IN THE MATTER OF:	*	BEFORE THE
THE APPLICATION OF		
OWEN T. MEADOWS –LEGAL OWNER	*	COUNTY BOARD OF APPEALS
/PETITIONER FOR SPECIAL HEARING		
ON PROPERTY LOCATED ON THE	*	OF
NE/S SEVERN AVENUE, 225' W OF		
C/L OF WALNUT AVENUE	*	BALTIMORE COUNTY
(610 SEVERN AVENUE)		
	*	CASE NO.: 05-498-SPH
15TH ELECTION DISTRICT		
7TH COUNCILMANIC DISTRICT	*	

* * * * * * * * * * *

OPINION

This matter comes on appeal from the decision of the Zoning Commissioner's dated May 19, 2005 in which the Petitioner's request for special hearing pursuant to § 500.7 of the *Baltimore County Zoning Regulations* (BCZR), to approve the storage of a dump truck, trailer and backhoe on residential property, was DENIED. The Board of Appeals heard this case *de novo*.

Testimony and Evidence

The Petitioner (Owen T. Meadows) testified that he is the owner of the property 610 Severn Avenue. This property backs up to the Baltimore Beltway (I-695) as shown in Petitioner's Exhibit 4a-h. He is retired and has owned the property since 1973 and has been parking his vehicles on the property without complaint since that time. Petitioner submitted Exhibits 1,2, and 3 (*Strucco*, *Cochran* and *Butts* decisions) which were past zoning commissioner's decisions granting zoning variances in the geographical area as the Petitioner; Exhibits 4A-H and 5A-D, which are photographs of his property and the surrounding area indicating commercial use and storage of other similar vehicles; and Exhibit 6, a list of signatures of his neighbors proclaiming "no opposition" to the Petitioner's parking his vehicles on his lot. The Petitioner testified that he has no other site to park his vehicles and that it would

be a financial hardship on him to pay rent to park his vehicles on a commercial lot. He testified he would have to sell his vehicles if he were unable to park his vehicles on his property. He stated that he did not use the backhoe and dump truck commercially but only for work around the neighborhood and for friends.

Six neighbors of the Petitioner (Mr. Lindsey, Mr. Stichel, Mr. Horseman, Mr. Long, Mr. Myers and Mr. Coffman) all testified that the Petitioner was an excellent neighbor, that they were aware of the vehicles, and had no issue with the Petitioner parking them on his property. They testified that the Petitioner was an asset to the neighborhood and often acted as a "Good Samaritan." They noted that the Petitioner helped numerous neighbors with snow removal of driveways and roads, before the County could reach the neighborhood; and further that the Petitioner repaired and maintained the road behind his property (Petitioner's Exhibit 7- aerial photo) for himself and his neighbors despite the road being a County road. They testified that the Petitioner was a volunteer at the local church, using his equipment to defray costs of expansion, and he has helped neighbors save money by using his equipment to offset high commercial rates for neighborhood jobs. They stated that the Petitioner's equipment was not an eyesore and that they never see the equipment where it is now stored.

The only opposition was by letter from Peter M. Zimmerman, People's Counsel for Baltimore County, in which he noted the position of the Office of Planning and the comment dated May 25, 2004, which is part of the record in this case. The Office of Planning opposes the relief requested because it " will negatively affect the adjoining properties and the immediate residential neighborhood in general, and would in essence constitute a use variance." People's Counsel also refers to BCZR § 431, which establishes a "use" for parking commercial vehicles on residential property, subject to specific standards. Mr. Zimmerman's position is that the

Petitioner does not comply with any of the standards, and that the special hearing must therefore be denied. People's Counsel additionally points out that there are no "use" variances permitted in Baltimore County. He argued that use is permitted in Baltimore County in three instances: (I) as a "permitted" use, (ii) a "special exception use", which permits a conditional use under BCZR 502.1, or (iii) a use permitted by a specific statute, for example such as 409.8 above, or under 304.1 to permit a dwelling on an undersized lot if specific standards are met. As such, People's Counsel's position is that the Petitioner is not entitled to a special hearing relief as requested.

Decision

This Board does not believe that Petitioner is requesting or is entitled to a so-called "use variance." We do, however, believe that § 500.7 of the BCZR, *Special Hearings*, does apply. Section 500.7 states:

> The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

The Board bases its conclusions on the testimony of the Petitioner and the neighbors' testimony as well as People's Counsel's letter. This Board concludes that there is a difference between the backhoe and the dumptruck. The Board agrees unanimously that the dump truck is a commercial vehicle and has no uses to the property. The backhoe, however, given the topography, is essential to the Petitioner's property as well as numerous documented uses on behalf of the greater neighborhood. The Board is not unmindful of the esthetic factors involved and has carefully considered the testimony of the other neighbors closely engaged with the Petitioner's property. The Board also concludes, based on testimony, that the concerns of the

health, safety and general welfare of the community are more than met and satisfied with the backhoe remaining on the property.

ORDER

THEREFORE, IT IS this 12th day of April, 2006, by the County Board of Appeals of Baltimore County

ORDERED that Petitioner's request for special hearing relief to approve the storage of a dump truck be and is hereby **DENIED**; and it is further

ORDERED that Petitioner's request for special hearing relief pursuant to § 500.7 of the *Baltimore County Zoning Regulations*, to approve the storage of a backhoe on the subject property, be and is hereby **GRANTED**, subject to the following restrictions:

1. That the backhoe be housed in an accessory building with the proper permit; or

2. That it be enclosed with a privacy fence over that portion of the property where it is stored.

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, Panel Chair

Mike Mohler

Wendell H. Grier

County Board of Appeals of Baltimore County

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

April 12, 2006

Mr. Owen T. Meadows
610 Severn Avenue
Baltimore, MD 21237

RE: *In the Matter of: Owen T. Meadows – Legal Owner/Petitioner*
Case No. 05-498-SPH

Dear Mr. Meadows:

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 subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

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

I think we can live with this.

IN THE MATTER OF: THE APPLICATION OF OWEN T. MEADOWS –LEGAL OWNER /PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE NE/S SEVERN AVENUE, 225' W OF C/L OF WALNUT AVENUE (610 SEVERN AVENUE)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	*	CASE NO.: 05-498-SPH

* * * * * * * * * * *

OPINION

This matter comes on appeal from the decision of the Zoning Commissioner's dated May 19, 2005 in which the Petitioner's request for special hearing pursuant to § 500.7 of the *Baltimore County Zoning Regulations* (BCZR), to approve the storage of a dump truck, trailer and backhoe on residential property, was DENIED. The Board of Appeals heard this case *de novo*.

Testimony and Evidence

The Petitioner (Owen T. Meadows) testified that he is the owner of the property 610 Severn Avenue. This property backs up to the Baltimore Beltway (I-695) as shown in Petitioner's Exhibit 4a-h. He is retired and has owned the property since 1973 and has been parking his vehicles on the property without complaint since that time. Petitioner submitted Exhibits 1,2, and 3 (*Strucco*, *Cochran* and *Butts* decisions) which were past zoning commissioner's decisions granting zoning variances in the geographical area as the Petitioner; Exhibits 4A-H and 5A-D, which are photographs of his property and the surrounding area indicating commercial use and storage of other similar vehicles; and Exhibit 6, a list of signatures of his neighbors proclaiming "no opposition" to the Petitioner's parking his vehicles on his lot. The Petitioner testified that he has no other site to park his vehicles and that it would

5/19

IN RE: PETITION FOR SPECIAL HEARING NE/S of Severn Avenue, 225 ft. W centerline of Walnut Avenue 15th Election District 7th Councilmanic District **(610 Severn Avenue)**	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	CASE NO. 05-498-SPH
Owen T. Meadows *Petitioner*	*	

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing filed by the legal owner of the subject property, Owen T. Meadows. The special hearing request is filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve the storage of a dump truck, trailer and backhoe on residential property.

