

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, the undersigned, being the owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing Under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve off-street parking in a R-1.1 residential zone.

See attached description

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

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

Carroll M. Radebaugh & Joseph L. Radebaugh
 Petitioners
 Address: 122 Burke Avenue
 Towson, Maryland 21204

John B. Howard
 Attorney for owners
 Address: 122 Burke Avenue
 Towson, Maryland 21204

Joseph L. Radebaugh
 Petitioner's Attorney
 Address: 122 Burke Avenue
 Towson, Maryland 21204

ORDERED BY the Zoning Commissioner of Baltimore County, this 7th day of February, 1978, 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 14th day of February, 1978, at 1:00 o'clock, P.M.

John B. Howard
 Zoning Commissioner of Baltimore County

BALTIMORE COUNTY

ZONING PLANS

ADVISORY COMMITTEE



PETITION AND SITE PLAN

EVALUATION COMMENTS

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

COUNTY OFFICE BLDG.
 111 W. Chesapeake Ave.
 Towson, Maryland 21204

670
 Nicholas B. Commodari
 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

April 10, 1978

John B. Howard, Esquire
 Cook, Howard, Downes & Tracy
 400 Washington Avenue
 Towson, Maryland 21204

RE: Special Hearing Petition
 Item Number 152
 Petitioner - Carroll Radebaugh
 Joseph Radebaugh

Dear Mr. Howard:

The Zoning Plans Advisory Committee has reviewed the plant 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 suitability of the requested zoning.

Locat. 4 or the north side of Burke Avenue approximately 75 feet east of Center Avenue in the 9th Election District, the subject property is presently improved with a detached dwelling, which is proposed to be razed and a parking lot constructed. This parking area will be utilized by customers of your client's florist shop, which is located adjacent to and east of this site.

The overall property was the subject of a previous zoning hearing (Case #74-147-2) in which setback Variances were granted. As you are aware, the subject property is presently zoned D.R. 5.5 and apparently is considered a nonconforming use. Section 104 of the Baltimore County Zoning Regulations indicates that no such use of a building, structure or a parcel of land shall be hereafter extended more than 25% of the ground floor area of

John B. Howard, Esquire
 Page 2
 Item Number 152
 April 10, 1978

buildings so used. With this in mind and because it was not clarified at the last hearing, proof that the proposed parking area does not conflict with the aforementioned section must be submitted at the time of this scheduled hearing. I emphasized that this should be done in order to alleviate any future problems that may result when applying for the necessary building permits should this petition be granted.

At the time of this writing the comments from the Office of Current Planning and Development were not available. However, it was verbally indicated to me by Mr. John Wimbly of said office that the access into this property would have to be revised. After deciding which revisions are to be made, all future plans should reflect this change as well as the proposed 54 foot right-of-way of Burke Avenue.

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. Commodari
 NICHOLAS B. COMMODARI
 Chairman
 Zoning Plans Advisory Committee

NBC:rf

cc: Gerhold, Cross & Strel
 412 Delaware Avenue
 Towson, Maryland 21204



(over)

BALTIMORE COUNTY
 Department of Public Works
 TOWSON, MARYLAND 21204

THORNTON M. MOURING, P.E.
 DIRECTOR

March 13, 1978

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

Re: Item #152 (1977-1978)
 Property Owner: Carroll M. & Joseph L. Radebaugh
 N/S Burke Ave. 75' E. Center Ave.
 Existing Zoning: D.R. 5.5
 Proposed Zoning: Special Hearing to allow offstreet parking in a residential zone.
 Acres: 0.20 District: 9th

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.

Comments were supplied for this property for Plat IDEA No. 76-189; and, in connection with the Zoning Advisory Committee review of the overall property for Item #7 (1973-1974). Those comments remain valid and are referred to for your consideration.

The capping and plugging of existing water and sanitary sewer service connections upon removal of the existing dwelling (114 Burke Avenue) will be the full responsibility of the petitioner, as will be the removal of nursery beds from the adjacent street right-of-way, and the stabilization of such areas with sod or seed and mulch.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this Item #152 (1977-1978).

Very truly yours,

Thornton M. Mouring
 THORNTON M. MOURING, P.E.
 Chief, Bureau of Engineering

END:EM:PM:SS

cc: J. Trenner

Attachment

4-20 Key Sheet

36 3/4" x 48" Sheet

36 3/4" x 48" Sheet

70 Tax Map

Baltimore County, Maryland
 Department of Public Works
 COUNTY OFFICE BUILDING
 TOWSON, MARYLAND 21204
 December 10, 1973

Bureau of Engineering
 ELLSWORTH H. DIVER, P.E. CHIEF
 Mr. S. Eric DiNenna
 Zoning Commissioner
 County Office Building
 Towson, Maryland 21204

Re: Item #7 (1973-1974)
 Property Owner: Carroll M. Radebaugh, et al
 S/E Cor. of Town Manor, bound by Burke Ave., Center Ave., Linden Terr., & Alpbuth Ave.
 Existing Zoning: D.R. 5.5
 Proposed Zoning: Variances to allow greenhouses, potted plants and other accessory structures 21 feet from property line instead of required 50'
 No. of Acres: 31,123 sq. ft. District 9th

Dear Mr. DiNenna:

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

Highways

S. Burke Avenue, as existing County street, is proposed to be improved in the future at a 14-foot class-type roadway cross-section on a 30-foot right-of-way at this location.

Alpbuth and Center Avenues and Linden Terrace, existing County streets, are proposed to be improved in the future as 30-foot class-type roadway cross-sections on 50-foot right-of-way.

Highway improvements are not required at this time; however, highway right-of-way widening including fill-in areas for eight diagonals at the four intersections and any necessary reversible easements for diagonals are required in connection with any grading or building permit application. Easements are required along the frontages of this site. Any construction or reconstruction of sidewalks, curb and gutter, entrance, screen, etc. will be the full responsibility of the petitioner.

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

Storm Drainage

The petitioner must provide necessary drainage facilities (temporary or permanent) to prevent existing any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Construction of any public works, such as, but not limited to, improper grading or improper installation of drainage facilities, would be the full responsibility of the petitioner.

Item #7 (1973-1974)
 Property Owner: Carroll M. Radebaugh, et al
 Page 2
 December 10, 1973

Water and Sanitary Sewer

Public water supply and sanitary sewerage are serving this property.

Very truly yours,

Ellsworth H. Diver
 ELLSWORTH H. DIVER, P.E.
 Chief, Bureau of Engineering

END:PM:PM:SS

cc: G. Fisher
 W-20 Key Sheet
 36 3/4" x 48" Sheet
 36 3/4" x 48" Sheet
 70 Tax Map

Baltimore County
 Office of Planning and Zoning
 TOWSON, MARYLAND 21204
 201-481-2211

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 #152, Zoning Advisory Committee Meeting, February 7, 1978, are as follows:

Property Owner: Carroll M. and Joseph L. Radebaugh
 Location: N/S Burke Avenue 75' E. Center Avenue
 Existing Zoning: D.R. 5.5
 Proposed Zoning: Special Hearing to allow off street parking in a residential zone
 Acres: 0.20
 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 to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

The number of driveways are excessive. Parking areas and driveways should be combined.

Very truly yours,

John L. Wimbly
 John L. Wimbly
 Planner II
 Current Planning and Development

April 11, 1978

March 17, 1978

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

Item No. 152 - ZMC - February 7, 1978
Property Owner: Carroll M. & Joseph L. Radebaugh
Location: N/S Burke Ave. 75' E Center Ave.
Existing Zoning: D.R. 5.5
Proposed Zoning: Special Hearing to allow off street parking in a residential zone.

Acres: 0.29
District: 9th

Dear Mr. DiNenna:

No major traffic problems are anticipated by the requested parking in a residential zone.

Very truly yours,

Michael E. Flanagan
Michael E. Flanagan
Traffic Engineer Associate

NET/ham

BOARD OF EDUCATION OF BALTIMORE COUNTY

TOWSON, MARYLAND - 21204

Date: February 9, 1978

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

Z.A.C. Meeting of: February 7, 1978

PE: Item No: 152
Property Owner: Carroll M. & Joseph L. Radebaugh
Location: N/S Burke Ave. 75' E Center Ave.
Present Zoning: D.R. 5.5
Proposed Zoning: Special Hearing to allow off street parking in a residential zone.

District: 9th
No. Acres: 0.29

Dear Mr. DiNenna:

No hearing on student population

Very truly yours,

W. Nick Petrulich
W. Nick Petrulich
Field Representative

MD/tp

JOSEPH H. WILLIAMS, PRESIDENT
T. BAYARD WILLIAMS, JR., VICE-PRESIDENT
HAROLD H. WILKINS

THOMAS H. BUTER
MRS. LORRAINE F. CHURCH
ROBERT H. HARTY
ROBERT V. BUREL, SECRETARY

ALVIN LORICK
MRS. M. LORICK R. SMITH, JR.
EDWARD W. HARTY, DVM

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

March 14, 1978

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

Dear Mr. DiNenna:

The following are comments on Item # 152, Zoning Advisory Committee Meeting of February 7, 1978:

Property Owner: Carroll M. & Joseph L. Radebaugh
Location: N/S Burke Ave. 75' E Center Ave.
Acres: 0.29
District: 9th

Metropolitan water and sewer are available, therefore no health hazards are anticipated.

Very truly yours,

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

TMD/KJ/fch

SRC 35 118

IDCA APPLICATION FOR SPECIAL EXCEPTION AND OR SPECIAL PERMIT

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

Carroll M. Radebaugh & Joseph L. Radebaugh
LEGAL OWNER OF THE PROPERTY SHOWN IN BALTIMORE COUNTY, THE PROPERTY OUTLINE OF WHICH IS DRAWN TO SCALE, COMPLETE WITH BEARINGS AND DISTANCES ON 200 FT. SCALE MAPS, WHICH ARE ATTACHED HERETO, HEREBY MAKE APPLICATION TO FILE FOR A SPECIAL PERMIT IN A D.R. 5.5 ZONE TO USE THE HEREIN DISCLOSED PROPERTY FOR Parking in a residential zone

THE PROPERTY IS EXPECTED TO BE IMPROVED AS FOLLOWS:

GROSS SITE AREA 0.19 Acres DEED REF. _____
GRADING _____ % OF OVER ALL SITE WILL REQUIRE GRADING.

BUILDING SIZE
GROUND FLOOR LOT/USE: _____ AREA _____
NUMBER OF FLOORS _____ TOTAL HEIGHT _____
FLOOR AREA RATIO = TOTAL FLOOR AREA DIVIDED BY SITE AREA = _____

BUILDING USE
GROUND FLOOR DRIVE OTHER FLOORS PLANNING BOARD

REQUIRED NUMBER OF PARKING SPACES
GROUND FLOOR _____ OTHER FLOORS _____ TOTAL 22 spaces

PAVING
AREA OF SITE TO BE PAVED TO ACCOMMODATE REQUIRED PARKING SPACES 7920 sq. ft.
(PAVED AREA MAY BE ESTIMATED BY MULTIPLYING REQUIRED NUMBER OF SPACES BY 36')

UTILITIES
WATER: ☒ PUBLIC ☐ PRIVATE, TYPE OF SYSTEM _____

SEWER: ☒ PUBLIC ☐ PRIVATE, TYPE OF SYSTEM _____

UTILITIES SECURITY APPROVAL _____

I CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Carroll M. Radebaugh
Carroll M. Radebaugh & Joseph L. Radebaugh
LEGAL OWNER
ADDRESS: 409 Washington Avenue
Towson, MD 21204

THE PLANNING BOARD HAS DETERMINED ON 3-16-78 THAT THE PROPOSED DEVELOPMENT DOES / DOES NOT CONFORM TO THE REQUIREMENTS OF SUBSECTION 21-119 OF THE BALTIMORE COUNTY ZONING ORDINANCE.

Signed: _____
DATE: 3/17/78
CHAIRMAN, BALTIMORE COUNTY PLANNING BOARD

IDCA FORM NO. 2 REVERSD 6-18-77

Paul H. Reische
CHIEF

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

Attention: Mr. Commodore, Chairman
Zoning Advisory Committee

Re: Property Owner: Carroll M. & Joseph L. Radebaugh

Location: N/S Burke Ave. 75' E Center Ave.

Item No. 152

Zoning Agenda Meeting of 2/7/78

Comments:

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

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____ 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.
- () 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.
- (x) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWED BY: *George M. Hageman*
Planning Board
Special Inspection Division
Fire Prevention Bureau

RE: PETITION FOR SPECIAL HEARING
N/S of Burke Ave. 75' E of Center Ave.,
9th District
BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY

CARROLL M. RADEBAUGH, et al
Petitioners
Case No. 78-229-SPH
1111111

ORDER TO ENTER APPEARANCE

M. 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.

John W. Hession, III
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, 1978, a copy of the foregoing Order was mailed to John B. Howard, Esquire, 409 Washington Avenue, Towson, Maryland 21204, Attorney for Petitioners.

John W. Hession, III

JOHN D. SEYFERT
DIRECTOR

February 21, 1978

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

Dear Mr. DiNenna:

Comments on Item #152 Zoning Advisory Committee Meeting, February 7, 1978 are as follows:

Property Owner: Carroll M. & Joseph L. Radebaugh
Location: N/S Burke Ave. 75' E Center Ave.
Existing Zoning: D.R. 5.5
Proposed Zoning: Special Hearing to allow off street parking in a residential zone.

Acres: 0.29
District: 9th

The items checked below are applicable:

- ☒ A. Any purpose construction shall conform to Baltimore County Building Code, 1970 Edition and the 1971 Supplement and other applicable codes.
- ☒ B. A grading and grading 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 corner lot.
- ☐ G. Requested setback variance conflicts with the Baltimore County Building Code. See Section _____.

Very truly yours,

Charles E. Burman
Charles E. Burman
Planning Board Chief
CDE/rj

PETITION FOR SPECIAL HEARING
N/S of Burke Avenue, 75' East
of Center Avenue - 9th
Election District
Carroll M. Radebaugh, et al.,
Petitioners
NO. 78-229-SPH (Item No. 152)
BEFORE THE
DEPUTY ZONING COMMISSIONER
OF
BALTIMORE COUNTY

ORDER FOR APPEAL

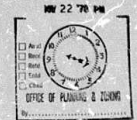
MR. COMMISSIONER:

Please note an appeal to the County Board of Appeals from your Opinion and Order of May 11, 1978, and each and every part thereof on behalf of Dr. Constant J. Georges and Mrs. Belah Georges, owners of adjacent property to the subject property, pursuant to Dr. Georges' check No. 1259 dated May 17, 1978, payable to Baltimore County in the amount of \$70.00, enclosed herewith.

James D. Nolan
James D. Nolan
Nolan, Blumhoff & Williams
204 W. Pennsylvania Avenue
Towson, Maryland 21204
823-7800
Attorneys for Protestants

I HEREBY CERTIFY that on this 22nd day of May, 1978, a copy of the foregoing ORDER FOR APPEAL was mailed, postage prepaid to JOHN B. HOWARD, ESQUIRE, ATTORNEY FOR PETITIONERS, 409 Washington Avenue, Towson, Maryland 21204, and to CARROLL M. RADEBAUGH, ET AL., P.O. Box 5517, 409 Washington Avenue, Towson, Maryland 21204.

James D. Nolan



RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
N/S of Burke Avenue, 75' E of :
Center Avenue, 9th District : OF BALTIMORE COUNTY
CARROLL M. RADEBAUGH, et al, : Case No. 78-229-SPH
Petitioners :

ORDER FOR APPEAL

Mr. Commissioner:

Please note an appeal from the decision of the Deputy Zoning Commissioner in the above-entitled matter, under date of May 11, 1978, to the County Board of Appeals and forward all papers in connection therewith to said Board for hearing.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

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

I HEREBY CERTIFY that on this 17th day of June, 1978, a copy of the foregoing Order was mailed to Mr. and Mrs. Constant J. Georges, 713 Hillen Road, Towson, Maryland 21204; Mr. Wilbur H. Perry, 113 Burke Avenue, Towson, Maryland 21204; and Dr. David Schlenoff, 228 East Burke Avenue, Towson, Maryland 21204, Protestants; and John B. Howard, Esquire, 409 Washington Avenue, Towson, Maryland 21204, Attorney for Petitioners.

John W. Hession III



PEOPLE'S COUNSEL FOR BALTIMORE COUNTY * IN THE CIRCUIT COURT
RE: PETITION FOR SPECIAL HEARING * FOR
N/S OF BURKE AVENUE, 75' E. OF * BALTIMORE COUNTY
CENTER AVENUE * Misc. 6762
9TH DISTRICT *
JOSEPH L. RADEBAUGH *
CARROLL M. RADEBAUGH et al *
Petitioners *

vs.

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

MEMORANDUM OPINION AND ORDER

This case involves an appeal to the Circuit Court for Baltimore County on behalf of People's Counsel for Baltimore County, from the Order of the County Board of Appeals (hereinafter referred to as the Board), dated January 31, 1979, which granted the Petitioners' request for off-street parking in a residential zone by way of a special hearing. Prior to that proceeding, an Order of the Deputy Zoning Commissioner, dated May 11, 1978, also granted the requested off-street parking in a residential zone.

The Petitioners, Carroll M. Radebaugh et al and their families own the subject property which is part of an entire block being formed by Burke Avenue, Center Avenue, Linden Terrace and Algurth Avenue. Within this block, the Radebaughs have been operating a florist business located at 120 Burke Avenue, which has operated continuously since 1924. The entire block is zoned DR 5.5 with the florist operation being a valid non-conforming use, and in addition, within the block, there are four separate residences occupied and owned by the Radebaugh family. In other words, the Radebaughs own the entire block except for a dwelling located within the block on the

RE: PETITION FOR SPECIAL HEARING : BEFORE THE
N/S of Burke Avenue, 75' E of : DEPUTY ZONING
Center Avenue - 9th Election District : COMMISSIONER
Carroll M. Radebaugh, et al - Petitioners :
NO. 78-229-SPH (Item No. 152) : OF
BALTIMORE COUNTY

This matter comes before the Deputy Zoning Commissioner as a result of a Petition for a Special Hearing to approve off-street parking in a residential zone. The subject property is located at the north side of Burke Avenue, 75 feet east of Center Avenue, in the Ninth Election District of Baltimore County. Comprising .20 acres of land, the property is improved with a single story dwelling and is east of the Petitioners' property. The Petitioners propose to raise the existing building and to construct a parking lot.

