

IN RE: PETITION FOR VARIANCE
N/S Spring Avenue, 590' N of the c/l
Karl Avenue
(1414A Spring Avenue)
14th Election District
7th Council District

Kenneth E. Canterbury, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 05-330-A
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Kenneth E. Canterbury, and his wife, Gloria A. Canterbury. The Petitioners seek relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (shed) to be located in the side yard in lieu of the required rear yard. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request was Kenneth Canterbury, property owner. Also appearing was Robert Infussi, a Zoning Consultant who assisted the Petitioners in the application process. Donald Vasold, adjacent property owner, and Joe Ruscito, Jr. and Fred Leiss, Jr. appeared as interested citizens/Protestants in the matter.

Testimony and evidence offered revealed that the subject property is a rectangular shaped parcel located on the north side of Spring Avenue, just south of Karl Avenue in Rosedale. The property is a panhandle lot, approximately 75 feet wide by 125 feet deep, and is located to the rear of the property known as 1414 Spring Avenue. The subject lot contains a gross area of .0274 acres (11,935 sq.ft.), more or less, zoned D.R.5.5, and is improved with a single-family dwelling and an accessory shed, which is the subject of the variance request. In this regard, the Petition was filed as the result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management relative to the location of the shed. As shown on the

ORDER RECEIVED FOR FILING
Date 2/28/05
By [Signature]

site plan, the house is located in the center of the lot, however, situated at an angle such that the corners of the dwelling are close to the side property lines. Due to the unusual configuration of the lot, the front and rear yards of the property are triangular in shape. The shed in question was constructed on the south side of the dwelling, within 3' of the side property line adjoining the Nicolette property to the south, which is currently vacant. In this regard, the Petitioner submitted a letter signed by Ms. Joan Nicolette, which was marked into evidence as Petitioner's Exhibit 2. That letter indicates that the Nicolettes are in the process of building a new home on that lot and that they have no objections to the shed being located adjacent to their common side property line.

Testimony indicated that the Petitioners have owned and resided on the property since 1993. Mr. Canterbury is legally blind, and suffers from Diabetes, heart disease, and neuropathy in both legs. It was indicated that he just underwent foot surgery and will be confined to a wheelchair and that the shed was located in close proximity to the attached garage of his home to provide needed storage space for his wheelchair and batteries to be used when travelling in a vehicle. In addition, the shed will be used to store lawn maintenance equipment. Mr. Canterbury testified that the shed is screened from the view of adjacent property owners to the north by a 7-foot privacy fence. Furthermore, as noted above, the Nicolettes who would be most affected, have no objections to the shed's location. Mr. Canterbury testified that he placed the shed where located for the reasons indicated above and was not aware of any community concerns or restrictions that would prevent him from so doing. He also testified that the shed could have been located in the rear yard but would not be as easily accessible given his physical condition and the existence of an above-ground pool in that area. Thus, relief is requested as set forth above to allow the shed to remain in its present location.

Mr. Joseph Ruscito appeared and testified in opposition to the request. He is vehemently opposed to the location of the structure, which he maintains is clearly visible to surrounding properties. In support of his position, Mr. Ruscito submitted photographs which show that the structure is located in close proximity to the front property line, despite its designation on the site plan as being located in the side yard, which he submits is erroneous. Mr. Ruscito also

submitted a copy of the subdivision plat for Lots 1 and 2 of The Finch Property, which was marked into evidence as Protestant's Exhibit 2. On that plan, the shed is shown to be located in the front yard of the subject property. Mr. Ruscito finds the view of the shed offensive and believes that the Petitioners should be required to relocate the shed in accordance with the regulations. He believes that the wheelchair and batteries could be stored in the existing attached garage, and that the shed should be relocated to the rear yard of the property as required. Mr. Leiss testified that he believes the Petitioners to be the authors of their own misfortune since they did not apply for the requisite building permit. He testified that the community is opposed to the location of the shed and submitted a Petition signed by various other neighbors indicating their objection to the variance request (see Protestants' Exhibit 1). Mr. Vasold testified that the shed was in violation of the regulations and that there are alternative sites on the subject property that would be more appropriate.

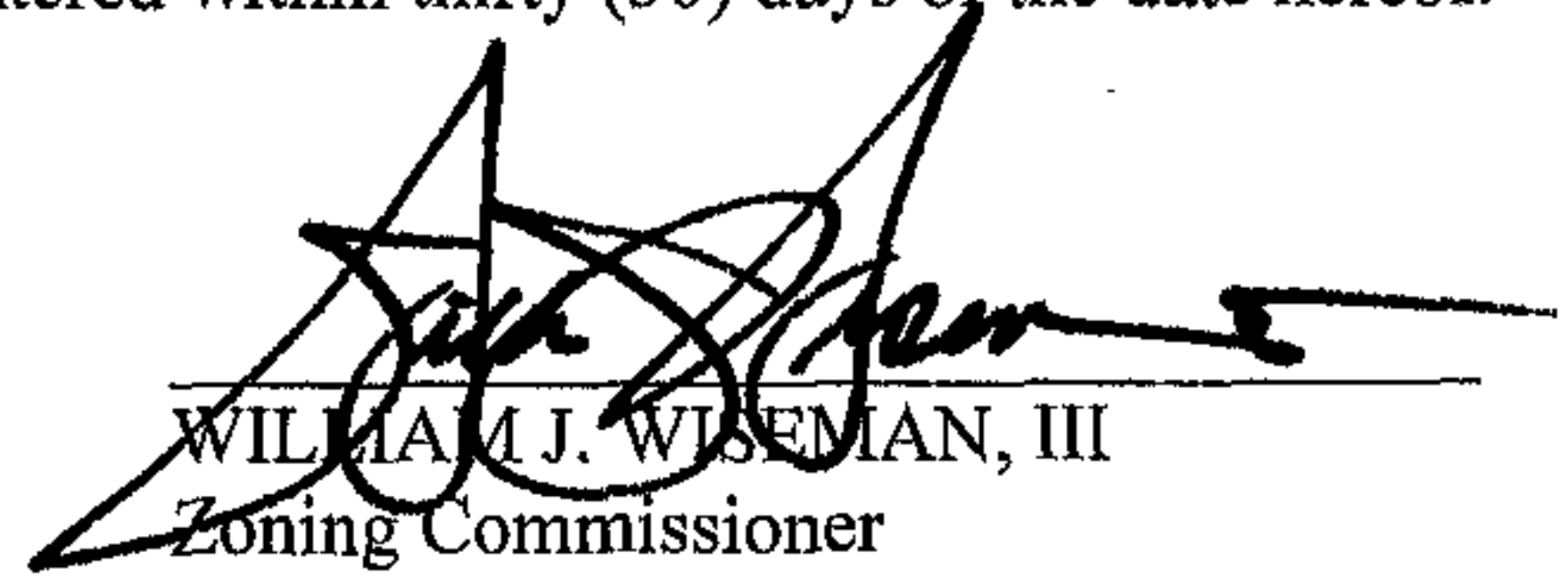
After due consideration of the testimony and evidence presented, I am persuaded to deny the variance. Although I am sympathetic to the disability and health issues faced by the Petitioner, I must consider the request in accordance with the mandate of Cromwell v. Ward, 102 Md. 691 (1995) and Section 307 of the B.C.Z.R. The Court interpreted the regulation to require that two tests be met in order for variance relief to be granted. First, it must be shown that the property is unique in some manner and that this uniqueness drives the need for variance relief. Secondly, upon the determination that the property is unique, then it must be considered whether compliance with the regulation would cause a practical difficulty upon the property owner and be unnecessarily burdensome. In my judgment, there was no evidence of unusual conditions or characteristics that are unique to this lot. Moreover, it was illustrated through photographs submitted at the hearing as Protestants' Exhibit 3, that sufficient room exists in the rear yard to locate the shed in conformance with the zoning regulations. Thus, I am persuaded to deny the variance.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28th day of February 2005 that the Petition for Variance seeking relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (shed) to be located in the side yard in lieu of the required rear yard, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petitioners shall have 120 days from the date of this Order in which to relocate the shed to the rear yard in compliance with the zoning regulations.

Any appeal of this decision shall be entered within thirty (30) days of the date hereof.


WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

ORDER RECEIVED FOR FILING
Date 2/28/15
By [Signature]

7/3/06
PETITION OF:

KENNETH E. & GLORIA A. CANTERBERY

1414A Spring Avenue
Rosedale, Maryland 21237

* IN THE

*

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

*

CIRCUIT COURT

*

Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

*

FOR

*

IN THE MATTER OF THE APPLICATION
KENNETH E. & GLORIA A. CANTERBERY
(Legal Owners)

*

BALTIMORE COUNTY

*

Case No. 05-330-A

For Variance on property located on the N/s
Spring Avenue, 590' N of c/l Karl Avenue
(1414A Spring Avenue)

*

*

Civil Case No.: 3-C-05-008601

14th Election District

7th Councilmanic District

*

* * * * *

MEMORANDUM

TO THE HONORABLE, THE JUDGE OF THE SAID COURT:

NOW COMES the Petitioners, **Kenneth E. & Gloria A. Canterbury**, by and through their attorney, **Arthur M. Frank, Esquire**, and hereby submits the following Memorandum in support of the Petition for Judicial Review in the above captioned case.

RECEIVED

JUL 03 2006

HISTORY OF PROCEEDINGS

**BALTIMORE COUNTY
BOARD OF APPEALS**

On February 28, 2005, the Zoning Commissioner of Baltimore County denied the Petitioners' request for a variance to allow their shed to remain in the side yard, in lieu of the backyard. On September 1, 2005, a public *de novo* hearing was held before the County Board of Appeals for Baltimore County. The Petitioners' requested variance relief from § 400.1 of the Baltimore County Zoning Regulations to permit an accessory structure to be located in the side

yard in lieu of the required rear yard was denied by the Board of Appeals on March 8, 2006. The Petitioners filed a timely Appeal to this Court and the transcript has been appropriately filed.

STATEMENT OF FACTS

In June 2004, the Petitioners, Kenneth and Gloria Canterbury, had a shed built for them by their son, Adam Canterbury, for a Father's Day present (T.8). Mr. Canterbury has been a diabetic for forty-four (44) years, has had several unsuccessful pancreas transplants, arthritis, deteriorating disks in his back, neuropathy in both legs, and is legally blind. The shed that was built on the side of the house is for all of his lawn supplies and medical equipment that Mr. Canterbury and his family use (T.23-25). The reason Mr. Canterbury placed the shed on the side of his house instead of the back was because of his disabilities and the greater ease that it would be for him to get to this equipment because of the access to direct pavement rather than walking over grass, roots, and other debris (T.27-28, 32). Furthermore, because of the uniqueness of Mr. Canterbury's home and how it is situated, building the shed on the side of the house was the logical location. Upon finding out that the shed was not in accordance with the Baltimore County Zoning Regulations, Mr. Canterbury immediately filed for variance relief for side yard placement of this shed, stating that it was necessary to allow storage within a close proximity to his dwelling for maintenance and medical equipment.

ISSUES

- 1. Was the County Board of Appeals decision erroneous in ruling that Baltimore County Zoning Regulation § 307 and the requirements of Cromwell v. Ward were not met for allowing a variance for the shed?**

2. **Did the County Board of Appeals err by refusing to consider the American Disability Act, the County Code on discrimination and/or the Fair Housing Act to the facts of this case where Petitioners' multiple medical disabilities would prevent him from fair use and enjoyment of his property by applying the zoning laws in this particular situation?**

ARGUMENT

Issue 1: The property owned by the Petitioners should permit a variance because of the circumstances and conditions to their property are very peculiar to the land or structure from other properties and strict compliance with the zoning regulations would "result in practical difficulty or unreasonable hardship."

Section 307 of the Baltimore County Zoning Regulations permits granting a variance from height and area restrictions "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."

In Cromwell v. Ward, 102 Md. App. 691 (1994), the Court of Appeals established that Petitioners must show that their property "is unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property." Secondly, there must be a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exist. In this particular instance, Mr. Canterbury's home is unique and unusual in that the location of his home is in the shape of a pan-handle; a long driveway with the home at

the top, a short back yard, and the handle which is paved with a grass area on which the shed in question lies. Mr. Canterbury's home is surrounded by other homes that have large fences that block off the front view of Mr. Canterbury's home and there is no other pan-handle property in this group of properties in question. The ordinance in question was not possibly intended to apply to situations where the front of a property is facing the rear and sides of other properties, which have fences erected that are also not in compliance with the same zoning regulations of Baltimore County.

The manner in which Mr. Canterbury's home is situated and the disabilities that Mr. Canterbury faces, make the location of the shed in the rear of his home unreasonable. Further, if the shed was to be placed in the rear of Mr. Canterbury's home, the zoning provision would disproportionately impact his property. Placing the shed in the rear would impact the property, in that, without cutting down some trees and taking roots up, the shed would not sit level. Therefore, because of the uniqueness of Mr. Canterbury's property and the disproportionate impact the ordinance will have on Mr. Canterbury, the first step of the analysis is met.

Secondly, which the Board of Appeals failed to address because they found that the Petitioners did not have a unique property, is the practical difficulty or unreasonable hardship involved in this case. *B.C.Z.R. Section 307*. Mr. Canterbury has many disabilities, all of which substantially inhibit his ability to move and his ability to see. In the Board of Appeals opinion, they stated "we see no reason why Petitioner cannot place his snow blower in his garage when the weather forecast predicts snow" (Board of Appeals Opinion, p. 8). For the Board to make this statement shows that having the shed closer to the driveway would make a substantial difference and the shed being close to the garage would be beneficial to Mr. Canterbury. Mr. Canterbury stated in his testimony that "I keep my hot dog cart, sodas, a refrigerator, and a sink [in the garage]. Things I need for my mobile hot dog business that I run" (T-8). Therefore, since

there is no additional room in the garage for other items necessary to maintain Petitioners' household, the placing of the shed on the side of the pan-handle would be necessary for Mr. Canterbury to have the complete use and enjoyment of his property. Further, if the shed were placed in the back where there is a great amount of debris, roots and uneven surfaces, the ordinance as applied in the present case would be impractical for this particular property. The Court is not to look at the hardship of the individual, but to the hardship of the property. Under these circumstances, although Mr. Canterbury has many individual hardships, his property is unique in shape compared to other properties around him and the placement of the shed on the side rather than the back would relieve any hardship placed on the property.

Issue 2: The County Board of Appeals erred by refusing to consider or interpret the American Disability Act, the County Code on discrimination and/or the Fair Housing Act to the facts of this case, where strict enforcement of the zoning regulations would not allow Ken Canterbury, a person with multiple disabilities, the fair use and enjoyment of his property as required.

American Disabilities Act, Title II § 12132 states:

Subject to the provisions of this subchapter, no qualified individual with a disability shall by reason of such disability, be excluded from participation in or be denied the benefits of the services, or activities of a public entity, or be subject to discrimination by any such entity.

In this case, the Baltimore County Zoning Regulation imposes a burden on the Petitioners and as applied in this case, discriminates against an individual with disabilities. By denying the Petitioners request for variance to have his shed placed on the side of his yard rather than the back, wrongfully discriminated against the Petitioners.

According to the Baltimore County Code, Title 1, § 29-1-101, discrimination is defined as “acting or failing to act or unduly delaying an action regarding a person because of the person’s physical or mental disability, in a way the person is adversely affected in the area of housing.”

In this situation, because of Mr. Canterbury’s many disabilities, the Baltimore County Zoning Regulations (and the enforcement thereof) have the cumulative effect of preventing the Petitioner from having the shed closer to the pavement and his garage and therefore unfairly discriminates against the Petitioner. At some point in the future, because of the Petitioner’s disabilities, he will be limited to a wheelchair. The location of the shed relevant to the house would be even more important, because Mr. Canterbury would be able to store his wheelchair in the shed, as well as, any medical equipment that he might need.

Fair Housing Act, 42 U.S.C. § 3604(f)(3) states:

Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

The Board of Appeals for Baltimore County by denying the variance relief for the Petitioner’s, is not making a reasonable accommodation and has not afforded the Petitioners the ability to use and enjoy their dwelling property.

In Mastandrea v. North, 361 Md. 107 (2000), the Court of Appeals determined that it was proper for the Board of Appeals to consider the resident’s disability and need for a reasonable accommodation when granting the variance. In Mastandrea, a brick path was built for wheelchair access which was constructed within in the Critical Area buffer zone adjacent to a creek, in violation of a Talbot County Zoning Ordinance. As is the present situation, the Petitioner, Ken Canterbury, built a shed that was to be used to accommodate his disability, both

now and in the future. The Board of Appeals should have considered Mr. Canterbury's disability when determining the need for a variance.

The Board of Appeals in this case did not want to hear anything to do with the American Disabilities Act or the Fair Housing Act, so much so that they stated: "*[w]e are not here to interpret the Americans Disability Act or the Fair Housing Act. Those are matters that should be taken up in the courts*" (T-26, lines 17-20) (emphasis added). The Court of Appeals in Mastandrea, infra, concluded that "after weighing all of the evidence the Board of Appeals permissibly decided to make a reasonable accommodation of Leah Mastandreas' disability in granting the variance" *Id.* at 696. In the case *sub judice*, the Baltimore County Board of Appeals most certainly does have the right and obligation to interpret the ADA and the FHA. By completely failing to consider, interpret, and apply these various disability laws, the decision of the Board of Appeals should be reversed and/or the case remanded for consideration of this issue.

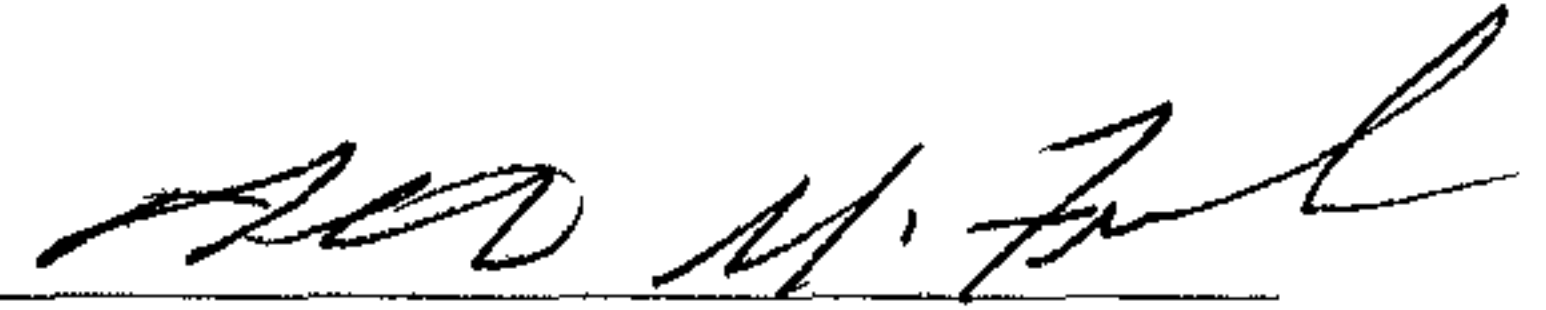
Under the American Disabilities Act, the Fair Housing Act, and/or the Baltimore County Code, which prohibits discrimination as part of necessary housing accommodations, the Petitioners were wrongfully prevented from the full and complete use and enjoyment of their dwelling property when this variance was denied. The variance should therefore be granted.

CONCLUSION

For the foregoing reasons, the Board of Appeals of Baltimore County's Order of March

8th, 2006 must be reversed and the variance relief requested by Petitioners should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Arthur M. Frank', written over a horizontal line.

Arthur M. Frank, Esquire
1726 Reisterstown Road, Suite 103
Pikesville, MD 21208
410-285-4800

Attorney for Petitioners

CERTIFICATION

I HEREBY CERTIFY, that on this 3rd day of July, 2006, a copy of this Memorandum in Support of Petitioner's Request for Variance was hand-delivered to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204 and to County Board of Appeals, Old Courthouse, Room 49 400 Washington Avenue, Towson, Maryland, 21204; and mailed, postage pre-paid to Mr. Joseph Ruscito, Jr., 1418A Spring Avenue, Rosedale, Maryland, 21237; Mr. Robert Walker, 1416 Spring Avenue, Rosedale, Maryland, 21237; Mr. John Peisinger, 1414 Spring Avenue, Rosedale, Maryland, 21237; Mr. Don Vasold, 1416A Spring Avenue, Rosedale, Maryland, 21237; and Mr. Fred Leiss, 1413 Spring Avenue, Rosedale, Maryland, 21237.



Arthur M. Frank, Esquire
1726 Reisterstown Road, Suite 103
Pikesville, MD 21208
410-285-4800

Attorney for Petitioners

6/2/05

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
KENNETH E. & GLORIA A. CANTERBERY
1414A Spring Avenue
Rosedale, MD 21237

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

CIVIL ACTION
No. 3-C-05-008601

IN THE MATTER OF THE APPLICATION
KENNETH E. & GLORIA A. CANTERBERY
(Legal Owners)
Case No.: 05-330-A
For a Variance on property located on the N/s
Spring Avenue, 590' N of c/l Karl Avenue
(1414A Spring Avenue)

14th ELECTION DISTRICT
7th COUNCILMANIC DISTRICT

* * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

06 JUN -2 PM 12:01

BALTIMORE COUNTY

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY**

No. 05-330-A

Jan. 3, 2005	Petition for Variance filed by Kenneth & Gloria A. Canterbury -- 400.1 to allow an accessory structure (shed) to be constructed in a side yard in lieu of the required rear yard. Description to accompany Petition for Variance.
Jan. 7, 2005	Notice of Zoning Hearing
Jan. 13, 2005	Entry of Appearance by People's Counsel.
Jan. 27, 2005	Publication in newspaper -- Jeffersonian.
Jan. 29, 2005	Certificate of Posting by Martin Ogle.
Feb. 8, 2005	Zoning Advisory Comments.
Feb. 14, 2005	Hearing held before the Zoning Commissioner. Citizen's & Petitioner's Sign In Sheets.
Feb. 28, 2005	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. Petition for Variance was DENIED.
Mar. 24, 2005	Notice of Appeal filed by Arthur M. Frank, Esq. on behalf of Petitioners.
Mar. 30, 2005	Second Notice of Appeal filed by Joseph Ruscito.
Aug. 11, 2005	Motion to Waive Filing Fees filed with the Circuit Court for Balto. Co.
Aug. 11, 2005	Order waiving filing fees was signed by Judge Dugan.
Sept. 1, 2005	Hearing held before the Board of Appeals.

Petitioner's Exhibits

- | | |
|---|---|
| 1 | Subdivision plat of property. |
| 2 | Plat with shed -- red |
| 3 | Photos A -- K. (I withdrawn photo of friend at house) |
| 4 | Video of subject property |
| 5 | Letter from Nicolette |

- 6 Letter from Dr. Zimmerman (4-11-05)
- 7 Letter from Dr. Zimmerman (5-09-05)
- 8 Letter from Dr. Schocket (5-31-05)
- 9 Letter from Fire Dept.

- 10 Memo from Office of Planning
- 11 Letter from State Highway Administration
- 12 Memo from Bowling to PDM
- 13 Memo from DEPRM to PDM

Protestant's Exhibit

- 1 Taxation Map
- 2 List of Properties
- 3 Photos
- 4 Letter from Code Enforcemen
- 5A Plat
- 5B Photo
- 6 Letter from Property Owners.
- 7 Letter from Mr. Reisinger

- Oct. 25, 2005 Public Deliberation concluded by the Board.

- Mar. 8, 2006 Opinion and Order issued by the Board of Appeals; Petition for Variance is DENIED.

- Mar. 9, 2006 Copy of Board's Opinion and Order faxed to Grant Kidd of Building Inspections.

- Mar. 15, 2006 Letter from People's Counsel for Baltimore County to Chairman of the Board advising that in the event that the Petitioner files a Petition for Judicial Review that People's Counsel intends to participate to defend the Board's decision.

- Mar. 24, 2006 Letter from Board Administrator acknowledging People's Counsel's letter of March 15, 2006.

- Apr. 17, 2006 Fax from Arthur M. Frank, P.A. advising the Board that a Petition for Judicial was filed by his office on behalf of the Petitioner's on March 17, 2006.

- Apr. 19, 2006 Retrieved a copy of the Petition for Judicial Review from the Circuit Court for Baltimore County, along with a Motion to Waive Filing Fees before

8/11/05
IN THE MATTER

OF

KENNETH E. CANTERBERY

and

GLORIA A. CANTERBERY

Petitioners/Appellants

* IN THE

* CIRCUIT COURT

* OF MARYLAND

* FOR BALTIMORE COUNTY

* Case No.: C05-8601

* (County Board of Appeals of
Baltimore County Case # 05-330-A)

* * * * *

MOTION TO WAIVE FILING FEES
(BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY)

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Now comes **Kenneth E. Canterbury** and **Gloria A. Canterbury**, Petitioners (and Appellants before the County Board of Appeals of Baltimore County, by and through **Arthur M. Frank**, Esquire, their attorneys, and, pursuant to Courts and Judicial Proceedings Article, §7-201(b), hereby files this Motion to Waive Filing Fees before the County Board of Appeals of Baltimore County (and any subsequent Appeal to this Court), and, in support thereof, states the following:

1. That the Petitioners were denied a variance by the Zoning Commissioner of Baltimore County to maintain a shed on their property known as 1414A Spring Avenue, in Baltimore County, State of Maryland (in Case No. 05-330-A) (a copy of the Findings and Facts and Conclusions of Law are attached hereto and incorporated by reference herein).
2. That on March 24, 2005, the undersigned counsel, on behalf of the Petitioners, filed a timely Appeal in this matter (a copy of said Appeal is attached hereto and incorporated by reference herein).

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CLERK OF THE COUNTY COURT
BALTIMORE COUNTY

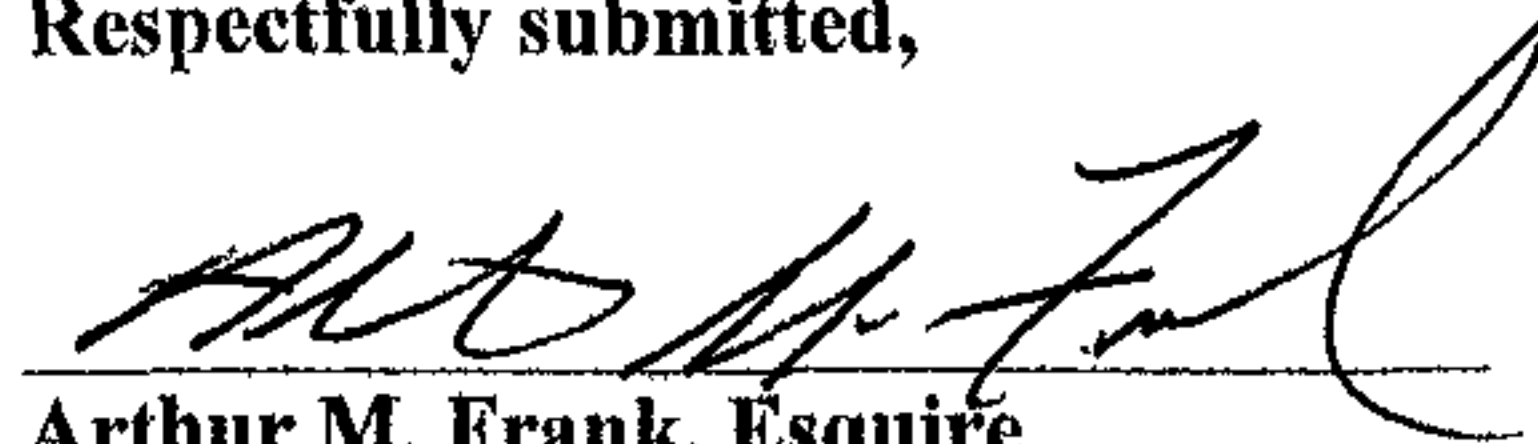
WMM

3. That Petitioners and counsel were advised that the filing fee totals the sum of Four Hundred Dollars (\$400.00), and, your Petitioners are without sufficient funds to pay the filing fee to pursue their appellate rights before the County Board of Appeals of Baltimore County.
4. That the undersigned counsel has undertaken representation in this matter on a *pro bono* basis.
5. That the Appeal is meritorious and is not taken for frivolous reasons; the case is scheduled for a Hearing on September 1, 2005 before the County Board of Appeals of Baltimore County.
6. That the Petitioner, Kenneth A. Canterbury, has a full disability, is legally blind, suffering from diabetes, neuropathy, and high blood pressure, coupled with two (2) previous pancreas transplant surgeries (a copy of three (3) letters from his eye doctors verifying that he is legally blind is attached hereto and incorporated by reference herein).
7. That the shed built in question was to accommodate Petitioner Kenneth Canterbury's disability, and has no negative impact upon the neighbors in any manner whatsoever.
8. That a Financial Statement of the Petitioners is attached hereto and incorporated by reference herein showing that the Petitioners are indigent and unable to pay the required amounts with respect to the filing fees to pursue their Appeal in this matter.
9. And for such other and further reasons as to be assigned at a Hearing on this Motion (if such a Hearing is necessary).

WHEREFORE, your Petitioners most respectfully pray that this Honorable

Court waive the filing fees before the County Board of Appeals of Baltimore County, as well as any subsequent Appeal to this Court (if necessary).

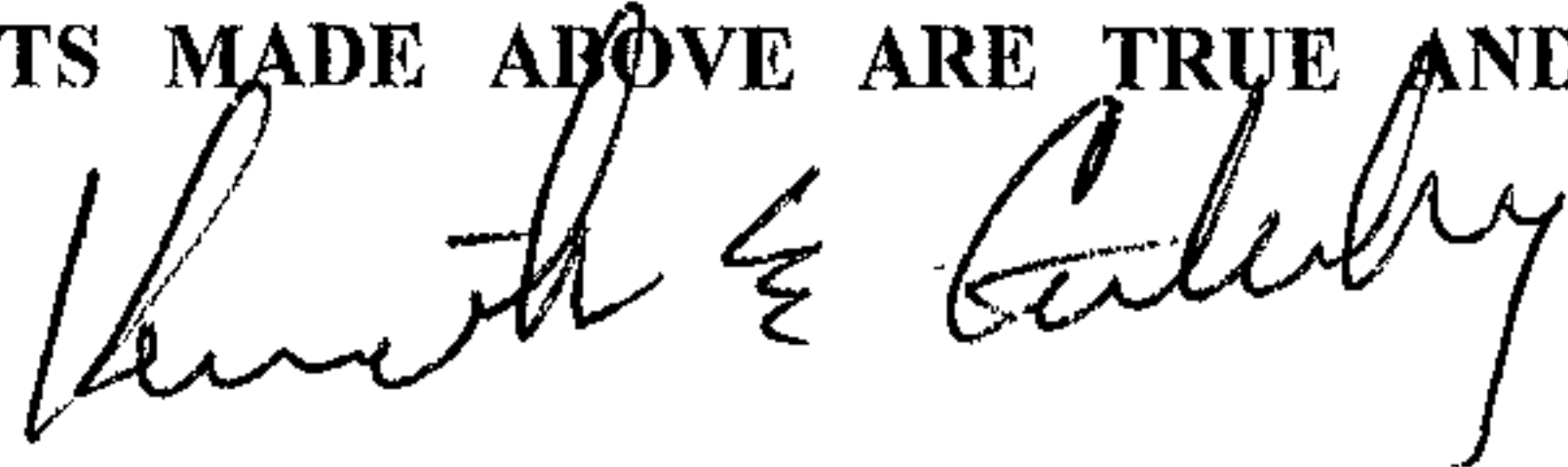
Respectfully submitted,



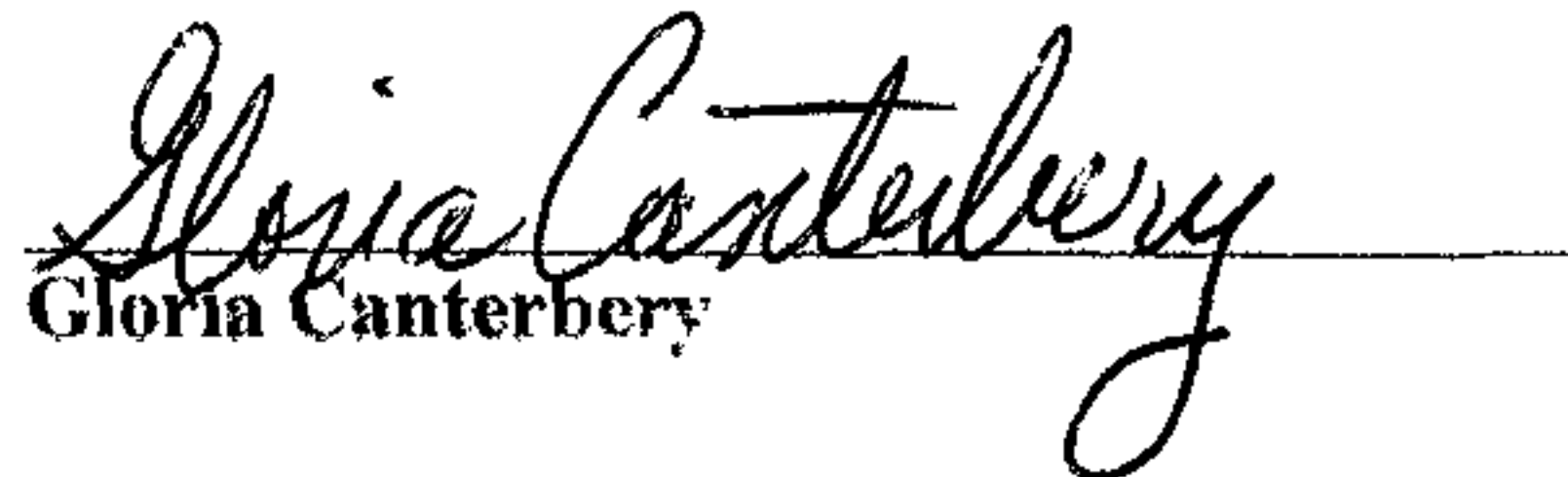
Arthur M. Frank, Esquire
341 N. Calvert Street, Suite 100
Baltimore, Maryland 21202-3633
410-285-4800

Attorney for Petitioners

I DO SOLEMNLY DECLARE AND AFFIRM, UNDER PENALTIES OF PERJURY, THAT THE STATEMENTS MADE ABOVE ARE TRUE AND CORRECT.



Kenneth Canterbury



Gloria Canterbury

4/12/06
PETITION OF **KENNETH & GLORIA CANTERBERRY***
FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS

IN THE

*
*
CIRCUIT COURT

IN THE CASE OF **KENNETH & GLORIA
CANTERBERRY**, LEGAL OWNERS FOR A PETITION
FOR VARIANCE ON PROPERTY LOCATED AT
1414A SPRING AVENUE; N/S SPRING AVENUE,
590' N KARL AVENUE

*
*
FOR

14th Election District, 7th Councilmanic District

*
BALTIMORE COUNTY

Prior Case No. 05-330-A
Before the County Board of Appeals

*
Case No. 03-C-05-008601

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed by **KENNETH & GLORIA CANTERBERRY**, and states that it intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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

RECEIVED

APR 26 2006

BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April, 2006, a copy of the foregoing Response to Petition for Judicial Review was mailed to Arthur M. Frank, Esquire, 341 N. Calvert Street, Suite 100, Baltimore, MD 21202, Attorney for Appellant and County Board of Appeals, 400 Washington Avenue, Room 49, Towson, Maryland 21204.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

4/21/06
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
KENNETH E. & GLORIA A. CANTERBERY
1414A Spring Avenue
Rosedale, MD 21237

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

IN THE MATTER OF THE APPLICATION
KENNETH E. & GLORIA A. CANTERBERY
(Legal Owners)
Case No.: 05-330-A
For a Variance on property located on the N/s
Spring Avenue, 590' N of c/l Karl Avenue
(1414A Spring Avenue)

14th ELECTION DISTRICT
7th COUNCILMANIC DISTRICT

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

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

Arthur M. Frank, Esq.
341 N. Calvert Street – Suite 100
Baltimore, MD 21202
(410)285-4800

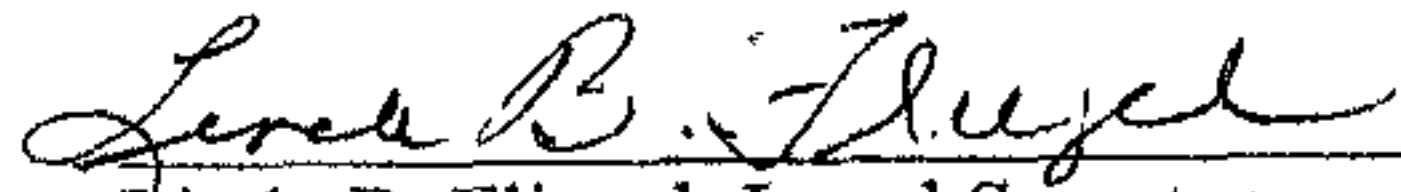
RECEIVED AND FILED

06 APR 21 PM 12:38

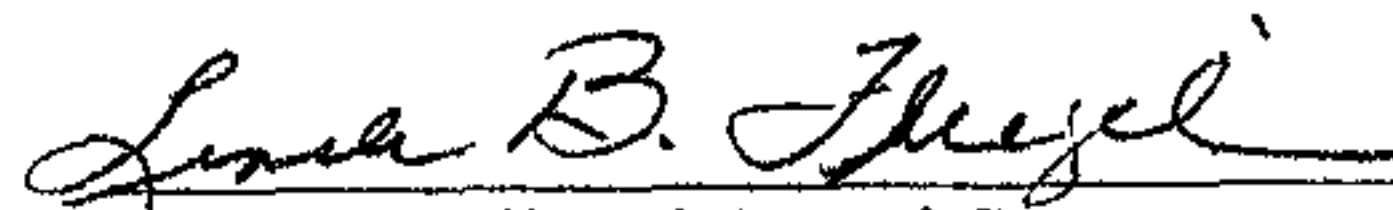
CLERK OF THE COURT
BALTIMORE COUNTY

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

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


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

I HEREBY CERTIFY that on this 21st day of April, 2006, a copy of the foregoing Certificate of Notice has been mailed to: Arthur M. Frank, 341 N. Calvert Street – Suite 100, Baltimore, MD 21202 and to Peter M. Zimmerman, People's Counsel for Baltimore County, 400 Washington Avenue, Courthouse – Room 47, Towson, MD 21204.


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



County Board of Appeals of Baltimore County

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

April 21, 2006

Arthur M. Frank, Esquire
341 N. Calvert Street, Suite 100
Baltimore, MD 21202

RE: Circuit Court Civil Action No. 3-C-05-008601
Petition for Judicial Review
Kenneth E. & Gloria A. Canterbury
1414A Spring Avenue
Case No.: 05-330-A

Dear Mr. Frank:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review, which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit the same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

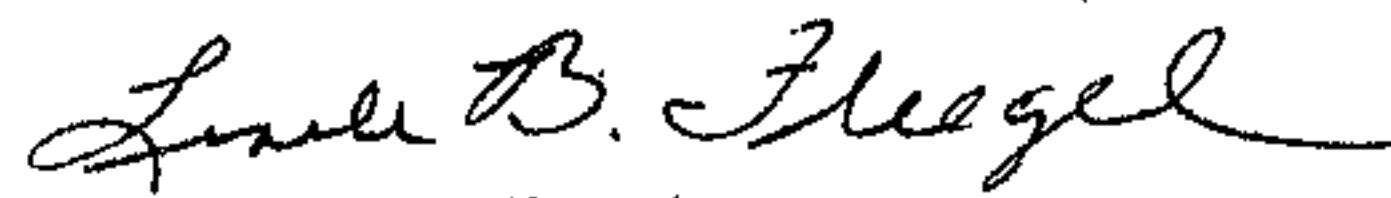
The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410- 486-8209
HEARING DATE: September 1, 2005

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by June 2, 2006, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, which enables her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,


Linda B. Fliegel
Legal Secretary

c: Carolyn Peatt, Court Reporter
People's Counsel for Balto. Co., MD





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 21, 2006

Peter M. Zimmerman,
People's Counsel for Baltimore County
Old Courthouse – Room 47
400 Washington Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-05-008601
Petition for Judicial Review
Kenneth E & Gloria A. Canterbury
Board of Appeals Case No.: 05-330-A

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on March 17, 2006 in the Circuit Court for Baltimore County, from the decision of the County Board of Appeals rendered in the above matter. The Board *retrieved* a copy of the Petition for Judicial Review from the Circuit Court on April 19, 2006. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Civil Action No. 3-C-05-008601**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,


Linda B. Fliegel
Legal Secretary

/lbf
Enclosure

c: Arthur M. Frank, Esq.
Robert Infussi
Joe Ruscito
Fred Leiss
Donald Vasold
Richard Reinhardt
Kenneth E. & Gloria A. Canterbury

William J. Wiseman, III, Zoning Commissioner/
Timothy Kotroco, Dir. of PDM
James Thompson, Code Enforcement
Pat Keller, Planning Director



7/9/06
IN THE MATTER OF
THE APPLICATION OF
KENNETH E. & GLORIA A. CANTERBURY
-LEGAL OWNERS /PETITIONERS FOR
VARIANCE ON PROPERTY LOCATED ON
THE N/S SPRING AVE, 590' N OF C/L KARL AVE
1414A SPRING AVENUE
14TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 05-330-A

* * * * *

OPINION

This case comes before the Baltimore County Board of Appeals on an appeal from a decision of the Zoning Commissioner dated February 28, 2005 in which variance relief to have a shed in the side yard, in lieu of the backyard, was denied.

Petitioners were represented by Arthur M. Frank, Esquire. Joseph Ruscito appeared *pro se* as a Protestant. A public de novo hearing was held on September 1, 2005, and a public deliberation was held on October 25, 2005.

Testimony and Evidence

Petitioner, Kenneth Canterbury, testified that his son built the shed for him in the side yard in June 2004. He stated that he stores a hot dog cart and business supplies in his garage, so the shed was needed for yard equipment, snow blower, and a propane tank. Petitioners' Exhibit 1 is a subdivision plat with the Petitioners' house marked in yellow. Petitioners' Exhibit 2 is a plat showing Petitioners' house and the location of the shed marked in red. Petitioners' house, at 1414A Spring Avenue, is situated behind the house at 1414 Spring Ave. that fronts on Spring Avenue. The two houses have separate driveways. Petitioners' house is set at an angle on the property, as is the house at 1416A Spring Ave. The shed is located three feet from the property line adjacent to 1412A. Petitioners' Exhibit 5 is a letter from Mr. Jack Nicolette, the owner of 1412A Spring Avenue, stating that he had no objections to the placement of the shed in the side

yard.

Petitioner produced a series of photographs (Petitioners' Exhibits 3A-K) showing various views of the property and the shed taken from different locations, several indicating that the shed could not be seen from the street. Photo 3E shows the shed, situated to the right of the garage with the house at 1412A directly behind. Photo 3J shows the inside of the garage with Petitioner's hot-dog cart.

Petitioner testified that he has numerous health problems: he has been a diabetic for 44 years; he has been legally blind since 1983; and he has arthritis and a deteriorating disk in his back. Petitioners' Exhibits 6, 7, and 8 are letters from doctors regarding his legal blindness. He testified that placing the shed in his backyard would create a practical difficulty for him, because it is hard for him to move his snow blower from the backyard to the front yard. He stated that the hot dog cart was his only business, so it was necessary for him to store it in his garage.

On cross-examination, Petitioner stated that he lives with his wife, who also works, and his two sons. He stated that there was an equal amount of lawn in the front and back of his house and there was no driveway in the back yard. He also stated that both he and his twelve-year-old son use the snow blower to remove snow. The Petitioner admitted that, although he had inquired about a permit, he did not consult the zoning regulations regarding placement of a shed.

When asked, on cross-examination, why his property was unique, compared to other properties in the area, the Petitioner stated that no one could see his house from the street. When asked what practical difficulty he would have if required to move the shed to the back yard, he stated that it would have to be dismantled. He also stated that he would have room to move around the back yard, if the shed were placed there.

On rebuttal, Petitioner stated that his driveway is 240 feet from the street. He further

testified that there are about five other properties in the neighborhood similar to his, which were subdivided with one house situated behind another house. He also stated that it was important for him to be able to do his own chores despite being blind.

Mr. Ruscito, the Protestant in the case, produced Protestant's Exhibit 1, a Department of Assessments and Taxation map showing five properties in the immediate area that had properties similar to Mr. Canterbury's. Protestant's Exhibits #3 A-D are photos taken by Mr. Ruscito of Petitioner's back and side yard. Mr. Ruscito also testified that he was concerned about the placement of the shed in the side yard because it was located near an electrical box that had once exploded (Protestant's Exhibit 5A and B).

In his closing arguments, Counsel for Petitioner argued that the variance should be granted because the shed could not be seen by anyone except the neighbor at 1416A Spring Avenue who did not object to the shed. He stated that the property was unique because it sits behind another house. He further argued that it would be an unnecessary hardship for the Mr. Canterbury to go from the back of his property to the front to use his snow blower.

Finally, Counsel for Petitioner argued that the requirements of the Americans with Disabilities Act (ADA) and the federal Fair Housing Act required that county zoning regulations not be burdensome to people with disabilities. Mr. Canterbury, he argued, had a right to fair access and use of his home. He cited *John P. Mastandrea, et ux v. John C. North II*, 760 A.2d 677 (Md. 2000).

Mr. Ruscito, in his closing arguments, pointed out that the requirements of § 307 of the *Baltimore County Zoning Regulations* (BCZR) and *Cromwell v. Ward* had not been met. The Petitioner had not shown how his property was unique compared with others in the area, nor had he shown how the zoning regulations resulted in a practical difficulty. The only practical

difficulty Mr. Canterbury faced was self-imposed, because the shed was already built in the side yard. Mr. Ruscito further argued that the ADA did not apply because Petitioner had no difficulty accessing his property, even with his disabilities. All the neighbors had to adhere to the same setbacks and zoning requirements and the County zoning regulations did not impose a specific hardship on Mr. Canterbury.

Opinion and Order

Two issues were presented to this Board to address.

Issue 1: Could Petitioner be granted a variance for a side yard shed based on the County zoning regulations and the requirements of *Cromwell v. Ward*?

Issue 2: Under the Americans with Disabilities Act (ADA) and the 1988 Fair Housing Act (FHA), did the *Baltimore County Zoning Regulations* create a situation that was burdensome to a person with disabilities, and/or did they prevent the Petitioner from the fair use of his property?

Issue 1: Could Petitioner be granted a variance based on the requirements of BCZR 307 and *Cromwell v. Ward*?

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, according 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.

In *Cromwell*, the Court of Special Appeals 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 addition the uniqueness of the property must be tied to the request for variances.

Petitioner claims that his property is unique because the house is situated behind another house and thus cannot be seen from the street. However, as both he and Mr. Ruscito testified, there are at least 5 and maybe 10 other houses in the neighborhood that are similarly situated. Further, the Petitioner failed to show how the fact that his house was situated behind another house caused the need for the variance he requested. His only argument in this regard was that the shed could not be seen from the street.

On both aspects regarding uniqueness then, we find that the Petitioner failed to prove his

case. The property is similar to many others in the neighborhood, and the characteristics of the property are not the reason for the variance request.

Having failed to find a case for uniqueness, this Board need not consider the remaining conditions for granting a variance and unanimously voted to deny the variance on that basis.

Issue 2: Under the Americans with Disabilities Act of 1990 and the 1988 Fair Housing Act, did the Baltimore County Zoning regulations create a situation that was burdensome to a person with disabilities, or did the regulations prevent the Petitioner from the fair use of his property?

Petitioner argues that according to the aforementioned federal laws, local zoning ordinances cannot discriminate against a person with a disability. In addition, *Baltimore County Code*, Title 1, § 29-1-101 defines "discrimination" as

(d) *Discrimination*. "Discrimination" means acting or failing to act or unduly delaying an action regarding a person because of the person's...physical or mental disability, in a way that the person is adversely affected in the areas of:

(1) Housing....

Petitioner further argues that, by requiring him to place his shed in the back yard, the *Baltimore County Zoning Regulations* impose a burden on him, because his disabilities make it more difficult for him to access his snow blower and other lawn equipment in the back yard than in the side yard.

Title II of the ADA requires that state and local governments make programs and services accessible to persons with disabilities. It also requires that they make reasonable modifications to local laws, ordinances and regulations that, although neutral on their face, may discriminate against a person with disabilities. The Americans with Disabilities Act, Title II Section 12132 states:

Subject to the provisions of this subchapter, no qualified individual with a disability shall by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

A qualified individual with a disability is defined by 42 U.S.C.A Section 12131(2) as:

An individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

The Fair Housing Act was amended in 1988 to prohibit discrimination in housing on the basis of disability. It covers private housing and housing funded through federal, local and state assistance programs. FHA also covers local zoning ordinances; 42 U.S.C. § 3604(f)(3) states:

For purposes of this subsection, discrimination includes

... (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. ...

Under both ADA and FHA, local jurisdictions are required to make "reasonable accommodations" in rules and policies to afford a person with disabilities "equal opportunity to use and enjoy a dwelling."

Although it did not reach a finding based on ADA, the Maryland Court of Appeals decision in *Mastandrea v. North* (1999) is instructive, and it did recognize that the Mastandrea's daughter had a legal right as asserted under § 12121(c) of the ADA. In this case, the Mastandrea family had built a pathway within the Critical Area buffer in order to provide access to the shoreline for their daughter, Leah, who was disabled and in a wheelchair. The Talbot County Board of Appeals ruled in their favor, concluding that "the paths provided reasonable access to the waterfront for handicapped persons and were reasonable accommodations for Leah's disability" (Mastandrea at 683).

After reviewing all the testimony and evidence in this case, this Board does not find that the zoning requirement that sheds be placed in rear yards is discriminatory or burdensome to the

Petitioner. Mr. Canterbury stores lawn equipment and a snow blower in the shed. He has, however, lawn area in the rear, side and front of his house. Thus, it is equally easy for him to use his lawn equipment whether it is stored in the front, side or the rear of the house.

Mr. Canterbury also stated that he uses his snow blower and that it would be a hardship for him to move it from the front yard to where his driveway starts in the front of the house. Exhibit 2, Plat of the property with the shed, shows that there is a distance of about 80 feet from the backyard property line to where the shed is located in the side yard. During re-direct testimony, Mr. Canterbury stated that the driveway he snowplows is 240 feet in length. Based on his own testimony that Petitioner can snowplow 240 feet, this Board does not find a practical difficulty or burden in the zoning regulations requirement that places his shed an additional 80 feet in the back yard.

In addition, the evidence before the Board does not indicate the size of the Petitioner's garage. This Board sees no reason why Petitioner cannot place his snow blower in his garage when the weather forecast predicts snow. Then, if it were necessary to plow the driveway, Petitioner would have the snow blower readily available.

The real hardship or burden, as Mr. Canterbury admitted on cross-examination, is that the shed was built without consulting the zoning regulations and must now be moved to comply with them. This is a self-imposed burden that neither the ADA nor FHA was intended to address.

BCZR § 400.1 is a neutral law that does not on its face discriminate against persons with disabilities. The question before the Board is whether granting a variance in this case would be a reasonable accommodation for a person with physical disabilities. We find that, despite his disability, Mr. Canterbury has access to his front, side and rear yards. Granting him a variance for a side yard shed would not serve to provide him with a right commonly enjoyed by his neighbors,

but would grant him a right in excess of his neighbors.

This Board unanimously denies the variance request and will so order.

ORDER

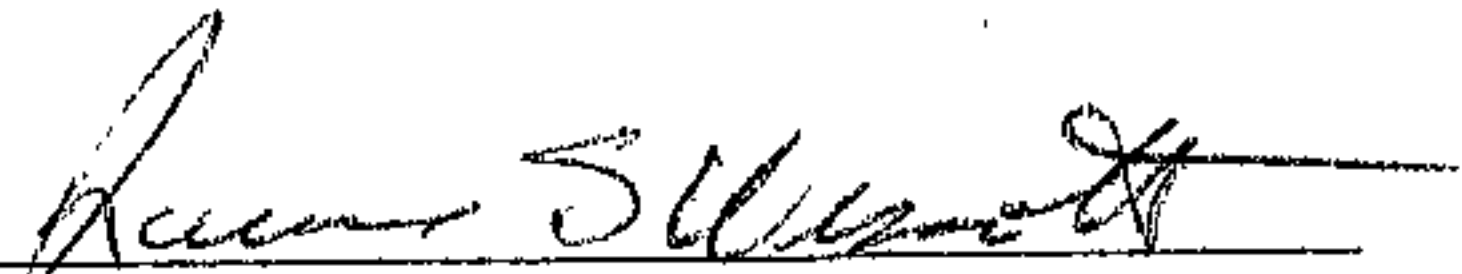
THEREFORE, IT IS THIS 8th day of March, 2006 by the County

Board of Appeals of Baltimore County

ORDERED that Petitioner's requested variance relief from § 400.1 of the *Baltimore County Zoning Regulations*, to permit an accessory structure (shed) to be located in the side yard in lieu of the required rear yard, be and the same is hereby **DENIED**.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Chairman


Mike Mohler


Margaret Brassil, Ph.D.



County Board of Appeals of Baltimore County

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

March 8, 2006

Arthur M. Frank, P.A.
341 N. Calvert Street
Suite 100
Baltimore, MD 21202-3633

RE: *In the Matter of: Kenneth E. and Gloria A. Canterbury*
– Legal Owners /Petitioners / Case No. 05-330-A

Dear Mr. Frank:

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

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

Enclosure

c: Kenneth & Gloria Canterbury
Joseph Ruscito
Robert Infussi
Fred Leiss
Donald Vasold
Richard Reinhardt
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
James Thompson, Code Enforcement /PDM /CC-04-8094
Timothy M. Kotroco, Director /PDM





Petition for Variance

to the Zoning Commissioner of Baltimore County
for the property located at 1414 A SPRING AVENUE
which is presently zoned O.R. 5.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400.1 TO ALLOW AN ACCESSORY STRUCTURE (SHED) TO BE CONSTRUCTED IN A SIDE YARD IN LIEU OF THE REQUIRED REAR YARD.

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

SEE ATTACHED BRIEF

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 _____

Attorney For Petitioner:

Name - Type or Print _____
Signature _____
Company _____
Address _____ Telephone No. _____
City _____ State _____ Zip Code _____

Legal Owner(s):

KENNETH E. CANTERBURY
Name - Type or Print _____
Kenneth E. Canterbury
Signature _____
GLORIA A. CANTERBURY
Name - Type or Print _____
Gloria A. Canterbury
Signature _____
1414 A SPRING AVE. (410) 780-0442
Address _____ Telephone No. _____
BALTO. MO. 21237
City _____ State _____ Zip Code _____

Representative to be Contacted:

ROBERT INFLESSI
Name _____
P.O. BOX 1043-7043 (410) 812-2236
Address _____ Telephone No. _____
BELAIR MD. 21014
City _____ State _____ Zip Code _____

OFFICE USE ONLY

Case No. 05-330A

ESTIMATED LENGTH OF HEARING 1 1/2 hr

UNAVAILABLE FOR HEARING

Reviewed By [Signature] Date 1-03-05

BRIEF TO ACCOMPANY PETITION FOR VARIANCE

1414A SPRING AVENUE

The petitioner, Mr. Kenneth Canterbury, is legally blind, suffers from diabetes, heart disease and neuropathy in both legs. At this time, the shed is necessary to allow a storage area within close proximity to the dwelling for maintenance equipment. Eventually, Mr. Canterbury will be confined to a wheel chair and will utilize the shed for storage of a wheel chair, batteries, etc. to be used when traveling in a vehicle. The shed will be secluded or screened from adjacent properties. The location and orientation of adjacent dwellings should be considered.

330

DESCRIPTION TO ACCOMPANY PETITION FOR VARIANCE

1414A SPRING AVENUE

Beginning at a point on the north side of Spring Avenue (37.5 feet wide) distant northwesterly 590 feet from it's intersection with the center of Karl Avenue, thence (1) N 66°14'55"W 12.02 feet thence (2) N 21°20'05"E 317.79 feet, thence (3) S 66°14'55"E 75.00 feet, thence (4) S 21°20'05"W 127.13 feet, thence (5) N 68°39'55"W 62.93 feet, thence (6) S 21°20'05"W 188.01 feet to the place of beginning.

Containing 0.274 acre of land, more or less.

Being known as 1414A Spring Avenue. Located in the 14th Election District, 7th Councilmanic District of Baltimore County, Maryland.

330

**NOTICE OF ZONING
HEARING**

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

Case: #05-330-A
1414-A Spring Avenue
N/side of Spring Avenue,
590 feet west of centerline
of Karl Avenue
14th Election District
7th Councilmanic District
Legal Owner(s): Kenneth E. &
Gloria A. Canterbury
Variance: to allow an accessory structure, shed, to be constructed in a side yard in lieu of the required rear yard.
Hearing: Monday, February 14, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM WISEMAN
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations. Please Contact the Zoning Commissioner's Office at (410) 887-4388.

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

1/358 Jan. 27 37163

CERTIFICATE OF PUBLICATION

1/27/, 2005

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 1/27/, 2005.

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

J. Wilkins

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

Card No. 441295
05-330-1A

DATE 1-03-05 ACCOUNT R-001-0006-6150

AMOUNT \$ 65.00

RECEIVED
FROM

Expedite III

FOR Residential Variance filed
for 1414 A Spring Ave.

DISTRIBUTION
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS DATE TIME DAY
1/04/2005 1:00 PM 1A-56129
BY MON. 04/04/05 PER 120-
RECEIPT # 33011 1/04/2005 0510

5.500000 VERIFICATION
0.151 401255

Receipt Tot \$65.00

\$65.00 05 1.00-04

Baltimore County, Maryland

CASHIER'S VALIDATION

im000198 (1152x864x24b jpeg)

ZONING NOTICE
CASE # 05-330-A

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

From: 107 County Courts Building
PLACE: 401 Bossey Avenue, Towson MD
DATE AND TIME: MONDAY, FEBRUARY 14, 2005
AT 10:00 AM

REQUEST: VARIANCE TO ALLOW AN
ACCESSORY STRUCTURE, SHED, TO BE
CONSTRUCTED IN A LOT ADJ. TO A LOT
OF THE EXISTING REAR YARD

NOTICE: THIS NOTICE IS REQUIRED BY THE ZONING COMMISSIONER AND CANNOT BE EXEMPTED.
IF YOU HAVE ANY QUESTIONS, PLEASE CALL 410-326-1511

FOR MORE INFORMATION, PLEASE VISIT OUR WEBSITE AT: www.towsonmd.gov

MAKING/ACCESSIBLE

Martin Ogilvie 1/29/05

CERTIFICATE OF POSTING

RE: Case No. : 05-330-A

Petitioner/Developer: KENNETH

GLORIA CANTERBURY

Date of Hearing/Closing: 2/14/05

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

Attention:

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary
sign(s) required by law were posted conspicuously on the property
at 1414A SPRING AVE

This sign(s) were posted on January 29, 2005
(Month, Day Year)

Sincerely,

Martin Ogle 1/29/05
(Signature of Sign Poster and Date)

Martin Ogle
Sign Poster
5016 Castlestone Drive
Address
Balto. Md 21237
(443-629-3411)

APPEAL SIGN POSTING REQUEST

CASE NO. 05-330-A

KENNETH & GLORIA CANTERBERY

1414 A SPRING AVENUE

14TH ELECTION DISTRICT

APPEALED: 3/24/2005

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, MD 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 05-330-A

Legal Owners: KENNE. CANTERBERY & GLORIA A. CANTERBERY

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

1414 A SPRING AVENUE

The sign was posted on 4/21, 2005

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Print Name)

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number 05-330-A
Petitioner. Kenneth E. CANTERBURY
Address or ^{site} Location 1414-A Spring Ave.

PLEASE FORWARD ADVERTISING BILL TO

Name: Robt. Infussi
Address P.O. Box 1043-7043
Bel Air, Md. 21014
Telephone Number 410-812-2236

TO: PATUXENT PUBLISHING COMPANY
Thursday, January 27, 2005 Issue - Jeffersonian

Please forward billing to:
Robert Infussi
P.O. Box 1043-7043
Belair, MD 21014

410-812-2236

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: 05-330-A

1414 A Spring Avenue

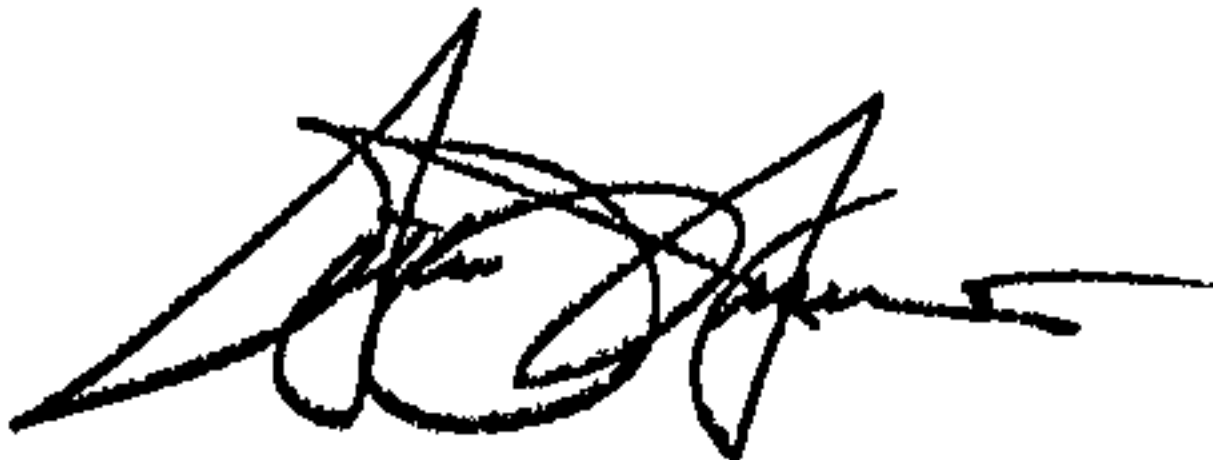
N/side of Spring Avenue, 590 feet west of centerline of Karl Avenue

14th Election District – 7th Councilmanic District

Legal Owners: Kenneth E. & Gloria A. Canterbury

Variance to allow an accessory structure, shed, to be constructed in a side yard in lieu of the required rear yard.

Hearing: Monday, February 14, 2005 at 10:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204



WILLIAM WISEMAN
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**

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



Baltimore County

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

February 8, 2005

Kenneth E. Canterbury
Gloria A. Canterbury
1414A Spring Avenue
Baltimore, Maryland 21237

Dear Mr. and Mrs. Canterbury:

RE: Case Number: 05-330-A , 1414A Spring Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on January 3, 2005.

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,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Robert Infussi P.O. Box 1043-7043 Belair 21014

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
JANUARY 10, 2005

TO: Tim Kotroco
PDM

FROM: John D. Oltman, Jr. JDO
DEPRM

DATE: February 3, 2005

SUBJECT: Zoning Items # See List Below

Zoning Advisory Committee Meeting of January 10, 2005.

