PETITION FOR ZONING VARIANCE 87-48-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1B02.3.C.1 to permit a sideyard setback of 2 feet in lieu of the required 25 feet

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County: for the following reasons: (indicate hardship or practical difficulty)

The front yard of the subject property is used as an athletic field and is not suited for the purposes intended. The back yard is wooded and where not wooded is plowed under and used as a large vegetable garden. On the east side of the house is a garage and paved parking area for automobiles which would be totally unsuitable for the use contemplated. That leaves only the west side of the house for the enlargement contemplated and immediately adjacent to the house on the west side is a terrace and enclosed fenced-in sitting area. The addition contemplated goes on the outside of this fenced-in area and is contemplated for the corner or edge of Petitioner's property where there are no trees to be removed and where the terrain is suitable. While the addition would be up against the neighboring property line this should give no *** problem as a high-rise residential use will be constructed on the abutting property.

Property is to be posted and advertised as prescribed by Zoning Regulations. [SEE BELOW]

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

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

David Cordish
(Type or Print Name)

David Cordish
Signature

Penelope Cordish, wife
(Type or Print Name)

Penelope Cordish
Signature

Attorney for Petitioner:

Glenn Weinberg & Paul Cordish
(Type or Print Name)

Glenn Weinberg
Signature

300 Water Street
Address

Baltimore, Maryland 21202
City and State

Attorney's Telephone No.: 752-5444

Address Phone No.

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Glenn Weinberg
Name
300 Water Street
Baltimore, Maryland 21202
Address
Phone No. 752-5444

MAP - NW 7I
N-26,840
W-28,100
E. D. 3rd
DATE 7/16/86
200 - PF
1000 - PF

ORDERED By The Zoning Commissioner of Baltimore County, this 30th day of June, 19 86, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 12th day of August, 19 86, at 9:30 o'clock A.M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
Date 7/30/86
By [illegible]

***problem as a high-rise residential use will be constructed on the abutting property. In essence, there is no other practical location other than where we have the house extension shown on the attached plat.

IN RE: PETITION FOR ZONING VARIANCE
N/S of Slade Avenue, 1125' NE of Reisterstown Road
3rd Election District
David Cordish, et ux
Petitioners

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-48-A

* * * * * * * * * * * * * * *

The Petitioners herein request a zoning variance to permit a side yard setback of 2 feet in lieu of the required 25 feet for a dwelling.

Testimony by and on behalf of the Petitioners indicates that David Cordish has resided on the site in an estate-type setting for the past 16 years. He proposes to construct two low buildings, no more than 12' x 12', which would be connected to the main residence by a covered passageway. The northern building, a bathhouse, is to include a toilet, shower, vanity and bench; the southern building, a guest room, is to include a toilet, vanity and sleep area. This guest room is needed because there is only one in the dwelling; the bathhouse is needed as a shower/locker room, especially for three teen-aged sons. The covered walkway is considered necessary to permit year-round use of the buildings by the family and guests. The front yard (south) is used for athletic fields; the east end contains the driveway. The rear yard (north) will remain partially wooded and contain vegetable gardens, as well as a breakfast porch and living area. The west yard is occupied by a somewhat formal garden which existed prior to the Petitioner's purchase of the property. A representative of the architectural firm testified that if the guest room and bathhouse were moved eastward so as to be within the building setback line, the symmetry of the garden would be destroyed and there would be less visual security for the buildings. The proposed buildings will appear as scaled down, wood frame garden structures. A landscape architect testified that the enclosed passageway will provide strong vertical limits to add to the formality of the garden as well as provide protection from the weather.

IN THE MATTER OF
THE APPLICATION OF
DAVID CORDISH, ET UX
FOR A ZONING VARIANCE ON
PROPERTY LOCATED ON THE N/s
OF SALDE AVENUE, 1125' NE OF
REISTERSTOWN ROAD
3rd ELECTION DISTRICT
2nd COUNCILMANIC DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 87-48-A

* *

OPINION

This case comes before this Board on appeal from a decision of the Deputy Zoning Commissioner granting a side yard setback of 2 feet in lieu of the required 25 feet for two structures proposed on the site. The case was heard this day in its entirety.

Appellant presented as his first witness David S. Cordish, the property owner, who testified that he purchased this property 16 years ago and introduced photographs of the site. He noted that the property consisted of three acres -- one acre of front yard used as an athletic field, one acre containing the home and a formal garden, and one acre of rear yard which abuts the golf course that surrounds the property. He testified as to the lengthy process by which he arrived at the decision to build the two additions, one bath house and one guest room, and a three-foot wide, glass-enclosed connecting walkway between the main house and these outbuildings, all of which are shown in the exhibits. He testified at length as to his reasons for their proposed locations, all of which are a part of the case record.

Dr. Arnall Patz, an ophthalmologist and neighbor, also testified in favor of the granting of the variance.

William F. Kirwin, a planner and landscape architect, testified as to the desirability of locating the proposed additions as shown on the plat. This concluded Appellant's case.

Case No. 87-48-A
David Cordish, et ux
2.

At this point, Protestant moved to dismiss the petition and contended that the Petitioner had not proved the necessity for variance as stated in Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.). The Board denied that motion, in that the evidence and testimony produced during the Petitioner's case need be considered in a light most favorable to him.

Protestants then presented Mr. Leonard Harlan, the property owner of the adjacent property, who intends to develop the property as a high-rise condominium and whose testimony was that the proposed location of the additions to Mr. Cordish's residence would damage his property because of the RTA (Residential Transition Area) requirements.

Mr. David Thaler, a civil engineer, testified as to the effect the proposed variance would have on Mr. Harlan's property.

Richard Blinder, an architect for Mr. Harlan, testified as to the impracticability of the proposed additions to Mr. Cordish's residence. This concluded testimony in this case.

Section 307, B.C.Z.R., states that the County Board of Appeals shall have the power to grant variances from height and area regulations only in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. The Board finds that there was no testimony or evidence indicating the need for the variance by way of practical difficulty or unreasonable hardship. Mr. Cordish's property comprises some three acres and affords him other locations and other possibilities by which he could construct his requested additions to the dwelling without the need for any variance. Furthermore, Section 307 states that any such variance shall be granted "...only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. They shall have no power to grant

Case No. 87-48-A
David Cordish, et ux
3.

any other variances." The proposed location of the two structures shown on the plan would require that the RTA be relocated so as to in fact reduce the usable area of Mr. Harlan's property and thereby evidence injury. Since the Board finds no testimony or evidence before it indicating compliance with Section 307, the Board is of the opinion that the requested variance should be denied and will so order.

ORDER

It is therefore this 24th day of June, 1987 by the County Board of Appeals ORDERED that the requested variance of a side yard setback of 2 feet in lieu of the required 25 feet be and the same is DENIED.

Any appeal from this decision must be made 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

Thomas J. Bollinger

Lawrence E. Schmidt

a precise length at which a passageway would cease to function as a mere connection, it is quite apparent that the proposed guest room and bathhouse are, for all intents and purposes, and within the spirit and intent of the BCZR, merely accessory structures according to the meaning of Section 101. In the instant case, the covered passageway was incorporated into the design for the aesthetic, increased formality of the garden, as well as convenience and protection in inclement weather. To interpret the proposed two small far-distant rooms as part of the principal building in accordance with Section 400.1 stretches the meaning of that section in exactly the same way the Petitioners have stretched their covered walkway, i.e. to the absurd. In the opinion of the Deputy Zoning Commissioner, the Petition was incorrectly worded, although the need for a guest room and bathhouse, as well as the practical difficulty or unreasonable hardship of locating the structures elsewhere, has been proven. The structures should be permitted, therefore, as accessory structures connected to the main residence by a walkway that is, at times, enclosed.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 5th day of December 1986, that a zoning variance to permit a side yard setback of 2 feet for two accessory buildings (guest room and bathhouse) and to permit one of those accessory structures (guest room) in the front yard in lieu of the required rear yard, both in accordance with the plan submitted, prepared by Stephen A. Glassman dated August 26, 1986 and identified as Petitioner's Exhibit 2, be and is hereby GRANTED from and after the date of this Order.

IT IS FURTHER ORDERED that the original request for a zoning variance to permit a side yard setback of 2 feet for a dwelling be and is hereby DENIED.

Deputy Zoning Commissioner
of Baltimore County

-3-

RE: PETITION FOR ZONING VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd.
3rd Election District
David Cordish, et ux - Petitioners
Case No. 87-48-A
APPEAL FILED BY: Appellants/Petitioners, David S. and Penelope A. Cordish

Date: 1/5/87

1. Petition
2. Description of Property
3. Certificate of Posting
4. Certificates of Publication
5. Zoning Advisory Committee Comments
6. Comments from the Director of Planning
7. Entries of Appearance
8. Order of Deputy Zoning Commissioner
9. Memorandum in Support of Petition
10. Memorandum of The Harlan Co. in Opposition to Petition for Variance
11. Letter of Appeal of David S. and Penelope A. Cordish, dated 12/22/86, and received for filing on 12/23/86
12. Letter to all parties from Arnold Jablon, Zoning Commissioner, dated 1/5/87, advising of the filing of Cordish appeal
13. Petitioners' Exhibits Nos.:

[ORIGINALS SENT TO BOARD OF APPEALS]
1. Plat, dated 5/19/8 (?)
2. Plat, dated 8/26/86
3a. Color photograph, dated 8/23/86
3b. Color photograph, dated 8/23/86
3c. Color photograph, dated 8/23/86
3d. Color photograph, dated 8/23/86
3e. Color photograph, dated 8/23/86
3f. Color photograph, dated 8/23/86
3g. Color photograph, dated 8/23/86
[Large Board Exhibit] 4. Colored plat, dated 8/26/86

14. Protestants' Exhibits Nos.:

[ORIGINALS SENT TO BOARD OF APPEALS]
1. Letter to Ron Lipsan from David S. Cordish, dated 1/9/86
2. Letter to David S. Cordish from M. Ronald Lipman, dated 1/13/86
3. Letter to Ron Lipsan from David S. Cordish, dated 1/16/86
[Large Board Exhibit] 4. 2 Drawings of 6 Slade Avenue by Beyer, Blinder, Belle
[Large Board Exhibit] 5. Site Plan with Typical Floor re: 6 Slade Avenue
[Large Board Exhibit] 6. Drawing of Buildable Area, Slade Avenue, dated 8/4/86
7. a. Letter to Jeffrey H. Scherr from M. Ronald Lipman, dated 11/19/85
b. Tiger Title Insurance Co. Commitment for Title Insurance
c. Blank Agreement of Sale, prepared 11/4/85 re: Edward A. and Ellen W. Haile
d. Map drawn by Lipman, Frizzell & Mitchell re: Slade Ave.
e. Aerial Photograph
f. Zoning Map drawn by Lipman, Frizzell & Mitchell
g. Plat, dated 11/21/85, re: Haile Property

- 2 -

8. Plat drawn by D. S. Thaler & Assoc., Inc., re: Haile Property
9a. Color polaroid, dated 8/14/86, re: West end Cordish House - full load of chipped wood
9b. Color polaroid, dated 8/14/86, re: West end of Cordish House
9c. Color polaroid, dated 8/14/86, re: West end of Cordish House - Tree Expert at Cordish Residence
9d. Color polaroid, dated 8/14/86, re: West end of Cordish House - Large tree removed
9e. Color polaroid, dated 8/15/86, re: West end of Cordish House - Cut up tree left by contractor
10. Impact of Proposed Cordish Expansion on Buildable Area, dated 8/12/86
11. Census Tract Map re: Market Area

[illegible] L. Cordish, Esquire
[illegible]an L. Weinberg, Esquire
[illegible]te 400, 300 Water Street
[illegible]ltimore, Maryland 21202
[illegible]9-2141)
Attorney for Appellants/Petitioners, David S. and Penelope A. Cordish

Jeffrey Scherr, Esquire
[illegible]rwood & Graham, P.A.
[illegible]n Life Building
[illegible]rles Center
[illegible]ltimore, Maryland 21201
[illegible]2-6030)
Attorney for Appellees/Protestant, The Harlan Co.

[illegible]n B. Howard, Esquire
[illegible]bert A. Hoffman, Esquire
[illegible], Howard, Downes & Tracy
[illegible] Allegheny Avenue, PO Box 5517
[illegible]wson, Maryland 21204
[illegible]4-2111)
Attorneys for Appellants/Petitioners, David S. and Penelope A. Cordish

Mr. David O. Feldman
[illegible] Sudbrook Lane
Baltimore, Maryland 21208
Appellee/Protestant

Mr. Allan Hirsh
[illegible] Slade Avenue
[illegible]ltimore, Maryland 21208
Appellee/Protestant

[illegible]ne Cole Friedman, Esquire
[illegible]ople's Counsel for Baltimore County
[illegible]oom 223, Courthouse
[illegible]wson, Maryland 21204
Requests notification:
Jeanne Kacher
[illegible] Reisterstown Road
Baltimore, MD 21208

Norman E. Gerber
James Rosenll
Arnold Jablon
[illegible] M. H. Jung
James E. Dyer
Margaret E. du Bois, Appeals Clerk, Zoning Office
Request Notification
" "
" "
" "
" "

-CONCLUSION-

For the foregoing reasons, the Cordishes respectfully request that the motion to dismiss this appeal be denied.

JOHN B. HOWARD

ROBERT A. HOFFMAN
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorney for Appellants

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this day of May, 1987, a copy of the foregoing Response to Motion to Dismiss Appeal of Decision of Deputy Zoning Commissioner was mailed to Jeffrey A. Scherr, Esquire and to Paul A. Teitelbaum, Esquire, Kramon & Graham, P.A., Sun Life Building, Charles Center, Baltimore, Maryland 21201, Attorneys for the Harlan Company, Inc.

ROBERT A. HOFFMAN

EXHIBIT A

PETITION FOR ZONING VARIANCE

87-48-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1B02.3.C.1 to permit a sideyard setback of 2 feet.

Variance from Section _____

in lieu of the required 25 feet

_____

_____

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

The front yard of the subject property is used as an athletic field and is not suited for the purposes intended. The back yard is wooded and where not wooded is plowed under and used as a large vegetable garden. On the east side of the house is a garage and paved parking area for automobiles which would be totally unsuitable for the use contemplated. That leaves only the west side of the house for the enlargement contemplated and immediately adjacent to the house on the west side is a terrace and enclosed fenced-in sitting area. The addition contemplated goes on the outside of this fenced-in area and is contemplated for the corner or edge of Petitioner's property where there are no trees to be removed and where the terrain is suitable. While the addition would be up against the neighboring property line this should give no *** problem as a high-rise residential use will be constructed on the abutting property. In essence, there is no other practical location other than where we have the house extension shown on the attached plat.

Property is to be posted and advertised as prescribed by Zoning Regulations. [SEE BELOW]

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

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

_____ (Type or Print Name)

_____ Signature

_____ Address

_____ City and State

Legal Owner(s):

David Cordish (Type or Print Name)

David Cordish Signature

Penelope Cordish, wife (Type or Print Name)

Penelope Cordish Signature

Attorney for Petitioner:

Glenn Weinberg & Paul Cordish (Type or Print Name)

Glenn Weinberg Signature

300 Water Street Address

Baltimore, Maryland 21202 City and State

Attorney's Telephone No.: 752-5444

_____ Address Phone No.

_____ City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Glenn Weinberg Name

300 Water Street Address

Baltimore, Maryland 21202 Phone No. 752-5444

ORDERED By The Zoning Commissioner of Baltimore County, this 30th day of June, 19 86, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 12th day of August, 19 86, at 9:30 o'clock A.M.

Zoning Commissioner of Baltimore County.

(over)

EXHIBIT B

IN RE: PETITION FOR ZONING VARIANCE
W/S of Slade Avenue, 1125' NE of Reisterstown Road
3rd Election District
David Cordish, et ux
Petitioners

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-48-A

The Petitioners herein request a zoning variance to permit a side yard setback of 2 feet in lieu of the required 25 feet for a dwelling.

Testimony by and on behalf of the Petitioners indicates that David Cordish has resided on the site in an estate-type setting for the past 16 years. He proposes to construct two low buildings, no more than 12' x 12', which would be connected to the main residence by a covered passageway. The northern building, a bathhouse, is to include a toilet, shower, vanity and bench; the southern building, a guest room, is to include a toilet, vanity and sleep area. This guest room is needed because there is only one in the dwelling; the bathhouse is needed as a shower/locker room, especially for three teen-aged sons. The covered walkway is considered necessary to permit year-round use of the buildings by the family and guests. The front yard (south) is used for athletic fields; the east end contains the driveway. The rear yard (north) will remain partially wooded and contain vegetable gardens, as well as a breakfast porch and living area. The west yard is occupied by a somewhat formal garden which existed prior to the Petitioner's purchase of the property. A representative of the architectural firm testified that if the guest room and bathhouse were moved eastward so as to be within the building setback line, the symmetry of the garden would be destroyed and there would be less visual security for the buildings. The proposed buildings will appear as scaled down, wood frame garden structures. A landscape architect testified that the enclosed passageway will provide strong vertical limits to add to the formality of the garden as well as provide protection from the weather.

a precise length at which a passageway would cease to function as a mere connection, it is quite apparent that the proposed guest room and bathhouse are, for all intents and purposes, and within the spirit and intent of the BCZR, merely accessory structures according to the meaning of Section 101. In the instant case, the covered passageway was incorporated into the design for the aesthetic, increased formality of the garden, as well as convenience and protection in inclement weather. To interpret the proposed two small far-distant rooms as part of the principal building in accordance with Section 400.1 stretches the meaning of that section in exactly the same way the Petitioners have stretched their covered walkway, i.e. to the absurd. In the opinion of the Deputy Zoning Commissioner, the Petition was incorrectly worded, although the need for a guest room and bathhouse, as well as the practical difficulty or unreasonable hardship of locating the structures elsewhere, has been proven. The structures should be permitted, therefore, as accessory structures connected to the main residence by a walkway that is, at times, enclosed.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 5th day of December 1986, that a zoning variance to permit a side yard setback of 2 feet for two accessory buildings (guest room and bathhouse) and to permit one of those accessory structures (guest room) in the front yard in lieu of the required rear yard, both in accordance with the plan submitted, prepared by Stephen A. Glassman dated August 26, 1986 and identified as Petitioner's Exhibit 2, be and is hereby GRANTED from and after the date of this Order.

IT IS FURTHER ORDERED that the original request for a zoning variance to permit a side yard setback of 2 feet for a dwelling be and is hereby DENIED.

Jean M.H. Jung
Deputy Zoning Commissioner
of Baltimore County

EXHIBIT C

PETITION FOR SPECIAL HEARING

87-176-SPH

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve _____

Petitioner's position that the jacuzzi bath, bathhouse, guest house and passage wave of 45 feet and 58 feet sought to be constructed by Petitioner's neighbor on th east side of Petitioner's property.

(See Addendum to Petition for Special Hearing)

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

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

FILING FEE	$ 75.00
POSTING	20.00
ADVERTISING	50.00
MISC.	5.00
TOTAL	150.00

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

_____ (Type or Print Name)

_____ Signature

_____ Address

_____ City and State

Legal Owner(s):

THE HARLAN COMPANY OF MARYLAND, INC. (Type or Print Name)

By: _____ Signature Leonard M. Harlan, President

_____ (Type or Print Name)

_____ Signature

Attorney for Petitioner:

Jeffrey H. Scherr (Type or Print Name)

_____ Signature

Kramon & Graham, P.A. Address

Sun Life Building, Charles Center

Baltimore, Maryland 21201 City and State

Attorney's Telephone No.: (301) 752-6030

c/o Kramon & Graham, P.A. (301) 752-6030 Address Phone No.

Sun Life Building, Charles Center

Baltimore, Maryland 21201 City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Jeffrey H. Scherr Name

Kramon & Graham, P.A.

Sun Life Building, Charles Center Address Phone No.

Baltimore, Maryland 21201

ORDERED By The Zoning Commissioner of Baltimore County, this 22nd day of September, 19 86, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 12th day of November, 19 86, at 1:30 o'clock P.M.

Zoning Commissioner of Baltimore County.

(over)

EXHIBIT D

LAW OFFICES
CORDISH AND CORDISH
300 WATER STREET SUITE 400
NE CORNER SOUTH & WATER STS.
BALTIMORE, MARYLAND 21202

PAUL L. CORDISH
DAVID S. CORDISH

December 22, 1986

TELEPHONE (301) 539-4141

Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: Appeal to the County Board of Appeals
for Baltimore County Maryland
Petition for Zoning Variance
N/S of Slade Avenue, 1125' NE of
Reisterstown Road
3rd District
Case #87-84-A

Gentlemen:

This letter is intended to constitute an Appeal to the County Board of Appeals of Baltimore County from the decision of December 5, 1986 in above matter, of the Honorable Jean M.H. Jung, Deputy Zoning Commissioner. The persons entering this appeal to the County Board of Appeals of Baltimore County from the decision rendered December 5, 1986 in the above case are David S. Cordish and Penelope A. Cordish whose addresses are 4 Slade Avenue, Pikesville, Baltimore County, Maryland 21208.

This Appeal is hereby filed within thirty (30) days from December 5, 1986 which is the date of the final Order in this matter.

You will find enclosed herewith check in the amount of $90.00, payable to Baltimore County, Maryland, in payment of the required Fees for this Appeal. The sum remitted herewith covers the appeal fee of $75.00 plus $15.00 for the cost of posting. David S. Cordish and Penelope A. Cordish, feeling aggrieved by the said decision, are hereby exercising their right to appeal therefrom to the County Board of Appeals of Baltimore County in accordance with Section 500.10 and Section 501.8 of the Baltimore County Zoning Regulations. The reason for this appeal is that portion of the decision appealed from which denies their request for a zoning variance to permit a side yard set back of two feet for a dwelling.

Very truly yours,

Paul L. Cordish

ADDENDUM TO PETITION FOR SPECIAL HEARING

accordance with the variance sought by Petitioner for Zoning Varience in Case No. 87-48-A, do not constitute a "dwelling" and therefore will not cause the Residential Transition Area on Petitioner's property to be moved 48 feet to the west of Petitioner's property, causing Petitioner a loss of approximately 10,000 square feet of buildable land, as shown on the Plan to Accompany Special Hearing filed simultaneously and made a part hereof.

The Petitioner intends to develop its property in accordance with DR-16 zoning designation as a high-rise luxury condominium/apartment building. If the Residential Transition Area is altered as aforesaid, it will render such development impracticable.

In the alternative, assuming arguendo that the neighboring improvements would constitute a dwelling and, therefore, that the variance sought by Petitioner's east side neighbor in Case No. 87-48-A is granted, then Petitioner's position would be that because that development and Petitioner's development of its property is proceeding simultaneously, the neighboring development should not have any impact in the Residential Transition Area of Petitioner's property.

Zoning Commissioner
Page Two
December 22, 1986

Glenn L. Weinberg
Suite 400
300 Water Street
Baltimore, Maryland 21202
(301) 539-4141
Attorneys for David S. Cordish
and Penelope A. Cordish,
Appellants

PLC/GLW
CC: Jeffrey Scherr,Esquire
Kramon & Graham, Sun Life Bldg.
Charles Center,Balto., MD. 21201

John B. Howard, Esquire
Robert A. Hoffman,Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Ave.,Towson,MD. 21204

Mr. David O. Feldman
107 Sudbrook Lane
Pikesville, MD. 21208

Ms. Camille Blackburn
Owings Mills Times
409 Washington Ave., 5th Floor.
Towson, MD. 21204

Ms. Phyllis Cole Freedman
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DAVID CORDISH, et ux *

Re: N/S Slade Avenue, 1125' NE of Reisterstown Road 3rd District Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the * BEFORE THE * BALTIMORE COUNTY * BOARD OF APPEALS * CASE NO. 87-48-A

* * * * * * * * * *

MOTION TO DISMISS THE APPEAL
OF THE DEPUTY ZONING COMMISSIONER

The Harlan Company of Maryland, Inc., by its attorneys Jeffrey H. Scherr, Paul S. Teitelbaum and Kramon & Graham, P.A., moves to dismiss the appeal of the decision of the Deputy Zoning Commissioner in the above-captioned case. As is more fully set forth in the accompanying Memorandum of Law, The Harlan Company so moves on the grounds that:

1. An appeal may not be taken from a favorable ruling.

2. Appellants' request for relief contravenes the doctrine of judicial estoppel.

WHEREFORE, The Harlan Company of Maryland, Inc. moves that the appeal be Dismissed.

Jeffrey H. Scherr

Paul S. Teitelbaum

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

PST:amk:04/30/87:1:1

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

PST:amk:04/30/87:1:1

Kramon & Graham P.A.

Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
301/752-6030

DAVID CORDISH, et ux *

Re: N/S Slade Avenue, 1125' NE of Reisterstown Road 3rd District Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the * BEFORE THE * BALTIMORE COUNTY * BOARD OF APPEALS * CASE NO. 87-48-A

* * * * * * * * * *

PROPOSED ORDER

Having considered the Motion of The Harlan Company of Maryland, Inc. to dismiss the appeal of the decision of the Deputy Zoning Commissioner, it is on this ____ day of _____, 1987

ORDERED that the appeal to the Baltimore County Board of Appeals shall be, and the same hereby is, DISMISSED.

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BALTIMORE, MARYLAND 21201
(301) 752-6030

PST:amk:04/30/87:1:1

DAVID CORDISH, et ux *

Re: N/S Slade Avenue,1125' NE of Reisterstown Road 3rd District Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the required 25 ft. * BEFORE THE * BALTIMORE COUNTY * BOARD OF APPEALS * CASE NO. 87-48-A

* * * * * * * * * *

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL OF DECISION
OF DEPUTY ZONING COMMISSIONER

I. Introduction

Appellant David Cordish owns a parcel of land of approximately three acres situated on Slade Avenue in the Pikesville section of Baltimore County. Although the property is held in Cordish's name alone, Mr. Cordish and his wife Penelope filed a Petition wherein they represented that they both own the property. The Petition was filed to secure a zoning variance to allow the construction of two long, covered walkways, each terminating in a 12 X 12 foot structure, one to be used as a bath house and the other as a guest room. These proposed structures would be situated fifty-five (55) feet closer to the western boundary of the Cordish property than the existing Cordish dwelling. In fact, they would extend to within two (2) feet of the boundary line shared with the adjoing property to the west. Because the Baltimore County Zoning Regulations require a side yard setback of twenty-five feet, the Cordishes sought a zoning variance.

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The Harlan Company of Maryland, Inc. is the owner of the six acre tract of land that adjoins the western side yard boundary of the Cordish property. As shall be more fully discussed below, The Harlan Company is currently seeking County approval for the construction of a luxury condominium building on its property adjacent to the Cordishes and thus understandably is vitally concerned with the potential impact of the Cordishes' proposed structures, which will stretch to within two (2) feet of the Harlan property. Were the Cordishes' proposed construction to be considered a part of their dwelling, these long appendages to the Cordish house could create a Residential Transition Area which would preclude development of approximately ten thousand (10,000) square feet of the Harlan property. The economic effect of such a restriction would be so profound as to call into question whether the project should be pursued.

On September 10, 1986, Deputy Zoning Commissioner Jean Marie Jung conducted a hearing regarding the Cordishes' proposed construction and their Petition for a Zoning Variance. At the hearing, testimony was adduced from witnesses produced by the Cordishes, and from witnesses produced by The Harlan Company of Maryland, Inc. On December 5, 1986, Deputy Zoning Commissioner Jung granted to the Cordishes a "zoning variance to permit a side yard setback of 2 feet for two accessory buildings (guest room and bathhouse)." The relief granted is in complete conformance with the plans prepared by the Cordishes' architect,

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Stephen A. Glassman, which plans were submitted in conjunction with the Cordishes' Variance Petition. A copy of the Plans is attached hereto as Exhibit A and made a part hereof.

On December 22, 1986, the Cordishes filed an appeal of Deputy Zoning Commissioner Jung's decision, notwithstanding the fact that the relief granted will allow them to build in accordance with their architect's plans. In the letter noting the appeal, counsel for the Cordishes stated that the Cordishes are "aggrieved" by the Deputy Zoning Commissioner's decision and assert that the decision "denies their request for a zoning variance to permit a side yard setback of 2 feet for a dwelling." (emphasis added) Letter of December 22, 1986 from Paul L. Cordish, Esq. to the Zoning Commissioner.

The Cordishes' appeal, however, can bear no legitimate relationship to the grant of the relief requested, as the approval of the Variance Petition allows construction of the structures precisely as they are shown on the plans drawn by the Cordishes' architect. The only aspect of the relief granted that varies from the relief requested is that the decision of the Deputy Zoning Commissioner describes the additions as "accessory structures," and as such they will not create a Residential Transition Area, as that is defined in Section 1B01.1.B.1.a of the Baltimore County Zoning Regulations. As Mr. Cordish is aware, if he is able to extend the RTA by constructing an addition to his dwelling (and in his Variance Petition, he expressly describes the new structures as an

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addition to his dwelling) he will deal a crippling blow to the Harlan project.

The motivation underlying the Cordishes' appeal of the Deputy Zoning Commissioner's favorable ruling becomes more apparent when the factual scenario surrounding their Petition for Variance is viewed in conjunction with the testimony presented at the hearing before Ms. Jung. When viewed in this light, the conclusion is inescapable that the Cordishes are attempting, through the manipulation of county agencies whose proper function is the equitable administration of the Zoning Regulations, to block the Harlan project. In fact, as will be discussed, Mr. Cordish has pointedly stated to Mr. Leonard Harlan, President of The Harlan Company of Maryland, Inc., that this is precisely his objective.

The Harlan Company signed a contract to purchase its six acre tract on November 29, 1985. Tr 152.[1] Its intention, as mentioned, is to construct a luxury condominium building. In January of 1986, Mr. Harlan called upon Mr. Cordish, and introduced himself as the purchaser of the property adjoining the Cordish parcel. Mr. Cordish told Mr. Harlan that the owners of the other properties in close proximity to or adjoining the Cordish property are relatives of the Cordishes and that Cordish had planned eventually to acquire their property, as well as the six acres bought by The Harlan Company, for development purposes

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1 Copies of all pages cited from the transcript of the hearing before Deputy Zoning Commissioner Jung are attached hereto as Exhibit B and made a part herof.

and that he was upset that Harlan, and not he, had purchased the six acre tract. Tr 168-169. Mr. Harlan testified that Cordish stated "I don't want you to take this personally, but I am going to do everything I can to block your development." Tr 169.

Cordish's resentment that The Harlan Company had purchased the property adjoining his own is clearly reflected in the letters exchanged between Cordish and Ronald Lipman of the firm of Lipman, Frizzell & Mitchell, which firm was involved in the marketing and sale of the six acre tract purchased by The Harlan Company. (Copies of these letters are attached as Exhibits C, D and E hereto.) In these letters, Cordish rebukes Lipman for not apprising Cordish that the property was on the market and states, "... the final chapter in this little drama is far from over and I think your friends from New York[2] may find that they will have earned their keep on this one before it is over." Letter dated January 16, 1986 from David Cordish to Ronald Lipman. At the hearing before Commissioner Jung, after being confronted with these letters, Mr. Cordish acknowledged sending them. Tr 47-50.

In February 1986, Mr. Harlan was contacted by the Cordishes' architect, Stephen Glassman, who candidly stated that Mr. Cordish had retained Glassman's firm to design a plan that would block development by The Harlan Company. Tr 171. Mr.

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2 Mr. Harlan, the principal of The Harlan Company of Maryland, Inc., is from New York and is the principal of the Harlan Company, Inc., a New York based real estate consulting firm.

Testimony on behalf of the adjacent property owner (The Harlan Company of Maryland, Inc.) indicates that it does not oppose the improvements, but has deep concerns that the proposed structures, attached to the main residence so as to be considered additions, would move the residential transition area (RTA) 48 feet to the west. Such a change in the RTA would prevent the quality of their proposed project and make it impossible to accomplish the design goals. The board of the Pikesville Community Growth Corporation voted to "approve and support the Harlan development and support the Cordish variance, only in so far as its granting would be compatible with the Harlan development and not change the setback required now pertaining to the Harlan development." An architect was of the opinion that the present garden is modest and that aesthetics could be better served by something other than a glassed in walkway; i.e. a trellis or a hedge. In addition, in his opinion, there are many available locations for a guest room and bathhouse.

All parties to the hearing stipulated that the Deputy Zoning Commissioner could visit the site and the general neighborhood.

Following a visit to the site, and after due consideration of all testimony and evidence presented on this case, in the opinion of the Deputy Zoning Commissioner, the granting of a variance that would permit the two buildings to be connected by a covered passageway, with walking distance of approximately 47 and 56 feet from the rooms to the existing porch, and referring to the structures as additions to the main residence, would extend the footprint of the residence in an unreasonable and ludicrous fashion. To the Deputy Zoning Commissioner's knowledge, no breezeway or covered passageway anywhere near the length proposed in this case has been approved in Baltimore County so as to connect an addition to the main building. Notwithstanding the language of Section 400.1 of the Baltimore County Zoning Regulations (BCZR), which obviously refers to utilitarian, relatively short covered passageways, and without venturing to establish

apr associates, inc.
surveyors-engineers

ALEXANDER P. RATTCH, PROF. L.S.
RICHARD J. TRUELOVE, P.E.

DESCRIPTION OF PROPERTY OF DAVID S.CORDISH
SLADE AVENUE
THIRD ELECTION DISTRICT,BALTIMORE COUNTY,MARYLAND

BEGINNING FOR THE SAME at a point in the division line between the lands of David S.Cordish and the lands of Edward A.Halle and wife; said point being situate North 36 degrees 48 minutes 39 seconds West 244.43 feet,measured along said division line,from a marble stone found on the Northwesterly side of Slade Avenue; thence binding along said division line,referring all courses to the True Meridian as established for the Baltimore County Metropolitan District,and as now surveyed, North 36 degrees 48 minutes 39 seconds West 244.43 feet ; thence leaving said division line and running North 53 degrees 11 minutes 21 seconds East 178.21 feet to a point in the center of 14.3 foot wide road; thence binding along thecenterline of said road,with the use thereof in common with others entitled thereto,South 36 degrees 48 minutes 39 seconds East 244.43 feet; thence leaving said road and running South 53 degrees 11 minutes 21 seconds West 178.21 feet to the point of beginning ; containg 1.0 acre more or less.
BEING all of the land which by Deed dated September 18,1970 and recorded among the Land Records of Baltimore County in Liber 5131,page 207 was conveyed by The Maryland Title Guarantee Company to David S.Cordish.

6/2/1986

STATE OF MARYLAND — CHARLES E. MARKS — No. 5121 — REGISTERED PROFESSIONAL LAND SURVEYOR

7427 harford road baltimore, md. 21234 tel: 301 444 4312

RE: PETITION FOR VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd., 3rd District
DAVID CORDISH, et ux, Petitioners

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 87-48-A

ENTRY OF APPEARANCE

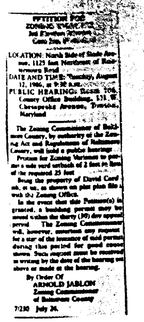
Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

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

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

I HEREBY CERTIFY that on this 17th day of July, 1986, a copy of the foregoing Entry of Appearance was mailed to Glen Weinberg, Esquire, and Paul Cordish, Esquire, 300 Water St., Baltimore, MD 21202, Attorneys for Petitioners.

Peter Max Zimmerman
Peter Max Zimmerman


PETITION FOR ZONING VARIANCE
3rd Election District
Case No. 87-48-A
LOCATION: North Side of Slade Avenue, 1125 feet Northeast of Reisterstown Road.
DATE AND TIME: Tuesday, August 12, 1986, at 9:30 a.m.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:
Petition for Zoning Variance to permit a side yard setback of 2 feet in lieu of the required 25 feet.
Being the property of David Cordish, et ux, as shown on plat plan filed with the Zoning Office.
In the event that this Petition(s) 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 JABLON
Zoning Commissioner
of Baltimore County
7230 July 24.

CERTIFICATE OF PUBLICATION

TOWSON, MD., July 24, 1986

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 July 24, 1986

THE JEFFERSONIAN,
Susan Steuber Obrecht
Publisher

Cost of Advertising
22.00
87-48-A

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 3rd — Date of Posting July 23 1986
Posted for: Variance
Petitioner: David Cordish, et ux
Location of property: N/S of Slade Ave., 1125' NE of Reisterstown Rd.
Location of Signs: In front of subject property at Slade Ave.
Remarks:
Posted by S. J. Gratz (Signature) — Date of return July 25 1986
Number of Signs: 1

CERTIFICATE OF PUBLICATION

77980

Pikesville, Md., July 30, 1986

THIS IS TO CERTIFY, that the annexed advertisement was published in the NORTHWEST STAR, a weekly newspaper published in Pikesville, Baltimore County, Maryland before the 12th day of Aug. 1986
the first publication appearing on the 23rd day of July, 1986
publication appearing on the ____ day of ____, 19____
publication appearing on the ____ day of ____, 19____

THE NORTHWEST STAR

Phyllis Marshall
Manager

Cost of Advertisement $20.00

LEGAL NOTICE

PETITION FOR ZONING VARIANCE
3rd Election District
Case No. 87-48-A

LOCATION: North Side of Slade Avenue, 1125 feet Northeast of Reisterstown Road.

DATE AND TIME: Tuesday, August 12, 1986, at 9:30 a.m.

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Petition for Zoning Variance to permit a side yard setback of 2 feet in lieu of the required 25 feet.

Being the property of David Cordish, et ux, as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) 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 JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M.H. JUNG
DEPUTY ZONING COMMISSIONER

August 5, 1986

Glenn Weinberg, Esquire
300 Water Street
Baltimore, Maryland 21202

RE: PETITION FOR ZONING VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd.
3rd Election District
David Cordish, et ux - Petitioners
Case No. 87-48-A

Dear Mr. Weinberg:

This is to advise you that $57.00 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 OR THE ORDER SHALL NOT BE ISSUED.

Do not remove sign from property from the time it is placed by this office until the day of the hearing itself.

Please make the check payable to Baltimore County, Maryland, and remit [illegible] Building, Towson, Maryland

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

No. 021378

DATE ____ ACCOUNT ____
AMOUNT $ ____
RECEIVED FROM ____
FOR ____
VALIDATION OR SIGNATURE OF CASHIER

LAW OFFICES
CORDISH AND CORDISH
300 WATER STREET - SUITE 400
NE CORNER SOUTH & WATER STS
BALTIMORE, MARYLAND 21202

PAUL L. CORDISH
DAVID S. CORDISH

TELEPHONE
(301) 539-4141

December 22, 1986

Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: Appeal to the County Board of Appeals
for Baltimore County Maryland
Petition for Zoning Variance
N/S of Slade Avenue, 1125' NE of
Reisterstown Road
3rd District
Case #87-48-A

Gentlemen:

This letter is intended to constitute an Appeal to the County Board of Appeals of Baltimore County from the decision of December 5, 1986 in above matter, of the Honorable Jean M.H. Jung, Deputy Zoning Commissioner. The persons entering this appeal to the County Board of Appeals of Baltimore County from the decision rendered December 5, 1986 in the above case are David S. Cordish and Penelope A. Cordish whose addresses are 4 Slade Avenue, Pikesville, Baltimore County, Maryland 21208.

This Appeal is hereby filed within thirty (30) days from December 5, 1986 which is the date of the final Order in this matter.

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

No. 025755

DATE ____ ACCOUNT ____
AMOUNT $ ____
RECEIVED FROM ____
FOR ____
VALIDATION OR SIGNATURE OF CASHIER

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Very truly yours,
Cordish

Zoning Commissioner
Page Two
December 22, 1986

Glenn L. Weinberg
Suite 400
300 Water Street
Baltimore, Maryland 21202
(301) 539-4141
Attorneys for David S. Cordish and Penelope A. Cordish, Appellants

PLC/GLW
CC: Jeffrey Scherr,Esquire
Kramon & Graham, Sun Life Bldg.
Charles Center,Balto., MD. 21201

John B. Howard, Esquire
Robert A. Hoffman,Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Ave.,Towson,MD. 21204

Mr. David O. Feldman
107 Sudbrook Lane
Pikesville, MD. 21208

Ms. Camille Blackburn
Owings Mills Times
409 Washington Ave., 5th Floor,
Towson, MD. 21204

Mrs. Phyllis Cole Freeman
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

LAW OFFICES
BRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

Glassman suggested that, if he were employed by The Harlan Company to design the Harlan project, he would be in a position to serve as an intermediary between Cordish and Harlan. Tr 171, 172. His proffer being refused by Mr. Harlan, Mr. Glassman's firm produced the plans that were submitted as part of the Cordish Variance Petition and later approved by Ms. Jung. Testimony by Mr. Fisher, the architect in the Glassman firm who actually drew the plans for the proposed structures on the Cordish property, reveals that he was instructed to connect the structures with the dwelling by covered walkways. Tr 90. Cordish's instruction to connect the structures with the house in this manner is consistent with his expressed intent to block the Harlan project. Without the covered walkways it would be high unlikely that the structures would be viewed by the Deputy Zoning Commissioner as part of the Cordish dwelling. Only if found by the Deputy Zoning Commissioner to be a part of the dwelling would the structures create an RTA and cripple the Harlan project. Significantly, Mr. Fisher also testified that, prior to February 1986, plans for a bath house or guest house had not been requested. Tr 82, 84. Thus, the proposal for construction of the covered walkways and accessory structures came into being only after Cordish learned of The Harlan Company's plans for the adjacent property.

As is documented by David Blinder, a senior partner of Beyer, Blinder & Belle, the architectural firm retained by The Harlan Company, if an RTA were to be created by the structures

proposed for the Cordish property, it would no longer be possible to create the spacious, high quality condominium units envisioned, as the building envelope would be substantially diminished. Were the RTA to be shifted, the building footprint would be reduced by 10,000 square feet, which, when aggregated over the full number of stories projected for the building, would result in a reduction of between sixty thousand (60,000) and ninety thousand (90,000) square feet. Tr 184.

Nor is the damage that would result from a shift in the RTA limited to harm suffered by The Harlan Company. Representatives of the Pikesville Community Growth Corporation, ("PCGC") attended the Cordish variance hearing and registered strong support for the Harlan project, believing that the welfare of Pikesville will be enhanced by the high quality residential units that The Harlan Company wants to build. Tr 116-119. Mr. David Blinder described how a shift in the RTA would fundamentally alter the nature of the project by dramatically reducing the building footprint and also by requiring the razing of the existing fine Georgian-style mansion and the existing stands of mature trees. Tr 224-230, 233. The Harlan Company very much wants to preserve both the mansion and the trees. The PCGC went on record in support of the Harlan project, and expressed support for the Cordish variance only if it would not change the setback requirements now pertaining to the Harlan development. Tr 116, 138-139.

In ruling on the Cordish appeal, it is strongly urged that this Board consider the physical configuration of the proposed Cordish structures - covered walkways jutting out like antennae from the main residence and terminating in small rooms, no larger than twelve feet by twelve feet in outside dimension. The concept is reminiscent of "gerrymandering," the technique, now illegal, once used by incumbent politicians to redraw the boundaries of their jurisdictions in an attempt to encompass only those constituents who could be counted upon to support the incumbent. Mr. Cordish is attempting here to gerrymander the "footprint" of his house and deal a crippling blow to the Harlan project.

Moreover, it is apparent that this appeal serves no legitimate function, as the Deputy Zoning Commissioner has granted a variance encompassing precisely the plans submitted by the architect selected by the Cordishes. Rather, the Cordishes' appeal is prompted by another concern - that of finding a way to block the Harlan project. The very act of filing an appeal from a favorable ruling belies Mr. Cordish's representations that the configuration of the proposed structures is based only on aesthetics and design imperatives.

II. Legal Arguments

Under the law, the Cordishes' appeal is flawed for two reasons, either of which provides sufficient grounds for this Board to dismiss the appeal. The first of these legal infirmities is founded upon a long line of Maryland authority

holding that an appeal may not be taken from a favorable ruling. As has been discussed, Ms. Jung has approved the construction of the structures as designed by the Cordishes' architect. The relief granted differs from the relief requested only insofar as the structures are deemed "accessory structures," rather than extensions of the dwelling house. By couching her opinion in this language, the Deputy Zoning Comissioner both grants the Cordishes the relief requested and insures that, by so doing, the RTA created by the Cordish dwelling will not shift, forcing The Harlan Company to abandon the plans developed by its architects.

The precept that an appeal may not be taken from a favorable ruling was invoked by the Court of Appeals in Goldstein v.Karukas, 180 Md. 232, 235 (1941). The plaintiff in Karukas was awarded money damages as compensation for injuries caused by the defendant's negligence. The plaintiff's subsequent appeal, seeking a larger damage award, was dismissed by the Court of Appeals. In so ruling, the Court held that there were insufficient grounds for an appeal, as it was not alleged that the trial court had committed error, but only that the quantum of damages was insufficient. In comparison, an argument that the remedy accorded the Cordishes is for some reason not ample is even less persuasive than that raised on appeal by the plaintiff in Karukas. In Karukas, the judgment was for less money than prayed for in the declaration, while the Cordishes have for all practical purposes received the full

measure of the relief requested. If the appeal in Karukas was insufficient as a matter of law, so must be that brought by the Cordishes, who fail to assert in what way they are aggrieved by the Deputy Zoning Commissioner's decision.

Even more clearly, the Cordishes' appeal must fail under the standard articulated in Offutt v. Montgomery Co. Bd. of Ed., 285 Md. 557 (1979), where the Court dismissed a cross-appeal brought by the Montgomery County Board of Education. The language of the Offutt court is unambiguous:

> It should be pointed out that, as a procedural matter, the cross-appeal in this case does not properly lie. Although the defendant School Board may not like the language in the trial court's opinion stating that the Board bargained in bad faith, the final judgment of the trial court, by denying any relief to the plaintiffs, is entirely in the School Board's favor. It is established as a general principle that only a party aggrieved by a court's judgment may take an appeal and that one may not appeal or cross-appeal from a judgment wholly in his favor. 285 Md. at 564, N.4.

Offutt is particulary apposite to the circumstances surrounding the Cordish appeal. In Offutt, the Court of Appeals dismissed the cross-appeal of the Montgomery County Board of Education despite the fact that the trial court had made a finding that the Board had not dealt with the appellants (plaintiffs below) in good faith. The parallel between Offutt and the Cordish appeal is clear. Although having been granted approval by the Deputy Zoning Commissioner to build the structures designed by their architect, the Cordishes allege error in regard to the collateral matter of whether their additions are deemed accessory structures or a part of the dwelling. If the Board

of Education's cross-appeal in Offutt was dismissed despite the fact that the trial court made findings adverse to the Board, then the Cordish appeal must be dismissed, as the Deputy Zoning Commissioner made no findings of an adverse nature comparable to those made by the Offutt trial court. Displeasure that the accessory structures will not cast an RTA restriction upon the adjoining Harlan property is hardly a cognizable ground for appeal.

Further authority for the proposition that the appeal must be dismissed is found in Adm'r, Motor Veh. Adm. v. Vogt, 267 Md. 660, 664 (1973), which restates the rule that, in the absence of an adverse ruling, no appeal may be taken. In Vogt, the issue arose in the context of an action brought by a group of auto "wreckers" seeking declaratory and injunctive relief from legislation passed by the General Assembly that imposed upon the wreckers a statutory scheme of regulation. The trial court decided the issue in the favor of the plaintiff wreckers. An appeal from the order of the trial court was taken by the Administrator of Motor Vehicles. The wreckers cross-appealed. As is carefully noted in the opinion of the Court of Appeals, the order of the trial court from which the appeal and cross-appeal were taken was devoid of all reference to certain of the arguments raised by the plaintiffs at trial, and, although the order did enjoin enforcement of the statute on the grounds that it was unconstitutional, the opinion of the trial court was adverse to the wreckers on other of the arguments

raised by them at trial. In holding that the cross-appeal must nevertheless be dismissed the Court stated:

> "In short, the court, in concise fashion, ruled against the administrator on the single basis [unconstitutionality] above, and rendered no further decision. The effect of all this is to place the appellees in the position of cross-appealing from an order in which they are the prevailing parties." 267 Md. at 664.

In Vogt, as in Offutt, supra, the fact that the judgment of the trial court did not reflect total approval of the arguments raised by the party prevailing at trial does not render inapplicable the rule of law that no appeal lies from a favorable judgment.

Further support for the principle here under discussion is found in Mugford v. City of Baltimore, 185 Md. 266, 269 (1945) (cited in Vogt, supra) As it did in Offutt and Vogt, the Court in Mugford concludes that when an appeal is based upon an assertion by the party prevailing at trial that it is aggrieved despite the fact that the trial court has ruled in its favor, the appeal must be dismissed. The suit in Mugford was brought by taxpayers seeking invalidation of an agreement entered into between the Department of Public Works of Baltimore City and the Municipal Chauffeurs, Helpers and Garage Employees Local Union No. 825. The bill of complaint sought a declaration that the agreement was invalid, an injunction prohibiting the City and its agencies from extending any preferential advantage or privilege to the Union, and an injunction prohibiting the City from deducting monies from wages or salaries paid to City

employees and remitting those monies to the Union as payment of the Union dues owed by the City employees.

The Chancellor declared the agreement to be invalid, permanently enjoined the City from entering into any agreements affording the Union a preferential advantage, and enjoined collection of Union dues in the manner set forth in the Agreement. Yet the Chancellor expressly approved, and exempted from its prohibition, voluntary arrangements whereby union dues would be withheld by the City's Central Payroll Bureau and remitted to the Union. The plaintiff's appeal of the Chancellor's decree was dismissed by the Court of Appeals, which stated "[i]t needs no authorities to support the proposition that one cannot appeal from a decree wherein the relief he prays for has been granted." 185 Md. at 269.

Comparison of the circumstances in Mugford and the attempt here by the Cordishes to appeal a favorable ruling compels the conclusion that the Cordish appeal must be dismissed. In Mugford it was held that an appeal could not be brought from a decision that granted the plaintiffs the relief they had requested but which also opened up an ancillary avenue whereby the contested dues might still be collected on a voluntary basis and remitted by the City. The Cordishes have even less justification for bringing an appeal than existed in Mugford. No comparable ancillary avenue has been created which arguably undercuts the relief granted by the Deputy Zoning Commissioner. What possible justification can be claimed for

affording the Cordishes an appeal of a ruling granting the relief requested, but denominating the "gerrymandered" structures as "accessory buildings." To entertain this appeal would serve no purpose but to give effect to the vindictive motives that underlie the Cordishes' legal maneuvering.

Under a second line of legal authority, dismissal of the Cordishes' appeal is necessary, as accommodation of the appellants under these circumstances would be in derogation of the doctrine of judicial estoppel. This doctrine is applicable because the Cordishes' appeal is repugnant to fundamental notions regarding the proper function of courts and, by analogy, administrative agencies. Judicial estoppel is closely related in concept to equitable estoppel, as each is intended to preclude the assertion by a party of inconsistent positions. The doctrine of equitable estoppel, briefly stated, regulates the rights of parties inter sese in circumstances where one party seeks to assert a position inconsistent with a position taken by that party in an earlier proceeding. In these instances, the party against whom the inconsistent position is asserted may invoke the doctrine of equitable estoppel to preclude his opponent from gaining an advantage in this inequitable manner.

Judicial estoppel, in distinction, is not similarly concerned with the rights of the parties inter sese, but functions to prevent a party from playing "fast and loose with the courts." Scarano v. Central Railroad, 203 F.2d 510, 513

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(3d Cir. 1953). Thus judicial estoppel is intended to safeguard the integrity of the judicial system from parties who seek to manipulate it by altering their stance on issues without regard to inconsistent arguments advanced earlier. Such facile transformations are not in harmony with the impartial dispensation of justice and the doctrine of judicial estoppel may be invoked to protect the judicial system from such sharp practice.

The nature of judicial estoppel was addressed by the court in Duplan Corp. v. Deering Milliken, Inc., 397 F.Supp. 1146, 1177-78 (1975):

> That an estoppel can arise because of a prior inconsistent claim or position taken in a judicial proceeding is clear. A party cannot have its cake and eat it too. Although there are several species of estoppel, the court is here dealing with what is generally known as judicial estoppel or the doctrine of preclusion against inconsistent positions. This type of estoppel protects interests different from those protected by equitable estoppel. . . . Equitable estoppel is designed to protect any adversary who may be prejudiced by the attempted change of position. On the other hand, judicial estoppel, or preclusion against inconsistent positions, is designed to protect the integrity of the courts and the judicial process.
>
> An exposition of the modern doctrine of judicial estoppel based upon preclusion against inconsistent positions is found 1B Moore, Federal Practice, 0.405[8], at 765-768 (2d ed. 1971) as follows:
>
> > Even where the facts will not permit the application of res judicata, collateral estoppel, or the election rule against inconsistent remedies, a party may be precluded by a prior position taken in litigation from later adopting an inconsistent position in the course of a judicial proceeding. Though the preclusion doctrine is sometimes referred to

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as "judicial estoppel" or "estoppel by oath," and though it is frequently expressed in language sounding in estoppel in pais, numerous cases illustrate the existence of a doctrine forbidding inconsistent positions, usually as to facts, which operates independently of equitable estoppel.

> Many cases forbidding inconsistent positions in judicial proceedings may be grouped conveniently into two classes: those where a party seeks to contradict his own sworn statements made in prior litigation in which he was a party or a witness; and those where the prior inconsistent position was not taken under oath. . . . Both types of preclusion seem to fall, generically, within a universal judicial reluctance to permit litigants to 'play fast and loose' with courts of justice according to the vicissitudes of self-interest.
>
> * * * * * * * * *
>
> The preclusion rule has been held to operate regardless of whether the prior inconsistent position was successfully maintained; and irrespective of reliance by, or prejudice to, the party invoking it. Strangers, as well as parties to the proceeding in which the prior inconsistent position was taken, may take advantage of the preclusion. (Citations omitted.) (Emphasis added).

As is reflected in the above quotation, judicial estoppel is broader in scope than the doctrine of equitable estoppel. The latter requires, for example, that there have been a prior proceeding in which the parties were aligned as adversaries. No such requirement pertains to judicial estoppel, the chief purpose of which is to prevent the erosion of the integrity of the judicial system that would result were a party allowed to assert inconsistent positions, or to "blow hot or blow cold" depending upon how the party could best serve its own interests.

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The scope of the doctrine of judicial estoppel clearly encompasses the conduct of the appellants before this Board. At the hearing before the Deputy Zoning Commissioner, Mr. Cordish insisted that the improbable configuration of the covered walkways and terminal structures was the result of careful study by his experts and represented the optimum solution to a thorny design problem. The Deputy Zoning Commissioner, while evidencing some skepticism as to merit of the Cordish proposal, nonetheless granted the requested variance to allow the Cordishes to build within two feet of the boundary shared with the Harlan property.

The Cordishes now seek to invoke the authority of this Board to appeal the grant of precisely the relief prayed for in the proceeding below. The inherent inconsistency of the Cordishes actions is plainly apparent. It is also apparent that, were this Board to entertain this appeal, the integrity of the entire zoning appeals process would suffer. That is the inevitable result when forums designed for suitors seeking justice are suborned by those who, through sharp practice, seek to achieve results that are at variance with the equities of the case. The damage that results from this manipulation is not inflicted only on The Harlan Company, whose interests clearly will be unconscionably prejudiced should this appeal go forward. Nor will the injury be confined to Pikesville if the quality of the Harlan project is compromised by the Cordishes' maneuvering. Rather, the harm is done to all citizens who depend upon the

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impartial functioning of judicial and administrative institutions to order the affairs of society.

Conclusion

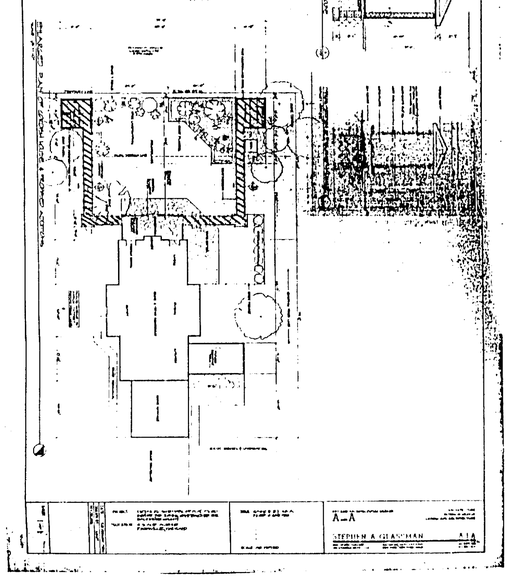
For the reasons set forth above, The Harlan Company of Maryland, Inc. prays that this Board of Appeals dismiss the appeal of the Deputy Zoning Commissioner's decision brought by David and Penelope Cordish.

Jeffrey H. Scherr

Paul S. Teitelbaum

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A. Yes.
Q. You understand the term duces tecum?
A. Yes.
Q. You understand the term duces tecum means bring any of the plans you have?
A. Yes.
Q. Have you brought any of the plans with respect to the kitchen?
A. No.
Q. You wrote a letter with respect to this property to Mr. Ron Lippman on January 26, 1986, did you not? Is that your signature?
A. That is correct.
Q. You didn't bring this letter with you?
A. No.
Q. It concerns the property, does it not?
A. I didn't think that it did.
Q. Indeed, it says, " I inquire why you have not had the courtesy to send me some information concerning the sale of this property", does it not?
A. Yes.

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Q. Mr. Lippman replied to you, did he not?
A. Yes.
Q. In that letter, he stated to you that he didn't think you were interested in the property, isn't that correct?
A. More or less.
Q. Is this a copy of the letter that Mr. Lippman sent to you?
MR. P. CORDISH: I think your Honor ought to see the letter he is talking about.
MR. SCHERR: If I can finish without interruption from counsel, my point will become very clear.
MS. JUNG: I am going to allow time to proceed.
Q. You wrote back to Mr. Lippman that you were very disturbed that you weren't advised about the sale of the property, did you not?
MS. JUNG: Gentlemen, gentlemen.
MR. SCHERR: This is highly unusual, your Honor. I have never seen a lawyer counsel his client when he was on the stand.
A. I was asking if we had the letters.

MS. JUNG: I would prefer you ask those things at the end.

Q. You in fact said in the letter, "I think your friends from New York may find they will earn their keep before this one is all over." That is your handwriting?

A. Yes.

Q. Isn't it your intent to block the construction of this property?

A. Not my intent to block it. I do believe it is a difficult project.

MR. SCHERR: I am submitting these as identified by Mr. Cordish, signed by him, sent by him and received by him. I am marking as Protestant's Exhibit 1 a letter from Mr. Cordish to Mr. Lippman inquiring why he was not advised of the sale of the property. I would like to mark it as Exhibit 2, or if you prefer, 1B --

MS. JUNG: Mark them separately.

MR. SCHERR: -- Exhibit 2 the letter back from Mr. Lippman saying I didn't think you were interested in residential property, the letter back from Mr. Cordish saying, "I am interested in the residential property as it

adjoins my property and your friends from New York may find they will earn their keep before this one is all over."

MR. WEINBERG: May I see copies of those.

MS. JUNG: I thought you saw them.

MR. SCHERR: The third letter is January 19, 1986, January 13, 1986 is Exhibit 2, January 9, 1986 is Exhibit 1 from Mr. Cordish to Mr. Lippman and January 16, 1986 is Exhibit 3.

MS. JUNG: Mr. Weinberg, do you wish a few moments to review them?

MR. WEINBERG: I would also like to get a copy, if possible. I would like to keep them.

MR. SCHERR: I will be happy to make copies. Do I have copies? Yes. That is all I have at this time, your Honor.

MS. JUNG: I have a few questions.

MR. WEINBERG: Your Honor, may I be permitted to ask a few questions after you are done?

MS. JUNG: Certainly.

Q. (MS. JUNG) Mr. Cordish, you described the

Q. And a bath?

A. Yes.

Q. The bath is how big?

A. 5 by 5, jacuzzi.

Q. There are other places you could put these structures on the property, is that correct?

A. As discussed several times prior, there are probably several zillion different ways you could place them. In our opinion, this is the best position. We discussed the sun, location, security, the juxtaposition to the garden and the rest of the house, a multitude of reasons for the location.

Q. It does require a variance to make it the best place?

A. Certainly.

Q. Your principal is Mr. Stephen Glassman, as I understand it?

A. He is the principal of the firm.

Q. The firm was hired, you said, seven months ago? That would be February?

A. Yes.

party?

A. Yes. We took it over from another architect who had been working on it for some time.

Q. Do you know how long or any information as to when the plans were first brought about?

A. I was told it was approximately two years.

Q. Did you take over the existing plans?

A. Yes, I did.

Q. I imagine there was a date on them? You probably don't remember?

A. They were rather vague plans. I think that is one of the problems to begin with. There were things that were not documented well. We took it over from that point.

MR. WEINBERG: No further questions.

Q. (MS. JUNG) Had any planning been done on the bathhouse and guest house before your company took over the project, to your knowledge?

A. Not that I know of.

Q. What were your instructions?

A. To design a bathhouse and guest house juxtaposed

covered walkway?

A. It would strictly be a glass enclosure. It certainly wouldn't be anything that would be kept heated. I wouldn't want to spend any great deal of time in it. It would be strictly a transition space for someone to walk from the house to the guest house.

Q. Did your original instructions include attaching the structures to the house by a covered walkway?

A. Yes. I believe that was part of our original discussions.

Q. Was reason given for that?

A. Mainly the reasons that I have stated as far as being able to get to them comfortably.

MS. JUNG: I have no further questions at this time. I might wish to recall the witness.

MR. SCHERR: Ms. Jung, may I ask two questions, please?

MS. JUNG: You may.

RECROSS-EXAMINATION

BY MR. SCHERR:

Q. Mr. Fisher, at the northwest end of the property,

Q. Did the board take any position with respect to those?

A. Yes, they did.

Q. What position did they take with respect to the zoning variance?

A. The PCGC board approved and supported the Harlan development and supports the Cordish variance only insofar as its granting would be compatible with the Harlan development and not change the setback requirements now pertaining to the Harlan development. The motion was passed with one descent.

Q. As you understand the Harlan project, that this project would be good for Pikesville?

A. Yes.

Q. Why would it be good for Pikesville?

A. Part of what the Pikesville Community Growth Corporation has been doing on the past six years or so has been to create a positive market for Pikesville. The members of the board and the members of the Executive Committee see the development that is proposed very much in keeping with our intent. It is a solid market base

that interrelates to the commercial well-being of the community.

From that perspective, it is the feeling that these are the kinds of projects that we are encouraging and want to see happening in Pikesville. Indeed, some of those are happening not perhaps to this quality but other projects are occurring and they are a part of an overall master plan for Pikesville's long-term viability.

Q. What would be the impact on Pikesville if Mr. Harlan is prohibited from developing the project as proposed?

MR. WEINBERG: Objection. I don't think there is any talk about prohibition.

MR. SCHERR: What?

MS. JUNG: I didn't hear you.

MR. WEINBERG: He said prohibited from building.

MS. JUNG: Would you restate your question?

Q. If the project does not go forward as explained to the board on September 3, what, if any, impact would there be to Pikesville and the general welfare of Pikesville?

A. It is my understanding, and the feeling of the members of the board, that the ability to have the quality project with the anticipated price ranges and the anticipated population that would reside there is critical to the kind of focus that we have tried to achieve vis-a-vis town center designation for Pikesville. A setback in not having this particular type of quality project, we feel, is detrimental to the objectives that we have been working so hard to achieve with town center designation.

This is the project or the type of quality project that the organization has been seeking and has tried to bring to Pikesville vis-a-vis the town center designation. We see it having an effect in that from a standpoint of overall objectives, that this could be the kind of thing that we want to envision Pikesville being over the long-term. We would want to believe that it could move forward because it fits so well with the overall plan and objective for the area.

Q. Has Mr. Cordish asked for reconsideration of the board's decision this this matter?

A. Yes, he did.

Q. What has been the board's response?

A. The board was mailed a copy of Mr. Cordish's reconsideration request, and through the polling process of those persons who received that correspondence, there was a majority of those persons that did not favor reconsideration at this point.

Q. I just want to make clear for the record the exhibits which were presented at the PCGC meeting on September 3rd were three exhibits, is that correct?

A. I was on vacation and not present at the meeting on September 3rd.

Q. Do the minutes reflect that Mr. Harlan presented three exhibits?

A. No, they do not.

MR. SCHERR: Thank you. I have nothing else of this witness.

CROSS-EXAMINATION

BY MR. WEINBERG:

Q. In this first meeting with Mr. Harlan, was David Cordish invited to attend?

presentation of Mr. Weinberg and Mr. Harlan?

A. I was.

Q. Mr. Harlan made a full presentation?

A. Both sides made full presentations.

Q. At that time, Mr. Harlan used three boards to make his presentation, did he not?

A. That is correct.

Q. I have introduced into evidence as Protestant's Exhibits 4, 5 and 6 which I believe you saw. Are these the boards that Mr. Harlan used at that time to make his presentation?

A. Those are the three exhibits he used when he made his presentation.

Q. Now, Mr. Altman, as I understand it, the PCGC board is in favor of Mr. Harlan's project, is that correct?

A. There was a general expression as the statements of the Executive Director of the corporation indicated, and after a lot of discussion and a lot of questions, that the organization at that board meeting favored the project as described by Mr. Harlan and took a position on Mr.

Cordish's proposal only to the extent that it would interfere with the execution of that project.

Q. Now, did Mr. Weinberg make any statements at that meeting with reference to the Harlan project?

A. There were a number of statements made by Mr. Weinberg that affected that project.

Q. What, if anything, did he say with respect to his client's opposition to the project?

A. He indicated in the beginning of the presentation quite clearly he had no opposition to that project.

Q. Did he make any subsequent statements?

A. Subsequently, it was not clear what his position was, but he indicated at the end, that, in fact, I say indicated, he was opposed to the proposed project.

Q. Did he say that, in fact, he would not reach an agreement, that he would not agree to oppose Mr. Harlan's project as it affected the RTA?