Testimony on behalf of the Petitioners indicated that they have operated a flower business at 120 Burke Avenue since 1924, with accompanying retail sales and a flower shop being operated at Burke and Algurth Avenues since 1940.

A letter from a nearby resident, Mrs. Barbara F. Bachur, 109 Linden Terrace, indicated support of the Petitioners' plans. (See Petitioners' Exhibit No. 1.)

Other nearby residents, of numbers 112, 113, and 228 East Burke Avenue, testified in protest of the request, indicating their fears of a negative effect upon the value of their homes if this Petition were granted.

Without reviewing the evidence further in detail but based upon all of the evidence presented at the hearing and in accordance with the power granted to the Deputy Zoning Commissioner by Section 500.7 of the Baltimore County Zoning Regulations, it is the opinion of the Deputy Zoning Commissioner that

northeast corner of Burke Avenue and Center Avenue, which is owned by Dr. Constant Georges, who is the sole protestant.

The Towson Manor Improvement Association, Inc., through its Board of Directors, passed a resolution favoring the granting of the petition. About two hundred and ten persons who reside in the area (majority are members of the Towson Manor Improvement Association, Inc.) signed petitions stating that they were not opposed to the request made by the Radebaughs.

That the Board gave great weight and consideration to the support exhibited by the community in favor of the Radebaughs is evident by the following language which appears in the Board's decision:

"The Board is impressed with the fact that this commercial operation in a residential neighborhood has been operated in such a way that the Radebaughs are obviously good neighbors, and have operated their business over the years in such a fashion so as to have the support of the neighboring community rather than opposition for this proposal."

This case was not argued before this Court, but was submitted on the record compiled before the Board, along with memoranda submitted by both the Petitioner's counsel and People's Counsel. Attorney for the Petitioner, like the members of the Board, was also greatly impressed by the support the Petitioner received from the area residents. This fact is indicated from the following statement in his memorandum:

"The need for the proposed lot was supported by the testimony of a number of area residents and unanimously endorsed by the Towson Manor Improvement Association, Inc. . . . Only Dr. Constant Georges appeared in opposition to the petition approval."

It has been said that an umpire at the plate is worth five thousand in the stands. In this case, the Court is of the opinion that Dr. Georges is the umpire at the plate.

the prerequisites of Section 409.4 have been met and that the health, safety, and general welfare of the community will not be adversely affected by the granting of the Special Hearing for off-street parking in a residential zone.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 17th day of May, 1978, that the Special Hearing for off-street parking in a residential zone, for the Radebaugh flower and florist business at the subject location, should be and the same is hereby GRANTED, from and after the date of this Order, subject to the approval of a site plan by the Department of Public Works, the Department of Traffic Engineering, the Department of Permits and Licenses, and the Office of Planning and Zoning, to include landscaping approval by the Division of Current Planning and Development.

Deputy Zoning Commissioner of Baltimore County

ORDER RECEIVED FOR FILING

DATE May 14, 1978

Blair P. Hays
Blair P. Hays
Deputy Zoning Commissioner

The People's Counsel for Baltimore County as well as the Petitioner's attorney raise numerous issues and direct the Court's attention to various sections of the Baltimore County Zoning Regulations. However, this Court, in reviewing the zoning regulations and the testimony of James E. Dyer of the Office of Zoning and Planning, finds that it need not concern itself with all of the issues raised by counsel. This Court is convinced and persuaded that those sections of the Zoning Regulations cited by Mr. Dyer clearly control the petition before this Court. The property in question, zoned DR 5.5, is in a transition zone as it is adjacent to an existing one family detached dwelling located on the southwest corner of Burke Avenue and Center Avenue and owned by Dr. Constant Georges, the lone protestant.

The transition area came into being at the same time as density zoning which was in the year 1970-1971. Density zoning permitted for the first time a clustering of various types of housing units in all DR zones. For example, in a DR 5.5, if one wished to construct apartments, he could do so provided he maintains the density. In this type of situation, to protect adjoining property owners, the residential transition area was established within which only houses similar to those existing on adjoining land could be constructed. In other words, a transition zone is an area that lies within 300' of a dwelling in a DR zone. The houses within that area (300') are restricted to houses similar to those of the adjoining property. In this particular case, it is restricted to a dwelling house.

The residential transition zone is defined in Baltimore County Zoning Regulations, Section 1801.B which reads as follows:

PETITION FOR SPECIAL HEARING : BEFORE THE
N/S of Burke Avenue, 75' East : DEPUTY ZONING COMMISSIONER
of Center Avenue - 9th :
Election District :
Carroll M. Radebaugh, et al. : OF
Petitioners : BALTIMORE COUNTY
NO. 78-229-SPH (Item No. 152) :

ORDER FOR APPEAL

MR. COMMISSIONER:

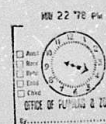
Please note an appeal to the County Board of Appeals from your Opinion and Order of May 11, 1978, and each and every part thereof on behalf of Dr. Constant J. Georges and Mrs. Belshak Georges, owners of adjacent property to the subject property, pursuant to Dr. Georges' check No. 1259 dated May 17, 1978, payable to Baltimore County in the amount of \$76.00, enclosed herewith.

James D. Nolan

Nolan, Plumbhoff & Williams
Nolan, Plumbhoff & Williams
204 N. Pennsylvania Avenue
Towson, Maryland 21204
823-7800
Attorneys for Protestants

I HEREBY CERTIFY that on this 17th day of June, 1978, a copy of the foregoing ORDER FOR APPEAL was mailed, postage prepaid to JOHN B. HOWARD, ESQUIRE, ATTORNEY FOR PETITIONERS, 409 Washington Avenue, Towson, Maryland 21204, and to CARROLL M. RADEBAUGH, ET AL., P.O. Box 5517, 409 Washington Avenue, Towson, Maryland 21204.

James D. Nolan



B. Dwelling - Type and Other Use Restrictions Based on Existing Subdivisions and Developments. Characteristics (Bill No. 100, 1970).

1. Residential Transition Areas and Uses Permitted Therein.
 - a. Definitions. For the purposes of this article:
 1. A residential transition area in any D.R.1, D.R.2, D.R.3, D.R.5.5, D.F. 10.5 zone or part thereof which lies (a) within 300 feet of any point on a dwelling other than an apartment building, or (b) within 250 feet of any point lying within a vacant lot of record which is itself wholly or partially classified as D.R. and which is two acres or less in area. (Emphasis added)

Counsel for the Petitioners concede that the subject property is in a transition area as defined above (Bill No. 100, 1970), but argue that they are not subject to the transition area regulations because their property is specifically exempted under the provisions of Subsection 1802.3 of the Baltimore County Zoning Regulations. A careful reading of the Baltimore County Zoning Regulations refutes the contention advanced by the Petitioners. The property is clearly subject to the transition area regulations set forth in Section 1801.B.

In addition, the Petitioners argue that approximately eight years after the adoption of 18, the Zoning Office did not realize and through error of interpretation did not strictly adhere to the transition area requirements. The Petitioners rationalize that since this case was filed in January, 1978, they should have been afforded the same interpretation and/or policy. This Court is duty bound to follow the law and cannot follow any misinterpretations and/or policies contrary to the law. The transition area created by Article 18 was

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BALTIMORE COUNTY
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COUNTY CLERK
BY

designed and intended specifically to protect and in fact does protect property owners such as Dr. Georges whose testimony weighs for greater than the 5000 umpires in the stand. Without this protection, Dr. Georges would have immediately adjacent to his home a parking lot with all its confusion, noises, exhaust fumes and litter.

The Court is aware that in a zoning appeal case such as the case at bar, in its limited function of judicial review, it may not substitute its judgment for that of the Board; and if the evidence supporting the decision of the board is substantial and renders the question of its action fairly debatable, the Board must be affirmed. However, the Court is of the opinion that the action of the Board in this case was clearly erroneous as to the law and facts, and was arbitrary, capricious and illegal and must be reversed.

For the reasons stated, and in conformity with the foregoing opinion, it is this 2nd day of November, 1979, by the Circuit Court for Baltimore County, ORDERED, that the Order of the County Board of Appeals of Baltimore County, dated January 31, 1979, be and the same is hereby **REVERSED**.

Judge Frank E. Cicone

MANDATE Court of Special Appeals of Maryland

No. 1478, September Term, 1979

Joseph L. Radebaugh et al.
v.
People's Counsel for Baltimore County

1/10/80: Motion to stay proceedings filed by counsel for appellants.
1/28/80: Motion to stay granted
3/6/81: Motion to Dismiss Appeal filed by counsel for appellants and treated as a line to dismiss.
3/10/81: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court for Baltimore County
Record \$25.63
Stenographer's Costs

In Court of Special Appeals:

Filing Record on Appeal \$10.00
Printing Brief for Appellant 0
Reply Brief 0
Portion of Record Extract - Appellant 0
Printing Brief for Cross-Appellee 0

Printing Brief for Appellee 0
Portion of Record Extract - Appellee 0
Printing Brief for Cross-Appellant 0

STATE OF MARYLAND, Set:

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

In testimony whereof, I have hereunto set my hand and affixed the seal of the Court of Special Appeals, this tenth day of March A.D. 1981.

Clerk of the Court of Special Appeals of Maryland.

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

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 9th day of January, 1981 a copy of the foregoing was mailed to Gary C. Duvall, Esquire, Special People's Counsel, 401 Washington Avenue, Towson, Maryland 21204 and to John W. Hession, 3rd, People's Counsel, County Office Building, Towson, Maryland 21204.

Herbert R. O'Connor, III

Baltimore County Council and then a public hearing before the County Board of Appeals; a request for a zoning reclassification will also be presented to the County Council for its consideration of the 1980 Comprehensive Zoning Map.

9. A zoning reclassification of the subject property would render the subject case moot in that the Appellants would then be able to implement an off-street parking plan without the necessity of pursuing this case.

10. The Appellants will incur substantial costs for the record and attorneys' fees in this Appeal; these expenses could be unnecessary depending on the outcome of the reclassification efforts.

11. The Appellants request a stay until April 1, 1980, at which time the emergency reclassification procedure is expected to be completed, subject to the further order of this Court.

12. The interests of justice would be served by the granting of this stay in that this Court may not be required to render a decision herein, depending on the outcome of the zoning reclassification efforts.

WHEREFORE, the Appellants move this Honorable Court for an Order to stay these proceedings until April 1, 1980, subject to the further order of this Court.

John B. Howard

Herbert R. O'Connor, III
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
Towson, Maryland 21204
823-4111
Attorneys for the Appellants

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND
SEPTEMBER TERM, 1979 - NO. _____
CIVIL LAW NO. 4762 IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY, MARYLAND

JOSEPH L. RADEBAUGH and CARROLL M. RADEBAUGH
Appellants
v.
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Appellee

MOTION FOR STAY

The Appellants, Joseph L. Radebaugh and Carroll M. Radebaugh, by their attorneys, John B. Howard and Herbert R. O'Connor, III, pursuant to Maryland Rule 1055, respectfully move for an Order to stay the proceedings in this Court and for reasons say the following:

1. This case arises from a Petition for Special Hearing for off-street parking in a residential zone, which was filed with the Zoning Commissioner of Baltimore County on January 24, 1978.
2. Counsel for the Appellee, Gary C. Duvall, (Special People's Counsel) has stipulated and agreed to a stay of these proceedings.
3. The Appellants are proprietors of a retail flower business which has been operated by their family at the present site since 1924.

RE: PETITION FOR SPECIAL HEARING * IN THE
for off-street parking in a * CIRCUIT COURT
Residential Zone *
N/S Burke Avenue *
E. of Center Avenue *
9th District *
BALTIMORE COUNTY
Carroll M. Radebaugh, et al *
Petitioners * 11/21/6762

ANSWER TO PETITION OF APPEAL

Carroll M. Radebaugh and Joseph L. Radebaugh, Petitioners and Appellees, in Answer to the Petition of Appeal of People's Counsel for Baltimore County, Appellant, state the following:

1. They admit the allegations contained in Paragraph 1.
2. They deny the allegations contained in Paragraphs 2, 3, 4, 5, 6, 7, 8 and 9.
3. Further answering the Petition, they aver that People's Counsel for Baltimore County lacks standing to prosecute this Appeal.

WHEREFORE, Petitioner and Appellee respectfully request that:

- a) The Appeal be dismissed; or
- b) The Order of the Board of Appeals be affirmed; and,
- c) That they be granted such other and further relief as the nature of this cause may require.

John B. Howard
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
Towson, Maryland 21204
823-4111
Counsel for Petitioners & Appellees

4. The Deputy Zoning Commissioner, after conducting a hearing, passed an Order on May 11, 1978 which granted the Petition; an Appeal was taken to the County Board of Appeals which, after a hearing, passed an Order of January 31, 1979 granting the Petition.

5. An appeal was noted to the Circuit Court for Baltimore County where a hearing was held on May 8, 1979; after almost six months, a Memorandum Opinion and Order were filed November 6, 1979 which reversed the Order of the County Board of Appeals.

6. The subject property was purchased when there were no known zoning regulations which would prevent the use of the property for parking; after the Appellants had acquired the property and the Petition had been filed, the Office of the Zoning Commissioner developed a new policy for interpreting and applying a regulation which prevents use of the subject property for parking; this policy and its application were the bases of the Memorandum Opinion and Order of the Circuit Court for Baltimore County.

7. More than two years and ten months have passed since the filing of the Petition with the Zoning Commissioner and the Appellants have expended substantial time, effort and money for engineering plans, site plans, photographs and for attorneys' fees in the preparation of numerous pleadings, memoranda and correspondence and for the attendance at numerous hearings and meetings.

8. The Appellants are requesting a zoning reclassification for the subject property pursuant to emergency procedures provided in Baltimore County Code, which will nullify resolutions of the Baltimore County Planning Board and the

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 29th day of March, 1979, a copy of the foregoing Answer to Petition of Appeal was mailed to Gary C. Duvall, Esquire, 401 Washington Avenue, Towson, Maryland 21204, Attorney for Appellants and to the Baltimore County Board of Appeals, Room 219, Court House, Towson, Maryland 21204.

John B. Howard

Rec'd 3/29/79
10:30am

Case No. 6762 Gary C. Duval	RE: PETITION FOR SPECIAL HEARING N/E of Burke Avenue, 75' E of Center Avenue, 9th District	ADVANCE COSTS Petitioner's Atty. 5.00 Clerk 50.00 Sheriff
	PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	Paid 2/11/78 Receipt No. 12200 AMOUNT DUE Clerk 25.00 Sheriff 50.00 Def't Atty. Per Paid Per Receipt No. Per Record Per
John B. Howard	JOSEPH L. RADEBAUGH CARROLL M. RADEBAUGH, et al Petitioners	

- (1) February 26, 1979 Order for Appeal from the People's Counsel for Baltimore County from the Order of the County Board of Appeals of Baltimore County #4.
- (2) February 26, 1979 People's Counsel for Baltimore Co. Petition #4.
- (3) Feb. 28, 1979 Certificate of Notice #4.
- (4) Mar. 27, 1979 App. of John B. Howard for Petitioners and Appellees. Same day Answer to Petition #4 Appeal #4.
- (5) Mar. 27, 1979 Answer and transcript of proceedings from County Board of Appeals of Baltimore County #4.
- May 3, 1979 Hon. Frank E. Cicone, hearing had, opinion to be filed.
- (6) Nov. 6, 1979 Memorandum Opinion & Order of Court that the Order of the County Board of Appeals of Baltimore County, dated January 31, 1979, be & the same is hereby REVERSED #4 (770).
- (7) Nov. 28, 1979 Petitioner's (Radebaugh) Order for Appeal to the Court of Special Appeals #4 (Appeals Docket 1/60).

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CLERK OF COURT
JAN 31 1979

MISCELLANEOUS DOCKET No. 11

PAGE 212

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY IN THE
RE: PETITION FOR SPECIAL HEARING
N/S of BURKE AVENUE, 75' E. OF
CENTER AVENUE
9TH DISTRICT
JOSEPH L. RADEBAUGH
CARROLL M. RADEBAUGH, et al
Petitioners
V.
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

ORDER FOR APPEAL BY JOSEPH L. RADEBAUGH AND
CARROLL M. RADEBAUGH, PETITIONERS

MR. CLERK:

Enter an Appeal to the Court of Special Appeals on behalf
of Joseph L. Radebaugh and Carroll M. Radebaugh, Petitioners and
Appellees herein, from the Judgment entered in this action on
November 6, 1979.

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BALTIMORE COUNTY
CLERK OF COURT
JAN 31 1979

JOHN B. HOWARD

HERBERT R. O'CONNOR, III

Cock, Howard, Domes & Tracy
210 Allegheny Avenue
Towson, Maryland 21204
823-4111
Attorneys for Appellees

I HEREBY CERTIFY that on this 28 day of November, 1979,
a copy of the foregoing was mailed to Gary C. Duval, Esquire,
Special People's Counsel, 401 Washington Avenue, Towson, Maryland
21204.

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CLERK OF COURT
JAN 31 1979

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CLERK OF CIRCUIT
COURT, BALTO. CO.