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

05-319

05-323

05-325

05-326

05-327

05-330

05-332

05-333

Reviewers: Sue Farinetti, Dave Lykens

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

DATE: January 24, 2005

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

SUBJECT: Zoning Advisory Committee Meeting
For January 17, 2005
Item Nos. 319, 320, 323, 324, 325, 326,
327, 330, 331, 332, and 333

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

RWB:CEN:jrb

cc: File

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

January 4, 2005

ATTENTION: Zoning Review planners
Distribution Meeting of: January 31, 2005
Item No.: 319-333

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

The Fire Marshal's Office has no comments at this time.

Lieutenant Franklin J. Cook
Fire Marshal's Office
(O) 410-887-4881 (C) 443-829-2946
MS-1102F

File

Exhibit 9:
Letter from Fire Department dated
January 4, 2005
County Board of Appeals/Canterbery

Visit the County's Website at www.baltimorecountyonline.info

BW
2/14

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: January 20, 2005

RECEIVED

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

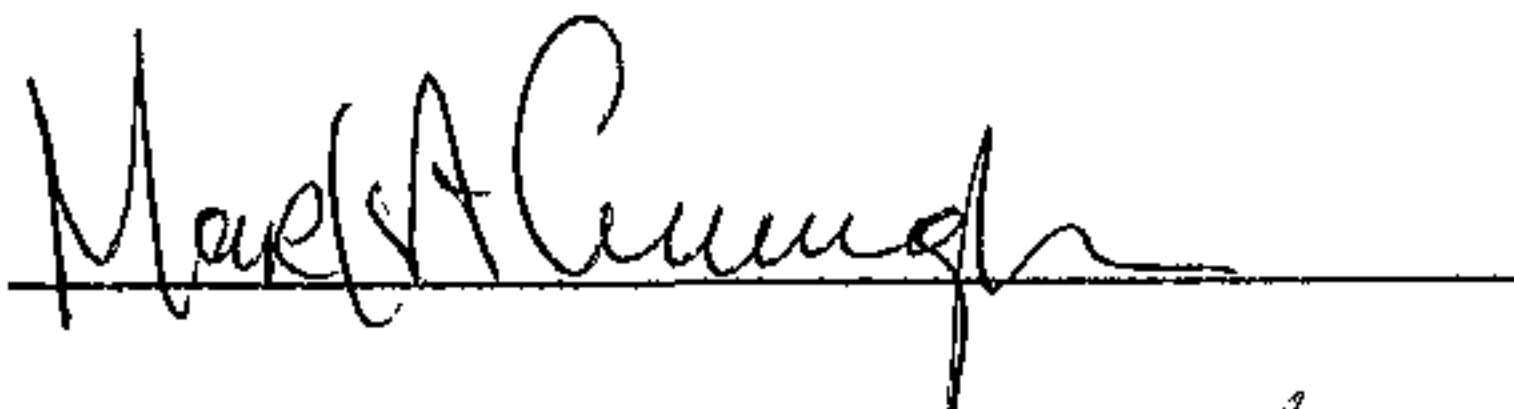
JAN 24 2005

SUBJECT: Zoning Advisory Petition(s): Case(s) 5-330 and 5-333

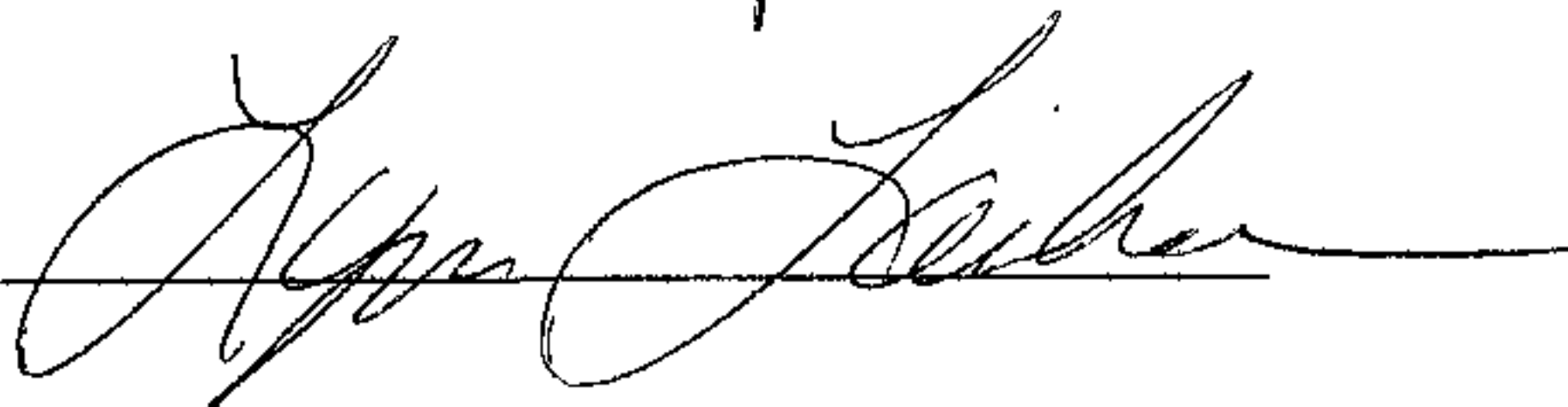
COMMISSIONER

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 Cunningham in the Office of Planning at 410-887-3480.

Prepared By:



Division Chief:



MAC/LL

**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 4, 2005

Kenneth E. Canterbury
Gloria A. Canterbury
1414 A Spring Avenue
Baltimore, MD 21237

Dear Mr. & Mrs. Canterbury:

RE: Case: 05-330-A, 1414 A Spring Avenue

Please be advised that this office received an appeal of the above-referenced case in this office on March 24, 2005 on your behalf by Arthur M. Frank. In addition to this appeal, a secondary appeal was filed on March 30, 2005 by Joe Rucsito. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Robert Infussi, P.O. Box 1043-7403, Belair 21014
Joe Ruscito, Jr., 1418A Spring Avenue, Rosedale 21237
Fred Leiss, Jr., 1413 Spring Avenue, Rosedale 21237
Donald Vasold, 1416A Spring Avenue, Rosedale 21237
Richard Reinhardt, 220 Bosley Avenue Towson 21204
Code Enforcement

Visit the County's Website at www.baltimorecountyonline.info



APPEAL

Petition for Variance
1414A Spring Avenue
N/s Spring Avenue, 590' N of the c/l Karl Avenue
14th Election District – 7th Councilmanic District
Legal Owners: Kenneth E. & Gloria A. Canterbury, et ux

Case No.: 05-330-A

Petition for Special Hearing (January 3, 2005)

Zoning Description of Property

Notice of Zoning Hearing (January 7, 2005)

Certification of Publication (January 27, 2005 – The Jeffersonian)

Certificate of Posting (January 29, 2005) by Martin Ogle

Entry of Appearance by People's Counsel (January 13, 2005)

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. Site Plan to accompany petition for Variance
2. Letter dated September 29, 2004 from Mr. Nicolette

Protestants' Exhibits:

1. Subdivision Plat Lots 1 & 2 (Finch Property)
2. Letter of Objection from Neighbors
3. Photographs

Miscellaneous (Not Marked as Exhibit)

1. Baltimore County Uniform Code Enforcement Citation
2. Final Order of the Code Enforcement Hearing Officer
3. Real Property Data Search

Zoning Commissioner's Order (DENIED – February 28, 2005)

Notice of Appeal received on March 24, 2005 from Arthur M. Frank on behalf of Petitioners

2nd Notice of Appeal received on March 30, 2005 from Joseph Ruscito

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Robert Infussi, P.O. Box 1043-7043, Belair 21014
Joe Ruscito, 1418A Spring Avenue, Rosedale 21237
Fred Leiss, 1413 Spring Avenue, Rosedale 21237
Donald Vasold, 1416 A Spring Avenue, Rosedale 21237
Richard Reinhardt, 220 Bosley Avenue, Towson 21204
Code Enforcement

date sent April 4, 2005, klm

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Kenneth and Gloria A Canterbury
1414A Spring Avenue
05-330-A

DATE : October 25, 2005

BOARD/PANEL Lawrence W. Wescott
Dr. Margaret Brassil
Michael Mohler

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: To deliberate whether or not to allow an accessory structure, a shed, to be constructed in a side yard in lieu of the required rear yard.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

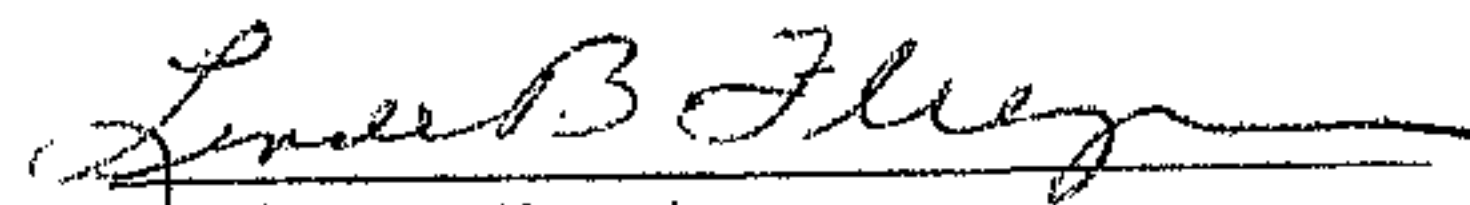
- Considered the *Cromwell* case when determining uniqueness.
- No evidence that supports that this property is unique.
- Property is similar to many other houses in the neighborhood.
- House could not be seen from the street.
- Not granting the variance may cause an inconvenience, but not a hardship.

DECISION BY BOARD MEMBERS: It was determined that nothing could support and argument to find the property as being unique, or, in the alternative, that it presented a hardship for the Petitioners.

FINAL DECISION: After a deliberation and review of the facts and law, the Board ***DENIED*** the Petitioners request for variance.

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

Respectfully Submitted



Linda B. Fliegel
County Board of Appeals

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: January 22, 2008

TO: Timothy Kotroco, Director
Permits & Development Management
Attn.: Donald T. Rascoe

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **Kenneth & Gloria Cantebury**
05-330-A
Circuit Court Case Nos.: 03-C-05-008601

On October 19, 2006 the Circuit Court for Baltimore County issued an Opinion and Order AFFIRMING the Board of Appeals decision to *DENY* Petitioners request for variance relief from § 400.1 of the BCZR to permit an accessory structure (shed) to be located in the side yard.



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

March 15, 2006

Lawrence S. Wescott, Chairman
County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: Kenneth & Gloria Canterbury
Case No.: 05-330-A

Dear Mr. Wescott:

Our office would like to register its interest to be a party in this case. Upon review of the March 8, 2006 Opinion, we noticed that there are issues raised not only with respect to basic variance law, but also with respect to the Americans with Disabilities Act and the 1988 Fair Housing Act. In the event that the Petitioner files a Petition for Judicial Review in the Circuit Court for Baltimore County, our office intends to participate to defend the CBA decision to deny the petition for variance. It should be noted that there is a party of record in opposition who participated at the CBA hearing. Please send our office notice of any further proceedings or anything else filed in this matter.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Peter Max Zimmerman".

Peter Max Zimmerman
People's Counsel for Baltimore County

A handwritten signature in cursive script that reads "Carole S. Demilio / rmw".

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Arthur M. Frank, P.A.
Mr. Joseph Ruscito



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 6, 2005

Arthur M. Frank, Esquire
341 N. Calvert Street
Suite 100
Baltimore, MD 21202-3633

RE: In the Matter of: *Kenneth E. & Gloria A. Canterbury*
Case No. 05-330-A

Dear Mr. Frank:

A hearing in the subject matter has been scheduled for Thursday, September 1, 2005 at 10:00 a.m. (Notice of Assignment enclosed).

It is my understanding that you filed an appeal on behalf of Mr. and Mrs. Canterbury from the March 24, 2005 decision of the Zoning Commissioner **without** payment of the required appeal fee on the basis that Mr. Canterbury was indigent and therefore unable to pay the necessary fee. While neither this office nor any agency of Baltimore County has the authority to waive the required appeal fee, you had advised the Department of Permits & Development Management at the time of appeal that you were filing for a waiver of this fee with the Circuit Court for Baltimore County.

In light of the above, the file was forwarded to this office for processing **pending receipt of an Order from the Circuit Court finding your client to be indigent and ordering this office to waive the appeal fee in this matter.**

Please be advised that, if such an Order is not received in this office by Monday, August 15, 2005, the Board will consider this matter for **dismissal for failure to pay** the necessary appeal fee as mandated by statute.

Should you have any questions, please contact me at 410-887-3180.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Kenneth and Gloria Canterbury
Office of People's Counsel w/enclosure
Joseph Ruscito w/enclosure
James Thompson, Code Enforcement /PDM w/enclosure
Timothy M. Kotroco, Director, PDM w/enclosure



Fred Leiss.
1413 Spring Ave
Rosedale MD, 21237
410-686-4119

April 25, 2006

Chief Clerk, Civil Division
Circuit Court for Baltimore County
County Courts Building
401 Bosley Ave
Towson, MD 21204

Hand-delivered

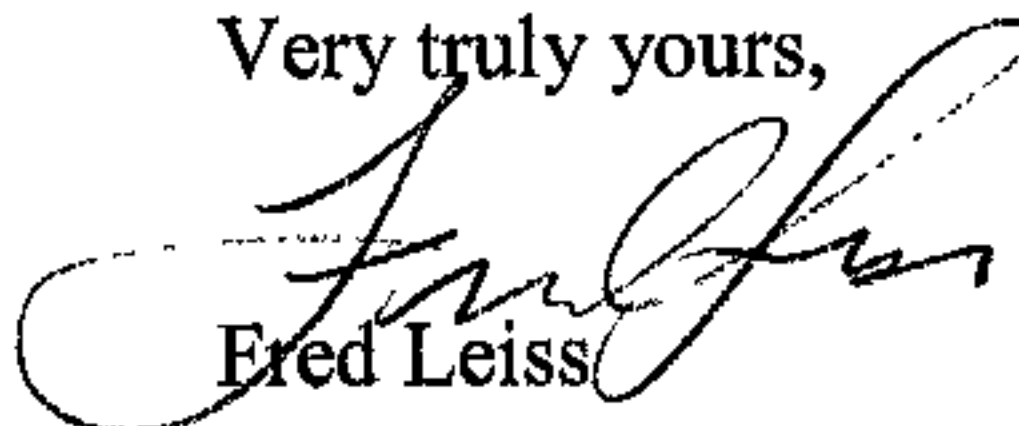
Re: Petition for Judicial Review of the Decision of the County
Board of Appeals In the Matter of Kenneth & Gloria
Canterbery
Case Number: 03 C-05-008601

Dear Sir or Madam:

Please file the enclosed response to Petition for Judicial Review. If you have any questions or concerns, please contact my office

Thank you for your consideration

Very truly yours,


Fred Leiss

Enclosures

cc: Arthur M Frank, Esquire
County Board of Appeals ✓

RECEIVED

MAY 22 2006

BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF **KENNETH & GLORIA CANTERBERRY** *
FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *

IN THE

CIRCUIT COURT

IN THE CASE OF **KENNETH & GLORIA** *
CANTERBERRY, LEGAL OWNERS FOR A PETITION *
FOR VARIANCE ON PROPERTY LOCATED AT *
1414A SPRING AVENUE; N/S SPRING AVENUE, *
590' N KARL AVENUE *

FOR

14th Election District, 7th Councilmanic District

BALTIMORE COUNTY

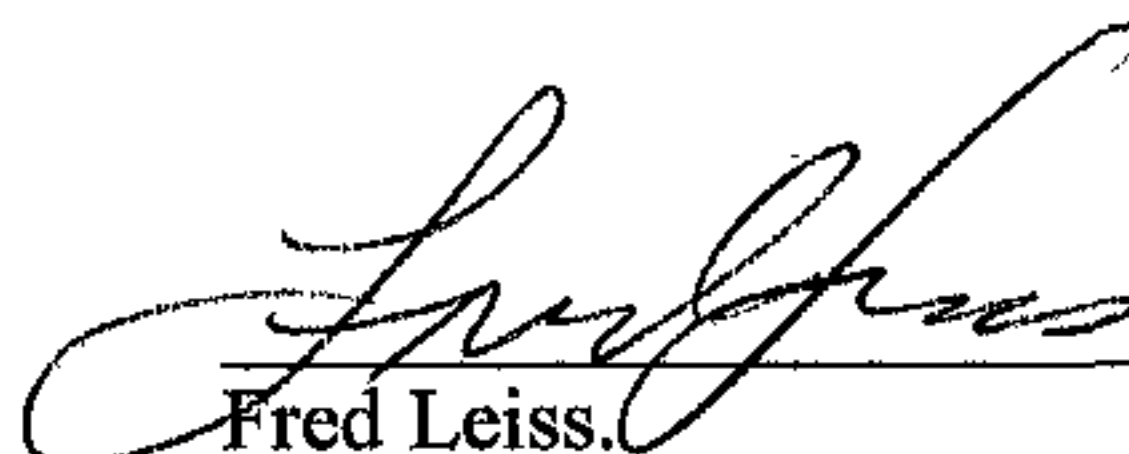
Prior Case No. 05-330-A
Before the County Board of Appeals

Case No. 03-C-05-008601

* * * * *

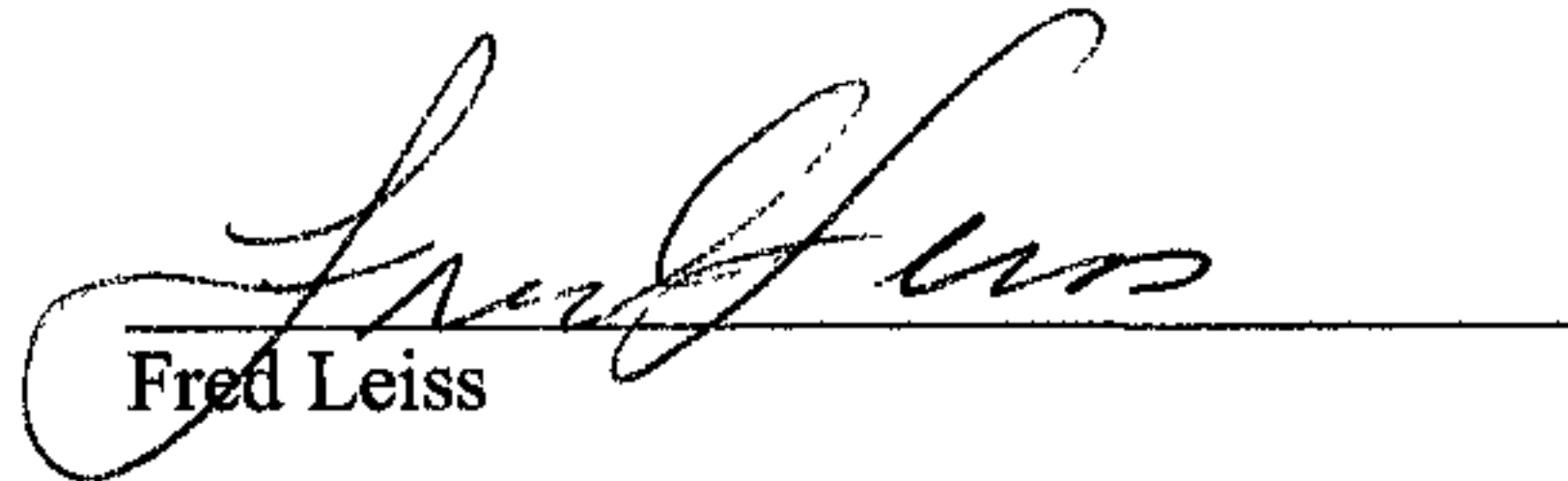
RESPONSE TO PETITION FOR JUDICIAL REVIEW

Fred Leiss, in accordance with Maryland Rule 7-204, submits this response to the
Petition for Judicial Review filed by **KENNETH & GLORIA CANTERBERRY**, and states that it intends
to participate in this action for Judicial Review. The undersigned participated in the proceeding before
the County Board of Appeals.


Fred Leiss.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 th day of April, 2006 a copy of the foregoing Response to Petition for Judicial Review was mailed to Arthur M Frank, Esquire, 341 N. Calvert Street, Suite 100, Baltimore, MD 21202, Attorney for Appellant and County Board of Appeals, 400 Washington Avenue, Room 49, Towson, Maryland 21204.


Fred Leiss

Don Vasold
1416A Spring Ave
Rosedale MD, 21237
410-404-3681

April 25, 2006

Chief Clerk, Civil Division
Circuit Court for Baltimore County
County Courts Building
401 Bosley Ave
Towson, MD 21204

Hand-delivered

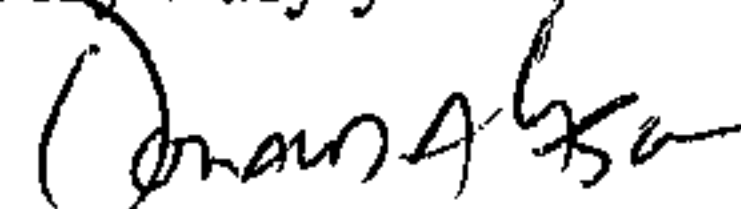
Re: Petition for Judicial Review of the Decision of the County
Board of Appeals In the Matter of Kenneth & Gloria
Canterbery
Case Number: 03 -C-05-008601

Dear Sir or Madam:

Please file the enclosed response to Petition for Judicial Review. If you have any questions or concerns, please contact my office

Thank you for your consideration

Very truly yours,


Don Vasold.

Enclosures

cc: Arthur M Frank, Esquire
County Board of Appeals ✓

RECEIVED
MAY 22 2006

**BALTIMORE COUNTY
BOARD OF APPEALS**

PETITION OF KENNETH & GLORIA CANTERBERY	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION		
OF THE COUNTY BOARD OF APPEALS	*	
OF BALTIMORE COUNTY		
	*	CIRCUIT COURT
IN THE CASE OF KENNETH & GLORIA	*	
CANTERBERY , LEGAL OWNERS FOR A PETITION		
FOR VARIANCE ON PROPERTY LOCATED AT	*	FOR
1414A SPRING AVENUE; N/S SPRING AVENUE,		
590' N KARL AVENUE	*	
14 th Election District, 7 th Councilmanic District	*	BALTIMORE COUNTY
Prior Case No. 05-330-A	*	Case No. 03-C-05-008601
Before the County Board of Appeals		
* * * * *		

RESPONSE TO PETITION FOR JUDICIAL REVIEW

Don Vasold, in accordance with Maryland Rule 7-204, submits this response to the
 Petition for Judicial Review filed by KENNETH & GLORIA CANTERBERY, and states that it intends
 to participate in this action for Judicial Review. The undersigned participated in the proceeding before
 the County Board of Appeals.



 Don Vasold.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 th day of April, 2006 a copy of the foregoing Response to Petition for Judicial Review was mailed to Arthur M Frank, Esquire, 341 N. Calvert Street, Suite 100, Baltimore, MD 21202, Attorney for Appellant and County Board of Appeals, 400 Washington Avenue, Room 49, Towson, Maryland 21204.



Don Vasold

John Peisinger.
1414 Spring Ave
Rosedale MD, 21237

April 25, 2006

Chief Clerk, Civil Division
Circuit Court for Baltimore County
County Courts Building
401 Bosley Ave
Towson, MD 21204

Hand-delivered

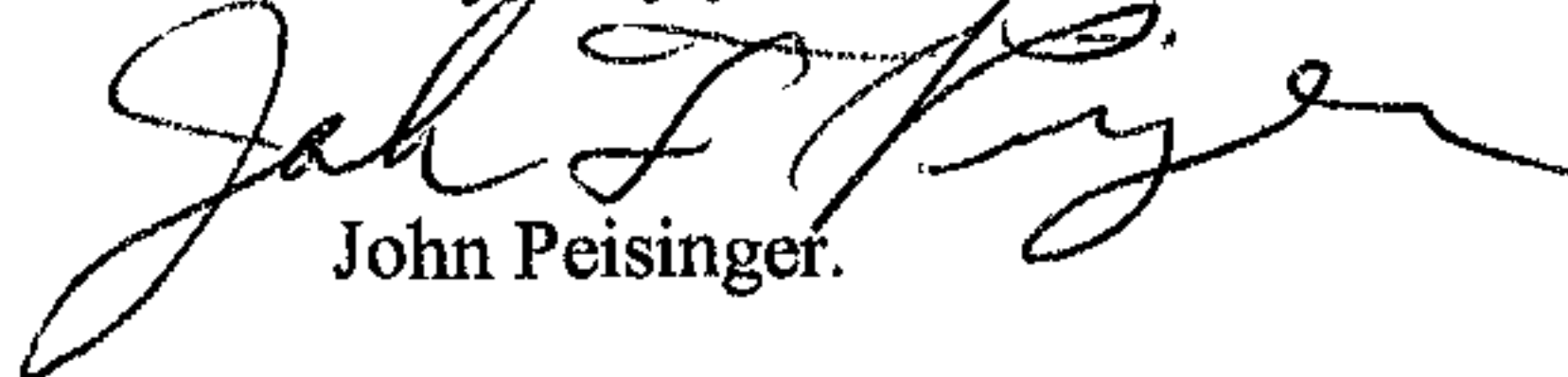
Re: Petition for Judicial Review of the Decision of the County
Board of Appeals In the Matter of Kenneth & Gloria
Canterbery
Case Number: 03-C-05-008601

Dear Sir or Madam:

Please file the enclosed response to Petition for Judicial Review. If you have any questions or concerns, please contact my office

Thank you for your consideration

Very truly yours,



John Peisinger.

Enclosures

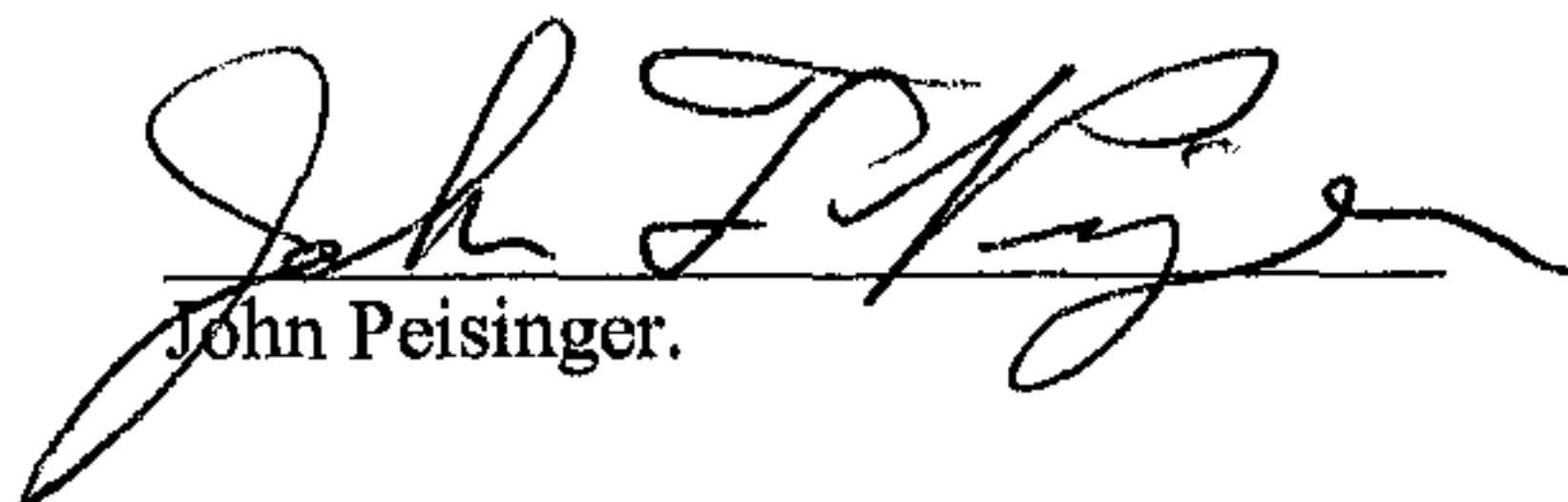
cc: Arthur M Frank, Esquire
County Board of Appeals ✓

RECEIVED
MAY 22 2006
BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF KENNETH & GLORIA CANTERBERRY	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION		
OF THE COUNTY BOARD OF APPEALS	*	
OF BALTIMORE COUNTY		
	*	CIRCUIT COURT
IN THE CASE OF KENNETH & GLORIA	*	
CANTERBERRY , LEGAL OWNERS FOR A PETITION		
FOR VARIANCE ON PROPERTY LOCATED AT	*	FOR
1414A SPRING AVENUE; N/S SPRING AVENUE,		
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Prior Case No. 05-330-A	*	Case No. 03-C-05-008601
Before the County Board of Appeals		
* * * * * * * *		* * *

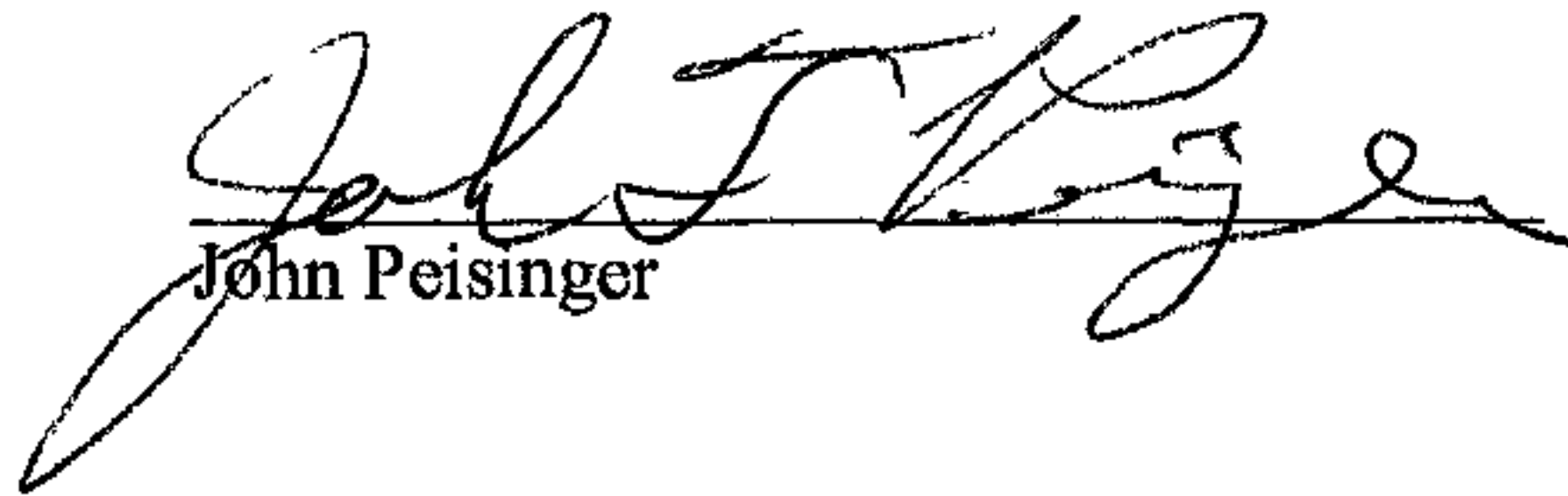
RESPONSE TO PETITION FOR JUDICIAL REVIEW

John Peisinger, in accordance with Maryland Rule 7-204, submits this response to the
Petition for Judicial Review filed by **KENNETH & GLORIA CANTERBERRY**, and states that it intends
to participate in this action for Judicial Review. The undersigned participated in the proceeding before
the County Board of Appeals.


John Peisinger.

CERTIFICATE OF SERVICE

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John Peisinger

Joseph Ruscito, Jr.
1418A Spring Ave
Rosedale MD, 21237
410-687-1655

April 25, 2006

Chief Clerk, Civil Division
Circuit Court for Baltimore County
County Courts Building
401 Bosley Ave
Towson, MD 21204

Hand-delivered

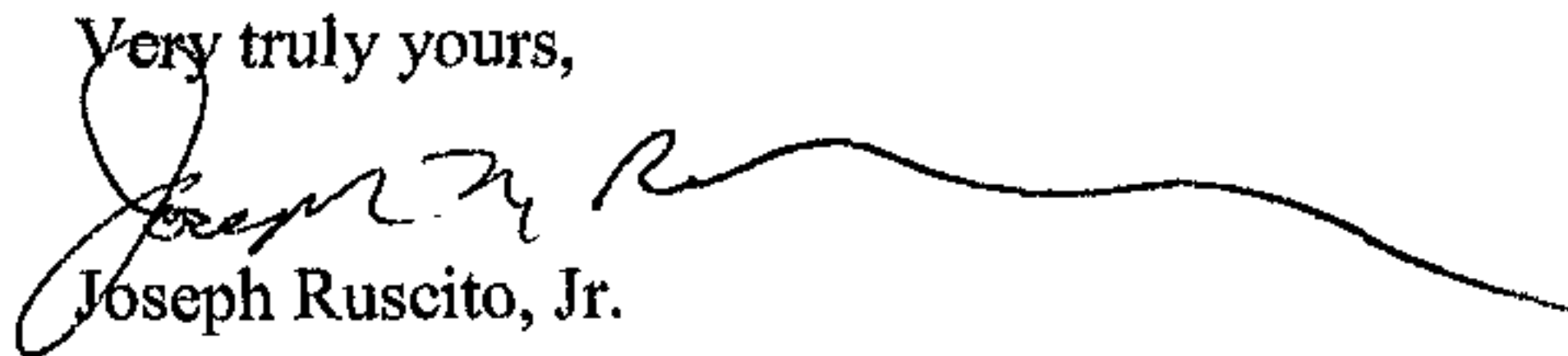
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Board of Appeals In the Matter of Kenneth & Gloria
Canterbery
Case Number: 03 --C-05-008601

Dear Sir or Madam:

Please file the enclosed response to Petition for Judicial Review. If you have any questions or concerns, please contact my office

Thank you for your consideration

Very truly yours,


Joseph Ruscito, Jr.

Enclosures

cc: Arthur M Frank, Esquire
County Board of Appeals ✓

RECEIVED
MAY 22 2006

BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF **KENNETH & GLORIA CANTERBERRY** *
FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS *
OF BALTIMORE COUNTY *

IN THE

CIRCUIT COURT

IN THE CASE OF **KENNETH & GLORIA** *
CANTERBERRY, LEGAL OWNERS FOR A PETITION *
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590' N KARL AVENUE *

FOR

14th Election District, 7th Councilmanic District

BALTIMORE COUNTY

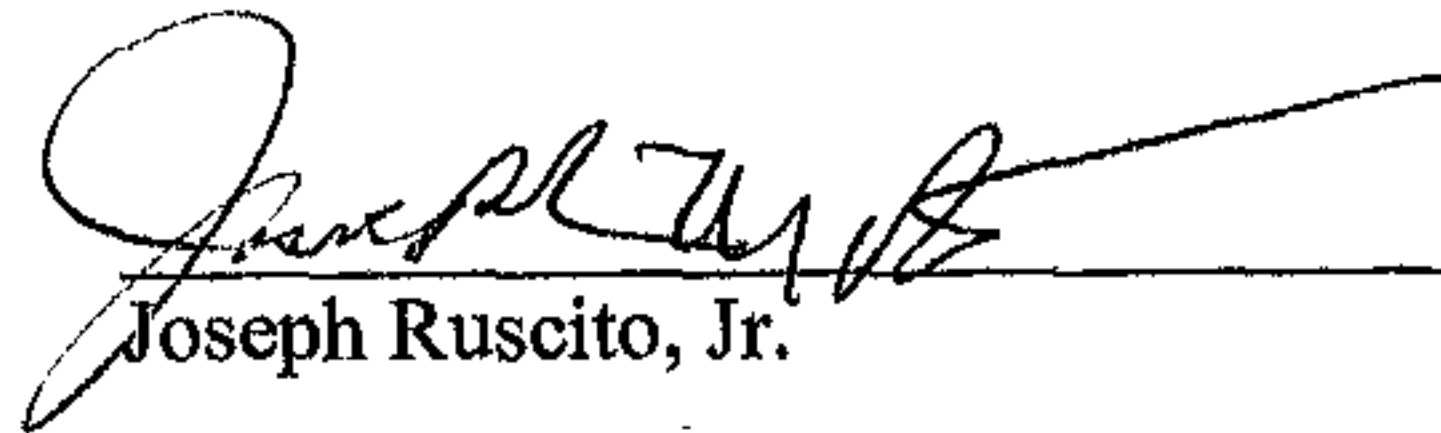
Prior Case No. 05-330-A
Before the County Board of Appeals

Case No. 03-C-05-008601

* * * * *

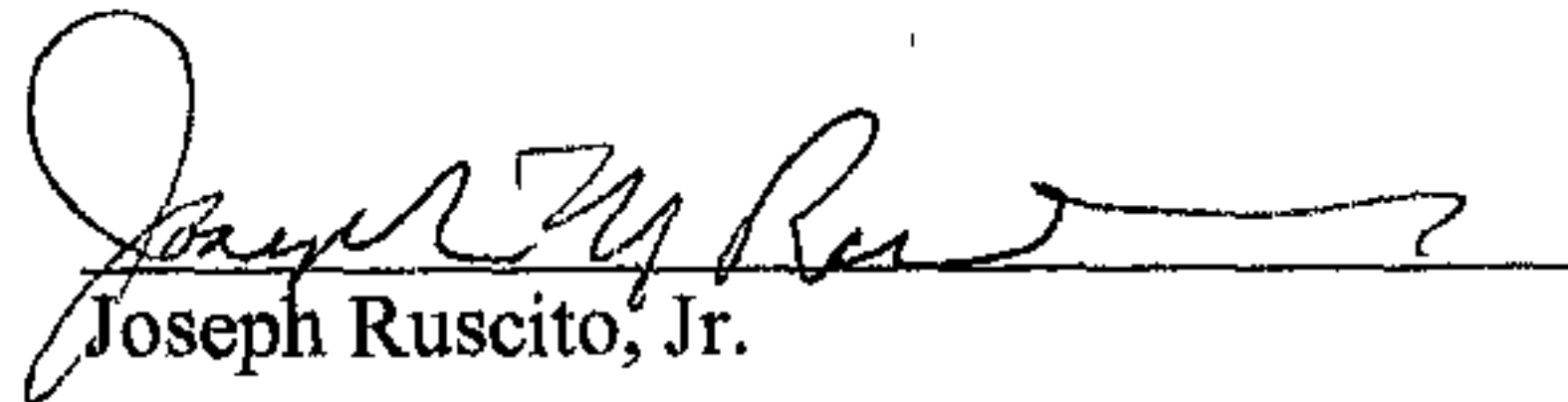
RESPONSE TO PETITION FOR JUDICIAL REVIEW

Joseph Ruscito, Jr., in accordance with Maryland Rule 7-204, submits this response to the
Petition for Judicial Review filed by **KENNETH & GLORIA CANTERBERRY**, and states that it intends
to participate in this action for Judicial Review. The undersigned participated in the proceeding before
the County Board of Appeals.


Joseph Ruscito, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 th day of April, 2006 a copy of the foregoing Response to Petition for Judicial Review was mailed to Arthur M Frank, Esquire, 341 N. Calvert Street, Suite 100, Baltimore, MD 21202, Attorney for Appellant and County Board of Appeals, 400 Washington Avenue, Room 49, Towson, Maryland 21204.


Joseph Ruscito, Jr.

Robert Walker
1416 Spring Ave
Rosedale MD, 21237
410-574-8738

April 25, 2006

Chief Clerk, Civil Division
Circuit Court for Baltimore County
County Courts Building
401 Bosley Ave
Towson, MD 21204

Hand-delivered

Re: Petition for Judicial Review of the Decision of the County
Board of Appeals In the Matter of Kenneth & Gloria
Canterbery
Case Number: 03 -C-05-008601

Dear Sir or Madam:

Please file the enclosed response to Petition for Judicial Review. If you have any questions or concerns, please contact my office

Thank you for your consideration

Very truly yours,


Robert Walker

Enclosures

cc: Arthur M Frank, Esquire
County Board of Appeals ✓

RECEIVED
MAY 22 2006
BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF KENNETH & GLORIA CANTERBERRY	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION		
OF THE COUNTY BOARD OF APPEALS	*	
OF BALTIMORE COUNTY		
	*	CIRCUIT COURT
IN THE CASE OF KENNETH & GLORIA	*	
CANTERBERRY , LEGAL OWNERS FOR A PETITION		
FOR VARIANCE ON PROPERTY LOCATED AT	*	FOR
1414A SPRING AVENUE; N/S SPRING AVENUE,		
590' N KARL AVENUE	*	
14 th Election District, 7 th Councilmanic District	*	BALTIMORE COUNTY
Prior Case No. 05-330-A	*	Case No. 03-C-05-008601
Before the County Board of Appeals		
* * * * *		

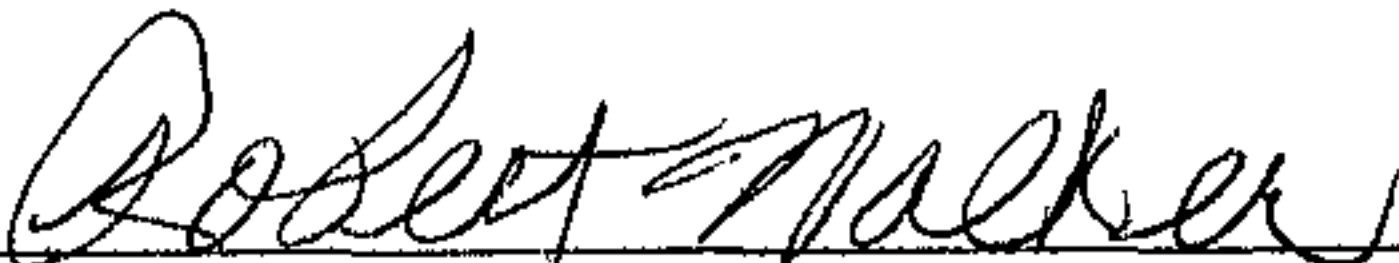
RESPONSE TO PETITION FOR JUDICIAL REVIEW

Robert Walker, in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed by KENNETH & GLORIA CANTERBERRY, and states that it intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.


 ROBERT WALKER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 th day of April, 2006 a copy of the foregoing Response to Petition for Judicial Review was mailed to Arthur M Frank, Esquire, 341 N. Calvert Street, Suite 100, Baltimore, MD 21202, Attorney for Appellant and County Board of Appeals, 400 Washington Avenue, Room 49, Towson, Maryland 21204.



ROBERT WALKER

Law Offices of
Arthur M. Frank, P.A.
341 N. Calvert Street • Suite 100
Baltimore, Maryland 21202-3633

410-285-4800
1-888-529-7878 (Toll Free)

410-415-0454 (Facsimile)
AFrank2857@aol.com

March 24, 2005

Mr. Timothy Kotroco, Director,
Baltimore County Permits & Development
111 W. Chesapeake Avenue
Towson, Maryland 21204

{hand-delivered}

Re: Petition for Variance
1414 A Spring Avenue
Kenneth E. Canterbury, et ux-Petitioners
Case No: 05-330-A

Dear Mr. Kotroco:

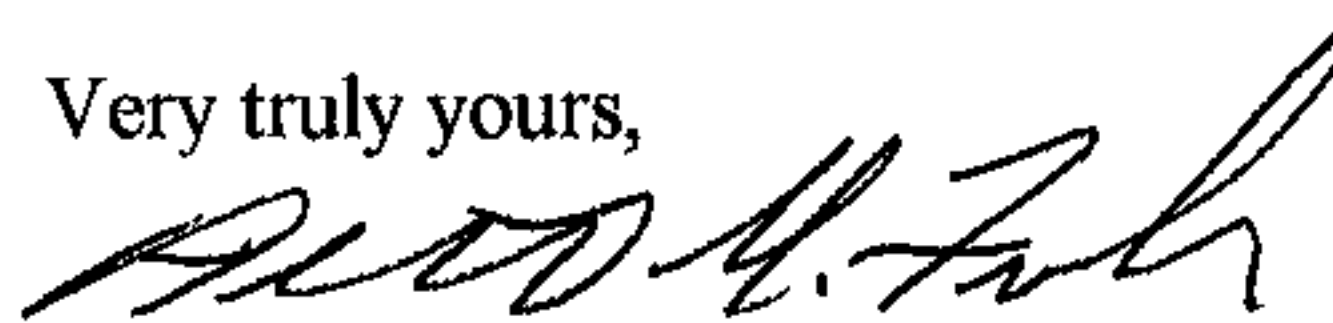
Please enter my Appearance as Attorney for Mr. and Mrs. Kenneth Canterbury, Petitioners, in connection with the above referenced Petition for Zoning Variance.

On behalf of the Petitioners, please enter an **Appeal** of the Zoning Commissioner for Baltimore County's decision dated February 28, 2005, denying the Petition for Variance.

Please direct all correspondence relative to this matter to my offices. Thank you for your assistance and attention to this matter.

With best wishes, I remain,

Very truly yours,



Arthur M. Frank

cc: William J. Wiseman, III, Zoning Commissioner
Code Enforcement Division, DPDM; People's Counsel

RECEIVED

Per...

Friday, May 6, 2005

Re: Canterbury Sign Posting
05-330-A

Received a call from a neighbor who noticed that the sign was no longer posted.

Monday, May 9, 2005

I spoke with Kathy about sign postings. Apparently, the sign is missing, once again. Since signs are very costly and they sometimes wind up missing, the sign would not be posted until two weeks prior to the hearing.

PRACTICE LIMITED TO OPHTHALMOLOGY

BY APPOINTMENT

ROBERT L. KASPER, M.D., P.A.
ROBERT A. LOEB, M.D., P.A.
AMY A. ZIMMERMAN, M.D.

EASTPOINT OFFICE PARK
SUITE 323
1105 NORTH POINT BLVD.
BALTIMORE, MD 21224
410-282-5544
FAX 410-282-3080

SUITE 100
6830 HOSPITAL DRIVE
BALTIMORE, MD 21237
410-574-1991
FAX 410-574-0988

April 11, 2005

Re: Ken Canterbury

To Whom It May Concern.

Mr. Canterbury has been a patient of our office since 2003.

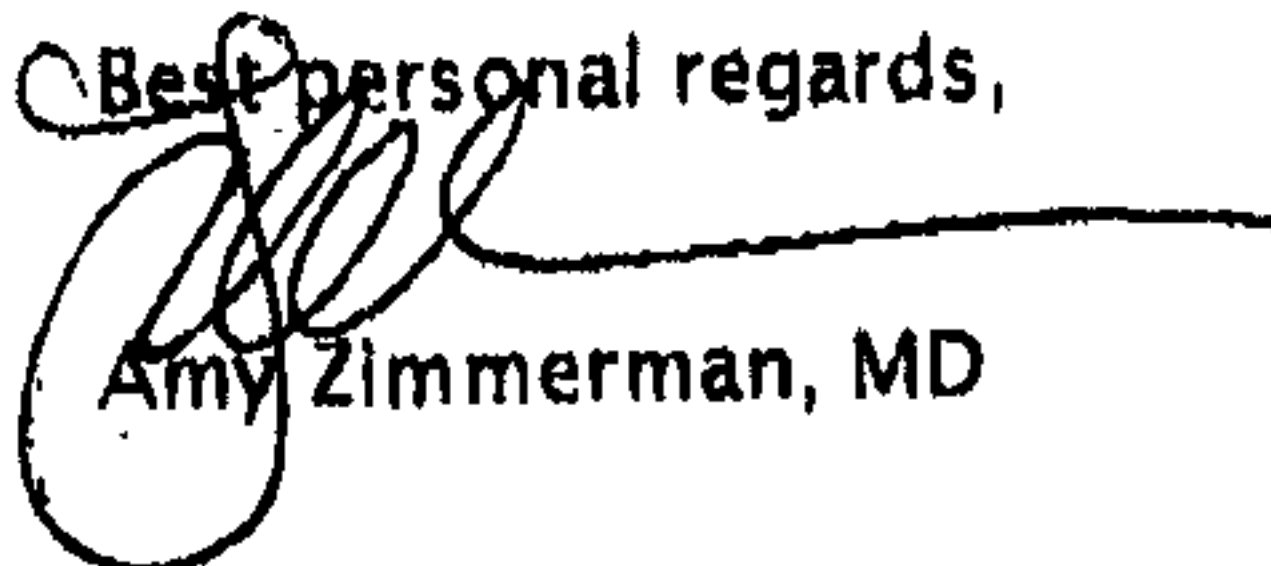
His right eye sees 20/200, best corrected. The left eye is a prosthetic (false) eye.

He recently had cataract surgery in the right eye to help preserve his vision. He is expected to remain at 20/200.

No treatment is available to improve his vision, which is the result of diabetic retinopathy and complications related to this condition.

Please call if you have any questions.

Best personal regards,



Amy Zimmerman, MD

Exhibit 6:

Letter dated April 11, 2005 from
Dr. Amy Zimmerman
County Board of Appeals/Canterbery

PRACTICE LIMITED TO OPHTHALMOLOGY

BY APPOINTMENT

ROBERT L. KASPER, M.D., P.A.
ROBERT A. LOEB, M.D., P.A.
AMY A. ZIMMERMAN, M.D.

EASTPOINT OFFICE PARK
SUITE 323
1105 NORTH POINT BLVD.
BALTIMORE, MD 21224
410-282-3544
FAX 410-282-3080

SUITE 100
6830 HOSPITAL DRIVE
BALTIMORE, MD 21237
410-574-1891
FAX 410-574-0868

May 9, 2005

Re: Ken Canterbury

To Whom It May Concern,

Mr. Ken Canterbury is a patient of our office, and he underwent cataract surgery in the right eye on March 24th, 2005.

His vision was been stable since the surgery, and he is considered legally blind.

Please call if you have any questions.

Very truly yours,

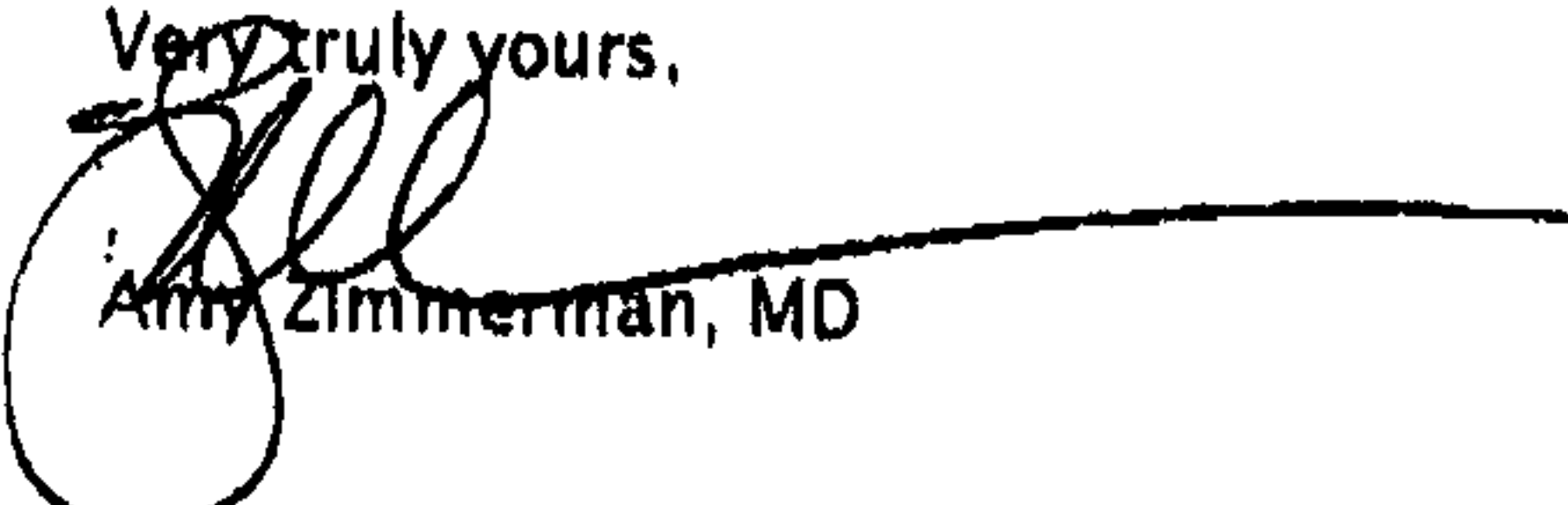

Amy Zimmerman, MD

Exhibit 7:

Letter dated May 9, 2005 from Dr.
Amy Zimmerman
County Board of Appeals/Canterbery

SEPTEMBER 29, 2004

To: Mr Grant Kidd (BALTIMORE COUNTY Building Inspector)

From: Jack Nicolette

As of September 29, 2004 I am still in the building stage process of my new home being built adjacent to 1414A Spring Ave. property owners Mr & Mrs Canterbury, I was notified by Mr. Canterbury that he going to build a shed near my property line and he asked for my approval prior to his shed being built. I told Mr. Canterbury that I have NO OBJECTIONS to the shed being built near my property line of 1412A Spring Ave.

Jack Nicolette
1412A Spring Ave
BALTIMORE, MD, 21237

Dated: September 29, 2004

Exhibit 5:

No Objection Letter from Jack
Nicolette (only neighbor affected)
County Board of Appeals/Canterbery

Case No.:

05-330 A

Exhibit Sheet

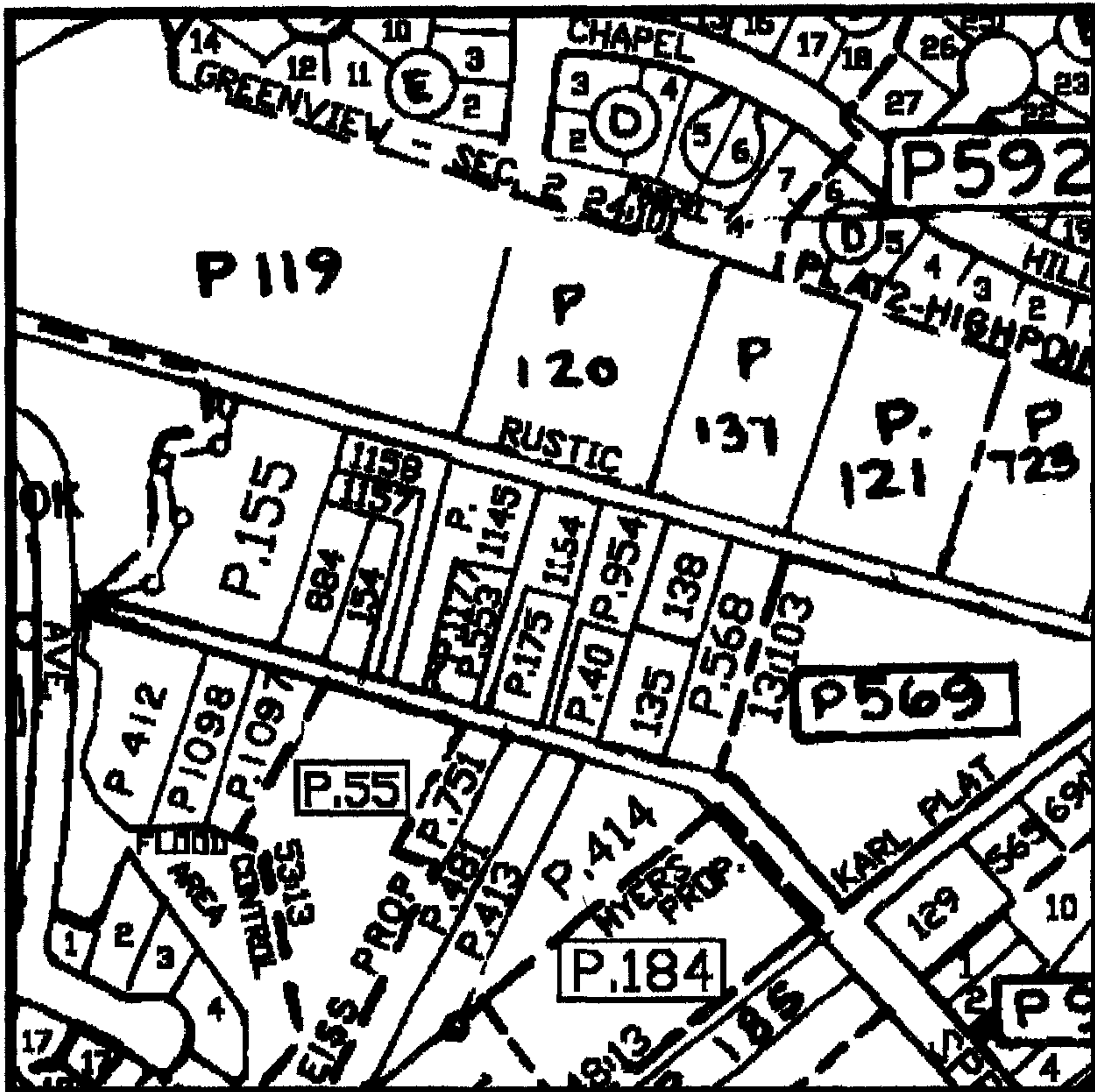
Petitioner/Developer

Protestant

No. 1	Site Plan	Protestants Protestants - 11 Neighboring Homes
No. 2	Letter 1412A MR Nicolette	Protestants # 2 SUBDIVISION PLAT
No. 3		PHOTOGRAPHS 3 ~~WITH SURVEY DISCREPANCY~~
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

	Maryland Department of Assessments and Taxation BALTIMORE COUNTY Real Property Data Search	View Map
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District - 14 Account Number - 2200011264



Property maps provided courtesy of the Maryland Department of Planning ©2004.
 For more information on electronic mapping applications, visit the Maryland Department of Planning
 web site at



D.R. 5.5

N 546,000

NE 4-F
E 30,000

N 12,000
N 12,000

NE
3-F

E 30,000

E 31,500

N 546,000

N 11,000

1414A SPRING AVE

NE 3F, 4F

330

D.R. 5.5

KARL
SPRING
AVE.

AVE.

RO

BL

[illegible]

VICINITY MAP
SCALE: 1"=1000'

1. ZONING - DR 5.5 (NE 3rd)
2. AREA = 0.274 AC. ± (11,935.34 ft.)
3. SITE IS NOT IN THE CRCA OR 100 YR. FLOOD PLAIN
4. ZONING HISTORY (SEE CIVIL VIGATION 04-8094 FOR SH
5. PUBLIC WATER & SEWER EXISTING
6. NO HISTORIC BUILDINGS.

