IN RE: PETITION FOR ADMIN. SPECIAL HEARING SW/Corner Shawan Road and York Road **(11330 York Road)** 8th Election District 3rd Council District York at Shawan, LLC Petitioners	* * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY **Case No. 05-332-SPH**

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, York at Shawan, LLC, and the Contract Lessee, Branch Banking and Trust Company (referred to hereinafter as BBT), by and through their attorney, Arnold E. Jablon, Esquire, The Petitioners request a special hearing seeking approval of a waiver, pursuant to Sections 32-4-106 and 32-4-107(b) of the Baltimore County Code (B.C.C.), of the requirements of Sections 32-4-221(b) and (c), 32-4-222 through 32-4-224, and 32-4-416 thereof, to raze an existing historical structure, known as the Elizabeth Gardner House and identified as Inventory No. BA917 with the Maryland Historic Trust. 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.

Section 32-4-107(b) of the Baltimore County Code (B.C.C.) provides that waivers from the requirements of Section 32-4-221 of the Code (i.e., the development plan) can be granted by the Director of the Department of Permits and Development Management (DPDM). Such requirements can be waived upon a finding that the size, scope and nature of the proposed development does not justify strict compliance, that a waiver would be within the scope, purpose, and intent of the development regulations, and that the proposed development complies with all other County laws, ordinances, and regulations. Under the Code, the property in question is posted for a period of 15 days during which time any property owner residing within 1,000 feet thereof

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Date 3/14/05
By

may demand a public hearing for a determination as to the merits of the request. Additionally, the Zoning Commissioner/Deputy Zoning Commissioner can schedule the matter for a public hearing if deemed appropriate. In this case, Deputy Zoning Commissioner John V. Murphy initially determined that a public hearing was necessary, based upon the Zoning Advisory Committee (ZAC) comment submitted by the Office of Planning, dated January 27, 2005, which recommended a denial of the request. That comment noted that the Landmarks Preservation Commission (LPC) had voted to consider placing the structure on the Preliminary Landmarks Preservation List and had scheduled a public hearing for March 10, 2005. The Office of Planning subsequently notified this office that following its hearing on the matter, the LPC had determined that the structure should not be placed on the Preliminary Landmarks List. Moreover, most of the testimony presented at that hearing was in support of the structure's demolition. In view of these findings, the Zoning Commissioner determined that a public hearing before this Hearing Officer was not necessary and thus, a decision on the waiver request follows.

The Petitioner has filed the supporting affidavits as required by Section 32-3-303 (a)(2)(i) of the Baltimore County Code and the documentation contained within the case file reflects that the property was duly posted as required. Based upon all of the evidence contained therein, I am persuaded to grant the requested relief. There were no adverse comments submitted by any County reviewing agency and due to the absence of opposition on the part of any citizen, I find that the requested waiver is appropriate in this instance. I further find that removal of the subject structure meets the spirit and intent of the development regulations, and that all other County laws, ordinances, and regulations will be met.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the B.C.Z.R. having been met, and for the reasons set forth above, the requested waiver shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 14th day of March 2005 that the Petition for Administrative Special Hearing seeking approval of a waiver, pursuant to Sections 32-4-106 and 32-4-107(b) of the Baltimore County

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By

Code (B.C.C.), of the requirements of Sections 32-4-221(b) and (c), 32-4-222 through 32-4-224, and 32-4-416 thereof to raze an existing historical structure, known as the Elizabeth Gardner House and identified as Inventory No. BA917 with the Maryland Historic Trust, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their razing permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

ORDER RECEIVED FOR FILING
Date 3/15/16
By

IN THE MATTER OF THE APPLICATION OF YORK @ SHAWAN LLC – LEGAL OWNER; BRANCH BANKING & TRUST CO. – C.P. FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SW/ COR OF SHAWAN & YORK ROADS (11330 YORK ROAD)	* * * * *	BEFORE THE COUNTY BOARD OF OF BALTIMORE COUNTY
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	Case No. 05-332-SPH
AND	*	
IN THE MATTER OF 11330 YORK ROAD /ELIZABETH GARDNER HOUSE RE: DECISION OF LANDMARKS PRESERVATION COMMISSION /PROPERTY NOT PLACED ON PRELIMINARY LANDMARKS LIST	* *	Case No. CBA-05-125

* * * * * * * * *

OPINION

This matter comes to the County Board of Appeals on an appeal from the Zoning Commissioner's Order of a Petition for Administrative Special Hearing requesting approval of a waiver from the Baltimore County Code to raze an existing historical structure, known as the Elizabeth Gardner House (Case No. 05-332-SPH), and on appeal from a decision of the Landmarks Preservation Commission in which the Elizabeth Gardner House was not placed on the Preliminary Landmarks List (Case No. CBA-05-125).

G. Scott Barhight, Esquire, represented the Owner /Petitioner, York @ Shawan, LLC, and Robert A. Hoffman, Esquire, represented the Contract Purchaser /Petitioner, Branch Banking & Trust Company, both referred to as the "Petitioners." John C. Murphy, Esquire, represented the Baltimore County Historical Trust, Inc.; Spark Glencoe Community Association, Inc.; Thomas S. Weaver, President, Advance Masonry Systems, Inc., hereinafter referred to as the "Appellants."

Case No. 05-332-SPH

The Appellants filed an appeal from the Zoning Commissioner's Order dated March 14, 2005 granting approval of a waiver, pursuant to §§ 32-4-106 and 32-4-107(b) of the *Baltimore*

County Code of the requirements of §§ 32-4-221(b) and (c), 32-4-222 through 32-4-224 and 32-4-416 thereof to raze an existing historical structure, known as the Elizabeth Gardner House and identified as Inventory No. BA917 with the Maryland Historic Trust (MHT), in accordance with Petitioners' Exhibit No. 1.

A *de novo* hearing before the Board revealed that the Petitioners had not submitted any development plan for the property located and known as 11330 York Road in Hunt Valley, Baltimore County, Maryland (hereinafter referred to as "the Property"). The Property is made up of .728 acres on the southwestern corner of the intersection of York and Shawan Roads. It is the site of a house known as The Elizabeth Gardner House (hereinafter referred to as "the House"), which is currently zoned for the most part B.L. Petitioners were instructed by the Baltimore County Department of Permits & Development Management (PDM) to file a Petition for Administrative Special Hearing in order to seek a permit to raze the structure because the House is in the MHT inventory. The record reflects that the House failed to be placed on the Preliminary Landmarks List at a meeting held by the Landmarks Preservation Commission, nor is it on the National Register of Historic Places.

This Board chose not to rule if the Elizabeth Gardner House belongs on any list of historic value since it believes that such action can only be carried out by the Commission already in place under statute.

This Board also heard the testimony of Mr. Rodney Little (which was read into the transcript in the Bonnie View Estates matter) as to how the inventory list is administered. This Board believes it is a simple database and archive only. The fact that a structure is listed on the inventory does not have any impact on property owners' rights nor, for that matter, does it have any regulatory effect. Even if a property is razed, it remains on the list. The evidence clearly indicated that the Elizabeth Gardner House did not meet the criteria to be considered and

therefore was not placed on the Landmarks Preservation Commission's Preliminary Landmarks List. It is not, therefore, up to this Board to determine how and why the Landmarks Preservation Commission voted the way it did, but simply to apply its conclusion to the case at hand.

Although the *Baltimore County Code* does not specifically address situations such as the instant one before this Board, the Code does include our jurisdiction regarding development and development plans. The Board unanimously finds that there is nothing legislatively that we can do to prevent razing a building that is not part of a development plan.

Case No. CBA-05-125

As to the appeal taken from the Landmarks Preservation Commission's decision not to place the subject structure on the Preliminary Landmarks List, a Motion to Dismiss said appeal was filed by Mr. Barhight on July 18, 2005, with an Answer to Motion to Dismiss filed by Mr. Murphy on August 1, 2005. A public deliberation on that Motion was conducted by this Board when it convened for hearing on August 3, 2005. As determined during that public deliberation, this Board has determined that it lacks the authority to review the Commission's decision and, further, does not possess the necessary qualifications to review that decision as requested by the Appellants.

The jurisdiction of this Board is strictly governed and set forth by statute. Our authority does not extend to appeals of actions by the Landmarks Preservation Commission.

In support of its ruling on this Motion, the Board cited a prior ruling of the Board of Appeals in Case No. CBA-98-125 and CBA-98-143 (*In the Matter of: Conclusion Farm*). The authority of this Board is derived only as to matters conferred upon it by County Council legislation. As such, the decision of the Landmarks Preservation Commission is not appealable; therefore, Petitioners' Motion to Dismiss is granted. That ruling shall be made a part of this final Opinion and Order.

ORDER

THEREFORE, IT IS THIS 7th day of November, 2005 by the County Board of Appeals of Baltimore County

ORDERED that, for the reasons as stated in the foregoing Opinion, Petitioner's request for administrative special hearing in Case No. 05-332-SPH seeking approval of a waiver, pursuant to §§ 32-4-106 and 3-2-4107(b) of the *Baltimore County Code* of the requirements of §§ 32-4-221(b) and (c), 32-4-222 through 32-4-224 and 32-4-416 thereof to raze an existing historical structure, known as the Elizabeth Gardner House and identified as Inventory No. BA917 with the Maryland Historic Trust be and the same is hereby **GRANTED**; and it is further

ORDERED that Petitioners' Motion to Dismiss filed in Case No. CBA-05-125 be and the same is hereby **GRANTED**; and it is further

ORDERED that the appeal field in Case No. CBA-05-125 be and the same is hereby **DISMISSED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Edward W. Crizer, Jr.

John P. Quinn

County Board of Appeals of Baltimore County

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

November 7, 2005

John C. Murphy, Esquire
516 N. Charles Street
Suite 206
Baltimore, MD 21201

RE: *In the Matter of: York @ Shawan, LLC – Legal Owner; Branch Banking & Trust Co. – C.P. –Petitioners* (Elizabeth Gardner House) Case No. 05-332-SPH and Case No. CBA-05-125

Dear Mr. Murphy:

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

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

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Baltimore County Historical Trust, Inc.
Thomas S. Weaver, President /Advance Masonry Systems, Inc.
Greater Sparks Glencoe Community Council
Robert A. Hoffman, Esquire
York @ Shawan, LLC /John G. Evans
Branch Banking and Trust Company /Richard Prosser
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Office of People's Counsel
Landmarks Preservation Commission
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Jay L. Liner, County Attorney

Printed with Soybean Ink on Recycled Paper

8/9/05

IN RE: PETITION FOR ADMINISTRATIVE SPECIAL HEARING 11330 York Road ("Elizabeth Gardner House")	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF
8th Election District 3rd Councilmanic District	*	BALTIMORE COUNTY
York @ Shawan, LLC, Legal Owner/Petitioner Branch Banking & Trust Co., Contract Purchaser/Petitioner	*	Case # 05-332-SPH

* * * * * * * * * *

MEMORANDUM IN LIEU OF CLOSING ARGUMENT

Legal Owner/Petitioner, York at Shawan, LLC, by its attorneys, G. Scott Barhight, Jennifer R. Busse and Whiteford, Taylor & Preston LLP, and Contract Lessee/Petitioner, Branch Banking and Trust Company, by its attorneys Robert A. Hoffman and Venable LLP (hereinafter collectively referred to as the "Petitioners"), hereby submit this Memorandum in Lieu of Closing Argument on the appeal filed by the Appellants/Protestants, Baltimore County Historical Trust, Inc., Thomas S. Weaver, President of Advance Masonry Systems, Inc., and the Sparks Glencoe Community Association (hereinafter referred to as "Protestants").[1]

In support of its Memorandum, Petitioners state:

I. FACTUAL AND PROCEDURAL BACKGROUND

The Appellee owns certain real property, known as 11330 York Road in Hunt Valley, Baltimore County, Maryland (hereinafter referred to as "the Property"). The Property consists of approximately .728 acres and is situated at the southwestern corner of the intersection of York and Shawn Roads. The property contains a structure known as the "Elizabeth Gardner House".

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[1] The Sparks Glencoe Community Association was not noted as an Appellant in the Notice of Appeal filed by Mr. Murphy. At no time during the hearing on August 3, 2005 did a representative of the Sparks Glencoe Community Association testify or submit "Rule 8 Papers". It appears that it is only in Mr. Murphy's Answer to Petitioners' Motion to Dismiss that there is a reference to the Sparks Glencoe Community Association being a party herein. The Petitioners object to the participation of the Sparks Glencoe Community Association as a party and request the Board dismiss their appeal.

The Elizabeth Gardner House, which is currently utilized as a commercial building, was given a Maryland Historic Trust ("MHT") Inventory Number of BA-917. *See*, Protestants' Exhibit 1.

Petitioners sought a permit to raze the Property and in doing so, were instructed by Baltimore County Department of Permits & Development Management ("PADM") to file a Petition for Administrative Special Hearing. *See*, Petitioners' Exhibit 4. On January 4, 2005, Petitioners filed for an Administrative Special Hearing and the matter was issued Case No. 05-332-SPH. The Property was posted and the Petition for Administrative Special Hearing was advertised. No public hearing was requested.

A public hearing on whether to place the Elizabeth Gardner House on the Preliminary Landmarks List was held by the Landmarks Preservation Commission ("LPC") on March 10, 2005. At that meeting, a motion was made to place the Elizabeth Gardner House on the Preliminary Landmarks List, and the motion failed. A copy of the LPC's Minutes from their 3/10/05 meeting was accepted as Petitioners' Exhibit 3.

The Zoning Commissioner issued an Order on March 14, 2005, granting the Petition for Administrative Special Hearing and thereby authorizing Petitioners to proceed with their application for a razing permit. A copy of the Zoning Commissioner's Order in Case 05-332-SPH is attached hereto as Attachment 6. The Zoning Commissioner's Order stated that:

> The Petitioners may apply for their razing permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

Petitioners filed for a razing permit on or about March 25, 2005 (B 586993). PADM has failed to issue the razing permit.

The public hearing before this Board in this matter was held on August 3, 2005. A copy of the transcript from the hearing is attached hereto as Attachment 2.

The Board publicly deliberated on August 3, 2005 and granted Petitioners' Motion to Dismiss the appeal taken by these Appellants/Protestants of the decision of the LPC to not place the Elizabeth Gardner House on the Preliminary Landmarks List, as noted in the minutes from their meeting on March 10, 2005. Therefore, Case CBA-05-125 has been dismissed.

The Board has scheduled its public deliberation for this instant matter (CBA-05-332-SPH) to take place on September 28, 2005. The parties' Memorandums in Lieu of Closing Argument are due on or before August 31, 2005.

II. ARGUMENT

I. Forcing Petitioner To Proceed With A Petition For Administrative Special Hearing Was Illegal.

Before being allowed to proceed with an application for a razing permit, Petitioners were forced by PADM to file a Petition for Administrative Special Hearing because the Elizabeth Gardner House is on the MHT Inventory. *See*, Petitioners' Exhibit 4. Petitioners have reserved their rights to object on this issue. *See*, Attachment 2, transcript at p. 13. PADM cites to Baltimore County Code ("BCC") §§ 32-4-223(8)(i) and 32-4-416(a)(2) in support of their requirement that in such situations, a Petition for Administrative Special Hearing be requested. *See*, Petitioners' Exhibit 4 (containing the following excerpt from BCC §§ 32-4-223 and 32-4-416[2]).

[2] Geoff Schultz testified on behalf of the Petitioners that Petitioners' Exhibit 4, the form provided to Petitioners from PADM, contains a typographical error whereby the reference to BCC § 32-4-416(a)(8) should read § 32-4-416(a)(2). *See*, Attachment 2, transcript at p. 37.

32-4-223. REQUIRED EXISTING SITE CONDITION INFORMATION

The Development Plan shall identify the following information concerning existing site conditions:
(8) Identification of any building, property, or site within or contiguous to the proposed development that is included in:
(i) The Maryland Historical Trust Inventory of Historic Properties;

32-4-416. PRESERVATION OF NATURAL OR HISTORIC FEATURES

(a) *Preservation of features.* Each Development Plan shall preserve:
(2) Historic structures or sites identified on any of the lists referred to in Section 32-4-223(8) of this title.

Reliance on BCC §32-4-223 and §32-4-416, which are provisions contained within the Development Title of the Baltimore County Code, fails as a matter of law. Petitioners are only proposing to raze a structure. Petitioners are not required to file a development plan and the Development Title is not applicable. *See*, Attachment 2, testimony of Geoffrey Schultz at p. 43.

There is no legally valid requirement in Baltimore County for the preservation of structures except for those appearing on Baltimore County's Preliminary Landmarks List or the Final Landmarks List. Ms. Kathryn Kuranda testified before the Board on behalf of the Petitioners and was accepted as an expert in the fields of architectural history and historic preservation. Ms. Kuranda testified that the Elizabeth Gardner House is on neither the Preliminary Landmarks List nor the Final Landmarks List. *See*, Attachment 2, transcript at p. 177.

Because the Landmarks Preservation Commission did not vote to include the Elizabeth Gardner House on its Preliminary Landmarks List, Baltimore County cannot require the Elizabeth Gardner House to be preserved. Any reading of the Development Regulations to require the preservation of a structure listed on the Maryland Inventory of Historic Properties but not included on the Preliminary Landmarks List or the Final Landmarks List would be arbitrary,

unreasonable and capricious, and would be in violation of the Plaintiff's due process rights under the Constitution of the State of Maryland and the United States Constitution.

The Maryland Inventory of Historic Properties is an archive of known or potential historic and cultural resources in Maryland as documented and maintained by the Maryland Historical Trust. *See*, Md. Ann. Code art. 83B, §§5-607(b)(2), 5-615 (2003 Repl. Vol.). Inclusion of a property in the Maryland Inventory of Historic Properties involves no regulatory restrictions or controls and the process for including structures in the Maryland Inventory of Historic Properties involves no notice or opportunity for property owners to be heard. Md. Ann. Code art. 83B, §§ 5-601 – 5-630.

Petitioners protest the requirement that forced them to file a Petition for Administrative Special Hearing and seek Special Hearing relief from the Zoning Commissioner. There is absolutely no notice given to a property owner when a structure is included in the MHT Inventory. There is absolutely no due process afforded a property owner before a structure is included in the MHT Inventory. It was not intended that property rights be affected by the inclusion of a structure in the MHT Inventory.

Mr. Rodney Little is Maryland's State Historic Preservation Officer. Portions of his testimony from the Bonnie View Estates Hearing Officer's Hearing were read into the record during the Board's hearing on this instant matter. Mr. Jeffrey Lees, who testified on behalf of the Protestants as an expert in the field of historic preservation, agreed with Mr. Little's assertions, which Mr. Little provided under oath, regarding the nature and intent of the MHT Inventory. *See*, Attachment 2, transcript at pp. 105-116. At the Board's request, the redacted portions of Mr. Little's testimony which were read into the record are attached hereto as Attachment 1.

As testified to by both Mr. Little and Mr. Lees, the MHT Inventory is just that - an inventory. It is the MHT's "raw data", and its primary purpose is to serve as "an archives". *See*, Attachment 2, transcript at p. 106 for Mr. Little's assertion provided under oath, and p. 113 for Mr. Lees' agreement with Mr. Little's assertions. Furthermore, where structures on the MHT Inventory are razed, the information remains on the Inventory. As explained by Mr. Little (and agreed upon by Mr. Lees):

> The Inventory is, serves several purposes. It's an archives, and I would say that's its primary purpose. That tells us either what is in a particular area or what was once there, because there are properties on our inventory that have, in fact, been demolished. They are no longer there. It's simply a record that they once existed.

Id. at pp. 106 and 113.

Mr. Paul McKean, who testified on behalf of the Protestants and previously served on the LPC and the Board of the Maryland Historical Trust, testified that he is familiar with the process of having a property listed on the MHT Inventory. Mr. McKean specifically testified that as part of the process of listing a property on the MHT Inventory, there is no notice provided to the property owner and there is no public hearing with due process. *See*, Attachment 2, transcript at pp. 158-59, 162-63, 166-67.

Ms. Kathryn Kuranda was accepted as an expert in architectural history and historic preservation and testified on behalf of the Petitioners. She provided the Board with a full understanding of the process involved in placing a structure on the MHT Inventory. *Id.* at pp. 177-88. In sum, Ms. Kuranda explained that anyone can fill out an MHT Inventory Form for any structure, and there is neither any notice provided to a property owner nor any public hearing as part of the process involved in placing a structure on the MHT Inventory. *Id.* The Chairman of the Board of Appeals, during the hearing in this matter on August 3, 2005, asked Ms. Kuranda the following questions:

The Chairman:

The Board has a question. When something is asked to be placed on the Inventory Form, at the time it's filled out, does it represent the opinion of any group, or does it represent solely the opinion of the person filling out the form?

The Witness (Kuranda):

It's the opinion of the person filling out the form.

Q: But it's published by the Maryland Historical Trust?

A: It's not published.

Q: Who publishes it?

A: The documentation is maintained in the Maryland Historical Trust Library. It's also available on their line as their inventory data.

Q: And if I want to bring a letter to the Maryland Historical Trust and say, Here's my house, put it on the Inventory, they will do it?

A: Uh-huh. Yes.

Q: So anybody can just write in, and they'll put it on?

A: Yes. And that explains the wide variance of quality in the Inventory Forms.

Q: So anybody can just write in and get their house listed on the Inventory.

A. There's no listing. It's just documentation.

Q: Then they'll publish this Inventory Form?

A: They don't publish the Inventory Form. It's an archive.

Q: They put it on their stationary, don't they?

A: No, they don't put it on their stationary. They have forms that you fill out. These are forms [sic] are standard classifications of information so that you can compare and do research about different types of properties in Maryland. It's a true archive.

See, Attachment 2, transcript at pp. 187-88.

In sum, the requirement placed on Petitioners to proceed through a Petition for Administrative Special Hearing where a razing permit for a structure listed on the MHT Inventory but not listed on either the Preliminary or Final Landmarks Preservation list cannot legally be upheld since it violates Petitioners' due process rights. Furthermore, reliance on the MHT Inventory as anything other than what it was intended to be - an inventory - is clearly misplaced.

In the event the Board rules in Petitioners' favor on the argument set forth above, namely that Petitioners were illegally forced to proceed through the process of filing a Petition for Administrative Special Hearing, Petitioners respectfully request this Board continue its analysis and rule on the merits of this case. Specifically, Petitioners respectfully request this Board set

forth its opinion on whether Petitioners have met their burden and either grant or deny Petitioners' Petition for Administrative Special Hearing. Petitioners' arguments on the merits of this case are set forth below.

II. Petitioners Met Their Burden, The Standards of BCC § 32-4-107(b) Were Satisfied.

Presuming for the purposes of this Memorandum that the Petitioners were properly instructed by PADM to proceed with a Petition for Administrative Special Hearing, Petitioners have clearly satisfied their burden and the Board must approve Petitioners requested relief. Petitioners, at the instruction of PADM, filed a Petition for Administrative Special Hearing to approve a waiver pursuant to BCC § 32-4-107(b), § 32-4-223(8) and § 32-4-416(a)(2) to raze a building.

The relevant standard for the review of Petitioners' request is provided in BCC § 32-4-107(b). At this Board's request, a copy of that section of the County Code is provided herein as Attachment 3. This section from the Code is also part of the form provided to Petitioners from PADM, accepted as Petitioners' Exhibit 4. BCC § 32-4-107(b) provides three (3) specific criteria which must be satisfied.

Mr. Geoffrey Schultz testified on behalf of the Petitioners and was accepted without objection as an expert land surveyor, and without objection as an expert in the fields of engineering, zoning and development in Baltimore County. *See*, Attachment 2, transcript at pp. 22 and 23. Mr. Schultz provided his expert opinion that Petitioners request for a waiver satisfied all three (3) criteria per § 32-4-107(b).

Specifically, Mr. Schultz testified that as to the first criteria, the razing of the Elizabeth Gardner House does not justify strict compliance with Title 4 (the Development Title). Mr.

Schultz opined that "strict compliance is not justified because the building itself, although it's listed on the MHT, it has been determined not historic ... the state has deemed it's not historic by the Landmarks Preservation Commission." *See*, Attachment 2, transcript at pp. 40-41. Mr. Schultz explained that Petitioners' request is for approval to raze a structure and that PADM does not require the filing of a development plan in order to obtain a razing permit. *Id.* at p. 43.

As to the second criteria, Mr. Schultz testified that Petitioners' requested waiver is within the scope, purpose and intent of BCC Title 4. He opined:

> The development regulations state that any site listed on the MHT must be preserved. The development regulations also provide for waivers to those requirements. ... In this case, we have a house that is listed on the MHT that technically under those requirements cannot be razed. However, it's been deemed not historic by the Landmarks Preservation Commission. It is clearly a hardship to my client to not be able to raze a house that has been deemed not historic. And I believe that's why the County put the waiver provisions in the development regulations, for exceptions like this.

Id. at 44-45.

Finally, as to the last criteria per BCC § 32-4-107(b), Mr. Schultz testified that the proposed razing complies with all other County laws and regulations. *Id.* at 45.

III. Protestants' Arguments Are Without Merit

A. The LPC Was Properly Provided A Recommendation From The Planning Office

Protestants allege that the LPC hearing on March 10, 2005, wherein the LPC voted not to include the Elizabeth Gardner House on the Preliminary Landmarks List, was somehow deficient because the LPC was not provided a recommendation from the Staff of the Office of Planning. On cross-examination, Protestants' witnesses admitted that the LPC was provided a recommendation from Mr. Jeff Long, as evidenced in the Minutes from the LPC meeting. *See*, Attachment 2, transcript at pp. 97, 99; and *See*, Petitioners' Exhibit 3.

Protestants' witnesses further admitted that Mr. Long is the Deputy Director of the Office of Planning, and that the Staff of the Office of Planning reports to Mr. Long. *See*, Attachment 2, transcript at 148.

Protestants submitted "Action Summaries" into evidence as Protestants' Exhibit 2. One of the Protestants, Patricia Bentz, testified that she obtained these Action Summaries from the LPC's files. *See*, Protestants' Exhibit 2, and *See*, Attachment 2, transcript at p. 137. Ms. Bentz testified that: "Action Summaries are prepared by the LPC staff members and are presented to and discussed with the LPC prior to the meeting." *Id.* at p. 137. Protestants' counsel argued the same point. Mr. Murphy stated: "I think they are Action Summaries before meetings where they express the views of the staff." *Id.* at p. 139.

Protestants' Exhibit 2 and the related testimony and argument by Protestants' own counsel do nothing but support the fact that the LPC was provided with a recommendation from the Office of Planning which incorporated the views of the Office of Planning's staff. The evidence is uncontroverted on this issue. The LPC Minutes and the Action Summaries clearly reflect that the Office of Planning's recommendation to the LPC was to *not* place this structure on the Landmarks List. *See* Petitioners' Exhibit 3 and Protestants' Exhibit 2. Protestants acknowledged that the Staff of the Office of Planning reports to Mr. Jeff Long, and their own testimony and Exhibit (the Action Summaries) contradicts their allegation that the Office of Planning Staff did not give a recommendation to the LPC.

Yet, Protestants have asserted that somehow the March 10, 2005 LPC meeting was deficient. This argument is clearly without merit. The Board dismissed Protestants' appeal of the LPC decision and ruled that it will not sit in the shoes of the LPC and reconsider the LPC's decision not to list the Elizabeth Gardner House on the Preliminary Landmarks Preservation List.

See, Attachment 2, transcript at pp. 7-8 (announcing Board's decision to dismiss Case No. 05-125); p. 151-53 (wherein the Chairman ruled on an objection and stated that the Board will not reconsider the LPC's decision, and whether or not specific members of the Planning Office's staff played a role in the ultimate recommendation to the LPC from the Planning Office is not relevant to the Board's consideration of this Case No. 05-132-SPH) Therefore, Protestants' argument is irrelevant as well.

B. The Completion And Submission Of An MHT Inventory Form Does Not Involve Review By The Baltimore County Historian.

Ruth Mascari, on behalf of the Protestants, was asked on direct examination by Protestants' counsel:

> Q: Does the Inventory Form reflect local values as well as national values in the field of historic reservation?
> A: An Inventory Form certainly could do that, yes.

See, Attachment 2, transcript at p. 156.

The MHT Inventory Form submitted for the Elizabeth Gardner House was accepted into evidence as Protestants' Ex. 1. There is no section of the Inventory Form which calls for any input from any local agency. The Inventory Form is completed in its entirety by whoever is submitting it - in this case a then student of Goucher College. There is no need for any local agency to confirm any of the information on the Inventory Form. Nowhere on the Inventory Form is there even an acknowledgment by the Baltimore County Historian of the information.

On the last page of the Form, at the bottom of Section 11, entitled "Form Prepared By", there is the following statement:

> "The Survey and Inventory are being prepared for information and record purposes only and do not constitute any infringement of individual property rights."

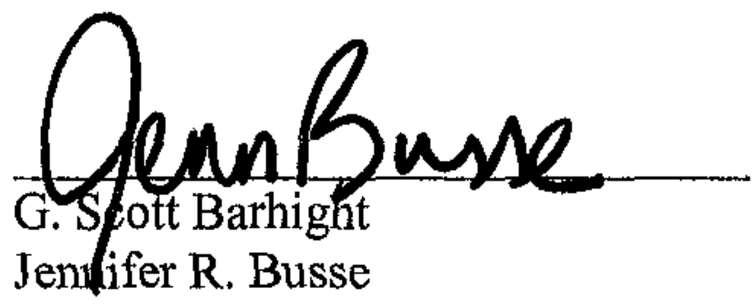
See, Protestants' Exhibit 1.

Ms. Kuranda explained the entire process to the Board as to how a structure is listed on the MHT Inventory. *See*, Attachment 2, transcript at pp. 177-88. Neither the County Historian nor the Office of Planning is involved in any part of the process whereby a structure is included on the MHT Inventory. The Inventory Form itself acknowledges its purpose. Any attempt by the Protestants, to assert that the Inventory Form serves as anything more than the purpose stated therein, is without merit.

III. CONCLUSION

For the reasons set forth above, Petitioners respectfully request this Board approve the Petition for Administrative Special Hearing.

Respectfully submitted,



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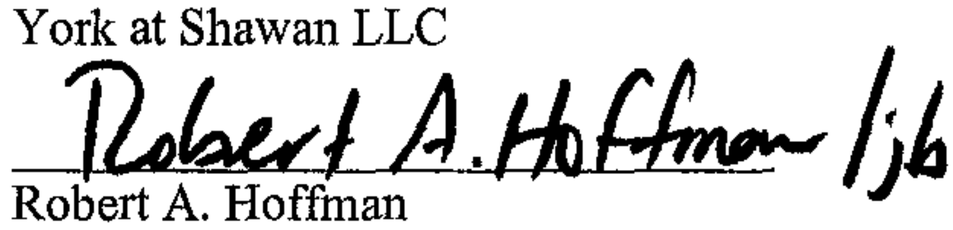

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342464

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 2005, a copy of the Petitioners' Memorandum in Lieu of Closing Argument was mailed, first class, postage prepaid to:

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G. Scott Barhight /jb
G. Scott Barhight

342464

IN RE: PETITION FOR ADMINISTRATIVE SPECIAL HEARING 11330 York Road ("Elizabeth Gardner House")	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF
8th Election District 3rd Councilmanic District	*	BALTIMORE COUNTY
York @ Shawan, LLC, Legal Owner/Petitioner Branch Banking & Trust Co., Contract Purchaser/Petitioner	*	Case # 05-332-SPH

* * * * * * * * * *

List of Attachments
to Petitioners' Memorandum in Lieu of Closing Argument

1. Cover page and redacted portions of transcript of testimony of Mr. Rodney Little in the Hearing Officer's Hearing for Bonnie View Estates, PDM # III-454, heard by the Zoning Commissioner/Hearing Officer of Baltimore County on September 16, 2003, which were read into the record in this instant case (CBA 05-332-SPH) by G. Scott Barhight during cross-examination of Jeffrey Lees.

2. Transcript from Board of Appeals hearing in this instant matter (CBA 05-332-SPH) on August 3, 2005.

3. Copy of Baltimore County Code § 32-4-107.

4. Copy of Baltimore County Code § 32-4-223.

5. Copy of Baltimore County Code § 32-4-416.

6. Copy of the Baltimore County Zoning Commissioner's decision in Case No. 05-332-SPH, dated March 14, 2005.

342521

1 VOLUME VII

#1

2 RE: BONNIE VIEW ESTATES

3 #III-454

4

5 _____/

6

7 The zoning hearing in the above-titled

8 matter was continued on Tuesday, September 16, 2003,

9 commencing at 1:00 p.m., at 111 West Chesapeake

10 Avenue, Towson, Maryland, 21204, before Paula J.

11 Eliopoulos, Notary Public.

12

13 APPEARANCES:

14 LAWRENCE SCHMIDT, Hearing Officer

15 HOWARD L. ALDERMAN, ESQUIRE
On behalf of Owners

16

J. CARROLL HOLZER, ESQUIRE

17 On behalf of Protestants

18 ROBERT A. HOFFMAN, ESQUIRE
PATRICIA MALONE, ESQUIRE

19 On behalf of Petitioner

20

21 REPORTED BY: PAULA J. ELIOPOULOS

Redacted Portions of transcript – testimony of Mr. Rodney Little:

Page 1042 and 1043

Q And with regard specifically to the Maryland Historic Trust inventory, can you explain what the inventory is?

A Yes, the inventory is what I would characterize as our raw database. Properties get added to the inventory in a – many varieties of ways.

They may be – we have professional field surveyors who are out surveying on a continuous basis. As they complete surveys of geographic areas, properties that they found get added to the inventory.

Property owners or volunteers sometimes fill out inventory forms. The inventory is – serves several purposes. It's an archives, and I would say that's its primary purpose, that tells us either what is in a particular area or what was once there, because there are properties on our inventory that have, in fact, been demolished. They're no longer there. It's simply a record that they once existed.

We use the inventory more or less as a red flag. It tells us that if we're looking at a project over which we do have legal jurisdiction, it causes us to take a second look at the property.

That second look then is usually an evaluation of is this property, in fact, does it have enough historic significance to warrant further elevation, designation.

Listing on the inventory does not have any impact on property owners' rights or on – or any regulatory effect.

Pages 1047 and 1048

Q And it is your department's position that the inventory from your department's perspective is not to have any regulatory effect; isn't that correct?

A It does not have any regulatory effect.

HEARING OFFICER: from the perspective of the Maryland Historic Trust?

THE WITNESS: In order – can I clarify that?

HEARING OFFICER: Sure.

THE WITNESS: In order for a property on the inventory to be subject to regulatory effect under State of Federal law, we actually have to go to another level of evaluation and determine whether it's eligible for the National Register of Historic Places or, in fact, listed on the National Register of Historic Places.

#2

IN THE MATTER OF:	*	BEFORE THE
11330 York Road/"ELIZABETH	*	COUNTY BOARD OF APEALS
GARDNER HOUSE" York @ Shawan,	*	OF
LLC, Owner; Branch Banking &	*	BALTIMORE COUNTY
Trust Co. - CP	*	Case No.
8th election District	*	August 3, 2005
3rd Councilmanic District	*	

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthoue, 400 Washington Avenue, Towson, Maryland 21204, at 10:30 a.m., August 3, 2005.

* * * * *

Reported by:

C.E. Peatt

1 BOARD MEMBERS
2
3 LAWRENCE STAHL, Chairman
4 EDWARD CRIZER, JR.
5 JOHN P. QUINN
6
7
8
9
10
11
12
13 APPEARANCES:
G. SCOTT BARHIGHT, Esquire
14 ROBERT A. HOFFMAN, Esquire
On behalf of Legal Owner and
15 Contract Purchaser
16 JOHN C. MURPHY, Esquire
17 On behalf of Appellants/Protestants
18
19
20
21

1 PROCEEDINGS
2 * * * * *
3 THE CHAIRMAN: Good morning, everyone. We're
4 here on a regular meeting of the Baltimore County Board of
5 Appeals for August 3, 2005.
6 We are here in two numbered matters. The first
7 is CBA-05-125, which is the matter of 11330 York Road, the
8 Elizabeth Gardner House, regarding a decision of the
9 Landmarks Preservation Commission in which the said house
10 was not placed on the Preliminary Landmarks List, and also
11 specifically a March 10, 2005 motion that it be placed on
12 that list, and also a companion matter, which is
13 05-332-SPH, also in the matter of York and Shawan, LLC,
14 the legal owner, and Branch Banking & Trust Company, which
15 is the contract purchaser, same address, same location,
16 also regarding the same Elizabeth Gardner House, in the
17 8th Election and 3rd Councilmanic Districts, and that
18 regards a 3-14-05 Zoning Commissioner's order below in
19 which requested zoning relief was granted.
20 Counsel, just before we go further, for the
21 record, please.

1 MR. BARHIGHT: Thank you Good morning. Scott
2 Barhight, Whiteford, Taylor & Preston, with offices here
3 in Towson at 210 West Pennsylvania Avenue, on behalf of
4 York at Shawan LLC, who is the property owner of 11330
5 York Road, the property in question in both of the
6 appeals.
7 MR. HOFFMAN: Good morning. Rob Hoffman,
8 representing BB&T Company, contract purchaser. Thank you.
9 MR. MURPHY: Good morning. John C. Murphy, 516
10 North Charles Street, Baltimore, Maryland. I'm
11 representing the appellants.
12 THE CHAIRMAN: Thank you, gentlemen. Okay. Just
13 procedurally, that's why we have two folks here from our
14 staff, there has been a Motion to Dismiss in the first
15 matter, in the 125 matter, that is, the determination of
16 the Landmarks Preservation Commission, and there is the
17 second matter which involves the granting of the razing
18 permit.
19 The Motion to Dismiss has been filed by Mr.
20 Barhight earlier on, which the Board has had a chance to
21 look at.

1 There has also been an Answer which has been
2 filed in the matter, and we have reviewed those related
3 documents.
4 What we are going to do, since the cases, the
5 questions, are inalterably connected to each other, we are
6 going to actually deliberate, and for those of us, the
7 public, since this is a public meeting, there's a
8 difference between hearing a case and deliberating a case.
9 There are certain matter we deliberate in public
10 by statute and by court ruling. That is, when anything is
11 a final act of what we do involving zoning or permits, it
12 must be done in a public setting. We can't simply meet in
13 the back and decide how we think. This is one of those
14 situations.
15 So in a moment, we are going to go off the
16 official record, and we are going to be meeting in a
17 deliberation session, which is why the Board's secretary
18 is here to take notes for that, since it's essentially a
19 work session.
20 Then we are going to go, depending on that, we
21 will then go back on the record for the actual hearing, if

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1 there be any hearing at that point. Gentlemen, you rise?
2 MR. BARHIGHT: Only because I wanted to make sure
3 there was clarity. It sounds like you're going to go
4 ahead and deliberate the motion.
5 THE CHAIRMAN: There's only one.
6 MR. BARHIGHT: You're right, there's only one.
7 I want to make sure, in terms of point of clarification,
8 when my Motion was filed, there was but one case number,
9 and it was filed under Case 05-332-SPH, but of course
10 related to the appeal of the LPC. I think that's very
11 clear from the text.
12 The Answer to the Motion To Dismiss, which I had
13 a chance to review for the first time this morning, also
14 bears the reference to Case No. 05-332-SPH, but obviously
15 the text of that answer also clearly responds to the
16 issues surrounding the appeal of the LPC decision, which
17 subsequent to the filing of the Motion, there was a number
18 assigned, and I got a notice of that.
19 That, I understand, is Case CBA-05-125. Just for
20 clarification, the moving party is not seeking a dismissal
21 of the appeal in 05-332-SPH, which is the special hearing

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1 that came up from the Zoning Commissioner.
2 We are seeking a dismissal of the appeal of the
3 LPC decision.
4 THE CHAIRMAN: The 125 case.
5 MR. BARHIGHT: 05-125. I just wanted to make
6 sure that was abundantly clear before you began your
7 deliberation.
8 THE CHAIRMAN: Right. That is our understanding.
9 MR. MURPHY: Mr. Chairman, I wonder if there's
10 any opportunity for any oral argument.
11 THE CHAIRMAN: No, I don't think we need any. I
12 think the positions are clear of both parties, and I think
13 we can address the issues at this time.
14 MR. MURPHY: Thank you.
15 THE CHAIRMAN: With that, we're going to go off
16 of our official record and we're going to pick up with the
17 Board's secretary.
18 (Whereupon, a pubic deliberation was held.)
19 THE CHAIRMAN: We are back on the record. For
20 the record, we have ruled unanimously that we do not have
21 jurisdiction to hear the Landmarks Preservation case,

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1 which is the 125 matter, and because of that, we'll now
2 move on to the special hearing matter CBA 05-322.
3 For the record, I'm assuming that there's no
4 additional counsel? There's the same counsel on that case
5 also, and we're ready to begin. Gentlemen.
6 MR. BARHIGHT: Thank you, Mr. Stahl. I have
7 several preliminary items to bring to the Board's
8 attention just to make sure we are proceeding on the same
9 path.
10 The first relates to the appeal in 05-332-SPH.
11 It's my understanding that three different parties have
12 attempted to file an appeal of that matter, all of whom
13 are represented by Mr. Murphy.
14 I want to make sure that the record is clear that
15 none of them were parties below. We want to preserve any
16 rights that we have to object, that they are not proper
17 parties to this matter, because they did not participate
18 in any way in the proceedings below.
19 MR. MURPHY: I would just say there weren't any
20 proceedings below. There was no hearing held.
21 MR. BARHIGHT: I will be happy to let Mr. Murphy

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1 respond at the appropriate time, if I could speak without
2 being interrupted.
3 THE CHAIRMAN: Mr. Murphy. Mr. Barhight hadn't
4 finished yet.
5 MR. BARHIGHT: Thank you. But to that question,
6 there were proceedings below. There was not a public
7 hearing below.
8 The petition for special hearing for
9 administrative special hearing was filed, the property was
10 posted, and no party sought to request a special hearing
11 of that matter.
12 Mr. Murphy or any of his clients could have done
13 that. They did not do that, and we want to preserve our
14 rights to that argument.
15 We want to make sure that we make the proper
16 motions that the appeal should be dismissed because they
17 were not parties below and should not have standing,
18 therefore, to file an appeal of this matter to this Board
19 in a case of a Petition for Special Hearing For
20 Administrative Relief, where the property was posted, and
21 they had a right to ask for a hearing, and chose not to do

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1 so.
2 In the order itself, I think Mr. Wiseman, the
3 Zoning Commissioner, especially noted the fact that no one
4 had asked for a hearing, that none of Mr. Murphy's clients
5 had asked for a hearing, and that there had been no
6 information or evidence or testimony with regard to any
7 opposition.
8 He then proceeded, in accordance with the county
9 practices -- which we'll comment on later -- to make his
10 final decision.
11 So I wanted to make sure that was properly
12 preserved. I don't know what's going to be happening to
13 this matter going forward, and I wanted to make sure the
14 record was clear on that.
15 THE CHAIRMAN: Mr. Murphy, your response?
16 MR. MURPHY: The property was -- notice was
17 posted allowing people to object, and it's the code
18 section that allows people to object, that is, people that
19 live within 1000 feet can object to a height or area
20 variance.
21 This was not a height or area variance. This was

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1 an application for a demolition. After the property was
2 posted, it was then subsequently posted for the hearing
3 before the Landmarks Preservation Commission.
4 My clients did appear before the hearing before
5 the Landmarks Preservation Commission, so it's not as if
6 we sat on our hands and had no interest in this property
7 and now we are coming in and asking that something be
8 done.
9 The forum that we utilized was the hearing before
10 the Landmarks Preservation Commission. That's why these
11 two issues are linked.
12 I understand totally that the Board has dismissed
13 the appeal from the Landmarks Preservation Commission, but
14 as the testimony will show, and as Mr. Wiseman's opinion
15 says, he rested his decision largely on the proceedings of
16 the Landmarks Preservation Commission, that they did not
17 list the property.
18 Well, in that proceeding, my clients did appear
19 and testify. Thank you.
20 THE CHAIRMAN: With appreciation to Mr. Barhight
21 for his comments, the record will reflect your objection.

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1 We are going to proceed and go ahead with this matter.
2 MR. BARHIGHT: The only other matter,
3 preliminarily, would be to make sure we understand who has
4 the burden of going forward.
5 Because this is an appeal of a Petition for
6 Administrative Special Hearing that we were filing below
7 before the Zoning Commissioner, it's our understanding
8 that we have the burden of going forward, and we should
9 proceed first with witnesses, and we are happy to do so.
10 THE CHAIRMAN: That's my understanding also of
11 the rules.
12 MR. BARHIGHT: Very good. I'd like to call our
13 first witness to the stand, Mr. Schultz.
14 While he's gathering his papers, I'd like to make
15 a very, very brief opening comment that relates to the
16 Petition for Special Hearing.
17 Again, some of this is necessary in order to make
18 sure we create the proper record in the event this matter
19 is filed on appeal.
20 You will hear Mr. Schultz talk about in just a
21 moment, the history of the proceedings and how you obtain

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1 razing permits, especially in a case where a property has
2 an MHT number.
3 It is undisputed that the subject property has an
4 inventory number, a Maryland Historical Trust number, a BA
5 number, and you'll hear it referred to in a variety of
6 different ways. That BA number, or that inventory number
7 triggers in the minds of the Department of Permits and
8 Development Management a requirement for a special hearing
9 before such structures can be razed.
10 One of the things I want to make clear, we want
11 to preserve all our rights to object to that requirement
12 by Permits and Development Management in the event that
13 this matter proceeds further.
14 We do not think that there is statutory authority
15 for the requirements of such a petition for special
16 hearing in the first place, nor statutory authority that
17 requires my client to do anything to obtain the ability to
18 raze the structure, other than to properly file an
19 application for a razing permit, which has been done.
20 That razing permit has not been ruled on. It has
21 not been denied or granted. It is still pending, pending

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1 the outcome of this hearing, but we wanted to make sure we
2 have preserved all of our rights and remedies as relates
3 to the requirements that the Department of Permits and
4 Development Management has.
5 As you will note, a year later, there's no
6 statutory provision for this kind of a hearing. Instead,
7 when someone goes to obtain a razing permit from the
8 Department of Permits and Development Management where the
9 property bears an MHT inventory number, they are
10 directed -- and there is actually a form that we will
11 introduce into evidence -- they are directed to file a
12 particular kind of petition for special hearing in order
13 to obtain the razing permit, which we did.
14 Ultimately, that matter gets referred to the
15 Landmarks Preservation Commission, for the Landmarks
16 Preservation Commission to make a recommendation to the
17 Zoning Commissioner one way or the other.
18 The Landmarks Preservation Commission has several
19 choices in this case. One was to do nothing. One was to
20 recommend some course of action to the Zoning
21 Commissioner. And another was to do what it did do, which

Page 15

1 was to have a hearing to determine whether the subject
2 property should be listed on the Baltimore County
3 Preliminary Landmarks Preservation List.
4 That's what the LPC decided to do in this case.
5 They did have the hearing. My clients were notified. We
6 showed up at the hearing on March 10th of this year.
7 Mr. Murphy showed up with his clients.
8 Introduction of evidence occurred. I'm sorry. His
9 clients were there. I apologize. I forgot. His clients
10 showed up, made arguments, and the end of the day, the
11 Landmarks Preservation Commission, you will hear in a
12 moment, clearly decided not to list the structure.
13 That information was conveyed back to the Zoning
14 Commissioner. No one had requested a hearing, so he
15 didn't have a hearing. And because he is bound by the
16 decision of the LPC, just as we would assert you're bound
17 by it, he granted the petition for special hearing, and
18 then moved forward in accordance with his decision.
19 But it's important to note that Mr. Murphy was
20 right. He did take note of the decision of the LPC. It
21 would have been inappropriate for him to have

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1 second-guessed in any way the decision of the LPC.
2 We wholeheartedly agree with your decision today
3 in granting the Motion to Dismiss. We are all bound by
4 that decision.
5 I won't go into too much detail in my opening
6 statement about the process of the Department of Permits
7 and Development Management, although I will let the next
8 witness really talk about that in further detail, but it's
9 important to point out that the Department of Permits and
10 Development Management for a regular razing permit, does
11 not require the filing of a development plan. That is not
12 considered development.
13 If you have a piece of property upon which a
14 structure is situated and they wish to, the property
15 owner, wishes to obtain a razing permit, the way you get
16 that permit is by merely filing for a razing permit.
17 The special hearing process is the overlay on top
18 of that, and only exists in the case where's there's a
19 potential historical issue.
20 That historical issue has been resolved. I don't
21 know whether Mr. Murphy wants to make an opening now or

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1 reserve until later.
2 THE CHAIRMAN: I was just going to ask him. Mr.
3 Murphy, do you want to wait until the beginning of your
4 case?
5 MR. MURPHY: No. I'd like to say something now.
6 Mr. Barhight has gone into the proceedings of the
7 Landmarks Preservations Commission, and that's fine.
8 That's his interpretation.
9 He's giving you his interpretation that they had
10 a full and fair hearing, is what he said, had a full and
11 fair hearing.
12 It did not have a full and fair hearing. Our
13 testimony will be that they did not have a full and fair
14 hearing.
15 The reason they did not have a full and fair
16 hearing is the Landmarks Preservation Commission is
17 privileged to have probably the best staff in the State of
18 Maryland assisting them in reaching its determination.
19 Probably many of you have heard the name of John
20 McGrain, who's the county historian, and is the Chief
21 Historical Officer for the Landmarks Preservation

Page 18

1 Commission, Tim Dugan, Kim Abe. These are highly
2 qualified people.
3 And when the matter came before the Landmarks
4 Preservation Commission, Mr. Barhight said, his testimony
5 was, they had a full and fair hearing.
6 I just want to explain why we're here. The
7 reason we are here is that this highly qualified staff,
8 the Landmarks Preservation Commission, was not asked to
9 give its evaluation as to this building.
10 That's the defect. So when Mr. Barhight says,
11 Well, they had a full and fair hearing, our testimony will
12 be that they did not have a full and fair hearing.
13 I understand that that's a matter that you cannot
14 second-guess that matter, but he brought it up as to what
15 the hearing was, the quality of the hearing. We are going
16 to explain that it was not a full and fair hearing.
17 Our second point here is that the application was
18 dispensed, with the requirement for a development plan.
19 That was the application filed. And the Zoning
20 Commissioner Mr. Wiseman granted that.
21 That's a crucial step, because the development

Page 19

1 plan requires that any building listed on the Inventory
2 shall be preserved. That's in the County Code.
3 It does not say that any building listed on the
4 Landmarks Preservation Commission, the LPC List, shall be
5 preserved. It says, Any building listed on the Inventory
6 shall be preserved.
7 And that's what the waiver, the Zoning
8 Commissioner granted the special waver from that
9 requirement in the Code, and this Board has to look at the
10 standards for granting the waiver and determine whether
11 this application meets those standards.
12 Our testimony will be that the building is
13 historic, and that there was nothing in the Zoning
14 Commissioner's ruling, or I believe in any of the
15 testimony here today, that is sufficient grounds for
16 granting the waiver.
17 Mr. Barhight makes a fundamental misstatement of
18 the law when he says that the Zoning Commissioner is bound
19 by the determination of the Landmarks Preservation
20 Commission. The law does not say buildings listed by the
21 Landmarks Preservation Commission shall be preserved.

Page 20

1 The law says buildings on the Maryland Historical
2 Trust Inventory shall be preserved. Thank you very much.
3 THE CHAIRMAN: Thank you.
4 MR. BARHIGHT: I'd go ahead and call Mr. Schultz
5 to the stand.
6 G E O F F R E Y S C H U L T Z,
7 having been called as a witness, was duly sworn and
8 testified as follows:
9 MR. BARHIGHT: While he's preparing to testify, I
10 believe there's a plan to accompany the petition at the
11 very back of that file.
12 THE CHAIRMAN: While he's doing that, sir, if you
13 would give us your name and your address, and spell your
14 last name.
15 THE WITNESS: Geoffrey Craig Schultz.
16 S-c-h-u-l-t-z, care of McKee & Associates, 5 Shawan Road,
17 Hunt Valley, Maryland 21030.
18 THE CHAIRMAN: Is that Geoffrey with a "J"?
19 THE WITNESS: Actually, Geoffrey With a "G."
20 (Discussion held off the record.)
21 DIRECT EXAMINATION.

Page 21

1 BY MR. BARHIGHT:
2 Q. Mr. Schultz, can you please indicate where you are
3 employed?
4 A. I am employed with McKee and Associates.
5 Q. What is your title there?
6 A. I am vice president.
7 Q. Your duties?
8 A. My duties are to oversee the daily operations of
9 the firm, as well as to oversee the financial operations
10 and to act as a project manager for many of the projects
11 that our firm works with.
12 Q. Can you please describe to the Board your
13 educational background? Very briefly.
14 A. I have a Bachelor of Science degree in
15 mathematics, and a Master's degree in business
16 administration.
17 Q. Could you please briefly describe your
18 work-related background, for the Board?
19 A. I have been with the Mckee firm for twenty-eight
20 years. I started as a designer and progressed to a
21 project manager, and eventually into vice president of the

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1 firm.
2 Q. What is the nature of the work that you do at
3 McKee & Associates?
4 A. We do residential, commercial, institutional,
5 development of property. We also perform land surveying.
6 We have an environmental section that does studies. And
7 we also help developers in developing real estate.
8 Q. Are you a professional land surveyor, registered
9 with the State of Maryland?
10 A. Yes, I am.
11 Q. Have you testified previously before this Board
12 and other commissions in Baltimore County, other bodies in
13 Baltimore County, as an expert in land surveying,
14 engineering, zoning and development, specifically in
15 Baltimore County?
16 A. Yes, I have.
17 MR. BARHIGHT: I'd like to offer Mr. Schultz as
18 an expert land surveyor, and also expert in engineering,
19 zoning and development in Baltimore County.
20 MR. MURPHY: I assume this does not include
21 historic preservation?

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1 MR. BARHIGHT: I'm only offering him --
2 THE CHAIRMAN: Land surveyor, engineering, zoning
3 and development in Baltimore County.
4 MR. MURPHY: No objection.
5 Q. Mr. Schultz, I assume that you're familiar with
6 the subject property?
7 A. Very familiar with it.
8 Q. How is it you became familiar with the subject
9 site?
10 A. The office is located directly across the street,
11 our office, or the site is located directly across the
12 street from our office.
13 It used to be occupied by Piper Realtors, and our
14 firm has had an association with Piper. And eventually it
15 became O'Connor, Piper and Flynn over the last twenty
16 years since we have been in the building.
17 Q. It sounds like you're very familiar with the
18 corner?
19 A. Yes.
20 Q. Would you please step down from the witness stand
21 and direct your attention to the plat to accompany

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1 petition for special hearing and would you please orient
2 the Board and explain to them, come over this way, so it's
3 easier for them to see, and get them oriented for where
4 the property is located or situated.
5 A. The site is located at the southwest corner of
6 the intersection of York Road and Shawan Road, located on
7 the eastern -- southeastern corner of the shopping center
8 that contains the Giant, probably about ten or twelve
9 strip stores, a bank in front. There's an office complex
10 to the northeast called North Park Office Complex that
11 contains a great deal of offices.
12 And directly across the street on the northwest
13 corner, there's an Amoco station. Behind the building,
14 fronting on York Road, is a Wendy's Restaurant. And then
15 to the west of the building is a property that is part of
16 the -- I guess the old C&P building. I guess it's Verizon
17 now.
18 Q. What is the approximate location, using that
19 plat, to orient the Board to the Hunt Valley Mall?
20 A. Hunt Valley Mall is located in this area.
21 Behind -- these are small properties that probably run

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1 about a hundred feet deep. Behind those properties and
2 then coming out to Shawan Road would be the Hunt Valley
3 Mall.
4 MR. BARHIGHT: I'd like to introduce the plat to
5 accompany petition for special hearing as the next
6 petitioner's exhibit.
7 THE CHAIRMAN: Mr. Murphy?
8 MR. MURPHY: No objection.
9 THE CHAIRMAN: So ordered. Mr. Barhight, or Mr.
10 Hoffman, would you mark that?
11 MR. HOFFMAN: Is it No. 1?
12 THE CHAIRMAN: Yes.
13 MR. HOFFMAN: (Indicating.)
14 Q. Mr. Schultz, while Mr. Hoffman is doing that, are
15 you also familiar with the Baltimore County GIS files?
16 A. Yes.
17 Q. And the aerial photographs that are available?
18 A. Yes, I am.
19 Q. I'm showing you a document which purports to be
20 an aerial photograph. Can you identify this?
21 A. Yes. This is an aerial photograph of the

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1 intersection of York and Shawan Road. The subject site is
2 located right here. There is the Verizon building.
3 Here's the Hunt Valley Mall.
4 Q. Let me go ahead and put that up, and I'd like for
5 you restate that for the Board.
6 THE CHAIRMAN: Are you going to mark that as No.
7 2, Mr. Barhight?
8 MR. BARHIGHT: Yes.
9 THE CHAIRMAN: Why don't you mark it on there?
10 MR. BARHIGHT: I will let Mr. Schultz do that.
11 THE WITNESS: Petitioner's No. 2.
12 THE CHAIRMAN: Put the initials "CBA" before it.
13 THE WITNESS: (Indicating.)
14 Q. If you could reorient the Board now that the
15 aerial is up on the board so they can see it, show the
16 location of Shawan and York Road and where the subject
17 property is.
18 A. This is a small scale, but York Road is running
19 here in a north/south direction. Here's the intersecting
20 Shawan Road.
21 The subject site is located right at the corner

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1 of those two roads. The building is shown here. And,
2 again, this would be the Wendy's. This is the Giant
3 Shopping Center. This is the North Park office buildings.
4 This is the Verizon building complex. Across the
5 street is the Amoco station, several small offices, and
6 then, of course, the Hunt Valley Mall.
7 THE CHAIRMAN: Sir, if you would do me a favor
8 and just draw a circle around the subject site?
9 THE WITNESS: (Indicating.)
10 THE CHAIRMAN: Very good.
11 Q. Mr. Schultz, what is the subject property zoned?
12 A. It's a business zone. I believe it's B.L. Can I
13 check the plan, just to verify?
14 Q. Please.
15 A. It should be a B.L., but just one second. Yes,
16 it's B.L., and a small portion of it is zoned M.L./I.M.
17 Q. What, generally, is the zoning in the vicinity?
18 A. Manufacturing and business.
19 Q. Are you familiar with the history of how you
20 obtain a razing permit in Baltimore County?
21 A. Yes, I am.

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1 Q. How we try to obtain a razing permit in Baltimore
2 County?
3 A. Yes.
4 Q. In this particular case -- the Board sort of
5 knows this, but we need to establish it for the record --
6 was a petition for special administrative hearing filed in
7 this particular case?
8 A. Yes, it was.
9 Q. Ultimately, did the Zoning Commissioner make a
10 decision in that case?
11 A. Yes, he did.
12 Q. Between the time the petition was filed and the
13 time when the decision was rendered, was there also a
14 Landmarks Preservation Commission hearing held and a
15 decision rendered by the Landmarks Preservation
16 Commission?
17 A. Yes, there was.
18 MR. MURPHY: This is leading. I object.
19 THE CHAIRMAN: Well, it's historical, we know all
20 these things occurred from opening argument, so let's get
21 through the history. Overruled.

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1 Q. Mr. Schultz, I'm showing you a copy of a set of
2 minutes. Could you please describe what I have just
3 handed you, to the board?
4 A. Those are the minutes from the Landmark
5 Preservation Committee meeting of March 10, 2005.
6 Q. Are there any particular references in those
7 minutes to the subject property?
8 A. There's a section that I'm familiar with, I
9 believe on the fourth and fifth page, item number nine,
10 that refers to the Elizabeth Gardner House, 11330 York
11 Road, the subject site.
12 Q. Obviously, that speaks for itself, but there was
13 a decision rendered that evening?
14 A. That is correct.
15 MR. BARHIGHT: I'd like to introduce the minutes
16 as the next petitioner's exhibit.
17 THE CHAIRMAN: Mr. Murphy?
18 MR MURPHY: No objection.
19 THE CHAIRMAN: Petitioner's Exhibit No. 3.
20 Q. Now, back to the actual process of filing for a
21 razing permit.

1 Are you familiar with how razing permits are
2 obtained in Baltimore County?
3 A. Yes, I am.
4 Q. Could you please generally, very briefly,
5 describe that process to the Board?
6 A. The permit is applied for with the Office of
7 Permits and Development Management. There are two
8 agencies that will review the permit application. One is
9 the Department of Permits and Development -- excuse me --
10 Department of Environmental Protection and Resource
11 Management. They will check the application for, or
12 actually check the building to be razed, for asbestos.
13 They also will check to make sure that any
14 existing well or septic connected to the existing dwelling
15 would be abandoned.
16 The second agency that reviews those, the
17 applicant, is the planning office. The planning office
18 requires any building to be razed to be documented with
19 pictures. They also serve to see if the building is
20 located or has an historic number with any of the local
21 historic catalogues. That's for a regular razing permit.

1 If the house is historical, the property is
2 historical, it also gets sent to the zoning office to see
3 if the appropriate actions have been taken through the
4 development regulations, and only if it's historic, does
5 it go to the zoning office.
6 Q. Now, with regard to the razing permit, when a
7 razing permit is filed in the ordinary course, are there
8 any requirements by the Department of Permits and
9 Development Management that a development plan be filed in
10 order to obtain a razing permit?
11 A. No, there's not.
12 Q. Now, back to the situation where there might be
13 some kind of historical designation. In the subject
14 matter, is this subject property the subject of an MHT
15 Inventory Number?
16 A. Yes, it is.
17 Q. It is listed on the Maryland Historical Trust
18 Number?
19 A. Yes, it is.
20 Q. Did that trigger in this particular case any
21 requirement imposed by Permits and Development Management?

1 A. Yes, it did.
2 Q. What requirement did that trigger?
3 A. The zoning office has a policy where they require
4 the filing of a petition for administrative special
5 hearing to permit the razing of a house, in compliance
6 with the zoning regulations.
7 They also have a standard form that they give to
8 the applicant to fill out and process.
9 MR. BARHIGHT: I'm going to show the witness the
10 form he's just referenced and ask him to identify it. The
11 copy I'm giving to the Board, you will note, has a fax
12 notation to the top.
13 I'd like you to disregard that. If there's any
14 problem, we can obviously cut it off.
15 Q. Mr. Schultz, I'm handing you a document and ask
16 you to identify that, please.
17 A. This is the sort of checklist or guidance list
18 given by the zoning office for filing of the special
19 administrative hearing to get permission to raze the
20 building.
21 Q. Does that form provided by Permits and

1 Development Management identify the nature of the special
2 hearing that needs to be requested?
3 A. Yes.
4 MR. BARHIGHT: Now, I'd like to introduce this as
5 the next petitioner's exhibit before we go on.
6 MR. MURPHY: May I just have a minute?
7 THE CHAIRMAN: Absolutely.
8 MR. MURPHY: At the risk of sounding picayune, I
9 have -- I'm a struggling lawyer. I can't keep up with all
10 the codes that are constantly being adopted, so I get my
11 code off the internet, and my Section 32 Form 107 has
12 another paragraph that is not in this exhibit.
13 THE CHAIRMAN: You mean, (a), because the exhibit
14 begins with (b)?
15 MR. MURPHY: I guess you're right, that it's (b).
16 I can only say that this is not a total copy of 32-4-107.
17 It's only (b).
18 THE CHAIRMAN: I don't think Mr. Barhight will
19 disagree. This is being offered not as a complete
20 compilation of the code section, but simply as the form
21 which is provided when one requests to take this

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1 particular action.
2 If either Mr. Barhight or you either wish in the
3 course of the hearing or as part of the memos, in lieu of
4 closing argument, to provide full text, that's fine.
5 MR. MURPHY: Terrific.
6 THE CHAIRMAN: Under those circumstance, with
7 those comments, for the record, this becomes Petitioner's
8 No. 4.
9 Q. In this particular case, was a petition filed in
10 accordance with Petitioner's Exhibit No?
11 A. Petitioner's Exhibit No. 4, yes, a petition was
12 filed. Correct.
13 Q. Are you familiar with the Baltimore County
14 development regulations?
15 A. Yes.
16 Q. Are you familiar with the section that governs
17 waivers?
18 A. Yes.
19 Q. Are you also familiar -- what section of the code
20 is it that governs wavers?
21 A. 32-4 -- excuse me. 32-4-07.

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1 Q. And are there other sections of the code that
2 govern how you file a development plan?
3 A. Yes.
4 Q. Are you familiar with those?
5 A. Yes.
6 Q. Are you familiar with the code sections that
7 relate to the information that must be provided on a
8 development plan, if and when it's filed?
9 A. Yes.
10 Q. Now, are you also familiar with Section 32-4-416
11 entitled, Preservation of Natural or Historic Features?
12 A. Yes, I am.
13 Q. If I could ask you to turn to that section?
14 A. Okay.
15 Q. Also look at Petitioner's Exhibit No. 4. Does
16 Petitioner's No. 4 accurately state at least that portion
17 of 32-4-416?
18 THE CHAIRMAN: Meaning (a)(8)?
19 MR. BARHIGHT: Yes.
20 Q. I think it says (a)(2).
21 A. Are you talking 107 or 416?

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1 Q. Do you have a copy of 32-4-416?
2 A. I have 416, yes.
3 Q. There's an (a) section and a (b) subsection you
4 have, correct?
5 A. Yes.
6 Q. We'll do it one step at a time. Does the (a)
7 section of 32-4-416 appear on Petitioner's Exhibit No. 4?
8 A. Yes. I'm sorry. Yes, it does.
9 Q. There is also a section on Petitioner's No. 4
10 that says "8." Do you see that?
11 A. Yes.
12 Q. Is that a typographical? Should it say "2"?
13 A. I have to go with a different section to read
14 that. Just one second. I have to go to 223.
15 Q. No, you don't. Look at 32-4-416(a)(2).
16 A. That references any site listed in 32-4-223 --
17 MR. BARHIGHT: For the record, I'm trying to
18 establish something that's a typographical error.
19 Q. Do you say where here it has an "8"?
20 A. Oh, I thought you were talking about that one.
21 Q. No.

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1 A. Yes, that should be (a)(2), that's correct.
2 Q. So it's a typographical error on the form. Where
3 it says 32-4-416(a)(8), it should say (a)(2)?
4 A. Correct.
5 MR. BARHIGHT: I just wanted to make sure the
6 Board understood the typographical error in the form.
7 Q. Nonetheless, does the form, Petitioner's Exhibit
8 No. 4, accurately identify the text of 32-4-416(a)(2)?
9 A. Yes, it does.
10 Q. What does that section say? It's very short.
11 You might as well read it.
12 A. 416(a)(2)?
13 Q. Yes.
14 A. Preservation of features. Each development plan
15 shall preserve historic structures or sites identified on
16 any of the lists referred to in Section 32-4-223(8) of
17 this title.
18 Q. Are you also familiar with that section,
19 32-4-223?
20 A. Yes, I am.
21 Q. With regard to that section, is the version

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1 that's shown on Petitioner's No. 4 identical to the text
2 in the actual statute?
3 A. Yes, it is.
4 Q. So with regard to 32-4-223, subsection (8), is
5 there a subsection, (i), that indicates the Maryland
6 Historical Trust Inventory of Historic Property?
7 A. Yes.
8 Q. Is that the list upon which this property is
9 listed?
10 A. That's correct.
11 Q. Now, with regard to 32-4-223, what is the very
12 first sentence of that section say?
13 A. The development plan shall identify the following
14 information concerning existing site conditions.
15 Q. So if you file a development plan, you have to
16 identify whether, for example, there is an MHT listing on
17 the particular property?
18 A. Correct.
19 Q. Is there a development plan in this case?
20 A. There is none.
21 Q. Are you familiar with Section 3-4-107(b), and the

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1 waiver that's the subject of this hearing today?
2 A. Yes, I am.
3 Q. Are you familiar with the finding that's required
4 under Subsection (i),(ii), (iii)?
5 A. Yes, I am.
6 Q. I'd like to then ask you questions about those to
7 make sure we can get this on the record clearly, but
8 before we do so, what does this waiver relate to?
9 A. This waiver relates to allowing the razing of a
10 structure that is listed in the Maryland Historical Trust.
11 Q. Now, with regard to 32-4-107(b)(1)(i) indicates
12 that the size, scope and nature of a proposed development
13 does not justify strict compliance with this title. Is
14 that what that indicates?
15 A. Yes.
16 Q. Do you have an opinion as to whether, with regard
17 to the razing of this structure, the size, scope and
18 nature of the proposed development justifies strict
19 compliance with this title?
20 A. It does not.
21 Q. Can you please explain why.

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1 A. It does not justify strict compliance because the
2 building itself, although it's listed on the MHT, it has
3 been determined not historic.
4 MR. MURPHY: Objection. The witness was not
5 going to testify as to any historical aspects. He's
6 testifying as an historic expert. I move to strike.
7 THE CHAIRMAN: That's his position. I will let
8 you respond.
9 MR. BARHIGHT: He's not offering historical
10 opinions. If he'd be allowed to complete the sentence, I
11 will proffer he would say the LPC has made that decision.
12 THE WITNESS: Right.
13 MR. BARHIGHT: Then we can argue about that, but
14 let him answer the question fully.
15 A. Again, strict compliance is not justified
16 because, although it's listed on the MHT, the state has
17 deened it's not historic by the Landmarks Preservation
18 Commission.
19 MR. MURPHY: I move to strike on the grounds the
20 witness did not qualify as historic preservation expert.
21 THE CHAIRMAN: I'm going to overrule your

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1 objection because he's not giving his opinion whether it
2 should have been on the list or not.
3 He's simply saying that, as a zoning expert, that
4 one of the requirements is that it be listed, and that, as
5 we all know from the history and decision, and he knows
6 it, you know it, and I know it, he's not giving his
7 opinion whether that was a good thing, bad thing,
8 justified or not justified; simply that that was the data
9 available to all people making the application for the
10 waiver, that they had declined to do so.
11 And that's an historical fact. That's not
12 something where he gives his personal opinion. So he's
13 not testifying as to the efficacy of the Landmarks
14 Preservation process or its decision, only that the
15 decision exists.
16 MR. MURPHY: Just for the record, may I clarify
17 this?
18 THE CHAIRMAN: Sure.
19 MR. MURPHY: The question was asked how did the
20 razing of this building qualify under subsection (i), what
21 relates to the size, scope and nature of a proposed

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1 development does not justify strict compliance. It does
2 not say anything about whether it's listed on the historic
3 register or not.
4 THE CHAIRMAN: Right. But in his opinion, he's
5 allowed to give his opinion as to why it doesn't qualify
6 under (i.)
7 As a part of that opinion is that, for whatever
8 reason, the Landmarks Commission determined not to put it
9 on there, and while he's making no opinion as to that, the
10 mere fact that he does not --
11 MR. MURPHY: You're pointing out for the record
12 that whether the Landmarks Commission put it on not
13 doesn't have anything to do with whether a variance ought
14 to be granted according to the size, scope and nature of a
15 proposed development.
16 THE CHAIRMAN: And if upon cross examination, you
17 want to question him as to why he thinks that's a factor
18 al all, based on that language, that's appropriate cross
19 examination.
20 MR. MURPHY: Thank you.
21 THE CHAIRMAN: Go ahead. Your objection is

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1 overruled.
2 Q. Mr. Schultz, with regard to the subject of the
3 particular case here, the potential razing of this
4 structure, what is the nature of the proposed development
5 in this particular case?
6 A. Well, technically, we don't have development. We
7 are asking for razing of the structure. We're not asking
8 for approval of any development at the site.
9 Q. Correct. And I think you also testified earlier
10 that the Department of Permits and Development Management
11 does not require a filing of a development plan for
12 compliance with the concept plan, community input meeting,
13 development plan, Hearing Officer's hearing, requirements
14 of which we are all familiar with, in order to obtain a
15 razing permit?
16 A. That is correct.
17 Q. Directing your attention to 32-4-107(b)(1)(ii),
18 are you familiar with that section that indicates a waiver
19 would be within the scope, purpose and intent of this
20 title?
21 A. Yes.

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1 Q. Do you have an opinion as to whether this waiver
2 would be within the scope, purpose and intent of the
3 title?
4 A. Yes.
5 Q. What is that opinion, please?
6 A. The opinion is we are within the scope, purpose
7 and intent of the title.
8 Q. Can you explain that position?
9 A. The development regulations state that any site
10 listed on the MHT must be preserved. The development
11 regulations also provide for waivers to those
12 requirements.
13 MR. MURPHY: Might I just have an objection, your
14 Honor?
15 THE CHAIRMAN: Yes. Overruled, but for the
16 record, go ahead. Do you want to make it continuing?
17 MR. MURPHY: I would. Thank you.
18 THE CHAIRMAN: So ordered.
19 A. In this case, we have a house that is listed on
20 the MHT that technically under those requirements cannot
21 be razed.

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1 However, it's been deemed not historic by the
2 Landmarks Preservation Committee. It is clearly a
3 hardship to my client to not be able to raze a house that
4 has been deemed not historic.
5 And I believe that's why the county put the
6 waiver provisions in the development regulations, for
7 exceptions like this.
8 MR. MURPHY: Move to strike, again, on the
9 witness testifying in detail about the historic aspects.
10 That's beyond his area of expertise.
11 THE CHAIRMAN: I'll overrule the objection for
12 the same reasons the previous objection was denied.
13 Q. Drawing your attention to 32-4-107(b)(1)(iii), do
14 you see where it indicates that the proposed development
15 complies with all other county laws and regulations?
16 A. Yes.
17 Q. With regard to the ultimate proposed razing of
18 the structure, does that requested action comply with all
19 of the county laws and regulations of which you are aware
20 of and are familiar?
21 A. Yes.

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1 MR. BARHIGHT: No other questions of this witness
2 at this time.
3 THE CHAIRMAN: Let's do it on one side first.
4 Mr. Hoffman, are there any questions you want to ask?
5 MR. HOFFMAN: No. I thought the direct was
6 perfect.
7 THE CHAIRMAN: Mr. Murphy.
8 CROSS EXAMINATION
9 BY MR. MURPHY:
10 Q. Mr. Phillips --
11 A. Mr. Schultz.
12 Q. I thought it was "Mr. Phillips."
13 A. I usually speak loudly. I'm surprised.
14 Q. Mr. Schultz, your testimony is that the proposed
15 development complies with all county laws and regulations?
16 A. That's correct.
17 Q. And that it's within the intent of the code?
18 A. Yes.
19 Q. Are you familiar with 32-4-416 which says
20 historic structures or sites identified on the Maryland
21 Historical Trust Inventory shall be preserved?

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1 A. I'm not -- you said 416?
2 Q. 32-4-416.
3 A. I'm familiar with that section.
4 Q. Look at it. It's 32-4-416.
5 A. Okay. That's the section I'm familiar with, that
6 section, yes.
7 Q. Does it not say that historic structures or sites
8 identified on any of the lists referred to in Section
9 32-4-223(8) shall be preserved?
10 A. That is correct.
11 Q. You recognize that the Gardner House is
12 identified on the list of the Maryland Inventory?
13 A. Yes.
14 Q. Why then is it consistent with that section,
15 because it's not going to be preserved, is it?
16 A. It's not going to be preserved is correct.
17 It's consistent because under the waiver statute, we are
18 allowed to request a waiver where there are certain
19 exceptions or circumstances that deem not following the
20 strict letter of the law.
21 Q. What circumstances are those?

