

RE: JOHN W. HESSIAN, III
People's Counsel for Baltimore County
Complainant
vs.
S. ERIC DINENNA
Zoning Commissioner of Baltimore
County, et al
Respondents

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
IN EQUITY
122/280/5842

DECREE AND DECLARATION OF RIGHTS

In accordance with the Memorandum Opinion in the above case dated November 15, 1978, it is, this _____ day of _____, 1978, by the Circuit Court for Baltimore County, DECLARED:

1. That the concluding sentence of Section 502.3 of the Baltimore County Zoning Regulations, which reads as follows:

"After a final order granting a Special Exception the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same."

be and hereby is, DECLARED, null and void, in violation of due process of law, for lack of provision for notice, hearing, and cross-examination in connection with a quasi-judicial act.

2. That the Complainant, People's Counsel for Baltimore County, as well as other neighboring property owners, who were parties to the proceedings involving the granting of the Special Exception, were denied due process of law as a result of the action of the Zoning Commissioner of Baltimore County in extending said Special Exception by Order dated May 23, 1977 without notice, opportunity for hearing or cross-examination for said Complainant and property owners.



IF EXTENSION ORDER QUESTIONED THEN APPEAL TO BOARD ONLY PROPER AVENUE

and should have as their exclusive remedy filed an appeal within 30 days with the County Board of Appeals, pursuant to Section 22-27 of the County Code. Furthermore, had they wished to be heard at the Zoning Commissioner level, they might have made a request for a hearing under Section 500.7 of the Zoning Regulations, which provision is extremely well known to the People's Counsel, and the Zoning Commissioner would have scheduled a hearing and advertised and posted the property once again. However, the People's Counsel nor the Protestants did not make a request for such a hearing at the Zoning Commissioner level, nor did they take the appeal to the County Board of Appeals within 30 days, but rather, they filed these proceedings which seek to completely overturn the right of the Elks to lawfully use their property.

The Court should recall that the original special exception in this matter was issued by the County Board of Appeals on April 28, 1976, and thus the two-year period under Section 502.3 would expire April 28, 1978. It seems rather unusual to counsel for the Elks and to the Elks that the People's Counsel did not file these proceedings until after April 28, 1978. Thus, if the People's Counsel prevails in this matter, the Elks will not have the opportunity to extend the special exception which has been lawfully extended for the additional three-year period allowed under Section 502.3 of the Zoning Regulations.

Two equitable maxims which have been applied in various equity actions, including actions for injunctions, would seem to have possible application in this case, namely that he who comes into equity must come with clean hands and the equitable maxim that he who seeks equity must do equity. As to the application of these equitable maxims to injunction cases, see *M.L.E. Injunction*, Section 1 at page 252, as well as *Niner v. Hanson*, 1958, 142 A.2d 798, 217 Md. 298. Also see *Broumel v. White*, 1899, 39 Atl.1047, 87 Md. 521. See as well *Etgen v. Washington County Building and Loan Association*, 1945, 41 A.2d 299, 184 Md. 412.

3. That Building Permit No. 06743, dated September 21, 1978, issued to Respondent Benevolent Protective Order of Elks No. 7 Baltimore Lodge is null and void because based on the aforesaid illegal zoning extension order, subject to the right of the Respondent Elks to take an appeal from this Decree and Declaration of Rights.

4. That any and all construction undertaken by Respondent Benevolent Protective Order of Elks No. 7 Baltimore Lodge was, and is, in violation of law because based on the aforesaid illegal zoning extension order and illegal building permit, once again subject to their right of appeal herefrom.

5. That Respondent Benevolent Protective Order of Elks No. 7 Baltimore Lodge is obligated to undo any and all construction which has occurred in connection with the aforesaid illegal extension order and building permit, and is required to restore the subject property in Baltimore County on the southwest side of Windsor Mill Road 804 feet south of Old Court Road in the Second Election District to its condition prior to the undertaking of construction in or about September, 1978.

6. That the Special Exception granted on April 28, 1976 by Order and Opinion of the Board of Appeals of Baltimore County, to Respondent for a community building on the aforesaid property be, and hereby is, DECLARED null and void, the right to its utilization having expired pursuant to Section 502.3 of the Baltimore County Zoning Regulations on April 28, 1978, subject once again to the right of the Elks to appeal herefrom.

In accordance with the Memorandum Opinion of this court dated November 15, 1978, it is furthermore, by the Circuit Court for Baltimore County, ORDERED, that:

1. The Demurrer filed by Respondent S. Eric Dinenna, Zoning Commissioner, in the above case, be and hereby is, overruled.

2. That the Motion to add Baltimore County, Maryland, party Respondent, be, and hereby is, granted.

PEOPLE'S COUNSEL AND PROTESTANTS FRUSTRATED ADMINISTRATIVE PROCESS BY NO APPEAL OR REQUESTS FOR HEARING

PARAGRAPH 14 OF BILL

STATUTORY REMEDY AVAILABLE, THEN SEC. 3-409(b) BASED ON DECLARATORY JUDGMENT ACTION

NUMEROUS STATUTORY REMEDIES AVAILABLE

If there has been any frustration of the administrative process in this matter, then it has been by the failure to file this action until the initial two-year special exception period had expired on April 28 of this year, and had either the People's Counsel or the Protestants wished to contest this extension at the Zoning Commissioner level or at the County Board of Appeals level, ample and readily utilized means existed to do so. Once again, counsel for the Elks says that these parties should not be permitted to do indirectly what they could have done directly and what they failed to do

IMPROPER CASE FOR THE UTILIZATION OF THE DECLARATORY JUDGMENT ACT.

In paragraph 14 of its Bill, the People's Counsel asserts that this dispute is appropriate for resolution under the Declaratory Judgment Act of the State of Maryland, Title III, Subtitle 4, Courts and Judicial Proceedings Article of the Maryland Annotated Code. Counsel for the Elks submit that by the express terms of the Declaratory Judgment Article, this is an improper and unlawful remedy to use herein. As previously stated, Section 3-403 of the Courts and Judicial Proceedings Article in Subsection (b) clearly states as follows: "If a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of a proceeding under this subtitle." As the Court knows, the People's Counsel and other interested parties herein could have requested a special hearing pursuant to Section 500.7 of the Zoning Regulations, at the Zoning Commissioner level, and they could have and should have as their exclusive remedy noted an appeal to the County Board of Appeals from the Extension Order of May 23, 1977, pursuant to the express provisions of Section 22-27 of the Baltimore County Code. The People's Counsel and the former Protestants in the matter did not follow either of these courses, and they should not now be allowed to seek to remedy their failure to utilize these remedies by means of invoking

LAW OFFICE
NOLAN, FLYNNHOFF
& WILLIAMS
TOWSON, MD.

3. That upon the Bill of Complaint for Declaratory and Injunctive Relief, Respondent S. Eric Dinenna, Baltimore County, Maryland, and Baltimore Lodge No. 7 of Benevolent Protective Order of Elks, and/or their agents, servants, and employees be, and hereby are, enjoined from taking any action pursuant to the aforesaid illegal extension order of May 23, 1977 and building permit issued by Baltimore County September 21, 1978, in connection with utilization of said Special Exception and construction of a community center at the aforesaid property.

4. That Respondents are directed to expedite the restoration of the aforesaid property to its condition prior to construction and to report to this court within thirty (30) days of the date of this Order concerning compliance with this provision.

5. That the operation of Paragraph 4 of this Order shall be stayed, only upon the following conditions:

a. Pending an appeal of this Decree and Declaration of Rights to the Court of Special Appeals, up to and until said appeal is finally determined, and the mandate is transmitted from the Court of Special Appeals and/or Court of Appeals.

b. Pending the filing of a new petition for special exception for community building, provided that said petition is filed within thirty (30) days of this Decree, and provided that it is prosecuted diligently to its conclusion.

c. The Buildings Engineer of Baltimore County shall have authority to assure that the construction site remains safe and secure pending the aforesaid legal processes.

JUDGE

the Declaratory Judgment Act. See the zoning cases previously cited in I. hereof.

III.
WHY THE MOTION FOR INTERLOCUTORY INJUNCTION SHOULD BE DENIED.

The Elks respectfully submit that the Motion for Interlocutory Injunction should be denied in this matter for all of the reasons previously set out in Sections I. and II. hereof, most particularly the fact that administrative remedies were not followed, and the fact that this is not a proper case for action under the Declaratory Judgment Act.

Furthermore, counsel for the Elks have instructed their clients, the Elks, to suspend any construction work and any other activity on the site on or before November 9, 1978, and thus an interlocutory injunction should not be required in view of this instruction of counsel to the Elks.

However, what preliminary construction work has been done on the site, primarily consists of concrete work and other work which must be done before the onset of cold weather. The obtaining of a building permit in this matter was done upon the advice of counsel, but actual construction was undertaken by the Elks without the approval of their counsel.

However, counsel for the Elks believes that it would be grossly inequitable and unjust to allow the People's Counsel and the former Protestants in this case to accomplish indirectly what they failed to do directly when the Board of Appeals granted this special exception. The Court can examine the seven conditions which the Board of Appeals attached to its Order of April 28, 1976, and it can be readily seen that a relatively small Elks Lodge and parking area on a 12-acre site will be adequately and properly placed in this neighborhood by following the seven conditions which the Board attached to its Order. The Elks have every intention of following these conditions to the letter, and they only ask to be allowed to utilize this home on Windsor Mill Road

ELKS WILL SUSPEND WORK AS OF NOVEMBER 9, 1978

WINTER WEATHER A PROBLEM

UNJUST AND INEQUITABLE TO STOP ELKS NOW

ELKS WILL FOLLOW SEVEN CONDITIONS EXACTLY

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NOLAN, FLYNNHOFF
& WILLIAMS
TOWSON, MD.

NOTICE AND OPPORTUNITY TO BE HEARD.

AMPLE NOTICE

NO DENIAL OF FILE OR RECORD ACCESS TO PEOPLE'S COUNSEL OR PROTESTANTS

NO REQUEST OR INQUIRY TO ZONING

IF REQUESTED SPECIAL HEARING WOULD HAVE BEEN HELD UNDER SEC. 500.7

In subparagraph (d) of paragraph 13 of the Bill, the People's Counsel asserts that neither the People's Counsel nor any other interested parties had any notice, hearing, or opportunity to be heard with regard to the Extension Order. Once again, without repeating the previous provisions, the Elks submit that everyone involved had ample knowledge that the provisions of Section 502.3 are implied as background law to the Board's Order, that the public records were available for examination, and that had any of these parties wished to be heard, they should have taken an appeal within 30 days from May 23, 1977. There is no allegation in the Bill of Complaint that either the Elks or the Zoning Commissioner in any way restricted the lawful public access to both the former Protestants and the People's Counsel to the Zoning Commissioner's Books and records in this case, File 75-183-X. All that either of these parties had to do was to walk into the Zoning Commissioner's Office, call the Zoning Commissioner's Office, or send the Zoning Commissioner's Office a letter expressing their continuing interest and their desire to participate in any extension order. Had any of these actions been taken, the Zoning Commissioner would have certainly scheduled a special hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations. As previously stated, such special hearings are ordinarily scheduled with regard to extension requests only when such an extension request is coupled with a request in a change of conditions of the Special Exception Order sought to be extended.

CLAIMED FRUSTRATION OF THE ADMINISTRATIVE PROCESS BEFORE THE BOARD OF APPEALS.

In Subparagraph 13 (c), the People's Counsel in his Bill claims that the proper administrative process before the County Board of Appeals has been frustrated. This is not so. As previously stated, had the People's Counsel or Protestants wished to question the Extension Order of May 23, 1977, then they could have

in the Woodlawn/Liberty Road area, where they have long sought to locate.

After moving from their downtown Lodge, Baltimore Lodge No. 7 sought to locate on a property located on Rice's Lane near the Diamond Ridge Golf Course and Western Area Park. After spending a great deal of money on this site, the Elks lost the opportunity to do so, and this property has been acquired by Baltimore County for incorporation into the Park System by the Department of Recreation and Parks.

As Zoning File 75-183-X will reveal, the Elks placed the Benson property on Windsor Mill Road under contract on September 18, 1974 and filed for this special exception with the Zoning Commissioner on February 7, 1975, over three years ago. Furthermore, Mr. Charles Bradford, whom the People's Counsel sought to serve in this matter, has since died, before his dream was realized, of seeing a new Elks Lodge in the Woodlawn Area. The Court's file in this matter will confirm his death.

Thus, the Elks would respectfully request that the Court review their entire file in this matter, including but not only this Memorandum, and upon such review the Elks believe that the Court will uphold the Demurrer of the Zoning Commissioner to the Bill of Complaint without leave to amend, since as the People's Counsel says in his Motion for Summary Judgment, the facts are undisputed, or in the alternative that the Court will grant summary judgment in favor of the Elks, for the reasons set out in this Memorandum.

CONCLUSION.

For the reasons set out herein, the Elks respectfully request that the Zoning Commissioner's Demurrer in this matter be sustained without leave to amend, or in the alternative that summary judgment be granted in their favor on the People's Counsel's Motion, and that no interlocutory injunction should

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& WILLIAMS
TOWSON, MD.

LOST RICE'S LANE SITE TO COUNTY FOR PARK

PRESENT CASE BEGAN FEBRUARY 7, 1975 - ALMOST FOUR YEARS AGO

SUSTAIN ZONING COMMISSIONER'S DEMURRER OR GRANT ELKS SUMMARY JUDGMENT

LAW OFFICE
NOLAN, FLYNNHOFF
& WILLIAMS
TOWSON, MD.

issue in this matter.

Respectfully submitted,

JAMES D. NOLAN

NEWTON A. WILLIAMS

NOLAN, PLUMHOFF & WILLIAMS
204 West Pennsylvania Avenue
Towson, Maryland 21204
823-7800

Counsel for Baltimore Lodge No. 7,
Benevolent and Protective Order
of Elks

I HEREBY CERTIFY that on this 7th day of November, 1978,
a copy of the foregoing Memorandum of Law was mailed, postage
prepaid to John W. Hessian III, Esquire, People's Counsel and
Peter Max Zimmerman, Deputy People's Counsel, County Office
Building, Towson, Maryland 21204 and to J. Carroll Holzer, Esquire,
County Solicitor and Thomas J. Bollinger, Assistant County Solici-
tor, Court House, Towson, Maryland 21204.

