

73044
114c
7/20/73

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, The Frank Realty Company, legal owner of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a special hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the zoning Commissioner and/or Deputy Zoning Commissioner should approve a use permit for the use of land in a residential zone for a parking area to fulfill in part the parking requirements of Section 409.2b(3) of the Baltimore County Zoning Regulations, all as shown on the zoning plat and descriptions filed herewith; the said use permit being in the interest of the public and in conformity with the letter and spirit of the Regulations.

see attached description

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

The Frank Realty Company
CONFERENCE PURCHASER
Address: 6808 Belair Road at Northern Parkway
Baltimore County, Maryland 21206
F. KENNEDY BOWEN
Petitioner's Attorney
204 W. Pennsylvania Avenue
Towson, Maryland 21204
Telephone: 823-7830

ORDERED BY the Zoning Commissioner of Baltimore County, this 20th day of August, 1973, 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 the property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 17th day of October, 1973, at 11:00 o'clock A.M.

John Hoffmeister
Zoning Commissioner of Baltimore County

(over)

11:00A
10/17/73

RE: PETITION FOR SPECIAL HEARING :
For Off-Street Parking in a :
Residential Zone :
NE/S of Maple Avenue 162' :
SE of Belair Road :
14th District :
The Frank Realty Company, :
Petitioner. :
Case No. 74-101-SPH :
John Hoffmeister, et al, :
Protestants-Appellants :
IN THE :
CIRCUIT COURT :
FOR :
BALTIMORE COUNTY :
AT LAW :
Misc. No. 5697 :
Misc. Docket No. 10 :
Folio 100

ORDER FOR APPEAL

Mr. Clerk:

Please enter an Appeal to the Court of Special Appeals from the Order and Judgment thereon entered herein on January 20, 1976.



I HEREBY CERTIFY that on this 10 day of February, 1976 a copy of the foregoing Order for Appeal was mailed to James D. Nolan, Esq., 204 W. Pennsylvania Avenue, Towson, MD. 21204 and Newton A. Williams, Esq., 204 W. Pennsylvania Avenue, Towson, MD. 21204, and Charles E. Kountz, Jr., Esq., Deputy People's Counsel, County Office Building, Towson, MD. 21204.

William F. C. Marlow, Jr.
Attorney for Protestants-Appellants

RE: PETITION FOR SPECIAL HEARING :
on property located on :
NE/S of Maple Avenue 162 feet :
SE of Belair Road :
14th District :
The Frank Realty Company :
Petitioner :
BEFORE :
COUNTY BOARD OF APPEALS :
OF :
BALTIMORE COUNTY :
No. 74-101-SPH

OPINION

This case came before the Board on an appeal from the Zoning Commissioner's Order dated June 4, 1974 wherein the petition for parking in a residential zone was granted, the subject property of this petition being located on the northeast side of Maple Avenue 162 feet southeast of Belair Road, in the 14th Election District of Baltimore County.

At the commencement of the hearing of this case a motion to dismiss the Petitioner's case was made by the Deputy People's Counsel, as well as counsel for the Protestants. The basis for the aforesaid motions was that the Zoning Commissioner lacked authority and jurisdiction to hear this matter and that his Order granting the request for a special parking permit in a residential zone was a nullity. The Board has received a memorandum in support of Protestants' motion, as well as a memorandum from the Deputy People's Counsel in support of his motion, and further, a memorandum from counsel for the Petitioners in opposition to the above respective motions.

The Protestants and the Deputy People's Counsel maintain that the Zoning Commissioner is without authority to grant a special permit for parking in a residential zone and state that the enabling legislation for the Zoning Commissioner's office, being Section 22-23 of the Baltimore County Code, does not specifically mention such a procedure, although special exceptions are contained therein, it being their contention that a special permit for parking in a residential zone is not analogous to or contained within the concept of "Special Exceptions". The Deputy People's Counsel and counsel for the Protestants also heavily rely on the case of Marek v. Baltimore County Board of Appeals, 218 Md. 351 (1958). Counsel for Petitioners argue, and the Board is in agreement therewith, that historically such a special permit has been within the jurisdiction

The Frank Realty Company - No. 74-101-SPH

of the Zoning Commissioner's office, and refer to sub-section C of Section XIII of the 1948 Regulations. Furthermore, throughout the aforesaid Section XIII of the 1948 Code, the word "permit" is used exclusively, although the reference contained in the title of that section is "Special Exceptions". Consequently the Board concludes that said terms are used interchangeably and that it was the intent of the County Commissioners that "special permit" and "special exception" meant the same thing as contained in that portion of the County Code.

Although the words permit and exception by themselves are quite distinct in their meaning, if not contradictory, their use in the context of zoning is of a similar if not identical meaning (i.e. permission to use property in a manner different than that permitted as a matter of right under a specific zoning classification). The Petitioner's memorandum refers to American Law of Zoning, Section 15.01, which recites that "special exception" and "special permit" and the use permitted subjective to administrative approval, are qualitatively the same." This section elaborates further on the fact that these terms are used interchangeably and, as we have indicated above in our own 1948 County Code and subsequent thereto, the terms have been used with the obvious intent that they mean the same thing. Consequently we feel that the concept of "special permit" is the same as that of a "special exception" and is properly within the purview of the Zoning Commissioner.

The Protestants and the Deputy People's Counsel also rely heavily on the case of Marek v. Baltimore County Board of Appeals, (supra), wherein the Court of Appeals considered the granting of an off-street parking permit to beach owners who operated the property as a nonconforming use in a residential zone. Counsel for the Petitioner argues that this is analogous to the instant case, and makes the allegation that the Petitioners herein are operating their business under a nonconforming use. This allegation is incorrect, as the property owned by the Petitioners contiguous to the subject property is zoned B.L. in a C.C.C. District, and consequently this could not be analogous to a situation wherein a commercial operation was taking place on the basis of a nonconforming use. Further, the Deputy People's Counsel concludes in his argument from this case that the Court of Appeals is holding that a use permit for off-street parking is not a

The Frank Realty Company - No. 74-101-SPH

special exception but is a separate entity in and of itself. We do not agree. The Board feels that the Court of Appeals holding in the Marek case was not based upon any such contention but was based substantially upon the requirement that any special permit for parking in a residential zone must be adjoining to or across an alley from a lot in a commercial zone. Obviously in the Marek case the adjoining property was that of a nonconforming use and therefore was not adjoining to or across an alley from any commercially zoned property, and therefore the property itself did not meet the required prerequisites in order to be eligible for a special permit.

For the above reasons, the motions filed on behalf of the Deputy People's Counsel and the Protestants seeking dismissal of the Petitioner's case will be hereby denied.

As to the merits of the case, the Petitioners testified that they are the owners of a business known as Overlea Caterers, located at 6809 Belair Road, in the 14th Election District of Baltimore County, and that said business has operated from that location since 1950. The business conducted thereat is essentially that of a hall, which is rented to different parties for use as receptions, banquets, political affairs, etc. The business itself, as indicated above, is located in a B.L. zone in a C.C.C. District. However, testimony from the Petitioners indicates that they do not have, at the present time, any off-street parking and the purpose of this petition is to request that property contiguous to the east of their commercial property, which they have purchased, be granted a special permit for parking which would accommodate eighty-four vehicles.

Several experts testified on behalf of the Petitioner. It was the consensus that there is a definite need for off-street parking, and further, that the proposals sought by the petition would not be adverse to the general health, welfare and safety of the County, and would adequately comply with the requirements of Section 502.1 of the Zoning Regulations. Further, as indicated by the testimony of the traffic expert called by the Petitioners, a proposal would not only be for the general welfare of the citizens of Baltimore County, and particularly those citizens patronizing the Petitioner's place of business, but it would further be of benefit to the immediate neighborhood in that

The Frank Realty Company - No. 74-101-SPH

the proposal would reduce the area of influence of parking in the surrounding neighborhood emanating from patrons of the Petitioner's establishment.

The Protestants in this case cited many reasons for the opposition, among them noise, traffic problems, parking of vehicles for patrons of the Petitioner in front of their residences, debris in the neighborhood, presumably from the same patrons, etc. Also concern was expressed of the infringement into the residential neighborhood by the granting of this permit for parking. However, said granting would not, of course, change the zoning classification and consequently could not be considered as a zoning infringement upon the residential neighborhood. Additionally it is felt that the granting of this petition would at least reduce the magnitude of the problem that now exists as a result of unavailable parking, at least to the extent of the eighty-four vehicles that can be accommodated by this proposal. This would reduce, and perhaps in some instances eliminate the parking problems, trash and traffic flow that generates from the operation of the Petitioner's business. Traffic flow that is generated by the Petitioner's business would be abated, at least to the extent of the accommodation of the eighty-four vehicles, and in some instances it would probably be abated altogether with regard to the incursion of the residential neighborhood to the east of the requested parking area.

Without reviewing the evidence in further detail, but based upon all of the evidence presented at the hearing, it is the opinion of this Board that the requested petition would not be adverse to the general welfare of Baltimore County and would satisfactorily comply with all requirements of Section 502.1 of the Zoning Regulations; furthermore this Board finds that said petition meets the prerequisites outlined in Section 409.4, and said use permit for off-street parking in a residential zone should be granted.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 29th day of July, 1975, by the County Board of Appeals ORDERED, that the use permit for off-street parking in a residential zone be and the same is hereby GRANTED, subject to the following conditions:

1. Compact screening, a minimum of six (6) feet in height, be constructed around the entire

The Frank Realty Company - No. 74-101-SPH

subject property, excluding entrances and exits, and that portion of the subject property which is immediately adjacent to the Overlea Hall catering establishment

2. Any lighting that is constructed on the subject property is to be a maximum of six (6) feet in height
3. Only ingress be afforded from the entrance on Overlea Avenue
4. Approval of a site plan by the Department of Public Works and the Office of Planning and Zoning.

Any appeal from this decision must be in accordance with Rules B-1 to B-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Reiter, Jr., Chairman
Robert L. Gifford
John A. Miller

Court of Special Appeals of Maryland

No. 152, SEPTEMBER TERM, 1976

John Hoffmeister et al

vs.

The Frank Realty Company

DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:

5/11/77 - Opinion by Moylan, J. Judgment affirmed; costs to be paid by appellants.

TRANSCRIPT

RETURNED TO Clerk, Circuit Court for Baltimore County

Towson, Maryland 21204

Date June 10, 1977

BY FIRST CLASS MAIL

REMARKS:

JULIUS A. ROMANO, CLERK

FILED JUN 14 1977

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the following finding of facts-----

the above Special Hearing for-----
by reason of-----

-----should be granted.
IT IS ORDERED by the Zoning Commissioner of Baltimore County this-----day of-----, 196--, that the herein Petition for Special Hearing should be and the same is granted, from and after the date of this order.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of-----
the above Special Hearing should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this-----day of-----, 196--, that the above Special Hearing be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

only for the Overlea Hall Caterers, but for all businesses along Belair Road. He further testified that the granting of this use permit would not create a depreciation or adverse affect upon the value of the homes in the vicinity.

Mr. Wilson Alton, a registered civil engineer, testifying on behalf of the Petitioner, indicated that there would be one entrance, with no exit, on Overlea Avenue, and both an ingress and egress to Maple Avenue. He stated the size of the subject property is .8 of an acre and that 84 parking spaces would be provided thereon.

Residents of the area, in protest of the subject Petition, indicated that they felt the granting of this use permit would be an infringement upon the residential area lying to the east of Belair Road. They were disturbed with the possibility of noise and trash, and one resident, in particular, was fearful of the possibility of dubious individuals lurking behind any screening that would be afforded the parking lot, creating fear for his and anyone else's life or limb.

Without reviewing the evidence further in detail but based on all the evidence presented at the hearing, in the judgment of the Zoning Commissioner, a use permit for off-street parking in a residential zone should be granted. The circumstances under which the Petitioner requests the use permit are unique in that there is no available off-street parking in the area. The subject property is immediately to the rear and adjacent to the use for which the parking is to be provided for, namely, Overlea Hall.

The Zoning Commissioner is aware of only two cases concerning requests for a use permit for off-street parking in a residential zone that have reached the Maryland Court of Appeals. They are Mercy, et al, vs. Baltimore County Board of Appeals, 218 Md. 351 and Jacobs, et al, vs. Baltimore County Board of Appeals, 234 Md. 242. In essence, the general context of both decisions were that a use permit could be granted if beneficial to the public and that each

MANDATE

Court of Special Appeals of Maryland

No. 152, September Term, 1976

John Hofmeister et al

vs.

The Frank Realty Company

Appeal from the Circuit Court for Baltimore County.

Filed: April 8, 1976.

September 14, 1976 - Appearance of E. Stephen Derby entered as co-counsel for appellee.

May 11, 1977 - Opinion by Moylan, J. Judgment affirmed; costs to be paid by appellants.

June 10, 1977 - Mandate issued.

STATEMENT OF COSTS:

In Circuit Court:

Record
Stenographer's Costs 15.17

In Court of Special Appeals:

Filing Record on Appeal 30.00
Printing Brief for Appellant Not Supplied
Reply Brief Not Supplied
Portion of Record Extract - Appellant
Printing Brief for Cross-Appellee

Printing Brief for Appellee 190.88
Portion of Record Extract - Appellee
Printing Brief for Cross-Appellant

STATE OF MARYLAND, Set:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this tenth day of June A.D. 19 77

Julius A. Romano
Clerk of the Court of Special Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE.

RE: PETITION FOR SPECIAL HEARING: IN THE
For Off-Street Parking in a Residential Zone
NE/S of Maple Avenue 162' SE of Belair Road
14th District
The Frank Realty Company, Petitioner.
Case No. 74-101-SPH
John Hoffmeister, et al, Protestants-Appellants

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. No. 5687
Misc. Pocket No. 10
Folio 160

ORDER

The Appeals in this matter having been considered by the Court, together with memoranda by counsel in the proceedings, and all counsel in the proceedings, including the Deputy People's Counsel, having been heard by the Court during oral arguments in the matter on January 13, 1976, now, therefore, do I hereby order, by the Court of Special Appeals, that the Order of the County Board of Appeals, dated July 29, 1975, granting the requested use permit for off-street parking in a residential zone, subject to the restrictions and conditions contained therein, be, and it is hereby affirmed for the reasons enumerated by the Court at the conclusion of oral argument as contained in the record herein.

