

COLIN A. HOFFMAN, et al.,
Petitioners
vs.
BALTIMORE COUNTY, MARYLAND,
et al.
Respondents

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
EQUITY CASE: 92684
DOCKET : 115
FOLIO : 111

OPINION AND ORDER

This case is before the Court on a Petition for Declaratory Judgment filed by the Plaintiffs Hoffman and Joyner. The Defendant, People's Counsel for Baltimore County, demurred and Baltimore County, et al, filed a Motion Raising Preliminary Objection.

The original Plaintiffs filed a Motion for Summary Judgment. Subsequently another Plaintiff, J. William Aston, was allowed to intervene and he, too, filed a Motion for Summary Judgment.

Judge Brannan heard counsel on the Demurrer and Motion Raising Preliminary Objection on October 31, 1977, gave counsel time to submit memoranda setting forth their respective positions, and allowed the parties to supply the Court with additional facts.

Unfortunately Judge Brannan passed away prior to the time he could prepare an opinion in this matter. It was agreed between counsel that this Court was to decide the case on the basis of the transcript of the prior argument, as well as the memoranda, etc., at issue. Subsequently on April 10, 1978, this Court heard additional argument from counsel in this case.

This matter involves land development and property

zoning procedures. Effective April 16, 1977, Baltimore County, Maryland enacted Bill No. 12-77, the so-called Interim Development Control Act (hereinafter: IDCA). The relevant provisions of IDCA preclude the granting of "special permits" or "exceptions" unless applications therefor are submitted to the Planning Board to determine their conformity with the Act. Excepted, however, are exceptions lawfully issued and in effect prior to April 16, 1977. See Baltimore County Code, "Planning, Zoning, and Subdivision Control," Article II, Section 22-15.1 (c), (e)(1), (f), and (h)(1).

The Petitioners here had filed petitions for special exceptions which were approved on April 15, 1977, one day prior to the effective date of the IDCA. Petitioners are among a group of some twenty-three property holders whose pre-April 16, 1977 exceptions were appealed to the Board of Appeals by the People's Counsel. At least six of those cases have been remanded to the Planning Board, but none of the Petitioners' cases have been remanded. The Board of Appeals is presumably awaiting the Court's decision before taking any further action.

It is the contention of the Petitioner: that, except under IDCA, the Board of Appeals has no power to remand. They further contend that, under the express terms of IDCA, their exceptions are immune from IDCA coverage. Petitioners therefore urge this Court to declare that the Board of Appeals may not lawfully remand their special exception appeals cases to the Planning Board.

Simply stated, we are asked to intervene with respect to a matter pending before the Board of Appeals on

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the thin basis that the Board is expected to issue an order similar to orders issued in other cases - an order which may or may not be legal. This Court will not rule on the propriety of the predicted actions of the Board of Appeals.

The jurisdiction to hear declaratory judgment actions is established under Section 3-493 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, "...if it will serve to terminate the uncertainty or controversy giving rise to the proceeding..."

The policy in Maryland regarding a court's discretion as to whether or not to render declaratory judgments has been clearly established by the courts and reinforced by the legislature. Taves v. Williams, 179 Md. 226, (1941), Reiling v. Comptroller, 201 Md. 384, Md. Code C. & J. Section 3-409. Where a form of remedy is provided by the legislature, the power of the properly delegated authority should not be usurped by the courts.

Borchard's Declaratory Judgments, (2d Ed. 1941) at page 342 states, "...where a special statutory procedure has been provided as an exclusive remedy for the particular type of case in hand, ...that specific recourse must be followed." Citing all of the above noted authorities, the Maryland Court of Special Appeals rebuked the trial court in accepting jurisdiction for rendering a declaratory judgment in "...dispute between the parties was already pending before the agency created by the legislature for the express purpose of resolving controversies..." Maryland National Park and Planning Commission v. Washington National Arena, 37 Md. Ap. 346.

The Board of Appeals is delegated with the authority

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to dispose of cases such as those of the Petitioners, and to do so in accordance with the law. Included within this authority is the responsibility of interpreting applicable laws and acting accordingly. Were this Court to render advice to the Board as to the propriety of future action, the Board could shut its administrative doors and refer all future decisions to this Court.

Accordingly, it is ORDERED this 2nd day of May, 1978, by the Circuit Court for Baltimore County, that the Petition for Declaratory Judgment filed by the Plaintiffs be and the same is hereby DISMISSED.

Cullen H. Holmes
CULLEN H. HOLMES
JUDGE

Copy to:
Mark Pollak, Esq.
2000 First Maryland Building
24 South Charles Street
Baltimore, Maryland 21201

Julius W. Lichter, Assistant County Solicitor
Courthouse
Towson, Maryland 21204

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

Eugene Creed, Administrator of the Court

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494-3180

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204
November 1, 1977

John V. Hasey, IV, Esquire
1311 Fidelity Building
Baltimore, Maryland 21201

Re: Case No. 77-207-X
Colin A. Hoffman

Dear Mr. Hasey:

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

Very truly yours,

Edith T. Eleman
Edith T. Eleman, Adm. Secretary

Encl.

cc: Mr. P. T. Lammom
Henry M. Decker, Jr., Esquire
William S. Baldwin, Esquire
John W. Hession, III, Esquire
James D. Nolan, Esquire
Mark Pollak, Esquire
Mr. William S. Jones
Mr. James E. Dyer
Mr. S. E. DiNenna
Mr. G. J. Mortlock
Mr. L. Groff
Mr. J. Howell

October 3, 1978

John V. Hasey, IV, Esquire
1311 Fidelity Building
Baltimore, Md. 21201

Re: Case No. 77-207-X
Colin A. Hoffman

Dear Mr. Hasey:

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

Very truly yours,

Edith T. Eleman
Edith T. Eleman, Adm. Secretary

Encl.

cc: Mr. P. T. Lammom
Henry M. Decker, Jr., Esquire
John W. Hession, III, Esquire
Mr. William S. Jones
James D. Nolan, Esquire
Mark Pollak, Esquire
Mr. J. S. Dyer
Mr. S. E. DiNenna
Mr. G. J. Mortlock
Mr. L. H. Groff
Mr. J. Howell
Board of Education

MCA 

MCA ENGINEERING CORPORATION
CONSULTING
ENGINEERS
1020 Cromwell Bridge Road, Baltimore, Maryland 21204 • Tel. (301) 893-0900

DESCRIPTION

5.0474 ACRE PARCEL
NUWOOD ROAD AND POWERS LANE
BALTIMORE COUNTY, MARYLAND

This Description is for Special Exception
For Tennis Club

Beginning for the same at the intersection of Nuwood Road and Powers Lane at a point on the Baltimore County "BR" Zoning Line, running thence in the bed of said Nuwood Road and binding on said "BR" Zoning Line,
(1) N 68° 52' 00" E 109.84 feet, thence binding on the outline of the land owned by Colin A. Hoffman and wife,
(2) N 11° 36' 32" E 510.22 feet, thence two courses:
(3) S 70° 54' 20" E 356.95 feet, and (4) S 11° 36' 32" W 624.97 feet to a point on said "BR" Zoning Line, thence binding on said Zoning Line and in the bed of said Powers Lane,

Water Supply • Sewerage • Drainage • Highways • Structures • Developments • Planning • Reports

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2.

(b) N 69° 58' 59" W 352.44 feet to the place of beginning.
Containing 5.0474 acres of land.

RWB:mp1 J.O. 1-73093 2/9/77
W.O. 15318-C



MAR 22 1979

MOTION FOR POSTPONEMENT OF HEARING

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE
for Community Buildings, etc. :
NE corner of Nuwood Road : COUNTY BOARD OF APPEALS
and Powers Lane :
1st District : OF
Colin A. Hoffman, Petitioner : BALTIMORE COUNTY
Altan N. Joyner, :
Contract Purchaser : No. 77-207-X

ORDER OF DISMISSAL

Herbert A. Davis
Herbert A. Davis

DISMISSAL OF PETITION FOR SPECIAL EXCEPTION

James D. Nolan
James D. Nolan

ORDER

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 77-207-X

MOTION AND ORDER FOR CONTINUANCE

William T. Hacke

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

—

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE
NE/corner of Nuwood Road & Powers : DEPUTY ZONING
Lane - 1st Election District : COMMISSIONER
Colin A. Hoffman - Petitioner :
NO. 77-207-X (Item No. 204) :
OF
BALTIMORE COUNTY

This matter comes before the Deputy Zoning Commissioner as a result of a Petition for a Special Exception for community buildings, and other civic, social and recreational uses on a property located on the northeast corner of Nuwood Road and Powers Lane. The building and facilities are further described as comprising indoor and outdoor tennis courts, practice areas, locker rooms, exercise rooms, showers, saunas, lounges, accessory buildings, managers' quarters, members' pro shop, and snack bar and vending area, all situated on a five acre tract in D.R. 16 and D.R. 3.5 Zones. The site was the subject of a previous Special Exception Petition (Case No. 74-28-X) which was eventually denied as a result of court proceedings.

