

IN RE: PETITION FOR VARIANCE

N side of Lance Avenue, 21 feet
NE of the c/l of Tibson Avenue
15th Election District
7th Council District
(944 Lance Avenue)

Violet McElwee
Petitioner

*
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*
*
*

BEFORE THE
OFFICE OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2012-0094-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by the owner of the property, Violet McElwee. The Petitioner is requesting Variance relief from Section 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a garage in the rear yard of an existing single family dwelling with a height of 23 feet in lieu of the required 15 feet, and to amend the previous Order and plan in Case No. 2000-0116-A. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the public hearing in support of the variance request was Wayne Jacobs II, and Geneva Jacobs, grandson and daughter of the Petitioner, respectively.

The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R. There were no Protestants or other interested persons in attendance, and the Petitioner indicated his neighbors were strongly supportive of his request.

This property was the subject of a previous administrative variance zoning request in Case No. 2000-0116-A. In that case, Petitioner requested variance relief from Section 400.1 of the B.C.Z.R. to allow an accessory structure (detached garage) with a height of 18 feet in lieu of the maximum permitted 15 feet. The request was approved by Timothy M. Kotroco, Deputy Zoning

ORDER RECEIVED FOR FILING

Date 11-30-11

By js

Commissioner, on October 15, 1999.

This matter came to the Office of Administrative Hearings as a result of a complaint registered with the Code Enforcement Division of the Department of Permits, Approvals and Inspections¹. A citation was issued to Petitioner on May 26, 2011, for constructing a second floor addition to the garage without proper permits. Following a hearing, Administrative Law Judge Stahl imposed a \$500 fine (suspended) and ordered Petitioner to obtain a building permit "before anything else was done." Hence, Petitioner filed for Variance relief to "legitimize" the height of the structure.

Thereafter, the Petitioner submitted on July 7, 2011, a letter to the Zoning Review Office requesting to increase the height of the subject garage to a height of 22 feet. In a letter dated July 12, 2011, the request was disapproved because it was not within the spirit and intent of the zoning request in Case No. 2000-0116-A.

Testimony and evidence offered revealed that the subject property is 5,220 square feet in size, and is improved by a single family dwelling constructed in 1954. The detached garage in the rear yard was built a few years later, and underwent significant remodeling in 2000. Petitioner now wants to construct the roof on the second floor of the garage to 23 feet, to provide structural integrity and to accommodate design choices, including skylights.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability, dated November 2, 2011, concerning compliance with the goals of the State-mandated Critical Area Law listed in B.C.Z.R. Section 500.14. These comments will be incorporated into the Order which follows.

¹ Case No: CO0092012

ORDER RECEIVED FOR FILING

Date 11-30-11

By pm

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request.

I further find that the granting of the relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare. Therefore, in all manner and form, I find that variance relief can be granted in accordance with the requirements of Section 307 of the B.C.Z.R. as articulated in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Although the Office of Planning did not make any recommendations related to the garage height and usage, I will impose conditions that the accessory structure not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, and not be used for commercial purposes.

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

THEREFORE, IT IS ORDERED, this 30 day of November, 2011 by this Administrative Law Judge that Petitioner's Variance request from Section 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a garage in the rear yard of an existing single family dwelling with a height of 23 feet in lieu of the required 15 feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However, the Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the thirty (30) day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.

ORDER RECEIVED FOR FILING

Date 11-30-11

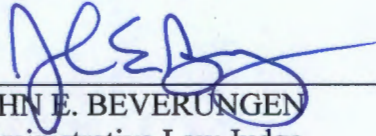
3

By pm

2. 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.
3. The accessory structure shall not be used for commercial purposes.
4. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated November 2, 2011, a copy of which is attached hereto and made a part hereof.

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

Order.



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:pz

ORDER RECEIVED FOR FILING

Date 11-30-11 4

By js

11/29 10am
205

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED

NOV 02 2011



OFFICE OF ADMINISTRATIVE HEARINGS

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: David Lykens, Department of Environmental Protection and Sustainability
(DEPS) - Development Coordination

DATE: November 2, 2011

SUBJECT: DEPS Comment for Zoning Item # 2012-0094-A
Address 944 Lance Avenue
(McElwee Property)

Zoning Advisory Committee Meeting of October 10, 2011.