JUDGE

508 OFFICE
NOLAN, FLEMING &
WILSON, INC.

RE: PETITION FOR SPECIAL HEARING
NE/S of Maple Avenue, 162' SE of Belair Road - 14th Election District
The Frank Realty Company - Petitioner
NO. 74-101-SPH (Item No. 26)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

The Petitioner requests a Special Hearing for the determination and approval of a use permit for off-street parking in a residential zone. Said property is located on the northeast side of Maple Avenue, 162 feet southeast of Belair Road, in the Fourteenth Election District of Baltimore County.

For clarification, the subject property faces Maple Avenue, the address known and improved as 6 Maple Avenue; and Overlea Avenue, the address known and improved as 7 Overlea Avenue. The property lies directly and adjacent to the rear of the Overlea Hall, a catering establishment in the Overlea area of Baltimore County, which enjoys a nonconforming status.

Testimony presented by Mr. Lawrence Stappier, on behalf of the Petitioner, indicated that he had been actively engaged in the business since 1962, for the catering of weddings, parties, bull roasts, etc. He indicated that there is presently no parking on the premises for the establishment, but has made arrangements for the use of the Union Trust Bank's parking lot, said lot being located immediately to the north of the subject property. Additionally, the St. Michaels Catholic Church's parking lot, located two blocks north of the subject property along Belair Road, is utilized during the various functions. He further stated that the use of these two locations has not met the parking needs.

Mr. Orms B. Moore, a qualified real estate broker and consultant on land use, testified that he was familiar with the area and was well aware of the lack of parking. He indicated that there was a dire need for parking, not

ORDER RECEIVED FOR FILING

DATE
BY

DAFT-McCUNE-WALKER, INC.

1200 East Joppa Road, Baltimore, Md. 21204
Telephone: 301-296-3333
Land Planning Consultants
Landscape Architects
Engineers

DESCRIPTION

0.826 Acre Parcel For Special Hearing For Off-Street in a Residential Zone

Beginning for the same at a point on the northeast side of Maple Avenue, 50 feet wide, at the distance of 162 feet more or less from the southeast side of Belair Road, and running thence leaving Maple Avenue North 41° 54' 01" East 150.00 feet, thence South 48° 05' 59" East 40.00 feet, thence North 41° 54' 01" East 150.00 feet to the southwest side of Overlea Avenue, 50 feet wide, thence binding thenceon South 48° 05' 59" East 80.00 feet, thence leaving Overlea Avenue, South 41° 54' 01" West 150.00 feet, thence South 48° 05' 59" East 40.00 feet, thence South 41° 54' 01" West 150.00 feet to the northeast side of Maple Avenue, thence binding thereon North 48° 05' 59" West 160.00 feet to the place of beginning, containing 0.826 acre of land, more or less.

DAFT-McCUNE-WALKER, INC.

Wilson F. Outen
Wilson F. Outen, Reg. L.S. #2493



May 22, 1975

Mr. Thurston H. Mearns, Deputy Director
Department of Public Works
County Office Building
Towson, Maryland 21204

Re: Case #74-101-SPH
The Frank Realty Co., Petitioner

Dear Mr. Mearns:

Enclosed please find returned to you your letter dated May 20, 1975, and received in our office this morning, May 22, 1975. May I advise you that same cannot be accepted as evidence in this case. Please note that this case was concluded in the afternoon of Tuesday, May 20, 1975. At that time the Petitioner, the Protestants and the office of the People's Counsel advised this Board that there was no additional evidence or testimony to be presented; hence, your letter cannot be considered by this Board.

May I point out, however, that I feel you must be aware of the fact that a representative of your department appeared as a witness. He was presented by the Deputy People's Counsel, and presumably presented to the Board the most current thinking of your department concerning the above entitled case.

Considering your letter and the testimony of the witness from your department, it occurs to the Board that perhaps an inquiry into your inter-departmental communications might be in order. Also, may the Board suggest a more detailed pretrial effort between your department and the office of the People's Counsel. Same might prove to be beneficial to all parties if your thoughts are to be presented to the Board in any future cases.

Very truly yours,

Walter A. Rafter, Jr., Chairman

WARR:re

cc: James D. Nolan, Esquire
Wm. F. C. Marlow, Jr., Esquire
James J. Jones, Esquire
John W. Hensley, III, Esquire
Charles E. Kowitz, Jr., Esquire
Hon. William Rush

3307 PUTTY HILL RD., 21234

decision should be based on the circumstances surrounding the particular request. In the instant case, the testimony is overwhelming that there is a lack and insufficiency of off-street parking in the general vicinity of the Overlea Hall Caterers; the Petitioner owns the subject property and would be responsible for the control and maintenance of said property; and the granting of the use permit for off-street parking in a residential zone would benefit the community in that it would afford off-street parking for the legitimate use of the Overlea Hall catering establishment. It would not cause an undue concentration of parking, especially upon Maple and Overlea Avenues, which patrons of the Overlea Hall now use.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this-----day of June, 1974, that the use permit for off-street parking in a residential zone, should be and the same is GRANTED, from and after the date of this Order, subject to the following conditions:

1. Compact screening, a minimum of six (6) feet in height, be constructed around the entire subject property, excluding the entrances and exits on that portion of property which is immediately adjacent to the Overlea Hall catering establishment.
2. Any lighting that is constructed on the subject property is to be a maximum of six (6) feet in height.
3. Only ingress be afforded from the entrance on Overlea Avenue.
4. Approval of a site plan by the Department of Public Works and the Office of Planning and Zoning.

Julius A. Romano
Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING

DATE

BY

REPORTED
IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 152

September Term, 1976

JOHN HOFMEISTER, ET AL.

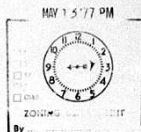
v.

THE FRANK REALTY COMPANY

Gilbert, C.J.
Moylan,
Love, JJ.

Opinion by Moylan, J.

Filed: May 11, 1977



If the imprecise use of language plagues the law generally, it falls upon the head of the zoning law with peculiar vengeance. The root problem giving rise to the present appeal was the failure of the lawmaking authorities of Baltimore County to distinguish clearly between the Genus "Special Exceptions" and the Species "Special Exceptions." The phrase was used in one critical context, at least, with a broad, generic meaning; the same phrase was used on other occasions with a more limited and specific meaning; the lawmaking authority never pinpointed which meaning it had in mind on a particular occasion nor did it even seem aware of the potential semantic problem lurking within its linguistic imprecision.

Although the problem before us for resolution is exclusively one of law, the factual background must be set. The appellee, Frank Realty Company (Frank), owns Overlea Hall, which is a catering establishment in Baltimore County. It is located on Belair Road, a major thoroughfare in a business district. Overlea Hall does not have its own parking lot, but it is situated next to a Union Trust Bank, which does. The customers of Overlea Hall park either on the bank lot or on the surrounding streets. In 1970, 1972 and 1973, Frank acquired three properties, adjacent to and in the rear of Overlea Hall, forming one integrated tract and having frontage on two side streets. On the tract, Frank desired to build a parking lot for 84 vehicles.

Pursuant to the Baltimore County Zoning Regulations (1975 Ed.) (BCZR), Overlea Hall was zoned Business Local (BL) in a Commercial Community Core (CCC) District. Catering is a use permitted in such a zone. The land on which the parking lot was to

grant.⁴ The County Board of Appeals found that the requirements of §409.4 and of §502.1⁵ of the BCZR had been satisfied and held that the Zoning Commissioner had the power to issue Special Use Permits. From that ruling, an appeal was taken to the Baltimore County Circuit Court. In that court, Judge John Grason Turnbull upheld the decision of the County Board of Appeals. That decision of Judge Turnbull has now been appealed to us.

The appellants do not contend that the action of the County Board of Appeals was "arbitrary and capricious" or lacked factual support. The sufficiency of the evidence on the merits of whether Frank had satisfied the pertinent requirements was not seriously disputed. The key issue presented by the appellants is that of whether the Zoning Commissioner and the County Board of Appeals possessed the delegated authority to grant such Use Permits at all. In question is the general authority and not the merits of this individual exercise of authority.

Before addressing its merits, we will state the argument as posed by the appellants. They contend that a "Special Permit" (or Use Permit) and a "Special Exception" are distinct legal phenomena. In this regard, they find arguable support in the words

⁴ An appeal to the County Board of Appeals is authorized in Md. Anno. Code, Art. 25A §5(u) (1975 Cum. Supp.) and §501.2 of the BCZR.

⁵ To be more fully discussed hereinafter.

⁶ Appeals to the Circuit Court and then to the Court of Special Appeals are authorized by Md. Anno. Code, Art. 25A §5(u) and §501.4 of the BCZR. See *Levy v. Sever Slade, Inc.*, 234 Md. 145, 149, 198 A.2d 267, 269 (1964).

entitled "Special Regulations." The remainder of the "Special Exceptions," which were not singled out for special handling, were treated in §502, called "Special Exceptions." (It would have been preferable, of course, if §502 had been entitled "Other Special Exceptions.") The differentiation proceeded further when §500, listing the powers of the Zoning Commissioner, listed his power to issue a use permit (such as for off-street parking) in subsection 500.4, but then listed his power to deal with "Special Exceptions" under §502 in a separate subsection, 500.2. We may thus perceive, as other conditional uses begin to take on separate identities and branch off from the main stem, the emergence of a distinct species "Special Exceptions," including in its rank the remainder of the conditional uses which have not taken on distinct identities. The species "Special Exceptions" is now a part of the genus "Special Exceptions." Therein is the heart of the problem. The same name now refers 1) to the whole and 2) to a part of the whole.

Notwithstanding this differentiation between the species, we think it preeminently clear that the singling out of certain conditional uses for special treatment in Art. 4 of the BCZR did not in any fashion denigrate from their credentials as members in continued good standing of the genus "Special Exceptions." Art. 4, in its Statement of Purpose, makes the reason for the distinct treatment quite clear:

"Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to apply regulations in greater detail than would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides such regulations." (Emphasis supplied.)

⁷ We do not agree that §502 need be complied with in order to obtain a use permit for off-street parking which is governed exclusively by §409.4.

Thus, if a "Use Permit" is a variety of "Special Exception" within the contemplation of §22-23, then the authority to issue such a "Use Permit" has been delegated to the Zoning Commissioner and the present decision will be affirmed. If, on the other hand, a "Use Permit" does not fit under the umbrella of "Special Exception," the authority to issue such "Use Permit" has not been delegated to the Zoning Commissioner and the decision must be reversed. The appellee urges that a "Use Permit" is a "Special Exception"; the appellants urge that it is not.

We conclude that the question is not so simple and clear-cut. A "Use Permit" both is and is not a "Special Exception," depending upon which meaning of "Special Exception" the legislative authors of the phrase had in mind upon the particular occasion when they used it. A "Use Permit" is within the generic meaning of "Special Exception"; it may not be within the specific meaning of "Special Exception." The question, therefore, becomes that of whether the Baltimore County Council, when it delegated to the Zoning Commissioner the power to make "Special Exceptions," intended to use the phrase in its broad and generic sense or in its narrower and more specific sense.

Having stated the issue, we seek the path to its resolution through the legislative and linguistic tangle of the Baltimore County zoning experience. We begin with a broad principle of zoning law not parochial to Baltimore County but universal to the zoning cosmos. Within each zone created, there are primary and designated uses available as a matter of right with no permission needing to be sought from any zoning authority. There are other uses proscribed by law and, therefore, beyond the pale, absent a zoning reclassifi-

The function of a special permit is to bring some flexibility to the rigid restrictions of a zoning ordinance while at the same time controlling troublesome or somewhat incompatible uses by establishing, in advance, standards which admit the use only under certain conditions or circumstances."

3 Anderson, *American Law of Zoning*, §15.01, speaks to the same effect, at 84:

"The 'special exception,' the 'special permit,' and the use permitted subject to administrative approval, are qualitatively the same. Each involves a use which is permitted rather than proscribed by the zoning regulations. Each is allowed only upon approval of a board of adjustment or other administrative body. . . . And in each case, the board is guided and its power limited by hearing requirements and standards."

2 Rathkopf, *The Law of Zoning and Planning*, Ch. 54, §1, n. 1, uses both the terms "special exception use" and "special exception permit" but claims that both are misnomers. He suggests that a more accurate description would be "conditional use permit" because ". . . no 'exception' is made to the provisions of the ordinance in permitting such use; the permit granted is for a use specifically provided for in the ordinance in the case in which conditions, legislatively prescribed, are also found."

Although frustratingly the vocabulary varies from county to county and although the ultimate arbiter of intended meaning is the local legislative user of the contested words, the Court of Appeals in *Rockville Fuel & Feed Co. v. Board of Appeals*, 257 Md. 183, 187-188, 262 A.2d 499, recognized generally that "conditional use" and "special exception" are synonymous terms. In a 1954 decision arising out of Baltimore County, *Quarler v. Board of Zoning Appeals of Baltimore County*, 204 Md. 397, 104 A.2d 568, the Court of Appeals did use the terms "permit" and "exception"

to this genus.

What remains to be seen is how the name "Special Exceptions" came to take on a more limited and specific meaning in the zoning experience of Baltimore County. As we shall see, however, that additional and narrower meaning was not in lieu of, but rather in addition to, the broader and more general meaning, which continued to enjoy a separate vitality of its own.

The process of evolution or differentiation, linguistically as well as biologically, is easy to understand. The genus initially was a simple and undifferentiated life form (or zoning phenomenon). Over the years, however, certain specific instances of the more general phenomenon were recognized as having some unique identifying characteristics, some unique problems, and some unique guidelines of their own. As these ascertainable instances of the more general phenomenon were singled out for separate handling, they came to be identified as distinct species within the broader genus. This was particularly true of that instance of "Special Exceptions" which came to be known as the "Use Permit" for off-street parking in a residential zone.

