IN RE: PETITIONS FOR SPECIAL HEARING & \*

VARIANCE - N/W S of Adelaire Street,

110' NE of Halethorpe Avenue

(62-64 Halethorpe Terrace)

13<sup>th</sup> Election District 1st Council District

Donald Ray Spurlin, et ux Petitioners BEFORE THE

ZONING COMMISSIONER

\* OF BALTIMORE COUNTY

\* Case No. 07-054-SPHA

\* \* \* \* \* \* \*

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owners of the subject property, Donald Ray Spurlin and his wife, Shirley Jean Spurlin. The Petitioners request a special hearing to confirm that Lots 62-64 and Lots 68-70 are not merged through use and that overall density is not affected and to confirm Section 102.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) does not apply. In addition, variance relief is requested from Section 1B02.3.C.1 of the B.C.Z.R. to permit a building lot having a width of 60 feet at the building line, a sum of side yards of 30 feet and lot area of 7,211 square feet in lieu of the required 100 feet, 40 feet and 20,000 square feet respectively, and to approve the subject property as an undersize lot. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Donald and Shirley Spurlin, owners of the property, and their daughter, Katie Spurlin. John C. Mellema, Sr., the property line surveyor, who prepared the site plan for this property, informed the Petitioners that he would attend, however, failed to appear. Appearing as a Protestant in this matter was Allan W. Miller, who is the adjacent property owner, residing to the east of the subject property. Donald S. Hawkins, member of the Halethorpe Civic League, Inc., attended as an interested person.

Testimony and evidence offered revealed that the subject property, not far from Washington Boulevard in western Baltimore County, is comprised of three lots, each being 20 feet wide by 121.32 feet deep (Lots 62, 63 and 64) forming a rectangular-shaped parcel. The property

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is located on the east side of Halethorpe Avenue and north of Adclaire Street which at present is a 30 foot unimproved (paper street) right-of-way. The property contains a gross area of 7,211 square feet, more or less, approximately 60 feet wide by 121.5 feet deep in dimension and is located within an older subdivision known as Halethorpe Terrace. The property, when obtained by the Petitioners who have lived in the Halethorpe community since 1965, was originally zoned D.R.5.5; however, was down zoned to D.R.2 in 1996. Testimony indicated the property's configuration is somewhat unique. Lots 65 through 70 face Halethorpe Avenue with the rear of these lots forming the western property line of the subject property which is oriented to face on the paper street known as Adclaire Street. Since purchasing the property, an 8-inch sewer line was extended from Woodside Avenue through the bed of Adclaire Street by the Miller families to service their homes. The Petitioners' residential home is located across Adclaire Street at 2001 Halethorpe Avenue. They also own improved property at 1925 Halethorpe Avenue. The Spurlins, who are advancing in age and planning on their retirement, have two daughters, Kristie and Katie. They desire to give the existing home at 1925 Halethorpe Avenue to Kristie and propose building a new home on the subject unimproved property for their daughter, Katie. Access to the new home will be from Halethorpe Avenue by way of the Adclaire right-of-way. Additionally, the existing sewer line will now provide a means to connect the utilities to the proposed home.

The Petitioners believing they have a buildable lot come before me seeking approval to develop the subject lot with a single-family dwelling. As shown on the site plan, the proposed structure will be a two-story, cottage type dwelling, a maximum 30 feet wide and 40 feet deep. The dwelling will be set back 40 feet from the front property line, which is consistent with neighboring dwellings. Variance relief is requested, however, from the side yard setback requirements. While 15-foot setbacks will be maintained on both the east and west sides of the property, the sum of side yard setbacks will only be 30 feet. Relief is also requested because the lot is undersized. Under the D.R.2 zoning classification, a minimum lot area of 20,000 square feet is required and as noted above, the subject lot is only 60 feet wide and 7,211 square feet in area. Testimony and evidence offered in support of the request was that without variance relief, the lot could not be developed. Obviously, strict compliance with the regulations would create a hardship

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as the zoning regulations result in a denial of a reasonable and sufficient use of the property. See *Belvoir Farms v. North* 355 Md. 259 (1999)

Donald Hawkins, as the former President of the Halethorpe Civic League, Inc., is intimately familiar with the neighborhood. While he took a neutral position, neither supporting nor opposing these petitions, he did believe the proposed home would be compatible with the existing homes in Halethorpe. Mr. Miller, who as adjacent property owner will be most affected, believes that the Petitioners are trying to take advantage of the county's system. He points out that the variances requested should be denied as the Spurlins own other lots across from the subject property and Adelaire Street on which they could build their daughter's home and, therefore, would not suffer a hardship or practical difficulty if their request was denied. The Spurlins disagree, noting that the lots in question (Lots 13 through 19) slope down and away from Adelaire Street. These lots are encumbered with environmental constraints and the 100-year floodplain that mitigate against development.

homes, built subsequent to the zoning change in 1996, where homes have routinely been built on 60-foot wide lots. The Petitioner's site plan and the zoning map further disclosed that the pattern of development in the immediate neighborhood has taken place on undersized lots, which they say supports their request (1921 Halethorpe Avenue, 4115 Old Washington Boulevard, 4119 Old Washington Boulevard, 2026 Northeast, etc.). Moreover, the uncontradicted evidence clearly establishes that there has never been a desire to combine or merge the several parcels (Lots 68-70) with the subject property (Lots 62-64). A small shed located at the northwest corner of subject Lot 64 next to parcel 74 owned by Todd and Jennifer Clontz has in the past been used by the adjoining property owner to store bicycles but has never been used for purposes accessory to the Spurlins improved property. There is no physical evidence that the subject property was used or consolidated with any other lot to invoke the doctrine of zoning merger as described in *Friends of the Ridge v Baltimore Gas & Electric Company* 352 Md. 645 (1999) and *Remes v Montgomery County* 387 Md. 52 (2005).

It is to also be noted that there was an adverse Zoning Advisory Committee (ZAC) comment received from the Office of Planning. Except for a determination that the proposed access to Lots 62-64 is not in conflict with Section 102.4 of the B.C.Z.R. the concerns outlined by Dennis Wertz have been addressed. Adclaire Street (a 30-foot public right-of-way) is shown on the plat as running from Halethorpe Avenue to Woodside Avenue. Thus, access to the property is proposed by way of a driveway that would extend from Halethorpe Avenue, past Lot 65 and into the south (front) side of the subject lot. Section 102.4 of the B.C.Z.R. provides that "no dwelling shall be built on a lot containing less than 20,000 square feet, which does not abut on a right-of-way at least 30 feet wide over which the public has an easement of travel, except as provided by panhandle lots". (See Section 32-4-409 of the Baltimore County Code [B.C.C.]) It is beyond dispute that the Petitioners property abuts the public access. The plat of Halethorpe Terrace shows the right-of-way as established in 1925, access approval could and should be permitted, both in accordance with Section 32-4-409(c) of the B.C.C. and Section 102.4 of the B.C.Z.R. This is the exact situation used by Allan and Joyce Miller and Nancy Miller who access their properties from Adclaire Street from Woodside Avenue.

After due consideration of the testimony and evidence presented, I am persuaded that relief should be granted. To deny relief would result in a practical difficulty for the Petitioners in that there would be no reasonable use of the property for a permitted purpose, a purpose for which the neighboring properties have previously been used. The proposed development is in keeping with other homes in the neighborhood and meets and spirit and intent of Section 307 of the B.C.Z.R. and *Cromwell v Ward* 102 Md. App. 691 (1995) for variance relief to be granted. I find that the subject property will not result in any increase in density. I find that the Spurlins, who own contiguous undersized lots, purchased the subject property in good faith and without any intent to avoid the area requirements. Moreover, as noted above, at the time of the Spurlins purchase of the property in 1995, it was zoned D.R.5.5.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted.

Gabe HECEIVED FOR FILING Date To 20 - 00 - 100 By THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this \_\_\_\_\_\_\_day of October 2006 that the Petition for Special Hearing to confirm that Lots 62-64 and Lots 68-70 are not merged through use and that overall density is not affected and to confirm Section 102.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) does not apply, and to approve an undersize lot for a proposed two-story dwelling in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations, (B.C.Z.R.), to approve a building lot having a width of 60 feet at the building line, a sum of side yards of 30 feet and a lot area of 7,211 square feet in lieu of the required 100 feet, 40 feet and 20,000 square feet respectively, for a proposed dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioner may apply for his building 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.
- 2) Prior to the issuance of any permits, the Petitioners shall submit building elevation drawings of the proposed dwelling to the Office of Planning for review and approval to insure compatibility with the neighborhood.
- 3) Petitioners shall install Leland cypress trees, five to six feet in height and adequately spaced along the length of the proposed two-story dwelling between the Allan and Joyce Miller property as shown on Exhibit 1. The planting of the trees shall be done prior to the construction of the dwelling on Lots 62-64.
- 4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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

WJW:dlw

Zoning Commissioner

for Baltimore County

IN THE MATTER OF
THE APPLICATION OF
DONALD RAY SPURLIN, ET UX -LEGAL
OWNERS/PETITIONERS FOR SPECIAL
HEARING AND VARIANCE ON PROPERTY
LOCATED ON THE NW/S OF ADCLAIRE ST,
110' NE OF HALETHORPE AVENUE
LOTS 62-64 HALETHORPE TERRACE
13<sup>TH</sup> ELECTION DISTRICT
1<sup>ST</sup> COUNCILMANIC DISTRICT

- \* BEFORE THE
- \* COUNTY BOARD OF APPEALS
- \* OF
- \* BALTIMORE COUNTY
- \* Case No. 07-054-SPHA

## **OPINION**

This matter comes before the Board of Appeals of Baltimore County arising from an appeal of the decision of the Zoning Commissioner dated October 26, 2006 in which a special hearing request and variance filed by the owners of the subject property, Donald Ray Spurlin and his wife, Shirley Jean Spurlin, were approved. The matter was heard by the Board on August 16, 2007. Appellant /Protestant, Allan W. Miller, Sr., appeared pro se. Donald Ray Spurlin appeared pro se on behalf of the Legal Owners /Petitioners. A public deliberation was held on August 30, 2007.

### Background

The subject property, which is located in the First Election District, First Councilmanic District, not far from Washington Boulevard in western Baltimore County, is comprised of three lots, each being 20 feet wide by 121.32 feet deep (Lots 62, 63 and 64), forming a rectangular-shaped parcel. The property is located on the east side of Halethorpe Avenue, north of Adelaire Street, which is a 30-foot, unimproved (paper street) right-of-way. The property contains a gross area of 7,211 sq. ft., +/-, and is approximately 60 feet wide and 121.5 feet deep. It is located within a subdivision known as Halethorpe Terrace. The lots were purchased separately by the Spurlins in 1979 and 1995, and were zoned D.R. 5.5 at the time of purchase. The lots were rezoned to D.R. 2 in 1996, and the Spurlins combined the lots in 1999. The Spurlins also own

improved property which they rent out at 1925 Halethorpe Avenue (Lots 68, 69 and 70). They also own improved property at 2001 Halethorpe Avenue, which is their residence. The rear property line of 1925 Halethorpe Avenue abuts part of the subject Lots 62, 63 and 64. There is a small shed located on the northeast corner of Lot 64 that has been used by the adjoining property owners of Lot 74, who are Jennifer and Todd Clontz. The Spurlins have two daughters and they desire to give the existing home at 1925 Halethorpe Avenue to one of the daughters and build a new home on the subject property for the other.

### **Issues**

The special hearing request presented to the Zoning Commissioner was to determine if the subject lots had been merged because of the presence of the small shed on one of the lots. The variance relief was requested because the lot is undersized. Under the D.R. 2 zoning classification, a minimum lot area of 20,000 sq. ft. and minimum lot width of 100 feet is required; the subject lot is only 60 feet wide and 7,211 sq. ft. in area. Without variance relief, the lot could not be developed.

The Zoning Commissioner ruled that the subject lots had not been merged as the result of the small shed placed at the corner of Lot 64. The Commissioner further ruled that to deny the variance would result in practical difficulty for the Spurlins in that there would be no reasonable use of the property.

## **Testimony and Evidence**

Shirley Jean Spurlin, Petitioner, testified in support of the Petition, and presented a site plan (Petitioners' Exhibit #1) prepared by John S. Mellema, Sr., Inc., Land Surveyor, which shows the location of the subject property. Mrs. Spurlin testified that she and her husband purchased the subject lots in 1979 and 1995 and combined them in 1999.

Allan W. Miller, Sr., Appellant, who resides at 4509 Adclaire Street, which is adjacent to

the subject property, next testified. Mr. Miller testified that he purchased his lots in 1999, after the zoning change to D.R. 2. Mr. Miller testified that the reason for his appeal of the Zoning Commissioner's decision is because the Spurlins' proposal to build a single-family residence on the subject lots does not conform to the current regulation for D.R. 2 zoning. Mr. Miller presented as evidence (Protestant's Exhibit #9) the site plan the Petitioners presented as their Exhibit #1 on which he indicated in red property owned by the Spurlins that is located across from the subject property on Adelaire Street. Mr. Miller stated his opinion that, if the Spurlins were to build on these lots, there would be no hardship, which was the basis for the Zoning Commissioner's ruling and his reason for allowing the variance.

There was no evidence or testimony to indicate the lots had been merged with another lot as the result of the placement of the shed. There also was no testimony or evidence to indicate that the subject property is unique from other properties in the Halethorpe Terrace development.

### **Decision**

The Board concurs with the Zoning Commissioner's decision that the subject lots were not merged as the result of the placement of the shed on Lot 64. There was no testimony or evidence presented to indicate that Lot 64 had been used or merged for the purpose of enhancing the development of an existing property.

As to the request for a variance, § 307 of the *Baltimore County Zoning Regulations*(BCZR) permits granting a variance from height and area regulations only in cases where special circumstances or conditions exist that are peculiar to the land and structure which is the subject of the variance request, and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship.

These conditions for granting a variance have been interpreted by the Court of Special Appeals in a number of cases, the controlling case being Cromwell v. Ward, 102 Md.App. 691,

651 A.2d 424 (1995). According to *Cromwell*, Petitioners must first prove that their property is unique. This standard must be met before other parts of the variance requirements can be considered, namely, hardship.

The Board must therefore engage in a two-step process in deciding whether or not to allow a variance. The first step requires a finding that the property is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties. If this first step results in a supportable finding of uniqueness, then a second step is taken to determine whether practical difficulty and/or unreasonable hardship caused by the property's uniqueness exists. If the Board cannot determine a case of uniqueness, then the second step to determine hardship is not necessary, and the request for variance must be denied.

In Cromwell, the Court of Appeals referred to the definition of "uniqueness" provided in North v. St. Mary's County, 99 Md.App. 512, 638 A.2d 1175 (1994).

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

Because there was no testimony or evidence presented to determine a quality of uniqueness for the subject property, there was no need to go to the second step to determine hardship. Unless there is a finding that the property is unique, unusual or different, the process stops and the variance is denied without any consideration of practical difficulty or unreasonable hardship. Therefore, the variance relief requested in the subject matter is denied for the reasons stated above.

#### ORDER

THEREFORE, IT IS THIS \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 2007 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to confirm that Lots 62, 63 and 64 are not merged through use be and is hereby GRANTED; and it is further

ORDERED that the Petition for Variance for an undersized lot is hereby DENIED.