A. He said he would oppose reaching an agreement insofar as it impacted on the RTA.

Q. Did Mr. Weinberg make any statements about placing the improvements elsewhere, Mr. Cordish's

A. Yes, I have a brother-in-law, my wife's brother, who lives in Baltimore, out in the Valley. His wife grew up in Pikesville, and I spend typically every Wednesday in Baltimore on some form of business in the community, and I am frequently here on other days, too.

Q. Now, Mr. Harlan, you became the owner of the 6 Slade Avenue property when, sir?

A. We closed on the property April 29th. We signed a contract for the property, I believe it was November 29th.

Q. After you signed a contract for the property, what, if any, activity did you engage in with respect to a feasibility study?

A. We immediately employed the services during the preliminary period in which we had an opportunity to not go forward with the contract, we employed the services of David Thaler for technical compliance as to all of the elements in the package that we received. A package was sent out to a number of parties as I have been told by the agent for the owner of the property, and we were one of the recipients, and there were representations made there

Q. This plan is in accordance with the CRG plan that you submitted to the County?

A. That is correct.

Q. Mr. Harlan, let me direct your attention to early January, 1986 and ask you if you had any contacts with Mr. Cordish at that time?

A. Yes. Once having signed a contact and having satisfied ourselves that the representations were correct, I called and made an appointment to visit with Mr. Cordish and introduce myself as I would want to do to any and all neighbors. I visited Mr. Cordish in early January at his offices in downtown Baltimore, along with a colleague of mine, Mr. Donald Shapiro.

Q. What, if anything, did Mr. Cordish say to you about your acquisition of the property?

A. He described how he was an extremely wealthy man, a man who was involved with a great number of projects. I think he mentioned that he had some 11 or 12 shopping centers under development throughout the country with some of the biggest shopping center developers in the world, and that he had vision for this entire -- he told me that

both neighbors, Levys and Patz were relatives and related to him, and that he had envisioned that he would acquire the Halle piece, and that at some point he would have that entire block as a huge complex.

He went on to say that he was very upset that the Halles did not offer him the opportunity to buy it. In fact, he had gone to the Halles and asked Mr. Halle at such time as he put the property on the market, would he please give him the opportunity to buy it. He went on to say that he was very angry with Mr. Lippman who was a boyhood friend of his for not having the courtesy to send him the same package we received.

We told him what we were doing. We mentioned what we were doing, a high-rise conceptually, and on the way out I was just bowled over when he shook my hand at the doorway to his conference room, looked me in the eye and he said, "I don't want you to take this personally but I am going to do everything I can to block your development." I said, "Why?" He said, "Because I just don't want anything next door."

Q. Did Mr. Cordish contact you before he filed the

So that in my judgment, there were and there exist many other alternative ways, and many ways, I feel preferable ways, of accomplishing what Mr. Cordish had indicated were his objectives for the project.

Q. Could you give Ms. Jung some examples of the alternatives ways this could be accomplished?

A. Well, for example, if you wanted to flank the garden, create a garden and flank it with some enclosure as was described by Mr. Kirwin as a desirable form of flanking the garden, I think a very desirable way would be some form of trellis with greens growing over it with a screened wall, some sort of a trellis wall. That would be much more garden and charming like than a glass enclosed bridge with emollients three foot on center.

The two buildings could be located on the north side of the property rather than either close to the house or within the 25-foot limit and still accomplish the objective of screening the garden without requiring the variance or affecting the Harlan development proposal.

Q. Mr. Blinder, you have had an opportunity to, I assume -- in fact, this was prepared under your direction

and control, was it not?

A. Yes.

Q. What would be the impact on Mr. Harlan's welfare if this project were not -- if the RTA were moved back by Mr. Cordish's improvements as shown on the exhibit?

A. I will try not to repeat what Mr. Thaler stated because I think he made a number of points. I would like to focus on the 54-foot dimension particularly. We are talking about a building here, a luxury building which tends to have very large apartments. Those large apartments would have a number of amenities required for this type of development, very large bathrooms, a number of large structures, large walk-in closets, very large rooms, all of which require an amount of a very great depth, much greater than 54 feet.

Reducing the availability to create an apartment house to 54 feet along almost two-thirds of the available area where you could build six stories would severely limit the ability to create those kinds of apartments. In addition, we investigated before we came to the particular solution that was presented a number of other

alternatives. We looked at multiple buildings.

We came to one very important early decision which I think also is an important ingredient in this project, which was there is a very substantial handsome house on the property with beautiful landscaping, huge trees, and we feel a mandatory aspect of not only creating the development but of being a good neighbor and creating a development which would be desirable by neighbors is to leave as many of those trees as possible and to leave that house.

Those became the cornerstone of what the development proposal was. So that we very early after looking at alternatives eliminated a multiple number of buildings of a lower rise nature because they would require the destruction of the existing trees, destruction of the existing house, in addition to having multiple lobbies and concierges which would be opposite the type of development we desire.

Q. Let me show you what states at the top "Impact on proposed buildable area, August 1986." Can you identify that?

A. Yes. We prepared that.

Q. What does this exhibit reflect?

A. It reflects the impact of what would occur as described by the orange patch on the drawing which is a loss of 10,238 square foot of footprint, and a potential loss of a minimum of 61,428 square feet of potential loss of buildable area. Again, this would greatly affect the kind of apartments or the kind of project that we are talking about.

We are proposing to build less than what is allowed by zoning but we are building very large units and those units require substantial square footages and a substantial footprint. This would have a severe detrimental effect on the project.

MS. JUNG: Do I understand there is no objection to this being Protestant's Exhibit 10?

MR. WEINBERG: I have an objection. The only objection that I have is I haven't had anyone else, person, analyze it. I don't know if it is true or not. That is the only objection.

MS. JUNG: All right.

CORDISH EMBRY & ASSOCIATES

January 9, 1986

Mr. Ron Lipman
Lipman Frizzell & Mitchell
8422 Bellona Lane
Towson, MD 21204

Dear Ron:

Purchasers of the Halle property introduced themselves to me yesterday and informed me that you were responsible for sending out at least sixty-two packages to prospective developers in regard to same. Might I inquire why you would not have had the courtesy to send me one since it is my backyard?

Very truly yours,

David S. Cordish

dsc:adc

David S. Cordish
Robert C. Embry, Jr.

Canton House
300 Water Street
Baltimore, Maryland 21202
(301) 752-5444

File

January 13, 1986

Mr. David S. Cordish
Cordish Embry & Associates
Canton House
200 Water Street
Baltimore, Maryland 21202

RE: Halle Property

Dear Dave:

Regarding your letter of January 9th... the packages I sent to prospective purchasers were directed to those developers on my mailing list (of approximately 1,200 names) who I thought would have some interest in the property based on my understanding of their business objectives. I frankly never considered you as a luxury condominium developer and, as such, did not send you a package.

If this is an area of your interest, I will certainly keep that in mind should I have another opportunity.

Very truly yours,

LIPMAN FRIZZELL & MITCHELL

M. Ronald Lipman, CRE, MAI

MRL/dmf

cc: Robbie Goldman
Ed Halle

CORDISH EMBRY & ASSOCIATES

January 16, 1986

Mr. Ron Lipman
Lipman Frizzell & Mitchell
8422 Bellona Lane
Towson, MD 21204

Re: Halle Property

Dear Ron:

Your letter of January 13th in answer to my letter is rather ingenius. Please be assured I always have interest in any property you or anyone else is handling adjacent to my residence. It is irrelevant whether I personally would build on the Halle property, but, rather, that I would have preferred to control the situation rather than reacting to same. Frankly, it is incredible to me that this thought would not have crossed your mind. In any event, the final chapter in this little drama is far from over and I think your friends from New York may find that they will have earned their keep on this one before it is over.

Very truly yours,

David S. Cordish

dsc:adc

David S. Cordish
Robert C. Embry, Jr.

Canton House
300 Water Street
Baltimore, Maryland 21202
(301) 752-5444

at my request, he followed it up with a letter the next day to me confirming the telephone conversation, and in that conversation, he said that Mr. Cordish was coming to him to ask him to help define a plan that would block my development, and that he thought that he was the one person who could "mediate" whatever was going to take place if we were to hire him and hire his firm.

When I indicated to him that he really didn't have the requisite experience in residential, he indicated that maybe he could align himself with Myers and Delayo (phonetic) who did, and, in fact, sent me a letter the next day.

Q. That conversation occurred in February of 1986, did it not, sir?

A. That is correct

MR. SCHERR: I have nothing else at this time. Your witness.

CROSS-EXAMINATION

BY MR. WEINBERG:

Q. Mr. Harlan, about the last comment, did Mr. Glassman say that David Cordish asked him to contact you?

A. No.

Q. Did it look like it was anything other than soliciting business?

A. Yes. He was soliciting my business on the basis that he could convince Mr. Cordish not to proceed to try to block our development.

Q. He didn't say it was under David Cordish's direction?

A. No.

Q. Have you ever shown these plans, other than today, to Mr. Cordish, the Patz or the Levys?

A. I was told by Mr. Cordish he represented the three. When he told me that he was going to do everything to block the development of the property, I accepted that. When I came to him as a neighbor to be a party with him as we went forward --

Q. Have you ever contacted David Cordish prior to purchasing the property?

A. Yes. I said when it was under contract.

Q. But you had signed the contract?

A. That is right.

we can, I believe that it would be at significantly greater cost.

Q. There was talk about how much property area. What is the difference in the area that you would lose that you believe if the RTA was brought out from the proposed additions to the Cordish home? How many?

A. We would lose at the footprint level 10,000 feet which would record itself in a little over 60,000 feet as the zoning permits. If we were to have the variance, the height variance that we are talking about, it would be 90,000 feet.

Q. Measuring from the home, as you are probably aware, Mr. Cordish can build up to 25 feet away from the property line, and if he was going to build two feet off, he can build up to 25 feet. So that is basically half that, I think, difference. I don't think it is actually 10,000 feet. What would it be if he built up to the 25-foot setback line?

MR. SCHERR: If you know.

A. I don't know that number.

Q. The existing dwelling, that is now I guess

Fisher as well as Mr. Kirwin. Could you comment upon the necessity to place the improvements as situated on the property as shown in the exhibit?

A. As a professional, I had difficulty understanding the testimony of hardship that was described by Mr. Cordish, Mr. Fisher and Mr. Kirwin in respect to the plans that were presented. As I heard the testimony, the points that were made were, that I remember and recorded, to the best of my knowledge, the following, that the proposal was done for the following reasons, to best locate the buildings in respect to the sun, to create a symmetrical extension of the project, to screen the garden, to create a project that was in sympathy with the existing house and to create functioning room for guests and a small jacuzzi tub. And there was testimony that this would be best located as far from the house as possible, considering they looked at the alternative of building it within the 25-foot setback and rejected that.

My inspection of the site, which I have done on several occasions, looking at photographs and the plans that were proposed, my feeling is that there were a number

of issues that I saw. One was that the garden that was described in very grand terms at this point was a fairly modest one, although proposed to be grandized, that the elements of the plan, the buildings have a, at best, very modest respect for the way that the sun works in the sense that the guess room was virtually totally oriented away from sun, faced almost completely north, that the bathhouse faces south and didn't have an overhang, and, therefore, would be subject to harsh sun rays, that the jacuzzi was hidden behind a glass wall and that the building that was located on the northern side of the site would, in fact, screen the garden from the sun.

In addition to this, the guest house appears by its design to be a summer facility. Therefore, it appears to me that there would be other solutions in terms of connections to the house. There is no indication of heating in either the guest house itself nor the corridor to it. It is an all glass structure and shows a tile floor which would be very cold. It is a slab on gray. There is no closet located in the guest room, no bathroom, only a toilet so that the guest, therefore, would have to

go back to the main house or to the other building to use a bath or shower.

There is no location for storing clothes or anything in the guest room. Therefore, it appeared to me that the guest facility would be one that could be attached, considering its design, by either some sort of trellis structure or roof structure which could, in fact, therefore, be made and considered to be an accessory building rather than a part of the house.

In addition, the indication that the structures would screen the garden, I think, could be accomplished in a number of other ways and achieve the same aesthetic objective, either by trellises, edges, walls, all of which from my design opinion would be more desirable than a glass enclosed structure, in that they would be more in character with a garden.

And if they were in that form, that the views from the house to the garden would be open rather than be obstructed by a glass structure. In fact, the glass structure proposed would, in fact, block views of the garden from the house.

Section 306—MINOR PUBLIC UTILITY STRUCTURES [B.C.Z.R., 1955.]

Minimum lot area regulations in any zone shall not apply to repeater, booster, or transformer stations, or small community dial offices. [B.C.Z.R., 1955; Resolution, November 21, 1956.]

Section 307—VARIANCES [B.C.Z.R., 1955; Bill No. 107, 1963.]

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from offstreet parking regulations and from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, offstreet parking, or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification.[1] Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance. [B.C.Z.R., 1955; Bill No. 107, 1963.]

1. *Apparently conflicts with Article VII of Title 22, Baltimore County Code 1978 as amended (Appendix D), which prescribes requirements with respect to notice and hearing regarding conventional reclassification petitions that differ from those which it prescribes regarding variance petitions. (See Section 22-31 of the same article for provision regarding conflicts between Title 22 and the Zoning Regulations.)*

Section 308—VARIANCES AND SPECIAL EXCEPTIONS FOR RADIATION FALLOUT SHELTERS— [Bills No. 87, 1961; No. 19, 1962.]

Radiation fallout shelters may be erected and constructed in accordance with specifications published by the Office of Civil and Defense Mobilization of the United States Government for one of the shelter types or designs approved by said agency as being effective for affording protection from radiation fallout, and the zoning commissioner may grant variances from area and height regulations and may make special exceptions to the Zoning Regulations where strict compliance with those regulations would result in practical difficulty or unreasonable hardship, and where the owner of the lot does not own sufficient adjoining land to conform strictly to the width and area requirements. However, any such variance or special exception shall be granted by the zoning commissioner only if in harmony with the general purpose and intent of the Zoning Regulations. All decisions of the zoning commissioner with respect to such matters shall be subject to appeal to the board of appeals. Every radiation fallout shelter which may be erected and constructed under this section shall be used only for the purpose of protection from radiation fallout, and not for normal residential, commercial or industrial uses. [Bills No. 87, 1961; No. 19, 1962.]

CORDISH EMBRY
& ASSOCIATES

January 9, 1986

Mr. Ron Lipman
Lipman Frizzell & Mitchell
8422 Bellona Lane
Towson, MD 21204

Dear Ron:

Purchasers of the Halle property introduced themselves to me yesterday and informed me that you were responsible for sending out at least sixty-two packages to prospective developers in regard to same. Might I inquire why you would not have had the courtesy to send me one since it is my backyard?

Very truly yours,

David S. Cordish

dsc:adc

David S Cordish
Robert C Embry, Jr

Canton House
300 Water street
Baltimore Maryland 21202
(301) 752 5444

CORDISH EMBRY
& ASSOCIATES

January 13, 1986

Mr. David S. Cordish
Cordish Embry & Associates
Canton House
300 Water Street
Baltimore, Maryland 21202

RE: Halle Property

Dear Dave:

Regarding your letter of January 9th... the packages I sent to prospective purchasers were directed to those developers on my mailing list (of approximately 1,200 names) who I thought would have some interest in the property based on my understanding of their business objectives. I frankly never considered you as a luxury condominium developer and, as such, did not send you a package.

If this is an area of your interest, I will certainly keep that in mind should I have another opportunity.

Very truly yours,

LIPMAN FRIZZELL & MITCHELL

M. Ronald Lipman, CRE, MAI

MRL/dmf

cc: Robbie Goldman
Ed Halle

CORDISH EMBRY
& ASSOCIATES

January 16, 1986

Mr. Ron Lipman
Lipman Frizzell & Mitchell
8422 Bellona Lane
Towson, MD 21204

Re: Halle Property

Dear Ron:

Your letter of January 13th in answer to my letter is rather ingenius. Please be assured I always have interest in any property you or anyone else is handling adjacent to my residence. It is irrelevant whether I personally would build on the Halle property, but, rather, that I would have preferred to control the situation rather than reacting to same. Frankly, it is incredible to me that this thought would not have crossed your mind. In any event, the final chapter in this little drama is far from over and I think your friends from New York may find that they will have earned their keep on this one before it is over.

Very truly yours,

David S. Cordish

dsc:adc

David S Cordish
Robert C Embry, Jr

Canton House
300 Water Street
Baltimore Maryland 21202
(301) 752 5444

EXHIBIT A

TICOR TITLE INSURANCE

Commitment for Title Insurance

TICOR TITLE INSURANCE COMPANY, (a stock company), a California corporation, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate one hundred eighty (180) days after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

This Commitment shall not be valid or binding until countersigned below by a validating signatory of the Company.

TICOR TITLE INSURANCE COMPANY

By _____ President

Attest _____ Secretary

Countersigned: ATLANTIC TITLE COMPANY

By _____
George J. Sybert *Validating Signatory*

COPYRIGHT, 1966 — AMERICAN LAND TITLE ASSOCIATION
CAT. NO. NN00324
TO 1423 (1-84) American Land Title Association Commitment — 1966

Conditions and Stipulations

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.

2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to Paragraph 3 of these Conditions and Stipulations.

3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Conditions and Stipulations, and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.

4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

Schedule A

Commitment No.	Effective Date of Commitment:
BC-4526	November 19, 1985
Your No.:	

Prepared For: LESLIE REIS, ESQUIRE
FRANK, BERNSTEIN, CONAWAY & GOLDMAN
300 E. LOMBARD STREET
BALTIMORE, MARYLAND 21202

Inquiries Should be Directed to: ATLANTIC TITLE COMPANY
SUITE 2301, CHARLES CENTER SOUTH
36 S. CHARLES STREET
BALTIMORE, MARYLAND 21201
727-8050

1. Policy or Policies to be Issued: Amount

(a) [X] ALTA Owners Policy — Form B — 1970 $ TBD

Proposed Insured: EDWARD A. HALLE and ELLEN W. HALLE, his wife or their nominees

(b) [X] ALTA Loan Policy 1970 $ TBD

Proposed Insured: To be determined

2. The estate or interest in the land described or referred to in this Commitment and covered herein is a Fee Simple.

3. Title to said estate or interest in said land is at the effective date hereof vested in:

EDWARD A. HALLE and ELLEN W. HALLE, his wife

4. The land referred to in this Commitment is located in the County of Baltimore State of Maryland and described as follows:

For Description see Deeds attached in Liber 3665, folio 461 and in Liber 3292, folio 242.

Schedule B

Commitment No.

I. The following are the requirements to be complied with:

1. Instruments necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record.

To be determined

II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Standard Exceptions: (WILL APPEAR IN OWNER'S POLICY ONLY)
   (a) Rights or claims of parties in possession not shown by the public records.
   (b) Easements, or claims of easements, not shown by the public records.
   (c) Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the premises.
   (d) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
3. Special Exceptions:
   (a) Taxes, State, County and Municipal and other public charges (including, but not limited to, assessments by any State, County, Municipality, Metropolitan District or Commission) payable on an annual basis have been paid through, to and including the fiscal year ending June 30, 1986. However, this policy of title insurance does not insure against possible future tax levies and/or frontage benefit assessments, nor against such public charges and assessments, or the balance thereof for existing or proposed improvements which may have been levied or assessed, or to be levied or assessed, but which are not now due and payable to said State, County, Municipality, Metropolitan District or Commission.
   (b) Subject to terms and provisions as contained in an Agreement dated May 29, 1922 and recorded among the Land Records of Baltimore County in Liber WPC 561, folio 18 between Florence H. Morris and Moses Morris, her husband and The Mt. Washington Sewerage Company.
   (c) Subject to terms and provisions as contained in a Deed and Agreement dated September 19, 1950 and recorded as aforesaid in Liber T.B.S. 1894, folio 486 between Stuart M. Weiler and Josepha S. Weiler, his wife and County Commissioners of Baltimore County on T.B.S. Liber 16, folio 79.
   (d) Subject to terms and provisions as contained in a Deed and Agreement dated June 4, 1951 and recorded as aforesaid in Liber 1984, folio 530, by and between County Commissioners of Baltimore County and Stuart M. Weiler and Josepha S. Weiler, his wife.
   (e) Subject to terms and provisions as contained in an Agreement between Florence H. Morris and Mt. Washington Sewerage Company, dated May 29, 1922, and recorded among the Land Records of Baltimore County in Liber WPC No. 561, folio 18.

Schedule "B" — (Continued)

COMMITMENT NO. BC-4526

(f) This policy will specifically insure against loss or damage by virtue of the violation of Item 4 contained in a Deed recorded as aforesaid in Liber No. 519, folio 232, and also against loss or damage by virtue of the violation of Items 5 and 8 contained in a Deed from Ida Grace Parrish, et al., to Florence H. Morris, dated January 5, 1922 and recorded among the Land Records of Baltimore County in Liber No. WPC 548, folio 510.

Copies of the reference deeds which were attached to the original commitment are available in the office of LIPMAN FRIZZELL & MITCHELL

RMG/11-04-85
1029R

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (this "Agreement") is made this ____ day of _____, 1985 by and between EDWARD A. HALLE and ELLEN W. HALLE (hereinafter collectively called "Seller") and _____ (hereinafter called "Buyer").

In consideration of the provisions hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

1. Property. Seller hereby agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller all that lot of ground fronting on Slade Avenue in Baltimore County, Maryland, containing approximately 5.986 acres of land, known as 6 Slade Avenue, and described in two Deeds, respectively dated December 31, 1957 and February 8, 1960, and respectively recorded among the Land Records of Baltimore County, Maryland in Liber 3292, folio 242 et seq., and Liber 3665, folio 461 et seq., together with the improvements thereon and all right, title and interest of Seller in and to the rights, ways, waters, roads, alleys and appurtenances belonging or in anywise appertaining thereto (hereinafter collectively called the "Property").

2. Purchase Price. The purchase price for the Property shall be _____ ($_____), payable as follows:

2.1. As an initial deposit, on account of the purchase price, Buyer has tendered herewith its check to the order of Frank, Bernstein, Conaway & Goldman (hereinafter "Escrow Agent") in an amount equal to five percent (5%) of the purchase price. Seller's acceptance of this Agreement is

RMG/11-04-85
1029R

expressly conditioned upon and subject to the immediate honoring and payment of said check upon presentation.

2.2. Within ten (10) days following the date on which Seller shall cause a counterpart of this Agreement, duly executed by Seller, to be delivered to Buyer, Buyer shall pay to Escrow Agent an additional deposit on account of the purchase price equal to five percent (5%) of the purchase price, Seller's delivery of said counterpart shall be by messenger service to the Baltimore area office of Buyer, specified by Buyer in Section 20 below. Seller shall insert the date of delivery as the date of this Agreement in the preamble hereto.

2.3. The balance of the purchase price shall be paid at closing which shall be held at the mutual convenience of the parties at the offices of Atlantic Title Company, or, if so requested by Buyer, at the Baltimore office of Buyer's attorney, no later than three (5%) months following the date of this Agreement. If the parties are unable to agree upon said date, closing shall be held on the 90th (150) day following the date of this Agreement (or, if said 90th (150) day is a Saturday, Sunday or bank holiday, on the first business day following said 90th (150) day) at 10:00 a.m.

3. Contingencies. Attached hereto as part hereof are the following Exhibits:

Exhibit A - constituting copy of commitment No. BC4525 issued by Atlantic Title Company to Seller.

Exhibit B - constituting a property report of Daft McCune Walker, Inc., setting forth the status of certain matters pertinent to the future development of the Property.

If, within 30 days following the date of this Agreement, Buyer shall validly determine that:

RMG/11-04-85
1029R

3.1. Buyer is unable to procure a commitment of Atlantic Title Company to insure title to the Property, at its normal rate, subject only to those exceptions shown in Exhibit A, or

3.2. That the status of matters disclosed by Exhibit B is not factually accurate,

in either such event, upon notice to Seller accompanied by valid evidence of such determination, Buyer shall be entitled to receive a refund of the deposits paid pursuant to Section 2, and upon such refund, this Agreement shall be and become null and void and neither party hereto shall have any further right against or obligation to the other pursuant hereto.

Other than as above set forth, or in accordance with Section 8 or by reason of Seller's default, the deposits made pursuant to Section 2 shall be absolutely nonrefundable, Buyer shall have no right to refuse performance hereunder, and this Agreement shall be fully enforceable by either party against the other.

4. Access to Property. Buyer or Buyer's agents shall have the right, at reasonable times and from time to time, prior to closing, to enter upon the Property at Buyer's own risk and expense for the following purposes and subject to the following conditions:

4.1. To prepare, at Buyer's sole cost and expense, any and all surveys which Buyer may require, including, but not limited to, survey to determine the courses and distances of the boundary lines of the Property for purposes of the description of the Property to be contained in the Deed to be delivered at settlement, surveys for planning of improvements, and topographical surveys; and

BALTIMORE COUNTY
DEPARTMENT OF HEALTH
TOWSON, MARYLAND 21204

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

RECEIVED
AUG 07 1985
DAFT - McCUNE - WALKER, INC.

August 1, 1985

Ms. Stacey H. Fisher
Daft, McCune, Walker, Inc.
530 East Joppa Road
Towson, Maryland 21204

RE: Halle Property

Dear Ms. Fisher:

Please be advised that development of the Watchung Soil on the Halle Property located at 6 Slade Avenue, Pikesville, will not be prohibited per the Baltimore County Wetland Guidelines.

If you have any questions regarding thhis matter, please contact Ms. Stephanie Taylor at 494-3768.

Very truly yours,

Colin K. Thacker, RS

Colin K. Thacker, R.S., Director
Waste and Water Quality Management
Bureau of Environmental Services

CKT:pms/SAT

LAW OFFICES
KRAMON & GRAHAM, P. A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
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TELECOPIER
(301) 539-1269

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JAMES M. KRAMON*+
LEE H. OSBURN
JEFFREY H. SCHERR
NANCY E. GREGOR+
JAMES P. ULWICK*+
PHILIP M. ANDREWS
GERTRUDE C. BARTEL
MARILYN HOPE FISHER+*

*ALSO ADMITTED IN NY
+ALSO ADMITTED IN DC
*ALSO ADMITTED IN NJ
*ALSO ADMITTED IN CA

BEL AIR OFFICE*
112 SOUTH MAIN STREET
BEL AIR, MARYLAND 21014
(301) 879-5040
(301) 838-9095
TELECOPIER
(301) 838-9298

August 5, 1986

RECEIVED
AUG 5 1986
ZONING OFFICE

HAND-DELIVERED

Mr. Arnold Jablon
Zoning Commissioner
Department of Planning
and Zoning
Room 113
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance of
David Cordish, Case No. 87-48-A

Dear Mr. Jablon:

I am writing to advise you that contrary to the provisions of Section 22-26. of the Baltimore County Code, notice of the above-referenced variance hearing has not been properly posted on the subject property.

As you are aware, the hearing on David Cordish's petition for a zoning variance is scheduled for Tuesday, August 12, 1986. However, as the enclosed photographs, taken on July 29 and August 1, indicate, the only sign giving notice of the hearing has been lying face down for the last several days. As it is now impossible for Mr. Cordish to properly post notice of the proposed variance for fifteen (15) consecutive days prior to the scheduled hearing, I respectfully request, on behalf of The Harlan Company of Maryland, Inc., that Mr. Cordish's petition for a variance be dismissed or, alternatively, be postponed until after notice of the proposed variance has been conspicuously posted on the property in accordance with the applicable provision of the Baltimore County Code. Only after notice is properly posted will all interested parties have a fair opportunity to attend and participate in the variance hearing.

LAW OFFICES
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August 21, 1986

RECEIVED
AUG 25 [illegible]
ZONING OFFICE

HAND DELIVERED

Mr. James E. Dyer
Zoning Supervisor
Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Room 113
Towson, Maryland 21204

RE: Petition for Special Hearing
Six Slade Avenue

Dear Mr. Dyer:

Enclosed is the Petition for Special Hearing for the above-captioned property. I have enclosed for filing three original Petitions for Special Hearing, ten plats, ten legal descriptions and the appropriate filing fee for the Baltimore County property owned by The Harlan Company of Maryland, Inc.

We respectfully request that this Petition be consolidated with Case No. 87-48-A because we believe that the issues presented by Case No. 87-48-A and this Petition for Special Hearing can be best considered and presented simultaneously. We understand that consolidation of this Petition and Case No. 87-48-A will not be heard on September 10, 1986, the date on which Case No. 87-48-A is now scheduled to be considered. This delay will be caused the required regulations respecting the posting and advertising of the affected property. We request, however, that the consolidated cases be heard together prior to October 1, 1986 so that this matter may be resolved as quickly as possible.

Mr. James E. Dyer
August 21, 1986
Page Two

Please call me or Jeff Scherr with any questions you may have regarding this matter.

Sincerely,

Marilyn Hope Fisher

MHF:hsm
Enclosures
cc: Mr. Arnold M. Jablon (w/copy of Petition only) ✓
Ms. Jean Jung (w/copy of Petition only)
Mr. Leonard M. Harlan (w/copy of Petition only)
Mr. D. Pike Aloian (w/copy of Petition only)
Mr. Stanley E. Galinsky (w/copy of Petition only)
Mr. David S. Thaler (w/copy of Petition only)
Mr. David Mullman (w/copy of Petition only)

To Jack Date 9/11 Time 11:10 AM PM
WHILE YOU WERE OUT
M Lou Cardish
of
Phone 539-4141 Area Code Number Extension
TELEPHONED PLEASE CALL

Arnold —
Lou is preparing new sign (just made the old one is no longer legible) and Jeff Baker is to put first one this A.M. Advised M. Jones [illegible] legal of this and the fact that it is our responsibility that Mr. Cordish's. Yes, [illegible] Mr. Scherr is representing a Petitioner, Harlan Co. means that Lou is prepared legal had a meeting prior to the hearing on Tuesday. Said Scherr legal to advise

---

Mr. Jean H. Jung
Sept. 24, 1986
Page Two

that no memorandum should be received by you at this time.

My client does not wish to appear to be uncooperative and simply desires to move the matter along. To this end, I advised Mr. Hoffman of what my client has stated previously in the public meetings and that is that it would be happy to meet with counsel to attempt to resolve all outstanding disputes.

Sincerely,

Jeffrey H. Scherr

JHS/de
cc: Mr. Leonard M. Harlan
Robert A. Hoffman, Esquire

please will see if memo [illegible]

87-265-A
Cordish

5/6/86 — no PP
J. file — no PP
& file not sufficient cause to waive PP

LAW OFFICES
KRAMON & GRAHAM, P. A.
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August 5, 1986

Mr. Arnold Jablon
August 5, 1986
Page Two

Please advise me of your decision at your earliest possible convenience. Thank you for your consideration of this matter.

Yours truly,

Jeffrey H. Scherr

Jeffrey H. Scherr
Kramon & Graham, P.A.

Attorneys for The Harlan
Company of Maryland, Inc.

MLH:jes

cc: Mr. Leonard M. Harlan
Glenn Weinberg, Esquire

87-265-A
Cordish

5/1/86
J. file

LAW OFFICES
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August 1, 1986

RECEIVED
AUG 4 1986
ZONING OFFICE

Mr. Arnold Jablon
Zoning Commissioner
Department of Planning and Zoning
111 West Chesapeake Avenue
Room 113
Towson, Maryland 21204

RE: Petition for Variance of David
Cordish, Case No. 87-48-A

Dear Mr. Jablon:

I represent The Harlan Company of Maryland, Inc., the owner of a tract of land of six acres more or less directly adjacent to the subject property. My client is an interested party in these proceedings and I respectfully intend to participate therein.

I request the issuance of the enclosed subpoena duces tecum, in accordance with the Rules of Practice and Procedure of the Zoning Commission of Baltimore County Rule IV.C., for the purpose of assuring the attendance at the hearing on August 12, 1986 of Mr. David S. Cordish and for the purpose of assuring that Mr. Cordish will bring with him the indicated documents.

While I recognize that it is reasonably certain that Mr. Cordish, being the Petitioner, would be present in any event, the request for issuance of the summons is necessary both because I intend to request the right to question Mr. Cordish with respect to certain most relevant matters and because the requested documents are required since they will bear directly on matters relevant to these proceedings.

Mr. Arnold Jablon
August 1, 1986
Page Two

I understand that this matter is to be heard by Mrs. Jung, who is scheduled to hear a number of other matters on the same morning, each of which is to last fifteen minutes. Please be advised that I estimate that the hearing on the Cordish petition will last several hours. Therefore, if special arrangements need to be made to ensure a full hearing without disruption of Mrs. Jung's schedule, please advise me accordingly.

Thank you for your consideration of this request.

Sincerely,

Jeffrey H. Scherr

JHS:kcg
Enclosure
cc: Glenn Weinberg, Esquire (w/encl.)

4.2. To make, at Buyer's sole cost and expense, all necessary soil tests, engineering studies, feasibility studies and the like, including, but not limited to, test borings and soil tests of the subsurface conditions, provided that said right shall not be exercised within any building or in any location such as to cause injury to any planting or improvements, and that Buyer shall restore or cause to be restored the surface of the land which shall have been disturbed by reason of such activities substantially to its condition prior to such borings and soil tests.

4.3. Buyer shall indemnify and hold Seller harmless from and against any and all claims, demands, losses, costs, damages, expenses (including reasonable attorneys' fees incurred in the enforcement or defense of any matter), or liabilities caused by, resulting from, arising out of or occurring in connection with any entry on the Property for any of the foregoing purposes.

5. Closing. At closing, upon payment as above provided of all the unpaid purchase money, a deed of the property containing covenants of special warranty and further assurances, shall be executed at Buyer's expense by Seller which shall grant and convey fee simple title to the Property to Buyer, free of any tenancies other than as disclosed in Exhibit A, and free of any liens, encumbrances or title exceptions other than those matters specifically set forth in Exhibit A hereto or arising pursuant to Section 8 below. Possession of the property, subject to the single tenancy disclosed in Exhibit A, shall be given to Buyer at closing.

6. Closing Adjustments. Taxes (including metropolitan district charges, front foot benefit charges, charges for sewer and water, and any other governmental assessments on the Prop-

erty, if any) and all other public charges paid or payable in annual installments shall be apportioned on the basis of such annual installments as of the date of settlement. Buyer shall be responsible for all subsequent annual charges thereon. In the event that there is an imposition of agricultural transfer tax against the property pursuant to Article 81, Section 278(f) of the Annotated Code of Maryland, said tax shall be paid by Seller. Other than as set forth in the next preceding sentence, cost of transfer, recordation or documentary stamp taxes shall be borne exclusively by Buyer.

7. Title Insurance. Provided Atlantic Title Company is willing to issue its commitment and a policy of title insurance in accordance with Section 3 hereof, Buyer shall be obligated at Buyer's expense to procure from Atlantic Title Company a commitment to insure title to the Property and a title insurance policy covering the title in the full amount of the purchase price.

8. Eminent Domain. If Seller shall be notified by any governmental agency of its intention to take the Property in whole or in part by condemnation or eminent domain, Seller shall immediately notify Buyer of such fact and Buyer shall have the right, within fifteen (15) days of receipt of such notice, by written notice to Seller, to elect to cancel this Agreement. In the event that Buyer shall so elect to cancel this Agreement, all deposits previously made by Buyer shall be repaid by Seller to Buyer and thereafter each of the parties hereto shall be released and relieved of any further obligation hereunder. If this Agreement is not so cancelled, it shall remain in full force and effect and Seller shall assign, transfer and set over to Buyer all of Seller's right, title and interest in and to any award that may be made for such taking.

9. Casualty. The Property shall be held at the risk of the Seller until closing. Seller shall immediately have all insurance policies covering the improvements on the Property endorsed to name Buyer as an additional insured as its interest may appear.

10. Encumbrances. Seller covenants and agrees that pending closing, Seller shall not sell the Property or do any act to diminish or encumber its title to the Property and not to create any mortgage or other indebtedness secured by the Property in excess of the unpaid balance of the purchase price.

11. Time of Essence. Time is of the essence of this Agreement and, upon any default on Buyer's part, Seller shall have the right (a) to declare this Agreement null and void and to retain all deposits as liquidated damages, ~~or (b) to resell~~ the Property and to apply the deposits made pursuant to Section 2 against any damages suffered by Seller, but with no obligation to account for or to refund such deposits if Seller shall decide to forego any claim (if any) against Buyer for additional damages.

12. Removal of Shrubs, Trees, etc. Seller reserves the right, pending closing, to remove from the Property any and all moveable shrubs and trees, all bird houses, dog houses, the gazebo, all arbors, all statuary, and all sundials.

13. Removal of Improvements. Pending closing, Seller reserves the right to remove from the Property any and all chandeliers and lighting fixtures, doorknobs, locks, handles and other items of hardware.

14. Removal of Other Improvements. As a covenant to survive closing hereunder, Buyer covenants and agrees, in the event that Buyer shall decide to raze or remove from the Property any of the improvements situated thereon, to notify

Seller of such intention and to afford Seller the right and opportunity, at Seller's sole cost and expense, to remove from such improvements any doors, mantels, mouldings, windows, railings, floors and other items of building materials or components that Seller may wish to take for Seller's use or disposal. Seller's right of removal shall terminate at the expiration of 30 days from the date on which Seller receives such notice from Buyer. During said 30 day period, Buyer shall refrain from interfering with Seller's right of removal pursuant to this Section. Subject to the provisions of Sections 9, 12, 13 and this Section 14, the Property is being sold hereunder in its present condition, "as is".

15. Gender. Words having the masculine, feminine or neuter gender herein have been used interchangeably, and the plural has been used to include the singular and the singular to include the plural, except where the context clearly requires a different interpretation.

16. Successors and Assigns. This Agreement shall inure to the benefit of and shall bind the parties hereto and their respective personal representatives, successors and assigns.

17. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and no amendment, modification or change hereto shall be valid unless in writing, duly executed by the parties hereto.

18. Captions and Headings. The captions and headings of the paragraphs or sections hereof are intended only for convenience of reference, and not as modifying the content of said sections.

19. Counterparts. This Agreement may be executed in counterparts, any and all of which shall constitute one and the same instrument.

20. Notices. Any notice permitted or required to be given pursuant to this Agreement shall be deemed valid if in writing, duly transmitted by hand against receipted copy or duly transmitted by certified or registered U.S. Mail, return receipt requested, with adequate postage prepaid, and addressed if to Seller:

Mr. Edward A. Halle
Six Slade Avenue
Baltimore, Maryland 21208

with copy to:

Robert M. Goldman, Esquire
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202

if to Buyer:

with copy to:

21. No Broker. Each of the parties represents to the other that such party has not dealt with any real estate agent or broker in connection with the procurement of this Agreement and each party covenants and agrees to indemnify and s /e harmless the other against any claim, cost, damage or expense which such other party may incur as a result of any breach of the above representation on the part of the party so indemnifying.

22. Escrowing of Deposits. The deposits made pursuant to Section 2 hereof shall be paid to, and, pending closing, shall be held by, the Escrow Agent in a 90 day certificate of deposit issued by Mercantile-Safe Deposit & Trust Company. Said certificate of deposit shall be endorsed to the order of the party entitled thereto and shall be delivered at closing to

Seller or shall be refunded to Buyer as and when required by the provisions hereof. Interest earned on said certificate of deposit shall apply for Buyer's account against the purchase price. Said escrow agent shall have no liability for its acts hereunder taken in good faith, nor shall said escrow agent have any liability for the failure of Mercantile-Safe Deposit and Trust Company to honor said certificate of deposit when and as the same shall be due.

22. In executing this Agreement and submitting it for Seller's acceptance, Buyer recognizes that Seller has invited Buyer and others to submit similar offers and that Seller requires an opportunity to consider all offers before Seller rejects or accepts any. Buyer further recognizes that Seller has reserved the absolute right in Seller's absolute discretion (a) to reject all offers or (b) to accept any one offer which Seller deems best, or (c) to elect to negotiate with any potential purchaser or purchasers. In consideration of Seller's willingness to review and consider the offer herein made, Buyer agrees to hold this offer available for Seller's acceptance until at least December 20, 1985.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

WITNESS:

_____ _____ (SEAL)
EDWARD A. HALLE

_____ _____ (SEAL)
ELLEN W. HALLE
Seller

_____ _____ (SEAL)

_____ _____ (SEAL)

Buyer

LAW OFFICES
KRAMON & GRAHAM, P. A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030
TELECOPIER
(301) 539-1269

ANDREW JAY GRAHAM**
JAMES M. KRAMON**
LEE H. OSBURN
JEFFREY H. SCHERR
NANCY E. LIEBOWITZ
JAMES P. ULRICH**
PHILIP M. ANDREWS
GEORGHUSE C. BARTEL
MARILYN HOPE FINKELS**
MICHAEL L. HEINES
PAUL S. TETTELBAUM
KATHLEEN A. BIRRANE
NANCY FELIX MANGANO

** ALSO ADMITTED IN NY
* ALSO ADMITTED IN DC
** ALSO ADMITTED IN PA
** ALSO ADMITTED IN VA
** ALSO ADMITTED IN FL

BEL AIR OFFICE
107 SOUTH MAIN STREET
BEL AIR, MARYLAND 21014
(301) 879-5043
(301) 838-9089
TELECOPIER
(301) 838-9799

May 1, 1987

HAND DELIVERED

William T. Hackett, Jr.
Chairman
Board of Appeals
Room 200
Court House
Towson, Maryland 21204

RE: David Cordish, et ux, Case No. 87-48-A
Halle Property, 6 Slade Avenue,
Case No. CBA-86-157

Dear Mr. Hackett:

Enclosed please find Motions to Dismiss, accompanying Memoranda of Law and Proposed Orders in the two above-captioned matters which currently are pending before the Board of Appeals. These Motions are filed by The Harlan Company of Maryland, Inc., whose interests would be profoundly compromised should the appellants be permitted to pursue their appeals before the Board. As is more fully discussed in the Memoranda of Law accompanying the Motions, well established principles of law would be contravened if the Board were to entertain the appeals.

The Zoning and County Review Group appeals are scheduled to be heard on June 3 and 11, respectively. Therefore, it is respectfully requested that this Board rule on these Motions so as to allow sufficient time to prepare for the appeals should these Motions be denied. We would be happy to appear for a hearing on these Motions at your earliest convenience should you believe it is appropriate.

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William T. Hackett, Jr.
May 1, 1987
Page Two

Your consideration of the issues raised with regard to the pending appeals is greatly appreciated.

Sincerely,

Jeffrey H. Scherr

JHS:amk
Enclosures
cc: Mr. Leonard M. Harlan
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Robert A. Hoffman, Esquire

DAVID CORDISH, et ux. * BEFORE THE

RE: N/S Slade Avenue, 1125' NE of Reisterstown Road 3rd District Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the required 25 ft. * BALTIMORE COUNTY * BOARD OF APPEALS * CASE NO. 87-48-A *

* *

HALLE PROPERTY * BEFORE THE

6 Slade Avenue * BALTIMORE COUNTY

RE: CRG Decision * BOARD OF APPEALS

* CASE NO. CBA-86-157

* *

SUBPOENA DUCES TECUM

You, David S. Cordish, 4 Slade Avenue, Pikesville, Maryland 21208, are hereby commanded to appear on June 9, 1987 at 11:00 a.m. before the Baltimore County Board of Appeals, Court House, Towson, Maryland 21204 and to testify from day to day until completed regarding all matters concerning or relating to your Petition for Zoning Variance, Case No. 87-48-A and your appeal thereof; and the conditional approval granted by the County Review Group to The Harlan Company of Maryland, Inc. for the development of Six Slade Avenue and your appeal thereof. You are hereby requested to bring with you the documents set forth in the Petition for the Issuance of a Subpoena Duces Tecum attached hereto.

Jeffrey H. Scherr

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COUNTY BOARD OF APPEALS
1987 JUN 27 P 2:21

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

Paul S. Teitelbaum

Kramon & Graham P.A.

Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
301/752-6030

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KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

DAVID CORDISH, et ux * BEFORE THE

RE: N/S Slade Avenue, 1125' NE of Reisterstown Road 3rd District Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the required 25 ft. * BALTIMORE COUNTY * BOARD OF APPEALS * CASE NO. 87-48-A *

* *

HALLE PROPERTY * BEFORE THE

6 Slade Avenue * BALTIMORE COUNTY

Re: CRG Decision * BOARD OF APPEALS

* CASE NO. CBA-86-157

* *

PETITION FOR THE ISSUANCE OF A SUBPOENA DUCES TECUM

Pursuant to Rule 5 of the Rules of Practice and Procedure of the County Board of Appeals, The Harlan Company of Maryland, Inc. requests that this Board issue a subpoena duces tecum to Mr. David S. Cordish.

The Harlan Company of Maryland, Inc. is a Maryland corporation, in good standing, and the owner of Six Slade Avenue (the "Harlan property"). Adjoining this property is Four Slade Avenue, which is a three acre tract owned by David S. Cordish (the "Cordish property"). The Harlan Company of Maryland, Inc. has received conditional approval from the County Review Group to proceed with the development at Six Slade Avenue of luxury, mid-rise condominium residences. David S. Cordish has appealed the conditional approval granted by the County Review Group (being the second of the above-captioned appeals).

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CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

David S. Cordish has submitted a Petition for Variance to the Zoning Commissioner, seeking approval of the construction at Four Slade Avenue of two long, covered walkways ending, respectively, in a "guest house" and a "bath house" (each "house" actually being a twelve foot by twelve foot room). Mr. Cordish has been granted permission to build these structures, but has appealed that decision to this Board (being the first of the above-captioned appeals). This appeal could have a great impact on The Harlan Company of Maryland, Inc., as it is Mr. Cordish's contention that the structures, which were denominated by Deputy Zoning Commissioner Jean Jung as "accessory" structures, actually constitute a part of the Cordish dwelling, so as to create an RTA which would preclude the development of Six Slade Avenue in the manner planned by The Harlan Company of Maryland, Inc. and allowed by current zoning. Accordingly, The Harlan Company of Maryland, Inc. has standing to intervene and participate in these proceedings.

The Harlan Company of Maryland, Inc. respectfully requests that a subpoena duces tecum be issued to Mr. David S. Cordish, requesting him to appear at the County Board of Appeals for Baltimore County, Court House, Towson, Maryland 21204, on June 9, 1987 at 11:00 a.m., and to testify from day to day until completed regarding all matters concerning or relating to 1) his Petition for Zoning Variance, Case NO. 87-48-A and his appeal thereof; and 2) the conditional approval granted by the County Review Group to The Harlan Company of Maryland, Inc. for

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SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

the development of Six Slade Avenue and Mr. Cordish's appeal thereof. Additionally, Mr. Cordish shall bring with him to the hearing of June 9, 1987 the following documents and things:

a. All documents and things of every kind and description, including without limitation, correspondence, memoranda, interoffice communications, notes, diaries, contracts, agreements, drawings, plans, photographs, specification, estimates, vouchers, permits, written ordinances, minutes of meetings, invoices, billings, checks, reports, studies, telegrams, telexes, notes of telephonic conversations, logs, log entries and expert's reports and models, which in any manner describe, refer to, discuss or concern the decisions of the County Review Group with respect to Six Slade Avenue, the decision of Deputy Zoning Commissioner Jung with respect to Four Slade Avenue (Case #87-48A) and Mr. Cordish's appeals thereof (these appeals being the above-captioned appeals).

b. Any and all documents and things of every kind and description, including without limitation, correspondence, memoranda, interoffice communications, notes, diaries, contracts, agreements, drawings, plans, photographs, specifications, estimates, vouchers, permits, written ordinances, minutes of meetings, invoices, billings, checks, reports, studies, telegrams, telexes, notes of telephonic conversations, logs, log entries and expert's reports and models, in any manner describing, referring to, discussing or concerning the Harlan property adjacent to the Cordish

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(301) 752-6030

property, or any portion of the Harlan property, any plans for the utilization of the Harlan property or any portion thereof by appellant or any party in which appellant is or at any time has been in any manner involved and any efforts by appellant or any party with which appellant has in any manner been involved to acquire the Harlan property or any portion thereof at any time in the past.

c. Any and all documents and things of every kind and description, including without limitation, correspondence, memoranda, interoffice communications, notes, diaries, contracts, agreements, drawings, plans, photographs, specification, estimates, vouchers, permits, written ordinances, minutes of meetings, invoices, billings, checks, reports, studies, telegrams, telexes, notes of telephonic conversations, logs, log entries and expert's reports and models, in any manner describing, referring to, discussing or concerning the position taken by appellant or any member of appellant's family or any party in any manner associated with appellant with respect to changes, whether effected in the past or contemplated for the future, in zoning of the Cordish property and/or the Harlan property, and specifically the change in zoning thereof to DR-16 in 1984.

d. Any and all documents and things of every kind and description, including without limitation, correspondence, memoranda, interoffice communications, notes, diaries, contracts, agreements, drawings, plans, photographs,

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SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

specifications, estimates, vouchers, permits, written ordinances, minutes of meetings, invoices, billings, checks, reports, studies, telegrams, telexes, notes of telephonic conversations, logs, log entries and expert's reports and models, in any manner describing, referring to, discussing or concerning appellant's institution of the above-captioned appeals of the decisions of the County Review Group and the Deputy Zoning Commissioner.

Jeffrey H. Scherr

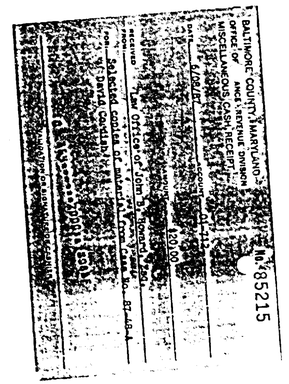
Paul S. Teitelbaum

Kramon & Graham P.A.

Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
301/752-6030

Attorneys for The Harlan Company of Maryland, Inc.

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030



LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

JAMES H. COOK
JOHN B. HOWARD
DAVID D. DOWNES
DANIEL O'C. TRACY, JR.
JOHN H. ZINK, III
JOSEPH C. WICH, JR.
HENRY S. PECK, JR.
HERBERT R. O'CONOR, III
THOMAS L. HUDSON
C. CAREY DEELEY, JR.
H. RUSS HILL, III

GEORGE E. REYNOLDS, III
LAWRENCE A. MOONEY, JR.
ROBERT A. HOFFMAN
DI-ANN L. EISNER
STEPHEN M. SCHENNING
CHARLES MALLOTT COX
KEITH R. SMITH
J. MICHAEL BRENNAN
H. BARRITT PETERSON, JR.
REGAN J. R. SMITH

JAMES D. C. DOWNES
(1906-1979)

TELEPHONE
(301) 823-4111

TELECOPIER
(301) 821-0147

HAND DELIVERY

May 18, 1987

William T. Hackett, Chairman
County Board of Appeals
of Baltimore County
Old Court House, 2nd Floor
Towson, Maryland 21204

Re: Case Nos.: CBA-86-157; 87-48-A

Dear Mr. Hackett:

Following this firm's noting an appeal to the Harlan Company's CRG approval for 6 Slade Avenue, our client entered into negotiations with the Harlan Company in order to resolve their differences. During the period and until approximately one week ago, this firm was not involved in those negotiations and was no longer actively representing Mr. Cordish in the Variance or the CRG appeal.

However, following the breakdown of negotiations, and upon receipt of motions to dismiss filed by the Harlan Company, Mr. Cordish requested that I resume my role as counsel.

Unfortunately, I have a longstanding, out of town commitment on June 3rd and respectfully request that the hearing date be changed, perhaps to June 11th when the Cordish variance case was originally scheduled. Because I was not actively involved in these cases until recently, I could not respond to my conflict situation until now.

Thank you for your consideration in this matter.

Yours truly,

John B. Howard

JBH:RAH:bw
cc: Jeffrey Scherr, Esquire
David Cordish

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1987 FEB 11 A 11:10

O'CONOR PIPER & FLYNN
REALTORS

Pikesville
301 Reisterstown Road
Pikesville, Maryland 21208
(301) 484-9010

REFERENCE: 87-48-A
4 Slade Avenue
Baltimore, Md. 21208

Please advise me when the above-mentioned hearing will be scheduled.

Thank you.

Joanne Wachter
301 Reisterstown Road
Baltimore, Md. 21208

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1987 FEB 11 P 12:52

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

May 13, 1987

(REVISED NOTICE)

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. CBA-86-157 — HALLE PROPERTY
6 Slade Avenue

and

RE: CRG Decision
11/13/86 -CRG conditional approval

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
VAR -Side yard setback of 2' in lieu of req. 25'
12/05/86 -D.C.C. granted VAR.
3rd Election District
2nd Councilmanic District

These cases will be assigned for the following date for hearing on motions ONLY. NO TESTIMONY OR EVIDENCE WILL BE RECEIVED ON THE MERITS OF THESE CASES.

ASSIGNED FOR: WEDNESDAY, May 20, 1987 at 1:30 p.m.

cc: ~~John B. Howard~~, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire — Counsel for Appellee
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
Patrick D. Hanley, Esquire — " " "
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Robert Covahey
David Fields
Edward McDonough
James A. Markle
Jorge Austrich
Jeanne Wachter

Kathi Weidenhammer
Administrative Secretary

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

May 13, 1987

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. CBA-86-157 — HALLE PROPERTY
6 Slade Avenue

and

RE: CRG Decision
11/13/86 -CRG conditional approval

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
VAR -side yard setback of 2' in lieu of req. 25'
12/05/86 -D.C.C. granted VAR.

Case No. CBA-86-157 (Halle Property) and Case No. 87-48-A (David Cordish, et ux) will be consolidated on a single day's hearing since, while there are two properties involved, there is only one issue involved. The hearing on these two cases will be at 9:00 a.m. on June 3, 1987. The Board will note for all parties involved that the Board will sit from 9:00 a.m. to 11:00 a.m. and recess from 11:00 a.m. to 12:30 p.m., and reconvene for the balance of the taking of testimony. This somewhat unusual circumstance is occasioned by the desire of the Board not to lose the entire day's hearing which would be the only alternative to providing the early lunch recess.

ASSIGNED FOR: WEDNESDAY, June 3, 1987 at 9:00 a.m.

cc: John B. Howard, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire — Counsel for Appellee
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
Patrick D. Hanley, Esquire — Office of Law
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Robert Covahey
David Fields
Edward McDonough
James A. Markle
Jorge Austrich
Jeanne Wachter

Kathi Weidenhammer
Administrative Secretary

pp - 87-48-A reassigned to 6/11/87 at 11:00
CBA-86-157 - Held sub curia pending ruling on motions

LAW OFFICES
CORDISH AND CORDISH
300 WATER STREET SUITE 400
NE CORNER SOUTH & WATER STS.
BALTIMORE, MARYLAND 21202

PAUL L. CORDISH
DAVID B. CORDISH

TELEPHONE
(301) 539-4141

RECEIVED
DEC 23 1986
ZONING OFFICE

December 22, 1986

Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: Appeal to the County Board of Appeals
for Baltimore County Maryland
Petition for Zoning Variance
N/S of Slade Avenue, 1125' NE of
Reisterstown Road
3rd District
Case #87-84-A 87-48

Gentlemen:

This letter is intended to constitute an Appeal to the County Board of Appeals of Baltimore County from the decision of December 5, 1986 in above matter, of the Honorable Jean M.H. Jung, Deputy Zoning Commissioner. The persons entering this appeal to the County Board of Appeals of Baltimore County from the decision rendered December 5, 1986 in the above case are David S. Cordish and Penelope A. Cordish whose addresses are 4 Slade Avenue, Pikesville, Baltimore County, Maryland 21208.

This Appeal is hereby filed within thirty (30) days from December 5, 1986 which is the date of the final Order in this matter.

You will find enclosed herewith check in the amount of $90.00, payable to Baltimore County, Maryland, in payment of the required Fees for this Appeal. The sum remitted herewith covers the appeal fee of $75.00 plus $15.00 for the cost of posting. David S. Cordish and Penelope A. Cordish, feeling aggrieved by the said decision, are hereby exercising their right to appeal therefrom to the County Board of Appeals of Baltimore County in accordance with Section 500.10 and Section 501.8 of the Baltimore County Zoning Regulations. The reason for this appeal is that portion of the decision appealed from which denies their request for a zoning variance to permit a side yard set back of two feet for a dwelling.

Very truly yours,

Paul L. Cordish

Zoning Commissioner
Page Two
December 22, 1986

Glenn L. Weinberg
Suite 400
300 Water Street
Baltimore, Maryland 21202
(301) 539-4141
Attorneys for David S. Cordish
and Penelope A. Cordish,
Appellants

PLC/GLW
CC: Jeffrey Scherr,Esquire
Kramon & Graham, Sun Life Bldg.
Charles Center,Balto., MD. 21201

John B. Howard, Esquire
Robert A. Hoffman,Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Ave.,Towson,MD. 21204

Mr. David O. Feldman
107 Sudbrook Lane
Pikesville, MD. 21208

Ms. Camille Blackburn
Owings Mills Times
409 Washington Ave., 5th Floor.
Towson, MD. 21204

Ms. Phyllis Cole Freedman
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

February 5, 1987

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
3rd District
Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the req. 25 ft.

ASSIGNED FOR: TUESDAY, JUNE 11, 1987, at 10 a.m.

cc: Paul Cordish, Esq. & Glenn L. Weinberg, Esq. — Counsel for Appellants/Petitioners
Jeffrey Scherr, Esq. — Counsel for Appellee Protestant, Harlan Co.
John B. Howard, Esq. & Robert A. Hoffman, Esq. — Counsel for Appellants/Petitioners
David O. Feldman — Appellee/Protestant
Allan Hirsh — " "
Phyllis C. Friedman — People's Counsel
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer
Betty duBois

Jean Holmen, Secretary

Reassigned 5/13/87
6-03-87
Consolidated w/CBA-86-157
Revised Order dtd 5/13/87 to consolidate w/ 87-48-A on 6-03-87

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

February 5, 1987

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

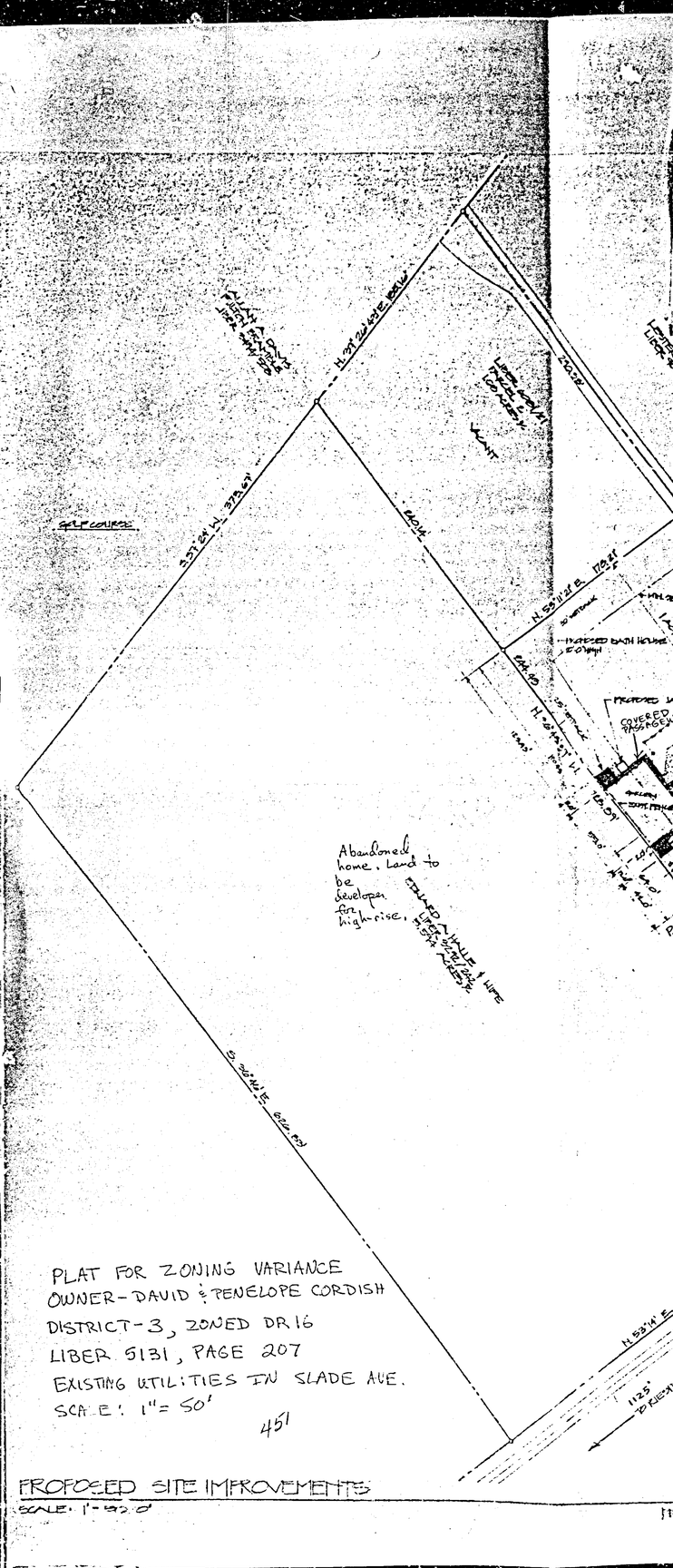
CASE NO. CBA-86-157 — HALLE PROPERTY
6 Slade Avenue
Re: CRG decision

ASSIGNED FOR: WEDNESDAY, JUNE 3, 1987, at 10 a.m.

cc: Robert A. Hoffman, Esq. — Counsel for Appellant
David S. Cordish — Appellant
The Harlan Co. of Md.
D. S. Thaler & Assoc., Inc.
Patrick Hanley, Esq. — Office of Law
Robert Covahey — Public Works
David Fields — Current Planning
Edward McDonough — Engineering
James A. Markle — Public Services
Malcolm Spicer, Jr., Esq. — Office of Law
Norman Gerber — Planning
Jorge Austrich — Economic Development

Jean Holmen, Secretary

Revised Order dtd 5/13/87 to consolidate w/ 87-48-A on 6-03-87


PLAT FOR ZONING VARIANCE
OWNER - DAVID & PENELOPE CORDISH
DISTRICT - 3, ZONED DR16
LIBER 5131, PAGE 207
EXISTING UTILITIES IN SLADE AVE.
SCALE: 1" = 50'
451
PROPOSED SITE IMPROVEMENTS
SCALE: 1" = 50'
MAY 19
PROPERTY OF: DAVID & PENELOPE CORDISH, ET UX
SLADE AVENUE
PARK HEIGHTS AVENUE
Abandoned home. Land to be developed for high-rise.
Nearest house in excess of 200'
N 55°11'E 55.55'
1125' TO REISTERSTOWN ROAD
POB
244.42'
S 34°48'E 624.80'
N 55°11'E 1162.87'
S 34°48'E 375.24'
N 55°11'E 1162.87'
S 34°48'E 624.80'
N 55°11'E 244.42'
S 34°48'E 375.24'
N 55°11'E 1162.87'
COVERED PASSAGEWAY
FRAME GAZEBO
FRAME BATH HOUSE
FRAME POOL
ZONED DR16
FRAME GAZEBO
COVERED PASSAGEWAY
FRAME HOUSE
FRAME WELL
FRAME SHED
FRAME GAZEBO
FRAME HOUSE
FRAME SHED
FRAME GAZEBO
FRAME WELL

apr associates, inc.
surveyors-engineers

ALEXANDER P. MATYCH, PROF. L.S.
RICHARD J. TRUELOVE, P.E.

DESCRIPTION OF PROPERTY OF DAVID S.CORDISH
SLADE AVENUE
THIRD ELECTION DISTRICT,BALTIMORE COUNTY,MARYLAND

BEGINNING FOR THE SAME at a point in the division line between the lands of David S.Cordish and the lands of Edward A.Halle and wife; said point being situate North 36 degrees 48 minutes 39 seconds West 244.43 feet,measured along said division line,from a marble stone found on the Northwesterly side of Slade Avenue; thence binding along said division line,referring all courses to the True Meridian as established for the Baltimore County Metropolitan District,and as now surveyed, North 36 degrees 48 minutes 39 seconds West 244.43 feet ; thence leaving said division line and running North 53 degrees 11 minutes 21 seconds East 178.21 feet to a point in the center of 14.3 foot wide road; thence binding along thecenterline of said road,with the use thereof in common with others entitled thereto,South 36 degrees 48 minutes 39 seconds East 244.43 feet; thence leaving said road and running South 53 degrees 11 minutes 21 seconds West 178.21 feet to the point of beginning ; containg 1.0 acre more or less.
BEING all of the land which by Deed dated September 18,1970 and recorded among the Land Records of Baltimore County in Liber 5131,page 207 was conveyed by The Maryland Title Guarantee Company to David S.Cordish.

6/2/1986

STATE OF MARYLAND — ROBERT LEE HOUSEL — No. 6626 — REGISTERED — LAND SURVEYOR

87-144

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

JAMES D. C. DOWNES (1908-1978)

TELEPHONE (301) 823-4111
TELECOPIER (301) 821-0147

RECEIVED
OCT 7 1986
ZONING OFFICE

October 7, 1986

HAND-DELIVERED

Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Variance
David Cordish, Petitioner
Our File No.: 1557/19499

Dear Mrs. Jung:

Please accept the enclosed Memorandum in Support of Petition for Variance for filing with respect to the above referenced matter.

Thank you.

Sincerely,

Robert A. Hoffman

RAH/jhr
Enclosure

PETITION FOR VARIANCE
N/S of Slade Ave. 1125' NE of Reisterstown Rd.,
Third District
DAVID CORDISH, et ux.,
Petitioners

* BEFORE THE DEPUTY
* ZONING COMMISSIONER OF
* BALTIMORE COUNTY
* Case No.: 87-48-A

* * * * * * *

MEMORANDUM IN SUPPORT OF PETITION FOR VARIANCE

Petitioners, David Cordish and Penelope Cordish, by John B. Howard and Robert A. Hoffman, their attorneys, file this Memorandum in Support of Their Petition for Variance.

On June 6, 1986, Petitioners filed a Petition for Zoning Variance to permit a side yard setback of two feet in lieu of the required 25 feet so that an addition to their home, including a guest room and a bathhouse, could be constructed.