Zoning regulations were first adopted by the County Commissioners of Baltimore County on January 2, 1945, pursuant to a special enabling act, adopted by the Maryland Legislature in the Acts of 1941, Ch. 247. The County Commissioners were authorized to appoint a Zoning Commissioner and a Board of Zoning Appeals to hear and determine issues raised pursuant to the regulations. Among his other powers, the Zoning Commissioner was empowered to make Special Exceptions and to issue Special Permits within appropriate guidelines. The Code of Public Local Laws of Baltimore County

entitled "Special Regulations." The remainder of the "Special Exceptions," which were not singled out for special handling, were treated in §502, called "Special Exceptions." (It would have been preferable, of course, if §502 had been entitled "Other Special Exceptions.") The differentiation proceeded further when §500, listing the powers of the Zoning Commissioner, listed his power to issue a use permit (such as for off-street parking) in subsection 500.4, but then listed his power to deal with "Special Exceptions" under §502 in a separate subsection, 500.2. We may thus perceive, as other conditional uses begin to take on separate identities and branch off from the main stem, the emergence of a distinct species "Special Exceptions," including in its rank the remainder of the conditional uses which have not taken on distinct identities. The species "Special Exceptions" is now a part of the genus "Special Exceptions." Therein is the heart of the problem. The same name now refers 1) to the whole and 2) to a part of the whole.

Notwithstanding this differentiation between the species, we think it preeminently clear that the singling out of certain conditional uses for special treatment in Art. 4 of the BCZR did not in any fashion denigrate from their credentials as members in continued good standing of the genus "Special Exceptions." Art. 4, in its Statement of Purpose, makes the reason for the distinct treatment quite clear:

"Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to apply regulations in greater detail than would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides such regulations." (Emphasis supplied.)

⁷ We do not agree that §502 need be complied with in order to obtain a use permit for off-street parking which is governed exclusively by §409.4.

§500.12 of the BCZR, a request for a Special Exception, once denied, could not be entertained again until the expiration of months. In the course of holding that §500.12 was not a bar to the granting of the Use Permit for off-street parking, the Court of Appeals found, of necessity, that such a Use Permit was not a "Special Exception." The Court reasoned, at 218 Md. 357:

" . . . then brings us to the question as to whether or not the petition filed in this case is a petition for a special exception from the use that can be made of land lying in a zone classified as R-6 Residential. We must conclude that the petition is not a request for a special exception. It is quite true that the zoning ordinance does provide that under certain circumstances and for certain purposes which are enumerated at length a different use may be made of the land than that which the zoning ordinance contemplates. Section 270 sets out this Schedule of Special Exceptions in detail and Sections 502 and 502.1 set forth the principles and conditions which shall govern the Zoning Commissioner and the Board.

Off-street parking is not mentioned among the many things which may be the subject of a special exception and the power to determine what situations shall be considered in that category is a legislative function, resting in this instance with the County Council of Baltimore County, and is not an administrative function of the Zoning Commissioner. The function of the Zoning Commissioner is limited to a determination under the existing factual situation if a special exception, one among those listed in the ordinance, is appropriate in any particular case." (Emphasis supplied.)

There was now established, at least in terms of surface appearance, a seemingly unbridgeable dichotomy between a "Special Use Permit" for off-street parking in a residential zone under §409.4 of the BCZR and a "Special Exception" under §500.12 and 502 of the BCZR. This was to become the appellants' minor premise: A "Use Permit" is not a "Special Exception." The major premise was established two years later with the passage by the Baltimore County

be built, however, was zoned Residential.¹ Off-street parking is not a use permitted as of right in a residential zone, but is a permitted use if a Special Use Permit is applied for and issued pursuant to §409.4 of the BCZR.

Over the protestations of the appellants, who are residents of the affected area, the Baltimore County Zoning Commissioner on June 4, 1974, granted Frank a Special Use Permit for off-street parking in a residential zone.² Appellants, joined by the Baltimore County Deputy People's Counsel,³ appealed to the County Board of Appeals, who, on July 29, 1975, upheld the

¹ The more exact residential zoning classification does not appear in the record.

² The permit was issued subject to the following conditions:

1. Compact screening, a minimum of six (6) feet in height, be constructed around the entire subject property, excluding entrances and exits, and that portion of the subject property which is immediately adjacent to the Overlea Hall catering establishment.
2. Any lighting that is constructed on the subject property is to be a maximum of six (6) feet in height.
3. Only ingress be afforded from the entrance on Overlea Avenue.

³ The People's Counsel is appointed by the Baltimore County Executive and is charged with representing the public interest before the Zoning Commissioner, the County Board of Appeals, or the courts in any matter involving the Baltimore County Zoning Regulations. Baltimore County Charter §524.1(b); Baltimore County Code (1968 ed., 1974-75 Cum.Supp.).

of the Court of Appeals in Marek v. Board of Appeals, 218 Md. 351, 357, 146 A.2d 875, to the effect that a request for an off-street parking permit "is not a request for a Special Exception." They further contend that prior to 1960, the Baltimore County Commissioners and their successors, the Baltimore County Council, explicitly delegated to the Zoning Commissioner of Baltimore County the power to issue both "Special Permits" and "Special Exceptions." The final premise in the argument is that a major change was made in this grant of authority by Bill No. 80, enacted by the County Council in 1960. That bill explicitly repealed §34-11 of the Baltimore County Code (1958 Ed.) which had delegated certain powers (including the power to issue Special Permits) to the Zoning Commissioner, and replaced it with §22-23 which provided in pertinent part:

"Authority of zoning commissioner to provide for special exceptions and variances.

Subject to the appropriate principles, standards, rules, conditions and safeguards as set forth in the zoning regulations, the zoning commissioner may . . . make special exceptions to the zoning regulations in harmony with their general purpose and intent . . ."

The appellants argue strenuously that "No mention was made of any other authority being vested in the Zoning Commissioner . . ." and "More important is the fact that the term and authority to issue a 'special permit' was deleted altogether." It is their position that in the repealing and reenacting of the grant of authority to the Zoning Commissioner that occurred in 1960, the Zoning Commissioner was stripped of all power to issue Special Use Permits.

The problem is clear-cut. The grant of authority, by its terms, authorizes "Special Exceptions" but not "Use Permits."

cation. Between the two poles is a borderland wherein certain uses are not prohibited by law but neither are they absolutely permitted as a matter of unconditioned right. Generally speaking, they are privileges which must be sought from and authorized by some administrative agency (a zoning commissioner, a zoning board, etc.), which possesses the authority to condition the grant of permission, influenced by a number of relevant social considerations. The uses of the property in issue are permitted uses, generally compatible with the zone but not at every or any location therein or without certain restrictions or conditions being imposed. This determination of compatibility and this imposing of conditions is vested in an appropriate administrative authority. In describing this broad phenomenon, the vocabulary has been far from uniform but the law has recognized that the same principle is afoot even when the labels may vary.

82 Am.Jur.2d, Zoning and Planning, XIII. C. "Special Permits or Exceptions," §281 "Generally; terminology," speaks of both the general phenomenon and its fluctuating vocabulary at 827-828:

" . . . A 'special permit' or 'special exception' designates a species of administrative permission which allows a property owner to put his property to a use which the regulations expressly permit under conditions specified in the zoning regulations themselves. Some zoning laws or ordinances use the term 'conditional use permit,' 'special exception permit,' or 'special use permit' to refer to this type of administrative permission. In one jurisdiction, the term 'waiver use approval' has been used. But regardless of which of the foregoing terms is used, the nature of the administrative permission and of the use permitted is, viewed broadly and substantively, the same, since each involves a use which is permitted rather than proscribed by the zoning regulations. In the words of the Supreme Court of Connecticut, 'the terms 'special exception' and 'special permit' hold the same legal impact and can be used interchangeably.' . . ."

interchangeably. Although, to be sure, dealing with zoning regulations and, therefore, with vocabulary emanating from Prince George's County rather than from Baltimore County, the Court of Appeals in Cadem v. Nanna, 243 Md. 536, 543, 221 A.2d 703, defined the phrase "Special Exception" in terms of the broad and general phenomenon herein being discussed:

"The words 'special exception' are well known in zoning law. They refer to a grant by the zoning administrative body pursuant to the existing provisions of the zoning law and subject to certain guides and standards, of a special use permitted under the provisions of the existing zoning law."

See also Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261. Cadem v. Nanna cited as authority the New Jersey decision of Tullo v. Township of Millburn, 54 N.J.Super. 483, 149 A.2d 620, 624-625, which explained:

"The term ['special exception'] might well be said to be a misnomer. 'Special uses' or 'special use permits' would be more accurate. The theory is that certain uses, considered by the local legislative body to be essential or desirable for the welfare of the community and its citizenry or substantial segments of it, are entirely appropriate and not essentially incompatible with the basic uses in any zone. . . . but not at every or any location therein or without restrictions or conditions being imposed . . . if the board finds compliance with the standard or requisites set forth in the ordinance, the right to the exception exists, subject to such specific safeguarding conditions as the agency may impose . . ."

Thus, the broad phenomenon does have, here as elsewhere, many labels. Whether the label employed on a particular occasion happens to be "special permit," "conditional use," "special use," "use permit," or "special exception," the type of relief described is the same. This broad phenomenon is what we shall refer to as the genus. Generally speaking, the name "Special Exceptions" refers

(1948), Title 23, §367 established §XIII of the Zoning Regulations, entitled "Provisions Relative to Special Exceptions and Special Permits."

That §XIII of the Zoning Regulations and Restrictions for Baltimore County (Doing Ed., 1948), indicated the still-loose interchangeability of the terms "special exception" and "special permit," on the one hand, but also began the process of differentiation between them, on the other hand. Although the term "special exception" is contained in the title, the text of the section nowhere employs it but uses only the term "special permit." Indeed, §XIII's preamble provides that ". . . such uses may be permitted only upon a special permit granted by the zoning commissioner, subject to appeal . . ." It appears that the Special Permit authorized the Special Use, the total effect of which could be described as a Special Exception. In terms of the beginning of differentiation, subsection A treats generally the special permits that shall be required for a list of designated uses in a residential zone. It does not include off-street parking. It is rather in a separate section, subsection C, that off-street parking receives its separate treatment: "In any residential zone a special permit shall be required for use of land for automobile parking, subject to the following regulations."

The process of differentiation went further in 1955 when the Baltimore County Commissioners excised from the old §XIII the provisions dealing with off-street parking in a residential zone and housed them in §409.4 of the Baltimore County Zoning Regulations. Several other conditional uses or "Special Exceptions," which also had taken on distinct identities and involved distinct guidelines and regulations, were also lodged in Art. 4 of the BCZR which was

Indeed, various of the special conditional uses singled out for individual treatment in Art. 4 explicitly retain their membership in the genus "Special Exceptions." A mere representative list includes §402.3 (The conversion of a residence "to tearoom or restaurant use" is a "Special Exception."); §402B ("An antique shop may be permitted as a Special Exception."); §402C ("A residential art salon may be permitted as a Special Exception."); §405.2 ("Locations in which automotive-service stations are permitted as of right and by special exception.");

Baltimore County adopted a charter form of government as of December 6, 1956. The Baltimore County Code, 1958 Ed., granted power to the Zoning Commissioner by §34-11. It referred explicitly to both "special exceptions" and "special permits." It explicitly confirmed the authority of the Zoning Commissioner to continue to do those things which had been "required by §XIII of the Zoning Regulations of Baltimore County, as adopted January 2, 1945, and as amended November 15, 1946."

The distinction between the Use Permit for off-street parking in a residential zone under §409.4, on the one hand, and the "special exception," on the other hand--the distinction on which the appellants largely build their present argument--was first made by the Court of Appeals in Marek v. Baltimore County Board of Appeals, 218 Md. 351, 146 A.2d 875, in 1958. There, a requested permit for off-street parking was initially denied for what turned out to be an erroneous reason. The request was promptly resubmitted and was granted by the Board of Zoning Appeals and the grant was affirmed by the Circuit Court for Baltimore County. The protestants there claimed that under the provisions of

Council of Bill No. 80, limiting for presently pertinent purposes the power of the Zoning Commissioner to the granting of "Special Exceptions." The predicate was now laid for the appellants' present syllogism, which is:

The delegated authority is to grant all "Special Exceptions." (Sect. 22-23 BCZR)	A is all B.
To grant a "Use Permit" is not to grant a "Special Exception." (Marek)	C is not B.

Therefore, to grant a "Use Permit" is not the delegated authority.	∴ C is not A.
--	---------------

The validity of the syllogism appears irrefutable. Nonetheless, we reject it as invalid. In terms of formal logic, it fails because there is no universal middle term (although there appears to be). The reason is that, although the words are the same, the term "Special Exception" does not mean the same thing in the major premise that it means in the minor premise. The term "B" has shifted its meaning in the course of the syllogism.

It is clear to us that the Court of Appeals in Marek was distinguishing the Species "Special Use Permit for Off-Street Parking" (governed by the rules of §409.4) from the Species "Special Exceptions" (meaning the remainder of the special exceptions which are controlled by the rules of §5502 and 500.12, establishing the 18-month limitation for repetition purposes). The Court was by no means indicating that the Species "Special Use Permit for Off-Street Parking" was no longer a part of the Genus "Special Exceptions" (encompassing all conditional uses no matter what their labels, what their separate identities and what their special regulatory provisions might be). Indeed, no such problem was before it and it had no occasion even to consider the question. The distinction was only between two species within the same genus and not between

a species and its parent genus. Indeed, we think the Court of Appeals was still giving the term its specific meaning when in Jacobs v. County Board of Appeals for Baltimore County, 234 Md. 242, 198 A.2d 900, it said in 1964, at 234 Md. 248:

"[We held in Marek, supra, that the Use Permits granted under Section 409.4 did not constitute 'special exceptions'. . ."