Testimony on behalf of the Petitioner indicated that this Petition, as in the previous case, is directed toward the establishment of a private tennis club. However, particular emphasis at the hearing was placed upon the fact that in the present instance the scope of the proposal has been substantially reduced. The original acreage was 7.76 acres, while the proposal is 5.0 acres. Likewise, a 25 per cent reduction in the number of indoor courts (from 8 to 6) and a 40 per cent reduction in outdoor courts (from 12 to 7) has been proposed. In similar vein, the proposed membership unit projection has been reduced from 1,100 to 750. In response to questioning, the Petitioner indicated that court facilities will allow a maximum of 52 players on the courts at any one time. The hours of operation proposed were from 7:00 a.m. to midnight with a

summer schedule of 8:00 a.m. to 8:00 p.m. There would be no lighted outdoor courts for night play.

Mr. Alton N. Joyner, the Contract Purchaser, stated that he must purchase the property within one year of the date of this Order, and that the contract is not contingent upon the results of this hearing.

Nearby residents, in protest, expressed their concern regarding increased traffic, possible decline of their property values, availability of sewerage and water systems, noise, and questioned the need for such a facility. It is noteworthy that some testimony, both verbal and by letter, was received from nearby residents indicating approval of the Petition. The validity of the Petition, under Baltimore County Zoning Regulations, was also called into question, with reference to Section 500.12 and the "18-month rule," as interpreted by memo from the County Solicitor to the Zoning Commissioner, dated November 17, 1976, in which the Petition was ruled currently acceptable.

Without reviewing all of the evidence in detail, but based upon all the evidence at the hearing, in the opinion of the Deputy Zoning Commissioner, the proposal meets the criteria of Section 502.1 and would be appropriate to this area serving as a meaningful buffer between the shopping center and single-family dwellings, and providing a substantial degree of open space which would not normally be achieved under D.R. 16 density. It would also seem reasonable to conclude that no substantive evidence was introduced at the hearing to indicate that adjacent property values would decline to a greater extent as a result of this project than they would if the five acre tract were to be developed under other D.R. 3.5 and D.R. 16 uses.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 15th day of April, 1977, that the Special Exception for community buildings, and other civic, social, recreational and educational facilities, namely, an indoor and outdoor tennis facility, with courts; a

members' pro shop, snack and vending area, locker rooms, showers, saunas, exercise rooms, lounges, managers' living quarters, accessory buildings, play areas and spectator areas in the D.R. 3.5 and D.R. 16 Zones, pursuant to Section 502.1 and Section 1B01.1C.6 of the Baltimore County Zoning Regulations should be and the same is hereby GRANTED, from and after the date of this Order, subject to the following restrictions:

1. The hours of operation shall be from 7:00 a.m. to 11:00 p.m. daily.
2. No swimming pool, nor related buildings, may be installed.
3. Adequate screening between the site and adjacent residential buildings must be provided.
4. No night outdoor courts may be operated, nor shall these courts be provided with illumination to allow play.
5. Approval of a site plan by the Department of Public Works and the Office of Planning and Zoning.

Raymond
Deputy Zoning Commissioner of
Baltimore County

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

To: Eric Hilgner, Zoning Commissioner Date: April 7, 1977
From: Norman T. Serier, Acting Director of Planning

SUBJECT: Petition for Special Exception for Community Buildings
Northeast corner of Nuwood Road and Powers Lane
Petitioner - Colin A. Hoffman and Rose M. Hoffman

1st District

REMARKS: Thursday, April 14, 1977 (10:00 A.M.)

The proposed use would be appropriate here; it would provide a transition between the heavy commercialization along Baltimore National Pike and the residential development to the north. If the petitioner's request is granted, however, it is suggested that detailed landscaping plans buffering the adjacent residential uses from the proposed tennis club be incorporated as part of the zoning order.

Norman T. Serier
Norman T. Serier
Acting Director of Planning

MSA:JTB:kw

ORDER RECEIVED FOR FILING

DATE: April 15, 1977

BY: John P. Joyner

DATE: April 15, 1977

BY: John P. Joyner

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Baltimore County
Department of Recreation and Parks
TOWSON, MARYLAND 21204
(301) 434-3817
ALCOLIN S. ALDRICH
DIRECTOR

June 4, 1976

Honorable John V. Murphy
Councilman, First District
Baltimore County Council
Towson, Maryland 21204

Dear Mr. Murphy:

In response to a request from Alton N. Joyner, prospective operator of a tennis center to be constructed in the southwestern area of the County, we are pleased to submit a statement indicating the position of the Department of Recreation and Parks with regard to the availability of tennis facilities open to the public in Baltimore County, similar to the report of July 26, 1973, addressed to Mr. John J. Dillon, Jr., Chairman, Zoning Advisory Committee, regarding Case 74-28X.

Sincerely,

Malcolm S. Aldrich

Malcolm S. Aldrich
Director of Recreation and Parks

MSA:EJB:k
Encl.
cc: Mr. Alton N. Joyner

BALTIMORE COUNTY DEPARTMENT OF RECREATION AND PARKS TENNIS BOOM IN BALTIMORE COUNTY

A boom in tennis is being felt all across America, as millions of new participants enter the sport, thousands of new tennis courts are constructed and/or lighted for extended use, and hundreds of indoor tennis centers are built to provide playing possibilities under a controlled environment. Indeed, tennis has been called the sport of the Seventies.

There are many reasons for this boom. One is the nature of the game which permits an individual of almost any age or physical condition to play enjoyably with one other person of his own choosing. Second has been the growth of public tennis facilities located in heavily populated neighborhoods. Another has been the development of group tennis teaching methods in colleges, schools and recreation departments which have inexpensively brought the fundamentals of tennis skill to a lot of new players. Another has been the development of tennis playing equipment which has made it possible for individuals of far less than average income to play the game.

Public Tennis Courts

Baltimore County had no public tennis courts in 1949 when the Department of Recreation and Parks got underway. Together with the Board of Education, the Department began in 1951 an orderly program of construction, building tennis courts at senior and junior high school-recreation centers. In 1956, an additional program was begun to construct needed courts at elementary school-recreation centers where local recreation councils agreed to raise 1/3 of the cost. One gauge of such citizen interest was the sale of \$5,700 worth of brooms in a door-to-door campaign to raise the recreation council's share of construction of courts at Ridgewood Elementary in 1970. Four tennis courts have just been built at Hillcrest Elementary and Stoneleigh Elementary. As a result of this building program, some 194 public all-weather courts are now available to the County's 690,000 people.

Public Tennis Programs

During 1975, as indicated in the attached official report, 50 summer tennis centers operated by the Recreation and Parks Department in conjunction with community recreation councils registered over 12,409 individuals. During the winter months, 7 gymnasiums were utilized for indoor tennis programs. In none of these situations were we able to provide all of the playing time requested by county residents. As we begin the summer of 1976, we are planning for 52 centers and at least 12,800 registered players.

There are now seven indoor tennis centers in Baltimore County (none in the Southwestern Area) providing tennis under controlled weather situations:

Orchard Indoor Tennis Club	opened 1968
Bare Hills Tennis Club	opened 1971
Twin Lakes Indoor Tennis Club	opened 1972
Yorktowne Racquet Club	opened 1972
Perring Racquet Club	opened 1973
Hilton Tennis Club	opened 1974
Greenspring Racquet Club	opened 1975

Another indoor tennis center to be built by private investment has been recommended for county-owned land at Oregon Ridge Park. As each of the present centers has gone up, there have been dire predictions of inability to fill the centers because of too much competition; yet a recent consultant's report indicates that all of the new centers are operating most successfully and near capacity.

Public Tennis Facilities, Southwestern Area

Baltimore County is a huge area of 697 square miles where transportation plays a large role in the availability of tennis opportunities. Public tennis facilities for a population of 100,400 people in the Southwestern section of Baltimore County are limited to the following sites:

Landowne Senior High School-Recreation Center	4 courts
Landowne Middle School-Recreation Center	3 courts
Hillcrest Elementary School-Recreation Center	2 courts
Catonville Senior High School-Recreation Center	4 courts
Catonville Junior High School-Recreation Center	3 courts
Arbutus Junior High School-Recreation Center	3 courts
Johnnycake Junior High School-Recreation Center	3 courts

During 1975, the Department of Recreation and Parks registered 1,205 on these courts in an eight-week summer program. Again, in 1976, we find ourselves unable to provide the playing time requested and needed by an even larger number of individuals who find a great interest in playing tennis.

