

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Dennis G. Smith, legal owner, of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an RS-1 zone to an RS-1-X zone; for the following reasons:

See attached description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for Section B(6) use: community bldgs, swimming pools, or other structural or land uses devoted to civic, social, recreational or educational activities.

Property is to be posted and advertised as prescribed by Zoning Regulations.

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

Contract purchaser DENNIS G. SMITH Left Owner

Address Bulls Sawmill Road Address Bulls Sawmill Road

Freeland, Maryland Freeland, Maryland

ROBERT S. RODY, Petitioner's Attorney

Protestant's Attorney

Address 700 Equitable Building

Baltimore, Maryland 21202

ORDERED By The Zoning Commissioner of Baltimore County, this 1st day

November 197 h, that the subject matter of this petition be advertised, as

required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-

out Baltimore County, that property be posted, and that the public hearing be had before the Zoning

Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore

County, on the 2nd day of December, 197 h, at 2:00 o'clock

...P.M.



(over)

April 1, 1975

Robert S. Rody, Esquire
700 Equitable Building
Baltimore, Maryland 21202

and

Robert A. DiCicco, Esquire
208 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Special Exception
Beginning 405' W of Bulls Sawmill
Road and Bulls Sawmill Road
Extended - 6th Election District
Dennis G. Smith - Petitioner
NO. 75-118-X (Item No. 47)

Dear Messrs. Rody and DiCicco:

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/scw
Attachments
cc: J. Earle Plumhoff, Esquire
204 West Pennsylvania Avenue
Towson, Maryland 21204

Mr. Ray Anchors, Jr.
Box 272 - X
Bulls Sawmill Road
Freeland, Maryland 21053

Anthony J. Sacco, Esq.
202 Courtland Ave.
Towson, MD 21204

Mrs. Shirley Parry
Rural Rt. 1, Box 174-M
Freeland, Maryland 21053

RE: PETITION FOR SPECIAL
EXCEPTION
Beginning 405' W of Bulls Sawmill
Road and Bulls Sawmill Road
Extended - 6th Election District
Dennis G. Smith - Petitioner
NO. 75-118-X (Item No. 49)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

This matter comes before the Zoning Commissioner as a result of a Petition filed by Dennis G. Smith for a Special Exception for community buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational, or educational activities. Said property is located 405 feet west of Bulls Sawmill Road and Bulls Sawmill Road Extended, contains 69.5 acres of land, more or less, and is located in the Sixth Election District of Baltimore County.

Evidence presented by the Petitioner indicated that the subject property is located in a rural area of Baltimore County and is surrounded by dense woods. The anticipated use of the property, as testified to by Mr. Dennis Smith, would be for picnicking, camping, a baseball diamond, horseshoe pits, tennis courts, a possible miniature golf course, a possible swimming pool, and outdoor concerts.

Expert testimony offered by Thomas E. Mulinasz, a qualified traffic engineer, indicated that the access road to the subject property, namely Bulls Sawmill Road, is a low type road, is approximately 16 to 17 feet in width, and has a capacity of approximately 400 automobiles per hour. He further stated that if there were picnic type affairs at the subject property, there would be no capacity problem on Bulls Sawmill Road, but, if a concert type affair were held, you would have a "mess". The question of exiting from the subject property became relevant at this point. Mr. Mulinasz indicated that it would be mandatory to have some system of flow from the subject property to get automobiles off of Bulls Sawmill Road and onto Middletown Road.

FROM THE OFFICE OF
GEORGE WILLIAM STEPHENS, JR. & ASSOCIATES, INC.
ENGINEERS
P.O. BOX 6828, TOWSON, MD. 21204

August 6, 1974

Description to Accompany
Zoning Petition for Special Exception
for a Recreational Area in an
Existing RDP Zone

Beginning for the same at a point in Bulls Sawmill Road Extended, said point being southeasterly along said Road Extended distant 405 feet more or less from where it intersects the centerline of Bulls Sawmill Road running thence forming the outline of the twenty seven following courses viz: (1) North 31° 21' 20" East 479.14 feet, (2) North 85° 00' East 2.86 feet, (3) North 7° 00' East 416.00 feet (4) South 83° 00' West 260.99 feet (5) North 10° 07' East 290.40 feet (6) North 52° 32' 30" East 553.65 feet (7) South 16° 12' West 188.83 feet (8) North 66° 59' West 114.97 feet (9) South 19° 38' West 262.32 feet (10) South 29° 39' West 759.00 feet (11) South 31° 58' West 342.37 feet (12) South 78° 25' West 994.07 feet (13) North 85° 30' 30" East 275.82 feet (14) South 15° 27' West 127.76 feet (15) South 56° 33' East 33.00 feet (16) South 15° 42' West 24.75 feet (17) South 40° 33' East 210.38 feet (18) South 86° 20' 30" East 1144.63 feet (19) South 6° 24' 30' West 363.0 feet (20) South 31° 05' 30" East 113.5 feet (21) North 66° 24' 30' East 627.0 feet (22) North 73° 09' 30" East 165.0 feet (23) North 55° 34' 30' East 165.0 feet (24) North 24° 05' 30' West 280.5 feet (25) North 82° 34' 30' East 452.10 feet (26) South 4° 38' 30" East 82.50 feet to the bed of the herein above mentioned Bulls Sawmill Road Extended and (27) in the bed of said Road North 49° 11' 30' East 646.68 feet to the place of beginning.

Containing 69.5 acres of land more or less.



Several residents of the area, in protest of the subject Petition, indicated that they were fearful of such a use taking place in this rural area of Baltimore County. They are concerned with additional traffic along Bulls Sawmill Road; and they were fearful that the granting of said Special Exception would be detrimental to their health, safety, and general welfare.

Without reviewing the evidence further in detail but based on all the evidence presented at the hearing, in the judgment of the Zoning Commissioner, the requested Special Exception should not be granted.

Section 502.1 of the Baltimore County Zoning Regulation's states:

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

- Be detrimental to the health, safety, or general welfare of the locality involved;
- Tend to create congestion in roads, streets or alleys therein;
- Create a potential hazard from fire, panic or other dangers;
- Tend to overcrowd land and cause undue concentration of population;
- Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- Interfere with adequate light and air."

The burden of proof is borne by the Petitioner. In the instant case, this burden has not been met.

Bulls Sawmill Road is a narrow country road, not designed for a capacity the proposed use would generate thereon. This would be adverse to the requirements stated above.

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Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 1st day of April, 1975, that the Special Exception for community buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational, or educational activities be and the same is hereby DENIED.

[Signature]
Zoning Commissioner of
Baltimore County

DATE 4-1-75
BY May [Signature]

-3-

LAW OFFICES
RODY & RODY, CHARTERED

700 EQUITABLE BUILDING
CALVERT & FAYETTE STREETS
BALTIMORE, MARYLAND 21202

February 19, 1976

County Board of Appeals
County Office Building
111 West Chesapeake Avenue
Baltimore, Maryland 21204

RE: Petition of Dennis G. Smith
for Special Exception
for Community Buildings, etc.
Case #75-118-X

Gentlemen:

On behalf of Petitioner, Dennis G. Smith, enclosed please find the following:

- Answer to Motion for Dismissal
- Memorandum in support of Answer to Motion for Dismissal
- Memorandum on behalf of Dennis G. Smith, Petitioner

Very truly yours,
[Signature]
Robert S. Rody

RSR:cr

cc: J. Earle Plumhoff, Esq.
Nolan, Plumhoff and Williams
204 W. Pennsylvania Avenue
Towson, Maryland 21204

Enclosures

Recd. 2-19-76
1:55 PM

LAW OFFICES
BROOKS & TURNBULL

180 BURLY AVENUE
TOWSON, MARYLAND 21204

August 7, 1975

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

Re: Case No. 75-118-X
Dennis G. Smith
Petition for Special Exception
Beg. 405' W. Bulls Sawmill Road and
Bulls Sawmill Road Extended
6th District

Gentlemen:

Please strike my appearance in the above captioned matter.

Sincerely yours,
BROOKS & TURNBULL

[Signature]
Charles E. Brooks

CEB:vid

cc: Dennis G. Smith

Recd. 2-19-76
9:15 AM

RE: PETITION FOR SPECIAL EXCEPTION :
for Community Buildings, Swimming
Pools, etc. : COUNTY BOARD OF APPEALS
Beg. 405' W. Bulls Sawmill Road :
and Bulls Sawmill Road Extended : OF
6th District : BALTIMORE COUNTY
Dennis G. Smith :
Petitioner : No. 75-118-X

OPINION

This matter comes before the Board on an appeal by the Petitioner from an Order of the Zoning Commissioner of Baltimore County, dated April 1, 1975, denying the requested special exception for community buildings, swimming pools, or other structures or land uses devoted to civic, social, recreational or educational activities.

The subject property is located at a point approximately 405 feet west of Bulls Sawmill Road and Bulls Sawmill Road extended, in the Sixth Election District of Baltimore County, and contains approximately sixty-nine and one half acres in two parcels. The subject property is rural in character, a portion of which is farmed and the remainder being wooded. Said property adjoins Pretty Boy watershed.

The first matter to be considered is the Motion for Dismissal by the Protestants on the basis that the proposed use is of a commercial nature and, therefore, not eligible to enjoy the benefits of the special exception petitioned for. Secondly, the Motion seeks dismissal on the basis that the actual proposed use would fall under a different section than that petitioned for and hence, proper notice had not been given for the hearing in the determination of this case.

The Board is receptive to the contention that the subject proposal is that of a limited commercial enterprise rather than that of a community or neighborhood oriented activity, which would be implied by the descriptive titling of the particular special exception. However, it would be the obligation of this Board in granting a special exception to impose such restrictions to prevent any petitioner from obtaining commercial or other zoning under the guise of a special exception. In any event, the Board is satisfied that the Protestants were generally well versed in the nature of the Petitioner's proposal, and the fact that it should have been brought under a different section is immaterial. This amounts not so much as to a change in the Petitioner's plans, but a suggestion by the

Dennis G. Smith - #75-118-X

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Protestants that the Petitioner's plans might properly be under a different section of the special exception under the zoning regulations. While proper notice is unquestionably an important and essential element of these cases, we feel that there was ample notice in the instant case. Consequently, the Motion for Dismissal by the Protestants will be denied.

The actual hearing on this matter consisted of four hearing dates which, due to the Board's scheduling problems, were spread over a period of time from July, 1975 to January, 1976, and at the conclusion of which counsel were extended leave to file memoranda in this case. This hearing consisted of testimony from twenty-four witnesses, twelve of which appeared for each side of this issue. Testimony on behalf of the Petitioner commenced with a civil engineer who described the plot of the subject property showing the proposed use as filed by the owner-petitioner, who testified generally as to what his proposals were concerning the subject property. This was followed by some four lay witnesses from the general neighborhood who indicated that they were in support of the petition. This was followed by a real estate appraiser who described the subject property and indicated that he did not feel the subject proposal would be adverse to the country atmosphere of the locality. Following this a traffic expert from the University of Maryland testified and indicated that he did not feel that there would be any safety problem concerning this proposal, although it would take two hours or better to exit the subject premise after a function if everyone left at the same time. He did concede on cross-examination that a vehicle breakdown would impede traffic on either Bulls Sawmill Road or Middletown Road. It is interesting to note that he was not aware of farm or recreational vehicle traffic in the area surrounding the subject property.

The next witness was from the Soil Conservation Service and indicated that a plan for a pond on the subject property had been approved by his department approximately two years ago. Following this a swimming pool representative testified as to the type of pool which was proposed for the subject property. Next, an additional civil engineer was produced on behalf of the Petitioner who professed to have expertise as to numerous specialties, including marketing, planning, environmental impact, sound and

Dennis G. Smith - #75-118-X

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economics among others, without establishing a substantial basis for his expressed opinions. Lastly, a witness who leases sound amplification systems testified generally as to the nature of the system and the cost thereof, but indicated that he was not a qualified engineer or expert in this field.

The Protestants then proceeded with their case and commenced with the testimony of private expert witnesses, the first of which was a real estate appraiser who described the subject property and the surrounding area and characterized it as rural. He further indicated that there were only eighteen hundred people in the entire Sixth Election District. It was his opinion that there was no need for such a project and the proposal would be detrimental to the general welfare, disturb the peace and quiet of the area, and hurt real estate property values.

Next the Deputy Traffic Engineer from Baltimore County testified and described the roads servicing the subject property, and indicated their inadequate capacity and the roads being as narrow as thirteen to fourteen feet wide with no shoulders. It was his opinion that it would take at least three and one half hours to empty the parking lots on the subject property if they were filled with seven hundred and fifty (750) vehicles. Additionally, he stated that this would cause a level of service of "F" (failure) on the said roads which service the subject property.

Following him was the Battalion Chief of the Baltimore County Fire Department who indicated that such a congestion or congregation of people would greatly increase the danger of fire, and there are no fire hydrants available in this area of Baltimore County. Additionally, he was concerned with the capability of fire equipment to respond to a fire due to the size of that equipment, the narrowness of the roads, and the possibility of congestion from the volume of traffic that the subject proposal would develop. These dangers would also be increased due to the large amount of wooded area in this immediate vicinity.

The next witness was the environmental planner for Baltimore County who was concerned with the danger to the Pretty Boy Reservoir, both from a standpoint of

Dennis G. Smith - #75-118-X

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sewerage as well as the increased runoff which would be as a result of the development of the subject property. In his opinion this would have a substantial impact upon the reservoir, both from a quantitative and a qualitative viewpoint, although the Board does not categorically accept this witness' contention that this proposal would be "like sitting on a bomb". Regarding pollution, we do accept the validity of his testimony in this regard. It was this witness' opinion that such a project would better be located in a more urban area.

The last expert witness presented was a representative of the Office of Planning who indicated that the proposed zoning on the forthcoming maps would be for R.C. zones for the entire subject property, with the western portion of the subject property being placed in a watershed zone.

The next witness was an adjoining property owner who had planted some eight thousand white pine trees in agreement with the Soil Conservation Service and who has a registered Maryland tree farm, and who objected to the subject proposal on the basis of the danger of fire, noise, and traffic congestion, and also from the aspect of having trespassing upon his property.

Additionally, the President of the Parkton Community Association testified and indicated that their area encompasses the Sixth and Seventh Election Districts, and indicated his Association's opposition to this petition for the following reasons:

1. They wish to retain the rural area
2. Problems of the increased traffic
3. Noise
4. No need for this proposal
5. Runoff problems
6. Pollution problems.

This seemed to be the consensus of the other witnesses for the Protestants who were neighbors of the proposed site. However, they did have the additional objections as to the fear of lessening of their property values, debris and other problems related to the traffic situation, such as, the effect of moving farming equipment on the roads in the vicinity of the subject property, as well as the increase of danger to other

Dennis G. Smith - #75-118-X

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traffic using these roads, i.e., pedestrians, bicycles and persons on horseback.

Without reviewing the evidence further in detail, but based upon all the evidence in this case, it is the opinion of this Board that the special exception petitioned for should not be granted. In order to grant a special exception it is incumbent upon the Petitioner to satisfy the Board that the conditions imposed by Section 502.1 of the Baltimore County Zoning Regulations would be met. This section is as follows:

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

- a. Be detrimental to the health, safety, or general welfare of the locality involved;
- b. Tend to create congestion in roads, streets or alleys therein;
- c. Create a potential hazard from fire, panic or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- f. Interfere with adequate light and air."

It is the opinion of this Board that the subject proposal would be detrimental to the general welfare of the surrounding area and potentially to the entire Baltimore County, and perhaps Baltimore City, from the threat of pollution to the reservoir. Additionally, the Board is constrained to find that the conditions imposed regarding the traffic cannot be satisfied, and that the subject proposal would create serious problems in this regard, and that there would be further safety problems incurred not only from the traffic congestion created but also to other vehicular traffic, as well as pedestrians and those on horseback. The Board is further impressed by increased danger from fire, and particularly from the possibility of the limitation of the Volunteer Fire Department's firefighting capability due to road congestion. Furthermore, we find that the danger from pollution, whether by runoff or failure of sewerage disposal systems, while speculative, is nevertheless a real threat. Consequently, we find that the conditions imposed by Section 502.1 (supra) will not be met by the proposal which is the subject of this petition, and for those reasons the requested special exception will be denied.

Dennis G. Smith - #75-118-X

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ORDER

For the reasons set forth in the foregoing Opinion, it is this 2nd day of July, 1976, by the County Board of Appeals, ORDERED that the Order of the Zoning Commissioner, dated April 1, 1975, is affirmed, and that the special exception petitioned for, be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Rules 8-1 thru 8-12 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Reiter, Jr., Chairman

Robert L. Gilman

John A. Miller

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

April 16, 1975

JAMES D. NOLAN
J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM H. HESSON, JR.
KENNETH H. MATTERS

AREA CODE 301
TELEPHONE
823-1800

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

Re: Petition for Special Exception Beginning
405' W of Bulls Sawmill Road and Bulls
Sawmill Road Extended - 6th Election District
Dennis G. Smith - Petitioner
No. 75-118-X (Item No. 49)

Dear Mr. Reiter:

Please enter my appearance in the above entitled matter on my own behalf as a party protestant and on behalf of the following nearby or adjoining property owners to the property in issue, as well as on behalf of other parties who will be named at the time of the hearing before the Board. It will be appreciated if your office will include me on the mailing list in this matter and keep us informed of all developments.

Dr. William Scott
Mt. Carmel Rd., Freeland 21053
Mrs. Jessie Scott
Mt. Carmel Rd., Freeland 21053
Mrs. Shirley Party
Mt. Carmel Rd., Freeland 21053
Mr. Joseph Smith
Bulls Saw Mill Rd., Freeland 21053
Mrs. Virginia Smith
Bulls Saw Mill Rd., Freeland 21053
Mr. Raymond Anchors
Bulls Saw Mill Rd., Freeland 21053
Mrs. Marie Fern
Bulls Saw Mill Rd., Freeland 21053
Mr. Ronald Debus
Bulls Saw Mill Rd., Freeland 21053

The Hon. Walter A. Reiter, Jr.
April 16, 1975
Page two

Mr. Marty O'Neill
Beckleysville Rd., Freeland 21053
Mr. Earle Plumhoff
Beckleysville Rd., Freeland 21053

Thanking you for your aid in this regard, I am
Sincerely yours,
J. Earle Plumhoff
J. Earle Plumhoff

JEP/hl
cc: Robert A. DiCicco, Esquire

Dr. William Scott
Mrs. Jessie Scott
Mrs. Shirley Party
Mr. Joseph Smith
Mrs. Virginia Smith
Mr. Raymond Anchors
Mrs. Marie Fern
Mr. Ronald Debus
Mr. Marty O'Neill

Rec'd 4/16/75
10:20 a.m.

RE: PETITION FOR SPECIAL
EXEMPTION
Beginning 405' W of Bulls
Sawmill Road and Bulls
Sawmill Road Extended -
6th Election District
Dennis G. Smith, Petitioner
NO. 75-118-X (Item No. 49)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

APPEAL

Kindly enter an Appeal in the above case on behalf of
Dennis G. Smith, Petitioner, to the County Board of Appeals from
the Order passed herein under date of April 1, 1975 by the
Zoning Commissioner of Baltimore County.

RODY & RODY, CHARTERED
ROBERT S. RODY
ATTORNEYS FOR PETITIONER
700 EQUITABLE BUILDING
BALTIMORE, MARYLAND 21204
727-0033

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 17988

DATE April 10, 1975 ACCOUNT 91-662

AMOUNT \$30.00

DISTRIBUTION
WHITE - CASHIER
Robert S. Rody, Esquire
Cost of Filing of an Appeal and Posting of Property on
Case No. 75-118-X (Item No. 49)
Beginning 405' W of Bulls Sawmill Road and Bulls Saw-
mill Road Extended - 6th Election District
Dennis G. Smith - Petitioner

YELLOW - CUSTOMER
FINK - AGENCY
B.U.C.C.



Recd. 7-27-76
2:55 PM

DENNIS G. SMITH
for special Exception for
Community Buildings, etc.
Beginning 405' W of
Bulls Saw Mill Road and
Bulls Saw Mill Road Extended
Sixth District
Case No. 75-118-X

BEFORE THE
BALTIMORE COUNTY
BOARD OF APPEALS
Case No. 75-118-X

MEMORANDUM

Protestant's first contention in its Motion for Dis-
missal is that the Petitioner's proposed use of the land is per-
mitted only in a B. M. or B. R. zone, not an R. D. P. zone under
Baltimore County Zoning Regulations (1975 Edition). The cited
zoning regulations utterly refute this contention. Although the
Protestants maintain that the proposed use is actually "in the
nature of golf courses, country clubs, or other outdoor recreation
clubs....," this, of course, is specifically provided for in the
zoning regulations applicable to a R. D. P. zone. In Article 1A,
Rural and Rural Suburban Low Density Zones, Section 1A00-R. D. P.
Zones, 1A00.2 (B) Uses Permitted by Special Exceptions: (10)
"golf courses, country clubs, or other outdoor recreation clubs;
also quasi-public camps, including day camps" are clearly listed
as uses permitted as special exceptions. For this reason, by the
Protestant's description the Petitioner is well within the over-
all design for land use in Baltimore County, as promulgated in
the Baltimore County Zoning Regulations (1975 Edition).

In regard to the Protestant's second point in the Mo-
tion for Dismissal, that the proposal was improperly classified
as 1A00.2 B.6, "Community buildings, swimming pools, or other
structural or land uses devoted to civic, social, or recreational,
or educational activities," when according to the Protestants,
the proposal should have been classified as 1A00.2 B.10 "Golf
courses, country clubs, or other recreational clubs; also
quasi-public camps, including day camps." Although the Protes-
tants have not shown that the Petitioner's proposal is not within
1A00.2 B.6, even if this were true, there is no support in the

Petition of
Dennis G. Smith
for Special Exception
for Community Buildings, etc.

BEFORE THE
BALTIMORE COUNTY
BOARD OF APPEALS
75-118-X

ANSWER TO MOTION FOR DISMISSAL

The Answer of Dennis G. Smith, Petitioner, to the Motion
for Dismissal heretofore filed herein by the Protestants, respect-
fully shows:

1. Answering paragraph one thereof, he vehemently denies
the allegation contained therein and demands strict proof thereof.
2. Answering paragraph two thereof, he denies that the
proposed area was not "... properly petitioned for, advertised
or heard," because of an alleged distinction in the category of
special exception between that sought and that described by the
testimony and evidence adduced in support of his said Petition;
on the contrary, he asserts that his proposed use falls fairly
and squarely within subsection B.6 (community buildings, etc.)
more appropriately than under subsection B.10 (golf courses, etc.);
that in any event, even if either subsection were applicable, no
harm or defect has been shown or alleged by Protestants, and
further, even if B.10 alone were correct and B.6 incorrect, as one
category to which the Petition should have referred, it is clearly
de minimis and pure technicality without any substance. Protes-
tants knew and had notice from the outset and from the hearing
before the Zoning Commissioner, at which all of their leaders
attended and a number testified, as to the nature and character
of said petition and never did they raise this issue, that said
knowledge and notice bars this argument now.

Further answering said Motion, Petitioner attaches hereto
his memorandum of law applicable to the points raised therein.
and for other reasons to be assigned at any hearing
scheduled on this Motion.

case law for the Protestant's contention that therefore, the pro-
posal was not properly "petitioned for, advertised or heard."