Quite clearly, the Court of Appeals did not mean to exempt the granting of Use Permits for off-street parking from the delegated powers of the Zoning Commissioner and County Board of Appeals, for in the Jacobs case itself, the Court affirmed the actions of the Zoning Commissioner and the County Board of Appeals in granting just such a Use Permit for off-street parking. That was four years after the Baltimore County Council had rearticulated the delegation of power, granting only, for presently pertinent purposes, the power to make "Special Exceptions." In Bloude v. MacNabb, 231 Md. 452, 190 A.2d 780, the Court of Appeals had also dealt with the granting of a "Use Permit" for off-street parking in a residential area by the Baltimore County Board of Appeals. It there said explicitly, at 231 Md. 454:

"Section 409.4 of the Baltimore County zoning regulations authorizes the zoning commissioner to issue a permit for the use of land in a residential zone for a parking area. . ."

Because as used in §5502 and 500.12 and by the Court of Appeals in Marek and Jacobs, the term "Special Exceptions" is given only its narrower and more specific meaning, the premises for the appellants' syllogism become:

A is all B.
C is not some-B.

From those premises, it cannot be established validly whether "C" (the granting of a "Use Permit" for off-street parking) is or is not "A" (within the power designated to the Zoning Commissioner).

To have established this much is to refute the logic of the appellants, but not yet to establish the counter-logic of the appellee.

For that purpose, we must look to the meaning of the term "B" as employed in the major premise, which is to say we must look to the meaning of the phrase "Special Exceptions" as used by the Baltimore County Council in repealing and re-enacting the grant of authority to the Zoning Commissioner and the County Board of Appeals in 1960.

It is clear to us that County Council Bill No. 80 of 1960 was intended not to rewrite the substance of the Baltimore County zoning law but only to consolidate, reorganize and edit the planning and zoning provisions that as of that time, after some 15 years of growth, were scattered throughout the Baltimore County Code. Indeed, §4 of Bill No. 80 itself provided that its short title would be "The 1960 Planning and Zoning Reorganization Bill." (Emphasis supplied) Every indication is that the County Council fully intended the Zoning Commissioner and the County Board of Appeals to continue to enjoy and to exercise the same authority that had theretofore been theirs under the predecessor grant of authority. Bill No. 80 created Title 23 of the Baltimore County Code entitled "Planning, Zoning and Subdivision Control" and specifically provided in §23-25 thereof:

"The zoning regulations adopted by Baltimore County on March 30, 1955, as amended on the effective date of this Act, are hereby declared to be in full

force and effect provided, however, that in the case of any conflict between such regulations and the provisions of this Act, these provisions shall control."

Above and beyond the short title, the title of Bill No. 80 confirms the intent of the County Council "to reorganize and consolidate the functions of planning, zoning and subdivision control in Baltimore County and to define the duties, powers, responsibilities, qualifications and manner of appointment . . ." of various zoning officials including the Zoning Commissioner. There is no indication in the title or the preamble that the Council sought to repeal any of the authority of the Zoning Commissioner to grant Use Permits for off-street parking. It is well established that legislative intent may be discerned by examining a statute's title or preamble as well as its terms. *Board of County Commissioners v. Colgan*, 274 Md. 193, 200-201, 334 A.2d 89; *Mass Transit Adm. v. Balto. Co. Rev. Authority*, 267 Md. 687, 695-696, 298 A.2d 413; *Shipley v. State*, 201 Md. 96, 103, 93 A.2d 67.

It is asserted by the appellee and conceded by the appellants that the settled usage in Baltimore County, even post-1960, is for the Zoning Commissioner to grant "Use Permits" for off-street parking in residential zones (or, as the case may be, to refuse the grant but in any event, to consider the question). Both *Jacobs v. County Board of Appeals*, *supra*, and *Bloede v. MacNabb*, *supra*, are evidence of this practice. Administrative interpretations contemporaneous with the passage of a statute have been considered strong evidence on the question of its best construction. *Smith v. Higginbotham*, 187 Md. 115, 48 A.2d 754. We think it preeminently clear that the Baltimore County Council did

" . . . a dispensation permissible where the Board of Zoning Appeals finds existing those facts and circumstances specified in the ordinance as sufficient to warrant a deviation from the general rule."

In just such a sense did Judge Davidson define the term for this Court in *Anderson v. Sawyer*, 73 Md.App. 612, 617, 329 A.2d 716, 720:

"The conditional use or special exception is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan." (Emphasis supplied)

It is beyond cavil that the granting of a "Use Permit" for off-street parking in a residential zone under the provisions of §409.4 falls within this broad definition of "Special Exception." The Species "Use Permit" is indisputably a member of the Genus "Special Exception." It is also indisputably clear that the Baltimore County Council in 1960 used the term "Special Exception" in its broad and generic sense. With this new minor premise, the ultimate syllogism becomes:

The delegated authority is to grant all "Special Exceptions." A is all B.
(Sect. 22-23 BCZR)
To grant a "Use Permit" is to grant a "Special Exception." C is some-B.
Therefore, to grant a "Use Permit" is the delegated authority. ∴ C is A.

Q. E. D.

Baltimore County
Department of Public Works
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

May 26, 1975

Mr. Walter Rider, Chairman
Baltimore County Board of Appeals
County Office Building
Towson, Maryland 21204

Zoning Appeal #74-101-SPH
Parking Lot

Dear Mr. Rider:

We have been requested by Delegate William Rush to offer any available technical information pertinent to the construction of a parking lot east of Belair Road between Overlea and Maple Avenues.

Maple Avenue had previously been studied for drainage improvement by the Bureau of Engineering. The study indicated the 12-inch storm drain on Maple Avenue to be undersized. Approximately two acres more or less contributed runoff to this point of concentration. We had recommended the replacement of the 12-inch drain with a 29-inch by 18-inch pipe arch which would equal a 21-inch or 24-inch round pipe dependent on the available grade. The existing 18-inch outfall drain from Maple to Prague Avenue appeared adequate from a preliminary observation.

It should be stated that changing the character of the contributing area from residential to commercial would further aggravate the existing system. The Department of Public Works would appreciate reviewing the applicant's plans for drainage consideration prior to approval of rezoning at this location. If drainage improvement in Maple Avenue is not a requisite in the rezoning appeal, the Capital Improvement Budget will fall heir to the problem.

The details concerning this brief discourse can be made available upon request to the Bureau of Engineering.

Sincerely,

THORNTON M. MOURING, P. E.

TMM ARM ara
cc/ Hon. William Rush

RE: PETITION FOR SPECIAL HEARING
NE/S of Maple Avenue, 162' SE of Belair Road - 14th Election District
The Frank Realty Company - Petitioner
NO. 74-101-SPH (Item No.26)

ORDER FOR APPEAL

Please enter an Appeal from the decision rendered by the Zoning Commissioner on June 4, 1974 in the above-captioned matter, in behalf of the following named protestants:

Mr. John Hoffmeister
26 Manor Avenue
Baltimore, MD. 21206

Mr. Arthur Casserley
19 Maple Avenue
Baltimore, MD. 21206

Mr. James Casserley, Sr.
19 Maple Avenue
Baltimore, MD. 21206

Mrs. James Casserley, Jr.
19 Maple Avenue
Baltimore, MD. 21206

Mr. Charles Stiemley
3 Maple Avenue
Baltimore, MD. 21206

Mrs. Charles Stiemley
13 Maple Avenue
Baltimore, MD. 21206

Mr. Robert Ellison
13 Maple Avenue
Baltimore, MD. 21206

Mrs. Robert Ellison
13 Maple Avenue
Baltimore, MD. 21206

Mr. Louis Taylor
18 Maple Avenue
Baltimore, MD. 21206

Mrs. Louis Taylor
18 Maple Avenue
Baltimore, MD. 21206

Mr. Frank D. Mazers, Sr.
5021 Truesdale Ave.
Baltimore, MD. 21206

Mr. John Rosenberger
4 E. Overlea Avenue
Baltimore, MD. 21206

Mrs. John Rosenberger
4 E. Overlea Avenue
Baltimore, MD. 21206

Mr. Charles J. Stiemley, Jr.
1 E. Maple Avenue
Baltimore, MD. 21206

Miss Anita K. Seward
1 E. Overlea Avenue
Baltimore, MD. 21206

Miss Ruth Louman
7 Maple Avenue
Baltimore, MD. 21206

Mr. John Wiess, Jr.
5 Maple Avenue
Baltimore, MD. 21206

Mrs. John Wiess, Jr.
5 Maple Avenue
Baltimore, MD. 21206

Mrs. Emma E. Gass
9 E. Maple Avenue
Baltimore, MD. 21206

Mr. Richard Stevens
3 E. Overlea Avenue
Baltimore, MD. 21206

Mrs. Hedley Stielberg
17 Madeline Avenue
Baltimore, MD. 21206

Mr. Charles Godwin
3 E. Overlea Avenue
Baltimore, MD. 21206

Mrs. Charles Godwin
3 E. Overlea Avenue
Baltimore, MD. 21206

Mrs. Martha Hoffmeister
10 E. Overlea Avenue
Baltimore, MD. 21206

Mr. C. J. Fowler
6703 Belair Road
Baltimore, MD. 21206

Mr. Robert Hurley
7007 Linden Avenue
Baltimore, MD. 21206

Mrs. Robert Hurley
7007 Linden Avenue
Baltimore, MD. 21206

Mrs. Joseph Dannehan
7005 Linden Avenue
Baltimore, MD. 21206

Mrs. Emanuel Primatta
15 Madeline Avenue
Baltimore, MD. 21206

Miss Thelma Haebler
21 E. Overlea Avenue
Baltimore, MD. 21206

Mr. E. G. Stiemley
6807 Linden Avenue
Baltimore, MD. 21206

Mrs. E. G. Stiemley
6807 Linden Avenue
Baltimore, MD. 21206

Mr. H. G. Townsend
107 E. Overlea Avenue
Baltimore, MD. 21206

Mrs. H. G. Townsend
107 E. Overlea Avenue
Baltimore, MD. 21206

Mr. Robert McKenzie
11 E. Overlea Avenue
Baltimore, MD. 21206

Mrs. Robert McKenzie
11 E. Overlea Avenue
Baltimore, MD. 21206

Mr. Gordon Raiz
1602 Northway Drive
Baltimore, MD. 21234

Mr. Garland C. Dodson
7003 Linden Avenue
Baltimore, MD. 21206

Mr. T. H. Clark
7517 Belair Road
Baltimore, MD. 21206

Mr. Charles Murphy
14 Willow Avenue
Baltimore, MD. 21206

Mrs. Charles Murphy
14 Willow Avenue
Baltimore, MD. 21206

Mr. Marvin Haw
17 E. Overlea Avenue
Baltimore, MD. 21206

Mrs. Marvin Haw
17 E. Overlea Avenue
Baltimore, MD. 21206

Mr. Clarence Rappold
6 E. Overlea Avenue
Baltimore, MD. 21206

Mr. Bernard Weigman
15 E. Overlea Avenue
Baltimore, MD. 21206

Mrs. Bernard Weigman
15 E. Overlea Avenue
Baltimore, MD. 21206

Mrs. Theresa Kimmelman
10 E. Linden Avenue
Baltimore, MD. 21206

Mr. William Bean
6903 Linden Avenue
Baltimore, MD. 21206

Mr. James H. Beitman
6900 Linden Avenue
Baltimore, MD. 21206

Mrs. James H. Beitman
6900 Linden Avenue
Baltimore, MD. 21206

William F. C. Marlow, Jr.

F. Vernon Booser

614 Bosley Avenue

Towson, MD. 21204

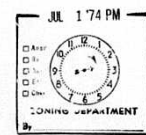
828-9441

Attorneys for Protestants

I HEREBY CERTIFY that on this 1st day of July, 1974, a copy of the foregoing Order for Appeal was mailed to James D. Nolan, Esq., 204 W. Pennsylvania Avenue, Towson, MD. 21204,

Attorney for Petitioners.

William F. C. Marlow, Jr.



PETITIONER'S EXHIBIT

Catholic War Veterans Post 832
1423 Kenwood Avenue
Baltimore, Maryland 21206

October 14, 1973

To: Commissioner of Zoning
Baltimore County

Subject: Off Street Parking at Maple Avenue and Belair Road

Dear Mr. Commissioner:

We, the Catholic War Veterans, Post 832, do condone the building of an off street parking lot at Maple Avenue and Belair Road.

This parking lot will be an asset to all individuals living in the Overlea area.

To the residence, this will relieve the constant parking in front of individual homes, blocking driveways and general nuisances. It will relieve the congestion of the area on busy weekends. Cars will be placed in the parking lot with controlled supervision, thus relieving the breakage, stolen property and relieving insurance and police activities.

We further investigated that the parking lot meets all of the Baltimore County Code requirements; drainage, lighting, access, etc. Thus, it should not be a burden to the community but an asset.

So again, we as veterans and taxpayers of this area do see the need for a parking lot at this location and so request that a permit be granted.

We do reject the method the opponents are using to defeat this permit, by circulating printed tracts which depict such items as rape, murder, etc. burns in off street parking.

If this is a true statement, gentlemen, the permit should not be granted, here, or at any other place such as churches, schools, hospitals, apartment houses, shopping centers, etc. By law they must have parking facilities. Thank you.

Sincerely yours,

Bill Callender,
Commander Post 832 CWV

not intend to erode the power of the Zoning Commissioner to continue to do those things which he had been doing since the advent of zoning regulations in that county. "When a word in a statute is not clear, the courts will seek the legislative intent in the language of the statute by considering the object to be accomplished and adopt the meaning which will harmonize therewith in carrying out the purpose of the statute." Walker v. Montgomery County Council, 244 Md. 98, 102, 223 A.2d 181; Height v. State, 225 Md. 751, 170 A.2d 212; Powell v. State, 179 Md. 399, 401, 18 A.2d 587.

We find further evidence of both the original legislative intent and the continued and settled usage in the county from the fact that, again post-1960, subsequent editions of the BCZR in 1963, in 1969 and in 1975 have continued to include §409.4 which explicitly authorizes the Zoning Commissioner to grant "Use Permits" for off-street parking in residential zones. Pertinent here are the words of Smith v. Hipinbotham, *supra*, at 127 Md. 132-133:

"... where the language of a statute is susceptible of two constructions, a long-continued and unvarying construction applied by administrative officials is strong persuasive influence in determining the judicial construction of the statute, and it should not be disregarded except for the strongest and most urgent reasons."