At the continued hearing on this matter on September 10, 1986, Jeffrey H. Scherr and Michael L. Heikes, on behalf of The Harlan Company submitted a Memorandum in Opposition to the Petitioners' Petition for Variance, the main thrust of which seeks protection of a contemplated project for the contiguous Harlan property described as a "beautiful, high rise, luxury, condominium project" (Harlan Memorandum, page 2). The described project is clearly an impermissible use under the existing D.R.16 zoning classification. In effect, the Harlan Company has described a project which would appropriately require a R.A.E. zoning classification.[1]

It is respectfully submitted that the sole issue before the Deputy Zoning Commissioner is whether Petitioners have met the requisite burden of proof under Section 307 of the Baltimore County Zoning regulations to permit a side yard setback variance. Clearly, uses that are not permitted as of right on adjoining properties should not be considered in determining the appropriateness of such a variance. The impact Petitioners' addition may have on such a proposed development is purely conjecture and speculation on the part of the Harlan Company and irrelevant in determining whether or not Petitioners' variances shoud be granted under the criteria of practical difficulty or hardship.

In Mclean v. Soley 270 Md. 208 (1973), the Court of Appeals stated the standard for granting a variance (although it may vary with specific language adopted in a zoning ordinance) is whether the strict compliance with

1 Petitioners are of the opinion that a number of the issues raised in the Memorandum in Opposition filed herein relate to the Petitions for Special Hearing and Variance (including variances of 80% over permitted height and 47% over permitted length) filed for Harlan's proposed project and, accordingly, are not being addressed herein.

the zoning regulation would result in "practical difficulty or unreasonable hardship".

The Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974) applied the following definition of practical difficulty:

> 1. Whether compliance with the strict letter of the restrictions. . .would reasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
>
> 2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district or whether a lesser relaxation than that applied for would get substantial relief. . . .
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and safety and welfare secured. Id. at p. 39.

To place this addition in any other location, which would be possible without the need for a variance, would, it is respectfully submitted, present a practical difficulty and undue hardship on Petitioners under the above-stated criteria. Because of Petitioners' family commitments, the guest room and bathhouse have become necessary additions. Overriding considerations of light, security, and continuity with the existing house and formal garden results in any other location for the proposed structure being totally impractical.

The Harlan Company has stated that "Mr. Cordish is attempting to disrupt the Harlan Company's development of its property and that Mr. Cordish has an abundance of other available sites on which to construct his proposed jaccuzi, bathhouse and guest room for which no variance would be necessary" (Harlan Company Memorandum, page 11). In fact, Mr. Cordish had no prior knowledge that this proposed addition would have any effect on Harlan's property and was merely proceeding with an overall master plan for improvement to his home which pre-dated Mr. Harlan's purchase of the adjoining parcel.

For these reasons, and based upon the weight of the testimony which was presented on behalf of Petitioners it is respectfully requested that the Variance be granted.

Respectfully submitted,

John B. Howard

Robert A. Hoffman
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorney for Petitioners

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 1986, a copy of the foregoing Memorandum in Suupport of Petition for Variance was mailed to Jeffrey H. Scherr, Esquire, and Michael L. Heikes, Esquire, Sun Life Building, Charles Center, Baltimore, Maryland 21201, Attorneys for the Harlan Company of Maryland.

ROBERT A. HOFFMAN

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

March 21, 1980

Julius W. Lichter, Esquire
305 West Chesapeake Avenue
Towson, Maryland 21204

RE: Developments of Oakhurst and Village of White Oak, Section 3
11th Election District

Dear Mr. Lichter:

Your letter of November 28, 1979, addressed to the Director of Planning, has been referred to me for reply.

I am enclosing a copy of this office's correspondence dated March 15, 1978, directed to Mr. Charles E. Fick, P.E., engineer for the development of Oakhurst. This correspondence correctly reflects this office's opinion of the effect, or in this case the noneffect, of the residential transition area regulations upon two adjoining subdivisions that are being processed simultaneously.

The above opinion was based, at least in part, on the following facts:

1. Both developers do have a right to begin processing their respective developments at the same time. They also have a right to be informed as to the Baltimore County Zoning Regulations that will affect the development of their property.
2. In many instances involving the simultaneous processing of two adjoining developments, there are no existing record lots or dwellings which form the basis of establishing residential transition areas and, in my opinion, it would be unreasonable to apply restrictive use regulations on one development that are based on proposed lots in another development; i.e., until such time as the lots are actually recorded, there is no guarantee that the subdivision will be processed to the point of recordation.

If you have any questions regarding the above, please call me.

Very truly yours,

JAMES E. DYER
Zoning Supervisor

JED/sf
Enclosure

cc: Mr. John D. Seyffert, Director, Office of Planning and Zoning
Mr. William E. Hammond, Zoning Commissioner
Mrs. Jean M. H. Jung, Deputy Zoning Commissioner
Mr. Leonard S. Jacobson, County Solicitor

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

July 17, 1986

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

000

Chairman

MEMBERS

Bureau of Engineering

Department of Traffic Engineering

State Roads Commission

Bureau of Fire Prevention

Health Department

Project Planning

Building Department

Board of Education

Zoning Administration

Industrial Development

Glenn Weinberg, Esquire
Paul Cordish, Esquire
300 Water Street
Baltimore, Maryland 21202

RE: Item No. 451 - Case No. 87-48-A
Petitioner: David Cordish, et ux
Petition for Zoning Variance

Dear Messrs. Weinberg and Cordish:

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 a hearing scheduled accordingly.

Very truly yours,

James E. Dyer/mb

JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:kkb

Enclosures

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon, Zoning Commissioner — Date July 21, 1986

FROM Norman E. Gerber, AICP, Director, Office of Planning and Zoning

SUBJECT Zoning Petitions No. 87-42-A, 87-48-A, 87-49-A, 87-51-A, 87-55-A, 87-56-A, 87-57-A and 87-58-A

There are no comprehensive planning factors requiring comment on these petitons.

Norman E. Gerber, AICP
Director

NEG:JGH:slm

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204

NORMAN E. GERBER
DIRECTOR

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

July 14, 1986

Re: Zoning Advisory Meeting of June 17, 1986
Item # 451
Property Owner: DAVID CORDISH, et al
Location: W/S SLADE AVE, 1125' NE OF REISTERSTOWN RD.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

(X) There are no site planning factors requiring comment.
( ) A County Review Group Meeting is required.
( ) A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
( ) This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
( ) A record plat will be required and must be recorded prior to issuance of a building permit.
( ) The access is not satisfactory.
( ) The circulation on this site is not satisfactory.
( ) The parking arrangement is not satisfactory.
( ) Parking calculations must be shown on the plan.
( ) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( ) Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
( ) Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( ) The amended Development Plan was approved by the Planning Board on
( ) Landscaping: Must comply with Baltimore County Landscape Manual.
( ) The property is located in a deficient service area as defined by Bill 178-79. No building permits may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is
( ) The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 172-79, and is conditional change for permitted density is required. The Basic Services Areas
( ) Additional comments:

cc: James Hoswell

Eugene A. Bober
Chief, Current Planning and Development

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

June 24, 1986

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

RE: Property Owner: David Cordish, et ux
Location: N/S Slade Avenue, 1125' NE of Reisterstown Road
Item No.: 451
Zoning Agenda: Meeting of 6/17/86

Gentlemen:

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

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or ____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____
EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: Capt. Scott Kelly 6-24-86 — Noted and Approved: John J. O'Neill
Planning Group
Special Inspection Division — Fire Prevention Bureau

/mb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

TED ZALESKI, JR.
DIRECTOR

July 21, 1986

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 451 Zoning Advisory Committee Meeting are as follows:

Property Owner: David Cordish, et ux
Location: N/S Slade Avenue, 1125 feet NE of Reisterstown Road
District: 3rd.

APPLICABLE ITEMS ARE CIRCLED:

(A) All structures shall conform to the Baltimore County Building Code as adopted by Council Bill #17-86, the Maryland Code for the Handicapped and Aged (A.S.H.I. #117.1 - 1980) and other applicable Codes and Standards.

(B) A building and other miscellaneous permits shall be required before the start of any construction.

C. Residential: Two sets of construction drawings are required to file a permit application. The seal of a registered in Maryland Architect or Engineer is/is not required on plans and technical data.

D. Commercial: Three sets of construction drawings sealed and signed by a registered in Maryland Architect or Engineer shall be required to file with a permit application. Reproduced seals are not acceptable.

NOTE: (E.) All Use Groups except R-4 Single Family Detached Dwellings require a minimum of 1 hour fire rating for exterior walls closer than 6'-0 to an interior lot line. Use Use Groups require a one hour wall if closer than 3'-0 to an interior lot line. Any wall built on an interior lot line shall require a fire or party wall. See Table 401, Section 1407, Section 1406.2 and Table 1402. No openings are permitted in an exterior wall within 3'-0 of an interior lot line.

F. The structure does not appear to comply with Table 505 for permissable height/area. Reply to the requested variance by this office cannot be considered until the necessary data pertaining to height/area and construction type is provided. See Table 401 and 505 and have your Architect/Engineer contact this department.

G. The requested variance appears to conflict with Section(s) _____, _____, of the Baltimore County Building Code.

H. When filing for a required Change of Use/Occupancy Permit, an alteration permit application shall also be filed along with three sets of acceptable construction plans indicating how the existing structure is to be altered in order to comply with the Code requirements for the new use. Maryland Architectural or Engineer seals are usually required. The change of Use Groups as from Use _____ to Use _____, or to Mixed Uses _____, _____, _____. See Section 312 of the Building Code.

I. The proposed project appears to be located in a Flood Plain, Tidal/Riverine. Please see the attached copy of Section 516.2 of the Building Code as adopted by Bill #17-86. Site plans shall show the correct elevations above sea level for the lot and the finish floor levels including basement.

J. Comments:

K. These abbreviated comments reflect only on the information provided by the drawings submitted to the Office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired the applicant may obtain additional information by visiting Room 122 of the County Office Building at 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Michael S. Flanigan
By: C. E. Burnham, Chief
Building Plans Review

6/23/86

96-637
for file & filed in cc: Counsel
4/23/96

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

RECEIVED
SEP 24 1986
ZONING OFFICE

JAMES H. COOK
JOHN B. HOWARD
DAVID D. DOWNES
DANIEL O.C. TRACY, JR.
JOHN H. ZINK, III
JOSEPH C. WICH, JR.
HENRY B. PECK, JR.
HERBERT P. O'CONOR, III
THOMAS L. HUDSON
C. CAREY DEELEY, JR.
R. KING HILL, III

GEORGE K. REYNOLDS, III
LAWRENCE L. HOOPER, JR.
ROBERT A. HOFFMAN
DEBORAH C. DOPKIN
CYNTHIA M. HAHN
KATHLEEN BALLOUBY COX
KEVIN W. SMITH
J. MICHAEL BRENNAN
H. BARRITT PETERSON, JR.

JAMES D. C. DOWNES
(1908-1978)

TELEPHONE
(301) 823-4111

TELECOPIER
(301) 821-0147

September 24, 1986

HAND-DELIVERED

Mrs. Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
Case No.: 87-48-A
David S. Cordish, Petitioner

Dear Mrs. Jung:

Please enter John B. Howard's and this firm's appearance on behalf of Petitioner in the above referenced case.

As we have just been retained by Mr. Cordish, we respectfully request an extension of time for filing a reply memorandum to that submitted by the Harlan Company of Maryland. We believe an additional twelve days beyond the original two weeks, or October 8, will be sufficient. We would assume this is satisfactory unless we hear from you to the contrary.

Thank you for your attention to these matters.

Yours truly,

Robert A. Hoffman

RAH/jhr
cc: David S. Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey H. Scherr, Esquire

97-637-A
cc

RECEIVED
SEP 23 1986
ZONING OFFICE

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

JAMES H. COOK
JOHN B. HOWARD
DAVID D. DOWNES
DANIEL O.C. TRACY, JR.
JOHN H. ZINK, III
JOSEPH C. WICH, JR.
HENRY B. PECK, JR.
HERBERT P. O'CONOR, III
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LAWRENCE L. HOOPER, JR.
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KEVIN W. SMITH
J. MICHAEL BRENNAN
H. BARRITT PETERSON, JR.

JAMES D. C. DOWNES
(1908-1978)

TELEPHONE
(301) 823-4111

TELECOPIER
(301) 821-0147

September 23, 1986

Mrs. Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
Case No.: 87-48-A
Dave Cordish, Petitioner

Dear Mrs. Jung:

Please enter John B. Howard's and this firm's appearance on behalf of Petitioner in the above referenced case.

As we have just been retained by Mr. Cordish, we respectfully request an extension of time for filing a reply memorandum to that submitted by The Harlan Company of Maryland. We believe an additional twelve days beyond the original two weeks, or October 8th, will be sufficient. We would assume this is satisfactory unless we hear from you to the contrary.

Thank you for your attention to these matters.

Yours truly,

Robert A. Hoffman

RAH/ddw

cc: David Cordish, Esquire
Glenn Weinberg, Esquire

RE: Petition for Variance N/S of Slade Avenue, 1125' NE of Reisterstown Rd. 3rd District David Cordish, et ux, Petitioners	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 87-48-A

MEMORANDUM OF THE HARLAN COMPANY OF MARYLAND IN OPPOSITION TO THE PETITION FOR VARIANCE OF DAVID CORDISH

The Harlan Company of Maryland, Inc., a Maryland corporation, ("The Harlan Company") owns a tract of land of approximately 6 acres adjacent to the property that is the subject of this zoning variance petition. The Harlan Company seeks to intervene in this proceeding because it will suffer direct and immediate harm should the Petitioner, David Cordish, be granted the zoning variance he seeks. For the reasons stated below, Petitioner has failed to meet the applicable legal requirements and his petition for variance should therefore be denied.

FACTUAL BACKGROUND

The Harlan Company acquired property adjacent to Mr. Cordish's property in November 1985. It is situated immediately to the west of Mr. Cordish's property which is comprised of three lots and contains 3.08± acres. Prior to its sale, The Harlan Company tract, like Mr. Cordish's property, was rezoned in 1984 from DR-3.5 to DR-16.

After purchasing its property, the Harlan Company began plans for development in order to take full advantage of the DR-16 zoning status. One of the first steps in the preparation of plans was for Leonard Harlan, President of The Harlan Company, to contact the neighboring property owners, including Mr. Cordish.

LAW OFFICES
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During his meeting with Mr. Harlan, Mr. Cordish threatened to do everything possible to block the Harlan Company's development of the property. Thereafter, the Harlan Company hired an engineer, an architect, and devoted substantial time and resources to the prospective development of a beautiful, highrise, luxury condominium project. Presently a CRG Plan has been filed seeking to construct a highrise condominium building on the property.

The development of the Harlan Company property is subject to Baltimore County residential transition areas ("RTA") which provide that the Harlan Company must maintain an RTA of at least three hundred (300) feet between its development and the dwelling of Mr. Cordish (as well as other neighbors). See 1B01.1B1.(a) B.C.Z.R. Within the RTA, building restrictions apply which are inapplicable to other portions of the Harlan Company property.

Mr. Cordish's petition, seeks a zoning variance in order to construct an extended passageway, thirty-three (33) feet long, leading to a jacuzzi, a small bathhouse and a small guest room within two feet of the property line he shares with the Harlan Company. Should Mr. Cordish's petition be granted, and his construction completed the dimensions of the RTA for the Harlan Company property could be changed significantly, potentially reducing by ten thousand two hundred thirty-eight (10,238) square feet the area on which the Harlan Company may build. By permitting the variance and construction, the RTA may extend approximately forty-eight (48) feet further inside the Harlan Company's property line and would disrupt and adversely affect the Harlan Company's development plans.

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Notwithstanding Mr. Cordish's threats, the Harlan Company does not oppose Mr. Cordish's variance so long as the variance does not impact upon the Harlan Company's RTA. At a recent public hearing before the Pikeville Community Growth Corporation (PCGC), Leonard Harlan offered to drop all opposition to Mr. Cordish's proposed variance if Mr. Cordish would agree that the variance would not affect the Harlan Company's RTA. Responding on behalf of Mr. Cordish, Glenn Weinberg, Mr. Cordish's attorney, stated that Mr. Cordish was intent on blocking the Harlan Company's development and therefore Mr. Cordish would not be amenable to any such agreement.

Mr. Cordish's motivation for requesting the variance is plain in light of his refusal to agree that his variance would not impact the Harlan Company's RTA and its development of the neighboring property, and in light of the numerous available alternative sites on his 3.08± acres of property on which to construct his jacuzzi, bathhouse and guest room which would not require a zoning variance nor disrupt the Harlan Company's development of its property. Mr. Cordish cannot demonstrate any unreasonable hardship or practical difficulty caused by strict compliance with zoning regulations. In fact, granting Mr. Cordish's petition for variance would have a detrimental impact on the public welfare and the interests of the community and specifically The Harlan Company property next door.

A. As a party who would be adversely affected should Mr. Cordish's zoning variance be granted, the Harlan Company has standing to intervene and oppose Mr. Cordish's petition for variance.

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The Harlan Company, as explained in the foregoing factual summary has a significant stake in the outcome of this proceeding. As Mr. Cordish's neighbor, should the variance be permitted, the Harlan Company's RTA could be altered, thereby severely disrupting the Harlan Company's plan for developing its property. In light of the potential adverse impact of the proposed variance, there can be no question that the Harlan Company has standing to intervene and assert its reasons for opposing the zoning variance.

There is ample and uncontradicted support in Maryland law for the right of a neighboring landowner to intervene and participate in zoning proceedings when he has direct interest in the outcome. See, Hyson v. Montgomery County Council, 242 Md. 55, 67, 217 A.2d 578, 585-86 (1966) (rights of interested parties to present testimony and cross-examine witnesses), Baltimore County Code, Section 22-36 (right of affected landowner to sue to enjoin violations of zoning regulations or restrictions). The Court of Special Appeals in Boehm v. Anne Arundel County, 54 Md. App. 497, 459 A.2d 590 (1982), enumerated the procedural rights that due process affords those who may be adversely affected by the decision of an administrative agency. Quoting B. Schwartz, Administrative Law, § 67 (1976), the court recognized an affected party's right to notice, including an adequate formulation of the subjects and issues in the case, the right to present evidence and rebut adverse evidence, cross-examine witnesses, appear with counsel, have the decision based only upon evidence introduced into the record at the hearing, and have a complete record including a

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transcript of the testimony and arguments and documentary evidence. Boehm, 54 Md.App. at 512.

Because of the significant interest jeopardized by Mr. Cordish's proposed variance, the Harlan Company is entitled to the full panoply of due process rights necessary to protect its property interests in this matter. Maryland law affords the Harlan Company the right to meaningful participation in this proceeding in order to adequately protect its property rights.

B. The Residential Transition Area Regulations should be held inapplicable when, as here, two adjoining developments are proposed simultaneously.

Mr. Cordish's proposed construction, as explained in the introduction of this memorandum, once completed, could alter significantly the dimensions on which the Harlan Company could develop its adjacent property. However, because Mr. Cordish's additions are proposed simultaneously with the proposed development of the Harlan property, the Commissioner should find that even if the variance and development are permitted to Mr. Cordish, there should be no impact on the Harlan Company's RTA and Cordish's proposed development should not otherwise limit the Harlan Company's development.

There is authority in Baltimore County for the very sensible proposition that when adjacent properties are being simultaneously developed, it would be unreasonable to apply restrictive regulations on one development based on the proposed development of the other. The rationale behind this rule is that RTA regulations are designed to govern the area between an existing dwelling and proposed construction and have no applicability when both developments are simply proposals and not

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yet existing. Therefore, as in this case where two adjoining property owners seek to develop their properties simultaneously and the RTA cannot be maintained if both development proposals are permitted, it would be unfair to prohibit one development on the basis of a mere proposal for the other. The resolution under such circumstances is to waive the RTA regulations as to both developments.

This result was reached when, by letter of March 15, 1978 Leslie Graff, the Director of Planning and S. Eric DiNenna, the Zoning Commissioner (letter attached as Exhibit 1) held that when two developments were processed and received tenative approval at approximately the same time, the transition zone is not applicable between the two adjoining portions of the two developments. The identical situation was addressed in March, 1980 when in a letter by Robert Dyer, the Zoning Supervisor, (attached as exhibit 2), the opinion was once again expressed that RTA regulations are inapplicable when two adjoining developments are proceediing simultaneously. As Mr. Dyer explained, when "there are no existing record lots or dwellings which form the basis of establishing residential transition areas,... it would be unreasonable to apply restrictive use regulations on one development that are based on proposed lots in another development." Thus, the Baltimore County Office of Planning and Zoning has made clear on at least two occasions that RTAs are inapplicable in the case of simultaneous development of adjacent properties.

In light of the previous decisions of this office,

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the RTA regulations should be inapplicable to the proposed developments of the Harlan Company and David Cordish. Here, where Mr. Cordish has planned a jacuzzi, bathhouse and guestroom on his property, and the Harlan Company has proposed a luxury highrise condominium project on its property, neither development should be prohibited because of RTA regulations which would be applicable only if the development of either property had already been completed.

C. Mr. Cordish has not and cannot meet the legal requirements for obtaining a zoning variance.

Should the Commission decide that the RTA regulations are applicable to the Harlan Company development and that the Cordish construction would effect the area on which the Harlan Company could build, the Harlan Company strenuously objects to the granting of a variance to Mr. Cordish because he has failed to satisfy the legal requirements for a zoning variance. The legal requirements Mr. Cordish must satisfy in order to obtain a zoning variance are straightforward and a review of those requirements renders obvious the legal inadequacy of Mr. Cordish's petition. Baltimore County Zoning Regulations, Section 307 provides that the Zoning Commissioner has the authority to grant a variance or special exception only in cases where strict compliance with Baltimore County Zoning Regulations would result in practical difficulty or unreasonable hardship. McLean v. Soley, 270 Md. 208 (1973). These requirements were clarified by the Court of Appeals in Carney v. City of Baltimore, 201 Md. 130, 137, 93 A.2d 74 (1952) where the Court said:

> The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and the liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendancy to cause discrimination and eventually destroy the usefulness of the ordinance. (Citation omitted)
>
> The expression 'practical difficulties or unnecessary hardships' means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant.

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201 Md. at 137.

In the Carney case, the court upheld the decision of the Board of Appeals denying a variance to a homeowner who sought a lesser side yard requirement so that he could add a bedroom and bath on the ground floor of his house to accommodate his wife's physical condition. The adjacent property owner objected because the variance would deprive him of light in his dining room. The court upheld the Board's determination that the medical convenience to Mrs. Carney was insufficient to satisfy the legal requirements for a variance.

Certainly Mr. Cordish's asserted basis for the variance he seeks pales in comparison to that which was rejected in Carney. Mr. Cordish has asserted no medical reasons for the need to construct his jacuzzi, bathhouse and guest room, nor has he adequately explained why his proposed construction cannot be undertaken on another portion of his property aside from offering the frail excuse that "athletic fields" and a vegetable garden preclude alternative sites.

A view of Mr. Cordish's property reveals that what

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Mr. Cordish claims are "athletic fields" is simply open space. There are no baseball diamonds or football fields with goal posts on Mr. Cordish's property, only a substantial plot of vacant land. The slight inconvenience of removing or altering his alleged athletic fields or his vegetable garden pales in comparison to the burden on The Harlan Company caused by the potential changed to its RTA should Mr. Cordish's variance and construction be granted. Additionally, Mr. Cordish has not explained why the jacuzzi, bathhouse and guest room cannot be constructed closer to the house (a configuration which would require no variance at all) without the elongated covered passageway which, as proposed, extends beyond the side yard setback. Nowhere in Mr. Cordish's petition does he explain why the jacuzzi, bathhouse and guest room must be placed in such remote locations.

More recently, in the McLean decision, the Court of Appeals, in explaining how to determine whether the petitioner has demonstrated practical difficulty in complying with zoning regulations, set out the following three criteria:

> (1) Whether compliance with the restrictions would unreasonably prevent the owner from using his property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> (2) Whether a grant of the variance would do substantial justice to the applicant as well as to other property owners.
>
> (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

McLean, 270 Md. at 214-15.

Mr. Cordish meets none of the McLean criteria. As

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the plat of his property reflects, Mr. Cordish could easily construct his jacuzzi, bathhouse and guest room on several other sites, all of which would be in conformity with the applicable regulations. Secondly, granting a variance to Mr. Cordish could work a substantial injustice to the Harlan Company whose development plans might would be unnecessarily hampered. Thirdly, by damaging a neighbor's development plans without justification and without exploring alternatives in conformity with the applicable regulations, Mr. Cordish's variance would certainly not be in the spirit of the ordinance nor would it further the public safety or welfare.

Moreover, the public welfare and the welfare of the Pikesville community would be significantly damaged should Mr. Cordish be permitted to thwart the Harlan Company's development. The Harlan Company has proposed a highrise, luxury condominium project which, once completed, would be occupied by residents who would be regular customers in Pikesville's shops, stores and banks, frequent users of Pikesville's services, and who would represent an increase in the Pikesville tax base. Therefore, the entire Pikesville community would stand to benefit and be further solidified by such an influx of affluent, desirable residents. To block the construction of the Harlan Company's condominium project would surely have a significant and detrimental impact on the welfare of the community.

D. Mr. Cordish's petition reflects an absence of good faith on his part and an intent to injure the Harlan Company.

A review of Mr. Cordish's petition in consideration of the relevant surrounding circumstances further highlights the

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admission by his attorney at the PCGC Meeting and reflects Mr. Cordish's true intent in this matter; to block the development of the property adjacent to his owned by the Harlan Company. As the evidence will indicate, Mr. Cordish was very bitter about the acquisition by the Harlan Company of the property next to his after the property had been rezoned DR-16. Mr. Cordish has made no secret of his intent to block, wherever possible, the Harlan Company's efforts to take advantage of the DR-16 zoning and develop the property. To that end, Mr. Cordish is attempting to obtain permission to constuct an elaborate passageway at the end of which he will place a jacuzzi, bathhouse and guest room, leaving only two feet between his proposed construction and the property line. By constructing these buildings so close to the property line, Mr. Cordish is attempting to alter significantly the RTA of the Harlan Company and force it to forego development of property which but for Mr. Cordish's variance, could be developed.

Mr. Cordish's ill-disguised plan to disrupt the Harlan Company's development of its property should be recognized as the attempt to injure the Harlan Company that it is. Mr. Cordish has an abundance of other available sites on which to construct his proposed jacuzzi, bathhouse and guest room for which no variance would be necessary.

Mr. Cordish's assertion that his mysterious "athletic fields" preclude construction in his spacious front yard is ludicrous and his logic defying proposal to construct his jacuzzi, bathhouse and guest room thirty-three (33) feet from his house

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when they could easily be built much closer to the house is further evidence that his true intention is to damage the Harlan Company's development plans and not to enhance his own property. Plainly, Mr. Cordish is attempting to use the Zoning Commission, not for a land use objective of his own, but instead for the improper purpose of injuring his neighbor. The Maryland Court of Appeals has suggested that under circumstances where an individual in bad faith or with a spiteful motive attempts to use public authorities to injure another's business, he may be held liable in tort for malicious interference with business. See, Beane v. McMullen, 265 Md. 585, 604 (1972). The Commission should recognize and resist Mr. Cordish's improper attempt to financially damage the Harlan Company through his proposed zoning variance.

CONCLUSION

Under these circumstances, the Commissioner should find that because the Cordish and Harlan properties are being developed simultaneously, the RTA regulations should be held inapplicable. Moreover, the Cordish variance should be denied because Mr. Cordish has not met his burden of showing any practical difficulty or undue hardship by strict compliance with the zoning regulations. In fact, the evidence reflects a multitude of alternatives for Mr. Cordish's construction which would neither require a variance nor interfere with the development of his neighbor's property. Because Mr. Cordish's sole purpose in seeking this variance is to maliciously disrupt

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the lawful development of his neighbor's land, his petition should be denied.

Respectfully submitted,

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Michael L. Helkes

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on this 10th day of September, 1986, a copy of the foregoing Memorandum was hand delivered to Glenn Weinberg, Esquire, 300 Water Street, Baltimore, Maryland 21201, Attorney for Petitioner.

Michael L. Helkes

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BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

January 5, 1987

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RE: PETITION FOR ZONING VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd.
3rd Election District
David Cordish, et ux - Petitioners
Case No. 87-48-A

Ms. Friedman and Gentlemen:

Please be advised that on December 23, 1986, an appeal was filed by the Appellants/Petitioners, David S. and Penelope A. Cordish, from the decision rendered by the Deputy Zoning Commissioner in the above-entitled matter.

You will be notified of the date and time of the appeal hearing when it has been scheduled by the County Board of Appeals (494-3180).

Very truly yours,

ARNOLD JABLON
Zoning Commissioner

AJ:med

cc: Paul L. Cordish, Esquire
Glenn L. Weinberg
Suite 400, 300 Water Street
Baltimore, Maryland 21202

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Room 200 Court House

Towson, Maryland 21204

May 20, 1987

BOARD OF APPEALS MEMBERS

Thomas J. Bollinger, Chairman

William T. Hackett

Lawrence E. Schmidt

MOTIONS HEARING

Halle Property

Case No. CBA-86-157

David Cordish, et ux

Case No. 87-48-A

Reported by: Susan A. Kambouris

MR. BOLLINGER: Good afternoon, ladies and gentlemen. We are here this afternoon on a Motions Hearing on Case No. CBA-86-157 and Case No. 87-48-A involving the Halle property at 6 Slade Avenue regarding an appeal from the decision of the County Review Group and the conditional approval thereof, and also the property of Mr. David Cordish on Slade Avenue regarding a side yard setback of two feet in lieu of the required twenty-five feet. A variance was granted by the Deputy Zoning Commissioner of Baltimore.

The board recognizes Miss Cynthia Hahn, Esquire, Mr. Robert Hoffman, Esquire, Mr. Jeffrey Scherr, Esquire, and counselor?

MR. SCHERR: Mr. Paul Teitelbaum from our office, also.

MR. BOLLINGER: How about Mr. Glenn L. Weinberg, Esquire? He is not going to be here?

MRS. HAHN: No.

MR. BOLLINGER: Mr. Paul Cordish, is he here?

MR. HOFFMAN: He will also not be.

MR. BOLLINGER: Will not be. All right, are there any other attorneys present? Okay, you may all have a seat, please. Let the record also indicate that notice of this

Motions Hearing has been given pursuant to the Board's Notice of Assignment to the Peoples Counsel, Phyllis Cole Friedman, who is voluntarily absent from this proceeding, and also to the Office of Law, both to the County Attorney, Mr. Malcolm F. Spicer, and the Assistant County Attorney, Patrick D. Hanley. They also have elected not to be here for this hearing.

Procedurally and initially, let me say that the Board, for the record, is sitting with three Board members, myself, Thomas Bollinger, Mr. Larry E. Schmidt, and Mr. William T. Hackett. Mr. Hackett is the Chairman of the Board of Appeals and the County Code requires that when he sits, he shall act as Chairman. Mr. Hackett has had the flu over the weekend and has asked me to act as Chair today. Does anybody have any objection to that?

MRS. HAHN: No objection.

MR. SCHERR: No objection.

MR. HOFFMAN: No objection.

MR. TEITELBAUM: No objection.

MR. BOLLINGER: Now, we have received Mr. Scherr's Motion, first a motion to dismiss the Appeal of the Deputy Zoning Commissioner, and a Motion to Dismiss the Appeal of

the County Review Group, and we have read those motions and we have received the response to the Motion to Dismiss the Appeal from the County Review Group and the response to dismiss the Appeal from the decision of the Deputy Zoning Commissioner and we have likewise read those motions.

Mr. Scheer, I guess it is your motion, so you would go first. What the Board would intially like you to address is anything you would like to add that is not already in your Motions and Memorandum which we have reviewed and considered and the same would apply to Miss Hahn and Mr. Hoffman. Then, we may have some questions for you all.

MR. SCHERR: The only -- first of all, let me introduce my client, if I might, Mr. Harlan of The Harlan Company of Maryland, and not our client but someone with interest in the project, Mr. Harry Blum, of Fiola-Blum (phonetic), realtor in town.

MR. BOLLINGER: Welcome, gentlemen.

MR. SCHERR: Thank you. Perhaps the best thing I can do, while you have had a chance to read the Motions, you have not had a chance to visually consider, visualize the property in question. I don't know if you all are familiar with the

Pikesville area and the Slade Avenue property or Slade Avenue area on which this property is located and the surrounding area where Mr. Cordish's property is located. I have three of these CRG Plans which have been approved. Perhaps rather than putting it up on the Board, the best thing to do is to give you one of them, I am going to retain one, and give one to counsel, although I am sure you have one, too.

MR. BOLLINGER: Do we wish to make this a Motions exhibit for the record?

MR. SCHERR: Sure, we can.

MR. BOLLINGER: Can we have a joint stipulation?

MR. HOFFMAN: We haven't had a chance to look at it.

MR. BOLLINGER: After you have chance to look at it.

MR. HOFFMAN: I don't have a problem with it. It is the same CRG Plan which was approved at CRG Meeting, I guess it was on the 13th of November. However, I don't know what relevence it has to the Motions at hand.

MR. SCHERR: The only relevence it has and I don't submit it for purposes of arguing about it, I only submit it for purposes of showing -- first of all, that this was the CRG Plan which was appealed from.

Secondly, I think that one picture is worth a thousand words, and what it shows here is it shows the Cordish property and the Harlan property as they are located side-by-side, as well as the proposed development which was approved by the CRG. The Cordish property is noted on the east side or the right-hand side, if you will, of the CRG Plan and it is not shaded in.

Mr. Hackett, I don't want to make you look over your shoulder.

MR. BOLLINGER: First, let us have this marked. I think it is a relevent question of the weight, as to the Motion, it would be for us to determine, but we will mark this as Appellee's Motion exhibit one, the plan acted on by the CRG and drawn by D.S. Thaler & Associates. I am looking for the last page on it.

MR. SCHERR: There is a date of 9/4/86 and 11/4/86 being the final revision date.

MR. BOLLINGER: That will be Appellee's exhibit one.

(Appellee's Exhibit No. 1 so marked by the Board.)

MR. HOFFMAN: Mr. Scherr,I believe there are further revision dates on the lower right-hand corner.

MR. SCHERR: Okay. 11/11 and 11/12/86 being final.

What it shows, it shows on the right-hand side for the east side of the drawing of property. It has the words existing dwelling in the middle lot of three lots. These lots, all three, are Mr. Cordish's property, and his house is known or what is shown as the existing dwelling. The lines that go off of his house show what is essentially the residential transition area as it currently exists. The other existing dwelling on the property is the existing house on the property, which is a neo-Georgian or Colonial, if you will, red brick structure which currently exists and is, for point of information, the Symphony Decorator House today. If you were to go there, you would see it decorated, you would be charged an entrance fee by the Symphony, and it is being used by the Symphony to raise funds for the Symphony business. The footprint shown to the left or far west of the drawing is the proposed building envelope, and we do, in fact, intend or my client does, in fact, intend to retain the existing dwelling and to build a building which is in architectural motif or architectural symetry with the existing dwelling so that it, too, will have a Colonial -- I am no architect -- but if I might say, a neo-Georgian appearance somewhat like the Green

Briar. Those are the pictures it is being modeled off of. Along Slade Avenue and across the street for your visual information are three high-rise apartment structures which have existed since the mid 60's. I think the first one was built at or about 1960. That is 11 Slade Avenue. It is closest to Reisterstown Road which runs up here at the corner of the plat would be Reisterstown Road. 1 Slade Avenue -- I think it is even shown -- I am sorry, that is 11 Slade Avenue. The entrance is shown on the CRG Plan. Then, immediately next to that is what is now known as 7 Slade Avenue called Suburban Oaks Condominium. That is in the middle of Slade Avenue across the street. Then, on the left or west is the 1 Slade Avenue high-rise condominium, all of which are significatly higher than 60 feet. I believe most of them are 90 feet or above. Then, right about where it says skematic layout for parking garage would be where Park Heights Avenue is.

I show you this not for purposes of arguing anything but simply for purposes of orienting you to the area and to show you where Mr. Cordish's property is in relationship to The Harlan Company property, what the CRG Plan is that is intended or has been conditionally approved, and what the

general area looks like.

In terms of adding to our written argument,there is relatively very little I can say. It is hot and I don't want to take up your time. I have just received copies of Mr. Hoffman's memorandum in response to our Motions to Dismiss. The only one I have really had a chance to read and really fly through, not really read, is the response to the Motion to Dismiss the variance, and what Mr. Hoffman says there is for the first time at the hearing before Commissioner Jung, there was raised the issue of the residential transition area and that that shouldn't have been considered by Deputy Commissioner Jung and indeed it should have been the subject matter of a separate Petition or separate hearing or some other proceeding, and should have been considered separately and it should not have been considered at all before Deputy Commissioner Jung. I submit that would be an absolutely tortured reading of section 307 of the Zoning Regulations which says that what is to be considered at a Zoning Hearing for a variance is whether or not a variance will be in harmony with the spirit and intent of various regulations, sign regulations, and off street parking regulations, and area

height regulations to be as so as to grant relief without substantial injury to the public health, safety, and general welfare. Well, the the Harlan Company of Maryland is certainly part of the public and there is no question that if these structures were allowed to be built and were a allowed to be built in such a way that they would impact on the RTA of the Harlan Company property, there would be no doubt it would be certainly an impact on our client's general welfare, who it is no secret paid $2.3 million dollars for what is known as the Halle property. It would also be the inability to build because of the impact on the RTA, would have also been an impact on Pikesville's general welfare. There is undisputed testimony in the record, which I believe Mr. Hoffman's office has copy of the record. It was taken and transcribed. And Mrs. Jung certainly did consider testimony from the Pikesville Community Growth Corporation, as well as, Pikesville area residents that says, we want this high-rise building. We think it is pretty. We think it will add to the area. We think it is something which ought to exist and we are in favor of it, and not to have it will impact on our welfare. There is no question that the RTA issue is certainly one that should

have been considered by Mrs. Jung and should have been ruled upon. The fact that the Harlan Company filed a Special Hearing Petition, I must tell you, quite frankly, I did that to make sure the issue was covered. It is like filing all of your pleadings in your discovery or any other case to make sure that an issue will be considered at a certain point in time. That is why I filed a Petition for Special Hearing. When I filed it, the Zoning Office -- this maybe excess testimony -- but I will tell you I represent to you as lawyer, said why are you bothering to file this, Mrs. Jung will give us a find, I said, just to cover myself, just to make sure there is something in the record which will make this issue be heard at a certain time and won't be a form of res judicata or collateral estoppel that it wasn't officially or formally waived.

Fortunately and pursuant to our request, Mrs. Jung did what we asked her to do, and did consider the RTA issue and I think rightfully so. I think that is Mrs. Jung ruled on the Motion to grant the variance filed by Mr. Cordish, granted his relief, as I said and I won't repeat our Motion again, and gave the Cordishs' exactly what they asked for, and at the

same time, made sure that there was no impact on our client's property by impacting the RTA and not allowing them to build high-rise project, which the property is zoned for. It is zoned for 60 feet in height and it is zoned for a condominiu project. The fact is we are seeking variances to seek to go higher, and a variance also to lessen the distance required between existing structures so that we can maintain the house, and also a special exception to widen the width. There is no question even if we were not seeking those variances, if the RTA were impacted upon by Mr. Cordish's proposed additions, then there would not even be a building to 60 feet, and we would not be able to go forward with the project.

The other thing I have not said about the variance and I have not said it in the memorandum, I noticed that Mr. Hoffman, I think you attahed the suit on the Zoning Commissioner --

MR. HOFFMAN: Uh-huh..

MR. SCHERR: -- to your memorandum. I think it is significant to say that I don't think Mrs. Jung -- although she said I find -- I grant the variance, that there is a practical difficulty. She makes some other findings which I

think are very important and which we did not refer to in our memorandum, which repeated -- she says something I think bear repeated. She commented upon the proposed structure, which would be approximately -- at page 2 of her opinion -- approximately 47 feet on one side and 56 feet on the other side with long wings with these rooms at the end, would extend, she says, extend the footprints of the residence, referring to the Cordish residence, in an unreasonable and ludicrous fashion. To the Deputy Zoning Commissioner's knowledge, no breezeway or covered passage anywhere near the length proposed in this case has been approved in Baltimore County so as to connect an addition to the main building. I think it is clear what Mrs. Jung is saying. This is ludicrous. This is absolutely absurd. After listening to all of the testimony, I think it is clear what you would like to do is impact on your neighbors property, but I am going to let you go ahead and do exactly what you said you want to do. I am going let you build 55 foot or 47 foot wings and put the rooms at the end, but I am not going to allow you to impact the general welfare or the welfare of your client, neighbor's property, so that it can't be used as it might otherwise be

used under existing zoning. Mrs. Jung concludes by saying on page three, in the middle of the paragraph she begins to interpret the proposed two small far distant rooms as part of the principal building in accordance with Section 400.1 Let me wait until you get it. To interpret the front two small far, distant rooms as part of the principle residence in accordance with Section 400.1, especially the meaning of that section in exactly the same way, the Petitioners have stretched their covered walkways to the absurd. I think that is also siginificant.

I think Mrs. Jung's commentary on what is thought to be -- what the Petitioner in the variance case ought to do is very important. I believe that she calls it an absurd attempt or attempt to obtain an absurd result is what was trying to ameliorate there, to do away with, and what we have attempted to do away with by seeking to dismiss the Appeal because Mr. Cordish has gotten what he what he wants, and he should not be able to use this body or any further body to continue to perpetuate a squable with a neighboring property owner.

With respect to the CRG --

MR. BOLLINGER: Mr. Scherr, before you move on to that

Motion, let me ask you this. With respect to your Motion to Dismiss the Appeal that the Deputy Zoning Commissioner ordered or granted the relief from the variance, they, in so granting that variance, the Deputy Zoning Commissioner called the new proposed structures to -- indicated they are accessory buildings. Okay? Now, referring you to the definition sections of the Baltimore County Zoning Regulations, the definition, page three, the top of the page, an accessory building, one which is subordinate and customarily incidental to and on the same lot with a main building. A trailer should not be considered an accessory building. A structure connected to a principal building by covered passageway or with one wall in common shall -- emphasis added -- shall not be considered an accessory building. It seems from that definition that Mis Jung is clearly in error in determining the structures to be an accessory building. What the Board would like you to address is how then could the Appellants not bring that to the attention of the Board or correct that except by appealing to this Board?

MR. SCHERR: My response to that is several folds. First of all, Mrs. Jung, in her opinion, addressed that very

issue and I think brought to her reading of the Zoning Codes something which none of us should leave home when we go to the law offices or the courtroom, that is our sense of practicality, and our sense of reason and logic. Mrs. Jung said -- and I can find it in her opinion -- that -- words to the effect that it is true that the definition section says this but it doesn't specify how long the connected structure has to be, and as I read at the end, to argue that this long breezeway of 55 feet or 47 feet is something which makes the structures, although it is part of the building, is absurd. And that she not would not interpret and read the zoning regulations that way.

I think to answer the second part of your question why is that not appealable, it is like the cases we have cited in our Memorandum, where, for example, in the Offut verses Montgomery County case that the proponent there, the Plaintiff got the relief that they wanted. They also wanted the Court to say, you have bargained in good faith, but the Court wouldn't say that. The Court wouldn't find they bargained in good faith.

Here, too, Deputy Zoning Commissioner Jung is going to

give you relief in exactly the way Mr. Cordish wants it, but she is not going to find that it is part of the dwelling, so that it will be -- will impact my client's RTA. The analogy is that they are not going to -- you can not appeal something which is a part of the judge's decision that is adverse to you as long as the relief which you have sought to obtain is the relief that you have prayed for. Mr. Cordish's Petition for the zoning variance is perfectly clear. It says permit a side yard setback of two feet in lieu of twenty-five feet. He has gotten it. He hasn't said, please consider that in his original Petition, please consider that an accessory structure or dwelling. He said what I want to do is I want to build these structures and build them for all of the following reasons, and had eight hours of testimony.

MR. BOLLINGER: That was his application for the variance. But addressing the -- and I am not trying to over simplify the issue because I might tell you the Board is very impressed with your Memorandums and Motions, some 18 pages of argument which is very interesting, but addressing the narrow issue of whether or not this Board has jurisdiction and whether we should dismiss even the question of an appeal, does

not the Appellant have a right and also take a gamble in appealing to this Board on an Appeal with a variance because, number one, he would have the right in that he didn't get everything he wanted because she termed it an accessory structure, and for whatever reason, does he not have a right in a de novo hearing to make this Board make that determination? And does he not take a gamble on the fact that we may not give him the variance to begin with? But is that not his right to appeal the decision of the Deputy Zoning Commissioner or else how does he get redress for what he believes was a wrong to him?

MR. SCHERR: The answer is I do not believe he has the right, quite honestly. I think the cases support that. Otherwise, we are a allowed to do what the cases speak against, that is to play fast and lose on the court to utilize the Appellant system, Board of Appeals, as a tool to obtain a result which is essentially and admittedly not the result Mr. Cordish wanted, that is objectively admitted not the result that he wanted. What he said he wanted was to be able to build these structures within two feet of his property line, forty-five feet to fifty-five feet off of his house. The fact

that Mrs. Jung has said, I am going to call them accessory structures, I do not believe under the cases that we have cited and under the way the Court of Appeals has approached this, an appealable issue anymore than the union could say, Court of Appeals, we want you to address the issue that we have bargained in good faith. Don't forget in that case, if, in fact, they bargained in bad faith, the Court of Appeals was setting the union representatives up for a lawsuit.

MR. BOLLINGER: Isn't Offut a little bit different then here where we have an Appellant asking for another body to make a factual determination, which is even binding on the Circuit Court? You know it is not the same as what the Court of Appeals said in Offut. These Appellants are asking for three people to make a factual finding on whether or not these structures are an accessory use and whether or not they should be permitted to have this variance. You are saying, then, we shouldn't have jurisdiction in that matter. What I don't quite understand is the analogy that you are making when here we have de novo hearings. This is the right of the people of Baltimore County that the Council and the Executive by legislative enactment have given them.

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MARILYN HOPE FISHER**

*ALSO ADMITTED IN NY
*ALSO ADMITTED IN DC
*ALSO ADMITTED IN NJ
*ALSO ADMITTED IN CA

August 27, 1986

Mrs. Jean M. H. Jung
Deputy Zoning Commissioner
of Baltimore County
Room 109
County Office Building
Towson, Maryland 21204

Re: Petition for Special Hearing,
Case No. 87-48-A, Cordish
Petition For Zoning Variance

Dear Mrs. Jung:

Enclosed herewith is a copy of a Petition for Special Hearing which was filed on or about August 21, 1986 with Mr. Dyer. I also enclose herewith a copy of our letter to Mr. Dyer.

Because the issues presented by the Petition for Special Hearing relate to Case No. 87-48-A I respectfully request that the Petition for Special Hearing be heard at the same time as the Variance Petition in Case No. 87-48-A.

The consolidation of these two cases may require a continuance. I believe, however, that such a continuance would be appropriate since a continuance was previously granted to the Petifioner in Case No. 87-48-A.

The hearing in Case No. 87-48-A is presently scheduled for September 10, 1986 at 1:30 p.m. If you would consent to hear both Petitions simultaneously and that will necessitate a continuance I will be happy to coordinate the hearing date with all concerned. In this connection, I am anxious to have this matter heard as quickly as possible and would hope that a hearing could be held before October 1, 1986.

Thank you for your consideration in this matter.

Sincerely,

Jeffrey H. Scherr

JHS:ndc
NO → Enclosures
cc: Mr. Leonard M. Harlan
Glenn Weinberg, Esquire
Mr. Arnold M. Jablon
Mr. James E. Dyer

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Jeffrey H. Scherr

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NO → Enclosures
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Mr. Arnold M. Jablon
✓Mr. James E. Dyer

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August 27, 1986

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Deputy Zoning Commissioner
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Towson, Maryland 21204

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PAUL L. CORDISH
DAVID S. CORDISH

TELEPHONE
(301) 539-6141

September 2, 1986

Mrs. Jean H. M. Jung
Deputy Zoning Commissioner
of Baltimore County
Room 109
County Office Building
Towson, Maryland 21204

RE: Petition for Special Hearing
of
The Harlan Company of Maryland, Inc.
Case #87-48-A
Cordish Petition for Zoning Variances

Dear Mrs. Jung:

We represent Mr. David S. Cordish and Mrs. Penelope Cordish, his wife, the Petitioners for Zoning Variances at their residence 4 Slade Avenue, Baltimore County, Maryland. This matter is pending before you and was partially heard on August 12, 1986 at which time you continued same until September 10, 1986 at 1:30 P.M.

It was not until September 2, 1986 that we received, from Jeffrey Scherr, Esquire, a copy of his letter to you dated August 27, 1986 entitled "Petition for Special Hearing". The copy thereof which we received did not contain a copy of Mr. Scherr's Petition for Special Hearing and did not contain a copy of the Plat referred to therein. We called this matter to his attention and he later furnished us with a copy thereof but did not furnish a copy of the Plat.

The purpose of this letter, in behalf of Mr. and Mrs. Cordish, is to respond to Mr. Scherr's letter to you and to state our position as to the Petition for Special Hearing in which The Harlan Company of Maryland, Inc. is the Petitioner, as follows:

1) The issues presented by the Petition for Special Hearing do not relate to case #87-48-A and constitute an entirely separate and distinct matter from the issues relating to the Zoning Variances requested by our clients.

2) The Petition for Special Hearing should not and cannot properly be heard at the same time as the Variance Petition in above case.

Mrs. Jean H. M. Jung
Page Two
September 2, 1986

3) There is no basis for consolidating the Petition for Special Hearing with the pending Petition of our clients for Zoning Variances at their residence. The legal issues involved with regard to the requested zoning variances are entirely dissimilar with and disconnected from the Petition for Special Hearing relating to another parcel of real property which, in essence, constitutes a request for a special exception to the Residential Transition Area requirements which cannot properly be granted.

4) Our clients emphatically disagree that a continuance, as requested by The Harlan Company of Maryland, Inc., is either necessary or appropriate and desire to proceed on September 10, 1986 to complete the hearing which has already taken place, in part.

5) The residence property concerned has continuously been, for approximately 18 years, the residence of the Cordish family, exclusively. It is a "dwelling" in every factual and legal sense. The variances which they seek consist entirely of additions and improvements to their residence property which will be an integral part of their dwelling, will be in strict harmony with the spirit and intent of all pertinent zoning regulations and requirements and will add to their use and enjoyment of their dwelling. The requested variances relate solely to additions and improvements to their primary residence which would not, to any extent, injure or diminish the public health, safety and general welfare of the area in which they are located.

6) The Petition for Special Hearing states that The Harlan Company of Maryland, Inc. intends to develop its six acre property as a high-rise condominium/apartment building and implies that granting the Cordishes the variances they seek will render such development "impracticable". Whether or not, in the opinion of The Harlan Company, its contemplated structures would be "impracticable" is totally irrelevant and immaterial with regard to the variances sought by the Cordishes which relate exclusively to additions and improvements to their dwelling. The granting to the Cordishes of their requested variances would not, to any extent, prevent The Harlan Company from developing and constructing a high-rise condominium/apartment building. It is irrelevant whether or not the plans for the condominium/apartment building they now contemplate may require modification or change. As a matter of fact, as of today, The Harlan Company has filed no plans and specifications whatsoever for its proposed development and has obtained no building permits with regard thereto.

Mrs. Jean H. M. Jung
Page Three
September 2, 1986

7) The Harlan Company, in its Petition for Special Hearing, contends that since its condominium/apartment building development and the variances requested by the Cordishes are "proceeding simultaneously", the granting of same to the Cordishes should not have any impact in the Residential Transition Area of the Harlan property. The two matters are not "proceeding simultaneously". The Cordishes have prepared and filed plans and specifications for the additions and improvements to their dwelling which are clear and specific. The Harlan Company has filed no plans and specifications for its contemplated development. Therefore, it is obvious that the two matters are not "proceeding simultaneously". The impact of granting to the Cordishes the variances they request is an entirely separate matter.

The Cordishes should not be subjected to any further delays which would make it impossible for them to complete the additions and improvements to their dwelling prior to the onset of the winter season during which construction is generally impossible.

The Cordishes should be permitted to proceed, as scheduled, with the hearing on their pending Petition for Variance with regard to their dwelling entirely apart and separate from any proceeding relating to the Petition for Special Hearing filed by The Harlan Company of Maryland, Inc.

Respectfully,

Paul L. Cordish

Glenn L. Weinberg

Attorneys for David S. Cordish
and Penelope Cordish, his wife
Petitioners for Zoning Variances

CC: A copy of this letter was hand delivered to Jeffrey H. Scherr, Esquire, attorney for The Harlan Company of Maryland, Inc.

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PAUL L. CORDISH
DAVID S. CORDISH

TELEPHONE
(301) 539-6141

September 2, 1986

Mrs. Jean H. M. Jung
Deputy Zoning Commissioner
of Baltimore County
Room 109
County Office Building
Towson, Maryland 21204

RE: Petition for Zoning Variance
4 Slade Avenue
Third Election District
Baltimore County
David S. Cordish and Penelope
Cordish, his wife
Case #87-48-A

Dear Mrs. Jung:

The above matter, in which we represent the Petitioners, was partially heard before you on August 12, 1986. You then continued same until September 10, 1986 at 1:30 P.M.

The required number of the Surveyor's Plat pertaining to the variances requested by Petitioners were filed before the Zoning Commissioner of Baltimore County on June 6, 1986.

Petitioners desire to make available a more detailed Plat to support the prior plats they filed in this matter. Accordingly, you will find delivered to you herewith 10 copies of a Plat entitled "Enlarged Plan of Cordish House and Proposed Addition", dated August 26, 1986, prepared by Stephen Glassman and John Fisher of Art and Architectural Design. This Enlarged Plan will furnish additional and full details as to the nature and extent of the structures which the Petitioners desire to add to their existing dwelling property at 4 Slade Avenue, Baltimore County, Maryland.

Respectfully Submitted,

Paul L. Cordish

Glenn L. Weinberg

Attorneys for David S. Cordish
and Penelope Cordish, his wife

Mrs. Jean H. M. Jung
Page Two
September 2, 1986

CC: A copy of this letter and two copies of Enlarged Plan were Hand Delivered to Jeffrey H. Scherr, attorney for The Harlan Company of Maryland, Inc.

VIA FEDERAL EXPRESS

MR. SCHERR: Except what Mr. Cordish is saying, I am aggrieved by the zoning issue, and he really isn't aggrieved. He never prayed for relief to say that this is a dwelling. What he prayed for relief for in the Petition for Zoning Variance is to be able to build this structure. The issue whether it is an accessory structure as opposed to a dwelling is a collateral issue. It is not the issue in the case.

MR. SCHMIDT: Isn't it a very real issue as far as he is concerned because based upon the determination of this Board or the Deputy Zoning Commissioner makes as to what that building is may very well have some detriment to him because if, in fact, the Zoning Commissioner decides or this Board or whoever made the decision it is, in fact, either an accessory structure or not an accessory structure, it is going to have an impact as far as the RTA requirements. So that there is a very real concern on the part of Mr. Cordish not only for the nature of the variance itself, the granting of the specific relief being prayed for, but the labeling of that relief also causes him a real and identifiable impact.

MR. SCHERR: Except, Mr. Schmidt, in insofar this is concerned, that only causes him a real and identifiable impact

if, in fact, he is seeking to inhibit the ability of Harlan to develop it's property, utilize it as it is properly zoned now, and if his objective is to block that project -- but even if that is his objective, and I am not arguing the merits of whether that is proper or not, all I am talking about is the narrow jurisdictional issue of whether he can come before the Board, and certainly those arguments are proper in a hearing before this Board as is the practicality of Miss Jung's definition of how long can a breezeway be. But I think those are all issues which would have to be addressed when we got here. I think where we are is before that.

Except that the very first proposition you said is Mr. Cordish harmed if this issue is not addressed by this body de novo. The answer is no, he is not harmed. He is still able to do exactly what he sought to do by the Zoning Commissioner below.

MR. BOLLINGER: Is that not an issue to be addressed on the merits?

MR. SCHERR: Why get that far when he has gotten the very relief he prayed? What he wanted to do was build these structures. I won't use an adjective to identify them If he

wants to build these structures, he is allowed to build thes structures.

MR. BOLLINGER: Let's be honest about it. What he wants to do is build these structures and block your proposed development.

MR. SCHERR: Assuming he gets there first.

MR. BOLLINGER: Assuming he gets there first.

MR. SCHERR: I note for the Board that he has not even put a shovel in the ground.

MR. BOLLINGER: Does he not have a right at least to, for whatever his reasons are, to come before this Board for whatever reason and let us determine anew, de novo, whether or not these should be not considered accessory structures but accessory buildings because that is the term utilized in Miss Jung's opinion, and which the Council specifically said in their wisdom that they shall not be considered where there is a covered passageway. Doesn't he have a right to come before us and let us determine that and take the gamble, as I said, that we might not even grant the variance?

MR. SCHERR: I submit to you under the cases and under the memorandum as we have proposed it, the answer is no

because he has gotten the relief he asked for below. He has gotten everything he sought in his Variance Petition and whether or not it is an accessory use and whether or not you agree with Mrs. Jung is irrelevant. He is a allowed to build exactly what he sought to build, exactly what he went to Mr. Jablon's office to file a Petition for, he has gotten.

MR. SCHMIDT: Mr. Sherr, if that is, in fact, the case where and particularly in view of the Hope Decision which invests this Board with almost exclusive jurisdiction and appeals from administrative agencies in the County, where can Mr. Cordish go to, in his eyes, right this wrong or at least have the question addressed as to what these structures are. If he can't appeal to this Board, where does he go to get a determination as to whether Mrs. Jung was right in her identification.

MR. SCHERR: Well, I think what the Offut Case and cases recited says is that no determination need be made. That determination that he has gotten the relief that he wanted, like, for example, in Offut, the fact that these people were called bargaining in bad faith is a very bad thing for these people. It sets them up for a lawsuit by their

union members for not having acted in their interest in a lawsuit by having acted in bad faith. I am not saying -- I don't know whether a lawsuit was ultimately brought or not. Certainly there was a very real harm in Offut as a result of the Court not even considering the Appellant's points of view whether or not there was bad faith. What the court said is they won below. Whether or not there is bad faith is absolutely irrelevant to what they sought to do, that was to win the right to, in that case, do away with twelve month teachers. In this case, Mr. Cordish considerably has won the right to build the structures he wanted. The fact Mrs. Jung called it an accessory use, there is no harm. He has gotten exactly what he asked for in his Petition for Variance. Therefore, that she wants not to negatively impact on my client, is not a harm to Mr. Cordish. There is nothing to redress anymore than there was anything to redress in the Offut Case where they said that there is bad faith. I submit that the Offut Case said that there is bad faith on a bunch of union representatives is far more aggrievest than calling these accessory buildings in terms of a right to be addressed.

MR. BOLLINGER: Okay. We are on the issue now of the

Motion to Dismiss the Appeal from the Deputy Zoning Commissioner on the variance. Mrs. Hahn, do you have anythin else to add other than what is in your memorandum? You migl gather from the Board's questioning you are ahead of the game

MRS. HAHN: Yes, and I realize that, and I appreciate many of the Board's questions because I think they are centra and right on the mark with the issues here at this time. I have a couple of comments.

I think Mr. Sherr is getting into the merits of this Appeal. I think the Board understands that and we would remind the Board we are simply here on Mr. Scherr's own Motion to Dismiss. His claim that this Board does not have jurisdiction to hear our Appeal, as noted in our memorandum and as referenced by the Board already, we do feel very much aggrieved by Miss Jung's finding that our additions are accessory buildings and that is precisely the issue from which we appeal. To say we are not aggrieved by that decision is naive and that is calling it a nice word. I am glad Mr. Scherr put this CRG Plan into evidence because I think it is shows the Board why this adjacent single family property owner may have an interest in what is going on next-door to him.

This is a huge project which is, in fact, apparently appropriate for an RAE Zone and they are trying to put it in a DR-16 zone. The RTA is a critical issue to the adjacent single family property owner in this case. Miss Jung's decision made a factual finding about where you are going to measure that RTA. She went beyond the decision of just deciding yes or no on the variance, and it is a variance and it is a variance for an accessory building. By doing that, she ruled on an issue and she ruled adversely to Mr. Cordish. Now, we are not going to be coy about this. Mr. Cordish honestly dc oppose the development next to his property. That is not -- would object to the characterization earlier that is why he building the additions. That is again a question on the merits.

He applied for the variance back in June of '86 before CRG Approval for this development was even obtained. Nevertheless, the developer came in and made the RTA and the effect of the variance a central issue to the hearing below. This transcript of the hearing below, your honor, more than half of it was testimony by the Harlan witnesses and Harlan's case regarding the RTA, and how important it was they keep the

full RTA on their property and what the additions on the Cordish property would mean. In effect, more than half of that hearing was devoted to the Harlan Properties RTA and where it was to be measured from, and then Miss Jung, considering all of the evidence she heard, went on to rule on that issue. She ruled on it by saying this is an accessory building. We have a right to Appeal from this adverse ruling and that is what we came to the Board about. We are hear for a de novo hearing and we don't think it could be any clearer that that is an adverse ruling. We think the case law cited by Mr. Scherr really obfuscates a deceptively simple issue. We have an adverse ruling by Miss Jung below that our additions are to be accessory buildings. That has a dramatic effect, witness Mr. Scherr's vehement opposition to this Appeal. That ruling has a dramatic effect on the RTA applicable to the adjacent developer. That is what the adverse ruling is, and your honors, I don't have to quote you the fact that if a party feels aggrieved by a decision of the Zoning Commissioner they have a right to appeal to this Board. That is Baltimore County Zoning Reg 500.10 and also in the code of Baltimore County Section 2232. This Board is well

aware of the definition of aggrieved. It is simply whether the property owner feels a property or a personal right has been adversely effected by the decision of the Zoning Commissioner. This Board recognizes what that adverse decision is. Again, we are not going to play coy about this. We do oppose the adjacent development. A ruling the RTA is going to be measured from the Cordish dwelling instead of ar addition to the Cordish dwelling is an adverse ruling. We a interested in that development and we do oppose it. Certain we believe that as a property owner on this site for approximately 16 years we have the right to oppose a development that isn't even within the confines of the applicable DR-16 zoning for that adjacent property.

MR. SCHMIDT: Let me ask you something --

MRS. HAHN: I was afraid if I stopped you would ask a question and you did. I should have set down.

MR. SCHMIDT: -- just to get your opinion. Chairman Bollinger indicated that obviously if this Appeal on the variance comes before us, the Board has de novo jurisdiction, which means that the variance in and of itself may not be granted, and therefore, the entire question as to the

accessory building and not an accessory building may not even be reached if the variance is not granted. Are you in agreement that, in fact, the Board by accepting this matter, you, in effect, pay your money and take your chances you may not get as far as you got before the Zoning Commissioner even.

MRS. HAHN: I understand the concept of de novo Appeal and the risks that are inherent whenever one takes an appeal from a decision, administrative or judicial, and I think there is somewhat of a risk involved. But I would emphasize to this Board and again you don't have the issue before you today because we are not here on the merits, but the appeal on this case was taken on an error issue and the Appeal is very carefully worded and it is an Appeal from the Jung decision that the variance is granted but the addition is not part the dwelling, and the latter Appeal is attached to our response to this Motion to Dismiss, and our position would that a Cross Petition for Appeal was not taken and that a single issue on Appeal has been raised and that is simply characterization of the approved addition, and obviously, the reason we are appealing that is what the Board has already referred Mr. Scherr to is the definition itself.

MR. BOLLINGER: Then, you are saying that you want your cake and eat it, too. You are saying that --

MRS. HAHN: Doesn't everybody?

MR. BOLLINGER: You are saying you want to appeal only the fact that Miss Jung characterized these structures as accessory buildings. You do you not want to appeal the fact that she gave you the variance; is that what you are saying?

MRS. HAHN: You honor, I think that is what our Appeal says. Again, I think we are getting into the merits of what is the Appeal here. The last sentence of Exhibit D attached to our response to the Motion to Dismiss states the reason for this Appeal is that portion of the decision appealed from which denies the request for a zoning variance to permit a side yard setback of two feet for a dwelling and that was very intentionally worded in that way and we believe that our Appeal is limited to a narrow issue. Obviously, if the Board feels otherwise, that would be another mountain we have to face.

MR. BOLLINGER: Just so we all address this issue before it becomes complicated, in addressing Mr. Sherr's Motion to Dismiss the Appeal from the Deputy Zoning

Comaissicner, the Board will also address that particular aspect as to whether or not you can have your cake and eat i too. Once you take a de novo Appeal, you put it all in our lap with respect to the question of the variance. We will address it.

MRS. HAHN: All right. My only request is that if the Board is -- do you say you will address it at the Appeal --

MR. BOLLINGER: We will address that as part of our decision in the Motion to Dismiss by Mr. Scherr.

MRS. HAHN: We would simply request the Board to give us time to submit something in writing then on that issue that the Board is going to consider.

MR. BOLLINGER: All right.

MRS. HAHN: I believe our memorandum covers the balance of our response to the Motion to Dismiss.

MR. BOLLINGER: Thank you very much. Do you have anything you want to add to that Motion?

MR. SCHERR: I guess the only thing I want to add is the mere fact that Miss Hahn says they only want to appeal the narrow issue of accessory use really frames the graviment of the reason why we are seeking to dismiss it. Quite frankly,

we don't want our clients or this Board to be the subject matter of a -- be made a ping-pong ball, be made a tool to the -- I think wrongful desires of a litigant. That is just not the place for Courts and it is not what I think our system is intended to do. I understand counsel denies it and I think they deny in good faith but I think Mr. Cordish's own letter attached to our Motion, which was submitted to Miss Jung, where he says, I think your friends from the -- he says to Ron Litman, who was involved in marketing the property -- I think your friends from New York may find they will earn their keep on this one before it is over, is absolutely the tenor of this entire proceeding. I would submit that this is just not right.

