

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, O'Neill Club of Towson, Inc., owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an _____ zone to an _____ zone, for the following reasons:

See attached description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for COMMUNITY BUILDING

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above re-classification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree, to and to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

O'Neill Club of Towson, Inc.
Robert J. RUSSELL
809 Eastern Boulevard
Add. in Baltimore, Maryland 21221

Contract purchaser
Robert J. RUSSELL
809 Eastern Boulevard
Add. in Baltimore, Maryland 21221

ORDAINED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 1972, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Board of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 1972, at 2:00 o'clock

Shirley D. Kenna
Zoning Commissioner of Baltimore County

ZONING LE 72-109-X
O'Neill Club of Towson

IN THE COURT OF APPEALS OF MARYLAND

No. 300

September Term, 1972

BERTHA SEMBLY et al.

v.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Barnes
McWilliams
Singley
Smith
Levine,
JJ.

Opinion by Levine, J.

Filed: May 29, 1973

This appeal is from an order of the Circuit Court for Baltimore County (Maguire, J.) affirming a decision of the Baltimore County Board of Appeals, which granted a special exception for a "community building" to the O'Neill Club of Towson, Inc. (the club), an affiliate of the Knights of Columbus. Appellants were protestants in the proceedings before the Board of Appeals.

The club's property consists of approximately 2.3 acres in the Eighth Election District of Baltimore County near Lutherville. It is approximately 675 feet east of the "Baltimore-Harrisburg Expressway" (Interstate 83) on the north side of Seminary Avenue. There is no access to the expressway at that location. The property is in the D.R. 5-5 zoning classification; this signifies density residential, 5.5 dwelling units to the acre. The club proposes to erect a one-story structure, 50x100 feet in size, on a site having frontage of 100 feet on Seminary Avenue. There would be a "stockade" type fence six feet high on the north and east sides of the premises. Parking spaces for 120 automobiles would be provided; outside lighting would be directed away from adjoining properties.

The principal exhibit admitted into evidence was a site plan which indicates that "all trees not in [the] immediate area of construction [are] to be saved." (emphasis in original). There was testimony that this would result in a band of trees - 50 feet in width - between the subject property and single-family property to the north and east. Originally, the club owned a single tract of 10.33 acres, 7.9 of which were subsequently placed in the D.R. 16 zone

(residential apartment, 16 units per acre) upon adoption of the county's comprehensive rezoning map in 1971. The tract has now been divided, and the latter parcel is between the subject property and the expressway.

In 1966, the club was granted a special exception for a "community building" to be built on what was then the entire 10.33-acre tract, but that permission expired because the club failed to initiate the use within the required two-year period. At that time, a building containing 22,000 square feet with 334 parking spaces was proposed. The current application contemplates a building closer to the south and east than that planned in 1966.

Although now only 24 feet wide, Seminary Avenue, in conjunction with the imminent widening of Interstate 83, will become a 36-foot roadway between the entrance to the club and the expressway. Since Seminary is a state road, the entrance to the club will be subject to the requirements and approval of the State Highway Administration.

The president of the club testified that the O'Neill Council has approximately 200 members, but that only 15% usually attend its semi-monthly meetings. There are also officers' meetings twice a month. It usually has no more than six dances a year, and the ladies' club would use the building for its meetings once a month. Meetings are always in the evenings, usually from 8:30 to 10:30 or 11:00. The dances are generally on Saturday nights. The fire code would limit the building occupancy to 250 people at any one time. Although the president stated that there is no present intention to rent the facilities, his testimony in this regard was equivocal, and undoubtedly permits the inference that the building might be used by other groups. No functions would be held outside the building, since there is not sufficient room for that purpose.

There are single-family homes to the south on the other side of Seminary Avenue which were described as an "older type development of frame type residences." Precisely what that characterization means is not revealed by the record. Immediately to the east of the subject property - some 70 feet from the property line - is a ranch-type dwelling, the occupant of which did not appear as a protestant. There is also a subdivision to the north, i.e., to the rear of the club property, but this is farther away than the dwellings on Seminary Avenue and would be screened by the trees.

There is a sharp conflict in the evidence concerning the impact the proposed use would have on traffic. Whereas witnesses for the club testified that evening traffic on Seminary Avenue is relatively light and causes no congestion after 7:00 P.M., appellants produced testimony to the effect that daily traffic is heavy until 10:00 P.M.; that the absence of sidewalks on Seminary presents a danger to pedestrians; that it is presently a two-lane roadway and the proposed widening would afford no relief for traffic to the east of the subject property.

To establish that the proposed use would not be "detrimental to the health, safety or general welfare of the locality," the club presented Mr. Frederick P. Klaus as an expert witness. His reasons in support of that view were: That with the exception of the "ranch house" occupant, those living to the north and east would be screened from the club by the trees, thus leaving only a "few" neighbors across Seminary Avenue who would have visibility; that there would be no outdoor activities; that the building would be limited in size, and that the property had been used as a "dumping ground" for many years and would be enhanced by approval of the application.

There was also evidence in the record that a permit would be necessary for all grading, including the stripping of topsoil; that drainage studies and sediment-control drawings would require approval; and that the club must provide such drainage facilities as may be necessary to prevent damage to adjacent land by the concentration of surface waters. In addition, approval of the county health department would be required for any food service facilities.

Prior to reaching the Board of Appeals, the application had been approved by the zoning commissioner, subject to three conditions which the Board also imposed subsequently. The zoning commissioner's decision was appealed to the Board of Appeals, which granted approval after finding:

"... that the proposal will satisfy all the requirements of ... the zoning laws and regulations of Baltimore County and would have no adverse effect on the value or use of the nearby homes ..."

"The few protestants who appeared were concerned almost entirely with the possible effect of traffic on Seminary Avenue. However, evidence indicate that a proposed widening of Seminary Avenue is under way, and that the bridge over the expressway is now under construction to make it considerably wider. While it is true that the construction of many homes west of the expressway has substantially increased the daily traffic on Seminary Avenue, at least as far eastward as Front Avenue in Lutherville, we do not believe that the proposed use of the special exception would make the situation any worse and the proposed widening of Seminary Avenue will relieve most of these difficulties. Therefore, the decision of the Zoning Commissioner will be affirmed, including the same conditions imposed by his Order[.]"

1. That no affair, meeting, etc. shall take place or continue beyond 1:00 A.M., except Fridays and Saturdays.
2. That the development of the plans shall be in substantial accordance with the plat submitted as revised.

"3. The site plan shall be subject to the approval of the State Highway Administration, the Bureau of Public Services and the Office of Planning and Zoning."

On appeal to the circuit court, Judge Maguire, after quoting the legal principles that govern the scope of judicial review in such cases, affirmed the decision of the Board, saying:

"... that a reasoning mind could reasonably have reached, upon a fair consideration of the entire record, the same conclusion as that of the Board, and hence its action was not arbitrary or capricious or illegal, but, on the other hand, was fairly debatable. Having determined this, the Court has fulfilled and exhausted its limited judicial function in reviewing a zoning appeal."

The Baltimore County Zoning Regulations impose several conditions or criteria for the granting of special exceptions; appellants focus their attack upon two of these:

"502.1 - Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not:

- a. Be detrimental to the health, safety, or general welfare of the locality involved;
- b. Tend to create congestion in roads, streets or alleys therein;

Appellants contend that the findings on these criteria were not supported by substantial evidence.

