

IN RE: PETITION FOR ADMIN. VARIANCE
W side of Seven Courts Drive, 144 feet
S of the c/l of Proctor Lane
11th Election District
5th Councilmanic District
(9328 Seven Courts Drive)

Leo W. and Dennis Drost
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
*
* CASE NO. 07-509-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, Leo W. and Dennis Drost for property located at 9328 Seven Courts Drive. The variance request is from Sections 1B02.3.C.1 and 303 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an addition (proposed attached garage) on side and front of existing dwelling with a 5 foot side setback with a sum of 23 feet and a 26 foot, 9 inch front setback in lieu of the required 10 feet side setback with a sum of 25 feet, and the required 36 foot, 2 inch front average setback. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1.

The Petitioners having filed a Petition for Administrative Variance, the subject property was posted on May 16, 2007.

Formal Demand for Public Hearing

On May 21, 2007, Betty J. Phillips, residing at 9324 Seven Courts Drive, filed a formal demand for public hearing. The hearing was subsequently scheduled for June 26, 2007, at 11:00 am in Room 407, County Courts Building, 401 Bosley Avenue, Towson, MD.

The property was posted with Notice of the Public Hearing on June 12, 2007 for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief and

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time and date of the public hearing. In addition, a Notice of Zoning for the public hearing was published in "The Jeffersonian" newspaper on June 12, 2007 to notify any interested persons of the scheduled hearing date and relief requested.

Zoning Advisory Committee

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights. ZAC comments were received from the Office of Planning dated May 22, 2007. That Office's main concern is architectural compatibility with the existing dwelling as well as immediately surrounding dwellings. The dwelling was sited on the lot in such a manner that it may not be conducive for a front-loaded garage that protrudes beyond the front façade. It is in the Planning Office's opinion that the design scenario would undermine architectural goals that Planning is trying to achieve on dwellings located within the URDL. That Office has met with the Petitioner and contractor to discuss the matter. The Petitioner has agreed to submit a revised site plan and reorient the proposed attached garage so that it aligns with the front façade of the existing single family detached dwelling. Provided the Petitioners submit a site plan showing the proposed garage that aligns with the front façade of the existing single family detached dwelling, the Office of Planning will support the associated relief. A copy of the comment is incorporated herein and made a part hereof the file.

Interested Persons

Appearing in support of the Petition was Leo W. Drost, Petitioner. Appearing in opposition to the request was Betty J. Phillips.

Testimony and Evidence

The subject property contains 7,484 square feet zoned DR 3.5 and is improved by the Petitioners' single family dwelling. The Petitioners would like to build a 14 foot x 24 foot

garage addition as shown in Petitioner's Exhibit 1. The Petitioner indicated that he was aware of the Planning Office comment requesting the garage be pulled back to be flush with the front of the house as shown on Petitioner's Exhibit 2. However he indicated that this would require him to cover his two basement windows which he uses for ventilation of the basement, would require him to pave another 8 feet of driveway, increase the cost of his roof for the addition, and lose the expense of all ready ordered fencing. Finally this would eliminate the front yard setback variance. However because of the added costs, he requested the garage be as shown on Petitioner's Exhibit 1 in which the garage projects into the front yard.

He indicated that he needed the garage to provide out of the weather storage for vehicles and direct access to his house. Not only does the Petitioner have health and mobility problems, but his brother and co-owner of the property is handicapped. In addition the Petitioner's elderly parents visit the Petitioners regularly with the assistance of walkers. All this leads to his need for fewest steps possible from the garage to the house which he indicated will occur with the chosen location for his garage.

In regard to the side yard setback, he indicated that the proposed garage is 14 feet wide, that this is a standard width and that he cannot practically reduce the width by 5 feet and still park a vehicle in the garage. He noted that he has a chimney for a fireplace on this side of the house which also reduces the usable space to park in the garage. See Petitioner's Exhibit 3.

He indicated that all his immediate neighbors save Ms. Phillips approve of the garage as show by Petitioner's Exhibit 4. He noted that Ms. Phillips house does not look directly at his house but is set back behind the house next door.

Ms. Phillips objected to granting the variance indicating the garage will devalue her home, and the request fails to meet legal standards for variances. She indicated she has health

concerns for herself, that her home is set back behind the houses fronting on Seven Courts Drive and so is not readily visible from the road at present. See protestant's Exhibit 2. This is a particular concern when emergency vehicles need to find her home. If the garage is built, her home would not be seen from the street. See protestant's photograph 1A through 1C.

Finally she doubted the Petitioner suffered from disabilities given the hard work he performs in the yard and opined that the Petitioner should have bought a house with a garage if he wanted one. She indicated the Petitioner could build the garage on the other side of his home and not block her view of the street.

The Petitioner indicated that if he built the garage on the other side of the house, the entrance to the house would be through his bedroom and not the kitchen which the present plan affords. He denied that the garage would block the view of her home from the street but agreed that moving the garage back so as to be flush with the front of the house if that would satisfy Ms. Phillips. In response Ms. Phillips indicate she still objected to the garage.

Findings of Fact and Conclusions of Law

Looking at the protestant's photographs, it is clear to me that if the Petitioner moved the garage back flush with the front of his house, the view of Ms Phillips' house from the street would be much easier than if the garage were built out front as proposed. In addition if flush with the front, this would satisfy the Planning Office comments who expressed concern that extending the garage into the front would undermine the architectural goals. Said another way the Planning Office is concerned that the garage would become the dominant feature of the house which is contrary to the residential performance standards of Section 260.6 B of the BCZR. I am cognizant of the extra cost to the Petitioner but on balance I find that this arrangement is best for the Petitioner, Ms. Phillips and the community.

Considering all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Therefore I find the property unique in a zoning sense.

I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. The Petitioner would not be able to have a garage out of weather for storage and access to his home.

Finally, I find this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. The neighbors on four side do not object to the garage and moving the garage back flush with the house will lessen Ms. Phillips' concern about being able to see her home from the street.

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 Petitioners, I find that the Petitioners' variance request should be granted in part and denied in part.

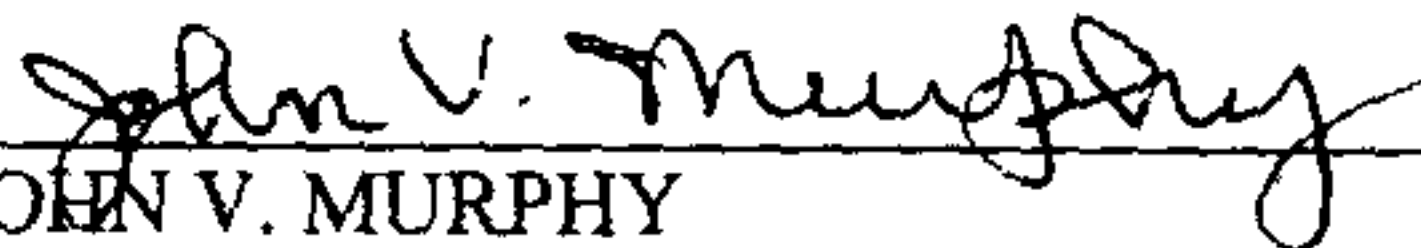
THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 28th day of June, 2007, that an administrative variance from Sections 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an addition (proposed attached garage) on side of existing dwelling with a 5 foot side setback and with a sum of 23 feet in lieu of the required 10 foot side setback with a sum of 25 feet, be and is hereby

GRANTED subject to the following:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

IT IS FURTHER ORDERED that the Petitioner's request for variance from Section 303 of the BCZR for a 26 foot, 9 inch front setback in lieu of the required 36 foot, 2 inch front average setback 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
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

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IN THE MATTER OF
THE APPLICATION OF
LEO AND DENNIS DROST- LEGAL OWNERS
FOR A VARIANCE ON PROPERTY
LOCATED ON THE W/S SEVEN COURTS DR,
144' S C/L OF PROCTOR LANE
(9328 SEVEN COURTS DRIVE)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 07-509-A
*

* * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals as an appeal of the decision of the Zoning Commissioner's decision dated June 28, 2007 by which the Petitioners were granted a variance to allow construction of a garage to be attached to the Petitioners' house utilizing a 5 foot side set back in lieu of the required 25 foot set back.

Background

The Petitioners, Leo W. Drost and Dennis Drost, are the legal owners of a 7,484 square foot parcel of land known as 9328 Seven Courts Drive. The parcel is improved by a single-family split level detached house with adjacent parking pad. The subject was purchased by the Petitioners in 2006. The property is zoned DR 3.5.

On or about April 23, 2007, the Petitioners filed a Petition for Administrative Variance with the Baltimore County Department of Permits and Development Management. By its terms the petition requested the following relief:

"To permit an addition (proposed attached garage) on side and front of existing dwelling with a 5 feet side setback and with a sum of 23 feet and 26'9" front setback in lieu of the required 10 feet setback with a sum of 25 feet, and, the required 36'2" front average setback"

The variance request is from Sections 1B02.3.c.1 and 303 of the *Baltimore County Zoning Regulations* (B.C.Z.R.).

On May 21, 2007, Betty Phillips, residing at 9324 Seven Courts Drive, filed a formal demand for a public hearing. The property was posted with a Notice of Public Hearing on June 12, 2007. Thereafter a hearing was conducted before the Deputy Zoning Commissioner for Baltimore County who on June 28, 2007 issued an Order granting the variance as requested.

An appeal was noted to the County Board of Appeals (Board) on July 27, 2007.

Issues Presented

1. Did the Board have jurisdiction to hear this appeal?
2. Should an Administrative Variance from Section 1B92.3.C.1 of the Baltimore County Zoning Regulations to permit an addition of an attached garage on the side of an existing dwelling with a 5-foot side setback and with a sum of 23 feet in lieu of the required 10-foot side setback with a sum of 25 feet be granted?

Issue 1

The Petitioners, Leo and Dennis Drost, contend that the Board lacks jurisdiction to hear the appeal in this matter by reason of a defect in the filing of same by Appellant, Betty Phillips, on the theory that the filing of the Notice of Appeal was deficient in that proper notice was not given pursuant to Board Rule 3.

The Rules of Practice and Procedure of the County Board of Appeals are set forth in Appendix B of the *Baltimore County Code* (BCC). Rule 3 thereof governs the procedure regarding appeals. Rule 3.a. directs that "no appeal shall be entertained by the Board of Appeals unless the notice of appeal shall state the names and addresses of the person taking such appeal."

In this case the Notice of Appeal was filed by counsel for Appellant, Betty J. Phillips. While the Notice of Appeal contains the name and address of counsel for Ms. Phillips, Appellant's name and address does not appear within the document. Counsel for the Petitioners

contends that Rule 3 is mandatory in its directive and therefore the lack of Ms. Phillips' name on the Notice of Appeal is fatal to this appeal. The Board concludes otherwise. The Board's review of the issue led it to conclude that compliance with Rule 3 was accomplished by the noting of the appeal by counsel for Appellant. Furthermore, in reliance on the case of *Logan v. Town of Somerset* 271 MD 42 (1974), the Board concludes that the failure to name and identify the Appellant was, at most, a technical irregularity and said technical irregularity could not be used to deprive Appellant of an opportunity to be heard before this body.

Issue 2

In order to receive a variance pursuant to the B.C.Z.R., the Petitioner must demonstrate that 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 *Baltimore County Zoning Regulations* would result in practical difficulty or undue hardship.

The evidence presented at the hearing in this matter established that Mr. Leo Drost suffers from an acute and chronic disability to his lumbar spine. The foregoing was offered as the basis for the request for variance. The Petitioners want to construct a 14' x 24' garage at the location noted on the submitted site plan for the purpose of providing out of the weather vehicle storage and direct access to the front door of the house. The logistical problem presented by the proposed garage is that the B.C.Z.R. requires that the property have a 10' side set back with a sum of 25'.

The Appellant testified that, in her opinion, the proposed location of the garage would impede the sight line of her house, located on a panhandle driveway behind and to the left of Petitioners' house, from the street on which the garage would be located. The Appellant also

indicated that she believed that the proposed garage would impede her view of the road as she exited the panhandle driveway that she uses as her egress from her property.

The Petitioners offered that the proposed location of the attached garage would allow Mr. Leo Drost the most reasonable physical location for access to the front of the house.

The Petitioners, unfortunately, presented no evidence that would lead the Board to conclude that the property was in any way "unique." Moreover the evidence presented at the hearing in this matter indicates that the Petitioners' house is standard and uniform in its design and construction relative to other houses in the neighborhood.

Testimony was received from Mr. James Patton, a civil engineer accepted as an expert witness on behalf of the Appellant, who opined that the property was not unique. He further stated that based on his examination and knowledge of the neighborhood in which the subject property is located there were other houses with garages that were apparently constructed by the same developer as the developer for the Drost property, and that the decision to construct a house with or without a garage was a design choice made at the time of construction of the houses.

Section 307.1 of the Baltimore County Zoning Regulations states, in pertinent part, as follows:

"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

The criteria for the issuance of a variance were stated in the case of *Cromwell v. Ward*, 102 Md. App 691 (1995), wherein the Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...." *Id.* at 698.

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... *Id.* at 710.

As to practical difficulty or unreasonable hardship, the Court further stated that "unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without consideration of practical difficulty or unreasonable hardship." *Id.* at 694.

DECISION

For the reasons cited above concerning Issue 1, the Board has determined that it was appropriate for this body to take and hear the appeal. Under the standards stated in *Cromwell v. Ward, Id.*, the Petitioner must first prove that the property in question is unique in order to proceed further in the administrative process. Once the property is shown to be unique, the Petitioner must show that the property itself contains some special circumstances that relate to the hardship complained of and causes practical difficulty.

The evidence presented in this matter provides a compelling circumstance in favor of the Petitioners; however, there is no evidence demonstrating that the property in question is "unique"; therefore the request for a variance is denied.

ORDER

THEREFORE, IT IS, this 7th day of August, 2008 by the
County Board of Appeals of Baltimore County

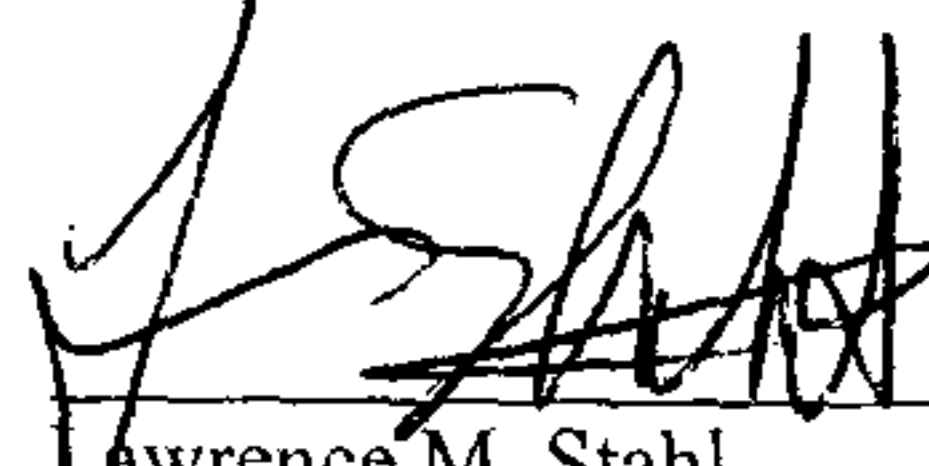
ORDERED that the request for a Variance from the *Baltimore County Zoning Regulations* to allow construction of a garage to be attached to the Petitioners' house utilizing a 5-foot side set back in lieu of the required 25 foot set back is hereby **DENIED**.

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*.

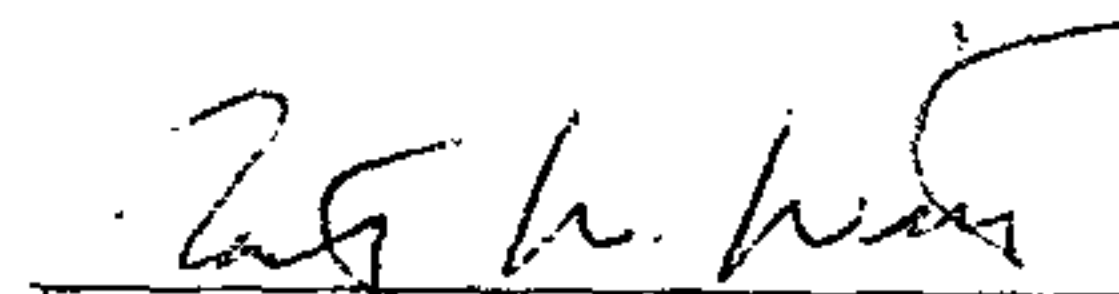
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Wendell H. Grier, Panel Chairman



Lawrence M. Stahl



Robert W. Witt

IN RE: PETITION FOR ADMINISTRATIVE
VARIANCE

W side of Seven Courts Drive, 144 feet
S of the c/l of Proctor Lane

11th Election District
5th Councilmanic District
(9328 Seven Courts Drive)

Leo W. & Dennis Drost,
Petitioners/Owners

BEFORE THE
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

CASE NO. 07-509-A
RECEIVED

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**BALTIMORE COUNTY
BOARD OF APPEALS**
PETITIONERS' CLOSING BRIEF

Leo W. Drost and Dennis Drost ("Petitioners" or "Owners"), by and through Ronald J. Klemkowski and Klemkowski, Klemkowski & Dunn, P.A., their attorneys, hereby submit this Closing Brief in accordance with the direction of the County Board of Appeals of Baltimore County ("Board") at the conclusion of the hearing held on the above referenced appeal on March 6, 2008, in lieu of closing argument.

I. Statement of the Case

This case is about the Owners' request, pursuant to a Petition for Administrative Variance filed before the Office of the Zoning Commissioner of Baltimore County, for a variance from Sections 1B02.3.C.1 and 303 of the Baltimore County Zoning Regulations to permit an addition of an attached garage on the side of an existing dwelling. The subject property contains 7,484 square feet zoned DR 3.5 and is improved by a single family dwelling. A hearing before the Deputy Zoning Commissioner of Baltimore County was held on June 26, 2007 pursuant to the demand of the sole protestant, Betty J. Phillips (residing at 9324 Seven Courts Drive). After hearing before the deputy Zoning Commissioner, an Administrative Variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations regarding a side setback was granted,

by an Order from the Deputy Zoning Commissioner of Baltimore County dated June 28, 2007, so that Owners could build the proposed attached garage with a 5 foot side setback and with a sum of 23 feet in lieu of the required 10 feet side setback with a sum of 25 feet. On July 27, 2007, a Notice of Appeal was filed with the County Board of Appeals of Baltimore County by C.

William Clark, Esquire on behalf of his client, Betty J. Phillips. Said appeal was heard on March 6, 2008 by the County Board of Appeals of Baltimore County. A preliminary Motion to Dismiss was made by Petitioners on the grounds that the Board lacked jurisdiction to entertain this appeal due to a violation of a procedural rule, which Motion was held *sub curia* by the Board.

Thereafter, testimony was taken on the proposed Administrative Variance.

II. Issues Presented

1. **Does the County Board of Appeals of Baltimore County have jurisdiction to entertain this appeal?**
2. **Should an Administrative Variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations to permit an addition of an attached garage on the side of an existing dwelling with a 5 foot side setback and with a sum of 23 feet in lieu of the required 10 feet side setback with a sum of 25 feet be granted?**

III. Argument

1. **Does the County Board of Appeals of Baltimore County have jurisdiction to entertain this appeal?**

The record shows that a Notice of Appeal was filed 27 days after the final action (Findings of Fact and Conclusions of Law with accompanying Order) by the Office of the Zoning

Commissioner of Baltimore County. However, Petitioners submit that said Notice of Appeal is deficient, and therefore, the County Board of Appeals of Baltimore County has no jurisdiction to entertain this appeal.

The *Rules of Practice and Procedure of County Board of Appeals* are set forth in *Appendix B* of the *Baltimore County Code*. *Rule 3* thereof governs the practice and procedure regarding Appeals. *Rule 3.a.* states that “[n]o appeal shall be entertained by the board of appeals unless the notice of appeal shall state names and addresses of the persons taking such appeal. Furthermore, *Rule 3.c.* states that “[u]nless otherwise provided by statute, all appeals to the board of appeals, subject to and limited by statutory authority to hear appeals, shall be made within thirty (30) days from the date of the final action appealed.”

Clearly, the name of the person taking the appeal at issue is Betty J. Phillips. Said Notice of Appeal was filed on Ms. Phillips’ behalf by her attorney, C. William Clark, Esquire. However, nowhere on the Notice of Appeal does Ms. Phillips’ address appear, as is required by *Rule 3.a.*. Furthermore, said Notice of Appeal was never amended, specifically said Notice of Appeal was not amended with Ms. Phillips’ address within the 30 day period required by *Rule 3.c.* for filing such an appeal.

Petitioners suggest that the Rules speak for themselves. *Rule 3.a.* does not confer jurisdiction upon the County Board of Appeals to entertain any appeal unless the Notice of Appeal **shall** state the address of the person taking the appeal. The Rule uses the mandatory “shall” and not a permissive directive such as “may” or “should.” In drafting this Rules, the County Legislature easily could have, and would have, substituted such a permissive directive had they intended to do so. Nonetheless, counsel for protestant, in response to Petitioners’

Motion to Dismiss, suggests that protestant is in substantial compliance with the Rule, since she was present at the proceeding below and her address appeared on the cover letter from the Zoning Commissioner transmitting the Decision below, and Ms. Phillips' address also appears in the decision itself.

Although there is no case law on point as to the Rule at issue, Maryland courts have considered the sufficiency of Notices of Appeal pursuant to the *Maryland Rules* governing circuit court review of administrative decisions, namely *Maryland Rule* 7-104 and 7-202. The cases interpreting these Rules make a distinction between compliance with **procedural rules** and **mere technical irregularities**. *Colao v. County Council of Prince George's County*, 109 Md. App. 431, 675 A.2d 148 (1995). The Court of Appeals in *Town of Somerset v. Montgomery County Board of Appeals*, 245 Md. 52, 60, 225 A.2d 294 (1966) held that "mere technical defects respecting the petition for review will not cause an appeal from an administrative agency to be dismissed if the petitioner has otherwise substantially complied with the procedural rules and there is no prejudice to the respondent." However, in the case of an omission required by a procedural rule, dismissal of the appeal is proper, even without a showing of prejudice to the adverse party. See *Volk v. Pugatch*, 262 Md. 80, 277 A.2d 17 (1971), *Salisbury Board of Zoning Appeals v. Bounds*, 240 Md. 547, 214 A.2d 810 (1965). Clearly, the protestant's failure to include her address in her Notice of Appeal is a clear violation of a procedural rule and not a mere technical irregularity.

It should be noted that in *Maryland Rule* 7-401, the sole procedural requirement is that "the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken", while *Maryland Rule* 7-202(c) contains additional procedural

requirements as to the contents of a petition seeking judicial review of an administrative decision, namely that "the petition shall request judicial review, identify the order or action of which review is sought, and state whether the petitioner was a party to the agency proceeding. If the petitioner was not a party, the petition shall state the basis of the petitioner's standing to seek judicial review. No other allegations are necessary. If judicial review of a decision of the Workers' Compensation Commission is sought, the petitioner shall attach to the petition a certificate that copies of the petition were served pursuant to subsection (d)(2) of this Rule"

Similarly, in the *Rules of Practice and Procedure of County Board of Appeals* as set forth in *Appendix B* of the *Baltimore County Code*, specifically *Rule 3.a.* set forth a procedural requirement that a notice of appeal **shall** state addresses of the persons taking such appeal. If not so stated in the Notice of Appeal, it is explicitly stated that the County Board of Appeals shall not entertain such appeal.

As such, Petitioners' Motion to Dismiss should be granted.

2. Should an Administrative Variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations to permit an addition of an attached garage on the side of an existing dwelling with a 5 foot side setback and with a sum of 23 feet in lieu of the required 10 feet side setback with a sum of 25 feet be granted?

Clearly, the Deputy Zoning Commissioner may grant variances from area regulations. *Baltimore County Code*, §32-3-301. Furthermore, pursuant to §307.1 of the *Baltimore County Zoning Regulations*, "[t]he 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 ... area regulations ... only in cases where special circumstances or conditions exist that are peculiar

to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations 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 ...area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said ... area... regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare."

At the March 6, 2008 Appeal Hearing before the Baltimore County Board of Appeals, testimony was taken from the owner/petitioner, Mr. Leo W. Drost, the protestant, Ms. Betty J. Phillips, and Ms. Phillips' expert witness, James S. Patton, P.E., a physical engineer offered by protestant as an expert in the zoning laws of Baltimore County. Offered and accepted into evidence were the Notice of Appeal, the written decision of the Deputy Zoning Commissioner dated June 28, 2007, a petition from adjoining neighbors in support of the Petition, a letter from petitioner's doctor, David Gichtin, M.D. confirming petitioner's limited mobility in walking, as well as various plats, deeds, assessment records and photographs. Also present was co-owner/petitioner, Dennis Drost, who did not offer testimony.

Petitioner, Leo W. Drost, testified that he needed an attached garage to accommodate his disability, his brother's (co-owner/petitioner) Dennis Drost's disability, and his elderly parents disabilities for direct access to his house with the need for fewest steps possible. The testimony from petitioner, Leo W. Drost, provided uncontroverted testimony, both personally and by letter from his treating doctor, David Gichtin, M.D. confirming his limited mobility in walking, as well as his brother's disability due to a stroke that requires co-owner/petitioner, Dennis Drost, to use a

walker, as well as his elderly parents need to use walkers. Furthermore, Mr. Drost testified that his brother will move into the subject house once the garage is built to accommodate his disability. Currently, neither his brother or parents can safely walk the length of the 12 foot sidewalk, especially in inclement weather conditions. And, Mr. Drost testified that he has already paid his contractor \$7,000.00 for laying the slab floor of the garage and foundation walls, and an additional \$5,000.00 for a down payment. As such, strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship to petitioner.

And, Mr. Drost testified that numerous other homes in the neighborhood have attached garages. The proposed location for the attached garage is the only practical location. However, a fireplace and chimney are located on the side of the house where the attached garage is proposed to be built. Given the space occupied by the fireplace/chimney, an administrative variance from the side setback requirements of the Zoning Regulations is required. In this sense, the property is unique in a zoning sense.

Additionally, all of the neighbors in the immediate proximity of petitioner's property, with the exception of the protestant, Ms. Phillips, have no objection to the proposed garage.

Furthermore, as noted in the written decision of the Zoning Commissioner dated June 28, 2007, which was admitted into evidence in the appeal *sub judice*, indicates the Zoning Advisory Committee and the Office of Planning support the requested variance.

The protestant, Ms. Betty Phillips, also testified. She presented no other witnesses, other than her paid expert witness, nor did she present any petitions from any neighbors objecting to the proposed garage. Ms. Phillips presented plats, deeds, assessment records, and many

photographs, all of which were admitted into evidence by this Board. Her testimony, and the testimony from her expert witness, shows that there are numerous homes in the neighborhood with attached garages. No mention was made as to whether any of the numerous existing attached garages in the neighborhood were subject to administrative variances. And, the Zoning Advisory Committee and the Office of Planning support the requested variance. As such, it is clear that the petitioner's request for this variance is in strict harmony with the spirit and intent of the Zoning Regulations.

Finally, the protestant, Ms. Phillips, testified that the proposed garage would obstruct the view of her home from the road and make it difficult for emergency vehicles to find her home. Ms. Phillips presented numerous photographs, including photographs in which the boundaries of the proposed garage are drawn in. Also visible in some of the photographs is a large, black pick-up truck, which Ms. Phillips testified had not been moved in at least one year. And, Ms. Phillips testified that her mailbox, located at the road where her driveway intersects is clearly marked with her address on her mailbox. Any obstruction of her home from the road would be minimal (and no greater than the obstruction caused by the pick-up truck). Thus, granting the variance in the manner requested would grant relief to petitioner without injury to the public health, safety and general welfare.

The testimony presented by protestant's expert witness, Mr. Patton, offered absolutely nothing. The conclusions reached by Mr. Patton are solely within the discretion of this Board.

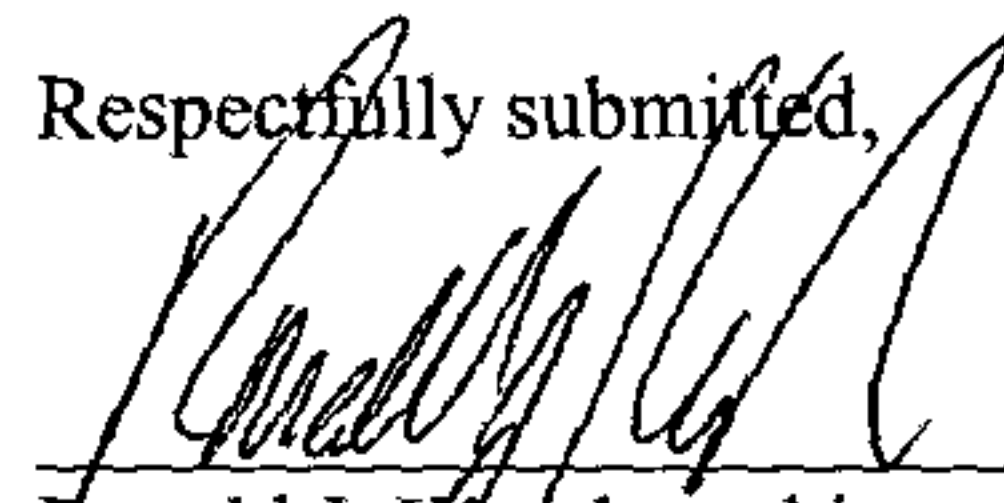
IV. Conclusion

1. Petitioners' Motion to Dismiss should be granted.

2. Considering all the testimony and evidence presented, this Board should find that special circumstances or conditions exist that are particular to the land or structure which is the subject of the variance request and that the property is, therefore, unique in a zoning sense. Furthermore, this Board should find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship to petitioner. And, this Board should find that this variance can be granted in strict harmony with the spirit and intent of the Zoning Regulations for Baltimore County, and in such manner to grant relief without injury to the public health, safety and general welfare.

Therefore, an Administrative Variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations to permit an addition of an attached garage on the side of an existing dwelling with a 5 foot side setback and with a sum of 23 feet in lieu of the required 10 feet side setback with a sum of 25 feet should be granted.

Respectfully submitted,

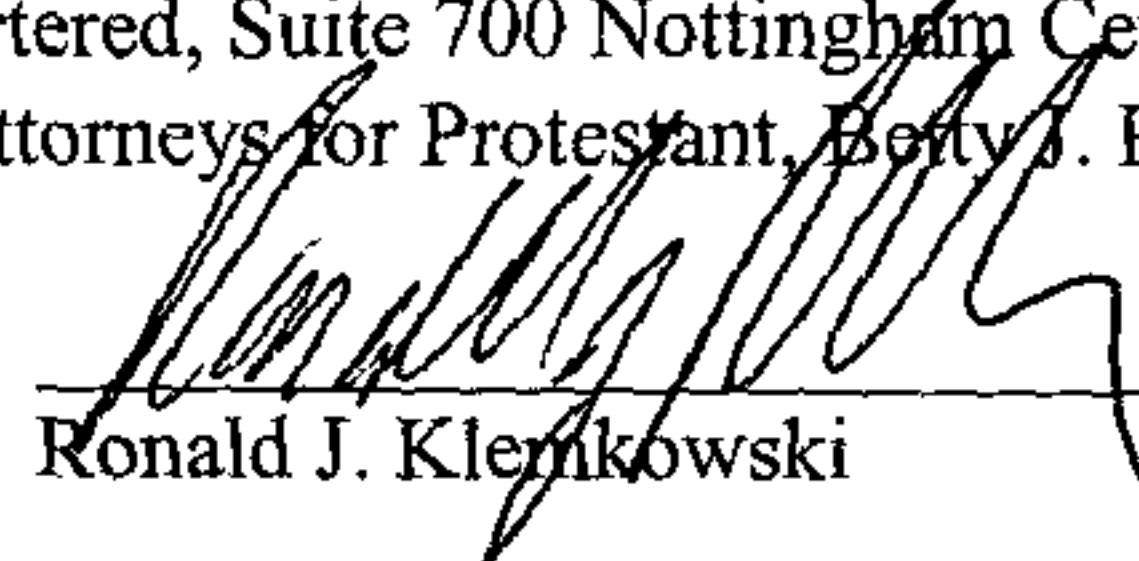


Ronald J. Klemkowski
Klemkowski, Klemkowski & Dunn, P.A.
5 East Franklin Street
Baltimore, Maryland 21202
(410) 752-5539

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 2008, a copy of the foregoing Petitioners' Closing Brief was forwarded first-class mail, postage pre-paid to: C. William Clark, Esquire, Nolan, Plumhoff & Williams, Chartered, Suite 700 Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204-4528, Attorneys for Protestant, Betty J. Phillips.



Ronald J. Klemkowski

THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
DOUGLAS L. BURGESS
C. WILLIAM CLARK
CATHERINE A. POTTHAST*
E. BRUCE JONES**
CORNELIA M. KOETTER*

* ALSO ADMITTED IN D.C.
** ALSO ADMITTED IN NEW
JERSEY

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
EMAIL: NPW@NOLANPLUMHOFF.COM
WEB SITE: WWW.NOLANPLUMHOFF.COM

J. EARLE PLUMHOFF
(1940-1988)
NEWTON A. WILLIAMS
(RETIRED 2000)
RALPH E. DEITZ
(1918-1990)

April 4, 2008

RECEIVED
APR 04 2008
BALTIMORE COUNTY
BOARD OF APPEALS

VIA HAND DELIVERY

Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
Jefferson Building
Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, MD 21204

Re: In the matter of: Leo and Dennis Drost- Legal Owners; Case No.: 07-509-A

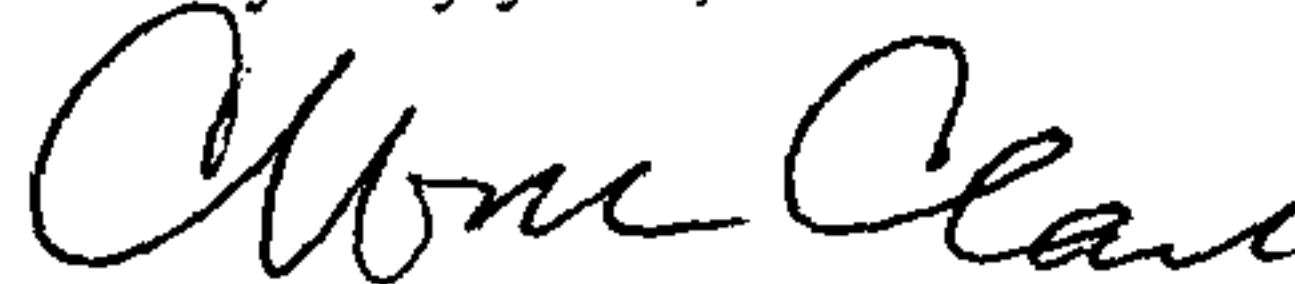
Dear Ms. Bianco:

The above captioned case was heard on March 6, 2008, pursuant to that hearing, enclosed herein please find one (1) original and three (3) copies of Respondent, Betty J. Phillips' Post Hearing Memorandum.

If you have any questions or concerns, please contact me.

Until then, I remain.

Very truly yours,



C. William Clark

CWC/jkc

Enclosures

cc: Ronald J. Klemkowski, Esquire
Betty J. Phillips. Respondent

PETITION OF:

* BEFORE THE

IN THE MATTER OF
LEO AND DENNIS DROST
Legal Owners
9328 Seven Courts Drive
Nottingham, Maryland 21236

RECEIVED

APR 04 2008

* COUNTY
BOARD OF APPEALS

FOR

11th ELECTION DISTRICT
5th COUNCILMANIC DISTRICT

BALTIMORE COUNTY
BOARD OF APPEALS BALTIMORE COUNTY

* CASE NO. 07-509-A

Petitioners

* * * * *

RESPONDENT, BETTY PHILLIPS' POST HEARING MEMORANDUM

Betty Phillips, Respondent, by C. William Clark and Nolan, Plumhoff & Williams, Chtd., her attorneys, file this Post Hearing Memorandum stating the reasons for the County of Board of Appeals to deny the Petitioner's Petition for Variance.

RESPONSE TO MOTION TO DISMISS

Prior to the commencement of receiving evidence in the above captioned case, the Petitioners, by and through his counsel, made an oral Motion to Dismiss Respondent's Appeal. The Motion was based upon Rule 3 of Rules of Practice and Procedure of the Baltimore County Board of Appeals. The gist of the Motion consisted of the argument that the Notice of Appeal filed by counsel on behalf of Betty Phillips did not meet the requirements of that Rule, purportedly because it did not contain the address of Betty Phillips.

Baltimore County is a charter county. Article 25 A, §5(U) of the Maryland Annotated Code gives charter counties the power to create "a county board of appeals". *Beth Tfiloh v. Glendon Community Association*, 152 Md. App. 97 (2003) at page 102. Baltimore County's charter created a Board of Appeals in Article VI, §602 (d). *Beth Tfiloh* (supra at page 103). The

Baltimore County statute authorizing appeals to the Board of Appeals from decisions of the Zoning Commissioner is found in §32-3-410 of the Baltimore County Code.¹ See *United Parcel v. People's Counsel*, 336, Md. 569, 578-579(1994). A copy of §32-3-401 of the Baltimore County Code is attached hereto and incorporated herein by reference and marked as Exhibit A. That section provides that a person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner may appeal the decision to the Board of Appeals. As to the Notice of Appeal it states the following:

(c) Notice and fee required for filing. The appealing party shall:

(1) File notice of the appeal, in writing, with the Department of Permits and Development Management within 30 days after the final decision; and

(2) Pay the required fee.(Emphasis Added).

All that is required by the statute is to file the Notice of Appeal, in writing, with the Department of Permits and Development Management within thirty (30) days after the final decision and pay the required fee. That is precisely what counsel for Protestant did. Attached hereto and incorporated herein by reference is a copy of said Notice, marked as Exhibit B. In the section of the code authorizing appeals to the Board of Appeals, no requirement exists to state the name and address of the person taking the appeal. Under the applicable statute, Protestant, through her counsel, did all that was required as the "appealing party" in order to give notice of her appeal. The Board's Rule of Procedure, cited by Petitioners, differs from §32-3-401 of the Baltimore County Code. That rule (a copy of which is attached hereto and marked Exhibit C) says in pertinent part as follows:

¹ This section was formerly designated as §26-132(a).