DEPS has reviewed the subject zoning petition for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, we offer the following comments:

1. The subject property is located within an Intensely Developed Area and is subject to the Critical Area 10% pollutant reduction requirements. The applicant is proposing to construct a garage with greater height than permitted. To minimize impacts on water quality, the 10% pollutant reduction requirements must be met. This may include planting trees on the lot, paying a fee-in-lieu, or a combination of both. By meeting this requirement, the relief requested by the applicant will result in minimal impacts to water quality.
2. This property is not waterfront. No forest, wetlands, or buffers will be impacted. Therefore, there will be no impact to habitat.
3. The relief requested will be consistent with established land-use policies provided that the applicants meet the requirements stated above.

Reviewer: Regina Esslinger

Date: October 31, 2011

ORDER RECEIVED FOR FILING

Date 11-30-11

By [Signature]



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
TIMOTHY M. KOTROCO
Administrative Law Judges

November 30, 2011

VIOLET MCELWEE
2012 TRED AVON ROAD
BALTIMORE MD 21221

RE: Petition for Variance
Case No.: 2012-0094-A
Property: 944 Lance Avenue

Dear Ms. McElwee:

Enclosed please find a copy of the decision rendered in the above-captioned matter

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

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", is written over the printed name.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:pz

Enclosure

c: Wayne Jacobs II, 944 Lance Avenue, Baltimore MD 21221



CBCA

TAX ACCOUNT # 1513071510

Petition for Variance

to the Zoning Commissioner of Baltimore County
for the property located at 944 LANCE AVENUE
which is presently zoned DR5.5

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

Section 400.3

To permit a garage in the rear yard of an existing single family with a height of 23 feet in lieu of the required 15 feet and to amend the previous order and plan in case number 2000-0116-A.

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

Increase the height of the second floor on the garage to 23 feet for additional storage and recreational/hobby space so that windows can be added to be used for light.

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

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Date

Telephone No.

City

By

State

Zip Code

Legal Owner(s):

Violet McElwee

Name - Type or Print

Signature

Name - Type or Print

Signature

2012 Tred Avon Road

410-686-5897

Address

Baltimore

Maryland

Telephone No.

21221

City

State

Zip Code

Representative to be Contacted:

Wayne Jacobs II

Name

944 Lance Avenue

443-630-4122

Address

Baltimore

Maryland

Telephone No.

21221

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Reviewed By

Date

9/29/11

Case No. 2012-0094-A

ZONING DESCRIPTION

ZONING DESCRIPTION FOR 944 LANCE AVENUE

Beginning on the north side of Lance Avenue which is 30 feet wide at a distance of 121 feet north east of the centerline of the nearest improved intersecting street Tibsen Avenue which is 30 feet wide. Being Lot #3, Plat 2 in the subdivision of Marlyn Manor as recorded in Baltimore County Plat Book #19, Folio #103 containing 5220 square feet. Also known as 944 Lance Avenue and located in the 15th Election District, 7th Councilmanic District.

2012-0094-A

Case No.: 2012-0094-A

Exhibit Sheet - Continued

Petitioner/Developer

Respondent

No. 13 1	Site Plan	
No. 14		
No. 15		
No. 16		
No. 17		
No. 18		
No. 19		
No. 20		
No. 21		
No. 22		
No. 23		
No. 24		

ZONING HEARING PLAN FOR VARIANCE X FOR SPECIAL HEARING _____ (MARK TYPE REQUESTED WITH X)

