IN THE MATTER OF THE APPLICATION OF DR HARLAN ZINN – LEGAL OWNER / PETITIONER FOR VARIANCE ON PROPERTY LOCATED ON THE E/S COLD SPRING ROAD, 700' +/- S OF CHESAPEAKE AVENUE (809 COLD SPRING ROAD) 15TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	* * * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 07-545-A

* * * * * * * * *

OPINION

This case comes as a result of Petitioner, Zinn, filing a Petition for Variance in June, 2007 to construct a residence on the site and requested relief from "Sections 303.1 and 1B02.3.C1 to allow a lot containing 7,342 square feet, front setback of 25 feet and rear yard setback of 25 feet in lieu of the required 10,000 square feet, front yard setback of 25 feet and rear yard setback of 25 feet in lieu of the required 10,000 square feet, 30 feet average and 30 feet setbacks respectively."

Zoning Commissioner, William Wiseman, denied the relief in an Opinion dated September 21, 2007. He found the relief was barred by *res judicata*. As a result of the Petitioner's appeal of this ruling to this Board, People's Counsel for Baltimore County filed a Motion for Summary Judgment pursuant to Maryland Rule 2-501 on the grounds of *Res Judicata.*

A hearing and deliberations were held on May 15, 2008. Petitioner was *pro se*. Carole S. Demilio, Deputy People's Counsel for Baltimore County, appeared on behalf of the Office of People's Counsel.

Background

As People's Counsel clearly documented in their Motion for Summary Judgment, attempts to obtain variances for construction on the subject property have been before both the Baltimore County Zoning Commissioner and the Baltimore County Board of Appeals on previous occasions.

The first Petition for Variance, was filed by Dr. Zinn's seller, Janice Oberst in Case No. 03-500-A. The Petition requested relief from BCZR Sections "303.1 and B102.3 C.1 to permit a front setback of 11 ft. in lieu of the required average of 55ft. and a rear setback of 2 ft. in lieu of the required 30 ft. and undersized lot." Zoning Commissioner Lawrence Schmidt denied the relief in an Opinion dated July 29, 2003, in which he recognized the opposition of the neighbors and the adverse comment from the Office of Planning and further stated:

> In any event, after due consideration of the testimony and evidence presented, I am persuaded to deny the request. I concur with Mr. Pitz that the property is simply too small for the proposed development. I am appreciative that the property is a lot of record that was originally recorded as part of the subdivision of Long Beach Estates well prior to the adoption of the current zoning regulations. Nonetheless, it is simply too small to support the proposed dwelling and development of the parcel would be inconsistent with the neighborhood and cause detrimental impacts to adjacent properties. In sum, I am not persuaded that the Petitioners have met the requirements of Section 307 and Cromwell v. Ward, 307 Md. 1 (1995), for relief to be granted.

This decision was not appealed.

Case 04-522-A, a case filed by Oberst, along with a new buyer, Dr. Zinn, the Petitioner in the instant case, was filed in 2004. The Petition again sought relief for an undersized lot and front yard setback of 23 ft. in lieu of 30 ft. and rear yard setback of 2ft. in lieu of 30ft. In a decision dated July 20, 2004, Deputy Zoning Commissioner John Murphy noted that the site had a waterfront recreational use and a use for mooring a boat and denied the Petition:

> Section 307.1 requires "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". . . . The dry land

> area is approximately 4800 sq. ft. . . . This is not close to the size lot envisioned by the Council when it imposed DR 3.5 on this area. . . . The Office of Planning points out that the lot is too small to accommodate the proposed residence and the 2 ft. rear yard setback is out of character with the neighborhood. . . I am also troubled by the placement of a very long narrow home in a neighborhood in which the homes are built in a more traditional way. . . In summary, considering all the evidence presented, I arrive where Mr. Schmidt found himself last July. The lot is simply too small for the home proposed.

Zinn and Oberst appealed this case to this Board. Following a hearing, the Board denied the relief on December 20, 2005. The Board found that the Petitioners were not entitled to relief under BCZR 304.1 which permits a dwelling on a lot deficient in area or width only if certain conditions are met. The Board denied the variances finding that "no evidence was presented by petitioners to show that the size of this property made it unique under Section 307 and/or *Cromwell*. . . The subject property needs variances because it is too small – which itself is not a unique feature. . . The Board concludes therefore that this lot is not unique as required by BCZR 307 and *Cromwell*." The Board also addressed the practical difficulty standard. The Board explained: "Given the zoning history of Lot 304, this Board found that Petitioners would not meet the practical difficulty test, even if it had found the property unique. . . Therefore, this Board finds that none of the conditions as required by 307 of the BCZR or *Cromwell* in order to grant the request for variance have been met. The subject property is not unique. . . and it can be used for other legal purposes, so the zoning regulations do not impose a practical difficulty. Finally, the variance request . . . would not meet the spirit and intent of the BCZR."

Petitioners did not appeal, making the December 20, 2005, decision is a final Order.

Petitioner again filed a Petition for Variance in June 2007, Case 07-545-A, the instant case, to construct a residence on the site and requested relief from "Sections 303.1 and 1B02.3.C1 to allow a lot containing 7,342 square feet, front setback of 25 feet and rear yard

setback of 25 feet in lieu of the required 10,000 square feet, front yard setback of 25 feet and rear yard setback of 25 feet in lieu of the required 10,000 square feet, 30 feet average and 30 feet setbacks respectively."

Zoning Commissioner William Wiseman denied the relief in an Opinion dated September 21, 2007. He found the relief was barred by *res judicata*:

The Zoning Commissioner stated that this Board had found that the site is not unique in a final Order. The Zoning Commissioner held:

> "In summation, I have considered the arguments and evidence presented. It is quite clear that the issues raised by the Petitioner were also before the CBA in Case No. 04-522-A. The case being fully litigated in that forum, the Board's decision not appealed, their Order is conclusive and "the end of the road". *Res judicata* precludes Dr. Zinn from filing the within Petition and re-litigating the matter."
>
> Petitioner appealed this decision to this Board.

DECISION

1. Doctrine of *Res Judicata*

Res judicata is the legal doctrine of preclusion, which conveys that the matter has been litigated to a conclusion and decided, and that this finality precludes further litigation. *Res judicata* bars litigation of the same matter with respect not only to the legal claims or issues decided in the case finally adjudicated, but also "as to all matters which with propriety could have been litigated in the first suit." *Alvey v. Alvey,* 225 Md. 386, 390 (1961); *MPC, Inc. v. Kenny,* 279 Md. 29, 32 (1977); *DeLeon v. Slear,* 328 Md. 569, 580 (1992). This doctrine requires that a litigant must bring forward the entire case, including all relevant facts and legal issues.

Res *judicata* has also been held to apply to administrative proceedings. *Batson v. Shiflett* 325 Md. 684, 701-05 (1992). Zoning cases allow for consideration of a substantial change in the

character of the neighborhood if it materially affects the zoning issue at hand. *Whittle v. Board of Zoning Appeals of Baltimore County,* 211 Md. 36 (1956); *Mayor & City Council of Baltimore v. Linthicum,* 170 Md. 245 (1936); *Bensel v. Mayor & City of Baltimore,* 203 Md. 506 (1954); *Woodlawn Area Citizens Assoc. v. Board of County Comm'rs,* 241 Md. 187 (1966).

When there is no appeal of a decision's final order, *Res judicata* brings finality to the issue. *Fertitta v. Brown,* 252 Md. 594 (1969)

2. Petitioners' Argument

Petitioner claims that *res judicata* does not bar his application for variance before the board due to his contention that the property has changed since the prior applications were denied, thus now making the variance possible pursuant to the holding in *Whittle v. Board of Zoning Appeals of Baltimore County,* 211 Md. 36 (1956); *Mayor & City Council of Baltimore v. Linthicum,* 170 Md. 245 (1936); *Bensel v. Mayor & City of Baltimore,* 203 Md. 506 (1954); Woodlawn *Area Citizens Assoc. v. Board of County Comm'rs* 241 Md. 187 (1966).

Petitioner's Exhibit 23 summarized these alleged changes as follows:

<u>Remediation of Concerns on Prior Zoning Variance Requests</u>

• No DEPRM approval	• Secured Division of Environmental Protection and Resource Management (DEPRM) approval on June 11, 2004
• No Critical Bay Area approval	• Secured Chesapeake Bay Critical Area Commission approval on March 29, 2004
• Property too small for house footprint	• Turnaround on property was legally proven to be privately owned as part of 809 Cold Spring Road lot; deed was filed and the plat was redrawn to reflect private ownership of turnaround area increasing property square

	footage from 5396 to 7345 square feet; previous and current owners provide turnaround as a courtesy to neighbors and the community
	• House footprint significantly reduced from 736 square feet in original variance request to 640 square feet in current request (almost a 13% difference)
	• Due to both the increase in property size from the addition of the turnaround and the decrease in the house footprint, this issue has been significantly mitigated
• Proposed dwelling is too close to "public" turnaround	• Turnaround is private, not public, as noted above
	• Private turnaround was reconstructed on the other side of the property resulting in a 25 foot setback from roadbed instead of a two foot setback from the previous turnaround
• Design of proposed dwelling does not conform to neighbors	• Proposed home was completely redesigned to conform to immediate neighbors as demonstrated in new architectural drawings
• Property configuration (shape) is not unique	• DEPRM, Chesapeake Bay Critical Area Commission and Asst. Commissioner of Zoning have all documented that the shape of the property is unique in variance hearings and letters
• No practical difficulty	• Since a recreation site or private pier is not a viable and reasonable use of a residentially zoned building lot, owners have brought various essential services to the site (water, electricity, phone, etc.) to enable some degree of utility of the site. By linking these services to a houseboat, there is very minimal use.

	Owners have secured approval from the County to install the traditional grinder pump station system on the property in anticipation of building a residence in the near future. The county system was designed to accommodate this property and we are continuing to pay construction and usage charges as did the previous owner for over a decade. Public safety and welfare have not been compromised but enhanced as a result of the improvements owners have made to the property including: relocation and expansion of turnaround; installation of bulkhead to prevent further environmental erosion; installation of plantings to stabilize property; and installation of lighting, fencing and surveillance to minimize dumping and abuse of property. Owners had additionally redesigned their proposed residence to accommodate community design standards and enhance the overall value of the property beyond existing values.
• Property was never intended for residential use	• Property is being taxed as a viable residential lot at market rates. • For over a decade, the property has been taxed continuously as a residential lot and assessed charges for sewer and water service. • Property currently has water, electric, cable, telephone, DSL service and approval for sewer service.
• Variance would not be in the spirit and intent of the zoning regulations	• Property size is now 7345 square feet rather than the 5396 stated in earlier request • Current proposed setbacks are 25 feet in the front and 25 feet in the rear compared to the previous proposed setbacks of 23 and two feet, respectively (requirement is for a 30 foot setback for each the front and rear property lines)

- Proposed density of 9% (640 house footprint/ 7345 lot size) of land mass reflects the same density ratio as 50% of similar house footprints and lots in the immediate vicinity

3. People's Counsel's Argument

People's Counsel argues that this case is barred by *res judicata*. People's Counsel maintains that the Board's decision, in Oberst, Case No. 03-500-A and Oberst, Case No. 04-522-A, preclude the Petitioner's current petition. As previously noted, the Oberst cases also involved a petition for variance for waterfront construction at 809 Cold Spring Road. People's Counsel notes that the Board found in the 2004 case that the property failed to satisfy the familiar "special circumstances or conditions exist that are peculiar to the land or structure" test, "uniqueness" by way of shorthand, set by BCZR 307.1. *Cromwell v. Ward* and that there was no practical difficulty.

People's Counsel argues that *res judicata* applies to administrative proceedings. *Batson v. Shiflett*, 325 Md. 684, 701-05 (1992). People's Counsel, however, concedes that in zoning cases, the law does allow for consideration of a substantial change in the character of the neighborhood if it materially affects the zoning issue at hand. *Whittle v. Board of Zoning Appeals of Baltimore County*, 211 Md. 36 (1956); *Mayor & City Council of Baltimore v. Linthicum*, 170 Md. 245 (1936); *Bensel v. Mayor & City of Baltimore*, 203 Md. 506 (1954); *Woodlawn Area Citizens Assoc. v. Board of County Comm'rs* 241 Md. 187 (1966).

People's Counsel argued in its Motion for Summary Judgment that the present case "deals with the same property, the same D.R. 3.5 zone and the same shoreline addressed in Oberst " and that there is no material change in the character of the neighborhood, or any other new fact that would justify revival of the case. People's Counsel further argues that Dr. Zinn acquired the property from Oberst, and, as a matter of law, is in privity. He acquired it before the Oberst

litigation ended and was a party to the prior case and that legally, Zinn here is bound by that decision as a party.

People's Counsel further notes that the proposed waterfront construction presents materially similar requests with respect to location and size and that there is still the issue of an undersized lot extremely deficient in area as well as setback variances. People's Counsel argues that, even if the Petitioner's request to establish an alternative housing size and type and location on the parcel were characterized as a new claim or legal theory, *res judicata* would still bar its assertion now.

In response to oral argument of the Petitioner which outlined the contents of Petitioner's Exhibit 23 previously outlined above, People's Counsel contends that none of the changes cited by the Petitioner taken individually or considered as a whole constituted "a substantial change in the character of the neighborhood that materially affected the zoning issue at hand." Without such a change, People's Counsel argues that *res judicata* should apply and the previous decisions affected this same property should stand.

CONCLUSION

The case law presented by People's Counsel is clear in that the doctrine of *res judicata* applies in zoning matters. The record is also clear that the relief requested by the Petitioner was fully adjudicated and denied in previous proceedings before the Zoning Commissioner and this Board. Furthermore, this Board's 2004 denial of the request for variance for this property was not appealed to the Circuit Court for Baltimore County, thus making it a final order.

It is this Board's opinion that the evidence presented by the Petitioner as to the changes to the property in question since the Board's last decision do not constitute "a substantial change in the character of the neighborhood that materially affects the zoning issue at hand" which would warrant a nullification of the principles of *res judicata*. It is the opinion of this Board that the

doctrine of *res judicata* is intended to prevent the endless re-litigation of issues that have already been legally determined. Consequently, this Board does not address the merits of the previous decisions, but rather finds that this matter has been fully litigated and that the People's Counsel's Motion for Summary Judgment is GRANTED and the Petitioner's request for relief DENIED.

ORDER

THEREFORE, IT IS THIS 1st day of July, 2008 by the County Board of Appeals of Baltimore County

ORDERED that the People's Counsel's Motion for Summary Judgment is hereby **GRANTED** and that the Petitioner's request for variance is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chair

Andrew M. Belt

Maureen Murphy

RE: PETITION FOR VARIANCE 809 Cold Spring Road; E/side of Cold Spring Road, 700' +/- S of Chesapeake Avenue 15th Election & 6th Councilmanic Districts Legal Owner(s): Harlan Zinn Petitioner(s)	* * * *	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 07-545-A

RECEIVED
APR 2 1 2008
BALTIMORE COUNTY
BOARD OF APPEALS

* * * \

refused to accept the final decisions. Instead, the administrative agencies, the protestants and People's Counsel have been subjected to repeated petitions for the same relief on the same site.

This Motion to Dismiss is based on the long standing legal principle of *res judicata*, which applies to administrative proceedings as well as court proceedings. Its purpose is to prevent this type of chicanery. The Petitioner's actions are preposterous and must be halted. This Motion is filed to protect the CBA, People's Counsel and the protestants from Petitioner's repeated abuse of the legal system.

II. The doctrine of *res judicata* precludes relief requested in the current petition

1. The case is barred by *res judicata*, the legal doctrine of preclusion, which conveys that the matter has been litigated to a conclusion and decided, and that this finality precludes further litigation. The CBA recently addressed this issue in Becker Case No. 06-651-SPHA. The CBA's decision in the prior Duvall case precluded the petitions in Becker. Similarly, the CBA decision, in Oberst, Case No. 03-500-A and Oberst, Case No. 04-522-A preclude the current position.

2. The Oberst cases also involved a petition for variance for waterfront construction at 809 Cold Spring Road. The key CBA finding in the 2004 case is that the property failed to satisfy the familiar "special circumstances or conditions exist that are peculiar to the land or structure" test, "uniqueness" by way of shorthand, set by BCZR 307.1. Cromwell v. Ward. The CBA also found there was no practical difficulty.

3. It is settled that *res judicata* applies to administrative proceedings. Batson v. Shiflett 325 Md. 684, 701-05 (1992). In zoning cases, the law does allow for consideration of a substantial change in the character of the neighborhood if it materially affects the zoning issue at hand. Whittle v. Board of Zoning Appeals of Baltimore County 211 Md. 36 (1956); Mayor & City Council of Baltimore v. Linthicum 170 Md. 245 (1936); Bensel v. Mayor & City of Baltimore 203 Md. 506 (1954); Woodlawn Area Citizens Assoc. v. Board of County Comm'rs 241 Md. 187 (1966).

4. *Res judicata* applies to parties or their privies. Batson, *supra*. A successor owner is a privy. This applies in zoning cases, where the issue revolves around property use rather than the owner's identity. City of Baltimore v. Poe 224 Md. 428 (1961).

5. *Res judicata* bars litigation of the same matter with respect not only to the legal claims or issues decided in the case finally adjudicated, but also "as to all matters which with propriety could have been litigated in the first suit." Alvey v. Alvey 225 Md. 386, 390 (1961); MPC, Inc.

v. Kenny 279 Md. 29, 32 (1977); DeLeon v. Slear 328 Md. 569, 580 (1992). A litigant must bring forward the entire case, including all relevant facts and legal issues. Otherwise, there would be a potentially unending series of litigation based on different facts and legal theories to achieve the same objective.

6. The present case deals with the same property, the same D.R. 3.5 zone and the same shoreline addressed in Oberst. There is no material change in the character of the neighborhood, or any other new fact that would justify revival of the case.

7. Dr. Zinn acquired the property from Oberst, and, as a matter of law, is in privity. He acquired it before the Oberst litigation ended and was a party to the prior case. Legally, the Zinns here are bound by that decision as parties.

8. The proposed waterfront construction presents materially similar requests with respect to location and size. There is still the issue of an undersized lot extremely deficient in area as well as setback variances.

9. Significantly, the *res judicata* doctrine also bars new litigation based on facts or legal argument which might have been presented in the earlier litigation. So, even if the Zinns' request to establish an alternative housing size and type and location on the parcel is characterized as a new claim or legal theory, *res judicata* would still bar its assertion now. It should be repeated, however, that, as we shall see, the CBA decision in Oberst determined there is no uniqueness or practical difficulty to warrant variance relief.

10. There was no appeal of the final order in Oberst. *Res judicata* stops this case right here. In Fertitta v. Brown, 252 Md. 594 (1969), Chief Judge Hammond expressed in an admirably concise four page opinion the essence of *res judicata* where the property owner repeatedly filed for the same relief to the frustration of the opponents and eventually the Court itself. We have reached that level of frustration in the instant case. Fertitta is attached so that this Board may see the precise similarities.

III. Zoning History of the Site

The language in the petitions filed over the years for this site as well as the language in the Orders of the administrative agencies will show there is no dispute of any material fact and that People's Counsel is entitled to a denial of the Petition as a matter of law.

1. Case 03-500-A (2003)

The first Petition for Variance was filed by Dr. Zinn's seller, Janice Oberst in Case 03—500-A. The Petition requested relief from BCZR Sections **"303.1 and B102.3 C.1 to permit a front setback of 11 ft. in lieu of the required average of 55ft. and a rear setback of 2 ft. in lieu of the required 30 ft. and undersized lot."** Zoning Commissioner Lawrence Schmidt denied the relief in an Opinion dated July 29, 2003 in which he recognized the opposition of the neighbors and the adverse comment from the Office of Planning and further stated:

> **"In any event, after due consideration of the testimony and evidence presented, I am persuaded to deny the request. I concur with Mr. Pitz' that the property is simply too small for the proposed development. I am appreciative that the property is a lot of record that was originally recorded as part of the subdivision of Long Beach Estates well prior to the adoption of the current zoning regulations. Nonethless, it is simply too small to support the proposed dwelling and development of the parcel would be inconsistent with the neighborhood and cause detrimental impacts to adjacent properties. In sum, I am not persuaded that the Petitioners have met the requirements of Section 307 and Cromwell v. Ward, 307 Md. 1 (1995), for relief to be granted."**

This decision was not appealed.

2. Case 04-522-A

Oberst, along with a new buyer, Dr. Zinn, the Petitioner in the instant case, filed another Petition for Variances in 2004. The Petition again sought relief for an undersized lot and front yard setback of 23 ft. in lieu of 30 ft. and rear yard setback of 2ft. in lieu of 30ft. In a decision dated July 20, 2004, DZC John Murphy recognized that the site has a waterfront recreational use and a use for mooring a boat and denied the Petition:

> **"Section 307.1 requires "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". . . . The dry land area is approximately 4800 sq. ft. . . . This is not close to the size lot envisioned by the Council when it imposed DR 3.5 on this area. . . . The Office of Planning points out that the lot is too small to accommodate the proposed residence and the 2 ft. rear yard setback is out of character with the neighborhood. . . I am also troubled by the placement of a very long narrow home in a neighborhood in which the homes are built in a more traditional way. . . In summary, considering all the evidence presented, I arrive where Mr. Schmidt found himself last July. The lot is simply too small for the home proposed."**

Zinn and Oberst appealed this case to the CBA. Following a 2 day hearing, in which the Office of Planning appeared in opposition, as well as the same opposing neighbors, the CBA

(Stahl, Brassil and Quinn) denied the relief in a 16 page Opinion on December 20, 2005. First the CBA noted Petitioner is not entitled to relief under BCZR 304.1 which permits a dwelling on a lot deficient in area or width only if certain conditions are met. The CBA noted Petitioner does not satisfy the condition that the proposal meet all other height and area regulations. The CBA denied the variances because **"No evidence was presented by petitioners to show that the size of this property made it unique under Section 307 and/or *Cromwell*. . . The subject property needs variances because it is too small – which itself is not a unique feature. . . The Board concludes therefore that this lot is not unique as required by BCZR 307 and *Cromwell*."** The CBA addressed the practical difficulty standard even though it recognized the variances could not be granted solely for lack of uniqueness. Recognizing that the property can be used for recreation, the CBA explained: **"Given the zoning history of Lot 304, this Board found that Petitioners would not meet the practical difficulty test, even if it had found the property unique. . . Therefore, this Board finds that none of the conditions as required by 307 of the BCZR or *Cromwell* in order to grant the request for variance have been met. The subject property is not unique. . . and it can be used for other legal purposes, so the zoning regulations do not impose a practical difficulty. Finally, the variance request . . . would not meet the spirit and intent of the BCZR."**

Petitioners did not appeal. The CBA Order dated December 20, 2005 is a final Order.

3. Case 07-236 SPH 2007

In November, 2006, Zinn filed a Petition for Special Hearing to "**permit a 8x14' storage shed on the property . . .to supplement use of property with associated pier. Shed would contain kayaks, boating equipment and gardening equipment.**" Clearly, Zinn with this Petition acknowledges he can utilize the waterfront property for the recreational use pointed out by DZC Murphy in 2004 and the CBA in 2005. [BCZR 417 permits waterfront constructional in residential zones for recreational uses without the requirement of a residence as a principal use on the site.]

DZC Murphy also presided at the hearing on this Petition. The DZC noted in his February 9, 2007 Opinion that Zinn testified **"he has improved the property substantially paving and relocating the turn around, landscaping the property and improving the existing pier. . . Tied to the end of the pier is a houseboard. .. . He indicated that in addition the property is now served by public water, cable and most recently public sewer which he**

indicated were all to serve the occupants of the houseboat. . . . Upon questioning whether the water and sewer would be connected to the shed, he indicated that the shed is strictly for storage, and will have no water, sewer, toilet, kitchen or bath. . . . the most obvious concern regarding this request is that the shed will quickly become the denied which has been denied by the County in the last three zoning cases. Mr. Zinn assures me that this will not happen and the public water and sewer are to serve the houseboat only."

The DZC granted the relief with numerous conditions to assure the shed will not be converted to a residence.

The neighbors did not oppose the relief nor did People's Counsel. They acknowledge the recreational use and were content with Zinn using the site for recreational boating. In filing this Petition, Zinn acknowledged a viable use for the site, commensurate with uses permitted in the zone, without the need for variance relief.

4. Case 07-545-A The Instant Case

Incredibly, Zinn filed a Petition for Variance in June, 2007 t construct a residence on the site and requested relief from **"Sections 303.1 and 1B02.3.C1 to allow a lot containing 7,342 square feet, front setback of 25 feet and rear yard setback of 25 feet in lieu of the required 10,000 square feet, front yard setback of 25 feet and rear yard setback of 25 feet in lieu of the required 10,000 square feet, 30 feet average and 30 feet setbacks respectively."** The relief is tantamount if not identical to the 2003 and 2004 variance requests. The point is Petitioner refuses to recognize the findings by the CBA, ZC and DZC in three separate cases seeking to construct a residence, that the site is not unique and moreover, there is no practical difficulty.

ZC William Wiseman denied the relief in an Opinion dated September 21, 2007. Mr. Wiseman is the fourth zoning administrator to hear a variance case for this site. He found the relief was barred by *res judicata*:

> **"Here, the Petitioner, Dr. Zinn, requested the same relief for the same site under the same regulations and zoning laws. He is bound by the CBA decision of 2005."**

The ZC stated pointedly that the CBA has found that the site is not unique in a final Order. He correctly noted, **"But when the Board determines the property is not unique, there**

is nothing that can change that decision or reverse this situation absent some phenomena that would physically change the land. Obviously this did not happen."

> **"In summation, I have considered the arguments and evidence presented. It is quite clear that the issues raised by the Petitioner were also before the CBA in Case No. 04-522-A. The case being fully litigated in that forum, the Board's decision not appealed, their Order is conclusive and "the end of the road". Res judicata precludes Dr. Zinn from filing the within Petition and relitigating the matter."**

Petitioner appealed the ZC decision to this Board.

IV. Conclusion

It is clear Petitioner has continued to file for the same variance relief on the same site, which he, or his predecessor in title, filed or should have filed in prior zoning hearings. In particular, the 2005 decision of the CBA bars relief in the instant case. At the very least, the CBA's finding on the variance for an undersized lot that no uniqueness or practical difficulty exists, is binding on the CBA in the current case. If there is no variance relief for an undersized lot, the Petition must be denied for no residence is permitted regardless of the size of the proposed house. Moreover, *res judicata* applies to the setback variances as well. It is irrelevant that the variances were slightly changed from petition to petition. Otherwise, *res judicata* would be a hollow and ineffective legal doctrine if a Petitioner could make a slight change to the relief to avoid its application. A Motion for Summary Judgment can act as a motion to dismiss the Petition for Variance in the instant case under Rule 2-322 (c) (f). There is no need for another hearing in this matter. Under the doctrine of *res judicata* Petitioner should be prohibited from pursuing relief here that has been denied in a prior final order of the CBA and other final orders of the ZC and DZC.

Respectfully submitted,

Carole S. Demilio
Deputy People's Counsel for Baltimore County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April, 2008 a copy of the foregoing Motion for Summary Judgement was mailed to, Richard Pitz, 808 Cold Spring Road, Baltimore, MD 21220, Protestant, and Harlan Zinn, 10628 Park Heights Avenue, Owings Mills, MD 21117, Petitioner.

CAROLE S. DEMILIO
Deputy People's Counsel for Baltimore County

IN RE: **PETITION FOR VARIANCE** E/Side Coldspring Road, 700' +/- S of Chesapeake Avenue **(809 Cold Spring Road)** 15th Election District 6th Council District Dr. Harlan K. Zinn Petitioner	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY **Case No. 07-545-A**

* * * * * * * * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Zoning Commissioner for a public hearing on a Petition for Variance filed by Dr. Harlan K. Zinn for waterfront property located in the Chesapeake Bay Critical Area at 809 Cold Spring Road in Bowleys Quarters. The Variance request is from Sections 303.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow for the construction of a single-family dwelling on a lot containing 7,342 square feet and having a front yard setback of 25 feet and rear yard setback of 25 feet in lieu of the required 10,000 square feet, 30 foot average and 30 foot setbacks respectively as set forth in the Density Residential regulations for the D.R.3.5 zone. The problem presented in this case is that the Office of the Zoning Commissioner, on two occasions, has denied similar requests.[1] In addition, the County Board of Appeals (CBA) after fully adjudicating Petitioner's *de novo* appeal on issues of an undersized lot and front and rear yard setbacks denied the appeal.[2] As aptly pointed out by the Office of People's Counsel, the case has been fully litigated; the decision of the CBA was not appealed and, therefore, constitutes a final binding Order. On August 20, 2007, a hearing was held before the undersigned on the instant Petition and the Petitioner and Protestants from the community presented testimony and evidence.[3] For the reasons set forth below, the relief requested will be **DENIED**.

ORDER RECEIVED FOR FILING
Date 9-21-07
By EC

[1] See Orders in Case Nos. 03-500-A and 04-522-A in which decisions were previously rendered July 28, 2003 and July 20, 2004.
[2] See Opinion and Order issued by the CBA on December 20, 2005.
[3] Dr. and Mrs. Zinn presented 19 exhibits demonstrating remedial efforts taken subsequent to zoning and CBA decision(s) while Protestants offered 6 exhibits alleging creative manipulation on the part of the Petitioner in arriving at the claimed lot area.

BACKGROUND

This case arises from Petitioner's proposed plan to develop 809 Cold Spring Avenue a/k/a Lot 304 located in the old subdivision of Long Green Estates that has historically remained unimproved for decades and used for recreation and boating. In this regard, Dr. Zinn's predecessor(s) in title beginning in the early 1960's with John and Ann Kratzer and ending with their daughter, Janice Ann Oberst owned, in addition to the subject lot, 810 Cold Spring Road (Lot 196, a 7,975 square foot parcel) across the street where they resided. The Kratzer's enjoyed sailing and built a bulkhead and pier on Lot 304 and used it in conjunction with their home across the street. While their home enjoyed water access on the Frog Mortar Creek side of the peninsula, the pier was built off of Lot 304 on the Galloway Creek side as it provided for deeper water access to moor a sailboat with a fixed keel. In 1992, the Kratzer's obtained by quit claim deed an additional portion of land (900 square feet) adjoining Lot 304 from the Bowleys Quarters Improvement Association. This parcel is commonly referred to as an "End of Road" lot and is traditionally used for community purposes such as water access and as a turnaround area for vehicles and trucks, etc. In any event, Ms. Oberst, having acquired title to the properties from her parents, decided to sell the home property (Lot 196) to Robert Kroll. Lot 304 and the small adjoining parcel, even though when combined never satisfied the minimum area requirements of the B.C.Z.R. from the time zoning was introduced to Baltimore County in 1945, was sold to Dr. Zinn.

Case No. 03-500-A was filed in 2003 by Janice N. Oberst as owner and Robert B. Long as a contract purchaser. At the hearing before then Commissioner Lawrence Schmidt, they claimed a gross area of .15 acres or 6,521 square feet and requested a front yard setback of 11 feet in lieu of the required 55 feet, a rear yard setback of 2 feet in lieu of the required 30 feet and approval of the property as an undersized lot for the construction of a residence to be 28′ x 28′. Their Petition was denied as the property was too small to support the proposed dwelling and development of the parcel would be inconsistent with the neighborhood. Deputy Zoning Commissioner John Murphy next heard Case No. 04-522-A in 2004 filed by Janice Oberst as owner and Amanda C. and Dr. Harlan

ORDER RECEIVED FOR FILING
Date 9-22-07
By

Zinn as contract purchasers. The subject property at that time was listed as consisting of 5,092 square feet in area and requested similar variance relief for a front yard setback of 23 feet and a rear yard setback of 2 feet for a proposed 16′ x 46′ residence. In his denial, the Deputy Zoning Commissioner found that the lot was simply too small for the home proposed and he was further troubled that the placement of a very long and narrow home in the neighborhood, which was built in a more traditional way, would not be compatible with the pattern of development and therefore out of character. As noted above, an appeal was filed and a de novo hearing held before the CBA, which was conducted over a 2-day period. It is pertinent to note that the Petitioner presented a new theory of the case at the CBA hearing. In their petition before the Deputy Zoning Commissioner, the setbacks for the proposed dwelling and lot area were calculated at a distance of 40 feet from the right-of-way line of Cold Spring Road. At the CBA hearing, the Petitioner claimed the right-of-way as being 25 feet, not 40 feet; thus, reducing the variance request. The CBA found Petitioner's evidence on this point conflicting and confusing and stated that a determination of ownership rights had to be made by the Circuit Court. I concur. Neither the CBA nor this Commission has within its jurisdiction the authority to determine property ownership rights. Moreover, it has been the practice of this Commission that in determining the area of a lot, an owner may not include the area of a right-of-way which he owns but is obligated to keep open for nearby property owners and the public. *See Young, American Law of Zoning,* 3rd, Section 9.64 and *Bankers Trust Company v. Zoning Board of Appeals,* 165 Conn. 624, 345 A 2nd 544 (1974).

RES JUDICATA AND COLLATERAL ESTOPPEL

Dr. Zinn requested a Petition for Variance for this site in Case No. 04-522-A. In that case, as in the instant case, the Petitioner sought relief for an undersized lot, and front and rear yard setbacks. In pertinent part and as evidenced in the CBA Opinion, dated December 20, 2005, the Board noted at Page 3:

> "Prior to the hearing before the Board, the Petition was amended. Petitioner's Exhibit 4 presents the revised Site Plan, which shows the footprint of a house 16′ wide x 46′ long. In addition, the property lines are redrawn to include a portion of the 40-foot right-of-way known as Cold Spring Road. The inclusion of the right-of-way would bring

ORDER RECEIVED FOR FILING
Date 9-21-07
By

the square footage of the property to 7,504 feet and the rear setback, from the house to the road pavement, to 25 feet. The front yard setback remains 24 feet."

The case was fully litigated in 2005. The decision of the CBA was not appealed by Dr. Zinn and was a final binding Order. The same issues raised and litigated in 2003, 2004 and 2005 are the same issues as the instant case by the same parties for the same site.[4] The doctrines of res judicata and collateral estoppel apply to administrative decisions. *Batson v. Shiflett* v. 325 Md. 684, 704-705 (1992): *Century I Condominum Ass'n v. Plaza Condominum Joint Venture* 64 Md. App. 107, 113-114 (1985). The Court of Appeals has consistently applied these doctrines in zoning cases. *Fertitta v. Brown* 252 Md. 594 (1969); *Chatham Corp. v. Baltram* 243 Md. 138 (1966); *Woodlawn Area Citizens Ass'n v. Board of Co. Com'rs.* 241 Md. 187 (1966); *Whittle v. Board of Zoning Appeals*, 211 Md. 36 (1956).

The doctrine of collateral estoppel is also known as "issue preclusion". It stands for the proposition that matters actually litigated and resolved against a party in a proceeding are considered to have been finally adjudicated for the purpose of a subsequent proceeding even where the subsequent proceedings differ in form. *See Jones v. State*, 350 Md. 284, 295 (1998); *MPC, Inc. v. Kenny*, 279 Md. 29, 34-36 (1977); *Pat Perusse Realty v. Lingo* 249 Md. 33, 43-45 (1968); *Prescott v. Coppage* 266 Md. 562, 570-573 (1972). Here, the Petitioner, Dr. Zinn, requested the same relief for the same site under the same regulations and zoning laws. He is bound by the CBA decision of 2005. This finding absent fraud, mistake or inadvertence prevents this Commission and the administrative body from reversing the prior decision. With respect to the within Petition – Case No. 07-545-A – the prior history belies the adage that, "the third time's the charm". This decision can be of no comfort to the Petitioner and his family who have expended great time, effort and expense since acquiring the property.

ORDER RECEIVED FOR FILING
Date 9-22-07
By

[4] Following the CBA's deliberation but prior to publishing its Opinion and Order on December 20, 2005, John B. Gontrum, Esquire, on behalf of the Petitioner, wrote to the CBA on November 14, 2005 asking the CBA to reconsider its position concerning lot area, turnaround area and the location of the County's right-of-way. *See Petitioner's* Exhibit 12.

MISCELLANEOUS

Petitioner argues that he is being denied reasonable use of his property and a continual denial of variance relief causes him to suffer hardship and practical difficulty. He asks that I follow the dictates of the Court of Appeals of Maryland in its decision of *Roeser v. Anne Arundel Co.* 368 Md. 294 (2002). The CBA, however, gave as a reason for denying variance relief in Case No. 04-522-A its finding that the property is not unique from a zoning standpoint. Had the Board's denial been based on the pattern of development of the neighborhood, I perhaps could have found from the significant evidence produced facts that would distinguish such a finding. But when the Board determines the property is not unique, there is nothing that can change that decision or reverse this situation absent some phenomena that would physically change the land. Obviously, this did not happen. Consequently, setting aside the doctrine of res judicata, I must deny this petition based upon my understanding that the Petitioner must take the case to the CBA or higher authority on the uniqueness issue. In other words, the Board made the determination that the property was not unique; I find the Board and not this Commission must be the forum to review this matter. I shall attempt to explain by way of example.

The Board has previously recognized that zoning regulations imposed after lots are laid out and recorded in the Land Records have a different impact then lots laid out after the regulations were enacted. As such, they have often been found to be unique even though they are flat rectangles with no redeeming features such as rivers, wetlands, etc. The R.C.5 zoning classification in this regard serves as a good illustration as it was imposed on many old lots on the eastern side of the County in the 1970's. This zone was initially concerned with controlling development around the rural commercial centers in the northern area of the County. Lots were specified to contain one acre, as this was the minimum size for homes using private water and septic systems. Having one acre, the

ORDER RECEIVED FOR FILING
Date 6-22-07
By

regulations could reasonably require 50-foot setbacks from lot lines for new homes. These regulations made great sense in the rural areas of the County.

As no public water and sewer were planned for large parts of the eastern side of the County, the Council imposed R.C.5 there as well. However, there are extensive portions of the County's Chesapeake Bay waterfront which were laid out in the 1920's on 50-foot lots, perhaps with 1/8 acres of ground. The pattern of development was often one (1) house on each 50-foot lot. Clearly, no one could meet the 50-foot side yard setback regulations on a 50-foot lot. In fact, someone would have to acquire three (3) adjoining lots just to put up a home to meet the side yard setback requirements. However, someone would have to have eight (8) lots to meet the acreage or area requirements, an impractical task. Recently, the minimum acreage was increased to 1.5 acres to address continuing development concerns around the rural commercial centers. If the present R.C.5 regulations strictly apply to the 50-foot lots along the waterfront, someone would need 12 lots to build. No homes could practically ever be built. Clearly, this was not the Council's intention. Rather, the Council addressed the issues it saw around the rural centers by means of the R.C.5 regulations and left the application of the R.C.5 regulations on the old 50-foot lots to the discretion of the Zoning Commissioner and CBA via the variance procedures. As such, these lots are unique in a zoning sense because they are impacted differently from the lots laid out in conformance with the R.C.5 regulations. That said, the community is protected from harmful development in these areas by the remaining requirements of B.C.Z.R. Section 307 such as no greater density, spirit and intent and adverse impact. The latter often amounts to analyzing the pattern of development of the neighborhood street by street to see if the new home will adversely impact the community. In this case, and as previously stated, the Board has made the determination that the instant property is not unique albeit that the Deputy Zoning Commissioner in his Order involving the same case found that the subject lot was unique in the sense required by *Cromwell v. Ward*, 110 Md. App. 691 (1995).

ORDER RECEIVED FOR FILING
Date 6-21-07
By

Mr. Murphy found the waterfront property to be very irregularly shaped, subject to periodic flooding and subject to the Chesapeake Bay Critical Area legislation. The CBA respectfully disagreed.

CONCLUSION

In summation, I have considered the arguments and evidence presented. It is quite clear that the issues raised by the Petitioner were also before the CBA in Case No. 04-522-A. The case being fully litigated in that forum, the Board's decision not appealed, their Order is conclusive and "the end of the road". Res judicata precludes Dr. Zinn from filing the within Petition and re-litigating the matter.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21st day of September 2007 that the Petition for Variance from Sections 303.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a lot containing 7,342 square feet for the construction of a single-family dwelling with a front yard setback of 25 feet and rear yard setback of 25 feet in lieu of the required 10,000 square feet, 30 foot average and 30 foot setbacks respectively as set forth in the Density Residential regulations for the D.R.3.5 zone, be and is hereby DENIED.

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

WJW:dlw

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

c: Dr. Harlan K. and Amanda C. Zinn, 10628 Park Heights Avenue, Owings Mills, Md. 21117
Douglas Zinn, 14814 Milton Brook Circle, Sparks, Md. 21152
Randy Zinn, 3348 Highland View Court, Finksburg, Md. 21048
Richard Pitz, 808 Cold Spring Road, Baltimore, Md. 21220
Nancy & Daniel Hubers, 800 Cold Spring Road, Baltimore, Md. 21220
Michael Vivirito, 3619 Bay Drive, Middle River, Md. 21220
Chesapeake Bay Critical Area Commission, 1804 West Street, Suite 100, Annapolis, Md. 21401
People's Counsel; Development Plans Review; File

ORDER RECEIVED FOR FILING
Date 9-21-07
By

CBCA • Flood • •

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 809 COLD SPRING ROAD

which is presently zoned DR 3.5

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

Sections 303.1 and JB 02.3.C1 to allow a lot containing 7,342 square feet, front yard setback of 25 feet and rear yard setback of 25 feet in lieu of the required 10,000 square feet, 30 feet average and 30 feet setbacks respectively

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

Unusual shape and size of lot will not allow residential development with strict adherence to zoning regulations. Owner is proposing a creatively designed dwelling which will still require variances noted above, while accommodating environmental regulations.

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

Legal Owner(s):

DR. HARLAN K. ZINN
Name - Type or Print

Signature

Name - Type or Print

Signature

H- 410.486.2899
10628 PARK HEIGHTS AVE O- 410.580.2980
Address — Telephone No.

OWINGS MILLS MD 21117
State — Zip Code

Attorney For Petitioner:

Name - Type or Print — City

Signature

Company

Address — Telephone No.

City — State — Zip Code

Representative to be Contacted:

Name

Address — Telephone No.

City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By RK Date 6/4/07

Case No. 07-545-A

REV 9/15/98

ORDER RECEIVED FOR FILING
Date 9-21-07
By DW

J. S. DALLAS, INC.

SURVEYING & ENGINEERING

13523 LONG GREEN PIKE
P.O. BOX 26
BALDWIN, MD 21013
(410) 817-4600
FAX (410) 817-4602

PROPERTY DESCRIPTION
#809 COLD SPRING ROAD

BEGINNING *at a point on or near the existing edge of paving of the traveled portion of Cold Spring Road at the extension of the division line between Lots No. 200 and 304 as shown on the Plat entitled "Plan of Long Beach Estates" as recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4 folio 131 thence running with and binding on the extension of said division line and a part of said division line, in all, with all bearings and distances herein according to a Boundary Survey dated December 5, 2001 by Siterite Surveying, Inc.* ***(1) South 64 degrees 09 minutes East 84.78 feet more or less*** *the waters of the Galloway Creek, thence leaving said division line and running with and binding on the outline of said Creek the three following courses and distances:* ***(2) South 42 degrees 10 minutes East 36.26 feet (3) South 14 degrees 31 minutes East 27.91 feet*** *and* ***(4) South 24 degrees 18 minutes East 24.59 feet*** *to intersect the northernmost outline of Lot No. 199 as shown on said Plat thence running with and binding on said northernmost outline of Lot No. 199* ***(5) South 88 degrees 51 minutes West 86.28 feet*** *to intersect a point on or near said existing edge of paving thence running with and binding on or near said existing edge of paving the three following courses and distances:* ***(6) North 03 degrees 30 minutes West 14.26 feet, (7) Northwesterly by a curve to the left with a radius of 300 feet for an arc length of 33.92 feet (the chord of said arc being North 16 degrees 21 minutes West 33.90 feet*** *and* ***(8) Northwesterly by a curve to the right with a radius of 300 feet for an arc length of 71.60 feet (the chord of said arc being North 17 degrees 10 minutes West 71.43 feet)*** *to the place of beginning.*

CONTAINING 7345 square feet or 0.169 acres *of land, more or less.*

BEING *all of those two parcels of Land which by deed dated January 14, 2003 and recorded among the Land Records of Baltimore County in Liber 17471 folio 328 etc. was conveyed by Ann June Schuman fka Ann June Kratzer and Janice Ann Oberst to Janice Ann Oberst.*

STATE OF MARYLAND
JONATHAN SCOTT DALLAS
No. 466
REGISTERED
PROPERTY LINE SURVEYOR

#545

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 29203

DATE 6/4/07 ACCOUNT R001-006-6150

AMOUNT $ 65.00

RECEIVED FROM: Harold Z. Lee

FOR: Variance

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Item # 545

PAID RECEIPT
BUSINESS ACTUAL TIME
6/04/2007 6/04/2007 10:14:32
RED ROOF - WALKER FARM RD
RECEIPT # 334956 6/04/2007 CFLH
Dept 5 520 ZONING VARIANCE(01)
CP No. 029203
Recpt Tot $65.00 CR $65.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

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

Case: #07-545-A
809 Cold Spring Road
E/side of Cold Spring Road, 700 feet south centerline of Chesapeake Avenue
15th Election District - 6th Councilmanic District
Legal Owner(s): Dr. Harlan Zinn

Variance: to permit a lot containing 7,342 square feet, front yard setback of 25 feet and rear yard setback of 25 feet in lieu of the required 10,000 square feet, 30 feet average and 30 feet setbacks respectively.