Rule 3. Appeals.

a. no appeal shall be entertained by the board of appeals unless the notice of appeal shall state the names and addresses of the **person** taking such appeal. (Emphasis Added).

Unlike the Baltimore County Code provision, which states that the appealing "party" shall file a Notice of Appeal, the Board of Appeals rule merely requires that the notice of appeal shall state the names and addresses of the "persons" taking such appeal. In this case, the person taking the appeal, was C. William Clark of the firm Nolan, Plumhoff & Williams, Chtd. on behalf of Betty Phillips, as her counsel. Counsel's name and address do in fact appear on the Notice of Appeal which satisfies the Rule. Petitioners' argument would have you believe that the Rule requires that the name and address of "party" taking such appeal, but that is not the word utilized by the Rule.

One reason the Board might have made the distinction consists of the necessity to communicate with the person taking the appeal, so as to schedule the hearing on the appeal. The person taking the appeal includes counsel for a party, and thus, it becomes important to send mail and notices to that person.

Furthermore, even if the Board were to read Rule 3 the way Petitioners argue, the Appeal filed by counsel for Betty Phillips satisfies that construction as well. The Notice of Appeal filed by Counsel states that the decision of the Deputy Zoning Commissioner is attached. Therefore, it became part of the Notice of Appeal. The Deputy Zoning Commissioner's opinion, together with his cover letter, clearly indicate the name of the party appealing, Betty Phillips, and her address at 9324 Seven Courts Drive, Nottingham, Maryland 21236. Clearly, the Notice, taken as a whole, does in fact contain the name and address of the "person" taking the appeal, Betty

Phillips. An examination of the original Notice of Appeal contained in the Board's file shows the Notice, and immediately behind it, a copy of the Deputy Zoning Commissioner's cover letter and opinion which bear the fax legend from AAI corporation which is Protestant's place of employment. It appears that the two had been stapled together, with the staple having been removed when filed in the Board's file.

Finally, during the course of testimony received before the Board, in cross-examination, Mr. Drost, one of the Petitioners, acknowledged: that he received a copy of the Notice of Appeal from counsel; that he knew Betty Phillips, his neighbor, that she had appeared before the Deputy Zoning Commissioner; that, he knew where she lived; and he knew that she was the party taking the appeal. And as to those matters, he testified that he had no doubt.

Therefore, the Board should deny the Motion to Dismiss, because to do otherwise, clearly exalts form over substance. It also would be clearly contradictory to the provisions governing appeals found in §32-3-401 of the Baltimore County Code.

VARIANCE

In order for the Petitioners to succeed, they must prove that their Petition meets the requirements of Section 307.1 of the Baltimore County Zoning Regulations. In short, he must prove that "...special circumstances or conditions exist that are peculiar to the land or structure which is subject of the variance request and where strict compliance with the [BCZR] would result in practical difficulty or unreasonable hardship...". The first half of that test has become known as proving "uniqueness". In its most recent decision regarding that requirement, the Court of Special Appeals in case of *Trinity Assembly of God of Baltimore City, Inc. v. People's*

Counsel for Baltimore County, ___ Md. App. ____ (2008)², No. 2840, September Term 2006, held that the...“first task in deciding the variance request was to determine whether the subject property is unique...”. *Trinity*, Slip Opinion at page 14. The Court of Special Appeals, citing *Umerly v. People’s Counsel*, 108 Md. App. 497, described the uniqueness criterion contained in §307.1”...to mean that the subject property is unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to have a disproportionate impact on the property. 108 Md. App. at page 50.” (citing *Cromwell v. Ward*, 102 Md. App. 691 at page 721). *Trinity* (Slip Opinion at page 14).

Even the Petitioners’ evidence does not establish uniqueness, nor does it allow any reasonable inference to that effect. Mr. Drost did not testify that his property was in any way different than the surrounding properties. Petitioners did not offer any expert testimony as to the requirements of §307.1. Petitioners’ Exhibits 1 and 2 show a view of the front of Petitioners’ house and property. Petitioners’ Exhibit No. 3 shows a view from their backyard. All of the pictures show a very flat lot with no topographical features that would require varying the side yard requirement so as to permit the garage Petitioners seek. Furthermore, there are no trees, rocks or other impediments that require a relaxation of the side yard setback requirement.

Petitioners’ Exhibit 8 which apparently is a section of the 200 scale zoning map NE11G shows the D.R.3.5 zone, and has the Phillips house highlighted in pink, with the Drost house highlighted in yellow. Within that exhibit, one can see a property outline of Petitioners’ and Respondent’s properties, as well as the properties of neighboring property owners, including two

² Attached hereto and incorporated herein is a copy of the Slip Opinion issued February 6, 2008, marked as Exhibit D.

of the people who signed Petitioners' Petition of Support.³ The Drosts' property is rectangular in shape. So are the lots at 9326, 9329, 9327 and 9325 Seven Courts Drive. There is nothing odd, irregular, or peculiar about those rectangularly shaped lots that would require a variance of the side yard setback that Petitioners seek.

Protestant's evidence confirms the utter lack of any uniqueness with respect to the Petitioner's property. A view of the Drost property depicted in Protestant's Exhibit 8 A shows a flat level lot with no topographical or other impediments on the side of his property adjacent to Ms. Phillips driveway which might require relaxation of the side yard setback requirement. Protestant's Exhibits 12, 13, 14 and 15, which include the plats of Pinedale Woods containing the lots owned by the Petitioners and Respondent, show numerous rectangularly shaped lots in the development and neighborhood demonstrating the similarity between the Petitioners' property and others in their neighborhood that militates against any inference that their lot is different in any significant way.

The testimony of James Patton, the civil engineer accepted as an expert witness on behalf of the Respondent, demonstrates based on the Petitioner's deed, (Protestant's Exhibit 8) it's reference to the plat of Pinedale Woods, and the dimensions shown on the plat (Protestant's Exhibit 14) that the Drosts' lot is a perfect rectangle 76 feet x 100 feet. The site plan prepared for Petitioners and admitted as Protestant's Exhibit 2, was not prepared or sealed by an engineer, land surveyor or land planner, and clearly contains erroneous dimensions when compared against the deed and the recorded, sealed plat. In fact, if any lot in that area were to be considered

³ The Petition supports building a garage. It does not mention supporting the variance requested by Petitioners.

unique, it would be the lot of the Protestant which has a pan handle lot in a reverse "J" formation attaching to the rest of her lot.

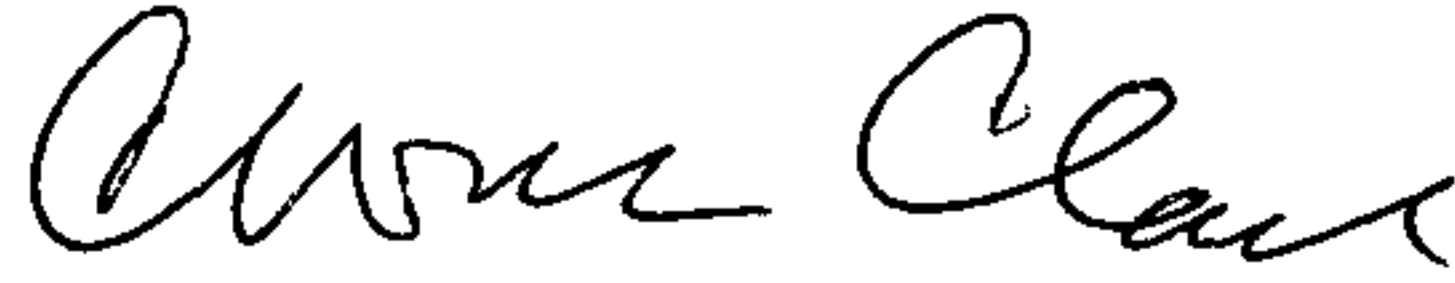
Mr. Patton testified that in his opinion, Petitioners' request does not meet the requirements of §307.1, not only as to uniqueness, but as to the remaining portions of the test. Strict compliance with the Baltimore County Zoning Regulations will not result in practical difficulty or unreasonable hardship. As Mr. Patton testified, the variance to grant the Petitioners relaxation of the side yard requirement so they can build a garage would not be within the spirit and intent of the regulation and not without injury to the public health, safety and general welfare. Protestant's Exhibits 10A - 10L show many of the houses in the neighborhood do not have garages. Some of the houses do have garages, but they are of a different style of house than the split level house that the Petitioners own. As Mr. Patton testified, from his knowledge of the neighborhood, his review of the plat, and his review of the housing styles, that it was a choice that the developer made, in construction, to either offer a house of one style with a garage, and of a different style without a garage. He could find no evidence of variances having been granted to permit any of the houses with garages. Furthermore, Mr. Patton opined that safety issues result from an inability to clearly see Ms. Phillips' house from the street and vice versa. Again Ms. Phillips expressed strongly this concern in her testimony. The illustrations prepared by Mr. Patton, admitted as Protestant's Exhibits 17-20, show how the construction of such a garage would obscure and virtually block, in its entirety, the view of Ms. Phillips' house from the street. Likewise, as Ms. Phillips testified, driving down her driveway from her house to the street likewise could cause problems with visibility of persons on the sidewalk, persons on bicycles and other such vehicles, and cars traveling on Seven Courts Drive. In her opinion, and in Mr. Patton's opinion, the safety

and general welfare of the community would be harmed should such a variance be granted to allow the garage proposed by the Petitioners. In a similar case, the Court of Special Appeals upheld the denial of front and side yard set backs to construct a garage because the reasons given were a matter of "convenience" and the siting and design of the proposed improvements of the property were a "self created hardship". *Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2d 959(2006). Such is the case here.

As Leo Drost testified, he looked at houses in this neighborhood for months before selecting the house he and his brother purchased. Certainly some of those for sale at that time had garages. Based upon assumptions and faulty advice, Mr. Drost believed he could build a garage of the size he now seeks on the lot without adequately ascertaining the correct application of the zoning regulations to his lot. After the decision by the zoning commissioner's office, but before the appeal period ran, Mr. Drost obtained a permit and had the foundation for the garage built, even though, as he acknowledged, the opinion of the zoning commissioner informed him if he did so, he did at his own risk. These presumptions about the zoning regulations and the effect of the previous decision do not legally create practical difficulty or undue hardship and should not result in granting the Petition for Variance.

WHEREFORE, for the foregoing reasons, the Respondent requests that the County Board of Appeals deny Petitioners' Petition for Variance.

Respectfully submitted,



C. William Clark
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED
502 Washington Avenue, Suite 700
Towson, MD 21204
(410)823-7800

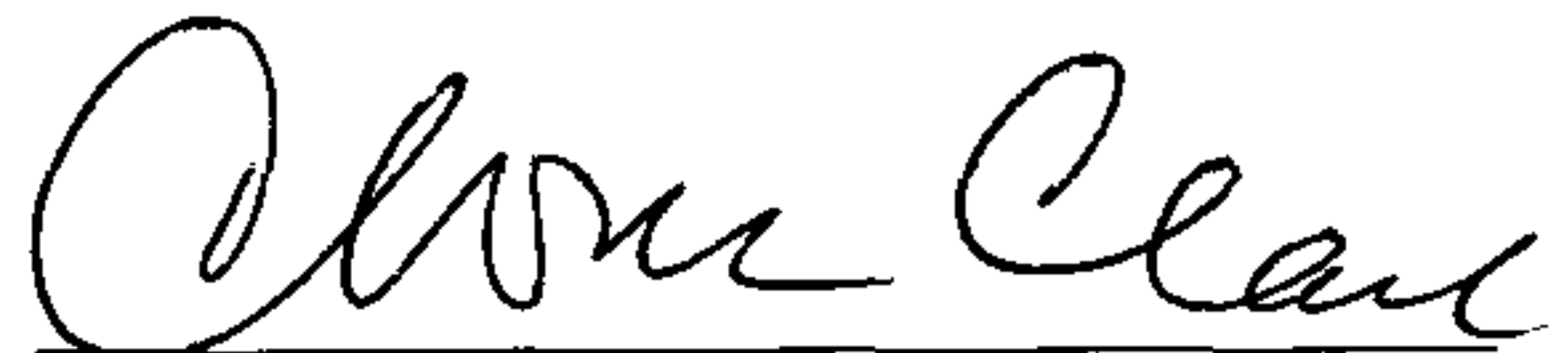
Attorneys for Betty J. Phillips

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 2008, that foregoing Respondent

Betty Phillips' Post Hearing Memorandum was mailed, first class, postage prepaid, to the following:

Ronald J. Klemkowski, Esquire
Klemkowski, Klemkowski & Dunn
5 East Franklin Street
Baltimore, MD 21202



C. William Clark

IN RE: PETITION FOR ADMIN. VARIANCE

W side of Seven Courts Drive, 144 feet

South of the c/l of Proctor Lane

11th Election District

5th Councilmanic District

(9328 Seven Courts Drive)

Leo W. and Dennis Drost

Petitioners

*

BEFORE THE

*

DEPUTY

*

ZONING COMMISSIONER

*

OF BALTIMORE COUNTY

*

CASE NO. 07-509- A

*

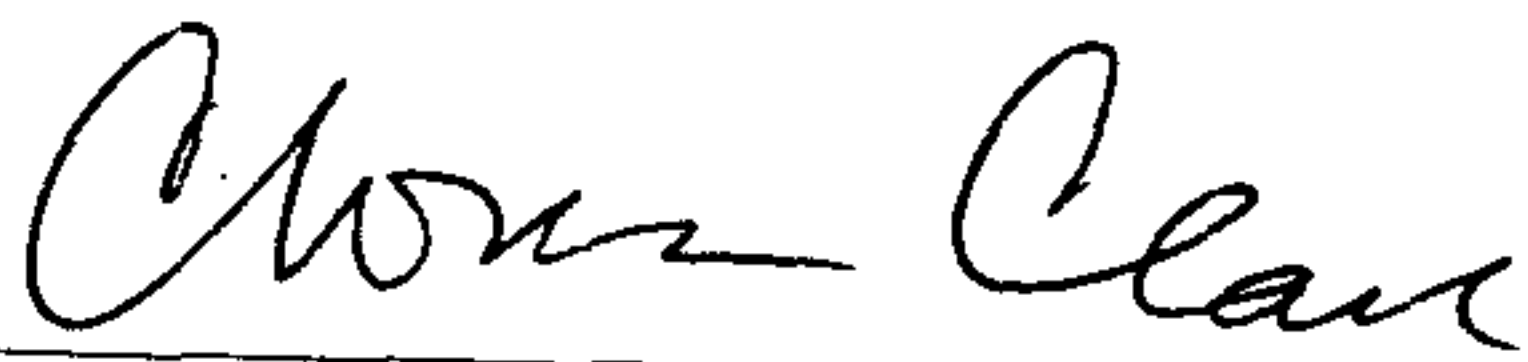
* * * * *

NOTICE OF APPEAL

Betty J. Phillips, by C. William Clark and Nolan, Plumhoff & Williams, Chtd., her attorneys, files this Appeal to the Board of Appeals from the zoning decision of Deputy Zoning Commissioner Murphy and appeal specifically:

The decision granting the Petitioners request for an administrative variance from Sections 1B02.3.c.1 of the Baltimore County Zoning Regulations to permit an addition (proposed attached garage) on side of existing dwelling with a 5 foot side setback and with a sum of 23 feet in lieu of the required 10 feet side setback with a sum of 25 feet as contained in the attached copy of Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner on June 28, 2007.

Respectfully submitted,



C. William Clark

NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

502 Washington Avenue, Suite 700

Towson, MD 21204

(410)823-7800

Attorneys for Betty J. Phillip

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

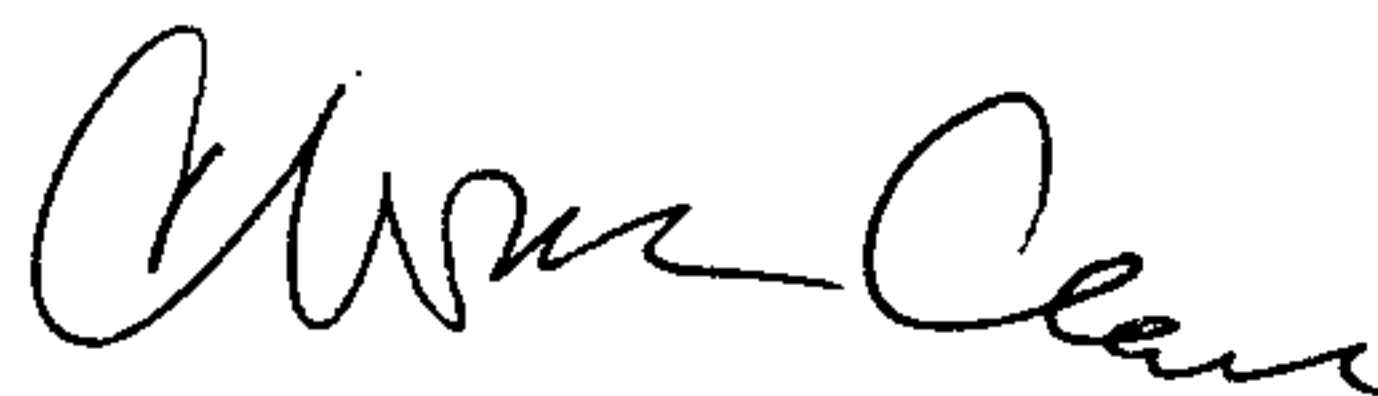
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this on this 25 day of July, 2007, the foregoing Notice of Appeal was mailed, first class, postage prepaid, to the following:

John V. Murphy
Deputy Zoning Commissioner
Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

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

Leo W. and Dennis Drost
9328 Seven Courts Drive
Nottingham, Maryland 21236



C. William Clark



Petition for Administrative Variance

to the Zoning Commissioner of Baltimore County

for the property located at 9328 SEVEN COURTS DRIVE
which is presently zoned RESIDENTIAL

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) BCZR 303, 1B02.3c1

TO PERMIT AN ADDITION (PROPOSED ATTACHED GARAGE) ON SIDE AND FRONT OF EXISTING DWELLING WITH A 5 FEET SIDE SETBACK WITH A SUM OF 23 FEET AND A 26'9" FRONT SETBACK IN LIEU OF THE REQUIRED 10 FEET SIDE SETBACK WITH A SUM OF 25 FEET, AND, THE REQUIRED 38'2" FRONT AVERAGE SET BACK.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form. *fw*

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

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

LEO W DROST
Name - Type or Print

Leo W Drost
Signature

DENNIS DROST
Name - Type or Print

Dennis Drost
Signature

9328 SEVEN COURTS DRIVE
Address Telephone No. 410-256-0293

NOTTINGHAM MD 21236
City State Zip Code

Representative to be Contacted:

Name

Address Telephone No.

City State Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this 07 day of May, that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

CASE NO. 07-5701

REV 10/25/01

Reviewed By A.K. Tsui Date 05/09/2007

Estimated Posting Date 06/28/07

Affidavit in Support of Administrative Variance

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

That the Affiant(s) does/do presently reside at 9328 SEVEN COURTS DRIVE
Address
NOTTINGHAM MD 21296
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

- A GARAGE IS REQUESTED TO BE CONSTRUCTED FOR:
- EASE OF ACCESS TO SIDE OF HOUSE BECAUSE OF PHYSICAL HANDICAPS
- SECURITY OF ENTRANCE & EXIT TO CAR FROM SIDE OF HOUSE.
- STORAGE ~~PHY~~ FACILITY
- SAFETY DURING INCLEMENT WEATHER.
- SAFETY TO PARK AT NIGHT
- * CARS HAVE HANDICAPPED TAGS

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

Leo W Drost
Signature

LEO W DROST
Name - Type or Print

Dennis Drost
Signature

DENNIS DROST
Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 23rd day of April, 2007, before me, a Notary Public, the State of Maryland, in and for the County aforesaid, personally appeared

Leo W. Drost Dennis Drost
the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

Notary Public
My Commission Expires 03/01/09

Affidavit in Support of Administrative Variance

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

That the Affiant(s) does/do presently reside at 9328 SEVEN COURTS DRIVE
Address
NOTTINGHAM MD 21236
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address (indicate hardship or practical difficulty):

- A GARAGE IS REQUESTED TO BE CONSTRUCTED FOR:
- EASE OF ACCESS TO SIDE OF HOUSE BECAUSE OF PHYSICAL HANDICAPS
- SECURITY OF ENTRANCE & EXIT TO CAR FROM SIDE OF HOUSE.
- STORAGE ~~PHY~~ FACILITY
- SAFETY DURING INCLEMENT WEATHER.
- SAFETY TO PARK AT NIGHT
- * CARS HAVE HANDICAPPED TAGS

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

Leo W Drost
Signature

LEO W DROST
Name - Type or Print

Dennis Drost
Signature

DENNIS DROST
Name - Type or Print

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 23rd day of April, 2007, before me, a Notary Public in the State of Maryland, in and for the County aforesaid, personally appeared

Leo W. Drost Dennis Drost
the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s).

AS WITNESS my hand and Notarial Seal

[Signature]
Notary Public

My Commission Expires 03/01/09



Petition for Administrative Variance to the Zoning Commissioner of Baltimore County

for the property located at 9328 SEVEN COURTS DRIVE
which is presently zoned RESIDENTIAL

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) BCZR 303, 1B02.3c1

TO PERMIT AN ADDITION (PROPOSED ATTACHED GARAGE) ON SIDE AND FRONT OF EXISTING DWELLING WITH A 5 FEET SIDE SETBACK WITH A SUM OF 23 FEET AND A 26'9" FRONT SETBACK IN LIEU OF THE REQUIRED 10 FEET SIDE SETBACK WITH A SUM OF 25 FEET, AND, THE REQUIRED 38'2" FRONT AVERAGE SET BACK.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the reasons indicated on the back of this petition form. fwd

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

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

LEO W DROST

Name - Type or Print

Leo W Drost

Signature

DENNIS DROST

Name - Type or Print

Dennis Drost

Signature

9328 SEVEN COURTS DRIVE

Address

410-256-0293

Telephone No.

NOTTINGHAM

City

MD

State

21236

Zip Code

Representative to be Contacted:

Name

Address

Telephone No.

City

State

Zip Code

A Public Hearing having been formally demanded and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this 07-28-07 day of July that the subject matter of this petition be set for a public hearing, advertised, as required by the zoning regulations of Baltimore County and that the property be reposted.

Zoning Commissioner of Baltimore County

CASE NO. 07-507-A

REV 10/25/01

Reviewed By A.K. TSUI Date 05/09/2007

Estimated Posting Date 06

Zoning Description

Zoning Description for 9328 Seven Courts Drive

WEST ^{LD}
Beginning at a point on the ~~North~~ side of Seven Courts Drive, which is 70 ft. of
right-of-way width, at a distance of ^{SOUTH ^{LD}} 144 ft. ~~North~~ of the centerline of the nearest
intersecting street, Proctor Lane, which is 70 ft. right-of-way width wide.

Being Lot #85, Block H, Section 11, in the subdivision of Pinedale Woods as
recorded in Baltimore County Plat Book #49 Folio #38 containing 7,484 sq. ft.

Also known as 9328 Seven Courts Drive, and located in the 11 Election District,
5th Councilmanic District.

07-509A

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: # 07-509-A
9328 Seven Courts Drive
W/side of Seven Courts Drive, 144 feet south of the centerline of Proctor Lane

11th Election District - 5th Councilmanic District
Legal Owner(s): Leo W. & Dennis Drost

Variance: to permit an addition (proposed attached garage) on side and front of existing dwelling with a 5 foot side setback with a sum of 23 feet and a 26 foot, 9 inch front setback in lieu of the required 10 foot side setback with a sum of 25 feet, and the required 36 foot, 2 inch front average setback.

Hearing: Tuesday, June 26, 2007 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley 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) 887-4388.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.
JT 6/6/09 June 12 138434

CERTIFICATE OF PUBLICATION

6/14/2007

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 6/12/2007.

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

J. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 27990

DATE 05/09/2007 ACCOUNT 001-0066130

AMOUNT \$ 65

RECEIVED FROM: Leo W. Drost

FOR: 9328 Seven Courts Dr. #1236

Admin. Variance 01-509A

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS ALIEN TIME TRN
5/11/2007 5/07/2007 11:26:01 2

REB 0502 MAIL JEN JIE
>>RECEIPT # 016410 5/09/2007 OFLN

Dept 0 SEC ZENITH VERIFICATION
CR NO. 027990

Receipt Tot \$65.00
\$65.00 CR
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

Date: 5/16/07

RE: Case Number: 07-509 A

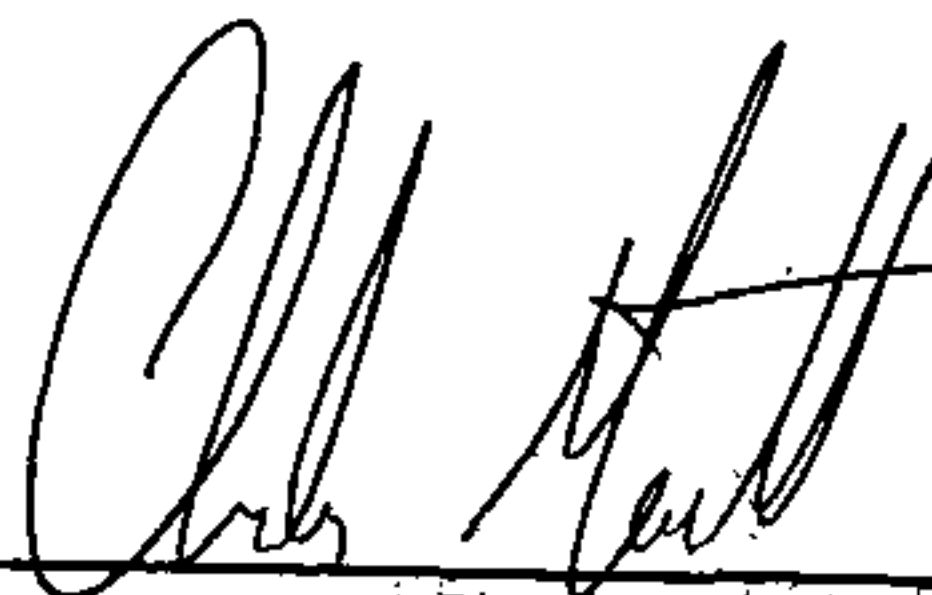
Petitioner/Developer: LEO W. DROST

Date of Hearing/Closing: 6/4/07

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 9328 STEVEN COURTS DRIVE

The sign(s) were posted on MAY 16, 2007

(Month, Day, Year)



(Signature of Sign Poster)

Charles E. Merritt
9831 Magledd Road
Baltimore, MD 21234
410-665-5562

ZONING NOTICE

ADMINISTRATIVE VARIANCE

CASE # 07-509A

VARIANCE TO PERMIT AN ADDITION ON SIDE
AND FRONT OF EXISTING DWELLING WITH 4.5 FEET
SIDE SETBACK AND A 26' 9" FRONT SETBACK IN
LIEU OF THE REQUIRED 10 FEET AND 36' 2"

PUBLIC HEARING ?

PURSUANT TO SECTION 26-127(b)(1), BALTIMORE COUNTY CODE,

AN ELIGIBLE INDIVIDUAL OR GROUP MAY

REQUEST A PUBLIC HEARING CONCERNING

THE PROPOSED VARIANCE, PROVIDED THE REQUEST IS

RECEIVED IN THE ZONING REVIEW BUREAU BEFORE

5:00 P.M. ON 6-4-07

ADDITIONAL INFORMATION IS AVAILABLE AT THE DEPARTMENT OF

PERMITS AND DEVELOPMENT MANAGEMENT, COUNTY OFFICE BUILDING,

111 WEST CHESAPEAKE AVE., TOWSON, MD 21204, (410) 887-3391

DO NOT REMOVE THIS SIGN AND POST UNTIL AFTER ABOVE DATE, UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE





BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

May 23, 2007
TIMOTHY M. KOTROCO, Director
Department of Permits and
Development Management

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: 07-509-A

9328 Seven Courts Drive

W/side of Seven Courts Drive, 144 feet south of the centerline of Proctor Lane

11th Election District – 5th Councilmanic District

Legal Owners: Leo W. & Dennis Drost

Variance to permit an addition (proposed attached garage) on side and front of existing dwelling with a 5 foot side setback with a sum of 23 feet and a 26 foot, 9 inch front setback in lieu of the required 10 feet side setback with a sum of 25 feet, and the required 36 foot, 2 inch front average setback.

Hearing: Tuesday, June 26, 2007 at 11:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

Handwritten signature of Timothy Kotroco in black ink.

Timothy Kotroco
Director

TK:km

C: Leo & Dennis Drost, 9328 Seven Courts Dr., Nottingham 21236
Betty Phillips, 9324 Seven Courts Drive, Nottingham 21236

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, JUNE 11, 2007.**
- (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.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, June 12, 2007 Issue - Jeffersonian

Please forward billing to:

Leo Drost
9328 Seven Courts Drive
Nottingham, MD 21236

410-256-0293

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: 07-509-A

9328 Seven Courts Drive

W/side of Seven Courts Drive, 144 feet south of the centerline of Proctor Lane

11th Election District – 5th Councilmanic District

Legal Owners: Leo W. & Dennis Drost

Variance to permit an addition (proposed attached garage) on side and front of existing dwelling with a 5 foot side setback with a sum of 23 feet and a 26 foot, 9 inch front setback in lieu of the required 10 foot side setback with a sum of 25 feet, and the required 36 foot, 2 inch front average setback.

Hearing: Tuesday, June 26, 2007 at 11:00 a.m. in Room 407, County Courts Building,
401 Bosley 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.

BALTIMORE COUNTY DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADMINISTRATIVE SPECIAL HEARING INFORMATION SHEET AND DATES

Case Number 07- 509 - SPHA Address 9328 SEVEN COURTS DR.
Contact Person: AARON TSUI Phone Number: 410-887-3391
Planner, Please Print Your Name
Filing Date: 05/09/2007 Posting Date: 5/20/07 Closing Date: 6/4/07

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

- POSTING/COST:** The petitioner must use one of the sign posters on the approved list (on the reverse side of this form) and the petitioner is responsible for all printing/posting costs. Any reposting must be done only by one of the sign posters on the approved list and the petitioner is again responsible for all associated costs. The zoning notice sign must be visible on the property on or before the posting date noted above. It should remain there through the closing date.
- DEADLINE:** The closing date is the deadline for an occupant or owner within 1,000 feet to file a formal request for a public hearing. Please understand that even if there is no formal request for a public hearing, the process is not complete on the closing date.
- ORDER:** After the closing date, the file will be reviewed by the zoning or deputy zoning commissioner. He may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. You will receive written notification (typically within 7 to 10 days of the closing date) as to whether the petition has been granted, denied, or will go to public hearing. The order will be mailed to you by First Class mail.
- POSSIBLE PUBLIC HEARING AND REPOSTING:** In cases that must go to a public hearing (whether due to a neighbor's formal request or by order of the zoning or deputy zoning commissioner), notification will be forwarded to you. The sign on the property must be changed giving notice of the hearing date, time and location. As when the sign was originally posted, certification of this change and a photograph of the altered sign must be forwarded to this office.

(Detach Along Dotted Line)

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

USE THE SPECIAL HEARING SIGN FORMAT

Case Number 07- 509 - SPHA Address 9328 SEVEN COURTS DR.
Petitioner's Name LEO W. DROST Telephone 410-256-0293
Posting Date: 5/20/07 Closing Date: 6/4/07
Wording for Sign: Administrative Special Hearing to approve VARIANCE TO PERMIT AN
ADDITION ON SIDE & FRONT OF EXISTING DWELLING WITH A 5 FEET SIDE
SETBACK AND A 26'9" FRONT SETBACK IN LIEU OF THE REQUIRED 10 FEET
AND 36'2"

WCR - 6/28/00

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

PROPERTY ADDRESS 9328 Seven Courts Drive

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

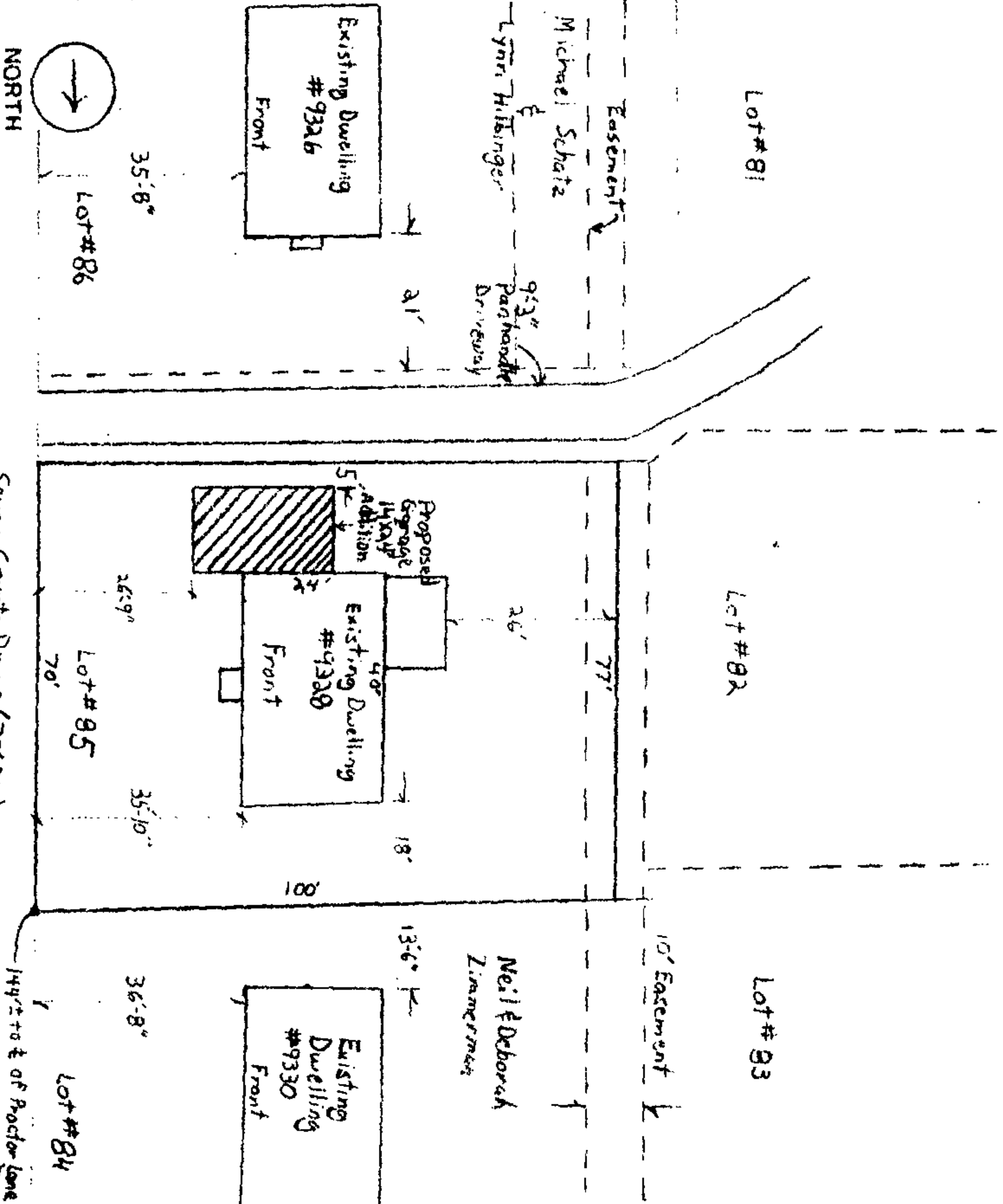
SUBDIVISION NAME Pinedale Woods

PLAT BOOK # 49 FOLIO # 38 LOT # 85 SECTION # 3

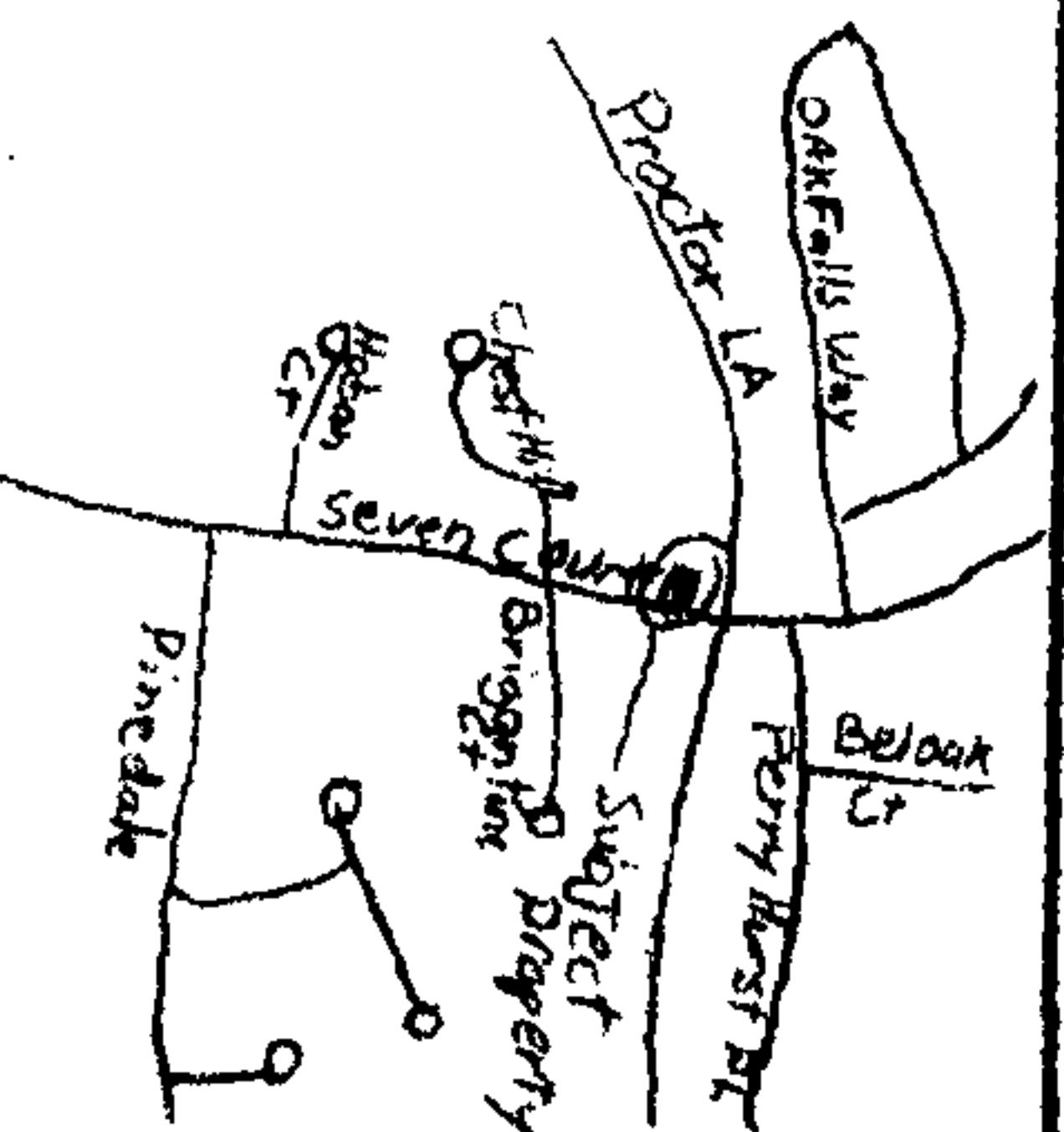
OWNER Drost, Leo W. + Dennis S.