We have consistently held that on judicial review of decisions granting or denying special exceptions, the correct test to be applied is whether the issue before the administrative body is "fairly debatable," that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions. If the questions involved are fairly debatable and the facts presented are sufficient to support the Board's decision, it must be upheld, Gerachis v. Mont. Co. Bd. of Appeals, 261 Md. 153, 156, 274 A.2d 379 (1971);

Eger v. Stone, 253 Md. 533, 542, 253 A.2d 372 (1969); Crowther, Inc. v. Johnson, 225 Md. 379, 383, 170 A.2d 763 (1961). Hence, where we conclude that the issues are fairly debatable, we will not substitute our judgment for that of the administrative body, unless its action is shown to be arbitrary, capricious or illegal, Prince George's Co. v. Heininger, 264 Md. 148, 154, 285 A.2d 649 (1972); Cason v. Bd. of Co. Comm'rs, 261 Md. 699, 707, 276 A.2d 661 (1971); Teuber v. County Bd. of Appeals, 257 Md. 202, 212, 262 A.2d 513 (1970); Eger v. Stone, *supra*.

We think that on the two issues raised by appellants, there was sufficient evidence presented to the Board by the club to make those questions fairly debatable. There was, for example, evidence from which the Board could find that club activities would be confined to the indoors, and would not extend into the late hours on weekdays; that social functions would likely be restricted to Saturday nights; and that attendance would be limited by the size of the building and the fire-prevention code.

There was also evidence that the club would be screened from the residents of the homes to the north and east; and that no damage would result to neighboring property from construction of the building. All this, coupled with other evidence we need not repeat, when considered by the Board, was sufficient to make fairly debatable the issue of whether the special exception would be detrimental to the health, safety, or general welfare of the locality involved."

Similarly, we regard as a fairly debatable issue, the impact that the special exception might have upon traffic. We have already noted that the evidence on this question is in sharp conflict. The Board could have found, however, as in effect it did, that the widening of Seminary Avenue between the subject property and the expressway

Pursuant to the advertisement, posting of property and public hearing on the above petition, and it appearing that by reason of the requirements of Section 502.1 of the Baltimore County Zoning Regulations having been met,

the above described property should be and the same is hereby

a Special Exception for a Community Building should be granted

IT IS ORDERED by the Zoning Commissioner of Baltimore County this

day of November, 1971, that the above described property should be and the same is

granted a Special Exception for a Community Building should be and the same is

granted, from and after the date of this order, subject to the following conditions:

1. that no affair, meeting, etc., take place or continue beyond

1:00 A.M. except Fridays and Saturdays; 2. that the develop-

ment of the plans be in substantial accordance with the plat submi-

ted for review and attached hereto; and 3. that the plan is

subject to the approval of the State Highway Administration, the

Bureau of Public Services and the Office of Planning and Zoning.

REASON: The Zoning Commissioner of Baltimore County this

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was "unreasonably" restrictive of a "fairly" use of the "reasonable" future,"
Circuit Court of Baltimore County, 234 Md. 341, 349, 271 A.2d 156 (1970);
Kestel v. McKelvie, 236 Md. 190, 194, 202 A.2d 639 (1964); Rende
v. County Board, 234 Md. 250, 264, 195 A.2d 216 (1964). Also sup-
ported by the evidence is its finding that the proposed use would
not add to existing traffic problems east of the subject property;
and that the anticipated widening, although to the west, would have
a beneficial effect.

Concededly, the evidence in this case may be "thin" in certain
respects, but it is nevertheless sufficient to support the findings
of the Board. In Erer v. Stone, supra, Judge Barnes aptly said,
for the Court, what we think is especially apposite here:

"This rule [if the issue is 'fairly debatable'] we will
not substitute our judgment for that of the administrative
body] will be adhered to even if we were of the opinion that
the administrative body came to a conclusion we probably would
not have reached on the evidence. In the instant case, but
for the rule, we might well have reached the conclusion [that
the Board of Appeals erred], but in enforcing the rule we are
obliged to say that reasonable persons could have reached a
different conclusion on the evidence; that the issues were
fairly debatable, and hence, the decision of the Board must
be sustained." 253 Md. at 542.

We are of the view that Judge Maguire applied the correct test and,
therefore, reached the only permissible result in this case.

ORDER AFFIRMED;
APPELLANTS TO PAY COSTS.

RE: PETITION FOR SPECIAL EXCEPTION
for a Community Building
N/S Seminary Avenue 675' E. of
Baltimore-Harrisburg Expressway,
8th District
O'Neill Club of Towson, Inc.,
Petitioner
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
Pvt. BALTIMORE COUNTY

ORDER FOR APPEAL FROM COUNTY
BOARD OF APPEALS OF BALTIMORE COUNTY

MR. CLERK:
PLEASE note an appeal to this Court on behalf of the
protestants. REPLY, 603 W. Seminary Avenue, Lutherville, Maryland,
MARIE JACKSON, 1423 School Lane, Lutherville, Maryland, FRED SPIGLER, 409
Coucher Avenue, Lutherville, Maryland, and PESTON CHILCOAT, 611 Spring Avenue,
Lutherville, Maryland, from the decision of the County Board of Appeals of
Baltimore County in the above entitled matter passed on May 18, 1972.

/s/ John W. Hession, III
John W. Hession, III
Attorney for Protestants

I HEREBY CERTIFY, That a copy of this Order for Appeal
was mailed this 12th day of June, 1972, to the Secretary of the County
Board of Appeals of Baltimore County, County Office Building, Towson, Mary-
land 21204, pursuant to applicable provisions of the Maryland Rules.

/s/ John W. Hession, III
John W. Hession, III

LAN-1000
HESMAN & TALLENT
TOWSON, MD. 21204

Rec'd 6/13/72
9:30 AM

RE: PETITION FOR SPECIAL EXCEPTION
for Community Building
N/S Seminary Ave. 675' East East of
Baltimore-Harrisburg Expressway,
8th District
O'Neill Club of Towson, Inc.,
Petitioner
Bertus Sumbly, et al
Protestants-Appellants
Zoning File No. 72-109-X
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket No. 9
Folio No. 199
File No. 4843

ANSWER TO ORDER OF APPEAL TO CIRCUIT
COURT FOR BALTIMORE COUNTY AND
CERTIFIED COPIES OF PROCEEDINGS BEFORE
THE ZONING COMMISSIONER AND BOARD
OF APPEALS OF BALTIMORE COUNTY

Mr. Clerk

House File, &c.

Muriel E. Erdman
County Board of Appeals of Baltimore County

cc: Zoning
Remedia, Esq.
Hession, III, Esq.

BERTUS SUMBLY,
MARIE JACKSON,
FRED SPIGLER and
PESTON CHILCOAT,
Appellants
vs
WALTER A. BRUYER, JR.,
W. JILES PARKER and
WILLIAM M. GAFFNEY,
constituting the County Board
of Appeals of Baltimore County
Appellees
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Misc. Docket No. 9
Folio No. 199
File No. 4843

MEMORANDUM OPINION
AND ORDER OF COURT

This matter involves an appeal from the County Board of
Appeals of Baltimore County, which by its Order, dated May 18,
1972, granted to the O'Neill Club of Towson, Inc., a special
exception for a community building. The Zoning Commissioner of
Baltimore County, by his Order of November 18, 1971, had granted
the same special exception. In both Orders, the special exception
was subject to certain restrictions.

