

77-155-AP #129 **PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS**

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
John A. Farley, Jr.
I, or we, and John T. Coady, legal owner of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Sections 1802.2B, 1504-VR(2), to allow a front yard set back of 19.5 feet in lieu of the required 30 feet and a side yard set back of 8 feet in lieu of the required 35 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty) The existing improvements, approximately 75-80 years old, presently violate the set back regulations as above set out - see plat. See also Case No. 74-198-RXA-Denied.

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

Contract purchaser: John A. Farley, Jr. Legal Owner
Address: 101 E. Redwood Street, Baltimore, MD. 21202

Protestant's Attorney: James H. Patterson
Address: 101 E. Redwood Street, Baltimore, MD. 21202

ORDERED BY The Zoning Commissioner of Baltimore County, this 20th day of December, 1977, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 25th day of February, 1977, at 11:00 o'clock A.M.

Zoning Commissioner of Baltimore County.

77-155-AP #129 **PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION**

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
John A. Farley, Jr.
I, or we, and John T. Coady, legal owner of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from as _____ to _____ and to _____, for the following reasons:

See attached description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for _____, Office building.

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

Contract purchaser: John A. Farley, Jr. Legal Owner
Address: 101 E. Redwood Street, Baltimore, MD. 21202

Protestant's Attorney: James H. Patterson
Address: 101 E. Redwood Street, Baltimore, MD. 21202

ORDERED BY The Zoning Commissioner of Baltimore County this 20th day of December, 1977, that the subject matter of this petition be advertised as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 25th day of February, 1977, at 11:00 o'clock A.M.

Zoning Commissioner of Baltimore County.

RE: PETITION FOR VARIANCE
NW/4 of Allegheny and Central Aves.,
9th District
JOHN A. FARLEY, et al, Petitioners

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 77-155-XA

ORDER TO ENTER APPEARANCE

Mr. Commissioner:
Pursuant to the authority contained in Section 524.1 of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Charles E. Kountz, Jr.
Deputy People's Counsel

John W. Hession, III
People's Counsel
County Office Building
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 17th day of February, 1977, a copy of the foregoing Order was mailed to James H. Patterson, Esquire, 101 E. Redwood Street, Baltimore, Maryland 21202, Attorney for Petitioners.

John W. Hession, III



RE: PETITIONS FOR SPECIAL EXCEPTION
AND VARIANCES
NW/4 corner of Allegheny and Central
Avenues, 9th Election District
JOHN A. FARLEY, et al, Petitioners

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 77-155-XA (Item No. 129)

ORDER FOR APPEAL

Mr. Commissioner:
I wish to take an appeal on behalf of the Protestants listed below from the decision of the Deputy Zoning Commissioner in the above-entitled matter, under date of March 21, 1977, to the County Board of Appeals and wish you to forward all papers in connection therewith to said Board for hearing.

Mary Elizabeth Ginn
606 Homcrest
West Towson, Maryland 21204
825-0360

Mrs. Cynthia W. Herrick
504 Highland Avenue
West Towson, Maryland 21204
825-7033

Mrs. Dorothy B. Pettigrew
512 Woodline Avenue
West Towson, Maryland 21204
825-4584

I HEREBY CERTIFY that on this 20th day of April, 1977, a copy of the above Order was mailed to James H. Patterson, Esquire, 101 East Redwood Street, Baltimore, Maryland 21202, Attorney for Petitioners; John W. Hession, III, People's Counsel for Baltimore County, County Office Building, Towson, Maryland 21204; and Mrs. John H. Wallace, 509 Park Avenue, West Towson, Maryland 21204.

Mary Elizabeth Ginn

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

February 17, 1977

Nicholas B. Commomari

Acting Chairman

MEMBERS

BUREAU OF ENGINEERING

DEPARTMENT OF TRAFFIC ENGINEERING

STATE ROADS COMMISSION

BUREAU OF FIRE PREVENTION

HEALTH DEPARTMENT

PROJECT PLANNING

BUILDING DEPARTMENT

BOARD OF EDUCATION

ZONING ADMINISTRATION

INDUSTRIAL DEVELOPMENT

James H. Patterson Esq.
101 E. Redwood Street
Baltimore, Maryland 21202

RE: Special Exception and Variance
Item 129
John A. Farley, Jr. &
John T. Coady - Petitioners

Dear Mr. Patterson:

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.

Located on the northwest corner of Allegheny and Central Avenues, in the 9th Election District, this site is currently improved with a 2-1/2 story frame dwelling and garage. Adjacent properties surrounding this site are improved with residences with the exception of the property immediately to the east, which is improved with Towson Elementary School.

This Special Exception is "necessary" under your Client's proposal to convert the existing dwelling to offices, and due to the proposed addition to the front and side. A Variance is also included. It should be noted that this property was the subject of a previous

James H. Patterson, Esq.
Re: Item 129
February 17, 1977
Page 2

zoning hearing (Case No. 74-198-RXA), that was eventually denied.

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,

Nicholas B. Commomari
Acting Chairman, Zoning
Plans Advisory Committee

NBC:JD

Enclosure

Cc: James A. Spamer & Associates
8017 York Road
Towson, Md. 21204



THORNTON M. MOURING, PE
DIRECTOR

January 27, 1977

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

Re: Item #129 (1976-1977)
Property Owner: John A. Farley, Jr. & John T. Coady
NW cor. Allegheny Ave. & Central Ave.
Existing Zoning: DR 16
Proposed Zoning: Special Exception for offices and a variance to permit a front setback of 19.5' in lieu of the required 30' and to permit a side setback of 8' in lieu of the required 30' and 25' respectively.
Access: 0.279 District: 5th

Dear Mr. DiMenna:

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

General:

Comments were supplied in connection with the Zoning Advisory Committee review of this property for Zoning Cycle VI, Item #10.

Highways:

Allegheny Avenue and Central Avenue, existing improved County streets, are proposed to be further improved in the future as 44-foot and 40-foot closed section roadways on 72-foot and 60-foot rights-of-way, respectively. Highway improvements are not required at this time. Highway right-of-way widening, including a fillet area for sight distance at the intersection and any necessary reversible easements for slopes will be required in connection with any grading or building permit application.

The alleyways in this area are being subjected to more intensive use as a result of the transition in land use. The status of the existing 20-foot alley at the rear of this property is unknown. This alley has a paved width of approximately 13 feet and Right-of-way widening, including any necessary reversible easements for slopes will be required to accomplish such reconstruction. Further information may be obtained from the Baltimore County Bureau of Engineering.

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

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the following finding of facts that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the Petitioners, the Variances should be had; and it further appearing that by reason of the granting of the Variances requested not adversely affecting the health, safety and general welfare of the community, Variances to permit a front yard setback of 19.5 feet instead of the required 30 feet and a side yard setback of 8 feet instead of the required 25 feet should be granted.

IF IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 21st day of March, 1977, that the herein Petition for the aforementioned Variances should be and the same are hereby GRANTED, from and after the date of this Order, subject to revising the site plan by removing the alley access and adding access via Allegheny Avenue, the maintenance of the exterior of the dwelling as depicted in the architects rendition, No. A-3 (D. B. Ratcliffe), and approval of a site plan by the Department of Public Works and the Office of Planning and Zoning.

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of the following finding of facts that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the Petitioners, the Variances should be had; and it further appearing that by reason of the granting of the Variances requested not adversely affecting the health, safety and general welfare of the community, Variances to permit a front yard setback of 19.5 feet instead of the required 30 feet and a side yard setback of 8 feet instead of the required 25 feet should be granted.

the above Variance should NOT BE GRANTED.

IF IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 21st day of March, 1977, that the above Variance be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of the requirements of Section 502.1 of the Baltimore County Zoning Regulations having been met, a Special Exception for an office building and offices should be granted.

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 21st day of March, 1977, that a Special Exception for an office building and offices should be and the same is GRANTED, from and after the date of this Order, subject to revising the site plan by removing the alley access and adding access via Allegheny Avenue, the maintenance of the exterior of the dwelling as depicted in the architects rendition, No. A-3 (D. B. Ratcliffe), and approval of a site plan by the Department of Public Works and the Office of Planning and Zoning.

ORDER RECEIVED FOR FILING

DATE March 21, 1977

BY John R. Coady

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of the following finding of facts that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the Petitioners, the Variances should be had; and it further appearing that by reason of the granting of the Variances requested not adversely affecting the health, safety and general welfare of the community, Variances to permit a front yard setback of 19.5 feet instead of the required 30 feet and a side yard setback of 8 feet instead of the required 25 feet should be granted.

the above re-classification should NOT BE HAD, and/or the Special Exception should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 21st day of March, 1977, that the above re-classification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain as is, and/or the Special Exception for as is be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND 21204

Date: December 16, 1976

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

Z.A.C. Meeting of: December 29, 1976

Re: Item 129
Property Owner: John A. Farley, Jr. & John T. Coady
Location: NW/C Allegheny Avenue & Central Avenue
Present Zoning: no information
Proposed Zoning: Special Exception for offices and a variance to permit a front setback of 19.5' in lieu of the required 30' and to permit a side setback of 8' in lieu of the required 30' and 25' respectively.

District: 9th
No. Acres: 0.379

Dear Mr. DiMenna:
No hearing on student population.

Very truly yours,
Thomas H. Devlin
E. Nick Petrovich,
Chief Representative.

END/pj

Item #129 (1976-1977)
Property Owner: John A. Farley, Jr. & John T. Coady
Page 2
January 27, 1977

Sediment Control.

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

Storm Drains.

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

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

Water and Sanitary Sewer.

Public water supply and sanitary sewerage are serving the present dwelling.

There are 12-inch and 2-inch water mains in Allegheny and Central Avenues, respectively. Additional fire hydrant protection is required in the vicinity.

There is an existing 8-inch sanitary sewer in Central Avenue.

Very truly yours,

Edmund N. Dwyer
EDMUND N. DWYER, P.E.
Chief, Bureau of Engineering

END:ENR/PWR:SR

cc: J. Freeman

Mr. Ratcliffe

10-06 Key Sheet
39 NE 2 Pos. Sheet
NE 10A Topo
70 & 70A Tax Maps

Baltimore County
Department of Traffic Engineering
TOWSON, MARYLAND 21204
(301) 494-3500

STEPHEN COLLINS
DIRECTOR

January 14, 1977

Mr. Eric S. DiMenna
Zoning Commissioner
2nd Floor, Courthouse
Towson, Maryland 21204

Re: Item 129 - ZAC - December 20, 1976
Property Owner: John A. Farley, Jr. & John T. Coady
Location: NW/C Allegheny Ave. & Central Ave.
Existing Zoning: Special Exception for offices and a variance to permit a front setback of 19.5' in lieu of req. 30' and to permit a side setback of 8' in lieu of req. 30' & 25' respectively
Acres: 0.379
District: 9th

Dear Mr. DiMenna:

The requested special exception for offices is not expected to be a major traffic generator, but the use of the existing alley for access can be expected to cause problems.

Very truly yours,

Michael S. Flanagan
Michael S. Flanagan
Traffic Engineer Associate

MSF:nc

Baltimore County
Department of Health
TOWSON, MARYLAND 21204

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

January 5, 1977

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

Dear Mr. DiMenna:

Comments on Item 129, Zoning Advisory Committee Meeting, December 20, 1976, are as follows:

Property Owner: John A. Farley, Jr. & John T. Coady
Location: NW/C Allegheny Ave. & Central Ave.
Existing Zoning: Special Exception for offices and a variance to permit a front setback of 19.5' in lieu of the required 30' and to permit a side setback of 8' in lieu of the required 30' and 25' respectively.
Acres: 0.379
District: 9th

Comment: Since metropolitan water and sewer exist, no health hazard is anticipated.

Very truly yours,

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

TED/STW/thc

Baltimore County
Department of Permits and Licenses
TOWSON, MARYLAND 21204
(301) 494-3670

JOHN D. SEVIER
DIRECTOR

December 29, 1976

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

Dear Mr. DiMenna:

Comments on Item #129 Zoning Advisory Committee Meeting, December 20, 1976 are as follows:

Property Owner: John A. Farley, Jr. & John T. Coady
Location: NW/C Allegheny Ave. & Central Ave.
Existing Zoning: Special Exception for offices and a variance to permit a front setback of 19.5' in lieu of the required 30' and to permit a side setback of 8' in lieu of the required 30' and 25' respectively.
Acres: 0.379
District: 9

The items checked below are applicable:

- ☒ A. Structure shall conform to Baltimore County Building Code (B.C.B.C.) 1970 Edition and the 1971 Supplement and other applicable codes.
- ☒ B. A building permit shall be required before construction can begin.
- ☐ C. Three sets of construction drawings will be required to file an application for a building permit.
- ☒ D. Three sets of construction drawings with a registered Maryland Architect or Engineer's original seal will be required to file an application for a building permit.
- ☐ E. Wood frame walls are not permitted within 3'0" of a property line. Contact Building Department if distance is between 3'0" and 6'0" of property line.
- ☐ F. No comment.
- ☐ G. Requested setback variance conflicts with the Baltimore County Building Code. See Section _____.

Very truly yours,

Charles E. Durban
Charles E. Durban
Plans Review Chief
CER:rrj

Baltimore County
Fire Department
TOWSON, MARYLAND 21204
(301) 425-7310

Paul H. Heinicke
Chief

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

Attention: Nicholas B. Cosmodori, Chairman
Zoning Advisory Committee

Re: Property Owner: John A. Farley, Jr. & John T. Coady

Location: NW/C Allegheny Ave. & Central Ave.

Item No. 129

Zoning Agenda December 20, 1976

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.

- (x) 1. Fire hydrants for the referenced property are required and shall be located at intervals of 300 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 _____ exceeds the maximum allowed by the Fire Department.
- () 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 "Life Safety Code", 1970 Edition prior to occupancy.
- () 6. Site plans are approved as drawn.
- () 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: ST J Kelly
Planning Group
Special Inspection Division

Noted and Approved: Stephen Collins
Battalion Chief
Fire Prevention Bureau

February 7, 1977

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

Dear Mr. DiNanno:

Comments on Item #129, Zoning Advisory Committee Meeting, December 20, 1976, are as follows:

Property Owner: John A. Farley, Jr. and John T. Coady
Location: NW/C Allegheny Avenue and Central Avenue
Existing Zoning: Special Exception for offices and a variance to permit a front setback of 19.5' in lieu of the required 30 feet and to permit a side setback of 8' in lieu of the required 30' and 25' respectively
Acres: 0.379
District: 9th

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.

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

Very truly yours,

John T. Wimb
John T. Wimb by
Planner III
Project and Development Planning

RECEIVED

OFFICE OF LAW

June 6, 1979

Ms. Mary Elizabeth Ginn
606 Horncrest
Towson, Maryland 21204

Re: Mary Elizabeth Ginn et al v. John A. Farley et al
No. 1407, September Term, 1978

Dear Ms. Ginn:

It has come to the attention of the Court, after review of the record and brief filed in the matter, that by virtue of your testimony before the Zoning Board of Baltimore County, you are not an "aggrieved" party within the contemplation of the law. It is presently clear that you have no standing in these proceedings. Seemingly, your efforts constitute the unauthorized practice of law in Maryland and accordingly, you will not be permitted to engage in oral argument before this Court.

If a particular pro se appellant, who is an aggrieved party, desires to argue the position of the proponent, he or she will be permitted to do so. Needless to say, counsel may argue on behalf of the appellants.

Yours very truly,

Howard E. Friedman
Howard E. Friedman
Clerk

HEF/nze

cc: James H. Cook, Esquire
T. Bruce Hanley, Esquire
James H. Patterson, Esquire
J. Carroll Holzer, Esquire



HOWARD E. FRIEDMAN
CLERK

Court of Special Appeals
of Maryland

Annapolis, Md. 21401

TELEPHONE 273-3848

May 1, 1979

RECEIVED

OFFICE OF LAW

T. Bruce Hanley, Esquire
395 W. Chesapeake Avenue
Towson, Maryland 21204

Ms. Mary Elizabeth Ginn
606 Horncrest Road
Towson, Maryland 21204

Re: Mary Elizabeth Ginn et al v. John A. Farley et al.
No. 1407, September Term, 1978

Dear Mr. Hanley and Ms. Ginn:

Be advised that the motion to dismiss the appeal was denied by Order dated 30 April 1979. The Court has seen fit to permit the appellants to file an amended appendix which was filed on April 25, 1979.

In addition, the Court has extended the time within which the appellants may file their brief and including June 1, 1979.

It would help the clerk of this Court if the appellants' brief could be filed as soon as possible for distribution to the bench.

Very truly yours,

Howard E. Friedman
Howard E. Friedman
Clerk

HEF/nze

cc: James H. Cook, Esquire
James H. Patterson, Esquire
J. Carroll Holzer, Esquire

Court of Special Appeals
ANNAPOLIS, MARYLAND 21404



HOWARD E. FRIEDMAN
CLERK

No. 1407, September Term, 1978

Mary Elizabeth Ginn Et Al

Mary Elizabeth Ginn

Attorneys for Appellant

vs.
John A. Farley Et Al

James H. Cook, Esquire
T. Bruce Hanley, Esquire
James H. Patterson, Esquire
J. Carroll Holzer, Esquire

Attorneys for Appellee

The Record in the captioned appeal was received and docketed on February 27, 1979.

The brief of the APPELLANT is to be filed with the office of the Clerk on or before April 9, 1979.

The brief of the APPELLEE is to be filed with the office of the Clerk on or before 30 days after filing of appellant brief (Rule 1030 a 2).

This appeal has been set for argument before this Court during the week of June 11, 12, 18, 19, 20 and 21, 1979.

Stipulations for extensions of time within which to file briefs will not be granted where the request will delay argument (Rule 1030(c) 1).

Counsel is likewise notified to advise the office of the Clerk (Pursuant to Rule 1047) of intent to submit on brief at the time of filing his brief. No submission on brief will be accepted within ten (10) days prior to the date of argument without specially obtained permission of Court.

Howard E. Friedman
Howard E. Friedman
Clerk of the Court of
Special Appeals of Maryland.