PREPARED BY Neal Feitelbaum

SCALE OF DRAWING: 1" = 30'



VICINITY MAP
SCALE: 1" = 1000'



LOCATION INFORMATION

ELECTION DISTRICT 11

COUNCILMANIC DISTRICT 5TH

1" = 200' SCALE MAP # 072A1

ZONING DR 3.5

LOT SIZE 1718 ACRES 7484 SQUARE FEET

SEWER ☒ PUBLIC ☐ PRIVATE

WATER ☒ ☐

CHESAPEAKE BAY CRITICAL AREA ☐ YES ☒ NO

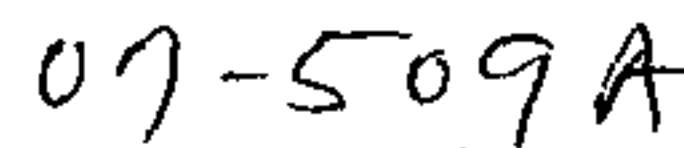
100 YEAR FLOOD PLAIN ☐ ☒

HISTORIC PROPERTY/BUILDING ☐ ☒

PRIOR ZONING HEARING None

ZONING OFFICE USE ONLY
REVIEWED BY ITEM # CASE #

A. Tsai 509 07-5094



PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

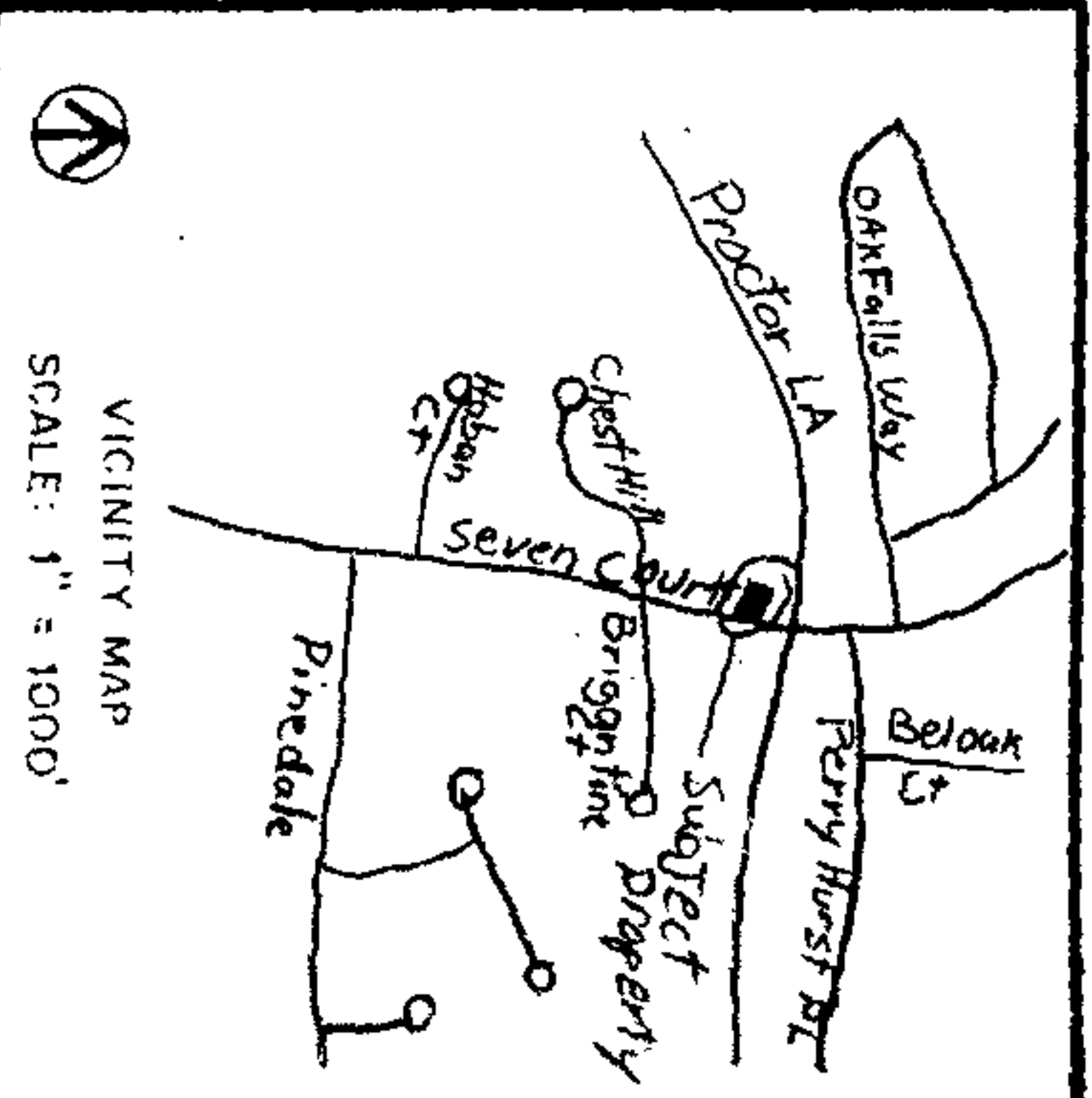
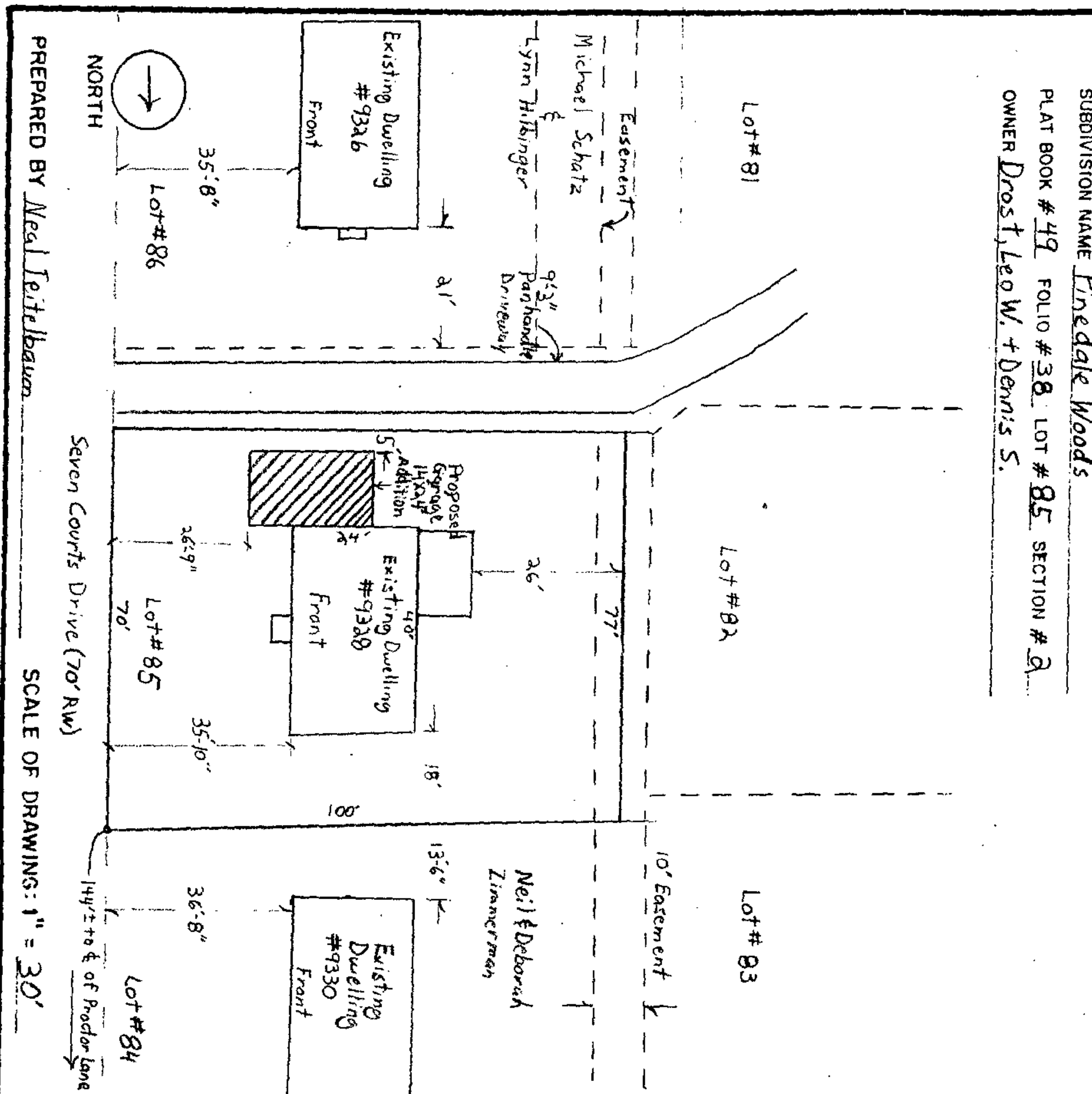
PROPERTY ADDRESS 9328 Seven Courts Drive

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME Pinedale Woods

PLAT BOOK # 49 FOLIO # 38 LOT # 85 SECTION # 2

OWNER Drost, Leo W. + Dennis S.



LOCATION INFORMATION

ELECTION DISTRICT 11

COUNCILMANIC DISTRICT 5th

1"=200' SCALE MAP # 07241

ZONING DR 3.5

LOT SIZE .1718 ACRES 7484 SQUARE FEET

SEWER ☒ PUBLIC ☐ PRIVATE

WATER ☒

CHESAPEAKE BAY CRITICAL AREA ☐ YES ☒ NO

100 YEAR FLOOD PLAIN ☐ YES ☒ NO

HISTORIC PROPERTY / BUILDING ☐ YES ☒ NO

PRIOR ZONING HEARING None

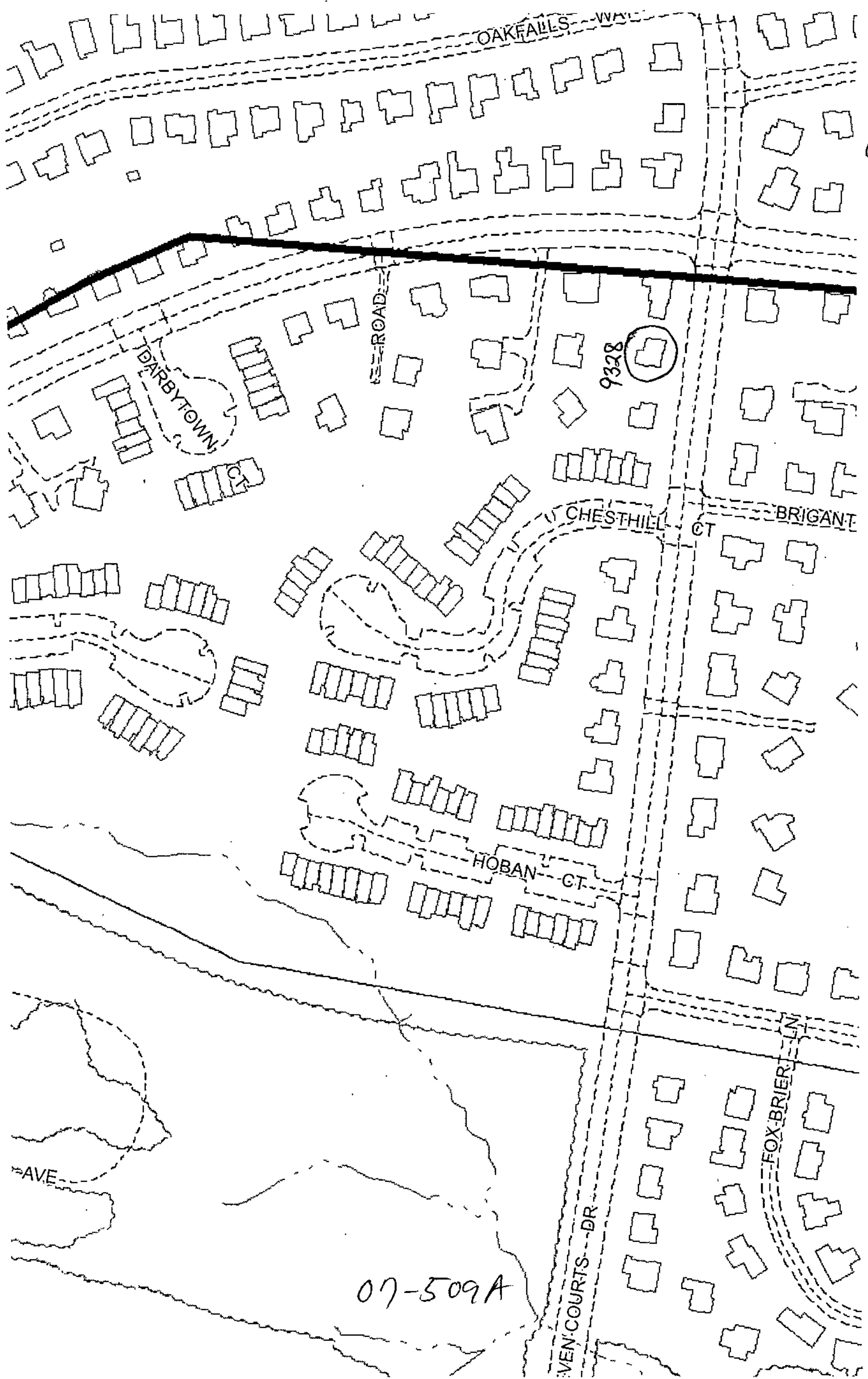
ZONING OFFICE USE ONLY

REVIEWED BY A. T&U ITEM # 509 CASE # P9-509A

PREPARED BY Neal Teitelbaum

SCALE OF DRAWING: 1" = 30'

ZONING
MAP #
072A1



07-509A



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
May 24, 2007 *Department of Permits and
Development Management*

Leo W. Drost
Dennis Drost
9328 Seven Courts Drive
Nottingham, MD 21236

Dear Mr. Drost:

RE: Demand for Public Hearing, Administrative Variance, Case Number: 07-509-A

The purpose of this letter is to officially notify you that your administrative posting procedure has been superceded by a timely public hearing demand concerning the above-proposed administrative procedure.

The hearing has been scheduled and the notice reflecting this request is attached, indicating the date, time and location of the hearing. This notice will also contain the date that the sign must be reposted with the hearing information.

The property must be advertised with the hearing date, time and location. This notification will be published in the Jeffersonian and you will be billed directly by Patuxent Publishing for this.

If you need any further explanation or additional information, please feel free to contact Aaron Tsui at 410-887-3391.

Very truly yours,

A handwritten signature in black ink that reads "W. Carl Richards, Jr.".

W. Carl Richards, Jr.
Supervisor
Zoning Review

WCR:klm

C: Betty Phillips, 9324 Seven Courts Drive, Nottingham 21236

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

DATE: May 21, 2007

FROM: ^{DAK} Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For May 21, 2007
Item Nos. 07-224, 500, 501, 501, 502, 503,
504, 505, 506, 507, 508, 509, 510, and 511

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- 05212007.doc



State Highway
Administration

Maryland Department of Transportation

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

John D. Porcari, Secretary
Neil J. Pedersen, Administrator

Date: MAY 15, 2007

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

RE: Baltimore County
Item No. 7-509-A
9328 SEVEN COURTS DRIVE
DROST PROPERTY
ADMINISTRATIVE VARIANCE

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 7-509-A.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-2803 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone: 410.545.0300 • www.marylandroads.com

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

May 18, 2007

ATTENTION: Zoning Review Planners

Distribution Meeting Of: May 7, 2007

Item Number: ⁵⁰⁹500 through 511

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 Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C) 443-829-2946
MS-1102F

cc: File

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

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 22, 2007

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

SUBJECT: 9328 Seven Courts Drive

INFORMATION:

Item Number: 7-509

Petitioner: Leo W. Drost

Zoning: DR 3.5

Requested Action: Administrative Variance

SUMMARY OF RECOMMENDATIONS:

After review of the subject property and site plan submitted with the petition, this Offices' main concern is architectural compatibility with the existing dwelling as well as immediately surrounding dwellings. The existing dwelling was sited on the lot in such a manner that it may not be conducive for a front-loaded garage that protrudes beyond the front façade. In this instance, the petitioners are proposing a garage that extends approximately 8 feet beyond the front façade. It is in this Offices' opinion that this design scenario would undermine architectural goals that the Office of Planning is trying to achieve on dwellings within the URDL.

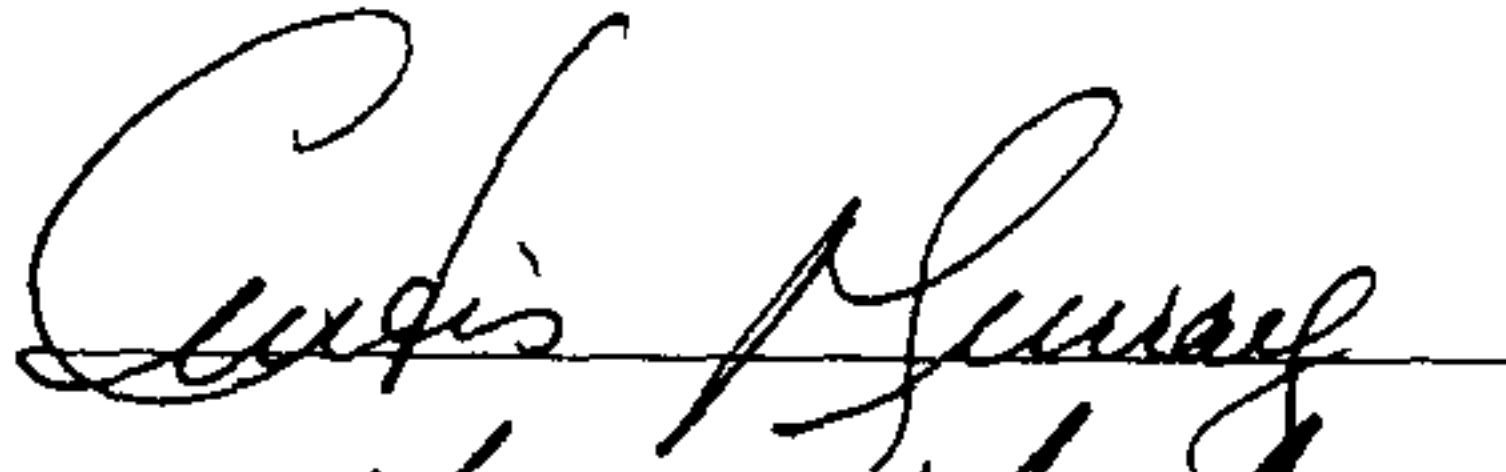
This Office has been in contact with the petitioner and their contractors to discuss the matter. From these discussions, the petitioner has agreed to reorient the proposed attached garage so that it aligns with the front façade of the existing single-family detached dwelling. Thus, the petitioner's request for a front yard average variance of 26.9 feet in lieu of the required 36.2 feet is no longer necessary. To this end, the petitioners have agreed to submit a revised site plan reflecting the above stated modifications to the proposed attached garage.

Provided that the petitioners resubmit a site plan showing the proposed garage that aligns with the front façade of the existing single-family detached dwelling, the Office of Planning will support the associated relief. As such, this Office does not oppose the requested variance for side yard to building setbacks or sum of side yard(s) setbacks as they would not have a negative impact on public safety or well being.

NOTE: This petition does not list the correct zoning for the subject property. This Office recommends that the zoning commissioner confirm the underlying zoning as D.R. 3.5 and not "residential" as listed.

For further information concerning the matters stated here in, please contact Kevin Gambrell at 410-887-3480.

Reviewed by:



Division Chief:
AFK/LL: CM





BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
September 24, 2007 *Development Management*

Leo Drost
Dennis Drost
9328 Seven Courts Drive
Nottingham, MD 21236

Dear Messrs. Drost:

RE: Case: 07-509-A, 9328 Seven Courts Drive

Please be advised that an appeal of the above-referenced case was filed in this office on July 27, 2007 by C. William Clark on behalf of Betty Phillips. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,


Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Betty Phillips, 9324 Seven Courts Drive, Nottingham 21236
C. William Clark, 502 Washington Avenue, Ste. 700, Towson 21204

KLEMKOWSKI, KLEMKOWSKI & DUNN, P.A.

ATTORNEYS AT LAW
FIVE EAST FRANKLIN
BALTIMORE, MARYLAND 21202

RONALD J. KLEMKOWSKI
WILLIAM M. DUNN

TEL 410.752.5539
FAX 410.752.1711

FOUNDER AND SENIOR PARTNER
HENRY W. KLEMKOWSKI

November 1, 2007

Ms. Kathleen C. Bianco
BALTIMORE COUNTY BOARD OF APPEALS
400 Washington Avenue, Room 49
Towson, Maryland 21204

**RE: Appeal of decision of the Zoning Commissioner
for Baltimore County
9328 Seven Courts Drive
Case No.: 07-509-A**

Dear Ms. Bianco:

Please be advised that I have been retained to represent the property owner, Mr. Leo W. Drost, in the referenced appeal of the decision and Order of the Zoning Commissioner for Baltimore County.

As I stated when we spoke on the phone yesterday, Mr. Drost has certain disabilities, including limited mobility in walking. His brother, the co-owner of the property, is disabled and uses a walker. And, his parents, who visit frequently, are elderly and have great difficulty walking any distance. At issue is a variance granted to Mr. Drost to build an attached garage to better and more safely accommodate the above, especially in bad weather as is expected with the coming winter season.

For these reasons, we respectfully request that priority be given to this matter and a hearing on the appeal be set at the earliest possible date. I have enclosed a copy of a letter from Mr. Drost's treating physician that was introduced at the hearing below, as well as a copy of the Deputy Zoning Commissioner's Findings of Fact and Conclusions of Law, which further document our reasons for this request to expedite the appeal.

Your consideration in this matter is greatly appreciated.

Very truly yours,

KLEMKOWSKI, KLEMKOWSKI & DUNN, P.A.

Ronald J. Klemkowski

RJK:rmb
Enclosures

cc: Mr. Leo W. Drost

RECEIVED

NOV 02 2007

**BALTIMORE COUNTY
BOARD OF APPEALS**

ZION AMBULATORY CENTER
9110 Philadelphia Road Suite 306
Baltimore, Maryland 21237
Office: 410-682-5040 Fax: 410-682-5044
David Gichtin, MD

October 10, 2007

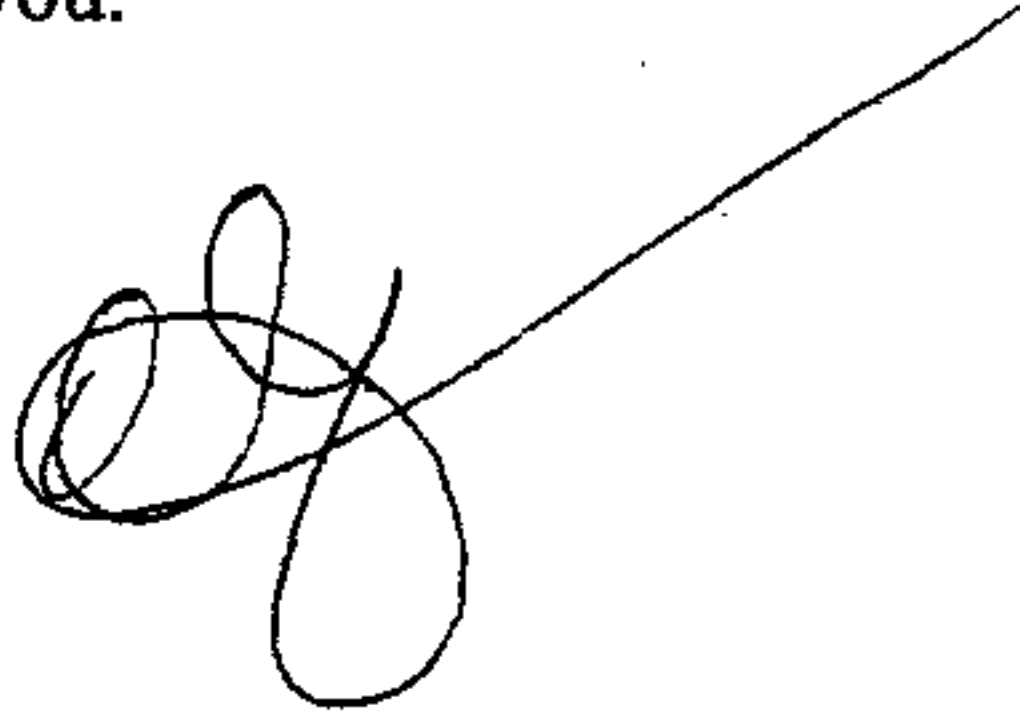
To Whom It May Concern:

Mr. Leo Drost has been a patient under my care since 2005 for chronic and acute lower back pain. As such, he has received three surgical procedures; the latest on September 17 and again on October 10, 2007.

Mr. Drost has limited mobility in walking and in performing tasks which require moderate bending and lifting. Mr. Drost does not work any longer as a mortician due to the nature of his profession which requires the aforementioned physical activities.

This letter, which Mr. Drost has asked me to endorse, is for documentation of his physical condition.

Thank you.

A handwritten signature in black ink, consisting of a series of loops and a long, sweeping horizontal line extending to the right.

David Gichtin, MD

**BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION**

IN THE MATTER OF: Leo and Dennis Drost
Case No. 07-509-A

DATE : Tuesday, April 22, 2008

BOARD /PANEL : Wendell H. Grier (WHG)
Lawrence M. Stahl (LMS)
Robert W. Witt (RWW)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Case No. 07-509-A /Petition for Variance

- Two issues before the Board: (1) preliminary Motion and (2) Petition for Variance
 - ✓ Issue #1 – Motion to Dismiss – address of appellant not included as part of appeal
 - ⊗ Contravention of our Rule 3 that says you have to put address in when filing an appeal
 - ⊗ Has happened many times over the years – cited the Somerset case which essentially says – you cannot deprive someone of opportunity to be heard because of a technical irregularity (“less technicality triumph over justice”)
 - ⊗ The purpose of our rule was to make sure that some from, for example, another County does not come in and become a party; that they are aggrieved
 - ⊗ You have to tell the Board where you are from so that determination can be made
 - ⊗ No question in this instance as to who anybody was – copy of opinion from below identifying everyone was attached to appeal; appellants were known
 - ⊗ In summary – Somerset says you have to balance technical problem with throwing someone out completely; allow them to litigate
 - ° Based upon review of Somerset and previous rulings by this Board in the exact situation, the Motion is DENIED; and the Board moved on to the merits of the case.
 - ✓ Issue #2 – Merits of Petition for Variance
 - ⊗ Began deliberation with reference to Cromwell v. Ward – basis for granting or denying appeals
 - ⊗ First prong of Cromwell is uniqueness
 - ⊗ No indication of uniqueness presented in this matter; to the contrary, it appeared to be the same as surrounding properties
 - ⊗ Unfortunately, counsel read 307 and quoted 307, but that is not the sum of substance of Cromwell
 - ⊗ Mentioned in Clark’s Brief – new case that recites everything, including Cromwell; not mentioned by Counsel for Petitioner in his Brief
 - ⊗ Could not find anywhere in Brief; did not go through list set forth in Cromwell
 - ⊗ If a variance is requested and no one objects, frequently granted below.
 - ⊗ At this level, if appealed, strict adherence to the law as set forth in Cromwell is required

- ⊗ No uniqueness found here – no argument made that there is anything unique
- ⊗ Petitioners' evidence does not establish uniqueness
- ⊗ Having failed to prove uniqueness, no need to go on (to practical difficulty or unreasonable hardship)
- ⊗ The law is written as to not allow variances; protects distances set out by statute
- ⊗ In this instance, the request will be denied; did not meet first prong of Cromwell.

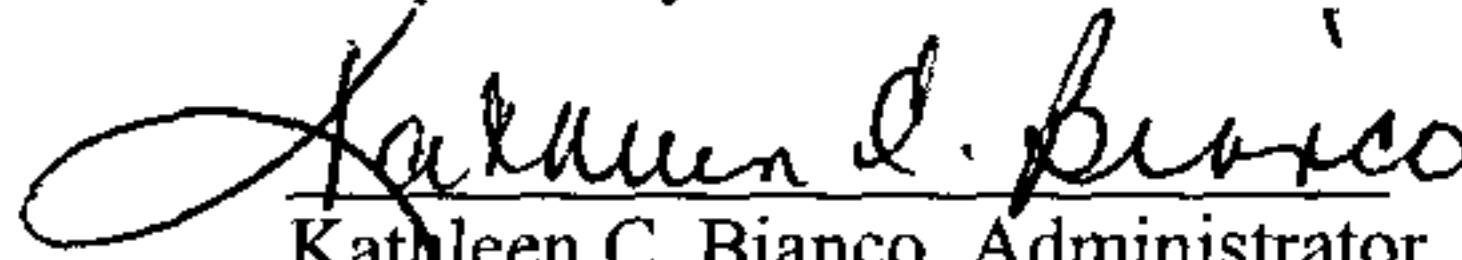
◆ **Decision reached at deliberation:**

Unanimous decision of the Board – variance relief as requested by Petitioner in this matter is **DENIED**; does not meet the requirements of the law, specifically uniqueness was not established.

Petition for Variance is **DENIED**; written Opinion and Order to be issued as outlined above; appellate period to run from date of written Order and not today's date.

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

Respectfully submitted


Kathleen C. Bianco, Administrator
County Board of Appeals

KLEMKOWSKI & KLEMKOWSKI, P.A.

ATTORNEYS AT LAW
FIVE EAST FRANKLIN
BALTIMORE, MARYLAND 21202

RONALD J. KLEMKOWSKI
PARTNER

TEL 410.752.5539
FAX 410.752.1711

HENRY W. KLEMKOWSKI
FOUNDER AND SENIOR PARTNER

July 21, 2008

Ms. Kathleen C. Bianco
BALTIMORE COUNTY BOARD OF APPEALS
400 Washington Avenue, Room 49
Towson, Maryland 21204

**RE: Appeal of decision of the Zoning Commissioner
for Baltimore County
9328 Seven Courts Drive
Case No.: 07-509-A**

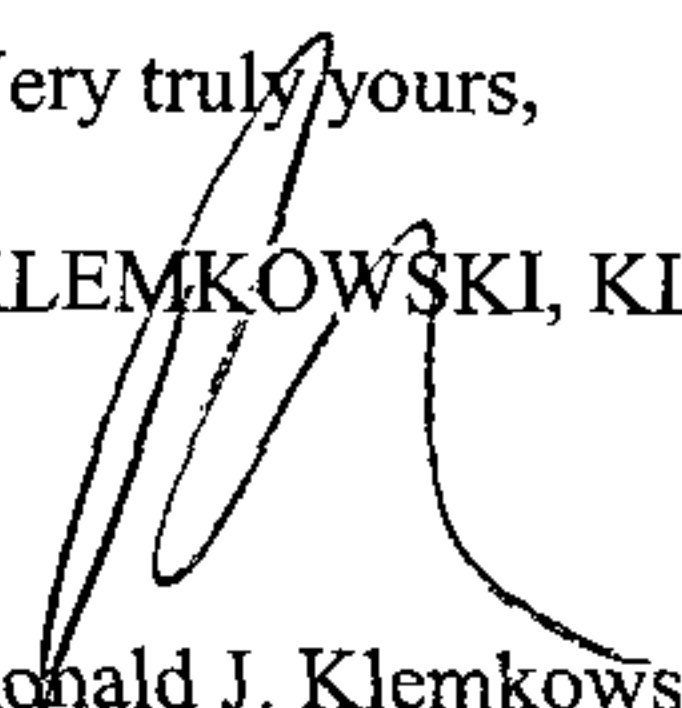
Dear Ms. Bianco:

On April 22, 2008, deliberations were held in the referenced appeal. See the enclosed notice. To date, I have not received a written opinion or order. Kindly forward same to me at your earliest convenience.

Thank you for your attention to this matter.

Very truly yours,

KLEMKOWSKI, KLEMKOWSKI & DUNN, P.A.


Ronald J. Klemkowski

RJK:rmb
Enclosure

cc: Mr. Leo W. Drost

RECEIVED

JUL 24 2008

BALTIMORE COUNTY
BOARD OF APPEALS



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 202
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-887-3160
FAX: 410-887-5162

March 7, 2008

NOTICE OF DELIBERATION

IN THE MATTER OF:

LEO AND DENNIS DROST – Legal Owners
Case No. 07-509-A

Having heard this matter on 3/06,2008, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **TUESDAY, APRIL 22, 2008 at 9:00 a.m.**

LOCATION : **Hearing Room #2, Second Floor**
Jefferson Building, 105 W. Chesapeake Avenue

NOTE: Closing briefs are due on Friday, April 4, 2008
(Original and three [3] copies)

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellant /Protestant : C. William Clark, Esquire
Appellant /Protestant : Betty Phillips
Counsel for Legal Owners /Petitioners : Ronald J. Klemkowski, Esquire
Legal Owners /Petitioners : Leo W. Drost and Dennis Drost
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Copy to: 4-2-6

CASE #: 07-509-A

IN THE MATTER OF: LEO AND DENNIS DROST –
Legal Owner /Petitioner 9328 Seven Courts Drive
11th Election District; 5th Councilmanic District

VAR – To permit addition (proposed attached garage) on side and front of existing dwelling with 5' side setback with sum of 23', and a 26', 9" front setback ilo req'd 10' side setback with sum of 25 feet, and the required 36'2" front average setback.

6/28/07 – D.Z.C.'s Decision (JM) in which requested zoning relief was GRANTED in part and DENIED in part.

1/25/08 – Notice of Assignment sent to following parties; hearing assigned for Thursday, March 6, 2008 at 10 a.m.:

C. William Clark, Esquire
Betty Phillips
Ronald J. Klemkowski, Esquire
Leo W. Drost and Dennis Drost
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

3/06/08 – Board convened for hearing (Grier, Stahl, Witt); completed hearing; memos due 4/04/08; deliberation to be assigned.

3/07/08 – Notice of Deliberation sent to parties; assigned for Tuesday, April 22, 2008 at 9:00 a.m. FYI copy to 4-2-6

4/04/08 – Petitioners' Closing Brief filed by Ronald J. Klemkowski, counsel for Petitioners.
-- Respondent, Betty Phillips' Post-Hearing Memorandum filed by C. William Clark, Esquire, counsel for Ms. Phillips.

4/09/08 – Copies of above memos sent to Grier, Stahl, and Witt; deliberation assigned for 4/22/08 at 9 a.m.

4/22/08 – Board convened for deliberation (4-2-6); unanimous decision – variance request is DENIED; does not meet first prong of Cromwell. Written opinion and order to be issued; appellate period to run from date of written Order.

7/24/08 – Letter from Ronald Klemkowski, counsel for Petitioner – requesting copy of final Order.
-- Response to Mr. Klemkowski this date advising that opinion is still being drafted by Board (4); will forward a signed copy to him as promptly as possible when the decision has been prepared and signed.

DATE June 26

PETITIONER'S SIGN-IN SHEET

[illegible]

(2) The appealing party shall file written notice of the appeal with the Department of Permits and Development Management within 15 days after the date of the Zoning Commissioner's final order with the required fee.

(3) The Board of Appeals shall:

(i) Schedule a public hearing for a date not more than 45 days after the notice of appeal is received by the Department of Permits and Development Management;

(ii) Provide notice of the date, time, and location of the public hearing and post the property at issue as provided in this Code; and

(iii) Issue its decision within 15 days after the conclusion of the public hearing.
(1988 Code, § 26-127) (Bill No. 18, 1990, § 2; Bill No. 91, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 103-02, § 2, 7-1-2004; Bill No. 75-03, § 5, 7-1-2004)

SUBTITLE 4. APPEALS

§ 32-3-401. APPEALS TO THE BOARD OF APPEALS.

(a) *In general.* A person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits and Development Management may appeal the decision or order to the Board of Appeals.

(b) *Appeals by county agencies.*

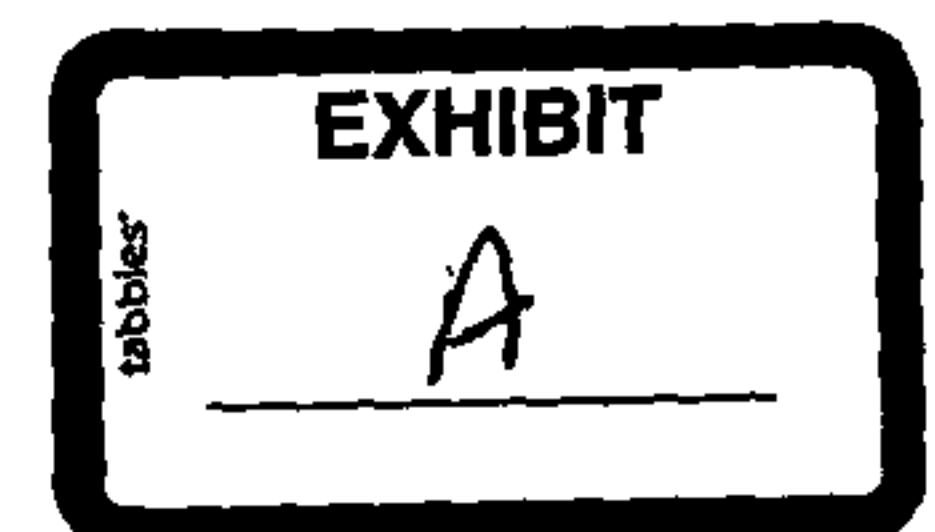
(1) This subsection does not apply to the People's Counsel.

