Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

June 7, 2018

Timothy M. Kotroco, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204

Nancy A. Cohen, Esquire
3415 Garrison Farms Road
Baltimore, Maryland 21208

Re: In the Matter of: *Corinne and Adam Janet*
Case No.: 17-339-A

Dear Counsel:

Enclosed please find a copy of the Order of Dismissal issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington Hay

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: J. Carroll Holzer, Esquire
Corinne and Adam Janet
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF CORINNE AND ADAM JANET-LEGAL OWNERS AND PETITIONERS FOR VARIANCE ON THE PROPERTY LOCATED AT 11316 JOHN CARROLL ROAD	*	BEFORE THE BOARD OF APPEALS OF
3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO. 17-339-A

* * * * * * * * * * *

ORDER OF DISMISSAL

This matter comes to the Board of Appeals by way of an appeal filed by Nancy A. Cohen, Protestant and Appellant, from a final decision of the Administrative Law Judge dated August 7, 2017, in which the requested zoning relief was granted and an Order on Motion for Reconsideration dated September 18, 2017 wherein the Motion was denied.

WHEREAS, the Board is in receipt of a Voluntary Dismissal of Appeal with Prejudice executed on May 16, 2018 by Ms. Nancy A. Cohen and filed on May 17, 2018, with a cover letter by Timothy Kotroco, Esquire, Counsel for Petitioner, explaining that the parties have worked out their differences (a copy of which is attached hereto and made a part hereof); and

IT IS ORDERED this 7th day of June, 2018 by the Board of Appeals of Baltimore County that the appeal taken in Case No. 17-339-A be and the same is hereby **DISMISSED with prejudice.**

BOARD OF APPEALS
OF BALTIMORE COUNTY

Jason S. Garber, Chairman

TIMOTHY M. KOTROCO
Attorney at Law
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

May 17, 2018

HAND DELIVERED
Board of Appeals for Baltimore County
Jefferson Building, Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204
Attention: Krysundra "Sunny" Cannington, Administrator

Re: In the Matter of: Corinne and Adam Janet
3417 Garrison Farms Road, Legal Owners
Case No. 2017-339-A
Voluntary Dismissal of Appeal

Dear Ms. Cannington,

I am pleased to report that the neighbors in the above referenced matter have worked out their differences concerning the variance request that is pending before the Board. To that end, Mrs. Nancy Cohen, the Appellant herein, has signed a Voluntary Dismissal with Prejudice, a copy of which is attached to this letter.

Please process this request for dismissal signed by the Appellant. Also attached is an Order for the Board's signature. Should you need any further information, please feel free to contact me.

Very truly yours,

Timothy Kotroco

Timothy M. Kotroco

TMK/EAK
cc: People's Counsel for Baltimore County
J. Carroll Holzer, Esquire
Adam & Corinne Janet

IN THE MATTER OF:	*	BEFORE THE
CORINNE & ADAM JANET 3417 GARRISON FARMS ROAD	*	BOARD OF APPEALS
	*	FOR
3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	•	Case No. 2017-339-A

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

VOLUNTARY DISMISSAL OF APPEAL WITH PREJUDICE

The undersigned Appellant, Nancy A. Cohen, pursuant to Rule 3.b.1 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals, hereby **DISMISSES WITH PREJUDICE**, her appeal filed in the above captioned matter.

Respectfully Submitted,

Nancy A Cohen

Nancy A. Cohen, Esquire
3415 Garrison Farms Road,
Baltimore, Maryland 21208

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 16th day of May, 2018, a copy of this Voluntary Dismissal of Appeal with Prejudice was mailed first class, postage prepaid to Timothy M. Kotroco 305 Washington Avenue, Suite 502, Towson, Maryland 21204 and the Office of People's Counsel for Baltimore County.

Nancy A Cohen

Nancy A. Cohen, Esquire

RECEIVED
MAY 17 2018
BALTIMORE COUNTY
BOARD OF APPEALS

TIMOTHY M. KOTROCO
Attorney at Law
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

May 17, 2018

HAND DELIVERED
Board of Appeals for Baltimore County
Jefferson Building, Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204
Attention: Krysundra "Sunny" Cannington, Administrator

Re: In the Matter of: Corinne and Adam Janet
3417 Garrison Farms Road, Legal Owners
Case No. 2017-339-A
Voluntary Dismissal of Appeal

Dear Ms. Cannington,

I am pleased to report that the neighbors in the above referenced matter have worked out their differences concerning the variance request that is pending before the Board. To that end, Mrs. Nancy Cohen, the Appellant herein, has signed a Voluntary Dismissal with Prejudice, a copy of which is attached to this letter.

Please process this request for dismissal signed by the Appellant. Also attached is an Order for the Board's signature. Should you need any further information, please feel free to contact me.

Very truly yours,

Timothy M. Kotroco

TMK/EAK
cc: People's Counsel for Baltimore County
J. Carroll Holzer, Esquire
Adam & Corinne Janet

IN THE MATTER OF:	*	BEFORE THE
CORINNE & ADAM JANET 3417 GARRISON FARMS ROAD	*	BOARD OF APPEALS
	*	FOR
3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	•	Case No. 2017-339-A

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

VOLUNTARY DISMISSAL OF APPEAL WITH PREJUDICE

The undersigned Appellant, Nancy A. Cohen, pursuant to Rule 3.b.1 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals, hereby **DISMISSES WITH PREJUDICE**, her appeal filed in the above captioned matter.

Respectfully Submitted,

Nancy A Cohen

Nancy A. Cohen, Esquire
3415 Garrison Farms Road,
Baltimore, Maryland 21208

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 16th day of May, 2018, a copy of this Voluntary Dismissal of Appeal with Prejudice was mailed first class, postage prepaid to Timothy M. Kotroco 305 Washington Avenue, Suite 502, Towson, Maryland 21204 and the Office of People's Counsel for Baltimore County.

Nancy A Cohen

Nancy A. Cohen, Esquire

IN THE MATTER OF:	*	BEFORE THE
CORINNE & ADAM JANET 3417 GARRISON FARMS ROAD	*	BOARD OF APPEALS
	*	FOR
3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	•	Case No. 2017-339-A

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

ORDER

Upon consideration of the Voluntary Dismissal of Appeal With Prejudice filed by the Appellant, Nancy A. Cohen, it is this _____ day of _____, 2018, by the Board of Appeals for Baltimore County;

ORDERED, that the Appeal filed by Nancy A. Cohen in the above referenced case be and is hereby **Dismissed With Prejudice.**

_____
Judge

_____
Judge

_____
Judge

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

April 2, 2018

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Corinne and Adam Janet
3417 Garrison Farms Road
17-339-A 3rd Election District; 2nd Councilmanic District

Re: Petition for Variance relief pursuant to § 1B02.3.B of the BCZR as follows:
1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and
2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback; and
3) for such other and further relief as the nature of the case may require.

8/7/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was GRANTED.

9/18/17 Opinion and Order on Motion for Reconsideration issued by the Administrative Law Judge wherein the Motion was DENIED.

This matter was assigned for hearing on April 11, 2018 and has been postponed. This matter has been

REASSIGNED FOR: JUNE 13, 2018, AT 10:00 a.m.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Counsel for Petitioner : Timothy Kotroco, Esquire
Petitioner : Corinne and Adam Janet

Counsel for Protestant : J. Carroll Holzer, Esquire
Protestant : Nancy Cohen

Richard Matz

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

IN THE MATTER OF: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corrine & Adam Janet *Legal Owners* *Petitioners*	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY Case No.: 2017-0339-A

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

ENTRY OF APPEARANCE AND REQUEST FOR POSTPONEMENT

Please enter the Appearance & Request for Postponement for ***J. Carroll Holzer, Esquire***, 508 Fairmount Avenue, Towson, Maryland 21286, on behalf of Ms. Nancy A. Cohen in the above-captioned matter. Your counsel will be away in Florida from April 6 thru April 20, 2018. All parties should copy J. Carroll Holzer on all correspondence, letters, responses, etc. at the address herein.

Respectfully submitted,

J. CARROLL HOLZER, Esquire
J. CARROLL HOLZER, P.A.
508 Fairmount Avenue
Towson, Maryland 21286
jcholzer38@gmail.com
410-825-6961
Attorney for Appellant

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

(410) 825-6961
FAX: (410) 825-4923

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of March, 2018, a copy of the foregoing Entry of Appearance & Request for Postponement was mailed first class, postage pre-paid to the following: Timothy Kotroco, Esquire, 305 Washington Ave., Suite 502, Towson, MD 21204, Attorney for Appellee/Petitioner.

J. CARROLL HOLZER, Esquire

C:\My Docs\2018 Entry of Appearance\N. Cohen - 3/29/18

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Thursday, January 25, 2018 11:16 AM
To: Krysundra Cannington; Nancy Cohen
Subject: Re: Board of Appeals scheduling Janet 17-339-A

Sunny,

Thank you for setting this on the docket. This date, as was all the other dates, is acceptable to us.

Regards,

Tim K.
Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: Krysundra "Sunny" Cannington <kcannington@baltimorecountymd.gov>
Date: Wednesday, January 24, 2018 at 3:09 PM
To: Timothy Kotroco <tkotroco@gmail.com>, Nancy Cohen <nancyacohen27@yahoo.com>
Subject: RE: Board of Appeals scheduling Janet 17-339-A

Mr. Kotroco and Ms. Cohen:

Please be advised that because I did not hear from either of you regarding your availability, this matter has been scheduled for a hearing at the Board's convenience. The Notice of Assignment was sent in today's mail. The hearing is scheduled for April 11, 2018 at 10:00 a.m.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

October 23, 2017

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RECEIVED
OCT 23 2017
BALTIMORE COUNTY
BOARD OF APPEALS

RE: **APPEAL TO BOARD OF APPEALS**
Petition for Variance
Case No. 2017-0339-A
Property: 3417 Garrison Farms Road

Dear Mr. Kotroco:

Please be advised that an appeal of the above-referenced case was filed in this Office on October 17, 2017. 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 contact the Board at 410-887-3180.

Sincerely,

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c:
Baltimore County Board of Appeals
People's Counsel
Nancy Cohen, 3415 Garrison Farms Road, Baltimore, Maryland 21208

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 3417 Garrison Farms Road, Baltimore, Maryland 21208 **which is presently zoned** D.R. - 2

Deed References: 38385 / 442 10 Digit Tax Account # 0 3 1 1 0 7 7 9 5 1

Property Owner(s) Printed Name(s) Corinne & Adam Janet

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1.____ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2.____ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

3.__X__ **a Variance** from Section(s)

- See attachment to Petition

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), 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.
Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

ORDER RECEIVED FOR FILING
Date 8/7/17
By ASN

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Corinne Janet / Adam Janet

Name #1 – Type or Print Name #2 – Type or Print

Corinne Janet / Adam Janet

Signature #1 Signature # 2

11316 John Carroll Road Owings Mills, Maryland

Mailing Address City State

21117 / 443-904-7044 / ajanet@myadvocates.com

Zip Code Telephone # Email Address

Attorney for Petitioner:

Timothy M. Kotroco

Name- Type or Print

Timothy Kotroco

Signature

305 Washington Avenue, Suite 502 Towson, Maryland

Mailing Address City State

21204 / 410-299-2943 / tkotroco@gmail.com

Zip Code Telephone # Email Address

Representative to be contacted:

Richard E. Matz

Name- Type or Print

Richard E. Matz

Signature

2835 Smith Avenue, Suite G Baltimore, Maryland

Mailing Address City State

21209 / 410-653-3838 / dmatz@cmrengineers.com

Zip Code Telephone # Email Address

CASE NUMBER 2017-0339-A **Filing Date** 6/16/17 **Do Not Schedule Dates:** _____ **Reviewer** JS

REV. 10/4/11

ATTACHMENT TO PETITION FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE

3417 Garrison Farms Road
2nd Councilmanic District
3rd Election District

Variance Relief:

1. From section 1B02.3.B of the Zoning Commissioner's Policy Manual to permit a 28 foot front yard setback in lieu of the required 40 foot setback.

2. From section 1B02.3.B of the Zoning Commissioner's Policy Manual to permit a 7 foot side yard setback in lieu of the required 15 foot setback.

3. For such other and further relief as the nature of this case may require.

Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners

ZONING DESCRIPTION
3417 Garrison Farms Road
Baltimore County, Maryland

Beginning at a point on the South side of Garrison Farms Road which is 50 feet wide at a distance of 372 feet, more or less East of the centerline of the intersection of Garrison Farms Road and Stevenson Road, which is 60 feet wide.

Being the lot of ground known as lot 4 on block B, Section One of the Plat of Section One Garrison Farms, recorded among the land records of Baltimore County in Plat Book No. W.J.R. 27, Folio 64 recorded March 17, 1961.

Containing 19,994 SF or 0.459 Acres more or less.

Located in the 3rd Election District and 2nd Councilmanic District. Known as 3417 Garrison Farms Road.

Professional Certification

I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.

License No. 13203 Expiration Date: 11/02/2018

STATE OF MARYLAND
RICHARD EARL MATZ
No. 13203
PROFESSIONAL ENGINEER

JUNE 12, 2017

2835 Smith Avenue, Suite G Baltimore, Maryland 21209
Telephone: (410) 653-3838 / Facsimile: (410) 653-7953

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

January 24, 2018

NOTICE OF REASSIGNMENT

IN THE MATTER OF: Corinne and Adam Janet
3417 Garrison Farms Road
17-339-A 3rd Election District; 2nd Councilmanic District

Re: Petition for Variance relief pursuant to § 1B02.3.B of the BCZR as follows:
1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and
2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback; and
3) for such other and further relief as the nature of the case may require.

8/7/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was GRANTED.

9/18/17 Opinion and Order on Motion for Reconsideration issued by the Administrative Law Judge wherein the Motion was DENIED.

ASSIGNED FOR: APRIL 11, 2018, AT 10:00 a.m.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c: Counsel for Petitioner : Timothy Kotroco, Esquire
Petitioner : Corinne and Adam Janet

Protestant : Nancy Cohen

Richard Matz

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, January 09, 2018 11:20 AM
To: 'Nancy Cohen'; tkotroco@gmail.com
Subject: RE: Board of Appeals scheduling Janet 17-339-A

Ms. Cohen and Mr. Kotroco,

Please be advised the dates previously offered are no longer available on the Board's calendar. At this time I can offer February 22, 28, March 1, 6, and 7, 2018. Any hearing scheduled would begin at 10:00 a.m.

Please be advised I cannot hold these dates beyond the close of business Friday, January 12, 2018.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

From: Nancy Cohen [mailto:nancyacohen27@yahoo.com]
Sent: Friday, December 22, 2017 5:44 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: Re: Board of Appeals scheduling Janet 17-339-A

Sunny,
The best days for me are January 31 or February 1st.
Please let me know if either of these dates will work.
Thank you.
Have a wonderful holiday.
Nancy

Krysundra Cannington

From: Nancy Cohen <nancyacohen27@yahoo.com>
Sent: Friday, December 22, 2017 5:44 PM
To: Krysundra Cannington
Subject: Re: Board of Appeals scheduling Janet 17-339-A

Sunny,
The best days for me are January 31 or February 1st.
Please let me know if either of these dates will work.
Thank you.
Have a wonderful holiday.
Nancy

Nancy A. Cohen, Esq.
201 N. Charles Street
Suite 1504
Baltimore, Maryland 21201
410-625-2268 (phone)
410-625-2269 (fax)
NancyACohen27@yahoo.com

On Tuesday, December 5, 2017, 1:13:41 PM EST, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Good afternoon,

Pursuant to our discussion this morning, below are dates that are currently available on the Board's calendar.

January 10, 17, 18, 23, 24, 25, 30, 31, February 1, 2018. Generally, our hearings begin at 10:00 a.m.

Please let me know which dates work best for you. Please also advise if you believe the hearing will take more than one hearing day.

Should you have any questions, please do not hesitate to contact me.

Thank you!

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, December 05, 2017 1:14 PM
To: tkotroco@gmail.com; 'nancyacohen27@yahoo.com'
Subject: Board of Appeals scheduling Janet 17-339-A

Good afternoon,

Pursuant to our discussion this morning, below are dates that are currently available on the Board's calendar.

January 10, 17, 18, 23, 24, 25, 30, 31, February 1, 2018. Generally, our hearings begin at 10:00 a.m.

Please let me know which dates work best for you. Please also advise if you believe the hearing will take more than one hearing day.

Should you have any questions, please do not hesitate to contact me.

Thank you!

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Corinne and Adam Janet 17-339-A

DATE: December 5, 2017

BOARD/PANEL: Joseph L. Evans, Panel Chairman
Maureen E. Murphy
Andrew M. Belt

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the Petitioners' Motion to Dismiss Appeal, and Responses thereto.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board convened for argument on the Petitioners' Motion to Dismiss Appeal, and the responses thereto. Immediately following the hearing, the Board held a Public Deliberation. Counsel for Petitioners, and the Protestant, waived the formal notice of deliberation.
- The Motion to Dismiss involves the timeliness of the Protestant's Motion for Reconsideration of the Opinion rendered by Administrative Law Judge ("ALJ") Beverungen. The Petitioners argue the Motion was filed on the 31st day, past the 30 day period, thereby making the appeal to the Board defective. The Protestant argues that she attempted to file her Motion on the 30th day at 4:23 p.m. and the Office of Administrative Hearings was closed. The Protestant returned the following day, explained the situation to staff, and the Motion was accepted. ALJ Beverungen ruled on the Motion, before Petitioners could file a response, making no ruling on the timeliness of its filing.
- The Board discussed the late filing of the Motion. One of the Board members believes that the 3 day rule for mailing is applicable to the filing of the Motion. If the Protestant had mailed her Motion and it was postmarked within the 30 day time period, the Motion would be considered timely. The other two Board members disagree noting that Maryland Rules do not apply to the Board, with the exception of the evidence rules. Rule K of the Rules of Practice and Procedure apply which states a Motion for Reconsideration must be filed 30 days from the date of the Order.
- The Board noted that the Protestant did make her best effort to file the Motion in a timely fashion. There was no note on the door of the Office of Administrative Hearings that the office had to close early, and no instruction as to how to handle filings.

CONCLUSION: After thorough review of the facts and law in the matter, the Board unanimously agreed to DENY the Motion to Dismiss, and schedule a hearing on the merits.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. 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 the Board.

Respectfully Submitted,

Tammy A. Zahner
Tammy A. Zahner

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

November 27, 2017

AMENDED NOTICE OF ASSIGNMENT
ARGUMENT ONLY ON MOTION TO DISMISS

IN THE MATTER OF: Corinne and Adam Janet
3417 Garrison Farms Road
17-339-A 3rd Election District; 2nd Councilmanic District

Re: Petition for Variance relief pursuant to § 1B02.3.B of the BCZR as follows:
1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and
2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback; and
3) for such other and further relief as the nature of the case may require.

8/7/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was GRANTED.

9/18/17 Opinion and Order on Motion for Reconsideration issued by the Administrative Law Judge wherein the Motion was DENIED.

Having received a Motion to Dismiss from Petitioner's Counsel, Timothy Kotroco, Esquire, on November 22, 2017, the de novo hearing on the merits has been changed to argument only on the Motion to Dismiss. The date and time will remain as

ASSIGNED ON: **December 5, 2017, AT 10:00 a.m.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c: Counsel for Petitioner : Timothy Kotroco, Esquire
Petitioner : Corinne and Adam Janet

Protestant : Nancy Cohen

Richard Matz

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

IN THE MATTER OF	*	BEFORE THE
CORINNE & ADAM JANET (3417 GARRISON FARMS ROAD) 3rd ELECTION DISTRICT 2nd COUNCILMAN DISTRICT *LEGAL OWNERS*	*	BOARD OF APPEALS FOR BALTIMORE COUNTY
PETITIONERS	*	Case No. 2017-339-A

* * * * * * * * * * *

RESPONSE TO PETITIONERS MOTION TO DISMISS APPEAL

Respondent, Nancy A. Cohen, respectfully requests that the Petitioners' Motion to Dismiss the Respondent's Appeal be denied and for reasons state as follows:

FACTS

1. Respondent who resides at 3415 Garrison Farms Road, which is located immediately next door to the Petitioners property, attended a hearing on a Petition for Variance relief pursuant to Sec. 1B02.3B of the BCZR. Respondent is opposed to the Variance relief requested by Petitioners and stated her objections on the record at the hearing.

2. An Opinion And Order was issued by Judge Beverungen, the Administrative Law Judge for Baltimore County that heard this matter. The Order was signed **August 7, 2017**. **(EXHBIT A)**

3. Although the Opinion And Order was issued August 7, 2017, a copy was not mailed to Respondent until the following day, **August 8, 2017** as evidenced by the postage date stamped on the envelope containing Judge Beverungen's decision. **(EXHIBITS B1 & B2)**

4. As a result of the Judge's decision, Respondent prepared a Motion for Reconsideration of the Administrative Law Judge's decision and attempted to hand delivered the Motion to the Office of Administrative Hearings on September 6, 2017

5. When Respondent attempted to enter the Office of Administrative Hearings during business hours on **September 6, 2017**, she found the door to the office locked and the lights

turned off. Thinking that someone was in a back portion of the office she attempted to knock on the door however there was no response. Respondent was confused and concerned as to why the office was

closed but not knowing what else to do left the building with her Motion.

6. The following day, **September 7, 2016**, Respondent returned to the Office of Administrative Hearings and filed her Motion for Reconsideration. After filing her Motion, Respondent approached Ms. Sherry Nuffer, the Legal Assistant to the Office of Administrative Hearings and advised her that she had attempted to file her Motion the day before during business hours when the office should have been open however the office was closed. Ms. Nuffer advised Respondent that she needed to leave early on **September 6, 2017** and because she was the only one in the office she closed the office early and locked the doors. Respondent explained that arguably, her motion should have been filed on September 6th and that as a result, Respondent was concerned. Ms. Nuffer stated that she would notify Judge Beverungen of the fact that she did did leave the office early on September 6th and that because of the office being closed early, Respondent was unable to file her Motion on that date. Ms. Nuffer stated that she would also express Respondent's concern that arguably the Motion was due on September 6, 2017 and that Respondent was concerned about the Motion being filed late. Ms. Nuffer assured Respondent that she would pass this information on to Judge Beverungen and that Respondent was to call her later that day regarding the Judge's response.

7. After returning to her office Respondent phoned Ms. Nuffer as instructed and was told by Ms. Nuffer that she had relayed to Judge Beverungen all the information that had been discussed and that he stated not to worry about it and that he would ignore the date and accept the Motion and rule on it. **(EXHIBIT C)**

8. On **September 18, 2017**, eleven days after Respondent had filed her Motion for Reconsideration, Judge Beverungen ruled on her Motion denying her request. **(EXHIBIT D)**

9. On **October 17, 2017**, 29 days after the denial of Respondent's Motion for Reconsideration, Respondent filed an Appeal with the Board of Appeals of Baltimore County. **(EXHIBIT E)**

10. On **November 22, 2017** Petitioners filed a Motion to Dismiss Respondent's Appeal. **(EXHIBIT F)**

ARGUMENT

(Respondent alleges that her Motion for Reconsideration was timely filed)

11. **Maryland Rule 1-203(a)(2)** provides that if an attempt is made to file a paper in a court and the office of the clerk is closed for part of the last day in which the period runs then the time for filing the paper is extended through the end of the next business day. (See also **Baltimore County Maryland – Code of Ordinances §1-2-203** (Computation of Time). Because Respondent attempted to file her Motion for Reconsideration at the Office of Administrative Hearings on September 6, 2017 during business hours, the day Petitioner argues was the last day to file this Motion, and because this office was closed at the time Respondent attempted to file her Motion, it would follow that because the Respondent filed her Motion on September 7, 2017 which was the next day that the Office of Administrative Hearings was open, that Respondent's Motion was in fact timely filed.

(Respondent alleges that Petitioners' Motion to Dismiss is Moot)

12. Respondent's Motion for Reconsideration was filed on September 7, 2017 and the Administrative Law Judge **ruled on said Motion on September 18, 2017**, eleven days after said Motion was filed.

13. **Maryland Rule 4-252(f)** provides that "A response, if made, **shall** be filed within 15 days after service of the motion and contain or be accompainied by a statement of points and citation of authorities.

14. Petitioners per Rule 4-252(f) had **15 days** from the date of receiving Respondent's Motion for Reconsideration to file their Response. It was within this 15 day time period that Petitioners were permitted to file a Response to Respondent's Motion for Reconsideration. It was only within this time period that Petitioner's had the opportunity to file a Response to Respondent's Motion for Reconsideration alleging that this Motion was not timely filed. Petitioners Response would have been due on or before **September 22, 2017**. Petitioners failed to file **any** response to Respondent's Motion until now. Even **after** the Administrative Law Judge on **September 18, 2017**, ruled on Respondent's Motion for Reconsideration, Petitioners, at that time could still have filed their own Motion for Reconsideration alleging even then that Respondent's Motion was not timely filed, and arguing that as a result, the Judge should deny the Respondent's Motion on the specific ground that it was not timely filed. Petitioners would have had an additional 15 days to file this Motion for Reconsideration from the date that the Judge signed the Order, which time period would have ended on **October 3, 2017**, however Petitioners failed to file a Motion for Reconsideration at that time when they were well within their rights to do so. It is Respondent's contention that the Petitioners did not file a timely Response to the Respondent's Motion for Reconsideration and as a result the issue of whether Respondent's Motion for Reconsideration was timely filed is moot and therefore their Motion to Dismiss should therefore be denied.

15. As previously stated, Respondent filed her Appeal on October 17, 2017. After the filing of the Appeal, the Administrative Law Judge lost jurisdiction to rule on this matter. The issue of whether or not the Respondents Motion for Reconsideration was timely filed is an issue that should have been heard before Judge Beverungen as he is most familiar with the facts surrounding this issue.

16. Baltimore County Code, Appendix E, §603 of the Rules of Practice and Procedure states that all hearings held by the County Board of Appeals "shall be heard de novo". "De novo

by definition means over again, anew, from the beginning. Respondent argues that the County Board of Appeals does not have jurisdiction to hear a Motion that should have been brought before the Office of Administrative Hearings. For the County Board of Appeals to rule on the Petitioners' Motion to Dismiss, it would require that the Board of Appeals be advised of the facts and allegations that were raised before Judge Beverungen. If a prerequisite for the Board of Appeals, to properly rule on a Motion, would be to learn the facts and allegations brought before the Administrative Law Judge, then having to provide this information to the Board would go against the principals of a De Novo hearing. The fact that the Board of Appeals would be required to understand what occurred in Judge Beverungen's Court, to properly rule on a Motion now before them is evidence that this issue does not belong before the Board of Appeals. It is the Respondent's contention that not only has the time period run for the filing of any type of Motion on the issue of the timeliness of Respondent's Motion for Reconsideration, in addition, once the Respondent filed her Appeal, the Petitioners lost any right they may have had to file any type of Response or Motion regarding the timeliness of Respondent's Motion for Reconsideration.

17. Respondent contends that although Petitioners have titled their Motion a "Motion to Dismiss" this Motion is in reality a "Response to Respondent's Motion for Reconsideration" in sheeps clothing. Petitioners failed to file a timely Response as previously alleged, and they are now attempting to file their Response at this time and disguising their Motion as "Motion to Dismiss".

18. **Maryland Rule 7-203(a)** (Judicial Review of Administrative Agency Decisions) provides that "a petition for judicial review shall be filed within 30 days after the latest of: (1) the date of the order or action for which review is sought" or (2) "the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner". Judge Beverungen's Opinion and Order, in response to Respondent's Motion for

Motion for Reconsideration is dated September 18, 2017. **(Exhibit D)** Repondent filed her Appeal on **October 17, 2017. (EXHIBIT E)** Respondent's Appeal was filed within the 30 days required by Maryland Rule 7-203(a) and as a result said Appeal was filed in a timely manner.

19. **Maryland Rule 7-204(a)** requires that any party that wishes to participate in an Appeal shall file a response to the Petition. **Maryland Rule 7-204(c)** requires that a Response to a Petition for Appeal "shall be filed within 30 days after the date the agency mails notice of the filing". Respondent filed her Appeal on October 17, 2017. Petitioner has not filed a response to Respondent's Appeal to date. Respondent contends that the Petitioner failed to file a Response to Respondents Appeal within the 30 days provided by the Maryland Rules and therefore should not be permitted to participate in Respondent's Appeal before the County Board of Appeals.