See also Rogan v. B. & O. R.R. Co., 188 Md. 44, 53, 52 A.2d 261; American-Stewart Distillery v. Stewart Distilling Co., 168 Md. 212, 177 A.2d 473.

We are persuaded overwhelmingly that in the enabling act of 1960, the Baltimore County Council intended to give the phrase "Special Exceptions" its broad and generic meaning. It used it broadly even as the Court of Appeals had defined it in Heath v. Mayor and City Council, 187 Md. 296, 303, 49 A.2d 799, 803, as:

This conclusion is irrefutably valid. The action of the Baltimore County Circuit Court affirming the decision of the County Board of Appeals affirming the decision of the Zoning Commissioner will, therefore, be and is hereby affirmed.

JUDGMENT AFFIRMED;
COSTS TO BE PAID BY APPELLANTS.

RE: PETITION FOR SPECIAL HEARING
NE/S of Maple Avenue, 162' SE of Selair Road - 14th Electric District
The Frank Realty Company, Petitioner-Appellee
Case No. 74-101SPH
JOHN HOFFMEISTER, ET AL, Protestants-Appellants

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
Misc. No. 5697
Misc. Docket No. 10 Folio 100

January 15, 1976

BEFORE: HONORABLE JOHN GRASON TURNBULL, JUDGE

APPEARANCES:

JAMES D. NOLAN, ESQUIRE, and
NEWTON A. WILLIAMS, ESQUIRE
on behalf of the Petitioner-Appellee

F. VERNON BOOZER, ESQUIRE, and
WILLIAM T. C. MARLOW, JR., ESQUIRE
on behalf of the Protestants-Appellants

CHARLES E. KOUNTZ, JR., ESQUIRE
Deputy People's Counsel,
on behalf of Baltimore County, Maryland

Reported by:
Paul G. Griffin
Official Court Reporter
in the Circuit Court for Baltimore County

Rec'd 1-15-76
3 PM

THE COURT: Well, gentlemen, on the question of special exception and special permit and the delegation, there is no doubt in my mind that historically special exceptions and special permits, those phrases, were used interchangeably; that is to say, permits for permanent usage, not temporary usage. The 1948 Edition of the Zoning Regulations, Section XIII, all the way through it, seems to me to use the phrases interchangeably. Section XIII is Powers Relative to Special Exceptions and Special Permits. Foreword. "It is hereby determined that the inherent character of the hereinafter mentioned uses require that they be carried on in districts or areas to which they do not conform or such uses have a peculiar tendency to impede the health, safety and morals of the public, and such uses may be permitted only upon a special permit granted by the Zoning Commissioner subject to appeal." Note that the words special exception are contained in the title, the heading, but that in the preamble it says, "such uses may be permitted only by a special permit." Then under Subsection A, "In any residential zone a special permit shall be required for the following uses," which does not, incidentally, include off-street parking. B. "In any residential zone a special permit shall be required." The same thing in C. And in C, it is provided, "In any residential zone a special permit shall be required for use of land for automobile parking, subject to the following regulations"; which are apparently approximately the same, not exactly the same, but approximately the same as now exist under 409.4. And there was a delegation to issue a special permit for off-street parking in a residential zone provided it is adjoining or across the alley from land commercially zoned. I do not read the

Marek case as holding anything other than that. I do not read the Marek case as holding that off-street parking in a residential area next to a commercial zone is anything other than a special permit, if you will, or a special exception, if you will.

It is an interesting historical survey which the Applicant has done in tracing back the delegations of power by the County Council, or the County Commissioners prior to the Council, to the Zoning Commissioner and the Board of Appeals. Indeed, strictly read, the burden on the Applicant, it seems to me under 409.4, might be construed to be even less than the burden contained in 502.1. In 409.4, "Upon application" just upon application, it does not say hearing or anything else, "Upon application the Zoning Commissioner may issue a permit for the use of land in a residential zone for parking areas to meet the requirements of the foregoing schedule, subject to the following conditions"; which conditions, of course, must be met.

So, gentlemen, I don't have any problem in coming to the conclusion, the same conclusion that the Board reached; to wit, and I quote from the Board, "that the concept of 'special permit' is the same as that of a 'special exception' and is properly within the purview of the Zoning Commissioner."

Now, the Marek case, again, is distinguishable from the situation here, where the Mareks were operating their shore business under a nonconforming use, and there was no provision, as I read it, because I have looked at the Regulations, no provision for a special exception or a special permit in residential property where a business is being operated

under a nonconforming use; because a nonconforming use, gentlemen, does not change the zoning, and the Regulations say that. For example, if a nonconforming use is being conducted in a residential zone, that zoning is still residential, and, even though the use is commercial, the zoning being residential, then the sections of the Zoning Regulations permitting the issuance of a permit for off-street parking next to or across the alley from a commercially zoned area are not applicable, because the nonconforming use is in a residential zone. So it seems to me, gentlemen, that the Marek case is clearly distinguishable from the situation here. Under no stretch of the imagination, in my opinion, could the Mareks legitimately argue that under these Regulations they were entitled to an off-street parking permit; they just simply did not qualify. This property is zoned commercial, and does qualify under the Regulations.

So we get to the point of being required, the Court is required to pass upon the action of the Board in making its determination that the issuance of an off-street parking permit was proper and was justified. We get back in that connection to a number of cases, the last of which cited to me is Anderson vs. Sawyer, 329 At. 2d. 716, where Judge Davidson said, at Page 724, "The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects," notwithstanding their inherent shortcomings, "cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses."

Now, we have here a lot of testimony that the granting of this permit will take off the public highways a large number of vehicles which otherwise would park on the public highways. There is testimony in this record, a lot of testimony, which the Board could accept, and did accept, that the granting of this permit and the removal of these cars from parking on the public highways would be a benefit to the overall nearby residential neighborhood. It is true that there is one statement by Mr. Gelston that the granting of this permit might or would have a detrimental effect upon the property immediately adjoining this proposed parking area. But I think that that falls into the language that Judge Davidson used, that "the presumption that the general welfare is promoted . . . cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the ones ordinarily associated with such uses."

Gentlemen, so far as the attack upon the application on the grounds of deterioration or depressant effect upon the property value is concerned, I find that the record holds ample evidence from which the Board could reach the conclusion it reached; to wit, that there would be no depressant effect sufficient to deny this application.

So far as the traffic situation is concerned, the testimony in that regard was, as I said, all on the side of the Applicant. Certainly there was ample testimony from which the Board might find that the granting of this permit, not only would not create traffic problems, but that it would indeed relieve traffic problems.

So far as the drainage is concerned, there was testimony

from which the Board could find, as it did implicitly find, although it made no specific finding in its opinion, there was testimony from which the Board could find, and implicitly did find, that the granting of this permit would not violate the County's regulations relative to the storm water drainage. It is perfectly true, and everybody knows it as a truism, that when you tear down existing structures which have earth around them, and replace them with macadamized cover, that there is obviously going to be less absorption of rain water, storm water in that particular given area. But there was testimony in this case from which the Board could find that, even though the structures were to be removed, and replaced with macadam, that the storm water drainage situation could be taken care of - and, of course, that is a matter of police power - if it is not taken care of, the County authorities will require it to be. Not only that, there is a building permit necessary for the macadamizing of this area, and it is the County's job to see to it that these permits are not issued until and unless all the requirements imposed by the law and by the Board of Zoning Appeals are met.

I revert to the argument by Mr. Boozer relative to the loud noises, the disgusting behavior of some of the patrons of the Overlea catering establishment. The way a property is used by those who use it, in my opinion, does not affect the propriety of the zoning. The same conditions could arise if individual parties were held in the homes which have been purchased by this applicant, and which it proposes to tear down for a parking lot. There could be a party in any one of these homes, or all

three of them, which could produce the same results; disgusting behavior, loud noises, terrorization of the neighborhood, as can be the result of the issuance of a permit for this parking. That, gentlemen, in my opinion, is a police problem. If this applicant permits his property to be used in such a fashion as to cause a public or a private nuisance, he is accountable to the proper forums in the law to compel and require him to see to it that such practices do not come into being, and he may be responsible by way of injunctive powers of the equity court, he may be responsible by way of damages in the law court, or he may be responsible to injured parties in both fashions; I do not know, and I make no prediction. But if the zoning is proper, the zoning should be granted. The way that it is used after the zoning, after appropriate zoning is granted, means that there is an improper use of proper zoning, and is not, in my opinion, a reason to deny zoning which is proper.

I am not passing on the merits or demerits of this case at all. My job is solely to determine from the record whether or not there was substantial basis for the action of the Board of Appeals in granting this application. In my opinion, there was substantial basis for the action of the Board of Appeals, and the Court will pass an Order affirming its action.

function, must act within the prescribed rules established by legislative prerogative, Dobres vs. Schwartzman, 191 Md. 19 (1948); Carney vs. City of Baltimore, 201 Md. 130 (1953).

The Zoning Commissioner cannot prescribe limitations nor increase his authority which is not authorized by the Zoning Ordinances. Restivo vs. Princeton Construction Company, 223 Md. 516 (1961).

The People's Counsel contends that there is no authority within the Baltimore County Code which delegates to the Zoning Commissioner the legislative function of the County Council to hear or decide whether or not a Use Permit for off-street parking in a residential zone should be approved or denied. The Zoning Commissioner lacks such jurisdiction without a specific delegation by the County Council of such authority.

The People's Counsel is not contending that the County Council does not have such authority. However, it is clear from reading the enabling legislation, i.e., Section 22-22 and 22-23 of the Baltimore County Code, that the County Council has limited the Zoning Commissioner's authority to reclassifications, special exceptions and variances. It is our contention that a Use Permit for off-street parking does not fall within either of these three categories.

The Maryland Court of Appeals stated in Marek vs. Board of Appeals at Page 358 the following:

"There is nothing in this provision (Sec. 409.2(C)) to suggest a special exception to the use permissible in the zoning area for the land in question, but it is a provision for off-street parking on



Baltimore County, Maryland

PEOPLE'S COUNSEL
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

JOHN W. HERRMAN, III
People's Counsel
CHARLES E. KOUNTZ, JR.
Deputy People's Counsel

TEL. 484-3211

May 21, 1975

County Board of Appeals
County Office Building
Room 301
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: The Frank Realty Company
Case No.: 74-101-SPH
For Special Hearing for Off-Street Parking in Residential Zone

Dear Mr. Chairman:

Pursuant to your request, enclosed please find my Memorandum of Points and Authorities in reference to the motion made before the Board to dismiss Petitioner's Petition on the basis that the Zoning Commissioner lacked the jurisdiction over the subject matter.

I have forwarded copies to all of the attorneys in this case.

Respectfully Submitted,

Charles E. Kountz, Jr.
Deputy People's Counsel
for Baltimore County

Encl.

*Rec'd 5-22-75
10:15AM*

RE: PETITION FOR SPECIAL HEARING
NE/S of Maple Avenue, 162' SE of Belair Road - 14th Election District
The Frank Realty Company - Petitioner
NO. 74-101-SPH (Item No. 26)

REPORT THE BOARD OF APPEALS OF BALTIMORE COUNTY

MEMORANDUM IN SUPPORT OF PEOPLE'S COUNSEL'S MOTION TO DISMISS PETITIONER'S CASE

The Petitioner requests a Special Hearing for the determination and approval of a use permit for off-street parking in a residential zone. Said property is located on the northeast side of Maple Avenue, 162 feet southeast of Belair Road, in the Fourteenth Election District of Baltimore County.

For clarification, the subject property faces Maple Avenue, the address known and improved as 6 Maple Avenue; and Overlea Avenue, the address known and improved as 7 Overlea Avenue. The property lies directly and adjacent to the rear of the Overlea Hall, a catering establishment in the Overlea area of Baltimore County, which enjoys a nonconforming status.

At the call of the case before the Board of Appeals of Baltimore County, the Office of the People's Counsel moved to dismiss Petitioner's Petition for reason that the Zoning Commissioner lacked jurisdiction over the subject matter of his Order dated June 4, 1974, granting the Use Permit for off-street parking in a residential zone with conditions. The People's Counsel would argue that the Board dismiss Petitioner's Petition for lack of jurisdiction on the following grounds.

The power to determine what situations shall be considered in the category of Zoning Classifications, special except-

enabling legislation and extend the authority of the Zoning Commissioner without a prior Charter Amendment by the County Council expanding this jurisdiction within the Baltimore County Code. Nowhere within the Baltimore County Code is there made mention of "Use Permits" for off-street parking and since the Court of Appeals has ruled that this particular category of zoning restrictions is an entity in and of itself, it is the People's Counsel's position that the enabling legislation does not provide nor vest jurisdiction in the Zoning Commissioner over these types of cases.

Therefore, the People's Counsel would respectfully request the Board to dismiss the Petitioner's Petition on the basis that the Zoning Commissioner lacked jurisdiction to hear the matter before it.

Respectfully Submitted,

Charles E. Kountz, Jr.
Deputy People's Counsel
for Baltimore County

ions and variances, is a legislative function of the County Council. Marek vs. Baltimore County Board of Appeals, 218 Md. 351, 357 (1958), but the Zoning Commissioner is authorized to determine, as to particular situations, because of the Council's delegation of authority, when a special exception, reclassification, or variance is appropriate under the legislative classifications. Baltimore County Code, Sections 22-22 and 22-23 (1973-74 Cum. Supp.).

Section 22-22 of the Baltimore County Code provides as follows:

- (a) The Zoning Commissioner shall have the power to make a change as to the district, division, or zone within which a particular piece of property is classified (Zoning Reclassification) as hereinafter provided.

Section 22-23 of the Baltimore County Code sets forth the authority of the Zoning Commissioner to provide for special exceptions and variances. Section 22-23 provides as follows:

Subject to the appropriate principles, standards, rules, conditions and safeguards as set forth in the Zoning Regulations, the Zoning Commissioner, upon Petition, may grant variances from area and height regulations and may make special exceptions to the Zoning Regulations in harmony with their general purpose and intent....