College Tennis Courts

The Department and its 47 affiliated recreation and park councils are greatly indebted to Towson State College, UMBC, Catonsville and Essex Community Colleges for use of their courts when not needed by the college program, but community use of such facilities is often limited.

Extended Use of Present Courts

Lighted courts are now in use at Catonsville, Pikesville, Dulaney, Parkville, EVT and Patapsco High and at Loch Raven and Pinewood Elementary. In order

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to secure maximum use of existing courts, the Department is now securing bids on lighting another eight of its tennis courts at Arbutus Jr., Hillcrest Elementary, Franklin Sr., Randallstown Sr., Towson Sr., Seminary Park, Stoneleigh Elementary and Overlea Senior, and hopefully will complete these installations by fall.

Help From the Private Sector

If there is to be any other relief for hard-pressed tennis enthusiasts in many sections of the County, such help will probably come from private construction at new apartment complexes or from indoor and/or outdoor centers specially built to serve those who can afford to pay to play.

As stated by James G. Watt, Director of the Bureau of Outdoor Recreation, Department of the Interior, July 10, 1973, "The Federal Government cannot be solely responsible for recreation planning. Responsibility must be shared by all levels of government and the private sector. Because the private sector owns and operates nearly twice as many recreation areas as do the public agencies, it is essential that private interests play a primary role in recreation planning. Outdoor recreation is one of the fastest growing and most important aspects of contemporary American life. Americans now spend more for recreation than their government spends for national defense. Today, recreation touches fundamental personal issues and contributes to the successful attainment of our citizens' personal goals and the broad objectives of our society."

We believe that in Baltimore County we must achieve a healthy balance of public and private interests if we are to meet the fitness needs of our County's citizens in the most economic and efficient manner.

June 4, 1976

MAR 22 1979

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
NE/C of Nuwood Rd. & Powers Lane,
1st District : OF BALTIMORE COUNTY
COLIN A. HOFFMAN, et ux, Petitioners : Case No. 77-207-X

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 therefore, and of the passage of any preliminary or final Order in connection therewith.

Charles E. Kuntz, 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 11th day of April, 1977, a copy of the foregoing Order was mailed to James D. Nolan, Esquire, 204 W. Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Petitioners.

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



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Eric S. DiNenna, Zoning Commissioner Date: April 13, 1977
Zoning Office
FROM: Edward J. Bender, Asst. Director
Department of Recreation and Parks
SUBJECT: Special Exception Petition
Colin A. and Rose M. Hoffman
Item No. 204

We request that the attached report dated June 4, 1976 be made part of the Baltimore County Advisory Committee comments for above case and advise that there have been no appreciable changes since June 4, 1976 affecting the contents of the report.

Edward J. Bender
Edward J. Bender

EJB:bjb



IN RE PETITION : PUBLIC HEARING BEFORE
FOR SPECIAL EXCEPTION : THE ZONING COMMISSIONER
CASE NO. 77-207-X : OF BALTIMORE COUNTY
Date: April 14, 1977

MEMORANDUM OF LAW

THE INAPPLICABILITY OF THE DOCTRINE
RES JUDICATA TO THE PRESENT CASE

The doctrine of res judicata stated simply means that an existing final judgment rendered upon the merits by a court or agency of competent jurisdiction is deemed conclusive of the facts or issues therein litigated as to the parties in all other actions in the same or other forums of concurrent jurisdiction. See generally, 46 Am. Jur. 2d, Judgments §394 et seq. However, that doctrine is not applicable where there has been a change of parties, or circumstances, or conditions, or where the plan submitted for consideration is at variance from one previously considered. 3 Anderson, American Law of Zoning (2d. Ed. 1977) §20.50 et seq.

Initially there must be authority to bring the matter before the Zoning Commissioner. That authority is provided by Section 500.12 of the Baltimore County Zoning Regulations which authorizes a new petition for a special exception after the expiration of eighteen (18) months from the date of denial by the Board of Appeals.

The crux of the question arises with regard to the changes in circumstances or conditions or changes in the submission from that provided in the prior matter. Norwood Heights Imp. Assn. v. Mayor & City Council, 191 Md. 155 (1948); Woodlawn Ass'n. v. Board, 241 Md. 187 (1966); The Chatham Corp. v.

Beltman, 243 Md. 138 (1966); Bayer v. Siskind, 247 Md. 116 (1967); 71 ALR 2d 1362. As was stated by the Court of Appeals in Whittle v. Board of Zoning Appeals, 211 Md. 36, 45 (1960):

"...where the facts are subject to changes which might reasonably lead to an opposite result from that arrived at in an earlier case, and if there have been substantial changes in fact and circumstances between the first case and the second, the doctrine of res judicata would not prevent the granting of the special permit..."

In Norwood Hts. Imp. Assn., supra, the court held that the following two submissions were not substantially the same:

- 15 acre tract, 10 apartment buildings containing 34 two-story units for 168 families plus 168 parking spaces.
- 15 acre tract, 12 apartment buildings containing 38 two-story units for 179 families plus 150 parking spaces and 26 garage buildings.

See also In re Crescent Beach Assn., 126 Vt. 140, 224 A. 2d 915 (1966) (new plan showing greater limitations on use held to avoid res judicata problem), and various cases involving a change in the neighborhood: Dadukian v. Zoning Board, 135 Conn. 706, 68 A. 2d 123 (1949); Dibello v. Zoning Board, 4 Pa. Cmwlth. 546, 287 A. 2d 856 (1972).

The changes in the instant case, limited for the purpose of this memorandum to those readily apparent from an examination of the submitted plan, include the following:

- (a) The size of the parcel has been reduced from approximately 7.8 acres down to 5.0 acres, or a reduction of nearly 36%;
- (b) the number of indoor tennis courts has been reduced from eight to six, or a reduction of 25%;

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(c) the number of outdoor tennis courts has been reduced from twelve to seven, or a reduction of approximately 42%;

(d) the height of the indoor tennis structure has been reduced from 40 feet to 36 feet, or a reduction of 10%; and

(e) the design has been dramatically changed with the clubhouse location altered, the tennis court format altered, the lights for night tennis eliminated and the entrance shifted from DeLong Road to Powers Lane. In addition there has been a reduction in the maximum membership of the club from 1100 family units to 750 family units, and from 1400 members to 1191 members. Given these changes in the proposal, and without considering any other changes in conditions or circumstances, the doctrine of res judicata is not applicable to this matter.

James D. Nolan
204 W. Pennsylvania Avenue
Towson, Maryland 21204
823-7800

Mark Folial
2000 First Maryland Building
25 South Charles Street
Baltimore, Maryland 21201
539-2530

Attorneys for the Petitioner

-3-

The original 1955 language of Section 500.12 is as follows:

"500.12 - No new petition for reclassification or Special Exception shall be entertained by the Zoning Commissioner in any case which has been considered and acted upon by him until the expiration of 18 months from the date of his final Order thereon. Where an appeal is taken from any decision of the Zoning Commissioner to the Board of Zoning Appeals, the Zoning Commissioner shall not entertain any new petitions for reclassification or Special Exception until the expiration of 18 months from the date of the final Order of said Board of Zoning Appeals."

It is clear that the term "final Order" under the 1955 language refers to "his final Order" meaning the Zoning Commissioner's "final Order" when a case has been considered and acted upon by the Zoning Commissioner and refers to the "final Order" of said Board of Zoning Appeals" when the case is appealed to the Board of Zoning Appeals. It is obvious that under the 1955 law the 18 month period commenced on the date of the Order of the Zoning Commissioner or the Board of Zoning Appeals, as the case may be.

The 1955 law was repealed and reenacted in 1959 and the language of Section 500.12 is now as follows:

"500.12 - No new petition for reclassification or special exception shall be entertained by the Zoning Commissioner in any case which has been denied either by the Zoning Commissioner or the County Board of Appeals until the expiration of 18 months from the date of the final Order thereon."

The 1959 Language offers no assistance in defining the term "final Order". There is a complete absence of any reference to an appeal to the Circuit Court for Baltimore County or subsequent judicial appeal. The 1959 modification does not attempt to redefine or alter the term "final Order". It does change the commencement date of the 18 month period from the date of an Order which had been "considered and acted upon" to the date of the Order of a "denial".