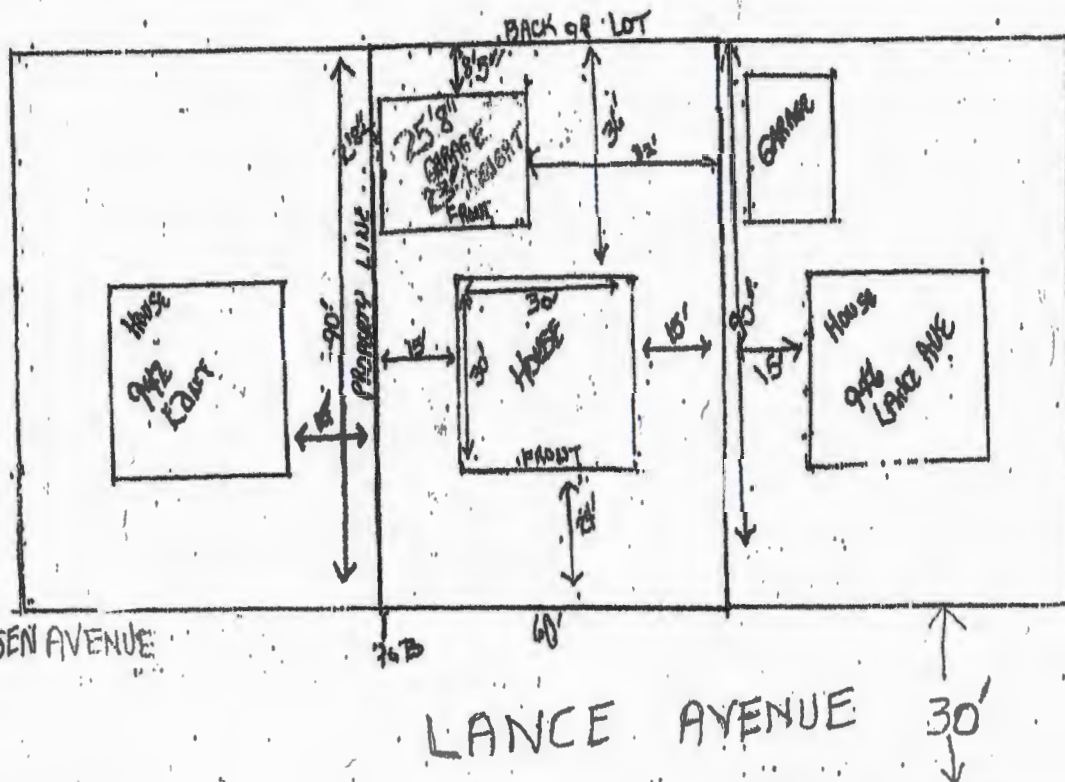
ADDRESS 944 LANCE Avenue OWNER(S) NAME(S) Violet McElwee

SUBDIVISION NAME MARLYN MANOR LOT # 3 BLOCK # _____ SECTION # _____

PLAT BOOK # 19 FOLIO # 103 10 DIGIT TAX # 1513071510 DEED REF. # 15271 / 646

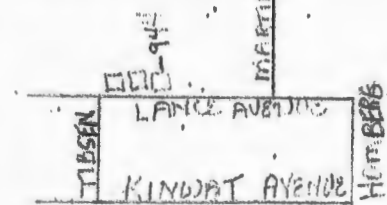
PETITIONER'S

EXHIBIT NO.



PLAN DRAWN BY WAYNE Jacobs DATE 9-29-11 SCALE: 1 INCH = 30 FEET

SITE VICINITY MAP



N



MAP IS NOT TO SCALE

ZONING MAP# 097B1

SITE ZONED DR5.5

ELECTION DISTRICT 15

COUNCIL DISTRICT 7

LOT AREA ACREAGE .12

OR SQUARE FEET 5220

HISTORIC? No

IN CBCA? Yes

IN FLOOD PLAIN? No

UTILITIES? MARK WITH X

WATER IS:

PUBLIC x PRIVATE _____

SEWER IS:

PUBLIC x PRIVATE _____

PRIOR HEARING? Yes

IF SO GIVE CASE NUMBER

AND ORDER RESULT BELOW

2000-0116-A

Granted: 18' Height for

Garage

VIOLATION CASE INFO:

CO 0092012

2012-0094-A

#1



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

July 12, 2011

Geneva Jacobs
944 Lance Avenue
Baltimore, MD 21221

Re: Spirit & Intent; case # 2000-0116-A; 15th Election District

Dear Ms. Jacobs:

Your recent letter to this office regarding the above referenced property was forwarded to me for reply. Based upon the information provided and my review of the applicable zoning case, the following has been determined.

Your request to increase the height of a proposed garage from the approved 18 ft. height to a 22 ft. height is **disapproved** because it cannot be considered as being within the spirit and intent of the subject zoning case. The petition was approved based on the applicant's desire to keep the design of the proposed garage consistent with the existing dwelling. Your request to increase the height another 4 ft. is not in keeping with the original "Hardship or Practical Difficulty" statement. You will need to apply for another variance.

The foregoing is merely an informal opinion, it is not an expert or legal opinion. It is not intended to be relied on as expert or legal advice, and is not legally or factually binding on Baltimore County or any of its officials, agents, or employees. Baltimore County expressly disclaims any and all liability arising out of, or in any way connected with the information provided in this document, or any interpretation thereof.

I trust that the information set forth in this letter is sufficiently detailed and responsive to your request. If you need further information or have any questions, I can be reached at 410-887-3391.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruno Rudaitis".

Bruno Rudaitis
Zoning Review

BR:br

2012-0094-A

July 7, 2011
944 Lance Avenue
Baltimore, MD 21221

Carl Richards, Jr.
Department of Zoning
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Zoning Department

Re: Variance case #00-116-A

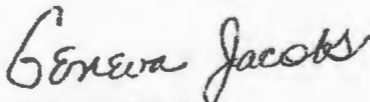
Mr. Richards:

The purpose of this Spirit of Intent Letter is to request an increase on the height of the detached accessory structure to 22 feet in reference to the variance on case #00-116-A so that a building permit may be obtained.