MR. BOLLINGER: Thank you. I guess the Board will have to make some factual findings on that.

MR. HACKETT: It is a shame Mr. Scherr didn't argue before the --

MR. BOLLINGER: Mr. Hackett was saying it is a shame you did not argue the Appellant case in the Hope decision.

MR. HACKETT: The Hope decision is what is giving us all of the problems.

MR. BOLLINGER: Now, nothing more on the Motion to Dismiss from the Deputy Zoning Commissioner, we will now address the Motion to Dismiss the Appeal of the County Review Group, and again, I will say, Mr. Scherr, we are impressed by your Memorandum. We have read same and if you don't have anything to add to that, we would have a few questions for the Appellants.

MR. SCHERR: I have nothing further to add. I have not yet had an opportunity to read Mr. Hoffman's memorandum. I think your questions may focus.

MR. BOLLINGER: Miss Hahn or Mr. Hoffman, who is going to address the Board's concern about this matter?

MRS. HAHN: Your honors, we believe that our argument on this Motion to Dismiss is covered in our written memorandum and if the Board does not want to hear additional oral argument, we would rest on our response.

MR. BOLLINGER: Let me ask you this question. Is it your position, as it seems somewhat to lend itself in your response to the Motion to Dismiss, is it your position that this present plan and the decision of the County Review Group is non-conditional?

MRS. HAHN: Well, I don't exactly know what you mean by the word non-conditional, but my answer is yes.

MR. BOLLINGER: Let me ask you this. In your response you have attached the CRG minutes, and for the record, addressing your attention to the end of those minutes -- we have a lot of paperwork up here.

MRS. HAHN: Yes. Your honor, at the last page, page 2 of the CRG minutes from November 13th.

MR. BOLLINGER: -- 13th, 1986, that's correct. Do you see that, Mr. Scherr?

MR. SCHERR: Yes, sir, page 2, developer's attorney.

MRS. HAHN: There, the CRG uses the term, the plan was given conditional approval. That is the language used. We believe that that approval -- and I should note for the record -- the only condition cited by the CRG is the zoning variances that this developer has to get for this property anyway. We have two main points we want to make about this. Number one, just because this approval is called conditional, the word is used here in the CRG minutes by the CRG does not mean that this does not constitute the CRG's final action on the plan. That is the critical concept because an Appeal is

statutorily authorized by section 2261 of the Development Regs from quote, unquote final action. The CRG can only do one of two things at a continued meeting like this. It can either continue the meeting for further hearings or it has to take final action of some sort. This is the CRG's final action in this case. This is what under Section 2261 of the Development Regulations we have the statutory right of appeal from.

MR. SCHMIDT: How do we know that? How do we know the CRG can't do something else based upon, say, a variance is granted with certain restrictions that are unenvisioned by the CRG. Can, in fact, the CRG get this back and do whatever it wants?

MRS. HAHN: In this case, I believe the powers of the CRG are very specifically defined in Section 2258, Subsection G of the Development Regulations which are very specific and mandatory language using the verbiage shall.

MR. BOLLINGER: That is at a continued meeting, which the CRG did not do this.

MRS. HAHN: Yes, this was the second continued meeting. This was the meeting of November 13, and Exhibit A to this response was the original meeting by the CRG, which was

October 30th, 1986.

MR. BOLLINGER: I agree with it is in the record. I direct your attention, for the record, to 2258-G. At the end of that continued meeting, they must either take final action on the plan or continue it again and not simply attempt to clear their dockets and put conditions on it and leave it up to this Board, which I might tell you we have already decided. Mr. Schmidt and I have sent cases back to the CRG because we do not believe they have the right to perform such action. don't see where the Council ever gave them the right to do anything other than final action or continue.

MRS. HAHN: Mr. Bollinger, we agree completely and we would be completely satisfied if this Board sends this matter right back to the CRG for a final determination.

MR. BOLLINGER: So, you are in agreement with the Motion to Dismiss filed by Mr. Scherr as to the decision by the CRG?

MRS. HAHN: No, I am arguing in the alternative. Either this is final action and we have the right of Appeal, or if it is not, this should be remanded back to the CRG because they have gone beyond their statutory power if this

conditional approval is not final action.

MR. BOLLINGER: Thank you. Mr. Scherr, I didn't mean to cut you off, it is your Motion, but we did have that concern and we thought we would cut right through.

MR. SCHERR: That is fine. Again, I think we all would agree that one doesn't come to the office and leave your practicality at home. This is a CRG Plan which anticipates height variances and conditional uses in an attempt to maintain the original structure on the property. Very difficult to do. The CRG has said we are going to grant the CRG approval but it is going to be conditioned upon the Zoning Commissioner making a determination that the variances are valid, should be granted or shouldn't be granted. If they are not granted, what Miss Hahn is logically saying is if it is final is that if it is not granted, then we have an approved CRG. We can go to the Zoning Commissioner and lose and we have an approved CRG. That is an absurd result. What we have to have here is the Zoning Commissioner granting his approval or disapproval of the variance for conditional use and then it maybe that the CRG decision at that point is final. But if it is not granted, then it is not final and it goes back to the

CRG. I am sure Dave Fields would sit in the CRG office and say this is not an approved CRG. The stamp of approval is not going to rest there forever if the Zoning Commissioner denies the variances, and if the Zoning Commissioner denies the variances, I may be here before this Board. So, what we would have is piecemeal appeals. There is a final appeal at this point, then we have the appeal from Mr. Jablon's decision, or if I win, based upon prior history, we can certainly believe that Mr. Hoffman and Miss Hahn are going to be here. So, then, we have another appeal involving exactly the same issues.

MR. BOLLINGER: That is exactly what I am trying to stop.

MR. SCHERR: We agree. We want to stop it, also.

MR. BOLLINGER: Anything else on that?

MR. HOFFMAN: I don't really have any rebuttal. If this Board feels obligated to remand this matter back to the CRG to await the decision of the Zoning Commissioner on Mr. Harlan's variances in this case, that would be acceptable to Mr. Cordish.

MR. BOLLINGER: I am sure it would.

MR. HOFFMAN: We have no problem going back to the CRG following a decision by the Zoning Commissioner, have the CRG make it's final determination on the plan, and then take the appeal at that time.

MR. SCHERR: What Mr. Hoffman is trying to undo is a CRG approval conditioned upon the zoning variances. I think what is before this Board is either a decision to dismiss Mr. Cordish's Appeal or hear Mr. Cordish's Appeal. There is no question that there is a conditional approval and that that is the way the CRG has so framed it. Whether or not there actually has to be another physical hearing, I don't think is addressed in the CRG regulations, number one. And number two, is not an issue. There is nothing for this Board to send this thing back to the CRG.

MR. BOLLINGER: You are saying because we don't have the jurisdiction to remand the issue to the CRG based on the fact that it is not a final plan and there is a contingency which must be addressed.

MR. SCHERR: Until the contingency is addressed by Mr. Jablon and decided one way or another, there is nothing for this Board to hear. It is not final.

MR. HOFFMAN: I submit in this case Mr. Scherr would like to have his cake and eat it, too. He wants his plan to sit in limbo until he gets his conditional approval and then decide it is at that time a final action. At that time, we don't have our opportunity to Appeal the decision.

MR. BOLLINGER: What we have done in the past is we have remanded the matter to the CRG for a determination of a final plan and we have retained jurisdiction of the Appeal so that it is not utilized as a mere delaying tactic against the developer. We have done that in the past. I don't know if we are all going to decide we are going to do that in this case or not. We have, to my knowledge, not outright dismissed any. We have taken action on the same question before with respect to the conditional approvals by the CRG. The cases are a matter of record of the Board's opinion and we have decided they have no right. The Council has not given them that right. If the Council wants to go ahead and tell them you can give final action with conditional approval, the Council will do that. Right now we have already decided that in several cases, but we understand the practical proble

also.

MR. BOLLINGER: Gentlemen, we are required to write an opinion in cases that come before this Board, a written opinion which shall be published, but here we have two Motions with exhaustive memorandum on both sides. The Board feels constrained to issue a verbal opinion at this time so everybody can set their schedules up and we will follow it up with a written opinion on the Motions.

First, addressing the Motion to Dismiss the Appeal of the Deputy Zoning Commissioner filed by the Appellee in this case, that Motion will be denied. The Board feels that the articulation by the Deputy Zoning Commissioner of this property to be an accessory building is contrary to the definition expressed by the Council through the Zoning Regulations, and as such, we feel the Appellant, Mr. Cordish, has a right to correct that, and that this is the avenue for which he may do that under the Hope Decision. So, that Motion will be denied and we will add in denying that Motion, also, that this Board will make a decision de novo based on the facts of the case as to whether or not, number one, the variance should even be granted, and number two, whether it

shall be called an accessory building or not. That case has already been set for hearing before the Board on June the 3rd of 1987, and the Board intends to proceed on that day and hear the matter on the merits and reach a conclusion. At the conclusion and upon our findings in that hearing on the merits, it may well make the other Appeal from the CRG decision moot, and for that purpose, we are going to hold the decision on the Appellee's Motion to Dismiss the Appeal of the County Review Group sub-curia until after we hear the Motion or after we hear the Appeal on the merits on June the 3rd of 1987.

We will, for the record, file a written opinion in conformance with this oral opinion. Whether or not you believe it is interlocutory or not interlocutory you will have a right to Appeal that decision thirty days from the date of that written opinion and not from today's date.

MR. HOFFMAN: Mr. Bollinger, I think Mr. Hackett has before him a request for a change of date. I only bring it up not to discuss the issue now, whether it should be granted or not, just to clarify that it is pending before Mr. Hackett, though.

MR. BOLLINGER: I think Mr. Hackett may wish to address that.

MR. HACKETT: My understanding is that the request for a change of date is because Mr. Howard will be unable to attend on June the 3rd.

MR. HOFFMAN: That's correct.

MR. HACKETT: Mr. Howard is from a rather large law firm including Mr. Hoffman, Miss Hahn and any number of other attorneys. It is my thought that adequate representation can certainly be supplied if Mr. Howard's schedule does not permit him to be present. My inclination is to deny the request for a postponement on that date.

MR. HOFFMAN: Mr. Hackett, I appreciate the compliment, but our client is rather insistent on having Mr. Howard represent him in this matter on the merits. For two associates to come in and argue on the motions is one thing, as you know, but a hearing on the merits in this case is rather important and he does feel very strongly about having retained Mr. Howard to represent him. I realize it is a rather large law firm. I would ask you to consider that in making your decision.

MR. BOLLINGER: Let the record show that what Mr. Hackett just said is speaking as the Chairman of this Board, not as this particular hearing. This is strictly his prerogative to grant the postponement. He is in charge of scheduling and I guess he is like the administrative judge.

MR. HOFFMAN: I also want to say one more thing. I don't know what the Board's schedule is. Mr. Howard's unavailability is in no way attempting to delay for any great length of time the hearing on the merits of this case. We hope the Board has another alternative shortly following June 3rd. He will not be out of town for a great period of time. I ask you consider both of those things.

MR. BOLLINGER: Let me ask this, how long did this hearing take?

MR. SCHERR: That is very much of an issue. It took from 1 o'clock in the morning until about 9:30 in the evening. I think it is going to go over. I certainly have no intention of trying to introduce extraneous evidence, prolonging the thing. We have no desire to do that. The problem I have in continually postponing cases is that A, I want to get the thing heard. He wants to get moving. But in addition, we are

going to have witnesses. What do I tell them? I have told witnesses June 3rd, June 11. What date do I tell them? It is getting to be short notice. As a result of my telephone conversation with Mr. Hackett the other day, I called everybody up and said okay, now, the date is June the 3rd, not June the 11th. It is getting to be a little frustrating. By the same token, insofar the CRG issue is concerned, that could be decided reasonably quickly, I would suspect -- and I don't want to pre-judge it -- on the 3rd, whereas the zoning case could go on and on and on. So that is consideration in terms of continuing to postpone the thing indefinitely to accomodate vacation schedules.

Also, I might say if you want me here on the 11th, I will be here, but I am on the Board of Governors of the Maryland State Bar Association. I am scheduled to be in Ocean City.

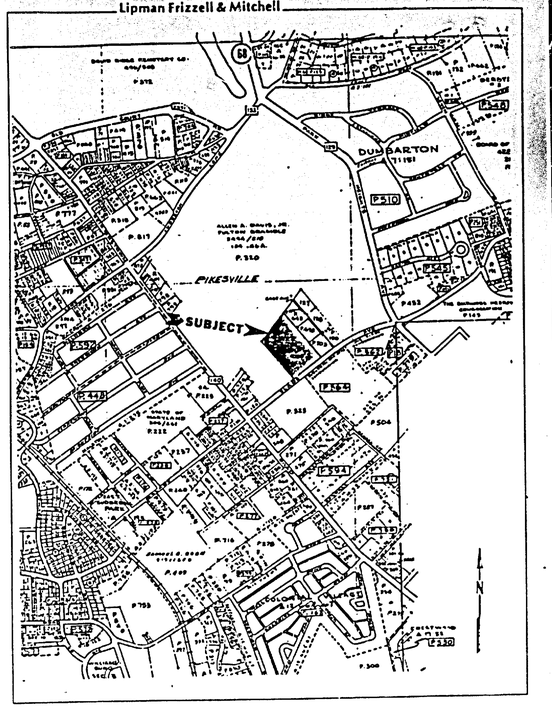
MR. BOLLINGER: I am Chairperson, so I won't be here either. We don't have to have the same Board.

MR. HACKETT: Off of the record. *

(Whereupon there was a discussion off of the record.)

* * *

Lipman Frizzell & Mitchell



87-48-A

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

Your petition has been received and accepted for filing this 30th day of June, 1986.

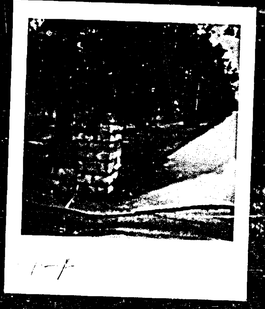
ARNOLD JABLON
Zoning Commissioner

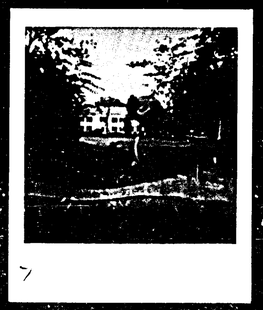
Petitioner David Cordish, et ux
Petitioner's Attorney Glenn Weinberg, Esquire

Received by: James E. Dyer
Chairman, Zoning Plans Advisory Committee









LAW OFFICES
KRAMON & GRAHAM, P. A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201

Photos

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

July 24, 1986

TED ZALESKI, JR.
DIRECTOR

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 451 Zoning Advisory Committee Meeting are as follows:

Property Owner: David Cordish, et ux
Location: N/S Slade Avenue, 1125 feet NE of Reisterstown Road
District: 3rd.

APPLICABLE ITEMS ARE CIRCLED:

(A.) All structures shall conform to the Baltimore County Building Code as adopted by Council Bill #17-85, the Maryland Code for the Handicapped and Aged (A.N.S.I. #117-1 - 1980) and other applicable Codes and Standards.

(B.) A building and other miscellaneous permits shall be required before the start of any construction.

C. Residential: Two sets of construction drawings are required to file a permit application. The seal of a registered in Maryland Architect or Engineer is/is not required on plans and technical data.

D. Commercial: Three sets of construction drawings sealed and signed by a registered in Maryland Architect or Engineer shall be required to file with a permit application. Reproduced seals are not acceptable.

NOTE: (E.) All Use Groups except R-4 Single Family Detached Dwellings require a minimum of 1 hour fire rating for exterior walls closer than 6'-0 to an interior lot line. R-4 Use Groups require a one hour wall if closer than 3'-0 to an interior lot line. Any wall built on an interior lot line shall require a fire or party wall. See Table 401, Section 1u07, Section 1u06.2 and Table 1u02. No openings are permitted in an exterior wall within 3'-0 of an interior lot line.

I. The structure does not appear to comply with Table 505 for permissable height/area. Reply to the requested variance by this office cannot be considered until the necessary data pertaining to height/area and construction type is provided. See Table 401 and 505 and have your Architect/Engineer contact this department.

G. The requested variance appears to conflict with Section(s) _____, _____, _____, of the Baltimore County Building Code.

H. When filing for a required Change of Use/Occupancy Permit, an alteration permit application shall also be filed along with three sets of acceptable construction plans indicating how the existing structure is to be altered in order to comply with the Code requirements for the new use. Maryland Architectural or Engineer seals are usually required. The change of Use Groups are from Use _____ to Use _____, or to Mixed Uses _____, _____, _____. See Section 312 of the Building Code.

I. The proposed project appears to be located in a Flood Plain, Tidal/Riverine. Please see the attached copy of Section 516.0 of the Building Code as adopted by Bill #17-85. Site plans shall show the correct elevations above sea level for the lot and the finish floor levels including basement.

J. Comments:

K. These abbreviated comments reflect only on the information provided by the drawings submitted to the Office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired the applicant may obtain additional information by visiting Room 122 of the County Office Building at 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Frank E. Burnham
BY: C. E. Burnham, Chief
Building Plans Review

6/22/86

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Office of the Zoning Commissioner Date April 29, 1988

FROM Kathleen C. Weidenhammer
County Board of Appeals

SUBJECT Closed File - Case No. 87-48-A
David Cordish, et ux

Inasmuch as no further appeal has been taken from the December 1, 1987 decision of the Circuit Court which affirmed the June 24, 1987 Order of this Board, we are closing the subject file.

There were four large exhibits in this case which were never requested by the Circuit Court. Included in these four exhibits were two which were entered before the Zoning Commissioner (Petitioner's Exhibit #4 and Protestant's Exhibit #4). I have written to respective counsel in this case, advising them that after a period of one year these exhibits will be destroyed unless they have been claimed. If your office wishes to have the above-referenced two exhibits returned to you, please let me know.

CPS-008

PETITION FOR VARIANCE N/S of Slade Ave. 1125' NE of Reisterstown Rd., Third District DAVID CORDISH, et ux.,	*	BEFORE THE DEPUTY
	*	ZONING COMMISSIONER OF
	*	BALTIMORE COUNTY
Petitioners	*	Case No.: 87-48-A

* * * * * * *

MEMORANDUM IN SUPPORT OF PETITION FOR VARIANCE

Petitioners, David Cordish and Penelope Cordish, by John B. Howard and Robert A. Hoffman, their attorneys, file this Memorandum in Support of Their Petition for Variance.

On June 6, 1986, Petitioners filed a Petition for Zoning Variance to permit a side yard setback of two feet in lieu of the required 25 feet so that an addition to their home, including a guest room and a bathhouse, could be constructed.

At the continued hearing on this matter on September 10, 1986, Jeffrey H. Scherr and Michael L. Heikes, on behalf of The Harlan Company submitted a Memorandum in Opposition to the Petitioners' Petition for Variance, the main thrust of which seeks protection of a contemplated project for the contiguous Harlan property described as a "beautiful, high rise, luxury, condominium project" (Harlan Memorandum, page 2). The described project is clearly an impermissible use under the existing D.R.16 zoning classification. In effect, the Harlan Company has described a project which would appropriately require a R.A.E. zoning classification.[1]

It is respectfully submitted that the sole issue before the Deputy Zoning Commissioner is whether Petitioners have met the requisite burden of proof under Section 307 of the Baltimore County Zoning regulations to permit a side yard setback variance. Clearly, uses that are not permitted as of right on adjoining properties should not be considered in determining the appropriateness of such a variance. The impact Petitioners' addition may have on such a proposed development is purely conjecture and speculation on the part of the Harlan Company and irrelevant in determining whether or not Petitioners' variances shoud be granted under the criteria of practical difficulty or hardship.

In Mclean v. Soley 270 Md. 208 (1973), the Court of Appeals stated the standard for granting a variance (although it may vary with specific language adopted in a zoning ordinance) is whether the strict compliance with

[1] Petitioners are of the opinion that a number of the issues raised in the Memorandum in Opposition filed herein relate to the Petitions for Special Hearing and Variance (including variances of 80% over permitted height and 47% over permitted length) filed for Harlan's proposed project and, accordingly, are not being addressed herein.

the zoning regulation would result in "practical difficulty or unreasonable hardship".

The Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974) applied the following definition of practical difficulty:

> 1. Whether compliance with the strict letter of the restrictions. . .would reasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
>
> 2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district or whether a lesser relaxation than that applied for would get substantial relief. . . .
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and safety and welfare secured. Id. at p. 39.

To place this addition in any other location, which would be possible without the need for a variance, would, it is respectfully submitted, present a practical difficulty and undue hardship on Petitioners under the above-stated criteria. Because of Petitioners' family commitments, the guest room and bathhouse have become necessary additions. Overriding considerations of light, security, and continuity with the existing house and formal garden results in any other location for the proposed structure being totally impractical.

The Harlan Company has stated that "Mr. Cordish is attempting to disrupt the Harlan Company's development of its property and that Mr. Cordish has an abundance of other available sites on which to construct his proposed jaccuzi, bathhouse and guest room for which no variance would be necessary" (Harlan Company Memorandum, page 11). In fact, Mr. Cordish had no prior knowledge that this proposed addition would have any effect on Harlan's property and was merely proceeding with an overall master plan for improvement to his home which pre-dated Mr. Harlan's purchase of the adjoining parcel.

For these reasons, and based upon the weight of the testimony which was presented on behalf of Petitioners it is respectfully requested that the Variance be granted.

Respectfully submitted,

John B. Howard

Robert A. Hoffman
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorney for Petitioners

ZONING OFFICE
RECEIVED
OCT 7 1986

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

JAMES D.C. DOWNES (1908-1979)

TELEPHONE (301) 823-4111

TELECOPIER (301) 821-0147

October 7, 1986

HAND-DELIVERED

Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Variance
David Cordish, Petitioner
Our File No.: 1557/19499

Dear Mrs. Jung:

Please accept the enclosed Memorandum in Support of Petition for Variance for filing with respect to the above referenced matter.

Thank you.

Sincerely,

Robert A. Hoffman

RAH/jhr
Enclosure

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

December 5, 1986

Glenn Weinberg, Esquire
Paul Cordish, Esquire
300 Water Street
Baltimore, Maryland 21202

RE: Petition for Zoning Variance
N/S of Slade Avenue, 1125' NE
of Reisterstown Road
3rd Election District
Case No. 87-48-A

Dear Messers. Weinberg & Cordish:

Enclosed please find a copy of the decision rendered in the above referenced case. Please be advised that your Petition for Zoning Variance has been granted, in part, in accordance with the attached Order.

If you have any further questions on the subject matter, please do not hesitate to contact this office.

Very truly yours,

JEAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:bjs

Enclosures

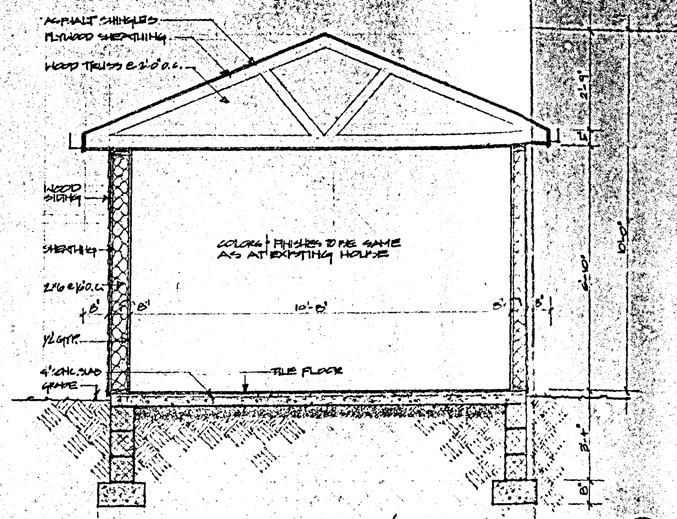
cc: Jeffrey Scherr, Esquire
Ackerman & Graham, Sun Life Bldg., Charles Center, Baltimore, Md. 21201

John B. Howard, Esquire & Robert A. Hoffman, Esquire
Cook, Howard, Downes & Tracy, 210 Allegheny Avenue, Towson, Md. 21204

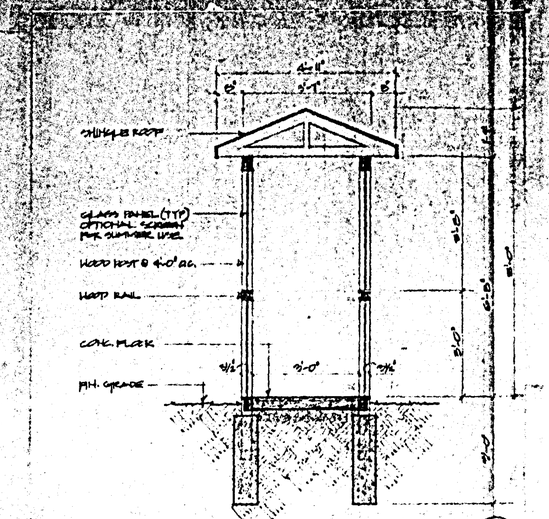
Mr. David S. Feldman
107 Sudbrook Lane, Pikesville, Md. 21208

Ms. Camille Blackburn, Owings Mills Times
409 Washington Avenue, 5th Floor, Towson, Md. 21204

People's Counsel

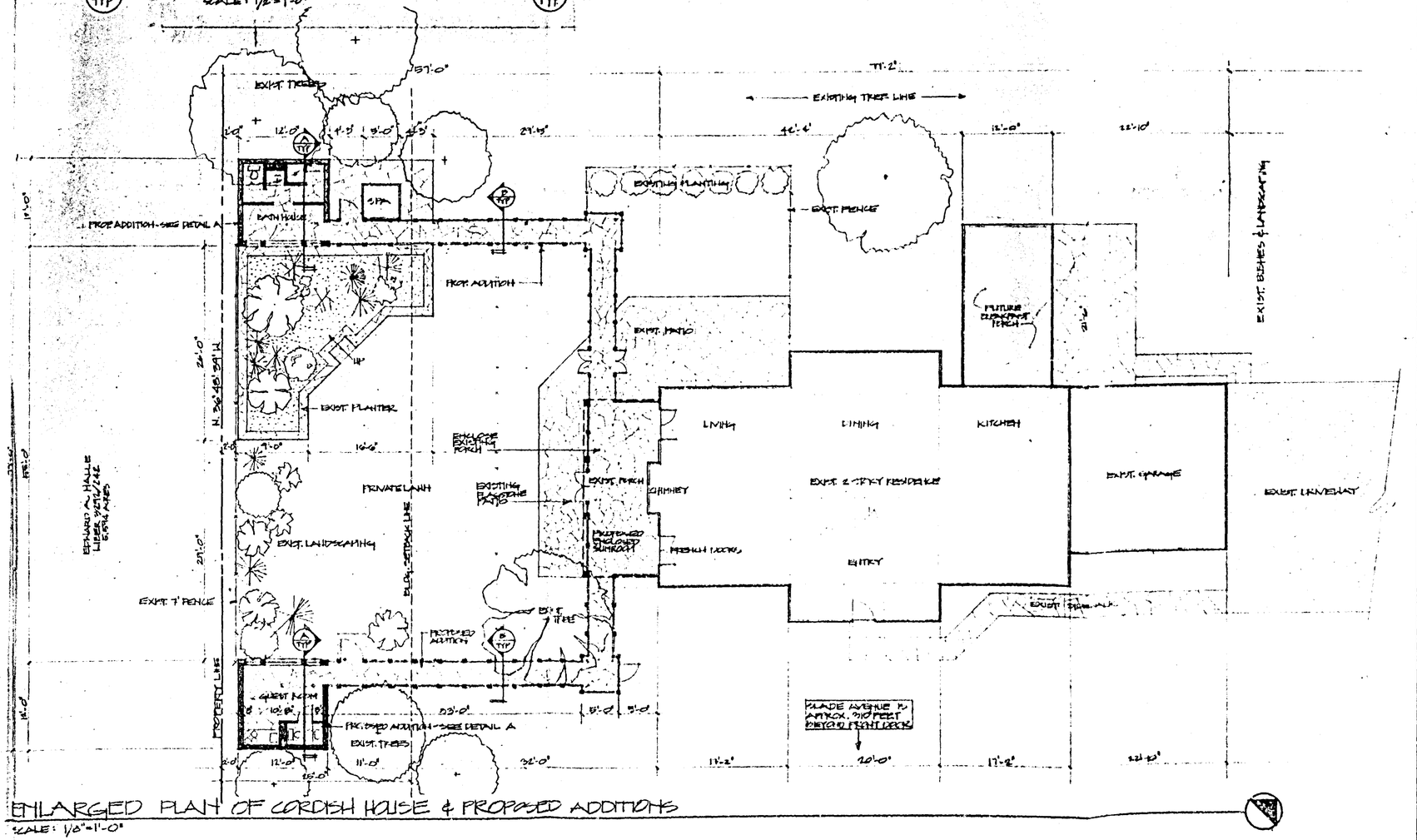


TYPICAL SECTION THRU GUEST ROOM/BATH HOUSE
SCALE: 1/2"=1'-0"



TYPICAL SECTION OF ENCLOSED WALKWAY
SCALE: 1/2"=1'-0"

ENLARGED DETAILS OF:
PLAT FOR ZONING VARIANCE
OWNER: DAVID & PENELOPE CORDISH
DIST. 9; ZONED D6
LIBER 5131 PAGE 207
UTILITIES IN SLADE AVENUE



ENLARGED PLAN OF CORDISH HOUSE & PROPOSED ADDITIONS
SCALE: 1/8"=1'-0"

ART AND ARCHITECTURAL DESIGN
A AND A
STEPHEN A GLASSMAN A.I.A.
ARCHITECTURE
INTERIOR DESIGN
LANDSCAPE ARCHITECTURE
612 PARK AVENUE BALTIMORE, MARYLAND 21201 301 539 7272
325 RIVERSIDE DRIVE 11A NEW YORK, NEW YORK 10025 212 864 1997

TITLE CASE # 87-484-A
FILED 6 JUNE 1986
SCALE AS NOTED

PROJECT DETAILED SKETCH OF PLAT FILED BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY
LOCATION 4 SLADE AVENUE PIKESVILLE, MARYLAND

DATE 20 AUGUST 1986
DRAWN BY
REVISIONS

SHEET 1 of 1

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 1986, a copy of the foregoing Memorandum in Support of Petition for Variance was mailed to Jeffrey H. Scherr, Esquire, and Michael L. Heikes, Esquire, Sun Life Building, Charles Center, Baltimore, Maryland 21201, Attorneys for the Harlan Company of Maryland.

ROBERT A. HOFFMAN

RE: Petition for Variance
N/S of Slade Avenue, 1125' NE of Reisterstown Rd.
3rd District
David Cordish, et ux, Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 87-48-A

* * * * * * *

MEMORANDUM OF THE HARLAN COMPANY OF MARYLAND IN OPPOSITION TO THE PETITION FOR VARIANCE OF DAVID CORDISH

The Harlan Company of Maryland, Inc., a Maryland corporation, ("The Harlan Company") owns a tract of land of approximately 6 acres adjacent to the property that is the subject of this zoning variance petition. The Harlan Company seeks to intervene in this proceeding because it will suffer direct and immediate harm should the Petitioner, David Cordish, be granted the zoning variance he seeks. For the reasons stated below, Petitioner has failed to meet the applicable legal requirements and his petition for variance should therefore be denied.

FACTUAL BACKGROUND

The Harlan Company acquired property adjacent to Mr. Cordish's property in November 1985. It is situated immediately to the west of Mr. Cordish's property which is comprised of three lots and contains 3.08± acres. Prior to its sale, The Harlan Company tract, like Mr. Cordish's property, was rezoned in 1984 from DR-3.5 to DR-16.

After purchasing its property, the Harlan Company began plans for development in order to take full advantage of the DR-16 zoning status. One of the first steps in the preparation of plans was for Leonard Harlan, President of The Harlan Company, to contact the neighboring property owners, including Mr. Cordish.

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SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MD. 21201
(301) 752-8030

During his meeting with Mr. Harlan, Mr. Cordish threatened to do everything possible to block the Harlan Company's development of the property. Thereafter, the Harlan Company hired an engineer, an architect, and devoted substantial time and resources to the prospective development of a beautiful, highrise, luxury condominium project. Presently a CRG Plan has been filed seeking to construct a highrise condominium building on the property.

The development of the Harlan Company property is subject to Baltimore County residential transition areas ("RTA") which provide that the Harlan Company must maintain an RTA of at least three hundred (300) feet between its development and the dwelling of Mr. Cordish (as well as other neighbors). See 1B01.1B1.(a) B.C.Z.R. Within the RTA, building restrictions apply which are inapplicable to other portions of the Harlan Company property.

Mr. Cordish's petition, seeks a zoning variance in order to construct an extended passageway, thirty-three (33) feet long, leading to a jacuzzi, a small bathhouse and a small guest room within two feet of the property line he shares with the Harlan Company. Should Mr. Cordish's petition be granted, and his construction completed the dimensions of the RTA for the Harlan Company property could be changed significantly, potentially reducing by ten thousand two hundred thirty-eight (10,238) square feet the area on which the Harlan Company may build. By permitting the variance and construction, the RTA may extend approximately forty-eight (48) feet further inside the Harlan Company's property line and would disrupt and adversely affect the Harlan Company's development plans.

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Notwithstanding Mr. Cordish's threats, the Harlan Company does not oppose Mr. Cordish's variance so long as the variance does not impact upon the Harlan Company's RTA. At a recent public hearing before the Pikesville Community Growth Corporation (PCGC), Leonard Harlan offered to drop all opposition to Mr. Cordish's proposed variance if Mr. Cordish would agree that the variance would not affect the Harlan Company's RTA. Responding on behalf of Mr. Cordish, Glenn Weinberg, Mr. Cordish's attorney, stated that Mr. Cordish was intent on blocking the Harlan Company's development and therefore Mr. Cordish would not be amenable to any such agreement.

Mr. Cordish's motivation for requesting the variance is plain in light of his refusal to agree that his variance would not impact the Harlan Company's RTA and its development of the neighboring property, and in light of the numerous available alternative sites on his 3.08± acres of property on which to construct his jacuzzi, bathhouse and guest room which would not require a zoning variance nor disrupt the Harlan Company's development of its property. Mr. Cordish cannot demonstrate any unreasonable hardship or practical difficulty caused by strict compliance with zoning regulations. In fact, granting Mr. Cordish's petition for variance would have a detrimental impact on the public welfare and the interests of the community and specifically The Harlan Company property next door.

A. As a party who would be adversely affected should Mr. Cordish's zoning variance be granted, the Harlan Company has standing to intervene and oppose Mr. Cordish's petition for variance.

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The Harlan Company, as explained in the foregoing factual summary has a significant stake in the outcome of this proceeding. As Mr. Cordish's neighbor, should the variance be permitted, the Harlan Company's RTA could be altered, thereby severely disrupting the Harlan Company's plan for developing its property. In light of the potential adverse impact of the proposed variance, there can be no question that the Harlan Company has standing to intervene and assert its reasons for opposing the zoning variance.

There is ample and uncontradicted support in Maryland law for the right of a neighboring landowner to intervene and participate in zoning proceedings when he has direct interest in the outcome. See, Hyson v. Montgomery County Council, 242 Md. 55, 67, 217 A.2d 578, 585-86 (1966) (rights of interested parties to present testimony and cross-examine witnesses), Baltimore County Code, Section 22-36 (right of affected landowner to sue to enjoin violations of zoning regulations or restrictions). The Court of Special Appeals in Boehm v. Anne Arundel County, 54 Md. App. 497, 459 A.2d 590 (1982), enumerated the procedural rights that due process affords those who may be adversely affected by the decision of an administrative agency. Quoting B. Schwartz, Administrative Law, § 67 (1976), the court recognized an affected party's right to notice, including an adequate formulation of the subjects and issues in the case, the right to present evidence and rebut adverse evidence, cross-examine witnesses, appear with counsel, have the decision based only upon evidence introduced into the record at the hearing, and have a complete record including a

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transcript of the testimony and arguments and documentary evidence. Bohem, 54 Md.App. at 512.

Because of the significant interest jeopardized by Mr. Cordish's proposed variance, the Harlan Company is entitled to the full panoply of due process rights necessary to protect its property interests in this matter. Maryland law affords the Harlan Company the right to meaningful participation in this proceeding in order to adequately protect its property rights.

B. The Residential Transition Area Regulations should be held inapplicable when, as here, two adjoining developments are proposed simultaneously.

Mr. Cordish's proposed construction, as explained in the introduction of this memorandum, once completed, could alter significantly the dimensions on which the Harlan Company could develop its adjacent property. However, because Mr. Cordish's additions are proposed simultaneously with the proposed development of the Harlan property, the Commissioner should find that even if the variance and development are permitted to Mr. Cordish, there should be no impact on the Harlan Company's RTA and Cordish's proposed development should not otherwise limit the Harlan Company's development.

There is authority in Baltimore County for the very sensible proposition that when adjacent properties are being simultaneously developed, it would be unreasonable to apply restrictive regulations on one development based on the proposed development of the other. The rationale behind this rule is that RTA regulations are designed to govern the area between an existing dwelling and proposed construction and have no applicability when both developments are simply proposals and not

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yet existing. Therefore, as in this case where two adjoining property owners seek to develop their properties simultaneously and the RTA cannot be maintained if both development proposals are permitted, it would be unfair to prohibit one development on the basis of a mere proposal for the other. The resolution under such circumstances is to waive the RTA regulations as to both developments.

This result was reached when, by letter of March 15, 1978 Leslie Graff, the Director of Planning and S. Eric DiNenna, the Zoning Commissioner (letter attached as Exhibit 1) held that when two developments were processed and received tenative approval at approximately the same time, the transition zone is not applicable between the two adjoining portions of the two developments. The identical situation was addressed in March, 1980 when in a letter by Robert Dyer, the Zoning Supervisor, (attached as exhibit 2), the opinion was once again expressed that RTA regulations are inapplicable when two adjoining developments are proceeding simultaneously. As Mr. Dyer explained, when "there are no existing record lots or dwellings which form the basis of establishing residential transition areas,... it would be unreasonable to apply restrictive use regulations on one development that are based on proposed lots in another development." Thus, the Baltimore County Office of Planning and Zoning has made clear on at least two occasions that RTAs are inapplicable in the case of simultaneous development of adjacent properties.

In light of the previous decisions of this office,

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the RTA regulations should be inapplicable to the proposed developments of the Harlan Company and David Cordish. Here, where Mr. Cordish has planned a jacuzzi, bathhouse and guestroom on his property, and the Harlan Company has proposed a luxury highrise condominium project on its property, neither development should be prohibited because of RTA regulations which would be applicable only if the development of either property had already been completed.

C. Mr. Cordish has not and cannot meet the legal requirements for obtaining a zoning variance.

Should the Commission decide that the RTA regulations are applicable to the Harlan Company development and that the Cordish construction would effect the area on which the Harlan Company could build, the Harlan Company strenuously objects to the granting of a variance to Mr. Cordish because he has failed to satisfy the legal requirements for a zoning variance. The legal requirements Mr. Cordish must satisfy in order to obtain a zoning variance are straightforward and a review of those requirements renders obvious the legal inadequacy of Mr. Cordish's petition. Baltimore County Zoning Regulations, Section 307 provides that the Zoning Commissioner has the authority to grant a variance or special exception only in cases where strict compliance with Baltimore County Zoning Regulations would result in practical difficulty or unreasonable hardship. McLean v. Soley, 270 Md. 208 (1973). These requirements were clarified by the Court of Appeals in Carney v. City of Baltimore, 201 Md. 130, 137, 93 A.2d 74 (1952) where the Court said:

> The need sufficient to justify an exception must be substantial and urgent and not merely for the con-

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venience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and the liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendancy to cause discrimination and eventually destroy the usefulness of the ordinance. (Citation omitted)

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

201 Md. at 137.

In the Carney case, the court upheld the decision of the Board of Appeals denying a variance to a homeowner who sought a lesser side yard requirement so that he could add a bedroom and bath on the ground floor of his house to accommodate his wife's physical condition. The adjacent property owner objected because the variance would deprive him of light in his dining room. The court upheld the Board's determination that the medical convenience to Mrs. Carney was insufficient to satisfy the legal requirements for a variance.

Certainly Mr. Cordish's asserted basis for the variance he seeks pales in comparison to that which was rejected in Carney. Mr. Cordish has asserted no medical reasons for the need to construct his jacuzzi, bathhouse and guest room, nor has he adequately explained why his proposed construction cannot be undertaken on another portion of his property aside from offering the frail excuse that "athletic fields" and a vegetable garden preclude alternative sites.

A view of Mr. Cordish's property reveals that what

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Mr. Cordish claims are "athletic fields" is simply open space. There are no baseball diamonds or football fields with goal posts on Mr. Cordish's property, only a substantial plot of vacant land. The slight inconvenience of removing or altering his alleged athletic fields or his vegetable garden pales in comparison to the burden on The Harlan Company caused by the potential changed to its RTA should Mr. Cordish's variance and construction be granted. Additionally, Mr. Cordish has not explained why the jacuzzi, bathhouse and guest room cannot be constructed closer to the house (a configuration which would require no variance at all) without the elongated covered passageway which, as proposed, extends beyond the side yard setback. Nowhere in Mr. Cordish's petition does he explain why the jacuzzi, bathhouse and guest room must be placed in such remote locations.

More recently, in the McLean decision, the Court of Appeals, in explaining how to determine whether the petitioner has demonstrated practical difficulty in complying with zoning regulations, set out the following three criteria:

(1) Whether compliance with the restrictions would unreasonably prevent the owner from using his property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

(2) Whether a grant of the variance would do substantial justice to the applicant as well as to other property owners.

(3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

McLean, 270 Md. at 214-15.

Mr. Cordish meets none of the McLean criteria. As

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the plat of his property reflects, Mr. Cordish could easily construct his jacuzzi, bathhouse and guest room on several other sites, all of which would be in conformity with the applicable regulations. Secondly, granting a variance to Mr. Cordish could work a substantial injustice to the Harlan Company whose development plans might would be unnecessarily hampered. Thirdly, by damaging a neighbor's development plans without justification and without exploring alternatives in conformity with the applicable regulations, Mr. Cordish's variance would certainly not be in the spirit of the ordinance nor would it further the public safety or welfare.

Moreover, the public welfare and the welfare of the Pikesville community would be significantly damaged should Mr. Cordish be permitted to thwart the Harlan Company's development. The Harlan Company has proposed a highrise, luxury condominium project which, once completed, would be occupied by residents who would be regular customers in Pikesville's shops, stores and banks, frequent users of Pikesville's services, and who would represent an increase in the Pikesville tax base. Therefore, the entire Pikesville community would stand to benefit and be further solidified by such an influx of affluent, desirable residents. To block the construction of the Harlan Company's condominium project would surely have a significant and detrimental impact on the welfare of the community.

D. Mr. Cordish's petition reflects an absence of good faith on his part and an intent to injure the Harlan Company.

A review of Mr. Cordish's petition in consideration of the relevant surrounding circumstances further highlights the

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admission by his attorney at the PCGC Meeting and reflects Mr. Cordish's true intent in this matter; to block the development of the property adjacent to his owned by the Harlan Company. As the evidence will indicate, Mr. Cordish was very bitter about the acquisition by the Harlan Company of the property next to his after the property had been rezoned DR-16. Mr. Cordish has made no secret of his intent to block, wherever possible, the Harlan Company's efforts to take advantage of the DR-16 zoning and develop the property. To that end, Mr. Cordish is attempting to obtain permission to constuct an elaborate passageway at the end of which he will place a jacuzzi, bathhouse and guest room, leaving only two feet between his proposed construction and the property line. By constructing these buildings so close to the property line, Mr. Cordish is attempting to alter significantly the RTA of the Harlan Company and force it to forego development of property which but for Mr. Cordish's variance, could be developed.

Mr. Cordish's ill-disguised plan to disrupt the Harlan Company's development of its property should be recognized as the attempt to injure the Harlan Company that it is. Mr. Cordish has an abundance of other available sites on which to construct his proposed jacuzzi, bathhouse and guest room for which no variance would be necessary.

Mr. Cordish's assertion that his mysterious "athletic fields" preclude construction in his spacious front yard is ludicrous and his logic defying proposal to construct his jacuzzi, bathhouse and guest room thirty-three (33) feet from his house

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when they could easily be built much closer to the house is further evidence that his true intention is to damage the Harlan Company's development plans and not to enhance his own property. Plainly, Mr. Cordish is attempting to use the Zoning Commission, not for a land use objective of his own, but instead for the improper purpose of injuring his neighbor. The Maryland Court of Appeals has suggested that under circumstances where an individual in bad faith or with a spiteful motive attempts to use public authorities to injure another's business, he may be held liable in tort for malicious interference with business. See, Beane v. McMullen, 265 Md. 585, 604 (1972). The Commission should recognize and resist Mr. Cordish's improper attempt to financially damage the Harlan Company through his proposed zoning variance.

CONCLUSION

Under these circumstances, the Commissioner should find that because the Cordish and Harlan properties are being developed simultaneously, the RTA regulations should be held inapplicable. Moreover, the Cordish variance should be denied because Mr. Cordish has not met his burden of showing any practical difficulty or undue hardship by strict compliance with the zoning regulations. In fact, the evidence reflects a multitude of alternatives for Mr. Cordish's construction which would neither require a variance nor interfere with the development of his neighbor's property. Because M . Cordish's sole purpose in seeking this variance is to maliciously disrupt

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the lawful development of his neighbor's land, his petition should be denied.

Respectfully submitted,

Jeffrey J. Scherr

Michael L. Helkes

Kramon & Graham, P.A.
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on this 10th day of September, 1986, a copy of the foregoing Memorandum was hand delivered to Glenn Weinberg, Esquire, 300 Water Street, Baltimore, Maryland 21201, Attorney for Petitioner.

Michael L. Helkes

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CHARLES CENTER
BALTIMORE, MD. 21201
(301) 752-6030

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

March 21, 1980

Julius W. Lichter, Esquire
305 West Chesapeake Avenue
Towson, Maryland 21204

RE: Developments of Oakhurst and Village of White Oak, Section 3
11th Election District

Dear Mr. Lichter:

Your letter of November 28, 1979, addressed to the Director of Planning, has been referred to me for reply.

I am enclosing a copy of this office's correspondence dated March 15, 1978, directed to Mr. Charles E. Fick, P.E., engineer for the development of Oakhurst. This correspondence correctly reflects this office's opinion of the effect, or in this case the noneffect, of the residential transition area regulations upon two adjoining subdivisions that are being processed simultaneously.

The above opinion was based, at least in part, on the following facts:

1. Both developers do have a right to begin processing their respective developments at the same time. They also have a right to be informed as to the Baltimore County Zoning Regulations that will affect the development of their property.

2. In many instances involving the simultaneous processing of two adjoining developments, there are no existing record lots or dwellings which form the basis of establishing residential transition areas and, in my opinion, it would be unreasonable to apply restrictive use regulations on one development that are based on proposed lots in another development; i.e., until such time as the lots are actually recorded, there is no guarantee that the subdivision will be processed to the point of recordation.

If you have any questions regarding the above, please call me.

Very truly yours,

JAMES E. DYER
Zoning Supervisor

JED/sf
Enclosure

cc: Mr. John D. Seyffert, Director, Office of Planning and Zoning
Mr. William E. Hammond, Zoning Commissioner
Mrs. Jean M. H. Jung, Deputy Zoning Commissioner
Mr. Leonard S. Jacobson, County Solicitor

Baltimore County
office of planning and zoning
TOWSON, MARYLAND 21204
(301) 494-3353

S. ERIC DINENNA
ZONING COMMISSIONER

March 15, 1978

Mr. Charles E. Fick, P.E.
George William Stephens, Jr.,
and Associates, Inc.
303 Allegheny Avenue
Towson, Maryland 21204

RE: Tentative Plans for Oakhurst,
Approved February 22, 1977,
and Village of White Oak, Section 3, Approved March 30,
1977 - 11th Election District

Dear Mr. Fick:

We are in receipt of your letter of February 2, 1978, in which you request information concerning the above referenced matter.

Inasmuch as both of these developments were processed and received tentative approval at approximately the same time, the transition zone is not applicable between the two adjoining portions of the two developments. It should be noted, however, that this decision is based upon the requirement that both developments proceed to final completion in accord with said tentative plans, including any subsequently approved development plans which must be in general accord with the above dated tentative approved plans.

If you have any further questions regarding this matter, please feel free to contact either one of us.

Very truly yours,

LESLIE H. GRAEF
Director of Planning

S. ERIC DI NENNA
Zoning Commissioner

LHG:SED:DAS:smw

PETITION FOR ZONING VARIANCE

3rd Election District

Case No. 87-48-A

LOCATION: North Side of Slade Avenue, 1125 feet Northeast of Reisterstown Road

DATE AND TIME: Tuesday, August 12, 1986, at 9:30 a.m.

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

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

Petition for Zoning Variance to permit a side yard setback of 2 feet in lieu of the required 25 feet

Being the property of David Cordish, et ux, as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) 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 JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

PC-637
Petition filed 9/23/86 by Counsel for Petitioner
Petitioner's Exhibit 1 - Plat to accompany Petition for Zoning Variance

RECEIVED
SEP 24 1986
ZONING OFFICE

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

JAMES D. C. DOWNES (1906-1979)

TELEPHONE (301) 823-4111

TELECOPIER (301) 821-0147

September 24, 1986

HAND-DELIVERED

Mrs. Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
Case No.: 87-48-A
David S. Cordish, Petitioner

Dear Mrs. Jung:

Please enter John B. Howard's and this firm's appearance on behalf of Petitioner in the above referenced case.

As we have just been retained by Mr. Cordish, we respectfully request an extension of time for filing a reply memorandum to that submitted by the Harlan Company of Maryland. We believe an additional twelve days beyond the original two weeks, or October 8, will be sufficient. We would assume this is satisfactory unless we hear from you to the contrary.

Thank you for your attention to these matters.

Yours truly,

Robert A. Hoffman

RAH/jhr
cc: David S. Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey H. Scherr, Esquire

Phone to Hoffman
Please send copy of letter to attorney for protestants - talked to secretary - "was overlooked..." copy will be going out to Jeff Scherr". 9/24/86

9/24/86

RECEIVED
SEP 23 1986
ZONING OFFICE

...mber 23, 1986

...Variance

...ioner

Please enter John B. Howard's and this firm's appearance on behalf of Petitioner in the above referenced case.

As we have just been retained by Mr. Cordish, we respectfully request an extension of time for filing a reply memorandum to that submitted by The Harlan Company of Maryland. We believe an additional twelve days beyond the original two weeks, or October 8th, will be sufficient. We would assume this is satisfactory unless we hear from you to the contrary.

Thank you for your attention to these matters.

Yours truly,

Robert A. Hoffman

RAH/ddw

cc: David Cordish, Esquire
Glenn Weinberg, Esquire

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

Arnold Jablon
Zoning Commissioner

Dennis F. Rasmussen
County Executive

May 27, 1987

Jeffrey H. Scherr, Esquire
Kramon & Graham, P.A.
Sun Life Building, Charles Center
Baltimore, Maryland 21201

RE: Case Nos. 87-48-A, 87-196-SPH, and 87-213-XA
The Halle/Harlan Company Property

Dear Mr. Scherr:

Your letter of May 1, 1987 to Arnold Jablon, Zoning Commissioner, has been referred to me for reply. You have requested confirmation that the use of the existing residence at 6 Slade Avenue for a recreational social center (community building) exclusively for the residents of the condominium would not require any form of zoning approval (emphasis on a special exception requirement and R.T.A. requirements).

This particular question came up at the November 13, 1986 C.R.G. meeting wherein I indicated as a response to questions by yourself and Rob Hoffman that I was fairly certain that Mr. Jablon would take the direction of the Board of Appeals of Baltimore County in Case No. 84-52-X, through the Maryland Court of Special Appeals, and interpret that a change in a building use only with no apparent exterior changes would not be subject to the R.T.A. requirements. I have confirmed that a special exception would not be required with Mr. Dyer and Mr. Jablon, provided that the use is limited to the residents of the condominium, and that the R.T.A. requirements in Section 1B01.1.B.1.b, BCZR, would not apply, provided that there is no exterior change proposed to the building from the way it existed as a single family dwelling.

The required change of occupancy permits and final revised site plan would have to be approved by this office, provided that the special exception and variances in Case 87-213-XA are granted.

Very truly yours,

W. Carl Richards

W. CARL RICHARDS, JR.
Zoning Coordinator

WCR,Jr:kkb

cc: John B. Howard, Esquire

87-213-A
5/1/87 Faxed all parties

LAW OFFICES
KRAMON & GRAHAM, P. A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
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TELECOPIER
(301) 539-1269

BEL AIR OFFICE:
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BEL AIR, MARYLAND 21014
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ANDREW JAY GRAHAM*+
JAMES M. KRAMON*+
LEE H. OGBURN
JEFFREY H. SCHERR
NANCY E. GREGOR*
JAMES P. ULWICK*+
PHILIP M. ANDREWS
GERTRUDE C. BARTEL
MARILYN HOPE FISHER*◊
MICHAEL L. HICKEY
PAUL S. TEITELBAUM
KATHLEEN A. BIRRANE
NANCY FELIX MANGANI

*ALSO ADMITTED IN NY
+ALSO ADMITTED IN DC
◊ALSO ADMITTED IN NJ
#ALSO ADMITTED IN GA
ALSO ADMITTED IN FL

May 1, 1987

RECEIVED
MAY 5 1987
ZONING OFFICE

Arnold E. Jablon, Esquire
Zoning Commissioner
for Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Six Slade Avenue
Proposed Community Building

Dear Mr. Jablon:

As you are aware, The Harlan Company of Maryland, Inc. owns a six-acre tract known as Six Slade Avenue and plans to construct a multi-story luxury condominium building on the property. Situated on the property is a neo-Georgian brick mansion, which was the residence of the prior owner. This structure is in good condition and has, in fact, been selected as the 1987 Symphony Decorator's House.

The Harlan Company very much wants to retain this gracious old house and believes that, if incorporated into the plans for the project, it will be ideally suited for use as a recreational social center, to be used exclusively by the condominium owners. Such use is allowed pursuant to Section 1B01.1B.1.c.10 of the Baltimore County Zoning Regulations. I should note that there will be no structural changes made to the building, but that this three-story building is somewhat taller than thirty-five feet.

On April 26, 1987, I spoke with Mr. Carl Richards about use of the house as the community building described above. Based upon the information set forth above, Mr. Richards informed me that it will not be necessary to file a Petition for Special Exception to use the building for the purposes stated, and also that the fact that the house is above thirty-five feet in height does not necessitate that The Harlan Company secure any form of zoning approval. I would very much appreciate it if you would confirm Mr. Richard's position with respect to these matters.

Arnold E. Jablon, Esquire
May 1, 1987
Page Two

Thank you very much for your cooperation.

Sincerely,

Jeffrey H. Scherr

JHS:amk

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

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MAY 21 1987
ZONING OFFICE

May 20, 1987

NOTICE OF POSTPONEMENT and REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 87-48-A

DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
VAR -side yard setback of 2 ft. in lieu of required 25 ft.
12/05/86 -D.Z.C. granted VAR.
3rd Election District
2nd Councilmanic District

Case No. CBA-86-157 (Halle Property) which had been assigned for hearing on Wednesday, June 3, has been POSTPONED and will be held sub curia; no reset date at this time.
Case No. 87-48-A (David Cordish, et ux) which had been assigned for hearing on Wednesday, June 3, has been POSTPONED at the request of Counsel for Appellant and has been

REASSIGNED FOR: TUESDAY, June 9, 1987 at 11:00 a.m.

cc: John B. Howard, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
Cynthia Hahn, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire — Counsel for Appellee
Jeffrey Scherr, Esquire — " " "
Paul Teitelbaum, Esquire
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
Patrick D. Hanley, Esquire — " " "
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Robert Covahey
David Fields
Edward McDonough
James A. Markle
Jorge Austrich — Jeanne Wachter

Kathi Weidenhammer
Administrative Secretary

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

July 27, 1987

filed 1/23/87 by Petitioner Paul Cordish

Jeffrey Scherr, Esquire
KRAMON & GRAHAM, P.A.
Sun Life Building
Charles Center
Baltimore, MD 21201

RE: Case No. 87-48-A
Paul Cordish, et ux

Dear Mr. Scherr:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Mr. David O. Feldman
Mr. Allan Hirsh
Ms. Jeanne Wachter
Phyllis Cole Friedman, Esquire
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

RECEIVED
JUL 29 1987
ZONING OFFICE

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/s OF SLADE AVENUE, 1125' NE OF REISTERSTOWN ROAD 3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT

: CIRCUIT COURT
: FOR
: BALTIMORE COUNTY
: AT LAW
: CG Doc. No. 44
: Folio No. 126
: File No. 87-CG-3256

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Thomas J. Bollinger, and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John B. Howard, Esquire, and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204, Counsel for Petitioners; Paul L. Cordish, Esquire, and Glenn L. Weinberg, Esquire, Suite 400, 300 Water Street, Baltimore, MD 21202; Jeffrey Scherr, Esquire, Kramon & Graham, P.A., Sun Life Building, Charles Center, Baltimore, MD 21201, Counsel for Protestant, The Harlan Company; David O. Feldman, 107 Sudbrook Lane, Baltimore, MD 21208, Protestant; Allan Hirsh, 11 Slade Avenue, Baltimore, MD 21208, Protestant; Jeanne Wachter, 301 Reisterstown Road, Baltimore, MD 21208; and Phyllis Cole Friedman, Esquire, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County, Room 200, Courthouse, Towson MD 21204

Case No. 87-48-A
David Cordish, et ux

2.

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John B. Howard, Esquire, and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204, Counsel for Petitioners; Paul L. Cordish, Esquire, and Glenn L. Weinberg, Esquire, Suite 400, 300 Water Street, Baltimore MD 21202; Jeffrey Scherr, Esquire, Kramon & Graham, P.A., Sun Life Building, Charles Center, Baltimore, MD 21201, Counsel for Protestant, The Harlan Company; David O. Feldman, 107 Sudbrook Lane, Baltimore, MD 21208, Protestant; Allan Hirsh, 11 Slade Avenue, Baltimore, MD 21208, Protestant; Jeanne Wachter, 301 Reisterstown Road, Baltimore, MD 21208; and Phyllis Cole Friedman, Esquire, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, on this 27th day of July, 1987.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

January 5, 1987

Jeffrey Scherr, Esquire
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201

John B. Howard, Esquire
Robert A. Hoffman, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
Towson, Maryland 21204

Mr. David O. Feldman
107 Sudbrook Lane
Baltimore, Maryland 21208

Mr. Allan Hirsh
11 Slade Avenue
Baltimore, Maryland 21208

Phyllis Cole Friedman, Esquire
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

RE: PETITION FOR ZONING VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd.
3rd Election District
David Cordish, et ux - Petitioners
Case No. 87-48-A

Ms. Friedman and Gentlemen:

Please be advised that on December 23, 1986, an appeal was filed by the Appellants/Petitioners, David S. and Penelope A. Cordish, from the decision rendered by the Deputy Zoning Commissioner in the above-entitled matter.

You will be notified of the date and time of the appeal hearing when it has been scheduled by the County Board of Appeals (494-3180).

Very truly yours,
Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ:med

cc: Paul L. Cordish, Esquire
Glenn L. Weinberg, Esquire
Suite 400, 300 Water Street
Baltimore, Maryland 21202

Date: 1/5/87

RE: PETITION FOR ZONING VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd.
3rd Election District
David Cordish, et ux - Petitioners
Case No. 87-48-A
APPEAL FILED BY: Appellants/Petitioners, David S. and Penelope A. Cordish

1. Petition
2. Description of Property
3. Certificate of Posting
4. Certificates of Publication
5. Zoning Advisory Committee Comments
6. Comments from the Director of Planning
7. Entries of Appearance
8. Order of Deputy Zoning Commissioner
9. Memorandum in Support of Petition
10. Memorandum of The Harlan Co. in Opposition to Petition for Variance
11. Letter of Appeal of David S. and Penelope A. Cordish, dated 12/22/86, and received for filing on 12/23/86
12. Letter to all parties from Arnold Jablon, Zoning Commissioner, dated 1/5/87, advising of the filing of Cordish appeal
13. Petitioners' Exhibits Nos.:

[ORIGINALS SENT TO BOARD OF APPEALS]
1. Plat, dated 5/19/8 (?)
2. Plat, dated 8/26/86
3a. Color photograph, dated 8/23/86
3b. Color photograph, dated 8/23/86
3c. Color photograph, dated 8/23/86
3d. Color photograph, dated 8/23/86
3e. Color photograph, dated 8/23/86
3f. Color photograph, dated 8/23/86
3g. Color photograph, dated 8/23/86
[Large Board Exhibit] 4. Colored plat, dated 8/26/86

14. Protestants' Exhibits Nos.:

[ORIGINALS SENT TO BOARD OF APPEALS]
1. Letter to Ron Lipman from David S. Cordish, dated 1/9/86
2. Letter to David S. Cordish from M. Ronald Lipman, dated 1/13/86
3. Letter to Ron Lipman from David S. Cordish, dated 1/16/86
[Large Board Exhibit] 4. 2 Drawings of 6 Slade Avenue by Beyer, Blinder, Belle
[Large Board Exhibit] 5. Site Plan with Typical Floor re: 6 Slade Avenue
[Large Board Exhibit] 6. Drawing of Buildable Area, Slade Avenue, dated 8/4/86
7. a. Letter to Jeffrey H. Scherr from M. Ronald Lipman, dated 11/19/85
b. Ticor Title Insurance Co. Commitment for Title Insurance
c. Blank Agreement of Sale, prepared 11/4/85 re: Edward A. and Ellen W. Halle
d. Map drawn by Lipman, Frizzell & Mitchell re: Slade Ave.
e. Aerial Photograph
f. Zoning Map drawn by Lipman, Frizzell & Mitchell
g. Plat, dated 11/21/85, re: Halle Property

8. Plat drawn by D. S. Thaler & Assoc., Inc., re: Halle Property
9a. Color polaroid, dated 8/14/86, re: West end Cordish House - full load of chipped wood
9b. Color polaroid, dated 8/14/86, re: West end of Cordish House
9c. Color polaroid, dated 8/14/86, re: West end of Cordish House - Tree Expert at Cordish Residence
9d. Color polaroid, dated 8/14/86, re: West end of Cordish House - Large tree removed
9e. Color polaroid, dated 8/15/86, re: West end of Cordish House - Cut up tree left by contractor
10. Impact of Proposed Cordish Expansion on Buidable Area, dated 8/12/36
11. Census Tract Map re: Market Area

Paul L. Cordish, Esquire — Attorney for Appellants/Petitioners, David S. and Penelope A. Cordish
Glenn L. Weinberg, Esquire
Suite 400, 300 Water Street
Baltimore, Maryland 21202
(539-4141)

Jeffrey Scherr, Esquire — Attorney for Appellees/Protestant, The Harlan Co.
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(752-6030)

John B. Howard, Esquire — Attorneys for Appellants/Petitioners, David S. and Penelope A. Cordish
Robert A. Hoffman, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
Towson, Maryland 21204
(823-4111)

Mr. David O. Feldman — Appellee/Protestant
107 Sudbrook Lane
Baltimore, Maryland 21208

Mr. Allan Hirsh — Appellee/Protestant
11 Slade Avenue
Baltimore, Maryland 21208

Phyllis Cole Friedman, Esquire
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

Norman E. Gerber — Request Notification
James Hoswell " "
Arnold Jablon " "
Jean M. H. Jung " "
James E. Dyer " "
Margaret E. du Bois, Appeals Clerk, Zoning Office " "

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

FEB 9 1987

ZONING OFFICE

February 5, 1987

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

CASE NO. 87-48-A — DAVID CORDISH, ET UX

N/s Slade Ave., 1125' NE of Reisterstown Rd.

3rd District

Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the req. 25 ft.

ASSIGNED FOR: THURSDAY, JUNE 11, 1987, at 10 a.m.

CC: Paul Cordish, Esq. & Glenn L. Weinberg, Esq. — Counsel for Appellants/Petitioners
Jeffrey Scherr, Esq. — Counsel for Appellees/Protestant, The Harlan Co.
John B. Howard, ESq. Robert A. Hoffman, Esq. — Counsel for Appellants/Petitioners
David O. Feldman — Appellee/Protestant
Allan Hirsh — " "
Phyllis C. Friedman — People's Counsel
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer
Betty duBois

June Holmen, Secretary

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

RECEIVED
JUN 25 1987
ZONING OFFICE

June 24, 1987

John B. Howard, Esquire
COOK, HOWARD, DOWNES & TRACY
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21204

RE: Case No. 87-48-A
David Cordish, et ux

Dear Mr. Howard:

Enclosed is a copy of the final Opinion and Order passed today by the County Board of Appeals in the subject case.

Sincerely,
Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

c: Robert A. Hoffman, Esquire
Paul L. Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire
Mr. David O. Feldman
Mr. Allan Hirsh
Phyllis Cole Friedman, Esquire
Jeanne Wachter
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

August 27, 1986

Jeffrey H. Scherr, Esquire
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201

RE: Petition for Zoning Variance
David Cordish, et ux, Petitioner
Case #87-48-A

Dear Mr. Scherr:

In response to your letter dated August 27, 1986 on the above-referenced matter, the hearing date of September 10, 1986 at 1:30 PM was mutually agreed upon with you and will proceed as scheduled.