In Tyrie v. Baltimore County, 215 Md. 135, (1957) the Court had occasion to address itself to the interpretation of Section 500.12 and to determine the legislative intent thereof. In making its determination, the Court at page 140 stated that it must not only consider "...the literal or usual meanings of the words but their meaning and effect considered in the light of the setting, the purposes of the enactment, the ends to be accomplished, and the consequences that may result from one meaning rather than another." At page 141, Judge Hammond opined that the 18 month period was intended as a "period of repose". The purposes of the "period of repose" appear to be to avoid and/or reduce repetitive petitions; to

permit adequate time for a change to occur; and to avoid and/or reduce harassment to protestants. The purposes of avoiding and/or reducing repetitive petitions and permitting time for a change to occur are accomplished when the commencement date of the 18 month period is the date of Order of the Zoning Commissioner or the Board of Appeals. A potential problem is presented when the protestants successfully pursue a judicial appeal and they are promptly faced with a new Petition because 18 months has expired since the Order of the Board of Appeals denying the original Petition. However, this problem is only evident in a minority of the cases brought before the Board of Appeals and is outweighed by the other consequences and ends to be achieved in interpreting Section 500.12.

In light of the legislative history, language, purposes, ends to be accomplished and the consequences resulting from the interpretation of Section 500.12, the undersigned is of the opinion that the 18 month period commences from the date of the final Order of denial by the Zoning Commissioner or the Board of Appeals, as the case may be. Accordingly, the Zoning Commissioner must receive the new Petition For Special Exception of the Petitioner.

This opinion does not consider the substantial effect of a pending judicial appeal on the 18 month period nor does it consider the substantial issue of res judicata or any other issues that may be raised before the Zoning Commissioner or the Board of Appeals in this case.

James D. Nolan
County Solicitor
Raymond Altman
Assistant County Solicitor
J. Edgar L. Lichten
Assistant County Solicitor

JCH/RJA/WJL/kkk

cc: Theodore G. Venetoulls
Randolph B. Rosencrans

MAR 22 1979

Traffic

A critical case in the area of traffic is *Gowl v. Atlantic Richfield Co.*, 27 Md. App. 410 (1975) in which the Court of Appeals upheld a lower court reversal of the Howard County Board of Appeal's decision in a special exception case denying the petition. One of the Board's findings related to traffic and the lower court agreed that present roads were inadequate to service the proposed use. Although the lower court also noted evidence on improvements "reasonably probable of fruition", it recognized that they provided an insufficient basis for reversal. They solved that conundrum by finding (upheld by the Court of Special Appeals) that insofar as special exceptions are concerned, the key factor is traffic generated by proposed conditional use versus traffic generated by permitted uses. Under that standard, the Board's finding was unreasonable since the evidence indicated no difference between the two.

The higher court discussed this holding as follows (27 Md. App. at 416-18):

"Judge Magill found that the evidence before the Board was 'certainly substantial, and more than substantial, that the access roads to the property, in their present state, were inadequate to service the proposed use or, presumably, any substantial industrial use, and that the presence of any number of trailer-trucks on these roads would create a hazard.' Judge Magill also noted, however, that there was evidence before the Board that the widening and upgrading of the South Hanover Road was reasonably possible of fruition in the foreseeable future, but he 'does not suggest that the action of the Board in this case should be reversed simply because the Board could have found that an adequate access road was reasonably probable of fruition in the foreseeable future, or because the Board could have, as a

condition precedent to construction, required that South Hanover Road be upgraded to serve the industrial area through which it runs."

Judge Magill went on to point out that in rejecting this application because of possible increase in vehicular traffic, the Board was making a comparison between existing traffic patterns around the presently undeveloped property and traffic patterns that could arise if the proposed use were to be permitted, without considering all that an even greater volume of traffic than that anticipated for the storage facility could arise from any of several uses for which the property is now zoned and for which no special exception would be required. He noted that under the present R-2 zoning, the subject premises could be used for aircraft manufacture or assembly; automobile or truck assembly plants; food manufacturing, packing or processing plants and bituminous road material mixing plants.

We believe it obvious that any one of these permissible uses of these premises could result in increased vehicular traffic of greater volume and density than that which is considered probable for the bulk storage facility, and we do not believe it arguable that it is any more desirable to have a concrete or bituminous mixing vehicle drive past one's home than a gasoline or fuel oil tank truck.

We think it fully appropriate that Judge Magill found the proper test to be a comparison between the traffic problems that might arise under the proposed use and traffic problems that could arise from the use of the premises now permitted by law. We recognize that traffic impact is a sufficient basis to deny a zoning application, including an application for a special exception. *Templeton v. County Council*, 21 Md. App. 636, 323 A.2d 717 (1974); *Templeton v. Board of Zoning Appeals*, 312 Md. 6, 129 A.2d 266 (1956); *Hardisty v. Zoning Board*, 211 Md. 172, 126 A.2d 621 (1956). But traffic impact on an application for a special exception ought to be measured against that which could arise under permissible use, and not merely on existing traffic loads around the undeveloped premises. Where, as here, the potential volume of traffic under the requested use would

appear to be no greater than that which would arise from permitted uses, we believe it arbitrary, capricious and illegal to deny the application for special exception on vehicular traffic grounds.

-2-

Lipman Frizzell & Mitchell QUALIFICATIONS OF CONSULTANT - M. RONALD LIPMAN

Member:

Member (CRE) of the American Society of Real Estate Counselors
Member (MAD) of the American Institute of Real Estate Appraisers
Senior Real Estate Analyst (SREA) of the Society of Real Estate Appraisers
(Chairman President - 74)
Licensed Broker - Maryland Real Estate Commission
Greater Baltimore Board of Realtors (Board of Directors 1972 - 1975)
Board of Directors, Commission on Governmental Efficiency & Economy, 1974-1976

Education, Teaching, Assignments, and Speaking Engagements:

Awarded Masters Degree in Bus. Admin. (Real Estate Major) American Univ., 1964
Awarded Bachelor of Arts Degree (Bus. Admin. Major) Duke University, 1960
Continuously engaged in real estate appraisal since 1961
Instructor: SREA 101 and 201 courses, 1971 thru 1976
Instructor: Appraisal Course, Harford Junior College, 1967, 1968, and 1969
Instructor: 14th thru 28th Annual Appraising Officers, 1969-1973
Instructor: Real Estate Appraisal Course, University of Baltimore, 1972 and 1973
Speaker: 1973 Bi-Regional Conference, AIREA, Asheville, North Carolina
Speaker: 1973 North Carolina Chapter, AIREA Summer Meeting, Wrightsville Beach
Speaker: 1973 International Appraisal Conference, SREA, Atlanta, Georgia
Speaker: 1974 Maryland Association of Realtors' Convention, Ocean City, Maryland
Speaker: 1974 Joint Baltimore/Washington Mortgage Bankers Association Meeting
Speaker: 1976 U.S. League of Savings Association Convention, New York

Qualified as expert witness before the courts of:

Baltimore City, Baltimore, Anne Arundel, Howard and Cecil Counties

Have appraised and/or consulted for:

Acme Markets, Inc.
James W. Rouse & Company, Inc.
Knott Industries, Inc.
Akerman Development Co.
Monumental Properties
Nottingham Properties
The Edward J. DeBartolo Corp.
Maryland Properties, Inc.
Olin Corporation (Maryland Housing)
Ford Motor Company
American Motor Sales Corp.
Chrysler Realty Corporation
Bello, Dept. of Housing & Comm. Dev.
Maryland State Roads Commission
Mass Transit Administration
Union Dime Savings Bank
Baltimore Life Insurance Company
Sonsbeek-Goldman Corporation
Chesapeake Financial Corporation
Capitol Mortgage Investments
Kaiser - Arco
Walker & Dunlop
Haskins & Sells
Peat, Marwick & Mitchell
First Wisconsin Mortgage Co.
T. Rowe Price
B. F. Saul
Baltimore Federal Savings & Loan Assn.
Lewin Mortgage Investors
Chase Manhattan Bank
Chemical Bank
Monumental Life Insurance Company
Prudential Insurance Company of America
Teachers Ins. & Annuity Assn. of America
Superior Trust Company
First National Bank
Mercantile Safe Deposit & Trust Company
Maryland National Bank
Equitable Trust Bank
Loyola Federal Savings & Loan Assn.
Piper & Marbury
Smith, Sonenshine & Case
Weinberg & Green
Venable, Baetjer & Howard
Gordon, Feinblatt
Phillip Morris
Realty Growth Investors
MIFA (Md. Ind. Dev. Financing Authority)
Charles Center/Inner Harbor Mgmt., Inc.
Frank, Bernstein, Conway & Goldman
Semmes, Bowen & Semmes
Miles & Stockbridge

JOHN N. ERDMAN TRAFFIC ENGINEER

In November of 1968, Mr. Erdman was appointed an Assistant Commissioner in the Department of Transit and Traffic of the City of Baltimore. While functions related to the administration of the Department are a major responsibility, Mr. Erdman is primarily responsible for transportation planning and expressway operations within the City of Baltimore. Mr. Erdman also serves as the Chief of the Bureau of Traffic of the Interstate Division for Baltimore City.