I have enclosed the fee of \$20.00 for this.

If there are any questions, I have provided by telephone number and addressed below.
Thank you for your attention to this matter.

Sincerely,



Geneva Jacobs
944 Lance Avenue
Baltimore, MD 21221
410-686-5897

IN RE: PETITION FOR ADMIN. VARIANCE

N/S Lance Avenue, 90' E of
Centerline of Tibsen Avenue
15th Election District
7th Councilmanic District
(944 Lance Avenue)

Jewel L. McElwee & Violet McElwee
Petitioners

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BEFORE THE

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE NO. 00-116-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a petition for administrative variance filed by the legal owners of the subject property, Jewel L. McElwee & Violet McElwee. The variance request is for property located at 944 Lance Avenue, located in the Essex area of Baltimore County. The Petitioners herein seek a variance from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure (detached garage addition) with a height of 18 ft. in lieu of the maximum permitted 15 ft. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1, the plat to accompany the Petition for Administrative Variance.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 26-127 (b)(1) of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the

2012-0094-A

requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

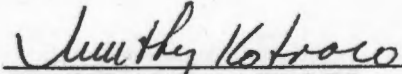
This property is located within the Chesapeake Bay Critical Areas and as such, is subject to compliance with any recommendations made by the Department of Environmental Protection and Resource Management (DEPRM), pursuant to Section 500.14 of the Baltimore County Zoning Regulations (B.C.Z.R.). As of the date of this Order, DEPRM had not completed its review of this project. Therefore, the relief granted herein is subject to the Petitioners' compliance with any recommendations made by DEPRM upon completion of their review.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 15th day of October, 1999 that a variance from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure (detached garage addition) with a height of 18 ft. in lieu of the maximum permitted 15 ft., be and is hereby GRANTED, subject, however, to the following restrictions which are a condition precedent to the relief granted herein:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- 2) Compliance with any recommendations made by DEPRM to minimize any effect the proposed development might have on the Bay and its tributaries.
- 3) The Petitioners or subsequent owners shall not allow or cause the accessory structure to be converted to a second dwelling unit and/or apartment. The structure shall contain no living or sleeping quarters, and no kitchen or bathroom facilities.

- 4) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.


TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

From: 4436304122 <4436304122@pixmbl.com>

To: wjacobs426 <wjacobs426@aol.com>

Date: Wed, Sep 28, 2011 2:52 pm

Sent from my mobile. Enjoy.



2012-0094-A

**NOTICE OF ZONING
HEARING**

The Administrative Law Judges 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: # 2012-0094-A

944 Lance Avenue
N/side of Lance Avenue,
121 feet +/- N/east of the
centerline of Tibson Avenue
15th Election District
7th Councilmanic District
Legal Owner(s): Violet
McElwee

Variance: to permit a garage in the rear yard of an existing single family with a height of 23 feet in lieu of the required 15 feet and to amend the previous order and plan in case number 2000-0116-A.

Hearing: Tuesday, November 27, 2011 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR
OF PERMITS, APPROVALS
AND INSPECTIONS FOR
BALTIMORE COUNTY

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

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

JT 11/661 Nov. 15 290773

CERTIFICATE OF PUBLICATION

11/17/, 2011

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 11/15/, 2011.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

Hearing 11/29/11

2012-0094-A

RE: Case No.: _____

Petitioner/Developer: _____

Violet McElwee

November 29, 2011

Date of Hearing/Closing: _____

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

Attn: Kristen Lewis:

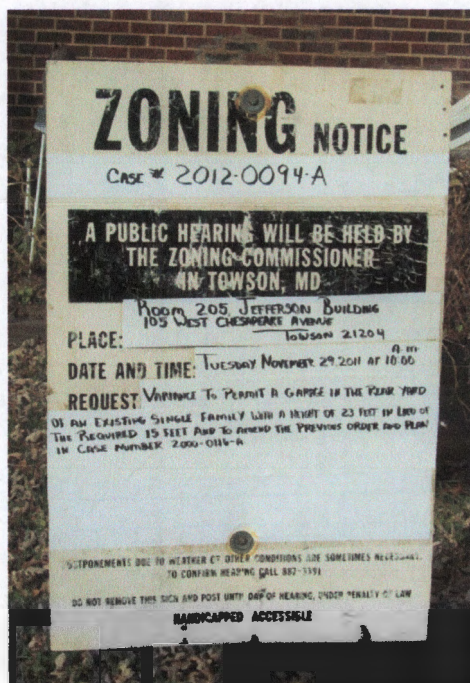
Ladies and Gentlemen:

