

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the following finding of facts:

Pace Membership Warehouse
Case No. 86-97-SPH

We further note the restrictions imposed by the Zoning Commissioner in his Order. Although we agree with the spirit of same, we decline to repeat them in our Order. The petition before us seeks only an interpretation and clarification of the BCZR, not a specific proposal at a specific site. We trust that this opinion has provided a delineable guideline for this issue. If a proposal for development within an M.L. zone is presented to this Board with substantial differences than that operation as described here, it will be considered in light of the BCZR on its own merits. We will not impose restrictions in this instance when there is no specific site before us.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 14th day of May, 1986, by the County Board of Appeals, ORDERED that the particular wholesale operation as described by the Petitioner herein is permitted as a matter of right in an M.L. zone and as such the Petition for Special Hearing is hereby GRANTED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Lawrence E. Schmidt
Lawrence E. Schmidt

Henry E. Buchheister, Jr.
Henry E. Buchheister, Jr.

IN RE: PETITION SPECIAL HEARING * BEFORE THE
Pace Membership Warehouse, * ZONING COMMISSIONER
Petitioner * OF BALTIMORE COUNTY
* Case No. 86-97-SPH
* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests that the Zoning Commissioner approve its use in a M.L. Zone as a matter of right.

The Petitioner, by Bill O'Connell, Field Membership Manager for the Petitioner, Pace Membership Warehouse (Pace), and Terry Guy, its National Real Estate Manager, appeared and testified and was represented by Counsel. There were no Protestants.

Pace is a business entity of a type variously labeled as a "wholesale club", "warehouse club", membership discount store", "wholesale cash and carry warehouse", and "wholesale center". The concept is to provide merchandise at or near wholesale prices to private customers, i.e., small business, e.g., restaurants, small retailers, service firms, and professionals, and to individual customers who work for or are members of a "qualified group", e.g., government, banks, public utilities, and schools. See Petitioner's Exhibit 3. Pace is designed for the sale or resale of merchandise bought by other businesses from Pace who then sell to its consumers. These businesses come to the Pace facility, a self-service warehouse of 100,000 square feet, and purchase what they need from merchandise stacked in designated areas and then remove whatever they purchase from the site. Customers may choose from 4,000 to 5,000 individual products stored in the warehouse. This allows Pace to

buy in bulk directly from the manufacturer and permits low wholesale prices to its customers. There are no delivery facilities and no credit is offered; the warehouse is not open to the general public. About 60% of its trade is to small businesses; 40% is to members of participating organizations.

The Petitioner has identified a M.L.-zoned site which is large enough to construct a 100,000 square foot facility, and before leasing or purchasing the property, Pace requests confirmation that such use as described above is permitted as a matter of right in the M.L. Zone.

Section 253.1.B.15, Baltimore County Zoning Regulations (BCZR), permits storage, warehousing, or wholesale distribution of any product whose sale (retail or wholesale) or final processing or production is permitted as a matter of right as a principal use in the M.L. Zone.

Prior to April 1, 1971, uses permitted in all commercial zones were permitted as a matter of right in a M.L. Zone. As a result of Bill No. 100, 1970, and pursuant to Section 253.1.F.1, BCZR, incidental sales, wholesale or retail, are permitted as a matter of right in the M.L. Zone. This provision was recommended by the Baltimore County Planning Board in its final report on proposed zoning amendments, dated September 4, 1969. It is obvious, therefore, that accessory wholesale sales are permitted as a matter of right in the M.L. Zone. The principal question posed is whether the Petitioner's sales at its facilities are accessory or incidental to its warehouse or wholesale distribution operation.

The M.L. regulations must be construed reasonably with regard to both the objects sought to be attained and to the general structure of the ordinance as a whole.

- 2 -

PETITION FOR SPECIAL HEARING

LOCATION: Zoning interpretation only, no particular location.

DATE AND TIME: Monday, August 19, 1985 at 1:00 p.m.

PUBLIC HEARING: Room 106, County Office Building, 111 West 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 to approve the use by PACE MEMBERSHIP WAREHOUSE of their wholesale operation as a matter of right in an M.L. zone. Zoning interpretation only, no particular location.

Being the property of Terry Guy/Pace Membership Warehouse as shown on the plat filed with the Zoning Office.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JARLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

If the activity as described is excluded from the M.L. Zone, it must fall into a commercial zone. In its nature, so far as it appears, it is as closely akin to "industry" as it is to "business" as those terms are commonly used in the BCZR.

The terms "warehouse" and "wholesale" are used inclusively in Section 253.1.B.15, BCZR, provided that the involved product's sale, processing, or production is permitted as a matter of right in the M.L. Zone, as delineated in Section 253.1.A, B, C, and D, BCZR. Section 253.1.E, BCZR, permits combinations of those uses listed in those subsections as a matter of right. There is no question that the items sold in the "warehouse" by the Petitioner are delineated as being permitted via production and processing in the M.L. Zone as a matter of right. However, the BCZR specifically excludes retail sales whose primary purpose is for the sale of goods stored on the premises from the warehouse operation. See Section 101, BCZR, Definitions - Warehouse. There is no question, therefore, that retail sales as the principal use are not permitted in and of themselves. A shopping center, for example, would not be permitted.

It would appear from a reading of the M.L. regulations in their entirety that retail sales as a principal use would not be permitted. The issue is thus reduced to defining the terms "retail" and "wholesale". If the latter is the type of operation conducted by the Petitioner, it would be permitted as a matter of right. If the former, the Petitioner would not be permitted to operate in a M.L. Zone.

In Petros v. City of Lynn, 28 NE.2d 233 (Mass., 1940), the Court noted that these words were commonly defined not with primary emphasis upon the difference between sales to an ultimate consumer and sales to one who intends to resell, but rather with reference to the difference between selling in

small quantities and selling in large quantities or in bulk. Black's Law Dictionary defines "wholesale" as selling of goods by "the piece and in large quantities." The regulations impacted here imply similar interpretation. Moreover, they are clearly unambiguous in that retail sales are permitted if incidental to the wholesale operation.

The primary goal of the Petitioner is to sell products quickly and in quantity and to enjoy a speedy turnover in stock. Based upon the testimony and evidence presented, the retail sales would be incidental to the use of the site as a warehouse or wholesale operation. As long as the general public is not permitted to shop and the other accouterments normally supplied by retail operations are not provided, the proposed use would satisfy the spirit and intent of Section 253.1.B.15, BCZR.

Pursuant to the advertisement and public hearing on this Petition held, and for the reasons given above, the relief prayed for should be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 30th day of November, 1985, that the particular wholesale operation as described by the Petitioner herein is permitted as a matter of right in a M.L. Zone and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. Sales from the site in a M.L. Zone shall be limited specifically to businesses with appropriate proof of operation and registration as such with the Petitioner and to individuals who are members of and belong to participating organizations, such as banks, credit unions, government agencies. Individuals will not be permitted to utilize the Petitioner's facilities unless they satisfy these restrictions.
2. Failure of the Petitioner to properly license and regulate those using its facilities as described above shall cause the facility to be in violation

of the BCZR for a M.L. Zone and shall be subject to a penalty of \$200 per day for each day in violation and to having the facility closed.

Zoning Commissioner of
Baltimore County

AJ/srl

cc: Leslie M. Pittler, Esquire
People's Counsel

ORDER RECEIVED FOR FILING
DATE November 26, 1985
BY [Signature]
ADMINISTRATIVE ASSISTANT

- 5 -

ORDER RECEIVED FOR FILING
DATE [Signature]
ADMINISTRATIVE ASSISTANT

- 3 -

- 4 -

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
No particular location - : OF BALTIMORE COUNTY
Zoning interpretation only.
PACE MEMBERSHIP WAREHOUSE, : Case No. 86-97-SPH
Petitioner

ENTRY OF APPEARANCE

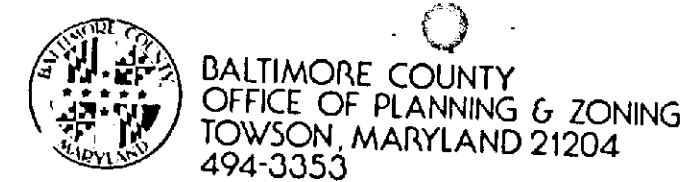
Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 8th day of August, 1985, a copy of the foregoing Entry of Appearance was mailed to Leslie M. Pittler, Esquire, Suite 501, 28 Allegheny Ave., Towson, MD 21204, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman



ARNOLD JABLON
ZONING COMMISSIONER

August 15, 1985

Leslie M. Pittler, Esquire
Suite 501, 28 Allegheny Ave.
Towson, Maryland 21204

RE: Petition for Special Hearing
Zoning interpretation only,
No particular location
Pace Membership Warehouse, Petitioner
Case No. 86-97-SPH

Dear Mr. Pittler,

This is to advise you that \$ 24.75 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

This fee must be paid and the zoning sign and post returned on the day of the hearing. Do not remove sign until day of the hearing.

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

Sincerely,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

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

No. 012424

DATE 11-27-85 ACCOUNT R-01015000

AMOUNT \$ 24.75

RECEIVED Leslie Pittler Esq

FOR Advertising & Posting

FOR 11-27-85

VALIDATION OR SIGNATURE OF CASHIER

Leslie M. Pittler, Esquire
Suite 501, 28 Allegheny Ave.
Towson, Md. 21204

July 31, 1985

NOTICE OF HEARING

RE: Petition for Special Hearing
Zoning interpretation only,
No particular location
Pace Membership Warehouse, Petitioner
Case No. 86-97-SPH

TIME: 1:00 p.m.

DATE: Monday, August 19, 1985

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

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

No. 008551

DATE 7/24/85 ACCOUNT R-01015000

AMOUNT \$ 20.00

RECEIVED FROM Leslie Pittler Esq

FOR 7/24/85

VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE
August 9, 1985

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

000
Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Police Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Leslie M. Pittler, Esquire
Suite 501, 28 Allegheny Avenue
Towson, Maryland 21204

RE: Item No. 4 - Case No. 86-97-A
Petitioner - Pace Membership Warehouse
Special Hearing Petition

Dear Mr. Pittler:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following 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.

* Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and hearing scheduled accordingly.

Very truly yours,

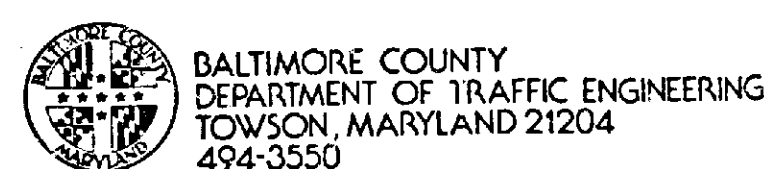
Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:rrr

Enclosures

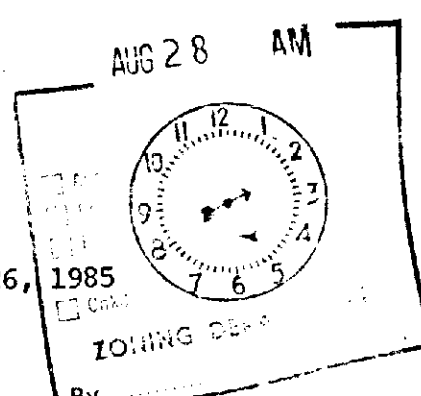
cc: Mr. Terry Guy
P.O. Box 39975
Denver, Colorado 80239

* No comments enclosed, interpretation only.



STEPHEN E. COLLINS
DIRECTOR

August 26, 1985



Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Item No. 4 -ZAC- Meeting of July 23, 1985
Property Owner: Anywhere in Baltimore County
Location: (No DESCRIPTIONS OR PLATS REQUIRED AS PER THE ZONING COMMISSIONER)
Existing Zoning:
Proposed Zoning:

Acres:
District:

Dear Mr. Jablon:

The Department of Traffic Engineering has no comment on this particular item.