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1 A. That the house has been deemed to be not
2 historic.
3 Q. Where's that listed?
4 A. It's not listed in the Code. It's decided by the
5 LPC.
6 Q. Well, the Code says that the size, scope and
7 nature of the proposed development. As I understand it,
8 your only explanation for the granting of a waiver is that
9 because it's not listed -- the Landmarks Preservation
10 Commission did not list it, that's your only explanation,
11 is that correct?
12 A. That is correct.
13 Q. So you don't have any testimony whatsoever that
14 the waiver -- that the owner is entitled to the waiver
15 because of the size of the property?
16 A. I would say the size of the property is small,
17 relatively. The scope -- there's no scope of development.
18 So we are taking words from the waiver and trying to apply
19 them to --
20 Q. You think the size means it's not valuable?
21 MR. BARHIGHT: Excuse me. The witness was in

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1 mid-sentence when he was interrupted.
2 THE CHAIRMAN: I thought he was finished, too.
3 Be a little quicker, and be a little more patient before
4 coming back.
5 A. We are taking words that apply to the development
6 and trying to apply them to a razing action, which isn't
7 actually development, so it can be a little confusing.
8 So when you talk about size and scope of the
9 development, we're not developing. We are razing.
10 Q. But yet the language is the size, scope and
11 nature of a proposed development?
12 A. The language is the language, correct.
13 Q. So, in your opinion, there is really no way a
14 waiver can be granted on the basis of the proposed
15 development, because there is no proposed development
16 here, is that correct?
17 A. That's not my opinion at all.
18 Q. Well, you say the waiver can be granted on the
19 size, scope and nature of a proposed development, but yet
20 you acknowledge there's no proposed development here?
21 A. There's no proposed development, is correct.

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1 Q. Is it your opinion that a waiver would be within
2 the intent of the title?
3 A. Clearly.
4 Q. And does not the title clearly say that any
5 building listed on the Maryland Inventory shall be
6 preserved?
7 A. It does say that, yes.
8 Q. How then could a waiver be consistent with that
9 intent?
10 A. Because it's subject to the provisions of the
11 waiver requirements. The county has put the waiver
12 provisions in there for cases like this where, there is a
13 hardship or exception or a unique circumstance.
14 Q. Where's the hardship stated?
15 A. It's not stated in the waiver requirements.
16 Q. Is that something that you applied to it, the
17 hardship, in your testimony?
18 A. When I talk about strict compliance or
19 unnecessary hardship, correct.
20 Q. What is the hardship here?
21 A. The hardship for my client is that he has a

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1 dwelling listed on the MHT that's not historic, that he
2 can't raze without going through the process.
3 Q. This was a real estate office, wasn't it? It
4 wasn't a dwelling?
5 A. It was a dwelling at --
6 Q. Wasn't it a real state office with Piper --
7 A. -- one time.
8 Q. -- and Company --
9 A. Piper, and then --
10 Q. Caldwell Banker?
11 MR. BARHIGHT: Excuse me. He continues to
12 interrupt and speak over the witness.
13 THE CHAIRMAN: Whoa. Stop for a second. Mr.
14 Murphy, we have a procedural thing. The young lady has a
15 real problem unless she can take one person at a time.
16 MR. MURPHY: I accept that, Mr. Chairman.
17 Q. But it's not -- you refer to it as a dwelling.
18 It's not dwelling?
19 A. It looks like a dwelling. I'm sorry. I
20 apologize.
21 Q. But it was put to, I assume, profitable

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1 commercial use by Piper, first, and then Caldwell Banker?
2 A. It was put to use. I don't know if it was
3 profitable or not.
4 Q. It was used activity as a real estate office,
5 wasn't it?
6 A. Yes, it was.
7 MR. MURPHY: That's all I have.
8 THE CHAIRMAN: Redirect?
9 MR. BARHIGHT: Nothing further. Thank you.
10 THE CHAIRMAN: Thank you, sir.
11 MR. QUINN: You're using two terms. One is the
12 Maryland Historical Trust and the other is the Landmarks
13 Preservation Trust, is that correct?
14 THE WITNESS: Well, the Maryland Historical --
15 they are two separate entities.
16 MR. QUINN: This property is listed on the
17 Maryland Historical Trust?
18 THE WITNESS: On their Inventory, correct.
19 MR. QUINN: However, The Land Preservation, that
20 means they chose not to make it historic, is that correct,
21 or to preserve it?

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1 THE WITNESS: Can I answer the question?
2 MR. BARHIGHT: You have to. He asked.
3 THE CHAIRMAN: Yes. I don't think you have an
4 option.
5 THE WITNESS: The MHT number does not imply that
6 the property is historic.
7 THE CHAIRMAN: Now.
8 MR. MURPHY: Objection. Move to strike the
9 answer. Again, this is an example of a witness testifying
10 as an historic preservation expert when he has no
11 qualifications for it.
12 THE CHAIRMAN: The question is as to the
13 relationship between being on the Historic Trust Inventory
14 List and whether or not that means that it's in any way
15 consistent or inconsistent with whether or not you're
16 placed on the Landmarks Preservation List.
17 Mr. Barhight, why don't we -- that's skirting the
18 line. Counsel is getting close because now he's talking
19 about purely the Maryland Historical process, whether one
20 thing is inclusive or exclusive of another, whether you
21 can be one and not be the other.

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1 That's not strictly zoning. That's getting into
2 the process of the Landmarks Preservation and what these
3 different things mean within the process of the Landmarks
4 Preservation, the trust, inventory, whether that means you
5 are or not.
6 Unless, from a zoning point of view, if you can
7 establish he's got sufficient background to do that, I may
8 grant the objection.
9 MR. BARHIGHT: Well, you're putting me in an
10 interesting position, because it wasn't my question.
11 THE CHAIRMAN: I'm going to make believe it's
12 coming from your side, because I'm going to rule to grant
13 the objection, unless you can expand it in terms of his
14 underlying knowledge.
15 You know what? I'll make life easier for you.
16 Have a seat, Mr. Barhight.
17 Mr. Witness, what you do as a zoning expert, do
18 you deal with the terms inventory list and preservation
19 list as part of what you do?
20 Not how you get there, but as things that are on
21 that list?

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1 THE WITNESS: Yes, we do.
2 THE CHAIRMAN: Have you, prior to this in your
3 experience as a zoning person, as an engineer, as a zoning
4 expert, have you seen properties previous to this that
5 have been on the Inventory List, but have not been on the
6 Preservation List?
7 THE WITNESS: On the Inventory List, but not on
8 the Preservation List? Yes.
9 THE CHAIRMAN: I think we'll leave it at that.
10 Go ahead, counsel. Oh, we had finished. It was a
11 question from the Board.
12 Now, did that question and clarification question
13 on my part raise anything, first from your side?
14 MR. BARHIGHT: No. Thank you.
15 THE CHAIRMAN: Does that raise anything from your
16 side?
17 MR. MURPHY: Well, I mean --
18 THE CHAIRMAN: Again, he didn't give an opinion.
19 I just asked whether or not, in his zoning thing, has he
20 seen properties that have existed on one list and not the
21 other. That's all he is saying.

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1 MR. MURPHY: No objection.
2 THE CHAIRMAN: Okay. Thank you, sir. Mr.
3 Barhight?
4 MR. BARHIGHT: Wait. He has cross examination.
5 Are you all done?
6 THE CHAIRMAN: He crossed.
7 MR. BARHIGHT: I just wanted to make sure.
8 THE CHAIRMAN: I think we are finished.
9 MR. BARHIGHT: I didn't know whether he had a
10 chance to jump in after Mr. Quinn's questions or not.
11 Although the documents in the different case
12 files should be already a part of the record of these
13 proceedings, I want to make it clear that we would like to
14 make sure that the documentation that's contained in the
15 case files is made a part of these proceedings, formally.
16 THE CHAIRMAN: Counsel, any objection?
17 MR. MURPHY: No.
18 THE CHAIRMAN: So ordered. We'll utilize the
19 exhibits an internal part of both files in conjunction.
20 MR. BARHIGHT: I don't think we need to
21 necessarily give it an exhibit number, but it's always

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1 better if there's no question later on about whether they
2 were a part of the record or not.
3 THE CHAIRMAN: Mr. Barhight, you've got the
4 floor.
5 MR. BARHIGHT: We rest our case in chief.
6 THE CHAIRMAN: Mr. Hoffman, do you have any case
7 from your side before we move to Mr. Murphy's?
8 MR. HOFFMAN: No, sir.
9 THE CHAIRMAN: Thank you. Mr. Murphy, your case.
10 MR. MURPHY: Mr. Jeffrey Lees.
11 JEFFREY LEES,
12 having been called as a witness, was duly sworn, and
13 testified as follows:
14 THE CHAIRMAN: Please have a seat. Give your
15 full name and address, and if you would spell your last
16 name, and since I got in trouble the first time, tell me
17 how you spell "Jeffrey"?
18 THE WITNESS: My name Jeffrey Lees, with a "J,"
19 and Lees is L-e-e-s. I live at 706 Dunkirk Road in
20 Baltimore County.
21 DIRECT EXAMINATION

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1 BY MR. MURPHY:
2 Q. Mr. Lees, would you tell the Board about your
3 education and experience.
4 A. I have a Bachelor of Arts degree in sociology. I
5 have a Bachelor of Arts in architecture and a Master's
6 degree in architecture.
7 Q. What has been your work experience?
8 A. I have had my own professional practice as an
9 architect for about twenty-one years. Prior to that, I
10 worked as an intern in various firms.
11 Most of the work that I have done involves
12 working with older and historic structures. I do a lot of
13 consulting regarding older and historic structures.
14 I do work in that regard both in Maryland as well
15 as in the state of North Carolina. I have a license to
16 practice architecture in both states.
17 I'd also like to add, if I may, that I had
18 training specifically in regards to preservation from a
19 program sponsored by the University of Florida called
20 Preservation Institute of Nantucket, Preservation
21 Institute of Nantucket, a program through the University

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1 of Florida, Division of Architecture.
2 And I spent a summer working with Historical
3 American Building Survey, documenting structures in Santa
4 Clara, California, and since that, most of my work has
5 been in Maryland and North Carolina.
6 Q. Haven't you been involved in the restoration of a
7 number of historic structures?
8 A. Yes, I have. I have been involved in consulting
9 as well as actually providing architectural services for
10 rehabilitation of various historic structures.
11 Q. Would you tell the Board some of those
12 structures?
13 A. I was the architect for the relocation and
14 rehabilitation of the George Elliott House in Ellicott
15 City, Maryland. I consulted with the Baltimore
16 Development Corporation on the President Street Station.
17 I consulted with Baltimore County on the
18 rehabilitation and stabilization of the Perry Hall
19 Mansion. I've worked on numerous certifications of tax
20 credit properties, including rehabilitation of office
21 structures, historic structures in the 1300 block of North

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1 Charles Street, in Federal Hill, Bolton Hill, to name a
2 few.
3 I've worked on projects in North Carolina in a
4 similar capacity. I'm currently involved in a
5 rehabilitation addition to the Grace Fering (phonetic)
6 house in Elizabeth City, North Carolina. That's the
7 oldest historic structure in Elizabeth City.
8 Q. Have you served on the Board of the Landmarks
9 Preservation Commission?
10 A. I was commissioner on the Landmarks Preservation
11 Commission from 1992 to 1997.
12 MR. MURPHY: I would offer Mr. Lees as an expert
13 witness in the field of -- as an architect and as an
14 expert witness in the field of historic preservation.
15 THE CHAIRMAN: Voir dire? Before you do that,
16 you're offering him again as an expert in what?
17 MR. MURPHY: As an architect in the field of
18 historic preservation.
19 THE CHAIRMAN: As an expert in the field of
20 historic reservation. Voir dire?
21 MR. BARHIGHT: a couple questions to make myself

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1 more familiar with Mr. Lees.
2 VOIR DIRE
3 BY MR. BARHIGHT.
4 Q. Mr. Lees, are you affiliated in any way with any
5 of the parties to this proceeding?
6 A. I contribute to the Baltimore County Historic
7 Trust as an organization.
8 Q. When you say you contribute, if you're talking
9 about money, don't tell me the amount, but how do you
10 contribute?
11 A. Annual dues contribution.
12 Q. So you're a member of the Baltimore County
13 Historic Trust?
14 A. Yes.
15 Q. That's the party in these proceedings?
16 A. That is correct.
17 Q. Are you affiliated in any way with any other
18 party in these proceedings, for example, the Greater
19 Sparks/Glenco Community Association?
20 A. No.
21 MR. BARHIGHT: My objection here would be that

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1 he's actually a party. He's a member of the Baltimore
2 County Historic Trust, and he obviously can't render
3 credible testimony that is not biased by the fact he's
4 testifying as a party.
5 And Mr. Murphy is trying hard to be able to put
6 on top of that, the mantel of expertise, but because of
7 that bias, he should not be allowed to testify as an
8 expert.
9 He can testify as a party. That's what he is,
10 but he should not be allowed to testify, given his bias
11 that is identified by the fact he's actually a party to
12 these proceedings, he's a member of that organization that
13 has filed the appeal.
14 THE CHAIRMAN: I'm going to save you some
15 trouble, Mr. Murphy.
16 With all due respect to that comment, whether or
17 not he's being offered as an expert based on his
18 experience and education, whether or not the opinion he
19 gives as an expert has a lot of credibility, a little
20 credibility or no credibility, is a function of
21 determination by this Board as a result of your cross

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1 examination and as of what he says, so I am going to
2 overrule your objection.
3 MR. MURPHY: Thank you.
4 MR. BARHIGHT: Thank you.
5 CONTINUED DIRECT EXAMINATION
6 BY MR. MURPHY:
7 Q Mr. Lees, are you familiar with the Gardner
8 House?
9 A. Yes, I am. I have visited it. I have had a
10 chance to look around the site and around the building. I
11 personally have been at the site.
12 Q. Do you have some slides here that show the --
13 A. Yes, I did.
14 MR. MURPHY: Can we move to Mr. Lees' slides?
15 We'll go through these, and then he can comment, tell us,
16 and we'll move to the next slide. Would that be better --
17 THE CHAIRMAN: Let me stop you for a second. Mr.
18 Barhight, let's do this, also Mr. Hoffman. If there's any
19 objections to specific slides, or specific comments, why
20 don't we wait, and let's get through this. We have done
21 this before.

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1 MR. BARHIGHT: Two things I'd like to mentioned,
2 to facilitate the proceeding, so Mr. Murphy and Mr. Lees
3 can have a direct examination.
4 The first is, with your permission, because I
5 haven't seen any of these slides before, do I expect to
6 have Mr. Murphy pull them out one at that time to show
7 them to me before he puts them up on the wall, so in order
8 to facilitate that, I'd like to be able to preserve any
9 objection regarding the slides themselves until the end of
10 the testimony, and I may or may not have an objection.
11 The second request relates to the nature of the
12 testimony and, again, in order to not have to make the
13 objections each time it happens, I am anticipating the
14 witness will do more than just show you some pictures of
15 what is there.
16 He may offer expert opinions as to whether this
17 property is historic in some way, and I will object to
18 that, because that decision has already been made by the
19 Landmarks Preservation Commission, and you've already
20 decided that is not the subject of this appeal.
21 THE CHAIRMAN: And if you find it necessary to

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1 make those kind of objections, we'll do it at the end.
2 MR. MURPHY: Mr. Chairman, Mr. Barhight has been
3 testifying all morning. I'm going to make just a few
4 comments on these slides as we go through.
5 THE CHAIRMAN: My point is, I am going to let you
6 make your presentation, Mr. Murphy.
7 Then, if Mr. Barhight is going to object to
8 slides, comments made, then we'll rule.
9 MR. BARHIGHT: I apologize if I was testifying.
10 Perhaps if Mr. Murphy would object when he asserts that
11 I'm testifying, the Board can make a decision whether that
12 what I'm doing is objectionable or not.
13 THE CHAIRMAN: Gentlemen, let's all take a step
14 back and let's get through this. Go ahead.
15 MR. BARHIGHT: I was trying to be nice about it,
16 and then I get that comment.
17 MR. MURPHY: If I may comment, Mr. Barhight, if
18 you have any comment, you can object.
19 MR. BARHIGHT: I did object, didn't I?
20 MR. MURPHY: This is the first slide that
21 Patricia Bentz, the director of the Baltimore County

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1 Historic Trust, prepared this.
2 This is actually a building across the street and
3 it's a 1917 and it's designed to show the character of the
4 historical area. This is a 1917 building. This building
5 is no longer there.
6 MR. BARHIGHT: I object to everything that just
7 happened.
8 THE CHAIRMAN: Mr. Murphy, this is an exhibit to
9 assist your witness. This really is not a presentation by
10 you because, obviously, nothing you say, other than
11 argument, can be testimony.
12 You need to do this in the structure of the
13 witness testifying. To the extent that he wants to
14 utilize this or explain this --
15 MR. MURPHY: I'm sorry. I was going to
16 facilitate the testimony.
17 THE CHAIRMAN: I understand that.
18 Q. Mr. Lees, will you give a commentary on the slide
19 here and then tell us when to go to the next one.
20 A. This is an example of a structure that existed at
21 one time in the vicinity of the current Gardner House that

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1 we're considering as, I believe, opposite York Road.
2 This is a view of the current context site,
3 probably where that house is located, was located
4 previously.
5 Again, a former structure in the vicinity of the
6 Gardner House that existed, I guess it would be across
7 Shawan Road.
8 And, again, directly north of the structure, at
9 the corner of Shawan Road and York Road, is a current
10 filling station that occupies the site of the previous
11 slide.
12 These are all structures that were in the
13 vicinity of the Gardner House on the southeast, which
14 would be the opposite of the Gardner House on York Road,
15 and, today, there's the development there at that corner.
16 This is the Gardner House in an earlier
17 photograph. It's a view from the southeast, showing the
18 porch, showing the original front section of the house
19 that is the east facing section facing York Road with the
20 "L" later addition visible in the left portion of the
21 photograph.

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1 This was a resident, I suppose. The view of it
2 today from the east, looking west, or northwest, at the
3 existing structure, showing primarily the front original
4 section of the house with a turret, octagonal profile
5 turret, that was attended to the structure.
6 It shows the original or wrap-around porch of the
7 house as it exists today. This is a view showing the
8 house in the context of its site in the fact that there's
9 a driveway to the left which is accessed to the rear of
10 the site.
11 There's also access to a carriage house in the
12 rear of the site that exists. It was originally part of
13 the development there, including the house.
14 This is a view from the northeast showing the
15 turret. That's a significant character-defining feature
16 of the house, and showing how the windows of the house in
17 the original front section are intact, and how the later
18 appended octagonal turret shows its windows also intact
19 from the time of its construction. Also the wrap-around
20 porch intact with its posts, its wood flooring, and its
21 ballastrade.

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1 This is a detail of the turret showing the
2 original fancy or fishtail shingles that sheathed the
3 house currently extend.
4 Q. That's currently in existence?
5 A. Yes.
6 Q. You took these photographs?
7 A. I did. I should add that there's modern siding
8 on the house with the exception of this octagonal turret.
9 In fact, it has its original character-defining shingles
10 intact.
11 Again, details of the porch showing the posts,
12 the turn spindles and the delicate sun woodwork intact,
13 also showing the historic sash intact on the first level
14 as well as an intact historical original front door.
15 Q. What do you mean by "sash"?
16 A. The window sash. I'm sorry. That's the two
17 components that allow a window to rise up and down
18 virtually, are intact.
19 Again, a view from the east, or -- I'm sorry --
20 the southeast, showing a changed window in the context of
21 the second floor, but also one of the earlier original

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1 windows on the second floor as well as the wrap-around
2 porch.
3 And this is a detail of the porch showing the
4 current condition with the historic shingles intact and
5 the significant character-defining turret features.
6 Also, the wood porch, the scales of the wood
7 porch is consistent with the original porch, and the posts
8 and the railings are consistent with the original features
9 of the house.
10 Q. Next?
11 A. This is a view showing the juxtaposition of an
12 in-filled porch area with the existing porch area on the
13 north side of the house, showing modern windows filling in
14 part of the porch on the north side, a section of that
15 porch in the context of the existing historic porch and
16 windows in the same proximity. That would be the north
17 wall of the original house.
18 This is a view of the carriage house as it exists
19 today showing it on its stone foundation with its wood
20 siding intact.
21 Q. Mr. Lees, the carriage house is on the side of

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1 the main house?
2 A. It is behind it and somewhat to the south. This
3 is a view showing, again, the north side of the house with
4 an in-filled porch area on the first level, and the rear
5 "L" of the house on the second floor with its original
6 windows intact.
7 This is a view from Shawan Road looking south
8 showing the general development or general location of the
9 house in its context, and the visibility of the in-filled
10 porch area to the rear or the right-hand picture, and then
11 the original porch to the left of the picture.
12 Next, this is a view of the general context that
13 shows the development of the filling station on the
14 northwest corner. However, it also shows the number of
15 similar-scaled structures from a similar era on the north
16 side of Shawan Road, which are still intact and are
17 related to the original Marble Hill Development in that
18 area.
19 THE CHAIRMAN: Mr. Witness, go back to that point
20 for a second. You're referring to those structures in the
21 center?

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1 THE WITNESS: Yes. I believe one of those is the
2 office s of McKee & Associates. Please correct me if I am
3 wrong.
4 THE CHAIRMAN: He can't respond. Just tell us
5 what you know.
6 THE WITNESS: This is another view looking more
7 northerly on York Road, showing other structures. There
8 are at least three historic structures instant in that
9 vicinity, remnants of the Marble Hill Development.
10 This is also showing that, here, the general
11 setting of York Road changes from primarily commercial to
12 a more rural development as one goes north from this
13 point.
14 This is a detail of the in-filled porch on the
15 south side of the house showing how modern glass has been
16 placed in the porch area.
17 However, it is consistent with the Secretary of
18 the Interior standards for how one might rehabilitate a
19 historic structure, or shall I say make a change to a
20 feature of an historic structure.
21 And another view from the south side of the

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1 Gardner House looking at similar scaled, of a similar time
2 frame, structures on the north side of Shawan Road,
3 showing the context of the Marble Hill Development
4 structures, detail of the modern door that has been
5 changed or been put in along with the rehabilitation
6 enclosure of this porch on the south side of the Gardner
7 House.
8 A view of -- a more detailed view of the
9 structures north of the Gardner House facing on York Road
10 that are consistent with the Marble Hill Development era
11 time frame, late nineteen century. A detail of one of the
12 nicer historic structures, houses, showing similar
13 architectural features as exist on the Gardner House,
14 including a turret and wrap-around porch features.
15 Q. These are just to the north of the Gardner House
16 on York Road?
17 A. Yes, that's correct. And this is a view from
18 across York Road on the east side looking south --
19 southwest -- showing those structures, showing the corner
20 intersection of Shawan Road where the filling station is,
21 and just beyond that to where the Gardner House is to

1 illustrate the line of historic structures that are intact
2 along that stretch of York Road.
3 Q. Mr. Lees, would you tell us how you go about
4 determining whether a building is historic or not?
5 A. I look at the form of the building, initially. I
6 look at the form and the scale of it, because historic
7 structures typically are smaller in scale and form than
8 what one sees in modern developments.
9 I look at the pattern of windows, the
10 relationship of windows and doors, openings. I look at
11 the pitch of the roof. I look at the materials that are
12 intact in the building.
13 Q. Do buildings have different styles?
14 A. I don't like to say "styles," but, yes, there are
15 patterns of architectural details that are consistent with
16 certain time areas and, yes, it's commonly referred to as
17 styles.
18 Q. How do you differentiate an historic building
19 from just an old building?
20 A. Usually, I look at the amount of remaining
21 historic fabric and the quality of the details and

1 finishes, the extent of specific architectural features.
2 Sometimes it has to do with intent of the
3 structure to comply with a certain design era. For
4 example, there are patterns, there's the Greek Revival,
5 there's patterns known as Queen Anne, there are patterns
6 known as bungalows, four squares, so the question is how
7 closely do any of these structures comply with this
8 so-called particular pattern I refer to.
9 Q. Now, turning to the Gardner House in particular,
10 what can you tell us about the Gardner house that relates
11 to whether or not you consider it to be historic?
12 MR. BARHIGHT: Objection. It's irrelevant to
13 these proceedings. The Landmarks Preservation Commission
14 has already asked and answered that question, and the
15 documents that are part of this record also show that the
16 state historic officer asked and answered that question,
17 and was one of the bases of the Landmarks Preservation
18 Commission.
19 That issue has been resolved. The Landmarks
20 Preservation Commission had a hearing, listened to a lot
21 of similar kind of evidence, and said, It's not historic.

1 It's not going to be listed.
2 This is an attempt by Mr. Murphy to try to do
3 through the back door what you indicated he cannot do
4 through the front door.
5 He tried to file an appeal of that case. He
6 tried to be able to bring to you the question of whether
7 the structure is historic.
8 That's already been answered, and because of
9 that -- it's nice to have this information for
10 background -- but the next question is irrelevant to these
11 proceedings. He cannot now, through this proceeding,
12 assert an historic designation that the LPC has already
13 said does not exist.
14 THE CHAIRMAN: Mr. Murphy?
15 MR. MURPHY: We're here to determine whether the
16 Zoning Commissioner correctly granted a waiver from the
17 standards that buildings on the Inventory of the Maryland
18 Historical Trust shall be preserved. That's the mandatory
19 standard. That's in the code.
20 The Hearing Examiner or the Zoning Commissioner
21 granted a waiver from that standard. And there's no

1 testimony that that waiver was consistent with the intent
2 of the Code, and the Code obviously says historic
3 buildings shall be preserved if they're on the various
4 lists, and the question of whether the demolition of an
5 historic building is consistent with the intent of the
6 Code really depends on whether the building is historic or
7 not.
8 Now, Mr. Barhight makes a fundamental error in
9 saying that the Landmarks Preservation Commission has
10 determined the building not to be historic.
11 The building is there. It's not disappeared.
12 It's either there or it's not, and it is there. It can be
13 historic whether it is listed on the Landmarks
14 Preservation Commission List or not.
15 This is really a matter of what the law says.
16 The law says there are various grounds for saying that a
17 building has to be preserved.
18 The Landmarks Preservation Commission in 32-4-416
19 is one of those lists. It's one of those, but it's not
20 the only one. The other one is whether it's on the
21 Inventory or not.

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1 And you get into the question of whether it's
2 consistent with the intent or not depends on whether the
3 building is historic or not.
4 If it was just an old shed that didn't have any
5 historic significance, you'd say it's no conflict with the
6 intent.
7 THE CHAIRMAN: Well, except you're getting into
8 more argument. Let's hone down to the objection.
9 I have no problem with him telling us whether
10 it's on any of the lists called for in 223. It is or it's
11 not.
12 We are dealing here with a particular fact that
13 this building, or what the Zoning Commissioner had before
14 him in determining whether or not to grant a waiver.
15 That's what we're here, second-guessing. That's what
16 we're here appealing, what the Zoning Commissioner did.
17 We are not going to make a determination, nor are
18 we going to decide one way or the other if the information
19 before the Zoning Commissioner was good, bad, properly
20 arrived at, not properly arrived at.
21 If a determination was made by the Landmarks

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1 Preservation Commission, it was made. He had it in front
2 of him. That's a fact.
3 We are not going back and discussing that.
4 Whether it can be on one of these other lists and,
5 therefore, arguendo, he should have taken that into
6 account, and didn't, that's simply a matter of him
7 testifying, whether it appears on one of these lists or
8 not.
9 I am not going to do expand intent, to go back to
10 say that, because intent is one of the issues, that all of
11 the substantive determinations that have been made can now
12 be revisited under the rubric of intent.
13 It doesn't really make a difference whether or
14 not he believes it should be on the Landmarks Preservation
15 List or not, or whether it should be on one of these other
16 lists in 223 or not, because either they are or they
17 aren't.
18 We are not second-guessing those determinations
19 or existences. All we are determining is based on what
20 the Zoning Commissioner had in front of him, did he act
21 properly or did he not act properly, so it's really a line

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1 of questioning that gets us nowhere in terms of what we
2 need to determine.
3 If he stood up and answered the question, it's
4 Absolutely historic and should be on the Landmarks
5 Preservation List --
6 MR. MURPHY: I didn't ask that question.
7 THE CHAIRMAN: I know you haven't.
8 MR. MURPHY: I'm not going to ask that question.
9 THE CHAIRMAN: Good, because it would be
10 irrelevant. Even if he testified that it was on that
11 list, that would be irrelevant to our determination,
12 because the only question we have here is, given what the
13 decision they've made, and the fact that the Zoning
14 Commissioner had that in front of him, is what he decided
15 appropriate or not appropriate?
16 And then your comment was that you weren't going
17 to ask him that particular question, and I responded that
18 I understood that. Now, if you want to take it from
19 there?
20 MR. MURPHY: Well, may I ask him if the building
21 is historic?

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1 MR. BARHIGHT: May I be heard?
2 THE CHAIRMAN: You could, but the relevancy would
3 escape me.
4 MR. MURPHY: Because it's listed on what is the
5 basis for -- really, what I'm trying to get at, what is
6 the basis for it being listed on the Inventory List,
7 what's the basis of it being listed?
8 THE CHAIRMAN: Because the Inventory is one of
9 the things listed in 223, if you want to ask how it gets
10 on that List, you can ask him that.
11 We know for a fact it's on the List. Whether
12 that's relevant to any determination we have to make may
13 be the next question, but if you want to ask how something
14 gets on the Historic Trust Inventory and whether this
15 property is or is not, I will allow that.
16 MR. MURPHY: I'll ask him the basis for it being
17 listed on the Inventory.
18 MR. BARHIGHT: May I respond?
19 THE CHAIRMAN: I'll let Mr. Barhight respond, but
20 I don't see any reason why, since that's one of the things
21 in 223, he can tell us if it is or if it isn't, and what

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1 the criteria is for being on there.
2 MR. BARHIGHT: I object to the form of the
3 question. He's says what's the basis? I don't know what
4 that means.
5 THE CHAIRMAN: Rephrase your question.
6 MR. BARHIGHT: The reason I need to object, we
7 have all agreed that it has an MHT Inventory number.
8 It's legal argument about what that means. If
9 the basis goes to why did somebody place it on there,
10 that's irrelevant. Either it's on there or it isn't.
11 And if he wants to ask the question how does something get
12 placed on the MHT List, how does that happen, to inform
13 the Board of that process, I don't have a problem with
14 that, but this gentleman, I don't believe, made the
15 application that this structure resulted in being listed.
16 THE CHAIRMAN: I'm going to allow -- and I agree
17 with Mr. Barhight -- I'm going to allow the question of
18 how something gets on the MHT List and I'm going to let
19 him tell us what the process is, based on his expertise in
20 historic structures and that sort of thing, which you've
21 already established him as, but whether it is or is not or

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1 should be or shouldn't be --
2 MR. MURPHY: I'm going to show him the Inventory
3 and ask him a question.
4 THE CHAIRMAN: Okay.
5 Q. Mr. Lees, I will show you a copy of the Inventory
6 of the Maryland Historical Trust. Are you familiar with
7 that?
8 A. Yes, I am.
9 Q. Have you read it?
10 A. I have read it.
11 Q. How does that Inventory come about?
12 A. The Inventory is an outcome of the National
13 Historic Preservation Act of 1966 that, as part of its
14 requirement, set up the method for every state providing a
15 survey of historic structures for the purpose of having an
16 overall record of structures that can be preserved and for
17 the purpose of providing funding in accordance with that
18 National Historic Preservation Act, so each state is
19 supposed to operate out of their state historic
20 preservation office to compile this survey.
21 So it was begun in the State of Maryland not long

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1 after that. And so teams or individuals were hired to
2 survey sites that were deemed to be possibly historic in
3 the early 1970s, so we have the beginning of a number of
4 these forms that were filled out based on certain
5 information available, research, the existence of historic
6 features on the house, some of the features I referred to
7 as architectural detail, those types of things, as well as
8 research on the families or personages associated with
9 those houses.
10 Those were incorporated into the information on
11 these survey forms and, initially, the surveys were geared
12 towards finding those structures that had the highest
13 level of significance, and it's since been expanded
14 somewhat to allow for other more inclusive types of
15 structures.
16 Q. Is the contents of the Inventory Form consistent
17 with your own determinations as to the historic quality of
18 the Gardner House?
19 A. Yes, definitely.
20 Q. And would you tell the Board, very briefly, why
21 the property is listed on the Inventory, based upon your

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1 examination of the Inventory Form?
2 MR. BARHIGHT: Objection. "Why" goes to intent.
3 THE CHAIRMAN: It is on the list. He doesn't
4 have to rationalize as to why it's on the list.
5 MR. MURPHY: Mr. Chairman, with all due respect,
6 we have heard a lot of testimony from the zoning expert
7 explaining at great length, the zoning procedures, why
8 they were there, all that, and I thought that was very
9 valuable, very interesting.
10 We have a similar witness who's qualified to talk
11 about, you know, what the content is of this form. The
12 form is just an abstract thing, like a phonebook, but
13 what's in the form is really significant.
14 THE CHAIRMAN: Is what's in the form more
15 significant than the fact, based upon filling out the
16 form, it was determined to be on the Maryland Historic
17 Trust Inventory?
18 MR. MURPHY: Well, you know, you can always
19 have -- for example, I guess you can have a form filled
20 out by mistake, something like that.
21 I want to have him explain that the information

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1 contained in this form is meaningful stuff.
2 THE CHAIRMAN: I don't question it's meaningful
3 stuff, but it's not anymore significant than the ultimate
4 fact that it resulted in that, that it was placed on the
5 Inventory.
6 The fact it was placed on the Inventory really
7 gives it a certain status and quality. How it got
8 there --
9 MR. MURPHY: Why? Why, though?
10 THE CHAIRMAN: If you will do it briefly, I'm
11 going to allow you to have him tell us why, but the record
12 should reflect that we accept, and everyone accepts, that
13 it's on the Inventory. That's not an issue.
14 Q. Explain, very briefly, Mr. Lees, why it's on the
15 Inventory.
16 MR. BARHIGHT: Same objection.
17 THE CHAIRMAN: Overruled.
18 A. It is on the Inventory because its level of
19 detail, its form, its scale, are all consistent with
20 recognized criteria for determining historic -- the
21 quality of historic structures.

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1 The features are described in detail in this form
2 in terms of its, first, appearance as a two-story
3 structure, to which then is an appended two-story "L" with
4 the significant feature in this case of the octagon, which
5 makes it consistent with the Queen Anne style of
6 architecture.
7 Is it the level of Queen Anne style that we see,
8 of George Barber? No. Is it the quality for Baltimore
9 County? Absolutely.
10 And so it's significant in the fact it is an
11 example of a Queen Anne architectural structure in
12 Baltimore County, in a semi-rural setting in Baltimore
13 County, so it's a high design intent here that is really
14 the primary significance of this structure, along with the
15 fact that most of its original exterior fabric is
16 remaining intact.
17 Q Now, Mr. Lees, that Inventory Form was prepared,
18 I believe, in 1981, is the date on it. Have there been
19 any changes to the building since that time that would
20 take away from the fact that it's listed on the Inventory?
21 MR. BARHIGHT: Objection. No foundation for that

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1 whatsoever.
2 THE CHAIRMAN: I have a problem with the
3 question, Mr. Murphy. You haven't put that form in yet.
4 MR. MURPHY: I will offer it.
5 THE CHAIRMAN: So if that form was in and
6 identified properly as what it was the form of, then you
7 can ask has anything changed from what's on that form.
8 MR. MURPHY: I will offer it. I'm sorry I didn't
9 do that. I'd offer the Maryland Historical Inventory
10 Form.
11 MR. BARHIGHT: That's already a part of the
12 record of the proceedings in the file. I have no
13 objection to it being listed as an individual exhibit.
14 It's already a part of the record in your file.
15 THE CHAIRMAN: This is going to be your No. 1,
16 Mr. Murphy.
17 MR. MURPHY: Correct, Mr. Chairman.
18 Q. Now, Mr. Lees, have there been any changes to
19 this property since the form was developed?
20 A. Yes, there have been.
21 Q. Would you describe them, for the Board?

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1 A. I believe two of the outbuildings were removed.
2 There was reference to a root cellar, an icehouse, when
3 this form was prepared. Those features have been removed.
4 I also understand that the porch that I showed in
5 the slides was in-filled or the glass enclosure and modern
6 door were subsequent changes since this form was
7 submitted.
8 Also, an enclosure of part of the porch on the
9 north side of the structure was after this report had been
10 prepared. I believe the vinyl siding is a change to the
11 structure after this report was prepared. And I believe
12 the roofing was replaced after this report was prepared.
13 THE CHAIRMAN: Let me interrupt. That Inventory
14 Form, Mr. Witness, was dated when?
15 THE WITNESS: I don't know if I have all of the
16 pages of the form.
17 MR. MURPHY: Mr. Chairman, in all honesty, I
18 don't think it has a date, but I think we all can agree
19 it's 1981.
20 THE CHAIRMAN: Okay. Mr. Barhight will agree to
21 that by stipulation?

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1 MR. BARHIGHT: Yes. I understand -- I haven't
2 seen his copy of the form, but my copy of the form
3 indicates it was prepared by Joan Gehring, a student from
4 Goucher College, dated May 11, 1981.
5 Q. Mr. Lees, with these changes that you've
6 described since 1981, do they affect the historic quality
7 of the building?
8 MR. BARHIGHT: Objection.
9 A. No, they did not.
10 MR. BARHIGHT: Objection. Goes back to the
11 issue --
12 THE CHAIRMAN: Why don't you rephrase to ask him
13 whether or not it alters in any way his opinion, the fact
14 it's on the Inventory?
15 Q. Mr. Lees, do the changes that you've testified to
16 alter in any way your opinion that the property is on the
17 Inventory?
18 A. No, they do not. I think they are relatively
19 minor changes.
20 MR. BARHIGHT: Objection.
21 Q. Explain the reason for your answer.

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1 THE CHAIRMAN: I'll let him answer.
2 A. Every historic structure undergoes changes over
3 its life. No building is the same. Even George
4 Washington's Mt. Vernon changed significantly from the
5 time it first began construction until today.
6 No building is static in time. So what we do is
7 try to minimize the damage that changes inflict on a
8 building, so there are guidelines prepared by the
9 Secretary of the Interior for how to make additions to
10 historic structures or alter historic structures.
11 And in my opinion, the changes that have been
12 made to that structure are consistent with the intent of
13 the Secretary of the Interior's standards.
14 MR. BARHIGHT: Objection. That's a different
15 question.
16 THE CHAIRMAN: You're going beyond the question.
17 The question simply was the basic one that he asked you,
18 is there anything that's been done that would change the
19 fact it's on the Inventory, and your answer is no?
20 THE WITNESS: There have not, or it could be
21 reversed.

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1 THE CHAIRMAN: Go ahead.
2 Q. Now, you have been practicing in the field of
3 historic preservation for how long?
4 A. Almost twenty-five years.
5 Q. You're familiar with these terms such as the
6 National Register of Historic Places? That's the program
7 administered by the federal government for listing
8 properties on the National Register?
9 A. Correct. It was also set up as part of the
10 provisions of the National Historical Preservation Act in
11 1966.
12 Q. You're also familiar with the Landmarks
13 Preservation standards?
14 A. Yes, I am. I testified I did serve on the
15 Commission for about five years.
16 Q. Now, would you explain to the Board how a
17 building listed on the Maryland Inventory cannot be listed
18 on the Landmarks Preservation Commission List?
19 A. Well, it's my understanding that is one of the
20 criteria that is used to determine listing on the
21 Landmarks List, the Preliminary Landmarks List.

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1 Q. That's a criteria for listing?
2 A. That's my understanding.
3 Q. But is the fact that the Landmarks Preservation
4 Commission decides not to list the building, does that
5 determine whether a building is historic or not?
6 MR. BARHIGHT: Objection.
7 THE CHAIRMAN: I'm going to sustain the objection
8 because the issue isn't whether the site is objectively,
9 quote, unquote, historic or not.
10 Something can be historic and not apply to any of
11 of these things simply because it's been around for a
12 while.
13 The question is, is it on the Landmarks
14 Preservation Commission List? Yes or no. And what
15 effect, if any, does that have?
16 The other question is, is it on the Inventory,
17 yes or no, and what effect does that have? Whether or not
18 it's an amorphous historic building is not relevant, so I
19 will sustain the objection. Go ahead.
20 Q. Mr. Lees, are you familiar with the staff of the
21 Landmarks Preservation Commission?

1 A. Yes, I am. I worked with them for a number of
2 years.
3 Q. Are they a highly qualified staff or not?
4 A. In my opinion, they are extremely qualified.
5 Q. Do they normally offer recommendations on matters
6 that come before the Landmarks Preservation Commission?
7 MR. BARHIGHT: Objection. I'm glad we think they
8 are a great staff, but none of that is relevant to the
9 question presented. This is Mr. Murphy's attempt to --
10 THE CHAIRMAN: Well, I'm going to let him go a
11 little further. It may be a foundation for something.
12 Let him make his point, and if you want to object to his
13 opinion, go ahead.
14 MR. BARHIGHT: Okay.
15 A. The staff is a good staff.
16 Q. Does the staff normally make recommendations on
17 matters that come before the Landmarks Preservation
18 Commission?
19 A. Yes. In my experience when I was a member of the
20 Commission, the staff typically brought information,
21 background information, as well as photographs of the

1 structures that were being considered for nomination to
2 the Preliminary Landmarks List, and those reports were
3 based on extensive research and documentation usually
4 prepared, usually by John McGrain, because he was the only
5 one doing it, and subsequent to that, Kim Abe has been
6 doing that, and Tim Dugan, the other member of the
7 planning staff, has been also supporting, providing
8 information relative to plan developments that are
9 affected by the Landmarks legislation.
10 Q. Is that a useful service that's provided to the
11 Landmarks Preservation Commission?
12 A. Absolutely. Without that, I don't think that the
13 Commissioners would really have a full understanding of
14 the significance of some of the structures that were being
15 submitted or considered for listing.
16 Q. Do you know whether, point of fact, the fact the
17 staff made a recommendation at the time the Gardner House
18 was considered?
19 A. My understanding is that the staff did not make a
20 recommendation.
21 MR. MURPHY: That's all the questions I have.

1 THE CHAIRMAN: Cross examination, Mr. Barhight.
2 Off the record.
3 (Discussion held off the record.)
4 THE CHAIRMAN: Let's take a lunch break now. Can
5 we do 1:15?
6 MR. BARHIGHT: That's fine.
7 THE CHAIRMAN: We are recessed for lunch. Be
8 back at 1:15.
9 (A luncheon recess was taken.)
10 * * * * *
11 AFTERNOON SESSION
12 * * *
13 THE CHAIRMAN: We're back on the record after our
14 lunch break. I believe we are up for cross examination.
15 Mr. Barhight?
16 MR. BARHIGHT: Yes. Thank you.
17 CROSS EXAMINATION
18 BY MR. BARHIGHT:
19 Q. Mr. Lees, good afternoon.
20 A. Good afternoon.
21 A. I want to work back over a couple of items in

1 your testimony. I believe where we left off on direct
2 examination, was your assertion that the staff did not
3 make a recommendation before the LPC. Do you remember
4 that testimony?
5 A. Yes.
6 Q. I assume when you were on the LPC, that you
7 became familiar with these different staff people?
8 A. Yes.
9 Q. Do you know who Jeff Long is?
10 A. No, I do not.
11 Q. Do you know who the Deputy Director of the Office
12 of Planning is?
13 A. Off the top of my head, no.
14 Q. Isn't it true, in fact, the Deputy Director of
15 the Office of Planning before the LPC specifically made a
16 recommendation to the LPC?
17 A. That is my understanding.
18 Q. You say your understanding. Were you there that
19 night?
20 A. I've seen a copy of the action information that
21 was submitted. I saw a copy of the minutes of the meeting

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1 of the hearing, and I saw a copy of the action information
2 submitted prior to that meeting.
3 Q. So let me ask the question again. Were you at
4 the Landmarks Preservation Commission meeting on March 10,
5 2005?
6 A. I was not at the meeting.
7 Q. But you're familiar with the minutes?
8 A. Yes.
9 Q. I'm going to show the witness a copy of
10 Petitioner's Exhibit No. 3, the minutes of the Landmarks
11 Preservation Commission, dated March 10, 2005.
12 And if I may direct your attention to pages four
13 and five which contain item nine relative to the Elizabeth
14 Gardner House, do you see those references?
15 A. Yes.
16 Q. Why don't you, just for the moment, go ahead and
17 re-familiarize yourself with portion nine. Just take a
18 moment to look at it again. Don't read it out loud. Just
19 look at it again.
20 A. Okay.
21 Q. I'd like to direct your attention to a particular

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1 line in the third paragraph. Do you see the third
2 paragraph that begins with the word "Ms. Secoura"?
3 A. Yes, sir.
4 Q. Do you see the second sentence that begins with
5 the phrase "Mr. Hardester"?
6 A. Yes, sir.
7 Q. Would you please read that sentence into the
8 record?
9 A. Mr. Hardester moved, on the basis of the
10 information presented in this hearing, to accept the
11 Planning Office's recommendation as stated by Mr. Long,
12 not to place this house on the Landmarks List.
13 Q. So isn't it true that the minutes clearly
14 indicate that the Planning Office did make a
15 recommendation?
16 A. It said the Planning Office, not the staff.
17 Q. There's a difference between the --
18 A. There's a difference between the staff --
19 Q. Hold on. Let me ask --
20 THE CHAIRMAN: Gentlemen, gentlemen. One at a
21 time, before we hear from the reporter.

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1 MR. BARHIGHT: You get to be the referee. Was
2 somebody answering, or was somebody asking the question?
3 THE CHAIRMAN: I'm going to defer to her.
4 COURT REPORTER: You were questioning, and he was
5 interrupting.
6 Q. Let me ask the question again. Is there a
7 difference between the Office of Planning and the planning
8 staff?
9 A. It didn't say the staff made the recommendation.
10 Q. No. I believe you just read it. It said they
11 accepted the Planning Office's recommendation. Those were
12 the words verbatim.
13 A. As stated by Mr. Long.
14 Q. Do you know who Mr. Long is?
15 A. Is he the Deputy Director that you referred to?
16 Q. I don't get to testify. Only you get to testify.
17 A. I don't know Mr. Long, personally.
18 Q. Do you know whether he's the Deputy Director of
19 the Office of Planning?
20 A. I don't know for sure.
21 Q. And these different folks that you've mentioned,

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1 Ms. Abe, Mr Dugan, Mr. McGrain, isn't it true that they
2 are employed by the Office of Planning?
3 A. Yes.
4 Q. And if they were employed by the Office of
5 Planning, they would be under the direct supervision of
6 the Deputy Director, would they not?
7 A. I suppose.
8 Q. I believe you offered testimony with regard to
9 your familiarity with the MHT Inventory.
10 The question occurred to me while we were having
11 lunch, if a structure is razed that has an MHT number,
12 isn't it true that that Inventory reference will remain?
13 A. Yes.
14 Q. And isn't it true that the documentation with
15 regard to the Inventory will remain a part of the archives
16 of the Maryland Historical Trust?
17 A. That is correct.
18 Q. Are you familiar with the Maryland Historical
19 Trust?
20 A. Generally speaking, yes. I've worked on projects
21 in conjunction with them.

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1 Q. Are you familiar with a gentleman by the name of
2 Rodney Little?
3 A. He's a state historic preservation officer.
4 Q. Have you had conversations with Mr. Little?
5 A. Yes.
6 Q. Have you worked with him on items before the
7 Maryland Historic Trust?
8 A. More of, let's say, at the Maryland Historic
9 Trust conference, conversations in kind of friendly terms.
10 MR. BARHIGHT: I'll give Mr. Murphy his full
11 opportunity. I'm not going to give you this until I have
12 done the questions.
13 Q. Mr. Lees, I'm going to show you some statements
14 made under oath by Mr. Little and ask you --
15 MR. MURPHY: Objection.
16 MR. BARHIGHT: Let me finish the question.
17 THE CHAIRMAN: Either of you were talking at the
18 same time. Let's see where Mr. Barhight is going. You're
19 going to object. We are not a jury. We're a professional
20 Board.
21 So if it turns out it shouldn't be in, I will

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1 strike it and we won't consider it, but let's see what we
2 are talking about first. Go ahead.
3 Q. Mr. Lees, I'm going to show you some statements
4 made by Mr. Little, who you just identified from the
5 Maryland Historic Trust, where he explains what the
6 Inventory is, and ask you whether you agree with those
7 statements.
8 MR. MURPHY: Objection.
9 THE CHAIRMAN Let's have a little more basis
10 first. What are you reading from?
11 MR. BARHIGHT: I can proffer that I'm reading
12 from the transcript of the Bonnie View Estates case that
13 was a zoning hearing that was held on Tuesday, September
14 16, 2003 before the Hearing Officer Lawrence Schmidt, that
15 contains the testimony from Mr. Little of the Maryland
16 Historical Trust.
17 It contains statements. I will not say the
18 answer. I will only proffer the question, and with regard
19 specifically to the Maryland Historic Trust Inventory, Can
20 you explain what the Inventory is, it's an example of the
21 kind of statement Mr. Little made under oath in that case,

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1 and I'd like to see if Mr. Lees agrees with it or not.
2 The alternative is for me to read a statement to
3 Mr. Lees without attribution and ask him whether he agrees
4 with it or not, but these are statements that are made
5 under oath by Mr. Little, whom he's identified as being
6 with the Maryland Historical Trust.
7 THE CHAIRMAN: Your objection to that, since we
8 know it's attribution, and it's a definition, and it's a
9 source that he acknowledges to exist, and the question
10 will simply be does he agree or disagree with that?
11 MR. MURPHY: Here's the problem. First of all,
12 this is hearsay.
13 THE CHAIRMAN: Well, it's under-oath testimony.
14 MR. MURPHY: But Mr. Little isn't here for
15 cross-examination.
16 THE CHAIRMAN: Do you agree --
17 MR. MURPHY: It's hearsay.
18 THE CHAIRMAN: -- it's not being offered for its
19 truth. It's being offered --
20 MR. MURPHY: It's to be read into the record.
21 THE CHAIRMAN: If he simply proffered a

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1 definition and said, Mr. Expert, do you agree with that
2 definition of what the Maryland Historical Trust is or
3 don't you, that would be perfectly legitimate.
4 It doesn't make it anymore true or less true
5 because Mr. Little said it.
6 MR. MURPHY: What it is, and it talks about the
7 quality of what the Inventory is.
8 THE CHAIRMAN: The definition of what the
9 Inventory is.
10 MR. MURPHY: It's not the definition. It's the
11 quality of --
12 THE CHAIRMAN: Wait a minute, what do you mean by
13 quality?
14 MR. MURPHY: The quality of the information in
15 the Inventory, that's what this is about.
16 THE CHAIRMAN: On the proffer, just so we can do
17 this the right way, again subject to being stricken from
18 the record, proffer for me what quote you're going to use,
19 because then we'll discuss whether it's quality or whether
20 it's definition.
21 MR. BARHIGHT: I'd be happy to. This is merely

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1 by the way of proffer from Mr. Little's testimony on page
2 1042 and page 1043, on line eight of page 1042.
3 Question: And with regards specifically to the
4 Maryland Historic Trust Inventory, can you explain what
5 the Inventory is?
6 Answer: Yes. The inventory is what I would
7 characterize as our raw data base. Properties get added
8 to the Inventory in a many varieties of ways. They may
9 be, we have professional field surveyors who are out
10 surveying on a continuous basis. As they complete surveys
11 of geographic areas, properties that they found get added
12 to the Inventory.
13 Property owners or volunteers sometimes fill out
14 Inventory Forms. The Inventory is, serves several
15 purposes. It's an archives, and I would say that's its
16 primary purpose. That tells us either what is in a
17 particular area or what was once there, because there are
18 properties on our inventory that have, in fact, been
19 demolished. They are no longer there.
20 It's simply a record that they once existed. We
21 use the Inventory more or less as a red flag. It tells us

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1 that if we are looking at a project over which we do have
2 legal jurisdiction. It causes us to take a second look at
3 the property. That second look then is usually an
4 evaluation of is this property, in fact, does it have
5 enough historical significance to warrens further
6 elevation designation.
7 Listing on the Inventory does not have any impact
8 on property owners' rights or on or any regulatory effect.
9 That's one of the questions that I was going to
10 ask Mr. Lees whether he agreed with that answer.
11 MR. MURPHY: Mr. Chairman, let me explain, I
12 think, what I think is the unfairness here. I attempted
13 at great length to try to prove this building is historic.
14 I asked the question whether this building is
15 historic. I asked that of Mr. Lees.
16 The question was objected to, and it was directed
17 that he couldn't get into whether the building was
18 historic.
19 The Chairman ruled, the Board ruled, that we can
20 only get into whether the building is listed on the
21 Inventory or not.

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1 Now, Mr. Barhight is seeking to go beyond that
2 and to show this Inventory, essentially, is not worth a
3 dam, that it's basically -- in the terms of Mr. Little --
4 just raw data, and that sort of thing.
5 What we have got to get here is, is the Gardner
6 Building historic? Does it have historic value?
7 If you are going to let him say or ask whether he
8 agrees that this is raw data, we have to talk about it in
9 the terms of the Gardner Building, is the Gardner Building
10 an historic building that merits being listed on the
11 Inventory?
12 MR. BARHIGHT: May I be heard, briefly?
13 THE CHAIRMAN: No. It's not necessary. Here's
14 how I'm going rule.
15 I agree with you, the question of is it historic
16 or is it not historic is not an issue that we're getting
17 into. We are beyond that.
18 That's what the Landmarks Preservation -- let me
19 finish -- the Commission people did. We are not getting
20 back into that question.
21 What we know here is that one of the requirements

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1 under the waiver form was that it is on the Maryland
2 Historical Trust List, Inventory List.
3 There was even a question from counsel answered
4 to by the witness as to the issue of if something gets
5 razed, does it remain on the List, along with all of its
6 supporting documentation, and the witness answered in the
7 affirmative.
8 I don't see anything in the proffer that does
9 anything but give what is -- and, again, the question was,
10 do you agree or disagree with the premise of what gets on
11 the Inventory, not whether this particular property should
12 be on the Inventory or should not be on the Inventory,
13 because that's something I don't want to get into, but if
14 we're talking generally about what the Inventory is and
15 what is the process by which something is placed on the
16 Inventory -- which we all agree this property is -- if
17 he's going to say no, that's not a reasonable definition
18 and description of that which this property is on, then I
19 think the Board wants to know why that definition or
20 exactly what his definition is.
21 Mr. Barhight can simply ask, could break that

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1 down, not attribute it, and say, Is it this? Is it that?
2 Is it this? Is it that? And the witness, who's an expert
3 on these things, can tell him yes or no, no or yes.
4 I don't really see the importance of it being
5 attributed to any particular person. Those facts
6 themselves, those statements themselves, could be asked of
7 an expert, Do you agree with this statement? Do you not
8 agree with this statement?
9 And, if so, why? Either way, it doesn't add or
10 make it any more truthful or any less truthful, anymore
11 likely he'll agree or any less likely he'll not agree
12 because somebody said it in one paragraph.
13 So I'm going to -- rather than go through six
14 different questions about what is or what isn't the
15 process of getting on the Trust, not whether the
16 conclusion of whether this property made it or didn't make
17 it, or was proper being on it, or not proper being on it,
18 but what is the Maryland Historical Trust Inventory List,
19 this opinion in one paragraph of what that thing is, he
20 can agree or disagree with, as an expert.
21 Where it's going in terms of relevancy, since the

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1 conclusion is not something we are going to get into, the
2 conclusion is something that's already been decided, it's
3 on the list, we are not going to take it off the list, we
4 are not going to move it from the list, because we're not
5 getting to that, whether it ultimately changes the case, I
6 don't believe it will, but it just seems a quicker way to
7 get at it.
8 If I grant your objection and counsel simply goes
9 through the different statements in there and asks the
10 expert, Does he agree that this is true, that that is
11 true, the other thing is true, yes or no, and why, it's
12 the same thing.
13 So it just seems to me that we're getting there
14 quicker. He can perfectly well say, No, that's not what
15 the Maryland Historic Trust is.
16 Again, I'm not sure what it proves, because it's
17 on it, and we are not going to change that.
18 MR. MURPHY: Let me just make one point based on
19 what the Chairman said. I'd say this with all respect.
20 THE CHAIRMAN: Please.
21 MR MURPHY: The fact it is not on the Landmarks

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1 Preservation List does not mean that the building is not
2 historic.
3 MR. BARHIGHT: I have to object. That's not an
4 accurate characterization.
5 THE CHAIRMAN: But I fully accept that statement
6 as your position. That's fine. You can take that
7 position.
8 MR. MURPHY: You understand that?
9 THE CHAIRMAN: Yes, absolutely.
10 MR. MURPHY: They're two separate lists.
11 THE CHAIRMAN: Yes. And after he goes through
12 this with him and after he comments one way or another,
13 yeah, nay, no, that's not right, that's not accurate, I
14 feel it's different, I feel it's not different, you can
15 simply come back on redirect and deal with any further
16 issues that may have been raised.
17 MR. MURPHY: Thank you, Mr. Chairman.
18 THE CHAIRMAN: So I'm going to overrule the
19 objection and let you use it in the proffered form.
20 So everything counsel proffered is now in the
21 record. If you want to repeat it again?

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1 MR. BARHIGHT: I'm going to let him read it, if
2 that's okay. I think it's more fair to let him read it,
3 rather than memorize what I just said.
4 THE CHAIRMAN: Okay, then, why don't we do that?
5 Q. For the record, I'm showing the witness pages
6 1042 and 1043.
7 MR. MURPHY: May I have a continuing objection?
8 THE CHAIRMAN: Yes.
9 Q. The question begins on line eight of 1042, and
10 the answer ends on line fifteen of page 1043.
11 Just take a moment and familiarize yourself with
12 it, personally, before I ask you any questions.
13 A. (Witness reading to himself.)
14 Q. Let us know when you're ready.
15 A. Okay. I have read those lines.
16 Q. Let me go ahead and ask the question for the
17 record. Do you agree or disagree with those assertions?
18 A. I agree.
19 Q. The next question I would like to ask, and I will
20 do the same proffer, it's much shorter, it's much easier,
21 the question is, And is it your department's position that

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1 the Inventory from your department's perspective --
2 MR. BARHIGHT: I'm on 1047, Mr. Murphy.
3 Q I will start over. Question: And is it your
4 department's position that the Inventory from your
5 department's perspective is not to have any regulatory
6 effect, isn't that correct? Answer: It does not have any
7 regulatory effect.
8 And I will show that to the witness. The
9 question begins on line thirteen of page 1047 and the
10 answer is on line sixteen.
11 THE CHAIRMAN: I presume, Mr. Murphy, you have an
12 objection to that as part of the continuing objection, and
13 for the same reason, I will overrule it.
14 MR. MURPHY: Thank you, Mr. Chairman.
15 A. Okay.
16 Q. Do you agree or disagree with that assertion?
17 A. I would disagree with the assertion in Baltimore
18 County as it implied.
19 Q. I understand as relates to Baltimore County, but
20 the question and the answer is from your department's
21 position -- meaning the Maryland Historical Trust's

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1 position -- as it relates to the position of the Maryland
2 Historical Trust, do you agree or disagree?
3 A. I would have to agree with that.
4 Q. And the last question, with a carry-over from
5 that follow-up, still on page 1047, it's a back and forth
6 that begins on line seventeen and carries over onto page
7 1048, on line seven, a little bit longer.
8 Seventeen. This is the Hearing Officer. This is
9 immediately following the question that we went through.
10 Hearing officer: From the perspective of the
11 Maryland Historic Trust?
12 The Witness: In order -- can I clarify that?
13 Hearing Officer: Sure.
14 The Witness: In order for a property on the
15 Inventory to be subject to regulatory effect under state
16 or federal law, we actually have to go to another level of
17 evaluation and determine whether it's eligible for the
18 National Register of Historic Places or, in fact, listed
19 on the National Register of Historic Places.
20 MR. BARHIGHT: I'd like to show those lines to
21 the witness and ask him whether he agrees or disagrees

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1 with those assertions.
2 THE CHAIRMAN: On the same basis, the objection
3 is noted on the record.
4 MR. MURPHY: Thank you, Mr. Chairman.
5 Q. Okay?
6 A. I have read that.
7 Q. Do you agree or disagree with those assertions?
8 A. I would agree.
9 MR. BARHIGHT: For the ease of the Board, I don't
10 know whether you want that in writing or whether you want
11 to rely upon the transcript, whatever the Board wishes.
12 THE CHAIRMAN: Well, I don't want any other
13 extraneous materials. If you can give us just the text of
14 those questions and answers, we will accept that for the
15 record.
16 MR. BARHIGHT: I can redact everything else. As
17 you might imagine, some of this is portions of pages. I
18 will be happy to redact that and provide that.
19 THE CHAIRMAN: We would accept the redacted
20 version with the understanding you will also provide it to
21 counsel so that, in memos at the end, everybody has all

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1 the material.
2 Q. Mr. Lees, I'm holding one of the file folders in
3 CBA-05-125 that's been made part of the record of these
4 proceedings, and with particularity in directing your
5 attention to an item --
6 MR. BARHIGHT: They are all under, for the
7 purpose of the court reporter, they are under -- what are
8 these things, eco-fasteners --
9 THE CHAIRMAN: Clips.
10 Q. Whatever they are under, so if you want to take
11 it out, we can do that. I'm showing you a document
12 entitled, Maryland Historical Trust, NR-Eligibility Review
13 Form. Have you ever seen that form before?
14 A. Yes, I have.
15 Q. Have you seen this particular form before today?
16 A. Yes, I have seen it.
17 Q. Isn't it true that on April 2, 2002, that
18 Maryland Historical Trust review indicated that
19 eligibility was not recommended for the subject property?
20 A. Eligibility for the National Register, not for
21 the Baltimore County Landmarks List. For the National

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1 Register. That's a higher criteria.
2 Q. That's fine, but isn't it true that on April 2,
3 2002, reviewed by the program director on April 9, 2002,
4 that with regard to this property, the Maryland Historical
5 Trust review indicated eligibility not recommended?
6 A. For the National Register, for inclusion on the
7 National Register.
8 Q. Isn't it also true that the Landmarks
9 Preservation Commission on March 10th made the same
10 determination, that the subject property should not be
11 listed on the Preliminary Baltimore County Landmarks
12 Preservation List?
13 A. Based on that same criteria, they did.
14 MR. BARHIGHT: No other questions of this
15 witness.
16 THE CHAIRMAN: Redirect.
17 REDIRECT EXAMINATION
18 BY MR. MURPHY:
19 Q. Mr. Lees, you previously saw the Inventory form
20 for the Gardner House that's been introduced into
21 evidence?

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1 A. Yes.
2 Q. And you heard counsel's characterization by Mr.
3 Little of the Inventory as being simply a compilation of
4 raw data, did you hear that described by Mr. Little?
5 A. It was written in the report that he had.
6 THE CHAIRMAN: Do you want the witness to have a
7 copy in front of him?
8 MR. MURPHY: Thank you.
9 Q. Here's the Inventory Form. Do you consider that
10 Inventory Form to be just a compilation of raw data?
11 A. Absolutely not. There is much more in here.
12 Q. Would you explain how it differs from Mr.
13 Little's characterization of the report?
14 A. Again, it depends on the amount of information
15 available on certain properties. Again, there's a broad
16 range in the state, a spectrum of properties that are
17 evaluated for this Inventory.
18 Some properties may have very little data to go
19 on. Other properties may have more information based on
20 history, personal associations, or connections with larger
21 patterns of history.

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1 This is one of those properties that has larger
2 associations. More information was available about it,
3 and the structure was more intact in terms of the
4 character-defining features that would help to qualify it
5 for its listing on the Inventory.
6 Q. Do you believe that this Inventory Form
7 demonstrates the historic value of this building?
8 MR. BARHIGHT: Objection. Again, he's trying to
9 go in through the back door. You can see it in the
10 closing argument. He'll recite this as the assertion
11 where he got a chance to have this witness testify whether
12 or not --
13 THE CHAIRMAN: The Inventory Form is in evidence?
14 MR. BARHIGHT: Yes.
15 THE CHAIRMAN: He can ask him, rather than give
16 him a conclusion to draw upon, you can ask him to make or
17 comment on the data that's in the Inventory Form.
18 MR. MURPHY: Thank you.
19 Q. Mr. Lees, would you comment on the data that's in
20 the Inventory Form?
21 MR. BARHIGHT: My only objection is, I don't know

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1 whether there's a foundation laid, whether he clarified
2 any of that data. There's not a proper foundation laid
3 here.
4 THE CHAIRMAN: Go ahead.
5 Q. Have you reviewed the Inventory Form?
6 A. Yes, I have.
7 Q. Have you, in fact, examined the building?
8 A. I have examined the building from the exterior,
9 yes.
10 Q. Based upon your experience -- I don't remember
11 what the exact question was -- whether the Inventory Form
12 contains a compilation of historic data?
13 A. It is a fairly complete compilation, and it's
14 accurate information based on my physical observance of
15 it.
16 It describes the history of the structure from
17 the standpoint of occupants as well as the evoluation of
18 the structure in its forms, beginning with its initial
19 sections and then the additions of other pieces. The real
20 "L"s is one I referred to, and the octagonal turret form
21 which gives it its Queen Anne appearance.

1 That's all clearly documented in this Inventory
2 Form along with the history of the various owners that
3 occupied, purchased, sold, made changes to.
4 There is also a description of the outbuildings
5 that existed at one time, as well as a little bit of data
6 about the surrounding village, the community context in
7 which the house currently sits.
8 That's a pretty complete listing, in my mind.
9 This much information is not available in all cases or all
10 forms that the Maryland Historical Trust Inventory has.
11 As I said, some have little information to go on,
12 others have a greater volume. This is an example I would
13 think of one that has more information to go on, and has
14 more character-defining features that would qualify it as
15 an historic structure.
16 Q. Are the assertions in the Inventory Form
17 regarding architectural features of the property, are they
18 correct?
19 A. Absolutely.
20 Q. Are the assertions of the various descriptions of
21 the style of the building and that sort of thing, are they

1 correct?
2 A. Yes, they are.
3 Q. Are the assertions of the various changes that
4 have been made up and to the year 1981 correct?
5 A. Yes.
6 Q. Now, in response to counsel's questions about the
7 staff of the Landmarks Preservation Commission, who do you
8 consider the staff to be?
9 MR. BARHIGHT: Objection.
10 THE CHAIRMAN: You opened the door as to who was
11 on the staff.
12 MR. BARHIGHT: Who's on the staff, but who he
13 considered to be on the staff?
14 THE CHAIRMAN: I will give him a little leeway
15 since you brought it up.
16 Q. Who was on the staff in the Landmarks
17 Preservation Commission?
18 A. John McGrain. Kimberly Abe. Tim Dugan.
19 Q. Are they qualified professional historians?
20 MR. BARHIGHT: Objection.
21 THE CHAIRMAN: He has no basis.

1 Q. Do you know their qualifications?
2 A. Not specifically, no. I cannot --
3 Q. Have you reviewed their work?
4 A. I have worked with them.
5 Q. Do you know their degree of knowledge and
6 expertise?
7 A. They seem highly qualified to me.
8 Q. In the field of historic preservation?
9 A. In the field of historic preservation. Many of
10 these forms were prepared by Mr. McGrain.
11 MR. BARHIGHT: Objection. That's not a proper
12 response to the question.
13 THE CHAIRMAN: When a question is asked, you
14 answer the question. If counsel wants something else, he
15 will ask another question.
16 THE WITNESS: I'm sorry.
17 THE CHAIRMAN: Not a problem.
18 Q. Is it, in your experience, that the planning
19 office has a degree of expertise in historic preservation?
20 A. Yes. Definitely.
21 Q. The planning office?

1 A. Oh, the staff of the planning office.
2 MR. BARHIGHT: Objection. Now he's impeaching
3 his own witness. He asked the question. He didn't like
4 the answer.
5 THE CHAIRMAN: No, no. I will consider it a slip
6 of the tongue.
7 Q. Is it the staff of the planning office or the
8 staff of the LPC?
9 A. The staff of the planning office contains the LPC
10 director, or executive secretary, which is Kimberly Abe.
11 Q. Who are the ones, to your knowledge, that have
12 the expertise in historic preservation?
13 A. I think all three of them.
14 Q. Who is that?
15 A. Kimberly Abe, John McGrain, and Tim Dugan.
16 Q. Do you know why they didn't make a recommendation
17 at this hearing?
18 A. No.
19 MR. BARHIGHT: Objection to the question. When
20 you say "they," do you mean the Office of Planning?
21 THE CHAIRMAN: He's answered the question, No.

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1 He doesn't know.
2 Q. Is it the normal practice for one of those three
3 to make a recommendation at the hearing?
4 A. My experience was that the staff made the
5 recommendations prior to the hearing.
6 Q. Do you consider that to be an important aspect of
7 the hearing process?
8 A. Yes, definitely, because it informs the
9 commissioners of all the assets of the particular
10 structure that qualifies it for listings. Some
11 commissioners may be familiar with it, others may not.
12 The purpose of the staff's recommendation, I
13 believe, is to familiarize all the commissioners with the
14 criteria and quality of the structure for listing.
15 Q. In response to a question by Mr. Barhight, you
16 examined the minutes of the Landmarks Commission with
17 respect to the Gardner House?
18 A. Yes, that's correct.
19 Q. Did they contain a description of the staff
20 recommendation?
21 A. No. It was not a staff recommendation.

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1 MR. BARHIGHT: Objection.
2 A. It was a recommendation from the planning office.
3 MR. BARHIGHT: He wasn't there. He already said
4 he wasn't there.
5 MR. MURPHY: Your Honor, I'm asking the
6 witness --
7 THE CHAIRMAN: One second. As to whose or what
8 recommendations, he's referring only to the minutes.
9 You made the point that the recommendation was
10 made. He's simply asking him to confirm that's, in fact,
11 what's on the form.
12 MR. BARHIGHT: No. The question was what
13 happened that night. He wasn't there, and he doesn't
14 know.
15 MR. MURPHY: NO. The question was, what did the
16 form say.
17 THE CHAIRMAN: What happened that night? I
18 thought it was the form we were talking about.
19 MR. BARHIGHT: I apologize then.
20 Q. Do the minutes record what the reasons were for
21 the Office of Planning's recommendation?

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1 A. No.
2 Q. Is there a difference between listing on the
3 Landmarks Preservation Commission and listing on the
4 Maryland Inventory of Historic Places?
5 A. Yes.
6 Q. What is the difference?
7 A. Structures listed on the Landmarks List may not
8 be listed on the Inventory, and vice-versa. For example,
9 Stevens Hall --
10 THE CHAIRMAN: Slow down.
11 A. I'm sorry. For example, Stevens Hall, I believe,
12 is an example of an historic structure that is on the
13 Inventory, but not on the Baltimore County Landmarks
14 Preservation List.
15 Q. Where's Stevens Hall?
16 A. Towson University. It was the first modern
17 structure at that campus.
18 Q. Is the fact that a building is on one or the
19 other list determine whether it is on either list?
20 A. The Landmarks Commission has said that in a, I
21 guess a resolution, clarifying structures on the Inventory

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1 should be considered for inclusion on the Landmark List,
2 but it is not a total requirement, and it does not mean
3 the building is historic or non-historic, necessarily.
4 Q. Can there be structures that are on the
5 Inventory, but not on The Landmarks list?
6 A. Yes, definitely. There's probably many that are,
7 in fact, listed on the Inventory, but are not on the
8 Preliminary Landmarks List.
9 Q. Is there a difference in the actual effect
10 between listing on the Landmarks List and listing on the
11 Inventory?
12 A. The difference, in effect, would be that there
13 would be no review of proposed changes to structures
14 listed on the Maryland Inventory, whereas structures
15 listed on the Landmarks List are subject to review for
16 changes or adaptions to them.
17 Q. In order words, if you had a structure on the
18 Landmarks List, and you wanted to put a new porch on, or
19 something like that, you'd have to come in and get
20 approval of the Landmarks Preservation Commission?
21 A. That is correct.

1 Q. Are there any similar requirements for structures
2 listed on the Inventory?
3 A. Not that I am aware of.
4 Q. In answer to the questions about Mr. Little's
5 assertions of the effect of the Inventory under state law,
6 you indicated that you agreed that the Inventory did not
7 have any regulatory effect under state or federal law?
8 A. That is correct. And I think that is being
9 applied when there's a review for federal funding like in
10 a Section 106 review process, there's no requirement,
11 legislative requirement, for the Inventory.
12 However, Baltimore County uses the Inventory as
13 possible recommended criteria for consideration of
14 listing.
15 Q. Is it also your understanding that under county
16 law, listing on the Inventory means that a listing shown
17 on the development plan may not be torn down?
18 A. In my understanding, it must be preserved,
19 according to Baltimore County statute.
20 Q. And further questions were raised about the
21 statement that the property was not eligible. I guess the

1 State Highway Administration determined, and the Maryland
2 Historical Trust agreed, that the property is not eligible
3 for the National Register of Historic Places. Does that
4 mean it is not eligible for the Maryland Inventory?
5 A. No.
6 Q. Is there a difference between national
7 significance and local significance?
8 A. Yes. Some structures certainly would be eligible
9 for national significance, but in Baltimore County, may
10 not be as high a level of significance. However, still
11 worthy of inclusion on the County Landmarks Preservation
12 List.
13 Q. In your judgment, can a property be determined
14 not eligible for listing on the National Register of
15 Historic Places, but still be considered a historic
16 property?
17 MR. BARHIGHT: Objection.
18 A. Definitely.
19 MR. BARHIGHT: That's different. That gets back
20 to the old question --
21 THE CHAIRMAN: It's back to the issue, again, of

1 whether it is or whether it isn't. If we are talking
2 about the process, it's one thing. That conclusion has
3 been made, whether it's on the Preservation List or not.
4 Either it is or it isn't, and they have already
5 decided, and we have decided we are not going to go into
6 that. We are not going to second-guess that.
7 THE WITNESS: Well, Mr. Barhight brought in --
8 MR. BARHIGHT: Objection.
9 THE CHAIRMAN: No, no.
10 Q. Is the process for listing on the National
11 Register -- what are the criteria for listing on the
12 National Register?
13 A. Well, there's a number of criteria, including
14 whether or not a structure is architecturally significant,
15 if it's associated with a particular architect, builder.
16 Also, there's a broad pattern of history criteria
17 that says whether or not the structure was associated with
18 a group of people or events that had some significance in
19 history, or a particular person. George Washington, for
20 example, is perhaps something that would contribute to an
21 architectural study.

