



JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

September 6, 2023

William Rutkowski- warutko@hotmail.com
7703 Philadelphia Road
Rosedale, MD 21237

RE: AMENDED OPINION AND ORDER
Petitions for Special Hearing & Variance
Case No. 2023-0102-SPHA
Property: 7703 Philadelphia Road

Dear Mr. Rutkowski:

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

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order 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,
A handwritten signature in black ink that reads "Paul M. Mayhew".

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm
Enclosure

c: Russ Mirable, Rosedale Community Association – russell3947@gmail.com

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(7703 Philadelphia Road)	*	OFFICE OF
14 th Election District		
6 th Council District	*	ADMINISTRATIVE HEARINGS
William Rutkowski		
Legal Owner	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2023-0102-SPHA
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	*	

AMENDED
OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as Petitions for Special Hearing and a Variance filed by the Petitioner William Rutkowski for the property located at 7703 Philadelphia Road, Rosedale. The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) § 500.7: For an accessory building with a footprint larger than the principal dwelling.

In addition, the Petitioner also seeks a Variance from BCZR § 400.3: To permit a proposed accessory building (garage) with a height of **22 ft.**, in lieu of the maximum permitted height of 15 ft.

A public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A Substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”), they did not oppose the requested relief.

The Petitioner, William Rutkowski, appeared at the hearing, *pro se*. There were no interested parties or protestants at the hearing. However, letters in support of the relief from the adjoining neighbors and the Rosedale Community Association were admitted as Petitioner’s Exhibits 1 thru 3.

The subject property is located on Philadelphia Road in Rosedale. It is approximately 26,442 sq. ft. (.62 acres), and is zoned DR 5.5. Mr. Rutkowski explained that he and his wife are classic car enthusiasts and collectors. They wish to build this proposed garage in order to properly store these vintage cars. He further explained that the 5 foot height variance is needed so that the roof pitch will match that of their dwelling and other homes on the street. He noted that the proposed garage will be located in a corner of their relatively large lot and will be largely shielded from view from the street. Further, none of the existing mature trees on the lot will need to be removed. Finally, he noted that within a quarter mile of this stretch of residences on Philadelphia Road there is a mix of commercial development in business zones. Indeed, the Petitioner's property and the other twelve dwellings along this portion of Philadelphia Road back to a commercial trucking business that fronts onto Route 40. In sum, this proposed private garage will have no adverse impacts on the surrounding neighborhood.

SPECIAL HEARING

A "special hearing" request under BCZR §500.7 "is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). This regulation gives the Administrative Law Judge the authority to interpret the county zoning regulations and to grant appropriate relief based on those interpretations. Further, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing [request] would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016).

Based on the record evidence in this case, I find that the special hearing relief requested in this case is within the spirit and intent of the regulations. Petitioner's dwelling footprint is relatively

small for this lot, and the proposed garage – though slightly larger – is in scale with the lot and neighborhood.

VARIANCE

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).

As noted above, the property is unique in a zoning sense because of the existing structures on the site and the fact that it is a residence in a pocket of homes surrounded by commercial uses. Petitioner would suffer practical difficulty and hardship if the modest height variance were denied because he would be unable to build the proposed garage in accordance with the specifications required by his vintage car insurance policies and in harmony with his dwelling. I find that the variance is within the spirit and intent of the regulations and that it will not harm the public health, safety and welfare. This finding is buttressed by the support of the Community Association and surrounding neighbors and the lack of opposition from the DOP.

THEREFORE, IT IS ORDERED, this 6th day of **September, 2023**, by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing under BCZR § 500.7: For an accessory building with a footprint larger than the principal dwelling is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance from BCZR § 400.3: To permit a proposed accessory building (garage) with a height of **22 ft.**, in lieu of the maximum permitted height of 15 ft. height is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is 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, Petitioner would be required to return the subject property to its original condition.
- The proposed building shall not be used for commercial or residential purposes.
- There shall be no second utility meter(s).
- Petitioner or subsequent owners shall not convert the proposed garage into a dwelling unit or apartment. The proposed accessory building garage shall not contain any sleeping quarters, living area, or kitchen or bathroom facilities.

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



PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm



JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

September 6, 2023

William Rutkowski- warutko@hotmail.com
7703 Philadelphia Road
Rosedale, MD 21237

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William Rutkowski	
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* * * * *

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In addition, the Petitioner also seeks a Variance from BCZR § 400.3: To permit a proposed accessory building (garage) with a height of 20 ft., in lieu of the maximum permitted height of 15 ft.

A public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A Substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”), they did not oppose the requested relief.

The Petitioner, William Rutkowski, appeared at the hearing, *pro se*. There were no interested parties or protestants at the hearing. However, letters in support of the relief from the adjoining neighbors and the Rosedale Community Association were admitted as Petitioner’s Exhibits 1 thru 3.