Section 22-22 and 22-23 of the Baltimore County Code is the enabling legislation for the Zoning Commissioner's authority. It is generally accepted that the Commissioner in performing his

June 4, 1974

James D. Nolan, Esquire
204 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Motion for Special Hearing
NE/S of Maple Avenue, 162' SE of Belair Road - 14th Election District
The Frank Realty Company - Petitioner
NO. 74-101-SPH (Item No. 26)

Dear Mr. Nolan:

I have this date passed my Order in the above referenced matter. Copy of said Order is attached.

Very truly yours,

S. ERIC DI NENNA
Zoning Commissioner

SED/sw

Attachments

cc: F. Vernon Booser, Esquire
614 Bosley Avenue
Towson, Maryland 21204

Mr. John C. Hofmeister
26 Manor Avenue
Baltimore, Maryland 21206

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE



PETITION AND SITE PLAN EVALUATION COMMENTS

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

August 20, 1973

COUNTY OFFICE BUILDING
110 N. Calverton Ave.
Towson, Maryland 21204

JOHN J. DILLON, JR.
Chairman

MEMBERS

BUREAU OF
ENGINEERING
DEPARTMENT OF
TRAFFIC ENGINEERING
STATE ROADS COMMISSION
BUREAU OF
THE FIRE DEPARTMENT
HEALTH DEPARTMENT
PROJECT PLANNING
BUILDING DEPARTMENT
BOARD OF EDUCATION
ZONING ADMINISTRATION
INDUSTRIAL
DEVELOPMENT

James D. Nolan, Esq.,
244 M. Pennsylvania Avenue
Towson, Maryland 21204

RE: Special Hearing Petition
Item 26
The Frank Realty Company

Dear Mr. Nolan:

The Zoning Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on site field inspection of the property. The following comments are a result of this review and inspection.

These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the appropriateness of the requested zoning.

The subject property is located between Maple Avenue and Overlea Avenue, approximately 160 feet east of Belair Road. This property, zoned D.R. 5.5, is currently improved with three dwellings. The first is located at No. 3 Overlea Road and is improved with a two-story frame structure. The other two structures are located on Maple Avenue and are improved with two 2-story frame dwellings. Curb and gutter exists along Overlea Avenue and is in fair condition.

Parking is restricted to the north side of Overlea Avenue at this location. There are existing dwellings on either side of the subject site and across the street from the subject property.

James D. Nolan, Esq.
Item 26 - The Frank Realty Company
August 20, 1973

It should also be noted that Overlea Avenue is a one-way street running west to east. Maple Avenue is two-way and curb and gutter exists on both sides of the street.

The properties that front on Maple Avenue are well landscaped, particularly with a large magnolia tree that should be retained if at all possible.

The proposed off street parking request is for the Overlea Caterers, which is a catering establishment that has been located along Belair Road for many years. Parking has been a very serious problem for both the caterer and also for the residents in the vicinity in that patrons of the catering establishment would avail themselves of existing "on street" parking in the area, many times causing hardships on local residents.

It should be noted that the parking required for the catering use equals 257 spaces and that the parking provided, should this off street parking be granted, only 84 spaces would result. This would only partially relieve the hardship for the neighborhood. It is my understanding that the petitioner will continue to avail himself of existing parking spaces of commercial establishments during the off hours in the evening.

This petition is accepted for filing on the date of the enclosed filing certificate. Notice of the hearing date and time, which will be held not less than 30, nor more than 90 days after the date on the filing certificate, will be forwarded to you in the near future.

Very truly yours,

JOHN J. DILLON, JR., Chairman
Zoning Advisory Committee

JJDjr:ljD

Enclosure
cc: Daft-McCune-Walker, Inc.
1200 East Joppa Road
Towson, Maryland 21204

Baltimore County Fire Department

J. Austin Deitz
Chief



Towson, Maryland 21204
833-7310

Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Mr. Jack Dillon, Chairman
Zoning Advisory Committee

Re: Property Owner: The Frank Realty Company

Location: NE/S Maple Avenue, 162' S/E Belair Road

Item No. 26 Zoning Agenda July 24, 1973

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "x" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead-end condition shown at _____
- () 4. The maximum allowed by the Fire Department. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operations.
- () 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "The Life Safety Code", 1970 edition prior to occupancy.
- () 6. Site plans are approved as drawn.
- (x) 7. The Fire Prevention Bureau has no comments at this time.

Reviewed: *[Signature]* Noted and Approved: *[Signature]*
Planning Group Deputy Chief
Special Inspection Division Fire Prevention Bureau

mls
4/16/73

Baltimore County, Maryland Department of Public Works COUNTY OFFICE BUILDING TOWSON, MARYLAND 21204

Bureau of Engineering
ELLSWORTH N. DYER, P. E. CHIEF

August 15, 1973

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

Re: Item #26 (1973-1974)
Property Owner: The Frank Realty Co.
N/S Maple Ave., 162' S/E Belair Rd.
Existing Zoning: D.R. 5.5
Proposed Zoning: Special Hearing for offstreet parking in a residential zone
District: 14th No. Acres: 0.826 acre

Dear Mr. DiNenna:

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:

Maple and Overlea Avenues, existing County streets, are proposed to be improved in the future as 16-foot closed-type roadway cross-sections on 50-foot rights-of-way. Highway improvements including any necessary reversible easements for lanes will be required in connection with any grading or building permit application. Further information may be obtained from the Baltimore County Bureau of Engineering.

The status of the existing alleys is unknown. It is the responsibility of the Petitioner to ascertain and clarify rights therein and to initiate such action as may be necessary to abandon, widen or extend these rights-of-way.

The entrance locations are subject to approval by the Department of Traffic Engineering and shall be constructed in accordance with Baltimore County Design Standards.

Storm Drains

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Item #26 (1973-1974)
Property Owner: The Frank Realty Co.
Page 2
August 15, 1973

Water and Sanitary Sewer:

Public water supply and sanitary sewerage are available and serving the existing residences and catering hall.

Very truly yours,

[Signature]
ELLSWORTH N. DYER, P.E.
Chief, Bureau of Engineering

END:RAM:FWB:iss

cc: G. A. Reier

N-Sb Key Sheet
22 NS 17 Pos. Sheet
NS & E Topo
81 Tax Map

BALTIMORE COUNTY, MARYLAND DEPARTMENT OF HEALTH



JEFFERSON BUILDING
TOWSON, MARYLAND 21204

August 2, 1973

DONALD J. WOOP, M.D., M.P.H.
DEPUTY STATE AND COUNTY HEALTH OFFICER

Mr. S. Eric DiNenna, Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. DiNenna:

Comments on Item 26, Zoning Advisory Committee Meeting July 24, 1973, are as follows:

Property Owner: The Frank Realty Co.
Location: NE/S Maple Ave., 162' E of Belair Road
Present Zoning: D.R. 5.5
Proposed Zoning: Special hearing for offstreet parking in a residential zone.
District: 14
No. Acres: 0.826

Since metropolitan water and sewer are available, no health hazard is anticipated.

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

Very truly yours,

[Signature]
Thomas H. Devlin, Director
BUREAU OF ENVIRONMENTAL SERVICES

HVB:mno

cc: L.A. Schuppert

BALTIMORE COUNTY, MARYLAND JEFFERSON BUILDING TOWSON, MARYLAND 21204



DEPARTMENT OF TRAFFIC ENGINEERING
EUGENE J. CLIFFORD, P.E.
DIRECTOR
WM. T. NELSON
DEPUTY TRAFFIC ENGINEER

August 7, 1973

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

Re: Item 26 - ZOC - July 24, 1973
Property Owner: The Frank Realty Company
NE/S Maple Avenue, 162 feet S/E Belair Road
Special Hearing for offstreet parking in a residential zone District 14

Dear Mr. DiNenna:

This Department has reviewed the subject petition and has the following comments:

- 1. The requested parking lot will help to alleviate parking problems that have existed in this area for years.
- 2. The exact status must be determined of the alley between the caterer's and the proposed parking lot as to whether it is public or private.
- 3. Should this petition be granted a grading plan must be submitted at the time of the building permit request.

Very truly yours,

[Signature]
Michael S. Flanigan
Traffic Engineer Associate

MSF/pk

JAMES D. NOLAN
J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
MILLARD S. RUBINSTEIN
KENNETH H. BASTERS

LAW OFFICES OF
NOLAN, PLUMHOFF & WILLIAMS
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

June 16, 1975

The Honorable Walter E. Reiter
Chairman, County Board of Appeals
Baltimore County Office Building
Towson, Maryland 21204

Re: Petition For Special Hearing NE/S of Maple
Avenue, 162' SE of Belair Road - 14th Election
District; The Frank Realty Company, Petitioner.
No. 74-101-SPH (Item No. 26); Memorandum in
Opposition to Protestants' and People's Counsel's
Motions to Dismiss Petitioner's Case.

Dear Mr. Reiter:

In accordance with the direction of the Board during
the hearing of May 14th, we are enclosing a Memorandum in
Opposition to Protestants' and People's Counsel's Motions
to Dismiss Petitioner's Case in the above matter.

Thanking the Board for its consideration of this matter
and ready to answer any further questions that the Board may
have, I am

Sincerely,

James D. Nolan

JDN/hl
Enclosure

cc: The Hon. S. Eric DiNenna, Zoning Commissioner

The Hon. James E. Dyer, Deputy Zoning Commissioner

The Hon. Charles F. Kountz, Jr., Deputy People's Counsel

P. Vernon Boozer, Esquire

William F. C. Marlow, Jr., Esquire

Millard S. Rubinstein, Esquire

The Frank Realty Company
Attention: Mr. & Mrs. Lawrence Stappier

RE: PETITION FOR SPECIAL HEARING : BEFORE THE
NE/S of Maple Avenue, 162'
SE of Belair Road - 14th : BOARD OF APPEALS
Election District
The Frank Realty Company, : OF
Petitioner
No. 74-101-SPH (Item No. 26) : BALTIMORE COUNTY

MEMORANDUM IN OPPOSITION TO
PROTESTANTS' AND PEOPLE'S COUNSEL'S
MOTIONS TO DISMISS PETITIONER'S CASE

The Petitioner, The Frank Realty Company, by its attorneys
James D. Nolan, Newton A. Williams and Nolan, Plumhoff and
Williams, respectfully submits this Memorandum for the considera-
tion of the Board.

As the Board will recall in this matter, Mr. Kountz, the
Deputy People's Counsel, prior to the beginning of testimony at
the hearing in this matter on May 14, 1975, joined by counsel for
the protestants, moved that the Petitioner's case be dismissed on
the grounds that the Zoning Commissioner and the County Board of
Appeals lacked jurisdiction in this parking permit case, and in
all other parking permit cases, on the grounds that the County
Council has failed to properly delegate such power to the Zoning
Commissioner and to the Board. According to our hearing notes,
the Board withheld a ruling on this Motion, and the Board gave the
People's Counsel and the Protestants' counsel until May 28th to
submit Memorandums, which has been done, and Petitioner's counsel
was given until June 16th to submit a Memorandum in writing, and
this Memorandum is being submitted on behalf of the Petitioner in
compliance with the Board's direction.

Based upon the research of Petitioner's counsel into
this question, including long history and usage, it is the Peti-
tioner's position that the Zoning Commissioner and the County
Board of Appeals both have jurisdiction with reference to parking
permit cases, and that the power to hear and to decide these
cases based upon certain standards has been properly delegated by

LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS
TOWSON, MD.

Rec'd 6/16/75
8 pm

the County Council to the Commissioner and the Board respectively.

Baltimore County is, of course, a chartered County of
Maryland, and the County derives its powers from the powers poss-
essed by the State of Maryland which have been specifically dele-
gated to Baltimore County and to other chartered Counties in
Maryland by Article 25A of the Annotated Code of Maryland (1973
Repl. Vol. and Cum. Supp. thereto), and specifically by the
terms of the express powers enumerated in Section 5 of Article
25A. Subsection 5(X) of Article 25A provides, "To enact local
laws, for the protection and promotion of public safety, health,
morals, and welfare relating to zoning and planning." Thus, this
Subsection 5(X) grants very broad powers in the areas of planning
and zoning to the chartered counties of Maryland, including Balti-
more County. The power to enact local laws establishing County
Board of Appeals, and the areas in which such Boards can hear
cases, is derived from Subsection (U) of Article 25A of the Code.
Among the areas which Subsection (U) of Section 5 of Article 25A
permits the local chartered County to place within the jurisdic-
tion of a County Board of Appeals is "an application for a zoning
variation or exception or amendment of a zoning ordinance map."
According to the position of the People's Counsel, as a chartered
county, Baltimore County possesses this zoning power, but the
People's Counsel maintains that the County Council has not pro-
perly delegated this power to the Zoning Commissioner and to the
Board of Appeals respectively. Counsel for the Petitioner dis-
agrees and for the reasons set out herein maintain that this power
has been properly delegated.

It is the position of the Petitioner in this case that
the Zoning Commissioner and the County Board of Appeals both
possess and have properly exercised jurisdiction in this case for
two reasons: First, the Zoning Regulations as adopted by the
County on March 30, 1955 and as further amended on July 25, 1960,

LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS
TOWSON, MD.

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are specifically validated by Section 22-26 of the Baltimore
County Code (1968 Ed.); and secondly, that Section 22-23 of the
Baltimore County Code (1973-74 Cum. Supp.) does delegate authority
to the Zoning Commissioner to provide for a use permit for parking
in a residential zone, which the Petitioner maintains is a special
type of special exception under the Baltimore County Zoning
scheme.