HERBERT R. O'CONNOR, III

B. Leelling - Type and Other Use Restrictions Based
On Existing Subdivisions and Development
Characteristic (Bill No. 100, 1970)

1. Residential Transition Areas and Uses
Permitted Therein.

a. Definitions. For the purposes
of this article:
1. A residential transition area in any
D.R.1, D.R.2, D.R.3.5, D.R.5.5,
D.R. 10.5 zone or part thereof which
lies (a) within 300 feet of any point on
a dwelling other than an apartment
building, or (b) within 150 feet of any
point lying with a vacant lot of
record which is itself wholly or partially
classified as D.R. and which is two
acres or less in area. (Emphasis added)

Counsel for the Petitioners concede that the subject property is
in a transition area as defined above (Bill No. 100, 1970), but argue that they
are not subject to the transition area regulations because their property is
specifically exempted under the provisions of Subsection 1802.3 of the
Baltimore County Zoning Regulations. A careful reading of the Baltimore County
Zoning Regulations refutes the contention advanced by the Petitioners. The
property is clearly subject to the transition area regulations set forth in
Section 1801.B.

In addition, the Petitioners argue that approximately eight years
after the adoption of 18, the Zoning Office did not realize and through error of
interpretation did not strictly adhere to the transition area requirements. The
Petitioners rationalize that since this case was filed in January, 1978, they
should have been afforded the same interpretation and/or policy. This Court
is duty bound to follow the law and cannot follow any misinterpretations and/or
policies contrary to the law. The transition area created by Article 18 was

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY IN THE
RE: PETITION FOR SPECIAL HEARING
N/S of BURKE AVENUE, 75' E. OF
CENTER AVENUE
9TH DISTRICT
JOSEPH L. RADEBAUGH
CARROLL M. RADEBAUGH, et al
Petitioners
V.
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

MEMORANDUM OPINION AND ORDER

This case involves an appeal to the Circuit Court for Baltimore
County on behalf of People's Counsel for Baltimore County, from the Order
of the County Board of Appeals (hereinafter referred to as the Board), dated
January 31, 1979, which granted the Petitioners' request for offstreet
parking in a residential zone by way of a special hearing. Prior to that
proceeding, an Order of the Deputy Zoning Commissioner, dated May 11,
1978, also granted the requested offstreet parking in a residential zone.

The Petitioners, Carroll M. Radebaugh et al and their families
own the subject property which is part of an entire block being formed by
Burke Avenue, Center Avenue, Linden Terrace and Alburgh Avenue. Within
this block, the Radebaughs have been operating a florist business located at
130 Burke Avenue, which has operated continuously since 1924. The entire
block is zoned DR 5.5 with the florist operation being a valid non-conforming
use, and in addition, within the block, there are four separate residences
occupied and owned by the Radebaugh family. In other words, the Radebaughs
own the entire block except for a dwelling located within the block on the

designed and intended specifically to protect and in fact does protect property
owners such as Dr. Georges whose testimony weighs for greater than the 5000
unimproved in the state. Without this protection, Dr. Georges would have
immediately adjacent to his home a parking lot with all its confusion, noises,
exhaust fumes and litter.

The Court is aware that in a zoning appeal case such as the case
at bar, in its limited function of judicial review, it may not substitute its
judgment for that of the Board and if the evidence supporting the decision
of the Board is substantial and renders the question of its action fairly
debatable, the Board must be affirmed. However, the Court is of the opinion
that the action of the Board in this case was clearly erroneous as to the law
and facts, and was arbitrary, capricious and illegal and must be reversed.

For the reasons stated, and in conformity with the foregoing
opinion, it is this 28 day of November, 1979, by the Circuit Court for
Baltimore County, ORDERED, that the Order of the County Board of Appeals
of Baltimore County, dated January 31, 1979, be and the same is hereby
REVERSED.

Frank E. Cicone
Judge Frank E. Cicone

northeast corner of Burke Avenue and Center Avenue, which is owned by
Dr. Constant Georges, who is the sole proprietor.
The Towson Manor Improvement Association, Inc., through its
Board of Directors, passed a resolution favoring the granting of the petition.
About two hundred and ten persons who reside in the area (majority are members
of the Towson Manor Improvement Association, Inc.) signed petitions stating
that they were not opposed to the request made by the Radebaughs.

That the Board gave great weight and consideration to the support
exhibited by the community in favor of the Radebaughs is evident by the
following language which appears in the Board's decision:

"The Board is impressed with the fact that
this commercial operation in a residential
neighborhood has been operated in such a
way that the Radebaughs are obviously good
neighbors, and have operated their business
over the years in such a fashion so as to
have the support of the neighboring community
rather than opposition for this proposal."

This case was not argued before this Court, but was submitted on
the record compiled before the Board, along with memoranda submitted by both
the Petitioners' counsel and People's Counsel. Attorney for the Petitioner,
like the members of the Board, was also greatly impressed by the support the
Petitioner received from the area residents. This fact is indicated from the
following statement in his memorandum:

"The need for the proposed lot was supported
by the testimony of a number of area residents
and unanimously endorsed by the Towson Manor
Improvement Association, Inc. . . . Only
Dr. Constant Georges appeared in opposition to
the petition approval."

It has been said that an umpire at the plate is worth five thousand
in the stands. In this case, the Court is of the opinion that Dr. Georges is
the umpire at the plate.

RE: PETITION FOR SPECIAL HEARING
N/S of Burke Avenue, 75' E of
Center Avenue, 9th District
CARROLL M. RADEBAUGH, et al
Petitioners
V.
BALTIMORE COUNTY
BOARD OF APPEALS
Case No. 78-229-SPH

ORDER TO ENTER APPEARANCE

Mr. Chairman:

Please enter my appearance in this proceeding as Special
People's Counsel. You are requested to notify me of any hearing
date or dates which may be now or hereafter designated for this
matter and of the passage of any preliminary or final order in
connection therewith.

Gary C. Duval
Gary C. Duval
401 Washington Avenue
Towson, Maryland 21204
821-6565

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of November, 1979,
a copy of the foregoing Order to Enter Appearance was mailed to
John B. Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland
21204.

Gary C. Duval
Gary C. Duval

Filed 11-13-79
12 NOV 14

Case No. 6782
 Gary C. Duwall
 PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

MR: PETITION FOR SPECIAL HEARING
 N/S of Burke Avenue, 75' E. of
 Center Avenue, 9th District

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

ADVANCE COSTS
 Filer's Atty. 5.00
 Clerk 50.00
 Sheriff

ADDITIONAL COSTS
 Clerk
 Sheriff

Dr. H's Atty. Per
 Receipt No.
 Record

JOSEPH L. RADEBAUGH
 CARROLL M. RADEBAUGH, ET AL
 Petitioners

1) February 26, 1979 Order for Appeal from the People's Counsel for Baltimore County from the Order of the County Board of Appeals of Baltimore County Id.

2) February 26, 1979 People's Counsel for Baltimore Co. Petition Id.

3) Feb. 28, 1979 Certificate of Notice Id.

4) Mar. 27, 1979- App. of John B. Howard for Petitioners and Appellees. Same day Answer to Petition Appeal Id.

5) Mar. 27, 1979- Answer and transcript of proceedings from County Board of Appeals of Baltimore County Id.

6) May 8, 1979 Hon. Frank E. Clione, hearing had, opinion to be filed.

7) Nov. 6, 1979 Memorandum Opinion & Order of Court that the order of the County Board of Appeals of Baltimore County, dated January 31, 1979, be & the same is hereby REVERSED Id. (190)

I HEREBY CERTIFY that the foregoing is a true copy taken from the LAW records of the Circuit Court as recorded in Liber EHE, Jr., No. 11 folio 212 Signed and seal affixed this 6th day of November 19 79

CLERK OF THE CIRCUIT COURT
 Baltimore County

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY * IN THE CIRCUIT COURT

RE: PETITION FOR SPECIAL HEARING * FOR
 N/S OF BURKE AVENUE, 75' E. OF * BALTIMORE COUNTY
 CENTER AVENUE * Misc. 6782
 9TH DISTRICT *
 JOSEPH L. RADEBAUGH *
 CARROLL M. RADEBAUGH et al *
 Petitioners *
 vs. *
 COUNTY BOARD OF APPEALS OF *
 BALTIMORE COUNTY *

MEMORANDUM OPINION AND ORDER

This case involves an appeal to the Circuit Court for Baltimore County on behalf of People's Counsel for Baltimore County, from the Order of the County Board of Appeals (hereinafter referred to as the Board), dated January 31, 1979, which granted the Petitioners' request for offstreet parking in a residential zone by way of a special hearing. Prior to that proceeding, an Order of the Deputy Zoning Commissioner, dated May 11, 1978, also granted the requested offstreet parking in a residential zone.

The Petitioners, Carroll M. Radebaugh et al and their families own the subject property which is part of an entire block being formed by Burke Avenue, Center Avenue, Linden Terrace and Alpbath Avenue. Within this block, the Radebaughs have been operating a florist business located at 120 Burke Avenue, which has operated continuously since 1924. The entire block is zoned DR 5.5 with the florist operation being a valid non-conforming use, and in addition, within the block, there are four separate residences occupied and owned by the Radebaugh family. In other words, the Radebaughs own the entire block except for a dwelling located within the block on the

designed and intended specifically to protect and in fact does protect property owners such as Dr. Georges whose testimony weighs far greater than the 5000 sq. ft. in the stand. Without this protection, Dr. Georges would have immediately adjacent to his home a parking lot with all its confusion, noises, exhaust fumes and litter.

The Court is aware that in a zoning appeal case such as the case at bar, in its limited function of judicial review, it may not substitute its judgment for that of the Board; and if the evidence supporting the decision of the Board is substantial and renders the question of its action fairly debatable, the Board must be affirmed. However, the Court is of the opinion that the action of the Board in this case was clearly erroneous as to the law and facts, and was arbitrary, capricious and illegal and must be reversed.

For the reasons stated, and in conformity with the foregoing opinion, it is this 2nd day of November, 1979, by the Circuit Court for Baltimore County, ORDERED, that the Order of the County Board of Appeals of Baltimore County, dated January 31, 1979, be and the same is hereby REVERSED.

Judge Frank E. Clione

in the northeast corner of Burke Avenue and Center Avenue, which is owned by Dr. Constant Georges, who is the sole proprietor.

The Towson Manor Improvement Association, Inc., through its Board of Directors, passed a resolution favoring the granting of the petition. About two hundred and ten persons who reside in the area (majority are members of the Towson Manor Improvement Association, Inc.) signed petitions stating that they were not opposed to the request made by the Radebaughs.

That the Board gave great weight and consideration to the support exhibited by the community in favor of the Radebaughs is evident by the following language which appears in the Board's decision:

"The Board is impressed with the fact that this commercial operation in a residential neighborhood has been operated in such a way that the Radebaughs are obviously good neighbors, and have operated their business over the years in such a fashion so as to have the support of the neighboring community rather than opposition for this proposal."

This case was not argued before this Court, but was admitted on the record compiled before the Board, along with memoranda submitted by both the Petitioners' counsel and People's Counsel. Attorney for the Petitioner, like the members of the Board, was also greatly impressed by the support the Petitioner received from the area residents. This fact is indicated from the following statement in his memorandum:

"The need for the proposed lot was supported by the testimony of a number of area residents and unanimously endorsed by the Towson Manor Improvement Association, Inc. . . . Only Dr. Constant Georges appeared in opposition to the petition approval."

It has been said that an umpire at the plate is worth five thousand in the stands. In this case, the Court is of the opinion that Dr. Georges is the umpire at the plate.

PE: PETITION FOR SPECIAL HEARING * IN THE
 N/S of Burke Avenue, 75' E. of * CIRCUIT COURT
 Center Avenue, 9th District * FOR
 CARROLL M. RADEBAUGH, et al * BALTIMORE COUNTY
 Petitioners *
 Docket :
 Folio :
 Case No. :

ORDER FOR APPEAL BY PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Mr. Clione:

Please enter an appeal on behalf of the office of the People's Counsel for Baltimore County from the Order of the County Board of Appeals of Baltimore County, passed in the above case on January 31, 1979.

Gary C. Duwall
 402 Washington Avenue
 Towson, Maryland 21204
 621-6564

People's Counsel for Baltimore County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February, 1979, a copy of the foregoing Order for Appeal by People's Counsel for Baltimore County was served upon John Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland 21204, attorney for Petitioners and the Baltimore County Board of Appeals, Old Courthouse, Towson, Maryland 21204.

Gary C. Duwall
 Gary C. Duwall

The People's Counsel for Baltimore County as well as the Petitioner's attorney raise numerous issues and direct the Court's attention to various sections of the Baltimore County Zoning Regulations. However, this Court, in reviewing the zoning regulations and the testimony of James E. Dyer of the Office of Zoning and Planning, finds that it need not concern itself with all of the issues raised by counsel. This Court is convinced and persuaded that those sections of the Zoning Regulations cited by Mr. Dyer clearly control the petition before this Court. The property in question, zone DR 5.5, is in a transition zone as it is adjacent to an existing one family detached dwelling located on the southwest corner of Burke Avenue and Center Avenue and owned by Dr. Constant Georges, the lone protestant.

The transition area came into being at the same time as density zoning which was in the year 1970-1971. Density zoning permitted for the first time a clustering of various types of housing units in all DR zones. For example, in a DR 5.5, if one wished to construct apartments, he could do so provided he maintains the density. In this type of situation, to protect adjoining property owners, the residential transition area was established within which only houses similar to those existing on adjoining land could be constructed. In other words, a transition zone is an area that lies within 300' of a dwelling in a DR zone. The houses within that area (300') are restricted to houses similar to those of the adjoining property. In this particular case, it is restricted to a dwelling house.

The residential transition zone is defined in Baltimore County Zoning Regulations, Section 1801.8 which reads as follows:

494-3180
 County Board of Appeals
 Room 219 Court House
 Towson, Maryland 21204
 August 15, 1978

NOTICE OF POSTPONEMENT and REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL 108

CASE NO. 78-229-SPH CARROLL M. RADEBAUGH, ET AL
 for Special Hearing - off-street parking in residential zone
 N/S Burke Ave. 75' E. of Center Ave.
 9th District
 5/11/78 - D.Z.C. GRANTED PETITION

scheduled for hearing on Thursday, October 26, 1978 at 10 a.m. has been POSTPONED at the request of the counsel for the Protestants due to travel arrangements and is

REASSIGNED FOR: THURSDAY, NOVEMBER 9, 1978 at 10 a.m.

cc: John B. Howard, Esquire Counsel for Petitioner
 Carroll M. Radebaugh and Joseph L. Radebaugh Petitioners
 James D. Nelson, Esquire, COT Counsel for Protestants
 Dr. and Mrs. Constant J. Georges Protestants
 Mr. Wilbur H. Perry " "
 Dr. David Schlusoff " "
 John W. Hession, III, Esquire People's Counsel
 Mr. S. E. DiNanno
 Mr. G. J. Mortinick
 Mr. J. E. Dyer
 Mr. L. H. Graef
 Mr. G. Bural
 Board of Education
 Mr. C. L. Perkins

Edith T. Eisenhart, Adm. Secretary

Rec'd 2/24/79
 3:30 pm

RE: PETITION FOR SPECIAL HEARING IN THE
for Off-Street Parking in a Residential Zone
N/S Burke Avenue 75'
E. of Center Avenue
9th District
Carroll M. Radebaugh, et al
Petitioners
File No. 78-229-SPH
Misc. Docket No. 11
Gary C. Duval
Special People's Counsel
Appellant
File No. 6762

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 Robert L. Gilland, William T. Hockett and John A. Miller, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against 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. 78-229-SPH
Feb. 7, 1978 Petition of Carroll M. Radebaugh, et al for Special Hearing for off-street parking in a D.R. 5.5 residential zone, on property located on the north side of Burke Avenue 75 feet east of Center Avenue, 9th District - filed
7 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for April 26, 1978 at 1:00 p.m.
Mar. 17 I.D.C.A. approved by Planning Board (#73-5-57)
Apr. 6 Certificate of Posting of property - filed
6 Certificate of Publication in newspaper - filed
10 Comments of Baltimore County Zoning Plans Advisory Committee filed

Carroll M. Radebaugh, et al - #78-229-SPH

2.

has been mailed to John B. Howard, Esq., 210 Allegheny Avenue, Towson, Maryland, 21204, counsel for Petitioners; Mr. Carroll M. Radebaugh and Mr. Joseph L. Radebaugh, 120 Burke Avenue, Towson, Maryland, 21204, Petitioners; Dr. and Mrs. Constant J. Georges, 713 Hillen Road, Baltimore, Maryland, 21204, Protestants; Mr. Wilbur H. Perry, 113 Burke Avenue, Towson, Maryland, 21204, Protestants; Dr. David Schlennoff, 228 E. Burke Avenue, Towson, Maryland, 21204, Protestants; Gary C. Duval, Esq., 401 Washington Avenue, Towson, Maryland, 21204, Special People's Counsel for Baltimore County, Appellant; and Mr. James E. Dyer, Office of Planning and Zoning, 111 W. Chesapeake Avenue, Towson, Maryland, 21204, on this 28th day of February, 1979.

Muriel E. Buddemeier
County Board of Appeals of Baltimore County

cc: Gary Duval, Esq.
John W. Heslin, Esq.
Mr. Carroll M. Radebaugh
Mr. Joseph L. Radebaugh
Dr. and Mrs. Constant J. Georges
Mr. Wilbur H. Perry
Dr. David Schlennoff
Mr. James Howell
Mrs. M. Campagna

Carroll M. Radebaugh, et al - No. 78-229-SPH (#6762)

2.