Before joining the staff of the Department of Transit and Traffic, Mr. Erdman was employed by the consulting firm of Edwards and Kelcey, the Department of Transit and Traffic of the City of Baltimore, the Baltimore County Department of Traffic Engineering, and the consulting firm of J. E. Greiner and Company. Mr. Erdman undertook assignments as Project Engineer in the Minneapolis office and Newark headquarters office of Edwards and Kelcey.

Mr. Erdman graduated from Johns Hopkins University with a degree in Civil Engineering. He has also completed traffic engineering courses at Northwestern University and the University of Maryland. He is a member of the Institute of Traffic Engineers, the International Municipal Signal Association, the American Society of Civil Engineers, the National Society of Professional Engineers, the Maryland Society of Professional Engineers, the American Public Works Association, the American Road Builders Association, the Maryland Academy of Sciences, and is a registered Professional Engineer in the State of Maryland.

#6 Trip Generation Summary Daily Trip Generation

Zoning	Development	# of Trips
Existing	Residential	391
D.R. 3.5	"	156
D.R. 5.5	"	183
D.R. 10.5	"	447
D.R. 16	"	617
B.R.	Shopping Center	2150
Sp. Etc.	Tennis Club	100 - 195
		100 - 390

D2C PETITIONER'S EXHIBIT #15

4 AUTHOR'S REVISION
BY HEARISE

77-207X 4-14-75

Summary - Park Home Traffic

Approach	From North	From South	From East	From West	Capacity	Notes
U.S. 40 N	1253	20	1233	20	2280	100% AD
Alameda Rd.	1253	20	1233	20	2280	100% AD
U.S. 40 S	943	20	1023	20	2280	100% AD
Alameda Rd.	943	20	1023	20	2280	100% AD
Alameda Rd.	118	20	158	20	2280	100% AD
Alameda Rd.	118	20	158	20	2280	100% AD

D2C PETITIONER'S EXHIBIT #15

4 AUTHOR'S REVISION BY HEARISE

LAW OFFICES OF
NOLAN, PEI, HOFFP & WILLIAMS
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
July 29, 1977

John N. Hessman, III, Esquire
People's Counsel
County Office Building
Towson, Maryland 21204

Re: Colin A. Hoffman, et ux, Petitioners.
Case No. 77-207-X

Dear Mr. Hessman:

We are in receipt of your letter of July 27, 1977, regarding a possible Remand for Interim Development Control Act processing in this matter.

We have been studying this situation, and it is presently under study with our co-counsel Mark Pollak, Esquire, and we will be in touch with you and the Board in the near future with regard to this matter.

It would appear that even if it is determined that a Remand is noted, we believe that the Planning Board should be able to complete its processing by November 1, and hence we will appreciate the Board retaining these dates for the time being. Hopefully, this should not inconvenience the Board since there is adequate time available to answer the hearing date question, as the matter progresses.

We will shortly be in touch with you regarding our reaction to your proposal.

Sincerely,

James D. Nolan

JDN/h1
cc's-see next page

Page two

cc: The Hon. Walter A. Reiter, Jr.
Chairman, County Board of Appeals
Court House
Towson, Md. 21204

Charles E. Kountz, Jr.
Deputy People's Counsel
County Office Building
Towson, Md. 21204

John H. Hessey, IV, Esquire
1311 Fidelity Building
Baltimore, Maryland 21201

P. T. Lemmon
1029 St. Paul Street
Baltimore, Maryland 21202

Henry M. Decker, Jr., Esquire
9 West Mulberry Street
Baltimore, Maryland 21201

Mark Pollak, Esquire
15 South Charles Street
Baltimore, Maryland 21201

Alton N. Joyner, C.L.U.
2612 N. Charles Street
Baltimore, Maryland 21218

Law Offices of
NOLAN, PATTERNOFF & WILLIAMS
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
JAMES D. NOLAN
J. EARL PATTERNOFF
WILLIAM A. WILLIAMS
WILLIAM M. HESSIAN, JR.
THOMAS J. HESSIAN
KENNETH H. HARTERS
STEPHEN J. NOLAN
AREA CODE 410
TELEPHONE
823-7800
June 28, 1978

Alton N. Joyner, C.L.U.
2612 N. Charles Street
Baltimore, Maryland 21218

Re: Dismissal of Petition for Special Exception
in the Colin A. Hoffman Case.

Dear Alton:

Recently Mrs. Eisenhart from the Board called and stated that you had requested certain of the exhibits.

Although of course the matter is not being continued, it still shows as an active file on the Board's records and accordingly the exhibits cannot be withdrawn unless there is a Dismissal of the Petition for Special Exception.

Accordingly, we are enclosing herewith an original and two copies of the Dismissal of Petition for Special Exception for your signature as the contract purchaser.

Please sign the original and one copy and return them for filing with the Board, after which time the exhibits in question can be withdrawn. If you have any questions or comments, please do not hesitate to call.

Sincerely,

Newton

Newton A. Williams

NAN/hl
Enclosures
cc: Mrs. Edith Eisenhart
Board of Appeals

Mark Pollak, Esquire
Piper & Marbury

Law Offices of
NOLAN, PATTERNOFF & WILLIAMS
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
JAMES D. NOLAN
J. EARL PATTERNOFF
WILLIAM A. WILLIAMS
WILLIAM M. HESSIAN, JR.
THOMAS J. HESSIAN
KENNETH H. HARTERS
STEPHEN J. NOLAN
AREA CODE 410
TELEPHONE
823-7800
September 11, 1978

The Honorable Walter A. Reiter, Jr.
Chairman, Baltimore County
Board of Appeals
Court House, Room 219
Towson, Maryland 21204

Re: Case No. 77-207-X, Colin A. Hoffman Property (Alton N. Joyner, Contract Purchaser).

Dear Mr. Reiter:

We are in receipt of the Board's Notice of Assignment dated September 8, setting the continued hearing in this matter for Thursday, October 5, at 10:00 a.m.

As we have told your Staff, it is our clear impression that our client Mr. Joyner has abandoned his efforts to obtain a special exception for the Hoffman Property as originally petitioned.

Earlier this year, we sent to our client a Dismissal of Petition for Special Exception for signature and we also asked Mr. Pollak, our co-counsel, to sign it as well, and to date it has not been returned. By copy of this letter to Mr. Joyner and Mr. Pollak, we are again enclosing a Dismissal and it would be our expectation that it will be so dismissed and this hearing date of October 5 will not be needed for this case.

We will endeavor to either dismiss the case as we believe is our client's wish, or we will promptly notify the Board that the hearing will be continued. Thanking you and your Staff for your attention to this letter, I am, with best regards,

Sincerely,

James D. Nolan

James D. Nolan

JDN/hl
cc: See next page

Page two

sioner on March 7 of this year; (3) The Reisterstown Moose case, Case 76-119-X, granted January 30, 1976, by the Deputy Zoning Commissioner; (4) The Hollenback's case, Case No. 77-221-ASPH, which had been granted in August of 1976, in which case one of the protestants, namely the Brandau's, are objecting to the proposed remand; (5) The Farley special exception for offices case which was granted on March 21 of this year, Case No. 77-155-XA, which has been remanded, processed through the IDCA and returned to the Board; and finally, (6) The William K. Hiss case which was granted on April 1 of this year and which has been remanded in Case No. 77-174-ASPH for IDCA processing.

Mrs. Eisenhart very kindly provided us with a copy of the appeals pending before the Board of Appeals, and according to my count there are some sixteen cases pending before the County Board of Appeals, involving special exceptions or use permits for parking in residential zones, which were decided prior to April 16 of this year and which are thus possible candidates for remand, dependent upon Your Honor's ruling.

I was successful in concluding an agreement with the protestants in one other use permit for parking case, namely the Middle River Realty Company case, Case No. 77-211-SPH, and thus this appeal has been dismissed, leaving the granted use permit in place, as granted by the Zoning Commissioner. According to my count there are thus 16 cases pending, including the Colin Hoffman case at Bar, 6 cases have been remanded to which there has been an objection in one remand case, and one case has been dismissed, totalling 23 cases all together.