Hearing: Monday, August 20, 2007 at 10:00 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) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

8/008 August 2 143932

C

CERTIFICATE OF PUBLICATION

8/2/, 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 8/2/, 2007.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

38 E 10

Requested: Jan. 3, 2008

APPEAL SIGN POSTING REQUEST

CASE NO. 07-545-A

809 COLD SPRING ROAD

15TH ELECTION DISTRICT APPEALED: OCT. 18, 2007

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

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

CERTIFICATE OF POSTING

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

Attention: Kathleen Bianco
Administrator

CASE NO.: 07-545-A

LEGAL OWNER: **DR. HARLAN ZINN**

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

809 COLD SPRING ROAD

E/SIDE COLDSPRING ROAD, 700' +/- S of CHESAPEAKE AVE.

The sign was posted on 1/4/08, 2008.

By: _____
(Signature of Sign Poster)

C. Rayner, Code Enforcement
(Print Name)

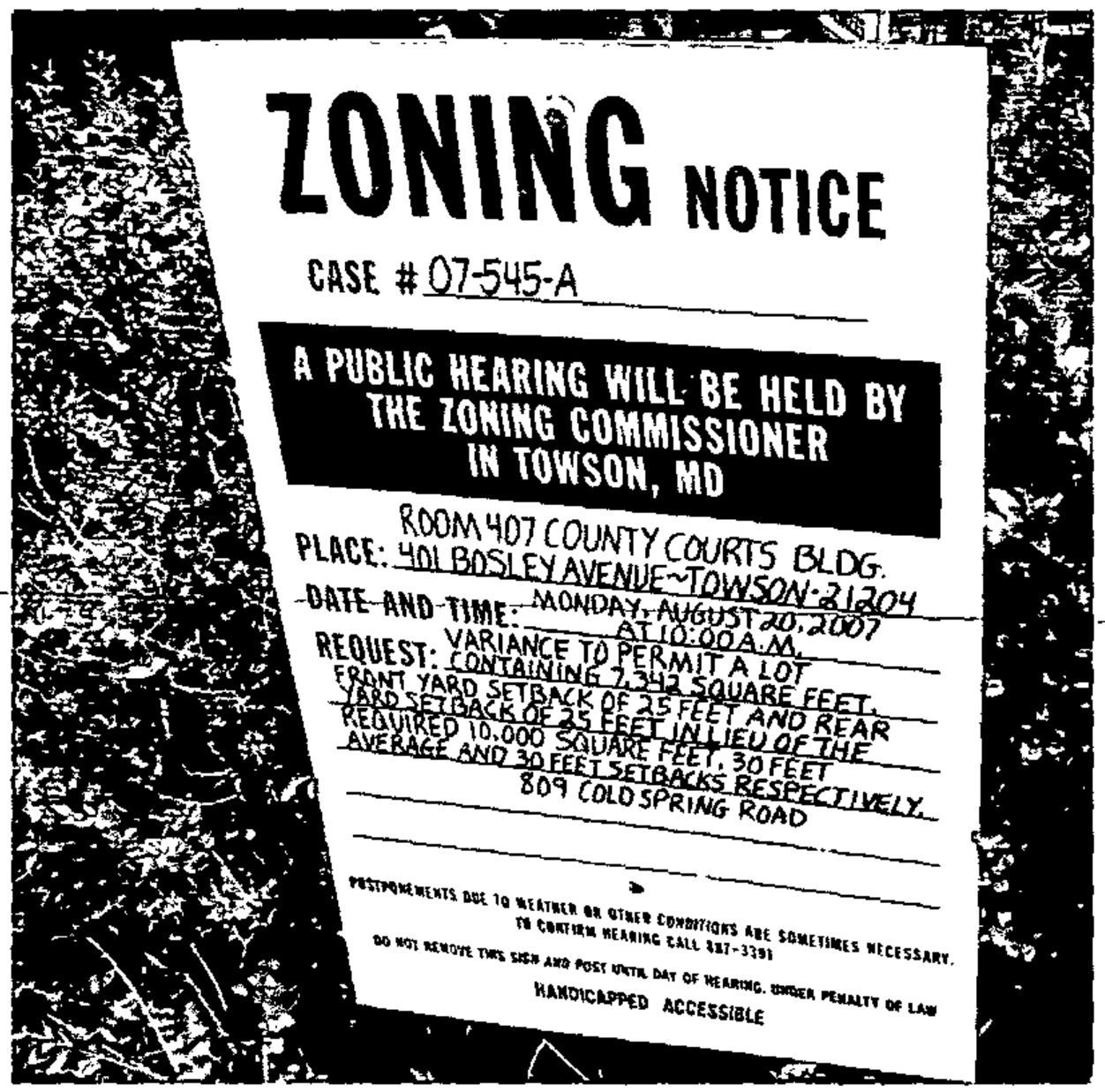
04-04-2008 11:30

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS
DATE: 08/01/07
Case Number: 07-545-A
Petitioner / Developer: DR. HARLAN ZINN
Date of Hearing (Closing): AUGUST 20, 2007

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:
809 COLD SPRING ROAD

The sign(s) were posted on: 07/31/07



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 – 666 – 5366
(Telephone Number of Sign Poster)

TO: PATUXENT PUBLISHING COMPANY
Thursday, August 2, 2007 Issue - Jeffersonian

Please forward billing to:
Dr. Harlan Zinn
10628 Park Heights Avenue
Owings Mills, MD 21117

410-486-2899

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: 07-545-A
809 Cold Spring Road
E/side of Cold Spring Road, 700 feet south centerline of Chesapeake Avenue
15th Election District – 6th Councilmanic District
Legal Owners: Dr. Harlan Zinn

Variance to permit a lot containing 7,342 square feet, front yard setback of 25 feet and rear yard setback of 25 feet in lieu of the required 10,000 square feet, 30 feet average and 30 feet setbacks respectively.

Hearing: Monday, August 20, 2007 at 10:00 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.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 07-545-A

Petitioner: DR. HARLAN K. ZINN

Address or Location: 809 COLDSPRING RD BALTIMORE, MD 21220

PLEASE FORWARD ADVERTISING BILL TO:

Name: DR. HARLAN K. ZINN

Address: 10628 PARK HEIGHTS AVE
OWINGS MILLS, MD 21117

Telephone Number: 410-486-2899

Revised 7/11/05 - SCJ

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

August 14, 2007

Dr. Harlan K. Zinn
10628 Park Heights Avenue
Owings Mills, MD 21117

Dear Mr. Zinn:

RE: Case Number: 07-545-A, 809 Cold Spring Road

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on June 4, 2007. This letter is not an approval, but only a **NOTIFICATION.**

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel

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

State Highway Administration
Maryland Department of Transportation

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

Date: JUNE 18, 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. 7-545-A
803 COLD SPRING ROAD
ZINN PROPERTY
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. 7-545-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,

Michael P. Bailey

FOR Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: July 11, 2007

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

SUBJECT: 809 Cold Springs Road

INFORMATION:

Item Number: 7-545 ***(revised)***

Petitioner: Dr. Narlan K. Zinn

Zoning: DR 3.5

Requested Action: **Variance**

Requested Action: Petition for Variance to the Zoning Commissioner of Baltimore County
Per sections 303.1 and 1B02.3 C1 to allow a lot containing 7342 square feet, front yard setback of 25feet and rear yard setback of 25 feet in lieu of the required 10,000 square feet, 30 feet average and 30 feet setbacks.

SUMMARY OF RECOMMENDATIONS:

The Office of Planning **does not support** the petitioner's request. Lot 304 of the Long Beach Estates plat is undersized and has inadequate area, even though the property owner has right of way to the centerline of the street and was able to obtain the 25-foot wide strip from Bowleys Quarters Improvement Association. (See John B. Gontrum's of Whiteford Taylor and Preston LLP letter dated December 11, 2005).

This property has been brought before the Zoning Commissioner on three prior occasions for variance requests and was denied for having insufficient acreage. (Files 03-500A, 04-522A and 07-236SPH). However, in February of 2007, the Zoning Commissioner granted a variance for having a shed with no primary structure. This however still does not make this lot compatible with the requirements of Baltimore County 's zoning regulations and feasible for building.

Should the Zoning Commissioner grant the applicant's requests, the following items shall be submitted to the Office of Planning for review and approval:

1. A detailed site plan which should show clearly the building footprint, egress and ingress onto the property from Cold Spring Road and the relationship of the proposed dwelling and the neighboring properties. Due to this being a flood zone, it must indicate clearly on the plan where the areas of parking would be located.

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

June 14, 2007

ATTENTION: Zoning Review Planners

Distribution Meeting Of: June 11, 2007

5 545
Item Number: 542 Through 549

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

2. Architectural elevation drawings, which should also show the proposed building materials.

3. A landscape plan, which must show all proposed vegetation. Tree and shrub dimension must be when trees and shrubs are in mature stages.

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

Reviewed by: Curtis Murray

Division Chief: Lynn Lanham
AFK/LL: CM

W:\DEVREV\ZAC\7-545revised.doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: June 14, 2007

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

SUBJECT: Zoning Advisory Committee Meeting
For June 18, 2007
Item No. 07-545

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment(s).

The base flood elevation for this site is 10.2 feet Baltimore County Datum.

The flood protection elevation for this site is 11.2 feet.

In conformance with *Federal Flood Insurance* requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.

The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the *Baltimore County Building Code* must be followed whereby elevation limitations are placed on the lowest floor (*including basements*) of residential (*commercial*) development.

The building engineer shall require a permit for this project.

The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.

Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the *International Building Code*.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 07-545-06142007.doc

BW
8-20-07
10 AM

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED
AUG 02 2007
BY:

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination

DATE: August 2, 2007

SUBJECT: Zoning Item # 07-545-A
Address 809 Cold Spring Road
(Zinn Property)

Zoning Advisory Committee Meeting of June 11, 2007

_X_ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

____ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

____ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

_X_ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections, of the Baltimore County Code).

Additional Comments:
This property is within the Limited Development Area (LDA) and Buffer Management Area (BMA) of the CBCA. LDA regulations state that the lot is limited to 25% impervious surface area and that 15% tree cover be maintained. BMA regulations state that any proposed development in the 100-foot buffer to tidal waters requires mitigation approved by this Department. A revised CBCA variance may be required.

Reviewer: Kevin Brittingham Date: 7/17/07

S:\Devcoord\1 ZAC-Zoning Petitions\ZAC 2007\ZAC 07-545-A.doc

BALTIMORE COUNTY

MARYLAND

JAMES T. SMITH, JR.
County Executive

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

November 6, 2007

Dr. Harlan Zinn
10628 Park Heights Avenue
Owings Mills, MD 21117

Dear Dr. Zinn:

RE: Case : 07-545-A, 809 Cold Spring Road

Please be advised that this office received your appeal of the above-referenced case in this office on October 18, 2007. 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
Dr. Harlan Zinn, 10628 Park Heights Avenue, Owings Mills 21117
Douglas Zinn, 14814 Milton Brook Circle, Sparks 21152
Randy Zinn, 3348 Highland View Court, Finksburg 21048
Richard Pitz, 808 Coldspring Road, Baltimore 21220
Nancy & Daniel Hubers, 800 Cold Spring Road, Baltimore 21220
Michael Vivirito, 3619 Bay Drive, Middle River 21220
CBCA, 1804 West Street, Ste. 100, Annapolis 21401

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Dr. Harlan Zinn, Legal Owner /Petitioner
Case No. 07-545-A

DATE : Thursday, May 15, 2008

BOARD /PANEL : Lawrence S. Wescott (LSW)
Maureen E. Murphy (MM)
Andrew M. Belt (AMB)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Case No. 07-545-A /Dr. Harlan Zinn /Petition for Variance and People's Counsel's Motion for Summary Judgment

The Board convened for public deliberation at the conclusion of the scheduled hearing in the subject matter.

LSW: I have looked at the argument in this matter. The first argument made – The Zinn's never replied to the Motion for Summary Judgment. Technically, without a reply to the Motion, the Motion should be granted. However, I will not base my decision solely on that – but it is a basis for granting the Motion.

I would grant the Motion, however, on the basis of the issues raised. This matter has been tried by this Board and by the previous Zoning Commissioner, and there is nothing really new other than the fact that the Petitioner claims that the size has increased. It's still an undersized lot – the uniqueness has also been tried before the Board and the Zoning Commissioner, and therefore I find that we don't even have to raise practical difficulty, because we find that it is not unique.

The fact that other situations in the neighborhood may have been allowed to exist, and other people have been allowed to build homes on what may be perceived as undersized lots – we cannot take that into consideration; it's not before us.

The issue of a neighbor's lot is not something that we would consider in making a decision on this lot. The issue of size /configuration of the house should have been considered before, as part of the previous case, if you wanted to make these changes.

I'm not saying that type of house would change the Board's position, but it could have been argued in previous cases but was not.

I find that the Motion for Summary Judgment should be granted.

MM: I concur with Mr. Wescott – in his decision. I believe that the County's memorandum which we have read on the Motion for Summary Judgment is very clear on the law (cited 1992 case that gave guidance on *res judicata*). Evidence that should have been presented the first time could have been presented at that time. Dr. Zinn, in the Board's Opinion on page 7, testified and stated that he was going to move the turnaround location. All issues that are to be raised here have already been raised here – in a full de novo hearing. The Board, acting in a judicial capacity, made a decision. The remedy would have been to appeal to the Circuit Court. There was

discussion of a letter by John Gontrum in November of 2005, prior to the Board's decision; considered what he had to say and denied it. Stated that the property had increased; that this is what has happened. The Board said okay – but put that into a Motion for Reconsideration. No such Motion was ever filed; no appeal was taken.

We will not litigate the same issues again. Even if there is an increase in the size, it is still an undersized lot. Also, there is no uniqueness; no change.

I therefore concur with Mr. Wescott – the Motion should be granted.

AMB: I also am concurring in the opinion of the other two members. *Res judicata* is a doctrine of law to keep the same issues from coming up over and over again. It may not be the most equitable rule. But the question is – was there substantial change. What has been brought up today, in the opposition to the Motion for Summary Judgment (which was not filed timely but rather here today) does not equal substantial change.

There is no need to go further; to consider the standards for a variance. The fact that there has not been a substantial change does not get the Board beyond the *res judicata* issue. That rule keeps the courts from being clogged and from re-hearing things that have been already done.

However, even if the standards for a variance are considered, I believe that the uniqueness standard has not been met.

I would therefore concur with granting this Motion.

- **In Summary:**

Unanimous decision of the Board – People's Counsel's Motion for Summary Judgment is GRANTED.

While there is not need to go beyond the issue of *res judicata*, the Board also found unanimously the variance standards as to uniqueness has not been met.

A written Order will 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

Kathleen C. Bianco, Administrator
County Board of Appeals

RECEIVED
MAY 12 2008
BALTIMORE COUNTY
BOARD OF APPEALS

County Board of Appeals of Baltimore County
Jefferson Building
Second Floor, Suite 203
105 West Chesapeake Ave.
Baltimore, Maryland, 21204

April 27, 2008

RECEIVED
POST – APPEAL

Case #: 07-545-A 809 Cold Spring Rd; Dr. Harlan Zinn/Petitioner

Dear Board:

I represent the immediate, adjacent neighbors to this proposed residential development and we again stand united in opposition, as we have on 4 previous occasions since July 2003. We have been joined in our opposition by the Bowley's Quarter's Improvement Association and the Office of the People's Counsel, Baltimore County. On 4 separate previous occasions, requests for variance relief or Board of Appeals reversal have been denied.

In July, 2003 (case 03-500-A) Zoning Commissioner Lawrence Schmidt ruled the day of the original hearing that the property is "simply too small to support the proposed dwelling and development of the parcel would be inconsistent with the neighborhood and cause detrimental impacts to adjacent properties". This property has always been a 'road end' and Mr. Schmidt referred to it as a 'postage stamp sized' piece of property since the property is only 43 feet deep from the roadside property line to the water.

In July, 2004 (case 04-522-A) Deputy Zoning Commissioner John Murphy again denied request for variance relief stating "I am troubled by the placement of a very long, narrow home in a neighborhood in which the homes are built in a more traditional way. I would not want to set a precedent for this home in this neighborhood. The lot is simply too small for the home proposed (16'by 46')".

Case 04-522-A was appealed and the Board of Appeals issued their decision on December 20, 2005 again denying the request for variance. The Board of Appeals found that "none of the conditions as required by article 307 of the BCZR or Cromwell in order to grant the request for variance have been met. The subject property is not unique. It has never met the zoning requirements to build on, and it can be used for other legal purposes, so the zoning regulations do not impose a practical difficulty. Finally, the variance request, being half of what is required by the zoning regulations, would not meet the spirit and intent of the BCZR". In this argument the petitioners counsel was attempting to claim both 'uniqueness' due to small size and at the same time add area from the county 40-foot right-of-way to increase the rear setback.

RECEIVED
POST – APPEAL

In Sept, 2007 (case 07-545-A) Zoning Commissioner William Wiseman again denied request for variance and stated, "In summation, I have considered the arguments and evidence presented. It is quite clear that the issues raised by the Petitioner were also before the CBA in Case No. 04-522-A. The case being fully litigated in that forum, the Board's decision was not appealed, their Order is conclusive and 'the end of the road'. Res Judicata precludes Dr. Zinn from filing the within Petition and re-litigating the matter."

Res Judicata was ruled to apply because little has changed in the 4 previous attempts at zoning relief. Since 2003, the footprint of the proposed house has fluctuated between 640 sq ft and 784 sq ft, yet the property size has creatively changed from 5,092 sq ft to the currently alleged 7,345 sq ft, of course that now includes most of the 40 ft wide county road right-of-way up to the asphalt which cannot be used for building or variance calculations. Interestingly enough, in 2004, the lot lines were determined to extend out into the water with the dry land area only being approximately 4800 sq ft. The petitioner is attempting to perform alchemy on a tiny piece of property that never was suitable for building. These repeated failed efforts are attempting to make a mockery of the land use guidelines that the county has imposed to allow property owners to have 'reasonable' use of their land.

I would simply invite the Board to visit the property so you could allow the picture to bring into focus the facts of this case and lend common sense to all of the other reasons why this folly should be stopped and not allowed to continue.

I respect the efforts of Baltimore County to give each property owner every opportunity to fully utilize their property but after 4 previous failed attempts, when does Baltimore County say "enough is enough". The undersized property (road-end) 'is what it is' and has not changed despite creative surveying and re-deeding of the property to include part of the 40 foot road right-of-way, no part of which can be used for building or variance calculations, the property is still 43 feet deep and still requires impossible variance reductions. Because of the waterfront community, the front setback from the water has firmly been determined to be 55 feet going back to the original variance request in 2003. This 55 foot setback has never changed yet has conveniently been ignored by the petitioners in recent requests and was upheld in the court's decisions. Is it possible to build within a 43 foot deep piece of property and stay 55 feet from the front edge of the property at the water line ?.....I think not.

This property is being used recreationally as it always has in the 70 years that my family has lived across the road. Dr. Zinn was aware of the difficulties of ever building a residence at 809 Cold Spring Rd. as he knew the previous owners and was aware that a previous attempt to build was denied. When I first met Dr. Zinn I told him the history of the property and that I and the neighbors would oppose every attempt to build on this tiny piece of property. His property line came within 2 feet of the road-end turnabout that was in the 40-foot county road right-of-way and used by all vehicles to turn around, including the county refuse/recycling trucks and their snowplows.

RECEIVED
POST - APPEAL

Dr. Zinn blocked the turnabout when he had a fence erected in Sept 2005. This was immediately reported to the county and I met with and walked the property with Eric Rockel (then with Land Acquisitions) and also Chip Raynor from Code Enforcement. Using the deed description and the survey drawings provided by Dr. Zinn's surveyor, both Eric and Chip agreed that no part of the county turnabout was on Dr. Zinn's property and the fence needed to come down. Two weeks later I learned that a compromise had been reached that the fence only had to be adjusted 2 feet. Dr. Zinn had agreed to relocate the turnabout on the north end of his property (part of which also is in the 40-foot road right-of-way). The relocated turnabout is there today and is used by Dr. Zinn as his parking area, regardless whether he has one, two or three cars on the site; this usage is contradictory to the sign posted which reads "For Use By Emergency and Service Vehicles".

We are close, friendly, long-standing neighbors on Cold Spring Rd. and would not stand in the way of someone seeking reasonable use of their land. We did not oppose Dr.Zinn's request to put an oversized shed on the property even though he needed a variance because there is no residence on the property; it was a reasonable use of the land. Putting a residence on this tiny piece of land, so close to the fragile Chesapeake Bay that so many are trying to save is not a reasonable use of this land; how many times does this same request have to be denied by the county before it stops being an issue?

CC: Timothy Kotroco, Director of PDM
People's Counsel
Dr. Harlan Zinn

RECEIVED
POST – APPEAL

As the immediately adjacent, opposite and close proximity Cold Spring Rd. property owners to 809 Cold Spring Rd. we adamantly oppose the building of any residential dwelling on this undersized lot. We have collectively opposed the repeated efforts to circumvent Baltimore County's building codes, guidelines and prior Zoning Commissioner and Board of Appeals decisions; we will continue to do so in the future.

Richard Pitz
808 Cold Spring Rd.

Read Van Zile
812 Cold Spring Rd.

Nancy Hubers
800 Cold Spring Rd.

Ernestine Sisson
813 Cold Spring Rd.
820 Cold Spring Rd.

Robert Kroll
810 Cold Spring Rd.

RE: PETITION FOR VARIANCE 809 Cold Spring Road; E/side of Cold Spring Road, 700' +/- S of Chesapeake Avenue 15th Election & 6th Councilmanic Districts Legal Owner(s): Harlan Zinn Petitioner(s)	* * * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 07-545-A

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of June, 2007, a copy of the foregoing Entry of Appearance was mailed to, Harlan Zinn, 10628 Park Heights Avenue, Owings Mills, MD 21117, Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
JUN 22 2007
Per.....

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

Citizens

~~COUNTY~~ REPRESENTATIVE'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
RICHARD PITZ	8054 COLD SPRING RD	BALTO MD 21220	RPITZ@JHMI.EDU
Nancy Hubers	800 Cold Spring Rd	Balto, Md 21220	
MICHAEL VIVIRITO	3619 BAY DR.	MIDDLE RIVER 21220	bayvilla@attinet
Daniel W Hubers	800 Cold spring Rd	" " "	
HUBERS			

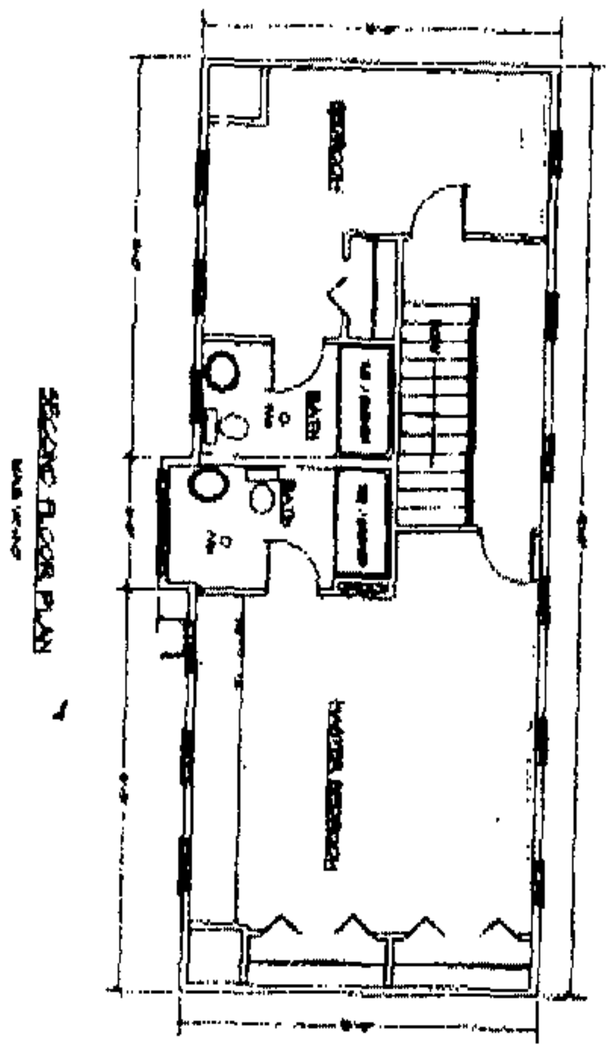
PLEASE PRINT CLEARLY

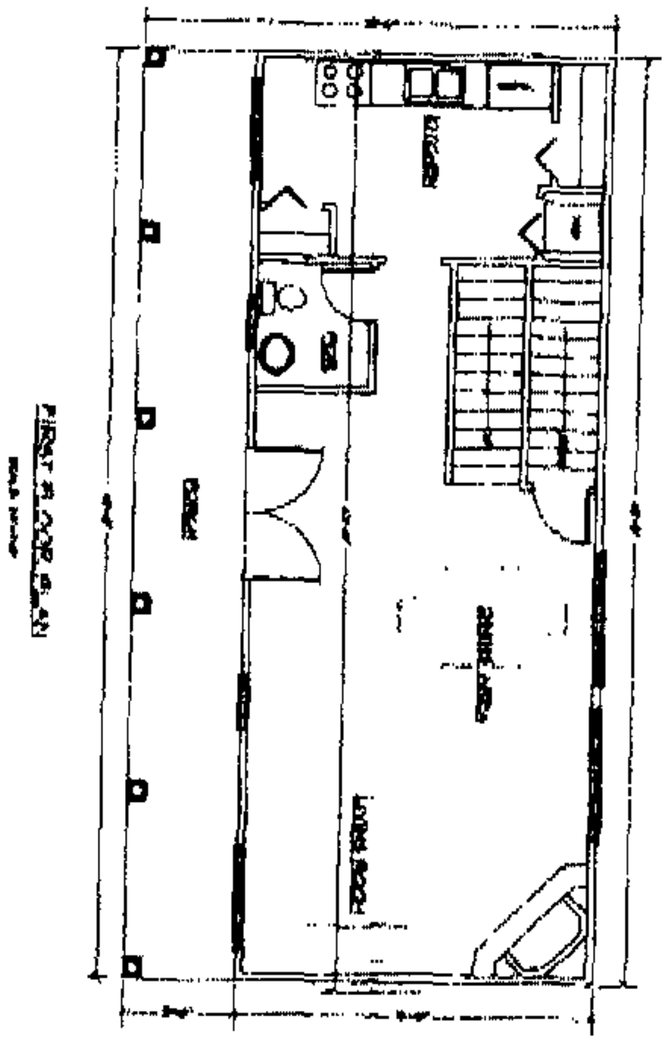
CASE NAME Dr. Harlan Zinn
CASE NUMBER 07-545-A
DATE 8-20-07

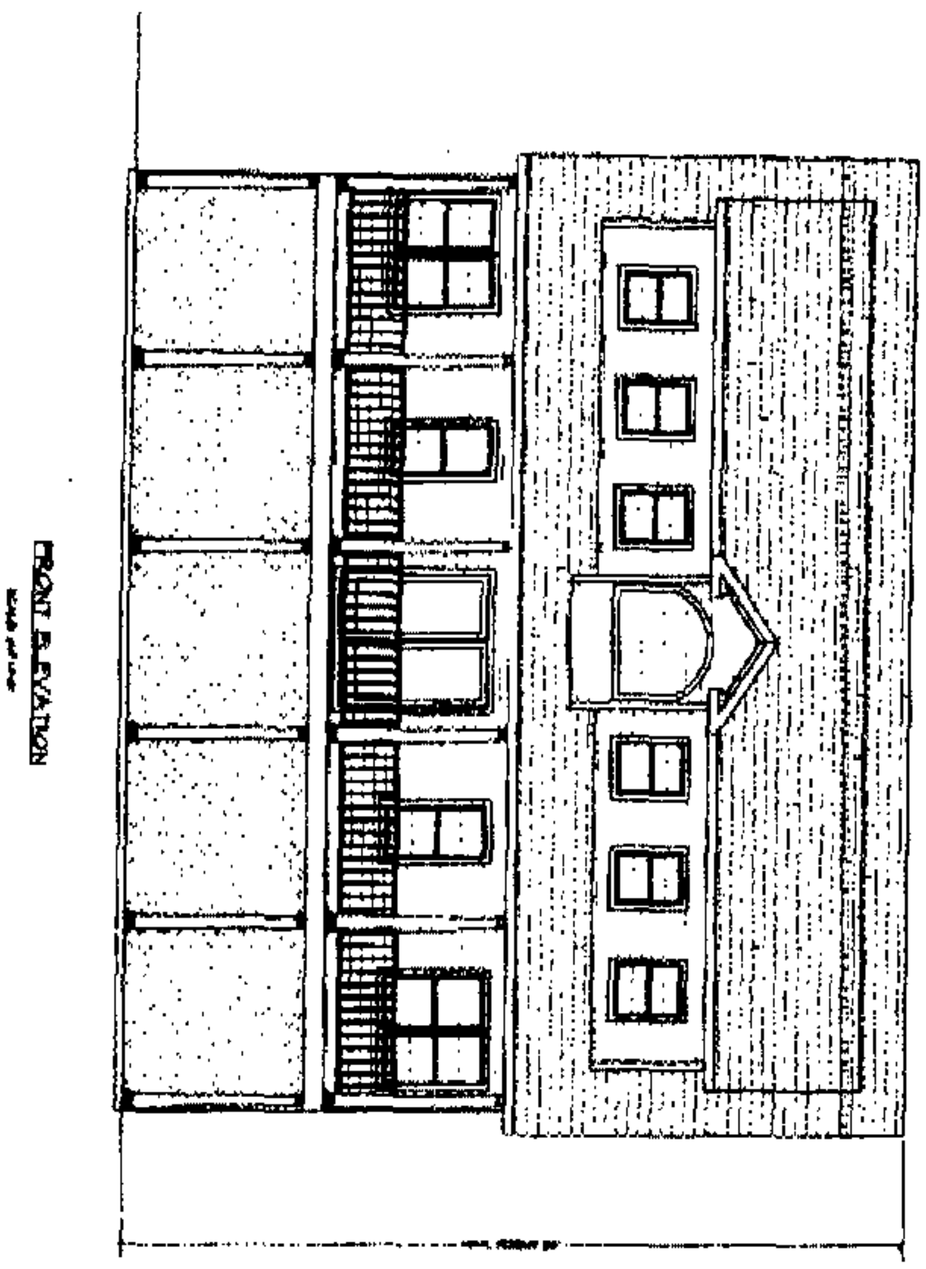
PETITIONER'S SIGN-IN SHEET

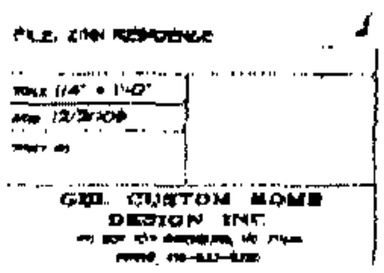
NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Dr. Harlan Zinn	10628 Park Hts Ave	Owings Mills, MD 21117	zinns@attglobal.net
Amanda C. Zinn	10628 Park Heights Ave.	Owings Mills, MD 21117	ecubed@comcast.net
Douglas Zinn	14814 MILTON BROOK CRT.	SPARKS, MD. 21152	
RANDY ZINN	3348 HIGHLAND VIEW CT.	FINKSBURG MD. 21048	

#5-4S



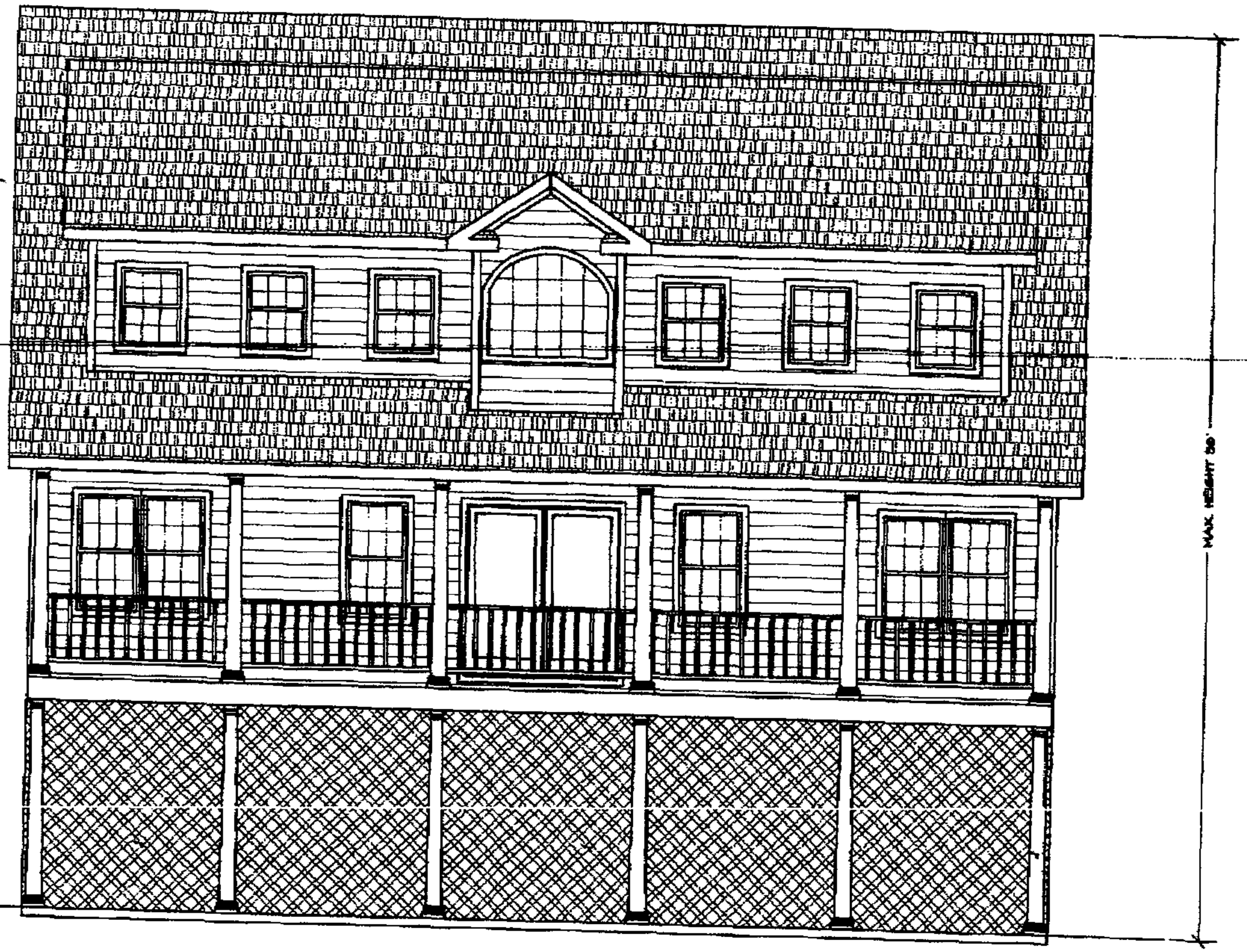






THE ZINN RESIDENCE

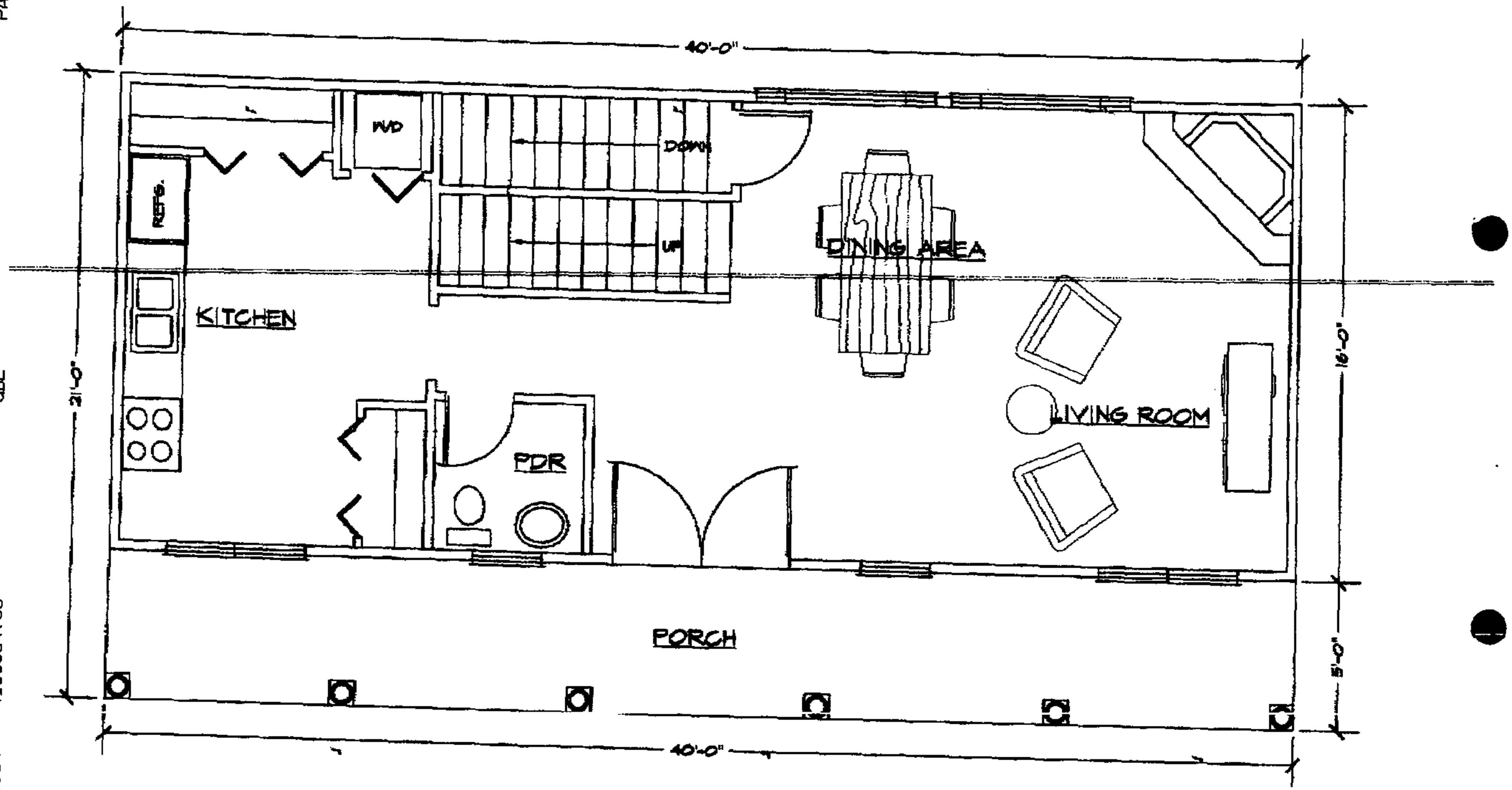
PRELIMINARY DESIGN



FRONT ELEVATION

SCALE: 1/4"=1'-0"

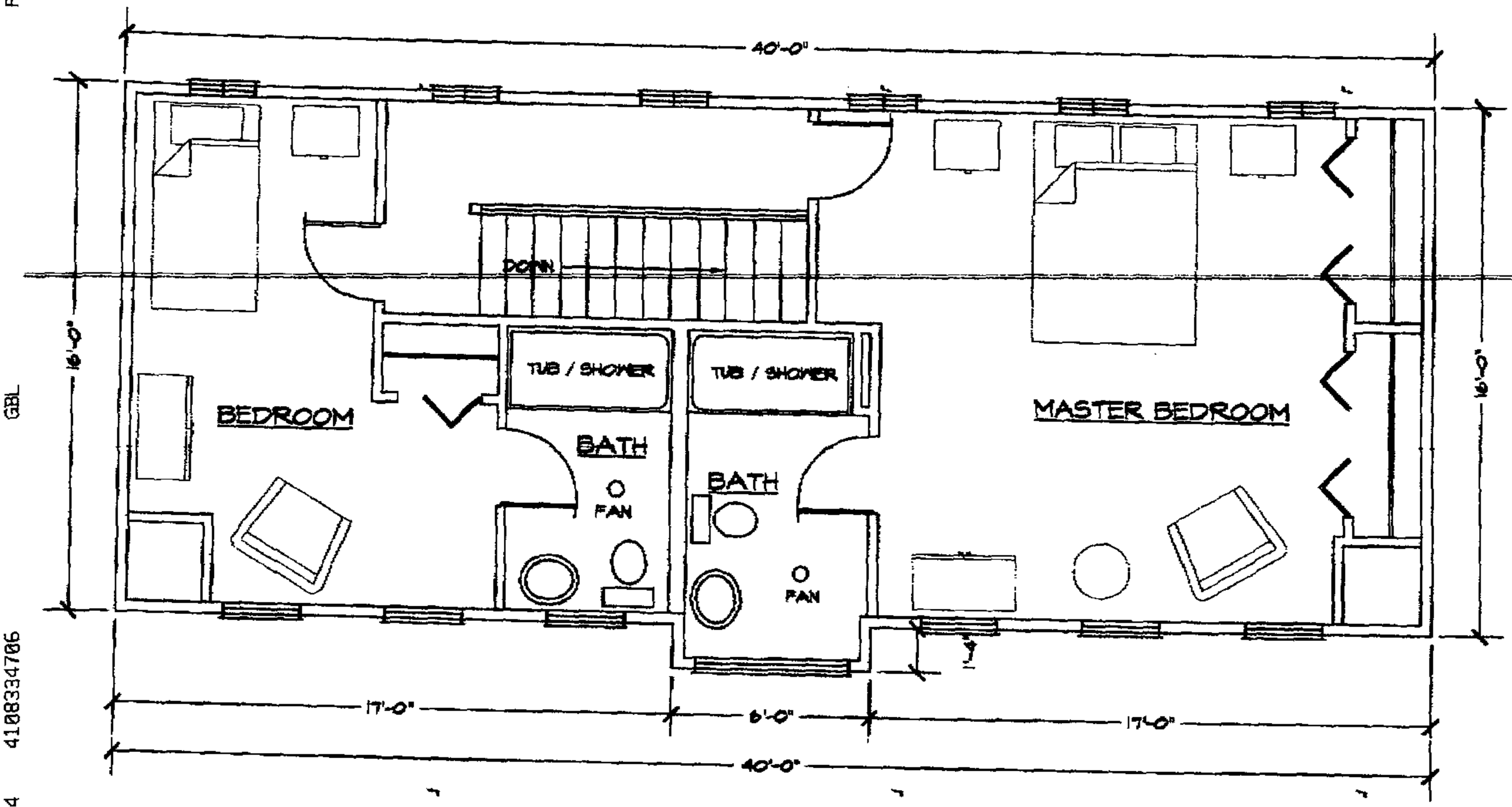
#575



FIRST FLOOR PLAN

SCALE: 1/4"=1'-0"