The subject property is on a 2.3 acre portion of the entire
property of the O'Neill Club of Towson, Inc., situated on the
north side of Seminary Avenue in the 8th Election District of
Baltimore County. The subject property is zoned D.R. 5.5 and a
special exception is required in order to erect a community building.
The property is located 675' east of the Baltimore-Harrisburg Expressway
and has a frontage on Seminary Avenue of approximately 100'. The
proposed community building is of masonry construction with 120
proposed parking places, said parking to be screened. The Building
is apparently designed to accommodate a maximum of 250 people and
its interior will include rest rooms, kitchen, meeting hall, etc.

Rec'd 11/14/72
3:45 PM

(decided March 22, 1966); McNelly v. Blum, 241 Md. 84
(decided March 29, 1966); Board v. Farr, 242 Md. 351 (decided
April 26, 1966); and Yonel v. McCosh, 242 Md. 371 (decided
April 28, 1966).

This Court is constrained to hold that a reasoning
mind could reasonably have reached, upon a fair consideration
of the entire record, the same conclusion as that of the Board,
and hence its action was not arbitrary or capricious or illegal,
but, on the other hand, was fairly debatable. Having determined
this, the Court has fulfilled and exhausted its limited judicial
function in reviewing a zoning appeal.

For the reasons stated and in conformity with the fore-
going Opinion, it is this 13th day of November, 1972, by
the Circuit Court for Baltimore County ORDERED that the Order of
the County Board of Appeals of Baltimore County dated May 18, 1972,
be and the same is hereby AFFIRMED.

JOHN H. MAGUIRE
JUDGE

The testimony indicates that the Petitioner owns the
entire tract of 7.9 acres, of which this is a part and it is in
a wooded area. It is to be noted that a special exception for
this same purpose was granted in March of 1967, for the use of
the entire tract which was 10.33 acres at that time and owned
by the O'Neill Club of Towson, Inc. However, this special exception
was never used and expired so that what we are entertaining here
is the same thing all over again on a portion of this property.

The testimony clearly indicates to this Court that the
analogous situation exists in that area as did exist in 1967 when
the Zoning Department granted this special exception out of this
same tract. It is clear to this Court that it is not its province
to resolve the various conflicts in the evidence before the Board
if there was, in fact, any evidence of a substantial nature supporting
and justifying the Board's actions. In Motherhead v. Bd. of Commrs.,
240 Md. 365 (decided November 18, 1965), the Court in quoting from
Judge Hammond's opinion in Board v. Oak Hill Farms, 232 Md. 274 p. 283
stated at pages 371-372 as follows:

"...the courts have exercised restraint so as
not to substitute their judgments for that of the agency
and not to choose between equally permissible inferences
or make independent determinations of fact, because to
do so would be exercising a non-judicial role. Rather,
they have attempted to decide whether a reasoning mind
could reasonably have reached the result the agency
reached upon a fair consideration of the fact picture
presented by the entire record."

"In the cases dealing with consideration of
the weight of the evidence, the matter seems to have come
down to whether, all that was before the agency considered,
its action was clearly erroneous, or to use the phrase
which has become standard in Maryland zoning cases, not
fairly debatable."

See also the following cases: Finney v. Halls, 241 Md.

334 (decided Feb. 2, 1966); Dill v. The Johns Corp., 242 Md. 16

(decided March 15, 1966); Bonnie View Club v. Glass, 242 Md. 46

May 18, 1972 Order of County Board of Appeals granting Special Exception, subject to restrictions

June 12 Order for Appeal filed in Circuit Court by John W. Hession, III, Esq., attorney for Petitioners

" 14 Certificate of Motion sent to all interested parties

" 26 Petition to accompany Order for Appeal filed in Circuit Court for Baltimore County

July 11 Order signed by Judge Rahn extending time for filing record of proceedings to period of thirty days following entry of final Order upon the Motion for Dismissal filed by O'Neill Club of Towson, Inc.

Sept. 5 Motion to Dismiss rejected by Judge Manchione

" 28 Transcript of testimony filed - 1 volume

Petitioner's Exhibit No. 1 - Plat revised after zoning hearing subject property - Evans, Hagan & Halczar (10/29/71)

" " 2 - File of zoning hearing

" " 3 - File #66-219-X - Previous file 1966

" " 4A- Photo - View from Seminary Ave. - Entrance to property

" " 4B- Photo - North or subject property

" " 4C- " South toward Seminary Ave.

" " 4D- " Drainage on subject property

" " 4E- " Seminary Ave. - west to Harburg Expy.

" " 4F- " Posting of zoning sign

" " 4G- " NW toward Expressway

" " 4H- " North on subject property

" " 4I- " North from subject property

" " 4J- " Storm drain toward Expressway

" " 5 Plat - Sheet NW - 8th District Photogrammetric Map - Lutherville

Sept. 29 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings, pursuant to which said Order was entered and said Record acted as permanent records of the Zoning Department of Baltimore County, is on

also the use district maps, and your respondents respectfully suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations, together with the zoning use district maps at the hearing on this petition, or whenever directed to do so by this Court.

Respectfully submitted,

Marcel I. Bollenbaker
County Board of Appeals of Baltimore County

BERTHA SAMBY
and
MARIE JACKSON
and
FRED SPIGLER
and
PRESTON CHILCONT
Appellants
vs.
WALTER A. REITER, JR.
W. GILES PARKER, and
WILLIAM H. GAFFNEY,
constituting the County
Board of Appeals of
Baltimore County.
Appellees

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW

Misc. Docket No. 9
Folio No. 199
File No. 4843

PETITION FOR EXTENSION OF TIME WITHIN WHICH
TO FILE RECORD AND TRANSCRIPT

THE Petition of BERTHA SAMBY, MARIE JACKSON, FRED SPIGLER and PRESTON CHILCONT, respectfully shows:

1. THAT your Petitioners have heretofore filed an Appeal to this honorable Court from a decision adverse to them rendered by the County Board of Appeals in this matter.
2. THAT their said Appeal was filed on the 12th day of June, 1972, and they are required, in accordance with the Maryland Rules, to file within thirty days thereafter the Record of Proceedings and the Transcript of Testimony taken thereat.
3. THAT certain preliminary motions have been filed in this matter which, if successfully maintained, would render the filing of the Record, and particularly the Transcript, unnecessary;

additionally, the official reporter of the County Board of Appeals has informed your Petitioners that he will be unable to complete said Transcript within the time limited.

WHEREFORE, your Petitioners pray that the time within which they must file the Record and Transcript of Testimony herein be extended for a period of thirty days beyond the date upon which this honorable Court by its appropriate Order rules upon the Motion to Dismiss heretofore filed by the O'Neill Club of Towson, Inc., in this cause.

AND AS IN DUTY BOUND, etc.

John W. Hession, III
107 N. Pennsylvania Avenue
Towson, Maryland 21204
823-8440
Attorney for Appellants

I HEREBY CERTIFY that on this 11th day of July, 1972 copies of the foregoing Petition for Extension of Time Within Which To File Record And Transcript, and of the Order attached thereto, were mailed to Robert J. Romadka, Esquire, 809 Eastern Boulevard, Baltimore, Maryland 21221, Attorney for O'Neill Club of Towson, Inc., and to the County Board of Appeals of Baltimore County, County Office Building, Towson, Maryland 21204.

John W. Hession, III
Attorney for Appellants

ORDER

Upon the foregoing Petition it is this 11th day of July, 1972, by the Circuit Court for Baltimore County, ORDERED that the time within which the Petitioners herein must file the Record of Proceedings and the Transcript taken thereat be and it is hereby extended for the period of thirty days following the entry of a final Order upon the Motion for Dismissal filed by the O'Neill Club of Towson, Inc. herein.