Very truly yours,

Michael S. Hange
Traffic Engineering Associate II

MSF/bza

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
No Particular Location - : OF BALTIMORE COUNTY
Zoning Interpretation Only
PACE MEMBERSHIP WAREHOUSE, : Case No. 86-97-SPH
Petitioner

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of November 26, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 26th day of December, 1985, a copy of the foregoing Notice of Appeal was mailed to Leslie M. Pittler, Esquire, Suite 501, 28 Allegheny Ave., Towson, MD 21204, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

IN RE: PETITION SPECIAL HEARING * BEFORE THE
Pace Membership Warehouse * COUNTY BOARD OF APPEALS
Petitioner * OF BALTIMORE COUNTY
* Case No. 86-97-SPH
* * * * *

SUBPOENA

TO: Zoning Commissioner of Baltimore County
111 W. Chesapeake Avenue, Room 109
Towson, Maryland 21204

At the request of Petitioner, "Pace Membership Warehouse, YOU ARE COMMANDED BY THE BOARD OF APPEALS OF BALTIMORE COUNTY to appear and testify at the following date, time and place:

DATE: Tuesday, April 15, 1986

TIME: 10:00 a.m.

PLACE: Board of Appeals of Baltimore County Hearing Room
Room 210, Old Courthouse
Towson, Maryland 21201

YOU FURTHER ARE COMMANDED to bring with you to the hearing such documents and tangible things set forth on the attached Document Schedule.

Leslie M. Pittler
LESLIE M. PITTILER
Suite 501
28 Allegheny Avenue
Towson, Maryland 21204
296-9220

Attorney for Petitioner

Mr. Sheriff:

Please issue the above summons.

June Holmen
June Holmen, Bd. of Appeals

RECEIVED
COUNTY BOARD OF APPEALS
100 APR 14 P 2-4

DOCUMENT SCHEDULE

- A. Any and all files related to Makro, Inc.
B. Any and all files related to Pace Membership Warehouse.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Zoning Commissioner Date: June 17, 1986

FROM: County Board of Appeals

SUBJECT: Zoning Commissioner's File No. 86-97-SPH

Attached hereto in the Zoning Commissioner's File No. 86-97-SPH, Pace Membership Warehouse, which was entered as Petitioner's Exhibit #4 at the hearing before the Board of Appeals.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary

LAW OFFICES
Leslie M. Pittler
SUITE 501
28 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
(410) 276-9020

October 7, 1985

Arnold Jablon, Esquire
Zoning Commissioner for Baltimore County
County Office Building
Towson, Maryland 21204

Hand-delivered

Re: Pace Membership Warehouse

Dear Mr. Commissioner:

After further discussions with Pace Membership Warehouse and further analysis of the I-M overlay, it would seem to me that the restrictions in the I-M would prevent its being a vehicle to implementation of a Pace warehouse. Thus, it would seem that Pace and similar type facilities would only be able to operate from an ML zoned area and not an I-M.

With further reflection on this issue, I would point out, as we set forth in the public hearing, the following:

A. If one considers the basic definition of "wholesale," as set forth in both Black's Law Dictionary and the Oxford Dictionary, Pace can be interpreted to be a wholesale operation by virtue of its selling "goods by the piece and in large quantities." Coupling this definition with the undisputed testimony that Pace's primary goal and objective is to be the small businessman's distributor, its entire operation is geared to the small businessman. Your scrutiny of the article from Nations Business clearly so indicates.

Even its sales to others are sales to employees of small businesses and not to the consumer at large.

The impact of truck traffic which services the Pace Warehouses does not lend itself to a shopping center, retail form of outlet. I am advised that as many as forty (40) to forty-five (45) trucks deliver to a Pace Warehouse operation every business day.

The crux of the matter is, we have in Baltimore County ML sites that are not being put to a productive use for Baltimore County. Employment and tax dollars, which will benefit all of our citizens,

Arnold Jablon, Esquire
October 7, 1985
Page Two

should be the deciding factor in an issue which causes no harmful interpretation to the Baltimore County Zoning Regulations.

In addition, Pace Membership Warehouse has been, and is, extremely active in the use of Baltimore County's OTA Program at their Woodlawn location. I am enclosing to you a copy of a letter directed to the Director of the Baltimore County Economic Development Commission to that effect. Pace shall be using the Baltimore County OTA Program at all future locations at which it builds or opens any warehouses within any ML Zone in Baltimore County. This employment initiative by Pace, in my opinion, totally diffuses any possible argument that their location in an ML Zone would inhibit employment opportunities in any part of the County designated for manufacturing use. In fact, the opposite will occur as is evidenced by Pace's track record currently being developed with the Office of Economic Development.

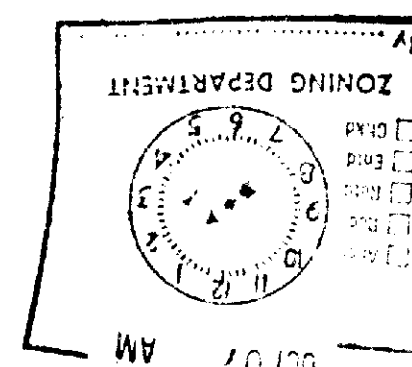
Under the circumstances outlined above, I would respectfully argue and urge that the granting of the petition pending before you is and will be an important enhancement to Baltimore County's economic and employment development.

Thank you for your kind consideration of these additional points and if I can be of any further assistance in furnishing any additional data on this matter, please do not hesitate to contact me or any other member of the Pace organization.

Sincerely,
Leslie M. Pittler
Leslie M. Pittler

LMP/cas

cc: Mr. Terry Guy
Pace Membership Warehouse
P. O. Box 39975
Denver, Colorado 80239



PACE
Membership Warehouse

Central Office
3350 Plover Street
Aurora, Colorado
80013-354-0700
Mailing Address
P.O. Box 39975
Denver, CO 80239

September 25, 1985

Mr. Robert L. Hannon,
Director
Baltimore Economic Development Commission
County Office Building
Towson, MD. 21204

Dear Mr. Hannon:

This is to confirm that we are currently using the OTA program at our Woodlawn PACE Membership Warehouse location. We will also be using the OTA program at all future PACE warehouses within Baltimore County. Current plans indicate we will be adding a minimum of two more warehouses in Baltimore County.

Sincerely,

Brad Gordon
Brad Gordon,
Vice President/Human Resources

BG/gjs

ESSEX DEVELOPMENT CORPORATION
439 Eastern Blvd. • Essex, Md. 21221 • 687-9080

February 24, 1986

Mr. William T. Hackett, Chairman
Baltimore County Board of Appeals
Old Court House, Room 200
Towson, Maryland 21204

Re: Case #86-97-SPH

Dear Mr. Hackett:

I understand that the Board of Appeals is considering the petition noted above from Pace Membership Warehouse, requesting that they be allowed to locate their wholesale business in an ML zone. While I can't comment on the appropriateness of their petition on a county-wide basis, I would like to express support for such an arrangement at a particular site.

I've enclosed letters sent to the People's Counsel and the Zoning Commissioner about a proposed development at Eastern Avenue and Diamond Point Road. The "business use in the area zoned ML" refers to a facility for a PACE Warehouse store. (We misunderstood the precise nature of the petition and believed that the request was for a special exception.)

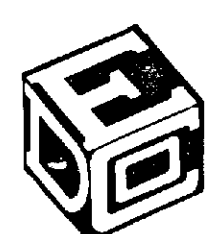
Essex Development Corporation is a non-profit organization consisting of residents, businessmen and property owners in the area of Eastern Boulevard in Essex. The area proposed for redevelopment by Mr. Fedder, just on the other side of the Back River, has a great impact on our own community, and we would very much support its improvement for the reasons outlined in the attached letters.

Thank you for considering our comments. For more information, please call EDCO's Executive Director, Marsha Jackson at 687-9080.

Sincerely,

Joseph A. DiCara
Joseph A. DiCara, President

JAD:cs
enclosure



ESSEX DEVELOPMENT CORPORATION
439 Eastern Blvd. • Essex, Md. 21221 • 687-9080

February 13, 1986

Mr. Arnold Jablon
Zoning Commissioner of Baltimore County
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

The Board of Directors of Essex Development Corporation voted at its February 3 meeting to support the shopping center development proposed by The Fedder Company for the 31+ acres adjacent to Eastern Avenue and Diamond Point Road. We understand that a Special Exception for business use in the area zoned ML is needed for part of this development to take place and we support this exception being granted.

The "gateway to Essex" across from the Back River Wastewater Treatment Plant has been an eyesore and embarrassment to the Essex community for decades. When people driving from Baltimore City or the Beltway go east on Eastern Avenue from Eastpoint, they think of themselves as being in Essex -- and their first (and lasting) impression is of lot after lot of unsightly salvage yards and junked automobiles. When a community leader mentioned to us that he'd heard the area would be redeveloped, we researched the issue to learn more.

Our executive director, Marsha Jackson, met recently with Joel D. Fedder and reviewed his plans. She was impressed with his previous and ongoing projects and by Mr. Fedder's commitment to quality for the Eastern Boulevard development. She joins the Board in supporting the proposed shopping center, noting that the physical improvements and types of anchor stores proposed would improve the entry to Essex and increase the marketability of our own portion of Eastern Boulevard, which is not appropriate for such large commercial facilities.

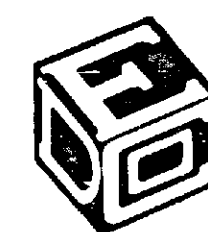
EDCO and other groups in the community are making concerted efforts to uplift the undesired negative image that some people have about Essex. We've come a long way in revitalizing the "heart of Essex", the 400-500 blocks of Eastern Boulevard. Removal of the current facilities at Diamond Point Road and improvement with quality development such as the proposed shopping center would greatly enhance our community.

Thank you for the opportunity to comment on this development. We hope you will call on us if we can be of further assistance.

Sincerely,

Joseph A. DiCara
Joseph A. DiCara
President

JAD:cs



ESSEX DEVELOPMENT CORPORATION
439 Eastern Blvd. • Essex, Md. 21221 • 687-9080

February 13, 1986

Ms. Phyllis Friedman
People's Counsel
Courthouse Building, Room 223
Towson, Maryland 21204

Dear Ms. Friedman:

The Board of Directors of Essex Development Corporation voted at its February 3 meeting to support the shopping center development proposed by The Fedder Company for the 31+ acres adjacent to Eastern Avenue and Diamond Point Road. We understand that a Special Exception for business use in the area zoned ML is needed for part of this development to take place and we support this exception being granted.

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Thank you for the opportunity to comment on this development. We hope you will call on us if we can be of further assistance.

Sincerely,

Joseph A. DiCara
Joseph A. DiCara
President

JAD:cs

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

William Hackett, Chairman
TO: Board of Appeals Date: March 18, 1986

Robert L. Hannon, Director
FROM: Economic Development Commission

SUBJECT: PACE Membership Warehouse

It is my understanding that Leslie Pittler, attorney representing PACE Membership Warehouse, has requested an early hearing date for the appeal of the Zoning Commissioner's decision on Case No. 86-97-SPH.

According to your office, a cancellation has resulted in an open date on April 15.

Please give every consideration to assigning this date to hear the subject case.

Robert L. Hannon
ROBERT L. HANNON

RLH/plf

cc: Diamond Point Plaza File

RECEIVED
COUNTY BOARD OF APPEALS
MAR 20 P 2 39

C'S-008

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
TO Planning and Zoning

Date: October 28, 1985

Robert L. Hannan, Director
FROM Economic Development Commission

SUBJECT: PACE MEMBERSHIP WAREHOUSE

As you know, both Economic Development (EDC) and the Occupational Training Administration (OTA) have worked extensively with principals of PACE to facilitate their location and start-up in Baltimore County. It is my understanding that PACE will open their Woodlawn store on or about November 1.

OTA has worked with local PACE management to assist in staffing. PACE at Woodlawn offered 20 occupational titles, 162 total positions (28 of which are full time and 134 of which are part time).

OTA referred more than 290 pre-qualified clients for these positions. To date, PACE has identified 11 positions for the OTA clients. Of these 11 full time positions, 4 were subsidized by OTA through an open OJT contract.

In addition, OTA paid for local and regional advertising from which 700+ additional applicants were derived. OTA assigned 11 staff members to work a Saturday for 6 1/2 hours and made arrangements at Woodlawn Senior High School to administer the 700 applicants. No final record of employment of the 700 is currently available from PACE.

As of Friday, October 25, all positions at PACE were filled. Facility manager, Bill Atwell, agreed to a meeting on November 12, to review the future employment outlook.