Apr. 26, 1978 At 1:00 p.m. hearing held on petition by Deputy Zoning Commissioner; case held sub curia
May 11 Order of Deputy Zoning Commissioner granting special hearing for off-street parking in a residential zone
22 Order of Appeal to County Board of Appeals from Order of Deputy Zoning Commissioner by James D. Nolan, Esq., attorney for Protestants
June 7 Order of Appeal to County Board of Appeals from Order of Deputy Zoning Commissioner filed by John W. Heslin, III, Esq., People's Counsel for Baltimore County
Nov. 9 Hearing on appeal before County Board of Appeals - case held sub curia
Jan. 31, 1979 Order of County Board of Appeals granting petition for off-street parking in residential zone, subject to restrictions listed in Order
Feb. 26 Order for Appeal filed in the Circuit Court for Baltimore County by Gary C. Duval, Esq., Special People's Counsel for Baltimore County
26 Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County
28 Certificate of Notice sent to all interested parties
Mar. 21 Transcript of testimony filed - 1 volume
Petitioner's Exhibit No. 1 - Plat, Rev. Apr. 22, 1978, Gerhold, Cross & Etzel
2 - Letter, Feb. 2, 1978, Towson Manor Improvement Assn., Inc.
3 - Letter Affidavit, David L. Kreeke, Pres. Towson Manor Imp. Assn., Inc.
4 - Resolution, Towson Manor Improvement Association, Inc., Sept. 21, 1978
5 - Canvas results of neighborhood
6A-6E Series of photos showing parking problems in area
7 - Letter from Donald D. Cooper, M.D., Nov. 8, 1978
People's Counsel Exhibit A - Plat (site plan), John E. Wolf & Assoc. Inc., 10/25/77
B - Site Plan, Gerhold, Cross & Etzel Jan. 17, 1978
C - Photo
27 Record of proceedings filed in the Circuit Court for Baltimore County

RE: PETITION FOR SPECIAL HEARING BEFORE
for Off-Street Parking in a Residential Zone
N/S Burke Avenue 75'
E. of Center Avenue
9th District
Carroll M. Radebaugh, et al
Petitioners
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 78-229-SPH

OPINION

This case comes before the Board on an appeal from an Order of the Deputy Zoning Commissioner, dated May 11, 1978, which granted the requested off-street parking in a residential zone. The subject property is located on the north side of Burke Avenue approximately seventy-five feet east of Center Avenue, in the Ninth Election District of Baltimore County.

The petition requests permission to use the subject property for additional off-street parking as an adjunct to its existing retail florist business located at 120 Burke Avenue, which has operated continuously since the 1920s. The business consists of a nursery and greenhouse operation to raise flowers, most of which are sold in a retail fashion. The business is a family business and almost the entire block, being formed by Burke Avenue, Center Avenue, Linden Terrace and Algonquin Avenue, is owned by the Radebaugh family with the notable exception of a dwelling on the northeast corner of Burke Avenue and Center Avenue, which is owned by the Appellant. It is to be noted that the proposal calls for the raising of an existing dwelling at the location and construction of a parking area containing twenty-two spaces for customer parking. As previously mentioned, this is a long existing family run business and it is interesting to note that within the block described aforesaid, there are four separate residences occupied by members of the Radebaugh family. The existing zoning is D.R. 5.5 with the florist operation being a valid non-conforming use.

Carroll M. Radebaugh testified in support of the petition indicating the proposal and surrounding the plot, which is identified as Petitioner's Exhibit #1. Additional support for the petition was in the form of neighborhood witnesses and an officer of the Towson Manor Improvement Association, along with a petition in support of the proposal signed by an impressive number of the people in the surrounding area.

Carroll M. Radebaugh, et al - No. 78-229-SPH (#6762)

3.

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, as 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 and all such rules and regulations, together with the zoning use district maps at the hearing on this petition, or whenever directed to do so by this Court.

Respectfully submitted,

Muriel E. Buddemeier
County Board of Appeals of Baltimore County

cc: John W. Heslin, III, Esq.
Gary C. Duval, Esq.
John B. Howard, Esq.

Carroll M. Radebaugh, et al - #78-229-SPH

2.

The Board is impressed with the fact that this commercial operation in a residential neighborhood has been operated in such a way that the Radebaughs are obviously good neighbors, and have operated their business over the years in such a fashion as to have the support of the neighboring community rather than opposition for this proposal. Furthermore, the subject proposal would tend to in some small way alleviate the horrendous traffic and parking problems existing in this east Towson area. This is caused in no small measure by the continued growth and expansion of Towson State University which results in students parking in the residential streets of east Towson, causing the residents a great deal of concern due to the aforesaid congestion and the impossible parking situation causing great difficulty in parking their own personal vehicles.

Without reviewing the testimony in further detail, but based upon all the testimony and Memoranda submitted by both the People's Counsel of Baltimore County and counsel for the Petitioner, it is the opinion of the Board that the Petitioner has met all of the requirements in order to be granted a special permit for parking in a residential area. Unquestionably, the proposed parking area abuts the existing commercial use and would fully comply with all the requirements of the Baltimore County regulations. We reject the theory advanced by the People's Counsel that the number of parking spaces required are a maximum rather than a minimum. We hold that such requirements are minimum and as such there can be no denial on the basis that more parking is provided than required. We feel that the granting of the subject proposal is certainly to the best interest of the general community and would in no small way lessen the impact of traffic and parking congestion on neighboring residents. Furthermore, the only opposing party is an absentee landowner and, in the opinion of the Board, the proposal will not be detrimental to his interest as the subject property will be adequately screened and be restricted to the parking only of private passenger vehicles during the hours of operation of the florist business. Therefore, the Board will issue an Order granting the requested parking in a residential zone, subject to certain conditions and restrictions.

RE: PETITION FOR SPECIAL HEARING IN THE
for Off-Street Parking in a Residential Zone
N/S Burke Avenue 75'
E. of Center Avenue
9th District
Carroll M. Radebaugh, et al
Petitioners
File No. 78-229-SPH
Misc. Docket No. 11
Gary C. Duval
Special People's Counsel
Appellant
File No. 6762

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Robert L. Gilland, William T. Hockett, and John A. Miller, 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, John B. Howard, Esq., 210 Allegheny Avenue, Towson, Maryland, 21204, counsel for Petitioners; Mr. Carroll M. Radebaugh and Mr. Joseph L. Radebaugh, 120 Burke Avenue, Towson, Maryland, 21204, Petitioners; Dr. and Mrs. Constant J. Georges, 713 Hillen Road, Baltimore, Maryland, 21204, Protestants; Mr. Wilbur H. Perry, 113 Burke Avenue, Towson, Maryland, 21204, Protestants; Dr. David Schlennoff, 228 E. Burke Avenue, Towson, Maryland, 21204, Protestants; Gary C. Duval, Esq., 401 Washington Avenue, Towson, Maryland, 21204, Special People's Counsel for Baltimore County, Appellant; and Mr. James E. Dyer, Office of Planning and Zoning, 111 W. Chesapeake Avenue, Towson, Maryland, 21204, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice

Carroll M. Radebaugh, et al - #78-229-SPH

3.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 31st day of January, 1979, by the County Board of Appeals, ORDERED that the petition for off-street parking in a residential zone by way of a special hearing be and the same is hereby GRANTED, as shown on Petitioner's Exhibit #1, which will be a part of this Order, and subject to the following conditions:

- Approval of the site plan by the Department of Public Works, the Department of Traffic Engineering, the Department of Permits and Licenses, and the Department of Planning and Zoning.
- Landscaping approval by the Division of Current Planning and Development.
- The use of parking area granted hereunder shall be limited to private passenger automobiles and only during the hours of operation of the retail florist business.

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
Robert L. Gilland, Vice Chairman

William T. Hockett
John A. Miller

RE: PETITION FOR SPECIAL HEARING
W/S OF Burke Avenue, 75'E of
Centre Avenue, 9th District
CARROLL M. RADEBAUGH, et al
Petitioners

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Docket:
Folio:
Case No:

PETITION

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of People's Counsel for Baltimore County, by Gary C. Duvall, Special People's Counsel, filed pursuant to Maryland Rule of Procedure 82(e) respectfully represents unto Your Honor:

1. That on or about January 31, 1979 the Baltimore County Board of Appeals filed the attached Opinion & Order with respect to the Petition for Special Hearing for Offstreet Parking in a Residential Zone in the above-captioned matter.

2. The County Board of Appeals of Baltimore County ("Board") erred in that there was no substantial evidence to support the Board's Opinion & Order.

3. The Board erred in that there was no substantial evidence presented by the Petitioner to meet the burden of proof of showing a valid non-conforming use.

4. The Board erred in that there was no substantial evidence submitted by the Petitioner to prove a valid expansion of any non-conforming use.

5. The Board erred in its application and interpretation of §104.1 B.C.Z.R.

6. The Board erred in that it failed to apply §104.1.B.1.A.2 B.C.Z.R.

7. The Board erred in its application and interpretation of §104 B.C.Z.R.

8. The Board erred in that its decision is arbitrary and capricious.

9. The Board erred in not considering uncontradicted expert opinion testimony.

10. And for such other and further reasons as will be assigned at a hearing on this Petition.

WHEREFORE, your Petitioner prays that:

- This Honorable Court vacate and reverse the Order of the Board; and,
- That this Court stay the enforceability of the Board's January 31, 1979 Order; and,
- Grant such other and further relief as your Petitioner's cause may require.

Gary C. Duvall
GARY C. DUVALL
407 Washington Avenue
Towson, Maryland 21204
821-6565
Special People's Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of February, 1979, a copy of the foregoing Petition was mailed to John Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland 21204, attorney for Petitioners and the Baltimore County Board of Appeals, Old Courthouse, Towson, Maryland 21204.

Gary C. Duvall
GARY C. DUVALL

- 2 -

RE: PETITION FOR SPECIAL HEARING
for Off-Street Parking in a
Residential Zone
N/S Burke Avenue 75'
E. of Center Avenue
9th District
CARROLL M. RADEBAUGH, et al
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 78-229-SPH

OPINION

This case comes before the Board on an appeal from an Order of the Deputy Zoning Commissioner, dated May 11, 1978, which granted the requested off-street parking in a residential zone. The subject property is located on the north side of Burke Avenue approximately seventy-five feet east of Center Avenue, in the Ninth Election District of Baltimore County.

The petition requests permission to use the subject property for additional off-street parking as an adjunct to its existing retail florist business located at 120 Burke Avenue, which has operated continuously since the 1920s. The business consists of a nursery and greenhouse operation to raise flowers, most of which are sold in a retail fashion. The business is a family business and almost the entire block, being formed by Burke Avenue, Center Avenue, Linden Terrace and Alburgh Avenue, is owned by the Radebaugh family with the notable exception of a dwelling on the northeast corner of Burke Avenue and Center Avenue, which is owned by the Appellants. It is to be noted that the proposal calls for the rezoning of an existing dwelling at the location and construction of a parking area containing twenty-two spaces for customer parking. As previously mentioned, this is a long existing family run business and it is interesting to note that within the block described aforesaid, there are four separate residences occupied by members of the Radebaugh family. The existing zoning is D.R. 5.5 with the florist operation being a valid nonconforming use.

Carroll M. Radebaugh testified in support of the petition indicating the proposal and introducing the plat, which is identified as Petitioner's Exhibit #1. Additional support for the petition was in the form of neighborhood witnesses and an officer of the Towson Manor Improvement Association, along with a petition in support of the proposal signed by an impressive number of the people in the surrounding area.

Carroll M. Radebaugh, et al - #78-229-SPH

The Board is impressed with the fact that this commercial operation in a residential neighborhood has been operated in such a way that the Radebaughs are obviously good neighbors, and have operated their business over the years in such a fashion so as to have the support of the neighboring community rather than opposition for this proposal. Furthermore, the subject proposal would tend to in some small way alleviate the horrendous traffic and parking problems existing in this east Towson area. This is caused in no small measure by the continued growth and expansion of Towson State University which results in students parking in the residential streets of east Towson, causing the residents a great deal of concern due to the aforesaid congestion and the impossible parking situation causing great difficulty in parking their own personal vehicles.

Without reviewing the testimony in further detail, but based upon all the testimony and Memoranda submitted by both the People's Counsel of Baltimore County and counsel for the Petitioner, it is the opinion of the Board that the Petitioner has met all of the requirements in order to be granted a special permit for parking in a residential area. Unquestionably, the proposed parking area abuts the existing commercial use and would fully comply with all the requirements of the Baltimore County regulations. We reject the theory advanced by the People's Counsel that the number of parking spaces required are a maximum rather than a minimum. We hold that such requirements are minimum and as such there can be no denial on the basis that more parking is provided than required. We feel that the granting of the subject proposal is certainly to the best interest of the general community and would in no small way lessen the impact of traffic and parking congestion on neighboring residents. Furthermore, the only opposing party is an absentee landowner and, in the opinion of the Board, the proposal will not be detrimental to his interest as the subject property will be adequately screened and be restricted to the parking only of private passenger vehicles during the hours of operation of the florist business. Therefore, the Board will issue an Order granting the requested parking in a residential zone, subject to certain conditions and restrictions.

Carroll M. Radebaugh, et al - #78-229-SPH

ORDER

For the reasons set forth in the foregoing Opinion, it is this 31st day of January, 1979, by the County Board of Appeals, ORDERED that the petition for off-street parking in a residential zone by way of a special hearing be and the same is hereby GRANTED, as shown on Petitioner's Exhibit #1, which will be a part of this Order, and subject to the following conditions:

- Approval of the site plan by the Department of Public Works, the Department of Traffic Engineering, the Department of Permits and Licenses, and the Department of Planning and Zoning.
- Landscape approval by the Division of Current Planning and Development.
- The use of parking area granted hereunder shall be limited to private passenger automobiles and only during the hours of operation of the retail florist business.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Robert L. Gifford
Robert L. Gifford, Vice Chairman

William T. Hackett
William T. Hackett

John A. Miller
John A. Miller

PETITION FOR SPECIAL HEARING * BEFORE THE BALTIMORE COUNTY
N/S OF BURKE AVENUE, 75' EAST * BOARD OF APPEALS
OF CENTRE AVENUE, 9TH DISTRICT *
CARROLL M. RADEBAUGH, et al. * Case No. 78-229-SPH
Plaintiffs *

MEMORANDUM IN SUPPORT OF PETITION FOR
SPECIAL USE PERMIT FOR OFFSTREET PARKING

The Petitioners seek a special permit to construct an off-street parking lot on the subject property under B.C.Z.R. Sections 409. The twenty-two (22) parking space lot would be constructed on a 0.20 acre lot adjacent to the Petitioner's non-conforming use retail florist business in an area zoned D.R.5.5 along the north side of Burke Avenue. At the hearing before the Baltimore County Board of Appeals on November 9, 1978, evidence was presented that established the continuous use of the Petitioner's property since the 1920's as a florist business and that only five percent (5%) of the business is attributable to the wholesale of flowers and plants. The need for the proposed lot was supported by the testimony of a number of area residents, and unanimously endorsed by the Towson Manor Improvement Association, Inc., who indicated that the traffic congestion problem, parking situation and general safety and welfare of the entire area would be enhanced if the petition were approved. Only Dr. Constant J. Georges appeared in opposition to the petition approval.

The People's Counsel in his Memorandum in Opposition to Issue of Special Use Permit for Offstreet Parking raises several grounds for objection to the Petitioner's use of Section 409 of the B.C.Z.R. as a basis for their petition.

It is the People's Counsel's contention that Section 409.1 requires that the "erection or enlargement" of a building be a condition precedent to the use of Section 409.4 to obtain Business or Residential Parking in a Residence Zone. Section 409.1 is merely a subsection of the offstreet parking article which sets forth the requirement that a plan showing the proposed lot and access routes be provided with the application for a building permit for the erection or enlargement of any building for which offstreet parking is required in the article. Section 409.4 must be considered separately and independently from Section 409.1. There are many incidents where Section 409.4 has been applied to existing businesses that have not expanded or enlarged their physical plant, but do have a need for additional parking spaces. *Marek v. Baltimore County Board of Appeals*, 219 Md. 351 (1958); *Hoffmeister v. The Frank Realty Company*, 35 Md. App. 691 (1977); *Blonde v. McManis*, 231 Md. 452 (1962).

The People's Counsel next contends that Section 409 addresses only the situation where offstreet parking is required by the schedule of Section 409.2.b, especially (6) and (7) dealing with retail and wholesale commercial use, and not parking for "convenience." The B.C.Z.R. Sections 32, 235 and 238 dealing with comparable business parking area requirements are consistent in stressing that the "minimum requirements" for Parking Area and Loading Space provisions shall be in accordance with the provisions of Section 409. All variance exceptions listed in the parking regulations deal with lowering the minimums, as it is understood, exceeding the minimums is not only permissible, but encouraged. The People's Counsel's interpretation that the schedule sets

forth the number of spaces to be met "but no more" is inconsistent with "Section 600 - Interpretation" (B.C.Z.R., 1955) which states the Regulations shall be held to be the minimum requirements for the public health, safety, convenience and general welfare. If the actual need of the community is greater than the minimums set forth then that actual need as determined by the Zoning Commissioner within his sound discretion will control, and the Zoning Commissioner's decision will not be overturned unless found to be "discriminatory, arbitrary, or illegal." *Marek, supra* and *Hoffmeister, supra*.

Even if we assume that the Section 409.4 can only be used to allow business parking in a residential zone to the extent of the minimums as set forth in 409.2.b(6) and (7), the evidence clearly supports that the additional spaces sought are required and not merely for convenience. The People's Counsel contends that the parking area data shown on People's Exhibits A and B should be binding on the Petitioners as their basis for calculating the number of minimum spaces allowed under Sections 409.2.b(6) and (7). People's Exhibit A is a plat filed on October 22, 1973 with a petition for a variance to convert their existing hot beds into a greenhouse on the subject property. At that time the greenhouse's function was erroneously calculated in a wholesale category of Section 409.2.b(7). People's Exhibit B is a plat originally filed by the Petitioners with their present petition on which the engineering firm retained by Petitioners showed a legend with parking space calculations. When it was brought to the engineers' attention that ninety-five percent (95%) of Petitioners' premises were used for retail sales, an amended

plat, superseding the earlier one, was filed on April 22, 1978.