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1407

September Term, 1978

MARY ELIZABETH GINN ET AL.

v.

JOHN A. FARLEY ET AL.

Gilbert, C.J.,
Morton,
Barrick, Samuel W.
(Specially Assigned),
JJ.

Opinion by Gilbert, C.J.

Filed: July 16, 1979

If, as Alexander Pope¹ wrote, "a little learning is a dangerous thing,"² then a little learning in law is particularly perilous.

This appeal, from an affirmation by the Circuit Court for Baltimore County of a zoning board decision, reaches us in an unusual posture. One of the appellants, Mary Elizabeth Ginn, is admittedly not an attorney, nor is she an aggrieved party. Yet, she authored the appellants' brief and appears on the record as one of the appellants.

We shall deal first with Ms. Ginn as a party appellant.

The Court of Appeals, in *Brinkman v. Montgomery County*, 267 Md. 137, 230 A.2d 789 (1967), articulated a binomial test which must be met before a person may appeal, in a chartered county, from an administrative zoning board decision to the circuit court. The party appealing must have been a party before the administrative body and must be aggrieved by the decision. See also *Slusher v. Hanson Road Joint Venture*, 25 Md. App. 356, 333 A.2d 631 (1975), cert. denied, 275 Md. 755 (1975); *Largo Civic Association v. Prince George's County*, 21 Md. App. 76, 318 A.2d 834 (1974).

¹ In his "Essay on Criticism." Part II l. 15.

² George Bernard Shaw (1856-1950) expressed it: "Ignorance of false knowledge; it is more dangerous than ignorance."

There is usually no difficulty in ascertaining whether a person was a party before the zoning authority inasmuch as the record generally reveals that fact. ³ Ms. Ginn appeared before the County Board of Appeals where she testified, "I am not an aggrieved party. I am just here representing the neighborhood, and this property is within the neighborhood complex." Later, in response to a question by the Board's chairman, Ms. Ginn replied, "I am not aggrieved, not in the sense that the Court allows aggrievement." ⁴ Thus, the record makes unmistakable that Ms. Ginn satisfied the first prong of *Brinkman*, appearance, but, at the same time, failed to meet the second prong, aggrievement. Prior to an admission she was not an aggrieved party within the meaning of the law, she possessed no right to appeal to the circuit court. ⁵ *Brinkman v. Montgomery County*, supra; *Debligen v. Staley*.

³ See *Largo Civic Assn. v. Prince George's Co.*, 21 Md. App. at 81 wherein we suggested that in order to satisfy the issue of whether an individual was a proper party, a "dispute-in-interest" or list of the names of those in attendance be made by the agency and included as part of the record.

⁴ An "aggrieved party" is one whose property right or specific interest is affected by a zoning or rezoning decision in a way that is different from that suffered by the public generally. *Johnson v. Staley*, 265 Md. 130, 135, 225 A.2d 277, 280 (1967); *Alvey v. Heslin*, 243 Md. 336, 339, 221 A.2d 62, 64 (1966); *Dufay v. Crane*, 246 Md. 185, 187, 213 A.2d 487, 489-90 (1969).

⁵ *Baltimore County Circuit Court*, § 60, provides that an "aggrieved" person may appeal to the "Circuit court of [said] Baltimore County, which shall have power to affirm the decision of the board, or, if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing...."

265 Md. 130, 135, 225 A.2d 277, 280 (1967); *Alvey v. Heslin*, 243 Md. 336, 339, 221 A.2d 62, 64 (1966); *Dufay v. Crane*, 246 Md. 180, 185, 213 A.2d 487, 489-90 (1969); *Slusher v. Hanson Road Joint Venture*, supra; *Largo Civic Association v. Prince George's County*, supra.

The matter of Ms. Ginn's standing in the circuit court appears from the record to have been raised but not decided. In the trial court Ms. Ginn felt that she had standing, largely, we infer, because she was the designated spokesperson for the other appellants whose standing was not disputed. Moreover, Ms. Ginn was of the view that Md. Ann. Code art. 10, § 1 permitted her to represent the other appellants because she was not "performing the functions of an attorney for pay or reward either directly or indirectly."⁶

Although Judge DeBlases did not address the issue of Ms. Ginn's standing, we have no hesitancy in holding that Ms. Ginn was not an "aggrieved party" within the meaning of Maryland law; she was not properly before the circuit court, and she should not have been heard. It follows

Md. Ann. Code art. 10, § 1 provides as follows:

"A person, except as provided in § 14A of Article 27 of the Annotated Code, may not practice the profession or perform the services of an attorney-at-law within this State without being admitted to the bar as hereinafter directed, and any person who shall give legal advice, represent any person in the trial of any case at law or in equity... for pay or reward shall be deemed an attorney-at-law for purposes of this article."

from what we have said that the appeal, with respect to Ms. Gim, should have been dismissed by the circuit court. We now *en banc* dismiss it on the basis of lack of standing on the part of Ms. Gim to maintain the appeal.

Prior to oral argument, the Clerk of this Court, at the Court's direction, notified Ms. Gim that it would not allow her to appear and argue on behalf of the other appellants. While she disagreed with the Court's position, she, nevertheless, did not argue the case. One of the other appellants, John H. Engel, argued *pro se*.

The difficulty facing us is that the other appellants are aggrieved parties and did properly note an appeal, but the brief filed on their behalf is not by counsel or by any of them *pro se*. Rather, it has been filed by Ms. Gim as "Appellant and Spokesman for the Appellants." As we see it, Ms. Gim's protestations to the contrary, what she did in this case constitutes the practice of law in violation of Md. Annotated Code art. 10. 7

This Court, in *Lukas v. Bar Association of Montgomery County*, 35 Md. App. 442, 371 A.2d 669, cert. denied, 280 Md. 733 (1977), referred to *Public Service Commission v. Riba Transportation, Inc.*, 253 Md. 571,

7
The Attorney General, any organized bar association of this State, or bar counsel may maintain an action to enjoin the unauthorized practice of law. Md. Ann. Code art. 10, § 26(a) and (b). See also *Lukas v. Bar Ass'n*, 35 Md. App. 442, 371 A.2d 669, cert. denied, 280 Md. 733 (1977).

253 A.2d 665 (1969) and said "what constitutes the practice of law is for the courts to determine." 35 Md. App. at 447. We further stated, "The power to regulate and define what constitutes the practice of law is vested solely in the judicial branch of government and not the executive nor the legislative." 35 Md. App. at 447.

It is hard to conceive that one would prepare the necessary appeal notice from the County Board, prepare a ten (10) page memorandum of law, complete with statutory and case citations, argue the case before the circuit court, note an appeal to this Court, prepare the necessary brief and record extract, complete with citations to prior decisions, and at the same time assert that they are not practicing law. Obviously, Ms. Gim is of the erroneous belief that because she has not and will not receive "pay or reward either directly or indirectly" she is outside the ambit of the prohibition against lay persons practicing law. If the lack of payment or reward is the determining factor, then she could, based on her reasoning, perform brain surgery without compensation and successfully contend that she was not practicing medicine. As we see it, Ms. Gim has transgressed the line between spokesperson and advocate, confidant and counsel, aide and attorney. Her appeal is dismissed. 3

8
It might be argued that we should dismiss the appeal as to all appellants because the brief was written in their behalf by Ms. Gim. We have no rule of law or procedure that requires such action, nor shall we impose it even if it does exist.

We shall treat all other appellants, except Mr. Engel, as having submitted on the brief. Engel, as we have said, appeared and argued the case in his own behalf.

The record discloses that following the appellees' purchase of a property located at the northeast corner of Allegheny and Central Avenues in Poolesville, Baltimore County, Maryland, the County Council reclassified the area to that of a higher density, namely, DR. 16. An office use is permitted in such a zone by Special Exception. The appellees petitioned the Zoning Commissioner for Baltimore County for a "Special Exception and Area Variance" to permit office use. The area variance was requested because the structure located on the property violated the existing front and side yard setback requirements. The Zoning Commissioner granted the petition, subject to certain conditions. An appeal was taken to the County Board of Appeals.

At that hearing, a registered professional engineer testified that in his opinion the requested use would not be detrimental to the health, safety, or general welfare of the locality involved. The engineer foresaw no difficulty with traffic congestion nor overcrowding. Indeed, he believed that the granting of the sought-after use would lessen the burden that then existed. He founded his opinion on the fact that the property would be changed from three apartments to an office with one apartment. The witness

9
John A. Farley, Jr., Esq. and John T. Goady, Esq.

did not perceive any violation of the letter or spirit of Baltimore County Zoning Regulations § 307. 10

An architect testified that in his opinion the office use would not offend the public safety, health, and general welfare, nor would it cause traffic congestion or create fire hazards. Similar testimony was produced by other witnesses called in behalf of the appellees.

10
Baltimore County Zoning Regulations § 307 provides:

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from offstreet parking regulations and from sign regulations, only in cases where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the zoning regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, offstreet parking, or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing, and any applicant for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

-8-
The gist of the appellants' testimony was that they did not want to see any variance or exception granted. They felt that if the exception were to be granted it would be the beginning of a change in the whole block, and that traffic congestion would develop. The Board granted the appellees' petition subject to five (5) restrictions. 11
The circuit court affirmed.

In this Court the appellants argue:

"1. The Board ... rendered its opinion without the legally required showing of proof of practical difficulty or unreasonable hardship by the appellees.

11
The five (5) restrictions embodied in the Board's order are:

"(1) That no parking area shall extend beyond the building line of the front of the main structure of the subject property (excluding the porch).

"(2) That access to the parking area shall be from the alley to the rear of the subject property; that there shall be no vehicular ingress and/or egress to the subject property from Allegheny Avenue.

"(3) That there shall be no enlargement of the existing front porch (facing Allegheny Avenue), and any enclosure of said porch shall be limited to one (1) story in height;

"(4) The approval of the site plan by the Office of Planning and Zoning.

"(5) Subject to full compliance with the Baltimore County Executive Order of December 1, 1974 implementing a storm water management program, as required by the provisions of the Interim Development Control Act."

- 9-
II. The Board ... rendered its opinion without regard to the spirit and intent of the zoning regulations for Baltimore County.
III. The Board ... committed major procedural error by permitting the appellees to introduce new evidence after the appellees had closed their case and after the appellants had closed their case.
IV. The Circuit Court committed error in holding that the evidence presented before the Board ... was sufficient for them [the members of the Board] to rule in favor of a special exception."

We read the appellants' first and second issues to be but one and that is that the evidence before the Board was insufficient to sustain its findings. There is no need to enter into a protracted discourse in which we summarize the evidence. The testimony of the professional engineer was sufficient for the Board to rule as it did. All that is required by courts in reviewing a board's determination is that the board's decision be based on fairly debatable evidence. *Gool v. Atlantic Blockfield Co.*, 27 Md. App. 410, 341 A.2d 832 (1975). The testimony of the engineer, by itself, was sufficient to trigger the "fairly debatable" standard. It is not the function of the courts to retry or second guess the Board. When there is fairly debatable evidence the courts must refrain from substituting their judgment for that of the board. *Commissioner, Baltimore City Police Department v. Gacem*, 34 Md. App. 487, 363 A.2d 1967 (1977); *Gool v. Atlantic*

Blockfield Co., supra; *Van Luch v. Board of County Commissioners of Queen Anne's County*, 24 Md. App. 383, 330 A.2d 735 (1975).

We agree with Judge Blatters that the evidence was sufficient to entitle the Board to grant a variance and exception.

After the parties had seemingly closed their presentations of evidence, Mr. Goady was recalled by the appellees for "redirection examination." An objection to his testimony was sustained. Nevertheless, he continued to answer without further objection the questions put to him by his counsel and was cross-examined by Ms. Gim. The latter was recalled by the protestors and her testimony was received. Appellants' complaint that the Board erred in receiving evidence from Goady after the testimony had been closed.

A zoning board, along with other administrative agencies, is generally not bound by the technical rules of evidence although it must observe fundamental fairness in dealing with the parties who appear before it. *Fairchild Hiller Corp. v. Supervisor of Assessments*, 267 Md. 519, 298 A.2d 148 (1973); *Pal Hino v. Board of County Commissioners of Prince George's County*, 238 Md. 333, 209 A.2d 62 (1965); Md. Annotated Code art. 41, § 252. The appellants, in the instant case, objected to two of the questions asked Mr. Goady. They did so on the basis of the evidence having been closed. A third time they objected their objections were sustained. What appellants did not do was to continue to object to the subsequent questions. Thus,

-11-
the answers to those questions were admitted into evidence and, inferentially, considered by the Board. The initiative in excluding answers to improper questions rests upon the shoulders of the opposing party. If the opponent fails to object, he will not later be heard to complain that the evidence should not have been admitted. *Baltimore & Ohio R.R. v. Black*, 107 Md. 642, 658, 69 A. 439 (1908); 1 *Wigmore on Evidence* § 18 (3d ed. 1940). The failure to object to the questions as propounded constitutes a waiver. *State Road Commission v. Harv*, 220 Md. 91, 151 A.2d 154 (1959). See also *Sutton v. State*, 25 Md. App. 309, 334 A.2d 126 (1975). Inasmuch as there were no objections to the questions that the appellants now find objectionable, the objections were waived and the Board did not err in considering the answers to those questions. The Board, in an apparent attempt to be fair, allowed the appellants to reopen appellants case and offer additional testimony. Even if the matter of waiver were not present, we would, under the circumstances, be hard pressed to hold that the Board denied appellants fundamental fairness.

We have said the Board had before it sufficient evidence to support its findings. It follows then that the circuit court did not err in affirming the Board.

REPEAL AS TO MARY ELIZABETH GIM DISMISSED, WITHOUT PREJUDICE, COSTS TO BE PAID BY APPELLANTS.

R.F. 2, 21
Winchester, Va.
05663
June 27, 1977

Mr. MacCava, Chairman
County Board of Appeals
Room 218-219, Court House
Towson, Md., 21204

Dear Mr. Reiter,

I am writing in reference to the case
due to be heard by your Board in the near future.
Case # 77-155-XA due to be heard July 21, 1977 at 10:00 A.M.
Case # 77-206-XA not yet assigned as far as I know.

My home is at 504 Highland Avenue, less than a
block from case # 77-206-XA, and a little over a block
from # 77-155-XA. I strongly object to the continuing
and excessive infiltration of officers and their attendant
parking spaces into our serene residential area.

Unfortunately, however, I will be away from Towson
until approximately October 20, after which time, if the
hearing could be delayed that long, it would like to
testify on behalf of our beleaguered neighborhood and
against any further incursions by commercial piers.

Sincerely,

Gyckel M. Turner
(Mrs. Regan)

Rec'd 6/27/77
3:45 PM
4/2/77-30 WAR-FILE

Mr. Walter Reiter, Chairman
Bd. of Appeals, Rm 219
Court House, Towson, Md 21204

Dear Mr. Reiter:

I just a letter note, in case my
colant, Mrs. Kay Turner (Pres of
Towson Hill Assoc) forgot to write
to you and/or the Board, to question
the date (July 21) of the John A.
Fraser case. We would be glad to
have you start the case for the
law firm of Condy, Gaily, & Alley, 600
Ave, but our witnesses against
us are out of town and/or
on vacation causing us to
request a continuance (1) for
our side of the hearing. *Rec'd 7-3-77
9:30 AM*

* one

G. King
Rt 97, Rockledge
New York 12770
June 30, 1977

I expect to be back in Baltimore
by the 7 or 8th of July and will
follow your advisement.
One witness (closest neighbor
party willing to testify) is in Vermont
and is not expected back till the
end of October or early November.

Thank you and have a
lovely summer.
Sincerely,
Mary E. Ginn
(Mrs. Robert Ginn)

* I do not have the file exp here in
NY. But rather
77-155-XA
or # 77-143-XA
seems to stick in my mind. It is
a re-hearing of the old Matting case.

PHONE
825-0360

606 Homcrest Rd.
West Towson, Md. 21204
JULY 14, 1977

County Board of Appeals
Rm. 218-219, Court House
Towson, Md. 21204

Re: Case # 77-155-XA
Mr. John A. Farley, et al

Dear Sirs:

We respectfully request that you subpoena:
Mr. E. N. Diver, Chief, Vacation
Bureau of Engineering
Co. Office Bldg.

to testify in the case listed above, on the following
date:

July 21, 1977
10 A.M.
at: HEARING ROOM, BOARD OF APPEALS
COURT HOUSE
TOWSON, MARYLAND.
SUMMONED COST \$ 00
NON EST. 19
NON SUIT. 19
COPY LEFT. 13
7-18-77
Thank you, Mary E. Ginn
Mary Elizabeth Ginn

Mr. Sheriff:

Please issue summons in accordance with above.

Muriel E. Buddemeier
County Board of Appeals

Rec'd 7/14/77
4:10 PM

606 Homcrest Rd.
West Towson, Md. 21204
JULY 14, 1977

County Board of Appeals
Rm. 218-219, Court House
Towson, Md. 21204

Re: Case # 77-155-XA
Mr. John A. Farley, et al

Dear Sirs:

We respectfully request that you subpoena:

Mr. E. N. Diver, Chief
Bureau of Engineering
Co. Office Bldg.

to testify in the case listed above, on the following
date:

July 21, 1977
10 A.M.

at: HEARING ROOM, BOARD OF APPEALS
COURT HOUSE
TOWSON, MARYLAND.

Thank you,

Mary Elizabeth Ginn

Mr. Sheriff:

Please issue summons in accordance with above.

Muriel E. Buddemeier
County Board of Appeals

PHONE
825-0360

606 Homcrest Rd.
West Towson, Md. 21204
JULY 14, 1977

County Board of Appeals
Rm. 218-219, Court House
Towson, Md. 21204

Re: Case # 77-155-XA
Mr. John A. Farley, et al

Dear Sirs:

We respectfully request that you subpoena:

Mr. Stephen Collins, Chief
Dept. of Traffic
Courts Bldg.

to testify in the case listed above, on the following
date:

July 21, 1977
10 A.M.

at: HEARING ROOM, BOARD OF APPEALS
COURT HOUSE
TOWSON, MARYLAND.