1 Basically, the criteria for National Register
2 Listing are similar, similarly adopted by Baltimore County
3 statute.
4 Q. Are the criteria different for listing on the
5 National Register than listing on the local Landmarks
6 Preservation Commission?
7 A. I think there's a higher standard applied in
8 terms of all the above, that is, the architect or builder,
9 the association with a group or event or a particular
10 style.
11 It's basically, is this of national significance,
12 meaning, is it really our finest quality viewed in the
13 context of the whole country? As opposed to is this an
14 example that qualified for consideration as historic in
15 our particular county.
16 MR. MURPHY: Thank you. That's all I have.
17 THE CHAIRMAN: Recross?
18 MR. BARHIGHT: Nothing further.
19 THE CHAIRMAN: Thank you, Mr. Witness.
20 MR. MURPHY: Patricia Bentz.
21 P A T R C I A B E N T Z,

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1 having been called as a witness, was duly sworn, and
2 testified as follows:
3 THE CHAIRMAN: Ma'am, give your full name and
4 spell your last name, and your address.
5 THE WITNESS: My name is Patricia Lynn Bentz.
6 B-e-n-t-z. I live at 1141 East Piney Hill Road in
7 Monkton, Maryland.
8 DIRECT EXAMINATION
9 BY MR. MURPHY:
10 Q. What is your occupation, Ms. Bentz?
11 A I'm the Executive Director of the Baltimore
12 County Historical Trust.
13 Q. Were you in attendance at the meeting on March
14 10, 2005?
15 A. Yes, I was.
16 Q. Do you often attend the meetings of the Landmarks
17 Preservation Commission?
18 A. Yes, I do.
19 Q. Are you familiar with their procedures and their
20 minutes, and that sort of thing?
21 A. Yes, I am.

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1 Q. Had the staff, prior to the meeting on March 10,
2 2005, recommended the preservation of the Gardner House?
3 A. Yes, they had.
4 Q. Is this stated in the -- are there so-called
5 Action Summaries that the Landmarks Preservation
6 Commission publishes?
7 A. Yes, there are.
8 Q. I will show you one and ask you if you can
9 identify this as an Action Summary.
10 MR. BARHIGHT: May I see it, please, before the
11 witness testifies. Thank you. If you could show us where
12 it's in the file?
13 MR. MURPHY: I thought it was in the Landmarks
14 Preservation file.
15 MR. BARHIGHT: It may. I just haven't seen it.
16 THE CHAIRMAN: Mr. Murphy, do you want to see if
17 it's in the other file?
18 MR. MURPHY: I thought it was in the file, so
19 we'll have to introduce it. I could have made copies.
20 (Discussion held off the record.)
21 MR. MURPHY: Do you see it?

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1 MR. BARHIGHT: I see it, but it's not a self-
2 authenticating document.
3 MR. MURPHY: She's going to authenticate it.
4 MR. BARHIGHT: How?
5 THE CHAIRMAN: Gentlemen --
6 MR. BARHIGHT: The letter purports to be a
7 Summary of Actions of the Landmarks Preservation
8 Commission. It's undated, from what I can see but for the
9 markings I assume counsel has placed in the columns.
10 I can honestly indicate that I'm not familiar
11 with this document, which is why I raised the questions I
12 did. Usually, if I'm familiar with something, I don't
13 raise an objection, because they're usually
14 self-authenticating, or they're something we've seen, or
15 whatever, but I have never seen this document before.
16 MR. MURPHY: Well, I've never seen the testimony
17 of Mr. Little at the other trial, either, and she's --
18 THE CHAIRMAN: When he says
19 "self-authenticating," that's means there's something in
20 the nature of the document that identifies what it is and
21 lends authenticity to it.

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1 MR. MURPHY: It's got the initials down there at
2 the bottom.
3 THE CHAIRMAN: Let's just deal with the issue of
4 its admissibility before anyone starts dealing with it.
5 Why don't you go through, make an attempt to lay an
6 appropriate foundation for its admissibility.
7 Then, if counsel objects, I will rule on the
8 objection. And if we rule it's in, you will go from
9 there.
10 Q. Ms. Bentz, did you examine the files of the
11 Landmarks Preservation Commission with respect to the
12 Gardner House?
13 A. Yes, I did.
14 Q. Do you know what are called Action Summaries?
15 A. Yes, I do.
16 Q. What are they?
17 A. Action Summaries are prepared by the LPC staff
18 members and are presented to and discussed with the LPC
19 prior to the meeting.
20 They normally meet at 5 o'clock to go over the
21 summary, and at 6 o'clock, it's the open meeting.

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1 Q. Did you go through the files and extract the
2 Action Summaries related to the Gardner House?
3 A. Yes, I did.
4 Q. Do you have any doubt that the copies that you
5 have seen are, in fact, taken from the files of the
6 Landmarks Preservation Commission?
7 A. No, there's no doubt.
8 THE CHAIRMAN: Why don't you rephrase that into a
9 positive statement?
10 Q. I will show you three pieces of paper. Can you
11 identify these as Action Summaries taken from the files of
12 the Landmarks Preservation Commission?
13 THE CHAIRMAN: By her.
14 Q. By you?
15 A. Yes, I can.
16 MR. MURPHY: I would offer them into evidence.
17 MR. BARHIGHT: I have two objections. One
18 relates to the memorandum that I hold from the Office of
19 Planning, dated July 22, 2005, from Mr. Dugan, who I
20 gather is part of the staff, to Kathi Bianco,
21 Administrator, Board of Appeals.

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1 It says, In response to a request, enclosed are
2 copies of documents comprising the Landmarks Preservation
3 Commission's file on the Commission's consideration of the
4 Elizabeth Gardner House for inclusion on the Landmarks
5 List.
6 It lists twelve itemized documents. This got
7 sent to Ms. Bianco. This letter and the attached document
8 are in your file. What the witness is characterizing as
9 Action Summaries are not listed on here.
10 MR. MURPHY: They are not. I think they are
11 Action Summaries before meetings where they express the
12 views of the staff.
13 THE CHAIRMAN: Here's the problem. Had there
14 been no communication between that agency, that entity and
15 the Board -- and we don't have their file, we don't have
16 the contents of their file -- and someone under oath,
17 presuming they are not committing perjury, which I am
18 willing to presume -- say, I took this from the file.
19 That's one thing.
20 Where we have the Landmarks Preservation
21 Commission sending us what they characterize -- I'm

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1 paraphrasing -- as the contents of their file, sent to the
2 Board as a result of an official request, then I have more
3 of a problem, because then I have the question of why
4 didn't they include that?
5 And she can't tell me why he didn't include that
6 in what she characterizes as the complete file.
7 MR. MURPHY: Well, I think what's in there is the
8 minutes, that sort of thing, and I think --
9 THE CHAIRMAN: But my problem is he characterizes
10 it in his letter to Ms. Bianco, he characterizes it as
11 the complete file, the contents of the file.
12 This document, therefore, in his mind, did not
13 meet the definition of the contents of the file. That's
14 my problem.
15 Now, if he were to come here and say, Yes, that
16 was in the file, but I didn't think that's what Ms. Bianco
17 was talking about so I didn't send it, then that's
18 something entirely different.
19 But absent him saying so, how can she say why it
20 wasn't included?
21 MR. MURPHY: Mr. Chairman, that's an issue that

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1 perhaps relates to relevance, but with all respect, I
2 don't think there's any doubt in anybody's mind here about
3 the fact that these are authentic documents from their
4 files.
5 Mr. Dugan is not here. Why they weren't included
6 in that, I don't know. But the question is whether they
7 are authentic.
8 And if Mr. Barhight wants to say, well, they
9 weren't included and, therefore, you know, you shouldn't
10 pay any attention to them, that's fine.
11 But with respect -- I don't think anybody has any
12 doubt that these are taken from the files. You can
13 examine her until the cows come home on the authenticity.
14 THE CHAIRMAN: Here's the problem. The problem
15 is it's taken from the files, she's says it's taken from
16 the files, and he says he sent the file, and it's not in
17 the file that she says she took it out of.
18 THE WITNESS: May I clear up something?
19 THE CHAIRMAN: No, no. That's my problem. We
20 are both talking about the same thing.
21 MR. MURPHY: Well, maybe Mr. Dugan didn't include

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1 everything.
2 THE CHAIRMAN: No, no. That's my point. Maybe
3 he did, maybe he didn't, but since he's the responsible
4 official, and he said that's the file, then because
5 someone said I took this out of a file, I'm a little
6 concerned about giving that as much weight as something
7 that I get officially from them. It may go to weight.
8 MR. BARHIGHT: I agree with what Mr. Murphy said.
9 If the assertion is that it's part of the file of the
10 Gardner House case, then I've got a problem because of
11 what you said. But if all we're going to say is that she
12 extracted these from the fourth floor office, the Planning
13 Office, they speak for themselves to the extent they do.
14 I don't doubt what the witness is saying. If she
15 just says what room she went in, what room she got them
16 from, that's fine by me to get them authenticated enough
17 to get them in the record, because I,like Mr. Murphy,
18 don't find this witness is lying.
19 THE CHAIRMAN: Nor do I want to in any way
20 suggest that.
21 MR. BARHIGHT: My only problem, I don't want him

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1 to be able to assert that it's part of the file.
2 MR. MURPHY: Just as a matter of information, I
3 checked that list when I got it, and these items relate to
4 the same dates. So I sort of checked them off and wrote
5 in the dates on it because they relate to the same dates.
6 I think what the difference is, that these are
7 like a preliminary statement to the Board, here's what's
8 going to be on your agenda here, and then these items
9 listed are the actual minutes of the action taken.
10 THE CHAIRMAN: Why don't we do this? Based upon
11 the witness's under-oath testimony, why don't we accept
12 them as that which she got under the circumstances and
13 conditions she suggests to us, and that the Board will
14 give to them the weight and relevance that it feels
15 appropriate under the circumstances.
16 MR. HOFFMAN: May I be heard just for a minute?
17 THE CHAIRMAN: Yes, just because we haven't heard
18 from you all day.
19 MR. HOFFMAN: What is the relevance?
20 THE CHAIRMAN: No, no. That's argument. I will
21 let you guys argue whether it's relevant later.

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1 We are simply talking about right now whether
2 it's coming in to the record. Whether or not it means
3 anything is something different.
4 MR. MURPHY: I move it be admitted into evidence
5 under the terms the Chairman described.
6 THE CHAIRMAN: So ordered. Let's give it a
7 number.
8 MR. CRIZER: Two.
9 Q. Turning your attention to page two, item
10 twenty-one -- page ten, rather -- item twenty-one, would
11 you describe the LPC action and the recommendation. Would
12 you read that into the record, please?
13 MR. BARHIGHT: It's relatively long. It speaks
14 for itself.
15 MR. MURPHY: We read plenty of stuff into the
16 record.
17 THE CHAIRMAN: We'll accept it, and we'll read
18 it.
19 A. The LPC action was to decide whether to set the
20 precedent of making determinations in the absence of an
21 actual proposal to demolish or alter a structure.

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1 The recommendation of the LPC staff was to vote
2 to affirm that, even though the structure is not of a
3 National Register level of significance, it might not be
4 of Landmarks significance, it is still clearly eligible to
5 remain on the MHT Inventory, now that the County Register,
6 and should remain subject to the requirements that it must
7 be preserved.
8 Note that, because there has been no public
9 hearing by posting, it is not appropriate to reach a final
10 conclusion on Landmark eligibility.
11 Q. And the date listed here is based upon the date
12 that you found these in the records?
13 A. I am assuming that, from my recollection.
14 Q. Thank you.
15 MR. BARHIGHT: What's the date of the first one?
16 MR. MURPHY: 10-14-2004.
17 Q. Then, would you turn to page six, item nine, it
18 has a date of 3-10-5, and read the LPC action and the
19 recommendation.
20 A. The recommendation, the action is to conduct
21 scheduled public hearings, decide whether or not the

1 structures qualify for the List.
2 Recommendation. The Office of Planning does not
3 support placing the house on the Landmarks List.
4 MR. MURPHY: We'll offer this.
5 THE CHAIRMAN: Based upon comments made by the
6 Chair, we'll accept it.
7 MR. CRIZER: It's No. 2.
8 Q. The recommendation by the Office of Planning, was
9 that made by the staff of the Landmarks Preservation
10 Commission?
11 A. No.
12 Q. Is there a difference between the staff of the
13 Landmarks Preservation Commission and the Office of
14 Planning?
15 A. Yes.
16 Q. To your knowledge, does the Office of Planning
17 have expertise in historic preservation which it utilizes
18 in making recommendations to the Landmarks Preservation
19 Commission?
20 A. That was the first time I saw it.
21 Q. Before that, had it always been --

1 MR. BARHIGHT: Objection.
2 THE CHAIRMAN: How about asking if that's
3 different from what she had seen previously.
4 Q. Is that different from what you had seen
5 previously?
6 THE CHAIRMAN: Thank you.
7 A. Yes, it is.
8 Q. In what way?
9 A. Well, I had never seen Jeff Long stand up and say
10 something in regard to the planning office. It's always
11 been a recommendation coming from the LPC staff.
12 Q. Did Mr. Long offer any supporting background or
13 material as to the basis for the recommendation?
14 A. No. He just made the statement.
15 MR. MURPHY: Thank you. That's all I have.
16 THE CHAIRMAN: Cross.
17 MR. BRHIGHT: I have to ask a few questions.
18 THE CHAIRMAN: Go ahead.
19 CROSS EXAMINATION
20 BY MR. BARHIGHT:
21 Q. Do you know who Mr. Long is?

1 A. Jeff Long is the Assistant Deputy.
2 Q. Is he the Deputy Director of the Office of
3 Planning?
4 A. Deputy Director, Yes.
5 Q. And Mr. Dugan works for the Office of Planning?
6 A. Yes. There's a sub-department within the Office
7 of Planning. The Office of Planning has numbers of people
8 much more than just the three people and Jeff Long. So
9 they are the historic preservation department within the
10 Planning Office.
11 Q. And they report to the Director, do they not?
12 A. They report to the Director.
13 Q. They report to the Deputy Director, do they not?
14 A. As far as I know, they do.
15 MR. BARHIGHT: No other questions.
16 THE WITNESS: They also report to the --
17 THE CHAIRMAN: Whoa, whoa. Okay. Any further
18 questions, counsel?
19 REDIRECT EXAMINATION
20 BY MR. MURPHY:
21 Q. Whom did you say they report to?

1 A. They also report to the Chairman of the Landmarks
2 Preservation Commission.
3 Q. Do you think it's possible that you can conduct a
4 fair hearing in a matter like this without the
5 recommendation of the Historic Preservation staff?
6 MR. BARHIGHT: Objection. Clearly outside the
7 scope of my cross examination.
8 THE CHAIRMAN: Not only that, but it goes to
9 whether or not what was done below before the Landmarks
10 Preservation Commission was appropriate or not. That's
11 not something we're going to get into.
12 MR. MURPHY: Thank you, Mr. Chairman. Thank you,
13 Ms. Bentz. Ms. Mascari.
14 R U T H M A S C A R I,
15 having been called as a witness, was duly sworn, and
16 testified as follows:
17 THE CHAIRMAN: Please state your name, and spell
18 your last name.
19 THE WITNESS: Ruth Mascari. M-a-s-c-a-r-i.
20 17210 Whitely Road, Monkton, Maryland.
21 DIRECT EXAMINATION

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1 BY MR. MURPHY:
2 Q. What's your background and education, Ms.
3 Mascari?
4 A. I have a Bachelor's degree in history. I have a
5 Master's degree in history. I have thirty hours beyond
6 historic preservation from the Goucher Program. I'm a
7 published author. I have taught local history.
8 Q. Published author in what field?
9 A. In the regional and Baltimore County history.
10 Q. You taught where?
11 A. I have taught in the community college system of
12 Baltimore County.
13 Q. Have you served on the Landmarks Preservation
14 Commission?
15 A. Yes. I was on the Commission from 1986 to 1998,
16 '97. I was the chairman for a number of years.
17 Q. Have you previously qualified as an expert
18 witness before the Board of Appeals?
19 A. I have.
20 MR. MURPHY: I would offer Ms. Mascari as an
21 expert witness in the field of historic preservation.

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1 THE CHAIRMAN: Voir dire?
2 MR. BARHIGHT: No questions.
3 THE CHAIRMAN The witness is accepted as an
4 expert in -- once again, Mr. Murphy?
5 MR. MURPHY: Historic preservation.
6 THE CHAIRMAN: Thank you.
7 Q. Are you familiar with the procedures of the
8 Landmarks Preservation Commission?
9 A. Yes.
10 Q. What role does the staff play in those
11 procedures?
12 MR. BARHIGHT: Now, we have been through this on
13 three witnesses. You have indicated it's not relevant to
14 these proceedings. I am going to have to object to the
15 line of questioning.
16 THE CHAIRMAN: Mr. Murphy, I know you want to
17 make a record, and I know that we've already ruled how
18 they got there, and I have, again, given everybody a
19 little bit of leeway.
20 How the Landmarks Commission people got there is
21 not something that we're going to get to, not because it

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1 may not be relevant, but that it is statutorily not our
2 call or inquiry to make.
3 So it seems to me that, just assuming arguendo,
4 as we lawyers say, you take this case up, then given the
5 fact we couldn't hear anything about that issue, someone
6 in a black robe might be interested in hearing that issue,
7 but this isn't the place.
8 MR. MURPHY: I respectfully point out that Mr.
9 Barhight brought it up. We had quite a bit of testimony
10 about. Mr. Long appearing.
11 THE CHAIRMAN: That was on his cross examination
12 of an area that I had let you get into a little bit.
13 MR. MURPHY: But in his cross examination, he
14 asked the questions.
15 THE CHAIRMAN: Sure, but it was based on your
16 initially getting into the subject, and maybe that's the
17 Chair's fault in opening the window more than I should
18 have, simply to allow you gentlemen to make a record.
19 But I'm not going to get involved in making this
20 a whole issue of did this staff say or did this staff say
21 this.

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1 Frankly, whether they said A, B, C, D, or didn't
2 say A, B, C, D, that only was relevant to the decision the
3 Landmarks Preservation Commission may or may not have made
4 correctly, or not correctly, but from our point of view,
5 we're stuck with the way it is, because we don't have any
6 right to change it.
7 Q. Did you prepare a statement that was read at the
8 proceedings of the Landmarks Preservation Commission on
9 March 10?
10 A. Yes.
11 Q. That expressed your views as to the Gardner
12 House?
13 A. Yes.
14 Q. Are you familiar with the Inventory that's been
15 offered into evidence, prepared by the Maryland Historic
16 Trust?
17 A. Yes.
18 Q. Have you examined that Inventory?
19 A. Yes.
20 Q. Were you in the hearing room when Mr. Little
21 described the Inventory as oftentimes being a compilation

1 of raw data, that sort of thing?
2 A. While I do know Rodney, I was not in the room for
3 that.
4 Q. You heard --
5 A. I heard here, yes, in this room.
6 Q. -- the recitation?
7 A. Yes.
8 Q. Do you believe the Inventory Form in this case is
9 simply a compilation of raw data?
10 A. Oh, no.
11 Q. Would you describe for the Board what you
12 consider to be the main features of the Inventory Form in
13 this case?
14 A. The Form?
15 Q. The contents.
16 A. The contents of the Form are exquisitely written
17 out much further than many other forms I have seen, not
18 just for this county, but for other counties.
19 It talks about the architecture, the structure of
20 the building, and also the broad patterns of history, the
21 people, the significance of Baltimore County, that are

1 totally associated with the historic house.
2 Q. Are you familiar with this house?
3 A. Yes.
4 Q. Do you have a view as to whether the contents of
5 the Inventory Form with respect to the historic
6 information and architectural information within those
7 contents are correct?
8 A. I believe them to be correct. I believe that
9 since the date of the Form in 1981, there have been some
10 differences, but they are not significant.
11 Q. Have you worked with the Maryland Historical
12 Trust?
13 A. Yes.
14 Q. Have you worked with categories such as the
15 National Register of Historic Places?
16 A. Yes.
17 Q. Does the Maryland Historical Trust have a higher
18 standard for its activities than exist at the local
19 Baltimore County level?
20 A. I would say that the Trust, the Maryland
21 Historical Trust, which is part of the Department of

1 Housing and Community Development in the state level, I
2 would say the Trust has a different prospective when it is
3 ruling or talking about the National Register. That's one
4 thing. If it's talking about the Inventory, that's
5 another.
6 Q. So is the National Register a different standard
7 than the standards used in the Inventory?
8 A. Yes, I believe that to be true.
9 Q. Does the Inventory Form reflect local values as
10 well as national values in the field of historic
11 reservation?
12 A. An Inventory Form certainly could do that, yes.
13 MR. MURPHY: That's all I have.
14 MR. BARHIGHT: No questions.
15 THE CHAIRMAN: Thank you, ma'am.
16 THE WITNESS: I have a map. Do you want to get
17 it on the record?
18 Q. (MR. MURPHY) Do you have a map there?
19 A. Yes.
20 Q. What is that map?
21 MR. HOFFMAN: I thought the examination was

1 completed?
2 A. It's shows -- it's just for the record. I
3 brought it.
4 Q. Does it show the Gardner House?
5 A. Yes.
6 MR. MURPHY: I would offer that.
7 THE CHAIRMAN: Gentlemen, it's no different than
8 a slide show. There's no argument, I think, among counsel
9 that the house is there and exists.
10 MR. BARHIGHT: Actually, I think this sheet is
11 already in the record.
12 MR. MURPHY: I'll offer it again, just to be
13 sure.
14 THE CHAIRMAN: This will be No. 3.
15 THE CHAIRMAN: Off the record for a second.
16 (Discussion held off the record.)
17 THE CHAIRMAN: Mr. Murphy?
18 MR. MURPHY: I offer this, Mr. Chairman.
19 THE CHAIRMAN: Noted. No. 3.
20 MR. MURPHY: Mr. Paul McKean.
21 P A U L M c K E A N,

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1 having been called as a witness, was duly sworn, and
2 testified as follows:
3 THE CHAIRMAN: Please keep your voice up, sir,
4 and tell us your name, and please spell your last name,
5 and address.
6 THE WITNESS: My name is Paul McKean --
7 M-c-K-e-a-n --and my address is 403 Gun Road, Relay,
8 Maryland.
9 THE CHAIRMAN: Thank you, sir.
10 DIRECT EXAMINATION
11 BY MR. MURPHY:
12 Q. Mr. McKean, you were a member of the Landmarks
13 Preservation Commission at one time?
14 A. Yes, for close to twenty years.
15 Q. Was that in the early years of it?
16 A. I started about a year, year and a half after it
17 was first established.
18 Q. It was first established around 1980?
19 A. No, no. It was before then. I really don't
20 recall.
21 Q. So you were on it about twenty years?

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1 A. Close to it. Perhaps nineteen.
2 Q. Were you at the hearing on March 10 when the
3 Gardner House was nominated?
4 A. I was.
5 Q. Did you testify in favor of it at that time?
6 A. I did, yes.
7 Q. Do you remember whether the staff made any
8 recommendations with respect to the nomination?
9 MR. BARHIGHT: Objection.
10 THE CHAIRMAN: Same question. I assume there's
11 an objection?
12 MR. BARHIGHT: Yes.
13 MR. MURPHY: I'm going to get to what the staff
14 did --
15 THE CHAIRMAN: But we have already been over this
16 ground, and, you know, we have the minutes, we even have
17 the Action Summary.
18 So there's no question that the staff made a
19 recommendation. We don't need this witness to corroborate
20 that which everybody accepts.
21 Q. Based upon your experience, is the absence of a

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1 staff recommendation, is that different from what you had
2 experienced before?
3 MR. BARHIGHT: Objection. Excuse me, sir.
4 Objection. As you just indicated, the evidence that Mr.
5 Murphy put in indicates there was a staff recommendation
6 and the Action Summary.
7 MR. MURPHY: There was an Office of Planning
8 recommendation.
9 THE CHAIRMAN: I'm going to suggest to you, I
10 think the Board is clear at this point that there is some
11 difference of opinion.
12 We've already heard from one witness on this, Mr.
13 Barhight, and two witnesses on your side as to what their
14 differences are and what was put in and wasn't put it.
15 With all due respect to the witness as to those
16 facts, not point of view, we don't need corroboration, we
17 accept that which you have described as far as the staff
18 recommendation.
19 MR. MURPHY: Let me approach it in a different
20 way, perhaps.
21 Q. You were on the board for some twenty years?

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1 A. Correct.
2 Q. Did the staff make recommendations on matters
3 that came before you at that time?
4 A. On every matter that came before us.
5 Q. Who were the members of the staff that made those
6 recommendations?
7 MR. BARHIGHT: Objection. For that whole
8 twenty-year period? It's not relevant. He wasn't there
9 on March 10th.
10 THE CHAIRMAN: Again, whether it was done for
11 twenty years or thirty years, and this was the only time
12 it wasn't done, or only one it was done, we're not going
13 to get into how they got to where they got.
14 There was a question, is the planning staff and
15 the Preservation Commission staff different. We've had
16 people tell us about those difference.
17 We understand those points of view. I have no
18 doubt that he'll corroborate that which your witnesses
19 have already said.
20 I will accept a proffer that they will
21 corroborate what your earlier witnesses said.

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1 MR. MURPHY: I will proffer that Mr. McKean will
2 testify that in his service on the Landmarks Preservation
3 Commission and as being an active citizen in the field of
4 historic preservation, that it was an integral part of the
5 proceedings of the Commission that the professional staff
6 of the Landmarks Preservation Commission, being the staff
7 assigned to the Commission, described by Ms. Bentz as
8 being sort of a sub-unit of the department of the planning
9 staff, that they made recommendations to the Commission,
10 and that these were an integral part of the Commission's
11 proceedings.
12 THE CHAIRMAN: Which is what Ms. Bentz said to
13 us.
14 MR. MURPHY: Yes. It corroborates that.
15 MR. BARHIGHT: It's clearly irrelevant. Other
16 than that, fine.
17 THE CHAIRMAN: Proffer accepted.
18 MR. MURPHY: Thank you.
19 Q. Mr. McKean, did you serve on Board of the
20 Maryland Historical Trust?
21 A. I did, indeed, for ten years. I was the

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1 representative from Baltimore County.
2 Q. So you went to the annual meetings in Annapolis,
3 that sort of thing?
4 A. It was more than annual meetings.
5 Q. Monthly?
6 A. It was monthly, and sometimes meetings or two in
7 between on specifically important matters.
8 Q. Are you familiar with the document known as the
9 Inventory, the Maryland Historical Trust Inventory?
10 A. Oh, yes, indeed.
11 Q. Are you familiar with how that was prepared?
12 A. I am, yes.
13 Q. What would you be able to tell the Board about
14 how that was prepared?
15 A. Well, the Inventory of Maryland structures was
16 prepared partly by staff, partly by consultants, over a
17 period of some time. Quite awhile, actually.
18 Q. Was any care taken in the preparation of that
19 Inventory?
20 A. It was very carefully prepared. The Board, the
21 staff, they took it extremely seriously. It was not a

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1 casual matter at all.
2 Q. Mr. McKean, do you make a differentiation between
3 listing a property on the Landmarks Preservation
4 Commission and listing it on the Maryland Inventory?
5 A. Well, they are two separate things. A listing on
6 the Maryland Inventory is just that. A listing on the
7 Landmarks Commission List is as a result of hearings and
8 all kinds of evidence that has to be concurred by the
9 County Council.
10 The Landmarks Commission is composed not only of
11 experts in historical preservation, like myself, but
12 people in real estate, the Library Board, developers had
13 representation, and at times the vote would go in ways
14 that had nothing to do with historic preservation.
15 Once in awhile, something would not be put on the
16 List for other reasons, and --
17 MR. BARHIGHT: Objection. Move to strike. Not
18 responsive.
19 THE CHAIRMAN: I was going to say I'm going to
20 sustain the objection simply it is not responsive. What
21 may have happened in other situations is totally not

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1 relevant to what's happened in this situation.
2 MR. MURPHY: This gets to the heart of the issue.
3 THE CHAIRMAN: I'd appreciate it.
4 Q. Is the fact that it's not listed on the Landmarks
5 Preservation List, does that mean that it's not then worth
6 preserving?
7 THE CHAIRMAN: In his personal opinion, I will
8 let him answer that.
9 A. The fact that the Landmarks Commission doesn't
10 list something has almost nothing to do at times with
11 whether it's historic or not.
12 MR. BARHIGHT: Objection.
13 THE CHAIRMAN: That's not the question you were
14 asked.
15 THE WITNESS: Repeat your question.
16 THE CHAIRMAN: Is it not worth preserving?
17 That's the question, or the reporter can read back the
18 question.
19 THE WITNESS: One more time so I can --
20 (Whereupon, the pending question was read by the
21 reporter.)

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1 THE WITNESS: If it's not listed, it does not
2 indicate it is not worth preserving.
3 THE CHAIRMAN: Thank you.
4 MR. MURPHY: That's all I have. Thank you.
5 CROSS EXAMINATION
6 BY MR. BARHIGHT:
7 Q. This witness may know, since you served on the
8 MHT, the process of having a piece of property listed on
9 the Inventory.
10 Are you familiar with that process? Let me back
11 up. I'm confusing you. I can tell by your expression.
12 Are you familiar with the process by which
13 property gets listed on MHT Inventory?
14 A. I think the word "was" in this case, right.
15 Q. No, that's not the question I asked. I asked you
16 whether you are familiar with the process of having any
17 property listed on the MHT Inventory?
18 A. Yes.
19 Q. In that process, is notice provided, as a matter
20 of course, to the property owner?
21 A. No.

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1 Q. In that process, as a matter of course, is there
2 a public hearing with due process?
3 A. No.
4 MR. BARHIGHT: No further questions.
5 THE CHAIRMAN: Thank you, sir. Mr. Murphy?
6 MR. MURPHY: That's my case. I would just also
7 point out that I didn't call him as a witness, but there's
8 a representative here of the Sparks-Glenco Community
9 Association.
10 THE CHAIRMAN: Your name, sir?
11 MR. REW: George Rew.
12 MR. MURPHY: You're an resident of the area?
13 MR. REW: Yes, sir.
14 THE CHAIRMAN: We appreciate your being here
15 today.
16 MR. REW: You're welcome.
17 THE CHAIRMAN: Anyone else?
18 MR. MURPHY: No, sir.
19 THE CHAIRMAN: Okay. That's the protestants'
20 case. Mr. Barhight, do you have any rebuttal case.
21 MR. BARHIGHT: I may have. Give me thirty

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1 seconds, please. I call Kathryn Kuranda to the stand,
2 please.
3 KATHRYN KURANDA,
4 having been called as a witness, was duly sworn, and
5 testified as follows:
6 THE CHAIRMAN: Ma'am, you have been here all day.
7 May I have your name, and spell your last name.
8 THE WITNESS: Kathryn -- K-a-t-h-r-y-n --
9 Kuranda -- K-u-r-a-n-d-a. I live at 107 East 3rd Street
10 in Frederick, Maryland
11 DIRECT EXAMINATION
12 BY MR. BARHIGHT:
13 Q. Ms. Kuranda, where are you employed?
14 A. I'm vice president of the Architectural and
15 Historical Services, with R. Christopher Goodwin &
16 Associates, an architectural resource management group
17 that is based in Frederick, Maryland.
18 Q. What is your educational background?
19 A. I have an undergraduate degree in American
20 Studies from Dickinson College, a Master's in
21 Architectural History from the University of Virginia.

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1 Q. What is your work-related background?
2 A. I have been employed as an architectural
3 historian in Carson City, Nevada, Virginia and have been
4 with Goodman & Associates since 1989. I started as a
5 senior project manager, and I'm now vice president.
6 Q. Do you have any professional affiliations or
7 associations?
8 A. Yes. I am a member of the Association for
9 Preservation Technology, the National Trust For Historic
10 Preservation --
11 COURT REPORTER: Excuse me. I'm having
12 difficulty hearing you.
13 A. -- I'm also a member of an international
14 association.
15 Q. I think you're going to not think about the mike,
16 speak up without reference to the mike. It seems like
17 you're hoping the mike is going to amplify. Just make
18 sure she can hear whatever you're going to say. Have I
19 provided you with a copy of the resume you provided me?
20 A. Yes.
21 Q. I have given one to counsel and given one each to

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1 the Board. Is this an actual copy of your resume?
2 A. Yes.
3 Q. It's identified, in addition to our education,
4 professional affiliations and experience, a number of
5 publications and papers presented, as well as projects?
6 A. Yes.
7 MR. BARHIGHT: I'd like to offer this as the next
8 exhibit for the petitioner.
9 MR. CRIZER: No. 5.
10 MR. MURPHY: No objection.
11 Q. Ms. Kuranda, have you testified previously and
12 have you been qualified as an expert in the field of
13 architectural history and historic preservation?
14 A. Yes.
15 MR. BARHIGHT: I'd like to offer Ms. Kuranda as
16 an expert in architectural history and historic
17 preservation.
18 THE CHAIRMAN: Voir dire?
19 VOIR DIRE
20 BY MR. MURPHY:
21 Q. Architectural history. Are you a registered

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1 architect?
2 A. No. I'm an architectural historian.
3 Q. Have you supervised renovations of a building?
4 A. I have dealt with the rehabilitation and
5 compliance with the Secretary of Interior standards for
6 rehabilitation.
7 Q. You never actually --
8 A. I'm not an historic architect. I'm an
9 architectural historian.
10 Q. Have you ever served as a staff member of a local
11 preservation commission?
12 A. I have served on a commission, but not as a staff
13 member.
14 Q. What commission did you serve?
15 A Carson City Historical Commission and the
16 Comstock National Landmarks Historical Commission.
17 Q. Did that have a staff?
18 A. Yes.
19 MR. MURPHY: I have nothing further. I don't
20 object.
21 THE CHAIRMAN: The witness is accepted as an

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1 expert in architectural history and historic reservation.
2 CONTINUED DIRECT EXAMINATION
3 MR. BARHIGHT:
4 Q. Ms. Kuranda, are you familiar with the subject
5 property?
6 A. Yes, I am.
7 Q. Have you had an opportunity to visit the site?
8 A. Yes.
9 Q. Without going into any information at all about
10 the report, did you prepare a report?
11 A. Yes.
12 Q. Was that report presented to the LPC on March 10,
13 2005?
14 A. It was presented by a member of my staff to the
15 LPC.
16 Q. To the best of your understanding, is that report
17 contained within the record of these proceedings?
18 A. I believe so.
19 Q. Were you here during the testimony of Mr. Lees?
20 A. Yes.
21 Q. Did you hear him describe, generally describe the

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1 original features of the subject house?
2 A. Yes.
3 Q. The subject property?
4 A. Yes.
5 Q. Do you have an opinion about whether you agree or
6 disagree how he described the original features of the
7 structure?
8 A I think it was accurately characterized. Would
9 you like me to expand?
10 Q. I would like you basically to summarize what you
11 think are the primary original features of the structure?
12 MR. MURPHY: Objection, your Honor. You know, I
13 was under severe constraint before with my historic
14 preservation witness, about testifying as to the historic
15 value of the property. Now it's been asked --
16 THE CHAIRMAN: I'm a little confused, gentlemen.
17 I thought that she just started off by saying what Mr.
18 Lees said was accurate.
19 And now I'm wondering, if what Mr. Lees said is
20 accurate, what relevance there would be to her repeating
21 essentially what he says was accurate. That's what I

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1 thought you were objecting to.
2 MR. MURPHY: I'm saying Mr. Lees was forced to
3 testify with regard to the information contained in the
4 Inventory. Remember, we did everything around the
5 Inventory. I was never --
6 THE CHAIRMAN: He described the house.
7 MR. BARHIGHT: I am asking her a real simple
8 question.
9 THE CHAIRMAN: He went through slide and slide
10 describing everything, the type of tiles --
11 MR. MURPHY: I'm just anticipating things. If
12 she's going to say the building is not historic --
13 THE CHAIRMAN: Why don't you wait?
14 MR. BARHIGHT: Why don't you wait?
15 THE CHAIRMAN: And let me say to you, Mr. Murphy,
16 if the witness tries to make an ultimate determination,
17 just as I prevented Mr. Lees from making a comment about
18 whether the LPC was correct or not, I am not going to let
19 this witness either.
20 We are just not going to go there. The witness
21 described the building in very great detail. And now I

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1 assume that this witness seems to be going in the same
2 direction.
3 MR. BARHIGHT: Much more briefly.
4 THE CHAIRMAN: If she tries to go over the line,
5 you will object.
6 Q. Let me ask the question again. Could you please
7 briefly summarize what original features there are in the
8 structure?
9 A. It retains its original massing and scale
10 sections of the original siding, selective earlier
11 windows, the turret with its fishtail shingles.
12 Q. Were you here during Mr. Lees' testimony as to
13 the changes that have occurred on the property since the
14 1981 Inventory Form?
15 A. Yes.
16 Q. Do you generally agree with what he characterizes
17 as changes?
18 A. Yes.
19 Q. Could you briefly summarize those changes, for
20 the Board?
21 A. We have replacement of the roofing materials,

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1 selected windows, vinyl siding installed. We have
2 enclosure of the porch and installation of the new
3 entrance door and removal of two of the three
4 outbuildings.
5 Q. Are you familiar with the federal preservation
6 laws?
7 A. Yes.
8 Q. The state preservation laws?
9 A. Yes.
10 Q. The county preservation laws?
11 A. Yes.
12 Q. Is this property on any federal preservation
13 list?
14 A. No, it's not.
15 Q. What state list is it on?
16 A. It is included in the Maryland Inventory of
17 Historical Properties.
18 Q. What does that mean?
19 A. It's included in the data base which records
20 historical data and descriptive data on buildings in
21 Maryland. No evaluation is made in the Inventory.

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1 Q. Are you familiar with Baltimore County
2 preservation laws?
3 A. Yes.
4 Q. Are you familiar with the fact there's a
5 Preliminary and Final Baltimore County Landmarks
6 Preservation List?
7 A. Yes.
8 Q. Is this property on either the Preliminary or the
9 Final Baltimore County Landmarks Preservation List?
10 A. No.
11 Q. Are you familiar with whether the Baltimore
12 County Landmarks Preservation Commission uses the MHT
13 Inventory as its own Inventory?
14 A. Yes.
15 Q. Some of this has already been brought out with
16 Mr. McKean. Are you familiar with how a structure obtains
17 an inventory number, a BA number, to make its way on the
18 MHT Inventory?
19 A. Yes.
20 Q. Describe how that happens.
21 A. You call the secretary at the Maryland Historic

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1 Trust and ask for a number, and you fill out a form, and
2 they enter it into the Inventory. It's on open data base.
3 Q. Is there any notice to the property owner that
4 that process is undergoing?
5 A. No.
6 Q. Is there any hearing a result of a piece of
7 property being listed on the Inventory?
8 A. No.
9 Q. Were you here when I was reciting portions of Mr.
10 Little's testimony?
11 A. Yes.
12 Q. When I asked Mr. Lees whether he agreed with
13 those characterizations?
14 A. Yes.
15 Q Do you agree with the characterizations offered
16 by Mr. Little?
17 A Yes.
18 Q. Ms. Kuranda, I'm showing you a form entitled,
19 Maryland Historical Trust NR-Eligibility Review Form
20 that's in the file marked CBA-05-125 as a record of these
21 proceedings. Are you familiar with that form?

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1 A. Yes.
2 Q. What is that form?
3 A. It's a determination of eligibility form for the
4 Maryland Historical Trust for evaluation of resources for
5 the listing on the National Register of Historic Places.
6 Q. Does it relates to this site in particular?
7 A. Yes, it does.
8 Q. Do you understand the background, why that form
9 was filled out?
10 A. This form was prepared by the Maryland State
11 Highway Administration, by their architectural historians
12 on staff, as part of a road improvement project on York
13 Road that was subject to Section 106 of the National
14 Preservation Act, as well as Article 83(b) of the Maryland
15 Annotated Code.
16 That law requires that agent, because there's
17 federal funding involved in that project, that undertaking
18 was required to take into consideration the fact of the
19 project on historic property.
20 This documentation was prepared. A consultation
21 with the Maryland Historical Trust, and in accordance with

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1 the 106 regulations that have been developed by the
2 advisory council on historical preservation, the
3 documentation was submitted to the county as well as the
4 Baltimore County Preservation Trust for their comment and
5 consideration.
6 Q. Now, we have already been through it, but at this
7 point, in April of '02, eligibility was not recommended by
8 the Maryland Historical Trust review?
9 A. That is correct.
10 Q. And was this process referred to the Baltimore
11 County Historical Office or the Landmarks Preservation
12 Commission for comment?
13 A. This form as well as the description of the
14 action was submitted by the State Highway Administration
15 to the county.
16 Q. Did the county respond in any way?
17 A. No.
18 MR. BARHIGHT: No other questions of this
19 witness. Thank you.
20 THE CHAIRMAN: Cross.
21 CROSS EXAMINATION

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1 BY MR. MURPHY:
2 Q. You have an exhibit up there, the Inventory Form?
3 This is the Inventory Form. Is this the document that you
4 said is just a result of a phone call?
5 A. You receive a number from the Maryland Historical
6 Trust, and then documentation is submitted to them. They
7 accept it. There's no screening process in the acceptance
8 of the documentation.
9 Q. You think that's just a result of a phone call,
10 that document?
11 A. I don't understand the question.
12 Q. Isn't that document quite a thorough evaluation
13 of the historical character of the Gardner House?
14 A. It is a good document. It was my understanding
15 that, based on the preparation and time on it, it was
16 developed by a student at Goucher College.
17 Q. Was it reviewed by the Maryland Historical Trust?
18 A. I don't know. I have not seen any documentation
19 to suggest that.
20 Q. So you think any student can just send something
21 in, and the Maryland Historical Trust will --

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1 A. It's done all the time.
2 Q. Do You believe it's a thorough professional
3 evaluation of the Gardner House?
4 A. I believe this is a good piece of work.
5 Q. So it's a worthy piece of work?
6 A. It's a very good documentation of the property.
7 Q. In response to Mr. Barhight's questions about the
8 Maryland Historical Trust eligibility form, the Maryland
9 Historical Trust determined it's not eligible, is that
10 correct?
11 A. Correct.
12 Q. Eligible for what?
13 A. Listing in the National Register. They evaluate
14 its significance and integrity on a state, national and
15 local level.
16 Q. Does that mean it's not historic?
17 A. Define what you mean by "historic."
18 Q. You're the expert.
19 MR. BARHIGHT: Objection.
20 Q. Does the fact that it's not listed on the
21 National Register mean that it's not historic?

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1 MR. BARHIGHT: I didn't ask her that. It's
2 outside the scope of the cross examination. He's trying
3 to now do an impeachment of what he said I was going to
4 do, and didn't do.
5 THE CHAIRMAN: I think the witness's response was
6 correct, asking him to define the terms. If he can define
7 the terms to her satisfaction, she can answer. If he
8 can't, that's her call as to whether or not she can
9 answer.
10 MR. BARHIGHT: Why is that relevant? You're the
11 one who said not to go down that path.
12 THE CHAIRMAN: I am hoping Mr. Murphy is getting
13 to the end, so I'll let him do it. Go ahead, Mr. Murphy.
14 Q. Do you believe that not listing or lack of
15 eligibility for the National Register of Historic Places
16 means that a building is not historic, according to the
17 generally accepted standards of the historical
18 preservation profession?
19 MR. BARHIGHT: Objection. He didn't define
20 those.
21 THE CHAIRMAN: I don't know what you're referring

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1 to. How can the witness?
2 MR. MURPHY: She's an expert on historic
3 preservation.
4 THE CHAIRMAN: No, no, no. Let me try to bring
5 this to a conclusion. Let's see if I can help.
6 Do you mean, are you talking in the sense that
7 everything that is more than a day old or a month old has
8 history? If you're using it as a term of art, then that's
9 an entirely different thing.
10 Are you saying that a building that's fifty years
11 old doesn't have history? Of course, it has history.
12 It's fifty years old.
13 Does that mean it technically has some form of
14 historical significance? It's an entirely different
15 issue.
16 Q. Did you, Ms. Kuranda, submit testimony to the
17 Landmarks Preservation Commission which contains the
18 following sentence. The SHA and the MHT have also
19 determined that the building is not historic.
20 A. Yes, using "historic" as a term of art.
21 Q. What do you mean by that?

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1 A. Historic property is a property that retains
2 sufficient integrity and significance for listing on the
3 National Register of Historic Places or the State Register
4 of Historic Places.
5 Q. So does that mean that it's not of local
6 significance?
7 A. It has been evaluated using those criteria on a
8 local level.
9 Q. For the National Register of the state?
10 A. For the Maryland Register, yes, and I believe --
11 Q. But a building could have local significance as
12 an historic building and not be recognized, for example,
13 as having sufficient significance to be listed
14 individually on the National Register, is that not the
15 case?
16 A. It's depends on what the criteria are.
17 Q. But your term of art that the building is not
18 historic, it could still be listed on the Maryland
19 Register, the Maryland Inventory of Historic Places as an
20 historic building, could it not?
21 A. The Maryland Inventory doesn't list historic

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1 buildings. It's basically a data base.
2 Q. It's what?
3 A. It's a data base. It's not evaluative.
4 Q. It's not evaluative?
5 A. Not the Maryland Inventory.
6 Q. For example, page one of the Inventory says the
7 Elizabeth Gardner House is significant as a good example
8 of the Queen Anne architectural style that was popular in
9 the United States. That's not evaluative?
10 MR. BARHIGHT: Objection. If he'd like to ask
11 the witness a question about the document, she should be
12 allowed to see that, and have it before her. He's taking
13 one sentence out of context.
14 THE CHAIRMAN: Would you like to have a copy of
15 that? Let her look at it, Mr. Murphy.
16 A. I am familiar with this document. That statement
17 doesn't clarify in which context the evaluation is being
18 made, or what criteria. To the best of my knowledge, and
19 I have been doing it for twenty years, the Maryland
20 Inventory of Historic Properties does not have the
21 criteria for inclusion.

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1 Q. For inclusion in what?
2 A. In the inventory. You can list something -- you
3 can document a 7-Eleven, or you can document the oldest
4 building in Maryland. It's simply an archive of data on
5 buildings, structures and objects that are in Maryland.
6 Q. I understand that, but --
7 THE CHAIRMAN: The Board has a question. When
8 something is asked to be placed on the Inventory Form, at
9 the time it's filled out, does it represent the opinion of
10 any group, or does it represent solely the opinion of the
11 person filling out the form?
12 THE WITNESS: It's the opinion of the person
13 filling out the form.
14 Q. But it's published by the Maryland Historical
15 Trust?
16 A. It's not published.
17 Q. Who publishes it?
18 A. The documentation is maintained in the Maryland
19 Historical Trust Library. It's also available on their
20 line as their inventory data.
21 Q. And if I want to bring a letter to the Maryland

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1 Historical Trust and say, Here's my house, put it on the
2 Inventory, they will do it?
3 A. Uh-huh. Yes.
4 Q. So anybody can just write in, and they'll put it
5 on?
6 A. Yes. And that explains the wide variance of
7 quality in the Inventory Forms.
8 Q. So anybody can just write in and get their house
9 listed on the Inventory.
10 A. There's no listing. It's just documentation.
11 Q. Then they'll publish this Inventory Form?
12 A. They don't publish the Inventory Form. It's an
13 archive.
14 Q. They put it on their stationery, don't they?
15 MR. BARHIGHT: Objection.
16 A. No, they don't put it on their stationery. They
17 have forms that you fill out.
18 These are forms are standard classifications of
19 information so that you can compare and do research about
20 different types of properties in Maryland. It's a true
21 archive.

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1 Q. This particular form, it's not a 7-Eleven?
2 A. No, it's not.
3 Q. It's a well-considered document describing in
4 rather painful detail, seven or eight pages, of historic
5 qualities of the building?
6 A. It's a very good documentation of the history and
7 the condition of the building in 1981.
8 Q. Do you disagree with that Form in any respect?
9 A. I believe there were changes made since the
10 documentation was done, but it's a good work of
11 scholarship.
12 Q. What changes were those that you object to?
13 A. Well, I don't object.
14 THE CHAIRMAN: She didn't object to any.
15 MR. BARHIGHT: She didn't object to any.
16 Q. What changes are you concerned about?
17 MR. BARHIGHT: Objection. She didn't say she was
18 concerned.
19 THE CHAIRMAN: She started out this whole cross
20 examination by saying she agreed with what Mr. Lee's
21 characterization of what the property was and the changes

1 that have been made since 1981.
2 MR. MURPHY: Well, Mr. Lees testified he didn't
3 feel the changes made since 1981 had any effect on the
4 historic character --
5 THE CHAIRMAN: And she agrees.
6 Q. Do you agree that they do not?
7 MR. BARHIGHT: No. I did not ask that question.
8 MR. MURPHY: Here's what we've got to get to.
9 THE CHAIRMAN: Okay. Let's say there's a
10 disagreement about whether or not the quality of the
11 property changed from 1981 to now.
12 The only purpose and use of it being on that list
13 is whether or not it has any significance different than
14 what the criteria is that the Commissioner was going to
15 use. To the extent that it makes it historic or not
16 historic in the sense of whether it gets on the Landmarks
17 Preservation List or not is an issue that we're not going
18 to get to, because it's not on the Landmarks Preservation
19 List, and that's the fact, and we are not getting back
20 into that conclusion.
21 MR. MURPHY: That's all I have of this witness.

1 THE CHAIRMAN: All right. Redirect, Mr.
2 Barhight?
3 MR. BARHIGHT: Nothing further. Thank you very
4 much.
5 THE CHAIRMAN: Thank you, ma'am. Any other
6 rebuttal?
7 MR. BARHIGHT: We would rest our rebuttal as
8 well.
9 MR. MURPHY: I have a surrebuttal. We would
10 call Ms. Mascari.
11 RUTH MASCARI,
12 having been previously sworn, resumed, and testified
13 further as follows:
14 THE CHAIRMAN: You're still under oath, the
15 previous oath being binding upon you. State your name
16 again, for the record, please.
17 THE WITNESS: Ruth Mascari.
18 DIRECT EXAMINATION
19 BY MR. MURPHY:
20 Q. Ms. Mascari, are you familiar with inventories
21 published by the Maryland Historical Trust on properties

1 in Baltimore County?
2 A. Yes.
3 Q. Would you generally describe the nature of those
4 Inventories?
5 A. Generally, the ones that I have seen -- and I
6 have written some, written up some -- they are extremely
7 well done. They are reviewed by John McGrain, who's
8 unrefutably an expert, and they do go into great detail.
9 Q. So is it your assumption that any Inventory Form
10 in Baltimore County would have been reviewed by John
11 McGrain?
12 MR. BARHIGHT: Objection. Leading question, and
13 there's no foundation for that.
14 THE CHAIRMAN: Sustained. Go ahead.
15 Q. Are you familiar with how the Inventory Forms are
16 prepared?
17 A. Yes.
18 Q. Who are they normally reviewed by in Baltimore
19 County?
20 A. To my knowledge, it's John McGrain.
21 Q. Are they reviewed by anybody at the Maryland

1 Historical Trust?
2 A. I believe they are.
3 Q. Have you, in fact, prepared Inventory Forms?
4 A Yes.
5 Q. Were yours reviewed by somebody at the Maryland
6 Historical Trust?
7 A. I believe once they are sent to John, they are
8 sent down to the Trust.
9 Q. Is it the case that anybody can just walk in and
10 sign a form and it will be distributed by the Maryland
11 Historical Trust as an Inventory Form of an historic
12 property?
13 A. I do not believe that to be true at all.
14 MR. MURPHY: That's all I have.
15 THE CHAIRMAN: Wait a second, ma'am. A member of
16 the Board has a question.
17 MR. QUINN: What is the advantage of putting a
18 piece of property on the Maryland Historical List?
19 THE WITNESS: I think the advantage is, probably
20 could be for the owner who would like to have a little bit
21 of prestige. It could be for the academic community, for

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1 surrogate information, and also could be for the community
2 or the county as a whole to express a body of information
3 of significant historic fabric.
4 MR. QUINN: What's the advantage of being on the
5 Landmarks Preservation List?
6 THE WITNESS: If one's property is listed on the
7 Landmarks Preservation Commission List, the preliminary
8 List, and sent to the Council for the final list, there's
9 a sense of preservation in general, preservation of the
10 historic fabric of the county, and also there are certain
11 tax credit incentives.
12 There are other possibilities for, say, prestige.
13 And there are other local grants and awards and
14 nominations, that sort of thing. I believe there was a
15 study done in the eighties -- I can't quote it -- but it
16 does show, from an economic point of view, it helps the
17 whole community with its insurance, stability, all that
18 sort of thing, done by legislation.
19 THE CHAIRMAN: Does that raise any questions?
20 MR. BARHIGHT: One moment, please?
21 MR. HOFFMAN: Can we take a short break?

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1 THE CHAIRMAN: Sure.
2 (Short break.)
3 THE CHAIRMAN: Are we ready?
4 MR. BARHIGHT: I changed my mind. No questions.
5 Thank you very much.
6 THE CHAIRMAN: Mr. Hoffman?
7 MR. HOFFMAN: No. I concur.
8 THE CHAIRMAN: All right. This would seem to
9 complete the testimony in this matter. Thank you, Madam
10 Witness, appreciate that.
11 As is the usual procedure of the Board, we will
12 accept, in lieu of closing arguments, memoranda. Mr.
13 Hoffman, Mr. Barhight, I assume you're going to file one
14 memoranda, or are you both going to file? I don't care,
15 but it's up to you guys.
16 MR. BARHIGHT: Probably just one.
17 THE CHAIRMAN: Just a suggestion. Mr. Murphy, we
18 usually give around thirty days or so for memoranda. Now,
19 for the edification of counsel, we'd like the law, all the
20 statutes, the testimony, the argument.
21 Now, as I started to say, we normally give around

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1 thirty days. This is the first week of August. We've got
2 vacations. We've got holidays. Off the record.
3 (Discussion held off the record.)
4 THE CHAIRMAN: Okay. Memos due the 31st day of
5 the month, which is a Wednesday. Then the Board will set
6 in a deliberation, which will be public, after which a
7 written opinion will issue, and any appellate rights you
8 have will exist from the date of that opinion.
9 I want to thank all counsel and folks here. We
10 are adjourned.
11 (Hearing concluded.)
12 * * * * *
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(c) *Development of land in a county agricultural easement.*

(1) The use or development of land in a county agricultural easement shall be governed by Article 24 of the Code.

(2) If there are conflicting provisions, the provisions of Article 24 of the Code shall take precedence over this title and the Baltimore County Zoning Regulations.

(d) *R.C. 6 zones.* Notwithstanding any other provisions of this section, all development in a R.C. 6 zone is subject to Subtitle 2, Part V of this title.
(1988 Code, § 26-171) (Bill No. 172, 1989, § 2; Bill No. 18, 1990, §§ 2, 3; Bill No. 106, 1990, §§ 1, 2; Bill No. 1, 1992, § 2; Bill No. 50-93, 1993, § 3; Bill No. 73-00, § 3, 9-15-2000; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 8, 7-1-2004)
***Annotation**–Former § 26-171 (1988) cited in Marzullo v. Kahl, 366 Md. 158, 783 A.2d 169 (2001).*

§ 32-4-107. WAIVERS.

(a) *In general.*

(1) At the request of a department director, the Hearing Officer may grant a waiver of any or all requirements of Subtitles 3, 4, and 5 of this title if the Hearing Officer finds that:

(i) 1. The size, scope, and nature of a proposed development does not justify strict compliance with this title;

2. A waiver would be within the scope, purpose, and intent of this title; and

3. All other county laws and regulations have been complied with; or

(ii) Compliance with this title would cause unnecessary hardship.

(2) A waiver shall be granted only in accordance with Title 8 of this article.

(b) *Waivers - Development Plan requirements.*

(1) The Director of Permits and Development Management may waive the Development Plan requirements under §§ 32-4-221(b) and (c) and 32-4-222 through 32-4-224 of this title and the Hearing Officer's hearing if, after consultation with appropriate county agencies, the Director finds:

(i) That the size, scope, and nature of a proposed development does not justify strict compliance with this title; and

(ii) That a waiver would be within the scope, purpose, and intent of this title; and

(iii) That the proposed development complies with all other county laws and regulations.

(2) Before proposing to grant a waiver for development within the critical area, the Director of Permits and Development Management shall obtain recommended findings from the Director of Environmental Protection and Resource Management based on the standards specified under § 32-4-226(d)(1)(iv) of this title.
(1988 Code, § 26-172) (Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 173-93, § 3, 11-17-1993; Bill No. 8-96, § 3, 3-23-1996; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 8, 7-1-2004)

§ 32-4-108. PROHIBITION ON TRANSFER OF LAND.

(a) *In general.* A person may not convey a lot, parcel, or tract of a subdivision unless a plat, if required, has been recorded in accordance with this title and the plat is effective at the time of the conveyance.

(b) *Enforcement.* The transferee of a lot, parcel, or tract conveyed in violation of this section may bring an action in the Circuit Court to:

(1) Rescind the conveyance and obtain return of the deposit or purchase money paid; and

(2) Receive reimbursement for reasonable expenses, including attorney's fees, incurred in connection with the conveyance.
(1988 Code, § 26-173) (Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-109. RECORDING AN APPROVED PLAT; PROHIBITED.

(a) *In general.* A person may not offer and the Clerk of the Circuit Court may not accept a plat for recording in the plat records of the county unless the plat has been approved for recording as required by this title.

(b) *Enforcement.* If a plat that has not been approved is recorded, the recording shall be considered a nullity.
(1988 Code, § 26-174) (Bill No. 18, 1990, § 2; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-110. FAILURE OF COUNTY AGENCY TO ACT.

If a county agency fails to act on a Development Plan or plat submitted in accordance with this title within the prescribed time, the Development Plan or plat shall be deemed to have been approved by the agency unless the failure to act has been excused by the County Administrative Officer, in writing, no later than 7 days after the expiration of the prescribed time.
(1988 Code, § 26-176) (Bill No. 79-01, § 2, 7-1-2004)

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(c) *Required signatures.* The Development Plan shall be signed and sealed by a surveyor, engineer, architect, or landscape architect, as appropriate, indicating that the plan is accurate and has been prepared in compliance with this title and any regulations adopted under the authority in this title.
(1988 Code, § 26-203) (Bill No. 18, 1990, §§ 2, 3; Bill No. 1, 1992, § 3; Bill No. 29-95, § 1, 5-21-1995; Bill No. 8-96, § 2, 3-23-1996; Bill No. 89-97, § 2, 10-19-1997; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 12, 7-1-2004)

§ 32-4-223. REQUIRED EXISTING SITE CONDITION INFORMATION.

The Development Plan shall identify the following information concerning existing site conditions:

(1) Topography, and existing topography for adjacent properties as shown on the county photogrammetric plats or more recent information where available;

(2) Streams, springs, seeps, bodies of water, and forest buffers;

(3) Soil types in accordance with the soil survey, Baltimore County, Maryland, including identification of prime and productive soils;

(4) Wooded areas;

(5) Buildings on the property;

(6) One-hundred-year floodplains or flood areas for both riverine and tidal areas;

(7) Nontidal wetlands and tidal wetlands;

(8) Identification of any building, property, or site within or contiguous to the proposed development that is included in:

(i) The Maryland Historical Trust Inventory of Historic Properties;

(ii) The county preliminary or final landmarks list;

(iii) The National Register of Historic Places;

(iv) The Maryland Archeological Survey or identification of any county historic district; or

(v) A National Register District covering the proposed development;

(9) Areas of critical state concern as designated under the procedures of § 5-611 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(10) As known to the applicant, location and description of hazardous material as defined under § 7-101 of the Environment Article of the Annotated Code of Maryland;

(11) Any additional information as may be required by the Department of Environmental Protection and Resource Management to determine compliance with the critical areas local protection program, under § 33-2-202 of the Code.
(1988 Code, § 26-203) (Bill No. 18, 1990, §§ 2, 3; Bill No. 1, 1992, § 3; Bill No. 29-95, § 1, 5-21-1995; Bill No. 8-96, § 2, 3-23-1996; Bill No. 89-97, § 2, 10-19-1997; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, §§ 12, 13, 7-1-2004)

§ 32-4-224. REQUIRED DEVELOPMENT PLAN INFORMATION.

(a) *In general.* The Development Plan shall contain the following development information:

(1) Proposed lot or building layout with parking and loading areas;

(2) Proposed street layout with existing and future paving and right-of-way widths indicated, including pedestrian walkways;

(3) Location of public and private existing and proposed easements or rights-of-way;

(4) Existing and proposed county, state, and private streets, along with estimated proposed average daily trips attributable to the development in the plan;

(5) When appropriate, transit services and facilities detailed in the Maryland Mass Transit Administration's Access by Design publication;

(6) Proposed and existing water and sewer lines;

(7) Proposed and existing underground fuel storage tanks, wells, and septic areas;

(8) Proposed and existing utility systems and fire hydrants;

(9) General schematic proposals for grading and retaining walls, including:

(i) The anticipated alteration or removal of vegetation or other natural features; or

(ii) A designated limit of disturbance line;

(10) Stormwater management areas supported by preliminary hydrology computations, and proposed and existing storm drainage systems and verification of suitable outfall;

(11) If required by the Department of Environmental Protection and Resource Management, a hydrogeological study and an environmental effects report;

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(2) The county may not allow encroachment in the floodway causing an increase in the existing base flood elevation.

(3) In areas where the base flood elevation has not been established, the county shall determine the riverine floodplain and flood elevation by means of a flood study prepared in accordance with the requirements of the Department of Public Works Design Manual and sealed by a registered professional engineer before the issuance of a permit or the recording of a subdivision plat.

(e) *Wetlands.*

(1) The county may not permit dredging, filling, or construction in any nontidal wetland or tidal wetland.

(2) The county shall require adequate protection of nontidal wetlands or tidal wetlands from contamination.
(1988 Code, § 26-276) (Bill No. 173-93, § 3, 11-17-1993; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004)

§ 32-4-415. SLOPE PROTECTION AND SOILS.

(a) *Development Plan or plat approval; slope protection required.* The county may not approve a Development Plan or plat unless the county finds that the proposed development:

(1) Includes protective measures adequate to prevent erosion or sloughing of any steep slope or unstable slope; and

(2) Promotes the preservation of the natural topographic features of the steep slope or unstable slope.

(b) *Same; soil limitation.* The county may not approve a Development Plan or plat on soils that present a severe or moderate limitation to development unless the county finds that adequate measures have been taken to mitigate the effects of the limitation.

(c) *Same; prime and productive soils.* On prime and productive soils within the RC-2 zone, the county may not approve a Development Plan or plat unless the county finds that construction, excavations, buildings, structures, pavements, grading, clearing, or other disturbances of the soils will be limited or restricted in accordance with policies established by the Department of Environmental Protection and Resource Management to promote agricultural uses and protect the county's soil resources.
(1988 Code, § 26-277) (Bill No. 18, 1990, § 2; Bill No. 113, 1992, § 5; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-416. PRESERVATION OF NATURAL OR HISTORIC FEATURES.

(a) *Preservation of features.* Each Development Plan shall preserve:

(1) Natural features, including watercourses, waterfalls, beaches, and significant vegetation; and

(2) Historic structures or sites identified on any of the lists referred to in § 32-4-223(8) of this title.

(b) *Duty to protect habitats.* The county shall require adequate protection of any known habitat of an endangered species.
(1988 Code, § 26-278) (Bill No. 29-95, § 1, 5-21-1995; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004)

§ 32-4-417. SCENIC VIEWSHEDS.

The Planning Board shall:

(1) Provide to the Zoning Commissioner a catalogue of the elements for each scenic viewshed in the Master Plan;

(2) Identify the scenic route or view, as designated in the Baltimore County Master Plan as either enclosed, expansive, focused or a combination; and

(3) Identify the aspects of the visual quality, unity of the elements, and integrity of the elements.
(1988 Code, § 26-284) (Bill No. 121-01, § 3, 1-29-2002; Bill No. 75-03, § 28, 7-1-2004)

SUBTITLE 5. RECLAMATION OF PROPERTY

§ 32-4-501. RECLAMATION PLAN.

(a) *In general.* The owner of reclamation property may provide for the reclamation, use, and development of reclamation property by submitting a reclamation plan in accordance with this section.

(b) *Schematic plan required.* The reclamation plan shall set forth a conceptual schematic representation of the proposed use of reclamation property by means of maps, graphs, charts, or other written or drawn documents so as to enable the reviewing body to make a reasonably informed decision regarding the development.

(c) *Where the reclamation plan is filed.* The reclamation plan shall be filed with the Office of Planning for review by the Planning Board and the Office of Planning.

(d) *Contents of reclamation plan.* The reclamation plan shall contain the following information:

(1) Property and location information, including:

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IN RE: PETITION FOR ADMIN. SPECIAL HEARING SW/Corner Shawan Road and York Road **(11330 York Road)** 8th Election District 3rd Council District	* * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
York at Shawan, LLC Petitioners	* * *	**Case No. 05-332-SPH**

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, York at Shawan, LLC, and the Contract Lessee, Branch Banking and Trust Company (referred to hereinafter as BBT), by and through their attorney, Arnold E. Jablon, Esquire, The Petitioners request a special hearing seeking approval of a waiver, pursuant to Sections 32-4-106 and 32-4-107(b) of the Baltimore County Code (B.C.C.), of the requirements of Sections 32-4-221(b) and (c), 32-4-222 through 32-4-224, and 32-4-416 thereof, to raze an existing historical structure, known as the Elizabeth Gardner House and identified as Inventory No. BA917 with the Maryland Historic Trust. 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.

Section 32-4-107(b) of the Baltimore County Code (B.C.C.) provides that waivers from the requirements of Section 32-4-221 of the Code (i.e., the development plan) can be granted by the Director of the Department of Permits and Development Management (DPDM). Such requirements can be waived upon a finding that the size, scope and nature of the proposed development does not justify strict compliance, that a waiver would be within the scope, purpose, and intent of the development regulations, and that the proposed development complies with all other County laws, ordinances, and regulations. Under the Code, the property in question is posted for a period of 15 days during which time any property owner residing within 1,000 feet thereof

may demand a public hearing for a determination as to the merits of the request. Additionally, the Zoning Commissioner/Deputy Zoning Commissioner can schedule the matter for a public hearing if deemed appropriate. In this case, Deputy Zoning Commissioner John V. Murphy initially determined that a public hearing was necessary, based upon the Zoning Advisory Committee (ZAC) comment submitted by the Office of Planning, dated January 27, 2005, which recommended a denial of the request. That comment noted that the Landmarks Preservation Commission (LPC) had voted to consider placing the structure on the Preliminary Landmarks Preservation List and had scheduled a public hearing for March 10, 2005. The Office of Planning subsequently notified this office that following its hearing on the matter, the LPC had determined that the structure should not be placed on the Preliminary Landmarks List. Moreover, most of the testimony presented at that hearing was in support of the structure's demolition. In view of these findings, the Zoning Commissioner determined that a public hearing before this Hearing Officer was not necessary and thus, a decision on the waiver request follows.

The Petitioner has filed the supporting affidavits as required by Section 32-3-303 (a)(2)(i) of the Baltimore County Code and the documentation contained within the case file reflects that the property was duly posted as required. Based upon all of the evidence contained therein, I am persuaded to grant the requested relief. There were no adverse comments submitted by any County reviewing agency and due to the absence of opposition on the part of any citizen, I find that the requested waiver is appropriate in this instance. I further find that removal of the subject structure meets the spirit and intent of the development regulations, and that all other County laws, ordinances, and regulations will be met.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the B.C.Z.R. having been met, and for the reasons set forth above, the requested waiver shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 14th day of March 2005 that the Petition for Administrative Special Hearing seeking approval of a waiver, pursuant to Sections 32-4-106 and 32-4-107(b) of the Baltimore County

Code (B.C.C.), of the requirements of Sections 32-4-221(b) and (c), 32-4-222 through 32-4-224, and 32-4-416 thereof to raze an existing historical structure, known as the Elizabeth Gardner House and identified as Inventory No. BA917 with the Maryland Historic Trust, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their razing permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

Zoning Commissioner

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

Baltimore County

James T. Smith, Jr., County Executive
William J. Wiseman III, Zoning Commissioner

March 14, 2005

Arnold E. Jablon, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, Maryland 21204

RE: PETITION FOR ADMINISTRATIVE VARIANCE
SW/Corner Shawan Road & York Road
(11330 York Road)
8th Election District – 3rd Council District
York at Shawan, LLC - Petitioners
Case No. 05-332-SPH

Dear Mr. Jablon:

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

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

cc: Mr. John G. Evans, Member, York at Shawan, LLC
4 Quail Hollow Road, Lutherville, Md. 21093-4523
G. Scott Barhight, Esquire, Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Towson, Md. 21204
Mr. Richard L. Prosser, V.P. & Area Real Estate Mgr., Branch Banking & Trust Co.
6400 Arlington Blvd., Suite 1100, Falls Church, Va. 22042
Office of Planning; People's Counsel; Case File

Printed on Recycled Paper

8/30/05

IN RE: PETITION FOR ADMINISTRATIVE SPECIAL HEARING 11330 York Road (Elizabeth Gardner House)	*	BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	CASE NO. 05-332-SPH

MEMORANDUM

Baltimore County Historical Trust, Inc., Sparks Glencoe Community Association, Inc., Thomas S. Weaver, President, Advance Masonry Systems, Inc., Appellants, by their attorney, John C. Murphy, submit the following as their appeal memorandum:

Introduction

The Appellants wish to thank the members of the Board of Appeals for their attention during the lengthy hearing. The Baltimore County Historical Trust and the other appellants have a simple contention. The County Code says that structures listed on the Maryland Historical Trust Inventory (MHT Inventory) shall be preserved as part of the development process. The Code allows a waiver of this requirement for certain prescribed reasons. The owner has not presented any reason recognized by the Code for granting a waiver. Therefore, the application for a waiver has to be denied. Because there was so much discussion about it, Appellants also wish to point out that the law set forth in the Code is what it is. It does not state that buildings not listed on the County landmarks list are not to be considered historic. Failure to list a building on the landmarks list does not mean that a building is no longer considered historic. The two lists are separate

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BOARD OF APPEALS

and independent with separate effects. The correct resolution of this case will result from following the language of the County Code.

QUESTION PRESENTED

SHOULD THE BOARD OF APPEALS GRANT A VARIANCE TO THE CODE REQUIREMENT FOR PREPARATON OF A DEVELOPMENT PLAN AND TO THE CODE REQUIREMENT THAT BUILDINGS LISTED IN THE MARYLAND HISTORICAL TRUST INVENTORY WHICH ARE SHOWN ON THAT PLAN SHALL BE PRESERVED?

I
SUMMARY OF FACTS

The procedural history is set forth in the decision of the Deputy Zoning Commissioner, William I. Wiseman, III. The owners sought a waiver, pursuant to Section 32-4-106 and 32-5-107 (b), of the Baltimore County Code, of the requirements of Sections 32-4-221(b) and (c), 32-4-222 through 32-4-224 and 32-4-416. These sections generally require a development plan for the preparation of land for development. In this case, the land was being prepared for development by the razing of the existing structure on the property, which is known as the Gardner House. Pursuant to County procedures, the application was referred to the Landmarks Preservation Commission (LPC) which, after a hearing, voted not to list the building on the County's preliminary landmark list. The Zoning Commissioner then granted a waiver on the stated reason that the LPC did not list the building. Appellants appealed both the decision of the LPC and the decision of the Zoning Commissioner. The Board dismissed the appeal of the decision of the

LPC for lack of jurisdiction. It held a hearing on the appeal of the decision of the Zoning Commissioner.

The structure known as the Gardner House sits at the southwest corner of York and Shawan Roads. Long a private residence, it was then used by Piper Realty and then Coldwell Banker as a real estate office. It is currently under contract to BBT Bank.

The Gardner House is in the Queen Anne architectural style. The MHT Inventory contains a summary description as follows:

> "The Elizabeth Gardner House is significant as a good example of the Queen Anne architectural style that was popular in the United States in the last quarter of the nineteenth century."

The parties both presented witnesses. Jeffrey A. Lees, A.I.A., testified for the Historical Trust.. He is a long time practicing architect in Towson with much experience in historic preservation; he is a former member of the LPC. He identified the Gardner House as being listed on the Maryland Historical Trust inventory and explained to the Board why the house was historic. He also identified the changes which had taken place over the years and explained why they did not destroy the historical integrity of the buildings. Mr. Lees also testified about the significance of staff reports at LPC hearings and that they are a normal part of the LPC process. Ruth Mascari, a former chairperson of the LPC, also testified as an expert witness, giving particular testimony as to the nature of the Maryland Historical Trust Inventory. Paul McKean, a former member of the board of the Maryland Historical Trust, also testified as to the care which is taken in the

preparation of he Maryland Historical Trust Inventory. Both Ms. Mascari and Mr. McKean testified that staff reports from the professional historical preservation staff of the LPF were necessary parts of the hearing and determination process.

For the owner, Katherine Karunda, an historic preservation expert from Frederick, Maryland, testified that the building has been so altered that it no longer qualified as historic. She acknowledged, however, the MHT Inventory form was an excellent collection of research and analysis. She claimed that a property could be listed on the inventory "just by a phone call" although she acknowledged that a great deal of research and study had gone into this inventory form. The owner introduced a transcript of testimony from Rodney Little, the Director of the Maryland Historical Trust, who testified in an unrelated case that listing in the inventory did not constitute a determination that the building should necessarily be preserved.

Jeffrey C. Schultz testified for the owners as a civil engineer- surveyor. He explained the procedures which were followed in this case, the filing of the request for waiver form, and the standard waiver form used by the County. The only reason offered by Mr. Schultz to justify the waiver the waiver was that the LPC did not not list the building on the preliminary landmarks list.

ARGUMENT

THE OWNER HAS NOT DEMONSTRATED REASONS SUFFICIENT UNDER THE COUNTY CODE FOR THE BOARD TO GRANT A VARIANCE FROM THE REQUIREMENT THAT THE GARDNER HOUSE BE PRESERVED

The only issue in this case is whether the owner has demonstrated sufficient reasons for the granting of a waiver from the requirement that the Gardner House be preserved.

The Board of Appeals is certainly aware of the legal principles which govern this case. When applying a statute, the direction is to look at the plain words of the statute. Charles County Department of Social Services v. Vann, 382 Md. 286 (2004). Exceptions to a statute cannot be inserted which were not enacted by the legislative body. Sears Roebuck v. Grissin, 350 Md. 552 (1998). Any application of a statute should give effect to all parts of the statute. Pelican Nat. Bank v. Provident Bank of Maryland, 381 Md. 327 (2004).

The standards for variances are well established. Although called a waiver in the Code, it seems to be in the nature of a variance, that is a determination that the provisions of the Code do not apply to a particular piece of property. A variance, if granted, permits a use that is normally prohibited and is presumed to be in conflict with the zoning ordinance. Riffin v. People's Counsel for Baltimore County, 137 Md. App. 90 (2001). A Board of Appeals cannot approve a variance except as specifically allowed. Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County, 103 Md. App. 324 (1995). When approving a variance, the approving authority has to follow the criteria set forth in the applicable statute. Lewis v. Department of Natural Resources, 377 Md. 382 (2003).

A very important principle applicable to this case is that if the applicable ordinance requires a condition of the property as a basis for granting a variance, then the property must have this special condition no what other criteria like hardship are present. Cromwell v. Ward, 102 Md. App. 691 (1995).

Finally, the applicant for a variance has the burden of proof. Penn Const. Co. v. City of Baltimore, 233 Md. 372 (1964).All of these doctrines are general principles of law and would apply to a waiver the same as they apply to a variance.