JAMES D. NOLAN

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

JAMES D. NOLAN
J. EARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM M. HESSIAN, JR.
THOMAS J. HENNER
KENNETH H. MASERS
STEPHEN J. NOLAN

November 30, 1978

Mr. Peter Max Zimmerman
Deputy People's Counsel
County Office Building
Towson, Maryland 21204

Re: Proposed Decree and Declaration
of Rights in Hessian v. DiNenna,
et al., Circuit Court for
Baltimore County, Equity No. 95842,
Equity Docket 122, Folio 280

Dear Mr. Zimmerman:

Thank you for your letter of November 29, 1978,
and the Proposed Decree and Declaration of Rights. Mr.
Goldman is assuming primary responsibility in the matter
and the decisions will primarily be up to Mr. Goldman
and his office. However, our office is aiding and is
ready to aid both Mr. Bollinger in the Office of Law
and Mr. Goldman.

We look forward to their comments and I am sure
they wish to conclude this matter within the next week
as you stated.

Sincerely yours,

Newton A. Williams

Newton A. Williams

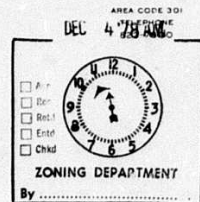
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enc.

cc: The Honorable S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

The Honorable George J. Martinak
Deputy Zoning Commissioner

Benny Kirkner
Exalted Ruler
Baltimore Elks Lodge No. 7
601C Old Liberty Road
Sykesville, Md. 21784

Mr. Cliff Krieg
3134 Hernwood Road
Woodstock, Md. 21163



Baltimore County, Maryland

PEOPLE'S COUNSEL
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

JOHN W. HESSIAN, III
People's Counsel
PETER MAX ZIMMERMAN
Deputy People's Counsel

TEL. 404-2180

November 29, 1978

✓ Newton A. Williams, Esquire
Nolan, Plumhoff & Williams
204 West Pennsylvania Avenue
Towson, Maryland 21204

Jeffrey I. Goldman, Esquire
1910 Charles Center South
Baltimore, Maryland 21201

Thomas Bollinger, Esquire
Office of Law
Court House
Towson, Maryland 21204



RE: Proposed Decree and Declaration
of Rights in Hessian v. DiNenna, et al.,
Circuit Court for Baltimore County,
Equity No. 95842, Equity Docket 122,
Folio 280

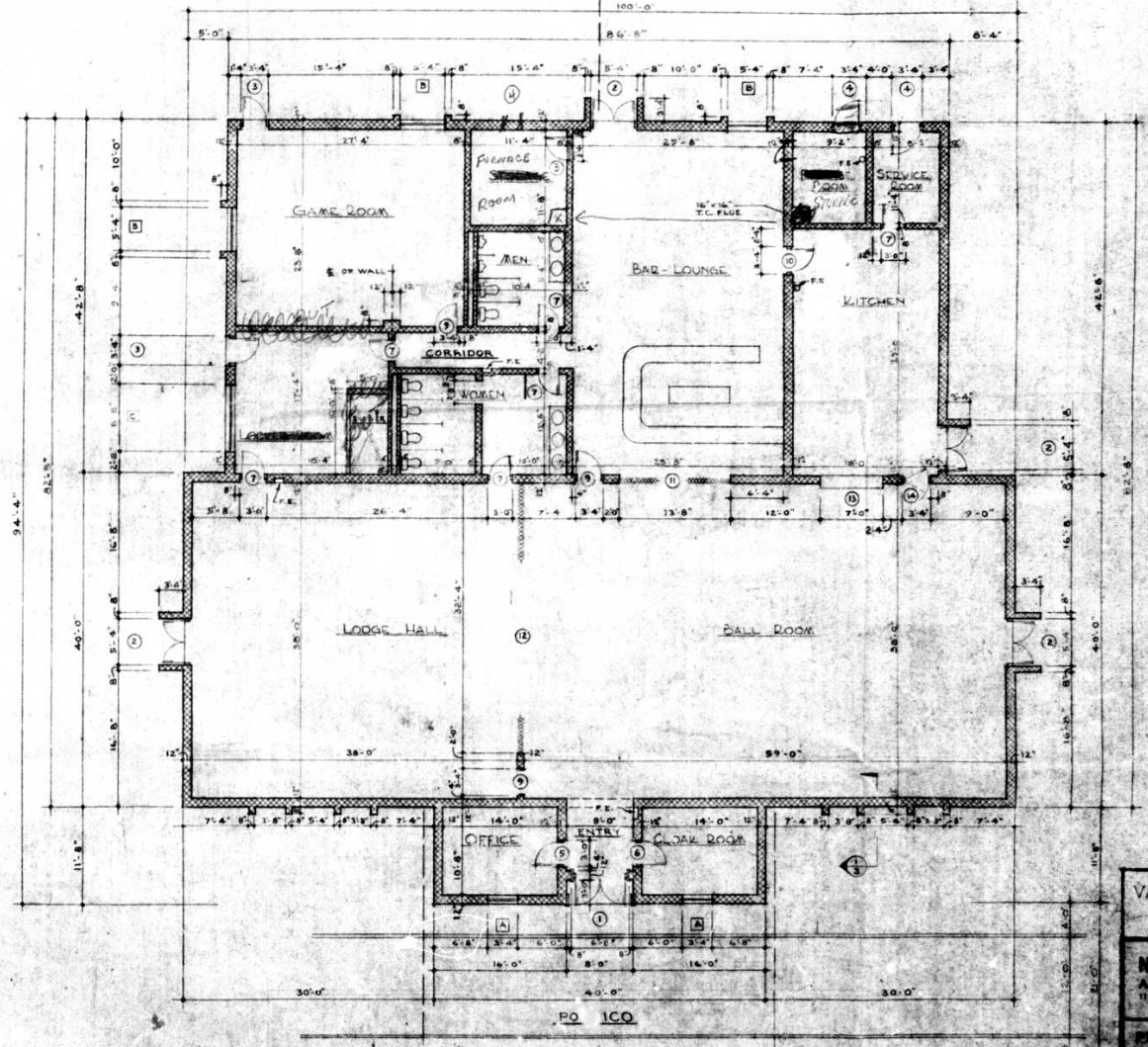
Dear Messrs. Williams, Goldman and Bollinger:

I have reviewed your response to our proposed Decree and Declaration of
Rights. Enclosed is our suggested alternative. We believe the Declaration of
Rights should remain substantially unchanged. We have, however, incorporated
your notation that there is a right to appeal. In order to address your concerns
regarding the status pending appeal to the Court of Special Appeals or pending
diligent prosecution of a new special exception petition, we have prepared
Paragraph 5 in reference to the Order, involving a stay under certain conditions.

We share your interest in having this matter resolved promptly and plan to
schedule a conference with the Court for next week.

Very truly yours,

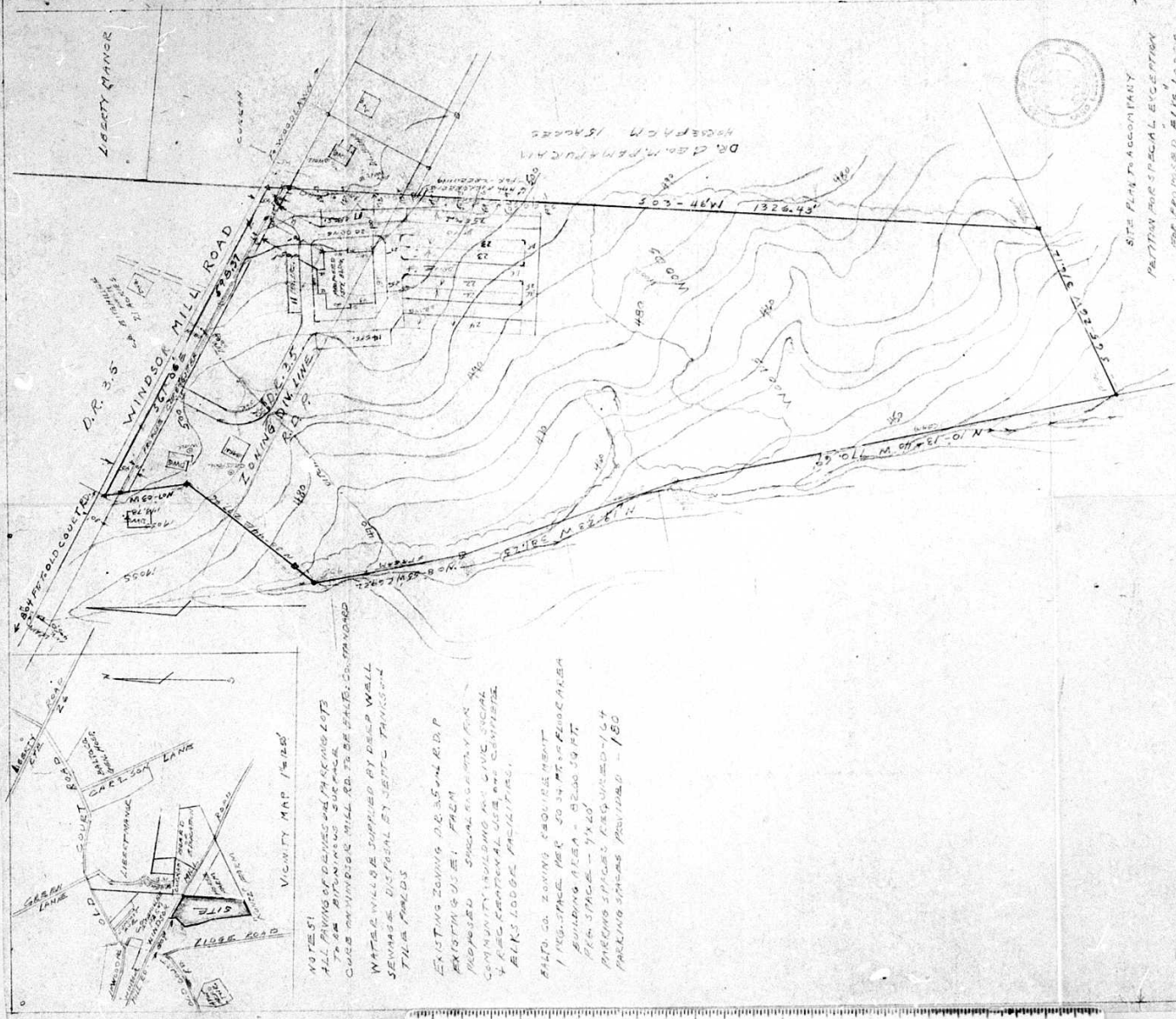
Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel



FLOOR PLAN
1/8\"/>

VAN DELITH & WEIDNER, INC.
ENGINEERS
NEUMAN & FORTY
ARCHITECTS
1111 10th Avenue
New York 17, N.Y.

E-311-5-1 30' high - 1' wide



JOHN W. HESSLIAN, III
People's Counsel for
Baltimore County,

Complainant

VS

S. ERIC DINERMAN,
Zoning Commissioner of
Baltimore County, et al.,

Respondents

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

EQUITY NO. 95842

MEMORANDUM OPINION

This case involves a narrow question of law since there is no factual dispute. On April 28, 1976, the Court granted a special exception to Baltimore Lodge No. 7, B.P.O. Elks, for a community building to be used by the Lodge for its fraternal and social purposes. The property is located on Windsor Mill Road, south of Old Court Road, and contains 17.29 acres. Certain restrictions were imposed by the Board, none of which are here relevant.

Section 502.3, of the Baltimore County Zoning Regulations provides that a special exception that is not utilized within two years shall be void unless the final Order granting the same specifies a longer period, not exceeding five years. The final Order granting the special exception did not specify any longer period so that it would become void on April 28, 1978, and it is clear that the special exception was not utilized within the two year period. However, counsel for the Elks wrote a letter to the Zoning Commissioner asking him to extend the time period of the special exception's life. On an ex parte basis, without notice to anyone or hearing of any kind, the Zoning Commissioner signed an Order extending the time period for a full five years from the date of the original grant of the special exception. This Order was dated May 23, 1977. In this suit, People's Counsel asks that the Court declare the permit to be void, that the Court declare that the Zoning Commissioner's extension Order of May 23, 1977, is void, and that the Elks be

enjoined from making any use of the land contrary to the applicable use restrictions in a residential zone.

The Court will assume, without deciding, that People's Counsel has standing to bring this action. The question is not raised in the pleadings and it would be futile and impractical for the Court to base a decision on the question of standing for, inevitably, concerned protestants would immediately file a new proceeding. There is no allegation that the facts as determined by the County Board of Appeals in 1976 have changed, so it would be expected that upon reapplication, the Elks could obtain a new special exception. Nevertheless, the Court is constrained to grant the relief prayed. The Courts have long held that due process requirements such as notice, hearing, and cross examination, are applicable to quasi-judicial proceedings by an administrative agency. Union vs Montgomery County, 244 Md., 585. The Court concludes that the last sentence of Regulation 502.3, is unconstitutional and void, in that it purports to give to the Zoning Commissioner the power to take actions affecting property rights of others without any notice or hearing and without any enunciated criteria for the exercise of the power. It should be noted that the regulation gives a party the right to appeal solely on the issue of the reasonableness of the time period specified during which the special exception is viable. To contend that the Zoning Commissioner could negate the action of the County Board of Appeals or any Court acting in an appellate capacity is completely untenable. The severability provisions of the Zoning Regulations permit the Court to strike down the last sentence of Regulation 502.3 without affecting the preceding provisions.

The Elks contend that there has been a failure to exhaust administrative remedies. The answer to this contention is that no administrative remedy is available to attack an Order passed by the Zoning Commissioner back on May 23, 1977. It is argued that the Complainant had constructive notice of the zoning records and regulations. Certainly, the Complainant is charged with knowledge

of the existence of Regulation 502.3 but it is conceded that he had no actual notice that the power purportedly given to the Zoning Commissioner had been exercised and to charge all interested parties with constructive notice of all ex parte acts by the Zoning Commission would be carrying the idea of constructive notice beyond acceptable limits. As counsel for the Elks points out, administrative practice of long standing can be utilized in construing a statute or regulation. Assuming, for the sake of argument, that there had been a long standing practice by the Zoning Commissioner of granting special exception extensions without notice or hearing, the argument is of no help to the Elks, for this is not simply a matter of construing an ambiguous statute or regulation. An administrative practice cannot breathe life into a regulation that is constitutionally infirm.

As indicated in the oral argument, the equities of the case favor the Elks as against property owners who did not appeal a finding that they would not be adversely affected by the special exception but this Court must adhere to applicable principles of constitutional law.

People's Counsel is directed to present to this Court for signature, a Decree in accordance with the foregoing.

JOHN H. RAINE, JR.
CHIEF JUDGE

November 15, 1978

JOHN W. HESSIAN, III
People's Counsel for Baltimore
County

Complainant

vs

S. ERIC DINENNA
Zoning Commissioner of Baltimore
County, et al

Respondents

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

DECREE

In accordance with the Memorandum Opinion in the above case dated November 15, 1978, it is, this 15th day of April, 1979, by the Circuit Court for Baltimore County, DECLARED:

1. The Demurrer filed by Respondent S. Eric Dinenna, Zoning Commissioner, in the above, be and hereby is, overruled.

2. That the concluding sentence of Section 502.3 of the Baltimore County Zoning Regulations, which reads as follows:

"After a final order granting a Special Exception the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same."

is hereby DECLARED, null and void, in violation of due process of law, for lack of provision for notice, hearing and cross-examination in connection with a quasi-judicial act.