2) 1" = 200' Scale zoning map NOS. NE, 3 & 4 - F

PLAT TO ACCOMPANY PETITION FOR VARIANCE

ELECTION DISTRICT 14C7

ATTENTION BALTIMORE COUNTY, MARYLAND

CENTRAL DRAFTING & DESIGN, INC.
601 CHARWOOD COURT
EDGEWOOD, MD 21040
(410) 679-8719

SCALE: 1 INCH = 40 FEET

NOVEMBER 5, 2004

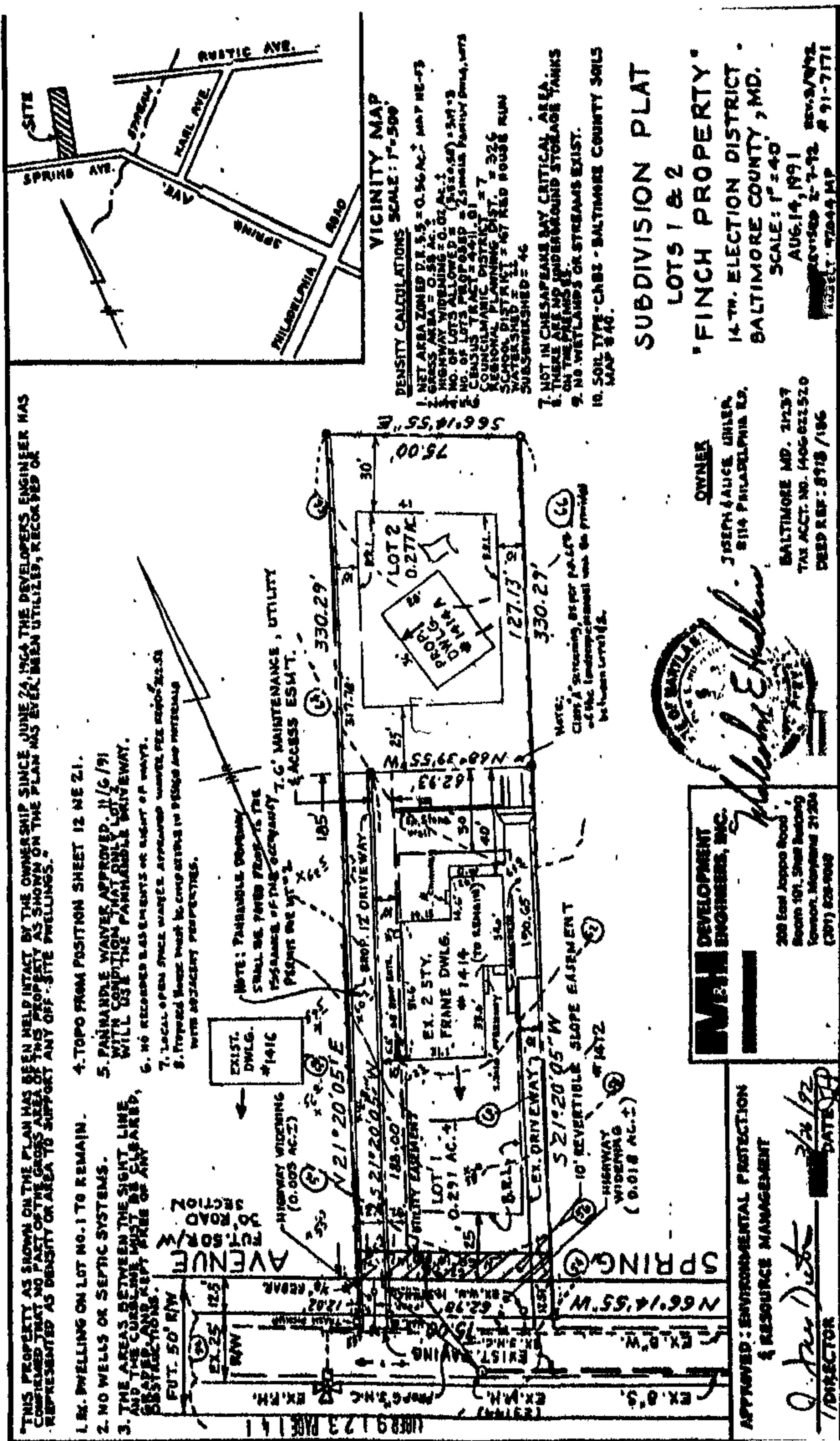
County Board of Appeals—List of Exhibits

Re: *In the Matter of Kenneth and Gloria Canterbury*
Case No.: 05-330-A

- Exhibit 1:** **Subdivision Plat (1414-A Spring Avenue in “yellow”)**
- Exhibit 2:** **Plat with shed (showing in “red”)**
- Exhibit 3:** **Series of Eleven (11) Pictures (A thru K)**
- Exhibit 3A:** **Frontal view (from the right) facing property (shed not in sight—only neighbors’ sheds)**
- Exhibit 3B:** **Frontal view (from the left) facing property (shed not in sight—only neighbors’ sheds)**
- Exhibit 3C:** **Front view approaching property from Spring Avenue (shed not in sight—only neighbors’ sheds)**
- Exhibit 3D:** **Front view half-way up driveway to subject property (still cannot observe shed at all—only neighbors’ sheds)**
- Exhibit 3E:** **Picture of shed**
- Exhibit 3F:** **Looking down from property towards Spring Avenue (showing 3 sheds/outbuilding in front of subject property and to side of 1414 Spring Avenue)**
- Exhibit 3G:** **View to the right from the shed area (totally screened; shed faces the adjoining property’s sheds)**
- Exhibit 3H:** **View in front of the shed (totally screened by fence, trees and is in rear of 1414 Spring Avenue)**
- With drawn*
Exhibit 3I: **View of property to the left of the shed (which is seen only by rear and side of neighboring property owner who has no objection to variance)**
- Exhibit 3J:** **Picture of contents in garage**
- Exhibit 3K:** **Picture of contents in shed**
- Exhibit 4:** **Video of Subject Property**

- Exhibit 5: No Objection Letter from Jack Nicolette (only neighbor affected)**
- Exhibit 6: Letter dated April 11, 2005 from Dr. Amy Zimmerman**
- Exhibit 7: Letter dated May 9, 2005 from Dr. Amy Zimmerman**
- Exhibit 8: Letter dated May 31, 2005 from Dr. Stanley Schocket**
- Exhibit 9: Letter from Fire Department dated January 4, 2005**
- Exhibit 10: Memo from Office of Planning dated January 20, 2005**
- Exhibit 11: Letter from State Highway Administration dated January 10, 2005**
- Exhibit 12: Memo from Bureau of Development Plans dated January 24, 2005**
- Exhibit 13: Memo from Dept. Of Environment Protection & Res. Mgm't. dated February 3, 2005**

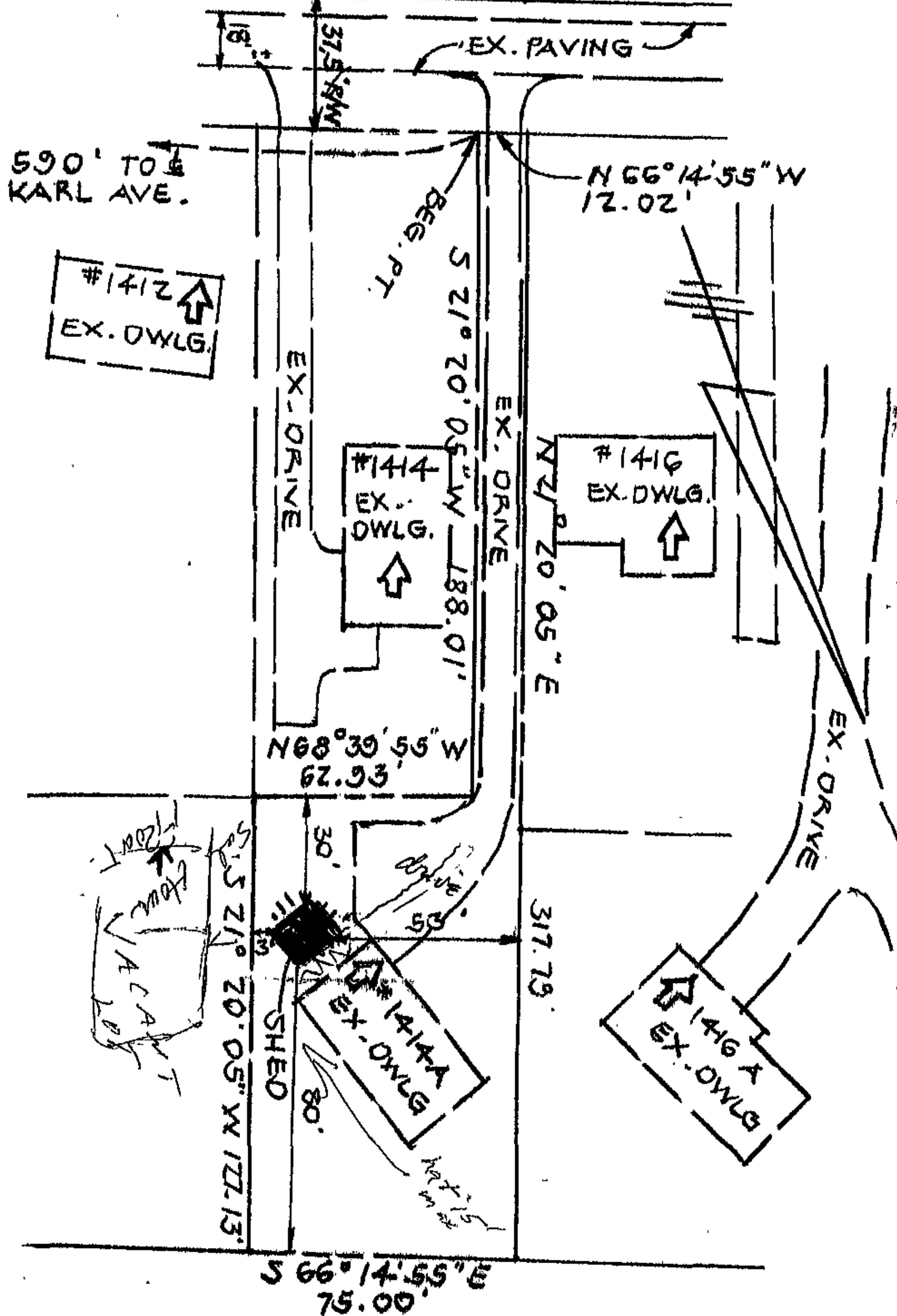
Handwritten signature and date: 8/12/91



Handwritten in a circle: Pat Ex 1

Exhibit 1:
Subdivision Plat (1414-A Spring Avenue in "yellow")
County Board of Appeals/Canterbury

SPRING AVENUE



NOTES:

1. ZONING - DR S-5 (NE 34)
2. AREA = 0.274 AC. ± (11,935.34 sq. ft.)
3. SITE IS NOT IN THE CBA OR 100 YR. FLOOD PLAIN
4. ZONING HISTORY (SEE CIVIL VIOLATION 04-8094 FOR SHED)
5. PUBLIC WATER & SEWER EXISTING

6. No Historic Buildings

7. 1" = 200' Scale Drawing

NE 34-F

CBA

Exhibit 2:
Plat with shed (showing in "red")

County Board of Appeals/Canterbury

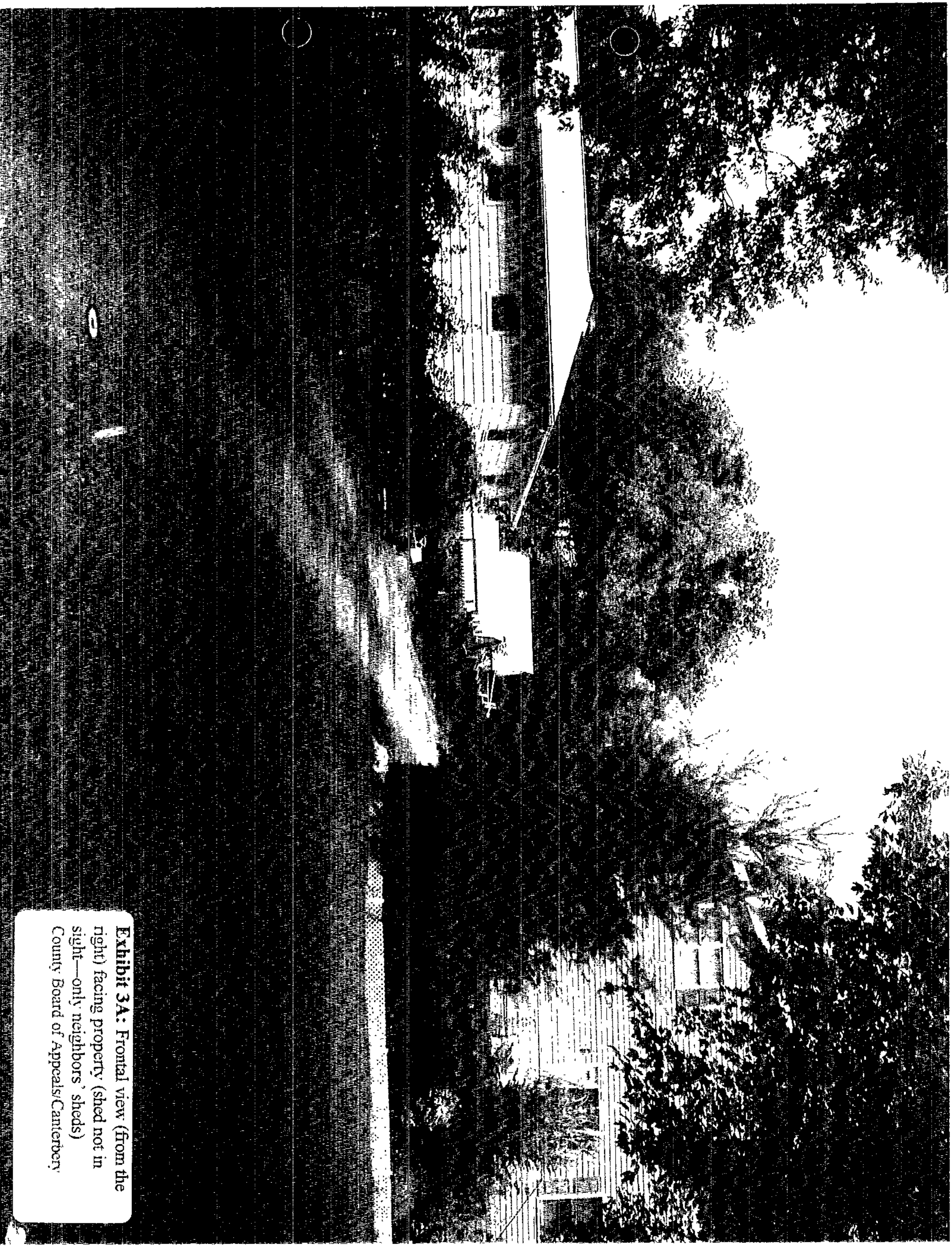


Exhibit 3A: Frontal view (from the right) facing property (shed not in sight—only neighbors' sheds)
County Board of Appeals/Canterbury



Exhibit 3B: Frontal view (from the left) facing property (shed not in sight—only neighbors' sheds)
County Board of Appeals/Camden

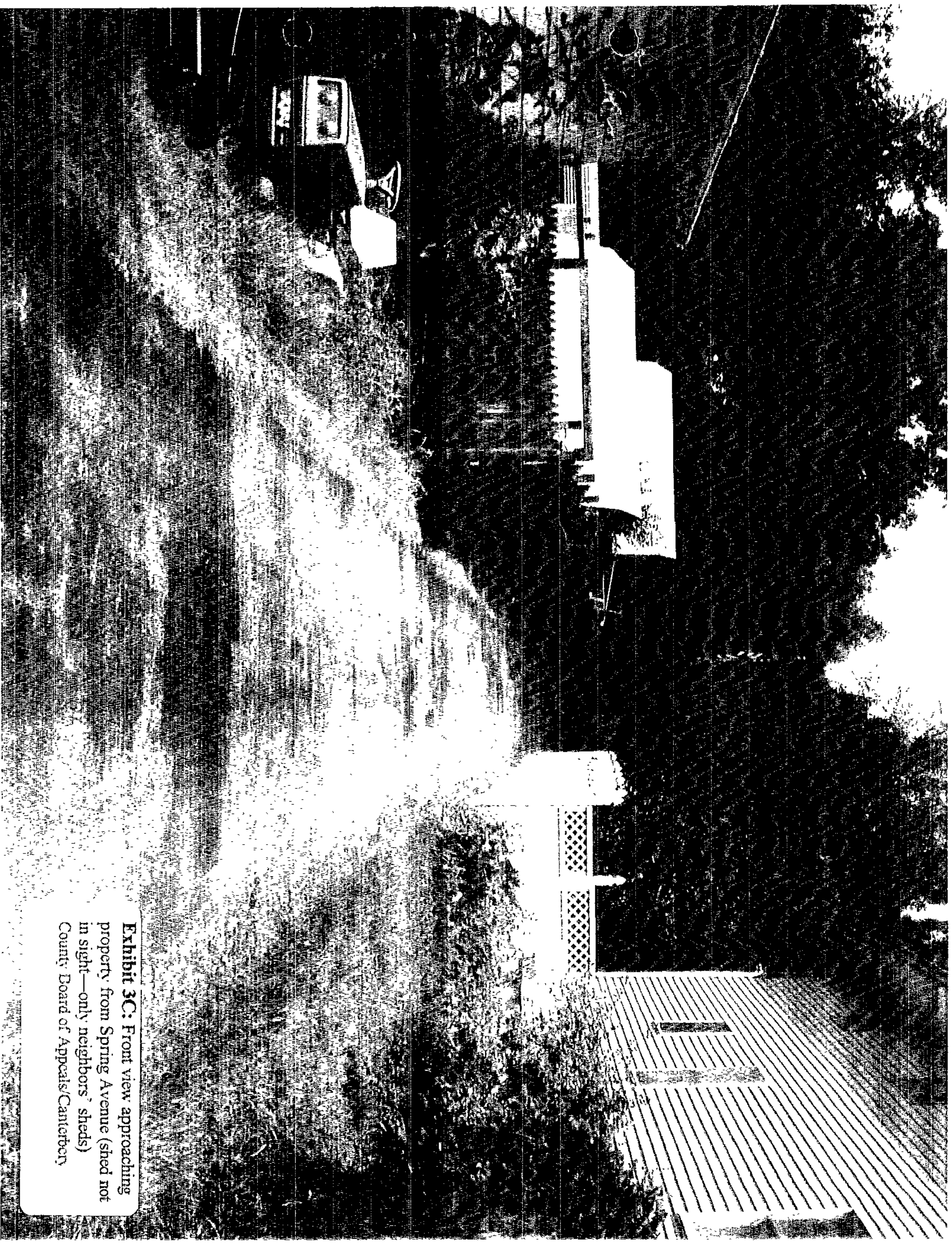


Exhibit 3C: Front view approaching property from Spring Avenue (shed not in sight—only neighbors' sheds) County Board of Appeals/Canterbury

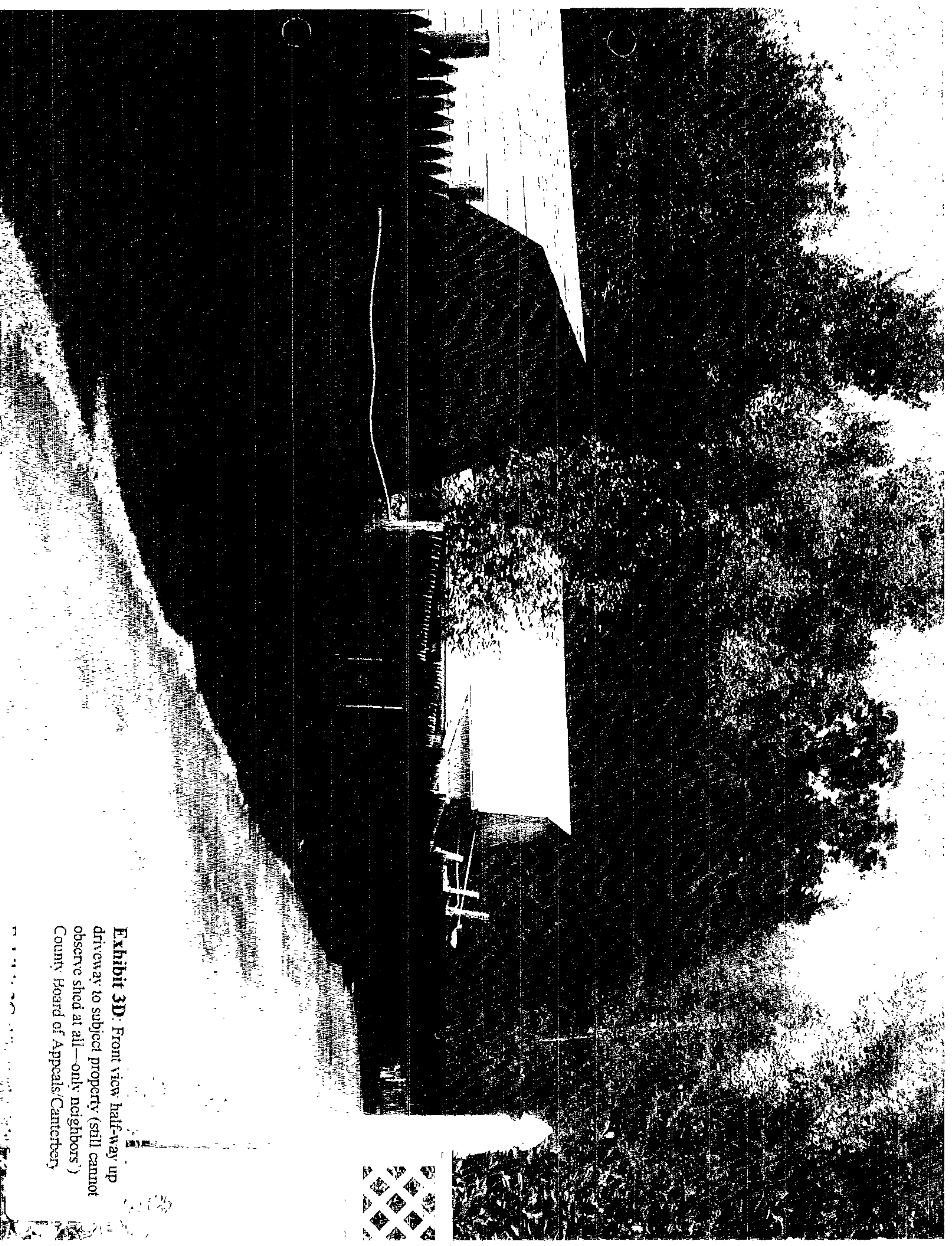


Exhibit 3D: Front view half-way up driveway to subject property (still cannot observe shed at all—only neighbors' County Board of Appeals/Canterbury

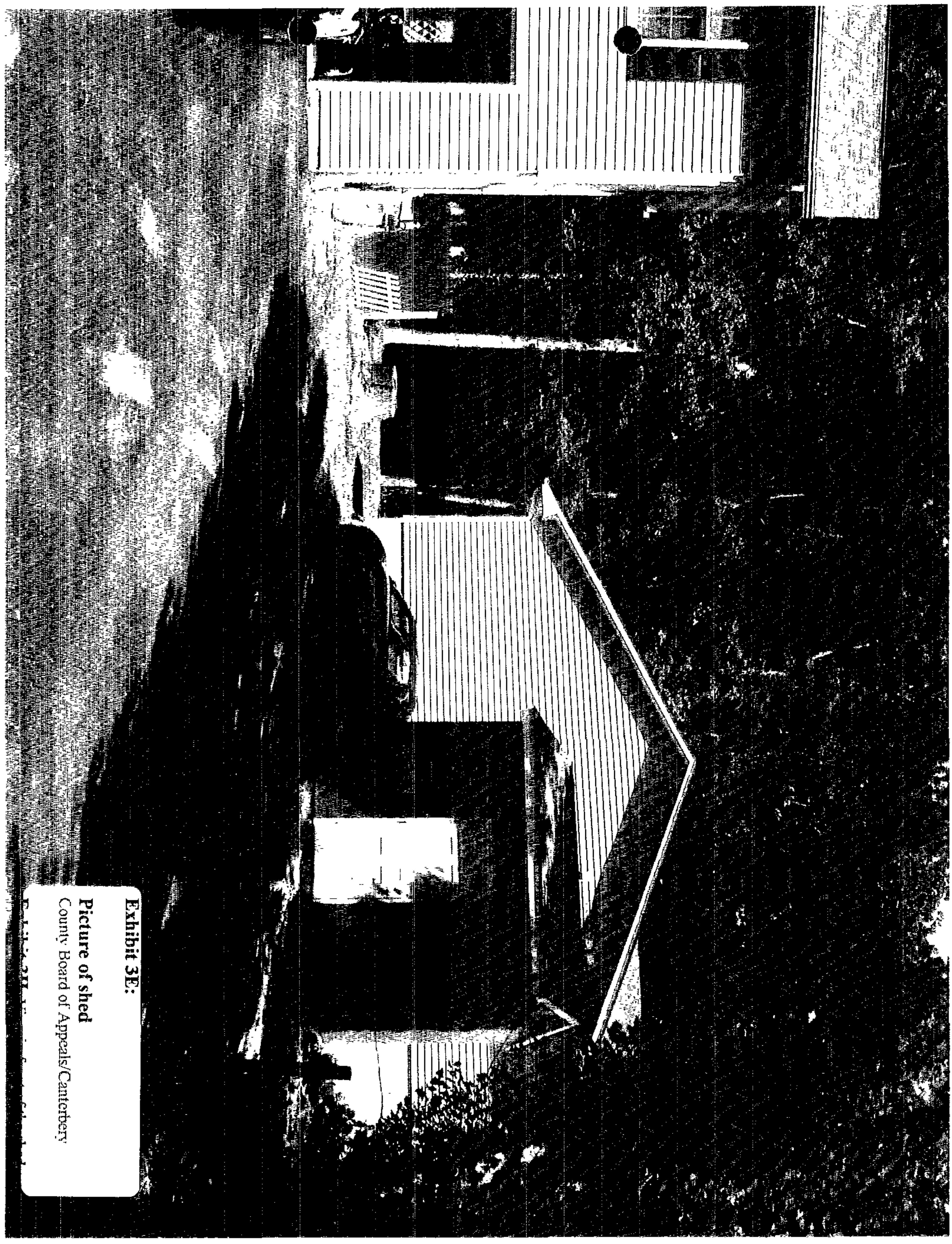
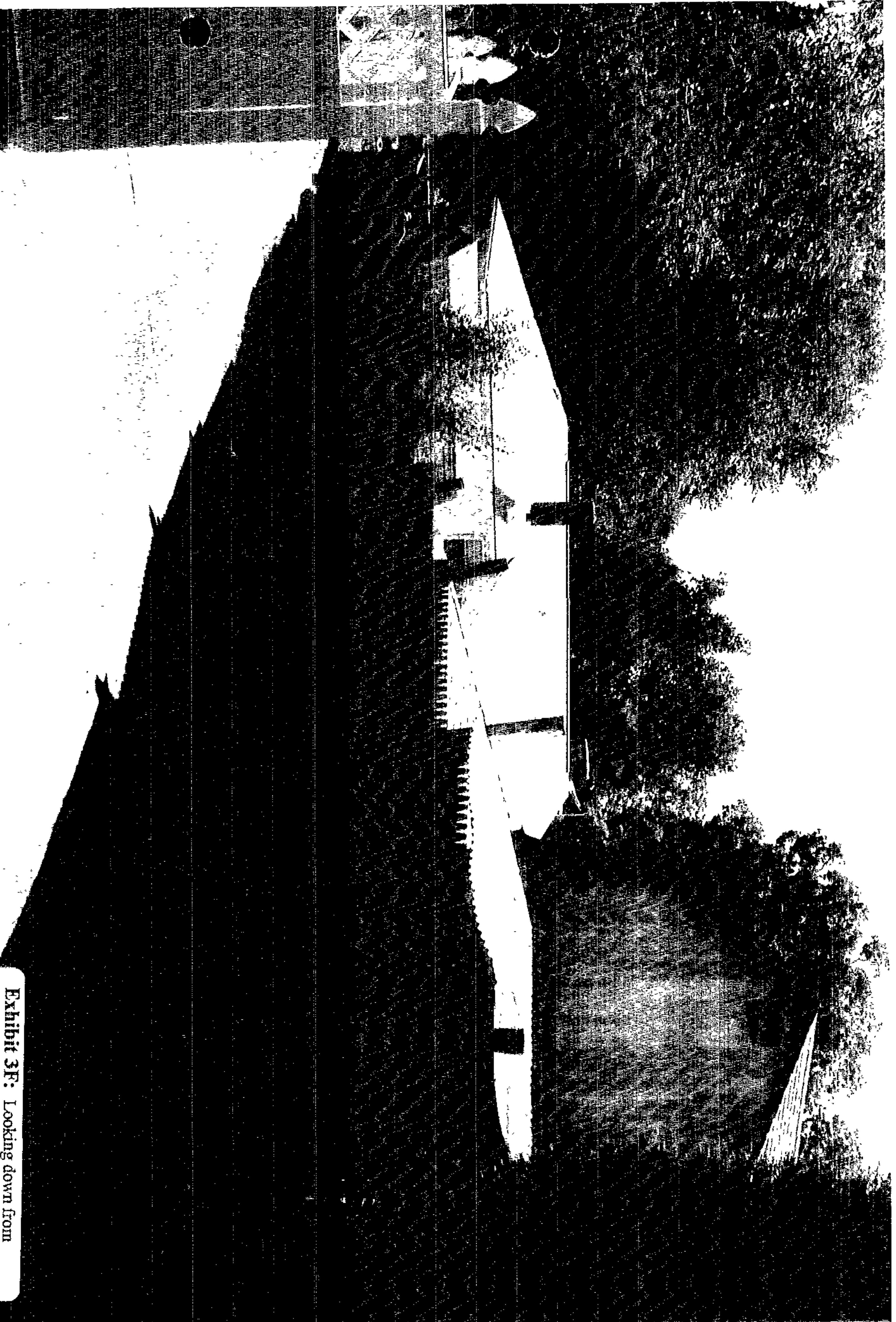


Exhibit 3E:

Picture of shed
County Board of Appeals/Canterbury

FILED 2011 SEP 26 10 46 AM

Exhibit 3F: Looking down from property towards Spring Avenue (showing 3 sheds/outbuilding in front of subject property)



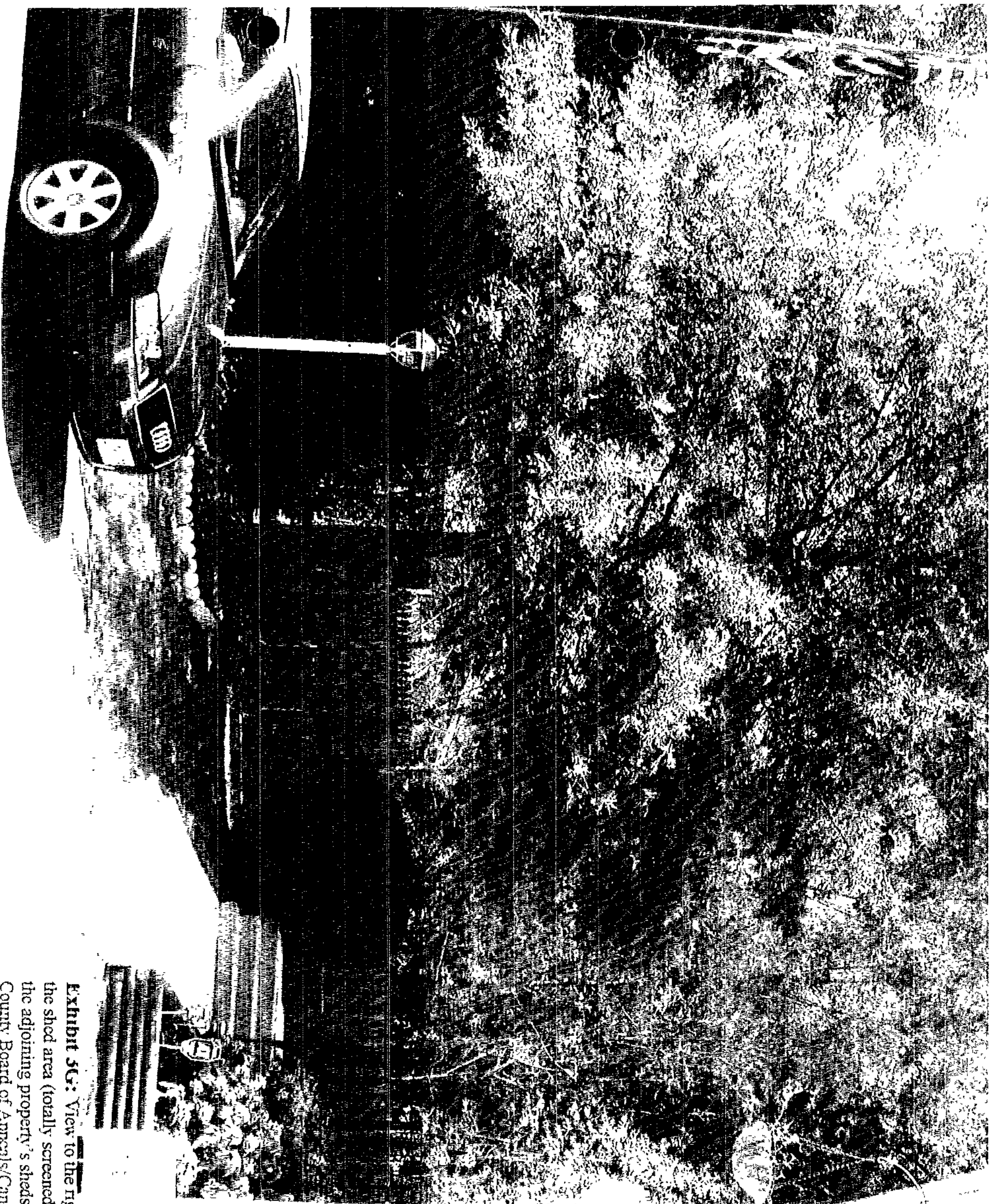
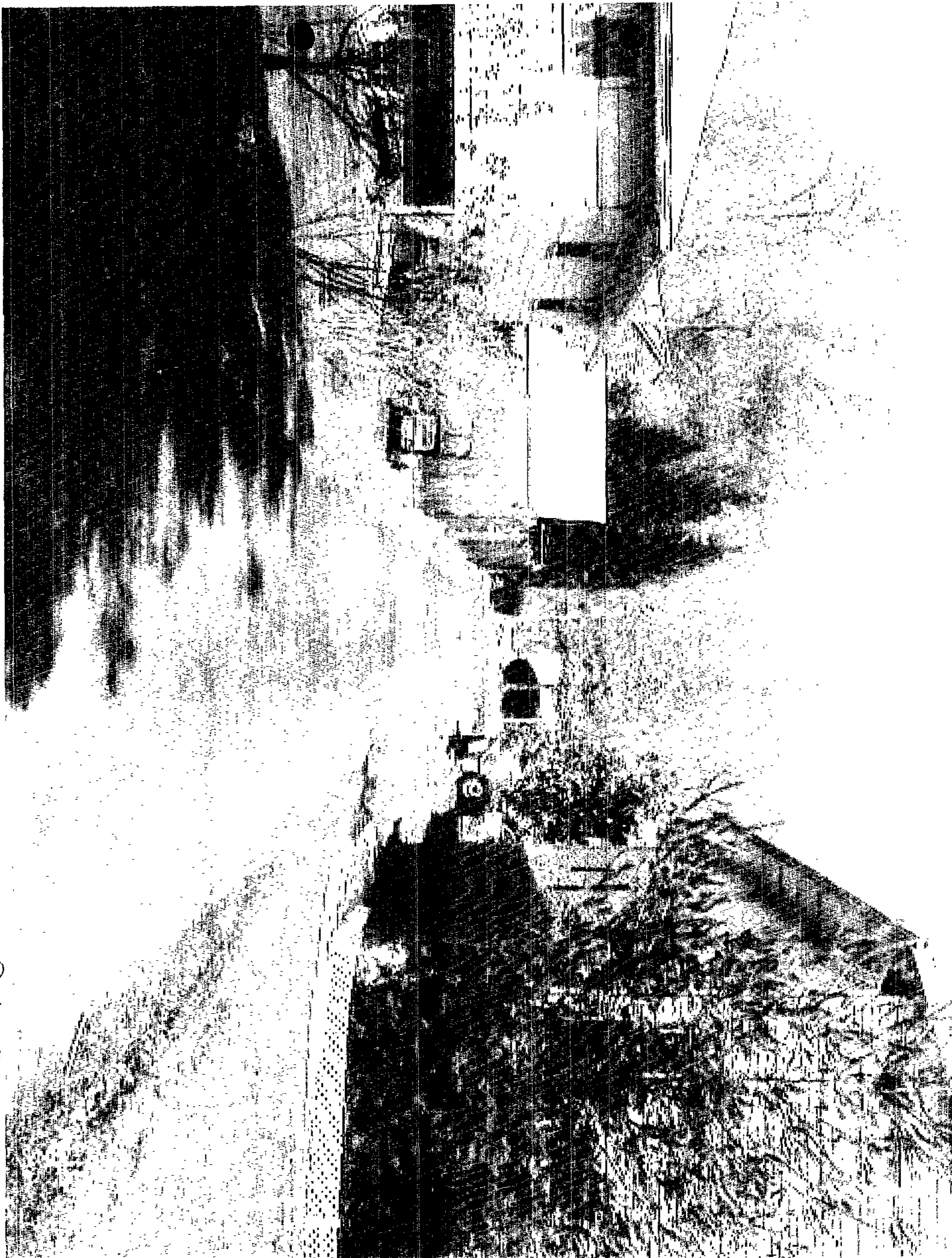


Exhibit 5C: View to the right from the shed area (totally screened, shed faces the adjoining property's sheds)
County Board of Appeals/Canterbury



Exhibit 5H: View in front of the shed
(totally screened by fence, trees and is in
rear of 1414 Spring Avenue)
County Board of Appeals/Canterbury

Oct 27 31





Variance) Exhibit 3J:

Picture of contents in garage

County Board of Appeals/Canterbury

35

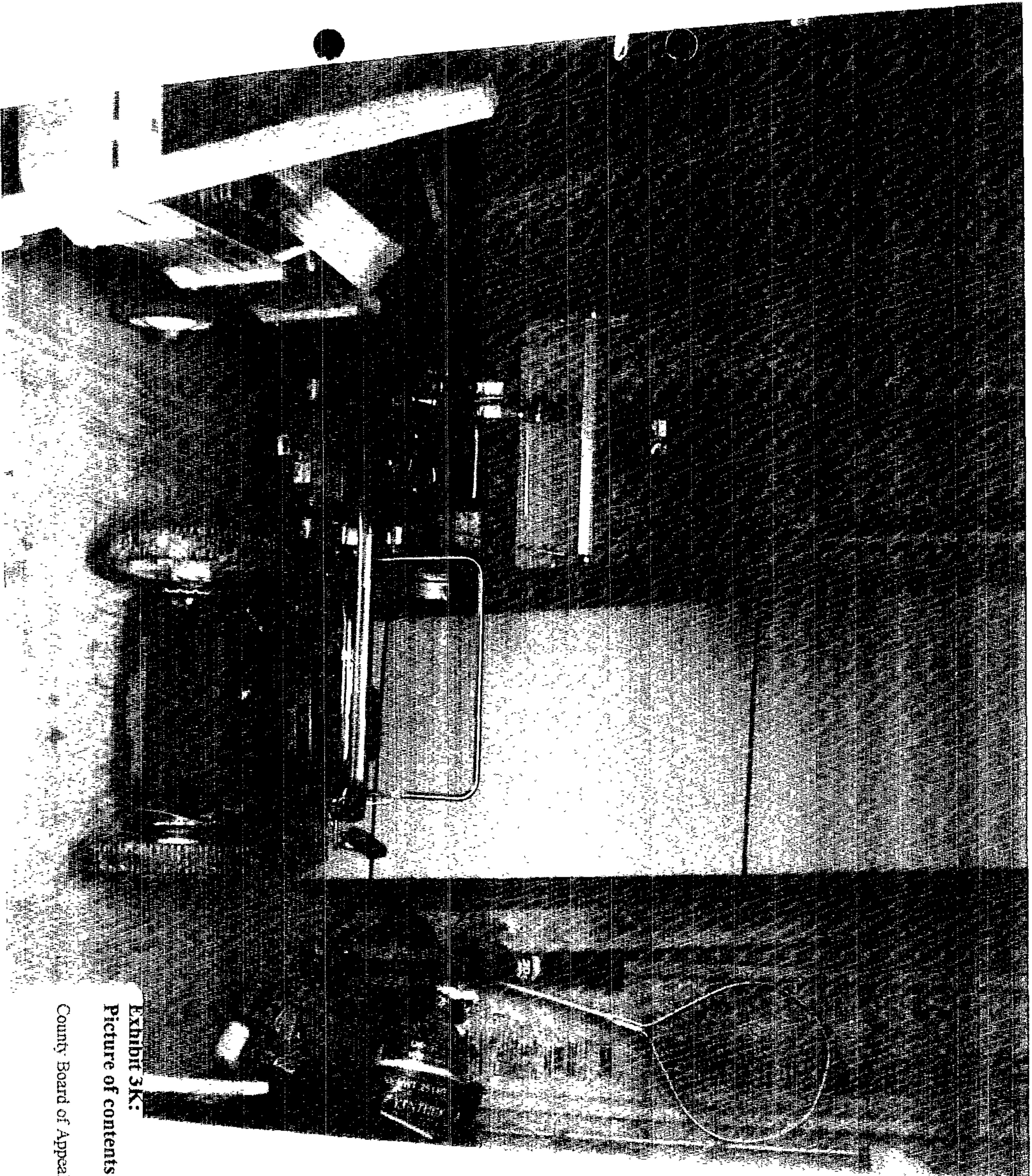
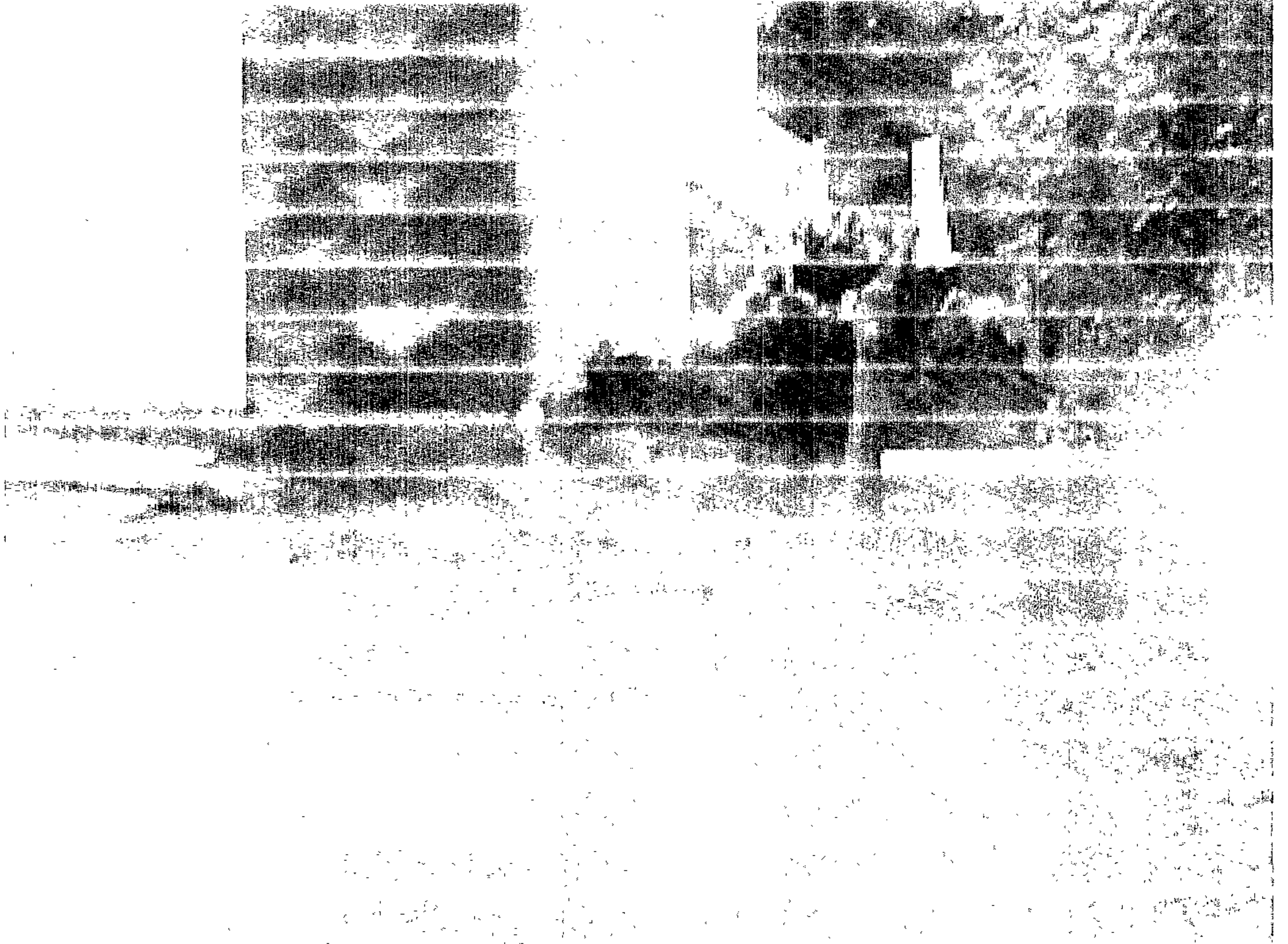


Exhibit 3K:

Picture of contents in shed

County Board of Appeals/Canterbury



~~EXE #4~~

~~Photo #4~~

Prot 5B

to assist with regulatory complaints and regulation compliance (See attachment Document #4.)

Additionally, we believe Mr. Canterbury's personal intentions are inconsistent with the information Mr. Robert Infussi has received or what is reflected in any part of this Petition for Variance. We the undersigned request that the Baltimore County Zoning Commission protect the residents of Spring Ave and reject his request for relief and require proper lot restrictions.

Additionally we request that an appeal be denied due to irresponsible nature of his previous actions in handling this matter...

Name	Address
Joseph M. Russett	1418A
Donna Johnson	1416A SPRING AVE 21237
Dolores Frush	1420 Spring Ave. 21237
Frank S. Seng	1413 Spring Ave 21237
John F. Foy	1414 Spring Ave 21237
Q. Hacker	1416 Spring Ave. 21237
Nancy Rarner	1423 Spring Ave 21237
Thomas King	1421 Spring Ave 21237
Nancy Russett	1418 Spring Ave 21237
Mary Ellison	1415 Spring Ave 21237

(9)

EX

~~EX~~

CBA
Prot Ex 7

SHED REMOVAL

Mr. Canterbury shed should be removed from his front yard and placed in his very large back yard. If anyone in the neighborhood were to start building a shed in there front yard Mr. Canterbury would be the first one to call Baltimore Co. to have it removed.

SINCERELY

John F. Peisinger

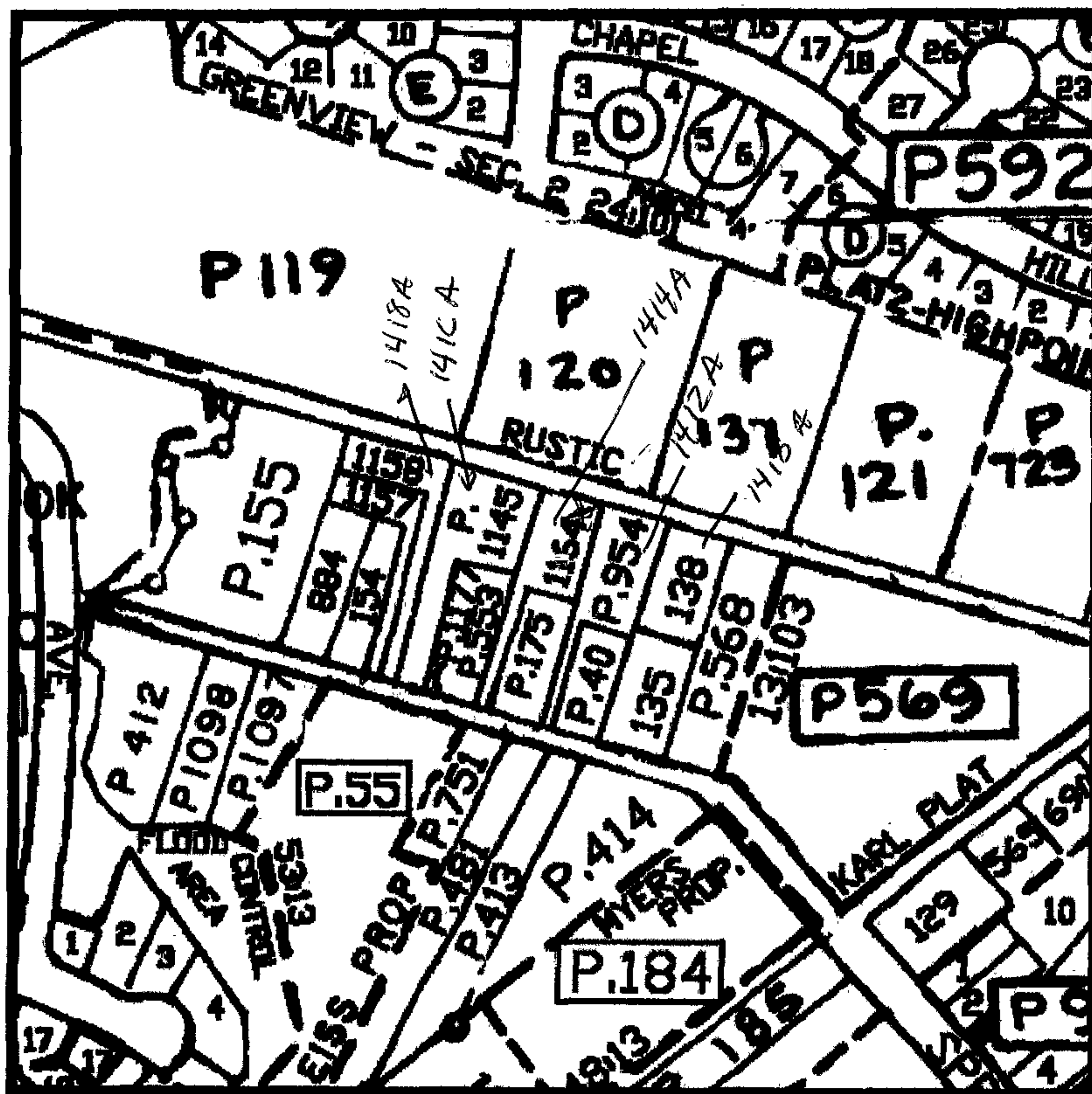
John F. Peisinger



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
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District - 14 Account Number - 2200011264



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 web site at www.mdp.state.md.us/webcom/index.html

P. 1164 → 1414A Spring

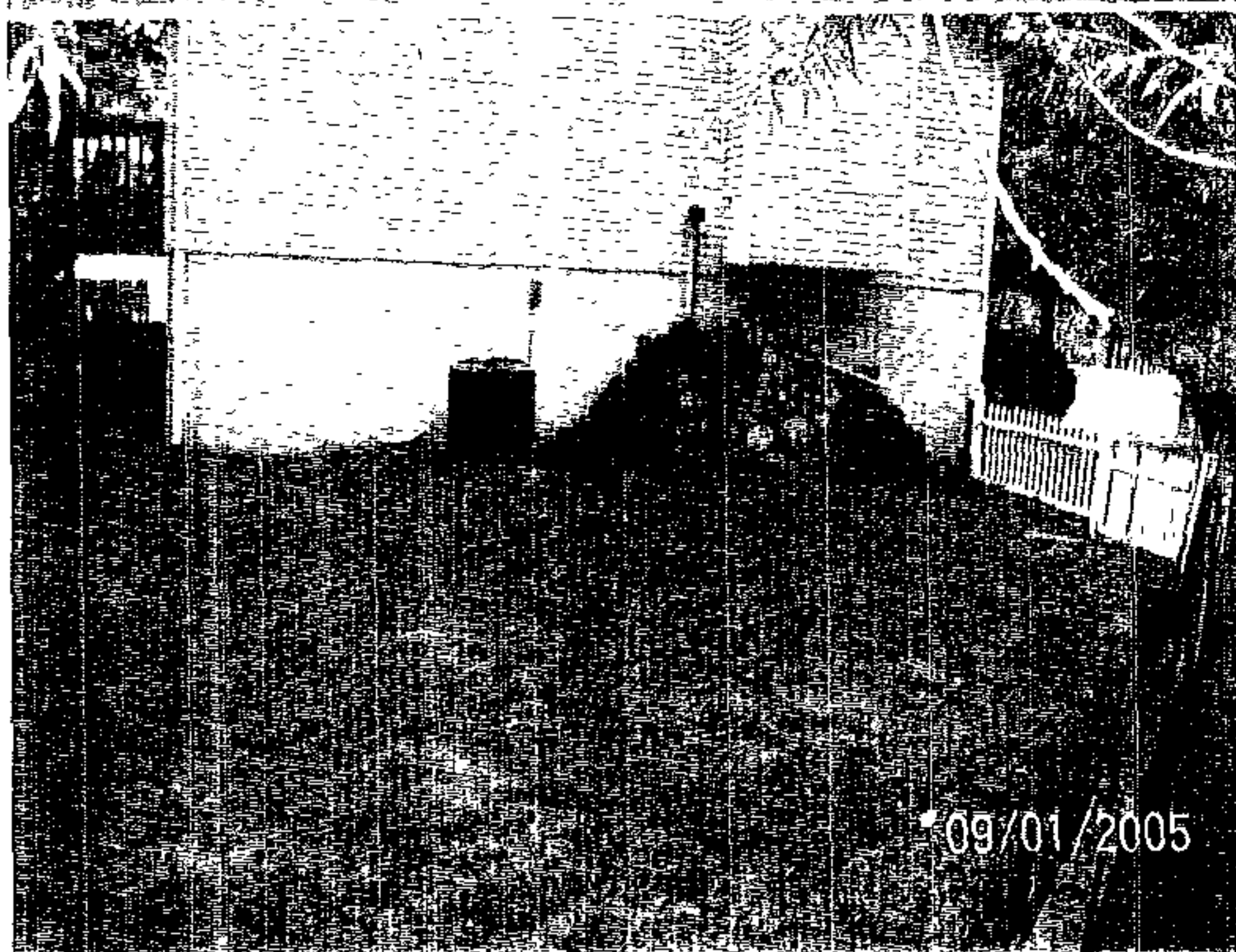
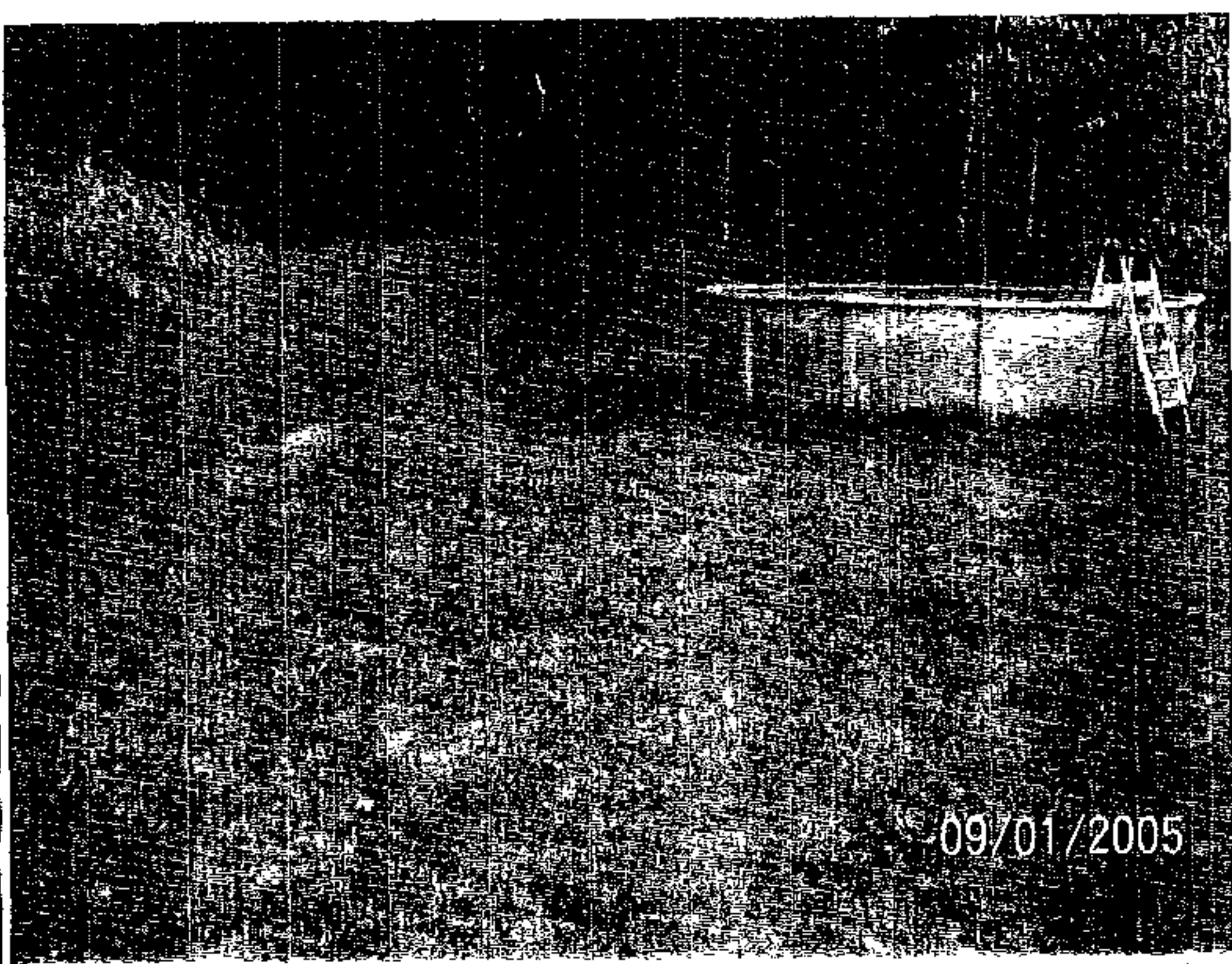
Ex #2

address	Parcel	tax number	pro size	structure size
1412	p.40	2400000857	10,890.00 SF	952 SF
1414A	p.1164	2200011264	12,049.00 SF	1,456 SF
1414	p.175	2200011265	12,700.00 SF	3,562 SF
1412A	p.954	2400000856	17,859.00SF	2,145 SF
1416A	p.1145	2000014006	8,190.00 SF	1,961 SF
1416	p.553	1423003230	14,840.00 SF	1,196 SF
1418	154		21,780.00 SF	1,200 SF
1418A	1158		9,539.00 SF	0
1410	135			
1410A	138			
1418 1/2	884		13,930.00 SF	1,142 SF
1418A1/2	1157		13,939.00 SF	1,706 SF

CBA
Prct E + 2

shed

X
X
new home
X
X

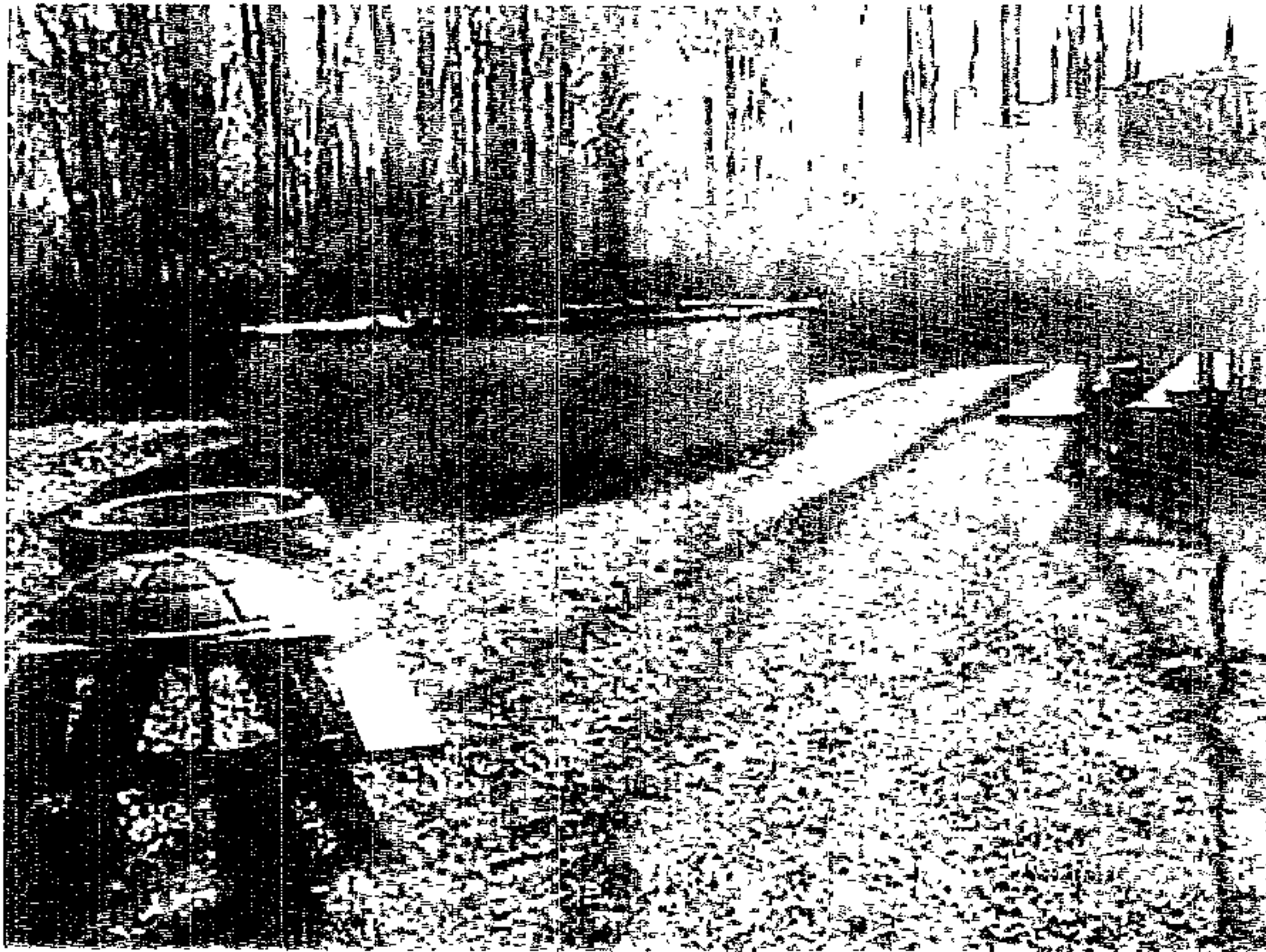


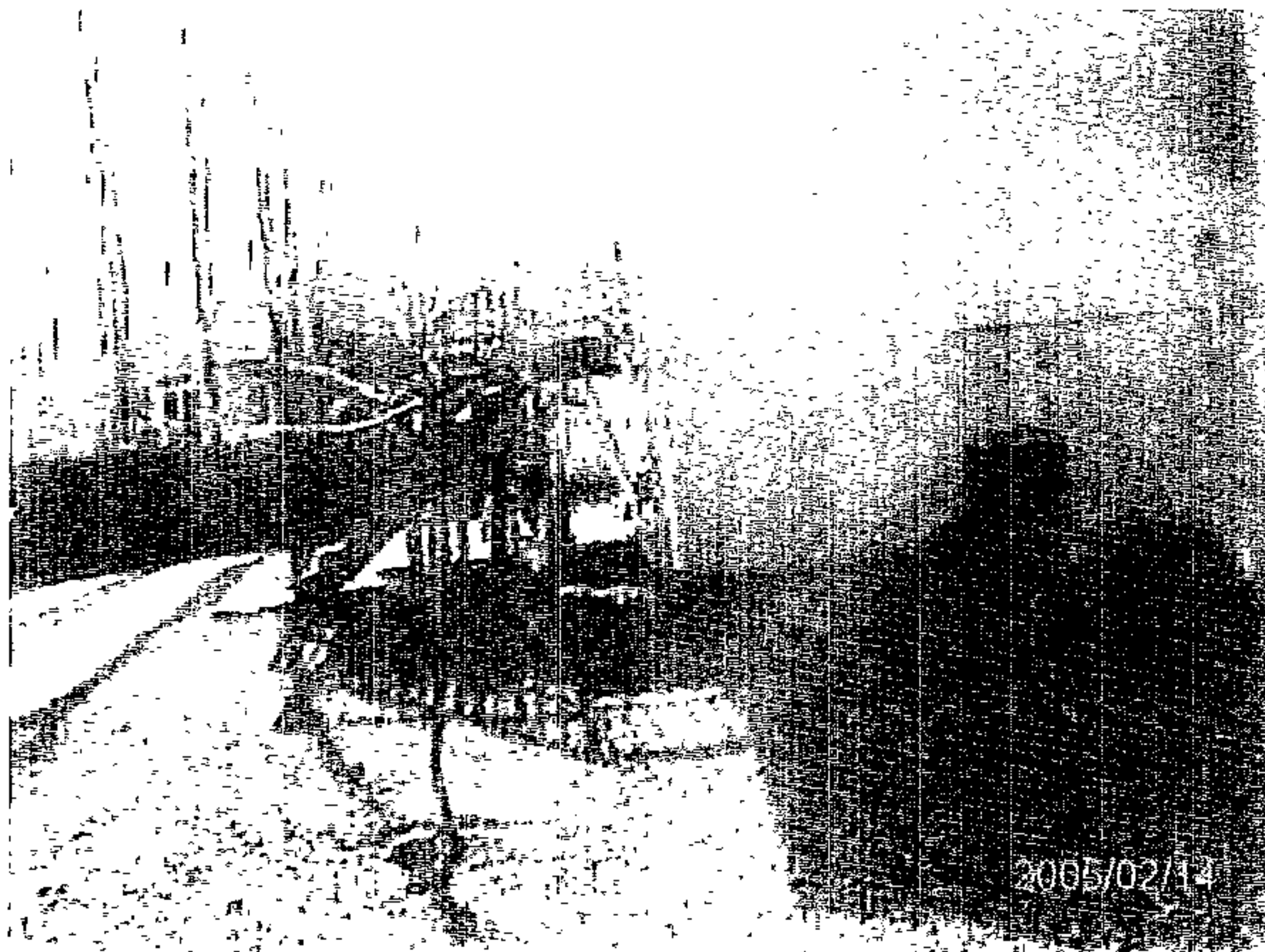
Reas (Prot Ex #3)