The property was posted with Notice of Hearing on May 1, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on May 3, 2005 to notify any interested persons of the scheduled hearing date.

Applicable Law

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

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

as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Section 500.7 of the B.C.Z.R. *Special Hearings*

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A negative ZAC comment was received from the Office of Planning dated April 25, 2005, which requests the Petition be denied and which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance request was Owen T. Meadows, the Petitioner. No Protestants or citizens attended the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The Petitioner testified that this property is approximately 0.6 acres zoned DR 5.5. It is composed of Lots 698 through 700 and Lots 787 through 781 of the "Chesaco Park" subdivision. This property backs up to the Beltway as shown in Petitioner's Exhibits 1 and 2. The Petitioner testified that he bought the property, which was part of a farm in 1940. He indicated that the farm had the kind of equipment he is requesting to store on the property such as a dump truck

backhoe and trailer. He indicated that he has stored this kind of equipment for the last 30 years on the property without a complaint.

However, he indicated that new people were moving into the neighborhood and were now complaining about his equipment. He noted that Nelson Butz at 612 Severn Avenue also stores similar equipment on his property located adjacent to the subject property. He proffered that Mr. Butz may do so legally but was not sure of the case or circumstance that supports his contention. He also noted that Mr. Strucco at 604 Patuxent Avenue also is allowed to store two dump trucks on his property. See photo 3. The Strucco property is across Patuxent Avenue as shown on Petitioner's Exhibit 2. Finally, he notes that the nearby property a 7925 Burke's Lane is used to store a tractor-trailer on that property. See Photo Exhibit 4.

Because the property backs up to the Beltway, he indicated that neighbors should not be disturbed by his equipment because of the traffic noise on the Beltway. He produced petitions, Exhibit 5, signed by over thirty neighbors that stated they did not object to storing the equipment on the property, and that he had been using the property to store such equipment for more than 30 years. He indicated that he did not use the backhoe and dump truck commercially but only for work around the neighborhood and for friends.

Findings of Fact and Conclusions of Law

It may well be as Mr. Meadows indicates that at least three of his neighbors have County permission to store similar equipment on their properties. I see from his evidence that trucks are stored on these properties. However, I have not been able to confirm his contention that the County gave permission, as the Petitioner did not know any case numbers from prior zoning decisions to support his contention. I do not doubt his word, but I would need to review the

zoning cases for these properties to determine if some precedent was set. Without this information I have to deal with the request as presented.

He may also be able to prove that the equipment has been stored on the property legally before the zoning regulations were imposed. Consequently, he may be able to show a nonconforming use. However, his Petition did not allege this nor was there any evidence on which I could find a nonconforming use.

However, my greatest problem with the request is that what he is asking for is essentially a use variance. I realize that he filed the case under the special hearing provision of Section 500.7 of the BCZR. However, this Commission has been very reluctant to grant by special hearing cases, which in reality are either variances or special exceptions. In this case, the Petitioner wants to use his property in a certain way. He wants to store a dump truck and backhoe on the property, which is zoned residential. To me this is a request for a use variance.

Unlike other counties, this Commission does not have the authority to grant use variances. The variance statute states:

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

I can not grant use variances and I can not in good conscience grant a request for special hearing which will essentially grant what the statute forbids.

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

THEREFORE, IT IS ORDERED, this 19 day of May, 2005, by this Deputy Zoning Commissioner, that the Petitioner's request for special hearing pursuant Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve the storage of a dump truck, trailer and backhoe on residential property, be and is hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 610 SEVERN AVE

which is presently zoned DR5.5

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

THE STORAGE OF A DUMPTRUCK, TRAILER AND BACKHOE ON RESIDENTIAL PROPERTY.

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:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

OWEN T MEADOWS
Name - Type or Print

Owen T Meadows 3-28-05
Signature

Name - Type or Print

Signature

610 SEVERN AVE 410391-5499
Address Telephone No.

ROSEDALE MD 21237
City State Zip Code

Representative to be Contacted:

Name

Address Telephone No.

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Case No. 05-498-SPH

Reviewed By D.T. Date 3/31/05

REV 9/15/98

Department of Permits and Development Management

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

Baltimore County

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

May 9, 2005

Owen T. Meadows
610 Severn Avenue
Rosedale, Maryland 21237

Dear Mr. Meadows:

RE: Case Number: 05-498-SPH, 610 Severn Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 31, 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

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

SHA State Highway Administration — Driven to Excel

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

Maryland Department of Transportation

Date: 4-8-05

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

RE: Baltimore County
Item No. 498 DT

Dear. Ms. Matthews:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

P 117

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 25, 2004

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

SUBJECT: 610 Severn Avenue

INFORMATION:

Item Number: 5-498

Petitioner: Owen T. Meadows

Zoning: DR 5.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning recommends that the petitioner's request to permit a dump truck and a backhoe to be stored on a residential lot be **DENIED**.

This office is of the opinion that parking the subject vehicles will negatively affect the adjoining properties and the immediate residential neighborhood in general, and would in essence constitute a use variance.

Prepared by: Mael A Cunningham

Section Chief: Lynn Lanham

AFK/LL:MAC:

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 25, 2004

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

SUBJECT: 610 Severn Avenue

INFORMATION:

Item Number: 5-498

Petitioner: Owen T. Meadows

Zoning: DR 5.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning recommends that the petitioner's request to permit a dump truck and a backhoe to be stored on a residential lot be **DENIED**.

This office is of the opinion that parking the subject vehicles will negatively affect the adjoining properties and the immediate residential neighborhood in general, and would in essence constitute a use variance.

Prepared by: _____

Section Chief: _____

AFK/LL:MAC:

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: April 25, 2005

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

SUBJECT: 610 Severn Avenue

INFORMATION:

Item Number: 5-498

Petitioner: Owen T. Meadows

Zoning: DR 5.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning recommends that the petitioner's request to permit a dump truck and a backhoe to be stored on a residential lot be **DENIED.**

This office is of the opinion that parking the subject vehicles will negatively affect the adjoining properties and the immediate residential neighborhood in general, and would in essence constitute a use variance.

Prepared by: _____

Section Chief: _____

AFK/LL:MAC:

April 14, 2005

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

ATTENTION: Zoning Review planners

Distribution Meeting of: April 11, 2005

Item No.: 485, 486,492, 498 499, 500, 501, 504, 505

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.

1. 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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: April 18, 2005

FROM: Dennis A. Kennedy, DAK Acting Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For April 18, 2005
Item No. 485, 486, ~~487~~, 488, 490, 491, 492, 494, 495, 497, (498) 499, 501, 503, and 504

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

DAK:CEN:clw
cc: file
ZAC-NO COMMENTS-04182005.doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE MEMORANDUM

TO: LYNN LANHAM
OFFICE OF PLANNING

FROM: PETER MAX ZIMMERMAN, PEOPLE'S COUNSEL PMZ

SUBJECT: IN THE MATTER OF OWEN T. MEADOWS
CASE NO.: 05-498-SPH

DATE: NOVEMBER 16, 2005

Enclosed please find a copy of the Deputy Zoning Commissioner's decision dated May 19, 2005 along with a copy of your office's comment in opposition. Be advised that this case was appealed by the Petitioner, and it is currently scheduled before the County Board of Appeals on January 24, 2006 at 10:00 a.m.

I would appreciate it if someone could be available to testify at this hearing. Please call my office at your earliest convenience.

Thank you for your consideration in this matter.

PMZ/rmw

Enclosure

RE:	PETITION FOR SPECIAL HEARING 610 Severn Avenue; NE/side Severn Avenue, 225' W c/line Walnut Avenue 15th Election & 7th Councilmanic Districts Legal Owner(s): Owen T. Meadows Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 05-498-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 11th day of April, 2005, a copy of the foregoing Entry of Appearance was mailed to Owen T. Meadows, 610 Severn Avenue, Rosedale, MD 21237, Petitioner(s).