3. That the Special Exception granted on April 28, 1976 by Order and Opinion of the Board of Appeals of Baltimore County, to Respondent for a community building on the aforesaid property be, and hereby is, DECLARED null and void, the right to its utilization having expired pursuant to Section 502.3 of the Baltimore County Zoning Regulations on April 28, 1978.

FILED MAY 3 1979

4. That upon the prayer for Injunctive Relief, Baltimore Lodge No. 7 of Benevolent Protective Order of Elks, and/or their agents, servants, and employees is hereby enjoined from making any use of the subject property in violation of any applicable zoning law or regulation.

JOHN F. RAINE, JR.
CHIEF JUDGE

COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

Walter A. Keller, Jr.
Walter A. Keller, Jr., Chairman
John A. Miller
John A. Miller
William T. Hockett
William T. Hockett

RE: PETITION FOR SPECIAL EXCEPTION
SW/S of Windsor Mill Road, 804' S of Old Court Road - 2nd Election District
Estate of Theresa D. Benson - Petitioner
NO. 75-183-X (Item No. 130)
BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

This matter comes before the Zoning Commissioner as a result of a Petition filed by Kenneth F. Benson, Personal Representative of the Estate of Theresa Dayton Benson, for a Special Exception for community buildings, swimming pool, and other structural and land uses for civic, social, recreational, and education activities in D, R, 3, 5 and R, D, P. Zones. Said property is located on the southwest side of Windsor Mill Road, 804 feet south of Old Court Road, in the Second Election District of Baltimore County, and contains 17.29 acres of land, more or less.

Evidence on behalf of the Petitioner indicated that the Benevolent and Protective Order of the Elks of Baltimore, Lodge No. 7, Contract Purchaser, has approximately 160 members and meets twice a month, with an average of 20 members in attendance. The Elks indicated that they had no intention of renting the hall to any other groups and would conduct approximately ten affairs per year. Mr. Robert C. Norris, land surveyor and engineer, testified that the 17.29 acres of land is 30 percent wooded, has a good topography, and that the presently paved width of Windsor Mill Road is approximately 20 feet. It was also testified that, although the subject property is not serviced by public sewer facilities, percolation tests would be acquired with reference to a septic system.

Mr. Hugh E. Gelston, a qualified real estate appraiser and zoning consultant, testified that he compared the subject site with the Y, M, C, A. site, which

is located in Towson and adjoins residential properties, yet does not have any detrimental affect upon the health, safety, or general welfare of the community. It was his expert opinion that the subject use would not adversely affect property values in the area. Testimony also indicated that the granting of the Special Exception would meet the prerequisites of Section 502.1 of the Baltimore County Zoning Regulations and, more specifically, that the granting of this Special Exception would not over congest the roads in the area.

Residents of the area, in protest to the subject Petition, were fearful that people using the subject property would trespass onto adjoining lands and that traffic generated by the subject property would over congest Windsor Mill Road.

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 be granted. The anticipated use would not be detrimental to the health, safety, and general welfare of the community; would not over congest the roads; and would otherwise meet the prerequisites of Section 502.1 of the Zoning Regulations.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 25th day of June, 1975, that the Special Exception for community buildings, swimming pool, and other structural and land uses for civic, social, recreational, and educational activities should be and the same is GRANTED, from and after the date of this Order, subject to the following restrictions:

1. The facility must be closed by 1:00 a.m. daily.
2. The structure must be a one story building and contain a maximum square footage of 8200 square feet.

-7-

3. No swimming pool may be installed on the subject property.
4. A site plan must be approved by the State Highway Administration, the Department of Public Works, and the Office of Planning and Zoning.

H. D. Nelson
Zoning Commissioner of Baltimore County

UNDER REVIEW - 10/1/75

DATE June 25, 1975

BY John A. Miller

UNDER REVIEW - 10/1/75

DATE June 25, 1975

BY John A. Miller

UNDER REVIEW - 10/1/75

DATE June 25, 1975

BY John A. Miller

-3-

PETITION FOR SPECIAL EXCEPTION (cont'd)

and educational activities in a D.R.3.5 zone and an R.D.P. zone, pursuant to Sections 1801.1C.6) and 1A00.2B.6).

Description for a parcel of land on the Windsor Mill Road, in the 2nd District, of Balto. Co., Md.

Beginning for the same at a point in the center of Windsor Mill Road, at the distance of 804 ft. measured Southeasterly from Old Court Road, at the beginning point of the first parcel, seventh line of the deed from Kenneth Francis Benson, to Kenneth Francis Benson, et al., dated November 16th, 1973 and recorded among the Land Records of Balto. Co., in Liber 5409, folio 828, thence running along the center of the Windsor Mill Road South 61 degrees 06 minutes East 598.37 ft.; thence running and binding on the outlines of said deed South 03 degrees 46 minutes West 1326.43 ft. to a stone and South 65 degrees 26 minutes West 316.12 ft. and North 10 degrees 13 minutes 40 seconds West 770.69 ft. and North 19 degrees 23 minutes West 381.23 ft. and North 08 degrees 55 minutes West 269.22 ft. and North 38 degrees 44 minutes East 277.46 ft. and North 07 degrees 03 minutes West 113.73 ft. to the point of beginning.

Containing 17.29 acres more or less and being all of the land conveyed in the above mentioned deed..

Robert C. Norris
Robert C. Norris,
Registered Surveyor, No. 759



August 5, 1975

Case No. 75-183-X (Item No. 130) - Estate of Theresa D. Benson

SW/S of Windsor Mill Road, 804' S of Old Court Road - 2nd Election District

Petition for Special Exception

Description of Property

Plat of Subject Property, dated October, 1974

Zoning Plans Advisory Committee Comments, dated February 10, 1975

Three (3) Photographs

Comments from William D. Fromm, Director of Planning, dated February 21, 1975

Seven (7) Letters of Protest

Certificates of Publication

Certificate of Posting (One (1) Sign)

Petitioner's Exhibit 1 - Plat of Subject Property, dated October, 1974

Petitioner's Exhibit 2 - Sketch of Proposed Building, dated October 4, 1972

Petitioner's Exhibit 3 - Letter from Mr. & Mrs. Nicholas F. Trombero, dated February 25, 1975

Order of the Zoning Commissioner, dated June 25, 1975 - GRANTED (Subject to Restrictions)

Order for Appeal from John W. Hessian, III, Esquire, Petitioner's Counsel, received July 17, 1975

Letter of Appeal from James E. Holmes, President, Brice Run Community Association, and Paul S. Dorsey, Protestants, received July 18, 1975

Copy of Letter from James E. Nolan, Esquire, to Mr. James E. Holmes, President, Brice Run Community Association, dated July 28, 1975

James D. Nolan, Esquire
204 West Pennsylvania Avenue 21204
Counsel for Petitioner

Mr. Kenneth F. Benson
Personal Representative of the Estate of Theresa Dayton Benson
107 Delrey Avenue 21228
Petitioner

B. P. O. E., Lodge No. 7
c/o Charles W. Bradford
4903 Old Court Road 21133
Contract Purchaser

Case No. 75-183-X (Item No. 130)
Page 2
August 5, 1975

Mr. James E. Holmes, President
Brice Run Community Association
285A Inwood Road
Baltimore, Maryland 21207
Protestant

Mr. Paul S. Dorsey
Box 392 Old Court Road
Baltimore, Maryland 21207
Protestant

Mrs. Claude Libis
Box 317, Windsor Mill Road Extended
Baltimore, Maryland 21207
Protestant

John W. Hessian, III, Esquire
People's Counsel
People's Counsel

RE: PETITION FOR SPECIAL EXCEPTION
EXCEPTION
SW/4 of Windsor Mill Road, 804'
S of Old Court Road - 2nd Election
District
Estate of Theresa D. Benson -
Petitioner
NO. 75-183-X (Item No. 130)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

ORDER FOR APPEAL

Mr. Commissioner:

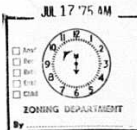
Please note on Appeal from your decision on June 25, 1975, in the case of the Estate of Theresa D. Benson to the County Board of Appeals and forward all papers in connection therewith to said Board for hearing.

John W. Hession, III
John W. Hession, III
People's Counsel

Charles E. Kuntz, Jr.
Charles E. Kuntz, Jr.
Deputy People's Counsel
County Office Building
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY That a copy of the foregoing Order for Appeal was mailed this 17th day of July, 1975 to James D. Nolan, Esquire, Nolan, Plunhoff & Williams 204 W. Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Petitioner and Benevolent and Protective Order of Elks Baltimore Lodge No. 7 c/o Charles W. Bradford, 4903 Old Court Road, Randallstown, Maryland, 21133, Contract purchaser.

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



BRICE RUN COMMUNITY ASSOCIATION Baltimore, Maryland

July 16, 1975

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

RE: Petition for Special Exception
SW/4 of Windsor Mill Road, 804'
S of Old Court Road - 2nd Election
District
Estate of Theresa D. Benson -
Petitioner
NO. 75-183X (Item No. 130)

Dear Mr. DiNenna:

The persons listed below desire to file an appeal of your June 25, 1975 order in the above referenced matter.

Mr. James E. Holmes
2554 Inwood Road
Baltimore, Maryland 21207

Mr. Paul S. Dorsey
Box 392 Old Court Road
Baltimore, Maryland 21207

Enclosed please find a check for the amount of \$75.00 as required.

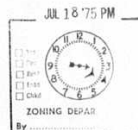
Very truly yours,

James E. Holmes
James E. Holmes, President
Brice Run Community Assoc.

Enclosure

PSB/mfg

CC: John W. Hession, III, Esquire
People's Counsel



June 25, 1975

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

RE: Petition for Special Exception
SW/4 of Windsor Mill Road, 804'
S of Old Court Road - 2nd Election
District
Estate of Theresa D. Benson -
Petitioner
NO. 75-183-X (Item No. 130)

Dear Mr. Nolan:

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

Very truly yours,

S. Eric DiNenna
S. ERIC DI NENNA
Zoning Commissioner

SED/scw

Attachments

cc: M's. Claude Libis
Box 317, Windsor Mill Road Extended
Baltimore, Maryland 21207

John W. Hession, III, Esquire
People's Counsel

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNenna, Zoning Commissioner Date: February 21, 1975

FROM: William D. Fromm, Director of Planning

SUBJECT: Petition # 75-183-X, Southwest side of Windsor Mill Road, 804' feet south of Old Court Road, Petition for Special Exception for Community Buildings, Swimming Pool, and other structural and land uses for civic, social, recreational and educational activities. Petitioner - Estate of Theresa Dayton Benson

2nd District

HEARING: Wednesday, February 26, 1975 at 10:00 A.M.

The staff of the Office of Planning and Zoning has reviewed the subject petition and has the following comments to offer.

The concept of a community building and swimming pool, etc. in a rural area may not be inconsistent with the policies of the 1960 guide plan. The size, scope and intensity of the proposed uses are not clearly defined by the information submitted to this office for review.

If the intent is to provide these facilities for an organization of a limited membership only, then the impact on the nearby community and the serving facilities (e.g., roads) may be negligible. However, if the membership is very large or if the facilities are intended to be opened to the public for special functions, then the requested use may not be compatible with the area.

Since data pertaining to the size and intensity of the proposed use has not been furnished to this office, the staff cannot comment on the compatibility of the request with the surrounding area nor can we recommend any special conditions which might be placed on such approval.

William D. Fromm
William D. Fromm
Director of Planning

WDF:JGH/mdb

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

February 10, 1975

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

XXXXXXXXXXXXXXXXXXXX
Chairman
Franklin T. Hoggans, Jr.

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

James D. Nolan, Esq.
Nolan, Plunhoff & Williams
204 W. Penna. Avenue
Towson, Maryland 21204

RE: Special Exception Petition
Item 130
Estate of Theresa Dayton Benson -
Petitioner

Dear Mr. Nolan:

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 south side of Windsor Mill Road, 804 feet southeast of Old Court Road, and a tract 17.29 acres in size presently utilized as a farm.

The petitioner is requesting a Special Exception to permit the construction of a one-story building for use as an Elks Lodge Community Building.

Adjacent properties along Windsor Mill Road are improved with single family dwellings, and lands south of these dwellings are primarily rural farm use.

The petitioner indicates 180 parking spaces to be provided to serve the proposed Lodge, with entrances at two points along Windsor Mill Road.

James D. Nolan, Esq.
Re: Item 130
February 10, 1975

Page 2

Please note the comments of Office of Project and Development Planning, as well as those comments of the Department of Traffic Engineering, concerning the relocation of the southeasternmost point of egress and ingress as a result of apparent site distance problems.

The parking area should be effectively screened from adjacent residential zones or uses, and such screening should be more clearly indicated on the plan. Further, the type and extent of required curbing around parking areas is not shown, and the site plan should be revised accordingly.

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,

Franklin T. Hoggans, Jr.
FRANKLIN T. HOGANS, JR.
Chairman,
Zoning Plans Advisory Committee

FTH:JD

Enclosure

cc: Mr. Robert C. Norris
Reg. Surveyor
Old Court Road
Baltimore, Md. 21207

1975

LEGAL'S

PETITION FOR SPECIAL EXCEPTION

ZONING: Planning for Special Exception for Community Buildings, Swimming Pool, and other structural and land uses for civic, social, recreational and educational activities.

LOCATION: Southwest side of Windsor Mill Road, 804' south of Old Court Road, 17.29 acres.

DATE: WEDNESDAY, FEBRUARY 26, 1975 at 10:00 A.M.

FILE: 75-183-X

REMARKS: The Zoning Commissioner of Baltimore County, in accordance with the provisions of the Zoning Ordinance of Baltimore County, will hold a public hearing on the petition for Special Exception for Community Buildings, Swimming Pool, and other structural and land uses for civic, social, recreational and educational activities, on the date and at the place specified below.

DATE: FEBRUARY 26, 1975

PLACE: County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204

BY: *Donald Landon*
Donald Landon
Zoning Commissioner of Baltimore County

Cost of advertisement: 24.00

Baltimore County Fire Department

J. Austin Deitz
Chief



Towson, Maryland 21204

875-7310

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

Attention: Mr. Jack Dillon, Chairman
Zoning Advisory Committee

Re: Property Owner: Estate of Theresa Dayton Benson

Location: S/S Windsor Mill Rd. 804' SE of Old Court Rd.