The Code requires an approved Development Plan for a development. 32-4-201. The Code defines development to include preparing land for development.32-4-101(p)(5). A development Plan has to show on the plan any structures listed on the MHT Inventory, the county preliminary or final landmark list, listing on the National Register of Historic Places, and archeological listings. 32-4-223. The most crucial element is 32-4-416 which says that each Development Plan "shall preserve" historic sites on any of the lists referred to in Section 32-4-223 (8). The County code has a specific provision for the word "shall"

"1-2-209. SHALL.

The word "shall" shall have a mandatory effect and establish a requirement".

The Code allows a waiver from the Development Plan requirements, 32-4-107.

The Code provisions are set forth on the County form which the owner's introduced, "Special Hearing Wording", which Appellants have attached.

The owners filed for a waiver of the development plan requirements by the "Petition for Administrative Special Hearing", which is also attached.

The effect is that the owners were asking they be allowed to raze the Gardner House by obtaining a waiver of the requirement for a development plan (32-4-223) including the requirement that structures listed on the MHT Inventory which would be shown on the Development Plan be preserved. In other words, by waiving the requirement for a development plan, the owners obtain a waiver of the requirement that structures shown on that plan be preserved. If you don't have a plan, you have no obligation to preserve any building shown on that plan.

If you look at the waiver provisions in 32-4-107 (b), you can see that there are three criteria. The way it is written, all three must be met because of the use of the word "and" following the first two criteria.

The first criterion is (i):

"That the size, scope, and nature of a proposed development does not justify strict compliance with this title; and ".

This section cannot apply because there was no evidence as to the proposed project at all, --whether it was a large building or small, what its nature was at all. So the waiver can't be granted on the basis of the size, scope and nature of the proposed development because that development was not described

to the Board. This omission is particularly important because the property had been used for commercial uses, namely a real estate office.

You really shouldn't go on to the second criterion because, as was pointed out, all three criteria must apply. But in any event, the second criterion reads:

"That a waiver would be within the scope, purpose, and intent of this title".

There is no basis for making this determination. So far as intent goes, the Code has a specific intent to preserve historical sites. 32-4-102 (b)(vi). The intent of the legislative body is found in the plain meaning of the words used. Here the County Council has provided that buildings listed on the MHT Inventory shall be preserved. That is the intent and the Board has no authority to deviate from it.

Applied to the facts of this case, the owner asks that waiver be granted because the property was not listed by the LPC. The Board has no authority to do this. The list referred to in the Code does include the LPC preliminary landmarks list. But it also includes the Maryland Historical Trust Inventory. They are two different lists. If the County Council had meant that only the landmarks list apply, it would have said it. But it specifically included the MHT Inventory.

The owner is asking the board to rewrite the Code —that if a property is not listed by the LPC, it is not historic. But the Code does not say this. It says that properties listed on the Maryland Historical Trust Inventory have to be preserved. It may be that the Board believes that if a property is not listed by the LPC, then it should not be preserved. But that is not what the Code says. The Board can't rewrite the Code.

In fact, there is nothing wrong or illogical with preserving a building from demolition and at the same time not listing it on the landmark list. Once listed on the landmarks list, then any changes whatsoever, like changing the windows or the doors, must be approved by the LPC. Code 32-7-403. As the County Code now stands, listing on the MHT Inventory means only that the building not be demolished as part of the development process. The two lists have different results and should not be equated. Failure to list a building on the LPC list means only that the building has not been listed by the LPC. It does not mean that the building is not historic.

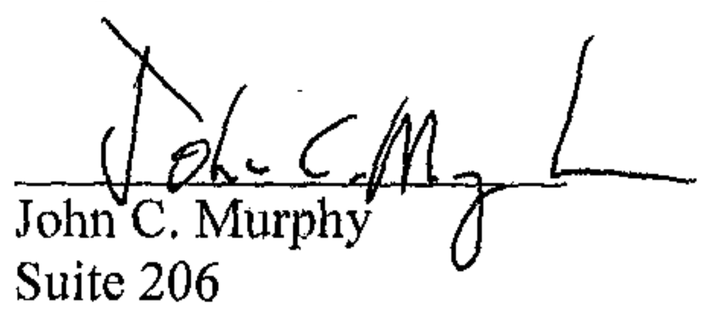
In essence the owner is asking the Board to accept Ms. Kuranda's testimony that the property is not historic. Recall the owner's argument that the members of the Board are not required to possess any expertise in historic preservation and have no competence to hear appeals from the LPC. Without implying any disrespect to the Board, this is certainly the case. The Board has no qualifications to pass on the merits of the historical quality of Gardner House, which is what the owner is asking the Board to do.

Plainly the building is still there. Plainly it still has historic value. This is not a case where some building was put on the Inventory by a phone call. The only thing the Board can do is to acknowledge that the structure listed on the Inventory is still there. To go beyond that to make a refined judgment about changes is to set the Board up as another LPC. It cannot do this.

The case is decided by simple questions. Is the property listed on the MHT Inventory? Yes. Did the applicant present any evidence that because of the nature of the development proposal, that strict compliance is not justified? No, because the owner presented no evidence as to the nature of the development proposal at all and because the proposal is plainly contrary to the intent of the Code, which says buildings listed on the MHT Inventory must be preserved. .

By answering these simple questions, it is shown that the owner has not met the criteria for granting the waiver. Therefore, the waiver has to be denied.

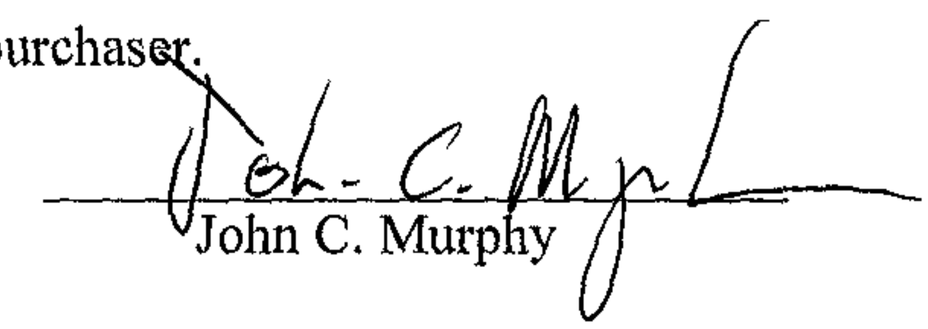
Respectfully submitted,



John C. Murphy
Suite 206
516 N. Charles Street
Baltimore, Md. 21201
410-625-4828
Attorney for the Appellants

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this 30 day of Aug, 2005, I mailed a copy of the foregoing answer to Scott Barhight. Esq., 210 West Pennsylvania Avenue, Towson, Md. 21204, attorney for the Appellee, and to Robert A. Hoffman, Esq., Venable Baetjer and Howard, 210 Allegheny Avenue, towson, Md. 21204, attorney for the contract purchaser.



John C. Murphy

1/23/05

IN RE: PETITION FOR ADMINISTRATIVE SPECIAL HEARING 11330 York Road (Elizabeth Gardner House)	*	BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	CASE NO. 05-332-SPH

ANSWER TO MOTION TO DISMISS

Baltimore County Historical Trust, Inc., Sparks Glencoe Community Association, Inc., Thomas S. Weaver, President, Advance Masonry Systems, Inc., Appellants, by their attorney, John C. Murphy, answer the motion to dismiss filed by the Appellee as follows:

I

SUMMARY OF RELEVANT FACTS

The Appelleee's statement does not provide an adequate statement of how this matter arose.

This matter began because the Elizabeth Gardner house is listed on the Inventory of Historic Properties (MHP BA – 917) prepared by The Maryland Historical Trust. A copy of the inventory is attached hereto and a cursory review of it will demonstrate that the subject matter of this action—the Elizabeth Gardner House—is a property of exceptional historical significance. This matter is of compelling interest to the Appellees because of the significance of the Gardner House.

The Baltimore County Code provides certain protections for properties listed on the Maryland Historical Trust Inventory. Code 32-4-223 (8) provides that the development plan must include any building or property included on:

"(i) The Maryland Historical Trust Inventory of Historical Properties".

As is evident from the attached, the Gardner House is included in the Inventory.

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The Baltimore County Code 32-4-416 provides that historic structures located on a development plan must be preserved:

"32-4-416 PRESERVATION OF NATURAL OR HISTORIC FEATURES.

(a) Preservation of features. Each development plan shall preserve:

(2) Historic structures or sites identified on any of the lists referred to in Section 32-4-223(8) of this title"

The owners of the of the Gardner House filed a petition for a waiver of the requirements of Section 32-4-416 which was granted by the Zoning Commissioner in Case Number 05-332-SPH and is the subject of this appeal. The Commissioner was required to find that the size, scope and nature of a proposed development does not justify strict compliance and that the waiver was within the intent of the development regulations. Code 32-4-107. The Commissioner premised the waiver on the grounds that the Landmarks Preservation Commission (LPC) had voted not to grant the application to list the property as a landmark and that "most of the testimony was in support of the structure's demolition". The County procedure is that when an application is filed for demolition of a property included on the Inventory, the matter is automatically referred to the LPC for its decision.

In the case presently before the Board of Appeals, there are two appeals, one of the decision in Case No. 05-332-SPH to grant a waiver from the Code requirement that buildings listed on the Historical Inventory be maintained and, second, an appeal from the decision of the LPC not to list the structure on the preliminary landmarks list.

The position of the Appellants is that the hearing before the LPC was not a fair hearing conducted in accordance with the normal procedures of the LPC. The departure

from the normal procedures will be demonstrated by witnesses presented to the Board. The departure from the normal procedures is that the professional staff of the LPC did not offer a recommendation on the proposal to list the building. Baltimore County is privileged to have a professional staff of four highly qualified individuals who research matters which come before the LPC and offer their recommendations. This is the normal practice of the LPC which has been followed since its beginning. It was not followed in this case. The LPC staff serves as a neutral professional resource to offer recommendations on LPC applications. In this case the owner presented thorough professional testimony by an expert witness against the listing but there was no professional advice from the LPC staff.

The proceedings of the LPC are highly relevant to the decision made by the Zoning Commissioner. His decision specifically noted that most of the testimony supported the demolition and that no adverse comments were submitted by any County reviewing agency. In fact, the staff of the LPC had submitted comments supporting listing of the property. The Zoning Commissioner was not advised of this unusual procedure or advised of the comments of the staff. The hearing process was flawed.

II

AN APPEAL IS ALLOWED BY LAW

The function of the hearing before the LPC was to determine whether the Elizabeth Gardner House should be placed on the Landmarks List. The decision of the Commission was whether to approve or disapprove the application for listing on the preliminary list. If approved, it goes automatically to the County Executive and County

Council for further action of ultimate approval or disapproval. If disapproved, as happened here, the matter ended.

The action taken by the LPC was a final decision to not list the Gardner House on the preliminary landmarks list. This decision had practical consequences for both the owner and the advocates of preservation,--it meant that the Gardner House could be demolished, at least in so far as the LPC was concerned.

The Board of Appeals has authority to entertain this appeal because of the provisions of Article 25A, Section 5(U) of the Annotated Code of Maryland and Section 602 of the Baltimore County Charter. The charter provides in Section 602 that the board has the following authority:

"The county board of appeals shall hear and decide appeals from all other administrative and adjudicatory orders as may from time to time be provided by Article 25A of the Annotated Code of Maryland ...or by legislative act of the county council not inconsistent herewith".

Article 25A, Section 5 (U) provides the Board of Appeals with the following jurisdiction to hear appeals involving:

"An application for a zoning variation or exception or amendment of a zoning ordinance map; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and the assessment of any special benefit tax".

This is an adjudicatory decision, that is, it involves the "right, duty, statutory entitlement, or privilege of a person, State Govt. Art. 20-201 (c)(1). See Donocam Associates v. Washington Suburban Sanitary Commission, 302 Md. 501 (1985).

For the purposes of the owner of the Gardner House, and for the applicants, the LPC action constituted a final determination that the Gardner House was not going to be on the landmarks list. It was a quasi judicial decision because it determined the rights of the parties. A decision can be adjudicatory but still have elements of a legislative action, such as the rezoning of an individual property. See Mayor and Council of Rockville v. Rylyns Enterprises, 372 Md. 514, 532 (2002).

The basic point made by the appellees is that neither the charter nor Article 25A, Section 5(U) provide for an appeal of this matter. A very similar contention was made by Baltimore County in Baltimore County v. Penn, 66 Md. App. 199 (1986), that neither the County Charter nor Article 25 A, Section 5 (U) nor the County Code provided for an appeal to the Board of Appeals from the Trustees of the County Retirement System. The Court of Special Appeals rejected this view because the decision of the trustees on a retirement application was an adjudicatory decision within the terms of Section 602 of the Charter and Article 25A, Section 5 (U) of the Annotated Code. A copy of the Penn case is attached hereto. The same reasoning applies here.

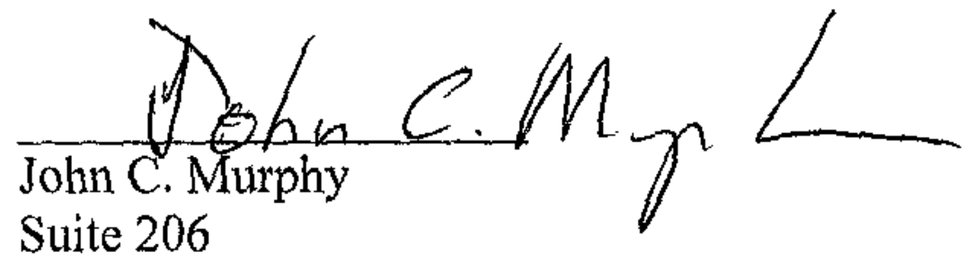
SUMMARY

For these reasons, the Board of Appeals does have jurisdiction to entertain this appeal.

As recited above, Appellants contention is that the decision of the LPC was fundamentally flawed because the LPC did not hear from the professional historical

preservation staff. In these circumstances, appellants will suggest at the hearing that the most appropriate remedy is to remand the matter back to the LPC for a proper hearing.

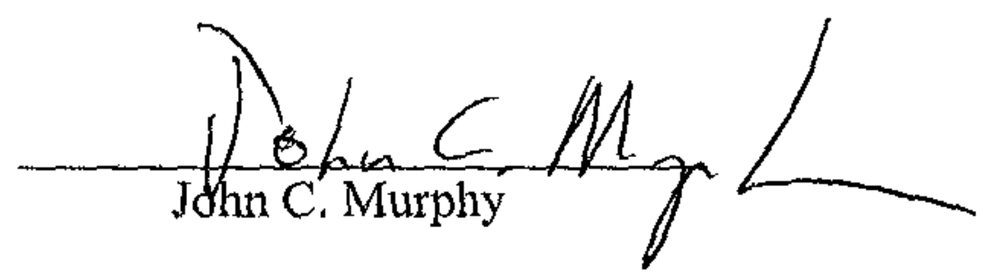
Respectfully submitted,



John C. Murphy
Suite 206
516 N. Charles Street
Baltimore, Md. 21201
410-625-4828
Attorney for the Appellants

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this 29 day of June, 2005, I mailed a copy of the foregoing answer to Scott Barhight. Esq., 210 West Pennsylvania Avenue, Towson, Md. 21204, attorney for the Appellee, and to the Landmarks Preservation Commission, County Courts Building, Towson, Md. 21204, and to Jay L. Liner, Esq., County Attorney, Courthouse, 400 Washington Ave., Towson, Md. 21204, and to Peter M. Zimmerman, People's Counsel, Room 47, Courthouse, 400 Washington Avenue, Towson, Md. 21204. .



John C. Murphy

IN RE: PETITION FOR ADMINISTRATIVE SPECIAL HEARING 11330 York Road ("Elizabeth Gardner House")	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF
8th Election District 3rd Councilmanic District	*	BALTIMORE COUNTY
York @ Shawan, LLC, Owner Branch Banking & Trust Co. – C.P.	*	Case # 05-332-SPH

* * * * * * * * * * *

MOTION TO DISMISS APPEAL

The Appellee, York at Shawan LLC (hereinafter referred to as the "Appellee"), by its attorneys, G. Scott Barhight, Jennifer R. Busse and Whiteford, Taylor & Preston, LLP, hereby moves to dismiss the appeal filed by the Appellants, Baltimore County Historical Trust, Inc. and Thomas S. Weaver, President of Advance Masonry Systems, Inc. The decision of the Landmarks Preservation Commission is not appealable and, therefore, the appeal must be dismissed.

In support of its Motion to Dismiss, the Appellee states:

I. FACTUAL AND PROCEDURAL BACKGROUND

The Appellee owns certain real property located at 11330 York Road in Hunt Valley, Baltimore County, Maryland known as the Elizabeth Gardner House (hereinafter referred to as the "Elizabeth Gardner House"). The Elizabeth Gardner House, which is currently improved by a commercial building, consists of approximately 0.728 acres and is situated at the southwestern corner of the intersection of York and Shawan Roads.

Baltimore County has adopted, by ordinance, a set of procedures to identify, evaluate, and preserve structures deemed to have "historical, architectural, archeological, or cultural merit." Baltimore County Code, Article 32, Title 7, Sections 101 through 503. In Baltimore

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County, the Landmarks Preservation Commission (hereinafter referred to as "Commission") is responsible for compiling and maintaining a Preliminary Landmarks List to identify the structures in the county it considers to be of significant historical, architectural, archeological, or cultural value. Baltimore County Code §§ 32-7-301, 32-7-302. The Commission may submit the approved Preliminary Landmarks List to the County Executive for review. Baltimore County Code §32-7-302(e)(2). Thereafter, the County Council may adopt a Final Landmarks List. Baltimore County Code §32-7-303(a). In order to be included on either of the Landmarks Lists, the Commission must find that the property contributes "substantially to the architectural, or historical heritage of the county, state, or nation" based on the specific criteria set forth in § 32-7-302(b) of the Baltimore County Code.

In the instant matter, the Commission fully evaluated whether the Elizabeth Gardner House met the criteria for inclusion on its Preliminary Landmarks Preservation List. After considering argument and exhibits, the Commission determined that the structure should ***not*** be placed on its Preliminary Landmarks List. See Minutes of the Landmarks Preservation Commission Meeting dated March 10, 2005, attached hereto as Exhibit A.

John C. Murphy, as counsel for the Baltimore County Historical Trust and Thomas S. Weaver, who do not own the Elizabeth Gardner House, have appealed to the Baltimore County Board of Appeals the decision of the Commission not to list the Elizabeth Gardner House on its Preliminary Landmarks List. See April 8, 2005 Letter by John C. Murphy to the Baltimore County Board of Appeals, attached hereto as Exhibit B.

II. ARGUMENT

The Appeal Must Be Dismissed.

The Appellants have noted an appeal regarding the Commission's decision that the Elizabeth Gardner House was not to be placed on the Preliminary Landmarks List. The Appellants have not explained how they expect the Board of Appeals to act with regard to their appeal. Thus, it remains unclear as to whether the Appellants have requested that the Board of Appeals conduct a de novo review of the Commission's decision or reconsider the Commission's decision based upon the underlying record. Whatever the Appellants ultimately request, the Board of Appeals lacks the authority and qualifications to review the Commission's decision. For these reasons, the appeal should be dismissed pursuant to Rule 3 b of the Rules of Practice and Procedure of the Baltimore County Board of Appeals.

A. The Board of Appeals Lacks Authority to Entertain the Appeal.

After considering arguments and exhibits on March 10, 2005 and fully evaluating whether the Elizabeth Gardner House met the criteria for inclusion on its Preliminary Landmarks Preservation List, the Commission determined that the structure was ***not*** to be placed on its Preliminary Landmarks List. Pursuant to the Baltimore County Charter, the Annotated Code of Maryland and the Baltimore County Code, the Commission's decision is not appealable and, therefore, the Board of Appeal lacks authority to entertain the appeal.

(1) The Annotated Code of Maryland.

The Annotated Code of Maryland does not provide the Appellants with any right to appeal the Commission's decision. As a chartered county, Article 25A, § 5 of the Annotated Code applies to provide "enumerated express powers" to Baltimore County. Section 5(U) specifically allows Baltimore County to establish a Board of Appeals to review certain matters,

including zoning, licensing, permits and adjudicatory orders. That section does not provide the Board of Appeals with the authority to entertain the Commission's decision to not include a structure on any Landmarks Preservation List. The Commission's decision was not a zoning matter or a licensing matter or a permit matter. Moreover, the Commission's decision was legislative[1], not adjudicatory[2]. For these reasons, the appeal should be dismissed.

(2) The Baltimore County Charter.

The Baltimore County Charter sets forth the powers and functions of its Board of Appeals. Baltimore County Charter at § 602. Pursuant to the Charter, the Board of Appeals has the power to participate in the following functions:

- Appeals from orders relating to zoning,
- Appeals from orders relating to licenses,
- Appeals from orders relating to building,
- Appeals from executive, administrative and adjudicatory orders (as set forth in Article 25A of the Annotated Code of Maryland), and
- Petitions for reclassification.

As discussed above, the appeal should be dismissed because it does not involve any zoning, licensing, building, adjudicatory orders or reclassification.

---

[1] The County Council represents the legislative branch of the Baltimore County government. Baltimore County Code §2-1-101. In considering whether the Elizabeth Gardner House should be placed on the Preliminary Landmarks List, the Commission was acting on behalf of the County Council, who has the ultimate authority in placing a structure on the Final Landmarks List. See Baltimore County Code §32-7-303.

[2] *See*, *Baltimore County v. Penn*, 66 Md. App. 199, 205, 503 A.2d 257 (1986).

(3) The Baltimore County Code.

The Baltimore County Code does not provide the Appellants with any right to appeal the Commission's decision. Subtitle 5 of the Historical and Architectural Preservation Title of the Baltimore County Code, which provides for "Appeals and Enforcement", does not allow for any appeal regarding whether or not a property is placed on any Landmarks Preservation List. Baltimore County Code §32-7-501. With regard to the Board of Appeals, that section ***exclusively*** provides for appeals regarding the approval, disapproval or delay of an application for a permit. Baltimore County Code §32-7-501(a), (e). No permit is at issue in this appeal.[3]

Moreover, the Baltimore County Code only provides rights to the property owner with regard to a structure's placement on the Final Landmarks List. The relevant section states the following:

> **§ 32-7-304 SAME – REMOVAL FROM LIST**
>
> (1) The owner of any structure that appears on the final landmarks list may petition the Commission for removal from the list.
>
> (2) The Commission shall then follow the notice and public hearing procedures under §32-7-302(c) of this subtitle.
>
> (3) If the Commission determines that the structure no longer qualifies as a landmark in accordance with §32-7-302 of this subtitle, the Commission shall recommend the removal of the structure from the list in accordance with §§ 32-7-302 (e) and 32-7-303 of this subtitle.

Although the above provision does not apply to the underlying circumstances of this appeal, it is relevant to exhibit that there are no rights provided to non-property owners and/or for the non-

[3] Even if a razing permit is eventually issued to the Appellee to demolish the Elizabeth Gardner House, such action will not be appealable because the permitting subtitle does not apply to structures not on a Landmarks Preservations List and not located within a historic district.

placement of a property on any Landmarks List. Due to the lack of statutory right to appeal the Commission's decision in this matter, the Appellants lack standing before the Board of Appeals.

B. The Board of Appeals Is Not Qualified to Place a Property on Any Landmarks List.

The Baltimore County Code provides that the Commission may place a structure on the Preliminary Landmarks List if certain criteria are met. More specifically, the Code provides the following:

> *Findings.* Before any structure may be placed on the preliminary landmarks list, the Commission must specifically find that the structure qualifies by contributing substantially to the architectural, or historical heritage of the country, state, or nation because of any one of the following:
>
> (1) It is associated with a personality, group, event, or series of events of historical importance;
>
> (2) It is a distinctive example of a particular architectural style or period;
>
> (3) It is a good example of the work of a noted architect or master builder;
>
> (4) It is a work of notable artistic merit or an object of singular natural beauty; or
>
> (5) It has yielded or may be likely to yield information or materials important in prehistory or history.

Baltimore County Code § 32-7-302(b).

The Commission is qualified to determine whether a structure meets the above criteria such that it should be placed on the Preliminary Landmarks List. Pursuant to the Baltimore County Code, the Commission consists of 15 members, seven appointed by the individual County Council members and eight appointed by the County Executive. The eight members appointed by the County Executive shall include the following:

- One representative of organizations active in historical preservation in the county;
- One registered architect whose principal office is in the county;
- One representative primarily engaged in agriculture in the county;
- One individual who is a member of the Planning Board;
- One representative of the home builders industry; and
- Three citizens actively interested in civic improvements as at-large representatives of the residents of the county.

Baltimore County Code §3-3-1202(a)(3). Moreover, each member of the Commission must "[p]ossess a demonstrated interest, knowledge, or training in historic preservation, history, architecture, conservation or related discipline" and be a resident of the county. §3-3-1202 (b).

The Members of the Board of Appeals, on the other hand, are not required to possess any qualifications concerning historic preservation, history, architecture, conservation or related discipline. §§ 3-5-101 to 3-5-105. Thus, only the Commission, not the Board of Appeals, is qualified to determine whether the Elizabeth Gardner House meets the criteria necessary for its placement on the Preliminary Landmarks List. For this reason, there is no action available to the Board of Appeals to reconsider, change or otherwise review the decision of the Commission in refusing to place the Elizabeth Gardner House on the Preliminary Landmarks List.

III. CONCLUSION

The appeal should be dismissed. The Board of Appeals lacks the authority and qualifications to review the Commission's decision.

Respectfully submitted,

G. Scott Barhight
Jennifer R. Busse
Whiteford, Taylor & Preston LLP
210 West Pennsylvania Avenue
Towson, Maryland 21204
(410) 832-2000
Attorneys for Appellee,
York at Shawan LLC

338813

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of July, 2005, a copy of the Motion to Dismiss Appeal was mailed, first class, postage prepaid to:

John C. Murphy, Esquire
Suite 206
516 N. Charles Street
Baltimore, MD 21201

Arnold Jablon, Esquire
Venable, Baeter & Howard
210 Allegheny Ave.
Towson, Maryland 21204

Peter M. Zimmerman, Esquire
People's Counsel
Room 47
400 Washington Avenue
Towson, Maryland 21204

Landmarks Preservation Commission
c/o Office of Planning
Room 406
401 Bosley Avenue
Towson, Maryland 21204

Jay L. Liner, County Attorney
Nancy C. West, Assistant County Attorney
Baltimore County Office of Lay
400 Washington Ave
Towson, Maryland 21204

G. Scott Barhight 1/16
G. Scott Barhight

338813

4/18/05

APPEAL OF BALTIMORE COUNTY	*	COUNTY BOARD OF APPEALS
HISTORICAL TRUST, INC.,	*	OF BALTIMORE COUNTY
THOMAS S. WEAVER, GREATER	*	
SPARKS GLENCOE COMMUNITY	*	
COUNCIL	*	
11330 YORK ROAD, 05-332-SPH	*	

RECEIVED
BALTIMORE COUNTY
BOARD OF APPEALS

PETITION

Baltimore County Historical Trust, Inc., Thomas S. Weaver, President, Advance Masonry Systems, Inc. and the Greater Sparks Glencoe Community Council, Appellants, by John C. Murphy, for petition in support of the appeals filed on April 8, 2005, pursuant to Baltimore County Code 32-4-281, state as follows:

1. Grounds for appeal from the Hearing Officer:

A. The Appellants are persons aggrieved or feeling aggrieved by the decision of the Zoning Commissioner to authorize the demolition of the property at 11330 York Road, Hunt Valley, Maryland 21030 by his decision in Case No, 05-332-SPH;

B. The Zoning Commissioner committed error in the following respects:

(i) Failure to hold a hearing and publish notice of the hearing so that interested persons could attend;

(ii) Failure to follow Code 32-4-416 which requires that structures listed on the Maryland Historical Trust Inventory of Historic Properties be preserved. The structure on the site is listed as the Elizabeth Gardner House in the inventory as No. BA 917.

(iii) Grant of a waiver pursuant to Code 32-4-107 without meeting the requirements for the waiver or making adequate factual findings in support thereof;

(iv) The decision was taken without adequate notice, violated substantive and procedural due process, and was arbitrary and capricious and violative of the law as will be shown at the hearing hereon.

2. Grounds for appeal from the Landmarks Preservation Commission:

A. Appellants are persons aggrieved or feeling aggrieved from the decision of the Landmarks Preservation commission to not list the property at 11330 York Road, the Elizabeth Gardner House, on the preliminary landmarks list;

B. The Landmarks Preservation Commission committed error in the following respects:

(i) Failure to receive a report from its staff of professional historians prior to voting on the matter;

(ii) Failure to make any findings of fact or conclusions of law on its decision;

(iii) The decision to not list the property was arbitrary and capricious and a denial of due process of law since the property qualifies for listing under the standards contained in Code 32-7-101 et seq.

(iv) Such other errors as will be demonstrated at the hearing hereon.

3. Relief requested:

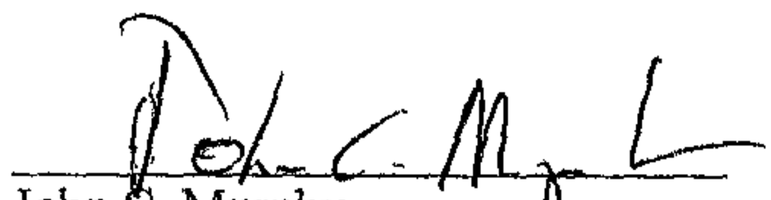
A. Denial of the request to demolish the property;

B. Listing of the property on the Preliminary Landmarks List;

C. Remand to the Landmarks Preservation Commission or the Zoning Commissioner for further proceedings;

D. Such other and further relief as the nature of Appellants' case may require.

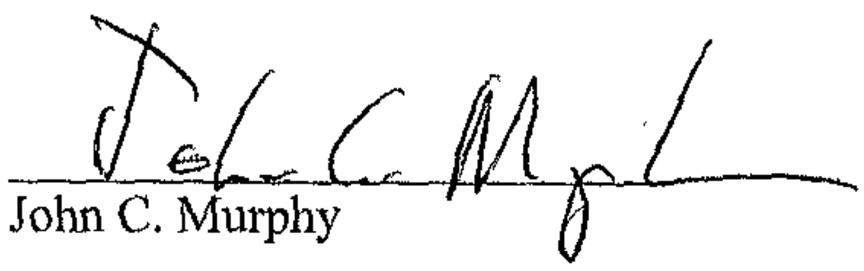
Respectfully submitted,



John C. Murphy
516 N. Charles Street -- Suite 206
Baltimore, Md. 21201
410-625-4828
Attorney for the Appellants

CERTIFICATE OF MAILING

Copies of the petition were delivered/mailed to the person on the attached list this 18th day of April 2005.



John C. Murphy

Greater Sparks Glencoe Community Council
P.O. Box 396
Sparks, Md.21152

Baltimore County Historical Trust, Inc.
P.O. Box 10067
Towson, Md. 21285

Thomas S. Weaver, President
Advance Masonry Systems, Inc.
1 Shawan Road
Hunt Valley, Md. 21030

Zoning Commissioner of Baltimore County
County Courts Building
Towson, Md. 21204

Landmarks Preservation Commission
County Courts Building
Towson, Md. 21204

Director of Department of Permits and Management
County Courts Building
Towson, Md. 21204

Arnold E. Jablon, Esq.
Venable LLP
210 Alleghany Avenue
Towson, Md. 21204

Zoning Commissioner

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

Baltimore County

James T. Smith, Jr., County Executive
William J. Wiseman III, Zoning Commissioner

March 14, 2005

Arnold E. Jablon, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, Maryland 21204

RE: PETITION FOR ADMINISTRATIVE VARIANCE
SW/Corner Shawan Road & York Road
(11330 York Road)
8th Election District – 3rd Council District
York at Shawan, LLC - Petitioners
Case No. 05-332-SPH

Dear Mr. Jablon:

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

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

cc: Mr. John G. Evans, Member, York at Shawan, LLC
4 Quail Hollow Road, Lutherville, Md. 21093-4523
G. Scott Barhight, Esquire, Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Towson, Md. 21204
Mr. Richard L. Prosser, V.P. & Area Real Estate Mgr., Branch Banking & Trust Co.
6400 Arlington Blvd., Suite 1100, Falls Church, Va. 22042
Office of Planning; People's Counsel; Case File

Printed on Recycled Paper

HISTORIC

Petition for Administrative Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 11330 York Road

which is presently zoned BL/ML-IM

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a ~~Special Hearing to approve a waiver pursuant to Sections 26-171, 26-172(b), Baltimore County Code of Sections 26-203(C)(8) and Section 26-278 to~~

Special hearing to approve a waiver pursuant to Sections 32-4-106, 32-4-107(b), Baltimore County Code of Sections 32-4-221 (b) and (c), 32-4-222 through 32-4-224, and 32-4-416 to raze a building (MHT# BA 917).

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

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

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

Contract Purchaser/Lessee:

Branch Banking and Trust Company
Name - Type or Print By: Richard L. Prosser,
Signature (Vice President & Area Real Estate
6400 Arlington Blvd. 703-531-2854 Mgr.)
Address Suite 1100 Telephone No.
Falls Church, Virginia 22042
City State Zip Code

Legal Owner(s):

York at Shawan, LLC
Name - Type or Print
Signature By: John G. Evans, Member
Name - Type or Print
Signature
4 Quail Hollow Road
Address Telephone No.
Lutherville, Maryland 21093-4523
City State Zip Code

Attorney For Petitioner:

Arnold E. Jablon
Name - Type or Print
Signature
Venable LLP
Company
210 Allegheny Avenue 410 494-6200
Address Telephone No.
Towson, Maryland 21204
City State Zip Code

Representative to be Contacted:

G.Scott Barhight
Name
210 W. Pennsylvania Ave 410 832-2050
Address Telephone No.
Towson, Maryland 21204
City State Zip Code

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

Zoning Commissioner of Baltimore County

Case No. 05 332 SPH

Reviewed By _____ Date _____

Estimated Posting Date _____

REV 9/18/98

Affidavit in Support of Administrative Special Hearing

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

That the Affiant(s) does/do presently reside at 4 Quail Hollow Road
Address

Lutherville MD 21093
City State Zip Code

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

Signature

Signature

John G. Evans
Name - Type or Print

Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 6th day of December, 2004, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

John G. Evans

the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s), and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her/their knowledge and belief.

AS WITNESS my hand and Notarial Seal

6 December 2004
Date

JUDITH L. EARLY NOTARY PUBLIC BALTIMORE COUNTY, MD

Notary Public Judith L. Early
My Commission expires July 1, 2008.
My Commission Expires 7-1-08

REV 9/18/98

Affidavit in Support of Administrative Special Hearing

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Signature

Signature

John G. Evans
Name - Type or Print

Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

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John G. Evans

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AS WITNESS my hand and Notarial Seal

6 December 2004
Date

JUDITH L. EARLY NOTARY PUBLIC BALTIMORE COUNTY, MD.

Notary Public Judith L. Early
My Commission expires July 1, 2008.
My Commission Expires 7-1-08

REV 9/18/98

McKEE & ASSOCIATES, INC.
Engineering • Surveying • Environmental Planning
Real Estate Development

332

November 22, 2004

STATE OF MARYLAND
GEOFFREY CRAIG SCHULTZ
No. 21134
PROFESSIONAL LAND SURVEYOR

ZONING DESCRIPTION
11330 YORK ROAD
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

BEGINNING at the intersection of the south side of Shawan Road and the west side of York Road; thence running along the west side of York Road,

1) South 37 degrees 11 minutes 04 seconds East, 60.91 feet, and
2) by a curve to the left, having a radius of 850.00 feet and an arc length of 85.00 feet; thence running,
3) South 75 degrees 56 minutes 16 seconds West, 226.04 feet, and
4) North 04 degrees 03 minutes 44 seconds West, 175.10 feet to the south side of Shawan Road; thence running along the south side of Shawan Road,
5) North 87 degrees 53 minutes 00 seconds East, 58.73 feet,
6) North 85 degrees 40 minutes 21 seconds East, 64.95 feet, and
7) North 85 degrees 59 minutes 02 seconds East, 48.01 feet to the place of beginning.

CONTAINING 31,712 square feet or 0.728 acres of land as recorded in Deed Liber 19368, folio 242.

Shawan Place • Suite 1 • 5 Shawan Road • Cockeysville, MD 21030
Tel: 410-527-1555 • Fax: 410-527-1563 • E-Mail: @mckeeinc.com

RECEIVED
MAY 24 2005
BALTIMORE COUNTY
BOARD OF APPEALS

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 443031

DATE [illegible] ACCOUNT [illegible]

AMOUNT $ [illegible]

RECEIVED FROM: [illegible]

FOR: [illegible]

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

[illegible]

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT JL 332 **No.** 41299

DATE 1/04/05 ACCOUNT 001 006 6150

AMOUNT $ 325.00

RECEIVED FROM: Vanable Baltimore Heard

FOR: Administrative Law Hearings (Petition) Concerning Belt
1330 York Rd

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
[illegible]
CASHIER'S VALIDATION

CERTIFICATE OF POSTING

RE: Case No.: 05-332-SPH

Petitioner/Developer: YORK AT SHAWAN, LLC

Date of Hearing/Closing: 1/31/05

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

ATTN: Kristen Matthews {(410) 887-3394}

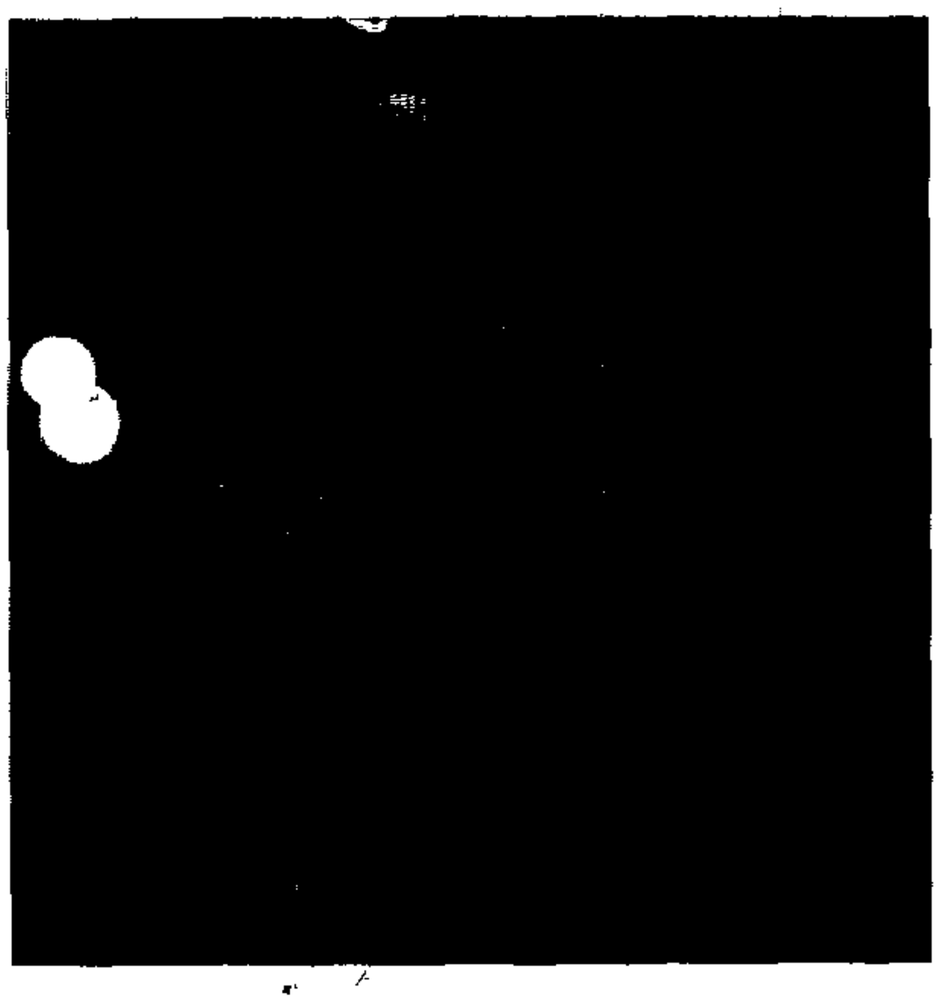
Ladies and Gentlemen:

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

11330 YORK RD

The sign(s) were posted on 1/18/05
(Month, Day, Year)

Sincerely,



Robert Black 1/18/05
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

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

(410) 282-7940
(Telephone Number)

APPEAL SIGN POSTING REQUEST

CASE NO. 05-332-SPH

11330 YORK ROAD 18G#2

8TH ELECTION DISTRICT APPEALED: 4/8/2005

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.: 05-332-SPH

BRANCH BANKING & TRUST, INC. CO./
RICHARD PROSSER - CONTRACT PURCHASERS

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

11330 YORK ROAD

The sign was posted on 6/22, 2005

By: L Schoff
(Signature of Sign Poster)

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

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

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

For Newspaper Advertising:

Item Number or Case Number 05-332-SPH

Petitioner: York at Shawan, LLC

Address or Location: 11330 York Rd.

PLEASE FORWARD ADVERTISING BILL TO

Name: Amy Dontell

Address Venable, LLP
210 Allegheny Avenue
Towson, MD. 21204

Telephone Number: 410-494-6244

ORIG TO APP 1/04/05

BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADMINISTRATIVE SPECIAL HEARING INFORMATION SHEET AND DATES

Case Number 05-332 -SPH Address 11330 YORK RD

Contact Person: JOHN LEWIS Phone Number: 410-887-3391
Planner, Please Print Your Name

Filing Date: 01/04/05 **Posting Date:** 1/18/05 **Closing Date:** 1/31/05

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

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

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

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

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

(Detach Along Dotted Line)

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

USE THE SPECIAL HEARING SIGN FORMAT

Case Number 05-332 -SPH Address 11330 YORK RD

Petitioner's Name [redacted] YORK AT SHAWAN, LLC Telephone 410 494 6200
FOR ARNOLD JABLON ATTNY.

Posting Date: 1/18/05 **Closing Date:** 1/31/05

Wording for Sign: *Administrative Special Hearing to approve* THE RAZING OF A HISTORIC BUILDING. (MHT # BA 917)

WCR - 6/28/00

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

June 1, 2005

NOTICE OF ASSIGNMENT

CASE #: 05-332-SPH

IN THE MATTER OF: YORK @ SHAWAN, LLC- Legal Owner;
Branch Banking & Trust Co. – C.P. 11330 York Road
("Elizabeth Gardner House") 8th E; 3rd C

3/14/05 – Z.C.'s Order in which requested zoning relief was GRANTED.

ASSIGNED FOR: **WEDNESDAY, AUGUST 3, 2005 at 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Protestants : John C. Murphy, Esquire
Appellants /Protestants : Baltimore County Historical Trust, Inc.
Thomas S. Weaver, President /Advance Masonry Systems, Inc.
Greater Sparks Glencoe Community Council

Counsel for Petitioners : Arnold Jablon, Esquire
Legal Owner /Petitioner : York @ Shawan, LLC /John G. Evans
Contract Lessee /Petitioner : Branch Banking and Trust Company /Richard Prosser

G. Scott Barhight, Esquire

Office of People's Counsel
Landmarks Preservation Commission
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Jay L. Liner, County Attorney

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

July 20, 2005

NOTICE OF ASSIGNMENT

CASE #: CBA-05-125

IN THE MATTER OF: 11330 YORK ROAD / "ELIZABETH GARDNER HOUSE" York @ Shawan, LLC, Owner; Branch Banking & Trust Co. - CP
8th Election District; 3rd Councilmanic District

RE: Decision of Landmarks Preservation Commission – "Elizabeth Gardner House" was not placed on Preliminary Landmarks List.

3/10/05 – Meeting of the Landmarks Preservation Commission in which motion to place Elizabeth Gardner House on Preliminary Landmarks List failed; the Elizabeth Gardner House to be placed on Preliminary Landmarks List.

ASSIGNED FOR: **WEDNESDAY, AUGUST 3, 2005 at 10:00** **

**** Assigned to be heard same date /time as Case No. 05-332-SPH**

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

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code. IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : John C. Murphy, Esquire
Appellants /Protestants : Baltimore County Historical Trust, Inc.
Thomas S. Weaver, President /Advance Masonry Systems, Inc.
Greater Sparks Glencoe Community Council

Counsel for Legal Owner : G. Scott Barhight, Esquire; Jennifer R. Busse, Esquire
Legal Owner : York @ Shawan LLC /John G. Evans
Counsel for C.P. : Robert A. Hoffman, Esquire; Arnold Jablon, Esquire
C.P. : Branch Banking and Trust Company /Richard Prosser

Office of People's Counsel
Landmarks Preservation Commission
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Jay L. Liner, County Attorney

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48

Old Courthouse, 400 Washington Avenue

August 4, 2005

NOTICE OF ASSIGNMENT /On Remand from Circuit Court

CASE #: 03-115-A

IN THE MATTER OF: TRINITY ASSEMBLY OF GOD, INC. -Legal
Owner /Petitioner 2122 W. Joppa Road
8th Election District; 3rd Councilmanic District

10/23/02 – D.Z.C.'s Order in which Petition for Variance was DENIED.
7/02/2004 – Variance request DENIED by Board of Appeals.
6/01/05 – Remanded to CBA by Order of Circuit Court /Argument on RLUIPA

THE SUBJECT MATTER HAS BEEN SCHEDULED FOR HEARING FOR THE LIMITED PURPOSE OF RECEIVING ARGUMENT ONLY ON THE SOLE ISSUE OF RLUIPA PURSUANT TO THE DECISION OF JUDGE DANIELS, CIRCUIT COURT FOR BALTIMORE COUNTY; AND HAS BEEN

ASSIGNED FOR: **TUESDAY, DECEMBER 6, 2005 at 10:00 a.m.**

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

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

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellant /Petitioner : C. William Clark, Esquire
Appellant /Petitioner : Trinity Assembly of God, Inc.
c/o John B. Burke
Reverend George W. Raduano

Robert J. Weaber
Ellis Shapos

Nancy Worden Horst /RRLRAIA
Fred Hudson
Rick Heuther
Patricia Hoffman
Tom Peace
Don Gerding

People's Counsel for Baltimore County
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Jeffrey Long /Planning
Timothy M. Kotroco, Director /PDM

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County Board of Appeals of Baltimore County

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

August 5, 2005

NOTICE OF DELIBERATION

IN THE MATTER OF:

YORK & SHAWAN, LLC – Legal Owner;
Branch Banking & Trust Co., Richard Prosser - CP
Case No. 05-332-SPH

Having heard this matter on 8/03/05, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, SEPTEMBER 28, 2005 at 9:30 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Wednesday, August 31, 2005
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Protestants : John C. Murphy, Esquire
Appellants /Protestants : Baltimore County Historical Trust, Inc.
Thomas S. Weaver, President /Advance Masonry Systems, Inc.
Greater Sparks Glencoe Community Council

Counsel for Petitioners : G. Scott Barhight, Esquire
: Robert A. Hoffman
Legal Owner /Petitioner : York @ Shawan, LLC /John G. Evans
Contract Lessee /Petitioner : Branch Banking and Trust Company /Richard Prosser

Office of People's Counsel
Landmarks Preservation Commission
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Jay L. Liner, County Attorney

FYI: 2-6-7

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Department of Permits & 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

January 31, 2005

Arnold E. Jablon
Venable, LLP.
210 Allegheny Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

RE: Case Number: 05-332-SPH, 11330 York Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on January 4, 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,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Branch Banking & Trust Richard Prosser 6400 Arlington Blvd. Falls Church VA 22042
York at Shawan, LLC. John Evans 4 Quail Hollow Road Lutherville 21093
G. Scott Barhhight 210 W. Pennsylvania Avenue Towson 21204

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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

cc: File

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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

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: January 27, 2005

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

SUBJECT: 11330 York Road

INFORMATION:

Item Number: 5-332

Petitioner: York at Shawan, LLC.

Zoning: BL/ML-IM

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The subject structure is historic and is commonly referred to as the "Elizabeth Gardner House" and is also identified as BA-917.

On January 13, 2005, the Baltimore County Landmarks Preservation Commission (LPC) voted to consider placing the structure on the Preliminary Landmarks List and scheduled a Public Hearing for March 10, 2005. According to § 32-7-302 (d) of the Baltimore County Code:

> *Effect of selection for hearing.* During the time period between the public notice required in subsection (c) of this section and the decision of the commission, the exterior of any structure proposed for inclusion on the preliminary landmarks list **may not be** renovated, reconstructed, altered, **or demolished** (emphasis added).

As such, this office recommends that the petitioner's request be **DENIED**.

Prepared by: Mae A Cumpton

Division Chief: Lynn Lucas

AFK/LL:MAC:

W:\DEVREV\ZAC\5-332.doc

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

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

RE:	PETITION FOR ADMINSTRATIVE SPECIAL HEARING	*	BEFORE THE
	11330 York Road; SW/side of York Road & Shawan Road	*	ZONING COMMISSIONER
	8th Election & 3rd Councilmanic Districts		
	Legal Owner(s): John G. Evans, York at Shawan, LLC	*	FOR
	Contract Purchaser(s): Richard L. Prosser, York at Shawan, LLC	*	BALTIMORE COUNTY
	Petitioner(s)	*	05-332-SPH

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

ENTRY OF APPEARANCE

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

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of January, 2005, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204 and Arnold Jablon, Esquire,Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204 , Attorney for Petitioner(s).

RECEIVED
JAN 13 2005
Per CLB

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

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

May 11, 2005

Arnold E. Jablon, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

Dear Mr. Jablon:

RE: Case: 05-332-SPH, 11330 York Road

Please be advised that an appeal of the above-referenced case was filed in this office on April 8, 2005 from John C. Murphy on behalf of the Baltimore County Historical Trust, Inc., the Greater Sparks Glencoe Community Council and Thomas Weaver of Advance Masonry Systems, Inc. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

RECEIVED
MAY 13 2005
BALTIMORE COUNTY
BOARD OF APPEALS

TK:klm

c: William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
John G. Evans, 4 Quail Hollow Rd., Lutherville 21093-4523
G. Scott Barhight, 210 W. Pennsylvania Avenue, Towson 21204
Richard Prosser, 6400 Arlington Blvd., Ste. 1100, Falls Church VA 22042
John C. Murphy, 516 N. Charles St., Ste. 206, Baltimore 21201
Thomas Weaver, 1 Shawan Rd., Hunt Valley 21030
Baltimore County Historical Trust, Inc., P.O. Box 10067, Towson 21285
Greater Sparks Glencoe Community Council, P.O. Box 396, Sparks 21152

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APPEAL

Petition for Administrative Special Hearing
11330 York Road
SW/corner of Shawan & York Roads
8th Election District – 3rd Councilmanic District
Legal Owners: York @ Shawan, LLC
Contract Purchasers: Branch Banking & Trust Co., Richard Prosser

Case No.: 05-332-SPH

✓ Petition for Special Hearing (January 4, 2005)

✓ Zoning Description of Property

Notice of Zoning Hearing (No notice made for Administrative Special Hearing)

Certification of Publication (No Publication)

✓ Certificate of Posting (January 18, 2005) by SSG Robert Black

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

Petitioner(s) Sign-In Sheet – None

Protestant(s) Sign-In Sheet – None

Citizen(s) Sign-In Sheet – None

Zoning Advisory Committee Comments

Petitioners' Exhibit
✓ 1. Plat to accompany Petition for Special Hearing

Protestants' Exhibits:
1. None in file

Miscellaneous (Not Marked as Exhibit)
✓ 1. Email to Bill Wiseman from Jeff Long regarding Landmarks Preservation decision

✓ Zoning Commissioner's Order (GRANTED – March 14, 2005)

✓ Notice of Appeal received on April 11, 2005 from Law Offices of John C. Murphy

✓ Follow-up Appeal for Greater Sparks Glencoe Community Council per John C. Murphy (4/12/05)

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
Arnold E. Jablon, Venable, 210 Allegheny Ave., Towson 21204
John G. Evans, 4 Quail Hollow Road, Lutherville 21093
G. Scott Barhight, 210 W. Pennsylvania Avenue, Towson 21204
Richard Prosser, 6400 Arlington Blvd., Ste. 1100, Falls Church VA 22042
✓ John C. Murphy, 516 N. Charles Ste., 206, Baltimore 21201
✓ Baltimore County Historical Trust, P.O. Box 10067, Towson 21285
Thomas Weaver, 1 Shawan Road, Hunt Valley 21030
Landmarks Preservation Commission, 401 Bosley Avenue, Towson 21204 – Planning
✓ Greater Sparks Glencoe Community Council, P.O. Box 396, Sparks 21152 #3402

date sent May 12, 2005, klm

RECEIVED
MAY 13 2005
BALTIMORE COUNTY
BOARD OF APPEALS

11330 YORK ROAD /ELIZABETH GARDNER HOUSE
York @ Shawan, LLC, Owner; Branch Banking & Trust Co. – CP
8th Election District; 3rd Councilmanic District

Case No. CBA-05-125

RE: Decision of Landmarks Preservation Commission – "Elizabeth Gardner House" was not placed on Preliminary Landmarks List.

March 10, 2005	Meeting of the Landmarks Preservation Commission at which time a motion to include the Elizabeth Gardner House on the Preliminary Landmarks List failed; the Elizabeth Gardner House *was not to be placed on the Preliminary Landmarks List.*
April 11	Notice of Appeal filed by John C. Murphy, Esquire, on behalf of Baltimore CountyHistorical Trust, Inc., and Thomas S. Weaver, President, Advance Masonry Systems, Inc.
April 12	Letter from John C. Murphy, Esquire, stating that "the Greater Sparks Glencoe Community Council joins in this appeal."

John C. Murphy, Esquire 516 N. Charles Street Suite 206 Baltimore, MD 21201	Counsel for Appellants /Protestants
Baltimore County Historical Trust, Inc. PO Box 10067 Towson, MD 21285	Appellant /Protestant
Thomas S. Weaver, President Advance Masonry Systems, Inc. 1 Shawan Road Hunt Valley, MD 21030	" "
Greater Sparks Glencoe Community Council PO Box 396 Sparks, MD 21152	
G. Scott Barhight, Esquire Jennifer R. Busse, Esquire WHITEFORD, TAYLOR & PRESTON 500 Court Towers 210 W. Pennsylvania Avenue Towson, MD 21204-4515	Counsel for Legal Owner
York @ Shawan, LLC by John G. Evans 4 Quail Hollow Road Lutherville, MD 21093-4523	Legal Owner
Robert A. Hoffman, Esquire Arnold Jablon, Esquire VENABLE LLP 210 Allegheny Avenue Towson, MD 21204	Counsel for C.P. /Petitioner
Richard L. Prosser, V.P. Branch Banking & Trust Co. 6400 Arlington Boulevard Falls Church, VA 22042	C.P. /Petitioner
Office of People's Counsel Landmarks Preservation Commission William J. Wiseman III /Zoning Commissioner Pat Keller, Planning Director Timothy M. Kotroco, Director /PDM Nancy C. West, Assistant County Attorney Jay L. Liner, County Attorney	

Case No. CBA-05-125

In the Matter of: Elizabeth Gardner House
11330 York Road York @ Shawan LLC –Owner;
Branch Banking & Trust Co. – CP

RE: Decision of LPC – Elizabeth Gardner House not to be placed on Preliminary Landmarks List.

7/18/05 – Motion to Dismiss Appeal filed by Jennifer R. Busse, Esquire, on behalf of York @ Shawan LLC.; copies to be provided for CBA panel as scheduled. (Copies sent to panel on 7/21/05)

7/20/05 – Notice of Assignment sent to the following parties; hearing scheduled for Wednesday, August 3, 2005 at 10:00 a.m. (assigned for same date and time as zoning appeal Case No. 05-332-SPH):

John C. Murphy, Esquire
Baltimore County Historical Trust, Inc.
Thomas S. Weaver, President /Advance
Masonry Systems, Inc.
Greater Sparks Glencoe Community Council
G. Scott Barhight, Esquire; Jennifer R. Busse, Esquire
York @ Shawan LLC /John G. Evans
Robert A. Hoffman, Esquire; Arnold Jablon, Esquire
Branch Banking and Trust Company /Richard Prosser
Office of People's Counsel
Landmarks Preservation Commission
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Jay L. Liner, County Attorney

8/10/05 – Answer to Motion to Dismiss filed by John C. Murphy, Esquire, in response to Mr. Barhight's Motion to Dismiss. Copies to be provided to panel members prior to start of hearing on 8/03/05.

8/03/05 – Board convened for hearing (Stahl, Quinn, Crizer); at start of hearing, Board publicly deliberated the Motion to Dismiss filed by Mr. Barhight in this matter. Motion was GRANTED and appeal dismissed; no jurisdiction to hear this appeal pursuant to the law; cited "Conclusion Farm" – a previous LPC ruled upon by this Board. Order to be issued. (At the conclusion of the deliberation, the Board continued with a full hearing in the matter of Case No. 05-332-SPH / the related zoning appeal filed by Protestants in this matter.)

ORDER IN THIS MATTER TO BE INCLUDED IN WRITTEN OPINION AND ORDER – CASE NO 05-332-SPH. (Board deliberated 05-332-SPH on 9/28/05; SPH granted; written Opinion/Order to be issued; appellate period to run from date of written Order [one order to be issued to incorporate both cases].)

Case No. 05-332-SPH

In the Matter of: York @ Shawan, LLC – Legal Owners;
Branch Banking & Trust Co. – C.P.

SPH – Seeking approval of waiver of requirements of §§ 32-4-221(b) and (c), 32-4-222 through 32-4-224, and 32-4-416 of the BCC – to raze an existing historical structure (Elizabeth Gardner House), identified as Inventory # BA 917 with Maryland Historic Trust.

3/14/05 -- Z.C.'s Order in which requested special hearing relief was GRANTED.

6/10/05 -Notice of Assignment sent to following; assigned for hearing on Wednesday, August 3, 2005 at 10 a.m.:

John C. Murphy, Esquire
Baltimore County Historical Trust, Inc.
Thomas S. Weaver, President /Advance
Masonry Systems, Inc.
Greater Sparks Glencoe Community Council
Arnold Jablon, Esquire
York @ Shawan, LLC /John G. Evans
Branch Banking and Trust Company /Richard Prosser
G. Scott Barhight, Esquire
Robert A. Hoffman, Esquire
Office of People's Counsel
Landmarks Preservation Commission
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Jay L. Liner, County Attorney

8/03/05 – Board convened for hearing (Stahl, Quinn, Crizer). At start of hearing, Board deliberated the Motion to Dismiss appeal filed by Mr. Barhight in this matter as to the Landmarks Preservation appeal)CBA-05-125. Said Motion was granted; no jurisdiction; cited "Conclusion Farm" as previously decided by the Board. Continued with hearing in Case No 05-332-SPH /zoning appeal. Matter concluded this date; memos due from counsel on 8/31/05; deliberation to be scheduled for 9/28/05 and notice to be sent.

8/05/05 – Notice of Deliberation sent to parties; assigned for Wednesday, September 28, 2005 at 9:30 a.m. FYI copy to 2-6-7.

8/24/05 – Letter from Jennifer Busse, Esquire, providing a copy of document: Protestants' Exhibit 1 "Maryland Historical Trust Form dated May 11, 1981." Indicating that the Board's file did not contain a copy of this document, although it is a part of the Landmark's Preservation Commission file provided to the Board.

8/31/05 – Memorandum in Lieu of Closing filed by Counsel for Appellee; Memorandum filed by Counsel for Appellants.

9/12/05 – Copies of Memos sent to panel members (2-6-7).

9/28/05 – Board convened for deliberation (2-6-7). Completed deliberation this date. Unanimous decision – special hearing relief granted; structure to be razed. Written Opinion/Order to be issued by the Board; TO INCLUDE BOARD'S RULING ON MOTION TO DISMISS (granted) IN CASE NO. CBA-05-125. Appellate period to run from date of written Order. 7 (E)

Case No. 05-332-SPH RE: 11330 York Road

FILE NOTE

4/08/05 – Letter of appeal hand-delivered by John C. Murphy, Esquire – from (1) decision of ZC in 05-332-SPH; and (2) decision of Landmarks Preservation Commission at meeting of 3/10/05 to not list property as an historic landmark.

- T/C to Kristen Matthews – she had not received an appeal and check in this matter as of 3:50 p.m. this date.

-- T/C to Mr. Murphy at 443-956-8711 4:30 p.m. regarding the above appeals (copies of which were delivered to PDM in COB and Landmarks Preservation, Courts Bldg.). Appeal from ZC decision is to be filed with PDM, along with check for $400 ($325 for appeal; $75 for sign); appeal from LPC decision to be filed with LPC, along with check for $225 (miscellaneous appeal). Mr. Murphy indicated that he would do this on Monday morning (4/11/05), with a copy of filing these checks to be sent to this office for inclusion in the Board's "Waiting on Appeal – File to be Forwarded" folder. <- HOLD IN THIS FOLDER.

FILE COPY

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Elizabeth Gardner House
11330 York Road
Case No. 05-332-SPH

DATE: September 28, 2005

BOARD/PANEL Lawrence M. Stahl
John P. Quinn
Edward W. Crizer, Jr.

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: Petition for Special Hearing to approve a waiver pursuant to Sections 32-4-106, 32-4-107(b), Baltimore County Code for Sections 32-4-221 (b) and (c), 32-4-222 through 32-4-224, and 32-4-416 to raze a building (MHT# BA 917).

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- Elizabeth Gardner House did not meet the criteria to be considered historical and therefore was not able to be placed on the Landmarks Preservation Commission's Preliminary Landmarks List.
- This matter comes before the Board as a *de novo* case.
- The following were some of the questions raised/discussed during the deliberation:
  1.) Is there an underlying right to hold a special hearing with respect to having a building razed?
  2.) Is this property historical?
  3.) Is the Board, now that it has stepped into unchartered waters, inventing a new process by deciding this case?
  4.) Should a permit be granted to raze the property?
  5.) What are the standards/criteria for a waiver?
- Currently, it appears that waiver standards are for development plans and do not appear to address the razing of buildings.
- DEPRM has the authority to grant a waiver.
- The Board expressed that a special hearing should take place in order to allow the community to have an opportunity to be heard.
- Apparently, the Zoning Commissioner applied the development plan criteria when deciding his ruling.
- The *granting/issuing* of a permit can not be appealed.
- Definitions to better clarify, as found in the BCC, what defines a *development* and what defines a *development plan* were reviewed and discussed by the Board.

- The Baltimore County Code does not specifically address situations such as this. What the BCC does address are laws regarding *development plans* and not laws with respect to razing a building.
- Mention was made that this needs to be addressed and that Council could simply pass a law that would add a single line in the BCC which would allow the same/similar laws for development plans to also apply to the razing of a building.
- The Board relayed that there is nothing legislatively that they can do to prevent the razing of a building, as the building is not part of a development plan.

DECISION BY BOARD MEMBERS

FINAL DECISION: After a thorough review of the facts and law, the Board unanimously decided to *GRANT* the request to hold a special hearing and that the Elizabeth Gardner house can be razed.

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

Linda B. Fliegel
County Board of Appeals

Baltimore County, Maryland

OFFICE OF PLANNING

Memorandum

TO: Kathy Bianco
Administrator, Board of Appeals

DATE: July 22, 2005

FROM: Tim Dugan
Chief, Preservation Services

SUBJECT: LPC's file on Elizabeth Gardner House

In response to your request, enclosed are copies of the documents comprising the Landmarks Preservation Commission's file on the Commission's consideration of the Elizabeth Gardner House for inclusion on the Landmarks List. The documents are:

1. October 4, 2004 package from Kathryn Kuranda (R. Christopher Goodwin & Assoc.) submitted for distribution to the LPC members with the Agenda and other materials for the October 14, 2004 meeting. The package consists of:
    a. Letter from Ms. Kuranda (4 pages)
    b. Maryland Historical Trust Inventory Form, property # BA-917 (21 pages total, including misc. accompanying documents, plans, and photos)
    c. 4/9/02 MHT NR-Eligibility Review Form (3 pages total)
    d. 22 numbered, undated color digital photos (11 pages total)
2. October 13, 2004 letter from The Greater Sparks Glencoe Community Council
3. October 14, 2004 LPC meeting Minutes (see item 21, page 7)
4. November 8, 2004 LPC meeting Minutes (see item 16, page 7)
5. 01-04-05 Petition for Administrative Special Hearing (1 page)
6. January 13, 2005 LPC meeting Minutes (see item 14.B, page 6)
7. February 9, 2005 letter from Vicki Nevy notifying the owner of the LPC's scheduled Public Hearing
8. Undated Memorandum from Ruth B. Mascari read into the hearing record on March 10, 2005 (3 pages total)
9. March 10, 2005 LPC meeting Minutes (see item 9, pages 4 and 5)
10. March 15, 2005 letter from Vicki Nevy notifying Buildings Engineer of LPC's non-listing of the House
11. April 18, 2005 Petition of Appeal of Baltimore County Historical Trust, et al.
12. July 18, 2005 letter from Jennifer Busse and accompanying Motion to Dismiss Appeal

RECEIVED
JUL 22 2005
BALTIMORE COUNTY
BOARD OF APPEALS

I have not included copies of items 11 and 12 because I am certain they must already be in the Board's case file. Our file also includes miscellaneous newspaper clippings, and we probably also have various photo prints and/or 35mm transparencies. Please let me know if you need any of this material.

TD:td

Cc: John C. Murphy
Jennifer R. Busse
Jay L. Liner
Peter M. Zimmerman

Item 12

Baltimore County, Maryland

OFFICE OF PLANNING

Memorandum

TO: John Reisinger
Building Engineer

DATE: March 15, 2005

FROM: Vicki Nevy VN
LPC Administrator/Secretary

SUBJECT: LPC's action – "Elizabeth Gardner House", 11330 York Road

---

By vote in the meeting on March 10, 2005, the Landmarks Preservation Commission declined to place the Elizabeth Gardner House, at 11330 York Road (SDAT property number 0808000625), on the Preliminary Landmarks List.

Although this property retains an MHT Inventory number (BA-917), it is not expected that the Office of Planning would request referral to the Hearing Officer or would object to future permit applications for alterations or demolition on this property.

VKN:TD:td

Cc: York At Shawan LLC
4 Quail Hollow Road
Lutherville, MD 21030-4523

W \LANDMARK\DevComments\Eliz Gardner house.doc

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

Arnold F. Pat Keller, III, Director

February 9, 2005

York At Shawan, LLC
4 Quail Hollow Road
Lutherville, MD 21030-4523

Re: 11330 York Road, Hunt Valley

To Whom It May Concern:

On January 13, 2005, the Baltimore County Landmarks Preservation Commission (LPC) decided (in accordance with Sec. 32-7-302 of County law) to hold a public hearing to consider placing the "Elizabeth Gardner House" at **11330 York Road** (MHT# BA-917) on the Preliminary Landmarks List. The public hearing is scheduled for **Thursday, March 10, 2005.** The hearing will be the first order of business in the LPC's regular monthly meeting, which will begin at 6:00 p.m. in Room 407, County Courts Building, Towson (enter the building from the Courthouse Plaza).

This letter, therefore, has two purposes for compliance with Sec. 32-7-302:

1. It gives notice on the scheduling of the hearing and the opportunity for the property's owner and/or representative(s) to participate in the hearing. The letter is being sent to you as the property owner identified in the State's Real Property System records.

2. It also alerts the owner(s) that the County may post an official sign on the property giving notice of the hearing.

Please feel free to contact me at 410-887-3495 or at vnevy@co.ba.md.us if you need additional information.

Sincerely,

Vicki Nevy
Administrator/Secretary
Landmarks Preservation Commission

VKN:vkn

Cc: John Reisinger

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

Printed on Recycled Paper

READ INTO RECORD BY TRISH PONTZ 3/10/05

Memorandum

To: Mr. Jim Matthews
From: Ruth B. Mascari, AICP
Re: Elizabeth Gardner House

Jim: please convey this to the other members of the Baltimore County Landmarks Commission. As a long time member of the County preservation community and board member of the Baltimore County Historical Trust, I ask that the Elizabeth Gardner House be listed as a Baltimore County landmark.

It meets at least two of the criteria:

>Architectural significance – it is a fine example of the Victorian style with an outstanding turret articulation. Exterior restoration has not altered the basic importance of the Victorian style. The carriage house remains in tact and actually was used for fire fighting assistance to the fledgling Cockeysville FD. When one views the house from the intersection of the two notable roads, the York Rd (formerly the York turnpike) and Shawan Road (the Western Run Turnpike), it becomes painfully obvious that it is the last remaining structure of its type and importance in the area. Most of the other historic fabric has been swallowed up or minimized by mammoth steel structures or streaming fast food establishments. Fortunately, across Shawan Road in some small shops, there has been some attempt to maintain appropriate scale and design. Land marking of the Gardner House would help assure a fitting architectural lynchpin for the area.

- Broad patterns of history and notable citizens – it is built on the land of the Worthington estate which stretched from the York Turnpike west across the county, land significant enough to be named, of course, the Worthington Valley. That family was a mainstay in the north county for hundreds of years. Sitting as it does on what was the Western Run Turnpike (WRT) it also is prominent in the transportation and commercial history of the county. Worthington's store was just across the road, the WRT office just behind it and the toll house just to its north. (See attached maps) Hence, this area was at the center of a beehive of county citizens and commercial enterprise. Carrying on in that tradition, James Piper later bought the property and began an excellent example of adaptive reuse. The Piper family and its members also are a part of the broad patterns of local history.

Based on the above evidence that the Gardner House meets at least two of the criteria required by the County Code, I request that the LPC give the House landmark status.

WHITEFORD, TAYLOR & PRESTON L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
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JENNIFER R. BUSSE
DIRECT NUMBER
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1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

August 31, 2005

DELIVERY BY HAND

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

In Re: Case No. 05-332-SPH
11330 York Road ("Elizabeth Gardner House")

Dear Ms. Bianco:

Enclosed please find an original and three copies of Appellee, York @ Shawan, LLC's Memorandum in Lieu of Closing. As you are aware, the public deliberation in this matter is set for September 28, 2005.

Please contact me with any questions or concerns.

Sincerely,

Jennifer R. Busse

JRB:sll
Enclosures
cc: John C. Murphy, Esquire
Robert A. Hoffman, Esquire
Arnold Jablon, Esquire
Jay L. Liner, County Attorney
Nancy C. West, Assistant County Attorney
Peter M. Zimmerman, Esquire
Landmarks Preservation Commission
Gordan Fronk, Esquire
Mr. John P. Evans

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CBA-05-125

WHITEFORD, TAYLOR & PRESTON L.L.P.

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1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

July 18, 2005

DELIVERY BY HAND

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

In Re: Petition for Administration Special Hearing - Case No. 05-332-SPH
11330 York Road ("Elizabeth Garner House")

Dear Ms. Bianco:

Enclosed please find an original and three copies of Appellee, York @ Shawan, LLC's Motion to Dismiss Appeal, relating to the appeal filed by Baltimore County Historical Trust, Inc. and Thomas S. Weaver, President of Advance Masonry Systems, Inc.'s appeal of the decision of the Landmarks Preservation Commission regarding the above-referenced property. As you are aware, the hearing in this matter is set for August 3, 2005.

Please contact me with any questions or concerns.

Sincerely,

Jennifer R. Busse

JRB:sll
Enclosures
cc: John C. Murphy, Esquire
Robert A. Hoffman, Esquire
Arnold Jablon, Esquire
Jay L. Liner, County Attorney
Peter M. Zimmerman, Esquire
Landmarks Preservation Commission
Gordan Fronk, Esquire
Mr. John P. Evans

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JUL 18 2005
BALTIMORE COUNTY
BOARD OF APPEALS

339274

Law Offices
John C. Murphy

John C. Murphy

516 N. Charles St., Suite 206
Baltimore, Md. 21201
jcmurphy@bellatlantic.net

410-625-4828
443-956-8711
Fax 410-625-0273

April 12, 2005

By Hand

Baltimore County Board of Appeals
Courthouse
Towson, Md. 21204

Director of Department of Permits and Management
County Office Building
Towson, Md. 21204

On April 8, 2005, an appeal was filed relative to 11330 York Road, Case No. 05-332-SPH, Landmarks Preservation Commission decision dated March 10, 2005. A copy of the appeal is attached.

The purpose of this letter state that the Greater Sparks Glencoe Community Council joins in this appeal.

Very truly yours,

John C. Murphy

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APR 12 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Law Offices
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516 N. Charles St., Suite 206
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jcmurphy@bellatlantic.net
410-625-4828
443-956-8711
Fax 410-625-0273

April 8, 2005

Baltimore County Board of Appeals
Courthouse
400 Washington Avenue
Towson, Md. 21204

This is a notice of appeal on behalf of the Baltimore County Historical Trust, Inc and Thomas S. Weaver, President, Advance Masonry Systems, Inc. The matters appealed both relate to the property at 11330 York Road and are as follows:

1. Decision of the Zoning Commissioner of Baltimore County, Case No. 05-332-SPH- granting approval to raze the historic structure on the property. To the extent necessary this appeal should also be considered to include an appeal of the decision of the director of the Department of Permits and Development Management to waive certain requirements, as stated on page 1 of the Zoning Commissioner's decision.

2. Decision of the Landmarks Preservation Commission at the meeting of March 10, 2005 to not list the property at 11330 York Road as a Baltimore County landmark.

If there is anything else required to perfect these appeals, will you please advise me.

Sincerely

John C. Murphy

RECEIVED
APR - 8 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Law Offices
John C. Murphy

John C. Murphy

516 N. Charles St., Suite 206
Baltimore, Md. 21201
jcmurphy@bellatlantic.net

410-625-4828
443-956-8711
Fax 410-625-0273

April 8, 2005

Director of Department of Permits and Management
County Courts Building
Towson, Md. 21204

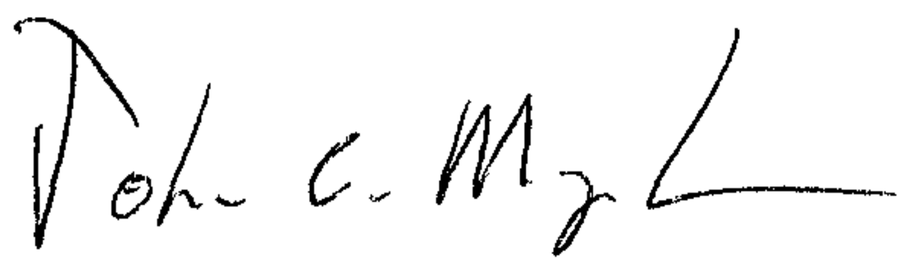
Re: Permit No. B 5 86 993
11330 York Road

Dear Director:

It is my understanding that the above permit is pending for the demolition of the historic house located at 11330 York Road. I am enclosing an appeal which has been filed with the Board of Appeals of Baltimore County. Pursuant to 32-4-281 of the County Code, no permit may be issued while an appeal is pending.

Will you please confirm to me that the above permit will not be issued until the resolution of the appeal.