RECEIVED
APR 11 2005
Per.....

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

cd
PM2
probably involved / trade case

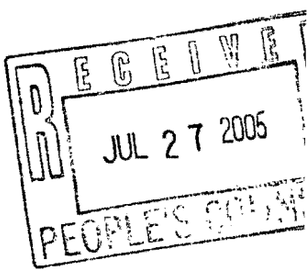
APPEAL

Petition for Special Hearing
610 Severn Avenue
NE/s Severn Avenue, 225 ft. W c/line of Walnut Avenue
15th Election District – 7th Councilmanic District
Legal Owner: Owen T. Meadows

Case No.: 05-498-SPH

Petition for Special Hearing (March 31, 2005)

Zoning Description of Property



Notice of Zoning Hearing (April 11, 2005)

Certification of Publication (May 3, 2005 – The Jeffersonian)

Certificate of Posting (May 1, 2005) by Linda O'Keefe

Entry of Appearance by People's Counsel (April 11, 2005)

Petitioner(s) Sign-In Sheet – One Sheet

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
2. Site Plan of Chesaco Park
3. (A-B) Photos
4. (A-E) Photos
5. Petitions of support dated April 30, 2005

Protestants' Exhibits - None

Miscellaneous (Not Marked as Exhibit)
1. Zoning Map Output
2. Site Plan

Deputy Zoning Commissioner's Order (DENIED – May 19, 2005)

Notice of Appeal received on June 14, 2005 from Owen T. Meadows

c: People's Counsel of Baltimore County, MS #2010
Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Owen T. Meadows, 610 Severn Avenue, Rosedale 21237

date sent July 26, 2005, klm

Department of Permits and Development Management

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

Baltimore County

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

July 22, 2005

Mr. Owen T. Meadows
610 Severn Avenue
Rosedale, Maryland 21237

Dear Mr. Owens:

RE: Case: 05-498-SPH, 610 Severn Avenue

Please be advised that this office received your appeal of the above-referenced case on June 13, 2005. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

FILE COPY

January 18, 2006

RECEIVED
JAN 18 2006
BALTIMORE COUNTY
BOARD OF APPEALS

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

Re: In the Matter of : Owen Meadows- Legal Owner
Case No.: 05-498-SPH

Dear Mr. Chairman:

The aforementioned case is scheduled for a hearing before the CBA on January 24th. The Deputy Zoning Commissioner denied a Petition for Special Hearing to approve the parking of a dump truck, trailer, and backhoe on residential property. The property owner appealed.

We entered our appearance below. Please enter our appearance in this appeal.

We agree with the decision of the DZC, which is also consistent with the position of the Office of Planning and the CBA in other cases. We call your attention to the Comment dated May 25, 2004 from the Office of Planning, which is part of the record in this case. OPZ opposes the relief because it "will negatively affect the adjoining properties and the immediate residential neighborhood in general, and would in essence constitute a use variance." (emphasis supplied).

BCZR 307 grants the power to grant variances from "height and area, from off-parking regulations, . . .". The request here does not fall into those categories. The "off-street parking regulations" refers to BCZR 409.1 *et seq,* none of which permits parking dump trucks etc. in a residential zone. (BCZR 409.8 B. permits a "use" permit under specific standards in the statute and the standards for a special exception use in 502.1; it does not apply to the case here because the relief is not the same, but does illustrate that commercial parking in a residential zone is not permitted by variance). "Parking variances" under BCZR 307.1 refer to matters such as the number of parking spaces or the size of spaces under BCZR 409.1 *et seq.*

BCZR 431 applies to the instant case and specifically establishes a use for parking commercial vehicles on residential property, subject to specific standards. The Petitioner here

does not comply with any of the standards, and his special hearing must be denied. There is no "variance" from these standards. The commercial parking use under 431 is similar to a special exception use whereby conditions under BCZR 502.1 must be satisfied, or the use is denied. There is no ability to "vary" or lessen the standard or to do away with it altogether. Either the Petitioner here complies with the standard and his use is permitted or he cannot comply and the use is denied.

The nature of our position is based on the zoning policy in Baltimore County that distinguishes an "area" variance from a "use" variance. **"The Court of Appeals has recognized a distinction between a use variance, which changes the character of the zoned district, and an area variance, which does not." "Use variances are customarily concerned with "hardship" cases, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are customarily concerned with "practical difficulty."** Anderson v. Board of Appeals, 22 Md. App. 28,38 (1974). **"A use variance generally permits a land use permitted in the particular zoning ordinance, such as a variance for commercial use in a zone restricted to residential use, while an area variance generally excepts an applicant from area, height, density, setback, or sideline restrictions, such as distance required between buildings."** Belvoir Farms Homeowners Ass'n, Inc. v. North, 355 Md. 259, footnote 10 (1999).

There are no "use" variances in Baltimore County. A use is permitted in Baltimore County in three instances: (i) as a "permitted use," (ii) a "special exception use," which permits a conditional use under BCZR 502.1, or (iii) a use permitted by a specific statute, for example such as 409.8 above, or under 304.1 to permit a dwelling on an undersized lot if specific standards are met.

Here the Petitioner has a reasonable use of his site for a residential dwelling. He is not entitled to a special hearing for a use – parking a dump truck, trailer, and back hoe – that is otherwise prohibited in the zone. The Planning Office is correct that his request is tantamount to a use variance, which is not permitted under the zoning ordinances in Baltimore County. See also the attached decisions of the CBA on this matter.

The Butz property referred to in the DZC's decision is not relevant. The owner could be non-conforming or in violation. The Strucko property referred to was a zoning request for two commercial trucks, which our office appealed. The property owner agreed to amend his relief and remand the matter to the Zoning Commissioner. In the remand Order, our office maintained its position that the relief is a use variance prohibited in Baltimore County. Here, the Petitioner requests three vehicles, none of which are permitted under BCZR 431. **"Zoning matters, including sign variance requests, depend upon unique facts and circumstances of particular location and must be analyzed individually."** Red Roof, Inns, Inc. v. People's Counsel for Baltimore County, 96 Md. App. 219 (1993).

We believe the decision in this matter should be denied as a matter of law and for the reasons stated in this letter. For these reasons, we do not believe our attendance at the hearing will add anything significant to the decision and we shall not attend the hearing.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Owen Meadows

June 9-05

To the Department of Permits
and Development Management

I Owen T. Meadows of
610 Severn Ave in Rosedale,
Md. 21237 That I am the
owner of such property would
like to appeal case number
05-498-SPH. Permission to
store my dump truck, trailer
and Back Hoe on my property.