The subject property is located on Philadelphia Road in Rosedale. It is approximately 26,442 sq. ft. (.62 acres), and is zoned DR 5.5. Mr. Rutkowski explained that he and his wife are classic car enthusiasts and collectors. They wish to build this proposed garage in order to properly store these vintage cars. He further explained that the 5 foot height variance is needed so that the roof pitch will match that of their dwelling and other homes on the street. He noted that the proposed garage will be located in a corner of their relatively large lot and will be largely shielded from view from the street. Further, none of the existing mature trees on the lot will need to be removed. Finally, he noted that within a quarter mile of this stretch of residences on Philadelphia Road there is a mix of commercial development in business zones. Indeed, the Petitioner's property and the other twelve dwellings along this portion of Philadelphia Road back to a commercial trucking business that fronts onto Route 40. In sum, this proposed private garage will have no adverse impacts on the surrounding neighborhood.

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- (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).

As noted above, the property is unique in a zoning sense because of the existing structures on the site and the fact that it is a residence in a pocket of homes surrounded by commercial uses. Petitioner would suffer practical difficulty and hardship if the modest height variance were denied because he would be unable to build the proposed garage in accordance with the specifications required by his vintage car insurance policies and in harmony with his dwelling. I find that the variance is within the spirit and intent of the regulations and that it will not harm the public health, safety and welfare. This finding is buttressed by the support of the Community Association and surrounding neighbors and the lack of opposition from the DOP.

THEREFORE, IT IS ORDERED, this 6th day of **September, 2023**, by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing under BCZR § 500.7: For an accessory building with a footprint larger than the principal dwelling is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance from BCZR § 400.3: To permit a proposed accessory building (garage) with a height of 20 ft., in lieu of the maximum permitted height of 15 ft. height is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is 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, Petitioner would be required to return the subject property to its original condition.
- The proposed building shall not be used for commercial or residential purposes.
- There shall be no second utility meter(s).
- Petitioner or subsequent owners shall not convert the proposed garage into a dwelling unit or apartment. The proposed accessory building garage shall not contain any sleeping quarters, living area, or kitchen or bathroom facilities.

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



PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections
To the Office of Administrative Hearings for Baltimore County for the property located at:

Address 7703 Philadelphia Rd Currently Zoned DR 5.5
Deed Reference 11607 / 00323 10 Digit Tax Account # 16 000 11163
Owner(s) Printed Name(s) William Rutkowski

(SELECT THE HEARING(S) BY MARKING ☒ AT THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST)

The undersigned, who own and occupy the property situate in Baltimore County and which is described in the plan/plat attached hereto and made a part hereof, hereby petition for an:

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

Accessory building larger than the principle dwelling

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

3. ☒ a Variance from Section(s) 400.3 of the BCZR to permit a proposed accessory building with a height of 20 feet in lieu of the maximum permitted height of 15 feet.

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/we agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to be bound 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

Attorney for Petitioner:

Name - Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

William Rutkowski

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

7703 Philadelphia Road, Rose Dale MD

Mailing Address City State

21237 / 410-866-2688 410-258-4994

Zip Code

Telephone #'s (Cell and Home)

Email Address

W.Rutko@hotmail.com

Representative to be contacted:

Name - Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Case Number 23-0102-SPHA Filing Date 5/9/23 Do Not Schedule Dates gh Reviewer gh

Revised 7/2022

ZONING PROPERTY DESCRIPTION FOR: 7703 Philadelphia Road, Rosedale, MD 21237

Beginning at a point on the southwest side of Philadelphia Road which is 42 feet wide at the distance of 104 feet northeast of the centerline of the nearest improved intersecting street Beatty Avenue which is 20 feet wide.

Thence the following courses and distances:

Parcel 1: (1st Point of Call – "POC") South 56 degrees 30 minutes West 100 feet, (2nd POC) South 38 degrees 9 minutes East 226.8 feet, (3rd POC) North 56 degrees 30 minutes East 100 feet, (4th POC) North 38 degrees 9 minutes West 226.8 feet, back to the point of beginning as recorded in Deed Liber J.B. No. 84, Folio 457 containing a total of 0.52 of an acre of land, more or less.

To be included, Parcel 2: (1st Point of Call – "POC") South 56 degrees 30 minutes West 17 feet, (2nd POC) South 38 degrees 9 minutes East 226.8 feet, (3rd POC) North 56 degrees 30 minutes East 17 feet, (4th POC) North 38 degrees 9 minutes West 226.8 feet, back to the point of beginning as recorded in Deed Liber WPC No. 644, Folio 7, containing a total of 0.09 of an acre of land, more or less.

William Rutkowski
7703 Philadelphia Road
Tax Account # 1600011163

(Continued from affidavit)

Size Variance:

I am requesting permission to build a proposed structure that is 30'x42', which is 200 sq/ft larger than the base footprint of my two and one-half story dwelling. The size is necessary to house the vehicles my wife and I own. The building will provide weather protection, enhance security and it will meet the storage stipulations as outlined in the Collectable car insurance policy we have. The location of the structure will not require tree removal from the property and only a portion of the structure will be visible from the street.