In Largo Civic Association v. Prince Georges County,

21 Md App76, 318 A2d 834 (1974), the district council had approved
a zoning change where the application and notice had indicated a
desire to rezone the property to C-1 (local commercial) although
the intent was actually for partial C-1, R-30 (multiple family)
and RT (townhouse) zoning. At the hearing, the Protestants
attended and testified against all of the applicant's proposals,
not merely the C-1 classification. In affirming this decision,
the Court of Appeals noted that the applicants had arrived at
the hearing prepared to contest any residential rezoning as well
as the C-1 zoning. The evidence presented made it obvious that
the appellants were not misled by the posted notice. The court
quoted from Judge Singley's opinion in McLay v. Maryland Assemblies,
Inc., 269 Md 465, 306 A2d 524, at 531 (1973), that:

"While failure of an administrative board to give proper
notice is jurisdictional and in some circumstances
may be fatal... the requirement of notification purposed
to inform may be satisfied by actual knowledge. Clark v.
Wolman, 243 Md 597, 221 A2d 687 (1966), especially when
it is acted upon." Largo, supra, at 841.

The court in Largo, supra, held that the appellants
there possessed actual notice within the meaning of McLay v. Mary-
land Assemblies, Inc., supra. For the same reasons, the Protestants
in the instant case had sufficient notice. They had actual no-
tice of the proposal of the Petitioner and acted upon it. The
record shows that the Protestants presented evidence at the hearing
in an attempt to defeat the recreational use proposed by the
Petitioner. It is therefore obvious that the Protestants possessed
actual knowledge and prepared their case on the basis of such know-
ledge.

In reaching a similar decision in Cassidy v. County
Board of Appeals of Baltimore County, 218 Md 418, 146 A2d 896

RODY & RODY, CHARTERED

ROBERT S. RODY
ATTORNEY FOR PETITIONER

I certify that I mailed a copy of the foregoing Answer
to Motion for Dismissal on this 14th day of February, 1976, to
J. Earle Plumhoff, Attorney for Protestants, Nolan, Plumhoff
and Williams, 204 W. Pennsylvania Avenue, Towson, Maryland 21204.

ROBERT S. RODY

County Board of Appeals
Room 219
Court House
Towson, Maryland 21204

Attention: Edith T. Eisenhart,
Administrative Secretary

Re: Case No. 75-118-X; Dennis G. Smith

Gentlemen:

Kindly strike my appearance as Counsel for the
Parkton Community Association, Inc. in the
above-entitled case.

Very truly yours,

Anthony J. Sacco

AJS:dec

cc: Newton A. Williams, Esquire and
J. Earle Plumhoff, Esquire

Recd. 7-27-76
2:55 PM

(1958), the court quoted 2 Merrill, Notice, section 769 for
the proposition that:

"The notification is adequate if it fairly informs the
noticee of the nature of the proceedings and the capacity
in which he is required to appear and answer... and he
is the heart of the requirement of notification in admin-
istrative proceedings, the noticee should be apprised clearly
of the character of the action proposed and enough of the
basis upon which it rests to enable him intelligently to
prepare for the hearing. If this minimum requirement is
met, the notification is adequate, no matter how much
it may fall short of the standards of pleading in judi-
cial contests." Cassidy, supra, at 599

Further support for this can be found in Clark v. Wolman,
supra, where the Court of Appeals reiterated the principle that:

"The law, in its majesty, is not designed to require
futile action or idle gestures. It is settled that
notification purposed to inform may be replaced by actual
knowledge... And this is especially so when the knowledge
has been acted upon without reliance upon the notifica-
tion's absence or its defects" at 688.

The Protestant's actual knowledge, and the fact that
they acted on this knowledge at the Petitioner's hearing is
clearly sufficient by the precedents established by the Court of
Appeals of Maryland, in spite of any technical flaw which the
Protestants may claim exists.

The Petitioner respectfully requests that the Protestant's
Motion for Dismissal be denied.

Respectfully submitted,

ROBERT S. RODY
RODY & RODY, CHARTERED
ATTORNEY FOR PETITIONER

I certify I mailed a copy of the foregoing Memorandum
on this 14th day of February, 1976 to J. Earle Plumhoff, Attorney
for Protestants, 204 W. Pennsylvania Avenue, Towson, Maryland
21204.

ROBERT S. RODY

Anthony J. Sacco
ATTORNEY AT LAW
808 COURTLAND AVENUE
TOWSON, MD. 21204

July 26, 1976

File

Anthony J. Sacco
ATTORNEY AT LAW
808 COURTLAND AVENUE
TOWSON, MD. 21204
January 2, 1975

Mr. S. Eric DiNenna
Zoning Commissioner for Baltimore County
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: In the Matter of the Application of Dennis Smith, for
Special Exception for Section B-6 Use; Case Number 75-118-X.

Dear Mr. Commissioner:

I represent the Parkton Community Association, Inc., a party-
protestant in the above-captioned.

Kindly enter my appearance as attorney of Record and forward
a copy of your Opinions directly to this office.

Thank you very much for your cooperation.

Very truly yours,

Anthony J. Sacco

AJS:law

cc: J. Earle Plumhoff, Esq.
A. Carl Hershfeld, President



IN THE MATTER OF THE
PETITION OF
DENNIS G. SMITH, for
Special Exception for
Community Buildings,
Swimming Pools or other
Structural or Land Uses
Devoted to Civic, Social,
Recreational or
Educational Activities,
beginning 405 Feet West
of Bulls Saw Mill Road and
Bulls Saw Mill Road
Extended, in the
6th Election District

BEFORE THE
BALTIMORE COUNTY
BOARD OF APPEALS
Case No. 75-118-x

MEMORANDUM ON BEHALF OF DENNIS G. SMITH, PETITIONER

GENERAL FACTS

This is a petition for special exception by the owner of approximately 70 acres of land in the Freeland area of North Baltimore County, near Prettyboy Dam, to use his wooded, rolling land unimproved at present except for an old cottage, barn and shed, and a pond (created by him pursuant to a conservation agreement with the Department of Agriculture) as the situs for a private family recreational club. Hearings were held on August 14, 1975, October 14, 1975, October 23, 1975 and January 22, 1976. Petitioner's land abuts Bull Saw Mill Road along intersection with Middletown Road, a major east-west road in the area, which in turn connects to Interstate 83 and to Falls Road. It lies in a sparsely developed area. Petitioner, a native of the area who attended public schools, including Hereford High School, purchased c. 60 acres in 1969 and the remaining c. 10 acres in 1974.

Petitioner presented a civil engineer, a traffic engineer, a real estate expert, an engineer specializing in and about to receive doctoral degree in environmental impact matters, whose testimony included market feasibility, a soil conservationist, a representative of a major swimming pool installation company, a sound control equipment specialist, and several neighboring

would not be able to use the facilities.

Testimony of Messrs. Kotschenreuther, Ashe, Noble and Salmon, all residents within the area, corroborated the need for recreational facilities, the lack of increased traffic impact in the area, the lack of sound intrusion to be expected, and the general desirability of the proposal. Testimony of Mr. Polk, of the soil conservation service, verified the construction of the pond in accordance with Department of Agriculture specifications within the past several years and the type of soil and terrain described by Petitioner's witnesses Fick and Frangos.

EVIDENCE FOR PROTESTANTS

Mr. Gelston, an elderly real estate broker, trumpeting a lack of acquaintance with the BREIS and other recent publications projecting the desiderata of planning for Baltimore County and an antagonism for the proposal because it is a 'poor location' for a private club, claimed without benefit of any market study or information other than his own opinion, that the area was too sparsely populated to need such a recreational facility and that there were too many competing clubs so that competition would be too great; that public school grounds provide additional recreational facilities.

Mr. Moore, a County traffic expert, agreed with Dr. Mulinazzi's determination of the capacity of Bull Saw Mill Road, and opined that 'congestion' would develop if 750 autos attempted to leave at the same time through the same route, defining congestion as more than one hour's delay in leaving a given point. He admitted that half the cars could exit the parking lot through Bull Saw Mill Road extended and around into Middletown Road, thereby cutting the 'departure' time in half, but claimed, despite obvious arithmetic to the contrary, that such vehicles would impede the traffic entering Middletown Road at Bull Saw Mill Road although

property owners, in addition to his own comprehensive and knowledgeable testimony and numerous plats and exhibits in support of this petition. Protestants included several nearby property owners, the representative of an improvement association, county traffic, environmental and zoning experts, a representative of the fire department and one outside real estate expert, and several exhibits. A Petition to Dismiss was filed and Petitioner has just filed his Answer thereto and a brief memorandum therewith.

EVIDENCE FOR PETITIONER

The testimony for this Petition included that of Engineer Fick, who testified the club to be established would be so limited in membership that not more than 1500 people (excluding personnel employed there) could be on site at any time; a maximum of 750 parking spaces would be adequate, and would be situated at a convenient point, at one end of the subject property, with access to two exit routes, that area to be improved by an open, pervious surface (without stormwater runoff problem) protected by wood fencing and subdued lighting, and operated by attendants at a gate, with control procedures; the club would initially expect to install an expensive olympic size swimming pool through a professional installer, several tennis courts, a picnic area with tables, a baseball field, and a facility for serving of foods and nonalcoholic beverages, the issue of a license for alcoholic beverages to await the desire of the membership in due time; sanitation would be provided onsite and without risk of pollution of the nearby water supply. Petitioner's map, with overlay, shows approximately 30% wooded area, there is a stream which enters the Prettyboy Dam, 2.7 miles away, the topography is steep, elevations varying from 580 feet at the lower level to over 700 at the top, the specially constructed one acre pool would be of value as an emergency fire protection resource, capable of providing a stream flow for about 10 hours at a 1500 gallons rate of service; the proposed sanitation

he admittedly had no figures to show that the capacity of Middletown Road (900 - 1000 cars/hr.) would even be approached, especially on a weekend date by addition of such vehicles to the ordinary volume of traffic, and although some traffic might exit the club through Bull Saw Mill Road Extended and take Beckleysville Road and/or Falls Road as their route out.

The requirement that the proposal would not violate any of the criteria of section 502.1 of the County zoning regulations was expressly and adequately vouchsafed by expert witnesses Fick, Horn, Mulinazzi, and Frangos.

Chief Light, of the County Fire Department, admitted that fire engines could negotiate Bull Saw Mill Road with traffic travelling on the opposite direction and that the pond would be a fire fighting resource, and stated that fires attract more vehicles than usual to any given road, and generate traffic problems.

Mr. Solomon, county environmental planner, emphasized the importance of Pretty Boy Dam, but admitted that proper 'closed' construction of sanitary facilities would eliminate all concern, in this regard, of pollution of the water supply.

Mr. Dillon, of the county planning department, stated one property of the subject property was proposed for RC 2 zone, and the western remainder for RC 4.

Dr. Scott, whose 140 acre property abuts petitioner's, but whose home is close to Mt. Carmel Road, claimed the proposal might endanger (through fire) his tree nursery, the club members might trespass on his property, and that noise from the club might disturb him.

Mrs. Roemer, not a property owner, but representing an improvement association whose members reside in the 6th and 7th election districts, claimed her group desired to retain the rural nature of the area and that noise might be produced by persons during their way to the club and stopping for directions and additional traffic in the roads and the possibility of septic tanks

facilities will meet all county code and federal environmental protection requirements; the club proposal - based on 2 1/2 acre lot and 3 1/2 persons per lot - would generate a lesser septic tank capacity use that would a residential development; the swimming pool would accommodate up to 335 persons.

Testimony of Dr. Mulinazzi, a member of the University of Maryland (College Park) faculty in traffic engineering, established through reference to at least 21 photographs admitted into evidence as Petitioners Exhibit 2A, his complete familiarity with the location, the access and major roads of the area, and the general topography. He testified the road was about 16 - 17 feet wide and had an estimated level of service D (capacity of 209 vehicles per hour, whereas Middletown Road, with a width of 20 feet, at 'level of service C,' had a capacity of 800 vehicles per hour in both directions; that by proper design of the parking lot area with wide aisles and stalls, vehicles could be diverted into the lot off of Bulls Saw Mill Road so as to minimize or even eliminate any congestion on that road.

Testimony of Mr. Horn, real estate expert, showed that the proposal would not in any way depreciate property values, that values adjacent to other existing clubs in the area appreciated comparably to those not adjacent, and that the proposal would be in keeping with the rural nature of the area, and that the proposed area would fill a recreational need in the area, and that the petitioner's land was ideal for the purpose.

The comprehensive and thorough testimony of Engineer Frangos, supplementing introduction of the BREIS analysis and several of his own written publications analyzing the proposal, which were admitted into evidence, confirmed that from the standpoints of planning and zoning, now and in the foreseeable future, environmental impact, aesthetics, recreational need, traffic engineering, financial and market feasibility, travel time to the site and compatibility with the rural region of Baltimore County in which it is

discharging into the Dam. She would not answer questions as to which she preferred - a housing development on the 70 acres or 70 acres unchanged except for additions of a swimming pool, two tennis courts and some picnic tables.

Mr. O'Neill, a resident of Beckleysville Road for three years and a realtor, claimed there might be fire and vandalism dangers, trash on the roads from picnics, and destruction of property.

Mr. Anchors, who lived on Bull Saw Mill Road for over two years, across from the subject property, complained of a lowering of property values, increase in traffic on the road, and a detrimental effect on health and welfare. He admitted in cross-examination he had himself sold a number of lots to persons who built or intended to build homes on Bull Saw Mill Road, thereby increasing traffic, sewer and other problems in the area.

Wayne Kurtz, a young occupant of Bull Saw Mill Road, was concerned about 'safety' and the effect on his farming activities, in that he must use the road to move tractors, combines, etc. He admitted his own activities might be a 'road' and 'safety hazard'.

Mr. Debus, a property owner of Bull Saw Mill Road for four years who only arrived there in August 1975 claimed concern for the safety of his children when they bicycled on the road, and felt the proposal would lower his property value, without specifying how.

LAW AND ARGUMENT

The law is clear that an applicant for a special exception is entitled to enjoy same if he shows that his proposed use "meets the prescribed standards and requirements." "He does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community." *Anderson vs. Sawyer*, 329 A2d 716,720 (12/16/74 affirming Judge MacDaniel, Circuit Court of Baltimore County in reversing a decision of the Baltimore County

situated, - considering factors of water, sewage, physiography, soil conservation (or pedology) surface hydrology, vegetation, wildlife, sound control, and the importance of the private sector of the economy in development of recreational uses, the subject property offered an unique opportunity for quality recreational facilities, at no cost to the county. A study in collaboration with Mr. Kenney, sound control specialist, showed that there would be absolutely no penetration of sound outside the boundaries of petitioner's property even at a possible 'rock' musical concert located in the 'hollow' at one end of the subject property.

Testimony of petitioner confirmed his plans for a quality, family oriented recreational facility, with the strong financial underpinning of mortgage free ownership of the land in question, conservatively estimated by him as worth \$150,000, and with every expectation of interesting enough memberships (500 in three years) to cover the operating expenses without any difficulty. He plans a facility serving food and beverages, and a pool, including cabana costing in excess of \$100,000. Two tennis courts would cost \$23,000 - 25,000 with potential up to six courts. He plans possible conversion of the barn into a clubhouse with a possibility of a new building in the future, the screening of the entrance area with shrubbery, and a sound system which will permit sound control over the entire area. Primary use would be from late May to October, at the outset. The club would be operated as a nonprofit organization. He was unconcerned about the investment return to himself. He was aware of the cost of lighting (low voltage - \$6,000 - 10,000) interest cost on a pool (9 - 9 1/2%) and had calculated that the initiation fees and membership fees plus concession revenue would generate sufficient capital to 'carry' the club. He planned to have a resident manager, pool attendants, and other necessary employees, and would doubtless generate employment for the local youth. He had done sufficient market study to feel comfortable with economics of the situation. The general community

Board of Appeals which had desired a special exception for construction of a funeral home on land zoned for residential use). This important recent decision emanating from Baltimore County zoning regulations also points out, citing *Rockville Fuel and Feed Co. v. Board* 257 Md 183, 262 A2d 499 (1970):

"If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal." The case before us falls within the latter category." This important decision is photocopied in full and attached hereto for your convenience.

In that case and in the case at bar, an important issue in the protestants' case was alleged traffic congestion to be generated by the proposal. In *Anderson vs. Sawyer*, supra, it was held that, respecting traffic, the Board needed proof that the use would create congestion "detrimental to the general welfare of the locality involved." The lower court and appellate court held, reversing the Board, that there was no such proof. Petitioner's traffic expert therein said the road in question "...could comfortably and safely accommodate the volume of traffic to be generated by the proposed use." A county expert merely opined that increasing traffic in a residential neighborhood was undesirable, but did not rebut or contradict petitioner's expert. No lay testimony significantly added to the testimony protestant's expert

therein. Moreover, the court criticized that expert's analysis of the traffic pattern as being 'vague and generalized,' amounting to no evidence at all.

The instant Petition is strikingly similar. Dr. Mulinazzi, Petitioner's traffic expert, described Bull Saw Mill Road and its capacity per hour, also characterizing its juncture with Middletown Road, giving its capacity, and the interrelation of the property and Bull Saw Mill Road Extended, Mt. Carmel Road, and other roads. He denied there would be 'congestion,' especially if the parking lot were designed properly. Mr. Moore, a county traffic engineer, agreed with Dr. Mulinazzi, but stated that 'congestion' (one hour delay in departing from the club) would result if the cars of all 750 parking places were to depart at the same time. This testimony failed to consider other routes out of the lot at this hypothetical moment, which is obviously not a realistic or practical consideration or one that would, in any event affect the "general welfare of the locality," even if it might at a peak time adversely affect the club members at the back end of the parking lot. No other testimony on behalf of protestants added to this traffic argument; accordingly, as in Anderson vs. Sawyer, the objection has no probative value.

There were rantings by several lay witnesses that petitioners proposal might adversely affect their property values, but no clear evidence of this was presented. Certainly their expert, Mr. Gelston, failed to show this. His main point was roughly, that there was no need for the proposal because of the alleged abundance of other recreational clubs and facilities, and that it was a poor location for a club because it was so "rural" an area. This, of course, merely illustrated his and Protestants' depth of misunderstanding of the entire petition. Witnesses Horn and Frangos, especially the latter, showed by overwhelming scope of knowledge of all facets of the real estate, environmental, planning, zoning, market feasibility and other criteria cited previously, that the proposal

would be a needed benefit to the north county. In any event, they demonstrated that there would not be a detriment to the general welfare. Petitioner's own testimony showed the depth of thought and consideration accorded to the interests and welfare of the community on the part of a young man who has spent most of his life there. This effort was far above and beyond the call of duty' in a special exception case.

There were many lesser considerations, from fire hazard to noise levels, but no evidence adduced by Protestants to show the degree of general harm necessary to defeat this eminently appropriate petition to put "community buildings" devoted to "recreational use" in a suitable outdoor setting with virtually no effect upon the environment. Even protestants' county environmental expert - Solomon - agreed that the proper septic system would eliminate any water pollution danger.

The 1973 case of Turner vs. Hammond 270 Md 41, 310 (A2d) 543 in which a property owner reversed a lower court (Wicomico County) decision upholding a Board decision denying a special use exception, attached hereto, is very similar to Anderson vs. Sawyer in its analysis of the evidence, including the traffic issue raised in both. Petitioner won because he had a right to the special exception, once he showed by clear, probative evidence that he met the prescribed standards. See also Gow vs. Atlantic Richfield, 341 A2d 832 (1975) (also attached hereto) in which in a Howard County case, affirming the lower court's reversal of his zoning board, the appellate court, though troubled by the traffic issue, as was the lower court, defined the proper test as "...a comparison between the traffic problems that might arise under the proposed use and traffic problems that could arise from the usage of the premises now permitted by law." (p. 836) and not the traffic existing under the present use of the property by the owner-petitioner. The appeals court then said: "Although, as Judge Meegill noted, the Board could correctly conclude that the requested use

would considerably increase the volume of traffic on the premises over existing traffic patterns and thereby menace the public safety or interfere with the reasonable enjoyment of people in their homes, we also agree with him that this reason would be insufficient to deny the application because similar or even more disadvantageous traffic conditions could easily arise if the premises in question were utilized for any of the lawful purposes now permitted under the heavy industrial zoning affecting the property. We believe the Board's refusal, therefore, to permit this special exception was arbitrary, illegal and capricious." See also: Cason vs. Board of Prince George's Co. 276 Md 660; Montgomery Co. vs. Merlands 96A(2d) 261 (1953); Prince George's County vs. Ziegler 223 A(2d) 255 (1966).

Obviously, even if the Board in the instant petition should conclude that the club will increase the volume of traffic on Bull Saw Mill Road, it is not a reason to deny the petition unless Protestants' evidence showed it would increase such traffic beyond any use permitted for any of the lawful purposes, (including a substantial housing development) of the zone. There was no such evidence presented or even alluded to herein.

CONCLUSION

Protestants have not shown a reason to deny the special exception sought herein. In fact, there are overwhelming reasons to grant it. It is in keeping with the determined new ideas and ideals of planning for the preservation of the north county in its beautiful, natural, rural condition. Petitioner, a native, is the kind of person with the feeling for the area who deserves an opportunity to develop his land in accordance with those ideas and ideals. He voluntarily limited the scope of the use proposed to 1500 persons. His request should be granted.

Respectfully submitted,
Robert A. DiCicco
Robert S. Rody, Esquire
Attorneys for Petitioner

I certify I mailed a copy of the foregoing Memorandum this 9 day of February, 1976 to J. Earl Plumhoff, Esquire, Attorney for Protestants, 204 W. Pennsylvania Avenue, Towson, Maryland 21204.

ROBERT S. RODY

DENNIS G. SMITH : BEFORE THE
for Special Exception for : BALTIMORE COUNTY
Community Buildings, etc. : Beginning 405' W of
Bulls Saw Mill Road and : BOARD OF APPEALS
Bulls Saw Mill Road Extended : Case No. 75-118-X
Sixth District
Case No. 75-118-X

PROTESTANTS' MOTION FOR DISMISSAL

The Protestants herein, namely, Dr. William Scott, Mrs. Jessie Scott, Mrs. Shirley Party, Mr. Joseph Smith, Mrs. Virginia Smith, Mr. Raymond Anchors, Mrs. Marie Fern, Mr. Ronald Debus, Mr. Marty O'Neill, Mr. Earle Plumhoff, and Mrs. Susan Plumhoff, by their attorneys J. Earle Plumhoff and Nolan, Plumhoff and Williams, move that the Petition for a Special Exception filed herein by Dennis G. Smith be dismissed by the County Board of Appeals on the following grounds:

1. That the proposed use is in reality a commercial recreation enterprise which is permitted only in a B.M. or B.R. zone under the Baltimore County Zoning Regulations (1975 Edition), and is not permissible as a special exception in an R.D.P. zone.
2. That the proposed use is not properly classified as a "(c)ommunity buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational or educational activities", but, rather, is in the nature of "golf courses, country clubs, or other outdoor recreation clubs..." (emphasis supplied), and as such has not been properly petitioned for, advertised or heard.

WHEREFORE the Protestants move that the within case be dismissed with prejudice.