WHEREFORE, Respondent, Nancy A. Cohen, respectfully requests the following relief of this Board of Appeals;

a). That this Court find that Respondent's Appeal was timely filed, and;

b). That Petitioners' Motion to Dismiss be denied, and;

c). Petitioners shall not be entitled to participate in Respondent's Appeal as a result of their failure to file a timely Response to Respondent's Appeal as provided by the Maryland Rules.

Respectfully submitted,

Nancy A Cohen

Nancy A. Cohen
201 N. Charles Street, Suite 1504
Baltimore, MD 21201
Phone: (410) 625-2268
E-mail: nancyacohen27@yahoo.com
Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of December, 2017, a copy of Respondent's Response to Petitioners' Motion to Dismiss was mailed first class mail, postage prepaid to:

Timothy M. Kotroco, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryoand 21204

and was forwarded via email to:

Timothy M. Kotroco, Esquire at: Tkotroco@gmail.com and to

Peter Max Zimmerman, Esquire at Peoplescounsel@baltimorecountymd.gov

Nancy A Cohen

Nancy A. Cohen

IN THE MATTER OF	*	BEFORE THE
CORINNE & ADAM JANET (3417 GARRISON FARMS ROAD) 3rd ELECTION DISTRICT 2nd COUNCILMAN DISTRICT *LEGAL OWNERS*	*	BOARD OF APPEALS FOR BALTIMORE COUNTY
PETITIONERS	*	Case No. 2017-339-A

* * * * * * * * * * *

ORDER

Upon consideration of Petitioners' Motion to Dismiss Appeal and Respondent's Response thereto, it is this _____ day of _____, 2017, by the Board of Appeals for Baltimore County;

ORDERED, that Petitioners' Motion to Dismiss Appeal be denied and;

ORDERED, that Petitioners not be entitled to participate in Respondent's Appeal as a result of their failure to file a timely Response to Respondent's Appeal as provided by the Maryland Rules.

_____
JUDGE

_____
JUDGE

_____
JUDGE

Copies to:

Nancy A. Cohen
201 N. Charles Street
Suite 1504
Baltimore, MD 21201

Timothy M. Kotroco, Esquire
305 Washington Avenue
Suite 502
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryoand 21204

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(3417 Garrison Farms Road)		
3rd Election District	*	OF ADMINISTRATIVE
2nd Council District		
Corinne & Adam Janet	*	HEARINGS FOR
Legal Owners		
	*	BALTIMORE COUNTY
Petitioners		
	*	**CASE NO. 2017-0339-A**

* * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Corinne and Adam Janet, owners of the subject property ("Petitioners"). Petitioners are requesting variance relief from § 1B02.3.B of the Baltimore County Zoning Regulations ("B.C.Z.R") as follows: (1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and (2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback. A site plan was marked as Petitioners' Exhibit 1.

Corinne & Adam Janet appeared in support of the Petition. Timothy M. Kotroco, Esq. represented the Petitioners. A neighbor (Nancy Cohen) opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not oppose the request.

A variance request involves a two-step process, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Richard Matz, a professional engineer accepted as an expert, testified that there is a grade change in the rear of Petitioners' property, and he also noted that each home and lot in this community was in some sense unique in terms of size, shape and configuration of the dwelling. I believe this testimony is sufficient to establish the "special circumstances" required under B.C.Z.R. §307 and the case law interpreting that section. *See* Baltimore County Board of Appeals Case # 2017-0122-SPHA (granting variance due to unique shape of lot). If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the proposed improvements. Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety and general welfare.

Ms. Cohen stated the garage was already enclosed and that Petitioners did not secure the needed permits for the construction. That fact causes me some concern, but such issues cannot be resolved or addressed in a zoning hearing. Instead, it is the Director of Permits, Approvals and Inspections who is authorized by the County Code to issue stop-work orders and impose civil penalties in cases where a resident was found to have violated the County's codes or regulations.

Ms. Cohen also expressed concern with the loss of her view across Petitioners' property and down the street, which she believes would be obstructed by the garage. While I can appreciate that concern, an adjoining owner has no legal right to an unobstructed view across his/her neighbor's property, a point frequently litigated in waterfront settings. Petitioners would be entitled to construct a fence or a vegetative buffer along the common property boundary, which would also block or at least impair the neighbor's view.

Finally, no evidence was presented which would rebut the expert testimony regarding the

uniqueness of the site or the special circumstances faced by Petitioners. There was some discussion concerning whether or not other owners in the neighborhood sought and were granted variances in connection with improvements to their property. Upon further research I determined that variances were granted to five other owners along Garrison Farms Road and the contiguous cul-de-sac. See Case Nos. 2008-0171-A; 2008-0277-A; 1970-0182-A; 2007-0490-A and 1989-0551-A.

THEREFORE, IT IS ORDERED, this **7th** day of **August, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance: (1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and (2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

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:sln

nistrative Hearings
apeake Avenue, Suite 103
ling
land, 21204

Hasler
06/08/2017
USPOSTAGE

EXHIBIT
DOCKET B1

Return

Nancy Cohen
3415 Garrison Farms Road
Baltimore, Maryland 21208

Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Jefferson Building
Towson, Maryland, 21204

Hasler
06/06/2017
FIRST-CLASS MAIL
AUTO
US POSTAGE $000.37[3]
ZIP 21204
011D13603654

Return Service Requested

Nancy Cohen
3415 Garrison Farms Road
Baltimore, Maryland 21208

EXHIBIT
B2

GLH-SSB 21208

AFFIDAVIT OF NANCY A. COHEN

The undersigned hereby states as follows:

On September 6, 2017 I attempted to hand deliver to the Office of Administrative Hearings a Motion that I had prepared entitled "Respondent's Motion For Reconsideration of Opinion and Order dated August 7, 2017". When I arrived at the door to the office of Administrative Hearings during business hours at approximately 4:23 p.m., when the office should have been opened, I found the door locked. I was able to see inside the office and saw that the lights were turned off. I attempted to knock on the door to the office thinking that an employee was in a back office however I did not see anyone in the office and no one came to the door in response to my knocking. I knew that the office should have been open until 4:30 p.m. I checked the time on my iPhone and confirmed that it was not yet 4:30 p.m. I stayed in front of the door to the office hoping that someone would return to open the door but that did not happen. I left the office and took my Motion with me not knowing what else to do.

The following day, September 7, 2017, I returned to the office of Administrative Hearings, where I had been the day before, entered the office and filed my Motion. After filing the Motion I approached Ms. Sherry Nuffer, the Legal Assistant to the Office of Administrative Hearings and advised her that I had attempted to file my Motion the day before, September 6, 2017 during business hours but at the end of the day and found the office closed. Ms. Nuffer stated that she needed to leave the office early on September 6, 2017 and that she because she was the only employee in the office that afternoon she closed the office a little early locking the front door. I explained that arguably, my motion should have been filed on September 6th and that I was concerned about the filing deadline. Ms. Nuffer assured me that she would notify Judge Beverungen of the fact that she left the office early on September 6th and that because she closed the office early, I was unable to file my Motion on that date. Ms. Nuffer stated that she would also let the Judge know of my concern that arguable the Motion

should have been filed on September 6, 2017 and that this was concerning to me. Ms. Nuffer instructed me to call her office later that afternoon and she would advise me of the Judge's response.

After I returned to my office on September 7th, I phoned Ms. Nuffer as instructed and was told by her that she had in fact relayed to Judge Beverungen all of the information that had been discussed and that he stated that he would ignore stamped filing date, accept the Motion and rule on it.

I do solemnly affirm under the penalties of perjury and upon personal knowledge that the matters and facts set forth herein are true.

12/03/17
Date

Nancy A. Cohen
Nancy A. Cohen
201 N. Charles Street, Ste. 1504
Baltimore, MD 21201
410-625-2268

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corinne & Adam Janet *Legal Owners* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2017-0339-A**

* * * * * * *

OPINION AND ORDER ON MOTION FOR RECONSIDERATION

Now pending is a Motion for Reconsideration filed by Nancy Cohen ("Respondent"). Respondent argues Petitioners failed to satisfy the requirements for variance relief and requests that the petition be denied.

It is true, as Respondent argues, variances should be granted "sparingly." Even so, the Baltimore County Board of Appeals has in several recent cases granted variance relief in *de novo* appeals from the Office of Administrative Hearings (OAH) wherein the petition was originally denied. *See, e.g.*, CBA-16-109-A & CBA-16-038-A. And, if Respondent's argument was adopted no property owner residing in a single family dwelling would ever be able to obtain a variance to enlarge her home or construct an accessory building on the lot, since the property was already being put to a use "for which it was intended." Motion, p. 4.

Respondent cites *Montgomery Co. v. Rotwein* in support of her argument. While the petition for variance was denied in that case, a pivotal factor in the court's ruling was that the owner could construct the proposed garage on another portion of the lot without needing a variance. The same is not true in this case wherein existing site conditions and improvements dictate that zoning relief would be required to expand the dwelling.

In summary, a motion for reconsideration serves a limited function in quasi-judicial

hearings. While the Motion certainly elaborates upon the arguments Respondent made at the hearing, it does not present any new or additional facts. In *Calvert County v. Howlin Realty, Inc.*, 364 Md. 301 (2001), the court held that an agency (like the OAH) "may reconsider an action previously taken and come to a different conclusion upon a showing that ... some new or different factual situation exists that justifies the different conclusion." In this case, I do not believe the Respondent has identified "some new or different factual situation." *Id.* at 325. As such, the motion will be denied.

WHEREFORE, for the foregoing reasons it is, this **18th** day of **September, 2017**, by the Administrative Law Judge for Baltimore County, ordered that the Motion for Reconsideration be and is hereby DENIED.

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:sln

Nancy A. Cohen
3415 Garrison Farms Road
Baltimore, MD 21208

October 17, 2017

Office of Administrative Hearings
105 West Chesapeake Avenue, Ste. 103
Towson, Maryland 21204

Re: Case No. 2017-0339-A
Property: 3417 Garrison Farms Road
Owners: Corinne & Adam Janet
Appellant: Nancy A. Cohen

Dear Sir/Madam:

This letter is to notify you that I wish to appeal the September 18, 2017 decision of the Administrative Law Judge in which Judge Beverungen denied my Motion for Reconsideration of his Opinion and Order dated August 7, 2017.

I was asked to state the reasons for my requested appeal. Briefly stated, I live next door to the subject property and my property line is extremely close to the Janet's carport and the side of their home. The Janet's were granted their requested variance against my objection, which now permits their carport to be converted into a garage, permits the extension of their garage closer to the street and permits an extension of the side of their house closer to our property line. These improvements to the Janet property will not only make me and my husband feel closed in because the improvement they requested are so close to our home, it is my belief that because the improvements are so close to our property, they will cause a decrease in our property value. And for other reasons, I object to the granting of the variance in this matter.

Thank you for your kind attention.

Very truly yours,

Nancy A Cohen

NANCY A. COHEN

NAC/ab
Enclosure
AppealRequest3417GarrisonFarmsRoad

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

November 27, 2017

EXHIBIT F

AMENDED NOTICE OF ASSIGNMENT
ARGUMENT ONLY ON MOTION TO DISMISS

IN THE MATTER OF: Corinne and Adam Janet
3417 Garrison Farms Road
17-339-A 3rd Election District; 2nd Councilmanic District

Re: Petition for Variance relief pursuant to § 1B02.3.B of the BCZR as follows:
1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and
2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback; and
3) for such other and further relief as the nature of the case may require.

8/7/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was GRANTED.

9/18/17 Opinion and Order on Motion for Reconsideration issued by the Administrative Law Judge wherein the Motion was DENIED.

Having received a Motion to Dismiss from Petitioner's Counsel, Timothy Kotroco, Esquire, on November 22, 2017, the de novo hearing on the merits has been changed to argument only on the Motion to Dismiss. The date and time will remain as

ASSIGNED ON: **December 5, 2017, AT 10:00 a.m.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

West's Annotated Code of Maryland
Maryland Rules
Title 1. General Provisions
Chapter 200. Construction, Interpretation, and Definitions

MD Rules, Rule 1-203

RULE 1-203. TIME

Currentness

(a) Computation of Time After an Act, Event, or Default. In computing any period of time prescribed by these rules, by rule or order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. If the period of time allowed is more than seven days, intermediate Saturdays, Sundays, and holidays are counted; but if the period of time allowed is seven days or less, intermediate Saturdays, Sundays, and holidays are not counted. The last day of the period so computed is included unless:

(1) it is a Saturday, Sunday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or holiday; or

(2) the act to be done is the filing of a paper in court and the office of the clerk of that court on the last day of the period is not open, or is closed for a part of the day, in which event the period runs until the end of the next day that is not a Saturday, Sunday, holiday, or a day on which the office is not open during its regular hours.

Committee note: This section supersedes Code, General Provisions Article, § 1-302 to the extent of any inconsistency.

Cross reference: For the definition of "holiday," see Rule 1-202.

(b) Computation of Time Before a Day, Act, or Event. In determining the latest day for performance of an act which is required by these rules, by rule or order of court, or by any applicable statute, to be performed a prescribed number of days before a certain day, act, or event, all days prior thereto, including intervening Saturdays, Sundays, and holidays, are counted in the number of days so prescribed. The latest day is included in the determination unless it is a Saturday, Sunday, or holiday, in which event the latest day is the first preceding day which is not a Saturday, Sunday, or holiday.

(c) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, three days shall be added to the prescribed period.

(d) Extension of Time Requirements Upon the Death of a Party. Upon the death of a party, all time requirements under these rules applicable to that party shall be extended automatically from the date of death to the earlier of (1) 60 days after the date of death or (2) 15 days from the issuance of letters of administration by a court of competent jurisdiction. Before or after the expiration of an extension period under this section and upon a showing of good cause why a proper substitution was not made or could not have been made prior to the expiration of the extension and that a further

extension will not unfairly prejudice the rights of any other party, the court may extend the time requirements applicable to the deceased party for an additional period commencing upon the expiration of the extension.

Cross reference: Rule 1-321.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 8 a.

Section (b) is derived from former Rule 8 b.

Section (c) is new and is derived from the 1971 version of Fed. R. Civ. P. 6 (e).

Section (d) is new.

Credits

[Adopted April 6, 1984, eff. July 1, 1984. Amended June 28, 1988, eff. July 1, 1988; July 16, 1992; Dec. 10, 1996, eff. Jan. 1, 1997; April 8, 1997, eff. July 1, 1997; May 9, 2000, eff. July 1, 2000; Nov. 12, 2003, eff. Jan. 1, 2004; March 2, 2015, eff. July 1, 2015.]

Notes of Decisions (17)

MD Rules, Rule 1-203, MD R GEN Rule 1-203
Current with amendments received through September 1, 2017

End of Document

§ 1-2-203. - COMPUTATION OF TIME.

A period of time shall be calculated as described in Rule 1-203 of the Maryland Rules.

(1988 Code, § 1-2) (Bill No. 93-98, § 2, 7-1-2004; Bill No. 70-03, § 2, 7-1-2004)

RULE 4-252. MOTIONS IN CIRCUIT COURT
West's Annotated Code of Maryland
Maryland Rules

West's Annotated Code of Maryland
Maryland Rules
Title 4. Criminal Causes
Chapter 200. Pretrial Procedures (Refs & Annos)

MD Rules, Rule 4-252

RULE 4-252. MOTIONS IN CIRCUIT COURT

Currentness

(a) Mandatory Motions. In the circuit court, the following matters shall be raised by motion in conformity with this Rule and raised are waived unless the court, for good cause shown, orders otherwise:

(1) A defect in the institution of the prosecution;

(2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense

(3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;

(4) An unlawfully obtained admission, statement, or confession; and

(5) A request for joint or separate trial of defendants or offenses.

(b) Time for Filing Mandatory Motions. A motion under section (a) of this Rule shall be filed within 30 days after the earlie appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213(c), except when dis discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.

(c) Motion to Transfer to Juvenile Court. A request to transfer an action to juvenile court pursuant to Code, Criminal Proc Article, § 4-202 shall be made by separate motion entitled "Motion to Transfer to Juvenile Court." The motion shall be filed w days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rul 213(c) and, if not so made, is waived unless the court, for good cause shown, orders otherwise.

Cross reference: For notification of victims of their right to file a victim impact statement in transfers of actions to juvenile c Code, Criminal Procedure Article, § 11-402(c).

(d) Other Motions. A motion asserting failure of the charging document to show jurisdiction in the court or to charge an offe be raised and determined at any time. Any other defense, objection, or request capable of determination before trial without the general issue, shall be raised by motion filed at any time before trial.

(e) Content. A motion filed pursuant to this Rule shall be in writing unless the court otherwise directs, shall state the ground which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for prob cause must be supported by precise and specific factual averments. Every motion shall contain or be accompanied by a sta points and citation of authorities.

(f) Response. A response, if made, shall be filed within 15 days after service of the motion and contain or be accompanied statement of points and citation of authorities.

(g) Determination.

(1) *Generally.* Motions filed pursuant to this Rule shall be determined before trial and, to the extent practicable, before the d except that the court may defer until after trial its determination of a motion to dismiss for failure to obtain a speedy trial. If fa

issues are involved in determining motion, the court shall state its findings or record.

(2) *Motions Concerning Transfer of Jurisdiction to the Juvenile Court.* A motion to transfer jurisdiction of an action to the juve court shall be determined within 10 days after the hearing on the motion.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer c case to the juvenile court.

(h) Effect of Determination of Certain Motions.

(1) *Defect in Prosecution or Charging Document.* If the court grants a motion based on a defect in the institution of the prose in the charging document, it shall order the defendant released on personal recognizance unless the crime charged is a crin violence as defined in Code, Criminal Law Article, § 14-101, in which case the court may release the defendant on any term conditions that the court considers appropriate or may order that the defendant be remanded to custody for a specific time p to exceed ten days pending the filing of a new charging document.

(2) *Suppression of Evidence.*

(A) If the court grants a motion to suppress evidence, the evidence shall not be offered by the State at trial, except that su evidence may be used in accordance with law for impeachment purposes. The court may not reconsider its grant of a mol suppress evidence unless before trial the State files a motion for reconsideration based on (i) newly discovered evidence could not have been discovered by due diligence in time to present it to the court before the court's ruling on the motion tc suppress evidence, (ii) an error of law made by the court in granting the motion to suppress evidence, or (iii) a change in l court may hold a hearing on the motion to reconsider. Hearings held before trial shall, whenever practicable, be held befoi judge who granted the motion to suppress. If the court reverses or modifies its grant of a motion to suppress, the judge sh prepare and file or dictate into the record a statement of the reasons for the action taken.

(B) If the State appeals a decision of the trial court granting a motion to suppress evidence in a case in which the defenda charged with a crime of violence as defined in Code, Criminal Law Article, § 14-101, the court may release the defendant terms and conditions that the court considers appropriate or may order the defendant remanded to custody pending the o of the appeal.

(C) If the court denies a motion to suppress evidence, the ruling is binding at the trial unless the court, on the motion of a defendant and in the exercise of its discretion, grants a supplemental hearing or a hearing de novo and rules otherwise. A ruling denying the motion to suppress is reviewable on a motion for a new trial or on appeal of a conviction.

(3) *Transfer of Jurisdiction to Juvenile Court.* If the court grants a motion to transfer jurisdiction of an action to the juvenile cc court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and proc of the juvenile court. In its order the court shall (A) release or continue the pretrial release of the defendant, subject to appro conditions reasonably necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant detention or shelter care pursuant to Code, Courts Article, § 3-8A-15. Until a juvenile petition is filed, the charging document have the effect of a juvenile petition for the purpose of imposition and enforcement of conditions of release or placement of t defendant in detention or shelter care.

Cross reference: Code, Criminal Procedure Article, § 4-202.

Committee note: Subsections (a)(1) and (2) include, but are not limited to allegations of improper selection and organizatio grand jury, disqualification of an individual grand juror, unauthorized presence of persons in the grand jury room, and other irregularities in the grand jury proceedings. Section (a) does not include such matters as former jeopardy, former conviction, acquittal, statute of limitations, immunity, and the failure of the charging document to state an offense.

Source: This Rule is derived from former Rule 736.

Credits

[Adopted April 6, 1984, eff. July 1, 1984. Amended eff. Dec. 21, 1988; Sept. 11, 1995, eff. Jan. 1, 1996; June 8, 1998, eff. O 1998; Nov. 1, 2001, eff. Jan. 1, 2002; Jan. 8, 2002, eff. Feb. 1, 2002; April 5, 2005, eff. July 1, 2005; June 16, 2009, eff. Jun 2009; Sept. 10, 2009, eff. Oct. 1, 2009; Dec. 7, 2015, eff. Jan. 1, 2016.]

Editors' Notes

HISTORICAL NOTES

2001 Orders

The November 1, 2001, order, in subsec. (h)(2)(A), in the fifth sentence, inserted "and file".

Sec. 603. Rules of pr :e and procedure.

Subject to the approval of the county council, the county board of appeals shall have authority to adopt and amend rules of practice and procedure to cover the conduct of its proceedings.[2] Such rules may include matters relating to filing fees, meetings and hearings conducted by the board, the manner in which the chairman of the board shall be selected and the term for which he shall serve as chairman, and all other matters deemed appropriate or necessary for the board to conduct its proceedings. Said rules and regulations when approved by the county council shall have the force and effect of law. All decisions of the county board of appeals shall be made after notice and opportunity of hearing upon the issues before said board. All hearings held by the board shall be heard de novo, unless otherwise provided by legislative act of the County Council, and shall be open to the public. The board shall cause to be maintained complete public records of its proceedings, with a suitable index.

(c) *Appeals from orders relating to building.* The county board of appeals shall hear and decide all appeals from orders relating to building.

(d) *Appeals from executive, administrative and adjudicatory orders.* The county board of appeals shall hear and decide appeals from all other administrative and adjudicatory orders as may from time to time be provided by Article 25A of the Annotated Code of Maryland (1957 Edition), as amended, or by legislative act of the county council not inconsistent therewith.

(e) The county board of appeals shall have original and exclusive jurisdiction over all petitions for reclassification.

Sec. 603. Rules of practice and procedure.

Subject to the approval of the county council, the county board of appeals shall have authority to adopt and amend rules of practice and procedure to cover the conduct of its proceedings.[2] Such rules may include matters relating to filing fees, meetings and hearings conducted by the board, the manner in which the chairman of the board shall be selected and the term for which he shall serve as chairman, and all other matters deemed appropriate or necessary for the board to conduct its proceedings. Said rules and regulations when approved by the county council shall have the force and effect of law. All decisions of the county board of appeals shall be made after notice and opportunity of hearing upon the issues before said board. All hearings held by the board shall be heard de novo, unless otherwise provided by legislative act of the County Council, and shall be open to the public. The board shall cause to be maintained complete public records of its proceedings, with a suitable index.

Sec. 604. Appeals from decisions of the board.

Within thirty days after any decision by the county board of appeals is rendered, any party to the proceeding who is aggrieved thereby may appeal such decision to the circuit court of Baltimore County, which shall have power to affirm the decision of the board, or, if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing, as justice may require. Whenever such appeal is taken, a copy of the notice of appeal shall be served on the board by the clerk of said court, and the board shall promptly give notice of the appeal to all parties to the proceeding before it. The board shall, within fifteen days after the filing of the appeal, file with the court the originals or certified copies of papers and evidence presented to the board in the proceeding before it, together with a copy of its opinion which shall include a statement of the facts found and the grounds for its decision. Within thirty days after the decision of the circuit court is rendered, any party to the proceeding who is aggrieved thereby may appeal such decision to the court of appeals of this state. The review proceedings provided by this section shall be exclusive.

[2]**Editor's Note: See Appendix H of this volume.**

RULE 7-203. TIME FOR FILING ACTION
West's Annotated Code of Maryland
Maryland Rules

West's Annotated Code of Maryland
Maryland Rules
Title 7. Appellate and Other Judicial Review in Circuit Court
Chapter 200. Judicial Review of Administrative Agency Decisions

MD Rules, Rule 7-203

RULE 7-203. TIME FOR FILING ACTION

Currentness

(a) Generally. Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 da the latest of:

(1) the date of the order or action of which review is sought;

(2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be s the petitioner; or

Cross reference: See Code, Labor and Employment Article, § 9-726 governing judicial review of a decision of the Workers' Compensation Commission in a case in which a rehearing request has been filed.

(3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. If one party files a timely petition, any other person may file a petition within ten days after the a agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

Committee note: The provisions of former Rule B4 concerning the shortening and extending of time are not carried forwarc time for initiating an action for judicial review is in the nature of a statute of limitations, which must be specifically raised eith preliminary motion under Rule 7-204 or in the answering memorandum filed pursuant to Rule 7-207.

Source: This Rule is derived from former Rule B4.

Credits

[Adopted March 30, 1993, eff. July 1, 1993. Amended Oct. 31, 2002, eff. Jan. 1, 2003.]

Editors' Notes

HISTORICAL NOTES

2002 Orders
The October 31, 2002, order added the cross reference following subsec. (a)(2).

Derivation:
Maryland Rule of Procedure B4, adopted Sept. 15, 1961, eff. Jan. 1, 1962, amended eff. July 1, 1974, related to time for filir appeals, rescinded March 30, 1993, eff. July 1, 1993.

MD Rules, Rule 7-203, MD R CIR CT Rule 7-203
Current with amendments received through September 1, 2017

END OF DOCUMENT

Krysundra Cannington

From: Nancy Cohen <nancyacohen27@yahoo.com>
Sent: Friday, December 01, 2017 3:32 PM
To: Krysundra Cannington
Subject: Re: Corinne and Adam Janet 17-339-A

Thank you.
I received it yesterday late.

Nancy A. Cohen
410-625-2268 (phone)
410-625-2269 (fax)
NancyACohen27@yahoo.com

On Friday, December 1, 2017, 11:39:40 AM EST, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Hello Ms. Cohen,

We received your voicemail message indicating that you did not receive the Assignment Notice. Attached please find a pdf copy of the original Assignment Notice dated October 27, 2017 and a pdf copy of the Amended Assignment Notice changing the hearing from a de novo hearing to Argument Only on the Motion to Dismiss, dated November 27, 2017. Both were mailed to the address we have on file for you.

I kindly ask that you contact us as soon as possible to confirm your mailing address for future correspondence.

Should you have any questions, or problems retrieving the attachments, please do not hesitate to contact me.

Thank you,

Sunny

12/1/17 4:00 p.m.
Nancy Cohen (410) 625-2268
- address is correct (Rec'd Amended assignment)
Will file Answer to Motion to Dismiss Monday Dec. 4 which is w/in time.
FYI - Mtn filed 11/20 before Thanksgiving. She was out-of-town and rec'd 11/27.

Krysundra Cannington

From: Krysundra Cannington
Sent: Friday, December 01, 2017 11:40 AM
To: 'nancyacohen27@yahoo.com'
Cc: tkotroco@gmail.com; Peoples Counsel
Subject: Corinne and Adam Janet 17-339-A
Attachments: Assignment Notice.pdf; Amended Assignment Notice - Argument only on Motion to Dismiss.pdf

Hello Ms. Cohen,

We received your voicemail message indicating that you did not receive the Assignment Notice. Attached please find a pdf copy of the original Assignment Notice dated October 27, 2017 and a pdf copy of the Amended Assignment Notice changing the hearing from a de novo hearing to Argument Only on the Motion to Dismiss, dated November 27, 2017. Both were mailed to the address we have on file for you.

I kindly ask that you contact us as soon as possible to confirm your mailing address for future correspondence.

Should you have any questions, or problems retrieving the attachments, please do not hesitate to contact me.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

17-339-a

Nancy Cohen
410-625-2268
NancyACohen27@yahoo.com
fax 410-625-2269

She did not receive copy of the Assignment Notice - can you e-mail or fax?

December 5th - Will it be argument only on the Motion to Dismiss? De Novo hearing another day?

12/1/17 11:25am LM
Want to confirm mailing address.

11/30/17
3:40 p.m.

Baltimore County, Marylana
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

November 30, 2017

HAND DELIVERED
Andrew Belt, Chairman
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Corrine and Adam Janet
3417 Garrison Farms Road
Case No.: 2017-339-A

Dear Chairman Belt,

Our office's charter responsibility to defend the comprehensive zoning maps in the public interest encompasses an interest in procedural correctness, fairness, and the opportunity for parties to participate within the scope of the law.

Petitioner has filed a motion to dismiss Protestant's appeal on the basis that the motion for reconsideration filed below at the ALJ level was stamped 31 days after the initial decision and thus beyond the 30-day filing period. Assuming this time frame to be accurate, we note nevertheless the general rule that 3 additional days are allowed where the notification is by mail.