Sincerely,



Baltimore county historical trust, Deprm letter

Greater Sparks Glencoe Community Council
P.O. Box 396
Sparks, Md.21152

Baltimore County Historical Trust, Inc.
P.O. Box 10067
Towson, Md. 21285

Thomas S. Weaver, President
Advance Masonry Systems, Inc.
1 Shawan Road
Hunt Valley, Md. 21030

Zoning Commissioner of Baltimore County
County Courts Building
Towson, Md. 21204

Landmarks Preservation Commission
County Courts Building
Towson, Md. 21204

Director of Department of Permits and Management
County Courts Building
Towson, Md. 21204

Arnold E. Jablon, Esq.
Venable LLP
210 Alleghany Avenue
Towson, Md. 21204

KEEP IN FILE.

#332

Zoning Office
Department of Permits and Development Management
111 West Chesapeake Ave
Towson, Maryland 21204

Zoning Office:

Please be advised that we, the undersigned, have authorized Arnold Jablon, Esq., Venable, LLP, 210 Allegheny Ave., Towson, Maryland 21204, to be our attorney-in-fact and attorney-at-law and on our behalf file the attached petitions for zoning relief. We hereby understand that the relief requested is for property we own and we hereby and herewith acknowledge our express permission for said petitions to be filed on our behalf. The petition(s) filed are for property located at 11330 York Rd, Cockeysville, Maryland 21030
_____, property we own.

Further, the undersigned is the contract lessee of said property, and hereby and herewith authorize(s) Mr. Jablon to be my/our attorney-in-fact and attorney-at-law and represent me/us in this matter.

York at Shawan, LLC (owner)

By: _____ _____(Date)
John G. Evans, Member

4 Quail Hollow Road, Lutherville, Maryland 21093
address

Branch Banking and Trust Co. , a North Carolina banking corporration (Contract Lessee)

By: _____ 11/23/06(Date)
Richard L. Prosser, Vice President and
Area Real Estate Manager

6400 Arlington Blvd, Suite 1100, Falls Church, Va 22042
address

From: Jeff Long
To: Wiseman, Bill
Date: 3/11/2005 1:49:32 PM
Subject: LPC BB&T (Elizabeth Gardner House--11330 York Road)

Bill, As you requested, here's the summary of the LPC's actions on one of the Agenda items in yesterday's meeting. This is the site that you and I discussed today.

— Elizabeth Gardner House, 11330 York Road: The hearing was conducted as scheduled, with extensive testimony (powerpoint, expert witnesses, etc.) on behalf of demolition. A few citizens testified for saving the building. There was then a motion not to place the building on the Landmarks List. Since there were only five votes for the motion it did not achieve the statutory minimum of "seven affirmative votes," and failed. Counsel for the proponents of demolition suggested that it might be better to have the Commission vote on a motion stated in the affirmative. There was then a motion to place the building on the List. This likewise failed, garnering only three affirmative votes. Ms. McIver abstained on both votes. The effect of the LPC's vote was that the structure will not be placed on the Preliminary Landmarks List.

As you are aware, there is a process regarding the Administrative Special Hearing for compliance with the "must be preserved" requirement in the Code (Sec. 32-4-416). It is my understanding that a hearing before the Zoning Commissioner will not be necessary in this case due to the absence of opposition on the part any citizen or a County Agency. Our normal practice is to inform the LPC about all such demolition matters, but we obviously would not bother on this one since the structure was not on the Preliminary Landmarks List.

Please let me know if you have any questions. Jeff

No. 2331 P. 1

RECEIVED
POST – APPEAL

Preservation Maryland

August 2, 2005

VIA FACSIMILE: 410-887-3182

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

Re: Case # CBA-05-125

Ladies and Gentlemen:

I write in support of the appeal made by the Baltimore County Historical Trust relative to the Elizabeth Gardner House in Marble Hill, Baltimore County. The Gardner House, constructed ca. 1870 is a fine example of vernacular interpretation of the Queen Anne style. It is the oldest remaining building in the Marble Hill area, and retains much of its historic integrity despite significant but reversible changes to the exterior cladding of the structure.

The Gardner House is likely eligible for the Baltimore County Landmarks List because it is a locally distinctive example of the Queen Anne style of architecture. Despite its significance and integrity, the Landmarks Preservation Commission (LPC) denied Baltimore County Landmark status to the building on March 10, 2005. Preservation Maryland attended this hearing, and was disappointed that the LPC did not hear recommendations from staff regarding designation. Baltimore County LPC staff are recognized for their professionalism and expertise, and normally provide the critical service evaluating historic properties and reporting their findings to the volunteer Commission.

I strongly urge you to overturn the LPC decision to deny Landmark listing to the Elizabeth Gardner House due to the architectural significance of the building and its importance in the history of Marble Hill and Baltimore County. Thank you for your time and consideration.

Sincerely,

Tyler Gearhart
Executive Director

TG/jp

OFFICERS
[illegible]
[illegible] Haynes
Vice Presidents
[illegible] J. Gessing, Jr.
Matthew L. Kodsill, Esq.
Kathryn Washburn Nickerson
Patrick E. Williams
Secretary
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Donald R. Kane, AIA
Robert B. Kershner, Esq.
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Edward T. McMahon
[illegible] "Mac" McMillan
[illegible] C. Murphy
[illegible] G. Oldham
Anne Neal Powell
John E. Velliere

Society for the Preservation of Maryland Antiquities
24 West Saratoga Street, Baltimore, Maryland 21201-4227
telephone: 410-685 2886 e-mail: PM@PreservationMaryland.org fax: 410-539-2182

Aug. 2. 2005 4:31PM

Minutes
Landmarks Preservation Commission
March 10, 2005

The scheduled meeting was convened at 6:05 p.m. by the Chairman, Mr. Mathews. The following Commissioners were:

Present	Not Present
Mr. James E. Matthews, Chairman	Ms. Sandra Caslin
Mr. John W. Hill, Vice-Chairman	Mr. Robert D. Lynd
Mr. James A. Stevens	Mr. Edward A. Griffith
Mr. Louis S. Diggs	
Ms. Norma Secoura	
Ms. Wendy McIver	
Ms. Sharon W. Paul	
Mr. Edward E. Hardester, Jr.	
Mr. Thomas L. Reynolds	
Mr. Qutub Syed	

Planning Office staff present included Vicki Nevy (LPC Administrator/Secretary), Jeffrey Long (Deputy Director of Planning), Kim Abe, Karin Brown and Tim Dugan.

Mr. Matthews stated for the record that the Commission operates under Title 32 of the County Code, the Secretary of the Interior's Standards, and its own Rules of Procedure and Historic Guidelines and Regulations.

Executive Session

At approximately 6:10 p.m., Mr. Hill moved to close the meeting to consult with counsel to obtain legal advice on a legal matter pursuant to § 10-508(a) of the State Government Article of the *Annotated Code of Maryland*. The motion was seconded by Ms. Secoura, and passed unanimously on a voice vote.

Upon a motion properly made and seconded in the closed meeting, the regular meeting resumed in open session at 6:35 p.m.

Review of the Agenda

1. In accordance with a procedure previously established by the Commission [see October 14, 2004 Minutes], several items were treated as a "Consent Agenda." Mr. Hill moved that, for the reasons stated, and in accordance with any conditions stated, in the written Action Summaries provided to the Commissioners by the staff, items 11, 12, 13, 14, and 15 be approved as submitted. The motion was seconded by Mr. Reynolds, and passed unanimously on a voice vote. There were no other changes to the published Preliminary Agenda.

Approval of the Minutes

2. Mr. Reynolds moved that approval of the February 10, 2005 Minutes be postponed to April 14, 2005. Mr. Hill seconded the motion, which passed unanimously on a voice vote.

Petition for Historic District

3. At the telephoned request of the Petitioner, the Commission agreed without discussion to postpone, to the April 14, 2005 meeting, the reconvened hearing on the Munafo property, Lot 12 in the Ruxton Ridge, LLC subdivision (former Ridge School property), 1306 West Joppa Road.

Public Hearings on Landmark Nominations

4. **Continued hearings on structures in the Philadelphia Road corridor**

   b. **Buck's Schoolhouse, 9734 Philadelphia Road (MHT # BA-2477)**
   c. **Taylor House and family cemetery, 9913 Philadelphia Road (MHT # BA-3177)**
   f. **Davies' House, 1454 Mohrs Lane (MHT # BA-3166)**
   g. **Seward's Store, 7819 Philadelphia Road, Rosedale (MHT # BA-2096)**

   In consideration of the testimony provided at the February 10, 2005 meeting and the report of the Technical Committee, the Commission made the following decisions:

   Mr. Diggs moved, given that the former Buck's Schoolhouse has no semblance of remaining historic integrity, to decline placing the building on the Preliminary Landmarks List. Mr. Hill seconded the motion, which passed unanimously on a voice vote.

   Mr. Hill moved to postpone a Landmarking decision on the Taylor House and family cemetery until the April 14, 2005 meeting. Mr. Reynolds seconded the motion, which passed unanimously on a voice vote. A citizen, Ms. Judith Davies, questioned why the item was tabled. Mr. Matthews responded that it was to receive advice from the Office of Law. Ms. Davies noted that, from additional deed research which she had provided to Mr. Diggs, the house should properly be identified as the Henry House (never having been owned by Taylors), and also requested that the house and the family cemetery be presented as two separate Agenda items (as they had been submitted by the Nottingham Improvement Association). Mr. Matthews agreed to the request.

   Mr. Diggs moved that, although the Davis House apparently is a Sears kit house, it has been substantially altered, and the Commission should therefore decline to place it on the Preliminary Landmarks List. Mr. Syed seconded the motion, which passed unanimously on a voice vote.

   Regarding Seward's Store, Mr. Diggs reported that he and Ms. Secoura had mistakenly looked at the wrong (adjoining) building during their site visit. They did

not feel qualified to make an informed recommendation to the Commission. Accordingly, he moved to table a decision until the April 14, 2005 meeting. Mr. Hill seconded the motion, which passed unanimously on a voice vote.

5. **Continued hearings on contributing structures in the Winter's Lane African American Survey District (MHT # BA-3067; National Register-eligible district):**

   a. **Brassard property, 80 Winter's Lane**
   b. **Washington property, 206 Winter's Lane**

Regarding the Brassard property, Mr. Diggs explained that he visited the site, but that he could not go inside. He stated that because he is not an architect he lacks the expertise to determine whether the building is structurally sound. He proposed that a Landmarking decision be tabled until an architect can make a site visit. Ms. Brassard, the current owner of the property, indicated that she dared not enter the building for fear it may collapse. She stated that she has to come from Europe to attend these meetings at great expense to her and that it is a hardship to make repeat trips. Mr. Paul McKean, a representative of the Baltimore County Historical Trust, Inc., stated that he is an architect with extensive building restoration experience and that he is familiar with both buildings. He believes both buildings are restorable. In the case of 206 Winters Lane, he thought that it could be rebuilt for less than the cost of a new structure. He also believes that both structures contribute to the historic integrity of the district. Mr. Hardester seconded Mr. Diggs' motion to table a decision regarding 80 Winters Lane until an architect can visit the site. The motion passed unanimously on a voice vote.

Mr. Worthington Washington, owner of 206 Winters Lane, also argued that Landmarking his building would pose a personal hardship. He said that he could get a new Maryland approved home for $ 90,000. The new home would have a basement and he did not think that he could restore his building and add a basement for the same amount. Mr. Stevens, noting that he is an architect and has visited the site, expressed his opinion that the building is restorable. Mr. Washington countered, "yes, but at what cost, and who will pay?" Mr. Matthews answered, "you or the contract purchaser". Mr. Hill moved to continue the hearing the next meeting. The motion was seconded by Mr. Hardester and passed unanimously on a voice vote.

6. **St. Luke's United Methodist Church's buildings:**

   a. **Young House, 52 Bond Avenue MHT # BA-1374)**
   b. **Odd Fellows Lodge – Community Building, 58 Bond Avenue (MHT # BA-1382)**
   c. **St. Luke's M.E. (United Methodist) Church, 60 Bond Avenue (MHT # BA-1255).**

The parish has just retained Mr. Arnold Jablon as attorney. Mr. Jablon asked for a continuance of the hearing, which was granted without opposition.

7. **Dr. Tracy's House, 19919 Cameron Mill Road, Walker vicinity.**

Before the hearing was opened for testimony, Mr. Hill made a motion, which was seconded by Mr. Diggs, to drop the item from consideration. A discussion ensued. Ms. McIver questioned why the item was being dropped. She argued that the structure is historic and warrants protection as an example of a vernacular farmhouse. Mr. Hill reiterated his motion. The motion was approved, with Ms. Paul, and Messrs. Diggs, Hill, Hardester, Reynolds, Syed, and Matthews voting aye, and Ms. McIver, Ms. Secoura, and Mr.Stevens voting nay.

8. **"Overlea", 108 Delrey Avenue, Catonsville**

Karin Brown presented the staff's recommendation to place the house on the Preliminary Landmarks List for contributing significantly to the County's historical heritage under criteria (1) – for its association with the Rev. George W. Ebeling and his pioneering educational work through the Overlea Home School; (2) – as an exceptionally distinctive example of high-style Italianate architecture, following the models of Andrew Jackson Downing; with integrity of setting, design, workmanship and materials; and (3) – as, a good example of the work of an architect or master builder. Mr. Hardester moved to place the structure on the Preliminary Landmarks List on all three criteria. Mr. Syed seconded the motion.

Mr. McPherson, owner of the property, expressed his support for Landmarking the property. He was asked whether he had any plans for the house. Mr. McPherson indicated that his only plan beyond continuing to rehabilitate the house is to construct a freestanding garage. Mr. Matthews noted that any alterations to the exterior of the historic structure would have to come before the Commission. The motion passed unanimously on a voice vote.

9. **"Elizabeth Gardner House," 11330 York Road (at Shawan Road), Hunt Valley (MHT # BA-917)**

Mr. Robert Hoffman, representing the contract purchaser (a bank), and Mr. G. Scott Barhight the legal representative of property' current owner, made a powerpoint presentation against preserving the building.

A representative of R. Christopher Goodwin & Assiciates, submitted a report and explained at great length her opinion, that the structure has lost its historic integrity and does not warrant being placed on the Landmarks List. Ms. Trisha Bentz, Executive Director of the Baltimore County Historic Trust, indicated that all changes made are reversible and that the building should be placed on the Preliminary Landmarks List. Mr. McKean also supported the Trust's position.

Ms. Secoura agreed that the building is very much a landmark and that it constitutes a key property on that corner. Mr. Hardester moved, on the basis of the information presented in this hearing, to accept the Planning Office's recommendation as stated by Mr. Long, not to place this house on the Landmarks List. Mr. Syed seconded the motion. The following five Commissioners voted for the motion: Ms. Paul, and

Messrs. Reynolds, Hill, Hardester, and Syed. Ms. McIver abstained . The motion failed.

Mr. Barheight suggested that the Commission vote on a motion stated in the affirmative. Mr. Stevens made a new motion, to place the structure on the Preliminary Landmarks List. Mr. Diggs seconded the motion. Mr. Stevens, Mr. Diggs, and Ms. Secoura voted for the motion. Ms. McIver abstained – the motion failed.

10. Schlosser- Moxley House, and Garage, 6100 Frederick Road, Paradise vicinity, built ca. 1927

Mr. Dugan presented the staff's recommendation to place these owner-nominated structures on the Preliminary Landmarks List for contributing significantly to the County's historical heritage under criteria (1) – for their association with the pattern of 1920s suburban development in the Catonsville area; and (2) – the house as a notably large, distinctive example of sympathetically-mixed architectural styles, and (3) – as, obviously, the work of a master builder.

Mr. Hardester moved to accept staff's recommendation, which was seconded by Mr. Hill. Mr. Samuel Kenney, a gentleman living in the area, expressed his opposition to the request. He indicated that the hearing notice sign was not properly posted by the County. The property owner responded that his property straddles the City/County line and that he moved the sign, so that it would be on the County portion of his property.

Mr. Hardester also responded to Mr. Keeney. The motion was then approved unanimously on a voice vote.

<u>Alteration to properties in County Historic Districts or Landmark structures</u>

11. Quinn property (Rutherford House), 18 Chatsworth Avenue, Glyndon County Historic District (MHT # BA-739): Construct of an addition, on the rear

In agreement with the supporting letter from the local advisory committee, a certificate of appropriateness was approved, via the Consent Agenda.

12. Acle property, 4606 Prospect Avenue, Glyndon County Historic District. Replace a freestanding garage with a new garage, and construct a two-story addition on the side of the house

In agreement with the supporting letter from the local advisory committee, a certificate of appropriateness was approved, via the Consent Agenda.

<u>Nominations to the Landmarks List</u>

13. Rowe-Jessop-Fosters Store, 16925 York Road, Hereford (MHT # BA-2051, built ca. 1833-1841)

14. **"Smallwood", 14400 Bonnie View Road, Western Run Valley (MHT # BA-449, build ca. 1801, slavery site).**

15. **"Rockland" 10214 Falls Road, Rockland (MHT # BA-219, built ca. 1827, slavery site.**

The nomination of each of these structures was accepted for public hearing on May 12, 2005, via the Consent Agenda.

Other business

16. **Resolution for recognition and protection of sites related to slavery.**

Mr. Dugan reported that some property owners have already objected to the nomination of their slavery-related structures to the Landmarks List. He recommended the adoption of the draft resolution, as mailed to the members, so that there would be, on a single sheet to accompany Ms. Abe's research report, a written explanation of the Commission's rationale for making the protection of these properties a high priority. Mr. Diggs moved to adopt the draft resolution. Mr. Reynolds seconded the motion, which was approved unanimously by voice vote.

17. **Status report on MHT's policy on State Tax Credit Program eligibility**

Mr. Dugan summarized the situation now affecting all Baltimore County Landmark owners who may wish to participate in the State program. Because of an application in the Towson area, MHT has been forced to evaluate the provisions and effects of the Landmark law. MHT has concluded that, although the law gives the LPC authority to control changes to a Landmark structure, it does not give the Commission any authority to protect the historic environmental setting which may be integral to the structure's historic significance. This position is expressed in the February 8, 2005 letter to the Commission from the Deputy Director of MHT, citing the LPC's lack of authority to implement the requirement in state law that -

> all local historic designations meet the criteria of the National Register of Historic Places (NR), including that a property retain sufficient land to preserve its historic context or environmental setting.

Because of this deficiency in the Landmark law, MHT has taken the position that Landmark status does not fulfill the requirement in State law to be eligible for the tax credit program. Mr. Dugan noted that owners of a Preliminary Landmarks List house in Catonsville have received a denial from MHT and have asked their County Councilman for help. Mr. Dugan described possible options. Mr. Reynolds moved that the Chairman be authorized to offer the LPC's assistance to the Council, in cooperation with the MHT, for overcoming the deficiency in the County law. Ms. McIver seconded the motion, which passed unanimously by voice vote.

18. **Status report on unauthorized fence, 2 Waugh Avenue, Glyndon County Historic District**

Mr. Dugan and Ms. Abe commented on the forthcoming public hearing with Hearing Officer which is supposed to deal with the violations both of the Landmarks law and the zoning regulations. Mr. Reynolds moved, and Mr. Syed seconded, that the Commission should re-iterate its position [adopted in the October 14, 2004 meeting] to require compliance with the Landmarks law.

19. Participation in Technical Committee site visits

The importance of the having the Commissioners fulfill their commitments to makesite visits was noted by Mr. Dugan.

20. Hearings on slavery-related structures

The Commissioners agreed that the staff, upon discovering deficiencies in the notifications about the February 10th public hearings, had correctly understood the Commission's intentions and had properly exercised administrative discretion in giving notice that the hearing is scheduled for April 14, 2005.

The meeting was adjourned at 8:40 p.m.

VKN:KEB/TD:vkn

Minutes
Landmarks Preservation Commission Meeting
October 14, 2004

The scheduled meeting was convened at 6:00 p.m. by the Chairman, Mr. Matthews. The following Commissioners were:

Present	Not Present
Mr. James E. Matthews, Chair	Mr. John W. Hill, Vice-Chair
Ms. Sandy Caslin	Mr. Jim Emerick
Mr. Louis Diggs	Ms. Sharon Paul
Mr. Edward A. Grffith	Mr. James A. Stevens
Mr. Edward E. Hardester, Jr.	
Mr. Robert D. Lynd	
Ms. Wendy McIver	
Mr. Shawn Meyer	
Mr. Thomas L. Reynolds	
Mr. Qutub Syed	

Planning Office staff present included Vicki Nevy (LPC Administrator/Secretary), Karin Brown, and Tim Dugan.

Mr. Matthews stated for the record that the Commission operates under Title 26 of the County Code, the Secretary of the Interior's Standards, and its own Rules of Procedure and Historic Guidelines and Regulations.

Review of the Agenda

1. The draft agenda was amended to include add items 5, 14, 20, 22, and 23.

Approval of the Minutes

2. Ms. Caslin moved that the Minutes of the September 14, 2004 meeting be approved as mailed. The motion was seconded by Mr. Reynolds, and on a voice vote, passed unanimously.

Alterations to properties in County Historic Districts

3. **Belt property, 2 Waugh Avenue (Glyndon County Historic District, contributing property)**
The elaborate history of the situation before and since the unauthorized removal of the fence on the Belt property at 2 Waugh Avenue was again recounted, this

time by Mr. Schmidt who requested that the Commission defer action pending the outcome of two separate hearings his client has requested: A hearing to respond to the Stop Work Notice and citation; and a hearing regarding the applicability of zoning or other (non-historic) regulations to the siting of the swimming pool and/or its mandated safety fencing. Under Mr. Schmidt's theory, action by the LPC would be premature because there is not yet an "application" on which the Commission could act – which there certainly isn't (and has never been). Mr. Dugan requested clarification on the role of the LPC in these hearings and noted the importance of assuring that their outcome recognizes the Commission's independent authority over permits for the erection of structures in the County Historic District.

After almost a full hour of further exposition, questions, discussion, etc., among the members, Mr. Schmidt, and community representatives, Ms. Caslin moved that the Director of Permits and Development Management be informed that enforcement should be initiated to require re-installation of the historic fence and the submittal of a proposal, for review and approval by the Commission's staff, to re-use the new fence for safety enclosure of the swimming pool. Mr. Reynolds seconded that motion. By a show of hands, the motion passed, with Mr. Diggs and Mr. Lynd voting against the motion. Mr. Schmidt indicated he will have the homeowner of the property submit a Historic Permit Application for action by the Commission.

4. Morris-Armacost property, 4715 Butler Road (Glyndon County Historic District, contributing dwelling)

Before proceeding further, the Chair asked Mr. Dugan to describe the proposed new "Consent Agenda" process. Mr. Dugan noted that the items marked on the Revised Agenda with a double asterisk (and highlighted in green on the Commissioners' copies) had been found, through review by the staff, to be appropriate for approval as submitted. Because the proposals comply with the Secretary's Standards, for the reasons noted on the Action Summary sheets in the Commissioners' notebooks, it would be appropriate to approve all these items in a single motion, unless *a Commissioner or any person attending the meeting wished to object to approval of the item – in which case it would be sequestered for separate discussion and vote. The County Planning Board uses a similar system, which helps to expedite conclusion of the Board's business but without preventing necessary discussion of Agenda items.*

Mr. Dugan then summarized the proposals in each of the consent agenda items. There being no objection to the approvals from any member of the Commission, or by any other person in attendance, Ms. Caslin moved that items 4, 7, 8, 9, 11, 18, 19, 20, 22, and 23 be approved as submitted, for the reasons stated and in accordance with any conditions stated, in the written Action Summaries. The motion was seconded by Mr. Emerick, and passed unanimously. Mr. Hardester noted that items 22 and 23 were recommendations for appointment of technical committees. Mr. Diggs recommended the appointment of a technical committee for item 19 as well, to which there was no objection.

A certificate of appropriateness was approved for item 4, via Consent the Agenda, in compliance with Standards #9 (compatibility) and # 10 (reversibility)

5. **Easter property, 302 Central Avenue (Glyndon County and National District, contributing dwelling)**

The homeowners presented their elevation drawings, which had not previously been received, and described the relation of their plans to add an addition on the rear of the dwelling to an existing extension on the house. Mr. Syed made a motion to issue a Notice to Proceed. Ms. Caslin seconded the motion, which passed unanimously.

6. **Hope property, 1721 Arlington Avenue (Relay County Historic District, contributing dwelling)**

Mr. David Hope detailed the chain of events involved with the application of the vinyl siding to his home, as had also been presented in detail in previous meetings and in voluminous correspondence submitted to the members. Ms. Caslin moved to issue a Notice to Proceed, even with recognition that this would be contrary to the Secretary of Interior Standards, because of County government's actions in improperly informing the homeowners about the necessity to obtain aopproval from the LPC.. Mr. Diggs seconded the motion. Mr. Matthews emphasized this is not to be regarded as a precedent-setting action even though the installation of vinyl siding over original historic material is inconsistent with the Standards. The motion passed unanimously, by show of hands, with Mr. Hardester abstaining.

7. **Pryor property, 1721 Magnolia Avenue (Relay County Historic District, non-contributing dwelling)**

Notice to proceed approved, via Consent Agenda, because The Secretary's Standards are not directly applicable to non-contributing structures.

8. **Stevens property, 4946 Hazel Avenue (Relay County Historic District, non-contributing dwelling)**

Notice to proceed approved, via Consent Agenda, because The Secretary's Standards are not directly applicable to non-contributing structures.

9. **Scaran property, 1543 South Rolling Road (Relay County Historic District, non-contributing dwelling)**

Notice to proceed approved, via Consent Agenda, because The Secretary's Standards are not directly applicable to non-contributing structures.

10. Reimer property, 16209 Corbett Village Lane (Corbett County Historic District, contributing dwelling)

The owners of the property presented and reviewed their plans for an addition to original structure to include the replacement of the existing metal roof. Mrs. Reimer explained all of her neighbors are aware of their proposal, have been consulted during the process of designing the addition, and have not expressed objections. Mr. Syed questioned the application of fieldstone along the foundation and on the chimney. The metal roof replacement was discussed at length. Ms. Caslin moved (1) to issue a Notice to Proceed for the addition, with a metal roof and without application of any fieldstone facing (complies with Standard # 9, subordinate in placement and scale, and consistent in architectural features, and # 10 reversible), and (2) to deny replacement of the existing metal roof (contrary to Standards # 2, 5, 6, and 10). Mr. Reynolds seconded the motion. The motion passed, by show of hands, with Mr. Lynd voting against the motion.

11. Hallmark Ventures LLC property, 11927 Jericho Road (Franklinville County Historic District, contributing dwelling)

Certificate of appropriateness approved, via Consent Agenda, in compliance with Standards # 2 and #9 (deteriorated porch is not historic material, reconstruction is consistent in character) and # 10 (reversibility)

12. Gedney property, 319 Melancthon Avenue (Lutherville County Historic District, contributing dwelling)

The homeowner, Mr. Mark Gedney presented his proposal for reconstructing two porches and for removing the cedar shake siding ans replacing it with HardiPlank to "mimic the original clapboard siding." The Commissioners had no objections to the porch repairs, but discussed whether the cedar siding had acquired significance in its own right (Secretary's Standards # 4 and 5), and the use of non-historic material applied on top of the original shiplap siding (# 6). The letter from the local advisory committee supporting the project was noted. Mr. Lynd moved to issue a Notice to Proceed. Ms. Caslin seconded the motion, which passed, on a voice vote, without objection except by Mr. Reynolds who opposed the motion because of reluctance to set a precedent on use of a product not in accordance with the Standards. Mr. Matthews requested that information be provided to the members information about the Park Service's current recommendations on non-historic materials.

13. Byrd property, 1501 Franke Avenue (Lutherville County Historic District, contributing dwelling on corner lot)

Mr. Byrd, the homeowner, explained his drawings, photographs, and the details of his project. Ms. Caslin expressed concern with replacement of the windows. The homeowner indicated he would be willing to reconsider replacing all of the

windows. Ms. Caslin moved to issue a Notice to Proceed that allowed for replacement of the rear windows and retaining the attic windows. Mr. Hardester seconded the motion, which passed unanimously.

14. Gheiler property, 8933 Church Lane (Fieldstone County Historic District, vacant lot)

The developer, Mr. Isaac Gheiler, reported that the foundation has been poured erroneously, and is the exact reverse footprint from the previously approved plans. Mr. Gheiler is requesting the project be allowed to continue by permitting the driveway to be angled across the front yard. Mr. David Bryan presented the community association's objection to allowing the project to continue without correction to the original layout, because (1) the driveway would not match existing patterns in the neighborhood; (2) the excessive grass-to-asphalt ratio that would result; (3) continuing would disregard the cooperative process followed up until this point; (4) the project as agreed upon previously was already a compromise worked out between the community and the developer; and (5) the economics of the issue are between the builder and his contractor, and should not drive the Commission's decision. Mr. Hardester moved that the project be built as originally approved. Ms. Caslin seconded that motion. The motion passed, with Mr. Diggs, Mr. Lynd and Mr. Griffith voting against the motion.

15. "Hunt-Schmidt House" (Dillon property), 12656 Manor Road (Final Landmarks List)

The homeowners advised the Commission that, after having listened to the discussions during the course of the evening, they would be willing to reconsider their application for all new windows, with the exception of the two west-facing windows on the rear of the home. Ms. Caslin moved that the application be denied (under Standards # 2, 5, 6, and 10), with the exception of the two west-facing windows on the rear, which may be replaced. Mr. Diggs seconded the motion which passed unanimously on a voice vote.

Recommendations on Maryland Historic Trust (MHT) Inventory Structures

16. "Reese House" (Travis property), 24 Lastgate Road, Owings Mills (MHT # BA 651)

The Commission's attention was drawn to the letter from John Hill nominating this home to the Landmarks List. The Commission was also being asked to approve the *concept* of a one-story, gable-roofed addition, not more than one-half the width of the front of the historic house, and with true-divided-light windows. Mr. Hardester moved to support the concept, with the plans to be subject to review and approval by staff, and to schedule the house for public hearing for the Landmarks List on December 9, 2004. Mr. Diggs seconded the motion, which passed unanimously.

Other business

17. "Griffith's Adventure Estates," 3517 Granite Road (MHT #BA-11):

Mr. Bruce Shapiro, developer's representative, Mr. Dan Blevins, project engineer, and Mr. Arnold Jablon, legal counsel, introduced and described the propsed 28-lot subdivision on the Griffith's Adventure property. Because the house and four related structures on the property, all of which are being preserved, were added to the Preliminary Landmarks List on September 14th, the development plan must be referred to the Planning Board for its decision on the "involvement" with the Landmark structures. The developer's presentation is for the purpose on obtaining the LPC's recommendation to the Planning Board.

For the lots bordering the historic complex, Mr. Blevins presented each of the revised site plans, cross-sections, photos of existing views, and computer-generated views (as shown also in the books mailed to each member). He described the revisions to the original siting for the new houses, and the proposed landscaping. Posible signage for interpretation of the property's significant slavery heritage was discussed, with Mr. Diggs volunteering to assist with the text.

Mr. Christopher Polglase described the methodology and the results of the Phase I-level archeological survey of the property, and his conclusions that "none of the deposits encountered was of sufficient chsaracter, integrity, or information to be designated as an archeological site," and that, given the proposed patterns of grading and construction, "no further archeological investigation is warranted."

Ms. Beverly Griffith, long-time researcher and historian of the Granite community, reported that she was "pleased ... that the developer has taken care to do what they should do [for] preservation of the property." Mr. Reynolds moved to recommend to the Planning Board, in regard to the involvement with Landmark structures, the development should be approved as shown in the red-line drawings submitted to the Commmission. Mr. Hardester seconded the motion, which passed unanimously.

18. Coale-Rider Spring House, 1317 Boyce Avenue, Ruxton (MHT # BA 2579)

Approved, via Consent Agenda, for public hearing on December 9, 2004.

19. "Mt. Welcome Retreat" farmstead and accessory buildings (including slavery-related), 3144 Granite Road, Granite vicinity (MHT # BA 9)

Approved, via Consent Agenda, for public hearing on December 9, 2004, and for establishing a Technical Committee.

20. Methodist Protestant Church (Woman's Club of Towson), 301 Allegheny Avenue, Towson (MHT # BA 1104)

Approved, via Consent Agenda, for public hearing on December 9, 2004.

21. Elizabeth Gardner House, 11330 York Road, Hunt Valley (MHT # BA 917)

Ms. Kathryn Kurnada presented her "due diligence" report describing the known information and reaching conclusions about the historic significance of the "Elizabeth Gardner House" at York and Shawan Roads. The property is being considered for leasing for a branch bank. After a brief discussion, Mr. Reynolds moved that the matter be postponed to the November meeting. Ms. Caslin seconded the motion, which passed unanimously.

22. Washington property, 206 Winters Lane, Catonsville (Winters Lane Historic District, contributing dwelling: MHT # BA 3067)

Approved, via Consent Agenda, for appointing a Technical Committee.

23. Smith, Holt, and Johnson property, 307 Winters Lane, Catonsville (Winters Lane Historic District), contributing dwelling: MHT # BA 3067)

Approved, via Consent Agenda, for appointing a Technical Committee.

The meeting was adjourned at approximately 9:40 p.m.

VKN:TD:vkn

Minutes
Landmarks Preservation Commission
November 8, 2004

The scheduled meeting was convened at 6:07 p.m. by the Chairman, Mr. Matthews. The following Commissioners were:

Present	Not Present
Mr. James E. Matthews, Chair	Mr. Edward A. Griffith
Ms. Sandy Caslin	Mr. Qutub Syed
Mr. Louis Diggs	
Mr. James Emerick	
Mr. Edward E. Hardester, Jr.	
Mr. John W. Hill, Vice-Chair	
Mr. Robert D. Lynd	
Ms. Wendy McIver	
Mr. Shawn Meyer	
Ms. Sharon W. Paul	
Mr. Thomas L. Reynolds	
Mr. James A. Stevens	

Planning Office staff present included Vicki Nevy (LPC Administrator/Secretary), Kim Abe, Karin Brown, and Tim Dugan.

Mr. Matthews stated for the record that the Commission operates under Title 26 of the County Code, the Secretary of the Interior's Standards, and its own Rules of Procedure and Historic Guidelines and Regulations.

Review of the Agenda

1. The Preliminary Agenda was revised to add items 19 and 20 and the "Consent Agenda" system.

Approval of the Minutes

2. At the time of the meeting, the minutes for the October 2004 meeting were not finished. Mr. Dugan indicated the minutes would be included in the packet of information mailed with the Agenda for the December meeting.

Public Hearings on Nominations to the Landmarks List

3. Ahearn - Braid House, 11 Montrose Avenue, Catonsville

Mr. Matthews asked to hear from anyone wanting to comment on the nomination of this house. No one being present to comment, and the information about the house's historic significance having been mailed to the Commissioners, Mr. Diggs moved to place the structure on the Preliminary List for contributing significantly to the County's historical heritage under criteria (1) – for its association with the suburban development of the Oak Forest Park neighborhood in Catonsville, and (2) – as a distinctive example of its turn-of-the-century period and of Queen Anne style architecture. The motion was seconded by Ms. Paul, and passed unanimously on a voice vote.

4. "Charles C. Woodland House", 77 Winters Lane, Catonsville

Mr. Charles Cephas, current owner and a descendant in the family which has owned the house for the past 90 years, recounted details of its history. The house was built ca. 1874 in the emerging Winters Lane community. It was acquired in 1914 by Mr. Cephas' grandfather, Charles C. Woodland, who championed this African-American community's development. In addition to his role as founding president of the Catonsville Cooperative Corporation, Charles Woodland helped to organize the "Greenwood Electric Park;" was a co-founder of the Grace African Methodist Episcopal Church; was an educator and the community's first African-American mail carrier; and was a businessman and the owner of extensive real estate in the area. Mr. Cephas also noted the circumstantial evidence from the house which suggests a link between its earlier residents and John Brown's raid at Harper's Ferry. Mr. Diggs moved to place the structure on the Preliminary List for contributing significantly to the County's historical heritage under criterion (1) – for its association both with the history of the National Register-eligible African-American neighborhood of Winters Lane, and with Charles Woodland and the Catonsville Cooperative Corporation. The motion was seconded by Mr. Hill, and passed unanimously a voice vote.

5. "Dumbarton" (Pikesville), 3412 Old Forest Road, Pikesville vicinity

No one in attendance asked to speak with regard to the nomination. Mr. Matthew's noted this is also an owner-supported nomination. Mr. Emerick moved to place the structure on the Preliminary List for contributing significantly to the County's historical heritage under criteria (1) – for its association with mid-nineteenth century agricultural history in the Pikesville area; (2) – as a distinctive example two architectural styles, nineteenth century Italianate villa and twentieth century Classical Revival; and (3) – as a good example of the work of a noted nineteenth century architect, William Reasin. Mr. Reynolds seconded the motion, which passed unanimously.

6a. C&P Telephone Exchange - St. Rita's Annex, 8 Dunmanway, Dundalk
6b. DeLawder Hall, 8A Dunmanway, Dundalk
6c. YMCA Building - Dundalk Center, 10 Dunmanway, Dundalk
7. Frankfort Distillery Co. (Seagram's) Structures, 1919 Willow Spring Road, Dundalk
8. National Distillers Products (Seagram's) Structures, 7101 Willow Spring Road, Dundalk

Mr. H. Edward Parker, President, and Ms. Jane Willebordse, Executive Director, of the Dundalk Renaissance Corporation, which had endorsed Mr. Parker's submittal of the five nominations, showed a powerpoint presentation explaining how the principles of "The Five Senses of Quality Communities" had inspired the nomination of various non-residential structures on five properties in and near the heart of Dundalk. They noted that Dundalk is both the subject of the first UDAT process and the first designated Main Street area in Baltimore County, and that these endangered sites, besides being significant for their architecture and their role in the community's history, hold great promise for a role in the community's economic development strategy through adaptive re-use, particularly with the availability of tax credits for rehabilitation of such historic structures.

Ms. Willebordse, a registered architect, described the architecturally significant aspects of the various structures and their relation to the community's heritage and historic design principles. Mr. Mark Miller, staff architect for Towson University, emphasized the adaptive use potential from the physical quality of the existing structures. Mr. Parker concluded by noting the community's goal to take a holistic view of its opportunities for establishing an even more inviting, pedestrian-friendly environment as well as protecting its irreplaceable heritage. He also submitted the initial results of a petition with 438 signatures supporting the nominations.

Mr. Pete Salavi, an artist residing in Dundalk, stressed the potential for some of the buildings at the Sollers Point site, located within convenient walking distance of Dundalk's historic core, to provide loft space for artists, thereby increasing the community's diversity and vitality.

A Dundalk resident since 1939, Mr. Harry Young, gave an immense amount of informative and entertaining information about the origins of the YMCA building and the host of family-oriented services and activities it provided to the community.

Ms. Caroline Jones, President of the Greater Dundalk Alliance, stated support for the C & P, DeLawder, and YMCA nominations and expressed concerns that listing the two former Seagram's sites might impede economic development and the type of "up scale" development the community desires. The latter sentiments also were expressed by Mr. Charles Beasley.

A GDA Board member, Ms. Sharon Beasley, spoke at length about the partial destruction of buildings on the Sollers Point site by its current owner but also reported that its contract purchasers, Bob Ward and Michael Campbell, are willing to go either way on Landmark status. Mr. Lynd noted, from his knowledge of Mr. Ward, that "they'll be fine."

Ms. Carla Crisp, Executive Director of Project Millenium, stressed the opportunities with the Seagram's sites, virtually next door to Canton, for housing to meet the needs of young families and professionals who prefer an alternative to sprawling development.

On a question from Mr. Emerick, Mr. Dugan confirmed that the Commission had not received opposition from the owners of any of the nominated structures.

Mr. Hill moved:

-- to place the C & P Telephone Building, on the Preliminary Landmarks List for contributing significantly to the County's historical heritage under criteria (1) – for its association with the continuing, complementary development of buildings the commercial core of the Dundalk National Register Historic District; (2) – as a distinctively designed and detailed example of 1920s-era, non-residential Art Deco architectural style; and (4) – as a work of notable artistic merit for its contribution to the streetscape of Dunmanway; and

-- to place the DeLawder Hall on the Preliminary Landmarks List for contributing significantly to the County's historical heritage under criteria (1) – for its association with the continuing, complementary development of buildings in the commercial core of the Dundalk National Register Historic District; (2) – as a distinctive building, designed in the International Style for parochial school use; and (4) – as a work of notable artistic merit for its contribution to the streetscape of Dunmanway; and

-- to place the YMCA Building on the Preliminary Landmarks List for contributing significantly to the County's historical heritage under criteria (1) – for its association with the continuing, complementary development of buildings in the commercial core of the Dundalk National Register Historic District; (2) – as a distinctively designed and detailed example of Art Deco architectural style, skillfully adapted to its site; and (4) – as a work of notable artistic merit for its contribution to the streetscape of Dunmanway.

The motion was seconded by Mr. Reynolds, and passed unanimously, on a voice vote.

Mr. Hill moved to place the four warehouse buildings ("A" through "D") and the water-tower on the Willow Spring Road property, as a group, on the Preliminary Landmarks List for contributing significantly to the County's historical heritage

under criteria (1) – for their association with the industrial history of Dundalk, and (2) – as rare (in Baltimore County), distinctive, skillful examples of the industrial use of the Art Deco architectural style in a manner to reduce the buildings' potentially dominant effect despite their enormous mass, and as a distinctive example of an industrial-scale elevated water tower of its period. The motion was seconded by Mr. Stevens, and passed, on a voice vote, with Mr. Diggs voting nay.

Mr. Hill moved to place buildings 1, 3, 4, 6, 7, 8, 9, and 10, the water-tower, and the smokestack, on the Sollers Point Road property, as a group, on the Preliminary Landmarks List for contributing significantly to the County's historical heritage under criteria (1) – for their association with the industrial history of Dundalk, and (2) – as a distinctive, rare (in Baltimore County) example of a multi-structure industrial complex consistently designed and representative of its architectural period (1930s-1940s). The motion was seconded by Mr. Reynolds, and passed unanimously, on a voice vote.

Alterations to properties in County Historic Districts or Landmark structures

9. "Griffith's Adventure" (Joshua Worthington House), 3517 Granite Road, Hernwood vicinity

Recapping the presentation from the October meeting, Mr. Jablon noted that the Office of Planning has not raised any objections to the revised site plans, as shown in the red-line drawings, other that questioning whether some parts of the landscaping might create too much of an enclosure around the historic buildings complex. Mr. Shapiro and Mr. Diggs discussed the uncertainties inherent in obtaining site-specific knowledge about the slavery-related aspects of the property, and about strategies for interpreting its slavery history. Mr. Diggs volunteered to prepare text for interpretative signage. Responding to Mr. Hill's question, Mr. Shapiro described the shifts in some of the new house sites away from the historic complex, within the property's environmental constraints.

Mr. Hill moved to recommend, as part of the Planning Board's decision on the project, a requirement that the architectural compatibility of the new houses in the immediate vicinity (in terms of height, bulk, massing, patterns of forms and openings, materials, and detailing) be evaluated by making the elevation drawings and landscaping plans for the houses on lots 5, 6, 8, and 9 subject to approval (in consultation with the Commission) by the Director of Planning. The motion was seconded by Mr. Diggs, and passed unanimously, on a voice vote.

10. Gheiler property, 8933 Church Lane, Fieldstone

The owner of the property indicated the only change now being requested to the previously approved plan involves converting the space originally designated for a garage (on the east side of the house) into a room and/or bathroom. Mr. Lynd moved to issue a new notice to proceed subject to the requirements that (1) the

house and driveway shall be sited as shown on the site plan accompanying the LPC's decision, and (2) the developer shall, as part of the documents transferring title to the property, include a covenant running permanently with the land to specify that no garage or other addition shall or may be constructed on the west (McDonogh Road) side of the house. The wording of the text to fulfill the second requirement shall, before being recorded, be submitted for approval by the Director of the Office of Planning. The motion was seconded by Mr. Diggs, and passed unanimously on a voice vote.

11. John Brown's Store, Shawan and Falls Road, Hunt Valley vicinity

The owners of the property presented a project to install a venting system which would allow for a ventilation stack on the roof and an air intake fan and ductwork at the ground level on the rear and south side of the building. After discussion of several options, Mr. Stevens moved to approve general concepts for revisions to the proposal, *viz.,* that the air intake unit will be mounted at the east face of the building, set back as far as possible from Shawan Road and screened at ground level by fencing and/or dense vegetation. The exhaust fan will be mounted as inconspicuously as possible on the roof above (and will be painted to match the slate roof color). The notice to proceed is to be approved by staff upon review of revised drawings showing how the approved concepts will be implemented. Mr. Matthews seconded the motion, which was unanimously approved, on a voice vote.

12. Dugan property, 1604 South Rolling Road, Relay

The homeowner, and Ms. Julie Junkin, the project's architect, described the proposed renovations/addition to the house. The changes are the removal of the shed-roofed addition, deck and stairs on the rear of the house; construction of a new rear addition, including porch, deck and stairs; removal of the metal storage building; and construction of a new detached garage structure. Mr. (Tim) Dugan (no relation to the applicant) advised the Commission that the local advisory group is temporarily refraining from making recommendations while they work to write guidelines for the community. Ms. Caslin moved to issue a notice to proceed. The motion was seconded by Mr. Diggs, and passed unanimously, on a voice vote.

13. Gaeng property, 1024 Windsor Road, Sudbrook Park

Upon a finding that the proposed installation of a 42" high, wooden, "gothic" picket fencing on this property is consistent with the Secretary's Standards # 9 and # 10, Mr. Hill moved to approve a certificate of appropriateness. Mr. Matthews noted the letter from the local advisory group recommending approval. Mr. Emerick seconded the motion, which passed unanimously, on a voice vote.

14. Washington property, 206 Winters Lane, Catonsville

Mr. Diggs indicated he would appreciate time to arrange for a site visit before any decision is made on the proposed demolition of this house, and also of the house at 307 Winters Lane (Agenda item 15). He moved to postpone this matter until December's meeting. Mr. Stevens seconded the motion, and indicated he would also be willing to visit the sites. The motion passed unanimously.

15. Smith, Holt, Johnson property, 307 Winters Lane, Catonsville

See item 14.

16. "Elizabeth Gardner House", 11330 York Road, Hunt Valley

Ms. Kathryn Kurnada reiterated the conclusions stated in her "due diligence" report, as presented in the October meeting, about the effects of alterations to the house in diminishing its physical integrity and thereby its historic significance. Potentials for adaptive re-use and rehabilitation were discussed, but no actual site development proposal has yet been prepared. A representative of a prospective purchaser, for a branch bank use, indicated lack of interest in acquiring the site if this building cannot be removed. In the absence of an actual rehabilitation proposal, the Commissioners agreed not to express an opinion about the house. Mr. Tim Hearne stated "I will be involved and have a significant financial investment in this property." Mr. Arnold Jablon expressed his thanks to the Commission.

<u>Nominations to the Landmarks List</u>

17. "Orwell", 11805 Franklinville Road, Franklinville
18. Slavery-related structures on nine properties
19. "Greystone", 1311 Dulaney Valley Road, Hampton vicinity
20. "Scott Settlement" Houses, Falls Road, vicinity of the "Bare Hills" Mansion

Ms. Abe described the factors which lead to each of the nominations in items 17 through 20. Nos. 17, 18, and 19 are staff-initiated. "Orwell," No. 17, is one of the few remaining houses in Baltimore County dating from the 1700s, and was selected in the 1930s because of its distinctive Tidewater architecture to be recorded by the Historic American Buildings Survey. No. 18, as explained in the October 28th staff memo, begins the overdue process of adding to the Landmarks List some of the few remaining slavery-related structures – 150 or more years old – that are not already listed. "Greystone," No. 19, nominated with the support of County Councilman McIntire, is a 1931 Colonial Revival design house which may be endangered by the recent transfer of ownership and proposal to subdivide the property. Finally, No. 20, the remaining set of five houses on Falls Road, was submitted by a citizen researching the history of the Scott Settlement African-

American community who is concerned that these surviving houses are endangered by neglect and/or severe deterioration.

Mr. Emerick moved that all of the structures encompassed in items No. 17 through 20 be scheduled for public hearing. Mr. Diggs seconded the motion with the understanding that item 18, the nine slavery-related sites, would be scheduled on Febrauary 10, 2005, and the other scheduled for January 13th. On a voice vote, the motion was unanimously approoved.

The meeting was adjourned at 8:44 p.m.

VKN:TD:vkn

Minutes
Landmarks Preservation Commission
January 13, 2005

The scheduled meeting was convened at 6:10 p.m. by the Chairman, Mr. Matthews. The following Commissioners were:

Present	Not Present
Mr. James E. Matthews, Chair	Mr. Louis S. Diggs
Ms. Sandy Caslin	Mr. Shawn T. Meyer
Mr. Edward A. Griffith	Mr. James A. Stevens
Mr. Edward E. Hardester, Jr.	
Mr. John W. Hill, Vice-Chair	
Mr. Robert D. Lynd	
Ms. Wendy McIver	
Ms. Sharon W. Paul	
Mr. Thomas L. Reynolds	
Ms. Norma Secoura	
Mr. Qutub Syed	

Planning Office staff present included Vicki Nevy (LPC Administrator/Secretary), Kim Abe, Karin Brown, Tim Dugan, and John McGrain.

Mr. Matthews stated for the record that the Commission operates under Title 26 of the County Code, the Secretary of the Interior's Standards, and its own Rules of Procedure and Historic Guidelines and Regulations.

Election of Officers

Mr. Reynolds moved the nomination of Mr. Matthews to be Chair of the Commission for a term of one year with Mr. Hill being the vice-chairman for a term of one year. The motion was seconded by Mr. Hardester, and, on a voice vote, passed unanimously.

Review of the Agenda

1. The Preliminary Agenda was revised to add items 14B and 16.

Approval of the Minutes

2. Mr. Hill moved that the minutes of the December 9, 2004 meeting be approved. seconded the motion, which passed unanimously on a voice vote.

Public Hearings on Nominations to the Landmarks List

3. **"Orwell," 11805 Franklinville Road, Franklinville (MHT # BA-245; Historic American Buildings Survey)**

Ms. Abe presented photographs, describing both the architecture of the home and the history of the site. The owners, Mr. and Mrs. Raymond, were present and did not object to the nomination. The owners indicated the diamond patterned windows Ms. Abe described as being present when survey pictures were taken still remain in all of the upstairs windows. Mr. Hill moved to place the main structure (only) on the Preliminary List for contributing substantially to the County's historical heritage under criteria (1) – for its association with the agricultural history of the Franklintown area; (2) – as a distinctive, virtually unique example of 17th century architecture; (3) as, obviously, a good example of the work of a master, albeit unknown, builder, and (4) – as a work of notable artistic merit. The motion was seconded by Mr. Syed, and passed unanimously on a voice vote.

4. **"Greystone, "1311 Dulaney Valley Road, Hampton area**

Mr. McGrain presented the staff report for the home known as Greystone and designed in 1931 by the architectural firm of Wren, Lewis & Jenks and using the highest quality building materials. Until recently, the home had been owned only by three familes, one being the Schmidts of Schmidt's Bakery of Baltimore. Art Rogers and Rick Badmington, speaking on behalf of the community association, stated their support of the nomination. Trish Bentz of the Baltimore County Historic Society also spoke in support and asked if the nomination was for the house only or the house and setting. Mr. Dugan advised that county law only allows for the nomination of the structure. James Wollen was in the audience and advised he had worked for the original architect of the home and knew that the original drawings had been sent to the Maryland Hall of Records about 10 years ago. The new owners of the property were present and spoke in opposition to the nomination. They advised he had obtained a permit approximately 2 months ago for work on the home and have plans for an addition and conversion of the garage to a carriage house. Mr. Badmington raised the issue of the Hampton Community covenants requiring review of any projects/additions within the community and noted they had not been advised of any changes to the property. Mr. Reynolds moved to place only the main structure on the Preliminary List for contributing substantially to the County's historical heritage under criteria (2) as a distinctive, example of colonial revival architecture and, (3) as an obviously good example of the work of a noted architect. The motion was seconded by Ms. McIver, and passed unanimously on a voice vote.

5. **"Scott Settlement" houses (contributing structures in the Bare Hills African-American Survey District, MHT # BA 3050):**

a. Zelenks property, 6224-28 Falls Road
b. Levere property, 6236 Falls Road
c. Scott property, 6238 Falls Road

d. Smith property, 6240 Falls Road
e. White & Covin property, 6242 Falls Road

Enid Freedman provided a presentation on the history of the community. Ms. Freedman, a Baltimore native, graduated from Morgan State with a degree in architecture and obtained her masters in History from Columbia University. She is presently working on a Morgan State University sponsored state education program on the history of free African-Americans living in Maryland prior to the abolition of slavery. The family of Aquilla Scott has ties to this community dating back to 1839. The community is a unique example of middle class architecture. Several descendents of the Aquilla Scott family were present and spoke of their experiences in the community and the structures being nominated. The son of the owner of 6224 - 28 Falls Road spoke against the nomination stating they were concerned about restrictions which may be placed on the property if it is placed on the Final Landmarks List. Mr. Hill moved to place all of the properties, including the original Scott House and carriagehouse in the rear of 6244, on the Preliminary List for contributing substantially to the County's historical heritage under criteria (1) – for their association with the county's distinctive history of pre-Civil War free African-American culture, and specifically the leadership and achievements of the Scott family in a slave society; (2) – as distinctive, examples of African-American vernacular architecture, and (4) – for their ability to yield more information about 19th century free African-American culture. The motion was seconded by Mr. Syed, and passed unanimously on a voice vote.

Public Hearing on Petition for Historic District

6. Munafo property, Lot 12 in the Ruxton Ridge, LLC subdivision (former Ridge School property), 1306 West Joppa Road

Mr. Matthews asked if anyone present wished to speak with regard to the petition. With no response, the Commissioners discussed the establishment of a district. Ms. McIver and Ms. Caslin expressed concerns over establishing a district only consisting of one house. Mr. Hill agreed and continued that the proposed lot for the home does not support an adequate setting. Mr. Hardester moved to decline the nomination of the property for historic district status. Ms. McIver seconded the motion. The motion passed with Ms. Paul voting against the motion.

Alterations to properties in County Historic Districts

7. Scott House, 323 Lennox Avenue, East Towson (MHT # BA-1011; contributing structure in the East Towson African-American Survey District; scheduled for Landmark hearing): Report from the Technical Committee

The contractor for this project, Mr. Lowe, addressed the costs and material issues for this job. He discussed the materials to be used for siding as well as window replacements indicating there are approximately 26 windows on this home and the owner is finding the costs of the windows preferred by the Commission to be

prohibitive ($750.00 per window). Several options were discussed including (but not limited to) repair of the windows in the front of the home with replacements in all other areas, and the use of cedar shakes on a portion of the home and siding on others. Mr. Hill moved to approve the repair of the front windows, allow replacement windows of compatible style along the side of the home and wood painted siding or vinyl. Mr. Reynolds questioned allowing the use of vinyl on the front of the home and Mr. Hill then amended his motion to require the use of cedar on the front of the home and vinyl in all other areas. Mr. Reynolds seconded the amended motion. The motion passed with all Commissioners voting aye except Ms. Caslin. Staff then made a recommendation to cancel the public hearing set for February's meeting on the matter of this property's nomination to the Final Landmark's List. The use of the new materials would alter the home's exterior to the extent that the original integrity of the home would preclude it from meeting the standards for properties on the Final Landmark's List. Mr. Matthews indicated the matter should remain on the agenda for February's meeting. *[Secretary's Note: Staff believes that the Commission agreed with Ms. Caslin's motion that the scheduled hearing should be cancelled.]*

8. "Shadowlawn," 1732 Corbett Road (Contributing structure in the Corbett County Historic District): Proposed addition

The homeowner indicated he wants to enlarge the home to meet the needs of his family. He understood Mr. Penza had designed an addition to the home for a previous owner which was respectful of the historic value of the home and therefore believed Mr. Penza would be the best qualified to expand the home again. Mr. Matthews reminded the home's owner and the architect that the Secretary of Interior's Standards (# 9) guards against the destruction of the original character of a home by noting that new work should be compatible with the massing, size, scale, and architectural features of the existing home. Mr. Penza noted the main change to the existing structure would be the loss of windows along the exterior where the new kitchen is to be constructed. The existing square footage of the home is approximately 3,800. The home will grow by approximately one-third. He is expecting to use a painted metal roof for the new addition and to recreate the pattern of the existing windows. Mr. Syed moved to approve the project as presented with Mr. Hill seconding the motion. The motion passed unanimously on a voice vote.

9. "Phillips Tenant House," 16203 Corbett Village Lane (MHT # BA-2256; contributing structure in the Corbett County Historic District): Replacement of historic roofing with non-historic material

The homeowner indicated he would like to replace the existing corrugated metal porch roof with asphalt shingles. Several alternative roofing materials were discussed. Mr. Syed moved to approve replacing the existing roof with either another metal roof or cedar shakes. Mr. Reynolds seconded the motion which passed unanimously on a voice vote.

<u>Nominations to the Landmarks List</u>

10. Bean (Hare) property, 101 Gwynnbrook: Re-consideration of the decision to schedule for a public hearing

Mr. Reynolds reported on his site visit to the home. The home is in very poor condition and the current owner is not interested in renovating the property and does not object to the plans for demolition proposed by the contract purchaser. Mr. Dugan advised on staff's opinion that the house is not eligible for the Landmarks List. Mr. Hardester moved to cancel the public hearing scheduled for February 10th. Mr. Hill seconded the motion which carried by unanimous vote.

11. Moxley House, 6100 Frederick Road, Paradise vicinity

The owners of the property nominated the house to the Landmarks List. Mr. Hardester moved to accept the nomination and to schedule the public hearing for March's meeting. Mr. Reynolds seconded the motion, which was passed unanimously on a voice vote.

12. St. Luke's Church buildings (contributing structures in the Reisterstown National Register Historic District, and in the Bond Avenue African-American Survey District):

a. 52 Bond Avenue, Young House (MHT # BA-1374)
b. 58 Bond Avenue, Odd Fellows Lodge - Community Building (MHT # BA-1382
c. 60 Bond Avenue, St. Luke's M.E. (United Methodist) Church (MHT # BA-1255)

Mr. Dugan reported this is a nomination submitted by Mr. Diggs. The current owner of the properties is proposing demolition of the 1898 former Odd Fellows Lodge and has demolished a former c. 1867 school in the same neighborhood. Mr. Reynolds moved to accept the nomination and to schedule the public hearing for March's meeting. Mr. Hill seconded the motion, which was passed unanimously on a voice vote.

13. Dr. Tracy's House, 19919 Cameron Mill Road, Walker vicinity

Staff reported on an inquiry about possible demolition of the house. Mr. Hardester moved to place the property on the County Register and to schedule a public hearing on the house, not including the barn, for the March 10th meeting. Mr. Reynolds seconded the motion, which passed unanimously on a voice vote.

14. "Overlea," 108 Delrey Avenue, Catonsville (MHT # BA-923)

The nomination submitted by staff was accepted with Mr. Syed making a motion to schedule a public hearing for the March meeting. That motion was seconded by Mr. Hill and was passed unanimously on a voice vote.

Other business

14.A. "Rockwood" (Langenfelder Farm), 7405 Longfield Drive, Kingsville (Preliminary Landmarks List # 242): Status report from the Technical Committee

The owners of the property provided each Commissioner with a binder detailing the proposed renovations to the exterior of the home. Mr. James Wollon is currently working with the owners on the project. Mr. Hill moved to approve the project as presented subject to Mr. Wollon's continued involvement with the project and the owners stating they would contact the Commission in the event plans changes from those presented. Mr. Reynolds seconded the motion which passed unanimously on a voice vote.

14.B. "Elizabeth Gardner House," 11330 York Road (at Shawan), Hunt Valley (MHT # BA-917): Proposed demolition

Mr. Dugan reported that the owner's request to demolish this property had come to the attention of staff. Several options to address the issue of the demolition were suggested. Ms. McIver moved to have the Commission request a Special Hearing through the Permits and Development Management. Mr. Hardester seconded the motion which passed unanimously on a voice vote. Tim Bishop spoke in support of preserving the building based upon it being a contributing structure to a district. Ms. McIver moved to nominate the house to the Landmarks List and schedule a public hearing in March. Ms. Secoura seconded the motion, which was approved by vote of all members except Mr. Hill.

15. Progress report from the County Executive's Task Force on Incentives

Mr. Matthews reported on the progress of the Task Force working to revise the incentive offered by the County to owners of certain historic properties. Mr. Matthews, Ms. Paul, and Trisha Bentz are among the members of the Task Force, with Ms. Brown as the County staff person. At this time, it appears that there may be a recommendation for the county program to follow a similar program currently being offered by the State.

16. Status report by staff

The Commission reviewed the draft letter prepared in accordance with its request to ask that the County Executive provide funding for completion of a countywide survey. Mr. Hill moved to authorize the Chairman to sign the letter. Mr. Hardester seconded the motion, which was passed unanimously on a voice vote.

The meeting was adjourned at 10:25 p.m.

VKN:TD:vkn

SUBTITLE 3. LANDMARKS

§ 32-7-301. LANDMARKS REGISTER.

The Commission shall compile and maintain a register of public and private structures in the county that the Commission considers to be of significant historical, architectural, archeological, or cultural value. (1988 Code, § 26-540) (Bill No. 18, 1990, § 2; Bill No. 6-99, § 1, 3-20-1999; Bill No. 112-02, § 2, 7-1-2004)

§ 32-7-302. PRELIMINARY LANDMARKS LIST.

(a) *Authorized.* The Commission may adopt a preliminary landmarks list.

(b) *Findings.* Before any structure may be placed on the preliminary landmarks list, the Commission must specifically find that the structure qualifies by contributing substantially to the architectural, or historical heritage of the county, state, or nation because of any one or more of the following:

(1) It is associated with a personality, group, event, or series of events of historical importance;

(2) It is a distinctive example of a particular architectural style or period;

(3) It is a good example of the work of a noted architect or master builder;

(4) It is a work of notable artistic merit or an object of singular natural beauty; or

(5) It has yielded or may be likely to yield information or materials important in prehistory or history.

(c) *Notice and hearing.*

(1) The Commission shall conduct public hearings to determine which structures on the register may qualify to be included on the preliminary landmarks list.

(2) (i) For each structure or group of structures selected on the register, a sign shall be conspicuously posted by the Commission giving notice of the public hearing on whether a structure should be included on the preliminary landmarks list.

(ii) The public hearing shall be held no sooner than 45 days nor later than 60 days after the sign is posted.

(3) The Commission:

(i) Shall send notice of the hearing, by first-class mail, to the owner of each structure; and

(ii) May provide additional forms of notice in accordance with its rules.

(d) *Effect of selection for hearing.* During the time period between the public notice required in subsection (c) of this section and the decision of the commission, the exterior of any structure proposed for inclusion on the preliminary landmarks list may not be renovated, reconstructed, altered, or demolished.

(e) *Commission action.*

(1) The Commission shall act within 30 days after the public hearing or any continuation of the public hearing.

(2) The Commission shall submit the approved preliminary landmarks list to the County Executive for review before introduction in the County Council for adoption as a final landmarks list.

(3) The County Executive's review period may not exceed 60 days.

(1988 Code, § 26-540) (Bill No. 18, 1990, § 2; Bill No. 6-99, § 1, 3-20-1999; Bill No. 112-02, § 2, 7-1-2004; Bill No. 75-03, § 34, 7-1-2004)

§ 32-7-303. FINAL LANDMARKS LIST – ADOPTION.

(a) *Adoption.* The County Council may adopt a final landmarks list.

(b) *Structures for consideration.* The County Council may consider any structure or portion of a structure for inclusion on the final landmarks list if the structure was subject to the notice and hearing requirements of § 32-7-302(c) of this subtitle.

(c) *Notice and hearing.*

(1) (i) The County Council shall conduct public hearings to determine if the structures on the list should be included on the final landmarks list.

(ii) The County Council shall give at least 20 days advance notice of a hearing on the final landmarks list, including publication in a newspaper of general circulation.

(2) (i) At least 30 days before the hearing, the commission shall notify the owner of each property of the time and place of the hearing.

(ii) The notice to the property owner shall be sent by certified mail, return receipt requested, to the owner.

(iii) If service of the notice is unsuccessful, notice subsequently may be sent by regular mail, postage prepaid.

(3) During the period of notice, the preliminary landmarks list shall be available in the Office of Planning or at another public place as the County Council may designate for public inspection.

(d) *Council action.*

(1) The County Council shall adopt a final landmarks list within 90 days after the public hearing.

(2) A structure may not be deemed to be a landmark unless and until it has been so designated by a law subject to the provisions of Section 308 of the Charter.

(e) *Availability of the list.* The final landmarks list shall be available for public inspection in the Department of Permits and Development Management, the Office of Planning, the Land Records Office of the county, all branches of the county public library, and in the office of the Commission.

(1988 Code, § 26-540) (Bill No. 18, 1990, § 2; Bill No. 6-99, § 1, 3-20-1999; Bill No. 112-02, § 2, 7-1-2004)

§ 32-7-304. SAME — REMOVAL FROM LIST.

(1) The owner of any structure that appears on the final landmarks list may petition the Commission for removal from the list.

(2) The Commission shall then follow the notice and public hearing procedures under § 32-7-302(c) of this subtitle.

(3) If the Commission determines that the structure no longer qualifies as a landmark in accordance with § 32-7-302 of this subtitle, the Commission shall recommend the removal of the structure from the list in accordance with §§32-7-302(e) and 32-7-303 of this subtitle.

(1988 Code, § 26-540) (Bill No. 18, 1990, § 2; Bill No. 6-99, § 1, 3-20-1999; Bill No. 112-02, § 2, 7-1-2004)

Maryland Court of Special Appeals Reports

BALTIMORE COUNTY v. PENN, *66 Md. App. 199* (1986)

503 A.2d 257

BALTIMORE COUNTY, MARYLAND v. CHARLES A. PENN ET AL.

No. 585, September Term, 1985.

Court of Special Appeals of Maryland.

January 17, 1986.

Certiorari Denied May 2, 1986.

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Appeal from the Circuit Court, Baltimore County, James S. Sfekas, J.

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James G. Beach, III (Malcolm F. Spicer, Jr., Co. Atty. and John A. Austin, Asst. Co. Atty., on the brief), Towson, for appellant.

Daniel J. Hanley (Hanley & Hanley, on the brief), Towson, for appellee.

Argued before GARRITY, ADKINS, ROBERT M. BELL, JJ.

ADKINS, Judge.

This case involves two former Baltimore County police officers, appellees Charles Penn and Wayne Henninger, who were granted accidental disability retirement benefits. Appellant, Baltimore County, thinks they did not deserve such generous treatment. The principal legal question presented is the nature and effect of a presumption contained in the County's disability retirement law.

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The law in question consists of §§ 20-22 and 20-22.1 of the Baltimore County Code. Those provisions read as follows:

Sec. 20-22. Accidental disability benefit.

> Upon the application of a member [of the Baltimore County employees' retirement system] in service, . . . any member who has been totally and permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, without wilful negligence on his part, shall be retired by the board of trustees; provided that the medical board shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired. No beneficiary entitled to an accidental

disability retirement allowance shall receive any allowance on account of ordinary disability.

Sec. 20-22.1. Accidental disability presumption.

(a) Commencing as of July 1, 1980, and subject to the provisions of subsections (b) and (c) hereof, any condition or impairment of health of any sworn personnel in the police or fire departments, who is a member of the employee's retirement system of Baltimore County caused by lung diseases, heart diseases, or hypertension resulting in permanent physical disability, which shall prevent the member from engaging in the scope of employment consistent with his normal previous duties, shall be presumed to have been suffered in the course of and arising from his employment; and such member shall be subject to retirement under the provisions of this Code relating to accidental disability retirement.

(b) Sworn personnel in the police department shall have successfully passed a physical examination upon entering into service as a police officer which failed to reveal any evidence of such condition or impairment of health as described herein.

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(c) In the case of sworn personnel in the fire department as of July 1, 1980, who successfully pass a physical examination between July 1 and August 16, 1980, which fails to reveal any evidence of such condition or impairment of health or those sworn personnel entering the fire department after July 1, 1980, and successfully passing a physical examination which fails to reveal any evidence of such condition or impairment of health, the presumption established may be rebutted only by clear and convincing evidence to the contrary.

The importance of these accidental disability provisions lies in the fact that one retired under them is entitled to an allowance equivalent to 662/3% of his or her final average compensation, as opposed to the maximum 50% allowance for those who retire under ordinary disability. Baltimore County Code §§ 20-23(a)(2); 20-21(b). Appellees Charles Penn and Wayne Henninger sought and obtained the generous accidental disability benefits under the following circumstances:

Penn was a lieutenant and Henninger a sergeant in the Baltimore County Police Department. On April 15, 1982, following an internal investigation, both were charged with numerous violations of departmental rules and regulations. Soon after that both men called in sick. They were placed on sick leave status. Because of their conditions the disciplinary proceedings against them were never scheduled for hearing and, therefore, never terminated either adversely or favorably to them. On February 1, 1983, Penn and Henninger applied for accidental disability pensions, based on hypertension.

The medical board certified to the board of trustees that both men suffered from hypertension and because of that were permanently incapacitated from the performance of their regular duties as police officers. Those findings are not contested on this appeal. The trustees, nevertheless, denied accidental disability benefits, awarding only the lesser ordinary disability benefits. Penn and Henninger appealed
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to the board of appeals. At
a *de novo* hearing, that body considered the record made before the trustees, as well as medical reports and portions of the internal investigation report. On August 24, 1984, the board of appeals reversed the trustees and authorized accidental disability retirement for Penn and Henninger. Baltimore County's appeal to the circuit court resulted in affirmance of the Board of Appeal's decision.

Before us, the County asks:

1. Was the trial court correct in its interpretation of the statutory presumption found in § 20-22.1(a)?

2. Did the trial court commit error in ruling that Penn and Henninger were entitled to accidental disability benefits?

3. Did the trial court and the Board of Appeals have jurisdiction over the appeal from the Board of Trustees?

Because the third question presents a threshold issue, we shall address it first. It will not detain us long.

Jurisdiction

Section 602 of the Baltimore County Charter deals with powers and functions of the Board of Appeals. Subsection (a) pertains to appeals from orders relating to zoning, as does subsection (e). Subsection (b) covers appeals from orders relating to licenses and subsection (c) with appeals from orders relating to building. Subsection (d) provides:

> The county board of appeals shall hear and decide appeals from all other administrative and adjudicatory orders as may from time to time be provided by Article 25A of the Annotated Code of Maryland . . . or by legislative act of the county council not inconsistent herewith.

There is no other pertinent "legislative act of the county council. . . ." Maryland Code, Article **25A, § 5**(U), however, allows a charter county to authorize the county board of appeals to hear and decide appeals regarding the following matters:
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> An application for a zoning variation or exception or amendment of a zoning ordinance map; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval,

exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and the assessment of any special benefit tax.

Baltimore County argues that because neither of these provisions expressly refers to personnel matters or to retirement benefits, the board of appeals lacked jurisdiction to hear the appeal from the trustees. If that is so, it avers, the circuit court also lacked jurisdiction to hear the appeal to it.

We do not read § 5(U) as the County does. As we see it, it deals with a broad variety of zoning matters, a broad variety of license and permit matters, special benefit taxes, and adjudicatory orders of any type. To eliminate "adjudicatory orders" as a separate category would be to fail to give effect to some of the legislative language, an improper approach to statutory construction. *See State v. Fabritz*, **276 Md. 416**, **348 A.2d 275** (1975), *cert. denied*, 425 U.S. 942, 96 S.Ct. 1680, 48 L.Ed.2d 185 (1976).

Section 602(d) reflects that reading of § 5(U). *See Hope v. Baltimore County*, **288 Md. 656**, 663, **421 A.2d 576** (1980) in which the Court of Appeals, although in the context of a subdivision plat appeal, suggested that § 602(d) refers to all adjudicatory and administrative orders. Thus, if the board of trustees' decision was an "adjudicatory order" it was appealable to the board of appeals and thence to the circuit court.

We have no doubt that the trustees' decision was an "adjudicatory order." In our view an adjudicatory order is one that decides what the Administrative Procedure Act defines as a "contested case" — an agency proceeding that involves "a right, duty, statutory entitlement, or privilege of a person. . . ." State Govt. Art. § 10-201(c)(1). *See Donocam Associates v. Washington Suburban Sanitary*
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Commission, **302 Md. 501**,
489 A.2d 26 (1985). Certainly Penn's and Henninger's "statutory entitlement" to pensions, or to some level of pension, was involved here. And the trustees decided that question of statutory entitlement after a hearing at which counsel for both sides were present and evidence was reviewed. It was not legislating; it was not rule-making; it was adjudicating two specific claims for statutory entitlement. Its decision was an adjudicatory order. Judge Sfekas did not err when he rejected Baltimore County's jurisdictional argument.

The Section 20-22.1 Presumption

The presumption upon which we now focus is found in § 20-22.1(a). So far as this case is concerned, that subsection provides that a police officer whose (1) health is impaired because of hypertension, and who has because of that impairment, (2) a "permanent physical disability" which prevents the officer (3) "from engaging in the scope of employment consistent with his normal previous duties, [4] *shall be presumed to have . . . suffered [that impairment] in the course of and arising from his employment*" and is "subject to" accidental disability retirement [emphasis supplied]. No one contends that conditions (1), (2),

and (3) were not met. The dispute is over the nature of the presumption and how it should be applied. Baltimore County insists that it is a Thayer-Wigmore presumption.

> The Thayer-Wigmore tradition shifts to the party against whom the presumption operates [here, the County] *only* the burden of producing evidence and *not the ultimate burden of persuasion*. Under that type of presumption, only the burden of going forward is dissipated (the bubble bursts), whenever the evidence to the contrary is sufficient to generate a genuine jury issue.

Montgomery County Fire Board v. Fisher, **53 Md. App. 435**, 446, **454 A.2d 394**, *aff'd.* **298 Md. 245**, **468 A.2d 625** (1983) [emphasis in original]. Once the bubble has burst, the presumption no longer has any effect.
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Penn and Henninger, on the contrary, are convinced that the presumption is of the Morgan type.

> [A] presumption in the Morgan tradition, may shift the ultimate burden of persuasion, as well as the burden of producing evidence. Such a presumption does not disappear like the bursting bubble . . . rather, it remains in the case as one of the elements to be considered in determining whether [the party who has the burden of ultimate persuasion has met it].

Id. To perceive the critical nature of these conflicting contentions on the outcome of this case, we must refer to the proceedings before the board of appeals.

All evidence was presented to the board by way of stipulation. That evidence consisted of the record before the board of trustees, a number of medical reports, and extensive documents stemming from the internal investigation of Penn and Henninger. As to these last, it was further stipulated that Penn and Henninger denied the truth of much of the material contained in the investigation reports. They agreed, however, that that information formed the basis for the disciplinary charges lodged against them.

In argument before the board, the County asserted that the hypertension problems concededly present in both Penn and Henninger really began to manifest themselves about the time the investigation commenced and became worse when the charges were filed.**[fn1]** Because "being under investigation, having charges, are not normal police activities . . . they are duties outside of normal duties" the County posited that the ailments "did not arise from a history of police work that produced a gradual onset" and could not have been suffered in line of duty (in the course of employment). Consistent with its Thayer-Wigmore theory, it concluded
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that the bubble had been burst and that the presumption no longer operated in favor of the officers.