Thank you,

Mary Elizabeth Ginn

Mr. Sheriff:

Please issue summons in accordance with above.

Muriel E. Buddemeier
County Board of Appeals

Rec'd 7-14-77
4:20 PM

PHONE
825-0360

606 Homcrest Rd.
West Towson, Md. 21204

County Board of Appeals
Rm. 218-219, Court House
Towson, Md. 21204

Re: Case # 77-155-XA
Mr. John A. Farley, et al

Dear Sirs:

We respectfully request that you subpoena:

Mr. Stephen Collins, Chief
Dept. of Traffic
Courts Bldg.

to testify in the case listed above, on the following
date:

July 21, 1977
10 A.M.

at: HEARING ROOM, BOARD OF APPEALS
COURT HOUSE
TOWSON, MARYLAND.

Thank you,

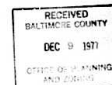
Mary Elizabeth Ginn

Mr. Sheriff:

Please issue summons in accordance with above.

Muriel E. Buddemeier
County Board of Appeals

2nd
7/15/77
3:30 PM



606 Homcrest Road
West Towson, Maryland 21204

December 7, 1977

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

Gentlemen:

Please summon the following person to be and appear before the County
Board of Appeals on Tuesday, December 13th and/or Thursday, December 15th,
1977, at 10:00 am, in Room 218, Court House, Towson, Maryland, to testify in
the case of John A. Farley, et al, Case No. 77-155-XA:

Mr. L. Giff, Director of Planning
and/or his Representative

Sincerely,

Theresa Ginn
Mary E. Ginn

Rec'd 12/8/77
9 a.m.

Mr. Clerk:

Please issue summons in accordance with above.

Muriel E. Buddemeier
County Board of Appeals

606 Homcrest Road
West Town, Maryland 21204

December 7, 1977

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

Gentlemen:

Please summon the following person to be and appear before the County Board of Appeals on Tuesday, December 13th and/or Thursday, December 15th, 1977, at 10:00 am, in Room 218, Court House, Towson, Maryland, to testify in the case of John A. Farley, et al, Case No. 77-155-XA:

*Mr. R. Grof, Director of Planning
and for his representative*

Sincerely,
Mary E. Ginn
Mary E. Ginn

825-0360

Rec'd 12/8/77
9 a.m.

Mr. Clerk:

Please issue summons in accordance with above.

Muriel E. Buddemeier, County Board of Appeals

606 Homcrest Road
West Town, Maryland 21204

December 7, 1977

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

Gentlemen:

Please summon the following person to be and appear before the County Board of Appeals on Tuesday, December 13th and/or Thursday, December 15th, 1977, at 10:00 am, in Room 218, Court House, Towson, Maryland, to testify in the case of John A. Farley, et al, Case No. 77-155-XA:

*Mr. Richard Moore, Dept. of Traffic Engineering
and for his representative D.C.*

Sincerely,
Mary E. Ginn
Mary E. Ginn

Rec'd 12/8/77
9 a.m.

Mr. Sheriff:

Please issue summons in accordance with above.

Muriel E. Buddemeier, County Board of Appeals

606 Homcrest Road
West Town, Maryland 21204

December 7, 1977

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

Gentlemen:

Please summon the following person to be and appear before the County Board of Appeals on Tuesday, December 13th and/or Thursday, December 15th, 1977, at 10:00 am, in Room 218, Court House, Towson, Maryland, to testify in the case of John A. Farley, et al, Case No. 77-155-XA:

*Mr. Richard Moore, Dept. of Traffic Engineering
and for his representative D.C.*

Sincerely,
Mary E. Ginn
Mary E. Ginn

Rec'd 12/8/77
9 a.m.

Mr. Sheriff:

Please issue summons in accordance with above.

Muriel E. Buddemeier, County Board of Appeals

COADY & FARLEY
ATTORNEYS AND COUNSELLORS AT LAW
101 EAST REDWOOD STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 782-4226 AREA CODE 301

July 17, 1978

Mr. George J. Martinak
Deputy Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

Re: John A. Farley Jr., et al
Case #77-155XA
Circuit Court Docket 10-497
Misc. #6471
400 Allegheny Ave., Towson,
Maryland, 21204

DEAR Mr. Martinak:

The undersigned, owners of 400 Allegheny Avenue, respectfully request that your office process the application for an alteration permit relating to said property. The case has been appealed from a unanimous decision of the Board of Zoning Appeals in favor of the property owners to the Circuit Court for Baltimore County.

In consideration of your processing said application at this time the undersigned, hereby agree to indemnify and save Baltimore County harmless from any and all damages arising therefrom. The undersigned also agree not to build until all appeal periods have expired, and in the event an adverse decision is rendered on appeal we will consider any permit issued void and of no effect. We also agree that the County shall not release the permit until all appeal periods have expired and the favorable decision granting the Special Exception for Office Use and Variance has become final.

Based upon the above agreement we respectfully request that you authorize the processing of said application.

Very truly yours,



John T. Coady
JOHN T. COADY

494-3160

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

February 16, 1978

Mrs. Mary E. Ginn
606 Homcrest Road
Towson, Maryland 21204

Re: Case No. 77-155-XA
John A. Farley, Jr., et al

Dear Mrs. Ginn:

Enclosed herewith is a copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Helen K. Schneider
Helen K. Schneider

Encl.

cc: James H. Patterson, Esq.
John A. Farley, Jr., Esq.
John T. Coady, Esq.
Mrs. Cynthia W. Harriott
Mrs. Dorothy B. Pettigrew
John W. Huston, III, Esq.
Mr. S. E. DiNenna
Mr. G. J. Martinak
Mr. James Dyer
Mr. L. Grof
Mr. J. Howell
Baltimore County Board of Education

COADY & FARLEY
ATTORNEYS AND COUNSELLORS AT LAW
101 EAST REDWOOD STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 782-4226 AREA CODE 301

September 19, 1977

Mrs. Muriel E. Buddemeier
County Board of Appeals
Room 219
Old Court House
Towson, MD 21204

Re: Case No. 77-155-XA
John A. Farley, Jr. et al
NW Corner Allegheny & Central Avenues
Ninth District

Dear Mrs. Buddemeier:

On July 18, 1977 I requested a postponement of the captioned case, which was scheduled to be heard on July 21, 1977 at 10 a.m., because of problems with I.D.C.A., which postponement was granted on the same date.

On September 15, 1977 the Baltimore County Planning Board, pursuant to its agenda of that date, approved Item 77-35X under I.D.C.A., which is the captioned property.

Accordingly, could you please be kind enough to re-schedule the captioned case before the Board of Appeals at your earliest possible convenience.

I am mailing a copy of this letter to Mr. DiNenna and to the Baltimore County Planning Board so that they may forward I.D.C.A. file 77-35X to your office.

Very truly yours,

John T. Coady
John T. Coady

JTC:ekt
cc: Mr. Eric S. DiNenna, County Office Bldg., Towson, MD 21204
Baltimore County Planning Board, Co. Office Bldg., Towson, MD 21204
Mrs. Mary E. Ginn, 606 Homcrest, Towson, MD 21204
Mrs. Cynthia W. Harriott, 306 Highland Avenue, Towson, MD 21204
Mrs. Dorothy B. Pettigrew, 512 Woodbine Avenue, Towson, MD 21204
Mr. John W. Huston, III, People's Counsel for Baltimore County, County Office Building, Towson, MD 21204

COADY & FARLEY
ATTORNEYS AND COUNSELLORS AT LAW
101 EAST REDWOOD STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 782-4226 AREA CODE 301

September 28, 1977

Mr. Walter A. Reiter, Jr., Chairman
County Board of Appeals
Room 219
Old Court House
Towson, MD 21204

Re: Case No. 77-155-XA
John A. Farley, Jr. et al
NW Corner Allegheny & Central Avenues
Ninth District

Dear Mr. Reiter:

I am enclosing herewith Motion concerning the captioned case and also effecting Case No. IDCA 77-35X, wherein we request that the captioned case, together with the IDCA case, be consolidated and remanded to Mr. DiNenna.

If you have any questions concerning this motion and order, would you please call me immediately as I have mailed copies to all interested parties.

Sincerely,
John T. Coady
John T. Coady

JTC:ekt

Enc.



Walter A. Reiter, Jr., Esquire
Chairman, Baltimore County
Board of Appeals
Room 219, Courthouse
Towson, Maryland 21204

October 17, 1977

Re: Case No. 77-155-XA (Item No. 129)
NW/Corner of Allegheny and
Central Avenues - 9th Election
District
John A. Farley, Jr., et al -
Petitioners

Dear Mr. Reiter:

As per your Order of September 30, 1977, said matter was processed and enclosed herewith please find a copy of the IDCA application for Special Exception and/or Special Permit (IDCA No. 77-35-X). The application was signed by Mr. Leslie H. Grof, Director of Planning and Secretary to the Baltimore County Planning Board, indicating the determination by the Board that the requested Special Exception conforms to the requirements of Section 22-15.1(f) of the Baltimore County Code.

Very truly yours,

S. Eric DiNenna
S. ERIC DI NENNA
Zoning Commissioner

SED/sf

Attachment

cc: John T. Coady, Esquire
101 East Redwood Street
Baltimore, Maryland 21202

Rec'd 10-20-77
10:35 AM

Walter A. Reiter, Jr., Esquire
Page Two
October 17, 1977

cc: James H. Patterson, Esquire
101 East Redwood Street
Baltimore, Maryland 21202

Mrs. Mary E. Ginn
606 Horncroft Road
Towson, Maryland 21204

Mrs. Cynthia W. Herriott
504 Highland Avenue
Towson, Maryland 21204

Mrs. Dorothy B. Pettijohn
512 Woodbine Avenue
Towson, Maryland 21204

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

September 30, 1977

Mrs. Mary E. Ginn
606 Horncroft Road
Towson, Md. 21204

Re: Case No. 77-155-XA
John A. Farley, Jr., et al

Dear Mrs. Ginn:

Enclosed herewith is a copy of the Motion and Order of Remand passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

John T. Elmhurst, Admin. Secretary

Encl.

cc: Mrs. Cynthia W. Herriott
Mrs. Dorothy B. Pettijohn
James H. Patterson, Esquire
John A. Farley, Jr., Esquire
John T. Coady, Esquire
John W. Hession, III, Esquire
Mr. James E. Dyer
Mr. S. E. DiNemmo
Mr. G. J. Martinak
Mr. L. Giesel
Mr. J. Howell

JAMES S. SPANER & ASSOCIATES
PROFESSIONAL ENGINEERS & LAND SURVEYORS
5017 YORK ROAD - TOWSON, MD. 21204
DATE: Dec 9, 1976
Drawing Description
No. 400 Allegheny Avenue
SHEET 1 OF 1
FILE

Beginning for the same at the corner formed by the intersection of the western side of Central Avenue with the northern side of Allegheny Avenue and running thence (1) binding on the northern side of Allegheny Avenue, westerly 110 feet, (2) thence parallel to the western side of Central Avenue, northerly 150 feet to the southern side of a 20 foot alley there situate, (3) thence binding on the southern side of said 20 foot alley with the use thereof in common with others entitled thereto and parallel to Allegheny Avenue, easterly 110 feet to the aforesaid western side of Central Avenue, (4) thence binding on the western side of Central Avenue, southerly 150 feet to the place of beginning.

Containing 16,500 square feet of land or 0.379 acres more or less.
Being the same lot of ground described in a Deed dated April 24, 1975 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5524, folio 252 from Nigelia Esther Martinez to John A. Farley, Jr. and John T. Coady.



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiNemmo, Zoning Commissioner Date: February 22, 1977
FROM: Norman E. Gerber, Acting Director of Planning
SUBJECT: Petition #77-155-XA. Petition for Special Exception for Offices and
Petition for Variance for Front and Side Yards.
Northwest corner of Allegheny and Central Avenues.
Petitioner - John A. Farley, Jr. and John T. Coady

5th District

HEARING: Thursday, February 24, 1977 (11:00 A.M.)

The type of conversion to office use proposed by the petitioner would be appropriate here. The Department of Traffic Engineering's representative on the Zoning Advisory Committee stated, in part, that "the use of the existing alley for access can be expected to cause problems." Hence, it is suggested that if the petitioner's request is granted, access be permitted from Allegheny Avenue only and the developer be required to redesign his parking area accordingly.

Norman E. Gerber
Acting Director of Planning

KDG:JCH:rw

March 21, 1977

James H. Patterson, Esquire
101 East Redwood Street
Baltimore, Maryland 21202

RE: Petition for Special Exception
and Variances
NW/corner of Allegheny and Central
Avenues - 9th Election District
John A. Farley et al - Petitioners
NO. 77-155-XA (Item No. 129)

Dear Mr. Patterson:

I have this date passed my Order in the above captioned matter in accordance with the attached.

Very truly yours,

OF JAMES H. MARTINAK
Deputy Zoning Commissioner

GJM/mc

Attachments

cc: Mrs. Mary Ginn
606 Horncroft
Towson, Maryland 21204

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

RE: PETITION FOR SPECIAL
EXCEPTION AND VARIANCES
NW/corner of Allegheny
and Central Avenues
9th Election District
JOHN A. FARLEY, et al
Petitioners

BEFORE THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
OF APPEALS OF BALTIMORE COUNTY
Case No. 77-155-XA
Case No. IDCA 77-35X

ORDER

Upon the foregoing Motion, it is this 30th day of September, 1977, by the County Board of Appeals for Baltimore County,

ORDERED that the Order of the Deputy Zoning Commissioner of Baltimore County granting said Petition No. 77-155-XA be and it is hereby neither Affirmed nor Reversed, but the entire proceeding is hereby REMANDED to the Zoning Commissioner of Baltimore County for consolidation with Petition No. IDCA 77-35X.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE

Walter A. Reiter, Jr., Chairman

Robert L. Gifford

Herbert A. Davis

RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCES
NW/corner of Allegheny
and Central Avenues
9th Election District
JOHN A. FARLEY, et al
Petitioners

BEFORE THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
OF APPEALS OF BALTIMORE COUNTY
Case No. 77-155-XA and
Case No. IDCA 77-35X

MOTION

To the Honorable, the County Board of Appeals:

The Motion of John A. Farley, Jr. and John T. Coady, by their attorney, James H. Patterson, respectfully represents:

1. That this case involves an application for a Special Exception to permit office use on a property which is presently zoned D.R. 16 on the 1976 Comprehensive Zoning Map duly adopted by the County Council for Baltimore County.

2. That, in view of the decision recently promulgated by the County Board of Appeals in a case entitled, "Petition for Special Exception, Nicholas B. Mangione, et al," No. 76-158-X, your Honors believe, and therefore aver, that the instant case is similarly impacted by the legal operation and effect of the "Interim Development Control Act" and should, as was held in "Mangione," be Remanded to the Zoning Commissioner of Baltimore County for processing in accordance with the terms and provisions of said "Interim Development Control Act."

3. That Petition No. IDCA 77-35X, which your Petitioners filed with the Planning Board of Baltimore County and which Board approved said case on September 15, 1977, is the same Petition and covering the same property as the case pending before the Board, namely Case No. 77-155-XA.

4. That your Petitioners desire to consolidate both cases. WHEREFORE, your Petitioners respectfully move that the County Board of Appeals, by its appropriate Order, cause Case No. 77-155-XA to be Remanded to the Zoning Commissioner of Baltimore County and to be consolidated with Case No. IDCA 77-35X.

-2-

James H. Patterson
James H. Patterson
Attorney for Petitioners
101 East Redwood Street
Baltimore, Maryland 21202
752-4226

I HEREBY CERTIFY, that on this 28th day of Sept., 1977, a copy of the foregoing Motion, and of the proposed Order thereon, was mailed to Mrs. Mary E. Ginn, 606 Horncroft, West Towson, Maryland 21204; Mrs. Cynthia W. Herriott, 504 Highland Avenue, West Towson, Maryland 21204; and Mrs. Dorothy B. Pettijohn, 512 Woodbine Avenue, West Towson, Maryland 21204, Protestants; and John W. Hession, III, People's Counsel for Baltimore County, County Office Building, Towson, Maryland 21204; and S. Eric DiNemmo, Zoning Commissioner, County Office Building, Towson, Maryland 21204.

James H. Patterson
James H. Patterson

Filed 9-28-77
2:02 PM

ICDA APPLICATION FOR SPECIAL EXCEPTION AND OR SPECIAL PERMIT

TO THE ZONING COMMISSIONERS OF BALTIMORE COUNTY
John T. Coody and
John A. Farley, Jr.
LAWYERS, CORP. OF THE PROPERTY LOCATED IN BALTIMORE
COUNTY, THE PROPERTY OUTLINE OF WHICH IS SHOWN TO BE A SPECIAL EXCEPTION AND OR SPECIAL PERMIT
AND IT IS REQUESTED THAT THE COMMISSIONERS GRANT A SPECIAL EXCEPTION AND OR SPECIAL PERMIT FOR
SPECIAL EXCEPTION AND OR SPECIAL PERMIT FOR
SPECIAL EXCEPTION AND OR SPECIAL PERMIT FOR

THE PROPERTY IS REQUESTED TO BE RECLASSIFIED AS FOLLOWS: Ex. Apt. House - Office
110-1150
GROSS SITE AREA - 0.39 AC. DEED REF. 1975-77-524-252
GRADING - 24. % OF OVERALL SITE SHALL BE GRADED.