Maryland Rule 1-203(c) has included this provision for many years. The Baltimore County Code has incorporated it under the aegis of "Computation of Time" in Section 1-2-203. These are enclosed. Unless there is some other provision to the contrary, it appears that Protestant's motion was timely filed. It is noteworthy that Administrative Law Judge John Beverungen did not indicate any problem with the filing. Moreover, given that this is a *de novo* appeal, filed within 30 days of the final ALJ decision, the case starts anew.

This letter constitutes our position. We do not see any need to comment further at oral argument and thus submit on the record.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Timothy Kotroco, Attorney for Petitioners
Nancy A. Cohen, Appellant

West's Annotated Code of Maryland
Maryland Rules
Title 1. General Provisions
Chapter 200. Construction, Interpretation, and Definitions

MD Rules, Rule 1-203

RULE 1-203. TIME

Currentness

(a) Computation of Time After an Act, Event, or Default. In computing any period of time prescribed by these rules, by rule or order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. If the period of time allowed is more than seven days, intermediate Saturdays, Sundays, and holidays are counted; but if the period of time allowed is seven days or less, intermediate Saturdays, Sundays, and holidays are not counted. The last day of the period so computed is included unless:

(1) it is a Saturday, Sunday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or holiday; or

(2) the act to be done is the filing of a paper in court and the office of the clerk of that court on the last day of the period is not open, or is closed for a part of the day, in which event the period runs until the end of the next day that is not a Saturday, Sunday, holiday, or a day on which the office is not open during its regular hours.

Committee note: This section supersedes Code, General Provisions Article, § 1-302 to the extent of any inconsistency.

Cross reference: For the definition of "holiday," see Rule 1-202.

(b) Computation of Time Before a Day, Act, or Event. In determining the latest day for performance of an act which is required by these rules, by rule or order of court, or by any applicable statute, to be performed a prescribed number of days before a certain day, act, or event, all days prior thereto, including intervening Saturdays, Sundays, and holidays, are counted in the number of days so prescribed. The latest day is included in the determination unless it is a Saturday, Sunday, or holiday, in which event the latest day is the first preceding day which is not a Saturday, Sunday, or holiday.

(c) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, three days shall be added to the prescribed period.

(d) Extension of Time Requirements Upon the Death of a Party. Upon the death of a party, all time requirements under these rules applicable to that party shall be extended automatically from the date of death to the earlier of (1) 60 days after the date of death or (2) 15 days from the issuance of letters of administration by a court of competent jurisdiction. Before or after the expiration of an extension period under this section and upon a showing of good cause why a proper substitution was not made or could not have been made prior to the expiration of the extension and that a further

extension will not unfairly prejudice the rights of any other party, the court may extend the time requirements applicable to the deceased party for an additional period commencing upon the expiration of the extension.

Cross reference: Rule 1-321.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 8 a.

Section (b) is derived from former Rule 8 b.

Section (c) is new and is derived from the 1971 version of Fed. R. Civ. P. 6 (e).

Section (d) is new.

Credits

[Adopted April 6, 1984, eff. July 1, 1984. Amended June 28, 1988, eff. July 1, 1988; July 16, 1992; Dec. 10, 1996, eff. Jan. 1, 1997; April 8, 1997, eff. July 1, 1997; May 9, 2000, eff. July 1, 2000; Nov. 12, 2003, eff. Jan. 1, 2004; March 2, 2015, eff. July 1, 2015.]

Notes of Decisions (17)

MD Rules, Rule 1-203, MD R GEN Rule 1-203
Current with amendments received through September 1, 2017

End of Document

§ 1-2-203. - COMPUTATION OF TIME.

A period of time shall be calculated as described in Rule 1-203 of the Maryland Rules.

(1988 Code, § 1-2) (Bill No. 93-98, § 2, 7-1-2004; Bill No. 70-03, § 2, 7-1-2004)

TIMOTHY M. KOTROCO

Attorney at Law
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

November 20, 2017

The Honorable Maureen Murphy, Chair
Board of Appeals for Baltimore County
Jefferson Building, Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204
Attention: Krysundra "Sunny" Cannington, Administrator

Re: In the Matter of: Corinne and Adam Janet, Case No. 2017-339-A
Motion to Dismiss Appeal

Dear Ms. Cannington,

Please find for filing my Motion to Dismiss the above referenced Appeal. Please process accordingly.

Very truly yours,

Timothy M. Kotroco

TMK/eak
Copy to: Nancy Cohen 3415 Garrison Farms Road, Baltimore, Maryland 21208
People's Counsel for Baltimore County

IN THE MATTER OF:	*	BEFORE THE
CORINNE & ADAM JANET 3417 GARRISON FARMS ROAD	*	BOARD OF APPEALS
	*	FOR
3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	•	Case No. 2017-339-A

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

MOTION TO DISMISS APPEAL

The petitioners, Corinne and Adam Janet, by and through their undersigned Counsel, move to dismiss the Appeal filed in this case by Mrs. Nancy Cohen and in support hereof, state the following:

1. This matter came on for a hearing before the Honorable John E. Beverungen, Administrative Law Judge on the 1st day of August, 2017 at 10am. The petitioners, Adam and Corinne Janet, having just purchased this property are seeking to enclose the old existing carport, converting it into a garage. They also seek to convert a sunroom into a mudroom for their family. The conversion triggers the requested variances. After a hearing was held, the requested variances were granted by Judge Beverungen by Order dated the 7th day of August, 2017. (Copy of Judge Beverungen's decision is attached at Exhibit A)

2. Thereafter, on the 7th day of September, thirty-one (31) days after the issuance of Judge Beverungen's decision, the protestant, Mrs. Cohen filed her Motion for Reconsideration with the Office of Administrative Hearings. Mrs. Cohen's Motion for Reconsideration is attached as Exhibit B. It contains an official date stamp from the Office of Administrative Hearings evidencing the fact that the Motion was filed on

September 7, 2017, thirty-one (31) days after Judge Beverungen's decision. (See attached Exhibit B)

3. Before the undersigned had an opportunity to respond to the defective Motion for Reconsideration filed with the Office of Administrative Hearings, Judge Beverungen denied Mrs. Cohen's Motion on substantive grounds, never ruling upon the lateness of the filing. (See attached copy of Order marked as Exhibit C)

4. Rule 4K of the Rules of Practice and Procedure Before the Zoning Commissioner/Hearing Officer for Baltimore County, specifically mandates that a Motion for Reconsideration must be filed within thirty (30) days from the date of the original Order. Having filed her Motion on the 31st day, Mrs. Cohen failed to satisfy this requirement.

5. This Appeal before the Board of Appeals is based upon the denial of the Motion for Reconsideration which was defectively filed. Accordingly, this Appeal before the Board is also defective and must be dismissed.

6. Therefore, for the foregoing reasons and based upon the documentation attached hereto, it is respectfully requested that the Appeal filed in this matter be dismissed.

Respectfully Submitted,

Timothy M. Kotroco, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 20th day of November, 2017, a copy of the foregoing Motion to Dismiss was mailed first class, postage prepaid to Nancy Cohen, 3415 Garrison Farms Road, Baltimore, Maryland 21208 and the Office of People's Counsel for Baltimore County.

Timothy Kotroco

Timothy M. Kotroco, Esquire

IN THE MATTER OF:	*	BEFORE THE
CORINNE & ADAM JANET 3417 GARRISON FARMS ROAD	*	BOARD OF APPEALS
	*	FOR
3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	•	Case No. 2017-339-A

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

ORDER

Upon consideration of the Motion to Dismiss filed by Counsel for the Applicants, Corinne and Adam Janet, it is this _____ day of _____, 2017, by the Board of Appeals for Baltimore County;

ORDERED, that the Motion to Dismiss is Granted and the Appeal filed in this case be and is hereby dismissed.

_____
Judge

_____
Judge

_____
Judge

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

August 7, 2017

EXHIBIT
tabbies
A

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: Petition for Variance
Case No. 2017-0339-A
Property: Garrison Farms Road

Dear Mr. Kotroco:

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 Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Nancy Cohen, 3415 Garrison Farms Road, Baltimore, Maryland 21208

8-1-11

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road)	*	BEFORE THE OFFICE
3rd Election District	*	OF ADMINISTRATIVE
2nd Council District		
Corinne & Adam Janet *Legal Owners*	*	HEARINGS FOR
	*	BALTIMORE COUNTY
Petitioners		
	*	**CASE NO. 2017-0339-A**

* * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Corinne and Adam Janet, owners of the subject property ("Petitioners"). Petitioners are requesting variance relief from § 1B02.3.B of the Baltimore County Zoning Regulations ("B.C.Z.R") as follows: (1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and (2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback. A site plan was marked as Petitioners' Exhibit 1.

Corinne & Adam Janet appeared in support of the Petition. Timothy M. Kotroco, Esq. represented the Petitioners. A neighbor (Nancy Cohen) opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not oppose the request.

A variance request involves a two-step process, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Richard Matz, a professional engineer accepted as an expert, testified that there is a grade change in the rear of Petitioners' property, and he also noted that each home and lot in this community was in some sense unique in terms of size, shape and configuration of the dwelling. I believe this testimony is sufficient to establish the "special circumstances" required under B.C.Z.R. §307 and the case law interpreting that section. *See* Baltimore County Board of Appeals Case # 2017-0122-SPHA (granting variance due to unique shape of lot). If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the proposed improvements. Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety and general welfare.

Ms. Cohen stated the garage was already enclosed and that Petitioners did not secure the needed permits for the construction. That fact causes me some concern, but such issues cannot be resolved or addressed in a zoning hearing. Instead, it is the Director of Permits, Approvals and Inspections who is authorized by the County Code to issue stop-work orders and impose civil penalties in cases where a resident was found to have violated the County's codes or regulations.

Ms. Cohen also expressed concern with the loss of her view across Petitioners' property and down the street, which she believes would be obstructed by the garage. While I can appreciate that concern, an adjoining owner has no legal right to an unobstructed view across his/her neighbor's property, a point frequently litigated in waterfront settings. Petitioners would be entitled to construct a fence or a vegetative buffer along the common property boundary, which would also block or at least impair the neighbor's view.

Finally, no evidence was presented which would rebut the expert testimony regarding the

uniqueness of the site or the special circumstances faced by Petitioners. There was some discussion concerning whether or not other owners in the neighborhood sought and were granted variances in connection with improvements to their property. Upon further research I determined that variances were granted to five other owners along Garrison Farms Road and the contiguous cul-de-sac. See Case Nos. 2008-0171-A; 2008-0277-A; 1970-0182-A; 2007-0490-A and 1989-0551-A.

THEREFORE, IT IS ORDERED, this **7th** day of **August, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance: (1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and (2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

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:sln

IN RE: PETITION FO[illegible]ARIANCE * BE[illegible]E THE OFFICE OF
(3417 Garrison Farms Road)
3rd Election District * ADMINISTRATIVE HEARINGS
2nd Council District
Corrine & Adam Janet * FOR BALTIMORE COUNTY
Legal Owners
Petitioners * **CASE NO. 2017-0339-A**

RESPONDENT'S MOTION FOR RECONSIDERATION OF OPINION AND ORDER DATED AUGUST 7, 2017

Respondent, Nancy A. Cohen, respectfully requests that this Court reconsider it's opinion and Order dated August 7, 2017 under Rule 10 of the Baltimore County Code on the grounds of error of law and newly discovered evidence and for reasons state as follow

1. Petitioners requested variance relief from Section 1B02.3.B of the Baltimor County Zoning Regulations, (B.C.Z.R.) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback and to permit a 7 ft. side yard setback in lieu of the requiared 15 ft. setback. The Petioners state that their reason for requesting a variance is; to permit them to change an existing carport into a garage, to allow for an extention of the length of the proposed garage so that when completed it would be longer and larger then the existing carport, to permit the garage to be closer to the street then is the existing carport, to add a mudroom to their home and to extend the width of their kitchen the results of which would cause the existing property to extend closer to their side property line then permitted.

2. The Commission's Order states that a variance request involves a two step process in which the Petitioner must first establish that their property is "unique" in a manner which makes it unlike surrounding properties and that this "uniqueness" or peculiarity must necessitate variance relief and that, if the variance relief is denied, that Petitioner "will" experience a practical difficulty or hardship. The Court cites Cromwell v. Ward 102 Md. App. 691, (1995) for this proposition.

3. The Order sur...rizes the evidence presented at the he...g stating that an engineer, accepted as an expert, testified that there is a grade change in the rear of Petitioners' property and that each home and lot in this community was in some sense unique in terms of size, shape and confirguration of the dwelling. The Court concluded that as a result of this evidence that the "special circumstances" required under B.C.Z.R. Section 307 and the case law interpreting this section had been met. The Court further stated that Petitioners would experience a practicual difficulty because they would be unable to construct their proposed impovements.

4. The Court concluded that as a result of the above findings that the two step process as required by Cromwell v. Ward had been met and that the Petitioners were therefore entitled to the variance requested.

5. It is Respondent's position that Petitioner did not meet their burden of establishing that the two step process established in Cromwell v. Ward had been met and therefore their request for a variance should be denied as a matter of law.

6. Section 307.1 of the Baltimore County Zoining Regulation requires that **"variances only be granted** in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request"(Cromwell v. Ward p. 693).

Cromwell v. Ward defines "special circumstances or conditions" to mean that the property whereon structures are to be placed, is in and of iteself unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject proeprty causes the zoning provision to impact disproportionately upon the property. (Cromwell v. Ward p. 693). Cromwell v. Ward states that if the property is **not** found to be **unique**, unusual or different, then the process must stop here at this first step and the variance must be denied. That if the requirements of the first step are not met then the factors involving the second step should not be taken into consideration. Cromwell v. Ward

states that the word "unic does not refer to the extent of the **im ements upon the property** (bold added), or upon neighboring properties, but rather uniqueness requires that the "subject property have an inherent characteristic not shared by other properties in the area, such as it's shape, topography, subsurface condition, environmental factors .... (p 710). The term "unique" is further defined in Cromwell v. Ward as having such exceptional narrowness, shallowness or unusual shape or other extraordinary special condition or situation of the property that it would make it exceptionally difficult ...to comply... and would cause unwarranted hardship and injustice. It has been established that a need for a variance arises only when a specific property is so unique that it cannot reasonably be put to a conforming use and that this uniqueness is not shared generally by other properties in the same zoning district and the same vicinity. It is respondents position that simply because the Petitioners' property had a grade change in the rear of their property, as stated by their expert, this finding of a grade change does not establish that their property is "unique". In fact numerous homes on Garrison Farms Road, including homes on both sides of Petitioners have a similar grade change in the rear of their property as has the Petitioner. The Petitioners failed to establish that their property was unique from any other property in the community.

In Montgomery County, Maryland v. Frances Rotwein, (169 Md. App. 716 (2006), the the Petitioner requested a variance from the front and side yard, to build a two car garage. The Petitioner stated that her property was unique in that it was exceptionally narrow and requested that the garage be built in a specific location on their property which would require a variance. The Court held that for the variance to be granted, it must be shown that without the variance, the Petitioner would be unable to make reasonable use of her property. The Court stated that the Petitioner had resided in her property for more then 50 years prior to the variance request and therefore the variance was denied because the property had proved to be well suited to be used as a residential dwelling. The fact that the property could be used as a residence was determined to be a reasonable use of the property. The Court further stated that

the Petitioners could loca eir garage in another area within the lope of the property that would not require a variance. The Court further stated that even if locating the garage in a different location proved to be more expensive, the expense of this change is not to be a consideration in this process. Expense alone does not satisfy the practical difficulties test because "every person requesting a variance can indicate some economic loss" and to grant an application for a variance any time economic loss is asserted, the courts have warned, "would make a mockery of the zoning program". The Court referenced Cromwell v. Ward for this opinion. The Court determined in the "Rotwein" matter that the Petitioner had not established that it would be impossible for her to make reasonable use of her property if her application for a variance was not approved. The Court held that the mere fact that Petitioner was residing in her dwelling established that Petitioner had in fact made use of her property. As a result of this initial finding that the Petioner's property was unique, it was determined that the Petitioner did not satisfy the first step of the requirement for obtaining a variance and as a result the second step of the process was not taken into consideration and the variance was denied.

7. It is Respondent's position that the Petitioner in the case at bar did not establish that their property was unique. Simply because a grade change exists in the back of the property as established by their expert does not satisfy the requirement that the property is unique in that it can not be used as a residence without the approval of the requested variance. In fact, as established in "Rotwein", because prior owners of Petitioners' property had lived in the residence for over 50 years, this establishes that the Petitioners' property can be used for the purpose for which it was intended. Again the Courts have held that if the first step of the two step process has not been met that the Court should not go any further and that the Variance shall be denied.

8. The Courts have held that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. The Courts have described "unique" to

mean that the property ha[illegible] inherent characteristic not shared by [illegible]r properties in the area. (Trinity v. People's Counsel, 407 Md. 53, (2008). That the nature of surrounding properties are such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. It is only when this standard is met that the second hurdle is to be considered. If a property is not proven to be unique, then no variance may be granted. (Cromwell v. Ward). It is the Petitoners burden to meet the requirements of the two step process as set out in Cromwell v. Ward. If the Petitoners fail to meet this burden then their variance must be denied. It is respondent's position that the Petitioners failed to meet their burden of establishing that their property is unique and further failed to establish that if the property were in fact unique, that this uniqueness prohibits the use of the property for its intended purpose that purpose being that of a residence.

The Petitioners are requesting a variance not because their property is unique but simply because the Petitoners desire to change the demensions and appearance of their property to their own liking. This is not a permission reason to allow a variance. As previously stated, had the Petitioners met their burden in the first step establishing the uniqueness of their property, Petitioners would only then move forward to the second step of the process. As previously stated, the second step requires that the Petitioners establish that they will experience practical difficulty or hardship if their variance is not granted. The Courts have established, again as previously stated, that economic costs to the Petitoners in achieving their goal through means other than obtaining a variance is not to be considered in determining whether a variance should be issued. The Petitoners in the case at bar failed to establish that the improvements they requested could not be achieved by other means not requiring a variance. such as locating the requested improvements in other areas of their property that would not require a variance. In addition, the Courts have held that if a hardship arises as a result of the act of the owner, the hardship will be regarded as having been "self-created", thereby barring relief. (Cromwell). Cromwell cites Shafer v. Zoning Bd of Appeals, a 1987

case where the owner of ge tract of land had conveyed away n rous parcels leaving the owner with a parcel that was so small that the size was prohibited under their ordinance. Although the Board granted him a variance, the appellate court reversed stating that there was no evidence regarding the uniqueness of the property in its condition, shape, topography, etc. The Court found that the deficiency of the property was one which was produced by the owner of the proper himself when he reduced the size of his property. The Court further stated that the reason for the variance must relate to the land itself and not to the owner-applicant.

9. A hardship results only if a special condition is present that is unique to a particular parcel of land. The hardship must relate to the special character of the land and not to the special circumstances of the landowner. It has been held that hardship can not be the result of actions taken by the owner or a prior owner. **Further it has been held that "when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the ground of undue hardship.** (Sibley v. Inhabitants of the Town of Wells 462 A. 2d 27, 30-31 (1983) cited in Cromwell v. Ward. A self-created or inflicted hardship is never considered proper grounds for a variance. "Where the applicant creates a nonconformity, the board lacks power to grant a variance. Hardship refers to conditions peculiar to the property, it does not refer to activities peculiar to the property owners. The Courts have held that a hardship is self-inflicted when the owners/contrator placed an improvement on the property that required a variance. (Cromwell). It is the Respondents position that if any hardship does exist, in the case at bar, it is the Petitoners who have created by proposing alterations to their home that require a variance. Petitoners requested a variance shortly after purchasing their property and prior to their moving into the property. It is the Respondent's position that if any hard ship exists that this hardship is self-inflicted.

10. The Petitione[illegible]new or should have known that the i[illegible]ovements they are requesting could not be completed without a variance. Courts have established that when a property is purchased by the Petitioner with knowledge, actual or constructive, of the restrictions imposed by law, they may not be granted a variance on the grounds of undue hardship. (The Courts further state that to allow this to be considered a hardship would emasculate zoning ordinances and zoning would be meaningless. (Assateaque Coastal Trust Inc. v. Schwalbach, 223 Md Ap 631, (Md App. 2015).

11. As a result of Petitoner's expert engineer stating that there was a grade change in the rear of Petioner's property, this fact did not establish that the Petitioner's property was unique nor did it establish that special circumstances existed so that Petitioners were entitled to a variance. The fact that a grade change existed in the rear of the property did not have any bearing on the Petitioner request to reduce the front set back and to reduce the side yard set back. A variance can not be granted simply because the owner chooses to create an improvement that would not otherwise conform to the zoning code. If this were permitted then what would be the purpose of having the zoning oridinances. The Petitioners failed to esablish that they would sufer a hardship if the variance is not granted. Any hardship would be self-inflicted as the Petitoners created their own hardship. They designed a house that required a variance and if not for the design a variance would not be needed. The Petitioner's desire a variance to enable them to make improvements to a property they recently purchased. The Petitioner's do not require a variance to live in the property. The Petitioner's will not suffer any hardship if their kitchen is not permitted to be made larger, if they are not permitted to extend their mudroom or if they are not permitted to change their carport into a garage and then extend the garage. Their request for a variance to accomplish these improvements to their property are not the result of purchasing a unique property but rather the result of the Petitioner's desire to extend the size of their existing home in violation of existing zoning regulations.

12. In summary, it is the Respondent's position that the Petitioners did not meet either requirement of the two step process as outlined in the Commission's Order and that it has been established through case law that a variance can not be granted based on the reasons presented by the Petitoners and as a result the Petitioners request for a variance should have been denied.

WHEREFORE, Respondent respectfully request that the Commission reconsider their decison as indicated above and deny the Petitioners request for a variance.

Nancy A Cohen

Nancy A. Cohen, Respondent
3415 Garrison Farms Road
Baltimore, MD 21208
nancyacohen27@yahoo.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of September, 2017, a copy of Respondent's, Motion for Reconsideration and Order was mailed first class mail, postage prepaid to :

Timothy M. Kotroco, Esquire
305 Washington Avenue
Suite 502
Towson, Maryland 21204
Attorney for Petitioners

Nancy A Cohen

Nancy A. Cohen

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corrine & Adam Janet *Legal Owners* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2017-0339-A**

ORDER

Upon consideration of Respondent, Nancy A. Cohen's Motion For Reconsideration and Petitioner's Response thereto, it is this _____ day of _____, 2017, by this Honorable Commision;

ORDERED, that the Petitioners Request for a Variance is denied.

_____
JUDGE

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

September 18, 2017

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

EXHIBIT
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C

RE: **MOTION FOR RECONSIDERATION**
Case No. 2017-0339-A
Property: Garrison Farms Road

Dear Mr. Kotroco:

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 Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Nancy Cohen, 3415 Garrison Farms Road, Baltimore, Maryland 21208

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corinne & Adam Janet *Legal Owners* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2017-0339-A**

* * * * * * *

OPINION AND ORDER ON MOTION FOR RECONSIDERATION

Now pending is a Motion for Reconsideration filed by Nancy Cohen ("Respondent"). Respondent argues Petitioners failed to satisfy the requirements for variance relief and requests that the petition be denied.

It is true, as Respondent argues, variances should be granted "sparingly." Even so, the Baltimore County Board of Appeals has in several recent cases granted variance relief in *de novo* appeals from the Office of Administrative Hearings (OAH) wherein the petition was originally denied. *See, e.g.,* CBA-16-109-A & CBA-16-038-A. And, if Respondent's argument was adopted no property owner residing in a single family dwelling would ever be able to obtain a variance to enlarge her home or construct an accessory building on the lot, since the property was already being put to a use "for which it was intended." Motion, p. 4.

Respondent cites *Montgomery Co. v. Rotwein* in support of her argument. While the petition for variance was denied in that case, a pivotal factor in the court's ruling was that the owner could construct the proposed garage on another portion of the lot without needing a variance. The same is not true in this case wherein existing site conditions and improvements dictate that zoning relief would be required to expand the dwelling.

In summary, a motion for reconsideration serves a limited function in quasi-judicial

hearings. While the Motion certainly elaborates upon the arguments Respondent made at the hearing, it does not present any new or additional facts. In *Calvert County v. Howlin Realty, Inc.*, 364 Md. 301 (2001), the court held that an agency (like the OAH) "may reconsider an action previously taken and come to a different conclusion upon a showing that ... some new or different factual situation exists that justifies the different conclusion." In this case, I do not believe the Respondent has identified "some new or different factual situation." *Id.* at 325. As such, the motion will be denied.

WHEREFORE, for the foregoing reasons it is, this 18th day of **September, 2017,** by the Administrative Law Judge for Baltimore County, ordered that the Motion for Reconsideration be and is hereby DENIED.

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:sln

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

October 27, 2017

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Corinne and Adam Janet
3417 Garrison Farms Road
17-339-A 3rd Election District; 2nd Councilmanic District

Re: Petition for Variance relief pursuant to § 1B02.3.B of the BCZR as follows:
1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and
2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback; and
3) for such other and further relief as the nature of the case may require.

8/7/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was GRANTED.

9/18/17 Opinion and Order on Motion for Reconsideration issued by the Administrative Law Judge wherein the Motion was DENIED.

ASSIGNED FOR: December 5, 2017, AT 10:00 a.m.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c: Counsel for Petitioner : Timothy Kotroco, Esquire
Petitioner : Corinne and Adam Janet

Protestant : Nancy Cohen

Richard Matz

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

October 23, 2017

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS**
Petition for Variance
Case No. 2017-0339-A
Property: 3417 Garrison Farms Road

Dear Mr. Kotroco:

Please be advised that an appeal of the above-referenced case was filed in this Office on October 17, 2017. 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 contact the Board at 410-887-3180.

Sincerely,

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c:
Baltimore County Board of Appeals
People's Counsel
Nancy Cohen, 3415 Garrison Farms Road, Baltimore, Maryland 21208

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No 143352

Date: 10/17/17

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				265.00

Total: 265

Rec From: Nancy Cohen CK# 6512

For: 2017-0339-A
3117 Gouldsboro Forums Rd

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
10/19/2017 10/17/2017 16:16:09 3
REG WS03 WALKIN CAM
>>RECEIPT # 749918 10/17/2017 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 143352
Recpt Tot $265.00
$265.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

Nancy A. Cohen
3415 Garrison Farms Road
Baltimore, MD 21208

October 17, 2017

Office of Administrative Hearings
105 West Chesapeake Avenue, Ste. 103
Towson, Maryland 21204

Re: Case No. 2017-0339-A
Property: 3417 Garrison Farms Road
Owners: Corinne & Adam Janet
Appellant: Nancy A. Cohen

Dear Sir/Madam:

This letter is to notify you that I wish to appeal the September 18, 2017 decision of the Administrative Law Judge in which Judge Beverungen denied my Motion for Reconsideration of his Opinion and Order dated August 7, 2017.

I was asked to state the reasons for my requested appeal. Briefly stated, I live next door to the subject property and my property line is extremely close to the Janet's carport and the side of their home. The Janet's were granted their requested variance against my objection, which now permits their carport to be converted into a garage, permits the extension of their garage closer to the street and permits an extension of the side of their house closer to our property line. These improvements to the Janet property will not only make me and my husband feel closed in because the improvement they requested are so close to our home, it is my belief that because the improvements are so close to our property, they will cause a decrease in our property value. And for other reasons, I object to the granting of the variance in this matter.

Thank you for your kind attention.

Very truly yours,

Nancy A Cohen

NANCY A. COHEN

NAC/ab
Enclosure
AppealRequest3417GarrisonFarmsRoad

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

September 18, 2017

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: **MOTION FOR RECONSIDERATION**
Case No. 2017-0339-A
Property: Garrison Farms Road

Dear Mr. Kotroco:

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 Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Nancy Cohen, 3415 Garrison Farms Road, Baltimore, Maryland 21208

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corinne & Adam Janet *Legal Owners* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2017-0339-A**

* * * * * * *

OPINION AND ORDER ON MOTION FOR RECONSIDERATION

Now pending is a Motion for Reconsideration filed by Nancy Cohen ("Respondent"). Respondent argues Petitioners failed to satisfy the requirements for variance relief and requests that the petition be denied.

It is true, as Respondent argues, variances should be granted "sparingly." Even so, the Baltimore County Board of Appeals has in several recent cases granted variance relief in *de novo* appeals from the Office of Administrative Hearings (OAH) wherein the petition was originally denied. *See, e.g.,* CBA-16-109-A & CBA-16-038-A. And, if Respondent's argument was adopted no property owner residing in a single family dwelling would ever be able to obtain a variance to enlarge her home or construct an accessory building on the lot, since the property was already being put to a use "for which it was intended." Motion, p. 4.