J. Earle Plumhoff
Nolan, Plumhoff and Williams
204 W. Pennsylvania Avenue
Towson, Maryland 21204
823-7800

I HEREBY CERTIFY that on this 14th day of Oct, 1975, a copy of the foregoing PROTESTANTS' MOTION FOR DISMISSAL was hand delivered to:

Charles E. Brooks, Esquire
Brooks & Turnbull
610 Bosley Avenue
Towson, Maryland 21204

John W. Hessian III, Esquire
People's Counsel
and
Charles E. Kountz, Jr., Esquire
Deputy People's Counsel
County Office Building
Towson, Maryland 21204

Robert Rody
Earle Plumhoff
J. Earle Plumhoff

STENDEL ASKEW & WILSON

LAW OFFICES
308 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

LEWIS E. STENDEL (1964-1970)
TELEPHONE
AREA CODE 301
807-5800

August 20, 1974

E. Eric DiNenna, Esquire
Zoning Commissioner for
Baltimore County
County Office Building
Towson, Maryland 21204

Re: Property of Dennis Smith
Special Exception for Recreation
Facility in Existing RDP Zone
August 15, 1974
Election District #6

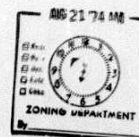
Dear Mr. DiNenna:

Kindly enter my appearance on behalf of Mr. Dennis Smith in regard to the above-captioned matter.

Very truly yours,

Robert A. DiCicco

RAD/slm
cc: Mr. Dennis Smith
Robert Rody, Esquire



ASKEW, WILSON & DICICCO

LAW OFFICES
308 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

JOHN L. ASKEW
MICHAEL E. WILSON
ROBERT A. DICICCO

April 10, 1975

S. Eric DiNenna, Esquire
Zoning Commissioner
Baltimore County Office of Planning
and Zoning
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Dennis Smith Appeal

Dear Mr. DiNenna:

As per the conversation with your office this date, please withdraw my appearance as co-counsel for the Appellant, Dennis Smith of your April 1, 1975 Order.

Very truly yours,

Robert A. DiCicco

RAD/slm
cc: Robert S. Rody, Esquire
Dennis Smith

DENNIS G. SMITH : BEFORE THE
for Special Exception for : BALTIMORE COUNTY
Community Buildings, etc. : BO ID OF APPEALS
Beginning 405' W of Bulls : Case No. 75-118-X
Saw Mill Road Extended
Sixth District
Case No. 75-118-X

PROTESTANTS' MEMORANDUM IN SUPPORT
OF MOTION FOR DISMISSAL

The Protestants herein, namely, Dr. William Scott et al., by their attorneys J. Earle Plumhoff and Nolan, Plumhoff and Williams, respectfully offer this Memorandum in Support of the Protestants' Motion for Dismissal previously filed herein.

As the Board will recall, early in the proceedings before the Board, the Protestants, by counsel, moved for the dismissal of these proceedings on two grounds, namely:

1. That the proposed use is in reality a commercial recreation enterprise which is permitted only in a B.M. or B.R. zone under the Baltimore County Zoning Regulations (1975 Edition), and is not permissible as a special exception in an R.D.P. zone.

2. That the proposed use is not properly classified as a "(c)ommunity buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational or educational activities", but, rather, is in the nature of "golf courses, country clubs, or other outdoor recreation clubs..." (emphasis supplied), and as such has not been properly petitioned for, advertised or heard.

This Memorandum will deal with each contention in turn.

Proposal Represents a Commercial Recreation
Enterprise Permitted Only in a B.M. or a B.R. Zone

As the Board knows, Section 233.2 of the Zoning Regulations of Baltimore County (1975 Edition) in speaking of those uses permitted as a matter of right in a B.M. zone, and hence in a B.R. zone, of "commercial recreation enterprises, including dance halls,

skating rinks, and others which - in the judgment of the Zoning Commissioner - are similar, but excluding merry-go-rounds and freak shows, shooting galleries and penny arcades;". Also permitted as a matter of right in a B.M. zone pursuant to Section 233.2 is a theatre, but not a drive-in theatre. In fact, even in a B.R. zone a special exception is required for a drive-in theatre pursuant to Section 236.4 of the Regulations.

On the first point, Mr. Smith indicated that he intends to hold dances on a weekly basis, or perhaps on an even more frequent basis, and the Protestants submit that weekly dances, and particularly dances of a greater frequency than weekly, fall into the category of a commercial dance hall which is specifically permitted only in a B.M. or a B.R. zone. According to counsel's recollection and notes, Mr. Smith indicated that he intended to convert the existing barn into a club house for the purposes of holding dances as well as other functions and affairs.

On the second point, relating to a drive-in theatre, while Mr. Smith did not indicate that he intends to show movies on the property, he did indicate that from time to time concerts and other musical affairs may be held in a section of the property which forms a natural amphitheatre. Protestants would submit that the usual place for holding a concert is a theatre or concert hall, and that depending upon the emphasis, the size of the crowds, and the frequency of such concerts, as well as the sound level, fall into the category of a drive-in theatre permitted only by special exception in a B.R. zone. Protestants would respectfully request that the Board bear these Regulations in mind relating to dance halls and theatres in considering this special exception request.

The Correctness of the Special Exception Petitioned for

As the file in this matter discloses the Petitioner filed his application, and the case was advertised and posted as a petition for a special exception in an R.D.P. zone to permit "community buildings, swimming pools or other structural or land uses devoted to civic, social, recreational or educational activities" pursuant to Section 1A00.2.D.6. The Protestants submit that one who would read the zoning notice in the newspaper, or the sign posted on the property, would naturally be led to believe that some small civic or recreational use in the nature of a fraternal organization, a political organization, or some other like use was being sought. Yet in reality the Petitioner's Site Plan dated August 15, 1974, and his testimony clearly indicate that the Petitioner is seeking permission to use his 69-1/2-Acre property for an outdoor recreation club, a completely different special exception in an R.D.P. zone, pursuant to Section 1A00.2.B.10, as well as an open air concert theatre and a dance hall as previously discussed.

Leaving aside for a moment the open air concert theatre, which may include rock concerts, and the dance hall, it seems clear that the predominant use that the property is slated for is for an outdoor recreation club which is a completely different special exception, even though it is permitted in the same zone. The Petitioner says that the Protestants came to the hearing and were apprised of Mr. Smith's actual plans, but this Board nor anyone will ever be able to say whether many other Protestants from the same area of the County would have attended had the sign posted on the property and the newspaper advertisement properly apprised them of Mr. Smith's plans. In all seriousness, even after hearing multiple days of testimony from the Petitioner the Protestants are still unsure of his plans, but they are certain that it does not fairly fall into the advertised category in which it was placed. As counsel pointed out in the primary Memorandum in this case, the size of the parking lot alone at 8 acres

plus could contain three or four times over the average special exception of the type advertised.

The Petitioner's Memorandum cites several cases, and would attempt to pass this very important matter of proper petitioning off as a mere technicality. The Protestants submit that it is not a mere technicality, that a vital special exception was not noted in either the advertising, the Petition, or the sign posted on the property. The Protestants cite Cassidy v. Board of Appeals, 218 Md. 418, 146 A.2d 896 (1958), as well as Largo Civic Association v. Prince George's County, 21 Md. App. 76, 318 A.2d, 834 (1974) as authority for their position in the matter. However, if one reads these cases it is noted that in both cases the Petition was advertised, posted and heard on the basis of a request for a greater zone, and the zoning authority granted a lesser included zone. In Cassidy, supra, the Baltimore Gas and Electric Company had applied for a reclassification from R.6 to M.H., believing that this was required in order to construct a steam electric generating station and related facilities, but subsequently it was discovered that such a station is permitted by special exception in an R.6 zone which was granted. Thus, the protestants in Cassidy, supra, had come to the hearing prepared to defend against a reclassification from Baltimore County's older residential zone, namely R.6, to its heaviest manufacturing, namely M.H., and they were also well informed of the fact that the Gas and Electric Company proposed to erect a steam electric generating station with related facilities.

In like manner, in Largo Civic Association, supra, the application was for a change from residential to C.1 (Local Commercial). Upon hearing the matter, the Board of County Commissioners sitting in the District Council reclassified 15 acres to the commercial zone and suggested that subject to conditions an additional 27 acres was to be increased in residential density,

-2-

-3-

-4-

with the remainder of the original 77.8 acres to remain in its original classification, namely R-R (Rural Residential). Largo Civic Association, supra, at pages 77 and 78. In McLay v. Maryland Assemblies, Inc., 269 Md. 465, 306 A.2d 524, the landowner in a zoning case involving a non-conforming use tried to claim lack of adequate notice by the Board of Appeals when it got no direct notice, although its attorney had requested a postponement from the Board, see McLay, supra, at pages 476 and 477. Furthermore, no particular means of giving notice was spelled out by the operative statutes, and it was apparent that the party had actual notice. However, the facts of the McLay case bear no relation to the facts in the present case.

In the present case it will never be known whether other parties would have appeared in protest to this request had they known that the entire 69-1/2 acres would be used for an outdoor recreation club, rather than the special exception which was petitioned for. Protestants would submit that the proper course would have been for the Petitioner, if he was unsure of the type of use which he sought, to petition, advertise and post the property in both of these special exception categories in the R.D.P. zone.

The Petitioner seems to argue that a petition and advertisement and posting of any special exception in the R.D.P. zone would enable the Zoning Commissioner and the Board of Appeals to grant any other special exception in the same zone. The fallacy in this position is readily apparent; by trying to maintain, for instance, that a special exception application for a commercial beach for instance could enable the Zoning Commissioner or the Board to grant a special exception for an airport or a cemetery, both of which are other permitted special exceptions in the same zone. Similarly, one could not petition for a special exception for a musical conservatory, and then offer proof that the real

intent is to install a sanitary landfill.

The Protestants would agree that those parties who actually attended either the Zoning Commissioner's hearing or the Board of Appeals' hearing eventually became apprised to some degree as to the Petitioner's plans, and perhaps as to these parties the adequacy of notice may be waived, but the Protestants submit that there is no way that this adequacy of notice can be waived as to persons who did not appear because they were not properly apprised of the Petitioner's plan, either by the Petition, the advertisement in the newspapers, or the posting of the property.

Conclusion

For all of these reasons, and such further reasons as shall be brought out at the time of any hearing by the Board hereon, the Protestants respectfully submit that this special exception case should be dismissed for want of proper notice going to the varied jurisdiction of the Board, as well as for impermissible uses as to the dance hall and outdoor concert theatre.

Respectfully submitted,

J. Earle Plumhoff
J. Earle Plumhoff
and

Nolan, Plumhoff & Williams
Nolan, Plumhoff and Williams
284 W. Pennsylvania Avenue
Towson, Maryland 21204
823-7800

I HEREBY CERTIFY that on this 12th day of March, 1976, a copy of the foregoing PROTESTANTS' MEMORANDUM IN SUPPORT OF MOTION FOR DISMISSAL was mailed, postage prepaid, to Robert S. Rody, Esquire, Rody and Rody, 700 Equitable Building, Baltimore, Maryland 21202, attorneys for Petitioner.

J. Earle Plumhoff
J. Earle Plumhoff

IN THE MATTER OF THE
PETITION OF
DENNIS G. SMITH, for
Special Exception for
Community Buildings,
Swimming Pools or other
Structural or Land Uses
Devoted to Civic, Social,
Recreational or Educational
Activities, beginning 405 feet
West of Bulls Sawmill Road
and Bulls Sawmill Road Extended,
in the 6th Election
District, Baltimore County

* BEFORE THE
* BALTIMORE COUNTY
* BOARD OF APPEALS
* Case No. 75-118-X

MEMORANDUM ON BEHALF OF
PROTESTANTS

SHIRLEY PARTY, et al, Protestants, herein, by J. Earle Plumhoff and Nolan, Plumhoff and Williams, their attorneys, respectfully offer this Memorandum for the consideration of the Board.

Statement of Case

This matter comes before the Board of Appeals as a result of a petition filed by Dennis G. Smith for a Special Exception for "Community buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational or educational activities" (Baltimore County Zoning Regulations, Section 1A00.2B.6.). The matter was first heard before the Zoning Commissioner, Commissioner DiNenna by his Opinion and Order dated April 1, 1975, and the requested Special Exception. The Petitioner then filed an appeal to this Board.

Statement of Facts

The subject property is located 405 feet west of Bulls Sawmill Road and Bulls Sawmill Road Extended and covers an area of 69.5 acres more or less. The tract is located in the Sixth Election District of Baltimore County just north of the Prettyboy Reservoir. The general area is one of

the few areas left in Baltimore County devoted primarily to agricultural land uses. The character of the neighborhood is, consequently, rural and sparsely developed.

The present zoning on the subject tract is Rural Deferred Planning (R.D.P.). On the proposed zoning maps, the bulk of the property is zoned Rural Conservation 2 (R.C.-2) with a portion slated for Rural Conservation 4 (R.C.-4).

Question Presented

Has the Petitioner met the burden of proof imposed upon him pursuant to Section 502.1 of the Baltimore County Zoning Regulations [1975 Ed.].

Argument

The Protestants contend that the Petitioner has wholly failed to meet the burden of proof imposed upon him by Section 502.1 of the Baltimore County Zoning Regulations [1975 Ed.]. Section 502.1 of the Baltimore County Zoning Regulations states:

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

- Be detrimental to the health, safety, or general welfare of the locality involved;
- Tend to create congestion in roads, streets or alleys therein;
- Create a potential hazard from fire, panic or other dangers;
- Tend to overcrowd land and cause undue concentration of population;
- Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- Interfere with adequate light and air."

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With the possible exception of subsection f, "Interference with adequate light and air," of Section 502.1, every other provision of Section 502.1 is clearly applicable to the requested Special Exception and would be violated by granting this request. Accordingly, the impact of provisions a, through e, of Section 502.1 will be considered herein. Subsection a, will be reserved until last as it is the most comprehensive and general provision.

1.) The Special Exception Requested Will Tend To Create Congestion in Roads, Streets and Alleys (Section 502.1 b.)

Testimony was elicited from two traffic engineers, namely, Thomas E. Mulinazzi for the Petitioner, and Richard Moore, a Baltimore County Assistant Traffic Engineer for the Protestants. It is uncontested that the primary means of access to the subject property will be via I-83 to Middletown Road and Middletown Road northwest to Bulls Sawmill Road, then left on Bulls Sawmill Road to Bulls Sawmill Road Extended, off of which will be the entrance to the Petitioner's proposed parking lot. Thomas Mulinazzi in his report and testimony recognized that Bulls Sawmill Road and Bulls Sawmill Road Extended have low road design characteristics and are sixteen to seventeen feet wide, which necessitates low operating speeds. Indeed, the testimony established that Bulls Sawmill Road Extended was only fourteen feet wide in some areas. The distance from Middletown Road down Bulls Sawmill Road and Bulls Sawmill Road Extended southward to the subject site is approximately one mile. Bulls Sawmill Road is a typical rural road with no curb and gutter, no shoulders and drainage ditches along the edges of a substantial portion thereof.

Mr. Mulinazzi concluded that Bulls Sawmill Road could accommodate 209 vehicles per hour although his conclusion was qualified as follows: "This type of calculation is for a relatively long uninterrupted flow road, so I have some doubts on its applicability for a short section of road such as Bulls Sawmill Road. I expected that the comments from the County

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Planning Agency will include (sic) a recommendation calling for the widening of Bulls Sawmill Road from Middletown Road to the site in question . . ." As the Board knows, Baltimore County cannot require the Petitioner to make off-site road or other improvements. Mr. Mulinazzi further admitted on cross examination that the vehicle flow calculations were based upon vehicles moving in both directions and, consequently, it is fair to assume that 209 vehicles could not traverse Bulls Sawmill Road in the space of one hour moving in a single direction. Mr. Moore testified that a wait of more than one hour to enter or exit with a vehicle would constitute traffic congestion under even the most demanding standards.

Inasmuch as the Petitioner proposes 1,500 members and a parking lot with a capacity of 750 vehicles, it is patently clear that ingress and egress of 750 vehicles or even half that number of vehicles will tend to create congestion in roads, streets or alleys under Section 502.1(b). The Petitioner retorts that there are two means of access to and exit from the subject property. The second route is circuitous at best, entailing travel down Bulls Sawmill Road to Mount Carmel Road to Beckleysville Road, then to Middletown Road, entering Middletown Road at a point approximately two miles northwest of the point where Bulls Sawmill Road enters Middletown Road and requiring that vehicles using the alternate means of ingress and egress pass the critical intersection of Bulls Sawmill Road and Middletown Road enroute to I-83.

Mr. Moore repeatedly made the point that vehicles using the alternate means of egress would still be required to pass the intersection of Middletown Road and Bulls Sawmill Road, thereby impeding the more direct flow of traffic from the subject property. Petitioner's questioning and, indeed, their Memorandum makes it plain that Mr. Moore's testimony fell upon deaf ears. The conclusion, however, is inescapable that 750 vehicles, or even half that number, exiting an affair held at the subject site would

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create substantial congestion and traffic backups of an hour or more. While it is perhaps true that some of those attending affairs on the premises may not strenuously object to an hour or more waiting time, the same cannot be said for the seventeen residents of Bulls Sawmill Road who have equal if not superior rights to the use of Bulls Sawmill Road without congestion.

2.) The Special Exception Will Tend to Create a Potential Hazard from Fire, Panic or Other Dangers

Chief Light of the Baltimore County Fire Department testified, without contradiction by the Petitioner, that emergency vehicles would be impeded in reaching the scene of a fire or other emergency by vehicles on Bulls Sawmill Road. If Mr. Moore's estimate of the potential delays of more than one hour is accurate, then such a delay would be catastrophic in case of immediate need for a police car, an ambulance or a fire truck. This testimony further established that some emergency vehicles are up to 96 inches wide, and would, consequently, consume more than one-half of the paved portion of Bulls Sawmill Road. Inasmuch as Bulls Sawmill Road has no shoulders, vehicles already on Bulls Sawmill Road would have great difficulty getting out of the path of an emergency vehicle and undoubtedly would severely hinder the movement of such emergency vehicle. Indeed, if an emergency occurred at or about the time that an affair on the subject property was to commence or at or about the time an affair on the subject property terminated, the movement of an emergency vehicle down Bulls Sawmill Road would be a virtual impossibility.

Further recognition should be given to the fact that a congregation of 1,500 people or even a fraction of that number substantially enhances the possibility of fire, as Chief Light pointed out. Given a crowd of the proportions which the Petitioner proposes, and a fire on the subject property

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(which is all the more likely with 1,500 souls gathered) panic becomes a very real possibility. With patrons scurrying to exit the premises and emergency vehicles endeavoring to enter the premises, a tragedy will be the likely result. The Petitioner responds that the pond on the subject property would be a fire fighting resource, which indeed it may be, however, it would be of little or no value if the fire fighting apparatus could not promptly get to the scene.

In addition to the usual fire dangers which exist for the residents along Bulls Sawmill Road, there also exists a unique danger to an adjoining property. Dr. Scott, one of the Protestants, testified that his property has the longest contiguous boundary with the subject property. Dr. Scott's property is certified as Maryland Tree Farm No. 132, and clearly, special dangers exist for his established land use, as a spark or cigarette flipped from the subject site could totally destroy years of work and growth in the tree farm.

3.) The Special Exception Will Tend to Overcrowd Land and Cause Undue Concentration of Population

Even disregarding the potential hazards from fire and panic, a congregation of 1,500 people on the subject site would clearly cause an undue concentration of population. The character of the neighborhood is such that there is no effective means to prevent patrons from trespassing upon the lands of adjoining property owners. Dr. Scott's property with its long boundary line on the subject site would undoubtedly be very inviting to patrons on the Petitioner's property desiring privacy for whatever reason, or just a peaceful stroll in a rural setting. It is both impossible and impractical to believe that the Petitioner will be able to effectively prevent trespassing on adjoining properties. Additionally, it is foreseeable that vandalism or destruction of property may occur by the introduction of 1,500 non-residents into a rural area with limited police protection. As the Board knows, the nearest Baltimore County Police Station is the Cockeysville Station some fifteen miles away.

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4.) The Special Exception Will Interfere With Adequate Provisions for Sewerage and Water

It is difficult to thoroughly deal with the impact of the requested Special Exception upon water and sewerage in the area. The difficulty, in part, arises from the nebulous fashion in which the Petitioner dealt with this problem. No figures or statistics were presented projecting water consumption or effluent generation of the proposed usage. No test borings were made and no percolation tests were conducted. Indeed, the only evidence the Petitioner offered on this critical subject was the testimony and report of George E. Frangos, an avowed expert in virtually every area of human endeavor. His report includes maps from the Baltimore Regional Environmental Impact Study (BREIS) indicating that the subject area is extremely sensitive biologically and extremely sensitive in regard to water quality.

The burden of proof is on the Petitioner to establish the quantity and availability of sufficient water for the requested Special Exception. It is further their burden to establish that the subject site has sufficient absorptive capacity to assimilate the effluent generated by the proposed use. The septic and water issue is all the more critical in this case because the subject property adjoins the Prettyboy Reservoir, a primary source of the metropolitan area drinking water supply. A portion of the property has been designated RC-4 (watershed); the entire property lies within the Prettyboy watershed. Runoff and septic overflow from the subject site will enter the Prettyboy Reservoir. Based upon the evidence submitted by the Petitioner, it is impossible to make an informed judgment of the impact of the proposed use on water and sewer and thus Petitioner has failed to meet his burden of proving that the grant of the requested Special Exception will not interfere with adequate provisions for sewerage and water.

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5.) The Special Exception Will Be Detrimental to the Health, Safety or General Welfare of the Locality Involved.

a.) Health: In addition to the health hazards likely to result from septic effluents exceeding absorption capacity, there is the more evident problem of noise pollution. The Maryland State Department of Health and Mental Hygiene promulgated regulations on August 6, 1975, pursuant to the Environmental Noise Control Act adopted by the Maryland State Legislature in 1974, and now codified as Article 43, §822, et seq., of the Annotated Code of Maryland. The Noise Control Act and the regulations recognize that "The people of this State have a right to an environment free from noise that may jeopardize their health, general welfare and property or that degrades their quality of life." Art. 43, §822(c), Annotated Code of Maryland. It is further recognized that noise above certain levels is harmful to the health of humans through loss of sleep, speech interference, hearing impairment and a variety of other psychological and physiological factors.

The noise emission standards promulgated by the Department of Health and Mental Hygiene are as follows:

	RESIDENTIAL	
	Day	Night
July 1, 1975	65 DBA*	60 DBA
July 1, 1977	60 DBA	50 DBA

*DBA - sound level in decibels

For enforcement purposes, sound meter readings are to be taken around the perimeter of the property from which the noise is emitted.

The Petitioner proposes to use the requested Special Exception for outdoor music concerts. To this end, Petitioner caused a study to be conducted on his property to determine a noise profile of the site. A noise source was used to generate a 106 dBA output, and sound measurements

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were conducted at various sites on the property. The evidence established that 106 dBA is the typical noise output of a rock-n-roll band. Petitioner concluded that applicable noise regulations could be met by a professionally designed system, and in testimony extolled the natural acoustics of the outdoor concert site.

Surprisingly, the test conducted by the Petitioner under controlled conditions failed to meet the 1975 residential day time noise emission standards at the property lines. If the Petitioner cannot comply with the 1975 standards under laboratory conditions, then it is patently clear that he cannot comply with the 1977 standards.

In addition to the noise emanation from music concerts, the residents will be further plagued by the noise generated by automobiles, motorcycles, applause, children swimming, public address systems, etc. Since the regulations were promulgated to protect the health of the citizens, it can be presumed that violation of the regulations will be detrimental to the health of the residents.

b.) Safety: The introduction of 1,500 people and/or 750 vehicles into a rural area will certainly affect the safety of the residents. Bulls Sawmill Road has no sidewalks and is utilized by children cycling and walking. Prettyboy Elementary School is located at the intersection of Bulls Sawmill Road and Middletown Road, such that children walk or ride to and from the school grounds via Bulls Sawmill Road. The traffic volume generated by Petitioner's proposal would radically alter the rural traffic patterns and safety on Bulls Sawmill Road. Petitioner's most extensive use of Bulls Sawmill Road would coincide with the most extensive use by children which would be during the summer months. The safety of slow moving farm vehicles which presently use the road would also be impaired by the granting of this request.