Height Variance:

I am requesting permission to build the structure with a 7/12 pitch roof, resulting in a roof height of 20 ft, this exceeds guidelines by 5 ft. My house and garage are built with a 7/12 roof pitch, I would like to match those buildings. In addition, all of the houses on this stretch of Philadelphia Road were built in the 1920's and 30's and all have high pitched roofs. Building the proposed accessory structure with a BCZR guideline compliant low pitched roof would result in a building that has mismatched roof lines to everything on my property as well as everything in eyesight. This proposed structure is not an "economy" building and the custom 7/12 truss option is not an inexpensive option. However, building this with the low pitched roofline would result in the look of a large "economy" shed, It would do nothing to enhance the neighborhood and low pitched roofs deteriorate faster because they are more prone to leaking than the higher pitch designs. It would certainly hurt my property value compared to a structure with a matching style.

A note about the neighborhood located on the southwest end of Philadelphia road where it intersects RT 40. There are over 20 businesses within ¼ mile of 7703 located ON Philadelphia Road. Those businesses include everything from apartments to fast food, automotive machine shops, retail businesses and warehouses. Zoning on this section of Philadelphia road includes BL, BR, ML, MLR, RO, DR5.5 and DR16. The rear property line of 7703 and my 12 residential neighbors on the south side of Philadelphia Road are all adjoining a BM zoned commercial truck business, which also fronts RT 40 westbound. Road noise from both Philadelphia road and Rt40 is constant and excessive. I truly believe granting this Variance will in no way negatively affect this neighborhood.