Sh57

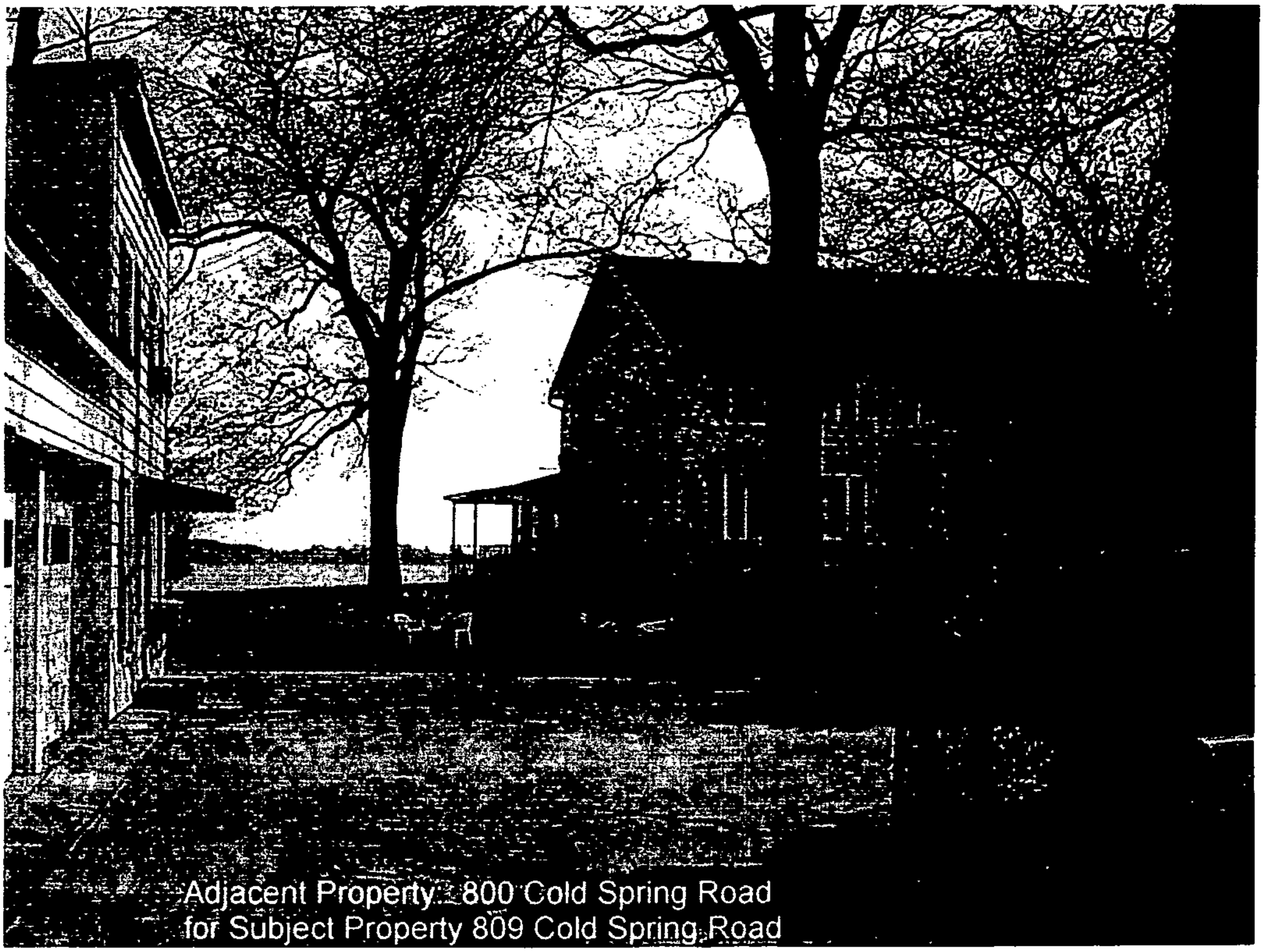


SECOND FLOOR PLAN

SCALE: 1/4"=1'-0"

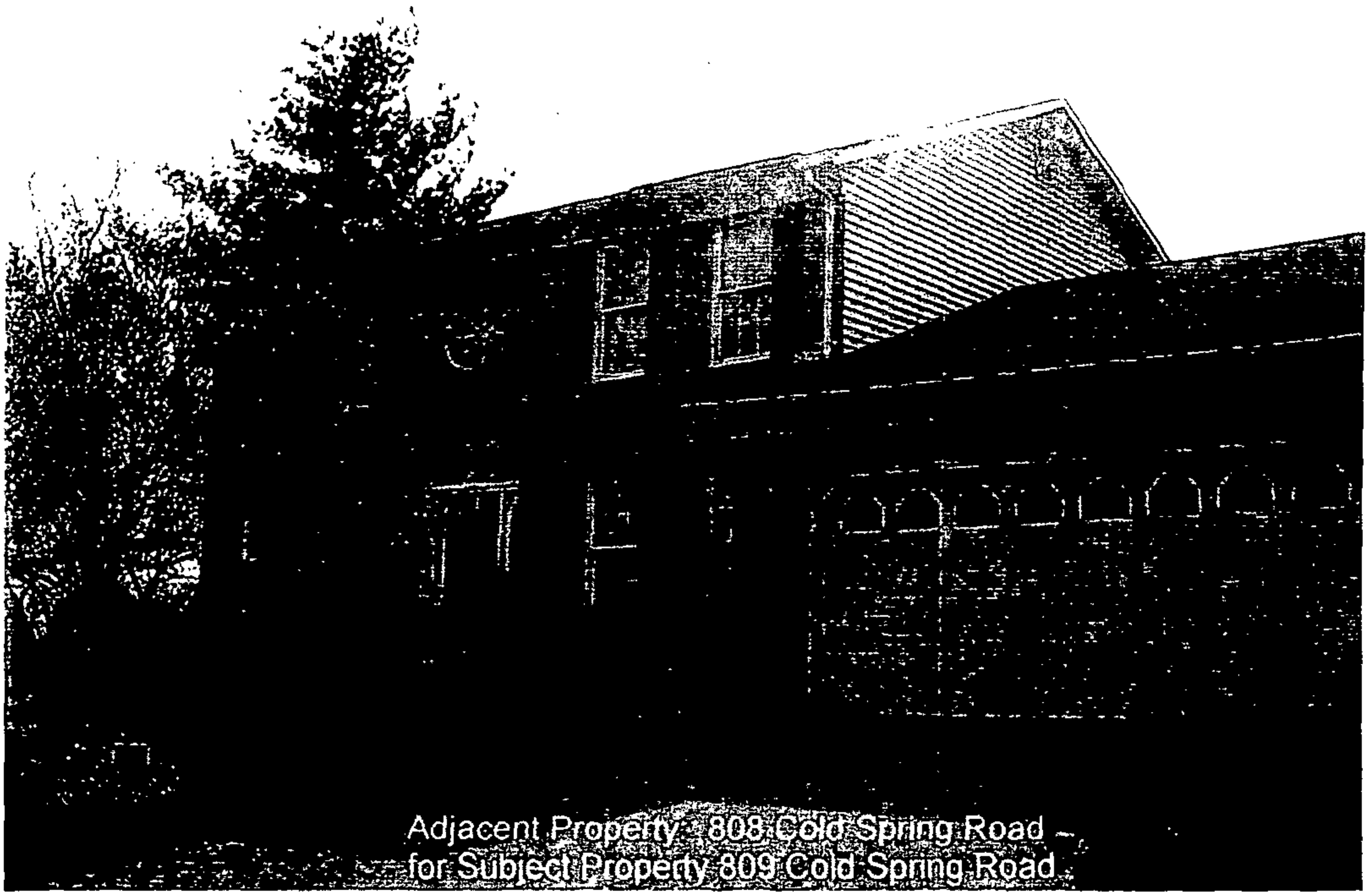
#575

#545



Adjacent Property: 800 Cold Spring Road
for Subject Property 809 Cold Spring Road

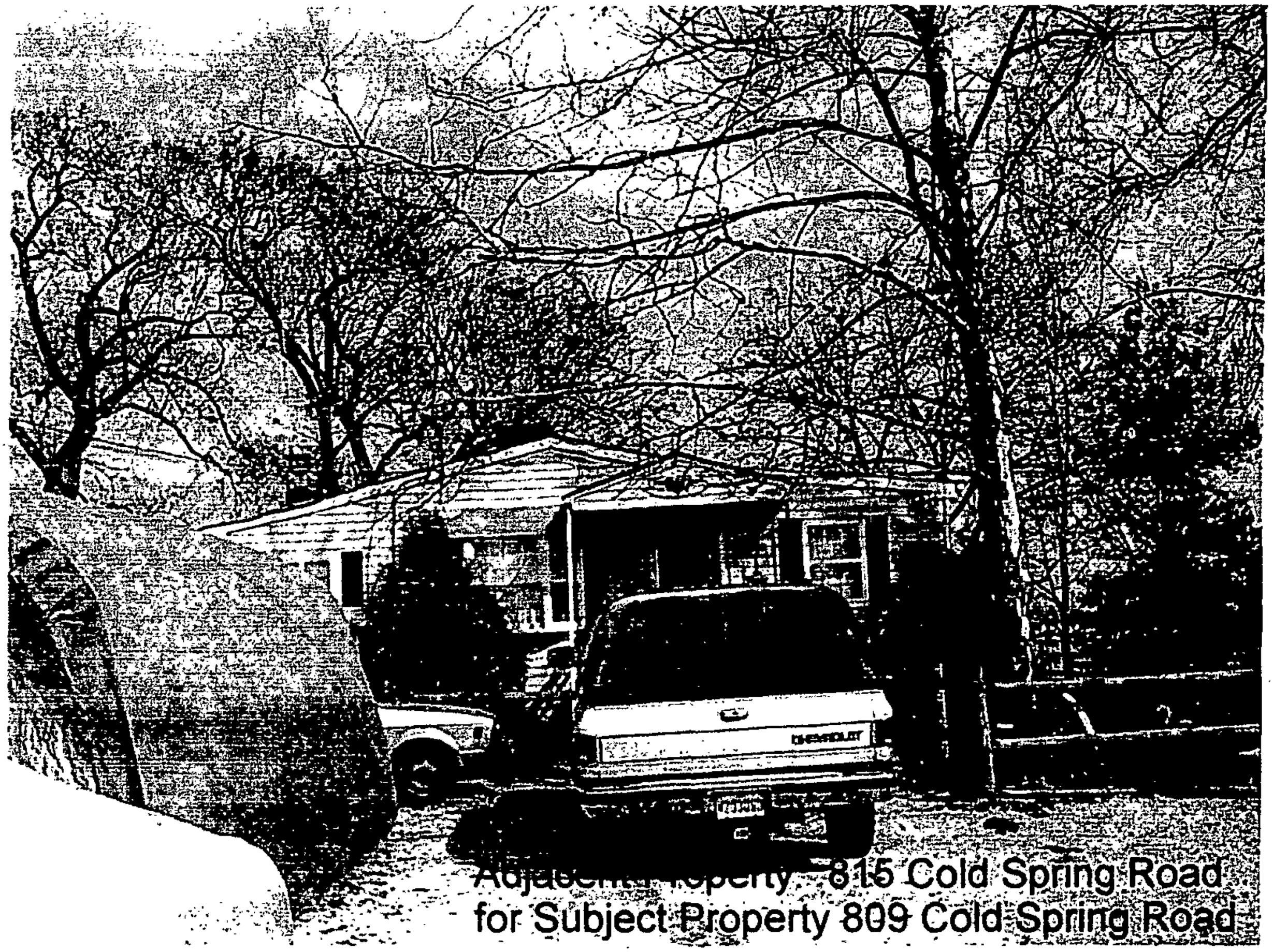
#545



Adjacent Property - 808 Cold Spring Road –
for Subject Property 809 Cold Spring Road

#545

#545



Adjacent Property - 815 Cold Spring Road
for Subject Property 809 Cold Spring Road

545

252 Md. 594

Albert J. FERTITTA

v.

Lambert A. BROWN et al.

No. 386.

Court of Appeals of Maryland.

March 7, 1969.

Proceeding on bill for declaratory decree for relief from order of zoning commissioner that property owner cease using his waterfront property for boatyard and marina. The Circuit Court, Baltimore County, W. Albert Menchine, J., sustained protestors' demurrer without leave to amend and plaintiff appealed. The Court of Appeals, Hammond C. J., held that the circuit court's final judgment, which denied relief from zoning commissioner's orders that property owner cease using his waterfront property as marina in violation of zoning ordinance, was binding adjudication on property owner, who had failed to appeal from such orders and circuit court judgment, that on same state of fact and law property owner did not have right, legal or constitutional, to operate marina or to carry on marina-type activity.

Affirmed.

1. Judgment ⚷650

The circuit court's final judgment, which denied relief from zoning commissioner's orders that property owner cease using his waterfront property as marina in violation of zoning ordinance, was binding adjudication on property owner, who had failed to appeal from such orders and circuit court judgment, that on same state of fact and law property owner did not have right, legal or constitutional, to operate marina or to carry on marina-type activity.

2. Zoning ⚷40

No constitutional right is impinged by legal necessity of landowner to use his property as others similarly situated must use theirs under valid zoning ordinance unless landowner is deprived of all reasonable use of his property.

3. Declaratory Judgment ⚷47

Once a controversy has been finally adjudicated by a court with jurisdiction of subject matter and parties, the controversy is no longer alive and, therefore, is not the proper subject for declaratory judgment action.

4. Declaratory Judgment ⚷41

Declaratory proceedings were not intended to and should not serve as substitute for appellate review or as a belated appeal.

5. Declaratory Judgment ⚷47

Where special mechanics for review of orders of zoning commissioner had already been utilized by property owner to binding finality, declaratory relief on same question was not available to him.

William E. Chamberlain, Baltimore (Ginsberg & Ginsberg and Hyman Ginsberg, Baltimore, on the brief), for appellant.

Ernest C. Trimble, Towson, for appellees.

Before HAMMOND, C. J., and MARBURY, BARNES, FINAN, SINGLEY and SMITH, JJ.

HAMMOND, Chief Judge.

The flowers that bloom in the spring have something to do with this case and their coming this year will not inspire Albert J. Fertitta, the appellant, to sing tra la as he has done figuratively for the past six springs. The zoning commissioner of Baltimore County after a hearing brought about by protesting neighbors, the appellees herein referred to as Brown, found on August 28, 1962, that Mr. Fertitta was illegally conducting a marina on his riverfront lot, 208 Corsica Road, in the 15th Election District, and in an order never

oning ordinance un-
'ed of all reasonable

: ⟹47

has been finally ad-
vith jurisdiction of
ies, the controversy
therefore, is not the
claratory judgment

t ⟹41

:dings were not in-
ıt serve as substitute
as a belated appeal.

t ⟹47

hanics for review of
issioner had already
ty owner to binding
ief on same question
m.

ıberlain, Baltimore
: and Hyman Gins-
brief), for appellant.

owson, for appellees.

), C. J., and MAR-
'INAN, SINGLEY

Judge.

ɔm in the spring have
this case and their
l not inspire Albert
ınt, to sing tra la as
ely for the past six
:ommissioner of Bal-
a hearing brought
ghbors, the appellees,
s Brown, found on
Mr. Fertitta was il-
marina on his river-
a Road, in the 15th
l in an order never

appealed directed such activity to cease permanently within thirty days. Nevertheless, Mr. Fertitta each spring and summer since, by skillful and persistent use of the administrative and judicial processes, has been able to conduct his usual marina operations. On July 31, 1963, over the objection of Brown, the zoning commissioner held another hearing and as a result found on somewhat circuitous and, it would appear, unsound reasoning that Fertitta had lost his non-conforming right to use his waterfront lot for a marina and ordered on July 31, 1963, that: "The use of the subject property for a boatyard and marina, either for commercial purposes or for use as a storage place for the boats of friends and neighbors shall cease immediately." (It appears that when he was called to account after the 1962 order Fertitta claimed that he was not using the lot commercially and that the numerous boats stored at its slips were all those of his many friends and neighbors, to whom he had refunded their slip rentals.) The board of appeals held that the zoning commissioner's first order of August 28, 1962, was final and also affirmed his order of July 31, 1963. Fertitta's appeal to the Circuit Court was dismissed for technical reasons.

Again over the objection of Brown, Fertitta gained another hearing on July 20, 1964, before the deputy zoning commissioner under an alleged right claimed to be given him by a provision of the County zoning regulations providing for a special hearing to determine the existence *vel non* of a non-conforming use. The hearing was continued to November 9, 1964, and finally on January 15, 1965, the deputy zoning commissioner decided that a boatyard had existed on lot 208 Corsica Road prior to 1945, the year zoning first came to Baltimore County, and continuously up to 1958, the year Fertitta bought the property, but that boats are no longer sold, built or repaired there, and held that lot 208 Corsica Road "may be used for the rental of slips and the sale of marine supplies and sundry items."

Brown appealed to the board of appeals, which on July 23, 1965, ordered that Fertitta was authorized to continue his marina. On appeal to the Circuit Court, Judge Proctor held on October 7, 1965, that admittedly there had been no change in conditions or circumstances between the date of the first order of August 28, 1962, and the time of the hearing before him, that the evidence as to the long-continued non-conforming use produced before the deputy zoning commissioner in 1964 was available and could have been produced by Fertitta before the zoning commissioner in 1962 and 1963, and was not because, according to Fertitta, he was too busy defending eleven separate charges of zoning violations before trial magistrates. Judge Proctor said that by analogy to the doctrine of res judicata when the evidence which is presented to an administrative agency could have been presented at an earlier hearing, and there is no change in circumstances between the times of the hearings, the final decision in the earlier case is unalterably binding under Whittle v. Board of Zoning Appeals, 211 Md. 36, 125 A.2d 41, 71 A.L.R.2d 1353; Bensel v. Mayor and City Council of Baltimore, 203 Md. 506, 101 A.2d 826; and Mayor and City Council of Baltimore v. Linthicum, 170 Md. 245, 183 A. 531, and held:

"Accordingly, the Court concludes that even if the failure to prosecute an appeal from the decision of Commissioner Rose, dated August 28th, 1962, did not bring an end to the matter, (and the Court believes it did), the failure to go forward with the appeal to the Circuit Court for Baltimore County from the order of Commissioner Rose, dated July 31st, 1963, was the end of the road.

"Although the grounds of this decision are those which have been set forth above, the Court is of the further opinion that the evidence adduced before the County Board of Appeals at the last hearing was not legally sufficient to support the Board's finding, and that the Board's decision was, therefore, arbi-

trary and capricious. The Demurrer is overruled, and the orders of the Deputy Zoning Commissioner dated January 15th, 1965, and of the County Board of Appeals dated July 27th, 1965, be and they hereby are reversed."

On motion for rehearing and reconsideration, Judge Proctor held on June 16, 1966:

"As stated above, the Court reviewed and weighed all the testimony and all of the exhibits at the time of the prior hearing. The Court's decision on this phase of the case was not arrived at idly. If the Court were to reconsider what it has done in every case, we'd never get any cases tried. Accordingly, I am not going to reconsider this phase of the case. The Intervenor-Petitioner contends that it is not barred by the prior decisions because there is a difference between the prior decisions and the present case in that the two earlier cases involved charges of violations against Intervenor-Petitioner, whereas the present case involves positive action by the Intervenor-Petitioner to have the zoning authorities determine that he has a vested right, viz., a non-conforming use. Identically the same question was presented by zoning violation cases. If the Petitioner has a valid non-conforming use, then there would not have been a finding, as there was, of a zoning violation. So that the Court does not consider this point to have merit."

Fertitta entered an appeal to this Court from Judge Proctor's orders but failed to perfect his appeal which as a result was dismissed on November 8, 1966.

Fertitta then rested until May 3, 1967, when he filed a bill seeking a declaratory decree in which he alleged that as a result of the dismissal of his appeal to the Court of Appeals in November 1966, "the order of the Zoning Commissioner dated July 31, 1963, is, for all intents and purposes, the law of the case * * *" and that "the order aforesaid of July 31, 1963, is confusing, and is ambiguous and effectively deprives and will deprive your Plaintiff of the use of his property in violation of his Constitutional Rights * * *," and prayed a declaration that the order of July 31, 1963 is "unenforceable, impracticable, unconstitutional and void, and without force of law."

Brown's demurrer to the bill relied on Fertitta's admission that the order of 1963 was the law of the case and his failure to set forth any ambiguity in the order of 1963 and the claim that the relief sought was barred and Fertitta's rights, including any constitutional rights, were beyond relief, by virtue of the doctrine of res judicata, all administrative and judicial remedies and recourses having been exhausted.

Judge Menchine sustained the demurrer without leave to amend, giving no reasons on the record for so doing. The present appeal followed and Fertitta enjoyed another spring and summer of renting slips and selling marina-type supplies, since the zoning enforcement officials, including the state's attorney, took the position that they would not enforce the orders of 1962 and 1963 while a case challenging those orders was pending, or on appeal.

We think this is one of those relatively rare instances of a petition for declaratory relief in which a demurrer properly was filed, as a justified challenge to the availability of the remedy sought to be used, Hunt v. Montgomery County, 248 Md. 403, 408–410, 237 A.2d 35, and we affirm the order sustaining the demurrer without leave to amend, which should mean that Fertitta will not this year, or in the years to come, unless the law is changed, greet the spring flowers by resuming the operation of his marina at 208 Corsica Road, being entitled to use lot 208 Corsica Road only for those uses permitted under his present Business Local zoning and not barred by the orders of the zoning commissioner of August 28, 1962 and July 31, 1963.

[1] Whether or not the reasons relied on by Judge Proctor to deny Fertitta relief from the orders of 1962 and 1963 were

sound—and w
were not—it j
of res judicata
cuit Court's f
is a binding a
state of fact a
a right, legal
a marina or to
ty on lot 208 C
225 Md. 386, 1
Citizens Ass'n
missioners for
Md. 187, 195–1
Corp. v. Beltr
589; Alvey v.
2d 62; De M
Casualty Co.,
Pat Perusse R
33, 238 A.2d 1

[2] We see
of July 31, 19
that the clarity
of the order are
constitutional r
gal necessity o
property as oth
use theirs unde
unless the lando
sonable use of
no showing or e
is deprived of e
208 Corsica Ro

[3–5] Declar
priate here for
impact of res juc
has been finally
jurisdiction of t
parties, the cont
and therefore is
a declaratory ju
generally held th
speak for themse
ceedings are not
strue, clarify or r
proceedings wer
should not serve
late review or as
2d Declarator
erson, Declarato

your Plaintiff of
violation of his
*," and prayed
r of July 31, 1963
ticable, unconsti-
vithout force of

he bill relied on
the order of 1963
and his failure to
in the order of
the relief sought
rights, including
were beyond re-
trine of res judi-
nd judicial reme-
been exhausted.

ned the demurrer
giving no reasons
ing. The present
titta enjoyed an-
r of renting slips
supplies, since the
ials, including the
position that they
rders of 1962 and
ging those orders
l.

of those relatively
on for declaratory
rrer properly was
lenge to the avail-
ought to be used,
unty, 248 Md. 403,
nd we affirm the
rrer without leave
mean that Fertitta
the years to come,
d, greet the spring
e operation of his
oad, being entitled
oad only for those
s present Business
rred by the orders
mer of August 28,

the reasons relied
deny Fertitta relief
62 and 1963 were

sound—and we do not intimate that they were not—it is apparent that the doctrine of res judicata controls the case. The Circuit Court's final judgment on the merits is a binding adjudication that on the same state of fact and law Fertitta does not have a right, legal or constitutional, to operate a marina or to carry on marina-type activity on lot 208 Corsica Road. Alvey v. Alvey, 225 Md. 386, 171 A.2d 92; Woodlawn Area Citizens Ass'n v. Board of County Commissioners for Prince George's County, 241 Md. 187, 195–196, 216 A.2d 149; Chatham Corp. v. Beltram, 243 Md. 138, 220 A.2d 589; Alvey v. Hedin, 243 Md. 334, 221 A.2d 62; De Maio v. Lumbermens Mutual Casualty Co., 247 Md. 30, 230 A.2d 279; Pat Perusse Realty Co. v. Lingo, 249 Md. 33, 238 A.2d 100.

[2] We see no ambiguity in the order of July 31, 1963. Indeed, it would seem that the clarity, specificity and directness of the order are what distress Fertitta. No constitutional right is impinged by the legal necessity of a landowner to use his property as others similarly situated must use theirs under a valid zoning ordinance, unless the landowner is deprived of all reasonable use of his property; and there is no showing or even claim here that Fertitta is deprived of every reasonable use of lot 208 Corsica Road.

[3–5] Declaratory relief was inappropriate here for reasons in addition to the impact of res judicata. Once a controversy has been finally adjudicated by a court with jurisdiction of the subject matter and the parties, the controversy is no longer alive and therefore is not the proper subject for a declaratory judgment action; and it is generally held that judgments and decrees speak for themselves and declaratory proceedings are not available either to construe, clarify or modify them. Declaratory proceedings were not intended to and should not serve as a substitute for appellate review or as a belated appeal. 22 Am. Jur.2d Declaratory Judgments § 17; 2 Anderson, Declaratory Judgments (2d Ed.), § 469; Borchard, Declaratory Judgments (2d Ed.), pp. 350–352, 355. We held in Mayor and City Council of Baltimore v. Seabolt, 210 Md. 199, 123 A.2d 207; Poe v. Baltimore City, 241 Md. 303, 216 A.2d 707, and Gingell v. Board of County Commissioners, 249 Md. 374, 239 A.2d 903, that a declaration was not available to test the current zoning status of a particular property, and in Quinan v. Schneider, 247 Md. 310, 231 A.2d 37, that a declaration could not be granted to declare non-paternity once the Paternity Act had been set in operation. If declaratory relief cannot be invoked prospectively where special administrative or judicial mechanics have been legislatively or judicially established for the type of case involved, certainly it should not be allowed where the special mechanics already have been utilized to binding finality.

Order affirmed, with costs.

252 Md. 655

Clarence BENNETT et al.

v.

DISTRICT HEIGHTS APARTMENTS, INC.

No. 114.

Court of Appeals of Maryland.

March 12, 1969.

Action growing out of alleged injuries to apartment tenant on apartment building premises. The Circuit Court for Prince George's County, Ralph W. Powers, J., entered judgment for landlord from which an appeal was taken. The Court of Appeals, Smith, J., held that apartment tenant, allegedly injured in fall when he slipped on oil and leaves on steps of unlighted outside stairway to basement furnace room of apartment building on his way to investigate source of smoke and oil fumes, was contributorily negligent in unnecessarily

Case No.: 07-545-A 809 COLD SPRING RD.

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	SITE PLAN	OPPOSITION LETTER H OF HISTORY/CONCERNS
No. 2	ORIGINAL SURVEY PLAT 1918 LONG ~~BEACH~~ Estates	PEOPLE'S COUNSEL D-2 POSITION
No. 3	Confirmatory Deed 2006	CASE 04-522-A E PROPERTY DRAWING
No. 4	CRITICAL AREA COMMISSION	1994 SURVEY F COLD SPRING RD.
No. 5	DEPRM - APPROVAL FOR VARIANCE	Petitioners DEAR NEIGHBOR letter
No. 6	Property Description 809 Cold Spring Rd 7345 sq. feet	BOWLEYS QUARTERS IMPROVEMENT ASSOCIATION - OPPOSITION to REQUEST
No. 7	Real Property Assessment	
No. 8	Photographs A thru G	
No. 9 9A 9B	Agreement for turn-a-round - Mr. Rochelle testimony	
No. 10	Water & Sewer Available See Tracky. Agency	
No. 11	Letter from Atty Gontrum to Scott Dallas 12/11/05	
No. 12	Letter to CBA dated 11/14/05	

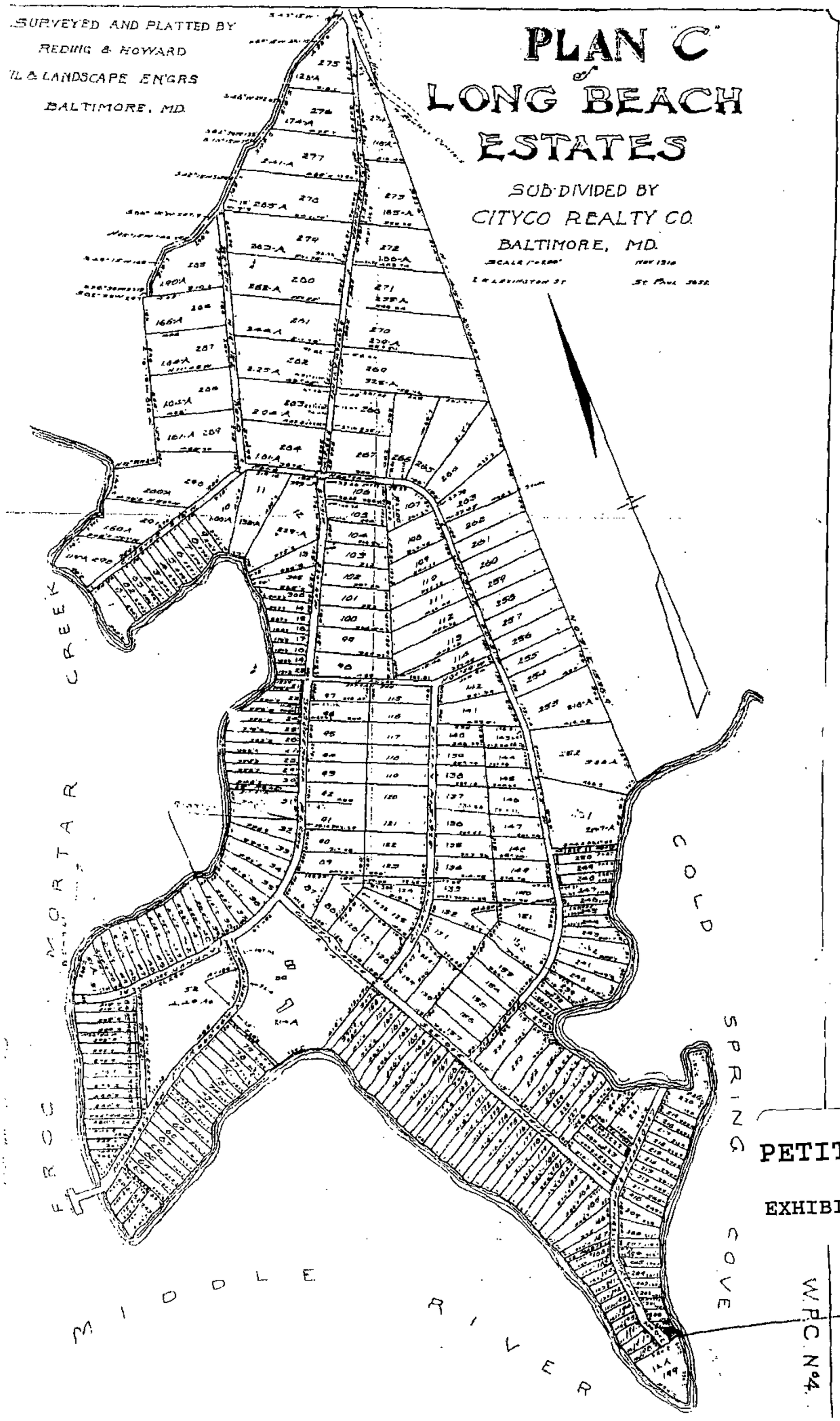
IN CBA closet on small board

Case No.: 07-545-A

Exhibit Sheet - Continued

	Petitioner/Developer	Protestant
No. 13	Colorized MAP OF Long Beach - "Log Point"	
No. 14	Photographs of adjacent Properties A thru G	
No. 15	Architectural Renderings Color Photo - 1st & 2nd Floor	
No. 16	Preliminary Design of Proposed Residence	
No. 17	Chart - Remediation of ISSUES FOR RELIEF REQUESTED	
No. 18	1215 SENECA - PRIOR approval - 06-334 PHOTO'S OTHER Residence	
No. 19	Letters of Support	
No. 20		
No. 21		
No. 22		
No. 23		
No. 24		

EXHIBIT 4



PETITIONER'S

EXHIBIT NO. 2

EXHIBIT 8

0023303 b52

THIS CONFIRMATORY DEED, Made this 10th day of ~~December~~ January, 2006, 2005, by and between JANICE ANN OBERST, party of the first part, and HARLAN K. ZINN, party of the second part

WITNESSETH:

WHEREAS by deed dated September 3, 2005 and recorded among the Land Records of Baltimore County in Liber 22503, folio 40, the Grantor herein conveyed a piece of property located in the 15th Election District of Baltimore County to Grantee; and

WHEREAS a subsequent description of the property has been prepared modifying the description of the original lot boundaries as shown on a record plat of Plan "C" of Long Beach Estates recorded among the Plat Books as aforesaid in Plat Book W.P.C. No. 4, page 131; and

WHEREAS said description is based on field analysis taking into account deletion from the waterfront of the property over the intervening decades since recordation of the aforesaid record plat and failure of the offer of dedication of the roadbed of Cold Spring Avenue as depicted on the aforesaid plan; and

WHEREAS the parties desired a more accurate depiction of the property being described

NOW, THEREFORE, in consideration of no consideration the said party of the first part, JANICE ANN OBERST, does hereby grant and convey all of the following described property unto the party of the second part, HARLAN K. ZINN, his personal representatives and assigns, in fee simple,

BEING all that lot of ground situated in the 15th Election District of Baltimore County, Maryland and described as follows:

SEE EXHIBIT "A"

BEING the same lot of ground intended to be conveyed by deed dated September 3, 2005 and recorded as aforesaid in Liber 22503, page 040 from Janice Ann Oberst to Harlan K. Zinn, the parties hereto.

PETITIONER'S

EXHIBIT NO. 3

TOGETHER WITH the buildings and improvements thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in 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 party of the second part, his heirs, personal representatives, and assigns, in fee simple.

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

WITNESS the hand and seal of said grantor.

WITNESS:

Janice Ann Oberst [SEAL]
JANICE ANN OBERST

State of Maryland, City/County of Baltimore, to wit:

I HEREBY CERTIFY, That on this 10th day of ~~December, 2005,~~ January 2006 before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared, JANICE ANN OBERST, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Yolanda Pinnell [SEAL]
Notary Public

My Commission Expires:
7/1/08

CERTIFICATION

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

JOHN B. GONTRUM

AFTER RECORDING, PLEASE RETURN TO:

John B. Gontrum, Esq.
Whiteford, Taylor & Preston L.L.P.
400 Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515

EXHIBIT 9B

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

March 29, 2004

Mr. Keith Kelley
Baltimore County
Department of Environmental Protection
and Resource Management
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

RE: **BC 353-03: 04-02 Oberst Property Buffer Variance Request**
Tax Map 98, Parcel 203, Lot 304: 809Cold Spring Lane

Dear Keith,

I have reviewed the information regarding this Buffer variance request to construct a dwelling in the 25-foot Critical Area Setback on a grandfathered lot in the LDA of Galloway Creek. This lot is located in a Buffer Management Area and is subject to a 25-foot Critical Area Setback. Due to the unusual configuration of this lot, the proposed development cannot be sited outside the Setback, even though it has been located as far away from the shoreline as possible. We do not oppose this variance request. We recommend the variance approval include the following condition:

- That mitigation for new disturbances in the Setback are to be provided on-site at a 3:1 ratio and disturbances in the Buffer outside the Setback are to be provided on-site at a 2:1 ratio, to the extent feasible.

Please provide this office with a copy of the written decision made in this case. Feel free to contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

Wanda Diane Cole

Wanda Diane Cole
Natural Resources Planner

cc: Mr. Harlan Zinn

PETITIONER'S
EXHIBIT NO. 4

EXHIBIT 9C

Department of Environmental Protection and Resource Management

401 Bosley Avenue, Suite 416
Towson, Maryland 21204

Baltimore County

James T. Smith, Jr., County Executive
David A.C. Carroll, Director

June 11, 2004

Ms. Janice Oberst
2587 Vance Drive
Mount Airy, MD 21771

Re: 809 Cold Spring Road
Critical Area Administrative Variance

Dear Ms. Oberst:

The Department of Environmental Protection and Resource Management (DEPRM) has received your revised variance request to construct a dwelling in the 100 foot tidal buffer closer to Galloway Creek/Middle River (23' in lieu of the required 32') than Buffer Management Area Regulations allow. The Director of DEPRM may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five (5) of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. The entire lot is in the 100-foot buffer due its shape/size. This property was already a recorded lot prior to the onset of Chesapeake Bay Critical Area Regulations. A literal enforcement of the regulations would prevent the construction of the dwelling, resulting in unwarranted hardship. Therefore, this criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. Many of the properties along the Chesapeake Bay waterfront have homes within the 100-foot tidal buffer. A similar variance would be granted on another waterfront lot under similar circumstances. Therefore, this criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Granting of this variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Therefore, this criterion has been met.

PETITIONER'S
EXHIBIT NO. 5

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. This variance is not based upon conditions or circumstances which are the result of your actions. Therefore, this criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. We acknowledge that alternative dwelling designs were explored to minimize buffer impacts. With mitigation, granting of the variance will not adversely affect water quality, or adversely impact fish, wildlife, or plant habitat.

Based upon our review, it is this Department's findings that the first four of the above criteria have been met, and that the fifth criterion can be met by planting three (3) 5-6 foot high, native, deciduous trees for every 100 square feet of proposed impervious structure, or paying a fee-in-lieu of $1.20 per square foot of impervious structure, or a combination of the mitigative options. Any pervious structures (deck) will require one-third the mitigation mentioned above. Therefore, the requested variance is hereby approved in accordance with Section 26-445(c) of the Baltimore County Code with the following conditions:

1. The attached "Notice of Granting of Variance" must be published in The Avenue, Dundalk Eagle or The East County Times. Final variance approval cannot be granted until fifteen (15) calendar days after the notice has been published. A copy of the Certificate of Publication for the advertisement issued by the newspaper, or a copy of the advertisement from the paper must be submitted to this office prior to receiving final variance approval.

2. Any trees to be planted must be done so by release of the Use & Occupancy Certificate. Any fee-in-lieu must be paid prior to building permit approval.

3. If any of the two (2) existing trees are removed, they must be replaced on a 1 to 1 basis by release of the Use & Occupancy Certificate.

4. The new dwelling shall not be located closer than 23 feet from Galloway Creek/ Middle River.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request.

Please sign the statement on the next page and then return a copy of the letter along with your Certificate of Publication to this Department c/o Ms. Patricia Farr of Environmental Impact Review. Failure to return a signed copy of this letter and the other item may result in delays in

processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Mr. Keith Kelley at (410) 887-3980.

Sincerely,

David A. C. Carroll
Director

DACC/kdk

cc: Ms. Wanda Cole, CBCA Commission
Mr. Scott Dallas, J. S. Dallas, Inc.

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Chesapeake Bay Critical Area regulations.

Signature	Date	Signature	Date

Attachment

J:\keith\revisedoberstcaav

EXHIBIT 7

0023303 655

J. S. DALLAS, INC.

SURVEYING & ENGINEERING

13523 LONG GREEN PIKE
P.O. BOX 26
BALDWIN, MD 21013
(410) 817-4600
FAX (410) 817-4602

PROPERTY DESCRIPTION
#809 COLD SPRING ROAD

BEGINNING *at a point on or near the existing edge of paving of the traveled portion of Cold Spring Road at the extension of the division line between Lots No. 200 and 304 as shown on the Plat entitled "Plan of Long Beach Estates" as recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4 folio 131 thence running with and binding on the extension of said division line and a part of said division line, in all, with all bearings and distances herein according to a Boundary Survey dated December 5, 2001 by Siterite Surveying, Inc.* ***(1) South 64 degrees 09 minutes East 84.78 feet more or less*** *the waters of the Galloway Creek, thence leaving said division line and running with and binding on the outline of said Creek the three following courses and distances:* ***(2) South 42 degrees 10 minutes East 36.26 feet (3) South 14 degrees 31 minutes East 27.91 feet*** *and* ***(4) South 24 degrees 18 minutes East 24.59 feet*** *to intersect the northernmost outline of Lot No. 199 as shown on said Plat thence running with and binding on said northernmost outline of Lot No. 199* ***(5) South 88 degrees 51 minutes West 86.28 feet*** *to intersect a point on or near said existing edge of paving thence running with and binding on or near said existing edge of paving the three following courses and distances:* ***(6) North 03 degrees 30 minutes West 14.26 feet, (7) Northwesterly by a curve to the left with a radius of 300 feet for an arc length of 33.92 feet (the chord of said arc being North 16 degrees 21 minutes West 33.90 feet*** *and* ***(8) Northwesterly by a curve to the right with a radius of 300 feet for an arc length of 71.60 feet (the chord of said arc being North 17 degrees 10 minutes West 71.43 feet)*** *to the place of beginning.*

CONTAINING ***7345 square feet or 0.169 acres*** *of land, more or less.*

BEING *all of those two parcels of Land which by deed dated January 14, 2003 and recorded among the Land Records of Baltimore County in Liber 17471 folio 328 etc. was conveyed by Ann June Schuman fka Ann June Kratzer and Janice Ann Oberst to Janice Ann Oberst.*

STATE OF MARYLAND
JONATHAN SCOTT DALLAS
No. 406
REGISTERED
PROPERTY LINE SURVEYOR

PETITIONER'S

EXHIBIT NO. 6

PETITIONER'S

EXHIBIT NO. 7

Click here for a plain text ADA compliant screen.

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

View Map
New Search
Ground Rent

Account Identifier: **District** - 15 **Account Number** - 2400013238

Owner Information

Owner Name:	ZINN HARLAN K	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	10628 PARK HEIGHTS AVE OWINGS MILLS MD 21117-4310	**Deed Reference:**	1) /23303/ 652 2)

Location & Structure Information

Premises Address
809 COLD SPRING AVE

Legal Description
.169AC LT304&ADJ LND
809 COLD SPRING AVE
C LONG BEACH ESTATES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
98	4	203					304	3	Plat Ref: 4/ 131

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		7,345.00 SF	34

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land:	45,390	123,750		
Improvements:	0	0		
Total:	45,390	123,750	71,510	97,630
Preferential Land:	0	0	0	0

Transfer Information

Seller:	ZINN HARLAN K	**Date:**	01/30/2006	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/23303/ 652	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

EXHIBIT 11

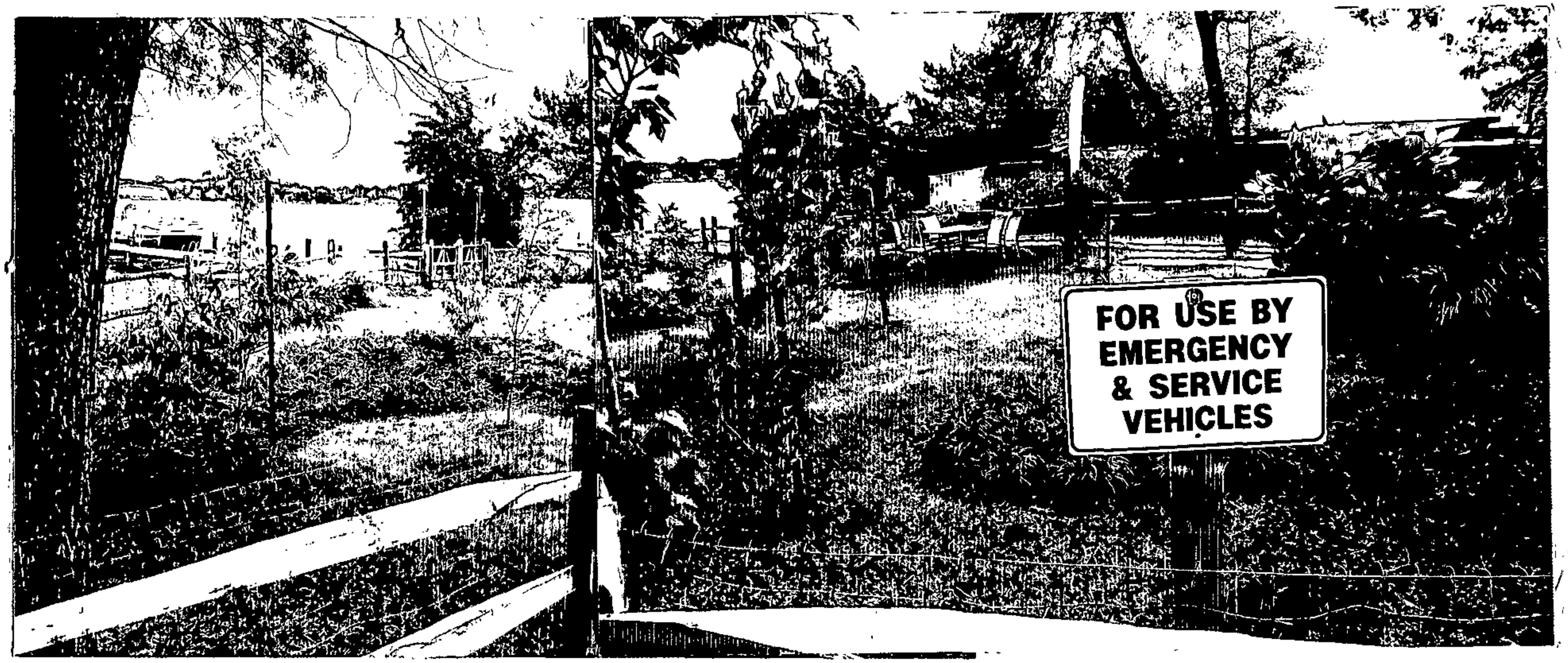
809 COLD SPRING RD. 10.03

809 COLD SPRING RD

PETITIONER'S

EXHIBIT NO. 8a-g

EXHIBIT 12



809 COLDSPRING RD

9.06

EXHIBIT 13

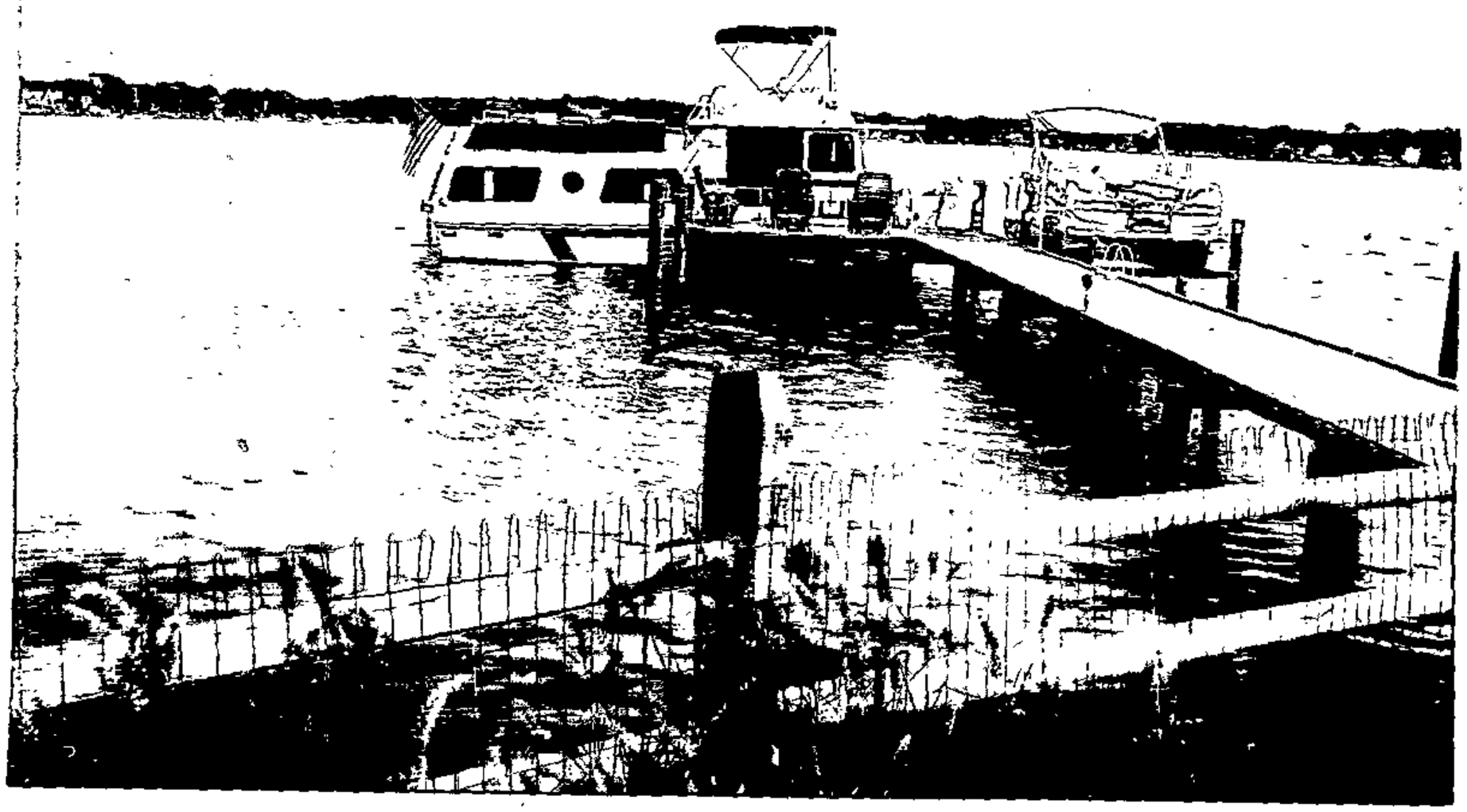


EXHIBIT 14

Exhibit 15
9A

Baltimore County

Department of Public Works
Bureau of Solid Waste Management
111 W. Chesapeake Avenue
Towson, Maryland 21234

_____Permission to Use Private Property_____

Permission is granted to Baltimore County and its Agents, the right to use and/or maintain on my property located at:

809 Coldspring Road in the Bowleys Quarters area.

The Following:
A turnaround for use by Baltimore County equipment and refuse collection vehicles.