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c.) General Welfare: In view of all of the detrimental effects already cited which would ensue from granting the requested Special Exception, it is not surprising that the general welfare of the area would be adversely affected. Hugh Gelston, a well known and respected real estate appraiser, testified for the protestants that Petitioner's proposal would operate to depreciate the value of adjoining lands. Some of the protestants also testified that they felt the proposal would impair the value of their properties. Clearly, if Petitioner's project succeeds as envisioned by the Petitioner, the value of neighboring residential properties will be diminished. If, on the other hand, the Special Exception is granted and Petitioner's project fails, then the value of neighboring residential properties will be similarly diminished. Failure of this project would leave the community with a 7-8 acre parking lot, a huge in-ground pool and various other buildings in diverse stages of completion, all of which would deteriorate to the detriment of the community.

The likelihood of failure is not entirely remote when consideration is given to the Petitioner's "Economic Analysis." The Petitioner's testimony established that this entire project would cost approximately \$175,000.00 to \$200,000.00, with an additional contribution of \$150,000.00 land costs, or roughly \$350,000.00. A six (6%) percent return on invested capital would therefore yield \$21,000.00 per annum. For the first five (5) years of operation, Petitioner projects revenues of \$197,260.00 and costs of \$182,335.00 for a net of \$14,925.00. Based upon Petitioner's own figures, his return on invested capital will be .85286%, less than 1%. The same monies deposited in a bank at 5% would yield over \$90,000.00 in the same 5 year period. In view of Petitioner's own financial projections, it is difficult to fathom why Petitioner desires to proceed, unless he is motivated by altruism.

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Law

Protestants agree with Petitioner that the case of Anderson v. Sawyer, 23 Md. App. 612, 329 A2d, 716 [1974], is pertinent to the subject petition for Special Exception. The Court in that case very clearly recognizes that "the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements". Anderson v. Sawyer at p. 617, 329 A2d, at p. 720. The standards and requirements are, of course, found in Section 502.1 of the Baltimore County Zoning Regulations. The testimony adduced by Petitioner in this case makes plain the fact that Petitioner has failed to meet his burden under the applicable standards and requirements of Section 502.1.

The Anderson case further stands for the proposition that a permissible special exception is presumptively in the interest of the general welfare, unless it is shown by probative evidence that the particular Special Exception will cause harm or disharmony. In the instant case, Protestants contend that the scope of the project envisioned by the Petitioner greatly exceeds the intended scope of the Special Exception for "community buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational or educational activities." (Baltimore County Zoning Regulations, Section #1A00, 2B, 6.). It is Protestant's belief that the scope of land uses contemplated by this Special Exception are such that they could in most cases be fully contained within the boundaries of Petitioner's proposed parking lot. Further, Petitioner intends a full blown commercial operation, not for civic, social, recreational or educational purposes, but solely for profit. Petitioner does not propose a community building, an Elks Lodge or Kiwanis Club, on the contrary, what he proposes is commercial enterprise of the magnitude of Painters' Mill, with a swimming pool.

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Conclusion

By virtue of Petitioner's failure to meet the burden of proof imposed upon him under Section 502.1, and in light of the probative evidence of harm introduced by Protestants, it is submitted that this Board is required by both law and logic to rule in favor of Protestants.

Respectfully submitted,

Earle Plumbhoff
J. Earle Plumbhoff
NOLA J. PLUMHOFF & WILLIAMS
Attorneys for Protestants
204 West Pennsylvania Ave.
Towson, Maryland 21204
Telephone: 823-7800

I HEREBY CERTIFY, that on this 15 day of March, 1976, a copy of the foregoing MEMORANDUM ON BEHALF OF PROTESTANTS was mailed to ROBERT S. RODY, ESQUIRE, 700 Equitable Building, Baltimore, Maryland 21202.

Earle Plumbhoff
J. Earle Plumbhoff

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Protestants' argument as contained on p.4 of this Memorandum is fallacious and untenable.

Likewise the presentation of Fire Chief Light of Baltimore County established only that fire engines attract automobiles, that the fire engines might not get through easily on any road when there is a high degree of congestion but failed to establish that there was anything special or peculiar to the problems of firefighters on Bulls Sawmill Road with reference to the alleged effect upon the water and sewer supply suffices to say that the expert introduced by Protestants, Mr. Sullivan of the County's Environmental Planning Department, clearly conceded that proper construction of sanitary facilities with a "closed" system would eliminate any and all reasonable concern as to the possibility of pollution of the nearby Prettyboy Reservoir.

Perhaps the most far fetched of the efforts to carp and criticize Petitioner's proposal is that portion of the Memorandum which suggests the possibility that 1,500 persons might tend to overcrowd the almost 70 acre preserve of Petitioner, and that the use of a cigarette by one or more of them might suddenly present a serious fire hazard especially to the property of Dr. Scott nearby by virtue of his treefarm.

Most touching indeed was the continued concern of Protestants for the economic well-being of Petitioner's project. Especially their conclusion that "it is difficult to fathom why Petitioner desires to proceed unless he is motivated by altruism". It is hoped that this Board will not eliminate altruism as a motivation especially when manifested in a young petitioner born and bred in the north of the County who desires to preserve wide open spaces, in accordance with all of the advanced planning concepts of the area rather than seek routine residential development for this scenic land. If Petitioner chooses to accept a

lesser return on his investment, dollar wise, than would be required by his purportedly altruistic opponents, who apparently believe that anyone not seeking to extract the last and best financial return from the land must be either a knave or a saint, it is respectfully suggested to the Board that instead, they respond to such criticism, with praise; certainly few petitioners appear before it with their horizons so limited to business and with no other purpose in their hearts.

Respectfully submitted,

Robert S. Rody
RODY & RODY, CHARTERED
ROBERT S. RODY
ATTORNEYS AT LAW
700 EQUITABLE BUILDING
BALTIMORE, MD. 21202
727-0033

I CERTIFY that on this 8 day of April, 1976, I mailed a copy of the foregoing Memorandum to J. Earle Plumbhoff, Esquire, 204 West Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Protestants.

Robert S. Rody
ROBERT S. RODY

IN THE MATTER OF THE
PETITION OF
DENNIS G. SMITH, for
Special Exception For
Community Buildings,
Swimming Pools or other
Structural or Land Uses
Devoted to Civic, Social,
Recreational or
Educational Activities,
beginning 405 West West
of Bulls Sawmill Road and
Bulls Sawmill Road
Extended, in the
6th Election District

BEFORE THE
BALTIMORE COUNTY
BOARD OF APPEALS
Case No. 75-118-X

MEMORANDUM OF DENNIS G. SMITH, PETITIONER
IN REPLY TO PROTESTANTS' MEMORANDUM

Protestants have warped and twisted the testimony of evidence as to two issues, primarily traffic, but also sewage disposal. There are no other issues raised by them which even appear to merit a reply.

The traffic evidence consists basically of the testimony of one expert, introduced by Petitioner, namely, Dr. Mulinazzi of the faculty of the University of Maryland. (That he is referred to as Mr. Mulinazzi by Protestants does not detract from his excellent background). Mr. Moore of the county planning department, accepted as correct, Dr. Mulinazzi's statement that the capacity of Bulls Sawmill Road was 209 vehicles per hour in both directions at 'level of service D'. As will be seen by the attached letter of Dr. Mulinazzi, dated March 22, 1976, clarifying the meaning of "209 vehicles per hour", it did not mean that 209 vehicles could not traverse Bull Sawmill Road in the space of an hour moving in a single direction", as stated by Counsel for Protestants at p.4 of his Memorandum on Behalf of Protestants.

Mr. Moore defined "congestion" as a one hour wait to enter or exit a road, and reasoned that inasmuch as Petitioner sought 750 parking spaces, and the road capacity was 209 vehicles per

Thomas E. Mulinazzi
16 Maplewood Court
Greenbelt, MD 20770

March 22, 1976

Mr. Dennis G. Smith
5 West Chesapeake
Towson, MD 21204

Dear Mr. Smith:

After reviewing the memorandum on behalf of protestants, case no. 75 - 118 - X before the Baltimore County Board of Appeals (the case involving your property on Bull's Saw Mill Road), I want to make the following comments.

Mr. Plumbhoff's report contains the following quote from my December 3, 1974 report to Mr. Rody concerning the access to your property on Bull's Saw Mill Road. "this type of calculation is for a relatively long uninterrupted flow road so I have some doubts on its application for a short section of road such as Bull's Saw Mill Road. I expect that the comments from the County Planning Agency will include a recommendation calling for the widening of Bull's Saw Mill Road from Middletown Road to the site in question. . . . I made this statement based on my experience with typical zoning cases in southern Indiana and Kentucky where planning agencies did require off-site road improvements as a criteria for obtaining property zoning. As far as the 209 vehicles/hour value which I quoted, that was a two directional volume. However, the point that I was trying to make was that it is extremely difficult if not impossible to determine the capacity of roads like Bull's Saw Mill Road by the procedures outlined in the highway capacity manual. Because of the short distance from Middletown Road to your property (just over a mile), Bull's Saw Mill Road would operate as an access road. The actual vehicle carrying capacity/hour is probably higher than 209 vehicles/hour or a vehicle every 17 seconds on the average. From a logical standpoint, it seems that Bull's Saw Mill Road should be able to carry more vehicles than that during isolated peak periods.

The second route, entailing travelling down Bull's Saw Mill Road to Mr. Carmel Road to Beckleysville Road then to Middletown Road has the option of using Freedom Road to get to the Maryland Line interchange on I-83. They would not necessarily have to pass through the "critical" intersection of Bull's Saw Mill Road and Middletown Road.

hour, congestion was assured on any peak occasion when the parking lot was full. Protestants' Counsel echoes this reasoning at p.4 of his Memorandum.

This argument is equivalent to one which would deny a bay bridge because there may be one or two days in the summer when the back-up will be so extreme due to overuse or accidents or a combination, that local persons traveling Route 50 in either direction on either side of the bridge may be so inconvenienced that they may be delayed in entering or exiting Route 50. No super highway in the world, existing now or to be constructed in the future, is congestion-proof. Those who enter Route 50 heading for the Bay Bridge on the fourth of July must assume they will encounter heavy traffic conditions. Those who attend a special feature once or twice a year at the Petitioner's Club will accept some delay in egress from the parking lot. This would appear to be the problem of the clubmembers and of Petitioner, rather than that of Protestants. No evidence was presented which clearly showed interference with the road traveling rights of property owners residing on Bulls Sawmill Road. Most of these people moved there within the past one or two years anyway, long after Petitioner acquired the subject property.

Protestants' expert, Moore, reluctantly conceded that the 'level of service D' road capacity of Middletown Road (300 vehicles per hour) was such that vehicles entering it from Bulls Sawmill Road from Petitioner's property could not affect the traffic flow of Middletown Road. He also was forced to concede, on cross examination, that if half of the vehicles on the parking lot at 750 capacity were to travel around through Mr. Carmel Road to Beckleysville Road, then to Middletown Road (i.e., 375 autos) and thence past its intersection with Bulls Sawmill Road, it could not approach the traffic capacity of the road. Thus

I hope these comments help to clarify my testimony. Please contact me if I can be of further assistance.

Sincerely yours,

Thomas E. Mulinazzi
Thomas E. Mulinazzi

TEM:gnw

cc: Robert S. Rody

OCT 30 1978

Petition of
Dennis G. Smith
for Special Exception
for Community Buildings, etc.

BEFORE THE
BALTIMORE COUNTY
BOARD OF APPEALS
75-118-X

MEMORANDUM IN REPLY TO PROTESTANTS'
MEMORANDUM IN SUPPORT OF MOTION FOR DISMISSAL

Dennis Smith, Petitioner, herein, by Rody and Rody,
Chartered and Robert S. Rody, his attorneys, respectfully offers
this memorandum for the consideration of the Board.

Petitioner here seeks to clarify the facts and applicable
law, which were obscured in Protestants' Memorandum in Support
of Motion for Dismissal. Petitioner has requested the Board's
permission to establish a private, membership-only recreation
club, as explicitly authorized as a suitable subject for Special
Exception in an R.D.P. zone in the Baltimore County Zoning Regu-
lations (1975 Edition). This is not a request for a commercial
enterprise which would be open to the general public. In addition,
Protestants were well aware of the nature of this proposal and
attended the hearing fully prepared to contest any and all recrea-
tional uses proposed by Petitioner. Protestants therefore had
actual knowledge and cannot claim lack of notice on their own
behalf. They do not have standing to raise lack of notice to
anyone else, even assuming that Petitioner's notice was in any-
way deficient -- a fact which has not been established, in any
event.

Assuming, arguendo, as Protestants insist, and as they
came to the hearing prepared to argue, the Petitioner's planned
use of the subject tract is in the nature of "golf courses,
country clubs, or other outdoor recreation clubs", even if this
were true, this is specifically provided for in the Baltimore
County Zoning Regulations (1975 Edition) as the subject for

special exception in the R.D.P. zone.

The fact that dances may be offered to the limited mem-
bership only, is not inconsistent with reasonable uses of either
"recreation clubs" or "other structural or land uses devoted to
civic, social, recreational or educational activities". The
possible use of a building for occasional dances does not convert
Petitioner's request for a private club into one for a dance hall.
As Protestants' memorandum states "Mr. Smith indicated that he
intended to convert the existing barn into a club house for the
purposes of holding dances as well as other functions and affairs".
Clearly, by Protestants' own description, such a usage would not
be inconsistent with a recreation club or a structural land use
devoted to "... recreational ... activities."

A similar lapse in logic is apparent in Protestants' in-
sistence that because the Petitioner may provide concerts for patrons,
this is somehow equivalent to a drive-in theatre which is not a
permitted special exception in an R.D.P. zone. The fact remains
however, that, if concerts were in fact offered, this would not
be inconsistent with the recreational use permitted by special
exception in an R.D.P. zone.

As the hearing record makes clear, Protestants were not
misled or in any way prejudiced by Petitioner's alleged error in
petitioning for a special exception for "community buildings,
swimming pools, or other structural or land uses devoted to civic,
social, recreational or educational activities," rather than
"golf courses, country clubs, or other outdoor recreation clubs..."

Although Protestants' memorandum purported to distinguish
the cases of Cassidy vs. Board of Appeals, 218 Md 418, 146A 2d896
(1958) and Largo Civic Association vs. Prince Georges County,
21 Md App 76, 318 A2d 834, (1974) on the basis that a greater zone
was requested in those cases and that the zoning authority granted
a lesser included zone, this statement represents a misunderstanding

of the holdings in those cases. In Largo, supra, rezoning for
commercial and multiple-family and townhouse residential uses
was sought, though protestants had received formal notice of only
the commercial rezoning request. The Protestants there attended
the hearing and in fact, argued against all of the proposed uses.
In finding that the notice was sufficient in that case, the court
noted two separate grounds for its decision. The court there noted
that one reason was that a less restrictive zone is deemed to
include any more restricted use. The Court went on to make quite
clear that a second, unrelated reason that the notice was not
insufficient was that the Protestants had actual knowledge and that
they had acted upon it. Largo, supra, at 840.

In Cassidy, supra, the Petitioners had erroneously re-
quested a change in zoning when a special exception was the sub-
ject of the hearing. In ruling that the notice was sufficient, the
Court of Appeals expressly did not base its opinion on the differ-
ence between a zoning change and a special exception, rather it
stated "... and here is the heart of the requirement of noti-
fication in administrative proceedings, the notice should be
apprised clearly of the character of the action proposed and
enough of the basis upon which it rests to enable him intelligently
to prepare for the hearing. If this minimum requirement is met,
the notification is adequate, no matter how much it may fall short
of the standards of pleading in judicial contexts..."

The fact that protestants there, as in the instant case,
had actual notice of the intended use, was sufficient at law.
It should also be noted that in Clark vs. Wolman, 243 Md
597, 221A2d 687, land which was originally zoned agricultural
was the subject of a zoning change petition to RDX, to be developed
with garden apartments with parking facilities, clearly a less
restrictive use. Yet although the Protestants in that case
received no formal notice, the court ruled that the notice require-
ment, was satisfied in view of the fact that the Protestants had

actual knowledge of the proposal and had acted upon it.

Although Protestants have by no means established that
petitioner was mistaken in requesting an exception for "community
buildings, swimming pools or other structural or land uses de-
voted to ...recreational...activities" rather than "golf courses,
country clubs, or other outdoor recreation clubs..." it remains
clear that they came to the hearing prepared to contest petitioner's
proposal on the basis of activities to be offered at subject tract,
so to claim that there was any prejudice as a result of lack of
proper notice is patently ridiculous. Protestants have cited no
case holding that actual notice by adjoining property owners was
not sufficient to meet the legal requirement.

In addition, there is no evidence which establishes that
the Petitioner intends to impose a prohibited use on the subject
tract. Protestants' insist that the proposal is actually for a
prohibited commercial purpose, yet the record clearly establishes
that the Petitioner's plan is one for a private, membership-only,
club devoted to recreational purposes. This is clearly a use
permitted by Special Exception in an R.D.P. zone and is certainly
encompassed by either 1A00.2 B.6, "community buildings, swimming
pools, or other structural or land uses devoted to civic, social,
recreational, or educational activities," or 1A00.2 B.10., "golf
courses, country clubs, or other outdoor recreation clubs."

No evidence was adduced at the hearing that any use pro-
posed by the Petitioner is outside the scope of permissible special
Exceptions in this zone.

Respectfully submitted,

Rody & Rody, Chartered

Robert S. Rody
Attorneys for Petitioner

I HEREBY CERTIFY that on this 8 day of April, 1976, a copy
of the foregoing Memorandum in Reply to Protestants' Memorandum
in Support of Motion for Dismissal was mailed to J. Earle Plumhoff,
Esquire, Nolan, Plumhoff and Williams, 204 West Pennsylvania Avenue,
Towson, Maryland 21204, Attorneys for Protestants.

Robert S. Rody

LAW OFFICES
RODY & RODY, CHARTERED
700 EQUITABLE BUILDING
CALVERT & FAYETTE STREETS
BALTIMORE, MARYLAND 21202

November 25, 1974

RE: "Escape" Outdoor Concert
Petition for Special Exception for Dennis G. Smith
#75-118-X

Mr. S. Eric DiNenna, Zoning Commissioner
Baltimore County Office of Planning & Zoning
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. DiNenna:

Kindly issue subpoena Duces Tecum to:

Ellison W. Ensor, Chief
Police Department of Baltimore County
Towson, Maryland 21204

to produce all records of Baltimore County Police Department con-
cerning issuance of gathering permit on August 11, 1973 and on
October 21, 1973 at the property of Dennis G. Smith, Bulls Sawmill
Road, Freeland, Maryland and any records of the police department
pertaining to any disturbances, complaints, etc., on either of
these dates.

And make the same returnable for the hearing before you on
the above captioned appeal for special exceptions, on Tuesday,
December 3, 1974 at 9:30 a.m. at Room 106, County Office Building,
Towson, Maryland 21204.

COST \$ 5
1 SUMMONED 11-29-74 Very truly yours,
NON EST
NON SUNT
COPY LEFT
CHAS. H. HICKLEY, JR. B. SHEPHERD
BY BALTIMORE COUNTY
Mr. Sheriff

Please issue summons in accordance with the above

Zoning Commissioner of
Baltimore County

The Zoning Commission of Baltimore County
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Sirs:

This is to express my objections to the application before
you to change the zoning of the Dennis Smith property located
405' from the Bulls Saw Mill Road (and my property) at
Freeland, Maryland.

I object to Mr. Smith's application for a zoning change be-
cause his proposed use is contrary to the published desire
of the planning commission to keep the Parkton-Herford-
Freeland area designated for agricultural and residential
development; because a zoning change is only a pre-requisi-
te to his securing a liquor license; and, because his
proposed use of this property will reduce the value of all
the properties in this general area.

His proposed commercial, and horribly noisy, use of this
property is incompatible with the rural atmosphere that the
Planning Commission, reportedly, (ref. Morning Sun, Nov. 18,
1974) is seeking to preserve in this area. Heretofore, under
the guise of entertaining a private, social club, Mr. Smith
has used his property as a site upon which to hold outdoor
Rock and Roll "concerts". "His road-side signs, as far away
as the I-83 Expressway (1.5 miles distance) have drawn that
element of the general public who would attend such affairs
into this rural residential-farm area and has totally des-
troyed this atmosphere for the days and/or nights when
"concerts" are held. To change this zoning to permit such
use on an unrestricted commercial basis would deny this
whole residential area the right to quiet enjoyment of our
properties; make an utter farce of the function of the
Planning Commission to study and plan the best use of these
areas; and ridicule the function of the Zoning Commissioner
to administer zoning laws and to protect the public welfare
from the misuse of property.

Mr. Smith's property must be re-zoned in order for him to
obtain a liquor license; without a liquor license, he has
so advised me, he cannot hope to rent the proposed com-
munity type buildings and facilities to the Veterans of
Foreign Wars and similar organizations. Is it necessary
to point out that these organizations use such outings
primarily as fund raisers? And, for economic reasons they
must open their affairs to the general public and, in so
doing must resort to every form of "bally-who" and noisy
undesirable promotional effort to bring large crowds into
our rural area?

It takes no imagination, much less the intelligence of
professional planners, to realize that such a proposed use
of the Smith property would preclude the use of neighboring
areas as desirable, good tax base, development property
but, to the contrary, would serve to cheapen the value of
existing residences. Believe me, Gentlemen, it takes great
effort to retain your sanity with the loud noise of this
so-called "music" blaring out over a public address system,
which permeates, for miles around, this rural atmosphere we
would all like to preserve! The traffic and confusion gen-
erated by these lost souls, the potential for increased
vandalism and crime this element of society represents, and
the noise pollution of the whole countryside are bound to
lessen property values of an area and preclude the desirable
development of this area in accordance with your plans and
our hopes.

Sincerely,
Ray G. Anchors, Jr.

RGA:jsa

RODY & RODY, CHARTERED

700 EQUITABLE BUILDING
CALVERT & FAYETTE STREETS
BALTIMORE, MARYLAND 21202

February 23, 1976

RE: Petition of Dennis G. Smith
for Special Exception
Case #75-118-X

County Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Baltimore, Maryland 21204

Gentlemen:

Legal research for the memorandum which I just submitted on behalf of Petitioner was completed before I left for a brief vacation on February 12th and before the appearance in The Daily Record of February 15, 1976 of the important opinion of the Court of Special Appeals of Trial in Miller, et al. vs. Kiwanis Club, 347 Md. 572, (1976), a Baltimore County zoning case involving a petition for special exception which the Board denied, the Circuit Court of Baltimore County reversed an appeal, and the appellate court affirmed the reversal of the Board. Because this new decision is squarely on point, as to the merits of the Petition herein for special exception and also reinforces Petitioner's Answer to the Motion to Dismiss, I attach a photocopy of said opinion.

In citing all of the leading cases relied upon by Petitioner (and photocopied for your convenience) of Turner vs. Hammond 270 Md. 41 (1973), Anderson vs. Sawyer, 23 Md. App. 612 (1974), Rockville Fuel 257 Md. 191, and Gowl vs. Atlantic Highlands, 37 Md. App. 410 (1975), the Court in this latest analysis of the special exception in Md. zoning law, noted that in reference to alleged "...noise from the loud speaker system and the fear of sewerage system deficiencies causing health problems, as well as to some degree the fear of a water deficiency in the area," and said:

"...we find nothing in the Baltimore County Zoning Regulations placing upon it the added burden of proving that it will be a good neighbor." To impose such a burden can only be termed illegal. To deny the special exception because the Board may think that burden has not yet been met is, in a legal sense, arbitrary and capricious." at 580

Section 1A02B(10) of Article 1A (Rural and Rural-Suburban Law-Intensity Zones) of the Baltimore County Zoning Regulations provides that in an R.D.P. zone, among other uses permitted a special exception are the following:

"10. Golf courses, country clubs, or other outdoor recreation clubs; also quasi public camps, including day camps."