Robert L. Hannan
Director

RLH/clt

cc: Les Pittler
Jim Tyall, OTA
PACE file

PACE Membership Warehouse 4-099
Current Data on Placement 10/18/85
10/18/85 - 21/14 - Qu. 14

POSITION	TO BE HIRE	PRESENT HIRE	BAIT. CO.	OTHER	% OF TOTAL PLACED
Security Guard PT	6	10	2	?	33%
Maintenance/Janitor PT	2	9	1	1	50%
Int. Junior Supervisor	1	6	1	1	100% EDC
Garage Clerk PT	1	13	1	1	100% EDC
Marker PT	4	7	1	?	25%
Shines Stocker PT	5	23	2	?	40%
Edging/Sparks Clerk	5	8	2	?	40%
Party Stocker PT	10	34	5	?	50%
Receiving/Sparks Clerk	1	3	1	1	100%
Port/PT Operator	6	39	2	2	33%
Receiving (Walden)	2	12	?	?	50% EDC
Receiving/Denali	1	22	1	1	100% EDC
Data Entry PT	1	21	?	?	0%
Machine Supervisor	3	17	1	?	33%
Tire Center Person	3	2	1	?	33%
Sales Staff PT	3	2	?	?	0%
Membership Staff	6	10	3	?	50%
Vault Cashier	2	29	?	?	0%
Callers	50	9	?	?	0%
Int. End Cashier	50	20	?	?	0%
Totals:	162	246	25	?	38%

Notes:
1. 74 STPA
11 - STPA
14 - NIA STPA

2. Both Security Guards hired from 9/14 Interviewees, 266 Baltimore candidates plus others not registered due to volume (986 Total seen on 9/21)

BALTIMORE COUNTY MASTER PLAN 1979-1990



land use element

C. INDUSTRY

Industrial development is critical to the future of Baltimore County. Attraction of new industry and expansion of existing industry makes significant contributions to the employment opportunities and income of current and future residents. The County's future seems bright; strong job growth is projected. A large reserve of prime land exists to accommodate industrial growth. Several highly competitive industrial parks have been developed in recent years. The strong demand for industrial land will absorb much of the land in existing parks, thus stimulating development of additional areas as industrial parks and sites. A comprehensive policy is necessary to guide county response to the demand.

The locational patterns of industrial development affect the desirability of neighboring areas for housing and commercial use. While industry is critical to the area's economic stability, its needs and impact are not totally compatible with truck traffic, visual aesthetics, noise and other environmental factors. Detailed planning and land use controls can help ensure that industrial development occurs at appropriate locations where adverse effects can be minimized.

To 1995, Baltimore County industry will require 1,314 acres to satisfy demand*. This estimate of future demand from the manufacturing, wholesale and trucking industries is based on employment growth projections presented in Technical Memorandum No. 1, "Demographic and Economic Analysis and Projections". Demand will be greater to 1985. Average annual demand is projected to be 75 acres per year until 1985 and 64 acres per year from 1985 to 1995.*

Manufacturers' needs will account for 21.5 percent of total demand at an average density of 20 employees per acre. The greatest demand will come from light industry including the printing, electrical equipment and instruments manufacturing industries.

Wholesalers will require 465 acres by 1995* with an average density 10 employees per acre. Baltimore County's road system provides many good locations for wholesaling operations serving metropolitan Baltimore markets. Likewise, many County locations are excellent for the trucking industry. Trucking operations typically require large tracts for storage and handling. At an assumed density of five employees per acre, 575 acres will be developed for trucking firms in 1995.*

All of these sectors--manufacturing, wholesaling and trucking--have particular needs in industrial land. Most important are access to superior transportation systems and availability of utilities. Well-situated industrial parks offer many advantages to manufacturing and wholesalers. All utilities are provided, necessary governmental permits have been solicited and immediate occupancy is possible. Recent industrial activity has demonstrated the strong market appeal of industrial parks. Their competitive advantage is expected to increase over time; the bulk of industrial land to be absorbed in the next 18 years will be in planned industrial parks. Land in existing parks will be supplemented by

*NOTE: These projections extend beyond the plan period, which ends in 1990. For the period 1990-1995, they are included for reference in plan monitoring.

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development of additional industrial parks, the location of which will be determined by County policies on utilities and land use.

Demand for prime industrial land focuses on large tracts with highway access. The ideal location from the park developer's perspective is near a major highway interchange in order to minimize user time in transit and to avoid the use of residential areas/streets. Public policy considerations include the proximity to existing infrastructure and the site's environmental sensitivity. Deliberate provisions to protect industrial land from intrusion by other uses is a critical element in the County's land use policy.

Currently, 9,398 acres of vacant land have been zoned for industrial use -- nearly seven times the amount that will be required to 1995. This reserve is a tremendous asset in the County's economic development efforts. There are three key reasons to maintain a large reserve of industrial land:

1) Need for a variety of sites. Variety is the key to the adequacy of reserve. Different industries have varying requirements as to location, size and amenities. Sites are not always interchangeable, so a large reserve facilitates a match between industry and land to meet its needs. Baltimore County is a logical location for serving several markets, not all of which can be served from one location. Access to particular materials such as gravel or semi-finished goods is a determining factor in some locational decisions. As with the selection of any property, personal preferences influence the location of many firms. Proximity to a golf course is not always a negligible decision factor.

2) Future demand after 1995. Obviously, demand for industrial land will continue far beyond 1995. Prime industrial land is too often lost to less efficient uses because of failure to preserve the land from alternative development. Once areas have been built, it is generally impossible to recover that land for industrial use. The opportunity is lost for decades.

3) Avoidance of future land use conflicts. Only careful long-range planning can ensure minimal conflicts between land uses. New development areas can be planned so as to provide adequate space for industry in locations buffered from conflicting uses. Residential development would then occur with full knowledge of the future locations of industry.

Given these reasons for preserving a large reserve of land for industrial purposes, it is appropriate to evaluate the amount and quality of the current inventory. County officials have the opportunity to review the individual areas previously zoned for industrial use, as to overall suitability.

It is recommended that the County:

Encourage location of industry within organized industrial parks. While there will always be a portion of industrial land demand which can only be satisfied by isolated freestanding sites, many industries can be accommodated within planned industrial parks. Potential for development consistent with community standards is greatest in the planned industrial park. The costs of providing buffers are shared between tenants. Traffic can be better managed with controlled access. Clustered firms can make joint use of industrial support services.

Preserve land at major highway intersections for industrial use. While railroad access is still important to many industries, truck transport of materials and goods has become the predominant transportation mode. Convenient access to major highways is essential to many firms. Close proximity to intersections minimizes the need to use residential streets for industrial traffic. Industrial land use considerations should be incorporated in utility and transportation planning processes.

Preserve land with good port access for industries which utilize water transport. Port-oriented land is a limited asset which should not be squandered on less efficient uses than for port-oriented industry.

Rezone properties in environmentally-sensitive areas. Baltimore County has the advantage of a healthy reserve of industrial land. A detailed evaluation should be conducted to determine the environmental suitability of each potential site. Any sites in areas draining into public water supply reservoirs should be rezoned for alternative use if danger exists that the water supply will be harmed.

Conduct a detailed evaluation of all industrially-zoned areas. Each area should be evaluated with respect to soil characteristics, transportation access, neighboring land uses, availability of utilities and air quality. The Industrial Development Commission should emphasize those sites best-suited for development on the basis of both public and private criteria.

Alleviate constraints of air quality requirements. Air quality standards may prove to be an obstacle to further industrial development in the southwest and southeast portions of the County. Every effort should be made to alleviate the problem.

Prepare a comprehensive economic development strategy.

The table on the following page indicates projected industrial land demand in the County by Regional Planning District.

ALLOCATION OF RECOGNIZED INDUSTRIAL LAND DEMAND BY RPD, BALTIMORE COUNTY,* 1976-1995

RPD	Available Acreage	1976-1980	1980-1985	1985-1990	1990-1995	Total Over Period
304	351	-	30	45	67	142
309	124	70	54	-	-	124
313	154	20	35	50	49	154
317	395	-	50	70	85	205
319	166	70	55	41	-	166
326	129	30	45	45	9	129
327	405	87	77	65	60	289
329	171	20	35	25	25	105
Total	1,895	297	381	341	295	1,314

Source: Hammer, Siler, George Associates

*These locations are approximate; by means of changes in zoning of vacant lands, changes in access to major roads and other public facilities, portions of this demand could be attracted to RPD's other than those indicated in this allocation. It should also be noted that a more aggressive County economic development program could attract more industrial use to the County than is projected here.

D. AGRICULTURE

Since most cities in the United States were originally developed on highly accessible sites along major transportation arteries near the center of prime agricultural lands, and since subsequent urban development has largely occurred as extensions out from these original centers, urbanization in the United States has occurred and continues to occur on prime agricultural lands. This pattern has occurred in the Baltimore Region in Baltimore County, as in the other Counties whose boundaries coincide with those of the City at the Region's center.

Between 1960 and 1970, the total land area of the United States in urban use increased from 27.2 million acres to 34.2 million acres; nearly half of this new urban land came out of the agricultural land inventory.¹ In-migration to SMSA's has meant that much of the loss occurred within metropolitan areas.

While land used as cropland throughout the country has declined steadily in recent years, crop production increased by 50% between 1960 and 1970 and food production has more than kept pace with population growth.

The Northeastern United States (Maine, New Hampshire, Vermont, Massachusetts, New York, Connecticut, Rhode Island, Pennsylvania, New Jersey, Delaware, and Maryland) differ from the remainder of the country in that in this region only, both farm acres and total agricultural production have declined. This trend is accelerating.²

With population increases in the already dense region, suburban and rural land values have risen sharply, and, with higher labor costs, feed prices and transportation costs relative to other regions, farmers in the Northeast have been under increasing pressure to sell their farms.

This pattern has been apparent throughout the State of Maryland, and has occurred at a faster rate in Baltimore County.

In the period 1958-1974, land in agricultural use throughout the State of Maryland decreased 24.7% while land in agricultural use in Baltimore County decreased 30.9%.³

During the Growth Management Program, the following County agricultural policy positions were defined:

The farmlands of Baltimore County are a valuable natural asset requiring County action to preserve them;

1. Miner, Dallas F. "Agricultural Lands Preservation, A Growing Trend in Open Space Planning" Ed Scott, R.W., Brower, D.J. and Miner, D.D. Management and Control of Growth, Volume III, (Washington, D.C.: The Urban Land Institute, 1973) p. 51.

2. Ibid, p. 54.

3. U.S. Department of Commerce, Bureau of the Census, 1974 Census of Agriculture, Preliminary Report, Baltimore County, Maryland, December, 1975.

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It is appropriate to adopt as a policy the preservation of scarce and disappearing agricultural land in the County as to retain a long-range option to return to closer markets for various agricultural products, in the face of rising transportation costs;

The dual role of farming as open space and employment makes the use an unusually valuable industry which warrants County actions to preserve it; and

To preserve agriculture as an industry in the region, it will be necessary to provide incentives to economic (sic) farmers to remain in the area.

In order to preserve its agriculture, the County needs improved systems of monitoring trends in agricultural uses, limiting conversion of agricultural lands to suburban or urban uses, and encouraging farmers to retain their lands in agricultural use.

Recommendations concerning agriculture are of three kinds:

Agricultural Management;

Agricultural Data Collection and Analysis; and

Agricultural Preservation.

Agricultural Management and Conservation Practices

An increased emphasis should be placed in the County upon conservation practices designed to preserve the fertility and productivity of the land as well as to monitor environmental impacts of farming and to limit adverse impacts of farming activities.

Specific County actions to promote conservation in farm management practices and to encourage farming practices in harmony with other County policies, goals, and objectives include:

Requirement of an approved Farm Management Plan prepared by the Baltimore County Soil Conservation District for all farms of 10 acres or more located within watersheds of municipal water supply watersheds and on outcrops of the Cockeysville Marble.

Recommendation of approved Farm Management Plans prepared by the Baltimore County Soil Conservation District for all farms of 10 acres or more in all areas of the County.

County investigation of impacts of pesticide, herbicide, and fertilizer use on the quality of surface and groundwater resources to determine the need for appropriate regulations.

IN THE MATTER OF THE APPLICATION OF CAROL DOHME, ET AL FOR SPECIAL HEARING ON PLACEMENT OF A SHED W/S OF BURKE ROAD 860' S. OF INTERSECTION OF BURKE ROAD (1330 BURKE ROAD) 15th DISTRICT

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

NO. 85-106-SPH

OPINION ON MOTIONS ONLY

The above captioned matter comes before this Board on the Zoning Commissioner's Motion to Dismiss and People's Counsel's Motion to Strike Appearance of the Zoning Commissioner.