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

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Margaret Brassil, Ph.D., Chairperson

Lawrence S. Wescott

Robert W. Witt

IN RE: PETITION FOR SPECIAL HEARING & VARIANCE - N/W S OF Adclaire Street, 110' NE of Halethorpe Avenue (62-64 Halethorpe Terrace) 13th Election District lst Council District

Donald Ray Spurlin, et ux Petitioners

- BEFORE THE
- \* ZONING COMMISSIONER
- \* OF BALTIMORE COUNTY
- \* CASE NO. 07-054-SPHA

# MOTION FOR RECONSIDERATION OR MOTION UNDER REVISORY POWER OF THE BOARD

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NOW COMES Donald Ray Spurlin and his wife, Shirley Jean Spurlin, Petitioners, by counsel, Michael P. Tanczyn, and moves this Honorable Board to reconsider, pursuant to Board of Appeals Rule 10, Motion for Reconsideration, and Rule 11, Revisory Power of the Board in the Event of Fraud, Mistake or Irregularity, its Decision and Order of September 28, 2007, and in support thereof respectfully represents unto this Board:

- 1. That the Spurlins, who were not granted the relief requested by the Zoning Commissioner, which Decision was appealed to the Board of Appeals, was heard by the Board on August 16, 2007. The Petitioners appeared *pro se* at that time.
- 2. Since receiving the Board's Opinion and Decision, the Spurlins sought and obtained counsel, namely, the undersigned.
- 3. Upon interviewing the Spurlins, it appears to counsel that the Spurlins may have been confused by directions from the Board at the time of hearing as to who would be allowed to testify on their behalf. Both Petitioners, who were present at the time of hearing along with their daughter, were prepared to testify. Both Petitioners have recounted to counsel that the Chair of the Hearing Panel advised them that only one person would be allowed to speak for either the Petitioners or the Protestants. Based on that admonition, neither Mr. Spurlin, nor his daughter,

attempted to testify in order to comply with the direction from the Board. Had Mr. Spurlin or his daughter testified, and based on information which they possessed at the time of the hearing before the Board of Appeals, they would have testified specifically as to the factors that would support their claim that Lots 62-64, the subject properties, were unique under the standard set forth in Baltimore County Zoning Regulation 307.1 as explicated in the case of Cromwell v.

Ward, 102 Md.App. 691, 651 A.2d 424 (1995). Some of that same testimony was presented by either Mr. Spurlin or the daughter before the Zoning Commissioner with regard to other homes in the neighborhood built since the DR-2 zoning, similarly undersized, of similar shape, which were allowed to be built which is some evidence of uniqueness since similar properties should be treated similarly under the law so as not to violate the Constitutional guarantees that property or rights of use will not be taken without just compensation and/or due process as a matter of law.

- 4. Additionally presented before the Zoning Commissioner was the original plat of Halethorpe Terrace as recorded in Plat Book 7 in folio 72 which laid out building lots of record as provided under the BCZR which would have existed as of lots of record in Baltimore County as of 1950. The imposition of Zoning Regulations on pre-existing subdivisions properly developed and approved under pre-existing standards to create lots of record is the gravamen of any claim for variance regarding undersized lots which may be presented in Baltimore County.
- 5. Further, in reading the Board's Opinion, there appears to be a misunderstanding as to the shed attributed to be on Lot 64 as being in service on the far left rear corner as serving the adjacent rental lots 68 through 70. In fact, a review indicates that the shed referred to by the Board is indeed on Lot 70 and not on Lot 64. To be clear, there is another shed on Lot 62 which has been used to store personal items owned by the Spurlins, but not by any other adjacent lot owner for purposes of considering zoning merger. Petitioners acknowledge that the Board did

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not find any issue as did the Zoning Commissioner of zoning merger which was one of their requested items of relief.

6. Uniqueness. Evidence of uniqueness which would have been testified to by the other Petitioners' witnesses if they thought they were allowed to testify would have included the sensitive environmental features in the vicinity of Lots 62 through 64 which also is another criteria to be considered under Cromwell v. Ward. Other Petitioners' witnesses also would have testified about the actions taken by the Protestant, Mr. Miller, who had created obstacles by grading a hump into the unpaved Adclaire Street adjacent to his home to block all traffic for his own purposes on what appears from the plat to be a dedicated, but not paved, paper street. I note the absence on the plat of record of any reservation of the fee by the owner of the property at the time the plat of Halethorpe Terrace was approved. The significance of that is that under MD. ANN. CODE, Real Property § 2-114, the legal effect of that, where a plat shows access to the street and there is no reservation of the fee, is that for purposes of density calculation the property owners are entitled to include the land parallel to their road frontage to the center line of the right of way for the purposes of calculating density. That would enhance and increase the density properly allocable to Lots 62-64 by at least 750 square feet. As the Court noted in its opinion quoting Cromwell, "the uniqueness for zoning purposes fact or stated include environmental factors, practical restrictions imposed by abutting properties such as obstructions or other restrictions." Other restrictions is not defined and should reasonably include factors pre-existing and beyond the control of the Petitioners such as would constitute a self-created hardship. Those factors present in this matter, which I am told would have been testified to by the other witnesses if they did not misunderstand the Board's direction that only one person could speak on their behalf, would have referred to the age of the subdivision, that Lots 62-64 have been lots of

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record, that the obstructions created by Mr. Miller since his house was build in Adelaire Street in which as the Zoning Commissioner noted in his Opinion, Mr. Miller had placed public utilities to service his property, as well as the sensitive environmental features, all constitute evidence of uniqueness from a zoning perspective.

WHEREFORE, Petitioners by counsel respectfully request that the Board of Appeals:

A. Grant the Motion to Reconsider to reopen the hearing of this matter for the taking of additional evidence of record with similar opportunity to be given to the Protestants who were present when the Board Chair stated only one speaker would be allowed for each side on behalf of Petitioners or Protestants in the event Protestants have any other witnesses which they wish to call in the interests of fairness;

B. After taking additional testimony, reconsider and redeliberate the matter with memos from the parties if the Board deems that desirable;

C. Redeliberate on the Exhibits presented before the Zoning Commissioner which the Board can under the Code consider as moved into evidence by the parties without objection or on the Board's own motion.

Respecfully submitted,

Michael P. Tanczyn, Esquire

606 Baltimore Avenue, Suite 106

Towson, MD 21204

(410) 296-8823

Attorney for Petitioners

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26<sup>th</sup> day of October, 2007, a copy of the foregoing was hand delivered to Kathleen C. Bianco, Administrator, County Board of Appeals of Baltimore County, Room 49, Old Court House, 400 Washington Avenue, Towson, MD 21204, Administrator for the Baltimore County Board of Appeals, and was mailed First Class Mail, postage prepaid, to Mr. Allan W. Miller, 4509 Adclaire Street, Halethorpe, MD 21227, Protestant, and to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 47, Old Court House, 400 Washington Avenue, Towson, MD 21204.

Michael P. Tanczyn, Esquire

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
& VARIANCE - N/W S OF Adelaire Street,	<b>.</b>	
110' NE of Halethorpe Avenue (62-64 Halethorpe Terrace)	*	ZONING COMMISSIONER
13 <sup>th</sup> Election District	*	OF BALTIMORE COUNTY
1st Council District	·	OF BALTIMORE COUNT I
	*	CASE NO. 07-054-SPHA
Donald Ray Spurlin, et ux		OLIDDITO: OF OUT DITIE
Petitioners	*	
· *	*	*
<u>ORI</u>	<u>)ER</u>	
Upon consideration of the Motion for Rec	consider	ation or Motion Under Revisory Power
of the Board filed by the Petitioners through cour	nsel, it i	s by the County Board of Appeals for
Baltimore County, this day of		_, 2007,
ORDERED that the Motion for Reconside	eration,	after deliberation, be and the same is
GRANTED as prayed.		
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•		BOARD
		DOMND



JAMES T. SMITH, JR. County Executive

October 26, 2006

WILLIAM J. WISEMAN III

Zoning Commissioner

Mr. & Mrs. Donald Spurlin 2001 Halethorpe Avenue Baltimore, Maryland 21227

RE: PETITIONS FOR SPECIAL HEARING & VARIANCE N/W Side of Adelaire Street, 110' NE of Halethorpe Avenue (62-64 Halethorpe Terrace)

13<sup>th</sup> Election District – 1st Council District Donald Ray Spurlin, et ux - Petitioners Case No. 07-054-SPHA

Dear Mr. & Mrs. Spurlin:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing and Variance have been granted with restrictions, 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.

ILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

Very ruly yours,

WJW:dlw

c: Ms. Katie Spurlin, 2001 Halethorpe Avenue, Baltimore, Md. 21227

Mr. John C. Mellema, Sr., 5409 East Drive, Arbutus, Md. 21227

Mr. Allan W. Miller, 4509 Adclaire Street, Halethorpe, Md. 21227

Mr. Donald S. Hawkins, 1921 Woodside Avenue, Halethorpe, Md. 21227

Office of Planning; People's Counsel; Case File



# Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at	Lots 62.64	Haleth	ur OC	tercar
	presently zoned		2	

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

CONFIRM THAT LOTS 62-64 AMD 62-70 ARE HOT MERGED THROUGH USE AND THAT OVERALL DENSITY IS NOT AFFECTED AND TO CONFIRM \$102.4 (BCZR)
DOES NOT APPLY

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 declar perjury, that I/we are the subject of this Person	e legal owner(s) of the	e penalties of property which
Contract Purchaser/	<u>Lessee:</u>	•	Legal Owner(s):		
			DONALD RAY	Spurlin	
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Attorney For Petition	State	Zip Code	Signature /		247-8640
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Case No. 07-0	254-SPU	Ą	UNAVAILABLE FO	R HEARING	<del></del>
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© <i>R21 9115198</i>	•			1	7



# Petition for Variance

# to the Zoning Commissioner of Baltimore County

for the property located at Lots 62.64 149/cthory Terrace
which is presently zoned DRZ

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1807.3. C 18 C 7 R

TO PERMIT A BUILDING LOT MANING A WIDTH OF GO' AT THE BUILDING LINE, A SUM OF SIDEYARDS OF 30' AND A LOT AREA OF 7,211 & IN LIEU OF THE REQUIRED 100', 40' AND 20,000 & RESPECTIVELY

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

TO BE DISCUSSED AT THE HEARING

Property is to be posted and advertised as prescribed by the zoning regulations.

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

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

Contract Purchaser/Lessee:		Legal Owner(s):
		Donald RAY SpurLin
Name - Type or Print	<u></u>	Name - Type or Print
Signature		Signature Spirale
Address	elephone No.	Shirley JEAN SOURLIN
	cicphone No.	Name - Type or Print Jean Such
City	Zip Code	Signature (//)
Attorney For Petitioner:		2001 HA LeThorpe Ave 247-8640
		Address Address Address Address Address Address Address Address Address
Name - Type or Print		BALTIMORE Md 21227 City State Zip Code
Signature	- · · · · · · · · · · · · · · · · · · ·	Representative to be Contacted:
		John Mellema
Tompany  Address  To		Name 5409 East DRIZE \$10.247.7488
	elephone No.	Address Telephone No.
City () State	Zip Code	Albits 40 Zizzz Zip Code State Zip Code
	_,p	OFFICE USE ONLY
Tase No. 07-054-SPNA		ESTIMATED LENGTH OF HEARING
EV.9/15/98	Reviewed By	UNAVAILABLE FOR HEARING  Date 18/06
₹£v.9/15/98 3 0 0		



### JOHN C. MELLEMA SR., INC. LAND SURVEYORS

5409 EAST DR. BALTO., MD. 21227 PHONE: 410-247-7488 FAX: 410-247-2507

ZONING DESCRIPTION
ADCLAIRE STREET
LOT 62 THRU LOT 64 BLOCK "A" INCLUSIVE
HALETHORPE TERRACE

BEGINNING FOR THE SAME AT A POINT ON THE NORTHWEST SIDE OF ADCLAIRE STREET 110 FEET MORE OR LESS FROM THE NORTHEAST SIDE OF HALETHORPE AVENUE, THNECE NORTHEASTERLY BINDING ON ADCLAIRE STREET 60 FEET MORE OR LESS THENCE NORTHWESTERLY 121 FEET MORE OR LESS THENCE SOUTHWESTERLY 60 FEET MORE OR LESS THENCE SOUTHEASTERLY 121 FEET MORE OR LESS TO THE POINT OF BEGINNING CONTAINING 7,260 SQUARE FEET OF LAND MORE OR LESS.

BEING LOT 62 THRU 64 BLOCK "A" AS SHONW ON A PLAT OF HALETHORPE TERRACE RECORDED IN BALTIMORE COUNTY, MARYLAND IN PLAT BOOK W.P.C. NO. 7 FOLIO 72



#### NOTICE OF ZONING HEARING

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

Case: # 07-054-SPHA

Lots 62-64 Halethorpe Terrace . \*

Northwest side of Adclaire, 110 feet northeast of

Halethorpe 13th Election District — 1st Councilmanic District Legal Owner(s): Donald Ray & Shirley Jean Spurlin Special Hearing: to confirm that Lots 62-64 and Lots 68-70 are not merged through use and that overall densi-

ty is not affected and to confirm Section 102.4 (BCZR) ( does not apply. Variance: to permit a building lot having a width of 60 feet at the building line, a sum of side yards. of 30 feet and a lot area of 7.211 square feet in lieu of the required 100, 40 and 20,000 square feet, respectively.

Hearing: Wednesday, October 18, 2006 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391. JT 10/600 Oct. 3

# CERTIFICATE OF PUBLICATION

10/5/,2006
THIS IS TO CERTIFY, that the annexed advertisement was published
in the following weekly newspaper published in Baltimore County, Md.,
once in each ofsuccessive weeks, the first publication appearing
on 103,20 <u>06</u>
The Jeffersonian
☐ Arbutus Times
🖵 Catonsville Times
☐ Towson Times
Owings Mills Times
☐ NE Booster/Reporter
☐ North County News
S. Wilkingon
<u>LEGAL ADVERTISING</u>

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# CERTIFICATE OF POSTING

RE: Case No.: 07-054-SPHA

Petitioner/Developer: D. \$5,5PURLIN

Date of Hearing/Closing: OCT. 18, 7006

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

Attention: Christen Matthews

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 propery located at LOTS 69-64

HALETHORPE TERRACE, N.W. SIDE OF ADCLAIRE

AVE. 110 FEET N.E. OF HALETHORPE AVE,

The sign(s) were posted on OCT. 2, 7006

(Month, Day, Year)

Sincerely,

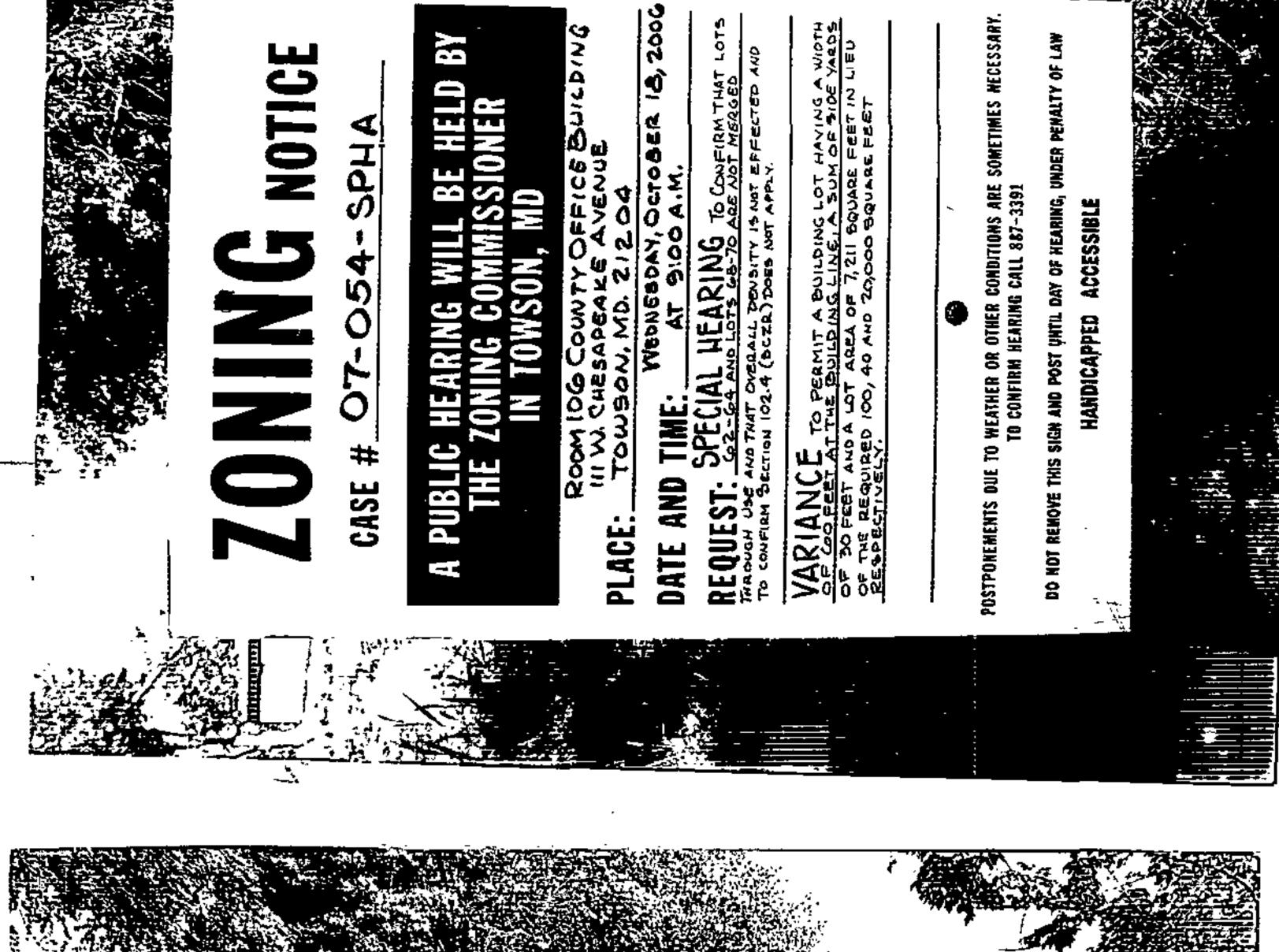
(Signature of Sign Poster and Date)