Very truly yours,
Jean M. H. Jung
JEAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:bjs

cc: Paul Cordish, Esquire
300 Water Street
Baltimore, Maryland 21202

File

LAW OFFICES
KRAMON & GRAHAM, P. A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
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(301) 539-1269

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ANDREW JAY GRAHAM*†
JAMES M. KRAMON*†
LEE H. OSBURN
JEFFREY H. SCHERR
NANCY E. GREGORY†
JAMES P. ULWICK*†
PHILIP M. ANDREWS
GERTRUDE C. BARTEL
MARILYN HOPE FISHER*†

*ALSO ADMITTED IN NY
†ALSO ADMITTED IN DC
‡ALSO ADMITTED IN VA
§ALSO ADMITTED IN CA

September 5, 1986

RECEIVED
SEP 8 1986
ZONING OFFICE

Mrs. Jean M. H. Jung
Deputy Zoning Commissioner
Baltimore County Office of
Planning & Zoning
Room 109
County Office Building
Towson, Maryland 21204

Re: Petition for Zoning Variance
David Cordish, et ux, Petitioner
Case No. 87-48-A

Dear Mrs. Jung:

I received Messrs. Cordish's and Weinberg's letter to you of September 2, 1986. As soon as Mr. Weinberg advised that he had not received a copy of the Petition for Special Hearing and plat I immediately hand delivered the Petition to him and had our engineer make the plat immediately available to him.

The issue in this case, however, is not an oversight in the delivery of materials to Mr. Weinberg. It is whether or not Mr. Cordish's variance will severely impact our client's property if in fact it is held to have an impact on the Residential Transition Area. I do not desire to try this issue by letter and will present our client's case and reasoning at the time of the hearing on Wednesday, September 10, 1986.

If you have any questions or if there are any materials which you need to review at this point, I will make copies available to you and Mr. Weinberg.

Sincerely,

Jeffrey H. Scherr

JHS:ndc
cc: Paul L. Cordish, Esquire
Glenn L. Weinberg, Esquire
Mr. Leonard M. Harlan

LAW OFFICES
KRAMON & GRAHAM, P. A.
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MARILYN HOPE FISHER*†

*ALSO ADMITTED IN NY
†ALSO ADMITTED IN DC
‡ALSO ADMITTED IN VA
§ALSO ADMITTED IN CA

September 24, 1986

RECEIVED
SEP 26 1986
ZONING OFFICE

HAND-DELIVERED

Mrs. Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
Case No.: 87-48-A
David S. Cordish, Petitioner

Dear Mrs. Jung:

I received a copy of Mr. Hoffman's letter to you dated September 24, 1986 which requested an extension of time for filing the Memorandum. We oppose the requested extension.

During a telephone conversation Mr. Hoffman advised that he requested the extension so that he could review the transcript. The Memorandum which we submitted at the hearing was not, however, based upon any evidence submitted in the case. You will recall that we submitted the Memorandum before the introduction of any evidence and it was based upon applicable law.

To give new counsel an opportunity to review the transcript and provide another closing argument would be unfair without providing us with an opportunity for reply. Moreover, this procedure would also prolong this matter when it has already been continued from the original August 12, 1986 hearing date at the request of Petitioner.

Petitioner has had since August 12, 1986 to prepare a legal memorandum. Mr. Weinberg and Mr. Paul Cordish and Mr. David Cordish, all lawyers, were well aware of the requirements to submit a memorandum within two weeks of the hearing. It appears that they have waited until the last possible moment to hire new counsel. I am sure, that these gentlemen as well as new counsel are aware of the law as it pertains to this case and could have complied with the two week requirement. Since the date for filing a memorandum has passed I respectfully submit

LAW OFFICES
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GERTRUDE C. BARTEL
MARILYN HOPE FISHER*†

*ALSO ADMITTED IN NY
†ALSO ADMITTED IN DC
‡ALSO ADMITTED IN VA
§ALSO ADMITTED IN CA

August 21, 1986

RECEIVED
AUG 25 1986
ZONING OFFICE

HAND DELIVERED

Mr. James E. Dyer
Zoning Supervisor
Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Room 113
Towson, Maryland 21204

case 87-48-A scheduled for Sept 10, '86 per Jean Jung

RE: Petition for Special Hearing
Six Slade Avenue

Dear Mr. Dyer:

Enclosed is the Petition for Special Hearing for the above-captioned property. I have enclosed for filing three original Petitions for Special Hearing, ten plats, ten legal descriptions and the appropriate filing fee for the Baltimore County property owned by The Harlan Company of Maryland, Inc.

We respectfully request that this Petition be consolidated with Case No. 87-48-A because we believe that the issues presented by Case No. 87-48-A and this Petition for Special Hearing can be best considered and presented simultaneously. We understand that consolidation of this Petition and Case No. 87-48-A will not be heard on September 10, 1986, the date on which Case No. 87-48-A is now scheduled to be considered. This delay will be caused the required regulations respecting the posting and advertising of the affected property. We request, however, that the consolidated cases be heard together prior to October 1, 1986 so that this matter may be resolved as quickly as possible.

Mr. James E. Dyer
August 21, 1986
Page Two

Please call me or Jeff Scherr with any questions you may have regarding this matter.

Sincerely,

Marilyn Hope Fisher

MHF:hsm
Enclosures
cc: Mr. Arnold M. Jablon (w/copy of Petition only)
Ms. Jean Jung (w/copy of Petition only)
Mr. Leonard M. Harlan (w/copy of Petition only)
Mr. D. Pike Aloian (w/copy of Petition only)
Mr. Stanley E. Galinsky (w/copy of Petition only)
Mr. David S. Thaler (w/copy of Petition only)
Mr. David Mullman (w/copy of Petition only)

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 44 PAGE 126 CASE NO. 87CG3256 CATEGORY APPEAL

ATTORNEYS

Julius W. Lichter
113 Chesapeake Bldg, 305 W. Chesa.
(04) 321-0600

~~John B. Howard~~
~~Robert A. Hoffman~~
~~Cook, Howard, Downs & Tracy~~
~~210 Allegheny Ave PO Box 5517~~
~~(04)---823-4111~~

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD

THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

True Copy Test
SUZANNE ECKERT, Clerk
Per Diane Williams
Assistant Clerk

THE HARLAN COMPANY OF MARYLAND, INC.
Appellee

ZONING FILE NO. 87-48-A

Jeffrey H. Scherr
Paul S. Teitelbaum
Sun Life Bldg. - Charles Center
(01) 752-6030

COSTS
CV GEN 813256 #
CV CLK 70.00
B LBRY 5.00
POST 2.00
CKCHECK TL 77.00
#17793 C001 R02 T14:46
01/29/87

(1) July 23, 1987 - Appellant's Order for Appeal from the denial of variance petition by the County Board of Appeals of Balto. Co., and Petition fd

(2) July 27, 1987 - Certificate of Notice fd.

(3) Aug 21, 1987 - Transcript of Record fd.

(4) Aug 21, 1987 - Notice of Filing of Record fd.

(5) Aug. 24, 1987 - App. of Jeffrey H. Scherr & Paul S. Teitelbaum for the Appellee & Same day Answer to Petition fd.

(6) Aug. 24, 1987 - Appellee's Motion to Dismiss & Request for Costs & Attorneys Fees fd.

(7) Sept 18, 1987 - Order to Strike the App of John B. Howard, Robert A. Hoffman and Cook, Howard, Downes & Tracy and Enter the App of Julius W. Lichter as counsel for the Pltffs fd.

(8) Sept 18, 1987 - Pltffs' Request for Extension of Time and Order of Court Granting Same fd. (JFF)

(9) Sept 21, 1987 - Motions Ruling--Appellee's Motion to Dismiss, etc. is DENIED. (JFH)

(10) October 5, 1987 - Appellant's (David Cordish & Penelope Cordish) Memorandum & Exhibits, fd.

(11) Nov 12, 1987 - Appellee's Memorandum fd. (Received on 11/10/87 @ 4:38 p.m. JTS

December 1, 1987 Hon. John F. Fader, II. Hearing had. Verbal motion by the Appellee for costs is Denied. Finding of the County Board of Appeals of Baltimore County is Affirmed.

44 126 87CG3256

David Cordish, et ux Zoning File No. 87-48-A 87 CG 3256 44/126

DATE	COURT MINUTES
12/1/87	Hon. JFF II. Hearing had. The Verbal Motion by the Appellee for Costs is Denied. The Finding of the County Board of Appeals of Baltimore Co. is Affirmed.

True Copy Test
SUZANNE ECKERT, Clerk
Per Diane Williams
Assistant Clerk

no order in file

RE: Petition for Variance
N/s of Slade Avenue, 1125' NE of Reisterstown Road

Case No. 87-48-A
3rd Election District
2nd Councilmanic District

David Cordish, et ux -Petitioners

June 30, 1986	Petition of David Cordish, et ux for a zoning variance to permit side yard setback of 2 feet in lieu of required 25 feet for dwelling.
August 12	Hearing held on petition by Deputy Zoning Commissioner.
December 5	Order of the D.Z.C. GRANTING zoning variance to permit side yard setback of 2 feet for two accessory buildings and to permit one of those structures in the front yard in lieu of required rear yard; original request to permit zoning variance for side yard setback for dwelling DENIED.
December 23	Letter of Appeal from Paul L. Cordish Esq. and Glenn L. Weisberg, Esq., to C.B. of A. on behalf of Petitioner.
May 18, 1987	Entry of Appearance from John B. Howard, Esq. as Counsel for Petitioner.
May 20	Hearing before C.B. of A. on motions only. No testimony or evidence received on merits of case; case set for hearing.
June 9	Hearing on appeal before C.B. of A.
June 24	Order of C.B. of A. DENYING variance for side yard setback of 2 feet in lieu of required 25 feet.
July 23	Order for Appeal to CCt, BCo from John B. Howard, Esq. and Robert A. Hoffman, Esq. on behalf of Petitioner.
July 23	Petition to accompany Order for appeal filed in CCt, BCo.
July 27	Certificate of Notice sent to interested parties.
August 21	Record of Proceedings filed in CCt, BCo; transcript of testimony filed.
December 1	Hearing had in CCt (Hon. John F. Fader II). Verbal motion motion by Appellee for costs denied; Finding of the CB of A is AFFIRMED.

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVE, 1,125 FEET N/E OF REISTERSTOWN ROAD THIRD ELECTION DISTRICT SECOND COUNCILMANIC DISTRICT

Vs.

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

Docket 44 Folio 126

Case No. 87CG3256

NOTICE OF FILING OF RECORD

TO: JOHN B. HOWARD
ROBERT A. HOFFMAN
COOK, HOWARD, DOWNES & TRACY
210 Allegheny Ave PO Box 5517 Balto. MD 21204

KATHLEEN C. WEIDENHAMMER
COUNTY BOARD OF APPEALS OF BALTO. CO.
Room 200, Courthouse
Towson, MD 21204

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on August 21, 1987.

Clerk

RECEIVED
COUNTY BOARD OF APPEALS
1987 AUG 25 P 1:46

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

May 13, 1987

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. CBA-86-157 — HALLE PROPERTY
6 Slade Avenue
and
RE: CRG Decision
11/13/86 -CRG conditional approval

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
VAR -side yard setback of 2' in lieu of req. 25'
12/05/86 -D.Z.C. granted VAR.

Case No. CBA-86-157 (Halle Property) and Case No. 87-48-A (David Cordish, et ux) will be consolidated on a single day's hearing since, while there are two properties involved, there is only one issue involved. The hearing on these two cases will be at 9:00 a.m. on June 3, 1987. The Board will note for all parties involved that the Board will sit from 9:00 a.m. to 11:00 a.m. and recess from 11:00 a.m. to 12:30 p.m., and reconvene for the balance of the taking of testimony. This somewhat unusual circumstance is occasioned by the desire of the Board not to lose the entire day's hearing which would be the only alternative to providing the early lunch recess.

ASSIGNED FOR: WEDNESDAY, June 3, 1987 at 9:00 a.m.

cc: John B. Howard, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire — Counsel for Appellee
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
Patrick D. Hanley, Esquire — Office of Law
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Robert Covahey
David Fields
Edward McDonough
James A. Markle
Jorge Austrich

RECEIVED
MAY 18 1987
ZONING OFFICE

Kathi Weidenhammer
Administrative Secretary

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

May 13, 1987
(REVISED NOTICE)

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. CBA-86-157 — HALLE PROPERTY
6 Slade Avenue
and
RE: CRG Decision
11/13/86 -CRG conditional approval

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Avenue, 1125' NE of Reisterstown Rd.
VAR -Side yard setback of 2' in lieu of req. 25'
12/05/86 -D.Z.C. granted VAR.
3rd Election District
2nd Councilmanic District

These cases will be assigned for the following date for hearing on motions ONLY. NO TESTIMONY OR EVIDENCE WILL BE RECEIVED ON THE MERITS OF THESE CASES.

ASSIGNED FOR: WEDNESDAY, May 20, 1987 at 1:30 p.m.

cc: John B. Howard, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire — Counsel for Appellee
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
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Robert Covahey
David Fields
Edward McDonough
James A. Markle
Jorge Austrich

Kathi Weidenhammer
Administrative Secretary

RECEIVED
MAY 18 1987
ZONING OFFICE

IN RE: PETITION FOR ZONING VARIANCE
N/S of Slade Avenue, 1125' NE of Reisterstown Road
3rd Election District
David Cordish, et ux
Petitioners

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-48-A

* * * * * * * * * * * * * *

The Petitioners herein request a zoning variance to permit a side yard setback of 2 feet in lieu of the required 25 feet for a dwelling.

Testimony by and on behalf of the Petitioners indicates that David Cordish has resided on the site in an estate-type setting for the past 16 years. He proposes to construct two low buildings, no more than 12' x 12', which would be connected to the main residence by a covered passageway. The northern building, a bathhouse, is to include a toilet, shower, vanity and bench; the southern building, a guest room, is to include a toilet, vanity and sleep area. This guest room is needed because there is only one in the dwelling; the bathhouse is needed as a shower/locker room, especially for three teen-aged sons. The covered walkway is considered necessary to permit year-round use of the buildings by the family and guests. The front yard (south) is used for athletic fields; the east end contains the driveway. The rear yard (north) will remain partially wooded and contain vegetable gardens, as well as a breakfast porch and living area. The west yard is occupied by a somewhat formal garden which existed prior to the Petitioner's purchase of the property. A representative of the architectural firm testified that if the guest room and bathhouse were moved eastward so as to be within the building setback line, the symmetry of the garden would be destroyed and there would be less visual security for the buildings. The proposed buildings will appear as scaled down, wood frame garden structures. A landscape architect testified that the enclosed passageway will provide strong vertical limits to add to the formality of the garden as well as provide protection from the weather.

RECEIVED FOR FILING
Date 12/5/86
By Kathi Weidenhammer

Testimony on behalf of the adjacent property owner (The Harlan Company of Maryland, Inc.) indicates that it does not oppose the improvements, but has deep concerns that the proposed structures, attached to the main residence so as to be considered additions, would move the residential transition area (RTA) 48 feet to the west. Such a change in the RTA would prevent the quality of their proposed project and make it impossible to accomplish the design goals. The board of the Pikesville Community Growth Corporation voted to "approve and support the Harlan development and support the Cordish variance, only in so far as its granting would be compatible with the Harlan development and not change the setback required now pertaining to the Harlan development." An architect was of the opinion that the present garden is modest and that aesthetics could be better served by something other than a glassed in walkway; i.e. a trellis or a hedge. In addition, in his opinion, there are many available locations for a guest room and bathhouse.

All parties to the hearing stipulated that the Deputy Zoning Commissioner could visit the site and the general neighborhood.

Following a visit to the site, and after due consideration of all testimony and evidence presented on this case, in the opinion of the Deputy Zoning Commissioner, the granting of a variance that would permit the two buildings to be connected by a covered passageway, with walking distance of approximately 47 and 56 feet from the rooms to the existing porch, and referring to the structures as additions to the main residence, would extend the footprint of the residence in an unreasonable and ludicrous fashion. To the Deputy Zoning Commissioner's knowledge, no breezeway or covered passageway anywhere near the length proposed in this case has been approved in Baltimore County so as to connect an addition to the main building. Notwithstanding the language of Section 400.1 of the Baltimore County Zoning Regulations (BCZR), which obviously refers to utilitarian, relatively short covered passageways, and without venturing to establish

RECEIVED FOR FILING
Date 12/5/86
By Kathi Weidenhammer

-2-

Affidavit of Process Server

Zoning Commissioner of Baltimore County, Maryland
(NAME OF COURT)

David Cordish, et ux — PLAINTIFF PETITIONER
vs
DEFENDANT RESPONDENT
87-48-A — CASE #

I declare that I am a citizen of the United States, over the age of eighteen and not a party to this action. And that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served David Cordish (NAME OF PERSON ENTITY BEING SERVED)
with the (documents) Subpoena Duces Tecum, Petition for the Issuance of a Subpoena Duces Tecum
by serving David Cordish (NAME) — (RELATIONSHIP)
at ☐ Home
☒ Business in front of Cordish & Cordish Law Offices, 300 E. Water Street, Balto., Md. 21202
on August 26, 1986 (DATE) at 0805 hours (TIME)

Thereafter copies of the documents were mailed by prepaid, first class mail on (DATE)
from (CITY) (STATE)

Manner of Service: ☒ By personally delivering copies to the person/authorized agent of entity being served
☐ By leaving, during office hours, copies at the office of the person/entity being served, leaving same with the person apparently in charge thereof.
☐ By leaving copies at the dwelling house or usual place of abode of the person being served, with a member of the household 18 or older and explaining the general nature of the papers
☐ By posting copies in a conspicuous manner to the address of the person entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above I have been unable to effect process upon the person entity being served because of the following reason(s):
☐ Unknown at Address ☐ Evading ☐ Moved, Left no Forwarding ☐ Other.
☐ Address Does Not Exist ☐ Service Cancelled by Litigant ☐ Unable to Serve in a Timely Fashion

Service Attempts: Service was attempted on ( ) (DATE) (TIME) ( ) (DATE) (TIME) ( ) (DATE) (TIME)
( ) (DATE) (TIME) ( ) (DATE) (TIME) ( ) (DATE) (TIME)

Description: Age 41 Sex male Race cauc Hgt 5'10" Wgt 170 Hair gray Glasses

I declare under penalty of perjury that the information contained herein is true and correct and this affidavit was executed on
8/26/86 (DATE) at Balto (CITY) Md (STATE)

Elias Sheriff (SIGNATURE OF PROCESS SERVER)
A P Legal Support Services
508 St. Paul Place - Baltimore, MD 21202
(301) 539-2313

State of
County of
Subscribed and sworn before me, a notary public, this ____ day of ____

WITNESS MY HAND AND OFFICIAL SEAL TO

NOTARY PUBLIC
My commission expires:

FORM 2 NATIONAL ASSOCIATION OF PROFESSIONAL PROCESS SERVERS

RE: PETITION FOR VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd., 3rd District
DAVID CORDISH, et ux, Petitioners

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-48-A

* * * * * * * * * * * * * * *

SUBPOENA DUCES TECUM

You, David S. Cordish, 4 Slade Avenue, Pikesville, Maryland 21208, are hereby commanded to appear on September 10, 1986 at 1:30 p.m. before the Zoning Commission of Baltimore County, Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 and to testify from day-to-day until completed regarding all matters concerning or relating to the Petition for Zoning Variance, Case No. 87-48-A. You are hereby requested to bring with you the documents set forth in the Petition for the Issuance of a Subpoena Duces Tecum attached hereto.

Jeffrey H. Scherr

Michael L. Heikes

KRAMON & GRAHAM, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

Attorneys for The Harlan Company of Maryland, Inc.

Zoning Commission for Baltimore County

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MD. 21201
(301) 752-6030

RE: PETITION FOR VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd., 3rd District
DAVID CORDISH, et ux, Petitioners

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-48-A

* * * * * * * * * * * * * * *

SUBPOENA DUCES TECUM

You, David S. Cordish, 4 Slade Avenue, Pikesville, Maryland 21208, are hereby commanded to appear on August 12, 1986 at 9:30 a.m. before the Zoning Commission of Baltimore County, Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 and to testify from day-to-day until completed regarding all matters concerning or relating to the Petition for Zoning Variance, Case No. 87-48-A. You are hereby requested to bring with you the documents set forth in the Petition for the Issuance of a Subpoena Duces Tecum attached hereto.

Jeffrey H. Scherr

Michael L. Heikes

KRAMON & GRAHAM, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

Attorneys for The Harlan Company of Maryland, Inc.

Zoning Commission for Baltimore County

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MD. 21201
(301) 752-6030

a precise length at which a passageway would cease to function as a mere connection. It is quite apparent that the proposed guest room and bathhouse are, for all intents and purposes, and within the spirit and intent of the BCZR, merely accessory structures according to the meaning of Section 101. In the instant case, the covered passageway was incorporated into the design for the aesthetic, increased formality of the garden, as well as convenience and protection in inclement weather. To interpret the proposed two small far-distant rooms as part of the principal building in accordance with Section 400.1 stretches the meaning of that section in exactly the same way the Petitioners have stretched their covered walkway, i.e. to the absurd. In the opinion of the Deputy Zoning Commissioner, the Petition was incorrectly worded, although the need for a guest room and bathhouse, as well as the practical difficulty or unreasonable hardship of locating the structures elsewhere, has been proven. The structures should be permitted, therefore, as accessory structures connected to the main residence by a walkway that is, at times, enclosed.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 5th day of December 1986, that a zoning variance to permit a side yard setback of 2 feet in lieu of the required 25 feet for a dwelling be and is hereby granted, subject to the following restrictions which must appear in the deed and plat:

1) The proposed guest room and bathhouse shall be used only as accessory structures to the principal dwelling on the property.

2) The proposed guest room, bath and passageway shall be constructed in accordance with the plan submitted, prepared by Stephen A. Glassman dated August 20, 1986, and identified as Petitioner's Exhibit 1, be and is hereby GRANTED from and after the date of this Order.

IT IS FURTHER ORDERED that the original request for a zoning variance to permit a side yard setback of 2 feet for a dwelling be and is hereby denied.

Deputy Zoning Commissioner
for Baltimore County

RECEIVED FOR FILING
Date 12/5/86
By Kathi Weidenhammer

-3-

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

Petitioner's position that the jacuzzi bath, bathhouse, guest house and passage ways of 45 feet and 58 feet sought to be constructed by Petitioner's neighbor on the east side of Petitioner's property, in (See Addendum to Petition for Special Hearing)

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

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

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

THE HARLAN COMPANY OF MARYLAND, INC.
(Type or Print Name)

By: Leonard M. Harlan
Signature Leonard M. Harlan, President

(Type or Print Name)

Signature

Attorney for Petitioner:

Jeffrey H. Scherr
(Type or Print Name)

Signature

Kramon & Graham, P.A.
Sun Life Building, Charles Center
Address

Baltimore, Maryland 21201
City and State

Attorney's Telephone No.: (301) 752-6030

c/o Kramon & Graham, P.A. (301) 752-6030
Address Phone No.
Sun Life Building, Charles Center
Baltimore, Maryland 21201
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Jeffrey H. Scherr
Name
Kramon & Graham, P.A.
Sun Life Building, Charles Center
Address Phone No.
Baltimore, Maryland 21201

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 19____, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 19____, at _____ o'clock _____M.

Zoning Commissioner of Baltimore County.

ADDENDUM TO PETITION FOR SPECIAL HEARING

accordance with the variance sought by Petitioner for Zoning Variance in Case No. 87-48-A, do not constitute a "dwelling" and therefore will not cause the Residential Transition Area on Petitioner's property to be moved 48 feet to the west of Petitioner's property, causing Petitioner a loss of approximately 10,000 square feet of buildable land, as shown on the Plan to Accompany Special Hearing filed simultaneously and made a part hereof.

The Petitioner intends to develop its property in accordance with DR-16 zoning designation as a high-rise luxury condominium/apartment building. If the Residential Transition Area is altered as aforesaid, it will render such development impracticable.

In the alternative, assuming arguendo that the neighboring improvements would constitute a dwelling and, therefore, that the variance sought by Petitioner's east side neighbor in Case No. 87-48-A is granted, then Petitioner's position would be that because that development and Petitioner's development of its property is proceeding simultaneously, the neighboring development should not have any impact in the Residential Transition Area of Petitioner's property.

LAW OFFICES
KRAMON & GRAHAM, P. A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030
TELECOPIER
(301) 539-1269

BEL AIR OFFICE:
112 SOUTH MAIN STREET
BEL AIR, MARYLAND 21014
(301) 879-5040
(301) 838-9095
TELECOPIER
(301) 838-9298

ANDREW JAY GRAHAM**
JAMES N. KRAMON**
LEE M. OSBURN
JEFFREY H. SCHERR
NANCY E. GREGOR**
JAMES P. ULWICK**
PHILIP M. ANDREWS
GERTRUDE C. BARTEL
MARILYN HOPE FISHER**
MICHAEL L. MEYERS
PAUL S. TEITELBAUM
KATHLEEN A. BIRRANE
NANCY FELIX MANGANI*

*ALSO ADMITTED IN NY
**ALSO ADMITTED IN DC
***ALSO ADMITTED IN VA
****ALSO ADMITTED IN GA
*****ALSO ADMITTED IN FL

August 24, 1987

HAND DELIVERED

Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

RE: In The Matter Of The Application Of David Cordish, ex ux. For A Zoning Variance On Property Located On The N/S Of Slade Avenue Avenue, 1,125 Feet N/E Of Reisterstown Road
Third Election District
Second Councilmanic District
Case No. 87-48-A

Dear Sir/Madam:

Enclosed please find the Harlan Company's Answer to Petition, Motion to Dismiss and Request for Costs and Attorney's Fees, and Memorandum in Support of Motion to Dismiss and Request for Costs and Attorney's Fees to be filed in the above-referenced case.

Your prompt attention to this matter is greatly appreciated.

Sincerely,

Paul S. Teitelbaum

PST:jes
Enclosures
cc: Baltimore County Board of Appeals
(h/dlvd., w/encl.)
John B. Howard, Esquire
(h/dlvd., w/encl.)
Robert A. Hoffman, Esquire
(h/dlvd., w/encl.)

RECEIVED
COUNTY BOARD OF APPEALS
1987 AUG 24 P 3:28

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ex ux. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD
THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT
* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 87-48-A

* * * * * * * * * * * * *

ANSWER TO PETITION

The Harlan Company of Maryland, Inc. (the "Harlan Company"), by its attorneys, Jeffrey H. Scherr, Paul S. Teitelbaum and Kramon & Graham, P.A., pursuant to Maryland Rule B9, answers the Petition filed by Appellants as follows:

1. The Harlan Company admits the factual allegations of Paragraph 1 of the Petition insofar as that paragraph purports to state that the action appealed from is the denial of a requested variance of a sideyard setback of two (2) feet in lieu of the required twenty-five (25) feet. It denies the remaining factual allegations of Paragraph 1.

2-3. The Harlan Company denies the factual allegations of Paragraphs 2 and 3 of the Petition.

4. Further answering, the Harlan Company affirmatively states that Appellants presented no evidence to the Board of Appeals that practical difficulty or unreasonable hardship would result from strict compliance with the Baltimore County Zoning Regulations, and the Board committed no error when it found that no such evidence was presented.

5. Further answering, the Harlan Company asserts that Paragraph 3 of the Petition is improper and contravenes Maryland Rule B2(e), which requires the Appellants to set forth

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 1987, a copy of the foregoing Answer was hand-delivered to: John B. Howard, Esquire and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, Maryland 21204; and the Baltimore County Board of Appeals, Room 200, Court House, Towson, Maryland 21204.

Paul S. Teitelbaum
Paul S. Teitelbaum

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 44 PAGE 126 CASE NO. 87CG3256 CATEGORY APPEAL

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET +/E OF LEISTERSTOWN ROAD

THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

THE HARLAN COMPANY OF MARYLAND, INC.
Appellee

ZONING FILE NO. 87-48-A

ATTORNEYS

Julius W. Lichter
113 Chesapeake Bldg. 305 W. Chesa.
(04) 321-0600

~~John B. Howard~~
~~Robert A. Hoffman~~
~~Cook, Howard, Downes & Tracy~~
~~210 Allegheny Ave. PO Box 5517~~
~~(4043 823-4111~~

True Copy Test
SUZANNE MENSH, Clerk
Per Diane Williams
Assistant Clerk

Jeffrey H. Scherr
Paul S. Teitelbaum
Sun Life Bldg. - Charles Center
(01) 752-6030

(1) July 23, 1987 - Appellant's Order for Appeal from the denial of variance petition by the County Board of Appeals of Balto. Co., and Petition fd.

(2) July 27, 1987 - Certificate of Notice fd.

(3) Aug 21, 1987 - Transcript of Record fd.

(4) Aug 21, 1987 - Notice of Filing of Record fd.

(5) Aug. 24, 1987 - App. of Jeffrey H. Scherr & Paul S. Teitelbaum for the Appellee & Same day Answer to Petition fd.

(6) Aug. 24, 1987 - Appellee's Motion to Dismiss & Request for Costs & Attorneys Fees fd.

(7) Sept 18, 1987 - Order to Strike the App of John B. Howard, Robert A. Hoffman and Cook, Howard, Downes & Tracy and Enter the App of Julius W. Lichter as counsel for the Pltffs fd.

(8) Sept 18, 1987 - Pltffs' Request for Extension of Time and Order of Court Granting Same fd. (JFF)

(9) Sept 21, 1987 - Motions Ruling--Appellee's Motion to Dismiss, etc. is DENIED. (JFH)

(10) October 5, 1987 - Appellant's (David Cordish & Penelope Cordish) Memorandum & Exhibits, fd.

(11) Nov 12, 1987 - Appellee's Memorandum fd. (Received on 11/10/87 @ 4:38 p.m. JTS

December 1, 1987 Hon. John F. Fader, II. On the Merits Heard. Verdict motion by the Appellee for costs is Denied. Finding of the County Board of Appeals of Baltimore County is Affirmed.

COSTS	
CV GEN	315.50
CV CLK	70.00
B LIBY	5.00
POST	2.00
CHECK TL	77.00
#17793 C001 R02 T1414	
07/29/8	

DOCKET 44 PAGE 126 CASE NO 87CG3256

David Cordish, et ux Zoning File No. 87-48-A 87 CG 3256 44/126

DATE	COURT MINUTES
12/1/87	Hon. JFF II. Hearing held. The Verbal Motion by the Appellee for Costs is Denied. The Finding of the County Board of Appeals of Baltimore Co. is Affirmed.

True Copy Test
SUZANNE MENSH, Clerk
Per Diane Williams
Assistant Clerk

no order in file

specifically each ground of error committed by the Agency from whose decision appeal is taken. Paragraph 3 of the Petition should be stricken, and can not create in the Appellants the right to assert in their Memorandum, to be filed pursuant to Maryland Rule B12, "other and further" unspecified reasons why Appellants believe the Board committed error.

6. Further answering, the Harlan Company asserts that the instant appeal, and the proceedings below, were initiated by Cordish for improper purposes, on an inaccurate factual predicate. Accordingly, this appeal should be dismissed, with costs and attorney's fees awarded to the Harlan Company, for the reasons set forth in The Harlan Company's Motion to Dismiss and accompanying Memorandum, filed hereinbefore and hereby incorporated herein.

Jeffrey H. Scherr
Jeffrey H. Scherr

Paul S. Teitelbaum
Paul S. Teitelbaum

Kramon & Graham, P.A.
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

Attorneys for The Harlan Company of Maryland, Inc.

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ex ux. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD
THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 87-48-A

* * * * * * * * * * * *

MOTION TO DISMISS, AND REQUEST FOR COSTS AND ATTORNEY'S FEES

The Harlan Company of Maryland, Inc. (the "Harlan Company"), by its attorneys, Jeffrey H. Scherr, Paul S. Teitelbaum and Kramon & Graham, P.A., pursuant to Maryland Rules B9 and 1-341, moves to dismiss the above-captioned appeal and requests that this Court grant the Harlan Company its costs, including attorney's fees, incurred in these proceedings. As grounds for its Motion, the Harlan Company states:

1. On June 23, 1986, Appellant David Cordish ("Cordish"), filed with the Zoning Commissioner a Petition for Variance (the "Petition") solely with the intent of injuring the Harlan Company's project at Six Slade Avenue.

2. Cordish filed the Petition, declaring under penalties of perjury that the subject property, Four Slade Avenue, is owned by Cordish and his wife, Penelope. In fact, as was established at the hearing below, the property is owned by Cordish alone. Cordish is an attorney and a seasoned real estate developer, and is well aware of the distinction between joint and sole ownership. At no time did Cordish seek to amend the Petition to correct the misrepresentation.

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

3. The reasons advanced by Cordish in support of the Petition were pretextual, for his true intent was to cause the Harlan project to fail by enlarging the Residential Transition Area ("RTA") created by his dwelling, which is located on property adjoining the Harlan Company property.

4. With the intent of injuring the Harlan Company, Cordish couched his variance proposal to seek approval of the construction of long covered walkways ending in small rooms stretching to within two (2) feet of the Harlan Company property. The sole purpose of this construction was to enlarge the "footprint" of the Cordish dwelling and thereby expand the RTA created by that structure, causing a commensurate reduction in the size of the building "envelope" in which the Harlan Company may erect its multifamily condominium building.

5. Cordish appealed the grant by Deputy Zoning Commissioner Jean Jung of the relief requested in the Petition. That appeal to the Board of Appeals was brought because the Deputy Zoning Commissioner approved the proposed structures as "accessory" structures, not a part of the Cordish dwelling, and as so designated they would not create an RTA.

6. The Board of Appeals, hearing the case de novo, denied the requested variance. It held that no evidence had been adduced to indicate that strict compliance with the Baltimore County Zoning Regulations would cause practical difficulty or unreasonable hardship. Despite this finding of a complete absence of substantive grounds upon which the variance request

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CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

could be premised, Cordish noted the instant appeal to this Court.

7. This appeal has been filed with the intent to further impede the Harlan Company's development of its property at Six Slade Avenue.

8. Cordish seeks by this action to exploit for improper purposes Baltimore County's administrative and judicial bodies by filing a claim that is devoid of merit and intended solely to injure the Harlan Company in its lawful business enterprises.

9. A brief Memorandum of points and authorities is attached hereto and made a part hereof.

WHEREFORE, the Harlan Company requests that this Court dismiss the appeal, and, pursuant to Maryland Rule 1-341, grant the Harlan Company's request for costs, including attorney's fees.

Jeffrey H. Scherr PST
Jeffrey H. Scherr

Paul S. Teitelbaum
Paul S. Teitelbaum

Kramon & Graham, P.A.
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

Attorneys for The Harlan Company of Maryland, Inc.

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 1987, a copy of the foregoing Motion to Dismiss and Request for Costs and Attorney's Fees and attached Memorandum in Support of Motion to Dismiss and Request for Costs and Attorney's Fees were hand-delivered to: John B. Howard, Esquire and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, Maryland 21204; and the Baltimore County Board of Appeals, Room 200, Court House, Towson, Maryland 21204.

Paul S. Teitelbaum
Paul S. Teitelbaum

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ex ux. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD
THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 87-48-A

* * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND REQUEST FOR COSTS AND ATTORNEY'S FEES

The factual bases for the Motion to Dismiss are set forth in that pleading, and will not be repeated here. Briefly summarized, it is evident that Cordish has brought this appeal in bad faith and without substantial justification. His bad faith is clearly manifested by the fact, inter alia, that he appealed the Deputy Zoning Commissioner's decision--permitting Cordish's requested construction--solely for the reason that the basis of her decision would not result in an enlargement of the RTA. See letter of December 22, 1986 from Paul L. Cordish and Glenn L. Weinberg to the Zoning Commissioner of Baltimore County, attached hereto as Exhibit A. In addition, Cordish permitted the variance petition to proceed on a glaringly inaccurate factual predicate, for Cordish represented that he alone owned the subject property. Significantly, the Board of Appeals found that grant of the variance requested by Cordish would reduce the usable area of the Harlan property and thereby injure the Harlan Company. This was Cordish's intention.

It is equally clear that the instant appeal was filed without substantial justification. The Board of Appeals found that Cordish adduced "no testimony or evidence indicating the

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SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

need for the variance by way of practical difficulty or unreasonable hardship." Decision of Board of Appeals in In the Matter of the Application of David Cordish, et ux., Case No. 87-48-A, at 2 (emphasis added). Despite the complete absence of substantive grounds to support his request for a variance, Cordish has appealed the Board's decision to this Court. There is no substantial justification for bringing an appeal on the record, when that record has been found to provide no support for the appellant's position.

The law in Maryland is clear that in any civil action brought in bad faith or without substantial justification, the opposing party is entitled to costs, including attorney's fees. See Maryland Rule 1-341; Blanton v. Equitable Bank, 61 Md. App. 158, 485 A.2d 694 (1985); Singer v. Steven Kokes, Inc., 39 Md. App. 180, 384 A.2d 463 (1978). Once a finding of bad faith or lack of substantial justification is made, application of Rule 1-341 is mandatory. Hess v. Chalmers, 33 Md. App. 541, 365 A.2d 294 (1976). Under the circumstances, the appeal should be dismissed, and the Harlan Company is entitled to relief under Maryland Rule 1-341.

Respectfully submitted,

Jeffrey H. Scherr PST
Jeffrey H. Scherr

Paul S. Teitelbaum
Paul S. Teitelbaum

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Kramon & Graham, P.A.
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

Attorneys for The Harlan Company of Maryland, Inc.

LAW OFFICES
CORDISH AND CORDISH
200 WATER STREET SUITE 400
NE CORNER SOUTH & WATER STS
BALTIMORE, MARYLAND 21202

PAUL L. CORDISH
DAVID A. CORDISH

TELEPHONE
(301) 539-4161

December 22, 1986

Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: Appeal to the County Board of Appeals
for Baltimore County Maryland
Petition for Zoning Variance
N/S of Slade Avenue, 1125' NE of
Reisterstown Road
3rd District
Case #87-84-A

Gentlemen:

This letter is intended to constitute an Appeal to the County Board of Appeals of Baltimore County from the decision of December 5, 1986 in above matter, of the Honorable Jean M.H. Jung, Deputy Zoning Commissioner. The persons entering this appeal to the County Board of Appeals of Baltimore County from the decision rendered December 5, 1986 in the above case are David S. Cordish and Penelope A. Cordish whose addresses are 4 Slade Avenue, Pikesville, Baltimore County, Maryland 21208.

This Appeal is hereby filed within thirty (30) days from December 5, 1986 which is the date of the final Order in this matter.

You will find enclosed herewith check in the amount of $90.00, payable to Baltimore County, Maryland, in payment of the required Fees for this Appeal. The sum remitted herewith covers the appeal fee of $75.00 plus $15.00 for the cost of posting. David S. Cordish and Penelope A. Cordish, feeling aggrieved by the said decision, are hereby exercising their right to appeal therefrom to the County Board of Appeals of Baltimore County in accordance with Section 500.10 and Section 501.8 of the Baltimore County Zoning Regulations. The reason for this appeal is that portion of the decision appealed from which denies their request for a zoning variance to permit a side yard set back of two feet for a dwelling.

Very truly yours,

Paul L. Cordish

Zoning Commissioner
Page Two
December 22, 1986

Glenn L. Weinberg
Suite 400
300 Water Street
Baltimore, Maryland 21202
(301) 539-4141
Attorneys for David S. Cordish
and Penelope A. Cordish,
Appellants

PLC/GLW
CC: Jeffrey Scherr,Esquire
Kramon & Graham, Sun Life Bldg.
Charles Center,Balto., MD. 21201

John B. Howard, Esquire
Robert A. Hoffman,Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Ave.,Towson,MD. 21204

Mr. David O. Feldman
107 Sudbrook Lane
Pikesville, MD. 21208

Ms. Camille Blackburn
Owings Mills Times
409 Washington Ave., 5th Floor.
Towson, MD. 21204

Ms. Phyllis Cole Friedman
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/s OF SLADE AVENUE, 1125' NE of REISTERSTOWN ROAD 3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT

DAVID CORDISH, ET UX, PETITIONER-PLAINTIFF

ZONING FILE NO. 87-48-A

CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

CG Doc. No. 44
Folio No. 126
File No. 87-CG-3256

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Thomas J. Bollinger, and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Zoning Office of Baltimore County:

No. 87-48-A

June 30, 1986	Petition of David Cordish, et ux, for a zoning variance to permit a side yard setback of 2 feet in lieu of the required 25 feet for a dwelling
June 30	Order of the Zoning Commissioner directing advertisement and posting of property - date of hearing set for August 12, 1986, at 9:30 a.m.
July 17	Comments of Baltimore County Zoning Plans Advisory Committee - filed
July 21	Comments of Baltimore County Director of Planning - filed
July 23	Certificate of Posting of property - filed
July 24	Certificate of Publication in newspaper - filed
August 12	At 9:30 a.m. hearing held on petition by Deputy Zoning Commissioner

David Cordish, et ux
Case No. 87-48-A
2.

December 5, 1986	Order of the Deputy Zoning Commissioner GRANTING a zoning variance to permit a side yard setback of 2 feet for two accessory buildings (guest room and bathhouse) and to permit one of those accessory structures (guest room) in the front yard in lieu of the required rear yard, in accordance with plan submitted; and FURTHER ORDERED that the original request for a zoning variance to permit a side yard setback of 2 feet for a dwelling be DENIED.
December 23	Letter of Appeal to the C.B. of A. from Paul L. Cordish, Esq., and Glenn L. Weinberg, Esq., Attorneys for Petitioner.
May 18, 1987	Entry of Appearance from John B. Howard, Esq. and Cook, Howard, Downes & Tracy as Counsel for Petitioner.
May 20	Hearing before County Board of Appeals on motions only. No testimony or evidence received on merits of case. Case set for hearing before the C.B. of A. on June 9, 1987.
June 9	Hearing on appeal before the County Board of Appeals.
June 24	Order of the Board of Appeals ordering that the requested variance of a side yard setback of 2 feet in lieu of the required 25 feet be DENIED.
July 23	Order for Appeal to the Circuit Court for Baltimore County from John B. Howard, Esquire, and Robert A. Hoffman, Esquire, Counsel for Petitioner.
July 23	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County.
July 27	Certificate of Notice sent to interested parties.
August 21	Transcript of testimony filed.
	Petitioner's Exhibit No. 1 - Plat
	" " No. 1A - Smaller plat showing proposed site improvements-4 Slade Ave- attached to Petitioner's Exhibit No. 1
	" " No. 2A - Photo, Slade Avenue view to house
	" " No. 2B - Photo, Backyard toward kitchen and garage
	" " No. 2C - Photo, Common driveway and garage

Case No. 87-43-A
David Cordish, et ux
3.

	Petitioner's Exhibit No. 2D - Photo, Backyard towards garden
	" " No. 2E - Photo, Close-up of garden
	" " No. 2F - Photo, Fence toward Halle property, interior of garden
	" " No. 2G - Photo, Porch, to be enclosed
	" " No. 3 - Resume of William F. Kirwin
	" " No. 4 - Identical to Petitioner's Exhibit No. 1 except as marked (plat)
	Protestant's Exhibit No. 1 -) Letters to and from
	" " No. 2 -) Cordish, to Lippman
	" " No. 3 -) " " "
	" " No. 4 - Md. Title to Cordish for property No. 4 Slade -9/18/79
	" " No. 5 - 9/25/79 -Md. Title to Cordish for a lot adjoining house
	" " No. 6 - Letter to Scherr from Lippman dated 11/19/85
	" " No. 7 - Halle Property, Daft Job Order 75-83, 11/21/85
	" " No. 8 - CRG plan by Thaler
	" " No. 9 - Architectural sketch of Harlon project (in Bd's closet)
	" " No. 10- Colored drawing of Harlan project showing RTA (in Board's closet)
	" " No. 11- Chart showing detrimental effects.
August 21, 1987	Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material

CBA Pet #9 - M-#10
in Bd's closet
(Family 2C right)
Pet #4 } in closet
Pet #4

Case No. 87-48-A
David Cordish, et ux
4.

or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals office, and upon request of the parties or the Court will be transmitted to the court by whomever institutes the request.

Respectfully submitted,

Kathleen C. Weidenhammer
County Board of Appeals
of Baltimore County

CASE NO. 87-CG-3256 AT Law
David Cordish, et ux VS.

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S ANSWER & TRANSCRIPT FILED IN THE ABOVE ENTITLED CASE. ALSO FILED IS THE ZONING COMMISSIONER'S FILE AND EXHIBITS.

S Sanders
Clerk's Office

Date: August 21, 1987

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/s OF SLADE AVENUE, 1125' NE OF REISTERSTOWN ROAD 3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT

CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

CG Doc. No. 44
Folio No. 126
File No. 87-CG-3256

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Thomas J. Bollinger, and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John B. Howard, Esquire, and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204, Counsel for Petitioners; Paul L. Cordish, Esquire, and Glenn L. Weinberg, Esquire, Suite 400, 300 Water Street, Baltimore, MD 21202; Jeffrey Scherr, Esquire, Kramon & Graham, P.A., Sun Life Building, Charles Center, Baltimore, MD 21201, Counsel for Protestant, The Harlan Company; David O. Feldman, 107 Sudbrook Lane, Baltimore, MD 21208, Protestant; Allan Hirsh, 11 Slade Avenue, Baltimore, MD 21208, Protestant; Jeanne Wachter, 301 Reisterstown Road, Baltimore, MD 21208; and Phyllis Cole Friedman, Esquire, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore
County, Room 200, Courthouse, Towson
MD 21204

Case No. 87-48-A
David Cordish, et ux
2.

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John B. Howard, Esquire, and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204, Counsel for Petitioners; Paul L. Cordish, Esquire, and Glenn L. Weinberg, Esquire, Suite 400, 300 Water Street, Baltimore MD 21202; Jeffrey Scherr, Esquire, Kramon & Graham, P.A., Sun Life Building, Charles Center, Baltimore, MD 21201, Counsel for Protestant, The Harlan Company; David O. Feldman, 107 Sudbrook Lane, Baltimore, MD 21208, Protestant; Allan Hirsh, 11 Slade Avenue, Baltimore, MD 21208, Protestant; Jeanne Wachter, 301 Reisterstown Road, Baltimore, MD 21208; and Phyllis Cole Friedman, Esquire, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, on this 27th day of July, 1987.

Kathleen C. Weidenhammer
County Board of Appeals
of Baltimore County

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

July 27, 1987

John B. Howard, Esquire
COOK, HOWARD, DOWNES & TRACY
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21204

RE: Case No. 87-48-A
Paul Cordish, et ux

Dear Mr. Howard:

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Secretary

Enclosures

cc: Robert A. Hoffman, Esquire
Paul L. Cordish, Esquire
Glenn L. Weinberg, Esquire

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

July 27, 1987

Jeffrey Scherr, Esquire
KRAMON & GRAHAM, P.A.
Sun Life Building
Charles Center
Baltimore, MD 21201

RE: Case No. 87-48-A
Paul Cordish, et ux

Dear Mr. Scherr:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Mr. David O. Feldman
Mr. Allan Hirsh
Ms. Jeanne Wachter
Phyllis Cole Friedman, Esquire
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

file

bcc of Cert. of Notice: B. du Bois J. Hoswell

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July, 1987, a copy of the foregoing Order of Appeal was hand delivered to the County Board of Appeals of Baltimore County, Old Court, Second Floor, Towson, Maryland 21204, in accordance with Rule B2.c, Maryland Rules of Procedure.

ROBERT A. HOFFMAN

2

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD
THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

* IN THE CIRCUIT COURT
* FOR BALTIMORE COUNTY
* County Board of Appeals
* Case No. 87-48-A

* * * * * * *

ORDER FOR APPEAL

David S. Cordish, Appellant (Petitioner below), by John B. Howard, Robert A. Hoffman with Cook, Howard, Downes & Tracy, his attorneys, hereby notes an appeal from the denial of Appellant's variance petition by the County Board of Appeals of Baltimore County in the above-captioned case.

John B. Howard RH
JOHN B. HOWARD

ROBERT A. HOFFMAN
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorneys for the Apppellant

RECEIVED
COUNTY BOARD OF APPEALS
1987 JUL 23 P 4: 18

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD
THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

* IN THE CIRCUIT COURT
* FOR BALTIMORE COUNTY
* County Board of Appeals
* Case No. 87-48-A

* * * * * * *

PETITION

David S. Cordish, Appellant, by John B. Howard, Robert A. Hoffman with Cook, Howard, Downes & Tracy, his attorneys, heretofore having filed an Order of Appeal pursuant to Rule B2, Maryland Rules of Procedure, files this Petition and states the following:

1. The action appealed from in this case is a decision of the County Board of Appeals of Baltimore County (the "Board") in Case No. 87-48-A, which denied the application of Appellant for a sideyard setback of two feet in lieu of the permitted 25 feet for two additions to Appellant's single-family dwelling; and

2. The Board committed error in that the weight of the evidence before the Board mandated a finding of practical difficulty or undue hardship upon the Appellant should the required 25 foot setback for the additions have to be met; and

RECEIVED
COUNTY BOARD OF APPEALS
1987 JUL 23 P 4: 18

3. The Board committed error for such other and further reasons as may be stated in Appellant's memorandum to be filed pursuant to Rule B12, Maryland Rules of Procedure.

Therefore, Appellant respectfully requests that the Order of the Board be reversed and the requested variance be granted, or that such other and further relief as deemed appropriate by this Court be granted.

John B. Howard RH
JOHN B. HOWARD

ROBERT A. HOFFMAN
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorneys for the Appellant

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July, 1987, a copy of the foregoing Petition was hand delivered to the County Board of Appeals of Baltimore County, Old Court, Second Floor, Towson, Maryland 21204, in accordance with Rule B2.e, Maryland Rules of Procedure.

ROBERT A. HOFFMAN

2

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

June 24, 1987

John B. Howard, Esquire
COOK, HOWARD, DOWNES & TRACY
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21204

RE: Case No. 87-48-A
David Cordish, et ux

Dear Mr. Howard:

Enclosed is a copy of the final Opinion and Order passed today by the County Board of Appeals in the subject case.

Sincerely,

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Robert A. Hoffman, Esquire
Paul L. Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire
Mr. David O. Feldman
Mr. Allan Hirsh
Phyllis Cole Friedman, Esquire
Jeanne Wachter
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

May 20, 1987

NOTICE OF POSTPONEMENT and REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
VAR -side yard setback of 2 ft. in lieu of required 25 ft.
12/05/86 -D.Z.C. granted VAR.
3rd Election District
2nd Councilmanic District

Case Nr. CBA-86-157 (Halle Property) which had been assigned for hearing on Wednesday, June 3, has been POSTPONED and will be held sub curia; no reset date at this time.
Case No. 87-48-A (David Cordish, et ux) which had been assigned for hearing on Wednesday, June 3, has been POSTPONED at the request of Counsel for Appellant and has been

REASSIGNED FOR: TUESDAY, June 9, 1987 at 11:00 a.m.

cc: John B. Howard, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
Cynthia Hahn, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire — Counsel for Appellee
Paul Feldmeham, Esquire — " " "
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
Patrick D. Hanley, Esquire — " " "
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Robert Covahey
David Fields
Edward McDonough
James A. Markle

Kathi Weidenhammer
Administrative Secretary

2/5/87 - Following were notified of hearing set for Thursday, June 11, 1987, at 10 a.m.:

Paul Cordish, Esq.
Glenn Weinberg, Esq.
Jeffrey Scherr, Esq.
John B. Howard, Esq.
Rob Hoffman
David O. Feldman
Allan Hirsh
Phyllis Friedman
Norman Gerber, James Hoswell
Arnold Jablon, Jean Jung, James Dyer, B. duBois
Jeanne Wachter

5/13/87 -REVISED notice sent to above (also included cc: listing for Case No. CBA-86-157 Halle Property) for consolidated hearing set for Wednesday, June 3, 1987 at 9:00 a.m.; included notation re early lunch recess (11:00 a.m. to 12:30 p.m.)

5/13/87 - Notice sent to above (and listing for Case No. CBA-86-157) re hearing for motions ONLY set for Wednesday, May 20, 1987 at 1:30 p.m.-NO TESTIMONY/EVIDENCE ON MERITS OF CASES.

5/20/87 - Hearing held on Motions only; Case No. CBA-86-157 to be held sub curia pending outcome of zoning issues; Case No. 87-48-A set for hearing; Above notified of hearing set for Tuesday, June 9 at 11:00 a.m.

DAVID CORDISH, et ux. * BEFORE THE BALTIMORE COUNTY

In Re: N/S Slade Avenue, 1125' NE of Reisterstown Road Third Election District * BOARD OF APPEALS

* Case No.: 87-48-A

* * * * * * *

RESPONSE TO MOTION TO DISMISS APPEAL
OF DECISION OF DEPUTY ZONING COMMISSIONER

Appellants David and Penelope Cordish, by John B. Howard and Robert A. Hoffman with Cook, Howard, Downes & Tracy, their attorneys, submit this response to the Motion to Dismiss filed by the Harlan Company of Maryland, Inc. ("Harlan").

-BACKGROUND-

In June of 1986, Mr. and Mrs. Cordish filed a petiton for zoning variance in order to obtain permission to construct a certain addition to the west side of their dwelling. Their contemplated addition, which had been designed by an architect, involved the construction of a guest bedroom and a bathhouse, both of which would be connected to the Cordish residence by glass-enclosed, covered passageways. A variance was necessary to proceed with the addition, as it required a two-foot side yard setback to the west of the dwelling in lieu of the required setback of twenty-five feet. The only relief sought by the variance petition was a change in the side yard setback to accommodate the planned addition. A

photocopy of the Cordish petition for variance is attached as Exhibit A and is incorporated by reference.

On September 10, 1986, Deputy Zoning Commissioner Jean M. Jung conducted a hearing on the petition for variance. The case presented by the Cordishes was straightforward. From the testimony of just four witnesses and from a viewing of the Cordish property, the Deputy Zoning Commissioner had no apparent difficulty in concluding that: "the need for a guest room and bathhouse, as well as the practical difficulty or unreasonable hardship of locating the structures elsewhere [on the Cordish property], has been proven." Opinion of Deputy Zoning Commissioner attached as Exhibit B and incorporated by reference). As a result, the Deputy Zoning Commissioner granted the Cordishes a zoning variance.

However, the September 10 hearing before the Deputy Zoning Commissioner and her subsequent written opinion involved a second critical issue. At the hearing, Harlan appeared as the developer of a highrise project planned for a parcel adjacent to the Cordish residence. While the developer did not oppose the proposed addition to the Cordish property at the hearing below, it nevertheless proceeded to litigate the separate issue of what effect the addition should be deemed to have on the

developer's project. Indeed, through the testimony of seven separate witnesses called on Harlan's behalf and through the admission of numerous exhibits, Harlan submitted evidence and then argued that the Cordish addition must not be permitted to affect the Residential Transition Area ("R.T.A.") applicable to the developer's property.

From the opening remarks of counsel for both parties, it was clear that the Cordishes objected to the developer's attempt to come in through the rear door to litigate the R.T.A. issue at their variance proceeding. Indeed, the developer itself had filed a separate petition for hearing on this issue, which had not been consolidated with the Cordish petition. A photocopy of the developer's separate action is attached as Exhibit C and is incorporated by reference. Nevertheless, over the objection of the Cordishes, the Deputy Zoning Commissioner received the developer's extensive testimony and numerous exhibits on this issue.

Had the Deputy Zoning Commissioner simply granted the Cordish variance and left the R.T.A. issue undecided, the Appellants would not have appealed. However, the Deputy Zoning Commissioner eventually went on in her written opinion to decide the R.T.A. issue. In particular, she ruled that while the Cordish addition

should be permitted, it should be considered an accessory structure connected to the Cordish residence, as opposed to an addition to the Cordish dwelling. Opinion at 3. The critical effect of this additional holding was to rule that the developer's R.T.A., which could only be affected by an addition to the Cordish dwelling, would be left unchanged by the addition.

In so ruling, the Deputy Zoning Commissioner committed at least two errors. First, she went beyond the scope of her authority to rule on the separate issue of the R.T.A. which was not before her (i.e., by classifying the nature of the Cordish addition as an accessory use). Second, she violated the well-established principle embodied in the zoning regulations that an addition connected to a main residence by covered passageways is not an accessory use but is rather an addition to the actual dwelling. See, B.C.Z.R. ("A structure connected to a principal building by a covered passageway or with one wall in common shall not be considered an accessory building.") (emphasis added).

Most importantly, the Deputy Zoning Commissioner's unorthodox ruling was actually a ruling in favor of the developer on the issue of the R.T.A. There was only one reason for the Deputy Zoning Commissioner to classify the Cordish addition as an accessory structure:

in order to protect the adjacent developer from the impact that an extension of the Cordish dwelling might have on the applicable R.T.A. This she gratuitously did, notwithstanding that the nature of the addition and its effect (if any) on the R.T.A. were the subject of a wholly separate action.

The decision to this extent is in direct conflict with the interest of the Cordishes. It is no secret that the Cordishes oppose the Harlan project. The developer is clearly overreaching by hiding a highrise development, appropriate in an RAE zone, behind variance requests in a DR-16 zone. It is the developer who has chosen this case as its battleground on the R.T.A. issue; the Cordishes are merely responding to an attack which has serious ramifications to their single family dwelling.

Faced with the Deputy Zoning Commissioner's adverse ruling that the Cordish addition constitutes an accessory use, the Cordishes filed the appeal in this case. In noting their appeal, they carefully stated the sole issue raised: "The reason for this appeal is that portion of the decision appealed from which denies the request for a zoning variance to permit a side yard set back of two feet for a dwelling." A photocopy of the notice of appeal is attached as Exhibit D and is incorporated by reference.

-ARGUMENT-

The developer has moved to dismiss this appeal for three apparent reasons: (1) it claims that the appeal is actually intended to block the highrise development; (2) it claims that the Cordishes cannot appeal a ruling which was purportedly in their favor; and (3) it claims that the Cordish appeal is inconsistent with the homeowners' prior action and that it is therefore subject to the doctrine of "judicial estoppel."

The first of these arguments involves numerous questions of fact improperly supported by references to testimony below, which is irrelevant to the de novo proceedings before this board. See Baltimore County Code, §603. The third argument presents a concept selectively applied in judicial proceedings, which is unsupported by any Maryland authority. See Harlan's Memorandum in Support of Motion to Dismiss at 14-18. Indeed, it is ironic that the developer itself made the R.T.A. an issue in this litigation, yet it now argues that the Appellants should not be able to appeal from the Deputy Zoning Commissioner's adverse determination related to this very issue. Finally, the second argument appears to be one of standing, (i.e., that the Cordishes lack standing because of the "favorable" ruling).

What all three arguments overlook is the critical fact that the Cordishes are "aggrieved" parties by virtue of the Deputy Zoning Commissioner's unorthodox ruling, and that they are thus entitled to pursue this appeal, as of right. See, B.C.Z.R. 500.10 ("Any person... feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the [County Board of Appeals of Baltimore County]") (Emphasis added).

THIS APPEAL IS PROPER
SINCE THE CORDISHES ARE AGGRIEVED PARTIES

It is axiomatic that a party must be "aggrieved" in order to pursue an appeal to this Board from an ajudication by the Zoning Commissioner. B.C.Z.R. 500.10; Baltimore County Code, Sec. 22-32. In zoning cases, an aggrieved party is simply defined as one "whose personal or property rights are adversely affected" by the decision from which an appeal was taken. See, e.g., Byrniarski v. Montgomery County Board of Appeals, 247 Md. 137, 143-48 (1967); DuBay v. Crane, 240 Md. 180, 185 (1965); Marcus v. Montgomery County Council, 235 Md. 535 (1964). In other words, an appellant will be considered aggrieved if he can demonstrate that his personal or property rights have been adversely affected by an administrative ruling.

In this case, the requisite aggrievement is apparent. The Deputy Zoning Commissioner went beyond the scope of the Cordish petition for variance to rule that

the homeowners' proposed addition will constitute an accessory structure and not a part of the Cordish dwelling. In so ruling, she effectively ruled that the R.T.A. applicable to the adjacent highrise project would be measured from the original Cordish residence, and not from the Cordish addition.

Where, as in this instance, such a determination adversely affects the personal and property rights of the Cordishes, the adjacent homeowners should be able to argue that the R.T.A. applicable to the highrise development should be measured from the point of their addition closest to the highrise project. The developer's Motion to Dismiss is a blatant attempt to foreclose this right.

Had the Deputy Zoning Commissioner confined her ruling strictly to the grant of the variance requested below, the Cordishes would agree that they would have no ground for appeal. However, once the Deputy Zoning Commissioner went beyond the granting or denial of the variance, to determine that the Cordish addition would only be an accessory structure which could have no impact on the adjacent developer's R.T.A., she went on to rule adversely to the rights of Mr. and Mrs. Cordish. Consequently, the Cordishes are aggrieved parties who have properly asserted this appeal from that portion of the Deputy Zoning Commissioner's ruling.

PETITION FOR ZONING VARIANCE 87-48-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1B02.3.C.1 to permit a sideyard setback of 2 feet in lieu of the required 25 feet

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County: for the following reasons: (indicate hardship or practical difficulty)

The front yard of the subject property is used as an athletic field and is not suited for the purposes intended. The back yard is wooded and where not wooded is plowed under and used as a large vegetable garden. On the east side of the house is a garage and paved parking area for automobiles which would be totally unsuitable for the use contemplated. That leaves only the west side of the house for the enlargement contemplated and immediately adjacent to the house on the west side is a terrace and enclosed fenced-in sitting area. The addition contemplated goes on the outside of this fenced-in area and is contemplated for the corner or edge of Petitioner's property where there are no trees to be removed and where the terrain is suitable. While the addition would be up against the neighboring property line this should give no *** problem as a high-rise residential use will be constructed on the abutting property.

Property is to be posted and advertised as prescribed by Zoning Regulations. [SEE BELOW]

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

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

David Cordish
(Type or Print Name)

David Cordish
Signature

Penelope Cordish, wife
(Type or Print Name)

Penelope Cordish
Signature

Attorney for Petitioner:

Glenn Weinberg & Paul Cordish
(Type or Print Name)

Glenn Weinberg
Signature

300 Water Street
Address

Baltimore, Maryland 21202
City and State

Attorney's Telephone No.: 752-5444

Address Phone No.

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Glenn Weinberg
Name
300 Water Street
Baltimore, Maryland 21202
Address
Phone No. 752-5444

MAP - NW 7I
N-26,840
W-28,100
E. D. 3rd
DATE 7/16/86
200 - PF
1000 - PF

ORDERED By The Zoning Commissioner of Baltimore County, this 30th day of June, 19 86, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 12th day of August, 19 86, at 9:30 o'clock A.M.

Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FOR FILING
Date 7/30/86
By [illegible]

***problem as a high-rise residential use will be constructed on the abutting property. In essence, there is no other practical location other than where we have the house extension shown on the attached plat.

IN RE: PETITION FOR ZONING VARIANCE
N/S of Slade Avenue, 1125' NE of Reisterstown Road
3rd Election District
David Cordish, et ux
Petitioners

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-48-A

* * * * * * * * * * * * * * *

The Petitioners herein request a zoning variance to permit a side yard setback of 2 feet in lieu of the required 25 feet for a dwelling.

Testimony by and on behalf of the Petitioners indicates that David Cordish has resided on the site in an estate-type setting for the past 16 years. He proposes to construct two low buildings, no more than 12' x 12', which would be connected to the main residence by a covered passageway. The northern building, a bathhouse, is to include a toilet, shower, vanity and bench; the southern building, a guest room, is to include a toilet, vanity and sleep area. This guest room is needed because there is only one in the dwelling; the bathhouse is needed as a shower/locker room, especially for three teen-aged sons. The covered walkway is considered necessary to permit year-round use of the buildings by the family and guests. The front yard (south) is used for athletic fields; the east end contains the driveway. The rear yard (north) will remain partially wooded and contain vegetable gardens, as well as a breakfast porch and living area. The west yard is occupied by a somewhat formal garden which existed prior to the Petitioner's purchase of the property. A representative of the architectural firm testified that if the guest room and bathhouse were moved eastward so as to be within the building setback line, the symmetry of the garden would be destroyed and there would be less visual security for the buildings. The proposed buildings will appear as scaled down, wood frame garden structures. A landscape architect testified that the enclosed passageway will provide strong vertical limits to add to the formality of the garden as well as provide protection from the weather.

IN THE MATTER OF
THE APPLICATION OF
DAVID CORDISH, ET UX
FOR A ZONING VARIANCE ON
PROPERTY LOCATED ON THE N/s
OF SALDE AVENUE, 1125' NE OF
REISTERSTOWN ROAD
3rd ELECTION DISTRICT
2nd COUNCILMANIC DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 87-48-A

* *

OPINION

This case comes before this Board on appeal from a decision of the Deputy Zoning Commissioner granting a side yard setback of 2 feet in lieu of the required 25 feet for two structures proposed on the site. The case was heard this day in its entirety.

Appellant presented as his first witness David S. Cordish, the property owner, who testified that he purchased this property 16 years ago and introduced photographs of the site. He noted that the property consisted of three acres -- one acre of front yard used as an athletic field, one acre containing the home and a formal garden, and one acre of rear yard which abuts the golf course that surrounds the property. He testified as to the lengthy process by which he arrived at the decision to build the two additions, one bath house and one guest room, and a three-foot wide, glass-enclosed connecting walkway between the main house and these outbuildings, all of which are shown in the exhibits. He testified at length as to his reasons for their proposed locations, all of which are a part of the case record.

Dr. Arnall Patz, an ophthalmologist and neighbor, also testified in favor of the granting of the variance.

William F. Kirwin, a planner and landscape architect, testified as to the desirability of locating the proposed additions as shown on the plat. This concluded Appellant's case.

Case No. 87-48-A
David Cordish, et ux
2.

At this point, Protestant moved to dismiss the petition and contended that the Petitioner had not proved the necessity for variance as stated in Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.). The Board denied that motion, in that the evidence and testimony produced during the Petitioner's case need be considered in a light most favorable to him.

Protestants then presented Mr. Leonard Harlan, the property owner of the adjacent property, who intends to develop the property as a high-rise condominium and whose testimony was that the proposed location of the additions to Mr. Cordish's residence would damage his property because of the RTA (Residential Transition Area) requirements.

Mr. David Thaler, a civil engineer, testified as to the effect the proposed variance would have on Mr. Harlan's property.

Richard Blinder, an architect for Mr. Harlan, testified as to the impracticability of the proposed additions to Mr. Cordish's residence. This concluded testimony in this case.