S/John E. Rahn, Jr.
Judge

LAW OFFICES
HESSION & IGLEHART
SUITE 202 ALEX. BROWN & SONS BUILDING
102 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

December 16, 1971



S. Eric Di Nenna, Esquire
Zoning Commissioner of Baltimore County
County Office Building
Towson, Maryland 21204

Re: Petition for Special Exception
N/S of Seminary Avenue, 675' E.
of the Baltimore-Harrisburg Ex-
pressway - 8th District
O'Neill Club of Towson, Inc., In-
corporated - Petitioner
NO. 72-109-X (Item No. 38)

Dear Mr. Di Nenna:

On behalf of Louis Nottzel, et al, please enter an appeal to the County Board of Appeals from your Order of November 18, 1971, granting special exception for a community building in connection with the above entitled rezoning application, concerning the above captioned property. A check for \$70.00 for costs is enclosed.

Very truly yours,

John W. Hession, III
John W. Hession, III

JWH:vh

Enclosure

cc: Robert J. Romadka, Esquire
Mr. Louis Nottzel

RE: PETITION FOR SPECIAL EXCEPTION :
for a Community Building :
N/S Seminary Avenue 675' E. of :
Baltimore-Harrisburg Expressway :
8th District :
O'Neill Club of Towson, Inc., :
Petitioner :
No. 72-109-X

BEFORE :
COUNTY BOARD OF APPEALS :
OF :
BALTIMORE COUNTY

OPINION

This case represents an application for a special exception for a Community Building on behalf of the O'Neill Club of Towson, Inc., an affiliate of the Knights of Columbus, who own a piece of property on the north side of Seminary Avenue east of the Baltimore-Harrisburg Expressway (I-83). An application for a special exception for this same purpose was granted in March of 1967 for use of the entire tract, i.e., 10.33 acres owned by them. However, this special exception was never used and has expired, and at the time of the adoption of the new zoning maps the County Council, in its wisdom, saw fit to zone about eight acres of this property as D.R. 16, and the Board understands that this segment is now under development for an apartment complex. Therefore, the present application concerns only the remaining 2.3 acres, which the Club wishes to use for a meeting hall and community building. Apparently the activities of the Club involve practically no outdoor affairs, and most of their other use of the property will be in the evening hours.

The testimony in the case was clear to the effect that the proposal will satisfy all the requirements of Section 502.1 of the zoning laws and regulations of Baltimore County and would have no adverse effect on the value or use of the nearby homes, and the Board so finds.

The few protestants who appeared were concerned almost entirely with the possible effect of traffic on Seminary Avenue. However, evidence indicated that a proposed widening of Seminary Avenue is under way, and that the bridge over the expressway is now under construction to make it considerably wider. While it is true that the construction of many homes west of the expressway has substantially increased the daily traffic on Seminary Avenue, at least as far eastward as Front Avenue in Lutherville, we do

not believe that the proposed use of the special exception would make the situation any worse and the proposed widening of Seminary Avenue will relieve most of these difficulties. Therefore, the decision of the Zoning Commissioner will be affirmed, including the same conditions imposed by his Order.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 18th day of May, 1972, by the County Board of Appeals, ORDERED that the special exception petitioned for, be and the same is hereby GRANTED, subject to the following restrictions:

1. That no affair, meeting, etc. shall take place or continue beyond 1:00 A.M., except Fridays and Saturdays
2. That the development of the plans shall be in substantial accordance with the plat submitted as revised
3. The site plan shall be subject to the approval of the State Highway Administration, the Bureau of Public Services and the Office of Planning and Zoning.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle 8 of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Reiter, Jr., Acting Chairman

W. Giles Parker

William H. Gaffney

HAGAN & HOLDEFER, INC. SURVEYORS AND CIVIL ENGINEERS 1001 E. WILSON STREET, BALTIMORE, MD. 21202 TELEPHONE: 368-1100

August 17, 1971

DESCRIPTION OF 2.29 ACRES PARCEL OF LAND ON SEMINARY AVENUE FOR SPECIAL EXCEPTION FOR A COMMUNITY BUILDING

BEGINNING for the same at a point on the north side of Seminary Avenue at the distance of 675 feet more or less, measured easterly along said north side of Seminary Avenue from its intersection with the east side of Baltimore-Harrisburg Expressway, thence leaving said place of beginning and running and binding on said north side of Seminary Avenue the four following courses and distances, viz:

South 60 degrees 18 minutes 55 seconds East 33.71 feet thence South 29 degrees 41 minutes 05 seconds West 20.00 feet thence South 60 degrees 18 minutes 55 seconds East 11.45 feet and thence South 62 degrees 31 minutes 43 seconds East 88.28 feet, thence leaving said north side of Seminary Avenue, North 17 degrees 32 minutes 41 seconds East 156.86 feet thence South 70 degrees 57 minutes 19 seconds East 150.00 feet thence North 17 degrees 32 minutes 41 seconds East 172.70 feet thence North 70 degrees 57 minutes 19 seconds West 466.15 feet, and thence binding near or along the center line of an existing stream there situate the three following courses and distances, viz:

South 07 degrees 45 minutes 19 seconds East 230 feet thence South 31 degrees 15 minutes 19 seconds East 106 feet and thence South 08 degrees 37 minutes 23 seconds East 35.37 feet to the place of beginning.

Containing 2.29 Acres of Land more or less.

This description has been prepared for zoning purposes only and is not intended to be used for conveyance.



Court of Appeals of Maryland

No. 300 September Term, 1972

Bertha Sembly et al.

John W. Hessian, III

Attorneys for appellants

County Board of Appeals of
Baltimore County

R. Bruce Alderman
Robert J. Romadka
Irvin M. Caplan
Attorneys for appellee

STATE OF MARYLAND, ss:

I hereby certify that on the second day of January
nineteen hundred and seventy-three I received from the Circuit Court for
Baltimore County Transcript of Record in the above entitled case.

Brief for appellant due to be filed February 13, 1972

JAMES H. MORRIS, JR.

Clerk of the Court of Appeals of Maryland.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. Eric DiNenna
TO: Zoning Commissioner
Date: September 16, 1971
FROM: Richard B. Williams
Project Planning Division
SUBJECT: Zoning Advisory Agenda Item #38

August 24, 1971
O'Neill Club of Towson, Inc.
N/S Seminary Avenue, 675' E. of
Baltimore Harrisburg Expressway

The Office of Planning has reviewed the subject site plan and offers the following comments:

The entrance is subject to approval of the State Highway Administration.

TO: S. Eric DiNenna
ATTN: Oliver L. Myers
FROM: Michael S. Flanigan
SUBJECT: Item 38 - ZAC - August 24, 1971
Property Owner: O'Neill Club
Seminary Avenue E. of Balto.
Special Exception for Community Building

The subject special problems, except during period it is recommended that the on a right and left turn lane con

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNenna
ATTN: Oliver L. Myers
FROM: Ellsworth N. Dwyer, P.E.
Date: September 1, 1971

SUBJECT: Item #38 (1971-1972)
Property Owner: O'Neill Club of Towson, Inc.
N/S Seminary Avenue, 675' E. of Baltimore-Harrisburg Expressway
Present Zoning: D.R. 5.5
Proposed Zoning: Special Exception for Community Building
District: 8th
No. Acres: 2.29

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways:

Seminary Avenue (Md. 131) and the Baltimore-Harrisburg Expressway (I-83) are State Roads; therefore, all improvements, intersections and entrances on these roads will be subject to State Highway Administration requirements.