In fact, the testimony of Mr. Carroll Radebaugh and other witnesses at the hearing fixed the wholesale trade of the entire operation at less than 5% of the business. This testimony stands uncontroverted. Since 95% of the greenhouse business and 100% of the retail store business can be used for the retail area basis of the calculations for Section 409.2.b(6), the "minimums" required under that Section far exceed the existing parking plus the additional parking being sought by the Petitioners. People's Exhibit A shows the Radebaugh property to consist of 27,843 square feet of greenhouse space and 3,280 square feet in the retail store area. Reducing the 27,843 square feet of greenhouse display area by the five percent (5%) figure attributable to the wholesale business, the total retail display area of the greenhouses is 26,451 square feet. Therefore, an additional 132 spaces are needed to meet the "minimums" set forth in the schedule of Section 409.2.b(6). These spaces added to the required number as set out in People's Exhibit B under parking data of 24 bring the total required to 146 spaces. Assuming Dr. Constant Georges' personal count of at least 40 parking spaces was relatively accurate, the additionally requested 22 spaces are substantially below the minimum number required under Section 409.2.

While it may be true that the effect of Marek v. Baltimore County Board of Appeals, 218 Md. 351 (1959) was modified somewhat by the November 21, 1956 amendment to Section 209.4 which limited the use of the Section to fulfill the parking requirements of the schedule listed within Section 409.2.b.,

The proposed parking lot would be constructed on a lot that clearly qualifies under any of the three criteria listed above (1802.3.A.3, A.4, or A.5). Having so qualified, the development and use of that lot is controlled by Subsection 1802.3.C.2 which exempts such lots from the control of the general article as to "other standards of development." Therefore, the Petitioners contravene the "transitional area" regulations set forth in Article 18 B.C.Z.R. are not applicable to this Petition.

Additionally, the Petitioners filed their original petition for the subject lot of this proceeding in January of 1978, pursuant to and in reliance on the stated policies of the Baltimore County Office of Planning and Zoning prior to the policy change of the County Zoning officials to apply Article 18 - Density Residential (D.R.) Zones (Bill No. 100, 1970) only to petitions filed after July of 1978. Mr. Dyer stressed in his testimony that it was not until July, 1978 (some eight years after the adoption of this Article) that its potential applicability to similar petitions was first called to his attention, and that all petitions filed prior to that date should be excluded from any possible control of the Article. In fact, the Zoning Commissioner so ruled in several petitions heard after July, 1978 but filed prior to that date. In the interest of fair notice and equitable treatment, the Petitioners believe that the date of filing and not the date of a decision upon a petition should be the determining factor in deciding which policy of the zoning officials should control. Therefore, the Petitioners assert that Article 18 - Density Residential (D.R.) Zones is inapplicable in deciding upon the present petition.

it is clear that the Resolution did not change the portion of the holding that held the Section applied to non-conforming use business property in D.R. zones as well as businesses in business zones that abut residential zones. Once the miscalculation involving the omission of the greenhouse display areas from the retail floor area basis is corrected, the Petitioners unquestionably meet the qualifications to use Section 409.4 as amended to gain approval for their proposed lot, i.e., to add to their non-conforming use business' required number of parking spaces.

The People's Counsel mistakenly interprets Petitioners' reliance on Marek, supra as supporting the proposition that the decision supports their right to expand a non-conforming use. Further, the People's Counsel relies on the 25% expansion allowance of B.C.Z.R. Section 104.1 as a limitation upon the Petitioners in their present petition for parking spaces in a residential zone. The Petitioners rely on Marek to support their claim that Section 409.4 applies equally to businesses abutting or across the street from residential zones as well as existing non-conforming businesses within residential zones. While the amendment to B.C.Z.R. Section 409.4 limited the use of the Section to meet the "minimums" as set out in B.C.Z.R. Section 409.2, it did not change the Marek decision's basic holding that non-conforming businesses, too, may avail themselves of this Section's provisions to meet the criteria of the schedule.

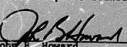
If 409.4 would allow businesses in business zones abutting but not previously within a residential zone to expand into adjacent residential zones to meet the minimum parking requirements based on the business' size and the B.C.Z.R. Section 409.2 schedule, it would not serve any rational, logical purpose

It can clearly be determined from the factual evidence presented at the hearing and the use of Section 409.4 of the Baltimore County Zoning Regulations that the Deputy Zoning Commissioner's approval of the proposed 22 space parking lot petition was soundly based in fact and in law and should not be disturbed as "discriminatory, arbitrary or illegal." Marek, supra; Hoffmeister, supra. Therefore, the Petition for Special Hearing should be approved.

Respectfully submitted,


John H. Howard
210 Allegheny Avenue
Towson, Maryland 21204
893-6111
Attorney for Plaintiffs

I HEREBY CERTIFY that on this 17th day of January, 1979, a copy of the foregoing Memorandum in Support of Petition for Special Use Permit for Offstreet Parking was mailed to Gary C. Duwall, Esquire, 401 Washington Avenue, Towson, Maryland 21204, Attorney for Special People's Counsel.


John H. Howard

to exclude existing non-conforming use businesses from the same opportunity to use adjacent residential property for the same purposes and to the same extent.

If the County Council had intended to limit the use of B.C.Z.R. Section 409.4 to businesses in business zones adjacent to residential zones, they had the obvious chance to clearly so limit the Section by excluding non-conforming businesses from its operation while amending the Section in 1956 in response to the Marek case. They chose instead to control the extent of any expansion for both businesses in abutting business zones and non-conforming businesses in residential zones by limiting the expansion to the minimums required in B.C.Z.R. 409.2 as to the number of parking spaces of any lawful business.

The 25% limitation of B.C.Z.R. 104.1 is clearly inapplicable when relying on the B.C.Z.R. Section 409.4 as a completely independent basis for parking lot construction and the only rational limitation for B.C.Z.R. Section 409.4 is the number of required spaces as computed from the schedule of B.C.Z.R. Section 409.2.

The People's Counsel's Memorandum raises the issue that the subject property is within a "transitional area," governed by B.C.Z.R. 1 B01.1.B.1.A.2 limiting its use to primarily dwellings and that offstreet parking does not appear as a permitted use in a "transitional zone." The Petitioners concede that the subject area is within the "transitional area" as defined by Article 18 B.C.Z.R. (Bill No. 100, 1970). However, Section 1802.3 "Special Regulations for Certain Existing Developments or Subdivisions and for Small Lots or Tracts in D.R. Zones," states in part that:

PETITION FOR SPECIAL HEARING * BEFORE THE BALTIMORE COUNTY
N/S OF BURKE AVENUE, 75' EAST * BOARD OF APPEALS
01 CENTRE AVENUE, 9TH DISTRICT *
CARROLL M. RADEBAUGH, et al. * Case No. 78-229-SPH
Plaintiffs *

MEMORANDUM IN SUPPORT OF PETITION FOR
SPECIAL USE PERMIT FOR OFFSTREET PARKING

The Petitioners seek a special permit to construct an offstreet parking lot on the subject property under B.C.Z.R. Sections 409. The twenty-two (22) parking space lot would be constructed on a 0.20 acre lot adjacent to the Petitioners' non-conforming use retail florist business in an area zoned D.R.5.5 along the north side of Burke Avenue. At the hearing before the Baltimore County Board of Appeals on November 9, 1978, evidence was presented that established the continuous use of the Petitioners' property since the 1920's as a florist business and that only five percent (5%) of the business is attributable to the wholesale of flowers and plants. The need for the proposed lot was supported by the testimony of a number of area residents, and unanimously endorsed by the Towson Manor Improvement Association, Inc., who indicated that the traffic congestion problem, parking situation and general safety and welfare of the entire area would be enhanced if the petition were approved. Only Dr. Constant J. Georges appeared in opposition to the petition approval.

The People's Counsel in his Memorandum in Opposition to issue of Special Use Permit for Offstreet Parking raises several grounds for objection to the Petitioners' use of Section 409 of the B.C.Z.R. as a basis for their petition.

"A. In D.R. zones, contrary provisions of this Article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy and development of, the alteration or expansion of structures upon, and administrative procedures with respect to:...

3. Any lot, or tract of lots in single ownership, as described in Subparagraph 1 or 2 and which is too small in gross area to accommodate six dwelling or density in the D.R. zone in which such tract is located; or (Bill No. 100, 1970).

4. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is less than one-half acre in area, regardless of the number of dwellings or density units that would be permitted at the maximum permitted density in the zone in which it is located. (Bill No. 100, 1970).

5. Any lot or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board of Planning Commission. (Bill No. 100, 1970).

...Standards for development of lots or tracts described in Subparagraphs A.3, A.4 or A.5 shall be as set forth in Paragraph C...

C. Development Standards for Small Lots or Tracts (Bill No. 100, 1970).

1. Any dwelling hereafter constructed...

2. Other standards for development of small lots or tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 304. (Bill No. 100, 1970).

Restating the first sentence of Subparagraph A of Subsection 1802.3 it says, in effect, that if a lot qualifies under any of the criteria set forth in the Subsection as a "small lot or tract," the general provisions of the Article shall no longer apply to the use of that lot and that this Subsection (1802.3 B.C.Z.R.) will control despite contrary provisions in the general article. This does not limit the Subsection's applicability to "depth and width" requirements as contended by the People's Counsel, indeed, it is specifically set out that the Subsection shall apply to the use of such qualifying lots.

It is the People's Counsel's contention that Section 409.1 requires that the "erection or enlargement" of a building be a condition precedent to the use of Section 409.4 to obtain Business or Residential Parking in a Residence Zone. Section 409.1 is merely a subsection of the offstreet parking article which sets forth the requirement that a plan showing the proposed lot and access routes be provided with the application for a building permit for the erection or enlargement of any building for which offstreet parking is required in the article. Section 409.4 must be considered separately and independently from Section 409.1. There are many incidents where Section 409.4 has been applied to existing businesses that have not expanded or enlarged their physical plant, but do have a need for additional parking spaces. Marek v. Baltimore County Board of Appeals, 218 Md. 351 (1959); Hoffmeister v. The Frank Realty Company, 35 Md. App. 691 (1977); Bloede v. McNabb, 231 Md. 452 (1962).

The People's Counsel next contends that Section 409 addresses only the situation where offstreet parking is required by the schedule of Section 409.2.b, especially (6) and (7) dealing with retail and wholesale commercial use, and not parking for "convenience." The B.C.Z.R. Sections 232, 235 and 238 dealing with comparable business parking area requirements are consistent in stressing that the "minimum requirements" for Parking Area and Loading Space provisions shall be in accordance with the provisions of Section 409. All variance exceptions listed in the parking regulations deal with lowering the minimums, as it is understood, exceeding the minimums is not only permissible, but encouraged. The People's Counsel's interpretation that the schedule sets

forth the number of spaces to be met "but no more" is inconsistent with "Section 600 - Interpretation" (B.C.Z.R., 1955) which states the Regulations shall be held to be the minimum requirements for the public health, safety, convenience and general welfare. If the actual need of the community is greater than the minimums set forth then that actual need as determined by the Zoning Commissioner within his sound discretion will control, and the Zoning Commissioner's decision will not be overturned unless found to be "discriminatory, arbitrary, or illegal." Marek, supra and Hoffmeister, supra.

Even if we assume that the Section 409.4 can only be used to allow business parking in a residential zone to the extent of the minimums as set forth in 409.2.b(6) and (7), the evidence clearly supports that the additional spaces sought are required and not merely for convenience. The People's Counsel contends that the parking area data shown on People's Exhibits A and B should be binding on the Petitioners as their basis for calculating the number of minimum spaces allowed under Sections 409.2.b(6) and (7). People's Exhibit A is a plat filed on October 22, 1973 with a petition for a variance to convert then-existing hot beds into a greenhouse on the subject property. At that time the greenhouses' function was erroneously calculated in a wholesale category of Section 409.2.b(7). People's Exhibit B is a plat originally filed by the Petitioners with their present petition on which the engineering firm retained by Petitioners showed a legend with parking space calculations. When it was brought to the engineers' attention that ninety-five percent (95%) of Petitioners' premises were used for retail sales, an amended

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"A. In D.R. zones, contrary provisions of this Article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy and development of, the alteration or expansion of structures upon, and administrative procedures with respect to...

3. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is too small in gross area to accommodate six dwelling or density in the D.R. zone in which such tract is located; or [Bill No. 100, 1970].

4. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is less than one-half acre in area, regardless of the number of dwellings or density units that would be permitted at the maximum permitted density in the zone in which it is located. [Bill No. 100, 1970].

5. Any lot or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board of Planning Commission. [Bill No. 100, 1970].

Standards for development of lots or tracts described in Subparagraphs A.3, A.4 or A.5 shall be as set forth in Paragraph C...

C. Development Standards for Small Lots or Tracts [Bill No. 100, 1970].

1. Any dwelling hereafter constructed...

2. Other standards for development of small lots or tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504. [Bill No. 100, 1970].

Restating the first sentence of Subparagraph A of Subsection 1802.3 it says, in effect, that if a lot qualifies under any of the criteria set forth in the Subsection as a "small lot or tract," the general provisions of the Article shall no longer apply to the use of that lot and that this Subsection (1802.3 B.C.Z.R.) will control despite contrary provisions in the general article. This does not limit the Subsection's applicability to "depth and width" requirements as contended by the People's Counsel, indeed, it is specifically set out that the Subsection shall apply to the use of such qualifying lots.

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plat, superseding the earlier one, was filed on April 22, 1978.

In fact, the testimony of Mr. Carroll Radebaugh and other witnesses at the hearing fixed the wholesale trade of the entire operation at less than 5% of the business. This testimony stands uncontradicted. Since 95% of the greenhouse business and 100% of the retail store business can be used for the retail area basis of the calculations for Section 409.2.b(6), the "minimums" required under that Section far exceed the existing parking plus the additional parking being sought by the Petitioners. People's Exhibit A shows the Radebaugh property to consist of 27,843 square feet of greenhouse space and 3,280 square feet in the retail store area. Reducing the 27,843 square feet of greenhouse display area by the five percent (5%) figure attributable to the wholesale business, the total retail display area of the greenhouses is 26,451 square feet. Therefore, an additional 132 spaces are needed to meet the "minimums" set forth in the schedule of Section 409.2.b(6). These spaces added to the required number as set out in People's Exhibit B under parking data of 24 bring the total required to 146 spaces. Assuming Dr. Constant Georges' personal count of at least 40 parking spaces was relatively accurate, the additionally requested 22 spaces are substantially below the minimum number required under Section 409.2.

While it may be true that the effect of Marek v. Baltimore County Board of Appeals, 218 Md. 351 (1958) was modified somewhat by the November 21, 1956 amendment to Section 209.4 which limited the use of the Section to fulfill the parking requirements of the schedule listed within Section 409.2.b.,

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The proposed parking lot would be constructed on a lot that clearly qualifies under any of the three criteria listed above (1802.3.A.3, A.4, or A.5). Having so qualified, the development and use of that lot is controlled by Subsection 1802.3.C.2 which exempts such lots from the control of the general article as to "other standards of development." Therefore, the Petitioners contend the "transitional area" regulations set forth in Article 1B A.C.Z.R. are not applicable to this Petition.

Additionally, the Petitioners filed their original petition for the subject lot of this proceeding in January of 1978, pursuant to and in reliance on the stated policies of the Baltimore County Office of Planning and Zoning prior to the policy change of the County Zoning Officials to apply Article 1B - Density Residential (D.R.) Zones (Bill No. 100, 1970) only to petitions filed after July of 1978. Mr. Dyer stressed in his testimony that it was not until July, 1978 (some eight years after the adoption of this Article) that its potential applicability to similar petitions was first called to his attention, and that all petitions filed prior to that date should be excluded from any possible control of the Article. In fact, the Zoning Commissioner so ruled in several petitions heard after July, 1978 but filed prior to that date. In the interest of fair notice and equitable treatment, the Petitioners believe that the date of filing and not the date of a decision upon a petition should be the determining factor in deciding which policy of the zoning officials should control. Therefore, the Petitioners assert that Article 1B - Density Residential (D.R.) Zones is inapplicable in deciding upon the present petition.

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it is clear that the Resolution did not change the portion of the holding that held the Section applied to non-conforming use business property in D.R. zones as well as businesses in business zones that abut residential zones. Once the miscalculation involving the omission of the greenhouse display areas from the retail floor area basis is corrected, the Petitioners unquestionably meet the qualifications to use Section 409.4 as amended to gain approval for their proposed lot, i.e., to add to their non-conforming use business' required number of parking spaces.

The People's Counsel mistakenly interprets Petitioners' reliance on Marek, supra as supporting the proposition that the decision supports their right to expand a non-conforming use. Further, the People's Counsel relies on the 15% expansion allowance of B.C.Z.R. Section 104.1 as a limitation upon the Petitioners in their present petition for parking spaces in a residential zone. The Petitioners rely on Marek to support their claim that Section 409.4 applies equally to businesses abutting or across the street from residential zones as well as existing non-conforming businesses within residential zones. While the amendment to B.C.Z.R. Section 409.4 limited the use of the Section to meet the "minimums" as set out in B.C.Z.R. Section 409.2, it did not change the Marek decision's basic holding that non-conforming businesses, too, may avail themselves of this Section's provisions to meet the criteria of the schedule.

If 409.4 would allow businesses in business zones abutting but not previously within a residential zone to expand into adjacent residential zones to meet the minimum parking requirements based on the business' size and the B.C.Z.R. Section 409.2 schedule, it would not serve any rational, logical purpose

It can clearly be determined from the factual evidence presented at the hearing and the use of Section 409.4 of the Baltimore County Zoning Regulations that the Deputy Zoning Commissioner's approval of the proposed 22 space parking lot petition was soundly based in fact and in law and should not be disturbed as "discriminatory, arbitrary or illegal." Marek, supra; Hoffmeister, supra. Therefore, the Petition for Special Hearing should be approved.