On March 7, 1985, this Board received oral argument referencing both the aforementioned Motions. Initially this Board, in deciding these Motions, anticipated a lengthy and effusive Opinion. However, upon reflection, this Board is convinced that although it is incumbent upon us to address the salient issues presented we should not, through this Opinion, dignify what this Board considers to be a frivolous and unfortunate battle between two separate and distinct officials of Baltimore County. As a result of these Motions the essence, the substance and the merits of the ultimate issues to be decided have been delayed. This Board views such delay as unfair to the real parties in interest, to wit: the Petitioners and the Protestants, neither of which were parties to the respective Motions.

In any event, as in 1980, this Board continues to be persuaded by the language of §524.1 BCZR wherein it is stated: "... in any matter or proceeding now pending or hereafter brought involving ..." [Emphasis added] We adopt and incorporate by reference in this Opinion the law cited and comments made in the Kenilwest Opinion. Webster's defines involve as "to require as in necessary accompaniment" among many variations of the word.

In the case at bar, in this Board's view, a necessary accompaniment to the front yard - back yard scenario and a collateral issue is the necessity or non-necessity of a variance. We agree that the powers and duties of the office of People's Counsel should be strictly construed, and as in Kenilwest there must be a "necessary accompaniment" to the three specifically enumerated powers. We find such necessary accompaniment in the case at bar.

It appears that in posting and advertising this matter the office of the Zoning Commissioner chose to call this matter an issue involving a determination of a front yard or back yard. Much care appears to have been used to avoid any mention of the term variance. In the final analysis, however, the issue before the Zoning Commissioner was directly connected to the question of a "variance". Consequently, pursuant to the powers and duties granted unto the People's Counsel, the issue before us does or could involve a variance and, therefore, People's Counsel enjoys the right to appeal.

PEOPLE'S COUNSEL, BALTIMORE COUNTY, MARYLAND, v. CAROL DOHME, ET AL, APPLICANTS FOR SPECIAL HEARING ON PLACEMENT OF A SHED W/S OF BURKE ROAD 860' S. OF INTERSECTION OF BURKE ROAD (1330 BURKE ROAD) 15th DISTRICT. No. 85-106-SPH. Opinion of the Board of Appeals. The Board of Appeals, in its decision, found that the application for a special hearing on the placement of a shed was properly before the Board. The Board also found that the application was timely and that the Board had jurisdiction to hear the application. The Board further found that the application was properly advertised and that the Board had given due notice to the public. The Board concluded that the application was properly before the Board and that the Board had jurisdiction to hear the application. The Board further found that the application was properly advertised and that the Board had given due notice to the public. The Board concluded that the application was properly before the Board and that the Board had jurisdiction to hear the application.

PAGE FILE

"The public local laws of Baltimore County and all rules, regulations, resolutions and ordinances of the county commissioners in force at the time of the effective date of this Charter are hereby repealed to the extent that they are inconsistent with the provisions of this Charter, but not further; ..."

Therefore, we are persuaded that this Board, in promulgating its own rules and procedures, intentionally, not by omission, removed any reference to the Zoning Commissioner as a party or otherwise. The Zoning Commissioner, pursuant to §501.6 BCZR, does not have the right to intervene as a party in an appeal before the County Board of Appeals, if for no other reason than §501.6 is no longer the law in Baltimore County.

The Zoning Commissioner argues further that he enjoys the right to intervene as a party pursuant to §22-32 of the Baltimore County Code which states, in part:

"Any person or persons, jointly or severally, or any taxpayer, or any official, office, department, board or bureau of the county, feeling aggrieved by any decision of the zoning commissioner shall have the right to appeal therefrom to the county board of appeals. ..."

Interestingly, the County Attorney representing the Zoning Commissioner in this proceeding concedes that the Zoning Commissioner enjoys no right of appeal to the County Board of Appeals. In the interest of expediency, we shall not further address that aspect of the argument as same is well supported by T & R Joint Venture v. Office of Planning and Zoning of Anne Arundel County, et al 47 Md. App. 395 (1980) and Howard County, Maryland v. Nicholas Mangione, 47 Md.

maker. He is impartial and his decisions reflect that impartiality. To permit the Zoning Commissioner to appear before this Board in defense of his decision would taint, distort and forever prejudice the integrity of this Board and the office of the Zoning Commissioner. The Zoning Commissioner is new and must always be objective and impartial. Once the Zoning Commissioner attempts to advocate the merits of his own decision he loses, to quote People's Counsel, "his virgin objectivity".

For the foregoing reasons, this Board shall strike the appearance of the Zoning Commissioner of Baltimore County from these proceedings.

Having thus granted People's Counsel's Motion to Strike Appearance of the Zoning Commissioner, the Zoning Commissioner's Motion to Dismiss appeal becomes moot. However, in order to ensure future guidance to the Zoning Commissioner, People's Counsel and the parties, we shall briefly address the issue.

At the outset, this Board adopts the County Board of Appeals Opinion and Order in — RE: Petition for Special Hearing for a Bank in an M.L.R. zone, 9th District, Kenilwest Limited Partnership, No. 80-88-SPH, decided on November 20, 1980.

People's Counsel's powers and duties are enumerated in §524.1(b)(3) of the Baltimore County Charter which reads, in part:

"A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, and the courts on behalf of the interests of the public in general, to defend the comprehensive zoning maps as adopted by the

PEOPLE'S COUNSEL, BALTIMORE COUNTY, MARYLAND, v. CAROL DOHME, ET AL, APPLICANTS FOR SPECIAL HEARING ON PLACEMENT OF A SHED W/S OF BURKE ROAD 860' S. OF INTERSECTION OF BURKE ROAD (1330 BURKE ROAD) 15th DISTRICT. No. 85-106-SPH. Opinion of the Board of Appeals. The Board of Appeals, in its decision, found that the application for a special hearing on the placement of a shed was properly before the Board. The Board also found that the application was timely and that the Board had jurisdiction to hear the application. The Board further found that the application was properly advertised and that the Board had given due notice to the public. The Board concluded that the application was properly before the Board and that the Board had jurisdiction to hear the application. The Board further found that the application was properly advertised and that the Board had given due notice to the public. The Board concluded that the application was properly before the Board and that the Board had jurisdiction to hear the application.

PEOPLE'S COUNSEL, BALTIMORE COUNTY, MARYLAND, v. CAROL DOHME, ET AL, APPLICANTS FOR SPECIAL HEARING ON PLACEMENT OF A SHED W/S OF BURKE ROAD 860' S. OF INTERSECTION OF BURKE ROAD (1330 BURKE ROAD) 15th DISTRICT. No. 85-106-SPH. Opinion of the Board of Appeals. The Board of Appeals, in its decision, found that the application for a special hearing on the placement of a shed was properly before the Board. The Board also found that the application was timely and that the Board had jurisdiction to hear the application. The Board further found that the application was properly advertised and that the Board had given due notice to the public. The Board concluded that the application was properly before the Board and that the Board had jurisdiction to hear the application. The Board further found that the application was properly advertised and that the Board had given due notice to the public. The Board concluded that the application was properly before the Board and that the Board had jurisdiction to hear the application.

We shall first consider People's Counsel's Motion to Strike Appearance of the Zoning Commissioner. The Zoning Commissioner cites as authority for his appearance in this matter §501.6 of the Baltimore County Zoning Regulations (BCZR) which reads in part:

"Appeals from the Zoning Commissioner shall be heard by the Board of Zoning Appeals de novo. At such hearing all parties, including the Zoning Commissioner shall have the right to be represented by counsel, ..." [Emphasis added]

We shall dispense with that argument initially. Section 501.6 was enacted prior to Charter government being initiated in Baltimore County. With the enactment of Charter government, the County Board of Appeals was established, organized and authorized to promulgate, subject to County Council approval, rules of procedure. Such rules of procedure were established and approved by the County Council in 1965. Rule 6 - Appearances and practice before the board of appeals - makes no mention of the Zoning Commissioner as a party or otherwise. Although the Zoning Commissioner may, with some credence, argue that by custom and practice the Board of Appeals has continued to recognize and use, for procedural guidance, §501.1 through §501.7 of the BCZR, this Board is constrained to note unequivocally, that if, in fact, this Board, in previous cases, has used said sections as a guide the Board could not, under any circumstances, consider those sections as the controlling law if they are in conflict with the rules of practice and procedure authorized by §603 of the Charter. Indeed, §1111 of the Charter removes any doubt when it states, in part:

App. 350 (1980).

The question then becomes convoluted. If the Zoning Commissioner has no right to appeal, can he file a Motion to Dismiss an appeal? Does the Zoning Commissioner have standing to do so? We think not.

Section 22-32 (Code) is, by its nature, broad in its scope. It leaves the door wide open for the right to appeal by many and varied persons, officials, taxpayers, departments, offices, boards and bureaus. Nevertheless, there is one common thread, a fabric which connects the rights of these individuals, departments, etc. to effect an appeal, to wit: the language "... feeling aggrieved by any' decision of the zoning commissioner . . .".

We are perplexed, how can the Zoning Commissioner be aggrieved by his own decision? Weber's defines aggrieved as "Distressed; having a grievance; adversely affected in respect of legal rights". None of the definitions recited apply to this case. Therefore, simple logic dictates that if the Zoning Commissioner cannot appeal to the County Board of Appeals, he cannot intervene for the purpose of preventing an appeal to the County Board of Appeals. Obviously, in both instances the purpose of such actions would be to espouse the correctness of his own decision.

We agree with People's Counsel that to permit the intervention of the Zoning Commissioner as a party to this proceeding would violate the public trust in our system of justice. The Zoning Commissioner sits as a quasi-judicial decision-maker.

county council, and in any matter or proceeding now pending or hereafter brought involving zoning classification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may be directly or indirectly interested, he shall not have, in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object to be heard, and to file and prosecute an appeal in his capacity as a lay person. The duties of counsel of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 611 of the Code of Baltimore County protect the health, safety and general welfare of the community."

[Emphasis added in original order.]

The Zoning Commissioner argues that inasmuch as the issue before this Board does not involve a zoning reclassification, variance or a special exception, People's Counsel has no right to appeal. Were the issue that simple this Board would agree. However, the issue is not that simple.

In the subject case, the initial purpose of the special hearing before the Zoning Commissioner was to determine that which constitutes the front and rear yards for an improvement that abuts water. The issue was important because an accessory structure was placed in the yard nearest the water. Since the Zoning Commissioner decided that the structure had been placed in the rear yard no variance was required. Had the Zoning Commissioner decided that the structure had been placed in the front yard, the property owner would then be required to petition for a variance. Indeed, it would have been more expedient to petition for the variance at the same time as the petition for a special hearing was filed.

The Board does note, however, for future reference, that each case shall be decided on its own merit and the statute enumerating the powers and duties of People's Counsel shall be strictly construed. We do not believe, therefore, that it was ever intended that People's Counsel enjoys "carte blanche" authority to intervene in any case People's Counsel deems in the public interest.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 18th day of March, 1985, by the County Board of Appeals, ORDERED that People's Counsel's Motion to Strike Appearance of the Zoning Commissioner be and the same is hereby GRANTED; and it is

FURTHER ORDERED that the Zoning Commissioner's Motion to Dismiss be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William R. Evans

[Signature]

[illegible][illegible]

RE: PETITION FOR SPECIAL HEARING : BEFORE
for a Bank in an M.L.R. zone :
9th District : COUNTY BOARD OF APPEALS
Kenilwest Limited Partnership : OF
Petitioner : BALTIMORE COUNTY
No. 80-88-SPH

OPINION

This case comes before the Board on appeal by the Petitioner in regard to the People's Counsel's participation in a hearing before the Zoning Commissioner to determine whether a bank is a permitted use in an M.L.R. zone. The Petitioner filed a petition for this special hearing under Section 500.7 of the Zoning Regulations of Baltimore County requesting the Commissioner to interpret Section 248.1 of the Regulations as including a bank as a permitted use in an M.L.R. zone. On May 29, 1980, the People's Counsel filed on appeal to the Commissioner's decision in that case.