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Drainage studies and sediment control drawings will be necessary to be reviewed and approved prior to the recording of any record plat or the issuance of any grading or building permits.

Storm Drains:

Provisions for accommodating storm water or drainage have not been indicated on the submitted plan.

In accordance with the drainage policy for this type development, the petitioner is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall.

As stated before, Seminary Avenue and Baltimore-Harrisburg Expressway are State Roads. Therefore, drainage requirements as they affect these roads come under the jurisdiction of the State Highway Administration.

Open stream drainage requires a drainage reservation or easement of sufficient width to cover the flood plain of a 50-year design storm.

Item #37 (1971-1972)
Property Owner: O'Neill
Page 2
September 1, 1971

Storm Drains: (Cont'd)

The Petitioner must or permanent) to prevent properties, especially of any problem with an installation of drainage the Petitioner.

Water and Sanitary Sewer

Public water supply property. However, add

General:

It appears that a the subdivision of the of drainage and utility

END/EA:PM:ess

SEE Key Sheet
1/6 "W" & Parting Sheet
NO. 1 & 2 Topo
60 TA. W-1

cc: Harris V. Shalwitz

REVIEWED BY THE BALTIMORE COUNTY JOINT SUBDIVISION PLANNING COMMITTEE
AUGUST 5, 1971

SEMINARY APARTMENTS

Developer - Carl T. Julio, 10 Parks Ave., Cockeysville 21030
Engineer - Evans, Hagan & Holdefer, 8013 Belair Rd. 21236
District - 8
Location - N/S Intersection Seminary Ave. & Balto-Harrisburg Expy.
Lot Type - DR-16 & 5.5 No. of Units: 90 No. of Acres: 8.2
Facilities - Contemplated: Water & Sewer

Representatives Present:

Representing Developer: Carroll Hagan

Representing Developer's Sections: Edw.A.M. Donough, Harris Shalwitz

Developer's representative presented a 50-scale plan of the proposed development located on the north side of Seminary Ave. and binding on the east boundary of the Baltimore-Harrisburg Expressway. The Committee's review was as follows.

Developer's representative was advised that the Transition Zone appeared to be located correctly with the exception that there is no transition required within the D.R. 16 zone.

Developer's representative was advised that parking is not permitted within the Transition Zone.

The Open Space requirements can be reduced to reflect 15% for the D.R. 16 zone and 6% for the D.R. 5.5 zone.

The cul-de-sac between the parking bays can be deleted.

Traffic representative requested that some additional parking be provided.

Developer will be required to improve Seminary Avenue according to the requirements of the State Highway Administration. The current right-of-way requirements for Seminary Avenue should be shown on the plan.

A storm drain study must be submitted to establish the drainage requirements. A suitable portion of this property is currently flood plain area.

JSPC Meeting

-2-

August 5, 1971

Re: Seminary Apartments
District 8

Water and sewer facilities exist adjacent to the site. The Developer's engineer will have to determine the feasibility of reaching these facilities.

Open space areas must be clearly defined and covenants will have to be recorded for same.

The Board of Education representative indicated that overcrowded conditions were evident in the area schools.

A public fire hydrant will be required on Seminary Avenue in addition to onsite hydrants.

State of Maryland requirements for underground wiring must be met.

Sediment control recommendations and a soils analysis were provided to the Developer's representative. A sediment control plan is required.

Developer's representative is to revise the plan in accordance with the Committee's review and arrange for another meeting with the Committee.

JAH:whl
8-10-71

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Oliver Myers Date: August 27, 1971
 FROM: Ian J. Forrest
 SUBJECT: Item 37 - Zoning Advisory Committee Meeting, August 24, 1971

37. Property Owner: O'Neill Club of Towson, Inc.
 Location: N/S Seminary Avenue, 675' E. of Balto.
 Harrisburg Expressway
 Present Zoning: P.R. 5.5
 Proposed Zoning: Special Exception for Community Bldg.
 District: 9th
 No. Acres: 2.29

Public water and sewer is available to the site.

Food Control Comment: If a food service facility is proposed, complete plans and specifications must be submitted to the Division of Food Control, Baltimore County Department of Health for review and approval.

Air Pollution Comment: The building or buildings on this site may be subject to registration and compliance with the Maryland State Health Air Pollution Control Regulations. Additional information may be obtained from the Division of Air Pollution, Baltimore County Department of Health.

L. J. Forrest
 Chief
 Water and Sewer Section
 BUREAU OF ENVIRONMENTAL HEALTH

HVS/sam

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Zoning Date: August 26, 1971
 FROM: Jack Dietrich - Plans Review
 SUBJECT: #38 O'Neill Club of Towson, Inc.
 N.S. Seminary Avenue
 675' E. of Baltimore Harrisburg Exp.
 District:

Petitioner to comply with all applicable requirements of the Baltimore County Building Code and regulations, when plans are submitted. Also, see Parking Lots Section 109.10M.

Jack Dietrich
 Jack Dietrich

BALTIMORE COUNTY BOARD OF EDUCATION

ZONING ADVISORY COMMITTEE MEETING
OF AUG. 24, 1971

Petitioner: O'Neill Club of Towson, Inc.
 Location: N/S Seminary Ave., 675' E. of Harrisburg Exp.
 District: 9
 Present Zoning: B.R. 5.5
 Proposed Zoning: S.E. 6.5 COMMUNITY BLDG.
 No. of Acres: 2.29

Comments: NO BEARING ON DENSE POPULATION

TO: S. Eric Dikens, Zoning Commissioner Date: August 26, 1971
 FROM: Fire Prevention Bureau
 Fire Department

SUBJECT: Property Owner: O'Neill Club of Towson, Inc.

Location: N/S Seminary Avenue 675' E. of Baltimore Harrisburg Expressway
 ITEM # 38 Zoning Agenda: August 24, 1971

- (1) Fire hydrants for the proposed site (are required and) shall be in accordance with Baltimore County Standards.
 The hydrants shall be located at intervals of 300 feet along an approved road.
- (2) A second means of access is required for the site.
- (3) The dead-end condition shown at _____ exceeds the maximum allowed by the Fire Department.
- (4) The site shall be made to comply with all applicable requirements of the National Fire Protection Association Standard No. 101, "The Life Safety Code", 1967 Edition, and the Fire Prevention Code prior to occupancy or commencement of operations.
- (5) The owner shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101, "The Life Safety Code", 1967 Edition, and the Fire Prevention Code when construction plans are submitted for approval.
- (6) The Fire Department has no comment on the proposed site.

H. J. E. Kelly
 Planning Division
 Fire Prevention Bureau

Note: Above comments indicated with a check apply.

mb



STATE HIGHWAY ADMINISTRATION

STATE OF MARYLAND
 DEPARTMENT OF TRANSPORTATION
 300 WEST PAVEMENT STREET
 BALTIMORE, MD. 21201

AUGUST 25, 1971

Mr. S. Eric Dikens
 Zoning Commissioner
 County Office Building
 Towson, Maryland 21204

Re: Z.A.C. Meeting 8/24/71
 ITEM 38 Property Owner
 O'Neill Club of Towson, Inc.
 Location: N/S Seminary
 Avenue (Route 131) 675'
 East of Baltimore Harrisburg
 Expressway
 Present Zoning: D. R. 5.5
 Proposed Zoning: Special exception
 for Community Bldg.
 No. Acres: 2.29

Dear Sirs:

The frontage of the subject site must be curbed with concrete. The roadside face of curb is to be 24" from and parallel to the centerline of Seminary Avenue. An inlet must be constructed to direct storm water into the drain under the road.