The Kiwanis Club's petition for a special exception, in addition to the special exception for a day camp under Section 1A02B(10), also requested a special exception for a "community building and swimming pool, etc." on 24 acres comprising part of the 73 acre tract under Section 1A02B(b) which permits land in an R.D.P. zone to be used by way of a special exception for:

"6. Community buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational, or educational activities."

Kiwanis had acquired the 24 acres in 1964 from the Spring Valley Country Club which had operated a pool and country club thereon since about 1959. Kiwanis continued the swimming pool operation, apparently as a non-conforming use (although there is some indication it was not a legal non-conforming use), and the principal reason for requesting the community building and swimming pool exception was to "legitimize" its present operations on the 24 acres.

The County Board of Appeals granted the special exception for the community building and swimming pool, subject to restrictions concerning their operation. An appeal was taken from that decision. As already stated, however, Kiwanis appeared to the Circuit Court for Baltimore County the denial of the special exception for a

1. Pursuant to other provisions of the regulations the Board of Zoning Appeals may know as the County Board of Appeals, with

The 51 acre tract is contiguous to the 24 acre tract and was acquired in 1971, at which time it was being operated as a farm by the former owner.

Sections 502.1 and 502.2 of the county zoning regulations set out the applicable provisions dealing with the granting of special exceptions in Baltimore County:

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

a. Be detrimental to the health, safety, or general welfare of the locality involved;

b. Tend to create congestion in roads, streets, alleys, etc.;

c. Create a potential hazard from fire, panic or other dangers;

d. Interfere with adequate provisions for schools, parks, water, sewerage, transportation, or other public requirements, conveniences, or improvements;

e. Interfere with adequate light and air.

502.2-In granting any Special Exception, the Zoning Commissioner or Board of Zoning Appeals, upon appeal, shall impose such conditions, restrictions, or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties.

All the powers and functions of the Board of Zoning Appeals.

Page Two
February 23, 1976

Please therefore consider this letter and the attached opinion as a supplement to the Memoranda previously submitted on behalf of Petitioner.

Respectfully yours,

Robert S. Rody

cc: Mr. J. Earle Plumhoff, Esq.
Nolan, Plumhoff and Williams
204 W. Pennsylvania Avenue
Towson, Maryland 21204

Enc.

Rec'd 2/24/76
10 a.m.

The owners, lessors or tenants of the property for which a Special Exception is granted, if required by the Zoning Commissioner, or Board of Zoning Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners of Baltimore County, stipulating the conditions, restrictions, or regulations governing such Special Exception, the same to be recorded among the land Records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such Special Exception. When so recorded said agreement shall govern the exercise of the Special Exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer."

Whereas, the applicant has the burden of adding testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. *Rockville Fuel, (Rockville Fuel v. Bd. of Appeals)* as at 257 Md. (193) 191, 262 A.2d (1971) at 503. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal."

In *Turner v. Hammond*, 270 Md. 41, 310 A.2d 543, 553 (1973) the Court of Appeals said: "The property owner [applicant for a special exception] has a prima facie right to enjoy the benefits of the special exception if he brings himself within the specific requirements of the ordinance." In *Jedrejew v. Gower*, 23 Md. App. 612, 329 A.2d 716 (1974) this Court, speaking through Judge Davidson, discussed the applicable standards for judicial review of the grant or denial of a special exception, as explicated by numerous decisions of the Court of Appeals, including *Turner v. Hammond*, supra. Judge Davidson said, at 617, 329 A.2d at 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 about any fact or circumstance negating the pre-

sumption. In applying these standards to the case before us we find that the Board's action in denying the special exception for a day camp was unsupported by substantial evidence and was not fairly debatable. We shall therefore affirm the judgment of the trial court reversing that action.

Kiwanis' purpose in acquiring the 51 acres was described by Mr. Walter E. Williams, a member of the Kiwanis committee

which would have provided such benefits must be subtracted from the award. They based this upon the premise that Chilton is not entitled to be put in a better position than it would have been if the contract had not been broken, citing *Tide Water Oil Co. v. Sporer*, 145 Md. 151, 125 A. 601.

Appellants overlook the fact that, at the time of the lease agreement, the premises were improved by a completely equipped restaurant. As a result of the agreement, the equipment had been removed and disposed of, and the building gutted and partially demolished to such extent that the cost to restore it to a rental condition was estimated to range from 40,000 to 45,000 dollars. Leaving appellee with the "benefit" of the value of the renovation not yet completed hardly places it in a better position than it would have been if the agreement had not been broken. The estimated cost to restore the building to its former (or presumably, an equivalent rental) condition exceeds what it would have cost to complete the intended renovation.

[3] Appellants further contend that the ultimate "award should be "discounted to prevent value." By this, appellants mean that since the rental under the lease would have been spread over the ten year term, to provide appellee with the full damages for the ten year lease in one lump sum gives it the benefit of the use of the money over the rest decade that it would not have had under the lease. Since appellee is not entitled to be put in a better position than it would have been had the contract not been broken, argue appellants, again citing *Tide Water Oil Co. v. Sporer*, the award must have been discounted the award to its present value.

Even if we had been shown Maryland authority for this principle to be applied to cases relating to "leases which are not leases," we have a specific mandate by the Court of Appeals of "the proper measure of damages to be applied in this case."

In proceeding on application for special exception to operate a day camp upon land zoned R.D.P. (Rural: Deferred-Planning), and an appeal was taken. The Court of Special Appeals, Melvin, J., held that deci-

(Emphasis added) which does not include a direction to discount the award to prevent value. Further, the absence of any direct evidence of that process in the original record would indicate that the application by the trial judge on remand since the Court expressly agreed with appellee Chilton that it had:

"... presented sufficient proof to support this measure of damages. *Decker Truckers, 272 Md. at 731, 327 A.2d at 289,* and that:

"... no further evidence need be entertained by the circuit court." *Id.* at 731, 327 A.2d at 289.

Judgment affirmed.

Costs to be paid by appellants.



Marion X. MILLER et al.

KIWANIS CLUB OF LOCH RAVEN, INC.

No. 200.

Court of Special Appeals of Maryland.

Dec. 2, 1975.

The Circuit Court, Baltimore County, Frank E. Cline, J. entered an order which reversed action of county board of appeals denying petition for special exception to operate a day camp upon land zoned R.D.P. (Rural: Deferred-Planning), and an appeal was taken. The Court of Special Appeals, Melvin, J., held that deci-

Under circumstances, fears pertaining to lowering of ground water table and to pollution of spring-fed stream located at rear of property could not be deemed substantial or probative evidence supporting county board of appeals' denial of special exception to operate a day camp upon land zoned R.D.P. (Rural: Deferred-Planning).

4. Zoning 40-539
Where potential volume of traffic under requested use as day camp in RDP

"that worked on the acquisition of the farm property."

"... When the club became aware that Mr. Babbitt, the former owner of the farm, was interested in selling the farm, we as a property owner were concerned about what would happen to this 51 acres, as I am sure everyone else in the neighborhood was concerned. We felt that the area which is now a golf course on one side, and our pool on the other, and generally an open space area, should be preserved.

For this reason we became interested in acquiring the farm, both in terms of our concern, I think for our own property value, but also in concern for the area in which we are situated. We felt that keeping this space, which now consists not only of our own but also other open areas and open space, would be a real community service.

Therefore we negotiated with Mr. Babbitt, who had indicated that he might sell the property to developers.

He gave us, however, the first option to buy, and we purchased the property for the purpose of preserving open space at that time.

Q. What are the plans that the committee has developed, and what did they do in anticipation of being able to operate a day camp?

A. Well, we felt that as part of this operation that the space should be used in some way that would be useful for the community, and investigated a number of ways. We made trips to day camps, we made a trip to a Kiwanis day camp in Richmond, Virginia.

Since it was a farm, we talked with the County extension agents as to the possibility of potential uses to maintain it as a farm setting.

Q. (By Mr. Reiter) Out of curiosity, was this investigation made after you purchased and settled for the property?

A. It was concurrent. We did not purchase the property until we felt that there would be some useful purpose served for the community.

The final decision regarding using it as a day camp, however, was after we purchased it, but as part of our purchase we felt there would be some useful purpose served for the community.

"We also considered utilizing the property for senior citizens, for their benefit, which is another one of the aims of Kiwanis at this time. We decided that the most practical thing to do, and also something of value to the community, was to create a day camp for children from 7 to 11, as there do not appear to be that kind of resources, to any large degree, in Baltimore County.

Q. (By Mr. Reiter) Girls and boys?

A. Girls and boys, yes. We also decided that it would be most appropriate to preserve the farm atmosphere that exists already in terms of preserving the environment as it now exists, and therefore we could continue to have some modern kind of farm operations, like planting corn and perhaps one or two maybe more, animals, that would preserve a farm setting for both senior citizens, perhaps to have a regular activity, a day-to-day camp for 2 weeks a year, Monday through Friday, and not on the weekends.

"We would be for not more than, and this really pointing issues to the market, to get 150 campers. We anticipate, in reality, that it would be somewhere between 50 and 100 campers who would utilize the property.

Q. (By Mr. Reiter) What are your projections for your camp, for its use, its numbers and quantities?

A. If we can get 50 children out there and keep it at 50 children, I think

sum denying special exception was not supported by substantial or probative evidence; that under circumstances, fears pertaining to lowering of ground water table and to pollution of spring-fed stream located at rear of property could not be deemed substantial or probative evidence supporting denial of special exception; that traffic impact could not afford basis for denial of exception; and that it was inappropriate for court itself to impose conditions and restrictions upon use of property as day camp under special exception.

Order reversing denial of special exception affirmed and case remanded.

1. Zoning 40-539
Decision of county board of appeals denying special exception to operate a day camp upon tract of land zoned R.D.P. (Rural: Deferred-Planning) was not supported by substantial or probative evidence.

2. Zoning 40-539
In proceeding on application for special exception to operate a day camp upon tract of land zoned R.D.P. (Rural: Deferred-Planning), evidence failed to establish that applicant's use of its lands had any adverse effect on wells of any adjoining properties or that day camp would have any such effect.

3. Zoning 40-539
Under circumstances, fears pertaining to lowering of ground water table and to pollution of spring-fed stream located at rear of property could not be deemed substantial or probative evidence supporting county board of appeals' denial of special exception to operate a day camp upon land zoned R.D.P. (Rural: Deferred-Planning).

4. Zoning 40-539
Where potential volume of traffic under requested use as day camp in RDP

(Rural: Deferred-Planning) zone did not appear to be greater than that which would arise from permitted uses, including use as one-family detached dwellings, hospitals and schools, denial of exception could not be based on vehicular traffic impact ground.

1. Zoning 40-539
If an applicant for a special exception meets its burden of satisfying requirements of ordinance, nothing in ordinance may place upon applicant the added burden of proving that it will be a "good neighbor," to deny special exception because board may think that burden has not yet been met is, in a legal sense, arbitrary and capricious.

2. Zoning 40-539
It was inappropriate for court itself to impose conditions and restrictions upon use of property as day camp under special exception.

3. Zoning 40-539
W. Lee Harrison and Cooper C. Graham, Townson, for appellants.

Ernest C. Trimble, Townson, for appellee.

Presented to ORT, C. J. and GILBERT and MELVIN, JJ.

MELVIN, Judge.

"This is an appeal from the order of the Circuit Court for Baltimore County reversing the action of the County Board of Appeals of Baltimore County denying the petition of Kiwanis Club of Loch Raven, Inc. (Kiwanis) for a special exception to operate a day camp upon a 73 acre tract of land zoned R.D.P. (Rural: Deferred-Planning) located on the south side of Backus Road approximately 1468 west of Dover Road, in the Fourth Election District of Baltimore County.

We would have these campers do things, we will be going good for a while, insulate plant trees and do other things that would improve the environment, and we will give us an overall total number of 200 campers for the summer.

All of this would be done under the supervision and control of a full-time manager, at the property, whose responsibility would be to see that these activities were controlled, that they did not create any problems for the campers and the neighborhood." (Emphasis supplied).

Mr. Henry F. Krausworth, "hired as a camp director for our hopefully day further on our Kiwanis Farm" testified further concerning the proposed operation of the day camp:

"Q. Will you give the Board the benefit of what you would hope to have and the program for the children, and how it would be conducted, and so forth?

A. Okay. The program is based as a day-camp operation. It is intended that the children will arrive in the morning around 9:00 o'clock, and attend the entire day of the farm, and leave at 4:00 in the afternoon.

"When they arrive, we start out with a really interesting lesson in the morning. Then the day would progress and we would have activities like different types of ball games, softball, volleyball, basketball, archery, nature studies, arts and crafts, and some supervised free activity on the farm."

Q. (By Mr. Reiter) What are your projections for your camp, for its use, its numbers and quantities?

A. Yes, we had planned on using a school bus.

Q. Yes, the children, would accumulate at some church, and come out on the bus?

A. Yes. We would encourage pick-up points and pick the children up, and bring them out to the camp in a school bus." (Emphasis supplied).

In denying the special exception for the day camp, the majority of the Board gave as its only reason: "It would seem inequitable."

table to extend the quasi-commercial use of this property further until such time as the Kiwanis Club has proved itself to be good neighbors by the proper operation of the swimming pool and covering the swimming pool with a permanent structure. The Petitioner, from the evidence presented, does not seem able to assure the principle set out in Section 502.2. Same are necessary if this special exception is to be granted. (Emphasis added.) We are not told by the Board which, if any, of the specific requirements of Section 502.1 the proposed use of the property fails to meet.

[1] We hold that there was no substantial or probative evidence warranting the Board's conclusion. On the other hand, there was evidence from the Baltimore County Office of Planning and Zoning that the "requested use is compatible with the surrounding land use character"; evidence from an expert real estate appraiser, familiar with the area, "that this land, this total acreage, to be in the hands of the Kiwanis Club, to be developed in the way it is proposed to be developed, will enhance the value of the adjoining properties"; and a report from the Board of Education of Baltimore County that the special exception would result in "no adverse effect on student population." There was also affirmative evidence from the Maryland State Department of Health and Mental Hygiene that the day camp would not be "detrimental to the health, safety, or general welfare of the locality involved" and would not "tend to overcrowd land and cause undue concentration of population."

The chief concern of the protestants seemed to be a fear that, since the property was not served by public water and sewer facilities, the water taken from the Kiwanis well would eventually cause a deficiency in the water supply of neighboring properties, and that the Kiwanis' sewerage facilities are inadequate to prevent overflowing the septic system, potentially causing health problems in the form of pollution of neighboring well water and streams.

[2] With respect to the water supply, the evidence is that water is supplied from two drilled wells, one 375 feet deep and the other 342 feet deep, and that Kiwanis has never had any problem with water supply for its operations on the property. There was no probative evidence that Kiwanis' use of its wells has had any adverse effect on the wells of any adjoining properties, or that the day camp would have any such effect.

With respect to Kiwanis' sewer system, there was evidence that in the summer of 1973 there was "a sewerage overflow at the swimming club." It is undisputed, however, that this was accidentally caused by heavy trucks running over and crushing a portion of the underground system. The system has been repaired by installing "a brand-new distribution box" and "all new piping" and "an additional seepage pit," making a total of seven seepage pits. A report from the Department of Mental Health and Hygiene, made before the seventh pit was installed, stated:

"Except for a period when only two of six seepage pits were working following the accident, the six pits have satisfactorily taken the sewage load of existing populations at the pool. A plan is soon to be set in motion to put in an additional seepage pit. A total of seven pits will insure proper sewage disposal at this location. Such plans and installations are subject to approval of the County Health authorities." (Emphasis supplied.)

[3] One of the protestants testified that his examination of the applicable provisions of the Baltimore County Plumbing Code and information he obtained from "local well drilling companies" led him to the conclusion that granting the special exception (including the swimming pool and community building) would result in the "probability that the present ground water table will be lowered to a point where many adjacent property owners' wells will run dry" and "the probable inability of the

ground to absorb 36,500 gallons per day of sewage and swimming pool waste will result in pollution of the present spring fed stream located at the rear of the property." As we have noted, there is no evidence that those feared conditions presently exist, nor indeed that there is more than a possibility (as opposed to probability) that they will ever exist. Under the circumstances such fears cannot be deemed substantial or probative evidence supporting the Board's denial of the special exception. *Montgomery County v. Maryland Club, 202 Md. 279, 291-292, 33 A.2d 553 (1953).*

[4] Most of the testimony before the Board concerned that portion of the special exception relating to the community building and swimming pool. As we have stated, there was no appeal by any of the protestants from the granting of that special exception. There was much testimony by the protestants concerning the traffic congestion caused by the swimming pool operation and the expressed fear that the day camp would make a bad situation worse. A report in evidence from the Baltimore County Department of Traffic Engineering stated that "no major traffic problems are anticipated by the requested special exception for a community building, swimming pool, and outdoor recreational club (including a quasi public day camp for Kiwanis Club)." In view of the fact that the day campers are to be transported in buses or car pools it seems patent that granting the special exception could hardly be said to "tend to create congestion in the streets, thoroughfares, or highways."

In addition, we note that there are many B.D.P. zones (without the requirement of a special exception therefor) which would undoubtedly create as much or more traffic than a day camp, operating eight weeks of the year with 50 children on 75 acres at any one time. Among these permitted uses are "one-family detached dwellings," "Hospitals" and "Schools." As we said in *Gent v. Atlantic Richfield Co., 27 Md.App. 410, 417, 341 A.2d 832, 836 (1975):*

"We recognize that traffic impact is a sufficient basis to deny a zoning application, including an application for a special exception. *Templeton v. County Council, 21 Md.App. 636, 321 A.2d 778 (1974); Tremont v. Board of Zoning Appeals, 212 Md. 6, 120 A.2d 256 (1956); Hardisty v. Zoning Board, 211 Md. 172, 126 A.2d 621 (1956).* But traffic impact on an application for a special exception could be measured against that which could arise under permitted use, and not merely by existing traffic loads around the undeveloped premises. Where, as here, the potential volume of traffic under the requested use would appear to be no greater than that which would arise from permitted uses, we believe it arbitrary, capricious and illegal to deny the application for special exception on vehicular traffic grounds."

[5] With regard to the Board's statement that permission to operate the day camp should await "such time as the Kiwanis Club has proved itself to be good neighbors by the proper operation of the swimming pool and community building," we can only assume the Board has in mind the possibility that Kiwanis will not abide by the restrictions placed upon it by the Board's order granting the special exception for the swimming pool operation on the 24 acres.³ These restrictions effective-

These restrictions are:
1. That all operations and activities of any kind shall cease upon the subject property no later than 1:00 p.m. each day.
2. The public address system shall not be used after 10:00 p.m. except in the event of an emergency. The public address

system must be controlled at all times under the close supervision of the pool manager as an aid to ensure a nuisance is not created.
3. That a site plan be approved by the Department of Public Works and the Office of Planning and Zoning, and any other pertinent County agencies.

Pretty Boy Watershed" which is factually incorrect and is highly material to what appears to have been the main basis for denial of the Special Exception namely the alleged "threat of pollution to the reservoir"; that the Board failed to note that the principal testimony in this connection adduced by Protestants, an environmental planner for Baltimore County, readily admitted that by use of the sewage system proposed by Petitioner there would be no risk of pollution of the water supply whatsoever and further disregarded the obvious dangers inherent in any other rational use of Petitioner's land, including development into cottages, which would present a year round and heavier risk of such pollution; that it disregarded the opinion of one of Petitioner's experts whose testimony was buttressed by voluminous memoranda which he had prepared and which was further supported by the voluminous BREIS reports and other reputable and professionally accepted authorities in support of his position that there was not only no risk whatever of pollution wise in the subject Petition but that on the contrary said Petition represented the best possible utilization of the land in keeping with the established desiderata of Baltimore County planning for the north county area, to wit, to retain insofar as is possible the rural natural characteristic of the area rather than to have it significantly altered by housing and other development.

5. That the said decision grossly distorted the clear and substantial weight of evidence with respect to traffic conditions in and about the subject property; that the clear weight of the evidence was that there could be no traffic congestion of any significance except on such rare occasions as when there was an absolute capacity use of the property by persons attending the proposed club; that the use of the roads in the area, including Bulls Sawmill Road would not be significantly affected any other times and that for more than half of the year there would be

by limited what appeared to be the more serious objections to the special exception voiced by the protestants, not only to the swimming pool operation but the day camp as well, those objections being noise from the loud speaker system and the fear of sewerage system deficiencies causing health problems, as well as to some degree the fear of a water deficiency in the area. If an applicant for a special exception meets its burden of satisfying the requirements of Section 502.1, as we think Kiwanis has in the present case, we find nothing in the Baltimore County Zoning Regulations placing upon it the added burden of proving that it will be "a good neighbor." To impose such a burden can only be termed illegal. To deny the special exception because the Board may think that borders has not yet been met is, in a legal sense, arbitrary and capricious.

[6] While we shall affirm the trial court's reversal of the denial of the special exception for a day camp, we think it was inappropriate for the court to have itself

imposed "conditions and restrictions" upon the use of the property for that purpose. Md. Rule 812 provides that in hearing appeals, such as this, the trial court "shall affirm, reverse or modify the action appealed from, remand the case to the agency for further proceedings, or dismiss the appeal as now or hereafter provided by law." We do not intimate the conditions and restrictions imposed by the trial court were reasonable or unreasonable. Rather we think the case should be remanded to the Board, to pursue to Section 502.2, "impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties." The imposition of such conditions in the first instance is properly the function of the zoning authorities rather than that of the courts.

Order reversing denial of special exception affirmed; case remanded for further proceedings conformable to the views expressed in this opinion.

Costs to be paid by Appellants.

4. The Health Department shall closely monitor the water usage and the proper functioning and full operation of the private sewage disposal system. This Special Exception is contingent upon the property owner obtaining all the necessary permits from the regulatory agencies, particularly the County and State Health Departments."

5. The same conditions, among others, were imposed by the Zoning Commissioner, who had granted the special exception for the day camp.

APPEAL

Dennis G. Smith, Petitioner, feeling aggrieved at the decision of the County Board of Appeals of Baltimore County, dated July 2, 1976, denying the Special Exception sought by him in his Petition, known as Petition No. 75-116-X hereby enters an Appeal therefrom to the Circuit Court for Baltimore County.

RODY & RODY, CHARTERED

ROBERT S. RODY
ATTORNEY AT LAW
700 EQUITABLE BUILDING
BALTIMORE, MD. 21202
727-0933
ATTORNEY FOR PLAINTIFF

I CERTIFY I mailed a copy of the foregoing Appeal this 2nd day of July, 1976 to County Board of Appeals of Baltimore County, 219 Court House, Towson, Md. 21204, J. Earle Plunhoff, Esquire, and Newton A. Williams, Esquire, 204 W. Pennsylvania Ave., Baltimore, Md. 21204, Attorney for Protestants, and to Charles E. Kounts, Jr. Esquire, Peoples Counsel, County Office Building, Towson, Md. 21204.