William Rutkowski

Home 410-866-2089

Cell 410-258-4994

23-0102-SDHA



Background Photo 1st Sign @ 7703 Philadelphia Rd. ~ 8/16/2023



Background Photo 2nd Sign @ 7703 Philadelphia Rd. ~ 8/16/2023

CASE # 2023-0102-SPHA

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS

DATE: 8/16/2023

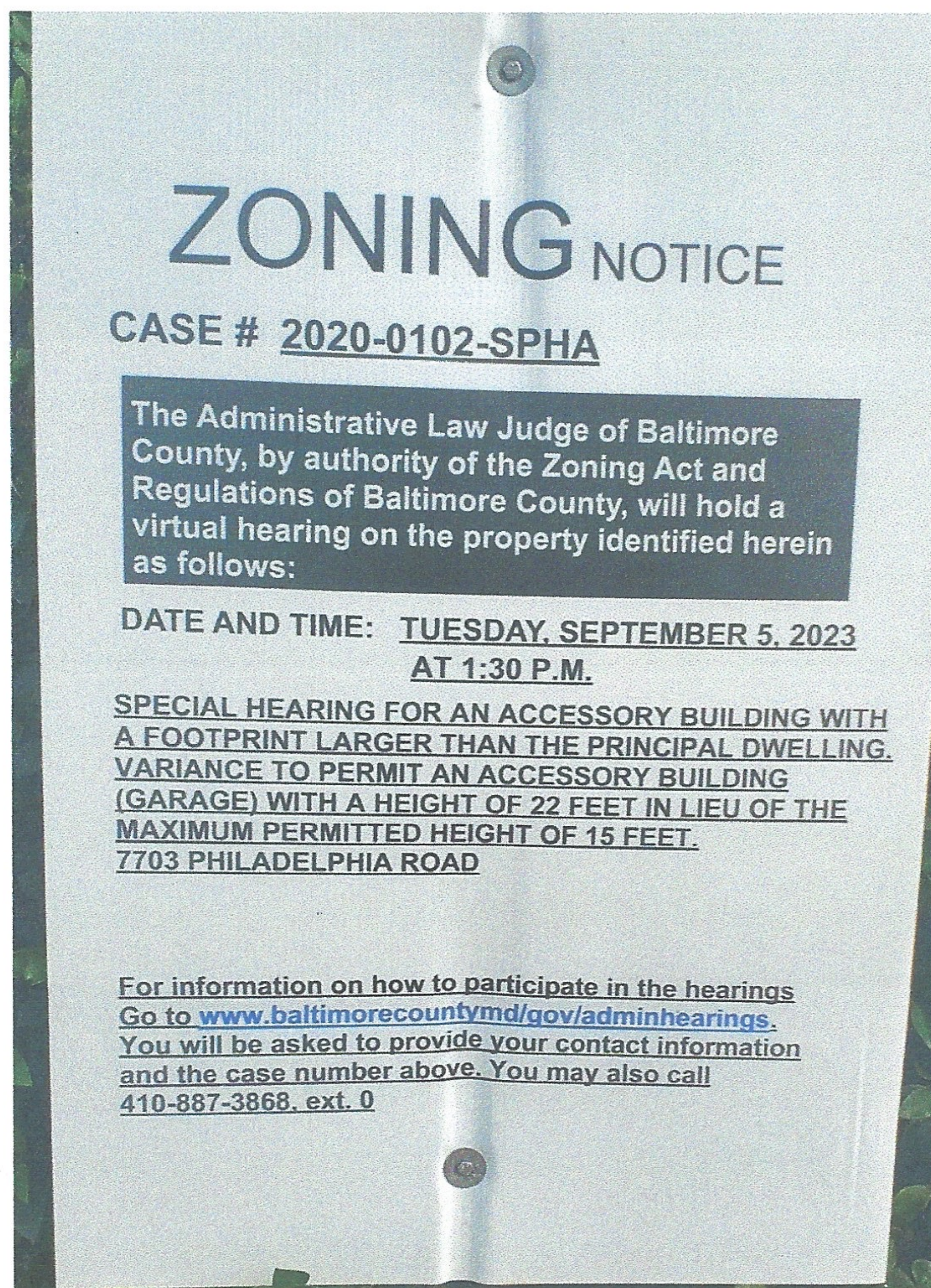
Case Number: 2023-0102-SPHA

Petitioner / Developer: WILLIAM RUTKOWSKI

Date of Hearing: SEPTEMBER 5, 2023

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:
7703 PHILADELPHIA ROAD

The sign(s) were posted on: AUGUST 16, 2023



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, MD 21030
(City, State, Zip of Sign Poster)

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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Peter Gutwald, Director
Department of Permits, Approvals

DATE: June 14, 2023

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For May 22, 2023
Item No. 2023-0099-A, 0102-SPHA, 0103-SPH, 0104-SPH & 2023-0105-A

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

*

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VKD: JK
cc: file

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: C. Pete Gutwald
Director, Department of Permits, Approvals and Inspections

DATE: 6/1/2023

FROM: Steve Lafferty
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 2023-0102-SPHA

INFORMATION:

Property Address: 7703 Philadelphia Road
Petitioner: William Rutkowski
Zoning: DR 5.5
Requested Action: Special Hearing, Variance

The Department of Planning has reviewed the petition for the following:

Special Hearing -

1. Under Section 500.7 of the Baltimore County Zoning Regulations (BCZR) to determine whether or not the Zoning Commissioner should approve an accessory building larger than the principle dwelling; and

Variance -

2. From Section 400.3 of the BCZR to permit a proposed accessory building with a height of 20 feet in lieu of the maximum permitted height of 15 feet.

The subject site is an approximately 0.61 acre site in the Rosedale area. It is currently improved with a two and a half story, single family detached dwelling, a two-car detached garage, and a shed. The property owners wish to demolish the existing shed and construct a 30' x 42' accessory structure. The structure is proposed to be located in the back corner of the property, behind the two-car detached garage.

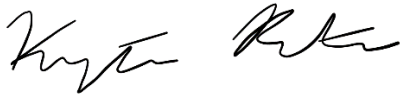
The subject site is within the boundaries of the Eastern Baltimore County Revitalization Strategy and the Eastern Baltimore County Pedestrian and Bicycle Access Plan. Neither plan provides guidance specific to the petition at hand.

In the applicants' petition, they included a letter explaining the need for the Special Hearing and Variance. The property owners collect cars and the structure is needed to provide weather protection, enhance security, and meet storage stipulations outlined in their collectable car insurance policy. For the Special Hearing for the size, the letter explains that the proposed structure is 30' x 42', which is 200 square feet larger than the base footprint of the principle dwelling. For the Variance for the height, the letter explains that the proposed structure will have a 7/12 pitch roof to match the principle dwelling and garage already existing on the property. Based on the applicant's letter and Google Streetview, the 7/12 pitch roof is common in the area and this stretch of Philadelphia Road.

The Department of Planning has no objection to the requested relief. With the 7/12 roof pitch, the proposed structure will be consistent with the existing structures on the property (the dwelling and garage), as well as neighboring properties. Further, the structure will be tucked behind the existing garage and therefore not highly visible from the public right-of-way.

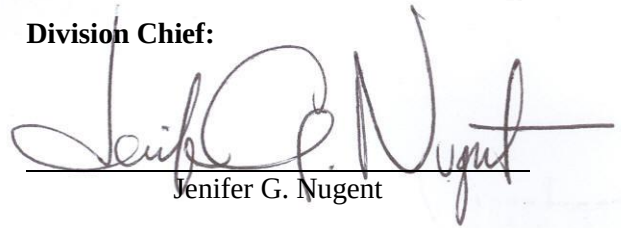
For further information concerning the matters stated herein, please contact Taylor Bensley at 410-887-3482.