The entrance will be subject to State Highway Administration approval and permit.

It is our opinion that the plan should be revised prior to a hearing date being assigned.

Very truly yours,
 Charles Lee, Chief
 Development Engineering Section
 by: John E. Mayers
 Asst. Development Engineer

CLJ:EMsbk

REVIEWED BY THE BALTIMORE COUNTY JOINT SUBDIVISION PLANNING COMMITTEE
AUGUST 5, 1971

SEMINARY APARTMENTS

Developer - Carl T. Julio, 10 Parks Ave., Cockeysville 21030
 Engineer - Evans, Hagan & Holdrege, 8013 B-lair Rd. 21236
 District - 8
 Location - N/E Intersection Seminary Ave. & Balto-Harrisburg Expwy.
 Lot Type - BR-16 & S-5 No. of Units: 90 No. of Acres: 8.2
 Facilities - Contemplated: Water & Sewer

Representatives Present:

Representing Developer: Carroll Hagan
 Representing Developer's Sections: Edw.A. McDonough, Harris Shalowitz

Developer's representative presented a 50-scale plan of the proposed development located on the north side of Seminary Ave. and binding on the east boundary of the Baltimore-Harrisburg Expressway. The Committee's review was as follows.

Developer's representative was advised that the Transition Zone appeared to be located correctly with the exception that there is no transition required within the D.R.16 zone.

Developer's representative was advised that parking is not permitted within the Transition Zone.

The Open Space requirements can be reduced to reflect 15% for the D.R.16 zone and 6% for the D.R.5.5 zone.

The cul-de-sac between the parking bays can be deleted.

Traffic representative requested that some additional parking be provided.

Developer will be required to improve Seminary Avenue according to the requirements of the State Highway Administration. The current right-of-way requirements for Seminary Avenue should be shown on the plan.

A storm drain study must be submitted to establish the drainage requirements. A sizeable portion of this property is currently flood plain area.

JPSC Meeting

-2-

August 5, 1971

Re: Seminary Apartments
 District 8

Water and sewer facilities exist adjacent to the site. The Developer's engineer will have to determine the feasibility of reaching these facilities.

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State of Maryland requirements for underground wiring must be met.

Sediment control recommendations and a soils analysis were provided to the Developer's representative. A sediment control plan is required.

Developer's representative is to revise the plan in accordance with the Committee's review and arrange for another meeting with the Committee.

JAW:bw1
 8-10-71

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 8th Date of Posting: Dec. 24, 1971
 Posted for: APPEAL
 Petitioner: O'Neill Club of Towson, Inc.
 Location of property: N/S SEMINARY AVE. 675' E. of BALTO. HARRISBURG EXPWY.
 Location of Signs: N/S SEMINARY AVE. 675' E. of BALTO. HARRISBURG EXPWY.
 Remarks: *Charles M. Phil*
 Posted by: *Charles M. Phil* Date of return: Dec 30, 1971

DR - 5.5

DR - 5.5
VACANT

DR - 16

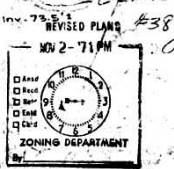
VACANT
PARCEL NO. 1
7.7 AC.

DR - 5.5
RESIDENCE

Note:
The owner has been advised that the
plans and specifications for the proposed
development are subject to the approval of the
City of Baltimore and the State of Maryland.
For the boundaries of the proposed development
see the accompanying map.

B.M. Elev. 100.55 - Assumed Elev.
Red Point of Cont. Point Contn. Joint
Opposite Sta. 5+00 - Baltimore Exp.

PROPOSED BLDG - 50' x 100' (50000)
PROPOSED ZONE - SPECIAL EXCEPTED
PROPOSED ZONE - RES. COMMUNITY BLDG.
PROPOSED BLDG - 50' x 100' (50000)
PARKING: REQ'D - 1 space/50' FL AREA 1000
PROPOSED - 120
DURABLE - MACADAM PAVING
PEOP. LIGHTING SEE DISCREET AWAY FROM ADJACENT
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ALL TREES NOT IN IMMEDIATE AREA OF CONSTRUCTION
TO BE SAVED.