(2) An official, office, department, or board of the county aggrieved or feeling aggrieved by a decision of the Zoning Commissioner may not appeal the decision to the Board of Appeals without the prior approval of the County Administrative Officer and the County Attorney.

(c) *Notice and fee required for filing.* The appealing party shall:

(1) File notice of the appeal, in writing, with the Department of Permits and Development Management within 30 days after the final decision; and

(2) Pay the required fee.



(d) *Procedure for hearings.* The Board of Appeals shall hear and dispose of the appeal as provided in the charter and the rules of procedure established by the Board of Appeals.
(1988 Code, § 26-132) (Bill No. 18, 1990, § 2; Bill No. 116, 1990, § 2; Bill No. 4, 1992, § 1; Bill No. 103-02, § 2, 7-1-2004)

Annotations:

Remedy provided under title 34 of 1958 Code held to be an alternative to that afforded by this section, at least where it is affirmatively alleged that the Planning Board has violated zoning regulations and that a violation of either the zoning or the subdivision regulations was subject to an injunction under title 34. Lynn v. Goldman, 216 Md. 562, 141 A.2d 172 (1958).

County Council need not follow the recommendations of the Planning Board, and need not have any further or additional hearing in regard to any changes or amendments the County Council may see fit to make. Swathmore Company v. Kaestner, 258 Md. 517, 266 A.2d 341 (1970).

The people's counsel has the right to appeal zoning decisions. People's Counsel for Baltimore County v. Williams, 45 Md. App. 617, 415 A.2d 585 (1974).

Former § 26-132 (1988) cited in Meadows of Greenspring Homeowners Association, Inc. v. Foxleigh Enterprises, Inc., 133 Md.App. 510, 758 A.2d 611 (2000).

SUBTITLE 5. ZONING RECLASSIFICATION THROUGH CYCLE ZONING

§ 32-3-501. DEFINITIONS.

(a) *In general.* In this subtitle, the following words have the meanings indicated.

(b) *Petition.* "Petition" means a petition for zoning reclassification.

(c) *Use.* "Use" includes development.

(d) *Zoning reclassification.*

(1) "Zoning reclassification" means:

(i) A change to a district or zone of a particular piece of property; or

(ii) A correction to the official Chesapeake Bay Critical Area Map adopted under § 33-2-105 of the Code.

(2) "Zoning reclassification" includes approval for the use of growth allocation in connection with paragraph (1)(i) and (ii) of this subsection.

(1988 Code, § 2-356) (Bill No. 103-02, § 2, 7-1-2004; Bill No. 75-03, § 5, 7-1-2004)

Drost Residence

50'

Revised location for garage

2' overhang

9328 Seven Courts Dr.

24x40

24x14

65'± x 24' proposed Garage Addition

2' overhang

18'

26'-9"±

Panhandle Driveway

Plot # 2

07-509A

Seven Courts Drive

To Whom It May Concern:

As neighbors of Leo Drost, residing at 9328 Seven Courts Drive:

It is my understanding that Mr. Drost is requesting a garage to be constructed on the left side of his house. This garage will also include access from the garage to the inside of the house.

As such, we have no objection to its construction, and we furthermore feel that this addition will only improve his property.

Lynne Schatz
9326 Seven Courts Drive

JOHN DUNNICK & ROSEANNE XOUACSI
3755 PROCTOR LANE

Louis J. Handhardt
9327 Seven Ct Dr.

— across street

Neil M. Zimmerman
9330 SEVEN COURTS DR.

(3)

SITE PLAN TO BE USED IN DETERMINING FRONT YARD DEPTHS IN RESIDENCE ZONES

WHEN THE IMMEDIATE ADJOINING LOTS ARE NOT IMPROVED
Reference - Section 303.1 Baltimore County Zoning Regulations

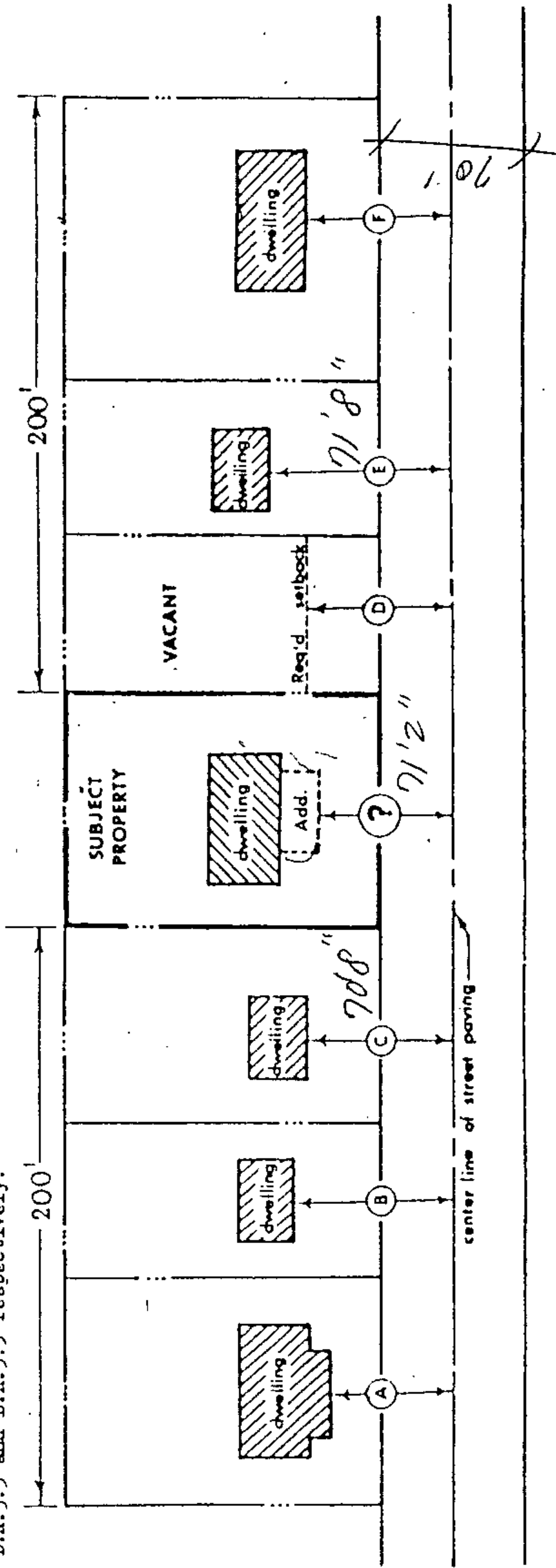
303.1 --In D.R.2, D.R.3.5 and D.R.5.5 Zones the front yard depth of any building or other structure hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side provided such adjoining lots are improved with principal buildings situate within 200 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 zones, 50 feet in D.R.3.5 zones and 40 feet in D.R.5.5 zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefrom in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 respectively.

A	_____ FT.
B	_____ FT.
C	70' 8" FT.
D	_____ FT.
E	71' 8" FT.
F	_____ FT.

$$\text{TOTAL (} 70' 8" \text{) } \div (2) = 71' 2" \\ 142' 4" \quad \# \text{ of dwellings (averaged)}$$

NORMAL REQUIRED SETBACKS
D.R.2 - 65 ft.
D.R.3.5- 55 ft.
D.R.5.5- 50 ft.

LEO W. DEAST
applicant's name
9328 SEVEN COUNTESS DR
building address
5/9/07
date



(4)

#07-509 A-







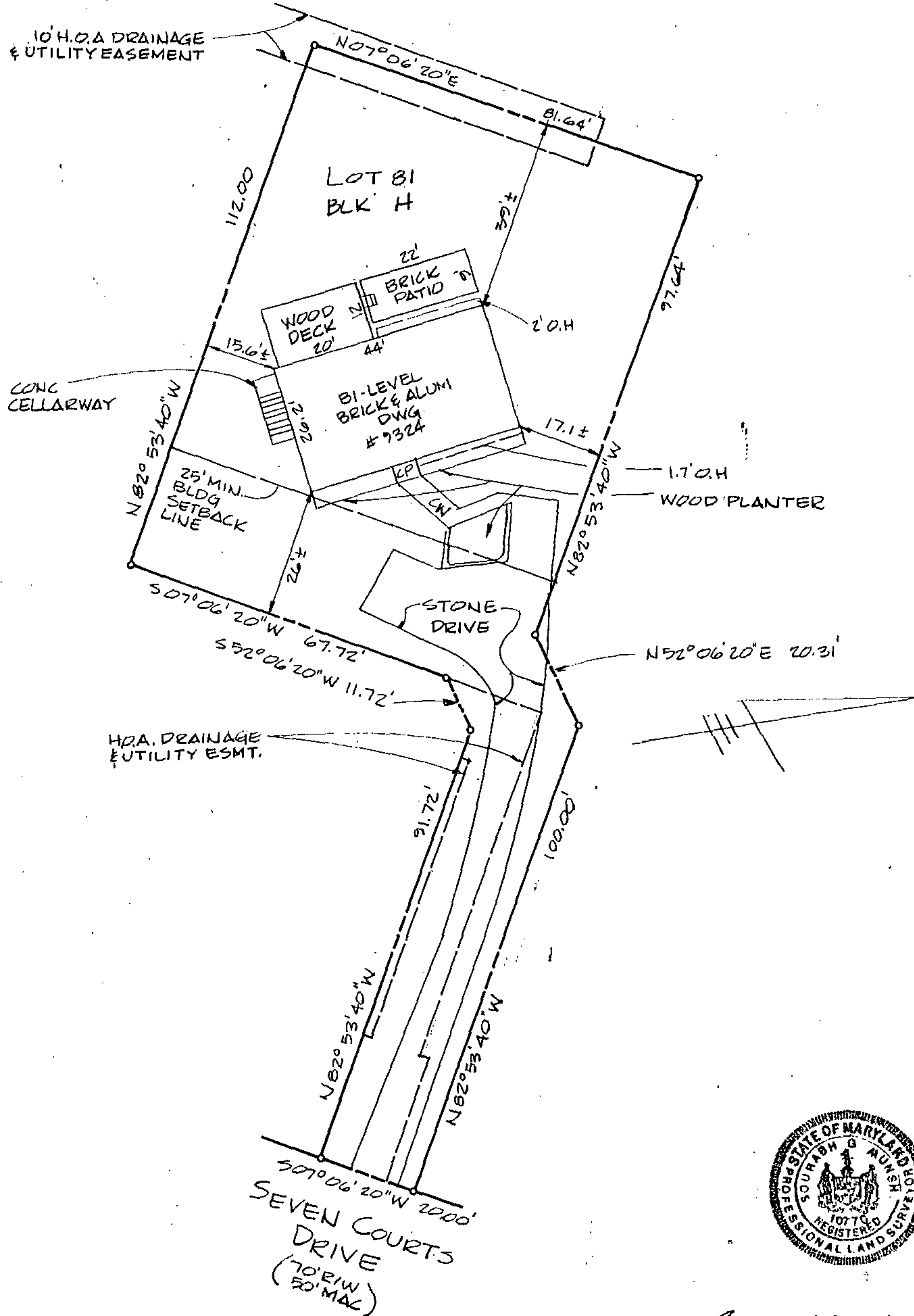
PA 11/7







10' H.O.A DRAINAGE
& UTILITY EASEMENT



Sarah Munn

This is to certify that the improvements indicated hereon are located as shown. This is not a property line survey and should not be used as such.

DON LYNCH ASSOC., INC.
4907 HARFORD ROAD
BALTIMORE, MD. 21214

Date: 11/30/92

Qm 2

Regulations, setting forth good and sufficient reasons for the requested postponement.
[Bill No. 50-2005]

- c. No postponement shall be granted within fifteen (15) days prior to the hearing date except in extraordinary circumstances and for a reason satisfactory to the board, given by the party requesting such postponement indicating that the circumstances requiring the postponement are of an unusual and ordinary nature.
- d. All records and dockets of the board shall be open to the public during normal business hours.
- e. In appeals from decisions of the zoning commissioner, formal notice of hearings, continuances and decisions of the board will be provided only to those persons entitled to receive same in accordance with section 500.11 of the Baltimore County Zoning Regulations.

Rule 3. Appeals.

- a. No appeal shall be entertained by the board of appeals unless the notice of appeal shall state the names and addresses of the persons taking such appeal.
- b. [Bill No. 50-2005]
 - 1. An appeal may be withdrawn or dismissed at any time prior to the conclusion of the hearing on said appeal.
 - 2. A request for withdrawal of a petition shall be filed in writing with the board. A petitioner who wishes to have a petition withdrawn and dismissed without prejudice shall withdraw the petition not less than 10 days before the scheduled hearing date. A petition that is withdrawn less than 10 days before the scheduled hearing date shall be dismissed with prejudice. A petition that is dismissed with prejudice under this paragraph may not be resubmitted for a period of 18 months after the dismissal.
- c. Unless otherwise provided for by statute, all appeals to the board of appeals, subject to and limited by statutory authority to hear appeals, shall be made within thirty (30) days from the date of the final action appealed. [Bill No. 141-1989]

Rule 4. Conduct of hearings.

- a. All hearings held by the county board of appeals shall be open to the public. No hearing shall be private even though all parties agree. The county board of appeals shall have the power to administer oaths, and all witnesses shall testify under oath.
- b. The chairman shall regulate the course of the hearing and shall rule upon procedural matters, applications, modifications and objections made during the course of the hearing, subject to the concurrence of a majority of the board conducting the hearing.
- c. A hearing may be adjourned from time to time for good cause shown and if the time and place of reconvening the hearing is announced at adjournment, no further notice of reconvening shall be required. If the time and place of reconvening is not



REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2840

September Term, 2006

TRINITY ASSEMBLY OF GOD
OF BALTIMORE CITY, INC.

v.

PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY, ET AL.

Eyler, Deborah S.,
Sharer,
Alpert, Paul E. (Ret'd, Specially
Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: February 6, 2008

3C060003734



The instant zoning dispute over a sign is approaching its sixth year in litigation. On September 9, 2002, Trinity Assembly of God of Baltimore City, Inc. ("the Church"), the appellant, filed a petition for variance with Baltimore County, seeking to vary the height and square footage limitations for a sign on its property ("Property"). The Deputy Zoning Commissioner took evidence and denied the petition. The Church appealed to the County Board of Appeals ("Board"), which held a *de novo* evidentiary hearing. It also denied the petition.

In the Circuit Court for Baltimore County, the Church brought an action for judicial review. The People's Counsel for Baltimore County ("the County") appeared as the respondent. The court upheld the final decision of the Board but remanded the matter for the Board to consider the application of 42 U.S.C. section 2000cc, *et seq.*, known as "The Religious Land Use and Institutionalized Persons Act" ("RLUIPA"). The Board did so, and again denied the petition. In a second action for judicial review, the circuit court affirmed the Board's final decision. We have before us now the Church's appeal from the judgment in that action. The County is the appellee in this Court.

The Church raises two questions for review, which we quote:

- I. Did the Board fail to apply the correct law of variances as to "uniqueness" and err in its determination that [the Church's] burden was not met?
- II. Did the Board err as a matter of law when it found that the proposed use constitutes religious exercise, but compelling interests exist which present no substantial burden on religious exercise? Was the Board's denial of the variances arbitrary and capricious since [the County] failed to support [its] objections with legally sufficient empirical data?

For the following reasons, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

The Property is comprised of 15 acres of land situated along side the inner loop of the Baltimore Beltway (Interstate 695), in the greater Towson area. Its address is 2122 West Joppa Road. It is in a low-density residential zone in which a church is a permitted use.

The Property is a rectangular parcel that is nestled at the intersection of the Beltway and West Joppa Road, which runs northeast across the Beltway, by overpass. Its westernmost short side is adjacent to the east side of West Joppa Road. Its northernmost long side is adjacent to a portion of the Beltway that is slightly east of Exit 23 (Interstate 83/Pikesville/Falls Road) and west of Exit 24 (Interstate 83). That particular segment of the Beltway actually is both I-695 and I-83. For a vehicle to travel from I-83 North inside the Beltway (the Jones Falls Expressway) to I-83 North outside the Beltway (Harrisburg Pike), the driver must traverse the eastbound segment of I-695 of which we speak.

Another church is located immediately across West Joppa Road from the Property; and yet a third church is located directly across the Beltway, also on the east side of West Joppa Road. There is a country club (also a permitted use in the zone) catty-corner to the Property, across the Beltway.

The Church currently has two signs visible from a highway. One is an identification sign measuring 36 square feet located at the Church's entryway on Joppa Road. The second is a double-sided sign that was erected when the original primary building was constructed

in 1980; its replacement is the subject of this appeal. It is situated at the northwest corner of the Property, facing west, toward oncoming traffic on the inner loop, which at that point in the Beltway is roughly eastbound. Much of the Property's border with the Beltway is walled off by 20- to 25-feet-high sound barriers that were erected by the County in the 1990's. The sound barriers end just to the east of the sign. The sign is made of wood, is 6 feet high by 4 feet wide, and is mounted on two 6 inch by 6 inch treated lumber supports. It identifies the Church as "Trinity" in large letters and "Assembly of God" in smaller letters. At night, the sign is illuminated by a ground-mounted light fixture.

Because of the configuration of the Beltway and the West Joppa Road overpass, a sign at that location only can be seen by travelers on the inner loop. Also, a sign at that location does not have directional value, *i.e.*, its location is not close enough to a Beltway exit from which the Church can be accessed to direct Beltway travelers to its site.

In its petition, the Church sought a variance from Baltimore County Zoning Regulation ("BCZR") section 450.4 Table of Sign Regulations ("450.4 Table"), to permit a single-faced, freestanding, illuminated identification sign of 250 square feet in area, *in lieu* of the allowed 25 square feet, and 25 feet in height, *in lieu* of the allowed 6 feet, with part of the sign being "changeable copy," operated electronically. The changeable copy segment of the proposed sign is designed to be in the middle area of the sign, approximately 5 feet high and 18 ½ feet wide.

The evidentiary hearing before the Deputy Zoning Commissioner took place on October 15, 2002. Witnesses in support of the petition were George Raduano, the pastor of the Church; Ellis Shapos and Robert Weaber, representatives of Visual Message and Display, Inc., the designer of the new sign; and counsel for the Church. Appearing in opposition to the petition were several residents of the surrounding community and Peggy Squitieri, a representative of the Ruxton/Riderwood/Lake Roland Area Improvement Association.

The Deputy Zoning Commissioner issued his memorandum opinion and order denying the variance request on October 23, 2002. He found as follows:

After considering the testimony and the evidence offered both in support and in opposition to the [Church's] request, I find that the variance request to permit the sign in question to be constructed on the [Church's] property should be denied. Of particular concern to me was the flashing message portion of the sign in question. The testimony offered at the hearing did demonstrate that the old sign is out-dated and is in need of replacement. However, the sign proposed to replace the old sign is not appropriate and cannot be approved.

The Church appealed to the Board, which, on July 17 and 29, and December 10, 2003, held a public evidentiary hearing. Appearing in favor of the requested variance were: 1) Pastor Raduano, who testified that the Church intended to use the proposed sign to post directions, community activities, scripture verse and other inspiring messages; 2) Mr. Shapos; 3) Dr. Robert James Claus, who was accepted as an expert witness on signs and the sign industry; and 4) William Monk, who was accepted as an expert in the Baltimore County zoning and development regulations. Appearing in opposition were 1) Jeffrey Long, of the Baltimore County Planning Office, who was accepted as an expert in planning; 2) George

Jensen, a resident of the general area of the Church; 3) Patricia Huffman, president of the Heatherfield Community Association; 4) Ms. Squitieri; 5) Randall Scott, an Assistant District Engineer for Traffic for the State Highway Administration ("SHA"), who testified among other things about concerns the SHA had about the erection of a blinking and flashing sign at that portion of the Beltway; 6) Jack Dillon, an expert in planning and zoning; and 7) Donald Gerding, a representative of the Greater Timonium Community Council. Numerous documents were admitted into evidence.

On July 2, 2004, the Board issued a 34-page opinion denying the petition for variance. The Board devoted 22 pages of its opinion to background and context information and summaries of the testimony of each witness. The Board then described the question before it:

It is to be noted that the proposed sign is for an institution [a church] which is permitted as a matter of right in the [Density Residential 2] zone. The only question is one of the present height limitations of 6 feet and an area limitation of 25 sq. ft. The Board is required to apply the law of variances as prescribed by Baltimore County Zoning Regulations (BCZR) § 307.1. That legislation requires the Board to grant variances from "height and area regulations, and from sign regulations only in cases where special circumstances exist that are peculiar to the land or structure which is the subject of the variance request, where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship . . . and any such variances 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 welfare."

The Board proceeded to discuss the particulars of the issue before it and to conclude:

1) the Property is not "unique" within the meaning of that term as explained in the relevant

zoning case law; 2) alternatively, there is no "practical difficulty" with respect to the Property; 3) the BCZR sign ordinance is not unconstitutional; and 4) the Board did not have jurisdiction to decide "the issue of whether or not [RLUIPA] applies to the instant case" because "it is not within [the Board's] jurisdiction to rule on the applicability of Federal statutes."

The Church filed its action for judicial review on July 22, 2004. The parties submitted memoranda of law and appeared before the court for oral argument.

On May 31, 2005, the court issued a "Judgment and Order" determining that the Board's factual findings that the Property was not "unique" and did not present "practical difficulties" were supported by substantial evidence in the agency record; and that the Board properly found, as a matter of law, that the section of the BCZR governing signs "do[es] not offend the freedom of speech, the freedom of exercise of religion, or freedom of assembly, guaranteed by the Constitution of the United States and the Maryland Declaration of Rights." The court decided, however, that it was within the power of the Board to consider and decide "the effect [RLUIPA] might have on the [Church's] request for a sign variance[.]" and remanded the matter to the Board for that purpose.

On remand, the Board heard oral argument from counsel representing the parties and conducted a public deliberation. On October 8, 2006, the Board issued its opinion on remand and found that the denial of a variance did not work a substantial burden on the Church's religious exercise, and, as such, did not violate RLUIPA in the enforcement of the County's

sign regulations. Alternatively, the Board found that denying the Church's variance request was the least restrictive means available to further the County's compelling interest in traffic safety and community aesthetics as reflected in the County's sign regulations. Accordingly, the Board again denied the variance petition.

The Church brought a second action for judicial review and the parties submitted memoranda and made oral arguments as before. On January 23, 2007, the court issued a "Ruling and Order" affirming the decision of the Board. The court stated:

[T]he record of proceedings before the [Board] contains substantial evidence in the agency record to support the Board's finding that "Baltimore County 'demonstrated a compelling interest in the passage of the sign ordinance which would reduce the number of distractions to motorists on the county's roads and highways and would reduce the clutter and excessive incompatible signage which had appeared throughout the County' . . . [and] 'that the passage of the sign regulation in Baltimore County'" . . . "is the least restrictive means of furthering that compelling government interest' Accordingly, the [Board] was correct in concluding that the denial of [the Church's] application for a sign variance was not a violation of [RLUIPA].

The Church noted a timely appeal to this Court. We shall include additional information as necessary to our discussion of the issues.

DISCUSSION

I.

The zoning regulations governing signs in Baltimore County can be found at BCZR section 450, *et seq.* By means of definitions and a table of regulations, that section controls the type, nature, size, and number of signs that may be erected on properties in Baltimore County. Two classes of sign are relevant to the case at bar: 1) "Changeable Copy," which

“mean[s] an on-premises sign displaying a message which may be changed periodically, manually, or by electric or electronic controls[,]” and 2) “Identification,” which “mean[s] a sign displaying the name or purpose of a place or structure.” BCZR 450.4 Table.

One changeable copy sign is allowed as an accessory to an “institutional structure,” which pursuant to section 450.3 includes a church. Such a sign may be wall-mounted or freestanding, may be illuminated, and may not exceed 25 square feet in area and 6 feet in height. It requires a use permit. BCZR 450.4 Table. Identification signs -- one for each frontage of the property -- also are allowed as an accessory to a church. They may be wall-mounted or freestanding, may be illuminated, may not exceed 25 square feet in area and 6 feet in height. They also require a use permit.

The authority to grant variances from zoning regulations, including from sign regulations, is conferred upon the Zoning Commissioner and the Board pursuant to BCZR 307.1. As pertinent to the issues in the case at bar, that regulation provides that,

the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations [exists] 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 [BCZR] would result in practical difficulty or unreasonable hardship. . . . [A]ny 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.

BCZR 307.1 (emphasis added).

In *Cromwell v. Ward*, 102 Md. App. 691 (1995), Judge Cathell, then a member of this Court, explained that the variance authority conferred by BCZR 307.1, like the variance authority conferred upon non-charter counties by Article 66B of the Maryland Code, implicates two issues: uniqueness and practical difficulty. *Id.* at 694-96. Specifically, the requirement that variances be granted only when “special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request” is a uniqueness criterion that must be satisfied -- even though the word “unique” is not used; and if that first criterion is met, practical difficulty or unreasonable hardship also must be shown.

Id. at 698-99. With respect to uniqueness, Judge Cathell further explained:

[T]he initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist.

Id. (emphasis in original). See also *Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43, 70 (2007) (stating that the uniqueness factor for obtaining a variance “requires a finding that the property whereon structures are to be placed (or uses conducted) is -- in and of itself -- unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property.”) (quoting *Cromwell*, *supra*, 102 Md. App. at 694-95).

In the case at bar, the Board found, in its initial opinion, that the Church did not satisfy the uniqueness criterion and on that ground alone would not be granted the requested variance from the height and area requirements of the sign regulations. The Board explained as follows:

The first requirement [for a variance] obviously imposed on the Board is to determine whether or not, as a finder of fact, uniqueness is present as to the land or structure. The "uniqueness" requires that "the subject property have an inherent characteristic not shared by other properties in the area." The Board as the finder of fact has no difficulty determining, from the testimony and the evidence submitted, that the subject property is not "unique" within the guidelines of *Cromwell*.

Unlike many variance request cases that come before the Board where very little is known about the subject property in question by the Board members, this case is unusual because all three panel members have considerable knowledge of the location of the [C]hurch, and that portion of the eastbound Baltimore Beltway that intersects with I-83, the Harrisburg Expressway. To that extent, Maryland law permits the Board members to bring into focus their own experiences with the roadway system and driving observations in the area.

All three member [sic] of this panel have viewed the sanctuary during daylight hours in the locale of the sound barriers and architectural style of the roof, and are aware of the dangers inherent in "weaving" and "merging" attempts in the area of the [C]hurch. All agree that motorists must be alert and cautious driving in the area and that the height and area face of the proposed sign would be a dangerous distraction to motorists driving eastbound in the direction of northbound I-83.

Irrespective of that factor is the overwhelming weight of evidence and testimony of participants in the hearing. The Board points significantly to the testimony of Mr. Jeffrey Long, who was accepted as an "expert planner." He adequately described the predominantly residential use of the neighborhood. As a planner familiar with the area, he did not consider the subject property to be unique. Other churches in the immediate area of Trinity also had identification problems, since their facilities are only partially visible from the Beltway – or not visible at all but were not requesting additional signage as evidence in this case. The Board credits Mr. Long's testimony.

The [C]hurch occupies approximately 15 acres with the original buildings constructed around 1980. The existing sanctuary was built around 1994, which is the building farthest from [West] Joppa Road. At the time the sound barrier was being constructed, the [Church] was able to work out an agreement with the State Highway Administration to provide a "break" in the barrier wall to provide a view of the [C]hurch from eastbound I-695. The fact that the church is located adjacent to the Beltway does not make it "unique," since, as Mr. Long opined, "there are many other uses with double frontage to their properties, and in no way unique given its topography." Based on his experience as an area planner, Mr. Long did not believe it had any topographical or geographical characteristics that would make it unique.

There exists many miles of similar type sound barriers along the many miles of the Beltway, along with brush, shrubbery or tree plantings by the SHA to provide visual relief from the driving experience. In other words, being adjacent to the Beltway does not, in and of itself, constitute uniqueness. The testimony of the Protestants herein also could not confirm any uniqueness of the property.

The testimony of Pastor Raduano did not reflect any particular uniqueness to the property, but rather dealt with the [C]hurch's position relative to a need for large signage as opposed to conditions constituting "uniqueness." In fact, the Pastor acknowledged that, while he resided in Eldersburg, and drove the Beltway on a weekly basis, he "could not recall a single institution along the Beltway that had a digital sign of the size or nature that was being proposed." Similarly, Mr. Ellis Shapos, the designer of the proposed sign, in his testimony . . . does not specifically reference the question of "uniqueness" – but rather concentrated on the need for the signage as an identification factor.

Dr. Claus was accepted as an expert in signage and traffic safety. His testimony focused on traffic and safety issues. He admitted that he had only spent "probably five hours in preparing the case, other than travel," hardly sufficient time to consider all local aspects of the case. There is nothing tangible in his testimony concerning any unique aspects of the subject property.

* * * *

Frankly, the Board was not impressed with the testimony of [Dr. Claus]. [He] dealt in generalities and not specifics.

* * * *

The Board was also not totally impressed with Mr. Monk's analysis of why he considered the property unique. His analysis was that there were "several unique site considerations here, some of which did not exist at the first variance hearing years ago, which created a unique set of circumstances which drove, in part, the positioning, the size, and the height of the subject sign. . . ."

The Board in its analysis of the case and examination of the drawings does not consider that the bushes, the chain fence, the evergreens[,] or the barrier wall create "uniqueness" that are [sic] commonly found in many areas of the Beltway

In summary, as to the uniqueness issue, the burden is on [the Church] to prove that fact by the evidence and testimony presented at the hearings. The Board concludes that the [Church] has failed to meet its burden and the requested variance must be denied on the basis of that fact alone.

(Citations to the record omitted.)

In this appeal, the Church contends that "the Board failed to apply the correct law of variances as to 'uniqueness'" and that, if the Board did not so err, it nevertheless erred in ruling as a matter of fact that the Church did not meet its burden to show "uniqueness" of the Property. As we shall explain, we disagree with both prongs of this contention.

On the question whether the Board applied the correct variance law as to "uniqueness," the Church argues as follows:

While the Board addressed whether there was uniqueness present as to the land or structure, it failed to correctly state the law as to the definition of uniqueness. The Board defined "uniqueness" as "special circumstances that exist that are peculiar to the land or structure," but omitted the second part of the definition, which focuses on the disproportionate impact that the zoning provision has on the property.

In *Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996), this Court wrote:

"A variance may only be granted after a two-step inquiry. First the zoning authority must determine whether the subject property is unique and unusual in a manner different from the

nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to have a disproportionate impact on the property. *Cromwell v. Ward*, [*supra*, 102 Md. App. at 721]. If such a finding is made the zoning authority must then determine whether an unreasonable hardship results from the disproportionate impact of the ordinance. . . .

Brief of Church at 10 (emphasis in Brief). Thus, the Church maintains, on the authority of *Umerley, supra*, that “uniqueness” in variance law requires proof *not only* that the subject property is unusual in a manner different from the nature of the surrounding properties *but also* that the uniqueness causes the zoning regulation sought to be varied to disproportionately affect the subject property; but that the Board in this case overlooked the latter part of the uniqueness definition.

The Board did not misperceive the meaning of the uniqueness concept embodied in BCZR section 307.1. First, the *Umerley* case, decided by this Court less than a year after *Cromwell v. Ward*, did not establish a new or expanded definition of uniqueness. In *Umerley*, owners of property in Baltimore County northeast of Baltimore City, in a light industrial zone, operated it as a trucking facility, even though it did not conform to the zoning regulations for such a facility. In an effort to obtain approval of that use, they petitioned for a special exception and a number of area and use variances. The Zoning Commissioner and then the Board denied their requests, and the Board’s decision was affirmed on circuit court judicial review.

This Court likewise affirmed. In doing so, we explained that, to obtain a variance, the applicant must show uniqueness and practical difficulty. Citing *Cromwell*, we described the uniqueness criterion to mean that “the subject property is unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to have a disproportionate impact on the property.” 108 Md. App. at 50 (citing *Cromwell, supra*, at 721). We held that the property’s having been used for many years as a trucking facility, contrary to the zoning regulations, did not make it unique for variance purposes.

Second, even if we take the definition of “uniqueness” as explained in *Umerley* to be the most complete and accurate, in that it explains that the uniqueness not only must exist but also must be such as to cause the zoning to have a different impact on the property than on other properties, it is plain that a predicate finding of uniqueness must be made before one inquires whether the uniqueness causes the zoning to have a disparate impact on the property compared to other properties, and here, the Board decided that no predicate finding of uniqueness was proven. Thus, the Board did not misunderstand the legal standard for “uniqueness” in Baltimore County zoning law. It properly understood that its first task in deciding the variance request was to determine whether the subject property is unique; and, as it acknowledged, its finding that the Property is not unique was in and of itself sufficient to deny the variance request.

As noted above, the Church also takes issue with the Board's factual finding that the Property is not unique. It argues that the Board "focused solely on the physical attributes of the property, such as the bushes, chain fence, evergreens, and barrier wall," and

ignored whether the interplay of these factors with the practical limitations imposed by the abutting properties, including the Federal Highway Administration and industry standards for signs, and the law protecting land use for religious exercise causes the requirements imposed by the sign regulations to have disproportionate impact upon the [Church's] property.

Our standard of appellate review of an administrative agency's factual findings is highly deferential. We shall uphold any factual finding by the agency for which there is substantial evidence in the agency record -- that is, that a reasoning mind reasonably could find from the evidence before it. *See Schwartz v. Maryland Department of Natural Resources*, 385 Md. 534, 554 (2005) ("The agency's determination of factual issues will be upheld if the record of the agency proceeding affords a substantial basis of fact from which the issue can be reasonably inferred.").

The Board's finding that the Property is not unique is supported by substantial evidence in the record. As noted above, Jeffrey Long, of the Baltimore County Planning Office, was accepted as an expert witness in planning on behalf of the County. He opined that the fact that the Church is located adjacent to the Beltway does not make it unique, in and of itself, as there are miles and miles of properties bordering the Beltway and having similar sound barriers blocking them and making them only partially visible from the Beltway. Moreover, in the Church's neighborhood, there are other churches that either

border the Beltway or are partially visible from it (including two in the Church's immediate vicinity). Mr. Long further opined that neither the Property's double frontage nor any of its natural physical features render it unique within the meaning of BCZR section 307.1.

The Board credited Mr. Long's testimony and rejected the testimony of Dr. Claus (who the Board observed offered "nothing tangible . . . concerning any unique aspects of the subject [P]roperty") and Mr. Monk (of whom the Board said it was "not totally impressed with [his] analysis of why he considered the [P]roperty unique"). Mr. Long's expert opinions constituted substantial evidence of non-uniqueness to support the Board's finding that the Property was not unique.¹

II.

On remand from the circuit court, the Board considered whether its denial of the variance request violated section 2000cc of RLUIPA, and concluded that it did not.

RLUIPA provides, in pertinent part:

No government shall impose or implement a land use regulation in a manner that imposes a *substantial burden* on the religious exercise of a person, including a religious assembly or institution, unless the government

¹As explained above in our discussion of variance law, to obtain a variance an applicant must show uniqueness *and* practical difficulty. The Board here found that neither was shown. The Protestants' first Question Presented appears only to challenge the Board's finding on the uniqueness issue. If their argument in fact were so limited, we would not need to address the issue of uniqueness as we would affirm the denial on the unchallenged practical difficulty issue. The Protestants indeed have challenged the Board's finding of no practical difficulty, however, in their argument for Question I. Accordingly, we have addressed and decided the uniqueness issue; and, having decided in favor of the Board on that issue, we need not address practical difficulty.

demonstrates that imposition of the burden on that person, assembly or institution (A) is in furtherance of a compelling government interest; and (B) is the least restrictive means of furthering that compelling governmental interest. This subsection applies in any case in which . . . the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

42 U.S.C. § 2000cc(a)(1), (2)(c) (emphasis added). RLUIPA section 2000cc protects the religious exercise of individuals and institutions from “substantial burden[s]” in the context of land use, while section 2000cc-1 protects the religious exercise of institutionalized persons, using the same “substantial burden” standard.

In its opinion, the Board cited to the Seventh Circuit’s discussion of “substantial burden” in *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 760 (7th Cir. 2003) (“*CLUB*”), *cert. denied*, 541 U.S. 1096 (2004), and proceeded to find as follows:

[The Church] is not prevented from using [its] property for its permitted purpose nor do such zoning restrictions as to height or area regulations render conformity with such restrictions as unnecessarily burdensome. The position presented by [the Church] is really one of “desire” or “want” rather than one of “need.” Lack of such a requested sign does not place anymore[sic] of a substantial burden on [the Church’s] exercise of religion than it does on any business to advertise its product.

The Church challenges the Board’s decision, arguing that, “[w]hile the Board quoted a passage of law regarding the ‘substantial burden’ standard, it did not correctly find and apply the appropriate standard as to what constitutes a ‘substantial burden’ when one is

required to change one's religious activity to conform to the requirements of the code."² The County responds that the Board correctly defined and applied the "substantial burden" test under RLUIPA.

As stated in section I of this discussion, we defer to an administrative agency's findings of fact but review *de novo* its interpretation of the law. *See Schwartz, supra*, 385 Md. at 180 ("... it is always within our prerogative to determine whether an agency's conclusions of law are correct, and to remedy them if wrong").

Enacted in 2000, RLUIPA is the successor to the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb *et seq.*, enacted in 1994 and then declared partially unconstitutional. *See City of Boerne v. Flores*, 521 U.S. 507, 536 (1997). RLUIPA is "narrower in scope [than RFRA], in that it applies only to governmental actions affecting land use and institutionalized persons, and establishes several jurisdictional limitations not included in RFRA." *Mintz v. Roman Catholic Bishop of Springfield*, 424 F. Supp.2d 309, 317 (D. Mass. 2006) (quoting *Regulating Historic Religious Properties Under RLUIPA* (NTHP Preservation Law Reporter Education Materials, 2005), SL014 ALI-ABA 719, 722

²The Board also found that, even if the Church had proven that the denial worked a "substantial burden" on its religious exercise, the County established that the variance denial was the least restrictive means of furthering the County's compelling interest in traffic safety and community aesthetics through sign regulation enforcement. The Church objects to this finding as well, arguing that "the Board misconstrued the compelling interest test, incorrectly applied it, and failed to shift the burden to [the County] requiring them [sic] to properly prove a compelling interest for denying the variance." Because of our disposition of the "substantial burden" issue, we need not address the Church's compelling interest / least restrictive means contention.