Respectfully submitted,

John B. Howard
John B. Howard
210 Allegheny Avenue
Towson, Maryland 21204
823-4111
Attorney for Plaintiff's

I HEREBY CERTIFY that on this 17th day of January, 1979, a copy of the foregoing Memorandum in Support of Petition for Special Use Permit for Offstreet Parking, as mailed to Gary C. Duvall, Esquire, 401 Washington Avenue, Towson, Maryland 21204, Attorney for Special People's Counsel.

John B. Howard
John B. Howard

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to exclude existing non-conforming use businesses from the same opportunity to use adjacent residential property for the same purposes and to the same extent.

If the County Council had intended to limit the use of B.C.Z.R. Section 409.4 to businesses in business zones adjacent to residential zones, they had the obvious chance to clearly so limit the Section by excluding non-conforming businesses from its operation while amending the Section in 1956 in response to the Marek case. They chose instead to control the extent of any expansion for both businesses in abutting business zones and non-conforming businesses in residential zones by limiting the expansion to the minimums required in B.C.Z.R. 409.2 as to the number of parking spaces of any lawful business.

The 25% limitation of B.C.Z.R. 104.1 is clearly inapplicable when relying on the B.C.Z.R. Section 409.4 as a completely independent basis for parking lot construction and the only rational limitation for B.C.Z.R. Section 409.4 is the number of required spaces as computed from the schedule of B.C.Z.R. Section 409.2

The People's Counsel's Memorandum raises the issue that the subject property is within a "transitional area," governed by B.C.Z.R. 1 B01.1.B.1.A.2 limiting its use to primarily dwellings and that offstreet parking does not appear as a permitted use in a "transitional zone." The Petitioners concede that the subject area is within the "transitional area" as defined by Article 1B B.C.Z.R. (Bill No. 100, 1970). However, Section 1802.3 "Special Regulations for Certain Existing Developments or Subdivisions and for Small Lots or Tracts in D.R. Zones," states in part that:

RE: PETITION FOR SPECIAL HEARING
N/S of Burke Avenue, 70' E of
Centre Avenue, 9th District
CARROLL M. RADEBAUGH, et al
Petitioners

BEFORE THE
BALTIMORE COUNTY
BOARD OF APPEALS
Case No: 78-229-SPH

MEMORANDUM IN OPPOSITION TO ISSUE OF SPECIAL USE PERMIT FOR OFFSTREET PARKING

STATEMENT OF FACTS

The Petition for Special Hearing in the within action was heard by the Baltimore County Board of Appeals on November 9, 1978. The Petitioners seek a special permit under B.C.Z.R. §409 to use the subject property for offstreet parking. The proposed parking lot will consist of 22 parking spaces to be constructed after the raising of the dwelling presently existing on the premises. It was stipulated to by counsel that the property in question, as well as the other Radebaugh properties, are zoned D.R. 5.5.

During the hearing, evidence was presented that the George W. Radebaugh & Sons, Inc. property consists of 23 lots (including the subject property) in the area known as Towson Manor, as shown in the Baltimore County Plat Records at Book W.P.C. 5, folio 79. These lots have 25 feet frontage and 125 feet in depth. Testimony showed that the Radebaugh family first began purchasing these lots in the early 1920's continuing through October of 1977, when lots 175 and 176, the subject of the November 9th hearing, were purchased. Mr. Carroll Radebaugh testified that his father began the present florist business on these properties sometime during the 1920's, and further testified that only about 5% of the family's florist business has ever been attributable to the wholesale sales of flowers and plants.

During their case, Petitioners introduced Petitioners' Exhibit No. 1, which is their revised site plan plat of April 22, 1976.

*Read 12-17-78
10 AM*

This plat shows a proposed 22 new spaces to be provided on lots 175 and 176. The plat further shows 22 existing spaces for parking on the remaining Radebaugh property. People's Exhibit B, which is the original plat filed with the Petition for Special Hearing, shows that only 24 spaces are required to fulfill the criteria of B.C.Z.R. §409.2. This figure is derived (as the legend on Exhibit B shows) from the retail requirements for parking and from the warehouse criteria for required offstreet parking as set forth in B.C.Z.R. §409.2b (6) and (7).

However, People's Exhibit A, which was introduced during the Petitioners' case, is a plat dated October 22, 1973, which was submitted by the Petitioner in Zoning Case 74-147-A wherein the present Petitioners sought a variance to construct a new greenhouse perpendicular to the proposed parking lot property. That plat shows that 32 spaces were to be provided - 8 spaces more than required. On cross-examination, Mr. Carroll Radebaugh testified that there were at least 32 parking spaces, if not more, on the various Radebaugh lots which were not shown on Petitioners' Exhibit No. 1 the revised plat of April 22, 1978. Dr. Constant Georges subsequently testified that he personally counted at least 40 parking spaces on the Radebaugh property.

Mr. Carroll Radebaugh also testified with reference to Petitioners' Exhibit No. 1 that in 1959 the parking space behind and to the west of the retail store was added. Furthermore, in the 1960's the parking lot off of Linden Terrace, which is designated "Employee Parking", was added after converting a prior growing area into the now existing parking lot. As was testified to by Mr. Radebaugh, no permits for construction of these parking lots were issued, nor were any public hearings had to determine whether or not such uses were permissible. Mr. Radebaugh further testified that in 1973 the dwelling at the corner of Linden Terrace and Aigburth Avenue was purchased and used as an office as opposed to

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florist trade is the nonconforming use, then the issue becomes whether or not the Radebaughs have already expanded or extended their nonconforming use up to and beyond the 25% limitation set forth in §104.1. Generally, while one has the right to continue a nonconforming use, this right usually does not encompass the right to extend or enlarge the nonconforming use. 1 Anderson, *American Law Zoning* §6.42 (2nd ed. 1976). However, B.C.Z.R. §104.1 does permit the extension of a nonconforming use to not more than "25% of the ground floor area of the building so used." The addition of new facilities or the enlargement of existing ones has been regarded as the extension of a use if the nonconforming use is thereby rendered more incompatible with permitted uses; if the volume or intensity of the use is increased; or if the nature of the use is substantially changed. 1 Anderson, *American Law Zoning* §6.44 (2nd ed. 1976).

The total area of the existing structure on the Radebaugh property as is shown by People's Exhibit A is 27,651 square feet. This would be the total square footage in 1959, prior to the adoption of the zoning regulation. The testimony showed that the new greenhouse which was built in 1974 has an area of 3,472 square feet; that lots 162 and 163, at the corners of Linden Terrace and Aigburth Avenue upon which the office building is located, have a total area of 12,500 square feet; that the employee parking area has, per the plat scale, an area of 4,500 square feet; that the parking behind the retail store, per the scale of the plat, has an area of 1,800 square feet; that the parking behind Mr. Carroll Radebaugh's home has, per the scale on the plat, an area of 1,375 square feet; and, that the other parking areas around the retail store as shown on People's Exhibit A have an area of approximately 925 square feet. This would make a total expansion of the nonconforming use since 1959 of 24,572 square feet. Add to this the 7,920 square feet for the proposed parking lot and there is

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a dwelling, as is indicated on the April 22, 1978 plat. This office is on lots 162 and 163 of Towson Manor.

The retail store, which fronts on Burke Avenue, has been used as the retail store since the inception of the Radebaugh florist business. However, Mr. Carroll Radebaugh testified on cross-examination that just recently the second floor of those premises was expanded to include the retail trade and in fact is now used for the display of various Christmas ornaments and gifts. As mentioned before, in 1974 the Radebaugh company constructed the greenhouse which runs perpendicular to the subject property under consideration, which according to the plats submitted in that case comprise 3,472 square feet. The plat in Case No. 74-174-A also shows the existing greenhouses and retail store have an area of 24,371 square feet and 3,280 square feet, respectively. With these facts before the Board, it is clear that the Petition for Special Hearing and issuance of a special use permit for offstreet parking should be denied.

LEGAL ARGUMENT

B.C.Z.R. §409.1 provides that a plan showing proposed offstreet parking shall be provided "at the time of application for a building permit for the erection or enlargement of any building for which offstreet parking... is hereinafter required..." It is apparent that the regulation addresses itself to the construction of parking in conjunction with erection or enlargement of a building. Furthermore, the language is clear that the offstreet parking addressed in §409 is required offstreet parking and not parking for convenience. Obviously, these first two conditions are not even met in the present case. There is no enlargement or erection of any building taking place on any of the Radebaugh properties. Rather, the Radebaughs are seeking additional offstreet parking simply for convenience sake.

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a total expansion of 32,492 square feet. It is obvious that the Radebaughs have expanded well beyond the 25% limitation in §104.1. Therefore, even assuming they have met their burden of proof, they still cannot take advantage of §104.1. For these additional reasons, this special use permit should be denied.

As will be remembered, Mr. James Dyer testified at great length with respect to the present zoning of the proposed parking lot. As was stipulated to by counsel, this parcel is a D.R. 5.5 zone. This specific density residential zone is classified as a residential "transition area" and has certain restrictions on the uses permitted therein. B.C.Z.R. §101.1.b.1.A.2 clearly shows that in such transition areas the uses which are permitted are severely restricted to primarily dwelling uses. Even the uses permitted as of right under §101.1 do not include any of the uses for which the Radebaugh property is presently being used. While they have designated themselves a "wholesale flower farm", Mr. Carroll Radebaugh's testimony clearly indicated that George W. Radebaugh & Sons, Inc.'s operation does not fall within the definition of a "limited acreage wholesale flower farm". Accordingly, the restrictions imposed by the transitional area uses are controlling. Now, how does offstreet parking appear as a permitted use.

Counsel for the Petitioner raised a question during Mr. Dyer's testimony whether or not B.C.Z.R. §101.1.b.2 and .3 applied. Mr. Dyer testified that they did not and it is clear from a reading of those two sections, and from subsection §102.3 that these provisions deal with existing developments and subdivisions which are to be developed or to have structures built upon them. It is clear from §102.3.B that the only differences in that section with the transitional area uses are the minimum depth and width of the lot or tracts to be developed. For the foregoing additional

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Secondly, as is clear from §409.2.b (6) and (7) that there is no additional offstreet parking required for the Radebaugh property. As clearly is shown on People's Exhibit A and from the testimony of Mr. Carroll Radebaugh, the subject Radebaugh properties already have the required number of spaces for offstreet parking. The October 22, 1973 plat shows that 32 spaces were to be provided on the Radebaugh property and as noted above, Mr. Carroll Radebaugh testified that there are presently at least 32, if not more, spaces already on the premises. The computation shown on People's Exhibit B, which was the plat first submitted in these proceedings, shows that by the Petitioners' own calculation, only 24 spaces were required under §409.2b.

Mr. James Dyer, of the Baltimore County Zoning Office, testified as to the change in the language of §409.4 regarding the issuance of the special use permit for offstreet parking. Added to the regulation was the language "to meet the requirements of the foregoing schedule", which did not appear in the prior County regulation. Obviously, the "schedule" which the section refers to is that contained in §409.2. Furthermore, it is clear from the rest of the language of the section that this special use permit is to issue when the requirements must be met for offstreet parking under §409.2; it is not to be read as an expansion for offstreet parking beyond the requirements of §409.2. Therefore, since the Petitioners have the requirements of §409.2, §409.4 is inapplicable to the present issue and the requested use permit should be denied.

1. The Petitioner has relied upon the case of *Marek v. Baltimore County Board of Appeals*, 218 Md. 351 (1974) to support its present proposed action for offstreet parking. However, as will be noted from a careful reading of that case, §409.4 did not have the limiting language testified to by Mr. Dyer at the time of the decision of that case. Accordingly, that case is of no value to the present petition.

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reasons the requested petition should be denied.

One final note should be made, and that relates to the comments of Nicholas E. Commodari, Chairman of the Zoning Plans Advisory Committee. First, no proof was offered that the proposed parking area did not conflict with B.C.Z.R. §104.1 as heretofore noted. Furthermore, no change in the plans was presented to show compliance with the comments of Mr. John L. Wimbley, of the Baltimore County Office of Planning and Zoning, that the number of driveways have been reduced. The plat of January 17, 1978, which was first submitted with the Petition (People's Exhibit B), when compared with Petitioners' Exhibit No. 1, which is the plat of April 22, 1978, clearly shows that no revision was made to reduce the number of driveways. For these final reasons the Petition for Special Hearing should be denied.

Respectfully submitted,

Gary C. Duwall
Gary C. Duwall
409 Washington Avenue
Towson, Maryland 21204
821-6565

Special People's Counsel

HEREBY CERTIFY that on this 14th day of December, 1978, a copy of the foregoing Memorandum in Opposition to Issue of Special Use Permit for Offstreet Parking was mailed to John B. Howard, Esquire, 409 Washington Avenue, Towson, Maryland 21204, attorney for Petitioners.

Gary C. Duwall
Gary C. Duwall

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During the course of brief argument before the Board, the Petitioners indicated that they have a nonconforming use and that the Marek decision supports their right to expand this nonconforming use. The burden of proving a nonconforming use is on the claimant of the use. *Calhoun v. County Board of Appeals of Baltimore County*, 262 Md. 265 (1971). It is respectfully submitted that the Petitioner has failed to meet this burden in the within petition. What is the nonconforming use? B.C.Z.R. §104.1 provides as follows:

"A nonconforming use (as defined in §101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use what- ever, or any abandonment or discontinu- ance of such nonconforming use for a period of one year or more, or in the case of nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) per cent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended over more than 25% of the ground floor area of buildings so used."

Mr. Carroll Radebaugh's testimony indicated that all of the offstreet parking which presently exists on the Radebaugh property was constructed in the late 1950's and early 1960's. Obviously, these parking lots would have been governed by §104.1 as it was in effect in 1955. Mr. Radebaugh also testified as to the conversion of the dwelling at Linden Terrace and Aigburth Avenue to an office in the 1970's, as well as to the construction of the greenhouse designed as "G" on Petitioners' Exhibit No. 1 in 1974. Therefore, are the parking lots nonconforming uses or is the retail florist trade the nonconforming use? This burden the Petitioner failed to meet.

If we assume that the Radebaughs met their burden of proof of establishing a nonconforming use and we assume that the retail

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Law Offices of
NOLAN, PLATTENHOFF & WILLIAMS
204 West Frederick Avenue
TOWSON, MARYLAND 21204

May 22, 1978

The Honorable George J. Martinak
Deputy Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Zoning Appeal - Radebaugh's Use Permit for Parking.

Dear Commissioner Martinak:

Please find enclosed our Order for Appeal on behalf of Dr. and Mrs. Georges, owners of property adjacent to this property involved.

Dr. Georges' check in the amount of \$70.00 is enclosed, together with this office's check in the amount of \$5.00 to cover the cost of the appeal and the printing of the property. The forwarding of all appropriate papers to the Board of Appeals will be greatly appreciated.

Thanking you and your Staff in this regard, I am

Sincerely,

James D. Nolan
James D. Nolan

JDN/hl
Enclosures
cc: The Hon. Walter E. Reiter, Chairman
Board of Appeals

John B. Howard, Esq. (Enclosure)
Dr. and Mrs. Constant J. Georges



April 3, 1978

Baltimore County
Office of Planning and Zoning
100 Washington Ave.
Towson, MD 21204

NOTICE OF HEARING

Re: Petition for Special Hearing for Carroll M. Radebaugh, et al
77-227-SPH

TIME: 1:00 P.M.

DATE: Wednesday, April 26, 1978

PLACE: ROOM 106 COUNTY OFFICE BUILDING, 311 N. CHESAPEAKE AVENUE,

TOWSON, MARYLAND

S. Eric DiNenna
S. ERIC DINENNA
Zoning Commissioner of
BALTIMORE COUNTY

Baltimore County
Office of Planning and Zoning
TOWSON, MARYLAND 21204
(301) 471-2381

John B. Howard, Esquire
100 Washington Avenue
Towson, Maryland 21204

April 17, 1978

Re: Petition for Special Hearing
Joseph B. Radebaugh, et al - Petitioners
77-227-SPH

Dear Sir:

This is to advise you that \$25.00 is due for advertising and posting of the above property.

Please make check payable to Baltimore County, Maryland and remit to Mrs. Campagna, Room 113, County Office Building, Towson, Maryland 21204, before the hearing.

Very truly yours,

S. ERIC DINENNA
Zoning Commissioner

SDP/scw

LAW OFFICE
COOK, HOWARD, DOWNES & TRACY
PROFESSIONAL ASSOCIATION
NEW WASHINGTON AVENUE
TOWSON, MARYLAND 21204

JAMES B. C. DOWNES
JOHN B. HOWARD
DAVID G. TRACY, JR.
JOHN A. WILBUR
HENRY A. PERRY
DAVID SCHLENOFF
CARROLL M. RADEBAUGH
THOMAS L. WOODSON

January 24, 1978

Eric DiNenna
Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: Parking Permit - Radebaugh Property
Our File No. 4825

Dear Mr. DiNenna:

Please be advised that our office is filing this date a Petition for Special Hearing for off-street parking in a residential zone on behalf of the above owners.

We would appreciate receiving all pertinent information concerning this Petition for Special Hearing.

Thank you.

Very truly yours,

Maxine V. Hoan
Maxine V. Hoan
Legal Assistant to
John B. Howard

MVH/mgm
Enclosure

Baltimore County
Office of Planning and Zoning
TOWSON, MARYLAND 21204
(301) 461-2383

S. ERIC DINENNA
ZONING COMMISSIONER

June 16, 1978

John B. Howard, Esquire
P. O. Box 5517
100 Washington Avenue
Towson, Maryland 21204

RE: Petition for Special Hearing
1/3 of Burke Avenue, 75' E of Center
Avenue - 34th Election District
Carroll M. Radebaugh, et al - Petitioners
77-227-SPH (Item No. 152)

Dear Mr. Howard:

Please be advised that an appeal has been filed by James D. Mohan, Esquire, in behalf of Dr. and Mrs. Constant J. Georges and by John W. Heslian, III, Esquire, Esquire's Counsel, from the decision rendered by the Deputy Zoning Commissioner of Baltimore County in the above referenced matter.