Respondent cites *Montgomery Co. v. Rotwein* in support of her argument. While the petition for variance was denied in that case, a pivotal factor in the court's ruling was that the owner could construct the proposed garage on another portion of the lot without needing a variance. The same is not true in this case wherein existing site conditions and improvements dictate that zoning relief would be required to expand the dwelling.

In summary, a motion for reconsideration serves a limited function in quasi-judicial

hearings. While the Motion certainly elaborates upon the arguments Respondent made at the hearing, it does not present any new or additional facts. In *Calvert County v. Howlin Realty, Inc.,* 364 Md. 301 (2001), the court held that an agency (like the OAH) "may reconsider an action previously taken and come to a different conclusion upon a showing that … some new or different factual situation exists that justifies the different conclusion." In this case, I do not believe the Respondent has identified "some new or different factual situation." *Id.* at 325. As such, the motion will be denied.

WHEREFORE, for the foregoing reasons it is, this **18th** day of **September, 2017**, by the Administrative Law Judge for Baltimore County, ordered that the Motion for Reconsideration be and is hereby DENIED.

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:sln

ORDER RECEIVED FOR FILING
Date 9/18/17
By sln

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corrine & Adam Janet *Legal Owners* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2017-0339-A**

RESPONDENT'S MOTION FOR RECONSIDERATION OF OPINION AND ORDER DATED AUGUST 7, 2017

Respondent, Nancy A. Cohen, respectfully requests that this Court reconsider it's opinion and Order dated August 7, 2017 under Rule 10 of the Baltimore County Code on the grounds of error of law and newly discovered evidence and for reasons state as follows:

1. Petitioners requested variance relief from Section 1B02.3.B of the Baltimore County Zoning Regulations, (B.C.Z.R.) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback and to permit a 7 ft. side yard setback in lieu of the requiared 15 ft. setback. The Petioners state that their reason for requesting a variance is; to permit them to change an existing carport into a garage, to allow for an extention of the length of the proposed garage so that when completed it would be longer and larger then the existing carport, to permit the garage to be closer to the street then is the existing carport, to add a mudroom to their home and to extend the width of their kitchen the results of which would cause the existing property to extend closer to their side property line then permitted.

2. The Commission's Order states that a variance request involves a two step process in which the Petitioner must first establish that their property is "unique" in a manner which makes it unlike surrounding properties and that this "uniqueness" or peculiarity must necessitate variance relief and that, if the variance relief is denied, that Petitioner "will" experience a practical difficulty or hardship. The Court cites Cromwell v. Ward 102 Md. App. 691, (1995) for this proposition.

3. The Order summarizes the evidence presented at the hearing stating that an engineer, accepted as an expert, testified that there is a grade change in the rear of Petitioners' property and that each home and lot in this community was in some sense unique in terms of size, shape and confirguration of the dwelling. The Court concluded that as a result of this evidence that the "special circumstances" required under B.C.Z.R. Section 307 and the case law interpreting this section had been met. The Court further stated that Petitioners would experience a practicual difficulty because they would be unable to construct their proposed impovements.

4. The Court concluded that as a result of the above findings that the two step process as required by Cromwell v. Ward had been met and that the Petitioners were therefore entitled to the variance requested.

5. It is Respondent's position that Petitioner did not meet their burden of establishing that the two step process established in Cromwell v. Ward had been met and therefore their request for a variance should be denied as a matter of law.

6. Section 307.1 of the Baltimore County Zoining Regulation requires that **"variances only be granted** in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request"(Cromwell v. Ward p. 693).

Cromwell v. Ward defines "special circumstances or conditions" to mean that the property whereon structures are to be placed, is in and of iteself unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject proeprty causes the zoning provision to impact disproportionately upon the property. (Cromwell v. Ward p. 693). Cromwell v. Ward states that if the property is **not** found to be **unique**, unusual or different, then the process must stop here at this first step and the variance must be denied. That if the requirements of the first step are not met then the factors involving the second step should not be taken into consideration. Cromwell v. Ward

states that the word "uniq... does not refer to the extent of the **im...ements upon the property** (bold added), or upon neighboring properties, but rather uniqueness requires that the "subject property have an inherent characteristic not shared by other properties in the area, such as it's shape, topography, subsurface condition, environmental factors .... (p 710). The term "unique" is further defined in Cromwell v. Ward as having such exceptional narrowness, shallowness or unusual shape or other extraordinary special condition or situation of the property that it would make it exceptionally difficult ...to comply... and would cause unwarranted hardship and injustice. It has been established that a need for a variance arises only when a specific property is so unique that it cannot reasonably be put to a conforming use and that this uniqueness is not shared generally by other properties in the same zoning district and the same vicinity. It is respondents position that simply because the Petitioners' property had a grade change in the rear of their property, as stated by their expert, this finding of a grade change does not establish that their property is "unique". In fact numerous homes on Garrison Farms Road, including homes on both sides of Petitioners have a similar grade change in the rear of their property as has the Petitioner. The Petitioners failed to establish that their property was unique from any other property in the community.

In Montgomery County, Maryland v. Frances Rotwein, (169 Md. App. 716 (2006), the the Petitioner requested a variance from the front and side yard, to build a two car garage. The Petitioner stated that her property was unique in that it was exceptionally narrow and requested that the garage be built in a specific location on their property which would require a variance. The Court held that for the variance to be granted, it must be shown that without the variance, the Petitioner would be unable to make reasonable use of her property. The Court stated that the Petitioner had resided in her property for more then 50 years prior to the variance request and therefore the variance was denied because the property had proved to be well suited to be used as a residential dwelling. The fact that the property could be used as a residence was determined to be a reasonable use of the property. The Court further stated that

the Petitioners could locate their garage in another area within the envelope of the property that would not require a variance. The Court further stated that even if locating the garage in a different location proved to be more expensive, the expense of this change is not to be a consideration in this process. Expense alone does not satisfy the practical difficulties test because "every person requesting a variance can indicate some economic loss" and to grant an application for a variance any time economic loss is asserted, the courts have warned, "would make a mockery of the zoning program". The Court referenced Cromwell v. Ward for this opinion. The Court determined in the "Rotwein" matter that the Petitioner had not established that it would be impossible for her to make reasonable use of her property if her application for a variance was not approved. The Court held that the mere fact that Petitioner was residing in her dwelling established that Petitioner had in fact made use of her property. As a result of this initial finding that the Petioner's property was unique, it was determined that the Petitioner did not satisfy the first step of the requirement for obtaining a variance and as a result the second step of the process was not taken into consideration and the variance was denied.

7. It is Respondent's position that the Petitioner in the case at bar did not establish that their property was unique. Simply because a grade change exists in the back of the property as established by their expert does not satisfy the requirement that the property is unique in that it can not be used as a residence without the approval of the requested variance. In fact, as established in "Rotwein", because prior owners of Petitioners' property had lived in the residence for over 50 years, this establishes that the Petitioners' property can be used for the purpose for which it was intended. Again the Courts have held that if the first step of the two step process has not been met that the Court should not go any further and that the Variance shall be denied.

8. The Courts have held that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. The Courts have described "unique" to

mean that the property has an inherent characteristic not shared by other properties in the area. (Trinity v. People's Counsel, 407 Md. 53, (2008). That the nature of surrounding properties are such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. It is only when this standard is met that the second hurdle is to be considered. If a property is not proven to be unique, then no variance may be granted. (Cromwell v. Ward). It is the Petitoners burden to meet the requirements of the two step process as set out in Cromwell v. Ward. If the Petitoners fail to meet this burden then their variance must be denied. It is respondent's position that the Petitioners failed to meet their burden of establishing that their property is unique and further failed to establish that if the property were in fact unique, that this uniqueness prohibits the use of the property for its intended purpose that purpose being that of a residence.

The Petitioners are requesting a variance not because their property is unique but simply because the Petitoners desire to change the demensions and appearance of their property to their own liking. This is not a permission reason to allow a variance. As previously stated, had the Petitioners met their burden in the first step establishing the uniqueness of their property, Petitioners would only then move forward to the second step of the process. As previously stated, the second step requires that the Petitioners establish that they will experience practical difficulty or hardship if their variance is not granted. The Courts have established, again as previously stated, that economic costs to the Petitoners in achieving their goal through means other than obtaining a variance is not to be considered in determining whether a variance should be issued. The Petitoners in the case at bar failed to establish that the improvements they requested could not be achieved by other means not requiring a variance. such as locating the requested improvements in other areas of their property that would not require a variance. In addition, the Courts have held that if a hardship arises as a result of the act of the owner, the hardship will be regarded as having been "self-created", thereby barring relief. (Cromwell). Cromwell cites Shafer v. Zoning Bd of Appeals, a 1987

case where the owner of a large tract of land had conveyed away numerous parcels leaving the owner with a parcel that was so small that the size was prohibited under their ordinance. Although the Board granted him a variance, the appellate court reversed stating that there was no evidence regarding the uniqueness of the property in its condition, shape, topography, etc. The Court found that the deficiency of the property was one which was produced by the owner of the proper himself when he reduced the size of his property. The Court further stated that the reason for the variance must relate to the land itself and not to the owner-applicant.

9. A hardship results only if a special condition is present that is unique to a particular parcel of land. The hardship must relate to the special character of the land and not to the special circumstances of the landowner. It has been held that hardship can not be the result of actions taken by the owner or a prior owner. **Further it has been held that "when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the ground of undue hardship.** (Sibley v. Inhabitants of the Town of Wells 462 A. 2d 27, 30-31 (1983) cited in Cromwell v. Ward. A self-created or inflicted hardship is never considered proper grounds for a variance. "Where the applicant creates a nonconformity, the board lacks power to grant a variance. Hardship refers to conditions peculiar to the property, it does not refer to activities peculiar to the property owners. The Courts have held that a hardship is self-inflicted when the owners/contrator placed an improvement on the property that required a variance. (Cromwell). It is the Respondents position that if any hardship does exist, in the case at bar, it is the Petitoners who have created by proposing alterations to their home that require a variance. Petitoners requested a variance shortly after purchasing their property and prior to their moving into the property. It is the Respondent's position that if any hard ship exists that this hardship is self-inflicted.

10. The Petitioner knew or should have known that the improvements they are requesting could not be completed without a variance. Courts have established that when a property is purchased by the Petitioner with knowledge, actual or constructive, of the restrictions imposed by law, they may not be granted a variance on the grounds of undue hardship. (The Courts further state that to allow this to be considered a hardship would emasculate zoning ordinances and zoning would be meaningless. (Assateaque Coastal Trust Inc. v. Schwalbach, 223 Md Ap 631, (Md App. 2015).

11. As a result of Petitoner's expert engineer stating that there was a grade change in the rear of Petioner's property, this fact did not establish that the Petitioner's property was unique nor did it establish that special circumstances existed so that Petitioners were entitled to a variance. The fact that a grade change existed in the rear of the property did not have any bearing on the Petitioner request to reduce the front set back and to reduce the side yard set back. A variance can not be granted simply because the owner chooses to create an improvement that would not otherwise conform to the zoning code. If this were permitted then what would be the purpose of having the zoning oridinances. The Petitioners failed to esablish that they would sufer a hardship if the variance is not granted. Any hardship would be self-inflicted as the Petitoners created their own hardship. They designed a house that required a variance and if not for the design a variance would not be needed. The Petitioner's desire a variance to enable them to make improvements to a property they recently purchased. The Petitioner's do not require a variance to live in the property. The Petitioner's will not suffer any hardship if their kitchen is not permitted to be made larger, if they are not permitted to extend their mudroom or if they are not permitted to change their carport into a garage and then extend the garage. Their request for a variance to accomplish these improvements to their property are not the result of purchasing a unique property but rather the result of the Petitioner's desire to extend the size of their existing home in violation of existing zoning regulations.

12. In summary, it is the Respondent's position that the Petitioners did not meet either requirement of the two step process as outlined in the Commission's Order and that it has been established through case law that a variance can not be granted based on the reasons presented by the Petitoners and as a result the Petitioners request for a variance should have been denied.

WHEREFORE, Respondent respectfully request that the Commission reconsider their decison as indicated above and deny the Petitioners request for a variance.

Nancy A Cohen

Nancy A. Cohen, Respondent
3415 Garrison Farms Road
Baltimore, MD 21208
nancyacohen27@yahoo.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of September, 2017, a copy of Respondent's, Motion for Reconsideration and Order was mailed first class mail, postage prepaid to :

Timothy M. Kotroco, Esquire
305 Washington Avenue
Suite 502
Towson, Maryland 21204
Attorney for Petitioners

Nancy A Cohen

Nancy A. Cohen

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corrine & Adam Janet *Legal Owners* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2017-0339-A**

ORDER

Upon consideration of Respondent, Nancy A. Cohen's Motion For Reconsideration and Petitioner's Response thereto, it is this _____ day of _____, 2017, by this Honorable Commision;

ORDERED, that the Petitioners Request for a Variance is denied.

_____
JUDGE

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

August 7, 2017

Timothy M. Kotroco, Esq.
305 W. Pennsylvania Avenue, Suite 502
Towson, Maryland 21204

RE: Petition for Variance
Case No. 2017-0339-A
Property: Garrison Farms Road

Dear Mr. Kotroco:

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 Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Nancy Cohen, 3415 Garrison Farms Road, Baltimore, Maryland 21208

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corinne & Adam Janet *Legal Owners* Petitioners	*	BEFORE THE OFFICE
	*	OF ADMINISTRATIVE
	*	HEARINGS FOR
	*	BALTIMORE COUNTY
	*	**CASE NO. 2017-0339-A**

* * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Corinne and Adam Janet, owners of the subject property ("Petitioners"). Petitioners are requesting variance relief from § 1B02.3.B of the Baltimore County Zoning Regulations ("B.C.Z.R") as follows: (1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and (2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback. A site plan was marked as Petitioners' Exhibit 1.

Corinne & Adam Janet appeared in support of the Petition. Timothy M. Kotroco, Esq. represented the Petitioners. A neighbor (Nancy Cohen) opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not oppose the request.

A variance request involves a two-step process, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

ORDER RECEIVED FOR FILING
Date 8/7/17
By Ben

Richard Matz, a professional engineer accepted as an expert, testified that there is a grade change in the rear of Petitioners' property, and he also noted that each home and lot in this community was in some sense unique in terms of size, shape and configuration of the dwelling. I believe this testimony is sufficient to establish the "special circumstances" required under B.C.Z.R. §307 and the case law interpreting that section. *See* Baltimore County Board of Appeals Case # 2017-0122-SPHA (granting variance due to unique shape of lot). If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the proposed improvements. Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety and general welfare.

Ms. Cohen stated the garage was already enclosed and that Petitioners did not secure the needed permits for the construction. That fact causes me some concern, but such issues cannot be resolved or addressed in a zoning hearing. Instead, it is the Director of Permits, Approvals and Inspections who is authorized by the County Code to issue stop-work orders and impose civil penalties in cases where a resident was found to have violated the County's codes or regulations.

Ms. Cohen also expressed concern with the loss of her view across Petitioners' property and down the street, which she believes would be obstructed by the garage. While I can appreciate that concern, an adjoining owner has no legal right to an unobstructed view across his/her neighbor's property, a point frequently litigated in waterfront settings. Petitioners would be entitled to construct a fence or a vegetative buffer along the common property boundary, which would also block or at least impair the neighbor's view.

Finally, no evidence was presented which would rebut the expert testimony regarding the

uniqueness of the site or the special circumstances faced by Petitioners. There was some discussion concerning whether or not other owners in the neighborhood sought and were granted variances in connection with improvements to their property. Upon further research I determined that variances were granted to five other owners along Garrison Farms Road and the contiguous cul-de-sac. See Case Nos. 2008-0171-A; 2008-0277-A; 1970-0182-A; 2007-0490-A and 1989-0551-A.

THEREFORE, IT IS ORDERED, this **7th** day of **August, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance: (1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and (2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

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:sln

ORDER RECEIVED FOR FILING
Date 8/7/17
By sln

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 3417 Garrison Farms Road, Baltimore, Maryland 21208 **which is presently zoned** D.R. - 2

Deed References: 38385 / 442 10 Digit Tax Account # 0 3 1 1 0 7 7 9 5 1

Property Owner(s) Printed Name(s) Corinne & Adam Janet

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1.____ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2.____ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

3. X **a Variance** from Section(s)

- See attachment to Petition

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), 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.
Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 8/7/17
By DEN

Legal Owners (Petitioners):

Corinne Janet / Adam Janet
Name #1 – Type or Print Name #2 – Type or Print

Corinne Janet / Adam Janet
Signature #1 Signature # 2

11316 John Carroll Road Owings Mills, Maryland
Mailing Address City State

21117 / 443-904-7044 / ajanet@myadvocates.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

Timothy M. Kotroco
Name- Type or Print

Timothy Kotroco
Signature

305 Washington Avenue, Suite 502 Towson, Maryland
Mailing Address City State

21204 / 410-299-2943 / tkotroco@gmail.com
Zip Code Telephone # Email Address

Representative to be contacted:

Richard E. Matz
Name – Type or Print

Richard E. Matz
Signature

2835 Smith Avenue, Suite G Baltimore, Maryland
Mailing Address City State

21209 / 410-653-3838 / dmatz@cmrengineers.com
Zip Code Telephone # Email Address

CASE NUMBER 2017-0339-A **Filing Date** 6/16/17 **Do Not Schedule Dates:** _____ **Reviewer** JS

REV. 10/4/11

ATTACHMENT TO PETITION FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE

3417 Garrison Farms Road
2nd Councilmanic District
3rd Election District

Variance Relief:

1. From section 1B02.3.B of the BCZR and the Zoning Commissioner's Policy Manual to permit a 28 foot front yard setback in lieu of the required 40 foot setback.

2. From section 1B02.3.B of the Zoning Commissioner's Policy Manual to permit a 7 foot side yard setback in lieu of the required 15 foot setback.

3. For such other and further relief as the nature of this case may require.

ATTACHMENT TO PETITION FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE

3417 Garrison Farms Road
2nd Councilmanic District
3rd Election District

Variance Relief:

1. From section 1B02.3.B of the Zoning Commissioner's Policy Manual to permit a 28 foot front yard setback in lieu of the required 40 foot setback.

2. From section 1B02.3.B of the Zoning Commissioner's Policy Manual to permit a 7 foot side yard setback in lieu of the required 15 foot setback.

3. For such other and further relief as the nature of this case may require.

Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners

ZONING DESCRIPTION
3417 Garrison Farms Road
Baltimore County, Maryland

Beginning at a point on the South side of Garrison Farms Road which is 50 feet wide at a distance of 372 feet, more or less East of the centerline of the intersection of Garrison Farms Road and Stevenson Road, which is 60 feet wide.

Being the lot of ground known as lot 4 on block B, Section One of the Plat of Section One Garrison Farms, recorded among the land records of Baltimore County in Plat Book No. W.J.R. 27, Folio 64 recorded March 17, 1961.

Containing 19,994 SF or 0.459 Acres more or less.

Located in the 3rd Election District and 2nd Councilmanic District. Known as 3417 Garrison Farms Road.

Professional Certification

I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.

License No. 13203 Expiration Date: 11/02/2018

STATE OF MARYLAND
RICHARD EARL MATZ
No. 13203
PROFESSIONAL ENGINEER

June 12, 2017.

2835 Smith Avenue, Suite G Baltimore, Maryland 21209
Telephone: (410) 653-3838 / Facsimile: (410) 653-7953

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 2017-339-A
DATE 8-1-2017

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Timothy M. Kotroco	305 Washington Avenue, Suite 502	Towson, MD 21204	Tkotroco@gmail.com
RICHARD E. MATZ	2835 SMITH AVE, SUITE G	BALTO. MD 21209	DMATZ@CMRENGINEERS.COM
Corinne Janet	11316 John Carroll Rd	Owings Mills, MD 21117	corinneajanet@gmail.com
Adam Janet	11316 John Carroll Rd	Owings Mills, MD 21117	adampjanet@gmail.

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Nancy Cohen	~~3415 Garrison Farms~~	~~Baltimore MD 21208~~	~~Nancy.A.Cohen@yahoo.com~~
Nancy A Cohen	3415 Garrison Farms Rd	Baltimore MD 21208	Nancy A Cohen 27 @yahoo.com

KEVIN KAMENETZ
County Executive

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

July 27, 2017

Corinne & Adam Janet
11316 John Carroll Road
Owings Mills MD 21117

RE: Case Number: 2017-0339 A, Address: 3417 Garrison Farms Road

Dear Mr. & Ms. Janet:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on June 16, 2017. 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: jaw

Enclosures

c: People's Counsel
Timothy M Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson MD 21204
Richard E Matz, 2835 Smith Avenue, Suite G, Baltimore MD 21209

Larry Hogan, **Governor**
Boyd K. Rutherford, **Lt. Governor**

MARYLAND DEPARTMENT
OF TRANSPORTATION

STATE HIGHWAY
ADMINISTRATION

Pete K. Rahn, **Secretary**
Gregory Slater, **Administrator**

Date: 6/28/17

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

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. 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 Case No. 2017-0339-A

Variance
Corinne & Adam Fanet
3417 Garrison Farms Road.

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

Richard A Zeller

Wendy Wolcott, PLA
Metropolitan District Engineer – District 4
Baltimore & Harford Counties

WW/RAZ

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 7/20/2017

RECEIVED
JUL 25 2017
OFFICE OF
ADMINISTRATIVE HEARINGS

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 17-339

INFORMATION:
Property Address: 3417 Garrison Farms Road
Petitioner: Corinne Janet, Adam Janet
Zoning: DR 2
Requested Action: Variance

The Department of Planning has reviewed the petition for a variance to permit a 28 foot front yard setback and 7 foot side yard setback in lieu of the required 40 and 15 feet respectively.

A site visit was conducted on June 29, 2017.

The Department has no objection to granting the petitioned zoning relief.

Although not a subject of the petition, the site plan submitted in support indicated a parking pad to be located immediately adjacent to the public right-of-way. Upon consultation with representatives for the petitioner a revised plan was submitted to the Department on July 18, 2017 showing said parking pad situated 5' away from the right of way with intervening landscaping. The Department recommends this layout is more in keeping with the neighborhood and applauds the good faith efforts of the petitioner.

For further information concerning the matters stated herein, please contact Bill Skibinski at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Division Chief:

Kathy Schlabach

AVA/KS/LTM/ka

c: Bill Skibinski
Richard E. Matz, Colbert Matz Rosenfelt, Inc.
Office of the Administrative Hearings
People's Counsel for Baltimore County

8-1-17
10 Am

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED
JUN 29 2017
OFFICE OF
ADMINISTRATIVE HEARINGS

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

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: June 29, 2017

SUBJECT: DEPS Comment for Zoning Item # 2017-0339-A
Address 3417 Garrison Farms Road
(Janet Property)

Zoning Advisory Committee Meeting of **July 3, 2017**.

X The Department of Environmental Protection and Sustainability has no comment on the above-referenced zoning item.

Reviewer: Steve Ford Date: 6-29-2017

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: July 18, 2017

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For July 03, 2017
Item No. 2017-0339, 0340 and 0345

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

VKD:CEN
cc:file
G:\DevPlanRev\ZAC -No Comments\ZAC07032017.doc

KEVIN KAMENETZ
County Executive

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

June 29, 2017

NOTICE OF ZONING HEARING

The Administrative Law Judge 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: 2017-0339-A
3417 Garrison Farms Road
SE/s Garrison Farms Road, 371 ft. NE of Stevenson Road
3rd Election District – 2nd Councilmanic District
Legal Owners: Corrine & Adam Janet

Variance to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback. To permit a 7 ft. side yard setback in lieu of the required 15 ft. setback. For such other and further relief as the nature of this case may require.

Hearing: Tuesday, August 1, 2017 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Timothy Kotroco, 305 Washington Avenue, Ste. 502, Towson 21204
Mr. Mrs. Janet, 11316 John Carroll Road, Owings Mills 21117
Richard Matz, 2835 Smith Avenue, Ste. G., Baltimore 21209

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, JULY 12, 2017.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

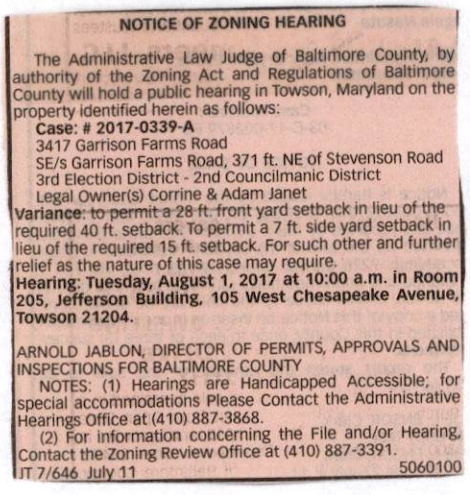
WE HEREBY CERTIFY, that the annexed advertisement of Order No 5060100

Sold To:
Adam Janet - CU00608168
11316 John Carroll Rd
Owings Mills,MD 21117-1658

Bill To:
Adam Janet - CU00608168
11316 John Carroll Rd
Owings Mills,MD 21117-1658

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Jul 11, 2017



NOTICE OF ZONING HEARING

The Administrative Law Judge 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: # 2017-0339-A
3417 Garrison Farms Road
SE/s Garrison Farms Road, 371 ft. NE of Stevenson Road
3rd Election District - 2nd Councilmanic District
Legal Owner(s) Corrine & Adam Janet

Variance: to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback. To permit a 7 ft. side yard setback in lieu of the required 15 ft. setback. For such other and further relief as the nature of this case may require.