CZARLAGEDE, MOORE (Printed Name)

3225 RYERSON CIRCLE
(Address)

BALTIMORE, MD, 21227 (City, State, Zip Code)

(410) 242-4263 (Telephone Number)





OCT 3 2006

Requested: 1/24/07

# APPEAL SIGN POSTING REQUEST

CASE NO. 07-054-SPHA

LOTS 62 – 64 HALETHORPE TERRACE

13<sup>TH</sup> ELECTION DISTRICT

APPEALED: 11/22/2006

BALTIMORE COUNTY, MARY OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT	LAND	No. 22602
DATE 11/28/06	ACCOUNT <u>QQ</u>	1.006.6150
	MOUNT \$	400,00
RECEIVED ALLAN MIL	CER	
FOR: Appeal	- ,	, <u>, , , , , , , , , , , , , , , , , , </u>
07-054-	SPHA	, <u></u>
DISTRIBUTION BING AGENCY	YFLLOW - CUSTOMER	

PAID RECEIPT

MUSINESS ACTUAL TIME DRU

11/29/2006 11/28/2006 14:59:51 1

REG MSOI MALKIN JRIC JMR

>>RECEIPT # 310964 11/28/2006 OFLN

Dept 5 528 ZONING VERIFICATION

CR NO. 022602

Recpt Tot \$400.00 CA

Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND  OFFICE OF BUDGET & FINANCE  No.	
DATE 3/8/06 ACCOUNT (2001 006 6130	<u>1</u> 5
AMOUNT \$ 130	
RECEIVED FROM:	
FOR:	
DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER	

PART OF THE TOTAL TOTAL

**CASHIER'S VALIDATION** 

Requested: 1/24/07

# APPEAL SIGN POSTING REQUEST

CASE NO. 07-054-SPHA

LOTS 62 – 64 HALETHORPE TERRACE

13<sup>TH</sup> **ELECTION DISTRICT** 

APPEALED: 11/22/2006

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

\*\*\*COMPLETE AND RETURN BELOW INFORMATION\*\*\*\*

# CERTIFICATE OF POSTING

Baltimore County Board of Appeals TO: 400 Washington Avenue, Room 49 Towson, MD 21204

Attention: Kathleen Bianco

Administrator

CASE NO.: 07-054-SPHA

LEGAL OWNER: DONALD RAY SPURLIN, ET UX

This is to certify that the necessary appeal sign was posted conspicuously on the property located at: LOTS 62 – 64 HALETHORPE TERRACE The sign was posted on By: (Print Name)



From:

Linda Fliegel

To:

Mark Gawel

Date:

04/06/07 8:25:10 AM

Subject:

Fwd: RE SIGN POSTING

>>> Kathleen Bianco 04/05/07 6:33 PM >>> Linda:

I received a call this evening from the petitioner in Case No. 07-054-SPHA /Donald Ray Spurlin, et ux - Legal Owner.

She indicated that the sign was posted in a different location than for the Zoning Commissioner's hearing; in fact, it's pretty much on someone else's property and will hinder his grass cutting over the summer.

Would you ask Jeff (or whichever inspector is posting for us now) to check on this - apparently the sign was posted on a "paper street" on Halethorpe Avenue - rather than behind those houses at the location where the property in question is actually located.

She just wanted to be sure it was posted properly for the hearing.

thanks

kath

LOTS 62 - 64 HALETHORPE TERRACE

Kathleen C. Bianco, Administrator County Board of Appeals Room 49, Old Courthouse Towson, MD 21204 410-887-3180 410-887-3182 (FAX)

kbianco@baltimorecountymd.gov

CC: Kathleen Bianco

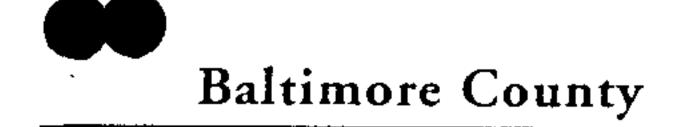
JASON X335

other property

# Department of Permits Development Management

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





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

August 24, 2006

# **NOTICE OF ZONING HEARING**

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

CASE NUMBER: 07-054-SPHA
Lots 62-64 Halethorpe Terrace
Northwest side of Adclaire, 110 feet northeast of Halethorpe
13<sup>th</sup> Election District – 1<sup>st</sup> Councilmanic District
Legal Owners: Donald Ray & Shirley Jean Spurlin

<u>Special Hearing</u> to confirm that Lots 62-64 and Lots 68-70 are not merged through use and that overall density is not affected and to confirm Section 102.4 (BCZR) does not apply. <u>Variance</u> to permit a building lot having a width of 60 feet at the building line, a sum of side yards of 30 feet and a lot area of 7.211 square feet in lieu of the required 100, 40 and 20,000 square feet, respectively.

Hearing: Wednesday, October 18, 2006 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco Director

Muthy Kotroco

TK:klm

C: Mr. & Mrs. Donald Spurlin, 2001 Halethorpe Avenue, Baltimore 21227 John Mellema Surveyors, 5409 East Drive, Arbutus 21227

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, OCTOBER 3, 2006.

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



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

TO: PATUXENT PUBLISHING COMPANY

Tuesday, October 3, 2006 Issue - Jeffersonian

Please forward billing to:

Don & Shirley Spurlin 2001 Halethorpe Avenue Baltimore, MD 21227

410-247-8640

# **NOTICE OF ZONING HEARING**

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

CASE NUMBER: 07-054-SPHA

Lots 62-64 Halethorpe Terrace

Northwest side of Adclaire, 110 feet northeast of Halethorpe

13<sup>th</sup> Election District – 1<sup>st</sup> Councilmanic District

Legal Owners: Donald Ray & Shirley Jean Spurlin

Special Hearing to confirm that Lots 62-64 and Lots 68-70 are not merged through use and that overall density is not affected and to confirm Section 102.4 (BCZR) does not apply. <u>Variance</u> to permit a building lot having a width of 60 feet at the building line, a sum of side yards of 30 feet and a lot area of 7.211 square feet in lieu of the required 100, 40 and 20,000 square feet, respectively.

Hearing: Wednesday, October 18, 2006 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

WILLIAM J. WISEMAN III

ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

# DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

# ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (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: 07-054-5PUA
Petitioner: DOHALD - SUIRLET SPURLIH
Address or Location: LOTS 62-64 MALETHORPE TENNACE
PLEASE FORWARD ADVERTISING BILL TO:
Name: DON & SHIRLEY SPURLIN
Address: 2001 HALETUOPE AUE,
13ALT, m0 21227
Telephone Number: 410 247 8640



JAMES T. SMITH, JR. County Executive

TIMOTHY M. KOTROCO, Director

Department of Permits and

Development Management

October 11, 2006

Donald Ray Spurlin Shirley Jean Spurlin 2001 Halethorpe Avenue Baltimore, MD 21227

Dear Mr. and Mrs. Spurlin:

RE: Case Number: 07-054-SPHA, Lots 62 - 64 Halethorpe Terrace

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 8, 2006.

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,

U. Callibal D

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel John Mellema Surveyors 5409 East Drive Arbutus 21227

**DATE:** September 7, 2006

RECEIVED

SEP 1 8 2006

ZONING COMMISSIONER

### BALTIMORE COUNTY, MARYLAND

#### INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

**SUBJECT:** 

Lots 62-64 Halethorpe Terrace

**INFORMATION:** 

Item Number:

7-054

Petitioner:

Donald Ray Spurlin

Zoning:

DR 2

Requested Action:

Special Hearing and Variance

#### SUMMARY OF RECOMMENDATIONS:

The Office of Planning has reviewed the petitioner's request and visited the subject site. Currently the subject property appears to be utilized by the dwellings located at 1925 and 1927 Halethorpe Avenue as rear yards with improved with accessory structures (the said accessory structures shall be shown on the plan). It is unclear from the subject drawing how vehicular access will be provided to the subject property. The "public access" strip shown on the subject drawing is unimproved along 1927 and 2001 Halethorpe Avenue, and appears to serve again as rear yard area. Additionally the subject property does not meet the provision set forth in Section 102.4 of the Baltimore County Zoning Regulations (BCZR). As such the Office of Planning recommends the petitioner's request be denied.

If the petitioner is able to demonstrate a hardship or practical difficulty, resulting in the Zoning Commissioner granting the subject request, the Office of Planning requests the property comply with Section 304 of the BCZR and architectural elevations be submitted to this office for review and approval prior to the issuance of any building permits and shall provide in-fee access to a public street.

For further information concerning the matters stated here in, please contact Dennis Wertz at 410-887-

3480.

Prepared by:

**Division Chief:** AFK/LL: CM

W:\DEVREV\ZAC\7-054,doc

# BALTIMORE COUNTY, MARYLAND

## INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

**DATE:** August 16, 2006

Department of Permits & Development

Management

FROM:

Dennis A. Kennedy, Supervisor

Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For August 21, 2006

Item Nos. 045, 046, 047, 048, 050,051, 052,

053, (054) 055, and 056

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-08162006.doc



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

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

Maryland Department of Transportation

Date:

8.15.03

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

RE:

**Baltimore County** 

Item No. 0754

LTM

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 (Igredlein@sha.state.md.us).

Very truly yours,

Steven D. Foster, Chief

Engineering Access Permits Division

### 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

August 17,2006

ATTENTION: Zoning Review Planners

Distribution Meeting of: August 14,2006

Item No.:045, 046, 047, 048, 049, 050, 051, 052, 053, (054) 055 and 056.

Pursuant to your request, the referenced plan(s) have been reviewed by the Fire Marshal's Office 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.

Acting Lieutenant Don W. Muddiman Fire Marshal's Office 410-887-4880 MS-1102F

Baltimore County Board Of Appeals Attn; Kathleen C. Bianco, Administrator Room 49,Old Court House 400 Washington Avenue Towson, Md.21204

Re: In the Matter of the Zoning Appeal Hearing On August 16, 2007 at 10:00 A.M. Case No. 07-054-SPHA

Dear Ms. Bianco and Board Of Appeal Members:

My name is Allan W. Miller Sr. and I am the appellant/protestant in this matter.

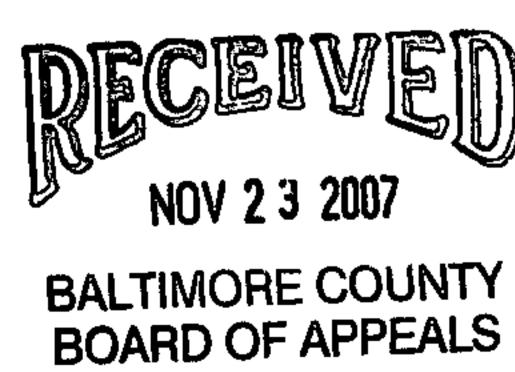
On November 6, 2007 I received a copy of a letter from Attorney Michael P. Tanczyn. He is requesting a Motion of Reconsideration on behalf of Donald Spurlin and his wife Shirley Spurlin. The Spurlin's Petition for a variance, for an undersized lot was denied by the Board of Appeals through the Decision and Order on September 28,2007.

I have read Mr. Tanczyn's letter to the Board of Appeals, and feel that the Board should not reconsider its decision. I would like to respond to items numbered 1 through 6 in his letter.

Items 1 & 2: On June 13<sup>th</sup>, 2007 Ms. Kathleen Bianco sent a Notice of Assignment Letter to all parties involved, notifying both parties of the appeal hearing. In that letter there was a paragraph that stated,

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

The Spurlins had from June 13<sup>th</sup> to August 16<sup>th</sup> (9 weeks) to hire an attorney and chose not to.



Item 3: On August 16<sup>th</sup>, 2007 at the beginning of the appeal hearing,

Chairperson, Margaret Brassil gave fair and equal instructions since neither side had an
attorney that only one person from each side could act as council. Council could call
witnesses, ask questions and present their case.

During the proceeding, Mrs. Spurlin acted as council on their behalf. I was called to the stand and questioned. When it was my turn I called Mrs. Spurlin to the stand and questioned her. During my questioning of Mrs. Spurlin, Mr. Spurlin kept calling out from his seat and was reminded by Chairperson, Margaret Brassil that for him to be recognized he had to be called as a witness.

Mr. Tanczyn's letter stated that the Spurlins did not understand that they could call witnesses, when they in fact did so.

Before the close of the hearing Chairperson, Margaret Brassil asked if both sides were finished and if there was anymore testimony or evidence to be presented.

Mr. Tanczyn's letter states that Mr. Spurlin or his daughter, possessed information that would support the claim, that Lots 62-64 were unique. If they possessed such information, why wasn't Mrs. Spurlin, (who was presenting the case) aware of this information?

Mrs. Spurlin was asked by Chairperson, Margaret Brassil if the lots had any unique characteristics, such as Historical Value, Unique Shape, Water Front, etc. and Mrs. Spurlin could not show that these lots were unique in any way.

Item 4: The original Plat of Halethorpe Terrace, dated July 18, 1923, shows it divided into 20 foot wide lots. Since that time there have been zoning law changes. In 1996 this area was zoned DR-2 which requires 100 foot width and 20,000

á

square feet. The Spurlins property is 60 feet wide and only 7,200 square feet.

County records show that the Spurlins purchased the lots in 1998, 2 years after the zoning laws changed.

Item 5: Mr. Tanczyn is mistaken about the location of the Spurlin's sheds. One shed is in Lot #70 and the other is on Lot #64.

Item 6: Mr. Tanczyn must have been misinformed and never have seen the properties in question. There is no hump obstructing the unimproved part of Adelaire Street in front of the Miller's home.

Public utilities: such as BGE and their tree trimmers, Comcast and Verizon bring trucks through to service their overhead lines and poles. Mr. Spurlin also routinely drives through to access his properties on both sides of Adelaire Street. The only obstacles are railroad ties, placed across the west end of Adelaire Street by Mr. Spurlin, preventing access from Halethorpe Ave.

When my home was built in 1999, I followed Baltimore

County Building codes and regulations. All work was permitted and inspected by

Baltimore County. I do not see how the placement of my home and Baltimore County

Public utilities has any bearing on this case.

Mr. Tanczyn's letter refers to MD. ANN. CODE, Real Property 2-114, which would enhance and increase the density properly allocable to Lots 62-64 by 750 square feet. This is still less than 8,000 square feet, where 20,000 square feet is required by DR-2 zoning regulations.

In closing, the facts remain that Lots 62-64 are well undersized. 7,211 square feet where 20,000 square feet is required. They only have 60 foot width where 100 feet is

required. There is nothing unique about the lots as stated in the Appeal Board's decision on September 28, 2007.

I do not feel this is creating a hardship for the Spurlins, due to the fact they own 13 Lots, on the other side of Adclaire Street. These lots are grouped together, #13 through #25, Block "B". These lots combined, equal 26,000 square feet and have 260 feet of street frontage, and have all public utilities in place.