It is understood that *no property is being turned over* to Baltimore County and that I will not be charged for any construction.
I agree that that the following stipulations will be observed.
Pad will be critical bay area compliant.

	10/14/05	
Property owner	Date	Witness
	10/14/05	
Property Owner	Date	Witness

(410) 887-3188 Fax (410) 887-2931

PETITIONER'S
EXHIBIT NO. 9A

from
ps?
ever
operty
earsay,
e a
ns?

MS. DEMILIO: No.
THE CHAIRMAN: Thank you, ma'am.
MR. GONTRUM: Mr. Rockel.

ERIC ROCKEL,

having been called as a witness, was duly sworn, and testified as follows:

MS. DEMILIO: I'd like to take care of something. Can I take a brief recess?
THE CHAIRMAN: Yes.
(A recess was taken.)
THE CHAIRMAN: Okay. We're back on the record.

ERIC ROCKEL,

resumed the witness stand.

THE CHAIRMAN: Can we have your full name, sir.
THE WITNESS: My name is Eric Rockel, R-o-c-k-e-l.
I'm a supervisor of contact, negotiation and records in the Bureau of Land Acquisition.
THE CHAIRMAN: Big title. Give me half a second. Okay.

DIRECT EXAMINATION

BY MR. GONTRUM:
Q. Mr. Rockel, as part of your duties in the Bureau of Land Acquisition, do you have familiarity or keep records as to properties that the county actually owns?
A. Yes, our bureau does.
Q. And with respect to Cold Spring Road in the Bowleys Quarters area of Baltimore County, are you able to determine what it is that the county actually owns with respect to the roadway?
A. Yes. When you talked to me last week and asked me to verify this, I researched all our records which consist of notations and data bases, paper logs, and our records reflect that we, Baltimore County, do not own the forty-foot right-of-way known as Cold Spring.

but
ever

again
r
k a
for

PETITIONER'S
EXHIBIT NO. 9B

EXHIBIT 17

BALTIMORE COUNTY DEPARTMENT PERMITS & DEVELOPMENT MANAGEMENT
RESIDENTIAL UTILITY CONNECTION TRACKING FORM

Date: 1/3/2007 **Reviewed By: Robin Hurley** **SEWER CONN ONLY**

Project Name: 809 Cold Spring Ave Election District: 15C6

Property Account #: 24-00-013238 Vicinity: **Long Beach Est**

Customer Name: Harlan K. Zinn T/A:

Mailing Address: 10628 Park Hgts Ave City/State/Zip: Owings Mills, MD 21117

Phone: 410-580-2980

WATER	SEWER
Service Size:	Service Size: 2"
Meter Size:	
Standard Detail:	Standard Detail: S-12A
Drawing #:	Drawing #: 1999-1838

Contract #: 07016 SS0 J.O. #: 1-0111-1654

Copies of drawings are available in Engineering Records; County Office Building Room 206.

NOTES: sewer connection for house boat
1. Grinder pump will be privately maintained.
2. Must use E-One Simplex grinder pump.
3. Must call Bureau of Utilities, 410-887-5318 before starting any work. Contractor is not permitted to turn any valves off in the existing low pressure sewer. All existing valves must be operated by Baltimore Co. Bureau of Utilities NOT the contractor.
4. Six copies of the Grinder Pump Shop Drawings must be submitted to Jim Pilson, Construction Inspection, Rm. 300B, for approval, before Construction Inspection will permit installation of the grinder pump.
5. Installation of the grinder pump must be a minimum of 15 ft from any type of construction.

Easement Recording Ref: N/A (Enter N/A, Req'd or Actual Recording Reference)

SHA Permit #: N/A (Enter N/A, Req'd or SHA Permit)

1) Work within a Maryland State Road will require a Utility Construction Permit from the State Highway Administration, (410) 321-2843, and must be attached hereto.

2) All work within the county roadway shall be restricted to the hours of 9:00 A.M. to 3:00 P.M..

3) 48 hours prior to beginning work:
   a) Make all notices required by Specification 105.07
   b) Contact the construction contracts Administration Division (410) 887-3531 to arrange for inspection.
   c) Notify Miss Utility at 1-800-257-7777.

4) All work, including but not limited to installation, traffic control and repaving, is to be accomplished in accordance with the STANDARD SPECIFICATIONS AND DETAILS FOR CONSTRUCTION of the Department of Public Works.

5) All work is to be performed by a Utility Contractor who is prequalified by the Baltimore County Department of Public Work

PETITIONER'S EXHIBIT NO. 10

EXHIBIT 1E

WHITEFORD, TAYLOR & PRESTON L.L.P.

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

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
SUITE 495
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

JOHN B. GONTRUM
DIRECT NUMBER
410-832-2055
JGontrum@wtplaw.com

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 339-4058
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

December 11, 2005

Scott Dallas
J.S. Dallas, Inc.
13523 Long Green Pike
Baldwin, Maryland 21013

Re: Harlan Zinn Property

Dear Scott:

As we discussed, we wish to prepare a confirmatory deed from the previous property owner to the Dr. and Mrs. Zinn. Their current deed conveys lot no. 304 as shown on the Plat of Long Beach Estates and the 25′ wide strip from the Bowleys Quarters Improvement Association. We would like both areas incorporated into one metes and bounds description.

In addition, we are aware that lot 304 as shown on the record plat of Plan "C" of Long Beach Estates recorded in 1914 has by accretion and deletion changed in its shape and that the bulkhead probably represents the accurate placement of the waterside above mean high tide.

The roadside of the property also has changed significantly from that depicted on the record plat. The recorded plat showed a 40′ wide easement for Cold Spring Avenue. There was no reservation in the property owner of the right of way, only an implied offer of dedication to the county.

As you are doubtless aware the Annotated Code of Maryland, Real Property, Section 2-114 states:

PETITIONER'S
EXHIBIT NO. 11

(a) *In general.* – Except as otherwise provided, any deed, will, or other instrument that grants land binding on any street or highway, or that includes any street or highway as 1 or more lines thereof, shall be construed to pass to the devisee, donee, or grantee all the right, title, and interest of the devisor, donor, or grantor (hereinafter referred to as the transferor) in the street or highway for that portion on which it binds.

(b) *Property on opposite sides of street.* – If the transferor owns other land on the opposite side of the street or highway, the deed, will, or other instrument shall be construed to pass the right, title, and interest of the transferor only to the center of that portion of the street or highway upon which the 2 or more tracts coextensively bind.

(c) *Exception.* – The provisions of subsections (a) and (b) of this section do not apply if the transferor in express terms in the writing by which the devise, gift, or grant is made, either reserves to the transferor or grants to the transferee all the right, title, and interest to the street or highway.

This section of the Code was also the law when the record plat was drawn and recorded. As you may also recall, Eric Rockel, a supervisor of contract, negotiation and records of the Baltimore County Bureau of Land Acquisition testified under oath that according to Baltimore County records, the county only claimed that portion of Cold Spring Avenue that was actually paved and maintained by the county and not the 40′ wide shown right of way. He stated: "But we only claim that we have this prescriptive easement in the area of paving." He also stated that he reviewed the county's records and that the county does not own the land under the right of way known as Cold Spring. He also indicated that due to the passage of time without any acceptance by the county that any implied offer of dedication as to the 40 foot wide right of way may have lapsed. This is consistent with court rulings on lapse of dedication offers, and I believe that Mr. Rockel is as knowledgeable as any one in the county on what the county claims to own.

Based on the state of the law and these facts, plus the long-standing exclusive usage by the residents along Cold Spring Avenue of their properties, including our predecessors in title, up to the paving of the roadway, it is my belief that our client is justified in claiming that his ownership actually extends out to the center of the paved portion of the roadway. Baltimore County certainly has an easement over the paved portion of the roadway and such other easements as may have been granted it for utilities. Utility easements to telephone and electric companies doubtless also exist, and there is an argument that could be made that there is a community easement in the portion of the land between the paving and the utility rights of way as evidenced by the poles for wires. Most residents have kept their improvements out of this area.

Consequently, your depiction of the Zinn property shown on your zoning site plan of December 1, 2005 appears to be consistent not only with the zoning regulations regarding area and net area of property but also with the status of Cold Spring Avenue. Your metes and bounds description, I believe, could either call out to the middle of the paved road saving and excepting such rights as may exist in Baltimore County over the paved portion of the right of way or call to the side of the right of way with the presumption of the state law adding the balance.

I have not done a full title search on the property or on the subdivision, and I am not aware of any reservations in the original land owners that would negate the state statute presumption in favor of ownership in adjoining land owners. Something may well exist, but no one has brought it to anyone's attention involved in the transaction of which I am aware. Also, I am not aware of any in fee ownership in anyone other than the current title holders and their predecessors of the property now adjacent to the roadbed, only the easements noted above.

Your assistance in this matter is greatly appreciated.

Sincerely,

John B. Gontrum

JBG:jbg
cc. Dr. Harlan Zinn

WHITEFORD, TAYLOR & PRESTON L.L.P.

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

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
SUITE 495
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

JOHN B. GONTRUM
DIRECT NUMBER
410-832-2055
JGontrum@wtplaw.com

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 339-4058
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314-1685
TELEPHONE 703 836-5742
FAX 703 836-3558

November 14, 2005

County Board of Appeals of Baltimore County
County Court House
400 Washington Avenue
Towson, Maryland 21204

Re: Dr. Harlan and Amanda Zinn
Case No. 04-522-A

Dear Members of the Board:

In the months since the Board's deliberation of the above-referenced matter on July 28, 2005, a number of issues bearing on the variances requested have been resolved with Baltimore County.

Baltimore County Department of Public Works has acknowledged that the turnaround area shown on the filed site plans does not belong to the county and has agreed to its new location as proposed by Petitioners, and the boundaries have been determined. In fact, Baltimore County has now finished the new turnaround. Furthermore, Baltimore County has agreed that the property now owned by Dr. Zinn and his wife does indeed include the area to the paved portion of Cold Spring Road. This raises the net lot area to 6869 square feet from the road claimed by the county to the bulkheads, and the area for computation of zoning would be over 8,000 square feet for that is based on gross area.

These were both issues that caused the Board concern during its deliberation. The acknowledged size of the lot also makes it commensurate in size with numerous lots in the subdivision, which we believe makes failure to allow construction on the lot, the denial of the right enjoyed by others in the neighborhood and creates a practical difficulty. The Board in its deliberation also expressed some confusion over the size of the property based on the facts presented and despite Mr. Rockel's testimony as to the

PETITIONER'S EXHIBIT NO. 12

location of the county's right of way. Finally, both public water and electricity have been made available to the property. The previous owners had been paying the water and sewer charges for years, and my client is simply making the connections to the site. A sewer connection is pending.

Based on these factors we would appreciate reopening the hearing for the presentation of these facts and a reconsideration of the deliberation.

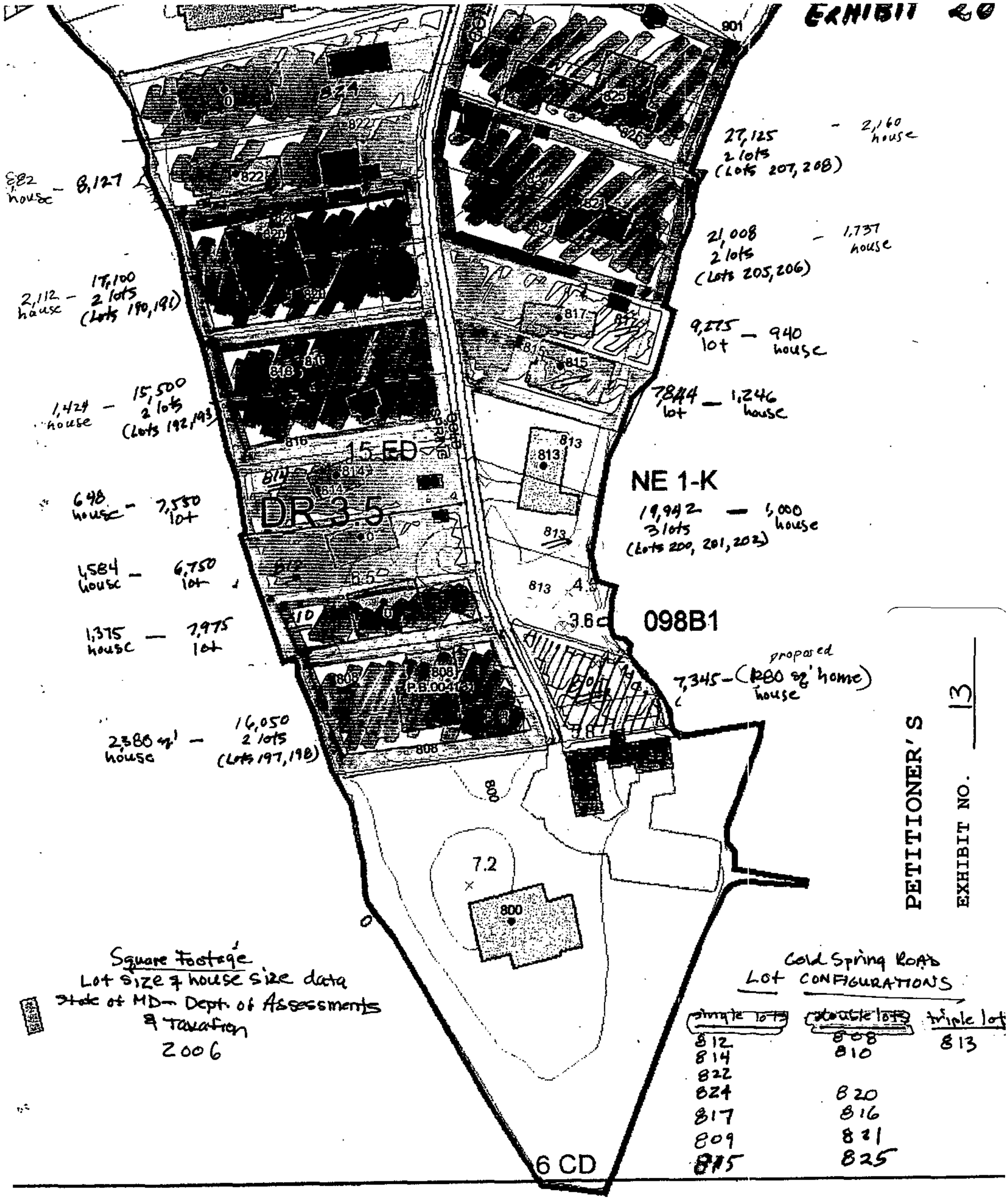
Sincerely,

John B. Gontrum

JBG:jbg
cc. Baltimore County Office of People's Counsel
Bowleys' Quarters Improvement Association, Inc.
Richard Pitz

Attachment
#348711

EXHIBIT 20

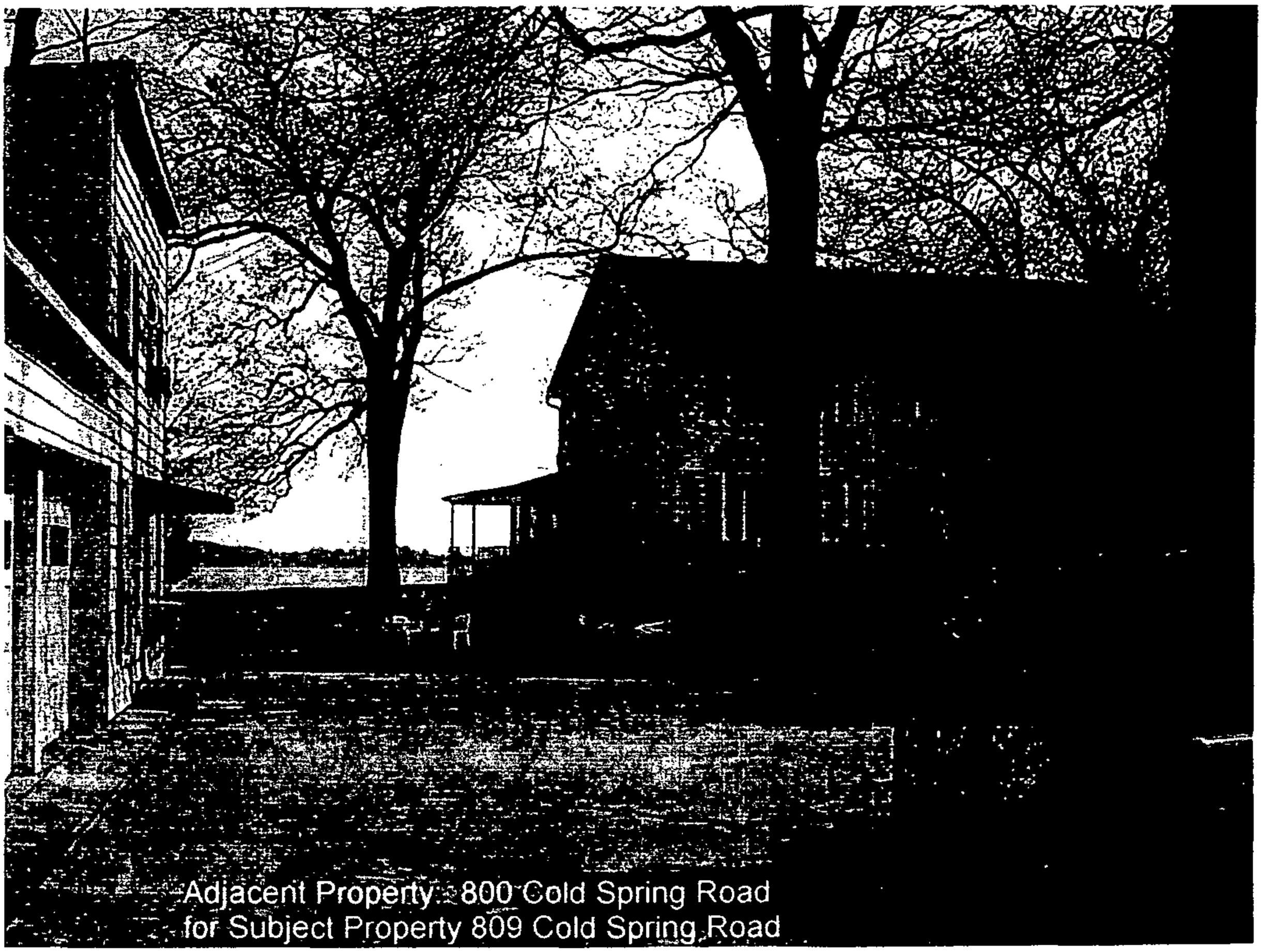


PETITIONER'S EXHIBIT NO. 13

098B2

EXISTING CHARACTER AND DENSITY OF NEIGHBORHOOD

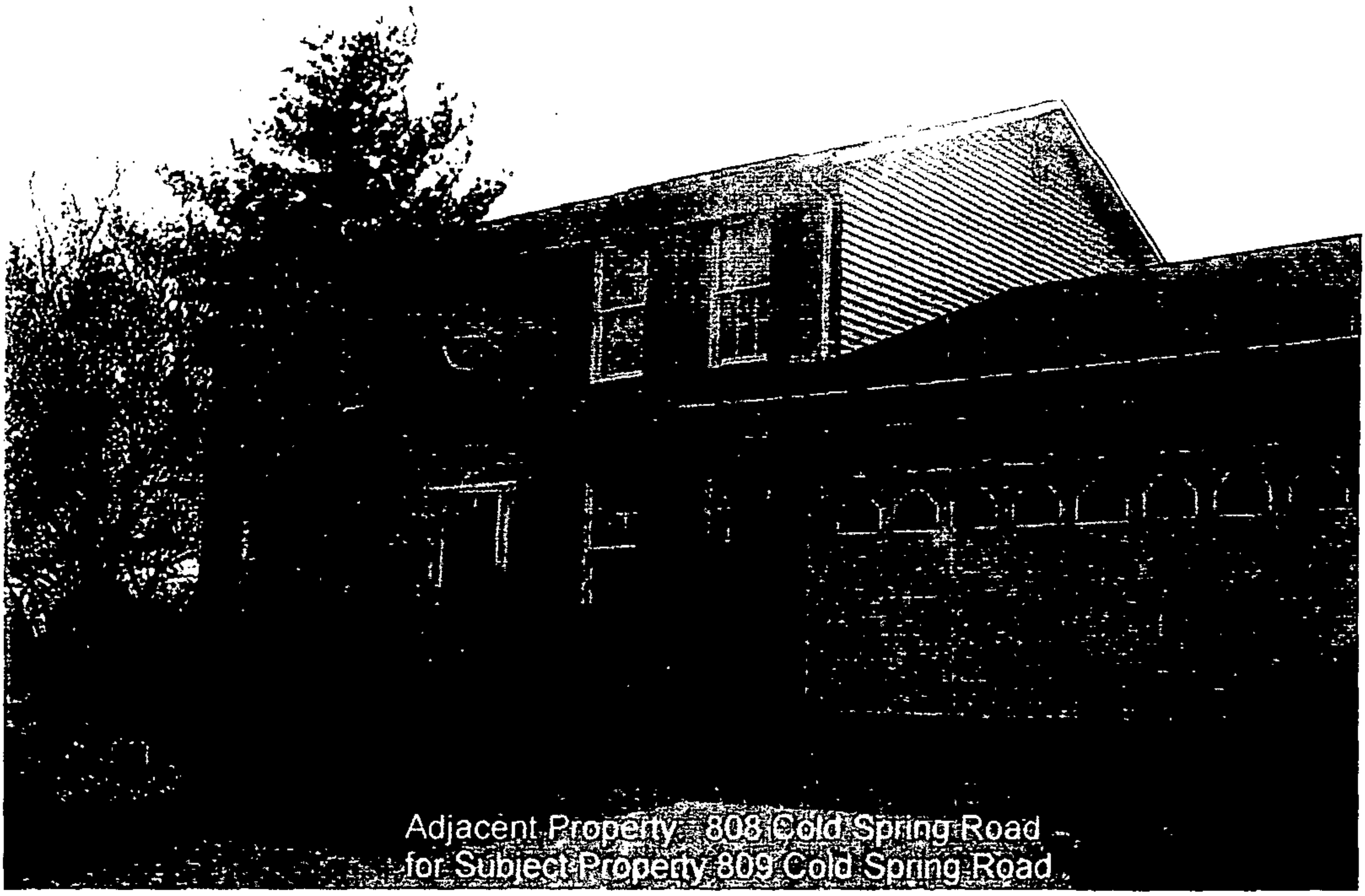
EXHIBIT 21



PETITIONER'S

EXHIBIT NO. 14

A thru G

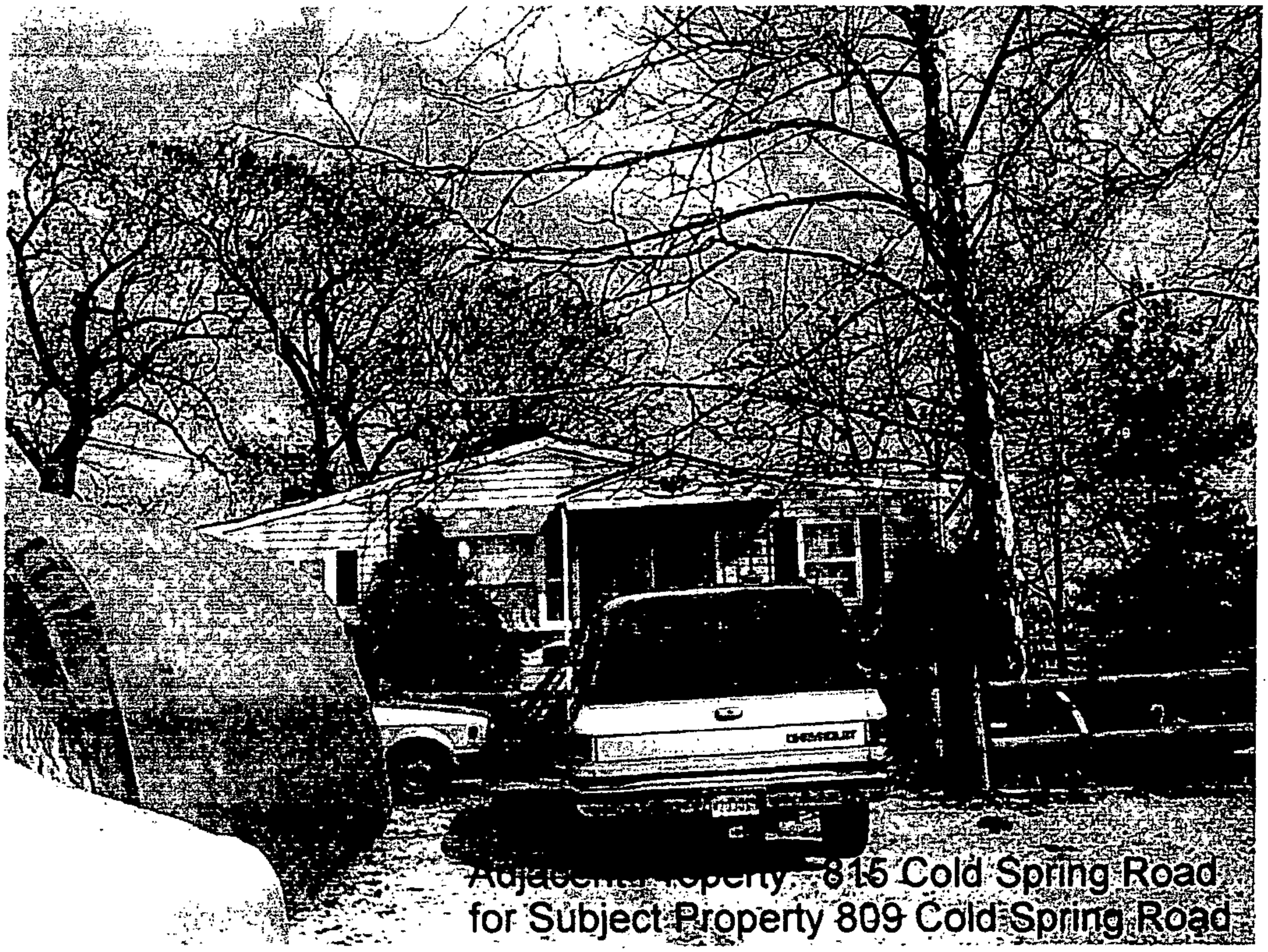


Adjacent Property 808 Cold Spring Road
for Subject Property 809 Cold Spring Road

PETITIONER'S
EXHIBIT NO. 14

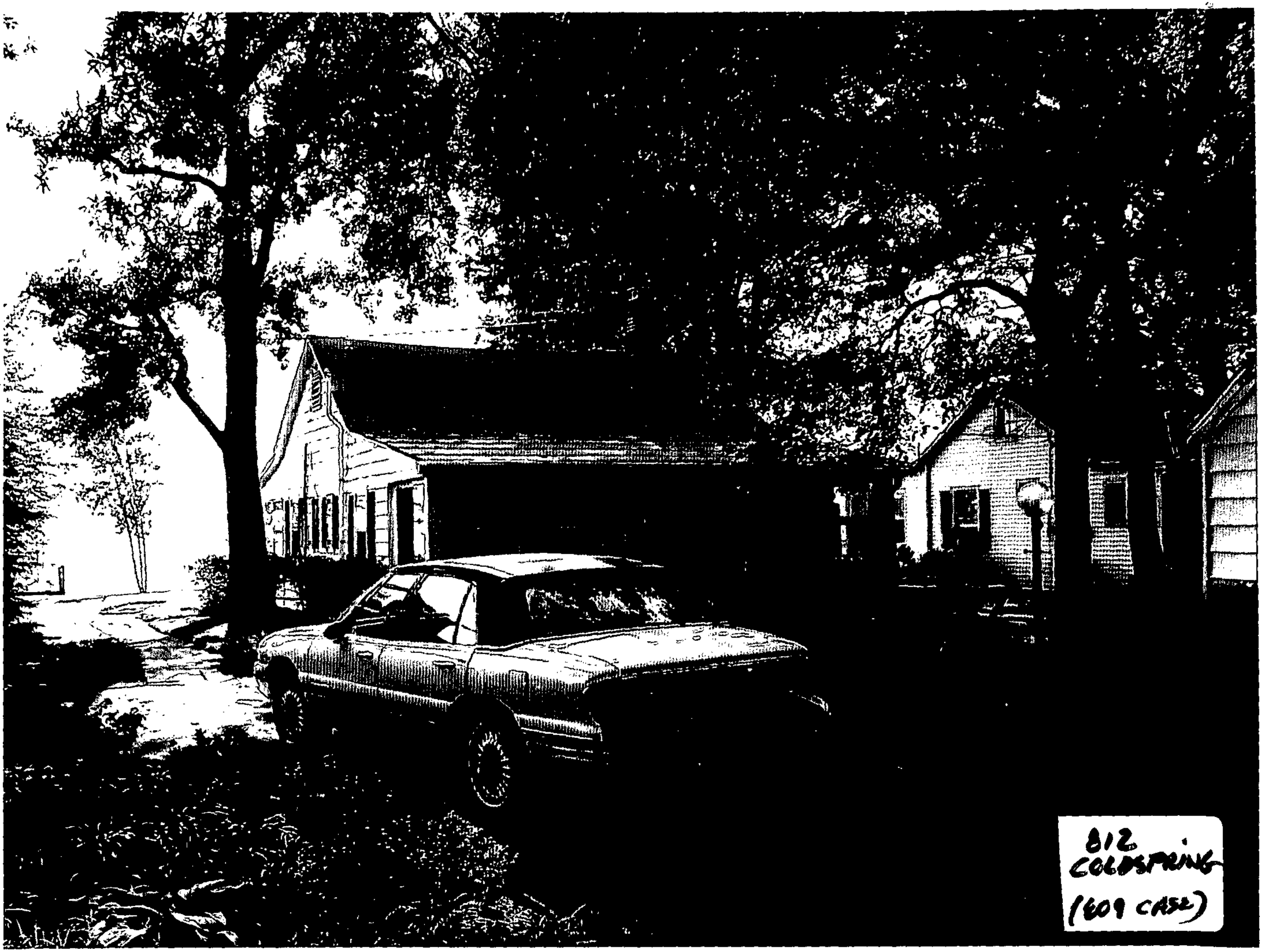
03-500-A

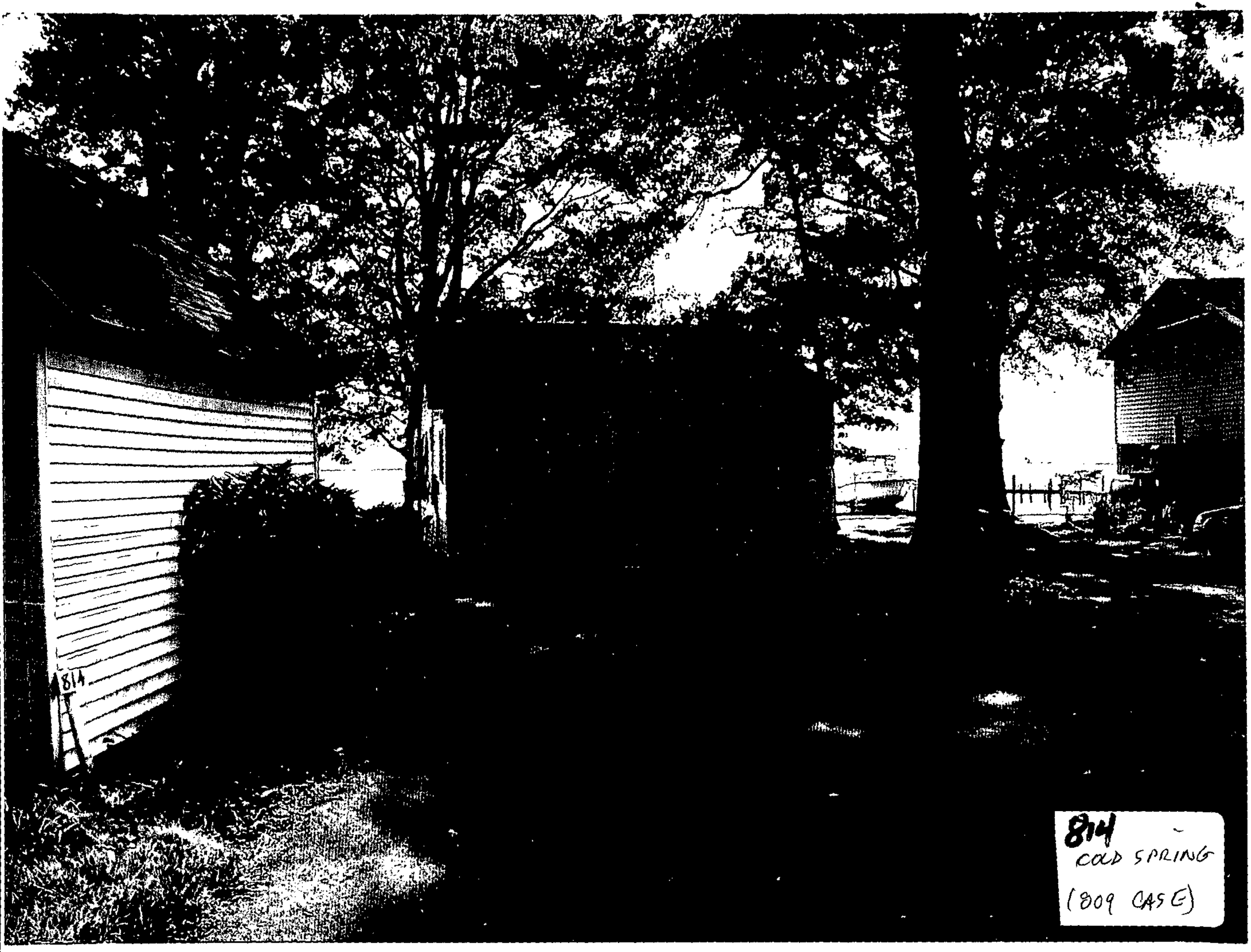
03-5001

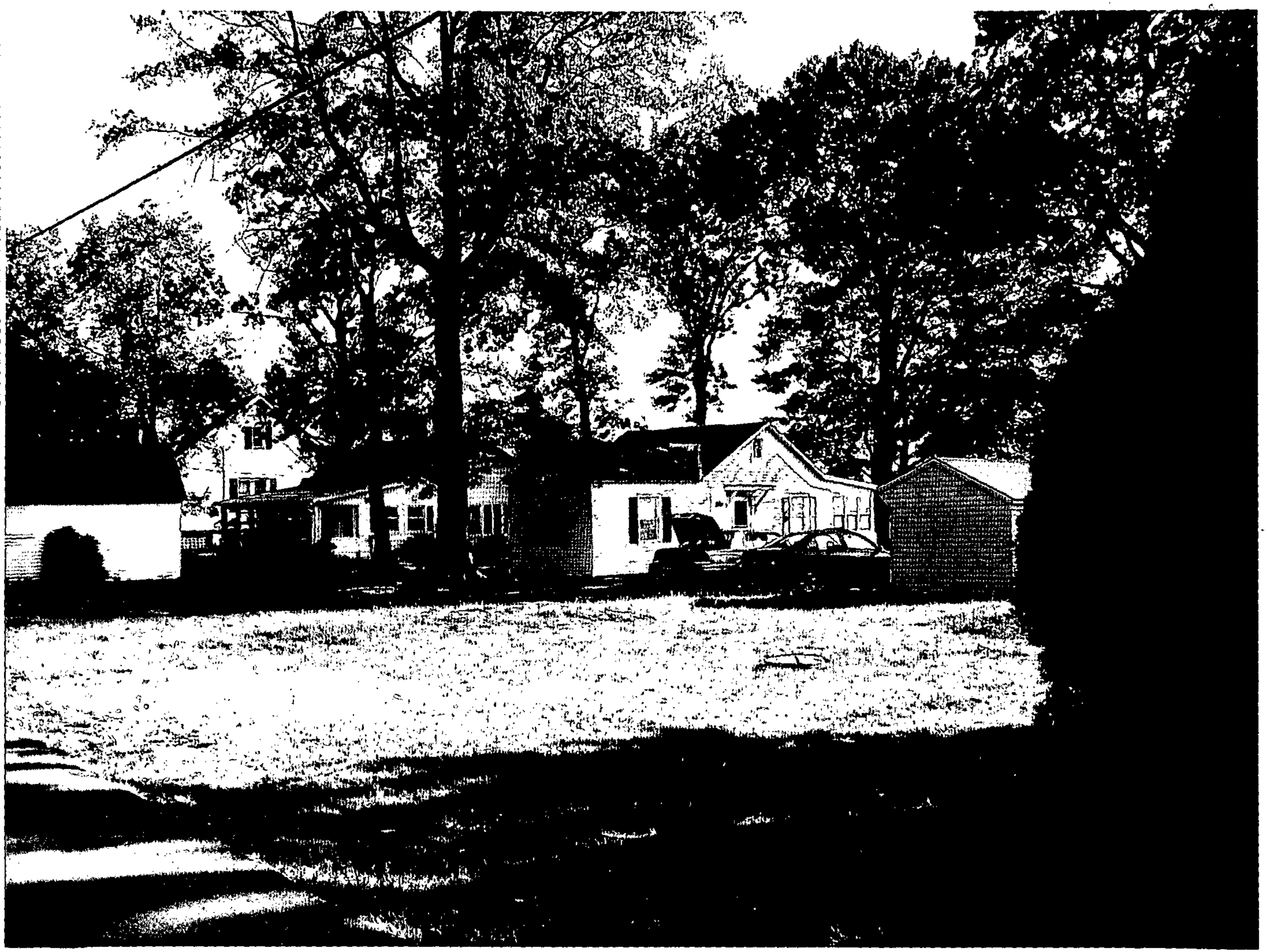


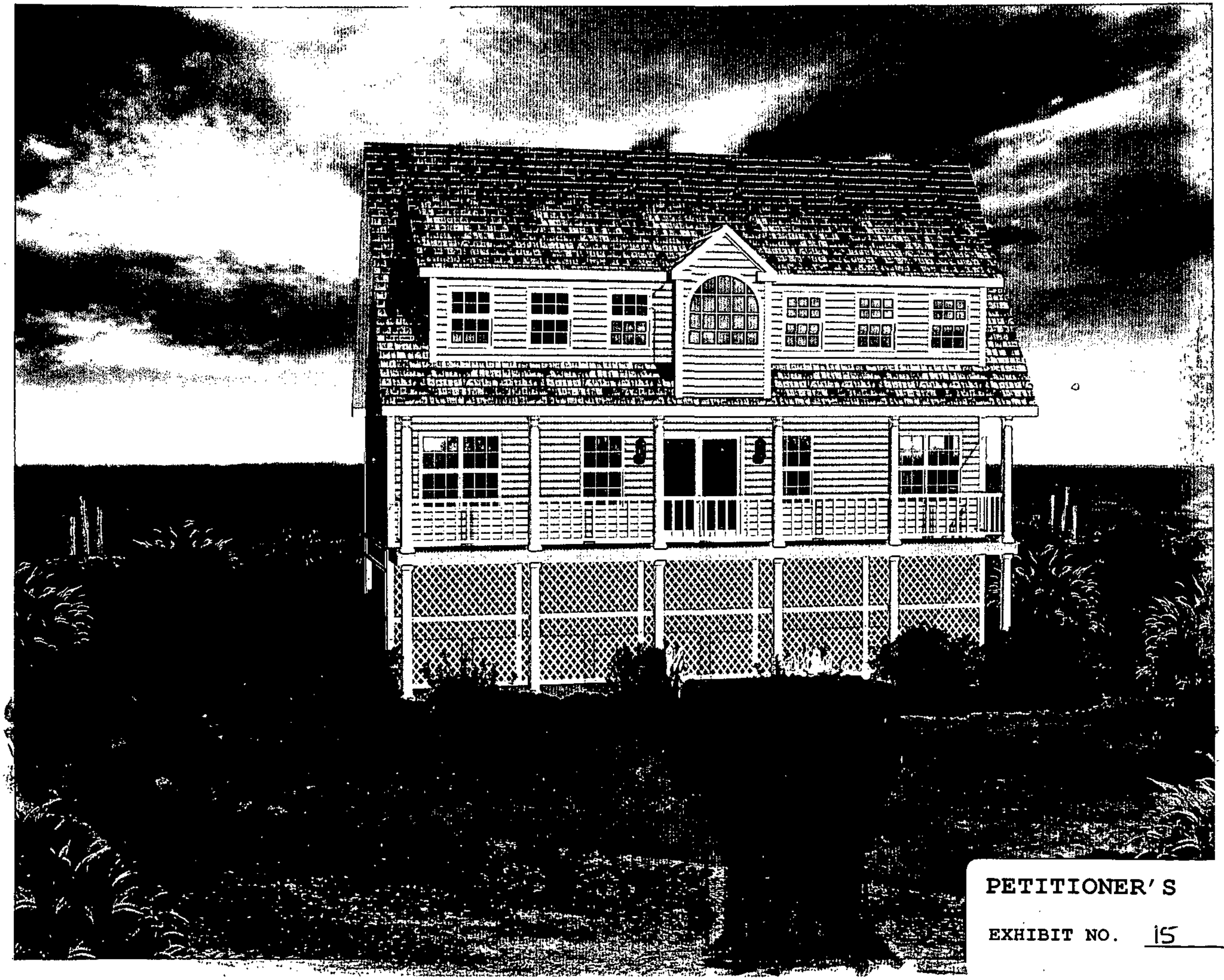
Adjacent Property - 815 Cold Spring Road
for Subject Property 809 Cold Spring Road