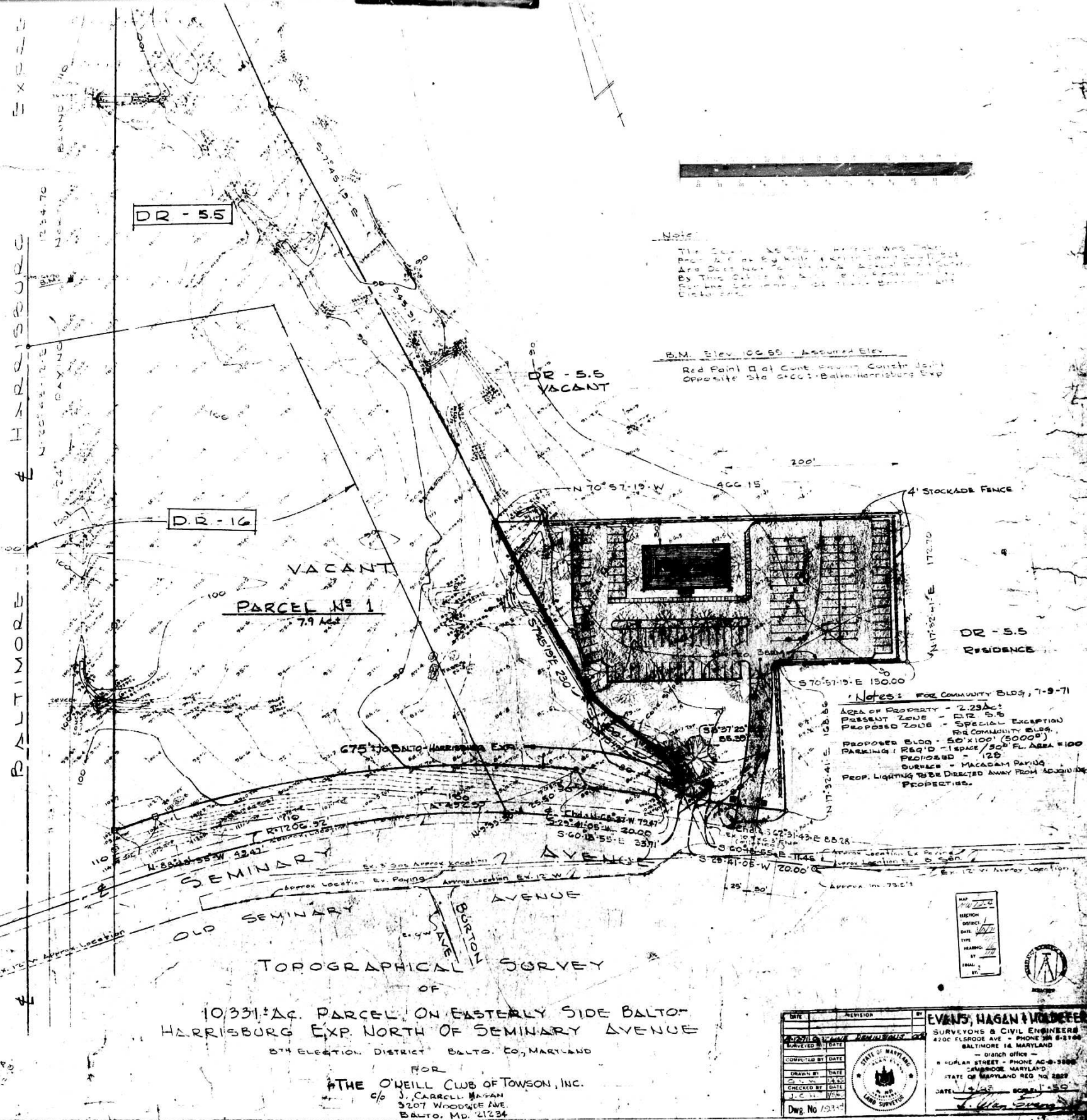


10331 AC PARCELS ON EASTERN SIDE BALTO
HARRISBURG EXP NORTH OF SEMINARY AVENUE

THE O'NEILL CLUB OF TOWSON, INC.
600 CARROLL MCGAN
2207 WOODBURN AVE.
BALTO, MD. 21204

DATE	NOV 2-71 PM	REVISED PLAN #38
COMPUTED BY DATE	NOV 2-71 PM	O'NEILL CUB
DESIGNED BY DATE	NOV 2-71 PM	O'NEILL CUB
CHECKED BY DATE	NOV 2-71 PM	O'NEILL CUB
DATE	NOV 2-71 PM	O'NEILL CUB

EVANS, JAMES H. JR.
SURVEYOR & CIVIL ENGINEER
2700 ELMORE AVE. BALTIMORE, MD.
BALTIMORE, MD.
- branch office -
8 HOLLAR STREET - PHOENIX, ARIZONA
STATE OF MARYLAND REG. NO. 1000
DATE 1-1-63



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DR - 5.5

DR - 16

PARCEL NO 1
7.9 Acs

DR - 5.5
VACANT

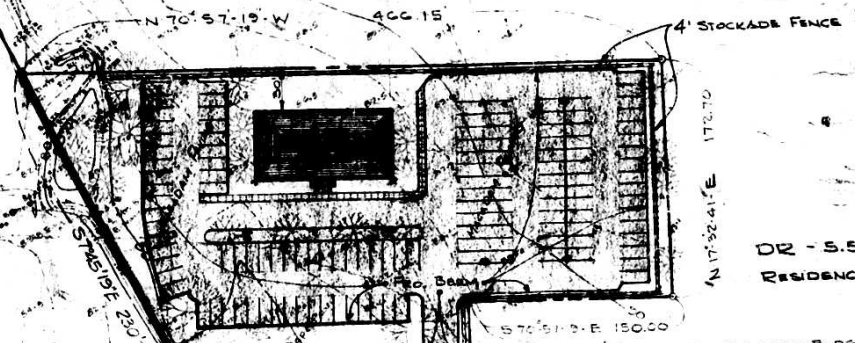
DR - 5.5
RESIDENCE



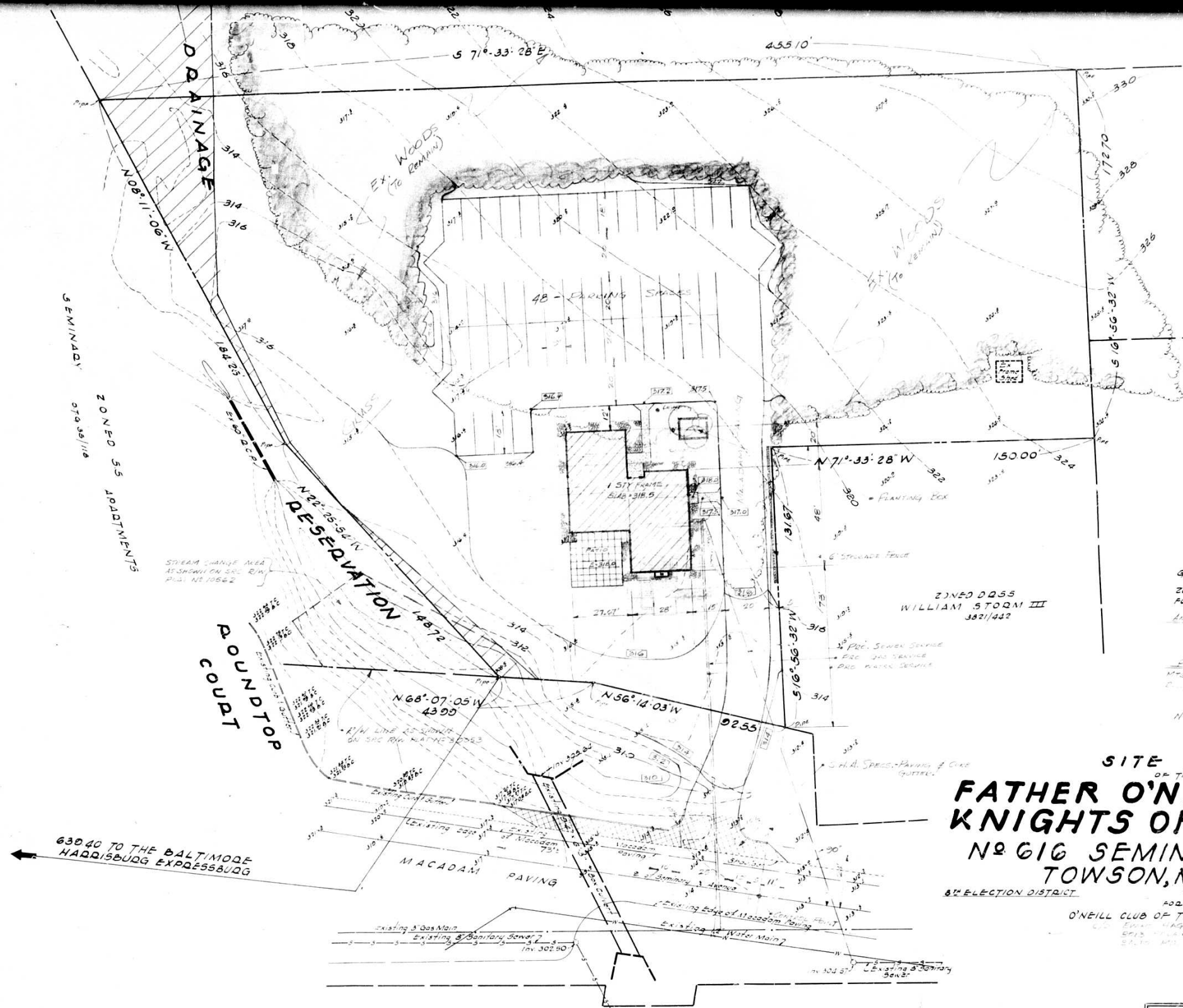
Note:

The Contour as shown hereon was taken from a plot by Keller & Keller dated July 17, 1964 and does not constitute a 'Actual Field Survey' by this Office. We assume no liability for the accuracy of these bearings and distances.

B.M. Elev. 106.55 - Assumed Elev.
Red Point Q at Cont. Pavement Const. Joint
Opposite Sta. 4+00.1 - Baltimore-Harrisburg Exp.



Notes: FOR COMMUNITY BLDG, 7-9-71
AREA OF PROPERTY - 12.29 Acs
PERMIT - 100' - DR - 5.5
EXEMPTED FROM - SPECIAL EXCEPTION
FOR COMMUNITY BLDG.
COMMUNITY BLDG - 50' x 100' (5000')



ZONE DQ.55
ERNEST A. ECSEY & WIFE
1751/208

60055 AREA OF PROPERTY 2005 ACRES:
ZONE DQ.55 WITH SPECIAL EXCEPTION
FOR COMMUNITY BUILDING
ANTICIPATED SEWER FLOW
Max. 100 G.P.D. = 120
20 apd x 120 = 2400 apd.