For the reasons stated in this letter, I do not feel the Board should reconsider its decision.

Thank you,

Allan Miller, Sr.

cc: Micheal Tanczyn, P.A.

Peter Zimmerman, Esq., People's Counsel



JAMES T. SMITH, JR. County Executive

TIMOTHY M. KOTROCO, Director

Department of Permits and

Development Management

January 10, 2007

Donald Ray Spurlin Shirley Jean Spurlin 2001 Halethorpe Avenue Baltimore, MD 21227

Dear Mr. and Mrs. Spurlin:

RE: Case: 07-054-SPHA, Lots 62-64 Halethorpe Terrace

DECEIVED IAN 1 20087 LO

BALTIMORE COUNTY BOARD OF APPEALS

Please be advised that an appeal of the above-referenced case was filed in this office on November 22, 2006 by Allan W. Miller, Sr.. 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 Director

DECEIV

JAN 1 1 2008 7

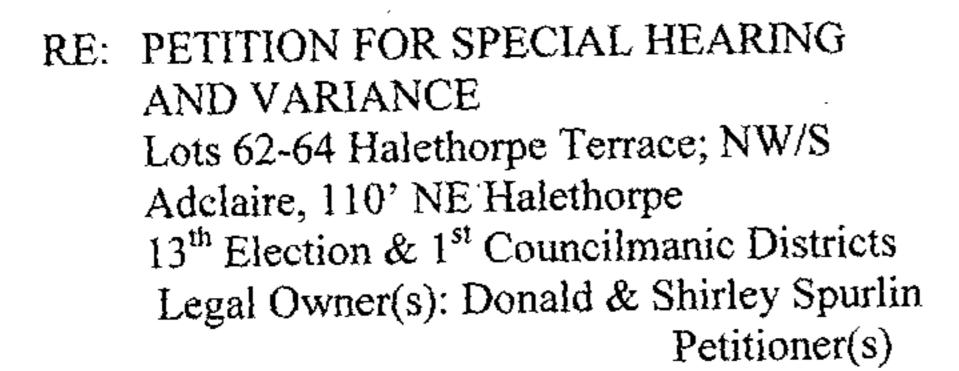
TK:amf

William J. Wiseman III, Zoning Commissioner
 Timothy Kotroco, Director of PDM
 People's Counsel
 Allan W. Miller, Sr. 4509 Adclaire Street Baltimore 21227

BALTIMUHE COUNTY BOARD OF APPEALS

John Mellema 5409 East Drive Arbutus 21227

Donald S. Hawkins 1921 Woodside Avenue Halethorpe 21227



\* BEFORE THE

\* ZONING COMMISSIONER

\* FOR

\* BALTIMORE COUNTY

\* 07-054-SPHA

### ENTRY OF APPEARANCE

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

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

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

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of August, 2006, a copy of the foregoing Entry of Appearance was mailed John Mellcoma Surveyors, 5409 East Drive, Arbutus, MD 21227, Representative for Petitioner(s).

RECEIVED

2 2 2008

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Par.

# PLEASE PRINT CLEARLY

CASE NAME CASE NUMBER DATE

PETITIONER'S SIGN-IN SHEET

E-MAIL	Shistey. Spendin & Extex	I hrames.	j									
CITY, STATE, ZIP	13.110 ml 21227											
- 1	2001 Halethape Are	Ĭ										
NAME	DONALd SOURLIN	Shikley Smelin	KATIE' SURLIZ									

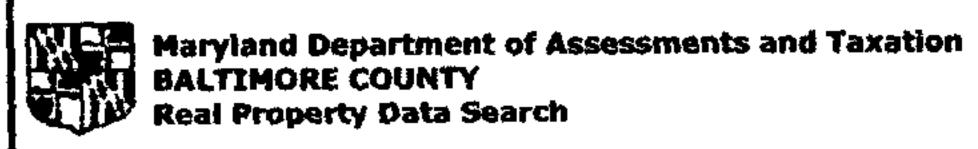
## PLEASE PRINT CLEARLY

CASE NAME	CASE NUMBER	DATE

# SITIZEN'S SIGN-IN SHEET

		1	. 4	<u>.</u>		,	1	,		1	1	i	1	1	ı	
E- MAIL																
CITY, STATE, ZIP	HOLKTHORPK A122	HALET HORRE MO 21227					•									
ADDRESS	41509 ADCLAIRE 57.	1921 WOOD SIDE AVE														
NAME	ALLAN MILLAR	DOWALD S. HAWKIUS														

Spurlin 07-054-594A Pet Ex.11.13.175. 5 A Pluth 4 119 Old Works to Bled Plutos show the topse Coult an



Go Back View Map New Search **Ground Rent** 

**Account Identifier:** 

District - 13 Account Number - 2300006571

**Owner Information** 

Owner Name:

SPURLIN DONALD RAY

SPURLIN SHIRLEY JEAN

Use:

RESIDENTIAL

Principal Residence:

NO

2001 HALETHORPE AVE Mailing Address:

**BALTIMORE MD 21227-4512** 

Deed Reference:

1) /13834/ 118

2)

### **Location & Structure Information**

**Premises Address** 

**ADCLAIRE ST** 

**Legal Description** 

.167AC PTLTS 62-64 **NWS ADCLAIRE ST** HALETHORPE TERRACE

Plat No: Block Lot Section Assessment Area **Sub District** Subdivision Map Grid Parcel Plat Ref: 7/ 72 62 108 144

Special Tax Areas

**Town Ad Valorem** 

Tax Class

**Property Land Area County Use Enclosed** Area **Primary Structure Built** 7,279.00 SF 04 0000

**Stories** 

**Basement** 

Exterior Type

### **Value Information**

	Base	Value	Phase-in Ass	essments
	Value	As Of	As Of	As Of
		01/01/2004	07/01/2006	07/01/2007
Land:	7,270	7,270		
Improvements:	0	0		
Total:	7,270	7,270	7,270	NOT AVAIL
Preferential Land:	0	0	0	NOT AVAIL

### **Transfer Information**

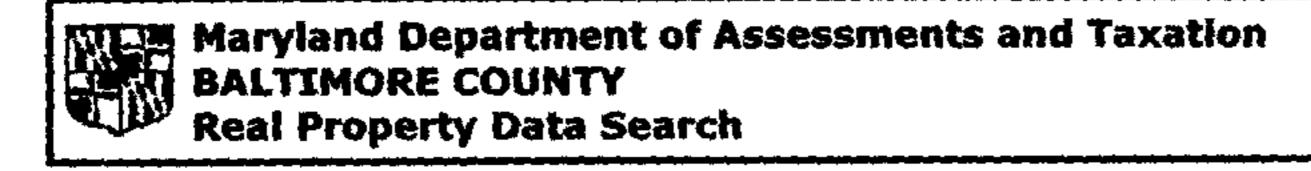
Seller: Type:	SPURLIN DONALD RAY NOT ARMS-LENGTH	Date: 06/19/1999 Deed1: /13834/ 118	Price: \$0 Deed2:	. <u></u>
Seller: Type:		Date: Deed1:	Price: Deed2:	
Seller: Type:		Date: Deed1:	Price: Deed2:	

### **Exemption Information**

Partial Exempt Assessments	<b>Class</b>	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: **Exempt Class:**  NO

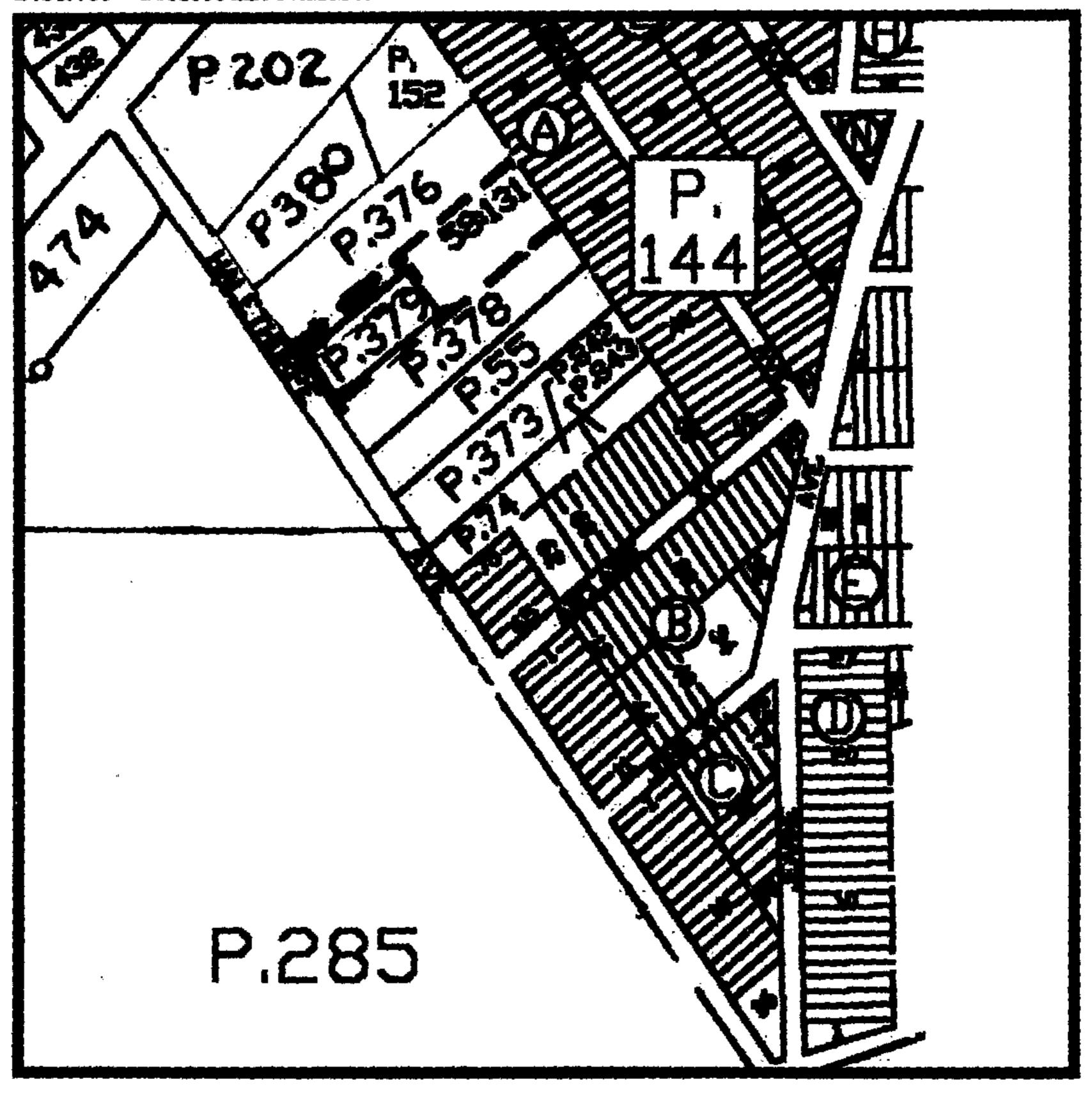
Special Tax Recapture:



Go Back View Map New Search

District - 13Account Number - 2300006571

· 100 19



Property maps provided courtesy of the Maryland Department of Planning ©2004. For more information on electronic mapping applications, visit the Maryland Department of Planning web site at <a href="https://www.mdp.state.md.us/webcom/index.html">www.mdp.state.md.us/webcom/index.html</a>

DJA 10/16/06

http://sdatcert3.resiusa.org/rp\_rewrite/maps/showmap.asp?countyid=04&accountid=13+230... 10/16/0