You will be notified of the date and time of the appeal hearing when it is scheduled by the Baltimore County Board of Appeals.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA
Zoning Commissioner

Mr. Zeph George
713 Hillen Road
Towson, Maryland 21204

Mr. Wilbur B. Perry
113 Burke Avenue
Towson, Maryland 21204

Dr. David Schlenoff
228 East Burke Avenue
Towson, Maryland 21204

Baltimore County
Office of Planning and Zoning
TOWSON, MARYLAND 21204
(301) 461-2383

S. ERIC DINENNA
ZONING COMMISSIONER

May 11, 1978

John B. Howard, Esquire
P.O. Box 5517
409 Washington Avenue
Towson, Maryland 21204

RE: Petition for Special Hearing
N/S of Burke Avenue, 75' E of
Center Avenue - 34th Election
District
Carroll M. Radebaugh, et al -
Petitioners
NO. 78-229-SPH (Item No. 152)

Dear Mr. Howard:

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

Very truly yours,

George J. Martinak
GEORGE J. MARTINAK
Deputy Zoning Commissioner

33M/jhm

Attachments

cc: Ms. Zeph George
713 Hillen Road
Towson, Maryland 21204

Mr. Wilbur H. Perry
113 Burke Avenue
Towson, Maryland 21204

Dr. David Schlenoff
228 East Burke Avenue
Towson, Maryland 21204

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

177602

Carroll M. Radebaugh, et al
77-227-SPH

PRESENTED ON APRIL 26, 1978

My name is Barbara Bachur. My husband, children and I reside at 109 Linden Terrace. We have lived in the community for nearly eight years. We are buying our home.

I speak today in support of the exception which would permit and provide for the Radebaugh parking lot. While I categorically protest commercial encroachment into residential areas, I feel that the petition before you bears certain considerations.

1. Radebaugh's is and from all outward appearances will continue to be, a family business - a family whose roots in the community certainly predated mine and most of our neighbors. The establishment of their interest preceded current zoning regulations rather than being an exception of such. I feel that future growth will and must be confined to the area bordered by Alpburth, Center, Linden Terrace and Burke Avenue. The sought parking is within this area.

2. Unlike so many successful family businesses, the members of this family have elected to remain in the community as residents. Rather than using their success to make flight, they have stayed and maintained their homes. As their children have grown and married, they, too, have purchased homes in the community. They are fine neighbors; their residence adds strength to our community.

3. To my knowledge, there has never been a community complaint directed toward the Radebaugh establishment. The grounds are well-maintained. The store front is easily appraised. Knowing the integrity, pride and concern which is a real part of their structure, it is difficult for me to imagine any significant change in these areas.

Respectful submitted,

Barbara B. Bachur
Barbara B. Bachur



APPLICANT'S
EXHIBIT #1

Geo. W. Radebaugh & Sons, Inc.

FLORISTS AND GREENHOUSES

20 BURKE AVENUE - TOWSON, MARYLAND 21204

TELEPHONE (301) 871-4000

April 26, 1978

CARROLL M. RADEBAUGH
JOSEPH B. RADEBAUGH, JR.
JOHN W. RADEBAUGH, JR.
WILLIAM J. RADEBAUGH
J. DONALD RADEBAUGH

I thank you for the opportunity to talk about the past history of our business and also the present need for additional parking.

Our business was established in 1904 by my father who obtained selling vegetable and flowering plants. From a very meager start and also in keeping with the times, expansion was slow. In 1939, with the first arrival of row homes in our adjacent neighborhood, it was obvious that a parking problem was beginning to develop. Throughout the next 25-30 years population growth expanded so that the county was forced into imposing parking restrictions and a tall-talking one way street. These conditions coupled with our increased business volume forced our company into converting valuable growing areas into parking spaces.

Next came the uncontrolled expansion of Towson State University which created a critical problem. Our streets and avenues are choked with the day student cars. Today there virtually isn't a single parking space around the entire block that would accommodate one of our customers. So therefore, it's no news to suppose that the whole overall parking situation in the Greater Towson area is a disaster.

The area we petition for zoning to become a parking area is a most costly investment. However, we feel it will help alleviate many problems. To name a few it will decrease traffic accidents, congestion, etc., in the most troublesome corner of Burke and Alpburth avenues. Furthermore, it will aid in the convenience and safety of our customers, many of whom are elderly. Lastly, it will prevent further old man from brooding in our campus dormitory.

In the past we have engaged a rather low key type of operation. By this, I mean we have maintained day light business hours, no flashy signs and have refrained from anti-social tactics. We believe it has been in keeping with the tradition of our neighborhood. We further believe we have a good relationship with our neighbors and down through the years we have listened to their grievances and avoided by their wishes if not asked. We hold their respect in high regard.

GEORGE W. RADEBAUGH & SONS, INC.

Carroll M. Radebaugh
President

Baltimore County
Office of Planning and Zoning
TOWSON, MARYLAND 21204
(301) 461-2381

S. ERIC DINENNA
ZONING COMMISSIONER

June 21, 1978

John B. Howard, Esq.
100 Washington Ave.
Towson, MD 21204

RE: Interim Development Control
Act (IDCA) Application No. 78-5-8
Carroll M. Radebaugh, et al

Dear Sirs:

Please be advised that your IDCA application for a Special Hearing hearing was approved by the Planning Board on June 16, 1978. Special Hearing and you may now file your petitions, plans, and descriptions for said hearing in accordance with the Zoning Commissioner's rules for filing.

In order to assist you, we are enclosing a copy of the Zoning Commissioner's rules for filing and petition forms to be completed by you.

Very truly yours,

S. Eric DiNenna
S. ERIC DINENNA
Zoning Commissioner

Plans, petitions and
descriptions already filed
in the Zoning Dept.

SEY/JED/scw

Enclosures

PETITION FOR SPECIAL HEARING

9th DISTRICT

ZONING: Petition for Special Hearing for Off-Street Parking in a Residential Zone.

LOCATION: North side of Burke Avenue 75 feet East of Center Avenue.

DATE & TIME: WEDNESDAY, APRIL 26, 1978 at 1:00 P.M.

PUBLIC HEARING: Room 106 County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Hearing Under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve off-street parking in a residential zone (R.R. 5.5)

All that parcel of land in the Ninth District of Baltimore County

Being the property of Carroll M. Radebaugh and Joseph L. Radebaugh, as shown on plat filed with the Zoning Department.

Hearing Date: Wednesday, April 26, 1978 at 1:00 P.M.
Public Hearing: Room 106 County Office Building, 111 W. Chesapeake Avenue, Towson, Md.

BY ORDER OF
S. ERIC MIRMANN
ZONING COMMISSIONER OF
BALTIMORE COUNTY

GERVOLD, CROSS & ETZEL
Registered Professional Land Surveyors
412 DELAWARE AVENUE
TOWSON, MARYLAND 21204
823-4470

REGISTERED
PROF. LAND SURVEYOR
FRED A. DOLAN

May 19, 1978

Zoning Description

All that piece or parcel of land situate, lying and being in the Ninth District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a point on the north side of Burke Avenue at the distance of 75 feet easterly measured along the north side of Burke Avenue from the center of Center Avenue and running thence and binding on the north side of Burke Avenue South 84 degrees 15 minutes East 68 feet, thence leaving said avenue and running the three following courses and distances viz: North 5 degrees 45 minutes East 123 feet, North 84 degrees 15 minutes West 68 feet and South 5 degrees 15 minutes West 120 feet to the place of beginning,

Containing 0.20 of an Acre of land more or less.

Being a part of the land of the petitioners herein as shown on a plat filed in the office of the Zoning Commissioner.



78-229

Baltimore County
Department of Permits and Licenses
TOWSON, MARYLAND 21204
201-606-3000

JOHN D. SEVETT
DIRECTOR

May 8, 1978

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

Dear Mr. Mirmann: REVISED

Comments on Item # 152 Zoning Advisory Committee Meeting, May 2, 1978 are as follows:

Property Owner: Carroll M. & Joseph L. Radebaugh
Location: N/S Burke Ave. 75' E Center Ave.
Existing Zoning: R.R. 5.5
Proposed Zoning: Special Hearing to allow off street parking in a residential zone.

Acres: 0.20
District: 9th

The items checked below are applicable:

- Structure shall conform to Baltimore County Building Code (B.C.B.C.) 1970 Edition and the 1971 Supplement, State of Maryland Code for the Handicapped and aged and other applicable codes.
- A building permit shall be required before construction can begin. etc.
- Existing existing, existing, existing permits shall be required.
- Building shall be upgraded to new use - requires alteration permit.
- Three sets of construction drawings will be required to file an application for a building permit.
- 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.
- 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.
- Requested setback variance conflicts with the Baltimore County Building Code. See Section _____.
- No Comment.
- Comments:

Very truly yours,

Charles E. Rasmussen
Charles E. Rasmussen
Plans Review Chief

CEB:rsj

Baltimore County
Department of Permits and Licenses
TOWSON, MARYLAND 21204
201-606-3000

JOHN D. SEVETT
DIRECTOR

May 8, 1978

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Very truly yours,

Charles E. Rasmussen
Charles E. Rasmussen
Plans Review Chief

CEB:rsj

Baltimore County
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TOWSON, MARYLAND 21204
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May 8, 1978

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- Requested setback variance conflicts with the Baltimore County Building Code. See Section _____.
- No Comment.
- Comments:

Very truly yours,

Charles E. Rasmussen
Charles E. Rasmussen
Plans Review Chief

CEB:rsj

Baltimore County
Department of Permits and Licenses
TOWSON, MARYLAND 21204
201-606-3000

JOHN D. SEVETT
DIRECTOR

May 8, 1978

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

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- Requested setback variance conflicts with the Baltimore County Building Code. See Section _____.
- No Comment.
- Comments:

Very truly yours,

Charles E. Rasmussen
Charles E. Rasmussen
Plans Review Chief

CEB:rsj

Baltimore County
Department of Permits and Licenses
TOWSON, MARYLAND 21204
201-606-3000

JOHN D. SEVETT
DIRECTOR

May 8, 1978

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

Dear Mr. Mirmann: REVISED

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Property Owner: Carroll M. & Joseph L. Radebaugh
Location: N/S Burke Ave. 75' E Center Ave.
Existing Zoning: R.R. 5.5
Proposed Zoning: Special Hearing to allow off street parking in a residential zone.

Acres: 0.20
District: 9th

The items checked below are applicable:

- Structure shall conform to Baltimore County Building Code (B.C.B.C.) 1970 Edition and the 1971 Supplement, State of Maryland Code for the Handicapped and aged and other applicable codes.
- A building permit shall be required before construction can begin. etc.
- Existing existing, existing, existing permits shall be required.
- Building shall be upgraded to new use - requires alteration permit.
- Three sets of construction drawings will be required to file an application for a building permit.
- 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.
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- Requested setback variance conflicts with the Baltimore County Building Code. See Section _____.
- No Comment.
- Comments:

Very truly yours,

Charles E. Rasmussen
Charles E. Rasmussen
Plans Review Chief

CEB:rsj

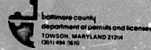
7/2/78
May 1978
Charles E. Rasmussen
DR David Schuler
2025 E. 60th Ave
Towson, MD 21204
4-19-78

Dear Mr. Mirmann,
I am writing to voice my opposition to having a home on Burke Ave. Road and replaced with a parking lot. I refer to the Radebaugh case # 78-229-544. Due to the nature of my occupation I will be unable to take time off from work in order to attend the hearing at 1:00 on 4/26/78.
I recently purchased my home on Burke Ave. because I felt that since it was outside of the proposed loop road, it would be unaffected by further business related development. I understand that it is the desire of those planning development within the Towson area to preserve the residential nature of that Towson. To replace the residence at 1550 with a parking facility would not only introduce more traffic into an already overcrowded thoroughfare, but would remove one of the older residences that served to give Residential Towson the appeal that drew me there initially.
I strongly oppose this proposed action by the Rackhards, and wish to be advised of the outcome of this hearing. I would also appreciate any information.
(2272)

on that might occur in filing an appeal, should
the matter be decided in favor of the Radebaugh's
plan.

Thank you.

Sincerely,
Dr. David Schenck



JAMES D. SEVERIN
DIRECTOR

May 8, 1978

Mr. E. Eric LaRocca, zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Dear Mr. LaRocca:

REVISED

Comments on Item # 152 zoning Advisory Committee Meeting, May 2, 1978
are as follows:

Property Owner: Carroll M. & Joseph L. Radebaugh
Location: N/S Burke Ave. 75' E Center Ave.
D.R. 5.5
Proposed Zoning: Special Hearing to allow off street parking in a residential zone.

Area: 0.20
District: 9th

The items checked below are applicable:

X 1. Structures shall conform to Baltimore County Building Code (B.C.B.C.)
1970 Edition and the 1971 Supplement, State of Maryland Code for the
Building and Code and other applicable codes.

X 2. A building permit shall be required before construction can begin.
etc.

X 3. Paving & grading, etc., shall be required.

X 4. Building shall be operated to new use - requires alteration permit.

Three sets of construction drawings will be required to file an
application for a building permit.

X 5. 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.

X 6. 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.

X 7. Requested setback variance conflicts with the Baltimore County
Building Code. See Section 10-10.

X 8. No comment.

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

The Hon. Barbara Bachur
TO: Baltimore County Council
FROM: County Board of Appeals
SUBJECT: Carroll M. Radebaugh - Case No. 78-229-SH

Date: January 31, 1979

Dear Mrs. Bachur:

In response to your recent inquiry concerning the above matter, this is to advise that the Board did not receive until January 18th a Memorandum from the Petitioner's attorney and consequently, it would have been inappropriate to render an Opinion prior to that time.

We have since, following receipt of this Memorandum, rendered a decision in this case and are enclosing herewith a copy of same for your consideration.

Thank you for your kind interest in this regard.

Yours very truly,

Robert L. Gilland, Vice Chairman

RLG:*

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
A PROFESSIONAL ASSOCIATION
210 ALBEMARLE AVENUE
P.O. BOX 5511
TOWSON, MARYLAND 21204

January 17, 1979

LAND-DELIVERED

Robert L. Gilland, Chairman
Baltimore County Board of Appeals
Court House
Towson, Maryland 21204

RE: Petition for Special Hearing
N/S of Burke Avenue, 75' East
Of Centre Avenue, 9TH District
Carroll M. Radebaugh, et al - Plaintiffs
Case No. 78-229-SH

Dear Mr. Gilland:

I am hand-delivering herewith Petitioner's Memorandum in response to that filed in opposition by Special People's Counsel as requested by the Board at the conclusion of the hearing in the above matter on November 9, 1978.

Special People's Counsel has raised in its Memorandum several issues that were not addressed at the time of hearing, and, further, has advanced arguments on certain of the general issues that were not posed at that time. Accordingly, it is respectfully requested that this matter be set in for additional argument so that these points may be properly addressed. I personally would not anticipate that such argument would consume even an hour; and, therefore, it would be most appreciated if an early date might be assigned.

Thank you for your consideration of this matter.

Kind regards.

Sincerely,

John B. Howard

JSH:kh
cc: William F. Hackett
John A. Millen



Baltimore County, Maryland

PEOPLE'S COUNSEL
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

JOHN W. HESSIAN, III
People's Counsel
PETER MAX SCHNEIDERMAN
Esquire People's Counsel

October 10, 1978

John B. Howard, Esquire
65 Washington Avenue
Towson, Maryland 21204

RE: CARROLL M. RADEBAUGH
Case No. 78-229-SH

Dear John:

This case has been assigned for hearing before the County Board of Appeals on Thursday, November 9, 1978. I have asked Gary Drvill, Esquire, to represent this office in the proceedings. He will, of course, have total control of the case and, accordingly, if there are any objections or other matters that you want to discuss, I would appreciate your contacting him directly.

Very truly yours,

John W. Hessian, III

cc: Gary Drvill, Esq. (212-464-1212)
James D. Nolan, Esq.
Edith Elmhurst, County Board of Appeals

JWH:h

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

September 27, 1978

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

Re: Case No. 78-229-SH, Carroll M. Radebaugh, et al
Our clients: Dr. and Mrs. Constant Georges.

Dear Chairman Reiter:

Please be advised that this office is striking its appearance in the above entitled matter.

Dr. and Mrs. Georges will be relying upon the efforts and representation of People's Counsel, John W. Hessian III, Esquire.

Sincerely yours,

James D. Nolan

cc: Dr. and Mrs. Constant Georges

John B. Howard, Esquire

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

DONALD DWIGHT COOPER, M.D.
100 BURKE AVENUE
TOWSON, MARYLAND 21204

TELEPHONE: RE2-4857

November 8, 1978

Board of Appeals

2

November 8, 1978

spaces for many blocks proximal to the school. This condition exists all day long and extends into the early evening when attendants at night school are considered.

To remain viable in this area, the Radebaugh firm needs more parking space. This they already possess on their own property at 114 Burke Avenue.

I have been informed that such an arrangement would be attractively landused and in no way would offer an objectionable appearance to the immediate community.

I therefore offer my sincere approval of this projected zoning change and I hope that it will be favorably received.

Sincerely yours,

Donald E. Cooper, M.D.

DOC/jj

Rec'd 11/8/78 (hand delivered)
B is given

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

Dear Sirs:

I am writing in behalf of Geo. W. Radebaugh and Sons, Inc. whose petition concerning rezoning of property at 114 E. Burke Avenue, Towson, Md., is now before you for consideration.

My family or I have owned property at 100 Burke Avenue since 1920. I believe that I have witnessed changes in this area for a longer time than other residents of this part of Towson. I recall the humble beginning of the Radebaugh enterprise in the early days of the Twenties. The business has always operated with consideration for the neighborhood and has maintained a low profile developing into the large enterprise of the present.