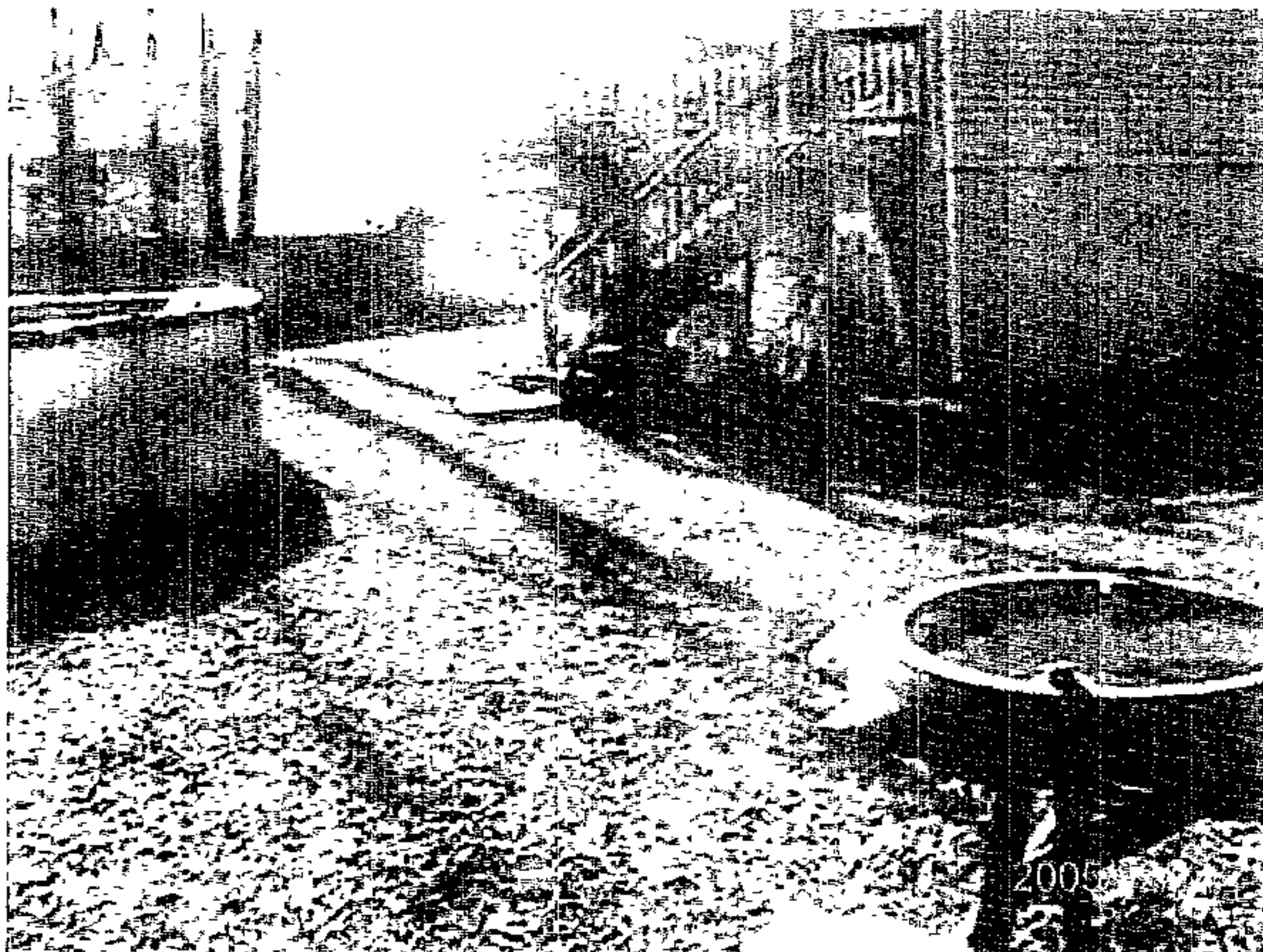
	Photo #1
3A Photo #2	3B Photo #3
3C	3D

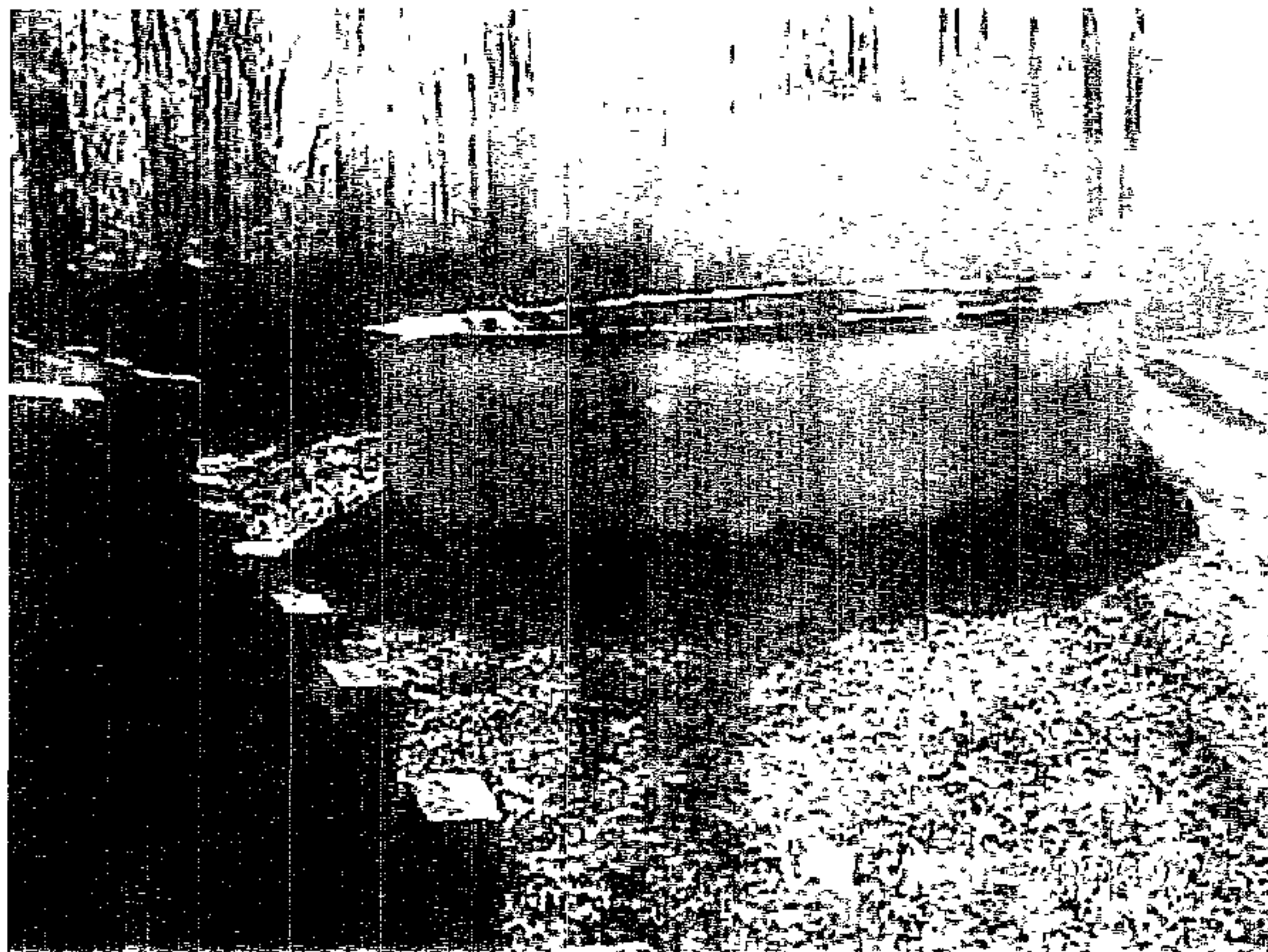


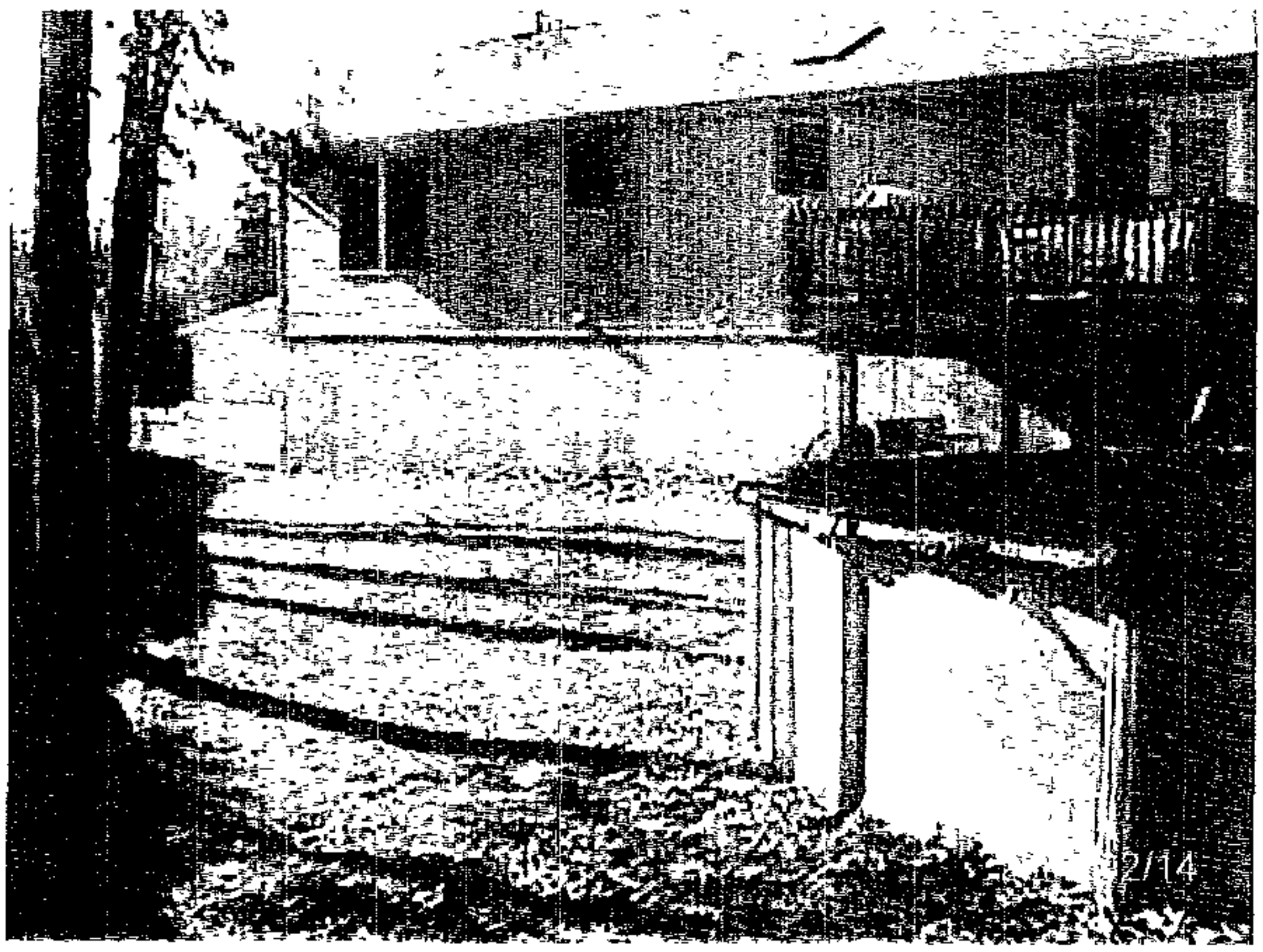
PROTESTANTS
EXHIBIT NO. 33

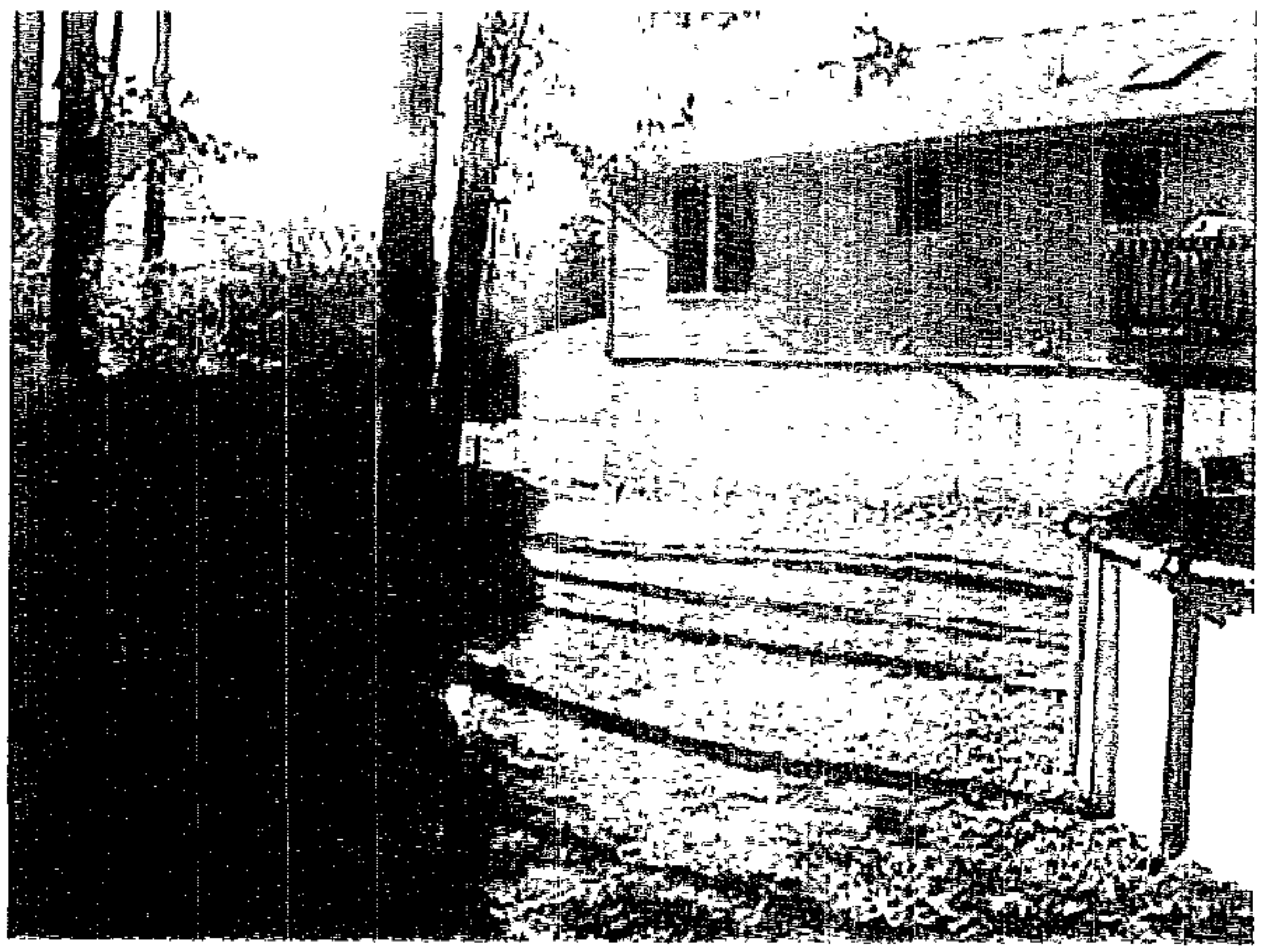


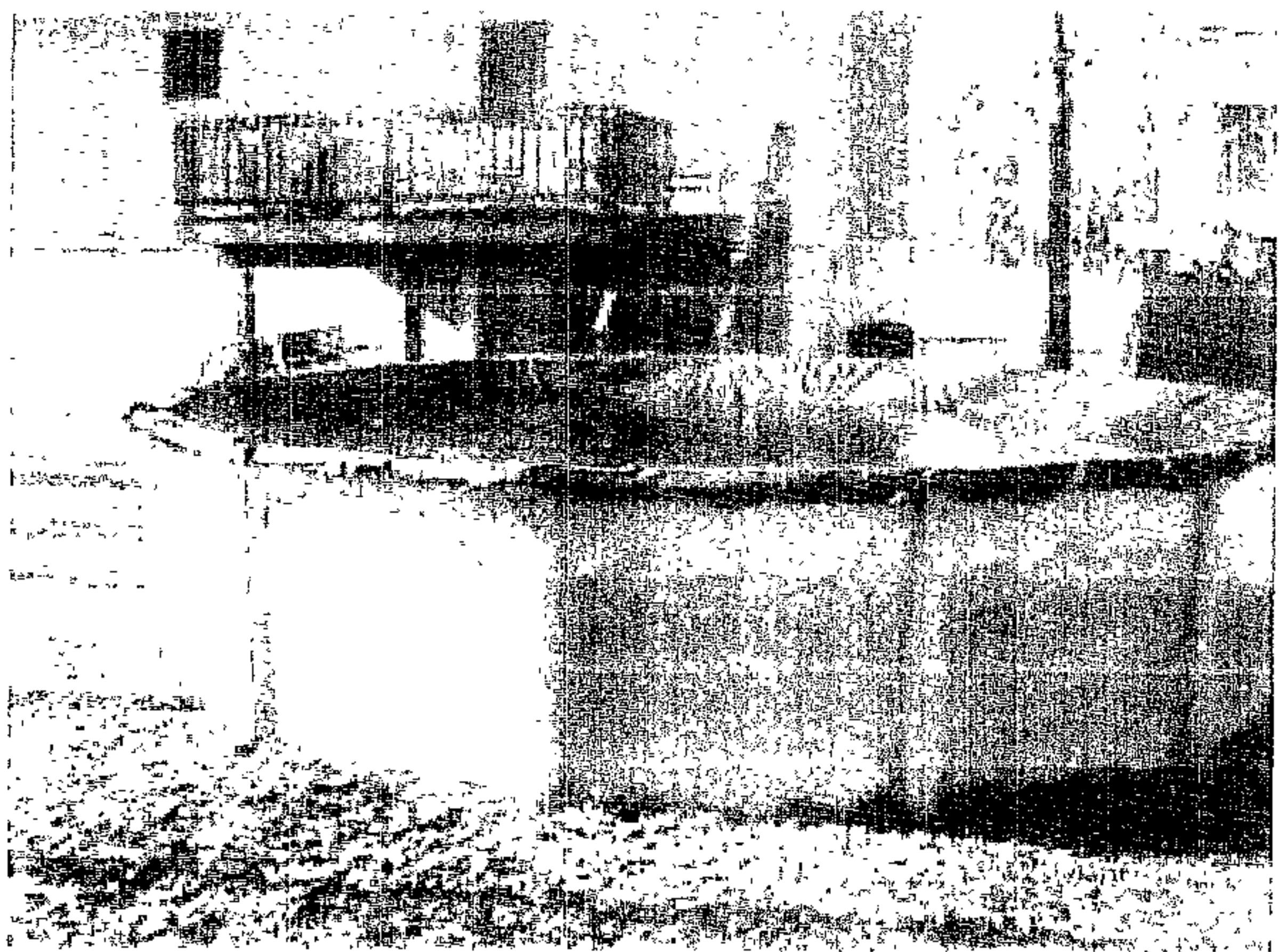


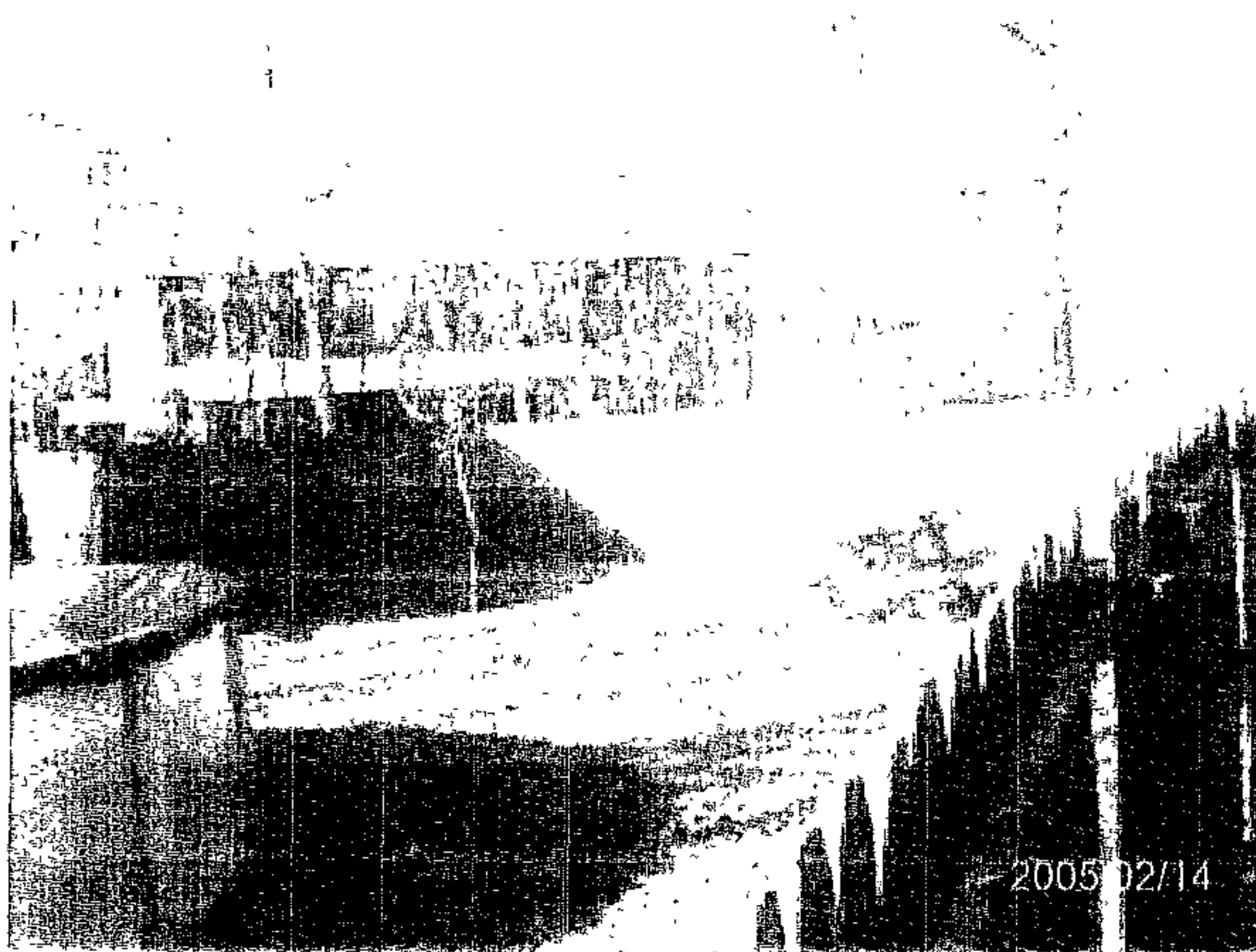


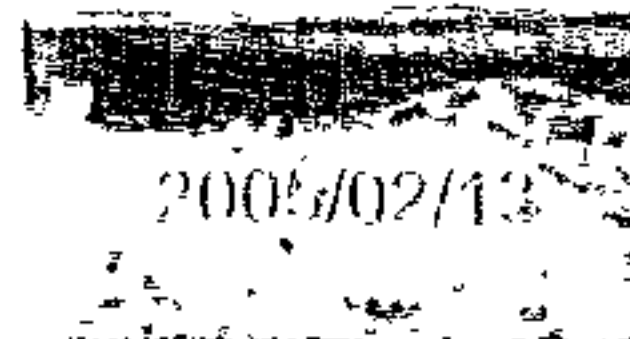




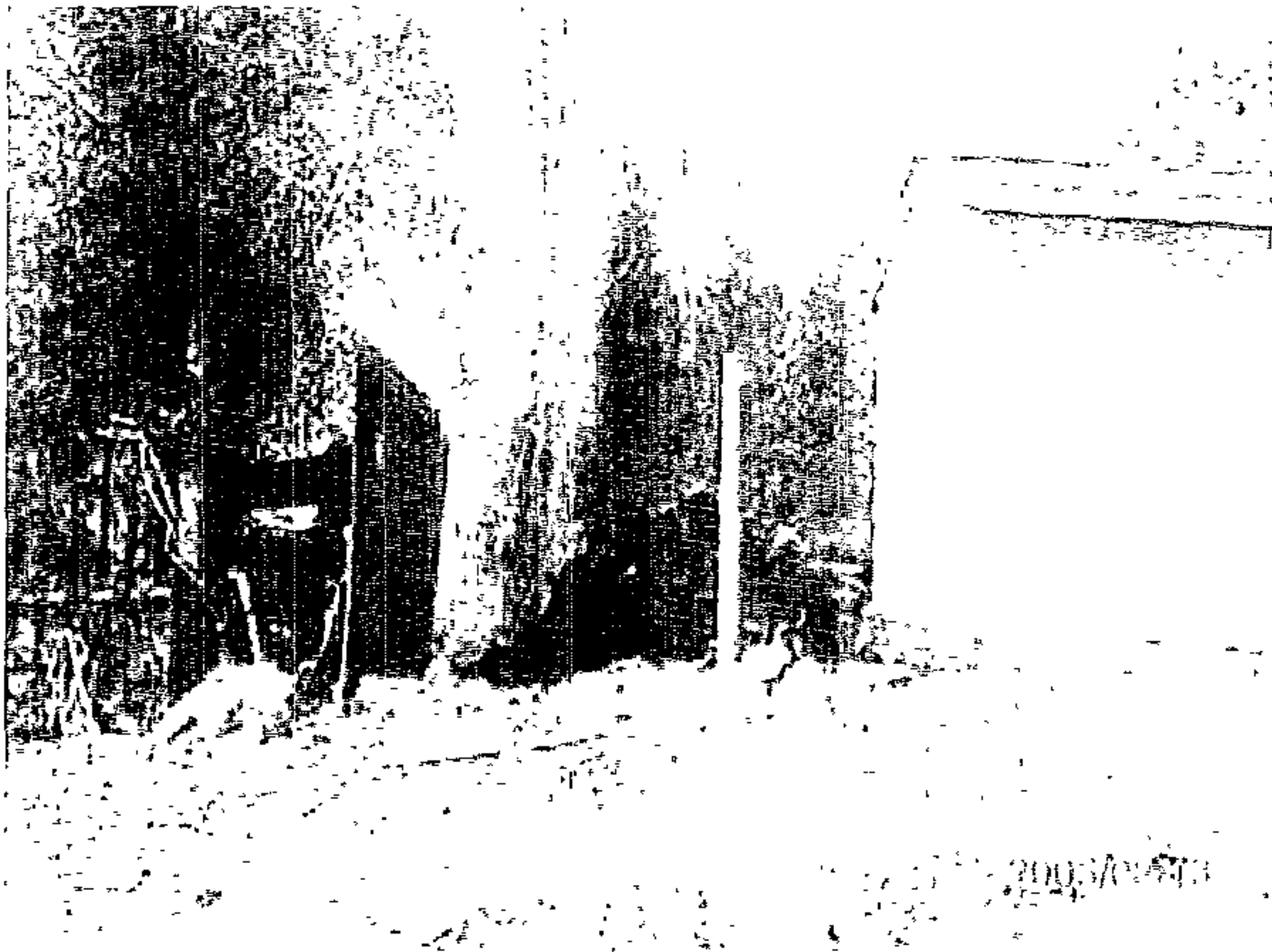


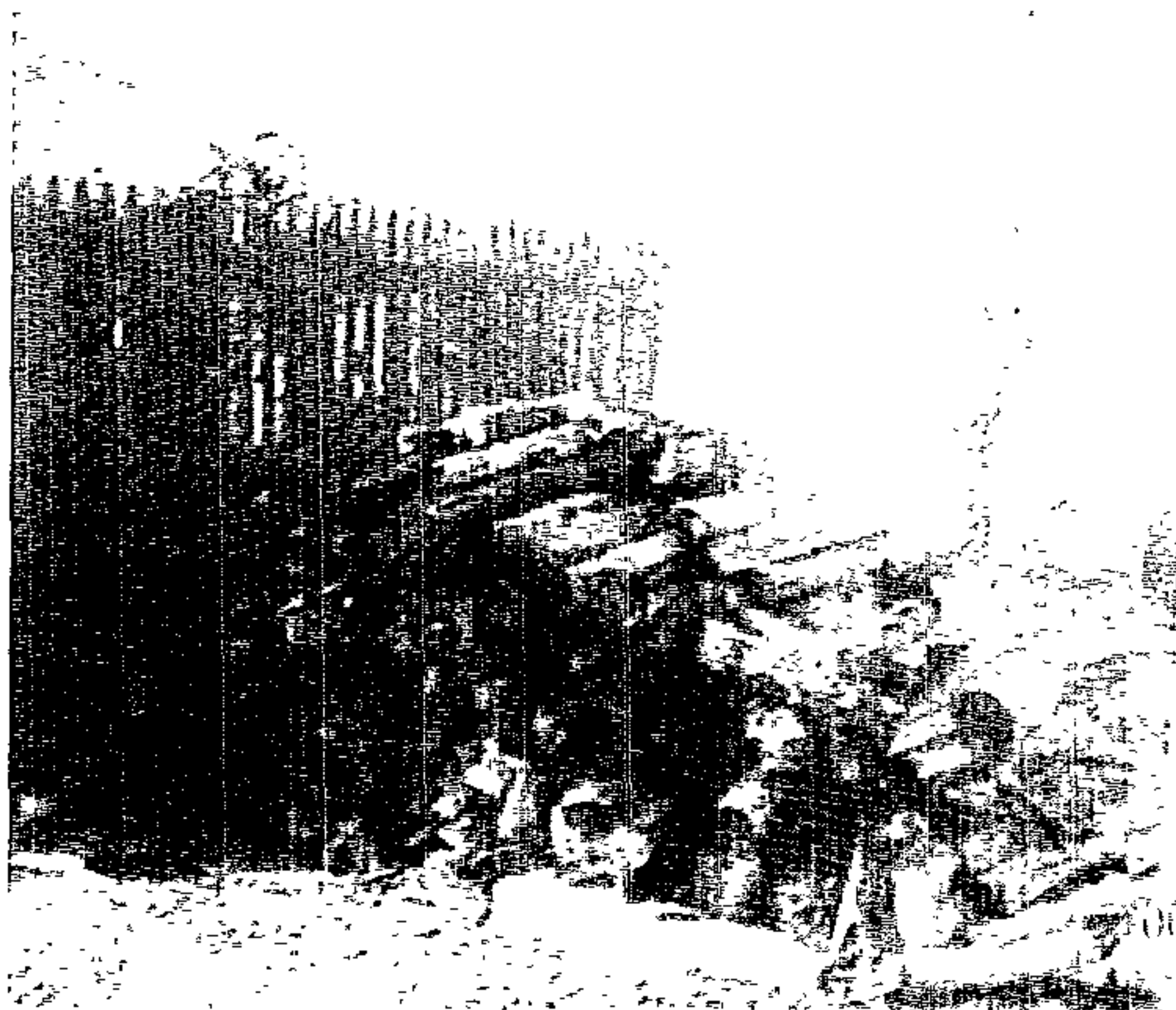




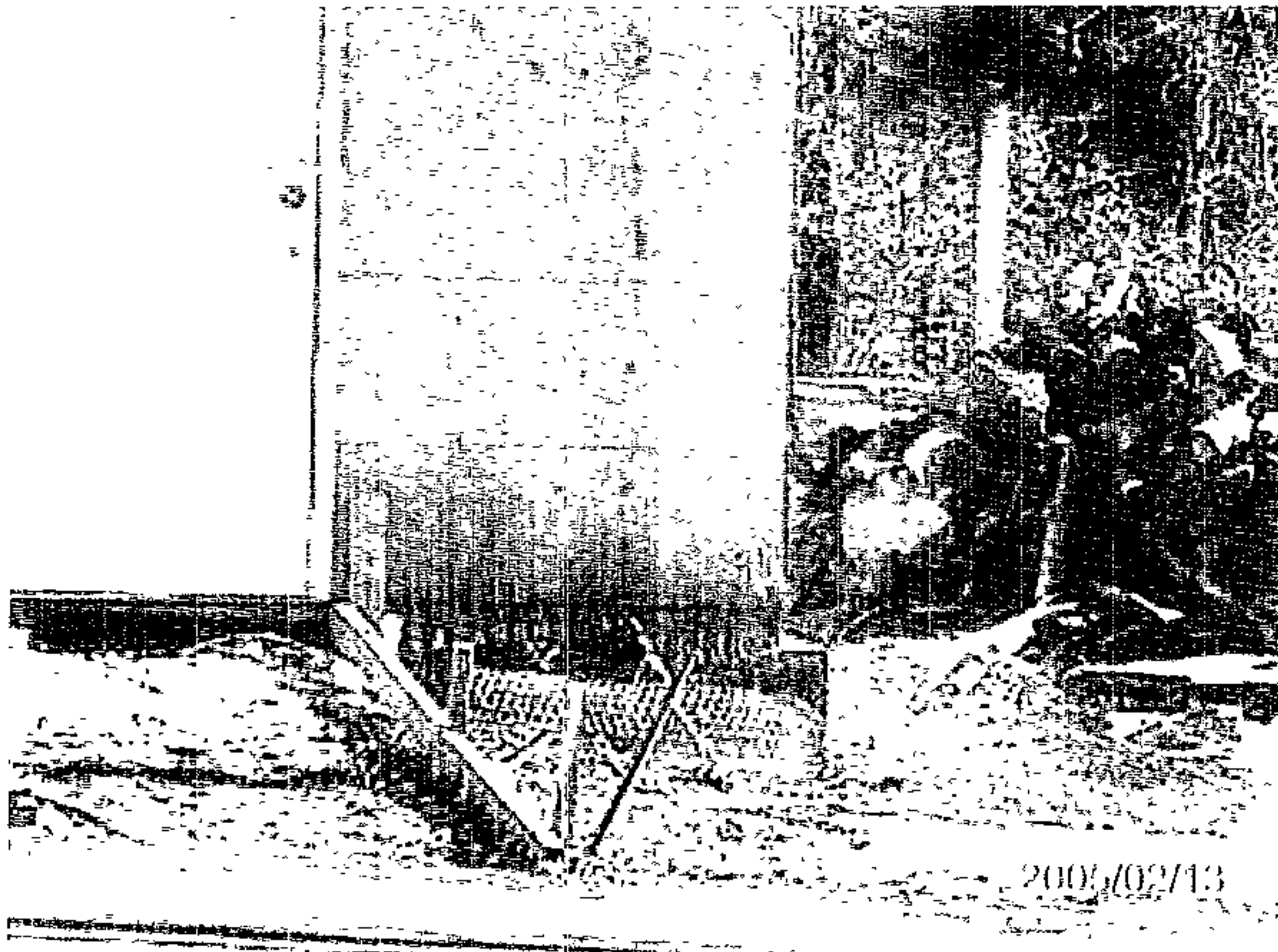


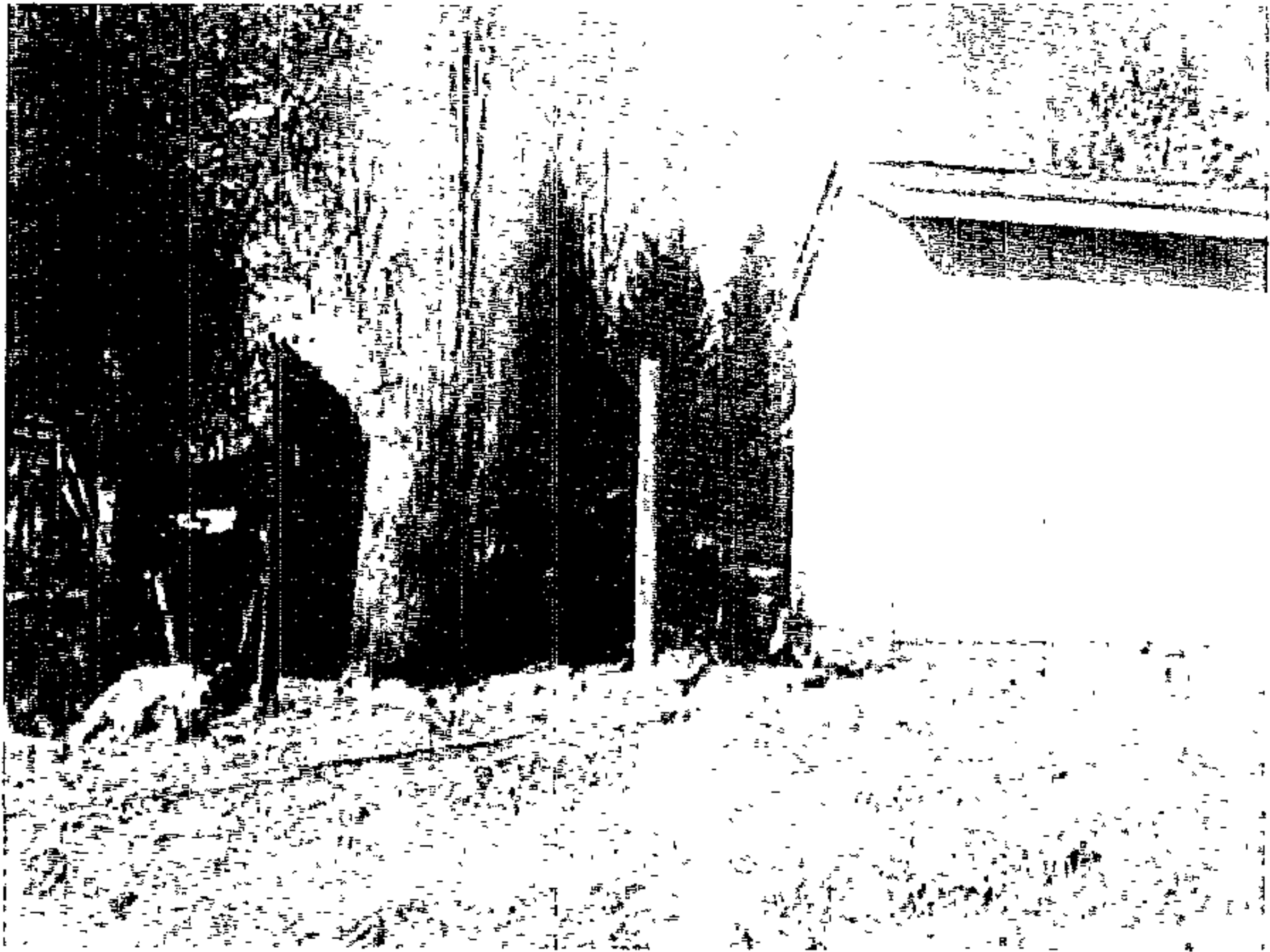
2005/02/13

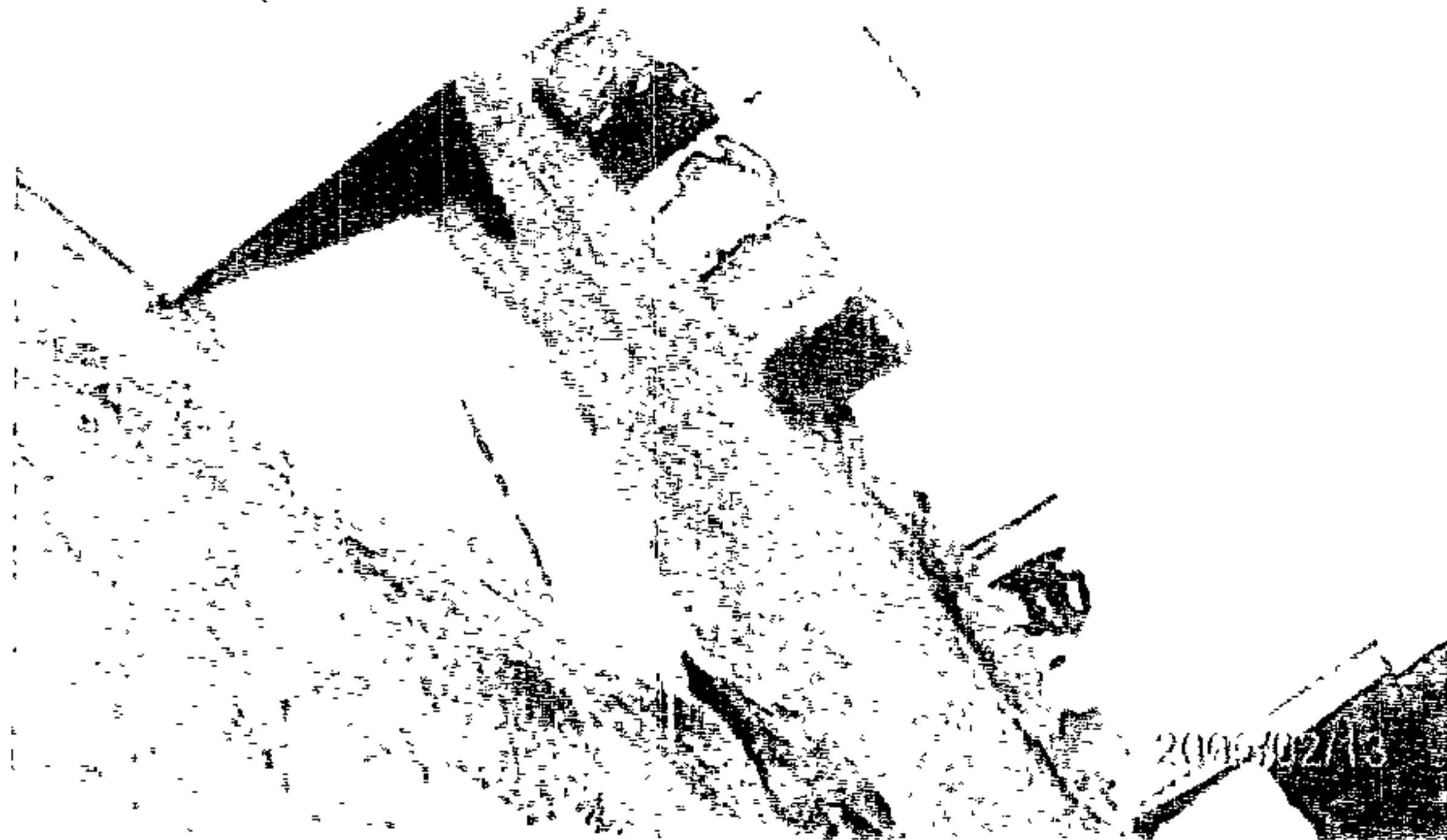




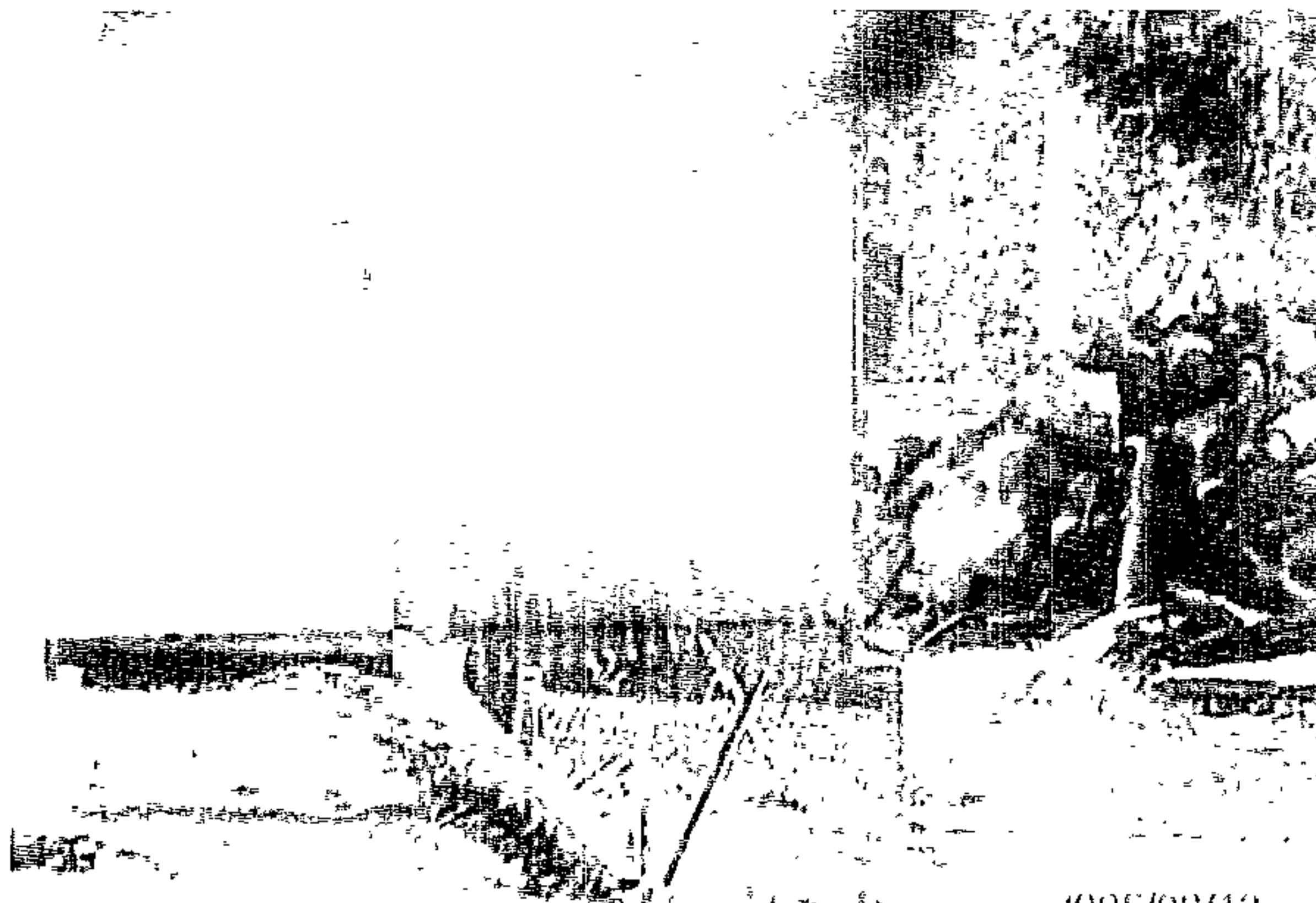
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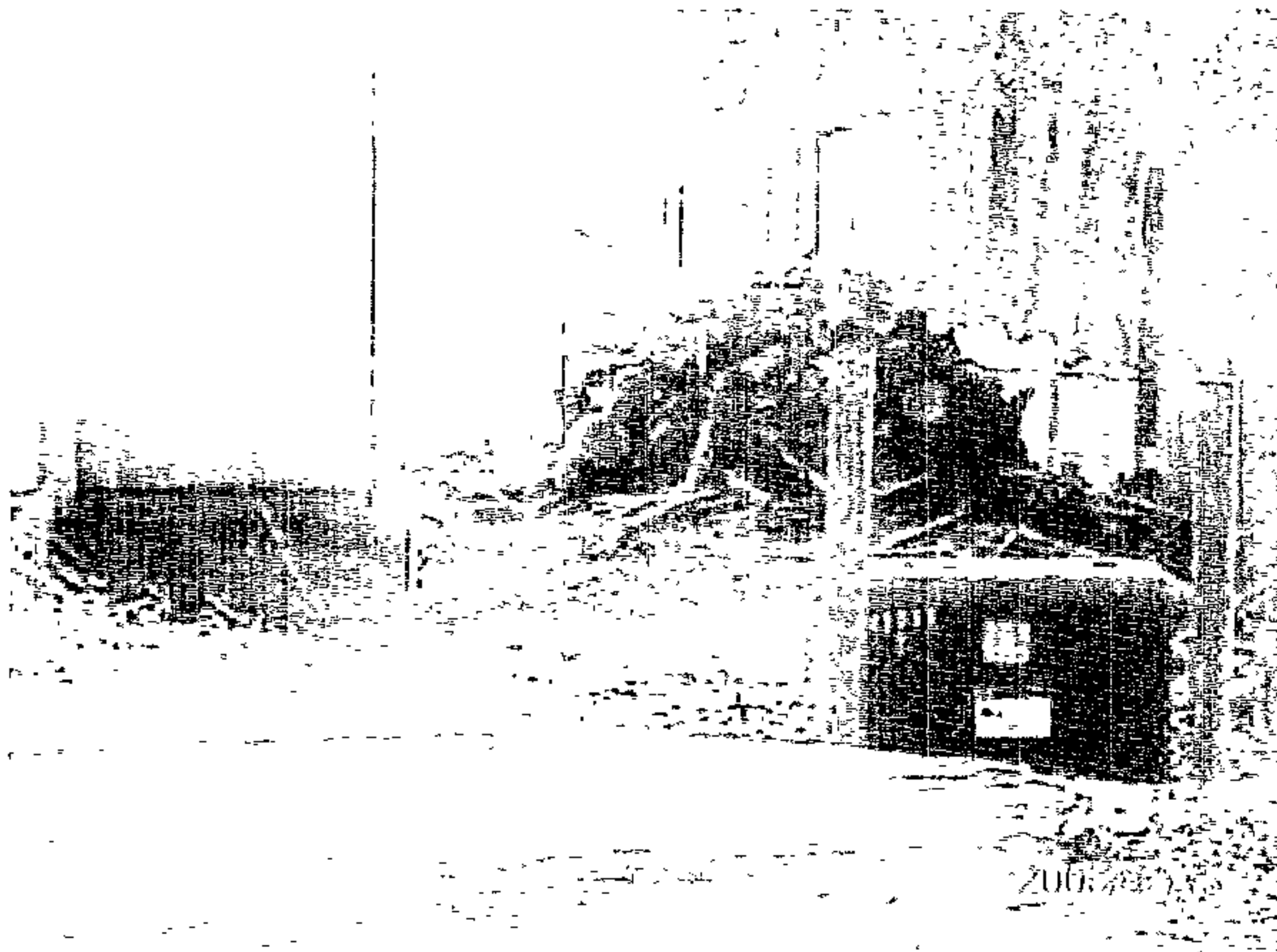


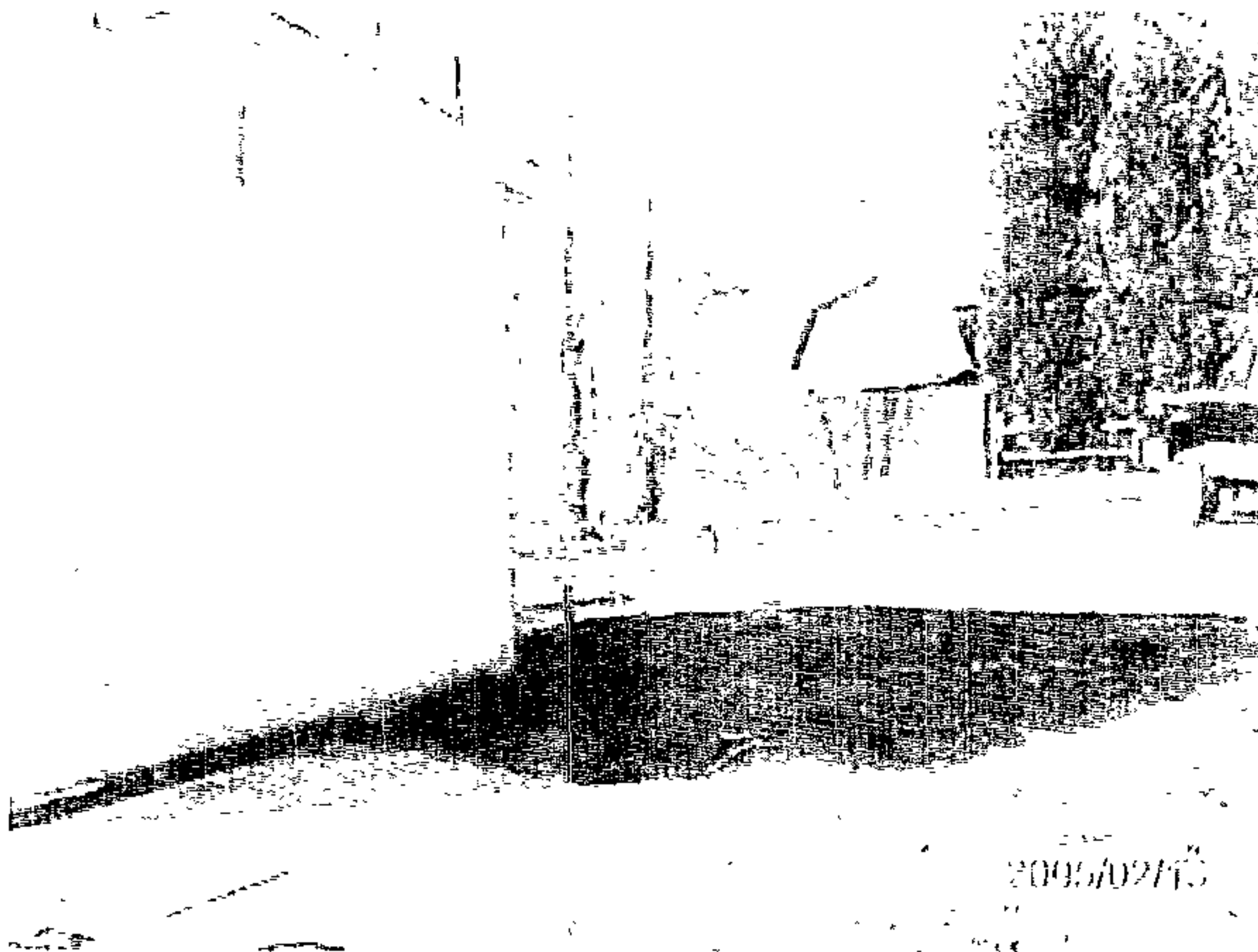






2005/09/43





2009/02/15



200.5/0 2/12



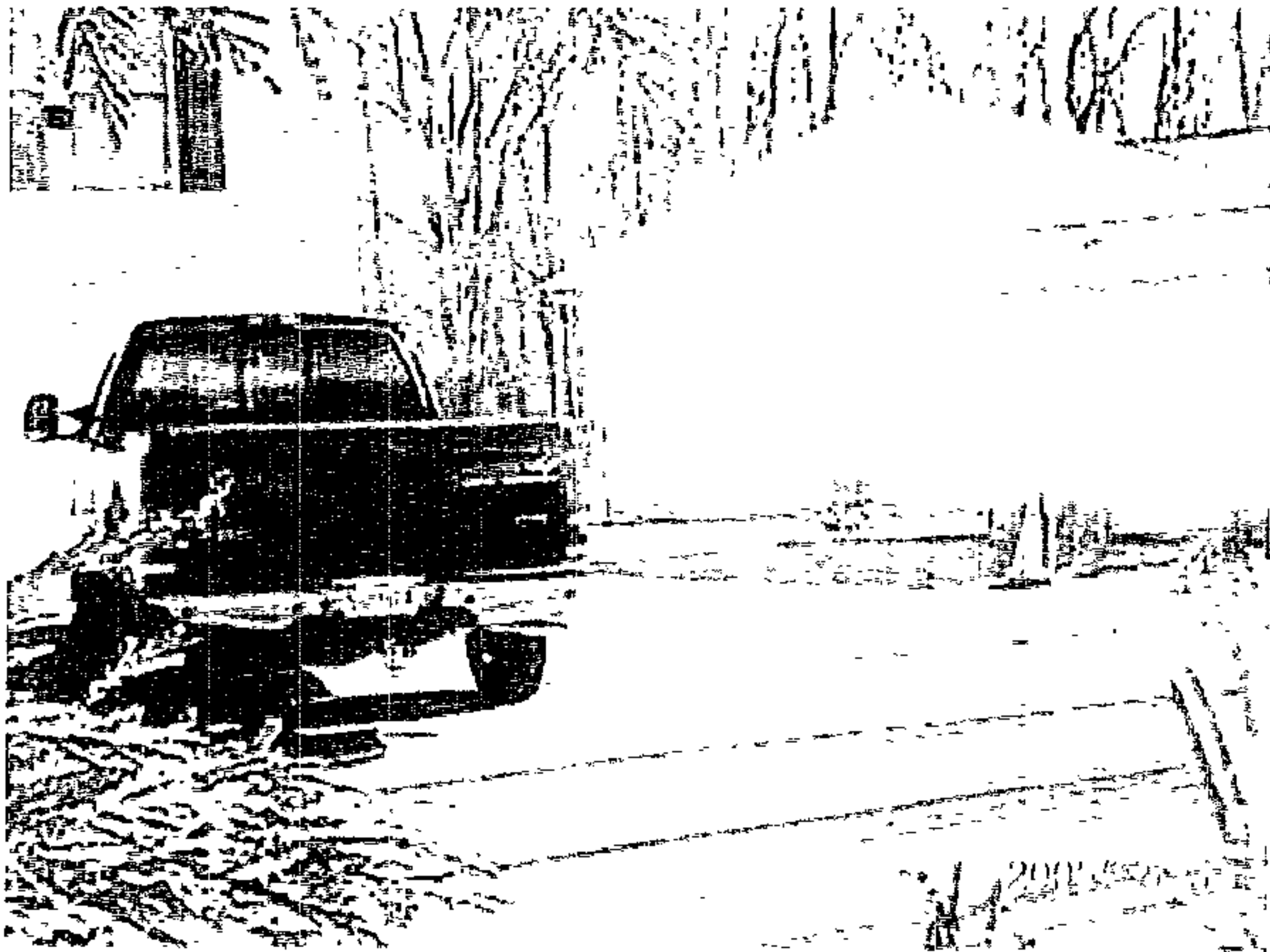
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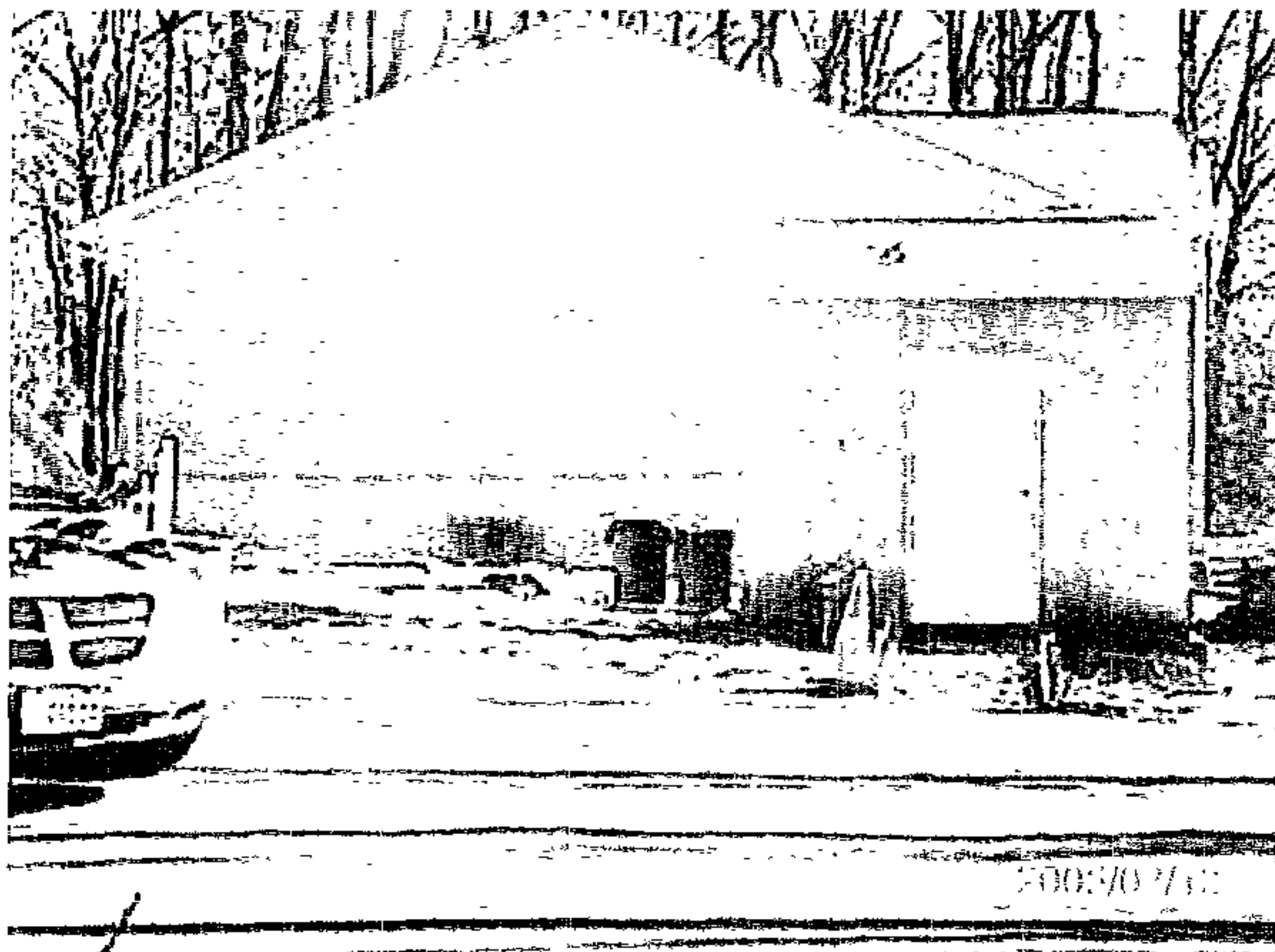


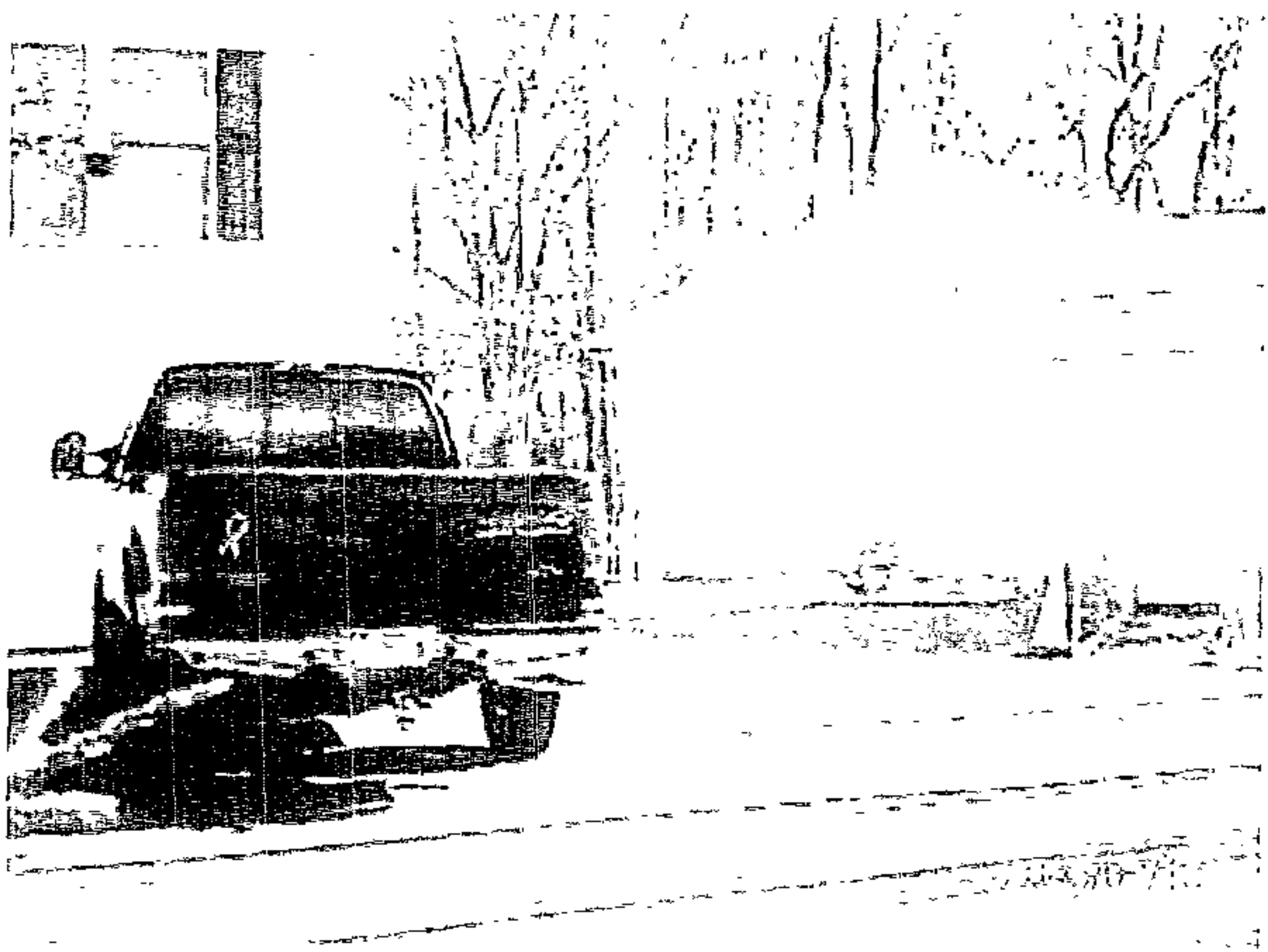
10069
C

5/02/13









UPDATE/MESSAGE FORM

CBA
Prot 4

Date:

2/2/05

Time:

a.m. p.m.