The board saw it differently. After reviewing the evidence before it, including that relating to the investigation, it observed that a finding of guilt on the charges against Penn and Henninger "may have provided the basis for a determination that notwithstanding the presumption of accidental disability such disability would not be `without wilful negligence' on the part of these employees and thus would not meet the standard stated in Section 20-22 of the Baltimore County Code." But, as the board pointed out, there was no finding of guilt, and under Baltimore County Police Department Rule 10, § 7, an officer charged with a departmental offense is presumed innocent until proven otherwise.

The board went on to find that an internal investigation "is an inescapable part of a police officer's job" and hypertension produced by such an investigation might well be considered to be incurred in line of duty. It concluded that "the presumption to which [Penn and Henninger] are entitled under Section 20-22.1 has not been rebutted by evidence to the contrary presented by the County." It, therefore, reversed the trustees.

The board of appeals did not, of course, state expressly that it was applying a Morgan presumption to the case before it. Neither did the Workmen's Compensation Commission in *Fisher*. Despite the County's argument to the contrary, however, this does not mean that the board rejected the Morgan approach. Indeed, it is clear that the board effectively applied a Morgan presumption. Instead of deciding the presumption was no longer operative when contrary evidence came in (the Thayer-Wigmore view), it continued to consider the presumption and found that it had "not been rebutted by evidence to the contrary presented by the County." In short, it treated the presumption as affirmative evidence throughout the case. That is classic Morgan. We must, therefore, decide whether, as Judge
Page 209
Sfekas held when the case reached him, § 20-22.1 establishes a Morgan presumption.

The County advances essentially two arguments in opposition to this result. One is that the statutory language, because it treats police officers differently from firefighters, provides a Morgan presumption for the latter but not for the former. Compare § 20-22.1(a) with § 20-22.1(c). The other is that Judge Sfekas was wrong in following *Fisher, supra*.

So far as we can tell from the record, the first argument was not raised either before the board of appeals or before the circuit court. In his well-reasoned and comprehensive opinion, Judge Sfekas makes no mention of it. While we think the argument, in any case, lacks merit, we hold that it is not before us. Md. Rule 1085. We turn, then, to *Fisher*.

Fisher was a workers' compensation case. It involved Art. 101, § 64A(a)(1) which, like § 20-22.1, applies to both police officers and firefighters. The former provides:

> Any condition or impairment of health of any paid municipal, county, State, airport authority or fire control district, fire fighter . . . caused by lung diseases, heart diseases, or hypertension, and any

> condition or impairment of health of any paid State, municipal, Maryland-National Capital Park and Planning Commission, county or airport authority police officer caused by heart diseases or hypertension resulting in total or partial disability or death shall be presumed to be compensable under this article and to have been suffered in the line of duty and as a result of his employment.

Both this court and the Court of Appeals held that the quoted language established a Morgan-type presumption which, as the Court of Appeals put it, imposes "a formidable burden on the party against whom it operates." *Fisher*, 298 Md. at 257, **454 A.2d 394**. It reasoned that the legislature intended to establish a Morgan presumption in § 64A(a) because of "a social policy affording preferential
Page 210
treatment to firefighters disabled by heart disease." *Id.* Of course, § 64A(a) reflects a similar social policy with respect to police officers.

Judge Sfekas applied that reasoning to the case at bar. He explained:

> [I]n cases involving permanent disability governed by Section 20-22.1 the presumption that the disability is work-related operates in favor of the employee and can be rebutted by the employer only after the employer has introduced evidence which clearly and convincingly establishes that the disability is the result of some source other than employment as a county police officer or fire fighter. To hold otherwise would undercut a strong social policy affording preferential treatment to police officers and fire fighters disabled by illnesses extremely common in their professions. No doubt the county legislators had this in mind when they enacted Section 20-22.1.

He then proceeded to discuss and apply the holding of *Fisher*.

In response to this reasoning, Baltimore County asserts that Judge Sfekas discerned legislative intent in the absence of any evidence of legislative history – history which it says is non-existent. But when a statute is clear and unambiguous on its face, no resort to legislative history is required. *Maryland-National Capital Park and Planning Commission v. Rockville*, **272 Md. 550**, 325 A.2d 748 (1974). Section 20-22.1 by its very language manifests an intention to afford preferential treatment to police officers and firefighters; that is clearly its sole purpose, and an important means to achieve that purpose is the use of a Morgan presumption. *Fisher*, 298 Md. at 257-59, **454 A.2d 394**. This court and the Court of Appeals had no difficulty in reaching a similar conclusion in *Fisher*, despite the absence of legislative history in that case.

The County also tells us that *Fisher* is distinguishable because of "the sweeping nature of the determination of compensability that was involved." It argues that

Page 211
"[a]bsent the
treatment of the presumption of compensability as a `Morgan' presumption, claimants would perhaps be entitled to no compensation at all where the employer produced some evidence that the onset of the disabling condition was due to sources other than employment factors." It sees this case as quite different because "the presumption in § 20-22.1 only means the difference of 16 2/3 % between . . . ordinary disability benefits and . . . accidental disability benefits. . . ."

We view it otherwise. The difference between half-pay retirement and two-thirds pay retirement is far from trivial from the viewpoint of the retiree. Moreover, it was the local legislative body that decided to apply the presumption for the patent "social policy" reasons we touched on earlier. *Fisher* does not hold that a Morgan presumption operates only in major cases; it holds that such a presumption applies when the legislature intended to apply it, and that intent is plain here. Judge Sfekas did not err in his presumption analysis.

Error in Review of Board of Appeals Decision

The last arguments the County has briefed contend that Judge Sfekas erred in his review of the board's fact-finding and in his rejection of the applicability of the "wilful negligence" provision of § 20-22.

The fact-oriented portion of this argument essentially charges that the board erred in its factual determination. As Judge Sfekas correctly recognized, the scope of judicial review of administrative agency fact-finding is very narrow. If there was evidence before the board from which a reasoning mind might have reached the conclusion the board did, a court will not substitute its judgment for the board's. *Commissioner v. Cason,* **34 Md. App. 487**, 508, **368 A.2d 1067**, *cert. denied,* **280 Md. 728** (1977). With that in mind we review the County's argument.

The County begins by claiming that the board erred in stating that there was "no evidence to the contrary provided
Page 212
at the
hearing to rebut" the § 20-22.1 presumption. It goes on to list medical evidence to the effect that Henninger, at least, had some hypertension problems before the beginning of the internal investigation. It thinks this evidence shows that these hypertension problems were caused by weight, not job-related stress. It makes a similar argument as to Penn, although with less support from the medical records. It concludes that all of this evidence was sufficient to show that the hypertension was not job-related.

If the board made the "no evidence" finding attributed to it, this might have been because at the board hearing the County vigorously insisted that neither Penn nor Henninger had manifested hypertension symptoms prior to the investigation. But we read the language quoted by the County as meaning that there was no significant evidence to rebut the presumption. This is a fair interpretation of the medical reports, some of which

indicated that the hypertension had been incurred in line of duty, and otherwise supported the positions of Penn and Henninger. That the board did consider all the evidence is apparent from, among other things, its statement "that the presumption to which [Penn and Henninger] are entitled under Section 20-22.1 has not been rebutted by evidence to the contrary presented by the County." What the County refuses to do now is to recognize that the presumption remained in the case as affirmative evidence in support of Penn's and Henninger's claims for accidental disability pensions. It could be, and obviously was, weighed against the other evidence. The weight to give various pieces of evidence, including the presumption, was for the board. *Fisher,* 298 Md. at 259-60, **454 A.2d 394**. Judge Sfekas opined: "This Court cannot say that the Board improperly concluded that the evidence put forth by the County was insufficient to persuade it that [Penn's and Henninger's] disability was [not] work-related." We cannot say that Judge Sfekas erred.

As to the "wilful negligence" issue, the County now asserts, contrary to the position it took before the board
Page 213
(and before the
trustees), that the crucial event in producing the hypertension was the filing of charges, not the investigation. This, it says, was tantamount to an "accident" – a single event as opposed to a disease that develops over time. Because, in the County's view, the disabling hypertension was caused by an accident, it invokes the language of § 20-22, which prohibits accidental disability benefits if the accident has been the result of "wilful negligence" on the employee's part. The County goes on to contend that the misconduct of which Penn and Henninger were accused was the equivalent of "wilful negligence." This produced the charges that in turn produced the hypertension; hence, no accidental disability allowance.

Judge Sfekas held § 20-22 inapplicable, a holding precisely in accord with the position the County had taken before the trustees. He explained:

> The Court reads Section 20-22 as preventing an award of accidental benefits only when the employee has suffered permanent disability as a direct result of an `accident' caused by the claimant's own recklessness. In this context, the word accident refers to a single, injury-producing event or happening, not a continuous pattern of behavior in violation of established department rules. . . . [A]n internal affairs investigation is not the type of event contemplated by Section 20-22. The Board of Appeals acted properly in not finding the investigation of [Penn and Henninger] as calling Section 20-22 into play.

We agree. Moreover, there was evidence before the board (including the presumption) that permitted a finding that job-related hypertension had occurred in both Penn and Henninger prior to the lodging of the charges against them and that the filing of the charges (itself a job-related action) merely

exacerbated the pre-existing condition.

In the course of this opinion, we have noted several ch the County's position as it pursued this case through its v administrative and judicial meanderings. Those switches illustrate the County's rather desperate, and

Page 214

to date

unsuccessful, efforts to find some legal way of avoiding the impact of a law that, under the circumstances of this case, it perceives as unwise. At oral argument the County urged on us the folly of the law, as applied, by suggesting serious adverse consequences to the police department and to the County. None of that information is in the record, of course, but if it were, it would make no difference. As Judge Smith pointed out in *State* v. *Wyand,* **304 Md. 721**, 726, **501 A.2d 43**, "[C]ourts do not pass upon the wisdom of statutes nor approve or disapprove of them." We simply construe them and, if they are constitutional, apply them. If the Baltimore County Council thinks § 20-22.1 is unwise, it may repeal or amend it. We can do neither.

JUDGMENT AFFIRMED. APPELLANT TO PAY THE COSTS.

[fn1] The County has changed its mind about this. As we shall later see, it now argues to us that "the filing of disciplinary charges, and not the investigation that preceded it, was the `single injury producing event or happening' that resulted in the Appellees becoming disabled."

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IN N.H. BOOKS 1/19 A

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THE GREATER SPARKS GLENCOE COMMUNITY COUNCIL

October 13, 2004

Ms. Kimberley Abe
Baltimore County Landmarks Commission
401 Bosley Avenue, Room 406
Towson, Md. 21204

RE: Elizabeth Gardner House (BA-917), 11330 York Road, Cockeysville

Dear Ms. Abe:

Our association just received information from Goodman & Associates regarding the historicity of the Elizabeth Gardner House. Because we have been given no time to take this issue to the Greater Sparks Glencoe Community Council, we are asking you to please postpone any decisions concerning this matter until next month's meeting. We appreciate your assistance and will be in touch as to how GSGCC will proceed with the information we have been given from Goodman & Associates. Our response will be provided before the next Landmarks Commission meeting in November.

Sincerely,

Page Crosby
Treasurer

R. CHRISTOPHER GOODWIN & ASSOCIATES, INC.
cultural resource management and preservation planning

October 4, 2004

Ms. Kimberly Abe
Historic Planner
Baltimore County Landmarks Preservation Commission
Baltimore County Office of Planning
401 Bosley Avenue, Room 406
Towson, MD 21204

RE: Elizabeth Gardner House (BA-917), 11330 York Road, Cockeysville

Dear Ms. Abe:

As requested during our recent telephone conversations, R. Christopher Goodwin & Associates, Inc., on behalf of BB&T bank, is pleased to submit the following materials for review by the Landmarks Preservation Commission (LPC) in the consideration of the Elizabeth Gardner House (BA-917) at their October 14, 2004 meeting:

- the Maryland Inventory of Historic Properties (MIHP) form completed in 1981 for the Elizabeth Gardner House (MIHP # BA-917);
- the Maryland Historical Trust (MHT) Determination of Eligibility (DOE) dated 2002, finding that the house is not eligible for listing on the National Register of Historic Places; and
- Photographs depicting current site conditions (September 2004), including the building, setting, and surrounding area.

BB&T currently is considering leasing the site containing the house. Goodwin & Associates, Inc. was retained to evaluate the property applying the Baltimore County Landmarks Preservation Commission criteria. The criteria for evaluation are codified in Title 7, Subtitle 3 (b [1-5]) of the Planning, Zoning and Subdivision Control of the Baltimore County Code, 1988, as amended. *The Historic Guidelines and Regulations* adopted by the LPC and the Office of Planning in February 2003 provide guidance on interpreting and applying the criteria. Our examination and evaluation indicates that the Elizabeth Gardner house does not appear to meet the Commission's criteria.

241 East Fourth Street, Suite 100 Frederick, Maryland 21701
(301) 694-0428 Fax (301) 695-5237 frederick@rcgoodwin.com www.rcgoodwin.com
Frederick, MD New Orleans, LA Tallahassee, FL

Previous Investigations and Property History

A Maryland Inventory of Historic Properties (MIHP) form was completed for the Elizabeth Gardner house in 1981. As documented in the MIHP form, the Elizabeth Gardner house was constructed ca. 1870. The dwelling was located in the crossroads village of Marble Hill. Employees of the nearby marble quarries and iron ore mines lived in the community. The village evolved as the result of its strategic location at the junction of the Western Run Turnpike (Shawan Road) and York Turnpike (York Road). A review of historic maps indicates that the area was relatively rural. The 1877 Hopkins *Atlas of Baltimore County* depicts five dwellings along the York Turnpike (south of Western Run Turnpike). Twenty-one years later, the Bromley *Atlas of Baltimore County* identified over a dozen dwellings located in Marble Hill. Samuel W. Worthington was the first owner of the dwelling. After construction, the property changed hands seven times, before it was acquired by Piper Reality in 1976. Elizabeth Gardner, for whom the dwelling is named, owned the property between 1875 and 1877. A ca. 1900 round icehouse, root cellar, and carriage house historically were located on the property.

The MIHP form notes that the Piper Reality Company extensively altered the building's interior; it appears that the exterior remained relatively intact. The MHIP form states that new walls, plumbing, wiring, insulation, commercial grade wall-to-wall carpeting, and central air conditioning were added in 1976. In addition, all original wood moldings were replaced. The screened porch on the south elevation was enclosed in glass at that time.

A Determination of Eligibility (DOE) subsequently was completed in 2001 by the State Highway Administration (SHA). The DOE was undertaken as part of a York Road improvement project pursuant to the National Historic Preservation Act of 1966, as amended. The DOE documented all alterations to the property since the completion of the 1981 MIHP form. These alterations included the installation of vinyl siding and asphalt shingles. The 2001 DOE form stated that the outbuildings, although altered, remained in place. According to the DOE, many of the nineteenth century dwellings that characterized the Marble Hill community had been demolished in order to accommodate strip mall development and the construction of office parks. Additionally, York and Shawan roads were widened. The SHA found that as a result of the alterations impacting the integrity of the building's materials, setting, feeling, and association, the Elizabeth Gardner was not eligible for listing on the National Register of Historic Places. In April 2002, the MHT concurred with that assessment.

Current Conditions

Staff from Goodwin & Associates, Inc., conducted a site inspection of the property on 22 September 2004, and identified a number of modifications that have occurred since 1981 and 2001, when the MIHP form and DOE form were completed.

The porch on the dwelling's north elevation was completely enclosed and one-over-one light, double-hung, wood-sash windows installed. The 1981 MIHP form described an entrance containing a four-panel door located on the first floor of the easternmost bay of the north elevation of the western addition; this door no longer is present. The porch on the west elevation was partially enclosed to create a weather lock. All but one of the original louvered, wood blinds were replaced with vinyl replicas.

The entrance to the dwelling was originally located on the east elevation. The original, four-panel, wood door located on the east elevation, while still present, is no longer functional. Access to the building was re-oriented to the south elevation. A geometrically patterned, wood door and smoked glass sidelights define the new primary entrance. Smoked glass windows also were installed in the enclosed porch found on the south elevation.

The site and the property's surrounding setting also have been altered. The icehouse and root cellar were demolished after 2001, although the carriage house remains. The five-lane York Road and four-lane Shawan Road carry a constant stream of traffic. Strip shopping centers, a gas station, and office complexes define the surrounding area. Few buidlings contemporary with the Elizabeth Gardner house remain in the vicinity of Shawan and York roads.

Evaluation

Baltimore County landmarks are identified applying the criteria established in the Baltimore County Code; National Register Bulletin 15: *How to Apply the National Register Criteria for Evaluation* may be consulted. The Commission adopted Historic Guidelines and Regulations for the evaluation of the eligibility of structures for inclusion on the Landmarks List in February 2003. Goodwin & Associates, Inc., applied these criteria in the current evaluation of the Elizabeth Gardner House.

The Elizabeth Gardner house has undergone extensive changes to its original design and does not appear to be eligible for inclusion on the Preliminary Landmarks List. Our analysis revealed that the house does not possess the significance and integrity required under the criteria applicable to built resources:

- the building is not associated with a personality, group or event (Criterion 1);
- the house does not convey importance as a late Victorian period Queen Anne style dwelling due to changes affecting its original design (Criterion 2);
- the building is not a good example of the work of a noted architect or master builder (Criterion 3); and
- it is not a work of notable artistic merit or an object of singular natural beauty (Criterion 4).

The property was not evaluated for its likelihood to yield information or materials important to pre-history or history (Criterion 5).

As previously determined in 2001, the house lacks the integrity of design, setting, materials, workmanship, feeling, and association from the period of its construction to convey significance from the late Victorian period. Nor do the alterations over time to the house possess significance applying the Baltimore County criteria.

The open wrap-around porch, which was a character-defining feature that extended around three sides of the building, has been enclosed on two sides. Incompatible materials and design elements added over the years include smoked glass windows, the geometric-patterned wood door, vinyl siding and shutters, and the reorientation of the entrance away from York Road and towards the driveway. In addition, the demolition of the two outbuildings, the construction of late-twentieth century shopping centers, and the widening of York Road have diminished the property's historic setting and historic context. As a result of these modifications, the Elizabeth Gardner House does not appear to be eligible for the Preliminary Landmarks List.

Thank you for your consideration.

Sincerely,

Kathryn M. Kurnada, M. Arch. Hist.
Vice President – Architectural and Historical Services

Cc: Mr. Dick Prosser (BB&T)
Mr. Thomas Graff, President (Hunt Valley Station)
Ms. Ann Heaton, President (Sherwood Hill Improvement Association)
Mr. George McCeney (Greater Sparks-Glencoe Community Association)

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MARYLAND HISTORICAL TRUST
NR-ELIGIBILITY REVIEW FORM

Property Name: Elizabeth Gardner House Inventory Number: BA-917

Address: 11330 York Road, Cockeysville, Baltimore County

Owner:

Tax Parcel Number: 229 Tax Map Number: 42

Project MD 45 (York Road) at Shawan Road Agency State Highway Administration (SHA)

Site visit by SHA Staff: __ no X yes Name: Anne Bruder Date: 07/16/2001

Eligibility recommended __ Eligibility **not** recommended __

Criteria __A __B __C __D Considerations: __A __B __C __D __E __F __G X None

Is property located within a historic district? X no __ yes Name of District:

Is district listed?: X no __ yes

Documentation on the property/district is presented in: Project Review and Compliance Files

Description of Property and Eligibility Determination *(Use continuation sheet if necessary and attach map and photo)*

The Elizabeth Gardner House is an example of the Queen Anne style single family dwelling. It was first altered in 1976 when the interior was gutted in order to create office space for Piper Realty. Since that time, the building has been encased in vinyl siding, and the roof is covered with asphalt shingles. The windows also appear to have been changed since the 1981 survey. The outbuildings listed in the MIHP form remain in place, but also have been altered.

The Gardner House was one example of late nineteenth century dwellings in the village of Marble Hill, which was the junction of the Western Run and York Turnpikes. Since the 1980s, most of the houses in the village have been altered or demolished through the construction of multiple late twentieth century commercial shopping centers and office parks that make up the present day Hunt Valley complex. Both Shawan and York Roads have been widened and nothing remains to demonstrate the turnpike roads.

As a result of the alterations to the materials, setting , feeling and association of the Gardner House and Marble Hill,

Prepared by: Anne E. Bruder, Architectural Historian, SHA

MARYLAND HISTORICAL TRUST REVIEW

Eligibility recommended __ Eligibility not recommended X

Criteria: __ A __ B __ C __ D Consideration __ A __ B __ C __ D __ E __ F __ G __ None

Andrew Lewis 04/02/02

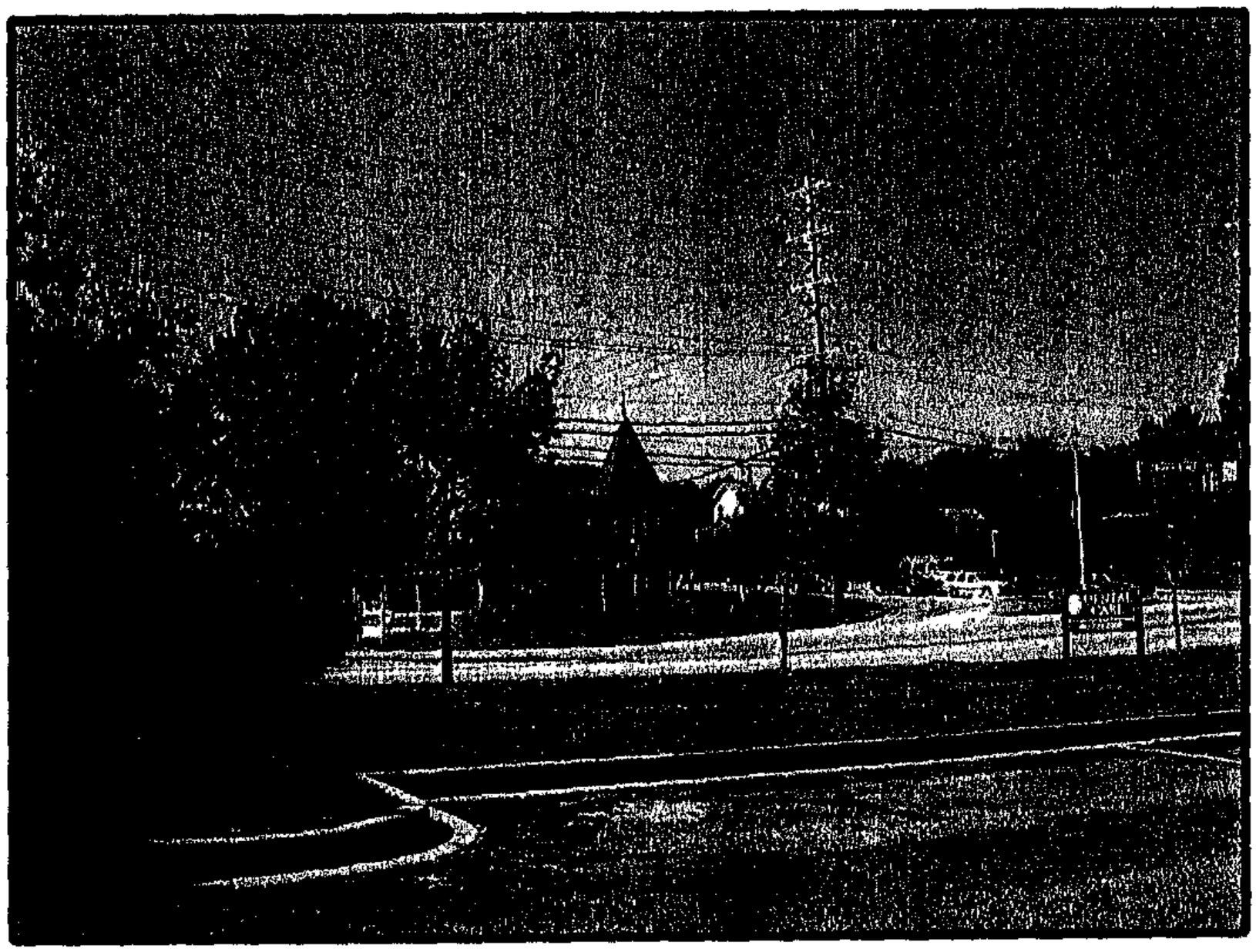
Reviewer, Office of Preservation Services Date

4/9/02

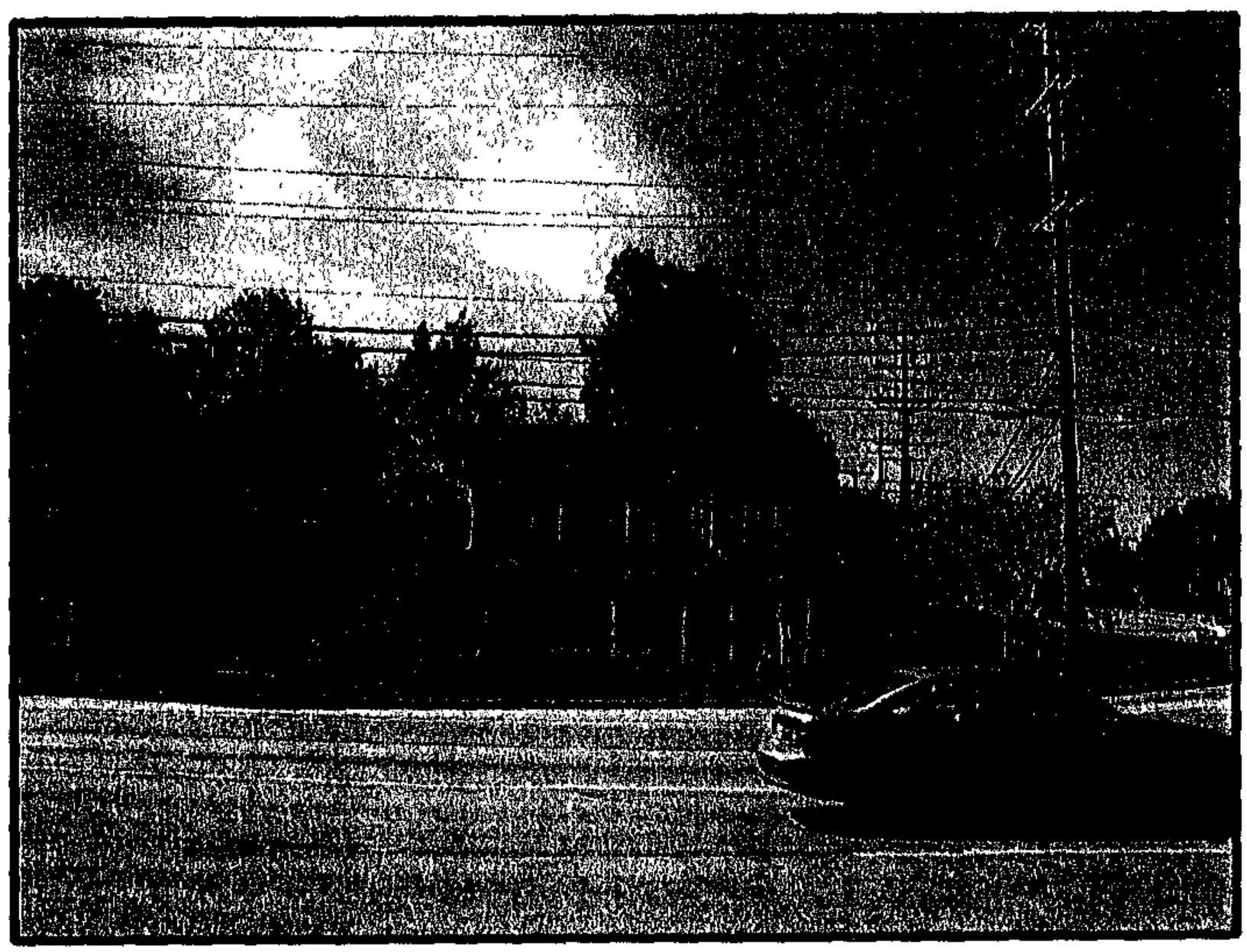
Reviewer, NR Program Date

20020055

the Gardner House is not eligible for inclusion in the National Register of Historic Places under Criterion C (architecture). The house does not have significance under Criterion A or B and no information was developed regarding Criterion D.



1. East Elevation

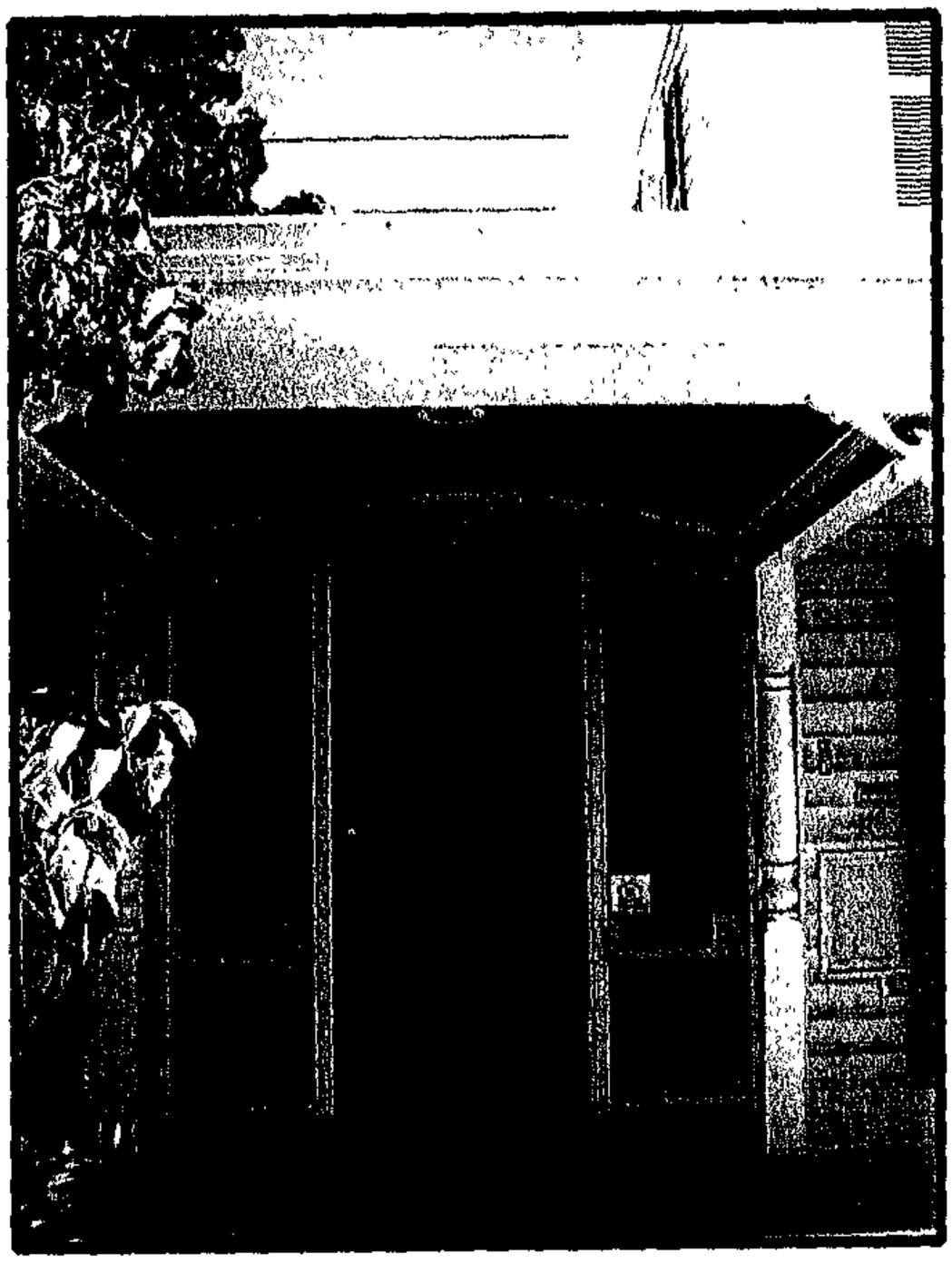


2. East Elevation

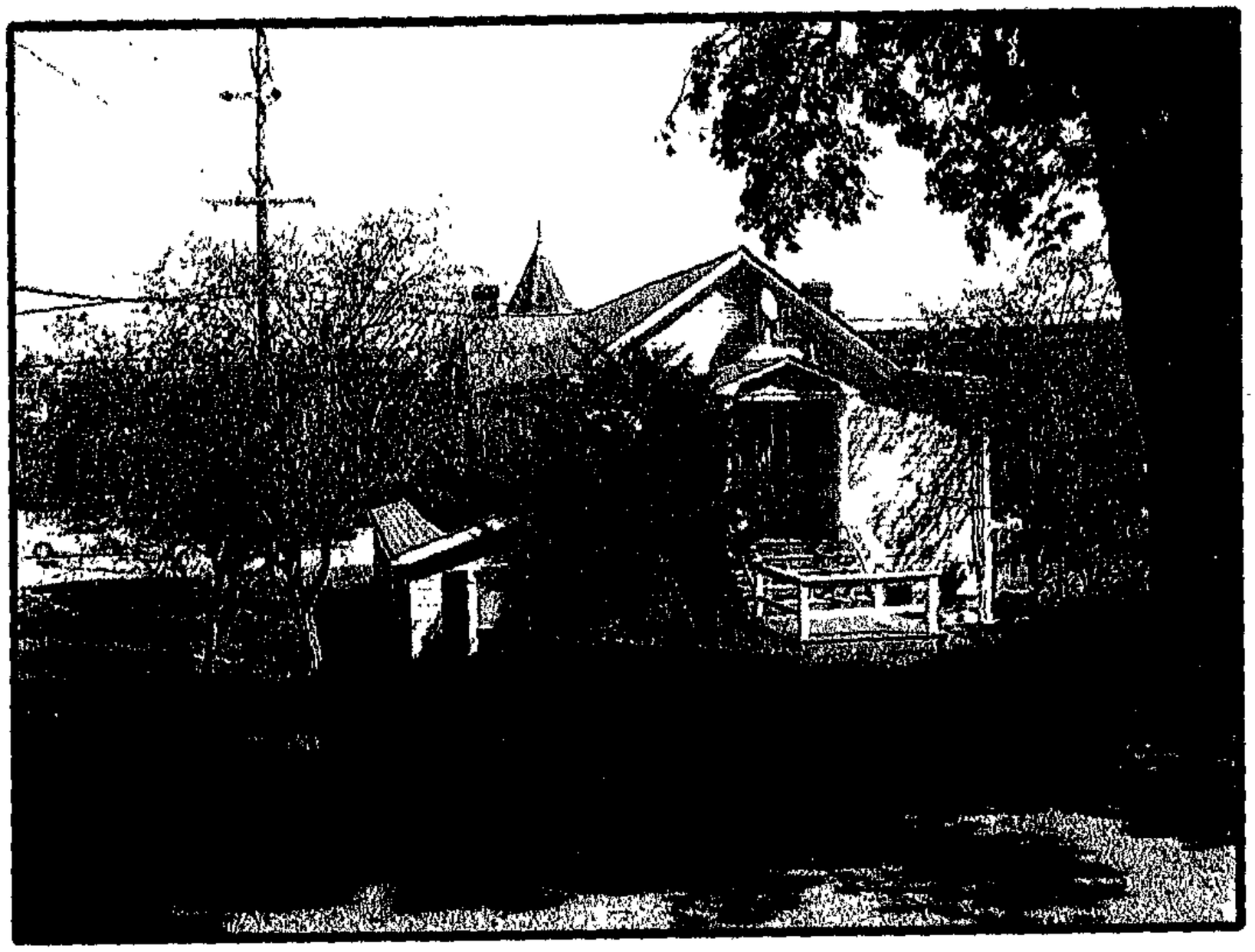
3. Southeast Elevation

4. South Elevation

5. Enclosed Porch - South Elevation



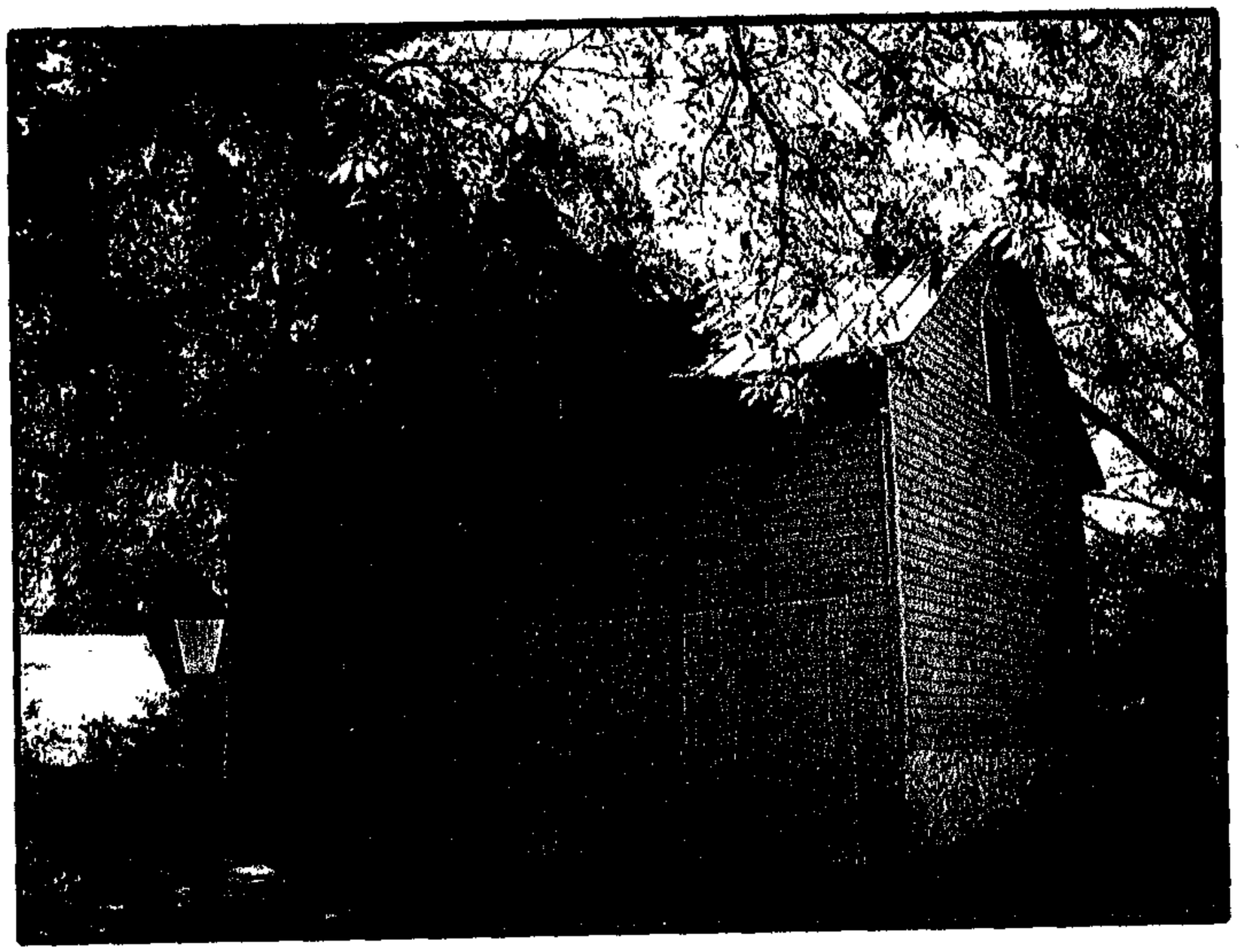
6. Entrance - South Elevation



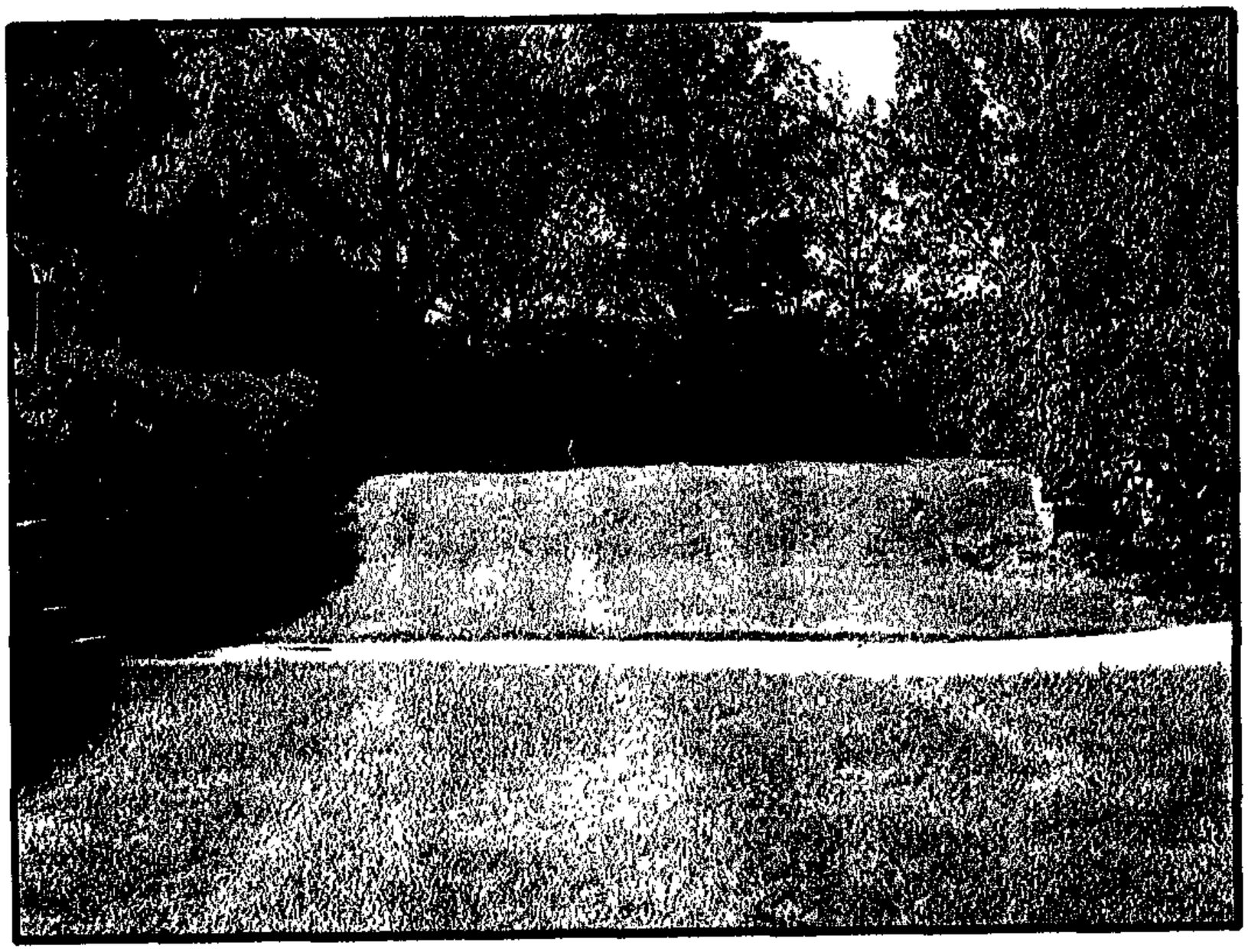
7. West Elevation

8. North Elevation

9. North Elevation

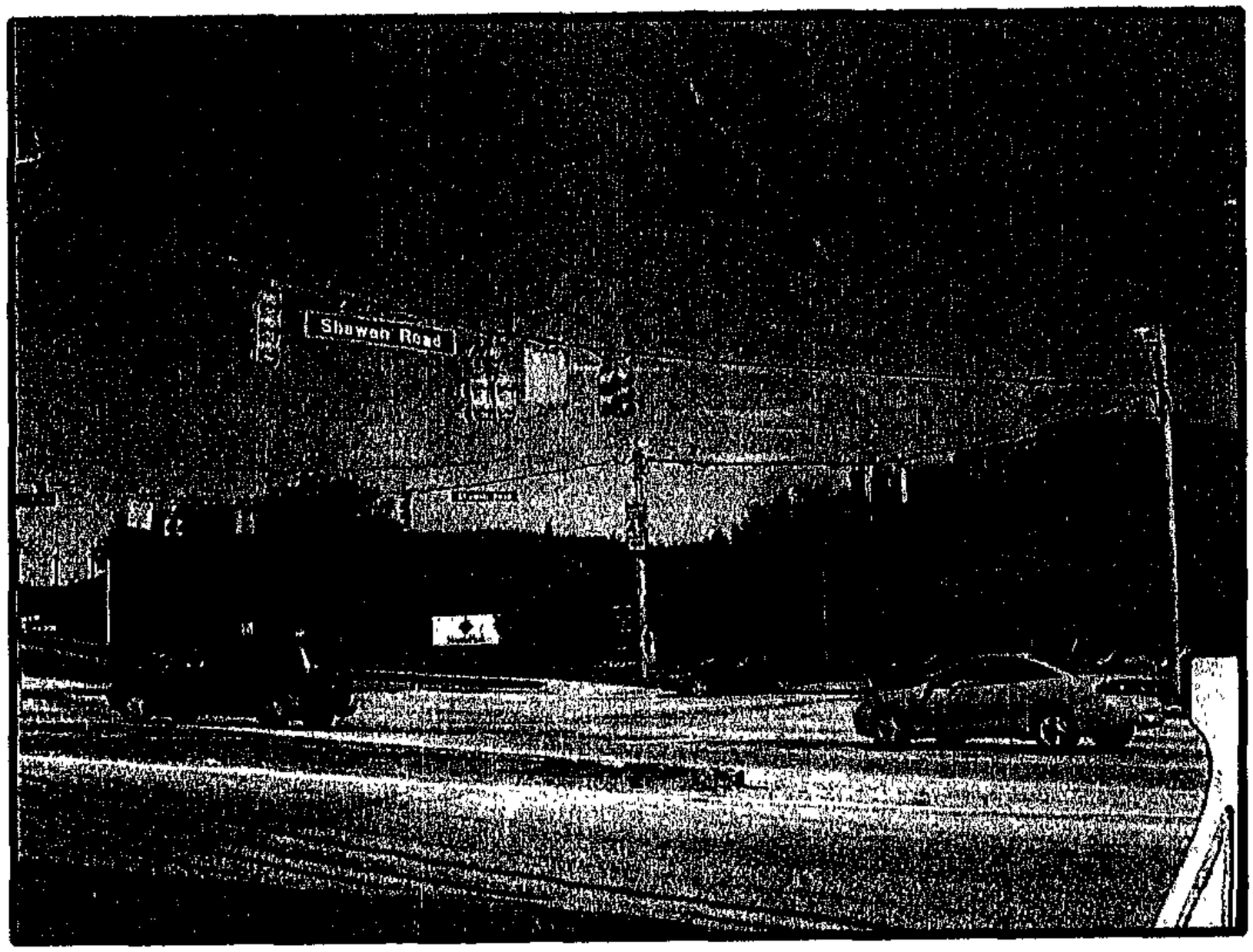


10. Carriage House

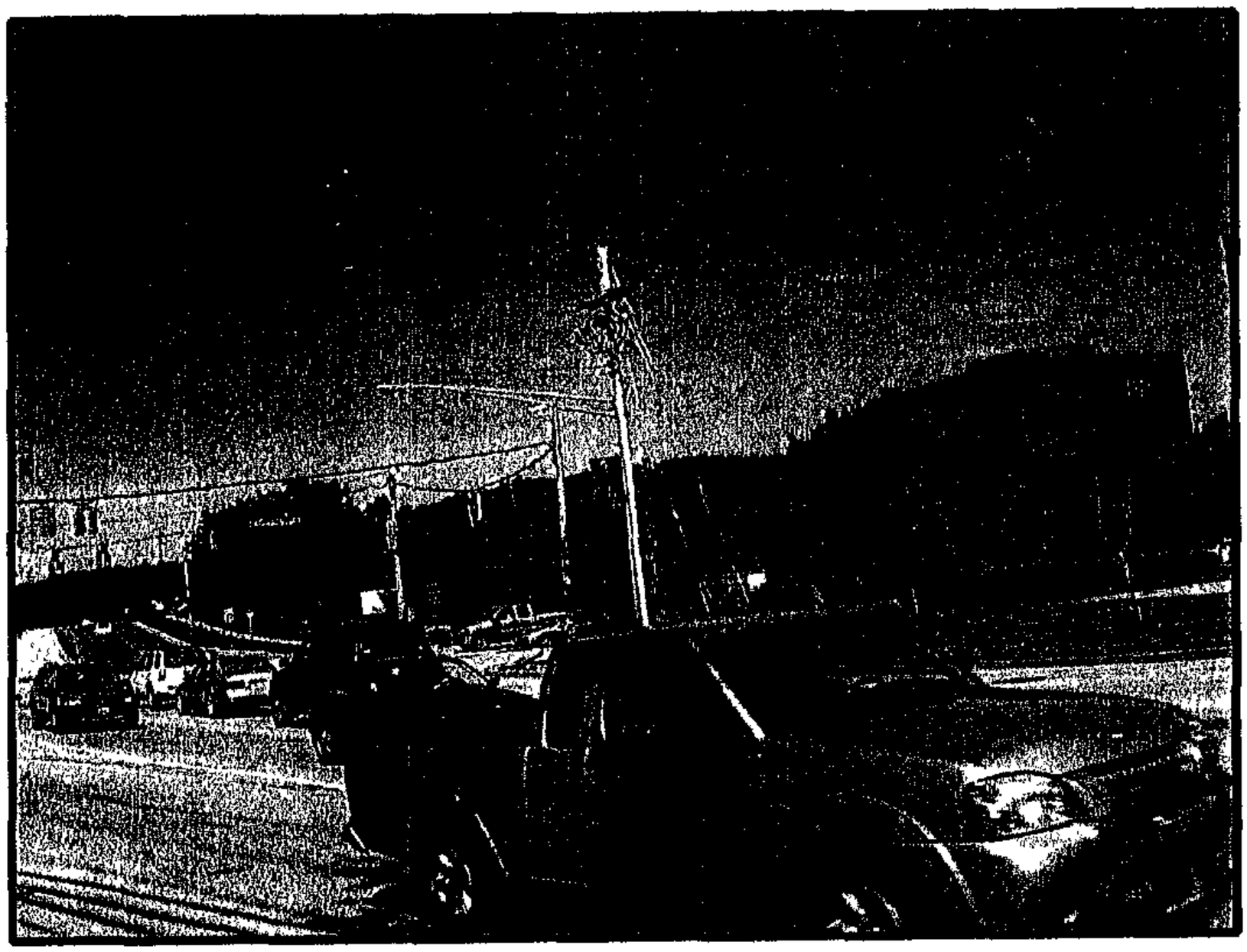


11. Setting - View West

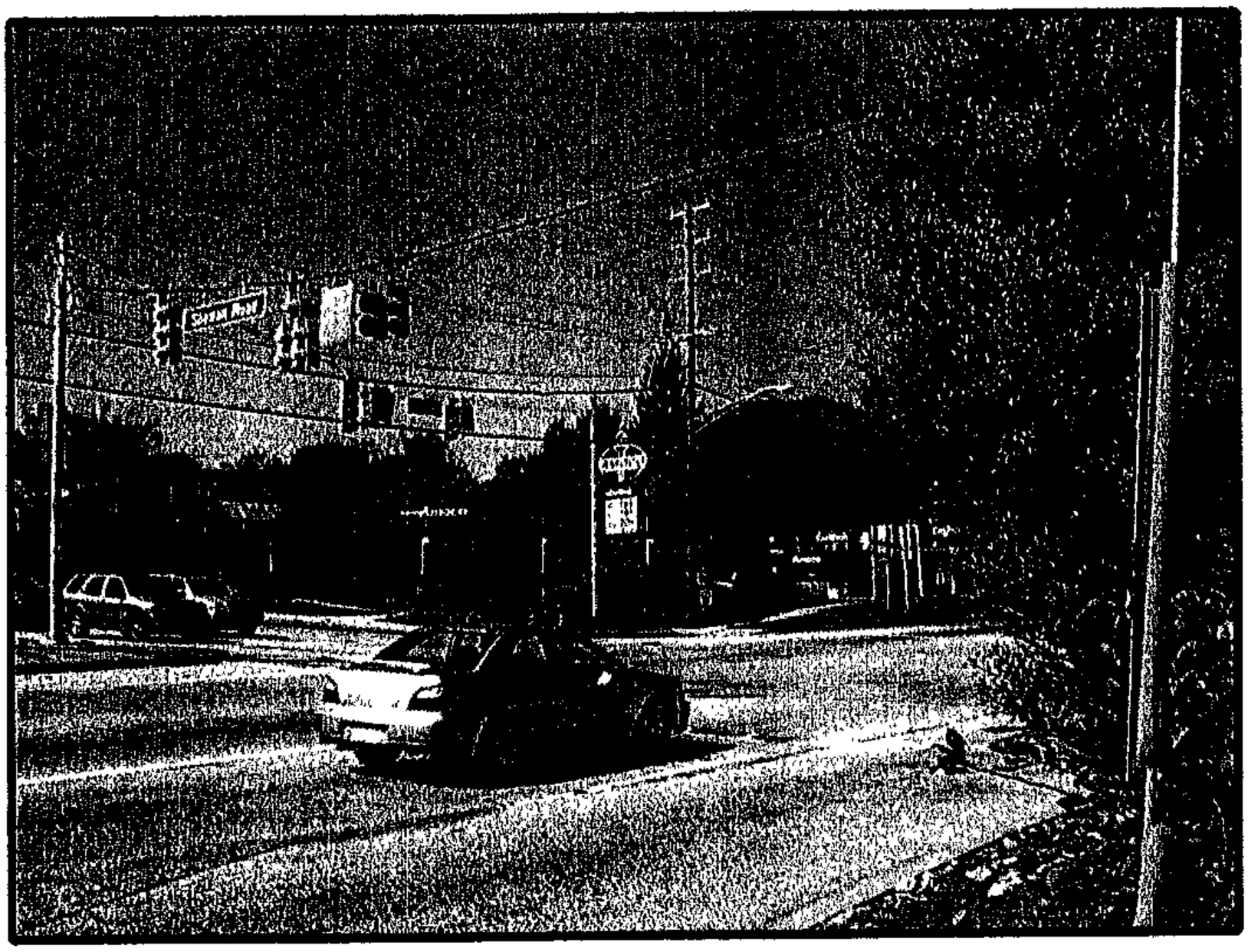
12. Setting - View South West



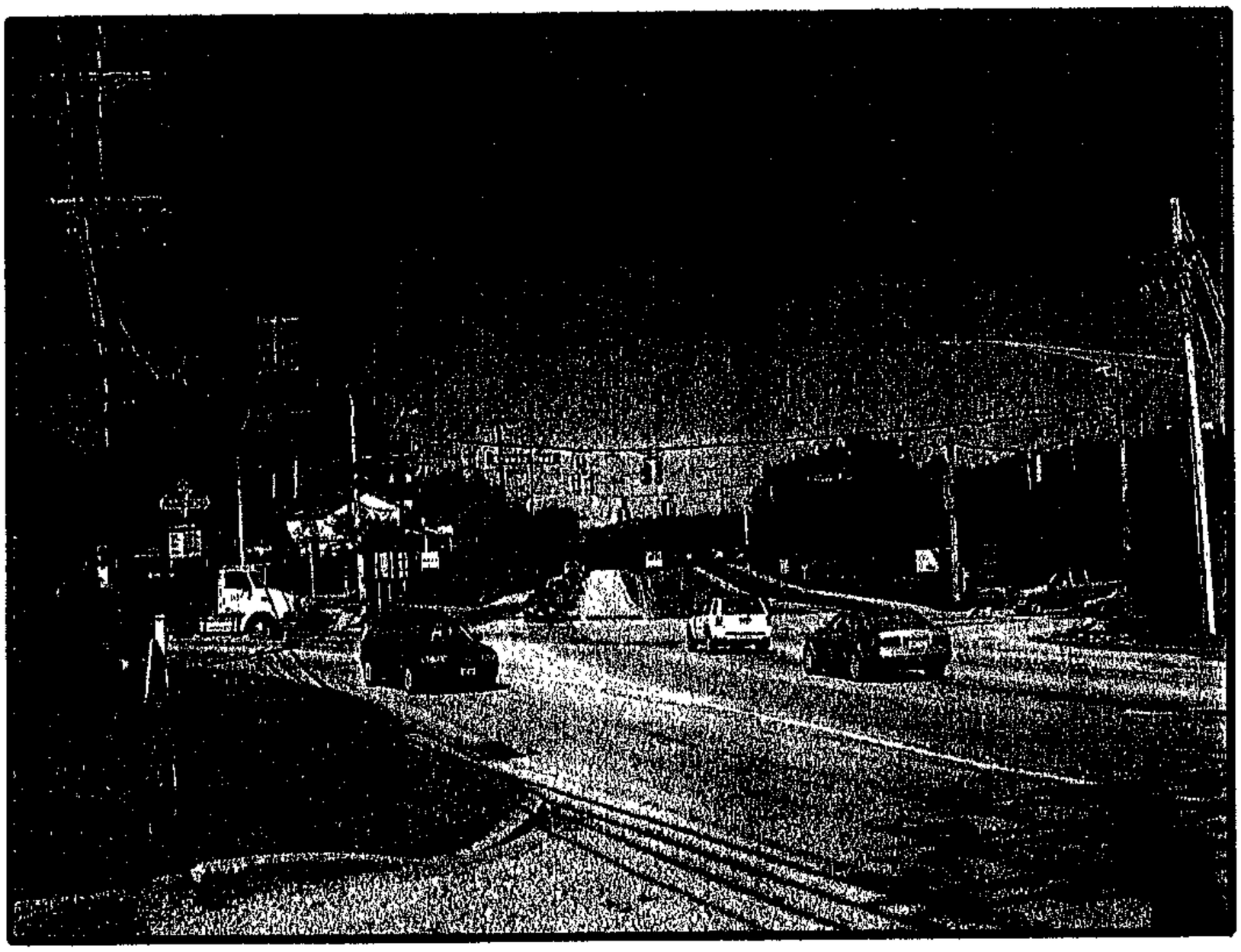
13. Corner York and Shawan Roads from Southwest - View Northeast



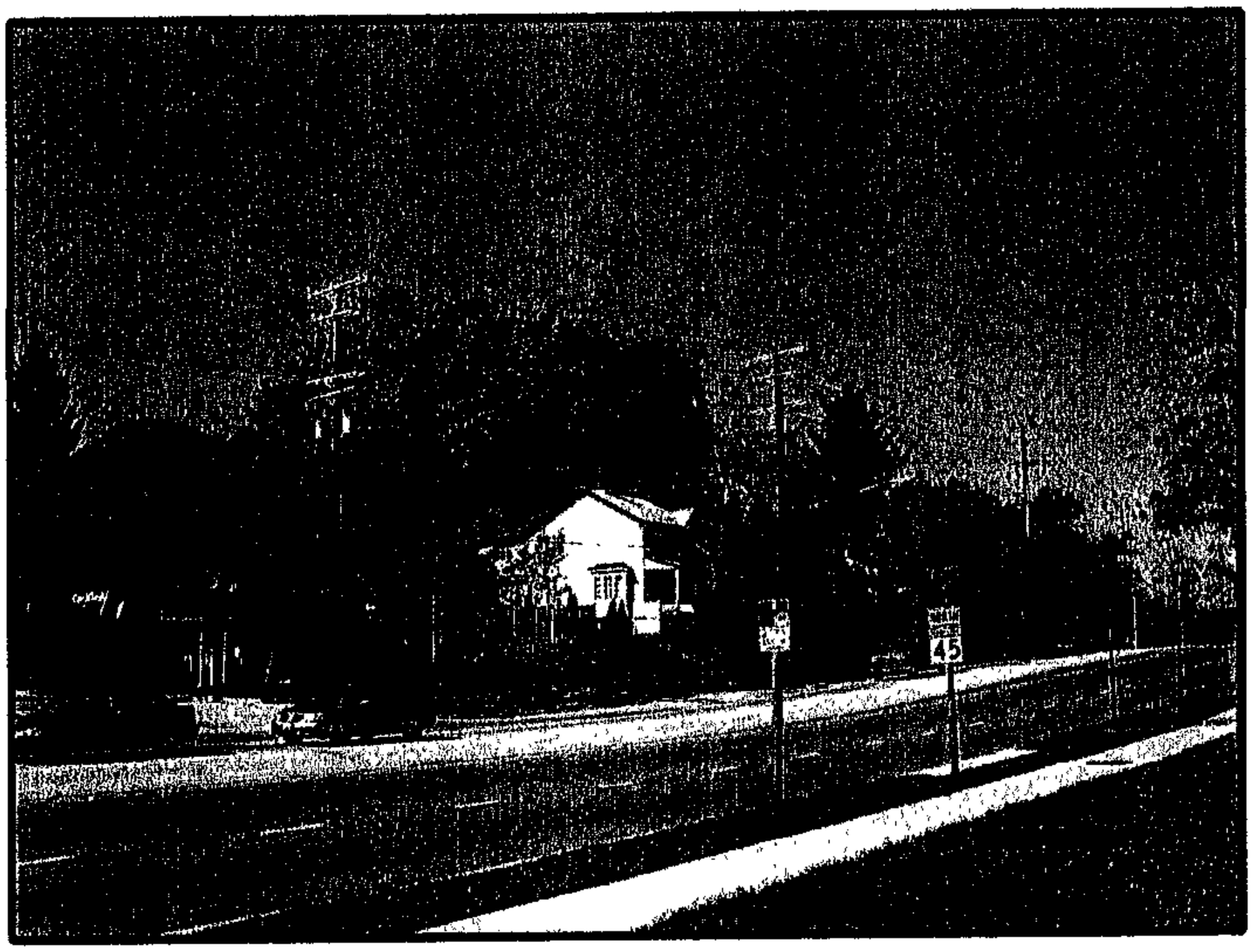
14. York Road - View Northeast



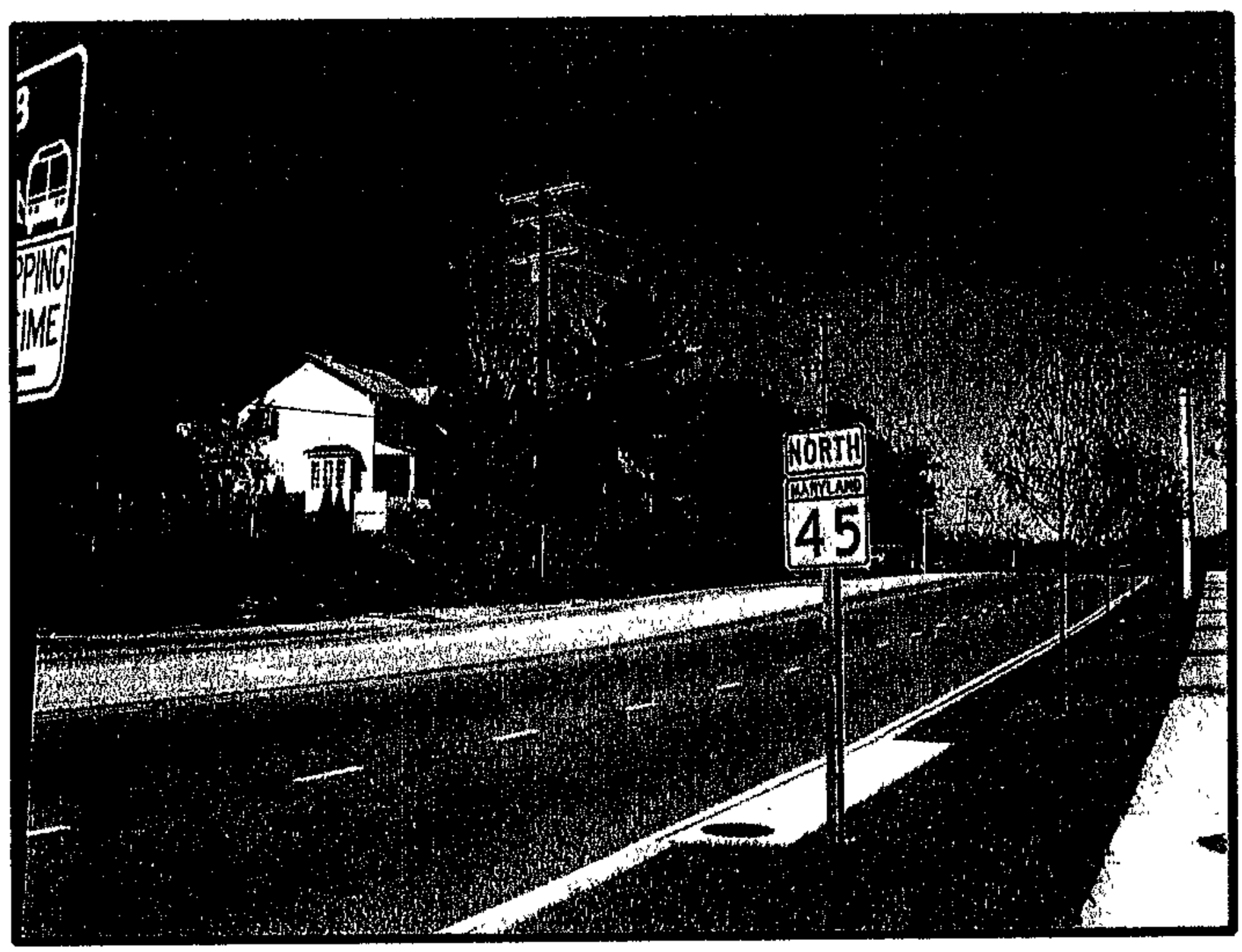
15. Corner York and Shawan Roads from Southeast - View Northwest



16. York Road - View North

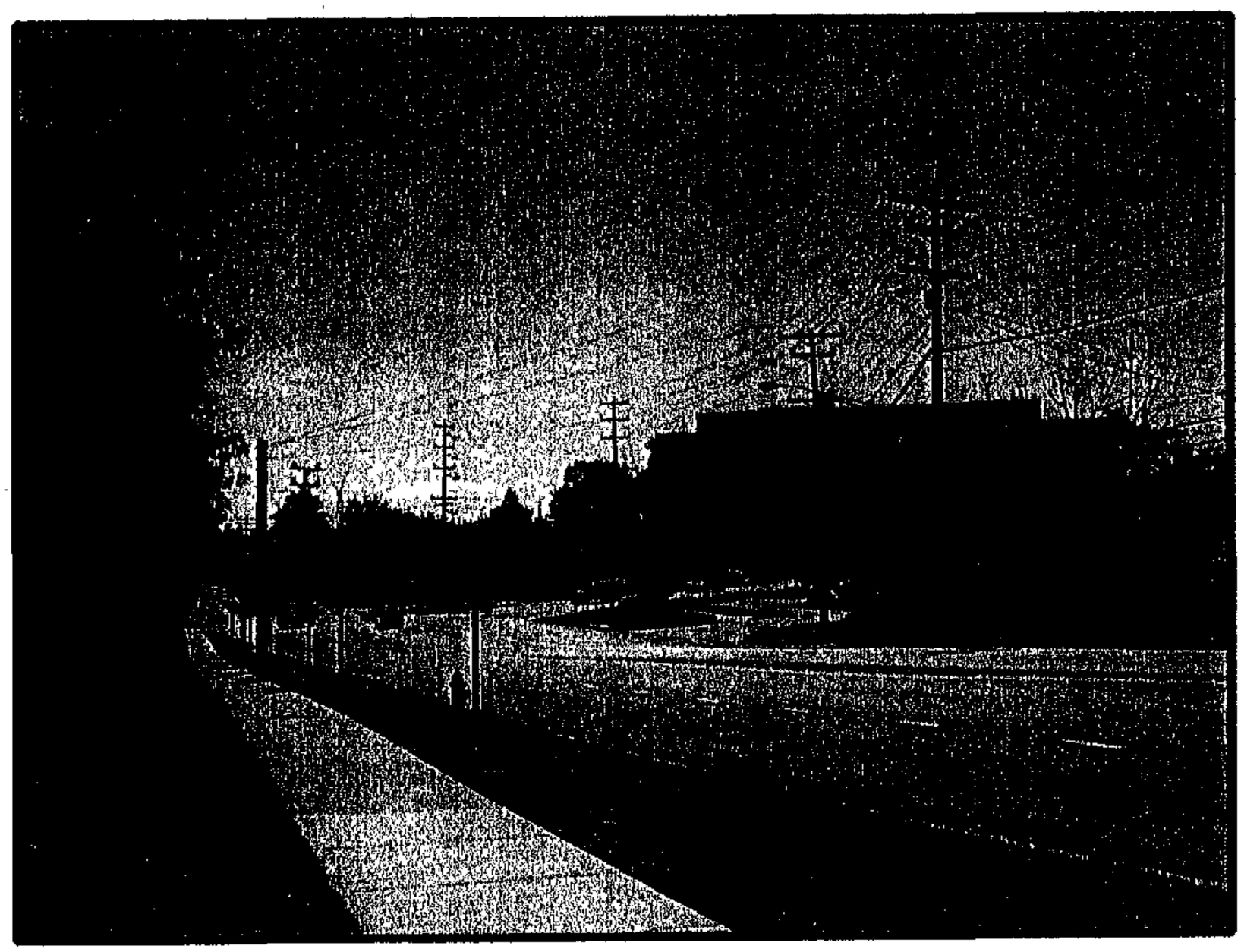


17. West side, York Road - View North

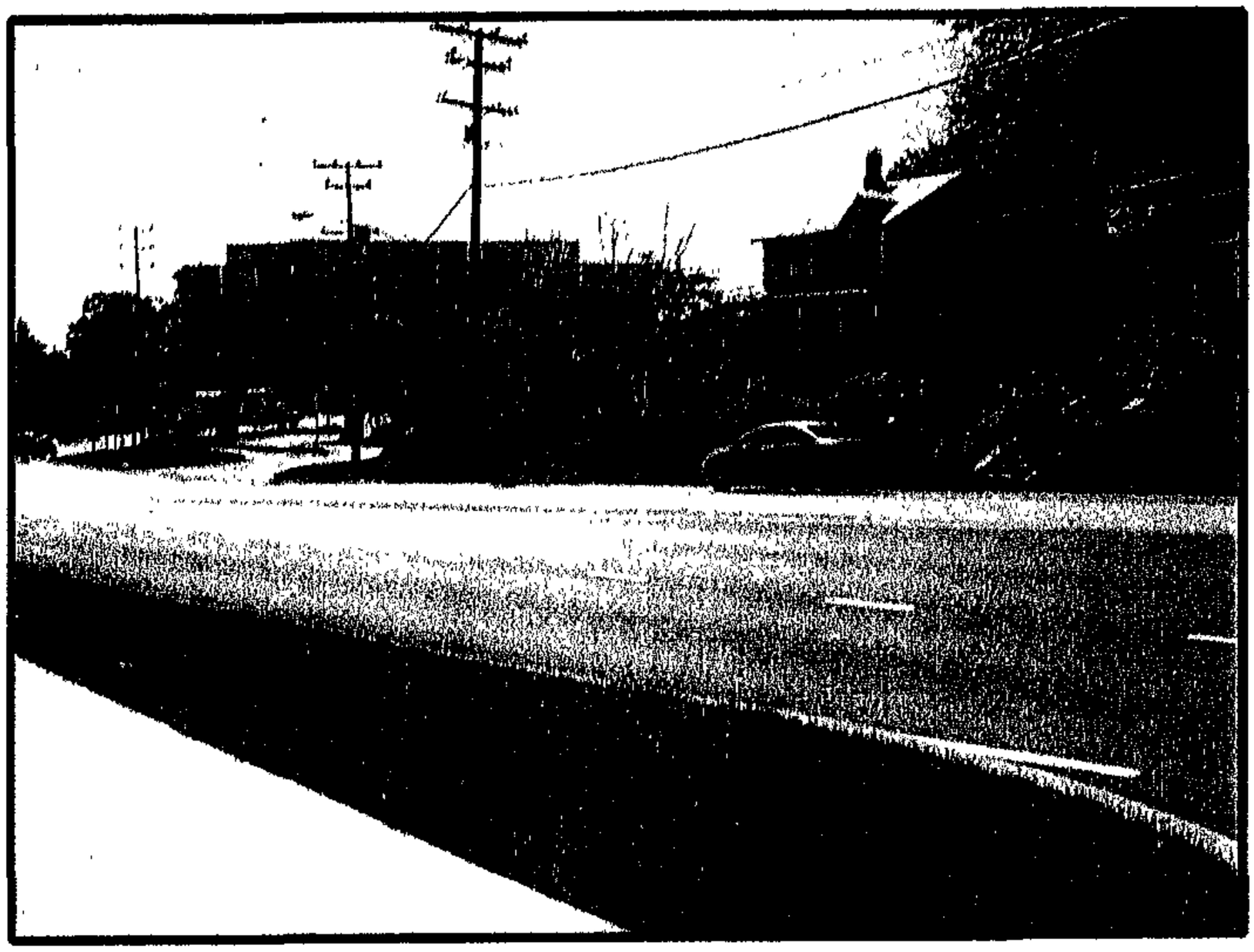


18. West side, York Road - View Northwest

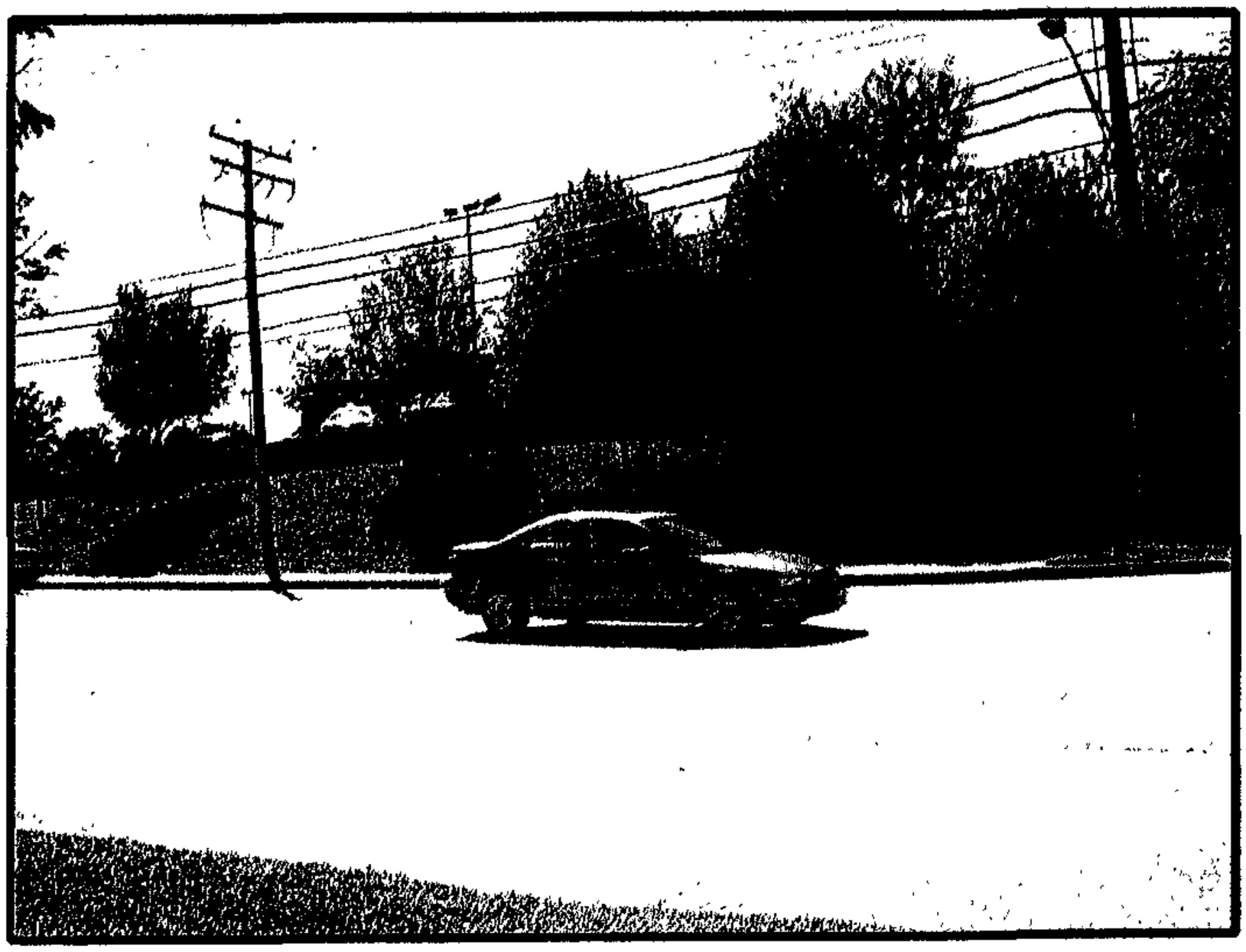
19. East side, York Road - View Southwest



20. York Road - View Southwest



21. York Road - View Southwest



22. York Road, South of Elizabeth Gardner House - View West

HISTORIC

Petition for Administrative Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 11330 York Road

which is presently zoned BL/ML-IM

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a ~~Special Hearing to approve a waiver pursuant to Sections 26-171, 26-172(b), Baltimore County Code of Sections 26-203(G)(8) and Section 26-278 to~~

Special hearing to approve a waiver pursuant to Sections 32-4-106, 32-4-107(b), Baltimore County Code of Sections 32-4-221 (b) and (c), 32-4-222 through 32-4-224, and 32-4-416 to raze a building (MHT# BA 917).