BUILDING SIZE
GROUND FLOOR - 38. x 47. AREA - 1,786 SQ. FT.
NUMBER OF FLOORS - 301.
TOTAL HEIGHT - 301.
FLOOR AREA RATIO - TOTAL FLOOR AREA DIVIDED BY SITE AREA - 2.08

BUILDING USE
GROUND FLOOR - Offices - 2nd Floor Offices
3rd Floor Apartments
REQUIRED NUMBER OF PARKING SPACES
GROUND FLOOR - 5.03 - OTHER FLOORS 2.87 8.13 TOTAL 10.33

AREA OF SITE TO BE PAVED TO ACCOMMODATE REQUIRED PARKING SPACES - 4,000 SQ. FT.
(PAVED AREA MAY BE ESTIMATED BY MULTIPLYING REQUIRED NUMBER OF SPACES BY 300)

UTILITIES
WATER: PUBLIC OR PRIVATE, TYPE OF SYSTEM - Existing Metered Service
SEWER: PUBLIC OR PRIVATE, TYPE OF SYSTEM - Existing Sewerage Service
UTILITIES SECURITY APPROVAL -

I CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND
BELIEF.
John T. Coody
John A. Farley, Jr.
LAWYERS, CORP. OF THE PROPERTY LOCATED IN BALTIMORE
COUNTY, THE PROPERTY OUTLINE OF WHICH IS SHOWN TO BE A SPECIAL EXCEPTION AND OR SPECIAL PERMIT
AND IT IS REQUESTED THAT THE COMMISSIONERS GRANT A SPECIAL EXCEPTION AND OR SPECIAL PERMIT FOR
SPECIAL EXCEPTION AND OR SPECIAL PERMIT FOR

THE PLANNING BOARD HAS DETERMINED ON 9-15-77 THAT THE PROPOSED DEVELOPMENT
COMPLIES WITH THE REQUIREMENTS OF SUBSECTION 16.01 OF THE BALTIMORE COUNTY ZONING
REGULATIONS.
RECEIVED
PLANNING BOARD

ICDA APPLICATION FOR SPECIAL EXCEPTION

ITEM No. 7:

- Applicant, Legal Owner, Contract Purchaser, Lessee
John A. Farley, Jr.
John T. Coody
101 E. Redwood Street
Baltimore, MD 21202 - 752-4226
- TITLE DEED: BHCJR 5524-252 - 4-24-75
- Existing building and use - apartments
- Proposed building and use - offices-conversion
- Ground floor dimensions 38' x 47' and Area 1,786 sq. ft.
- Number of floors and Area of each floor including basement
First floor - 1,786 sq. ft.
Second floor - 1,436 sq. ft.
Third floor - 1,000 sq. ft.
Basement - 1,400 sq. ft.
- Total floor area of building - 5,622 sq. ft.
- Area of site - 16,500 sq. ft. - 0.38 ac.
- Ratio floor area (Building Area ÷ Site Area) 1,786 ÷ 16,500 = 0.10
- Required number of parking spaces based on use (See Section 409 requirements) - 10 spaces
- Estimated paved area required to accommodate the parking spaces (This may be determined by multiplying the number of spaces required by 300) - 4,000 sq. ft.
- Percent of site to be graded - 4,000 ÷ 16,500 = 24%

NOTE: THIS PROPERTY WAS APPROVED UNDER FORMER APPLICATIONS:

#74-198-IXA
#77-155-IXA

RE: PETITION FOR RECLASSIFICATION : BEFORE
from D.R. 5.5 to D.R. 16, : COUNTY BOARD OF APPEALS
SPECIAL EXCEPTION FOR OFFICES, : OF
and VARIANCE from Section : BALTIMORE COUNTY
1802.28 (504 V.B.2) of the :
Baltimore County :
Zoning Regulations :
NW corner of Allegheny : No. 74-198-IXA
and Central Avenues :
9th District :
Petitioners :
Co-Far Holding Corporation, :
Contract Purchaser :

DISSENTING OPINION

This case comes before the Board on an appeal from an Order of the Zoning Commissioner of Baltimore County granting the requested reclassification from D.R. 5.5 zone to D.R. 16 zone, with a special exception for offices, and variances to permit the Petitioner to use the existing building.

The subject property is located on the northwest corner of Allegheny and Central Avenues, in the Ninth Election District of Baltimore County, and comprises approximately .379 acres.

Testimony was produced on behalf of the contract purchaser to indicate that the County Council was in error when they chose not to zone this property as D.R. 16, in spite of the recommendation to do so by the Planning Board. Testimony was offered for reasons as to the change in the character of the immediate neighborhood, citing as examples the improvements to Bayley Avenue, granting of numerous reclassifications and special exceptions in the neighborhood for uses as offices, the placing on the zoning map of large tracts of D.R. 16 property, one of which is on the adjacent (southeast) corner from the subject property, the use of the property on the northeast corner of the intersection of Central Avenue and Allegheny Avenue for office purposes, this being the old T-wagon High School, which building is presently used as offices by the Board of Education.

The Petitioner was mainly concerned with the damage effect in the creeping change in the residential character of this area of Townson, and also felt that the traffic problem and the resulting danger to children attending Townson Elementary School, which is located on Central Avenue immediately to the north and east of the subject

Nigelio E. Martinez - #74-198-IXA

property, would be intensified. However, this member is satisfied that it is unrealistic to expect the subject property to remain at a use consistent with D.R. 5.5. This member further feels that Section 502.1 of the Zoning Regulations has been satisfied with regard to the granting of the special exception, and that the variances petitioned for should be granted, as to deny same would present an unreasonable hardship or practical difficulty upon the Petitioner in his proposal to retain the existing building with extensive interior redecoration or remodeling. This would seem to be a proposal consistent with the neighborhood and the requested variances should be granted in this member's opinion.

Therefore, it is the opinion of this member that either the Council erred in not following the recommendation of the Planning Board to place D.R. 16 zoning on the subject property, or that the substantial development, such as the major construction on Bayley Avenue with the resultant change in traffic patterns, as well as numerous changes in zoning through either reclassifications or special exceptions within the immediate vicinity of the subject property, and the other items previously referred to, constitute a substantial change in the character of the immediate neighborhood of the subject property and, therefore, the requested zoning of D.R. 16 should be granted; and that the special exception for office use should also be granted, as sections of Section 502.1 of the Baltimore County Zoning Regulations have been complied with. Further, the request for variances to permit a front yard setback of twenty (20) feet in lieu of the required thirty (30) feet, and side yard setbacks of eight (8) feet in lieu of the required thirty (30) feet and twenty-five (25) feet respectively should be granted in order that the Petitioner can use the existing building, as indicated on Petitioner's Exhibit No. 1; and that denial of said variances would certainly place an unreasonable hardship upon the Petitioner.

Robert L. Gillard

Date: January 7, 1975

RE: PETITION FOR RECLASSIFICATION : BEFORE
from D.R. 5.5 to D.R. 16, : COUNTY BOARD OF APPEALS
SPECIAL EXCEPTION FOR OFFICES, : OF
and VARIANCE from Section 1802.28 : BALTIMORE COUNTY
(504 V.B.2) of the Baltimore :
County Zoning Regulations :
NW corner of Allegheny and : No. 74-198-IXA
Central Avenues :
9th District :
Petitioners :
Co-Far Holding Corp., :
Contract Purchaser :

OPINION

This case comes before the Board on appeal from the Order of the Zoning Commissioner of Baltimore County, dated May 8, 1974, granting a petition for reclassification of the subject property from a D.R. 5.5 zone to a D.R. 16 zone, with a special exception for offices and variances to permit side and front yard setbacks.

The subject property is located on the north-west corner of Allegheny Avenue and Central Avenue, in the Ninth Election District of Baltimore County. Subject property is improved with a two and one-half story frame building on a 0.379 acre lot. To the north, west and south are single family dwellings on D.R. 5.5 zoned lands; to the east there exists D.R. 5.5 and D.R. 16 zoning.

Testimony by Mr. John T. Coody of Co-Far Holding Corporation, contract purchaser of the subject property, indicated that if the petition is granted they intend to relocate their business offices from Baltimore City to the subject location, utilizing the basement and the first floor for their own use, the second floor for rented offices and the third floor for apartment rental. The main thrust of the testimony in behalf of the Petitioners was that the Baltimore County Council erred in that, during the processing of the 1971 Comprehensive Zoning Maps, the Planning Board recommended that D.R. 16 zoning be extended from the Townson Center to the Y.M.C.A. property, and that there has been substantial change in the immediate neighborhood subsequent to the adoption of the 1971 maps.

Testimony produced by the Protestants indicated mainly that they strongly oppose this petition because of the resultant increase in traffic which would affect the health, safety and welfare of the school children attending nearby Townson Elementary School and that very little change has taken place in the immediate neighborhood.

Testimony by Mr. C. Richard Moore, Assistant Traffic Engineer for Baltimore

Martinez - #74-198-IXA

County, indicated that while the rezoning of this parcel would not have a serious effect on the traffic pattern, the Townson road system has been designed with the assumption that very limited office use would be available west of Bayley Avenue, and that practical rezoning of small parcels into office space without an adequately designed road system can only create problems in the future.

It is the opinion of the majority of the Board that substantial change in the immediate neighborhood has not been proven, and in addressing itself to the claim by Petitioners that the County Council erred, we feel that the Council, when reviewing the Planning Board's recommendations during the map processing, had all of the facts before it and in its wisdom decided that zoning for high density residential and office use should be concentrated nearer the Townson Center. Further, the Board strongly feels that any enlargement of the Townson Center, explicitly the expansion of D.R. 16 zoning from that hub, should only be done in the comprehensive process. Therefore, by Order of the majority of this Board, the Petitioners' request shall be denied in toto.

ORDER

For the reasons set forth in the foregoing Opinion, it is this day, of January, 1975, by the County Board of Appeals, ORDERED that the reclassification, special exception and variances petitioned for, be, and the same is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter C. Horn, Jr.

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE
for Offices and Office Building : COUNTY BOARD OF APPEALS
VARIANCE from Section 1802.28 : OF
(504 V.B.2) of the Baltimore County : BALTIMORE COUNTY
Zoning Regulations :
NW corner of Allegheny and Central Avenues :
9th District :
Petitioners :
John A. Farley, Jr., et al :
Petitioner : File No. 77-155-IXA

OPINION

This case comes before the Board on an appeal from an Order of the Deputy Zoning Commissioner, dated March 21, 1977, which granted the requested petition for a special exception and variances.

The subject property is located on the northwest corner of Allegheny and Central Avenues, in the 9th Election District of Baltimore County, and comprises approximately .379 acres. This is the same property and proposal that was before this Board previously which resulted in a split decision in January of 1975. However, since the previous case, at which time the present Petitioner was a contract purchaser and has since purchased the property, the Baltimore County County Council has reclassified the subject property under the October 1976 comprehensive zoning to the present classification of D.R. 16. Therefore the matters petitioned for at this time do not include the reclassification, but contain only a request for a special exception to permit offices under the existing zoning, and an additional request for variances to permit the use of the existing structure.

Accordingly, the only question before the Board is whether the proposal complies with the requirements of Section 502.1 of the Baltimore County Zoning Regulations, and further, whether practical difficulty or hardship would be imposed upon the Petitioner if the variances were not granted.

The proposal as indicated in the petition, and the testimony produced in support thereof, is essentially the same as previously before this Board, namely, to convert the two and one-half story frame building, which presently contains three apartments and is in excess of ninety years old, into offices for use in the Petitioner's profession, and

John A. Farley, Jr., et al - No. 77-155-IXA

to retain the third floor as an apartment. Testimony indicated by the professional engineer and architect that the variances are necessary, as the existing building does not conform to the present requirements of the Baltimore County Zoning Regulations. Consequently it would impose a substantial hardship upon the Petitioner to require strict adherence to the variances in that he could not use the existing building, and this would seem to be derogation of the general plan for similar properties classified as D.R. 16 in that it is the intention of the Planning Department to encourage use of the existing buildings in that they might retain the general appearance of the neighboring residences and be in harmony with their immediate surroundings.

Additionally, it is to be noted that this case was scheduled before this Board previously, and was in the posture of having reached this Board, and during the period of time from the decision of the Deputy Zoning Commissioner and the scheduled hearing before this Board, the Interim Development Control Act was passed in April of 1977. Consequently said Act required additional submission to the Planning Board for approval. The Petitioner was then referred back to the Planning Board and has subsequently obtained I.D.C.A. approval from the Planning Board of Baltimore County. Said approval for the most part contemplates that there is no adverse effect upon the general health and welfare of the citizenry of Baltimore County, and further indicates substantial compliance with the Baltimore County Zoning Regulations, and in particular by interpolation of the requirements of Section 502.1 of said Regulations.

There was, of course, additional testimony from the Petitioner's case that all of the requirements provided for in the obtaining of a special exception were completely satisfied.

The Protestants in this case were opposed basically on the premise that they wanted the property to remain residential, and further, there was some objection to parking along Allegheny Avenue and creation of additional traffic. However, the use proposed would generate a minimum of traffic, and the Baltimore County Traffic Department did not indicate any significant problem or reason for an adverse finding under

the requirements of Section 502.1.

Furthermore, Mr. James Hession, the representative of the Baltimore County Planning Department, indicated that the proposal was an appropriate use under the existing zoning, and was preferable, in his opinion, to a medical type of office use.

It is, therefore, the opinion of this Board that the petition for a special exception and variances should be granted, subject to certain restrictions to be imposed in the accompanying Order.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 16th day of February, 1978, by the County Board of Appeals ORDERED, that the petition for Special Exception for offices and office building, and Variances from Section 1802.2B (504-VB.2) of the Baltimore County Zoning Regulations, be and the same are hereby GRANTED, subject to the following restrictions:

- (1) That no parking area shall extend beyond the building line of the front of the main structure of the subject property (excluding the porch);
- (2) That access to the parking area shall be from the alley to the rear of the subject property; that there shall be no vehicular ingress and/or egress to the subject property from Allegheny Avenue;
- (3) That there shall be no enlargement of the existing front porch (facing Allegheny Avenue), and any enclosure of said porch shall be limited to one (1) story in height;
- (4) The approval of the site plan by the Office of Planning and Zoning;
- (5) Subject to full compliance with the Baltimore County Executive Order of December 1, 1974 implementing a storm water management program, as required by the provisions of the Interim Development Control Act.

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

COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

Walter A. Reiter, Jr., Chairman

Robert L. Gilland

Herbert A. Davis

RE: PETITIONS FOR SPECIAL EXCEPTION : IN THE CIRCUIT COURT
AND VARIANCES
NW corner of Allegheny and Central
Avenues, 9th Election District : FOR BALTIMORE COUNTY AT LAW

JOHN A. FARLEY, et al, Petitioner: Misc. Docket No. _____

Case No. 77-155-XA : Folio No. _____

Mary Elizabeth Ginn, et al : File No. _____
Protestants-Appellants

1 : 1 : 1 : 1

ORDER FOR APPEAL

MR. CLERK:

On behalf of the following, viz:

Mary Elizabeth Ginn
606 Homcrest
Towson, Maryland 21204
825-0360
and
Dorothy B. Pettijohn and
Francis J. Pettijohn, her spouse
512 Woodbine Avenue
Towson, Maryland 21204 - 825-4584
and
Cynthia W. Herriott
504 Highland Avenue
Towson, Maryland 21204
823-7033
and
John H. Engel and Carol G. Engel, his spouse
618 Highland Avenue
Towson, Maryland 21204
821-7697

please note an appeal to the Circuit Court for Baltimore County from the Order of the County Board of Appeals for Baltimore County under date of February 16, 1978 granting a Special Exception for offices and office building and Variances from Section 1802.2B (504-VB.2) of the Baltimore County Zoning Regulations.

Mary Elizabeth Ginn
606 Homcrest
Towson, Maryland 21204
825-0360

Dorothy B. Pettijohn
Dorothy B. Pettijohn
512 Woodbine Avenue
Towson, Maryland 21204
825-4584

Francis J. Pettijohn
Francis J. Pettijohn
512 Woodbine Avenue
Towson, Maryland 21204
825-4584

Cynthia W. Herriott
Cynthia W. Herriott
504 Highland Avenue
Towson, Maryland 21204
823-7033

John H. Engel
John H. Engel
618 Highland Avenue
Towson, Maryland 21204
821-7697

Carol G. Engel
Carol G. Engel
618 Highland Avenue
Towson, Maryland 21204
821-7697

I HEREBY CERTIFY that on this 16th day of March, 1978,

A. That a copy of this Order was served on the Administrative Secretary of the County Board of Appeals of Baltimore County, Room 219, Court House, Towson, Maryland 21204, prior to the presentation of the original to the Clerk of the Circuit Court for Baltimore County.

B. That a copy thereof was mailed to James H. Patterson, Esquire, 101 East Redwood Street, Baltimore, Maryland 21202, Attorney for Petitioners; and John W. Hession, III, People's Counsel for Baltimore County, County Office Building, Towson, Maryland 21204.

Mary Elizabeth Ginn
Mary Elizabeth Ginn

RE: PETITION FOR SPECIAL EXCEPTION : IN THE
for Offices and Office Building : CIRCUIT COURT
VARIANCE from Section 1802.2B :
(504-VB.2) of the Baltimore County :
Zoning Regulations : FOR
NW corner of Allegheny and Central Aves. : BALTIMORE COUNTY
9th District : AT LAW
John A. Farley, Jr., et al : Misc. Docket No. 10
Petitioner :
Zoning File No. 77-155-XA : Folio No. 497
Mary Elizabeth Ginn, et al : File No. 6491
Protestants - Appellants

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Walter A. Reiter, Jr., Robert L. Gilland and Herbert A. Davis, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, James H. Patterson, Esq., 101 E. Redwood Street, Baltimore, Maryland, 21202, attorney for the Petitioners; John A. Farley, Jr., Esq. and John T. Coady, Esq., 101 E. Redwood Street, Baltimore, Maryland, 21202, Petitioners; John W. Hession, III, Esq., People's Counsel for Baltimore County, County Office Building, Towson, Maryland, 21204; Mrs. Mary Elizabeth Ginn, 606 Homcrest Road, Towson, Maryland, 21204, Mr. and Mrs. Francis J. Pettijohn, 512 Woodbine Avenue, Towson, Maryland, 21204, Mr. and Mrs. Cynthia W. Herriott, 504 Highland Avenue, Towson, Maryland, 21204, and Mr. and Mrs. John H. Engel, 618 Highland Avenue, Towson, Maryland, 21204, Protestants - Appellants; and Mr. James E. Dyer, Office of Planning and Zoning, County Office Building, Towson, Maryland, 21204, a copy of which Notice is attached hereto and played that it may be made a part thereof.