Hearing: Tuesday, August 1, 2017 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 7/646 July 11 5060100

The Baltimore Sun Media Group

By S. Wilkinson

Legal Advertising

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 7/12/2017
Case Number: 2017-0339-A
Petitioner / Developer: TIMOTHY KOTROCO, ESQ. ~ MR. & MRS. JANET ~ RICHARD MATZ
Date of Hearing (Closing): AUGUST 1, 2017

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:
3417 GARRISON FARMS ROAD

The sign(s) were posted on: JULY 12, 2017

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)

RE: PETITION FOR VARIANCE 3417 Garrison Farms Rd; SE/S Garrison Farms Rd, 371' NW of c/line of Stevenson Road 3rd Election & 2nd Councilmanic Districts Legal Owner(s): Corinne & Adam Janet Petitioner(s)	*	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY 2017-339-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.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
JUN 29 2017

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 29th day of June, 2017, a copy of the foregoing Entry of Appearance was mailed to Richard Matz, 2835 Smith Avenue, Suite G, Baltimore, Maryland 21209 and Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CASE NO. 2017-339-A

CHECKLIST

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
7/18	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	no comment
6/29	DEPS (if not received, date e-mail sent _____)	no comment
_____	FIRE DEPARTMENT	_____
7/20	PLANNING (if not received, date e-mail sent _____)	no obj w/comment
6/28	STATE HIGHWAY ADMINISTRATION	no obj
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 7/11/17

SIGN POSTING Date: 7/12/17 by O'Keefe

PEOPLE'S COUNSEL APPEARANCE Yes ☒ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: _____

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration

Account Identifier: **District - 03 Account Number -** 0311077951

Owner Information

Owner Name:	JANET ADAM P JANET CORINNE A	**Use:** **Principal Residence:**	RESIDENTIAL YES
Mailing Address:	3417 GARRISON FARMS RD BALTIMORE MD 21208-1852	**Deed Reference:**	/38385/ 00442

Location & Structure Information

Premises Address:	3417 GARRISON FARMS RD BALTIMORE 21208-1852	**Legal Description:**	GARRISON FARMS

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:	
0068	0016	0125		0000	1	B	4	2017	Plat Ref:	0027/ 0064

Special Tax Areas:		**Town:**	NONE
		Ad Valorem:	
		Tax Class:	

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1961	2,769 SF	558 SF	20,037 SF	04

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
1	NO	STANDARD UNIT	BRICK	3 full/ 1 half	1 Carport	

Value Information

	Base Value	Value As of 01/01/2017	Phase-in Assessments As of 07/01/2016	Phase-in Assessments As of 07/01/2017
Land:	111,300	111,300		
Improvements	238,900	249,300		
Total:	350,200	360,600	350,200	353,667
Preferential Land:	0			0

Transfer Information

Seller: GLASS MARTIN	**Date:** 12/13/2016	**Price:** $475,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /38385/ 00442	**Deed2:**
Seller: KRAMER CHARLES M	**Date:** 05/20/1976	**Price:** $100,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /05634/ 00607	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2016	07/01/2017
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt:	**Special Tax Recapture:**
Exempt Class:	NONE

Homestead Application Information

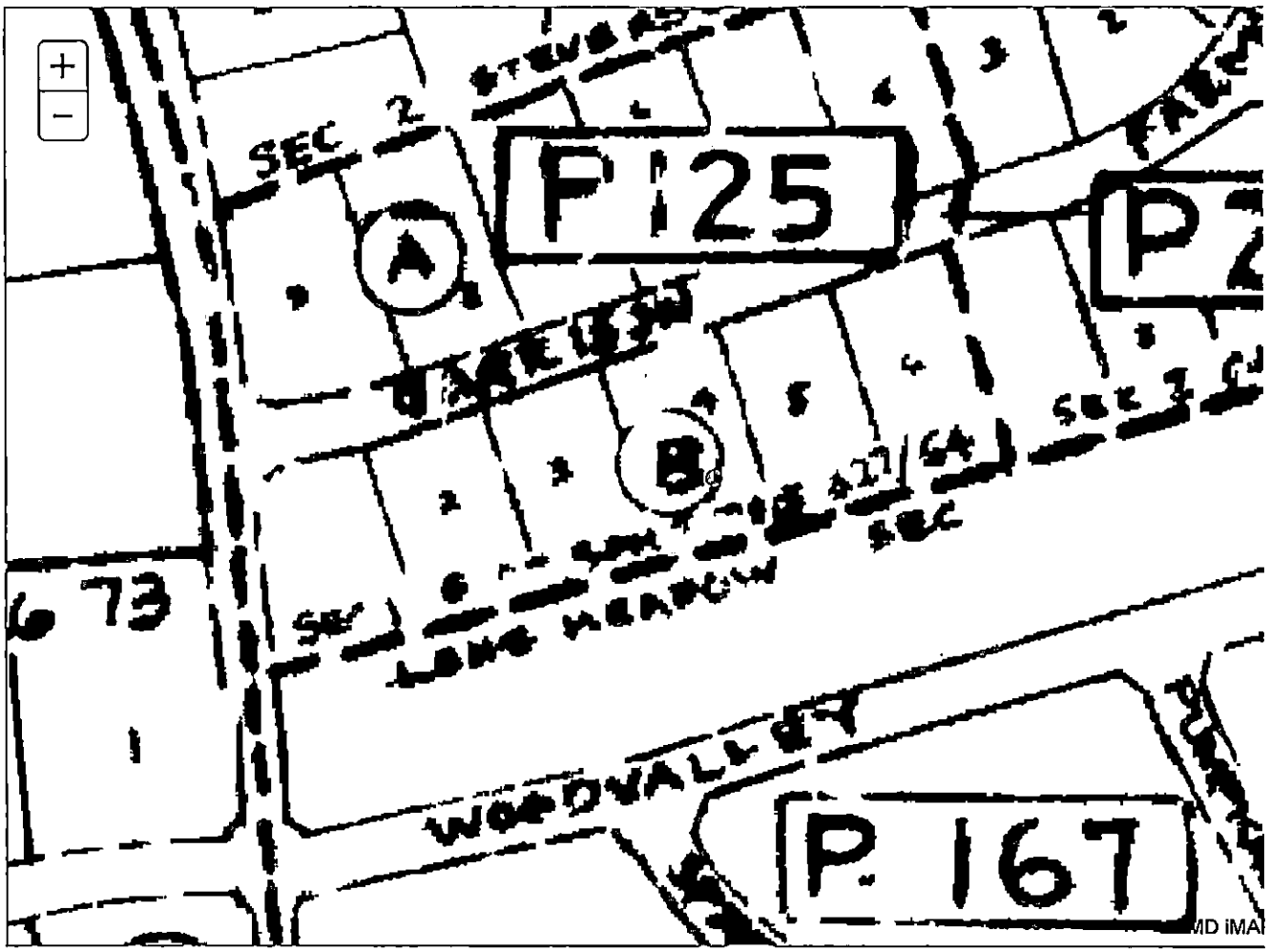
Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Baltimore County

New Search (http://sdat.dat.maryland.gov/RealProperty)

District: **03** Account Number: **0311077951**



The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at www.plats.net (http://www.plats.net).

Property maps provided courtesy of the Maryland Department of Planning.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/OurProducts/OurProducts.shtml (http://www.mdp.state.md.us/OurProducts/OurProducts.shtml).

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

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

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: June 29, 2017

SUBJECT: DEPS Comment for Zoning Item # 2017-0339-A
Address 3417 Garrison Farms Road
(Janet Property)

Zoning Advisory Committee Meeting of **July 3, 2017**.

X The Department of Environmental Protection and Sustainability has no comment on the above-referenced zoning item.

Reviewer: Steve Ford Date: 6-29-2017

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

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 legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least twenty (20) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/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:

Case Number: 2017-0339-A

Property Address: 3417 GARRISON FARMS ROAD

Property Description: RESIDENTIAL WITH ONE EXISTING DWELLING

Legal Owners (Petitioners): CORINNE & ADAM JAHET

Contract Purchaser/Lessee: N/A

PLEASE FORWARD ADVERTISING BILL TO:

Name: ADAM JAHET

Company/Firm (if applicable): N/A

Address: 11316 JOHN CARROLL ROAD,
OWINGS MILLS, MARYLAND 21117

Telephone Number: 443-904-7044

Revised 7/9/2015

TO: PATUXENT PUBLISHING COMPANY
Tuesday, July 11, 2017 Issue - Jeffersonian

Please forward billing to:
Adam Janet 443-904-7044
11316 John Carroll Road
Owings Mills, MD 21117

NOTICE OF ZONING HEARING

The Administrative Law Judge 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:

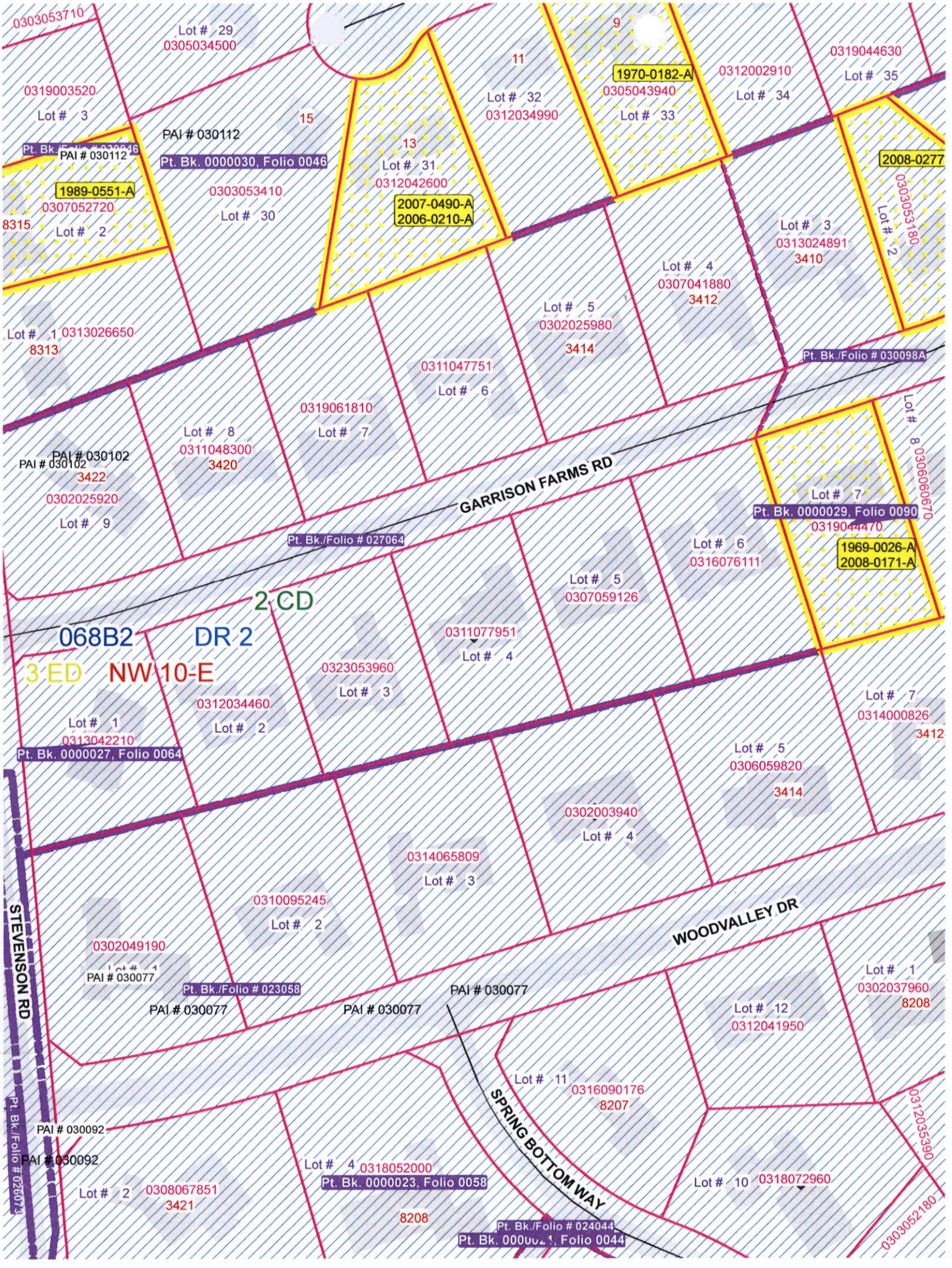
CASE NUMBER: 2017-0339-A
3417 Garrison Farms Road
SE/s Garrison Farms Road, 371 ft. NE of Stevenson Road
3rd Election District – 2nd Councilmanic District
Legal Owners: Corrine & Adam Janet

Variance to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback. To permit a 7 ft. side yard setback in lieu of the required 15 ft. setback. For such other and further relief as the nature of this case may require.

Hearing: Tuesday, August 1, 2017 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 ACCOMODATIONS, 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.


0303053710
Lot # 29
0305034500
0319003520
Lot # 3
PAI # 030112
Pt. Bk./Folio # 030046
PAI # 030112
Pt. Bk. 0000030, Folio 0046
1989-0551-A
0307052720
8315
Lot # 2
0303053410
Lot # 30
15
13
Lot # 31
0312042600
2007-0490-A
2006-0210-A
11
Lot # 32
0312034990
9
1970-0182-A
0305043940
Lot # 33
0312002910
Lot # 34
0319044630
Lot # 35
2008-0277
0303053180
Lot # 2
Lot # 3
0313024891
3410
Lot # 4
0307041880
3412
Lot # 5
0302025980
3414
Lot # 1 0313026650
8313
0311047751
Lot # 6
0319061810
Lot # 7
Lot # 8
0311048300
3420
PAI # 030102
PAI # 030102
3422
0302025920
Lot # 9
Pt. Bk./Folio # 030098A
Lot # 8 0306060670
Lot # 7
Pt. Bk. 0000029, Folio 0090
0319044470
1969-0026-A
2008-0171-A
GARRISON FARMS RD
Pt. Bk./Folio # 027064
Lot # 6
0316076111
Lot # 5
0307059126
2 CD
068B2
DR 2
3 ED
NW 10-E
0311077951
Lot # 4
0323053960
Lot # 3
0312034460
Lot # 2
Lot # 1
0313042210
Pt. Bk. 0000027, Folio 0064
Lot # 7
0314000826
3412
Lot # 5
0306059820
3414
0302003940
Lot # 4
0314065809
Lot # 3
0310095245
Lot # 2
STEVENSON RD
0302049190
PAI # 030077
Pt. Bk./Folio # 023058
PAI # 030077
PAI # 030077
WOODVALLEY DR
Lot # 1
0302037960
8208
Lot # 12
0312041950
Lot # 11
0316090176
8207
SPRING BOTTOM WAY
0312035390
PAI # 030092
PAI # 030092
Pt. Bk./Folio # 026073
Lot # 4 0318052000
Pt. Bk. 0000023, Folio 0058
Lot # 2
0308067851
3421
8208
Lot # 10
0318072960
Pt. Bk./Folio # 024044
Pt. Bk. 0000021, Folio 0044
0303052180

Board of Appeals

Case No: 17-339-A Case Name: Corrine + Adam Janet

Exhibit List

Party: Corine + ~~Howard~~ Adam Janet Date: 12/5/17

Exhibit No:	Description:
✓ 1	ALJ Opinion and Order
✓ 2	Respondents Motion for Consideration.
✓ 3	ALJ Opinion and Order on Motion Reconsid.
	VERIFIED BY KC DATE: 12/5/17

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

August 7, 2017

Petitioner
CBA Exhibit
1

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: Petition for Variance
Case No. 2017-0339-A
Property: Garrison Farms Road

Dear Mr. Kotroco:

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 Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Nancy Cohen, 3415 Garrison Farms Road, Baltimore, Maryland 21208

8-1-11

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corinne & Adam Janet *Legal Owners* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2017-0339-A**

* * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Corinne and Adam Janet, owners of the subject property ("Petitioners"). Petitioners are requesting variance relief from § 1B02.3.B of the Baltimore County Zoning Regulations ("B.C.Z.R") as follows: (1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and (2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback. A site plan was marked as Petitioners' Exhibit 1.

Corinne & Adam Janet appeared in support of the Petition. Timothy M. Kotroco, Esq. represented the Petitioners. A neighbor (Nancy Cohen) opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not oppose the request.

A variance request involves a two-step process, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Richard Matz, a professional engineer accepted as an expert, testified that there is a grade change in the rear of Petitioners' property, and he also noted that each home and lot in this community was in some sense unique in terms of size, shape and configuration of the dwelling. I believe this testimony is sufficient to establish the "special circumstances" required under B.C.Z.R. §307 and the case law interpreting that section. *See* Baltimore County Board of Appeals Case # 2017-0122-SPHA (granting variance due to unique shape of lot). If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the proposed improvements. Finally, I find that the variances can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety and general welfare.

Ms. Cohen stated the garage was already enclosed and that Petitioners did not secure the needed permits for the construction. That fact causes me some concern, but such issues cannot be resolved or addressed in a zoning hearing. Instead, it is the Director of Permits, Approvals and Inspections who is authorized by the County Code to issue stop-work orders and impose civil penalties in cases where a resident was found to have violated the County's codes or regulations.

Ms. Cohen also expressed concern with the loss of her view across Petitioners' property and down the street, which she believes would be obstructed by the garage. While I can appreciate that concern, an adjoining owner has no legal right to an unobstructed view across his/her neighbor's property, a point frequently litigated in waterfront settings. Petitioners would be entitled to construct a fence or a vegetative buffer along the common property boundary, which would also block or at least impair the neighbor's view.

Finally, no evidence was presented which would rebut the expert testimony regarding the

uniqueness of the site or the special circumstances faced by Petitioners. There was some discussion concerning whether or not other owners in the neighborhood sought and were granted variances in connection with improvements to their property. Upon further research I determined that variances were granted to five other owners along Garrison Farms Road and the contiguous cul-de-sac. See Case Nos. 2008-0171-A; 2008-0277-A; 1970-0182-A; 2007-0490-A and 1989-0551-A.

THEREFORE, IT IS ORDERED, this **7th** day of **August, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance: (1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and (2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

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:sln

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corrine & Adam Janet *Legal Owners* Petitioners	*	BEFO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2017-0339-A**

RESPONDENT'S MOTION FOR RECONSIDERATION OF OPINION AND ORDER DATED AUGUST 7, 2017

Respondent, Nancy A. Cohen, respectfully requests that this Court reconsider it's opinion and Order dated August 7, 2017 under Rule 10 of the Baltimore County Code on the grounds of error of law and newly discovered evidence and for reasons state as follow

1. Petitioners requested variance relief from Section 1B02.3.B of the Baltimor County Zoning Regulations, (B.C.Z.R.) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback and to permit a 7 ft. side yard setback in lieu of the requiared 15 ft. setback. The Petioners state that their reason for requesting a variance is; to permit them to change an existing carport into a garage, to allow for an extention of the length of the proposed garage so that when completed it would be longer and larger then the existing carport, to permit the garage to be closer to the street then is the existing carport, to add a mudroom to their home and to extend the width of their kitchen the results of which would cause the existing property to extend closer to their side property line then permitted.

2. The Commission's Order states that a variance request involves a two step process in which the Petitioner must first establish that their property is "unique" in a manner which makes it unlike surrounding properties and that this "uniqueness" or peculiarity must necessitate variance relief and that, if the variance relief is denied, that Petitioner "will" experience a practical difficulty or hardship. The Court cites Cromwell v. Ward 102 Md. App. 691, (1995) for this proposition.

3. The Order summ es the evidence presented at the heari ating that an engineer, accepted as an expert, testified that there is a grade change in the rear of Petitioners' property and that each home and lot in this community was in some sense unique in terms of size, shape and confirguration of the dwelling. The Court concluded that as a result of this evidence that the "special circumstances" required under B.C.Z.R. Section 307 and the case law interpreting this section had been met. The Court further stated that Petitioners would experience a practicual difficulty because they would be unable to construct their proposed impovements.

4. The Court concluded that as a result of the above findings that the two step process as required by Cromwell v. Ward had been met and that the Petitioners were therefore entitled to the variance requested.

5. It is Respondent's position that Petitioner did not meet their burden of establishing that the two step process established in Cromwell v. Ward had been met and therefore their request for a variance should be denied as a matter of law.

6. Section 307.1 of the Baltimore County Zoining Regulation requires that **"variances only be granted** in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request"(Cromwell v. Ward p. 693).

Cromwell v. Ward defines "special circumstances or conditions" to mean that the property whereon structures are to be placed, is in and of iteself unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject proeprty causes the zoning provision to impact disproportionately upon the property. (Cromwell v. Ward p. 693). Cromwell v. Ward states that if the property is **not** found to be **unique**, unusual or different, then the process must stop here at this first step and the variance must be denied. That if the requirements of the first step are not met then the factors involving the second step should not be taken into consideration. Cromwell v. Ward

states that the word "uniqu es not refer to the extent of the **impr nents upon the property** (bold added), or upon neighboring properties, but rather uniqueness requires that the "subject property have an inherent characteristic not shared by other properties in the area, such as it's shape, topography, subsurface condition, environmental factors .... (p 710). The term "unique" is further defined in Cromwell v. Ward as having such exceptional narrowness, shallowness or unusual shape or other extraordinary special condition or situation of the property that it would make it exceptionally difficult ...to comply... and would cause unwarranted hardship and injustice. It has been established that a need for a variance arises only when a specific property is so unique that it cannot reasonably be put to a conforming use and that this uniqueness is not shared generally by other properties in the same zoning district and the same vicinity. It is respondents position that simply because the Petitioners' property had a grade change in the rear of their property, as stated by their expert, this finding of a grade change does not establish that their property is "unique". In fact numerous homes on Garrison Farms Road, including homes on both sides of Petitioners have a similar grade change in the rear of their property as has the Petitioner. The Petitioners failed to establish that their property was unique from any other property in the community.

In Montgomery County, Maryland v. Frances Rotwein, (169 Md. App. 716 (2006), the the Petitioner requested a variance from the front and side yard, to build a two car garage. The Petitioner stated that her property was unique in that it was exceptionally narrow and requested that the garage be built in a specific location on their property which would require a variance. The Court held that for the variance to be granted, it must be shown that without the variance, the Petitioner would be unable to make reasonable use of her property. The Court stated that the Petitioner had resided in her property for more then 50 years prior to the variance request and therefore the variance was denied because the property had proved to be well suited to be used as a residential dwelling. The fact that the property could be used as a residence was determined to be a reasonable use of the property. The Court further stated that

the Petitioners could locate [illegible] garage in another area within the env[illegible]e of the property that would not require a variance. The Court further stated that even if locating the garage in a different location proved to be more expensive, the expense of this change is not to be a consideration in this process. Expense alone does not satisfy the practical difficulties test because "every person requesting a variance can indicate some economic loss" and to grant an application for a variance any time economic loss is asserted, the courts have warned, "would make a mockery of the zoning program". The Court referenced Cromwell v. Ward for this opinion. The Court determined in the "Rotwein" matter that the Petitioner had not established that it would be impossible for her to make reasonable use of her property if her application for a variance was not approved. The Court held that the mere fact that Petitioner was residing in her dwelling established that Petitioner had in fact made use of her property. As a result of this initial finding that the Petioner's property was unique, it was determined that the Petitioner did not satisfy the first step of the requirement for obtaining a variance and as a result the second step of the process was not taken into consideration and the variance was denied.

7. It is Respondent's position that the Petitioner in the case at bar did not establish that their property was unique. Simply because a grade change exists in the back of the property as established by their expert does not satisfy the requirement that the property is unique in that it can not be used as a residence without the approval of the requested variance. In fact, as established in "Rotwein", because prior owners of Petitioners' property had lived in the residence for over 50 years, this establishes that the Petitioners' property can be used for the purpose for which it was intended. Again the Courts have held that if the first step of the two step process has not been met that the Court should not go any further and that the Variance shall be denied.

8. The Courts have held that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. The Courts have described "unique" to

mean that the property has ... ...herent characteristic not shared by ot roperties in the area. (Trinity v. People's Counsel, 407 Md. 53, (2008). That the nature of surrounding properties are such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. It is only when this standard is met that the second hurdle is to be considered. If a property is not proven to be unique, then no variance may be granted. (Cromwell v. Ward). It is the Petitoners burden to meet the requirements of the two step process as set out in Cromwell v. Ward. If the Petitoners fail to meet this burden then their variance must be denied. It is respondent's position that the Petitioners failed to meet their burden of establishing that their property is unique and further failed to establish that if the property were in fact unique, that this uniqueness prohibits the use of the property for its intended purpose that purpose being that of a residence.

The Petitioners are requesting a variance not because their property is unique but simply because the Petitoners desire to change the demensions and appearance of their property to their own liking. This is not a permission reason to allow a variance. As previously stated, had the Petitioners met their burden in the first step establishing the uniqueness of their property, Petitioners would only then move forward to the second step of the process. As previously stated, the second step requires that the Petitioners establish that they will experience practical difficulty or hardship if their variance is not granted. The Courts have established, again as previously stated, that economic costs to the Petitoners in achieving their goal through means other than obtaining a variance is not to be considered in determining whether a variance should be issued. The Petitoners in the case at bar failed to establish that the improvements they requested could not be achieved by other means not requiring a variance. such as locating the requested improvements in other areas of their property that would not require a variance. In addition, the Courts have held that if a hardship arises as a result of the act of the owner, the hardship will be regarded as having been "self-created", thereby barring relief. (Cromwell). Cromwell cites Shafer v. Zoning Bd of Appeals, a 1987

case where the owner of a large tract of land had conveyed away numerous parcels leaving the owner with a parcel that was so small that the size was prohibited under their ordinance. Although the Board granted him a variance, the appellate court reversed stating that there was no evidence regarding the uniqueness of the property in its condition, shape, topography, etc. The Court found that the deficiency of the property was one which was produced by the owner of the proper himself when he reduced the size of his property. The Court further stated that the reason for the variance must relate to the land itself and not to the owner-applicant.

9. A hardship results only if a special condition is present that is unique to a particular parcel of land. The hardship must relate to the special character of the land and not to the special circumstances of the landowner. It has been held that hardship can not be the result of actions taken by the owner or a prior owner. **Further it has been held that "when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the ground of undue hardship.** (Sibley v. Inhabitants of the Town of Wells 462 A. 2d 27, 30-31 (1983) cited in Cromwell v. Ward. A self-created or inflicted hardship is never considered proper grounds for a variance. "Where the applicant creates a nonconformity, the board lacks power to grant a variance. Hardship refers to conditions peculiar to the property, it does not refer to activities peculiar to the property owners. The Courts have held that a hardship is self-inflicted when the owners/contrator placed an improvement on the property that required a variance. (Cromwell). It is the Respondents position that if any hardship does exist, in the case at bar, it is the Petitoners who have created by proposing alterations to their home that require a variance. Petitoners requested a variance shortly after purchasing their property and prior to their moving into the property. It is the Respondent's position that if any hard ship exists that this hardship is self-inflicted.

10. The Petitioner's knew or should have known that the improvements they are requesting could not be completed without a variance. Courts have established that when a property is purchased by the Petitioner with knowledge, actual or constructive, of the restrictions imposed by law, they may not be granted a variance on the grounds of undue hardship. (The Courts further state that to allow this to be considered a hardship would emasculate zoning ordinances and zoning would be meaningless. (Assateaque Coastal Trust Inc. v. Schwalbach, 223 Md Ap 631, (Md App. 2015).

11. As a result of Petitoner's expert engineer stating that there was a grade change in the rear of Petioner's property, this fact did not establish that the Petitioner's property was unique nor did it establish that special circumstances existed so that Petitioners were entitled to a variance. The fact that a grade change existed in the rear of the property did not have any bearing on the Petitioner request to reduce the front set back and to reduce the side yard set back. A variance can not be granted simply because the owner chooses to create an improvement that would not otherwise conform to the zoning code. If this were permitted then what would be the purpose of having the zoning oridinances. The Petitioners failed to esablish that they would sufer a hardship if the variance is not granted. Any hardship would be self-inflicted as the Petitoners created their own hardship. They designed a house that required a variance and if not for the design a variance would not be needed. The Petitioner's desire a variance to enable them to make improvements to a property they recently purchased. The Petitioner's do not require a variance to live in the property. The Petitioner's will not suffer any hardship if their kitchen is not permitted to be made larger, if they are not permitted to extend their mudroom or if they are not permitted to change their carport into a garage and then extend the garage. Their request for a variance to accomplish these improvements to their property are not the result of purchasing a unique property but rather the result of the Petitioner's desire to extend the size of their existing home in violation of existing zoning regulations.

12. In summary, it is the Respondent's position that the Petitic[illegible] did not meet either requirement of the two step process as outlined in the Commission's Order and that it has been established through case law that a variance can not be granted based on the reasons presented by the Petitoners and as a result the Petitioners request for a variance should have been denied.

WHEREFORE, Respondent respectfully request that the Commission reconsider their decison as indicated above and deny the Petitioners request for a variance.

Nancy A Cohen

Nancy A. Cohen, Respondent
3415 Garrison Farms Road
Baltimore, MD 21208
nancyacohen27@yahoo.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of September, 2017, a copy of Respondent's, Motion for Reconsideration and Order was mailed first class mail, postage prepaid to :

Timothy M. Kotroco, Esquire
305 Washington Avenue
Suite 502
Towson, Maryland 21204
Attorney for Petitioners

Nancy A Cohen

Nancy A. Cohen

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corrine & Adam Janet *Legal Owners* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2017-0339-A**

ORDER

Upon consideration of Respondent, Nancy A. Cohen's Motion For Reconsideration and Petitioner's Response thereto, it is this _____ day of _____, 2017, by this Honorable Commision;

ORDERED, that the Petitioners Request for a Variance is denied.

_____
JUDGE

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

September 18, 2017

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

Petitioner
CBA Exhibit
3

RE: **MOTION FOR RECONSIDERATION**
Case No. 2017-0339-A
Property: Garrison Farms Road

Dear Mr. Kotroco:

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 Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Nancy Cohen, 3415 Garrison Farms Road, Baltimore, Maryland 21208

IN RE: PETITION FOR VARIANCE (3417 Garrison Farms Road) 3rd Election District 2nd Council District Corinne & Adam Janet *Legal Owners* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **CASE NO. 2017-0339-A**

* * * * * * *

OPINION AND ORDER ON MOTION FOR RECONSIDERATION

Now pending is a Motion for Reconsideration filed by Nancy Cohen ("Respondent"). Respondent argues Petitioners failed to satisfy the requirements for variance relief and requests that the petition be denied.

It is true, as Respondent argues, variances should be granted "sparingly." Even so, the Baltimore County Board of Appeals has in several recent cases granted variance relief in *de novo* appeals from the Office of Administrative Hearings (OAH) wherein the petition was originally denied. *See, e.g.*, CBA-16-109-A & CBA-16-038-A. And, if Respondent's argument was adopted no property owner residing in a single family dwelling would ever be able to obtain a variance to enlarge her home or construct an accessory building on the lot, since the property was already being put to a use "for which it was intended." Motion, p. 4.

Respondent cites *Montgomery Co. v. Rotwein* in support of her argument. While the petition for variance was denied in that case, a pivotal factor in the court's ruling was that the owner could construct the proposed garage on another portion of the lot without needing a variance. The same is not true in this case wherein existing site conditions and improvements dictate that zoning relief would be required to expand the dwelling.