Section 307, B.C.Z.R., states that the County Board of Appeals shall have the power to grant variances from height and area regulations only in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. The Board finds that there was no testimony or evidence indicating the need for the variance by way of practical difficulty or unreasonable hardship. Mr. Cordish's property comprises some three acres and affords him other locations and other possibilities by which he could construct his requested additions to the dwelling without the need for any variance. Furthermore, Section 307 states that any such variance shall be granted "...only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. They shall have no power to grant

Case No. 87-48-A
David Cordish, et ux
3.

any other variances." The proposed location of the two structures shown on the plan would require that the RTA be relocated so as to in fact reduce the usable area of Mr. Harlan's property and thereby evidence injury. Since the Board finds no testimony or evidence before it indicating compliance with Section 307, the Board is of the opinion that the requested variance should be denied and will so order.

ORDER

It is therefore this 24th day of June, 1987 by the County Board of Appeals ORDERED that the requested variance of a side yard setback of 2 feet in lieu of the required 25 feet be and the same is DENIED.

Any appeal from this decision must be made 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

Thomas J. Bollinger

Lawrence E. Schmidt

a precise length at which a passageway would cease to function as a mere connection, it is quite apparent that the proposed guest room and bathhouse are, for all intents and purposes, and within the spirit and intent of the BCZR, merely accessory structures according to the meaning of Section 101. In the instant case, the covered passageway was incorporated into the design for the aesthetic, increased formality of the garden, as well as convenience and protection in inclement weather. To interpret the proposed two small far-distant rooms as part of the principal building in accordance with Section 400.1 stretches the meaning of that section in exactly the same way the Petitioners have stretched their covered walkway, i.e. to the absurd. In the opinion of the Deputy Zoning Commissioner, the Petition was incorrectly worded, although the need for a guest room and bathhouse, as well as the practical difficulty or unreasonable hardship of locating the structures elsewhere, has been proven. The structures should be permitted, therefore, as accessory structures connected to the main residence by a walkway that is, at times, enclosed.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 5th day of December 1986, that a zoning variance to permit a side yard setback of 2 feet for two accessory buildings (guest room and bathhouse) and to permit one of those accessory structures (guest room) in the front yard in lieu of the required rear yard, both in accordance with the plan submitted, prepared by Stephen A. Glassman dated August 26, 1986 and identified as Petitioner's Exhibit 2, be and is hereby GRANTED from and after the date of this Order.

IT IS FURTHER ORDERED that the original request for a zoning variance to permit a side yard setback of 2 feet for a dwelling be and is hereby DENIED.

Deputy Zoning Commissioner
of Baltimore County

-3-

RE: PETITION FOR ZONING VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd.
3rd Election District
David Cordish, et ux - Petitioners
Case No. 87-48-A
APPEAL FILED BY: Appellants/Petitioners, David S. and Penelope A. Cordish

Date: 1/5/87

1. Petition
2. Description of Property
3. Certificate of Posting
4. Certificates of Publication
5. Zoning Advisory Committee Comments
6. Comments from the Director of Planning
7. Entries of Appearance
8. Order of Deputy Zoning Commissioner
9. Memorandum in Support of Petition
10. Memorandum of The Harlan Co. in Opposition to Petition for Variance
11. Letter of Appeal of David S. and Penelope A. Cordish, dated 12/22/86, and received for filing on 12/23/86
12. Letter to all parties from Arnold Jablon, Zoning Commissioner, dated 1/5/87, advising of the filing of Cordish appeal
13. Petitioners' Exhibits Nos.:

[ORIGINALS SENT TO BOARD OF APPEALS]
1. Plat, dated 5/19/8 (?)
2. Plat, dated 8/26/86
3a. Color photograph, dated 8/23/86
3b. Color photograph, dated 8/23/86
3c. Color photograph, dated 8/23/86
3d. Color photograph, dated 8/23/86
3e. Color photograph, dated 8/23/86
3f. Color photograph, dated 8/23/86
3g. Color photograph, dated 8/23/86
[Large Board Exhibit] 4. Colored plat, dated 8/26/86

14. Protestants' Exhibits Nos.:

[ORIGINALS SENT TO BOARD OF APPEALS]
1. Letter to Ron Lipsan from David S. Cordish, dated 1/9/86
2. Letter to David S. Cordish from M. Ronald Lipman, dated 1/13/86
3. Letter to Ron Lipsan from David S. Cordish, dated 1/16/86
[Large Board Exhibit] 4. 2 Drawings of 6 Slade Avenue by Beyer, Blinder, Belle
[Large Board Exhibit] 5. Site Plan with Typical Floor re: 6 Slade Avenue
[Large Board Exhibit] 6. Drawing of Buildable Area, Slade Avenue, dated 8/4/86
7. a. Letter to Jeffrey H. Scherr from M. Ronald Lipman, dated 11/19/85
b. Tiger Title Insurance Co. Commitment for Title Insurance
c. Blank Agreement of Sale, prepared 11/4/85 re: Edward A. and Ellen W. Haile
d. Map drawn by Lipman, Frizzell & Mitchell re: Slade Ave.
e. Aerial Photograph
f. Zoning Map drawn by Lipman, Frizzell & Mitchell
g. Plat, dated 11/21/85, re: Haile Property

- 2 -

8. Plat drawn by D. S. Thaler & Assoc., Inc., re: Haile Property
9a. Color polaroid, dated 8/14/86, re: West end Cordish House - full load of chipped wood
9b. Color polaroid, dated 8/14/86, re: West end of Cordish House
9c. Color polaroid, dated 8/14/86, re: West end of Cordish House - Tree Expert at Cordish Residence
9d. Color polaroid, dated 8/14/86, re: West end of Cordish House - Large tree removed
9e. Color polaroid, dated 8/15/86, re: West end of Cordish House - Cut up tree left by contractor
10. Impact of Proposed Cordish Expansion on Buildable Area, dated 8/12/86
11. Census Tract Map re: Market Area

[illegible] L. Cordish, Esquire
[illegible]an L. Weinberg, Esquire
[illegible]te 400, 300 Water Street
[illegible]ltimore, Maryland 21202
[illegible]9-2141)
Attorney for Appellants/Petitioners, David S. and Penelope A. Cordish

Jeffrey Scherr, Esquire
[illegible]rwood & Graham, P.A.
[illegible]n Life Building
[illegible]rles Center
[illegible]ltimore, Maryland 21201
[illegible]2-6030)
Attorney for Appellees/Protestant, The Harlan Co.

[illegible]n B. Howard, Esquire
[illegible]bert A. Hoffman, Esquire
[illegible], Howard, Downes & Tracy
[illegible] Allegheny Avenue, PO Box 5517
[illegible]wson, Maryland 21204
[illegible]4-2111)
Attorneys for Appellants/Petitioners, David S. and Penelope A. Cordish

Mr. David O. Feldman
[illegible] Sudbrook Lane
Baltimore, Maryland 21208
Appellee/Protestant

Mr. Allan Hirsh
[illegible] Slade Avenue
[illegible]ltimore, Maryland 21208
Appellee/Protestant

[illegible]ne Cole Friedman, Esquire
[illegible]ople's Counsel for Baltimore County
[illegible]oom 223, Courthouse
[illegible]wson, Maryland 21204
Requests notification:
Jeanne Kacher
[illegible] Reisterstown Road
Baltimore, MD 21208

Norman E. Gerber
James Rosenll
Arnold Jablon
[illegible] M. H. Jung
James E. Dyer
Margaret E. du Bois, Appeals Clerk, Zoning Office
Request Notification
" "
" "
" "
" "

-CONCLUSION-

For the foregoing reasons, the Cordishes respectfully request that the motion to dismiss this appeal be denied.

JOHN B. HOWARD

ROBERT A. HOFFMAN
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorney for Appellants

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this day of May, 1987, a copy of the foregoing Response to Motion to Dismiss Appeal of Decision of Deputy Zoning Commissioner was mailed to Jeffrey A. Scherr, Esquire and to Paul A. Teitelbaum, Esquire, Kramon & Graham, P.A., Sun Life Building, Charles Center, Baltimore, Maryland 21201, Attorneys for the Harlan Company, Inc.

ROBERT A. HOFFMAN

EXHIBIT A

PETITION FOR ZONING VARIANCE

87-48-A

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1B02.3.C.1 to permit a sideyard setback of 2 feet.

Variance from Section _____

in lieu of the required 25 feet

_____

_____

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

The front yard of the subject property is used as an athletic field and is not suited for the purposes intended. The back yard is wooded and where not wooded is plowed under and used as a large vegetable garden. On the east side of the house is a garage and paved parking area for automobiles which would be totally unsuitable for the use contemplated. That leaves only the west side of the house for the enlargement contemplated and immediately adjacent to the house on the west side is a terrace and enclosed fenced-in sitting area. The addition contemplated goes on the outside of this fenced-in area and is contemplated for the corner or edge of Petitioner's property where there are no trees to be removed and where the terrain is suitable. While the addition would be up against the neighboring property line this should give no *** problem as a high-rise residential use will be constructed on the abutting property. In essence, there is no other practical location other than where we have the house extension shown on the attached plat.

Property is to be posted and advertised as prescribed by Zoning Regulations. [SEE BELOW]

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

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

_____ (Type or Print Name)

_____ Signature

_____ Address

_____ City and State

Legal Owner(s):

David Cordish (Type or Print Name)

David Cordish Signature

Penelope Cordish, wife (Type or Print Name)

Penelope Cordish Signature

Attorney for Petitioner:

Glenn Weinberg & Paul Cordish (Type or Print Name)

Glenn Weinberg Signature

300 Water Street Address

Baltimore, Maryland 21202 City and State

Attorney's Telephone No.: 752-5444

_____ Address Phone No.

_____ City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Glenn Weinberg Name

300 Water Street Address

Baltimore, Maryland 21202 Phone No. 752-5444

ORDERED By The Zoning Commissioner of Baltimore County, this 30th day of June, 19 86, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 12th day of August, 19 86, at 9:30 o'clock A.M.

Zoning Commissioner of Baltimore County.

(over)

EXHIBIT B

IN RE: PETITION FOR ZONING VARIANCE
W/S of Slade Avenue, 1125' NE of Reisterstown Road
3rd Election District
David Cordish, et ux
Petitioners

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-48-A

The Petitioners herein request a zoning variance to permit a side yard setback of 2 feet in lieu of the required 25 feet for a dwelling.

Testimony by and on behalf of the Petitioners indicates that David Cordish has resided on the site in an estate-type setting for the past 16 years. He proposes to construct two low buildings, no more than 12' x 12', which would be connected to the main residence by a covered passageway. The northern building, a bathhouse, is to include a toilet, shower, vanity and bench; the southern building, a guest room, is to include a toilet, vanity and sleep area. This guest room is needed because there is only one in the dwelling; the bathhouse is needed as a shower/locker room, especially for three teen-aged sons. The covered walkway is considered necessary to permit year-round use of the buildings by the family and guests. The front yard (south) is used for athletic fields; the east end contains the driveway. The rear yard (north) will remain partially wooded and contain vegetable gardens, as well as a breakfast porch and living area. The west yard is occupied by a somewhat formal garden which existed prior to the Petitioner's purchase of the property. A representative of the architectural firm testified that if the guest room and bathhouse were moved eastward so as to be within the building setback line, the symmetry of the garden would be destroyed and there would be less visual security for the buildings. The proposed buildings will appear as scaled down, wood frame garden structures. A landscape architect testified that the enclosed passageway will provide strong vertical limits to add to the formality of the garden as well as provide protection from the weather.

a precise length at which a passageway would cease to function as a mere connection, it is quite apparent that the proposed guest room and bathhouse are, for all intents and purposes, and within the spirit and intent of the BCZR, merely accessory structures according to the meaning of Section 101. In the instant case, the covered passageway was incorporated into the design for the aesthetic, increased formality of the garden, as well as convenience and protection in inclement weather. To interpret the proposed two small far-distant rooms as part of the principal building in accordance with Section 400.1 stretches the meaning of that section in exactly the same way the Petitioners have stretched their covered walkway, i.e. to the absurd. In the opinion of the Deputy Zoning Commissioner, the Petition was incorrectly worded, although the need for a guest room and bathhouse, as well as the practical difficulty or unreasonable hardship of locating the structures elsewhere, has been proven. The structures should be permitted, therefore, as accessory structures connected to the main residence by a walkway that is, at times, enclosed.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 5th day of December 1986, that a zoning variance to permit a side yard setback of 2 feet for two accessory buildings (guest room and bathhouse) and to permit one of those accessory structures (guest room) in the front yard in lieu of the required rear yard, both in accordance with the plan submitted, prepared by Stephen A. Glassman dated August 26, 1986 and identified as Petitioner's Exhibit 2, be and is hereby GRANTED from and after the date of this Order.

IT IS FURTHER ORDERED that the original request for a zoning variance to permit a side yard setback of 2 feet for a dwelling be and is hereby DENIED.

Jean M.H. Jung
Deputy Zoning Commissioner
of Baltimore County

EXHIBIT C

PETITION FOR SPECIAL HEARING

87-176-SPH

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve _____

Petitioner's position that the jacuzzi bath, bathhouse, guest house and passage wave of 45 feet and 58 feet sought to be constructed by Petitioner's neighbor on th east side of Petitioner's property.

(See Addendum to Petition for Special Hearing)

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

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

FILING FEE	$ 75.00
POSTING	20.00
ADVERTISING	50.00
MISC.	5.00
TOTAL	150.00

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

_____ (Type or Print Name)

_____ Signature

_____ Address

_____ City and State

Legal Owner(s):

THE HARLAN COMPANY OF MARYLAND, INC. (Type or Print Name)

By: _____ Signature Leonard M. Harlan, President

_____ (Type or Print Name)

_____ Signature

Attorney for Petitioner:

Jeffrey H. Scherr (Type or Print Name)

_____ Signature

Kramon & Graham, P.A. Address

Sun Life Building, Charles Center

Baltimore, Maryland 21201 City and State

Attorney's Telephone No.: (301) 752-6030

c/o Kramon & Graham, P.A. (301) 752-6030 Address Phone No.

Sun Life Building, Charles Center

Baltimore, Maryland 21201 City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Jeffrey H. Scherr Name

Kramon & Graham, P.A.

Sun Life Building, Charles Center Address Phone No.

Baltimore, Maryland 21201

ORDERED By The Zoning Commissioner of Baltimore County, this 22nd day of September, 19 86, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 12th day of November, 19 86, at 1:30 o'clock P.M.

Zoning Commissioner of Baltimore County.

(over)

EXHIBIT D

LAW OFFICES
CORDISH AND CORDISH
300 WATER STREET SUITE 400
NE CORNER SOUTH & WATER STS.
BALTIMORE, MARYLAND 21202

PAUL L. CORDISH
DAVID S. CORDISH

December 22, 1986

TELEPHONE (301) 539-4141

Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: Appeal to the County Board of Appeals
for Baltimore County Maryland
Petition for Zoning Variance
N/S of Slade Avenue, 1125' NE of
Reisterstown Road
3rd District
Case #87-84-A

Gentlemen:

This letter is intended to constitute an Appeal to the County Board of Appeals of Baltimore County from the decision of December 5, 1986 in above matter, of the Honorable Jean M.H. Jung, Deputy Zoning Commissioner. The persons entering this appeal to the County Board of Appeals of Baltimore County from the decision rendered December 5, 1986 in the above case are David S. Cordish and Penelope A. Cordish whose addresses are 4 Slade Avenue, Pikesville, Baltimore County, Maryland 21208.

This Appeal is hereby filed within thirty (30) days from December 5, 1986 which is the date of the final Order in this matter.

You will find enclosed herewith check in the amount of $90.00, payable to Baltimore County, Maryland, in payment of the required Fees for this Appeal. The sum remitted herewith covers the appeal fee of $75.00 plus $15.00 for the cost of posting. David S. Cordish and Penelope A. Cordish, feeling aggrieved by the said decision, are hereby exercising their right to appeal therefrom to the County Board of Appeals of Baltimore County in accordance with Section 500.10 and Section 501.8 of the Baltimore County Zoning Regulations. The reason for this appeal is that portion of the decision appealed from which denies their request for a zoning variance to permit a side yard set back of two feet for a dwelling.

Very truly yours,

Paul L. Cordish

ADDENDUM TO PETITION FOR SPECIAL HEARING

accordance with the variance sought by Petitioner for Zoning Varience in Case No. 87-48-A, do not constitute a "dwelling" and therefore will not cause the Residential Transition Area on Petitioner's property to be moved 48 feet to the west of Petitioner's property, causing Petitioner a loss of approximately 10,000 square feet of buildable land, as shown on the Plan to Accompany Special Hearing filed simultaneously and made a part hereof.

The Petitioner intends to develop its property in accordance with DR-16 zoning designation as a high-rise luxury condominium/apartment building. If the Residential Transition Area is altered as aforesaid, it will render such development impracticable.

In the alternative, assuming arguendo that the neighboring improvements would constitute a dwelling and, therefore, that the variance sought by Petitioner's east side neighbor in Case No. 87-48-A is granted, then Petitioner's position would be that because that development and Petitioner's development of its property is proceeding simultaneously, the neighboring development should not have any impact in the Residential Transition Area of Petitioner's property.

Zoning Commissioner
Page Two
December 22, 1986

Glenn L. Weinberg
Suite 400
300 Water Street
Baltimore, Maryland 21202
(301) 539-4141
Attorneys for David S. Cordish
and Penelope A. Cordish,
Appellants

PLC/GLW
CC: Jeffrey Scherr,Esquire
Kramon & Graham, Sun Life Bldg.
Charles Center,Balto., MD. 21201

John B. Howard, Esquire
Robert A. Hoffman,Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Ave.,Towson,MD. 21204

Mr. David O. Feldman
107 Sudbrook Lane
Pikesville, MD. 21208

Ms. Camille Blackburn
Owings Mills Times
409 Washington Ave., 5th Floor.
Towson, MD. 21204

Ms. Phyllis Cole Freedman
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DAVID CORDISH, et ux *

Re: N/S Slade Avenue, 1125' NE of Reisterstown Road 3rd District Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the * BEFORE THE * BALTIMORE COUNTY * BOARD OF APPEALS * CASE NO. 87-48-A

* * * * * * * * * *

MOTION TO DISMISS THE APPEAL
OF THE DEPUTY ZONING COMMISSIONER

The Harlan Company of Maryland, Inc., by its attorneys Jeffrey H. Scherr, Paul S. Teitelbaum and Kramon & Graham, P.A., moves to dismiss the appeal of the decision of the Deputy Zoning Commissioner in the above-captioned case. As is more fully set forth in the accompanying Memorandum of Law, The Harlan Company so moves on the grounds that:

1. An appeal may not be taken from a favorable ruling.

2. Appellants' request for relief contravenes the doctrine of judicial estoppel.

WHEREFORE, The Harlan Company of Maryland, Inc. moves that the appeal be Dismissed.

Jeffrey H. Scherr

Paul S. Teitelbaum

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

PST:amk:04/30/87:1:1

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

PST:amk:04/30/87:1:1

Kramon & Graham P.A.

Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
301/752-6030

DAVID CORDISH, et ux *

Re: N/S Slade Avenue, 1125' NE of Reisterstown Road 3rd District Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the * BEFORE THE * BALTIMORE COUNTY * BOARD OF APPEALS * CASE NO. 87-48-A

* * * * * * * * * *

PROPOSED ORDER

Having considered the Motion of The Harlan Company of Maryland, Inc. to dismiss the appeal of the decision of the Deputy Zoning Commissioner, it is on this ____ day of _____, 1987

ORDERED that the appeal to the Baltimore County Board of Appeals shall be, and the same hereby is, DISMISSED.

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

PST:amk:04/30/87:1:1

DAVID CORDISH, et ux *

Re: N/S Slade Avenue,1125' NE of Reisterstown Road 3rd District Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the required 25 ft. * BEFORE THE * BALTIMORE COUNTY * BOARD OF APPEALS * CASE NO. 87-48-A

* * * * * * * * * *

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL OF DECISION
OF DEPUTY ZONING COMMISSIONER

I. Introduction

Appellant David Cordish owns a parcel of land of approximately three acres situated on Slade Avenue in the Pikesville section of Baltimore County. Although the property is held in Cordish's name alone, Mr. Cordish and his wife Penelope filed a Petition wherein they represented that they both own the property. The Petition was filed to secure a zoning variance to allow the construction of two long, covered walkways, each terminating in a 12 X 12 foot structure, one to be used as a bath house and the other as a guest room. These proposed structures would be situated fifty-five (55) feet closer to the western boundary of the Cordish property than the existing Cordish dwelling. In fact, they would extend to within two (2) feet of the boundary line shared with the adjoing property to the west. Because the Baltimore County Zoning Regulations require a side yard setback of twenty-five feet, the Cordishes sought a zoning variance.

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CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

PST:amk:05/01/87:10:1

The Harlan Company of Maryland, Inc. is the owner of the six acre tract of land that adjoins the western side yard boundary of the Cordish property. As shall be more fully discussed below, The Harlan Company is currently seeking County approval for the construction of a luxury condominium building on its property adjacent to the Cordishes and thus understandably is vitally concerned with the potential impact of the Cordishes' proposed structures, which will stretch to within two (2) feet of the Harlan property. Were the Cordishes' proposed construction to be considered a part of their dwelling, these long appendages to the Cordish house could create a Residential Transition Area which would preclude development of approximately ten thousand (10,000) square feet of the Harlan property. The economic effect of such a restriction would be so profound as to call into question whether the project should be pursued.

On September 10, 1986, Deputy Zoning Commissioner Jean Marie Jung conducted a hearing regarding the Cordishes' proposed construction and their Petition for a Zoning Variance. At the hearing, testimony was adduced from witnesses produced by the Cordishes, and from witnesses produced by The Harlan Company of Maryland, Inc. On December 5, 1986, Deputy Zoning Commissioner Jung granted to the Cordishes a "zoning variance to permit a side yard setback of 2 feet for two accessory buildings (guest room and bathhouse)." The relief granted is in complete conformance with the plans prepared by the Cordishes' architect,

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CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

Stephen A. Glassman, which plans were submitted in conjunction with the Cordishes' Variance Petition. A copy of the Plans is attached hereto as Exhibit A and made a part hereof.

On December 22, 1986, the Cordishes filed an appeal of Deputy Zoning Commissioner Jung's decision, notwithstanding the fact that the relief granted will allow them to build in accordance with their architect's plans. In the letter noting the appeal, counsel for the Cordishes stated that the Cordishes are "aggrieved" by the Deputy Zoning Commissioner's decision and assert that the decision "denies their request for a zoning variance to permit a side yard setback of 2 feet for a dwelling." (emphasis added) Letter of December 22, 1986 from Paul L. Cordish, Esq. to the Zoning Commissioner.

The Cordishes' appeal, however, can bear no legitimate relationship to the grant of the relief requested, as the approval of the Variance Petition allows construction of the structures precisely as they are shown on the plans drawn by the Cordishes' architect. The only aspect of the relief granted that varies from the relief requested is that the decision of the Deputy Zoning Commissioner describes the additions as "accessory structures," and as such they will not create a Residential Transition Area, as that is defined in Section 1B01.1.B.1.a of the Baltimore County Zoning Regulations. As Mr. Cordish is aware, if he is able to extend the RTA by constructing an addition to his dwelling (and in his Variance Petition, he expressly describes the new structures as an

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CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

addition to his dwelling) he will deal a crippling blow to the Harlan project.

The motivation underlying the Cordishes' appeal of the Deputy Zoning Commissioner's favorable ruling becomes more apparent when the factual scenario surrounding their Petition for Variance is viewed in conjunction with the testimony presented at the hearing before Ms. Jung. When viewed in this light, the conclusion is inescapable that the Cordishes are attempting, through the manipulation of county agencies whose proper function is the equitable administration of the Zoning Regulations, to block the Harlan project. In fact, as will be discussed, Mr. Cordish has pointedly stated to Mr. Leonard Harlan, President of The Harlan Company of Maryland, Inc., that this is precisely his objective.

The Harlan Company signed a contract to purchase its six acre tract on November 29, 1985. Tr 152.[1] Its intention, as mentioned, is to construct a luxury condominium building. In January of 1986, Mr. Harlan called upon Mr. Cordish, and introduced himself as the purchaser of the property adjoining the Cordish parcel. Mr. Cordish told Mr. Harlan that the owners of the other properties in close proximity to or adjoining the Cordish property are relatives of the Cordishes and that Cordish had planned eventually to acquire their property, as well as the six acres bought by The Harlan Company, for development purposes

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SUN LIFE BUILDING
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BALTIMORE, MARYLAND 21201
(301) 752-6030

1 Copies of all pages cited from the transcript of the hearing before Deputy Zoning Commissioner Jung are attached hereto as Exhibit B and made a part herof.

and that he was upset that Harlan, and not he, had purchased the six acre tract. Tr 168-169. Mr. Harlan testified that Cordish stated "I don't want you to take this personally, but I am going to do everything I can to block your development." Tr 169.

Cordish's resentment that The Harlan Company had purchased the property adjoining his own is clearly reflected in the letters exchanged between Cordish and Ronald Lipman of the firm of Lipman, Frizzell & Mitchell, which firm was involved in the marketing and sale of the six acre tract purchased by The Harlan Company. (Copies of these letters are attached as Exhibits C, D and E hereto.) In these letters, Cordish rebukes Lipman for not apprising Cordish that the property was on the market and states, "... the final chapter in this little drama is far from over and I think your friends from New York[2] may find that they will have earned their keep on this one before it is over." Letter dated January 16, 1986 from David Cordish to Ronald Lipman. At the hearing before Commissioner Jung, after being confronted with these letters, Mr. Cordish acknowledged sending them. Tr 47-50.

In February 1986, Mr. Harlan was contacted by the Cordishes' architect, Stephen Glassman, who candidly stated that Mr. Cordish had retained Glassman's firm to design a plan that would block development by The Harlan Company. Tr 171. Mr.

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

2 Mr. Harlan, the principal of The Harlan Company of Maryland, Inc., is from New York and is the principal of the Harlan Company, Inc., a New York based real estate consulting firm.

Testimony on behalf of the adjacent property owner (The Harlan Company of Maryland, Inc.) indicates that it does not oppose the improvements, but has deep concerns that the proposed structures, attached to the main residence so as to be considered additions, would move the residential transition area (RTA) 48 feet to the west. Such a change in the RTA would prevent the quality of their proposed project and make it impossible to accomplish the design goals. The board of the Pikesville Community Growth Corporation voted to "approve and support the Harlan development and support the Cordish variance, only in so far as its granting would be compatible with the Harlan development and not change the setback required now pertaining to the Harlan development." An architect was of the opinion that the present garden is modest and that aesthetics could be better served by something other than a glassed in walkway; i.e. a trellis or a hedge. In addition, in his opinion, there are many available locations for a guest room and bathhouse.

All parties to the hearing stipulated that the Deputy Zoning Commissioner could visit the site and the general neighborhood.

Following a visit to the site, and after due consideration of all testimony and evidence presented on this case, in the opinion of the Deputy Zoning Commissioner, the granting of a variance that would permit the two buildings to be connected by a covered passageway, with walking distance of approximately 47 and 56 feet from the rooms to the existing porch, and referring to the structures as additions to the main residence, would extend the footprint of the residence in an unreasonable and ludicrous fashion. To the Deputy Zoning Commissioner's knowledge, no breezeway or covered passageway anywhere near the length proposed in this case has been approved in Baltimore County so as to connect an addition to the main building. Notwithstanding the language of Section 400.1 of the Baltimore County Zoning Regulations (BCZR), which obviously refers to utilitarian, relatively short covered passageways, and without venturing to establish

apr associates, inc.
surveyors-engineers

ALEXANDER P. RATTCH, PROF. L.S.
RICHARD J. TRUELOVE, P.E.

DESCRIPTION OF PROPERTY OF DAVID S.CORDISH
SLADE AVENUE
THIRD ELECTION DISTRICT,BALTIMORE COUNTY,MARYLAND

BEGINNING FOR THE SAME at a point in the division line between the lands of David S.Cordish and the lands of Edward A.Halle and wife; said point being situate North 36 degrees 48 minutes 39 seconds West 244.43 feet,measured along said division line,from a marble stone found on the Northwesterly side of Slade Avenue; thence binding along said division line,referring all courses to the True Meridian as established for the Baltimore County Metropolitan District,and as now surveyed, North 36 degrees 48 minutes 39 seconds West 244.43 feet ; thence leaving said division line and running North 53 degrees 11 minutes 21 seconds East 178.21 feet to a point in the center of 14.3 foot wide road; thence binding along thecenterline of said road,with the use thereof in common with others entitled thereto,South 36 degrees 48 minutes 39 seconds East 244.43 feet; thence leaving said road and running South 53 degrees 11 minutes 21 seconds West 178.21 feet to the point of beginning ; containg 1.0 acre more or less.
BEING all of the land which by Deed dated September 18,1970 and recorded among the Land Records of Baltimore County in Liber 5131,page 207 was conveyed by The Maryland Title Guarantee Company to David S.Cordish.

6/2/1986

STATE OF MARYLAND — CHARLES E. MARKS — No. 5121 — REGISTERED PROFESSIONAL LAND SURVEYOR

7427 harford road baltimore, md. 21234 tel: 301 444 4312

RE: PETITION FOR VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd., 3rd District
DAVID CORDISH, et ux, Petitioners

: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 87-48-A

ENTRY OF APPEARANCE

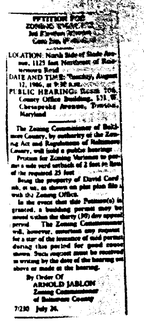
Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

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

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

I HEREBY CERTIFY that on this 17th day of July, 1986, a copy of the foregoing Entry of Appearance was mailed to Glen Weinberg, Esquire, and Paul Cordish, Esquire, 300 Water St., Baltimore, MD 21202, Attorneys for Petitioners.

Peter Max Zimmerman
Peter Max Zimmerman


PETITION FOR ZONING VARIANCE
3rd Election District
Case No. 87-48-A
LOCATION: North Side of Slade Avenue, 1125 feet Northeast of Reisterstown Road.
DATE AND TIME: Tuesday, August 12, 1986, at 9:30 a.m.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:
Petition for Zoning Variance to permit a side yard setback of 2 feet in lieu of the required 25 feet.
Being the property of David Cordish, et ux, as shown on plat plan filed with the Zoning Office.
In the event that this Petition(s) 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 JABLON
Zoning Commissioner
of Baltimore County
7230 July 24.

CERTIFICATE OF PUBLICATION

TOWSON, MD., July 24, 1986

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 July 24, 1986

THE JEFFERSONIAN,
Susan Steuber Obrecht
Publisher

Cost of Advertising
22.00
87-48-A

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 3rd — Date of Posting July 23 1986
Posted for: Variance
Petitioner: David Cordish, et ux
Location of property: N/S of Slade Ave., 1125' NE of Reisterstown Rd.
Location of Signs: In front of subject property at Slade Ave.
Remarks:
Posted by S. J. Gratz (Signature) — Date of return July 25 1986
Number of Signs: 1

CERTIFICATE OF PUBLICATION

77980

Pikesville, Md., July 30, 1986

THIS IS TO CERTIFY, that the annexed advertisement was published in the NORTHWEST STAR, a weekly newspaper published in Pikesville, Baltimore County, Maryland before the 12th day of Aug. 1986
the first publication appearing on the 23rd day of July, 1986
publication appearing on the ____ day of ____, 19____
publication appearing on the ____ day of ____, 19____

THE NORTHWEST STAR

Phyllis Marshall
Manager

Cost of Advertisement $20.00

LEGAL NOTICE

PETITION FOR ZONING VARIANCE
3rd Election District
Case No. 87-48-A

LOCATION: North Side of Slade Avenue, 1125 feet Northeast of Reisterstown Road.

DATE AND TIME: Tuesday, August 12, 1986, at 9:30 a.m.

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

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

Petition for Zoning Variance to permit a side yard setback of 2 feet in lieu of the required 25 feet.

Being the property of David Cordish, et ux, as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) 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 JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M.H. JUNG
DEPUTY ZONING COMMISSIONER

August 5, 1986

Glenn Weinberg, Esquire
300 Water Street
Baltimore, Maryland 21202

RE: PETITION FOR ZONING VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd.
3rd Election District
David Cordish, et ux - Petitioners
Case No. 87-48-A

Dear Mr. Weinberg:

This is to advise you that $57.00 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 OR THE ORDER SHALL NOT BE ISSUED.

Do not remove sign from property from the time it is placed by this office until the day of the hearing itself.

Please make the check payable to Baltimore County, Maryland, and remit [illegible] Building, Towson, Maryland

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

No. 021378

DATE ____ ACCOUNT ____
AMOUNT $ ____
RECEIVED FROM ____
FOR ____
VALIDATION OR SIGNATURE OF CASHIER

LAW OFFICES
CORDISH AND CORDISH
300 WATER STREET - SUITE 400
NE CORNER SOUTH & WATER STS
BALTIMORE, MARYLAND 21202

PAUL L. CORDISH
DAVID S. CORDISH

TELEPHONE
(301) 539-4141

December 22, 1986

Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: Appeal to the County Board of Appeals
for Baltimore County Maryland
Petition for Zoning Variance
N/S of Slade Avenue, 1125' NE of
Reisterstown Road
3rd District
Case #87-48-A

Gentlemen:

This letter is intended to constitute an Appeal to the County Board of Appeals of Baltimore County from the decision of December 5, 1986 in above matter, of the Honorable Jean M.H. Jung, Deputy Zoning Commissioner. The persons entering this appeal to the County Board of Appeals of Baltimore County from the decision rendered December 5, 1986 in the above case are David S. Cordish and Penelope A. Cordish whose addresses are 4 Slade Avenue, Pikesville, Baltimore County, Maryland 21208.

This Appeal is hereby filed within thirty (30) days from December 5, 1986 which is the date of the final Order in this matter.

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

No. 025755

DATE ____ ACCOUNT ____
AMOUNT $ ____
RECEIVED FROM ____
FOR ____
VALIDATION OR SIGNATURE OF CASHIER

, in the amount
land, in payment
um remitted
is $15.00 for
Penelope A.
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Very truly yours,
Cordish

Zoning Commissioner
Page Two
December 22, 1986

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Glassman suggested that, if he were employed by The Harlan Company to design the Harlan project, he would be in a position to serve as an intermediary between Cordish and Harlan. Tr 171, 172. His proffer being refused by Mr. Harlan, Mr. Glassman's firm produced the plans that were submitted as part of the Cordish Variance Petition and later approved by Ms. Jung. Testimony by Mr. Fisher, the architect in the Glassman firm who actually drew the plans for the proposed structures on the Cordish property, reveals that he was instructed to connect the structures with the dwelling by covered walkways. Tr 90. Cordish's instruction to connect the structures with the house in this manner is consistent with his expressed intent to block the Harlan project. Without the covered walkways it would be high unlikely that the structures would be viewed by the Deputy Zoning Commissioner as part of the Cordish dwelling. Only if found by the Deputy Zoning Commissioner to be a part of the dwelling would the structures create an RTA and cripple the Harlan project. Significantly, Mr. Fisher also testified that, prior to February 1986, plans for a bath house or guest house had not been requested. Tr 82, 84. Thus, the proposal for construction of the covered walkways and accessory structures came into being only after Cordish learned of The Harlan Company's plans for the adjacent property.

As is documented by David Blinder, a senior partner of Beyer, Blinder & Belle, the architectural firm retained by The Harlan Company, if an RTA were to be created by the structures

proposed for the Cordish property, it would no longer be possible to create the spacious, high quality condominium units envisioned, as the building envelope would be substantially diminished. Were the RTA to be shifted, the building footprint would be reduced by 10,000 square feet, which, when aggregated over the full number of stories projected for the building, would result in a reduction of between sixty thousand (60,000) and ninety thousand (90,000) square feet. Tr 184.

Nor is the damage that would result from a shift in the RTA limited to harm suffered by The Harlan Company. Representatives of the Pikesville Community Growth Corporation, ("PCGC") attended the Cordish variance hearing and registered strong support for the Harlan project, believing that the welfare of Pikesville will be enhanced by the high quality residential units that The Harlan Company wants to build. Tr 116-119. Mr. David Blinder described how a shift in the RTA would fundamentally alter the nature of the project by dramatically reducing the building footprint and also by requiring the razing of the existing fine Georgian-style mansion and the existing stands of mature trees. Tr 224-230, 233. The Harlan Company very much wants to preserve both the mansion and the trees. The PCGC went on record in support of the Harlan project, and expressed support for the Cordish variance only if it would not change the setback requirements now pertaining to the Harlan development. Tr 116, 138-139.

In ruling on the Cordish appeal, it is strongly urged that this Board consider the physical configuration of the proposed Cordish structures - covered walkways jutting out like antennae from the main residence and terminating in small rooms, no larger than twelve feet by twelve feet in outside dimension. The concept is reminiscent of "gerrymandering," the technique, now illegal, once used by incumbent politicians to redraw the boundaries of their jurisdictions in an attempt to encompass only those constituents who could be counted upon to support the incumbent. Mr. Cordish is attempting here to gerrymander the "footprint" of his house and deal a crippling blow to the Harlan project.

Moreover, it is apparent that this appeal serves no legitimate function, as the Deputy Zoning Commissioner has granted a variance encompassing precisely the plans submitted by the architect selected by the Cordishes. Rather, the Cordishes' appeal is prompted by another concern - that of finding a way to block the Harlan project. The very act of filing an appeal from a favorable ruling belies Mr. Cordish's representations that the configuration of the proposed structures is based only on aesthetics and design imperatives.

II. Legal Arguments

Under the law, the Cordishes' appeal is flawed for two reasons, either of which provides sufficient grounds for this Board to dismiss the appeal. The first of these legal infirmities is founded upon a long line of Maryland authority

holding that an appeal may not be taken from a favorable ruling. As has been discussed, Ms. Jung has approved the construction of the structures as designed by the Cordishes' architect. The relief granted differs from the relief requested only insofar as the structures are deemed "accessory structures," rather than extensions of the dwelling house. By couching her opinion in this language, the Deputy Zoning Comissioner both grants the Cordishes the relief requested and insures that, by so doing, the RTA created by the Cordish dwelling will not shift, forcing The Harlan Company to abandon the plans developed by its architects.

The precept that an appeal may not be taken from a favorable ruling was invoked by the Court of Appeals in Goldstein v.Karukas, 180 Md. 232, 235 (1941). The plaintiff in Karukas was awarded money damages as compensation for injuries caused by the defendant's negligence. The plaintiff's subsequent appeal, seeking a larger damage award, was dismissed by the Court of Appeals. In so ruling, the Court held that there were insufficient grounds for an appeal, as it was not alleged that the trial court had committed error, but only that the quantum of damages was insufficient. In comparison, an argument that the remedy accorded the Cordishes is for some reason not ample is even less persuasive than that raised on appeal by the plaintiff in Karukas. In Karukas, the judgment was for less money than prayed for in the declaration, while the Cordishes have for all practical purposes received the full

measure of the relief requested. If the appeal in Karukas was insufficient as a matter of law, so must be that brought by the Cordishes, who fail to assert in what way they are aggrieved by the Deputy Zoning Commissioner's decision.

Even more clearly, the Cordishes' appeal must fail under the standard articulated in Offutt v. Montgomery Co. Bd. of Ed., 285 Md. 557 (1979), where the Court dismissed a cross-appeal brought by the Montgomery County Board of Education. The language of the Offutt court is unambiguous:

> It should be pointed out that, as a procedural matter, the cross-appeal in this case does not properly lie. Although the defendant School Board may not like the language in the trial court's opinion stating that the Board bargained in bad faith, the final judgment of the trial court, by denying any relief to the plaintiffs, is entirely in the School Board's favor. It is established as a general principle that only a party aggrieved by a court's judgment may take an appeal and that one may not appeal or cross-appeal from a judgment wholly in his favor. 285 Md. at 564, N.4.

Offutt is particulary apposite to the circumstances surrounding the Cordish appeal. In Offutt, the Court of Appeals dismissed the cross-appeal of the Montgomery County Board of Education despite the fact that the trial court had made a finding that the Board had not dealt with the appellants (plaintiffs below) in good faith. The parallel between Offutt and the Cordish appeal is clear. Although having been granted approval by the Deputy Zoning Commissioner to build the structures designed by their architect, the Cordishes allege error in regard to the collateral matter of whether their additions are deemed accessory structures or a part of the dwelling. If the Board

of Education's cross-appeal in Offutt was dismissed despite the fact that the trial court made findings adverse to the Board, then the Cordish appeal must be dismissed, as the Deputy Zoning Commissioner made no findings of an adverse nature comparable to those made by the Offutt trial court. Displeasure that the accessory structures will not cast an RTA restriction upon the adjoining Harlan property is hardly a cognizable ground for appeal.

Further authority for the proposition that the appeal must be dismissed is found in Adm'r, Motor Veh. Adm. v. Vogt, 267 Md. 660, 664 (1973), which restates the rule that, in the absence of an adverse ruling, no appeal may be taken. In Vogt, the issue arose in the context of an action brought by a group of auto "wreckers" seeking declaratory and injunctive relief from legislation passed by the General Assembly that imposed upon the wreckers a statutory scheme of regulation. The trial court decided the issue in the favor of the plaintiff wreckers. An appeal from the order of the trial court was taken by the Administrator of Motor Vehicles. The wreckers cross-appealed. As is carefully noted in the opinion of the Court of Appeals, the order of the trial court from which the appeal and cross-appeal were taken was devoid of all reference to certain of the arguments raised by the plaintiffs at trial, and, although the order did enjoin enforcement of the statute on the grounds that it was unconstitutional, the opinion of the trial court was adverse to the wreckers on other of the arguments

raised by them at trial. In holding that the cross-appeal must nevertheless be dismissed the Court stated:

> "In short, the court, in concise fashion, ruled against the administrator on the single basis [unconstitutionality] above, and rendered no further decision. The effect of all this is to place the appellees in the position of cross-appealing from an order in which they are the prevailing parties." 267 Md. at 664.

In Vogt, as in Offutt, supra, the fact that the judgment of the trial court did not reflect total approval of the arguments raised by the party prevailing at trial does not render inapplicable the rule of law that no appeal lies from a favorable judgment.

Further support for the principle here under discussion is found in Mugford v. City of Baltimore, 185 Md. 266, 269 (1945) (cited in Vogt, supra) As it did in Offutt and Vogt, the Court in Mugford concludes that when an appeal is based upon an assertion by the party prevailing at trial that it is aggrieved despite the fact that the trial court has ruled in its favor, the appeal must be dismissed. The suit in Mugford was brought by taxpayers seeking invalidation of an agreement entered into between the Department of Public Works of Baltimore City and the Municipal Chauffeurs, Helpers and Garage Employees Local Union No. 825. The bill of complaint sought a declaration that the agreement was invalid, an injunction prohibiting the City and its agencies from extending any preferential advantage or privilege to the Union, and an injunction prohibiting the City from deducting monies from wages or salaries paid to City

employees and remitting those monies to the Union as payment of the Union dues owed by the City employees.

The Chancellor declared the agreement to be invalid, permanently enjoined the City from entering into any agreements affording the Union a preferential advantage, and enjoined collection of Union dues in the manner set forth in the Agreement. Yet the Chancellor expressly approved, and exempted from its prohibition, voluntary arrangements whereby union dues would be withheld by the City's Central Payroll Bureau and remitted to the Union. The plaintiff's appeal of the Chancellor's decree was dismissed by the Court of Appeals, which stated "[i]t needs no authorities to support the proposition that one cannot appeal from a decree wherein the relief he prays for has been granted." 185 Md. at 269.

Comparison of the circumstances in Mugford and the attempt here by the Cordishes to appeal a favorable ruling compels the conclusion that the Cordish appeal must be dismissed. In Mugford it was held that an appeal could not be brought from a decision that granted the plaintiffs the relief they had requested but which also opened up an ancillary avenue whereby the contested dues might still be collected on a voluntary basis and remitted by the City. The Cordishes have even less justification for bringing an appeal than existed in Mugford. No comparable ancillary avenue has been created which arguably undercuts the relief granted by the Deputy Zoning Commissioner. What possible justification can be claimed for

affording the Cordishes an appeal of a ruling granting the relief requested, but denominating the "gerrymandered" structures as "accessory buildings." To entertain this appeal would serve no purpose but to give effect to the vindictive motives that underlie the Cordishes' legal maneuvering.

Under a second line of legal authority, dismissal of the Cordishes' appeal is necessary, as accommodation of the appellants under these circumstances would be in derogation of the doctrine of judicial estoppel. This doctrine is applicable because the Cordishes' appeal is repugnant to fundamental notions regarding the proper function of courts and, by analogy, administrative agencies. Judicial estoppel is closely related in concept to equitable estoppel, as each is intended to preclude the assertion by a party of inconsistent positions. The doctrine of equitable estoppel, briefly stated, regulates the rights of parties inter sese in circumstances where one party seeks to assert a position inconsistent with a position taken by that party in an earlier proceeding. In these instances, the party against whom the inconsistent position is asserted may invoke the doctrine of equitable estoppel to preclude his opponent from gaining an advantage in this inequitable manner.

Judicial estoppel, in distinction, is not similarly concerned with the rights of the parties inter sese, but functions to prevent a party from playing "fast and loose with the courts." Scarano v. Central Railroad, 203 F.2d 510, 513

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(3d Cir. 1953). Thus judicial estoppel is intended to safeguard the integrity of the judicial system from parties who seek to manipulate it by altering their stance on issues without regard to inconsistent arguments advanced earlier. Such facile transformations are not in harmony with the impartial dispensation of justice and the doctrine of judicial estoppel may be invoked to protect the judicial system from such sharp practice.

The nature of judicial estoppel was addressed by the court in Duplan Corp. v. Deering Milliken, Inc., 397 F.Supp. 1146, 1177-78 (1975):

> That an estoppel can arise because of a prior inconsistent claim or position taken in a judicial proceeding is clear. A party cannot have its cake and eat it too. Although there are several species of estoppel, the court is here dealing with what is generally known as judicial estoppel or the doctrine of preclusion against inconsistent positions. This type of estoppel protects interests different from those protected by equitable estoppel. . . . Equitable estoppel is designed to protect any adversary who may be prejudiced by the attempted change of position. On the other hand, judicial estoppel, or preclusion against inconsistent positions, is designed to protect the integrity of the courts and the judicial process.
>
> An exposition of the modern doctrine of judicial estoppel based upon preclusion against inconsistent positions is found 1B Moore, Federal Practice, 0.405[8], at 765-768 (2d ed. 1971) as follows:
>
> > Even where the facts will not permit the application of res judicata, collateral estoppel, or the election rule against inconsistent remedies, a party may be precluded by a prior position taken in litigation from later adopting an inconsistent position in the course of a judicial proceeding. Though the preclusion doctrine is sometimes referred to

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as "judicial estoppel" or "estoppel by oath," and though it is frequently expressed in language sounding in estoppel in pais, numerous cases illustrate the existence of a doctrine forbidding inconsistent positions, usually as to facts, which operates independently of equitable estoppel.

> Many cases forbidding inconsistent positions in judicial proceedings may be grouped conveniently into two classes: those where a party seeks to contradict his own sworn statements made in prior litigation in which he was a party or a witness; and those where the prior inconsistent position was not taken under oath. . . . Both types of preclusion seem to fall, generically, within a universal judicial reluctance to permit litigants to 'play fast and loose' with courts of justice according to the vicissitudes of self-interest.
>
> * * * * * * * * *
>
> The preclusion rule has been held to operate regardless of whether the prior inconsistent position was successfully maintained; and irrespective of reliance by, or prejudice to, the party invoking it. Strangers, as well as parties to the proceeding in which the prior inconsistent position was taken, may take advantage of the preclusion. (Citations omitted.) (Emphasis added).

As is reflected in the above quotation, judicial estoppel is broader in scope than the doctrine of equitable estoppel. The latter requires, for example, that there have been a prior proceeding in which the parties were aligned as adversaries. No such requirement pertains to judicial estoppel, the chief purpose of which is to prevent the erosion of the integrity of the judicial system that would result were a party allowed to assert inconsistent positions, or to "blow hot or blow cold" depending upon how the party could best serve its own interests.

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The scope of the doctrine of judicial estoppel clearly encompasses the conduct of the appellants before this Board. At the hearing before the Deputy Zoning Commissioner, Mr. Cordish insisted that the improbable configuration of the covered walkways and terminal structures was the result of careful study by his experts and represented the optimum solution to a thorny design problem. The Deputy Zoning Commissioner, while evidencing some skepticism as to merit of the Cordish proposal, nonetheless granted the requested variance to allow the Cordishes to build within two feet of the boundary shared with the Harlan property.

The Cordishes now seek to invoke the authority of this Board to appeal the grant of precisely the relief prayed for in the proceeding below. The inherent inconsistency of the Cordishes actions is plainly apparent. It is also apparent that, were this Board to entertain this appeal, the integrity of the entire zoning appeals process would suffer. That is the inevitable result when forums designed for suitors seeking justice are suborned by those who, through sharp practice, seek to achieve results that are at variance with the equities of the case. The damage that results from this manipulation is not inflicted only on The Harlan Company, whose interests clearly will be unconscionably prejudiced should this appeal go forward. Nor will the injury be confined to Pikesville if the quality of the Harlan project is compromised by the Cordishes' maneuvering. Rather, the harm is done to all citizens who depend upon the

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impartial functioning of judicial and administrative institutions to order the affairs of society.

Conclusion

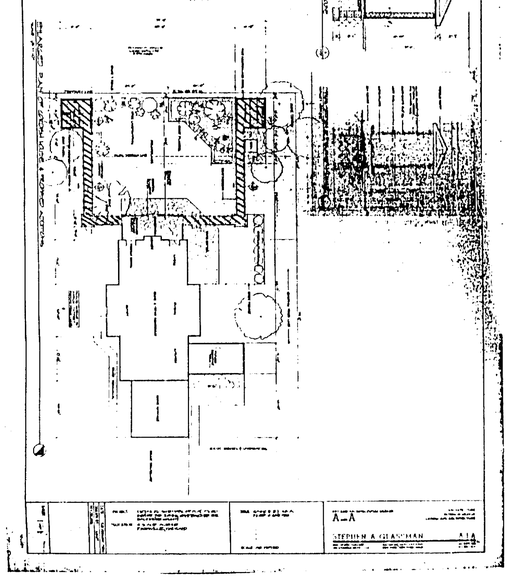
For the reasons set forth above, The Harlan Company of Maryland, Inc. prays that this Board of Appeals dismiss the appeal of the Deputy Zoning Commissioner's decision brought by David and Penelope Cordish.

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A. Yes.
Q. You understand the term duces tecum?
A. Yes.
Q. You understand the term duces tecum means bring any of the plans you have?
A. Yes.
Q. Have you brought any of the plans with respect to the kitchen?
A. No.
Q. You wrote a letter with respect to this property to Mr. Ron Lippman on January 26, 1986, did you not? Is that your signature?
A. That is correct.
Q. You didn't bring this letter with you?
A. No.
Q. It concerns the property, does it not?
A. I didn't think that it did.
Q. Indeed, it says, " I inquire why you have not had the courtesy to send me some information concerning the sale of this property", does it not?
A. Yes.

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Q. Mr. Lippman replied to you, did he not?
A. Yes.
Q. In that letter, he stated to you that he didn't think you were interested in the property, isn't that correct?
A. More or less.
Q. Is this a copy of the letter that Mr. Lippman sent to you?
MR. P. CORDISH: I think your Honor ought to see the letter he is talking about.
MR. SCHERR: If I can finish without interruption from counsel, my point will become very clear.
MS. JUNG: I am going to allow time to proceed.
Q. You wrote back to Mr. Lippman that you were very disturbed that you weren't advised about the sale of the property, did you not?
MS. JUNG: Gentlemen, gentlemen.
MR. SCHERR: This is highly unusual, your Honor. I have never seen a lawyer counsel his client when he was on the stand.
A. I was asking if we had the letters.

MS. JUNG: I would prefer you ask those things at the end.

Q. You in fact said in the letter, "I think your friends from New York may find they will earn their keep before this one is all over." That is your handwriting?

A. Yes.

Q. Isn't it your intent to block the construction of this property?

A. Not my intent to block it. I do believe it is a difficult project.

MR. SCHERR: I am submitting these as identified by Mr. Cordish, signed by him, sent by him and received by him. I am marking as Protestant's Exhibit 1 a letter from Mr. Cordish to Mr. Lippman inquiring why he was not advised of the sale of the property. I would like to mark it as Exhibit 2, or if you prefer, 1B --

MS. JUNG: Mark them separately.

MR. SCHERR: -- Exhibit 2 the letter back from Mr. Lippman saying I didn't think you were interested in residential property, the letter back from Mr. Cordish saying, "I am interested in the residential property as it

adjoins my property and your friends from New York may find they will earn their keep before this one is all over."

MR. WEINBERG: May I see copies of those.

MS. JUNG: I thought you saw them.

MR. SCHERR: The third letter is January 19, 1986, January 13, 1986 is Exhibit 2, January 9, 1986 is Exhibit 1 from Mr. Cordish to Mr. Lippman and January 16, 1986 is Exhibit 3.

MS. JUNG: Mr. Weinberg, do you wish a few moments to review them?

MR. WEINBERG: I would also like to get a copy, if possible. I would like to keep them.

MR. SCHERR: I will be happy to make copies. Do I have copies? Yes. That is all I have at this time, your Honor.

MS. JUNG: I have a few questions.

MR. WEINBERG: Your Honor, may I be permitted to ask a few questions after you are done?

MS. JUNG: Certainly.

Q. (MS. JUNG) Mr. Cordish, you described the

Q. And a bath?

A. Yes.

Q. The bath is how big?

A. 5 by 5, jacuzzi.

Q. There are other places you could put these structures on the property, is that correct?

A. As discussed several times prior, there are probably several zillion different ways you could place them. In our opinion, this is the best position. We discussed the sun, location, security, the juxtaposition to the garden and the rest of the house, a multitude of reasons for the location.

Q. It does require a variance to make it the best place?

A. Certainly.

Q. Your principal is Mr. Stephen Glassman, as I understand it?

A. He is the principal of the firm.

Q. The firm was hired, you said, seven months ago? That would be February?

A. Yes.

party?

A. Yes. We took it over from another architect who had been working on it for some time.

Q. Do you know how long or any information as to when the plans were first brought about?

A. I was told it was approximately two years.

Q. Did you take over the existing plans?

A. Yes, I did.

Q. I imagine there was a date on them? You probably don't remember?

A. They were rather vague plans. I think that is one of the problems to begin with. There were things that were not documented well. We took it over from that point.

MR. WEINBERG: No further questions.

Q. (MS. JUNG) Had any planning been done on the bathhouse and guest house before your company took over the project, to your knowledge?

A. Not that I know of.

Q. What were your instructions?

A. To design a bathhouse and guest house juxtaposed

covered walkway?

A. It would strictly be a glass enclosure. It certainly wouldn't be anything that would be kept heated. I wouldn't want to spend any great deal of time in it. It would be strictly a transition space for someone to walk from the house to the guest house.

Q. Did your original instructions include attaching the structures to the house by a covered walkway?

A. Yes. I believe that was part of our original discussions.

Q. Was reason given for that?

A. Mainly the reasons that I have stated as far as being able to get to them comfortably.

MS. JUNG: I have no further questions at this time. I might wish to recall the witness.

MR. SCHERR: Ms. Jung, may I ask two questions, please?

MS. JUNG: You may.

RECROSS-EXAMINATION

BY MR. SCHERR:

Q. Mr. Fisher, at the northwest end of the property,

Q. Did the board take any position with respect to those?

A. Yes, they did.

Q. What position did they take with respect to the zoning variance?

A. The PCGC board approved and supported the Harlan development and supports the Cordish variance only insofar as its granting would be compatible with the Harlan development and not change the setback requirements now pertaining to the Harlan development. The motion was passed with one descent.

Q. As you understand the Harlan project, that this project would be good for Pikesville?

A. Yes.

Q. Why would it be good for Pikesville?

A. Part of what the Pikesville Community Growth Corporation has been doing on the past six years or so has been to create a positive market for Pikesville. The members of the board and the members of the Executive Committee see the development that is proposed very much in keeping with our intent. It is a solid market base

that interrelates to the commercial well-being of the community.

From that perspective, it is the feeling that these are the kinds of projects that we are encouraging and want to see happening in Pikesville. Indeed, some of those are happening not perhaps to this quality but other projects are occurring and they are a part of an overall master plan for Pikesville's long-term viability.

Q. What would be the impact on Pikesville if Mr. Harlan is prohibited from developing the project as proposed?

MR. WEINBERG: Objection. I don't think there is any talk about prohibition.

MR. SCHERR: What?

MS. JUNG: I didn't hear you.

MR. WEINBERG: He said prohibited from building.

MS. JUNG: Would you restate your question?

Q. If the project does not go forward as explained to the board on September 3, what, if any, impact would there be to Pikesville and the general welfare of Pikesville?

A. It is my understanding, and the feeling of the members of the board, that the ability to have the quality project with the anticipated price ranges and the anticipated population that would reside there is critical to the kind of focus that we have tried to achieve vis-a-vis town center designation for Pikesville. A setback in not having this particular type of quality project, we feel, is detrimental to the objectives that we have been working so hard to achieve with town center designation.

This is the project or the type of quality project that the organization has been seeking and has tried to bring to Pikesville vis-a-vis the town center designation. We see it having an effect in that from a standpoint of overall objectives, that this could be the kind of thing that we want to envision Pikesville being over the long-term. We would want to believe that it could move forward because it fits so well with the overall plan and objective for the area.

Q. Has Mr. Cordish asked for reconsideration of the board's decision this this matter?

A. Yes, he did.

Q. What has been the board's response?

A. The board was mailed a copy of Mr. Cordish's reconsideration request, and through the polling process of those persons who received that correspondence, there was a majority of those persons that did not favor reconsideration at this point.

Q. I just want to make clear for the record the exhibits which were presented at the PCGC meeting on September 3rd were three exhibits, is that correct?

A. I was on vacation and not present at the meeting on September 3rd.

Q. Do the minutes reflect that Mr. Harlan presented three exhibits?

A. No, they do not.

MR. SCHERR: Thank you. I have nothing else of this witness.

CROSS-EXAMINATION

BY MR. WEINBERG:

Q. In this first meeting with Mr. Harlan, was David Cordish invited to attend?

presentation of Mr. Weinberg and Mr. Harlan?

A. I was.

Q. Mr. Harlan made a full presentation?

A. Both sides made full presentations.

Q. At that time, Mr. Harlan used three boards to make his presentation, did he not?

A. That is correct.

Q. I have introduced into evidence as Protestant's Exhibits 4, 5 and 6 which I believe you saw. Are these the boards that Mr. Harlan used at that time to make his presentation?

A. Those are the three exhibits he used when he made his presentation.

Q. Now, Mr. Altman, as I understand it, the PCGC board is in favor of Mr. Harlan's project, is that correct?

A. There was a general expression as the statements of the Executive Director of the corporation indicated, and after a lot of discussion and a lot of questions, that the organization at that board meeting favored the project as described by Mr. Harlan and took a position on Mr.

Cordish's proposal only to the extent that it would interfere with the execution of that project.

Q. Now, did Mr. Weinberg make any statements at that meeting with reference to the Harlan project?

A. There were a number of statements made by Mr. Weinberg that affected that project.

Q. What, if anything, did he say with respect to his client's opposition to the project?

A. He indicated in the beginning of the presentation quite clearly he had no opposition to that project.

Q. Did he make any subsequent statements?

A. Subsequently, it was not clear what his position was, but he indicated at the end, that, in fact, I say indicated, he was opposed to the proposed project.

Q. Did he say that, in fact, he would not reach an agreement, that he would not agree to oppose Mr. Harlan's project as it affected the RTA?

A. He said he would oppose reaching an agreement insofar as it impacted on the RTA.

Q. Did Mr. Weinberg make any statements about placing the improvements elsewhere, Mr. Cordish's

A. Yes, I have a brother-in-law, my wife's brother, who lives in Baltimore, out in the Valley. His wife grew up in Pikesville, and I spend typically every Wednesday in Baltimore on some form of business in the community, and I am frequently here on other days, too.

Q. Now, Mr. Harlan, you became the owner of the 6 Slade Avenue property when, sir?

A. We closed on the property April 29th. We signed a contract for the property, I believe it was November 29th.

Q. After you signed a contract for the property, what, if any, activity did you engage in with respect to a feasibility study?

A. We immediately employed the services during the preliminary period in which we had an opportunity to not go forward with the contract, we employed the services of David Thaler for technical compliance as to all of the elements in the package that we received. A package was sent out to a number of parties as I have been told by the agent for the owner of the property, and we were one of the recipients, and there were representations made there

Q. This plan is in accordance with the CRG plan that you submitted to the County?

A. That is correct.

Q. Mr. Harlan, let me direct your attention to early January, 1986 and ask you if you had any contacts with Mr. Cordish at that time?

A. Yes. Once having signed a contact and having satisfied ourselves that the representations were correct, I called and made an appointment to visit with Mr. Cordish and introduce myself as I would want to do to any and all neighbors. I visited Mr. Cordish in early January at his offices in downtown Baltimore, along with a colleague of mine, Mr. Donald Shapiro.

Q. What, if anything, did Mr. Cordish say to you about your acquisition of the property?

A. He described how he was an extremely wealthy man, a man who was involved with a great number of projects. I think he mentioned that he had some 11 or 12 shopping centers under development throughout the country with some of the biggest shopping center developers in the world, and that he had vision for this entire -- he told me that

both neighbors, Levys and Patz were relatives and related to him, and that he had envisioned that he would acquire the Halle piece, and that at some point he would have that entire block as a huge complex.

He went on to say that he was very upset that the Halles did not offer him the opportunity to buy it. In fact, he had gone to the Halles and asked Mr. Halle at such time as he put the property on the market, would he please give him the opportunity to buy it. He went on to say that he was very angry with Mr. Lippman who was a boyhood friend of his for not having the courtesy to send him the same package we received.

We told him what we were doing. We mentioned what we were doing, a high-rise conceptually, and on the way out I was just bowled over when he shook my hand at the doorway to his conference room, looked me in the eye and he said, "I don't want you to take this personally but I am going to do everything I can to block your development." I said, "Why?" He said, "Because I just don't want anything next door."

Q. Did Mr. Cordish contact you before he filed the

So that in my judgment, there were and there exist many other alternative ways, and many ways, I feel preferable ways, of accomplishing what Mr. Cordish had indicated were his objectives for the project.

Q. Could you give Ms. Jung some examples of the alternatives ways this could be accomplished?

A. Well, for example, if you wanted to flank the garden, create a garden and flank it with some enclosure as was described by Mr. Kirwin as a desirable form of flanking the garden, I think a very desirable way would be some form of trellis with greens growing over it with a screened wall, some sort of a trellis wall. That would be much more garden and charming like than a glass enclosed bridge with emollients three foot on center.

The two buildings could be located on the north side of the property rather than either close to the house or within the 25-foot limit and still accomplish the objective of screening the garden without requiring the variance or affecting the Harlan development proposal.

Q. Mr. Blinder, you have had an opportunity to, I assume -- in fact, this was prepared under your direction

and control, was it not?

A. Yes.

Q. What would be the impact on Mr. Harlan's welfare if this project were not -- if the RTA were moved back by Mr. Cordish's improvements as shown on the exhibit?

A. I will try not to repeat what Mr. Thaler stated because I think he made a number of points. I would like to focus on the 54-foot dimension particularly. We are talking about a building here, a luxury building which tends to have very large apartments. Those large apartments would have a number of amenities required for this type of development, very large bathrooms, a number of large structures, large walk-in closets, very large rooms, all of which require an amount of a very great depth, much greater than 54 feet.

Reducing the availability to create an apartment house to 54 feet along almost two-thirds of the available area where you could build six stories would severely limit the ability to create those kinds of apartments. In addition, we investigated before we came to the particular solution that was presented a number of other

alternatives. We looked at multiple buildings.

We came to one very important early decision which I think also is an important ingredient in this project, which was there is a very substantial handsome house on the property with beautiful landscaping, huge trees, and we feel a mandatory aspect of not only creating the development but of being a good neighbor and creating a development which would be desirable by neighbors is to leave as many of those trees as possible and to leave that house.

Those became the cornerstone of what the development proposal was. So that we very early after looking at alternatives eliminated a multiple number of buildings of a lower rise nature because they would require the destruction of the existing trees, destruction of the existing house, in addition to having multiple lobbies and concierges which would be opposite the type of development we desire.

Q. Let me show you what states at the top "Impact on proposed buildable area, August 1986." Can you identify that?

A. Yes. We prepared that.

Q. What does this exhibit reflect?

A. It reflects the impact of what would occur as described by the orange patch on the drawing which is a loss of 10,238 square foot of footprint, and a potential loss of a minimum of 61,428 square feet of potential loss of buildable area. Again, this would greatly affect the kind of apartments or the kind of project that we are talking about.

We are proposing to build less than what is allowed by zoning but we are building very large units and those units require substantial square footages and a substantial footprint. This would have a severe detrimental effect on the project.

MS. JUNG: Do I understand there is no objection to this being Protestant's Exhibit 10?

MR. WEINBERG: I have an objection. The only objection that I have is I haven't had anyone else, person, analyze it. I don't know if it is true or not. That is the only objection.

MS. JUNG: All right.

CORDISH EMBRY & ASSOCIATES

January 9, 1986

Mr. Ron Lipman
Lipman Frizzell & Mitchell
8422 Bellona Lane
Towson, MD 21204

Dear Ron:

Purchasers of the Halle property introduced themselves to me yesterday and informed me that you were responsible for sending out at least sixty-two packages to prospective developers in regard to same. Might I inquire why you would not have had the courtesy to send me one since it is my backyard?

Very truly yours,

David S. Cordish

dsc:adc

David S. Cordish
Robert C. Embry, Jr.