The question before this Board is whether the People's Counsel had exceeded his defined powers given in the Charter of Baltimore County in appearing at the Zoning Commissioner's special hearing and appealing the decision. The Petitioner argues that Baltimore County's Charter limits the powers of the People's Counsel, as created under Section 524.1 of the Charter, to an extent that he may not appear as a party nor appeal from special hearings called by the Zoning Commissioner in that these hearings are not specifically enumerated in the County Charter's provision describing the powers of the People's Counsel. Section 524.1.(b).(3) lists the powers and duties of the office of People's Counsel as follows:

"A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, and the court on behalf of the interests of the public in general, to defend the comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present

In the case before the Board, the facts support the People's Counsel's appearance before and appeal from Zoning Commissioner's decisions. The Board finds that the essence of the issue before the Zoning Commissioner was whether a special exception would be required or did the bank fall within the framework of the M.L.R. zone and, therefore, not require a special exception. The Board finds sufficient direct connection between the issue before the Zoning Commissioner at the hearing and the special exception request which would follow if the Zoning Commissioner had replied that such was needed. As a general rule, the Board believes that appearance by the People's Counsel, where challenged as herein, should be determined on a case by case basis using the test of whether the activity is sufficiently connected to a zoning reclassification, special exception or variance, that it is a "necessary accompaniment" to those functions. The Board notes the recent Charter amendment expanding the People's Counsel's power to defend the Master Plan. The Board finds that the test was applied on an issue on the map.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 20th day of November, 1980, by the County Board of Appeals, ORDERED that the Petitioner's Motion in regard to this specific question of whether the People's Counsel has standing to appear before it in this matter be, and the same is hereby DISMISSED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Reiter, Jr., Chairman

John V. Murd

John V. Murphy

John A. Miller

86-97-SPH
CERTIFICATE OF PUBLICATION

TOWSON MD August 8 1895

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on August 8 1885

THE JEFFERSONIAN.

18 Venetian

Publisher

Cost of Advertising
24.75

**PETITION FOR SPECIAL
HEARING**

LOCATION: Hearing Interper-
son, no particular location
DATE AND TIME: Monday, April
10, 1960 at 10:00 a.m.
PUBLIC HEARING: Room
1000 of the City Building, 11
Chesapeake Avenue, Town
Maryland

The Zoning Commission of the
County of Montgomery, in ac-
cordance with the authority of the
Act and Regulations of the
General Assembly, do hereby
advise that it will hold a public hearing
on the application of the
Section 500.2 to approve the use
of the PAUL H. HERSHMAN
HOUSE of three thousand square
feet, right in an S.W.L. no
residential neighborhood, ac-
cording to the provisions of the
City Membership Warrant of Terry
G. Hershman, as shown on the
map filed in the office of the
Commissioner.

In the event that this Petition
is approved, the Commission may
renew within the thirty (30) day ap-
pointed period of time, and may
also, however, determine any other
use of the site of the house and
during the period of the hearing
shown. Such request must be received
in writing, and the hearing must be
above 7:00 a.m. of the morning and
before 7:00 p.m.

ARNOLD JARLON,
Zoning Commissioner
of Baltimore County

Attest, _____

AUG 6 1966

his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare of the community." (Emphasis added)

The Petitioner argues that only three types of cases govern the People's Counsel's participation; "zoning reclassification and/or variance and/or special exception". Petitioner further argues that since these are specifically called out in the Charter, which is a governing constitutional document, this Section should be strictly construed, citing Cooley Constitutional Limits at page 449; Hardwood vs. Marshall 9 103 (1856) and County Commissioner vs. Meekins 50 445 (1878). The Petitioner also argues that since the specific powers of the People's Counsel are enumerated, appearance before and appeal from the Zoning Commissioner's special hearings, not being so enumerated, cannot be implied from the intended purposes of Section 524.1 nor are they incidental to his right to appear as a party with regard to special exceptions.

The Board believes that the key phrase to be interpreted in this decision is underlined in Section 524.1 aforesaid and involves the words ". . . in any matter or proceeding now pending or thereafter brought involving . . .". (Emphasis added) Within this phrase the Board particularly examined the word "involving" and how it may be interpreted in establishing the People's Counsel's powers. The Board agrees with the Petitioner that Charter provisions must be strictly construed in regard to the power of officials of the County. However, the word "involving" itself appears to be a more general and more adaptable term than the Petitioner would have us understand. Black's Law Dictionary, Fourth Edition, does not contain a definition of the word "involving". However, Webster's Collegiate Dictionary does define the word "involve" to include "to require as in necessary accompaniment" among many variations of the word. The Board believes this to be the most applicable definition, and holds that in order for the People's Counsel to appear there must be a "necessary accompaniment" to the three specifically enumerated powers.

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the following finding of facts:

Pace Membership Warehouse
Case No. 86-97-SPH

We further note the restrictions imposed by the Zoning Commissioner in his Order. Although we agree with the spirit of same, we decline to repeat them in our Order. The petition before us seeks only an interpretation and clarification of the BCZR, not a specific proposal at a specific site. We trust that this opinion has provided a delineable guideline for this issue. If a proposal for development within an M.L. zone is presented to this Board with substantial differences than that operation as described here, it will be considered in light of the BCZR on its own merits. We will not impose restrictions in this instance when there is no specific site before us.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 14th day of May, 1986, by the County Board of Appeals, ORDERED that the particular wholesale operation as described by the Petitioner herein is permitted as a matter of right in an M.L. zone and as such the Petition for Special Hearing is hereby GRANTED.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Lawrence E. Schmidt
Lawrence E. Schmidt

Henry E. Buchheister, Jr.
Henry E. Buchheister, Jr.

IN RE: PETITION SPECIAL HEARING * BEFORE THE
Pace Membership Warehouse, * ZONING COMMISSIONER
Petitioner * OF BALTIMORE COUNTY
* Case No. 86-97-SPH
* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests that the Zoning Commissioner approve its use in a M.L. Zone as a matter of right.

The Petitioner, by Bill O'Connell, Field Membership Manager for the Petitioner, Pace Membership Warehouse (Pace), and Terry Guy, its National Real Estate Manager, appeared and testified and was represented by Counsel. There were no Protestants.

Pace is a business entity of a type variously labeled as a "wholesale club", "warehouse club", membership discount store", "wholesale cash and carry warehouse", and "wholesale center". The concept is to provide merchandise at or near wholesale prices to private customers, i.e., small business, e.g., restaurants, small retailers, service firms, and professionals, and to individual customers who work for or are members of a "qualified group", e.g., government, banks, public utilities, and schools. See Petitioner's Exhibit 3. Pace is designed for the sale or resale of merchandise bought by other businesses from Pace who then sell to its consumers. These businesses come to the Pace facility, a self-service warehouse of 100,000 square feet, and purchase what they need from merchandise stacked in designated areas and then remove whatever they purchase from the site. Customers may choose from 4,000 to 5,000 individual products stored in the warehouse. This allows Pace to

buy in bulk directly from the manufacturer and permits low wholesale prices to its customers. There are no delivery facilities and no credit is offered; the warehouse is not open to the general public. About 60% of its trade is to small businesses; 40% is to members of participating organizations.

The Petitioner has identified a M.L.-zoned site which is large enough to construct a 100,000 square foot facility, and before leasing or purchasing the property, Pace requests confirmation that such use as described above is permitted as a matter of right in the M.L. Zone.

Section 253.1.B.15, Baltimore County Zoning Regulations (BCZR), permits storage, warehousing, or wholesale distribution of any product whose sale (retail or wholesale) or final processing or production is permitted as a matter of right as a principal use in the M.L. Zone.

Prior to April 1, 1971, uses permitted in all commercial zones were permitted as a matter of right in a M.L. Zone. As a result of Bill No. 100, 1970, and pursuant to Section 253.1.F.1, BCZR, incidental sales, wholesale or retail, are permitted as a matter of right in the M.L. Zone. This provision was recommended by the Baltimore County Planning Board in its final report on proposed zoning amendments, dated September 4, 1969. It is obvious, therefore, that accessory wholesale sales are permitted as a matter of right in the M.L. Zone. The principal question posed is whether the Petitioner's sales at its facilities are accessory or incidental to its warehouse or wholesale distribution operation.

The M.L. regulations must be construed reasonably with regard to both the objects sought to be attained and to the general structure of the ordinance as a whole.

- 2 -

PETITION FOR SPECIAL HEARING

LOCATION: Zoning interpretation only, no particular location.

DATE AND TIME: Monday, August 19, 1985 at 1:00 p.m.

PUBLIC HEARING: Room 106, County Office Building, 111 West 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 to approve the use by PACE MEMBERSHIP WAREHOUSE of their wholesale operation as a matter of right in an M.L. zone. Zoning interpretation only, no particular location.

Being the property of Terry Guy/Pace Membership Warehouse as shown on the plat filed with the Zoning Office.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JARLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

If the activity as described is excluded from the M.L. Zone, it must fall into a commercial zone. In its nature, so far as it appears, it is as closely akin to "industry" as it is to "business" as those terms are commonly used in the BCZR.

The terms "warehouse" and "wholesale" are used inclusively in Section 253.1.B.15, BCZR, provided that the involved product's sale, processing, or production is permitted as a matter of right in the M.L. Zone, as delineated in Section 253.1.A, B, C, and D, BCZR. Section 253.1.E, BCZR, permits combinations of those uses listed in those subsections as a matter of right. There is no question that the items sold in the "warehouse" by the Petitioner are delineated as being permitted via production and processing in the M.L. Zone as a matter of right. However, the BCZR specifically excludes retail sales whose primary purpose is for the sale of goods stored on the premises from the warehouse operation. See Section 101, BCZR, Definitions - Warehouse. There is no question, therefore, that retail sales as the principal use are not permitted in and of themselves. A shopping center, for example, would not be permitted.

It would appear from a reading of the M.L. regulations in their entirety that retail sales as a principal use would not be permitted. The issue is thus reduced to defining the terms "retail" and "wholesale". If the latter is the type of operation conducted by the Petitioner, it would be permitted as a matter of right. If the former, the Petitioner would not be permitted to operate in a M.L. Zone.

In Petros v. City of Lynn, 28 NE.2d 233 (Mass., 1940), the Court noted that these words were commonly defined not with primary emphasis upon the difference between sales to an ultimate consumer and sales to one who intends to resell, but rather with reference to the difference between selling in

small quantities and selling in large quantities or in bulk. Black's Law Dictionary defines "wholesale" as selling of goods by "the piece and in large quantities." The regulations impacted here imply similar interpretation. Moreover, they are clearly unambiguous in that retail sales are permitted if incidental to the wholesale operation.

The primary goal of the Petitioner is to sell products quickly and in quantity and to enjoy a speedy turnover in stock. Based upon the testimony and evidence presented, the retail sales would be incidental to the use of the site as a warehouse or wholesale operation. As long as the general public is not permitted to shop and the other accouterments normally supplied by retail operations are not provided, the proposed use would satisfy the spirit and intent of Section 253.1.B.15, BCZR.

Pursuant to the advertisement and public hearing on this Petition held, and for the reasons given above, the relief prayed for should be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 30th day of November, 1985, that the particular wholesale operation as described by the Petitioner herein is permitted as a matter of right in a M.L. Zone and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. Sales from the site in a M.L. Zone shall be limited specifically to businesses with appropriate proof of operation and registration as such with the Petitioner and to individuals who are members of and belong to participating organizations, such as banks, credit unions, government agencies. Individuals will not be permitted to utilize the Petitioner's facilities unless they satisfy these restrictions.
2. Failure of the Petitioner to properly license and regulate those using its facilities as described above shall cause the facility to be in violation

of the BCZR for a M.L. Zone and shall be subject to a penalty of \$200 per day for each day in violation and to having the facility closed.

Zoning Commissioner of
Baltimore County

AJ/srl

cc: Leslie M. Pittler, Esquire
People's Counsel

ORDER RECEIVED FOR FILING
DATE November 21, 1985
BY [Signature]
ADMINISTRATIVE ASSISTANT

- 5 -

ORDER RECEIVED FOR FILING
DATE [Signature]
ADMINISTRATIVE ASSISTANT

- 3 -

- 4 -

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
No particular location - : OF BALTIMORE COUNTY
Zoning interpretation only.
PACE MEMBERSHIP WAREHOUSE, : Case No. 86-97-SPH
Petitioner

ENTRY OF APPEARANCE

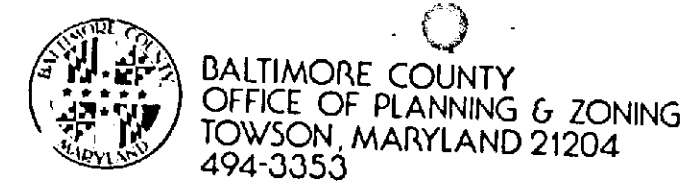
Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Rm. 223, Court House
Towson, MD 21204
494-2188

I HEREBY CERTIFY that on this 8th day of August, 1985, a copy of the foregoing Entry of Appearance was mailed to Leslie M. Pittler, Esquire, Suite 501, 28 Allegheny Ave., Towson, MD 21204, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman



ARNOLD JABLON
ZONING COMMISSIONER

August 15, 1985

Leslie M. Pittler, Esquire
Suite 501, 28 Allegheny Ave.
Towson, Maryland 21204

RE: Petition for Special Hearing
Zoning Interpretation only,
No particular location
Pace Membership Warehouse, Petitioner
Case No. 86-97-SPH

Dear Mr. Pittler,

This is to advise you that \$ 24.75 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

This fee must be paid and the zoning sign and post returned on the day of the hearing. Do not remove sign until day of the hearing.