(Nov. 2005)). Congress intended, through RLUIPA, to mandate a “more searching standard of review of free exercise burdens than the standard used in parallel constitutional claims: strict scrutiny instead of reasonableness.” *Lovelace v. Lee*, 472 F.3d 174, 186 (4th Cir. 2006) (internal quotation omitted). However, for a court to conduct the strict scrutiny evaluation under RLUIPA of the government decision at issue, “a plaintiff must first demonstrate that the regulation at issue actually imposes a substantial burden on religious exercise.” *CLUB*, 342 F.3d at 760; *see* RLUIPA § 2000cc-2(b)).

RLUIPA defines “religious exercise” as “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” § 2000cc-5(7)(A). Further, “[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.” § 2000cc-5(7)(B). Although First Amendment jurisprudence has limited “religious exercise” to the actual practice of religious beliefs “fundamental” to the person’s faith, most judicial interpretations of “religious exercise” as used in RLUIPA have given the term a wider meaning. *See CLUB, supra*, 342 F.3d at 760 (definition of “religious exercise” in RLUIPA’s text “reveals Congress’s intent to expand the concept of religious exercise contemplated” in First Amendment cases). Various courts have interpreted “religious exercise” to encompass any use of land having some religious purpose, including the construction of parish centers, religious day schools, and even a socializing hall used for a religiously affiliated group on a college campus. *Mintz, supra*, 424 F. Supp. 2d 309 (parish

center); *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338 (2nd Cir. 2007) (religious day school); *Episcopal Student Foundation v. City of Ann Arbor*, 341 F. Supp. 2d 691 (E.D. Mich. 2004) (socializing hall for religious group).

RLUIPA does not define “substantial burden,” but a number of federal circuits, including the Fourth Circuit, have articulated generally consistent meanings of the phrase, both in the context of land use regulations (section 2000cc) and institutionalized persons (section 2000cc-1). Addressing a challenge brought under RLUIPA’s institutionalized person provision, the Fourth Circuit, noting that the Supreme Court has defined the term “substantial burden” in the context of the Free Exercise Clause, concluded that the meaning of “substantial burden” in RLUIPA is substantially the same: namely, “for RLUIPA purposes, a substantial burden on religious exercise occurs when a state or local government, through act or omission, ‘*put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs.*’” *Lovelace, supra*, 472 F.3d at 187 (quoting *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 718 (1981)) (emphasis added).³

No Maryland appellate court has had occasion to determine the meaning of “substantial burden” or “religious exercise” in the RLUIPA land use context. A number of

³Legislative history confirms the Fourth Circuit’s assertion that the term “substantial burden” should be interpreted by reference to First Amendment jurisprudence. See 146 CONG. REC. 7774-01, 7776 (“The term ‘substantial burden’ as used in this Act is not intended to be given any broader interpretation than the Supreme Court’s articulation of the concept of substantial burden or religious exercise”).

federal circuit courts have done so, however, and have articulated definitions of “substantial burden” similar to those used in the RLUIPA institutionalized persons context.

In *CLUB*, for instance, the Chicago zoning law made churches permitted uses on land zoned residential but special permit uses in other zones. The plaintiff-churches argued that the special use permit requirement combined with the scarcity of affordable, residentially zoned property effectively prohibited them from finding suitable relocation properties in Chicago. The Seventh Circuit defined “substantial burden” under RLUIPA as “one that necessarily bears direct primary, and fundamental responsibility rendering religious exercise - including the use of real property for the purpose thereof within the regulated jurisdiction - effectively impracticable.” 342 F.3d at 761. The court concluded that, although the zoning regulations made congregation relocations more difficult and expensive, they did not make it “impracticable” for a church to purchase property for development as a church; in fact, all of the plaintiff-churches had found and developed suitable property within the Chicago city limits, even if those locations were not the most desirable or suitable to the individual congregation’s needs. *Id.* at 761-62. *See also Vision Church, United Methodist v. Village of Long Grove*, 468 F.3d 975, 999 (7th Cir. 2006) (holding that village’s approval of church’s special use permit for new sanctuary construction with restrictions on future building and church activity limitations during the week imposed “no more than incidental burdens on the exercise of religion”), *rehearing and rehearing en banc denied*, January 10, 2007, *cert. denied*, 128 S. Ct. 77 (2007).

In *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1225-28 (11th Cir. 2004), the Eleventh Circuit rejected a RLUIPA challenge by two synagogues to a city zoning ordinance that restricted churches and synagogues to “RD-1” zoned properties. The synagogues argued that their Orthodox Jewish faith required their congregants to walk to weekly services, and that limiting the possible building sites for a new synagogue to the RD-1 zone locations would “greatly burden” many young and elderly congregants who would have difficulty walking from their homes to any available property in the RD-1 zone. The court held that the ordinance did not effect a “substantial burden” on the plaintiff-synagogues because, to be substantial, a burden

must place more than an inconvenience on religious exercise; a ‘substantial burden’ is akin to significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly. Thus, a substantial burden can result from pressure that tends to force adherents to forego religious precepts or from pressure that mandates religious conduct.

366 F.3d at 1227. The court concluded that, “[w]hile we certainly sympathize with those congregants who endure Floridian heat and humidity to walk to services, the burden of walking a few extra blocks, made greater by Mother Nature’s occasional incorrigibility, is not ‘substantial’ within the meaning of RLUIPA.” *Id.* at 1228. See also *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1035 (9th Cir. 2004) (finding no substantial burden when city zoning laws “may have rendered [the] [c]ollege unable to provide education and/or worship at the Property, [but] there is no evidence in the record demonstrating that [c]ollege was precluded from using other sites within the city” for such

purpose); *Lighthouse Institute for Evangelism, Inc. v. City of Long Branch*, 406 F. Supp. 2d 507, 515-16 (D. N.J. 2005) (city ordinances prohibiting use of property as church within redevelopment zone did not impose substantial burden when suitable alternative venues were available in 90% of the rest of the city, and presence of church within zone would most likely not contribute to redevelopment), *rev'd on other grounds*, ____ F.3d ____, No. 061319, slip op. (3rd Cir. Nov. 27, 2007). *Cf. Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005) (when a city's conditional use permit procedure involved inconsistency, delay, and expense amounting to bad faith and resulting in a negative outcome for a church's planned use of purchased property, the city's denial of the church's permit application was a substantial burden), *rehearing and rehearing en banc denied*, March 7, 2005.

In the case at bar, the Church's intended use of the sign for which it sought area variances -- to inspire its congregants and passers-by and to recruit eastbound travelers on I-695 -- is a form of "religious exercise" protected by RLUIPA. As discussed previously, Congress intended a broad definition of "religious exercise" to encompass any use of land for a religious purpose. Evangelism of this sort qualifies as a religious purpose. We hold, however, that the Church's religious exercise was not "substantially burdened" by the Board's denial of its variance requests. The variance denial did not compel the Church to modify the behavior of its congregants so as would "violate [their] beliefs." *Lovelace, supra*, 472 F.3d

at 187. Nor can we say that the variance denial rendered “effectively impracticable” the Church’s use of a sign as a means to inspire its congregation and recruit new members.

As the cases discussed above make clear, in determining whether a zoning regulation imposes a “substantial burden” on religious exercise, it is important to consider whether there are effective alternatives to the denied proposed use. Here, the Church has multiple alternative means to preach to and inspire sought-after-members other than by use of a sign that is significantly larger than what the zoning regulations allow. The existing sign that faces I-695 is visible to the passing public and, while not as highly noticeable as the Church would like, serves the same purpose, just to a lesser degree.⁴

As a “regional” congregation that draws members from the greater Baltimore County area, even into Pennsylvania, the Church could spread its word and recruit members by means of commercial billboards and signs, as would a business seeking to advertise its product. For-rent billboards and signs can serve the same function as the Church seeks for its proposed replacement sign. Although having to rent a sign might be more expensive and less convenient for the Church in its religious exercise, it does not compel members of the congregation to violate or modify or forego their religious beliefs or precepts. *See Lovelace*, 472 F.3d at 187 (citing *Thomas, supra*, 450 U.S. at 717-18 and *Sherbert v. Verner*, 374 U.S. 398, 404 (1963)).

⁴In addition, the Church has another sign on its Property frontage facing West Joppa Road that it could develop further under BCZR 450.4 -- including by adding electronically changeable type to communicate inspirational messages.

In this case, there is no implication of bad faith on the part of the Board due to needless delay and expense in the variance consideration, as was present in *Sts. Constantine and Helen Greek Orthodox Church*, 396 F.3d at 901. And, for the reasons discussed in section I, the variance denial was not "so utterly groundless as to create an inference of religious discrimination" as RLUIPA was meant to combat. *Petra Presbyterian Church v. Village of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007), *cert. denied*, ___ U.S. ___, 2008 WL 59852 (January 7, 2008). Instead, the Board merely required that the Church be governed by the same land use regulations as any other institution or business with property abutting I-695.

In sum, the Church has not been denied *any* use of a sign as a means of evangelism, but only the non-conforming use of a sign that cannot be as large and eye-catching as the Church might desire. Denial of its variance request burdens the Church's religious exercise, but not substantially, so as to make any use of a sign for uplift and recruitment "effectively impracticable" or to compel the congregants to "violate [their religious] beliefs." The Board properly interpreted the "substantial burden" standard in RLUIPA; and, on the record before it, did not err in concluding that the Church did not meet that standard.

**JUDGMENT AFFIRMED. COSTS TO BE
PAID BY THE APPELLANT.**

RECEIVED

FEB - 7 2008

NOLAN, PLUMHOFF &
WILLIAMS, CHTD.

Verified
3-06-08

CASE 07-509-A

PROTESTANT'S EXHIBITS

- ✓ 1. deed to 9328 Seven Courts drive.
- ✓ 2. Plat to accompany the petition.
- ✓ 3. Plat to accompany the petition with blue line markings.
- ✓ 4. Plat showing the proposed garage flush with the house.
- ✓ 5. Building Permit.
- ✓ 6. Deputy Zoning Commissioner's Order dated 6/28/07.
- ✓ 7. deed to 9324 Seven Courts drive - Mrs. Phillips property.
- ✓ 8. A-C Photos of Mr. Alton's property.
- ✓ 9. A-C Photos from Mrs. Phillips' house to the street.
- ✓ 10. A-C Photos of houses along Seven Courts drive.
- ✓ 11. A-C Photos of houses with garages.
- ✓ 12. Reduced scale of plat of Pine Lake Woods.
- ✓ 13. Reduced scale of plat of Pine Lake Woods marking Alton and Phillips properties.
- ✓ 14. Enlargement of Exhibits 12 and 13.
- ✓ 15. Plat of Pine Lake Woods showing Proctor Lane & Seven Courts drive.

CASE 07-509-A

PROTESTANT'S EXHIBITS

16. Section 307 BCZR.

17. Photo of 9328 Sever County Drive with red line of garage

18. Same as No. 17 - Closer shot

19. Same as No. 17

20. Same as No. 17

WHEN RECORDED RETURN TO:

File # 3840-06-03007

Leo W. Drost and Dennis S. Drost
9328 Seven Courts Drive
Nottingham, MD 21236

Parcel ID#-#
(None)

THIS DEED, Made this 19th day of June, 2006, by and between Carlo Donofrio, III and Beverly A. Donofrio (also known as Beverly Ann Donofrio), parties of the first part, Grantors, and Leo W. Drost and Dennis S. Drost, parties of the second part, Grantees.

WITNESSETH, that in consideration of the sum of Three Hundred Thirty-Six Thousand and 00/100 DOLLARS (\$336,000.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, the said parties of the first part do grant and convey unto the said parties of the second part, as joint tenants, and not as tenants in common, their assigns, the survivor of them, and the heirs, Personal Representatives and assigns of the survivor, in fee simple, all that lot or parcel of ground situate in **Baltimore County**, State of Maryland, and described as follows:

BEING KNOWN AND DESIGNATED as Lot No. 85 in Block H, as shown on the Plat entitled "Resubdivision of Plat IV, Section II, Pinedale Woods", which plat is recorded among the Land Records of Baltimore County in Plat Book EHK, Jr., No. 49, folio 38. The improvements thereon being known as No. 9328 Seven Courts Drive.

BEING the same property which by Deed dated August 20, 1997 and recorded among the Land Records of Baltimore County in Liber No. 12344, folio 432, was granted and conveyed by Donald E. Clark and Joan M. Clark unto Carlo Donofrio, III and Beverly A. Donofrio (also known as Beverly Ann Donofrio), the Grantors herein.

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

TO HAVE AND TO HOLD the said lots of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said parties of the second part, as joint tenants, and not as tenants in common, their assigns, the survivor of them, and the heirs, Personal Representatives and assigns of the survivor, in fee simple.

AND the said parties of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite.

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

Carol Ann Wildesen
Carol Ann Wildesen, Attorney

CBA
PRO.
II,

CERTIFICATE OF EXEMPTION FROM WITHHOLDING
Upon Disposition of Maryland Real Property

AFFIDAVIT OF RESIDENCE OR PRINCIPAL RESIDENCE

TRANSFEROR CLAIMS EXEMPTION, based on the certifications below, from the tax withholding requirements of the Annotated Code of Maryland, Tax General Article, Section 10-912 which requires that tax payments are required to be withheld when a deed or other instrument is recorded and affects a change of ownership. The requirements of withholding DO NOT apply when a transferor of real property executes a certification of Maryland residence OR a certification that the property transferred is the principal residence of the transferor.

A.

TRANSFEROR INFORMATION

NAME OF TRANSFEROR:

Beverly A. Donofrio

B.

REASON FOR EXEMPTION

RESIDENT STATUS

☒ I, the Transferor, am a resident of the State of Maryland.

☐ Transferor is a resident entity under Section 10-912(A)(4) of the Tax General Article of the Annotated Code of Maryland, I am an agent of the Transferor, and I have the authority to sign this document on behalf of the Transferor.

**PRINCIPAL
RESIDENCE**

☐ Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in the Internal Revenue Code, Section 121.

The undersigned transferor, under the penalties of perjury, certifies that I have examined this declaration and to the best of my knowledge, that it is true, correct and complete.

C.

INDIVIDUAL TRANSFEROR

Man 3 MSA
 Witness

Beverly A. Donofrio
 Name (Printed)

Beverly A. Donofrio
 Signature

D.

ENTITY TRANSFEROR

 Witness/Attest

 Name of Entity (Printed)

By: _____
 Name

 Title

NRT File No. 3840-06-03007

Property: 9328 Seven Courts Drive, Nottingham, MD 21236

CERTIFICATE OF EXEMPTION FROM WITHHOLDING
Upon Disposition of Maryland Real Property

AFFIDAVIT OF RESIDENCE OR PRINCIPAL RESIDENCE

TRANSFEROR CLAIMS EXEMPTION, based on the certifications below, from the tax withholding requirements of the Annotated Code of Maryland, Tax General Article, Section 10-912 which requires that tax payments are required to be withheld when a deed or other instrument is recorded and affects a change of ownership. The requirements of withholding DO NOT apply when a transferor of real property executes a certification of Maryland residence OR a certification that the property transferred is the principal residence of the transferor.

A.

TRANSFEROR INFORMATION

NAME OF TRANSFEROR:

Carlo Donofrio, III

B.

REASON FOR EXEMPTION

RESIDENT STATUS

☒ I, the Transferor, am a resident of the State of Maryland.

☐ Transferor is a resident entity under Section 10-912(A)(4) of the Tax General Article of the Annotated Code of Maryland, I am an agent of the Transferor, and I have the authority to sign this document on behalf of the Transferor.

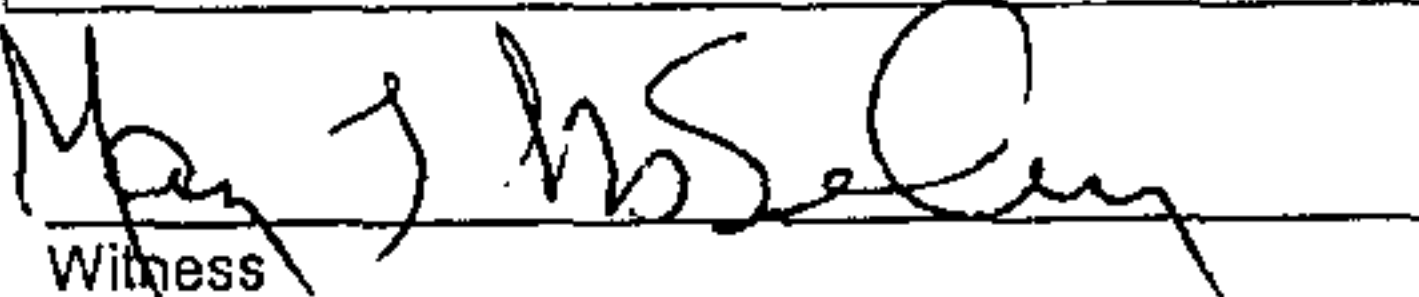
**PRINCIPAL
RESIDENCE**

☐ Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in the Internal Revenue Code, Section 121 and recorded as such with the State Department of Assessments & Taxation.

The undersigned transferor, under the penalties of perjury, certifies that I have examined this declaration and to the best of my knowledge, that it is true, correct and complete.

C.

INDIVIDUAL TRANSFEROR


 Witness


 Name (Printed)


 Signature

D.

ENTITY TRANSFEROR

 Witness/Attest

 Name of Entity (Printed)

By: _____
 Name

 Title

NRT File No. 3840-06-03007

Property: 9328 Seven Courts Drive, Nottingham, MD 21236

PRINCIPAL RESIDENCE AFFIDAVIT

Leo W. Drost and Dennis S. Drost, Grantee(s) in the within Deed from Carlo Donofrio, III and Beverly A. Donofrio, as Grantor(s), hereby certify under the penalties of perjury, that the land conveyed in said deed is residentially improved owner-occupied real property and that the residence will be occupied by us.

Leo W. Drost

Leo W. Drost, Grantee

Dennis S. Drost

Dennis S. Drost, Grantee

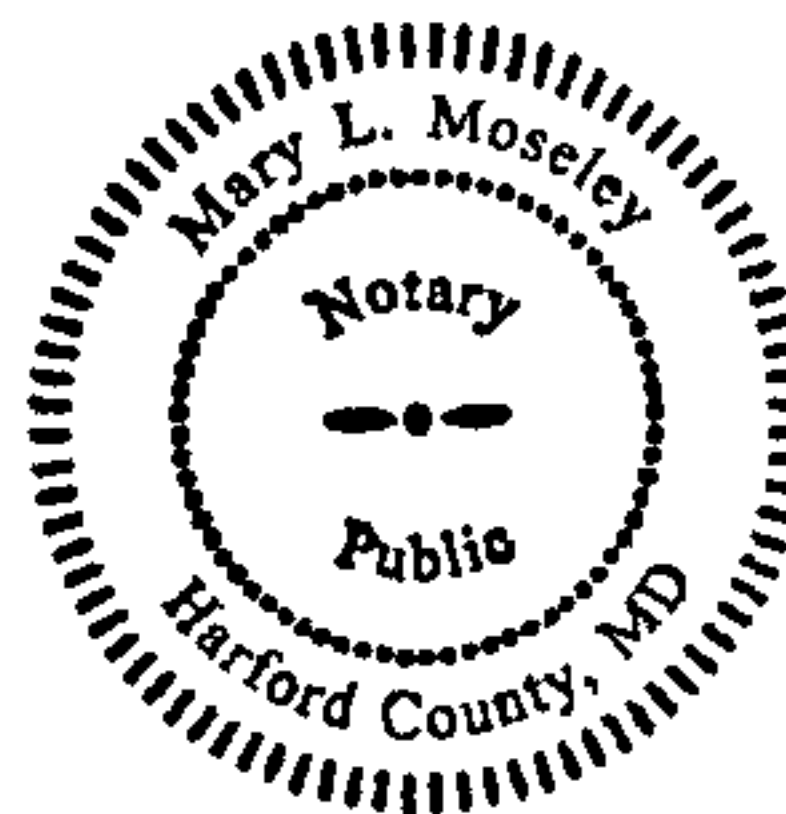
STATE OF MARYLAND, CITY/COUNTY of Baltimore, to wit:

I HEREBY CERTIFY, That on this 19th day of June, 2006, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared **Leo W. Drost and Dennis S. Drost**, the within Grantee(s), and they acknowledged the foregoing instrument to be their act.

AS WITNESS my hand and Notarial Seal.

Mary L. Moseley
Notary Public

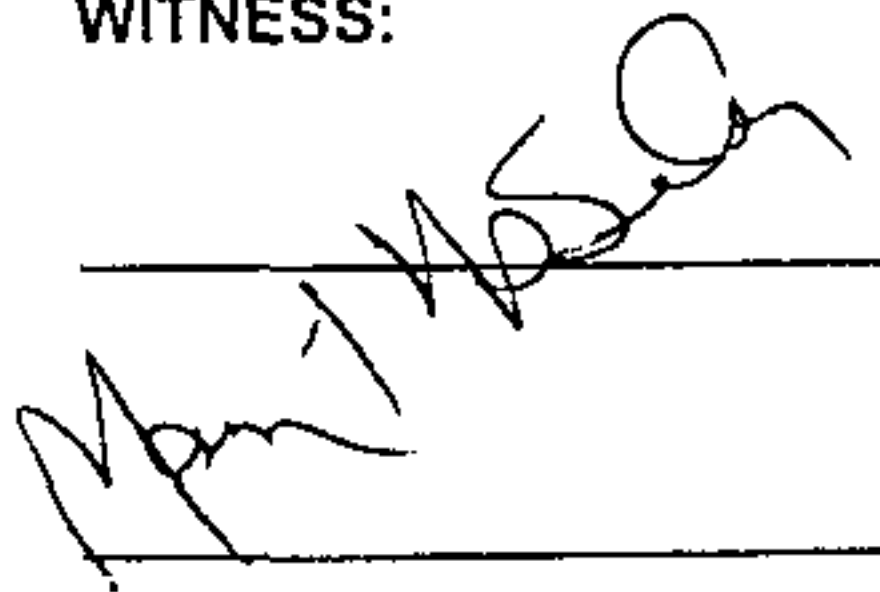
My Commission Expires: 8/1/09

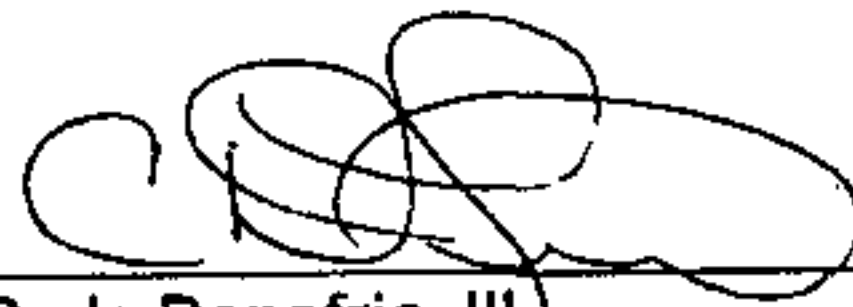


9328 Seven Courts Drive

WITNESS the hands and seals of the within Grantors.

WITNESS:



 (SEAL)
Carlo Donofrio, III

 (SEAL)
Beverly A. Donofrio, also known as
Beverly Ann Donofrio

STATE OF MARYLAND, CITY/COUNTY OF Baltimore, to wit:

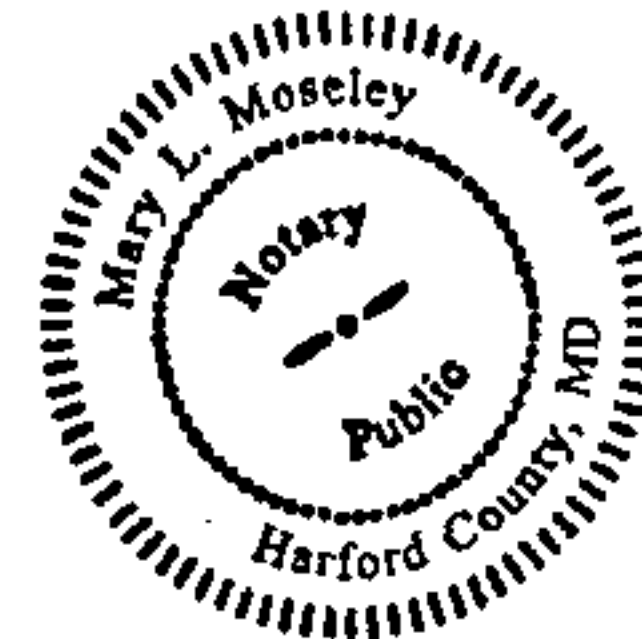
I HEREBY CERTIFY, That on this 19th day of June, 2006, before me, the subscriber, a Notary Public of the State and jurisdiction aforesaid, personally appeared **Carlo Donofrio, III and Beverly A. Donofrio, also known as Beverly Ann Donofrio**, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within Deed, who signed the same in my presence, and acknowledged that they executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.


Notary Public

My Commission Expires: 8/1/09

Prepared by:
NRT Mid-Atlantic Title Services, LLC
11350 McCormick Road, Suite 200
Executive Plaza III
Hunt Valley, MD 21031
410-252-1208
File #3840-06-03007



State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore County

0024037 416

Information provided is for use of the Clerk's Office, State Department of Assessments and Taxation and County Finance Office only.
(Type or Print in Black Ink Only - All Copies Must Be Legible)

1	Type(s) of Instruments	☐ Check Box if Addendum Intake Form is Attached																																																																																																																			
		1 Deed ☐ Mortgage ☐ Other ☐ Other																																																																																																																			
		☐ Deed of Trust ☐ Lease ☐																																																																																																																			
2	Conveyance Type Check Box	☒ Improved Sale ☐ Unimproved Sale ☐ Multiple Accounts ☐ Not an Arms-Length Sale																																																																																																																			
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DUPLICATE PAID RECEIPT

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

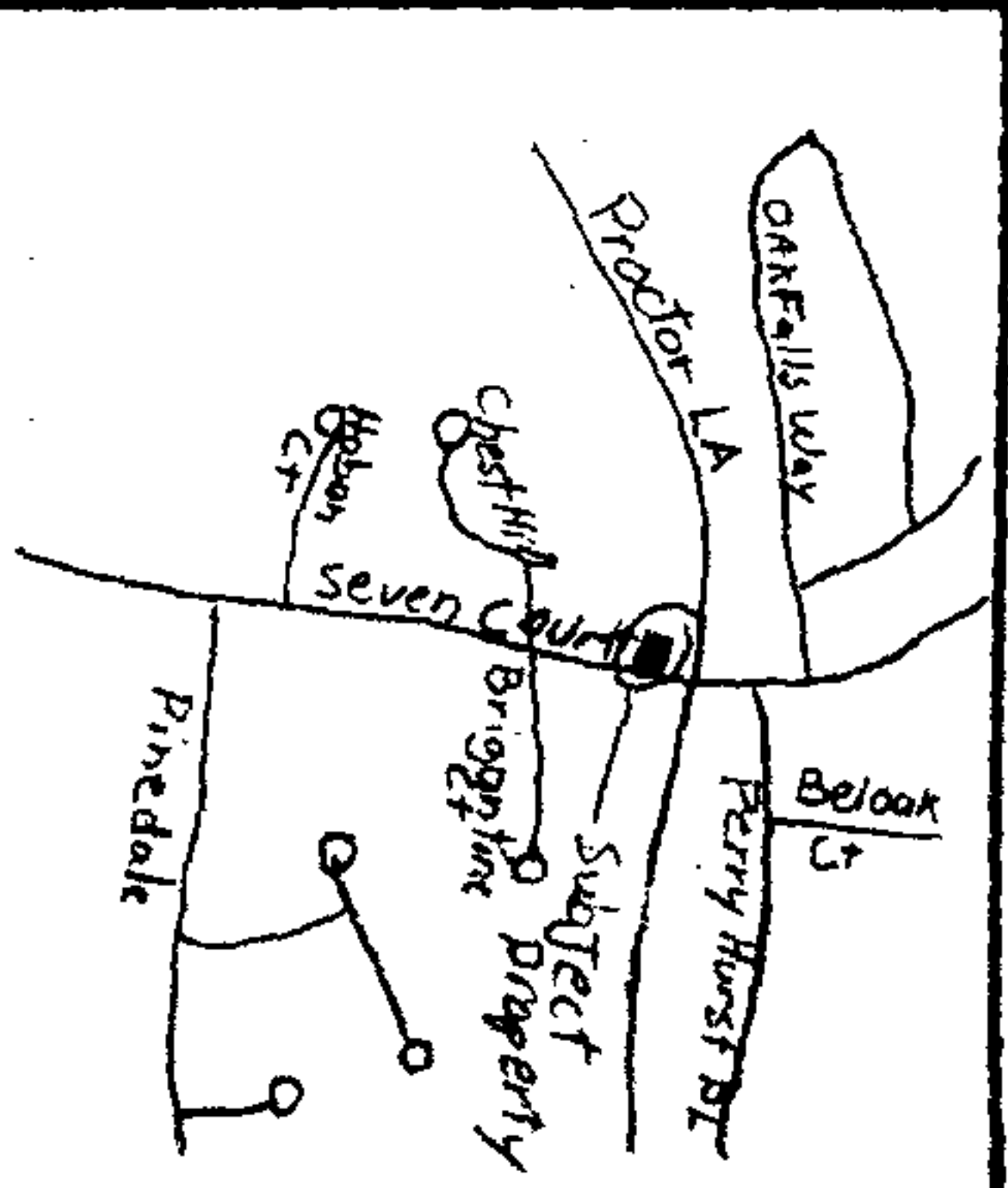
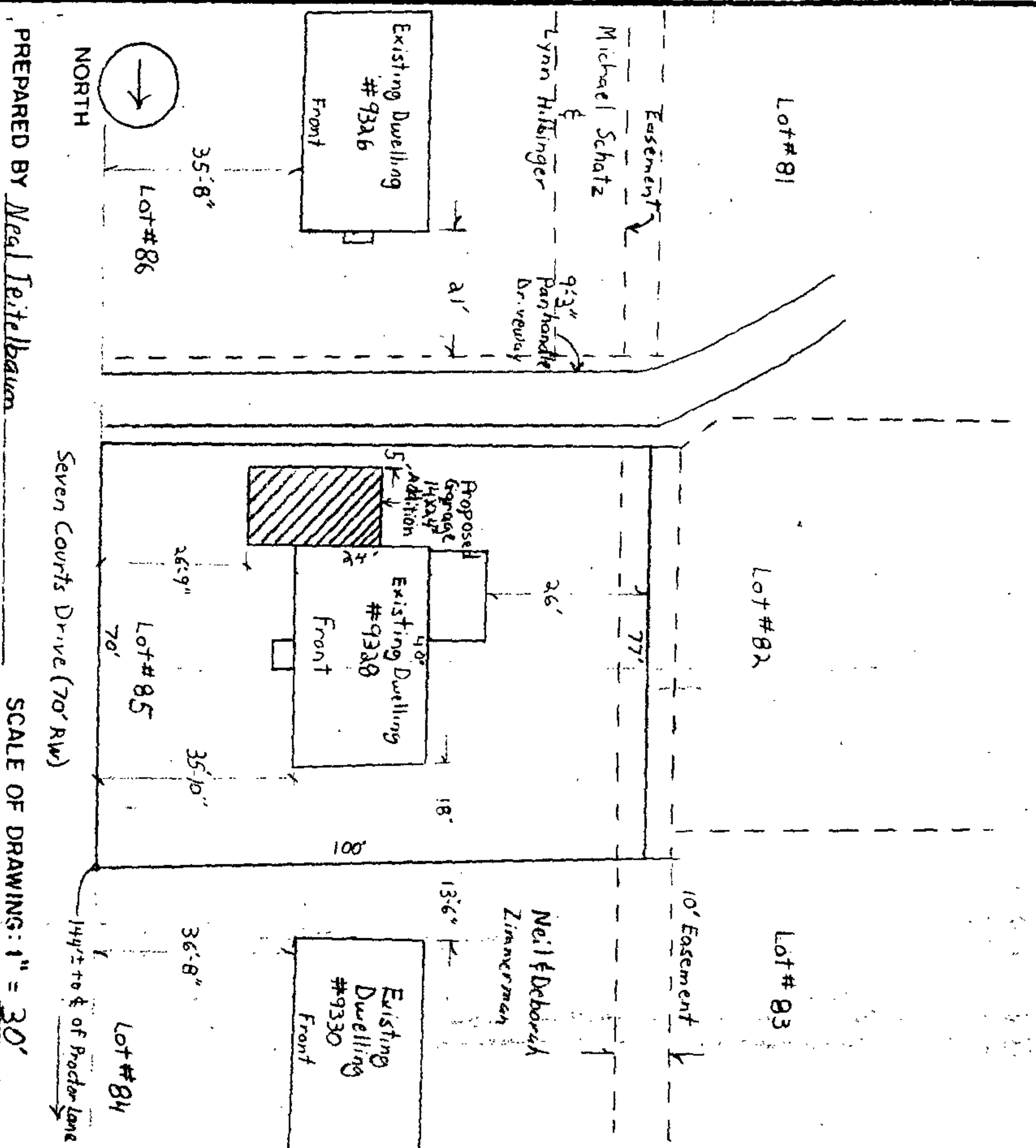
PROPERTY ADDRESS 9328 Seven Courts Drive

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME Pinedale Woods

PLAT BOOK # 49 FOLIO # 38 LOT # 85 SECTION # 2

OWNER Drost, Leo W. + Dennis S.



LOCATION INFORMATION

ELECTION DISTRICT 11

COUNCILMANIC DISTRICT 5TH

1" = 200' SCALE MAP # 07241

ZONING DR 3.5

LOT SIZE 1718 ACRES 7484 SQUARE FEET

PUBLIC PRIVATE

SEWER ☒

WATER ☒

CHESAPEAKE BAY CRITICAL AREA ☐ YES ☒ NO

100 YEAR FLOOD PLAIN ☐ YES ☒ NO

HISTORIC PROPERTY / BUILDING ☐ YES ☒ NO

PRIOR ZONING HEARING None

ZONING OFFICE USE ONLY

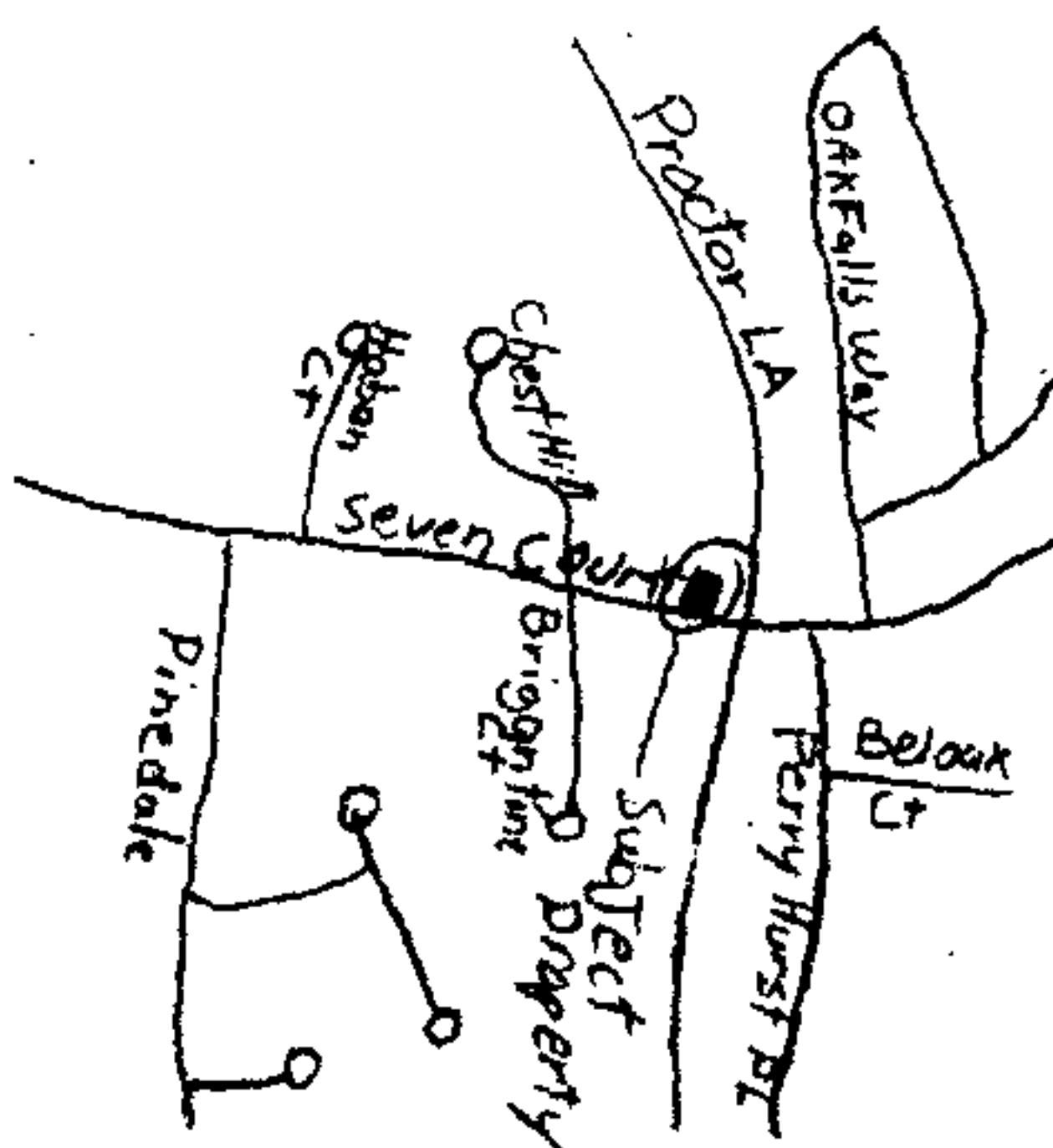
REVIEWED BY A. TSC ITEM # 509 CASE # 09-509A

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II 2

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME Pine Dale Woods

PLAT BOOK # 49 FOLIO # 38 LOT # 85 SECTION # 2
OWNER Drost, Leo W. + Dennis S.