Inspector:

B. Kido

Case No.:

04-8094

Address:

1414 A SPRING AVE

Comments:

2/2/05 MR. PROFILI VISITED SITE, MEASURED
SHED, MEASURED 11 FT X 11 FT. IF VARIANCE IS
APPROVED BY ZONING COMMISSIONER, A PERMIT WILL BE
REQUIRED FOR THE SHED. 2/2/05 Grant Hall

ENTERED INTO AS400

This Petition will be filed with the Zoning Commisioner of Baltimore County in opposition case 05-033a

Jul

I acknowledge by my signature that I live in the affected area, understand the attached Petition for Variance request case no. ~~05-330~~-a as it relates to the property 1414a Spring Ave, Baltimore County Maryland 21237, owner Mr. Kenneth Canterbury, and will be affected directly by the proposed Storage Facility.

05-330 A

I object to the storage facilities lot location for its potential commercial use until all investigation by the Federal, State and local Government have been completed.

I object to the storage facilities lot location due to the insufficient amount of front lot space, there is more than enough space in the rear lot. (See attachment labeled Photo #1.)

I object to the storage facilities lot location due to the increased structural density created (See attachment labeled Photo #2.)

I object to the storage facilities lot location due its the property devaluing impact (See attachment study Document #1.)

I object to the storage facilities lot location due to the negative environmental and sediment run off impact.(See attachment labeled Photo #3.).

I object to the storage facilities lot location due the offensive appearance and condition of the proposed storage facility location (See attachment labeled Photo #4.)

I also understand that Mr. Canterbury may or may not have needs for a wheel chair and battery to run said equipment and believe he would be better served by an access ramp for his wheel chair or removing the restaurant / cooking equipment he operates for his business in the attached garage and make the needed space there (the garage is attached within the four main load bearing exterior walls of the family home located on the ground floor (see attachment labeled Photo #5.)

J

By utilizing the family garage he would gain safe tempered space for any specialized medical equipment that he may or may not need in the future at his free will. By utilizing the house garage Mr. Canterbury's, Family Members, Emergency Medical Assistants, Fire Department Personnel and Residents would also have immediate access to any medical equipment that he may or may not need in the future, without leaving the exterior of the home, possibly exposing him or anyone else to environmental conditions or confusion as to the whereabouts of the equipment and logistics such as locks, keys, alarms, floods, debris, rodents, damage and other naturally occurring degrading conditions of a shed detached and placed on the dirt in the front yard.

PROTESTANTS
EXHIBIT NO. 1

This Storage Facility location also creates an egress issue for the residency and a safety issue for the neighbors, motorists and children. Currently, family and business vehicles entering this residence have to back down, out of the drive for about 300 feet on an unlit, unguided 8 foot wide driveway separated by two homes 15 feet apart (not shown on diagrams provided by the Petitioner) into a very sharp impingement at the entrance of Spring Ave (During best conditions it very hard to do.) where about 10 to 15 neighbor hood children play on a regular basis creating safety issues for all of the families that have children playing in the neighbor hood. While on the surface this issue may be a liability for the resident as it relates to the owners vehicles exiting the property, however, other vehicles such as Fire department personnel, Business delivery personnel Emergency Medical personnel operating motor vehicles will be unaware of the restricted conditions not visible from the street approximately 300 feet, forcing them to egress in a manner compromised by the vehicles position as it relates to direction of travel placing them and our neighbor hood at risk.

Directly facing on the other side of the street located in the center line of the driveway is a fire hydrant and a mailbox that have been damaged recently because of the forced and self imposed egress conditions at the residence. Family vehicles will have the knowledge of the limiting space in the front yard and make the decision to back out rather than park on the street but Business Vehicles, Emergency Medical Vehicles, Fire Department Vehicles and visitors will be unaware of the restricted driving conditions approximately 300 feet and to the right obstructed by the distance and angle.

On 09-28-04 Baltimore County responded to a complaint of the construction violation from a neighbor and Baltimore building inspection issued a stop work order and cited Mr.Canterbery for non compliance of B.C.Z.R 101.102.1.400. Citation number 04-8094 (See *attachment Document #4.*)

Baltimore County gave Mr.Canterbery 10 days to either move the structure or file for a Variance.

After repeated attempts by the inspector and no response from Mr. Canterbury he was ordered by Baltimore County to appear for a judicial hearing regarding the issue on 12-07-04

The hearing was delayed while Mr.Infussi filed an incomplete application for a variance. The hearing acknowledge Mr. Canterbury's non-compliance and acknowledges he had made no attempt to file for a variance or move the structure for over 75 days, in fact work continued to the structure. Because of the last minute attempt to save Mr.Canterbery from a financial impact the application was not available because it was incomplete on the day of the hearing. Mr.Canterbery's action were and intentional and with the understanding of all County requirements Mr.Canterbery is well aware of county processes and elected to aggressesly continue building a storage facility without the benefit of a County Variance. Mr.Canterbery has clearly self imposed this hardship.

Mr. Canterbury has displayed his knowledge of the Baltimore County procedures by filing complaints against his own neighbors and local a local business in the recent past (See *attachment Document #2 and #3.*) He has also displayed his level of arrogance and willingness to "snub his nose" in the face of other Baltimore County procedures designed

PLAN APPROVAL — MINOR SUBDIVISIONS

This Project Has Received An Exemption Or Waiver
From Div. 2 "Development Regs. of Balto. Co. Md."
Plan Is Hereby Accepted For Processing . .

Technical Sufficiency: DPW 3-26-92 OPZ _____

Plan Approved DPW _____

Plan Approved OPZ _____

LIBER 9123 PAGE 143

TOGETHER with the buildings and improvements thereupon erected, made or being, and all and every the rights, alleys, ways, waters, privileges, appurtenances, and advantages to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot(s) of ground and premises unto and to the use of the said Grantee(s), as tenants by the entirety, their assigns, and unto the survivor of them, his or her personal representatives and assigns, in fee simple.

AND the said Grantor hereby covenants that the Grantor has not done or suffered to be done any act, matter or thing whatever to encumber the property hereby conveyed; and to warrant specially the property hereby granted and to execute such further assurances of the same as may be requisite.

Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

WITNESS the hand and seal of said Grantor.

WITNESS:

Lawrence C. Meusel Joseph R. Uhler (SEAL)
Joseph R. Uhler
Alice A. Uhler (SEAL)
Alice A. Uhler

STATE OF MARYLAND, County of BALTO. TO WIT:

I HEREBY CERTIFY, that on this 2 day of April 1992, 1992, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared JOSEPH R. UHLER and ALICE A. UHLER known (or satisfactorily proven) to me to be the person(s) whose name(s) ~~they~~ are subscribed to the within Deed and acknowledged the foregoing Deed to be their act and in my presence signed and sealed the same, and further acknowledged that the consideration as stated above is true and correct.

AS WITNESS my hand and Notarial Seal.

Lawrence C. Meusel
Notary Public



My Commission Expires: DEC 31, 1993.

This is to certify that the within instrument has been prepared by or under the supervision of the undersigned Maryland attorney.

Richard E. Lattanzi, Attorney

Page 2
Individual

MOORE, CARNEY RYAN & LATTANZI
4111 E. JOPPA ROAD SUITE 201
BALTIMORE, MD 21236

THIS DEED, Made this 2 day of April
in the year one thousand nine hundred and ninety two, by
and between JOSEPH R. UHLER and ALICE A. UHLER, husband and wife,
parties
of the first part, Grantor, and JOSEPH R. UHLER and ALICE A. UHLER,
husband and wife, parties
of the second part, Grantee.

WITNESSETH, That in consideration of the sum of \$ ZERO
and other valuable considerations, the receipt whereof is hereby
acknowledged, the said Grantor does hereby grant, convey and
assign unto the said Grantee(s), as tenants by the entireties,
their assigns, and unto the survivor of them, his or her

personal representatives and
assigns, in fee simple, all that lot(x) of ground situate in
Baltimore County in the State of Maryland, and described
as follows, that is to say:

BEING KNOWN AND DESIGNATED as the property described in
Schedule "A" attached hereto and made a part hereof.

BEING part of the property described in a Deed dated Sep-
tember 10, 1991 and recorded among the Land Records of Baltimore
County in Liber S.M. No. 8918 folio 186 was granted and conveyed
by George Schiaffino and S. James Shipley to James R. Uhler and
Alice A. Uhler, the Grantors herein.

D RC/F 20.00
DC IMP 5.00
D/TRST 0 #
SM CLERK 25.00

#97547 C002 R02 T13:22

04/03/92

TRANSFER TAX NOT APPLICABLE
BALTIMORE COUNTY, MARYLAND

Per

[Signature]
Author and Signer

Date 4-2-92 Sec. 33-139 E

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

[Signature] 4/2/92
Date

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE *[Signature]* DATE 4/3/92

SCHEDULE "A"

LIBER 9123 PAGE 140

M. & H. DEVELOPMENT ENGINEERS, INC.

200 EAST JOPPA ROAD
ROOM 101, SHELL BUILDING
TOWSON, MARYLAND 21204

Towson Office
Malcolm E. Hudkins
Registered Surveyor
Phone 835-9080

MARCH 24, 1992

DESCRIPTION OF LOT 2 SPRING AVENUE
ON ATTACHED MINOR SUBDIVISION PLAT
BEGINNING for the same at a point on the northeast side of Spring

Avenue, 25 feet wide, and in the second or North 66 degrees 15 minutes West, 800.00 foot line of the land conveyed by Emma E. Sterner, widow, to Phoebe Rhea Berman, et al, by deed dated April 15, 1954 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2465, folio 127, said point being 241.41 feet measured North 66 degrees 15 minutes West along the northeast side of Spring Avenue from an iron pipe at the end of the first line in said deed; thence running and binding on the northeast side of Spring Avenue and on part of the aforesaid second line, as now surveyed, N 66° 14' 55" W, 12.02 feet to a point; thence leaving the northeast side of Spring Avenue N 21° 20' 05" E, 330.29 feet to a point; thence S 66° 14' 55" E, 75.00 feet to a point on the first line described in the deed from Emma C. Sterner, widow, to Phoebe Rhea Berman, dated and recorded as aforesaid; thence along said first line, for part of the distance, as now surveyed S 21° 20' 05" W, 127.13 feet to a point; thence for new lines of division thru the whole tract the two (2) following courses and distances, VIZ: (1) N 68° 39' 55" W, 62.93 feet and (2) S 21° 20' 05" W, 200.51 feet to the POINT OF BEGINNING, containing 0.277 of an acre, more or less.

Saving and excepting for Highway Widening, a strip of land 12.5 feet wide, lying northeast of and adjacent to the first line described above, containing 0.003 of an acre, more or less.

Subject to a 10 feet Revertible Slope EAsement as shown on the Plat.

Being a part of the same property which by deed dated September 10, 1991 and recorded among the Land rEcords of Baltimore County in Liber 8918, folio 186, was granted and conveyed by George Schiaffino and Jmaes S. Shipley to Joseph R. Uhler and Alice A. Uhler.



IN THE MATTER OF:

* BEFORE THE

KENNETH E. AND GLORIA A.

* COUNTY BOARD OF APPEALS

CANTERBERY - Legal Owners/

* OF

Petitioners

* BALTIMORE COUNTY

* CASE No. 05-330-A

* September 1, 2005

* * * * *

The above-entitled proceedings 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 o'clock a.m., September 1,
2005.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

Page 3

Page 5

1 BOARD MEMBERS:

2

3 LAWRENCE S. WESCOTT, Chairman

4 MARGARET BRASSIL, Ph.D.

5 MIKE MOHLER

6

7 APPEARANCES:

8 ARTHUR M. FRANK, Esquire
On behalf of Petitioner

9 JOSEPH RUSCITO, Pro se

10

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21

1 speak for them, or call them as witnesses?

2 MR. RUSCITO: I'm going to speak for myself, and

3 they will represent themselves. I may, in my deliberation

4 reference one, maybe two of the neighbors.

5 However, I believe that they are all here

6 individually to have input in today.

7 THE CHAIRMAN: Well, I'm going to ask you to be

8 the representative and, if necessary, if they want to make

9 a statement or testify, they can come up here and be sworn

10 and testify.

11 And if you're going to testify as to incidents or

12 evidence, or give evidence, you will also have to be, you

13 can give your testimony as a narrative, however you want

14 to do that.

15 MR. RUSCITO: Will some of the others will be

16 allowed to give their testimony as well?

17 THE CHAIRMAN: I don't want to limit anyone, and

18 you will have an opportunity to cross examine witnesses.

19 I'm not going to have to have four people cross

20 examining, so if they have anything they want you to ask,

21 they can give it to you and you can present it, but we are

Page 4

Page 6

1 PROCEEDINGS

2 * * * * *

3 THE CHAIRMAN: Good morning, ladies and

4 gentlemen. This is a regular meeting of the County Board

5 of Appeals for Baltimore County in Case No. 05-330-A, in

6 the matter of Kenneth and Gloria Canterbury, legal

7 owners/petitioners, 1414A Spring Avenue, 14 Election

8 District, 7th Councilmanic District.

9 This is an appeal from the Zoning Commissioner's

10 order in which requested variance relief was denied.

11 Will counsel please state their appearances, for

12 the record.

13 MR. FRANK: For the record, Arthur Frank, 40 West

14 Pennsylvania Avenue, representing the petitioners Kenneth

15 and Gloria Canterbury.

16 MR. RUSCITO: My name is Joe Ruscito. I live at

17 1418A Spring Avenue.

18 I'm representing myself, and I'm here with some

19 others in the community that are also representing

20 themselves.

21 THE CHAIRMAN: Mr. Ruscito, are you going to

1 only going to have one person who will be examining and
2 cross examining witnesses.

3 MR. RUSCITO: I understand.

4 THE CHAIRMAN: Thank you. Mr. Frank?

5 MR. FRANK: As a preliminary matter first, I

6 would move to sequester any witnesses so that all

7 witnesses, when they testify, they won't have heard other

8 witnesses' testimony beforehand.

9 And, secondly, the gentleman to the left of Mr.

10 Ruscito -- I didn't get your name?

11 MR. VASOLD: I didn't say my name.

12 MR. FRANK: I guess --

13 THE CHAIRMAN: Why don't you make up a sign-in

14 sheet.

15 MR. VASOLD: Can you speak up a little bit?

16 MR. FRANK: The first problem would be Mr.

17 Ruscito is not an attorney representing the community.

18 THE CHAIRMAN: He's representing himself.

19 MR. FRANK: I would have a problem with him cross

20 examining.

21 THE CHAIRMAN: I'm sorry, but he's allowed to do

Page 7

1 that.

2 MR. FRANK: I was just stating that, for the
3 record.

4 THE CHAIRMAN: The problem I have with
5 sequestering witnesses, if all the people here are
6 representing themselves, I'm afraid we are not going to be
7 able to sequester witnesses.

8 MR. FRANK: Okay.

9 THE CHAIRMAN: Present your case.

10 MR. FRANK: Thank you. I will call Kenneth
11 Canterbury to the stand.

12 KENNETH CANTERBERY,
13 having been called as a witness, was duly sworn and
14 testified as follows.

15 DIRECT EXAMINATION

16 BY MR. FRANK:

17 Q. Would you state your full name and address, for
18 the record, please.

19 A. My name is Kenneth Canterbury, 1414A Spring
20 Avenue, Baltimore, Maryland 21237.

21 Q. Are you the owner in title to that property just

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1 Also to keep propane tanks in the shed, because
2 the fire chief told me that's probably the safest place to
3 keep them, not to keep it in the house or outside.

4 MR. FRANK: I'm first going to submit to the
5 Board so they can told follow the list of exhibits I am
6 going to introduce through Mr. Canterbury, but I have
7 given a copy to Mr. Ruscito.

8 Q. The first exhibit that you've already looked at
9 is Exhibit 1, which is a subdivision plat of your property
10 that was attached to your deed.

11 Is that a true and correct copy of the
12 subdivision plat of your property?

13 A. Yes it is.

14 MR. FRANK: I move to introduce this as Exhibit
15 No. 1, for the petitioners.

16 THE CHAIRMAN: Any objection?

17 MR. RUSCITO: I'd like to read it, because we
18 have seen some others. No objection.

19 THE CHAIRMAN: Accepted.

20 MR. FRANK: This is the house, and it shows the
21 house in relation to the lot and house in front of him.

Page 8

1 described?

2 A. Yes, I am.

3 Q. You own that with your wife, is that correct?

4 A. That is correct.

5 Q. What is her name?

6 A. Gloria Canterbury.

7 Q. You're also representing her here today as well?

8 A. That is correct.

9 Q. Now, did there come a time where a shed was built
10 on your property?

11 A. Yes. I believe it was June of 2004. My son Adam
12 came in from Afghanistan. That was a father's day gift
13 for me.

14 Q. What's the purpose of the shed? What are you
15 going to use it for?

16 A. Well, in my garage, I keep a hot dog cart and
17 sodas and refrigerator, a sink. Things I need for my
18 mobile hot dog business that I run.

19 So I didn't have room for bicycles, lawnmowers.
20 I have a snow blower, because I have a large driveway,
21 so, basically, that's what it was for.

Page 10

1 MR RUSCITO: Does that show the location of the
2 proposed facility?

3 MR FRANK: That one doesn't. The next one will.

4 THE CHAIRMAN: This is Petitioner's Exhibit 1.

5 MR. FRANK: I think I marked them on the
6 right-hand corner.

7 MS. BRASSIL: We'll mark them as they come.

8 MR. FRANK: I'm sorry.

9 MS. BRASSIL: That's Exhibit 1.

10 Q. Mr. Canterbury, I show you Exhibit 2 which is a
11 plat with the shed in red next to your house marked in
12 yellow.

13 Is that the approximate location where the shed
14 is?

15 A. You're talking down here?

16 Q. Yes.

17 A. Yes.

18 MR. FRANK: I move to introduce this as Exhibit
19 No. 2.

20 THE CHAIRMAN: Is this a second copy of
21 Petitioner's No. 1?

1 MR. FRANK: Yes, it's a duplicate copy. I didn't
 2 realize that you had when I submitted the second one.
 3 MS. BRASSIL: That's Exhibit 2.
 4 THE CHAIRMAN: Give him a copy.
 5 MR. RUSCITO: I'm not sure. That's clearly
 6 misplaced there, and we have information that would refute
 7 that.
 8 THE CHAIRMAN: You can cross examine on that.
 9 MR. FRANK: I think we may have drawn the shed a
 10 little bit back when, in actuality, it's a little closer
 11 to the front property line.
 12 Q. But you can explain that when you're asked some
 13 questions on that. I just asked if this was the
 14 approximate location?
 15 A. I have a little problem with the drawing. I
 16 assume, with my eyesight, unless I had it on a scanner, I
 17 might not be able to determine that.
 18 I can describe where it's at and how my house is
 19 laid out, but I'm not so sure.
 20 Q. I'm going take you through a series of eleven
 21 pictures.

1 MR. FRANK: I'm going to mark them all as
 2 Exhibits 3A through J.
 3 Q. I'm going to ask you on Exhibit 3A, what does
 4 that show?
 5 A. 3A -- 3A -- okay. That is a picture just before
 6 you approach my driveway, looking up my driveway.
 7 Q. Can you see your house from that?
 8 A. No. It's directly behind this front house.
 9 Q. That picture was taken from the end of your
 10 driveway on Spring Avenue?
 11 A. That's correct. And the house on the left, with
 12 a shed in the back of their house.
 13 Q. Then there is another shed in the picture?
 14 A. You can't really see -- you can't see it, but Don
 15 Vasold, who lives at 1416A, his shed is on the side of his
 16 house.
 17 THE CHAIRMAN: Is that shown in that picture?
 18 MR. FRANK: Yes.
 19 A. I can't see it myself.
 20 Q. Now, this picture and the ten that follow for a
 21 total of eleven, are they true and accurate

1 representations of the property?
 2 A. Yes.
 3 Q. Is that what it looked like when you took the
 4 pictures?
 5 A. Yes.
 6 Q. Who took the pictures? I did. When were they
 7 taken?
 8 A. They were taken approximately a week ago.
 9 Q. When I took the pictures, you were with me when I
 10 took the pictures?
 11 A. Yes.
 12 MR. FRANK: First, I introduce Exhibit 3A.
 13 Q. Now, Exhibit 3B shows another frontal view, but a
 14 little bit to the left of the property?
 15 A. Yes. This would be -- it was before my driveway.
 16 This would be looking up my driveway. You can't even see
 17 my house.
 18 Of course, you can't see the shed. And that's my
 19 mailbox, so that's my driveway.
 20 Q. We took that picture from the street at Spring
 21 Avenue at the end of your driveway?

1 A. That is correct.
 2 Q. Can cars coming down Spring Avenue and see your
 3 house?
 4 A. No.
 5 Q. And can they see the shed?
 6 A. No.
 7 MR. FRANK: I would introduce 3B into evidence.
 8 MS. BRASSIL: I need to clarify. This is not his
 9 house?
 10 MR. FRANK: No.
 11 THE WITNESS: The front house is 1414 and mine is
 12 1414A, separate residences.
 13 Q. I'm now going to show you Exhibit 3C which is a
 14 picture taken from about the center of your driveway going
 15 up to your house, is that right?
 16 A. That's correct.
 17 Q. Even from the center of your driveway, is your
 18 house visible from that view?
 19 A. No. The only thing you can see is my flag, and
 20 that's it.
 21 Q. Again, the property on the right is not your

Page 15

1 house?

2 A No, it's not.

3 Q. The white fence there surrounds a swimming pool,
4 is that correct?

5 A. Yes. It's -- the house on the left, the wooden
6 fence, they have an in-ground swimming pool with two
7 sheds.

8 And then on the right, it is a six, almost
9 seven-foot fence surrounding their back yard.

10 Q. Now, the sheds that are in the rear of that
11 house, which is to the left, are those sheds basically in
12 the front of your house?

13 A. Yes, they are.

14 Q. You can see them from your front steps?

15 A. Yes.

16 MR. FRANK: I would introduce Exhibit 3C into
17 evidence.

18 Q. Exhibit 3D, again, again, is --

19 A. Further up the driveway.

20 Q. And you still can't see your house from that view
21 either?

Page 16

1 A. No, sir.

2 MR. FRANK: Introduce Exhibit 3D into evidence.

3 Q. Exhibit 3E is a picture of the shed itself, is
4 that right?

5 A. That is correct, yes. This is the corner of the
6 property.

7 There are trees that divide it. And the newer
8 home right in the back of it, and it has no windows on the
9 side of that house.

10 MR. FRANK: Move to introduce 3E into evidence.

11 MS. BRASSIL: Is the house in the background
12 your house?

13 THE WITNESS: Yes, ma'am.

14 THE CHAIRMAN: Which background?

15 MS. BRASSIL: The beige house here?

16 THE CHAIRMAN: I don't think that's it.

17 THE WITNESS: No. This is my house. That's to
18 the right.

19 MR. FRANK: That's a neighbor's house. We'll
20 submit it later into evidence. I think it's part of the
21 file.

Page 17

1 Q. But that neighbor that can see your shed if they
2 are on the side of their property, has no objection to
3 the --

4 THE CHAIRMAN: Now, wait a minute. You're
5 testifying now. If you've got that evidence, you can
6 bring that in.

7 MR. FRANK: I will withdraw it. Thank you.

8 Q. Now, your shed, which house in the block can see
9 that shed from their home?

10 A. If they are in their home?

11 Q. Or on their property.

12 A. Nicolettes, who are 1412A, the new house. They
13 are the only ones that can see that shed.

14 Q. That's to the right of the shed in that last
15 picture?

16 A. Right. And they -- it's in line with the front
17 of their house, but it's actually on the side of their
18 home.

19 Q. Now, Exhibit 3F is a picture looking down from
20 your property, is that correct?

21 A. Yes, it is. Standing out front of my driveway.

Page 18

1 Q. Can you see Spring Avenue from that location we
2 took the picture at?

3 A. No, you cannot.

4 Q. The sheds on the right, what are they?

5 A. This is the Walker shed. The one in front of
6 that is the Walker shed.

7 And you see these tall evergreens to the right,
8 that's the Vasolds' house at 1416A. That's part of their
9 property.

10 MR. FRANK: Now, I will introduce Exhibit 3F into
11 evidence.

12 Q. Now Exhibit 3G, would you describe for the
13 members of the Board of Appeals what that shows?

14 A. Okay. This is looking from the side of my house
15 from my shed. This is looking from my shed to the right,
16 the other side of my house where the Vasolds live behind
17 those trees, and that's a six or seven-foot fence, and Mr.
18 Ruscito lives on the other side of that house and those
19 trees, two houses away.

20 MR. FRANK: I would introduce Exhibit 3G into
21 evidence.

Page 19

1 Q. I'm going to show you a copy of picture 3H, and
2 I'm going to introduce the original into evidence and let
3 you describe 3H from the copy. What does that view show?

4 A. This shows from my front porch. The back -- the
5 back yard. Facing the back of the house 1414. It shows
6 what I look at.

7 You see the high privacy fence, and on the other
8 side is, in this left-hand side, is where his shed is.

9 So even though his shed is in his back yard, it's
10 basically in my front yard.

11 Q. Now, I'm going to refer to the first picture
12 taken and I'm going to show you a copy of it.

13 The question is Exhibit 3A, the house on the
14 right is the back yard of that house, what you're looking
15 at in Exhibit 3H?

16 A. Yes, it is.

17 Q. Now, Exhibit 3-I -- which I will move into
18 evidence -- let me show you a copy.

19 This is the new house that is to the immediate
20 right of your property when you're facing your property,
21 is that right?

Page 20

1 A. (No response.)

2 Q. Can you tell who owns that house?

3 A. I think that's my flag, and I know these are my
4 trees, my poplars.

5 Q. What's your difficulty in seeing?

6 A. I just can't picture -- I don't think this is the
7 new house.

8 Q. Okay.

9 A. Wait a minute.

10 Q. That's all right.

11 A. I'm sorry.

12 Q. If you don't know, that's all right.

13 A. I don't know. I can't figure that one out.

14 Q. Let me show you Exhibit 3J, and what does that
15 show?

16 A. Okay. This is the front of my -- front of my
17 house with my garage open, and there's a privacy fence in
18 the back of my home separating Nicolette's yard from mine,
19 and a little plastic type fence going into my back yard.

20 Q. Does this show the contents of your garage?

21 A. Yes. My little hot dog business in the garage.

Page 21

1 MR. FRANK: I would introduce that as Exhibit 3J.

2 MR. RUSCITO: I object.

3 THE CHAIRMAN: It's accepted. You can cross
4 examine on it.

5 Q. Now, Exhibit 3K is a picture of the contents of
6 the shed that's the subject of this action?

7 A. Yes. In that shed -- you can see it's a nice
8 shed -- a snowblower and a lawnmower, some fishing
9 equipment.

10 And back on the right -- you can't notice it --
11 but there is some shelving with some garden equipment,
12 just odds and end junk.

13 A gasoline and a propane tank, and that's about
14 it.

15 MR. FRANK: Introduce this as Exhibit 3K.

16 THE CHAIRMAN: What are we going to do with I?

17 MR. FRANK: I withdrew that.

18 MR. RUSCITO: Is that the trees that we couldn't
19 identify?

20 MR. FRANK: Yes.

21 Q. Mr. Canterbury, I'm now going to put in a video

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1 for the Board to see.

2 THE CHAIRMAN: What is the video, Mr. Frank?

3 MR. FRANK: The video basically shows what the
4 pictures show from the street of Spring Avenue on the way
5 up to the house.

6 THE CHAIRMAN: Don't we have enough? I don't
7 know that we need the video if it's just a repeat of what
8 you have here.

9 MR. FRANK: I would like to include it in the
10 record.

11 THE CHAIRMAN: Well, you can, but I don't think
12 we have to sit here and watch it.

13 MR. FRANK: It's about a minute, but I will
14 introduce that as Exhibit No. 4.

15 THE CHAIRMAN: Is it basically showing what
16 you've got here?

17 MR. FRANK: It just gives a more realistic
18 picture of the fact you can't see the house, or even the
19 shed from anywhere at Spring Avenue.

20 THE CHAIRMAN: Well, do you want to make the
21 video an exhibit?

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1 MR. RUSCITO: If we are going to make it an
2 exhibit, we'd like to see that.

3 THE CHAIRMAN: If you want to see it, you can see
4 it afterwards.

5 We are not going to stop the hearing to show
6 basically what we have here. I think we've got a picture
7 of the layout.

8 MR. FRANK: And I have a copy for you, if you
9 want to keep it.

10 I would at this time -- it's part of the file --
11 but I want to formally introduce as Exhibit 5, there's a
12 letter from Mr. Nicolette, the property owner of 1412A
13 Spring Avenue.

14 THE CHAIRMAN: We'll take the letter for what
15 it's worth. We normally just take letters -- Mr.
16 Nicolette is not here to be cross examined, so we'll just
17 take it for what it's worth.

18 MR. FRANK: I understand.

19 Q. Now, Mr. Canterbury, would you describe your
20 medical condition?

21 A. Well, I have been a diabetic forty-four years. I

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1 have had two pancrea transplants, both done successful,
2 the last one in '96. Both unsuccessful. The last one
3 being in 1996, I spent three months in the hospital.

4 The infection almost killed me. I came home. I
5 was in bed for three months. I was wide open. They
6 couldn't stitch me up, they couldn't staple me, straight
7 up, all the way up my chest. So, anyway, that was
8 probably the worst thing.

9 And I have high cholesterol, high blood pressure
10 from diabetes. I had my left eye removed.

11 I have had -- when I had the last pancrea
12 transplant, it destroyed my bowel. I had to have a
13 cholostomy for six months. So other than that, I am in
14 good shape.

15 THE CHAIRMAN: At least you've got a good sense
16 of how normal can be.

17 THE WITNESS: Trust me, there's a lot more going
18 on right now.

19 I just found out last week I have arthritis, and
20 I have deteriorating disks in my back, and I am going to a
21 neurosurgeon, and I just had back surgery two weeks ago.

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1 So I have a lot of problems due to when you have
2 diabetes for forty-four years.

3 It kind of like affects everything, but, you
4 know.

5 Q. Mr. Canterbury, do you work full-time?

6 A. No, I don't work full-time. I try to work most
7 days. If I feel good, I run the hot dog business at the
8 Dundalk Post Office.

9 I've been on that corner fourteen years. My name
10 is up on the street signs. I have been there a long time,
11 but that's basically the only job that I have.

12 Q. How long have you been declared legally blind by
13 your doctor?

14 A. Let's see. My son was born in '83. I guess
15 right after that, around 1983. And I drove up until that
16 time.

17 MR. VASOLD: Can I say something? Am I allowed
18 to interject?

19 THE CHAIRMAN: No, not unless you're going to
20 object.

21 MR. VASOLD: I'm Don Vasold, 1416A Spring Avenue.

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1 What does the illness and things have to do with the fact
2 of a structure being built?

3 THE CHAIRMAN: It doesn't have anything to do
4 with it, to be very honest, but I am going to let him tell
5 us what he wants to tell us.

6 MR. FRANK: I would preface the testimony by
7 saying I do intend to raise the Americans Disability Act
8 and the Fair Housing Act as superseding some statutory and
9 case law interpretation of the zoning code, along with
10 other cases, but that's the reason for this testimony

11 THE CHAIRMAN: Well --

12 MR. RUSCITO: Will you be specific on that case
13 law?

14 MR. FRANK: Yes.

15 THE CHAIRMAN: We are here to interpret the
16 zoning regulations.

17 We are not here to interpret the Americans
18 Disability Act or the Fair Housing Act.

19 Those are matters that should be taken up in the
20 courts.

21 MR. FRANK: I hope not to get that far, but I

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1 think it has to be presented to this Board, because if it
2 is not presented to this Board, it's not preserved on
3 appeal.

4 THE CHAIRMAN: You can present it. I understand.

5 MR. FRANK: Thank you.

6 Q. Now, what are the items in your shed?

7 THE CHAIRMAN: I think he's already stated what
8 he has in the shed.

9 Q. What are they going to be used for?

10 A. Lawn and property maintenance, basically.

11 Q. Now, what will be the difficulty in keeping that
12 equipment in a shed in your back yard?

13 A. Well, I can remember the last few snowstorms, the
14 difficulty we had even pushing that snowblower up and down
15 the driveway, let alone pulling it from the back yard with
16 two or three foot of snow, which has happened several
17 times since I lived in that house.

18 Once I even had to get a bulldozer to come up my
19 driveway, because I could not remove the snow.

20 So that's the basic reason that I put it out
21 front.

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1 Q. In terms of access to the back of your house,
2 what will be the difficulty in getting to the snowblower
3 from the back of your house, in conjunction with your
4 condition, your medical condition?

5 A. Well, like I say, basically, number one, I have
6 severe neuropathy in my feet and my legs, and I have to be
7 careful of getting frostbitten, because I don't feel any
8 feeling, so I don't want to be outside for a long time if
9 I can help it.

10 But it's coordination, being off, my balance, by
11 trying to walk through some deep snow.

12 Like I say, it's happened several times, and it
13 was difficult.

14 Q. I'm going to show you what I have marked as
15 Exhibit 6, a letter from Dr. Amy Zimmerman.

16 Is this a letter that you received from her
17 regarding your disability?

18 A. Yes.

19 MR. FRANK: I would introduce this as Exhibit No.
20 6.

21 THE CHAIRMAN: We'll take it on the same basis we

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1 took the other.

2 Q. And Exhibit No. 7 is another letter from Dr.
3 Zimmerman indicating your diagnosis of being legally
4 blind, is that correct?

5 A. That is correct.

6 MR. FRANK: I introduce this as Exhibit No. 7.

7 Q. And Exhibit No. 8 is a letter from a Dr.
8 Schocket, from the Eye Consultant of Maryland, verifying
9 the diagnosis of Dr. Zimmerman?

10 A. That is correct.

11 MR. FRANK: I would introduce this as Exhibit No.
12 8.

13 THE CHAIRMAN: Accepted.

14 MR. FRANK: And then I would introduce Exhibit 9
15 through thirteen, which should be part of the file.

16 I just want to make sure it's part of the
17 petitioner's case which are described in my table of
18 contents of exhibits, which is the letter from the Fire
19 Department, Exhibit Nine.

20 A letter from Director of the Office of Planning,
21 Exhibit 10.

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1 A letter from the State Highway Administration.
2 Exhibit 11.

3 A letter from the Bureau of Development Plans,
4 Exhibit 12.

5 And Exhibit No. 13 is from DEPRM, Department of
6 Environmental Protection and Resource Management, which
7 basically doesn't agree, but doesn't have any comment with
8 respect to the shed in question.

9 Q. Mr. Canterbury, what other difficulty would you
10 have by putting the shed in the rear of your property in
11 terms of using the equipment or items that would be put in
12 the shed?

13 A. Number one, like I said, if it was snowing, I
14 would have to drag these things, like the snowblower.

15 And if I was out front working, then I'd have to
16 go back through the snow to go around back to get more
17 gasoline, get oil, or whatever, to maintain, you know, the
18 mower.

19 And, also, it would be easier for like if I used
20 the snowblower for starting it, if I have electric at the
21 garage, or in the shed, I could use to start that.

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1 If it was around back, it would be very difficult
2 to run an extension cord around back. That wouldn't be --
3 plus, the lawnmower, you know, dragging it through the
4 gate, around back, just makes it very difficult.

5 And not now, but I'm looking out for the future,
6 if I have had diabetes this long, and I have neuropathy as
7 severe as I do, eventually, I will be in a wheelchair, and
8 I figure I could possibly use that for storing a
9 wheelchair, not that I couldn't store it in the garage,
10 but, hopefully, I will be able to always have somebody
11 help me with the hot dog business, because that's my
12 income.

13 Q. How much income do you get from the hot dog
14 business per year, approximately?

15 A. Approximately, net, \$10,000.

16 Q. Now, would there be any problems with having
17 those items in the shed in the rear of your house if it
18 were not for your medical conditions that you previously
19 described?

20 A. Yes. There's a couple reasons. Number one,
21 Where my shed is, it's easy access for me to go right out.

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1 I'm on my driveway and it's easy -- I know I go
2 out back, there is twigs and trees. We got big trees out
3 back. The stuff falls down. You know, you trip and fall.

4 I just feel far more comfortable being with it
5 where can I get in and out the of the shed. I can keep my
6 eye on it if there's a problem. My family is right there
7 if something is happening or going on with it.

8 When we asked about the county, I guess I'm
9 ignorant, but I asked the county about a permit, and they
10 said, No, you don't need a permit. And Mr. Grant Kidd
11 from the county told me that --

12 THE CHAIRMAN: That's hearsay, sir. You can't
13 testify to that. I'm sorry.

14 THE WITNESS: Well, I have proof, sir, but I will
15 let that go.

16 Q. Is there anything else that you want to tell the
17 members of the Board of Appeals that you haven't covered
18 yet?

19 A. Yes. Going back to what I was just talking
20 about, what the county told me.

21 Q. Besides what the county told you.

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1 A. Oh, well --

2 Q Talking about from your own personal knowledge,
3 is there anything else that you wanted to add?

4 A. No, there's not. It's pretty clear. I think you
5 know I would like to have it there.

6 MR. FRANK: I have no other questions.

7 THE CHAIRMAN: Do you have any questions, Mr.
8 Ruscito?

9 MR. RUSCITO: Yes, I do. If you could give me
10 just a moment, because there's a lot of information.

11 We really weren't prepared to discuss the
12 legality of the placement of the shed, but it opens up a
13 couple questions.

14 CROSS EXAMINATION

15 BY MR. RUSCITO:

16 Q. Mr. Canterbury, you've obviously got some
17 certification that you're legally blind, I understand.

18 Do you live by yourself there at the house you
19 have?

20 A. I have a family.

21 THE CHAIRMAN: What, you have family there?

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1 THE WITNESS: Yes.

2 Q. So you don't live alone? You have a wife that's
3 working?

4 A. Yes.

5 Q. And then you've got a son Adam. I know Adam.
6 How old is Adam?

7 A. He's twenty-two. He's deployed right now. He's
8 in the Army National Guard. He just got deployed.

9 Q. So you also stated you have an income of \$10,000.
10 Is that your only form of income?

11 A. My wife works.

12 Q. And she is the other property owner?

13 A. That's right.

14 Q. So we have that income to include, and you said
15 you make \$10,000?

16 A. That's correct.

17 Q. I would have to ask, what does she do?

18 THE CHAIRMAN: I don't think that really makes
19 any difference.

20 THE WITNESS: Right.

21 MR. RUSCITO: Well, I guess the reason why I ask

1 is because if fees were --
 2 MR. FRANK: Objection. That's argument. That's
 3 not a question.
 4 MR. RUSCITO: That's true, but we made --
 5 MR. FRANK: I will object.
 6 MR. RUSCITO: We are --
 7 THE CHAIRMAN: Let's keep it one at a time.
 8 MR. VASOLD: If I have a question, I have to
 9 funnel my question through him?
 10 THE CHAIRMAN: Yes.
 11 Q. The shed that you see --
 12 MR. RUSCITO: This is from Mr. Don Vasold the
 13 neighbor at 1416A --
 14 THE CHAIRMAN: You don't have to --
 15 MR. RUSCITO: Directly next --
 16 THE CHAIRMAN: You can ask the question.
 17 Q. You said there is two sheds in Exhibit 3D. When
 18 you moved to 1414A, were they already there?
 19 The current sheds that you see, were they in
 20 place when you moved?
 21 A. One was. One was not.

1 Q. Which one was not?
 2 A. The big one.
 3 Q. The big one was not. Okay. And then the other.
 4 You are aware they went through the normal Baltimore
 5 County permit process?
 6 A. Yes, they did.
 7 Q. Do you have a problem with them being there?
 8 A. No. No, I didn't then, and I don't now.
 9 Q. The storage facility where it's placed right now,
 10 I'm not sure exactly what your plan is to use it for.
 11 Are we talking medical equipment you may or may
 12 not need, and we are also talking about lawn and garden
 13 equipment?
 14 Is that something that's going to happen in the
 15 very near future, or is this just something that you're
 16 speculating on, its placement so far in front of the
 17 house?
 18 THE CHAIRMAN: He's already stated and the
 19 pictures show a snowblower in there, and I don't know what
 20 else it shows.
 21 MR. RUSCITO: It doesn't show medical equipment.

1 THE CHAIRMAN: He said he does not have a
 2 wheelchair at this point.
 3 Q. You wouldn't put medical equipment in there?
 4 A. I didn't say medical equipment. I said a
 5 wheelchair. Only a wheelchair. There's no other medical
 6 equipment necessary, you know.
 7 THE CHAIRMAN: That wasn't the question.
 8 Q. Do you think it would be better served inside the
 9 house there, in your garage that's attached?
 10 A. Mr. Ruscito, I don't know that answer. I'm just
 11 saying I could put it in there, if I felt it was
 12 necessary.
 13 Q. And that would probably be the most appropriate
 14 place?
 15 MR. FRANK: Objection. It's not a question.
 16 MR. RUSCITO: Well, that's fine. It's my
 17 opinion.
 18 THE CHAIRMAN: Just ask questions. Don't make
 19 statements.
 20 Q. Where's the majority of your grass plot that you
 21 would be using the lawnmower that you plan to store in the

1 vault?
 2 A. I have equal out front and out back. Out back, I
 3 have a pool.
 4 Q. How much driveway occupies your rear lot, the
 5 macadam driveway surface where there is no lawn to mow?
 6 A. None. Zero.
 7 Q. How much macadam driveway is in the front,
 8 directly in front of your house and the proposed shed?
 9 A. To answer your question, I have to run the
 10 lawnmower down both sides of my driveway.
 11 I own approximately a foot on both sides of the
 12 driveway, so it's equal distance to run the lawnmower
 13 front or back. It would not matter.
 14 Q. So would you say you have more lawn in the back,
 15 or more lawn in the front?
 16 A. I don't know, Joe. I never figured it out.
 17 Q. Because I've got a photo that can make that clear
 18 for you.
 19 A. So what's the point?
 20 Q. You have approximately 3000, almost 4000 square
 21 feet in the rear property of lawn and --

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1 THE CHAIRMAN: Wait a minute. Now you're
 2 testifying.
 3 MR. RUSCITO: But I --
 4 THE CHAIRMAN: Ask him a question.
 5 MR. RUSCITO: I did.
 6 THE CHAIRMAN: He said he didn't know, so he
 7 doesn't know. We've got the plat here.
 8 Q. Do you do the snow clearing?
 9 A. I do, and my son does. My younger son is
 10 learning.
 11 My older son, I can't count on him now. He's
 12 engaged, and he's deployed right now. He just come back
 13 from Afghanistan.
 14 Now he's deployed, helping the flood victims in
 15 Mississippi. I cannot remember on him.
 16 Q. When he can't do it and your youngest -- how old
 17 is the young son?
 18 A. He's eleven, just turned twelve.
 19 Q. Who removes the snowblower and performs those
 20 duties when they are not available for you?
 21 A. We work as a family. Okay?

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1 Q. I have never seen you. I have seen the truck
 2 come and plow like --
 3 MR. FRANK: Objection.
 4 A. If you've never seen me run that snowblower, you
 5 can ask Mr. Walker.
 6 THE CHAIRMAN: Mr. Canterbury, he asked a simple
 7 question.
 8 THE WITNESS: I run it as well. It's --
 9 THE CHAIRMAN: Let's not beat about the bush.
 10 Q. So you run the snowblower. Now, you are legally
 11 blind?
 12 A. That's right.
 13 Q. Has anybody ever advised you about operating that
 14 snowblower other than the reading material you have?
 15 THE CHAIRMAN: Does it make my difference?
 16 A. Yes.
 17 MR. RUSCITO: Probably not. I have just a couple
 18 things.
 19 Q. What are the unique differences in your property
 20 as it relates to 1410 Spring Avenue, 1412, 1412A, 1414,
 21 1416, 1416A, what are the unique differences of your

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1 property?
 2 MR. FRANK: Objection. That's the legal
 3 conclusion the Board has to make.
 4 THE CHAIRMAN: I'm going to allow him to answer.
 5 A. Basically, nobody can see my house or my yard.
 6 That's a basic uniqueness. No one can see my yard. No
 7 one can see my house.
 8 Q. Are you aware that we have photos from the street
 9 that people can see your home and the shed?
 10 A. Oh, really?
 11 THE CHAIRMAN: You can bring those up yourself.
 12 If you want to show him the photos, you can.
 13 Q. Ken, if you placed that shed in the rear property
 14 of your yard, do you have enough room to put it back
 15 there?
 16 A. I don't believe, number one, I don't believe it
 17 would fit.
 18 Even though I didn't need a permit for it, I
 19 would have a heck of a time getting it around there.
 20 I tried to move it twice when we first got the
 21 court notice, and we had a bobcat, some other equipment

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1 over there. My son built it too well. It's just too
 2 heavy.
 3 Q. We'll get to it. So are you telling me you do
 4 have enough room to remove it and place it in the back as
 5 one structure, or would you have -- are you telling me
 6 you'd have to dismantle it?
 7 A. We'd have to dismantle it.
 8 MR. FRANK: Objection.
 9 THE CHAIRMAN: Overruled. There is room in the
 10 back, but you'd have to dismantle it?
 11 THE WITNESS: I'd have to dismantle it. It's
 12 extremely heavy.
 13 Q. Is the back property flat, and would it support
 14 that structure?
 15 A. Not too flat. It really has like a gully, and
 16 water lays back there severely when it rains.
 17 Q. Have you noticed the other properties having the
 18 same issue?
 19 A. I never looked. Can't see that far. Don't know.
 20 Q. So you don't really notice what the neighboring
 21 properties --

1 A. Exactly as far as their yard?

2 Q. If you placed the shed in the back yard, would

3 you still have available space to move around back there?

4 A. Yes.

5 Q. Would there be any hardship placed on you -- has

6 there been any hardship placed on you?

7 In other words, what has motivated you to place

8 it in the front, inconsistent with Baltimore County

9 regulations?

10 MR. FRANK: Objection.

11 THE CHAIRMAN: I think he's stated why he has

12 wanted it in the front. He wants access to equipment.

13 Q. Mr. Canterbury, when this structure was built,

14 did you file for a permit?

15 A. Yes, I did, and they told me it wasn't necessary.

16 Q. Were they aware you were placing it in the front

17 property?

18 A. It was never brought up. And like I say, I might

19 have been a little ignorant, because I never thought about

20 zoning regulations as far as variances.

21 I didn't know anything about it. And the only

1 Q. If you were to place the shed in the back yard,

2 Mr. Canterbury, would there be any unreasonable prevention

3 of you gaining acquisition to the storage facility?

4 A. Would there be any what?

5 Q. Would you have a problem gaining acquisition to

6 the storage facility?

7 A. Absolutely.

8 Q. Would you have enough room then to access your

9 back property?

10 THE CHAIRMAN: I didn't understand that.

11 MR. RUSCITO: I am trying to make sure he clearly

12 has access to the shed if it's placed to the rear.

13 MR. FRANK: Objection. He testified that he did

14 have access to it. He testified it would be difficult,

15 based on his disability.

16 Q. Since the structure is already in place, Mr.

17 Canterbury, how close would you say it is to your front

18 property line?

19 A. To the front -- what do you mean?

20 Q. The front of the property line. Physically, I

21 know you have trouble seeing the plat.

1 thing I know, he said I didn't need a permit.

2 Q. Mr. Canterbury -- this may get struck -- but

3 haven't you worked closely with zoning regulations as

4 relate to complaints and other neighbors?

5 A. No. Never have.

6 Q. Have you ever changed your position because of a

7 proceedings the last time, you admitted to it?

8 A. No, I never admitted that. I had called -- code

9 enforcement is not zoning.

10 Q. So you were -- never had a position at the top of

11 the street for the properties that were also under

12 variance?

13 A. See --

14 MR. FRANK: Objection.

15 THE CHAIRMAN: I will sustain the objection.

16 MR. RUSCITO: He's saying he doesn't understand

17 what the regulations or process is, and he's been very

18 involved.

19 THE WITNESS: It wasn't zoning.

20 THE CHAIRMAN: You can bring that up later. He

21 says he doesn't know.

1 A. I don't know what you mean by the front of the

2 property line.

3 Q. The front of your house has a front property line

4 that separates you from 1414 Spring Avenue, and that shed

5 is placed between there, but how close to that property

6 line is it?

7 MR. VASOLD: I can't talk?

8 THE CHAIRMAN: No.

9 A. To answer that question, the shed is in line. If

10 you look out my front door, it's in line with the front of

11 my house.

12 The front of the house faces in. That's the road

13 with the front of the house shown on the plat. The front

14 of the house is where the shed is.

15 MR. RUSCITO: That's incorrect. We plan to prove

16 that. We plan to bring to you real evidence that clearly

17 shows the difference, not only in the mathematical numbers

18 used to locate that shed, but visually.

19 MR. MOHLER: The shed is in front of the house?

20 MR. RUSCITO: Exactly. And if you look at the

21 exhibits you have, you can see if it was placed there

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1 (indicating), you'd never be able to see that.

2 MR. FRANK: Are you being shown pictures that I
3 haven't seen?

4 MR. RUSCITO: These are yours.

5 THE CHAIRMAN: Exhibit 3E.

6 MR. RUSCITO: I do have one that counsel hasn't
7 seen, and it's probably -- you've got to excuse my
8 printer -- but this shows where the location is of the
9 front of the house. This is Exhibit 5.

10 THE CHAIRMAN: Well, it's sort of catercorner
11 from the front to the side. It's certainly not all the
12 way in the side yard?

13 THE WITNESS: Right.

14 MR. RUSCITO: It's very much in the front.

15 THE CHAIRMAN: That's your argument.

16 MR. RUSCITO: But we have some plats and some
17 other identifying features of this photo that you will be
18 able to see that.

19 THE CHAIRMAN: That's for your case, Mr. Ruscito.
20 Do you have anything more for him?

21 MR. RUSCITO: Yes, sir.

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1 THE CHAIRMAN: Get to it then.

2 Q. Mr. Canterbury, did you ever receive a notice
3 from the county that suggested the structure was too large
4 and would need a permit?

5 A. No. On the contrary, I got a notice from Mr.
6 Grant Kidd stating I do not need a permit.

7 Q. Was that your original notice, the original
8 citation for constructing --

9 A. The only notice I got, ever got.

10 Q. That's the only notice you ever got?

11 A. That's the only notice I ever got.

12 Q. Is there anything unusual or different about your
13 property than the surrounding property?

14 A. You already asked that.

15 Q. No. I asked if there was anything unique. I am
16 asking specific, if there's anything unusual about your
17 property?

18 Is there anything different about your property
19 than the surrounding properties?

20 A. I'm not so sure, Joe, because I don't see that
21 far. I can't answer your question, because I can't even

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1 see -- I can't see any of my neighbors' houses.

2 THE CHAIRMAN: He's answered the question.

3 Q. If Baltimore County allowed you to place this
4 large facility in the rear of your property, would it
5 result in practical difficulty or unreasonable hardship?

6 A. Sure, it would.

7 Q. If so, what are they?

8 A. Well, I'd have to dismantle it. I already told
9 you that.

10 MR. FRANK: Objection. It was asked and
11 answered. He's asking the same question that was asked on
12 direct.

13 THE CHAIRMAN: I think you have covered it pretty
14 well.

15 MR. RUSCITO: I don't know.

16 THE CHAIRMAN: He said he'd have to go around in
17 the back, he'd have to get the snowblower out, it would be
18 difficult for him to do that, and also the thing would
19 have to be dismantled.

20 MR. RUSCITO: I have no other questions. I guess
21 I should ask them --

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1 THE CHAIRMAN: You can ask them if they have any
2 questions.

3 Q. Mr. Canterbury, are you aware the photos only
4 show half the --

5 THE CHAIRMAN: They show what they show. If you
6 want to make some argument, you can do that, but they show
7 what they show.

8 Q. Mr. Canterbury, climbing a ladder, if you're --
9 in your opinion, does it take more dexterity -- is it
10 harder for you to climb a ladder and come down from a
11 ladder than walk to your back property on flat level
12 ground and open up your shed?

13 MR. FRANK: Objection.

14 MR. RUSCITO: They brought in the situation of
15 medical and need.

16 THE CHAIRMAN: I will sustain the objection.

17 MR. RUSCITO: That's all I have.

18 MR. FRANK: I have two quick questions on follow

19 REDIRECT EXAMINATION

20 BY MR. FRANK:

21 Q. How many other houses in that neighborhood are

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1 situated like yours, behind another house?
 2 A. Quite a few. There is 1214, sixteen, eighteen.
 3 I'd say at least five. They are long lots and they were
 4 subdivided.
 5 Q. As a person with a disability, why is it
 6 important for you to not rely on other family members to
 7 try to take care of some of those household chores?
 8 A. Because I was previously a president of the
 9 National Federation of the Blind here in Maryland, and we
 10 can probably do most things that other people -- at least
 11 make attempts.
 12 Because you're legally blind, it doesn't mean you
 13 can't get on a ladder.
 14 Q. Can you get on a ladder?
 15 MR. RUSCITO: I object.
 16 THE CHAIRMAN: I will sustain that. Forget the
 17 ladder.
 18 THE WITNESS: I'm using that as an example. We
 19 can do a lot of other things.
 20 It's not like in the old days where you sit back
 21 in your rocker and become legally blind. You do what you

1 THE WITNESS: My house?
 2 MS. BRASSIL: Yes. In the yellow.
 3 THE WITNESS: My door is on the left side. My
 4 shed would be over here.
 5 MS. BRASSIL: Your front door is here?
 6 THE CHAIRMAN: Mr. Canterbury --
 7 MS. BRASSIL: Mark your front door.
 8 THE WITNESS: This is my house.
 9 THE CHAIRMAN: Is your front door on the same
 10 side as your garage door?
 11 THE WITNESS: No, the opposite side. So my
 12 front door would be right there, and my shed would be
 13 right like that.
 14 I think maybe my attorney would look at that to
 15 make sure I gave you the right -- I made a little
 16 indication to show where my front door would be.
 17 THE CHAIRMAN: Do you have any pictures of the
 18 front of the house?
 19 MR. FRANK: I'd have to check. The video would
 20 show it. But his front door is to the left of that garage
 21 door.

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1 can do.
 2 MR. FRANK: No other questions.
 3 THE CHAIRMAN: Thank you, Mr. Canterbury. Wait a
 4 minute. One of the Board members has a question.
 5 MR. MOHLER: Mr. Canterbury, from Spring Avenue,
 6 I am looking at the plat here, and it seems to me it's a
 7 fairly substantial driveway. Is that your driveway or a
 8 community --
 9 THE WITNESS: That's my personal driveway.
 10 MR. MOHLER: It doesn't service any other house?
 11 THE WITNESS: It's about 200 -- my house is about
 12 240 feet from the street.
 13 MR. MOHLER: It doesn't service the house that we
 14 saw?
 15 THE WITNESS: No.
 16 MR. MOHLER: It only services you?
 17 THE WITNESS: My actual driveway is 200 feet, and
 18 then the driveway at my house, so I'm the only one -- I'm
 19 the only one for that driveway.
 20 MS. BRASSIL: Can you point to me which side is
 21 your front door?

1 THE CHAIRMAN: When he was asked if the front
 2 door was on the same side as his garage door, he said no.
 3 THE WITNESS: When you're looking at the front of
 4 my house, my front door is to the left.
 5 THE CHAIRMAN: When we are facing your house, the
 6 garage is to the right?
 7 THE WITNESS: Right.
 8 THE CHAIRMAN: The front door is to the left?
 9 THE WITNESS: That's correct.
 10 THE CHAIRMAN: I understand now.
 11 THE WITNESS: I'm sorry. It's an angle,
 12 obviously, that's a little confusing. All the houses in
 13 the back have to be angled in.
 14 Can I say one thing? I'm sure you probably know,
 15 but all the houses in the back, if one is angled this way,
 16 the next one is angled that way. You can't be facing each
 17 other and can't be straight. They have to be at an angle.
 18 So I'm looking down this way. My neighbor
 19 Nicolette is looking down that way. So it's a little
 20 difficult.
 21 THE CHAIRMAN: Okay.

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1 THE WITNESS: One other thing I'd like to bring
2 up, if I could.

3 To the rear of all our homes, the people that are
4 here, is an all-wooded lot owned by Baltimore County.

5 There's nothing back there, and there is nothing
6 will be back there, so nobody is on that back end is
7 looking at our property.

8 THE CHAIRMAN: Where's Mr. Nicolette's driveway?

9 THE WITNESS: His is on the opposite side. Like
10 I was saying, these houses are angled. He's on the far
11 right side.

12 He would have been here today, but he's out of
13 the country.

14 MR. FRANK: I guess this picture may show a
15 little better. We would introduce this to replace 3-I,
16 that I didn't introduce.

17 Q. And just looking at the front of this property,
18 is your door right behind those trees?

19 A. Okay. That is my house. Yes. Approximately,
20 yes. See the lamp post? That's approximately -- the
21 lamppost is approximately the front of my house, so maybe

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1 you can see it better there.

2 THE CHAIRMAN: This is going to be 3J?

3 MS. BRASSIL: No. 3-I.

4 MR. RUSCITO: 3J, we objected to.

5 MS. BRASSIL: 3-I was withdrawn. 3J was the
6 picture of the contents of the garage.

7 MR. RUSCITO: We objected to that.

8 MS. BRASSIL: It was introduced.

9 MR. FRANK: We replaced 3-I with that, and it
10 don't show exactly the front door, but Mr. Canterbury
11 described it as being to the right of the lamppost, and I
12 have no further questions.

13 THE CHAIRMAN: Thank you.

14 MR. VASOLD: Can I ask one question?

15 THE CHAIRMAN: Direct it through him.

16 MR. VASOLD: Have they got a picture looking up
17 at the opposite house where his driveway goes? There's a
18 house there. There's a new house, and --

19 THE CHAIRMAN: You can bring that up in your
20 case. It doesn't show in this picture.

21 MR. VASOLD: You can't see --

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1 THE CHAIRMAN: Sir, you can testify, and Mr.
2 Ruscito can show you these pictures, and if you think
3 there is something different about the pictures, then you
4 can testify as to what you see.

5 MR. RUSCITO: We are going to in follow-up
6 questions.

7 MR. MOHLER: Do you have any photos that show up
8 the driveways of Mr. Peisinger and Mr. Nicolette?

9 THE CHAIRMAN: He doesn't have to introduce
10 those. If you've got them, you can introduce them.
11 Off the record.

12 (Discussion held off the record.)

13 MR. FRANK: Your Honor, I would --

14 THE CHAIRMAN: He's not introducing them?

15 MR. RUSCITO: There may be, but there may not be.

16 THE CHAIRMAN: Anything further?

17 MR. FRANK: Can Mr. Canterbury step down?

18 THE CHAIRMAN: Yes.

19 MR. FRANK: I would ask the Board to consider, at
20 least maybe on its own after the hearing, to look at
21 Exhibit 4, because it does show, coming down the street

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1 from every prospective coming down, whether or not the
2 shed is in view.

3 THE CHAIRMAN: If everybody wants to see the
4 video, we'll show it right now. Let's see it right now.
5 (Videotape now being played.)

6 THE CHAIRMAN: What is this showing?

7 MR. FRANK: Do you want me to put Mr. Canterbury
8 back on?

9 THE CHAIRMAN: You better.

10 MR. FRANK: Take the stand again.

11 THE CHAIRMAN: Stand there and tell us what it
12 shows.

13 KENNETH CANTERBERY,
14 having been previously sworn, was recalled, and testified
15 further as follows:

16 MR. FRANK: Mr. Canterbury, describe the video.
17 Come on up and take a look at.

18 You're facing the T.V. looking at it. Try to
19 talk loud. Okay?

20 Q. (MR. FRANK) Where's the camera moving from?

21 A. I haven't zoomed in yet.

1 THE CHAIRMAN: Who took it? Did you take the
2 video?
3 THE WITNESS: This is out front of 1414.
4 Q. Did you see what that was?
5 A. Oh, okay. This is from the side. Okay?
6 Q. This is coming up your driveway?
7 A. This is coming up my driveway.
8 MR. FRANK: It pretty much shows what the picture
9 shows.
10 A. But I thought we had one from the other side.
11 See, that fence here blocks that side of the house.
12 MR. MOHLER: Is this going to or from his house?
13 THE WITNESS: To my house. You might be able to
14 see my front door.
15 MR. RUSCITO: Stop the video right there.
16 THE WITNESS: This is my front door right there.
17 MR. RUSCITO: I want to point out that I think
18 this is totally irrelevant to whether or not this property
19 is unique or not, but you can clear that up because you
20 can see how much room there is between the property line
21 and the house that would make for great egress and access

1 (A recess was taken.)
2 THE CHAIRMAN: Okay. Mr. Ruscito, are you going
3 to testify?
4 MR. RUSCITO: I'm going to testify.
5 THE CHAIRMAN: Then come up here and get sworn.
6 If you have notes you want to bring with you, go ahead and
7 bring them.
8 JOSEPH RUSCITO,
9 having been called as a witness, was duly sworn, and
10 testified as follows:
11 THE CHAIRMAN: Give your full name and your
12 addresses.
13 THE WITNESS: Joseph Ruscito, Jr., 1418A Spring
14 Avenue.
15 THE CHAIRMAN: That's in --
16 THE WITNESS: Baltimore County.
17 THE CHAIRMAN: Okay. What do you want to tell
18 us?
19 THE WITNESS: What I wanted to bring to you today
20 was a plat to let you have. It shows the property line
21 right there.