Item No. #130 Zoning Agenda January 7, 1975

Gentlemen:

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

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

Reviewed: *H. J. Kelly* Noted and
Planning Group Approved:
Special Inspection Division

Paul H. Riecke
Deputy Chief
Fire Prevention Bureau

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. S. Eric DiNenna, Zoning Commissioner Date: January 28, 1975
Office of Planning and Zoning
FROM: William L. Phillips
SUBJECT: Zoning Advisory Committee Meeting

On January 15, 1975, comments were submitted by the Department of Health for Item 130, Zoning Advisory Committee Meeting of January 7, 1975.

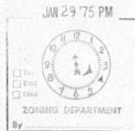
Property Owner: Estate of Theresa Dayton Benson
Location: S/S Windsor Mill Road; 804' SE of Old Court Road
Existing Zoning: D.R. 3.5 and R.D.P.
Proposed Zoning: Special Exception for community buildings; swimming pool, and other structural and land uses for civic, social, recreational, and educational activities pursuant to Secs. 1801.1C.6 and 1A00.2B.6.

No. of Acres: 17.29
District: 2nd

In the original comments, a section on "Parking Management" was included inadvertently. The Parking Management requirements DO NOT apply to item #130 and should therefore be deleted.

William L. Phillips
William L. Phillips, Chief
Division of Air Pollution
Bureau of Environmental Services

VLP/DF/p
cc: H. V. Bonner, Sanitary Engineering



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF HEALTH



JEFFERSON BUILDING
TOWSON, MARYLAND 21204

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

January 15, 1975

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

Dear Mr. DiNenna:

Comments or Item 130, Zoning Advisory Committee Meeting, January 7, 1975, are as follows:

Property Owner: Estate of Theresa Dayton Benson
Location: S/S Windsor Mill Rd. 804' SE of Old Court Rd.
Existing Zoning: D.R. 3.5 & R.D.P.
Proposed Zoning: Special Exception for community bldgs., swimming pool, & other structural & land uses for civic, social, recreational & educational activities pursuant to Secs. 1B.1.1C.6 and 1A00.2B.6.
No. of Acres: 17.29
District: 2nd

Complete soil evaluation must be conducted; an approved water supply must be provided.

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

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

Zoning Advisory Committee Meeting
January 7, 1975
Comments on Item 130

Page 2

Parking Management Comments: The parking facilities to be constructed on this site are subject to review and approval under the Federal Environmental Protection Agency's Management of Parking Supply Regulations. Specified information regarding the proposed facilities must be submitted to the appropriate regional reviewing authority. Contact the Baltimore County Division of Air Pollution for additional information concerning the submittal of an application for approval.

Very truly yours,

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

SNVB/mco

CC--L.A. Schuppert
J.A. Messina
W.L. Phillips

WILLIAM D. FROMM
DIRECTOR
S. ERIC DINENNA
ZONING COMMISSIONER



February 6, 1975

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 #130, Zoning Advisory Committee Meeting, January 7, 1975, are as follows:

Property Owners: Estate of Theresa Dayton Benson
Location: S/S Windsor Mill Road 804' SE of Old Court Road
Existing Zoning: D.R.3.5 and R.D.P.
Proposed Zoning: Special Exception for community buildings, swimming pool and other structural and land uses for civic, social, recreational and educational activities pursuant to Secs. 1801.1C.6 and 1A00.2B.6
No. of Acres: 17.29
Districts: 2nd

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 southern most driveway is not acceptable due to poor sight distance along Windsor Mill Road. Compact screening must be provided for the parking areas in accordance with Section 409 of The Zoning Regulations.

Very truly yours,

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

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: January 8, 1975

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

Z.A.C. Meeting of: January 7, 1975

Re: Item 130
Property Owner: Estate of Theresa Dayton Benson
Location: S/S Windsor Mill Road; 804' S.E. of Old Court Road
Present Zoning: D.R. 3.5 & R.D.P.
Proposed Zoning: Special Exception for community buildings, swimming pool, and other structural and land uses for civic, social, recreational and educational activities pursuant to Sections 1801.1C.6 and 1A00.2B.6
District: 2nd
No. Acres: 17.29 acres
Dear Mr. DiNenna:
No adverse effect on student population.

MSP/ml

Very truly yours,

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

H. EMILIE PARKS, President
EUGENE C. HESS, Vice President
MRS. ROBERT L. BERNY

MARCUS M. BOTSANS
JOSEPH N. MCGOWAN
ALVIN LOBECK
JOSHUA R. WHEELER, Superintendent

T. BAYARD WILLIAMS, JR.
MICHAEL W. TRACEY, V.M.D.
MRS. RICHARD K. KUEHLER

BALTIMORE COUNTY, MARYLAND
JEFFERSON BUILDING TOWSON, MARYLAND 21204

DEPARTMENT OF TRAFFIC ENGINEERING

EUGENE J. CLIFFORD, P.E. Wm. T. MELZER
DIRECTOR DEPUTY TRAFFIC ENGINEER

February 26, 1975

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

Re: Item 130 - ZAC - January 7, 1975
Property Owner: Estate of Theresa Dayton Benson
Location: S/S Windsor Mill Rd. 804' SE of Old Court Rd.
Existing Zoning: D.R. 3.5 & R.D.P.
Proposed Zoning: Special Exception for community bldgs., swimming pool, & other structural & land uses for civic, social, recreational & educational activities pursuant to Secs. 1801.1C.6 and 1A00.2B.6
No. of Acres: 17.29
District: 2nd

Dear Mr. DiNenna:

The proposed special exception for community buildings, swimming pool and recreational facilities are not expected to cause any major traffic problems.

The proposed easternmost entrance has poor sight distance due to a vertical curve. This site should be limited to one entrance and that entrance should be located in the western half of the site.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineering Assoc.

HSF/bza

BALTIMORE COUNTY

ZONING PLANS

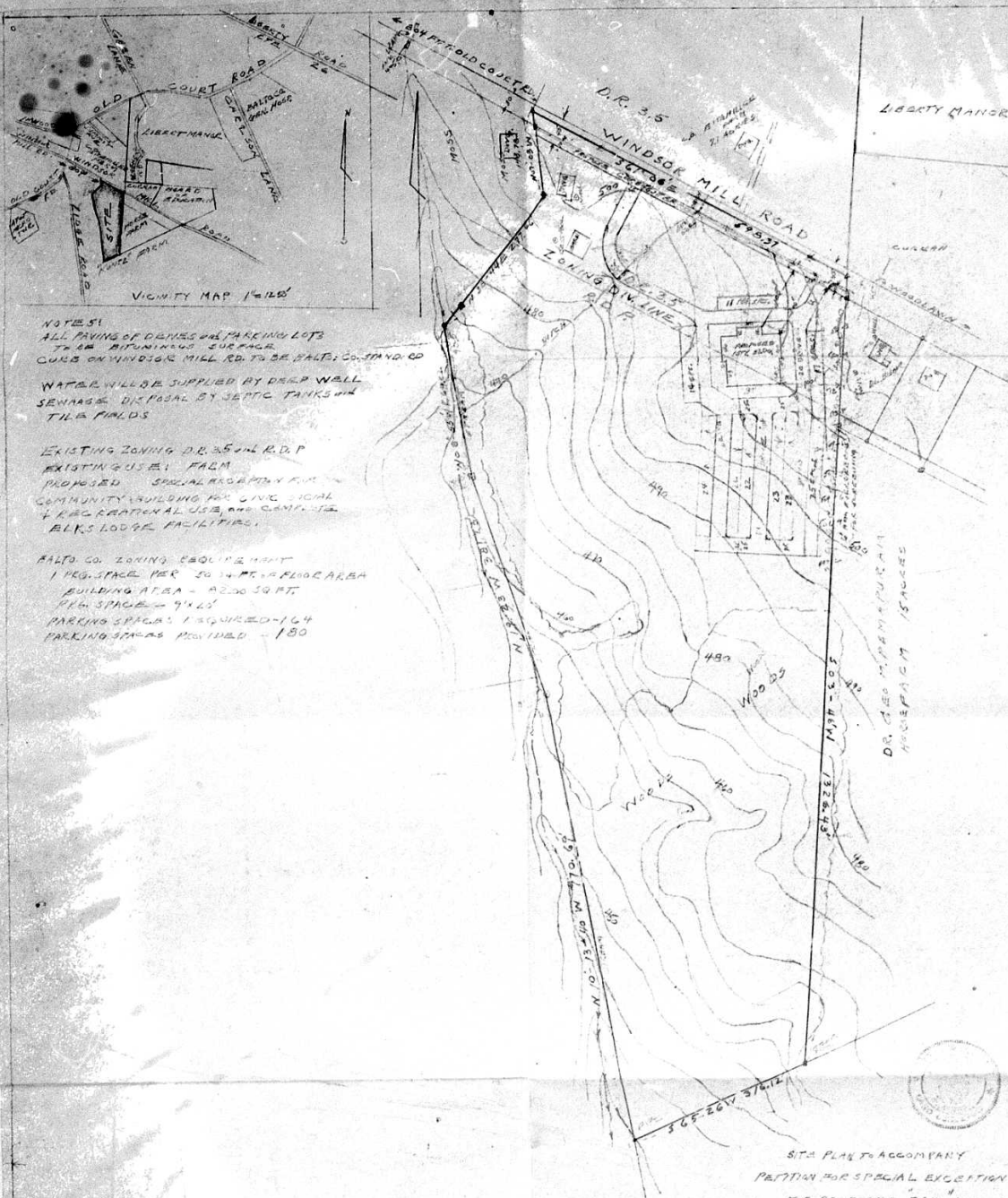
ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
SUITE 301 JEFFERSON BUILDING 105 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND 21204
AREA CODE 301 PLANNING 480-3231 ZONING 480-3230



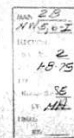
NOTES:
ALL PAVING OF DRIVEWAY, PARKING LOTS
TO BE BITUMINOUS SURFACE.
CURB ON WINDSOR MILL RD. TO BE BALD. CO. STANDARD.

WATER WILL BE SUPPLIED BY DEEP WELL
SEWAGE DISPOSAL BY SEPTIC TANKS AND
TILE FIELDS.

EXISTING ZONING D.R. 3.5 and R.D.P.
EXISTING USE: FAC
PROPOSED: SPECIAL EXCEPTION FOR
COMMUNITY BUILDING FOR CIVIC, SOCIAL
& RECREATIONAL USE, AND COMPLETE
ELK LODGE FACILITIES.

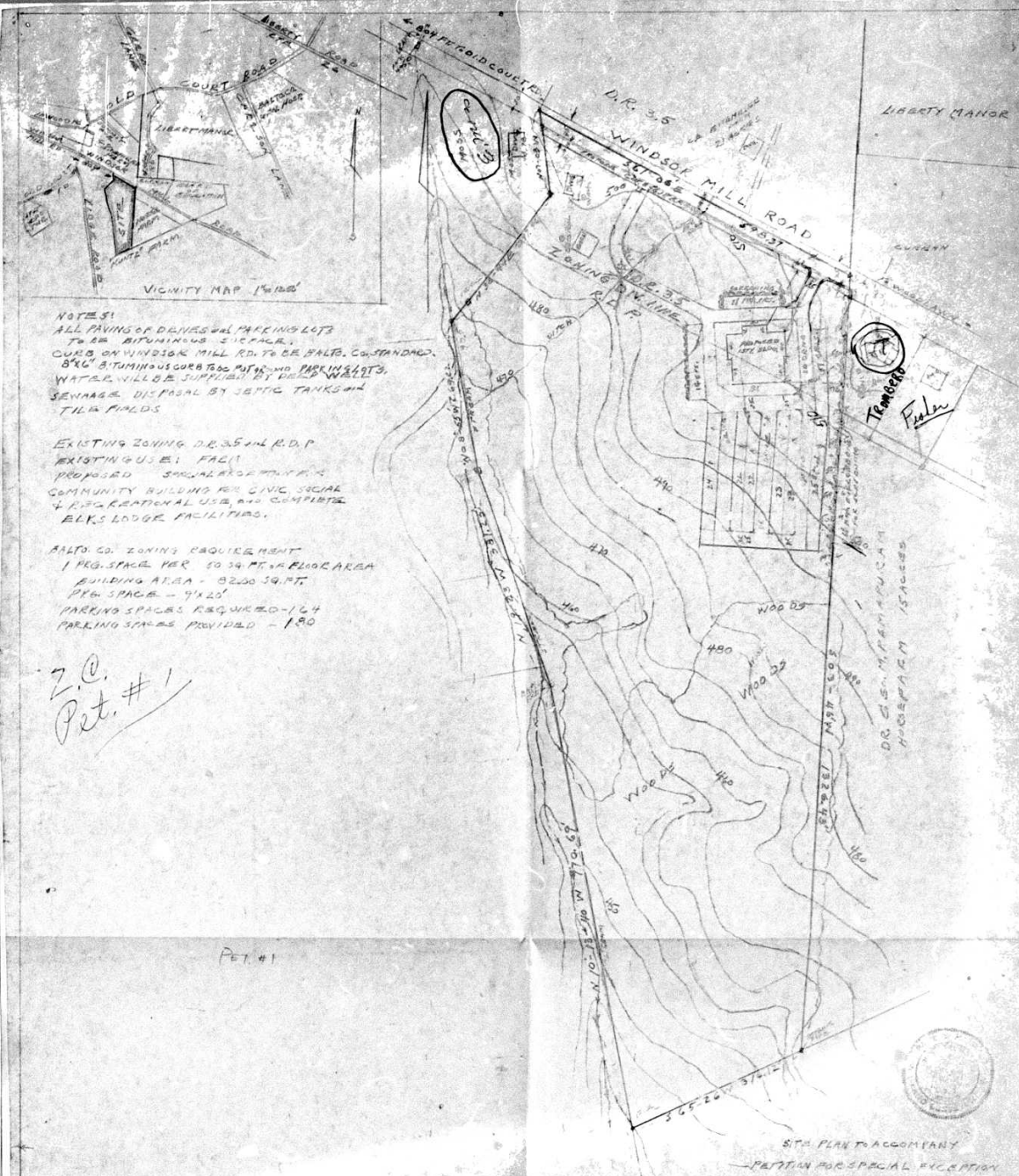
BALTO. CO. ZONING REQUIREMENT
1 PKG. SPACE PER 30.34 SQ. FT. FLOOR AREA
BUILDING AREA - 4200 SQ. FT.
PKG. SPACE - 9425
PARKING SPACES REQUIRED - 164
PARKING SPACES PROVIDED - 180

SITE PLAN TO ACCOMPANY
PETITION FOR SPECIAL EXCEPTION
FOR PROPOSED ELK LODGE
THE BENSON PROPERTY
172.9 ACRES



Red Paw

EXISTING CONTIGUOUS ZONING & WELLS
BALTO. CO. M.O.C. & VERT. CONTROLS
2ND. DIST. BALTO. CO., MD.
SCALE 1/4" = 100' OCT. 1974
PREPARED BY
ROBERT C. NORRIS, REG. SURVEYOR
OLD COURT RD. BALTO. 21207
Robert C. Norris



NOTES:
ALL PAVING OF DRIVEWAY, PARKING LOTS
TO BE BITUMINOUS SURFACE.
CURB ON WINDSOR MILL RD. TO BE BALD. CO. STANDARD.
8"X6" BITUMINOUS CURB 200 FT. AND PARKING LOTS.
WATER WILL BE SUPPLIED BY DEEP WELL.
SEWAGE DISPOSAL BY SEPTIC TANKS AND
TILE FIELDS.