Canton House
300 Water Street
Baltimore, Maryland 21202
(301) 752-5444

File

January 13, 1986

Mr. David S. Cordish
Cordish Embry & Associates
Canton House
200 Water Street
Baltimore, Maryland 21202

RE: Halle Property

Dear Dave:

Regarding your letter of January 9th... the packages I sent to prospective purchasers were directed to those developers on my mailing list (of approximately 1,200 names) who I thought would have some interest in the property based on my understanding of their business objectives. I frankly never considered you as a luxury condominium developer and, as such, did not send you a package.

If this is an area of your interest, I will certainly keep that in mind should I have another opportunity.

Very truly yours,

LIPMAN FRIZZELL & MITCHELL

M. Ronald Lipman, CRE, MAI

MRL/dmf

cc: Robbie Goldman
Ed Halle

CORDISH EMBRY & ASSOCIATES

January 16, 1986

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Lipman Frizzell & Mitchell
8422 Bellona Lane
Towson, MD 21204

Re: Halle Property

Dear Ron:

Your letter of January 13th in answer to my letter is rather ingenius. Please be assured I always have interest in any property you or anyone else is handling adjacent to my residence. It is irrelevant whether I personally would build on the Halle property, but, rather, that I would have preferred to control the situation rather than reacting to same. Frankly, it is incredible to me that this thought would not have crossed your mind. In any event, the final chapter in this little drama is far from over and I think your friends from New York may find that they will have earned their keep on this one before it is over.

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at my request, he followed it up with a letter the next day to me confirming the telephone conversation, and in that conversation, he said that Mr. Cordish was coming to him to ask him to help define a plan that would block my development, and that he thought that he was the one person who could "mediate" whatever was going to take place if we were to hire him and hire his firm.

When I indicated to him that he really didn't have the requisite experience in residential, he indicated that maybe he could align himself with Myers and Delayo (phonetic) who did, and, in fact, sent me a letter the next day.

Q. That conversation occurred in February of 1986, did it not, sir?

A. That is correct

MR. SCHERR: I have nothing else at this time. Your witness.

CROSS-EXAMINATION

BY MR. WEINBERG:

Q. Mr. Harlan, about the last comment, did Mr. Glassman say that David Cordish asked him to contact you?

A. No.

Q. Did it look like it was anything other than soliciting business?

A. Yes. He was soliciting my business on the basis that he could convince Mr. Cordish not to proceed to try to block our development.

Q. He didn't say it was under David Cordish's direction?

A. No.

Q. Have you ever shown these plans, other than today, to Mr. Cordish, the Patz or the Levys?

A. I was told by Mr. Cordish he represented the three. When he told me that he was going to do everything to block the development of the property, I accepted that. When I came to him as a neighbor to be a party with him as we went forward --

Q. Have you ever contacted David Cordish prior to purchasing the property?

A. Yes. I said when it was under contract.

Q. But you had signed the contract?

A. That is right.

we can, I believe that it would be at significantly greater cost.

Q. There was talk about how much property area. What is the difference in the area that you would lose that you believe if the RTA was brought out from the proposed additions to the Cordish home? How many?

A. We would lose at the footprint level 10,000 feet which would record itself in a little over 60,000 feet as the zoning permits. If we were to have the variance, the height variance that we are talking about, it would be 90,000 feet.

Q. Measuring from the home, as you are probably aware, Mr. Cordish can build up to 25 feet away from the property line, and if he was going to build two feet off, he can build up to 25 feet. So that is basically half that, I think, difference. I don't think it is actually 10,000 feet. What would it be if he built up to the 25-foot setback line?

MR. SCHERR: If you know.

A. I don't know that number.

Q. The existing dwelling, that is now I guess

Fisher as well as Mr. Kirwin. Could you comment upon the necessity to place the improvements as situated on the property as shown in the exhibit?

A. As a professional, I had difficulty understanding the testimony of hardship that was described by Mr. Cordish, Mr. Fisher and Mr. Kirwin in respect to the plans that were presented. As I heard the testimony, the points that were made were, that I remember and recorded, to the best of my knowledge, the following, that the proposal was done for the following reasons, to best locate the buildings in respect to the sun, to create a symmetrical extension of the project, to screen the garden, to create a project that was in sympathy with the existing house and to create functioning room for guests and a small jacuzzi tub. And there was testimony that this would be best located as far from the house as possible, considering they looked at the alternative of building it within the 25-foot setback and rejected that.

My inspection of the site, which I have done on several occasions, looking at photographs and the plans that were proposed, my feeling is that there were a number

of issues that I saw. One was that the garden that was described in very grand terms at this point was a fairly modest one, although proposed to be grandized, that the elements of the plan, the buildings have a, at best, very modest respect for the way that the sun works in the sense that the guess room was virtually totally oriented away from sun, faced almost completely north, that the bathhouse faces south and didn't have an overhang, and, therefore, would be subject to harsh sun rays, that the jacuzzi was hidden behind a glass wall and that the building that was located on the northern side of the site would, in fact, screen the garden from the sun.

In addition to this, the guest house appears by its design to be a summer facility. Therefore, it appears to me that there would be other solutions in terms of connections to the house. There is no indication of heating in either the guest house itself nor the corridor to it. It is an all glass structure and shows a tile floor which would be very cold. It is a slab on gray. There is no closet located in the guest room, no bathroom, only a toilet so that the guest, therefore, would have to

go back to the main house or to the other building to use a bath or shower.

There is no location for storing clothes or anything in the guest room. Therefore, it appeared to me that the guest facility would be one that could be attached, considering its design, by either some sort of trellis structure or roof structure which could, in fact, therefore, be made and considered to be an accessory building rather than a part of the house.

In addition, the indication that the structures would screen the garden, I think, could be accomplished in a number of other ways and achieve the same aesthetic objective, either by trellises, edges, walls, all of which from my design opinion would be more desirable than a glass enclosed structure, in that they would be more in character with a garden.

And if they were in that form, that the views from the house to the garden would be open rather than be obstructed by a glass structure. In fact, the glass structure proposed would, in fact, block views of the garden from the house.

Section 306—MINOR PUBLIC UTILITY STRUCTURES [B.C.Z.R., 1955.]

Minimum lot area regulations in any zone shall not apply to repeater, booster, or transformer stations, or small community dial offices. [B.C.Z.R., 1955; Resolution, November 21, 1956.]

Section 307—VARIANCES [B.C.Z.R., 1955; Bill No. 107, 1963.]

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from offstreet parking regulations and from sign regulations, only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, offstreet parking, or sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification.[1] Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance. [B.C.Z.R., 1955; Bill No. 107, 1963.]

1. *Apparently conflicts with Article VII of Title 22, Baltimore County Code 1978 as amended (Appendix D), which prescribes requirements with respect to notice and hearing regarding conventional reclassification petitions that differ from those which it prescribes regarding variance petitions. (See Section 22-31 of the same article for provision regarding conflicts between Title 22 and the Zoning Regulations.)*

Section 308—VARIANCES AND SPECIAL EXCEPTIONS FOR RADIATION FALLOUT SHELTERS— [Bills No. 87, 1961; No. 19, 1962.]

Radiation fallout shelters may be erected and constructed in accordance with specifications published by the Office of Civil and Defense Mobilization of the United States Government for one of the shelter types or designs approved by said agency as being effective for affording protection from radiation fallout, and the zoning commissioner may grant variances from area and height regulations and may make special exceptions to the Zoning Regulations where strict compliance with those regulations would result in practical difficulty or unreasonable hardship, and where the owner of the lot does not own sufficient adjoining land to conform strictly to the width and area requirements. However, any such variance or special exception shall be granted by the zoning commissioner only if in harmony with the general purpose and intent of the Zoning Regulations. All decisions of the zoning commissioner with respect to such matters shall be subject to appeal to the board of appeals. Every radiation fallout shelter which may be erected and constructed under this section shall be used only for the purpose of protection from radiation fallout, and not for normal residential, commercial or industrial uses. [Bills No. 87, 1961; No. 19, 1962.]

CORDISH EMBRY
& ASSOCIATES

January 9, 1986

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EXHIBIT A

TICOR TITLE INSURANCE

Commitment for Title Insurance

TICOR TITLE INSURANCE COMPANY, (a stock company), a California corporation, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate one hundred eighty (180) days after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

This Commitment shall not be valid or binding until countersigned below by a validating signatory of the Company.

TICOR TITLE INSURANCE COMPANY

By _____ President

Attest _____ Secretary

Countersigned: ATLANTIC TITLE COMPANY

By _____
George J. Sybert *Validating Signatory*

COPYRIGHT, 1966 — AMERICAN LAND TITLE ASSOCIATION
CAT. NO. NN00324
TO 1423 (1-84) American Land Title Association Commitment — 1966

Conditions and Stipulations

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.

2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to Paragraph 3 of these Conditions and Stipulations.

3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Conditions and Stipulations, and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.

4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

Schedule A

Commitment No.	Effective Date of Commitment:
BC-4526	November 19, 1985
Your No.:	

Prepared For: LESLIE REIS, ESQUIRE
FRANK, BERNSTEIN, CONAWAY & GOLDMAN
300 E. LOMBARD STREET
BALTIMORE, MARYLAND 21202

Inquiries Should be Directed to: ATLANTIC TITLE COMPANY
SUITE 2301, CHARLES CENTER SOUTH
36 S. CHARLES STREET
BALTIMORE, MARYLAND 21201
727-8050

1. Policy or Policies to be Issued: Amount

(a) [X] ALTA Owners Policy — Form B — 1970 $ TBD

Proposed Insured: EDWARD A. HALLE and ELLEN W. HALLE, his wife or their nominees

(b) [X] ALTA Loan Policy 1970 $ TBD

Proposed Insured: To be determined

2. The estate or interest in the land described or referred to in this Commitment and covered herein is a Fee Simple.

3. Title to said estate or interest in said land is at the effective date hereof vested in:

EDWARD A. HALLE and ELLEN W. HALLE, his wife

4. The land referred to in this Commitment is located in the County of Baltimore State of Maryland and described as follows:

For Description see Deeds attached in Liber 3665, folio 461 and in Liber 3292, folio 242.

Schedule B

Commitment No.

I. The following are the requirements to be complied with:

1. Instruments necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record.

To be determined

II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Standard Exceptions: (WILL APPEAR IN OWNER'S POLICY ONLY)
   (a) Rights or claims of parties in possession not shown by the public records.
   (b) Easements, or claims of easements, not shown by the public records.
   (c) Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the premises.
   (d) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
3. Special Exceptions:
   (a) Taxes, State, County and Municipal and other public charges (including, but not limited to, assessments by any State, County, Municipality, Metropolitan District or Commission) payable on an annual basis have been paid through, to and including the fiscal year ending June 30, 1986. However, this policy of title insurance does not insure against possible future tax levies and/or frontage benefit assessments, nor against such public charges and assessments, or the balance thereof for existing or proposed improvements which may have been levied or assessed, or to be levied or assessed, but which are not now due and payable to said State, County, Municipality, Metropolitan District or Commission.
   (b) Subject to terms and provisions as contained in an Agreement dated May 29, 1922 and recorded among the Land Records of Baltimore County in Liber WPC 561, folio 18 between Florence H. Morris and Moses Morris, her husband and The Mt. Washington Sewerage Company.
   (c) Subject to terms and provisions as contained in a Deed and Agreement dated September 19, 1950 and recorded as aforesaid in Liber T.B.S. 1894, folio 486 between Stuart M. Weiler and Josepha S. Weiler, his wife and County Commissioners of Baltimore County on T.B.S. Liber 16, folio 79.
   (d) Subject to terms and provisions as contained in a Deed and Agreement dated June 4, 1951 and recorded as aforesaid in Liber 1984, folio 530, by and between County Commissioners of Baltimore County and Stuart M. Weiler and Josepha S. Weiler, his wife.
   (e) Subject to terms and provisions as contained in an Agreement between Florence H. Morris and Mt. Washington Sewerage Company, dated May 29, 1922, and recorded among the Land Records of Baltimore County in Liber WPC No. 561, folio 18.

Schedule "B" — (Continued)

COMMITMENT NO. BC-4526

(f) This policy will specifically insure against loss or damage by virtue of the violation of Item 4 contained in a Deed recorded as aforesaid in Liber No. 519, folio 232, and also against loss or damage by virtue of the violation of Items 5 and 8 contained in a Deed from Ida Grace Parrish, et al., to Florence H. Morris, dated January 5, 1922 and recorded among the Land Records of Baltimore County in Liber No. WPC 548, folio 510.

Copies of the reference deeds which were attached to the original commitment are available in the office of LIPMAN FRIZZELL & MITCHELL

RMG/11-04-85
1029R

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (this "Agreement") is made this ____ day of _____, 1985 by and between EDWARD A. HALLE and ELLEN W. HALLE (hereinafter collectively called "Seller") and _____ (hereinafter called "Buyer").

In consideration of the provisions hereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

1. Property. Seller hereby agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller all that lot of ground fronting on Slade Avenue in Baltimore County, Maryland, containing approximately 5.986 acres of land, known as 6 Slade Avenue, and described in two Deeds, respectively dated December 31, 1957 and February 8, 1960, and respectively recorded among the Land Records of Baltimore County, Maryland in Liber 3292, folio 242 et seq., and Liber 3665, folio 461 et seq., together with the improvements thereon and all right, title and interest of Seller in and to the rights, ways, waters, roads, alleys and appurtenances belonging or in anywise appertaining thereto (hereinafter collectively called the "Property").

2. Purchase Price. The purchase price for the Property shall be _____ ($_____), payable as follows:

2.1. As an initial deposit, on account of the purchase price, Buyer has tendered herewith its check to the order of Frank, Bernstein, Conaway & Goldman (hereinafter "Escrow Agent") in an amount equal to five percent (5%) of the purchase price. Seller's acceptance of this Agreement is

RMG/11-04-85
1029R

expressly conditioned upon and subject to the immediate honoring and payment of said check upon presentation.

2.2. Within ten (10) days following the date on which Seller shall cause a counterpart of this Agreement, duly executed by Seller, to be delivered to Buyer, Buyer shall pay to Escrow Agent an additional deposit on account of the purchase price equal to five percent (5%) of the purchase price, Seller's delivery of said counterpart shall be by messenger service to the Baltimore area office of Buyer, specified by Buyer in Section 20 below. Seller shall insert the date of delivery as the date of this Agreement in the preamble hereto.

2.3. The balance of the purchase price shall be paid at closing which shall be held at the mutual convenience of the parties at the offices of Atlantic Title Company, or, if so requested by Buyer, at the Baltimore office of Buyer's attorney, no later than three (5%) months following the date of this Agreement. If the parties are unable to agree upon said date, closing shall be held on the 90th (150) day following the date of this Agreement (or, if said 90th (150) day is a Saturday, Sunday or bank holiday, on the first business day following said 90th (150) day) at 10:00 a.m.

3. Contingencies. Attached hereto as part hereof are the following Exhibits:

Exhibit A - constituting copy of commitment No. BC4525 issued by Atlantic Title Company to Seller.

Exhibit B - constituting a property report of Daft McCune Walker, Inc., setting forth the status of certain matters pertinent to the future development of the Property.

If, within 30 days following the date of this Agreement, Buyer shall validly determine that:

RMG/11-04-85
1029R

3.1. Buyer is unable to procure a commitment of Atlantic Title Company to insure title to the Property, at its normal rate, subject only to those exceptions shown in Exhibit A, or

3.2. That the status of matters disclosed by Exhibit B is not factually accurate,

in either such event, upon notice to Seller accompanied by valid evidence of such determination, Buyer shall be entitled to receive a refund of the deposits paid pursuant to Section 2, and upon such refund, this Agreement shall be and become null and void and neither party hereto shall have any further right against or obligation to the other pursuant hereto.

Other than as above set forth, or in accordance with Section 8 or by reason of Seller's default, the deposits made pursuant to Section 2 shall be absolutely nonrefundable, Buyer shall have no right to refuse performance hereunder, and this Agreement shall be fully enforceable by either party against the other.

4. Access to Property. Buyer or Buyer's agents shall have the right, at reasonable times and from time to time, prior to closing, to enter upon the Property at Buyer's own risk and expense for the following purposes and subject to the following conditions:

4.1. To prepare, at Buyer's sole cost and expense, any and all surveys which Buyer may require, including, but not limited to, survey to determine the courses and distances of the boundary lines of the Property for purposes of the description of the Property to be contained in the Deed to be delivered at settlement, surveys for planning of improvements, and topographical surveys; and

BALTIMORE COUNTY
DEPARTMENT OF HEALTH
TOWSON, MARYLAND 21204

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

RECEIVED
AUG 07 1985
DAFT - McCUNE - WALKER, INC.

August 1, 1985

Ms. Stacey H. Fisher
Daft, McCune, Walker, Inc.
530 East Joppa Road
Towson, Maryland 21204

RE: Halle Property

Dear Ms. Fisher:

Please be advised that development of the Watchung Soil on the Halle Property located at 6 Slade Avenue, Pikesville, will not be prohibited per the Baltimore County Wetland Guidelines.

If you have any questions regarding thhis matter, please contact Ms. Stephanie Taylor at 494-3768.

Very truly yours,

Colin K. Thacker, RS

Colin K. Thacker, R.S., Director
Waste and Water Quality Management
Bureau of Environmental Services

CKT:pms/SAT

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GERTRUDE C. BARTEL
MARILYN HOPE FISHER+*

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August 5, 1986

RECEIVED
AUG 5 1986
ZONING OFFICE

HAND-DELIVERED

Mr. Arnold Jablon
Zoning Commissioner
Department of Planning
and Zoning
Room 113
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance of
David Cordish, Case No. 87-48-A

Dear Mr. Jablon:

I am writing to advise you that contrary to the provisions of Section 22-26. of the Baltimore County Code, notice of the above-referenced variance hearing has not been properly posted on the subject property.

As you are aware, the hearing on David Cordish's petition for a zoning variance is scheduled for Tuesday, August 12, 1986. However, as the enclosed photographs, taken on July 29 and August 1, indicate, the only sign giving notice of the hearing has been lying face down for the last several days. As it is now impossible for Mr. Cordish to properly post notice of the proposed variance for fifteen (15) consecutive days prior to the scheduled hearing, I respectfully request, on behalf of The Harlan Company of Maryland, Inc., that Mr. Cordish's petition for a variance be dismissed or, alternatively, be postponed until after notice of the proposed variance has been conspicuously posted on the property in accordance with the applicable provision of the Baltimore County Code. Only after notice is properly posted will all interested parties have a fair opportunity to attend and participate in the variance hearing.

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August 21, 1986

RECEIVED
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ZONING OFFICE

HAND DELIVERED

Mr. James E. Dyer
Zoning Supervisor
Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Room 113
Towson, Maryland 21204

RE: Petition for Special Hearing
Six Slade Avenue

Dear Mr. Dyer:

Enclosed is the Petition for Special Hearing for the above-captioned property. I have enclosed for filing three original Petitions for Special Hearing, ten plats, ten legal descriptions and the appropriate filing fee for the Baltimore County property owned by The Harlan Company of Maryland, Inc.

We respectfully request that this Petition be consolidated with Case No. 87-48-A because we believe that the issues presented by Case No. 87-48-A and this Petition for Special Hearing can be best considered and presented simultaneously. We understand that consolidation of this Petition and Case No. 87-48-A will not be heard on September 10, 1986, the date on which Case No. 87-48-A is now scheduled to be considered. This delay will be caused the required regulations respecting the posting and advertising of the affected property. We request, however, that the consolidated cases be heard together prior to October 1, 1986 so that this matter may be resolved as quickly as possible.

Mr. James E. Dyer
August 21, 1986
Page Two

Please call me or Jeff Scherr with any questions you may have regarding this matter.

Sincerely,

Marilyn Hope Fisher

MHF:hsm
Enclosures
cc: Mr. Arnold M. Jablon (w/copy of Petition only) ✓
Ms. Jean Jung (w/copy of Petition only)
Mr. Leonard M. Harlan (w/copy of Petition only)
Mr. D. Pike Aloian (w/copy of Petition only)
Mr. Stanley E. Galinsky (w/copy of Petition only)
Mr. David S. Thaler (w/copy of Petition only)
Mr. David Mullman (w/copy of Petition only)

To Jack Date 9/11 Time 11:10 AM PM
WHILE YOU WERE OUT
M Lou Cardish
of
Phone 539-4141 Area Code Number Extension
TELEPHONED PLEASE CALL

Arnold —
Lou is preparing new sign (just made the old one is no longer legible) and Jeff Baker is to put first one this A.M. Advised M. Jones [illegible] legal of this and the fact that it is our responsibility that Mr. Cordish's. Yes, [illegible] Mr. Scherr is representing a Petitioner, Harlan Co. means that Lou is prepared legal had a meeting prior to the hearing on Tuesday. Said Scherr legal to advise

---

Mr. Jean H. Jung
Sept. 24, 1986
Page Two

that no memorandum should be received by you at this time.

My client does not wish to appear to be uncooperative and simply desires to move the matter along. To this end, I advised Mr. Hoffman of what my client has stated previously in the public meetings and that is that it would be happy to meet with counsel to attempt to resolve all outstanding disputes.

Sincerely,

Jeffrey H. Scherr

JHS/de
cc: Mr. Leonard M. Harlan
Robert A. Hoffman, Esquire

please will see if memo [illegible]

87-265-A
Cordish

5/6/86 — no PP
J. file — no PP
& file not sufficient cause to waive PP

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August 5, 1986

Mr. Arnold Jablon
August 5, 1986
Page Two

Please advise me of your decision at your earliest possible convenience. Thank you for your consideration of this matter.

Yours truly,

Jeffrey H. Scherr

Jeffrey H. Scherr
Kramon & Graham, P.A.

Attorneys for The Harlan
Company of Maryland, Inc.

MLH:jes

cc: Mr. Leonard M. Harlan
Glenn Weinberg, Esquire

87-265-A
Cordish

5/1/86
J. file

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August 1, 1986

RECEIVED
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ZONING OFFICE

Mr. Arnold Jablon
Zoning Commissioner
Department of Planning and Zoning
111 West Chesapeake Avenue
Room 113
Towson, Maryland 21204

RE: Petition for Variance of David
Cordish, Case No. 87-48-A

Dear Mr. Jablon:

I represent The Harlan Company of Maryland, Inc., the owner of a tract of land of six acres more or less directly adjacent to the subject property. My client is an interested party in these proceedings and I respectfully intend to participate therein.

I request the issuance of the enclosed subpoena duces tecum, in accordance with the Rules of Practice and Procedure of the Zoning Commission of Baltimore County Rule IV.C., for the purpose of assuring the attendance at the hearing on August 12, 1986 of Mr. David S. Cordish and for the purpose of assuring that Mr. Cordish will bring with him the indicated documents.

While I recognize that it is reasonably certain that Mr. Cordish, being the Petitioner, would be present in any event, the request for issuance of the summons is necessary both because I intend to request the right to question Mr. Cordish with respect to certain most relevant matters and because the requested documents are required since they will bear directly on matters relevant to these proceedings.

Mr. Arnold Jablon
August 1, 1986
Page Two

I understand that this matter is to be heard by Mrs. Jung, who is scheduled to hear a number of other matters on the same morning, each of which is to last fifteen minutes. Please be advised that I estimate that the hearing on the Cordish petition will last several hours. Therefore, if special arrangements need to be made to ensure a full hearing without disruption of Mrs. Jung's schedule, please advise me accordingly.

Thank you for your consideration of this request.

Sincerely,

Jeffrey H. Scherr

JHS:kcg
Enclosure
cc: Glenn Weinberg, Esquire (w/encl.)

4.2. To make, at Buyer's sole cost and expense, all necessary soil tests, engineering studies, feasibility studies and the like, including, but not limited to, test borings and soil tests of the subsurface conditions, provided that said right shall not be exercised within any building or in any location such as to cause injury to any planting or improvements, and that Buyer shall restore or cause to be restored the surface of the land which shall have been disturbed by reason of such activities substantially to its condition prior to such borings and soil tests.

4.3. Buyer shall indemnify and hold Seller harmless from and against any and all claims, demands, losses, costs, damages, expenses (including reasonable attorneys' fees incurred in the enforcement or defense of any matter), or liabilities caused by, resulting from, arising out of or occurring in connection with any entry on the Property for any of the foregoing purposes.

5. Closing. At closing, upon payment as above provided of all the unpaid purchase money, a deed of the property containing covenants of special warranty and further assurances, shall be executed at Buyer's expense by Seller which shall grant and convey fee simple title to the Property to Buyer, free of any tenancies other than as disclosed in Exhibit A, and free of any liens, encumbrances or title exceptions other than those matters specifically set forth in Exhibit A hereto or arising pursuant to Section 8 below. Possession of the property, subject to the single tenancy disclosed in Exhibit A, shall be given to Buyer at closing.

6. Closing Adjustments. Taxes (including metropolitan district charges, front foot benefit charges, charges for sewer and water, and any other governmental assessments on the Prop-

erty, if any) and all other public charges paid or payable in annual installments shall be apportioned on the basis of such annual installments as of the date of settlement. Buyer shall be responsible for all subsequent annual charges thereon. In the event that there is an imposition of agricultural transfer tax against the property pursuant to Article 81, Section 278(f) of the Annotated Code of Maryland, said tax shall be paid by Seller. Other than as set forth in the next preceding sentence, cost of transfer, recordation or documentary stamp taxes shall be borne exclusively by Buyer.

7. Title Insurance. Provided Atlantic Title Company is willing to issue its commitment and a policy of title insurance in accordance with Section 3 hereof, Buyer shall be obligated at Buyer's expense to procure from Atlantic Title Company a commitment to insure title to the Property and a title insurance policy covering the title in the full amount of the purchase price.

8. Eminent Domain. If Seller shall be notified by any governmental agency of its intention to take the Property in whole or in part by condemnation or eminent domain, Seller shall immediately notify Buyer of such fact and Buyer shall have the right, within fifteen (15) days of receipt of such notice, by written notice to Seller, to elect to cancel this Agreement. In the event that Buyer shall so elect to cancel this Agreement, all deposits previously made by Buyer shall be repaid by Seller to Buyer and thereafter each of the parties hereto shall be released and relieved of any further obligation hereunder. If this Agreement is not so cancelled, it shall remain in full force and effect and Seller shall assign, transfer and set over to Buyer all of Seller's right, title and interest in and to any award that may be made for such taking.

9. Casualty. The Property shall be held at the risk of the Seller until closing. Seller shall immediately have all insurance policies covering the improvements on the Property endorsed to name Buyer as an additional insured as its interest may appear.

10. Encumbrances. Seller covenants and agrees that pending closing, Seller shall not sell the Property or do any act to diminish or encumber its title to the Property and not to create any mortgage or other indebtedness secured by the Property in excess of the unpaid balance of the purchase price.

11. Time of Essence. Time is of the essence of this Agreement and, upon any default on Buyer's part, Seller shall have the right (a) to declare this Agreement null and void and to retain all deposits as liquidated damages, ~~or (b) to resell~~ the Property and to apply the deposits made pursuant to Section 2 against any damages suffered by Seller, but with no obligation to account for or to refund such deposits if Seller shall decide to forego any claim (if any) against Buyer for additional damages.

12. Removal of Shrubs, Trees, etc. Seller reserves the right, pending closing, to remove from the Property any and all moveable shrubs and trees, all bird houses, dog houses, the gazebo, all arbors, all statuary, and all sundials.

13. Removal of Improvements. Pending closing, Seller reserves the right to remove from the Property any and all chandeliers and lighting fixtures, doorknobs, locks, handles and other items of hardware.

14. Removal of Other Improvements. As a covenant to survive closing hereunder, Buyer covenants and agrees, in the event that Buyer shall decide to raze or remove from the Property any of the improvements situated thereon, to notify

Seller of such intention and to afford Seller the right and opportunity, at Seller's sole cost and expense, to remove from such improvements any doors, mantels, mouldings, windows, railings, floors and other items of building materials or components that Seller may wish to take for Seller's use or disposal. Seller's right of removal shall terminate at the expiration of 30 days from the date on which Seller receives such notice from Buyer. During said 30 day period, Buyer shall refrain from interfering with Seller's right of removal pursuant to this Section. Subject to the provisions of Sections 9, 12, 13 and this Section 14, the Property is being sold hereunder in its present condition, "as is".

15. Gender. Words having the masculine, feminine or neuter gender herein have been used interchangeably, and the plural has been used to include the singular and the singular to include the plural, except where the context clearly requires a different interpretation.

16. Successors and Assigns. This Agreement shall inure to the benefit of and shall bind the parties hereto and their respective personal representatives, successors and assigns.

17. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and no amendment, modification or change hereto shall be valid unless in writing, duly executed by the parties hereto.

18. Captions and Headings. The captions and headings of the paragraphs or sections hereof are intended only for convenience of reference, and not as modifying the content of said sections.

19. Counterparts. This Agreement may be executed in counterparts, any and all of which shall constitute one and the same instrument.

20. Notices. Any notice permitted or required to be given pursuant to this Agreement shall be deemed valid if in writing, duly transmitted by hand against receipted copy or duly transmitted by certified or registered U.S. Mail, return receipt requested, with adequate postage prepaid, and addressed if to Seller:

Mr. Edward A. Halle
Six Slade Avenue
Baltimore, Maryland 21208

with copy to:

Robert M. Goldman, Esquire
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202

if to Buyer:

with copy to:

21. No Broker. Each of the parties represents to the other that such party has not dealt with any real estate agent or broker in connection with the procurement of this Agreement and each party covenants and agrees to indemnify and s /e harmless the other against any claim, cost, damage or expense which such other party may incur as a result of any breach of the above representation on the part of the party so indemnifying.

22. Escrowing of Deposits. The deposits made pursuant to Section 2 hereof shall be paid to, and, pending closing, shall be held by, the Escrow Agent in a 90 day certificate of deposit issued by Mercantile-Safe Deposit & Trust Company. Said certificate of deposit shall be endorsed to the order of the party entitled thereto and shall be delivered at closing to

Seller or shall be refunded to Buyer as and when required by the provisions hereof. Interest earned on said certificate of deposit shall apply for Buyer's account against the purchase price. Said escrow agent shall have no liability for its acts hereunder taken in good faith, nor shall said escrow agent have any liability for the failure of Mercantile-Safe Deposit and Trust Company to honor said certificate of deposit when and as the same shall be due.

22. In executing this Agreement and submitting it for Seller's acceptance, Buyer recognizes that Seller has invited Buyer and others to submit similar offers and that Seller requires an opportunity to consider all offers before Seller rejects or accepts any. Buyer further recognizes that Seller has reserved the absolute right in Seller's absolute discretion (a) to reject all offers or (b) to accept any one offer which Seller deems best, or (c) to elect to negotiate with any potential purchaser or purchasers. In consideration of Seller's willingness to review and consider the offer herein made, Buyer agrees to hold this offer available for Seller's acceptance until at least December 20, 1985.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

WITNESS:

_____ _____ (SEAL)
EDWARD A. HALLE

_____ _____ (SEAL)
ELLEN W. HALLE
Seller

_____ _____ (SEAL)

_____ _____ (SEAL)

Buyer

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MICHAEL L. HEINES
PAUL S. TETTELBAUM
KATHLEEN A. BIRRANE
NANCY FELIX MANGANO

** ALSO ADMITTED IN NY
* ALSO ADMITTED IN DC
** ALSO ADMITTED IN PA
** ALSO ADMITTED IN VA
** ALSO ADMITTED IN FL

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May 1, 1987

HAND DELIVERED

William T. Hackett, Jr.
Chairman
Board of Appeals
Room 200
Court House
Towson, Maryland 21204

RE: David Cordish, et ux, Case No. 87-48-A
Halle Property, 6 Slade Avenue,
Case No. CBA-86-157

Dear Mr. Hackett:

Enclosed please find Motions to Dismiss, accompanying Memoranda of Law and Proposed Orders in the two above-captioned matters which currently are pending before the Board of Appeals. These Motions are filed by The Harlan Company of Maryland, Inc., whose interests would be profoundly compromised should the appellants be permitted to pursue their appeals before the Board. As is more fully discussed in the Memoranda of Law accompanying the Motions, well established principles of law would be contravened if the Board were to entertain the appeals.

The Zoning and County Review Group appeals are scheduled to be heard on June 3 and 11, respectively. Therefore, it is respectfully requested that this Board rule on these Motions so as to allow sufficient time to prepare for the appeals should these Motions be denied. We would be happy to appear for a hearing on these Motions at your earliest convenience should you believe it is appropriate.

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COUNTY BOARD OF APPEALS
MAY 4 P 12:20

William T. Hackett, Jr.
May 1, 1987
Page Two

Your consideration of the issues raised with regard to the pending appeals is greatly appreciated.

Sincerely,

Jeffrey H. Scherr

JHS:amk
Enclosures
cc: Mr. Leonard M. Harlan
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Robert A. Hoffman, Esquire

DAVID CORDISH, et ux. * BEFORE THE

RE: N/S Slade Avenue, 1125' NE of Reisterstown Road 3rd District Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the required 25 ft. * BALTIMORE COUNTY * BOARD OF APPEALS * CASE NO. 87-48-A *

* *

HALLE PROPERTY * BEFORE THE

6 Slade Avenue * BALTIMORE COUNTY

RE: CRG Decision * BOARD OF APPEALS

* CASE NO. CBA-86-157

* *

SUBPOENA DUCES TECUM

You, David S. Cordish, 4 Slade Avenue, Pikesville, Maryland 21208, are hereby commanded to appear on June 9, 1987 at 11:00 a.m. before the Baltimore County Board of Appeals, Court House, Towson, Maryland 21204 and to testify from day to day until completed regarding all matters concerning or relating to your Petition for Zoning Variance, Case No. 87-48-A and your appeal thereof; and the conditional approval granted by the County Review Group to The Harlan Company of Maryland, Inc. for the development of Six Slade Avenue and your appeal thereof. You are hereby requested to bring with you the documents set forth in the Petition for the Issuance of a Subpoena Duces Tecum attached hereto.

Jeffrey H. Scherr

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COUNTY BOARD OF APPEALS
1987 JUN 27 P 2:21

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Paul S. Teitelbaum

Kramon & Graham P.A.

Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
301/752-6030

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DAVID CORDISH, et ux * BEFORE THE

RE: N/S Slade Avenue, 1125' NE of Reisterstown Road 3rd District Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the required 25 ft. * BALTIMORE COUNTY * BOARD OF APPEALS * CASE NO. 87-48-A *

* *

HALLE PROPERTY * BEFORE THE

6 Slade Avenue * BALTIMORE COUNTY

Re: CRG Decision * BOARD OF APPEALS

* CASE NO. CBA-86-157

* *

PETITION FOR THE ISSUANCE OF A SUBPOENA DUCES TECUM

Pursuant to Rule 5 of the Rules of Practice and Procedure of the County Board of Appeals, The Harlan Company of Maryland, Inc. requests that this Board issue a subpoena duces tecum to Mr. David S. Cordish.

The Harlan Company of Maryland, Inc. is a Maryland corporation, in good standing, and the owner of Six Slade Avenue (the "Harlan property"). Adjoining this property is Four Slade Avenue, which is a three acre tract owned by David S. Cordish (the "Cordish property"). The Harlan Company of Maryland, Inc. has received conditional approval from the County Review Group to proceed with the development at Six Slade Avenue of luxury, mid-rise condominium residences. David S. Cordish has appealed the conditional approval granted by the County Review Group (being the second of the above-captioned appeals).

RECEIVED
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1987 JUN 27 P 2:22

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BALTIMORE, MARYLAND 21201
(301) 752-6030

David S. Cordish has submitted a Petition for Variance to the Zoning Commissioner, seeking approval of the construction at Four Slade Avenue of two long, covered walkways ending, respectively, in a "guest house" and a "bath house" (each "house" actually being a twelve foot by twelve foot room). Mr. Cordish has been granted permission to build these structures, but has appealed that decision to this Board (being the first of the above-captioned appeals). This appeal could have a great impact on The Harlan Company of Maryland, Inc., as it is Mr. Cordish's contention that the structures, which were denominated by Deputy Zoning Commissioner Jean Jung as "accessory" structures, actually constitute a part of the Cordish dwelling, so as to create an RTA which would preclude the development of Six Slade Avenue in the manner planned by The Harlan Company of Maryland, Inc. and allowed by current zoning. Accordingly, The Harlan Company of Maryland, Inc. has standing to intervene and participate in these proceedings.

The Harlan Company of Maryland, Inc. respectfully requests that a subpoena duces tecum be issued to Mr. David S. Cordish, requesting him to appear at the County Board of Appeals for Baltimore County, Court House, Towson, Maryland 21204, on June 9, 1987 at 11:00 a.m., and to testify from day to day until completed regarding all matters concerning or relating to 1) his Petition for Zoning Variance, Case NO. 87-48-A and his appeal thereof; and 2) the conditional approval granted by the County Review Group to The Harlan Company of Maryland, Inc. for

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SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

the development of Six Slade Avenue and Mr. Cordish's appeal thereof. Additionally, Mr. Cordish shall bring with him to the hearing of June 9, 1987 the following documents and things:

a. All documents and things of every kind and description, including without limitation, correspondence, memoranda, interoffice communications, notes, diaries, contracts, agreements, drawings, plans, photographs, specification, estimates, vouchers, permits, written ordinances, minutes of meetings, invoices, billings, checks, reports, studies, telegrams, telexes, notes of telephonic conversations, logs, log entries and expert's reports and models, which in any manner describe, refer to, discuss or concern the decisions of the County Review Group with respect to Six Slade Avenue, the decision of Deputy Zoning Commissioner Jung with respect to Four Slade Avenue (Case #87-48A) and Mr. Cordish's appeals thereof (these appeals being the above-captioned appeals).

b. Any and all documents and things of every kind and description, including without limitation, correspondence, memoranda, interoffice communications, notes, diaries, contracts, agreements, drawings, plans, photographs, specifications, estimates, vouchers, permits, written ordinances, minutes of meetings, invoices, billings, checks, reports, studies, telegrams, telexes, notes of telephonic conversations, logs, log entries and expert's reports and models, in any manner describing, referring to, discussing or concerning the Harlan property adjacent to the Cordish

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property, or any portion of the Harlan property, any plans for the utilization of the Harlan property or any portion thereof by appellant or any party in which appellant is or at any time has been in any manner involved and any efforts by appellant or any party with which appellant has in any manner been involved to acquire the Harlan property or any portion thereof at any time in the past.

c. Any and all documents and things of every kind and description, including without limitation, correspondence, memoranda, interoffice communications, notes, diaries, contracts, agreements, drawings, plans, photographs, specification, estimates, vouchers, permits, written ordinances, minutes of meetings, invoices, billings, checks, reports, studies, telegrams, telexes, notes of telephonic conversations, logs, log entries and expert's reports and models, in any manner describing, referring to, discussing or concerning the position taken by appellant or any member of appellant's family or any party in any manner associated with appellant with respect to changes, whether effected in the past or contemplated for the future, in zoning of the Cordish property and/or the Harlan property, and specifically the change in zoning thereof to DR-16 in 1984.

d. Any and all documents and things of every kind and description, including without limitation, correspondence, memoranda, interoffice communications, notes, diaries, contracts, agreements, drawings, plans, photographs,

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specifications, estimates, vouchers, permits, written ordinances, minutes of meetings, invoices, billings, checks, reports, studies, telegrams, telexes, notes of telephonic conversations, logs, log entries and expert's reports and models, in any manner describing, referring to, discussing or concerning appellant's institution of the above-captioned appeals of the decisions of the County Review Group and the Deputy Zoning Commissioner.

Jeffrey H. Scherr

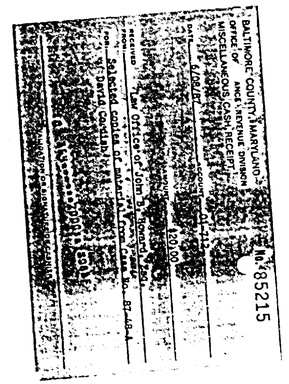
Paul S. Teitelbaum

Kramon & Graham P.A.

Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
301/752-6030

Attorneys for The Harlan Company of Maryland, Inc.

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KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030



LAW OFFICES
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210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

JAMES H. COOK
JOHN B. HOWARD
DAVID D. DOWNES
DANIEL O'C. TRACY, JR.
JOHN H. ZINK, III
JOSEPH C. WICH, JR.
HENRY S. PECK, JR.
HERBERT R. O'CONOR, III
THOMAS L. HUDSON
C. CAREY DEELEY, JR.
H. RUSS HILL, III

GEORGE E. REYNOLDS, III
LAWRENCE A. MOONEY, JR.
ROBERT A. HOFFMAN
DI-ANN L. EISNER
STEPHEN M. SCHENNING
CHARLES MALLOTT COX
KEITH R. SMITH
J. MICHAEL BRENNAN
H. BARRITT PETERSON, JR.
REGAN J. R. SMITH

JAMES D. C. DOWNES
(1906-1979)

TELEPHONE
(301) 823-4111

TELECOPIER
(301) 821-0147

HAND DELIVERY

May 18, 1987

William T. Hackett, Chairman
County Board of Appeals
of Baltimore County
Old Court House, 2nd Floor
Towson, Maryland 21204

Re: Case Nos.: CBA-86-157; 87-48-A

Dear Mr. Hackett:

Following this firm's noting an appeal to the Harlan Company's CRG approval for 6 Slade Avenue, our client entered into negotiations with the Harlan Company in order to resolve their differences. During the period and until approximately one week ago, this firm was not involved in those negotiations and was no longer actively representing Mr. Cordish in the Variance or the CRG appeal.

However, following the breakdown of negotiations, and upon receipt of motions to dismiss filed by the Harlan Company, Mr. Cordish requested that I resume my role as counsel.

Unfortunately, I have a longstanding, out of town commitment on June 3rd and respectfully request that the hearing date be changed, perhaps to June 11th when the Cordish variance case was originally scheduled. Because I was not actively involved in these cases until recently, I could not respond to my conflict situation until now.

Thank you for your consideration in this matter.

Yours truly,

John B. Howard

JBH:RAH:bw
cc: Jeffrey Scherr, Esquire
David Cordish

RECEIVED
COUNTY BOARD OF APPEALS
1987 FEB 11 A 11:10

O'CONOR PIPER & FLYNN
REALTORS

Pikesville
301 Reisterstown Road
Pikesville, Maryland 21208
(301) 484-9010

REFERENCE: 87-48-A
4 Slade Avenue
Baltimore, Md. 21208

Please advise me when the above-mentioned hearing will be scheduled.

Thank you.

Joanne Wachter
301 Reisterstown Road
Baltimore, Md. 21208

RECEIVED
COUNTY BOARD OF APPEALS
1987 FEB 11 P 12:52

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

May 13, 1987

(REVISED NOTICE)

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. CBA-86-157 — HALLE PROPERTY
6 Slade Avenue

and

RE: CRG Decision
11/13/86 -CRG conditional approval

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
VAR -Side yard setback of 2' in lieu of req. 25'
12/05/86 -D.C.C. granted VAR.
3rd Election District
2nd Councilmanic District

These cases will be assigned for the following date for hearing on motions ONLY. NO TESTIMONY OR EVIDENCE WILL BE RECEIVED ON THE MERITS OF THESE CASES.

ASSIGNED FOR: WEDNESDAY, May 20, 1987 at 1:30 p.m.

cc: ~~John B. Howard~~, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire — Counsel for Appellee
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
Patrick D. Hanley, Esquire — " " "
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Robert Covahey
David Fields
Edward McDonough
James A. Markle
Jorge Austrich
Jeanne Wachter

Kathi Weidenhammer
Administrative Secretary

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

May 13, 1987

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. CBA-86-157 — HALLE PROPERTY
6 Slade Avenue

and

RE: CRG Decision
11/13/86 -CRG conditional approval

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
VAR -side yard setback of 2' in lieu of req. 25'
12/05/86 -D.C.C. granted VAR.

Case No. CBA-86-157 (Halle Property) and Case No. 87-48-A (David Cordish, et ux) will be consolidated on a single day's hearing since, while there are two properties involved, there is only one issue involved. The hearing on these two cases will be at 9:00 a.m. on June 3, 1987. The Board will note for all parties involved that the Board will sit from 9:00 a.m. to 11:00 a.m. and recess from 11:00 a.m. to 12:30 p.m., and reconvene for the balance of the taking of testimony. This somewhat unusual circumstance is occasioned by the desire of the Board not to lose the entire day's hearing which would be the only alternative to providing the early lunch recess.

ASSIGNED FOR: WEDNESDAY, June 3, 1987 at 9:00 a.m.

cc: John B. Howard, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire — Counsel for Appellee
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
Patrick D. Hanley, Esquire — Office of Law
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Robert Covahey
David Fields
Edward McDonough
James A. Markle
Jorge Austrich
Jeanne Wachter

Kathi Weidenhammer
Administrative Secretary

pp - 87-48-A reassigned to 6/11/87 at 11:00
CBA-86-157 - Held sub curia pending ruling on motions

LAW OFFICES
CORDISH AND CORDISH
300 WATER STREET SUITE 400
NE CORNER SOUTH & WATER STS.
BALTIMORE, MARYLAND 21202

PAUL L. CORDISH
DAVID B. CORDISH

TELEPHONE
(301) 539-4141

RECEIVED
DEC 23 1986
ZONING OFFICE

December 22, 1986

Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: Appeal to the County Board of Appeals
for Baltimore County Maryland
Petition for Zoning Variance
N/S of Slade Avenue, 1125' NE of
Reisterstown Road
3rd District
Case #87-84-A 87-48

Gentlemen:

This letter is intended to constitute an Appeal to the County Board of Appeals of Baltimore County from the decision of December 5, 1986 in above matter, of the Honorable Jean M.H. Jung, Deputy Zoning Commissioner. The persons entering this appeal to the County Board of Appeals of Baltimore County from the decision rendered December 5, 1986 in the above case are David S. Cordish and Penelope A. Cordish whose addresses are 4 Slade Avenue, Pikesville, Baltimore County, Maryland 21208.

This Appeal is hereby filed within thirty (30) days from December 5, 1986 which is the date of the final Order in this matter.

You will find enclosed herewith check in the amount of $90.00, payable to Baltimore County, Maryland, in payment of the required Fees for this Appeal. The sum remitted herewith covers the appeal fee of $75.00 plus $15.00 for the cost of posting. David S. Cordish and Penelope A. Cordish, feeling aggrieved by the said decision, are hereby exercising their right to appeal therefrom to the County Board of Appeals of Baltimore County in accordance with Section 500.10 and Section 501.8 of the Baltimore County Zoning Regulations. The reason for this appeal is that portion of the decision appealed from which denies their request for a zoning variance to permit a side yard set back of two feet for a dwelling.

Very truly yours,

Paul L. Cordish

Zoning Commissioner
Page Two
December 22, 1986

Glenn L. Weinberg
Suite 400
300 Water Street
Baltimore, Maryland 21202
(301) 539-4141
Attorneys for David S. Cordish
and Penelope A. Cordish,
Appellants

PLC/GLW
CC: Jeffrey Scherr,Esquire
Kramon & Graham, Sun Life Bldg.
Charles Center,Balto., MD. 21201

John B. Howard, Esquire
Robert A. Hoffman,Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Ave.,Towson,MD. 21204

Mr. David O. Feldman
107 Sudbrook Lane
Pikesville, MD. 21208

Ms. Camille Blackburn
Owings Mills Times
409 Washington Ave., 5th Floor.
Towson, MD. 21204

Ms. Phyllis Cole Freedman
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

February 5, 1987

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
3rd District
Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the req. 25 ft.

ASSIGNED FOR: TUESDAY, JUNE 11, 1987, at 10 a.m.

cc: Paul Cordish, Esq. & Glenn L. Weinberg, Esq. — Counsel for Appellants/Petitioners
Jeffrey Scherr, Esq. — Counsel for Appellee Protestant, Harlan Co.
John B. Howard, Esq. & Robert A. Hoffman, Esq. — Counsel for Appellants/Petitioners
David O. Feldman — Appellee/Protestant
Allan Hirsh — " "
Phyllis C. Friedman — People's Counsel
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer
Betty duBois

Jean Holmen, Secretary

Reassigned 5/13/87
6-03-87
Consolidated w/CBA-86-157
Revised Order dtd 5/13/87 to consolidate w/ 87-48-A on 6-03-87

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

February 5, 1987

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

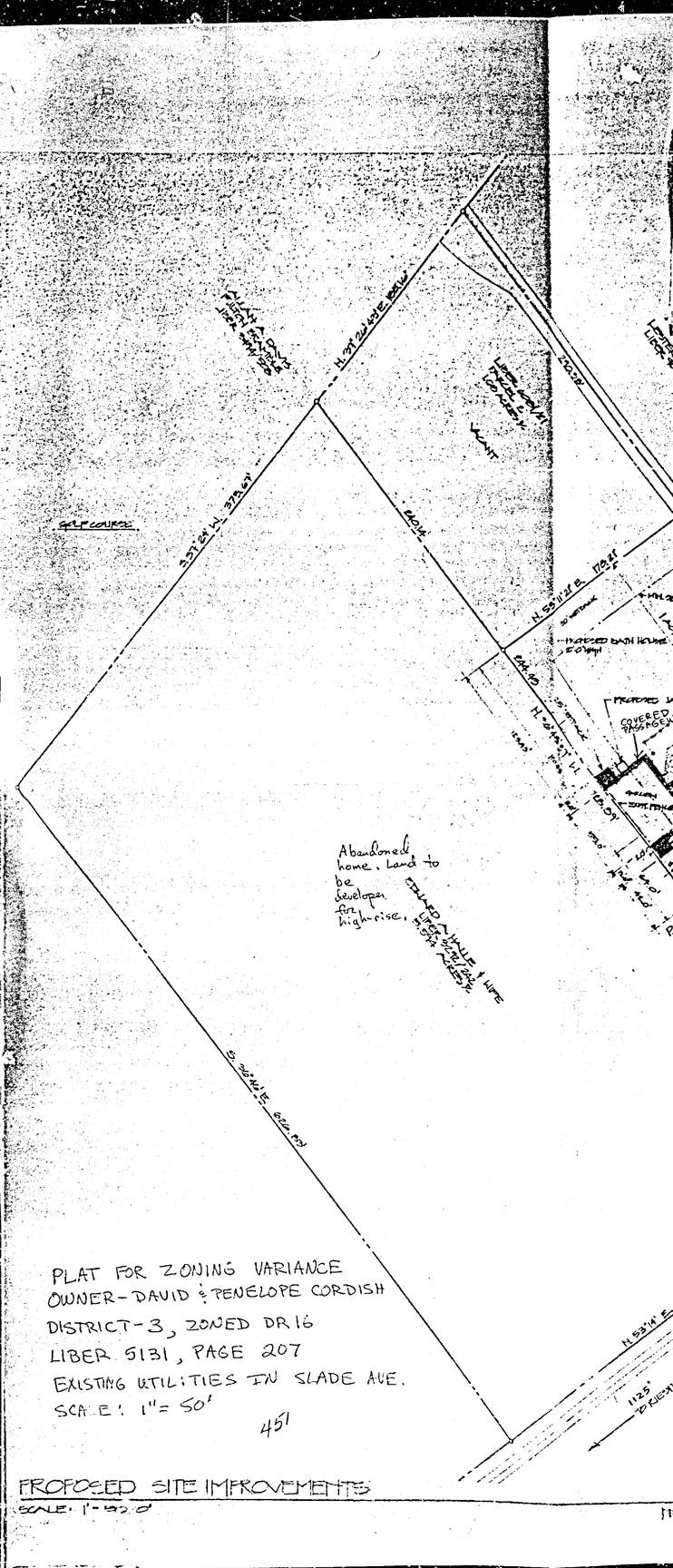
CASE NO. CBA-86-157 — HALLE PROPERTY
6 Slade Avenue
Re: CRG decision

ASSIGNED FOR: WEDNESDAY, JUNE 3, 1987, at 10 a.m.

cc: Robert A. Hoffman, Esq. — Counsel for Appellant
David S. Cordish — Appellant
The Harlan Co. of Md.
D. S. Thaler & Assoc., Inc.
Patrick Hanley, Esq. — Office of Law
Robert Covahey — Public Works
David Fields — Current Planning
Edward McDonough — Engineering
James A. Markle — Public Services
Malcolm Spicer, Jr., Esq. — Office of Law
Norman Gerber — Planning
Jorge Austrich — Economic Development

Jean Holmen, Secretary

Revised Order dtd 5/13/87 to consolidate w/ 87-48-A on 6-03-87


PLAT FOR ZONING VARIANCE
OWNER - DAVID & PENELOPE CORDISH
DISTRICT - 3, ZONED DR16
LIBER 5131, PAGE 207
EXISTING UTILITIES IN SLADE AVE.
SCALE: 1" = 50'
451
PROPOSED SITE IMPROVEMENTS
SCALE: 1" = 50'
MAY 19
PROPERTY OF: DAVID & PENELOPE CORDISH, ET UX
SLADE AVENUE
PARK HEIGHTS AVENUE
Abandoned home. Land to be developed for high-rise.
Nearest house in excess of 200'
N 55°11'E 55.55'
1125' TO REISTERSTOWN ROAD
POB
244.42'
S 34°48'E 624.80'
N 55°11'E 1162.87'
S 34°48'E 375.24'
N 55°11'E 1162.87'
S 34°48'E 624.80'
N 55°11'E 244.42'
S 34°48'E 375.24'
N 55°11'E 1162.87'
COVERED PASSAGEWAY
FRAME GAZEBO
FRAME BATH HOUSE
FRAME POOL
ZONED DR16
FRAME GAZEBO
COVERED PASSAGEWAY
FRAME HOUSE
FRAME WELL
FRAME SHED
FRAME GAZEBO
FRAME HOUSE
FRAME SHED
FRAME GAZEBO
FRAME WELL

apr associates, inc.
surveyors-engineers

ALEXANDER P. MATYCH, PROF. L.S.
RICHARD J. TRUELOVE, P.E.

DESCRIPTION OF PROPERTY OF DAVID S.CORDISH
SLADE AVENUE
THIRD ELECTION DISTRICT,BALTIMORE COUNTY,MARYLAND

BEGINNING FOR THE SAME at a point in the division line between the lands of David S.Cordish and the lands of Edward A.Halle and wife; said point being situate North 36 degrees 48 minutes 39 seconds West 244.43 feet,measured along said division line,from a marble stone found on the Northwesterly side of Slade Avenue; thence binding along said division line,referring all courses to the True Meridian as established for the Baltimore County Metropolitan District,and as now surveyed, North 36 degrees 48 minutes 39 seconds West 244.43 feet ; thence leaving said division line and running North 53 degrees 11 minutes 21 seconds East 178.21 feet to a point in the center of 14.3 foot wide road; thence binding along thecenterline of said road,with the use thereof in common with others entitled thereto,South 36 degrees 48 minutes 39 seconds East 244.43 feet; thence leaving said road and running South 53 degrees 11 minutes 21 seconds West 178.21 feet to the point of beginning ; containg 1.0 acre more or less.
BEING all of the land which by Deed dated September 18,1970 and recorded among the Land Records of Baltimore County in Liber 5131,page 207 was conveyed by The Maryland Title Guarantee Company to David S.Cordish.

6/2/1986

STATE OF MARYLAND — ROBERT LEE HOUSEL — No. 6626 — REGISTERED — LAND SURVEYOR

87-144

LAW OFFICES
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210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

JAMES D. C. DOWNES (1908-1978)

TELEPHONE (301) 823-4111
TELECOPIER (301) 821-0147

RECEIVED
OCT 7 1986
ZONING OFFICE

October 7, 1986

HAND-DELIVERED

Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Variance
David Cordish, Petitioner
Our File No.: 1557/19499

Dear Mrs. Jung:

Please accept the enclosed Memorandum in Support of Petition for Variance for filing with respect to the above referenced matter.

Thank you.

Sincerely,

Robert A. Hoffman

RAH/jhr
Enclosure

PETITION FOR VARIANCE
N/S of Slade Ave. 1125' NE of Reisterstown Rd.,
Third District
DAVID CORDISH, et ux.,
Petitioners

* BEFORE THE DEPUTY
* ZONING COMMISSIONER OF
* BALTIMORE COUNTY
* Case No.: 87-48-A

* * * * * * *

MEMORANDUM IN SUPPORT OF PETITION FOR VARIANCE

Petitioners, David Cordish and Penelope Cordish, by John B. Howard and Robert A. Hoffman, their attorneys, file this Memorandum in Support of Their Petition for Variance.

On June 6, 1986, Petitioners filed a Petition for Zoning Variance to permit a side yard setback of two feet in lieu of the required 25 feet so that an addition to their home, including a guest room and a bathhouse, could be constructed.

At the continued hearing on this matter on September 10, 1986, Jeffrey H. Scherr and Michael L. Heikes, on behalf of The Harlan Company submitted a Memorandum in Opposition to the Petitioners' Petition for Variance, the main thrust of which seeks protection of a contemplated project for the contiguous Harlan property described as a "beautiful, high rise, luxury, condominium project" (Harlan Memorandum, page 2). The described project is clearly an impermissible use under the existing D.R.16 zoning classification. In effect, the Harlan Company has described a project which would appropriately require a R.A.E. zoning classification.[1]

It is respectfully submitted that the sole issue before the Deputy Zoning Commissioner is whether Petitioners have met the requisite burden of proof under Section 307 of the Baltimore County Zoning regulations to permit a side yard setback variance. Clearly, uses that are not permitted as of right on adjoining properties should not be considered in determining the appropriateness of such a variance. The impact Petitioners' addition may have on such a proposed development is purely conjecture and speculation on the part of the Harlan Company and irrelevant in determining whether or not Petitioners' variances shoud be granted under the criteria of practical difficulty or hardship.

In Mclean v. Soley 270 Md. 208 (1973), the Court of Appeals stated the standard for granting a variance (although it may vary with specific language adopted in a zoning ordinance) is whether the strict compliance with

1 Petitioners are of the opinion that a number of the issues raised in the Memorandum in Opposition filed herein relate to the Petitions for Special Hearing and Variance (including variances of 80% over permitted height and 47% over permitted length) filed for Harlan's proposed project and, accordingly, are not being addressed herein.

the zoning regulation would result in "practical difficulty or unreasonable hardship".

The Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974) applied the following definition of practical difficulty:

> 1. Whether compliance with the strict letter of the restrictions. . .would reasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
>
> 2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district or whether a lesser relaxation than that applied for would get substantial relief. . . .
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and safety and welfare secured. Id. at p. 39.

To place this addition in any other location, which would be possible without the need for a variance, would, it is respectfully submitted, present a practical difficulty and undue hardship on Petitioners under the above-stated criteria. Because of Petitioners' family commitments, the guest room and bathhouse have become necessary additions. Overriding considerations of light, security, and continuity with the existing house and formal garden results in any other location for the proposed structure being totally impractical.

The Harlan Company has stated that "Mr. Cordish is attempting to disrupt the Harlan Company's development of its property and that Mr. Cordish has an abundance of other available sites on which to construct his proposed jaccuzi, bathhouse and guest room for which no variance would be necessary" (Harlan Company Memorandum, page 11). In fact, Mr. Cordish had no prior knowledge that this proposed addition would have any effect on Harlan's property and was merely proceeding with an overall master plan for improvement to his home which pre-dated Mr. Harlan's purchase of the adjoining parcel.

For these reasons, and based upon the weight of the testimony which was presented on behalf of Petitioners it is respectfully requested that the Variance be granted.

Respectfully submitted,

John B. Howard

Robert A. Hoffman
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorney for Petitioners

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 1986, a copy of the foregoing Memorandum in Suupport of Petition for Variance was mailed to Jeffrey H. Scherr, Esquire, and Michael L. Heikes, Esquire, Sun Life Building, Charles Center, Baltimore, Maryland 21201, Attorneys for the Harlan Company of Maryland.

ROBERT A. HOFFMAN

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

March 21, 1980

Julius W. Lichter, Esquire
305 West Chesapeake Avenue
Towson, Maryland 21204

RE: Developments of Oakhurst and Village of White Oak, Section 3
11th Election District

Dear Mr. Lichter:

Your letter of November 28, 1979, addressed to the Director of Planning, has been referred to me for reply.

I am enclosing a copy of this office's correspondence dated March 15, 1978, directed to Mr. Charles E. Fick, P.E., engineer for the development of Oakhurst. This correspondence correctly reflects this office's opinion of the effect, or in this case the noneffect, of the residential transition area regulations upon two adjoining subdivisions that are being processed simultaneously.

The above opinion was based, at least in part, on the following facts:

1. Both developers do have a right to begin processing their respective developments at the same time. They also have a right to be informed as to the Baltimore County Zoning Regulations that will affect the development of their property.
2. In many instances involving the simultaneous processing of two adjoining developments, there are no existing record lots or dwellings which form the basis of establishing residential transition areas and, in my opinion, it would be unreasonable to apply restrictive use regulations on one development that are based on proposed lots in another development; i.e., until such time as the lots are actually recorded, there is no guarantee that the subdivision will be processed to the point of recordation.

If you have any questions regarding the above, please call me.

Very truly yours,

JAMES E. DYER
Zoning Supervisor

JED/sf
Enclosure

cc: Mr. John D. Seyffert, Director, Office of Planning and Zoning
Mr. William E. Hammond, Zoning Commissioner
Mrs. Jean M. H. Jung, Deputy Zoning Commissioner
Mr. Leonard S. Jacobson, County Solicitor

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

July 17, 1986

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

000

Chairman

MEMBERS

Bureau of Engineering

Department of Traffic Engineering

State Roads Commission

Bureau of Fire Prevention

Health Department

Project Planning

Building Department

Board of Education

Zoning Administration

Industrial Development

Glenn Weinberg, Esquire
Paul Cordish, Esquire
300 Water Street
Baltimore, Maryland 21202

RE: Item No. 451 - Case No. 87-48-A
Petitioner: David Cordish, et ux
Petition for Zoning Variance

Dear Messrs. Weinberg and Cordish:

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 a hearing scheduled accordingly.

Very truly yours,

James E. Dyer/mb

JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:kkb

Enclosures

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon, Zoning Commissioner — Date July 21, 1986

FROM Norman E. Gerber, AICP, Director, Office of Planning and Zoning

SUBJECT Zoning Petitions No. 87-42-A, 87-48-A, 87-49-A, 87-51-A, 87-55-A, 87-56-A, 87-57-A and 87-58-A

There are no comprehensive planning factors requiring comment on these petitons.

Norman E. Gerber, AICP
Director

NEG:JGH:slm

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204

NORMAN E. GERBER
DIRECTOR

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

July 14, 1986

Re: Zoning Advisory Meeting of June 17, 1986
Item # 451
Property Owner: DAVID CORDISH, et al
Location: W/S SLADE AVE, 1125' NE OF REISTERSTOWN RD.

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

(X) There are no site planning factors requiring comment.
( ) A County Review Group Meeting is required.
( ) A County Review Group meeting was held and the minutes will be forwarded by the Bureau of Public Services.
( ) This site is part of a larger tract; therefore it is defined as a subdivision. The plan must show the entire tract.
( ) A record plat will be required and must be recorded prior to issuance of a building permit.
( ) The access is not satisfactory.
( ) The circulation on this site is not satisfactory.
( ) The parking arrangement is not satisfactory.
( ) Parking calculations must be shown on the plan.
( ) This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( ) Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
( ) Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( ) The amended Development Plan was approved by the Planning Board on
( ) Landscaping: Must comply with Baltimore County Landscape Manual.
( ) The property is located in a deficient service area as defined by Bill 178-79. No building permits may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is
( ) The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 172-79, and is conditional change for permitted density is required. The Basic Services Areas
( ) Additional comments:

cc: James Hoswell

Eugene A. Bober
Chief, Current Planning and Development

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

June 24, 1986

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

RE: Property Owner: David Cordish, et ux
Location: N/S Slade Avenue, 1125' NE of Reisterstown Road
Item No.: 451
Zoning Agenda: Meeting of 6/17/86

Gentlemen:

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

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or ____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____
EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: Capt. Scott Kelly 6-24-86 — Noted and Approved: John J. O'Neill
Planning Group
Special Inspection Division — Fire Prevention Bureau

/mb

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

TED ZALESKI, JR.
DIRECTOR

July 21, 1986

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 451 Zoning Advisory Committee Meeting are as follows:

Property Owner: David Cordish, et ux
Location: N/S Slade Avenue, 1125 feet NE of Reisterstown Road
District: 3rd.

APPLICABLE ITEMS ARE CIRCLED:

(A) All structures shall conform to the Baltimore County Building Code as adopted by Council Bill #17-86, the Maryland Code for the Handicapped and Aged (A.S.H.I. #117.1 - 1980) and other applicable Codes and Standards.

(B) A building and other miscellaneous permits shall be required before the start of any construction.

C. Residential: Two sets of construction drawings are required to file a permit application. The seal of a registered in Maryland Architect or Engineer is/is not required on plans and technical data.

D. Commercial: Three sets of construction drawings sealed and signed by a registered in Maryland Architect or Engineer shall be required to file with a permit application. Reproduced seals are not acceptable.

NOTE: (E.) All Use Groups except R-4 Single Family Detached Dwellings require a minimum of 1 hour fire rating for exterior walls closer than 6'-0 to an interior lot line. Use Use Groups require a one hour wall if closer than 3'-0 to an interior lot line. Any wall built on an interior lot line shall require a fire or party wall. See Table 401, Section 1407, Section 1406.2 and Table 1402. No openings are permitted in an exterior wall within 3'-0 of an interior lot line.

F. The structure does not appear to comply with Table 505 for permissable height/area. Reply to the requested variance by this office cannot be considered until the necessary data pertaining to height/area and construction type is provided. See Table 401 and 505 and have your Architect/Engineer contact this department.

G. The requested variance appears to conflict with Section(s) _____, _____, of the Baltimore County Building Code.

H. When filing for a required Change of Use/Occupancy Permit, an alteration permit application shall also be filed along with three sets of acceptable construction plans indicating how the existing structure is to be altered in order to comply with the Code requirements for the new use. Maryland Architectural or Engineer seals are usually required. The change of Use Groups as from Use _____ to Use _____, or to Mixed Uses _____, _____, _____. See Section 312 of the Building Code.