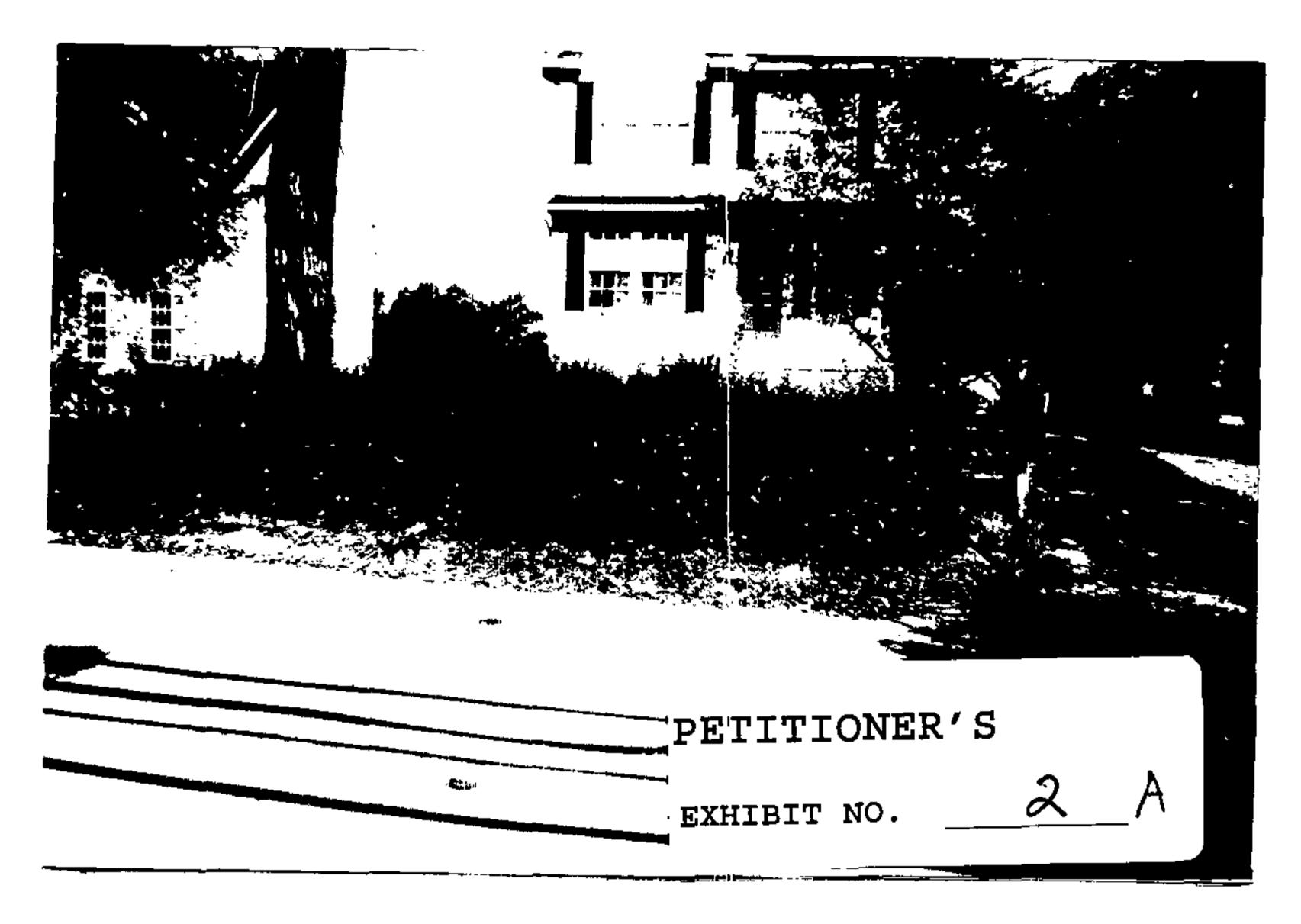
PET EX2-5 PHOTOS

Spurlin, et up Petition's 07.054-5PHA Photos 2-A

or Marine Service







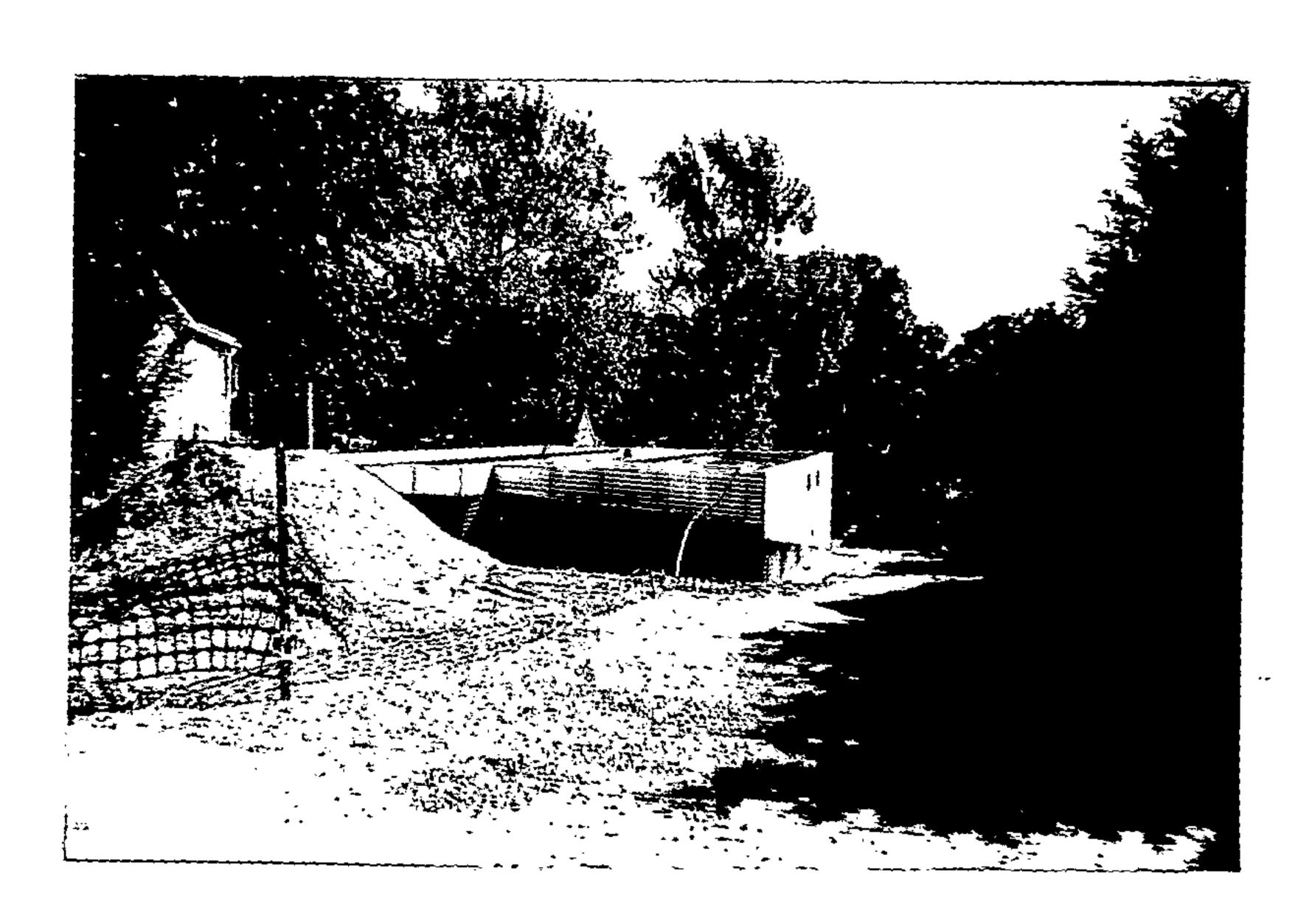
















**Exempt Class:** 

## Maryland Department of Assessments and Taxation BALTIMORE COUNTY Real Property Data Search (2007b)

Go Back View Map New Search GroundRent

**Account Identifier:** District - 13 Account Number - 2300006571 **Owner Information** RESIDENTIAL SPURLIN DONALD RAY **Owner Name:** Use: SPURLIN SHIRLEY JEAN Principal Residence: NO **Mailing Address:** 2001 HALETHORPE AVE **Deed Reference:** 1) /13834/ 118 BALTIMORE MD 21227-4512 2) **Location & Structure Information** Premises Address **Legal Description** ADCLAIRE ST .167AC.PTLTS.62-64 . NWS ADCLAIRE ST .HALETHORPE TERRACE Subdivision. Grid **Parcel Sub District** Section **Assessment Area** Map Block Lot Plat No: 108 12 144 62 Plat Ref: 7/ 72 Α Town **Special Tax Areas Ad Valorem Tax Class Primary Structure Built Enclosed Area Property Land Area County Use** 0000 7,279.00 SF 04 **Stories** Basement -Type Exterior **Value Information Base Value Value Phase-in Assessments** As Of As Of As Of 01/01/2007 07/01/2006 07/01/2007 7,270 7,270 Land Improvements: 0 Total: 7,270 7,270 7,270 7,270 **Preferential Land:** 0 0 **Transfer Information** Seller: SPURLIN DONALD RAY 06/19/1999 Date: Price: \$0 NOT ARMS-LENGTH 1 Type: **Deed1:** /13834/ 118 Deed2: Seller: Date: Price: Type: Deed1: Deed2: Seller: Date: Price: Type: Deed1: Deed2: **Exemption Information Partial Exempt Assessments** Class 07/01/2006 07/01/2007 County 000 State 000 Municipal 000 0 Tax Exempt: NO **Special Tax Recapture:** 

PROTEXI

\* NONE \*



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

BALTIMORE MD 21227-4510

Go Back View Map New Search Ground Rent

ccount Identifier:

District - 13 Account Number - 1303230675

**Owner Information** 

)wner Name:

RENT GORDON E,JR

RENT BONNIE L

lailing Address: 1927 HALETHORPE AV

Use:

RESIDENTIAL

Principal

Residence:

YES

**Deed Reference:** \_ 1) /14708/ 570

**Location & Structure Information** 

remises Address

927 HALETHORPE AVE

Legal Description

(LT 65,66-)

1927 HALETHORPE AV

HALETHORPE TERRACE

1ap Grid Parcel Sub District Subdivision Section Block Lot Assessment Area Plat No:

Α

801 12

**Stories** 

pecial Tax Areas

144

Town

Ad Valorem Tax Class

Primary Structure Built 1979

**Enclosed Area** 

**Property Land Area** 

**County Use** 

7/ 72

995 SF 4,400.00 SF

**Basement** 

YES

Type STANDARD UNIT

65

04 Exterior

Plat Ref:

SIDING

**Value Information** 

Base Value Phase-in Assessments Value As Of As Of As Of

01/01/2004 07/01/2006 07/01/2007

Land:

26,400

26,400

Improvements: 59,910

59,910 86,310 86,310

86,310

**NOT AVAIL** 

Total: 'referential Land:

NOT AVAIL

**Transfer Information** 

≥ller: WAGNER ANTHONY J

/pe: MULT ACCTS ARMS-LENGTH

\*\*Iler: MAYFIELD FARMS D EVELOPMENT CORP

Date: **Deed1:** /14708/ 570

Date:

05/22/2000

05/10/1979

**Price:** \$87,000

Deed 2:

Price: \$0

tp://sdatcert3.resiusa.org/rp\_rewrite/detail.asp?accountnumber=13+1303230675&county=04&intMenu...

11/4/2006



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

Go Back View Map New Search Ground Rent

ccount Identifier:

District - 13 Account Number - 1313855130

**Owner Information** 

wner Name:

SPURLIN DONALD RAY

SPURLIN SHIRLEY J

Use:

RESIDENTIAL

**Principal** 

Residence:

lailing Address: 2001 HALETHORPE AVE

**BALTIMORE MD 21227-4512** 

Deed Reference:

1) / 6824/ 431

YES

### **Location & Structure Information**

remises Address

001 HALETHORPE AVE

Legal Description

LT-1=4.

SE-COR ADELAIRE AVE

HALETHORPE TERRACE

1ap Grid Parcel Sub District 108 12 144

Subdivision Section Block Lot Assessment Area

В

Plat No: Plat Ref: 7/ 72

pecial Tax Areas

Town Ad Valorem

Tax Class

Primary Structure Built (~ **1990** )

**Enclosed Area** 

**Property Land Area** 

County Use

1,136 SF

8,800.00 SF

04

**Stories** 

**Basement** 

Type

**Exterior** 

SPFOY

SPLIT FOYER

SIDING

### **Value Information**

Base Value Value Phase-in Assessments As Of

As Of

32,450

32,450

01/01/2004 07/01/2006 07/01/2007

As Of

Land: Improvements:

109,530

109,530

141,980

NOT AVAIL

Total: 'referential Land:

141,980 141,980

NOT AVAIL

### **Transfer Information**

elier: PASKY LEONARD JOSEPH /pe: IMPROVED ARMS-LENGTH Date:

11/21/1984

**Price:** \$14,000

**Deed1:** / 6824/ 431

Deed2:

Date:

Price:

eller:

tp://sdatcert3.resiusa.org/rp\_rewrite/detail.asp?accountnumber=13+1313855130&county=04&intMen... 10/27/2006

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

Go Back View Map New Search Ground Rent

ccount Identifier:

District - 13 Account Number - 1316600631

**Owner Information** 

iwner Name:

SCOTT HENRY

lailing Address: 2003 HALETHORPE AVE

SCOTT ELIZABETH

BALTIMORE MD 21227

Use:

RESIDENTIAL

Principal

Residence:

YES

Deed Reference:

1) /11021/ 566

2)

**Location & Structure Information** 

remises Address

**003 HALETHORPE AVE** 

Legal Description

**LT 5,6** 

2003 HALETHORPE AVE HALETHORPE TERRACE

1ap Grid Parcel Sub District Subdivision Section Block Lot Assessment Area Plat No:

108 12 144

В 5

Piat Ref:

7/ 72

Town pecial Tax Areas Ad Valorem

1930

Tax Class

Primary Structure Built,

**Enclosed Area** 906 SF

**Property Land Area** 4,400.00 SF

**County Use** 

04

**Stories** 

Basement

YES

Type STANDARD UNIT **Exterior** 

SIDING

**Value Information** 

Base Value As Of

Value Phase-in Assessments As Of

As Of

01/01/2004 07/01/2006 07/01/2007

Land: Improvements: 26,400 51,650 26,400 51,650

Total: referential Land: 78,050 78,050

78,050 0 NOT AVAIL

NOT AVAIL

**Date:** 03/01/1995

**Transfer Information** 

eller: WEBER GERALD E

eller: POLAN CARROLL A

/pe: IMPROVED ARMS-LENGTH

Date:

04/26/1995 Deed1: /11021/ 566 **Price:** \$58,500

Deed2:

Price: \$0

tp://sdatcert3.resiusa.org/rp\_rewrite/detail.asp?accountnumber=13+1316600631&county=04&intMen... 11/20/2006



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

Go Back View Map New Search Ground Rent

ccount Identifier:

District - 13 Account Number - 1320550000

**Owner Information** 

wner Name:

YAKEL STEPHEN J

BALTIMORE MD 21227-4512

YAKEL KAREN L

lailing Address: 2007 HALETHORPE AVE

Use:

RESIDENTIAL

Principal

Residence:

YES

Deed Reference: 1) /17341/ 458 /

**Location & Structure Information** 

remises Address

007 HALETHORPE AVE

Legal Description

LTS 7-9

2007 HALETHORPE AVE

HALETHORPE TERRACE

1ap Grid Parcel Sub District 108 12

144

Subdivision Section Block Lot Assessment Area

В

Plat No:

Piat Ref: 7/ 72

pecial Tax Areas

**Ad Valorem** 

Tax Class

(Primary Structure Built) 1985 📝

**Property Land Area** 6,600.00 SF

**County Use** 

04

**Stories** SPFOY

Basement

Town

884 SF

**Enclosed Area** 

Type

**Exterior** 

SIDING

**Value Information** 

Base Value Value Phase-in Assessments As Of

As Of

01/01/2004 07/01/2006 07/01/2007

As Of

SPLIT FOYER

Land:

Improvements:

31,600 112,360

31,600 112,360

**NOT AVAIL** 

Total: 'referential Land:

143,960

143,960

143,960

NOT AVAIL

Transfer Information

01/08/2003 Date:

**Price:** \$149,900

**Deed1:** /17341/ 458

Deed 2:

Mer: DURBIN STEPHEN D

/pe: IMPROVED ARMS-LENGTH

eller: DURBIN STEPHEN D

**Date:** 09/18/2001

Price: \$0

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

Go Back View Map New Search Ground Rent

ccount Identifier:

District - 13 Account Number - 1800007806

**Owner Information** 

wner Name:

SPURLIN DONALD RAY-

SPURLIN SHIRLEY JEAN

BALTIMORE MD 21227-4512

ailing Address: 2001 HALETHORPE AVE

Use:

RESIDENTIAL

**Principal** 

Residence:

NO

Deed Reference: 1) / 5994/ 614 2)

**Location & Structure Information** 

remises Address

**925 HALETHORPE AVE** 

Legal Description

LTS\_68-69-70 (60'NW\_ADCLAIRE\_ST

HALETHORPE TERRACE

.08

lap Grid Parcel Sub District

12 144 Subdivision Section Block Lot

Assessment Area

Plat No:

Plat Ref: 7/ 72

pecial Tax Areas

Town Ad Valorem

Tax Class

Primary Structure Built

**Enclosed Area** 

**Property Land Area** 

**County Use** 

1979

762 SF

6,600.00 SF

04

**Stories** 

**Basement** 

Type

68

**Exterior** 

SPFOY

SPLIT FOYER

SIDING

**Value Information** 

Base Value Value Phase-in Assessments As Of

As Of

01/01/2004

As Of

07/01/2006 07/01/2007

Land: Improvements:

31,600 68,280

31,600 68,280

99,880

Total: Preferential Land: **99,880** 99,880

**NOT AVAIL NOT AVAIL** 

**Transfer Information** 

eller: MAYFIELD FARMS D EVELOPMENT CORP

ype: IMPROVED ARMS-LENGTH

Date:

02/03/1979

\$44,500 Price:

**Deed1:** / 5994/ 614

Deed2:

eller:

Date:

Price:

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10/27/2006

DOET 6.