In summary, a motion for reconsideration serves a limited function in quasi-judicial

hearings. While the Motion certainly elaborates upon the arguments Respondent made at the hearing, it does not present any new or additional facts. In *Calvert County v. Howlin Realty, Inc.*, 364 Md. 301 (2001), the court held that an agency (like the OAH) "may reconsider an action previously taken and come to a different conclusion upon a showing that ... some new or different factual situation exists that justifies the different conclusion." In this case, I do not believe the Respondent has identified "some new or different factual situation." *Id.* at 325. As such, the motion will be denied.

WHEREFORE, for the foregoing reasons it is, this 18th day of **September, 2017**, by the Administrative Law Judge for Baltimore County, ordered that the Motion for Reconsideration be and is hereby DENIED.

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:sln

8/1
10Am

Case No.: 2017-0339-A

Exhibit Sheet

Petitioner/Developer DW 9-7-17 Protestants Sen 8-7-17

No. 1	Plan (redline)	Photos
No. 2	Letters of support from neighbors	
No. 3	My Neighborhood Map w/ photos	
No. 4	Photos - homes in vicinity	
No. 5	Plat - Garrison Farms	
No. 6	My Neighborhood Aerial	
No. 7	Elevations	
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

TO: Administrative Law Judge,

In a recent conversation with our neighbors the Janets, we had an opportunity to review and discuss the proposed garage enclosure of the existing carport and minor addition to the home at 3417 Garrison Farms Road.

We have seen the architectural drawings and site plan and have no objections to the proposed improvements.

Thank you,

Stephen B Hameroff MD

Beatrice Hameroff

PRINTED NAMES: Dr. Stephen B HAMEROFF MD

Beatrice Hameroff

HOME ADDRESS: 3419 Garrison Farms Rd

CONTACT NUMBER: 410 486 7710

EXHIBIT 2

TO: Administrative Law Judge,

In a recent conversation with our neighbors the Janets, we had an opportunity to review and discuss the proposed garage enclosure of the existing carport and minor addition to the home at 3417 Garrison Farms Road.

We have seen the architectural drawings and site plan and have no objections to the proposed improvements.

Thank you,

Jerome J. Seidenman

Shana A. Seidenman/JR

PRINTED NAMES: Jerome J. SeidenMAN

Shana A. SeidenMAN/JR.

HOME ADDRESS: 3414 Garrison Farms Rd. 21208

CONTACT NUMBER: 410-653-8823

TO: Administrative Law Judge,

In a recent conversation with our neighbors the Janets, we had an opportunity to review and discuss the proposed garage enclosure of the existing carport and minor addition to the home at 3417 Garrison Farms Road.

We have seen the architectural drawings and site plan and have no objections to the proposed improvements.

Thank you,

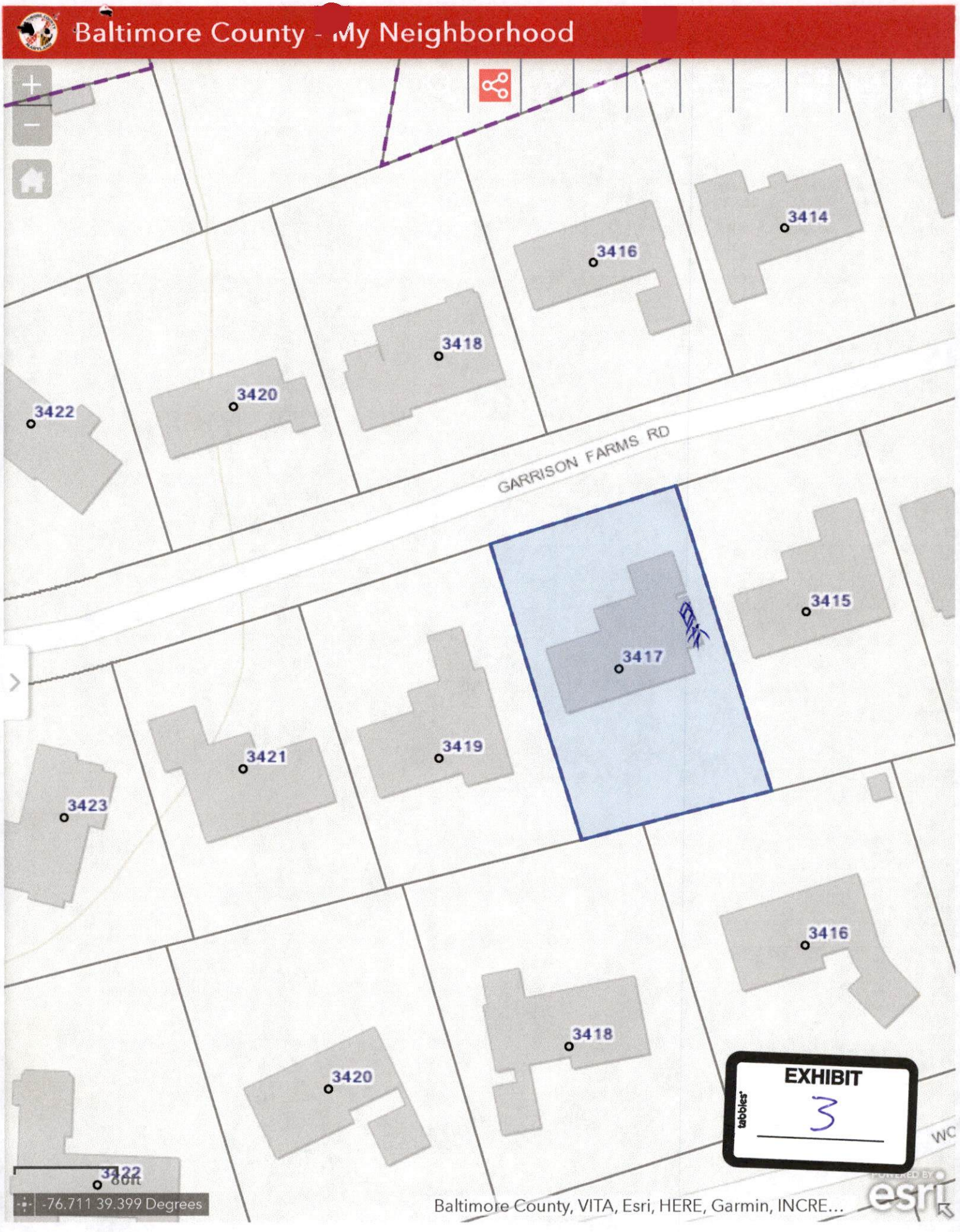
Audrey Levine

PRINTED NAMES: AUDREY LEVINE

HOME ADDRESS: 3421 Garrison Farms Rd.

CONTACT NUMBER: 410-484-0578

)fi!
Whatever you want!
Ellen Hasenau
(across the street)


Baltimore County - My Neighborhood
3414
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GARRISON FARMS RD
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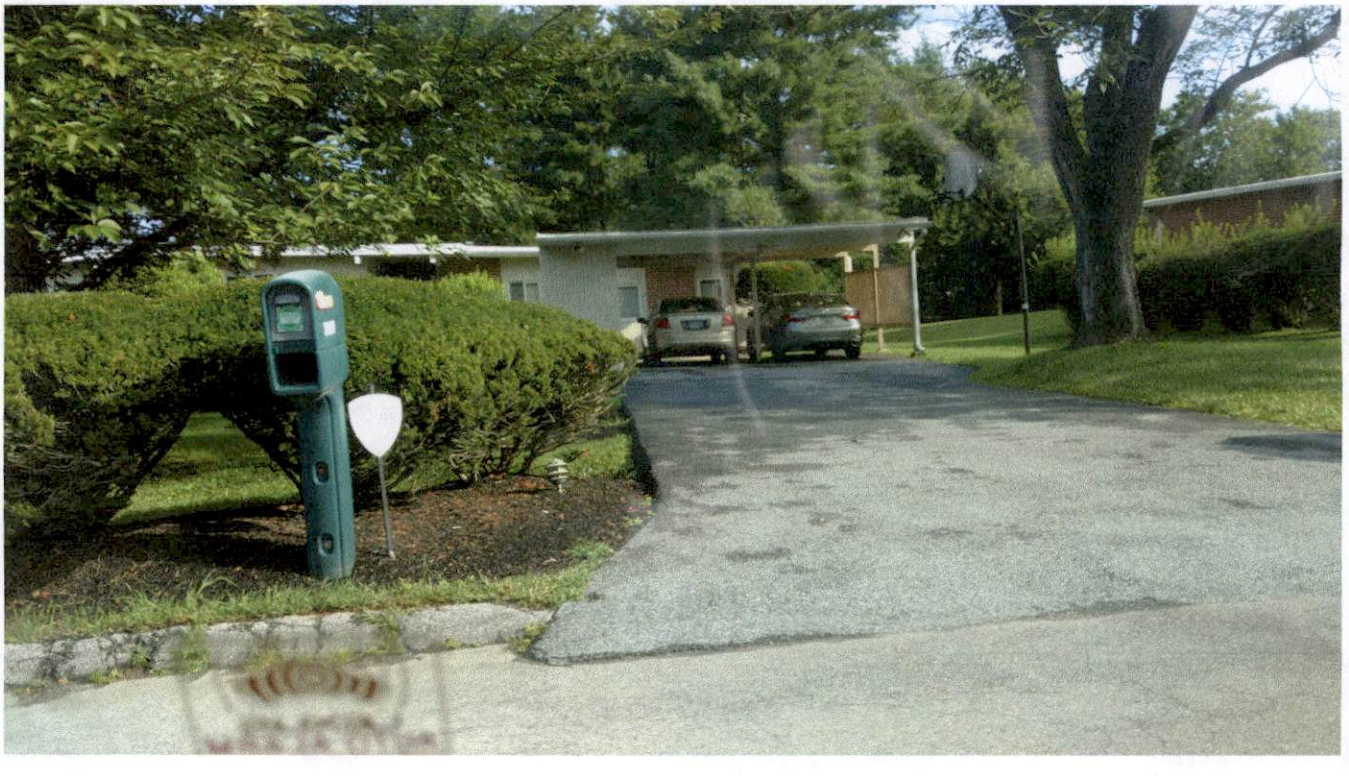
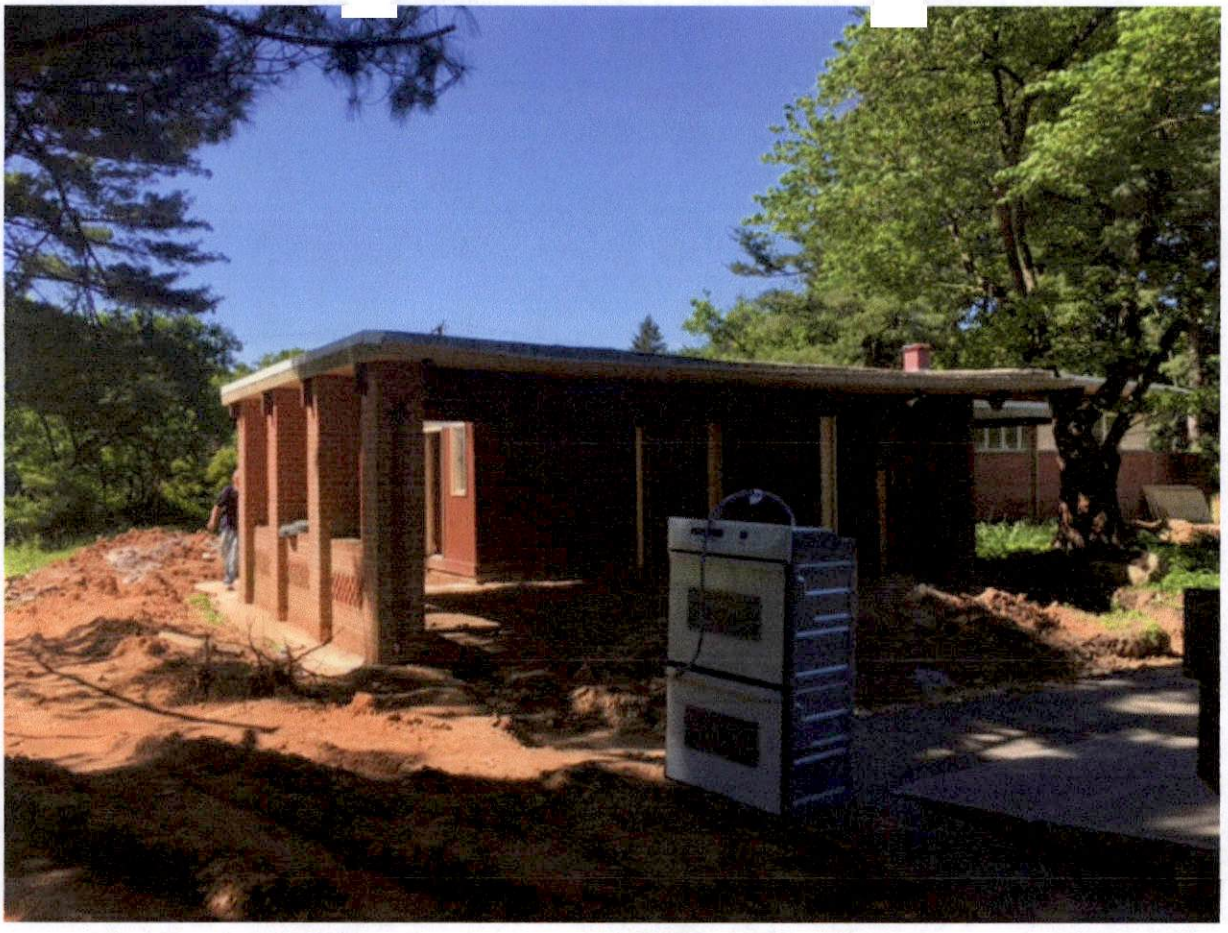
EXHIBIT
3

EXHIBIT
4






Baltimore County - My Neighborhood
Layer List
EXHIBIT
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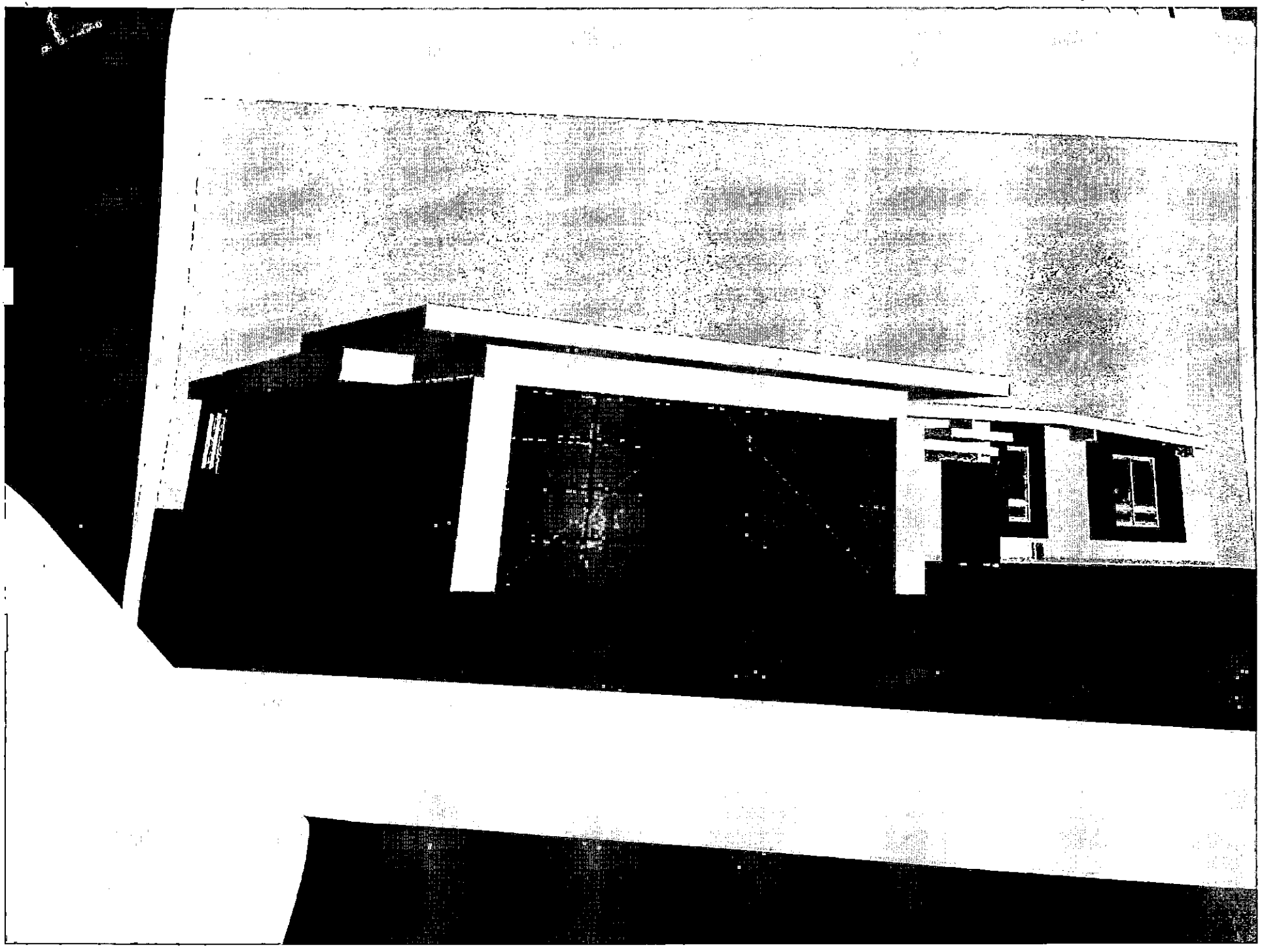
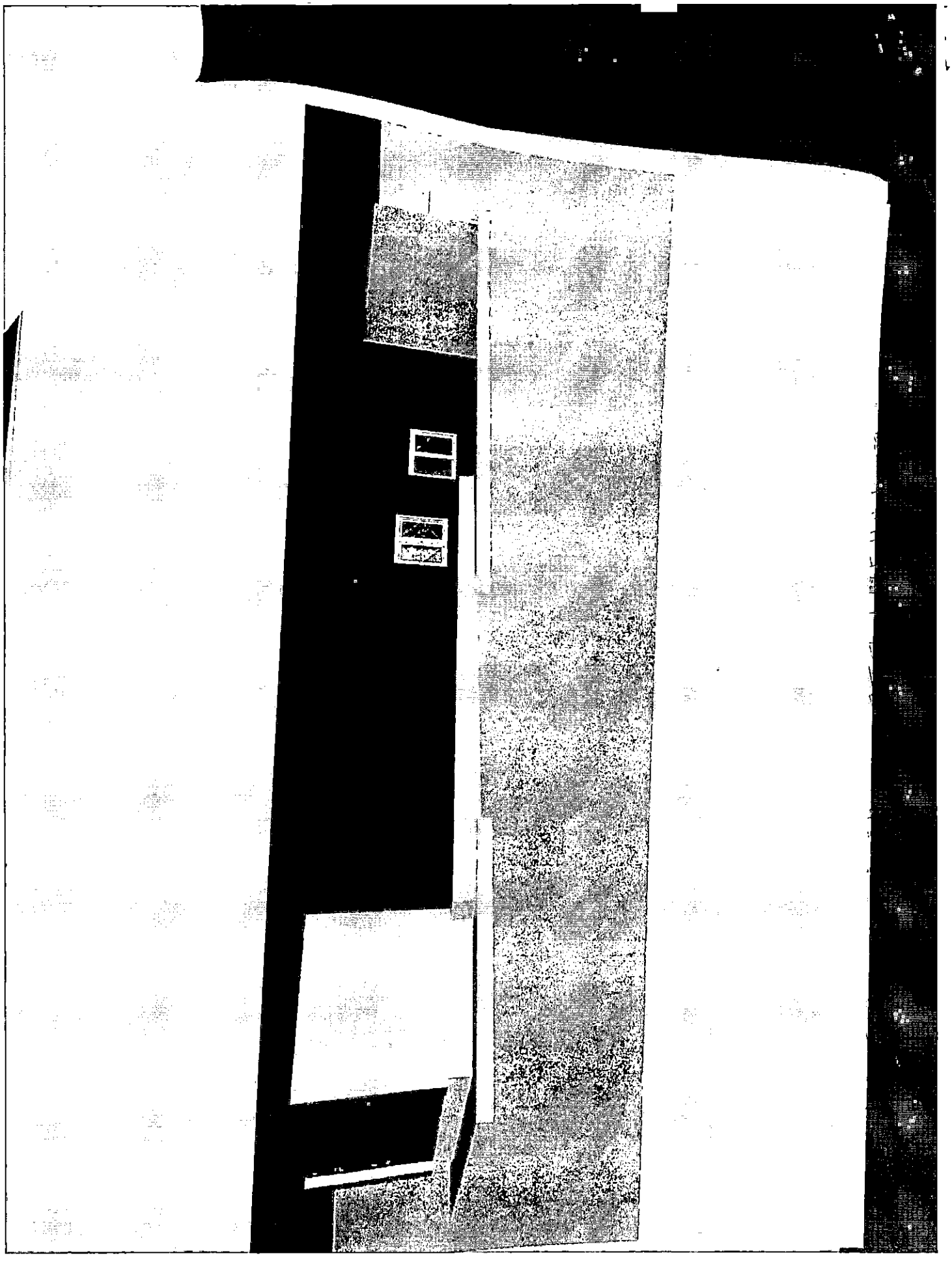
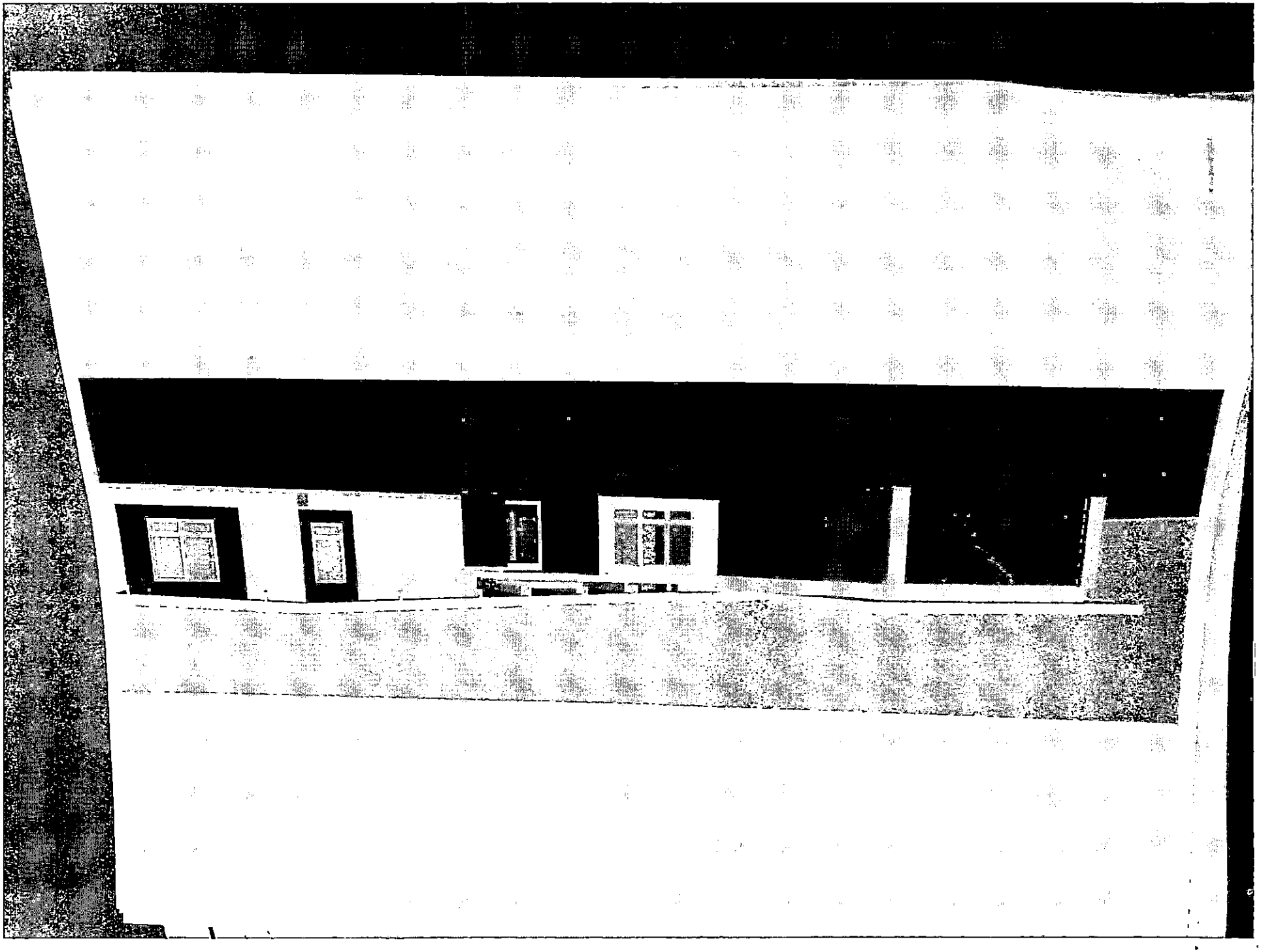
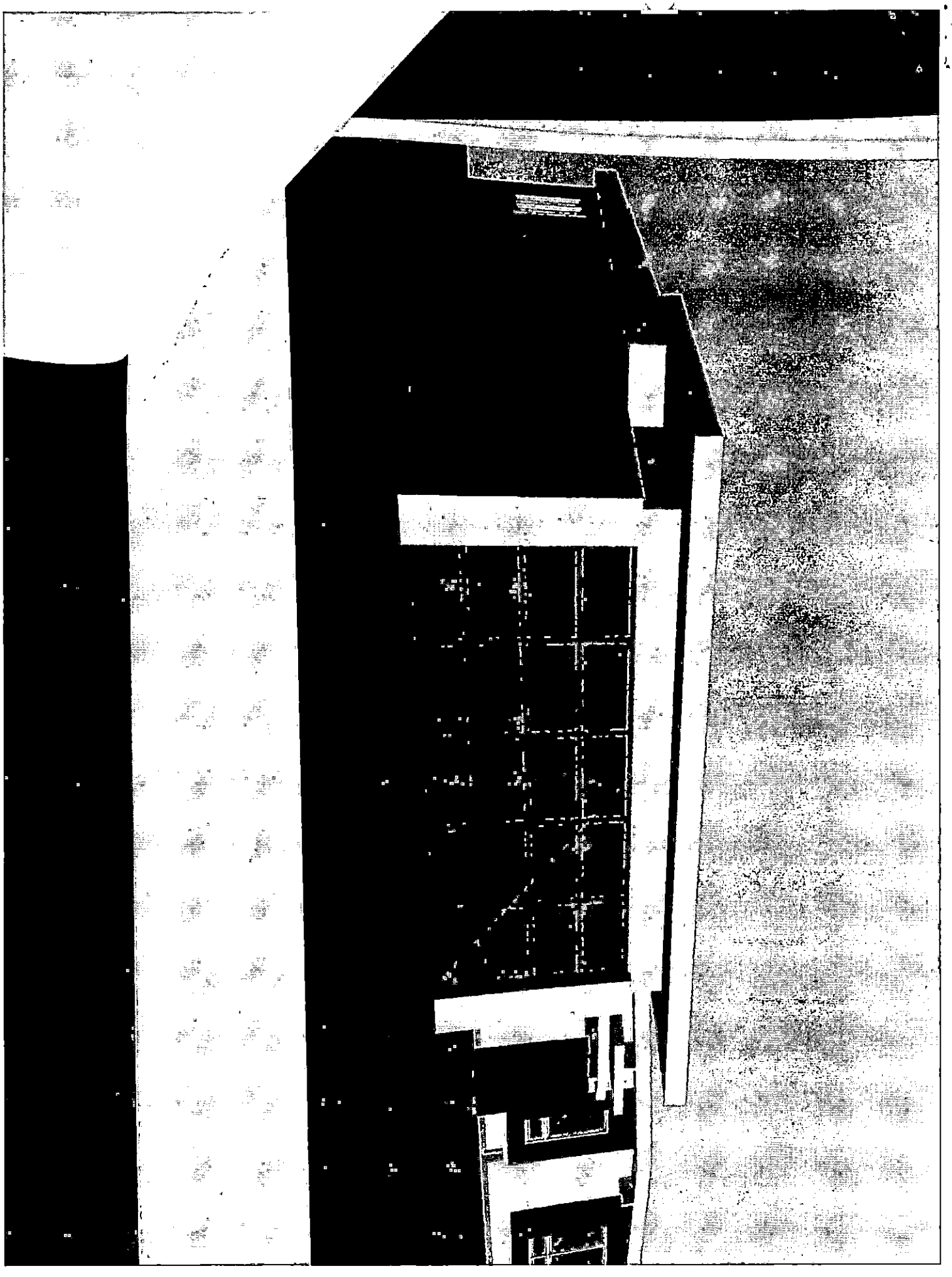
-76.710 39.398 Degrees
Microsoft
POWERED BY esri