ROBERT S. RODY

DENNIS G. SMITH
Petitioner
vs.
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Respondent

IN THE

CIRCUIT COURT

OF

BALTIMORE COUNTY

PETITION UNDER RULE 81 ON BEHALF OF PETITIONER

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of Dennis G. Smith, by Rody & Rody, Chartered and Robert S. Rody, his Attorneys respectfully represents:

1. That heretofore he filed an Appeal herein from the decision of the County Board of Appeals of Baltimore County dated July 2, 1976 in which his Petition for Special Exception was denied.

2. That said decision grossly violated his right to obtain the Special Exception sought in that it grossly, erroneously and unlawfully failed to decide said Petition upon the evidence and upon the weight of the evidence presented before it, but on the contrary misinterpreted, distorted, misunderstood and otherwise erred in its interpretation of the testimony and the evidence presented in support of said Petition and grossly, incorrectly misinterpreted the applicable zoning regulations and other law, including important Court of Appeals decisions applicable to this case.

3. That the said Board conducted the hearing on four scattered hearing dates spread from approximately August 1975 to January 1976, rather than conducting said hearing in an orderly manner on consecutive or near consecutive days so that the continuity and recollection of evidence was not lost.

4. That the said opinion in the second paragraph thereof incorrectly states that the subject property edge "adjoins

virtually no use of the roads that would be measurably different from what exists now without said Petition, as the club would be primarily used only in the warm weather months of the year.

6. That there was gross distortion of the evidence with respect to the alleged noise or disturbance that might emanate from proper activities upon the large grounds to be utilized by the club.

7. That the said decision grossly distorted the evidence with respect to the alleged danger of fire; that in fact the large pool to be constructed as well as the pond already specially built in accord with soil conservation planning thru the Department of Agriculture by Petitioner would be substantial fire fighting assets in the event of any such fire either on or near the subject property.

8. That the Board apparently ignored the numerous decisions of appellate courts specifying the entitlement of Petitioner, almost as a matter of right, to a special exception where his petition is clearly within the ambit of permissible uses under the regulations.

9. That the Board, instead of recognizing the extremely modest limitation contained in the subject petition as to the number of persons on the premises at any time, made as a gesture of accommodation towards Protestants, crassly and unreasonably denied any use whatever; that numerous other alternatives were available to the Board, even if it did not grant all of that which was requested by Petitioner, so that there was, in effect, abuse of discretion and judgment of the part of said Board in its failure to grant a significant part of, if not all of the use requested in said Petition.

10. And for other and numerous reasons which can and will be assigned at the hearing of this Appeal.

WHEREFORE, This Appeal is brought so that Petitioner may have his case heard before a Court in order to reverse the decision of the County Board of Appeals.

RODY & RODY, CHARTERED

ROBERT S. RODY
ATTORNEY FOR PETITIONER
700 EQUITABLE BUILDING
BALTIMORE, MD. 21202

727-0933

I CERTIFY I mailed a copy of the foregoing Petition this 1st day of July, 1976 to County Board of Appeals of Baltimore County, 219 Court House, Towson, Md. 21204, J. Earle Plunhoff, Esquire, and Newton A. Williams, Esquire, 204 W. Pennsylvania Ave., Baltimore, Md. 21204, Attorney for Protestants, and to Charles E. Kounts, Jr. Esquire, Peoples Counsel, County Office Building, Towson, Md. 21204.

ROBERT S. RODY

Rec'd-7-22-76
1:55 PM

OCT 30 1978

DENNIS G. SMITH
Petitioner
v.
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Respondent
PEOPLE'S COUNCIL FOR
BALTIMORE COUNTY
MISCELLANEOUS CASE NO. 5982

OPINION & ORDER

In this case the Petitioner, Dennis G. Smith, filed a Petition for a Special Exception for community buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational or educational activity for his property located on the west side of Bulls Sawmill Road and Bulls Sawmill Road Extended in the 6th Election District of Baltimore County. The property contains 69.5 acres of land and is located in northern Baltimore County in an area that is rural in nature and which is located in an R.D.P. zone.

There was a hearing before the Zoning Commissioner of Baltimore County on December 2nd, 1974. The protestants objected because they felt the proposed special exception would be detrimental to the health, safety and welfare of the community. The Zoning Commissioner rendered his decision denying the special exception on April 1st, 1975. An appeal followed to the Board of Appeals. Trial before that body consumed four days interspersed over a period of five months (August 14th,

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October 14th, and October 23rd, 1975 and January 22nd, 1976). Legal memoranda were subsequently filed and the Board rendered an opinion on July 2nd, 1976 affirming the decision of the Zoning Commissioner. The Petitioner filed a timely appeal on July 22nd, 1976. The transcript and exhibits were filed in this court on August 16th, 1976 and argument was heard on October 1st, 1976.

The Zoning Commissioner based his denial primarily on the traffic problem which would be created by the proposed project. The Board in its opinion also focused on the traffic problem, but additionally based its denial on the danger of fire and the potential danger of pollution to the Prettyboy watershed, which is located just west of the subject property. From the Petitioner's property to the watershed is about 2500 feet and to the dam it is a distance of 2.73 miles. It is important to bear in mind that the function of this court is not to determine the merit or lack of merit of the petition but is merely to determine whether there was any substantial evidence before the Board of Appeals to justify its action. This court, of course, may not substitute its judgment for that of the Board, Sapero v. Mayor and City Council of Baltimore, 235 Md. 1 (1964). This rule does not mean that the Board's decision is absolute, for if, upon review, the court finds that there was no substantial evidence for the denial of the application and on the other hand finds that there was sufficient evidence

At this point it must be emphasized that the court's decision in this matter is not based in any way on this aspect of the case. One cannot help wondering whether there would be as strenuous a community objection if the previously held concerts had been given by the Glenn Miller Orchestra or the Baltimore Symphony.

The Petitioner produced four lay witnesses from the area who generally supported the petition. One of these witnesses drove a school bus on Bulls Sawmill Road. He admitted that there were no shoulders on the road, that it was about 17 feet wide and that the number of vehicles exiting at one time from an affair on the premises would create traffic problems.

Both sides produced real estate experts. Not surprisingly, the Petitioner's expert indicated that the proposal would not have an adverse effect on the community; and the Protestant's expert indicated that the proposal would be detrimental to the community.

The Petitioner also produced another civil engineer, Mr. George Frangos, who was offered as an expert in several areas, including traffic engineering. He referred to the Baltimore Regional Environmental Impact Study (BREITS) done by the Regional Planning Council, and which was offered into evidence. He prepared a specific and detailed study for this proposal. In general his testimony was that the proposal was a sound one. As to the traffic problem, it was his estimate

that the peak load would not exceed the capacity figure as projected by the Petitioner's other traffic expert, Dr. Thomas Molinazzi, a civil engineer who stated that Bulls Sawmill Road was 16 feet wide, of chip and seal construction, and who offered a series of 23 photographs showing the access from Middletown Road, down Bulls Sawmill Road to the site of the Petitioner's property. Bulls Sawmill Road can handle 709 vehicles per hour. Dr. Molinazzi stated that if all of the 750 cars left the premises at once it would take 2 (two) hours to clear Bulls Sawmill Road but that the proposal would not have a detrimental effect on traffic.

On cross-examination, he discussed Middletown Road. This is a 20 feet wide road with sharp turns which affected the flow of traffic. He conceded that any vehicle breakdown would impede traffic coming out of Bulls Sawmill Road. On the weekend visits he had made to the subject property, he saw no recreational or farm vehicle traffic.

The protestants produced a qualified traffic engineer, Mr. C. Richard Moore, Assistant Traffic Engineer for the Department Traffic Engineering of Baltimore County. He agreed that Dr. Molinazzi's estimate of 209 vehicles per hour on Bulls Sawmill Road was a reasonable one but that is about all that he and Dr. Molinazzi agreed upon.

Mr. Moore described Bulls Sawmill Road as being 16 to 17 feet in width at Middletown Road and narrowing to 13 to 14

that the Petitioner had complied with the requirements of Section 502.1 of the Baltimore County Zoning Regulations, it is required to reverse the Board, Anderson v. Sawyer, 23 Md. App. 612 (1974) and Miller v. Kiwanis Club of Loch Raven, Inc., 29 Md. App. 285 (1975).

Testimony before the Board was given by 24 witnesses, 12 on each side. This court will examine the pertinent testimony in the light of its duty upon review.

The Petitioner produced a qualified civil engineer, Mr. Charles E. Fick, who testified as to the plat of the property, which is partially wooded with a steep topography ranging in elevation from 580 feet to 700 feet above sea level. There is a pond and an existing barn and shed on the property. The proposed layout is shown in Petitioner's Exhibit 1 and need not be repeated here except to say that the proposal contained a broad spectrum of athletic and recreational uses. The proposal included a 750 vehicle parking lot which would be of pervious material and a septic and sewerage system designed to handle the needs of 1500 persons.

The Petitioner testified that the land is owned solely by him and is in two parcels totalling the 69.5 acres. At present there is a frame farmhouse, a barn, several outbuildings and the aforementioned pond. He stated that he envisioned a family-oriented type of recreation facility. His proposed facility would be operated as a club only, with classes of

membership based on categories of usage. The facility would handle a maximum of 1500 people. He described generally and specifically what his intentions were. Of great concern to the protestants is the noise factor. The Petitioner stated it was his intention to have a custom built sound system installed which he said would not saturate the area with noise. The proposed hours of operation would be from 10:00 a.m. until 11:00 p.m. in the summer. The pool area would be lighted and other outdoor activities would be available for use by the members from May to October. The existing barn would be converted into a clubhouse which would be used on a year-round basis, but its size would limit the number of people who could utilize its services at any one time. There would be no overnight camping or facilities for same.

On cross-examination, the Petitioner denied that the primary intent of the proposed special exception was to conduct "rock" concerts on the property, which was an obvious concern of the protestants. The Petitioner produced an audio engineer, who was not a college graduate but who had many years of experience in this field and who had installed the sound and amplification system used by the Petitioner for previously scheduled concerts. While not a qualified engineer and not a qualified expert, he did say that the proposed sound system would not cause a disturbance to any of the neighboring property.

feet wide where Bulls Sawmill Road meets Bulls Sawmill Road Extended. There are no shoulders, but there are drainage ditches which would pose a hazard to traffic passing in opposite directions. According to his estimate it would take three and a half hours to empty 750 vehicles out of the proposed site from Bulls Sawmill Road to Middletown Road. Even allowing for some traffic exiting the narrow Bulls Sawmill Road Extended in the other direction than from toward Middletown Road, Mr. Moore felt the exit time would be at least 2 (two) hours. And if vehicles utilized that direction any oncoming traffic could not pass because of the narrow road width.

It was Mr. Moore's opinion that the proposed petition would tend to congest the roads and streets in the neighborhood of the subject property. In connection with the entire traffic problem in this case the court observes that the best route to the premises is obviously from Interstate 83 to Middletown Road to Bulls Sawmill Road and thence to the subject property.

Battalion Chief Emory E. Leight of the Baltimore County Fire Department testified that if there were to be a fire in the area four volunteer fire companies would be in a position to respond. In this area of Baltimore County a tanker relay system is used to haul water to the scene, that is, trucks carry from 500 to 2,000 gallons of water in a relay system. The fire engine is nine feet to nine feet six inches in width and 28 to 30 feet long.

In his opinion if the proposed petition were granted a problem would be created in fighting any fire in the vicinity even making allowance for the pond on the property as an auxiliary water supply.

Finally, the Professional Environmental Planner for Baltimore County Paul Solomon, testified that the proposed project would involve a significant element of risk to the Prettyboy watershed area. So much for the testimony in the case.

This court has read the entire 538 page transcript, the exhibits in the case and has studied the plats, aerial photographs and maps.

It is obvious that most of the members of the proposed club would come from the Towson-Lutherville-Cockeysville area via Interstate 83 to Middletown Road, where traffic would exit in a westerly direction on Middletown Road, left on Bulls Sawmill Road to the subject property. The photographs and maps offered as exhibits together form a graphic picture of a narrow, dangerous country road (Bulls Sawmill Road) which could suddenly become inundated by from 600 to 750 vehicles exiting with a two to three and a half hour backup thus reducing the road to one long traffic jam.

Even the suggested alternative of some vehicles exiting by way of Bulls Sawmill Road extended provides no relief for in that direction the road is only 13 to 14 feet wide. Even disregarding the sound problem and discounting the

potential danger to the watershed area as perhaps being speculative, the traffic and fire hazard in this case do not justify granting the petition for exception. This point is glossed over in Petitioner's Exhibit 10, page 5 thereof, by reference to the BREIS traffic analysis which was dated March, 1974. The Petitioner's Exhibit blandly states that the "peaking" characteristic of recreational facilities occurs in the evening hours and during the weekends" hence access to places to the project will be "comfortable and safe". In the court's judgment this conclusion flies in the face of the expert evidence introduced both by the Petitioner and the Protestants.

In addition the environmental impact analysis (Petitioner's Exhibit No. 9) does not address itself to a detailed study of the traffic problems. That study does contain Dr. Mulinazzi's report which states, "It is very difficult to calculate the maximum service volume for a given level of service for these type roads." Then there also follows a mathematical computation which arrives at 209 vehicles per hour and Dr. Mulinazzi states (See also Petitioner's Exhibit 3), "this type of calculation is for a relatively long uninterrupted flow road, so I have some doubts on its applicability for a short section of road such as Bulls Sawmill Road." Dr. Mulinazzi, the Petitioner's traffic expert, goes on to say, "One recommendation I would like to make is to divert the traffic from Bulls Sawmill Road Extended into the parking lot

as soon as possible."

While the court is impressed with the study made for the Petitioner by G.F.A. Engineering Systems and is impressed with the aims of the Petitioner in attempting to establish an exclusionary recreational type family facility, this court feels that the overwhelming evidence of a severe traffic hazard on Bulls Sawmill Road militates against any overturning of the Board's decision. This Court finds that the Petitioner has not met the burden of proving there was substantial compliance with Section 502.1 of the Baltimore County Zoning Regulations and that the Board did not render its decision in an arbitrary, capricious or discriminatory manner.

Thus the Court has no choice but to affirm the decision of the Board of Appeals.

It is, therefore, ORDERED by the Circuit Court for Baltimore County at Law this 17th day of January, 1977, that the order of the Board of Appeals dated July 2nd, 1976 be and the same is hereby AFFIRMED.

William E. Brannan
William E. Brannan, Judge

Dictated in chambers
January 6, 1977

September Term, 1977

DENNIS G. SMITH

V.

SHIRLEY PARTY, ET AL.

* Menchine,
Mason,
Liss

JJ.

PER CURIAM

Filed: February 9, 1978

* Menchine, J., participated in the hearing of the case and in the conference in regard to its decision, but retired prior to the adoption of the opinion by the Court.

Appellant, Dennis G. Smith, is the owner of a tract of land consisting of approximately 69.5 acres in Northern Baltimore County. The subject property is located in a rural area adjoining Prettyboy Watershed and is zoned rural-suburban conservation. Appellant sought a special exception for "community buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational or educational activities." The Zoning Commissioner of Baltimore County, the County Board of Appeals and the Circuit Court for Baltimore County denied the requested exception. On appeal appellant, in essence, contends that the requested special exception met the prescribed standards and requirements of Section 502.1 of the county zoning regulation, which provides:

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

- Be detrimental to the health, safety, or general welfare of the locality involved;
- Tend to create congestion in roads, streets or alleys therein;
- Create a potential hazard from fire, panic or other dangers;
- Tend to overcrowd land and cause undue concentration of population;
- Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- Interfere with adequate light and air.

It is fundamental that court review of actions taken by the zoning authority is narrow and restricted in scope. Where the zoning authority has declined to rezone, the inquiry of the court is whether there was legally sufficient evidence to support the zoning body, i.e., was it a fairly debatable question? Montgomery County v. Shiental, 249 Md. 194 (1968); Fitzgerald v. Montgomery County, 37 Md. App. 148 (1977).

In the present case, appellant has the burden of proving that the special exception met the prescribed standards and requirements of Section 502.1, supra. Miller v. Kiwanis Club, 29 Md. App. 285 (1975). To justify denial of the requested rezoning, it was only necessary for the zoning authority to find that appellant had failed to meet his burden of proof on any one of these requirements. Messenger v. Board of County Commissioners, 259 Md. 693 (1970).

Applying the above standard to the facts in the case before us, we conclude that the Board's decision denying the special exception was based on substantial evidence and was fairly debatable.

The Board heard testimony from twenty-four witnesses, twelve, on each side of the issue. This, alone, we believe clearly underscores the fact that the issue was fairly debatable. Moreover, testimony of several expert witnesses produced on behalf of the opponents showed that appellant's application for the special exception failed to comply with virtually every requirement of Section 502.1. For example, an engineer from the Baltimore County Department of Traffic Engineering testified that a grant of the special exception would create traffic congestion on the roads in the area.

The Battalion Chief of the Baltimore County Fire Department testified that the special exception would create a potential hazard from fire. A professional environmental planner from Baltimore County testified that the special exception would cause an undue concentration of population in the area, and that this would result in trespassing on lands of adjoining properties. He also indicated that the special exception would interfere with adequate provisions for sewerage and water in the area. A real estate broker and appraiser indicated that the special exception would be detrimental to the safety, health and welfare of the area. Therefore, notwithstanding the testimony of appellant's witnesses, which may have indicated the special exception met the requirements of Section 502.1, the testimony adduced by the opponents was amply sufficient to make the issue fairly debatable.

In ostensible reliance on Miller v. Kiwanis Club, supra, appellant further argues that Section 502.2 of the Baltimore County zoning regulations required the zoning authority to alter or revise the requested special exception until it complied with the standards and requirements of Section 502.1, supra. We do not agree. Section 502.2 provides:

In granting any Special Exception, the Zoning Commissioners of the Board of Zoning Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties.

If appellant's argument were correct, an applicant would simply have to request a special exception and the zoning authority would be required, sua sponte, to make the requested special exception comply with Section 502.1, supra. There is nothing in Miller v. Kiwanis Club

that suggests such a result. In that case, we merely held that it was the function of the zoning authority, rather than that of the court, to impose conditions and restrictions upon the use of the property.

JUDGMENT AFFIRMED. COSTS TO BE
PAID BY APPELLANT.

DENNIS G. SMITH

V.

SHIRLEY PARTY et al.

In the
Court of Appeals
of Maryland

Petition Docket No. 40
September Term, 1978
(No. 133, September Term, 1977
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: April 24, 1978.

IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 1977

PETITION DOCKET NO. _____

DENNIS G. SMITH
Petitioner
vs.

SHIRLEY PARTY, et al
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS OF MARYLAND

RODY & RODY, CHARTERED
ROBERT S. RODY
336 ST. PAUL PLACE
BALTIMORE, MD. 21202
727-0033

Petitioner, by his attorneys, Rody & Rody, Chartered and Robert S. Rody, respectfully requests that a Writ of Certiorari be issued to the Court of Special Appeals of Maryland following its decision in this case on February 9, 1978, being Case No. 133, September Term, 1977.

STATEMENT OF THE CASE

Petitioner appealed from a decision of the Circuit Court for Baltimore County which affirmed a decision of the County Board of Appeals which denied Petitioner a Special Exception which he sought for "community buildings" etc. under the County Zoning provisions applicable to his 70 acre tract in the north portion of said County. The Court of Special Appeals in a per curiam decision, affirmed the decision below. Its Mandate was issued March 13, 1978.

QUESTIONS PRESENTED

1. DID THE COURT OF SPECIAL APPEALS ERR IN AFFIRMING THE RULING OF THE CIRCUIT COURT FOR BALTIMORE COUNTY THAT THE DECISION OF THE BOARD OF ZONING APPEALS WAS BASED ON "SUBSTANTIAL EVIDENCE" AND WAS "FAIRLY DEBATABLE"?

- 2 -

generate any "fire hazard". The Battalion Chief of the Baltimore County Fire Department simply testified that he encounters "curiosity seekers" at fires and they have a tendency to be in the way of fire engines.

The Board did not make any attempt to modify, revise or alter the proposal so as to alleviate the "congestion" which protestants alleged would be created by the proposal.

PERTINENT STATUTES,
ORDINANCES OR REGULATIONS

This Petition is primarily concerned with Section 502.1 and 502.2 of the Baltimore County Zoning Regulations.

ARGUMENT IN SUPPORT OF THE PETITION

THE COURT OF SPECIAL APPEALS ERRED IN AFFIRMING THE RULING OF THE CIRCUIT COURT FOR BALTIMORE COUNTY THAT THE DECISION OF THE BOARD OF ZONING APPEALS WAS BASED ON "SUBSTANTIAL EVIDENCE" AND WAS "FAIRLY DEBATABLE".

The Court of Special Appeals in its opinion, attached hereto, page two, said:

"The Board heard testimony from twenty four witnesses including expert witnesses, twelve on each side of the issue. This alone, we believe, clearly underscores the fact that the issue was fairly debatable."

- 5 -

No amount of explanation or rationalization as contained thereafter in the opinion of the Court of Special Appeals can eradicate the confusion and ambiguity which this statement creates, for the bench and bar generally, in regard to the proper interpretation of this most important criterion in evaluation of decisions of administrative tribunals. However qualified by the succeeding sentences in regard to what particular "experts" or witnesses allegedly stated, the opinion does not remove the suggestion that the Court of Special Appeals felt it permissible for a Board to "count noses" and thereby determine whether or not the evidence presented was "fairly debatable". This is certainly not the law. The question of whether something is "fairly debatable" is a question of quality and of the probative value of evidence not the status of the person testifying or the number of persons testifying. As you have repeatedly held in other cases, in considering "traffic congestion" the question is whether the quality of the evidence presented by protestants measures up to that offered in support of a Petition in order to render it "fairly debatable" or for it to be deemed so. As was said in the leading case of Anderson v. Sawyer, 329 A 2d, 716, 720 (1974):

"If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring

- 6 -

2. DID THE COURT OF SPECIAL APPEALS ERR IN ITS INTERPRETATION OF THE ARGUMENT OF PETITIONER THAT SECTION 502.2 OF THE BALTIMORE COUNTY ZONING REGULATIONS WAS ILLEGALLY AND IMPROPERLY IGNORED BY THE BOARD?

STATEMENT OF FACTS

Dennis Smith owned 70 acres of land on Bull Saw Mill Road about one mile from Middletown Road in the Freeland area of Baltimore County near Prettyboy Dam. He sought to have a Special Exception for his wooded rolling land which was unimproved except for an old cottage, barn and shed and a pond as the situs for a private family oriented recreational club. Neighboring property owners complained in testimony for the Board on his Petition that he would create "traffic congestion", a "fire hazard", and miscellaneous lesser problems.

Petitioner presented numerous experts some of whom had prepared lengthy, complex and thorough going studies of the proposed use and all of whom testified that the proposed use not only would not and could not create a traffic hazard, a fire hazard or any other kind of hazard in any fair and rational interpretation of the zoning regulations but that the proposal would be a benefit to the entire county. There was testimony from experts on behalf of the protestants to the effect that there would be congestion at certain peak times on the road after there were special events at the club and that such congestion could, at such moments,

- 3 -

area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal. The case before us falls within the latter category."

There was nothing presented before the Board that showed rationally and probatively any traffic congestion. The only contention was not that traffic generally would be increased on Bull Saw Mill Road so as to impede ability of other property owners or even of the public in general in use of said road or of any other road connecting to it, but that the club members themselves might require several hours to vacate the club site on a peak occasion when everyone desired to leave at the conclusion from some event, perhaps two or three times a year. It is submitted that this entire contention is not only not "fairly debatable", but verges on the bizarre and/or idiotic.