Go Back View Map New Search GroundRent

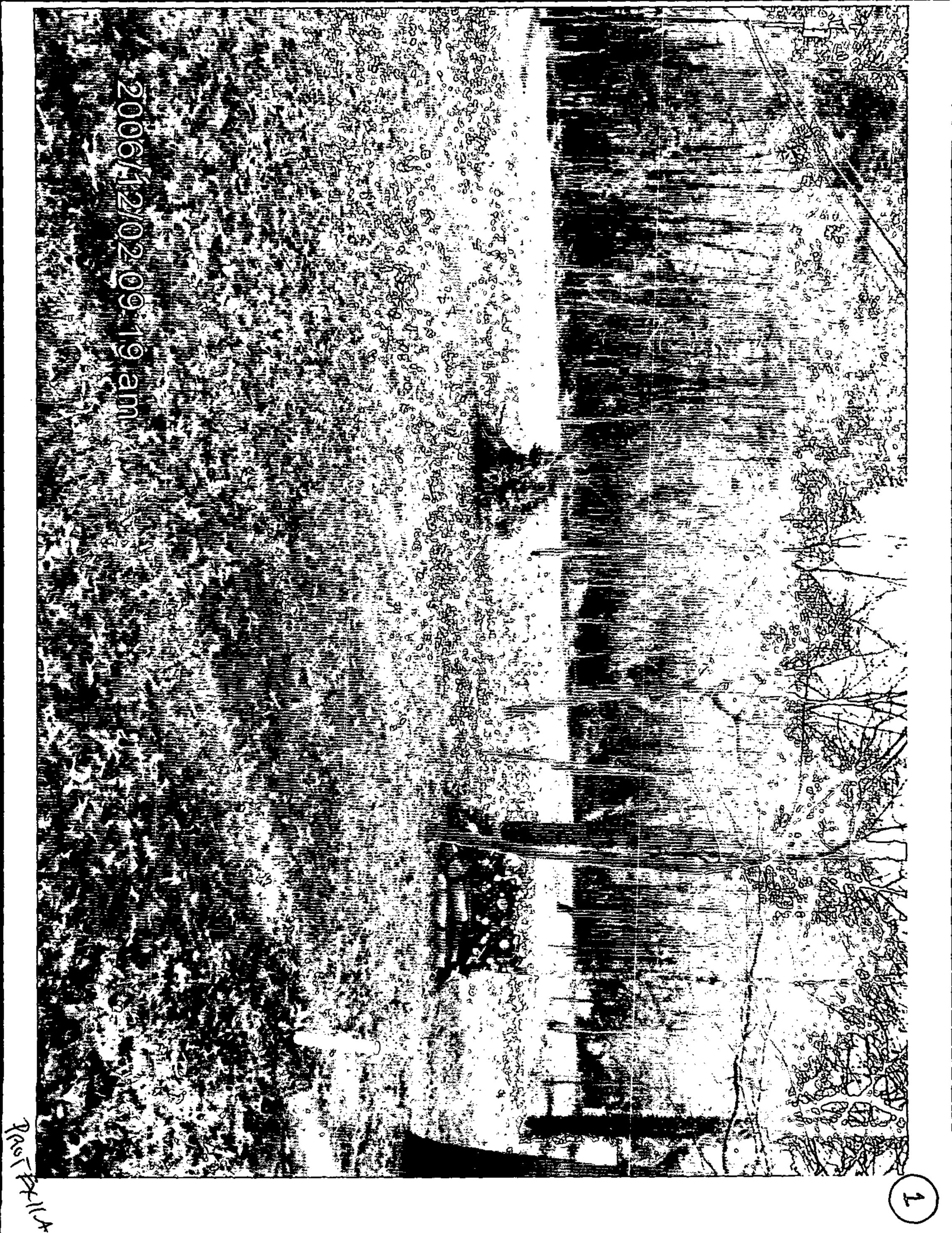
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· .						.278 AC LT	S 57-61			
							•			
						HALETHOR	PE TERRAC	E		
cel	Sub District	Subdivision	Section	Block	Lot	Assessm	ent Area	Plat No:	,	
4					57	1		Plat Ref:	7/7	
	To	wn					-			
\$	Ad	Valorem								
	Та	x Class								
Struct	ure Built 🔭 🦙	Enclose	ed Area		Prope	erty Land A	rea	County	Use	
1999		1,56	0 SF		12	2,132.00 SF		04		
	Baseme	ent	Туре					Exterior		
	YES			STAND	ARD UN	IIT		SIDING		
-		Va	lue Informa	ition				<del></del>	——————————————————————————————————————	
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Land	33,280	93,030								
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	Land: Land: LAN W S-LENG	MILLER JOYCE 4509 ADCLAIL BALTIMORE M  To Ad Ta  Structure Built 1999  Baseme YES  Base Value  Land 129,890 163,170	(MILLER ALLAN WAYNE, SR MILLER JOYCE LYNN  4509 ADCLAIRE ST ; BALTIMORE MD 21227-4560  Location in the second seco	(MILLER ALLAN WAYNE, SR   MILLER JOYCE LYNN   4509 ADCLAIRE ST   BALTIMORE MD 21227-4560  Location & Structure  Location & Structure  S.  Cel Sub District Subdivision Section  4  Town Ad Valorem Tax Class  Structure Built Enclosed Area 1999 1,560 SF  Basement YES  Value Informa  Base Value Value Phase-in As Of As C 01/01/2007 07/01/200  Land 33,280 93,030 nents: 129,890 256,290 Total: 163,170 349,320 163,17 Land: 0 0  Transfer Inform  LLAN WAYNE, SR S-LENGTH  Exemption Informations  Exemption Informations  Class 000	MILLER JOYCE LYNN   Principle   4509 ADCLAIRE ST   Deed	MILLER ALLAN WAYNE,SR	MILLER ALLAN WAYNE, SR   MILLER JOYCE LYNN   A509 ADCLARE ST   Deed Reference:	MILLER ALLAN WAYNE, SR	MILLER ALIAN WAYNE,SR	

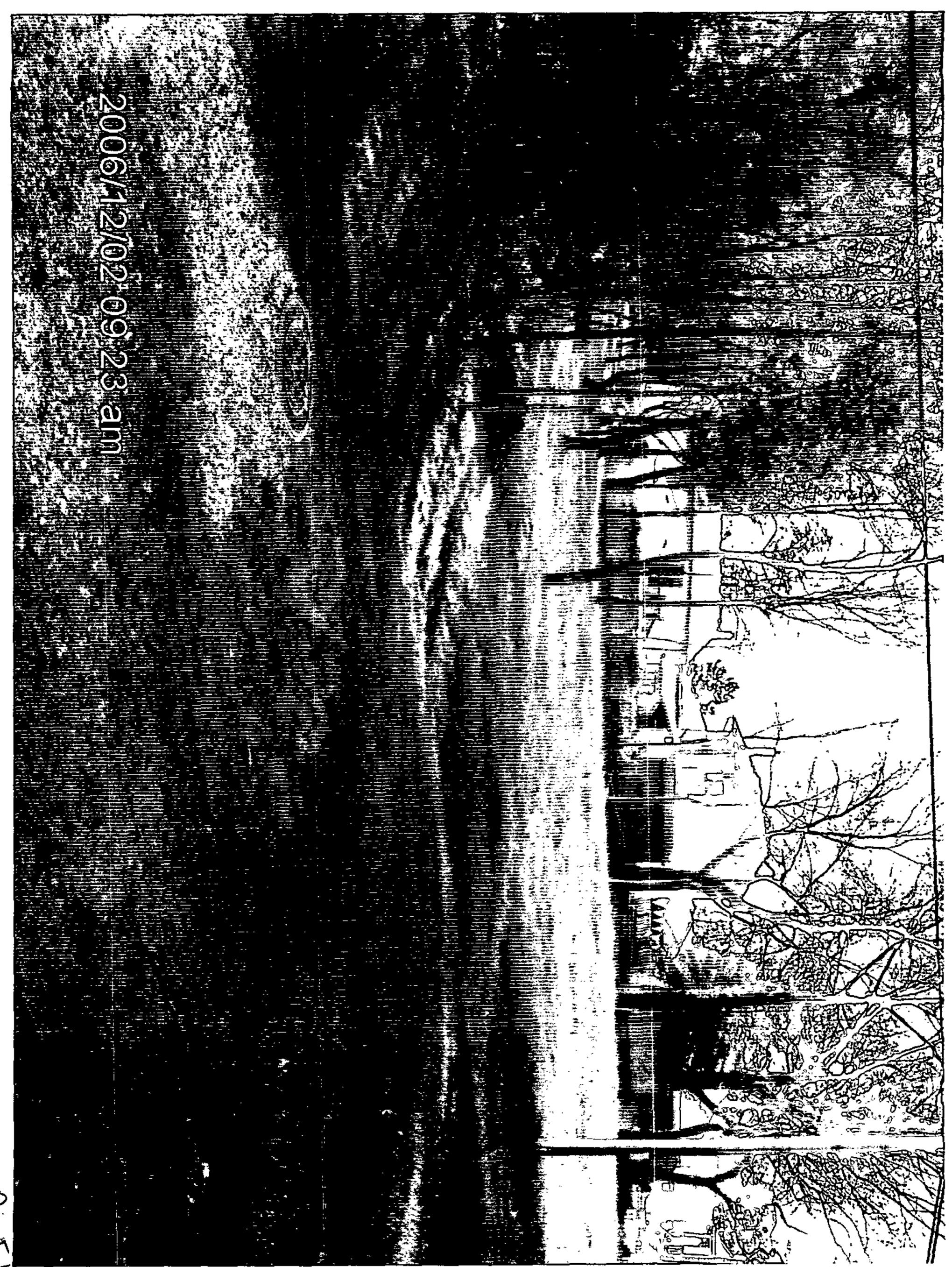
PROTEX?

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07-054-5PHA
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La Deter South slong Transfer 4500 Adali 57 Plat 57 Holding Terran 2/18/1423 Exa: - Plat ) Helly Term Child. Lots Show AS DRAWN BY MILLER Drang down by Publisher 1998 stay Ex 11-A- Soul of Property 5 buty assure figures

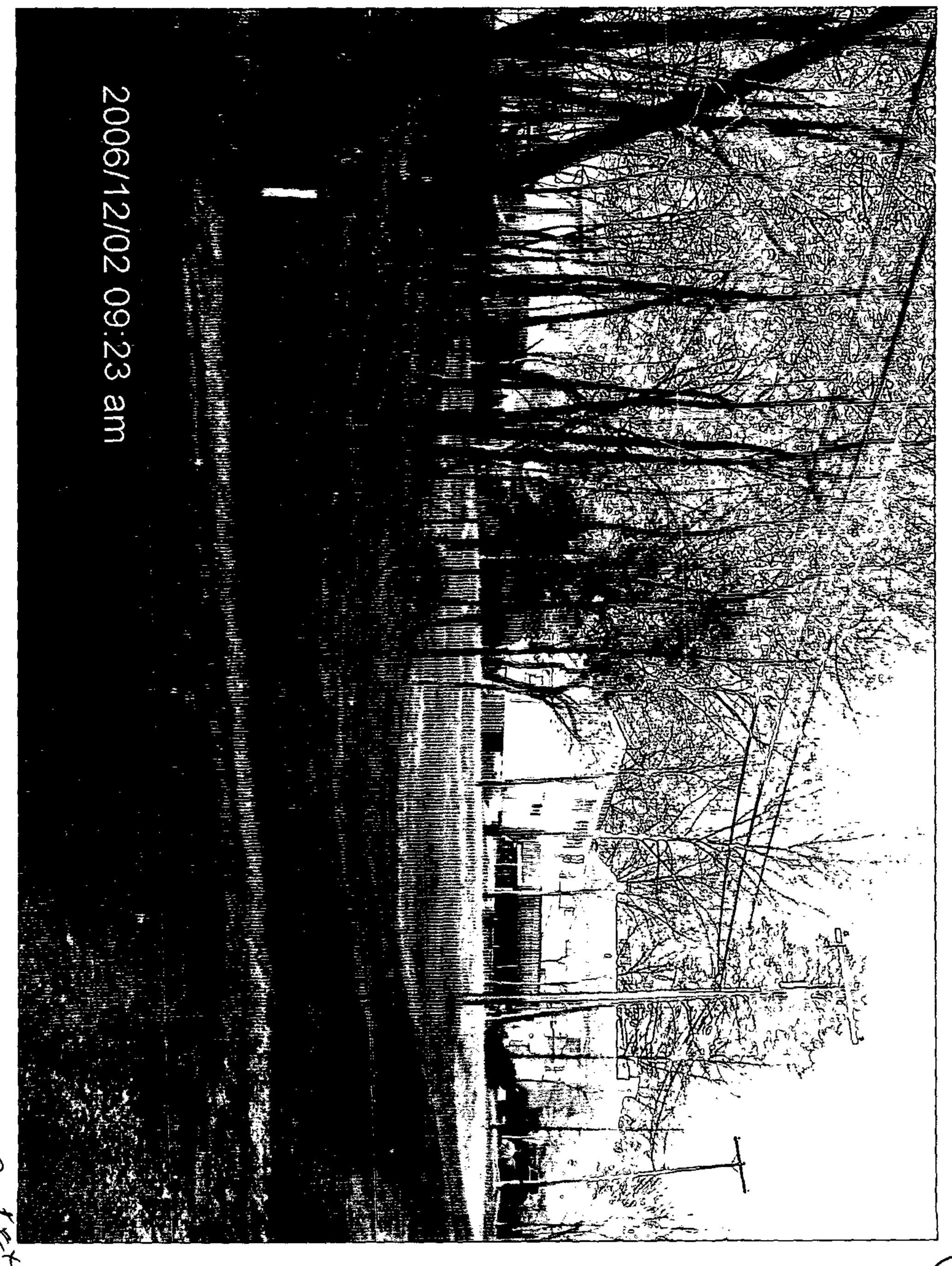
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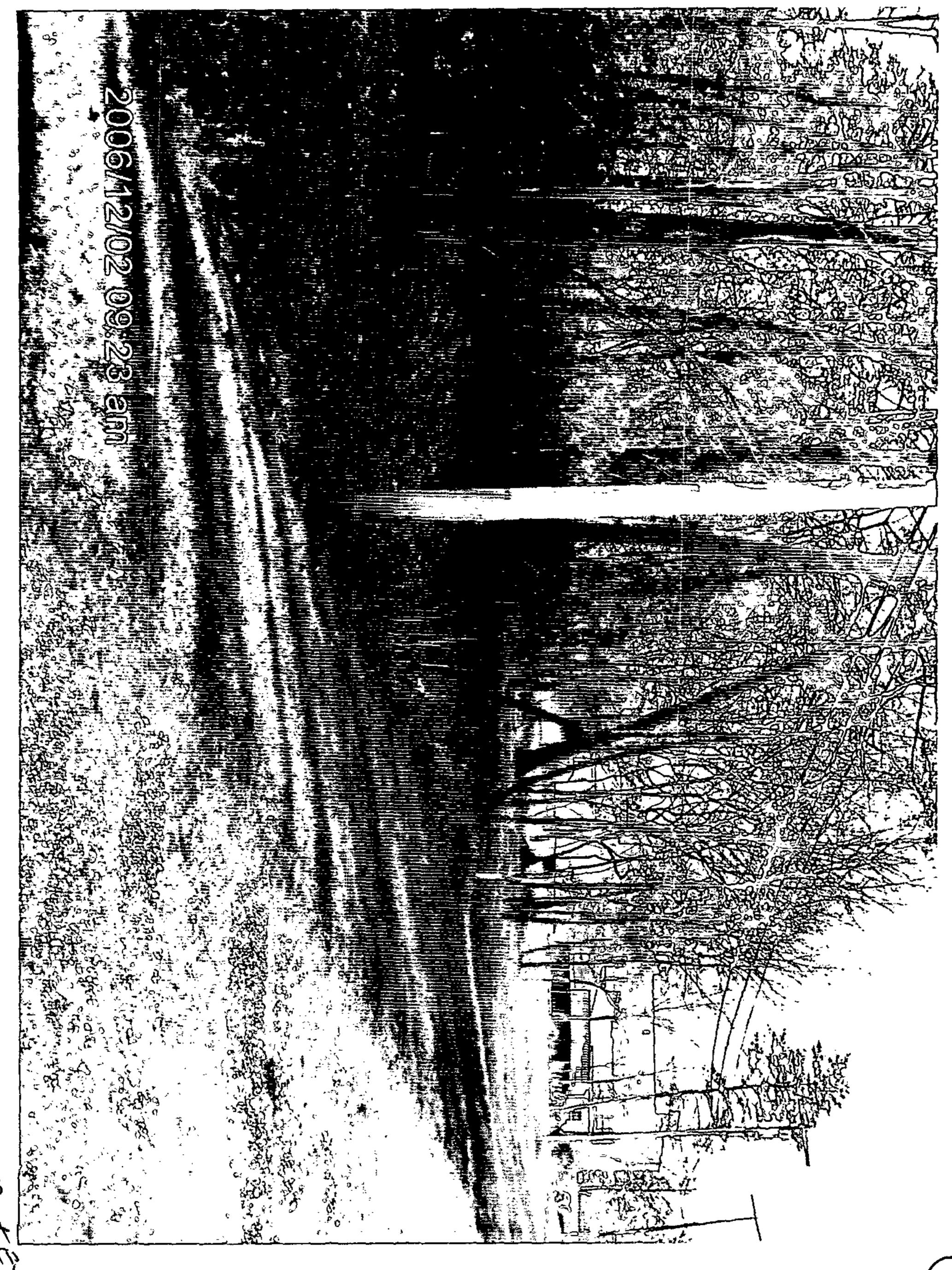