Thank You
Owen T Meadows
410-391-5499

Owen T. Meadows
610 Severn Ave
Rosedale, Md. 21237
Phone 410-391-5499

Owen T Meadows

Rec'd
June 13, 2005

Plat to accompany Petition for Zoning [X] Variance [ ] Special Hearing

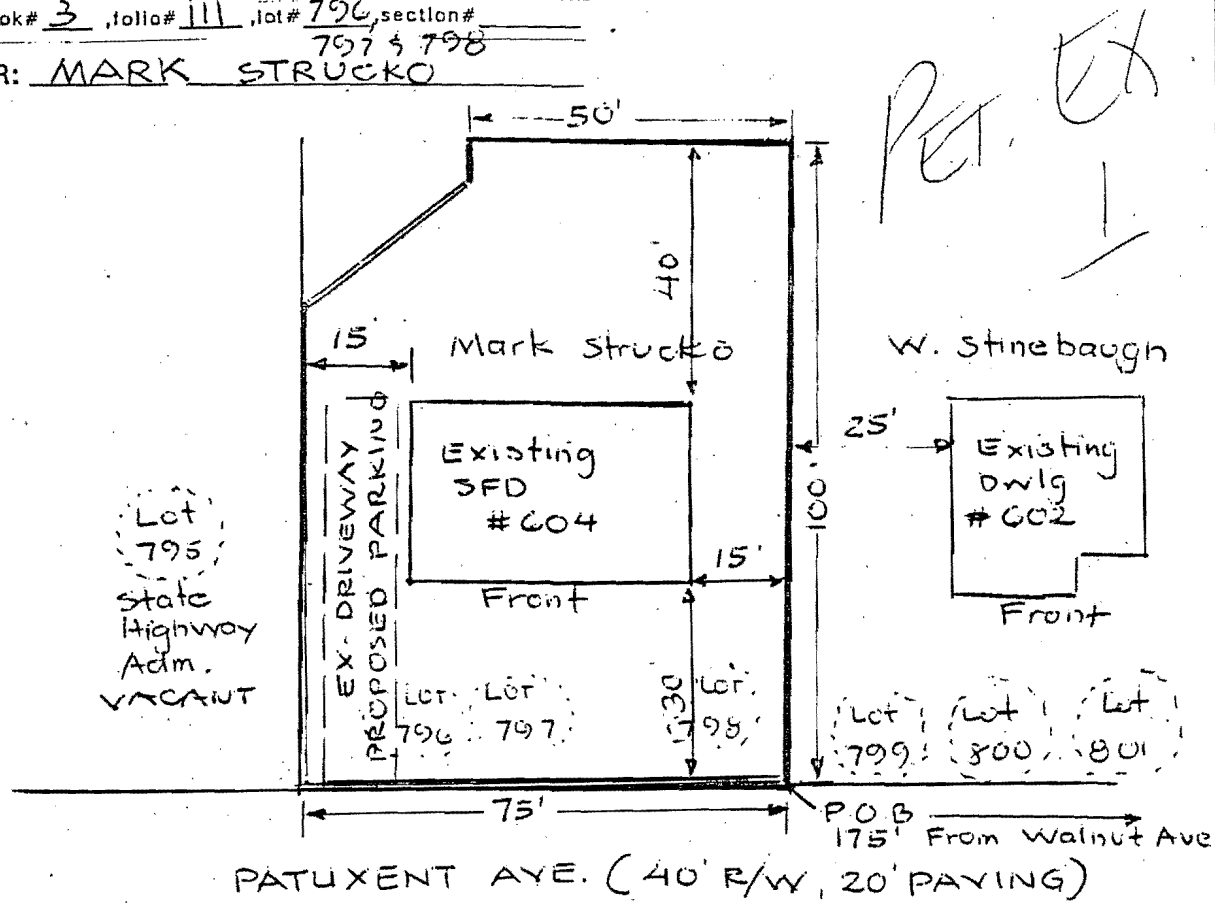
PROPERTY ADDRESS: 604 PATUXENT AVE.

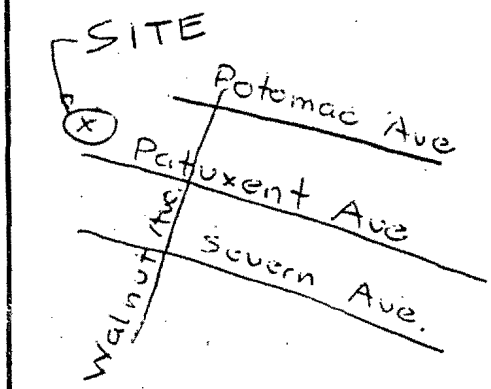
see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: CHESACO PARK

plat book# 3, folio# 111, lot# 796, section# ~~797 & 798~~

OWNER: MARK STRUCKO





LOCATION INFORMATION

Election District: 15th

Councilmanic District: 5

1"=200' scale map#: NE 2-F

Zoning: DR 5.5

Lot size: 0.172 Ac. 7,522 ☐
acreage square feet

	public	private
SEWER:	☑	☐
WATER:	☑	☐

	yes	no
Chesapeake Bay Critical Area:	☐	☑

Prior Zoning Hearings: NONE

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE#:
JRF	330	

North

date: 3/12/98

prepared by: MS

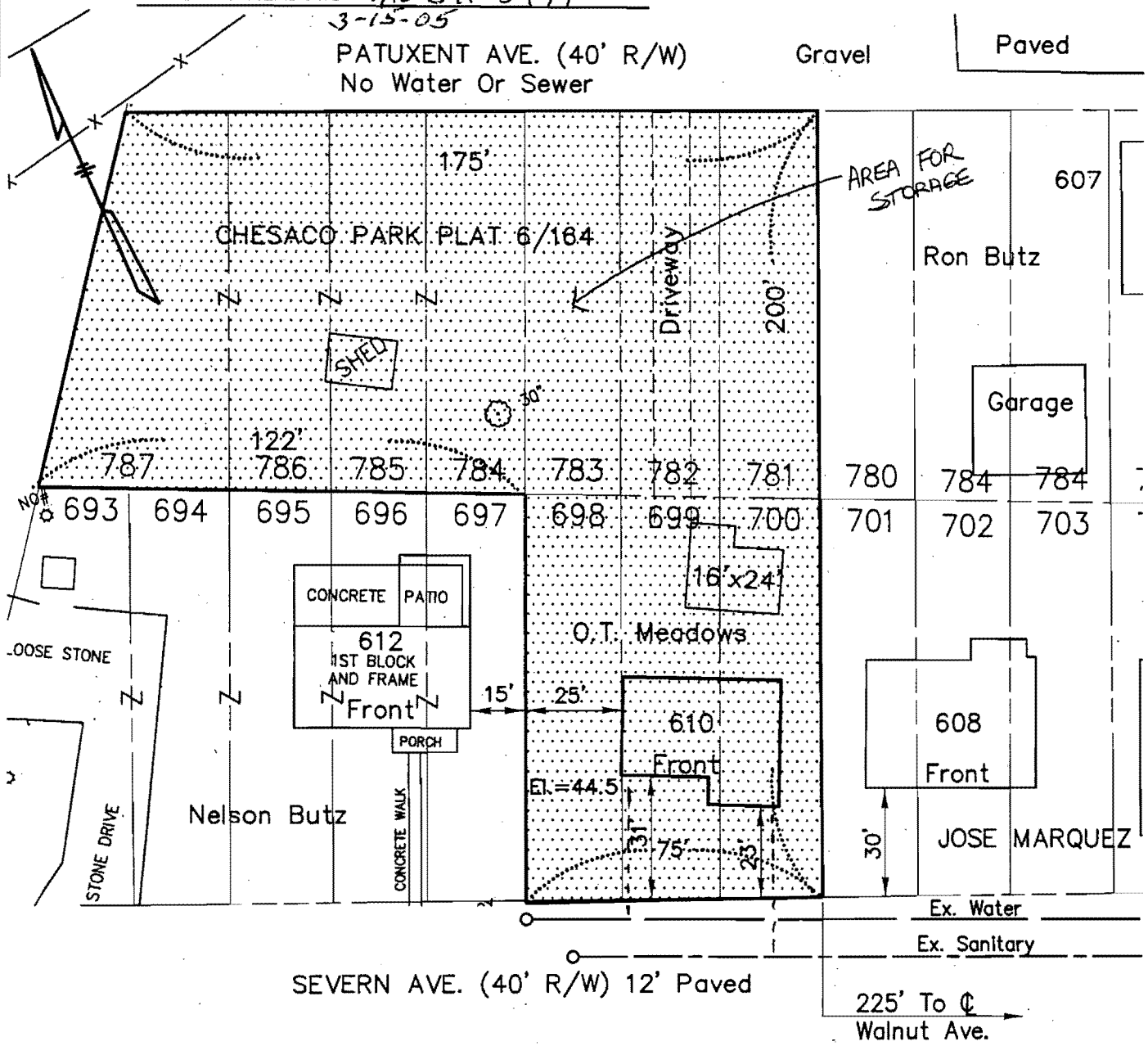
Scale of Drawing: 1"=30'