The Petitioner first maintains that Section 22-26 of the
Baltimore County Code (1968 Ed.) which validates existing Zoning
Regulations, is ample basis and a strong and adequate foundation
on which jurisdiction in this type of case may rest. Section
22-26 by its terms validates the Zoning Regulations as they were
adopted on March 30, 1955 and as amended on July 25, 1960; and
the 1955 Edition of the Baltimore County Zoning Regulations does
contain Section 409.4 dealing with business or industrial parking
in residential zones. Furthermore, this Section of the 1955
Regulations contains the eight conditions, a. through h., in pre-
cisely the exact form in which the Regulations contain these
standards today. It might be said or argued that the proviso to
Section 22-26 which provides, "provided, however, that in the
case of any conflict between such Regulations and the provisions
of this title, these provisions shall control.", is an obstacle
to such jurisdiction, but the Petitioner does not believe that
it is an obstacle for the reasons as hereinafter explained. It
is the Petitioner's belief that the term "special exception" as
used in the Baltimore County Code (1973-74 Cum. Supp.) and in the
Baltimore County Zoning Regulations includes, and has always been
understood to include, use permits for parking in a residential
zone.

Counsel for the Petitioner has examined the following
codifications of the Baltimore County Zoning Regulations:

1. Zoning Regulations and Restrictions for Baltimore
County, codified September 1, 1948 by Charles H. Doing, Zoning

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Commissioner of Baltimore County:

2. Baltimore County Zoning Regulations adopted by
County Commissioners of Baltimore County, March 30, 1955;

3. Baltimore County Zoning Regulations, 2nd Ed., 1964;

4. Baltimore County Zoning Regulations, 1969 Ed., the
so-called "red looseleaf book"; and

5. Baltimore County Zoning Regulations, September, 1971,
Interim Edition.

This examination was made with the intention of tracing the pre-
sent Section 409.4 back through each codification or edition to
its origin. This journey back through the Regulations has been
most illuminating, and it has led Counsel for the Petitioner to
believe that the term "special exception" and the term "special
permit" are used interchangeably, both in Baltimore County Zoning,
and by many text writers and lawmakers in other municipalities,
and that the authority granted by Section 22-23 of the Baltimore
County Code (1973-74 Cum. Supp.) which confers upon the Zoning
Commissioner the power to provide for special exceptions and var-
iances, fairly includes the power to grant parking permits in
residential zones set out by Section 409.4 of the Regulations, the
case at hand.

In the 1948 Codification of the Regulations, Section XIII
is entitled "Powers Relative to Special Exceptions and Special
Permits". This Section XIII and its various subsections speaks
throughout in terms of special permits for various uses in var-
ious zones, including residential zones, commercial zones, and
special permits for enumerated uses in any zone. Although the
term "special exception" is mentioned in the title, throughout the
Section XIII the Section speaks in terms of special permits, in-
cluding the forerunner of the present Section 409.4, namely Sub-
section C of Section XIII, and these special permits are the
counterparts of what the present Regulations term "special excep-
tions".

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Subsection C of Section XIII of the 1943 Regulations pro-
vides as follows: "In any residential zone a special permit shall
be required for use of land for automobile parking, subject to
the following Regulations: (a) Land to be used for any such use
must be adjoining or across an alley from a lot in a commercial
zone. (b) Parking must be limited to patrons of the building or
enterprise on said lot in the commercial zone. (c) No charge may
be made for parking on said lot. (d) No vehicles other than pas-
senger cars shall be permitted to use such parking space. (e) No
service of any kind shall be extended to persons occupying such
vehicles. (f) The Zoning Commissioner or Board of Zoning Appeals,
upon appeal, shall have the right to impose such conditions,
limitations or restrictions as to hours of use, mode of lighting,
location and height of screening, whether wall, fence or shrubbery
for the protection, convenience and quiet of the surrounding
and neighboring properties." The similarities between this earlier
provision and the present Section 409.4 are immediately apparent.
As previously mentioned throughout Section XIII of the 1948 Code,
the term permit is used exclusively, and the only reference to
the special exception that was apparent was that in the title.
Furthermore, and in support of the proposition that the words
special permit and special exception are interchangeable as used
in the Baltimore County Zoning Regulations, the 1948 Code pro-
vision in Subsection III of Section XIII provides: "In the
granting of any special permit under this section (Section XIII)
the Zoning Commissioner, and the Board of Zoning Appeals, upon
appeal, shall be governed and controlled by the following prin-
ciples, standards, rules, conditions and safeguards.

"Before any such special permit shall be granted it must
appear that the use, for which the special permit is requested,
will not: (a) Be detrimental to the safety, health, morals, and
general welfare of the community involved. (b) Tend to create

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congestion in roads, streets and alleys in the area involved.

(c) Create a hazard from fire, panic or other dangers. (d) Tend
to overcrowd land and cause undue concentration of population.
(e) Interfere improperly with adequate provisions for schools,
parks, water, sewerage, transportation and other public require-
ments, conveniences and improvements. (f) Interfere with adequate
light and air." Thus, Subsection III of the 1948 Regulations
which speaks in terms of special permits is almost verbatim the
present Section 502.1 relating to the standards which must be
preserved by the Zoning Commissioner and the Board of Appeals in
granting any special exception. The language change in the name
is merely one of form, and it does not affect the substance of
this zoning device itself.

It is the position of the Petitioner that based upon the
history of the Baltimore County Zoning Regulations, and upon a
commonsense analysis, that a use permit for parking in a residen-
tial zone, pursuant to Section 409.4 of the Regulations, is a
specialized type of special exception, but a special exception,
nevertheless. Furthermore, use permits for parking are zoning
tools which the Zoning Commissioner and the Board of Appeals
have always utilized since the inception of Baltimore County
Zoning, and it is a zoning tool which the County Council and the
County Commissioners have always understood to have been delegated
to the Zoning Commissioner and to the Board of Appeals.

The fact that the term special exception and special
permit are used interchangeably and are synonymous in Baltimore
County zoning usage is also borne out by the note to Section 502
of the Regulations as contained in the 1971 Interim Edition which
states in part "Note: Certain types of uses are required to
secure a permit to allow them to be placed in one or more zones
in which their uncontrolled occurrence might cause unsatisfactory
results of one kind or another..." (Emphasis Supplied). The

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Petitioner believes that the word "permit" is significant as used
in the note, since the note is speaking about special exceptions,
and this use of the word permit tends to indicate that the words
and the terms are used synonymously, even today, as they were
used in the 1948 Regulations.

That the terms "special exception" and "special permit"
are similar terms and are often used interchangeably is borne out
by Professor Anderson in his American Law of Zoning, wherein, at
Section 15.01 he states:

"The Standard Act employed the term 'special
exception' to designate a species of administrative
permission which 'allows a property owner to put his
property to a use which the regulations expressly
permit under conditions specified in the zoning
regulations themselves.' Some enabling acts and
zoning regulations use the term 'special permit'
to refer to the same type of administrative
permission to use land for a specified purpose
allowed in the district subject to administrative
approval. Still other enabling acts simply author-
ize a board of appeals to hear and decide matters
referred to them by the zoning regulations, select-
ing no specific term to describe permits such as
those under discussion. And some ordinances autho-
rize certain uses upon approval by the board of
adjustment, giving no name to the approval.

"The 'special exception', the 'special permit',
and the use permitted subject to administrative
approval, are qualitatively the same. Each involves
a use which is permitted rather than proscribed by
the zoning regulations. Each is allowed only upon
approval of a board of adjustment or other adminis-
trative body charged with various duties and in-
vested with certain powers in connection with the
administration of the zoning regulations. And in
each case, the board is guided and its power limited
by hearing requirements and standards."

In the opinion of counsel for the Petitioner, the term "special
exception" was substituted in the 1955 codification of the Zoning
Regulations for the term "special permit" in every portion of
the Regulations except in the case of the provisions dealing
with industrial and commercial parking in residential zones. The
retention of the name "permit" does not change the nature of the
proceeding, nor does it change the fact that the use permit for
parking in a residential zone and the present special exceptions

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all owe their parentage and trace their lineage back to Section XII of the 1948 Code. The name change to special exception does not change the basic nature of the proceeding or of the parking permit process, and they are all basically similar.

The Deputy People's Counsel in his brief states that the Court of Appeals has decided in the case of Marek vs. Board of Appeals, 218 Md. 351, 357 (1958), that a Baltimore County use permit for parking is not a special exception, but counsel for the Petitioner believes that this is an overly broad statement of this particular part of the holding in the Marek case. In the opinion of counsel for the Petitioner, Marek decided on this point that a use permit for parking is not a special exception for the purposes of Section 500.12 of the Baltimore County Zoning Regulations which forbids any new filing until the expiration of eighteen months from the date of the Final Order for a previously applied for special exception or reclassification.

The second question raised by the protestants in Marek, at page 359, was whether Section 409.4 of The Baltimore County Zoning Regulations constitutes "a valid, lawful and constitutional delegation of the police power". The Court concluded that it was a valid delegation after reviewing a number of Maryland precedents and cases from other jurisdictions. At page 361, Judge Henry stated for the Court:

"There are eight standards set forth in Section 409.1, supra, and we think that they are sufficient to constitute a valid, lawful and constitutional delegation of the police power."

Apparently neither counsel nor the Bench in Marek viewed the case in the perspective that the Deputy People's Counsel would view it, namely from the point of view of an appropriate delegation of this parking permit power in the County Code. Petitioner's counsel believe that if the Court and counsel had so viewed the problem that the Court would have concluded there had

been a proper delegation based on one or more of several theories, as follows:

1. Upon a review of the historical development of Section 409.4, the Court should have, and would have concluded that the term "special exception" as used in Section 27-23 of the Baltimore County Code (1974-74 Cum. Supp.) comprehends and includes "use permits" for "business or industrial parking in residence zones", and that the terms are synonymous.

2. The Court should conclude, and could properly conclude that Sections 22-26 of the Baltimore County Code (1968 Ed.) validates and incorporates by reference the entire body of law known as the Baltimore County Zoning Regulations, including Section 409.4, and that there is no conflict between the Code and the Regulations to invalidate such validation and incorporation.

3. The Court could conclude that the County Council has sought to delegate the entire day-to-day zoning power, but not the legislative power to change or alter the Regulations, in the Zoning Commissioner and the Board of Appeals, and that historically the Council has taken no part in the day-to-day administration and decision of zoning matters.

4. The Court could also conclude that the greater powers to reclassify land and to redistrict land necessarily comprehends and includes the lesser power to deal with matters such as use permits for parking in residence zones.

Counsel for the Petitioner are thoroughly convinced after researching this matter that the use permit for parking in a residential zone is now and has always been a special exception under Baltimore County Zoning Regulations. It is, in fact a special exception in addition to the provisions of Section 502.1 of the Regulations must also meet and include the eight requirements laid down by subsections (a) through (h) of Section 409.4 of the Regulations. Petitioner would submit that the requirements

of Section 409.4 have been fully met, and that the requirements of Section 502.1 were met as well. With regard to Section 502.1, the Petitioner's position is as follows:

a. The proposed parking facility will not be detrimental to the health, safety or general welfare of the locality involved, and will have no adverse effect on health, will improve the safety of the area by taking parked cars off the street and cutting down on general traffic circulation through the area, and thus will aid the general welfare of the area involved.

b. The proposed parking facility will not tend to create congestion in roads, streets or alleys thereon, but will, as Mr. Erdman the traffic engineer pointed out, greatly improve the parking situation during most of the affairs held at the Overlea Catering Facility, and will also cut down on the circulation of cars through the neighborhood and act to confine traffic from the Overlea Hall closer to the Hall and to Belair Road.

c. The proposed parking facility, of course, cannot cause any potential hazard from fire or any potential hazard from panic or any other danger, since it will be constructed by modern standards and will be a supervised facility.

d. The proposed facility will not tend to overcrowd land, but will actually open up additional open space in the neighborhood and provide a buffer between the commercial activities surrounding the Hall and the Medical Center and the residential properties to the south.

e. In like manner, the proposed parking facility will not interfere with adequate provision for schools, parks, water, sewerage, transportation, or other public requirements, conveniences or improvements, since it will be built to appropriate standards, properly screened and supervised and will tend to provide the parking that the Overlea Hall would be required to provide if it were to be constructed under the present parking regulations.

f. The proposed parking facility will not interfere with light and air, but will actually open up the area for additional light and for additional air circulation and will not attract any new automobiles that are not already parking in this neighborhood since, as the testimony brought out, there is no plan to expand the capacity of the Hall which is already operating at near maximum capacity.

The Petitioner believes that it has fully met the points raised by the Deputy People's Counsel in his Memorandum, and also in doing this have met the points raised by the private attorney for the protestants in his Memorandum in Support of Protestants' Motion to dismiss.

Conclusion

Based upon the foregoing analysis, counsel for the Petitioner respectfully submit that both the Zoning Commissioner and the Board of Appeals do enjoy jurisdiction to grant use permits for parking in a residential zone, and that such use permits for parking are a special type of special exception which, in addition to the requirements of Section 502.1 of the Regulations, must meet the requirements of Section 409.4, with its eight requirements denominated (a) through (h). Therefore, the Petitioner respectfully submits that the Board has the jurisdiction in this matter to address the case on its merits, and the Petitioner would respectfully ask the Board to deal with the case on its merits in exercise of its clear jurisdiction in the matter.

Respectfully submitted,

James D. Nolan
James D. Nolan

Newton A. Williams
Newton A. Williams

Nolan, Plunhoff & Williams
Nolan, Plunhoff & Williams

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-10-

I HEREBY CERTIFY that on this 10th day of June, 1975, a copy of the foregoing MEMORANDUM was mailed, postage prepaid to CHARLES E. KOUNTZ, JR., DEPUTY PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Office of Law, County Office Building, Towson, Maryland 21204.

James D. Nolan
James D. Nolan

I HEREBY CERTIFY that on this 10th day of June, 1975, a copy of the foregoing MEMORANDUM was mailed, postage prepaid to P. VERNON BOOZER, ESQUIRE, 614 Bosley Avenue, Towson, Maryland, 21204.

James D. Nolan
James D. Nolan

I HEREBY CERTIFY that on this 10th day of June, 1975, a copy of the foregoing MEMORANDUM was mailed, postage prepaid, to WILLIAM F. C. MARLOW, JR., ESQUIRE, 614 Bosley Avenue, Towson, Maryland 21204.