03-500-A


812
COLDSPRING
(609 CASE)

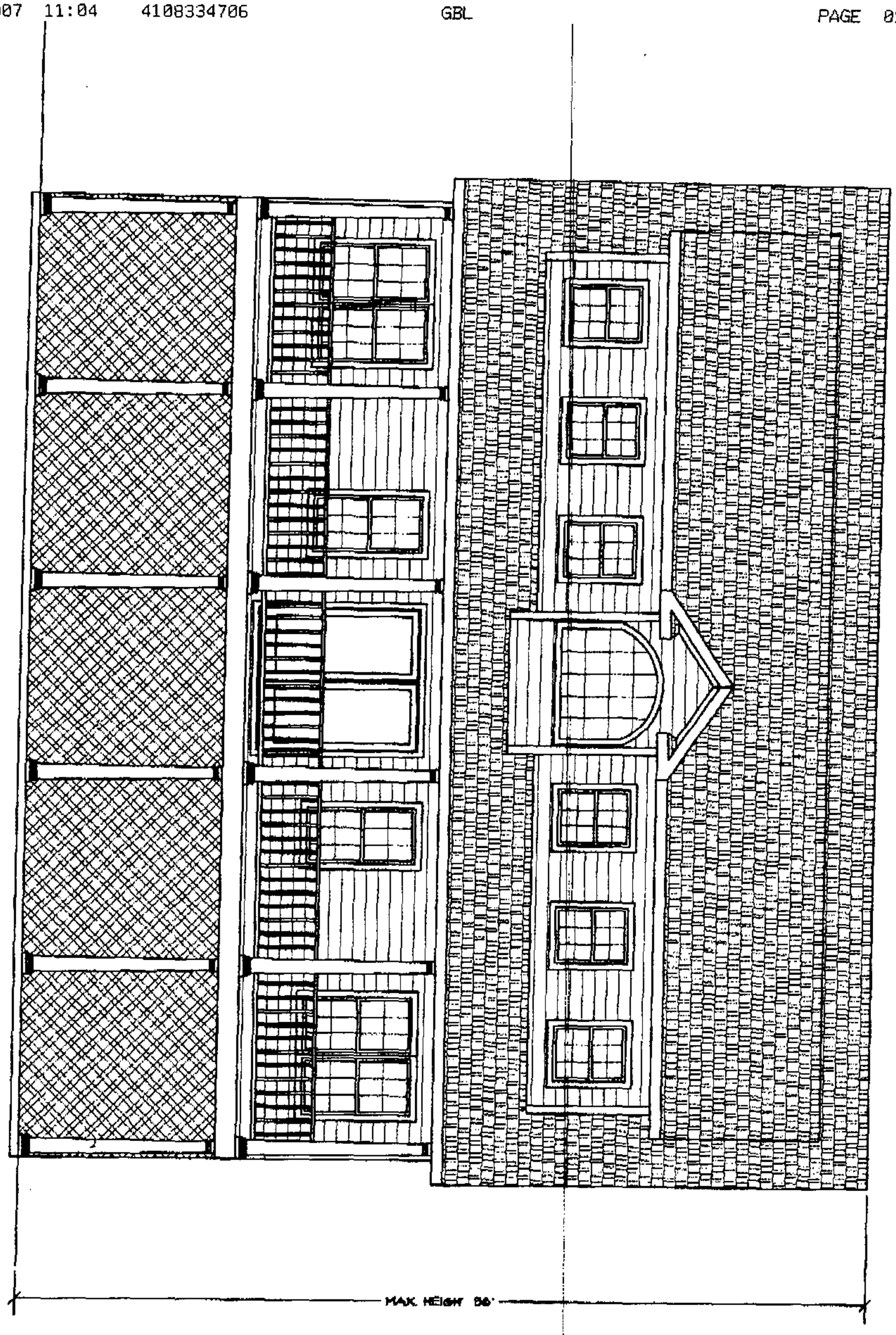

814
814
COLD SPRING
(809 CASE)





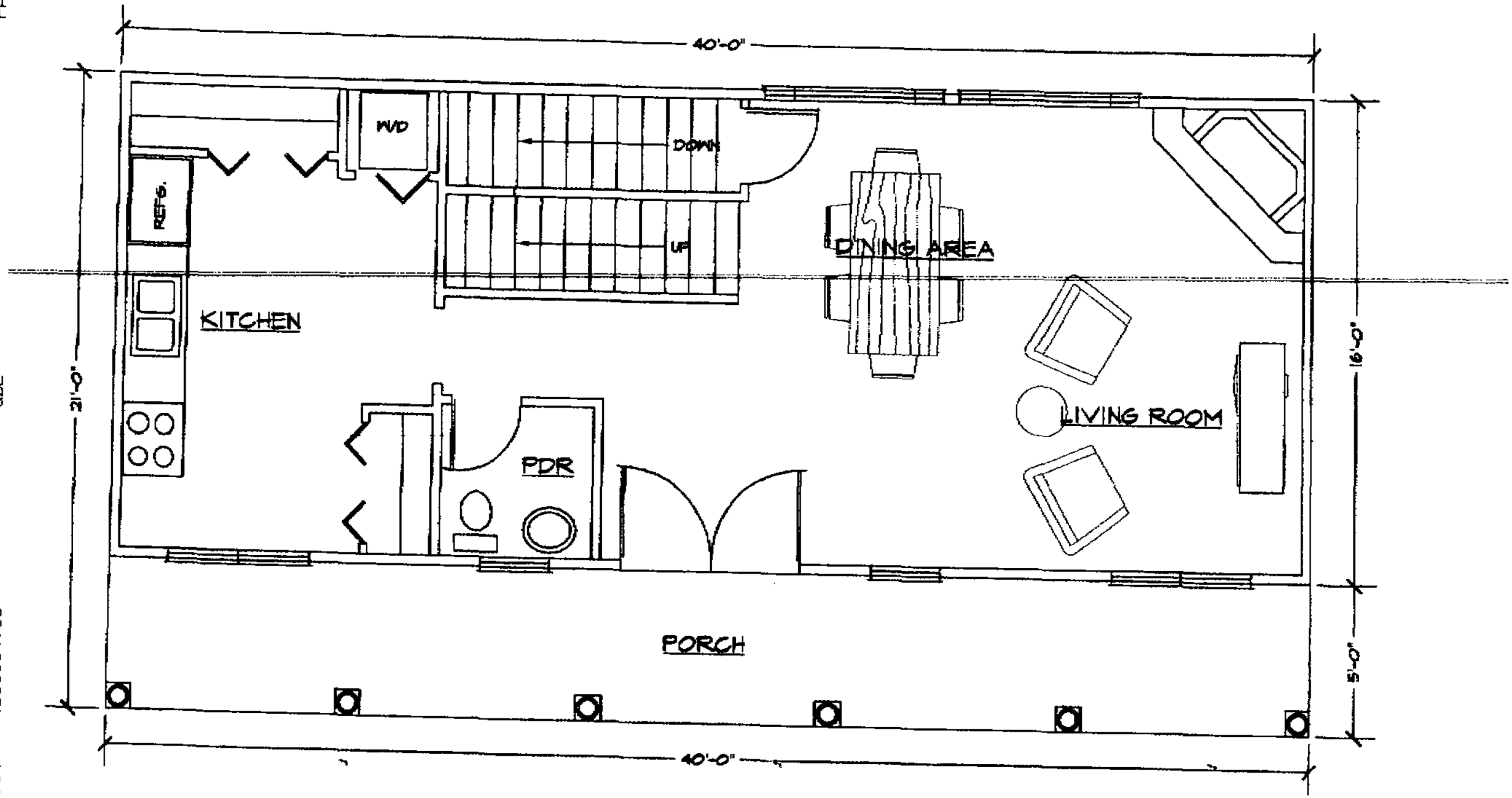
PETITIONER'S

EXHIBIT NO. 15



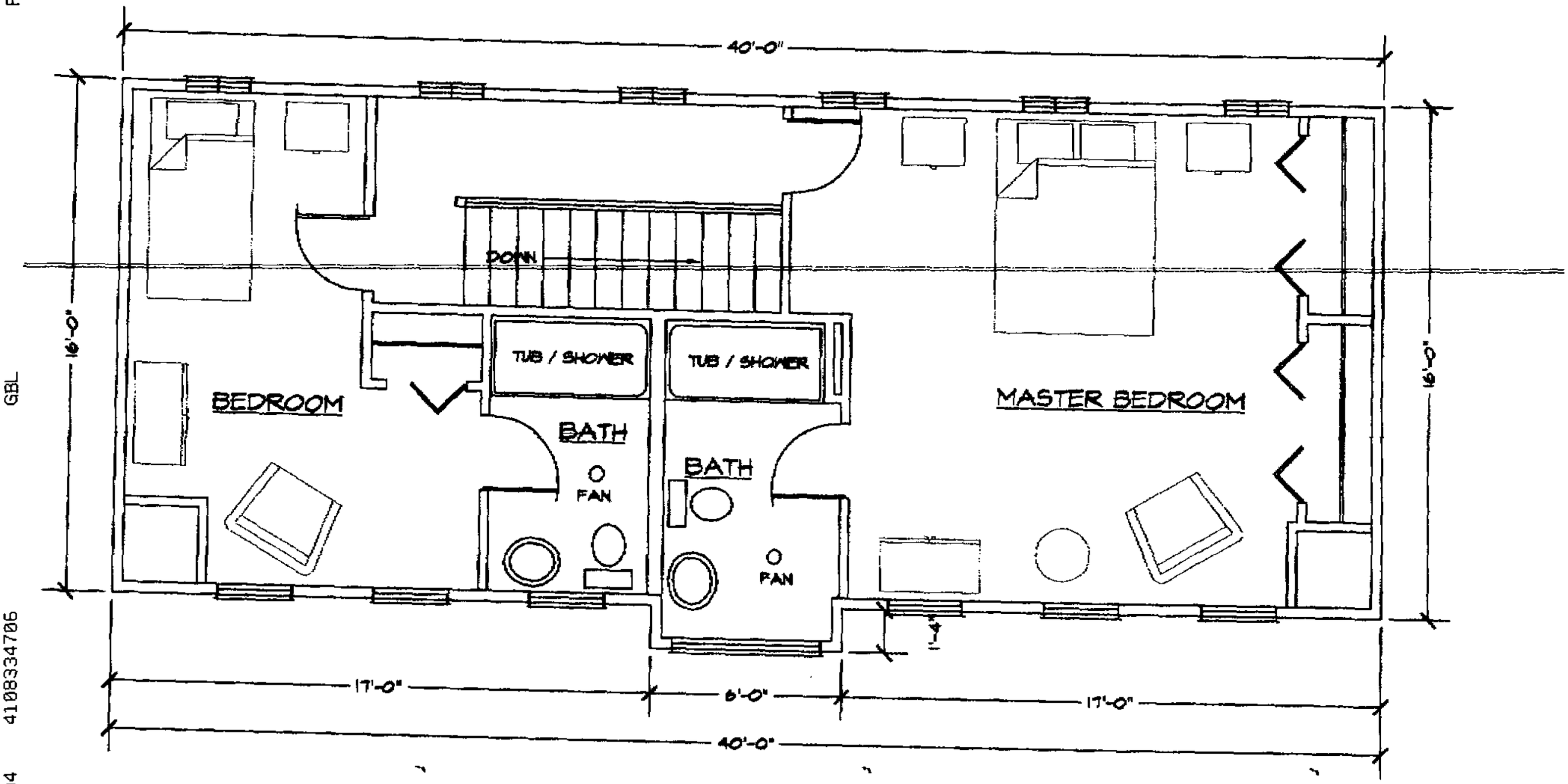
FRONT ELEVATION

SCALE: 1/16"=1'-0"



FIRST FLOOR PLAN

SCALE: 1/4"=1'-0"



SECOND FLOOR PLAN

SCALE: 1/4"=1'-0"

EXHIBIT 23

Preliminary Design of Zinn Residence

809 Coldspring Road, Baltimore

Architects: Gregory Little (AIA), GBL Custom Home Design, Inc., Finksburg, MD

The proposed preliminary residence is designed to harmonize with adjacent structures to the extent possible. An open floor plan dictates the 1st floor (640 sq. feet), to be comprised of LR/DR combo, gas fireplace, ½ bath and minimal pervious decking in front and rear – exterior design elements of doors and windows will be similar on both sides of the house; 2nd floor (640 square feet) to be comprised of 2 BR, 2 baths, and fireplace.

Residence could be "green certified", being energy efficient and water stingy while stressing the natural over the chemical, the recycled over the new and the renewable over the finite. In addition, extensive native species trees and vegetation are planned to limit irrigation while providing habitat for native birds and insects.

Details:

Roof – architectural wood shingles. Exterior finishes – wood or vinyl siding; decking to be composite material; gutters and downspouts – copper or vinyl. Windows to be double glazed. fiberglass composite; gas fireplaces with flues – aligned and parallel relative to floors. Front door entrance platform will be located underneath structure and adjacent to parking. Heating and air conditioning via heat pumps integrated beneath structure and elevated. Currently exploring an alternative hydronic heating system. Parking for cars would be underneath structure and hidden behind motorized basket weave panels which tuck under 1st floor joists.

PETITIONER'S

EXHIBIT NO. 16

EXHIBIT 24

Remediation of Concerns on Prior Zoning Variance Requests

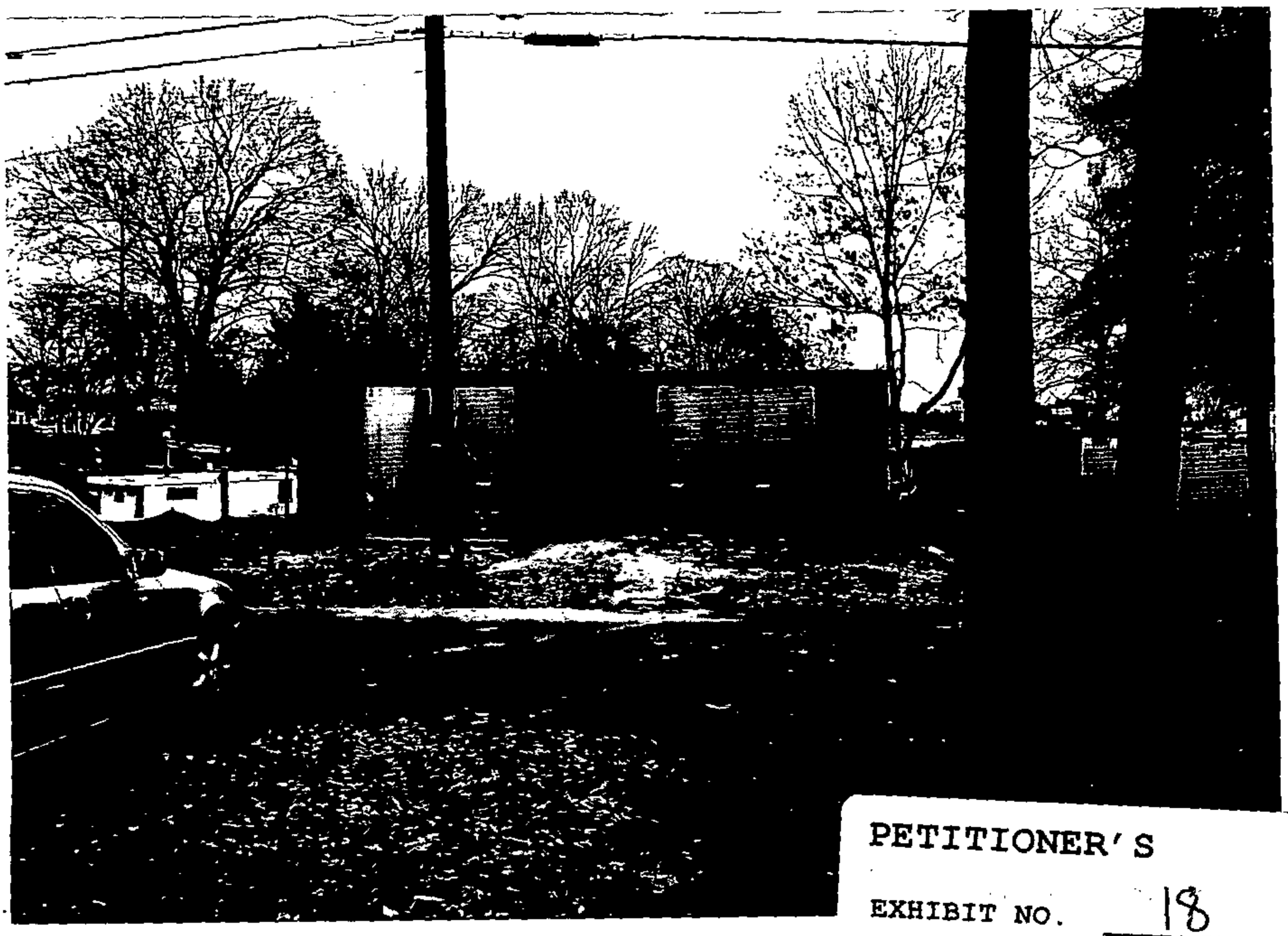
Year	Concern	Remedy
2003	• No DEPRM approval	• Secured Division of Environmental Protection and Resource Management (DEPRM) approval on June 11, 2004
2003	• No Critical Bay Area approval	• Secured Chesapeake Bay Critical Area Commission approval on March 29, 2004
2003 and 2004	• Property too small for house footprint	• Turnaround on property was legally proven to be privately owned as part of 809 Cold Spring Road lot; deed was filed and the plat was redrawn to reflect private ownership of turnaround area increasing property square footage from 5396 to 7345 square feet; previous and current owners provide turnaround as a courtesy to neighbors and the community • House footprint significantly reduced from 784 square feet in original variance request to 640 square feet in current request (almost a 20% difference) • Due to both the increase in property size from the addition of the turnaround and the decrease in the house footprint, this issue has been significantly mitigated
2004	• Proposed dwelling is too close to "public" turnaround	• Turnaround is private, not public, as noted above • Private turnaround was reconstructed on the other side of the property resulting in a 25 foot setback from roadbed instead of a two foot setback from the previous turnaround
2004	• Design of proposed dwelling does not conform to neighbors	• Proposed home was completely redesigned to conform to immediate neighbors as demonstrated in new architectural drawings
2005	• Property configuration (shape) is not unique	• DEPRM, Chesapeake Bay Critical Area Commission and Asst. Commissioner of Zoning have all documented that the shape of the property is unique in variance hearings and letters

PETITIONER'S

EXHIBIT NO. 17

2005	• No practical difficulty	• Since a recreation site or private pier is not a viable and reasonable use of a residentially zoned building lot, owners have brought various essential services to the site (water, electricity, phone, etc.) to enable some degree of utility of the site. By linking these services to a houseboat, there is very minimal use. Owners have secured approval from the County to install the traditional grinder pump sanitation system on the property in anticipation of building a residence in the near future. The county system was designed to accommodate this property and we are continuing to pay construction and usage charges as did the previous owner for over a decade. Public safety and welfare have not been compromised but enhanced as a result of the improvements owners have made to the property including: relocation and expansion of turnaround; installation of bulkhead to prevent further environmental erosion; installation of plantings to stabilize property; and installation of lighting, fencing and surveillance to minimize dumping and abuse of property. Owners have additionally redesigned their proposed residence to accommodate community design standards and enhance the overall value of the property beyond existing values.
2005	• Property was never intended for residential use	• Property is being taxed as a viable residential lot at market rates. • For over a decade, the property has been taxed continuously as a residential lot and assessed charges for sewer and water service. • Property currently has water, electric, cable, telephone, DSL service and approval for sewer service.
2005	• Variance would not be in the spirit and intent of the zoning regulations	• Property size is now 7345 square feet rather than the 5396 stated in earlier request • Current proposed setbacks are 25 feet in the front and 25 feet in the rear compared to the previous proposed setbacks of 23 and two feet, respectively (requirement is for a 30 foot setback for each the front and rear property lines) • Proposed density of 9% (640 house footprint / 7345 lot size) of land mass reflects the same density ratio as 50% of similar house footprints and lots in the immediate vicinity

EXHIBIT 25.



PETITIONER'S

EXHIBIT NO. 18

Letters of Support Within Bowleys Quarters

David & Vicki Wesolowski	858 Seneca Park Rd	410.335.7179
Mary Trabing	815 Cold Spring Rd	410.335.1306
Thomas & Tina Bentz	816 Cold Spring Rd	410.335.7303
Paul & Kathy Paul	3803 Bay Drive	410.335.3525

PETITIONER'S

EXHIBIT NO. 19

July/August 2007

William J Wiseman III
Zoning Commissioner
Baltimore County Zoning Office

Dear Mr. Wiseman:

As a homeowner living in Bowley's Quarters, we wanted to share our support for Dr. Harlan Zinn in his quest to build a home at 809 Cold Spring Road.

I / We are aware of numerous other similarly sized properties in Bowleys Quarters that have recently been approved for houses. In addition, it is apparent that Dr. Zinn has expended considerable effort, creativity and expense in upgrading the property to its present state including extensive landscaping, fencing, bulkhead and pier, and acquiring various utilities (water, cable, telephone, electric and approved septic) which serve the property and his houseboat. Approving his property for variances would appear consistent with other similarly sized properties in his immediate neighborhood and throughout Bowleys Quarters.

As a result, we wish to go on record as having no objection to the plans of Dr. Zinn to construct his residence at this location and feel he deserves similar accommodation and treatment as others. We believe the entire Zinn family is an asset to our community and they are truly invested in our community and will remain actively involved.

Name	Address	Phone Number
Mary [illegible]	815 Cold Spring RD	410-335-1306
Thomas Bentz	816 Coldspring RD.	410 335·7303
Tina Bentz	816 Coldspring Rd	"

July/August 2007

William J Wiseman III
Zoning Commissioner
Baltimore County Zoning Office

Dear Mr. Wiseman:

As a homeowner living in Bowley's Quarters, we wanted to share our support for Dr. Harlan Zinn in his quest to build a home at 809 Cold Spring Road.

I / We are aware of numerous other similarly sized properties in Bowleys Quarters that have recently been approved for houses. In addition, it is apparent that Dr. Zinn has expended considerable effort, creativity and expense in upgrading the property to its present state including extensive landscaping, fencing, bulkhead and pier, and acquiring various utilities (water, cable, telephone, electric and approved septic) which serve the property and his houseboat. Approving his property for variances would appear consistent with other similarly sized properties in his immediate neighborhood and throughout Bowleys Quarters.

As a result, we wish to go on record as having no objection to the plans of Dr. Zinn to construct his residence at this location and feel he deserves similar accommodation and treatment as others. We believe the entire Zinn family is an asset to our community and they are truly invested in our community and will remain actively involved.

Name	Address	Phone Number
Mary [illegible]	815 Cold Spring Rd	410-535-1306
Paul A. Paulff.	3803 Bay Drive	410-335-3525
Kathy Paul	3803 Bay Dr.	410 335-3525

July/August 2007

William J Wiseman III
Zoning Commissioner
Baltimore County Zoning Office

Dear Mr. Wiseman:

As a homeowner living in Bowley's Quarters, we wanted to share our support for Dr. Harlan Zinn in his quest to build a home at 809 Cold Spring Road.

I / We are aware of numerous other similarly sized properties in Bowleys Quarters that have recently been approved for houses. In addition, it is apparent that Dr. Zinn has expended considerable effort, creativity and expense in upgrading the property to its present state including extensive landscaping, fencing, bulkhead and pier, and acquiring various utilities (water, cable, telephone, electric and approved septic) which serve the property and his houseboat. Approving his property for variances would appear consistent with other similarly sized properties in his immediate neighborhood and throughout Bowleys Quarters.

As a result, we wish to go on record as having no objection to the plans of Dr. Zinn to construct his residence at this location and feel he deserves similar accommodation and treatment as others. We believe the entire Zinn family is an asset to our community and they are truly invested in our community and will remain actively involved.

Name	Address	Phone Number
David Wesolowski	858 Seneca Park Rd.	410-335-7179
Vicki A. Wesolowski	858 Seneca Park Rd.	410-335-7179

Case No.: 07-545-A 809 COLD SPRING RD.

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	SITE PLAN	OPPOSITION LETTER OF HISTORY/CONCERNS H
No. 2	ORIGINAL SURVEY PLAT 1918 LONG ~~BEACH~~ Estates	PEOPLE'S COUNSEL POSITION D-2
No. 3	Confirmatory Deed 2006	CASE 04-522-A PROPERTY DRAWING E
No. 4	CRITICAL AREA COMMISSION	1994 SURVEY COLD SPRING RD. F
No. 5	DEPRM - APPROVAL FOR VARIANCE	Petitioners DEAR NEIGHBOR Letter
No. 6	Property Description 809 Cold Spring Rd 7345 sq. feet	BOWLEYS QUARTERS IMPROVEMENT ASSOCIATION - OPPOSITION to REQUEST
No. 7	Real Property Assessment	
No. 8	Photographs A thru G	
No. 9 9A 9B	Agreement for turn-a-round - Mr. Rochelle testimony	
No. 10	Water & Sewer Available See Tracky's Agreement	
No. 11	Letter from Atty Gontrum to Scott Dallas 12/11/05	
No. 12	Letter to CBA dated 11/14/05	

Case No.: 07-545-A

Exhibit Sheet - Continued

	Petitioner/Developer	Protestant
No. 13	Colorized MAP OF Long Beach - "Log Point"	
No. 14	Photographs of adjacent Properties A thru G	
No. 15	Architectural Renderings Color Photo - 1st & 2nd Floor	
No. 16	Preliminary Design of Proposed Residence	
No. 17	Chart - Remediation of ISSUES FOR RELIEF REQUESTED	
No. 18	1215 SENECA - PRIOR approval - 06-334 SPHA PHOTO'S OTHER Residence	
No. 19	Letters of Support	
No. 20		
No. 21		
No. 22		
No. 23		
No. 24		

EXHIBIT H

Zoning Variance Case # 07-545-A Aug 20, 2007
Neighbor's Opposition

History

July 29, 2003 – Commissioner Lawrence Schmidt heard the case (03-500-A) and **Denied** the request for variance relief on that day without waiting 30 days to issue a decision citing the property was " too small and would be inconsistent with the neighborhood and cause detrimental impact to adjacent properties."

EXHIBIT A

- request was for a front yard (water) setback of 11 ft in lieu of the required 55 ft and a rear yard setback of 2 ft in lieu of the required 30 ft. The residence was proposed to be 28 ft x 28 ft.
- **depth of property = 11 ft + 28 ft + 2 ft = 41 ft** G - 1, 2

July 20, 2004 – Deputy Commissioner John Murphy heard the case (04-522-A) and **Denied** the request for variance relief citing that "the lot is simply too small for the home proposed" and "I am troubled by the placement of a very long narrow home in a neighborhood in which homes are built in a more traditional way. I would not want to set a precedent for this home in this neighborhood.

EXHIBIT B

- request was for a front yard (water) setback of 23 ft. and a rear yard setback of 2 ft. in lieu of the required 30 ft (incorrect standard, should be 55 ft.) and 30 ft respectively. The residence was proposed to be 16 ft x 46 ft. This residence suggests an elevated 2 story mobile home and surely not in character with the neighborhood.
- **depth of property = 23 ft + 16 ft + 2 ft = 41 ft** G-1, 2

December 20, 2005 – The County Board of Appeals of Baltimore County issued their decision after hearing the appeal case for 04-522-A during multiple sessions earlier in the year and again **Denied** the request for variance relief.

EXHIBIT C

- in their written statement the Appeals Board cited "this Board finds that none of the conditions as required by item 307 of the BCZR or Cromwell in order to grant the request for variance have been met. The subject property is not unique. It has never met the zoning requirements to build on, and it can be used for other legal purposes, so the zoning regulations do not impose a practical difficulty. Finally, the variance request, being half of what is required by the zoning regulations, would not meet the spirit and intent of the BCZR."

PROTESTANT'S
EXHIBIT NO. 1 (H)

July 6, 2007 – The People's Counsel of Baltimore County issued a letter to the Zoning Commissioner, William J. Wiseman, III stating that case # 07-545-A should be denied citing legal precedence and noting that the same relief has been adjudicated before the Office of the Zoning Commissioner on two occasions and denied on July, 2003 and July, 2004, in addition, the County Board of Appeals denied an appeal *de novo* in December, 2005. They further stated that the petitioner cannot now impudently seek variance relief on the same relief denied in the prior cases and this effort is an affront to the CBA, the Office of the Zoning Commissioner and to the administrative zoning process and must be stopped once and for all. They concluded by stating " It is our firm position that the relief requested is highly improper and an unacceptable manipulation of the zoning process. We strenuously urge denial of the Petition for Variance."

EXHIBIT D-1

People's Counsel Position – in their written statement dated June 30 2005, Deputy Counsel Carole Demilio eloquently addressed the following key issues:

- on questioning Mr. Scott Dallas of J.S. Dallas, Inc. who was accepted as an expert in zoning and surveying (and testifying on behalf of the Petitioner), he testified that he had checked with the Baltimore County Bureau of Land Acquisition and found there was no record of a County taking or deed for the 40 ft right-of-way that is present on the Baltimore County and surveyors maps. He opined that since the right-of-way was never formally taken by the County it was, therefore, retained by the property owner. In rebuttal, Mr. Eric Rockel of the Baltimore County Bureau of Land Acquisitions stated that the county claims a prescriptive right to the 40 ft right-of-way because it had been in open and continuous use for 90 years; he referred to the County's sewer construction plan on which the 40 ft right-of-way is clearly marked. Mr. Rockel further stated that even though the Bowley's Quarters Improvement Assn. had sold the 'road end' parcel - 900 sq ft – to the previous owners, the community still had the right to use the parcel and it could **NOT** be built upon.

EXHIBIT D-2

EXHIBIT E, F

- on direct examination, Mr. Mark Cunningham, a Community Review Planner with the Baltimore County Office of Planning testified that Petitioners had used the wrong standard in calculating the front yard setbacks (between the house and the water), BCZR 303.1 requires that front yards in D.R. 3.5 zone be averaged, although they are not required to be setback more than 50 ft. Since the properties north and south of Lot 304 averaged more than 50 ft, the front yard setback on Lot 304 would need to be 50 ft, not the 30 ft. as Petitioners argued.

- People's Counsel also noted and had expert testimony agree that the numbering scheme stood out for Lot 304 on the original plat, in that it was not numbered in sequence. All of the lots on the West side of the peninsula are numbered from 180 – 199 and the lots on the East side of the peninsula are numbered from 199 – 220, yet Lot 304 follows Lot 199. Is this not an indicator that the planners for this subdivision understood that this is not a buildable lot ?

Turnabout – There has been a misconception about the original turnabout regarding it's location and benefit any moving of it would have on the other property owners. The deed and the earlier variance request submissions clearly showed the original turnabout abutting but never crossing the Petitioner's property line. The County should never have allowed the turnabout to have been either blocked as it was on September 22, 2005 or moved. After immediately calling Baltimore County Code Enforcement, I met with Eric Rockel from the Land Acquisitions dept. and also Inspector Chip Raynor at the property and showed them the actual property line; their conclusion was that the turnabout should never have been tampered with; however, 2 weeks later I learned that a compromise (with whom, certainly not any of the other property owners) had been reached and the new fence would only have to be adjusted 2 ft, yet still to completely block the turnabout.

EXHIBIT E

The impact of the moving of the turnabout is obvious with the continuing damage to my landscaping and the deterioration of my driveway. This past winter the snow plow drove to the end of the road as it always did but found that the usual spot to turn around was gone; however long it took for the driver to realize that backing out was necessary the salt spreader was still dispensing salt at the base of my trees resulting in irrecoverable chemical damage and now the need to replace long established, mature trees. The problem and the damage to my driveway with the number of trucks now being forced to turn around in my driveway as well as Mrs. Hubers (Lot 199) is only exacerbated by the private vehicles of the Petitioner and his guests in the new turnabout, although the posted sign restricts it's usage to Service and Emergency Vehicles Only..

G-3,4

G-5,6,7

G-8,9,10 11,12

Property Use – this leftover piece of property has been used recreationally for over 50 years and it currently is being used that way and should continue to be used as such. The Petitioner recently sought variance relief to have a shed placed on the property to store lawn equipment, tools, kayaks, etc. The neighbors never objected to that as it was reasonable to be able to store and protect various items.

Summary

This is the fourth effort to obtain severe and necessary variances for a tiny property that was and still is too small to build on by any measure. I respect and understand Dr. Zinn's desire to have a home on the water and I'm sure he and his family would be good neighbors but this property should not be developed for a host of reasons already discussed. When I first met Dr. Zinn I explained to him that the community (adjacent property owners and the broader community) would object to any effort to build on this lot. According to Baltimore County tax records Dr. Zinn purchased this property at a minimal price with the full knowledge that attempts to build would be problematic with the property owners having great pride in their community and would not sit idle while Baltimore County building codes and standards were circumvented.

With the assistance of legal counsel and attempted creative manipulation of variance standards we as a community have to again speak collectively and ask the Office of the Zoning Commissioner to render a decision that is in the best interest of all parties involved. Previous cases have shown the deeded property to be no more than 41 ft deep to the water yet the established front yard (water) setback should be 50 ft; obviously an impossibility. In the most recent Board of Appeals decision, they would not rule on and did not consider Dr. Zinn's claim to any portion of the 40 ft road right-of-way and even if they did allow that consideration and were gracious to allow him to claim even 20 ft of the road right-of-way to add to the 41 ft property depth to give him a maximum of 61 ft to work with, he still will have to honor and need the 50 ft variance setback from the water as well as the 30 ft rear setback to the road. With only having 61 ft of depth to work with and needing 80 ft of variance clearance, again, an impossibility. If this were an average size property only needing a minimal clearance, we would not be here today. There has been some creative juggling of the square footage of this property to seemingly inflate its size but this would not significantly change the depth of either the property or its close proximity to the water.

This past weekend Dr. Zinn distributed to other property owners supporting materials to help his cause and solicited support in his desire to develop this property and indicated a desire to enjoy a neighborly relationship with us. That is an admirable intent, yet is inconsistent with his having planted bamboo around the entire perimeter of the property, except for the water side. Bamboo is a plant that will mature to form a solid 15-20 ft and higher wall. I can understand planting a hedge or arborvitae for privacy, but bamboo ? I know that is out of character for the neighborhood.

Words can express many things, some accurate, some not so accurate, I would invite you to visit the property to put these words into their proper context and perspective.

We, the immediate adjacent neighbors of 809 Cold Spring Rd. respectfully, yet adamantly oppose this Petition for Variance relief (case 07-545-A) and any effort to build a residence on this undersized lot. Request for variance relief for this property has been denied twice prior; in 2003 (03-500-A) and in 2004 (04-522-A) by the Zoning Commissioner and denied a third time in 2005 by the County Board of Appeals of Baltimore County in a letter dated December 20, 2005. We are again joined in opposition by the Baltimore County Office of People's Counsel in a letter sent to the Zoning Commissioner dated July 6, 2007.

Richard Pitz
Richard Pitz
808 Cold Spring Rd.
Aug 16, 2007

Mike Vivirito
Mike Vivirito, President
Bowley's Quarter's Improvement Assoc.
August 16, 2007

Nancy Hubers
Nancy Hubers
800 Cold Spring Rd.
8/19/2007

James Trabing
815 Cold Spring Rd.

Ernestine Sisson
Ernestine Sisson
813 Cold Spring Rd.
820 Cold Spring Rd.
8-19-07

Read Van Zile
Read Van Zile
812 Cold Spring Rd.
8/16/07

EXHIBIT D-2

RE: PETITION FOR VARIANCE 809 Cold Spring Road; E/side of Cold Spring Road, 640' +/- S of Chesapeake Avenue 15th Election 7 6th Councilmanic Districts Legal Owner(s):Janice Oberst Contract Purchaser(s): Dr Harlan and Amanda C. Zinn Petitioner(s)	* * * * *	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 04-522-A

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

FACTS AND OVERVIEW OF PEOPLE'S COUNSEL'S POSITION

Some of the facts in this case are undisputed. The present owner of Lot 304 is the daughter of long-time owners. The lot is part of an old subdivision (Long Green Estates) and has remained unimproved from its inception until now. Mrs. Oberst's parents also owned Lot 196 across the street at 810 Cold Spring Road, where they resided. Her mother, June Schuman, sold Lot 196 in April, 2004,to Robert Kroll who testified in opposition to the Petition. Oberst's parents built a bulkhead and pier on Lot 304 and used it for recreation and boating in conjunction with their home across the street. In 1992, they purchased a sliver of land adjoining Lot 304 from the Bowleys Quarters Improvement Association for $2000. It consists of 900 square feet and was never even assigned a lot number in the Long Green Subdivision. Mr. Eric Rockel from the Baltimore County Department of Land Acquisition testified that it was common for a community association to acquire what Mr. Rockel called "end of road" parcels for community use. He testified that despite the deed from Bowley's Quarters to Mrs. Oberst's parents, the County has taken the position that the quit claim deed does not extinguish the community's rights in the parcel, such as access to the water.

PROTESTANT'S
EXHIBIT NO. 2 D-2

Mr. Rockel also agreed that a cul-de-sac on a peninsula, such as Cold Spring Avenue, would require a turn-around area for such vehicles as trash trucks, emergency vehicles, and snow removal equipment to service Cold Spring Avenue, a Baltimore County public road. This long-standing turnaround on Lot 304 reduces the "area" available to construct a dwelling as Petitioner proposes. On this point, Young, American Law of Zoning, 3rd, § 9.64 states:

> ***"In determining the area of a lot, an owner may not include the area of a right-of-way which he owns but is obligated to keep open for nearby property owners. Bankers Trust Co. v. Zoning Bd. of Appeals, 165 Conn. 624, 345 A2d 544 (1974)."***

Even without deducting the area for the turn-around, Petitioner does not meet the minimum area requirements of the zone when the entire area of Lot 304 and the adjacent sliver are combined. In fact, since zoning was introduced to Baltimore County in 1945, Lot 304 never satisfied the minimum area requirements of whatever zone was placed on the site. The sliver adds no meaningful area to the equation. This supports the testimony of the citizens and OPZ that the site is too small to support a residence.

A review of the zoning history and the subdivision plat supports People's Counsel premise that the site was never intended as a building lot:

Long Beach Estates. Petitioner's Exhibit 1- the Long Beach Estates Subdivision Plan shows Lot 304 as totally out of sequence with the other lot numbers on Cold Spring Road; it is not unreasonable to assume it was not intended to be sold and developed as the other lots. In fact, no improvements were ever erected on the site since the subdivision was laid out in 1910. Petitioner's family never sought to develop it with a

home in the many decades Mrs. Schuman testified they lived on Cold Spring Road. Additionally, the sliver, a mere 900 sq. ft parcel as per the deed in Petitioner's Exhibit 5D at the end of the road, was never even assigned a lot number.

Zoning History: Rural Deferred Planning. The RDP zone assigned to the site in 1971 required a minimum 1 acre lot (approx. 43,500 sq. ft), which the site did not meet.

Zoning History: D.R. 5.5. The D.R. 5.5 zone was attached in 1976. This zone establishes a minimum area of 6000 sq. ft per lot under the small lot Table in BCZR 1B02.3 C.1. If the Table does not apply, D.R. 5.5 requires a minimum lot size over 7900 sq. ft. In 1976, Petitioner owned Lot 304, (not the adjoining sliver which was acquired in 1992). Lot 304 is less than 5400 sq. ft, undersized for the D.R. 5.5 zone. (See Petitioner's Exhibit 5A.). The setbacks for the D.R. 5.5 zone are comparable to current regulations. The proposal here could not meet the setbacks even if the site were zoned D.R. 5.5.

Zoning History: D.R. 3.5. In 1992, the site was rezoned to D.R. 3.5. At the same time, Petitioner acquired the adjoining 900 sq. ft. sliver from the Bowley's Quarters Community Association. Under the aforementioned Table in BCZR, D.R. 3.5 requires a minimum lot size of 10,000 sq. ft. If the Table does not apply, D.R. 3.5 requires over 12,400 sq. ft minimum per lot. The evidence shows Lot 304 and the sliver are a maximum 6200 sq. ft., and do not meet the area requirements for the D.R. 3.5 zone. In summary, <u>under any scenario since zoning was enacted in the County, the site is undersized.</u>

Existing Development Not Comparable. Petitioner's references to other development in the neighborhood are misleading. The existing homes built under the

1910 Long Green Estates Plat before the enactment of zoning are nonconforming and protected. Petitioner cannot bootstrap her relief to the existence of these older dwellings, which were legal when constructed. Additionally, other lots, or combined contiguous lots in single ownership, may satisfy current area regulations. Again, Petitioner's request is out of line with dwellings that satisfy current zoning standards. Petitioner did not point out a single dwelling constructed under the current zoning that did not satisfy the minimum lot size, or substantially meet the setback standards.

In summary, a rezoning cannot be used as a basis to grant a variance. Even so, there is no evidence here that the rezoning of the site over the years made substandard an otherwise suitable lot as to area and setbacks. Except for the period prior to 1945 when zoning was first enacted in Baltimore County, Lot 304, the adjoining sliver, or both combined, could never meet the applicable area or setback requirements to support a dwelling. And Petitioner offered no deed or other evidence that her family even owned the site prior to zoning in 1945 when a dwelling may have been permitted. The testimony that it was bought for "investment" is misleading and specious. It is undisputed that there was no request to build a home and that no dwelling was ever constructed on the site at any time until Oberst's 2003 Petition. Furthermore, Petitioner did not dispute that unimproved waterfront property in itself is a good investment and has increased in value over the years.

Existing and Past Uses On The Site. Both Petitioner's witnesses and the protestants agree that Lot 304 has always had viable recreational uses – boating, fishing etc. Recreational uses are not uncommon on unimproved lots on the water, and the

testimony of opposing witnesses indicates that waterfront property is bought, sold, maintained and used solely for these purposes. In fact, such uses are permitted in BCZR as explained in the Zoning Commissioner's Policy Manual at 417.1:

> ***"Waterfront Construction***
>
> ***(c) Unimproved Lots: Waterfront construction (piers, mooring piles, bulkheads) may be constructed on unimproved lots pursuant to Section 417. [BCZR 417]"***

Here, Petitioner Oberst's family, whose house across Cold Spring Road was on the Frog Mortar Creek side of the peninsula, built a pier off Lot 304 on the Galloway Creek side, to launch a boat for recreation and fishing expeditions. The neighbors never opposed this use.

It cannot be overlooked that it was Petitioner Oberst who chose to sell Lot 304 and the adjoining sliver separate from their home site on Lot 196, despite many years of joint use. It is significant that Mr. Robert Kroll who purchased Lot 196 testified that he was interested in buying Lot 304 to continue the recreational open space as a complement to his house. While he was willing to pay a respectable price as waterfront recreational open space, the asking price for a building lot was inconsistent with its prior use.

The Front and Rear Yard Setback Calculations Are Incorrect; the Relief Is Without Merit. Not only does the site fail to meet minimum lot size, but the Petitioner also seeks significant front yard and rear yard setbacks. This need for significant variances suggests the site was never intended as a building lot and cannot reasonably accommodate a dwelling. Furthermore, we challenge the legality and the accuracy of the setback variances in Petitioner's case. The Zoning Commissioner's Policy Manual

(ZCPM) at Section 400.2.a (1) (attached) is clear that on waterfront property, the front yard is the area between the house and the waterfront, and the rear yard is the area between the house and the street.

First, we dispute Petitioner's position as to what the front yard setback should be. Petitioner suggests the Table for small lots applies and the required setback is 30 ft. It is our position, as well as the opinion of the Office of Planning and Zoning, ("OPZ") that front yard averaging under BCZR 303.1 and the Policy Manual Section 400.2.a (2) apply and the required setback is 50 ft.

> ***BCZR 303.1*** ***In D.R.2, D.R.3.5 and D.R.5.5 Zones,[3] the front yard depth of any building 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, <u>50 feet in D.R.3.5 Zones</u> 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 therefor in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively. [Resolution, November 21, 1956]*(emphasis supplied).

ZCPM 400.2.a. – Accessory Buildings – Waterfront setbacks

> ***(2) In D.R. zones the same maximum average setback requirements apply on waterfront.***

It is undisputed that the adjoining properties that factor into the averaging calculations are within 200 ft of the site and are setback from the water more than 50 ft. With these facts, and the application of BCZR 303, a front yard setback between the proposed dwelling and the waterfront must be 50 ft. Instead, Petitioner claims a 30 ft

setback is required as per the Table in BCZR 1B02.3 C.1. Marc Cunningham from OPZ testified that averaging under BCZR 303, and not the Table, is applicable.