II

THE COURT OF SPECIAL APPEALS ERRED IN ITS INTERPRETATION OF THE ARGUMENT OF PETITIONER THAT SECTION 502.2 OF THE BALTIMORE COUNTY ZONING REGULATIONS WAS ILLEGALLY AND IMPROPERLY IGNORED BY THE BOARD.

Just as there was nothing "fairly debatable" about

- 7 -

conceivably prevent fire engines from going down Bull Saw Mill Road to the area of the club.

The late Judge Brannan found that there was evidence of traffic congestion and possible fire hazard but no other difficulty with the proposal, in affirming the Board.

The "gut issue" in the case was whether or not the proposed number of vehicles on the road at a peak moment, and as requested in the Petition might create "congestion". The principal factual basis for the contention that there might be "congestion" was the notion that the patrons of the recreational club might take one or more hours in departing from the club if they all were to leave at a fixed and specific time. Petitioner argued below, unsuccessfully, that the question of whether there was inconvenience to the club members in delaying their return home was hardly a rational basis for denying the Petition when the only persons to be inconvenienced by the alleged "congestion" would be members of the club themselves. The evidence of inconvenience to any of the few neighboring property owners along Bull Saw Mill Road was either non-existent or so nebulous and negligible as to be incapable of constituting a rational argument in opposition to the Petition; in fact most of the protestants including Shirley Party, the named Appellee, do not reside in the immediate area of the club but on some other road somewhere in the neighborhood. Nor was there any significant evidence that the proposed use would

- 4 -

the traffic issue under Section 502.1, as argued above, there was utterly no reason why the Board could not have and should not have made any one of a hundred possible minor adjustments on the proposal so as to accommodate any possible basis for the contention that "congestion" could result even at a peak time. Obviously, innumerable plans and requirements regarding the vacating of the road could have been suggested -- as to the number of vehicles, as to the number of vehicles per hour departing, as to the number of vehicles permitted to be parked on the premises at any time or any one of many other alternative methods whereby, not as a rewriting of the proposal but as a modification of a basically acceptable proposal, the Board could have utilized Section 502.2 in imposing

"... such conditions, restrictions, and regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties."

The Board's failure to so utilize Section 502.2, under these circumstances, constituted an abuse of discretion and for this reason alone, its decision was arbitrary, capricious and unreasonable. This was the argument respectfully suggested to the Court of Special Appeals and this was the argument that it erroneously rejected in its comment at pages 3 - 4 of the Opinion in which it said

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LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS

TRAFFIC IMPACT STUDY

For:
Mr. Robert S. Rody

Concerning:
ZONING CASE INVOLVING MR. DENNIS SMITH

by:
Thomas E. Mulinazzi, P.E.
6148 Springhill Terrace, Apt. 102
Greenbelt, Maryland 20770

December 3, 1974

6148 Springhill Terrace
Greenbelt, Maryland 20770
December 3, 1974

Mr. Robert S. Rody
Rody & Rody, Chartered
700 Equitable Building
Calvert & Fayette Streets
Baltimore, Maryland 21202

Dear Mr. Rody:

After visiting the site of the proposed recreational facility on November 10, 1974, and talking with Mr. Smith and you, I want to submit this letter report on my evaluation of the traffic situation associated with Mr. Smith's pending zoning request for his property on Bulls Sawmill Road Extended in Baltimore County.

A large majority of the users of the proposed recreational facility will probably come from the Baltimore area via Interstate 83. This existing multi-lane highway would experience no detrimental traffic impact because the traffic demands, which may result from the proposed recreational facility, would occur at off-peak times; in other words, they would not occur during the typical weekday morning or afternoon peak periods, when I-83 experiences its maximum congestion.

The connection between I-83 and the site in question in Middletown Road, a typical two lane twenty-foot rural highway. Given the following assumptions:

Level of Service C
Operating Speed = 40 mph
Passing Sight Distance > 1500 ft(%) = 40%
v/c ratio (from 0.38 to 0.51)

The maximum service volume for Level of Service C is calculated as follows:

2000 (0.38) (0.78) = 600 vehicles per hour (both directions)
2000 (0.51) (0.78) = 800 vehicles per hour (both directions)

* (0.78) is a factor for the width of the road

The distance from the interchange of I-83 and Middletown Road and the intersection of Middletown Road and Bulls Sawmill Road is a relatively short distance, less than four miles; so the main part of the trip will be made on I-83. Roads in Baltimore County of similar geometric characteristics, for example Falls Road, are currently carrying higher traffic volumes during the peak periods than Middletown Road would be expected to carry.

Bulls Sawmill Road and Bulls Sawmill Road Extended connect the site to Middletown Road, a total distance of approximately one mile. These two roads have low design characteristics and are sixteen to seventeen feet wide, which necessitates low operating speeds. Because of the short distance involved and the nature of the traffic - everyone going to the same location and expecting congestion near the site - no one should want to pass and speeds should be slow. Also since Bulls Sawmill Road Extended dead ends at Mr. Smith's property, there will be no interference between the traffic destined for the site and through traffic. It is very difficult to calculate the maximum service volume for a given Level of Service for these types of roads. A typical calculation would be as follows:

Level of Service D
Width factor $W_p = 0.55$
v/c ratio = 0.19 (assuming 0% passing sight distance)
2000 (0.55) (0.19) = 209 vehicles per hour

This type of calculation is for a relatively long uninterrupted flow road, so I have some doubts on its applicability for a short section of road such as Bulls Sawmill Road.

I expected that the comments from the County Planning Agency will included a recommendation calling for the widening of Bulls Sawmill Road from Middletown Road to the site in question or at least to where Bulls Sawmill Road Extended begins.

One recommendation I would like to make is to divert the traffic from Bulls Sawmill Road Extended into the parking lot as soon as possible.

The internal design of the parking lot is also important. By providing for quick access into the parking lot, congestion on Bulls Sawmill Road can be minimized or even eliminated. I would also recommend that that 25 feet be provided for the aisles between the parking stalls. With parking stalls designed to be 18 feet deep, a 25 foot aisle results in a distance of 61 feet for a two sided parking arrangement with 90 degree parking. Sixty feet should be a minimum and sixty-five feet is desirable.

Thank you for the opportunity of working with you.

Sincerely,
Thomas E. Mulinazzi, P.E.

We the undersigned oppose the zoning for Special Exception requested for approximately 69.5 acres, being the property of Dennis G. Smith and located near Bullsaw Mill Road Extended.

The petition for Special Exception for community buildings, swimming pools or other structural or land uses devoted toward Civic, Social, Recreational or Education Activities is not considered to be in the best interests of the rural communities of northern Baltimore County.

NAME	ADDRESS	PHONE NO.
Joseph C. Smith	2664 Bulls Saw Mill Rd Freeland, Md	357-5285
Chapman L. Smith	260 H. Backs Saw Mill Rd Freeland, Md	357-5289
3. Lawrence C. Col	2671 Bulls Saw Mill Rd Freeland, Md	357-7731
4. Glenn J. Cox	2674 Bulls Saw Mill Rd Freeland, Md	357-8321
5. Carolyn M. Keen	267 Bulls Sawmill Rd Freeland, Md	357-8777
6. Robert E. Nove	265 Bulls Saw Mill Rd Freeland, Md	357-8170
7. Robert C. Reese	266 Bulls Sawmill Rd Freeland, Md 21053	329-6219
8. Marion M. Reese	Parkton, Md.	329-6731
9. Tamara M. Bonitz	Parkton, Md.	329-6731
10. Anthony J. Smith	Parkton, Md.	329-6731
11. Robert D. Williams	Bulls Saw Mill Rd.	282-1855
12. Felicia M. Debus	Bulls Saw Mill Rd.	282-1855
13. Frank B. Smith	6082 Mill Rd	(444-5674)-10 (444-5674)-10
14. George R. Handberg	8137 Backlignville Rd.	472-2429
15. Marie H. Hartley	8137 Backlignville Rd.	357-8901
16. Robert C. Wiedick	8137 Backlignville Rd.	357-8901
17. Gene Muechel	8137 Backlignville Rd.	357-8901
18. Amy Harris	Backlignville Rd. Miller, Md	357-5647

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NAME	ADDRESS	PHONE NO.
1. Vicki K. Kitter	P.O. Box 376 Middletown Rd. Parkton, Md	357-5638
2. Robert M. Kater	Box 354 Middletown Rd Parkton, Md	357-5638
3. Rev. William E. Kater	Box 354 Middletown Rd Parkton, Md	357-5638
4. Alice Hanna	Box 191 Middletown Rd. Parkton, Md	357-5436
5. May B. Mogle	Parsonage Road Parkton, Md 21120	357-5588
6. Lewis Hill	RD 1 Box 341, Parsonage Rd, Parkton Anne Arundel Co. Parkton, Md.	357-5588
7. Mona B. Hill	Parsonage Rd. Parkton, Md	357-5588
8. Mrs. Bruce Hill	Parsonage Rd. Parkton, Md	357-5588
9. Mrs. Robert M. Hill	Parsonage Rd. Parkton, Md	357-5588
10. Harry Heckler	Walke, Rd. Freeland, Md	357-5435
11. Yvonne Hill	Middletown Rd. Parkton, Md	357-5302
12. Yvonne Hill	Daing Rd. Parkton, Md	357-5713
13. Yvonne Hill	Daing Rd. Parkton, Md	357-5713
14. Yvonne Hill	Daing Rd. Parkton, Md	357-5713
15. Yvonne Hill	Daing Rd. Parkton, Md	357-5713
16. Yvonne Hill	Daing Rd. Parkton, Md	357-5713
17. Yvonne Hill	Daing Rd. Parkton, Md	357-5713
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66. Yvonne Hill	Daing Rd. Parkton, Md	357-5713

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NAME	ADDRESS	PHONE NO.
31. Mrs. Wm. H. Wynn	Freeland, Md.	357-8256
32. Mrs. Edgar Bull	Parkton, Md.	357-8256
33. Mrs. Edgar Bull	Parkton, Md.	357-8256
34. Mrs. Edgar Bull	Parkton, Md.	357-8256
35. Mrs. Edgar Bull	Parkton, Md.	357-8256
36. Mrs. Edgar Bull	Parkton, Md.	357-8256
37. Mrs. Edgar Bull	Parkton, Md.	357-8256
38. Mrs. Edgar Bull	Parkton, Md.	357-8256
39. Mrs. Edgar Bull	Parkton, Md.	357-8256
40. Mrs. Edgar Bull	Parkton, Md.	357-8256
41. Mrs. Edgar Bull	Parkton, Md.	357-8256
42. Mrs. Edgar Bull	Parkton, Md.	357-8256
43. Mrs. Edgar Bull	Parkton, Md.	357-8256
44. Mrs. Edgar Bull	Parkton, Md.	357-8256
45. Mrs. Edgar Bull	Parkton, Md.	357-8256
46. Mrs. Edgar Bull	Parkton, Md.	357-8256
47. Mrs. Edgar Bull	Parkton, Md.	357-8256
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49. Mrs. Edgar Bull	Parkton, Md.	357-8256
50. Mrs. Edgar Bull	Parkton, Md.	357-8256
51. Mrs. Edgar Bull	Parkton, Md.	357-8256
52. Mrs. Edgar Bull	Parkton, Md.	357-8256
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54. Mrs. Edgar Bull	Parkton, Md.	357-8256
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58. Mrs. Edgar Bull	Parkton, Md.	357-8256
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County Office Building Room 106 9:30 AM
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NAME	ADDRESS	PHONE NO.
53. Shirley Gack	Freeland, Md.	472-4612
54. Shirley Gack	Freeland, Md.	472-4612
55. Shirley Gack	Freeland, Md.	472-4612
56. Shirley Gack	Freeland, Md.	472-4612
57. Shirley Gack	Freeland, Md.	472-4612
58. Shirley Gack	Freeland, Md.	472-4612
59. Shirley Gack	Freeland, Md.	472-4612
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61. Shirley Gack	Freeland, Md.	472-4612
62. Shirley Gack	Freeland, Md.	472-4612
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65. Shirley Gack	Freeland, Md.	472-4612
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NAME	ADDRESS	PHONE NO.
John C. Francis	Millers	357-8407
Mr. & Mrs. W. J. Harris	Millers	357-4422
Ernest Tracey	Freeland	357-5662
Earl Clark	RD 3 Glen Rock, Pa.	717-235-4984
James P. Pluta	RD 3 Glen Rock, Pa.	
Henry F. Beaumonts	Parkton, Md.	
Nancy R. Francis	Millers, Md.	357-8407
Freddie J. Tracey	Freeland, Md.	
Christina Tracey	Box 71, Freeland, Md.	357-8896
Floyd W. Smith	Freeland, Md.	
Edna M. Davis	Freeland, Md.	357-8467
Robert H. Parrish	Freeland, Md.	357-5778
Indra Tracey	Freeland, Md.	357-5662
Mrs. Julie Bollinger	Freeland, Md.	357-5246
Thomas Bragier	Freeland, Md.	357-5440
August St. Badger	Freeland, Md.	357-5490
Rydzetta M. Badger	Freeland, Md.	357-8615
Edward C. White	Freeland, Md.	357-8118
Virginia Boyd White	Freeland, Md.	

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NAME	ADDRESS	PHONE NO.
87 Devin Duntavelle	RD 1, Freeland, Md.	357-5859
88 Mary E. Phillips	Parsonage Rd. Parkton	357-5029
89 Carl V. Phillips	Parsonage Rd. Parkton, Md.	" "
90 Charles O. Doyle	Parsonage Rd. Parkton, Md.	329-6586
91 Minnie Mae Leight	Parsonage Rd. Parkton, Md.	
92 Mrs. Rita W. O'Leary	Parsonage Rd. Parkton, Md.	329-6564
93 Mrs. Marie E. Wight	Parsonage Rd.	472-4694
94 Vernon Standiford	Laurel Ridge Drive, Parkton, Md.	357-5157
95 Barbara Standiford	Laurel Ridge Dr., Parkton, Md.	357-5157
96 Elizabeth S. Kerr	Laurel Ridge Dr., Parkton, Md.	357-5898
97 Thomas E. Kerr	Laurel Ridge Dr., Parkton, Md.	357-5898
98 William W. Tanager	Laurel Ridge Drive, Parkton, Md.	357-5879
99 Robert J. Tanager	Laurel Ridge Drive, Parkton, Md.	357-5879
100 Betty J. Hill	Parsonage Rd.	357-5350
101 Charles P. Edwards	Laurel Ridge Drive, Parkton, Md.	472-2197
102 Monte E. Edwards	Laurel Ridge Dr., Parkton, Md.	472-2197
103 Peggy J. Yates	Laurel Ridge Dr., Parkton, Md.	329-6419
104 Edna M. Hates	Laurel Ridge Dr., Parkton, Md.	357-5438
105 Donald W. Yates	Laurel Ridge Dr., Parkton, Md.	329-6519
106 James A. Stepiet	Laurel Ridge Dr., Parkton, Md.	357-5947
107 Ralph Stepiet	Laurel Ridge Dr., Parkton, Md.	357-5947
108 William R. Stepiet	Laurel Ridge Dr., Parkton, Md.	357-5948
109 Betty J. Stepiet	Laurel Ridge Dr., Parkton, Md.	357-5948

PETITION

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NAME	ADDRESS	PHONE NO.
110 Ellen V. Williamson	Ed 2, Box 42, Parkton, Md.	327-8582
111 John Ward	Rt. 1 Box 303A, Parkton, Md.	357-5821
112 Donna D. Doyle	205 Rayne Rd., Parkton, Md.	357-5874
113 Virginia Keenan	Rt. 2 Box 145, Parkton, Md.	357-8209
114 Betty Hinch	Box 128A Mt. Cashel Rd., Parkton, Md.	472-4193
115 Betty Turner	Wesley Hill Rd., Parkton, Md.	357-4241
116 Mary Ann Ellwood	Box 127 Mt. Cashel Rd., Parkton, Md.	472-2145
117 Jessie L. Scott	Box 275, Rt. 1, Millers, Md.	329-6267
118 Charles C. Scott	Box 275, Rt. 1, Millers, Md.	329-6267
119 William C. Scott	Box 275, Rt. 1, Millers, Md.	329-6267
120 Joseph D. Scott	Box 275, Rt. 1, Millers, Md.	329-6267
121 Mary Ann Scott	Box 275, Rt. 1, Millers, Md.	329-6267
122 James J. Scott	Box 275, Rt. 1, Millers, Md.	329-6267
123 Charles J. Scott	Box 275, Rt. 1, Millers, Md.	329-6267
124 Charles J. Scott	Box 275, Rt. 1, Millers, Md.	329-6267
125 Charles J. Scott	Box 275, Rt. 1, Millers, Md.	329-6267
126 Charles J. Scott	Box 275, Rt. 1, Millers, Md.	329-6267
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NAME	ADDRESS	PHONE NO.
131 John M. Davis	Freeland, Md.	329-6267
132 John M. Davis	Freeland, Md.	329-6267
133 John M. Davis	Freeland, Md.	329-6267
134 John M. Davis	Freeland, Md.	329-6267
135 John M. Davis	Freeland, Md.	329-6267
136 John M. Davis	Freeland, Md.	329-6267
137 John M. Davis	Freeland, Md.	329-6267
138 John M. Davis	Freeland, Md.	329-6267
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146 John M. Davis	Freeland, Md.	329-6267
147 John M. Davis	Freeland, Md.	329-6267
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NAME	ADDRESS	PHONE NO.
151 Charles M. Hodge	Box 269C, Bullaw Mill, Md.	329-6564
152 Charles M. Hodge	Box 269C, Bullaw Mill, Md.	329-6564
153 Charles M. Hodge	Box 269C, Bullaw Mill, Md.	329-6564
154 Charles M. Hodge	Box 269C, Bullaw Mill, Md.	329-6564
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161 Charles M. Hodge	Box 269C, Bullaw Mill, Md.	329-6564
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168 Charles M. Hodge	Box 269C, Bullaw Mill, Md.	329-6564
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The petition for Special Exception for community buildings, swimming pools or other structural or land uses devoted toward Civic, Social, Recreational or Education Activities is not considered to be in the best interests of the rural communities of northern Baltimore County.

NAME	ADDRESS	PHONE NO.
171 John J. Jancowski	Rt. 1 Box 139, Millers, Md.	472-4780
172 John J. Jancowski	Rt. 1 Box 139, Millers, Md.	472-4780
173 John J. Jancowski	Rt. 1 Box 139, Millers, Md.	472-4780
174 John J. Jancowski	Rt. 1 Box 139, Millers, Md.	472-4780
175 John J. Jancowski	Rt. 1 Box 139, Millers, Md.	472-4780
176 John J. Jancowski	Rt. 1 Box 139, Millers, Md.	472-4780
177 John J. Jancowski	Rt. 1 Box 139, Millers, Md.	472-4780
178 John J. Jancowski	Rt. 1 Box 139, Millers, Md.	472-4780
179 John J. Jancowski	Rt. 1 Box 139, Millers, Md.	472-4780
180 John J. Jancowski	Rt. 1 Box 139, Millers, Md.	472-4780

We the undersigned oppose the zoning for Special Exception requested for approximately 69.5 acres, being the property of Dennis G. Smith and located near Bullaw Mill Road Extended.

The petition for Special Exception for community buildings, swimming pools or other structural or land uses devoted toward Civic, Social, Recreational or Education Activities is not considered to be in the best interests of the rural communities of northern Baltimore County.

NAME	ADDRESS	PHONE NO.
181 Mrs. Gloria Shaffer	Box 269C, Bullaw Mill, Md.	329-6564
182 Mrs. Gloria Shaffer	Box 269C, Bullaw Mill, Md.	329-6564
183 Mrs. Gloria Shaffer	Box 269C, Bullaw Mill, Md.	329-6564
184 Mrs. Gloria Shaffer	Box 269C, Bullaw Mill, Md.	329-6564
185 Mrs. Gloria Shaffer	Box 269C, Bullaw Mill, Md.	329-6564
186 Mrs. Gloria Shaffer	Box 269C, Bullaw Mill, Md.	329-6564
187 Mrs. Gloria Shaffer	Box 269C, Bullaw Mill, Md.	329-6564
188 Mrs. Gloria Shaffer	Box 269C, Bullaw Mill, Md.	329-6564
189 Mrs. Gloria Shaffer	Box 269C, Bullaw Mill, Md.	329-6564
190 Mrs. Gloria Shaffer	Box 269C, Bullaw Mill, Md.	329-6564

File

ROBERT S. RODY
EMILY M. RODY
CARROLL E. MARSHALL

LAW OFFICES
ROD & RODY, CHARTERED

Mr. S. Eric DiNenna
Zoning Commissioner
County Office Building
Horse, Maryland 21068



ZONING DEPARTMENT

RE: Item #9 -ZAC- August 27, 1974
Property Owner: Dennis J. Smith
Location: N/S or Bulls Sawmill Road, Extended, 405 Ft. S/W of
Bulls Sawmill Road
Existing Zoning: R.D.P.
Proposed Zoning: Special exception for Sec. B (6) uses: swimming
pools, swimming pools, or other structural or land uses.
No. of Acres: 69.5
Date: 8/28/74

By way of conjoined answer to the questions of Mr. Flanagan and the request of Mr. Wimbley, it is the intention and expectation of the Board that the great majority of its activities for the foreseeable future will be outside of the City limits. Approximately 5 to 6 months of the year, from May or June to September or October, the Board will be in operation. During this period, approximately during such a period of the year, the related problems could occur except for the fact that the Board will be in operation for approximately 1,600 parking spaces, it is doubtful if that number will ever be required to use the existing parking facility. It is believed that the availability of abundant parking area will be sufficient to handle the traffic at the Saw Mill Road at all times, even during some featured activity during the year.

More specifically, Mr. Smith expects to schedule a variety of activities which will, typically draw perhaps several hundred people to the site each week at the same time, such as a company picnic, other social events, sports events, religious observances, charitable functions, and athletic events, religious observances, charitable functions, and heavy traffic at the same point in time will be scheduled so as to engender no more than one or two large crowds per day.

Ongoing uses such as swimming, camping, etc., which could not create significant peak periods of use, would be scheduled so as to expect to provide his own traffic personnel in or about Bullitt County, Illinois, to assist and expedite the flow of traffic during the principal hours of use.

RSR • 12/15

Robert S. Rody

Gore Mill Road
Freeland, Maryland 21053

JUN 2 '75 AM

☐ App.
☐ Rec.
☐ Rel.
☐ Encl.
☐ Chkd.

ZONING DEPARTMENT

By

Dear Mr. Venetoulis:

I do not personally think the community is as disturbed over the matter of Mr. Smith having a private club with a swimming pool and some tennis courts, and possibly some overnight outings for only boy or girl scout troops.

I do not personally think the community is as disturbed over the matter of Mr. Smith having a private club with a swimming pool and some tennis courts, and possibly some overnight outings for only boy or girl scout troops.

I feel another critical point of concern is the control of crowds at these affairs. At the present time, Baltimore County has two and occasionally three police cars assigned to the Northern end of the county, near Bayviewville. I am sure with the ever growing problem of crime in the county, it would be a tremendous sacrifice for the Baltimore County Police Department to have to assign a large number of patrol cars plus vehicles to this specific area on Saturdays and Saturday evenings.

I hope you will personally talk to Mr. Eric DiMenna, your County Zoning Commissioner, and ask him to continue the strong position he previously took regarding this matter, when he originally turned down Mr. Smith's petition for special exception. I can assure you your personal concern and the interest you have shown in this matter in the past has been greatly appreciated by the many residents who have been affected by this preposterous proposal.