Pet. No. 7









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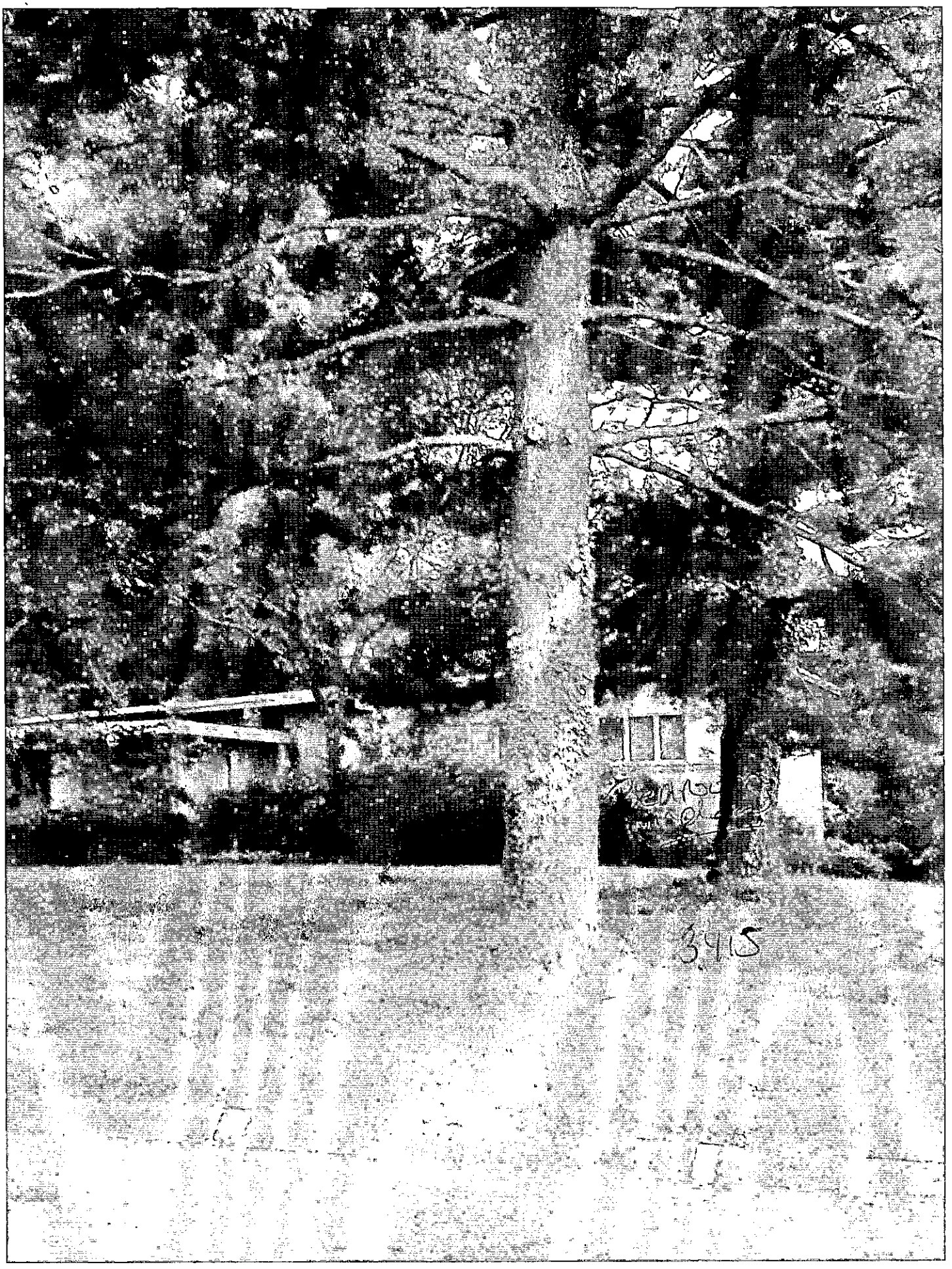

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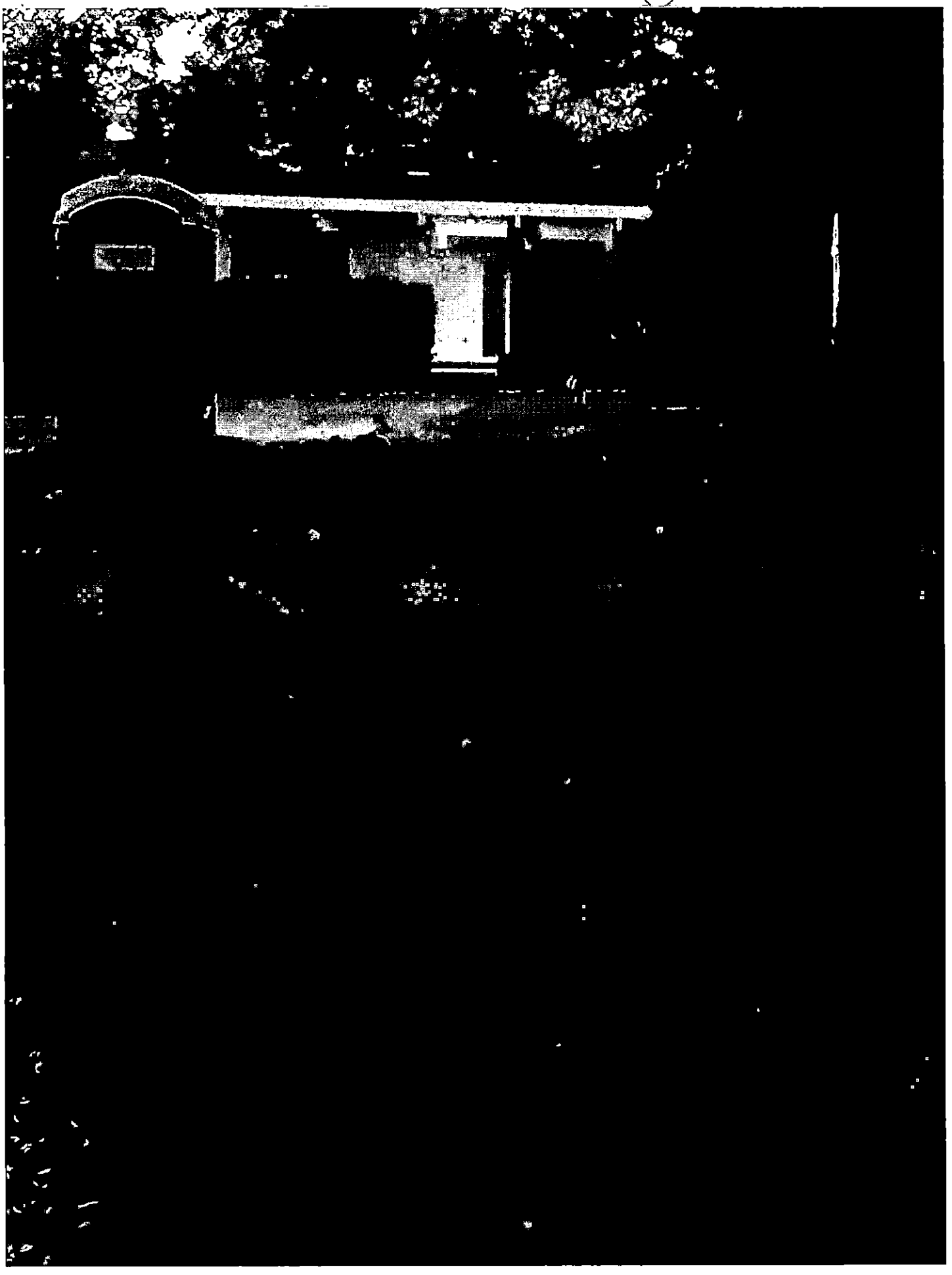

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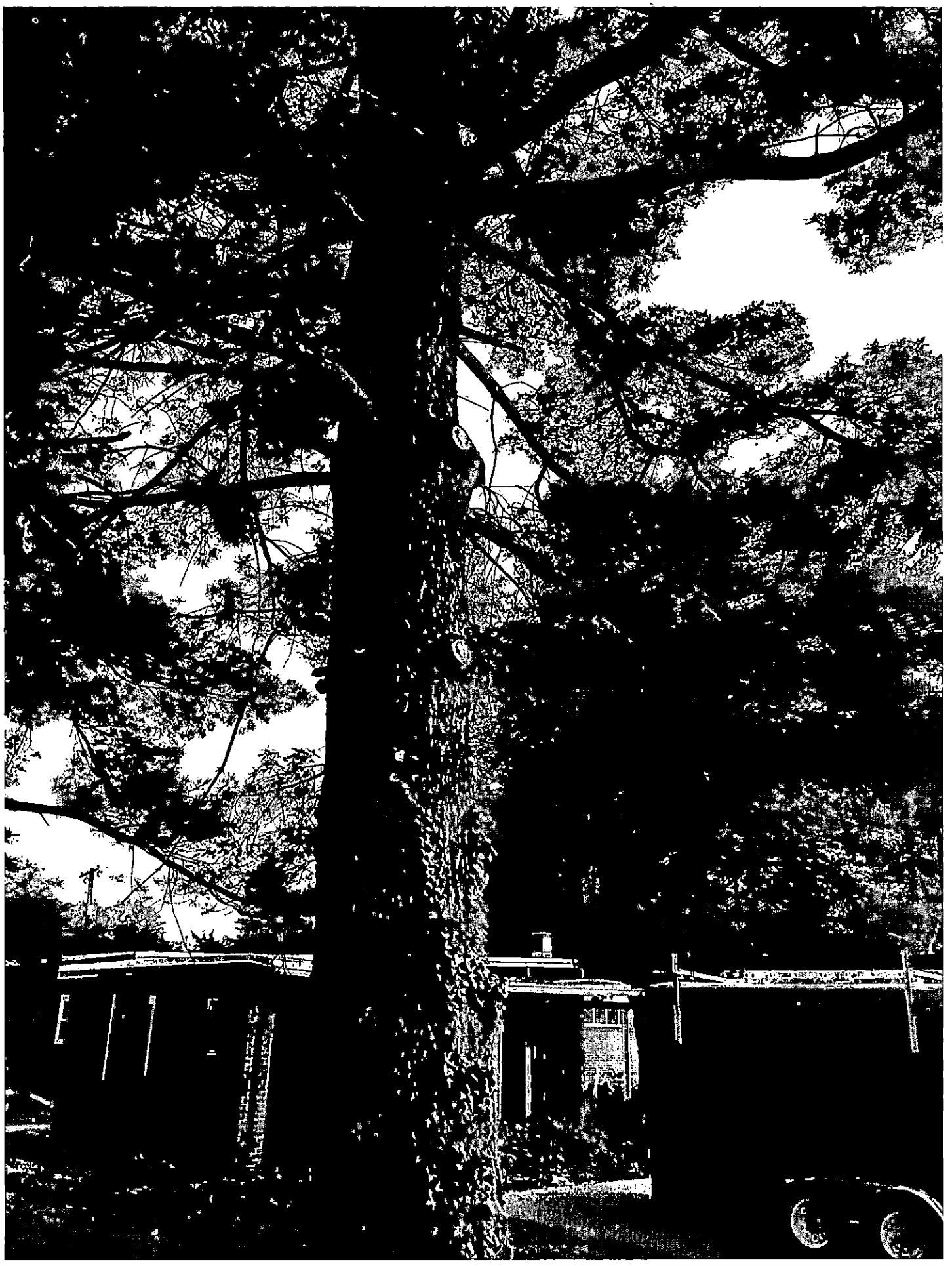

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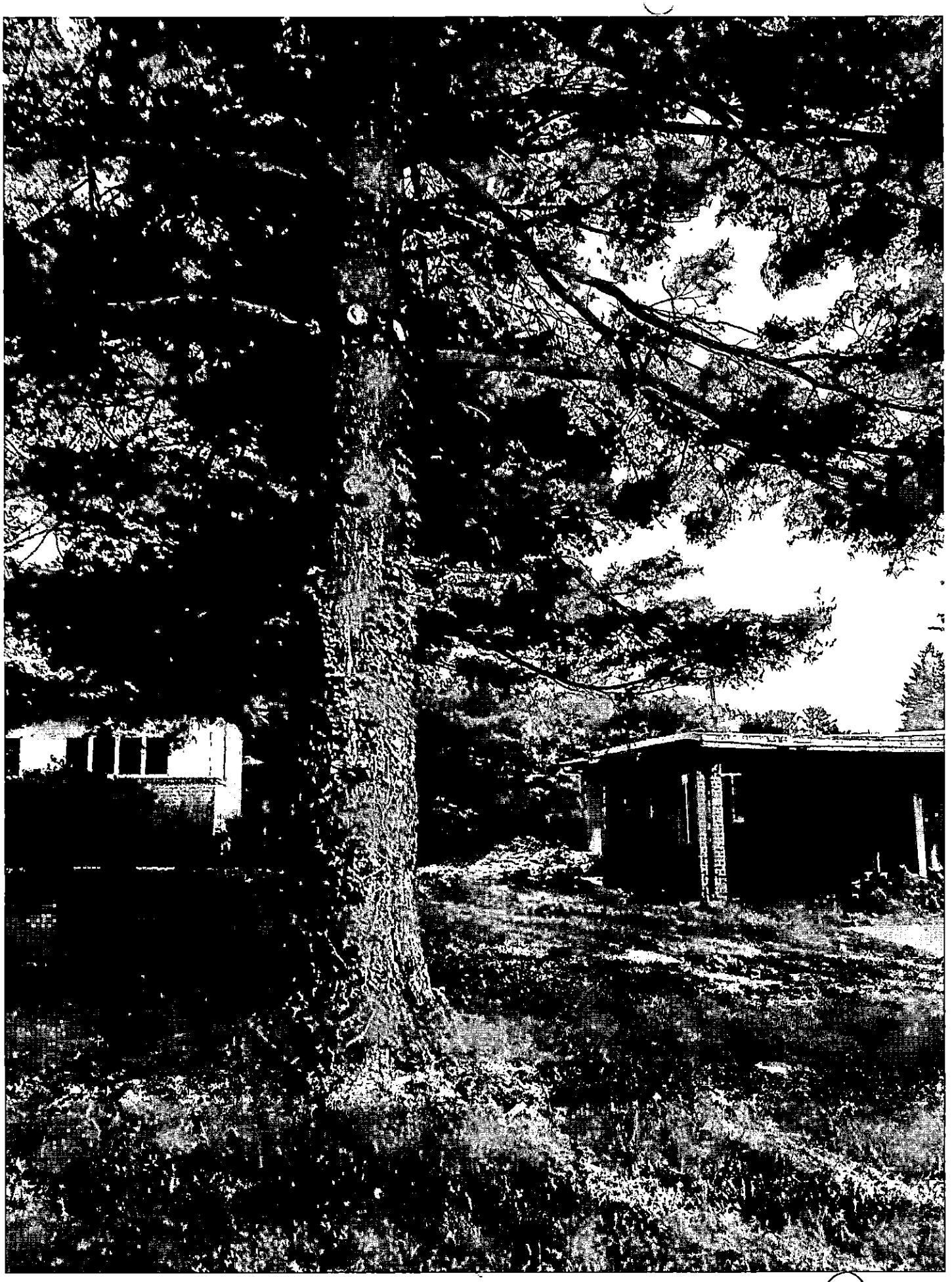
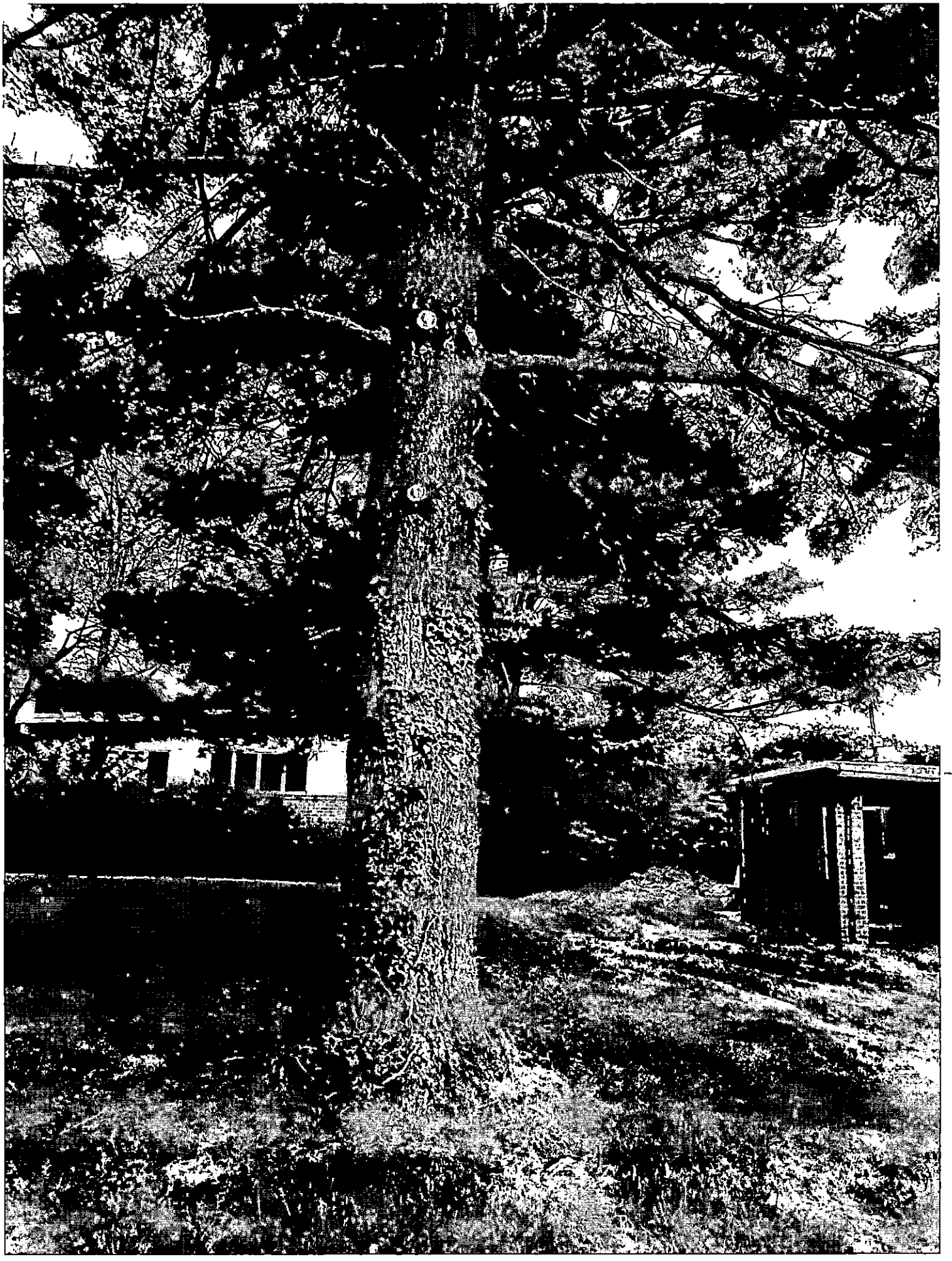
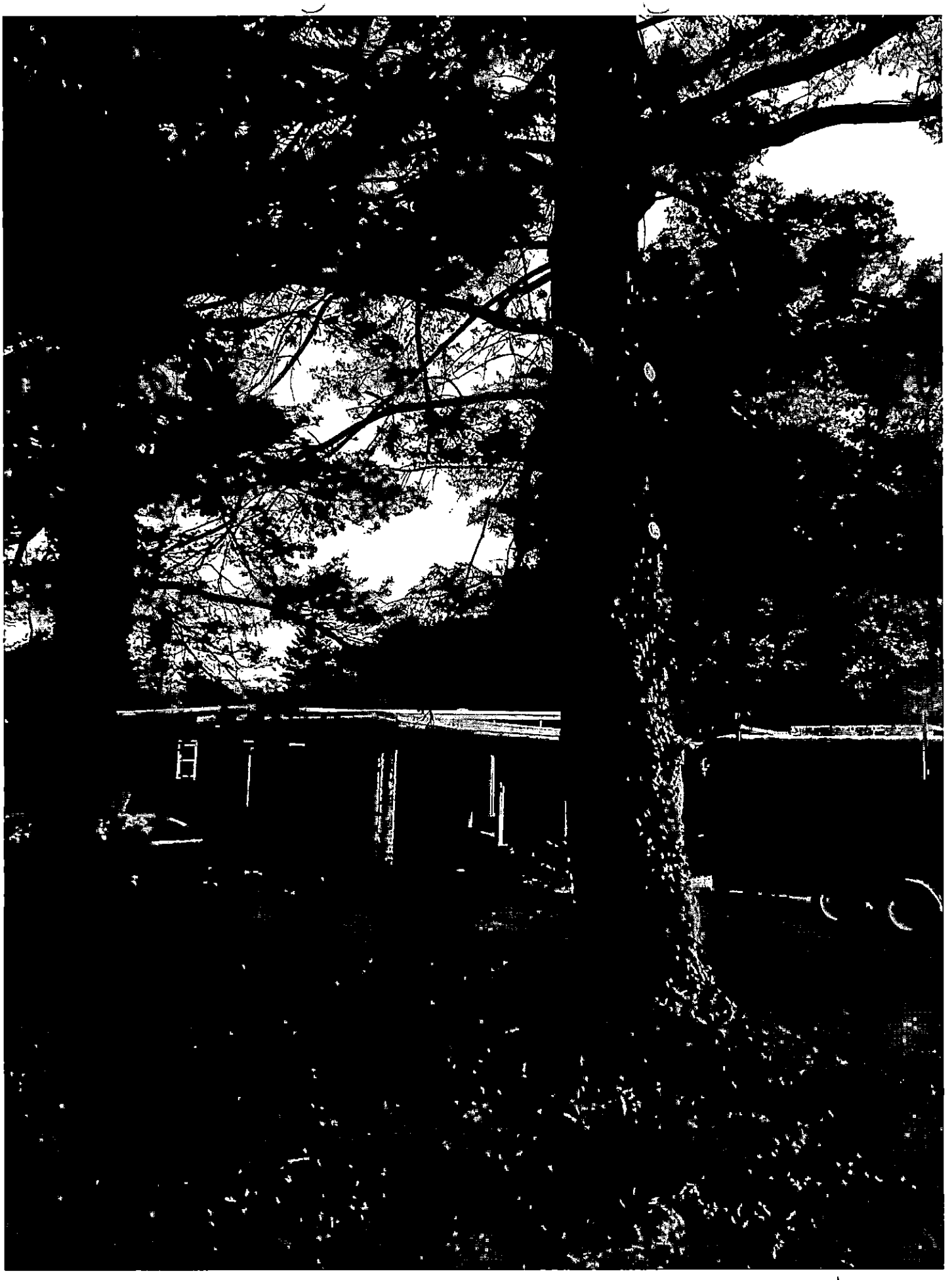
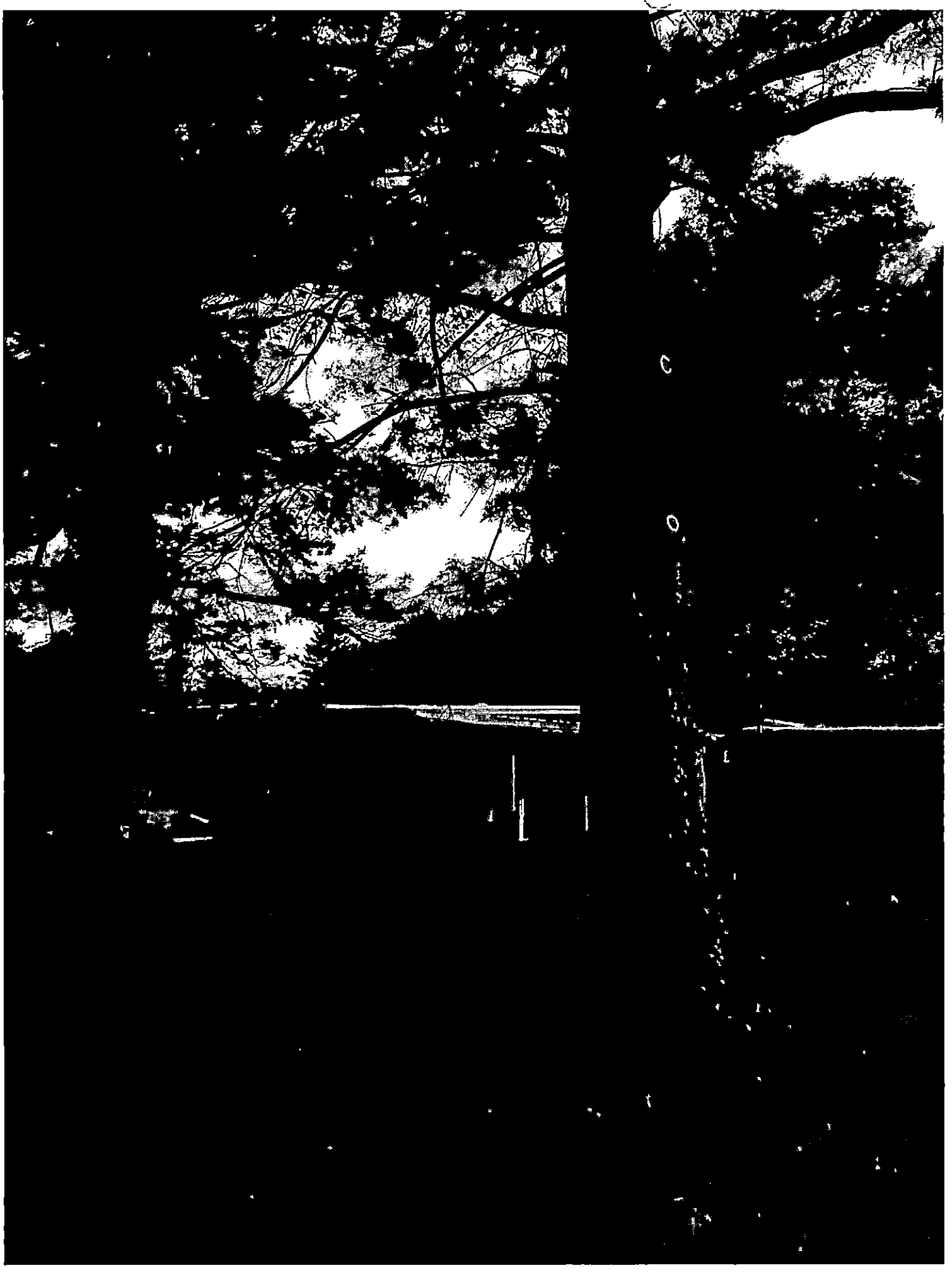
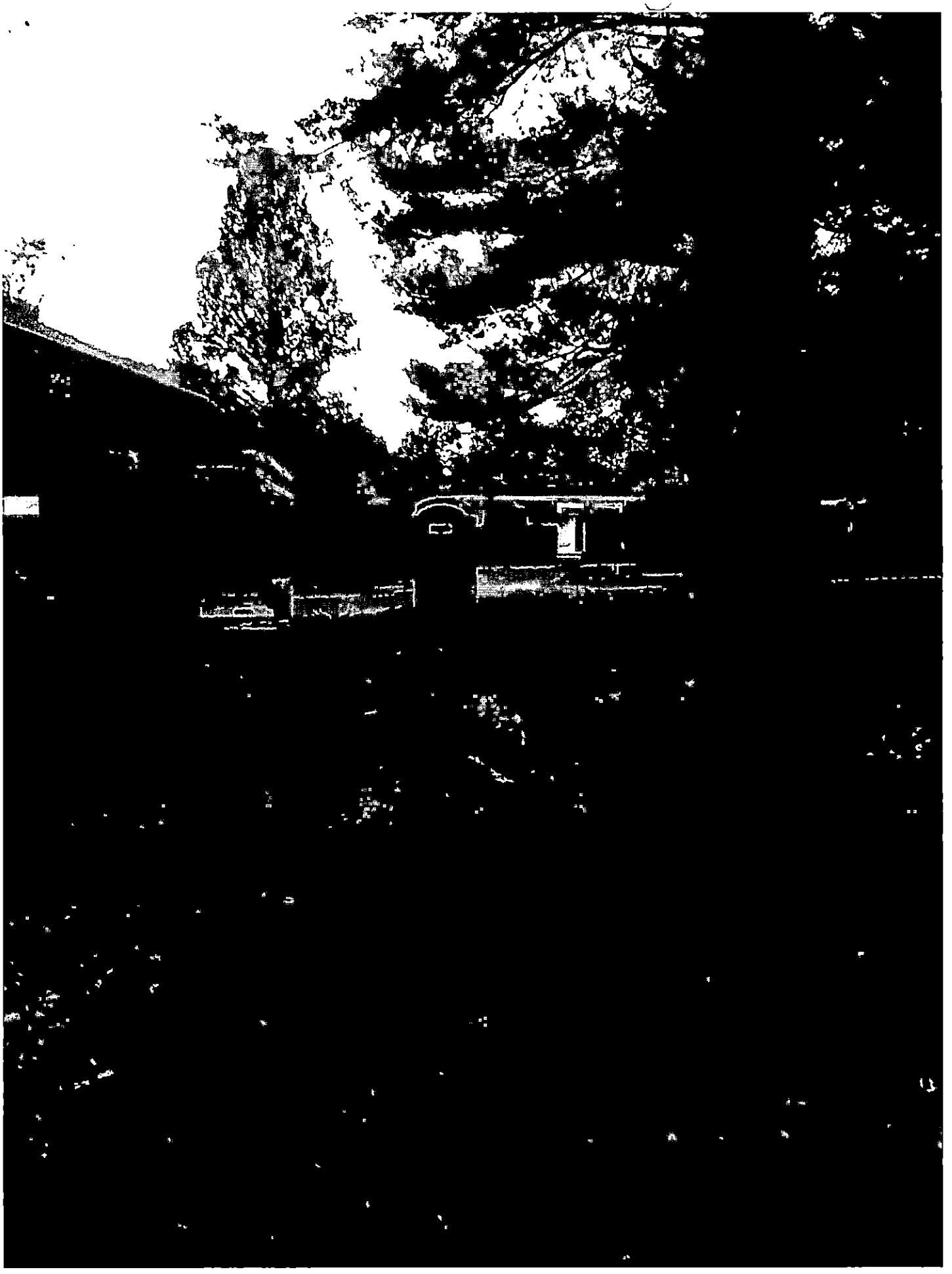
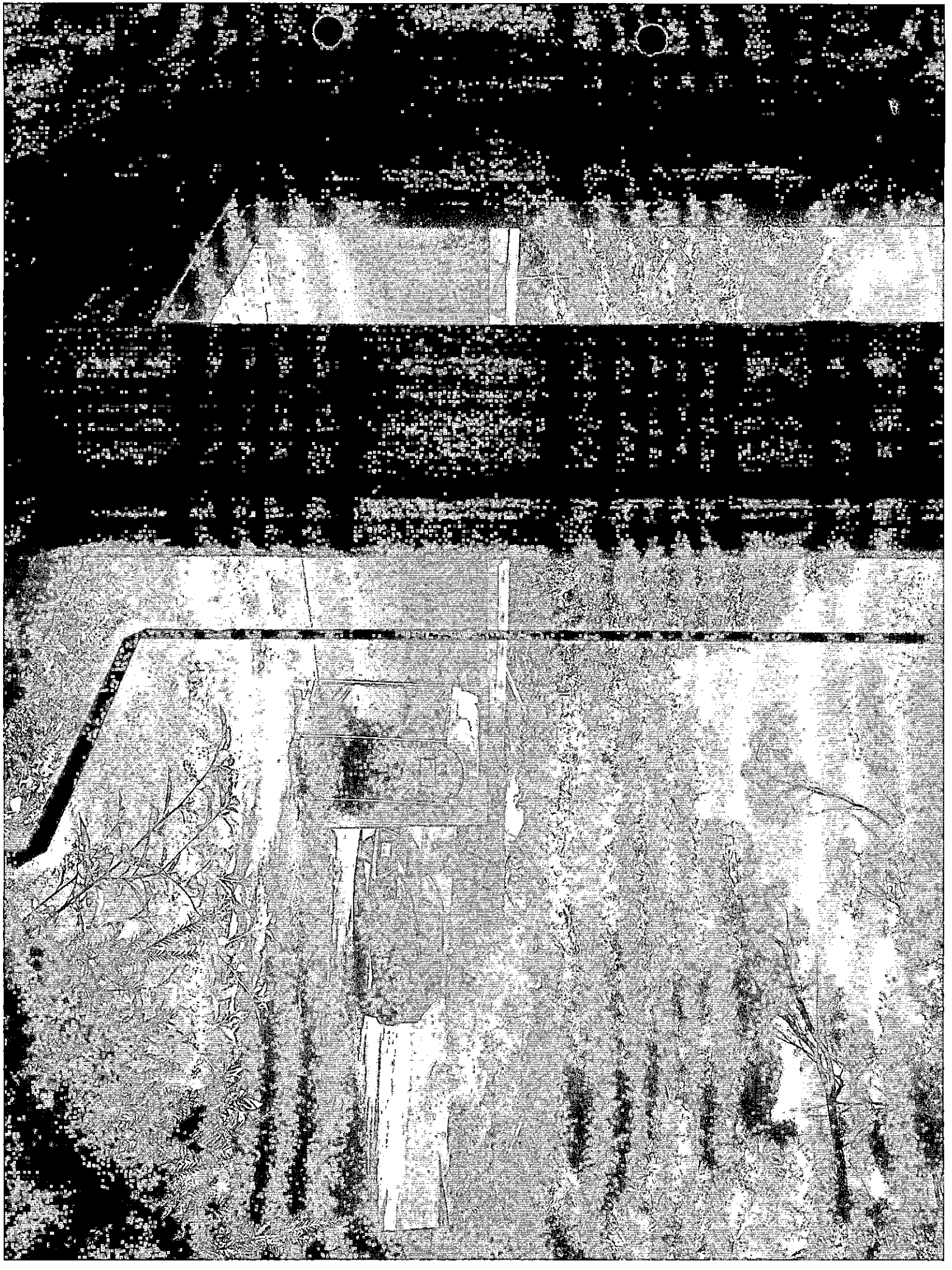