In any event, under either standard, Petitioner variance request for a 23 ft front yard setback should not be granted. Petitioner's erroneous application of the law is a red herring. The request must be seen in light of the proper regulations as a significant deviation from the standard that violates the "spirit and intent" of the area regulations as stated in BCZR 307.

The Rear Yard Setback Calculation Is Inaccurate; the Relief Is Without Merit. Petitioner miscalculates the extent of the rear yard setback (the area between the proposed dwelling and Cold Spring Road). The Petition for Variance requests a 2 ft rear yard setback in lieu of the required 30ft. Petitioner maintained this position before the Deputy Zoning Commissioner. Her relief was denied. Now at the CBA hearing, Petitioner presents a new theory on the width of Cold Spring Road that relies on contradictory evidence. In the Petition and before the Deputy Zoning Commissioner, the setback was calculated as the distance between the 40 ft. right-of-way line for Cold Spring Road and the proposed dwelling. At the CBA hearing the Petitioner unilaterally claims the right-of-way is 25 ft., not 40 feet, thus reducing her variance request. The location of the proposed dwelling did not change. The Petitioner's evidence on this point is conflicting, confusing, and illustrates the need for proper pleading and County review. Moreover, it may not be within the jurisdiction of the CBA to determine property lines. In any event, the rear yard variance, whether it is for 23 ft or 2 ft, is not warranted and should be denied.

Violation of Chesapeake Bay Critical Area Law. The spirit and intent of the Chesapeake Bay Critical Area laws prohibit this type of over-development of a site that eviscerates the purpose of the law. This will be discussed in more detail in another section of this Memorandum.

ISSUES

The questions to be decided are:

1. Does the denial of variance relief for this site requested by Petitioner in Case #03-500-A **(People's Counsel Exhibit#2)** bar relief in the instant case under the doctrines of *res judicata* and/or *collateral estoppel?*
2. Did the Petitioner prove uniqueness under BCZR 307 and *Cromwell v. Ward?*
3. Did the Petitioner prove practical difficulty under BCZR 307 and *Cromwell v. Ward?*
4. Is the County Board of Appeals authorized to determine property boundaries?

Statement of Facts Pertinent to *Res Judicata* and *Collateral Estoppel*

Petitioner Oberst requested a Petition for Variance for this site in Case 03-500-A, filed April, 2003. In that case as in the instant case, Petitioner Oberst sought relief for an undersized lot, and front and rear yard setbacks. There was a second Petitioner who was a contract purchaser. The Zoning Commissioner denied the relief and stated in his Opinion (People's Counsel's Exhibit 2):

> ***"I concur with Mr. Pitz*** [opposing neighbor] ***that the property is simply too small for the proposed development. I am appreciative that the property is a lot of record that was originally recorded as part of the subdivision of Long Beach Estates well prior to the adoption of the current zoning regulations. Nonetheless, it is simply too small to support the proposed dwelling and development of the parcel would be inconsistent***

with the neighborhood and cause detrimental impacts to adjacent properties. In sum, I am not persuaded that the Petitioners have met the requirements of Section 307 and Cromwell v. Ward, 307 Md. 1 (1995), for relief to be granted."

The case was fully litigated in 2003. The decision of the Zoning Commissioner was not appealed by Oberst and was a final binding Order. The parties are identical or in privity. The cause of action is the same in both cases. The site is identical. The same issues raised and litigated in 2003 are the very issues in the instant case – is the site unique under *Cromwell* and will practical difficulty result if the relief is not granted. If the property was not unique in 2003, and there is not a scintilla of evidence that the site has changed in any way, it cannot be found unique in the instant case under the legal principle of *res judicata.*

Argument: *Res Judicata, Collateral Estoppel* - Interpretation of Variance Law

The Claim a Variance is Warranted is Barred by *Res Judicata, Collateral Estoppel*

The doctrines of res judicata and collateral estoppel apply to administrative decisions. Batson v. Shifflett 325 Md. 684, 704-705 (1992); see Century I Condominium Ass'n v. Plaza Condominium Joint Venture 64 Md.App. 107, 113-114 (1985). The Court of Appeals has consistently applied these doctrines in zoning cases. Fertitta v. Brown 252 Md. 594 (1969); Chatham Corp. v. Beltram 243 Md. 138 (1966); Woodlawn Area Citizens Ass'n v. Board of County Comm'rs 241 Md. 187 (1966); Whittle v. Board of Zoning Appeals 211 Md. 36 (1956).

The doctrine of collateral estoppel is also known as "issue preclusion." It stands for the proposition that matters actually litigated and resolved against a party in a proceeding are considered to have been finally adjudicated for the purpose of a

subsequent proceeding even where the subsequent proceeding differs in form. See Jones v. State 350 Md. 284, 295 (1998); MPC, Inc. v. Kenny 279 Md. 29, 34-36 (1977); Pat Perusse Realty v. Lingo 249 Md. 33, 43-45 (1968); Prescott v. Coppage 266 Md. 562, 570-573 (1972). Here, the Petitioner Oberst requested the same relief for the same site under the same regulations and zoning laws. She is also a party to the current proceeding. Doctor Zinn, the contract purchaser here, is in privity to Oberst and is also bound by the 2003 decision. "Privity" is defined in Black's Law Dictionary as ***"Mutual or successive relationship to the same rights of property. Derivative interest founded on, or growing out of, contract . . . between parties; . . ."***

To illustrate the point, we attach Chief Judge Hall Hammond's opinion in Fertitta v. Brown, *supra*. It chronicles Fertitta's persistent and repeated attempts to legitimize his marina use on the Baltimore County waterfront. After an August 28, 1962 finding by the zoning commissioner of a violation, Fertitta filed a petition to establish a non-conforming use. The Commissioner denied this petition on July 31, 1963 and ordered Fertitta to cease operations. Upon appeal, the Board of Appeals affirmed. Fertitta's appeal to the Circuit Court was dismissed for technical reasons.

Upon yet another petition, and another round of hearings from the commissioner to the Board to the Circuit Court, Judge Proctor found that the July 31, 1963 commissioner order, having survived appeals to the CBA and Circuit Court, was conclusive and "the end of the road." Fertitta appealed to the Court of Appeals but failed to perfect it. He then filed a declaratory judgment action to avoid or overturn the July 31,

1963 order. The Circuit Court sustained Brown's demurrer. The Court of Appeals affirmed because Judge Proctor's decision had preclusive effect.

If we combine Fertitta v. Brown, highlighting Judge Proctor's decision, with the Batson decision that *res judicata* and *collateral estoppel* apply to administrative decisions, it is inescapable that the Zoning Commissioner's 2003 decision, being a final order that was not appealed, precludes the litigation of the essential issues resolved in that proceeding. As to the issues, the present case is in a position equivalent to Fertitta when it came before Judge Proctor. *Collateral estoppel* and *res judicata* apply despite the difference in the form of the proceeding. Otherwise, a Petitioner denied relief could litigate *ad infinitum,* by simply slightly amending the setbacks or adding a different party as contract purchaser. This is exactly the type of cunning and forum shopping that the principles of *res judicata* and *collateral estoppel* prohibit.

These principles were recently applied in Case No. 05-172-SPHA, attached. It should be noted that in those succession of cases for the same site, the set back variances were different in each of the three cases referred to in the latest decision. Case No 01-313-A decision of this Board and Case No. 03-342-SPHA (ZC) are attached with Case No. 05-172-SPHA and highlighted as to this point. (The issue was also raised In the Matter of Meittinis before this Board. Because the Circuit Court reversed the CBA, it stated it did not have to reach the issue of *res judicata*).

Argument: Variances Are Not Warranted under BCZR 307 and Cromwell v. Ward

> ***" . . . with respect to variances, it is said that a variance is 'designed as an escape hatch from the literal terms of the ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus amount to***

confiscation.'" (citations omitted, emphasis supplied). Young, *American Law of Zoning 4th Edition, Section 20.02.* P. 411, 412.

BCZR 307.1 is in accord with general variance law and states that the CBA may grant variances:

> ***"... 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 of Baltimore County would result in practical difficulty or unreasonable hardship."***

Variances are not favored under the law and presumed to be in conflict with the regulations. For these reason, the spirit and intent of the law must be strictly construed. As Judge Cathell pointed out in *Cromwell, supra*:

> ***"The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. See, e.g., A. Rathkopf, 3 The law of Zoning and Planning Section 38 (1978)." Id. 651 A.2d 424,430."***

The strict standard requires proof of the following:

1. That the land or structure is "unique," a zoning term of art;
2. That the uniqueness "results" in "practical difficulty" pertinent to zoning compliance;
3. That there is true "practical difficulty," another zoning term of art; and
4. That any such "practical difficulty" is not self-created.

The first inquiry here is whether the property is peculiar or "unique." If evidence of uniqueness is insufficient or unpersuasive, the inquiry ends there. Cromwell v. Ward 102 Md. App. 691 (1995); Umerley v. People's Counsel 108 Md.App. 497 (1996); Riffin v. People's Counsel 137 Md. App. 90 (2001). If this threshold is passed, the further

question is whether the unique condition results in "practical difficulty." McLean v. Soley 270 Md. 208, 213-15 (1973).

(a) Uniqueness Defined and Analyzed

The word "unique" is defined strictly. Otherwise, anyone could make some sort of claim. In *Cromwell* at 710, the Court 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 have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."***

The variance statute is found in BCZR 307.1:

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

Petitioner's witnesses did not present a shred of evidence to support the criteria for uniqueness, although it is their burden. ***"The burden of proof is on the applicant to***

establish that his land is uniquely affected resulting in unnecessary hardship." *Cromwell* at 721 (citations omitted).

Most important, the size of the lot is not a unique feature. Judge Cathell in *Cromwell* at 717 cited approvingly Sibley v. Inhabitants of the Town of Wells, 462 A2d 27, 30-31 (1983):

> ***"[T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood; . . . [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner. . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size." (emphasis supplied)***

Judge Cathell referenced at p. 718 other out-of state decisions in describing uniqueness:

> ***("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship which is unique to his particular property . . ."). . . A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by other property owners in the area . . . [Applicant] Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance."*** (citations omitted).

Judge Cathell also stated:

> ***"[I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight which is the criterion . . . Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size."*** *Cromwell* at 719-720, (citations omitted)

(b) Practical Difficulty Is Not An Issue and Does Not Exist

Since there is no evidence of uniqueness, the Board need not consider whether the uniqueness caused "practical difficulty":

> ***"We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been – a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness <u>before any consideration will be given to whether practical difficulty or unnecessary hardship exists.</u>"*** *Cromwell* at 721.

Judge Cathell further explained that practical difficulty must be caused by the established uniqueness: ***". . . the uniqueness of the property caused the ordinance to have a different impact on it [subject property] than on adjoining property . . . and there is evidence that the neighboring properties were in any way different than the subject property."*** *Cromwell* at 721.

But a property owner is not entitled to every use in the zone, only a reasonable use. Nor can a variance be granted to increase Petitioner's economic gain: ***"Mere fact that variance would make property more profitable is not a sufficient ground to justify granting of variance from setback requirements of Baltimore Zoning Ordinance."*** <u>Easter v. Mayor and City Council of Baltimore</u> , 195 Md. 395 (1950). ***"Fact that variance of zoning ordinance will make realty more profitable is not sufficient ground to justify variance."*** <u>Gleason v. Keswick Imp. Ass'n</u>, 197 Md. 46 (1951).

Zoning principles have long rejected variance relief based on convenience and profitability for the property owner. "Practical difficulty" does <u>not</u> mean:

> (i) Increase profit for the homeowner: ***"The courts have consistently held that a variance may not be granted solely on the ground that such relief will enable the applicant to make a greater profit."*** *American Law of Zoning 4th Edition, Section 20.23*
>
> (ii) inconvenience to the applicant if the variance is not granted - ***" . . . an applicant cannot qualify for an area variance simply by showing that he will be inconvenienced if relief is not granted."*** *American Law of Zoning 4th Edition, Section 20.54*
>
> (iii) preferences of the property owner: ***"To warrant the granting of an area variance there must be something more than a showing that a variance would permit the applicant to select a preferable alternative."*** *American Law of Zoning 4th Edition, Section 20.54*

The appellate courts have rejected variance claims based on financial or revenue considerations. Burns v. Mayor & City Council, 251 Md. 554 (1968), Daihl v. County Board of Appeals, 258 Md. 157 (1970) and Cromwell, supra, quoting Xanthos v. Board of Adjustment, 685 P.2d 1032, 1037 (1985).

> ***"Financial return . . . alone, never justifies a variance."***
> ***"Hardship is not demonstrated by economic loss alone . . Every person requesting a variance can indicate some economic loss. To allow a variance any time any economic loss is alleged would make a mockery of the zoning program."*** *Cromwell* at 715. (citations omitted).

BCZR 304 – Limited Exception To Build On Undersized Lot Does Not Apply

Petitioner does not meet the requirements under BCZR 304, which permits limited relief for undersized lots under very specific conditions. Specifically, Petitioner does not comply with 304 (B). BCZR 304.1 states:

> ***"Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building ling less than that required by the area regulations contained in there regulations if:***
>
> ***A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;***
>
> ***B. All other requirements of the height and area regulations are complied with; and***
>
> ***C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations."***

Here, Petitioner cannot obtain relief under Section 304 without qualifying for variance relief for the front and rear yard setbacks, a violation of 304.B. Furthermore, there is no evidence the setbacks, even if permitted under 304, qualify for a variance under the uniqueness standards in BCZR 307.1 and *Cromwell.*

Testimony of Witnesses

The following witnesses testified in opposition to the Petition:

- Marc Cunningham – Planner, Baltimore County Office of Planning and Zoning
- Nancy Hubers – adjoining resident
- Richard Pitz – adjacent neighbor
- Michael Vivirito – Bowleys Quarter Improvement Association officer and resident of the area
- Robert Kroll - adjacent neighbor

Their testimony, or approved proffer in the case of Mr. Vivirito, emphasized the following:

- Lot 304 even with the adjoining strip acquired from Bowleys Quarters is too small to support a dwelling.

- A dwelling on this undersized lot that also requires significant variances is out of character with the neighborhood and would have a negative effect on the property values of the current residents.

- While other dwellings may be non-conforming, Petitioner cannot point to a single dwelling constructed on an undersized lot under current zoning.

- The site has had a separate and viable waterfront use for fishing, boating and recreation.

- This Petition is barred by the decision in the 2003 case in which a variance was denied on the basis of lack of uniqueness and practical difficulty; there has been no change to the site or the area since the 2003 decision.

- The area is low-lying and has experienced significant flooding during storms, let alone Hurricane Isabel when the site flooded.

- It is essential that on this cul-de-sac, a turn-around area that has been used continuously for many years remain on the site for use by emergency vehicles, County snow removal equipment, etc.

- Although the site was used by Petitioner Oberst's family along with their home across the street, Petitioner chose not to sell it with the sale of her former home, thus ignoring a viable use; Mr. Kroll who bought her home even had an interest in and inquired about Lot 304.

- Development of the site is contrary to the principles and policies of the Critical Area laws.

- There is no evidence of uniqueness under the standards of BCZR 307.1 and *Cromwell.*

The main points of Petitioner's case to deny the variance are:

1. The evidence as to whether the right of way for Cold Spring Road is 40 ft or 25 ft. is conflicting and should be reviewed by the County agencies or the Circuit Court in a separate action; Mr. Eric Rockel admitted on cross-examination that the maps prepared by the engineering firm of Morris and Ritchey used by the County to construct water and sewer service to the area in 1998, show a 40 ft. right-of-way; the fact that the County cannot locate a deed does not mean the evidence of a 40ft right-of-way is invalid. Petitioner's surveyor, Mr. Dallas' own description of the site states Cold Spring Road is 40ft wide **(People's Counsel's Exhibit #11)**. The ZCPM touches on this issue at 1B01.2.C.3.b Road Widening - Existing Lots, attached. It provides that if an unimproved lot meets area requirements before the road widening, it will become nonconforming after the taking. Even so, it requires any future buildings and use to meet the current zoning regulations. There is no relaxation of setbacks for road or right-of-way expansions. Young, supra at § 9.64, also states:

> ***"In determining whether a lot meets minimum area requirements, land may not be considered which is reserved for road purposes in lieu of street." (citations omitted).***

If the Petitioner is in error, and it is determined that the right of way is 40 feet, granting the set back variance here would catastrophic for all parties. Young, American Law of Zoning, 3rd § 9.64 is clear:

"An alley bed at the rear of a lot may not be included in computing the are of the lot ..." (citations omitted).

Moreover, a request for a variance to locate a house 2 ft from a public road is without precedence in People's Counsel experience. It is one thing to request a setback variance from an adjoining residence or residential lot line. It is quite another to permit a permanent structure 2 feet from the public road. As Mr. Cunningham from OPZ stated, the health safety and welfare of the citizens are at risk if this variance is granted. It is also irrelevant that other residents may have made passive use of the right-of-way area with grass and small plantings. This is not unusual nor is such activity permanent. Such use is not evidence of the exact right-of-way line as Petitioner suggests and is irrelevant to a basic property issue. Regardless, of use, setbacks must be calculated from the right-of way – " ". Finally, Petitioner must still qualify for a variance even if the right-of-way is 25 ft; evidence of uniqueness or practical difficulty is lacking regardless of the location of the right-of-way line.

2. The turnaround area was granted to the County by Petitioner Oberst's family in 1998 and never revoked; a turnaround on Lot 304 and/or the adjoining sliver has been in existence for as long as the residents can remember – it is necessary for emergency and service vehicles on this cul-de-sac and thus the "public health, safety and general welfare;" even Petitioner Zinn admits it is necessary and has agreed to maintain a turn-around area on the site, although the neighbors testified the proposed location would cause further damage to their properties by the large vehicles; in any event, the designated turn-around area further reduces an already undersized lot.

3. Petitioner could not differentiate this case from the denial of variances on the same site in 2003; *res judicata* prohibits the relief requested here; a similar decision was reached by the Deputy Zoning Commissioner in the attached Case #05-172 for 11304 Beach Road; variances were sought and denied at the site in prior cases, including a decision of the CBA in the attached Case #01-313-A; *res judicata* was applicable even if the setback variances in the later case differed in feet from what was requested in the earlier case. Similarly, in Case # 05-308A, the Deputy Commissioner denied a sign variance on the basis of *res judicata*. The appeal is now pending before this Board. The decision of the Zoning Commissioner in 2003 that Lot 304 and the adjoining sliver of land was not unique under *Cromwell* and BCZR 307.1 must be respected and followed – there is not a scintilla of evidence that the site itself has changed in any way. Even Petitioner's witnesses as well as the Planner Mr. Cunningham testified that the site has not changed since 2003.

4. Even if *res judicata* does not bar relief, Petitioner failed to carry the burden of proof. The only evidence of uniqueness as defined in *Cromwell* was a discussion of the shape. But Mr. Kellman admitted others in the subdivision are similarly shaped. More importantly, <u>it is not the shape that is driving the need for variances.</u> <u>The site is simply too small to satisfy the minimum area and required setbacks.</u> And under the language in *Cromwell*, the size of the site is not unique because even Petitioner's witnesses recognized other small lots on the peninsula:

> ***"[I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight which is the criterion . . Thus, a landowner was not***

entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size." *Cromwell* at 719-720.

See also the subdivision plat for Long Beach Estate as to lot sizes. **Petitioner's Exhibit 1.**

A close review of Petitioner's case discloses it is no different than the type of evidence refuted by Judge Cathell:

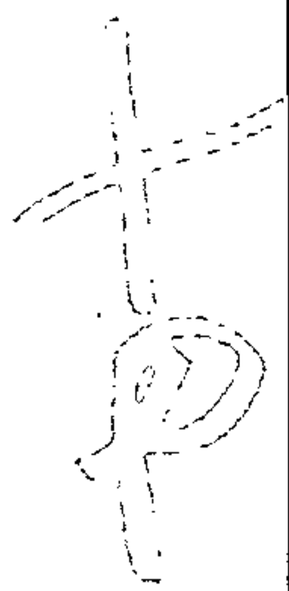
> ***"Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty. . . Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted)cannot be the source of the first prong of the variance process – an inherent uniqueness of the subject property not shared by surrounding properties."*** Id. 695.

As stated, the application of zoning on the site in 1971 and the subsequent rezonings do not make the site unique. The site itself must have an <u>inherent</u> characteristic which differentiates it from others and which makes the application of the set back regulations unduly burdensome. If rezoning alone justified a variance, the effect would set in motion a runaway train: (i) the power of the County Council to rezone would be emasculated, or rendered altogether moot; (ii) the law of nonconforming use would be superfluous; (iii) the first zone applied to a site would, in effect, remain the zone for all time; variances would be justified under the distorted logic that the site is "unique" because it cannot comply with current regulations.

5. It must be emphasized that the size of the lot does not make it unique *per se*. It is never mentioned in the discussion of uniqueness in *Cromwell*. A rare small lot

that does not meet the standards in BCZR 304 may be entitled to a variance if it is an aberration in the neighborhood and has no other use under the zoning regulations if relief is not granted. This strict interpretation is important, otherwise, no variance for an undersized lot could ever be denied.

For this reason, and to permit some relief for lot owners in old subdivisions, Baltimore County, like other jurisdictions, has provided specific regulations for undersized lots. As discussed above, BCZR 304 sets forth specific criteria for relief. The Petitioner here does not qualify for relief under 304 because she cannot comply with 304 B, which prohibits relief if front and rear yard setbacks cannot be satisfied. Unless the site meets the *Cromwell* standards for a variance for area and setbacks, there is no relief simply because the lot is undersized. Furthermore, BCZR 307 specifically states, ***"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 <u>area regulations</u>."*** (Emphasis added). The variance requested here from the minimum lot size directly violates this restriction on variance relief for undersized lots. Since there is a viable use of the site as discussed in the next paragraph, there is no justification to grant the variances.



6. The uncontested evidence shows the Petitioner and her family maintained viable uses on the site for many years, including boating and fishing. Unlike non-waterfront properties, uses in conjunction with waterfront construction (piers, mooring piles, bulkheads) are permitted on unimproved lots without a principal residential use. (See BCZR 417). A property owner is not entitled to every use in the zone. He is only

entitled to some reasonable use. It is evident such recreational uses are reasonable since Petitioner Oberst and her family used the site in this way for decades. Clearly, her motive is to make more money by selling the site as a building lot. While this may be a recognized economic preference, it has been stated consistently by the appellate courts in Maryland, and discussed above in this Memorandum, that economic profitability is not a basis for zoning relief. This also applies to Dr. Zinn's interests. Neither he nor the owner Oberst should use the zoning regulations for their own benefit and to the detriment of the neighbors.

7. It is obvious Long Beach Estates has been developed with a degree of distinct uniformity in its layout of lots and improvements. This is part of its character and charm. While no one disputes the larger Lot 199 at the point owned by the Hubers is an attribute, an unconventional large dwelling on an undersized lot detracts from the neighborhood. As the protesting witnesses testified, a house, regardless of style, on a lot that is so small it cannot accommodate modest setbacks, is out of character, out of place, and has an adverse effect on the entire neighborhood. (While the style of house should have no effect on the legal standards for variance relief, the Board should be sensitive to style and appearance if a dwelling is permitted here).

Moreover, here it may be dangerous as well as unsightly to build, given the need for a vehicle turn-around area on the site and the testimony describing a history of flooding on Lot 304.

8. The site is in the Chesapeake Bay Critical Area. Under BCZR 500.14, a

variance or special hearing cannot be granted unless certain specific findings are made by DEPRM. The June 11, 2004 letter from DEPRM **(Petitioner's Exhibit 3A)** fails to discuss the requirements in 500.14 C. that the proposal is ***"consistent with established land use policies for development in the Chesapeake Bay Critical Area"*** and must ***". . . address the fact that even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts."*** The Board is not required to accept DEPRM's letter as the definitive word on the Critical Area standards. The decision lies ultimately with the Board who must make its independent findings if the variances can be granted in such a manner ". . . without injury to public health, safety and general welfare" under BCZR 307. We contend they cannot under BCZR 500.14.

Summary

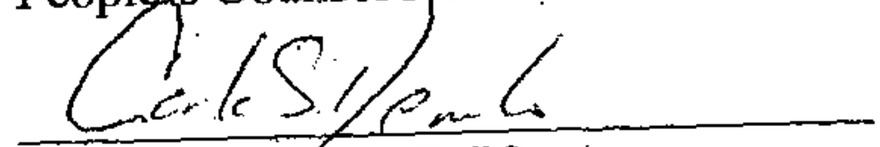
The Petition should be denied for the following reasons:

1. The relief is barred by *res judicata* and *collateral estoppel* since the identical relief was denied on July 29, 2003 in Case No. 03-500-A, a final decision of the then Zoning Commissioner, Lawrence Schmidt, that was not appealed.
2. Petitioner does not qualify for relief under BCZR 304 for undersized lots because she cannot comply with the requirement in BCZR 304 (B) that all other setback standards are met. Rather, not only does Petitioner fail to meet the minimum lot size, but she also requests variances from both the front and rear yard setback requirements.
3. Petitioner is not entitled to a variance because she failed to prove the site is unique, nor that the alleged uniqueness prevents, as a practical difficulty, a reasonable use of the site. There was no evidence the site qualified as unique under the standards in *Cromwell* and BCZR 307 as to ***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, which prohibit reasonable use of the site. The size is not a factor of uniqueness and Petitioner herself claims the size is similar to others on the subdivision plat. There is no evidence of practical difficulty since the site has had and can continue to have waterfront recreational uses.

4. The uncontested evidence of the opposing citizens and expert is the requested relief would violate the spirit and intent of the D.R. 3.5 zone, the Critical Areas Laws, and variance law, and would be injurious to public health, safety and welfare.

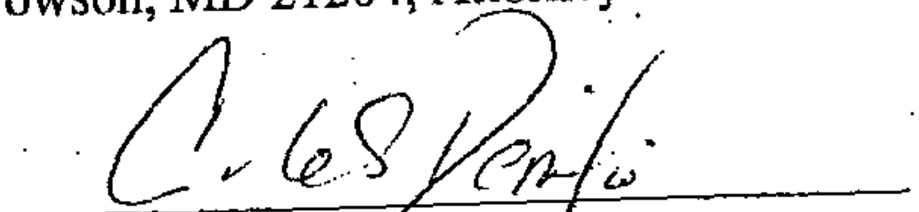
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2005, a copy of the foregoing Entry of Appearance was mailed to John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP, 210 W Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s).



CAROLE S DEMILIO
Deputy People's Counsel

EXHIBIT E

4,800 SF DRY LAND AREA

PROPERTY LINE

GALLOWAY CREEK

WOOD PIER (IN RUINS)

PROP 16'x46' DWG ON PILINGS OVER DRIVEWAY

S 64°09'00"E 107±

PROP 8'x15' CANTILEVERED "PERVIOUS" DECK

NO BULKHEAD NATIVE GRASSES

S 30° 28' 16" E

EDGE OF WATER

COLD SPRING RD

GRAVEL TO BE GRASSED

COUNTY RIGHT OF WAY TURNABOUT

XX-DAMAGED DRIVEWAY

808 COLD SPRING RD

DAMAGED SHRUBS

WATER VALVES

IRON PIPE FOUND

S 88° 51' 00" W 50.26'

800 COLD SPRING RD.

40' ROAD RIGHT OF WAY

PROTESTANT'S EXHIBIT NO. 3 (E)

J. S. DALLAS, INC.

SURVEYING & ENGINEERING

13523 LONG GREEN PIKE
P.O. BOX 26
BALDWIN, MD 21013
(410) 817-4600
FAX (410) 817-4602

ZONING DESCRIPTION -#809 Cold Spring Road-
TAX MAP 98 -PARCEL 203 lot 304 (and Adjacent)

BEGINNING at a point on the east side of Cold Spring Road, 40 feet wide, at the distance of 640 feet, more or less, in a southerly direction from the extension of the centerline of Chesapeake Avenue, 40 feet wide, as shown on the Plat entitled Plan "C" of Long Beach Estates and recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4 folio 131, at the division line between Lots 304 and 200 as shown on said Plat thence running with and binding on said division line, with all bearings and distances herein according to a Boundary Survey dated December 5, 2001 by Siterite Surveying, Inc. ***(1) South 64 degrees 09 minutes 00 seconds East 107 feet more or less*** *to a point in the Galloway Creek, thence leaving said division line and running with and binding on the outline of said Lot* ***(2) South 04 degrees 13 minutes 25 seconds East 36.83 feet*** *thence leaving said Lot 304 and running* ***(3) South 30 degrees 36 minutes 14 seconds East 28.71 feet*** *to the northernmost outline of Lot 199 as shown on said Plat thence running with and binding on a part of said northernmost outline* ***(4) South 88 degrees 51 minutes 00 seconds West 50.26 feet*** *to intersect said east side of Cold Spring Road thence running with and binding on said east side of Cold Spring* ***(5) North 30 degrees 09 minutes 00 seconds West 126.17 feet*** *to the place of beginning.*

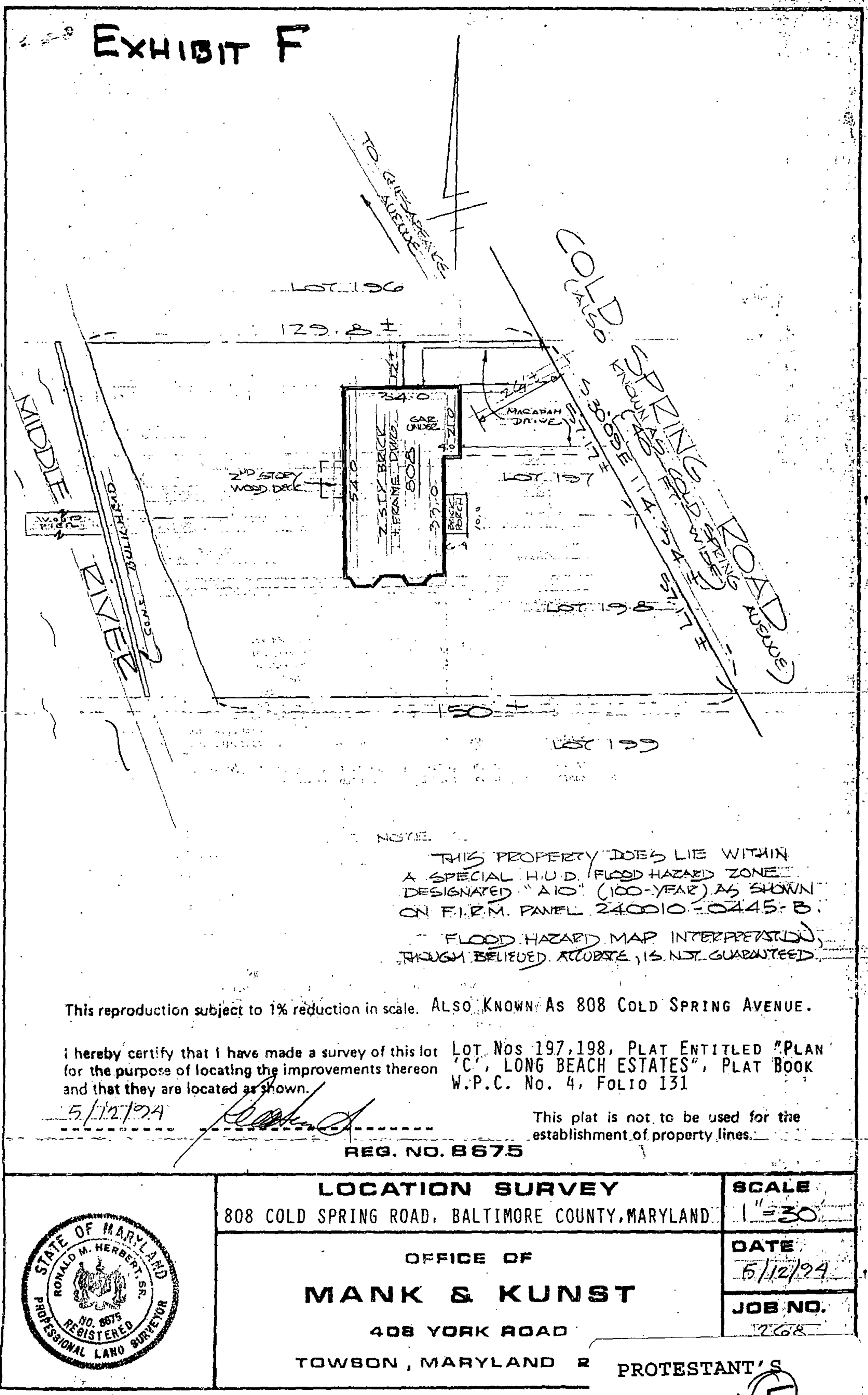
CONTAINING ***5,092 square feet*** ***or 0.117 acres*** *of land, more or less.*

BEING all of those two parcels of Land which by deed dated January 14, 2003 and recorded among the Land Records of Baltimore County in Liber 17471 folio 328 etc. was conveyed by Ann June Schuman fka Ann June Kratzer and Janice Ann Oberst to Janice Ann Oberst.

Note: above description for zoning purposes only.

STATE OF MARYLAND
JONATHAN SCOTT DALLAS
No. 408
REGISTERED
PROPERTY LINE SURVEYOR

EXHIBIT F



NOTE

THIS PROPERTY DOES LIE WITHIN A SPECIAL H.U.D. FLOOD HAZARD ZONE DESIGNATED "A10" (100-YEAR) AS SHOWN ON F.I.R.M. PANEL 240010-0445-B.

FLOOD HAZARD MAP INTERPRETATION, THOUGH BELIEVED ACCURATE, IS NOT GUARANTEED.

This reproduction subject to 1% reduction in scale. ALSO KNOWN AS 808 COLD SPRING AVENUE.

I hereby certify that I have made a survey of this lot for the purpose of locating the improvements thereon and that they are located as shown.

LOT NOS 197,198, PLAT ENTITLED "PLAN 'C', LONG BEACH ESTATES", PLAT BOOK W.P.C. No. 4, FOLIO 131

5/12/94

This plat is not to be used for the establishment of property lines.

REG. NO. 8675

STATE OF MARYLAND
RONALD M. HERBERT, SR.
NO. 8675
REGISTERED
PROFESSIONAL LAND SURVEYOR

LOCATION SURVEY

808 COLD SPRING ROAD, BALTIMORE COUNTY, MARYLAND

OFFICE OF

MANK & KUNST

408 YORK ROAD

TOWSON, MARYLAND 2

SCALE 1"=30'

DATE 5/12/94

JOB NO. 268

PROTESTANT'S EXHIBIT NO. 4 (F)

August 17, 2007

Dear Neighbors,

As you are undoubtedly aware, our family has requested a zoning variance so that we may build a home on our property at 809 Cold Spring Road. We would like to share our plans and perspective with you, our neighbors.

Attached you will find a page titled, "Remediation of Concerns on Prior Zoning Variance Requests." This page notes all the reasons why prior requests were denied as documented in the hearing findings along with the actions we have taken to address each. We'd like to highlight the following key points:

- We have received environmental approvals from the County and State: DEPRM and Chesapeake Bay Critical Area.
- After legally proving that the turnaround area is privately owned, not a public easement, the property was resurveyed and the deed was amended resulting a lot size of 7345 square feet.
- As privately held land, we allow and provide the turnaround as a courtesy and convenience to our community and County agencies. We hope to continue to extend this courtesy.
- We have moved the turnaround from its previous position on our property so that our proposed residence will no longer be directly behind it.
- The setbacks in both the front and back of our proposed residence are now 25 feet from the water and the roadbed, respectively.
- In an effort to accommodate the aesthetic sensibilities of the community, we have completely redesigned the proposed residence to a more traditional design.
- We have also decreased the size of the proposed residence by nearly 20%.
- The property has been taxed with water and sewer charges continuously for over a decade. Currently the property is equipped with water, electricity, cable, telephone and DSL services. We have also been approved for sewer, but have not installed it yet.

The second page attached is titled, "Existing Character and Density of Neighborhood." This document shows that our property with proposed residence is equivalent to 50% of the properties in the immediate vicinity; with the exception of the Hubers property which is quite unique and distinct from all of the other properties. Of particular interest are the following points:

PROTESTANT'S

EXHIBIT NO. 5

- Of the 14 properties in the immediate vicinity, 7 are single lots (including our property); 7 are double or triple lots.

- The density of our property with proposed residence is consistent with the density of other properties:

    - the average density of the other single lots is 9%

    - the average density of all single and double lots is 8%

    - the density of our property with proposed residence is 9%

- Although our property is unique in its shape from other lots, it is, in fact, no different in terms of size or density from other immediate vicinity community properties.

The third and final attachment is a rendering of our proposed dwelling.

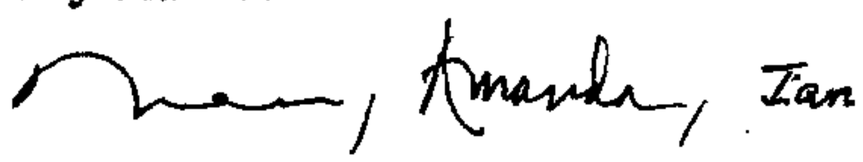
We believe we have significantly improved our property from its former state both aesthetically and economically. We have addressed each and every reason for being denied the full use of our property in the past. We have attempted to accommodate the community by keeping and moving, the turnaround and redesigning our proposed residence. We simply want to enjoy the same rights that everyone else has: the full use of our property.

Furthermore, Harlan has attended as many of the Bowleys Quarters Improvement Association (BQIA) meetings as possible over the past year. He has also volunteered to serve as the editor of the BQIA newsletter. These are demonstrable actions of our intentions to be engaged and active members of our community.

The zoning hearing is this coming Monday, August 20. We plan to be on our property most of this weekend. We welcome your input and feedback regarding our pursuit. If you'd like to discuss our plans further, please feel free to stop by or call us: Harlan's cell - 443.801.3472; Amanda's cell - 443.865.0704; residence - 410.486.2899; office: 410.580.2980 and house boat – 410.630.2290.

We are hopeful that we can all come together to find a mutually satisfactory outcome to this situation. If you would like to sign a letter of endorsement, we would be happy to provide a form. We would like nothing more than to enjoy a neighborly relationship with each of you.

Many thanks!



Harlan, Amanda, Ian and Allie (our English Setter) Zinn

The Bowleys Quarters Improvement Association, Inc.
P.O. Box 18051 Baltimore, Maryland 21220 (410) 335-9802

August 20, 2007

CASE #07-545A

Dear Commissioner:

I am writing this letter in reference to the Petition for Variance at the property of 809 Cold Spring Rd. Dr. Zinn has again asked for a variance which has twice before been denied. It is our strong belief that this petition should now be denied once and for all. This case has gone through the proper procedures. We have taken time off from our jobs, etc. to testify to the fact that this property is too small, it is not unique, and has NO practical difficulty. We are here again to reiterate these same things. We believe that this case should be permanently closed since nothing has changed that would allow the property to be built on.

Thank you for your time and consideration in this matter.

Sincerely,

Michael Vivirito

Michael Vivirito

PROTESTANT'S
EXHIBIT NO. 6

Zoning Hearing - 809 Cold Spring Rd,
Bowleys Quarters

Case Number 07-545A

- **Requirements** for filing for a variance - Exhibits 1 and 2 – "certificate of posting and publications"
- **Current variance request** - permit a lot containing 7,342 net square feet, front and rear setbacks of 25 feet in lieu of the required 10,000 square feet, 30 feet setbacks respectively.
- **Zoning history** - a recorded lot of record as part of "Long Beach Estates" in 1918 (Exhibit__); lots No. 200 and 304 acquired by the Oberst family in the 1950's, transferred to a daughter in the 1990's; I purchased property in September, 2005 to build a home.

  Previous contract purchaser denied variance in September, 2003 because overwhelming house foot print, lack of environmental variance approvals and proximity to a partial turn around on the property;

  Zinn denied variance February, 2004 despite reduced house footprint, environmental approvals (Critical Area Commission & DEPRM) & similar proximity to existing turn-around; Asst. Zoning Commissioner John Murphy found property unique, but expressed concern about conflicting with the earlier zoning ruling, proximity to turnaround & dwelling design incompatibility;

  *Appealed and denied by the **Board of Appeals,** December, 2005 - lot size less than 10,000 square feet; property not unique; no practical difficulty imposed; not in the spirit and intent of zoning regulations.*

- **"Zoning description"** - Exhibit 3.

- **Survey field analysis** - November, 2005 by J.S. Dallas Associates, engineers and surveyors (Exhibit 5 & 7), to accurately define the lot boundaries because of deletion from the waterfront of the property over the intervening decades since recordation and the failure of the offer of dedication of the roadbed of Cold Spring Road.
- **Confirmatory deed** was prepared, supervised and recorded by attorney John Gontrum of Whiteford, Taylor and Preston in January, 2006 (Exhibit 8).
- Total net property contains 7,345 net square feet or .169 acres of land; gross area 8,115 square feet; zoned DR 3.5 & within the 100 year floodplain.
- **Zoning Map** attached to the current application shows the site, adjacent to Log Point at Galloway Creek and Middle River (Exhibit 9); property within the Chesapeake Bay Critical Area - granted variance approval by both the MD Critical Area Commission and DEPRM to build a dwelling on the property (Exhibits 9.b & 9.c).
- **Zoned and taxed** for residential purposes (market value for buildable waterfront property) including water and sewer taxes (Exhibit 10).
- **Interim, significant improvements** - Exhibit 13 (June, 1995 & in October, 2003); extensive landscaping; fencing; additional improvements -expanded bulkhead, pier and platform, and boat lift - Exhibit 13.
- **Turnaround** – (privately owned) moved 70 feet north for the convenience of the community and Baltimore County emergency and service vehicles (Exhibit 14); secured infrastructure utilities - water, electric, telephone, cable and DSL service - a **very minimal** use of the property via a houseboat and pontoon.; grinder pump sewer connection approved in January, 2007 – efforts to make the property attractive and conducive to eventual residential use.

- Significant changes since earlier appeal; **Office of People's Counsel**, July, 2007 expressed concerns of "res judicata" and a lack of merit to the variances requested. Exhibit 6a & 6b). Issues addressed in testimony today.

- Issues:

  Lot size - gross area of 8,115 square feet (area up to and including ½ of the paved road way); net area - 7, 345 square feet (area up to the paved roadway (Exhibit 5). Change since Baltimore County determined its only easement is the road paving road (per Mr. Eric Rockel, Bureau of Land Acquisition, Exhibit 16); and that the turnaround belongs to me; utilized by County via permission Exhibit 15 and in letter from John Gontrum of Whiting, Turner and Preston in November, 2005 (Exhibit 18).

  Turnaround now 60 feet further north on property for the benefit of the entire community; funded and constructed by myself and the County; County agreement Exhibit ....."Permission to Use Private Property" - clearly states that "no property is being turned over to Baltimore County and that the turnaround pad would be Critical Bay Area compliant.

  Other property - January, 2006 – contacted Ernestine Sisson, owner of adjacent three contiguous lots - 813 Cold Spring Road, regarding selling a small portion of one of her lots to increase my entire lot size to over 10,000 square feet. Indicated NO interest in selling any vacant property; might expand the existing (1,100 square foot rancher in the near future; other adjacent property at 800 Cold Spring Road has residential and garage structures up to our mutual property line. No additional land available on either side to expand my property of record, thereby necessitating a variance to address the property size. BCZR Section 4A03.4(B)(1) – states "a building permit may be issued for the construction of a dwelling on an undersized lot subject to the following conditions: The owner of the lot does not own sufficient adjoining land that if combined with the adjoining land would allow the property owner to conform to the current zoning requirements".

- **Property Shape** – triangular; restricts front and rear setbacks to 25 feet, variance of 5 feet, front and rear. Side setbacks meet 10 foot; - Setbacks are designed to ensure buildings line up reasonably with existing buildings on

adjoining lots – so structures are not protruding out along the line of buildings. (Lot 99, Hubers is virtually around the corner so illogical to align with via an average)

Density - Exhibit 20 shows density of lots in the immediate vicinity – 50% are single lots; 43% are double lots; and 7% are triple lots; 809 Cold Spring Rd consistent with majority of other lots now existing and being used for single family dwellings in the immediate area.

- Dwelling would not injure the health, safety or general welfare of the community; actually enhances because of turnaround.
- **"Practical difficulty"** - compliance to area requirement - prevent property use for a permitted purpose or would render conformity with the regulations unnecessarily burdensome; without area variance approval - no residential use which is the foremost permitted use in the DR zones; unreasonable to prevent rights commonly enjoyed by others with similarly zoned land.
- Variance grant = substantial justice permitting what others now enjoy in the zone based on the older lot scheme - spirit of the BCZR is observed and public safety and welfare secured by recognizing that BCZR 304, Sections 103.1 and 103.3 - "area and density regulations in effect at the time of the submitted subdivision plan for approval shall apply regardless of current zoning."
- Owners have relocated and enhanced their privately owned turn-around for the betterment of the entire community; not obligated to have such a turnaround on property; no property rights created by owner letter of permission for use by the County (exhibit 15).
- **Community design** - architect redesigned house after studying the prevailing designs in neighborhood via a rendering (Exhibit 22); reflects traditional neighborhood character, minimizes impervious ground and blends more sensitively.