1 to that rear property.
2 And you'd see the very same thing right there.
3 This is also -- you get a good idea how far in front of
4 the house that shed is as well. There is the front of the
5 house.
6 THE WITNESS: There's Vasold's house. Joe
7 Ruscito on the other side.
8 MR. RUSCITO: There's another permitted shed. A
9 fence --
10 THE CHAIRMAN: Okay. Hold on.
11 MR. RUSCITO: I feel this is irrelevant. It has
12 nothing to do with the case.
13 THE CHAIRMAN: All right, you think it's
14 irrelevant. That's fine.
15 MR. RUSCITO: I'd like it stricken.
16 THE CHAIRMAN: Well, it won't be.
17 MR. RUSCITO: You have seen it.
18 MR. FRANK: That would be the end of the
19 petitioner's case.
20 THE CHAIRMAN: Okay. Let's take a ten-minute
21 break and then prepare your case.

1 THE CHAIRMAN: "Right there" doesn't tell us
2 anything. We have to have it for the record.
3 MR. FRANK: Is there a copy for me?
4 THE CHAIRMAN: It's the same plat you introduced.
5 Now, what you said, the property line --
6 THE WITNESS: Well, I noticed and I have
7 witnessed the structure is placed approximately four feet
8 from the easement, of a Baltimore County easement, and
9 it's inconsistent with the plats that have been presented
10 here today.
11 THE CHAIRMAN: This is a different plat then?
12 You're presenting a different plat?
13 THE WITNESS: No. This is the very same plat,
14 but I'm speaking in respect to Exhibit No. 2, I believe it
15 is, where it shows the placement of the shed.
16 THE CHAIRMAN: What is it you want to tell us
17 about that?
18 THE WITNESS: Well, it's not located in the rear
19 property as per Baltimore County regulations it should be.
20 THE CHAIRMAN: That's what we are here about?
21 THE WITNESS: Yes. What I have is a collection

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1 of information that basically refutes the request here,
2 based on Baltimore County law and what it's based on. You
3 know --

4 THE CHAIRMAN: That's our job. Do you want to
5 argue the law at this point?

6 THE WITNESS: Oh, no. All I wanted to do is
7 bring you this information that that is inconsistent, that
8 the placement and proposal of this variance is
9 inconsistent with the law. I don't see it there, you
10 know, and --

11 THE CHAIRMAN: Well, I think we are all aware of
12 the fact that the shed is not in the rear of the house.

13 It is either on the side or catercorner on the
14 side and front, and there's no question about that.

15 THE WITNESS: Well, I would request the
16 Commission maintain the original verdict and deny the
17 proposal based on those facts.

18 This is my testimony, because I see it's very
19 clearly inconsistent. The properties are very much the
20 same. There's no unusual aspects.

21 THE CHAIRMAN: Now, do you want to talk about the

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1 uniqueness?

2 THE WITNESS: Yes.

3 THE CHAIRMAN: From your standpoint, what is
4 unique or not unique about the properties? And name the
5 properties you're talking about.

6 THE WITNESS: The properties -- Mr. Canterbury's
7 property is unique (sic).

8 THE CHAIRMAN: It is unique?

9 THE WITNESS: It is similar. Excuse me. It is
10 similar to the adjacent immediate surrounding properties.

11 THE CHAIRMAN: Located?

12 THE WITNESS: Located at 1416A, 1412A, 1418A --

13 THE CHAIRMAN: Now, this plat that we have here,
14 can you point out those properties 1416A, 1412A and 1418A?

15 THE WITNESS: On this one, I cannot. But on
16 this one, I can.

17 THE CHAIRMAN: You have a plat of your own that
18 you want to introduce?

19 THE WITNESS: Yes.

20 THE CHAIRMAN: All right. Give us back the other
21 one. What do you have there?

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1 THE WITNESS: This is an overview from the
2 county. What I'm showing --

3 THE CHAIRMAN: Hold it, hold it, hold it.

4 THE WITNESS: All right.

5 THE CHAIRMAN: Now, what is it you have there?
6 This is your exhibit?

7 THE WITNESS: Exactly. This is my exhibit. It's
8 Exhibit No. 1.

9 It's a simple printout from Baltimore County that
10 shows an overview of the immediate surrounding properties,
11 the immediate surrounding panhandle property and other
12 property.

13 THE CHAIRMAN: Let us see what that is.

14 THE WITNESS: The red dot indicates 1414A.

15 THE CHAIRMAN: This is a taxation map?

16 THE WITNESS: Exactly.

17 THE CHAIRMAN: Have you seen this, Mr. Frank?

18 MR. FRANK: They have a copy, so I can see it.
19 Yes, I have now.

20 THE CHAIRMAN: All right. I'd like you to take
21 this map, and with a red pen, I would like you to mark Mr.

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1 Canterbury's lot on there, if you can.

2 THE WITNESS: Well, it already is.

3 (Indicating.).

4 THE CHAIRMAN: Okay. That's the red mark on
5 there. Now, does 1416A, 1412A and 1418A show up on this
6 map?

7 THE WITNESS: Yes, they do.

8 THE CHAIRMAN: Will you mark them?

9 THE WITNESS: It may help -- I have a separate
10 sheet that shows all the properties with their square
11 footage.

12 THE CHAIRMAN: Let's do it on this map here.

13 THE WITNESS: You would like the addresses
14 placed on here?

15 THE CHAIRMAN: 1416A, 1412A and 1418A.

16 THE WITNESS: (Indicating.)

17 THE CHAIRMAN: Okay. Continue.

18 THE WITNESS: I also have Exhibit 2. It shows
19 the square footage of the properties.

20 THE CHAIRMAN: Okay. The second page --

21 MS. BRASSIL: Hold on.

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1 THE CHAIRMAN: Have you seen this, Mr. Frank?
 2 MR. FRANK: I haven't seen any of this
 3 information.
 4 THE CHAIRMAN: Before you introduce them, show
 5 them to Mr. Frank.
 6 THE WITNESS: Okay.
 7 THE CHAIRMAN: Off the record.
 8 (Discussion held off the record.)
 9 THE CHAIRMAN: What is that, Mr. Ruscito?
 10 THE WITNESS: That also came from Baltimore
 11 County real property search and in the Land Records, the
 12 tax search. It shows specifically the square footage of
 13 the property, of the homes, and it also shows the square
 14 footage of the property.
 15 THE CHAIRMAN: Is this a search you yourself did?
 16 THE WITNESS: That's a search that I performed,
 17 absolutely. It's made available by the county for
 18 everyone.
 19 THE CHAIRMAN: You took this from Baltimore
 20 County records?
 21 THE WITNESS: Exactly. It's posted on the web.

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1 It's for the individual residents so they can view their
 2 property.
 3 THE CHAIRMAN: Is this a search you yourself
 4 made, and you yourself prepared that document?
 5 THE WITNESS: That is correct.
 6 MR. FRANK: My only objection is to relevance,
 7 because the size of the house or the lot is an irrelevant
 8 factor.
 9 THE CHAIRMAN: We will accept it.
 10 THE WITNESS: Thank you.
 11 THE CHAIRMAN: That would be Protestants' No. 2.
 12 Go ahead.
 13 THE WITNESS: This would be our Exhibit 3. These
 14 are four photos that Mr. Vasold --
 15 MR. VASOLD: We do have a colored version.
 16 THE CHAIRMAN: Whatever you want to introduce.
 17 You might as well introduce the color.
 18 THE WITNESS: Well, they're in the video, but
 19 what this does, this shows the rear property, and it shows
 20 the shed in front of the house.
 21 THE CHAIRMAN: All right. This is a Protestants'

1 Exhibit 3, of four photos. A through D.
 2 The first photo in the left upper-hand corner
 3 will be Protestants' Exhibit 3A, and that is a photo of
 4 the shed. Is that correct? The front of the shed?
 5 THE WITNESS: That is correct. Very first one.
 6 That shot is taken from the front.
 7 THE CHAIRMAN: And 3B will be the photograph on
 8 the right side of the exhibit showing a pool. And what is
 9 that?
 10 THE WITNESS: That's the ground terrain and the
 11 area that is available in the rear of 1414A.
 12 THE CHAIRMAN: The rear of Mr. Canterbury's home
 13 showing an above-ground pool?
 14 THE WITNESS: Exactly.
 15 THE CHAIRMAN: The third, which will be
 16 Protestants' 3C, is on the lower left-hand side of the
 17 exhibit showing a woodpile. What is that?
 18 THE WITNESS: That's showing the side of Mr.
 19 Canterbury's home where he would be able to access the
 20 rear property.
 21 THE CHAIRMAN: Now, there is a little white fence

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1 there. Is that entering into the rear yard? What is
 2 that, if you know?
 3 THE WITNESS: It's a fence that just travels from
 4 the side of the house to the property line.
 5 THE CHAIRMAN: There is something that looks like
 6 white in the background. What is that? Is that the rear
 7 yard?
 8 THE WITNESS: I'm sorry. That is the front of the
 9 home. This is the side view that shows access to this
 10 rear lot and to the side of the home. So this --
 11 THE CHAIRMAN: So if we were to take a left,
 12 it would be the rear, going to the rear of his home?
 13 THE WITNESS: Correct.
 14 THE CHAIRMAN: And then the lower right-hand
 15 side, that is showing the pool again and the rear steps.
 16 I take it that's again the rear of the home? 3D.
 17 THE WITNESS: That would be the other side.
 18 Okay.
 19 THE CHAIRMAN: Do these accurately reflect the
 20 area that they portray?
 21 THE WITNESS: Absolutely. Okay. Continue.

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1 THE WITNESS: All right. I've got Exhibit 5 --
 2 THE CHAIRMAN: What happened to four?
 3 THE WITNESS: We'll get to that.
 4 THE CHAIRMAN: Get to four before we get to five.
 5 THE WITNESS: Let's see where it is. Four, it
 6 was basically another photograph showing the access to the
 7 rear of the property, so we'll forego that.
 8 THE CHAIRMAN: All right.
 9 THE WITNESS: This is a letter from the
 10 Department of Enforcement that states that if the variance
 11 were to be granted, a permit would be needed due to the
 12 size of the facility.
 13 THE CHAIRMAN: We'll take it for what it's worth,
 14 same as we took the other letters.
 15 THE WITNESS: Because we're requesting the
 16 partially constructed facility to be removed,
 17 specifically, we want to show its placement, its current
 18 placement.
 19 And I have to show this to you in a crazy way,
 20 but this is a property line that borders Mr. Peisinger,
 21 who could not be here today, so I submit a letter --

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1 MR. FRANK: Objection.
 2 THE WITNESS: This is Mr. Peisinger's property.
 3 He's the front property. He has the most complaint
 4 here --
 5 MR. FRANK: Objection.
 6 THE CHAIRMAN: He's not here.
 7 THE WITNESS: I do have a letter. Can you take
 8 that for what it's worth?
 9 THE CHAIRMAN: You can introduce the letter and
 10 we will take it for what it's worth.
 11 THE WITNESS: This property line right here
 12 indicates the boundaries between 1414A, Mr. Canterbury's
 13 property, and 1414.
 14 Right here is an electrical box that states the
 15 easement, and as identified by this dotted line up here,
 16 that BGE -- you have to excuse me because I've got to show
 17 you -- this is a very sketchy photograph that was taken
 18 this morning, witnessed by Mr. Vasold.
 19 THE CHAIRMAN: Did you take this photograph?
 20 THE WITNESS: I did. What this shows you is the
 21 electrical box and the placement of the shed, the front

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1 porch of 1412A --
 2 THE CHAIRMAN: Whose home?
 3 THE WITNESS: That's Mr. Jack Nicolette's.
 4 THE CHAIRMAN: This is Protestants' Exhibit No.
 5 6?
 6 MS. BRASSIL: No. 5.
 7 THE CHAIRMAN: I thought the plat was five?
 8 THE WITNESS: These are together. These are
 9 actually together. They should be --
 10 MS. BRASSIL: 5A and 5B.
 11 THE WITNESS: Thank you. So this clearly
 12 identifies the location right now because of the
 13 electrical box and because of the plat where it shows a
 14 specific location on the property, guarded by two steel
 15 concrete poles.
 16 The reason why I'm bringing this to you, one of
 17 my concerns, they had an explosion at that right-of-way.
 18 Mr. Nicolett --
 19 MR. FRANK: Objection. I don't know. Does he
 20 have personal knowledge of an explosion, where it's from?
 21 I don't think he's an expert to testify as to the

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1 nature of the cause.
 2 THE CHAIRMAN: Were you there when the explosion
 3 took place?
 4 THE WITNESS: Yes.
 5 THE CHAIRMAN: He can testify to what he saw.
 6 THE WITNESS: What I heard was a loud bang. What
 7 I felt was the house shakable. Then the -- I wasn't the
 8 only one.
 9 THE CHAIRMAN: Just tell us what you experienced,
 10 not whatever everybody else experienced.
 11 THE WITNESS: That's what I experienced, because
 12 we were all out talking, and then BGE had responded.
 13 THE CHAIRMAN: It was from the electrical box?
 14 THE WITNESS: Yes, tying into the new home 1412A.
 15 MS. BRASSIL: Is the electrical box in this
 16 photo?
 17 THE WITNESS: So somebody, obviously --
 18 MR. FRANK: Objection as to any conclusions of
 19 obviously being a safe concern.
 20 THE WITNESS: There's no way --
 21 THE CHAIRMAN: Sustained. We'll make the

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1 conclusion.
 2 Where is the shed with respect to the electrical
 3 box?
 4 THE WITNESS: I do apologize. It's approximately
 5 ten feet back and to the right.
 6 THE CHAIRMAN: It's not in the picture?
 7 THE WITNESS: Absolutely. This is the door.
 8 THE CHAIRMAN: Of the shed?
 9 THE WITNESS: Yes. It just didn't fit in the
 10 picture. That's where it's currently placed.
 11 THE CHAIRMAN: Is the shed red? Okay I see the
 12 door. It shows the same thing as shown in picture 3.
 13 THE WITNESS: I appreciate taking the time to
 14 identify that. The reason why I bring that to you is back
 15 to the plat, 5A.
 16 The property line is fully on the other side
 17 towards Mr. Canterbury's home, north sixty-eight --
 18 COURT REPORTER: I can't hear you.
 19 THE WITNESS: -- and 39 dot 55 west. And that
 20 line is on the north side of the electrical box, which is
 21 also indicated here.

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1 That gives you an idea how close the property
 2 line of 1414 is. I'd have to measure. If I said two
 3 feet --
 4 THE CHAIRMAN: We get the picture.
 5 THE WITNESS: But if I said twenty feet, which is
 6 indicated on the one plat that they put in there, it would
 7 be completely erroneous.
 8 I have a letter of objection, and I will ask the
 9 committee which exhibit number we are on?
 10 MS. BRASSIL: Six.
 11 THE WITNESS: I'm going to read this.
 12 THE CHAIRMAN: You don't have to read it. Just
 13 give it to us.
 14 THE WITNESS: This is an objection letter signed
 15 by twelve founding members of that community that we
 16 represent.
 17 MR. FRANK: This was already introduced below.
 18 THE CHAIRMAN: This is de novo. What happened
 19 below doesn't count.
 20 MR. FRANK: If he's going to introduce it, fine,
 21 but for him to start explaining who the people are --

1 THE CHAIRMAN: It speaks for itself.
 2 THE WITNESS: Those are all immediately
 3 neighboring properties.
 4 MR. FRANK: Objection.
 5 THE CHAIRMAN: Let me just take a look at it. It
 6 speaks for itself.
 7 MR. RUSCITO: It shows they are all on Spring
 8 Avenue.
 9 THE CHAIRMAN: Okay.
 10 MR. RUSCITO: The next exhibit is from the owner
 11 of 1414A, who couldn't be here today.
 12 THE CHAIRMAN: It speaks for itself. You don't
 13 have to interpret it. That will be Protestants's Exhibit
 14 7.
 15 THE WITNESS: That's from Mr. John Peisinger.
 16 THE CHAIRMAN: Okay.
 17 THE WITNESS: We spoke to Mr. Nicolette on or
 18 about the date that we all received our decision the
 19 variance was denied.
 20 We spoke to him about that, because he was
 21 interested.

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1 THE CHAIRMAN: Don't tell me what he said,
 2 because that's hearsay.
 3 THE WITNESS: Mr. Nicolette wanted to be here.
 4 He can come in and testify exactly to the letter he wrote.
 5 THE CHAIRMAN: Have you got a letter from him?
 6 THE WITNESS: We already do, and it isn't signed.
 7 MR. FRANK: Objection.
 8 THE WITNESS: I'd like to introduce No. 8. Don,
 9 could you give me a copy of the Nicolett letter?
 10 THE CHAIRMAN: You said it's not signed by him?
 11 THE WITNESS: No. If you -- if you look at that
 12 just a little closer, it's basically signed by his wife.
 13 I would just like to discredit that because we
 14 don't know the conversation was with him. It wasn't just
 15 myself --
 16 THE CHAIRMAN: If you want to discredit anything,
 17 you're going to have to bring him in.
 18 THE WITNESS: Well, he didn't sign it.
 19 THE CHAIRMAN: Well, if his wife signed it --
 20 THE WITNESS: That's all my point, he hasn't
 21 signed it. We're talking about how it's okay --

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1 MR. FRANK: Objection.
 2 THE CHAIRMAN: Do we have anything from Mr.
 3 Nicolette?
 4 THE WITNESS: That's their letter.
 5 THE CHAIRMAN: Okay. That's in.
 6 MR. VASOLD: It's their Exhibit 5?
 7 THE CHAIRMAN: It is what is is.
 8 THE WITNESS: And I have my opinion, if that's
 9 what you want, if you don't mind --
 10 THE CHAIRMAN: Now you're getting into argument.
 11 Are you going to make the final argument?
 12 THE WITNESS: I hope so.
 13 THE CHAIRMAN: Does your opinion coincide with
 14 your final argument?
 15 THE WITNESS: Yes.
 16 THE CHAIRMAN: Okay. If you want to have one of
 17 these gentlemen testify, let them testify, and then I'm
 18 going to ask for a summation at the end, and if you'd like
 19 to do that -- or if you want to continue testifying?
 20 THE WITNESS: No, no. I think we've got the
 21 evidence I wanted in there.

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1 I want to thank you for that time, and I
 2 apologize for my inexperience.
 3 THE CHAIRMAN: That's quite all right. You
 4 haven't got a law degree. Sometimes that's not an asset.
 5 MS. BRASSIL: I think you have Exhibit 1 still?
 6 Thank you.
 7 THE CHAIRMAN: Mr. Frank, do you want to cross
 8 examine?
 9 MR. FRANK: Yes.
 10 CROSS EXAMINATION
 11 BY MR. FRANK:
 12 Q. Mr. Ruscito, you're going to have to come up
 13 again. Now, stay up there.
 14 Mr. Ruscito, you can see the other two sheds as
 15 well from the front of the property as described in the
 16 picture, is that right?
 17 A. I am uncertain. Which properties?
 18 Q. The other two sheds you saw in the pictures,
 19 eight or nine pictures of the exhibit. I can show them to
 20 you, if you want?
 21 A. Let's see exactly what you are referring to.

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1 Q. I show you Exhibit 3A. Do you see the two sheds
 2 from the neighboring property? Yes or no.
 3 A. Yes.
 4 Q. Does it look to you like that picture was taken
 5 from about the end of Mr. Canterbury's driveway?
 6 A. Uh-huh.
 7 THE CHAIRMAN: Say yes or no.
 8 A. Yes.
 9 Q. Can you see Mr. Canterbury's shed from that view?
 10 A. No.
 11 Q. Can you see Mr. Canterbury's shed from your
 12 property?
 13 A. Yes, I did.
 14 Q. You can?
 15 A. Absolutely.
 16 Q. Can you see the other two sheds from your
 17 property?
 18 A. Yes, I can.
 19 Q. So what would be the difference to you with
 20 looking at Mr. Canterbury's shed versus the other two
 21 sheds.

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1 THE CHAIRMAN: It doesn't make any difference,
 2 Mr. Frank. It's what we think. Not what he thinks.
 3 Q. You know, how many houses in the neighborhood
 4 would you say there are from Old Philadelphia Road, or
 5 Philadelphia Road at the end of the street to the dead end
 6 where you live?
 7 A. I'm not certain.
 8 Q. Is it more than thirty?
 9 A. I don't believe so.
 10 THE CHAIRMAN: He said he doesn't know.
 11 A. I really don't know.
 12 Q. There's how many lots -- you described four or
 13 five lots that are divided where there's a property in the
 14 rear of a front lot?
 15 A. I believe ten.
 16 Q. What's that?
 17 A. I think there is ten.
 18 Q. You know how many there are of those, but you
 19 don't know how houses in that area without it are --
 20 THE CHAIRMAN: Let's not argue, sir. Just ask
 21 him the question.

1 Q. The question is, you know how many lots there are
2 that are divided in two, but you don't know how many lots
3 there are that aren't divided by two, is what you are
4 saying?

5 A. Well, I will answer the questions I can, if
6 that's okay. I think -- are you speaking in the immediate
7 vicinity of all the homes?

8 Q. I'm speaking from Philadelphia Road to the end.

9 A. Absolutely not, I couldn't answer that.

10 Q. Now, do you have some -- without going into the
11 detail of them -- do you have a lot of personal issues or
12 problems with Mr. Canterbury?

13 THE CHAIRMAN: That's not pertinent. These
14 things are always personal, and we are not going to get
15 into that.

16 MR. FRANK: It affects motive.

17 THE CHAIRMAN: It will not affect the law one way
18 or the other.

19 MR. FRANK: I have no other questions.

20 THE CHAIRMAN: Thank you, sir. Now, if you
21 gentlemen want to testify, if you're going to testify to

1 MR. VASOLD: Can I enter the denial of the
2 petition?

3 MR. FRANK: That's what we are appealing from.

4 THE CHAIRMAN: That's the Zoning Commissioner's
5 decision.

6 MR. VASOLD: Right.

7 THE CHAIRMAN: That doesn't make any difference.

8 We are starting brand new here. Off the record.

9 (Discussion held off the record.)

10 THE CHAIRMAN: Okay.

11 MR. FRANK: I have two questions of Mr.

12 Canterbury on brief rebuttal.

13 THE CHAIRMAN: Go ahead.

14 KENNETH CANTERBURY,
15 having been previously sworn, was recalled, and testified
16 further as follows:

17 DIRECT EXAMINATION

18 BY MR. FRANK:

19 Q. Mr. Canterbury, the start of Spring Avenue starts
20 at which road?

21 A. Philadelphia Road.

1 the same things as Mr. Ruscito, I think we can stipulate
2 that if you were to testify, you would give the same type
3 testimony.

4 We don't gain anything by everyone standing up
5 here and saying the same thing.

6 If you've got something different to say, fine,
7 we will hear you.

8 MR. VASOLD: I don't have anything to testify.
9 We'll be able to make closing remarks, everybody?

10 THE CHAIRMAN: Are you going to say the same
11 thing he's going to say? There's no real point in
12 everybody getting up and saying the same thing three
13 times.

14 MR. VASOLD: That's fine.

15 THE CHAIRMAN: The pertinent question is whether
16 or not the shed belongs in the back, or whether Mr.
17 Canterbury gets a variance to put the shed where it is, or
18 does it have to be in the back yard. Off the record for a
19 second.

20 (Discussion held off the record.)

21 THE CHAIRMAN: Okay.

1 Q. And Philadelphia Road, it's at the end of Spring
2 Avenue?

3 A. Yes.

4 Q. From the Philadelphia Road entry on Spring Avenue
5 to the end of the road where it dead-ends, about how many
6 houses are on that street, both sides?

7 MR. RUSCITO: I object. Speculative. The
8 witness isn't an expert. We don't know how many homes are
9 there.

10 MR. FRANK: You don't have to be an expert to
11 count.

12 MR. RUSCITO: I don't think --

13 THE CHAIRMAN: Overruled.

14 A. Well, there are two cul-de-sacs and at least, my
15 estimate, I'd say between thirty and forty houses.

16 Q. You're familiar with the property, and I assume
17 you go down it every day?

18 A. Yes.

19 MR. FRANK: I have no other questions.

20 THE CHAIRMAN: Thank you.

21 MR. RUSCITO: I have one question. It's related

1 to his ability to see.

2 CROSS EXAMINATION

3 BY MR. RUSCITO:

4 Q. How can you see those homes?

5 MR. FRANK: Objection.

6 A. Joe, I can see objects and colors okay.

7 THE CHAIRMAN: Overruled.

8 MR. RUSCITO: All right. Never mind.

9 THE CHAIRMAN: Okay. Do you want to give closing
10 argument?

11 MR. FRANK: Yes.

12 THE CHAIRMAN: Are you ready, or do you want five
13 minutes?

14 MR. FRANK: I'm ready.

15 THE CHAIRMAN: Okay. Go ahead.

16 MR. FRANK: I would ask your Honors to consider
17 when you look at the zoning statute, I think it has to be
18 looked into how all the rules, regulations and laws,
19 including the Constitution that is in play here, and I
20 understand there may be a narrow focus on what the --

21 THE CHAIRMAN: The Constitution of the United

1 States?

2 MR. FRANK: Every law from the Constitution down.
3 I'm not making a Constitutional argument. I'm saying this
4 has to be, or that you should consider every law that
5 might apply to this particular circumstance, so I would
6 first start out really with the Baltimore County Code
7 under Title 1, Section 29-1-101 and 102.

8 I can leave a copy, but it basically deals with
9 the Baltimore County policy against discrimination, and
10 discrimination includes someone with a physical handicap
11 or disability.

12 I think Mr. Canterbury clearly testified as to
13 what his physical disability is, and when you take that
14 disability and apply it to the zoning regulations, the
15 disability, that he has doesn't wipe out the zoning
16 regulations, but it certainly should be considered in
17 conjunction with the zoning regulations when it comes to
18 talking about a hardship and whatnot on the property.

19 Under the variance section of the Baltimore
20 County zoning regulations, Section 307, it basically
21 indicates that if there are special circumstances or

1 conditions that exist that are peculiar to the land or
2 structure which is the subject of the variance, well, his
3 property -- they showed five in this plat, said there
4 might be ten -- but there is five to ten properties out of
5 thirty to forty that are built behind other houses.

6 Clearly, the zoning regulations certainly
7 wouldn't want any Zoning Commissioner or Board of Appeals
8 to think they were thinking that, when they passed this
9 variance law or the zoning regulations, that they were
10 going to foresee a situation where there were two sheds
11 behind somebody's house and then another shed on the side
12 towards the front of a house, which is the house in
13 question, Mr. Canterbury's house.

14 It makes no difference where Mr. Canterbury puts
15 his shed in relation to the layout of the neighborhood.
16 His property is very peculiar, because you look out the
17 front of his house, you can see his shed to the left. You
18 can see right in the front of his house two sheds, right
19 off to the side looking down to the right as shown in the
20 picture.

21 So to ask Mr. Canterbury to put his shed behind

1 his house is no consequence or significance to the overall
2 zoning intended by the County Council.
3 It's of no effect in this case, and that makes
4 this property peculiar. Yes, there's a couple other
5 properties situated the same, but it's of no effect to the
6 entire neighborhood.

7 The neighborhood, at least from the street, you
8 can't see Mr. Canterbury's property at all. You have to
9 go up the street to see his property and the shed before
10 you even get there.

11 You see those two sheds on the left that are in
12 the rear of those properties, but because Mr. Canterbury's
13 house is facing the front, his front is facing the rear of
14 the other property in question, Mr. Peisinger, or
15 Peisinger, who has a shed in his rear, but that's in the
16 front of Mr. Canterbury's house, so I think the overall
17 layout of Mr. Canterbury's house is unique in that sense,
18 in the sense that where his shed is placed is of no
19 consequence or significance.

20 And I would ask the Board to consider that in
21 conjunction with his disability, under the Americans with

1 Disabilities Act, which clearly in the Act it takes
2 precedence over any local statutes, state statutes or
3 ordinance, and I would cite Section 12131, Title 42,
4 dealing with the public health and welfare, and I know
5 originally you said you didn't think you should consider
6 the Americans with Disabilities Act, but if you look at --

7 THE CHAIRMAN: The Americans with Disabilities
8 Act deals with public facilities.

9 MR. FRANK: Actually, it deals with public and
10 private and residential, and that's actually stated in the
11 case that interprets the Americans with Disabilities Act,
12 and a local county ordinance --

13 THE CHAIRMAN: Are you going to give us a copy of
14 that case?

15 MR. FRANK: It's Mastandrea versus North, 361 Md.
16 107, cited by the Court of Appeals in 1999, and I also
17 want to bring out the Federal Fair Housing Act would also
18 apply if it creates a situation which becomes burdensome
19 to a person with a disability, that those acts can take
20 precedence over any local statute.

21 And, also, I could put forth the copies from

1 MR. FRANK: We copied them from the law library
2 not too long ago. I can give Mr. Ruscito the cite.

3 MR. RUSCITO: Is this information that could
4 change the outcome of your decision?

5 THE CHAIRMAN: I have no idea.

6 MR. RUSCITO: You know, I know the Americans with
7 Disabilities Act, as an elected --

8 THE CHAIRMAN: You can make your argument when he
9 gets through.

10 MR. RUSCITO: I was just curious where we were
11 going.

12 MR. FRANK: I do want the Board to consider the
13 Americans with Disabilities Act, the federal Fair Housing
14 Act, and the County Code dealing with human relations,
15 public policy and discrimination that's contrary to public
16 policy.

17 I'm just saying if you strictly look at the
18 variance section based on what the Zoning Commissioner
19 found, it's contrary to Baltimore County's position on
20 discrimination and fair access to one's home and use of
21 the home.

1 Title 42 which states, Section 12202, that the state shall
2 not be immune under the 11th Amendment from an action of
3 the federal of state court dealing with violations of the
4 Americans with Disabilities Act.

5 MR. RUSCITO: Is there an exhibit being
6 re-entered?

7 THE CHAIRMAN: No. Are you going to give Mr.
8 Ruscito a copy?

9 MR. FRANK: I can give him the cite. I only have
10 one copy.

11 MR. RUSCITO: I don't understand. I know the
12 Americans with Disabilities Act works on sidewalks and for
13 the public at large, but we're talking about a public
14 issue here as the misplacement of the shed.

15 THE CHAIRMAN: I think he ought to have a copy.

16 MR. RUSCITO: I will need one.

17 THE CHAIRMAN: Don't you normally give copies?

18 MR. FRANK: Not in closing argument. Normally, I
19 don't even give the court copies.

20 THE CHAIRMAN: This court does not have access to
21 a big law library.

1 And then when you look at that, in light of where
2 his shed is in relation to the other properties, meaning
3 his shed is behind one house that's to his front and it's
4 to the right of the house on the left, so that the zoning
5 regulations don't even make sense, and then I would
6 further state even if you look at the zoning regulations
7 as they are, I believe you have to show the property is
8 unique in some manner, and I think it is unique based upon
9 the fact it sits behind another house and there are sheds
10 all in plain view from the front of his property.

11 And then once you get past that hurdle, I think
12 it would cause a practical difficulty upon the property
13 owner and it would be unnecessarily burdensome, because he
14 testified about it being necessary being on the side of
15 the house so as his condition worsens, he'll have access
16 to items that he may need to maintain his lawn.

17 And to say that other people in his house can do
18 it, I don't think is being very sympathetic to a person
19 that's under a disability.

20 And I think if you look at all the factors
21 together, I think the public policy of this Board should

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1 be that any act or ordinance that's contrary to public
2 policy, if it is applied in this case and doesn't cause an
3 unnecessarily unfavorable attraction in the community,
4 that does not affect the community at all, and that's the
5 bottom line, and I think the fact that it doesn't affect
6 the community, based on Daihl versus County Board of
7 Appeals of Baltimore County and Baylus -- it's 258 Md.
8 157 -- in that case, they were looking at the setback
9 requirements violating the statute, and they looked at
10 that in comparison to the relative effect and the
11 detriment to other people in the community, and this
12 particular shed has absolutely no detriment to other
13 people in the community.

14 You have to come up on his lawn and probably
15 trespass to take the pictures that were introduced into
16 evidence by the complainants and --

17 MR. RUSCITO: No.

18 MR. FRANK: I said "probably." So the fact of
19 where you have to go to even see his shed is just beyond
20 any stretch of imagination.

21 Why anybody would complain? It doesn't change

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1 the character of the neighborhood, which is one of the
2 tests in Daihl versus County Board of Appeals.

3 It has absolutely no adverse effect on the
4 neighborhood. And if you consider that, along with all
5 the disability issues of Mr. Canterbury, and, lastly, the
6 leading case, Cromwell v. Ward, 102 Md. 691, again, it
7 doesn't affect the surrounding property.

8 And I think if you look at the unreasonable
9 hardship that would be created upon Mr. Canterbury by
10 having to go around his property to get the snowblower to
11 be able to brush off his driveway so he can have easy
12 access to his house, that in and of itself would create a
13 hardship for him to remove that shed in the rear of the
14 premises.

15 Some mention was made that he has a garage there.
16 He has to keep in that garage his hot dog vending machine,
17 his only livelihood that he has right now.

18 He can't go out and work like he normally could
19 have worked in the past, and he certainly couldn't put
20 commercial materials in the shed, because that would
21 violate some other section.

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1 I think that is just basically the totality of
2 the circumstances, and the variance request here should be
3 granted.

4 THE CHAIRMAN: Thank you. Mr. Ruscito.

5 MR. RUSCITO: Okay. We request the Commissioners
6 to uphold the original decision and deny the request for
7 this variance basically, specifically, on regarding
8 Baltimore County as it relates to Cromwell versus Ward.

9 By Mr. Canterbury's own admission, he walks up
10 and down the street. He has no problem moving around.

11 He can count homes, see long distances. So he
12 has no problem with accessing his property as it relates
13 to his disabilities specifically.

14 He has a flat piece of property. I don't think
15 there would be any objection even to the larger structure
16 that would require a permit.

17 The structure is so large, it should have gotten
18 a permit, and it was only after closer review that
19 Baltimore County had noticed that.

20 Originally, they came out, thought they were
21 dealing with a very simple situation. But when they saw

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1 how large it was, they decided that he --

2 THE CHAIRMAN: Just deal with what's in evidence.

3 MR. RUSCITO: Even if it's approved, the variance
4 would need a permit.

5 THE CHAIRMAN: We're not here to talk about the
6 permit. We don't grant permits.

7 MR. RUSCITO: Okay. With regard to his
8 disability, he is very able. He also has people on the
9 property that can help him with the snowblowing.

10 MR. FRANK: Objection.

11 MR. RUSCITO: Which I'm not sure how that has an
12 effect on whether it meets any of the guidelines of
13 Baltimore County.

14 But the property is very similar to the
15 neighboring properties. The terrain is probably better
16 than the other properties,

17 MR. FRANK: Objection. It's not in evidence

18 THE CHAIRMAN: I'll let him go. It's closing.

19 MR. RUSCITO: The area contains more surface
20 area. It's flat, level ground, and he can easily access
21 his property.

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1 Furthermore, he says that, by his own admission,
2 this is something, some day, that is possibly going to
3 house a wheelchair, and he has available space in the
4 house to place that wheelchair, if the time ever comes
5 about that he needs it.

6 I want to remind the committee that the
7 neighborhood is very sympathetic with Mr. Canterbury. We
8 take care of everyone in that neighborhood.

9 THE CHAIRMAN: Just argue the evidence. We
10 haven't heard anything about the sympathy to Mr.
11 Canterbury.

12 MR. RUSCITO: And as far as the Americans
13 Disabilities Act, I don't know how it plays as a public
14 issue. The petitioner --

15 THE CHAIRMAN: If you want us to consider it,
16 take it --

17 MR. RUSCITO: The petitioner failed to prove that
18 the property at 1414A is unique and unusual and different
19 from the surrounding properties at 1416A, 1414, 1412A, and
20 1418A.

21 The reasons listed in number one, strict

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1 adherence to the Baltimore County zoning regulations will
2 not result in either practical difficulty or unreasonable
3 hardship.

4 Mr. Canterbury, by his own admission, has said he
5 could access that property and has ample room. Reasonable
6 return to available -- reasonable use can be made of the
7 rear yard because the petitioners has available space in
8 the rear lot.

9 The property itself suffers no difficulties or
10 unusual hardship in contrast with the surrounding
11 properties.

12 The surrounding properties are the same common
13 rear setbacks, maintain the same side and frontal
14 setbacks, and have no special differences as relates to
15 the zoning, i.e., floodplain, or terrain and equities.
16 All the properties have the same size and features that
17 can be seen from the street as well as the adjacent
18 properties' view of each other.

19 The petitioner Mr. Canterbury has a self-imposed
20 hardship by not taking advantage of the County permit
21 process. In fact, when he was caught --

1 MR. FRANK: Objection.

2 THE CHAIRMAN: You have to argue what has been
3 put into evidence here. You can't argue something that's
4 not in evidence.

5 MR. RUSCITO: Well, there is in evidence.

6 THE CHAIRMAN: What is?

7 MR. RUSCITO: Because the argument is being made
8 that it is unique and it is different, and it is not.

9 THE CHAIRMAN: And you have said that, and also
10 told us. We don't go into the violation. That's not
11 before us.

12 MR. RUSCITO: When you talk about self-imposed
13 hardship, it was self-imposed. The county came out and
14 specifically said we have available in Baltimore County
15 rules and regulations that are made for everyone.

16 THE CHAIRMAN: You're saying by placing the shed
17 where it is, it was a self-imposed hardship by Mr.
18 Canterbury?

19 MR. RUSCITO: Exactly. Additionally, the county
20 has --

21 MR. FRANK: That's not the hardship we're

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1 maintaining.

2 THE CHAIRMAN: He's arguing.

3 MR. RUSCITO: The county has not applied any
4 additional zoning regulations on his property individual
5 from the county-run type property.

6 My point is, we all maintain the same side
7 setbacks, the rear property setbacks, and the county
8 hasn't imposed any hardship on him.

9 They haven't come in and said part of your
10 property is floodplain, you can't use that, therefore, we
11 are going to grant you this variance to put your shed,
12 because maybe you do need a shed. The county hasn't done
13 that. They haven't imposed --

14 THE CHAIRMAN: The county never does that.

15 MR. RUSCITO: But I want -- Mr. Canterbury is
16 well aware of the county and the circuit court. By his
17 own, he's well aware of the county circuit court system.

18 Strict compliance to the requirements would not
19 unreasonably prevent Mr. Canterbury from gaining access to
20 his storage facility approximately ten feet from the west
21 side of the property and twenty feet on the east to gain

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1 access to the property's facility.

2 Granting a variance would be a substantial
3 injustice to the applicant as well as the surrounding
4 properties due to property value degradation, unsightly
5 conditions, property line placement, unstable foundation,
6 sediment control issues, and possible Baltimore County Gas
7 and Electric easement constraints.

8 Mr. Canterbury expressed his intent to store lawn
9 and garden equipment in this facility, which would be
10 better served in the rear of the property where most of
11 the property is located.

12 For medical equipment such as a wheelchair,
13 batteries, electronic equipment, would require an electric
14 permit and be better served in his attached garage, served
15 on the ground floor.

16 By granting this, you do him a disservice.
17 Relief cannot be granted in any fashion to cure public
18 safety and welfare because the structure is so large, it
19 would require a building permit.

20 MR. FRANK: Objection.

21 THE CHAIRMAN: That's not in evidence.

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1 MR. RUSCITO: Absolutely.

2 THE CHAIRMAN: Go on.

3 MR. RUSCITO: That comes from enforcement.
4 There was a visit to the site where they measured the
5 structure.

6 THE CHAIRMAN: By they're not here to testify.

7 MR. RUSCITO: No, they're not, but the note is,
8 so we don't know what the impact Mr. Canterbury has.

9 THE CHAIRMAN: Okay.

10 MR. RUSCITO: The structure is too large, it's
11 unstable, and it's right on the property line.

12 The boundaries, two properties, 1212A and 1414A,
13 they have already suffered damages --

14 MR. FRANK: Objection. Not in evidence.

15 MR. RUSCITO: Mr. Peisinger made --

16 THE CHAIRMAN: It's not in evidence.

17 MR. RUSCITO: Well, it is through the photos.

18 THE CHAIRMAN: The photos are there, but I don't
19 know whose fence is whose.

20 MR. RUSCITO: That is his fence.

21 THE CHAIRMAN: That's not going to make any

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1 difference, I can tell you that right now.

2 MR. RUSCITO: The Baltimore County regulations
3 are very, very clear. There is a two-step process which
4 we haven't addressed, and Mr Canterbury only addressed the
5 disabilities act, and we don't know what is there, that we
6 have gone close to a year now, and we have funded this all
7 the way.

8 The people that are protesting the variance are
9 the founding members of that community. These are the
10 local people that have been there far longer than Mr.
11 Canterbury or myself have been there, thirty-some years.

12 Mr. Don Vasold --

13 THE CHAIRMAN: They have not testified.

14 MR. RUSCITO: Our concern is the density this
15 creates. We want it in the rear, like all the other sheds
16 that are owned by the properties.

17 So we are requesting that you deny their variance
18 request.

19 Furthermore, we want it to be dismantled and
20 moved in a way that Baltimore County can come down and
21 treat it as if it is a permitted item.

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1 The way the structure sits, it's on a hill that
2 is right on the property line. It's on the corner of the
3 property line. So however they would move this, they
4 would disturb the ground, create additional runoff.

5 THE CHAIRMAN: That's not with us, either. We
6 can't say how it's moved.

7 MR. RUSCITO: If you impose a permit for the
8 removal or replacement --

9 THE CHAIRMAN: We are not going to do that.

10 MR. RUSCITO: That's what we are requesting,
11 that the Commission can make the suggestion when it be
12 removed, that it be removed in such a way to follow the
13 guidelines. Remember, this shed is already there.

14 We're not here saying we want to do this. We are
15 saying it's there. We want it to be removed.

16 There was no -- they didn't take any advantage of
17 the county permit process. They just went and placed it
18 there and maintained it, even after Baltimore County came
19 down and said it was wrong, it was illegal on two
20 accounts.

21 So it's a community. You have everyone that sees

1 this. I have seen this plenty of times. It's just too
2 clear, it's too wrong. I don't see it holding up in a
3 civil case, and I'm afraid that's where we are at, but we
4 want to keep it narrow and focused on Mr. Canterbury, and
5 nothing -- we need a clean bill of health.

6 The county has rejected it. The county sees it's
7 inconsistent with its regulations, clearly stated, made
8 available to everybody in Cromwell versus Ward. That's
9 all I have. I want to yield some time to Mr. Vasold.

10 THE CHAIRMAN: What do you have to say?

11 MR. VASOLD: Am I allowed to speak now? I will
12 keep it short. We have been here over two and a half
13 hours.

14 THE CHAIRMAN: I don't think we need much more.

15 MR. VASOLD: I can't even believe we're here
16 today.

17 THE CHAIRMAN: We are here, so if you've got
18 something to say, we'll hear it.

19 MR. VASOLD: When the ruling came out from Mr.
20 Wiseman, it was very clear in that ruling.

21 THE CHAIRMAN I don't want to hear about Mr.

1 property can follow the code.

2 Nobody else has the structures in their front
3 yard.

4 So what they were arguing is it's more of a
5 convenience factor for Mr. Canterbury, it would be
6 convenient because of his disability.

7 Well, if you have a disability like that where
8 you are running a snowblower and lawnmower, how much do we
9 get snow?

10 We wasted like two hours on a disability thing
11 that really don't need to be talked about.

12 Fact of the matter is, it can go in the back yard
13 just like everybody else on Spring Avenue, if they a shed.

14 All these pictures you saw, these exhibits, these sheds --

15 THE CHAIRMAN: Are in the back yard. I know.

16 MR. VASOLD: -- is in the back yard.

17 THE CHAIRMAN: He said that.

18 MR. VASOLD: If he followed the rules, then
19 everything is okay. If Mr. Canterbury is allowed to put
20 that there, if he does that, what stops everybody along
21 Spring Avenue from doing that?

1 Wiseman saying something.

2 This is a de novo hearing, folks, as if Mr.
3 Wiseman never heard the case.

4 MR. VASOLD: I understand that Mr. Frank is
5 allowed to bring up all kinds of rules.

6 THE CHAIRMAN: You can bring up Cromwell v. Ward.

7 MR. VASOLD: That's what I was trying to do.

8 THE CHAIRMAN: Bring it up. Don't cite Mr.
9 Wiseman.

10 MR. VASOLD: The first interpretation is it must
11 be shown that the property is unique, and I don't know how
12 many properties are on Spring Avenue either.

13 I've lived there over ten years. I don't go up
14 and down and count houses, but when you get a situation
15 like this where you got one person that wants to build a
16 structure in violation of the county code, then I start
17 digging in.

18 You can look, and the internet is available to
19 everybody. There are at least ten different properties,
20 so I walked up and down Spring Avenue and looked at the
21 properties, and everyone else that has a panhandle type

1 And I, as a resident there ten years, I pay a lot
2 of property taxes. I don't want people putting up sheds
3 in the front yard. Thank you.

4 THE CHAIRMAN: Okay. Thank you. The Board will
5 set the matter in for public deliberation. You will be
6 notified of the public deliberation.

7 After that, we will issue a written decision, and
8 either party will have thirty days from the date of the
9 written decision to appeal to the Circuit Court for
10 Baltimore County in accordance with the rules of the Court
11 of Appeals of the State of Maryland,

12 If there is nothing further, we are adjourned.

13 MR. FRANK: I want to submit the authority that I
14 cited, and I will copy them and send them to Mr. Ruscito.

15 THE CHAIRMAN: Very good. If there is nothing
16 further, we are adjourned.

17 (Hearing concluded.)

18 * * * * *

19

20

21 I N D E X

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DAVID CROMWELL et al. v. ARTHUR THOMAS WARD, III

No. 617, SEPTEMBER TERM, 1994

COURT OF SPECIAL APPEALS OF MARYLAND

102 Md. App. 691; 651 A.2d 424; 1995 Md. App. LEXIS 9

January 4, 1995, Filed

PRIOR HISTORY: [***1] APPEAL FROM THE Circuit Court for Baltimore County. Lawrence Daniels, JUDGE.

DISPOSITION: JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

LexisNexis(R) Headnotes

COUNSEL: ARGUED BY Michael Paul Smith (Thomas G. Bodie and Bodie, Nagle, Dolina, Smith & Hobbs, P.A. on the brief) all of Towson, MD., FOR APPELLANTS.

ARGUED BY Newton A. Williams (Nolan, Plunhoff & Williams, Chtd. on the brief) all of Towson, MD., FOR APPELLEE.

JUDGES: ARGUED BEFORE WENNER, CATHELL, and MURPHY, JJ.

OPINIONBY: CATHELL

OPINION: [**425] [**693] Opinion by Cathell, J.

Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:

I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances [**694] requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations

II. Does the record before the Honorable Lawrence Daniels support a finding that

had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require [***2] a different pitch from all other buildings on the property?

III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of § 307 of the Baltimore County Zoning Regulations?

[**426] While those questions are limited, appellant expands in his arguments supporting the questions and argues that

the restrictions of the applicable ordinance, taken in conjunction with the unique circumstances affecting the property, must be the proximate cause of the hardship [Emphasis added.]

and

Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request . . . [Emphasis added.]

and

Mr. Ward's property is not unique from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the variance process, i.e., it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is — in and of itself — unique [***3] and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes

*2 step
Findings*

the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and [*695T] the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, i.e., a determination of whether practical difficulty and/or n1 unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

n1 Some ordinances use the conjunctive, "and," creating a requirement that both practical difficulty "and" unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, "or," to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when "use" variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser "practical difficulty" standard when "area" variances are sought.

[***4]

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

In the case sub judice, appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process — an inherent uniqueness of the subject property not shared by surrounding properties. [*696]

The Facts

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for [*697] a garage, wine

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

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost [*698] suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height elevations might have been discernable, though we are at a loss to understand why the [*699] elevations were not given in feet and why the plans contained no scale. n2

n2 Appellee, several times in his brief, states that the plans "clearly" show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown — they are not shown at all — but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

[***7]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspec-

tions were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height. n3 Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

n3 As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

The Law

The State Zoning Enabling Act was first passed in 1927 by Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl. Vol., 1994 Cum. Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they [***8] normally had to conform to the provisions of Article 66B.

Baltimore County, however, is a charter county and is exempt from many of the provisions in Md. Code Art. 66B. See Md. Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here] . . . this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance. [*698]

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

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

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, [***9] i.e., height, may be granted only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance . . . would result in practical difficulty [**428] or unreasonable hardship. [Emphasis added.]

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

The Baltimore County ordinance requires "conditions . . . peculiar to the land . . . and . . . practical difficulty" Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances, n4 if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity [***10] and [*699] uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

n4 It is not clear that section 307, "Variances," would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of "area" variance requests.

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses n5 (where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore [***11] County statute will then be restated and applied to the facts and circumstances of the case sub judice.

n5 Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to "use" issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense, however, "conditional uses" refer to uses while exceptions normally apply to area, i.e., yard, height, and density matters.

In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

Special Exceptions (and Conditional Uses) and Variances — Distinguished

The treatise writers define the concept as:

A variance is an authorization for [that] . . . which is prohibited by a zoning ordinance. . . .

. . . [***12] . The difference between the two [variances and special exceptions] . . . is of practical significance. . . .

" . . . The variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception [*700] contemplates a permitted use . . . [once] the prescribed conditions therefor are met."

. . . [A] variance is "authority . . . to use his property in a manner forbidden . . .," while an exception "allows him to put his property to a use which the enactment expressly permits."

. . . The standards for . . . exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.

"A special exception . . . is one which is controlled and . . . permissible in a given zone. It is granted . . . upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized . . . where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02-03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193, 210 A.2d 540 (1965)). [***13] See also *Schultz v. Pritts*, 291 Md. 1, 11, [**429] 432 A.2d 1319 (1981); *People's Counsel v. Mangione*, 85 Md. App. 738, 748, 584 A.2d 1318 (1991).

A distinction commonly is made between [special] exceptions . . . and variances An "exception" . . . is a dispensation permissible where a board . . . finds existing those facts . . . specified in the ordinance as sufficient " . . . But zoning ordinances usually provide for another kind of dispensation, . . . by which a variance . . . may be authorized . . . where a literal enforcement . . . would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances. . . . A variance should be strictly construed

Id. § 25.162 (footnotes omitted). See also 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* [*701] § 38.01 (4th ed. 1981); 3 E. C. Yokley, *Zoning Law* [***14] and Practice § 21-6 (4th ed. 1979); 3 Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception . . . is expressly permissible [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property . . . or by reason of exceptional topographical conditions or other extraordinary situations . . . of specific parcels of property, the strict application . . . would result in . . . unusual practical difficulties to, or exceptional or undue hardship

Stacy, 239 Md. at 193.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 288-91, 96 A.2d 261 (1953):

It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which [***15] ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area . . . the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance. . . .

. . . .

. . . There is a distinction between . . . the ordinance provisions . . . in those cases [Baltimore City cases] and the facts and the ordinance provision in this case

See also our case of *Martin Marietta Aggregates v. Citizens*, 41 Md. App. 26, 34-35, 395 A.2d 179 (1978).

[*702]

A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional[n6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use . . . so long as . . . conditions are met. Therefore, conditional use grants cannot be encompassed [***16] within the . . . statutory authority to grant variances.

n6 Exceptional is used here in its generic sense.

Eberhart v. Indiana Waste Systems, Inc., 452 N.E.2d 455, 459 (Ind. App. 3 Dist. 1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals*, 464 N.E.2d 347, 350 (Ind. App. 1 Dist. 1984), opined:

A great deal of confusion has been generated . . . because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions A variance involves a deviation . . . from the [***430] legislated zoning classification A special exception involves a use which is permitted . . . once certain statutory criteria have been satisfied. [Citations omitted.]

See also *Lindquist v. Board of Adjustment*, 490 So.2d 16, 18 (Ala. Civ. App. 1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a [***17] special exception may not be used as a substitute for a variance in order to avoid the . . . burden of proving . . . hardship"); *Wolfner v. Board of Adjustment*, 672 S.W.2d 147, 150 (Mo. App. 1984) ("an exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes*, 179 N.J. Super. 203, 431 A.2d 163, 167 (N.J. Super. A.D.), cert. denied, 87 N.J. 428, 434 A.2d 1099 (1981) (special exception and variance defined - case decided on zoning estoppel basis); *A. J. Grosek & Associates v. Zoning Hearing Bd.*, 69 Pa. Commw. 38, 450 [*703] A.2d 263, 265 (Pa. Commonwealth 1982); *Bell v. City Council*, 224 Va. 490, 297 S.E.2d 810, 813-14 (Va. 1982).

VARIANCE -

The First Step - Uniqueness or Peculiarity of the Subject Property

The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. See, e.g., A. Rathkopf, 3 *The Law of Zoning and Planning* [***18] § 38 (1979).

Doorack v. Board of Adjustment, 709 S.W.2d 140, 143 (Mo. App. 1986). See also *Morrow v. Board of Adjustment*, 765 S.W.2d 700, 701-02 (Mo. App. 1989); *Taylor v. Board of Zoning Adjustment*, 738 S.W.2d 141, 144 (Mo. App. 1987).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md. Code Article 66B, and it is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws — and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because the board of zoning appeals is in effect given the power [***19] to set aside or annul the ordinance . . . with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships" Under our system of written constitutions it is essential that they accomplish those . . . objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them For such [*704] phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, 164 A. 220, appeal dismissed, 290 U.S. 585, 78 L. Ed. 517, 54 S. Ct. 56 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church*, 164 Md. 487, 165 A. 703 (1933), [***20] the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the

rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 300, 49 A.2d 799 (1946). By the time of its decision in *Heath*, the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "chaos would result if [a building engineer] were allowed to make exceptions or variances [**431] in his own discretion." 187 Md. at 301. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis and Sugar*, the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible [***21] where the Board . . . finds . . . those facts . . . specified in the ordinance . . ." *Id.* at 303.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some [*705] confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore [***22] City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore*, 231 Md. 280, 285, 189 A.2d 631 (1963) ("In Baltimore City there appears to be no distinction between the two terms . . .").ⁿ⁷ We also attempted to indicate the problem in *North v. St. Mary's County*, 99 Md. App. 502, 510, 638 A.2d 1175 (1994), in footnote 3:

ⁿ⁷ Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400, 73 A.2d 491 (1950),

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

[***23]

Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances. . . . It is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated: [*706]

It was incumbent upon the Marinos to have shown . . . (ii) that the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district, and (iii) that the hardship was not the result of the applicants' own actions.

*Marino v. Mayor and City [**707] Council of Baltimore*, 215 Md. 206, 218, 137 A.2d 198 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547, 214 A.2d 810 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

The only evidence before the Board as to hardship or injustice [***24] involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees. . . .

240 Md. at 554. The Court first quoted from 2 *Rathkopf, The Law of Zoning and Planning*, § 48-1, and then noted:

"Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions . . . hardship [**432] arises The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. . . . The hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief. . . ."

The instant case fits squarely within the above general

rule. . . . If the appellees had used proper diligence . . . and then made accurate measurements . . . [the resultant hardship could have been avoided]. The hardship . . . was entirely self-created

Id. at 554-55 [***25] (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. See also *Burns v. Mayor and City Council of Baltimore*, 251 Md. 554, 559, 248 A.2d 103 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore*, 233 Md. 372, 378, 196 A.2d 879 (1964) ("[There was] no evidence of any limitation . . . by . . . size of yards, irregularity of shape of land or buildings, topography, grade or accessibility" . . .); *Mayor and City Council v. Sapero*, 230 Md. 291, 186 A.2d 884 (1962); *Frankel v. Mayor and City Council of Baltimore*, 223 Md. 97, 104, 162 A.2d 447 (1960) ("It was incumbent . . . to show that the hardship . . . affected his particular premises and was not . . . common to other property in the neighborhood. . . . He met the burden . . . "); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.*, 216 Md. 271, 277-78, 139 A.2d 843 (1958).

Secs. 14 (b), 14 (d) and 16 . . . have been [***26] held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property

Mayor and City Council v. Polakoff, 233 Md. 1, 9, 194 A.2d 819 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore*, 247 Md. 601, 606-07, 233 A.2d 800 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "urgent necessity, hardship peculiar to the particular property" . . . Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley*, 270 Md. 208, 210, 310 A.2d 783 (1973), [***27] one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection [*708] with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and

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

Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to [***28] full occupancy . . . that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance

. . . .

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

[**433] Id. at 215. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243, 176 A.2d 355 (1961), and *Frankel v. Mayor & City Council of Baltimore*, 223 Md. 97, 162 A.2d 447 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, [***29] exceedingly rare. [*709]

The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 513 A.2d 893 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317. After addressing the important

preemption issues therein raised, the Court directed its attention to the area variances sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question . . . that do not apply generally to other properties . . . in the . . . district." *Id.* at 340. [***30] The Court concluded:

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

...

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

Id. at 340-41 (emphasis added).

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

In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority. [*710]

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

We then discussed the legal standards to utilize in respect [***31] to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist that are peculiar to the land . . . and where strict compliance . . . would result in practical difficulty . . ." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances of a particular location and must be analyzed individually." *Id.* at 227-28 (emphasis added).

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 exist that are pecu-

liar to the land . . ." We there stated that, in the zoning context, the term "unique" has a customized meaning:

In the zoning context the "unique" aspect of a variance requirement does not refer [***32] to the extent of improvements upon the property, or upon neighboring property. [**434] "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

....

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

Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific . . . property . . ., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of . . . property . . . the literal enforcement . . . would make it [***33] exceptionally difficult . . . to comply . . . and would cause unwarranted hardship and injustice. . . .

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

Id. at 514-15.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean*, *supra*; *Stacy*, *supra*; *Sapero*, *supra*; *Loyola Federal Savings & Loan Assoc.*, *supra* (a Baltimore County case); and *Frankel*, *supra*. All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel*, *Loyola*, and *McLean* ap-

pear to be somewhat at odds with accepted Maryland law. McLean was described by the Court as [***34] a "concededly . . . close case" Frankel has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky*, 239 Md. 611, 212 A.2d 508 (1965), involved one of the same issues that was presented in Frankel, i.e., whether a zoning restriction so compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance — a variance Frankel was granted. The Court noted that the trial court had found Frankel controlling. The Court of Appeals disagreed. The Court acknowledged [*712] that Borinsky had the "same expert witness," "he was asked the same general questions . . . and gave the same answers," and that the "economic suicide" present in Frankel was "doubly true in this instance." *Id.* at 624. The Court, nevertheless, made a factual distinction and declined to apply Frankel. Judge Barnes opined in dissent that, based on what the Court had done in Frankel, the facts for variances were stronger in Borinsky. Sapero and Stacy met traditional standards for the granting [***35] of variances. Frankel, Loyola, and McLean were anomalous cases.

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

Cases from other jurisdictions are generally in accord.

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

In *Shafer v. Zoning Bd. of Appeals*, 24 Mass. App. Ct. 966, 511 N.E.2d 635 (Mass. App. Ct. 1987), [***36] the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

There was no evidence . . . regarding "soil conditions,

shape or topography of [the property] . . . especially affecting [the property] but not affecting generally the zoning district in which it is located" The . . . argument that [*713] the insufficient width . . . constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

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

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

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

Id. at 168. [***38] The court responded: "Reasons for a variance must be reasons pertaining to the property itself Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75-foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity" *Id.* at 169. In the case sub judice, the [*714] Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment*, 706 P.2d 899 (Okla. 1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil

drilling well. Amoco had expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created [***39] by the owner . . . constitutes no valid basis for a variance . . . Deprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

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

Id. at 904-05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of *Lucas v. South Carolina Coastal Council*, [**436] 120 L. Ed. 2d 798, 112 S.Ct. 2886 (1992), but had facts similar to *Lucas*, the Supreme Court of Delaware in *Baker v. Connell*, 488 A.2d 1303 (Del. Supr. 1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned [***40] open space and nothing could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0-1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the [*715] property could not conform to open space land. The appellate court affirmed, stating:

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

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard*, ___ U.S. ___, 129 L. Ed. 2d 304, 114 S. Ct. 2309 [62 U.S.L.W. 4576] (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment*, 685 P.2d 1032 (Utah 1984), involved a factual [***41] scenario similar to the case sub judice. The Xanthoses re-

ceived notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance . . . the applicant [must] show . . . that there are special conditions with regard to the property . . ." 685 P.2d at 1035-36. The court continued:

What must be shown . . . is that the property itself contains some special circumstance that relates to the hardship complained of . . .

. . . The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.

....

Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic [***42] loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthoses brought [*716] their losses upon themselves. The application affirmatively alleged . . . that no dwelling existed . . . [n8]

n8 The application and plans in the case sub judice were, at best, vague and unclear as to the height of the structure.

Id. at 1036-37 (footnotes omitted).

The Xanthoses also argued, in a fashion similar to the argument in the case sub judice, that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "To hold that the city should have been put on notice . . . in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication . . . and . . . shift the burden of proof in variance cases to the city. None of these results is acceptable." [***43] Id. at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While

the zoning inspectors might have been able to extrapolate dimensions from other schematics, they certainly were not required [**437] to do so in light of appellants' affirmative statement of compliance.

See also *Chambers v. Smithfield City*, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "There is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond*, 225 Va. 177, 300 S.E.2d 781 (Va. 1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted [***44] that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, [*717] in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A-1 district." Id.

The court in *Richardson v. Town of Salisbury*, 123 N.H. 93, 455 A.2d 1059, 1061 (N.H. 1983), noted:

We have defined unnecessary hardship as follows:

"A hardship exists only if due to special conditions unique to a particular parcel of land, the ordinance unduly restricts the use The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner." [Emphasis added.]

See also *Margate Motel, Inc. v. Gilford*, 130 N.H. 91, 534 A.2d 717 (N.H. 1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment*, 123 N.H. 170, 459 A.2d 244 (N.H. 1983). [***45]

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;

....

. . . 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. . . .

. . . However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also *Williams v. Salem Township*, 92 Pa. Commw. 634, 500 A.2d 933 (Pa. Commonwealth 1985) alloc. denied, 531 A.2d 781, 516 Pa. 615 (1987); [*718] *Hersh v. Zoning Hearing Bd. of Marlborough Township*, 90 Pa. Commw. 15, 493 A.2d 807 (Pa. Commonwealth 1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem*, 84 Pa. Commw. 558, 480 A.2d 362 (Pa. Commonwealth 1984) [***46] (burden sustained); *Davis v. Zoning Bd. of Adjustment*, 78 Pa. Commw. 645, 468 A.2d 1183 (Pa. Commonwealth 1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment*, 72 Pa. Commw. 109, 456 A.2d 1110 (Pa. Commonwealth 1983); *Immordino v. Zoning Hearing Bd.*, 65 Pa. Commw. 79, 441 A.2d 818, 821 (Pa. Commonwealth 1982) ("Property owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship which is unique to his particular property") (Emphasis added.)