PROTEX 13

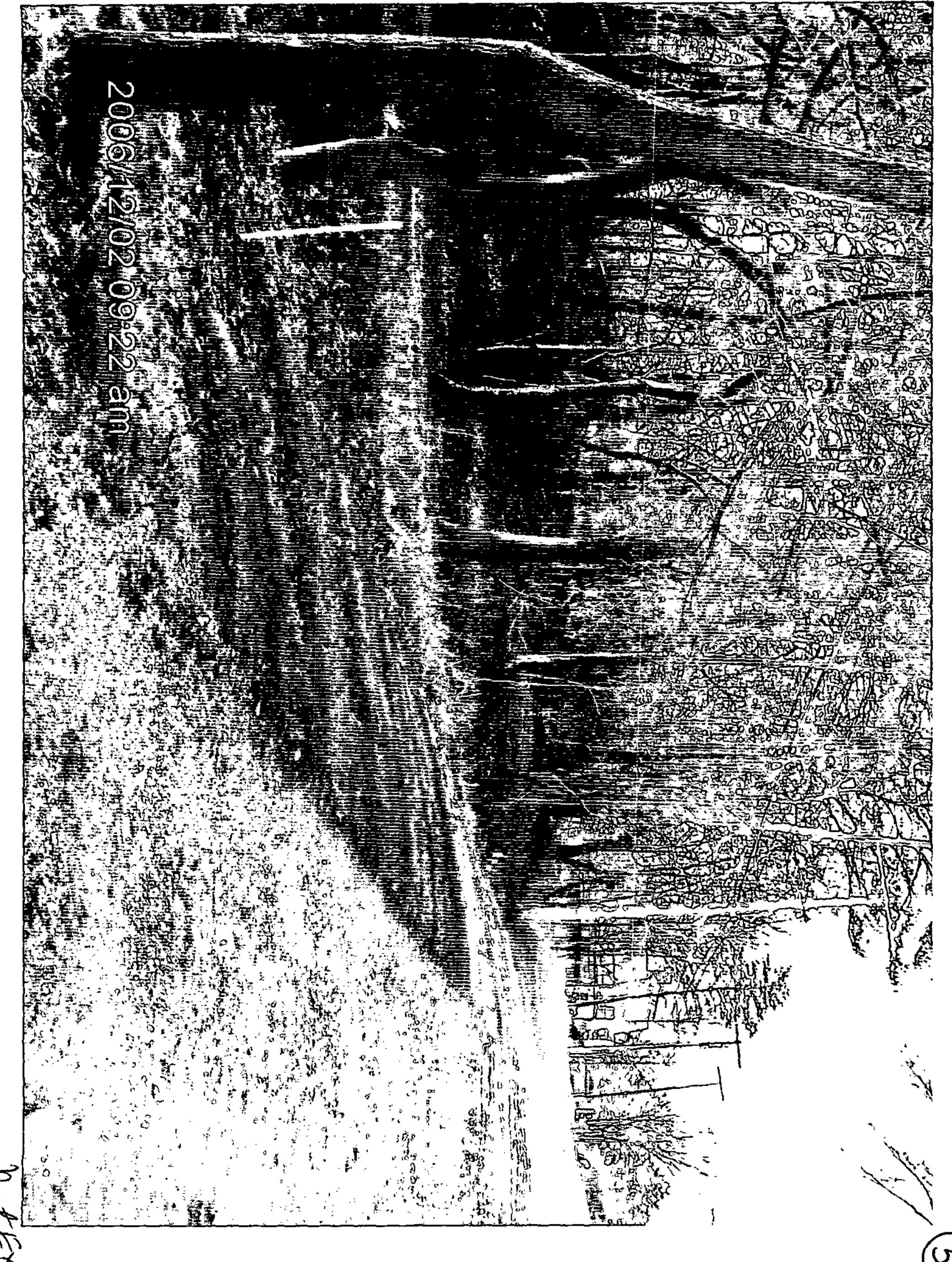
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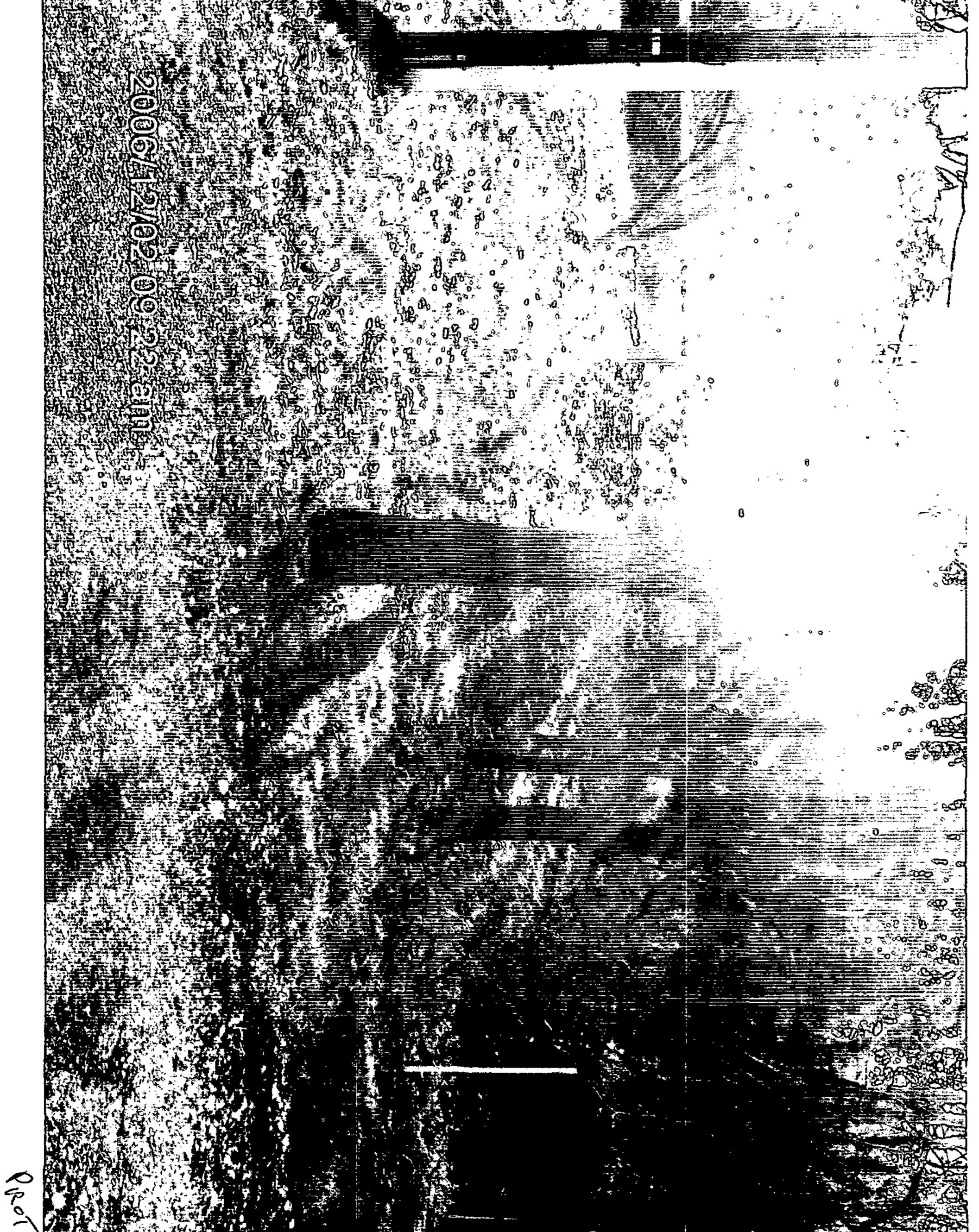


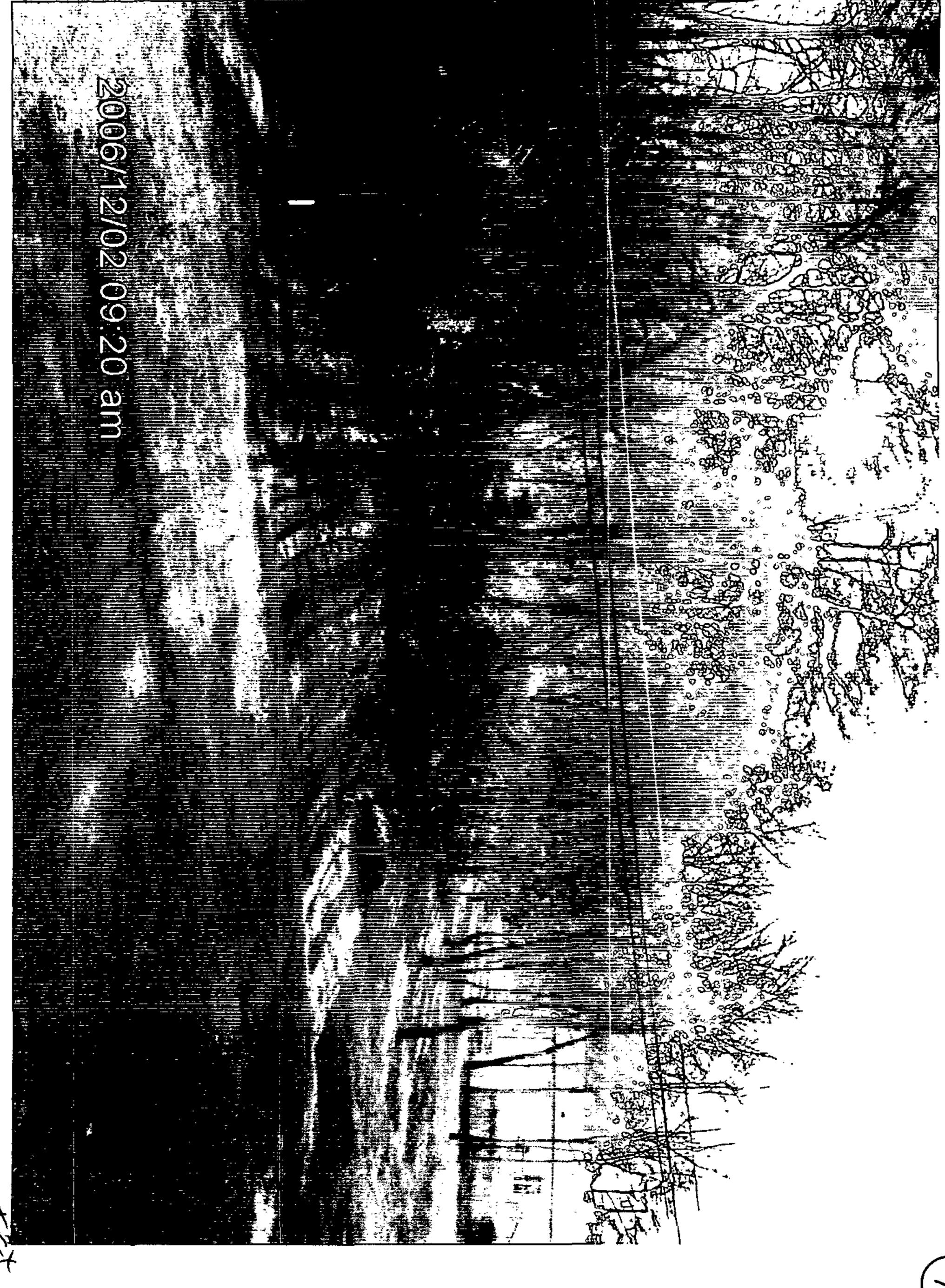
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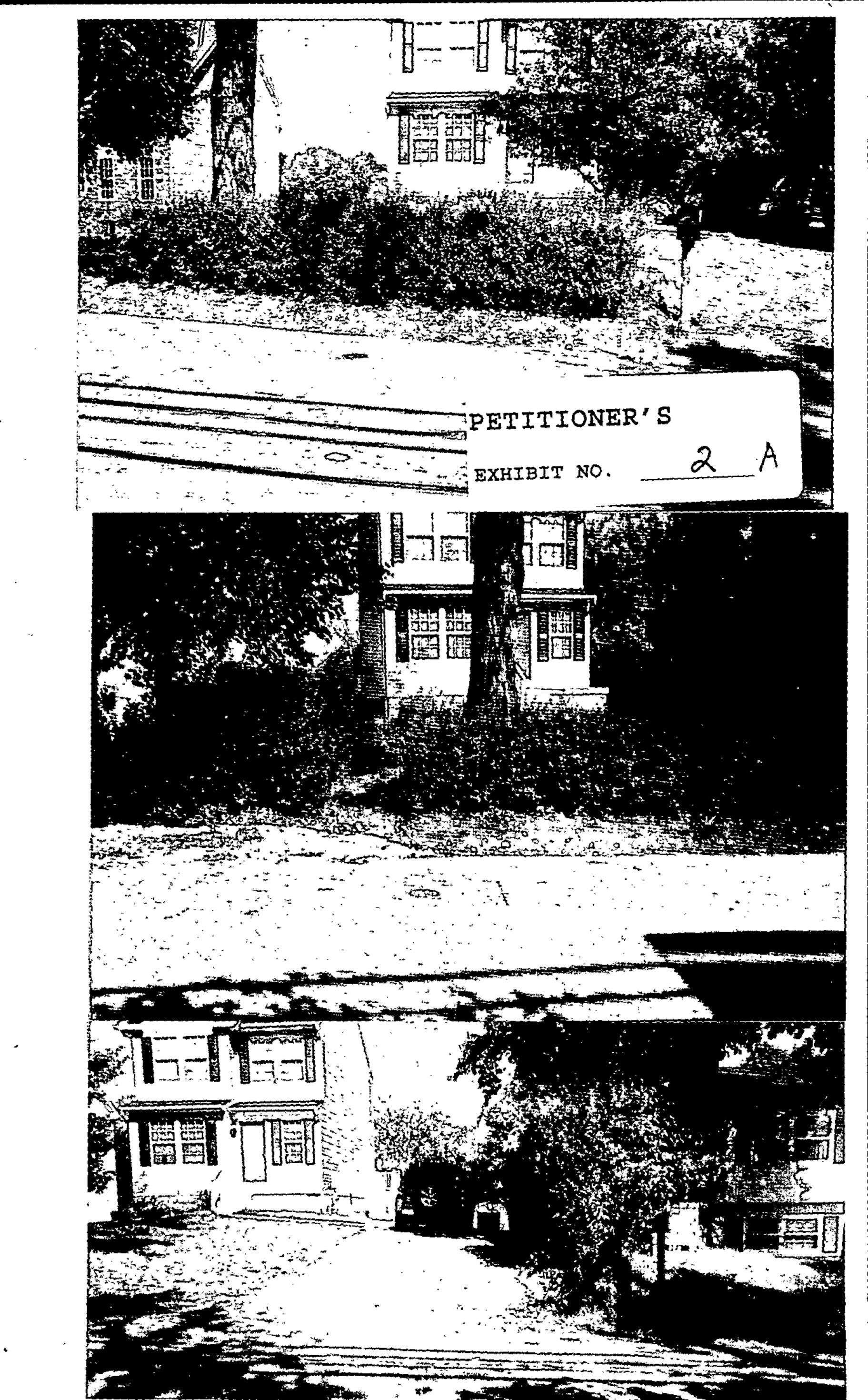
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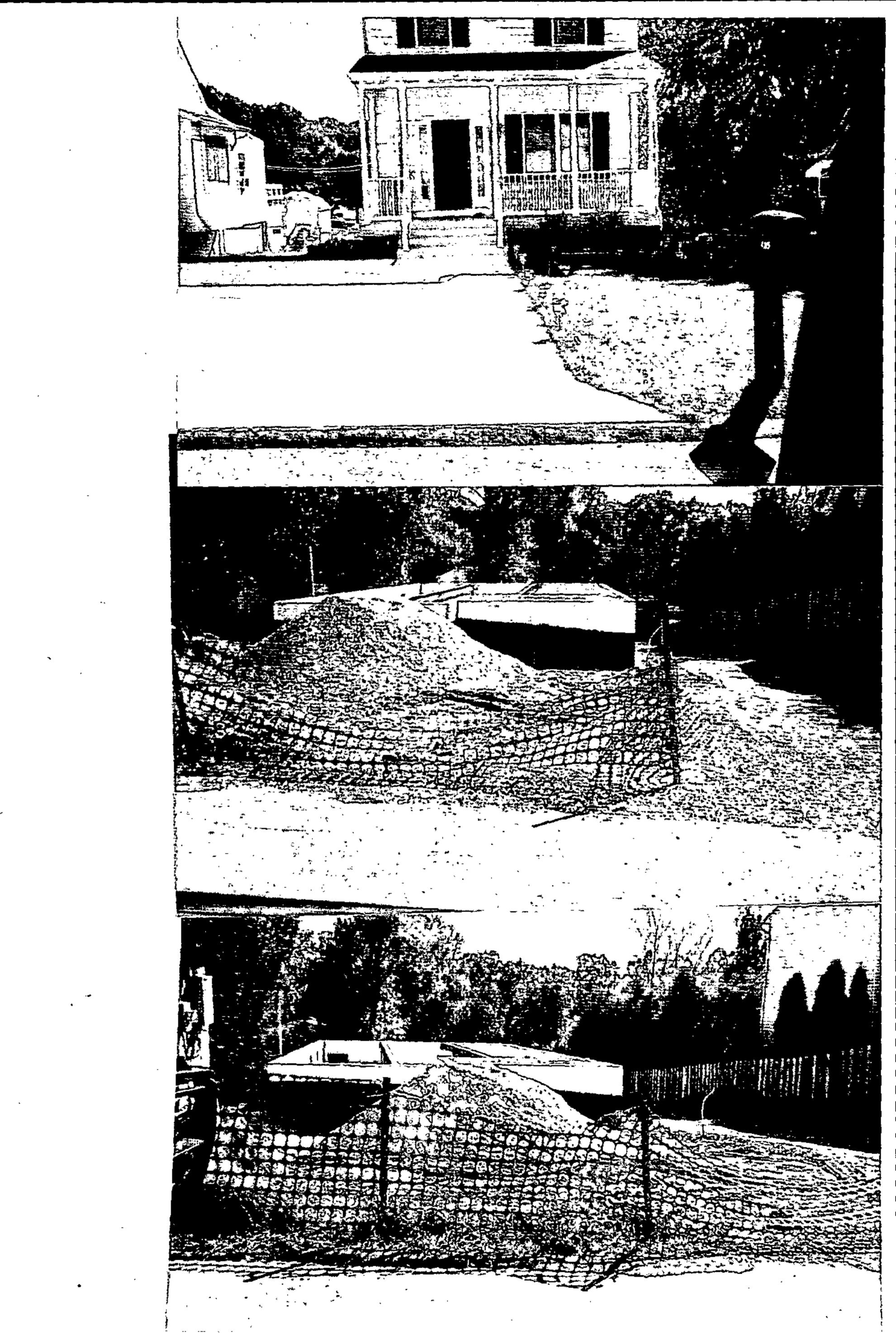