Muriel E. Buddemeier
Muriel E. Buddemeier
County Board of Appeals of Baltimore County
Rm. 219 Court House, Towson, Md. 21204
Telephone - 494-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to James H. Patterson, Esq., 101 E. Redwood Street, Baltimore, Maryland, 21202, attorney for the Petitioners; John A. Farley, Jr., Esq. and John T. Coady, Esq., 101 E. Redwood Street, Baltimore, Maryland, 21202, Petitioners; John W. Hession, III, Esq., People's Counsel for Baltimore County, County Office Building, Towson, Maryland, 21204; Mrs. Mary Elizabeth Ginn, 606 Homcrest Road, Towson, Maryland, 21204, Mr. and Mrs. Francis J. Pettijohn, 512 Woodbine Avenue, Towson, Maryland, 21204, Mr. and Mrs. Cynthia W. Herriott, 504 Highland Avenue, Towson, Maryland, 21204, and Mr. and Mrs. John H. Engel, 618 Highland Avenue, Towson, Maryland, 21204, Protestants - Appellants; and Mr. James E. Dyer, Office of Planning and Zoning, County Office Building, Towson, Maryland, 21204, on this 20th day of March, 1978.

Muriel E. Buddemeier
Muriel E. Buddemeier
County Board of Appeals of Baltimore County

cc: Patterson, Esq.
Farley, Esq.
Coady, Esq.
Hession, Esq.
Mrs. M. Ginn
Mr. & Mrs. Pettijohn
Mrs. C. Herriott
Mr. & Mrs. J. Engel
Mr. J. Dyer
Mrs. B. Anderson
Mr. J. Howell

RE: PETITION FOR SPECIAL EXCEPTION : IN THE
for Offices and Office Building : CIRCUIT COURT
VARIANCES from Section 1802.2B :
(504-VB.2) of the Baltimore County :
Zoning Regulations : FOR
NW corner of Allegheny and Central Aves. : BALTIMORE COUNTY
9th District : AT LAW
John A. Farley, Jr., et al : Misc. Docket No. 10
Petitioner :
Zoning File No. 77-155-XA : Folio No. 497
Mary Elizabeth Ginn, et al : File No. 6491
Protestants - Appellants

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Walter A. Reiter, Jr., Robert L. Gilland and Herbert A. Davis, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed to them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

- No. 77-155-XA
- Dec. 20, 1976 Petition of John A. Farley, Jr. and John T. Coady for special exception for offices and office building, and variances from Section 1802.2B (504-VB.2) of the Baltimore County Zoning Regulations, on property located on the northwest corner of Allegheny and Central Avenues, 9th District - filed
- Feb. 3, 1977 Certificate of Publication in newspaper - filed
- " 5 Certificate of Posting of property - filed
- " 17 Comments of Baltimore County Zoning Advisory Committee - filed
- " 20 At 11:30 a.m. hearing held on petition by Deputy Zoning Commissioner case held sub curia
- " 22 Comments of Acting Director of Office of Planning - filed
- Mar. 21 Order of Deputy Zoning Commissioner granting petition
- Apr. 20 Order of Appeal before County Board of Appeals filed by Mary E. Ginn, et al

- Sept. 15, 1977 I.D.C.A. approved by Planning Board (#77-35-X)
- " 30 Motion and Order of Remand passed by County Board of Appeals
- Dec. 13 Hearing on appeal before County Board of Appeals
- Feb. 16, 1978 Order of County Board of Appeals granting special exception and variances, subject to restriction
- Mar. 16 Order for Appeal filed in Circuit Court for Baltimore County by Mary Elizabeth Ginn, et al
- " 20 Certificate of Notice sent to all interested parties
- " 23 Petition to accompany Order for Appeal filed in Circuit Court for Baltimore County
- Apr. 19 Transcript of testimony filed - 1 volume
- Petitioner's Exhibit No. 1 - Plat, rev. 12-6-76
- " " 2 - Copy of zoning map NE 10-A
- " " 3 - Plat - front and rear elevations
- " " 4 - G.W. Bromley & Co. Atlas - Baltimore Co. - 1898 edition
- " " 5 - Plat J.W.S. No. 1, Part 2-326 (1891)
- Protestant's Exhibit A-1 - Zoning Resolution - Towson P.T.A.
- A-2 - Authority to testify
- " " B - Folder - 11 photos of subject property at environs (in C.B. of A. case)
- " " C - Towson Town Center - working paper (identification only)
- " " D - Baltimore County Council issues (identification only)
- " " E-1 - Zoning Resolution - Southfield Hills
- " " E-2 - Definitive statement
- " " E-3 - Authorization to testify
- " " F - Authorization to represent

" 24 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, and are also the use district maps, and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any

Respectfully submitted,

Muriel E. Buddemeier
County Board of Appeals
of Baltimore County

PETITION ON APPEAL

6. That the Board improperly failed to consider the applicants' possible rental of office space for the use of professions other than their own, e.g., medical offices which would cause additional parking and traffic problems in a residential alley close to elementary schools.

Rec'd 3/23/78
nam
(Hans M. ...)

APPELLEES/PETITIONERS' MEMORANDUM

FACTS

The subject property and its improvements were purchased by Appellees/petitioners on April 24, 1975. Since the purchase date, the Baltimore County Council reclassified the subject property under the October, 1976 Comprehensive Zoning Map to the present classi-

ARGUMENT

Occasionally the bar and less often the branch lose sight of the concept that the conditional use or special exception, as it is generally called, is a part of the comprehensive zoning plan sharing the presumption that as such it is in the interest of the general welfare and the character of the neighborhood. The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses the legislature has determined can be allowed, properly applied, and the absence of such a finding precludes negating the presumption. In Montgomery County v. Merlands Club

AND AS IN DUTY BOUND, etc.

Mary Elizabeth Ginn
606 Horncrest
Towson, Maryland 21204

Cynthia W. Herriott
Cynthia W. Herriott

John H. Engel

Mary Elizabeth Ginn

March 23, 1978

while the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements he does not have the burden of showing that his use is for the public use accords with the general welfare. If he shows to the satisfaction of the board that the proposed use will not come within the definition of a use of the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighborhood is, of course, material but if he shows that the use is not a use of the neighborhood there is no probative evidence of harm or disturbance in light of the evidence that the use is not a use of the neighborhood. The dissonance between the dissonance to the functioning of the comprehensive plan, a denial of an application for a special exception is not a capricious and illegal action. (Emphasis added)

James S. Spamer, Registered Professional Engineer, testified that the allowance of the special exception would not have detrimental effect upon the health, safety or general welfare of

TO: T. Bruce Hanley, Esquire
305 W. Chesapeake Avenue
Towson, Maryland 21204
James H. Patterson, Esquire
101 East Redwood Street
Baltimore, Maryland 21202
James H. Cook, Esquire
210 Allegheny Avenue
Towson, Maryland 21204
J. Carroll Holzer, Esquire
County Solicitor
Court House - Mezzanine
Towson, Maryland 21204

RE: Non-Jury Law - Misc. 6491 John A. Farley VS Ginn, et al and
Balto. Co. Board of Appeals

HEARING DATE: Thursday, October 19, 1978 at 9:30 A.M.

on the following: "MERITS" (1 Hour)

Carolene M. Ensor
Carolene M. Ensor
Civil Assignment Commissioner

POSTPONEMENTS: If the above date is NOT agreeable to any counsel, please contact this office for another date. If the postponement is granted, IT WILL BE UP TO COUNSEL REQUESTING THE POSTPONEMENT TO NOTIFY ALL PARTIES OF THE CHANGE, WITH A COPY OF THE CONFIRMING NOTICE BEING SENT TO THIS OFFICE.

SETTLEMENTS: If a settlement is reached prior to the hearing date this office must be notified IMMEDIATELY.
(Call Mrs. Marce Oravetz, Director, Assignment Office, for postponements/settlements.)

RECEIVED
OCT 6 1978

OFFICE OF LAW

the locality because the building improvement plans would have to be in full conformity with building regulations and public works agreements required and enforced by the Baltimore County government (T9-10). Mr. Spamer also testified potential hazards from fire had been checked and that available fire protection was confirmed to be adequate (T10). Again referring to the 502.1 requirements, Mr. Spamer testified that the requested special exception would reduce as opposed to overcrowd the land thereby diminishing population concentration (T11). Collateral thereto, the intended office use would lessen interference with the school population, parks, water, sewage and transportation as set out in 502.1(e) from its present use (T11).

Each standard of 502.1 was also favorably addressed by Donald B. Ratcliffe, Petitioners' architect (T35-36). Further, W. Burton Guy, Jr., testified that the proposed office use would not adversely effect property values in the area (T40).

The central thrust of Protestants opposition to the granting of the special exception was the potential traffic congestion which they believe would be caused by the office use in the alley to the rear of the property (T59-60, 65, 95, 100, 115).

The quality of evidence to deny the granting of a special exception due to traffic congestion was set forth by the Court of Special Appeals in Anderson v. Sawyer, supra, at page 617:

"Here, in order to deny the right of the property owner to enjoy the requested special exception, the Board needed before it probative evidence that the proposed use would, in fact, create traffic congestion on Sunberry Road, and would, in fact, be detrimental otherwise to the general welfare of the locality involved."

An examination of the record clearly shows that there was no probative evidence offered by Protestants that the use would in fact create traffic congestion. Mere bald opinions of Protestants fail to meet the above test.¹ It is also interesting to note that the property owners whose homes about the subject property all favor the granting of the special exception (T50).

Not only did Petitioners establish through expert testimony that proper parking was provided and that access through the alley would not cause congestion, it was the testimony of John T. Coady, Esquire, Petitioner, that due to the nature of their law practice few clients visited their offices on an in and out basis (T52).

Considering the issue of the special exception from the view that the Board had denied the use upon the record now before this court, in light of the Turner case, supra, such denial would certainly have to be taken as an arbitrary, capricious and illegal ruling, for the Protestants failed to offer any probative evidence that the proposed use would cause any harm or disturbance to the neighboring area in light of the nature of the DR16 zone.

To the contrary, the testimony of James Howell, called by the people's counsel, Mr. Hessian, is conclusive of the issue of granting the special exception. On questions from Mr. Reiter, Board Chairman, Mr. Howell testified:

"...all I know the Petitioners have stated, their case, and they told us about the conversion of an older building in the Towson area, putting an addition on the front and the back, and the

1. It should be specially noted that Protestants called as a witness in their case C. Richard Moore, Assistant Traffic Engineer for the Department of Traffic Engineering for Baltimore County. However, Protestants failed for obvious reasons to question their witness with regard to potential traffic congestion under the office use.

- 5 -

strict harmony with the spirit and intent of the Regulations should be upheld, would, we think, place too narrow a construction upon § 307, and would itself impose an unreasonable hardship on the applicant..." 227 Md. at 250-51."

The building as it presently exists violates the applicable DR 16 zone front and side-yard setback requirements. Theoretically in order to bring the building into compliance without the variance, the structure itself would have to be moved and/or portions of the building demolished (T46). But because of the existence of three (3) fireplaces on all levels of the building and the age of the structure, moving of the building would be physically impractical and severely effect the structural integrity of the building.

It is the objective of the petitioners to upgrade and retain the present exterior appearance of a residence, so as to be consistent with the other neighboring houses (T33, 46).

Further, petitioner Coady testified that due to the small size of his law firm it would be highly impractical and detrimental to have to utilize two floors for their firm--thereby causing fractionalizing of their operation and the necessity of transporting between floors (T47, 54).

Protestants assert that Petitioners cannot claim practical difficulty because they as purchasers are charged with knowledge of the restrictions placed on the property. This argument fails for both factual and legal reasons. First, the Petitioners had purchased the subject property prior to the 1976 Zoning Map change making the parcel a DR16 zone. Second, as stated by the Court of Appeals in McLean v. Soley, supra

apart footage apparently shows on Petitioner's Exhibit 1, and we are considering whether or not to grant that petition based on Section 502.1, and I am seeking your counsel as a planner, what is your judgment of this petition?

A Under the existing zoning an office use is appropriate here. As to the size and type, I have opinions.

Q Tell us about it.

A I would prefer, if it is granted, that it be restricted to non-medical type of use. I particularly would like to see, and perhaps it isn't a problem here, as the Petitioner is suggesting it would be his office there.

Q Why would you isolate the medical profession?

A The smaller trial generation is what I think would be an advantage."

The appropriate appellate issue before this court in reviewing the rulings of the Board was stated in Gow v. Atlantic Richfield Co., 27 Md. App. 410 at page 418:

"The duty of the trial court and the duty of this Court in reviewing a decision of a board of appeals in a zoning case is the same. The courts are not permitted to substitute their judgment as to the wisdom or soundness of the action taken by the administrative body, but must confine themselves to a consideration as to whether the action was illegal, arbitrary or discriminatory. If the decision of the Board was based on fairly debatable evidence, that decision must be upheld, and only where there is no room for reasonable debate or where the record is devoid of supporting facts are the courts authorized to declare an administrative act invalid."

The record before the Board contains sufficient evidence to support the findings of that body and at the very least must be considered fairly debatable with regard to the Board's granting of the special exception.

- 6 -

"It is also contended by McLean that Soley is precluded from asserting 'practical difficulty' because he was charged with knowledge of the sideyard requirements when he purchased this property. We see no merit in this argument. We noted in Zengerle v. Bd. of Co. Comm'rs, 262 Md. 1, 21, 276 A.2d 646 (1971), citing Loyola, supra, that this 'rule' is more strictly applied in 'use variance' cases than in cases of 'area variances,' such as the one at bar. In other words, it has less significance where we are concerned with 'practical difficulty' than it does in the event of 'hardship' which usually characterizes the 'use variance' cases."

The second requirement of § 307 as stated above is that the requested variance be in strict harmony with the spirit and intent of the area regulations. Protestants in their memorandum emphasize "strict harmony". Chief Judge Brune for the court in Loyola, supra, noted that with such a strict interpretation there would be no variances granted, at page 247:

"...if the requested height variance were in strict accord with the terms of the Regulations, there would, of course, be no occasion for a variance. The question is whether it is in strict accord with the spirit and intent of the Regulations..."

Again Protestants' argument also fails on the factual context of the herein case. The area variances requested by Petitioners now exist. At the time that the house was built, Central Avenue did not even exist (T45). The Petitioners are not asking to extend the building in violation of the present regulations. They ask only for an approval of existing structures; thus leaving the outward appearance of a residence in conformity with the adjacent buildings. Front and side-yard setbacks are regulated both for aesthetic and practical reasons (e.g. changes in utilities roadways); therefore, there cannot be any conceivable offense to

II.

THE BOARD'S DECISION IN GRANTING AREA VARIANCES FOR FRONT AND SIDE-YARD SETBACKS REQUIRED BY THE DR16 ZONE WAS CONSISTENT WITH AND SUPPORTED BY THE EVIDENCE PRESENTED.

In order to grant an area variance under § 307 of the Baltimore County Zoning Regulations the Board must be shown: (1) that strict compliance with the area regulations would result in practical difficulty to the petitioner; (2) that such area variance is in strict harmony with the spirit and intent of said regulations; and (3) that the area variance be granted only in such manner as to grant relief without substantial injury to the public health, safety and general welfare. Loyola Loan Ass'n v. Buschman, 227 Md. 243 (1961).

As Protestants tacitly recognized in their memorandum, there exist differing standards in the assessment of applications for use variances as opposed to mere area variances as in the case at bar. The elements of proof to be shown by petitions in obtaining an area variance were clearly stated in Anderson v. Board of Appeals, 22 Md. App. 28 at page 39:

"Where the standard of 'practical difficulty' applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the 'undue hardship' standard. In order to justify the grant of an area variance the applicant need show only that:

'1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

'2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

these area regulations with regard to a requested variance for existing portions of a building under a newly adopted zone.

Protestants state in their memorandum that Mr. Howell's testimony "more than adequately substantiates the fact that the granting of the requested variances would not be in keeping with the spirit and intent of the regulations." The only material apprehension voiced by Mr. Howell concerned the front yard variance wherein he stated on questioning of Mr. Hessian:

Q (By Mr. Hessian) Mr. Howell, on several occasions you have reviewed the Planning Department's file with regard to this application. You have seen the exhibits as they have been introduced today. Do you feel that you have enough information to express an opinion concerning the impact, if any, that the granting of the variance in front of this property might have on the properties adjacent to the west?

A Yes.

Q What is that opinion?

A In my opinion, once a variance for the front yard were granted here, it would be extremely difficult not to use the remainder of the houses in the block, if they so choose, to petition for it, be denied the same type of variance to construct additions to their properties." (emphasis added)

Mr. Howell's comment of such possibilities cannot be given any weight in reviewing the Board's determinations. As stated in Miller v. Kivani Club of Loch Raven, 29 Md. App. 263, at page 296:

"...As we have noted, there is no evidence that those feared conditions presently exist, nor indeed that there is more than a possibility (as opposed to probability) that they will ever exist..."

'3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.' McLean v. Soley, 270 Md. 208, 214-15, 310 A.2d 783, 787 (1973), quoting 2 Bathko, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972).

The lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance."

The policy reasoning for the distinction between the use and area variance is based upon the practical zoning premise that a use variance changes the character of the zoned district while an area change does not. Anderson v. Bd. of Appeals, supra.