A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by other property owners in the area Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla. App. 5th Dist. 1981), aff'd, 419 So.2d 1041 (1982) [***47] (citation omitted). See also *Fort Lauderdale Bd. of Adjustment v. Nash*, 425 So.2d 578, 579 (Fla. App. 4th Dist. 1983); *City of Naples v. Clam Court Marina Trust*, 413 So.2d 475, 477 (Fla. App. 2d Dist. 1982); *Lakeshore Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments*, 481 So.2d 162, 168 (La. App. 4th Cir. 1985), cert. denied, 484 So. 2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal

of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231 (D.C. App. 1979), where, due to the size of the lot, no viable economical use of the property could be had without the [*719] variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. [***48] The Supreme Court of New Hampshire reversed the denial of a variance in *U-Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord*, 122 N.H. 910, 451 A.2d 1315, 1317 (N.H. 1982), saying: "The location and characteristics of the property involved create greater security requirements . . . than . . . other property in the area because the parcel . . . is less central . . . less populated and . . . less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland*, 55 Ore. App. 215, 637 P.2d 1302 (Or. App. 1981), cert. denied, 292 Ore. 722, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. See also *Higgins v. Township of Radnor*, 13 Pa. Commw. 195, 318 A.2d 761, 763 (Pa. Commonwealth 1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of [***49] a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

It is fundamental that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions to particular property and not general in character 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* § 25.167 (emphasis added, footnotes omitted). [*720]

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.

Anderson, *supra* [***50] § 14.55 (1968).

It follows that the unnecessary hardship . . . must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance

In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question. . . .

. . . .

Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot . . . arises from circumstances peculiar to that lot . . . ; and in that case the appropriate remedy is . . . a variance In the other types of cases, the hardship . . . may arise because of conditions which are general in the neighborhood; . . . it is often [**439] held that the appropriate remedy is a change in the zoning . . . [***51] . The courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

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

Id. § 142.06. See also Rathkopf, *supra* § 38.04; Yokley, *supra* § 21-6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship."). Yokley quotes from *Taxpayers' Association v. Board of Zoning Appeals*, 301 N.Y. 215, 93 N.E.2d 645, 647 (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 [***52] and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21-6.

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

Self-Inflicted Hardship

We have before referred to *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206, 137 A.2d 198. There, [***53] the Court said, "it was incumbent [on the applicant] to [show] . . . that the hardship was not the result of the applicants' own actions." *Id.* at 218. The Court of Appeals [***722] noted in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. at 340:

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

The Court affirmed the Board. Foreign jurisdictions are generally in accord. See *Pollard v. Zoning Bd. of Appeals*, 186 Conn. 32, 438 A.2d 1186, 1190 (Conn. 1982) ("Self-inflicted or self-created hardship . . . is never considered proper grounds for a variance." . . . "Where the applicant . . . creates a nonconformity, the board lacks power to grant a variance.") (citations omitted); *Volkman v. City*

of Kirkwood, 624 S.W.2d 58 (Mo. App. 1981); [***54] *Matter of Schrader*, 660 P.2d 135 (Okla. 1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals*, 279 S.C. 598, 310 S.E.2d 438 (S.C. App. 1983); *McClurkan v. Board of Zoning Appeals*, 565 S.W.2d 495 (Tenn. 1977); *Steele v. Fluvanna County Bd. of Zoning Appeals*, 246 Va. 502, 436 S.E.2d 453, 456 (Va. 1993) ("The hardship, if any, was self-inflicted. The placement of the improvements . . . was within the control of the Garretts and their contractor, Raintree."). See also *Shafer, supra*; *VanLandschoot, supra*; *Walkingstick, supra*; *Xanthos, supra*; *St. Clair, supra*. Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively [***440] not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning [***55] variance purposes cannot generally be self-inflicted.

The Granting of the Permit

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

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

. . . They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623, 634, 51 A.2d 273 (1947), overruled on other grounds in *Nutter v. Non-Profit Housing Co.*, 230 Md. 6, 185 A.2d 360 (1962), [***56] where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit . . . does not create a vested right, or estop the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of*

County Comm'rs v. Snyder, 186 Md. 342, 347, 46 A.2d 689 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

n9 The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council*, 96 Md. App. 526, 625 A.2d 424 (1993), rev'd in part, 334 Md. 499, 639 A.2d 1070 (1994).

[***57]

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

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

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

A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law. . . . The ordinance forbade the officials . . . to grant the permit which the plaintiff asked and obtained

. . . It was therefore unlawful for the officers . . . to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. [***58] A permit thus issued . . . does not . . . prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. . . . Every one dealing with the officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.

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

164 Md. at 227-28.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413, 545 A.2d 1296 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow* [*725] Shopping Center, 264 Md. 481, 287 A.2d 242 (1972), [***59] a case of a timely appeal of the denial of a building permit. In *Inlet Associates*, the Court opined that "consequently, 'everyone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'" 313 Md. at 437. The Court added: "The doctrine of equitable estoppel 'cannot be . . . invoked to defeat the . . . enforcement of . . . ordinances, because of an error or mistake committed by one of its officers . . . which has been relied on by the third party to his detriment.'" *Id.*

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

The authorities elsewhere are in accord.

The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special [***60] character of the land, not to the circumstances of the owner.

Richardson, 455 A.2d at 1062.

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

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

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La. App. 4th Cir. 1970). See also *Klanke v. Zoning Bd. of Adjustment*, 83 Pa. Commw. 441, 477 A.2d 907, 909 (Pa. Commonwealth 1984), and *Walkingstick*, supra; *Xanthos*, supra; and *St. Clair*, supra. [*726]

Resolution

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

There was no evidence submitted to the Board that the

102 Md. App. 691, *726; 651 A.2d 424, **441;
1995 Md. App. LEXIS 9, ***60

subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's [***61] impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

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

**JUDGMENT REVERSED; COSTS TO
BE PAID BY APPELLEE.**

2 of 10 DOCUMENTS

**DAIHL, et al. v. COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY and
BAYLUS**

No. 306, September Term, 1969

Court of Appeals of Maryland

258 Md. 157; 265 A.2d 227; 1970 Md. LEXIS 985

May 11, 1970, Decided

PRIOR HISTORY: [*1]**

Appeal from the Circuit Court for Baltimore County;
Maguire, J.

DISPOSITION:

Order affirmed in part and reversed in part as set forth
in this opinion, appellees to pay costs.

LexisNexis(R) Headnotes**HEADNOTES:**

*Zoning — Baltimore County — Appeals — Hearing De
Novo — Issues On Appeal — Meaning Of Term De Novo
As Used In Section 501.6 And 501.3 Of Baltimore County
Zoning Regulations Is That On Appeal To The County
Board Of Appeals There Shall Be A De Novo Hearing
On Those Issues Which Have Been Appealed From The
Zoning Commission And Not On Every Matter Covered
In The Application.*

*Zoning — Appeals — De Novo — Issues On Appeal —
Scope Of De Novo Hearing As Used In Relation To Appeal
Heard By County Board Of Appeals From Decision Of
Zoning Commissioner Is That It Is Restricted To Specific
Issue Or Issues Resolved By The Commissioner From
Which An Appeal Has Been Taken — County Board Of
Appeals Did Not Have Jurisdiction To Review Findings
On Issues From Which An Appeal Had Not Been Taken.*

*Zoning — Mistake — Change — Streets As Barriers —
Although A Street May Have Been Better Choice For
Boundary Between Two Zoning Classifications Than The
Boundary That Was Adopted, This Criteria Falls Far
Short [***2] Of Substantiating Its Adoption As Error —
The Use In 1957 Of A Property Line Which Was Then
Proper And Appropriate Was Not Error Simply Because
It Now Appears That Another Boundary May Have Been
More Desirable To Separate Two Zones.*

Zoning — Mistake — Original Zoning — In

*Considering The Correctness Of Original Zoning There
Is A Strong Presumption Of Its Correctness — Evidence
As To Mistake Was Not Sufficiently Strong To Render The
Question "Fairly Debatable".*

*Zoning — Change In Character Of Neighborhood —
Fairly Debatable — Where Question Of Change In
Character Of Neighborhood Is Fairly Debatable Court
Will Not Disturb Finding Of Board On This Issue.*

*Zoning — Appeal — Reclassification — Residentially
Zoned Property — Spirit And Intent Of Regulations —
Where The Evidence Would Lead Reasonable Man
To Believe That Granting Of Requested Variance
May Well Affect Aesthetic Ambience Of Residentially
Zoned Property In Immediate Area, Granting Of These
Variances Would Be In Disharmony With The Spirit And
Intent Of The Zoning Regulations.*

*Zoning — Reclassification — Variances — Mere Fact
That Variance Would Make Property More Profitable Is
Not Sufficient [***3] Ground To Justify Relaxation Of
Setback Requirements And Court Must Determine The
Relative Effect Of Detriment To Applicant Against The
Benefit To Community.*

SYLLABUS:

Petition to Deputy Zoning Commissioner for Baltimore County by Herman H. Baylus for reclassification of two parcels of land. From a decision of the Commissioner granting the request as to one parcel and denying it as to the other, the appellants, Robert E. Daihl and other protestants appealed to the County Board of Appeals of Baltimore County. The petitioner, Mr. Baylus, filed no cross appeal. From a decision of the Board to the effect that the requested zoning should have been granted to both parcels an appeal was taken to the Circuit Court which upheld the decision of the Board. From the order of the Circuit Court affirming the action of the Board, Robert E. Daihl and others appeal.

*Change in
character of
neighborhood
as to
this to be
reconsider
+ he
inherent
of the
street in
the
area
is
inapplicable*

COUNSEL:

John W. Hessian, III, for appellants.

Frank E. Cicone, with whom was *Christian M. Kahl* on the brief, for appellees.

JUDGES:

Hammond, C. J., and Barnes, McWilliams, Finan, Singley, Smith and Digges, JJ. Finan, J., delivered the opinion of the Court.

OPINIONBY:

FINAN

OPINION:

[*159] [**227] This case is before us on appeal [***4] from an order of the Circuit Court for Baltimore County which affirmed an order of the County Board of Appeals for Baltimore County granting a petition seeking the reclassification of two parcels of land. The parcels front on the north side of a paper street known as Riderwood-Lutherville Drive and are part of the Talbott Manor subdivision. The two parcels are separated by two intervening lots which are zoned residential. All of the lots in both parcels are contiguous to industrially zoned land to the north.

[**228] This dispute began when Herman Baylus, appellee, petitioned for the reclassification of the two parcels from residential R-6 zoning to industrial M-L zoning. He also asked that the set-off and area restrictions, which are generally applicable to industrially zoned property which abuts on residential, be relaxed. The Deputy Zoning Commissioner n1 allowed the M-L rezoning for the easternmost parcel along with the requested **variances**. However, he denied the rezoning for the other parcel.

n1 Section 500.13 of **Baltimore County Zoning Regulations** provides that the Deputy Zoning Commissioner shall have authority to exercise the same duties as the Zoning Commissioner.

[***5]

The easternmost and largest parcel consists of Lots 10 through 19 of the Talbott Manor subdivision and is also contiguous to industrially zoned property directly on the east. The smaller and westernmost parcel consisting of Lots 22, 23 and 24 of the subdivision abuts at the front and on the east and west on residential property. The protestants, appellants, live in the immediate area. John Young resides on Lot No. 26 and there is a residence

constructed on Lot No. 25. Another protestant, Becky, resides approximately 350 feet from the easternmost parcel. The protestant Daihl at the time of the hearing, was in the process of constructing his home approximately 189 feet from the easternmost parcel and he valued his property at approximately \$33,000. There is another residence between the Daihl home and the easternmost parcel. The **variances in the Baltimore County Zoning regulations** [*160] sought by the petitioner were six in number as follows:

1. Reduction of the required restrictive strip of 100 feet to 30 feet (section 255.1).
2. Reduction of the required front yard from 75 feet to 30 feet (section 243.1).
3. Reduction of the required side yard from 50 feet to [***6] 30 feet (section 243.2).
4. Reduction of the required rear yard from 50 feet to 30 feet (section 243.3).
5. Reduction of the required set back for a structure from 125 feet to 30 feet (section 243.4).
6. Reduction of the required floor area ratio from .4 to 2. (section 243.5 and section 101).

The appellants filed an appeal to the County Board of Appeals for Baltimore County. Mr. Baylus, petitioner appellee, filed no cross-appeal. At the hearing, the Board heard testimony as to the zoning of both parcels of land although the appellants contend that since no cross-appeal had been filed, the Deputy Commissioner's denial of industrial zoning for the westernmost parcel was final. The Board held that both properties should be classified industrial M-L and as to them granted the requested variances. On appeal by the appellants, the Circuit Court upheld the Board's decision.

The issues raised on this appeal are:

1. Did the County Board of Appeals have jurisdiction to consider the appellee's request for a review of the Deputy Zoning Commissioner's denial of the petition for rezoning and variances for Lots Nos. 22, 23 and 24, the westernmost parcel, in view of the fact that [***7] the petitioner had taken no appeal from the Zoning Commissioner's decision.
2. Did the County Board of Appeals err in reversing the Zoning Commissioner's denial of [*161] the rezoning and variances as to Lots 22, 23 and 24, the westernmost parcel.
3. Did the County Board of Appeals err in affirming the action of the Zoning Commissioner in granting the rezoning and

variances for Lots 10 through 19, the easternmost parcel.

[**229] I and II

After a public hearing, the Deputy Zoning Commissioner passed an order granting the rezoning and variances sought by the petitioners for Lots 10 through 19 but denied the rezoning and variances sought for Lots Nos. 22, 23 and 24. On July 26, 1967, the protestants filed a timely appeal; however, it must be noted that the petitioners did not file any appeal. It certainly makes no sense or logic to argue that the protestants in perfecting their appeal intended to take an appeal from any action of the Deputy Commissioner other than that portion of his opinion granting the rezoning and variances to Lots 10 through 19, for the simple reason that the issues involving Lots Nos. 22, 23 and 24 were resolved in their favor. The wording of the [***8] following notice of appeal filed by the protestants with the Zoning Commissioner supports this reasoning:

"Please note an *Appeal from the portions of said Order granting the requested rezoning and variances* to the Board of Appeals of Baltimore County on behalf of Earl S. Jones, et al., residents and protestants." (Emphasis supplied.)

Section 500.10 of the ordinance, which is the general provision regulating appeals, provides in pertinent part:

"Any person or persons, jointly or severally or any taxpayer, or any official, office, department, board or bureau of Baltimore County, feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the County Board of Appeals. * * *"

[*162] The above Section should also be considered in conjunction with Section 501.3 which provides in pertinent part:

"* * * All decisions of the County Board of Appeals shall be made after notice and opportunity for hearing *de novo upon the issues* before said Board. * * *" (Emphasis supplied.)

We think it significant to note that Section 501.3 refers to "issues" and does not use the term decision. Issue connotes a matter which [***9] lends itself to a separate finding or separate holding, that is, something which involves a separate point. *Webster's New World Dictionary* (College Edition) defines "issue" as: * * * a point, matter or question to be disputed or decided * * *."

We must also take into consideration the language of Section 501.6 which in referring to appeals, states:

"Appeals from the Zoning Commissioner shall be heard by the County Board of Appeals *de novo*. * * *"

We think that the context in which the term *de novo* is used in Section 501.6 and 501.3 (both quoted above) means that on appeal there shall be a *de novo* hearing on those issues which have been appealed and not on every matter covered in the application. In this sense *de novo* means that the Board of Appeals may hear testimony and consider additional evidence pertaining to the issue or issues presented on appeal. See Vol. 2, *The Law of Zoning and Planning*, Rathkoff, ch. 65-30, § 7. The original nature of a *de novo* hearing with its quality of newness is in contra-distinction to a review upon the record as exists where matters are heard on certiorari. 73 C.J.S. *Public Administrative Bodies and Procedure*, [***10] § 204.

Both parties to this appeal agree that there appears to be no Maryland case adjudicating the question of whether the *de novo* review power of the Board of Appeals is to be limited to those portions of the Zoning Commissioner's decision from which an appeal has been taken. However, in *Deen v. Baltimore Gas & Electric Company*, [*163] 240 Md. 317, 214 A. 2d 146 (1965), this question briefly surfaced but then disappeared. There, a utility company desired to construct a high tension transmission line over a segment of an abandoned railroad right of way 5.1 miles [**230] in length. Three areas were involved. At the hearing the Zoning Commissioner granted the utility company's request for its intended use in the third segment, but denied its petition regarding the first and second segment. The utility company appealed to the Board from that portion of the Commissioner's order which required the underground installation of the transmission lines. The Board affirmed the Commissioner's order as to the overhead construction of lines as to the second segment but reversed the Commissioner as to the first segment. Thereafter the utility company took an appeal to the [***11] circuit court from the denial of its request for the construction of overhead lines as to the first segment, and the property owners appealed the Board's granting of overhead construction of lines for the second segment. At the hearing in the circuit court, the utility company contended that there was no issue before the Board concerning the authorized construction of overhead facilities in the third segment because the property owners had failed to appeal from the decision. However, the circuit court was of the opinion that the matter before it dealt with the "general subject of 'overhead' vs. 'underground' transmission lines" and considered the appeal to the Board as encompassing the entire distance of the line.

The specific issue as to the scope of the appeal before the Board was not raised in this Court on appeal. Although *Deen* does illustrate that appeals may logically be taken from a portion of an order of the Commissioner, it falls short of establishing any precedent as to what may be the scope of a *de novo* hearing.

In the absence of any precedent to guide us, we think the more sensible interpretation of the meaning of the scope of a *de novo* hearing as used [***12] in relation to an appeal heard by the County Board of Appeals, from a decision of the Zoning Commissioner, is that it is restricted [*164] to the specific issue or issues resolved by the Commissioner from which an appeal has been taken. By exclusion, this may not encompass all issues which may have been resolved by the Commissioner in his decision, when more than one issue is involved. We think it is consonant with the concept of appeal, that it be co-extensive with those issues concerning which the moving party or parties feel aggrieved. We are also buttressed in our reasoning on this matter by the knowledge that such hearings are adversary in nature and are oftentimes complicated. Furthermore, we are of the strong belief that an orderly procedural disposition of these matters requires specificity of the adverse ruling concerning which the aggrieved party seeks review.

Accordingly, we are of the opinion that the County Board of Appeals did not have jurisdiction to review the Deputy Zoning Commissioner's denial of the petition for the reclassification in variances pertaining to Lots Nos. 22, 23 and 24, and that it was error to reverse his decision concerning this westernmost [***13] parcel.

III

The petitioners argued that the evidence presented to the Board brought the application for the rezoning classification under the "change-mistake rule." *Helfrich v. Mongelli*, 248 Md. 498, 237 A. 2d 454 (1968), and numerous cases cited in footnote 2, page 503 of that opinion. See also *Jobar Corp. v. Rodgers Forge*, 236 Md. 106, 202 A. 2d 612 (1964).

The original zoning map covering the area in which the subject parcels are located was adopted by the County Council in November 1955. In an effort to prove a mistake in original zoning the petitioner presented testimony through expert witnesses Augustine J. Muller and Frederick P. Klaus. We think the most favorable interpretation that can be given this testimony is that, on second thought, it would appear that Riderwood-Lutherville Drive, a paper street in 1955, would have made a more logical buffer zone than the boundary adopted. At the [*165] time of the original zoning, the southerly boundary of the 80 acre tract [**231] which has now been developed into

an industrial park, was adopted as the boundary between the M-L and residential zones. The petitioners' witnesses also discounted the desirability [***14] of the use of the property bordering Riderwood-Lutherville Drive for residential purposes.

Hindsight might dictate that Riderwood-Lutherville Drive may have been a better choice for the boundary between M-L zone and the residential zone; however, this desirability falls far short of substantiating its adoption as error. In the case *Greenblatt v. Toney Schloss Properties Corporation*, 235 Md. 9, 200 A. 2d 70 (1964), the expert witness stated that there had been error in the 1957 comprehensive rezoning plan because the legislative body had used the boundary lines of a tract of land rather than a natural drainage course as a dividing line between an R-40 and an R-20 zone. After reaffirming the strong presumption attending original zoning and comprehensive rezoning, citing *Shadynook Imp. Assn. v. Molloy*, 232 Md. 265, 269, 192 A. 2d 502 (1963), we stated: " * * * the use in 1957 of a property line which was then proper and appropriate * * * was not error simply because it is now revealed that subsequent events (the manner of development of contiguous lands) have made it more logical or desirable or economically profitable that the division line be a natural contour line * * *." [***15] 235 Md. at 14.

The protestants have also testified that Riderwood-Lutherville Drive has been improved to the extent that the improved portion now extends 100 feet in front of Lots Nos. 22, 23 and 24, and that utilities are now available for residential development within several hundred feet of the subject properties. Viewing the evidence offered in totality and recognizing the strong presumption of correctness which attaches to original zoning, *Shadynook Imp. Assn., supra*, we do not think the evidence as to mistake was sufficiently strong as to render that question "fairly debatable." *Dill v. Jobar Corp.*, 242 Md. 16, 23, 217 A. 2d 564 (1966); *Rohde v. County Bd. of Appeals*, 234 Md. 259, 199 A. 2d 216 (1964); and *Overton v. Co. Commissioners*, 225 Md. 212, 219, 170 A. 2d 172 (1961). See also the discussion in *Mack v. Crandell*, 244 Md. 193, 198, 199, 223 A. 2d 248 (1966).

With regard to the question of change in the character of the neighborhood, we reach a different conclusion. The original zoning map having been adopted in 1955, the evidence in the record reveals that in September of 1962, Lots Nos. 1 through 9 of the Talbott Manor, which are contiguous [***16] and immediately east of Lots Nos. 10 through 19 were rezoned from R-6 to M-L. This in effect enlarges the industrial park area. There has been considerable building in the industrial park itself and we are of the opinion that the evidence does render the question of change in the character of the neighborhood as

258 Md. 157, *166; 265 A.2d 227, **231;
1970 Md. LEXIS 985, ***16

fairly debatable and hence we must not disturb the finding of the Board on this issue. *Brenbrook Constr. Co. v. Dahne*, 254 Md. 443, 450, 255 A. 2d 32 (1969); *Hunter v. County Commissioners*, 252 Md. 305, 250 A. 2d 81 (1969); and cases cited therein at page 309.

However, we differ with the lower court in its affirmation of the action of the Board in granting the requested variances as to Lots Nos. 10 through 19. Section 307 of the Zoning Ordinance expressly provides that, "the Zoning Commissioners of Baltimore County and the Board of Appeals * * * shall have * * * the power to grant variances from height and area regulations, * * * only in cases where strict compliance with the Zoning Regulations in Baltimore County would result in practical difficulty or unreasonable hardships. Furthermore, any such variance shall be granted only if in strict harmony with the spirit [***17] and intent of said height, area * * * regulations, and only in such [**232] manner as to grant relief without substantial injury to public health, safety, and general welfare. * * *"

The Board predicated its granting of the variances on the basis that they were "reasonable and essential to prevent practical difficulty and hardship in developing the property." However, there is nothing in the record which [*167] would indicate the exact type of structure that the petitioners intended to construct on Lots 10 through 19, other than that it would be in keeping with the general architectural scheme prevalent in the industrial park.

We cannot overlook the fact that in the instant case there are substantial residential properties within the immediate area. The appellant Becky resides 350 feet from Lots 10 through 19. The appellant Daihl is constructing a \$33,000 home, 186 feet from Lots 10 through 19. There is another residence between Daihl's home and Lots 10 through 19. Appellant Young resides on Lot No. 26. The evidence is such as would lead a reasonable man to the

belief that the granting of these variances may well affect the aesthetic ambience of the residentially [***18] zoned properties which lie in the immediate area. For this reason we are of the opinion that the granting of these variances would be in disharmony with the "spirit and intent * * * of * * * the regulations * * *."

The "difficulties" and "hardships" to which the Board referred, although not spelled out, obviously were thought to be of such a nature that, if not overcome, would have resulted in the petitioners sustaining some financial hardship in their efforts to develop the property and in their future use of it. In *Easter v. The Mayor and City Council of Baltimore*, 195 Md. 395, 400, 73 A. 2d 491 (1950) we said: "The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. *Garden View Homes v. Board of Adjustment*, 137 N.J.L. 44, 57 A. 2d 677." In that same opinion Judge Henderson, later Chief Judge, also stated: "* * * but we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan." See also *Burns v. Baltimore City*, 251 Md. 554, 558, 248 A. 2d 103 (1968), and *City of Baltimore v. Polakoff*, 233 Md. 1, 194 A. 2d [***19] 819 (1963). As we view the law, we think the granting of the variances by the Board was arbitrary and capricious.

On the basis of what we have said in this opinion we [*168] affirm the decision of the lower court in sustaining the Board's action with regard to the rezoning of Lots 10 through 19 from R-6 to M-L (light manufacturing), and reverse the decision with respect to the court's affirming of the granting of the variances as to Lots 10 through 19 and the rezoning and variances as to Lots 22, 23 and 24.

Order affirmed in part and reversed in part as set forth in this opinion, appellees to pay costs.

- C. If the Department of Permits and Development Management has not notified the applicant of a determination pursuant to the provisions of this section, or has not notified the applicant pursuant to Section 304.4 above of the intention to require a public hearing, the dwelling shall be considered appropriate for purposes of this section.
- 304.6 The decision of the Zoning Commissioner or the Director of the Department of Permits and Development Management may be appealed, in which case the hearing shall be scheduled by the Board of Appeals within 45 days from receipt of the request.
- 304.7 The Director of the Department of Permits and Development Management shall establish appropriate fee schedules.

Section 305

Replacement of Destroyed or Damaged Dwellings

[BCZR 1955; repealed by Bill No. 124-1991; re-enacted by Bill No. 214-1991]

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

Section 306

Minor Public Utility Structures

[BCZR 1955; Resolution, November 21, 1956; Bill No. 32-2004]

Minimum lot area regulations in any zone shall not apply to:

- A. Repeater, booster or transformer stations;
- B. Bus shelters, Class A or B; or
- C. Small community dial offices.

Section 307

Variances

[BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

- 307.1 The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore,

any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to 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.¹ 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.

Section 308

Variances and Special Exceptions for Radiation Fallout Shelters [Bill Nos. 87-1961; 19-1962]

Radiation fallout shelters may be erected and constructed in accordance with specifications published by the Office of Civil and Defense Mobilization of the United States Government for one of the shelter types or designs approved by said agency as being effective for affording protection from radiation fallout, and the Zoning Commissioner may grant variances from area and height regulations and may make special exceptions to the Zoning Regulations where strict compliance with those regulations would result in practical difficulty or unreasonable hardship, and where the owner of the lot does not own sufficient adjoining land to conform strictly to the width and area requirements. However, any such variance or special exception shall be granted by the Zoning Commissioner only if in harmony with the general purpose and intent of the Zoning Regulations. All decisions of the Zoning Commissioner with respect to such matters shall be subject to appeal to the Board of Appeals. Every radiation fallout shelter which may be erected and constructed under this section shall be used only for the purpose of protection from radiation fallout, and not for normal residential, commercial or industrial uses.

¹ Editor's Note: Apparently conflicts with certain provisions found in the Baltimore County Code 1988 Edition, as revised, which prescribe requirements with respect to notice and hearing regarding conventional reclassification petitions that differ from those which it prescribes regarding variance petitions. See the Appendices of this volume for excerpts from the Baltimore County Code. See Section 26-127 for authority of the Zoning Commissioner to grant variances, and Section 26-117 for provision regarding conflicts between Title 26 and the Zoning Regulations.

- Sec.
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 (a) In general.
 (b) Standards.
12150. Interim accessibility requirements.
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12163. Conformance of accessibility standards.
12164. Regulations.
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12210. Illegal use of drugs.
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12211. Definitions.
 (a) Homosexuality and bisexuality.
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12212. Alternative means of dispute resolution.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 290bb-34, 608, 1760, 1786, 3796gg-7, 15007, 15024 of this title; title 2 sections 1302, 1331, 1371, 1434; title 3 sections 402, 421; title 16 sections 410aaa-41, 410aaa-52; title 20 sections 1011, 1140c, 1415, 8507; title 23 section 133; title 25 section 2005; title 26 section 44; title 29 sections 720, 721, 762, 764, 781, 793, 795, 3011; title 49 sections 5302, 5307, 5314, 5323, 5335, 47102.

§ 12101. Findings and purpose

(a) Findings

The Congress finds that—

- (1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
- (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
- (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, over-protective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
- (6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
- (7) individuals with disabilities are a discrete and insular minority who have been

faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

(Pub. L. 101-336, § 2, July 26, 1990, 104 Stat. 328.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 101-336 provided that: "This Act [enacting this chapter and section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending section 706 of Title 29, Labor, and sections 152, 221, and 611 of Title 47, and enacting provisions set out as notes under sections 12111, 12131, 12141, 12161, and 12181 of this title] may be cited as the 'Americans with Disabilities Act of 1990'."

STUDY BY GENERAL ACCOUNTING OFFICE OF EXISTING DISABILITY-RELATED EMPLOYMENT INCENTIVES

Pub. L. 106-170, title III, § 303(a), Dec. 17, 1999, 113 Stat. 1903, provided that:

"(1) STUDY.—As soon as practicable after the date of the enactment of this Act [Dec. 17, 1999], the Comptroller General of the United States shall undertake a study to assess existing tax credits and other disability-related employment incentives under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and other Federal laws. In such study, the Com-

troller General shall specifically address the extent to which such credits and other incentives would encourage employers to hire and retain individuals with disabilities.

"(2) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report presenting the results of the Comptroller General's study conducted pursuant to this subsection, together with such recommendations for legislative or administrative changes as the Comptroller General determines are appropriate."

§ 12102. Definitions

As used in this chapter:

(1) Auxiliary aids and services

The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability

The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) State

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 101-336, § 3, July 26, 1990, 104 Stat. 329.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280b-1c, 3796gg-7, 3796hh, 12211, 12581, 12594 of this title; title 20 sections 1003, 1228c, 2302, 9202; title 29 section 2801; title 40 section 484; title 47 section 255.

SUBCHAPTER I—EMPLOYMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1981a, 12201, 12203, 12206 of this title; title 2 section 1311; title 3 section 411; title 29 sections 723, 728a, 732, 772, 791, 793, 794.

§ 12111. Definitions

As used in this subchapter:

(1) Commission

The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

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who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

(Pub. L. 101-336, title II, § 201, July 26, 1990, 104 Stat. 337.)

REFERENCES IN TEXT

Section 24102 of title 49, referred to in par. (1)(C), was subsequently amended, and section 24102(4) no longer defines "commuter authority". However, such term is defined elsewhere in that section.

CODIFICATION

In par. (1)(C), "section 24102(4) of title 49" substituted for "section 103(8) of the Rail Passenger Service Act" on authority of Pub. L. 103-272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

EFFECTIVE DATE

Section 205 of Pub. L. 101-336 provided that:

"(a) GENERAL RULE.—Except as provided in subsection (b), this subtitle [subtitle A (§§ 201-205) of title II of Pub. L. 101-336, enacting this part] shall become effective 18 months after the date of enactment of this Act [July 26, 1990].

"(b) EXCEPTION.—Section 204 [section 12134 of this title] shall become effective on the date of enactment of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12181, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

(Pub. L. 101-336, title II, § 202, July 26, 1990, 104 Stat. 337.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12133, 12142, 12143, 12144, 12146, 12147, 12148, 12162, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

(Pub. L. 101-336, title II, § 203, July 26, 1990, 104 Stat. 337.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12203, 12209 of this title; title 2 section 1331; title 3 section 421.

§ 12134. Regulations

(a) In general

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations

in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) Relationship to other regulations

Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) Standards

Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

(Pub. L. 101-336, title II, § 204, July 26, 1990, 104 Stat. 337.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

EFFECTIVE DATE

Section effective July 26, 1990, see section 205(b) of Pub. L. 101-336, set out as a note under section 12131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12209 of this title; title 2 section 1331; title 3 section 421.

PART B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 12134, 12206 of this title.

SUBPART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

§ 12141. Definitions

As used in this subpart:

(1) Demand responsive system

The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

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of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees

Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing sub-section (c) of this section.

(Pub. L. 101-336, title I, §104, July 26, 1990, 104 Stat. 334.)

REFERENCES IN TEXT

The Drug-Free Workplace Act of 1988, referred to in subsec. (c)(3), is subtitle D (§§5151-5160) of title V of Pub. L. 100-690, Nov. 18, 1988, 102 Stat. 4304, which is classified generally to chapter 10 (§701 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 41 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2000e-16b, 12209 of this title; title 2 section 1311; title 3 section 411.

§ 12115. Posting notices

Every employer, employment agency, labor organization, or joint labor-management committee covered under this subchapter shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by section 2000e-10 of this title.

(Pub. L. 101-336, title I, §105, July 26, 1990, 104 Stat. 336.)

§ 12116. Regulations

Not later than 1 year after July 26, 1990, the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5.

(Pub. L. 101-336, title I, §106, July 26, 1990, 104 Stat. 336.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12117 of this title.

§ 12117. Enforcement

(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

(Pub. L. 101-336, title I, §107, July 26, 1990, 104 Stat. 336.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1981a, 12203 of this title; title 2 section 1311; title 3 section 411.

SUBCHAPTER II—PUBLIC SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300d-52, 1437c-1, 9918, 12201, 12203, 12204, 12206 of this title; title 2 section 1331; title 29 section 792.

PART A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 12206 of this title.

§ 12131. Definitions

As used in this subchapter:

(1) Public entity

The term "public entity" means—

- (A) any State or local government;
- (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
- (C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of title 49).

(2) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability

¹ See References in Text note below.

plied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I of this chapter, in transportation covered by subchapter II or III of this chapter, or in places of public accommodation covered by subchapter III of this chapter.

(c) Insurance

Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter¹ I and III of this chapter.

(d) Accommodations and services

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(Pub. L. 101-336, title V, § 501, July 26, 1990, 104 Stat. 369.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (a), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title V of the Rehabilitation Act of 1973 is classified generally to subchapter V (§ 790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

¹So in original. Probably should be "subchapters".

Title IV of this Act, referred to in subsec. (c), means title IV of Pub. L. 101-336, July 26, 1990, 104 Stat. 366, which enacted section 225 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and amended sections 152, 221, and 611 of Title 47.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

§ 12202. State immunity

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in¹ Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

(Pub. L. 101-336, title V, § 502, July 26, 1990, 104 Stat. 370.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

§ 12203. Prohibition against retaliation and coercion

(a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) Remedies and procedures

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.

(Pub. L. 101-336, title V, § 503, July 26, 1990, 104 Stat. 370.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 sections 791, 793, 794.

§ 12204. Regulations by Architectural and Transportation Barriers Compliance Board

(a) Issuance of guidelines

Not later than 9 months after July 26, 1990, the Architectural and Transportation Barriers Com-

¹So in original. Probably should be "in a".

so would produce unpre-
dictable benefits that employ-
ers would be required to
provide. The court stated, "[s]uch an inter-
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of the words, but also with
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tory scheme of workers'
DeBusk, 342 Md. at 440.

permitting the use of the
when permanent total dis-
ability is determined, rather than the
incident, leads to increased
delay, and inquiries into
of what is termed vested
rights. Petitioner pleads that
the date of permanent
disability is the date of permanent
disability. There needs to be
a finding by the Commission, which may
be on regarding whether the
date was ascertained correctly.
The court, "[t]he date of an accident
may be externally verified
without a fact-finding

is of dealing with, and
of determining, the
was addressed by the
appeals in *Fleming*, 113
A.2d 1161. *Fleming* is
the present case, in that both
involve the interpretation of which statute
governs workers' compensation
benefits. In *Fleming*, the statute in
effect at the time of the injury in 1984
provided that the case was to be
decided by the court. The court refused to reach
the question of interpretation because
"it is the law in effect at the time of the
accidental injury in *Fleming*, 113 Md.App.
162. The court, in reaching its
conclusion, cited a number of cases
in which the date of injury was
determined. *Fleming*, 113 Md.App.
162 (1982); *Mutual One*, 205 Md.
100 (1991).

A.2d at 1164. The court did state, howev-
er, that despite these cases "it is important
for practitioners and courts to be cognizant
of the statutory genesis of the concept that
the law in effect at the time of the injury
applies. Departure from the statute has
the potential to raise certain red herrings
such as the issue of vested rights." *Id.*

**JUDGMENT AFFIRMED, WITH
COSTS.**



361 Md. 107

John P. MASTANDREA, et ux.

v.

John C. NORTH, II.

No. 119, Sept. Term, 1999.

Court of Appeals of Maryland.

Oct. 10, 2000.

Chesapeake Bay critical area commis-
sion sought review of county board of ap-
peals' grant of variance from critical area
regulations for brick-in-sand pathway de-
signed for wheelchair access for landown-
er's daughter on residential property with
frontage on creek. The Circuit Court, Tal-
bot County, William S. Horne, J., reversed.
Landowners appealed. After issuance of
a writ of certiorari, the Court of Appeals,
en banc, held that: (1) pathway consti-
tuted a reasonable modification to relevant
zoning ordinance requirement, and (2) evi-
dence supported grant of variance.

The judgment of circuit court reversed
and remanded with directions.

Zoning and Planning §570

Whether Americans with
Disabilities Act (ADA) or local zoning ordi-

Furley v. Warren-Ehret Co.,
195 Md. 339, 347-48, 73 A.2d 497 (1950).

nance authorizing "reasonable accommoda-
tions" for benefit of disabled citizens in
zoning matter was source of legal authori-
ty for county board of appeals' consider-
ation of reasonable accommodations to a
disabled person in a variance proceeding
was not required to be resolved in case in
which board granted variance from Chesa-
peake Bay critical area regulations for
brick-in-sand pathway designed for wheel-
chair access on landowners' residential
property that had frontage on creek,
where critical area commission conceded
that board had the abstract legal authority
to grant a variance as a reasonable accom-
modation to a disabled person. 42
U.S.C.A. §§ 12131-12134.

2. Zoning and Planning §502.1

Brick-in-sand pathway designed for
wheelchair access for landowners' daugh-
ter on residential property in Chesapeake
Bay critical area constituted a reasonable
modification to relevant zoning ordinance
requirement and enabled such a disabled
person to enjoy waterfront within critical
area buffer equally with a non-disabled
person.

3. Zoning and Planning §745.1

Court of Appeals' role in reviewing
whether county board of appeals, as ad-
ministrative agency, correctly reached con-
clusions required by zoning ordinance for
grant of variance in Chesapeake Bay criti-
cal area buffer was precisely the same as
that of circuit court; that meant that Court
was required to review administrative de-
cision itself.

4. Zoning and Planning §607

For its conclusions to be "fairly debat-
able" in process of judicial review, county
board of appeals' decision to grant vari-
ance must have been based on substantial
evidence.

5. Zoning and Planning §709

Under substantial evidence test for
reviewing county board of appeals' grant

195 Md. 339, 347-48, 73 A.2d 497 (1950).

of variance, court may not substitute its judgment on question whether the inference drawn is right one or whether a different inference would be better supported; test is reasonableness, not rightness.

6. Zoning and Planning §502.1

County board of appeals was not required to consider whether denying variance from Chesapeake Bay critical area regulations would have denied landowners a reasonable and significant use of their entire lot, in case in which landowners sought to validate existing brick-in-sand pathway designed for wheelchair access for landowners' daughter on residential property with frontage on creek; rather, board was required to consider whether landowners, in light of their daughter's disability, would be denied a reasonable and significant use of waterfront of their property without access that path provided.

7. Zoning and Planning §539

Evidence of soil composition and natural slope of landowners' property fronting creek in Chesapeake Bay critical area supported county board of appeals' finding, in support of grant of variance from critical area regulations for brick-in-sand pathway designed for wheelchair access to waterfront, that there was a special condition or circumstance unique to landowners' lot that would cause an unwarranted hardship if landowners were required to comply with impervious area buffer requirement of critical area program; without pathway, landowners' daughter, who used wheelchair, would not have been able to access reasonably the rear yard, view wildlife along water's edge, or participate in shoreline-oriented activities.

8. Zoning and Planning §539

Evidence supported county board of appeals' finding, in support of grant of variance from Chesapeake Bay critical area regulations for brick-in-sand pathway designed for wheelchair access to waterfront on landowners' property with front-

age on creek, that a literal interpretation of zoning ordinance governing variance for property in critical area would deprive landowners of rights commonly enjoyed by others in critical area; without path within critical area buffer, landowners' daughter, who used wheelchair, could not enjoy waterfront property because of risks posed by property's natural slope and soil composition.

9. Zoning and Planning §539

Evidence supported county board of appeals' finding that granting variance from Chesapeake Bay critical area regulations for brick-in-sand pathway designed for wheelchair access to waterfront on landowners' property with frontage on creek would not confer a special privilege on landowners; granting variance simply put landowners' daughter, who used wheelchair, in a similar position as occupants of other properties in same zone who were able to enjoy their property without such a wheelchair-accessible path.

10. Zoning and Planning §539

Evidence in form of several letters from medical personnel supported county board of appeals' finding, in support of grant of variance from Chesapeake Bay critical area regulations for brick-in-sand pathway designed for wheelchair access to waterfront on landowners' property with frontage on creek, that paths were the least objectionable means to accommodate disability of landowners' daughter and to provide her with a reasonable use of family property.

11. Zoning and Planning §539

Evidence supported county board of appeals' conclusion, in support of grant of variance from Chesapeake Bay critical area regulations for brick-in-sand pathway designed for wheelchair access to waterfront on landowners' property with frontage on creek, that granting variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and that granting of variance would be

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12. Zoning

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in harmony with general spirit and intent of critical area law, county critical area plan, and regulations adopted in ordinance; although path exceeded that which was required normally to provide direct access to pier on property, the excess was minimal, and path was actually three times as permeable as surrounding lawn.

Zoning and Planning §502.1

Factor that variance from Chesapeake Bay critical area regulations be in "harmony with the general spirit and intent of the Critical Area Law" is not the most important of the variance factors; other factors provide illumination for the primary unmitigated hardship analysis.

Zoning and Planning §539

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Evidence supported county board of appeals finding that brick-in-sand pathway in Chesapeake Bay critical area was in harmony with spirit and intent of zoning ordinance governing variances for property within critical area; although paths created some 6000 square feet of new impermeable surface area within buffer, evidence indicated that the brick-in-sand path was actually three times as permeable as surrounding natural lawn, and that much of the increase in runoff from the other brick-in-sand pathways was mitigated by land-

Zoning and Planning §502.1

intent of zoning ordinance governing variances for property within Chesapeake Bay critical area is aimed at the cautious and thoughtful consideration and, where appropriate, granting of variances within the ordinance on a case-by-case basis.

Zoning and Planning §489

variances for property within Chesapeake Bay critical area are appropriate where applications meet critical area requirements and, where necessary, create reasonable accommodations for needs of dis-

David R. Thompson (Brynja M. Booth of Cowdrey, Thompson & Karsten, P.A., on brief), Easton, for appellants.

Marianne D. Mason, Asst. Atty. Gen. (J. Joseph Curran, Jr., Atty. Gen., on brief), Annapolis, for appellee.

Argued before BELL, C.J., and ELDRIDGE, RODOWSKY, RAKER, WILNER, CATHELL and HARRELL, JJ.

HARRELL, Judge.

We issued a writ of certiorari on our own initiative in this appeal,¹ before it was considered by the Court of Special Appeals, primarily to consider the question of whether Title II of the Americans With Disabilities Act (42 U.S.C. §§ 12131-12134) applies to the administration and enforcement of the Talbot County Zoning Ordinance (the Zoning Ordinance or Z.O.), and specifically its provisions governing variances for property within the Chesapeake Bay Critical Area lying within Talbot County. Because of a facet of the pertinent legislative history revealed only after we agreed to consider this case, we shall not answer this question; instead, we shall reverse, on a different ground, the judgment of the Circuit Court for Talbot County, which had reversed the grant of the variance at issue in this matter by the Board of Appeals of Talbot County (the Board). In so doing, we also conclude that the Board's grant of the variance was supported by substantial evidence on the record before the Board.

I.

Dr. and Mrs. John P. Mastandrea (Appellants) purchased in December 1992 an approximately 12 acre undeveloped, but subdivided, lot with frontage on Glebe Creek in Talbot County. Over the next 4 years or so, the Mastandreas, for themselves and their family, constructed on the lot a home, swimming pool, tennis court,

pier, garden, and an extensive set of pathways connecting these improvements. Included in the pathway system, installed personally in 1996 by Dr. Mastandrea and his three eldest sons, were a brick-in-cement path connecting the house and pier and a brick-in-sand path roughly parallel to and within 20-25 feet of the bulkheaded edge of Glebe Creek. A primary reason given for installing the extensive, connecting path system was that the Mastandreas' daughter, Leah, suffered from muscular dystrophy (a progressively degenerative neurological and muscular disease) and was confined to a motorized wheelchair for mobility purposes. In order that she might access all of the property's amenities, and partake of them to some extent with her siblings, the pathways were designed to facilitate her movement by wheelchair. Much of the design and construction of the improvements on the lot also considered wheelchair access as an integral goal.

The Mastandreas installed the pathways without the benefit of a required building permit from Talbot County (or any form of prior governmental blessing or review) and heedless of the fact that a portion of the pathways were placed within the 100 foot buffer of the Chesapeake Bay Critical Area² adjacent to Glebe Creek. The brick-in-cement portion of that path within the Critical Area buffer comprised 711 square feet of surface area. The brick-in-sand portion covered 4486 square feet of the surface of the Critical Area buffer. Together, the surface areas of these two components of the overall path system represented 4% of the total Critical Area buff-

er identified on the lot. Discovery by the authorities of the unauthorized installation led, among other things, to the Mastandreas filing on 29 January 1998 a variance application with the Board in an effort to validate the pathways constructed within the Critical Area buffer.³

Zoning Ordinance § 19.12(b)(5)(iii)(b) defines the Critical Area buffer as being "at least 100 feet wide, measured landward from the Mean Highwater Line of tidal waters and tidal wetlands, and from tributary streams."⁴ The need for a variance for those portions of the pathways located within 100 feet of the shore of Glebe Creek is necessitated by Z.O. § 19.12(b)(5)(iii)(c), which prohibits "[n]ew development activities, including structures, roads, parking areas and other impervious surfaces" in the buffer.⁵

At the time the Mastandreas filed their variance application, Z.O. § 19.14(b)(3)(iv) required the following favorable findings to be made by the Board before it could grant a variance from the Critical Area regulations:

(iv) In order to vary or modify the Talbot County Critical Area provisions of this Ordinance, the Board of Appeals must determine that the application meets all of the criteria set forth below:

[a] Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this Ordinance would result in unwarranted hardship to the property owner;

4. The Mastandreas do not challenge that the pathways in this case are installed within the Critical Area buffer on their lot.

5. The Chesapeake Bay Critical Area Commission, the body that superintends compliance with the State regulatory scheme for the Critical Area, interprets the "impervious area" prohibition as including the types of pathway construction involved in the present case. The Mastandreas do not challenge that interpretation.

2. The State statutory background creating the Chesapeake Bay Critical Area regulatory scheme, which pre-existed the installation of the pathways in the present case, and how it is carried out through the land use regulatory schemes of local political subdivisions, is presented generally in *White v. North*, 356 Md. 31, 36-38, 736 A.2d 1072, 1075-76 (1999).

3. A special exception was also sought. The disposition of that application, however, is not at issue in the present matter.

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A literal interpretation of this
 Ordinance will deprive the property
 owner of rights commonly enjoyed by
 other property owners in the same
 zone.

The granting of a variance will
 confer upon the property owner
 a special privilege that would be
 denied by this Ordinance to other
 owners of lands or structures within
 the same zone;

The variance request is not
 based on conditions or circumstances
 which are the result of actions by the
 property owner nor does the request
 arise from any condition relating to
 land or building use, either permitted
 or nonconforming, on any neighboring
 property;

The granting of a variance within
 the Critical Area will not adversely
 affect water quality or adversely im-
 pact fish, wildlife, or plant habitat and
 the granting of the variance will be in
 harmony with the general spirit and
 intent of the Critical Area Law, the
 Talbot County Critical Area Plan and
 the regulations adopted in this Ordinance;

The variance shall not exceed the
 minimum adjustment necessary to re-
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 4(b)(3)(iii) required the following find-
 ings to be made before a variance could be
 granted with regard to property not implicat-
 ing Critical Area regulation:

Certain unique physical characteristics
 exist, such as unusual size or shape of the
 property or extraordinary topographical
 conditions, such that a literal enforcement
 of the provisions of this Ordinance would
 result in practical difficulty or unreasonable
 hardship in enabling the applicant to devel-
 op the property;

Area Law, the Talbot County Critical
 Area Program and the Critical Area
 provisions of this Ordinance.^[6]

At the Board's 11 May 1998 hearing on
 the Mastandreas' application, the appli-
 cants, in support of their principal theme
 that the variance should be granted as a
 reasonable accommodation of Leah's dis-
 ability so that she could access the pier
 and enjoy the shoreline of Glebe Creek,
 mustered both testimony and exhibits.
 They explained that the pathways were
 located to allow a wheelchair to get close
 enough that Leah could enjoy the water-
 front, but not so close as to be dangerous.
 According to the Mastandreas, the natural
 slope and the soil composition of the lot
 near the shoreline (except for the direct
 pier access) did not permit wheelchair ac-
 cess directly to the waterfront. Placing
 the pathways outside the 100 foot buffer,
 however, would deny a wheelchair occu-
 pant access to and enjoyment of the wa-
 terfront, they contended. The pathways
 permitted Leah to enjoy the natural and
 recreational aspects of her family's water-
 front lot and were the only means by
 which Leah could accompany her brothers
 and sisters on walks and other activities
 on the lot. Mrs. Mastandrea testified that
 her daughter's ability to have access to the
 waterfront is one of the few pleasures that
 she still is able to enjoy due to the physi-
 cal effects of her disorder.

The (brick-in-concrete) pier access path-
 way was designed to prevent a wheelchair
 from gaining momentum on the natural
 downslope from the house to the water. A

[b] The granting of the variance is not
 based upon circumstances which are self-
 created or self-imposed;

[c] Greater profitability or lack of knowl-
 edge of the restrictions shall not be consid-
 ered as sufficient cause for a variance;

[d] The granting of the variance will not
 be contrary to the public interest and will
 not be a deterrent to adjacent or neighbor-
 ing properties; and

[e] The variance shall not exceed the mini-
 mum adjustment necessary to relieve the
 practical difficulty or unreasonable hard-
 ship.

pathway constructed in a straight line from the house to the pier, without the slope break provided by the Mastandreas' construction, would create a dangerous situation for a person confined to a wheelchair.

Dr. Mastandrea testified that in constructing the brick-in-sand pathway parallel to Glebe Creek his sons removed about six inches of turf, surface soil, and clay, and replaced it with three to five inches of sand. An environmental consultant, Ronald Gatton,⁷ testified that he was familiar with the Mastandreas' property and the intent of the Critical Area laws to reduce the amount of runoff into the Chesapeake Bay and its tributaries.⁸ Mr. Gatton testified that the soil of the lot was one of the heaviest clay soils that he had ever tested. He conducted an infiltration test on the brick-in-sand path and determined that water permeated the brick-in-sand pathway faster than the surrounding undisturbed soil, making the path three times as permeable as the surrounding lawn. Mr. Gatton stated that because the natural soil conditions in the area tended to be very stiff, with a "plastic" quality, it was his opinion that the pathway parallel to the creek actually intercepts much of the runoff from the lawn between the house and the path before entering Glebe Creek.

Dr. Mastandrea explained that during the initial construction of the home he removed a number of trees, mainly from

7. The surname of this witness was spelled "Gattol" in the transcript of the Board's hearing. We shall adopt the spelling "Gatton," as used in the parties' briefs.

8. Section 9-1808 of the Annotated Code of Maryland provides, in pertinent part:

(b) *Goals of Program.*—A [Critical Area] program shall consist of those elements which are necessary or appropriate:

- (1) To minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- (2) To conserve fish, wildlife, and plant habitat; and

the shoreline, to allow bulkheading. Prior to bulkheading, the shoreline was eroding under the bordering trees. The Mastandreas replaced the removed trees and vegetation with approximately 100 eight-to-twelve foot trees and approximately 1000 three-foot seedlings planted throughout the lot. Overall, they installed approximately 2000 new plantings on the property.

The Critical Area Commission (the Commission)⁹ presented one witness in opposition to the variance request. Mr. Gregory L. Schaner, a Natural Resources Planner for the Commission, opined that the requirements for granting a variance were not met by the Mastandreas. Mr. Schaner re-stated the position of the Commission previously set forth in a 9 April 1998 letter to the Talbot County Planning Commission, that the Commission recommended denial of the variance request and that the Mastandreas be required to remove all portions of the pertinent pathways, except for an immediate perpendicular access from the house to the pier. As to the house-to-pier connection, Mr. Schaner recommended that the Board require that the Mastandreas remove all portions of the pathway, including the circular, wheelchair "break" areas designed to reduce a wheelchair's momentum on the way toward the pier, and suggested that the Board allow only a single, straight-line path from the house to the pier. He acknowledged that the Commission had not conducted any

- (3) To establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

9. Appellee in this case, John C. North, II, is the Chair of the Commission. As such, he is standing, on behalf of the Commission, to initiate judicial review proceedings regarding local land use actions, such as the present one, where questions involving the enforcement of the Critical Area regulations are implicated. See Md. Code (1974, 1990 Repl. Vol. 1999 Suppl.), Natural Resources Art. 1812(a).

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that there were, at that time, no
visions in the Critical Area regulations
(or county) or the Z.O. variance pro
expressly taking into account hand
access considerations.

Board, in split decisions rendered
July 1998, voted to grant legitimizing
for the existing pathway from
house to the pier (by a 4-1 vote) and
the existing pathway parallel to Glebe
Creek (by a 3-2 vote). Essentially, the
majority in each instance concluded
the paths provided reasonable access
to the waterfront for handicapped persons
and were reasonable accommodations for
Leah's disability. The Board majority was
impressed also with the mitigation effects
of the Mastandreas' plantings and the
disability enhancement of the brick-in
pathway. Accordingly, the Board
made written findings on 21 October 1998
favorable to the Mastandreas' application,
as required by Z.O. § 19.14(b)(3)(iv).

The Commission (Appellee) timely
sought judicial review of the Board's deci
sion in the Circuit Court for Talbot Coun

10. For this contention, the Mastandreas rely
on 28 C.F.R. § 35.130(b)(7) (1999); see *infra*
note 22 and accompanying text.

11. We note that the Mastandreas made scant
mention of the ADA before the Board. In
fact, they directed our attention to only the
following reference made by their counsel in
closing argument before the Board on 11 May

12. It is true that the Americans with Disabil
ities Act which requires that the public and
public permitting agencies and that every
body involved with public matters make
reasonable accommodations to the disabled
and we all know about that. But it's very
difficult for the lawyers technically to say, oh,
the Americans with Disabilities Act only
applies to commercial ventures, to places of
public accommodation. This is a private
residence so don't dare accommodate the
people that live there even if it has zero
impact on the Bay which is the testimony
before you tonight. No one's talked about

ty. The Mastandreas, in their memoran
dum of law supporting affirmance of the
Board's decision, offered their now flag
ship legal argument that Title II of the
federal Americans With Disabilities Act
(ADA) not only applied to the Board's
consideration of their variance application,
but compelled its approval on the evidence
before the Board. In essence, the Mastan
dreas argued that public entities, such as
the Board, are required by the ADA to
make reasonable modifications to their pol
icies, practices, and procedures (such as
the Z.O. provisions prohibiting new imper
vious surfaces within the Critical Area
buffer), when necessary to avoid discrimi
nation on the basis of a disability, unless it
is shown that the modifications sought
would alter fundamentally the nature of
the service, program, or activity.¹⁰ There
fore, as Appellants' argument went, the
Board's grant of the variance on the rec
ord before it, especially in light of the
absence in the record of any contrary evi
dence that the variance would affirmative
ly harm the water quality of Glebe Creek
or the Critical Area buffer on the lot,
resulted in the reasonable accommodation
of Leah's disability, as directed by the
ADA and extant case law interpreting its
application to land use regulations.¹¹

the Federal Fair Housing Amendment and
the Federal Fair Housing Law. It is an
interesting law. It is a law that is designed
in the housing field to do the same thing
that the Americans with Disabilities Act
does in places of public accommodation
and to employers. And it says that it is
unlawful to discriminate or to otherwise
make unavailable or deny a dwelling to
somebody because of handicap. For the
purposes of this subsection, discrimination
includes a refusal to permit at the expense
of the handicapped person reasonable mod
ifications of existing premises to be occu
pied by such person. A refusal to make
reasonable accommodation in rules, poli
cies, practices, service when such accom
modations may be necessary to afford such
person equal opportunity to use and enjoy
the dwelling. And I submit to you that this
is a law that if we test this at the next level
or the level after that, there may well be a
judge who says to you all that the County
having a policy that it is prohibited from

Appellee's response to Appellants' ADA argument in the Circuit Court, delivered at oral argument on 4 June 1999, was that the ADA did not apply to the present case. The Commission asserted that the most that could be gleaned from the case law interpreting Title II was that "zoning authorities must make their decisions in a neutral manner, that is without regard to the disabilities of the applicant." The environmentally-justified, all-embracing prohibition against the development of new impervious surfaces within the Critical Area buffer was not a law that discriminated, argued the Commission's attorney. Moreover, as the argument continued, the ADA did not trump or compel the grant of variances in the present case merely because each resident of the house on the lot could not enjoy unfettered access to every part of the lot, i.e., "there is no . . . fundamental right to lateral shoreline access on the part of anyone with private property."¹²

By order dated 22 June 1999, the Circuit Court explained its judgment, in pertinent part, as follows:

Title II of the Americans With Disabilities Act (42 U.S.C. § 12132) has no application to this case, as the ADA only applies to places with public access, and

making a reasonable accommodation at a private residence like this, may be in violation of federal law.

The Board, in its written decision, did not refer to or rely expressly on the ADA, or the Fair Housing Law, to justify or explain its approval of the variance.

12. The Commission was referring to the ADA, not riparian rights law, in making this assertion.
13. Appellee does not question the Circuit Court's ruling as to the house-to-pier pathway. Therefore, that aspect of the Circuit Court's judgment is not before us.
14. We issued our writ of certiorari on 20 December 1999.
15. The substantive language of Z.O. § 19.14(b)(7), as adopted by Bill No. 701, was:

the ADA does not apply to zoning ordinance enforcement;

The Respondents have failed to satisfy the variance factors required by the Talbot County Zoning Ordinance Section 19.14(b)(3) for the brick-in-sand parallel pathway; and

The pathway from the home to the dock is permitted under the Talbot County Zoning Ordinance as a water-dependent structure, and as such, no variance is required for this pathway.

The Court ordered the removal of the brick-in-sand pathway in the Critical Area buffer parallel to Glebe Creek.

The Mastandreas appealed to the Court of Special Appeals. While that appeal was pending and shortly before we issued our writ of certiorari, the County Council of Talbot County enacted Bill No. 741 on 28 November 1999.¹⁴ Bill 741, which became effective on 24 January 2000, repealed and re-enacted, with amendments, a hitherto ineffective provision of the Z.O. (§ 19.4(b)(7)), adopted originally on 9 March 1999 as Bill 701, which purported to require reasonable accommodations for the needs of disabled citizens in the consideration of, among other zoning actions, variances.¹⁵ Bill No. 741 provided, in pertinent part, as follows:

(i) Notwithstanding any other provisions of this Ordinance, and without regard to the standards for appeals, variances or special exceptions set forth elsewhere in this Zoning Ordinance, the Board of Appeals and other permitting authorities and officials shall make reasonable accommodations for the benefit of disabled citizens in the consideration of any building permit, administrative appeal, special exception, or variance.

Bill No. 701 did not become effective, however, because the Commission on or about June 1999, pursuant to its authority under § 8-1809 of the Natural Resources Article of the Md. Code, refused to approve Bill No. 701 as an amendment to, or refinement of, Talbot County's Critical Area protection program embodied in the zoning ordinance, § 8-1809(a)(1).

BILL TO REPEAL AND RE-ENACT SECTION 19.14(B)(7), TITLE 19, ZONING, OF THE TALBOT COUNTY CODE, WITH AMENDMENTS TO ALLOW THE BOARD OF APPEALS TO MAKE REASONABLE ACCOMMODATION FOR DISABLED CITIZENS, TO ESTABLISH CRITERIA FOR DOING SO, AND FOR LIMITING THE ENVIRONMENTAL IMPACT OF ANY SUCH ACCOMMODATION IN THE CRITICAL AREA.

SECTION ONE: BE IT ENACTED by the County Council of Talbot County that Section 19.14(b)(7), Title 19, Zoning, of the Talbot County Code entitled "Reasonable Accommodation" shall be and is hereby repealed in its entirety and re-enacted as set forth herein.

(i) Reasonable Accommodation for the Needs of Disabled Citizens

(i) Purpose. Notwithstanding any other provision of this Ordinance, the Board of Appeals may make reasonable accommodations for the benefit of disabled citizens in the consideration of any final order or decision of the Planning Officer or any administrative appeal, special exception or variance. Reasonable accommodation for the needs of disabled citizens may be permitted in accordance with the evidentiary requirements set forth in paragraph (ii) of this Section. Reasonable accommodations may only be approved following a review and recommendation by the Planning Commission, and final approval and authorization after a public hearing before the Board of Appeals.

(ii) An applicant/appellant shall have the burden of demonstrating by a preponderance of the evidence that:

(a) The existence of a disability within the meaning of the Americans with Disabilities Act;

(b) Literal enforcement of the statute, ordinance, regulation, or other requirement would (1) result

in discrimination by virtue of such disability or (2) deprive the applicant/appellant of the reasonable use and enjoyment of the property;

[c] A reasonable accommodation would reduce or eliminate the discriminatory effect of the statute, ordinance, regulation, or other requirement or restore the applicant/appellant's reasonable use or enjoyment of the property;

[d] The accommodation requested will not substantially impair the purpose, intent, or effect of the statute, ordinance, regulation, or other requirement as applied to the property;

If the property is located in the Critical Area, the accommodation would:

[e] Be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation or other requirement; or

[f] Allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant/appellant.

(iii) The Board of Appeals shall determine the nature and scope of any accommodation under this section and may award different or other relief than requested after giving due regard to:

[a] The purpose, intent, or effect of any applicable statute, regulation, or ordinance;

[b] The size, location, nature, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.

(iv) Upon termination of the need for any accommodation, the Board of Appeals may require, as a condition of approval, that the property be restored to comply with all applica-

ble statutes, ordinances, regulations, or other requirements.

(v) Hearing Notice. Public notice of all applications and hearings shall be given in accordance with Section 19.14(h).

(vi) Site Visit. A majority of the members of the Board of Appeals shall be required to visit the site before conducting the public hearing. However, the decision shall be based upon the evidence of record.

(vii) Recommendation of the Planning Commission. Before making a decision on any application or appeal, the Board of Appeals shall obtain the recommendation of the Planning Commission. The Planning Commission's recommendation shall address the criteria in paragraph (ii) in this Section. The recommendation shall be considered by the Board of Appeals, shall become part of the record, but shall not be binding on the Board of Appeals. The Board may request from the Planning Commission such technical service, data, or factual information as may further assist the Board of Appeals in reaching a decision.

(viii) New application after denial. Following the denial of a request for a reasonable accommodation, no application for the same use on the same premises shall be filed within one (1) year from the date of denial,

16. The Commission, in its brief to this Court, essentially conceded that the Circuit Court, in its 22 June 1999 order, erred in these regards. The Commission stated that it

agrees that the trend of federal case law is that Title II of the ADA prohibits discrimination against disabled persons by a local government in the government's activities, including zoning. Respondent submits that, while the lower court's reasoning on these issues may have been flawed, the court's statements about the ADA were not dispositive of the central issue before the circuit court—that is, the propriety of the Talbot County Board of Appeals's granting

except on grounds of newly discovered evidence.