Warmest personal regards.

cc: Mr. S. Eric Di Manno (with enclosure)

enclosure

Myself, as well as the residents living in this area, are very disturbed over Mr. Smith's plans to turn his property into a recreation area with water to outdoor music rock concerts. He was invited to present his plans in writing to the citizens at a special meeting held recently at the Prettyboy Elementary School, and I am enclosing minutes of that meeting for your benefit. His rationale given at the meeting for wanting to have rock concerts were purely economic, he stated, since he is having domestic problems with his wife. What relationship his home domestic problems have with creating a public nuisance for hundreds of county residents is far beyond my grasp.

I think the residents are extremely concerned with a number of factors regarding these proposed outdoor concerts. Traffic and traffic control are of vital interest, and, as you can see in the enclosed photographs, Bulls Sawmill Road is a very narrow county road with narrow shoulders and embankments on either side which make it virtually impossible to pull off of the road in case of a car breakdown.

Though Mr. Sakh stated the maximum he would have in attendance at his concerts would be 2,000, he also admitted it would be virtually impossible to control the number that may attempt to attend, and you can imagine the resulting chaos that would occur at the rock concert entrance if an additional 2,000 persons showed up. The absence of adequate control of behavior and traffic problems after the gates have been closed for rock concerts at different locations around the State have always been extremely frightening and have resulted in numerous injuries to the young people in attendance, as well as numerous property owners (i.e., Largo, University of Maryland, Baltimore City, etc.).

RODY & RODY, CHARTERED

Mr. John L. Wimbley
Planning Specialist II
Project and Development Planning
Baltimore County Office of Planning and Zoning
Suite 301 Jefferson Building
Baltimore, Maryland 21204

Mr. Michael S. Flanigan
Traffic Engineering Asso.
Department of Traffic Engineering
Baltimore County, Maryland
Jefferson Building
Towson, Maryland 21204

SUBJECT: Case No. 75-118-X (Item No. 49)
Beginning 405' W of Bulls Sawmill Road and
Bulls Sawmill Road Extended - 6th Election
District
Dennis G. Smith - Petitioner

A copy of Mr. Alford Carey's letter, dated May 29, 1975, has been forwarded to this office by Mr. William D. Fromm, Director of Planning, for our review and comments.

The above referenced Case was denied on April 1, 1975, and subsequently an appeal was filed to the County Board of Appeals, by counsel for Mr. Dennis G. Smith, on April 4, 1975. This Case has been scheduled for a hearing on Thursday, August 14, 1975, at 10:00 a. m., in Room 301 of the County Office Building.

In the event that the Board of Appeals upholds my decision, Mr. Smith may appeal to the Circuit Court for Baltimore County. Further, under the authority of Section 500.12 of the Baltimore County Zoning Regulations, Mr. Smith may refile his request no sooner than eighteen months from the date of the final Order in this matter. If this happens, it will again be Mr. Smith's burden of proving that his proposed operation complies with Section 502.1 of the aforementioned Regulations. I would then review the Case de novo and base my decision on whether the requirements of said Section have been met.

If Mr. Carey has any further questions or requires additional information, please advise him to contact this office.

SED/NRC/scw

cc: Mr. William D. Fromm
Director of Planning

Mr. James E. Dyer
Deputy Zoning Commissioner

S. ERIC DI NENNA
Zoning Commissioner

Mr. Nicholas B. Commodari
Zoning Technician II

Case No. 75-118-X

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

NOTES FROM MEETING OF PRETTYBOY SCHOOL ON
APRIL 30, 1975 CONCERNING D. SMITH PETITION
FOR SPECIAL EXCEPTION ZONING ON BULL'S SAWMILL ROAD

1. M. O'Neill opened the meeting at 7:40 P.M.
 2. Earle Plumbhof summarized that Smith zoning was denied because Smith failed to prove his case for special exception. Burden of proof is on Smith.
 3. Smith was introduced by Earle Plumbhof to tell the group what his plans are. Plumbhof emphasized that Smith was asked to prepare a written statement of his plans. Smith had no prepared statement. Smith was asked to list what modifications he is willing to make in his request to make the project more acceptable to the residents of the area.
- Smith reviewed his background as a resident of the County not as an outsider. He stated that his reasons for wanting to have concerts were economic (wife problems). He reviewed how the police pulled his permit for a two-day concert. He stated that he would agree to a Special Exception - Recreational Area limited as follows:
- a.) Outdoor music (2:00 P.M. to 12:00 A.M.)
(None of 15 events will be on Sunday)
(15 in four months)
 - b.) Private Club
 - c.) Attendance - 2,000 maximum people; 200 daily
 - d.) \$100,000 swimming pool - within 2 years after zoning approved Tennis Courts
 - e.) Control of Crowds - Baltimore County Police
 - f.) Hours: 10:00 A.M. to 1:00 A.M.
 - g.) Amplification of Sound
 - h.) Overnight Camping - None except recognized boy or girl scout troops

4. D. Smith talked from approximately 7:45 P.M. to 9:00 P.M. At conclusion of talk, Smith left.

Smith reviewed his background as a resident of the ^{COUNTY} country not as an outsider. He stated that his reasons for wanting to have concerts were economic (wife problems). He reviewed how the police "pulled" his permit for a two-day concert. He stated that he would agree to a Special Exception - Recreational Area limited as follows:

a.) Outdoor music (2:00 P.M. to 12:00 A.M.)
(None of 15 events will be on Sunday)
(15 in four months)

- b.) Private Club
- c.) Attendance - 2,000 maximum people; 200 daily
- d.) \$100,000 swimming pool - within 2 years after zoning approved Tennis Courts

e.) Control of Crowds - Baltimore County Police

f.) Hours: 10:00 A.M. to 1:00 A.M.

g.) Amplification of Soup

h.) Overnite Camping - None except recognized boy or girl scout troops

4. D. Smith talked from approximately 7:45 P.M. to 9:00 P.M. At conclusion of talk, Smith left.

5. Group, by unanimous vote, agreed that no compromise with Smith' is necessary at this time, since Smith had been granted no zoning.
6. Earle Plumhoff outlined the zoning appeal procedure for the group.
7. A recommendation was made that the group propose to Smith that a limit of 200 people per event be imposed. Earle Plumhoff stated that he would not agree to it.
8. A motion was made by R. Anchors that Earle Plumhoff's firm be designated to handle the appeal. Motion was seconded and carried unanimously.
9. One party stated that D. Smith had threatened people with zoning violations (report of) if they protested his plans
10. Mrs. Party made a motion to create a committee to collect money and provide communications, committee was formed:

Shirley Party	Gayle Yost
Ray Anchors	Judy Bosley
M. O'Neill	Liz Peters
E. Plumhoff	Joe Smith
C. J. Fern	Mrs. Scott
	Mary Roamer
11. A motion was made that ten people underwrite \$100 each to create a fund for expert and legal fees.
Ten volunteers included:

Carl Party	E. Plumhoff
Ray Anchors	D. Black
Ron Debris	H. Mickey
C. J. Fern	Joe Smith
Dr. Scott	H. O. Niell
12. Miscellaneous Notes:
 - a.) D. Smith said no motorcycle events or skeet shooting will be allowed?
 - b.) D. Smith stated that he expected 60% of the membership to swimming club to come from within eight mile radius.
 - c.) ESCAPE is the corporation which will hold the events (per Smith)
 - d.) Smith will not post a bond insuring that music cannot be heard off of his property
 - e.) Any Covenant's shall stay with the property as long as D. Smith is alive (Smith has agreed to this stipulation - or would)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. Joseph R. Gallen, Executive Director
Community Relations Commission
February 25, 1975
Date
Mr. S. Eric DiNenna
Zoning Commissioner
Case No. 75-118-X (Item No. 49)
Beginning 405' W of Bulls Sawmill Road and
Bulls Sawmill Road Extended - 6th Election
District
Dennis G. Smith - Petitioner

This is to advise you that Mr. Dennis G. Smith filed a Petition for a Special Exception and I am holding the decision of said Petition sub curia.

As to Mr. Alford R. Carey's letter, I cannot make comment on it at this time.

S. ERIC DI NENNA
Zoning Commissioner

SED/csw

cc: Mr. James E. Dyer
Deputy Zoning Commissioner

File

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

November 7, 1974

COUNTY OFFICE BUILDING
111 W. Chesapeake Avenue
Towson, Maryland 21204

James B. Byrnes, III
Chairman

MEMBERS

ZONING ADMINISTRATION

HEALTH DEPARTMENT

BUREAU OF FIRE PREVENTION

DEPARTMENT OF TRAFFIC ENGINEERING

STATE HIGHWAY ADMINISTRATION

BUREAU OF ENGINEERING

PROJECT AND DEVELOPMENT PLANNING

INDUSTRIAL DEVELOPMENT COMMISSION

BOARD OF EDUCATION

OFFICE OF THE BUILDINGS ENGINEER

Robert S. Rody, Esq.
700 Equitable Building
Baltimore, Maryland 21202

RE: Reclassification and
Special Exception Petition
Item 49
Dennis G. Smith - Petitioner

Dear Mr. Rody:

The Zoning Plans 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 on the northwest side of Bulls Sawmill Road extended, approximately 405 feet southwest of Bulls Sawmill Road, in the 6th Election District of Baltimore County.

This 69.5 acre tract is presently improved with an existing dwelling and barn. It is surrounded by large acreage farm properties to the northeast, northwest and southeast. Various single family residential uses exist opposite the site on Bulls Sawmill Road extended.

The petitioner is requesting a Special Exception to permit a community building, swimming pools, and other structural and land uses devoted to civic, social, recreational or educational activities.

Robert S. Rody, Esq.
Item 49
November 7, 1974

Page 2

Various facilities, such as a baseball diamond, tennis courts, horseshoe pits are proposed in conjunction with a large area devoted to picnic and tent use. Off street parking is proposed for 1000 square feet. Attention should be given to the comments of the Project & Development Planning Office and the Dept. of Traffic Engineering.

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,

JAMES B. BYRNES, III
Chairman,
Zoning Plans Advisory Committee

JBB:JD

Enclosure

cc: George William Stephens, Jr. & Assoc., Inc.
P.O. Box 6828, Towson, Maryland 21204

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

October 8, 1974

Robert S. Rody, Esq.
700 Equitable Building
Baltimore, Maryland 21202

RE: Special Exception Petition
Item 49
Dennis G. Smith - Petitioner

Dear Mr. Rody:

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 on the northwest side of Bulls Sawmill Road Extended, approximately 405 feet southwest of Bulls Sawmill Road, in the 6th Election District of Baltimore County. This 69-1/2 acre tract is presently improved with an existing dwelling, barn and shed. The surrounding properties all exist as large acreage residential or farm use.

The petitioner is requesting a Special Exception for a recreational facility and proposes various uses, such as a baseball diamond, tennis courts, picnic and tent areas, and possible miniature golf and pool facilities. Off street parking is proposed for 1000 vehicles.

This Committee is withholding approval of the subject application until revised plans, reflecting the comments of both the Department of Traffic Engineering and the Project and

Robert S. Rody, Esq.
Re: Item 49
October 8, 1974

Page 2

Department Planning Office are submitted to this office.

Very truly yours,

James B. Byrnes, III
Chairman,
Zoning Advisory Committee

JBB:JD

Enclosure

cc: George William Stephens, Jr.
& Associates, Inc.
P.O. Box 6828
Towson, Md. 21204

Robert A. DiCicco, Esq.
208 W. Pennsylvania Avenue
Towson, Maryland 21204

Baltimore County, Maryland
Department of Public Works

COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

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

September 20, 1974

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

Re: Item #49 (1974-1975)
Property Owner: Dennis G. Smith
N/S of Bulls Sawmill Rd. Extended, 405' S/W of Bulls Sawmill Rd.
Existing Zoning: R.D.P.
Proposed Zoning: Special Exception for Sec. 3 (b) uses: community buildings, swimming pools, or other structural or land uses devoted to civic, social, recreational or educational activities.
No. of Acres: 69.5 District: 6th

Dear Mr. DiNenna:

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

Highways:

A portion of Bulls Sawmill Road Extended is County maintained. This road is proposed to be improved in the future as a 30-foot closed section roadway on a 50-foot right-of-way. Highway improvements including highway right-of-way widening and any necessary reversible easements for slopes 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 plan must be revised accordingly.

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

Sediment Control:

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

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

Storm Drains:

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

Item #49 (1974-1975)
Property Owner: Dennis G. Smith
Page 2
September 20, 1974

Storm Drains: (Cont'd)

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

Drainage and utility easements and/or reservations are required through this property.

Open stream drainage requires a drainage reservation or easement of sufficient width to cover the flood plain of a 100-year design storm. However, a minimum width of 50 feet is required.

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.

Water and Sanitary Sewer:

Public water supply and sanitary sewerage are not available to serve this property which is tributary to the Prettyboy Reservoir and lies beyond the Baltimore County Metropolitan District and the Urban Rural Reservation Line. The Baltimore County Comprehensive Water and Sewerage Plan, amended July 1973 indicates "No Planned Service" in the area.

Very truly yours,

Ellsworth N. Dyer
Ellsworth N. Dyer, P.E.
Chief, Bureau of Engineering

END:ENH:PMR:ss

cc: J. Trenner

JJ-SE Key Sheet
130 thru 133 NW 21 & 22 Pos. Sheets
NW 31 & 32 P Topo
11 Tax Map

BALTIMORE COUNTY, MARYLAND

JEFFERSON BUILDING TOWSON, MARYLAND 21204



DEPARTMENT OF TRAFFIC ENGINEERING

EUGENE J. CLIFFORD, P.E.
DIRECTOR

WM. T. MELZER
DEPUTY TRAFFIC ENGINEER

September 27, 1974

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

Re: Item 49 - ZAC - August 27, 1974
Property Owner: Dennis G. Smith
Location: N/S of Bulls Sawmill Road Extended, 405 ft. S/W of Bulls Sawmill Rd.
Existing Zoning: R.D.P.
Proposed Zoning: Special exception for Sec. B (6) uses: community bldgs., swimming pools, or other structural or land uses devoted to civic, social, recreational or educational activities.
No. of Acres: 69.5
District: 6th

Dear Mr. DiNenna:

This department would like to have more information as to the types of events to be held, frequency and the number of people and vehicles that will be using this site at any one time.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineering Asso.

MSF/15

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF HEALTH



JEFFERSON BUILDING
TOWSON, MARYLAND 21204

September 3, 1974

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 49, Zoning Advisory Committee Meeting, August 27, 1974, are as follows:

Property Owner: Dennis G. Smith
Location: N/S of Bulls Sawmill Rd. Extended, 405 ft. S/W of Bulls Sawmill Rd.
Existing Zoning: R.D.P.
Proposed Zoning: Special exception for Sec. B (6) uses: community bldgs., swimming pools, or other structural or land uses devoted to civic, social, recreational or educational activities.
No. of Acres: 69.5
District: 6th

Complete soil evaluation needed; approved water well must be drilled.

Food Protection Comments: Prior to construction, renovation and/or installation of equipment for this food service facility, complete plans and specifications must be submitted to the Division of Food Protection, Baltimore County Department of Health, for review and approval.

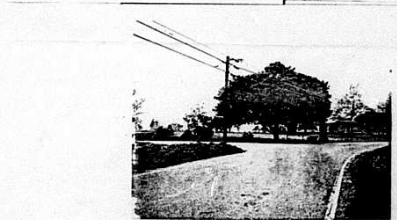
Swimming Pool Comments: Prior to approval of a public pool on this site, complete plans and specifications of the pool and bath-house must be submitted to the Baltimore County Department of Health for review and approval.

Very truly yours,

Thomas H. Devlin
Thomas H. Devlin, Director
BUREAU OF ENVIRONMENTAL SERVICES

ENVB/acG

CG--L.A. Schuppert
J.A. Messina



Very truly yours,

John L. Wimbley
John L. Wimbley
Planning Specialist II
Michael S. Flanigan
Michael S. Flanigan
Traffic Engineering Associate

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
SUITE 301 JEFFERSON BUILDING 105 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND 21204
AREA CODE 301 PLANNING 484-3811 ZONING 484-3351

WILLIAM D. FROMM
DIRECTOR
S. ERIC DINENNA
ZONING COMMISSIONER



September 20, 1974

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 49, Zoning Advisory Committee Meeting, August 27, 1974, are as follows:

Property Owner: Dennis G. Smith
Location: N/S of Bulls Sawmill Road extended, 405 feet S/W of Bulls Sawmill Road
Existing Zoning: R.D.P.
Proposed Zoning: Special exception for Sec. B (6) uses, community bldgs, swimming pools or other structural or land uses devoted to civic, social, recreational or educational activities
No. of Acres: 69.5
District: 6th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

The site plan and information submitted with the petition are insufficient to make comments as to the development of the site. This office will withhold comment until more detailed information is made available.

Very truly yours,

John L. Wimbley
John L. Wimbley
Planning Specialist II
Project and Development Planning

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
SUITE 301 JEFFERSON BUILDING 105 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND 21204
AREA CODE 301 PLANNING 484-3811 ZONING 484-3351

BOARD OF EDUCATION
OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: August 28, 1974

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

Z.A.C. Meeting of: August 27, 1974

Re: Item 49.50

Property Owner: Dennis G. Smith

Location: N/S of Bulls Sawmill Rd. Extended, 405 ft. S/W of Bulls Sawmill Rd.

Present Zoning: R.D.P.

Proposed Zoning: Special exception for Sec. B (6) uses: community bldgs., swimming pools, or other structural or land uses devoted to civic, social, recreational or educational activities.

District: 6th

No. Acres: 69.5

Dear Mr. DiNenna: No adverse effect on student population.

Very truly yours,

W. Nick Petrovich
W. Nick Petrovich,
Field Representative.

WNP/ml

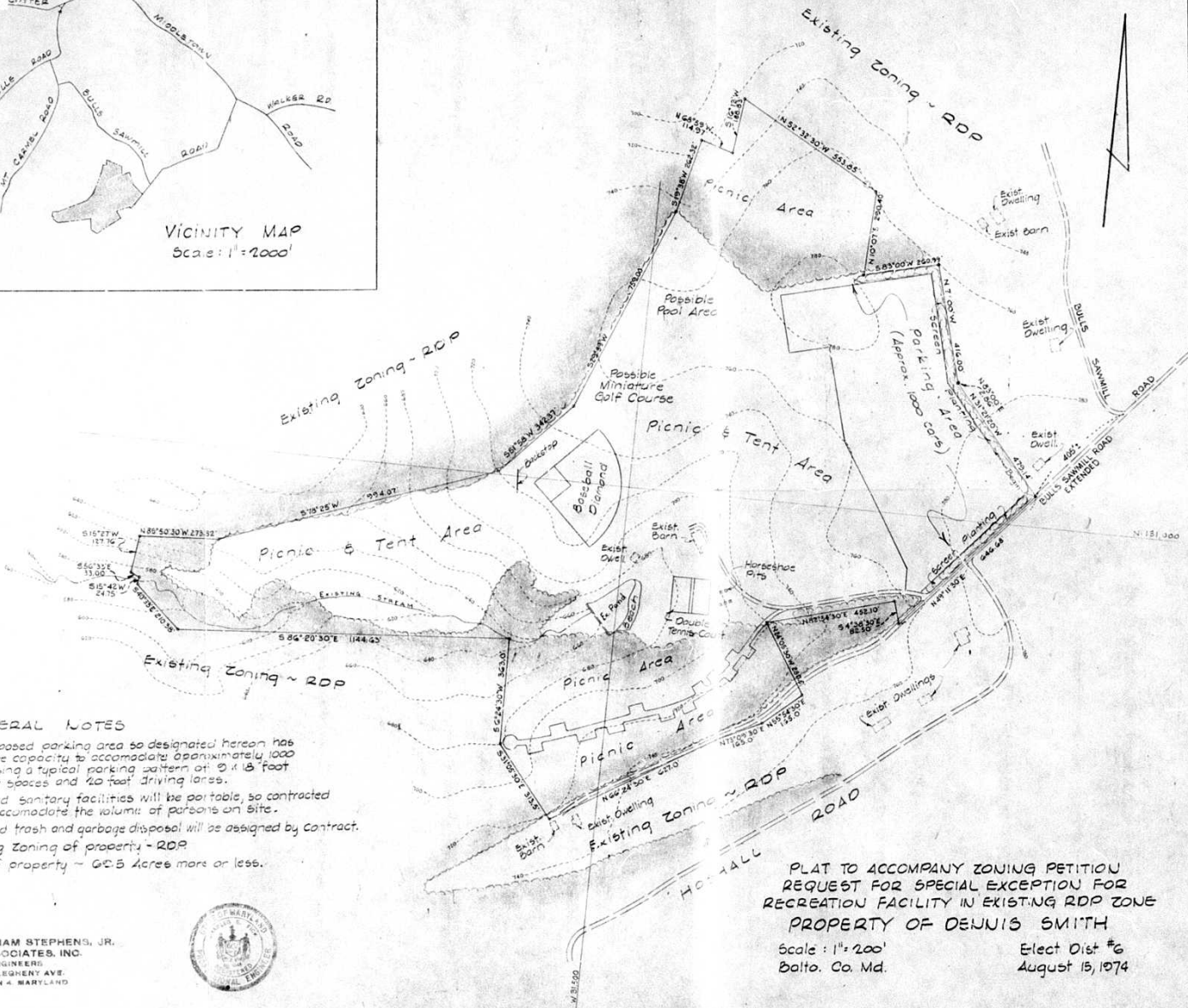
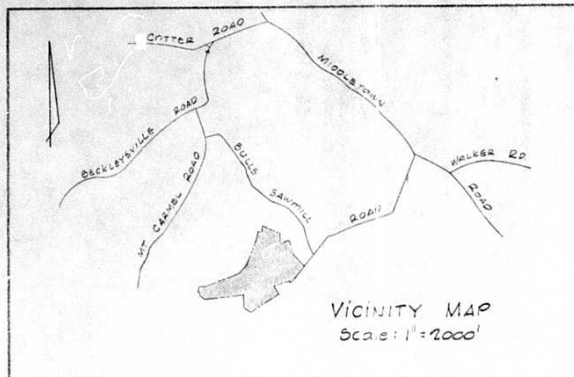
H. EMILIE PARKS, PRESIDENT
EUGENE C. HESS, VICE PRESIDENT
MRS. ROBERT L. BENNEY

MARCUS H. BOTSARIS
JOSEPH M. MAGOWAN
ALVIN LORECK
JOSHUA W. WHEELER, SECRETARY

F. DAYMON WILLIAMS, JR.
RICHARD W. THAYER, JAMES
MRS. RICHARD A. MULLER



Dennis G. Smith
Bulls Saw Mill Rd.
Freeland, Md. 21053
Petition for Special Exception
#75-118-X



GENERAL NOTES

1. The proposed parking area so designated hereon has a storage capacity to accommodate approximately 1000 cars, using a typical parking pattern of 20 ft x 10 ft parking spaces and 40 foot driving lanes.
2. Proposed sanitary facilities will be portable, so contracted as to accommodate the volume of persons on site.
3. Proposed trash and garbage disposal will be assigned by contract.
4. Existing Zoning of property - RDP
5. Area of property - 62.5 Acres more or less.

GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
ENGINEERS
303 ALLEGANY AVE.
TOWSON 4 MARYLAND



PLAT TO ACCOMPANY ZONING PETITION
REQUEST FOR SPECIAL EXCEPTION FOR
RECREATION FACILITY IN EXISTING RDP ZONE
PROPERTY OF DENNIS SMITH

Scale: 1"=200'
Baltimore, Co. Md.

Elect Dist #6
August 15, 1974