Prepared by:



Krystle Patchak

Division Chief:



Jenifer G. Nugent

SL/JGN/KP

c: William Rutkowski
Michael Thomas, Community Planner
Ngone Seye Diop, Community Planning Division Chief
Jeff Perlow, Zoning Review
Kristen Lewis, Zoning Review
Office of Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Paul M. Mayhew; Managing Administrative Law Judge
Office of Administrative Hearings

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

DATE: May 19, 2023

SUBJECT: DEPS Comment for Zoning Item # 2023-0102-SPHA
Address: 7703 Philadelphia Rd.
Legal Owner: William Rutkowski

Zoning Advisory Committee Meeting of May 22, 2023.

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

Additional Comments:

Reviewer: Earl D. Wrenn

7703 Philadelphia Road



Publication Date: 5/9/2023



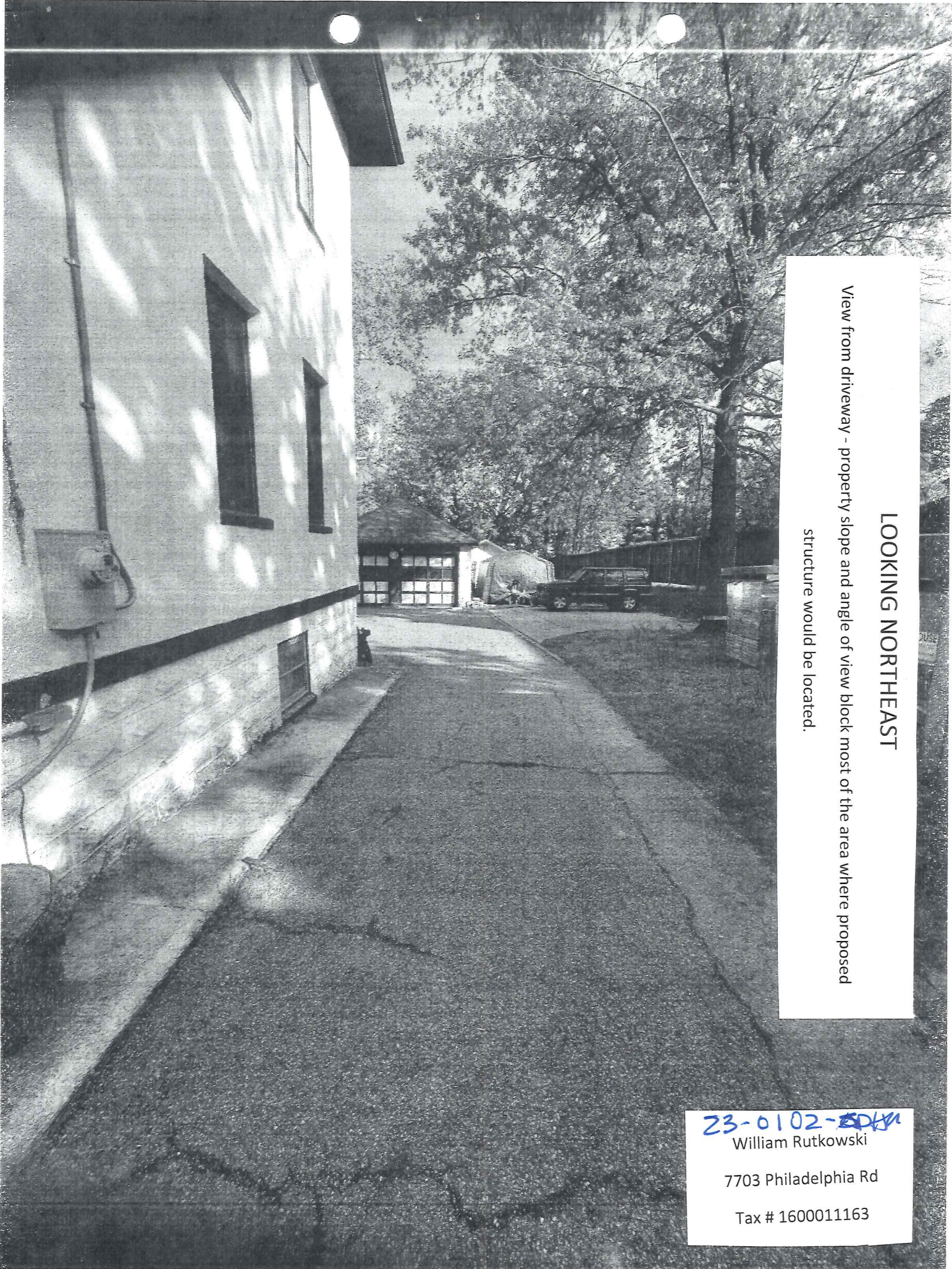
Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



0 10 20 40 60 80 Feet

1 inch = 40 feet

23-0102-APHA



LOOKING NORTHEAST

View from driveway - property slope and angle of view block most of the area where proposed structure would be located.