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

Sincerely,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

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

No. 012424

DATE 11-27-85 ACCOUNT R-01015000

AMOUNT \$ 24.75

RECEIVED Leslie Pittler Esq

FOR Advertising & Posting

FOR 11-27-85

VALIDATION OR SIGNATURE OF CASHIER

Leslie M. Pittler, Esquire
Suite 501, 28 Allegheny Ave.
Towson, Md. 21204

July 31, 1985

NOTICE OF HEARING

RE: Petition for Special Hearing
Zoning Interpretation only,
No particular location
Pace Membership Warehouse, Petitioner
Case No. 86-97-SPH

TIME: 1:00 p.m.

DATE: Monday, August 19, 1985

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

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

No. 008551

DATE 7/24/85 ACCOUNT R-01015000

AMOUNT \$ 20.00

RECEIVED FROM Leslie Pittler Esq

FOR 7/24/85

VALIDATION OR SIGNATURE OF CASHIER

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE
August 9, 1985

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

000
Nicholas B. Commodari
Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Police Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Leslie M. Pittler, Esquire
Suite 501, 28 Allegheny Avenue
Towson, Maryland 21204

RE: Item No. 4 - Case No. 86-97-A
Petitioner - Pace Membership Warehouse
Special Hearing Petition

Dear Mr. Pittler:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following 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.

* Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and hearing scheduled accordingly.

Very truly yours,

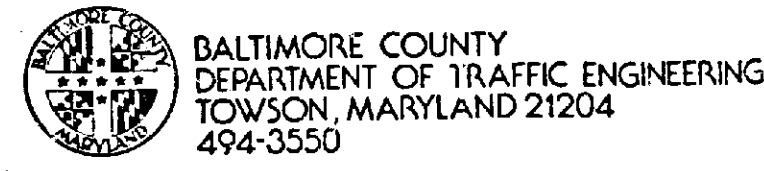
Nicholas B. Commodari
NICHOLAS B. COMMODARI
Chairman
Zoning Plans Advisory Committee

NBC:rr

Enclosures

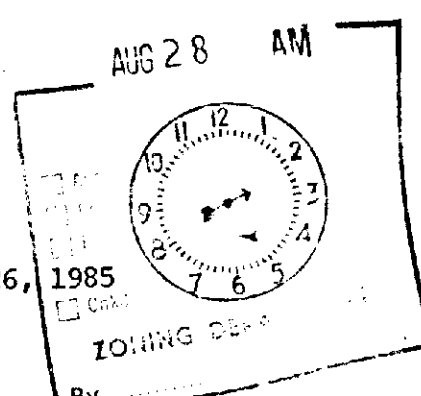
cc: Mr. Terry Guy
P.O. Box 39975
Denver, Colorado 80239

* No comments enclosed, interpretation only.



STEPHEN E. COLLINS
DIRECTOR

August 26, 1985



Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Item No. 4 -ZAC- Meeting of July 23, 1985
Property Owner: Anywhere in Baltimore County
Location: (No DESCRIPTIONS OR PLATS REQUIRED AS PER THE ZONING COMMISSIONER)
Existing Zoning:
Proposed Zoning:

Acres:
District:

Dear Mr. Jablon:

The Department of Traffic Engineering has no comment on this particular item.

Very truly yours,

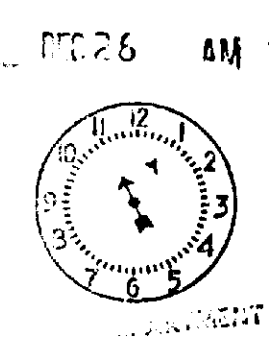
Michael S. Hange
Traffic Engineering Associate II

MSF/bza

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
No Particular Location - : OF BALTIMORE COUNTY
Zoning Interpretation Only
PACE MEMBERSHIP WAREHOUSE, : Case No. 86-97-SPH
Petitioner

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of November 26, 1985, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.



Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 26th day of December, 1985, a copy of the foregoing Notice of Appeal was mailed to Leslie M. Pittler, Esquire, Suite 501, 28 Allegheny Ave., Towson, MD 21204, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

IN RE: PETITION SPECIAL HEARING * BEFORE THE
Pace Membership Warehouse * COUNTY BOARD OF APPEALS
Petitioner * OF BALTIMORE COUNTY
* Case No. 86-97-SPH
* * * * *

SUBPOENA

TO: Zoning Commissioner of Baltimore County
111 W. Chesapeake Avenue, Room 109
Towson, Maryland 21204

At the request of Petitioner, "Pace Membership Warehouse, YOU ARE COMMANDED BY THE BOARD OF APPEALS OF BALTIMORE COUNTY to appear and testify at the following date, time and place:

DATE: Tuesday, April 15, 1986

TIME: 10:00 a.m.

PLACE: Board of Appeals of Baltimore County Hearing Room
Room 210, Old Courthouse
Towson, Maryland 21201

YOU FURTHER ARE COMMANDED to bring with you to the hearing such documents and tangible things set forth on the attached Document Schedule.

Leslie M. Pittler
LESLIE M. PITTLER
Suite 501
28 Allegheny Avenue
Towson, Maryland 21204
296-9220

Attorney for Petitioner

Mr. Sheriff:

Please issue the above summons.

June Holmen
June Holmen, Bd. of Appeals

RECEIVED
COUNTY BOARD OF APPEALS
AUG 14 1985

DOCUMENT SCHEDULE

- A. Any and all files related to Makro, Inc.
B. Any and all files related to Pace Membership Warehouse.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Zoning Commissioner Date: June 17, 1986

FROM: County Board of Appeals

SUBJECT: Zoning Commissioner's File No. 86-97-SPH

Attached hereto in the Zoning Commissioner's File No. 86-97-SPH, Pace Membership Warehouse, which was entered as Petitioner's Exhibit #4 at the hearing before the Board of Appeals.

Very truly yours,

Edith T. Eisenhart
Edith T. Eisenhart, Adm. Secretary

LAW OFFICES
Leslie M. Pittler
SUITE 501
28 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
(410) 276-9020

October 7, 1985

Arnold Jablon, Esquire
Zoning Commissioner for Baltimore County
County Office Building
Towson, Maryland 21204

Hand-delivered

Re: Pace Membership Warehouse

Dear Mr. Commissioner:

After further discussions with Pace Membership Warehouse and further analysis of the I-M overlay, it would seem to me that the restrictions in the I-M would prevent its being a vehicle to implementation of a Pace warehouse. Thus, it would seem that Pace and similar type facilities would only be able to operate from an ML zoned area and not an ML-IM.

With further reflection on this issue, I would point out, as we set forth in the public hearing, the following:

A. If one considers the basic definition of "wholesale," as set forth in both Black's Law Dictionary and the Oxford Dictionary, Pace can be interpreted to be a wholesale operation by virtue of its selling "goods by the piece and in large quantities." Coupling this definition with the undisputed testimony that Pace's primary goal and objective is to be the small businessman's distributor, its entire operation is geared to the small businessman. Your scrutiny of the article from Nations Business clearly so indicates.

Even its sales to others are sales to employees of small businesses and not to the consumer at large.

The impact of truck traffic which services the Pace Warehouses does not lend itself to a shopping center, retail form of outlet. I am advised that as many as forty (40) to forty-five (45) trucks deliver to a Pace Warehouse operation every business day.

The crux of the matter is, we have in Baltimore County ML sites that are not being put to a productive use for Baltimore County. Employment and tax dollars, which will benefit all of our citizens,

Arnold Jablon, Esquire
October 7, 1985
Page Two

should be the deciding factor in an issue which causes no harmful interpretation to the Baltimore County Zoning Regulations.

In addition, Pace Membership Warehouse has been, and is, extremely active in the use of Baltimore County's OTA Program at their Woodlawn location. I am enclosing to you a copy of a letter directed to the Director of the Baltimore County Economic Development Commission to that effect. Pace shall be using the Baltimore County OTA Program at all future locations at which it builds or opens any warehouses within any ML Zone in Baltimore County. This employment initiative by Pace, in my opinion, totally diffuses any possible argument that their location in an ML Zone would inhibit employment opportunities in any part of the County designated for manufacturing use. In fact, the opposite will occur as is evidenced by Pace's track record currently being developed with the Office of Economic Development.

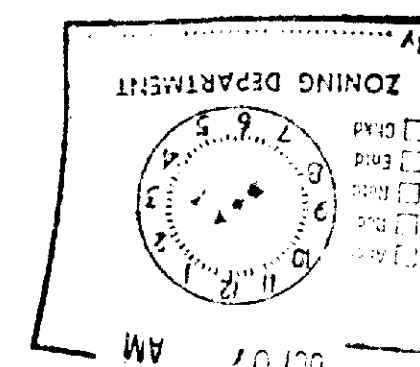
Under the circumstances outlined above, I would respectfully argue and urge that the granting of the petition pending before you is and will be an important enhancement to Baltimore County's economic and employment development.

Thank you for your kind consideration of these additional points and if I can be of any further assistance in furnishing any additional data on this matter, please do not hesitate to contact me or any other member of the Pace organization.

Sincerely,
Leslie M. Pittler
Leslie M. Pittler

LMP/cas

cc: Mr. Terry Guy
Pace Membership Warehouse
P. O. Box 39975
Denver, Colorado 80239



PACE
Membership Warehouse

Central Office
3350 Plover Street
Aurora Colorado
80013-354-0700
Mailing Address
P.O. Box 39975
Denver CO 80239

September 25, 1985

Mr. Robert L. Hannon,
Director
Baltimore Economic Development Commission
County Office Building
Towson, MD. 21204

Dear Mr. Hannon:

This is to confirm that we are currently using the OTA program at our Woodlawn PACE Membership Warehouse location. We will also be using the OTA program at all future PACE warehouses within Baltimore County. Current plans indicate we will be adding a minimum of two more warehouses in Baltimore County.

Sincerely,

Brad Gordon
Brad Gordon,
Vice President/Human Resources

BG/gjs

ESSEX DEVELOPMENT CORPORATION
439 Eastern Blvd. • Essex, Md. 21221 • 687-9080

February 24, 1986

Mr. William T. Hackett, Chairman
Baltimore County Board of Appeals
Old Court House, Room 200
Towson, Maryland 21204

Re: Case #86-97-SPH

Dear Mr. Hackett:

I understand that the Board of Appeals is considering the petition noted above from Pace Membership Warehouse, requesting that they be allowed to locate their wholesale business in an ML zone. While I can't comment on the appropriateness of their petition on a county-wide basis, I would like to express support for such an arrangement at a particular site.

I've enclosed letters sent to the People's Counsel and the Zoning Commissioner about a proposed development at Eastern Avenue and Diamond Point Road. The "business use in the area zoned ML" refers to a facility for a PACE Warehouse store. (We misunderstood the precise nature of the petition and believed that the request was for a special exception.)

Essex Development Corporation is a non-profit organization consisting of residents, businessmen and property owners in the area of Eastern Boulevard in Essex. The area proposed for redevelopment by Mr. Fedder, just on the other side of the Back River, has a great impact on our own community, and we would very much support its improvement for the reasons outlined in the attached letters.

Thank you for considering our comments. For more information, please call EDCO's Executive Director, Marsha Jackson at 687-9080.

Sincerely,

Joseph A. DiCara
Joseph A. DiCara, President

JAD:cs
enclosure

RECEIVED
COUNTY BOARD OF APPEALS
FEB 25 4 05 PM '86

ESSEX DEVELOPMENT CORPORATION
439 Eastern Blvd. • Essex, Md. 21221 • 687-9080

February 13, 1986

Mr. Arnold Jablon
Zoning Commissioner of Baltimore County
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

The Board of Directors of Essex Development Corporation voted at its February 3 meeting to support the shopping center development proposed by The Fedder Company for the 31+ acres adjacent to Eastern Avenue and Diamond Point Road. We understand that a Special Exception for business use in the area zoned ML is needed for part of this development to take place and we support this exception being granted.