98-330-A

-15-

PLAT TO ACCOMPANY PETITION FOR ZONING ☐ VARIANCE ☒ SPECIAL HEARING

PROPERTY ADDRESS: 610 SEVERN AVENUE
SUBDIVISION NAME: CHESACO PARK
PLAT BOOK #3-111 FOLIO #164 LOT #700 SECTION # D
OWNER: OWEN T. MEADOWS 410 391-5499
3-15-05



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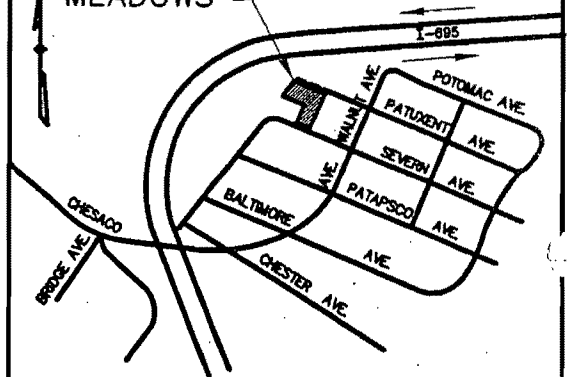
PROPERTY OF OWEN T. MEADOWS



VICINITY MAP
SCALE 1"=1000'

LOCATION INFORMATION

ELECTION DISTRICT 15

COUNCILMATIC DISTRICT 7

1"=200' SCALE MAP # 6 NE 22

ZONING DR5.5

LOT SIZE .597 ± Ac (ACREAGE) 25,989± (SQUARE FEET)

	PUBLIC	PRIVATE
SEWER	☒	☒
WATER	☒	☒

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

PRIOR ZONING HEARING NONE

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #
D.T.	498	05-498-SPH

PLAT TO ACCOMPANY PETITION FOR ZONING ☐ VARIANCE ☒ SPECIAL HEARING

PROPERTY ADDRESS: 610 SEVERN AVENUE
SUBDIVISION NAME: CHESACO PARK
PLAT BOOK #3-111 FOLIO #164 LOT #700 SECTION # D
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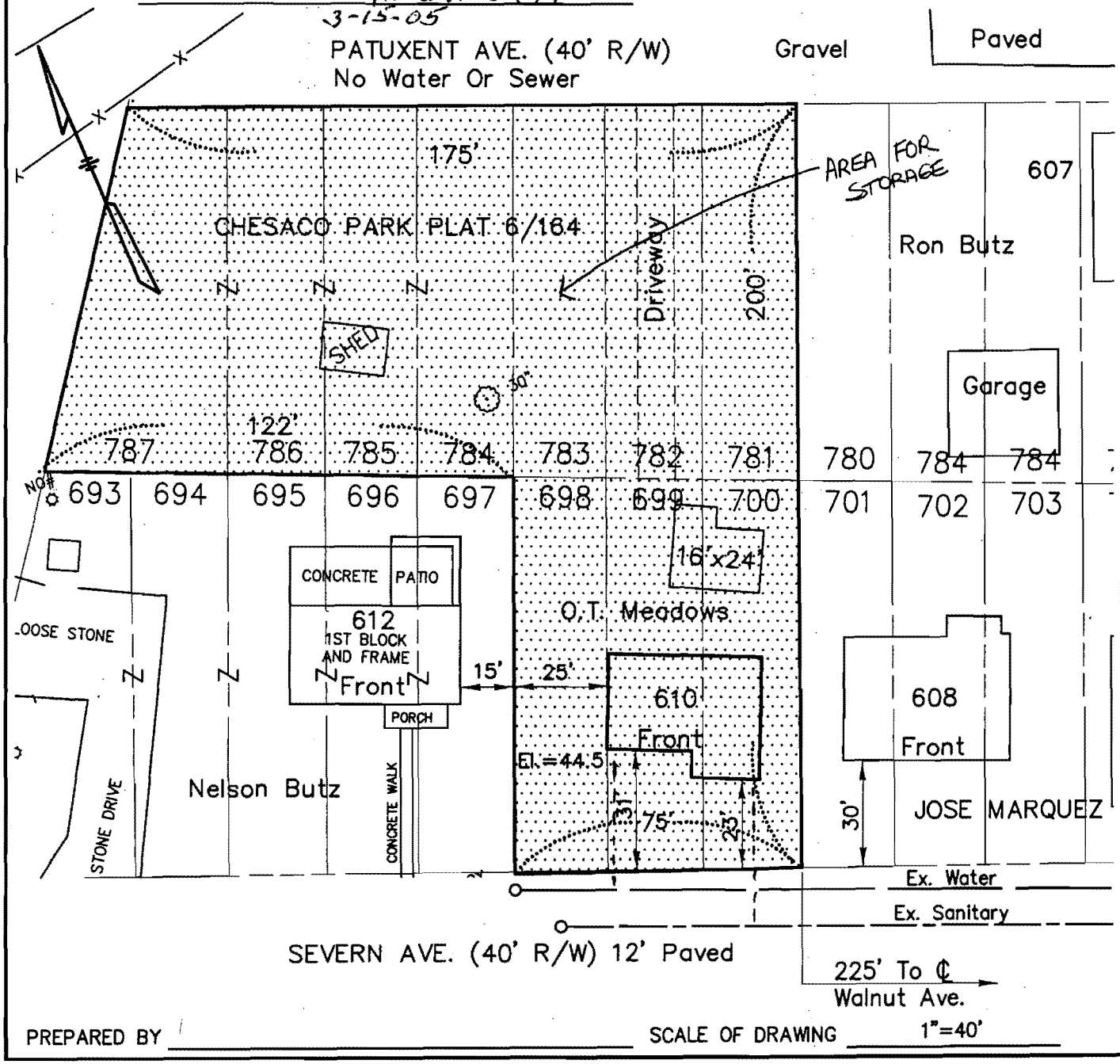

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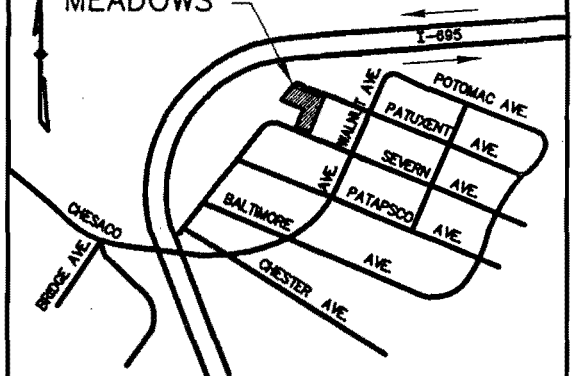
PROPERTY OF
OWEN T.
MEADOWS



VICINITY MAP
SCALE 1"=1000'

LOCATION INFORMATION

ELECTION DISTRICT 15

COUNCILMATIC DISTRICT 7

1"=200' SCALE MAP # 6 NE 22

ZONING DR5.5

LOT SIZE .597 ± Ac / ACREAGE — 25,989± / SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☒
WATER	☒	☒