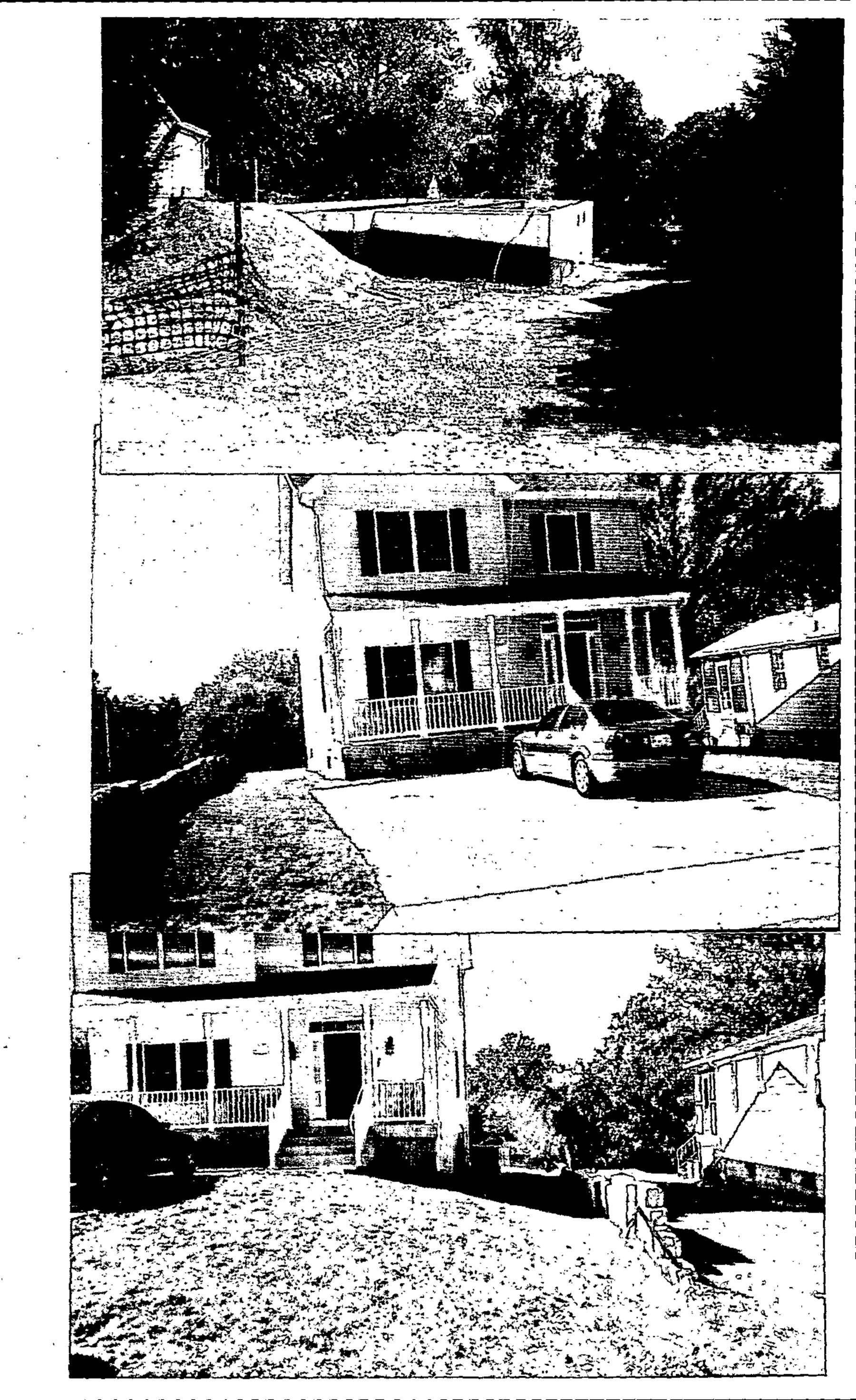
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Inlasted +X Ex1- Bulter Land Dates Sank slang Trengen Dates FX2- Tox samb 1977 Helitye Xu Fr 3- 1. 1 2001 Holdy A. 5- 4 2007 1507 Adalis ST 1 Fx 8 Plat of Halellage Termen. 2/18/1923 # +49: - Plat ) Helling Term mitts Chalita bots show AS DRAWN BY MILLER. in the For Drong down by Pulled Works 1995 along FX-11-A- Bond of Proto Strow, NO FXISTING MAN. HOLE X hots weren ST. cont Ex 11-c- Pluto Lot 18 x 19-3- Wantel. 11-D- SE= Span Adrelow ST.

11-E- Shang Spanty muchan if wer St. Show book of Sporton town Show Spirity when it with projection LI-F. Plut 5 lag uhe flows. 11- Plate Home for Acher STA

07-054-5PHA Pet Ex.7+1B175 ExI- Pet ExzA. Plata 1921 Hellings Av. Ex. 3 A. ". 4115 . Manlyte Blas! FX 4A. 1 2026 Northeant 4.B. " Fr 5-A Plate 4 119 Old Wanty To Blod Plusto o show that were coult on - 5 mel lots in lant went yours. 

Case No.:	07-054	- SPHA
		<del>_</del>

## **Exhibit Sheet**

## Petitioner/Developer

### Protestant

No. 1.		
	SITE PLAN	PHOTO'S OF Exastin C CONTITIONS
No. 2	2A Thru 2I PHOTO'S OF NEW CONSTRUCTION ON UNDERSIZED LOTS	
No. 3	DEPT. OF ASSESMENTS SEPARATE TAY BILL - Lots 62-64	
No. 4		
No. 5		
No. 6		•
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		



## County Board of Appeals of Baltimore County

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

February 22, 2008

Mr. Allan W. Miller, Sr. 4509 Adclaire Street Baltimore, MD 21227

RE: In the Matter of: Donald Ray Spurlin, et ux-Legal Owner/Petitioner /Case No. 07-054-SPHA Ruling on Motion for Reconsideration

Dear Mr. Miller:

Enclosed please find a copy of the Board's Ruling on Motion for Reconsideration issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all 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 37

Administrator

#### Enclosure

c: Donald S. Hawkins / Halethorpe Civic League, Inc.
Donald Ray Spurlin, et ux
Katie Spurlin
John Mellema, Sr.
Office of People's Counsel
William J. Wiseman III / Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director / PDM

IN THE MATTER OF: BEFORE THE THE APPLICATION OF DONALD RAY SPURLIN, ET UX COUNTY BOARD OF APPEALS LEGAL OWNER/PETITIONER FOR SPECIAL HEARING AND OF VARIANCE ON PROPERTY LOCATED ON THE NW/S OF BALTIMORE COUNTY ADCLAIRE STREET, 110' NE OF HALETHORPE AVENUE CASE NO.: 07-054-SPHA LOTS 62-64 HALETHORPE TERRACE 13<sup>TH</sup> ELECTION DISTRICT COUNCILMANIC DISTRICT

# RULING ON PETITIONERS' MOTION FOR RECONSIDERATION

This matter comes before the Board of Appeals of Baltimore County for the purpose of deliberating a Motion for Reconsideration, filed by Michael P. Tanczyn, Esquire, on behalf of Petitioners, Donald Ray and Shirley Spurlin, of the Board's Order dated September 28, 2007 denying the Petitioners' request for a variance for an undersized lot. The Motion was filed pursuant to Board Rule 10 and within 30 days of the Board's Order. A Response to the Motion was filed by Allan W. Miller, Sr., Appellant /Protestant.

The Board held a public deliberation on Tuesday, December 18, 2007 at 9:30 a.m. to review the Petitioners' Motion and the Appellant's Response. It is noted that Margaret Brassil, Ph.D., who sat as Chairperson at the August 16, 2007, Board hearing, did not participate in this public deliberation due to Dr. Brassil's resignation from the Board effective September 28, 2007.

Mr. Tanczyn presented the following arguments in his Motion for Reconsideration:

- 1. The Petitioners' appeared pro se without counsel at the Board hearing on August 16, 2007.
- 2. The Petitioners sought and have obtained counsel since receiving the Board's opinion and decision.
- 3. The Petitioners may have been confused by the direction from the Board at the time of the hearing as to who would be allowed to testify on their behalf. Petitioners have recounted to counsel that the Chair of the hearing panel advised them that only one person would be allowed to speak for either the Petitioner or Protestant. Based on that admonition, neither Mr. Spurlin nor his daughter attempted to testify. Had they testified, they would have testified specifically as to the factors that would support their claim that the subject properties were unique under the standard set forth in § 307.1 of the Baltimore County Zoning Regulations (BCZR).
- 4. The imposition of zoning regulations on pre-existing subdivision property developed and approved under pre-existing standards to create lots of record is the gravaman or essential part of any claim for variance regarding undersized lots that may be presented in Baltimore County.
- 5. There appears to be a misunderstanding as to the shed attributed to being on Lot 64.
- 6. Evidence of uniqueness would have been testified to by the other Petitioners' witnesses if they had been allowed to testify.

Mr. Miller's responses to the items presented by Mr. Tanczyn as argument for the Motion for Reconsideration are as follows:

- 1 & 2. On June 13, 2007, all parties were notified that the "appeal was an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney."
- 3. The Chairperson, Ms. Brassil, at the beginning of the hearing, gave fair and equal instruction that, since neither party had an attorney, only one person from each side could act as counsel and call witnesses, ask questions, and present their case. Before the close of the hearing, Chairperson Brassil asked if both sides were finished and if there were any additional testimony or evidence to be presented.
- 4. The lots are zoned D.R. 2 which require a 100-foot width and 20,000 sq. ft.

  The Spurlins' property is 60 feet wide and 7,200 sq. ft.
  - 5. One shed is on Lot 70 and the other is on Lot 64.
- 6. There is nothing unique about the lots. Mr. Spurlin routinely drives through to access his properties on both sides of Adclaire Street.

We have reviewed the Petitioners' Motion for Reconsideration and Protestant's Response individually:

Nos. 1 and 2: There is no question that the Petitioners and Protestants appeared at the hearing on August 16, 2007 without an attorney, *pro se*, and that the Petitioners have since obtained counsel. It is not unusual for parties to represent themselves pro se; however, the majority are represented by counsel. Mr. Miller, in his Response, points out that both parties were notified of the advisability of retaining an attorney <u>prior</u> to the

hearing. Chairperson Brassil, at the beginning of the hearing, instructed the Petitioner and Protestant that only one person from each side would be allowed to call witnesses and present evidence. Mrs. Spurlin and Mr. Miller chose to represent the Petitioners and Protestant, respectively. Lack of counsel is not a valid argument for reconsideration.

- No. 3: As to who would be allowed to testify, only Mrs. Spurlin testified for the Petitioners and Mr. Miller for the Protestant. Before the close of the hearing, Chairperson Brassil asked both parties if there was any more evidence or testimony to be presented. There was none.
- No. 4: The lots are zoned D.R. 2 and undersized and therefore require a variance. In order to allow a variance, there must be testimony and evidence to prove uniqueness and hardship. There was no testimony presented to prove both issues.
- No. 5: As to the misunderstanding of the placement of the shed, the issue of merger was not part of the appeal and therefore was not considered.
- No. 6: As previously stated in No. 4, there was no testimony or evidence presented to prove uniqueness or hardship. Mr. Tanczyn states that evidence of uniqueness would have been testified to by other Petitioners' witnesses if they thought they were allowed to testify. This <u>lack</u> of evidence and testimony cannot be a basis for reconsideration. Rule 10 states: "...the board may not receive additional testimony with respect to the substantive matter of the case."

### Ruling

Pursuant to the Board's Rules, the remaining two undersigned members, who originally heard the case on August 16, 2007, and constitute a majority of the panel, have

reviewed and deliberated the Motion for Reconsideration. The Board's review included the arguments presented by Counsel for Petitioners, the Protestant's Response, and the testimony and evidence presented at the hearing on August 16, 2007. Based on this review, we can find no basis for the Motion for Reconsideration of our Order dated September 28, 2007.

IT IS THEREFORE ORDERED this 25 day of Jefury, 2007, that the Motion for Reconsideration be and is hereby denied; and it is further

ORDERED that the Board of Appeals for Baltimore County Opinion and Order dated September 28, 2007, is hereby affirmed.

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<sup>1</sup>

Lawrence S. Wescott

Robert W. Witt

This case was originally heard and publicly deliberated by a panel comprised of three members of the Board of Appeals of Baltimore County; viz., Margaret Brassil, Ph.D., Chairperson; Lawrence S. Wescott; and Robert W. Witt, all of whom reached the unanimous decision in this matter and signed the Order of September 28, 2007. However, at the time of deliberation on this Motion for Reconsideration, Dr. Brassil was no longer a member of the Board of Appeals.

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	MCINITY MAP  SCALE: 1=2000'		FLOOD PLAINE (100 YR)  LOCATION INFORMATION  COUNCILMANIC DISTRICT: 1  ELECTION DISTRICT: 13  ZONING: D.R. 2 1"=200' SCALE MAP: 108C2  LOT SIZE: 7,211.46 SQ. FT.  YES NO PUBLIC SEWER 🖾 📋 PUBLIC WATER 🔀 📋	CHESAPEAKE BAY YES NO CRITICAL AREA  SUBDIVISION NAME: HALETHORPE TER! W.P.C. 7 FOLIO 7; PRIOR ZONING HEARING: N/A DEED REFERENCE: 13834/118 OWNER: DONALD RAY SPURLIN SHIRLEY JEAN SPURLIN SHIRLEY JEAN SPURLIN SHIRLEY JEAN SPURLIN ADDRESS: 2001 HALETHORPE AVE. BALTIMORE, MD. 21227 TAX NO. 2300006571 DATE: JANUARY, 2006 SCALE: 1"=30'	62-64, BLOCK "A" ETHORPE TERRACE ORE COUNTY, MARYLAND 108 GRID 12 PARCEL 144 =30' DATE: JANUARY, 20
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