It is a family owned and operated business. The members of this family are industrious, hard working, civic minded people who have earned the respect of their neighbors and the entire metropolitan community. Their firm includes a considerable number of full time employees. For years they have also afforded helpful part time employment to scores of young people who have been aided considerably by these opportunities.

In this area of Towson, parking space has become a critical problem. Student (Towson State University) parking now claims the majority of street

8-9-78 Notified of appeal hearing scheduled for THURSDAY, OCTOBER 26, 1978 at 10 am:

John B. Howard, Esq.	Counsel for Petitioner	(Sent L72 & 872)
Carroll M. and Jos. L. Radebaugh	Petitioners	
James D. Nolan, Esq.	Counsel for Protestants	
Dr. and Mrs. C. J. Georges	Protestants	
Mr. W. H. Perry	Protestant	
Dr. David Schlencoff	"	
John W. Hessian, III, Esq.	People's Counsel	
Mr. J. Dyer	Zoning	

8/15/78 - Above notified of postponement and reassignment for THURSDAY, NOV. 9, 1978 at 10 a.m.

494-3180

County Board of Appeals
Room 219, Old Court House
Towson, Maryland 21204
Hearing Room 118

NOTICE OF ASSIGNMENT

August 9, 1978

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #108

CASE NO. 78-229-SH

CARROLL M. RADEBAUGH, ET AL

for Special Hearing - for off-street parking in residential zone
N/S Burke Ave. 75' E. of Center Ave.

9th District

5/11/78 - DZC Granted parking

ASSIGNED FOR:

THURSDAY, OCTOBER 26, 1978 at 10 a.m.

cc: J. B. Howard, Esq.
Carroll M. Radebaugh and
Joseph L. Radebaugh

Counsel for Petitioner
Petitioners

James D. Nolan, Esq.
Dr. and Mrs. Constant J. Georges

Counsel for Protestants

Dr. David Schlencoff

Protestant

John W. Hessian, III, Esq.

People's Counsel

Mr. S. E. DiNanna
Mr. George Martinak
Mr. James E. Dyer
Mr. Leslie Groat
Mr. Gary Burt
Mr. C. L. Perkins

Muriel E. Buddemeier
County Board of Appeals

LAW OFFICES OF
NOLAN, PLUMBOFF & WILLIAMS
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
JAMES D. NOLAN
J. CARL PLUMBOFF
WILLIAM H. WILLIAMS
WILLIAM H. HERRIN, JR.
DONALD J. HENNING
KELLY H. HARTEN
STEPHEN J. NOLAN
1964 CODE 700
TOWSON
833-7400
August 11, 1978

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

Re: Radebaugh Use Permit for Parking Case,
Case No. 78-229-SPH, Scheduled for
Thursday, October 26, 1978 at 10:00 A.M.

Dear Mr. Reiter:

We have just received the Notice of Assignment dated August 9 from the Board, setting this case in for the very early date of October 26, 1978.

Unfortunately, both of my clients, namely Dr. and Mrs. Georges, will be attending the American Dental Association convention in the Los Angeles area during that date, and they have long since had reservations for this event, which they attend annually.

Similarly, my clients will be attending New York State Dental convention the first week in December and will be away for about a week beginning September 15.

My wife and I will be away with the Bar Association trip to Europe leaving October 16, and we will return around October 21 or 25.

Thus, due to the fact that my clients who are the aggrieved parties, as the owners of the contiguous property affected, will be away on October 26, we would respectfully request that the matter be reset for another date which does not conflict with the travel plans outlined in this letter.

Thanking you and the Board for your kind attention in this matter, I am

Respectfully,

James D. Nolan

JDN/hl
See next page for copies

Page two - Walter Reiter, Esquire - August 11, 1978

cc: John B. Howard, Esquire
409 Washington Avenue
Towson, Md. 21204

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

Dr. and Mrs. Constant Georges
508 York Road
Towson, Md. 21204

494-3180

County Board of Appeals

Room 219, Court House
Towson, Maryland 21204

June 23, 1978

James D. Nolan, Esq.
204 W. Pennsylvania Ave.
Towson, Md. 21204

Re: File No. 78-229-SPH
Carroll M. Radebaugh, et al

Dear Mr. Nolan:

1. Number of witnesses you anticipate calling 243
2. How many of these witnesses will be "expert witnesses"? 1
3. Fields to be covered by experts you intend to call - please check:
Land Planner _____
Real Estate 1 _____
Engineer _____
Traffic _____
Other _____
4. Total time required (in hours) for presentation of your side of the case.
One hour

James D. Nolan
Attorney for Petitioners (L)
Attorney for Petitioners ()

Rec'd 6/23/78
12:15 PM

PRESENTED ON APRIL 26, 1978

My name is Barbara Radebaugh. My husband, children and I reside at 109 Linden Terrace. We have lived in the community for nearly eight years. We are buying our home.

areak today in support of the exception which would permit and provide for the Radebaugh parking lot. This is categorically a potent commercial encroachment into residential areas. I feel that the petition before you bears certain considerations.

1. Radebaugh's is and from all outward appearances will continue to be, a family business - a family whose roots in the community certainly preceded mine and most of our neighbors. The establishment of their interest preceded current zoning regulations rather than being an exception of such. I feel that future growth will and must be confined to the area bordered by Albemarle, Center, Linden Terrace and Burke Avenue. The sought parking is within this area.

2. Unlike so many successful family businesses, the members of this family have elected to remain in the community as residents. Rather than using their success to make right, they have stayed and maintained their homes. As their children have grown and married, they too have remained in the community. They are fine neighbors; their presence adds a wealth to our community.

3. To my knowledge, there has never been a community complaint directed toward the Radebaugh establishment. The grounds are well maintained. The store front nicely appointed. Knowing the integrity, pride and concern which is a real part of their structure, it is difficult for me to imagine any significant change in these areas.

Respectful submitted,

Barbara P. Radebaugh
Barbara P. Radebaugh

APR 26 78 AM



EXHIBIT #1

John S. Howard, Esquire
Cook, Fawcett, Deane & Tracy
409 Washington Avenue
Towson, Maryland 21204
COUNTY OFFICE OF PLANNING & ZONING
111 W. Chesapeake Ave.
Towson, Maryland 21204
YOUR NO. 152

Your Petition has been received and accepted for filing
this 24 day of January 1978

By Eric Blumhagen
Zoning Commissioner

Petitioner: Carroll M. Radebaugh
Petitioner's Attorney: Nicholas I. Comolari
Chairman, Zoning Plans
Advisory Committee

cc: Gerhold, Cross & Steel
413 Baltimore Ave.
Towson, MD 21204

78-229 SPH

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9 Date of Posting: 4-6-78
Posted for: Special Hearing for Off-Street Parking in R.R. Joe
Petitioner: Carroll M. Radebaugh
Location of property: N.E. Burke Ave. 75 E. of Centerline
Location of Sign: Front of Property
Remarks:
Posted by: C. Fawcett Date of return: 4-6-78

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your Petition has been received * this 24 day of
JAN 1978 File # Fee \$25 Received _____

Cash
Other

Petitioner: Radebaugh Submitted by: N. Howard
Petitioner's Attorney: N. Howard Reviewed by: N. Howard
* 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		GIS Sheet
	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: <u>N. Howard</u>	Revised Plans: Change in outline or description _____ Yes _____ No								
Previous case:	Map # _____ OFFICE COPY								

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9 Date of Posting: 4/6/78
Posted for: Special Hearing for Off-Street Parking in R.R. Joe
Petitioner: Carroll M. Radebaugh
Location of property: N.E. Burke Ave. 75 E. of Centerline
Location of Sign: Front of Property
Remarks:
Posted by: C. Fawcett Date of return: 4/6/78

OFFICE OF THE TIMES
TOWSON, MD. 21204
April 6 1978

THIS IS TO CERTIFY, that the annexed advertisement of
PETITION FOR SPECIAL HEARING - Jos. Radebaugh,
was inserted in the following:

- | | |
|--|--|
| ☐ Cronville 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 _____ successive weeks before the
7th day of April, 1978, that is to say, the same
was inserted in the issues of April 6, 1978

S. ROMBERG PUBLICATIONS, INC.

BY Eric Blumhagen

CERTIFICATE OF PUBLICATION

TOWSON, MD. APRIL 4, 1978

THIS IS TO CERTIFY, that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper printed
and published in Towson, Baltimore County, Md. on each
day of _____ before the _____
day of _____ 1978, the same publication
appearing on the _____ day of _____
1978.

THE JEFFERSONIAN
L. L. Landman
Manager

Cost of Advertisement, \$ _____

11/20/80 - Per Mr. O'Connor to my question as to whether
they are going to discontinue their support of the Radebaugh case
because it is more due to the fact that the property has been
rezoned on the new maps, Mr. O'Connor said that they are not
going to discontinue right now - they are willing to see if Baltimore
County is going to have the necessary permits. If they do not,
then they will proceed in court.

ETE

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

No. 65544

DATE April 3, 1978 ACCOUNT 01-662

AMOUNT \$25.00

RECEIVED Messrs. Cook, Howard, Downes & Tracy, 409
Washington Ave. P.O. Box 5517, Towson, Md. 21204
FOR Petition for Special Hearing for Carroll M. Radebaugh,
et al
#78-229-SPH

18651 APR 4

25.00 MSC

VALIDATION OR SIGNATURE OF CASHIER

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

DATE June 16, 1978 ACCOUNT 01-662

AMOUNT \$75.00

RECEIVED FROM John W. Harlan, III, Esquire, Cost of Appeal
Petition for Special Hearing N/S of Burke Ave., 75' E
of Center Ave. Carroll M. Radebaugh, et al
Case No. 78-229-SPH

401 JUN 19

75.00 MSC

VALIDATION OR SIGNATURE OF CASHIER

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

No. 65586

DATE April 27, 1978 ACCOUNT 01-662

AMOUNT \$47.07

RECEIVED FROM John B. Howard 409 Washington Ave. 21204
FOR Posting & advertising property of Joseph L.
Radebaugh, et al No. 78-229 SPH

1814 APR 27

47.07 MSC

VALIDATION OR SIGNATURE OF CASHIER

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

DATE June 16, 1978 ACCOUNT 01-662

AMOUNT \$75.00

RECEIVED FROM James D. Nolan, Esquire, 204 W. Pennsylvania Ave.
Towson, Md. 21204, Cost of Appeal for Dr. Constant J.
George Case No. 78-229-SPH Carroll M. Radebaugh, et al
Petitioners - N/S of Burke Ave., 75' E of Center Ave.

401 JUN 19

75.00 MSC

VALIDATION OR SIGNATURE OF CASHIER

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

No. 15423

DATE 1/2/79 ACCOUNT 01.712

John B. Howard, Esq.
204 210 Allegheny Ave. AMOUNT \$1.45

Towson, Md. 21204

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Copy of Plat, Pet. Ex. #1 - File No. 78-229-SPH
N/S Burke Ave. 75' E. of Center Ave.
9th District
Carroll M. Radebaugh, et al

1811 JAN 3

1.45 MSC

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

No. 15421

DATE 12/28/78 ACCOUNT 01.712

John Howard, Esq.
210 Allegheny Ave. AMOUNT \$2.90
Towson, Md. 21204

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

2 copies of exhibits from file #78-229-SPH
Carroll M. Radebaugh, et al
N/S Burke Ave. 75' E. of Center Ave.
9th District 2.90 MSC

#78-229-SPH (Item No. 152) 9th District
N/S of Burke Ave. 75' E. of Center Ave.
Carroll M. Radebaugh, et al
Petitioners
1 SIGN

#78-229-SPH (Item No. 152) 9th District
N/S of Burke Ave. 75' E. of Center Ave.
Carroll M. Radebaugh, et al
Petitioners
1 SIGN



Zoned BSS
0.11 Acre
Aerial Intersection
Yield Road and Buckle Avenue

Property of
General W. E. Edwards & Sons, Inc.
9733 District
Baltimore Co MD



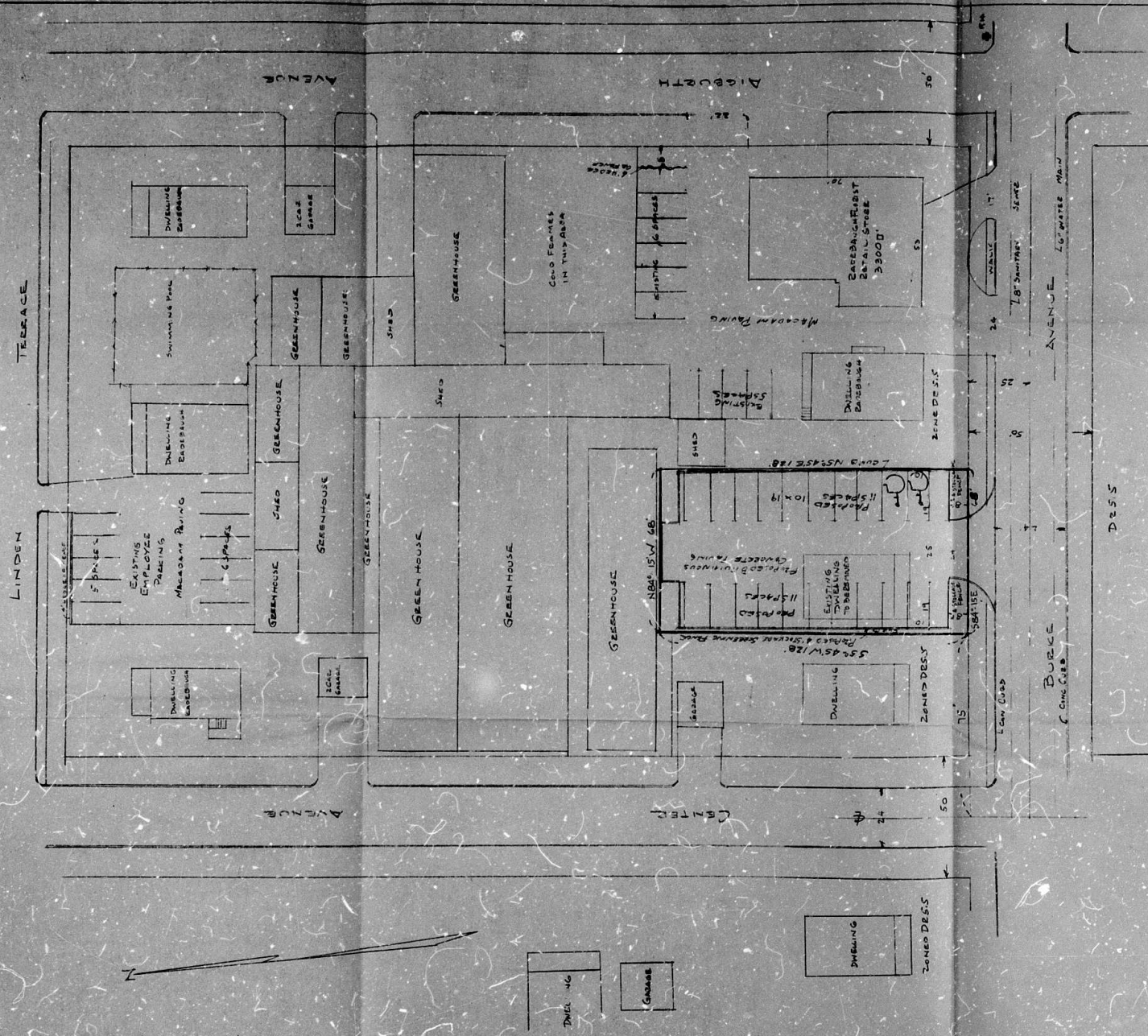
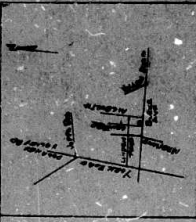


1976 COMPREHENSIVE ZONING MAP
 ADOPTED BY THE
 BALTIMORE COUNTY COUNCIL
 37-1-1976 AND 5-19-76
 BALTIMORE 108-2-109-76 110-76 111-76
 112-76 113-76 and 114-76

PROPERTY OF
 GEORGE W. RADZBUCH, INC.
 4TH DISTRICT BAYVIEW AND

PHOTOGRAMMETRIC MAP OF BALTIMORE COUNTY METROPOLITAN AREA OFFICIAL ZONING MAP

REVISIONS	DATE	SCALE	LOCATION	SHEET
1		1" = 200'	WILTONDALE	NE
2			TOWSON	SA
DATE OF PHOTOGRAPHY APRIL 1963 Prepared by Photogrammetric Services AERO SERVICE CORPORATION - PHILADELPHIA, PA.				



Parking Data
 EXISTING SPACES 22
 PROPOSED NEW SPACES 22
 TOTAL SPACES 44

- EXISTING ZONING DR 5.5
 EXISTING USE - RETAIL FURNITURE AND GARDEN SHOP AND
 ASSOCIATED OUTDOOR SALES AREA
 PROPOSED ZONING 401.4; PERMIT FOR BUSINESS PARKING
 IN RESIDENTIAL ZONE C-20 (OFF-MANAGER)
- RESTRICTIONS
- 1. ONLY PASSENGER VEHICLES, EXCLUDING BUSES, MAY USE PARKING AREA
 - 2. NO LOADING SERVICE OR ANY USE OTHER THAN PARKING
 - 3. LIGHTING - DAYTIME USE OF AREAS ONLY
 - 4. SCREENING AS SHOWN
 - 5. AREA TO BE PAVED WITH BITUMINOUS CONCRETE
 - 6. HOURS OF USE 8:AM TO 5 PM

PROPERTY OF
 RADEBAUGH FLORENTS
 9TH DISTRICT BALTO CO MD

SCALE - 1" = 20' JANUARY 17, 1978
 REVISED APRIL 22, 1978
 GERHOLD, CROSS & ETZEL
 REGISTERED LAND SURVEYORS
 412 DELAWARE AVE TOWSON MARYLAND