Mr. Fleury's case on behalf of J. William Aston, namely Cases No. 77-156-X and No. 77-157-X, are among the 16 cases potentially affected.

At the hearing scheduled before the County Board of Appeals on November 1, the Hoffman case, Case No. 77-207-X was continued by the County Board of Appeals with a hearing not to be set in the matter until a ruling is had from the Circuit Court for Baltimore County, and possibly from the Court of Special Appeals of Maryland, the latter being Mr. Hessian's request.

It is our understanding that Your Honor has given Mr. Hessian and Mr. Lichter until Monday, November 7 to submit Memorandums to the Court, and in turn Mr. Pollak and

Page three

this office have three days, that is until November 10, to submit a Reply Memorandum in the matter.

If Your Honor wishes or if any of the various counsel involved wish, the full particulars of each and every pending case can be obtained, but this was not felt to be useful and would have unduly lengthened this summary letter.

Thanking the Court for its consideration in this matter, I am

Respectfully,

Newton A. Williams

Newton A. Williams

NAN/hl
cc: The Hon. Walter A. Reiter, Jr.
Chairman, County Board of Appeals
Court House
Towson, Maryland 21204

Julius W. Lichter, Esquire
Assistant County Solicitor
Court House

John W. Hessian III, Esquire
People's Counsel
County Office Building

William S. Baldwin, Esquire
24 W. Pennsylvania Avenue
Towson, Md. 21204

Lewis L. Fleury, Esquire
424 Woodbine Avenue
Towson, Md. 21204

Mark Pollak, Esquire
2000 First Maryland Building
25 South Charles Street
Baltimore, Md. 21201

Alton N. Joyner, C.L.U.
2612 N. Charles Street
Baltimore, Md. 21218

Page two - Walter A. Reiter, Jr. - September 11, 1978

cc: John H. Hensey, IV, Esquire
1311 Fidelity Building
Baltimore, Maryland 21201

Henry M. Decker, Esquire
9 West Mulberry Street
Baltimore, Maryland 21201

Mark Pollak, Esquire
2000 First Maryland Building
25 S. Charles Street
Baltimore, Md. 21201

Al on N. Joyner, C.L.U.
2612 N. Charles Street
Baltimore, Maryland 21218

Mr. and Mrs. Colin A. Hoffman
2018 Powers Lane
Baltimore, Md. 21228

Mr. William S. Jones
2102 Fernglan Way
Baltimore, Md. 21228

Law Offices of
NOLAN, PATTERNOFF & WILLIAMS
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
JAMES D. NOLAN
J. EARL PATTERNOFF
WILLIAM A. WILLIAMS
WILLIAM M. HESSIAN, JR.
THOMAS J. HESSIAN
KENNETH H. HARTERS
STEPHEN J. NOLAN
AREA CODE 410
TELEPHONE
823-7800
November 1, 1977

The Honorable William C. Brannan
Circuit Court for Baltimore County
Court Building
Towson, Maryland 21204

Re: Hoffman, et al. v. Baltimore County, et al.
Circuit Court for Baltimore County, Equity
No. 92684, Equity Docket 115, Folio 111.
Special Exception Cases in the Interim Development Control Act.

Dear Judge Brannan:

Pursuant to the discussion during the hearing recently held before Your Honor on October 31, 1977, I have once again checked the records of the County Board of Appeals.

As I told the Court or the 11st, Chairman Reiter told me that according to his original count when the Mangione case, Case No. 76-158-X first presented this problem at the Board, there were some 23 cases, including the Mangione case, affected. That is, there were some 23 cases which had been decided by the Zoning Commissioner or his Deputy which involved special exceptions in residential zones granted prior to April 16, 1977, the effective date of this sweeping piece of legislation.

Furthermore, Mr. Reiter and Mrs. Eisenhart, the Secretary to the Board, inform me that the Board has not made a sweeping remand of all cases as was done with the dismissal of pending reclassification cases upon passage of the new zoning maps in October of last year, but rather, the Board has approached each one of these cases on a case by case basis.

As of October 25, there had been some 6 cases remanded to the Zoning Commissioner for IDCA processing; including the following: (1) The Mangione case, Case 76-158-X which had been granted by the Zoning Commissioner prior to April 16; (2) The Alice M. Sinclair case, Case No. 77-141-XA which had been similarly granted by the Deputy Zoning Commis-

April 14, 1977
Mrs. Richard A. Metz
1929 Cedar Creek Drive
Baltimore, Maryland 21228

Dear Mrs. Metz,
As a resident of Westlake
and a member of the Westlake Community
Assoc. I would like it to go on
record that I am in favor of the
proposed zoning change of the
Hoffman property from R-3.5 to a
special exception of the proposed
Hessians property, as proposed by
Mr. Alton Joyner.

Sincerely,
Mrs. Richard A. Metz

My husband & I are in
favor of the Hessians Court
Hessians Court at Howard &
Powers Lane. We are
residents of Westlake living
2 blocks from the proposed
tennis club
Wesley Sal Commuter
2129 Cedar Creek Dr.

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

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

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

Your Petition has been received and accepted for filing
this 11th day of March 1978.

S. Eric DiNenna
S. Eric DiNenna
Zoning Commissioner

Petitioner: Colin A. and Rose M. Hoffman

Petitioner's Attorney: James D. Nolan

cc: MCA Engineering Corp.
1020 Cromwell Bridge Road
Towson, Maryland 21204

Reviewed by: *Nicholas B. Commodari*
Nicholas B. Commodari
Planning & Zoning
Associate III

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

April 4, 1976

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

RE: Special Exception Petition
Item No. 204
Colin A. and Rose M. Hoffman -
Petitioners

Dear Mr. Nolan:

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

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

The subject property, consisting of vacant land zoned partially D.R. 16, 3.5, and a small portion zoned B.R., is located on the northeast corner of Powers Lane and Nuwood Road in the first election district.

Adjacent property surrounding this site consist of commercial uses to the south and southwest, an apartment complex and single family dwellings to the west and north, respectively with additional land owned by the petitioner to the east consisting of farm land.

James D. Nolan, Esquire
Item No. 204
Page 2
April 4, 1977

The proposal at this time is to improve this site with an indoor and outdoor tennis club facility and related activities. This site was the subject of a previous Special Exception request (Case 74-28-X) in which a similar type operation was proposed, however, it was eventually denied through the courts.

While formal written comments were not available at this time from the Bureau of Engineering, Department of Traffic Engineering, and the Office of Project and Development Planning, I took the liberty to schedule this petition for a hearing after reviewing the comments from the above departments that were included within the previous case file. I was verbally assured by said departments that their comments at this time would be basically the same, however, I suggest that you personally contact the representative from these departments on this committee and verify this information.

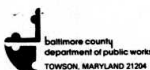
This petition is accepted for filing on the date of the enclosed filing certificate. Notice of the hearing date and time, which will be held not less than 30 nor more than 90 days after the date of the filing certificate, will be forwarded to you in the near future.

Very truly yours,

Nicholas B. Commodari
NICHOLAS B. COMMODARI
Acting Chairman, Zoning
Plans Advisory Committee

NBC:tk

cc: MCA Engineering Corp.
1020 Cromwell Bridge Road
Towson, Maryland 21204



THORNTON M. MOURING, P.E.
DIRECTOR

April 6, 1977

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

Re: Item #204 (1976-1977)
Property Owner: Colin A. & Rose M. Hoffman
W/E cor. Nuwood Rd. & Powers La.
Existing Zoning: D.R. 3.5, D.R. 16, B.R.
Proposed Zoning: Special Exception for a community building and other civic, social, recreational and educational uses.
Acres: 5.0474 District: 1st

Dear Mr. DiNenna:

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

General:

The comments which were supplied in connection with the Zoning Advisory Committee review of this property for Item #237 (1972-1973) are referred to for your consideration.

Very truly yours,

Donald W. Tucker, P.E.
DONALD W. TUCKER, P.E.
Acting Chief
Bureau of Engineering

DWT:EM:PM:rs

cc: H. Shalowitz

H-NE Key Sheet
3 & 4 SW 28 Pw. Sheet
SW 1 & 2 C Topo
94 Tax Map



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

Dear Mr. DiNenna:

Comments on Item #204, Zoning Advisory Committee Meeting March 22, 1977, are as follows:

Property Owner: Colin A. and Rose M. Hoffman
Location: NE/C Nuwood Road and Powers Lane
Existing Zoning: D.R. 3.5, D.R. 16 and B.R.
Proposed Zoning: Special Exception for a community building and other civic, social, recreational and educational uses
Acres: 5.0474
District: 1st

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.