PARKING:
MT. 1000 x 211.17' = 211,170 sq. ft.
211,170 sq. ft. / 400 sq. ft. per space = 527.925 spaces
527.925 spaces x 400 sq. ft. per space = 211,170 sq. ft.
NOTE: "TRUCK REQUIREMENT"
THE "NO PARKING" ZONE, ETC. SHALL TAKE PLACE ON
CONTIGUOUS BUILDING OCCUPANCY, EXCEPT FROM 8:00 A.M. TO 5:00 P.M.

SITE PLAN
OF THE
**FATHER O'NEILL COUNCIL
KNIGHTS OF COLUMBUS**
NO 616 SEMINARY AVENUE
TOWSON, MARYLAND
BALTIMORE COUNTY MARYLAND

8th ELECTION DISTRICT
FOO
O'NEILL CLUB OF TOWSON INC
EDWARD HAGAN & HOLDEFER, INC.
1313 BELAIR ROAD / BALTIMORE, MD. 21204
301.668.1501

SEMINARY AVENUE

PLANS APPROVED
OFFICE OF PLANNING & ZONING
BY: *John J. W...*
DATE: 10-16-74
Approved subject to "Ex. Woods"
to remain "drainage required"
for parking area if natural
drainage (wood) becomes insignificant.

EVANS, HAGAN & HOLDEFER, INC.		
DATE	REVISION	BY
5/14/74	1. PREL. DRAINAGE	EVH
5/14/74	2. PREL. DRAINAGE	EVH
SURVEYED BY		
COMPILED BY		
DRAWN BY		
CHECKED BY		
Drwg. No.		
309 POKA STREET / CAMMIDGE, MD. 21613 / (301) 328-3400 115 E. MAIN STREET / WESTMINSTER, MD. 21157 / (301) 348-1790 13 E. WASHINGTON STREET / GAITHERSBURG, MD. 20878 / (301) 483-3400		
<i>John C. Hagan</i> DATE: Nov. 5, 1973 SCALE: 1"=80'		



ZONED DQ 55
PLAT 1 LUTHER - VILLA
NPG 7/128



LOCATION
MAP
SCALE 1:1000

ZONED DQ 55
EQUEST A ECSEBY WIFE
1752/208

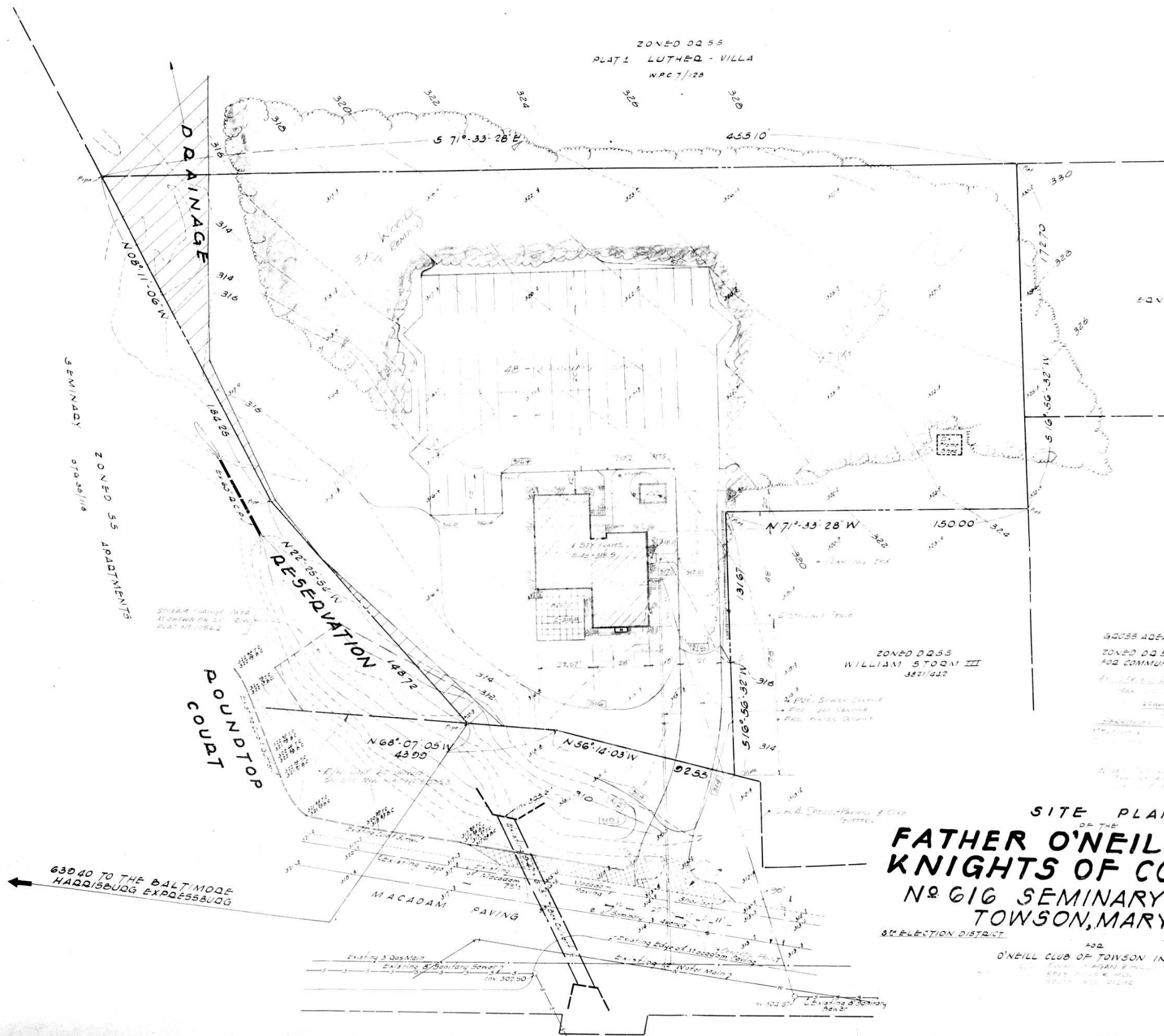
GOODS AREA OF PROPERTY 2005 ACRES:
ZONED DQ 55 WITH SPECIAL EXCEPTION
FOR COMMUNITY BUILDING

ANALYSIS OF PROPOSED DEVELOPMENT
MAX. LOT AREA 120
20000 x 120 = 2400000
2400000 / 4 = 600000
N 11° 10' 00" E 100.00' TO CORNER OF LOT 120
THEN BY BEARING 11° 10' 00" E 100.00' TO PLACE OF
CROSSING OF BALTIMORE & ANNE ARUNDEL COUNTIES
THEN BY BEARING 11° 10' 00" E 100.00' TO PLACE OF
CROSSING OF BALTIMORE & ANNE ARUNDEL COUNTIES

SITE PLAN
OF THE
**FATHER O'NEILL COUNCIL
KNIGHTS OF COLUMBUS**
N 616 SEMINARY AVENUE
TOWSON, MARYLAND
8th ELECTION DISTRICT

O'NEILL CLUB OF TOWSON INC
EVANS, HAGAN & HOLDEFER, INC.

EVANS, HAGAN & HOLDEFER, INC.



63040 TO THE BALTIMORE
HARRISBURG EXPRESSWAY