EXISTING ZONING D.R. 3.5 and R.D.P.
EXISTING USE: FAC
PROPOSED: SPECIAL EXCEPTION FOR
COMMUNITY BUILDING FOR CIVIC, SOCIAL
& RECREATIONAL USE, AND COMPLETE
ELK LODGE FACILITIES.

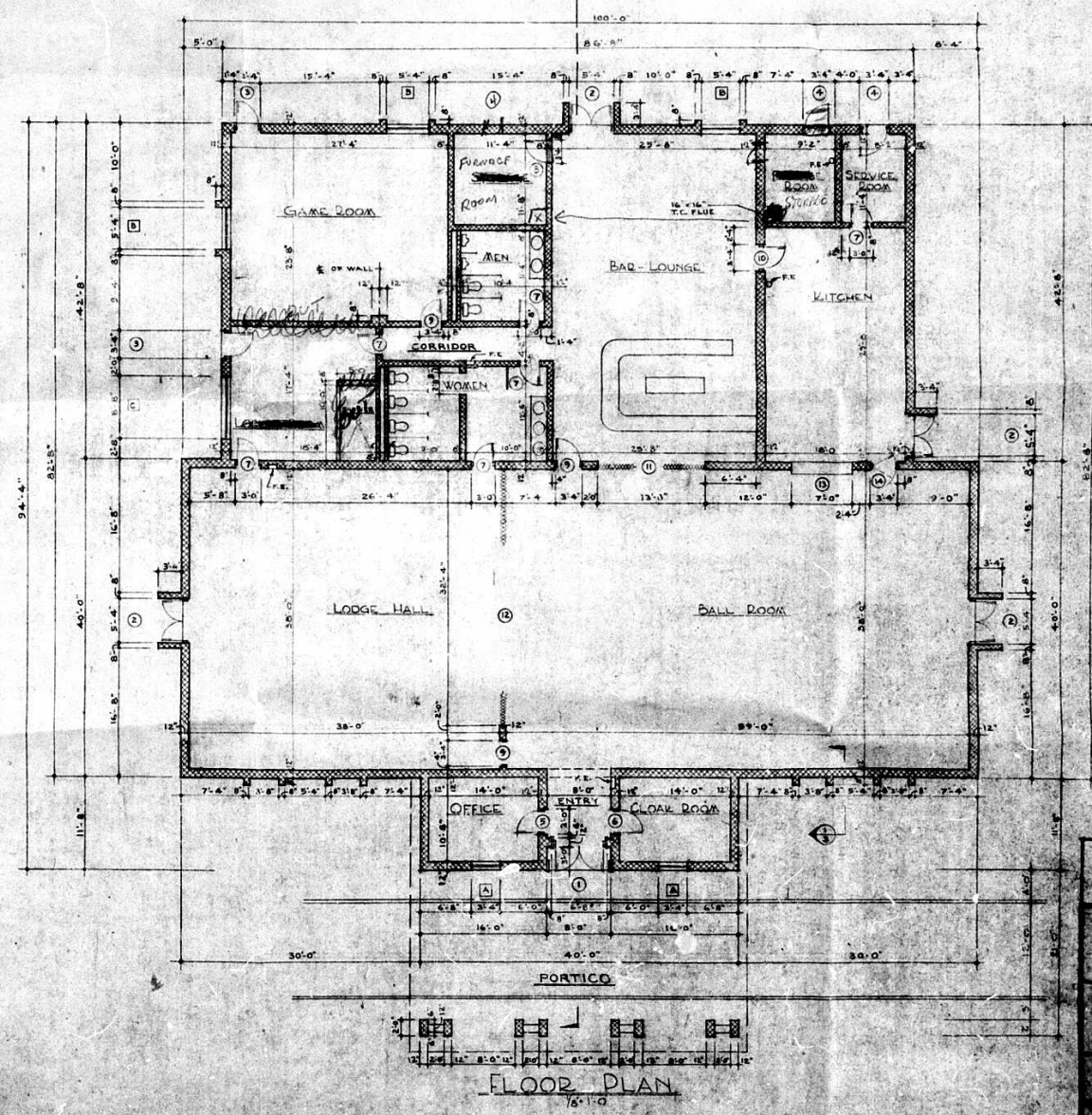
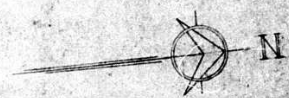
BALTO. CO. ZONING REQUIREMENT
1 PKG. SPACE PER 30.34 SQ. FT. FLOOR AREA
BUILDING AREA - 4200 SQ. FT.
PKG. SPACE - 9425
PARKING SPACES REQUIRED - 164
PARKING SPACES PROVIDED - 180

Z.C.
Pet. #1

SITE PLAN TO ACCOMPANY
PETITION FOR SPECIAL EXCEPTION
FOR PROPOSED ELK LODGE
THE BENSON PROPERTY
172.9 ACRES

BOARD OF APPEALS
PETITIONER'S
EXHIBIT 2

EXISTING CONTIGUOUS ZONING & WELLS
BALTO. CO. M.O.C. & VERT. CONTROLS
2ND. DIST. BALTO. CO., MD.
SCALE 1/4" = 100' OCT. 1974
PREPARED BY
ROBERT C. NORRIS, REG. SURVEYOR
OLD COURT RD. BALTO. 21207
Robert C. Norris



VAN DELITH & WEIDNER, INC.
ENGINEERS

REMARKS: THIS
PLAN IS FOR THE
BUILDING OF THE
FLOOR PLAN

F-370-6-10 30' x 10' x 10'

INTER-OFFICE CORRESPONDENCE

TO: William E. Hammond, Esquire
Zoning Commissioner

Date: October 15, 1980

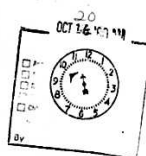
FROM: Office of Law

SUBJECT: Elks Lodge vs. People's Counsel
for Baltimore County

Enclosed please find a copy of the decision of the Court of Special Appeals in connection with the above.

William F. Spitzer, Jr.
Assistant County Solicitor

MFS:jc/sc
Enc.



UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1625

September Term, 1979

BALTIMORE LODGE NO. 7 OF THE
BENEVOLENT AND PROTECTIVE ORDER
OF ELKS, et al

v.

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Thompson,
Figueroa, M. Albert
(Specially Assigned)
Klavan, Stanley
(Specially Assigned)
JJ.

Per Curiam

Filed: October 2, 1980

The appellant, Baltimore Lodge No. 7 of the Benevolent and Protective Order of Elks (hereinafter designated Elks) sold certain of its real property in Baltimore City in 1967 and in 1969 purchased certain unimproved property in Baltimore County adjacent to the Diamond Ridge Area Park and Golf Course, for the purpose of erecting a new lodge facility. When the appellant applied for a building permit it was informed that the County desired to acquire the property for enlargement of Diamond Ridge and appellant then entered into a contract for the 17 area tract involved in this suit. The contract was contingent on appellant's ability to obtain a special exception under the Baltimore County Zoning regulation which would authorize the construction of a facility to function both as a lodge hall and a community building available for rental to other groups and individuals. Application for the Special Exception was heard and granted for a period of two years by the Zoning Commissioner of Baltimore County on June 25, 1975, subject to certain restrictions which are not pertinent to the issues involved in this case.

Appellee appealed the Commissioner's Order granting the Special Exception to the County Board of Appeals. Said Board, by Order dated April 28, 1976, affirmed the grant of the Special Exception, but made it subject to certain additional restrictions which are not pertinent to the issue

here involved. The Board's Order was not appealed and the appellant settled on the property.

Section 502.3 of the Baltimore County Zoning Regulations, provides as follows:

"A Special Exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void. The Zoning Commissioner or, on appeal, the County Board of Appeals, in connection with the grant of any Special Exception, shall fix within the foregoing limits, the period of time for its utilization. Any party to the proceedings may, by so specifying, appeal from either the order of the Zoning Commissioner or of the County Board of Appeals as the case may be, solely as to the reasonableness of the period of time determined in conjunction with any appeal from the grant or refusal of the application for a Special Exception. After a final order granting a Special Exception the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extension of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same. [B.C. & R., 1985; Bills No. 42, 1962; N9, 85, 1967.]"

On April 25, 1978 appellant's counsel submitted a request by letter to the Zoning Commissioner for a three year extension of the Special Exception. No copies of the letter were circulated to appellee or to individual protestants of record in the case.

-3-

Appellant engaged engineers and other professional assistance to design its proposed facility. Appellee, responding to an inquiry from one of the protestants of record in the case, found the request for the extension for the Special Exception and the resultant Order in the file of the Zoning Commissioner and filed a Bill of Complaint for Declaratory and Injunctive Relief.

After the suit was docketed and served on the defendants and after the defendants, Elks and Zoning Commissioner had filed pleadings, the Elks sought and obtained a building permit from Baltimore County, and proceeded with and partially completed construction. The Elks incurred obligations for the partially completed improvements in the amount of \$21,471.00 as against a total cost for the improvements of \$111,200.00. The contract for the improvements had been entered into on January 19, 1978, prior to the docketing of the suit, but no work began prior thereto. Appellee filed a Motion for Interlocutory Injunction to enjoin the construction work, but appellant voluntarily halted said work and has not further undertaken construction.

The matter was heard by Judge John E. Raine, Jr. who granted the Motion for Summary Judgment filed by appellee.

Judge Raine held that the concluding sentence of Section 502.3 of the Baltimore County Zoning Regulations was null and void, in violation of due process of law, for

lack of provision of notice, hearing and cross-examination in connection with a quasi-judicial act. He further held that the Special Exception granted on April 28, 1976, by the Board of Appeals of Baltimore County was null and void, the right to its utilization having expired pursuant to Section 502.3 of the Baltimore County Zoning Regulations on April 25, 1978.

Both appellants, Elks and the Zoning Commissioner of Baltimore County contend that the Special Exception could be extended without notice and hearing and argue that the necessity for affording due process, in terms of notice and hearing, is determined by the character of the proceedings; the nature of the right or interest of the person seeking relief; and the nature of the power exercised. They go on to state that as general rule, notice and hearing are not essential where the administrative official acts in an executive, administrative or legislative capacity as opposed to a judicial or quasi-judicial capacity.

The question of determining the difference between legislative and judicial function has been examined by the Court of Appeals in Hyson v Montgomery County Council, 242 Md. 55, 217 A2d 578 (1966); Union Investors, Inc. v Montgomery County, 244 Md. 585, 224 A2d 453 (1966); Montgomery County v Woodward & Lothrop, 280 Md. 686, 376 A2d 483 (1977).

Both the Zoning Commissioner of Baltimore County and the County Board of Appeals have detailed Rules of Practice

-4-

-5-

and Procedure. The Board of Appeals maintains dockets, has reporters, operates under rules, makes findings of fact and decisions on the record in adversary proceedings. To argue that the granting of a Special Exception is a judicial function, but the extension is a legislative function is not, in our opinion, either persuasive or logical. This is particularly true where both the granting of the special exception and its duration are both appealable issues.

The cases and the record herein all support the Chancellor's conclusion that the appellee was denied due process by failure to be given notice of the extension of the special exception with an opportunity to be heard and a right of appeal.

The Elks argue that the Chancellor failed to recognize its vested rights and the equities of the case. The simple answers to these arguments are that appellant had no vested right and the equities of the case are with the appellee.

Appellants concede that more than just obtaining a building permit is needed in order to claim a vested right. Colwell v Howard County, 31 Md. App. 8, 354 A2d 210 (1975); Rockville Fuel v Gaithersburg, 266 Md. 117, 291 A2d 672 (1972).

Appellant, Elks, in speaking of vested rights and equities does so with full knowledge that it failed to secure a building permit until after the original period for the Special Exception had expired and after the suit

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against it was docketed and it had notice of same. The expenditure of \$21,471, under these circumstances, does not help appellant as it embarked on construction on a calculated risk. City of Hagerstown v Long Meadow Shopping Center, 264 Md. 481, 287 A2d 242 (1972).

We affirm the decision of the Chancellor.

JUDGMENT AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.

RE: EXTENSION OF ORIGINAL PETITION FOR SPECIAL EXCEPTION
SW/S of Windsor Mill Road, 804' S of Old Court Road - 2nd Election District
Estate of Theresa D. Benson - Petitioner
NO. 75-183-X (Item No. 130)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

EXTENSION ORDER

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 23rd day of May, 1977, that the Special Exception for community buildings, swimming pool, and other structural and land uses for civic, social, recreational, and educational activities be and the same is hereby extended, in accordance with Section 502.3 of the Baltimore County Zoning Regulations, for a period of three years, beginning April 28, 1978, and ending April 28, 1981.

[Signature]
Zoning Commissioner of
Baltimore County

Newton A. Williams, Esquire
204 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Extension of Original Petition for Special Exception
SW/S of Windsor Mill Road, 804' S of Old Court Road - 2nd Election District
Estate of Theresa D. Benson - Petitioner
NO. 75-183-X (Item No. 130)

Dear Mr. Williams:

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

Very truly yours,

[Signature]
S. ERIC DI NENNA
Zoning Commissioner

SED/eri

Attachment

ESTATE OF THERESA D. BENSON

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

JAMES D. NOLAN
J. CARLE PLUMHOFF
NEWTON A. WILLIAMS
WILLIAM M. HESSEN, JR.
KENNETH H. MASTERS
THOMAS J. KENNER

April 28, 1977

AREA CODE 301
TELEPHONE
863-7800

The Honorable S. Eric DiNenna
Zoning Commissioner for Baltimore County
County Office Building
Towson, Maryland 21204

Re: Requested Extension of Special Exception for Elks Lodge to be Located on a Windsor Mill Road Property, Case No. 75-183-X

Dear Commissioner DiNenna:

As your records will reveal, on June 25, 1975, by your Opinion and Order you granted a special exception for an Elks Lodge to be constructed on the former Benson Property on the southwest side of Windsor Mill Road, approximately 800 feet south of Old Court Road in the Second Election District of Baltimore County. Subsequently, the matter was appealed by Mrs. Claude Libis on behalf of the Greater Randallstown Coordinating Council, and your Decision to grant the special exception with certain conditions was affirmed by the County Board of Appeals' Opinion and Order of April 23, 1976. There was no appeal from the Board's decision, and thus it is now final.