23-0102-~~ED~~HA
William Rutkowski

7703 Philadelphia Rd

Tax # 1600011163

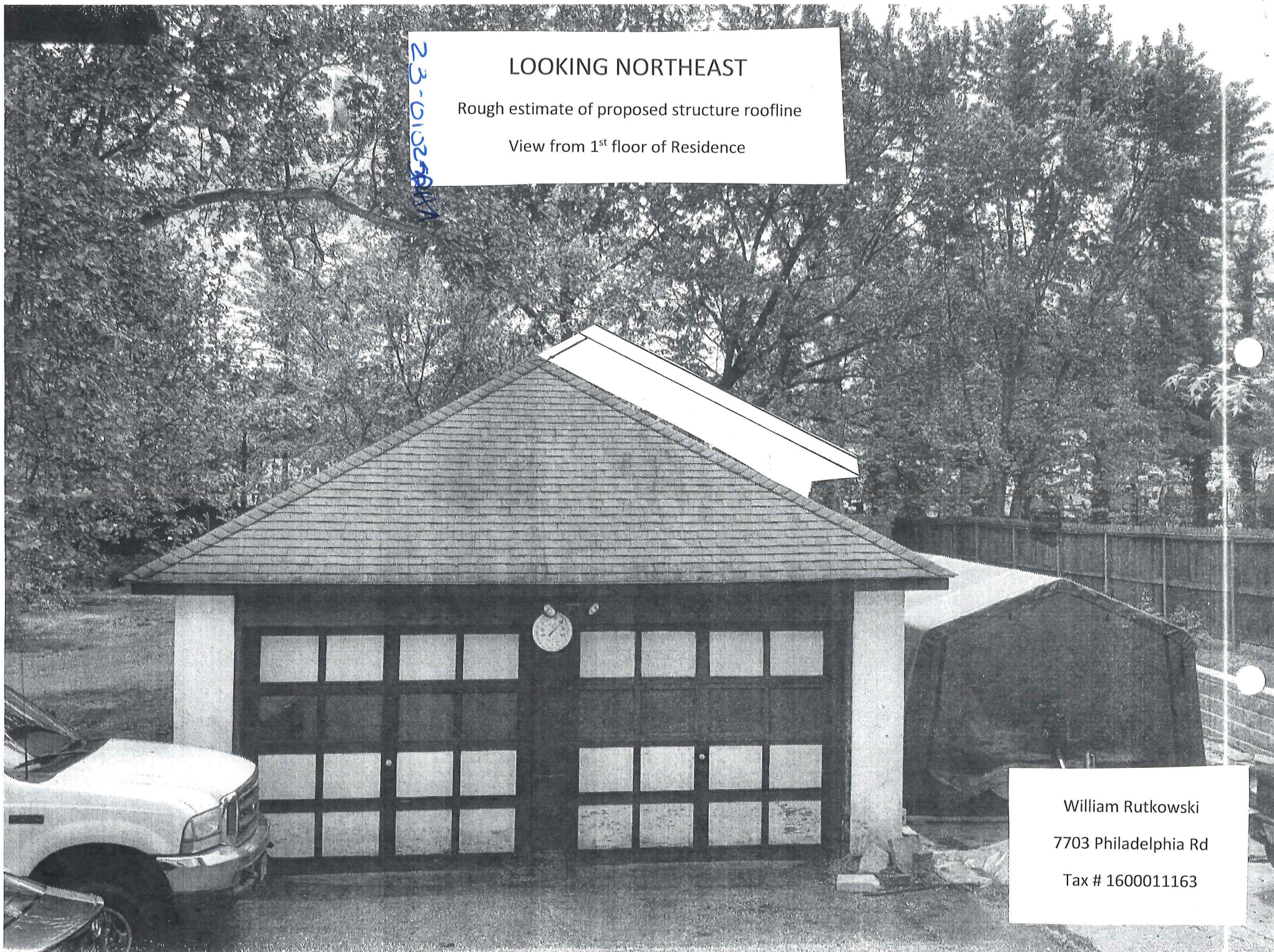
23-0102-~~ED~~HA

23-010250114

LOOKING NORTHEAST

Rough estimate of proposed structure roofline

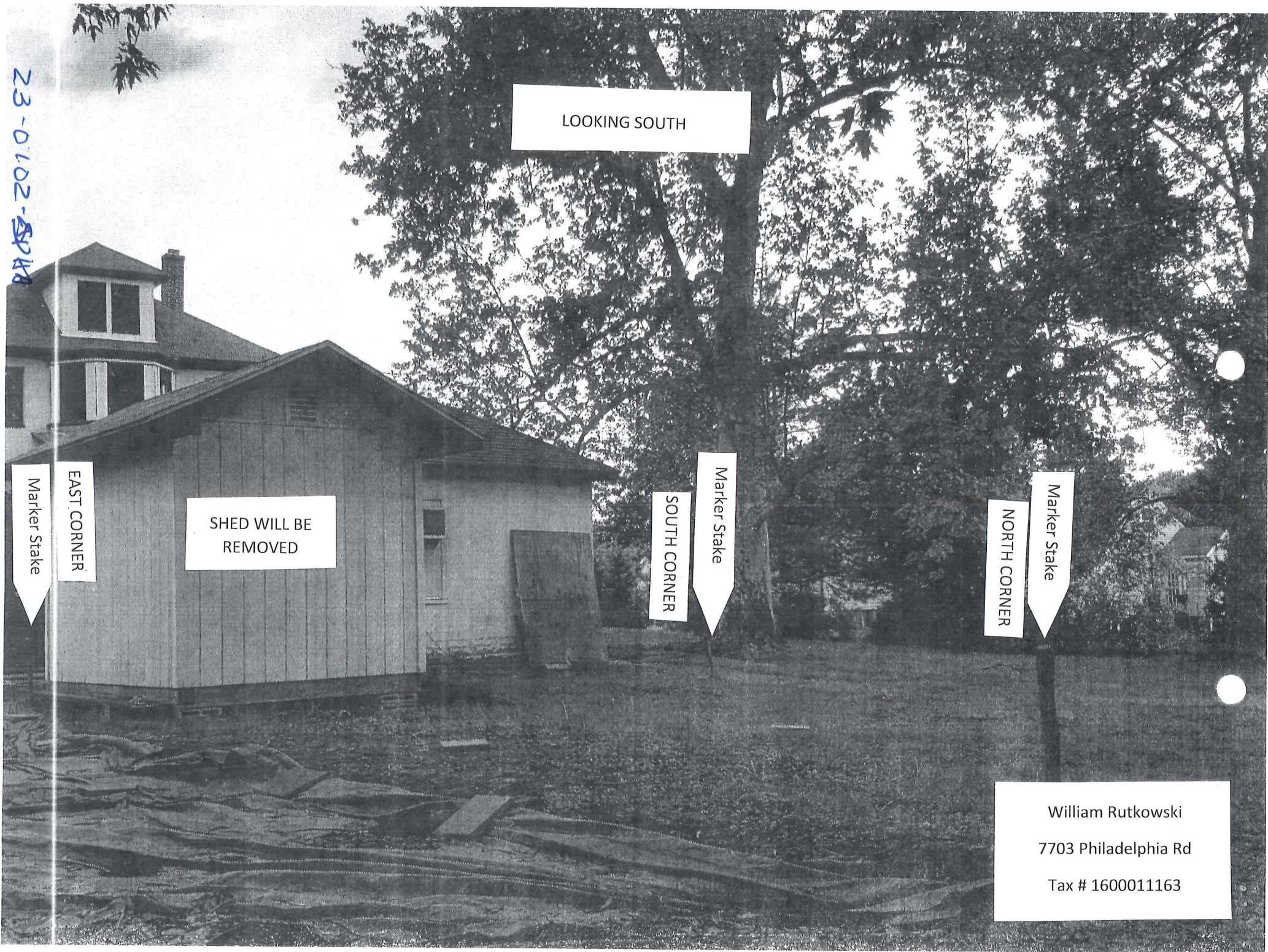
View from 1st floor of Residence



William Rutkowski

7703 Philadelphia Rd

Tax # 1600011163



23-0102-SPH

LOOKING SOUTH

Marker Stake

EAST CORNER

SHED WILL BE
REMOVED

SOUTH CORNER

Marker Stake

NORTH CORNER

Marker Stake

William Rutkowski
7703 Philadelphia Rd
Tax # 1600011163

LOOKING SOUTHWEST

SHED WILL BE
REMOVED

SOUTH CORNER

Marker Stake

Marker Stake

WEST CORNER

William Rutkowski
7703 Philadelphia Rd
Tax # 1600011163

LOOKING WEST

NORTH CORNER

Marker Stake

SHED WILL BE
REMOVED

Marker Stake
WEST CORNER

Please note neighboring roof pitches.