VICINITY MAP
SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT 11

COUNCILMANIC DISTRICT 5TH

1"=200' SCALE MAP # 072A1

ZONING DR 3.5

LOT SIZE .1718 7484

[illegible]

PUBLIC PRIVATE

SEWER ☒ 17

WATER ☒ ☐

CHESAPEAKE BAY
CRITICAL AREA

100 YEAR FLOOD PLAIN ☐ ☒

HISTORIC PROPERTY/
BUILDING ☐ ☒

PRIOR ZONING HEARING *None*

ZONING OFFICE USE ONLY
REVIEWED BY ITEM # CASE #

A. Tsai 509 pg-509A

13A
P/20.
#3

10667741

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

PROPERTY ADDRESS 9328 Seven Courts Drive SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME Pinedale Woods

PLAT BOOK # 49 FOLIO # 38 LOT # 85 SECTION # 2

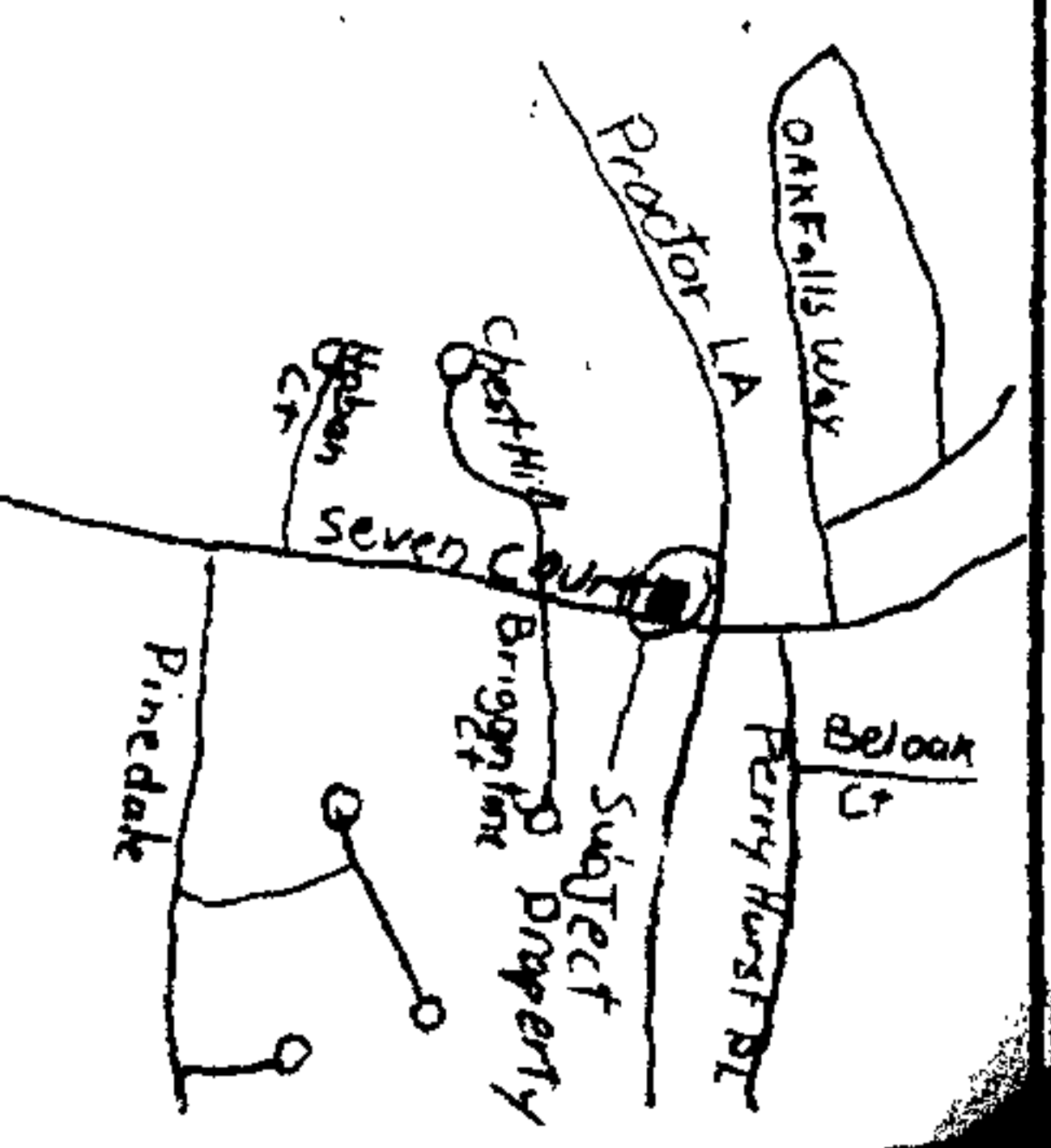
OWNER Drost, Leo W. + Dennis S.

Block 947

Sheet 11



VICINITY MAP
SCALE: 1" = 1000'



LOCATION INFORMATION

ELECTION DISTRICT 11

COUNCILMANIC DISTRICT 5th

1" = 200' SCALE MAP # 072A1

ZONING DR 3.5

LOT SIZE .1718 ACRES 7484 SQUARE FEET

SEWER ☒ PUBLIC ☐ PRIVATE

WATER ☒ ☐

CHESAPEAKE BAY CRITICAL AREA ☐ YES ☒ NO

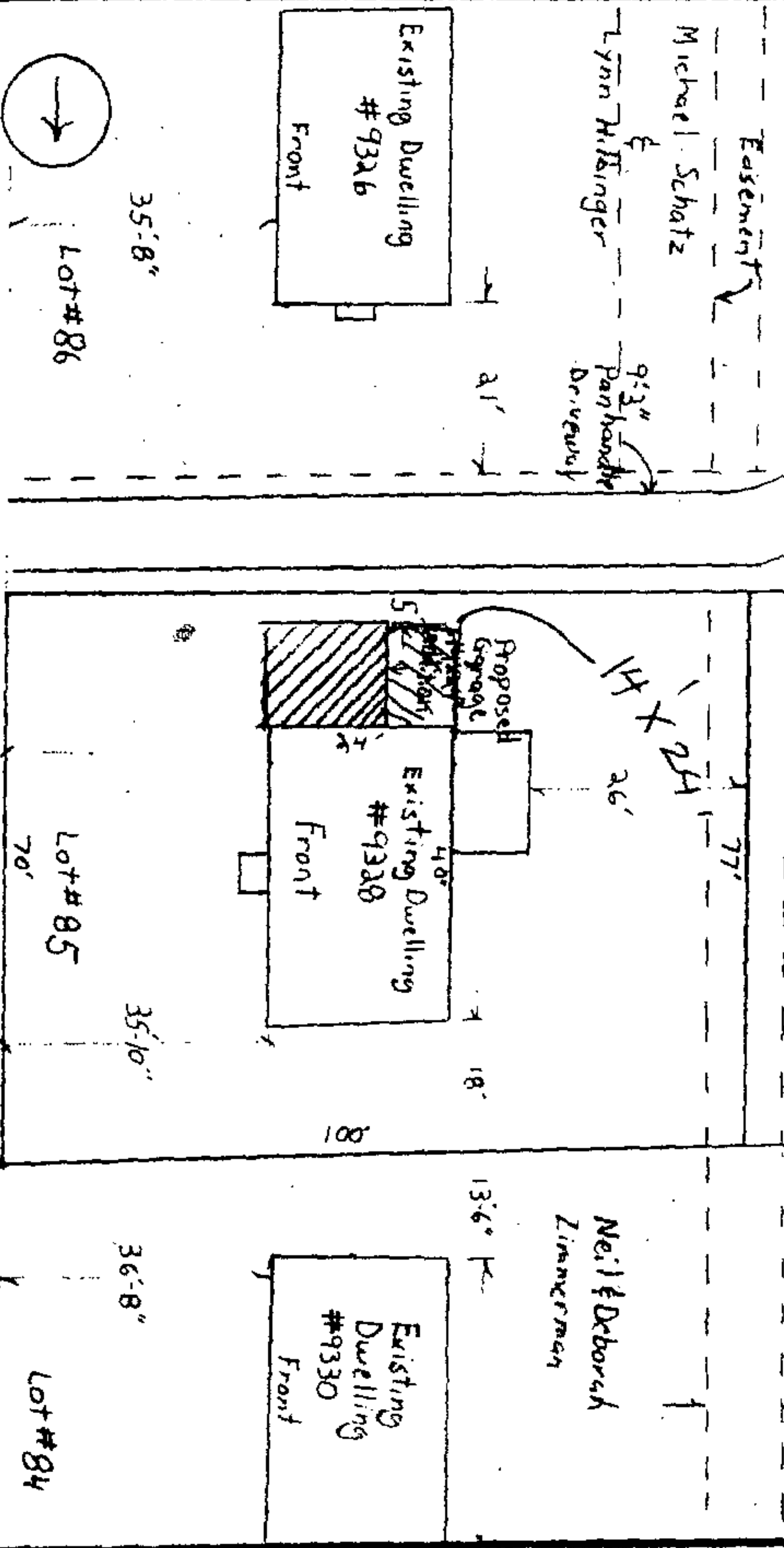
100 YEAR FLOOD PLAIN ☐ ☒

HISTORIC PROPERTY / BUILDING ☐ ☒

PRIOR ZONING HEARING None

ZONING OFFICE USE ONLY
REVIEWED BY ITEM # CASE #

A. Tschir 509 07-509A



SCALE OF DRAWING: 1" = 30'

PREPARED BY Neal Teitelbaum

*CPBA
PLe.
100-4*

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT



TIMOTHY M. KOTROCO, Director



DONALD E. BRAND, Buildings Engineer

BUILDING PERMIT

PERMIT #: B669747 CONTROL #: MR DIST: 11 PREC: 01
DATE ISSUED: 07/10/2007 TAX ACCOUNT #: 1900006930 CLASS: 04

PLANS: CONST 0 PLOT 2 R PLAT 0 DATA 0 ELEC YES PLUM NO
LOCATION: 9328 SEVEN COURTS DR
SUBDIVISION: PINEDALE WOODS

OWNERS INFORMATION

NAME: DROST, LEO

ADDR: 9328 SEVEN COURTS DR, NOTTINGHAM MD 21236

TENANT:

CONTR: NLT CONSTRUCTION

ENGR:

SELLR:

WORK: CONSTRUCT ONE CAR GARAGE ON SIDE OF EX SFD
14X24X12=336SF. PER ZONING CASE 07-509-A
APPEAL PERIOD TO END 7/28/2007

BLDG. CODE:

RESIDENTIAL CATEGORY: DETACHED

OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: SFD WITH GARAGE

EXISTING USE: SFD

TYPE OF IMPRV: ADDITION

USE: ONE FAMILY

FOUNDATION:

SEWAGE: PUBLIC EXIST

BASEMENT:

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 7484SF

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: 5'/NC

SIDE STR SETB:

REAR SETB: NC

CBA

PRO.

No. 5

11R INSPECTOR COPY

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

IN RE: PETITION FOR ADMIN. VARIANCE * BEFORE THE
W side of Seven Courts Drive, 144 feet *
S of the c/l of Proctor Lane * DEPUTY ZONING COMMISSIONER
11th Election District *
5th Councilmanic District * OF BALTIMORE COUNTY
(9328 Seven Courts Drive) *
Leo W. and Dennis Drost *
Petitioners * CASE NO. 07-509-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, Leo W. and Dennis Drost for property located at 9328 Seven Courts Drive. The variance request is from Sections 1B02.3.C.1 and 303 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an addition (proposed attached garage) on side and front of existing dwelling with a 5 foot side setback with a sum of 23 feet and a 26 foot, 9 inch front setback in lieu of the required 10 feet side setback with a sum of 25 feet, and the required 36 foot, 2 inch front average setback. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1.

The Petitioners having filed a Petition for Administrative Variance, the subject property was posted on May 16, 2007.

Formal Demand for Public Hearing

On May 21, 2007, Betty J. Phillips, residing at 9324 Seven Courts Drive, filed a formal demand for public hearing. The hearing was subsequently scheduled for June 26, 2007, at 11:00 am in Room 407, County Courts Building, 401 Bosley Avenue, Towson, MD.

The property was posted with Notice of the Public Hearing on June 12, 2007 for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief and

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#6

time and date of the public hearing. In addition, a Notice of Zoning for the public hearing was published in "The Jeffersonian" newspaper on June 12, 2007 to notify any interested persons of the scheduled hearing date and relief requested.

Zoning Advisory Committee

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights. ZAC comments were received from the Office of Planning dated May 22, 2007. That Office's main concern is architectural compatibility with the existing dwelling as well as immediately surrounding dwellings. The dwelling was sited on the lot in such a manner that it may not be conducive for a front-loaded garage that protrudes beyond the front façade. It is in the Planning Office's opinion that the design scenario would undermine architectural goals that Planning is trying to achieve on dwellings located within the URDL. That Office has met with the Petitioner and contractor to discuss the matter. The Petitioner has agreed to submit a revised site plan and reorient the proposed attached garage so that it aligns with the front façade of the existing single family detached dwelling. Provided the Petitioners submit a site plan showing the proposed garage that aligns with the front façade of the existing single family detached dwelling, the Office of Planning will support the associated relief. A copy of the comment is incorporated herein and made a part hereof of the file.

Interested Persons

Appearing in support of the Petition was Leo W. Drost, Petitioner. Appearing in opposition to the request was Betty J. Phillips.

Testimony and Evidence

The subject property contains 7,484 square feet zoned DR 3.5 and is improved by the Petitioners' single family dwelling. The Petitioners would like to build a 14 foot x 24 foot

garage addition as shown in Petitioner's Exhibit 1. The Petitioner indicated that he was aware of the Planning Office comment requesting the garage be pulled back to be flush with the front of the house as shown on Petitioner's Exhibit 2. However he indicated that this would require him to cover his two basement windows which he uses for ventilation of the basement, would require him to pave another 8 feet of driveway, increase the cost of his roof for the addition, and lose the expense of all ready ordered fencing. Finally this would eliminate the front yard setback variance. However because of the added costs, he requested the garage be as shown on Petitioner's Exhibit 1 in which the garage projects into the front yard.

He indicated that he needed the garage to provide out of the weather storage for vehicles and direct access to his house. Not only does the Petitioner have health and mobility problems, but his brother and co-owner of the property is handicapped. In addition the Petitioner's elderly parents visit the Petitioners regularly with the assistance of walkers. All this leads to his need for fewest steps possible from the garage to the house which he indicated will occur with the chosen location for his garage.

In regard to the side yard setback, he indicated that the proposed garage is 14 feet wide, that this is a standard width and that he cannot practically reduce the width by 5 feet and still park a vehicle in the garage. He noted that he has a chimney for a fireplace on this side of the house which also reduces the usable space to park in the garage. See Petitioner's Exhibit 3.

He indicated that all his immediate neighbors save Ms. Phillips approve of the garage as shown by Petitioner's Exhibit 4. He noted that Ms. Phillips house does not look directly at his house but is set back behind the house next door.

Ms. Phillips objected to granting the variance indicating the garage will devalue her home, and the request fails to meet legal standards for variances. She indicated she has health

concerns for herself, that her home is set back behind the houses fronting on Seven Courts Drive and so is not readily visible from the road at present. See protestant's Exhibit 2. This is a particular concern when emergency vehicles need to find her home. If the garage is built, her home would not be seen from the street. See protestant's photograph 1A through 1C.

Finally she doubted the Petitioner suffered from disabilities given the hard work he performs in the yard and opined that the Petitioner should have bought a house with a garage if he wanted one. She indicated the Petitioner could build the garage on the other side of his home and not block her view of the street.

The Petitioner indicated that if he built the garage on the other side of the house, the entrance to the house would be through his bedroom and not the kitchen which the present plan affords. He denied that the garage would block the view of her home from the street but agreed that moving the garage back so as to be flush with the front of the house if that would satisfy Ms. Phillips. In response Ms. Phillips indicate she still objected to the garage.

Findings of Fact and Conclusions of Law

Looking at the protestant's photographs, it is clear to me that if the Petitioner moved the garage back flush with the front of his house, the view of Ms Phillips' house from the street would be much easier than if the garage were built out front as proposed. In addition if flush with the front, this would satisfy the Planning Office comments who expressed concern that extending the garage into the front would undermine the architectural goals. Said another way the Planning Office is concerned that the garage would become the dominant feature of the house which is contrary to the residential performance standards of Section 260.6 B of the BCZR. I am cognizant of the extra cost to the Petitioner but on balance I find that this arrangement is best for the Petitioner, Ms. Phillips and the community.

Considering all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Therefore I find the property unique in a zoning sense.

I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. The Petitioner would not be able to have a garage out of weather for storage and access to his home.

Finally, I find this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. The neighbors on four side do not object to the garage and moving the garage back flush with the house will lessen Ms. Phillips' concern about being able to see her home from the street.

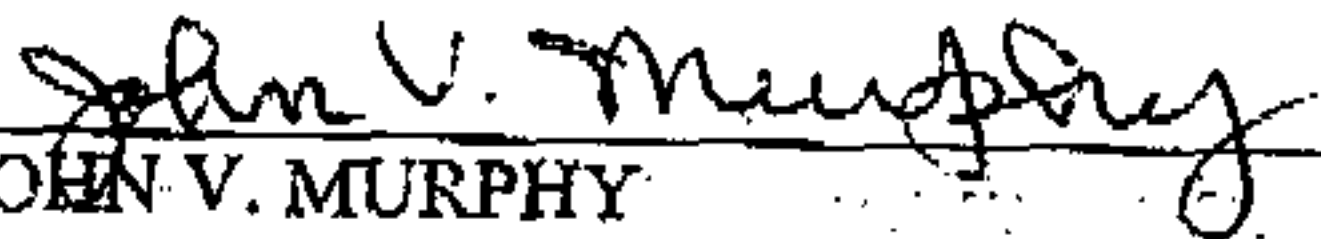
Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' variance request should be granted in part and denied in part.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 28th day of June, 2007, that an administrative variance from Sections 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an addition (proposed attached garage) on side of existing dwelling with a 5 foot side setback and with a sum of 23 feet in lieu of the required 10 feet side setback with a sum of 25 feet, be and is hereby GRANTED subject to the following:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

IT IS FURTHER ORDERED that the Petitioner's request for variance from Section 303 of the BCZR for a 26 foot, 9 inch front setback in lieu of the required 36 foot, 2 inch front average setback 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
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

THIS DEED, made this 3rd day of November, 1992, by and between DANIEL V. REILLY AND RITA M. REILLY, his wife, Grantors, of the State of Maryland, of the first part, and BETTY JANE PHILLIPS, of the State of Maryland, Grantee, of the second part.

WITNESSETH, that in consideration of the sum of ONE HUNDRED TWENTY-FOUR THOUSAND DOLLARS (\$124,000.00) and other valuable consideration, the receipt whereof is hereby acknowledged, the said parties of the first part do grant and convey unto the said Betty Jane Phillips, Grantee, for and during the term of said grantee's natural life with powers and subject to the limitations and conditions hereinafter expressed, all that lot of ground situate in Baltimore County, State of Maryland, and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot No. 81, Block H, as shown on the Plat entitled, "Resubdivision of Plat IV, Section II, Pinedale Woods," which Plat is recorded among the Land Records of Baltimore County in Plat Book EHK, Jr. No. 49, folio 38. The improvements thereon being known as 9324 Seven Courts Drive.

BEING the same property which by deed dated September 25th, 1984 and recorded among the Land Records of Baltimore County, in Liber No. 6796 Folio 525, was granted and conveyed by Sperl Construction Co., Inc. unto the grantors herein named, in fee simple

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

TO HAVE AND TO HOLD the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said grantee, for and during the term of said grantee's natural life, with the full power unto said grantee to sell, lease, mortgage, convey or otherwise dispose (except by Last Will and Testament) of the whole and entire estate in the said property at any time said grantee may deem expedient, without the

SA CIRCUIT COURT (LIBER 9729, p. 0547). Printed 02/26/2008. Online 03/09/2008.
AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE 24 DATE 4/27/93 20 - 0

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

24 4/27/93

EXHIBIT

PR 65

7

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purchasers, mortgagees, lessees, or other persons taking title from said grantee, being required to see to the application of the purchase or mortgage money, or the consideration paid for the disposal of said property, and with the further power in the said grantee to delegate the power to exercise the powers herein given to said grantee by the execution of a Power of Attorney; it being also the intention of these presents that the exercise by the said grantee or said grantee's duly appointed Attorney-in-Fact, of the powers hereinbefore enumerated and granted unto said grantee, when and as exercised, shall operate upon and there shall pass thereunder unto the grantees, mortgagees, lessees, or other persons taking title, not only the life estate hereby created, but also the interest and estate in the remainder, hereinafter mentioned and hereby created; and immediately upon the death of the said grantee, without having disposed of said property in the exercise of the powers aforesaid, or as to so much of the same as may remain unto the use of Anthony William Phillips, his personal representatives and assigns, in fee simple.

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

WITNESS the hand and seal of the said grantor.

TEST:

Paul R. Cyach
PAUL R. CYACH

as to both

Daniel V. Reilly
Daniel V. Reilly (SEAL)

Rita M. Reilly
Rita M. Reilly (SEAL)

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this 20th day of November, 1992, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Daniel V. Reilly and Rita M. Reilly, his wife, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who signed same in my presence, and acknowledged that the instrument has been executed for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Paul R. Cvach
 PAUL R. CVACH
 Notary Public
 BALTIMORE COUNTY, MD.

My Commission Expires: 8/30/97

This is to certify that the foregoing instrument was prepared under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Paul R. Cvach
 Paul R. Cvach

Betty Jane Phillips, Grantee, in the within deed hereby certifies under the penalties of perjury, that the land conveyed in said Deed is residentially improved owner-occupied real property and that the residence will be occupied by me.

Betty Jane Phillips
 Betty Jane Phillips

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this 30th day of November, 1992, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Betty Jane Phillips, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who signed same in my presence, and acknowledged that the instrument has been executed for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Consideration 128,000.00
STAMPS 620.00
ST T.T. 475.00
LOCAL T.T. 1984.00

Paul R. Cvach
 Notary Public

PAUL R. CVACH

PAUL R. CVACH
 Notary Public
 BALTIMORE COUNTY, MD.

My Commission Expires 8/30/97

004763 APR 27 8

Baltimore County, Maryland
Land Instrument Intake Sheet

(Type or print in black ink only—all copies must be legible)

In compliance with Baltimore County Code, 1978, Title 33, Taxation, Article III, §§3-126 through 33-140, as amended, and the Annotated Code of Maryland, Tax-Property Article, §12-101 through 12-113, as amended, and Tax-Property Article, §13-101 through 13-108, as amended, it is certified that an instrument of writing dated 11/3/92 conveying title to, or creating liens or encumbrances upon, real or personal property is offered for record in the County. The property conveyed, or on which a lien or encumbrance is created, is identified as follows:

1	Description of Property (Check box(es) for item(s) to be indexed in land records)	Property Tax ID No. <u>19-00-006926</u> Subdivision/Tract <u>Pineale Woods</u> Street Address (or description if partial conveyance) <u>9324 Seven Corners Drive</u> Baltimore, MD 21236	☐ Lot/Block <u>81/00H</u> ☐ Lot Acreage <u>6.796/525</u>	Map/Grid/Parcel No. <u>Sec 2 Plat 4</u> Prior Deed Ref. <u>6796/525</u> Y&B L.O.O. ☐	Space Reserved for Circuit Court Clerk Recording Validation	
2	Transferred From	Grantor(s) (check box if additional sheets are attached) <u>Daniel V. Reilly</u> <u>Rita M. Reilly</u> Owner of record (if different from grantor)				D RC/F 15.00
3	Transferred To	Grantee(s) (check box if additional sheets are attached) <u>Betty Jane Phillips</u>				DC IMP 5.00 D T TX 470.00 D DOCS 620.00
4	Type of Instrument	☒ Deed ☒ Deed of Trust ☐ Mortgage ☐ Lease	Assignment of Mtg/DOT ☐ Contract ☐ Land Installment Cont. ☐ Power of Attorney ☐	Financing Statement ☐ Other (Specify) ☐		DEED 0 H SM CLERK 1110.00 #79732 C002 R02 T15:09 04/27/93
5	Exemptions (Cite authority or explain briefly)	Baltimore County Exempt Status Claimed: Recordation Tax Exempt Status Claimed: State Exempt Status Claimed:				
6	Consideration and Tax Calculations Make check payable to Baltimore County, MD (410) 887-2418	Consideration Amount <u>124,000.00</u> Purchase Price/Consideration (including any new mortgage) <u>\$ 124,000.00</u> Real Property <u>124,000.00</u> Personal Property <u>—</u> Balance of Assumed Mortgage <u>—</u> Other <u>—</u> Total Consideration or Assessed Factor <u>\$ 124,000.00</u>	County Taxes to be Paid Transfer Tax Consideration <u>\$ 124,000.00 x 1.6% = \$ 1984.00</u> Office of Finance Use Only Agent <u>JOB</u> Tax Bill <u>—</u> C.B. Credit <u>—</u> Ag. Tax/Other <u>—</u>			
7	Fees and Recording Instructions Make check payable to Clerk of the Circuit Court (410) 887-2850	Recording Charges Recording Fees Recording Charges <u>\$ 52.00</u> State Transfer Tax <u>470.00</u> County Recordation Tax <u>620.00</u> Surcharge <u>—</u> Other <u>—</u> Total <u>\$ 1142.00</u>	Special Recording Instructions (if any) <u>15/10/1</u> <u>4/20</u>			
8	Contact/Mail Information	Instrument Prepared By Name: <u>Paul R. Swann</u> Firm: <u>SWANN, TAYLOR & COMPANY</u> Address: <u>6712 HARBOR ROAD</u> Baltimore, MD 21236 Phone: <u>254-6877</u>	Return Instrument To Name: <u>Paul R. Swann</u> Firm: <u>SWANN, TAYLOR & COMPANY</u> Address: <u>6712 HARBOR ROAD</u> Baltimore, MD 21236	Mailing Address for Tax Bill Name: <u>Betty Jane Phillips</u> Address: <u>9324 Seven Corners Dr</u> Baltimore, MD 21236		
9	Certification	I hereby certify under the penalties of perjury that the information given above is true to the best of my personal knowledge and belief. Signature: <u>Paul R. Swann</u> Date: <u>12/2/92</u>				
10	Assessment Information (410) 321-2299 STAD1M0228LTRX BA C002:23FMO4-27-93 \$1,984.00	IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER ☒ Yes ☐ No Will grantee be living at property conveyed? ☒ Yes ☐ No Is grantor currently receiving a homeowners' tax credit? ☒ Yes ☐ No Is property conveyed subject to agricultural transfer tax? If yes, enter amount: _____ ☒ Yes ☐ No If agricultural assessment on conveyance is to continue, have you attached a letter of intent? ☒ Yes ☐ No Partial conveyance? If yes, amount of acreage transferred: _____ List improvements conveyed: _____ If subdivision occurred after July 1, indicate former property tax ID number: _____ Optional Expediting Information ☒ Yes ☐ No Was property surveyed? If yes, attach copy of survey. If partial conveyance, balance of acreage: _____ Complete description of property conveyed (subdivision, lot, block, section, plat ref., acreage): <u>LOT 81 BLOCK 1 REUBENSON PLAT IV SEC 2 PINEALE WOODS</u> Location and improvement address: <u>9324 SEVEN CORNERS DRIVE</u> <u>BALTO. MD 21236</u> Assessment Use Only - Do Not Write Below This Line Deed Picture ☐ Deed Reference ☐ Assigned Property No. ☐				
Terminal Verification Agricultural Verification Trans. Process Verification Whole ☐ Deed ☐ Part ☐ Distribution: Whole - Clerk's Office Copy - Office of Finance Part - SOAT Goldenrod - Preparer BA CIRCUIT COURT (Land Record) CE 62-9584 SM 9729, p. 0550. Printed 02/20/08, Online 03/09/2008. AOC-CC-100						