Our clients, the Elks, remain very interested in constructing a facility, but they have been attempting to sell another site located on Rice's Lane, and due to their efforts to sell the Rice's Lane site as well as other fund raising efforts, they have not as yet broken ground on the Benson Property, although they do own it.

Accordingly, on behalf of the Baltimore Lodge No. 7 of the Benevolent Protective Order of Elks, we would respectfully ask for an extension of 3 years, pursuant to Section 502.3 within which the special exception may be utilized. Thus, our request is for a 3-year extension from April 28, 1978 until April 28 of 1981, within which the Elks will most certainly construct their new facility.

Page two

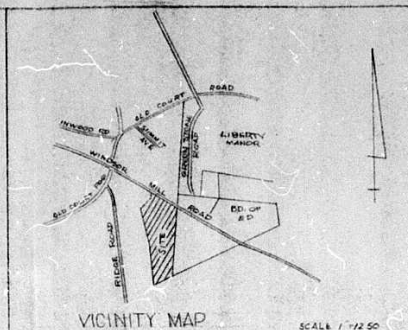
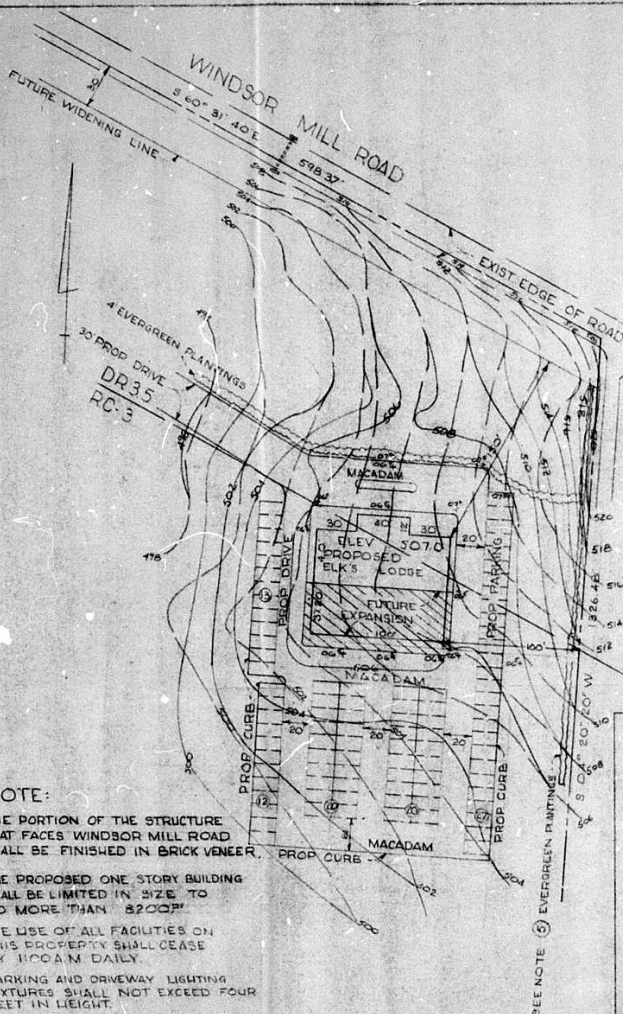
On behalf of our clients the Elks, we wish to thank you and your staff for your consideration of this very important request.

Writing your advice in this regard, I am

Respectfully,

Newton A. Williams
Newton A. Williams

NAW/hl
cc: Mr. Charles Bradford
4903 Old Court Road
Randallstown, Md. 21133



DEVELOPEMENT PLAN

ELKS LODGE

WINDSOR MILL ROAD
2ND ELECTION DISTRICT
BALTIMORE CO., MARYLAND
SCALE 1" = 50'
JULY 19, 1978
REVISED AUGUST 4, 1978

NOTES:

EXIST ZONING: DR 35 & RC-3 WITH A SPECIAL EXCEPTION FOR COMMUNITY BUILDINGS (75-163-X)
AREA: 17.8 AC.±
NO OF PARKING SPACES REQUIRED: 89
1 SPACE FOR EVERY 50 SQ FT FLOOR AREA
4480 ± SQ FT ± 89.6
NO OF PARKING SPACES PROVIDED: 92
AREA OF BLDG: 4480 ± SQ FT
COVERAGE: 0.59%

NOTE:

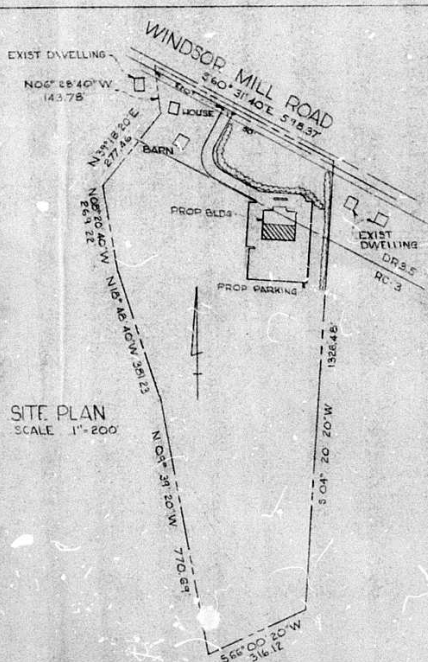
1. THE PORTION OF THE STRUCTURE THAT FACES WINDSOR MILL ROAD SHALL BE FINISHED IN BRICK VENEER.
2. THE PROPOSED ONE STORY BUILDING SHALL BE LIMITED IN SIZE TO NO MORE THAN 8200 SF.
3. THE USE OF ALL FACILITIES ON THIS PROPERTY SHALL CEASE BY 11:00 AM DAILY.
4. PARKING AND DRIVEWAY LIGHTING FIXTURES SHALL NOT EXCEED FOUR FEET IN HEIGHT.
5. WHITE PINE TREES SIX FEET IN HEIGHT PLANTED IN TWO ROWS, STAGGERED ALTERNATELY SIX FEET ON CENTER.



SPELLMAN, LARSON & ASSOCIATES INC.

Towson, Maryland 21204
823-3535

PLANS APPROVED
OFFICE OF PLANNING & ZONING
BY: *[Signature]*
DATE: 8-11-78
15-183-7



75083



77-0150
Cdk
Tdk

LAW OFFICES OF
NOLAN, PLUNKHOFF & WILLIAMS
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
November 21, 1978

John W. Hessian, III, Esquire and Peter Max Zimmerman, Esquire
People's Counsel
County Office Building
Towson, Maryland 21204

Re: Proposed Decree and Declaration of Rights in
Hessian v. DiNenna, et al., Circuit Court
for Baltimore County, Equity No. 95842,
Equity Docket 122, folio 280.

Dear Mr. Hessian and Mr. Zimmerman:
In response to your letter of November 20, and in
accordance with my telephone conversation of November 21
with Mr. Zimmerman, we wish to state that the Elks do not
approve the proposed form of the Decree and Declaration of
Rights.

It is our feeling that while construction must be
stopped pending an appeal and/or the obtaining of a new spe-
cial exception, the Elks should not be required to dismantle
structures, or any work that has already been accomplished
on the site until all of their remedies have been exhausted,
which will hopefully result in the vindication and restoration
of their right to construct this small fraternal building on
a very large site.

Since speaking with Mr. Zimmerman, I received a tele-
phone call from Jeffrey I. Goldman, Esquire of Baltimore
City, who is entering the case on behalf of the Elks and who
may wish to present a motion for reargument, note an appeal,
and possibly take other steps on behalf of the Elks.

Accordingly, we are enclosing suggested modifications
to the proposed Decree and Declaration of Rights, and in the
interest of speed, and to show the proposed modifications
clearly, they have been written in. Since Mr. Goldman is
entering the case, we would ask that no Decree and Declaration
of Rights be submitted to the Court without his approval.

Page two - November 21, 1978
Finally, we believe that the Elks have stopped con-
struction on the site, and we are instructing them once again
to stop construction on the site and to merely secure the
site against theft or vandalism or weather damage, pending
appropriate further action by all of the various parties
involved in this matter.

Thanking everyone involved for their cooperation, and
looking forward to Mr. Goldman's comments concerning the
entire matter, but most particularly the proposed Decree and
Declaration of Rights, I am

Sincerely yours,
Newton A. Williams
Newton A. Williams

Enclosures
cc: The Hon. S. Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Md. 21204

The Hon. George J. Martinak
Deputy Zoning Commissioner

Mr. James E. Dyer
Zoning Supervisor
Zoning Commissioner's Office

J. Carroll Holzer, Esquire
County Solicitor
Court House
Towson, Md. 21204

Thomas Bollinger, Esquire
Office of Law
Court House
Towson, Md. 21204

Jeffrey I. Goldman, Esquire
1910 Charles Center South
Baltimore, Md. 21201

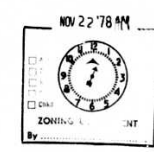
Benny Kirkner
Exalted Ruler
Baltimore Elks Lodge No. 7
601C Old Liberty Road
Sykeville, Md. 21784

Mr. Cliff Krieg
3134 Herwood Road
Woodstock, Md. 21163

Page three - November 21, 1978
P.S. to Commissioner DiNenna and Deputy Commissioner Martinak
and to Mr. James E. Dyer, Zoning Supervisor:

Per my recent telephone conversation with Mr. Dyer,
we are enclosing three copies of our Memorandum of Law which
was supplied to the Court at the time of argument on the 9th
of November. Any appeal from the Memorandum Decision of
November 15, 1978, must be filed with the Clerk of the Circuit
Court for Baltimore County not later than Friday, December 15,
1978. Your thoughts, comments and suggestions will be appre-
ciated.

With best regards, I am
Sincerely,
N.A.W.
N.A.W.



JOHN W. HESSIAN, III, : IN THE
People's Counsel for : CIRCUIT COURT
Baltimore County, :
Complainant : FOR
v. : BALTIMORE COUNTY
S. ERIC DINENNA, : IN EQUITY
Zoning Commissioner of :
Baltimore County, et al., : Equity Case No. 95842
Respondents. : Equity Docket 122, folio 280

MEMORANDUM OF LAW
OF BALTIMORE LODGE NO. 7
OF THE BENEVOLENT AND PROTECTIVE ORDER OF ELKS
IN SUPPORT OF THE ZONING COMMISSIONER'S DEMURRER
AND IN OPPOSITION TO THE
PEOPLE'S COUNSEL'S MOTION FOR SUMMARY JUDGMENT
AND MOTION FOR INTERLOCUTORY INJUNCTION

The Baltimore Lodge No. 7 of the Benevolent and Protective
Order of Elks (Elks), by James D. Nolan, Newton A. Williams, and
Nolan, Plunkhoff & Williams, its attorneys, for its Memorandum of
Law in Support of the Zoning Commissioner's Demurrer, as well as
in opposition to the People's Counsel's Motion for Summary Judg-
ment and Motion for Interlocutory Injunction, respectfully
requests that the Court consider the following materials in consi-
dering the above entitled matters.

This Memorandum will be divided into a consideration of
three primary issues, as follows:

- I. Why the Demurrer of the Zoning Commissioner should
be sustained and the People's Counsel's Bill of Complaint should
be dismissed without leave to amend.
- II. Why the Motion for Summary Judgment by the People's
Counsel should be resolved in favor of the Elks and the validly
extended special exception Order upheld.
- III. Why the Motion for Interlocutory Injunction should
be denied.

THREE
QUESTIONS
PRESENTED

LAW OFFICE
NOLAN, PLUNKHOFF
& WILLIAMS
TOWSON, MD.

APPEAL TO
BOARD OF
APPEALS
SEC. 22-27
COUNTY CODE

OTHER
APPEALS
AVAILABLE

NO APPEALS
TAKEN

LAW OFFICE
NOLAN, PLUNKHOFF
& WILLIAMS
TOWSON, MD.

WHY THE DEMURRER OF THE ZONING COMMISSIONER
SHOULD BE SUSTAINED WITHOUT LEAVE TO AMEND.
The Demurrer of the Zoning Commissioner filed on his behalf
by the Office of Law raises two primary points, neither of which
can be overcome by the People's Counsel in this matter, as
follows:

1. "The Bill fails to state that the Complainant has
exhausted all administrative remedies with respect to the Applica-
tion for Special Exceptions from the Office of the Zoning Commis-
sioner for Baltimore County."
2. "The Bill of Complaint fails to state a right or claim
against the Respondent, S. Eric DiNenna, for which relief by way
of injunctive relief may be granted."

EXHAUSTION OF ADMINISTRATIVE REMEDIES.

As the Court well knows, there is a very well established
hierarchy of appellant steps in the Baltimore County Zoning prac-
tice, namely, persons dissatisfied with an action of the Zoning
Commissioner may appeal within 30 days to the County Board of
Appeals pursuant to Section 22-27 of the Baltimore County Code
(1968 Ed. and Cum.Supp.), and persons aggrieved by Orders of the
County Board of Appeals may in turn appeal to the Circuit Court
for Baltimore County pursuant to Section 604 of the Baltimore
County Charter (November 6, 1956, and as amended). Furthermore,
as the Court knows, further appeals to the Court of Special
Appeals, and by certiorari to the Court of Appeals of Maryland
are provided for by appropriate statutory provisions.

The People's Counsel in its Bill of Complaint for Declaratory
and Injunctive Relief affirmatively shows and indicates in a
number of paragraphs that no appeals were taken from the Extension
Order of May 23, 1977, issued by Zoning Commissioner DiNenna,
People's Counsel's Exhibit D. Thus, as the Office of Law points
out in its Demurrer, the People's Counsel's own pleadings affirma-

SEABOLT
CASE
210 Md. 199

HARRED BY
SECTION G OF
UNIFORM
DECLARATORY
JUDGMENTS
ACT

LAW OFFICE
NOLAN, PLUNKHOFF
& WILLIAMS
TOWSON, MD.

tively demonstrate and clearly show that neither the People's
Counsel nor any other party noted an appeal from the Extension
Order pursuant to Section 22-27 of the Code. An appeal to the
County Board of Appeals within 30 days from May 23, 1977, was and
is the Complainant's only and proper administrative remedy in
this matter, and by filing these proceedings, the Complainants
are seeking to do indirectly what they failed to do directly,
namely follow the appropriate appellate and administrative pro-
cedure.

As to the exhaustion of administrative remedies in general,
see M.L.E. Administrative Law and Procedure, Section 6, and C.J.S.
Public Administrative Bodies and Procedure, Section 41(b), as well
as 24 Md. Law Review, Pages 1 and 26 (1964).