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

PRIOR ZONING HEARING NONE

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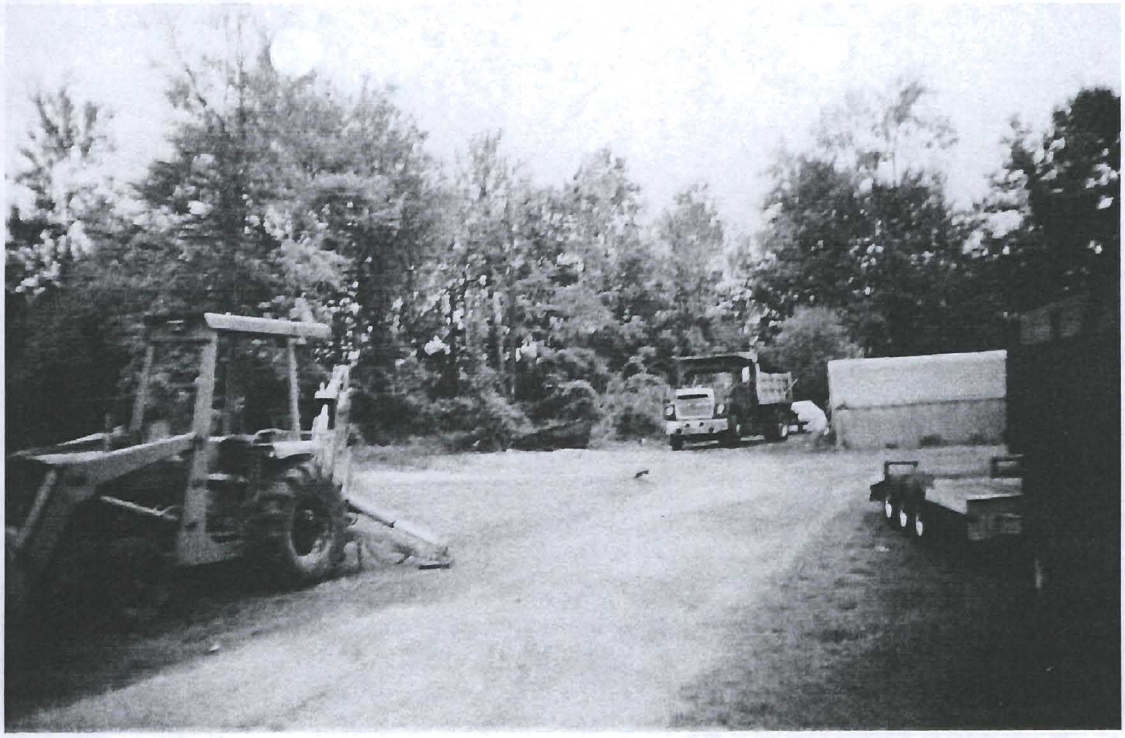

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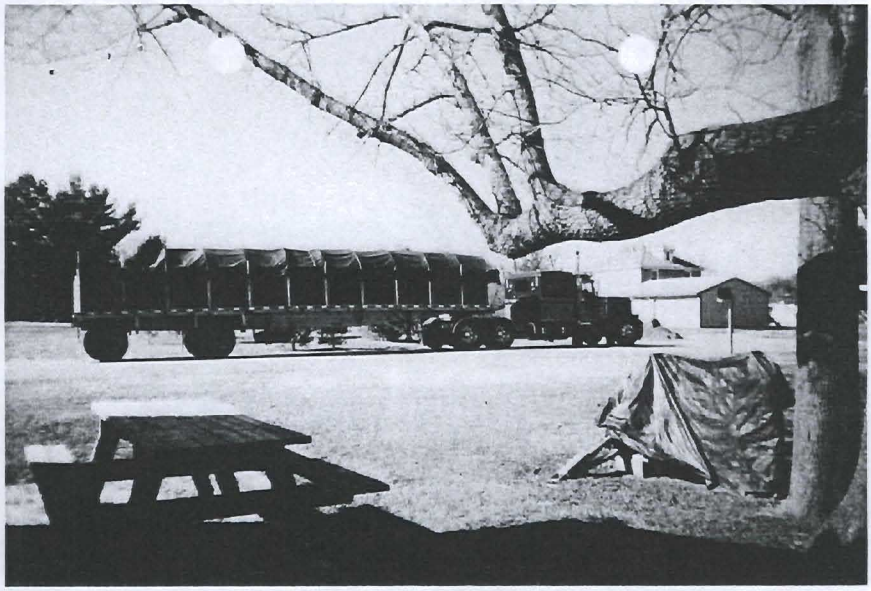
3b



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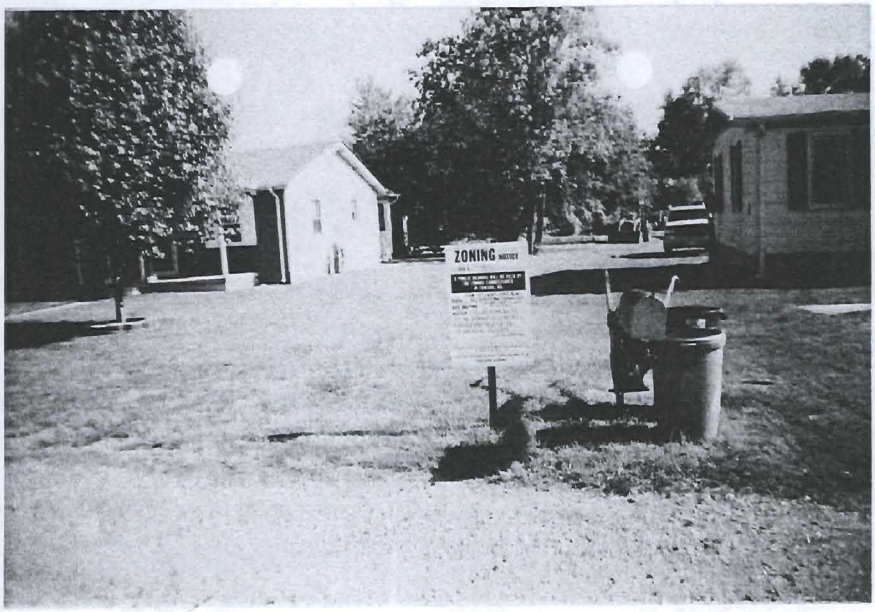

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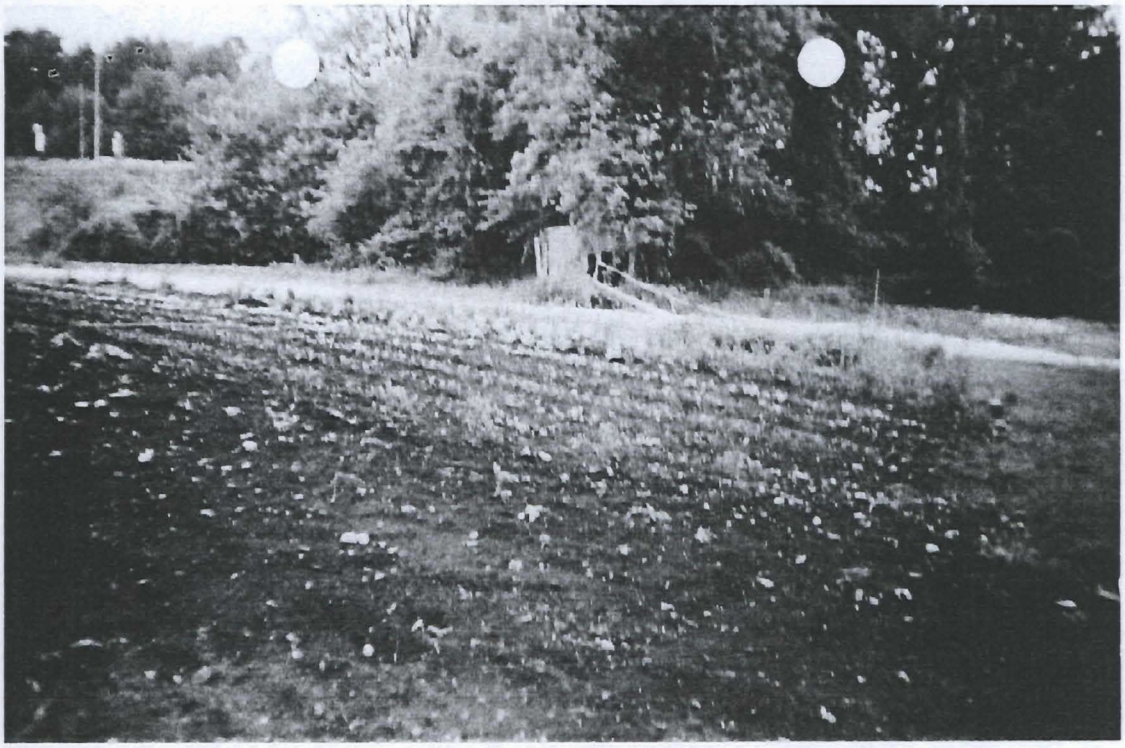