In McLean v. Soley, 270 Md. 208 (1970) the Court of Appeals held that on an application for area variance under Baltimore County Zoning Regulations § 307, only "practical difficulty" need be shown by petitioner. (Citing Loyola Loan Ass'n v. Buschman, supra, the court in McLean stated at page 213:

"There we noted that the requirements 'practical difficulty or unreasonable hardship' are in the disjunctive. Thus we said:

"The terms of § 307 are applicable only to variances as to height and area. We see no occasion to construe that section otherwise than as it reads -- in the disjunctive -- 'practical difficulty or unreasonable hardship' and we see no reason to construe 'practical difficulty' here as the equivalent of a taking taking in the constitutional sense. In our estimation, the Board had at least sufficient evidence before it to make the question of practical difficulty a debatable one; and under the authorities above referred to, its order should, therefore, have been affirmed... This, we think, presents at least a case of 'practical difficulty' within the meaning of § 307 of the Regulations. To ignore it and to restrict Loyola to a building of uneconomic size where, as here, the Board's findings that there is no injury to the public health, safety and general welfare and that the proposed variance is in

- 8 -

The third element is establishing the need for an area variance is a demonstration that such a change will not result in injury to public health, safety and general welfare. Again this issue is answered affirmatively in the record because the variances requested are now and have been for many years in existence--the present violations of front and side-yard setback requirements. Further, the testimony of Petitioners' witnesses clearly shows no such injury with regard to the granting of the variance.

Considering the record before and the decision of the Board, this court should affirm the granting of petitioners' special exception and area variance with the restrictions noted therein.

151

JAMES H. COOK, Esquire
409 Washington Avenue
Towson, MD 21204
823-4111
Attorney for Appellants/Petitioners

I HEREBY CERTIFY that on this 29th day of May, 1978, a copy of the foregoing Appellees'/Petitioners' Memorandum was mailed to JAMES H. PATTERSON, Esquire, 101 East Redwood Street, Baltimore, MD 21202; JOHN W. HESSIAN, III, Esquire, County Office Building, Towson, MD 21204; CHARLES O. MOUNT, Esquire, 503 Groom Drive, Towson, MD 21204; and to MARY ELIZABETH GINN, 606 Horncrest Road, Towson, MD 21204.

151

JAMES H. COOK

- 9 -

- 10 -

- 11 -

- 12 -



21204
WEST TOWSON NEIGHBORHOOD ASSOCIATION, INC.

To Council:

Re: Case 77-155-XA File #6491

N.B. I forgot to mail the following corrections on your copies of our memorandum. Please call, re-call.

Page 1. All: Protestants - Appellants below my name. In 1st full paragraph after line 5, the sentence is omitted. Despite their testimony, there was a specific showing that the grant of the special exception would not be harmful to the community.

Page 6. In 2nd sentence, paragraph 4 (Paragraph beginning "IDCA legislation") omit the "the" before "unless weight".

Page 7. In the 3rd paragraph (Paragraph beginning "the Board"), the Rockville citation should follow immediately after the words "neighboring uses." Accordingly, the 4th paragraph would begin "The weight of the..."

Page 8. Come after the citation should be a semi-colon (just before "as such").

Page 9. Citation in last two lines of page should be underlined.

Sincerely,
Mary Elizabeth Ginn

RE: PETITIONS FOR SPECIAL EXCEPTION IN THE CIRCUIT COURT AND VARIANCES
NW Corner of Allegheny & Central Avenues, 9th Election District
FOR BALTIMORE COUNTY
AT LAW
JOHN A. FARLEY, et al, Petitioners : Misc. Docket No. 10
Case No. 77-155-XA : Folio No. 497
Mary Elizabeth Ginn, et al : File No. 6491
Protestants - Appellants



MEMORANDUM ON BEHALF OF APPELLANTS STATEMENT OF THE CASE

This Appeal is filed by the Protestants (Appellants) from an Order of the County Board of Appeals which granted to John A. Farley, Jr., et al (Applicants or Petitioners) a special exception for office use in a DR 16 zone and a variance from certain front and side yard setback requirements of the Baltimore County Zoning Regulations.

STATEMENT OF FACTS

The figures in parentheses refer to the transcript pages of the hearing before the Board, unless otherwise indicated.

The subject property, comprising approximately .379 acres, is located on the northwest corner of Allegheny and Central Avenues, in the 9th Election District of Baltimore County. (See petitioner's Exhibit 1, the plat that accompanied the Petition). As the petitioner's plat indicates, the property is located in the 400 block of Allegheny Ave., a block which was reclassified from DR 5.5 to DR 16 as part of the Baltimore County Council's enactment of the October 1976 comprehensive zoning maps. (See petitioner's Exhibit 2). The property is presently improved with a 2 1/2 story frame building approximately 80 - 90 years old. (3) The applicant's original Petition was for a special exception for professional office and for a variance permitting a front yard setback of 19.5 feet instead of the required 30 feet and a side yard setback of 8 feet instead of the required 25 feet. The house faces Allegheny Ave. to the south

and is bounded by Central Ave. on the east. Access to the property is by way of an alley in the rear, stated to be 20' in width, although it is unclear from the testimony whether the entire 20' is paved. (8) In fact, the entire 20' is not paved. (1) Off-street parking requirements were stated to be 21 spaces which apparently was calculated without reference to the plans that the front porch was to be enclosed on the first floor. (8) A hedge currently surrounds the property at the front, along Central Ave. and at a portion of the alley in the rear. (9) The only sidewalk which exists is along the frontage of Allegheny. (12)

The dimensions of the front porch are approximately 8 x 36 feet (18), and absent the porch, the property would be in conformity with the DR 16 front setback requirements (21). The neighboring and adjacent properties currently all comply with those front setback requirements (21 et. seq.).

The distance from the rear property line to the rear of the existing structure is 82 feet and the planned addition to the rear of the structure would reduce that distance to 64 feet. (27) From the middle of the alley to the planned rear construction, the distance would only be 74 feet (27), which is one foot short of the required 75 feet under section 1802.2C of the zoning regulations and for which no variance has been requested.

The original plan of the applicants was to enclose the front porch and build a second story above it. (32) Donald Ratcliffe, the architect employed by the applicants, testified to the fact that the applicants had abandoned their plan for a two-story addition in front (after enclosing the front porch) but still planned for a two-story addition on the rear of the house which would be some 18 by 34'. (32, 33).

John T. Coady, one of the applicants, testified that it was the applicants' intent to use the first floor and basement for the applicants' law offices (the basement for law library, storage and filing); that the second floor would be rented as professional offices; and that the third floor would remain as a single apartment (46). He stated that the need

- 2 -

for the additions proposed were in large part a result of the existence of several fireplaces which cut into the actual usable space on the first floor and that it would not be convenient for a law practice such as his to be located on more than one floor. (47, 54) He admitted on cross examination, however, that the fireplaces existed when he bought the property and, accordingly, he was aware of the problems at the time of purchase. (128)

In support of the Petition, the applicants called James Spamer, a registered professional engineer; the aforementioned Mr. Ratcliffe, the architect; and William B. Guy, a realtor, mortgage banker and appraiser. (2, 30, 39) All testified essentially to the fact that the proposed use was an appropriate one and that it would not be harmful to the community.

Furthermore, no evidence whatsoever was offered as to whether the grant of the variances requested would be in "strict harmony with the spirit and intent of the zoning regulations"; the only time in which the issue was addressed was in response to a question Mr. Heslian posed on cross examination to Mr. Spamer, and a later's answers were simply not responsive. (13-17)

Among the witnesses called on behalf of the protestants, Alene Crenson testified on behalf of the PTA of Towson Elementary School as to the adverse impact of additional office use so near to the school (57-62), while several property owners, including some of the protestants, testified to the irreversible erosion of the quality of life in the community resulting from a conversion of the property to office use, citing increased traffic, the resultant danger to children attending Towson Elementary School, additional parking congestion and the inevitable domino effect of a complete change in the 400 block of Allegheny Ave. from residential to office use incident to the granting of the Petition for special exception. (91-122) Additionally, C. Richard Moore, Assistant Traffic Engineer for the Department of Traffic Engineering of Baltimore County, testified as to the varying degrees of off-street parking required for certain types of office use which might result from a grant of the special exception. (85)

- 3 -

Finally, James Howell, a planner with Baltimore County was called on behalf of Baltimore County, and he testified that, while office use may be an appropriate use under DR 16, the grant of the variances petitioned for would simply not be in "harmony with the neighborhood" and the enclosing of the porch would encourage and permit adjoining property owners to petition for similar variances in contravention of the spirit and intent of the zoning regulations. (66, 85, 87).

ARGUMENT

1. THE BOARD'S GRANT OF THE SPECIAL EXCEPTION FOR OFFICE USE IS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE AND IS AGAINST THE WEIGHT OF THE EVIDENCE PRESENTED BY THE PROTESTANTS.

Section 502.1 of the Baltimore County Zoning Regulations constitutes the authority upon which special exceptions may be granted. It provides in its entirety as follows:

"Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not [B.C.Z.R., 1955.]

- Be detrimental to the health, safety, or general welfare of the locality involved [B.C.Z.R., 1955.]
- Tend to create congestion in roads, streets or alleys therein [B.C.Z.R., 1955.]
- Create a potential hazard from fire, panic or other dangers [B.C.Z.R., 1955.]
- Tend to overcrowd land and cause undue concentration of population [B.C.Z.R., 1955.]
- Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public improvements, conveniences, or improvements [B.C.Z.R., 1955.]
- Interfere with adequate light and air [B.C.Z.R., 1955.]

Emphasis added.

Despite general statements elicited from the applicants' witnesses that the Petition for special exception for office use would not be detrimental, cause congestion or otherwise run contrary to the prohibition of Sec. 502.1, those statements were vague, not supported by any specifics necessary for the Board to draw its own independent conclusions and findings that the mandates of the section would be satisfied if the special exception were granted.

Moreover, none of the applicants' witnesses were qualified experts capable of rendering valid opinions on health, safety, fire, traffic, or land use. Apart from the applicants' witnesses lack of expertise in these matters, inherent in their case was the proposition that the Towson Elementary School was to be closed, that the alley in the rear was sufficient to handle the ingress and egress of additional traffic, and that office use for the subject property would not adversely affect the property values in the surrounding area.

Towson Elementary School will remain open, at least for an additional year, and there is every reason to believe that from the ongoing revaluation of the criteria for determining which schools, if any, should close, that Towson Elementary School will remain open as the only school that can adequately and economically serve the children of the communities of East and West Towson and area, balance, stability, and harmony to the business and residential areas in and around Towson.

The proposition that the alley in the rear (whose ownership and consequential maintenance obligations were not addressed) is adequate to handle non-residential traffic is completely unjustified in the face of the testimony of residents and property owners called by the Protestants.

The concept that property values in the area would not be adversely affected falls entirely to take into account the dislocation of family use and the actual decrease in value of the surrounding properties for continued residential use.

There was, in essence, no actual finding by the Board, nor sufficient evidence to support any such finding, that all of the requirements of Sec. 502.1 would be met by the grant of the special exception requested.

- 5 -

The Board, on page 2 of its opinion simply stated that:

"There was, of course, additional testimony from the Petitioner's case that all of the requirements provided for in the obtaining of a special exception were completely satisfied."

Such a statement does not constitute a finding that Sec. 502.1 had been complied with as required by the Court of Appeals in *Radon v. Montgomery County Council*, 270 Md. 668 (1974) in which it was stated that the administrative body considering a request for special exception must make specific findings on each of the requirements and not merely present a recitation of fact or report the language of the zoning ordinance.

Furthermore, the Board seems to have assumed on page 2 of its opinion that IDCA approval from the Planning Board of Baltimore County was tantamount to a finding (binding on the Board of Appeals) that there was no adverse effect upon the general health and welfare of the citizenry of Baltimore County (rather than of the locality involved) and further that there was "substantial compliance with Baltimore County Zoning Regulations, and in particular by interpolation of the requirements of Section 502.1 of said Regulations."

I.D.C.A. legislation was merely designed to check growth by first assessing the adequacy of facilities before additional growth could take place. The Board thus gave the undue weight to the I.D.C.A. approval and essentially substituted the I.D.C.A. approval for its own independent judgment on the propriety and legality of granting the requested special exception.

Finally, the Board erred in failing to permit the introduction of evidence as to the Towson Plan and current studies as to the proper use of the properties in the immediate vicinity of the Towson core, particularly those in the surrounding residential communities such as West Towson, while the subject property admittedly is within a residential zone which permits special exception for office use when the requirements of Sec. 502.1 have been met. It is respectfully submitted that it was error for the Board not to consider the present circumstances concerning land use studies and their conclusions when they were fostered, initiated and supported by Baltimore County to insure balanced growth and development in the Towson area.

While these studies do not, in and of themselves, constitute the law under which property development is currently to be governed, they do indicate qualified professional opinion solicited by Baltimore County as to what is in the best interests for the health, safety and general welfare of the citizenry of Baltimore County and, in particular, those who reside, work, and own property in Towson and its environs.

Even in the absence of such evidence as to current professional opinion concerning what would be detrimental to the subject neighborhood, the evidence of the applicants does not satisfactorily show that the grant of the special exception requested would be without real detriment to the neighborhood and would not actually adversely affect the public interest.

The Board, in short, arrived at its conclusions to grant the special exception without any real showing by the applicant that the relief requested would not harm or disturb neighboring uses.

As in *Rockville Fuel and Feed v. Bd. of Appeals of City of Gaithersburg*, 257 Md. 183 (1970), the weight of the evidence was, in fact, to the contrary, and the Board of Appeals was therefore in error in granting the special exception petitioned for.

2. THERE IS NO LEGALLY SUFFICIENT EVIDENCE UPON WHICH THE BOARD COULD HAVE GRANTED THE VARIANCES REQUESTED.

The authority to grant variances is contained in Sec. 307 of the Baltimore County Zoning Regulations which reads in pertinent part as follows:

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from offstreet parking regulations and from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height and area regulations. Furthermore, any such variance shall be granted only if it is in strict harmony with the spirit and intent of said height, area, offstreet parking, or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare... (Emphasis added); they shall have no power to grant any other variances."

Applicants have simply failed to present any evidence of a practical difficulty or unreasonable hardship to warrant the granting of the variances requested. The only inference of hardship or difficulty is that which was self-imposed by reason of applicants' purchase of a property with then known characteristics and constraints as to its potential use, namely its configuration, size and existence of the fire-places to which reference has been made in the statement of facts.

Zengerle v. Board of County Commissioners for Frederick County, 262 Md. 1 (1971). As indicated in that case, the general rule is that hardship or practical difficulty cannot be claimed by one who purchases or is charged with knowledge of restrictions on the property (such as here with respect to the front, rear and side yard set-back requirements). While this general rule may be more applicable in the case of "use variances" than in cases of "area variances," it is respectfully submitted that the applicants here cannot be said to have the right to remedy possible inconveniences they believe to exist when the circumstances giving rise to the same existed and were perceived by them at the time the subject property was purchased. See also Stacy v. Montgomery County, 239 Md. 189 (1965); Pan Construction Company v. Mayor & City Council of Baltimore, 233 Md. 372, 377, (1964); Gleason v. Keswick Improvement Association, 197 Md. 46, 50, (1951).

With regard to the allegations of practical difficulty or hardship, it must be noted that there was simply no evidence of any sort whatsoever offered as to the economic prospects of operating the applicants' profession in the building as it presently exists, or at least without the substantial modifications which would require the variances requested. The only testimony in this regard was merely self-serving and of a general, vague nature condemned by the Court of Appeals in such cases as Stratakis v. Beauchamp, 268 Md. 643, as such, it is clearly insufficient to support the applicants' position that there exists difficulty or hardship of the type properly remedied by variance.

More importantly, however, as indicated in the statement of facts, there is no affirmative testimony or evidence in the record adequate to indicate that the applicants have satisfied the second test required by Section 307 of the Regulations, namely that it most appear that the grant of the variances requested would be "in strict harmony with the spirit and intent of said area regulations." The only question along these

answers, and indeed, the entire testimony of Mr. Hoswell more than adequately substantiates the fact that the grant of the requested variances would not be in keeping with the spirit and intent of the regulations. See Dahl v. County Board of Appeals of Baltimore County, 258 Md. 157 (1970) where the Court of Appeals of Maryland held that the grant of a variance as to setback and area restrictions affecting the "aesthetic ambience" of residentially zoned properties in the immediate area would clearly be in disharmony with the spirit and intent of the regulations. (See also Hampshire v. Erlanson, Circuit Court of Baltimore County, Misc. Doc. 9, Fol. 391, Case 5228, (July 25, 1974), Aff'd by Court of Special Appeals in an unpublished opinion; cert. denied by Court of Appeals.)

It is respectfully submitted that the grant of the variances requested are not in keeping with the spirit and intent of the zoning regulations and that the Board of Appeals in its opinion utterly failed to consider or apply that particular test in its decision to grant the variances, stating in effect that:

"... The only question before the Board is whether the proposed comes within the requirement of section 502.1 of the Baltimore County Zoning Regulations, and further, whether practical difficulty or hardship would be imposed upon the Petitioner if the variances were not granted."

As indicated by the Court of Appeals in Carney v. City of Baltimore, 201 Md. 130, 137 (1952), to justify a deviation from the provisions of a zoning ordinance, the need "must be substantial and urgent and not merely for the convenience of the applicant." Because the aim of the zoning ordinance is to prevent exceptions as far as possible, a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to completely undermine the usefulness of that ordinance. In this light, it is worth noting the language of the Court of Appeals in City of Baltimore v. Byrd, 191 Md. 632, 638.

- 9 -

"The expression 'practical difficulties or unreasonable hardships' means difficulties which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant."

The mere fact that the variance would make the property more profitable is not a sufficient ground to justify the relaxation of the setback requirements. Easton v. Mayor and City Council of Baltimore, 195 Md. 395, 400 (1950). To the same effect, see also Burns v. Mayor and City Council of Baltimore, 251 Md. 554, 558 (1968); Mayor & City Council of Baltimore v. Polakoff, 233 Md. 1 (1963) where the detriment to the applicant was weighed against the benefit to the community in maintaining the general plans.

In short, the applicants have failed to present a case of the kind of difficulty or hardship which would warrant deviation from the general scheme mandated by the zoning regulations and the variances petitioned for clearly were not found to be in strict harmony with the spirit and intent of the zoning regulations. Accordingly, the Board of Appeals erred in granting the variances requested."

I HEREBY CERTIFY that on this 5th day of May, 1978, a copy of the foregoing Memorandum was mailed to James H. Cook, Esq., 409 Washington Avenue, Towson, Md. 21204 and James H. Patterson, Esq., 101 East Redwood Street, Baltimore, Md. 21202, Attorneys for Applicants-Appeal and also to John W. Hession III, Esq., People's Counsel for Baltimore County, County Office Building, Towson, Md. 21204 and Charles O. Mount, Esq., 503 Groom Drive, Towson, Md. 21204.