It is suggested by this office that the proposed stockpile fence be placed to the interior of the property in order to provide landscaping along the exterior of the property.

Very truly yours,

John L. Wimbley
John L. Wimbley
Planner III
Project and Development Planning



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

April 1, 1977

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

Dear Mr. DiNenna:

Comments on 204, Zoning Advisory Committee Meeting, March 22, 1977, are as follows:

Property Owners: Colin A. & Rose M. Hoffman
Location: NE/C Nuwood Rd. & Powers La.
Existing Zoning: D.R. 3.5, D.R. 16, B.R.
Proposed Zoning: Special Exception for a community building and other civic, social, recreational and educational uses.
Acres: 5.0474
District: 1st

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

The building or buildings on this site may be subject to a permit to construct and a permit to operate and all fuel burning and processing equipment. Additional information may be obtained from the Division of Air Pollution Control, Baltimore County Department of Health.

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

Very truly yours,

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

TSD/SVS/rth

cc: V. L. Phillips
L. A. Schuppert



STEPHEN E. COLLINS
DIRECTOR

March 28, 1977

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

Re: Item 204 - EAC - March 22, 1977
Property Owner: Colin A. & Rose M. Hoffman
Location: NE/C Nuwood Rd & Powers La.
Existing Zoning: D.R. 3.5, D.R. 16, B.R.
Proposed Zoning: Special Exception for a community building and other civic, social recreational & educational uses.
Acres: 5.0474
District: 1st

Dear Mr. DiNenna:

No major traffic engineering problems are anticipated by the requested special exception for a community building and other civic, social, recreational and educational uses.

Very truly yours,

Michael F. Flanagan
Michael F. Flanagan
Traffic Engineer Associate

NSF/11F

Received from Zoning 3-28-77

Baltimore County Department of Permits and Licenses
TOWSON, MARYLAND 21204
(301) 484-3310

JOHN D. SEYFERT
DIRECTOR

March 28, 1977

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

Dear Mr. DiNenna:

Comments on Item # 204, Zoning Advisory Committee Meeting, March 22, 1977 are as follows:

Property Owner: Colin A. & Rose H. Hoffman
Location: E/WC Woodward Road & Powers Lane
Existing Zoning: D.R. 3.5, D.R. 16, B.R.
Proposed Zoning: Special Exception for a community building and other civic, social recreational and educational uses.

Address: 5,047
District: 1st

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. Use of building & type of construction will determine allowable area.

☐ 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. Burnham
Charles E. Burnham
Plans Review Chief
CDB:ry

BOARD OF EDUCATION OF BALTIMORE COUNTY
TOWSON, MARYLAND - 21204

Date: March 23, 1977

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

Z.A.C. Meeting of: March 22, 1977

Item No: 204
Property Owner: Colin A. & Rose H. Hoffman
Location: NW/C Woodward Rd. & Powers Lane
Present Zoning: D.R. 3.5, D.R. 16, B.R.
Proposed Zoning: Special Exception for a community building and other civic, social, recreational and educational uses.

District: 1st
No. Acre: 5.0474

Dear Mr. DiNenna:

No hearing on student population.

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

NWP/lip

JOSEPH A. MULLIGAN, CHAIRMAN
T. BAYARD WILLIAMS, JR., PRESIDENT
MARION W. MONTAGNI
THOMAS J. MOYER
MRS. LOUISE F. THORNTON
ROGER W. MONTAGNI
ALVIN LITVICK
MRS. MARY ANN LITVICK
RICHARD W. LITVICK

Choice times available at conveniently-located FORTY WEST RACQUET CLUB
Opening September, 1977

Are you looking for a place to play tennis? The Forty West Racquet Club is the answer. Located in the heart of Towson, Maryland, this new club offers a variety of tennis facilities and a full range of services. The club is open to all ages and skill levels. For more information, call 410-281-1111.

MEMBERSHIP SCHEDULE

Category	Regular	Junior	Senior	Family	Life
Initiation Fee	\$10.00	\$5.00	\$10.00	\$20.00	\$100.00
Annual Dues	\$15.00	\$8.00	\$12.00	\$30.00	\$500.00
Guest Fee	\$5.00	\$3.00	\$5.00	\$10.00	N/A

CLUB HOURS
For 1977-78: Monday - 7 am - 9 am, Tuesday - 7 am - 9 am, Wednesday - 7 am - 9 am, Thursday - 7 am - 9 am, Friday - 7 am - 9 am, Saturday - 7 am - 9 am, Sunday - 7 am - 9 am.

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

No. 4688

Date: Mar. 22, 1977 ACCOUNT 01-662

AMOUNT \$50.00

RECEIVED FROM: Alton H. Janner, 2612 N. Charles St., Balto., Md. 21218

FOR: Petition for Special Exception for Colin A. Hoffman

889 6 7 1977 22 5 00 CASH

VALIDATION OR SIGNATURE OF CASHIER

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

No. 51740

Date: May 17, 1977 ACCOUNT 01-662

AMOUNT \$50.00

RECEIVED FROM: Bercom Land Leasing Corp., 1009 Saint Paul Street, Baltimore, Md. 21202

FOR: Cost of Appeal for Colin A. Hoffman - Petitioner

889 6 7 1977 17 8 00 CASH

VALIDATION OR SIGNATURE OF CASHIER

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

No. 51738

Date: May 17, 1977 ACCOUNT 1-662

AMOUNT \$50.00

RECEIVED FROM: Messrs. Sussman, Judd & Decker 9 West, Baltimore, Md. 21201

FOR: Cost of Appeal for Colin A. Hoffman - Petitioner

889 6 7 1977 17 8 00 CASH

VALIDATION OR SIGNATURE OF CASHIER

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

No. 51739

Date: May 17, 1977 ACCOUNT 01-662

AMOUNT \$50.00

RECEIVED FROM: Balto. County, Md. Measurement Account, John V. Bessian, 3rd, People's Council

FOR: Cost of Appeal for Colin Hoffman - Petitioner

889 6 7 1977 17 8 00 CASH

VALIDATION OR SIGNATURE OF CASHIER

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

No. 46544

Date: April 18, 1977 ACCOUNT 01-662

AMOUNT \$52.25

RECEIVED FROM: James D. Nolan, Esq., 204 V. Penna. Ave., Towson, Md. 21204

FOR: Advertising and posting of property for Colin Hoffman

889 6 7 1977 18 5 25 CASH

VALIDATION OR SIGNATURE OF CASHIER

OFFICE OF THE TIMES
TOWSON, MD. 21204 March 24, 1977

THIS IS TO CERTIFY, that the annexed advertisement of Petition for Special Exception 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 one successive weeks before the 14th day of April 1977, that is to say, the same was inserted in the issues of March 24, 1977.

STROMBERG PUBLICATIONS, INC.
BY *Paul Smile*

CERTIFICATE OF PUBLICATION
TOWSON, MD. March 24, 1977

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 a week for one time successive weeks before the 14th day of April 1977, the 22nd publication appearing on the 24th day of March 1977.

THE JEFFERSONIAN,
L. Leland Smith
Manager

Cost of Advertisement, \$ _____

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1st Date of Posting: MARCH

Posted for: *NE/Sec. of N. Woodward Rd. at Powers Lane*

Petitioner: *Colin A. Hoffman*

Location of property: *NE/Sec. of N. Woodward Rd. at Powers Lane*

Location of signs: *On E/W Woodward Rd. at Powers Lane, Drive & N/S of Powers Lane, 175 to E/W Woodward Rd.*

Remarks: *See map & record*

Posted by: *Thomas R. Ireland* Date of return: MARCH 21, 1977

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1st Date of Posting: MAY 21, 1977

Posted for: *APPEAL*

Petitioner: *Colin A. Hoffman*

Location of property: *NE/Sec. of N. Woodward Rd. at Powers Lane*

Location of signs: *On E/W Woodward Rd. at Powers Lane, Drive & N/S of Powers Lane, 175 to E/W Woodward Rd.*

Remarks: *See map & record*

Posted by: *Thomas R. Ireland* Date of return: MAY 22, 1977

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received * this 14th day of March 1977. Filing Fee \$50.00 Received ☒ Cash ☐ Other

Petitioner: *Colin Hoffman* Submitted by: *Helen Long*

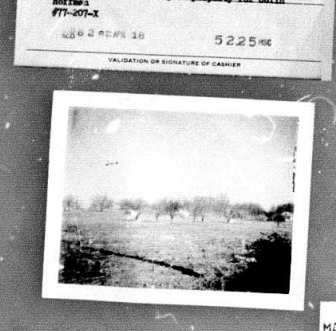
Petitioner's Attorney: *James Nolan* Reviewed by: *John Smith*