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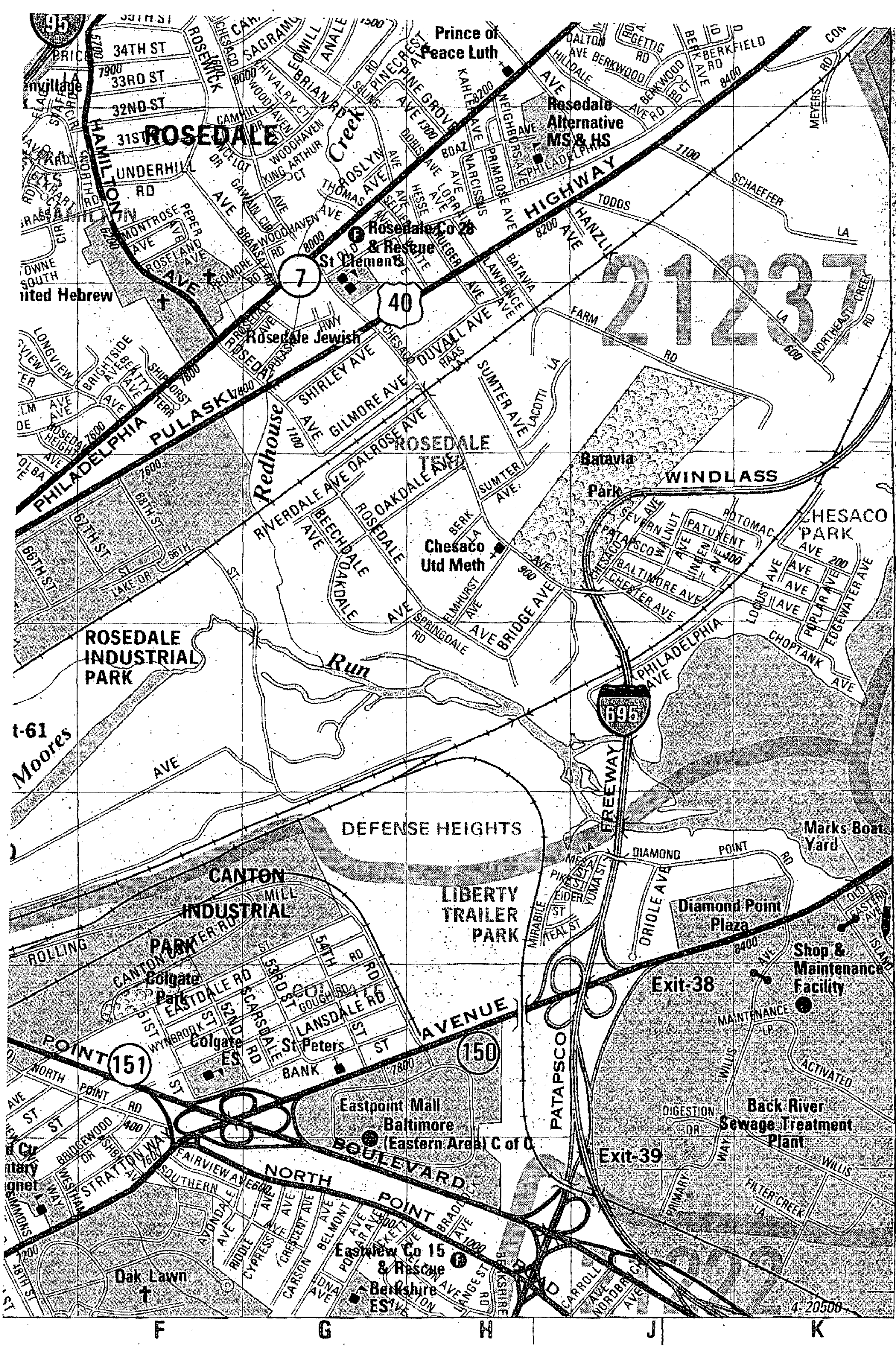
4e