Mary Elizabeth Ginn
MARY ELIZABETH GINN

"Additionally, even were the variances sustained, no variance was requested with respect to the proposed additions to the rear of the building, and as indicated in the statement of facts, it is uncontroverted that a variance would be required before the contemplated construction could be allowed."

- 10 -

RE: PETITION FOR SPECIAL EXCEPTION
for VARIANCES
N/W Corner of Allegheny and Central
Avenues
9th. Election District

JOHN A. FARLEY	FOR	IN THE CIRCUIT COURT
Petitioner		
MARY ELIZABETH GINN		BALTIMORE COUNTY
DOROTHY B. PETTIJOHN and		
FRANCIS J. PETTIJOHN		
CYNTHIA W. HERRIOTT		
JOHN H. ENGEL		
CAROL ENGEL		
Protestants-Appealants		
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY		MISCELLANEOUS LAW CASE NO. 6491

OPINION

This is an appeal from an order of the County Board of Appeals granting a special exception for an office building and a variance. The property is zoned D.R. 16.

The appellee, raised two issues on appeal:

- 1) The board lacked sufficient evidence to grant a special exception.
- 2) The board lacked sufficient evidence to grant a variance.

It is difficult to see how the use of this property as an office building can affect the elements enumerated under sec. 502.1 a - f any more than its use under D.P. 16. A reading of the transcript will show that there was evidence before the board regarding health, safety or general welfare of the locality, congestion in roads, streets or alleys, potential hazard from fire, panic or other dangers, overcrowded land and undue concentration of population, interference with adequate provisions for schools, parks, water, sewage, transportation or other public requirements, conveniences or improvements and interference with adequate

light and air. See transcript at pages 10, 16, 34, 35 and 84. This evidence though not always in detail is sufficient for the board to rule in favor of a special exception.

The second issue involves a variance. The appellee argues that a hardship was not shown. The short answer is that this is an area variance and not a use variance. The appellee need only show practical difficulty to obtain an area variance. Once again, a reading of the transcript at the pages listed above provides sufficient evidence to grant an area variance.

At the hearing on appeal the appellants raised questions of evidence regarding the admissibility of a summary of issues prepared by the Office of Planning and Zoning for the Baltimore County Council and the admissibility of the Townsowne Center plan prepared for Baltimore County by Cope, Linder and Wansley. The board did not err in sustaining the objection to the admissibility of the summary of issues because they are not relevant at a hearing on a petition for a special exception. They might be relevant on the issue of mistake at a hearing on a petition for reclassification of zoning such as a petition to reclassify from industrial to commercial or from D.R. 5 to D.R. 16 and the like. It was also not erroneous on the part of the board to sustain the objection regarding the admissibility of the Townsowne Center plan. The admission of such a plan in this case would have been an admission of hearsay and there was not established an exception to the hearsay rule. Under the conditions existent at the time of hearing before the board the admissibility of this

plan would have deprived the appellees of their right of cross examination.

A legion of cases have held that this court is not to substitute its judgment for that of the County Board of Appeals. It is only when the action of the board is arbitrary, capricious or unreasonable that this court can reverse the board. Obviously, this court's power to reverse under such law is narrow. The appellee has not shown an act of the board which is arbitrary, capricious or unreasonable and the ruling of the County Board of Appeals is, therefore, affirmed.

Edward A. DeWaters, Jr.
Edward A. DeWaters, Jr.
Judge
Date 1/25/78

END/vc
cc: T. Bruce Hanley, Esq.
James H. Paterson, Esq.
James H. Cook, Esq.
J. Carroll Holzer, Esq.
Mary Elizabeth Ginn

JOHN H. ENGEL et al.

In the
Court of Special Appeals
of Maryland
No. 1407, September Term, 1978
CLERK

v.

JOHN A. FARLEY et al.

ORDER

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

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

/s/ Robert C. Murphy
Chief Judge

Date: September 28, 1979.



Court of Special Appeals
of Maryland

Annapolis, MD. 21401
1300 3RD FLOOR, BALTIMORE DIRECT LINE
1300 201-2920 (WASHINGTON DIRECT LINE)

October 3, 1979

Mr. Elmer H. Kahline, Jr., Clerk
Circuit Court for Baltimore County
Court House
Towson, Maryland 21204

Re: John H. Engel et al vs. John A. Farley et al

Re 1407, September Term, 1978

Dear Mr. Kahline:

Enclosed is a copy of an order of the Court of Appeals of Maryland, Petition Docket No. 1407, September Term, 1978 (Civil), denying the Petition for a Writ of Certiorari filed on behalf of the above-named appellant. Will you please make the appropriate docket entry in the transcript of record which has been returned to your court.

Very truly yours,
Howard E. Friedman
Howard E. Friedman
Clerk

HEF:mcb
Enclosure

SEP 4 1979

RE: PETITION FOR SPECIAL EXCEPTION : IN THE CIRCUIT COURT
and for VARIANCES
NW Corner of Allegheny and : FOR BALTIMORE COUNTY
Central Avenue
9th Election District : AT LAW
JOHN A. FARLEY
Petitioner
MARY ELIZABETH GINN
DOROTHY B. PETTJOHN and
FRANCIS J. PETTJOHN
CYNTHIA W. HERRIOTT
JOHN H. ENGEL
CAROL ENOTT : MISCELLANEOUS LAW
Protestants-Appellants : CASE NO. 6491

ORDER FOR APPEAL

Mr. Clerk:

Please enter an Appeal to the Court of Special Appeals
from the Order and Judgment thereon entered herein on November 29,

1978.

Dorothy Pettjohn

Mary Elizabeth Ginn
512 Woodhull Ave.
Towson, Md. 21204
February 7th, 1977

I HEREBY CERTIFY that on this 27th day of December, 1978,
a copy of the foregoing Order for Appeal was mailed to James R. Cook,
Esquire, Rowley Building, Towson, Maryland 21204; T. Bruce Hanley,
Esquire, Wright & Parks, 305 W. Chesapeake Avenue, Towson, Maryland
21204; and James H. Patterson, Esquire, Coady & Farley, 10 E. Redwood
Street, Baltimore, Maryland 21202.

Mary Elizabeth Ginn
Mary Elizabeth Ginn

RECEIVED
RECORDED

378 DEC 29 PM 2:10
CLERK OF CIRCUIT
COURT, BALTO. CO.

OFFICE OF
THE TIMES
NEWSPAPERS

TOWSON, MD. 21204 Feb 3 1977

THIS IS TO CERTIFY that the annexed advertisement of
Petition for Special Exception and Variance
was inserted in the following:

☐ Catonsville Times ☒ Towson Times
☐ Dundalk Times ☐ Arbutus Times
☐ Essex Times ☐ Community Times
☐ Suburban Times East ☐ Suburban Times West

weekly newspapers published in Baltimore, County, Maryland,
once a week for 24 successive weeks before the
24th day of February 1977, that is to say, the same
was inserted in the issues of February 3, 1977

STROMBERG PUBLICATIONS, INC.

BY *D. Smith*

BALTIMORE COUNTY, MARYLAND No. 46414

OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE Feb. 18, 1977 ACCOUNT 01-662

AMOUNT \$62.00

RECEIVED FROM: *Hester, Coady & Farley, 101 E. Redwood St.,
Baltimore, Md. 21202*
FOR: *Advertising and posting of property
#77-155-1A*

875 70718 18 62.00 CR

VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY, MARYLAND No. 57278

OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE Sept. 20, 1977 ACCOUNT 01-662

AMOUNT \$63.50

RECEIVED FROM: *Dr. Charles E. Reiser 318 Northwind Rd.
Towson, Md. 21204*
FOR: *Advertising and posting of property
#78-01-1A*

875 70721 21 63.50 CR

VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY, MARYLAND No. 15408

OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE Mar. 23, 1978 ACCOUNT 01-712

AMOUNT \$27.00

RECEIVED FROM: *Mrs. Mary E. Ginn, et al
606 Homestead Road
Towson, Md. 21204*
FOR: *Submission
THIS RECEIPT*

Cost of cert. and documents in Case #77-155-1A
John A. Farley, Jr., et al
NW cor. of Allegheny & Central Aves.
9th District 27.00 CR

CERTIFICATE OF PUBLICATION

TOWSON, MD. February 3, 1977, 19.77

THIS IS TO CERTIFY that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper printed
and published in Towson, Baltimore County, Md., once in each
wk. one time successive weeks before the 24th
day of February 1977, the first publication
appearing on the 3rd day of February
1977.

THE JEFFERSONIAN

H. Leach Smith
Manager

Cost of Advertisement, \$.....

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 9th Date of Posting April 30, 1977

Posted for: Attest

Petitioner: John A. Farley, Jr., et al

Location of property: NW cor. of ALLEGHENY and CENTRAL AVES.

Location of Sign: FRONT 400 ALLEGHENY AVE.

Remarks:

Posted by: Thomas R. Roland Date of return: MAY 6, 1977

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 9th Date of Posting FEB 5, 1977

Posted for: PETITION FOR A SPECIAL EXCEPTION & VARIANCE

Petitioner: John A. Farley, et al

Location of property: NW cor. of ALLEGHENY and CENTRAL AVES.

Location of Sign: FRONT 400 ALLEGHENY AVE.

Remarks:

Posted by: Thomas R. Roland Date of return: FEB 10, 1977

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your Petition has been received * this 7 day of

Dec 1976. Filing Fee \$ 50. Received ☒ Check

☐ Cash

☐ Other

S. Eric DiNenna
S. Eric DiNenna,
Zoning Commissioner

Petitioner *John A. Farley, Jr., et al* Submitted by *John A. Farley, Jr.*

Petitioner's Attorney *John A. Farley, Jr.* Reviewed by *John A. Farley, Jr.*

* This is not to be interpreted as acceptance of the Petition for
assignment of a hearing date.

BALTIMORE COUNTY, MARYLAND No. 42876

OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE Jan. 23, 1977 ACCOUNT 01-662

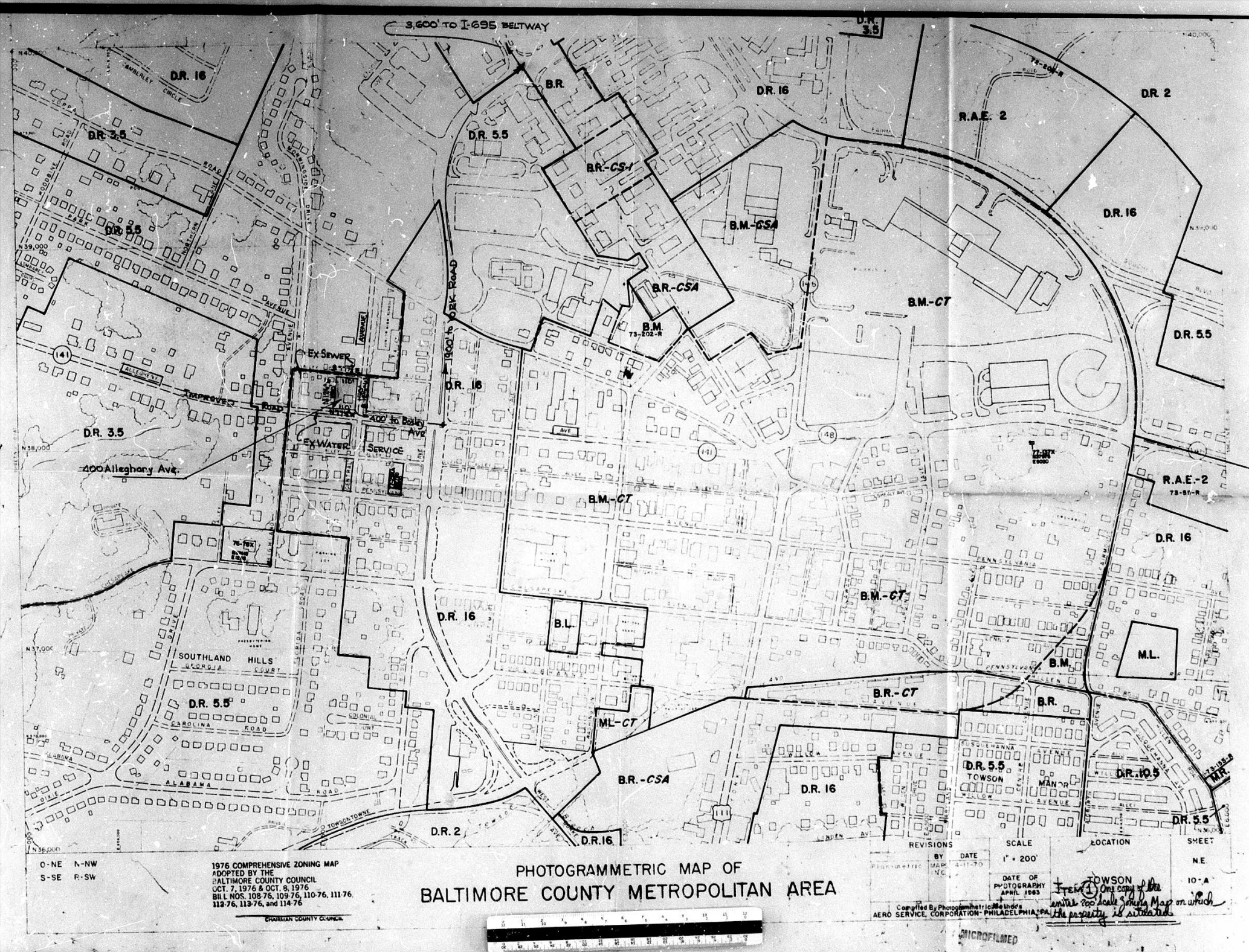
AMOUNT \$50.00

RECEIVED FROM: *Hester, Coady & Farley, 101 E. Redwood St.,
Baltimore, Md. 21202*
FOR: *Petition for Special Exception and Variance
#77-155-1A*

875 70718 1 50.00 CR

VALIDATION OR SIGNATURE OF CASHIER







Public Works

- ALL UTILITIES ARE AVAILABLE.
- (FIRE PROTECTION AS REQUIRED)
- ALL ROADS IMPROVED.
- SIDEWALKS EXIST.
- SCREEN PLANTING EXIST.

EXISTING STRUCTURE:

- 2/2 STORY FRAME CONSTRUCTION @ 978' x 66'
- TO BE CONVERTED :
 - ADD 1 - STORY FRAME CONSTRUCTION + BASEMENT
 - BASEMENT - ATTORNEY'S OFFICES 800.0
 - 1ST FLOOR - ATTORNEY'S OFFICES 243.0
 - 2ND FLOOR - ATTORNEY'S OFFICES 243.0
 - 3RD FLOOR - SINGLE APARTMENT,
- LOT - 0.35 ± ACRES

IZING

- EXISTING - RR. 11
- PROPOSED - RR. - 16 w/ SPECIAL EXCEPTION FOR DEVICES

PARKING

- REQUIRED - 20 @ 9'-20' EA. (PER 300 #)
- PROVIDED - 21 @ 9'-20' EA.

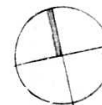
ADDITIONAL

- LOCATION :
400 LEECHMAN AVENUE
BALTIMORE COUNTY, MARYLAND
DISTRICT #2
- OWNER :
JOHN A. FARLEY JR.
and JOHN T. COADY
101 B. REDWOOD ST., BALTO. CHLOE

PARKING CALCULATIONS:

BASEMENT 864 ÷ 300 = 2.75
1ST. FL. 2431 ÷ 300 = 8.10
2ND FL. 2431 ÷ 300 = 8.10
3RD FL. ONE APT. X 1.53 = 1.53

TOTAL REQUIRED	20.48
----------------	-------



UPDATED SURVEY OF 12-10-73 BY
JAMES S. SPANER & ASSOC.
ENGINEERS & SURVEYORS
3017 YORK RD. TOWSON, MD. 21204

PLAT FOR ZONING PURPOSES

1. EXISTING D.R. 16 APPLICATION FOR SPECIAL EXCEPTION FOR OFFICE BLDG.
2. VARIANCE: REQUEST FRONT YARD SETBACK OF 19.5' INSTEAD OF 30' REQUIRED
REQUEST SIDE YARD SETBACK OF 8.0' INSTEAD OF 30' REQUIRED

SEE ALSO CASE # 74-198 RXA



3,600' to I-695 Beltway



0-NE W-NW
S-SE R-SW

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA



REVISIONS BY DATE Topographic MAPS 4-11-70 INC		SCALE 1" = 200'	LOCATION TOWSON	SHEET NE
DATE OF PHOTOGRAPHY APRIL 1953		ITEM ② Seven copies of the entire 200' scale Baltimore County Topographical Map		

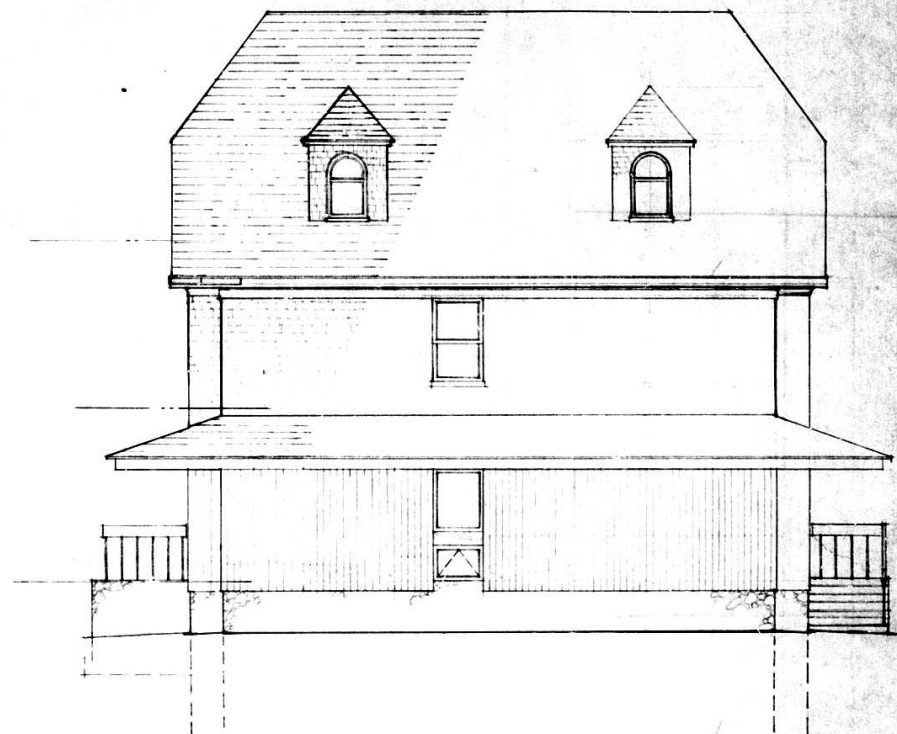
Topography Compiled by Photogrammetric Methods
AERO SERVICE CORPORATION PHILADELPHIA, PA