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County.

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

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

Contract Purchaser/Lessee:

Branch Banking and Trust Company
Name - Type or Print By: Richard L. Prosser,

Signature (Vice President & Area Real Estate
10 Arlington Blvd. 703-531-2854 Mgr.)
Address Suite 1100 Telephone No.
Falls Church, Virginia 22042
City State Zip Code

Legal Owner(s):

York at Shawan, LLC
Name - Type or Print

Signature By: John G. Evans, Member

Name - Type or Print

Signature

4 Quail Hollow Road x
Address Telephone No.
Lutherville, Maryland 21093-4523
City State Zip Code

Attorney For Petitioner:

Arnold E. Jablon
Name - Type or Print

Signature

Venable LLP
Company
210 Allegheny Avenue. 410 494-6200
Address Telephone No.
Towson, Maryland 21204
City State Zip Code

Representative to be Contacted:

G.Scott Barhight
Name
210 W. Pennsylvania Ave 410 832-2050
Address Telephone No.
Towson, Maryland 21204
City State Zip Code

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

Zoning Commissioner of Baltimore County

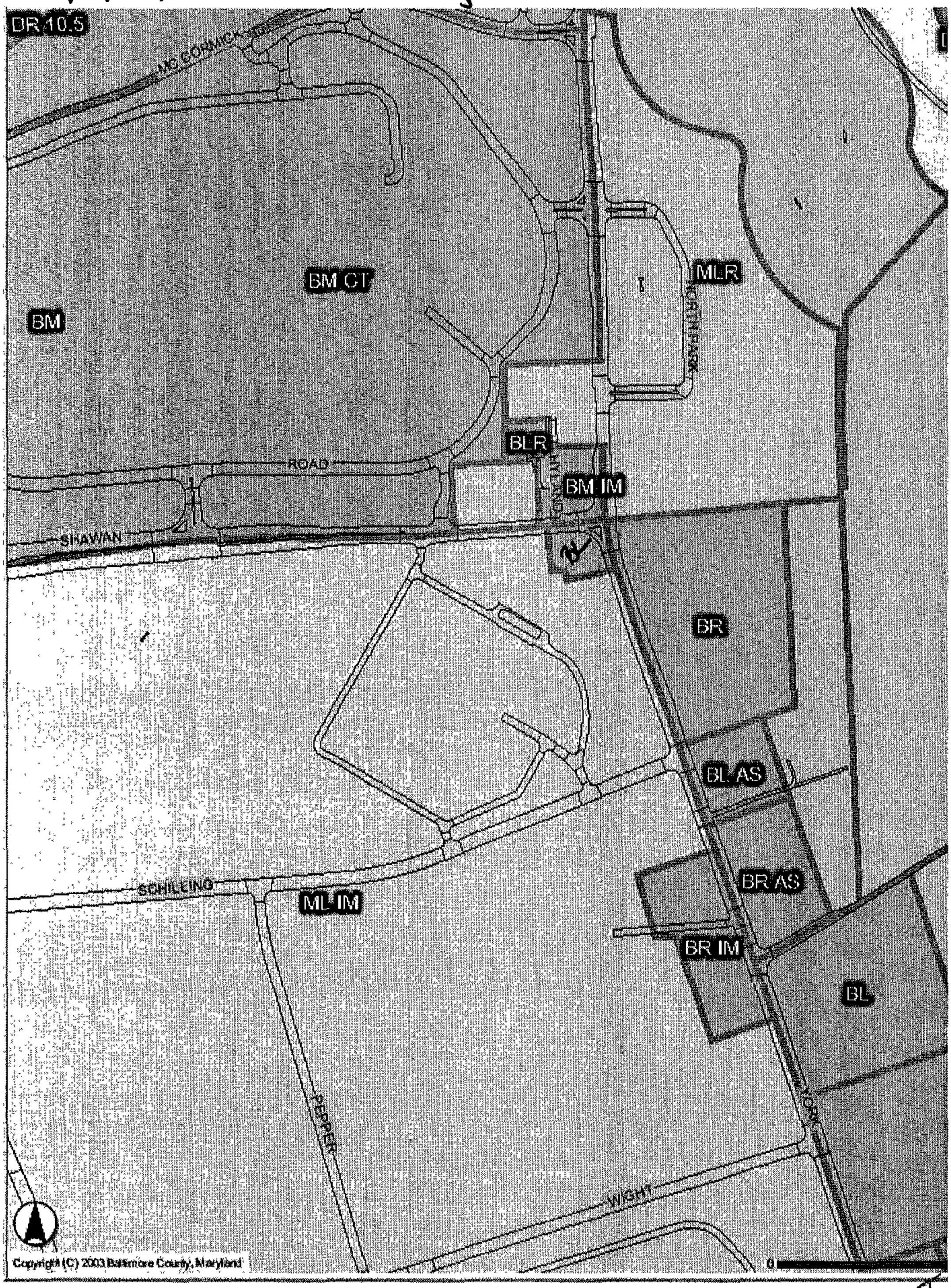
Case No. 05 332 SPH

Reviewed By JLL Date 01-04-05

9/18/98

Estimated Posting Date _____

Zone of property confirmed at Zoning 12/1/04



BBa. 7

welcome to
Baltimore County, *Maryland*

Zoning Information for BL

Zone Description: Business Local

Intent: No intent statement in the regulations.

Typical Uses Permitted by Right: Retail sales, personal services, restaurant, bank, office, tavern, food store, medical clinic.

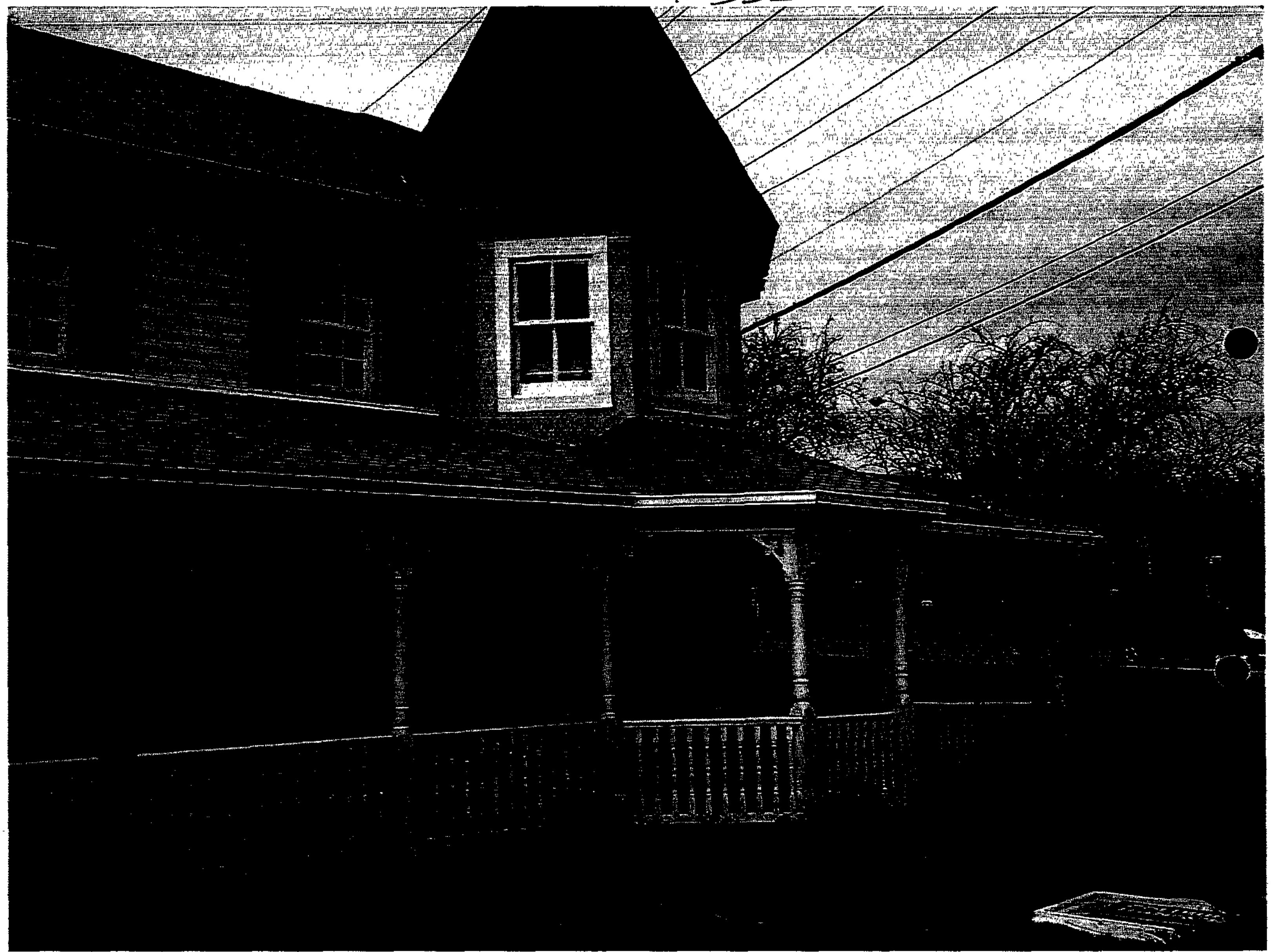
Typical Uses Permitted by Special Exception: Arcade, car wash, service garage, hotel/motel, funeral establishment, golf course, driving range, animal boarding place Class A, theatre.

For more information see: The Citizen's Guide to Zoning (PDF)

Print Report

Close Window

#332



Side of House facing York Rd.

1-3-05 ALD

#332

Side of house facing Shawan Rd.

1-3-05 ACD

#332

View of house from Driveway

1-3-05 ALD

#332

Rear View of House

1-3-05 ALD

05-332-SPH

Petitioners Exhibits

1. Plan to Accompany Special Hearing
2. O.I.T. Arial Photo
3. Minutes for Landmarks Preservation Comm. 3-10-05
4. Waiver form for Historic Building or sites
5. Kathryn Kuranda C.V.

Pet. Ex. #3

Minutes
Landmarks Preservation Commission
March 10, 2005

The scheduled meeting was convened at 6:05 p.m. by the Chairman, Mr. Mathews. The following Commissioners were:

Present	Not Present
Mr. James E. Matthews, Chairman	Ms. Sandra Caslin
Mr. John W. Hill, Vice-Chairman	Mr. Robert D. Lynd
Mr. James A. Stevens	Mr. Edward A. Griffith
Mr. Louis S. Diggs	
Ms. Norma Secoura	
Ms. Wendy McIver	
Ms. Sharon W. Paul	
Mr. Edward E. Hardester, Jr.	
Mr. Thomas L. Reynolds	
Mr. Qutub Syed	

Planning Office staff present included Vicki Nevy (LPC Administrator/Secretary), Jeffrey Long (Deputy Director of Planning), Kim Abe, Karin Brown and Tim Dugan.

Mr. Matthews stated for the record that the Commission operates under Title 32 of the County Code, the Secretary of the Interior's Standards, and its own Rules of Procedure and Historic Guidelines and Regulations.

Executive Session

At approximately 6:10 p.m., Mr. Hill moved to close the meeting to consult with counsel to obtain legal advice on a legal matter pursuant to § 10-508(a) of the State Government Article of the *Annotated Code of Maryland*. The motion was seconded by Ms. Secoura, and passed unanimously on a voice vote.

Upon a motion properly made and seconded in the closed meeting, the regular meeting resumed in open session at 6:35 p.m.

Review of the Agenda

1. In accordance with a procedure previously established by the Commission [see October 14, 2004 Minutes], several items were treated as a "Consent Agenda." Mr. Hill moved that, for the reasons stated, and in accordance with any conditions stated, in the written Action Summaries provided to the Commissioners by the staff, items 11, 12, 13, 14, and 15 be approved as submitted. The motion was seconded by Mr. Reynolds, and passed unanimously on a voice vote. There were no other changes to the published Preliminary Agenda.

Approval of the Minutes

2. Mr. Reynolds moved that approval of the February 10, 2005 Minutes be postponed to April 14, 2005. Mr. Hill seconded the motion, which passed unanimously on a voice vote.

Petition for Historic District

3. At the telephoned request of the Petitioner, the Commission agreed without discussion to postpone, to the April 14, 2005 meeting, the reconvened hearing on the Munafo property, Lot 12 in the Ruxton Ridge, LLC subdivision (former Ridge School property), 1306 West Joppa Road.

Public Hearings on Landmark Nominations

4. **Continued hearings on structures in the Philadelphia Road corridor**

   b. **Buck's Schoolhouse, 9734 Philadelphia Road (MHT # BA-2477)**
   c. **Taylor House and family cemetery, 9913 Philadelphia Road (MHT # BA-3177)**
   f. **Davies' House, 1454 Mohrs Lane (MHT # BA-3166)**
   g. **Seward's Store, 7819 Philadelphia Road, Rosedale (MHT # BA-2096)**

In consideration of the testimony provided at the February 10, 2005 meeting and the report of the Technical Committee, the Commission made the following decisions:

Mr. Diggs moved, given that the former Buck's Schoolhouse has no semblance of remaining historic integrity, to decline placing the building on the Preliminary Landmarks List. Mr. Hill seconded the motion, which passed unanimously on a voice vote.

Mr. Hill moved to postpone a Landmarking decision on the Taylor House and family cemetery until the April 14, 2005 meeting. Mr. Reynolds seconded the motion, which passed unanimously on a voice vote. A citizen, Ms. Judith Davies, questioned why the item was tabled. Mr. Matthews responded that it was to receive advice from the Office of Law. Ms. Davies noted that, from additional deed research which she had provided to Mr. Diggs, the house should properly be identified as the Henry House (never having been owned by Taylors), and also requested that the house and the family cemetery be presented as two separate Agenda items (as they had been submitted by the Nottingham Improvement Association). Mr. Matthews agreed to the request.

Mr. Diggs moved that, although the Davis House apparently is a Sears kit house, it has been substantially altered, and the Commission should therefore decline to place it on the Preliminary Landmarks List. Mr. Syed seconded the motion, which passed unanimously on a voice vote.

Regarding Seward's Store, Mr. Diggs reported that he and Ms. Secoura had mistakenly looked at the wrong (adjoining) building during their site visit. They did

not feel qualified to make an informed recommendation to the Commission. Accordingly, he moved to table a decision until the April 14, 2005 meeting. Mr. Hill seconded the motion, which passed unanimously on a voice vote.

5. **Continued hearings on contributing structures in the Winter's Lane African American Survey District (MHT # BA-3067; National Register-eligible district):**

   a. **Brassard property, 80 Winter's Lane**
   b. **Washington property, 206 Winter's Lane**

Regarding the Brassard property, Mr. Diggs explained that he visited the site, but that he could not go inside. He stated that because he is not an architect he lacks the expertise to determine whether the building is structurally sound. He proposed that a Landmarking decision be tabled until an architect can make a site visit. Ms. Brassard, the current owner of the property, indicated that she dared not enter the building for fear it may collapse. She stated that she has to come from Europe to attend these meetings at great expense to her and that it is a hardship to make repeat trips. Mr. Paul McKean, a representative of the Baltimore County Historical Trust, Inc., stated that he is an architect with extensive building restoration experience and that he is familiar with both buildings. He believes both buildings are restorable. In the case of 206 Winters Lane, he thought that it could be rebuilt for less than the cost of a new structure. He also believes that both structures contribute to the historic integrity of the district. Mr. Hardester seconded Mr. Diggs' motion to table a decision regarding 80 Winters Lane until an architect can visit the site. The motion passed unanimously on a voice vote.

Mr. Worthington Washington, owner of 206 Winters Lane, also argued that Landmarking his building would pose a personal hardship. He said that he could get a new Maryland approved home for $ 90,000. The new home would have a basement and he did not think that he could restore his building and add a basement for the same amount. Mr. Stevens, noting that he is an architect and has visited the site, expressed his opinion that the building is restorable. Mr. Washington countered, "yes, but at what cost, and who will pay?" Mr. Matthews answered, "you or the contract purchaser". Mr. Hill moved to continue the hearing the next meeting. The motion was seconded by Mr. Hardester and passed unanimously on a voice vote.

6. **St. Luke's United Methodist Church's buildings:**

   a. **Young House, 52 Bond Avenue MHT # BA-1374)**
   b. **Odd Fellows Lodge – Community Building, 58 Bond Avenue (MHT # BA-1382)**
   c. **St. Luke's M.E. (United Methodist) Church, 60 Bond Avenue (MHT # BA-1255).**

The parish has just retained Mr. Arnold Jablon as attorney. Mr. Jablon asked for a continuance of the hearing, which was granted without opposition.

7. **Dr. Tracy's House, 19919 Cameron Mill Road, Walker vicinity.**

Before the hearing was opened for testimony, Mr. Hill made a motion, which was seconded by Mr. Diggs, to drop the item from consideration. A discussion ensued. Ms. McIver questioned why the item was being dropped. She argued that the structure is historic and warrants protection as an example of a vernacular farmhouse. Mr. Hill reiterated his motion. The motion was approved, with Ms. Paul, and Messrs. Diggs, Hill, Hardester, Reynolds, Syed, and Matthews voting aye, and Ms. McIver, Ms. Secoura, and Mr.Stevens voting nay.

8. **"Overlea", 108 Delrey Avenue, Catonsville**

Karin Brown presented the staff's recommendation to place the house on the Preliminary Landmarks List for contributing significantly to the County's historical heritage under criteria (1) – for its association with the Rev. George W. Ebeling and his pioneering educational work through the Overlea Home School; (2) – as an exceptionally distinctive example of high-style Italianate architecture, following the models of Andrew Jackson Downing; with integrity of setting, design, workmanship and materials; and (3) – as, a good example of the work of an architect or master builder. Mr. Hardester moved to place the structure on the Preliminary Landmarks List on all three criteria. Mr. Syed seconded the motion.

Mr. McPherson, owner of the property, expressed his support for Landmarking the property. He was asked whether he had any plans for the house. Mr. McPherson indicated that his only plan beyond continuing to rehabilitate the house is to construct a freestanding garage. Mr. Matthews noted that any alterations to the exterior of the historic structure would have to come before the Commission. The motion passed unanimously on a voice vote.

9. **"Elizabeth Gardner House," 11330 York Road (at Shawan Road), Hunt Valley (MHT # BA-917)**

Mr. Robert Hoffman, representing the contract purchaser (a bank), and Mr. G. Scott Barhight the legal representative of property' current owner, made a powerpoint presentation against preserving the building.

A representative of R. Christopher Goodwin & Assiciates, submitted a report and explained at great length her opinion, that the structure has lost its historic integrity and does not warrant being placed on the Landmarks List. Ms. Trisha Bentz, Executive Director of the Baltimore County Historic Trust, indicated that all changes made are reversible and that the building should be placed on the Preliminary Landmarks List. Mr. McKean also supported the Trust's position.

Ms. Secoura agreed that the building is very much a landmark and that it constitutes a key property on that corner. Mr. Hardester moved, on the basis of the information presented in this hearing, to accept the Planning Office's recommendation as stated by Mr. Long, not to place this house on the Landmarks List. Mr. Syed seconded the motion. The following five Commissioners voted for the motion: Ms. Paul, and

Messrs. Reynolds, Hill, Hardester, and Syed. Ms. McIver abstained . The motion failed.

Mr. Barheight suggested that the Commission vote on a motion stated in the affirmative. Mr. Stevens made a new motion, to place the structure on the Preliminary Landmarks List. Mr. Diggs seconded the motion. Mr. Stevens, Mr. Diggs, and Ms. Secoura voted for the motion. Ms. McIver abstained – the motion failed.

10. Schlosser- Moxley House, and Garage, 6100 Frederick Road, Paradise vicinity, built ca. 1927

Mr. Dugan presented the staff's recommendation to place these owner-nominated structures on the Preliminary Landmarks List for contributing significantly to the County's historical heritage under criteria (1) – for their association with the pattern of 1920s suburban development in the Catonsville area; and (2) – the house as a notably large, distinctive example of sympathetically-mixed architectural styles, and (3) – as, obviously, the work of a master builder.

Mr. Hardester moved to accept staff's recommendation, which was seconded by Mr. Hill. Mr. Samuel Kenney, a gentleman living in the area, expressed his opposition to the request. He indicated that the hearing notice sign was not properly posted by the County. The property owner responded that his property straddles the City/County line and that he moved the sign, so that it would be on the County portion of his property.

Mr. Hardester also responded to Mr. Keeney. The motion was then approved unanimously on a voice vote.

Alteration to properties in County Historic Districts or Landmark structures

11. Quinn property (Rutherford House), 18 Chatsworth Avenue, Glyndon County Historic District (MHT # BA-739): Construct of an addition, on the rear

In agreement with the supporting letter from the local advisory committee, a certificate of appropriateness was approved, via the Consent Agenda.

12. Acle property, 4606 Prospect Avenue, Glyndon County Historic District. Replace a freestanding garage with a new garage, and construct a two-story addition on the side of the house

In agreement with the supporting letter from the local advisory committee, a certificate of appropriateness was approved, via the Consent Agenda.

Nominations to the Landmarks List

13. Rowe-Jessop-Fosters Store, 16925 York Road, Hereford (MHT # BA-2051, built ca. 1833-1841)

14. **"Smallwood", 14400 Bonnie View Road, Western Run Valley (MHT # BA-449, build ca. 1801, slavery site).**

15. **"Rockland" 10214 Falls Road, Rockland (MHT # BA-219, built ca. 1827, slavery site.**

The nomination of each of these structures was accepted for public hearing on May 12, 2005, via the Consent Agenda.

<u>Other business</u>

16. **Resolution for recognition and protection of sites related to slavery.**

Mr. Dugan reported that some property owners have already objected to the nomination of their slavery-related structures to the Landmarks List. He recommended the adoption of the draft resolution, as mailed to the members, so that there would be, on a single sheet to accompany Ms. Abe's research report, a written explanation of the Commission's rationale for making the protection of these properties a high priority. Mr. Diggs moved to adopt the draft resolution. Mr. Reynolds seconded the motion, which was approved unanimously by voice vote.

17. **Status report on MHT's policy on State Tax Credit Program eligibility**

Mr. Dugan summarized the situation now affecting all Baltimore County Landmark owners who may wish to participate in the State program. Because of an application in the Towson area, MHT has been forced to evaluate the provisions and effects of the Landmark law. MHT has concluded that, although the law gives the LPC authority to control changes to a Landmark structure, it does not give the Commission any authority to protect the historic environmental setting which may be integral to the structure's historic significance. This position is expressed in the February 8, 2005 letter to the Commission from the Deputy Director of MHT, citing the LPC's lack of authority to implement the requirement in state law that -

> all local historic designations meet the criteria of the National Register of Historic Places (NR), including that a property retain sufficient land to preserve its historic context or environmental setting.

Because of this deficiency in the Landmark law, MHT has taken the position that Landmark status does not fulfill the requirement in State law to be eligible for the tax credit program. Mr. Dugan noted that owners of a Preliminary Landmarks List house in Catonsville have received a denial from MHT and have asked their County Councilman for help. Mr. Dugan described possible options. Mr. Reynolds moved that the Chairman be authorized to offer the LPC's assistance to the Council, in cooperation with the MHT, for overcoming the deficiency in the County law. Ms. McIver seconded the motion, which passed unanimously by voice vote.

18. **Status report on unauthorized fence, 2 Waugh Avenue, Glyndon County Historic District**

Mr. Dugan and Ms. Abe commented on the forthcoming public hearing with Hearing Officer which is supposed to deal with the violations both of the Landmarks law and the zoning regulations. Mr. Reynolds moved, and Mr. Syed seconded, that the Commission should re-iterate its position [adopted in the October 14, 2004 meeting] to require compliance with the Landmarks law.

19. Participation in Technical Committee site visits

The importance of the having the Commissioners fulfill their commitments to makesite visits was noted by Mr. Dugan.

20. Hearings on slavery-related structures

The Commissioners agreed that the staff, upon discovering deficiencies in the notifications about the February 10th public hearings, had correctly understood the Commission's intentions and had properly exercised administrative discretion in giving notice that the hearing is scheduled for April 14, 2005.

The meeting was adjourned at 8:40 p.m.

VKN:KEB/TD:vkn

Pet. Ex #4

SPECIAL HEARING WORDING FOR WAIVER OF PRESERVATION OF HISTORIC BUILDINGS OR SITES

Special Hearing to approve a **waiver** pursuant to Sections 32-4-107 (b), BCC of Sections 32-4-223.(8) and Section 32-4-416(a)(2) **to raze, alter or construct addition to building**._____
(indicate work here)

BALTIMORE COUNTY CODE 2003

32-4-107. WAIVERS.

(b) *Waivers- Development Plan requirements.*

(1) The Director of Permits and Development Management may waive the Development Plan requirements under Section 32-4-221(b) and (c) and 32-4-222 through 32-4-224 of this title and the Hearing Officer's hearing if, after consultation with appropriate county agencies, the Director finds:

(i) That the size, scope, and nature of a proposed development does not justify strict compliance with this title; and

(ii) That a waiver would be within the scope, purpose, and intent of this title; and

(iii) That the proposed development complies with all other county laws and regulations.

32-4-223. REQUIRED EXISISTING SITE CONDITION INFORMATION

The Development Plan shall identify the following information concerning existing site conditions:

(8) Identification of any building, property, or site within or contiguous to the proposed development that is included in:

(i) The Maryland Historical Trust Inventory of Historic Properties;

(ii) The county preliminary or final landmarks list;

(iii) The National Register of Historic Places;

(iv) The Maryland Archeological Survey or identification of any county historic district; or

(v) A National Register District covering the proposed development;

32-4-416. PRESERVATION OF NATURAL OR HISTORIC FEATURES

(a) *Preservation of features.* Each Development Plan shall preserve:

(8) Historic structures or sites identified on any of the lists referred to in Section 32-4-223(8) of this title.

1988 Code References:
26-172(b), 26-203(c)(8),
26-278--8/19/04 WCR

Law Offices
John C. Murphy

John C. Murphy

516 N. Charles St., Suite 206
Baltimore, Md. 21201
jcmurphy@bellatlantic.net

410-625-4828
443-956-8711
Fax 410-625-0273

April 8, 2005

Baltimore County Board of Appeals
Courthouse
400 Washington Avenue
Towson, Md. 21204

This is a notice of appeal on behalf of the Baltimore County Historical Trust, Inc and Thomas S. Weaver, President, Advance Masonry Systems, Inc. The matters appealed both relate to the property at 11330 York Road and are as follows:

1. Decision of the Zoning Commissioner of Baltimore County, Case No. 05-332-SPH- granting approval to raze the historic structure on the property. To the extent necessary this appeal should also be considered to include an appeal of the decision of the director of the Department of Permits and Development Management to waive certain requirements, as stated on page 1 of the Zoning Commissioner's decision.

2. Decision of the Landmarks Preservation Commission at the meeting of March 10, 2005 to not list the property at 11330 York Road as a Baltimore County landmark.

If there is anything else required to perfect these appeals, will you please advise me.

Sincerely

John C. Murphy

RECEIVED
APR 11 2005
Per. ...

EXHIBIT
B

Pet. Ex #5

KATHRYN M. KURANDA, M. ARCH. HIST.

VICE PRESIDENT - ARCHITECTURAL SERVICES/ARCHITECTURAL HISTORIAN

EDUCATION

Master of Architectural History, Concentration in Historic Preservation, University of Virginia, Charlottesville, Virginia, 1984

Bachelor of Arts in American Studies, Dickinson College, Carlisle, Pennsylvania, 1977

Workshop "National Environmental Policy Act", University of Southern Maine, Summer Session Program, 1999

Workshop "Property Transfer Site Assessment Research Methods," Illinois State Museum, Springfield Illinois, 1992

Training Course "Historic Concrete: Investigation and Repair," Association for Preservation Technology, 1989

Training Course "Working With Section 106," Advisory Council on Historic Preservation and The Bureau of Land Management, 1988

London Summer School, The Victorian Society in America, 1980

Training Course "Wood Preservation Technology," Association for Preservation Technology, 1978

Historic Restoration and Preservation Technology Course Work, St. Lawrence College, Ontario, Canada, 1977

Training Course "Professional Development Program in Engineering for Older Buildings, including Heritage Buildings: Materials & Pathologies," Association for Preservation Technology & National Center for Preservation Technology and Training, 2003.

PROFESSIONAL ASSOCIATIONS

Member, APT; Member, International Council on Monuments and Sites; Member, Vernacular Architectural Forum.

Board of Directors, Delaplaine Visual Arts Education Center, Frederick, Maryland
Member, Public Art Task Force, Frederick, Maryland

PROFESSIONAL EXPERIENCE

Vice President -- Architectural and Historical Services, R. Christopher Goodwin & Associates, Inc., Frederick, Maryland, 1991-present

Assistant Vice President -- Architectural and Historical Services, R. Christopher Goodwin & Associates, Inc., Frederick, Maryland 1990 - 1991

Senior Project Manager, R. Christopher Goodwin & Associates, Inc., Frederick, Maryland, October 1989 - 1990

Architectural Historian, State of Nevada, Department of Conservation, Division of Historic Preservation and Archeology, State Historic Preservation Office, April 1984 – July 1989

Architectural Historian, Colorado Department of Highways, Project Development Branch, Denver, Colorado, October 1983 – March 1984

Architectural Historian, Community and Preservation Planning Consultants, Concord, New Hampshire, August 1981 – June 1982

Preservation Consultant, Stafford Rockingham Regional Council, Exeter, New Hampshire, June 1980 – August 1981

MANUSCRIPTS, PUBLICATIONS, AND PAPERS PRESENTED

1980a *Franklin Falls Historic District Nomination.* Franklin Falls, New Hampshire.

1980b *Cultural Resources of Rochester, New Hampshire.* Contributor, Survey Planning Report.

1981a *Plymouth Depot National Register Nomination.* Plymouth, New Hampshire.

1981b *Merchants Exchange.* Concord, New Hampshire. (HABS).

1981c *Rogers Garage.* Concord, New Hampshire. (HABS).

1982a *Boston Port Road Historic District Planning Report.* Rye, New York, Preservation planning study for National Register Historic District encompassing three estates on Long Island Sound.

1982b *Barret Hill Farm National Register District Nomination.* Wilton, New Hampshire.

1982c James Steam Mill Apartments, Historic Preservation Tax Certification Project, Newburyport, Massachusetts.

1982d Medical Clinic, Historic Preservation Tax Certification Project, Concord, New Hampshire.

1983a *Trinidad Foundry and Machine Company.* Trinidad, Colorado, (HAER).

1983b *Lime Kiln Near Morrison.* Morrison, Colorado (HAER).

1983c *Rooney Ranch.* Jefferson County, Colorado (HABS).

1984 *Midwest Iron & Steel Company.* Denver, Colorado, (HAER).

1985a The Architecture of Las Vegas, Nevada. Presentation sponsored by Nevada Humanities Committee and Nevada State Museum and Historic Society, Las Vegas, Nevada.

1985b *Stewart Indian School Historic District Nomination.* Carson City, Nevada.

1987a *Multiple Resource Nomination of Buildings Designed by Frederick De Longchamps.* Washoe and Douglas Counties, Nevada.

1987b Speaker, "Oasis" Conference sponsored by Nevada Historical Society, Nevada

1988a Humanities Committee, Nevada State Council on the Arts, Nevada Division of Historic

1988b Images of the Nineteenth-Century Agricultural Landscape, *Nevada Historical Society Quarterly* Vol. XXXI, Winter 1988, No. 4.

1989a *Western Vernacular Architecture.* Museum Week lecture series, sponsored by Nevada State Museum and Historical Society, Carson City, Nevada.

1989b Preservation Workshop. Nevada State Museum and Historical Society, Las Vegas, Nevada.

1989c Walking Tour of Virginia City, Nevada. Sponsored by Historic Preservation Committee, Virginia City, Nevada.

1989d *Harmon School National Register Nomination.* Churchill County, Nevada.

1989e *Reed House National Register Nomination.* Gardnerville, Nevada.

1989f *Architectural Survey of the Planned Royersford Main Post Office, Montgomery County, Pennsylvania* (with R. Christopher Goodwin and Michelle T. Moran). Submitted to the United States Postal Service, Facilities Service Center.

1989g *Elm Street School.* Frederick, Maryland (HABS).

1990a *Detailed Archeological and Architectural Investigations of the Tabard Village Project area, Cedar Grove Complex (AA-881), and Archeological Site 18AN594, Anne Arundel County, Maryland* (with Thomas W. Neumann and Michelle T. Moran). Submitted to Classic Community Corporation.

1990b *Phase I and II Archeological Investigations of Bachelor's Hope Farm, St. Mary's County, Maryland* (with Martha Williams and Suzanne Sanders). Submitted to Archetype.

1990c *Phases I and II Archeological Investigations of the Frederick Municipal Golf Course, Frederick County, Maryland* (with Thomas W. Neumann and Michelle T. Moran). Submitted to City of Frederick, Maryland.

1990d *Archeological and Architectural Reconnaissance of the Suitland Federal Center, Prince Georges County, Maryland* (with Christopher R. Polglase, April Fehr, Michelle Therese Moran, and Janet S. Shoemaker). Submitted to Ward/Hall Associates, AIA.

1990e *Phase I Archeological Investigation at the Meadows, Baltimore County, Maryland,* (with R. Christopher Goodwin and Suzanne L. Sanders). Submitted to The Macks Group.

1990f *Phase I Archeological Investigations of Billingsley Road, U.S. Route 301 to the Charles County Sanitary Landfill No. 2, Waldorf, Maryland,* (with R. Christopher Goodwin and Michelle T. Moran). Submitted to Whitman, Requardt and Associates.

1990g *A Study of Secondary Impacts to Historic Resources Resulting from Construction of the Proposed Montgomery County Resource Recovery Facility, Dickerson, Maryland* (with R. Christopher Goodwin, and Michelle T. Moran). Submitted to ENSR Consulting and Engineering.

1990h *Architectural Survey of the Planned Oakmont Green Development, Carroll County, Maryland* (with R. Christopher Goodwin, Michelle T. Moran, and Mary Kendall Shipe). Submitted to Oakmont Green Limited Partnership.

1993f *Architectural Investigations Undertaken in Conjunction with the Base Realignment of Dahlgren Division, Naval Surface Warfare Center, Dahlgren, Virginia* (with Brooke V. Best and Leo Hirrel). Submitted to the Naval Facilities Engineering Command.

1993g *Historical Resource Study - Oxon Cove Park* (with Michelle T. Moran, Hugh McAloon and Peter Morrison). Report submitted to National Capital Park/East, National Park Service.

1993h *Fort George G. Meade - Cultural Resource Management Plan* (with Hugh McAloon, John Mintz, Martha Williams, Kathleen Child, and Leo Hirrel). Report submitted to the Baltimore District, Army Corps of Engineers.

1993i *Conditions Analyses and Preservation Treatment Recommendations for Historic Brick Buildings at Aberdeen Proving Ground* (with Brooke V. Best). Report submitted to the Baltimore District, Army Corps of Engineers.

1993j *Phase I Archeological Survey and Architectural Investigations of the Proposed Delmarva Power & Light Company, Easton-Steele 138 kV Transmission Line, Maryland* (with Michael A. Simons, Geoffrey E. Melhuish, W. Thomas Dod, and Christopher R. Polglase). Submitted to Delmarva Power & Light Company.

1993k *An Architectural History of St. Vincent De Paul Church, 120 North Front Street, Baltimore, Maryland* (with Michelle T. Moran, and Martha R. Williams). Submitted to the St. Vincent de Paul Church.

1994a *Architectural and Historic Investigations for Four Former Defense Sites in Mississippi* (with Hugh B. McAloon and Leo Hirrel). Submitted to the U.S. Army Corps of Engineers, Vicksburg District.

1994b *Architectural Investigations Undertaken in the Dahlgren Residential Area, Naval Surface Warfare Center Dahlgren, Virginia* (with Brooke V. Best, Eliza Edwards, Leo P. Hirrel, and Patrick Jennings). Submitted to the Naval Facilities Engineering Command, Atlantic Division.

1994c *Architectural Assessment of Buildings 296 and 297 Naval Hospital Cherry Point, North Carolina.* Submitted to the Naval Facilities Engineering Command, Atlantic Division.

1994d *Architectural Survey and Assessment of the DuPont Factory Structures at the Fleet and Industrial Supply Center, Cheatham Annex, York County, Virginia* (with Katherine Grandine and Hugh McAloon). Submitted to the Naval Facilities Engineering Command, Atlantic Division.

1994e *Inventory of Standing Structures within the Operations and Industries Area at the Dahlgren Laboratory of the Dahlgren Division, Naval Surface Warfare Center* (with Brooke V. Best and Leo P. Hirrel). Submitted to the Naval Facilities Engineering Command, Atlantic Division).

1994f *National Historic Context for Department of Defense Installations, 1790 - 1940* (with Deborah K. Cannan, Leo Hirrel, Katherine E. Grandine, Bethany M. Usher, Hugh B. McAloon, and Martha R. Williams). Submitted to the U.S. Army Corps of Engineers, Baltimore District.

1994g *Phase I Cultural Resource Investigations Undertaken at the U.S. Army Reserve Area Maintenance Support Activity (AMSA) Clarksburg, WV* (with Eliza H. Edwards, Suzanne L. Sanders, Leo P. Hirrel, and Hugh McAloon). Submitted to the U.S. Army Corps of Engineers, Baltimore District.

1994h *Historic Context for Department of Defense Facilities World War II Permanent Construction* (Principal Investigator; Deborah K. Cannan, Leo P. Hirrel, William T. Dod, and J. Hampton Tucker). Submitted to the U.S. Army Corps of Engineers, Baltimore District.

1994i *Navy Cold War Guided Missiles Context: Resources Associated with the Navy's Guided Missile Program, 1946 - 1989* (with Brooke V. Best, Eliza Edwards, and Leo Hirrel). Submitted to the Department of the Navy, Atlantic Division, Naval Facilities Engineering Command.

1994j *Historic Context for the Army Material Command's World War II Facilities* (with Deborah K. Cannan, Leo Hirrel, Hugh McAloon, and Brooke V. Best). Submitted to the U.S. Army Corps of Engineers, Baltimore District.

1995a *Supplemental Cultural Resource Investigations to the Cultural Resource Management Plan, Aberdeen Proving Ground: Cultural Resource Procedures and Guidelines* (with Geoffrey Melhuish and Katherine Grandine). Submitted to the Atlantic Division, Naval Facilities Engineering Command.

1995b *Carlisle Indian Industrial School.* Brochure prepared with William P. Giglio and William McNamee. Submitted to the U.S. Army Research Laboratory and Carlisle Barracks.

1995c *St. Vincent de Paul and Baltimore: The Story of a People and Their Home* (with Thomas W. Spalding). Maryland Historical Society, Baltimore, 1995.

1995d *Monograph on Black Walnut Rural Historic District* (with Brooke V. Best and Hugh McAloon). Submitted to Old Dominion Electric Cooperative.

1995e *Architectural Investigations of the Dudderar Farm, Frederick County, Maryland* (Principal Investigator; Geoffrey E. Melhuish and Hugh B. McAloon). Submitted to the Ward Corporation.

1995f *HAER Documentation of the Kelly-Springfield Tire Plant, Cumberland, Maryland* (Principal Investigator). Prepared for the Allegany County Commissioners, Cumberland, Maryland.

1996a *Historical and Architectural Documentation of the Elmer Wolfe High School* (with Deborah Whelan). Submitted to Carroll County Public Schools, Westminster, Maryland.

1996b *Mason Row Maintenance Plan and National Register Documentation, Naval Weapons Station, Yorktown, Virginia* (with Katherine Grandine, Hugh McAloon, and Brooke V. Best). Submitted to Naval Facilities Engineering Command.

1996c *Historic American Building Survey Documentation: 5900-5910 Dalecarlia Place, Washington Aqueduct* (Principal Investigator; Lori B. O'Donnell). Prepared for U.S. Army Corps of Engineers, Baltimore District.

1996d *Cultural Resource Investigations at Bayou Rapides Drainage Structure and Pumping Plant, Alexandria, Louisiana* (Principal Investigator; Hugh McAloon). Submitted to U.S. Army Corps of Engineers, Vicksburg District.

1996e *HAER Recordation of Naval Surface Warfare Center Carderock Buildings 7, 11, 12, 13, 138, 139, 157* (Principal Investigator; Geoffrey Melhuish). Submitted to Engineering Field Activity-Chesapeake, Washington D.C.

1996f *Architectural Investigations for the Wedgewood Industrial Park.* Submitted to Parker, Cade & Large, Inc., Millersville, Maryland.

1996g *Langley Air Force Base Cultural Resource Management Plan* (Principal Investigator; Brooke V. Best, Martha Williams, and Lex Campbell). Submitted to the U. S. Army Corps of Engineers, Baltimore District.

1996h *Documentation of Bowie Tobacco Barn, Westwood Property, Prince George's County, Maryland* (Principal Investigator). Prepared for Donatelli & Klein, Inc.

1997a *Cultural Resources Investigations for Alignment and Environmental Studies, Halfway Boulevard Extended and Newgate Boulevard (PUR-577), Washington County, Maryland* (with April L. Fehr, Martha Williams, W. Patrick Giglio, and Ellen Saint Onge). Prepared for KCI Technologies.

1997b *Historical and Architectural Resources Protection Plan (HARP), Naval Surface Warfare Center, Carderock Division, Maryland* (Principal Investigator; Geoffrey E. Melhuish and April L. Fehr). Submitted to Engineering Field Activity - Chesapeake.

1997c *Revised National Register Documentation for "Guilford", Frederick County, Maryland* (Principal Investigator; Lex F. Campbell). Prepared for Clagett Enterprises, Inc.

1997d *Navy Cold War Communication Context: Resources Associated with the Navy's Communication Program, 1946-1989* (Principal Investigator; Brooke V. Best, Katherine Grandine, and Stacie Y. Webb). Submitted to Atlantic Division, Naval Facilities Engineering Command.

1997e *Intensive Architectural Survey at Naval Base Norfolk, Virginia* (Principal Investigator; Katherine E. Grandine). Submitted to Atlantic Division, Naval Facilities Engineering Command.

1997f *Washington Aqueduct Cultural Resource Management Plan* (Principal Investigator; Eliza E. Burden and Martha R. Williams). Submitted to the U.S. Army Corps of Engineers, Baltimore District.

1997g *Architectural Investigations of St. Juliens Creek Annex* (Principal Investigator; Hugh B. McAloon, Geoffrey E. Melhuish, William T. Dod, and Martha R. Williams). Submitted to Atlantic Division, Naval Facilities Engineering Command.

1997h *Architectural Scoping Study: The Villages at Urbana, Frederick County, Maryland* (with Geoffrey L. Melhuish). Submitted to Monocacy Land Company, L.L.C.

1997i *Architectural and Historic Evaluation, U.S. Naval Air Station Keflavik, Keflavik, Iceland* (Principal Investigator; Brooke V. Best, Geoffrey E. Melhuish, and Thomas W. Davis). Prepared for Atlantic Division, Naval Facilities Engineering Command.

1997j *Dalecarlia Water Treatment Plant Historic American Engineering Record Documentation and Dalecarlia Employee Dwellings Historic American Building Survey Documentation* (with Lori O. Thursby). Prepared for Baltimore District, U.S. Army Corps of Engineers.

1997k *Architectural Impact Assessment for the Bethesda Trolley Trail, Bridges Over I-495 and I-270* (with Lex F. Campbell). Prepared for Hurst-Rosche Engineers, Inc.

1997l *Supplemental Phase I Archeological Investigations for the Proposed Storm Water Retention Pond, Naval Surface Warfare Center Carderock, Montgomery County, Maryland* (Principal Investigator; April L. Fehr and Andrew D. Madsen). Prepared for Engineering Field Activity - Chesapeake, Washington, D.C.

1997m *Addendum Report to Phase I Archeological and Architectural Investigations for the Monrovia Wastewater Treatment Plant, Frederick County, Maryland* (with Geoffrey E. Melhuish and April L. Fehr). Prepared for Frederick County Department of Public Works.

1997n *Center of Military History, U.S. Army Ordnance Museum, Outdoor Ordnance Collection at Aberdeen Proving Ground, National Register Nomination* (Principal Investigator; Katherine Grandine and Jane Armstrong). Prepared for Aberdeen Proving Ground and Baltimore District, Corps of Engineers.

1997o *HABS Recordation of Stephen J. Barbre Middle School, Kenner, Louisiana.* Submitted to Southeast Regional Office, National Park Service.

1997p *Architectural Survey and Impact Assessment for the Proposed Royal Oaks Subdivision, New Market, Maryland* (Principal Investigator; Lex F. Campbell). Prepared for NML Corporation.

1997q *Architectural Evaluations of Properties I and IV for the Washington Gas Company Pipeline, Prince George's and Charles Counties, Maryland* (Principal Investigator; Lori O. Thursby). Prepared for Stone & Webster Environmental Technology & Services.

1997r *Architectural Documentation of the Guilford Tenant House, Frederick, Maryland* (Principal Investigator; Lex Campbell). Prepared for Clagett Enterprises, Inc.

1997s *Object Inventory, Edgewood Area, Aberdeen Proving Ground Summary Report* (with Katherine Grandine and Jane Armstrong). Prepared for Baltimore District, U.S. Army Corps of Engineers.

1997t *Architectural Investigation of St. Timothy's School, Baltimore County, Maryland* (with Lex Campbell and Jane Armstrong). Prepared for St. Timothy's School, Stevenson, Maryland.

1997u *Historic American Buildings Survey Documentation: Abbey Mausoleum and Washington Navy Yard Buildings 28, 142, 143, 198, 201, 104, and 197* (Principal Investigator; Katherine Grandine and Geoffrey Melhuish). Prepared for Engineering Field Activity - Chesapeake.

1997v *Architectural Investigations of the Pettingall/Bussard Farm, Frederick County, Maryland* (Principal Investigator; W. Patrick Giglio and Jane Armstrong). Prepared for Maryland National Golf Club.

1997w *Architectural Resources Survey of 3,700 Acres, Naval Security Group Activity, Northwest, Chesapeake, Virginia* (Principal Investigator; Brooke V. Best). Submitted to Atlantic Division, Naval Facilities Engineering Command.

1997x *Historic Preservation Plan: United States Naval Academy, Annapolis, Maryland* (Co-Principal Investigator; Lex Campbell, John Seidel, and Martha Williams). Prepared for Engineering Field Activity-- Chesapeake.

1997y *Preservation Analysis of the Derr House, Frederick, Maryland* (Principal Investigator). Prepared for Natelli Associates, Inc.

1998o *Architectural Investigations of the Proposed Villages of Urbana Planned Urban Development (PUD) Frederick County, Maryland* (Principal Investigator; Geoffrey Melhuish). Prepared for Monocacy Land Co., L.L.C.

1998p *Phase III Jackson Historic Resources Survey* (Principal Investigator; Lex Campbell and Sheila Lewis). Prepared for City of Jackson, MS.

1998q *Chemical Area Storage Yard (CASY), Aberdeen Proving Ground, Edgewood Area, MHT Historic Properties Inventory Form* (Principal Investigator; with Katherine Grandine). Prepared for Dynamac Corporation.

1998r *Maryland Historical Trust State Historic Sites Inventory Form for Building Numbers 115, 123, 132, 144, and 153, Naval Surface Warfare Center, Carderock Division* (Principal Investigator; Lex Campbell). Prepared for Naval Surface Warfare Center, Carderock Division.

1998s *Supplemental Architectural Investigations, Determination of Eligibility Documentation for Select Buildings, Indian Head Naval Surface Warfare Center, Charles County, Maryland* (Principal Investigator; Lex Campbell, W. Patrick Giglio, and Elaine Kiernan). Prepared for Engineering Field Activity – Chesapeake.

1998t *Preliminary Cultural Resources Management Plan for Defense Supply Center Richmond (DSCR), Chesterfield County, Virginia* (Co-Principal Investigator with Ann Markell; Brooke Best, Bradley McDonald, Ann Markell, Henry Measells, and Brian Cleven). Prepared for Mill Creek Environmental Consultants, Ltd.

1998u *Phase I Architectural Survey and Archeological Investigations at Naval Communication Detachment Cheltenham, Prince George's County, Maryland* (Co-Principal Investigator with Christopher R. Polglase; April Fehr and Katherine Grandine). Submitted to the Baltimore District, U.S. Army Corps of Engineers.

1998v *Integrated Cultural Resources Management Plan, US Army Garrison, Fort Belvoir, Virginia* (Co-Principal Investigator with Christopher R. Polglase; Brooke Best, W. Patrick Giglio, and Martha Williams). Submitted to Dewberry & Davis on behalf of the Environmental & Natural Resources Division, Fort Belvoir, Virginia.

1999a *Architectural Survey and Assessment of Naval Air Station Oceana and Naval Auxiliary Landing Field Fentress, Virginia* (Principal Investigator; Geoffrey E. Melhuish). Prepared for Atlantic Division, Naval Facilities Engineering Command.

1999b *Archival and Architectural Investigations at Naval Station Roosevelt Roads, Puerto Rico* (Principal Investigator; Brooke V. Best, W. Patrick Giglio, Geoffrey Melhuish, and Julian Granberry). Prepared for Naval Facilities Engineering Command.

1999c *Architectural Survey of NSGA Sabana Seca, Sabana Seca, Puerto Rico* (Principal Investigator; Brooke V. Best). Prepared for Atlantic Division, Naval Facilities Engineering Command.

1999d 800 Carroll Parkway, Frederick, Maryland National Register Nomination (Principal Investigator; Katherine Grandine). Prepared for Stuart/Grey Corporation.

1999e *Architectural Reconnaissance Survey of the Proposed Beech Tree Development, Prince George's County, Maryland* (Principal Investigator; Katherine Grandine, Elaine Kiernan, and Brian Cleven). Prepared for Ryko Development, Inc.

1999f National Register of Historic Places Registration Form for Florida Avenue Siphon, New Orleans, Louisiana (Principal Investigator; Brian Cleven and Ralph Draughon). Prepared for U.S. Army Corps of Engineers, New Orleans District.

1999g *Indian Head Division, Naval Surface Warfare Center, Historic and Archeological Resource Protection Plan* (Principal Investigator; Thomas W. Davis). Prepared for Engineering Field Activity-Chesapeake.

1999h *Historic American Engineering Record Documentation: Florida Avenue Bridge, New Orleans, Louisiana* (with Brian Cleven and Ralph Draughon). Prepared for the United States Coast Guard Eighth Coast Guard Division.

1999i *Archeological Evaluation of Dudderar Farm (18FR729), Urbana, Frederick County, Maryland* (with Sonja Ingram, Hugh McAloon, an Geoffrey Melhuish). Submitted to Monocacy Land Company, LLC.

1999j *Architectural Inventory of New Jersey Army National Guard Facilities* (Principal Investigator; Elaine K. Kiernan). Prepared for Southwest Missouri State University.

1999k *Interim Report on Architectural Reconnaissance Survey of the Proposed Independence Pipeline Corridor through Lawrence, Butler, Armstrong, Clarion, Jefferson, Forest, and Elk Counties, Pennsylvania* (Principal Investigator; by Elaine Kiernan, Patrick Giglio, Brooke Best, and Martha Williams). Submitted to ANR Pipeline Company.

1999l *Architectural Evaluation of the Farmstead on Rosenstock North Farm* (Principal Investigator; by Katherine Grandine). Submitted to Buckeye Development Construction Company, Inc.

1999m Visual Impact Assessment for Hunters Brooke Subdivision. Submitted to Universal Development Company, LLC.

1999n National Register Evaluation of the Claiborne Storehouse (Principal Investigator; Katherine Grandine and Ralph Draughon). Submitted to New Orleans District, Corps of Engineers.

1999o *Architectural Documentation of the Sebastian Derr House, Frederick, Maryland* (Principal Investigator; with Katherine Grandine, W. Patrick Giglio, Brian Cleven, and Barry Warthen). Submitted to Natelli Communities.

1999p *Letter Report for MD 18: U.S. 301 to Greenspring Road, Queen Anne's County, Maryland* (Principal Investigator; with Katherine E. Grandine, W. Patrick Giglio, and Justin Edgington). Submitted to Maryland Department of Transportation.

1999q *Walter Reed Army Medical Center Integrated Cultural Resources Management Plan* (Principal Investigator; with W. Patrick Giglio). Submitted to U.S. Army Corps of Engineers, Baltimore District.

1999r *Architectural and Historical Assessment of 9150 Darnestown Road, Rockville, Maryland* (Principal Investigator, with Brian Cleven and Katherine Grandine). Prepared for Dr. Bor-Chung Lee through Miller, Miller, & Canby, Rockville, Maryland.

1999s *Preliminary Cultural Resources Management Plan for Defense Supply Center Richmond (DSCR)* (Co-Principal Investigator with Ann Markel, Brooke Best, Henry Measells, and Brian Cleven). Prepared for Mill Creek environmental Consultants, Ltd., Hampton, Virginia,

1999t *Architectural and Historical Evaluation of the Kelly-Brewser House, 1853 Reisterstown Road, Pikesville, Maryland.* Prepared for Southwood Holding Corporation, Baltimore, Maryland.

1999u *National Register Documentation for Indian Head White Plains Railroad, Indian Head Naval Surface Warfare Center, Charles County, Maryland.* (Principal Investigator with Elaine K. Kiernan and Lex Campbell). Submitted to Department of the Navy, EFA Chesapeake.

2000a *Letter Report for Frederick House (BA-1206)* (Principal Investigator; with Katherine Grandine). Submitted to Mr. Arthur S. Tracey Personal Representative Eda Ensor Estate.

2000b *Rehabilitation Analysis of the Edward Campbell Farmstead, Frederick, Maryland* (Principal Investigator; with W. Patrick Giglio and Brian Cleven). Submitted to Millennium Development Group, L.L.C.

2000c *Integrated Cultural Resource Management Plan: Naval Surface Warfare Center, Carderock Division* (Principal Investigator; with April L. Fehr and Brooke V. Best). Submitted to Naval Surface Warfare Center.

2000d *Historic American Engineering Record Documentation: Galvez Street Wharf, New Orleans, Louisiana* (Principal Investigator; by Brian Cleven). Submitted to United States Coast Guard.

2000e *Integrated Cultural Resource Management Plan, United States Naval Academy, Annapolis, Maryland* (Co-Principal Investigator; by Lex Campbell, John L. Seidel, and Martha R. Williams). Prepared for Engineering Field Activity – Chesapeake.

2000f *Campbell Farmstead (F-8-23) Addendum to Maryland Inventory of Historic Properties Form* (Principal Investigator; by Katherine E. Grandine and Brian Cleven). Prepared for Riverside Investment Group, LLC.

2000g *Architectural Recordation of Frederick Memorial Hospital and Nurses' Home, Frederick Maryland* (Principal Investigator; by Justin Edgington and Katherine E. Grandine). Prepared for Frederick Memorial Hospital.

2000h *Evaluation of National Register Eligibility of Bayou Boeuf, Bayou Sorrel, and Berwick Locks and the Calumet and Charenton Floodgates in the Atchafalaya Basin, Louisiana* (Principal Investigator; by Brian Cleven and Brooke V. Best). Prepared for the New Orleans District, US Army Corps of Engineers.

2000i *Historic American Engineering Record Documentation: Rock Creek Trestle, Montgomery County, Maryland* (Principal Investigator; by Brian Cleven). Prepared on behalf of Hurst-Rosche Engineers, Inc. for Montgomery County Department of Public Works and Transportation.

2000j *Historic American Engineering Record Documentation: Keystone Lock and Dam, St. Martinville, Louisiana* (Principal Investigator; by Brian Cleven). Prepared for the New Orleans District, U.S. Army Corps of Engineers.

2000k *National Register Assessment of the Lock Keepers Dwelling at the Keystone Lock and Dam, St. Martin Parish, Louisiana* (with Brian Cleven). Prepared for the New Orleans District, U.S. Army Corps of Engineers.

2000l *Architectural Inventory of the Gordon Building, 57 South Market Street, Frederick, Maryland* (Principal Investigator; by Brian Cleven and Nathaniel Patch). Prepared for the City of Frederick, Maryland.

2000m *Village on Falling Spring Transportation Enhancement Project, Borough of Chambersburg, Franklin County, Pennsylvania.* Prepared for Gannett Fleming, Inc.

2000n *Maryland Inventory of Historic Property Form: Birkhead House, 23629 Woodfield Road, Montgomery County* (Principal Investigator; with Katherine Grandine). Prepared for Iko Development, Inc.

2000o Speaker. *Tools for Preservation Planners* Preservation and Revitalization Conference, Preservation Maryland.

2000p *Analysis of Regulations for Compliance with Section 106 of the National Historic Preservation Act of 1966, as Amended.* (with April Fehr) Submitted to The INGAA Foundation, Inc.

2000q *Historical and Architectural Investigation of Memorial Stadium, Baltimore, Maryland.* (with Brian Cleven) Prepared for Maryland Stadium Authority, Baltimore, Maryland.

2000r *Documentation of Federated Charities Building, 22 South Market Street, Frederick, Maryland.* (Principal Investigator with Brian Cleven, Katherine Grandine, Justine Edgington, and Barry Warthen). Prepared for Federated Charities Corporation of Frederick.

2000s Sheffer House, Middletown, Maryland. Federal and State Historic Rehabilitation Tax Certification prepared for Mr. & Mrs. Goodloe E. Byron.

2000t Francis Scott Key Hotel, Frederick, Maryland. Federal Historic Rehabilitation Tax Certification prepared for Struever Bros., Eccles & Rouse, Inc.

2000u Thomas Cannery, Montgomery County, Maryland. Federal and State Historic Rehabilitation Tax Certification prepared for Rockville Fuel and Feed.

2000v *National Register Nomination for the Sheffer House.* (Principal Investigator with Katherine Grandine). Prepared for Mr. & Mrs. Goodloe E. Byron.

2000w *Study of Building Ornamentation at Langley Air Force Base, Langley, Virginia.* (Principal Investigator with Katherine Grandine and Justine Edgington) Submitted to the Baltimore District, U.S. Army Corps of Engineers.

2000x *Marketing Prospectus for the Edward Campbell Farm, Frederick, Maryland.* Prepared for Millennium Development Corporation.

2000y *MD 26: Liberty Reservoir to MD 32, Carroll County, Maryland, Project No. CL850B11.* (Principal Investigator with Katherine Grandine) Prepared for the Maryland State Highway administration.

2001a *Communications Tower Sites in Frederick County Maryland – Murphy Farm and Buffington Farm.* Assessment prepared for Sprint PCS.

2001b *Fairview (71A-13) Environmental Setting.* Letter report prepared for the Prince George's County Planning Department.

2001c *National Register Assessment of the Broadmoor Neighborhood* (with Katy Coyle). Prepared for the New Orleans District, U.S. Army Corps of Engineers.

2001d Speaker. *Symposium on the Management of Capehart-Wherry Era Housing.* Department of the Army.

2001e *Energy Panel.* Task Force on Energy, Advisory Council on Historic Preservation Meeting, San Francisco, California.

2001f *Aberdeen Proving Ground Integrated Cultural Resources Management Plan.* (Co-Principal Investigator with Christopher R. Polglase; with Katherine Grandine and Thomas W. Davis) Submitted to Advanced Technology Systems, Inc.

2001g *Historic American Engineering Record Documentation: St. Claude Bridge, New Orleans, Louisiana.* (Principal Investigator with Brian Cleven) Prepared for the New Orleans District, U.S. Army Corps of Engineers.

2001h *Historic American Engineering Record Documentation: Inner Harbor Navigation Canal Lock, New Orleans, Louisiana.* (Principal Investigator with Brian Cleven) Prepared for the New Orleans District, U.S. Army Corps of Engineers.

2001i *Supplemental Architectural and Historical Investigations for the Proposed Duke Energy Facility on the Vernon-Hines and Urciolo Properties, Frederick County, Maryland* (Principal Investigator; by Katherine Grandine, Brian Cleven, and Nathaniel Patch). Prepared for Environmental Consulting & Technology, Inc.

2001j *Jesup Blair House and Park, Montgomery County, Maryland, Maryland Inventory of Historic Properties Form* (Principal Investigator; with Kirsten Peeler). Prepared for Montgomery College.

2001k *Phase I Archeological Survey for the Proposed Duke Energy North America (DENA), LLC Powerplant, German Township, Fayette County, Pennsylvania (Pennsylvania Environmental Report #2001-1219-051-C)* (with Jesse Kulp, Peter Holmes, Brian Cleven, Katherine Grandine, Michael Hornum, and Scott Meacham). Prepared for CH2M Hill.

2001l *Archeological and Historical Investigations for the Proposed Duke Energy Facility on the Offutt Property, Frederick, Maryland* (Principal Investigator; by Katherine Grandine, Brian Cleven, Scott Meacham and Nathaniel Patch). Prepared for Environmental Consulting & Technology, Inc.

2001m *Architectural Investigation of Buildings and Structures at the Naval Surface Warfare Center Carderock Division Memphis Detachment, Memphis, Tennessee* (Principal Investigator; by Scott Meacham and Katherine Grandine). Prepared for Public Works Department.

2001n *Historic Context for Army Fixed-Wing Airfields 1903-1989* (Principal Investigator; by Katherine Grandine, Brian Cleven, Thomas W. Davis, and Nathaniel Patch). Prepared for U.S. Army Environmental Center.

2002a *Historic Properties Report on Hangars 745, 755, and 756, Langley Air Force Base, City of Hampton, Virginia VDHR File No.* _____ (Principal Investigator; by Katherine Grandine and Brian Cleven). Prepared for Science Applications International Corporation (SAIC).

2002b *Housing an Army: Addressing the Postwar Family Housing Shortage (1949-1962)* (Principal Investigator; with Kirsten Peeler, Carrie Albee, and Katherine Grandine). Prepared for U.S. Army Environmental Center.

2002c *Evaluation of the National Register Eligibility of Calcasieu Lock, Calcasieu Parish, Louisiana* (Contract Order DACW29-97-D-0018) (Principal Investigator, with Brian Cleven). Prepared for U.S. Army Corps of Engineers.

2002d *Historic American Buildings Survey Documentation: Fort Monroe, Buildings 65, 66, 67, 68, 69, 70, and 79* (Principal Investigator; by Katherine Grandine). Prepared for DPW Environmental Office.

2002e *HABS/HAER Level II Documentation of the Paint and Oil Storehouse (Building No. 216), Naval Air Station Patuxent River, St. Mary's County, Maryland* (Principal Investigator; by Carrie Albee). Prepared for Naval Air Station Patuxent River.

2002f *Maryland Historical Trust Architectural Inventory Documentation Duke Energy North America Facility in Frederick County, Maryland* (Principal Investigator; by Katherine Grandine, Brian Cleven, and Nathaniel Patch). Prepared for Environmental Consulting & Technology, Inc.

2002g *Archival, Architectural, and Geophysical Remote Sensing Investigation at the Montevue Property, Frederick County, Maryland* (Principal Investigator with Christopher R. Polglase; by William Lowthert IV, Scott Meacham, Nate Patch, Brian Cleven, Jean B. Pelletier, and Katherine Grandine). Prepared for the Frederick County Department of Public Works.

2002h *Middletown Primary School Site Assessment, Middletown, Maryland* (Principal Investigator; by Brian Cleven). Prepared for Frederick County Public Schools.

2002i *Research Design for Cultural Resource Assessment of Six State Parks, State Owned Cultural Resource Assessment Program, Department of Natural Resources Pilot Study* (Principal Investigator with Christopher R. Polglase; by Katherine E. Grandine, Jeffrey H. Maymon, and Martha Williams). Prepared for Maryland Historical Trust.

2002j *Archeological, Historical, and Architectural Reconnaissance Study of Crab Cay, Exuma Island, The Bahamas* (with Suzanne L. Sanders, R. Christopher Goodwin, and Jennifer A. Brown). Prepared for Islands By Design Ltd.

2002k *Baltimore East/South Clifton Park Historic District National Register Nomination* (Principal Investigator; by Katherine E. Grandine, Brian Cleven, Kirsten G. Peeler, Carrie Albee, and Nathaniel S. Patch). Prepared for Center Development Corporation.

2002l *Charity Ellen Frazier Farm Assessment, Knoxville, Maryland* (Principal Investigator; by Brian Cleven and Christine Heidenrich). Prepared for Hailey Development LLC.

2002m *HABS/HAER Level II Documentation of Boat House No. 2 (Building 214) Naval Air Station Patuxent River, St. Mary's County, Maryland* (Principal Investigator; by Katherine Grandine). Prepared for Naval Air Station Patuxent River.

2003a *Unaccompanied Personnel Housing (UPH) during the Cold War (1946-1989)* (Principal Investigator; with Brian Cleven, Nathaniel Patch, Katherine Grandine, and Christine Heidenrich). Prepared for the U.S. Army Environmental Center.

2003b *Neighborhood Design Guidelines for Army Wherry and Capehart Family Housing* (Principal Investigator; by Kirsten Peeler and Reid Wraase) Prepared for the Department of the Army.

2003c *Housing an Army: The Wherry and Capehart Era Solutions to the Postwar Family Housing Shortage (1949-1962) Historic Context* (Principal Investigator; with Kirsten Peeler, Christine Heidenrich, Carrie Albee, and Katherine Grandine). Prepared for the Department of the Army.

05-332-SPH

Protestants Exhibits

8/24/05 1. Maryland Historical Trust form dated May 11, 1971
2. Action summary notes
3 Atlas of Baltimore Co. (copy)

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FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
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August 24, 2005

DELIVERY BY HAND

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

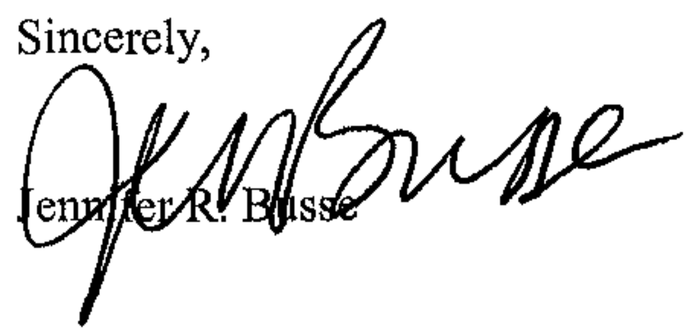
In Re: Case No. 05-332-SPH
11330 York Road ("Elizabeth Gardner House")

Dear Ms. Bianco:

The list of Protestants' Exhibits states that Protestants' Exhibit 1 is a copy of the "Maryland Historical Trust Form dated May 11, 1981." The Board's file does not contain a copy of this document. Therefore, for the Board's convenience, enclosed please find a copy of this document. Along with Petitioners' Memorandum of Law in Lieu of Closing Argument, I will be providing the Board with a copy of the transcript of the hearing in this matter held on August 3, 2005. You will note that page 88 of the transcript notes that this Maryland Historical Inventory Form is already a part of the record for these proceedings since that document is part of the Landmark's Preservation Commission's file which was provided to the Board.

Please feel free to contact me with any questions or concerns.

Sincerely,



Jennifer R. Busse

JRB:jar
Enclosure
cc: John C. Murphy, Esquire (w/enclosure)
Robert A. Hoffman, Esquire (w/enclosure)
Arnold Jablon, Esquire (w/o enclosure)
Jay L. Liner, County Attorney(w/o enclosure)
Peter M. Zimmerman, Esquire (w/enclosure)
Landmarks Preservation Commission (w/o enclosure)
Gordan Fronk, Esquire (w/o enclosure)
Mr. John P. Evans (w/o enclosure)

339274v3

RECEIVED
BALTIMORE COUNTY
BOARD OF APPEALS

BA-917 c. 1870
Elizabeth Gardner House
Marble Hill
private

The Elizabeth Gardner House is located in Marble Hill, Baltimore County, Maryland at the southwest corner of the junction of Shawan and York Roads. The house sits at the base of a small hill and faces east towards York Road. Built c. 1870 and sheathed in wooden German siding on a coursed rubble foundation, the frame house consists of three sections: the gable-roofed main section, rectangular in plan with a symmetrical facade, is 2½-stories tall and 3-bays wide with a semi-octagonal turret appended to the northern bay; to the west (rear) is a 2½-story addition, also rectangular in plan, that is one-bay wide and four-bays deep; appended to the southwest corner of this addition is a small, two-story addition, one-bay wide and one-bay deep with a shed roof sloping south. All roofs are covered with asphalt composition shingle, except for the shed-roofed addition which is covered with standing seam metal roofing. Sitting west of the house are three outbuildings which were erected c. 1900: a root cellar, a circular ice house and a 2½-story carriage house.

The Elizabeth Gardner House is significant as a good example of the Queen Anne architectural style that was popular in the United States in the last quarter of the nineteenth century. Also architecturally significant is a circular ice house which was erected circa 1900 on the property; this circular ice house is rare because most ice houses built in Maryland are either square or rectangular in plan. The dwelling is also a significant visual landmark sited on a corner in the crossroads village of Marble Hill, Baltimore County, Maryland.

MARYLAND HISTORICAL TRUST MAGI # 0309175511

INVENTORY FORM FOR STATE HISTORIC SITES SURVEY

1 NAME

HISTORIC Elizabeth Gardner House

AND/OR COMMON Piper Realty

2 LOCATION

STREET & NUMBER 11330 York Road

CITY, TOWN Cockeysville ___ VICINITY OF Marble Hill CONGRESSIONAL DISTRICT 3rd

STATE Maryland COUNTY Baltimore

3 CLASSIFICATION

CATEGORY	OWNERSHIP	STATUS	PRESENT USE	
__DISTRICT	__PUBLIC	X OCCUPIED	__AGRICULTURE	__MUSEUM
X BUILDING(S)	X PRIVATE	__UNOCCUPIED	X COMMERCIAL	__PARK
__STRUCTURE	__BOTH	__WORK IN PROGRESS	__EDUCATIONAL	__PRIVATE RESIDENCE
__SITE	PUBLIC ACQUISITION	ACCESSIBLE	__ENTERTAINMENT	__RELIGIOUS
__OBJECT	__IN PROCESS	X YES: RESTRICTED	__GOVERNMENT	__SCIENTIFIC
	__BEING CONSIDERED	__YES: UNRESTRICTED	__INDUSTRIAL	__TRANSPORTATION
		__NO	__MILITARY	__OTHER:

4 OWNER OF PROPERTY

NAME Piper Real Estate Company Telephone #: 301-667-6100

STREET & NUMBER 11330 York Road

CITY, TOWN Cockeysville ___ VICINITY OF Marble Hill STATE, zip code Maryland

5 LOCATION OF LEGAL DESCRIPTION

COURTHOUSE, REGISTRY OF DEEDS, ETC. Baltimore County Courthouse Liber #: 5691 Folio #: 87

STREET & NUMBER Pennsylvania Avenue

CITY, TOWN Towson STATE Maryland

6 REPRESENTATION IN EXISTING SURVEYS

TITLE

DATE ___FEDERAL ___STATE ___COUNTY ___LOCAL

DEPOSITORY FOR SURVEY RECORDS

CITY, TOWN STATE

BA-917

7 DESCRIPTION

CONDITION		CHECK ONE	CHECK ONE
X EXCELLENT	__DETERIORATED	__UNALTERED	X ORIGINAL SITE
__GOOD	__RUINS	X ALTERED	__MOVED DATE_____
__FAIR	__UNEXPOSED		

DESCRIBE THE PRESENT AND ORIGINAL (IF KNOWN) PHYSICAL APPEARANCE

The Elizabeth Gardner House is located in Marble Hill, Baltimore County, Maryland at the southwest corner of the junction of Shawan and York Roads. The house sits at the base of a small hill and faces east towards York Road.

Built c. 1870 and sheathed in wooden German siding on a coursed rubble foundation, the frame house consists of three sections: the gable-roofed main section, rectangular in plan with a symmetrical facade, is 2½-stories tall and 3-bays wide with a semi-octagonal turret appended to the northern bay; to the west (rear) is a 2½-story addition, also rectangular in plan, that is one-bay wide and four-bays deep; appended to the southwest corner of this addition is a small, two-story addition, one-bay wide and one-bay deep with a shed roof sloping south. The gable roof of the main section runs north to south while the gable roof of the western addition runs east to west; all roofs are covered with asphalt composition shingle, except for the shed-roofed addition which is covered with standing seam metal roofing.

All windows have double-hung wooden sash with 2/2 lights, except for the windows on the second story of the main section which have 6/6 lights. All windows, except those in the turret, are flanked by wooden louvred blinds. A one-story, bracketed wooden porch with turned posts and balusters surrounds the north, east and south facades of the structure. Two louvred quarter-round openings are located in each of the gable ends of the main block.

Sitting west of the house are three outbuildings which were erected c. 1900; a root cellar, a circular ice house and a 2½-story carriage house.

The principal (east) facade of the main section contains a four-paneled wooden door in the central bay, while the southern bay on the first story is a floor-to-ceiling window. A semi-octagonal turret appended to the north bay is sheathed in fish-scale shingles, has first and second story windows in its north-east, east and southeast walls, and an octagonal roof which terminates in a metal finial. Interior end-wall chimneys emerge at the gable ends of the roof.