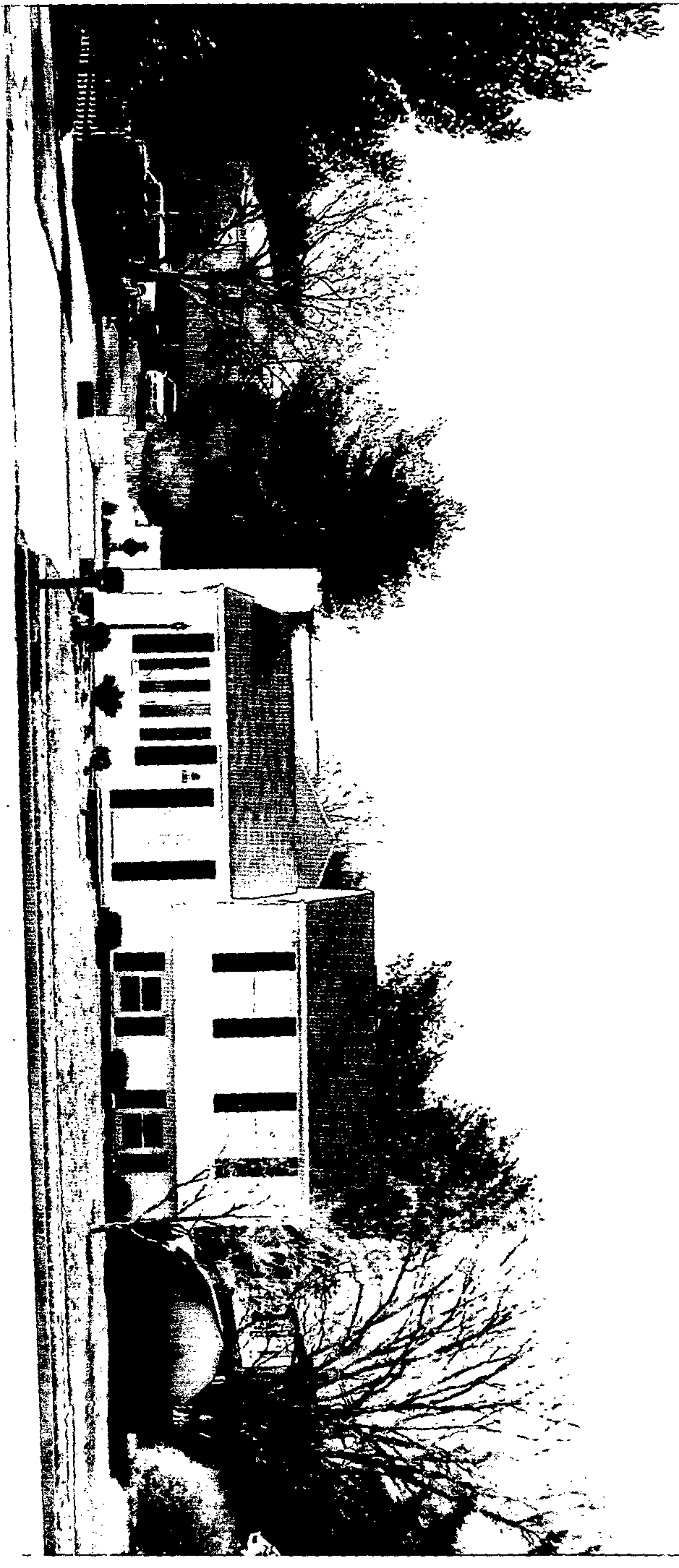


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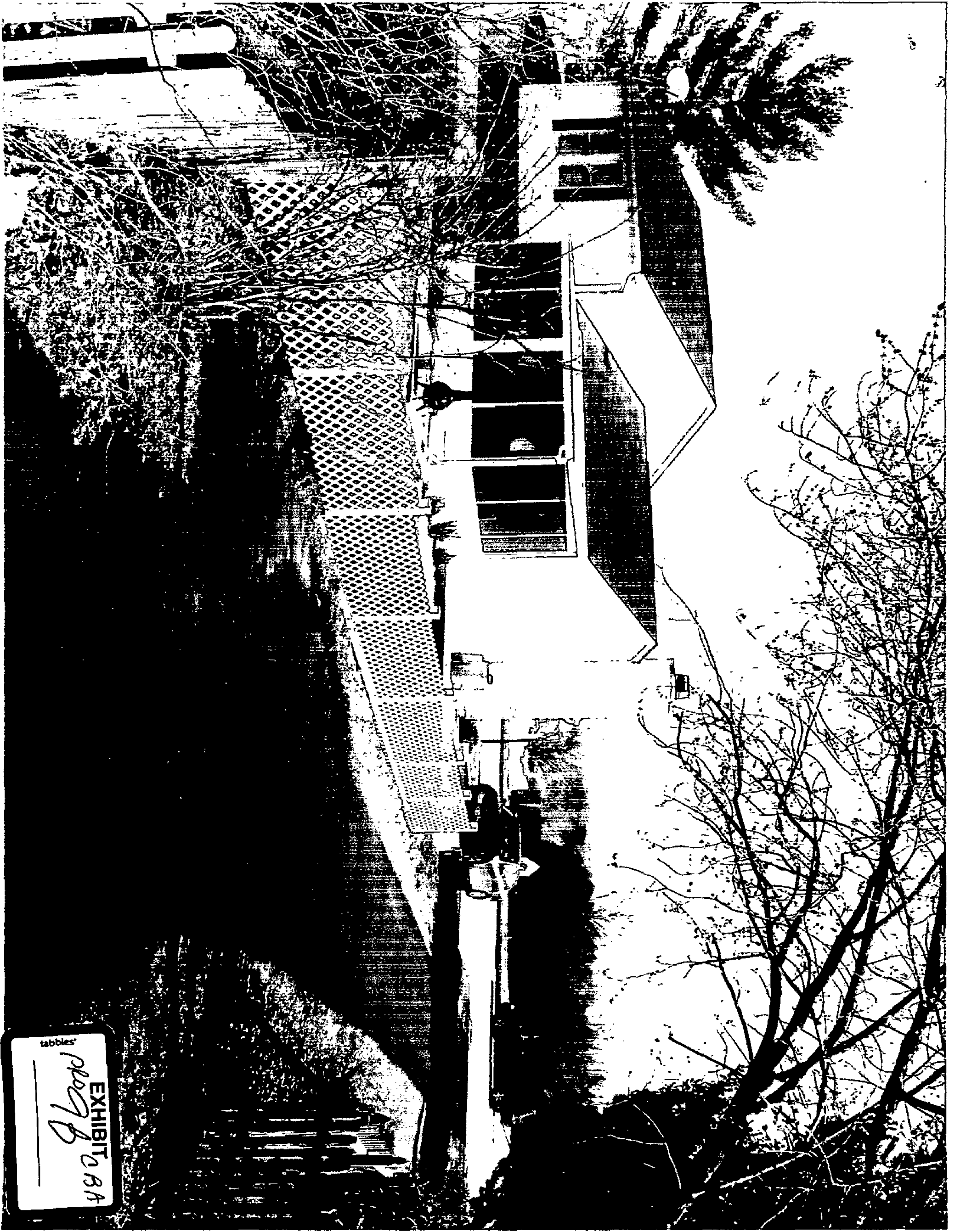
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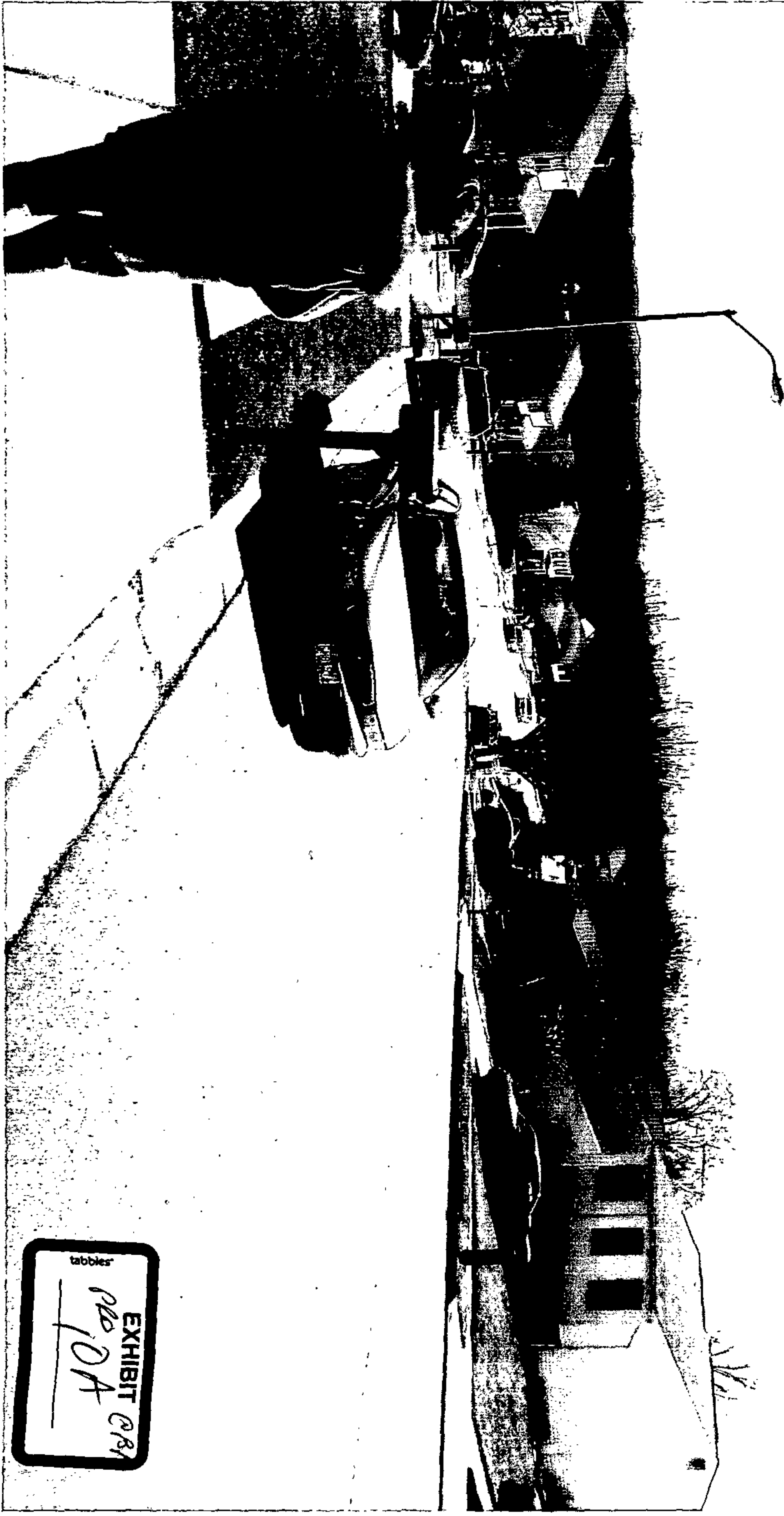
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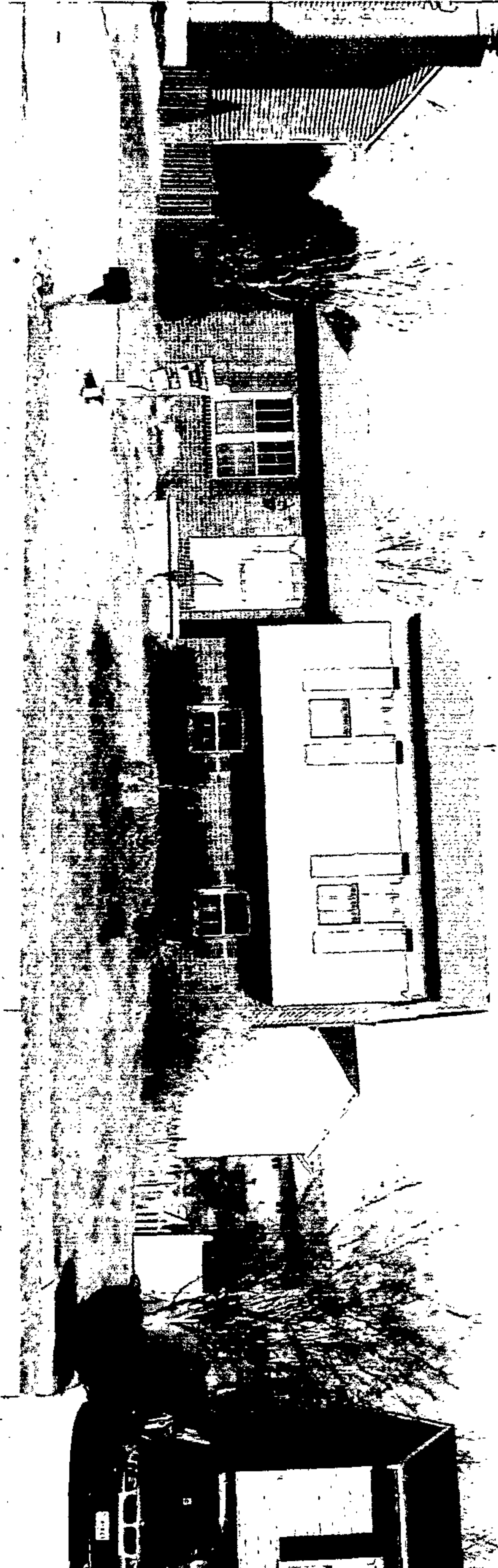
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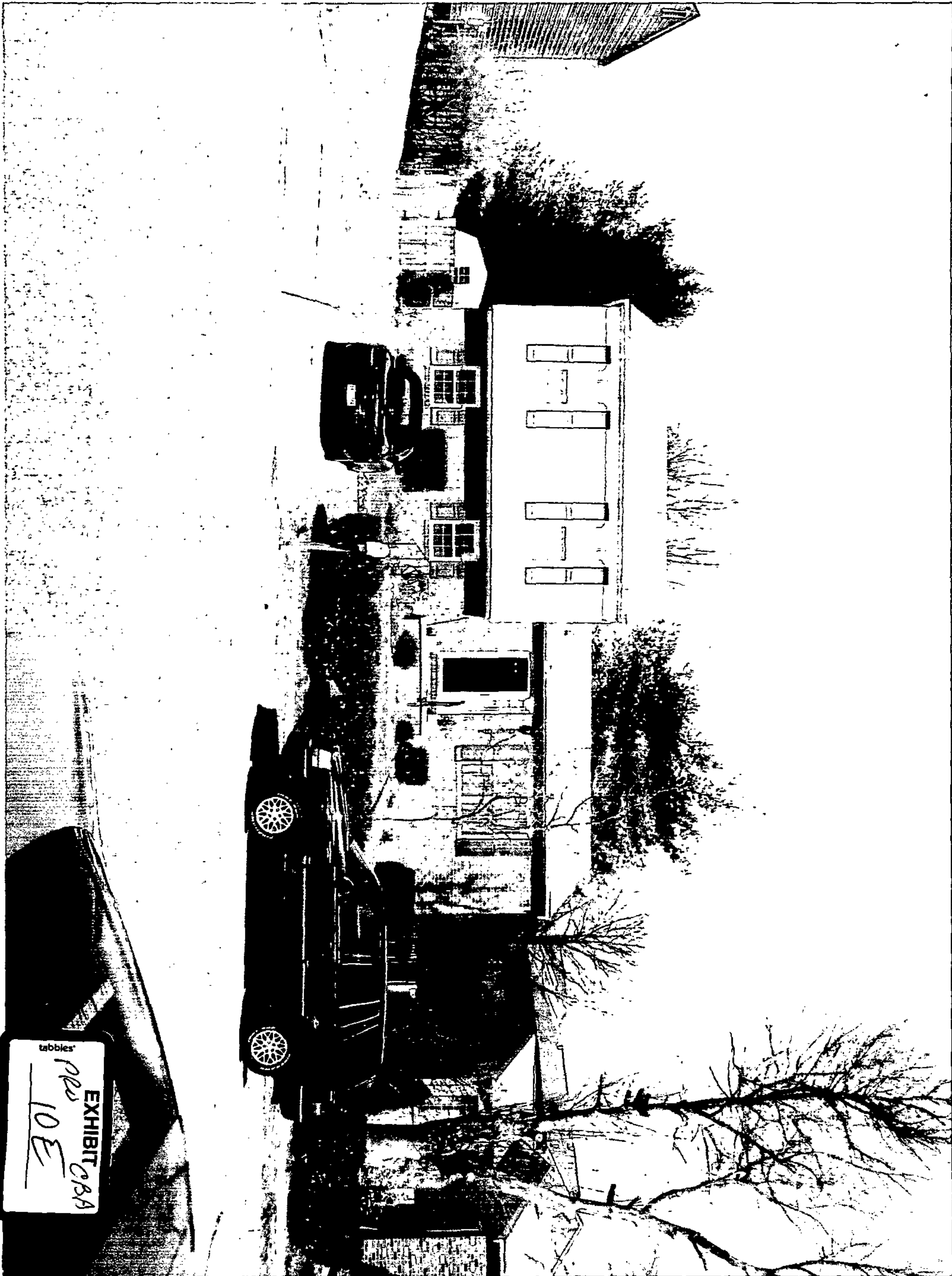
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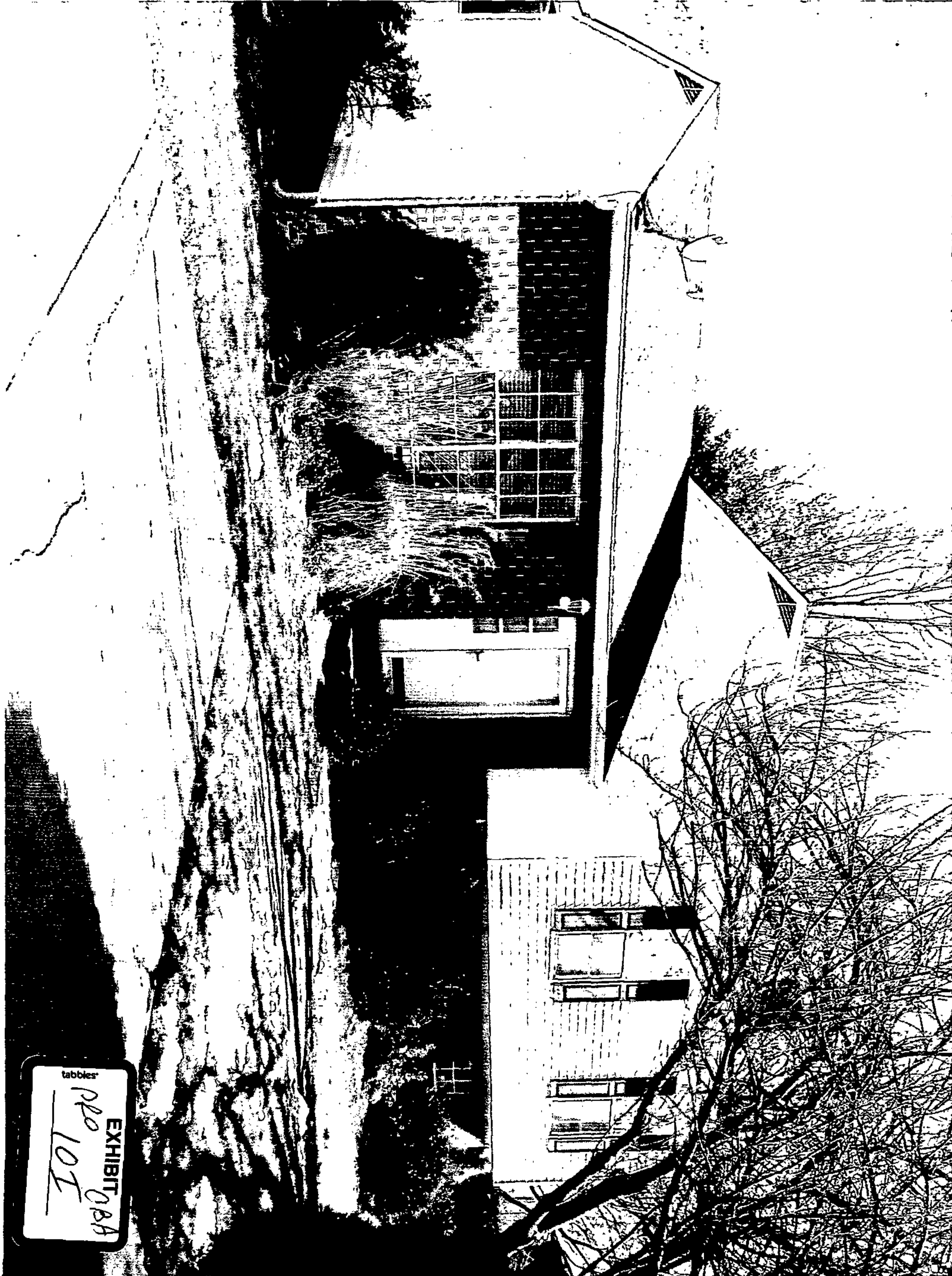
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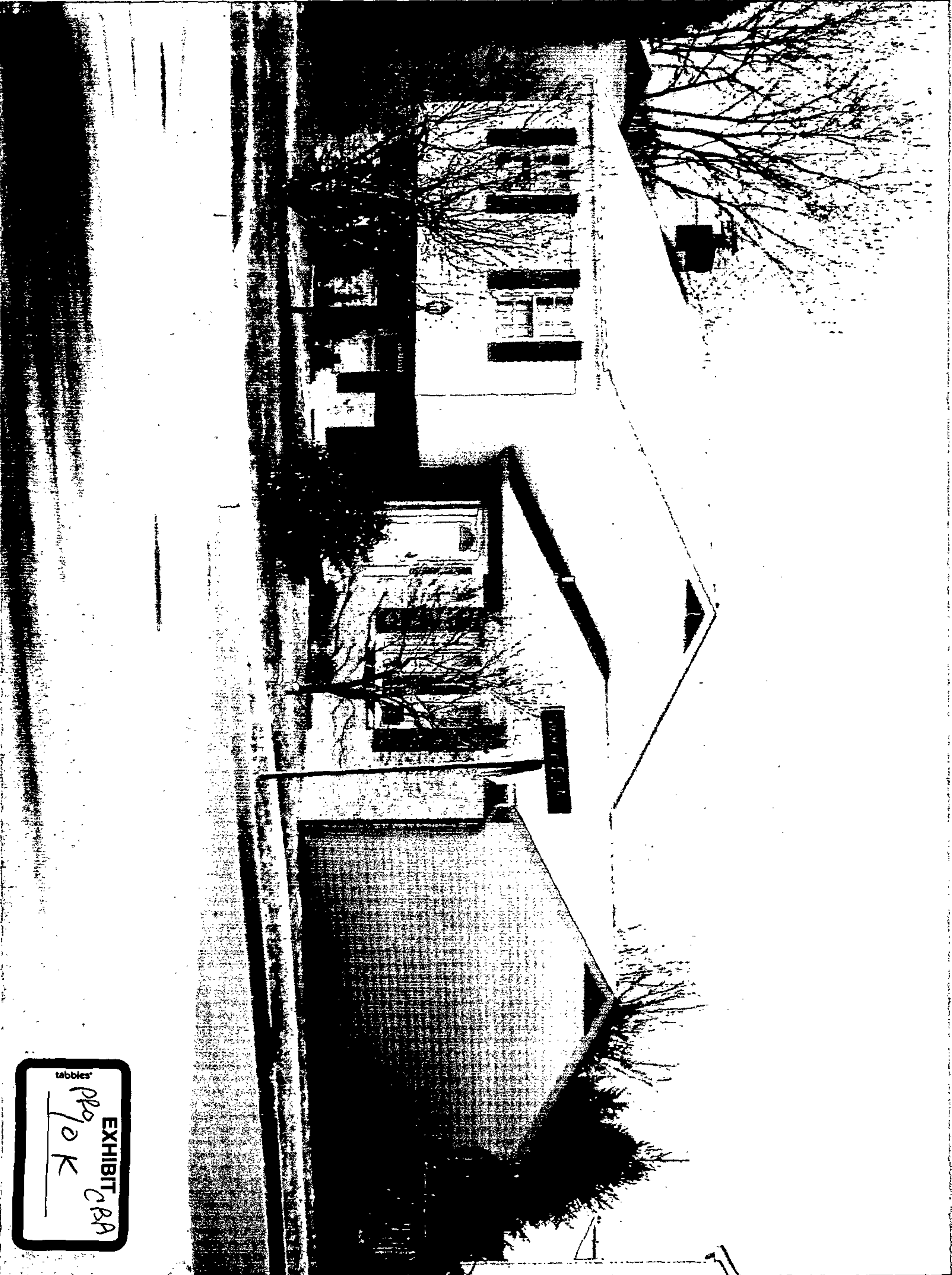
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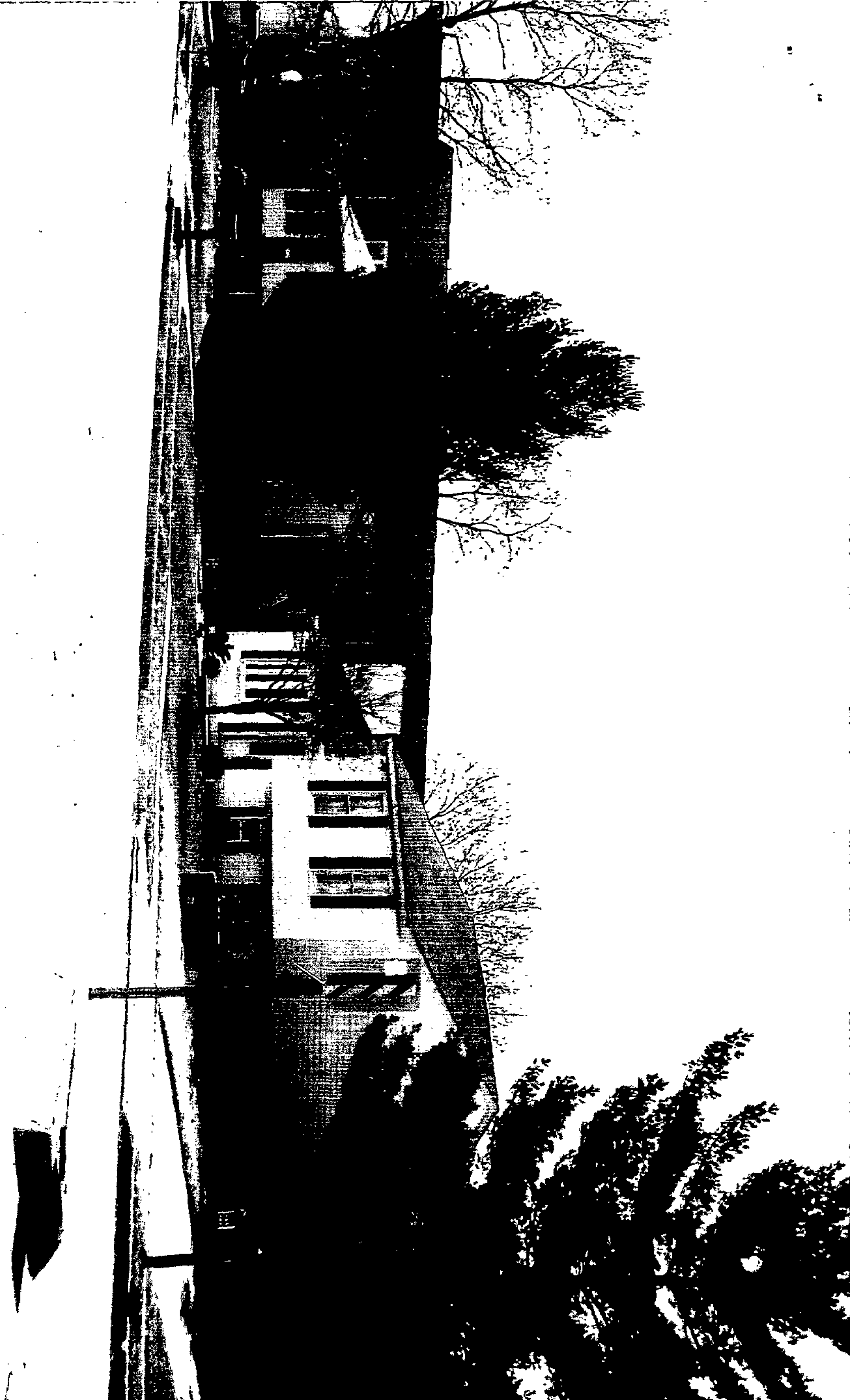
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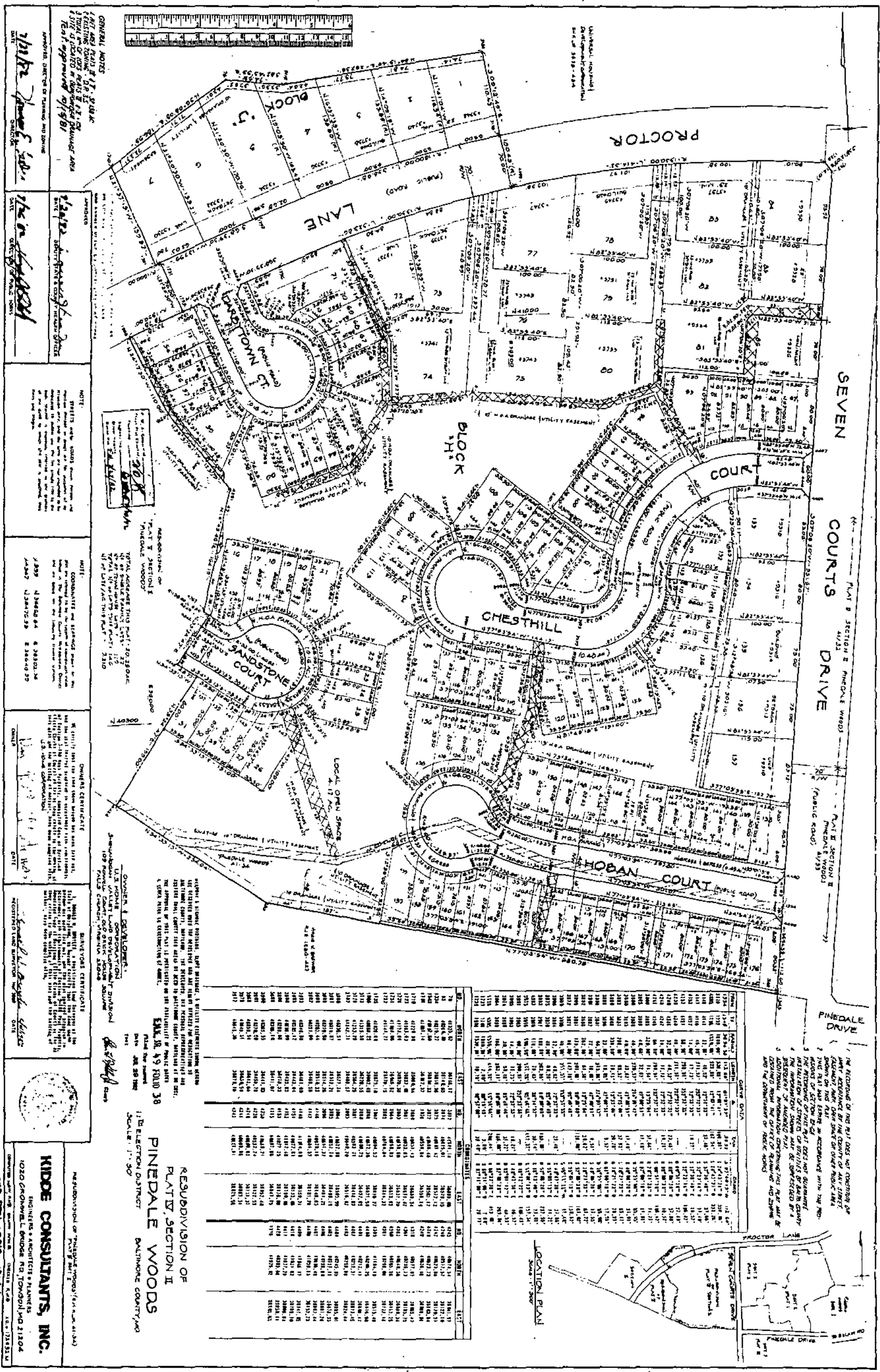
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GENERAL NOTES:
1. THIS PLAT IS A RE-SUBDIVISION OF THE LAND SHOWN ON THE PLAT OF SECTION II, MIDDLE WOODS, BALTIMORE COUNTY, MARYLAND, DATED 1958.
2. THE TOTAL AREA OF THE LAND SHOWN ON THIS PLAT IS 1.12 ACRES.
3. THE TOTAL AREA OF THE LAND SHOWN ON THE PLAT OF SECTION II, MIDDLE WOODS, BALTIMORE COUNTY, MARYLAND, DATED 1958, IS 1.12 ACRES.
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OWNER & DEVELOPER:
KIDDE CONSULTANTS, INC.
1020 GOWANES LANE, SUITE 100, BALTIMORE, MARYLAND 21204
TELEPHONE: 333-1000
FAX: 333-1001

EXHIBIT 08A

KIDDE CONSULTANTS, INC.
ENGINEERS & ARCHITECTS
1020 GOWANES LANE, SUITE 100, BALTIMORE, MARYLAND 21204
TELEPHONE: 333-1000
FAX: 333-1001

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COURTS
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PART II SECTION II

LINEAR
DRIVE

- 1 THE RECORDING OF THIS MAT DOES NOT CONSTITUTE AN ADVANCEMENT IN THE DEGREE OF AIR STREET CEMENTATION, NOR CAN SUCH BE OTHER PUBLIC AREA BOUND BY THIS RAIL
- 2 THIS RAIL MAY BEING IN ACCORDANCE WITH THE PRO METHODS OF SETTING IT OUT
- 3 THE RECORDING OF THIS MAT DOES NOT CONSTITUTE A MISFEITING OF SERVICES TO INDIVIDUALS AT AIRB COME
- 4 THE INFORMATION SHOWN MAY BE SUPERSEDED BY A SUBSEQUENT OR ALTERNATIVE RAIL
- 5 ADDITIONAL INFORMATION CONCERNING THIS MAT MAY OBTAINED FROM THE OFFICE OF PLANNING AND ZONING AND THE DEPARTMENT OF PUBLIC WORKS



1. CONDUCT & DEVELOPMENT.
 U. S. MARINE CORPS/AMPHIBIOUS
 DIVISION
 2. PERSONNEL
 3. TRAINING
 4. LOGISTICS
 5. COMBAT
 6. RESEARCH
 7. INTELLIGENCE
 8. COMMUNICATIONS
 9. TRANSPORTATION
 10. ENGINEERING
 11. CONSTRUCTION
 12. MAINTENANCE
 13. ADMINISTRATION
 14. FINANCE
 15. LEGAL
 16. RELATIONS
 17. WELFARE
 18. RECREATION
 19. FOOD
 20. QUARTERS
 21. UNIFORMS
 22. WEAPONS
 23. VEHICLES
 24. BOATS
 25. AIRCRAFT
 26. ARTILLERY
 27. INFANTRY
 28. ARMORED
 29. NAVY
 30. AIR FORCE
 31. ARMY
 32. COAST GUARD
 33. NAVY
 34. AIR FORCE
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 96. COAST GUARD
 97. NAVY
 98. AIR FORCE
 99. ARMY
 100. COAST GUARD

RESUBDIVISION OF
PLAT IV, SECTION II
PINEDALE WOODS
11th ELECTION DISTRICT
BALTIMORE COUNTY, MD
SCALE: 1" = 50'

1. NET AREA PAID BY A.P. TO BE ADJ.
FILLING TOWARD .00 15
2. TOTAL AMT OF 1025 AREA IS 6.3 127
3 SITE IS LOCATED IN SUBSIDIARY PLANNING AREA.
Tent. approved 10/15/81

APPROVED: DIRECTOR OF PLANNING AND ZONING

DATE: 7/21/82 JAMES E. WILSON
DIRECTOR

DATE: 11/11/11
BY: [Signature]
OFFICE: [Signature]

NOTE

STRENGTH, and the NANOON group, having not
expressed interest in such as the obtaining of an
irrigation permit and the others of this kind, the
desideratum is hereby met. The two weekly lifts at the
Noble, Nevada, is certainly furnished by the garden
of two hundred by means the first is analyzed, most
better and stronger.

[illegible]

CHINESE CERTIFICATE	
NAME	WU, CHIAO CHIAO
DATE	1943

SLAVE YEARS CERTIFICATE

I, David A. Smith, a Justice of the Peace of the County of Jefferson, State of Mississippi, do hereby certify that John A. Smith is the owner of one slave, to-wit: John A. Smith, a male, of the age of 25 years, who was born on the 1st day of April, 1861, and who was sold to me by John A. Smith, and then came into my possession.

David A. Smith
Justice of the Peace

REGISTERED CLERK MISSISSIPPI

John A. Smith
DATE 4/18/65



ADVERTISED ON "PAID FOR" BASIS (See Ad-33-34)

PAID \$ 1641.75

KIDDE CONSULTANTS, INC.
ENGINEERS & ARCHITECTS & PLANNERS
1020 CROCHFORD DRIVE, RD. 1 TORONTO, ONT. M1S 1B4
CONTACT: JOHN KING PHONE: 366-1100 FAX: 366-1100

1000-421 155 1511

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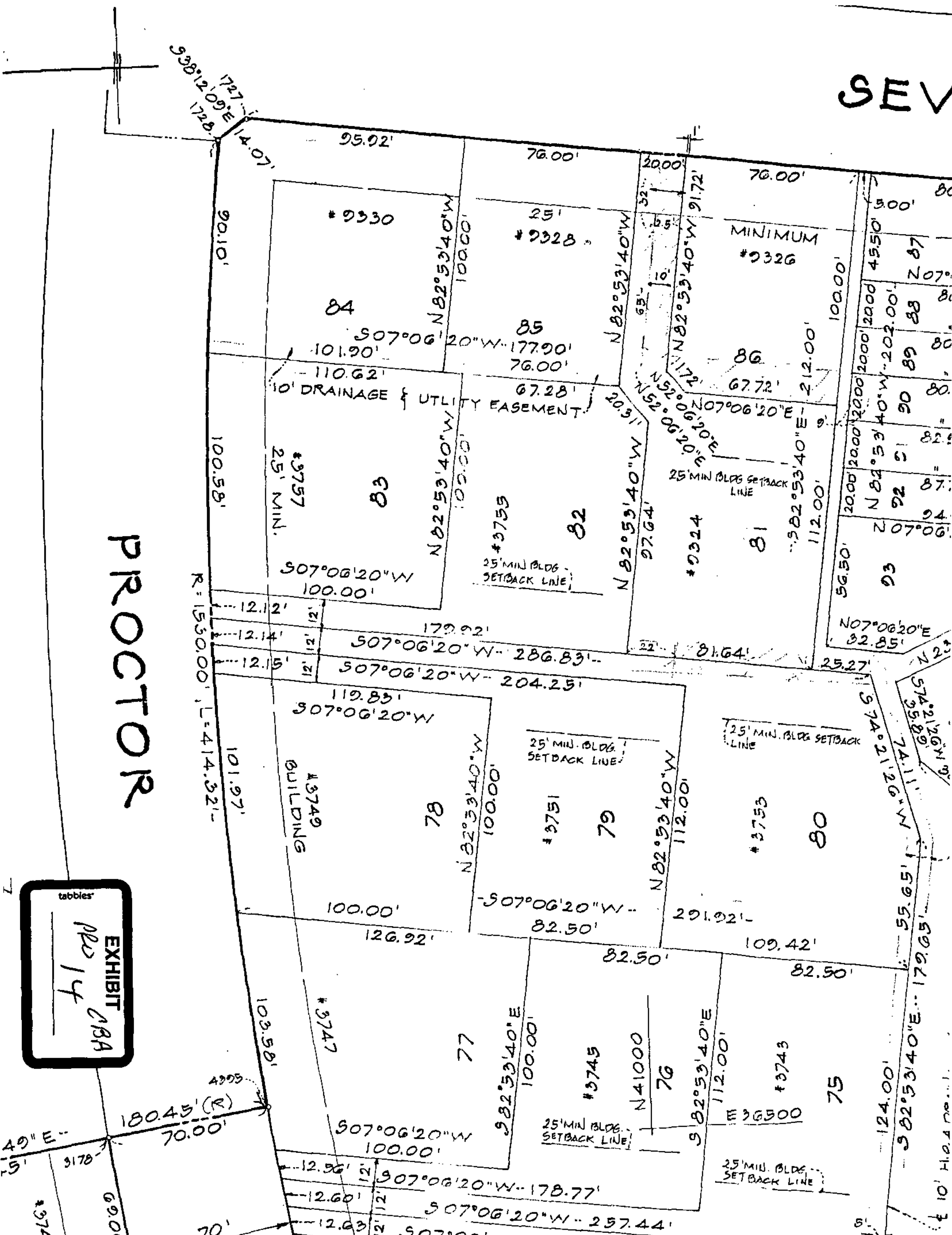
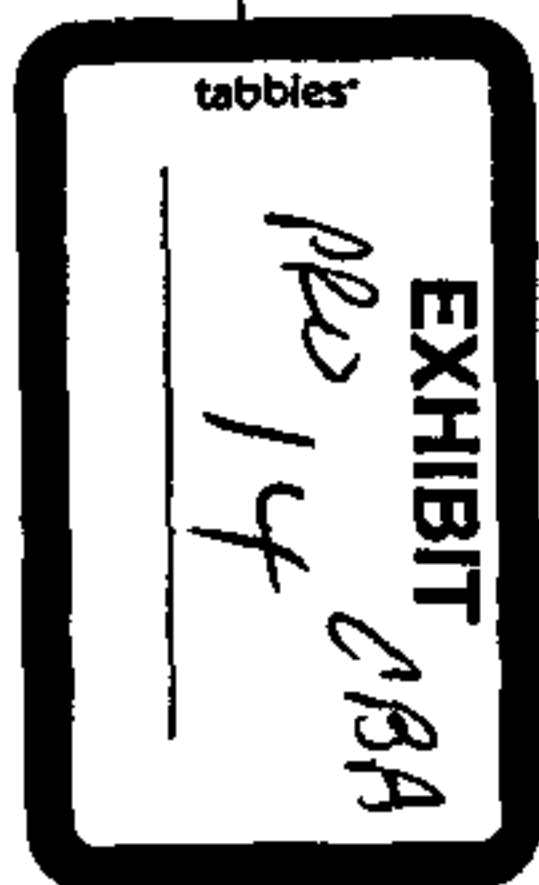
EXHIBIT C-19A

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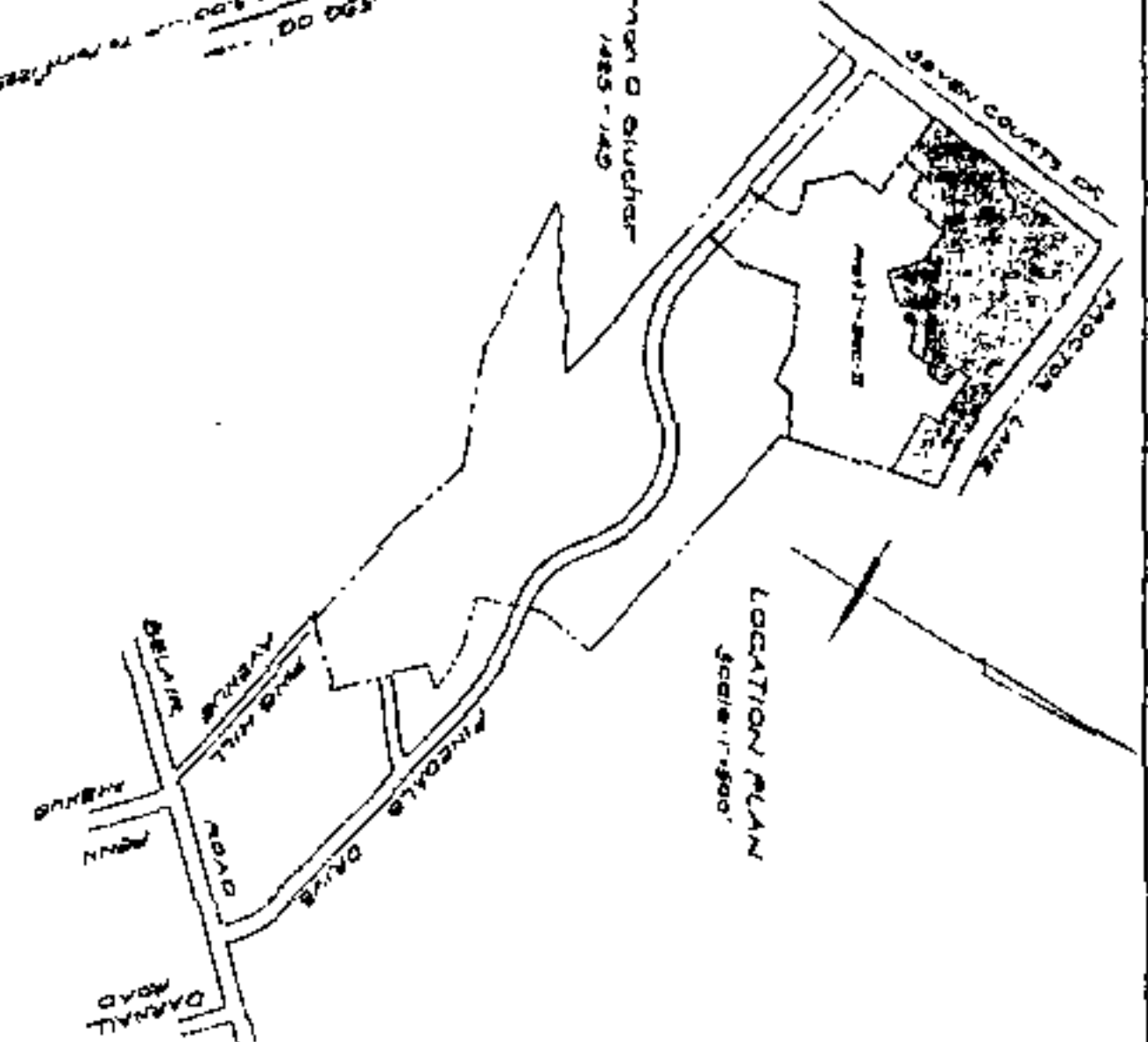
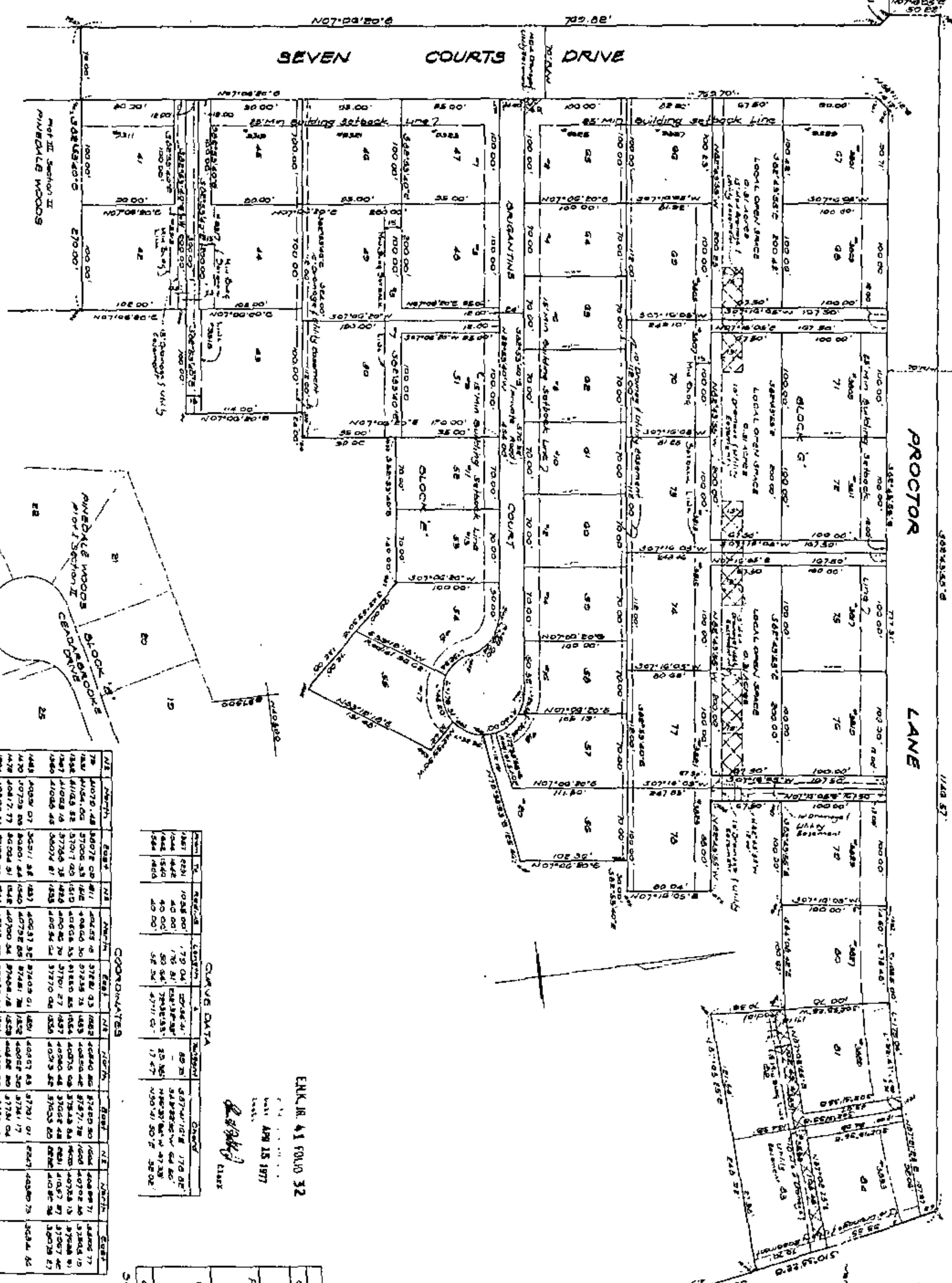
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5413

SEV

PROCTOR



100' Right of Way line as requested
to be shown by Baltimore County
Survey of Engineering



ENCL. 41 POND 32
L.A. 15 1977

COORDINATED DATA

Lot	Area	Volume	Notes
41	10,000	10,000	
42	10,000	10,000	
43	10,000	10,000	
44	10,000	10,000	
45	10,000	10,000	
46	10,000	10,000	
47	10,000	10,000	
48	10,000	10,000	
49	10,000	10,000	
50	10,000	10,000	
51	10,000	10,000	
52	10,000	10,000	
53	10,000	10,000	
54	10,000	10,000	
55	10,000	10,000	
56	10,000	10,000	
57	10,000	10,000	
58	10,000	10,000	
59	10,000	10,000	
60	10,000	10,000	
61	10,000	10,000	
62	10,000	10,000	
63	10,000	10,000	
64	10,000	10,000	
65	10,000	10,000	
66	10,000	10,000	
67	10,000	10,000	
68	10,000	10,000	
69	10,000	10,000	
70	10,000	10,000	
71	10,000	10,000	
72	10,000	10,000	
73	10,000	10,000	
74	10,000	10,000	
75	10,000	10,000	
76	10,000	10,000	
77	10,000	10,000	
78	10,000	10,000	

DENSITY CALCULATIONS

Category	Area	Volume	Notes
Overall Residential Area	10,000	10,000	
Permitted Dwelling Units	10,000	10,000	
Overall Residential Area	10,000	10,000	
Permitted Dwelling Units	10,000	10,000	

COORDINATED DATA

Lot	Area	Volume	Notes
41	10,000	10,000	
42	10,000	10,000	
43	10,000	10,000	
44	10,000	10,000	
45	10,000	10,000	
46	10,000	10,000	
47	10,000	10,000	
48	10,000	10,000	
49	10,000	10,000	
50	10,000	10,000	
51	10,000	10,000	
52	10,000	10,000	
53	10,000	10,000	
54	10,000	10,000	
55	10,000	10,000	
56	10,000	10,000	
57	10,000	10,000	
58	10,000	10,000	
59	10,000	10,000	
60	10,000	10,000	
61	10,000	10,000	
62	10,000	10,000	
63	10,000	10,000	
64	10,000	10,000	
65	10,000	10,000	
66	10,000	10,000	
67	10,000	10,000	
68	10,000	10,000	
69	10,000	10,000	
70	10,000	10,000	
71	10,000	10,000	
72	10,000	10,000	
73	10,000	10,000	
74	10,000	10,000	
75	10,000	10,000	
76	10,000	10,000	
77	10,000	10,000	
78	10,000	10,000	

APPROVED: *[Signature]*
DATE: *[Date]*

NOTE: *[Text]*

OWNERS CERTIFICATE: *[Text]*

SURVEYOR CERTIFICATE: *[Text]*

P147119 MSA CSU 2136 7679 41-32



- C. If the Department of Permits and Development Management has not notified the applicant of a determination pursuant to the provisions of this section, or has not notified the applicant pursuant to Section 304.4 above of the intention to require a public hearing, the dwelling shall be considered appropriate for purposes of this section.
- 304.6 The decision of the Zoning Commissioner or the Director of the Department of Permits and Development Management may be appealed, in which case the hearing shall be scheduled by the Board of Appeals within 45 days from receipt of the request.
- 304.7 The Director of the Department of Permits and Development Management shall establish appropriate fee schedules.