William Rutkowski
7703 Philadelphia Rd
Tax # 1600011163

23-0102-8081

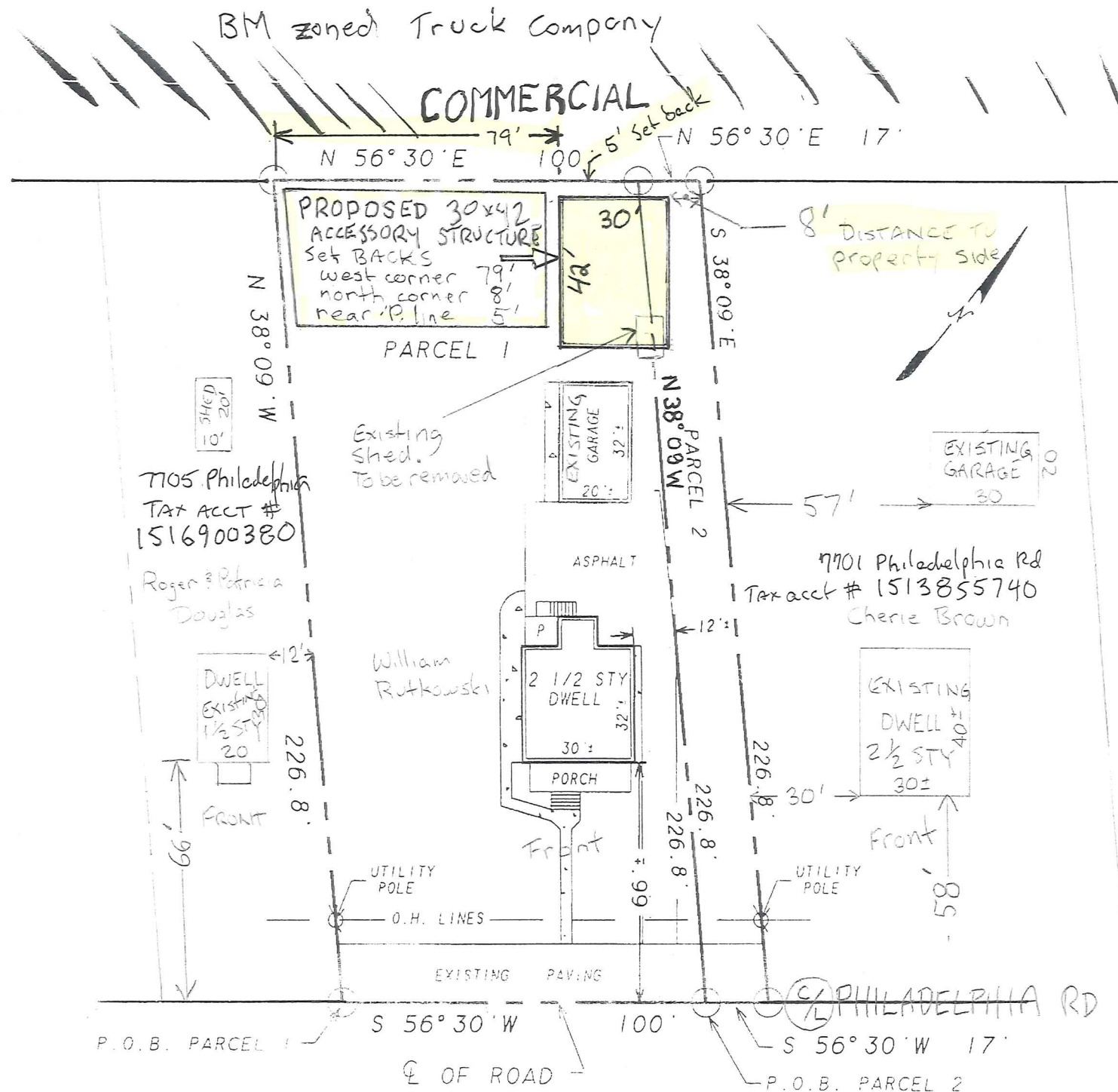
ZONING HEARING PLAN FOR VARIANCE X FOR SPECIAL HEARING _____ (MARK TYPE REQUESTED WITH X)

ADDRESS 7703 PHILADELPHIA RD OWNER(S) NAME(S) William Rutkowski

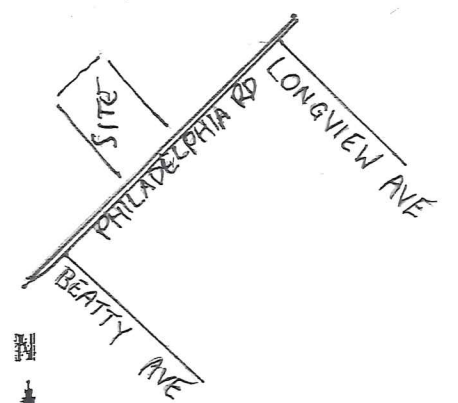
SUBDIVISION NAME _____ LOT # 7703 BLOCK # _____ SECTION # _____

PLAT BOOK # JB #84 FOLIO # 457 10 DIGIT TAX # 1600011163 DEED REF. # 11607100323

3 WPC #644 #7



SITE VICINITY MAP



N

MAP IS NOT TO SCALE

ZONING MAP# 089B3

SITE ZONED DR S.5

ELECTION DISTRICT 15

COUNCIL DISTRICT 7

LOT AREA ACREAGE .61

OR SQUARE FEET _____

HISTORIC? NO

IN CBQA? NO

IN FLOOD PLAIN? NO

UTILITIES? MARK WITH X

WATER IS:

PUBLIC X PRIVATE _____

SEWER IS:

PUBLIC X PRIVATE _____

PRIOR HEARING? NO

IF SO GIVE CASE NUMBER

AND ORDER RESULT BELOW

VIOLATION CASE INFO:

PLAN DRAWN BY William Rutkowski

DATE _____

SCALE: 1 INCH = 40 FEET

23-0102-SPHA