- **Rear yard setback** – rear yard setback is measured from the paved portion of Cold Spring Road; supported by testimony from Eric Rockel, former head of land acquisition for Baltimore County, - "Baltimore County does not own the forty foot right of way known as Cold Spring" – regardless of paper depictions of a 40 foot right-of-way as shown on various other County planning documents.
- **Practical difficulty test** – Critical Area Commission and DEPRM already rigorously evaluated the property for unreasonable hardship and concluded a **variance was necessary.**
- **Res Judicata** – current case is substantially different from earlier case based upon: 1. completed significant additional property improvements to minimize the impact on the lot, on the environment and on the community; 2. actual land mass, updated survey and deed, turnaround and setbacks have all been modified to reflect current circumstances. Also, 3. the eradication of earlier hurdles – tight rear setback has been eliminated; turnaround obstacle has been relocated, changes in house design and footprint and setbacks, etc. Policy precedent cast in an almost identical but smaller property in Bowleys Quarters in 2006.
- **Policy Precedent** – want to emphasize that this variance request would NOT establish a precedent but would follow a previously approved permitted variance:

  -almost identical shape but smaller size in Bowleys Quarters. Case # 06-334-SPHA - 1215 Senaca Road;

  -an undersized, unimproved lot (6,900 square feet);

  -variance relief to lot size, and set backs of 8, 10 & 16 feet in lieu of 50';

  street centerline setback of 29 feet in lieu of 75 feet;

  "more significant setbacks in an even more restricted RC 5 zoning area.";

  similar: unimproved; substantial property improvements prior to variance application (pier, landscaping, bulk heading);

-recorded lot of record (1930s);

-the property lacked sufficient area for development by today's standards;

-public water and sewer available;

-many houses in the immediate vicinity are built on undersized lots;

-similar adverse comments from the Office of Planning recommending denial of the request;

Other cases include:

04-505A – "the imposition of RC zoning on these old subdivisions burdens lots in these subdivisions more harshly than lots created after the zoning was imposed making them legally unique; this lot would not change the character of the neighborhood"

07-657A – 7,250 sq. feet – approved

04-48-7A – 6,812 sq. feet - approved

Findings:

- lot is undersized by today's standards
- relief, Section 1A04.3.B is appropriate given the unique configuration and small area of the lot
- proposed development is consistent with the pattern of development in the neighborhood
- meets the requirements of the RC3.5 regulations
- met the requirements of Section 307 of BCZR and Cromwell v. Ward for relief to be granted ("uniqueness requires that the subject property have an inherent characteristic not shared by other properties in the area – i.e. its shape,..... and consequently causes the zoning provision to have a disproportionate impact on the property".)
- established that the property is buildable lot of record
- overall density of the neighborhood will not be affected by the proposed development

- unique by 2 co. agencies

parking for 3 cars

- property is located in an older subdivision that was platted and recorded in the Land Records prior to adoption of RC3.5 zoning regulations
- strict compliance with the regulations would result in a practical difficulty and prohibit reasonable use of the property for a Permitted Purpose
  many other houses in subdivision were built on similar sized lots.

(Building a home on the lot would improve the neighborhood as to the current vacant lot contrasted to the lot being previously a dumping ground subject to abuse and thus being a constant maintenance burden on the owner. House to be built would not create additional parking problem as a separate area is currently designated by the property owner to park or turn cars around, for the community as well. There is little practical use that can be made of these lots if the owner cannot build a home.)

Failure to grant the requested waiver would continue to create a hardship for me.
2002: Roesser v. Anne Arundel Co., 386 MD 392, 793 CA.2d and 545 (202) the Court of Appeals held that purchasing property with notice of zoning restrictions was NOT a self-created hardship that precludes the owner from receiving an area variance.

8/20
10 Am

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 6, 2007

William J. Wiseman, III, Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

RECEIVED
JUL 06 2007
BY:

Re: Dr. Harlan Zinn- Petitioner
Case No: 07-545-A

Dear Mr. Wiseman:

The aforementioned case has come to our attention and we have duly entered our appearance. We believe this matter should be denied. The same relief by the same party has been adjudicated before the Office of the Zoning Commissioner on two occasions and denied on July 28, 2003 and July 20, 2004. In addition, the County Board of Appeals denied an appeal *de novo* on December 20, 2005. We attach those decisions. The Petitioner cannot now impudently seek variance relief on the same relief denied in the prior cases. It is an affront to the CBA, the office of the zoning commissioner, and to the administrative zoning process. It must be stopped once and for all.

We strenuously argue this case is barred by *res judicata* and/or collateral estoppel and there is no merit to the variances requested. Moreover, relief that is similar, even if not identical to the previously denied relief, is still barred by these legal principles:

> "Justice requires that every cause be once fairly and impartially tried; but the public tranquility demands that having been once so tried, all litigation of that question and between the same parties should be closed forever." Maryland Digest, Judgment Section 540 quoting McKinzie v. Baltimore & O.R. Co. 28 Md. 161 (1868).

The doctrine of *res judicata* is actually based on fairness and finality of judicial decisions. It is easily understood in that context as explained by the Court of Appeals:

> "The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider

and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions.

* * *

This rule seems to rest not strictly on the doctrine of res judicata, but upon the proposition that it would be arbitrary for the board to arrive at the opposite conclusions on substantially the same state of facts and the same law." Whittle v. Bd. Of Zoning Appeals, 211 Md. 36, 45. quoted in Woodlawn Area Cit. Ass'n v. Board of County Com'rs, 241 Md 187 (1966). (emphasis added).

The principle applies to parties in privity and to the same cause of action, regardless of how titled by the Petitioner to disguise the previous decisions:

"Rule of res judicata is that judgment between same parties and their privies is a final bar to any other suit upon same cause of action, and is conclusive, not only as to all matters that have been decided in original suit, but as to all matters which with propriety could have been litigated in first suit." (emphasis added) Maryland Digest, Judgment Section 540 quoting Jack v. Foster Branch Homeowner's Ass'n No. 1, Inc. 53 Md. App. 325 (1982). See also Roberts v. Gates, 24 Md. App. 374 (1975):

The Court of Appeals has set forth the elements of *res* judicata in Batson v. Shiflett 325 Md. 684, 701 (1992). Judge Robert Karwacki there wrote:

"The Court of Special Appeals used the following test for determining whether the NLRB decision is entitled to preclusive effect:

"Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: '(1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the district court was actually litigated before the [agency]; and (3) whether its resolution was necessary to the [agency's] decision.'" *Batson*, 86 Md.App. at 356, 586 A.2d at 799 (quoting *West Coast Truck Lines v. American Industries*, 893 F.2d 229, 234-35 (9th Cir.1990)). This test was first enunciated in *Exxon Corp. v. Fischer*, 807 F.2d 842, 845046 (9th Cir. 1987), and its three prongs are supported by the Supreme Court caselaw on issue preclusion.

In *United States v. Utah Constr. Co.*, 384 U.S. 394, 86 S.Ct. 1545, 16 L.Ed.2d 642 (1966), the Court spoke particularly to the preclusive effect of administrative law rulings, stating that:

> "When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose."

Id. at 422, 86 S.Ct. at 1560, 16 L.Ed.2d. at 661. Thus, agency findings made in the course of proceedings that are judicial in nature should be given the same preclusive effect as findings made by a court."

It is our firm position that the relief requested is highly improper and an unacceptable manipulation of the zoning process. We strenuously urge denial of the Petition for Variance.

Respectfully submitted,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Harlan Zinn (w/o enclosures)
Richard Pitz (w/o enclosures)
Mike Vivirito (w/o enclosures)

IN RE: PETITION FOR VARIANCE W/S Cold Spring Road, 700' S of the c/l Chesapeake Avenue (809 Cold Spring Road) 15th Election District 6th Council District	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 03-500-A
Janice Ann Oberst, Owner; Robert B. Long, Contract Purchaser	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Janice Ann Oberst, and the Contract Purchaser, Robert B. Long. The Petitioners request relief from Sections 303.1 and 1B.02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an undersized lot. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Janice Oberst, property owner; Robert Long, Contract Purchaser/Builder; and Ann J. Schuman, an adjacent property owner. Richard Pitz, another adjacent property owner, appeared in opposition. There were no other interested parties present.

Testimony and evidence offered revealed that the subject property is an irregular shaped waterfront parcel located adjacent to Galloway Creek on the east side of Cold Spring Road, near its terminus, in the subdivision of Long Beach Estates. The property contains a gross area of .15 acres in area (6,521 sq.ft.) zoned D.R.3.5 and is presently unimproved; however, is served by public water and sewer. Testimony indicated that Ms. Oberst acquired the property in January 2003 from her parents who had apparently owned the property since 1954. The Petitioner recently

contracted to sell the property to Mr. Long who proposes to develop the property with a single-family dwelling, 28' x 28' in dimension, with an area for a parking pad. Owing to the unusual shape and small area of the lot, minimal setbacks are proposed. The front corner of the house is shown within 11 feet of the existing wooden bulkhead. In that the house will be oriented to face the water, this area is considered the front yard. Thus, a front setback of 11 feet in lieu of the required 55 feet is proposed. The rear corner of the house is shown within 2 feet of the rear property line. Moreover, due to its waterfront location, development on the property is subject to Chesapeake Bay Critical Areas regulations and certain environmental regulations. Apparently, however, a waiver from those requirements was applied for and granted by DEPRM.

As noted above, Mr. Pitz appeared in opposition to the request. Mr. Pitz opined that the property is simply too small to support a dwelling. His objections are summarized in a written memorandum that was submitted at the hearing as Opposition Exhibit 1. Therein, he expresses a number of concerns regarding the potential development of this site.

An adverse Zoning Advisory Committee (ZAC) comment was also received from Baltimore County's Office of Planning. That comment opines that the property is too small to accommodate the proposed residence and that the 2-foot rear yard setback is not in character with the surrounding neighborhood. It also notes that the minimum required 25-foot setback from the water's edge for the house in a buffer management area can only be waived by an administrative variance from DEPRM's environmental regulations. However, as noted above, the Petitioners apparently applied for and were granted a variance from this requirement.

In any event, after due consideration of the testimony and evidence presented, I am persuaded to deny the request. I concur with Mr. Pitz' that the property is simply too small for the proposed development. I am appreciative that the property is a lot of record that was originally recorded as part of the subdivision of Long Beach Estates well prior to the adoption of the current zoning regulations. Nonetheless, it is simply too small to support the proposed dwelling and development of the parcel would be inconsistent with the neighborhood and cause detrimental

impacts to adjacent properties. In sum, I am not persuaded that the Petitioners have met the requirements of Section 307 and Cromwell v. Ward, 307 Md. 1 (1995), for relief to be granted.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28th day of July 2003 that the Petition for Variance seeking relief from Sections 303.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an undersized lot, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

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

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

IN RE: PETITION FOR VARIANCE E/S of Cold Spring Road, 640 ft. +/- S centerline of Chesapeake Avenue 15th Election District 6th Councilmanic District **(809 Cold Spring Road)** Janice Oberst, *Legal Owner* **and** Amanda C. & Dr. Harlan K. Zinn, *Contract Purchasers* *Petitioners*	* * * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 04-522-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owners, Janice Oberst and Amanda C. & Dr. Harlan K. Zinn, the contract purchasers. The Petitioners are requesting variance relief for property located at 809 Cold Spring Road in the eastern area of Baltimore County. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a lot containing 5,092 sq. ft., a front yard of 23 ft. and a rear yard of 2 ft. in lieu of the required 10,000 sq. ft., 30 ft. and 30 ft. respectively, and to approve an undersized lot pursuant to Section 304 of the B.C.Z.R.

The property was posted with Notice of Hearing on June 25, 2004, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on June 29, 2004 to notify any interested persons of the scheduled hearing date.

Applicable Law

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

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the

subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Department of Environmental Protection & Resource Management (DEPRM) dated June 9, 2004 stating that the Petitioners must comply with the Chesapeake Bay Critical Area Regulations, a copy of which is attached hereto and made a part hereof. A ZAC comment was also received from the Office of Planning dated July 8, 2004 recommending denial of the requested relief, a copy of this comment is attached hereto and made a part hereof. In addition, a ZAC comment was also received from the Bureau of Development Plans Review dated June 3, 2004 setting forth several federal and county code requirements the Petitioners must comply with for this project.

Interested Persons

Appearing at the hearing on behalf of the variance request were Scott Dallas whose surveying firm prepared the plan to accompany, Jan Oberst, Richard Oberst, Douglas Zinn and Harlan Zinn, the Petitioners. Appearing in opposition to the request was Richard Pitz, adjacent property owner. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Testimony and evidence indicated that the property, which is the subject of this variance request, is vacant, consists of 5,092 sq. ft. and is zoned D.R. 3.5. This property was the subject of another zoning variance case (Case No. 03-500-A) in which Zoning Commissioner Schmidt denied similar variances in his order dated July 28, 2003. The lot has been the site of the present owner's sailboat mooring. It is served by public water and sewer.

Mr. Dallas presented the plan to accompany the petition marked as Petitioners' Exhibit No. 1. He proffered that the proposed home on the site was significantly different from that of the prior case. In the prior case, the proposed home was a 28 ft. x 28 ft. single family home located 2 ft. from the rear property line with a separate parking pad. As a waterfront property, this lot is subject to the requirements of the Chesapeake Bay Critical Area legislation. When the previous hearing took place in 2003, approval by DEPRM had apparently not been attained.

In this design, the home is 16 ft. x 46 ft. with parking only under the first floor and a proposal to remove the existing concrete pad and gravel drive. Mr. Dallas explained that this would allow the impervious area of the site to essentially remain what it is today, that is without a home on site. He also explained that he had proposed to move the home 7 ft. off the rear property line, but that this had been rejected by DEPRM who has now approved the design. Apparently, DEPRM wanted to move the home as far back away from the waterfront as possible to minimize impact on Galloway Creek. Even so, the Petitioner must request a front yard setback variance of 23 ft. in lieu of the required 30 ft. for DR 3.5 zoned land. On the other hand, the rear of the home is within 2 ft. of the road turnaround for this part of the peninsula. Mr. Dallas presented several photographs of homes in the area which were also very close to the road.

The proposed house would be elevated one story to avoid the damage done to so many other waterfront properties in the area during Hurricane Isabel in 2003. Over this first level, which will be used for parking, the house would have two stories of living space. The house would be only 16 ft. in depth, similar to smaller row homes in the Baltimore County and Baltimore City. As such, there would be essentially one room and a hallway end to end. Unlike row homes in the area, of course, this home would have windows for light and air.

The area of this very irregularly shaped lot includes lot 304 of the Long Beach Estates subdivision, which was recorded in the Land Records of the County in 1910. The area also includes a small parcel of an old right-of-way, which has now been acquired by the owner. However, although the lot is listed as 5,092 sq. ft. of area, in fact, the boundaries of the lot extend out into the water. The actual dry land of the lot is approximately 4,800 sq. feet.

Mr. Dallas argued that the 2 ft. setback problem had been initially caused by Baltimore County because DEPRM required moving the house away from the water while the Department of Public Works built the turnaround for this peninsula essentially on the property line. Presumably, the latter occurred because the property was vacant and the owner did not object.

Mr. Pitz presented testimony and evidence that the lot is simply too small for a home to be added to it. He notes that the home proposed in 2003 had a 784 sq. foot footprint while this home is essentially the same at 736 sq. feet. He testified that a 16 ft. x 46 ft. home has the same configuration as a mobile home and that it would change the character of this single-family home neighborhood if allowed to be built.

His primary concern was that this proposal for a 2 ft. rear yard setback was exactly the same as was turned down by Commissioner Schmidt at the hearing in July 2003. This setback puts the rear wall of the house only 2 ft. from the end of the paved portion of the turnaround. He was concerned that vehicles using the turnaround would hit the rear wall of the new home. As

evidence that this could happen, he presented photographs of the damage done to the existing turnaround by trash trucks and other larger vehicles. See protestant's photos, Exhibit Nos. 5B and 6.

A dispute arose as to the proper front yard setback. Mr. Dallas explained that he used the zoning chart of Section 1B02.3.C.1 (B.C.Z.R.) which specifies a 30 ft. setback for front yards in DR 3.5 zoned property. However, if one were to average the front yard setbacks of adjoining lots, particularly lot 199 which is setback 92 ft. from the water and lot 200 which is setback 20 ft. from the water, the standard would be 55 ft. Also disputed was whether several neighbors signed petitions both supporting and opposing the requested relief.

Findings of fact and conclusions of law

Since this case will likely be appealed to the Board of Appeals, I will address each of the issues raised.

Res Judicata

The legal system has a provision that once a case is heard and a decision made, the same case can not be brought back again. Mr. Pitz indicates that this case was just heard and decided only one year ago. He points out the variances requested in the 2003 case and in this case were for front and rear yard setbacks and an undersized lot. He contends that since the case had been decided by Commissioner Schmidt last year, I should dismiss this case.

While I recognize the similarity of these cases, there are enough differences that I will not dismiss the case on the basis of *res judicata.* I note that the house is shaped differently, the setback from the water in this case is 25 ft. as opposed to 11 ft. in the 2003 case, and the impervious surface proposed is significantly reduced from the 2003 case. In addition, the Petitioner has obtained variances from the Chesapeake Bay Critical Area regulations with this design.

Front Yard Setback.

While it is true that the County customarily averages the front yard setbacks of adjoining properties, in this case I find that the small lot front yard set back of 30 ft. is the appropriate standard even though the standard applied in the 2003 case was the average (55 feet). The reason the County averages front yard setbacks is to make sure that the proposed building lines up reasonably with existing buildings on adjoining lots. In other words, they do no want a new structure to protrude out along the line of buildings. This makes great sense when the buildings are along a common road or waterfront. However, this is sharp peninsula where lot 199 is virtually around the corner from the proposed house and trying to align these proposed with the existing homes is not logical. See Petitioner's Exhibit No. 1, particularly the vicinity map.

Unique lot

A threshold question for any variance case is whether the lot is unique. *Cromwell v Ward*, 110 Md App. 691, 651 A 2d 424 (1995) requires that there be some physical peculiarity on the property to meet the threshold. I find that this lot is unique in the sense *Cromwell* requires. It is very irregularly shaped, is waterfront property subject to periodic flooding, and subject to the Chesapeake Bay Critical Area legislation. As such, the zoning and CBCA regulations impacts this lot disproportionately as compared to other lots in the area which were laid out in accord with such regulations. The lot was laid out in 1910 much before the zoning and CBCA regulations were imposed upon the lot.

Hardship or Practical Difficulty

I also find that the if the variances were denied the owner would suffer hardship and practical difficulty. In short, the Petitioners would have a lot on the water on which they could not build a home. However, in finding this to be so, I am not saying that the regulations forbid

any reasonable use of the property. The owners have used the property as a recreation site and to moor their sailboat. These are valuable uses that would continue regardless of whether or not the variances are granted.

Density/ Spirit and Intent

Section 307.1 requires "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". I find it troubling to look only at the calculated area of the lot where a portion of the lot is out in Galloway Creek. I can not imagine the County Council intended to give credit for property that is located in the water although the technical definition of the lot may be as presented. This is a spirit and intent issue. The dry land area is approximately 4,800 sq. ft. Given DR 3.5 zoning, this lot would be entitled to only 0.39 dwellings if one considers the dry land area. This is not close to the size lot envisioned by the Council when it imposed DR 3.5 on this area. I recognize that many of the lots in the immediate area are standard 50 ft. wide waterfront lots which also do not look like DR 3.5 lots. However, it is not my place to ignore the zoning on the property.

General Welfare

Section 307.1 also requires "Furthermore, any such variance shall be granted .....only in such manner as to grant relief without injury to the public health, safety and general welfare." The Office of Planning points out that the lot is too small to accommodate the proposed residence and the 2 ft. rear yard setback is out of character with the neighborhood. In addition, they are concerned that the home is too close to the turnaround. Mr. Pitz presented evidence which shows there is a problem with vehicles in the turnaround now much less when a home is built 2 ft. from the where the trash trucks and snow plows will be operating.

I am also troubled by the placement of a very long narrow home in a neighborhood in which the homes are built in a more traditional way. I would not want to set a precedent for this home in this neighborhood.

In summary, considering all the evidence presented, I arrive where Mr. Schmidt found himself last July. The lot is simply too small for the home proposed.

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 denied.

THEREFORE, IT IS ORDERED, this 20 day of July, 2004, by this Deputy Zoning Commissioner, that the Petitioners' request for variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a lot containing 5,092 sq. ft., a front yard of 23 ft. and a rear yard of 2 ft. in lieu of the required 10,000 sq. ft., 30 ft. and 30 ft. respectively, and to approve an undersized lot pursuant to Section 304 of the B.C.Z.R., be and it is hereby **DENIED**.

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

IN THE MATTER OF THE APPLICATION OF JANICE OBERST – LEGAL OWNER; DR. HARLAN AND AMANDA ZINN – C.P. / PETITIONERS FOR VARIANCE ON PROPERTY LOCATED ON THE E/S OF COLD SPRING RD, 640' +/- S OF CHESAPEAKE AVENUE (809 COLD SPRING ROAD) 15TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * CASE NO. 04-522-A *

* * * * * * * * *

OPINION

This matter comes as an appeal of a Deputy Zoning Commissioner Order in which the requested variance relief was denied. The variance request is for property at 809 Cold Spring Road. Petitioners requested relief from § 1B02.3.C.1 of the *Baltimore County Zoning Regulations* (BCZR) to allow a lot containing 5,092 square feet, a front yard of 23 feet and a rear yard of 2 feet, in lieu of the required 10,000 square feet, 30 feet, and 30 feet respectively. Petitioners also request approval of the lot as an undersized lot per § 304 of the BCZR.

A public, *de novo* hearing was held before the Board of Appeals on February 24 and May 25, 2005. Petitioners Janice Oberst, legal owner, and Dr. Harlan Zinn, contract purchaser, were represented by John B. Gontrum, Esquire. Carole S. Demilio, Deputy People's Counsel, appeared on behalf of the Office of People's Counsel. The Board publicly deliberated this case on July 28, 2005.

Background

The subject property, Lot 304, was first platted in 1914 as part of Plan "C" of the Long Beach Estates subdivision (see Petitioner's Exhibit 1). It is an undeveloped parcel of land fronting Galloway Creek, off Cold Spring Road. According to the Maryland Department of Assessments and Taxations Real Property Data Search, the property consists of 5,396 square feet (Petitioner's Exhibit 5A). Lot 304 was bought by the family of Ms. Janice Oberst around 1954, following their purchase of 810 Cold Spring Road, which was their residence. In 1992, the

family purchased an adjoining 900 square foot parcel from Bowley's Quarters Improvement Association, giving Lot 304 a total of 6,296 sq. ft. A survey by J.S. Dallas, Inc., however, describes the combined square footage as 5,092 (People's Counsel Exhibit 11). According to Ms. Oberst's testimony, during the 50 years her family has owned Lot 304, they kept a small sailboat, and her father operated a charter business. They maintained a storage shed on the lot. The property was also connected to public water and sewer, on which the family paid property taxes. (See Petitioner's Exhibit 8, a copy of the tax bill for Lot 304.) The lot had been improved with a pier and bulkhead, but since Hurricane Isabel, only the bulkhead remained. In 2003, it was transferred from Ms. Ann Schuman (Petitioner's mother) to Ms. Oberst (Petitioner's Exhibit 5C), and in 2004, Ms. Schuman sold the house at 810 Cold Spring Road to Mr. Robert Kroll.

Ms. Oberst testified that her mother, Ann Schuman, had granted permission to County garbage trucks to use the property as a turnaround, since Cold Spring Road ended in a cul de sac. This permission was formalized in 1998, when Ms. Schuman (then Ann Kratzer) signed a statement allowing the Baltimore County Department of Public Works, Bureau of Solid Waste Management to pave the turnaround (Petitioner Exhibit 7).

The property has been re-zoned several times since it was platted in 1914. In 1971, it was zoned Rural Deferred Planning, which required a minimum 1-acre lot for development. In 1976, the area was rezoned D.R. 5.5, which required a minimum 6,000 square feet for development. In 1992, the area was rezoned D.R. 3.5, which required a minimum 10,000 square feet, and which remains the zoning today.

Issues Presented

1. Can the Board consider the revised variance request and how should be setbacks be

measured?

2. Does the property satisfy the requirements of BCZR § 307 and the standards of *Cromwell v. Ward*?

3. Does the proposed house, and the change in the placement of the turnaround, present a public safety issue?

Testimony and Evidence

1. Can the Board consider the revised variance request and how should the setbacks be measured?

Ms. Oberst first sought a Petition for Variance for this property in 2003 in Case 03-500-A. The Zoning Commissioner denied relief because he determined that the property was too small upon which to build.

In 2004, with a new contract purchaser and revised proposal for the property, Ms. Oberst again requested a variance. The Petition was denied by the Deputy Zoning Commissioner, and subsequently, an appeal was made to this Board. Prior to the hearing before the Board, the Petition was amended. Petitioner's Exhibit 4 presents the revised Site Plan, which shows the footprint of a house measuring 16 feet long by 46 feet wide. In addition, the property lines are redrawn to include a portion of the 40-foot right-of-way known as Cold Spring Road. The inclusion of the right-of-way would bring the square footage of the property to 7,504 and the rear setback, from the house to the road pavement, to 25 feet. The front yard setback remains 23 feet.

Mr. Scott Dallas, of J.S. Dallas, Inc., was accepted as an expert in zoning and surveying and testified that he had checked with the Baltimore County Bureau of Land Acquisition and found there was no record of a County taking or deed for the 40-foot right-of-way. He opined that since the right-of-way was never formally taken by the County it was, therefore, retained by

the property owner. He stated that the revised lot size was comparable in size to other lots in the neighborhood.

Mr. Mitchell Kellman, of Daft, McCune, Walker, Inc., was accepted as an expert in zoning and development regulations. He produced a number of photos (Petitioner's Exhibits 10A-P), showing neighboring houses with fences, boats, plantings, etc. within the 40-foot right-of-way of Cold Spring Road and pointed out that along this stretch of Cold Spring Road there were no sidewalks, and that other houses in the area seemed to use the unpaved portion of the right-of-way as an extension of their properties.

In rebuttal, Mr. Eric Rockel, from the Baltimore County Bureau of Land Acquisition, supported the Petitioner's position in part, stating that a review of County records revealed that Baltimore County did not own the 40-foot right-of-way known as Cold Spring Road. He went on to point out, however, that the County could claim a prescriptive right to the road, because it had been in open and continuous use for many years. Prescriptive rights, he noted, had to be determined by a Circuit Court ruling. Further, on cross-examination, he referred to the County's sewer construction plan (People's Counsel Exhibit 10), dated 1999, on which the 40-foot right-of-way was clearly marked.

On cross-examination, Mr. Rockel also opined that, even though the Bowley's Quarters Improvement Association had sold the "road end" parcel—900 sq. ft.—to Ms. Oberst's family, the community still had the right to use the parcel, and it could not be built upon.

Mr. Mark Cunningham, a Community Review Planner with the Baltimore County Office of Planning, testified for People's Counsel regarding the front and rear setbacks. He had reviewed the original petition and site plan for variance and submitted comments on them in

2004. In regard to the 2-foot setback from the right-of-way, he stated that it would result in potential liability, because of the cul de sac and turnaround issues. He also stated that houses along Cold Spring Road were set back farther than 2 feet from the right-of-way, so it would not be consistent with the neighborhood.

On cross-examination, Mr. Cunningham was shown the revised petition (Exhibit 4) which increased the lot size and the rear yard setback by utilizing part of the right-of-way. He noted that, had he an opportunity to review this site plan, his comments might have been different. The larger square footage would make the property more compatible with the neighborhood, and a rear setback of 22 feet was preferable to a 2-foot setback. However, he noted that those changes would not necessarily have meant the plan would have been approved, as there were other County officials who had to look at and approve a site plan. He reiterated that he still would not recommend building a house "two feet from a fire truck or snow plow."

On direct examination, the witness also testified that Petitioners had used the wrong standard in calculating the front yard setbacks (between the house and the water). BCZR § 303.1 requires that front yards in a D.R. 3.5 zone be averaged, although they are not required to be setback more than 50 feet. Since the properties north and south of Lot 304 averaged more than 50 feet, the front yard setback on Lot 304 would need to be 50 feet, not 30 feet as Petitioners argued. Petitioners would have to request a variance from the use of front-yard averaging, which they had not done, according to Mr. Cunningham. Cross-examined on this point, Cunningham was asked to consider the fact that 800 Cold Spring Road, the property south of Lot 304, had a larger than average setback, due to being on the point. He reiterated that this setback would still have to be used in the averaging, under BCZR 303.1.

In testimony for People's Counsel regarding the neighborhood and use of the right of way, Mr. Richard Pitz, of 808 Cold Spring Road, pointed out that his house and many others in the area were built on double or triple lots. He also stated that, while some property owners might make use the Cold Spring Road right-of-way, no one had built in it, and he opposed building a house in the 40-foot right-of-way.

2. *Does the property satisfy the requirements of BCZR Section 307 and standards of* Cromwell v. Ward?

In making the Petitioners' argument for uniqueness, Mr. Scott Dallas stated that he believed that the property was unique because of its shape. Under cross-examination, however, Mr. Dallas stated that the lot did meet the width requirements of the zoning regulations, and that if it had also met the area requirement of 10,000 sq. ft., it would have been a buildable lot under the current zoning. Mr. Dallas was unsure of all the uses possible for this property if a house could not be built there, but agreed that a pier was a legitimate use for recreation activities, noting that the lot had, in fact, been used for years as a place to both launch and store a boat.

Mr. Kellman also testified regarding the property's uniqueness, referring to Petitioner's Exhibit 3B, a letter from the State of Maryland Critical Area Commission, which granted a variance approval from the 25-foot Critical Area Setback due to the "unusual configuration of this lot." He stated that the irregular shape of this lot makes it unique; that it is wider than it is long, compared to other lots in the area. He also opined that without variances, the owner would not be able to build, creating a practical difficulty.

Upon cross-examination, Mr. Kellman conceded that there were other developed lots in the area of similar size as Lot 304, which had been built on under previous zoning, so that based on size, Lot 304 was not unique. Directed to People's Counsel Exhibit 1 (a GIS map of the area),

Mr. Kellman conceded that there were other lots that were of similar shape as Lot 304. He also agreed with People's Counsel that Lot 304 stood out from the others on the original plat, Exhibit 1, in that it was not numbered in sequence. All the other lots on the East side of the peninsula are numbered 199-220, with Lot 304 following 199.

In his testimony Mr. Cunningham stated that there was nothing unusual about this property, and that it had other civic and social uses. He stated that, according the Zoning Commissioner's Policy Handbook, waterfront property could be improved with piers and be used for recreational purposes, even if the lot was unimproved with a dwelling.

Two neighborhood property owners testified regarding the use of Lot 304. Mr. Pritz testified that the site had always been used for recreational purposes in the past, and thought it should remain as such. Mr. Robert Kroll, who purchased 810 Cold Spring Road from Ms. Shuman, also testified that he had been interested in purchasing Lot 304, but that it was too expensive.

3. *Does the proposed house and the change in the placement of the turnaround present a public safety issue?*

Dr. Harlan Zinn, the contract purchaser of Lot 304, testified regarding the house he plans to build on site should the requested variances be granted. He noted that in compliance with flood plain regulations, and based on discussions with DEPRM, the site would be properly landscaped, with additional trees planted. Dr. Zinn further testified that he understood the need for the turnaround in the interests of safety of the community, and stated that he intended to keep it but would move it to a more accessible location (Petitioner's Exhibit 2). He stated that all County and commercial trucks using Cold Spring Road might use the turnaround.

Mr. Richard Pritz, Ms. Nancy Huber of 810 Cold Spring Road, and Mr. Robert Kroll, all

owners of properties adjacent to or across the street from Lot 304, testified against allowing a house to be built on what they considered to be too small a parcel of land. They also expressed concerns regarding the turnaround. Mr. Pitz and Mr. Kroll, particularly, were concerned because their properties are immediately across from Lot 304, relating that, even now, they often have trucks backing up into their driveways and on their properties. Their concern was that once a house is built on Lot 304, such incidents would increase, because drivers would miss the turnaround.

Decision

This Board first considered the question of whether this Petition for Variance should be reviewed, or whether it was barred by *res judicata* and collateral estoppel, as Deputy People's Counsel Demilio argues in her closing memo. She notes that in 2003, the Zoning Commissioner decided against a similar Petition for Variance relief, finding that there was nothing unique about the property and that, due to its size, it would not support the proposed dwelling and would be detrimental to the neighborhood. People's Counsel argues that since nothing about the property had changed since 2003, "it cannot be found unique in the instant case under the legal principle of *res judicata*." This Board believes, however, that since the hearing before it is *de novo*, we should properly consider the merits of Petitioners' current Petition for Variance.

This Board also agreed that Lot 304 would not qualify as an undersized lot, as defined in BCZR § 304. Although the lot was recorded prior to 1955, as required by § 304.1A, it does not comply with "all the other requirements of the height and area regulations" as required by § 304.1B without the requested variance relief.

Variances are rare and difficult to grant. They must meet a very stringent test placed

upon them by the zoning regulations, as interpreted by the Maryland Court of Special Appeals. The Court, in *Cromwell v. Ward* 102 Md. App. 691 (1994), notes that "The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances" (at 702). The Court notes further that a review of cases in Maryland since the state zoning enabling act in 1927 found only five reported Maryland cases in which the grant of a variance had been affirmed or the denial of one reversed.

Section 307 of the *Baltimore County Zoning Regulations* permits granting a variance from height and area regulations "only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request" and where strict compliance with the zoning regulations would "result in practical difficulty or unreasonable hardship." Furthermore, according to § 307, "any such variance shall be granted only if in strict harmony with the spirit and intent" of said regulations and "only in such manner as to grant relief without injury to public health, safety and general welfare."

These conditions for granting a variance have been interpreted by the Court of Special Appeals in a number of cases, most particularly *Cromwell v. Ward*. According to *Cromwell*, Petitioners must first prove that their property is unique. This condition must be met as a prerequisite to considering whether or not practical difficulty even exists.

Uniqueness

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

> In the zoning context, the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its

> shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restriction.

The Court goes on to cite a number of cases in *Cromwell* supporting the conclusion that uniqueness must pertain to the property in question and cannot be a general condition shared by other properties in the area. In addition the uniqueness of the property must be tied to the request for variances.

In testimony, the arguments for uniqueness were made by Mr. Dallas and Mr. Kellman. They both pointed to the shape of the property as being its unique feature. Mr. Kellman pointed specifically to the fact that the property is wider than it is long. However, Mr. Dallas admitted during cross-examination that the lot meets the width requirements of the zoning regulation, and both he and Mr. Kellman admitted that the subject site was in fact similar to other properties in the immediate area. He also acknowledged that, if the lot had also met the area and front and back yard setback requirements, it would not need variances. Therefore, the fact that the property is wider than it is long was not sufficient to establish uniqueness. Variances are needed for this lot because it is not long enough to build without them.

In Petitioners' Closing Memo, a number of other arguments are made for uniqueness, but this Board did not find them credible. For instance, the memo states that "all waterfront properties have the unique feature that the water (not the road) is considered the front of the property" (Petitioner's Memo, p. 3). However, by the criteria set forth in § 307 and *Cromwell*, the fact that "all waterfront properties" share this feature means the property is not unique in this regard. *Cromwell* and succeeding cases are clear that the uniqueness must be as to the subject property itself. Furthermore, the fact that the property is on the waterfront is not a sufficient

reason for the variance request. Houses can be built on waterfront property, if they meet zoning requirements. This property, although on the waterfront, simply does not meet the area and setback zoning requirements.

Petitioners' Memorandum also argues that the property is unique because the 40-foot right-of-way at the rear of the property is not in actuality 40 feet, but only the 18 feet of paved surface. Petitioners' Memo also argues that the lot size is a unique characteristic, because the right-of-way is not considered in the total square footage. However, if either of these arguments were true, they would also apply to every lot along Cold Spring Road, and again, would not meet § 307 or *Cromwell's* definition of uniqueness. Furthermore, by adding the area from the 40-foot right-of-way to the area of the subject property, the size of the property is no longer a unique feature; it becomes similar in size to the other properties in the community, as Mr. Kellman pointed out in cross-examination. Petitioners cannot claim the property is unique because of small size and at the same time add the area from the 40-foot right-of-way to increase the rear setback.

This Board also agreed that it could not consider the 40-foot right-of-way as part of this property. It appears on County maps as recently as 1999 (People's Counsel Exhibit 10). In addition, as Mr. Rockel, from the Baltimore County Bureau of Land Acquisition testified, the County could claim a prescriptive right to the entire right-of-way, since it has been in use some 90 years. It is not up to this Board to determine whether Ms. Oberst's property includes this right-of- way, or whether the County has such a prescriptive right. That determination has to be made by a Circuit Court. We must consider the property as platted in 1914. In addition, according to Mr. Rockel's testimony, we also cannot consider the 900 square-foot, end-of-road

parcel purchased by Ms. Oberst's mother as part of the buildable portion of this property.

This leaves the original 5,396 square foot property (per Exhibit 5A) to be considered, which requires variances for a rear setback of 2 feet and a front setback of 23 feet. No evidence was presented by Petitioners to show that the size of this property made it unique under § 307 and/or *Cromwell*. In fact, various witnesses pointed out that Lot 304 was similar in size to others in the area, except that some houses were built on double and triple lots. As People's Counsel's Memo points out, any houses built on single lots of similar size to Lot 304 under previous zoning regulations are nonconforming and protected. Those houses were legal when constructed. The fact that this property is wider than it is long is not what causes the need for a variance. The subject property needs variances because it is too small – which itself is not a unique feature. It is of similar size to other properties in the area, but they were developed during earlier zoning eras. This Board concludes therefore that this lot is not unique as required by BCZR 307 and *Cromwell*.

Practical Difficulty

Once the Board of Appeals finds that there is no uniqueness to the property causing the need or a granting of a variance, it need go no further. The Court of Special Appeals in *Cromwell* writes:

> The first step requires a finding that the property whereon the structures are to be placed (or uses conducted) is--in and of itself—unique . . . Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. (Id at 695)

However, during deliberations this Board recognized clearly that in denying variances for this property, it was, in effect, concluding that it was an unbuildable

property, thus limiting greatly the owner's use of it. We therefore considered all aspects of the granting of a variance, including the practical difficulty and whether a variance request would be in keeping with the spirit and intent of the zoning ordinance.

Cromwell notes that BCZR § 307 requires that, were the property to be found unique, the question of practical difficulty is then addressed. The Court in *Cromwell* is explicit that the practical difficulty must result from "the disproportionate impact of the ordinance *caused* by the property's uniqueness..." (*Cromwell* at 695, italics in original). The standard to be applied is set out in *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 MD.App.28, 37-39. According to the Court of Special Appeals in that case, there are three criteria for a showing of practical difficulty:

> 1. Whether compliance with the strict letter of the restrictions governing area, setbacks . . . would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district....
>
> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. (Id at 39)

In their Memorandum, Petitioners argue that being denied the requested variances would impose a practical difficulty because "Compliance with the strict letter of the area restriction would unreasonably prevent the owner from using the Property for a permitted purpose or would render conformity with regulations unnecessarily burdensome. . . . Without the variance there is no open area left for a house of any size. A true practical difficulty exists if the Property cannot

be used" (Petitioner's Memo, p. 21).

But, as People's Counsel points out, and as the evidence establishes, the property can be used and has been used for other legal purposes, but not residential. People's Counsel points out that "a property owner is not entitled to every use in the zone, only a reasonable use" (People's Counsel Memo, p. 15).

Petitioners argue that "there is no sound reason why [they] should be denied the right to reside on their property when their neighbors have not been denied the same right on similarly sized lots" (Petitioner's Memo, p. 15). But, as noted earlier, the neighbors' houses are nonconforming and therefore protected.

Given the zoning history of Lot 304, this Board found that Petitioners would not meet the practical difficulty test, even if it had found the property unique. Since zoning was first imposed on this area 10 years before the property was purchased by Ms. Oberst's family, Lot 304 has never conformed to any zoning requirements for development. Ms. Oberst's family knew, or should have known, from the time they purchased the property that their ability to develop it was limited, based on the zoning codes. The Courts have consistently held that, when a landowner purchases a property knowing the zoning restrictions, he may not then complain of his self-imposed predicament.

We conclude, therefore, that this petition would fail on the second prong of the Variance test: practical difficulty.

Spirit and Intent of the Zoning Regulations

This request for variances asks the Board to consider 5,396 square feet in lieu of 10,000 square feet, 23 feet front yard setback in lieu of either 30 or 50 (depending on which argument

for measurement is accepted), and 2 feet rear setback in lieu of 30 feet. In almost all cases, the request is for a variance half that required by the zoning regulations.

Petitioner attempts to argue that under a previous zoning scheme, D.R. 5.5, which was the zoning from 1976 until 1992, this property was buildable. However, under that zoning scheme the property still would have required variances, and the setback requests would still have been half of what was required. But, more importantly, property owners cannot pick the zoning scheme most preferable for their interests.

Zoning regulations are imposed for the benefit of an entire community, and must be abided by except in very unique circumstances. "The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." (*Cromwell*, at 702).

It is impossible to view these setback requests as being in the spirit and intent of the zoning regulations. The only request even remotely acceptable is the front yard setback, which was allowed by the Chesapeake Bay Critical Area Commission, and conforms somewhat to other setbacks north of the property. But the property is so narrow that a 23-foot front yard setback and 2 foot rear yard setback only leaves 16-foot depth for the house, an unacceptable result.

Therefore, this Board finds that none of the conditions as required by § 307 of the BCZR or *Cromwell* in order to grant the request for variance have been met. The subject property is not unique. It has never met the zoning requirements to build on, and it can be used for other legal purposes, so the zoning regulations do not impose a practical difficulty. Finally, the variance request, being half of what is required by the zoning regulations, would not meet the spirit and intent of the BCZR.

ORDER

THERFORE IT IS ORDERED, this 20 day of December, 2005, that the Petitioners' request for variance from § 1B02.3.C.1 of the *Baltimore County Zoning Regulations*, to allow a lot containing 5,092 sq. ft., a front yard of 23 ft. and a rear yard of 2 ft., in lieu of the required 10,000 sq. ft., 30 ft., and 30 ft., respectively, and to approve an undersized lot pursuant to § 304 of the B.C.Z.R. be and is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Margaret Brassil, Ph.D.

John P. Quinn

IN RE: PETITION FOR SPECIAL HEARING E side of Cold Spring Road, 640 feet S of C/l of Chesapeake Avenue 15th Election District 6th Councilmanic District **(809 Cold Spring Road)**	* * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
Harlan K. Zinn *Petitioner*	*	CASE NO. 07-236-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the property located at 809 Cold Spring Road. The Petition was filed by Harlan K. Zinn, legal property owner. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an 8 x 15 foot storage shed, accessory structure on property on which no primary structure currently exists, to supplement use of property with associated pier. The shed would contain kayaks, boating equipment and gardening equipment.

The property was posted with Notice of Hearing on January 13, 2007, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on January 16, 2007, to notify any interested persons of the scheduled hearing date.

Applicable Law

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

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

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) Comments are made part of the record of this case and contain the following highlights: ZAC comments were received from the Department of Environmental Protection and Resource Management dated January 22, 2007 which contains restrictions, and the Bureau of Development Plans Review dated November 30, 2006 which contains restrictions, and copies of which are incorporated herein and made a part hereof the file.

However upon review of the comments by the Bureau of Development Plans Review, it appears the comment was directed at new construction of a dwelling and not a shed. The Bureau's requirements related to sheds are incorporated into this Order.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing was Harlan K. Zinn, Petitioner. There were no protestants or citizens at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The subject waterfront property contains 0.169 acres zoned DR 3.5 and is improved by a pier and houseboat. This property had been the subject of several zoning requests. In Case No. 03-500-A the Zoning Commissioner denied the owner's request for setback variances to allow construction of a dwelling on the property. In Case No. 04-522-A the Deputy Zoning Commissioner and the Board of Appeals denied the owner's request for variances to allow construction of a dwelling on the property.

The Petitioner would now like to construct a shed on the property to store kayaks, boating equipment and gardening equipment. The proposed shed would be 8 x14 feet or 12 x10 feet configured as shown on exhibit 15 and located approximately in the area shown on Petitioner's

exhibit 20. In support of the request, Mr. Zinn presented 18 additional exhibits which will be highlighted as follows. He indicated that he has improved the property substantially paving and relocating the turn around, landscaping the property and improving the existing pier as shown in exhibits 11, 12 and 13. Tied to the end of the pier is a houseboat shown on exhibit 13. He indicated that in addition the property is now served by public water, cable and most recently public sewer which he indicated were all to serve the occupants of the houseboat.