The "gateway to Essex" across from the Back River Wastewater Treatment Plant has been an eyesore and embarrassment to the Essex community for decades. When people driving from Baltimore City or the Beltway go east on Eastern Avenue from Eastpoint, they think of themselves as being in Essex -- and their first (and lasting) impression is of lot after lot of unsightly salvage yards and junked automobiles. When a community leader mentioned to us that he'd heard the area would be redeveloped, we researched the issue to learn more.

Our executive director, Marsha Jackson, met recently with Joel D. Fedder and reviewed his plans. She was impressed with his previous and ongoing projects and by Mr. Fedder's commitment to quality for the Eastern Boulevard development. She joins the Board in supporting the proposed shopping center, noting that the physical improvements and types of anchor stores proposed would improve the entry to Essex and increase the marketability of our own portion of Eastern Boulevard, which is not appropriate for such large commercial facilities.

EDCO and other groups in the community are making concerted efforts to uplift the undesired negative image that some people have about Essex. We've come a long way in revitalizing the "heart of Essex", the 400-500 blocks of Eastern Boulevard. Removal of the current facilities at Diamond Point Road and improvement with quality development such as the proposed shopping center would greatly enhance our community.

Thank you for the opportunity to comment on this development. We hope you will call on us if we can be of further assistance.

Sincerely,

Joseph A. DiCara
Joseph A. DiCara
President

JAD:cs

February 13, 1986

Ms. Phyllis Friedman
People's Counsel
Courthouse Building, Room 223
Towson, Maryland 21204

Dear Ms. Friedman:

The Board of Directors of Essex Development Corporation voted at its February 3 meeting to support the shopping center development proposed by The Fedder Company for the 31+ acres adjacent to Eastern Avenue and Diamond Point Road. We understand that a Special Exception for business use in the area zoned ML is needed for part of this development to take place and we support this exception being granted.

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Thank you for the opportunity to comment on this development. We hope you will call on us if we can be of further assistance.

Sincerely,

Joseph A. DiCara
Joseph A. DiCara
President

JAD:cs

ESSEX DEVELOPMENT CORPORATION
439 Eastern Blvd. • Essex, Md. 21221 • 687-9080

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

William Hackett, Chairman
TO: Board of Appeals

Date: March 18, 1986

Robert L. Hannon, Director
FROM: Economic Development Commission

SUBJECT: PACE Membership Warehouse

It is my understanding that Leslie Pittler, attorney representing PACE Membership Warehouse, has requested an early hearing date for the appeal of the Zoning Commissioner's decision on Case No. 86-97-SPH.

According to your office, a cancellation has resulted in an open date on April 15.

Please give every consideration to assigning this date to hear the subject case.

Robert L. Hannon
ROBERT L. HANNON

RLH/plf

cc: Diamond Point Plaza File

RECEIVED
COUNTY BOARD OF APPEALS
MAR 20 2 23 PM '86

C's-008

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
TO Planning and Zoning

Date: October 28, 1985

Robert L. Hannan, Director
FROM Economic Development Commission

SUBJECT: PACE MEMBERSHIP WAREHOUSE

As you know, both Economic Development (EDC) and the Occupational Training Administration (OTA) have worked extensively with principals of PACE to facilitate their location and start-up in Baltimore County. It is my understanding that PACE will open their Woodlawn store on or about November 1.

OTA has worked with local PACE management to assist in staffing. PACE at Woodlawn offered 20 occupational titles, 162 total positions (28 of which are full time and 134 of which are part time).

OTA referred more than 290 pre-qualified clients for these positions. To date, PACE has identified 11 positions for the OTA clients. Of these 11 full time positions, 4 were subsidized by OTA through an open OJT contract.

In addition, OTA paid for local and regional advertising from which 700+ additional applicants were derived. OTA assigned 11 staff members to work a Saturday for 6 1/2 hours and made arrangements at Woodlawn Senior High School to administer the 700 applicants. No final record of employment of the 700 is currently available from PACE.

As of Friday, October 25, all positions at PACE were filled. Facility manager, Bill Atwell, agreed to a meeting on November 12, to review the future employment outlook.

Bob
ROBERT L. HANNAN
Director

RLH/clt

cc: Les Pittler
Jim Lyall, OTA
PACE file

PT: Part Time
FT: Full Time
1/4 - Opening

PACE Membership Warehouse
Current Data on Placement 10/18/85
21/14 - Quota

POSITION	TO BE HIRED	PRESENT HIRED	BAIT CO.	OTHER	% OF TOTAL PLACED
Security Guard PT	6	10	2	?	33%
Maintenance/Janitor PT	2	9	1	1	50%
Int. Junior Supervisor PT	1	6	1	1	100% EDC
Garage Clerk PT	1	13	1	1	100% EDC
Marker PT	4	7	1	?	25%
Shines Stocker PT	5	23	2	?	40%
Edging/Sparks Clerk PT	5	8	2	?	40%
Party Stocker PT	10	34	5	?	50%
Receiving/Sparks Clerk PT	1	3	1	1	100%
Port/PT Operator PT	6	39	2	2	33%
Receiving (Warehouse) PT	2	12	?	?	50% EDC
Receiving/Dock PT	1	22	1	1	100% EDC
Data Entry PT	1	21	?	?	0%
Machine Supervisor PT	3	17	1	?	33%
Tire Center Person PT	3	2	1	?	33%
Sales Staff PT	3	2	?	?	0%
Membership Staff PT	6	10	3	?	50%
Vault Cashier PT	2	29	?	?	0%
Callers PT	50	9	?	?	0%
Int. End Cashier PT	50	20	?	?	0%
Totals:	162	246	25	?	38%

Notes:
Rollercoaster Positions
Cashier + Vault Cashiers
All Stockers
Membership + Sales
Clerks
Both Security Guards hired from
9/14 Interviewees,
266 Baltimore candidates plus others not registered due to volume (986 Total seen on 9/21)

BALTIMORE COUNTY MASTER PLAN 1979-1990



land use element

C. INDUSTRY

Industrial development is critical to the future of Baltimore County. Attraction of new industry and expansion of existing industry makes significant contributions to the employment opportunities and income of current and future residents. The County's future seems bright; strong job growth is projected. A large reserve of prime land exists to accommodate industrial growth. Several highly competitive industrial parks have been developed in recent years. The strong demand for industrial land will absorb much of the land in existing parks, thus stimulating development of additional areas as industrial parks and sites. A comprehensive policy is necessary to guide county response to the demand.

The locational patterns of industrial development affect the desirability of neighboring areas for housing and commercial use. While industry is critical to the area's economic stability, its needs and impact are not totally compatible with truck traffic, visual aesthetics, noise and other environmental factors. Detailed planning and land use controls can help ensure that industrial development occurs at appropriate locations where adverse effects can be minimized.

To 1995, Baltimore County industry will require 1,314 acres to satisfy demand*. This estimate of future demand from the manufacturing, wholesale and trucking industries is based on employment growth projections presented in Technical Memorandum No. 1, "Demographic and Economic Analysis and Projections". Demand will be greater to 1985. Average annual demand is projected to be 75 acres per year until 1985 and 64 acres per year from 1985 to 1995.*

Manufacturers' needs will account for 21.5 percent of total demand at an average density of 20 employees per acre. The greatest demand will come from light industry including the printing, electrical equipment and instruments manufacturing industries.

Wholesalers will require 465 acres by 1995* with an average density 10 employees per acre. Baltimore County's road system provides many good locations for wholesaling operations serving metropolitan Baltimore markets. Likewise, many County locations are excellent for the trucking industry. Trucking operations typically require large tracts for storage and handling. At an assumed density of five employees per acre, 575 acres will be developed for trucking firms in 1995.*

All of these sectors--manufacturing, wholesaling and trucking--have particular needs in industrial land. Most important are access to superior transportation systems and availability of utilities. Well-situated industrial parks offer many advantages to manufacturing and wholesalers. All utilities are provided, necessary governmental permits have been solicited and immediate occupancy is possible. Recent industrial activity has demonstrated the strong market appeal of industrial parks. Their competitive advantage is expected to increase over time; the bulk of industrial land to be absorbed in the next 18 years will be in planned industrial parks. Land in existing parks will be supplemented by

*NOTE: These projections extend beyond the plan period, which ends in 1990. For the period 1990-1995, they are included for reference in plan monitoring.

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development of additional industrial parks, the location of which will be determined by County policies on utilities and land use.

Demand for prime industrial land focuses on large tracts with highway access. The ideal location from the park developer's perspective is near a major highway interchange in order to minimize user time in transit and to avoid the use of residential areas/streets. Public policy considerations include the proximity to existing infrastructure and the site's environmental sensitivity. Deliberate provisions to protect industrial land from intrusion by other uses is a critical element in the County's land use policy.

Currently, 9,398 acres of vacant land have been zoned for industrial use -- nearly seven times the amount that will be required to 1995. This reserve is a tremendous asset in the County's economic development efforts. There are three key reasons to maintain a large reserve of industrial land:

1) Need for a variety of sites. Variety is the key to the adequacy of reserve. Different industries have varying requirements as to location, size and amenities. Sites are not always interchangeable, so a large reserve facilitates a match between industry and land to meet its needs. Baltimore County is a logical location for serving several markets, not all of which can be served from one location. Access to particular materials such as gravel or semi-finished goods is a determining factor in some locational decisions. As with the selection of any property, personal preferences influence the location of many firms. Proximity to a golf course is not always a negligible decision factor.

2) Future demand after 1995. Obviously, demand for industrial land will continue far beyond 1995. Prime industrial land is too often lost to less efficient uses because of failure to preserve the land from alternative development. Once areas have been built, it is generally impossible to recover that land for industrial use. The opportunity is lost for decades.

3) Avoidance of future land use conflicts. Only careful long-range planning can ensure minimal conflicts between land uses. New development areas can be planned so as to provide adequate space for industry in locations buffered from conflicting uses. Residential development would then occur with full knowledge of the future locations of industry.

Given these reasons for preserving a large reserve of land for industrial purposes, it is appropriate to evaluate the amount and quality of the current inventory. County officials have the opportunity to review the individual areas previously zoned for industrial use, as to overall suitability.

It is recommended that the County:

Encourage location of industry within organized industrial parks. While there will always be a portion of industrial land demand which can only be satisfied by isolated freestanding sites, many industries can be accommodated within planned industrial parks. Potential for development consistent with community standards is greatest in the planned industrial park. The costs of providing buffers are shared between tenants. Traffic can be better managed with controlled access. Clustered firms can make joint use of industrial support services.

Preserve land at major highway intersections for industrial use. While railroad access is still important to many industries, truck transport of materials and goods has become the predominant transportation mode. Convenient access to major highways is essential to many firms. Close proximity to intersections minimizes the need to use residential streets for industrial traffic. Industrial land use considerations should be incorporated in utility and transportation planning processes.

Preserve land with good port access for industries which utilize water transport. Port-oriented land is a limited asset which should not be squandered on less efficient uses than for port-oriented industry.

Rezone properties in environmentally-sensitive areas. Baltimore County has the advantage of a healthy reserve of industrial land. A detailed evaluation should be conducted to determine the environmental suitability of each potential site. Any sites in areas draining into public water supply reservoirs should be rezoned for alternative use if danger exists that the water supply will be harmed.

Conduct a detailed evaluation of all industrially-zoned areas. Each area should be evaluated with respect to soil characteristics, transportation access, neighboring land uses, availability of utilities and air quality. The Industrial Development Commission should emphasize those sites best-suited for development on the basis of both public and private criteria.

Alleviate constraints of air quality requirements. Air quality standards may prove to be an obstacle to further industrial development in the southwest and southeast portions of the County. Every effort should be made to alleviate the problem.

Prepare a comprehensive economic development strategy.

The table on the following page indicates projected industrial land demand in the County by Regional Planning District.