The north and south facades of the main section are two-bays wide and feature floor-to-ceiling windows on the first story. The west facade is characterized by one window in the southwest corner of the second story.

see continuation sheets

CONTINUE ON SEPARATE SHEET IF NECESSARY

8 SIGNIFICANCE

AREAS OF SIGNIFICANCE -- CHECK AND JUSTIFY BELOW

PERIOD				
__PREHISTORIC	__ARCHEOLOGY-PREHISTORIC	__COMMUNITY PLANNING	__LANDSCAPE ARCHITECTURE	__RELIGION
__1400-1499	__ARCHEOLOGY-HISTORIC	__CONSERVATION	__LAW	__SCIENCE
__1500-1599	__AGRICULTURE	__ECONOMICS	__LITERATURE	__SCULPTURE
__1600-1699	X ARCHITECTURE	__EDUCATION	__MILITARY	__SOCIAL/HUMANITARIAN
__1700-1799	__ART	__ENGINEERING	__MUSIC	__THEATER
X 1800-1899	__COMMERCE	__EXPLORATION/SETTLEMENT	__PHILOSOPHY	__TRANSPORTATION
__1900-	__COMMUNICATIONS	__INDUSTRY	__POLITICS/GOVERNMENT	__OTHER (SPECIFY)
		__INVENTION		

SPECIFIC DATES BUILDER/ARCHITECT

STATEMENT OF SIGNIFICANCE

The Elizabeth Gardner House is significant as a good example of the Queen Anne architectural style that was popular in the United States in the last quarter of the nineteenth century. Also architecturally significant is a circular ice house which was erected circa 1900 on the property; this circular ice house is rare because most ice houses built in Maryland are either square or rectangular in plan. The dwelling is also a significant visual landmark sited on a corner in the crossroads village of Marble Hill, Baltimore County, Maryland.

HISTORY AND SUPPORT

The crossroads village of Marble Hill developed in the last quarter of the nineteenth century as a result of its strategic location at the junction of Western Run Turnpike (now Shawan Road) and York Turnpike (now York Road). Both turnpikes were heavily traveled in the late 1800's and early 1900's by persons transporting goods north to York, Pennsylvania or south to Baltimore. Western Run Turnpike, in operation from 1867 to 1918, located one of its tollgates on the south side of Shawan Road at its junction with York Road. In addition to servicing these toll roads, Marble Hill became a community for people working in the nearby marble quarries and iron ore mines. Today, Marble Hill consists of about 16 buildings erected primarily between 1880 and 1900; of the six buildings identified on the Hopkins 1877 Atlas of Baltimore County, only two remain. One of the two is the Elizabeth Gardner House.

In the spring of 1875, Mrs. Elizabeth J. Gardner purchased this dwelling for $1800 from Samuel W. Worthington, a neighboring farmer (Baltimore County Land Records, liber JB 92, folio 146). To the west and south of this house, Worthington owned a large estate which fronted the south side of Western Run Turnpike. The gatekeeper's house for that turnpike (no longer extant) stood on the lot directly north of the Elizabeth Gardner House.

see continuation sheets

CONTINUE ON SEPARATE SHEET IF NECESSARY

B4-917

9 MAJOR BIBLIOGRAPHICAL REFERENCES

Baltimore Sun. Baltimore, Maryland. May 1, 1977. p. F-3.

Baltimore County Land, Tax and Probate Records, Courthouse, Towson, Maryland.

(see continuation sheet)

CONTINUE ON SEPARATE SHEET IF NECESSARY

10 GEOGRAPHICAL DATA

ACREAGE OF NOMINATED PROPERTY less than one acre

UTM references: 18-358101-4372840

VERBAL BOUNDARY DESCRIPTION

This property occupies parcel 185, section 42, block 15 in the eight election district of Baltimore County, Maryland and has approximately 126' frontage on York Road.

LIST ALL STATES AND COUNTIES FOR PROPERTIES OVERLAPPING STATE OR COUNTY BOUNDARIES

STATE COUNTY

STATE COUNTY

11 FORM PREPARED BY

NAME / TITLE Joan Gearren, student

DATE May 11, 1981

ORGANIZATION Goucher College

TELEPHONE 301-661-6218

STREET & NUMBER 1432 Dartmouth Road

STATE Maryland 21234

CITY OR TOWN Baltimore

The Maryland Historic Sites Inventory was officially created by an Act of the Maryland Legislature, to be found in the Annotated Code of Maryland, Article 41, Section 181 KA, 1974 Supplement.

The Survey and Inventory are being prepared for information and record purposes only and do not constitute any infringement of individual property rights.

RETURN TO: Maryland Historical Trust
The Shaw House, 21 State Circle
Annapolis, Maryland 21401
(301) 267-1438

PS-1108

The north facade of the western addition is 4-bays deep, and displays a four-panel door in the easternmost bay on the first story. The second story of the north facade features four windows. The west facade is characterized by a gable-roofed, one-bay wide porch extending from a door in the second story and with stairs leading to ground level. Below the second story door is a window; above the door is a square, louvred vent at attic level.

The 6-bay wide porch along the south facade of the west addition has been enclosed with glass and has a modern Mediterranean-style wooden door at its eastern end. There are only two windows in the second story.

The one-bay wide, one-bay deep appendage to the southwest corner of the west addition has no fenestration on the east and west facades while the south facade has a single window with 2/2 lights at the first and second story levels.

The interior of the building was completely gutted in 1976 when it was converted into offices for a real estate company. New walls, plumbing, wiring, insulation and central air-conditioning were added at that time. Floors are now covered with commercial grade, wall-to-wall carpeting. All moldings have been replaced with modern wood moldings although the windows are original. A screened porch which ran along the south facade was glassed in to create a conference room and reception area. All other rooms are used for offices, except for those rooms in the 2-story appendage to the southwest corner of the west addition which are modern, 1/2 bathrooms.

The 1½-story root cellar entrance building is built into a bank to the west of the dwelling and has no fenestration. It is rectangular in plan, sheathed in wooden German siding and is built on an uncoursed rubble foundation. The gable roof which runs from east to west is covered with wooden shingles. A vertically-planked wooden door punctuates the east facade.

The interior of the root cellar is comprised of two levels. The upper level, visible on the surface, contains wooden steps leading downward to an underground chamber. The interior walls of the entrance are covered with white-washed stucco and the roof framing is exposed. The underground chamber is entered through a wooden plank door in the east wall. Covered with white-washed stucco is the ceiling (made of brick) and the walls. Wooden shelves line the north and south walls, and a square vented opening in the center of the ceiling leads to a louvred tower sitting on the ground surface above.

Directly west of the root cellar is a circular ice house, also built into a bank. The conical roof, covered with wooden shingles, sits on an uncoursed rubble foundation. It is topped by an octagonal cupola that has louvred panels in each of the eight sides and is surmounted by a sheet-metal cap. A stone walk-way leads to a plank door in the southeast facade at the lower level. A pedimented dormer, also with a planked door, emerges from the upper level on the west facade.

The interior of the ice house features an upper and lower level. The lower level sits approximately eight feet deep in the ground. Its circular wall is made of uncoursed rubble while the floor is composed of poured concrete. Floor joists and flooring of the upper level constitute the ceiling of this lower level. The upper level is used for storage and features wooden plank flooring. The walls are unfinished.

The 2½-story carriage house sits to the southwest of the ice house. It is sheathed in wooden German siding and sits on an uncoursed rubble foundation. The gable roof runs north to south and is covered with standing seam metal roofing. The principal (east) facade displays two pairs of outward-swinging plank doors at the first floor level. A centrally-placed, gabled dormer features a plank door which gives access to the upper loft area. The north and south facades have exposed rafter ends and contain louvred vents at the attic level. The west (rear) facade has a 6-light wooden sash window in the northwest corner. The interior was inaccessible.

Mrs. Gardner sold the dwelling two years later to Dr. Benjamin R. Benson, a 21-year old physician who graduated from the University of Maryland in 1873 and practiced in Carroll County prior to moving to Marble Hill. He paid $2500 for the property (liber JB 102, folio 588).

In 1890, Dr. Benjamin R. Benson built himself a new home on the opposite side of York Road and sold this property in that same year to his brother, Dr. Joshua Edward Benson (liber JWS 179, folio 342). Dr. J.E. Benson had been a pupil of Dr. Benjamin Benson and was graduated from the University of Maryland in 1884. Prior to purchasing the house from his brother, Dr. J.E. Benson was living "several doors north in one of the Marble Hill houses" (notes on file with John McGrain, chairman, Baltimore County Landmarkds Preservation Commission, Towson, Maryland). Dr. J.E. Benson so admired the ice house and root cellar at his brother's new home that he had similar ones constructed on his property (John McGrain, notes).

In 1923, Dr. J.E. Benson sold the property to Elijah Hale (liber WPC 568, folio 432). Hale conveyed the property to his son John A. Hale in 1937 (liber 1012, folio 469). He retained the property until 1976 when he sold it to the present owners Piper and Co., a real estate firm that established its offices in the building (liber 5691, folio 87).

Piper Realty restored the exterior of the house and completely gutted the interior, except for the studding, and added new wiring, plumbing, insulation and central air conditioning. The ice house, root cellar and carriage house were restored at the same time although a 2-story shop, a shed and a long, one-story building which adjoined the carriage house were demolished to provide parking spaces.

The original portion of the building was probably constructed between 1866 and 1875 during S.W. Worthington's ownership. Because Mrs. Gardner sold the property for substantially more than she paid for it (from $1800 to $2500) it is likely that she added the west addition between 1875 and 1877. The bathroom appendage to the southwest corner of the west addition dates after 1918 because the tax list for that year gives dimensions for the main block and west addition only.

Bromley, George Washington. 1915 Atlas of Baltimore County, Maryland; 1898 Atlas of Baltimore County, Maryland.

Cordell, Eugene F. Medical Annals of Maryland. Baltimore: Williams and Wilkens Co., 1903.

Hollifield, William. Difficulties Made Easy. Baltimore County Historical Society, 1978.

Hopkins, G.M. and Co. 1877 Atlas of Baltimore, Maryland and Environs.

Notes on file, John McGrain, chairman, Baltimore County Landmarks Preservation Commission. Towson, Maryland.

Taylor, Robert. 1857 Map of Baltimore City and County.

CHAIN OF TITLE

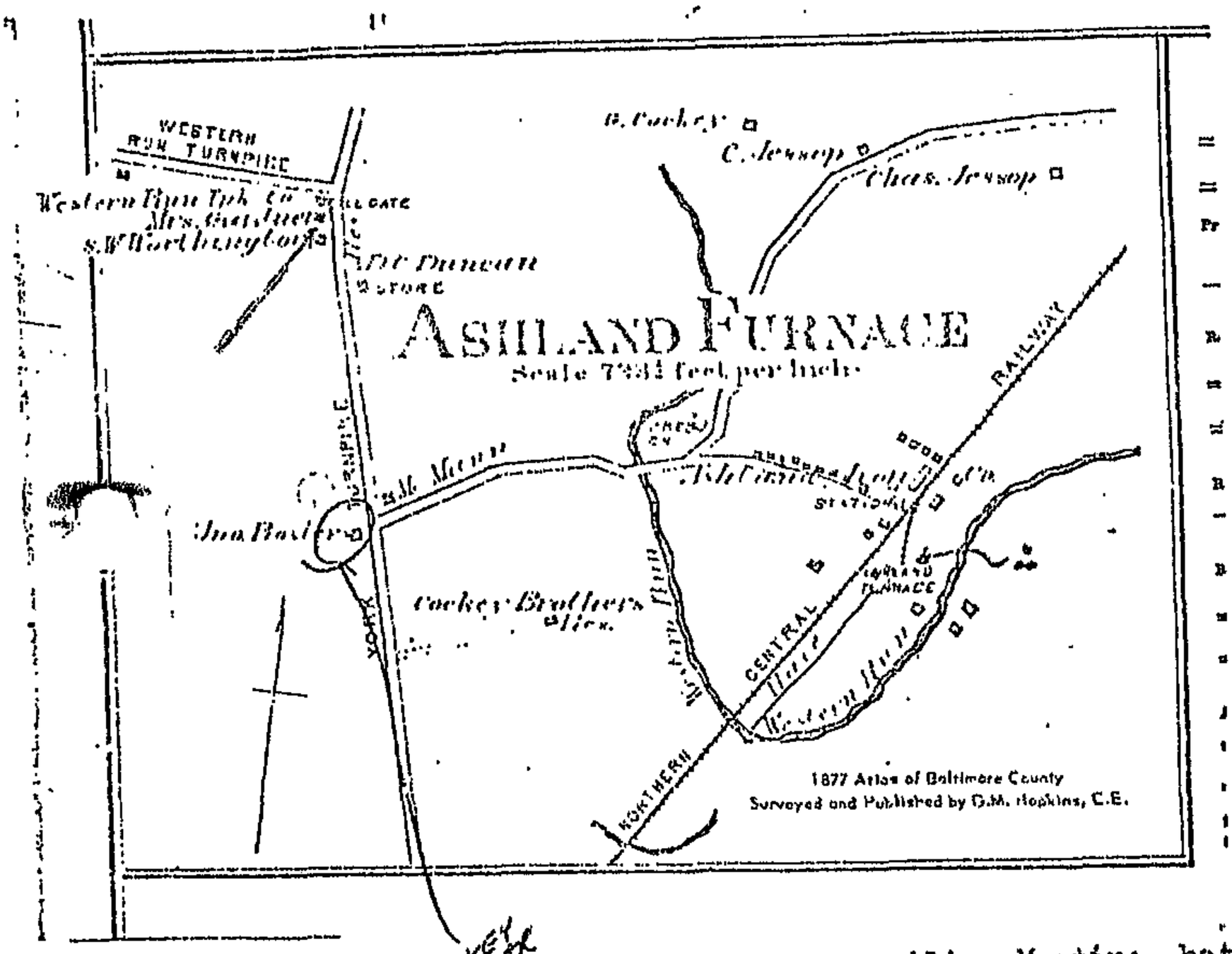
BA-917
Elizabeth Gardner House
Marble Hill

5691/87 10/28/1976 deed	from: to:	John A. and Myrl C. Hale Piper & Co., Inc.
TBS 1694/82 8/6/1948 deed	from: to:	Clayton W. Bordley, Inc. John A. Hale
TBS 1694/81 8/6/1948 deed	from: to:	John A. Hale, et al Clayton W. Bordley, Inc.
1012/469 10/20/1937 deed	from: to:	Elijah Hale and wife John A. Hale
WPC 568/432 3/27/1923 deed	from: to:	J. Edward Benson and wife Elijah Hale
JWS 179/342 4/1890 deed	from: to:	Dr. Benjamin R. Benson and wife Dr. J. Edward Benson $2800
JB 102/588 9/14/1877 deed	from: to:	Elizabeth T. and John H. Gardner Benjamin R. Benson $2500
JB 92/146 4/22/1875 deed	from: to:	Samuel W. Worthington Mrs. Elizabeth J. Gardner $1800

SA-917 JOHN HALE'S HOUSE 11,335 York Road, Hunt Valley

BA ____ Gardner-Benson-Hale House (Site of Myhalein Ice House)

House under restoration 1976 as real estate office of Dick Price
with Piper & Co. ... (821-1700)
These repairs in progress in Feb., Mar. 1977. (Call Nov. 17, 1976)



COCKEY TOWER HOUSE

Further notes from Alice Martin:--both the root cellar and ice house are ~~imitations~~ of those across York Road at other Benson estate owned by Emory Benson. Alice & Mr. Elmer R. Haile had tape-recorded Mr. Emory Benson. Mr. and Mrs. John Hale were in nursing home, late 1976. (Nov. 18, 1976---telecon) -> both have now died (

NOW PRACTICALLY SOUTH OF THE GATE HOUSE

BA - 917 ~~GARDNER~~-Worthington-BENSON-HALE HOUSE

Tipers & Co.

SW corner of Western Run Road, now Shawan Road & York Road
Under restoration in 1976 by Dick Price as real estate office

1850 map by J.C. Sidney shows blacksmith shop on larger property of Samuel Worthington

1877 atlas shows that the exact SW corner was toll gate location; while the present Victorian house was that of Mrs. Gardner (i.e., Elizabeth Gardner, or Mrs. John H.)

The earliest deed in Towson Court House is one of 1866 that establishes that the property was Samuel Worthington's, devised by will to son Thomas L. in 1858. (Wills JLR 1:352, f. 356). A plat annexed to the will book shows that Lot No. 2 was 157-3/4 acres and was bounded on the north by Furnace Turnpike, now Shawan Road (f. 352). This plat was the result of a survey of 1855; recorded 1858.

A.M. note: ice house/ root cellar built by Dr. Benson & brother Dr. Edward after that became Percy Neff's tracking lived (in yellow house) & moved into Hale house after Dr. Benson moved to nearby Spill house area etc

Samuel Worthington's inventory taken in 1858 fails to establish the date of the ice house at the corner property, although there is a lsiting of "Dairy furniture" worth $____.

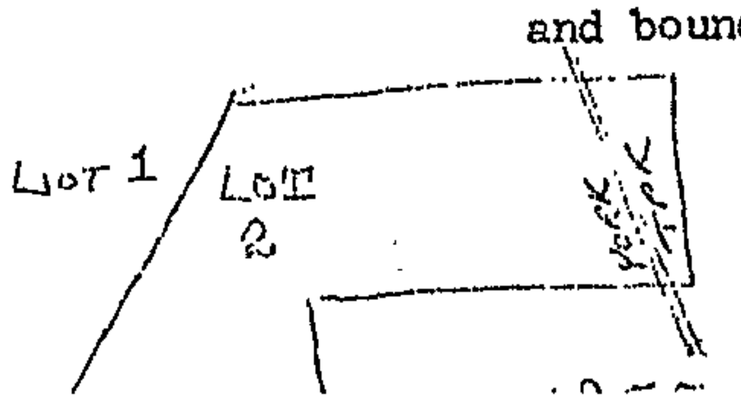
Other Items, Inventories 3:239

1	Hussey's Reaper	$75
1	Set Black Smith's Tools, & old Iron	30
1	Threshing Machine & horse power	8
1	Bamborough wheat fan	18
2	Wheat fans	18
1	Threshing Machine & Horse Power (old)	20
1	McCormick's Reaper (broken)	30
1	Corn sheller	
100	Acres of wheat in ground	500
1	Barrick (about 7 tons) Clover Hay	50

(15 slaves .... names ....)

27 January 1858

Deeds JHL 50:199 Thomas L. Worthington--to--Samuel W. Worthington ... 22 August 1866 ... $5000 ... part of .... Lot 2 ... as described on a plat of Samuel Worthington's land ... annexed ... June 1855 .... now of record ... which entire lot or parcel of land number two (2) was devised to the said Thomas L. Worthington by the last will & testament of his father Samuel Worthington by the last will of his father Samuel Worthington above referred to .... Beginning .... on Furnace Turnpike Road ... ref to "Gerar" .... (ref to a deed ... WG 166/353) .... metes and bounds .... improvements



Deeds JB 92:146

Samuel W. Worthington--to--Mrs. Elizabeth J. Gardner ... 22 April 1875 ... $1800 ... BG ... 3/4 acre .... according to survey made 1875 by Thomas W. Renshaw ... being half of Lot No. 2 of the lands of Samuel Worthington ... deceased ... also ... part of ... lot that was conveyed by deed ... 22 Aug 1866 ... rec JHL 50/199 ... by Thomas W. Worthington to sd Samuel W. Worthington ....

1876 Tax Ledger, f. 69

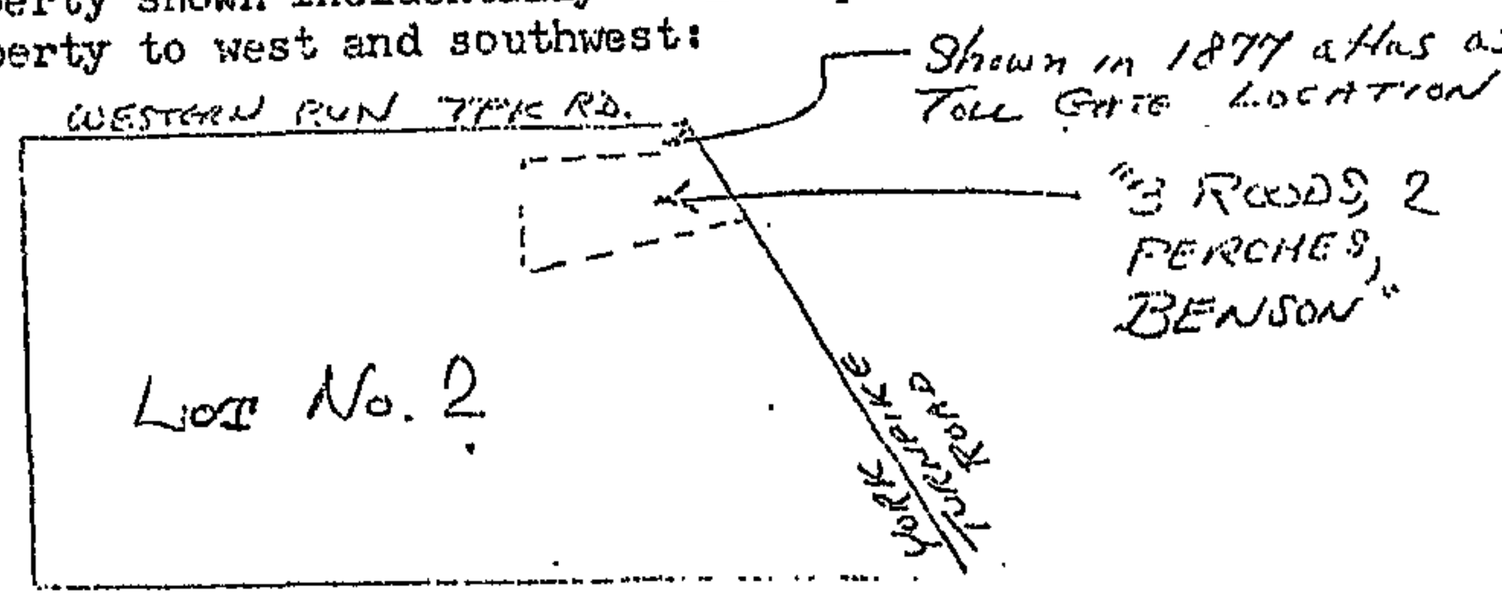
Elizabeth J. Gardner
Lot on York Road $100 Improvements #$1000
Furniture $150 Carriage $100; live stock $56 $396

Deeds JB 102:588

Eliz. Gardner & John H. Gardner, husband --to--Dr. Benjamin R. Benson ... 14 Sep 1877 ... $2500 ... lot or parcel ... in B.C. ... 3/4 acre & 2 square perches ... as surveyed 20 April 1875 .... part of lot No. 2 of the lands of Samuel Worthington deceased ... etc etc ... also, part of .... deed ... rec JB 146 ... conv from Samuel W. Worthington to sd Elizabeth Gardner ... 1875

Plats JWS 1:25

Property shown incidentally in 1881 plat of Worthington property to west and southwest:



Deeds JWS 179:342

Dr. Benjamin R. Benson & wf--to--Dr. J. Edward Benson ... April 1890 ... $2800 ... parcel ... north of the village Cockeysville ... Beginning .... etc .... 3/4 acre .... Being a part of Lot No. 2 of the land of Samuel W. Worthington by his last will and testament and afterwards conveyed by said Thomas L. Worthington by deed duly recorded in JHL 50:199 S/A ... conveyed by the sd Samuel W. Worthington to Elizabeth Gardner by deed bearing date of 22 April 1875 ... rec JB No. 92/146 ... also the same conveyed by the said Elizabeth Gardner and husband to the said Benjamin R. Benson, M.D, ... by deed bearing date 14 September 1877 ... rec JB 102/588 .... improvements ....

1896 Tax Ledger, District 8, f.__

Benson, Dr. J.E., Cockeysville, Md.
Real Property, 3/4 acre of land on West side York Turnpike near Western Run Turnpike
valued @ $200.00
Improvements 1,050.00

1911 Tax Ledger, f. 20

J.E. Benson	
1 Acre Land on York Pike near Western Run Pike	$500
House $2000 Ice House $100 Carriage House $200 Stable $400	2,700
Furniture 5000 Vehicles 150 Live Stock 250	900
1912 Auto	400
New Auto (Ford) 1917	375

1918 Tax Ledger, f. 21

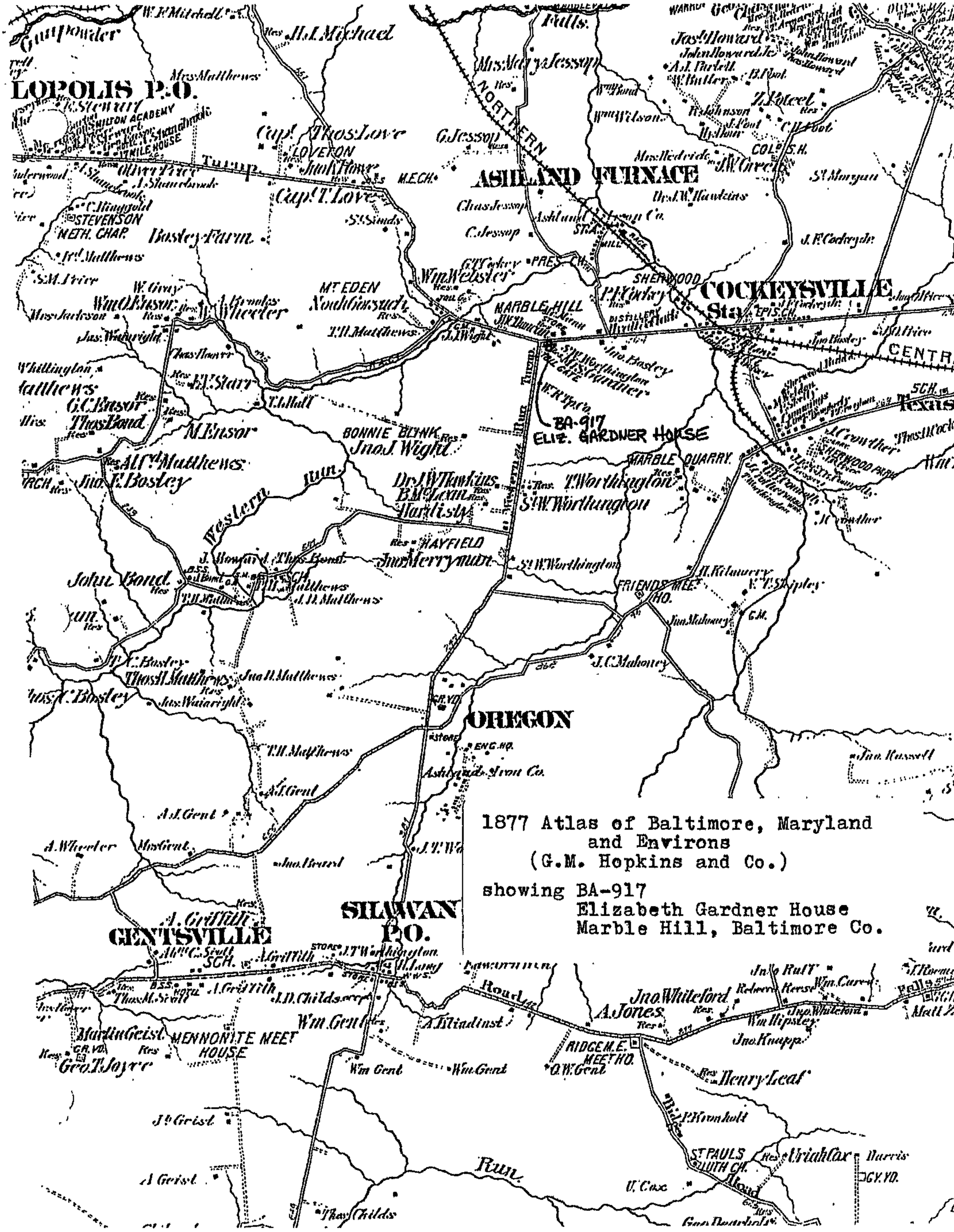
J.E. Benson	
1 Acre on York Rd., near Western Run Pike, 1 m. n. of Cockeysville	500
Dwellings (2) 16 x 30 (2) 17 x 34	2,116
Stable & outbuildings	500
(stock etc .....)	

Deeds WPC 568:432

J. Edward Benson & wf--to--Elijah Hale ... 27 March 1923 ... parcel ... 8th District ... Beginning ... etc ... 3/4 acres ... Same as ... in deed ... April 7, 1890 ... from Dr. Benjamin R. Benson & wf to J. Edward Benson ... rec in JWS 179/342 ... bldgs ...

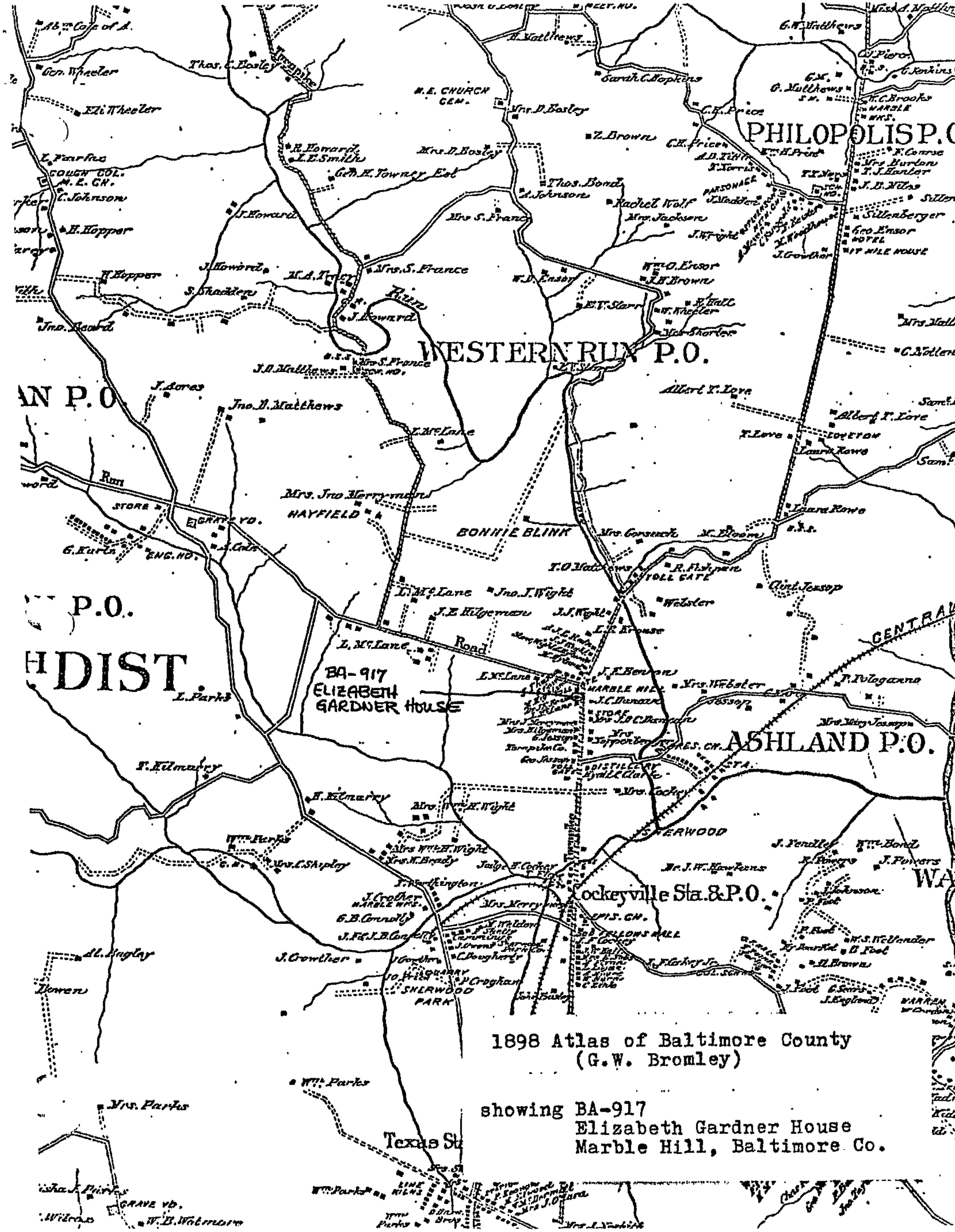
Deeds CWB Jr. 1012:469

Elijah Hale & wf--to--John A. Hale ... 20 October 1937 ... parcel ... 8th District ... BG ... 53½ ft from south side of the Western Run Turnpike Road, S 3/4°W 9-1/5 perches to a stone, N80-3/4°E 15.7 perches to centre of York Turnpike .... along said road N11°W 6-4/5 perches, N88¼W 14 perches to Beginning ... 3/4 acres ... S/A ... deed ... 1923 ... rec WPC 568/432 ... conv. by J. Edward Benson & Laura T., his wife to Elijah Hale ....



1877 Atlas of Baltimore, Maryland
and Environs
(G.M. Hopkins and Co.)

showing BA-917
Elizabeth Gardner House
Marble Hill, Baltimore Co.

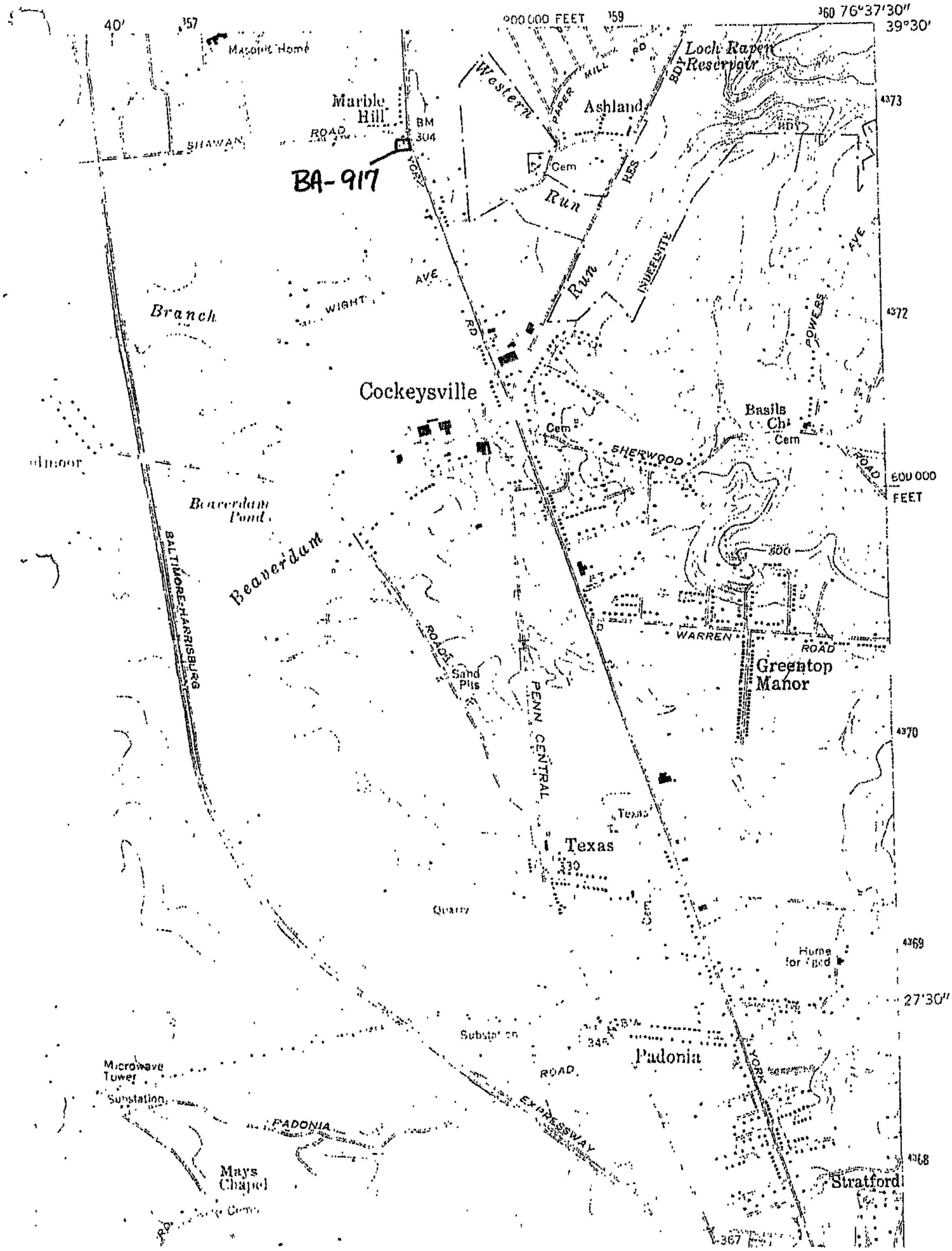


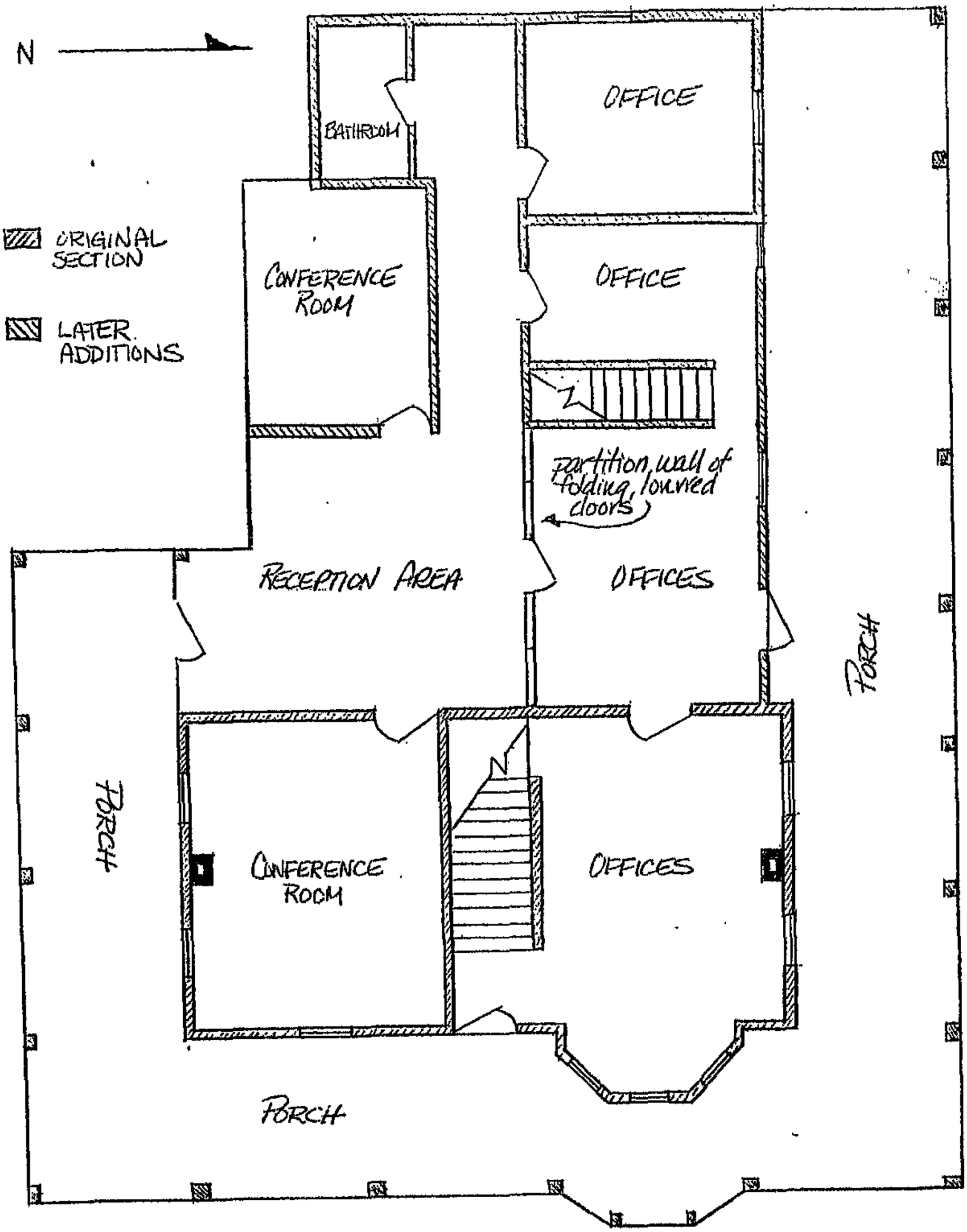
1898 Atlas of Baltimore County
(G.W. Bromley)

showing BA-917
Elizabeth Gardner House
Marble Hill, Baltimore Co.

COCKEYSVILLE QUADRANGLE
MARYLAND—BALTIMORE CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)
NW/4 BALTIMORE 15' QUADRANGLE

5663 II SE (PHOENIX)





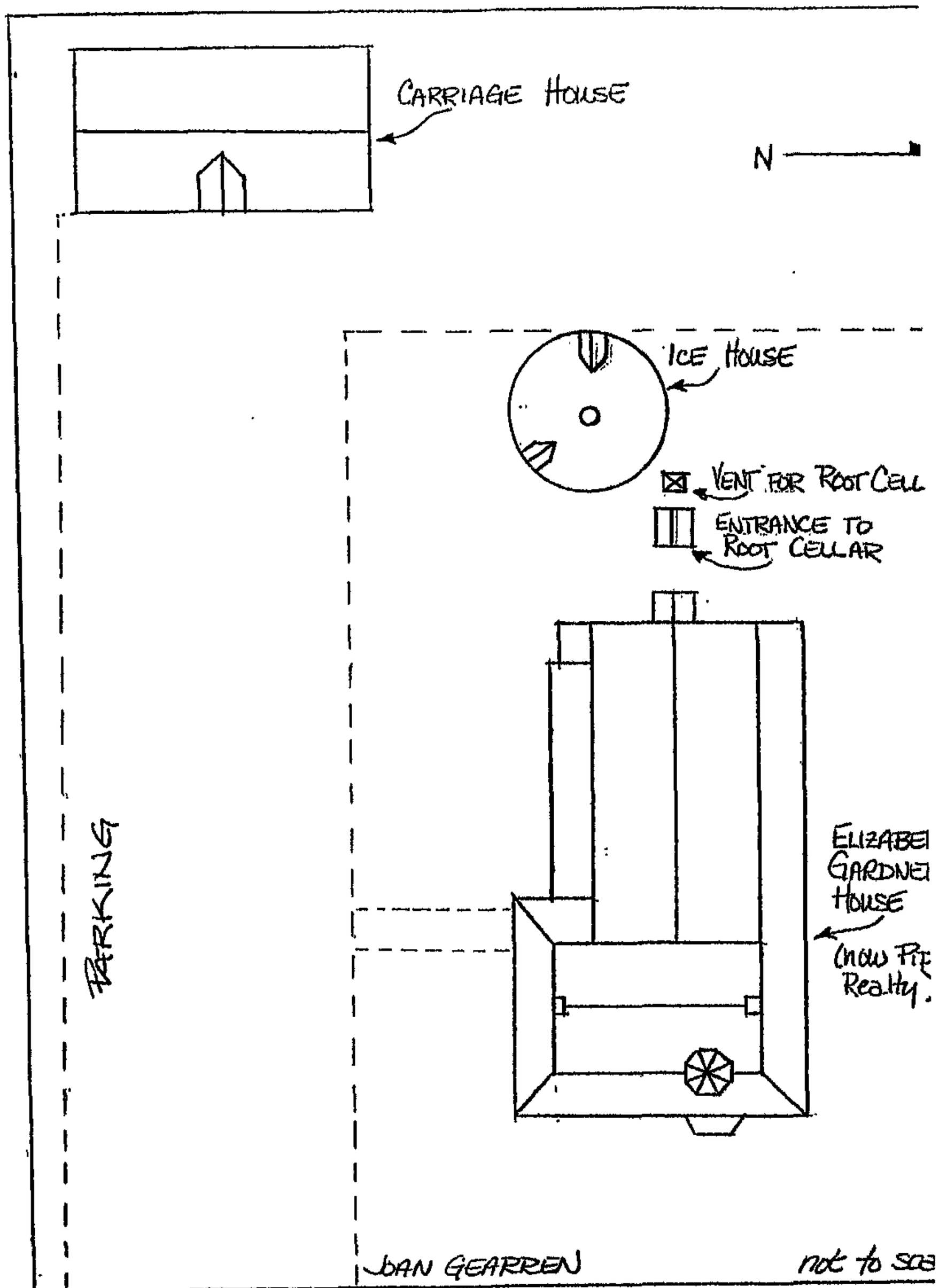
JOAN E. GEARREN

SCALE: 1/8" =

ELIZABETH GARDNER HOUSE
MARBLE HILL, MARYLAND

BA-917

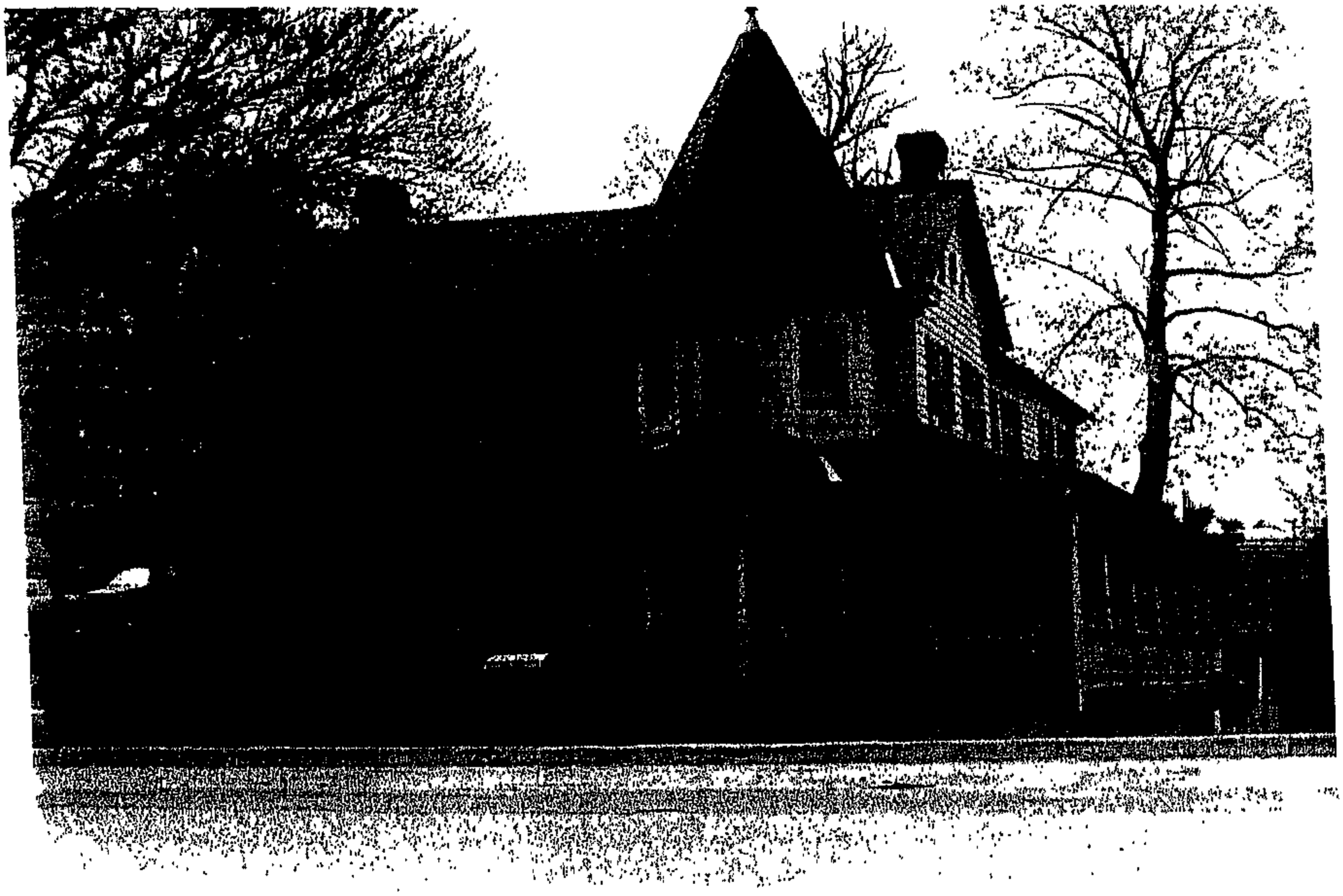
MAY 4

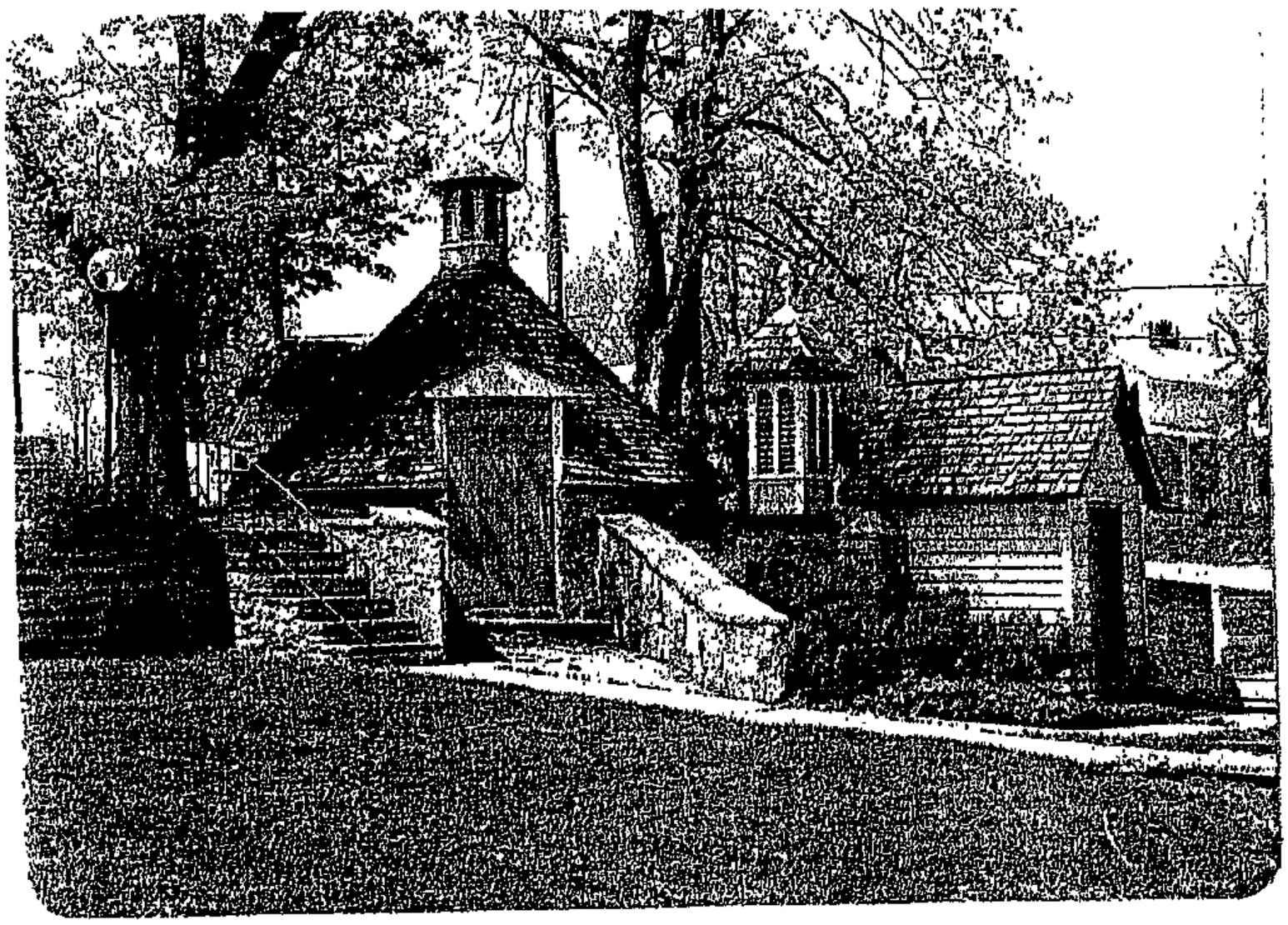


SITE PLAN-- ELIZABETH GARDNER HOUSE
MARBLE HILL

BA-917

MAY 4, 19





Pro. Ex. #2

10-14-04

	21.	**"Elizabeth Gardner House," 11330 York Road (at Shawan Road), Hunt Valley**
	Historic Status:	MHT Inventory # BA 917, built ca. 1870
	Proposal:	Request for an advisory evaluation of historic significance (unstated reason for the request, but likely the prelude to a proposal by the owner for demolition)
	LPC Action:	Decide whether to set the precedent of making determinations in the absence of an actual proposal to demolish or alter a structure.
10-14-2004	Recommendation:	**Vote to affirm that, even though this structure is not of a National Register level of significance, and *might* not be of Landmark significance, it is still clearly eligible to remain on the MHT Inventory (now the County Register) and should remain subject to the requirement that it "must be preserved."** ***Note that, because there has been no public notice by posting, it is not appropriate to reach a final conclusion on Landmark eligibility.***
	Authority for Action:	County Code, Secs. *32-7-102, 32-4-416 (a)(2)*

	22.	**Washington property, 206 Winters Lane, Catonsville**
	Historic Status:	Contributing structure in the proposed Winters Lane National Register Historic District (MHT # BA 3067)
	Proposal:	Demolition
	LPC Action:	Consider appointing a Technical Committee to prepare recommendations for the Commission to send to the Hearing Officer
	Recommendation:	**Vote to appoint a Technical Committee**
	Authority for Action:	Standing request from the Hearing Officer for advisory comments

14.A. **"Rockwood" (Langenfelder Farm), 7405 Longfield Drive, Kingsville**

Historic Status: Preliminary Landmarks List # 242

Proposal: Rehabilitation

LPC Action: Consider the report from the Technical Committee (Mr. Hill and Ms. Secoura), and the developer's package submitted yesterday

Recommendation: ***Postpone decisions to the February meeting***

Authority for Action: County Code, Secs. 32-7-404 (b)(2), -405 (a)

14.B. **"Elizabeth Gardner House," 11330 York Road (at Shawan Road), Hunt Valley**

1-13-05

Historic Status: MHT Inventory # BA 917; built ca. 1870, partially altered in the late twentieth century

Proposal: Demolition

LPC Action: Consider what, if any, actions to take:
-- formally request a Special Hearing
-- make recommendations for the Hearing Officer's "Private Review" meeting
-- schedule the house for a Landmark Hearing

Recommendation:

Authority for Action: County Code, Secs. 32-7-102, 32-4-416 (a)(2)

3-10-05

9.	**"Elizabeth Gardner House," 11330 York Road (at Shawan), Hunt Valley**
Historic Status:	MHT # BA-917; built ca. 1870
Proposal:	Nominated to the Landmarks List
LPC Action:	Conduct the scheduled public hearings. Decide whether or not the structures qualify for the List.
Recommendation:	**The Office of Planning does not support placing this house on the Landmarks List**
Authority for Action:	County Code, Sec. 32-7-302 (b)

10.	**Moxley House, 6100 Frederick Road, Paradise vicinity**
Historic Status:	On the Baltimore County Register; built ca. 1927
Proposal:	Nominated to the Landmarks List (by the owners)
LPC Action:	Conduct the scheduled public hearings. Decide whether or not the structures qualify for the List.
Recommendation:	**Vote to place the house on the Preliminary List for contributing significantly to the County's historical heritage under criteria (1) – for its association with the pattern of suburban development in the Catonsville area; (2) – as a notably large, distinctive example of Colonial Revival-style architecture, and (3) – as, obviously, the work of a master builder**
Authority for Action:	County Code, Sec. 32-7-302 (b)

Pro. Ex #3

ATLAS OF BALTIMORE COUNTY MARYLAND.

Surveyed & Published under the Direction OF

G. M. HOPKINS, C.E.

320 Walnut Street

PHILADELPHIA.

1877.

Engraved by
Walter S. MacCormac
320 Walnut St. Philada.

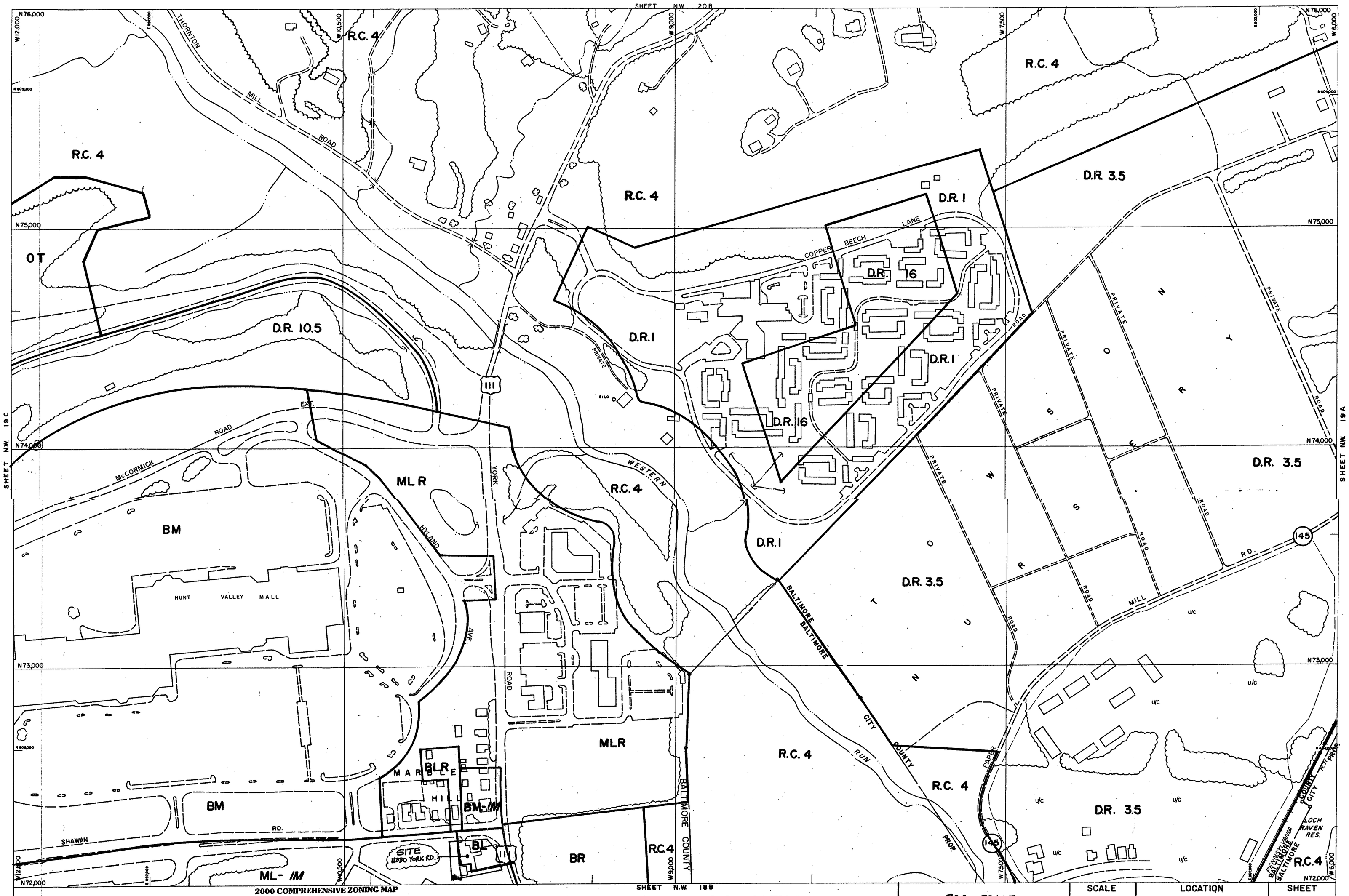
F. HOURQUIN'S
Steam Lithographic Press
31 South 6th St.
Philada.

Entered according to Act of Congress in the year 1877 by G. M. Hopkins, in the Office of the Librarian of Congress at Washington.

Scale 2 Inches = to a Mile.

PHOENIX MILLS
Phoenix Sta.
COTTON
LODGE HALL
Gunpowder
PHILOPOLIS P.O.
Cap. Thos. Love
LOVERTON
Turnp.
Cap. T. Love
STEVENSON
METH. CHAP
Bosley Farm
Mt. EDEN
Wm. Webster
Wm. Wheeler
Wm. Ensor
G. C. Ensor
Thos. Bond
M. Ensor
BONNIE BLINK
Jno. J. Wight
Jno. F. Bosley
Dr. J. W. Thomkins
Hardisty
HAYFIELD
Jno. Merryman
John Bond
Thos. Ingham
Jas. Bosley
Thos. F. Bosley
Western Run
OREGON
Ashland Iron
SHAWAN P.O.
GENTSVILLE
A. Griffith
Falls
Wm. Gent
MENNONITE MEET HOUSE
Geo. T. Joyce
Road
Run

WARREN
Dr. Wm. S. Thompson
Jas. Torrington
POPLARS
MEET HO
Jos. Howard
Falls
Mary Jessop
STAFFORD
SHILOH FURNACE
Dr. J. W. Hankins
Ashland Iron Co.
SHERWOOD
COCKEYSVILLE Sta.
MARBLE HILL
CENTRAL
Texas Sta.
MARBLE QUARRY
S. W. Worthington
FRIENDS MEET HO.
J. C. Mahoney
Jno. Mahoney
Jno. Russell
Thos. Kenney
Jno. Justice
Beaver Dam
Jno. Whiteford
A. Jones
RIDGE M. E. MEET HO.
Henry Leal
ST PAULS LUTH CH
Jno. Knapp
Jno. Ruff
Wm. Carr
Matt. Zink
Jno. B. Wast
Jno. B. Shode
Thos. Ward
Alex. D. Brown
Ab. M. Brown & Son
BAPTIST CH
CEM. 17 Years Old
RACE COURSE
N. Rogers Est.
Road
Jno. B. Brown
Jno. Cronchardt
Wm. Cross
Thos. Gilmer
W. O. Willson
J. Mayes
J. Greaser
S. Musgrove
MAYES CHAPEL
Jas. Osburn
P. Parks
Elisha J. Parks
Watman
Thos. Ward
Jno. B. Shode
Alex. D. Brown
Mrs. Mordecai
Pat. Burnham
Mrs. Frank
Mrs. Thomas
Mrs. Leellis
H. Stump
J. Cronchardt
E. Burnham
A. D. Brown
Mrs. A. Chalk
F. Dawes
Mrs. A. Nesbitt
Jos. F. C. Tulbott
Talbot
TEN MILE HO
Turnpike
Ashland Iron Co.
Lowry
Mrs. Tulbott
G. O. Stevens
Henry Kellogg
Thos. Ward
Jno. Parks
Jas. Kelly
J. W. Merryman
BALT. CO. POOR HOUSE
J. F. Parks
LUTHE
Turnpike
Ashland Iron Co.
Jno. Parks
Jno. Bosley
Jno. Whitington
C. W. Matthews
T. T. Hall
T. H. Matthews
J. D. Matthews
Jno. Wright
Jas. Wainwright
Thos. Hoover
Jas. Ensor
A. Griffith
J. D. Childs
Wm. Gent
A. Hindinst
Jas. Ensor
J. P. Geist
A. Chilcoat
A. Geist
Edwin Scott
Wm. Cole of A.
A. I. Gent
A. Wheeler
Mrs. Gent
Jno. Beard
J. T. Worthington
Jno. Bosley
Thos. Bond
Thos. Ingham
Thos. H. Matthews
Jno. H. Matthews
Jas. Winwright
T. H. Matthews
Jas. Bosley
Thos. F. Bosley
Jas. Ensor
Jas. Osborn
Jas. Wainwright
Jas. Bosley
Thos. Bosley
Jas. Wainwright
Jas. Bosley
Thos. Bosley
Jas. Wainwright
Jas. Bosley
Thos. Bosley



V-NE

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

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

Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

200 SCALE
ZONING MAP
11330 YORK ROAD
8TH ELECTION DIST.
3RD. COUNCILMANIC DIST.

SCALE	LOCATION	SHEET
1" = 200'±	ASHLAND	N. W. 19-B
DATE OF PHOTOGRAPHY JANUARY 1986		

NW 19 B

GENERAL NOTES

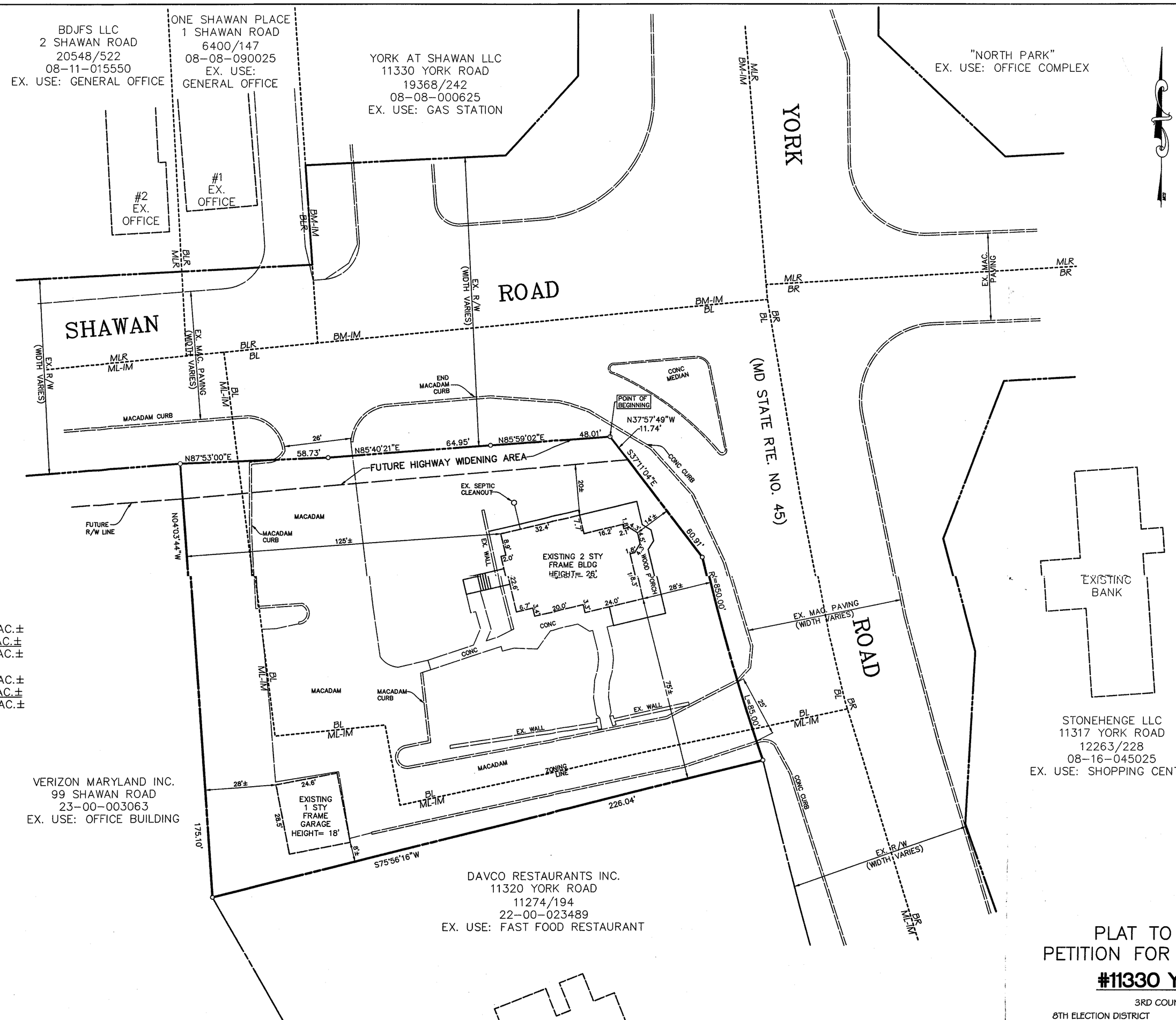
1. THERE HAVE BEEN NO PRIOR ZONING HEARINGS, DEVELOPMENT PLANS, CRG PLANS, OR DRC MEETINGS FOR THIS PROPERTY.
2. THIS SITE IS SERVED BY PUBLIC WATER AND PRIVATE SEPTIC SYSTEMS.
3. THIS SITE DOES NOT LIE WITHIN A 100 YEAR FLOOD PLAIN.
4. THERE ARE NO STREAMS, WETLANDS, OR STORMWATER MANAGEMENTSYSTEMS WITHIN 50 FEET OF THIS SITE.
5. THIS SITE LIES ON 200 SCALE ZONING MAP NO. NW19-B.
6. EXISTING USE OF PROPERTY: VACANT (FORMER GENERAL OFFICE).

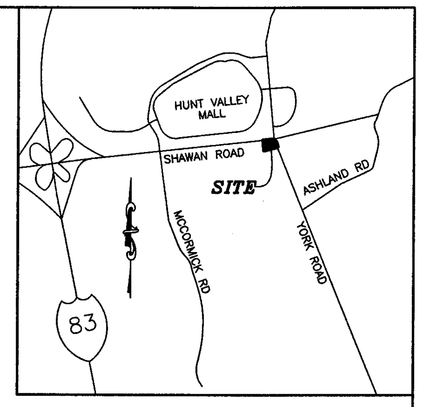
HISTORIC NOTE

THIS SITE IS LISTED AS INVENTORY NUMBER BA917 WITH THE MARYLAND HISTORIC TRUST BUT IS NOT LISTED ON EITHER THE PRELIMINARY OR FINAL BALTIMORE COUNTY LANDMARK PRESERVATION LISTS.

SITE DATA

1. EXISTING ZONING: BL & ML-IM
2. GROSS AREA: BL 29,819 SF=0.685 AC.±
   ML 10,503 SF=0.241 AC.±
   TOTAL GROSS AREA 40,322 SF=0.926 AC.±
3. NET AREA: BL 22/259 SF=0.511 AC.±
   ML 9,453 SF=0.217 AC.±
   TOTAL NET AREA 31,712 SF=0.728 AC.±





VICINITY MAP
SCALE: 1"= 2000'

CBA Petitioner's #1

332

PLAT TO ACCOMPANY
PETITION FOR SPECIAL HEARING

#11330 YORK ROAD

3RD COUNCILMANIC DISTRICT
8TH ELECTION DISTRICT — BALTIMORE COUNTY, MARYLAND
SCALE: 1"=20' — DATE:NOVEMBER 12, 2004

OWNER
YORK AT SHAWAN LLC
4 QUAIL HOLLOW ROAD
LUTHERVILLE, MD 21030-4523

DEED REFERENCE 19368/242
TAX ACCOUNT NO. 08-08-000625
TAX MAP 42 PARCEL 229

McKEE & ASSOCIATES, INC.
Engineering – Land Planning – Land Surveying
Natural Resource Planning – Real Estate Development
5 SHAWAN ROAD, Suite 1 — COCKEYSVILLE, MARYLAND 21030
TELEPHONE: (410) 527-1555 — FACSIMILE: (410) 527-1563

STATE OF MARYLAND — GEOFFREY CRAIG SCHULTZ — No. 21154 — PROFESSIONAL LAND SURVEYOR

GCS 11/19/04
GEOFFREY C. SCHULTZ — DATE
MARYLAND REG. No. 21154

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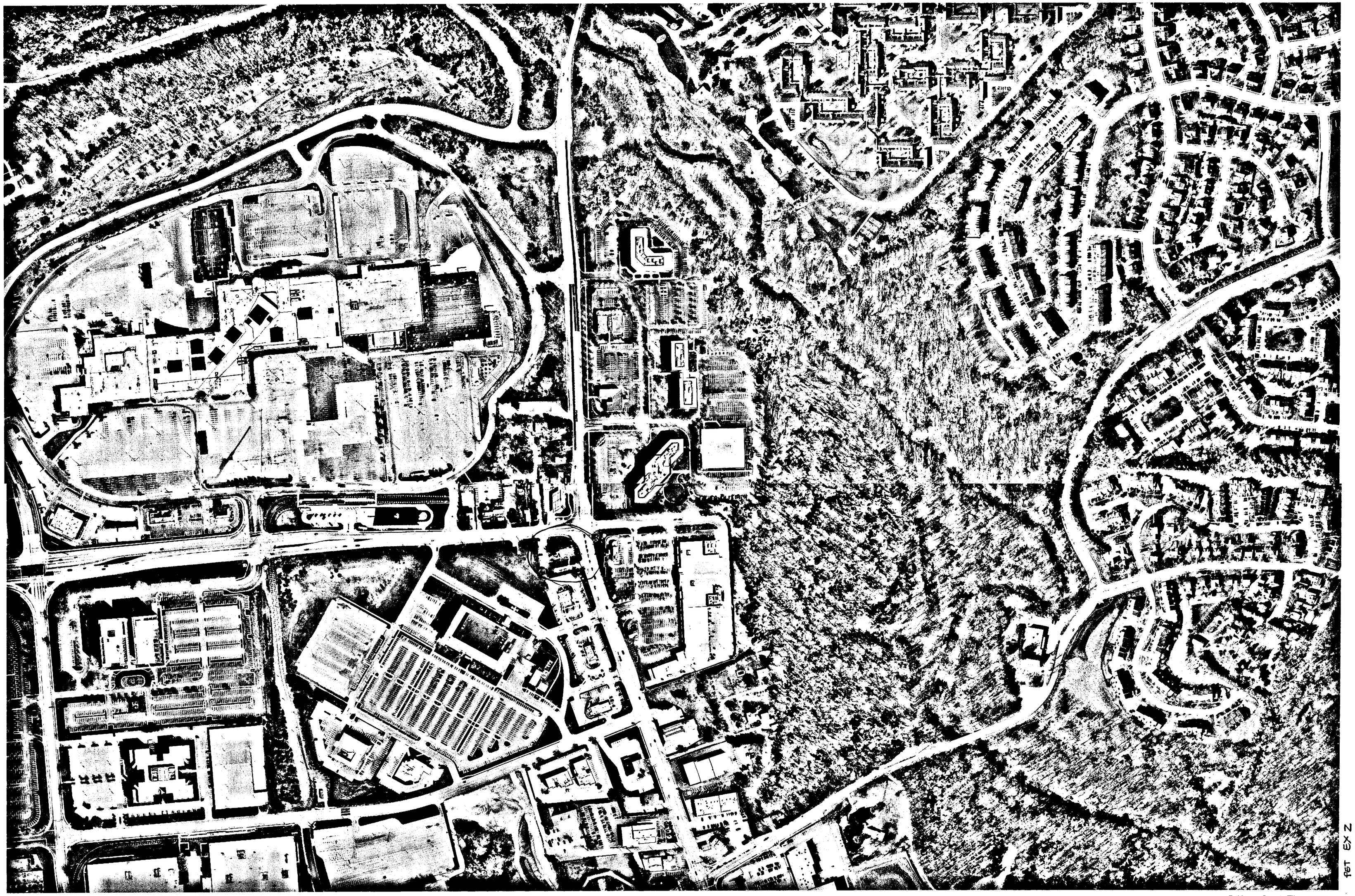

Map Produced By Baltimore County GIS Services Scale: 1 inch equals 200 feet

Baltimore County Tile: 042B2

feet EX Z
CDA