He noted that the property has had prior sheds in the 1980's and 1990 as shown in exhibit 17 and many of the neighbors have similar sheds as shown on exhibits 18 and 19. He opined that the shed on this property will not adversely affect the community and that strict compliance with the regulations would present a hardship.

Upon questioning whether the water and sewer would be connected to the shed, he indicated that the shed is strictly for storage, and will have no water, sewer, toilet, kitchen or bath.

Findings of Fact and Conclusions of Law

As I mentioned at the hearing, the most obvious concern regarding this request is that the shed will quickly become the dwelling which has been denied by the County in the last three zoning cases. Mr. Zinn assures me that this will not happen and the public water and sewer are to serve the houseboat only. Having been reassured by Mr. Zinn, I now worry that a future owner may mistakenly turn this storage shed into a dwelling with kitchen, bath, sleeping facilities and over time simply expand the shed/dwelling to accomplish over time that which the County prohibited.

Considering the testimony and evidence presented I find that the request to permit a storage shed, accessory structure, on property on which no primary structure currently exists,

will not adversely affect the community, and is within the spirit and intent of the regulations. Therefore I will grant the request but will require the Petitioner to record this Order in the Land Records of the County prior to permit to assure that future owners of the property do not mistakenly convert the shed to a dwelling.

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

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 9th day of February, 2007, that the Petitioners' request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit storage shed as an accessory structure on property on which no primary structure currently exists, is hereby GRANTED subject to the following conditions:

1. After recording this Order in the Land Records as in 3 below, the Petitioners may apply for their permits 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.
2. The shed shall not exceed 120 square feet in footprint area.
3. The Petitioner shall employ a qualified attorney to record a copy of this Order in the Land Records of Baltimore County prior to permit; and
4. The Petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
5. The accessory structure shall not be used for commercial purposes.
6. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).
7. This property is within the Limited Development Area (LDA) and Buffer Management Area (BMA) of the CBCA. Any development on this property must comply with LDA and BMA regulations.
8. In conformance with *Federal Flood Insurance* Requirements, the first floor must be at least 1 foot above the flood plain elevation in all construction.

9. The property is located adjacent to tidewater. The Petitioner is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.
10. The building engineer shall require a permit for this project.
11. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
12. Flood-resistant construction shall be in accordance with the requirement of B.O.C.A. International Building Code adopted by the County.

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

___SIGNED_____
JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

DEED
NO TITLE INSURANCE

THIS DEED, Made this 3RD day of SEPTEMBER, in the year two thousand and five, by and between Janice Ann Oberst, party of the first part and Harlan K. Zinn, party of the second part.

WITNESS in consideration of the sum of five thousand dollars the said Janice Ann Oberst, party of the first part does hereby grant, and convey unto Harlan K. Zinn, party of the second part, in fee simple, all that lot of ground situated, lying and being in the Baltimore County, State of Maryland, and described as follows;

BEING known and designated as Lot No. 304, Plat of Long Beach Estates 97.59′ by 102′, fronts on the East side of Cold Spring Avenue, corner of a 25′ road; which Plat is on file in the office of the Clerk of the Circuit Court for Baltimore County, Plat Book W. P. C. No. 4, folio 131, in the fifteenth election district of Baltimore County.

BEGINNING for the same at the corners formed by the intersect of the east side of Cold spring Road with the north side of a 25 foot road or Right of Way, as laid out and shown on the plat entitled Plan "C" Long Beach Estates, said plat being recorded among the Land Records Of Baltimore County in Plat Book 4 folio 131; thence leaving Cold spring Road and binding on the north side of said road or Right Of Way in an easterly direction 50 feet more or less to the waters of Cold spring Cove, thence binding on the waters of Cold Spring Cove in a southerly direction 25 feet more or less to the northern outline of Lot 199 and to the south side of said road or right Of Way, thence running and binding on the northern outline of Lot 199 and on the south side of said road or Right Of Way in a westerly direction 40 feet more or less to the east side of Cold spring Road, and thence running and binding on the east side of Cold Spring Road North 30 degrees 09 Minutes West 25.50 feet more or less to the place of beginning.

BEING the same lots of ground and premises which by deed dated January 14, 2003 and recorded among the Land records of Baltimore, County in Liber 17471, Folio 329 was granted and conveyed by Ann June Schuman fka Ann June Kratzer and Janice Ann Oberst unto Janice Ann Oberst, the within Grantor.

TOGETHER WITH the buildings and improvements thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in anywise appertaining.

BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE 62-22358] Book SM 22503, p. 0040. Printed 09/20/2007. Online 10/06/2005.

TO HAVE AND TO HOLD the said described lot of ground and premises, unto the said Harlan K. Zinn.

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

Grantor is a State of Maryland resident.

WITNESS the hand and seal of the said Grantor.

Witness

Janice Ann Oberst

STATE OF MARYLAND, BALTIMORE CITY, to wit:

I HEREBY CERTIFY, that on this 3rd day of September, 2005, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Janice Ann Oberst, known to me (or satisfactorily proven) to be the persons described in the aforeging instrument, and acknowledged that she executed the same in the capacity therein stated and for the purpose therein contained, and in my presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal.

KIMBERLY A. SCHISSLER MY COMMISSION EXPIRES AUGUST 21 2007 CARROLL COUNTY MD NOTARY PUBLIC

Notary Public

My commission expires: Aug 21 2007

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

Timothy P. Knepp

0022503 042

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☑ County: Baltimore

Information provided is for the 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)

Space Reserved for Clerk Recording Validation

INB FD SURE $ 20.00
RECORDING FEE 20.00
TAX STATE 25.00
TOTAL 65.00
Rcpt # BA04 Rcpt # 87494
JLF Blk # 1236
Sep 08, 2005 03:51 am

1 Type(s) of Instruments (☐ Check Box if addendum Intake Form is Attached.)

☑ Deed ☐ Mortgage ☐ Other ☐ Other
☐ Deed of Trust ☐ Lease

2 Conveyance Type Check Box

☐ Improved Sale Arms-Length [1] ☑ Unimproved Sale Arms-Length [2] ☐ Multiple Accounts Arms-Length [3] ☐ Not an Arms-Length Sale [9]

3 Tax Exemptions (if Applicable) Cite or Explain Authority

Recordation
State Transfer
County Transfer

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only — Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ 5000	Transfer Tax Consideration	$
Any New Mortgage	$	X ( ) % =	$
Balance of Existing Mortgage	$	Less Exemption Amount –	$
Other:	$	Total Transfer Tax =	$ 75.00
Other:	$	Recordation Tax Consideration	$
		X ( ) per $500 =	$ 25.00
Full Cash Value	$	TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 40	$
Surcharge	$	$
State Recordation Tax	$	$
State Transfer Tax	$	$
County Transfer Tax	$	$
Other	$	$
Other 15, 22-00	$ 0645007	$

Agent: RUT
Tax Bill:
C.B. Credit:
Ag. Tax/Other:

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
15	11-770661		98	203	☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)
	304			C	

Location/Address of Property Being Conveyed (2): 810 Cold Spring Road

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential ☑ or Non-Residential ☐ | Fee Simple ☑ or Ground Rent ☐ Amount:

Partial Conveyance? ☐ Yes ☑ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Janice Ann Oberst	
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
Harlan Zinn	

New Owner's (Grantee) Mailing Address: 10628 Park Heights Ave. Owings Mills MD 21117

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person
Name: Tim Knupp
Firm: PO Box 5401
Address: Balto. MD 21221 Phone: (410) 686-5471

☑ Return to Contact Person
☐ Hold for Pickup
☐ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☐ Yes ☐ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☐ No Does transfer include personal property? If yes, identify:
☐ Yes ☐ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Terminal Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Assessment Number: Date Received: Deed Reference: Assigned Property No.:

	20	20				
Year			Geo.	Map	Sub	Block
Land			Zoning	Grid	Plat	Lot
Buildings			Use	Parcel	Section	Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

Distribution: White - Clerk's Office; Canary - SDAT; Pink - Office of Finance; Goldenrod - Preparer; AOC-CC-300 (6/95)

Space Reserved for County Validation

PAID RECEIPT
ACTIVITY DATE 9/08/2005 TIME 09:47:51 2
REG 0504 TWEEN DOOL DWD
TRANSACTION 32256 9/08/2005 OPLM
Dept 2 ZON RECORDATION TAXES $100.00
ACCOUNT NO. 2000004507
Total $100.00
Land
Buildings
Total $.00 CA CK
County, Maryland

BALTIMORE COUNTY CIRCUIT COURT (Land Records) (MSA_CE 62_22358) Book SM 22503, p. 0042. Printed 09/20/2007. Online 10/06/2005.

THIS CONFIRMATORY DEED, Made this 10th day of ~~December~~ January, 2006, 2005, by and between JANICE ANN OBERST, party of the first part, and HARLAN K. ZINN, party of the second part

WITNESSETH:

SH MAB5
Jan 30, 2006 10:45 am

WHEREAS by deed dated September 3, 2005 and recorded among the Land Records of Baltimore County in Liber 22503, folio 40, the Grantor herein conveyed a piece of property located in the 15th Election District of Baltimore County to Grantee; and

WHEREAS a subsequent description of the property has been prepared modifying the description of the original lot boundaries as shown on a record plat of Plan "C" of Long Beach Estates recorded among the Plat Books as aforesaid in Plat Book W.P.C. No. 4, page 131; and

WHEREAS said description is based on field analysis taking into account deletion from the waterfront of the property over the intervening decades since recordation of the aforesaid record plat and failure of the offer of dedication of the roadbed of Cold Spring Avenue as depicted on the aforesaid plan; and

WHEREAS the parties desired a more accurate depiction of the property being described

NOW, THEREFORE, in consideration of no consideration the said party of the first part, JANICE ANN OBERST, does hereby grant and convey all of the following described property unto the party of the second part, HARLAN K. ZINN, his personal representatives and assigns, in fee simple,

BEING all that lot of ground situated in the 15th Election District of Baltimore County, Maryland and described as follows:

SEE EXHIBIT "A"

BEING the same lot of ground intended to be conveyed by deed dated September 3, 2005 and recorded as aforesaid in Liber 22503, page 040 from Janice Ann Oberst to Harlan K. Zinn, the parties hereto.

#545

TOGETHER WITH the buildings and improvements thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in 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 party of the second part, his heirs, personal representatives, and assigns, in fee simple.

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

WITNESS the hand and seal of said grantor.

WITNESS:

Janice Ann Oberst [SEAL]
JANICE ANN OBERST

State of Maryland, City/County of Baltimore, to wit:

I HEREBY CERTIFY, That on this 10th day of ~~December, 2005,~~ January 2006 before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore, personally appeared, JANICE ANN OBERST, known to me or satisfactorily proven, to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Yolanda Pinnell [SEAL]
Notary Public

My Commission Expires:
7/1/08

#545

CERTIFICATION

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

JOHN B. GONTRUM

AFTER RECORDING, PLEASE RETURN TO:

John B. Gontrum, Esq.
Whiteford, Taylor & Preston L.L.P.
400 Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515

#545

BW 8/20 10am

July 13, 2007

10628 Park Heights Avenue
Owings Mills, MD 21117

William J. Wiseman, III
Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, MD 21204

RECEIVED
JUL 17 2007
BY:.....

Re: Case No. 07-545A
Dr. Harlan Zinn – Petitioner

Dear Mr. Wiseman:

I am in receipt of correspondence from the Office of People's Counsel, Baltimore County to you regarding my upcoming variance hearing, Case No. 07-545A. It is interesting to me how this office continues to "selectively" represent and defend zoning issues on behalf of County residents and in a derogatory and inflammatory manner. Without any knowledge or interest in any forthcoming evidence, they have systematically concluded that the requested relief in Case No. 07-545A is "highly improper and an unacceptable manipulations of the zoning process."

My understanding of the legal process relative to the doctrine of "res judicata" is to prevent repetitious law suits over matters which have been decided legally and in which facts have remained substantially static, factually and legally. Legal rules provide that "res judicata" extend only to the facts and conditions as they were at the time a judgment was rendered. When new facts or conditions intervene, the issues are no longer the same and the former judgment cannot be pleaded as a bar to subsequent action. This was even expressed by Deputy Commissioner John Murphy relative to the 2004 case (Case No. 04-522-A) when he dismissed protestant's objections to hearing the case because of "res judicata" concerns since the parties, facts and circumstances had changed.

Part of my forthcoming testimony will address changes in land mass as associated with updated and current surveys of the property due to the deletion from the waterfront of the property over the intervening decades; eradication of earlier hurdles and key impediments; revised property deed; failure of the offer of dedication of the roadbed of Cold Spring Road; changes in house footprint, design and setbacks; and policy precedents set by the Zoning office relative to similar properties.

In summary, I am prepared to present the substantive changes in circumstances or conditions relevant to my variance application. I seek a fair, full and independent consideration of the issues raised without the prejudice of past hearings.

Thank you for the opportunity to address issues created by the Office of People's Counsel.

Sincerely yours,

Dr. Harlan K Zinn

cc: Office of People's Counsel

September 19, 2007

William Wiseman, III
Zoning Commissioner

Dear Mr. Wiseman:

First, we wanted to express our heartfelt condolences to you on the passing of your mother in the later part of August. You had expressed your concern for her status at the conclusion of our hearing on 809 Cold Spring Road, (Case #07-545-A) on August 20th.

Secondly, we indicated to you at the hearing that we planned on meeting with representatives of the County Planning Department to work with them to resolve any concerns regarding our variance application since they were unavailable prior to the hearing. We met with Laurie Hay and Nkechi Hislop on August 23rd when we presented additional documentation regarding our case as well as parallel issues with the 1215 Seneca Road property. They reflected on the similarities and indicated they would discuss the matter with the development review group.

Ms. Hay later informed us of her intention to discuss the matter with the Bowleys Quarters community planning group on the 17th of September. Attendees, some of whom are on the Board of the BQIA, indicated that:

- "the Board has not acted in any capacity relative to the property;
- the Board and Association typically do not get involved in individual variance issues;
- and, that the Association will NOT be put in the position of picking sides."

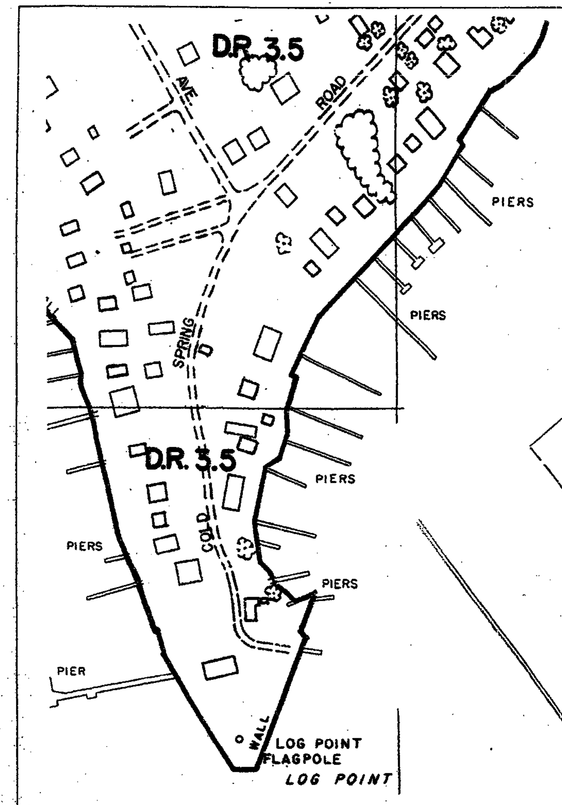
Incidentally, it has come to our attention that a motion to impeach the current President of the BQIA was filed September 13th for: dereliction of duty, abuse of authority and conflict of interest" with a vote scheduled for early October. The comments expressed at the planning group meeting and the statements made by Mr.Vivirito at the hearing seem to reflect misrepresentation as to the Association's posture in this variance request. Furthermore, we have not received a copy of the minutes of the BQIA Board meeting that Mr. Vivirito said he would provide.

We have stressed to all concerned that the issues associated with 809 Cold Spring Road are not precedent setting, and that our desire is to be subjected to the same consistency of policy relative to undersized lots, both philosophically and conceptually.

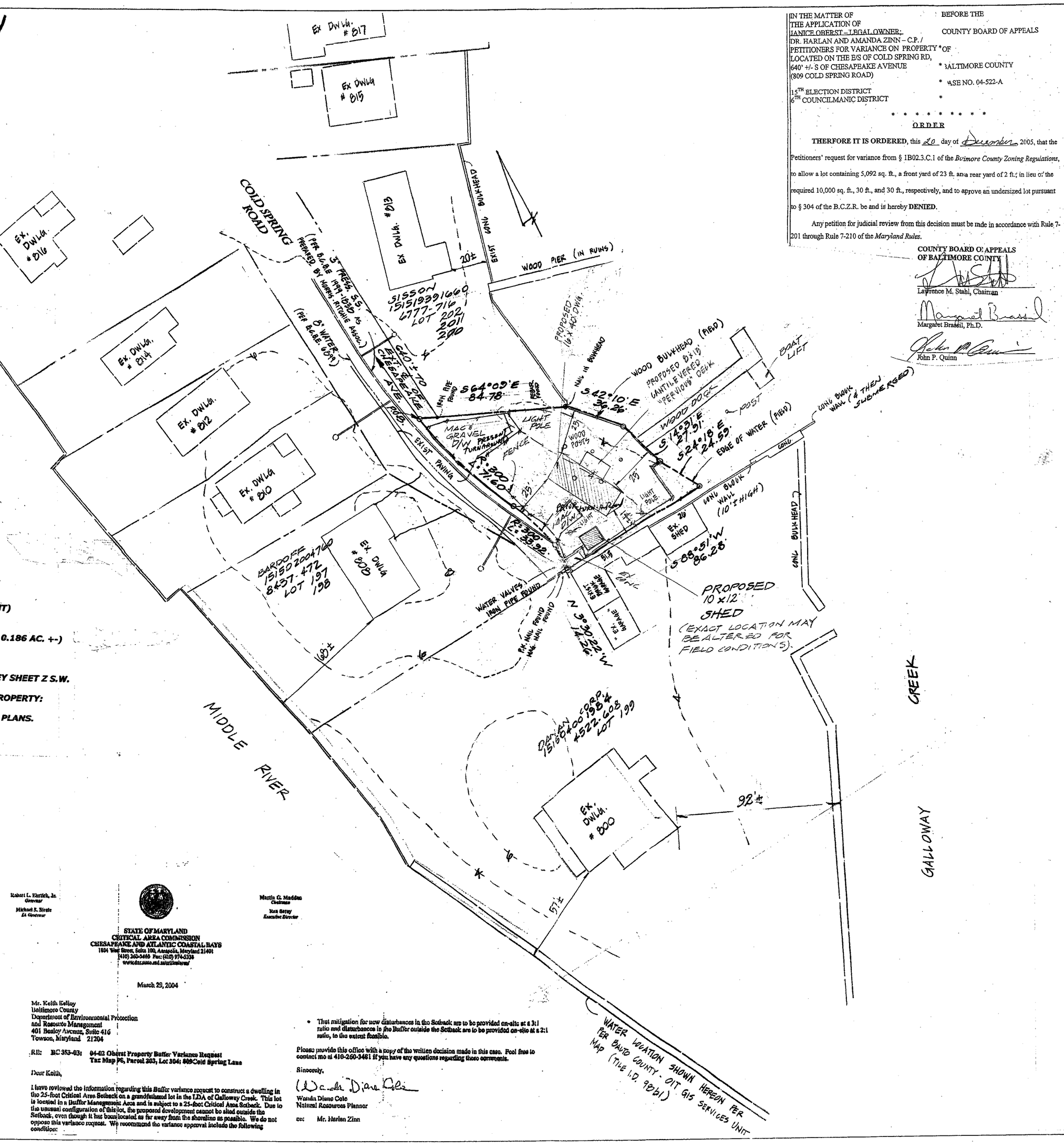
In every one of our interactions with the community, the Association and the County, we have been forthright while expressing our desire to work with all parties to realize our dream of building a home on our property on Cold Spring Road. We are awaiting Ms. Hay's comments at this juncture and appreciate your patience and understanding in this matter.

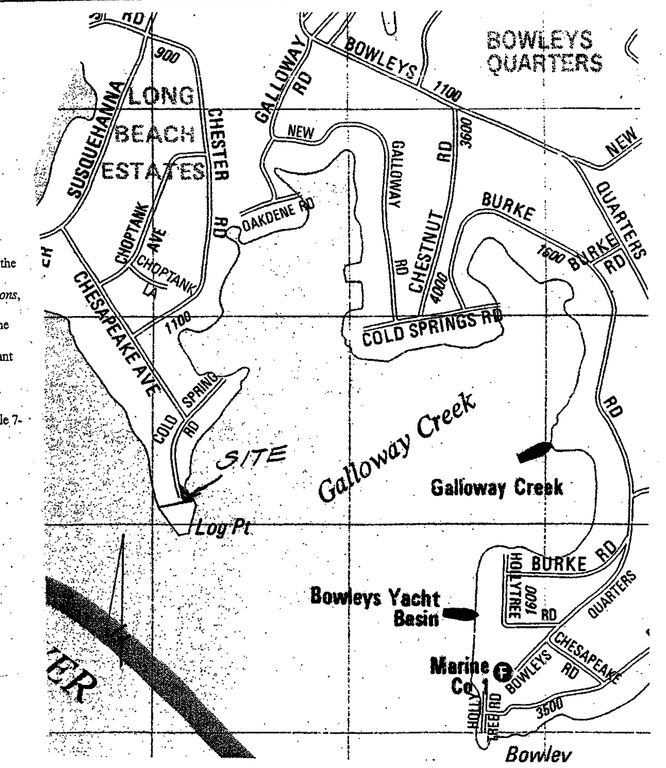
Sincerely,

Dr. Harlan and Amanda Zinn



PART OF OPZ NE 1-K
1"= 200'





VICINITY MAP 1"=1000'

IN THE MATTER OF
THE APPLICATION OF
JANICE OBERST - LEGAL OWNER;
DR. HARLAN AND AMANDA ZINN – C.P. /
PETITIONERS FOR VARIANCE ON PROPERTY
LOCATED ON THE E/S OF COLD SPRING RD,
640' +/- S OF CHESAPEAKE AVENUE
(809 COLD SPRING ROAD)
15TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 04-522-A

ORDER

THERFORE IT IS ORDERED, this 20 day of December 2005, that the Petitioners' request for variance from § 1B02.3.C.1 of the *Baltimore County Zoning Regulations*, to allow a lot containing 5,092 sq. ft., a front yard of 23 ft. and a rear yard of 2 ft.; in lieu of the required 10,000 sq. ft., 30 ft., and 30 ft., respectively, and to approve an undersized lot pursuant to § 304 of the B.C.Z.R. be and is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Margaret Brassil, Ph.D.

John P. Quinn

NOTES

1. ATTACHED PRIOR ZONING HEARING DECISIONS (03-500-A AND 04-522-A AND 07-236-SPH)
2. OWNERSHIP: DEED REFERENCE : 23303-652
   HARLAN K. ZINN
   10628 PARK HEIGHTS AVENUE
   OWINGS MILLS, MD 21117
   PHONE: 410-486-2899
3. PROPERTY INFORMATION:
   TAX MAP 98 PARCEL 203 LOT 304 (AND ADJACENT)
   ACCT. NO. 2400013238
   LONG BEACH ESTATES PLAT C (4-131)
4. AREA OF SUBJECT SITE: (GROSS 8115 SF +- OR 0.186 AC. +-)
   NET 7345 SF +- OR 0.169 AC. +-
5. PROPOSED NEW SHED (EX. USE- VACANT)
6. SITE IS IN C.B.C.A. (LDA) PER MAP NO. 96.
7. SITE LIES IN FLOOD ZONE A10 PER BCMD S.D. KEY SHEET Z S.W. AND F.E.M.A. F.I.R.M. 240010 0445 C
8. EXISTING ZONING OF SITE AND SURROUNDING PROPERTY: D.R. 3.5
9. UTILITIES SHOWN HEREON ARE PER REFERENCED PLANS.
10. NOT A KNOWN HISTORIC BUILDING OR SITE.
11. ZONING OF SITE D.R. 3.5 PER OPZ NE 1-K.

IN RE: PETITION FOR VARIANCE
W/S Cold Spring Road, 700' S of the c/l Chesapeake Avenue
(809 Cold Spring Road)
15th Election District
6th Council District

Janice Ann Oberst, Owner;
Robert B. Long, Contract Purchaser

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 03-500-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Janice Ann Oberst, and the Contract Purchaser, Robert B. Long. The Petitioners request relief from Sections 303.1 and 1B.02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an undersized lot.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of July 2003 that the Petition for Variance seeking relief from Sections 303.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an undersized lot, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

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

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

March 29, 2004

Mr. Keith Kelley
Baltimore County
Department of Environmental Protection
and Resource Management
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

RE: BC 383-03; 04-02 Oberst Property Buffer Variance Request
Tax Map 98, Parcel 203, Lot 304; 809 Cold Spring Lane

Dear Keith,

I have reviewed the information regarding this Buffer variance request to construct a dwelling in the 25-foot Critical Area Setback on a grandfathered lot in the LDA of Galloway Creek. This lot is located in a Buffer Management Area and is subject to a 25-foot Critical Area Setback. Due to the unusual configuration of this lot, the proposed development cannot be sited outside the Setback, even though it has been located as far away from the shoreline as possible. We do not oppose this variance request. We recommend the variance approval include the following conditions:

- That mitigation for new disturbances in the Setback are to be provided on-site at a 3:1 ratio and disturbances in the Buffer outside the Setback are to be provided on-site at a 2:1 ratio, to the extent feasible.

Please provide this office with a copy of the written decision made in this case. Feel free to contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

Wanda Diane Cole
Natural Resources Planner

cc: Mr. Harlan Zinn

J.S. DALLAS, INC.
Surveying & Engineering
13523 Long Green Pike
Baldwin, MD. 21013
(410) 817-4600

SITE PLAN TO ACCOMPANY PETITION FOR SPECIAL HEARING

 # 809 COLD SPRING ROAD

15TH ELECTION DISTRICT 6TH COUNC. DIST. BALTIMORE COUNTY, MD.

SCALE : 1" = 30' FEBUARY 2007

SHEET 1 OF 2

j.o. # 03-1014

PETITIONER'S
EXHIBIT NO. 1

#545

IN RE: PETITION FOR SPECIAL HEARING
E side of Cold Spring Road, 640 feet S of
C/l of Chesapeake Avenue
15th Election District
6th Councilmanic District
(809 Cold Spring Road)

Harlan K. Zinn
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY

* CASE NO. 07-236-SPH

* * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the property located at 809 Cold Spring Road. The Petition was filed by Harlan K. Zinn, legal property owner. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an 8 x 15 foot storage shed, accessory structure on property on which no primary structure currently exists, to supplement use of property with associated pier. The shed would contain kayaks, boating equipment and gardening equipment.

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

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 9th day of February, 2007, that the Petitioners' request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit storage shed as an accessory structure on property on which no primary structure currently exists, is hereby GRANTED subject to the following conditions:

1. After recording this Order in the Land Records as in 3 below, the Petitioners may apply for their permits 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.
2. The shed shall not exceed 120 square feet in footprint area.
3. The Petitioner shall employ a qualified attorney to record a copy of this Order in the Land Records of Baltimore County prior to permit; and
4. The Petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
5. The accessory structure shall not be used for commercial purposes.
6. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).
7. This property is within the Limited Development Area (LDA) and Buffer Management Area (BMA) of the CBCA. Any development on this property must comply with LDA and BMA regulations.
8. In conformance with *Federal Flood Insurance* Requirements, the first floor must be at least 1 foot above the flood plain elevation in all construction.
9. The property is located adjacent to tidewater. The Petitioner is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.
10. The building engineer shall require a permit for this project.
11. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
12. Flood-resistant construction shall be in accordance with the requirement of B.O.C.A. International Building Code adopted by the County.

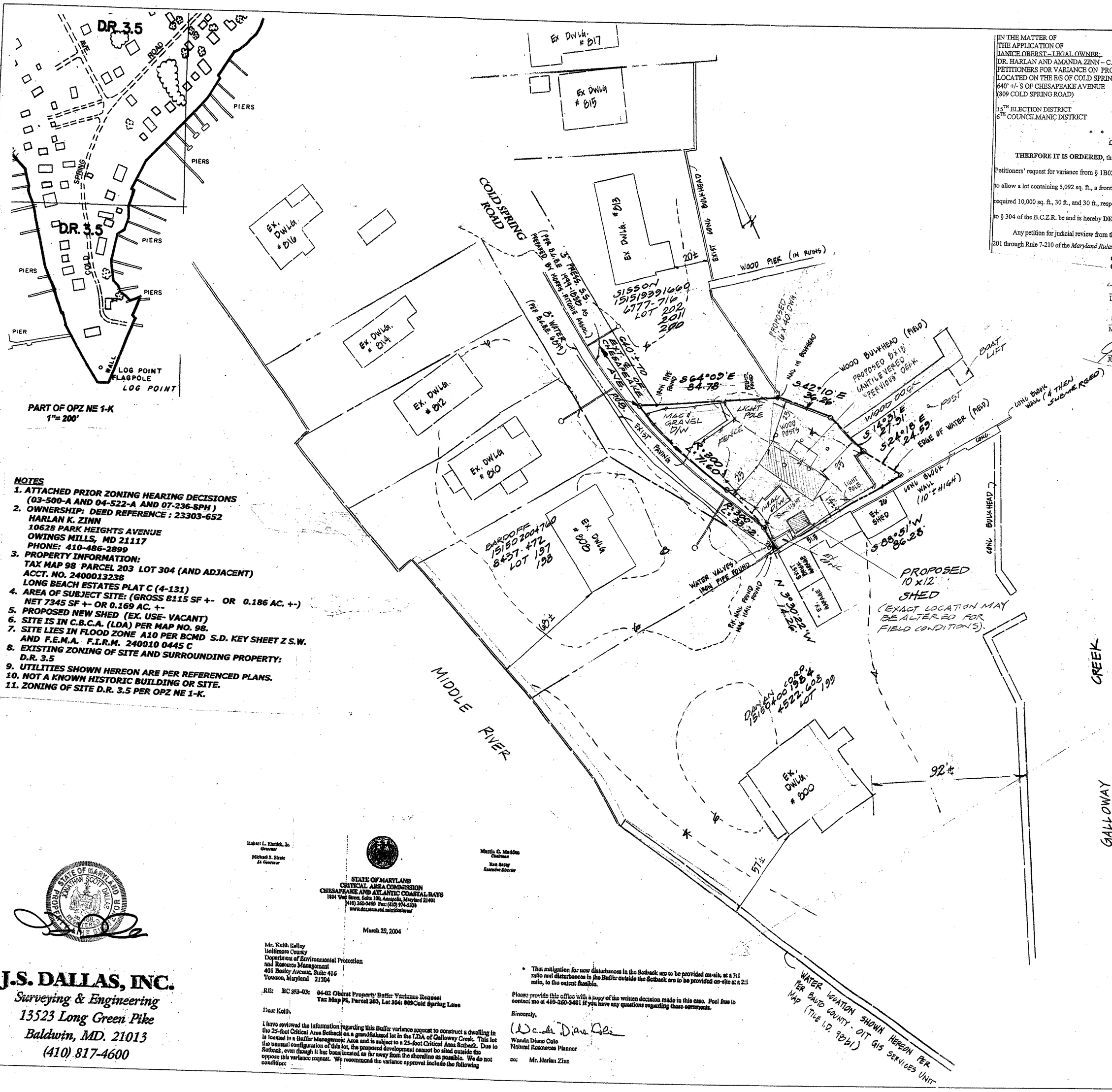
Any appeal of this decision must be made within thirty (30) days of the date of this Order.

John V. Murphy
JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

J.S. DALLAS, INC.
Surveying & Engineering
13523 Long Green Pike
Baldwin, MD. 21013
(410) 817-4600

SITE PLAN TO ACCOMPANY PETITION FOR SPECIAL HEARING
 # 809 COLD SPRING ROAD
15TH ELECTION DISTRICT 6TH COUNC. DIST. BALTIMORE COUNTY, MD.
SCALE : 1" = 30'
FEBUARY 2007
SHEET 2 OF 2

J.O. # 03-1014



NOTES

1. ATTACHED PRIOR ZONING HEARING DECISIONS (03-500-A AND 04-522-A AND 07-236-SPH)
2. OWNERSHIP: DEED REFERENCE : 23303-652
   HARLAN K. ZINN
   10628 PARK HEIGHTS AVENUE
   OWINGS MILLS, MD 21117
   PHONE: 410-486-2899
3. PROPERTY INFORMATION:
   TAX MAP 98 PARCEL 203 LOT 304 (AND ADJACENT)
   ACCT. NO. 2400013238
   LONG BEACH ESTATES PLAT C (4-131)
4. AREA OF SUBJECT SITE: (GROSS 8115 SF +- OR 0.186 AC. +-)
   NET 7345 SF +- OR 0.169 AC. +-
5. PROPOSED NEW SHED (EX. USE- VACANT)
6. SITE IS IN C.B.C.A. (LDA) PER MAP NO. 98.
7. SITE LIES IN FLOOD ZONE A10 PER BCMD S.D. KEY SHEET Z S.W. AND F.E.M.A. F.I.R.M. 240010 0445 C
8. EXISTING ZONING OF SITE AND SURROUNDING PROPERTY: D.R. 3.5
9. UTILITIES SHOWN HEREON ARE PER REFERENCED PLANS.
10. NOT A KNOWN HISTORIC BUILDING OR SITE.
11. ZONING OF SITE D.R. 3.5 PER OPZ NE 1-K.

IN THE MATTER OF
THE APPLICATION OF
JANICE OBERST – LEGAL OWNER;
DR. HARLAN AND AMANDA ZINN – C.P. /
PETITIONERS FOR VARIANCE ON PROPERTY
LOCATED ON THE B/S OF COLD SPRING RD,
640' +/- S OF CHESAPEAKE AVENUE
(809 COLD SPRING ROAD)

15TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 04-522-A
*

* * * * * * * * *

ORDER

THERFORE IT IS ORDERED, this 20 day of December 2005, that the Petitioners' request for variance from § 1B02.3.C.1 of the *Baltimore County Zoning Regulations*, to allow a lot containing 5,092 sq. ft., a front yard of 23 ft. and a rear yard of 2 ft.; in lieu of the required 10,000 sq. ft., 30 ft., and 30 ft., respectively, and to approve an undersized lot pursuant to § 304 of the B.C.Z.R. be and is hereby **DENIED.**

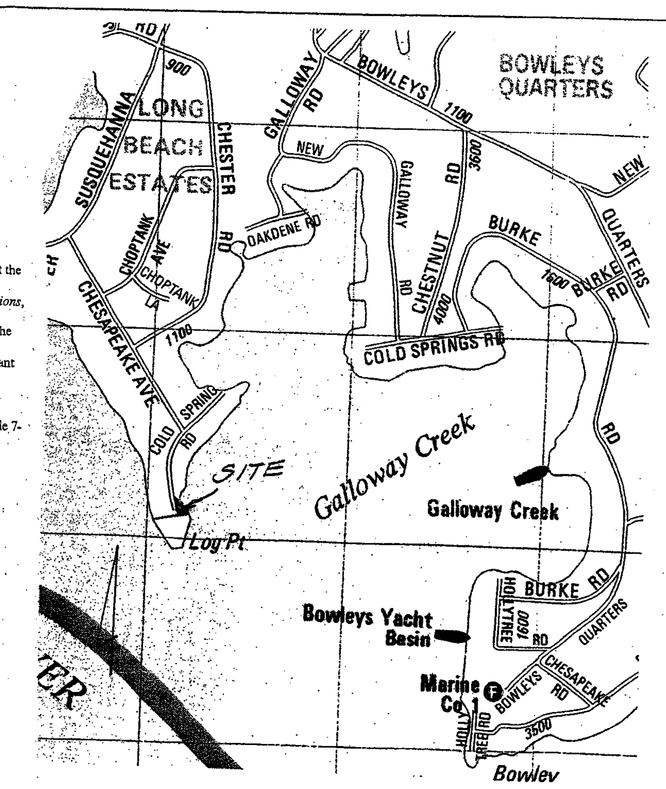
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Margaret Brassil, Ph.D.

John P. Quinn



VICINITY MAP 1'=1000'

IN RE: PETITION FOR VARIANCE
W/S Cold Spring Road, 700' S of the c/l
Chesapeake Avenue
(809 Cold Spring Road)
15th Election District
6th Council District

Janice Ann Oberst, Owner;
Robert B. Long, Contract Purchaser

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 03-500-A
*

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Janice Ann Oberst, and the Contract Purchaser, Robert B. Long. The Petitioners request relief from Sections 303.1 and 1B.02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an undersized lot.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of July 2005 that the Petition for Variance seeking relief from Sections 303.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an unsersized lot, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

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

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

March 29, 2004

Mr. Keith Kelley
Baltimore County
Department of Environmental Protection
and Resource Management
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

RE: BC 353-03: 04-02 Oberst Property Buffer Variance Request
Tax Map 98, Parcel 203, Lot 304: 809 Cold Spring Lane

Dear Keith,

I have reviewed the information regarding this Buffer variance request to construct a dwelling in the 25-foot Critical Area Setback on a grandfathered lot in the LDA of Galloway Creek. This lot is located in a Buffer Management Area and is subject to a 25-foot Critical Area Setback. Due to the unusual configuration of this lot, the proposed development cannot be sited outside the Setback, even though it has been located as far away from the shoreline as possible. We do not oppose this variance request. We recommend the variance approval include the following condition:

- That mitigation for new disturbances in the Setback are to be provided on-site at a 3:1 ratio and disturbances in the Buffer outside the Setback are to be provided on-site at a 2:1 ratio, to the extent feasible.

Please provide this office with a copy of the written decision made in this case. Feel free to contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

Wanda Diane Cole
Natural Resources Planner

cc: Mr. Harlan Zinn

STATE OF MARYLAND
JONATHAN SCOTT DALLAS
PROFESSIONAL ENGINEER

J.S. DALLAS, INC.
Surveying & Engineering
13523 Long Green Pike
Baldwin, MD. 21013
(410) 817-4600

SITE PLAN TO ACCOMPANY PETITION FOR SPECIAL HEARING

 # 809 COLD SPRING ROAD

15TH ELECTION DISTRICT 6TH COUNC. DIST. BALTIMORE COUNTY, MD.

SCALE : 1" = 30' FEBUARY 2007

SHEET 1 OF 2

j.o. # 03-1014

#545

IN RE: PETITION FOR SPECIAL HEARING
E side of Cold Spring Road, 640 feet S of
C/l of Chesapeake Avenue
15th Election District
6th Councilmanic District
(809 Cold Spring Road)

Harlan K. Zinn
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY

* CASE NO. 07-236-SPH

* * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the property located at 809 Cold Spring Road. The Petition was filed by Harlan K. Zinn, legal property owner. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an 8 x 15 foot storage shed, accessory structure on property on which no primary structure currently exists, to supplement use of property with associated pier. The shed would contain kayaks, boating equipment and gardening equipment.

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

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 9th day of February, 2007, that the Petitioners' request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit storage shed as an accessory structure on property on which no primary structure currently exists, is hereby GRANTED subject to the following conditions:

1. After recording this Order in the Land Records as in 3 below, the Petitioners may apply for their permits 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.
2. The shed shall not exceed 120 square feet in footprint area.
3. The Petitioner shall employ a qualified attorney to record a copy of this Order in the Land Records of Baltimore County prior to permit; and
4. The Petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
5. The accessory structure shall not be used for commercial purposes.
6. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).
7. This property is within the Limited Development Area (LDA) and Buffer Management Area (BMA) of the CBCA. Any development on this property must comply with LDA and BMA regulations.
8. In conformance with *Federal Flood Insurance* Requirements, the first floor must be at least 1 foot above the flood plain elevation in all construction.
9. The property is located adjacent to tidewater. The Petitioner is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.
10. The building engineer shall require a permit for this project.
11. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
12. Flood-resistant construction shall be in accordance with the requirement of B.O.C.A. International Building Code adopted by the County.

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

John V. Murphy
JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

J.S. DALLAS, INC.
Surveying & Engineering
13523 Long Green Pike
Baldwin, MD. 21013
(410) 817-4600

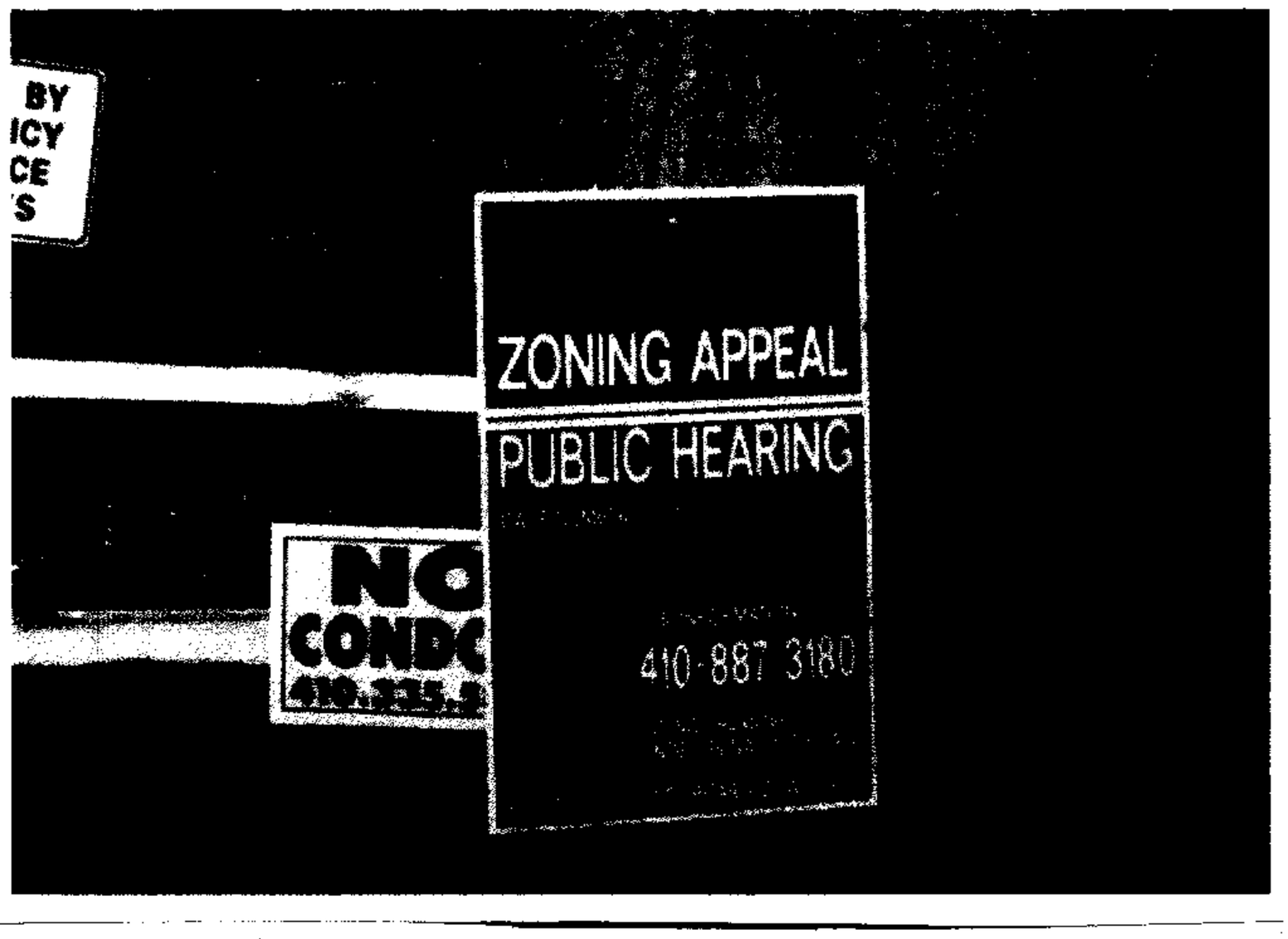
SITE PLAN TO ACCOMPANY PETITION FOR SPECIAL HEARING
 # 809 COLD SPRING ROAD
15TH ELECTION DISTRICT 6TH COUNC. DIST. BALTIMORE COUNTY, MD.
SCALE : 1" = 30' FEBUARY 2007
SHEET 2 OF 2

J.O. # 03-1014

PHOTOGRAPHIC RECORD

Citation/Case No.: _____

Date of Photographs: _____



I HEREBY CERTIFY that I took the _____ photographs set out above, and that these photographs
(number of photos)
fairly and accurately depict the condition of the property that is the subject of the above-referenced citation/case number on the date set out above.

_____
Enforcement Officer

11/14/00