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

944 Lance Ave

November 13, 2011

The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

[Signature]
(Signature of Sign Poster)

November 16, 2011

(Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

RE: PETITION FOR VARIANCE
944 Lance Avenue; N/S Lance Avenue,
121' NE of Tibson Avenue
15th Election & 7th Councilmanic Districts
Legal Owner(s): Violet McElwee
Petitioner(s)

* BEFORE THE OFFICE
* OF ADMINSTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* 2012-094-A

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party 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 all documentation filed in the case.

RECEIVED

OCT 14 2011

le

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of October, 2011, a copy of the foregoing Entry of Appearance was mailed to Wayne Jacobs, II, 944 Lance Avenue, Baltimore, Maryland 21221, Representative for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

ZONING HEARING PLAN FOR VARIANCE X FOR SPECIAL HEARING _____ (MARK TYPE REQUESTED WITH X)

ADDRESS 944 LANCE AVENUE OWNER(S) NAME(S) Violet McElwee

SUBDIVISION NAME MARLYN MANOR LOT # 3 BLOCK # _____ SECTION # _____

PLAT BOOK # 19 FOLIO # 103 10 DIGIT TAX # 213071510 DEED REF. # 15271 / 646

SITE VICINITY MAP



N



MAP IS NOT TO SCALE

ZONING MAP # 097B1

SITE ZONED DR5.5

ELECTION DISTRICT 15

COUNCIL DISTRICT 7

LOT AREA ACREAGE .12

OR SQUARE FEET 5220

HISTORIC? No

IN CBCA? Yes

IN FLOOD PLAIN? No

UTILITIES? MARK WITH X

WATER IS:

PUBLIC X PRIVATE _____

SEWER IS:

PUBLIC X PRIVATE _____

PRIOR HEARING? Yes

IF SO GIVE CASE NUMBER

AND ORDER RESULT BELOW

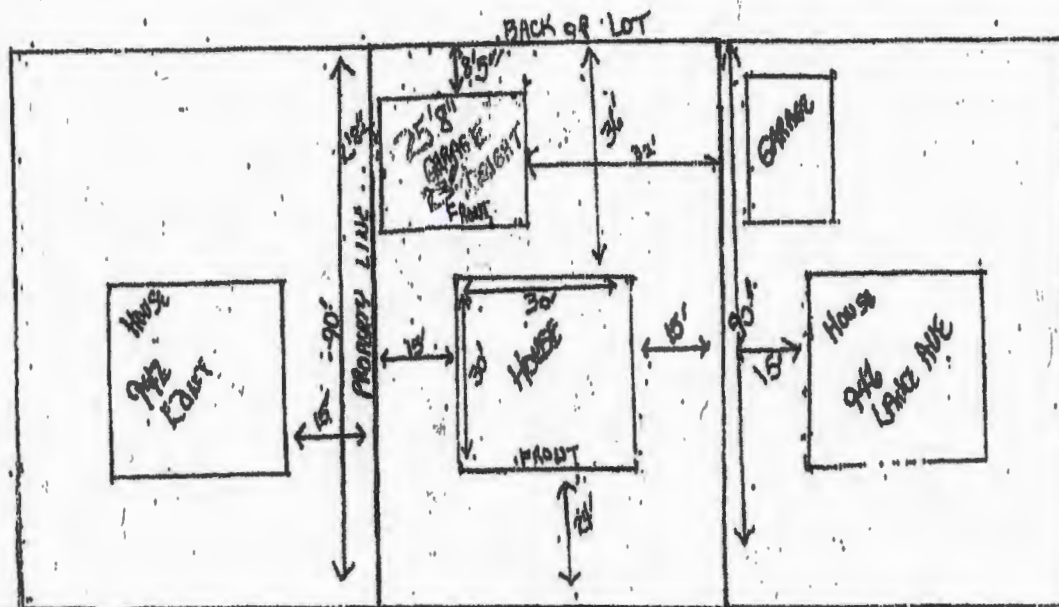
2000-0116-A

Granted: 18' Height for

Garage

VIOLATION CASE INFO:

CO 0092012



121' TO TIBSEN AVENUE

LANCE AVENUE

30'



2012-0094-A

PLAN DRAWN BY WAYNE Jacobs DATE 9-29-11 SCALE: 1 INCH = 30 FEET