10-10-6

Architect
Oct 1913

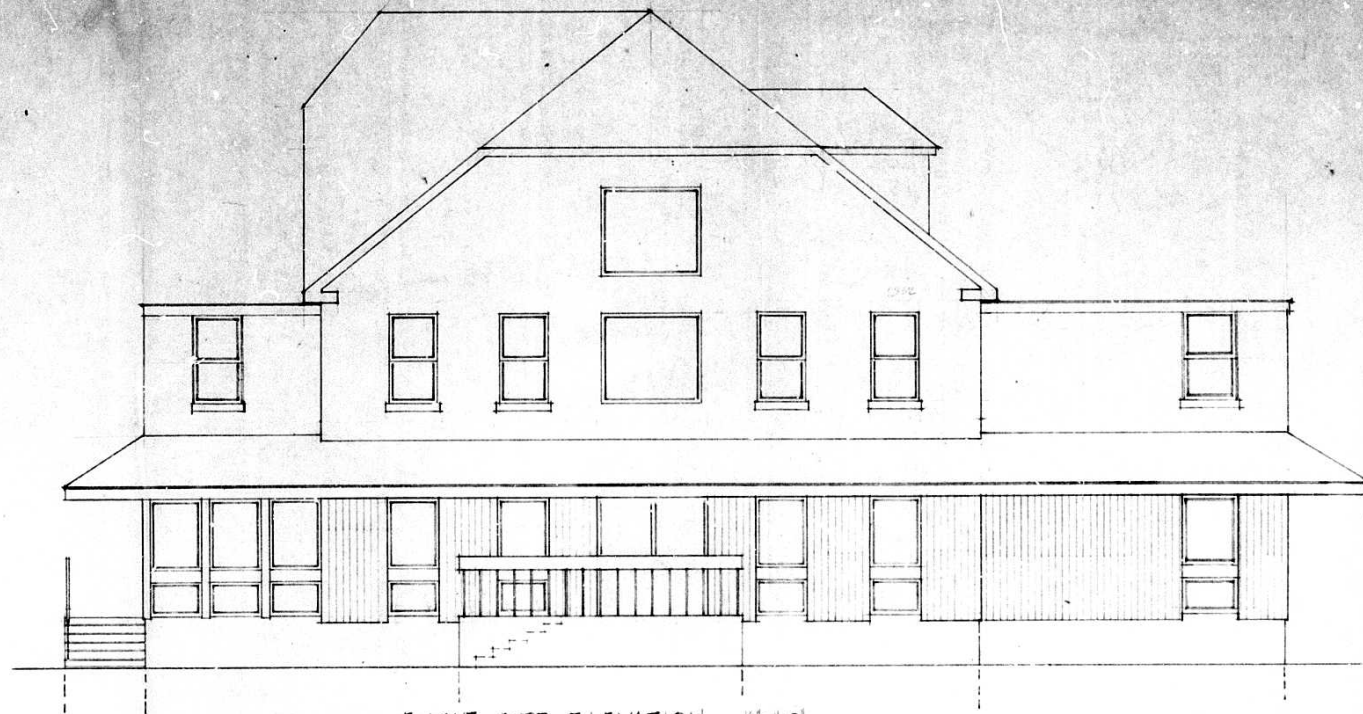


FRONT ELEVATION 1/4" = 1'-0"

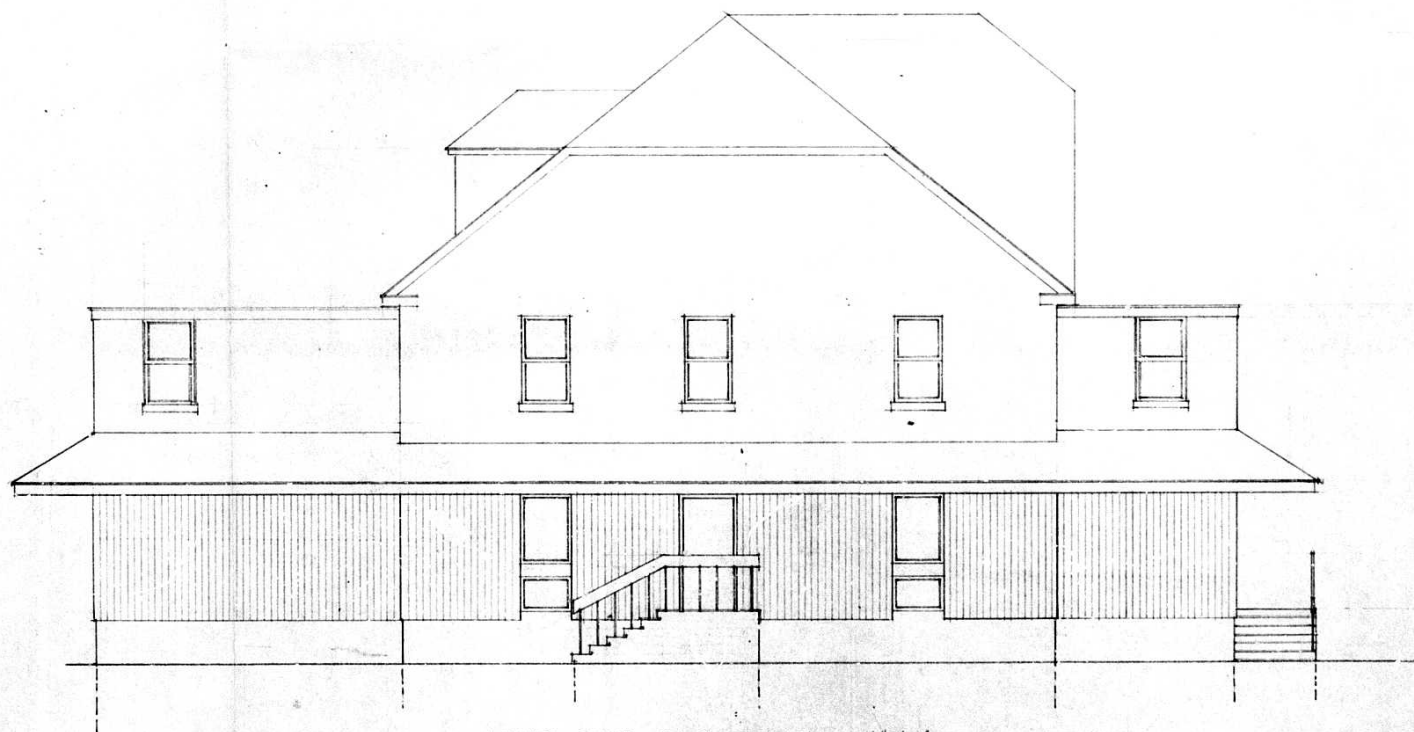


REAR ELEVATION 1/4" = 1'-0"



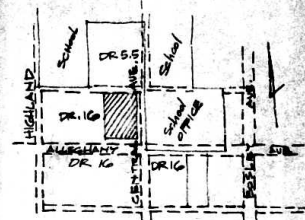


RIGHT SIDE ELEVATION $\frac{1}{4}" = 1'-0"$



LEFT SIDE ELEVATION $\frac{1}{4}" = 1'-0"$





LOCATION MAP No. 1001
RE: HE-10-A

ZONING INFORMATION FOR
ADDITIONS TO 400 ALLEGHENY
AVENUE

PUBLIC WORKS

- ALL UTILITIES ARE AVAILABLE.
- (FIRE PROTECTION NOT REQUIRED)
- ALL ROADS IMPROVED.
- SEWERAGE, EXIST.
- SEWER PLANTING EXIST.

EXISTING STRUCTURES

- EXIST. 1-1/2 STORY FRAME CONSTRUCTION 8,510 S.F.
- TO BE CONNECTED:

NEW USE

- ADD 1-1/2 STORY FRAME CONSTRUCTION + EMBASEMENT
- 8,151 S.F. - 1-1/2 STORY FRAME + 2-1/2 STORY EMBASEMENT
- BASEMENT - ATTORNEY'S OFFICES 6,000 S.F.
- 1ST FLOOR - ATTORNEY'S OFFICES 6,000 S.F.
- 2ND FLOOR - ATTORNEY'S OFFICES 6,000 S.F.
- 3RD FLOOR - SINGLE APARTMENT
- LOT 0.007 ACRE

ZONING

- EXISTING - DR. 10
- PROPOSED - DR. 10 SPECIAL EXCEPTION FOR OFFICES

PARKING

- REQUIRED - 20 @ 250 S.F. (PER 200 S.F.)
- PROVIDED - 21 @ 250 S.F.

LOCATION

- 400 ALLEGHENY AVENUE
- BALTIMORE COUNTY, MARYLAND
- DISTRICT 10
- DIVISION
- JOHN A. FARLEY JR.
- AND JOHN T. COADY
- 101 B. REDWOOD ST., BALTIMORE, M.D.

PARKING CALCULATIONS:

BASEMENT	6,000 S.F.	2.00
1ST FL.	6,000 S.F.	2.00
2ND FL.	6,000 S.F.	2.00
3RD FL.	ONE APT. 1,150 S.F.	1.00
TOTAL REQUIRED		14.00

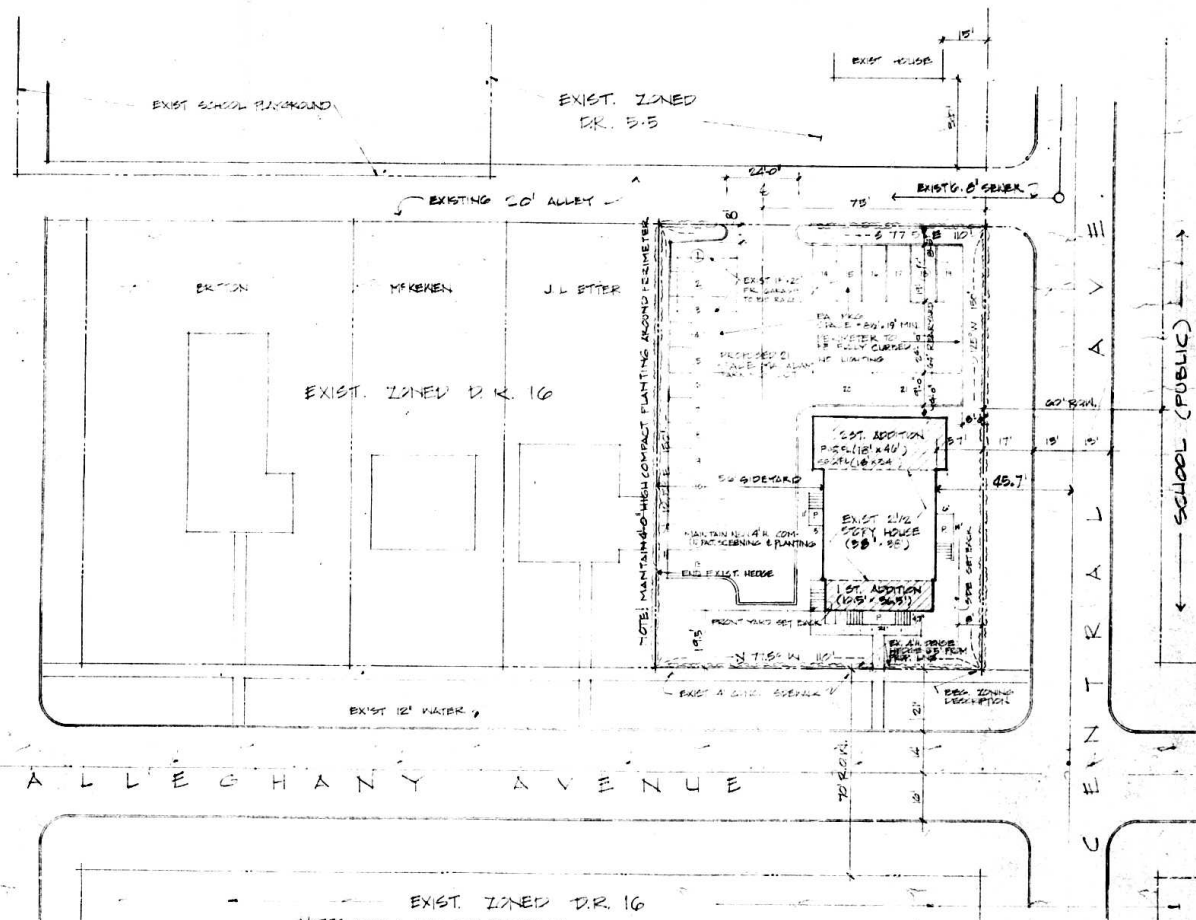


PLANS APPROVED

OFFICE OF PLANNING & ZONING
BY: [Signature]
DATE: 11-21-77
77-155-XA



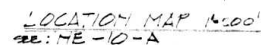
UPDATED SURVEY OF 12-10-75 BY:
JAMES B. SPANER & ASSOCIATES
ENGINEERS & SURVEYORS
307 YORK RD., TOWSON, MD. 21204



NOTES: REF. ZONING CASE # 77-155-XA
1. NO PARKING AREA SHALL EXTEND BEYOND THE BUILDING LINE OF THE MAIN STRUCTURE (EXCLUDING PORCH)
2. ACCESS TO THE PARKING AREA SHALL BE FROM THE ALLEY TO THE REAR OF THE PROPERTY. THERE SHALL BE NO VEHICULAR INGRESS AND EGRESS TO THE PROPERTY TO ALLEGHENY AVE.
3. THERE SHALL BE NO ENLARGEMENT OF EXISTING FRONT PORCH (FACING ALLEGHENY AVE.) AND ENCLOSURE OF PORCH SHALL BE CORDON IN HEIGHT

PLAN FOR ZONING PURPOSES

- EXISTING DR. 10 APPLICATION FOR SPECIAL EXCEPTION FOR OFFICE USE.
 - VARIANCE: REQUEST FRONT YARD SETBACK OF 10' INSTEAD OF 40' REQUIRED REQUEST SIDE YARD SETBACK OF 5' INSTEAD OF 50' REQUIRED
- SEE ALSO CASE # 74-196 RXA



ZONING INFORMATION FOR
ADDRESSES TO 400 AUSTIN
AVENUE

2021/12/15

- EG ARE ALL THE (EYE PROTECTION) REQUIRED.
- ALL WEARS INDICATED
- STEEL TOE BOOTS.
- GREEN PLANTING EXIST

ENDING STRUTTER

2. 2ND STORY FRAME CONSTRUCTION - 518.00
2. 2ND STORY FRAME CONSTRUCTION - 518.00
ADD 1. 2ND STORY FRAME CONSTRUCTION + CEMENTIT
3. 1ST STORY FRAME - 0.5 X 0.5 = CEMENTIT
BASEMENT - ATTORNEY'S OFFICES 0.64
1ST FLOOR - ATTORNEY'S OFFICES 2.64
2ND FLOOR - ATTORNEY'S OFFICES 2.64
3RD FLOOR - SINGLE APARTMENT
2. 2ND STORY FRAME CONSTRUCTION - 518.00

July 16

- EXISTING - DR. 10
• PROPOSED - DR. - 10 w/ SPECIAL EXCEPTION
FOR OFFICES

22/11/2020

- FEBRUARY - 20 6-19' ES. (PER 300 #)
MARCH - 21 6-19' ES.

12.10.11

- LOCATION
400 ALBANY AVENUE
BAYVIEW DRIVE, WARDEN
DIST #2
• OWNER:
JOHN A. BARLEY JR.
AND JOHN T. COATY
416 REDWOOD ST. BAYVIEW

PARKING CALCULATIONS:

BASEMENT	$804 \div 300 =$	2.80
1ST FL.	$254 \div 300 =$	0.70
2ND FL.	$156 \div 300 =$	0.30
3RD FL.	ONE APT. $\times 1.53 =$	1.50

TOTAL REQUIRED	<u>19.82320</u>
----------------	-----------------



APPROVED: John F. Smith ZONING
DATE: 11-21-78
77-155-XA



UPDATE SURVEY OF 2-10-78 BY
JAMES S. SPATER & ASSOCIATES
ENGINEERS & SURVEYORS
87 YRK RD. TOWSON, MD. 21204

PLAT FOR ZONING PURPOSES

1. EXISTING DRUG APPLICATION FOR SPECIAL EXCEPTION FOR OFFICE USE

2. VARIANCE: REQUEST FRONT YARD SETBACK OF 19.5' INSTEAD OF 30' REQUIRED
REQUEST SIDE YARD SETBACK OF 30' INSTEAD OF 50' REQUIRED

SEE ALSO CASE # 74-198 RXA

Office of
DONALD B. RATCLIFFE
ARCHITECTS MEMBER A.I.A.
334 W. 25TH ST. BALTIMORE, MD.

ADDITIONS TO:
400 ALLEGHANY AVE.
TOWSON, MARYLAND

MR. JOHN A. FARLEY

Shoel Wife
Zachary 511 11

Drops 574

WILL IT BE A PROBLEM?

REVIEWS

U.S. 6-4-1



SP-1