Section 305

Replacement of Destroyed or Damaged Dwellings

[BCZR 1955; repealed by Bill No. 124-1991; re-enacted by Bill No. 214-1991]

In case of complete or partial casualty loss by fire, windstorm, flood or otherwise of an existing dwelling that does not comply with height or area requirements of the zone in which it is located, such dwelling may be restored, provided area or height deficiencies of the dwelling before the casualty are not increased in any respect, and such restoration is subject to the limitations imposed by Section 104.2 of the Baltimore County Zoning Regulations.

Section 306

Minor Public Utility Structures

[BCZR 1955; Resolution, November 21, 1956; Bill No. 32-2004]

Minimum lot area regulations in any zone shall not apply to:

- A. Repeater, booster or transformer stations;
- B. Bus shelters, Class A or B; or
- C. Small community dial offices.

Section 307

Variances

[BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

- 307.1 The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore,

CBA
PRO.
#16

any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification.¹ Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

Section 308

Variances and Special Exceptions for Radiation Fallout Shelters

[Bill Nos. 87-1961; 19-1962]

Radiation fallout shelters may be erected and constructed in accordance with specifications published by the Office of Civil and Defense Mobilization of the United States Government for one of the shelter types or designs approved by said agency as being effective for affording protection from radiation fallout, and the Zoning Commissioner may grant variances from area and height regulations and may make special exceptions to the Zoning Regulations where strict compliance with those regulations would result in practical difficulty or unreasonable hardship, and where the owner of the lot does not own sufficient adjoining land to conform strictly to the width and area requirements. However, any such variance or special exception shall be granted by the Zoning Commissioner only if in harmony with the general purpose and intent of the Zoning Regulations. All decisions of the Zoning Commissioner with respect to such matters shall be subject to appeal to the Board of Appeals. Every radiation fallout shelter which may be erected and constructed under this section shall be used only for the purpose of protection from radiation fallout, and not for normal residential, commercial or industrial uses.

¹ Editor's Note: Apparently conflicts with certain provisions found in the Baltimore County Code 1988 Edition, as revised, which prescribe requirements with respect to notice and hearing regarding conventional reclassification petitions that differ from those which it prescribes regarding variance petitions. See the Appendices of this volume for excerpts from the Baltimore County Code. See Section 26-127 for authority of the Zoning Commissioner to grant variances, and Section 26-117 for provision regarding conflicts between Title 26 and the Zoning Regulations.



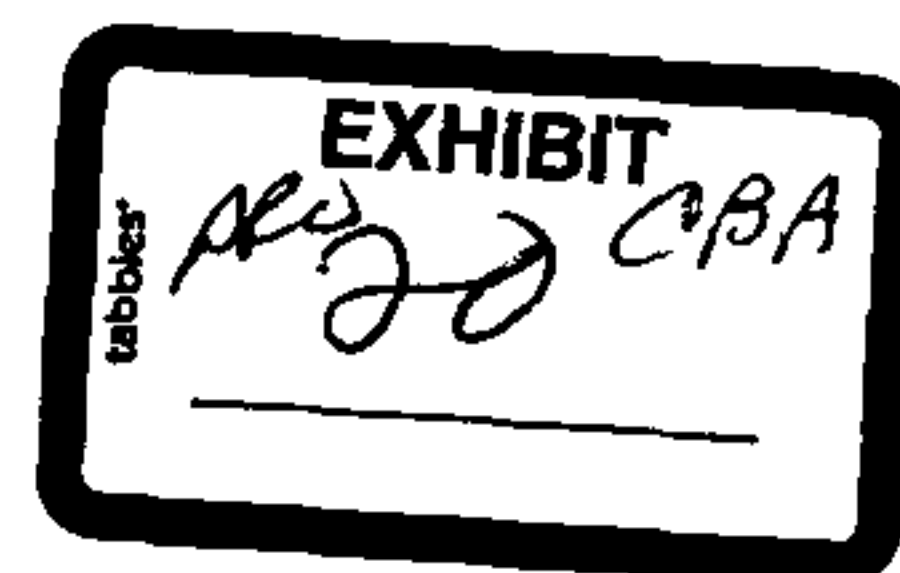
EXHIBIT
PRO 17 CBA
tabbles



EXHIBIT
tabbles PRO 18 CPA



EXHIBIT *CBA*
PFO
19
tabbles



3-26-08
CASE 07-509-A

PETITIONER'S EXHIBITS

✓ 1. Photo of 9328 and 9330 Seven Courts drive.

✓ 2. Photo 9324, 9326, 9328 Seven Courts drive.

✓ 3. Photo of side view of Seven Courts.

✓ 4. Photo of Phillips house.

✓ 5. Photo of Mr. Short driveway.

✓ 6. Letter from neighbors supporting Mr. Short's request.

✓ 7. Letter dated 10/10/07 Zion Ambulatory Center.

✓ 8. Drawing - pink - Mrs. Phillips' yellow Mr. Short's house.







CBA
PET.
NO. 5

To Whom It May Concern:

As neighbors of Leo Drost, residing at 9328 Seven Courts Drive:

It is my understanding that Mr. Drost is requesting a garage to be constructed on the left side of his house. This garage will also include access from the garage to the inside of the house.

As such, we have no objection to its construction, and we furthermore feel that this addition will only improve his property.

Lynne Schatz
9326 Seven Courts Drive

JOHN DUNNICK & ROSEANNE KOVACSI
3755 PROCTOR LANE

Louis J. Landhardt
9327 Seven Ct Dr.

Neil M. Zimmerman
9330 SEVEN COURTS DR.

CBA
PET.
#6

ZION AMBULATORY CENTER
9110 Philadelphia Road Suite 306
Baltimore, Maryland 21237
Office: 410-682-5040 Fax: 410-682-5044
David Gichtin, MD

October 10, 2007

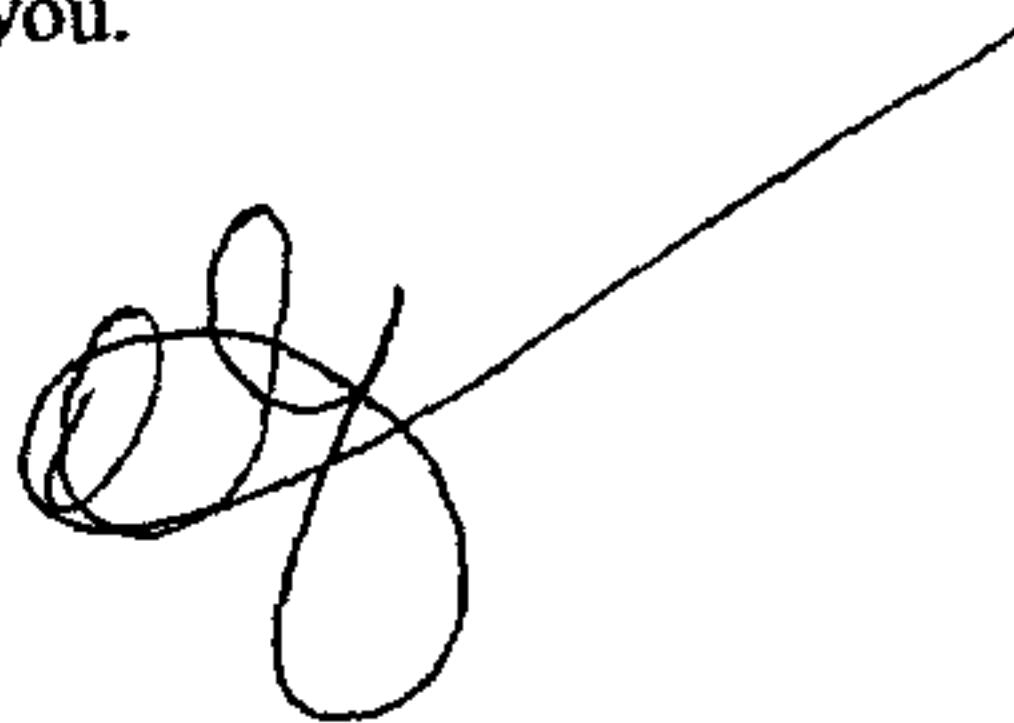
To Whom It May Concern:

Mr. Leo Drost has been a patient under my care since 2005 for chronic and acute lower back pain. As such, he has received three surgical procedures; the latest on September 17 and again on October 10, 2007.

Mr. Drost has limited mobility in walking and in performing tasks which require moderate bending and lifting. Mr. Drost does not work any longer as a mortician due to the nature of his profession which requires the aforementioned physical activities.

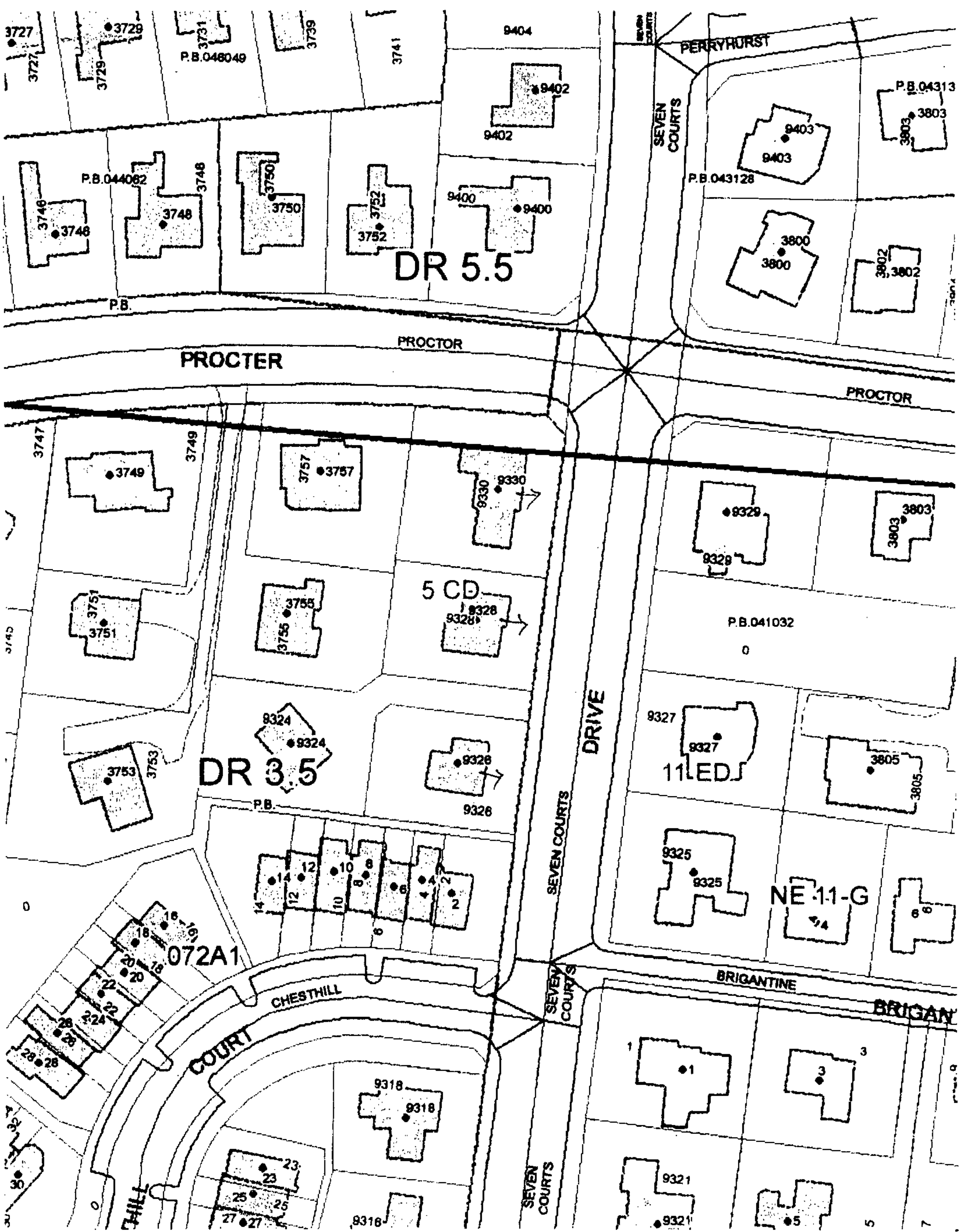
This letter, which Mr. Drost has asked me to endorse, is for documentation of his physical condition.

Thank you.



David Gichtin, MD

CBA
PET,
No. 7



CRA PET. No 8

07-509A

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

PROPERTY ADDRESS 9328 Seven Courts Drive

SUBDIVISION NAME Pinedale Woods

PLAT BOOK # 49 FOLIO # 38 LOT # 85 SECTION # 2

OWNER Drost, Leo W. + Dennis S.

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

Lot # 81

Lot # 82

Lot # 83

10' Easement

Easement

Michael Schatz

Lynn H. Klinger

9'3" Paraphernalia Driveway

21'

Existing Dwelling #9326

Front

35'-8"

Lot # 86

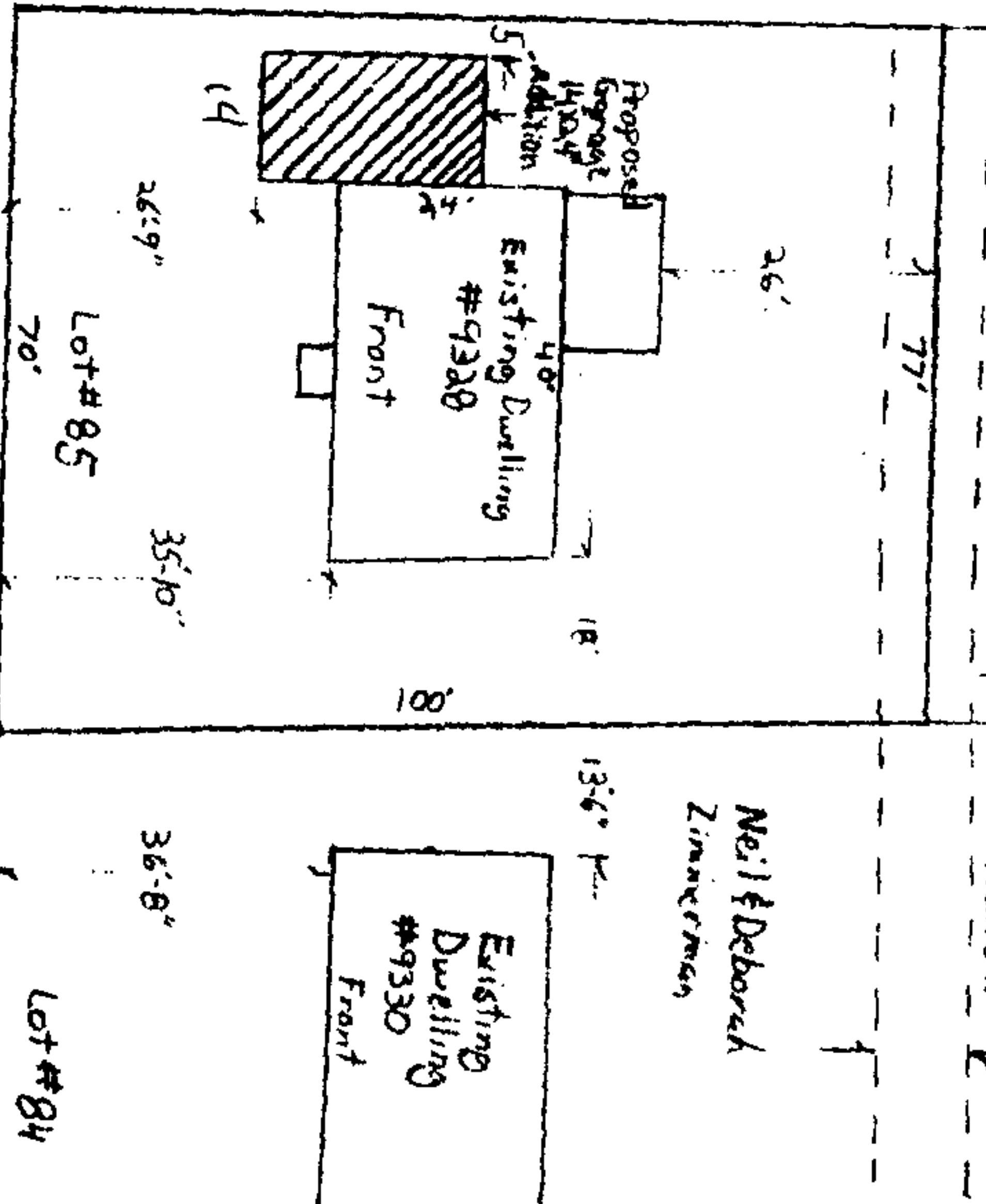
NORTH



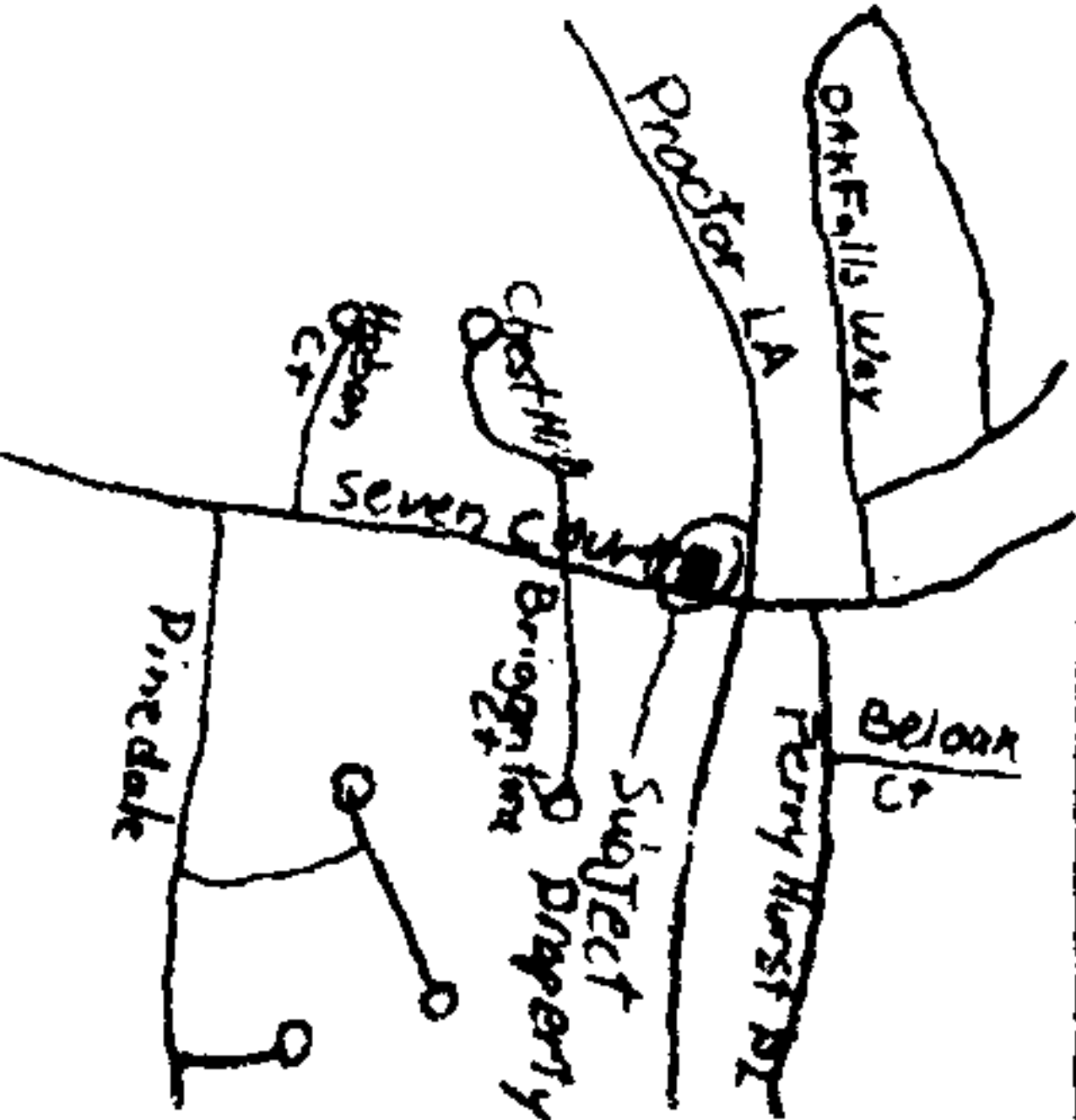
PREPARED BY Neal Teitelbaum

SCALE OF DRAWING: 1" = 30'

Seven Courts Drive (70' RW)



VICINITY MAP
SCALE: 1" = 1000'



LOCATION INFORMATION

ELECTION DISTRICT 11

COUNCILMANIC DISTRICT 5th

1" = 200' SCALE MAP # 072A1

ZONING DR 3.5

LOT SIZE .1718 ACRES

7484

SQUARE FEET

SEWER ☒ PUBLIC ☐ PRIVATE

WATER ☒

CHESAPEAKE BAY CRITICAL AREA ☐ YES ☒ NO

100 YEAR FLOOD PLAIN ☐ YES ☒ NO

HISTORIC PROPERTY / BUILDING ☐ YES ☒ NO

PRIOR ZONING HEARING None

ZONING OFFICE USE ONLY

REVIEWED BY ITEM # CASE #

A. Tsui 509 07-5094

To Whom It May Concern:

As neighbors of Leo Drost, residing at 9328 Seven Courts Drive:

It is my understanding that Mr. Drost is requesting a garage to be constructed on the left side of his house. This garage will also include access from the garage to the inside of the house.

As such, we have no objection to its construction, and we furthermore feel that this addition will only improve his property.

Lynne Schatz
9326 Seven Courts Drive

JOHN DUNNOK & ROSEANNE XOUACSI
3755 PROCTOR LANE

Louis A. Gumbardt
9327 Seven Ct Dr.

— across street

Nail M. Gammara
9330 SEVEN COURTS DR.

(3)

SITE PLAN TO BE USED IN DETERMINING FRONT YARD DEPTHS IN RESIDENCE ZONES

WHEN THE IMMEDIATE ADJOINING LOTS ARE NOT IMPROVED

Reference - Section 303.1 Baltimore County Zoning Regulations

303.1 —In D.R.2, D.R.3.5 and D.R.5.5 Zones the front yard depth of any building or other structure hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side provided such adjoining lots are improved with principal buildings situate within 200 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 zones, 50 feet in D.R.3.5 zones and 40 feet in D.R.5.5 zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefrom in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 respectively.

A	_____	FT.
B	_____	FT.
C	70'8"	FT.
D	_____	FT.
E	71'8"	FT.
F	_____	FT.

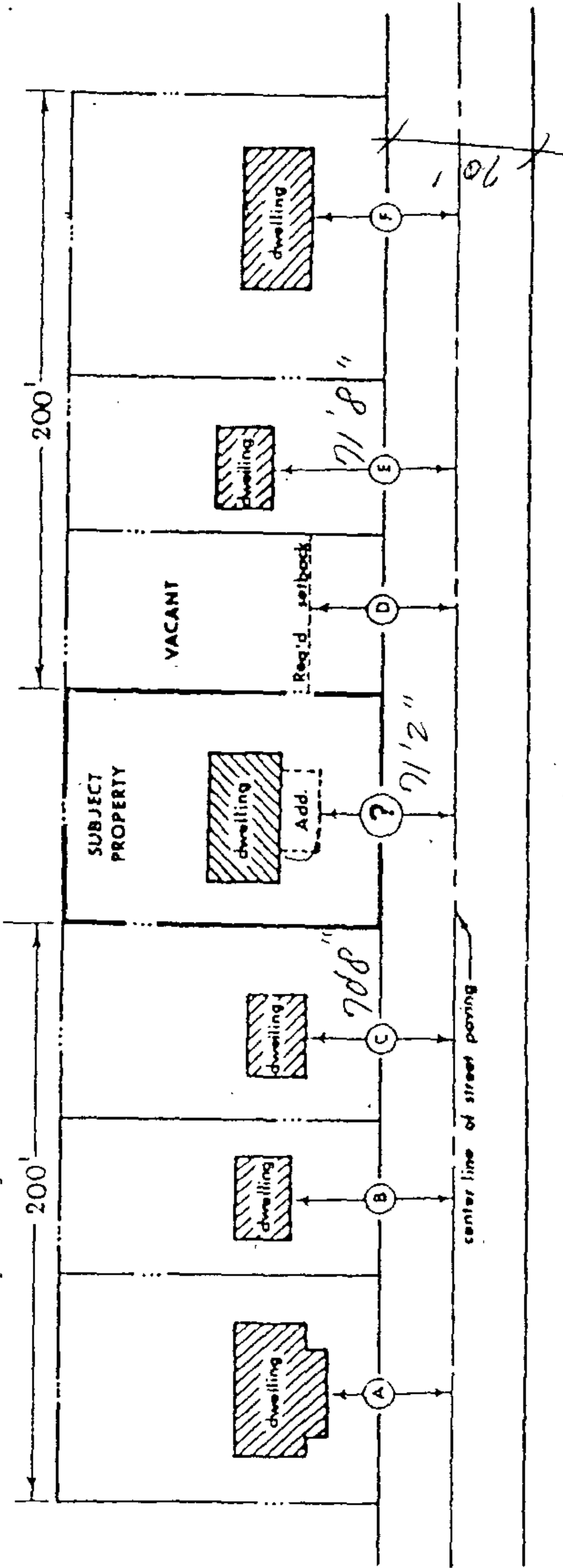
$$\text{TOTAL } (70'8") \div (2) = 71'2"$$

142'4" # of dwellings

REQUIRED FRONT SETBACK (averaged)

NORMAL REQUIRED SETBACKS
D.R.2 - 65 ft.
D.R.3.5- 55 ft.
D.R.5.5- 50 ft.

LEO W. DEOST
applicant's name
9328 SEVEN COURTS DR
building address
5/9/07
date

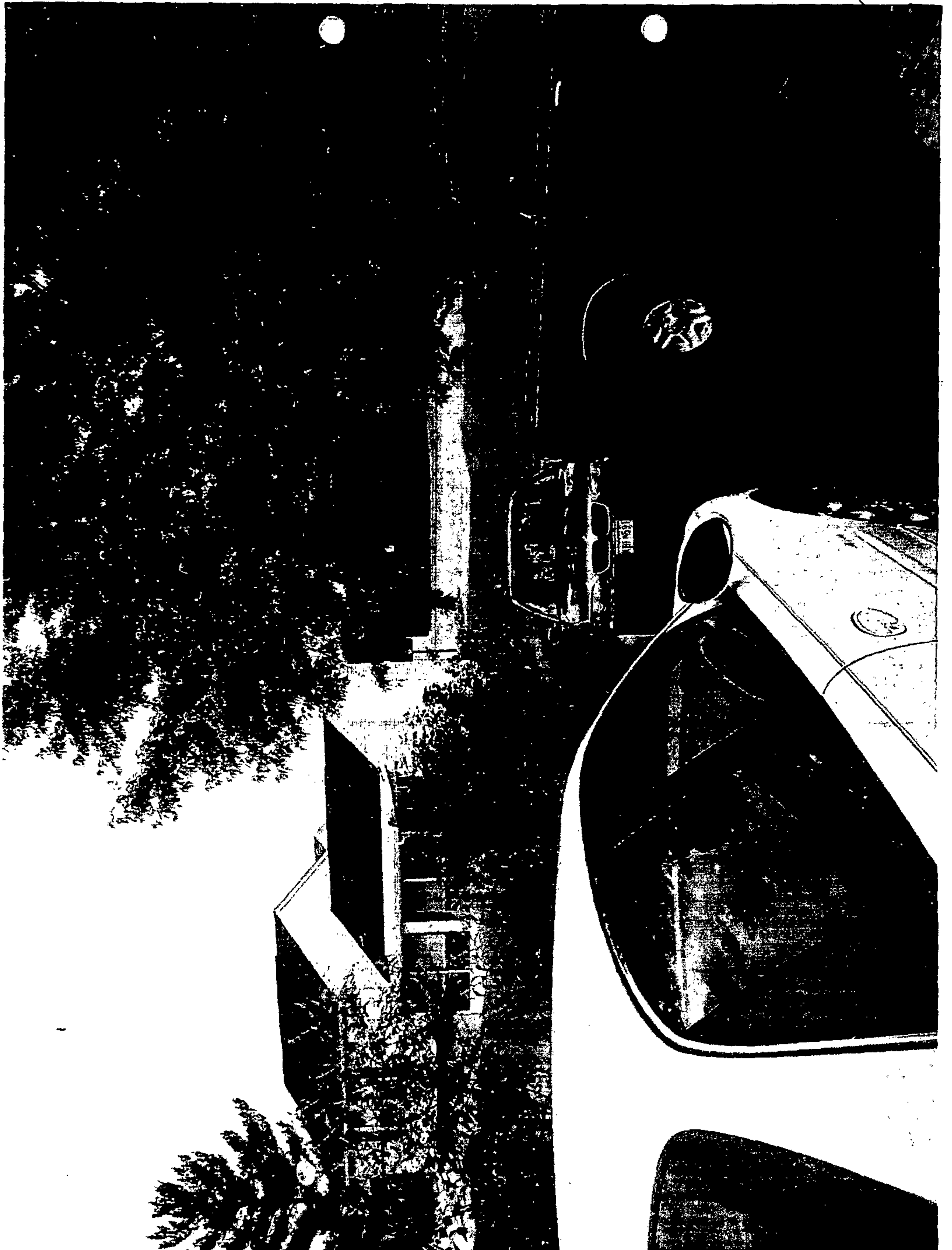


4

07-509 A







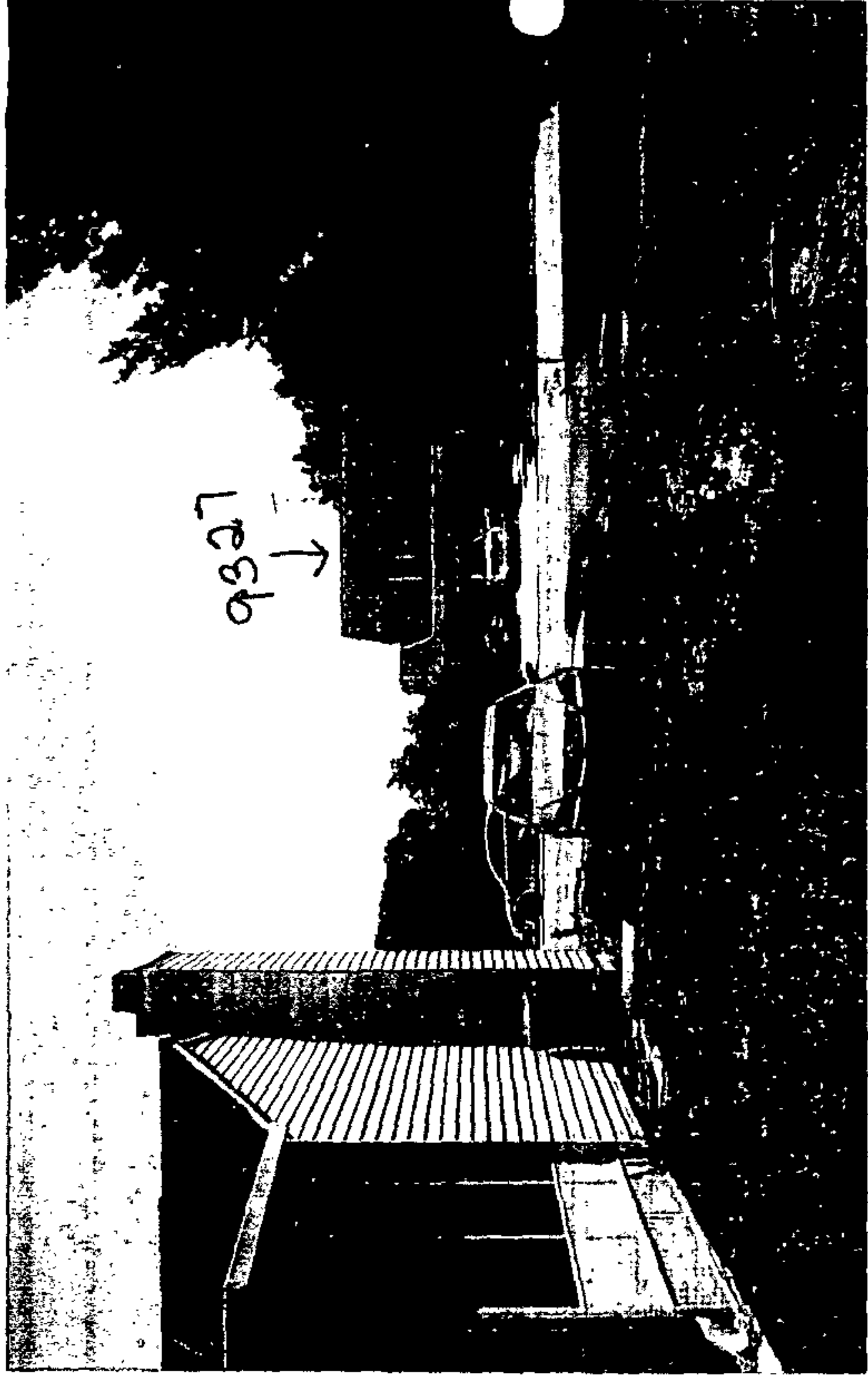
10' H.O.A DRAINAGE
& UTILITY EASEMENT



Date: 11/30/97

D.L. # 92-3006

This is to certify that the improvements indicated hereon are located as shown. This is not a property line survey and should not be used as such.





CASE NAME 01207 A1 - UNB
CASE NUMBER 07-509-A
DATE 6/26/07

CITIZEN'S SIGN-IN SHEET

[illegible]