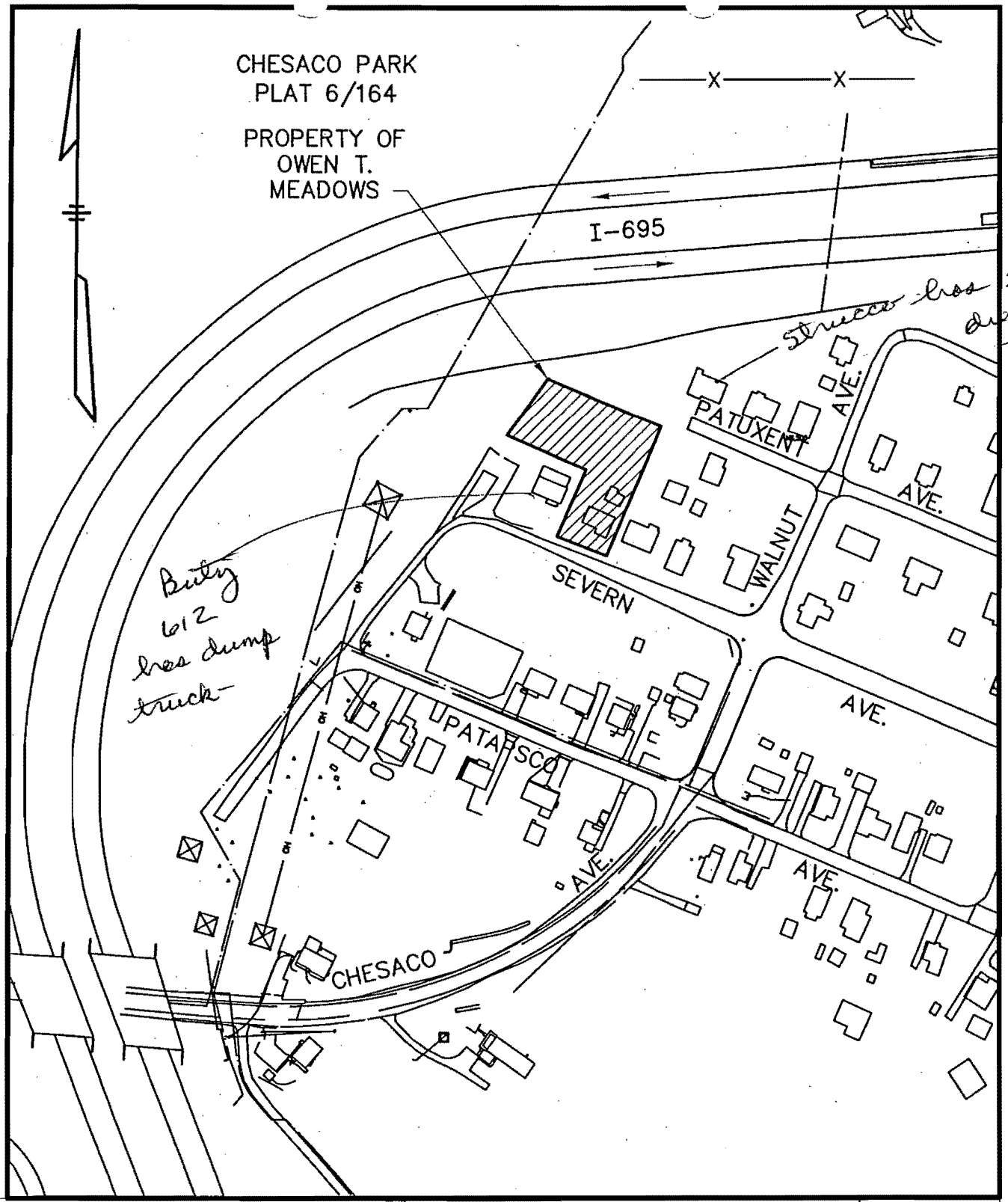
Baltimore County - My Neighborhood

>

05-498-SPH


ROSEDALE
2123
Prince of Peace Luth
Rosedale Alternative MS & HS
Rosedale Co 28 & Rescue
St Clements
United Hebrew
Rosedale Jewish
PHILADELPHIA
PULASKI
HIGHWAY
HAMILTON
ROSEDALE TERR
Redhouse
Creek
Batavia Park
WINDLASS
CHESACO PARK
Chesaco Utd Meth
ROSEDALE INDUSTRIAL PARK
Run
Moores
DEFENSE HEIGHTS
Marks Boat Yard
CANTON INDUSTRIAL PARK
LIBERTY TRAILER PARK
Diamond Point Plaza
Shop & Maintenance Facility
Exit 38
Colgate Park
Colgate ES
St Peters
AVENUE
Eastpoint Mall
Baltimore (Eastern Area) C of C
BOULEVARD
NORTH POINT
PATAPSCO
FREEWAY
Exit 39
Back River Sewage Treatment Plant
Eastview Co 15 & Rescue
Berkshire ES
Oak Lawn
4-20500
F
G
H
J
K
940,000 FT
76°30'00"

Joins Map 44



	SCALE	LOCATION	SHEET
OWEN T MEADOWS 610 SEVERN AVE ROSEDALE MD 21237 410-391-5499	1" = 200'	CHESACO	Pet #2

Pe-#5

4-30-05

This is to say that Mr Meadows has had his Truck, trailer and his backhoe on his property for over thirty years

Names	Addresses
Arthur J Myers	7939 Bridge Ave 21237
Jowell E Polk	8050 Phila Rd 21237
James Hollebaugh Jr	1515 Bacon Road 21237
William [illegible]	7925 Bank Lane 21237
Jeff Cahran	1007 Chesaco Ave 21237
Danny Meaner	7926 BRIDGE AVE 21237
Dennis Murphy	7932 Bridge Ave 21237
John Stuchel Jr	714 Chesaco Ave 21237
Joseph Rauenzahn	517 B Patuxent Ave 21237
John S Myers	526 Potomac ave 21237
Joseph Caridad	7915 BRIDGE AVE 21237
NELSON BUTZ	612 SEVERN AVE 21237
Robert W Draack	804 Rosedale AVE 21237
Mark Stuchal	604 PATUXENT AVE 21237
Jenker Stuchal	604 Patuxent Ave 21237
Brian [illegible]	611 Patapsco Ave 21237
Petra Caffy	— " —
Audrey Williams	613 Patapsco 21237
William Williams	613 Patapsco 21237
Grady Elkins	615 Patapsco 21237

4-30-05

Owen Meadows 610 Severn Ave
Rosedale Md 21237

I am a neighbor of Mr Meadows and have not had any problems about him having his Truck, Trailer nor his back Hoe on his property.

It has not been any problem of them being in the neighborhood.

Names	Addresses
Arthur J. Myers	7939 Bridgeton-21237
Harry Wagner	7926 BRIDGE 21237
Pendia Murphy	7932 BRIDGE AVE 21237
John R. Stichel	714 Chesaco Ave 21237
Warren L. Johnson	8109 Walnut Ave 21237
Joseph Dennerlein	517 Patuxent Ave 21237
John S. Ray	526 Potomac Ave 21237
Joyce Woodell	7915 BRIDGE AVE 21237
NELSON BUTZ	612 SEVERN AVE 21237
Robert W Drasal	8041 Rosedale AVE 21237
Che Schot	609 Severn Ave 21237
[illegible]	609 Severn Ave 21237
Tom Horsman	8112 Locust Ave 21237
Lee Mess	323 Patapsco Ave 21237
Fred Reider	1006 Sumter Ave 21237

RE: PETITION FOR ADMINISTRATIVE VARIANCE	*	BEFORE THE
604 Patuxent Avenue, North side Patuxent Avenue, 175 feet west of Walnut Avenue, 15th Election District, 7th Councilmanic	*	COUNTY BOARD OF APPEALS
	*	FOR BALTIMORE COUNTY
MARK T. STRUCKO	*	Case No. 98-330-A
Petitioner	*	

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

ORDER

The following facts were stated and agreed to by the parties hereto in a hearing before the County Board of Appeals on December 3, 1998:

1. MR. MARK T. STRUCKO, Petitioner in proper person, and CAROLE S. DEMILIO, DEPUTY PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, appeared before the CBA on December 3, 1998 on a timely appeal by PEOPLE'S COUNSEL of the Deputy Zoning Commissioner's Order granting an Administrative Variance to STRUCKO permitting two (2) commercial vehicles, each in excess of 10,000 pounds, at STRUCKO's residence at 604 Patuxent Avenue.

2. MR. STRUCKO and the OFFICE OF PEOPLE'S COUNSEL agreed that the "administrative" variance procedure, under Baltimore County Code Section 26-127, filed on Affidavit by Petitioner and without a hearing, does not apply to relief under Baltimore County Zoning Regulations Section 431.

3. MR. STRUCKO agreed to reduce his request for variance to one (1) commercial vehicle in excess of 10,000 pounds, namely, a 6-wheeled, single-axle dump truck, at 604 Patuxent Avenue.

4. The parties acknowledge that the OFFICE OF PEOPLE'S COUNSEL does not agree that variance relief under Baltimore County Zoning Regulations Section 307 is available for Baltimore County Zoning Regulations Section 431.

RE: PETITION FOR ADMINISTRATIVE VARIANCE	*	BEFORE THE
604 Patuxent Avenue, North side Patuxent Avenue, 175 feet west of Walnut Avenue, 15th Election District, 7th Councilmanic	*	COUNTY BOARD OF APPEALS
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MARK T. STRUCKO	*	Case No. 98-330-A
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4. The parties acknowledge that the OFFICE OF PEOPLE'S COUNSEL does not agree that variance relief under Baltimore County Zoning Regulations Section 307 is available for Baltimore County Zoning Regulations Section 431.

10/7/99

IN RE: PETITION FOR VARIANCE N/S Patuxent Avenue, 175' W of Walnut Avenue 15th Election District 7th Councilmanic District (604 Patuxent Avenue) Mark Thomas Strucko Petitioner	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 98-330-A

OCT 21 1999

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, Mark Thomas Strucko. The Petitioner is requesting a variance for property he owns at 604 Patuxent Avenue which property is zoned D.R.5.5. The variance request is from Section 431.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a commercial vehicle with a gross weight exceeding 10,000 lbs. to be parked on a residential lot in lieu of the maximum permitted 10,000 lbs. gross weight. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit No. 1.

Appearing at the hearing on behalf of the variance request was Mark Strucko, property owner. There were no protestants in attendance.

Testimony and evidence indicated that the property which is the subject of this variance request consists of 0.172 acres, more or less, zoned D.R.5.5. The subject property is located on the north side of Patuxent Avenue, west of its intersection with Walnut Avenue. The subject property is improved with an existing single family dwelling and one commercial vehicle consisting of a 1975 International dump truck which is the subject of this variance request.