ALLOCATION OF RECOGNIZED INDUSTRIAL LAND DEMAND BY RPD, BALTIMORE COUNTY,* 1976-1995

RPD	Available Acreage	1976-1980	1980-1985	1985-1990	1990-1995	Total Over Period
304	351	-	30	45	67	142
309	124	70	54	-	-	124
313	154	20	35	50	49	154
317	395	-	50	70	85	205
319	166	70	55	41	-	166
326	129	30	45	45	9	129
327	405	87	77	65	60	289
329	171	20	35	25	25	105
Total	1,895	297	381	341	295	1,314

Source: Hammer, Siler, George Associates

*These locations are approximate; by means of changes in zoning of vacant lands, changes in access to major roads and other public facilities, portions of this demand could be attracted to RPD's other than those indicated in this allocation. It should also be noted that a more aggressive County economic development program could attract more industrial use to the County than is projected here.

D. AGRICULTURE

Since most cities in the United States were originally developed on highly accessible sites along major transportation arteries near the center of prime agricultural lands, and since subsequent urban development has largely occurred as extensions out from these original centers, urbanization in the United States has occurred and continues to occur on prime agricultural lands. This pattern has occurred in the Baltimore Region in Baltimore County, as in the other Counties whose boundaries coincide with those of the City at the Region's center.

Between 1960 and 1970, the total land area of the United States in urban use increased from 27.2 million acres to 34.2 million acres; nearly half of this new urban land came out of the agricultural land inventory.¹ In-migration to SMSA's has meant that much of the loss occurred within metropolitan areas.

While land used as cropland throughout the country has declined steadily in recent years, crop production increased by 50% between 1960 and 1970 and food production has more than kept pace with population growth.

The Northeastern United States (Maine, New Hampshire, Vermont, Massachusetts, New York, Connecticut, Rhode Island, Pennsylvania, New Jersey, Delaware, and Maryland) differ from the remainder of the country in that in this region only, both farm acres and total agricultural production have declined. This trend is accelerating.²

With population increases in the already dense region, suburban and rural land values have risen sharply, and, with higher labor costs, feed prices and transportation costs relative to other regions, farmers in the Northeast have been under increasing pressure to sell their farms.

This pattern has been apparent throughout the State of Maryland, and has occurred at a faster rate in Baltimore County.

In the period 1958-1974, land in agricultural use throughout the State of Maryland decreased 24.7% while land in agricultural use in Baltimore County decreased 30.9%.³

During the Growth Management Program, the following County agricultural policy positions were defined:

The farmlands of Baltimore County are a valuable natural asset requiring County action to preserve them;

1. Miner, Dallas F. "Agricultural Lands Preservation, A Growing Trend in Open Space Planning" Ed Scott, R.W., Brower, D.J. and Miner, D.D. Management and Control of Growth, Volume III, (Washington, D.C.: The Urban Land Institute, 1973) p. 51.

2. Ibid, p. 54.

3. U.S. Department of Commerce, Bureau of the Census, 1974 Census of Agriculture, Preliminary Report, Baltimore County, Maryland, December, 1975.

We shall first consider People's Counsel's Motion to Strike Appearance of the Zoning Commissioner. The Zoning Commissioner cites as authority for his appearance in this matter §501.6 of the Baltimore County Zoning Regulations (BCZR) which reads in part:

"Appeals from the Zoning Commissioner shall be heard by the Board of Zoning Appeals de novo. At such hearing all parties, including the Zoning Commissioner shall have the right to be represented by counsel, ..." [Emphasis added]

We shall dispense with that argument initially. Section §01.6 was enacted prior to Charter government being initiated in Baltimore County. With the enactment of Charter government, the County Board of Appeals was established, organized and authorized to promulgate, subject to County Council approval, rules of procedure. Such rules of procedure were established and approved by the County Council in 1965. Rule 6 - Appearances and practice before the board of appeals - makes no mention of the Zoning Commissioner as a party or otherwise. Although the Zoning Commissioner may, with some credence, argue that by custom and practice the Board of Appeals has continued to recognize and use, for procedural guidance, §01.1 through §01.7 of the BCZR, this Board is constrained to note unequivocally, that if, in fact, this Board, in previous cases, has used said sections as a guide the Board could not, under any circumstances, consider those sections as the controlling law if they are in conflict with the rules of practice and procedure authorized by §603 of the Charter. Indeed, §1111 of the Charter removes any doubt when it states, in part:

App. 350 (1980).

The question then becomes convoluted. If the Zoning Commissioner has no right to appeal, can he file a Motion to Dismiss an appeal? Does the Zoning Commissioner have standing to do so? We think not.

Section 22-32 (Code) is, by its nature, broad in its scope. It leaves the door wide open for the right to appeal by many and varied persons, officials, taxpayers, departments, offices, boards and bureaus. Nevertheless, there is one common thread, a fabric which connects the rights of these individuals, departments, etc. to effect an appeal, to wit: the language "... feeling aggrieved by any' decision of the zoning commissioner ...".

We are perplexed, how can the Zoning Commissioner be aggrieved by his own decision? Weber's defines aggrieved as "Distressed; having a grievance; adversely affected in respect of legal rights". None of the definitions recited apply to this case. Therefore, simple logic dictates that if the Zoning Commissioner cannot appeal to the County Board of Appeals, he cannot intervene for the purpose of preventing an appeal to the County Board of Appeals. Obviously, in both instances the purpose of such actions would be to espouse the correctness of his own decision.

We agree with People's Counsel that to permit the intervention of the Zoning Commissioner as a party to this proceeding would violate the public trust in our system of justice. The Zoning Commissioner sits as a quasi-judicial decision-maker and is not a party to the proceeding.

county council, and in any matter or proceeding now pending or hereafter brought involving zoning, reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may be a party, or in which he may have a substantial interest in such appearance, all the rights of counsel of a party in interest, including but not limited to the right to present his case, to cross examine, to object to be heard, and to file and prosecute an appeal in his capacity as a party, shall be reserved to the party or the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Sections 10-101 through 10-105 of the Code of the City and General Ordinances of Baltimore County, Maryland. [Emphasis added in original. Order]

The Zoning Commissioner argues that inasmuch as the issue before this Board does not involve a zoning reclassification, variance or a special exception, People's Counsel has no right to appeal. Were the issue that simple this Board would agree. However, the issue is not that simple.

In the subject case, the initial purpose of the special hearing before the Zoning Commissioner was to determine that which constitutes the front and rear yards for an improvement that abuts water. The issue was important because an accessory structure was placed in the yard nearest the water. Since the Zoning Commissioner decided that the structure had been placed in the rear yard no variance was required. Had the Zoning Commissioner decided that the structure had been placed in the front yard, the property owner would then be required to petition for a variance. Indeed, it would have been more expedient to petition for the variance at the same time as the petition for a special hearing was filed.

The Board does note, however, for future reference, that each case shall be decided on its own merit and the statute enumerating the powers and duties of People's Counsel shall be strictly construed. We do not believe, therefore, that it was ever intended that People's Counsel enjoys "carte blanche" authority to intervene in any case People's Counsel deems in the public interest.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 18th day of March, 1985, by the County Board of Appeals, ORDERED that People's Counsel's Motion to Strike Appearance of the Zoning Commissioner be and the same is hereby GRANTED; and it is

FURTHER ORDERED that the Zoning Commissioner's Motion to Dismiss be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

William R. Evans

Keith S. Franz

[illegible][illegible]

RE: PETITION FOR SPECIAL HEARING : BEFORE
for a Bank in an M.L.R. zone :
9th District : COUNTY BOARD OF APPEALS
Kenilwest Limited Partnership : OF
Petitioner : BALTIMORE COUNTY
No. 80-88-SPH

OPINION

This case comes before the Board on appeal by the Petitioner in regard to the People's Counsel's participation in a hearing before the Zoning Commissioner to determine whether a bank is a permitted use in an M.L.R. zone. The Petitioner filed a petition for this special hearing under Section 500.7 of the Zoning Regulations of Baltimore County requesting the Commissioner to interpret Section 248.1 of the Regulations as including a bank as a permitted use in an M.L.R. zone. On May 29, 1980, the People's Counsel filed an appeal to the Commissioner's decision in that case.

The question before this Board is whether the People's Counsel had exceeded his defined powers given in the Charter of Baltimore County in appearing at the Zoning Commissioner's special hearing and appealing the decision. The Petitioner argues that Baltimore County's Charter limits the powers of the People's Counsel, as created under Section 524.1 of the Charter, to an extent that he may not appear as a party nor appeal from special hearings called by the Zoning Commissioner in that these hearings are not specifically enumerated in the County Charter's provision describing the powers of the People's Counsel. Section 524.1.(b).(3) lists the powers and duties of the office of People's Counsel as follows:

*A. He shall appear as a party before the zoning commissioners of Baltimore County, He, the party, the zoning board of appeals, and the court, shall be bound by the interests of the public in general, and shall defend the comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present

In the case before the Board, the facts support the People's Counsel's appearance before and appeal from Zoning Commissioner's decisions. The Board finds that the essence of the issue before the Zoning Commissioner was whether a special exception would be required or did the bank fall within the framework of the M.L.R. zone and, therefore, not require a special exception. The Board finds sufficient direct connection between the issue before the Zoning Commissioner at the hearing and the special exception request which would follow if the Zoning Commissioner had replied that such was needed. As a general rule, the Board believes that appearance by the People's Counsel, where challenged as herein, should be determined on a case by case basis using the test of whether the activity is sufficiently connected to a zoning reclassification, special exception or variance, that it is a "necessary accompaniment" to those functions. The Board notes the recent Charter amendment expanding the People's Counsel's power to defend the Master Plan. The Board finds that the test was met on this issue on the map.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 20th day of November, 1980, by the County Board of Appeals, ORDERED that the Petitioner's Motion in regard to this specific question of whether the People's Counsel has standing to appear before it in this matter be, and the same is hereby DISMISSED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Reiter, Jr., Chairman

20 11 2000

John V. Murphy

R. L. Miller

86-97-SPH
CERTIFICATE OF PUBLICATION

TOWSON, MD August 8 1968

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on August 8 1885

THE JEFFERSONIAN

JB Venetaki
Publisher

Cost of Advertising
24.75

**PETITION FOR SPECIAL
HEARING**

LOCATION: Hearing Interper-
son, no particular location
DATE AND TIME: Monday, April
19, 1969, at 10:00 a.m.
PUBLIC HEARING: Room
1000, City Building, 11
Chesapeake Avenue, Town
Maryland

The Zoning Commission of the
County of Montgomery, in
accordance with the provisions of the
Act and Regulations of the
General Assembly, hereby
will hold a public hearing
on the application of the
Section 502 to approve the use
of the PAUL H. HERSHMAN
HOUSE of three thousand square
feet, right in an M-1, no
other residential use, and
other local location.

Residence property of Terry G.
Pace Membership Washington
in the plan filed in the
file.

In the event that this Petition
is approved by the Commission
it is intended that the Commission
will hold the hearing on the
petition. The zoning Commission
will, however, determine the
use of the house of land
during the hearing. The
house. Such request must be received
in writing, and the hearing must be
above "made at the house and
the house."

ARNOLD JARLON,
Zoning Commissioner
of Baltimore County

Attest,

AUG 6 1964

his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare of the community." (Emphasis added)

The Petitioner argues that only three types of cases govern the People's Counsel's participation; "zoning reclassification and/or variance and/or special exception". Petitioner further argues that since these are specifically called out in the Charter, which is a governing constitutional document, this Section should be strictly construed, citing Cooley Constitutional Limits at page 449; Hardwood vs. Marshall 9 103 (1856) and County Commissioner vs. Meekins 50 445 (1878). The Petitioner also argues that since the specific powers of the People's Counsel are enumerated, appearance before and appeal from the Zoning Commissioner's special hearings, not being so enumerated, cannot be implied from the intended purposes of Section 524.1 nor are they incidental to his right to appear as a party with regard to special exceptions.

The Board believes that the key phrase to be interpreted in this decision is underlined in Section 524.1 aforesaid and involves the words ". . . in any matter or proceeding now pending or thereafter brought involving . . .". (Emphasis added) Within this phrase the Board particularly examined the word "involving" and how it may be interpreted in establishing the People's Counsel's powers. The Board agrees with the Petitioner that Charter provisions must be strictly construed in regard to the power of officials of the County. However, the word "involving" itself appears to be a more general and more adaptable term than the Petitioner would have us understand. Black's Law Dictionary, Fourth Edition, does not contain a definition of the word "involving". However, Webster's Collegiate Dictionary does define the word "involve" to include "to require as in necessary accompaniment" among many variations of the word. The Board believes this to be the most applicable definition, and holds that in order for the People's Counsel to appear there must be a "necessary accompaniment" to the three specifically enumerated powers.