The Commission, in a letter to Talbot County, dated 7 January 2000, notified the County of its approval of Bill No. 741 as a "program refinement."

Our writ of certiorari was issued on the "strength" of Appellants' brief filed in the Court of Special Appeals on 3 December 1999. At the time of issuance of our writ on 20 December 1999, Appellee's brief was neither filed nor due in the intermediate appellate court. In Appellants' brief in the intermediate appellate court, no mention was made of the enactment on 23 November 1999 of Bill No. 741. In a footnote in that brief, passing mention was made of the enactment of Bill No. 701 and a copy of it was included in the companion record extract; however, it was noted that Bill No. 701 had been disapproved by the Commission. Accordingly, when the writ of certiorari was issued, we were unenlightened as to the enactment of Bill No. 741. Appellee's responsive brief filed later in this Court, and Appellants' subsequent reply brief, placed the legal effect of that enactment in play in this case.

II.

A.

As previously noted, the Mastandreas contend that the Circuit Court erred in concluding that Title II of the ADA is limited to places of public accommodation and does not apply to local land use regulatory actions.¹⁶ They argue that the

of a variance to the Critical Area Program. Even if the circuit court incorrectly interpreted the scope of the federal law, the lower court made the right decision on the record in this case.

Appellee's Brief at 17-18. Appellee's apparent concession may be well-founded. See *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 730 (9th Cir. 1999) (adopting the reasoning of the Second Circuit and holding that the ADA applies to local zoning decisions); *Innovative Health Systems, Inc. v. City of White Plains*, 117 F.3d 37, 44-46 (2d Cir. 1997) (concluding that zoning is an "activity" of a public entity to which

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and not Bill No. 741, governed the Appeals's consideration of the request and what reasonable accommodations must be made in light of Leah's disability. The foundation of Appellants' argument is grounded on two assertions: (1) the ADA pre-empts local legislation on the same subject matter, and (2) the provisions of Bill No. 741, which vest in the Board discretion to grant a variance in order to achieve a reasonable accommodation for a disabled person, conflict with provisions of the ADA, which require that the local governmental body make such accommodations under the circumstances presented in this case. As a secondary basis, Appellants contend that the standards established in Bill No. 741 are impermissibly more strict than those in Title II of the ADA and the interpretative regulations of the Department of Justice.¹⁷ Finally, the Mastandreas contend that Bill No. 741 is not applicable to the instant case, in the guise of curative law, because, given the effect of the ADA on the pre-existing Z.O. requirements, no defect or omission existed in the ordinance at the time of the Board's decision that required curative legislation. Asent from Appellants' arguments directed at Bill No. 741 is any reliance on consideration of its retrospective application, e.g.,

ADA applies), *aff'g*, 931 F.Supp. 222 (S.D.N.Y.1996); *Smith-Berch, Inc. v. Baltimore County*, 68 F.Supp.2d 602, 621 (D.Md. 1999) (applying the ADA to a zoning ordinance and finding that the county could not require a special hearing for the construction of a methadone clinic); *Dadian v. Village of Winnetka*, No. 98-C-3731, 1999 WL 299887, 1999 N.D.Ill. May 4, 1999 (same); *Discovery House, Inc. v. Consolidated City of Indianapolis*, 23 F.Supp.2d 997, 1003 (N.D.Ind.1999) (refusing to dismiss the case on the argument that the Discovery House was not denied the right of an "activity" as defined by Title II of the ADA, for zoning is an "activity" under the ADA); *San Diego Unified Port District v. San Diego*, 62 Cal.App.4th 501, 73 Cal.Rptr.2d 901 (1998) (noting that an anchorage site, a type of zoning decision, is subject to the ADA); *Trovato v. City of Manchester, New Hampshire*, 992 F.Supp. 493, 497 (D.N.H.1997) (concluding that Title II of the ADA applied to zoning decisions); see also

Arundel Corp. v. County Comm'rs of Carroll County, 323 Md. 504, 594 A.2d 95 (1991).

Even though there was scant reference to the ADA in the record before the Board and no express reliance on the ADA in the Board's written findings of fact and conclusions of law granting the variance, it is clear that the Board considered and relied on Leah's disability in its application of the Critical Area variance standards in Z.O. § 19.14(b)(3)(iv). The Board's pertinent conclusions of law stated:

2. There are special conditions or circumstances which exist that are peculiar to the subject property such a literal enforcement of the provisions of the ordinance would result in unwarranted hardship to the property owner. The property is a large parcel with a substantial amount of waterfront. A walkway only to the pier on this property does not provide reasonable access to the entire waterfront area of the property if a walkway is the only means by which a resident can gain access to the waterfront. Part of the reasonable use of such a property is access to the entire waterfront, not just the pier. The lateral walkways within the buffer providing such access to a handicapped resident of

Oak Ridge Care Center, Inc. v. Racine County, 896 F.Supp. 867, 873 (E.D.Wisc.1995) (determining that "[e]ven if zoning decisions are not an activity, a service, or a program, the [ADA's] catch-all phrase protects [individuals] from being subjected to discrimination by any such [governmental] entity"); *Pack v. Clayton County*, No. 1:93-CV-8365-RHH, 1993 WL 837007, at *8 (N.D.Ga.1993) (noting the ADA prohibits local governments from discriminating on the basis of disability in a zoning permit procedure), *aff'd*, 47 F.3d 430 (11th Cir.1995).

17. Appellants conversely assert that the ineffective Bill No. 701 would not have been preempted by, or in conflict with, the ADA because the provisions of Bill No. 701 were expressed as mandatory ("shall make reasonable accommodations for the benefit of disabled citizens in the consideration of any variance").

the property amount to only about four percent of the entire surface area of the buffer, an amount which can easily be offset by mitigating plantings on the property and the Applicant appears to have already mitigated much of the potential increase in runoff from the lateral walkway by existing and planned landscaping. (The property was previously cultivated annually as farm property.)

3. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone. Access to the waterfront of the property for the Applicant's daughter is limited by her disability. Most people fortunate enough to live on waterfront property have access to the entire waterfront without having special walkways disturbing the buffer zone vegetation. The special circumstances of this resident will deprive her of that access commonly enjoyed by others.

4. The granting of the variance will not confer upon the property owner any special privilege that would be denied by the ordinance to other owners of lands or structures within the same zone. The walkways constructed by the Applicants are a reasonable accommodation for the special circumstances of the Applicants and should be granted to all owners of land in similar circumstances.

5. The variance request is not based on conditions or circumstances which are the result of actions by the property owner. By their actions, the Applicants purchased the property and placed the walkways where they are. However, they simply desire equal access to as much of the enjoyment of the property for their handicapped daughter as reasonably possible. The walkways are the least objectionable means to that end to accommodate her special circumstance which, of course, is not a result of their

18. The Commission maintains, however, that the grant of the variance in this case was not

choice. The request does not arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

6. The proposed variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat. The granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area Plan and the regulations adopted in the Ordinance. While the walkways exceed that which is normally required to provide direct access to a pier on the property the excess is minimal and can easily be mitigated.

[1] In this appeal, neither side argues that the Board should not have considered Leah's disability. Rather, Appellant would have us affirm the Board because on this record, the ADA compels that result. Appellee, alternatively, would have us declare as moot the issue of the ADA application and effect on the case because Bill No. 741 "answers the question of whether the ... Board ... may make reasonable accommodation to the zoning laws to accommodate a citizen with a disability under the [ADA]." Under the arguments offered by either side in this case, the Board's legal ability to do what it did is not in question. Only the wellspring of that authority is quarreled over. The Mastandreas, as the prevailing parties in the administrative proceeding, will gain no additional or different relief if they are correct in their appellate arguments. The Commission concedes that the Board has the abstract legal authority to grant a variance as a reasonable accommodation to a disabled person.¹⁸ Consequently, there is no actual case or controversy as to the flagship issue in this case for us to decide. Because we do not exist merely to resolve academic disputes between appellants and respondents, *County Comm'rs v. Secretary of Health and Mental Hygiene*, 302 Md. 560, 489 A.2d 1127 (1985) (noting "academic

merited on the record. We shall address the argument *infra*.

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do not render advisory opinions on "hypothetical or abstract propositions"); *Attorney General v. Anne Arundel County Sch. Contractors Ass'n.*, 286 Md. 324, 328, 720 A.2d 749, 752 (1979) (same), no matter how interesting, the question of the source of legal authority for the Board's consideration of reasonable accommodations to a disabled person in a variance proceeding need not be resolved in this case.

Bill No. 741, within its scope, aims at the same purposes as Title II of the ADA.¹⁹ Specifically, Bill No. 741 authorizes the Board of Appeals to make reasonable accommodations for the benefit of disabled persons in the consideration of any final order or decision of the Planning Officer or any administrative appeal, special exception or variance; establishes criteria for doing so; and limits the environmental impact of any such accommodation in the District Area. Given that Bill No. 741 is consistent with the Board's grant of the

ADA, 42 U.S.C.A. § 12101(b) provides that the purpose of Title II of the ADA is:

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

The House Report accompanying the consideration and passage of the Americans With Disabilities Act explained that "Title II of the ADA specifies that no qualified individual with a disability may be discriminated against by a department, agency, special purpose district, or other instrumentality of a State or a local government." H.R. Rep. No. 485(II), at 6 (1990). Compare to the text of Bill No. 741, *supra* at pp. 685-86.

A qualified individual with a disability is defined by 42 U.S.C.A. § 12131(2) as:

...individual with a disability who, with or without reasonable modifications to rules,

Mastandreas' variance, we find it unnecessary to answer in this case the question of whether Title II of the Americans With Disabilities Act (42 U.S.C. §§ 12131-12134) applies to the administration and enforcement of the Talbot County Zoning Ordinance and, if applicable, would have compelled the Board's grant of the requested variance. Accepting for the purposes of argument only that the Mastandreas' disabled daughter has a legal right as asserted under Section 12131(c) of the ADA²⁰ and Z.O. § 19.14(b)(7)(ii)(b), recourse to the local ordinance is as far as this Court need look to vindicate that right in the context of this record.²¹

B.

Regardless of whether Title II of the ADA and/or Bill No. 741 applies to the present case, Appellee argues that the Mastandreas do not have a legal right under the ADA or Z.O. § 19.14(b)(7)(ii)(b)

policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

A review of the Act's legislative history defines disability as:

- (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (2) a record of such an impairment; or
- (3) being regarded as having such an impairment.

H.R. Report No. 485(I), at 64-65 (1990). The House Report specifically includes muscular dystrophy, the impairment from which Leah suffers, under the first prong. See *infra* note 20 for record evidence of Leah's impairment.

21. Two letters in the record attest to Leah's disability. One letter, dated 3 July 1997 from the Head of the Division of Pediatric Neurology at Henry Ford Hospital in Detroit, Michigan, lists the numerous symptoms of the "progressive, disabling muscular dystrophy known as myotonic dystrophy" from which Leah suffers. The second letter, dated 7 July 1997, confirms Leah's diagnosis and indicates her illness will "result[] in eventual confinement to a wheelchair...."

because they do not meet prongs two and three of the three-prong test provided in *Smith-Berch, Inc. v. Baltimore County*, 68 F.Supp.2d 602 (D.Md.1999), which requires a plaintiff attempting to establish disability discrimination in violation of Title II of the ADA to prove "(1) that he has a disability; (2) that he is otherwise qualified for the employment or benefit in question; and (3) that he was excluded from the employment or benefit due to discrimination solely on the basis of the disability." *Id.* at 620. According to Appellee, the Mastandreas ask us to hold that "a local zoning authority must disregard an environmental protection statute to permit a purely private recreational structure for a person who does not otherwise qualify for the governmental benefit (the zoning variance)." See Appellee's Brief, at 19.

The Mastandreas' reply that the court in *Smith-Berch* expounded that Title II "provides very little guidance by way of defining exactly what constitutes 'discrimination' within the meaning of the statute," thus necessitating the court's reliance on the Department of Justice's Title II implementing regulations.²² *Id.* Specifically, the court noted that the regulations provide that the ADA provision applies to "policies and practices that are neutral on their face, but deny individuals with disabilities an effective opportunity to participate." *Smith-Berch*, 68 F.Supp.2d at 620. The Mastandreas argue that Title II is intended, therefore, to cover neutral policies,

22. Under the regulations, a public entity, "in providing any aid, benefit, or service may not . . . [a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others" or "[o]therwise limit [such an individual] in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service." 28 C.F.R. § 35.130(b)(1)(ii), (vii). Furthermore, the regulations prohibit a public entity from "utiliz[ing] criteria or methods of administration . . . [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability." 28 C.F.R. § 35.130(b)(3)(i).

such as Z.O. § 19.14(b)(3)(iv), which have a disproportionate impact on disabled individuals. We address this argument, although declining to reach Appellants' flagship issue of the application *vel non* of the ADA, because Z.O. § 19.14(b)(7)(ii)(a) relies, by express incorporation, on the ADA's definition of what constitutes a "disability" and the implications that necessarily flow from that determination.

[2] The pith of the Mastandreas argument is that the Board of Appeals implicitly recognized the need to accommodate disabled persons despite restrictions imposed by the neutral Critical Area zoning criteria and that reasonable accommodations were possible without fundamentally altering the nature of the Critical Area program. We find this argument to be persuasive given the record evidence supporting the Board's conclusion that the pathway in question provides Leah with reasonable and significant use of the lot,²³ but does not impact adversely the Chesapeake Bay.²⁴ Given the unique dependence many disabled persons have on wheelchairs, the path constitutes a reasonable modification to the relevant zoning ordinance requirement and enables such a disabled person to enjoy the waterfront within the Critical Area buffer equally with a non-disabled person. Thus, we reiterate that, accepting for the purposes of argument only that the Mastandreas' disabled daughter has a legal right as asserted under the ADA and Z.O. § 19.14(b)(3)(iv).

Finally, the regulations require that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service program, or activity.²⁵ 28 C.F.R. § 35.130(b)(7). *Smith-Berch*, 68 F.Supp.2d at 620-21.

23. See *infra* "Unwarranted Hardship" discussion, pp. 691-93.

24. See *infra* "No Adverse Impact" discussion, pp. 694-95.

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C.

Maryland Rule 8-604(d) provides that the Court concludes that the substantial merits of the case will not be determined by affirming, reversing, or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In cases where the actions of an administrative body would be erroneous even if the correct standard had been applied to the evidence, it may be appropriate for a trial court to then direct agency action. See *Belvoir Farms v. North*, 355 Md. 259, 272 n. 5, 734 A.2d 227, 235 n. 5 (1999).

In this case, we find no practical reason to remand the case for further consideration by the Board. Review of the record and the Board's written findings of fact and conclusions of law makes clear that the Board took Leah's disability into consideration when making each required finding under Z.O. § 19.14(b)(3)(iv). By both accommodating Leah's needs and satisfying the requirements of the Zoning Ordinance, the Board acted within the scope of both Title II of the ADA and Bill No. 741. The Board, in effect, applied the correct standard in considering the Mastandreas variance application, regardless of which standard it considered. It appears the Board would have acted no differently had Bill No. 741 been in effect when the Board granted the variance. Therefore, there is no purpose to be served by a remand, if the Board's findings and conclusions are sustainable otherwise on the record before it.

III.

Our role in reviewing whether the Board, as an administrative agency, correctly reached the conclusions required by the Zoning Ordinance for the grant of a

variance in the Critical Area buffer "is precisely the same as that of the circuit court." *White v. North*, 121 Md.App. 196, 219, 708 A.2d 1093, 1105 (1998), *rev'd on other grounds*, 356 Md. 31, 736 A.2d 1072 (1999). This means we must review the administrative decision itself. See *Id.*

[4, 5] We have stated that "the correct test to be applied [to the judicial review of zoning matters] is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." *White v. North*, 356 Md. 31, 44, 736 A.2d 1072, 1079-80 (1999) (internal citation omitted). For its conclusions to be "fairly debatable," the Board's decision to grant the variance must have been based on substantial evidence. *Id.*, see also *Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979) (defining substantial evidence as both "such evidence as a reasonable mind might accept as adequate to support a conclusion" and "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached" (internal citations omitted)). Under the substantial evidence test, "[t]he heart of the fact-finding process often is the drawing of inferences made from the evidence.... The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness." *Annapolis Waterfront Co.*, 284 Md. at 398-99, 396 A.2d at 1089 (quoting 4 K. DAVIS, ADMINISTRATIVE LAW, § 29.05, at 137, 139 (1958)).

Z.O. § 19.14(b)(3)(iv)(a)—Unwarranted Hardship

The Commission argues that there was no special condition or circumstance unique to the land or structure that would cause an unwarranted hardship if the Mastandreas were required to comply with the impervious area buffer requirement of the

Talbot County Critical Area Program embodied in Z.O. § 19.12(b)(5)(iii)(c). Specifically, the Commission contends that the Mastandreas' desire to provide complete access along the shoreline of the property does not relieve them from this requirement. The Commission also argued that, "at most," the denial of the variance would cause the Mastandreas an "inconvenience," not an unwarranted hardship, because relocating the lateral pathways outside of the buffer area would not prevent a reasonable and significant use of the "entire" property.

In *White v. North*, we were asked whether the Anne Arundel County Board of Appeals properly granted the Whites a variance to construct a swimming pool in their backyard which, because of its slope, was within the extended Critical Area buffer provided for by the Chesapeake Bay Critical Area regulations. 356 Md. 31, 38, 736 A.2d 1072, 1076 (1999). After an extensive review of the Chesapeake Critical Area Program, we focused on Anne Arundel County Code Article 3, § 2-107, which governs the issuance of a Critical

Area variance and which lists a series of factors, similar to the ones in the present case, which an applicant must persuade the Board are satisfied.²⁵ *White*, 356 Md. at 44-49, 736 A.2d at 1080-82. We initially explained that the first factor, whether "strict implementation of the County's Critical Area program would result in an unwarranted hardship," was the determining consideration. *White*, 356 Md. at 48-52, 736 A.2d at 1080-84. We concluded that the other factors provided guidance for the unwarranted hardship analysis, and resolved that the question was not whether the Whites' variance request met every factor in Anne Arundel County Code § 2-107, but whether the information derived from all of those factors amounted to an unwarranted hardship. *Id.* Moreover, we added that forcing compliance with every individual factor might have unconstitutional taking implications.²⁶ *White*, 356 Md. at 49, 736 A.2d at 1082.

When discussing the unwarranted hardship standard in *White*, we relied on our previous analysis of a similar issue in *Belvoir Farms v. North*, 355 Md. 259, 734

25. Anne Arundel County Code Article 3, § 2-107 stated in relevant part:

(b) For a property located in the Critical Area, a variance to the requirements of the County Critical Area program may be granted after determining that:

(1) due to the features of the site or other circumstances other than financial considerations, strict implementation of the County's Critical Area program would result in an unwarranted hardship to the applicant;

(2) a literal interpretation of the Code of Maryland Regulations, Title 27, Subtitle 01, Criteria for Local Critical Area Program Development, or the County Critical Area Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the County;

(3) the granting of the variance will not confer on an applicant any special privilege that would be denied by COMAR, Title 27, Subtitle 01 or the County Critical Area Program to other lands or structures within the County Critical Area;

(4) the variance request:

(i) is not based on conditions or circumstances that are the result of actions by the applicant; and

(ii) does not arise from any condition relating to the land or building use, either permitted or non-conforming, on any neighboring property; and

(5) the granting of the variance:

(i) will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County's Critical Area; and

(ii) will be in harmony with the general spirit and intent of the County Critical Area program.

26. Specifically, we concluded that

[i]f total compliance with every specific requirement [of a zoning ordinance] were necessary, relief would be nearly impossible and serious "taking" questions might arise. It is our view that these specifically stated requirements are to be considered in the context of the entire variance ordinance. At the end that, when interpreted as a whole, either they are or are not generally met. *White v. North*, 356 Md. 31, 50, 736 A.2d at 1072, 1083 (1999).

227 (1999). There, we defined "unwarranted hardship" as "a denial of reasonable and significant use" of the land. *See, e.g., Roper Farms*, 355 Md. at 282, 734 A.2d at 200. In explaining this standard, we made clear that unwarranted hardship is a lesser standard than that required to prove an unconstitutional taking. *Id.* Moreover, we determined that "[w]hether a property owner has been denied reasonable and significant use of his property is a question of fact best addressed by the expertise of the Board of Appeals, not the courts." *Id.*

[6, 7] The Board in this case, therefore, did not have to consider whether denying the variance would have denied the Mastandreas a reasonable and significant use of the "entire" lot. Rather, the Board was required to (and did) consider whether the property owners, in light of their daughter's disability, would be denied reasonable and significant use of the waterfront of their property without the access that the path provided. There is substantial evidence in the record establishing that, without the path, a person in a wheelchair could not enjoy the waterfront portion of the property.²⁷

Evidence before the Board indicated that the soil composition of the Mastandreas property near the shoreline, "one of the heaviest clay soils" their expert "had never tested," does not allow handicap access to the waterfront.²⁸ The record indicates that the Commission neither offered any evidence to the contrary nor questioned the Mastandreas' expert witness on this point when he testified before the Board. The Commission did not offer such evidence apparently because it did not conduct any site-specific studies or collect a quantifiable adverse impact of the path on the Critical Area buffer or Little Creek. In other words, there is no evidentiary refutation by the Commission

See supra pp. 681-82.

William Sweitzer, a marine contractor engaged by the Mastandreas to install the pier and the bulkheads, testified that his backhoe,

on the record that would support its argument that the Mastandreas' property is not unique or "in any way different from other properties in the neighborhood or in the Talbot County Critical Area." *See Appellee's Brief*, at 23.

The record evidence supports the Mastandreas' assertion, and substantiates the Board's finding, that there was a special condition or circumstance unique to the lot. The record also supports the Board's finding that, without the pathway in question, Leah would not be able to access reasonably the rear yard, view wildlife along the water's edge, or participate in shoreline-oriented activities. In light of the evidence before the Board, we find no reason to question the presumed expertise of the Board in reaching the conclusions it did.

Z.O. § 19.14(b)(3)(iv)(b)—Commonly Enjoyed Rights

[8] The Commission suggests that the Board incorrectly determined that a literal interpretation of the Z.O. would deprive the Mastandreas of rights commonly enjoyed by others in the Critical Area. It argues that all property owners would be barred from constructing brick pathways within the Critical Area buffer and that denial of the Mastandreas' variance, therefore, would not deprive them of any rights commonly enjoyed by others in the Talbot County Critical Area.

We are unable to say that the Board unreasonably concluded that the Mastandreas were not in the same position as other property owners in the same zone because, without the path within the buffer, the Mastandreas, but most particularly, Leah, could not enjoy their waterfront property. Unlike able-bodied property owners, Leah would be unable to navigate the waterfront portion of the property

equipped "with aggressive tractor grid," was slipping and sliding on the ground during the construction. He described the soil adjacent to the creek as "greasy" when wet and difficult to grow grass on.

without the wheelchair-accessible path because of the risks posed by the property's natural slope and soil composition.

The Board recognized that a literal application of the Z.O. would deprive Leah of an ability to enjoy the property on which she resides as others in the area similarly situated may enjoy theirs without the need for a similar path. By providing a reasonable accommodation for Leah's special circumstances, the Board prevented discrimination by virtue of her disability and thereby provided her with a reasonable use and enjoyment of the property. Had Bill No. 741 been in effect at the time, the Board's action would be entirely consistent with the bill's purpose in permitting this reasonable accommodation to reduce the otherwise discriminatory effect of the Z.O. and to restore Leah's reasonable use and enjoyment of the property. Z.O. § 19.14(b)(7)(ii)(c).

*Z.O. § 19.14(b)(3)(iv)(c)—
Special Privilege*

[9] The Commission claims that there was no evidence before the Board to support its finding that granting the variance to the Mastandreas would not confer a special privilege on the Mastandreas. It argues that no one has the right to build the "most desirable, maximum access along the shoreline for every resident of the household." We find, however, that there was substantial evidence in the record upon which the Board could (and did) conclude reasonably that granting the variance would simply put Leah in a similar position as occupants of other properties in the same zone who were able to enjoy their property without such a wheelchair-accessible path. The path was a reasonable accommodation that may be granted to others in similar circumstances. Furthermore, we reiterate our conclusion that such a reasonable accommodation of Leah's disability would be consistent with Z.O. § 19.14(b)(7)(ii)(c) so as to reduce the otherwise discriminatory effect of the ordi-

nance and to restore Leah's reasonable use and enjoyment of the property.

*Z.O. § 19.14(b)(3)(iv)(d)—Actions Not
the Result of Property Owner*

[10] The Commission questions how the Board concluded that the variance was not based on conditions or circumstances that resulted from the Mastandreas' actions when the Board stated that "[b]y their actions the Applicants purchased the property and placed the pathways where they are." We believe the Commission misapprehends the language of this ordinance provision and the Board's conclusion. Leah's disability is an unfortunate, naturally-occurring condition. The Board stated that the special circumstances which necessitated the purpose for the path obviously "were not the result of the [Mastandreas'] choice." The Mastandreas' desire to provide wheelchair access to much of their property for their daughter is a circumstance which pre-dated construction of the actual path. There was substantial evidence in the record, in the form of several letters from medical personnel, on which the Board could have relied (and did rely) in reaching this conclusion. Based on this evidence, the Board properly concluded that the paths were the least objectionable means to accommodate Leah's disability and to provide her with a reasonable use of the family property. Z.O. § 19.14(b)(7)(ii)(f).

*Z.O. § 19.14(b)(3)(iv)(e)—
No Adverse Effects*

[11] The Commission suggests that the Board did not address the fact that "greater profitability or lack of knowledge of restrictions" is not a sufficient cause for granting a variance. The Commission is correct in the abstract. The Board did not discuss this factor, but it did not do so because this factor is not part of the Critical Area criteria. What the Commission mistakenly refers to is Z.O.

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§ 19.14(b)(3)(iii), which requires an application in the Non-Critical Area to meet the criteria. Specifically, Z.O.

§ 19.14(b)(3)(iii)(c) states, "[g]reater profitability or lack of knowledge restrictions shall not be considered as sufficient cause for a variance." Because the pathways in question are located within the Critical Area, the variance request as to it would be governed by the provisions of Z.O. § 19.14(b)(3)(iv), not the Non-Critical Area factor suggested by the Commission.

Zoning Ordinance § 19.14(b)(3)(iv)(e) is the appropriate criteria considered by the Board. This section states:

The granting of a variance within the Critical Area will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, the Talbot County Critical Area Plan and the regulations adopted in this Ordinance.

The Mastandreas presented the Board with ample evidence that the path would not have an adverse affect on the surrounding environment. The Board noted that although the creekside path exceeded that which is required normally to provide direct access to a pier on the property, the excess is minimal, amounting to less than 4% of the total land area within the buffer. Accepting that the brick-in-sand path is actually three times as permeable as the surrounding lawn, the Board also found that any effect the path may have was easily mitigated by the approximately 3000 new plantings on the property.

In contrast, the Commission provided the Board with no evidence that the placement of the brick-in-sand path at its specific location within the 100 foot buffer would affect adversely water quality or adversely impact fish, wildlife, or plant habitat. Specifically, the Board found that the Commission conducted no permeability run-off tests to support its contention that the pathway would have a negative impact. The Board, therefore, permissibly

decided that the path met the criteria in this section. Additionally, the evidence supporting the Board's decision is consistent with the criteria of Bill No. 741, as the brick-in-sand path on this record is no worse than environmentally neutral. Z.O. § 19.14(b)(7)(ii)(e).

Z.O. § 19.14(b)(3)(iv)(f)—Variance Does Not Exceed Minimum Adjustment

The Commission asserts that the Board adopted an oxymoronic concept of "minimal excess" in determining that the path could both "exceed that which is normally required to provide direct access to a pier on the property" and be considered "minimal" and easily mitigated. We read the Board's findings differently. First, the pier access mentioned by Appellee is not at issue. Second, the Board was presented with specific facts from which it could compare what shoreline access is normally permitted under the Critical Area criteria and what shoreline access the Mastandreas constructed within the Critical Area buffer to accommodate their disabled daughter. The relevant paths, those within the Critical Area buffer, constitute only 4% of the entire buffer area on the lot. The Board found that such a percentage could be described accurately as "minimal excess" or, if the Commission prefers, "the minimum adjustment necessary," to provide Leah with a reasonable and significant use of the property. In accordance with Bill No. 741, the path undoubtedly also would be found to be the minimal environmental changes necessary to meet Leah's physical limitations. Z.O. § 19.14(b)(7)(ii)(f).

Z.O. § 19.14(b)(3)(iv)(g)—In Harmony with Spirit and Intent of Zoning Ordinance

[12] The Commission makes several assertions regarding the Board's application of this factor of the Zoning Ordinance. First, the Commission argues that perhaps the most important of the seven variance factors is that the variance be in "harmony

with the general spirit and intent of the Critical Area Law." This hierarchal statement is not correct. As we observed earlier in our discussion of *White v. North*, *supra*, the other factors of a variance ordinance, apparently including the "harmony" factor here, provide illumination for the primary unwarranted hardship analysis.

[13-15] Second, the Commission argues that the Board's finding that the path is in harmony with the spirit and intent of the Zoning Ordinance is arbitrary and capricious. The foundation of its argument is that, when viewed with a broader perspective and considered in conjunction with the impact of other impervious structures within the buffer, granting the variance would violate Talbot County's intent to protect its Critical Areas. The Commission's argument in this regard is too extreme. With its logic, no variances would ever be granted for fear that, one day, they could have a negative cumulative effect on their environs. In our opinion, the intent of the Zoning Ordinance is aimed at the cautious and thoughtful consideration and, where appropriate, granting of variances within the Critical Area on a case-by-case basis. Under Talbot County law, such variances are appropriate when their applications meet the Critical Area criteria³⁰ and, where necessary, create reasonable accommodations for the needs of disabled citizens.

Although the Mastandreas' paths did create some 5000 square feet of new impervious surface area within the buffer, the evidence indicated that the brick-in-sand path was actually three times as permeable as the surrounding natural lawn, and that much of the potential increase in runoff from the other pertinent pathways was mitigated by landscaping. The Board's conclusion that these extensive mitigating factors do not impact adversely fish, wildlife, or plant habitat and are in harmony with the Zoning Ordinance's intent was supported by the record evidence. Furthermore, the Board's con-

clusions regarding these mitigating factors are in accordance with Bill No. 741, being "environmentally neutral" and not "substantially impair[ing]" the intent of the variance ordinance. Z.O. § 19.14(b)(7)(ii)(d).

CONCLUSION

In conclusion, we find that the Board considered all of the factors required under Talbot County Zoning Ordinance § 19.14(b)(3)(iv) and, after weighing the evidence before it, permissibly decided to make a reasonable accommodation of Leah Mastandreas' disability in granting the variance for the pathway in the Critical Area buffer parallel to Glebe Creek. Given the substantial evidence before the Board and the Board's application of the variance criteria to that evidence, we hold that there was no basis for the Circuit Court's reversal. The Mastandreas and the Board have met generally the requirements of the Talbot County Zoning Ordinance.

JUDGMENT OF THE CIRCUIT COURT FOR TALBOT COUNTY REVERSED; CASE REMANDED TO THE CIRCUIT COURT WITH DIRECTIONS TO AFFIRM THE DECISION OF THE BOARD OF APPEALS OF TALBOT COUNTY IN BOARD APPEAL NO. 1053; COSTS TO BE PAID BY APPELLEE.



30. See *supra* pp. 680-81, 685-86.



The ADA and City Governments: Common Problems

Introduction

Access to civic life by people with disabilities is a fundamental goal of the Americans with Disabilities Act (ADA). To ensure that this goal is met, Title II of the ADA requires State and local governments to make their programs and services accessible to persons with disabilities. This requirement extends not only to physical access at government facilities, programs, and events -- but also to policy changes that governmental entities must make to ensure that all people with disabilities can take part in, and benefit from, the programs and services of State and local governments. In addition, governmental entities must ensure effective communication -- including the provision of necessary auxiliary aids and services -- so that individuals with disabilities can participate in civic life.



Curb ramps providing access to streets and sidewalks are a basic city service.

One important way to ensure that Title II's requirements are being met in cities of all sizes is through self-evaluation, which is required by the ADA regulations. Self-evaluation enables local governments to pinpoint the facilities, programs and services that must be modified or relocated to ensure that local governments are complying with the ADA.

This document contains a sampling of common problems shared by city governments of all sizes that have been identified through the Department of Justice's ongoing enforcement efforts. The document provides examples of common deficiencies and explains how these problems affect persons with disabilities. The document is not intended to be comprehensive or exhaustive.



City programs held in this municipal gazebo are covered by the ADA.

For additional information about the Americans with Disabilities Act's Title II requirements, please contact the Department of Justice ADA Information Line. This free service provides answers to general and technical questions about ADA requirements and free ADA documents, such as Commonly Asked Questions about Title II of the Americans with Disabilities Act (ADA), Commonly Asked Questions about the Americans with Disabilities Act and Law Enforcement, Title II Highlights, Access for 9-1-1 and Telephone Emergency Services, the ADA Guide for Small Towns, and the ADA Standards for Accessible Design. You may reach the ADA Information Line at:

800-514-0301 (voice) or 800-514-0383 (TTY)

ADA information is also available on the Department's ADA Home Page on the World Wide Web at:

www.usdoj.gov/crt/ada/adahom1.htm

Issue: "Grandfather" Clause or Small Entity Exemption

Common Problem:

City governments may believe that their existing programs and facilities are protected by a "grandfather" clause from having to comply with the requirements of Title II of the ADA. Small municipalities may also believe that are exempt from complying with Title II because of their size.

Result:

Because city governments wrongly believe that a "grandfather" clause or a small entity exemption shields them from complying with Title II of the ADA, they fail to take steps to provide program

access or to make modifications to policies, practices, and procedures that are required by law. People with disabilities are unable to gain access to city facilities, programs, services, or activities because of a public entity's reliance on these common misconceptions.

Requirement:

There is no "grandfather" clause in the ADA. However, the law is flexible. City governments must comply with Title II of the ADA, and must provide program access for people with disabilities to the whole range of city services and programs. In providing program access city governments are not required to take any action that would result in a fundamental alteration to the nature of the service, program, or activity in question or that would result in undue financial and administrative burdens. This determination can only be made by the head of the public entity or a designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burden would result must be based on all resources available for use in a program. If an action would result in such an alteration or such burdens, a city government must take any other action that it can to ensure that people with disabilities receive the benefits and services of the program or activity. 28 C.F.R. § 35.150(a)(3).



Cities must remove barriers to provide alternative access to programs and services in existing facilities.

Similarly, there is no exemption from Title II requirements for small municipalities. While public entities that have less than 50 employees are not required to comply with limited sections of the Department of Justice's regulations, such as maintaining self-evaluations on file for three years and designating a grievance procedure for ADA complaints, no general exemption applies. All public entities, regardless of size, must comply with Title II's requirements. 28 C.F.R. § 35.104.

Issue: Program Accessibility

Common Problem:

City governments often have failed to ensure that the whole range of the city's services, municipal buildings, and programs meet Title II's program access requirements.

City governments are not required to take any actions that will result in a fundamental alteration or in undue financial and administrative burdens. 28 C.F.R. §§ 35.160-35.164.

Issue: Local Laws, Ordinances, and Regulations

Common Problem:

City governments may fail to consider reasonable modifications in local laws, ordinances, and regulations that would avoid discrimination against individuals with disabilities.

Result:

Laws, ordinances, and regulations that appear to be neutral often adversely impact individuals with disabilities. For example, where a municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district, installing a ramp to ensure access for people who use wheelchairs may be impermissible without a variance from the city. People with disabilities are therefore unable to gain access to businesses in the city.



City zoning policies were changed to permit this business to install a ramp at its entrance.

Requirement:

City governments are required to consider reasonable modifications to local laws, ordinances, and regulations that would avoid discrimination against individuals with disabilities. For example, it may be a reasonable modification to a zoning ordinance requiring a set-back of 12 feet from the curb to allow a business to install a ramp at its entrance. In addition, city governments may need to make exceptions to the enforcement of local laws, ordinances, and regulations. For example, a municipal ordinance banning animals from city health clinics may need to be modified to allow a blind individual who uses a service animal to bring the animal to a mental health counseling session. 28 C.F.R. § 35.130(b)(7).

Result:

People with disabilities are unable to participate in the activities of city government, such as public meetings, unable to attend city functions, and unable to gain access to the city's various programs and services. If a municipal building such as a courthouse is inaccessible, people with disabilities who use wheelchairs are unable to participate in jury duty, attend hearings, and gain access to other services, because doorways are too narrow, restroom facilities are inaccessible, and steps are the only way to get to all or portions of a facility.



D

A ramp was installed to provide access to the city activities conducted in this facility.

Requirement:

Title II requires city governments to ensure that all of their programs, services, and activities, when viewed in their entirety, are accessible to people with disabilities. Program access is intended to remove physical barriers to city services, programs, and activities, but it generally does not require that a city government make each facility, or each part of a facility, accessible. For example, each restroom in a facility need not be made accessible. However, signage directing people with disabilities to the accessible features and spaces in a facility should be provided. Program accessibility may be achieved in a variety of ways. City governments may choose to make structural changes to existing facilities to achieve access. But city governments can also pursue alternatives to structural changes to achieve program accessibility. For example, city governments can move public meetings to accessible buildings and can relocate services for individuals with disabilities to accessible levels or parts of buildings. When choosing between possible methods of program accessibility, however, city governments must give priority to the choices that offer services, programs, and activities in the most integrated setting appropriate. In addition, all newly constructed city facilities must be fully accessible to people with disabilities. 28 C.F.R. §§ 35.149, 35.150, 35.151, 35.163.

Issue: Historically Significant Facilities**Common Problem:**

City governments may believe that they have no duty to make changes to historically significant buildings and facilities to improve accessibility for people with disabilities.

Result:

Many city programs, services, and activities are conducted in buildings that are historically significant. In addition, many cities operate historic preservation programs at historic sites for educational and cultural purposes. If no accessibility changes are made at these facilities and locations, individuals with disabilities are unable to visit and participate in the programs offered. For example, people who use wheelchairs would not be able to reach the courtroom or clerk's office located in a historic nineteenth century courthouse if no physical changes are made to achieve access.

Requirement:

Historically significant facilities are those facilities or properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law. Structural changes to these facilities that would threaten or destroy the historical significance of the property or would fundamentally change the program being offered at the historic facility need not be undertaken. Nevertheless, a city must consider alternatives to structural changes in these instances -- including using audio-visual materials to depict the inaccessible portions of the facility and other innovative solutions.



An accessible side entrance was added to this historic facility.

If alterations are being made to a historically significant property, however, these changes must be made in conformance with the ADA Standards for Accessible Design, ("the Standards"), 28 C.F.R. Part 36, § 4.1.7, or the Uniform Federal Accessibility Standards, ("UFAS") § 4.1.7, to the maximum extent feasible. If following either set of standards would threaten or destroy the historical significance of the property, alternative standards, which provide a minimal level of access, may be used. This decision must be made in consultation with the appropriate historic advisory board designated in the Standards or UFAS, and interested persons should be invited to participate in the decision-making process. 28 C.F.R. §§ 35.150(b)(2); 35.151(d); Standards § 4.1.7; UFAS § 4.1.7. If these lesser standards would threaten or destroy historically significant features, then the programs or services conducted in the facility must be offered in an alternative accessible manner or location.

Issue: Curb Ramps

Common Problem:

City governments often do not provide necessary curb ramps to ensure that people with disabilities can travel throughout the city in a safe and convenient manner.

Result:

Without the required curb ramps, sidewalk travel in urban areas is dangerous, difficult, and in some cases impossible for people who use wheelchairs, scooters, and other mobility aids. Curb ramps allow people with mobility impairments to gain access to the sidewalks and to pass through center islands in streets. Otherwise, these individuals are forced to travel in streets and roadways and are put in danger or are prevented from reaching their destination.

Requirement:

When streets and roads are newly built or altered, they must have ramps wherever there are curbs or other barriers to entry from a pedestrian walkway. Likewise, when new sidewalks or walkways are built or altered, they must contain curb ramps or sloped areas wherever they intersect with streets or roads. While resurfacing a street or sidewalk is considered an alteration for these purposes, filling in potholes alone will not trigger the alterations requirements. At existing roads and sidewalks that have not been altered, however, city governments may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb, but they are not necessarily required to do so. Under program access, alternative routes to buildings that make use of existing curb ramps may be acceptable where people with disabilities must only travel a marginally longer route.



D

Curb ramps provide basic access at intersections and pedestrian crossings.

One way to ensure the proper integration of curb ramps throughout a city is to set a series of milestones for curb ramp compliance in the city's transition plan. Milestones are progress dates for meeting curb ramp compliance throughout the municipality. Milestones should occur on a regular basis throughout the course of the transition plan and must reflect a priority to walkways serving government buildings and facilities, bus stops and other transportation services, places of public accommodation, and business districts, followed by walkways serving residential areas. It also may be appropriate for a city government to establish an ongoing procedure for installing curb ramps upon request in both residential and nonresidential areas frequented by individuals with disabilities. 28 C.F.R. §§ 35.150(d)(2); 35.151(e). In setting milestones and in implementing a curb cut transition plan for existing sidewalks, the actual number of curb cuts installed in any given year may be limited by the fundamental alteration and undue burden limitations.

Issue: Effective Communication

Common Problem:

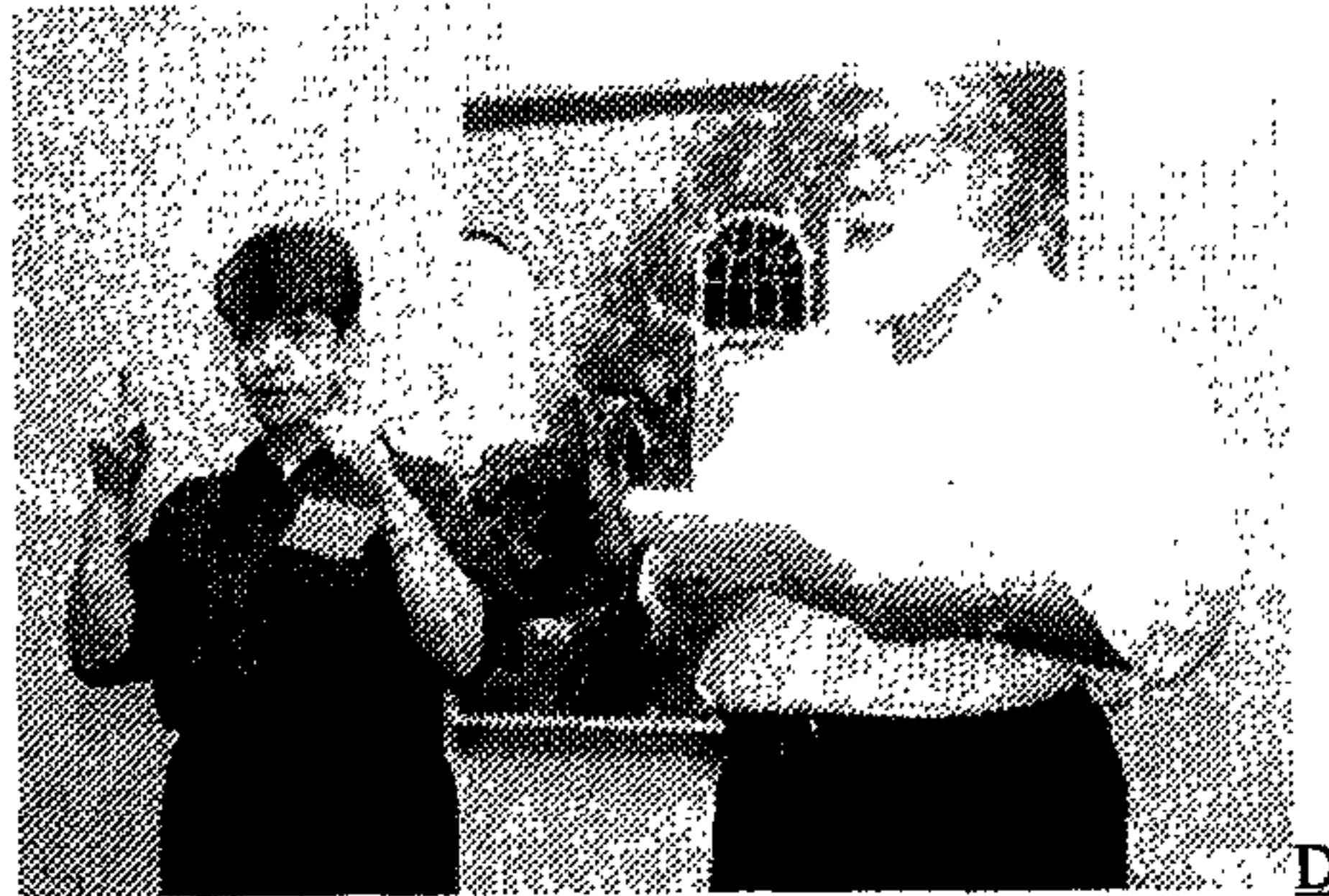
City governments often fail to provide qualified interpreters or assistive listening devices for individuals who are deaf or hard of hearing at public events or meetings. In addition, city governments often fail to provide materials in alternate formats (Braille, large print, or audio cassettes) to individuals who are blind or have low vision.

Result:

Individuals who are deaf or hard of hearing are unable to participate in government-sponsored events or public meetings and unable to benefit from city programs and services when they are not provided with appropriate auxiliary aids and services. Likewise, people who are blind or have low vision are unable to benefit from city government services when printed materials are the only means of communication available.

Requirement:

Title II requires that city governments ensure that communications with individuals with disabilities are as effective as communications with others. Thus, city governments must provide appropriate auxiliary aids and services for people with disabilities (e.g., qualified interpreters, notetakers, computer-aided transcription services, assistive listening systems, written materials, audio recordings, computer disks, large print, and Brailled materials) to ensure that individuals with disabilities will be able to participate in the range of city services and programs. City governments must give primary consideration to the type of auxiliary aid or service that an individual with a disability requests. The final decision is the government's.



A sign language interpreter at a public meeting may be needed to provide effective communication for people who are deaf.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved and the needs of the individual. For example, sign language interpreters are not required for all interactions with people who are deaf or hard of hearing. Employees can often communicate effectively with individuals who are deaf or hard of hearing through standard written materials and exchange of written notes. For simple transactions like paying bills or filing applications, these methods may be sufficient. For more complex or extensive communications, however, such as court hearings, public meetings, and interrogation by police officers, interpreters or assistive listening systems are likely to be necessary.

City governments should ensure that auxiliary aids and services are also provided for individuals who are blind or have low vision. Alternate formats, such as Brailled or large print materials, qualified readers, computer disks, or audio recordings are examples of appropriate auxiliary aids.

example, by allowing, in appropriate circumstances, arrestees who are deaf to be handcuffed in front of their bodies so that they can communicate with others and by allowing detainees access to their medication. 28 C.F.R. § 35.150(b)(7). (See Commonly Asked Questions about the Americans with Disabilities Act and Law Enforcement)

Issue: Self-Evaluation and Transition Plans

Common Problem:

City governments often have not conducted thorough self-evaluations of their current facilities, programs, policies, and practices to determine what changes are necessary to meet the ADA's requirements, and have not developed transition plans to implement these changes.

Result:

When self-evaluations are not conducted and transition plans not developed, city governments are ill-equipped to implement accessibility changes required by the ADA. Without a complete assessment of a city's various facilities, services, and programs, it is difficult to plan or budget for necessary changes, and the city can only react to problems rather than anticipate and correct them in advance. As a result, people with disabilities cannot participate in or benefit from the city's services, programs, and activities.

Requirement:

All city governments were required to complete a self-evaluation of their facilities, programs, policies, and practices by January 26, 1993. The self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements. Self-evaluations should consider all of a city's programs, activities, and services, as well as the policies and practices that a city has put in place to implement its various programs and services. Remedial measures necessary to bring the programs, policies, and services into compliance with Title II should be specified -- including, but not limited to: (1) relocation of programs to accessible facilities; (2) offering programs in an alternative accessible manner; (3) structural changes to provide program access; (4) policy modifications to ensure nondiscrimination; and (5) auxiliary aids needed to provide effective communication.



Issue: 9-1-1 Systems

Common Problem:

City governments do not provide direct and equal access to 9-1-1 systems, or similar emergency response systems, for individuals who are deaf or hard of hearing and use TTY's (TDD's or text telephones) or computer modems.

Result:

People who are deaf or hard of hearing, or those who have speech impairments, and use TTY's or computer modems for telephone communication are unable to access emergency services (police, fire and ambulance) that are necessary for health and safety. When direct emergency services are not available, emergency calls for individuals with disabilities are not responded to appropriately, or in a timely manner, and in some instances, not at all.

Requirement:

City governments that provide emergency telephone services must provide direct access to TTY calls. This means that emergency telephone services can directly receive calls from TTY's and computer modem users without relying on state relay services or third parties. A TTY must be located at each individual operator station. City governments must ensure that emergency operators are trained to use the TTY not only when they recognize the tones of a TTY at the other end of the line, but also when they receive a "silent call." 28 C.F.R. §§ 35.161, 35.162. (See Access for 9-1-1 and Telephone Emergency Services)

Issue: Law Enforcement Policies, Practices, and Procedures

Common Problem:

When dealing with persons with disabilities, law enforcement agencies often fail to modify policies, practices, or procedures in a variety of law enforcement settings -- including citizen interaction, detention, and arrest procedures.

Result:

When interacting with police and other law enforcement officers, people with disabilities are often placed in unsafe situations or are unable to communicate with officers because standard police practices and policies are not appropriately modified. For example, individuals who are deaf or have hearing impairments and use sign language may be unable to communicate with law enforcement officers if they are taken into custody and handcuffed behind their backs. Similarly, individuals with epilepsy or diabetes may be placed at great risk if they are not permitted access to their medications.

Requirement:

Title II of the ADA requires law enforcement agencies to make reasonable modifications in their policies, practices, or procedures that are necessary to ensure accessibility for individuals with disabilities, unless making such modifications would fundamentally alter the program or service involved. Law enforcement officers should be prepared to make reasonable modifications, for

City policies, including those affecting service animals,
should be reviewed during the self-evaluation.

If a city that employs 50 or more persons decides to make structural changes to achieve program access, it must develop a transition plan that identifies those changes and sets a schedule for implementing them. Both the self-evaluation and transition plans must be available to the public. 28 C.F.R. §§ 35.105, 35.150(d).

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[ADA Home Page](#)

last update: May 9, 2000

TITLE 1. IN GENERAL

Definitions

Public policy

DEFINITIONS.

General. In this article the following words have the meanings indicated.

Commission. "Commission" means the Human Relations Commission established under Article 10 of the Code.

Complainant. "Complainant" means a person who files a complaint under this article.

Discrimination. "Discrimination" means acting or failing to act or unduly delaying an action on because of the person's race, creed, religion, color, sex, age, national origin, marital status, or mental disability, in a way that the person is adversely affected in the areas of:

housing;

employment;

education;

public accommodation; or

anything

Housing. "Housing" means the whole or a part of a building, structure, mobile home, or manufactured home occupied as, designed for, or intended for occupancy as a residence by one or more persons.

Land. "Land" includes land which is offered for sale or lease for the construction or location, or the construction or location of a building, structure, mobile home, or manufactured housing.

Baltimore County - Human Relations

(f) *Family*. "Family" includes a single individual.

(g) *Hearing*. "Hearing" means an inquiry, forum, investigation, or meeting conducted in accordance with this article.

(h) *Person*.

(1) "Person" means an individual, corporation, partnership, association, labor institution, representative, mutual company, financial institution, joint-stock company, trust, unincorporated organization, trustee, trustee in bankruptcy, agent, receiver, or fiduciary.

(2) "Person" does not include the county government, county Board of Education, or community college.

(i) *Physical or mental disability*. "Physical or mental disability" means a physical or mental condition which:

- (1) Substantially limits one or more of an individual's major life activities;
- (2) Is historically a part of the individual's record; or
- (3) Is regarded as an impairment.

(j) *Respondent*. "Respondent" means a person against whom a complaint is filed under this article (1988 Code, §§ 19-32, 19-39, 19-40, 19-41, 19-42, 19-43) (Bill No. 11-96, § 1, 2-15-1996; Bill No. 31-00, § 1, 5-8-1998; Bill No. 74-03, § 7, 7-1-2004)

§ 29-1-102. PUBLIC POLICY.

(a) *Equal opportunity*. All citizens of the county and all persons transacting business in the county shall have an equal opportunity to pursue their lives and conduct their business free of discrimination.

(b) *Discrimination contrary to public policy*. Discrimination is contrary to the public policy of the county.

(c) *Purpose*. It is the purpose of this article to eliminate discrimination within the county (1988 Code, § 19-31) (Bill No. 11-96, § 1, 2-15-1996; Bill No. 31-00, § 2, 7-1-2004)

Canterbury

1414A Spring Ave 21237

CBA 05-330A - Var - Side yard shed
ZC Denied

- Pet - Arthur M Frank

Prot - Joseph Ruscite pro se
1418A Spring Ave.

Frank OS

Sequester witnesses - request
so they can't hear each other's
testimony

- LW - Can't do.

Testimony - Kenneth Canterbury

- Property owner with Gloria A. Canterbury -
wife

Built shed on prop June 2004

Shed built for Dad

Purpose of shed:

In Garage - hot dog cart and
bus. stuff.

No room for yard equipment

Shed for equipment

also propane tanks

Ex 1 Subdiv. Plat with house
in yellow

Ex 1 Plat with shed in red
Approx location of shed but
eyesight bad so not exact.

Ex 3A Photo ~~of~~ before driveway looking
up driveway House not in view
On left Walker house with shed
Front house is 1414 not Pet.
~~(1416A shed) (1500)~~
Photos taken by Frank 1 week ago

B Front view to L of prop.
Taken at end of driveway

C Center of driveway -
house still not visible
Prop on right not Pet house
House on L has 2 sheds & pool.
Can see

D Further up driveway - Neighbor
sheds

E Subject shed
House on left
Neighbor house on R - Beisre

~~E~~ Who can see shed?
Niccolletts 1412A (New House)
only ones who can see shed.

Canterberry

3F - From house down driveway
Sheds are neighbors.
Tall evergreens 1416A

G. Side of house from shed to
other side of house to
Vascals house
Riscito 2 houses away behind
fence

H. From Front porch -
Facing back of 1414 - Privacy
fence ~~and~~ 3

Can't
ID I. View of right facing property
from?
Not new house Withdrawn

J. Front of house w/ garage open
privacy fence separates Nicolle's
yard from his
Contents of garage
Garage part of house

K - Contents of shed
lawn mower etc.

Ex 4 - Video of house and shed
shows shed can't be seen.

Ex 5 Letter from neighbor

Diabetic 44 yrs
2 pancreas transplants

Unsuccessful

Last was 1996 -
High cholesterol, blood pressure
Left eye removed
Colostomy after bowel destroyed.
Recently learned arthritis and
degenerating disk in back.

Work - Not full time
but most days

Hot dog bus, Dundalk PO
14 years in front
Only job

Legally Blind - Since 1983
after son born

Frank: ADA Act and Fair Housing Act
Intent to raise

Lu: Matters that must be taken up
on Court

Frank: Preserve for appeal

Items - shed - lawn &
prop maintenance

Why not back yard?

A Last few snow storms -
hard to pull from back yard
with 2-3 ft snow.
Reason it is in front

Canterbury

Access to back of house?

A Severe neuropathy in ft & legs
no feeling in feet & legs
Hard to walk thru deep snow
to back

E+6 - Letter from Doctor

E+7 Letter from Dr.

ES Venetian diagnosis

Practical Difficulty with Shed
in Back

A Hard to go from Front to Back
in Snow

Easier to start - electric
at ~~garage~~ shed. Could not
run cord to back.

Hard to drag the gate

Future - eventually I'll be in
wheelchair.

Could store wheelchair in shed

Hedgehog bus only business

Net income \$10,000 per year

~~Shed~~ Shed is easy access -

Hearsey When we asked County about
permit was told do not need
permit

Cross -

Q Live by self

A No, has family
Wife works

San Aden - 22 - deployed
now in Nat Guard.

Does incare support?

Wife works

Other prop owner.

Q Ex 3D - 2 sheds already,
there when you moved?

A Big one was not

Q They went thru permit process?
Yes

Shed where placed
maybe medical lan & garden
Near future a speculation?

Placement so far in front of house

A Could put wheel chair if needed.

Majority of grass for
lawn mower

Equal at front & Back

Q How much driveway in back

A None

Q How much in front of house &
shed

A 1 ft Prop both sides of
driveway. Doesn't know exactly

Canterbury

~~3000~~

Do you snow clean?

A

yes and younger son (12)

Q

Who removes snow blower when you can't and sons?

A

I run it

Leased

What is unique about your property compared to others?

A

Objection
Overruled

A

No one can see my house.
That is its uniqueness.

Q

Is shed in rear - enough room?

~~Will Don't think would fit and would be hard to get around. Can't be moved.~~

Would have to be dismantled

~~Do you have~~ Has room

Prop. has gully - water lays severely

doesn't know if neighbors prop have same problem

* Q

Is shed in Backyard would you still have space to move around

A yes

Q ~~Hand shop?~~ Why in front?

Q Did you file for permit

A I did told not necessary
Did not think about 2ress
~~access~~

Q Part of Petition up street?

A I called code enforcement not
 zoning

Q If placed in backyard would
 you have problem gaining
 access?
 yes

Yes access but difficult
 b/c of disability

Q How close to prop line?

A L is shed

Shed in line with front of house

Q Notice from County - too large?

A No. Only notice was permit
 ~~Notice from~~ not needed.

Q Anything unusual about your
 prop?

A Can't say Can't see far.

Canterbury.

Q. If placed in Rear - what hardship?

A. County made you
Would have to dismantle

Q. ~~Rt Photos - Show only half of~~

Re Puffer

Q. How many houses situated behind another house

A. Quite a few at least 5
long lots subdivided

Q. As person with disability why important to do Chores

A. Need of Fed. of Blind -
We can do things
Do what you can do.

Driveway Canterbury's alone
240 ft from street

Rear of houses is wooded lot owned by Balt. County

E+3I New Photo -
Front door to Right of
Lap post

Protestant Case

Testimony - Joseph Ruscito Jr.
1418A Spring Ave.

Structure is 4ft from BC
easement

~~Location~~

Ex 2 - shed is placed
incorrectly on exhibit

Intermittent

Uniqueness

Properties are same -

Similar to adjacent: ~~none~~

1416A 1412A 1418A

Prot Ex 1

Overview of immediate ~~properties~~
properties.

Taxation map -

Mark Canterbury - Red

Addresses in Red.

1418A -

Ex 2

- Land Records - shows sq. ft
of property.

I performed search on web.
public record.

Ex 3

Photos

A-D

Shows Rear property

A. Photo of front of shed

taken from

Canterbury

3B Shows pool - in Rear of Canterbury home

3C Shows Side of Canterbury home access to rear of property from ~~Whitellah~~ front

3D Shows Side and Rear

~~Photo~~

Ex 4 Letter from Enforcement -

Ex 5A Prop Line borders front property
 1414A and 1414
 Electrical Box identified by
 dotted line.

Ex 5B Photo taken this morning ^{Dark}
~~Photo~~ Shows electric box and shed
 front parcel 1412A (Mr. Nicolleth)
 2 on right

A ~~Plat shows~~

Explosion - at electric box
 in photo when 1414 built

5A - Prop line

N 66.39.55W

Is on N side of electric box.
 Shows how close to property line

Ex 6 Objection Letter by Randy
 members of Community

Ex 7 1414 A - Letter objecting

CROSS

Q You can see other 2 sheds from front of property right?
3A -

Q Does it look like picture is from end of driveway

A Yes

Q Can you see shed from your prop

A Yes

Q Other 2 sheds

A Yes

~~What is distance~~

Q How many lots w/ prop in rear of front lot?

Lots Divided by 2?

A @ 10

~~From PQA~~

Rebital -

Camberley -

Start of Spring Ave at Phil Rd
Dead end

of houses on Spring?

2 cul de sacs

Est 30-40 houses.

~~Q1234~~

Closing

Frank -

- Zoning Statute - Board should consider Constitution and all laws that apply

Title 1 Sect 29-1-101 and 102
- deals with BC Policy vs discrimination include person with handicap
Consider disability in Rt:
Handicap

Variance Section 307

Special circumstances of structure -

5-10 properties built behind other houses.

Clearly 2 Regs could foresee layout of

Prop peculiar b/c can see 2 sheds off to side

To ask for shed behind house
/ doesn't affect neighborhood
when shed is new.

Can't see shed.

Can see sheds in rear of other
~~these~~ properties

Sheds in rear are front of other houses.

Consider ADA - takes precedence over state laws - 12 131 Title 42

~~Does not mention Crumwell.~~

deals with public health & welfare

Does affect private residential
Case: 1 MD 107 - 1999

Federal Fair Housing Act -
can't create situation burdensome
& is arbitrary.

Title 42 - state not immune
from ADA

County Code deals with discrimination
contrary to public policy
Fair access to home and use of
home.

Prop is unwise b/c sits
behind another house and
sheds = plain view
∴ practical difficulty

Does not cause neg. affect
on community.
Case - cited

Would have to come up on lawn
to see shed. So no neg affect.
Does not change character of hood

*

Crumwell v. Ward -

Unreasonable hardship to go
around prop for snow blower.

Russell Close

Request to deny var.
based on BC laws and
Cramwell v. Ward.

Mr. Cardenbery admitted he walks
up and down street
No difficulty accessing prop
even with disabilities

Structure should have needed
permit b/c of size

~~He is~~ RT/disabled -
he is able

Doesn't see how difficulty with
snow blower

Prop similar to others
flat level ground
Prop easily accessed.

Studded shed might house
wheelchair but has space in
house for

~~Neighborhood sympathetic~~
~~Condo~~

ADA - public issue

Pet failed to prove uniqueness
or unusual CF with
surrounding prop.
See Ex 1

Adherence to 2 Regs will not
result in PD or hardships

He admitted access and ample room.

Could use rear yard -

Some visible features - all prop.

Self-imposed hardship ~~by~~
~~act of~~ ~~doing~~
by building shed in wrong place

We all mention some setbacks
No specific hardship on Mr
Corderberry. imposed by county.

Mr Corderberry well aware of
County Circuit CTT System.

Strict compliance will not cause
hardship.

#1212A > Shed on both property
1214A > lines

the County Board of Appeals of Baltimore County, filed by Arthur M. Frank, Esq.

Apr. 21, 2006 Certificate of Notice sent to interested parties.

June 1, 2006 Transcript of testimony filed.

June 2, 2006 Record of Proceedings filed in the Circuit Court for Baltimore County.

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


Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

c: Arthur M. Frank, Esq.
 People's Counsel for Baltimore County