James D. Nolan
James D. Nolan

WILLIAM D. FROMM
DIRECTOR
ERIC DINENNA
ZONING COMMISSIONER



August 14, 1973

Mr. S. Eric DiNenna, Zoning Commissioner
Zoning Advisory Committee
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Dear Mr. DiNenna:

Comments on Item #26, Zoning Advisory Committee Meeting, July 24, 1973, are as follows:

Property Owner: The Frank Realty Co.
Locations: NE/S Maple Ave., 162' S/E Belair Road
Existing Zoning: D.R.S.5
Proposed Zoning: Special Hearing for off street parking in a residential zone.
Election District: 14
No. Acres: 0.826 acres

This plan has been reviewed and there are no site-planning factors requiring comment.

Very truly yours,

John L. Wimbley
John L. Wimbley
Planning Specialist II
Project & Development Planning Division

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
SUITE 301 JEFFERSON BUILDING 105 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND 21204
AREA CODE 301 PLANNING 486-2211 ZONING 484-3381

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: August 2, 1973

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

Z.A.C. Meeting of: July 24, 1973

Re: Item 26
Property Owner: The Frank Realty Company
Location: see agenda
Present Zoning: D.R. 5.5
Proposed Zoning: S.H. for off-street parking in a residential zone.

District: 14
No. Acres: 0.826

Dear Mr. DiNenna:

No effect on student population.

Very truly yours,
W. Nick Petrovich
W. Nick Petrovich
Field Representative

WNP/ml

MR. FROMM: DIRECTOR
MR. DINENNA: ZONING COMMISSIONER
MR. BOOZER: ESQUIRE
MR. MARLOW: ESQUIRE

MR. FROMM: DIRECTOR
MR. DINENNA: ZONING COMMISSIONER
MR. BOOZER: ESQUIRE
MR. MARLOW: ESQUIRE

MR. FROMM: DIRECTOR
MR. DINENNA: ZONING COMMISSIONER
MR. BOOZER: ESQUIRE
MR. MARLOW: ESQUIRE

Appeal CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 14 Date of Posting: 11/14/74

Posted for: Frank Realty Co.

Petitioner: Frank Realty Co.

Location of property: NE/S Maple Ave. 162' S/E Belair Rd.

Location of Signs: 1 sign on Maple Ave. 1 sign on Belair Rd.

Remarks: None.

Posted by: Michael H. Kras Date of return: 11/24/74

Signature

11/13/74

Appeal • Reopened CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 14 Date of Posting: 11/13/74

Posted for: Frank Realty Co.

Petitioner: Frank Realty Co.

Location of property: NE/S Maple Ave.

Location of Signs: 1 sign on Maple Ave. 1 sign on Belair Rd.

Remarks: None.

Posted by: Michael H. Kras Date of return: 11/19/74

Signature

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& WILLIAMS
TOWSON, MD.

OCTOBER 1973

Michael G. Fuller
Michael J. Fuller
3213 Bayonne Ave
Baltimore, Md. 21214

OCTOBER 1973

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PETITION

OCTOBER 1973

WE (1), THE UNDERSIGNED, WISH TO OPPOSE ANY CHANGE IN THE ZONING RULES AND REGULATIONS WHICH WOULD ALLOW OFF STREET

PARKING ON EAST OVERLEA AND EAST MAPLE AVENUES, BALTIMORE CO.

MARYLAND, 21206: *I am positively against destruction of 4 homes to make way for commercial off street parking which ruin a good neighborhood*
NAME: *Virginia H. Snyder*
SIGNATURE: *Virginia H. Snyder*
ADDRESS: *14 E. Overlea Ave*
Balt md 21206

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PETITION

OCTOBER 1973

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PARKING ON EAST OVERLEA AND EAST MAPLE AVENUES, BALTIMORE CO.

MARYLAND, 21206:

NAME: *Mrs. Helen Hamilton*
SIGNATURE: *Helen Hamilton*
ADDRESS: *14 E. Overlea Ave*

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PETITION

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PARKING ON EAST OVERLEA AND EAST MAPLE AVENUES, BALTIMORE CO.

MARYLAND, 21206:

NAME: *Mrs. Margaret M. Wright*
SIGNATURE: *Margaret M. Wright*
ADDRESS: *14 E. Overlea Ave. 21206*

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PETITION

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PARKING ON EAST OVERLEA AND EAST MAPLE AVENUES, BALTIMORE CO.

MARYLAND, 21206:

NAME: *Mrs. Anne Carolyn Carroll*
SIGNATURE: *Anne Carolyn Carroll*
ADDRESS: *6 Maple Ave. 1st floor* *definitely oppose*

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PETITION

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PARKING ON EAST OVERLEA AND EAST MAPLE AVENUES, BALTIMORE CO.

MARYLAND, 21206:

NAME: *Adolph G. Sykes*
SIGNATURE: *Adolph G. Sykes*
ADDRESS: *104 E. Overlea Ave*
21206

NAME
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PETITION

OCTOBER 1973

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PARKING ON EAST OVERLEA AND EAST MAPLE AVENUES, BALTIMORE CO.

MARYLAND, 21206:

NAME: *Mrs. Robert Bass*
SIGNATURE: *Robert Bass*
ADDRESS: *6909 Linden Ave*
21206

NAME
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PETITION

OCTOBER 1973

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PARKING ON EAST OVERLEA AND EAST MAPLE AVENUES, BALTIMORE CO.

MARYLAND, 21206:

NAME: *Antonia Savaris*
SIGNATURE: *Antonia Savaris*
ADDRESS: *16 E. Overlea Ave. 21206*

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PETITION

OCTOBER 1973

WE (1), THE UNDERSIGNED, WISH TO OPPOSE ANY CHANGE IN THE ZONING RULES AND REGULATIONS WHICH WOULD ALLOW OFF STREET

PARKING ON EAST OVERLEA AND EAST MAPLE AVENUES, BALTIMORE CO.

MARYLAND, 21206:

NAME: *Martha H. Kiley*
SIGNATURE: *Martha H. Kiley*
ADDRESS: *14 E. Overlea Ave. Baltimore Md 21206*

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OCTOBER 1973

Laurence F. Brudler
6911 Beech Ave.
Baltimore Md. 21206

OCTOBER 1973

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OCTOBER 1973

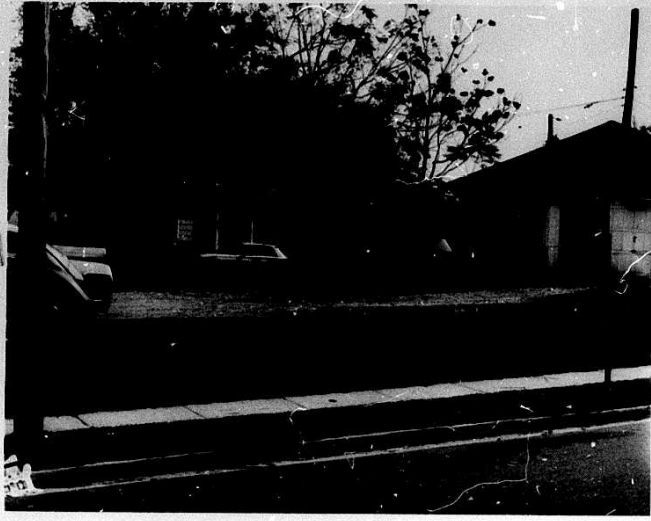
NAME _____
SIGNATURE _____
ADDRESS _____

OCTOBER 1973

NAME _____
SIGNATURE _____



Z.C. PETITIONERS' EXHIBIT 2A



Z.C. PETITIONERS' EXHIBIT 2B



Z.C. PETITIONERS' EXHIBIT 2C



Z.C. PETITIONERS' EXHIBIT 2D



Z.C. PETITIONERS' EXHIBIT 2E



Z.C. PETITIONERS' EXHIBIT 2F



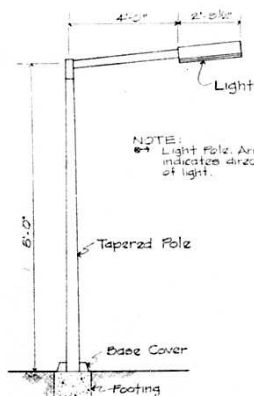
Z.C. PETITIONERS' EXHIBIT 2G



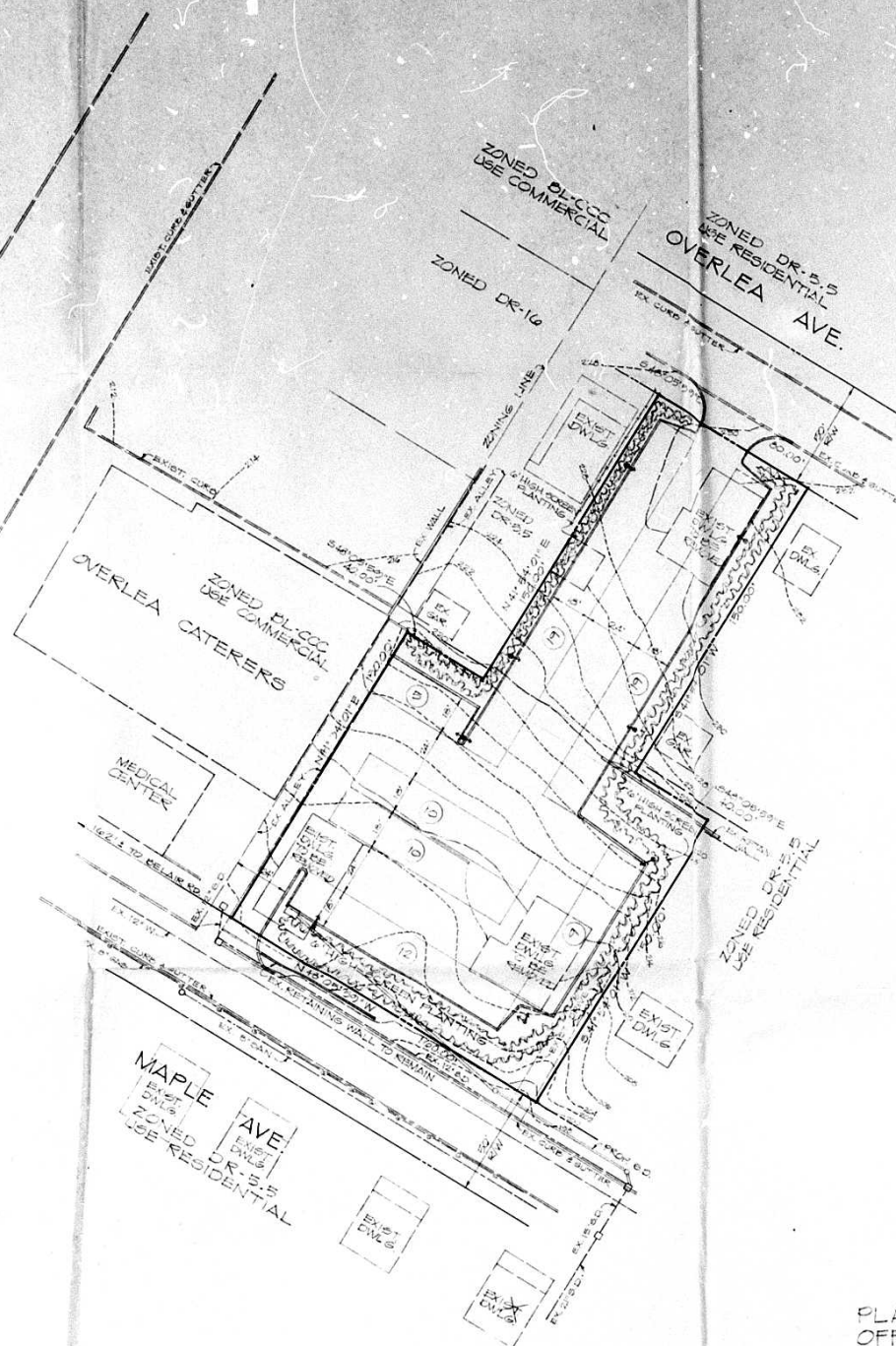
Z.C. PROTESTANTS' EXHIBIT



BELAIR
ROAD



LIGHT STANDARD DETAIL
NO SCALE



PLAT TO ACCOMPANY SPECIAL HEARING FOR
OFF-STREET PARKING IN RESIDENTIAL ZONE
14th ELECTION DISTRICT BALTIMORE CO. MD.



VICINITY MAP
SCALE: 1" = 500'

The following terms and conditions are agreed to and provided for by the petitioner.

- 1) The subject area as indicated on this plat is deemed to be the site of the retail facility.
- 2) Only nonpassenger vehicles, excluding taxicabs, will use the parking area.
- 3) The use of the parking area for other than the retail activity will be permitted subject to special circumstances warrant.
- 4) Lighting will be regulated so as to prevent illumination or glare onto adjacent properties.
- 5) Screening by means of a high planting will be provided between the parking area and all adjacent zones or uses as directed by the City.
- 6) A paved surface, properly drained, will be provided.
- 7) The parking plan as indicated on this plat provides for adequate lighting and ventilation.
- 8) Maintenance of parking area will be required by the developer or his agent. Hours of parking activity will generally be confined from 10:00 A.M. to 10:00 P.M. and no more than 100 vehicles will be permitted to occupy the public entrance. Entrances will be changed when lot is not used.

SITE DATA

AREA OF SITE	0.020 AC.
ZONING OF SITE	CR 155
TYPE OF BUILDING TO BE	
SERVED BY PARKING	ENTERING MAIL
AREA OF BUILDING	1,204 S.
NUMBER OF SPACES REQUIRED	150 @ 257
NUMBER OF SPACES SHOWN	54

2.c. Petitioner's Ex. 1



DAFT · McCUNE · WALKER INC.
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS
1200 EAST JOFFA ROAD, BALTIMORE, MD 21204
TELEPHONE: 301 - 794-1222
8055 VAN STREET, SILVER SPRING, MD 20910
TELEPHONE: 301 - 590-1222



DATE	REVISIONS

SCALE:

JOB ORDER NO.

ISSUE DATE

7/18/73