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

PETITION MAPPING PROGRESS SHEET

FUNCTION	Wall Map		Original		Duplicate		Tracing		200 Sheet	
	date	by	date	by	date	by	date	by	date	by
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by ZC, BA, CC, CA										
Reviewed by: _____			Revised Plans: _____							
Change in outline or description: Yes ☐ No ☒										
Previous case: <i>74-28X</i>			Map # _____							

(Closed May 25, 1976)





Play it best at FORTY WEST

Four Tennis Courts

Four Racquet Ball/Handball Courts

Two Platform Tennis Courts

Glare-free Lighting

True Bounce Latex Playing Surface

Fully-Equipped Clubhouse

Exciting Party

Accommodations

Complete Pro Shop

Professional Instruction:

Clinics & Personal Instruction

Ball Machines

Racquet Stringing

Sitting Service for

Toddlers-Up

Play it best at
FORTY WEST

FORTY WEST RACQUET CLUB
6421 Baltimore National Pike
Baltimore, Maryland 21228

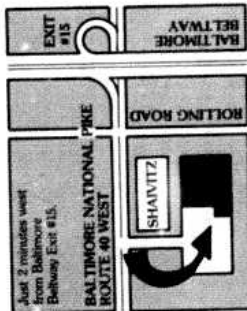
First Class
Permit No. 17878
BALTIMORE, MD.

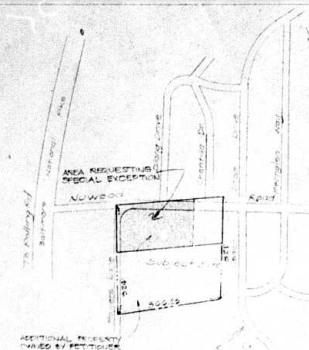
Business Reply Mail

No postage stamp necessary if mailed in the United States

Postage will be paid by

FORTY WEST RACQUET CLUB
6421 Baltimore National Pike
Baltimore, Maryland 21228





GENERAL NOTES

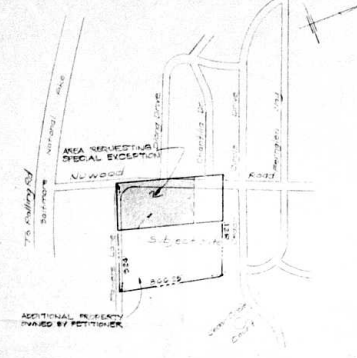
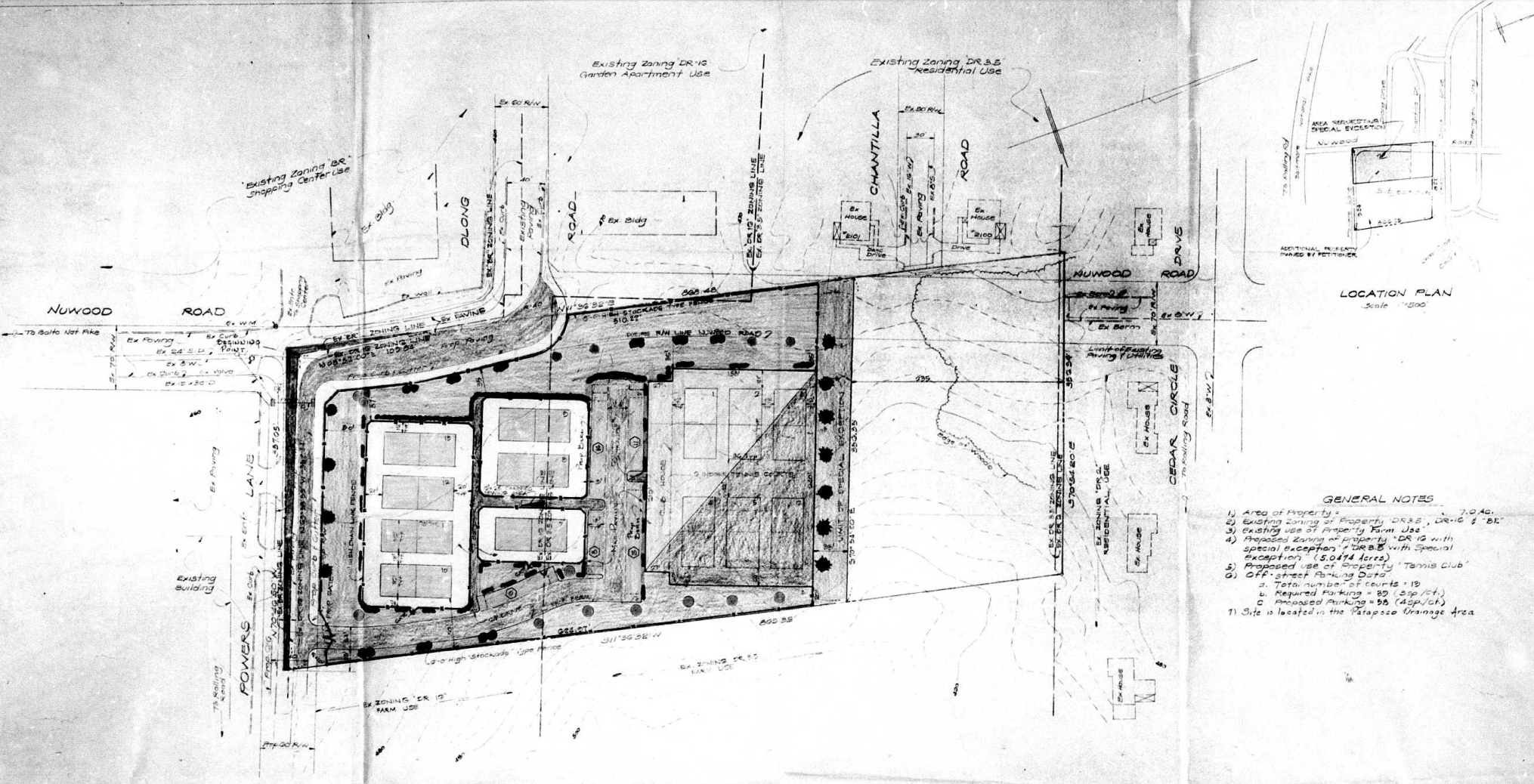
- 1) Area of Property = 7.0 AC.
- 2) Existing Zoning of Property "DR-18", 24-18 & "B-1"
- 3) Existing use of Property "Farm Use"
- 4) Proposed Zoning of Property "DR-18" with Special Exception "DR-18 with Special Exception" (5,047.42 acres)
- 5) Proposed Use of Property "Tennis Club"
- 6) Off-street Parking:
 - a. Total number of parking = 18
 - b. Required Parking = 20 (500/sq.ft.)
 - c. Proposed Parking = 18 (450/sq.ft.)
- 7) Site is located in the Potomac Drainage Area

PLAT TO ACCOMPANY PETITION
for
SPECIAL EXCEPTION OF PROPERTY
VICINITY
NUWOOD ROAD ~ POWERS LANE

Election District #1
Scale: 1"=50'

Baltimore County, Md
January 27, 1977

MAR 22 1979



- GENERAL NOTES**
- 1) Area of Property = 7.046.
 - 2) Existing zoning of Property DR-15, DR-16 & DR-17.
 - 3) Existing use of Property Farm Use.
 - 4) Proposed zoning of Property DR-15 with special exception of DR-15 with Special exception (5.0494 acres).
 - 5) Proposed use of Property "Tennis Club".
 - 6) Off-street Parking Data:
 - a. Total number of courts = 13
 - b. Required Parking = 80 (50p/cf.)
 - c. Proposed Parking = 55 (40p/cf.)
 - 7) Site is located in the Patapsco Drainage Area.

PLANT LIST

Symbol	Type	Size	Quantity
●	Major deciduous	12-14'Ht.	14 trees
●	Evergreen trees	5-10'Ht.	70-100'Ht.
●	Flowering trees	0-8'Ht.	15-30'Ht.
●	Shrubs	5-10'Ht.	5-10'Ht.

DLC Pet # 2



PLAT TO ACCOMPANY PETITION
 For
SPECIAL EXCEPTION OF PROPERTY
 VICINITY
NUWOOD ROAD ~ POWERS LANE
 Election District 7
 Baltimore County, Md.
 January 27, 1979



MDOT
 MARYLAND DEPARTMENT OF TRANSPORTATION
 200 EAST BALTIMORE STREET
 BALTIMORE, MARYLAND 21202

[illegible]

8-7 NW



4.