A case of particular application to the facts of the pre-
sent case is Mayor and City Council of Baltimore v. Seabolt, 1956,
123 A.2d 207, 210 Md. 199. In Seabolt, the owner of an unim-
proved Baltimore City property applied first to the Buildings
Engineer, and subsequently to the Board of Municipal and Zoning
Appeals for a special exception to permit the construction of a
post office garage and facilities on a part of the land. The
Board of Municipal and Zoning Appeals denied the application,
and instead of appealing to the Baltimore City Court, as per-
mitted by Section 7 of the Zoning Enabling Act, Code (1951) Art.
66B, and appropriate provisions of the Baltimore City Zoning
Ordinance, the owners instead filed a Bill in Equity against the
City seeking a declaratory decree to the effect that the Zoning
Ordinance, as originally enacted and as since amended was uncon-
stitutional and invalid, insofar as it attempted to restrict
their property to residential use only.

The Court decided that the owners were not entitled to
declaratory relief, since Section 6 of the Uniform Declaratory
Judgments Act, Art. 31A of the then 1951 Md. Code, provided in
part "When..... a statute provides a special form of remedy for

SEC. 3-409(b)
DECLARATORY
JUDGMENT

ONLY PROPER
APPEAL UNDER
SEC. 22-27

RIGHT OF
APPEAL LOST

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& WILLIAMS
TOWSON, MD.

a specific type of case, that statutory remedy must be followed."
See Seabolt, at pages 203 to 211.

This former Section 6 is now codified as Section 3-409 of
Subtitle 4 "Declaratory Judgment" of the Courts and Judicial Pro-
ceedings Article of the Annotated Code of Maryland, and Subsection
3-409.(b) provides "If a statute provides a special form of
remedy for a specific type of case, that statutory remedy shall
be followed in lieu of a proceeding under this Subtitle."

Other zoning case wherein the statutory remedy was held to
be the exclusive remedy and the remedy to be followed cited in
the annotation to Section 3-409 include in addition to the Seabolt
case, the following: Poe v. City of Baltimore, 1966, 216 A.
2d 707, 241 Md. 303; Gingell v. Board of County Commissioners,
1968, 239 A.2d 903, 249 Md. 374; Hartman v. Prince George's
County, 1972, 286 A.2d 88, 264 Md. 320; and Friendship Heights
v. Fungor, 1972, 289 A.2d 329, 265 Md. 339.

Furthermore, in a case in which the Court allowed the use
of the declaratory judgment vehicle, due to the fact that the
title of the statute had not adequately described its contents,
namely Pressman v. State Tax Commission, 1954, 102 A.2d 821, 204
Md. 78, the Court said therein questions could be raised in a
declaratory judgment action providing, that such action did not
improperly bypass the exercise by an administrative body of its
function as an expert.

The Elks submit herein that if the People's Counsel or any
other party had any question as to the Zoning Commissioner's
Extension Order of May 23, 1977, that such question would have
been properly raised by an appeal under Section 22-27 of the
Baltimore County Code and the County Board of Appeals who might
have properly resolved such question.

The Elks submit that any such right to have the Extension
Order reviewed by the County Board of Appeals pursuant to Section

EXTENSION
ORDER ALREADY
GRANTED

SEC. 502.3
OF COUNTY
CODE FOLLOWS
EXACTLY

EX. 1010
PROCEDURE
LANGUAGE OF
SEC. 502.3

LAW OFFICE
NOLAN, PLUNKHOFF
& WILLIAMS
TOWSON, MD.

22-27 was lost by its failure to appeal the Extension Order within
30 days from its issue on May 23, 1977, and that this lost right
of appeal should not be and cannot be revived by resort to a bill
in equity or an action for declaratory relief.

IMPROPRIETY OF AN INJUNCTION ORDER
DIRECTED TO THE ZONING COMMISSIONER

Although it is "Hornbook Law", the general principle stated
in M.L.E. Injunctions, Section 1, is very appropriate in this
proceeding. Section 1 states "Injunction is primarily a preven-
tative remedy, the province of which is to afford relief against
future acts which are against equity in good conscience, and to
keep a condition in status quo rather than to remedy something
which is past or to punish wrongful acts already committed."

In the present case, first of all, consider that the Exten-
sion Order of May 23, 1977, has long since been issued by the
Zoning Commissioner, and as previously stated no appeal was taken.
Furthermore, the Elks state that the Zoning Commissioner has
followed the letter of the applicable law, Section 502.3 of the
Baltimore County Zoning Regulations (1975 Ed.) to the letter.
Thus, the Elks on their own behalf, and on behalf of the Zoning
Commissioner, submit that nothing has been done either against
equity or against good conscience and that there is nothing
wrongful either in the past or in the present for which equity's
aid should be invoked.

In paragraph 12, the People's Counsel quotes the applicable
provisions of Section 502.3 of the Baltimore County Zoning Regu-
lations, and the Elks believe that the final sentence of the first
paragraph thereof is particularly appropriate to this inquiry,
in that it provides as follows: "After a final order granting a
special exception the Zoning Commissioner, at any time prior to
the expiration of the period of time authorized for its utiliza-
tion, may grant one or more extensions of such period, provided

Copies for Zoning
Commissioner and
Staff

that a maximum time for utilization of the special exception is not thereby extended for a period of more than five years from the date of the Final Order granting same."

As the Court knows in the instant proceedings, the County Board of Appeals, by its Opinion and Order of April 28, 1976, after extensive hearings at which both sides were represented, granted the special exception for a fraternal use of the subject Benson property, but at the same time the Board attached seven major and detailed conditions under which the special exception could be utilized.

The Extension Order of May 23, 1977, made absolutely no change whatever in the seven conditions attached to the Board's Order of April 28, 1976, but rather the Zoning Commissioner's Order merely extended the period for utilization for an additional three years, pursuant to Section 502.3 of the Baltimore County Zoning Regulations for a period beginning April 28, 1978, and ending April 28, 1981.

A careful review of the Board's Opinion and Order of April 28, 1976, reveals that none of the seven conditions attached addressed themselves to the time for the utilization of the special exception. Accordingly, in the absence of an express provision in the Order, the pertinent provisions of Section 502.3 must be read into this and every other Order, since they form the background law pertaining to the time period for the utilization of special exceptions. Thus, the Board's Order of May 23, 1977, contained within it a two-year utilization period, pursuant to Section 502.3 of the Regulations, as well as the legal right and prospect that the Petitioner might request the Zoning Commissioner to extend the special exception for an additional period up to three years, again pursuant to the express provisions of Section 502.3 of the Regulations.

It should be carefully noted that no appeal was taken by any party to the proceedings before the Board from the Board's

NO PARTIES APPELLANT AND NO APPEAL TAKEN FROM BOARD ORDER OF APR. 28, 1976

HISTORY OF SEC. 502.3

ORIGIN - 1955 ZONING REGULATIONS

1963 ZONING REGULATIONS PRESENT FORM

LAW OFFICE HOLAN, PLUMBOFF & WILLIAMS THUNDER, MD.

Order of April 28, 1976, and thus there were no parties appellant to the proceedings at the time of the request for extension by letter dated April 28, 1977, by counsel for the Elks to the Zoning Commissioner.

An examination of the copies of the Zoning Regulations as they have developed in Baltimore County over the years which are available to counsel for the Elks, reveals that the 1948 Regulations made no apparent provision for a time limit within which a special exception might be exercised.

The first time that counsel can discover the appearance of Section 502.3 is in the 1955 edition of the Baltimore County Zoning Regulations, which provided that a special exception should be utilized within one year from the date of issue, and which provided for one extension of an additional year. Section 502.3 in the 1955 Regulations reads as follows: "Any Special Exception which is not utilized within a period of one year from the date of issue, or any 'Special Permit' which was granted before the date of adoption of these Regulations and which has not been utilized within a period of one year after such date, shall be void unless on written request from the Petitioner, the Zoning Commissioner grants an extension, provided, however, that not more than one such extension for a period of one year may be granted."

In the 1963 Baltimore County Zoning Regulations, Section 502.3 was amended to enlarge the initial utilization period to two years from the date of the Final Order, and provided for a maximum period of five years, as does the Section today. The pertinent part of the 1963 version of Section 502.3 provides: "After a Final Order granting a Special Exception the Zoning Commissioner at any time prior to the expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that the maximum time for utilization of

-7-

1963 and 1971 REGULATIONS NO CHANGE

LONG ESTABLISHED ZONING COMMISSIONER PRACTICE

PEOPLE'S COUNSEL AND PROTESTANTS' REQUEST FOR CONSTRUCTIVE NOTICE

BACKGROUND LAW READ INTO ORDER

ZONING BOOKS, RECORDS AND FILE 75-183-X OPEN TO PUBLIC AT ALL TIMES

LAW OFFICE HOLAN, PLUMBOFF & WILLIAMS THUNDER, MD.

the Special Exception is not thereby extended for a period of more than five years from the date of the Final Order granting the same."

In the 1969 Regulations, again the initial utilization period is two years, with a maximum of five years, with the pertinent sentence relating to its extension being exactly as quoted in the 1963 Regulations in the previous paragraph.

Similarly, the 1971 Zoning Regulations, in the Interim Edition, provide for a two-year utilization period, with a maximum of five years once again, and the same language relating to an extension or extensions thereof up to a five-year limit.

It has been the established practice of the Zoning Commissioner's Office to the knowledge of counsel for the Elks to grant such Extension Orders in the manner in which it was done in the present case, provided that no changes in the condition imposed by either the Zoning Commissioner or the Board of Appeals are sought. Counsel for the Elks have extended a number of special exceptions in numerous cases, in the manner utilized in this case.

Counsel for the Elks submits that both the Protestants in this matter, as well as the People's Counsel's Office, had and have notice in cases such as this one by reasons of the following factors:

1. In the absence of an express contrary provision, the express provisions of Section 502.3 are read into the Orders of the Zoning Commissioner and the Board of Appeals relating to special exceptions.
2. The Zoning Commissioner's proceedings, books and records, are open to public inspection, including but not only to the People's Counsel and the Protestants in this case, pursuant to Section 500.13 of the Zoning Regulations.
3. Either the People's Counsel or the Protestants in this case, rather than corresponding and talking among themselves,

-8-

PEOPLE'S COUNSEL AND PROTESTANTS SHOULD HAVE WRITTEN OR CALLED ZONING COMMISSIONER'S OFFICE

LONG ESTABLISHED STATUTORY EXTENSION PROCESSES SHOULD BE MAINTAINED

1955 TO 1978, 23 YEAR PRACTICE HAS LEGISLATIVE APPROVAL AND FORCE OF LAW

LAW OFFICE HOLAN, PLUMBOFF & WILLIAMS THUNDER, MD.

could have and should have advised the Zoning Commissioner's Office by appropriate correspondence that in the event an Extension Order was sought in this matter, that they would like to be notified of any such request and action. It was not up to the counsel for the Elks to take this task which properly belongs to the Protestants and the People's Counsel, upon themselves. Both People's Counsel and the Protestants in this matter for the price of a stamp and a letter could have so advised the Zoning Commissioner. Similarly, the People's Counsel, his Staff, and the Protestants could have, at any time, examined the Zoning Commissioner's books and records to determine the status of the matter.

Counsel for the Elks, on behalf of the Elks and on behalf of the Zoning Commissioner, assert that the long established and long understood practice of at least twenty-three years, dating from the 1955 Regulations, should not be lightly interfered with or thrown aside. Furthermore, it is an established principle that where an administrative practice has long prevailed, and there has been no interference by the Legislative Branch or the County Council in this case, that such interpretation and practice is in conformity with legislative intent.

The established practice of twenty-three years in this case is three times the seven-year practice which the Court of Special Appeals upheld in *Jackson Marine Sales, Inc. v. State Department of Assessments and Taxation*, 1976, 32 Md. App. 213, wherein at page 217, the Court said "It is significant that the Agency interpretation existed seven years . . . and during that time no change was forthcoming from the Legislature. . . . The acquiescence by the Legislature is indicative that its intent is being carried out. . . ."

Similarly, our Court of Appeals has said that as a standard principle of administrative law, when our Legislature over a prolonged period has not seen fit to interfere with the construction

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of one of its statutes given to it by an administrative agency, that "this contemporaneous construction, long continued under such circumstances, has the force of law." *Popham v. Conservation Commission*, 1945, 186 Md. 62 at page 71. In addition, the Court has held that such "continued and unvarying construction applied by administrative officials, particularly such construction applied soon after enactment of a statute. . . should not be disregarded except for the strongest and most cogent reasons." *Farber v. Inc. v. Comptroller of the Treasury of the State of Maryland*, 1971, 266 Md. 44.

In the present case, the People's Counsel is asking this Court to cast aside the established practice, which surely must be well known to People's Counsel, of twenty-three years, and because the People's Counsel and the Protestants in this matter failed to notify the Zoning Commissioner of their continuing interest in the matter, and failed to check the books and records of the Zoning Commissioner, that the entire established practice should be changed. The Elks on their own behalf and on behalf of the Zoning Commissioner respectfully submit that there is no reason why injunctive relief against the Zoning Commissioner as requested by the People's Counsel in this matter should be granted.

II. WHY MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED AGAINST THE PEOPLE'S COUNSEL

As the Court knows from the file in this matter, People's Counsel has filed a Motion for Summary Judgment herein. The Elks respectfully submit that if any summary judgment is to be granted, that it should be granted in favor of the Elks and against the People's Counsel for the reasons set out in I. herein, as well as for the following reasons. The substantive complaints of the People's Counsel herein are really contained in paragraphs 11, 12 and 13 of the People's Counsel's Bill.

LACK OF NOTICE AND NO HEARING HELD - PARAGRAPH 11 CONSTRUCTIVE NOTICE READ INTO ORDER

FILE 75-183-X OPEN TO PUBLIC AT ALL TIMES

PRICE OF A LETTER OR STAMP TO ZONING

NO CHANGE IN ORDER - NO NEED FOR HEARING

LAW OFFICE HOLAN, PLUMBOFF & WILLIAMS THUNDER, MD.

SUBSTANTIVE COMPLAINTS IN PEOPLE'S COUNSEL'S BILL OF COMPLAINT

In paragraph 11 of the Bill, People's Counsel complains of two points, lack of notice and failure to hold a hearing relating to the Extension Order.

First of all, as to lack of notice, the Elks submit that the People's Counsel and others had constructive notice due to the following factors:

1. The provisions of Section 502.3 are read into the Board's Order granting the Special Exception dated April 28, 1976.
2. The books, records, dockets, etc. as well as the zoning file in this matter, namely file No. 75-183-X were and are and will be open to the public, to the People's Counsel, to the Protestants and to the Staff of the People's Counsel, as a consequence of Section 500.13 of the Baltimore County Zoning Regulations. At any time the Protestants and the People's Counsel might have examined the Zoning Commissioner's file in this matter and determined the true state of facts, rather than merely corresponding and conferring between themselves and failing to check public records which would have revealed the request for an extension and the Extension Order of May 23, 1977.