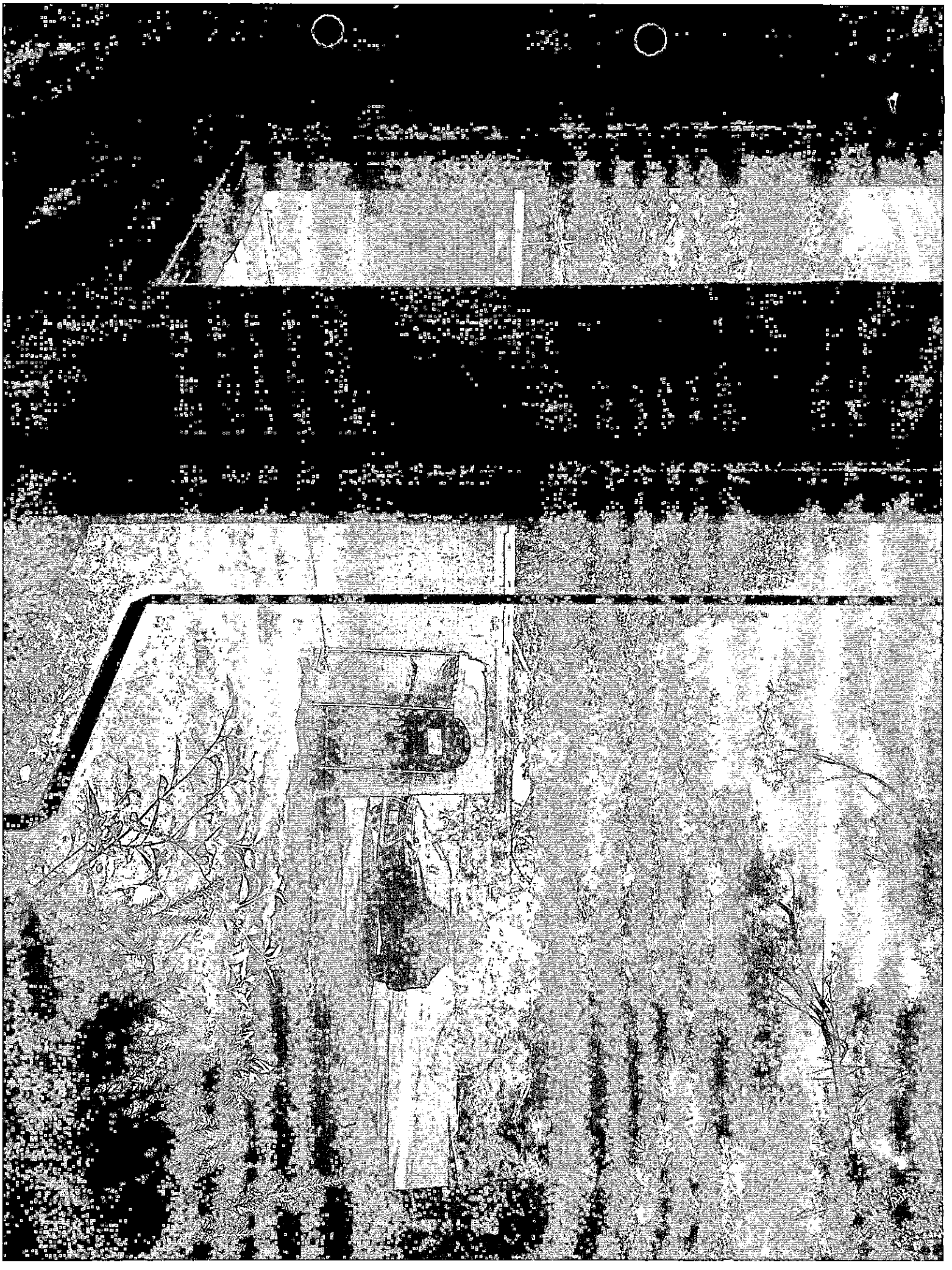






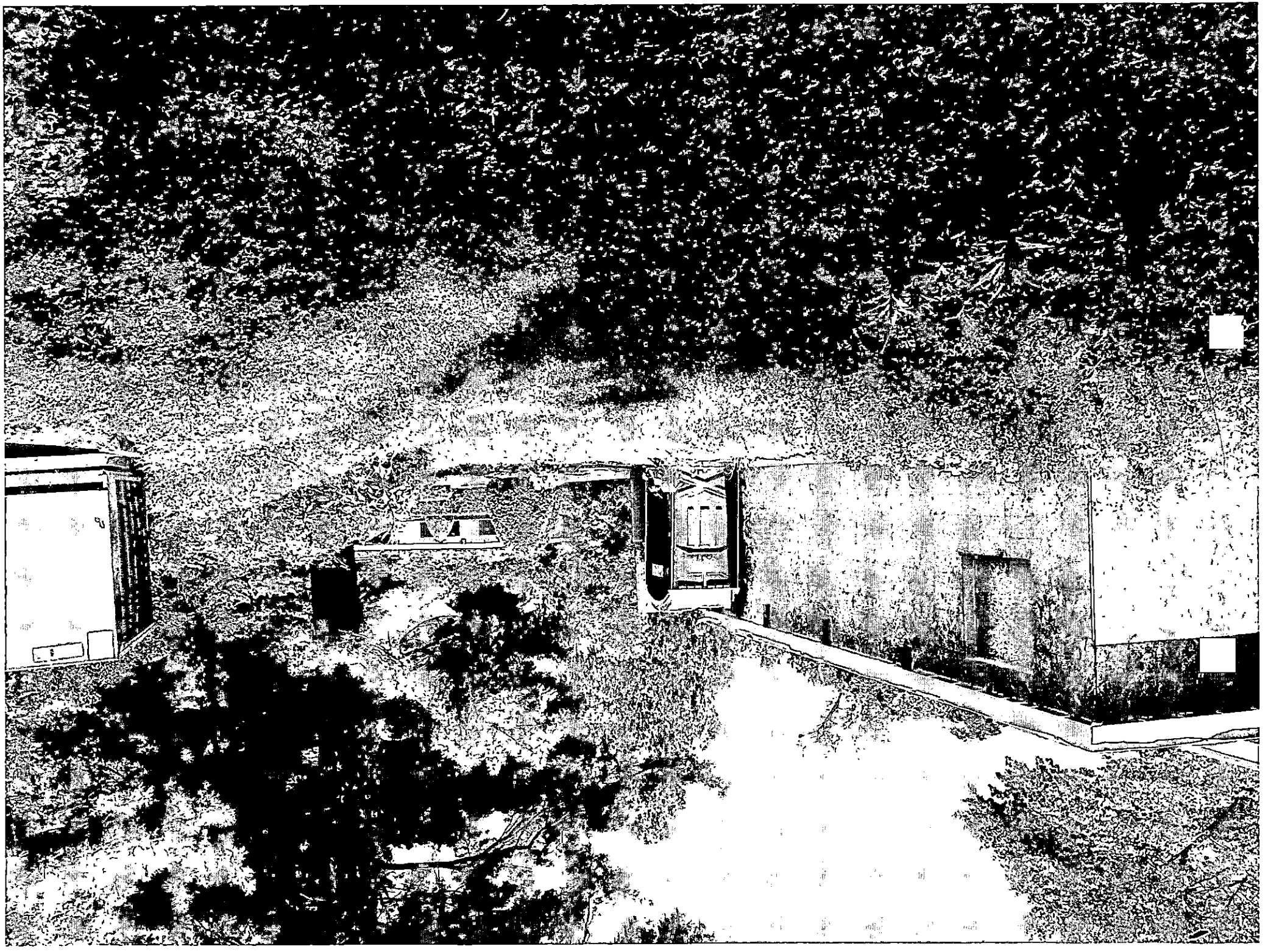


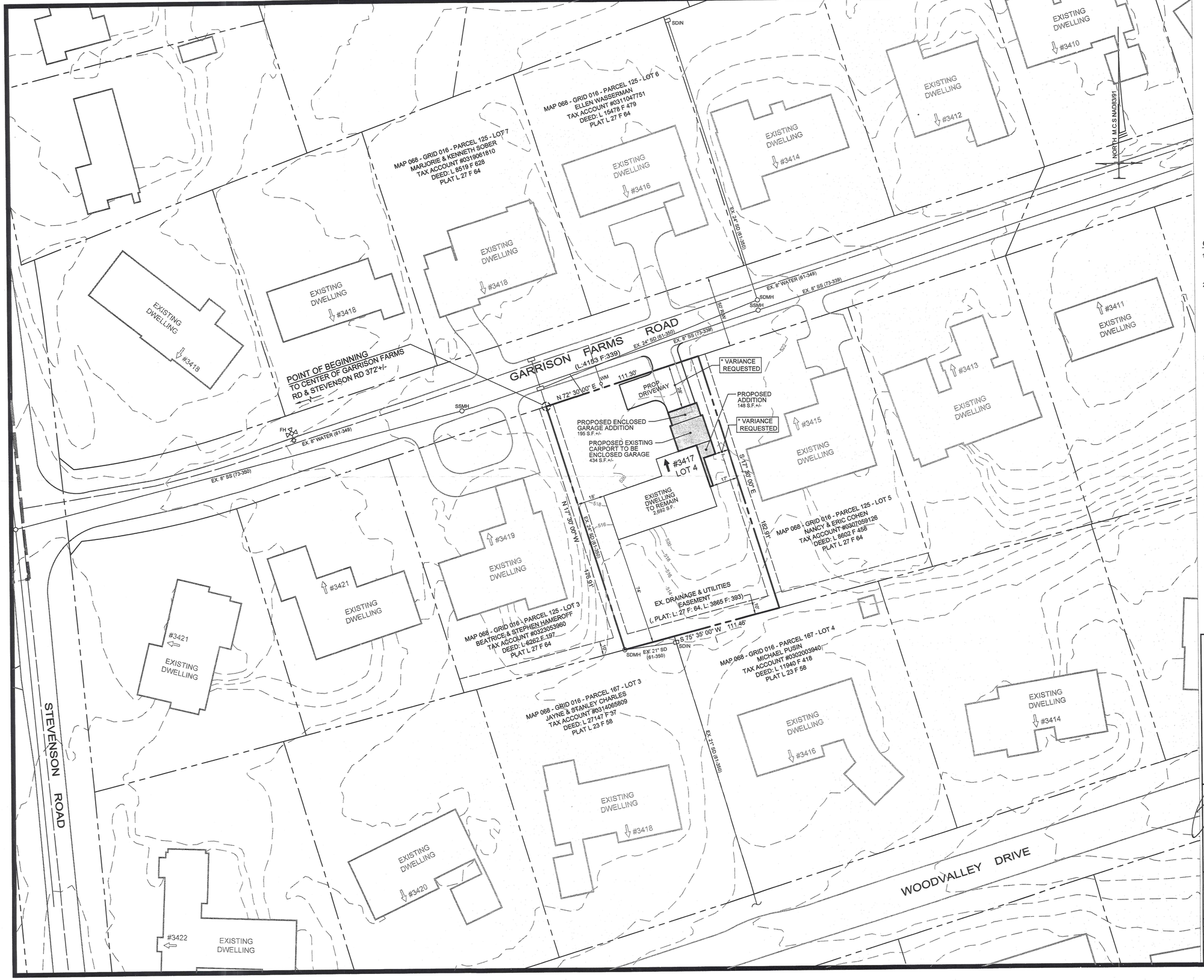


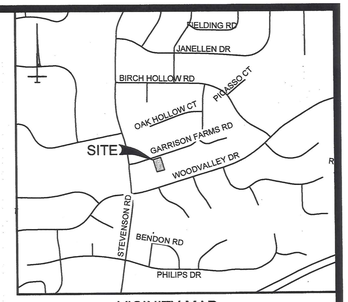



our
trees

tall trees are on property of 3415







VICINITY MAP
SCALE: 1" = 1,000'

GENERAL NOTES:

1. OWNERS:
   CORINNE & ADAM JANET
   3417 GARRISON FARMS ROAD
   BALTIMORE, MARYLAND, 21208
2. SITE DATA:
   ADDRESS: 3417 GARRISON FARMS ROAD
   BALTIMORE, MARYLAND, 21208
   TAX ACCOUNT #: 0311077951
   MAP: 68
   GRID: 16
   PARCEL: 125
   DEED REF: LIBER 38385 FOLIO 442
   PLAT REF: LIBER 27 FOLIO 64
   GIS TILE (200 SCALE): 068B2
3. SITE AREA: 20,024 SQ. FT. OR 0.459 AC.±
4. CURRENT ZONING: D.R. 2
5. ZONING HISTORY:
   NONE
6. D.R. 2 ZONING SETBACKS: (1B02.3.B)
   RECORD PLAT APPROVED BY BALTIMORE COUNTY PLANNING BOARD BETWEEN MARCH 30, 1955 AND MARCH 30, 1971

SETBACKS	REQUIRED	PROPOSED
FRONT YARD	40'	28'
SIDE YARD (EAST)	15'	7'
REAR YARD	40'	74'

7. THIS SITE IS SERVED BY PUBLIC WATER AND SEWER.
8. THIS SITE IS NOT LOCATED WITHIN THE 100 YEAR FLOODPLAIN.
9. THIS SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
10. THERE ARE NO STRUCTURES LOCATED ON SITE INCLUDED IN THE MARYLAND INVENTORY OF HISTORIC PROPERTIES OR THE BALTIMORE COUNTY FINAL LANDMARKS LIST.
11. TOPOGRAPHIC INFORMATION SHOWN HEREON WAS TAKEN FROM THE BALTIMORE COUNTY GIS DATA AND ADDITIONAL BOUNDARY INFORMATION WAS TAKEN FROM THE PLAT L 27 F 64 TITLED "PLAT OF SECTION ONE GARRISON FARMS" DATED FEB. 21, 1960 AND THE LOCATION OF THE DWELLING WAS TAKEN FROM THE LOCATION DRAWING PERFORMED BY J.S. DALLAS, INC., DATED MAY 19, 2017.

PLAN TO ACCOMPANY ZONING PETITION

JANET RESIDENCE

3417 GARRISON FARMS ROAD
BALTIMORE COUNTY, MD.

3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT

GRAPHIC SCALE

30 0 15 30 60 120

(IN FEET)
1 inch = 30 ft.

Colbert Matz Rosenfelt, Inc.
*Engineers * Surveyors * Planners*
2835 Smith Avenue, Suite G
Baltimore, Maryland 21209
Telephone: (410) 653-3838
Facsimile: (410) 653-7953

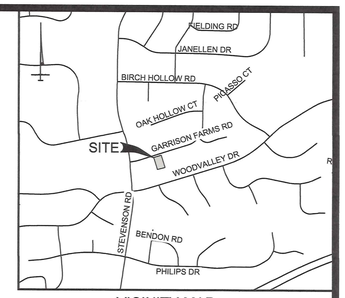
STATE OF MARYLAND — ANTHONY J. CORTEAL — No. 13203 — PROFESSIONAL ENGINEER — 6/9/2017
THIS PLAN IS ACCURATE AND HAS BEEN PREPARED IN ACCORDANCE WITH BALTIMORE COUNTY REGULATIONS.

Professional Certification
I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.
License No. 13203 Expiration Date: 11/02/2018

SCALE:	1"-30'
DATE:	6/9/2017
JOB NO.:	2017-140
DESIGNED:	AJC
DRAWN:	AJC
CHECKED:	REM
FILE:	2017140 GARRISON FARM RD (CURRENT).DWG
DRAWING NUMBER:	VAR-01
SHEET	1 OF 1

NO.	DATE	REVISIONS:	BY

\\CMRFILE\cadd\wgld2\project\2017\2017140 (3417 Garrison Farm Rd)\CMR\Concept-Prelim\2017140 GARRISON FARM RD (CURRENT).dwg, Layout1, 6/12/2017 2:19:52 PM, acorteal



VICINITY MAP
SCALE: 1" = 1,000'

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5. ZONING HISTORY:
   NONE
6. D.R. 2 ZONING SETBACKS: (1B02.3.B)
   RECORD PLAT APPROVED BY BALTIMORE COUNTY PLANNING BOARD BETWEEN MARCH 30, 1955 AND MARCH 30, 1971

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9. THIS SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
10. THERE ARE NO STRUCTURES LOCATED ON SITE INCLUDED IN THE MARYLAND INVENTORY OF HISTORIC PROPERTIES OR THE BALTIMORE COUNTY FINAL LANDMARKS LIST.
11. TOPOGRAPHIC INFORMATION SHOWN HEREON WAS TAKEN FROM THE BALTIMORE COUNTY GIS DATA AND ADDITIONAL BOUNDARY INFORMATION WAS TAKEN FROM THE PLAT L 27 F 64 TITLED "PLAT OF SECTION ONE GARRISON FARMS" DATED FEB. 21, 1960 AND THE LOCATION OF THE DWELLING WAS TAKEN FROM THE LOCATION DRAWING PERFORMED BY J.S. DALLAS, INC., DATED MAY 19, 2017.

PLAN TO ACCOMPANY ZONING PETITION

JANET RESIDENCE

3417 GARRISON FARMS ROAD
BALTIMORE COUNTY, MD.

3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT

GRAPHIC SCALE

30 0 15 30 60 120

(IN FEET)
1 inch = 30 ft.

Colbert Matz Rosenfelt, Inc.
*Engineers * Surveyors * Planners*
2835 Smith Avenue, Suite G
Baltimore, Maryland 21209
Telephone: (410) 653-3838
Facsimile: (410) 653-7953

STATE OF MARYLAND — RICHARD E. MATZ — No. 13203 — PROFESSIONAL ENGINEER
JULY 31, 2017
THIS PLAN IS ACCURATE AND HAS BEEN PREPARED IN ACCORDANCE WITH BALTIMORE COUNTY REGULATIONS.

Professional Certification
I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional engineer under the laws of the State of Maryland.
License No. 13203 Expiration Date: 11/02/2018

NO.	DATE	REVISIONS:	BY

SCALE:	1"-30'
DATE:	6/9/2017
JOB NO.:	2017-140
DESIGNED:	AJC
DRAWN:	AJC
CHECKED:	REM
FILE:	2017140 GARRISON FARM RD (CURRENT).DWG
DRAWING NUMBER:	VAR-01
SHEET	1 OF 1

PETITIONER'S
EXHIBIT NO. 1

STEVENSON INVESTMENT COMPANY
GLB 2528-55

GARRISON FARMS INC.
GLB-7-58

STEVENSON ROAD

GARRISON FARMS

BLOCK "A"

BLOCK "B"

ROAD

AMENDED PLAT-1
LONGMEADOW WEST
WJR-26-73

SECTION-1
LONGMEADOW AT GARRISON
GLB-23-58

GORDON E. SUGAR
GLB 2688-491

No	R.	L.	Δ	T.D.	CHORD
1	525.00	107.46	11°-43'-40"	59.02	S 78°-21'-50"W 107.27'
2	575.00	117.70	11°-43'-40"	59.05	N 78°-21'-50"E 117.49
3	1369.59	52.14	02°-10'-53"	26.07	N 06°-51'-46.5"W 52.14

NOTE:

THE STREETS AND/OR ROADS SHOWN HEREON AND MENTION THEREOF IN DEEDS ARE FOR PURPOSES OF DESCRIPTION ONLY AND ARE NOT INTENDED TO BE DEDICATED TO PUBLIC USE; THE FEE SIMPLE TITLE TO THE BEDS THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED TO WHICH THIS PLAT IS ATTACHED, THEIR HEIRS AND ASSIGNS.

NOTE:

COORDINATES AND BEARINGS SHOWN ON THIS PLAT ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED IN THE BALTIMORE COUNTY METROPOLITAN DISTRICT, AND ARE BASED ON THE FOLLOWING TRAVERSE STATIONS:

X-1506	W 27 432.67	N 37 224.72
X-2474	W 24 578.48	N 38 860.27
X-2475	W 24 116.10	N 38 797.62
X-1507	W 27 459.90	N 37 602.55

W.J.R. 27 FOLIO 64

RECEIVED for Record
MAR 17 1961 at A.M. P.M.
same day recorded in libe:
W.J.R. No. ..... folio .....
One of the ..... Records of Baltimore County and examined, per

Walter J. Rasmussen
Clerk

PLAT OF
SECTION ONE
GARRISON FARMS

3RD. ELECT. DISTRICT BALTO. COUNTY, MD.
SCALE: 1"=50' FEB. 21, 1960

DEVELOPER:
PRIME CONTRACTORS, INC.
210 E. LEXINGTON ST.
BALTIMORE, MD.

P.W.A. Complete 36104 S.C.C.
Final Plat Checked
Planning JE
Engineering [illegible]
Date March 16th 1961

APPROVED:
3/17/61 William H. F. Worthen M.D.
DATE DEPUTY STATE & COUNTY HEALTH OFFICER

APPROVED, BALTIMORE COUNTY PLANNING BOARD:
Mar. 15, 1961 Malcolm Peck
DATE DIRECTOR

APPROVED:
3/16/61 Albert B. Blattenbach
DATE COUNTY ROADS ENGINEER

OWNERS CERTIFICATE

THE REQUIREMENTS OF SECTION 72-B, ARTICLE 17, OF THE ANNOTATED CODE OF MARYLAND (FLACK 1947 SUPPLEMENT) AS FAR AS THEY RELATE TO THE PREPARATION OF THIS PLAT HAVE BEEN COMPLIED WITH.

PRIME CONTRACTORS, INC.
[signature] P.Pres. 2-22-61
OWNER DATE

SURVEYORS CERTIFICATE

I, NORMAN FRANCIS HERRMANN, A REGISTERED LAND SURVEYOR OF THE STATE OF MARYLAND, DO HEREBY CERTIFY THAT THE LAND SHOWN HEREON HAS BEEN LAID OUT, AND THE PLATS THEREOF PREPARED IN ACCORDANCE WITH THE PROVISIONS OF THE LAW RELATING TO THE SUBDIVISION OF LAND KNOWN AS HOUSE BILL "459", CHAPTER 1016 OF THE ACTS OF 1945, AND SUBSEQUENT AMENDATORY ACTS.

Norman Francis Herrmann 3/8/61
REGISTERED LAND SURVEYOR #2828 DATE

LAND SURVEYOR NORMAN FRANCIS HERRMANN No. 2828 STATE OF MARYLAND

EXHIBIT 5

MATZ, CHILDS & ASSOCIATES
2129 N. CHARLES ST.
BALTIMORE 18, MD.

COMPUTED: E.S. DRAWN: J.D. CHECKED: E.S. '60.167

MSA S1236-2289