3. As previously stated, for the price of a letter and a stamp, either the People's Counsel or the Protestants in this matter might have advised the Zoning Commissioner that in the event any request for extension of the special exception was made that they be specifically notified. The People's Counsel's own pleadings affirmatively indicate that no such request which could have been easily made was made.

4. As for the necessity to hold a public hearing in this matter, an examination of counsel's request for an extension on behalf of the Elks dated April 28, 1977, and the Zoning Commissioner's Extension Order of May 23, 1977, both reveal that absolutely no requests for any changes in the seven conditions which the Board attached to its Order was made. Furthermore, the Zoning Commissioner's Extension Order made no change in the seven condi-

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ESTABLISHED PRACTICE - NO HEARING REQUIRED UNLESS CONDITIONS OF ORIGINAL ORDER CHANGE SOUGHT

PARAGRAPH 12 SEC. 502.3 FOLLOWED BY ELKS AND ZONING COMMISSIONER

PARAGRAPH 13

LAW OFFICE HOLAN, PLUMBOFF & WILLIAMS THUNDER, MD.

tions attached by the Board to its Order of April 28, 1976.

It has been the experience of counsel for the Elks, and the practice of the Zoning Commissioner's Office to schedule and hold a public hearing in any case in which a change in conditions is sought, but if a mere extension for the time of utilization is sought, then no such hearing or hearings have been held in such cases in the past, to the knowledge of counsel for the Elks. Without recounting all of the cases, counsel for the Elks submit that this long established administrative practice, which has continued for at least twenty-three years, since 1955, has the presumptive stamp of approval of Baltimore County Council pursuant to the cases cited in I. hereof relating to established administrative practice and legislative nonaction.

In paragraph 12 of the Bill, the People's Counsel cites the applicable provisions of Section 502.3, and the Elks would respectfully request that the Court once again examine this Section, most particularly the Section relating to an extension or extensions. Counsel for the Elks followed this Section verbatim, as did the Zoning Commissioner, and thus, the Elks submit that neither the People's Counsel or the former Protestants in this matter have any reason to complain. If they did have a reason to complain, they have lost it by failure to file an appeal within 30 days from the Extension Order of May 23, 1977, pursuant to the provision of Section 22-27 of the Baltimore County Code.

In paragraph 13 of the Bill, the People's Counsel makes three separate assertions, namely:

- a) that the Zoning Commissioner lacks jurisdiction to grant the extension of time for certain reasons;
- b) that the Protestants and the People's Counsel were without notice, hearing or opportunity to be heard as to the Extension Order; and
- c) that the Zoning Commissioner, by his ex parte Extension

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Order has precluded and frustrated the proper functioning and pursuit of the administrative process before the Board of Appeals.

BASIS OF ZONING COMMISSIONER'S JURISDICTION.

The Board of Appeals is well aware of the provisions of Section 502.3, and of the long established practice of extensions of special exceptions which have been granted either by the Zoning Commissioner or by the Board of Appeals by the Zoning Commissioner pursuant to the express provisions of that Section. Furthermore, as previously stated, the express provisions of Section 502.3 relating to extensions of special exceptions by the Zoning Commissioner form the background law and are read into and are implied in every Order of the Zoning Commissioner and the Board relating to a special exception.

Thus, rather than being an amendment to the Order of the Board of Appeals in this matter, the Extension Order of May 23, 1977, was an express exercise by the Zoning Commissioner of the powers granted to him under Section 502.3, which as background law was included in the Board's Order.

Counsel for the Elks have never seen or heard of the Board of Appeals being asked to extend a special exception Order, and the established practice was and is for the Zoning Commissioner to do so, under Section 502.3. Furthermore, Section 502.3 does not say the Board shall extend its Orders for special exception, and counsel for the Elks submit that had the Elks sought such an Order for the Board that the People's Counsel and the Protestants would have claimed, and properly so, that the Zoning Commissioner would be the proper official to make such an extension. Once again, and without stating the citations, the long established administrative practice also has the presumptive approval of the County Council, and indeed of the force of law pursuant to its exact, express terms.

SEC. 502.3 READ INTO BOARD ORDER

EXTENSION ORDER-AN EXPRESS EXERCISE OF ZONING COMMISSIONER'S POWER-NOT AN AMENDMENT

SEC. 502.3 TIVES NO "INITIAL" EXTENSION ORDER TO BOARD - ONLY "COMMISSIONER"

LAW OFFICE HOLAN, PLUMBOFF & WILLIAMS THUNDER, MD.

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AMPLE NOTICE

NOTICE AND OPPORTUNITY TO BE HEARD.

In subparagraph (d) of paragraph 13 of the Bill, the People's Counsel asserts that neither the People's Counsel nor any other interested parties had any notice, hearing, or opportunity to be heard with regard to the Extension Order. Once again, without repeating the previous provisions, the Elks submit that everyone involved had ample knowledge that the provisions of Section 502.3 are implied as background law to the Board's Order, that the public records were available for examination, and that had any of these parties wished to be heard, they should have taken an appeal within 30 days from May 23, 1977. There is no allegation in the Bill of Complaint that either the Elks or the Zoning Commissioner in any way restricted the lawful public access to both the former Protestants and the People's Counsel to the Zoning Commissioner's Books and records in this case, File 75-183-X. All that either of these parties had to do was to walk into the Zoning Commissioner's Office, call the Zoning Commissioner's Office, or send the Zoning Commissioner's Office a letter expressing their continuing interest and their desire to participate in any extension order. Had any of these actions been taken, the Zoning Commissioner would have certainly scheduled a special hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations. As previously stated, such special hearings are ordinarily scheduled with regard to extension requests only when such an extension request is coupled with a request in a change of conditions of the Special Exception Order sought to be extended.

CLAIMED FRUSTRATION OF THE ADMINISTRATIVE PROCESS BEFORE THE BOARD OF APPEALS.

In Subparagraph 13 (c), the People's Counsel in his Bill claims that the proper administrative process before the County Board of Appeals has been frustrated. This is not so. As previously stated, had the People's Counsel or Protestants wished to question the Extension Order of May 23, 1977, then they could have

IF EXTENSION ORDER QUESTIONED THEN APPEAL TO BOARD ONLY PROPER AVENUE

ORIGINAL ORDER FOR SPECIAL EXCEPTION APRIL 28, 1976 WOULD EXPIRE APRIL 28, 1978

THESE PROCEEDINGS NOT FILED UNTIL AFTER APRIL 28, 1978

EQUITY REQUIRES CLEAN HANDS AND EQUITY TO BE DONE BY SEEKER OF EQUITY

LAW OFFICE NOLAN, PLUMHOFF & WILLIAMS TOWSON, MD.

and should have as their exclusive remedy filed an appeal within 30 days with the County Board of Appeals, pursuant to Section 22-27 of the County Code. Furthermore, had they wished to be heard at the Zoning Commissioner level, they might have made a request for a hearing under Section 500.7 of the Zoning Regulations, which provision is extremely well known to the People's Counsel, and the Zoning Commissioner would have scheduled a hearing and advertised and posted the property once again. However, the People's Counsel nor the Protestants did not make a request for such a hearing at the Zoning Commissioner level, nor did they take the appeal to the County Board of Appeals within 30 days, but rather, they filed these proceedings which seek to completely overturn the right of the Elks to lawfully use their property.

The Court should recall that the original special exception in this matter was issued by the County Board of Appeals on April 28, 1976, and thus the two-year period under Section 502.3 would expire April 28, 1978. It seems rather unusual to counsel for the Elks and to the Elks that the People's Counsel did not file these proceedings until after April 28, 1978. Thus, if the People's Counsel prevails in this matter, the Elks will not have the opportunity to extend the special exception which has been lawfully extended for the additional three-year period allowed under Section 502.3 of the Zoning Regulations.

Two equitable maxims which have been applied in various equity actions, including actions for injunctions, would seem to have possible application in this case, namely that he who comes into equity must come with clean hands and the equitable maxim that he who seeks equity must do equity. As to the application of these equitable maxims to injunction cases, see M.L.E. Injunction, Section 1 at page 252, as well as Niner v. Hanson, 1958, 142 A.2d 798, 21 Md. 298. Also see Broumel v. White, 1898, 39 Atl.1047, 87 Md. 521. See as well Eugen v. Washington County Building and Loan Association, 1945, 41 A.2d 290, 184 Md. 412.

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PEOPLE'S COUNSEL AND PROTESTANTS FRUSTRATED ADMINISTRATIVE PROCESS BY NO APPEAL OR REQUESTS FOR HEARING

PARAGRAPH 14 OF BILL

STATUTORY REMEDY AVAILABLE, THEN SEC. 3-409(b) BARS DECLARATORY JUDGMENT ACTION

NUMEROUS STATUTORY REMEDIES AVAILABLE

LAW OFFICE NOLAN, PLUMHOFF & WILLIAMS TOWSON, MD.

If there has been any frustration of the administrative process in this matter, then it has been by the failure to file this action until the initial two-year special exception period had expired on April 28 of this year, and had either the People's Counsel or the Protestants wished to contest this extension at the Zoning Commissioner level or at the County Board of Appeals level, ample and readily utilized means existed to do so. Once again, counsel for the Elks says that these parties should not be permitted to do indirectly what they could have done directly and what they failed to do

IMPROPER CASE FOR THE UTILIZATION OF THE DECLARATORY JUDGMENT ACT.

In paragraph 14 of its Bill, the People's Counsel asserts that this dispute is appropriate for resolution under the Declaratory Judgment Act of the State of Maryland, Title III, Subtitle 4, Courts and Judicial Proceedings Article of the Maryland Annotated Code. Counsel for the Elks submit that by the express terms of the Declaratory Judgment Article, this is an improper and unlawful remedy to use herein. As previously stated, Section 3-409 of the Courts and Judicial Proceedings Article in Subsection (b) clearly states as follows: "If a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of a proceeding under this subtitle." As the Court knows, the People's Counsel and other interested parties herein could have requested a special hearing pursuant to Section 500.7 of the Zoning Regulations, at the Zoning Commissioner level, and they could have and should have as their exclusive remedy noted an appeal to the County Board of Appeals from the Extension Order of May 23, 1977, pursuant to the express provisions of Section 22-27 of the Baltimore County Code. The People's Counsel and the former Protestants in the matter did not follow either of these courses, and they should not now be allowed to seek to remedy their failure to utilize these remedies by means of invoking

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the Declaratory Judgment Act. See the zoning cases previously cited in I. hereof.

III.

THE MOTION FOR INTERLOCUTORY INJUNCTION SHOULD BE DENIED. The Elks respectfully submit that the Motion for Interlocutory Injunction should be denied in this matter for all of the reasons previously set out in Sections I. and II. hereof, most particularly the fact that administrative remedies were not followed, and the fact that this is not a proper case for action under the Declaratory Judgment Act.

Furthermore, counsel for the Elks have instructed their clients, the Elks, to suspend any construction work and any other activity on the site on or before November 9, 1978, and thus an interlocutory injunction should not be required in view of this instruction of counsel to the Elks.

However, what preliminary construction work has been done on the site, primarily consists of concrete work and other work which must be done before the onset of cold weather. The obtaining of a building permit in this matter was done upon the advice of counsel, but actual construction was undertaken by the Elks without the approval of their counsel.

However, counsel for the Elks believes that it would be grossly inequitable and unjust to allow the People's Counsel and the former Protestants in this case to accomplish indirectly what they failed to do directly when the Board of Appeals granted this special exception. The Court can examine the seven conditions which the Board of Appeals attached to its Order of April 28, 1976, and it can be readily seen that a relatively small Elks Lodge and parking area on a 12-acre site will be adequately and properly placed in this neighborhood by following the seven conditions which the Board attached to its Order. The Elks have every intention of following these conditions to the letter, and they only ask to be allowed to utilize this home on Windsor Mill Road

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LOST RICE'S LANE SITE TO COUNTY FOR PARK

PRESENT CASE BEGAN FEBRUARY 7, 1975 - ALMOST FOUR YEARS AGO

SUSTAIN ZONING COMMISSIONER'S DEMURRER OR GRANT ELKS SUMMARY JUDGMENT

in the Woodlawn/Liberty Road area, where they have long sought to locate.

After moving from their downtown Lodge, Baltimore Lodge No. 7 sought to locate on a property located on Rice's Lane near the Diamond Ridge Golf Course and Western Area Park. After spending a great deal of money on this site, the Elks lost the opportunity to do so, and this property has been acquired by Baltimore County for incorporation into the Park System by the Department of Recreation and Parks.

As Zoning File 75-183-X will reveal, the Elks placed the Benson property on Windsor Mill Road under contract on September 18, 1974 and filed for this special exception with the Zoning Commissioner on February 7, 1975, over three years ago. Furthermore, Mr. Charles Bradford, whom the People's Counsel sought to serve in this matter, has since died, before his dream was realized, of seeing a new Elks Lodge in the Woodlawn Area. The Court's file in this matter will confirm his death.

Thus, the Elks would respectfully request that the Court review their entire file in this matter, including but not only this Memorandum, and upon such review the Elks believe that the Court will uphold the Demurrer of the Zoning Commissioner to the Bill of Complaint without leave to amend, since as the People's Counsel says in his Motion for Summary Judgment, the facts are undisputed, or in the alternative that the Court will grant summary judgment in favor of the Elks, for the reasons set out in this Memorandum.

CONCLUSION.

For the reasons set out herein, the Elks respectfully request that the Zoning Commissioner's Demurrer in this matter be sustained without leave to amend, or in the alternative that summary judgment be granted in their favor on the People's Counsel's Motion, and that no interlocutory injunction should

issue in this matter.

Respectfully submitted,

JAMES D. NOLAN

NELTON A. WILLIAMS

NOLAN, PLUMHOFF & WILLIAMS
204 West Pennsylvania Avenue
Towson, Maryland 21204
823-7800

Counsel for Baltimore Lodge No. 7,
Benevolent and Protective Order
of Elks

I HEREBY CERTIFY that on this 7th day of November, 1978, a copy of the foregoing Memorandum of Law was mailed, postage prepaid to John W. Hessian III, Esquire, People's Counsel and Peter Max Zimmerman, Deputy People's Counsel, County Office Building, Towson, Maryland 21204 and to J. Carroll Holzer, Esquire, County Solicitor and Thomas J. Bollinger, Assistant County Solicitor, Court House, Towson, Maryland 21204.

JAMES D. NOLAN

LAW OFFICE NOLAN, PLUMHOFF & WILLIAMS TOWSON, MD.

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JUDGE



Peter Max Zimmerman
Deputy People's Counsel

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ZONING DEPARTMENT

2. That the Motion to add Baltimore County, Maryland, party Respondent, be, and hereby is, granted.