I. The proposed project appears to be located in a Flood Plain, Tidal/Riverine. Please see the attached copy of Section 516.2 of the Building Code as adopted by Bill #17-86. Site plans shall show the correct elevations above sea level for the lot and the finish floor levels including basement.

J. Comments:

K. These abbreviated comments reflect only on the information provided by the drawings submitted to the Office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired the applicant may obtain additional information by visiting Room 122 of the County Office Building at 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Michael S. Flanigan
By: C. E. Burnham, Chief
Building Plans Review

6/23/86

96-637
for file & filed in cc: Counsel
4/23/96

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COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

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SEP 24 1986
ZONING OFFICE

JAMES H. COOK
JOHN B. HOWARD
DAVID D. DOWNES
DANIEL O.C. TRACY, JR.
JOHN H. ZINK, III
JOSEPH C. WICH, JR.
HENRY B. PECK, JR.
HERBERT P. O'CONOR, III
THOMAS L. HUDSON
C. CAREY DEELEY, JR.
R. KING HILL, III

GEORGE K. REYNOLDS, III
LAWRENCE L. HOOPER, JR.
ROBERT A. HOFFMAN
DEBORAH C. DOPKIN
CYNTHIA M. HAHN
KATHLEEN BALLOUBY COX
KEVIN W. SMITH
J. MICHAEL BRENNAN
H. BARRITT PETERSON, JR.

JAMES D. C. DOWNES
(1908-1978)

TELEPHONE
(301) 823-4111

TELECOPIER
(301) 821-0147

September 24, 1986

HAND-DELIVERED

Mrs. Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
Case No.: 87-48-A
David S. Cordish, Petitioner

Dear Mrs. Jung:

Please enter John B. Howard's and this firm's appearance on behalf of Petitioner in the above referenced case.

As we have just been retained by Mr. Cordish, we respectfully request an extension of time for filing a reply memorandum to that submitted by the Harlan Company of Maryland. We believe an additional twelve days beyond the original two weeks, or October 8, will be sufficient. We would assume this is satisfactory unless we hear from you to the contrary.

Thank you for your attention to these matters.

Yours truly,

Robert A. Hoffman

RAH/jhr
cc: David S. Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey H. Scherr, Esquire

97-637-A
cc

RECEIVED
SEP 23 1986
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September 23, 1986

Mrs. Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
Case No.: 87-48-A
Dave Cordish, Petitioner

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Thank you for your attention to these matters.

Yours truly,

Robert A. Hoffman

RAH/ddw

cc: David Cordish, Esquire
Glenn Weinberg, Esquire

RE: Petition for Variance N/S of Slade Avenue, 1125' NE of Reisterstown Rd. 3rd District David Cordish, et ux, Petitioners	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 87-48-A

MEMORANDUM OF THE HARLAN COMPANY OF MARYLAND IN OPPOSITION TO THE PETITION FOR VARIANCE OF DAVID CORDISH

The Harlan Company of Maryland, Inc., a Maryland corporation, ("The Harlan Company") owns a tract of land of approximately 6 acres adjacent to the property that is the subject of this zoning variance petition. The Harlan Company seeks to intervene in this proceeding because it will suffer direct and immediate harm should the Petitioner, David Cordish, be granted the zoning variance he seeks. For the reasons stated below, Petitioner has failed to meet the applicable legal requirements and his petition for variance should therefore be denied.

FACTUAL BACKGROUND

The Harlan Company acquired property adjacent to Mr. Cordish's property in November 1985. It is situated immediately to the west of Mr. Cordish's property which is comprised of three lots and contains 3.08± acres. Prior to its sale, The Harlan Company tract, like Mr. Cordish's property, was rezoned in 1984 from DR-3.5 to DR-16.

After purchasing its property, the Harlan Company began plans for development in order to take full advantage of the DR-16 zoning status. One of the first steps in the preparation of plans was for Leonard Harlan, President of The Harlan Company, to contact the neighboring property owners, including Mr. Cordish.

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During his meeting with Mr. Harlan, Mr. Cordish threatened to do everything possible to block the Harlan Company's development of the property. Thereafter, the Harlan Company hired an engineer, an architect, and devoted substantial time and resources to the prospective development of a beautiful, highrise, luxury condominium project. Presently a CRG Plan has been filed seeking to construct a highrise condominium building on the property.

The development of the Harlan Company property is subject to Baltimore County residential transition areas ("RTA") which provide that the Harlan Company must maintain an RTA of at least three hundred (300) feet between its development and the dwelling of Mr. Cordish (as well as other neighbors). See 1B01.1B1.(a) B.C.Z.R. Within the RTA, building restrictions apply which are inapplicable to other portions of the Harlan Company property.

Mr. Cordish's petition, seeks a zoning variance in order to construct an extended passageway, thirty-three (33) feet long, leading to a jacuzzi, a small bathhouse and a small guest room within two feet of the property line he shares with the Harlan Company. Should Mr. Cordish's petition be granted, and his construction completed the dimensions of the RTA for the Harlan Company property could be changed significantly, potentially reducing by ten thousand two hundred thirty-eight (10,238) square feet the area on which the Harlan Company may build. By permitting the variance and construction, the RTA may extend approximately forty-eight (48) feet further inside the Harlan Company's property line and would disrupt and adversely affect the Harlan Company's development plans.

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Notwithstanding Mr. Cordish's threats, the Harlan Company does not oppose Mr. Cordish's variance so long as the variance does not impact upon the Harlan Company's RTA. At a recent public hearing before the Pikeville Community Growth Corporation (PCGC), Leonard Harlan offered to drop all opposition to Mr. Cordish's proposed variance if Mr. Cordish would agree that the variance would not affect the Harlan Company's RTA. Responding on behalf of Mr. Cordish, Glenn Weinberg, Mr. Cordish's attorney, stated that Mr. Cordish was intent on blocking the Harlan Company's development and therefore Mr. Cordish would not be amenable to any such agreement.

Mr. Cordish's motivation for requesting the variance is plain in light of his refusal to agree that his variance would not impact the Harlan Company's RTA and its development of the neighboring property, and in light of the numerous available alternative sites on his 3.08± acres of property on which to construct his jacuzzi, bathhouse and guest room which would not require a zoning variance nor disrupt the Harlan Company's development of its property. Mr. Cordish cannot demonstrate any unreasonable hardship or practical difficulty caused by strict compliance with zoning regulations. In fact, granting Mr. Cordish's petition for variance would have a detrimental impact on the public welfare and the interests of the community and specifically The Harlan Company property next door.

A. As a party who would be adversely affected should Mr. Cordish's zoning variance be granted, the Harlan Company has standing to intervene and oppose Mr. Cordish's petition for variance.

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The Harlan Company, as explained in the foregoing factual summary has a significant stake in the outcome of this proceeding. As Mr. Cordish's neighbor, should the variance be permitted, the Harlan Company's RTA could be altered, thereby severely disrupting the Harlan Company's plan for developing its property. In light of the potential adverse impact of the proposed variance, there can be no question that the Harlan Company has standing to intervene and assert its reasons for opposing the zoning variance.

There is ample and uncontradicted support in Maryland law for the right of a neighboring landowner to intervene and participate in zoning proceedings when he has direct interest in the outcome. See, Hyson v. Montgomery County Council, 242 Md. 55, 67, 217 A.2d 578, 585-86 (1966) (rights of interested parties to present testimony and cross-examine witnesses), Baltimore County Code, Section 22-36 (right of affected landowner to sue to enjoin violations of zoning regulations or restrictions). The Court of Special Appeals in Boehm v. Anne Arundel County, 54 Md. App. 497, 459 A.2d 590 (1982), enumerated the procedural rights that due process affords those who may be adversely affected by the decision of an administrative agency. Quoting B. Schwartz, Administrative Law, § 67 (1976), the court recognized an affected party's right to notice, including an adequate formulation of the subjects and issues in the case, the right to present evidence and rebut adverse evidence, cross-examine witnesses, appear with counsel, have the decision based only upon evidence introduced into the record at the hearing, and have a complete record including a

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transcript of the testimony and arguments and documentary evidence. Boehm, 54 Md.App. at 512.

Because of the significant interest jeopardized by Mr. Cordish's proposed variance, the Harlan Company is entitled to the full panoply of due process rights necessary to protect its property interests in this matter. Maryland law affords the Harlan Company the right to meaningful participation in this proceeding in order to adequately protect its property rights.

B. The Residential Transition Area Regulations should be held inapplicable when, as here, two adjoining developments are proposed simultaneously.

Mr. Cordish's proposed construction, as explained in the introduction of this memorandum, once completed, could alter significantly the dimensions on which the Harlan Company could develop its adjacent property. However, because Mr. Cordish's additions are proposed simultaneously with the proposed development of the Harlan property, the Commissioner should find that even if the variance and development are permitted to Mr. Cordish, there should be no impact on the Harlan Company's RTA and Cordish's proposed development should not otherwise limit the Harlan Company's development.

There is authority in Baltimore County for the very sensible proposition that when adjacent properties are being simultaneously developed, it would be unreasonable to apply restrictive regulations on one development based on the proposed development of the other. The rationale behind this rule is that RTA regulations are designed to govern the area between an existing dwelling and proposed construction and have no applicability when both developments are simply proposals and not

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yet existing. Therefore, as in this case where two adjoining property owners seek to develop their properties simultaneously and the RTA cannot be maintained if both development proposals are permitted, it would be unfair to prohibit one development on the basis of a mere proposal for the other. The resolution under such circumstances is to waive the RTA regulations as to both developments.

This result was reached when, by letter of March 15, 1978 Leslie Graff, the Director of Planning and S. Eric DiNenna, the Zoning Commissioner (letter attached as Exhibit 1) held that when two developments were processed and received tenative approval at approximately the same time, the transition zone is not applicable between the two adjoining portions of the two developments. The identical situation was addressed in March, 1980 when in a letter by Robert Dyer, the Zoning Supervisor, (attached as exhibit 2), the opinion was once again expressed that RTA regulations are inapplicable when two adjoining developments are proceediing simultaneously. As Mr. Dyer explained, when "there are no existing record lots or dwellings which form the basis of establishing residential transition areas,... it would be unreasonable to apply restrictive use regulations on one development that are based on proposed lots in another development." Thus, the Baltimore County Office of Planning and Zoning has made clear on at least two occasions that RTAs are inapplicable in the case of simultaneous development of adjacent properties.

In light of the previous decisions of this office,

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the RTA regulations should be inapplicable to the proposed developments of the Harlan Company and David Cordish. Here, where Mr. Cordish has planned a jacuzzi, bathhouse and guestroom on his property, and the Harlan Company has proposed a luxury highrise condominium project on its property, neither development should be prohibited because of RTA regulations which would be applicable only if the development of either property had already been completed.

C. Mr. Cordish has not and cannot meet the legal requirements for obtaining a zoning variance.

Should the Commission decide that the RTA regulations are applicable to the Harlan Company development and that the Cordish construction would effect the area on which the Harlan Company could build, the Harlan Company strenuously objects to the granting of a variance to Mr. Cordish because he has failed to satisfy the legal requirements for a zoning variance. The legal requirements Mr. Cordish must satisfy in order to obtain a zoning variance are straightforward and a review of those requirements renders obvious the legal inadequacy of Mr. Cordish's petition. Baltimore County Zoning Regulations, Section 307 provides that the Zoning Commissioner has the authority to grant a variance or special exception only in cases where strict compliance with Baltimore County Zoning Regulations would result in practical difficulty or unreasonable hardship. McLean v. Soley, 270 Md. 208 (1973). These requirements were clarified by the Court of Appeals in Carney v. City of Baltimore, 201 Md. 130, 137, 93 A.2d 74 (1952) where the Court said:

> The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and the liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendancy to cause discrimination and eventually destroy the usefulness of the ordinance. (Citation omitted)
>
> The expression 'practical difficulties or unnecessary hardships' means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant.

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201 Md. at 137.

In the Carney case, the court upheld the decision of the Board of Appeals denying a variance to a homeowner who sought a lesser side yard requirement so that he could add a bedroom and bath on the ground floor of his house to accommodate his wife's physical condition. The adjacent property owner objected because the variance would deprive him of light in his dining room. The court upheld the Board's determination that the medical convenience to Mrs. Carney was insufficient to satisfy the legal requirements for a variance.

Certainly Mr. Cordish's asserted basis for the variance he seeks pales in comparison to that which was rejected in Carney. Mr. Cordish has asserted no medical reasons for the need to construct his jacuzzi, bathhouse and guest room, nor has he adequately explained why his proposed construction cannot be undertaken on another portion of his property aside from offering the frail excuse that "athletic fields" and a vegetable garden preclude alternative sites.

A view of Mr. Cordish's property reveals that what

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Mr. Cordish claims are "athletic fields" is simply open space. There are no baseball diamonds or football fields with goal posts on Mr. Cordish's property, only a substantial plot of vacant land. The slight inconvenience of removing or altering his alleged athletic fields or his vegetable garden pales in comparison to the burden on The Harlan Company caused by the potential changed to its RTA should Mr. Cordish's variance and construction be granted. Additionally, Mr. Cordish has not explained why the jacuzzi, bathhouse and guest room cannot be constructed closer to the house (a configuration which would require no variance at all) without the elongated covered passageway which, as proposed, extends beyond the side yard setback. Nowhere in Mr. Cordish's petition does he explain why the jacuzzi, bathhouse and guest room must be placed in such remote locations.

More recently, in the McLean decision, the Court of Appeals, in explaining how to determine whether the petitioner has demonstrated practical difficulty in complying with zoning regulations, set out the following three criteria:

> (1) Whether compliance with the restrictions would unreasonably prevent the owner from using his property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> (2) Whether a grant of the variance would do substantial justice to the applicant as well as to other property owners.
>
> (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

McLean, 270 Md. at 214-15.

Mr. Cordish meets none of the McLean criteria. As

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the plat of his property reflects, Mr. Cordish could easily construct his jacuzzi, bathhouse and guest room on several other sites, all of which would be in conformity with the applicable regulations. Secondly, granting a variance to Mr. Cordish could work a substantial injustice to the Harlan Company whose development plans might would be unnecessarily hampered. Thirdly, by damaging a neighbor's development plans without justification and without exploring alternatives in conformity with the applicable regulations, Mr. Cordish's variance would certainly not be in the spirit of the ordinance nor would it further the public safety or welfare.

Moreover, the public welfare and the welfare of the Pikesville community would be significantly damaged should Mr. Cordish be permitted to thwart the Harlan Company's development. The Harlan Company has proposed a highrise, luxury condominium project which, once completed, would be occupied by residents who would be regular customers in Pikesville's shops, stores and banks, frequent users of Pikesville's services, and who would represent an increase in the Pikesville tax base. Therefore, the entire Pikesville community would stand to benefit and be further solidified by such an influx of affluent, desirable residents. To block the construction of the Harlan Company's condominium project would surely have a significant and detrimental impact on the welfare of the community.

D. Mr. Cordish's petition reflects an absence of good faith on his part and an intent to injure the Harlan Company.

A review of Mr. Cordish's petition in consideration of the relevant surrounding circumstances further highlights the

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admission by his attorney at the PCGC Meeting and reflects Mr. Cordish's true intent in this matter; to block the development of the property adjacent to his owned by the Harlan Company. As the evidence will indicate, Mr. Cordish was very bitter about the acquisition by the Harlan Company of the property next to his after the property had been rezoned DR-16. Mr. Cordish has made no secret of his intent to block, wherever possible, the Harlan Company's efforts to take advantage of the DR-16 zoning and develop the property. To that end, Mr. Cordish is attempting to obtain permission to constuct an elaborate passageway at the end of which he will place a jacuzzi, bathhouse and guest room, leaving only two feet between his proposed construction and the property line. By constructing these buildings so close to the property line, Mr. Cordish is attempting to alter significantly the RTA of the Harlan Company and force it to forego development of property which but for Mr. Cordish's variance, could be developed.

Mr. Cordish's ill-disguised plan to disrupt the Harlan Company's development of its property should be recognized as the attempt to injure the Harlan Company that it is. Mr. Cordish has an abundance of other available sites on which to construct his proposed jacuzzi, bathhouse and guest room for which no variance would be necessary.

Mr. Cordish's assertion that his mysterious "athletic fields" preclude construction in his spacious front yard is ludicrous and his logic defying proposal to construct his jacuzzi, bathhouse and guest room thirty-three (33) feet from his house

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when they could easily be built much closer to the house is further evidence that his true intention is to damage the Harlan Company's development plans and not to enhance his own property. Plainly, Mr. Cordish is attempting to use the Zoning Commission, not for a land use objective of his own, but instead for the improper purpose of injuring his neighbor. The Maryland Court of Appeals has suggested that under circumstances where an individual in bad faith or with a spiteful motive attempts to use public authorities to injure another's business, he may be held liable in tort for malicious interference with business. See, Beane v. McMullen, 265 Md. 585, 604 (1972). The Commission should recognize and resist Mr. Cordish's improper attempt to financially damage the Harlan Company through his proposed zoning variance.

CONCLUSION

Under these circumstances, the Commissioner should find that because the Cordish and Harlan properties are being developed simultaneously, the RTA regulations should be held inapplicable. Moreover, the Cordish variance should be denied because Mr. Cordish has not met his burden of showing any practical difficulty or undue hardship by strict compliance with the zoning regulations. In fact, the evidence reflects a multitude of alternatives for Mr. Cordish's construction which would neither require a variance nor interfere with the development of his neighbor's property. Because Mr. Cordish's sole purpose in seeking this variance is to maliciously disrupt

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the lawful development of his neighbor's land, his petition should be denied.

Respectfully submitted,

Jeffrey H. Scherr

Michael L. Helkes

Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on this 10th day of September, 1986, a copy of the foregoing Memorandum was hand delivered to Glenn Weinberg, Esquire, 300 Water Street, Baltimore, Maryland 21201, Attorney for Petitioner.

Michael L. Helkes

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BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

January 5, 1987

Jeffrey Scherr, Esquire
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201

John B. Howard, Esquire
Robert A. Hoffman, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
Towson, Maryland 21204

Mr. David O. Feldman
107 Sudbrook Lane
Baltimore, Maryland 21208

Mr. Allan Hirsh
11 Slade Avenue
Baltimore, Maryland 21208

Phyllis Cole Friedman, Esquire
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

RE: PETITION FOR ZONING VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd.
3rd Election District
David Cordish, et ux - Petitioners
Case No. 87-48-A

Ms. Friedman and Gentlemen:

Please be advised that on December 23, 1986, an appeal was filed by the Appellants/Petitioners, David S. and Penelope A. Cordish, from the decision rendered by the Deputy Zoning Commissioner in the above-entitled matter.

You will be notified of the date and time of the appeal hearing when it has been scheduled by the County Board of Appeals (494-3180).

Very truly yours,

ARNOLD JABLON
Zoning Commissioner

AJ:med

cc: Paul L. Cordish, Esquire
Glenn L. Weinberg
Suite 400, 300 Water Street
Baltimore, Maryland 21202

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Room 200 Court House

Towson, Maryland 21204

May 20, 1987

BOARD OF APPEALS MEMBERS

Thomas J. Bollinger, Chairman

William T. Hackett

Lawrence E. Schmidt

MOTIONS HEARING

Halle Property

Case No. CBA-86-157

David Cordish, et ux

Case No. 87-48-A

Reported by: Susan A. Kambouris

MR. BOLLINGER: Good afternoon, ladies and gentlemen. We are here this afternoon on a Motions Hearing on Case No. CBA-86-157 and Case No. 87-48-A involving the Halle property at 6 Slade Avenue regarding an appeal from the decision of the County Review Group and the conditional approval thereof, and also the property of Mr. David Cordish on Slade Avenue regarding a side yard setback of two feet in lieu of the required twenty-five feet. A variance was granted by the Deputy Zoning Commissioner of Baltimore.

The board recognizes Miss Cynthia Hahn, Esquire, Mr. Robert Hoffman, Esquire, Mr. Jeffrey Scherr, Esquire, and counselor?

MR. SCHERR: Mr. Paul Teitelbaum from our office, also.

MR. BOLLINGER: How about Mr. Glenn L. Weinberg, Esquire? He is not going to be here?

MRS. HAHN: No.

MR. BOLLINGER: Mr. Paul Cordish, is he here?

MR. HOFFMAN: He will also not be.

MR. BOLLINGER: Will not be. All right, are there any other attorneys present? Okay, you may all have a seat, please. Let the record also indicate that notice of this

Motions Hearing has been given pursuant to the Board's Notice of Assignment to the Peoples Counsel, Phyllis Cole Friedman, who is voluntarily absent from this proceeding, and also to the Office of Law, both to the County Attorney, Mr. Malcolm F. Spicer, and the Assistant County Attorney, Patrick D. Hanley. They also have elected not to be here for this hearing.

Procedurally and initially, let me say that the Board, for the record, is sitting with three Board members, myself, Thomas Bollinger, Mr. Larry E. Schmidt, and Mr. William T. Hackett. Mr. Hackett is the Chairman of the Board of Appeals and the County Code requires that when he sits, he shall act as Chairman. Mr. Hackett has had the flu over the weekend and has asked me to act as Chair today. Does anybody have any objection to that?

MRS. HAHN: No objection.

MR. SCHERR: No objection.

MR. HOFFMAN: No objection.

MR. TEITELBAUM: No objection.

MR. BOLLINGER: Now, we have received Mr. Scherr's Motion, first a motion to dismiss the Appeal of the Deputy Zoning Commissioner, and a Motion to Dismiss the Appeal of

the County Review Group, and we have read those motions and we have received the response to the Motion to Dismiss the Appeal from the County Review Group and the response to dismiss the Appeal from the decision of the Deputy Zoning Commissioner and we have likewise read those motions.

Mr. Scheer, I guess it is your motion, so you would go first. What the Board would intially like you to address is anything you would like to add that is not already in your Motions and Memorandum which we have reviewed and considered and the same would apply to Miss Hahn and Mr. Hoffman. Then, we may have some questions for you all.

MR. SCHERR: The only -- first of all, let me introduce my client, if I might, Mr. Harlan of The Harlan Company of Maryland, and not our client but someone with interest in the project, Mr. Harry Blum, of Fiola-Blum (phonetic), realtor in town.

MR. BOLLINGER: Welcome, gentlemen.

MR. SCHERR: Thank you. Perhaps the best thing I can do, while you have had a chance to read the Motions, you have not had a chance to visually consider, visualize the property in question. I don't know if you all are familiar with the

Pikesville area and the Slade Avenue property or Slade Avenue area on which this property is located and the surrounding area where Mr. Cordish's property is located. I have three of these CRG Plans which have been approved. Perhaps rather than putting it up on the Board, the best thing to do is to give you one of them, I am going to retain one, and give one to counsel, although I am sure you have one, too.

MR. BOLLINGER: Do we wish to make this a Motions exhibit for the record?

MR. SCHERR: Sure, we can.

MR. BOLLINGER: Can we have a joint stipulation?

MR. HOFFMAN: We haven't had a chance to look at it.

MR. BOLLINGER: After you have chance to look at it.

MR. HOFFMAN: I don't have a problem with it. It is the same CRG Plan which was approved at CRG Meeting, I guess it was on the 13th of November. However, I don't know what relevence it has to the Motions at hand.

MR. SCHERR: The only relevence it has and I don't submit it for purposes of arguing about it, I only submit it for purposes of showing -- first of all, that this was the CRG Plan which was appealed from.

Secondly, I think that one picture is worth a thousand words, and what it shows here is it shows the Cordish property and the Harlan property as they are located side-by-side, as well as the proposed development which was approved by the CRG. The Cordish property is noted on the east side or the right-hand side, if you will, of the CRG Plan and it is not shaded in.

Mr. Hackett, I don't want to make you look over your shoulder.

MR. BOLLINGER: First, let us have this marked. I think it is a relevent question of the weight, as to the Motion, it would be for us to determine, but we will mark this as Appellee's Motion exhibit one, the plan acted on by the CRG and drawn by D.S. Thaler & Associates. I am looking for the last page on it.

MR. SCHERR: There is a date of 9/4/86 and 11/4/86 being the final revision date.

MR. BOLLINGER: That will be Appellee's exhibit one.

(Appellee's Exhibit No. 1 so marked by the Board.)

MR. HOFFMAN: Mr. Scherr,I believe there are further revision dates on the lower right-hand corner.

MR. SCHERR: Okay. 11/11 and 11/12/86 being final.

What it shows, it shows on the right-hand side for the east side of the drawing of property. It has the words existing dwelling in the middle lot of three lots. These lots, all three, are Mr. Cordish's property, and his house is known or what is shown as the existing dwelling. The lines that go off of his house show what is essentially the residential transition area as it currently exists. The other existing dwelling on the property is the existing house on the property, which is a neo-Georgian or Colonial, if you will, red brick structure which currently exists and is, for point of information, the Symphony Decorator House today. If you were to go there, you would see it decorated, you would be charged an entrance fee by the Symphony, and it is being used by the Symphony to raise funds for the Symphony business. The footprint shown to the left or far west of the drawing is the proposed building envelope, and we do, in fact, intend or my client does, in fact, intend to retain the existing dwelling and to build a building which is in architectural motif or architectural symetry with the existing dwelling so that it, too, will have a Colonial -- I am no architect -- but if I might say, a neo-Georgian appearance somewhat like the Green

Briar. Those are the pictures it is being modeled off of. Along Slade Avenue and across the street for your visual information are three high-rise apartment structures which have existed since the mid 60's. I think the first one was built at or about 1960. That is 11 Slade Avenue. It is closest to Reisterstown Road which runs up here at the corner of the plat would be Reisterstown Road. 1 Slade Avenue -- I think it is even shown -- I am sorry, that is 11 Slade Avenue. The entrance is shown on the CRG Plan. Then, immediately next to that is what is now known as 7 Slade Avenue called Suburban Oaks Condominium. That is in the middle of Slade Avenue across the street. Then, on the left or west is the 1 Slade Avenue high-rise condominium, all of which are significatly higher than 60 feet. I believe most of them are 90 feet or above. Then, right about where it says skematic layout for parking garage would be where Park Heights Avenue is.

I show you this not for purposes of arguing anything but simply for purposes of orienting you to the area and to show you where Mr. Cordish's property is in relationship to The Harlan Company property, what the CRG Plan is that is intended or has been conditionally approved, and what the

general area looks like.

In terms of adding to our written argument,there is relatively very little I can say. It is hot and I don't want to take up your time. I have just received copies of Mr. Hoffman's memorandum in response to our Motions to Dismiss. The only one I have really had a chance to read and really fly through, not really read, is the response to the Motion to Dismiss the variance, and what Mr. Hoffman says there is for the first time at the hearing before Commissioner Jung, there was raised the issue of the residential transition area and that that shouldn't have been considered by Deputy Commissioner Jung and indeed it should have been the subject matter of a separate Petition or separate hearing or some other proceeding, and should have been considered separately and it should not have been considered at all before Deputy Commissioner Jung. I submit that would be an absolutely tortured reading of section 307 of the Zoning Regulations which says that what is to be considered at a Zoning Hearing for a variance is whether or not a variance will be in harmony with the spirit and intent of various regulations, sign regulations, and off street parking regulations, and area

height regulations to be as so as to grant relief without substantial injury to the public health, safety, and general welfare. Well, the the Harlan Company of Maryland is certainly part of the public and there is no question that if these structures were allowed to be built and were a allowed to be built in such a way that they would impact on the RTA of the Harlan Company property, there would be no doubt it would be certainly an impact on our client's general welfare, who it is no secret paid $2.3 million dollars for what is known as the Halle property. It would also be the inability to build because of the impact on the RTA, would have also been an impact on Pikesville's general welfare. There is undisputed testimony in the record, which I believe Mr. Hoffman's office has copy of the record. It was taken and transcribed. And Mrs. Jung certainly did consider testimony from the Pikesville Community Growth Corporation, as well as, Pikesville area residents that says, we want this high-rise building. We think it is pretty. We think it will add to the area. We think it is something which ought to exist and we are in favor of it, and not to have it will impact on our welfare. There is no question that the RTA issue is certainly one that should

have been considered by Mrs. Jung and should have been ruled upon. The fact that the Harlan Company filed a Special Hearing Petition, I must tell you, quite frankly, I did that to make sure the issue was covered. It is like filing all of your pleadings in your discovery or any other case to make sure that an issue will be considered at a certain point in time. That is why I filed a Petition for Special Hearing. When I filed it, the Zoning Office -- this maybe excess testimony -- but I will tell you I represent to you as lawyer, said why are you bothering to file this, Mrs. Jung will give us a find, I said, just to cover myself, just to make sure there is something in the record which will make this issue be heard at a certain time and won't be a form of res judicata or collateral estoppel that it wasn't officially or formally waived.

Fortunately and pursuant to our request, Mrs. Jung did what we asked her to do, and did consider the RTA issue and I think rightfully so. I think that is Mrs. Jung ruled on the Motion to grant the variance filed by Mr. Cordish, granted his relief, as I said and I won't repeat our Motion again, and gave the Cordishs' exactly what they asked for, and at the

same time, made sure that there was no impact on our client's property by impacting the RTA and not allowing them to build high-rise project, which the property is zoned for. It is zoned for 60 feet in height and it is zoned for a condominiu project. The fact is we are seeking variances to seek to go higher, and a variance also to lessen the distance required between existing structures so that we can maintain the house, and also a special exception to widen the width. There is no question even if we were not seeking those variances, if the RTA were impacted upon by Mr. Cordish's proposed additions, then there would not even be a building to 60 feet, and we would not be able to go forward with the project.

The other thing I have not said about the variance and I have not said it in the memorandum, I noticed that Mr. Hoffman, I think you attahed the suit on the Zoning Commissioner --

MR. HOFFMAN: Uh-huh..

MR. SCHERR: -- to your memorandum. I think it is significant to say that I don't think Mrs. Jung -- although she said I find -- I grant the variance, that there is a practical difficulty. She makes some other findings which I

think are very important and which we did not refer to in our memorandum, which repeated -- she says something I think bear repeated. She commented upon the proposed structure, which would be approximately -- at page 2 of her opinion -- approximately 47 feet on one side and 56 feet on the other side with long wings with these rooms at the end, would extend, she says, extend the footprints of the residence, referring to the Cordish residence, in an unreasonable and ludicrous fashion. To the Deputy Zoning Commissioner's knowledge, no breezeway or covered passage anywhere near the length proposed in this case has been approved in Baltimore County so as to connect an addition to the main building. I think it is clear what Mrs. Jung is saying. This is ludicrous. This is absolutely absurd. After listening to all of the testimony, I think it is clear what you would like to do is impact on your neighbors property, but I am going to let you go ahead and do exactly what you said you want to do. I am going let you build 55 foot or 47 foot wings and put the rooms at the end, but I am not going to allow you to impact the general welfare or the welfare of your client, neighbor's property, so that it can't be used as it might otherwise be

used under existing zoning. Mrs. Jung concludes by saying on page three, in the middle of the paragraph she begins to interpret the proposed two small far distant rooms as part of the principal building in accordance with Section 400.1 Let me wait until you get it. To interpret the front two small far, distant rooms as part of the principle residence in accordance with Section 400.1, especially the meaning of that section in exactly the same way, the Petitioners have stretched their covered walkways to the absurd. I think that is also siginificant.

I think Mrs. Jung's commentary on what is thought to be -- what the Petitioner in the variance case ought to do is very important. I believe that she calls it an absurd attempt or attempt to obtain an absurd result is what was trying to ameliorate there, to do away with, and what we have attempted to do away with by seeking to dismiss the Appeal because Mr. Cordish has gotten what he what he wants, and he should not be able to use this body or any further body to continue to perpetuate a squable with a neighboring property owner.

With respect to the CRG --

MR. BOLLINGER: Mr. Scherr, before you move on to that

Motion, let me ask you this. With respect to your Motion to Dismiss the Appeal that the Deputy Zoning Commissioner ordered or granted the relief from the variance, they, in so granting that variance, the Deputy Zoning Commissioner called the new proposed structures to -- indicated they are accessory buildings. Okay? Now, referring you to the definition sections of the Baltimore County Zoning Regulations, the definition, page three, the top of the page, an accessory building, one which is subordinate and customarily incidental to and on the same lot with a main building. A trailer should not be considered an accessory building. A structure connected to a principal building by covered passageway or with one wall in common shall -- emphasis added -- shall not be considered an accessory building. It seems from that definition that Mis Jung is clearly in error in determining the structures to be an accessory building. What the Board would like you to address is how then could the Appellants not bring that to the attention of the Board or correct that except by appealing to this Board?

MR. SCHERR: My response to that is several folds. First of all, Mrs. Jung, in her opinion, addressed that very

issue and I think brought to her reading of the Zoning Codes something which none of us should leave home when we go to the law offices or the courtroom, that is our sense of practicality, and our sense of reason and logic. Mrs. Jung said -- and I can find it in her opinion -- that -- words to the effect that it is true that the definition section says this but it doesn't specify how long the connected structure has to be, and as I read at the end, to argue that this long breezeway of 55 feet or 47 feet is something which makes the structures, although it is part of the building, is absurd. And that she not would not interpret and read the zoning regulations that way.

I think to answer the second part of your question why is that not appealable, it is like the cases we have cited in our Memorandum, where, for example, in the Offut verses Montgomery County case that the proponent there, the Plaintiff got the relief that they wanted. They also wanted the Court to say, you have bargained in good faith, but the Court wouldn't say that. The Court wouldn't find they bargained in good faith.

Here, too, Deputy Zoning Commissioner Jung is going to

give you relief in exactly the way Mr. Cordish wants it, but she is not going to find that it is part of the dwelling, so that it will be -- will impact my client's RTA. The analogy is that they are not going to -- you can not appeal something which is a part of the judge's decision that is adverse to you as long as the relief which you have sought to obtain is the relief that you have prayed for. Mr. Cordish's Petition for the zoning variance is perfectly clear. It says permit a side yard setback of two feet in lieu of twenty-five feet. He has gotten it. He hasn't said, please consider that in his original Petition, please consider that an accessory structure or dwelling. He said what I want to do is I want to build these structures and build them for all of the following reasons, and had eight hours of testimony.

MR. BOLLINGER: That was his application for the variance. But addressing the -- and I am not trying to over simplify the issue because I might tell you the Board is very impressed with your Memorandums and Motions, some 18 pages of argument which is very interesting, but addressing the narrow issue of whether or not this Board has jurisdiction and whether we should dismiss even the question of an appeal, does

not the Appellant have a right and also take a gamble in appealing to this Board on an Appeal with a variance because, number one, he would have the right in that he didn't get everything he wanted because she termed it an accessory structure, and for whatever reason, does he not have a right in a de novo hearing to make this Board make that determination? And does he not take a gamble on the fact that we may not give him the variance to begin with? But is that not his right to appeal the decision of the Deputy Zoning Commissioner or else how does he get redress for what he believes was a wrong to him?

MR. SCHERR: The answer is I do not believe he has the right, quite honestly. I think the cases support that. Otherwise, we are a allowed to do what the cases speak against, that is to play fast and lose on the court to utilize the Appellant system, Board of Appeals, as a tool to obtain a result which is essentially and admittedly not the result Mr. Cordish wanted, that is objectively admitted not the result that he wanted. What he said he wanted was to be able to build these structures within two feet of his property line, forty-five feet to fifty-five feet off of his house. The fact

that Mrs. Jung has said, I am going to call them accessory structures, I do not believe under the cases that we have cited and under the way the Court of Appeals has approached this, an appealable issue anymore than the union could say, Court of Appeals, we want you to address the issue that we have bargained in good faith. Don't forget in that case, if, in fact, they bargained in bad faith, the Court of Appeals was setting the union representatives up for a lawsuit.

MR. BOLLINGER: Isn't Offut a little bit different then here where we have an Appellant asking for another body to make a factual determination, which is even binding on the Circuit Court? You know it is not the same as what the Court of Appeals said in Offut. These Appellants are asking for three people to make a factual finding on whether or not these structures are an accessory use and whether or not they should be permitted to have this variance. You are saying, then, we shouldn't have jurisdiction in that matter. What I don't quite understand is the analogy that you are making when here we have de novo hearings. This is the right of the people of Baltimore County that the Council and the Executive by legislative enactment have given them.

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MARILYN HOPE FISHER**

*ALSO ADMITTED IN NY
*ALSO ADMITTED IN DC
*ALSO ADMITTED IN NJ
*ALSO ADMITTED IN CA

August 27, 1986

Mrs. Jean M. H. Jung
Deputy Zoning Commissioner
of Baltimore County
Room 109
County Office Building
Towson, Maryland 21204

Re: Petition for Special Hearing,
Case No. 87-48-A, Cordish
Petition For Zoning Variance

Dear Mrs. Jung:

Enclosed herewith is a copy of a Petition for Special Hearing which was filed on or about August 21, 1986 with Mr. Dyer. I also enclose herewith a copy of our letter to Mr. Dyer.

Because the issues presented by the Petition for Special Hearing relate to Case No. 87-48-A I respectfully request that the Petition for Special Hearing be heard at the same time as the Variance Petition in Case No. 87-48-A.

The consolidation of these two cases may require a continuance. I believe, however, that such a continuance would be appropriate since a continuance was previously granted to the Petifioner in Case No. 87-48-A.

The hearing in Case No. 87-48-A is presently scheduled for September 10, 1986 at 1:30 p.m. If you would consent to hear both Petitions simultaneously and that will necessitate a continuance I will be happy to coordinate the hearing date with all concerned. In this connection, I am anxious to have this matter heard as quickly as possible and would hope that a hearing could be held before October 1, 1986.

Thank you for your consideration in this matter.

Sincerely,

Jeffrey H. Scherr

JHS:ndc
NO → Enclosures
cc: Mr. Leonard M. Harlan
Glenn Weinberg, Esquire
Mr. Arnold M. Jablon
Mr. James E. Dyer

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August 27, 1986

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PAUL L. CORDISH
DAVID S. CORDISH

TELEPHONE
(301) 539-6141

September 2, 1986

Mrs. Jean H. M. Jung
Deputy Zoning Commissioner
of Baltimore County
Room 109
County Office Building
Towson, Maryland 21204

RE: Petition for Special Hearing
of
The Harlan Company of Maryland, Inc.
Case #87-48-A
Cordish Petition for Zoning Variances

Dear Mrs. Jung:

We represent Mr. David S. Cordish and Mrs. Penelope Cordish, his wife, the Petitioners for Zoning Variances at their residence 4 Slade Avenue, Baltimore County, Maryland. This matter is pending before you and was partially heard on August 12, 1986 at which time you continued same until September 10, 1986 at 1:30 P.M.

It was not until September 2, 1986 that we received, from Jeffrey Scherr, Esquire, a copy of his letter to you dated August 27, 1986 entitled "Petition for Special Hearing". The copy thereof which we received did not contain a copy of Mr. Scherr's Petition for Special Hearing and did not contain a copy of the Plat referred to therein. We called this matter to his attention and he later furnished us with a copy thereof but did not furnish a copy of the Plat.

The purpose of this letter, in behalf of Mr. and Mrs. Cordish, is to respond to Mr. Scherr's letter to you and to state our position as to the Petition for Special Hearing in which The Harlan Company of Maryland, Inc. is the Petitioner, as follows:

1) The issues presented by the Petition for Special Hearing do not relate to case #87-48-A and constitute an entirely separate and distinct matter from the issues relating to the Zoning Variances requested by our clients.

2) The Petition for Special Hearing should not and cannot properly be heard at the same time as the Variance Petition in above case.

Mrs. Jean H. M. Jung
Page Two
September 2, 1986

3) There is no basis for consolidating the Petition for Special Hearing with the pending Petition of our clients for Zoning Variances at their residence. The legal issues involved with regard to the requested zoning variances are entirely dissimilar with and disconnected from the Petition for Special Hearing relating to another parcel of real property which, in essence, constitutes a request for a special exception to the Residential Transition Area requirements which cannot properly be granted.

4) Our clients emphatically disagree that a continuance, as requested by The Harlan Company of Maryland, Inc., is either necessary or appropriate and desire to proceed on September 10, 1986 to complete the hearing which has already taken place, in part.

5) The residence property concerned has continuously been, for approximately 18 years, the residence of the Cordish family, exclusively. It is a "dwelling" in every factual and legal sense. The variances which they seek consist entirely of additions and improvements to their residence property which will be an integral part of their dwelling, will be in strict harmony with the spirit and intent of all pertinent zoning regulations and requirements and will add to their use and enjoyment of their dwelling. The requested variances relate solely to additions and improvements to their primary residence which would not, to any extent, injure or diminish the public health, safety and general welfare of the area in which they are located.

6) The Petition for Special Hearing states that The Harlan Company of Maryland, Inc. intends to develop its six acre property as a high-rise condominium/apartment building and implies that granting the Cordishes the variances they seek will render such development "impracticable". Whether or not, in the opinion of The Harlan Company, its contemplated structures would be "impracticable" is totally irrelevant and immaterial with regard to the variances sought by the Cordishes which relate exclusively to additions and improvements to their dwelling. The granting to the Cordishes of their requested variances would not, to any extent, prevent The Harlan Company from developing and constructing a high-rise condominium/apartment building. It is irrelevant whether or not the plans for the condominium/apartment building they now contemplate may require modification or change. As a matter of fact, as of today, The Harlan Company has filed no plans and specifications whatsoever for its proposed development and has obtained no building permits with regard thereto.

Mrs. Jean H. M. Jung
Page Three
September 2, 1986

7) The Harlan Company, in its Petition for Special Hearing, contends that since its condominium/apartment building development and the variances requested by the Cordishes are "proceeding simultaneously", the granting of same to the Cordishes should not have any impact in the Residential Transition Area of the Harlan property. The two matters are not "proceeding simultaneously". The Cordishes have prepared and filed plans and specifications for the additions and improvements to their dwelling which are clear and specific. The Harlan Company has filed no plans and specifications for its contemplated development. Therefore, it is obvious that the two matters are not "proceeding simultaneously". The impact of granting to the Cordishes the variances they request is an entirely separate matter.

The Cordishes should not be subjected to any further delays which would make it impossible for them to complete the additions and improvements to their dwelling prior to the onset of the winter season during which construction is generally impossible.

The Cordishes should be permitted to proceed, as scheduled, with the hearing on their pending Petition for Variance with regard to their dwelling entirely apart and separate from any proceeding relating to the Petition for Special Hearing filed by The Harlan Company of Maryland, Inc.

Respectfully,

Paul L. Cordish

Glenn L. Weinberg

Attorneys for David S. Cordish
and Penelope Cordish, his wife
Petitioners for Zoning Variances

CC: A copy of this letter was hand delivered to Jeffrey H. Scherr, Esquire, attorney for The Harlan Company of Maryland, Inc.

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(301) 539-6141

September 2, 1986

Mrs. Jean H. M. Jung
Deputy Zoning Commissioner
of Baltimore County
Room 109
County Office Building
Towson, Maryland 21204

RE: Petition for Zoning Variance
4 Slade Avenue
Third Election District
Baltimore County
David S. Cordish and Penelope
Cordish, his wife
Case #87-48-A

Dear Mrs. Jung:

The above matter, in which we represent the Petitioners, was partially heard before you on August 12, 1986. You then continued same until September 10, 1986 at 1:30 P.M.

The required number of the Surveyor's Plat pertaining to the variances requested by Petitioners were filed before the Zoning Commissioner of Baltimore County on June 6, 1986.

Petitioners desire to make available a more detailed Plat to support the prior plats they filed in this matter. Accordingly, you will find delivered to you herewith 10 copies of a Plat entitled "Enlarged Plan of Cordish House and Proposed Addition", dated August 26, 1986, prepared by Stephen Glassman and John Fisher of Art and Architectural Design. This Enlarged Plan will furnish additional and full details as to the nature and extent of the structures which the Petitioners desire to add to their existing dwelling property at 4 Slade Avenue, Baltimore County, Maryland.

Respectfully Submitted,

Paul L. Cordish

Glenn L. Weinberg

Attorneys for David S. Cordish
and Penelope Cordish, his wife

Mrs. Jean H. M. Jung
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CC: A copy of this letter and two copies of Enlarged Plan were Hand Delivered to Jeffrey H. Scherr, attorney for The Harlan Company of Maryland, Inc.

VIA FEDERAL EXPRESS

MR. SCHERR: Except what Mr. Cordish is saying, I am aggrieved by the zoning issue, and he really isn't aggrieved. He never prayed for relief to say that this is a dwelling. What he prayed for relief for in the Petition for Zoning Variance is to be able to build this structure. The issue whether it is an accessory structure as opposed to a dwelling is a collateral issue. It is not the issue in the case.

MR. SCHMIDT: Isn't it a very real issue as far as he is concerned because based upon the determination of this Board or the Deputy Zoning Commissioner makes as to what that building is may very well have some detriment to him because if, in fact, the Zoning Commissioner decides or this Board or whoever made the decision it is, in fact, either an accessory structure or not an accessory structure, it is going to have an impact as far as the RTA requirements. So that there is a very real concern on the part of Mr. Cordish not only for the nature of the variance itself, the granting of the specific relief being prayed for, but the labeling of that relief also causes him a real and identifiable impact.

MR. SCHERR: Except, Mr. Schmidt, in insofar this is concerned, that only causes him a real and identifiable impact

if, in fact, he is seeking to inhibit the ability of Harlan to develop it's property, utilize it as it is properly zoned now, and if his objective is to block that project -- but even if that is his objective, and I am not arguing the merits of whether that is proper or not, all I am talking about is the narrow jurisdictional issue of whether he can come before the Board, and certainly those arguments are proper in a hearing before this Board as is the practicality of Miss Jung's definition of how long can a breezeway be. But I think those are all issues which would have to be addressed when we got here. I think where we are is before that.

Except that the very first proposition you said is Mr. Cordish harmed if this issue is not addressed by this body de novo. The answer is no, he is not harmed. He is still able to do exactly what he sought to do by the Zoning Commissioner below.

MR. BOLLINGER: Is that not an issue to be addressed on the merits?

MR. SCHERR: Why get that far when he has gotten the very relief he prayed? What he wanted to do was build these structures. I won't use an adjective to identify them If he

wants to build these structures, he is allowed to build thes structures.

MR. BOLLINGER: Let's be honest about it. What he wants to do is build these structures and block your proposed development.

MR. SCHERR: Assuming he gets there first.

MR. BOLLINGER: Assuming he gets there first.

MR. SCHERR: I note for the Board that he has not even put a shovel in the ground.

MR. BOLLINGER: Does he not have a right at least to, for whatever his reasons are, to come before this Board for whatever reason and let us determine anew, de novo, whether or not these should be not considered accessory structures but accessory buildings because that is the term utilized in Miss Jung's opinion, and which the Council specifically said in their wisdom that they shall not be considered where there is a covered passageway. Doesn't he have a right to come before us and let us determine that and take the gamble, as I said, that we might not even grant the variance?

MR. SCHERR: I submit to you under the cases and under the memorandum as we have proposed it, the answer is no

because he has gotten the relief he asked for below. He has gotten everything he sought in his Variance Petition and whether or not it is an accessory use and whether or not you agree with Mrs. Jung is irrelevant. He is a allowed to build exactly what he sought to build, exactly what he went to Mr. Jablon's office to file a Petition for, he has gotten.

MR. SCHMIDT: Mr. Sherr, if that is, in fact, the case where and particularly in view of the Hope Decision which invests this Board with almost exclusive jurisdiction and appeals from administrative agencies in the County, where can Mr. Cordish go to, in his eyes, right this wrong or at least have the question addressed as to what these structures are. If he can't appeal to this Board, where does he go to get a determination as to whether Mrs. Jung was right in her identification.

MR. SCHERR: Well, I think what the Offut Case and cases recited says is that no determination need be made. That determination that he has gotten the relief that he wanted, like, for example, in Offut, the fact that these people were called bargaining in bad faith is a very bad thing for these people. It sets them up for a lawsuit by their

union members for not having acted in their interest in a lawsuit by having acted in bad faith. I am not saying -- I don't know whether a lawsuit was ultimately brought or not. Certainly there was a very real harm in Offut as a result of the Court not even considering the Appellant's points of view whether or not there was bad faith. What the court said is they won below. Whether or not there is bad faith is absolutely irrelevant to what they sought to do, that was to win the right to, in that case, do away with twelve month teachers. In this case, Mr. Cordish considerably has won the right to build the structures he wanted. The fact Mrs. Jung called it an accessory use, there is no harm. He has gotten exactly what he asked for in his Petition for Variance. Therefore, that she wants not to negatively impact on my client, is not a harm to Mr. Cordish. There is nothing to redress anymore than there was anything to redress in the Offut Case where they said that there is bad faith. I submit that the Offut Case said that there is bad faith on a bunch of union representatives is far more aggrievest than calling these accessory buildings in terms of a right to be addressed.

MR. BOLLINGER: Okay. We are on the issue now of the

Motion to Dismiss the Appeal from the Deputy Zoning Commissioner on the variance. Mrs. Hahn, do you have anythin else to add other than what is in your memorandum? You migl gather from the Board's questioning you are ahead of the game

MRS. HAHN: Yes, and I realize that, and I appreciate many of the Board's questions because I think they are centra and right on the mark with the issues here at this time. I have a couple of comments.

I think Mr. Sherr is getting into the merits of this Appeal. I think the Board understands that and we would remind the Board we are simply here on Mr. Scherr's own Motion to Dismiss. His claim that this Board does not have jurisdiction to hear our Appeal, as noted in our memorandum and as referenced by the Board already, we do feel very much aggrieved by Miss Jung's finding that our additions are accessory buildings and that is precisely the issue from which we appeal. To say we are not aggrieved by that decision is naive and that is calling it a nice word. I am glad Mr. Scherr put this CRG Plan into evidence because I think it is shows the Board why this adjacent single family property owner may have an interest in what is going on next-door to him.

This is a huge project which is, in fact, apparently appropriate for an RAE Zone and they are trying to put it in a DR-16 zone. The RTA is a critical issue to the adjacent single family property owner in this case. Miss Jung's decision made a factual finding about where you are going to measure that RTA. She went beyond the decision of just deciding yes or no on the variance, and it is a variance and it is a variance for an accessory building. By doing that, she ruled on an issue and she ruled adversely to Mr. Cordish. Now, we are not going to be coy about this. Mr. Cordish honestly dc oppose the development next to his property. That is not -- would object to the characterization earlier that is why he building the additions. That is again a question on the merits.

He applied for the variance back in June of '86 before CRG Approval for this development was even obtained. Nevertheless, the developer came in and made the RTA and the effect of the variance a central issue to the hearing below. This transcript of the hearing below, your honor, more than half of it was testimony by the Harlan witnesses and Harlan's case regarding the RTA, and how important it was they keep the

full RTA on their property and what the additions on the Cordish property would mean. In effect, more than half of that hearing was devoted to the Harlan Properties RTA and where it was to be measured from, and then Miss Jung, considering all of the evidence she heard, went on to rule on that issue. She ruled on it by saying this is an accessory building. We have a right to Appeal from this adverse ruling and that is what we came to the Board about. We are hear for a de novo hearing and we don't think it could be any clearer that that is an adverse ruling. We think the case law cited by Mr. Scherr really obfuscates a deceptively simple issue. We have an adverse ruling by Miss Jung below that our additions are to be accessory buildings. That has a dramatic effect, witness Mr. Scherr's vehement opposition to this Appeal. That ruling has a dramatic effect on the RTA applicable to the adjacent developer. That is what the adverse ruling is, and your honors, I don't have to quote you the fact that if a party feels aggrieved by a decision of the Zoning Commissioner they have a right to appeal to this Board. That is Baltimore County Zoning Reg 500.10 and also in the code of Baltimore County Section 2232. This Board is well

aware of the definition of aggrieved. It is simply whether the property owner feels a property or a personal right has been adversely effected by the decision of the Zoning Commissioner. This Board recognizes what that adverse decision is. Again, we are not going to play coy about this. We do oppose the adjacent development. A ruling the RTA is going to be measured from the Cordish dwelling instead of ar addition to the Cordish dwelling is an adverse ruling. We a interested in that development and we do oppose it. Certain we believe that as a property owner on this site for approximately 16 years we have the right to oppose a development that isn't even within the confines of the applicable DR-16 zoning for that adjacent property.

MR. SCHMIDT: Let me ask you something --

MRS. HAHN: I was afraid if I stopped you would ask a question and you did. I should have set down.

MR. SCHMIDT: -- just to get your opinion. Chairman Bollinger indicated that obviously if this Appeal on the variance comes before us, the Board has de novo jurisdiction, which means that the variance in and of itself may not be granted, and therefore, the entire question as to the

accessory building and not an accessory building may not even be reached if the variance is not granted. Are you in agreement that, in fact, the Board by accepting this matter, you, in effect, pay your money and take your chances you may not get as far as you got before the Zoning Commissioner even.

MRS. HAHN: I understand the concept of de novo Appeal and the risks that are inherent whenever one takes an appeal from a decision, administrative or judicial, and I think there is somewhat of a risk involved. But I would emphasize to this Board and again you don't have the issue before you today because we are not here on the merits, but the appeal on this case was taken on an error issue and the Appeal is very carefully worded and it is an Appeal from the Jung decision that the variance is granted but the addition is not part the dwelling, and the latter Appeal is attached to our response to this Motion to Dismiss, and our position would that a Cross Petition for Appeal was not taken and that a single issue on Appeal has been raised and that is simply characterization of the approved addition, and obviously, the reason we are appealing that is what the Board has already referred Mr. Scherr to is the definition itself.

MR. BOLLINGER: Then, you are saying that you want your cake and eat it, too. You are saying that --

MRS. HAHN: Doesn't everybody?

MR. BOLLINGER: You are saying you want to appeal only the fact that Miss Jung characterized these structures as accessory buildings. You do you not want to appeal the fact that she gave you the variance; is that what you are saying?

MRS. HAHN: You honor, I think that is what our Appeal says. Again, I think we are getting into the merits of what is the Appeal here. The last sentence of Exhibit D attached to our response to the Motion to Dismiss states the reason for this Appeal is that portion of the decision appealed from which denies the request for a zoning variance to permit a side yard setback of two feet for a dwelling and that was very intentionally worded in that way and we believe that our Appeal is limited to a narrow issue. Obviously, if the Board feels otherwise, that would be another mountain we have to face.

MR. BOLLINGER: Just so we all address this issue before it becomes complicated, in addressing Mr. Sherr's Motion to Dismiss the Appeal from the Deputy Zoning

Comaissicner, the Board will also address that particular aspect as to whether or not you can have your cake and eat i too. Once you take a de novo Appeal, you put it all in our lap with respect to the question of the variance. We will address it.

MRS. HAHN: All right. My only request is that if the Board is -- do you say you will address it at the Appeal --

MR. BOLLINGER: We will address that as part of our decision in the Motion to Dismiss by Mr. Scherr.

MRS. HAHN: We would simply request the Board to give us time to submit something in writing then on that issue that the Board is going to consider.

MR. BOLLINGER: All right.

MRS. HAHN: I believe our memorandum covers the balance of our response to the Motion to Dismiss.

MR. BOLLINGER: Thank you very much. Do you have anything you want to add to that Motion?

MR. SCHERR: I guess the only thing I want to add is the mere fact that Miss Hahn says they only want to appeal the narrow issue of accessory use really frames the graviment of the reason why we are seeking to dismiss it. Quite frankly,

we don't want our clients or this Board to be the subject matter of a -- be made a ping-pong ball, be made a tool to the -- I think wrongful desires of a litigant. That is just not the place for Courts and it is not what I think our system is intended to do. I understand counsel denies it and I think they deny in good faith but I think Mr. Cordish's own letter attached to our Motion, which was submitted to Miss Jung, where he says, I think your friends from the -- he says to Ron Litman, who was involved in marketing the property -- I think your friends from New York may find they will earn their keep on this one before it is over, is absolutely the tenor of this entire proceeding. I would submit that this is just not right.

MR. BOLLINGER: Thank you. I guess the Board will have to make some factual findings on that.

MR. HACKETT: It is a shame Mr. Scherr didn't argue before the --

MR. BOLLINGER: Mr. Hackett was saying it is a shame you did not argue the Appellant case in the Hope decision.

MR. HACKETT: The Hope decision is what is giving us all of the problems.

MR. BOLLINGER: Now, nothing more on the Motion to Dismiss from the Deputy Zoning Commissioner, we will now address the Motion to Dismiss the Appeal of the County Review Group, and again, I will say, Mr. Scherr, we are impressed by your Memorandum. We have read same and if you don't have anything to add to that, we would have a few questions for the Appellants.

MR. SCHERR: I have nothing further to add. I have not yet had an opportunity to read Mr. Hoffman's memorandum. I think your questions may focus.

MR. BOLLINGER: Miss Hahn or Mr. Hoffman, who is going to address the Board's concern about this matter?

MRS. HAHN: Your honors, we believe that our argument on this Motion to Dismiss is covered in our written memorandum and if the Board does not want to hear additional oral argument, we would rest on our response.

MR. BOLLINGER: Let me ask you this question. Is it your position, as it seems somewhat to lend itself in your response to the Motion to Dismiss, is it your position that this present plan and the decision of the County Review Group is non-conditional?

MRS. HAHN: Well, I don't exactly know what you mean by the word non-conditional, but my answer is yes.

MR. BOLLINGER: Let me ask you this. In your response you have attached the CRG minutes, and for the record, addressing your attention to the end of those minutes -- we have a lot of paperwork up here.

MRS. HAHN: Yes. Your honor, at the last page, page 2 of the CRG minutes from November 13th.

MR. BOLLINGER: -- 13th, 1986, that's correct. Do you see that, Mr. Scherr?

MR. SCHERR: Yes, sir, page 2, developer's attorney.

MRS. HAHN: There, the CRG uses the term, the plan was given conditional approval. That is the language used. We believe that that approval -- and I should note for the record -- the only condition cited by the CRG is the zoning variances that this developer has to get for this property anyway. We have two main points we want to make about this. Number one, just because this approval is called conditional, the word is used here in the CRG minutes by the CRG does not mean that this does not constitute the CRG's final action on the plan. That is the critical concept because an Appeal is

statutorily authorized by section 2261 of the Development Regs from quote, unquote final action. The CRG can only do one of two things at a continued meeting like this. It can either continue the meeting for further hearings or it has to take final action of some sort. This is the CRG's final action in this case. This is what under Section 2261 of the Development Regulations we have the statutory right of appeal from.

MR. SCHMIDT: How do we know that? How do we know the CRG can't do something else based upon, say, a variance is granted with certain restrictions that are unenvisioned by the CRG. Can, in fact, the CRG get this back and do whatever it wants?

MRS. HAHN: In this case, I believe the powers of the CRG are very specifically defined in Section 2258, Subsection G of the Development Regulations which are very specific and mandatory language using the verbiage shall.

MR. BOLLINGER: That is at a continued meeting, which the CRG did not do this.

MRS. HAHN: Yes, this was the second continued meeting. This was the meeting of November 13, and Exhibit A to this response was the original meeting by the CRG, which was

October 30th, 1986.

MR. BOLLINGER: I agree with it is in the record. I direct your attention, for the record, to 2258-G. At the end of that continued meeting, they must either take final action on the plan or continue it again and not simply attempt to clear their dockets and put conditions on it and leave it up to this Board, which I might tell you we have already decided. Mr. Schmidt and I have sent cases back to the CRG because we do not believe they have the right to perform such action. don't see where the Council ever gave them the right to do anything other than final action or continue.

MRS. HAHN: Mr. Bollinger, we agree completely and we would be completely satisfied if this Board sends this matter right back to the CRG for a final determination.

MR. BOLLINGER: So, you are in agreement with the Motion to Dismiss filed by Mr. Scherr as to the decision by the CRG?

MRS. HAHN: No, I am arguing in the alternative. Either this is final action and we have the right of Appeal, or if it is not, this should be remanded back to the CRG because they have gone beyond their statutory power if this

conditional approval is not final action.

MR. BOLLINGER: Thank you. Mr. Scherr, I didn't mean to cut you off, it is your Motion, but we did have that concern and we thought we would cut right through.

MR. SCHERR: That is fine. Again, I think we all would agree that one doesn't come to the office and leave your practicality at home. This is a CRG Plan which anticipates height variances and conditional uses in an attempt to maintain the original structure on the property. Very difficult to do. The CRG has said we are going to grant the CRG approval but it is going to be conditioned upon the Zoning Commissioner making a determination that the variances are valid, should be granted or shouldn't be granted. If they are not granted, what Miss Hahn is logically saying is if it is final is that if it is not granted, then we have an approved CRG. We can go to the Zoning Commissioner and lose and we have an approved CRG. That is an absurd result. What we have to have here is the Zoning Commissioner granting his approval or disapproval of the variance for conditional use and then it maybe that the CRG decision at that point is final. But if it is not granted, then it is not final and it goes back to the

CRG. I am sure Dave Fields would sit in the CRG office and say this is not an approved CRG. The stamp of approval is not going to rest there forever if the Zoning Commissioner denies the variances, and if the Zoning Commissioner denies the variances, I may be here before this Board. So, what we would have is piecemeal appeals. There is a final appeal at this point, then we have the appeal from Mr. Jablon's decision, or if I win, based upon prior history, we can certainly believe that Mr. Hoffman and Miss Hahn are going to be here. So, then, we have another appeal involving exactly the same issues.

MR. BOLLINGER: That is exactly what I am trying to stop.

MR. SCHERR: We agree. We want to stop it, also.

MR. BOLLINGER: Anything else on that?

MR. HOFFMAN: I don't really have any rebuttal. If this Board feels obligated to remand this matter back to the CRG to await the decision of the Zoning Commissioner on Mr. Harlan's variances in this case, that would be acceptable to Mr. Cordish.

MR. BOLLINGER: I am sure it would.

MR. HOFFMAN: We have no problem going back to the CRG following a decision by the Zoning Commissioner, have the CRG make it's final determination on the plan, and then take the appeal at that time.

MR. SCHERR: What Mr. Hoffman is trying to undo is a CRG approval conditioned upon the zoning variances. I think what is before this Board is either a decision to dismiss Mr. Cordish's Appeal or hear Mr. Cordish's Appeal. There is no question that there is a conditional approval and that that is the way the CRG has so framed it. Whether or not there actually has to be another physical hearing, I don't think is addressed in the CRG regulations, number one. And number two, is not an issue. There is nothing for this Board to send this thing back to the CRG.

MR. BOLLINGER: You are saying because we don't have the jurisdiction to remand the issue to the CRG based on the fact that it is not a final plan and there is a contingency which must be addressed.

MR. SCHERR: Until the contingency is addressed by Mr. Jablon and decided one way or another, there is nothing for this Board to hear. It is not final.

MR. HOFFMAN: I submit in this case Mr. Scherr would like to have his cake and eat it, too. He wants his plan to sit in limbo until he gets his conditional approval and then decide it is at that time a final action. At that time, we don't have our opportunity to Appeal the decision.

MR. BOLLINGER: What we have done in the past is we have remanded the matter to the CRG for a determination of a final plan and we have retained jurisdiction of the Appeal so that it is not utilized as a mere delaying tactic against the developer. We have done that in the past. I don't know if we are all going to decide we are going to do that in this case or not. We have, to my knowledge, not outright dismissed any. We have taken action on the same question before with respect to the conditional approvals by the CRG. The cases are a matter of record of the Board's opinion and we have decided they have no right. The Council has not given them that right. If the Council wants to go ahead and tell them you can give final action with conditional approval, the Council will do that. Right now we have already decided that in several cases, but we understand the practical proble

also.

MR. BOLLINGER: Gentlemen, we are required to write an opinion in cases that come before this Board, a written opinion which shall be published, but here we have two Motions with exhaustive memorandum on both sides. The Board feels constrained to issue a verbal opinion at this time so everybody can set their schedules up and we will follow it up with a written opinion on the Motions.

First, addressing the Motion to Dismiss the Appeal of the Deputy Zoning Commissioner filed by the Appellee in this case, that Motion will be denied. The Board feels that the articulation by the Deputy Zoning Commissioner of this property to be an accessory building is contrary to the definition expressed by the Council through the Zoning Regulations, and as such, we feel the Appellant, Mr. Cordish, has a right to correct that, and that this is the avenue for which he may do that under the Hope Decision. So, that Motion will be denied and we will add in denying that Motion, also, that this Board will make a decision de novo based on the facts of the case as to whether or not, number one, the variance should even be granted, and number two, whether it

shall be called an accessory building or not. That case has already been set for hearing before the Board on June the 3rd of 1987, and the Board intends to proceed on that day and hear the matter on the merits and reach a conclusion. At the conclusion and upon our findings in that hearing on the merits, it may well make the other Appeal from the CRG decision moot, and for that purpose, we are going to hold the decision on the Appellee's Motion to Dismiss the Appeal of the County Review Group sub-curia until after we hear the Motion or after we hear the Appeal on the merits on June the 3rd of 1987.

We will, for the record, file a written opinion in conformance with this oral opinion. Whether or not you believe it is interlocutory or not interlocutory you will have a right to Appeal that decision thirty days from the date of that written opinion and not from today's date.

MR. HOFFMAN: Mr. Bollinger, I think Mr. Hackett has before him a request for a change of date. I only bring it up not to discuss the issue now, whether it should be granted or not, just to clarify that it is pending before Mr. Hackett, though.

MR. BOLLINGER: I think Mr. Hackett may wish to address that.

MR. HACKETT: My understanding is that the request for a change of date is because Mr. Howard will be unable to attend on June the 3rd.

MR. HOFFMAN: That's correct.

MR. HACKETT: Mr. Howard is from a rather large law firm including Mr. Hoffman, Miss Hahn and any number of other attorneys. It is my thought that adequate representation can certainly be supplied if Mr. Howard's schedule does not permit him to be present. My inclination is to deny the request for a postponement on that date.

MR. HOFFMAN: Mr. Hackett, I appreciate the compliment, but our client is rather insistent on having Mr. Howard represent him in this matter on the merits. For two associates to come in and argue on the motions is one thing, as you know, but a hearing on the merits in this case is rather important and he does feel very strongly about having retained Mr. Howard to represent him. I realize it is a rather large law firm. I would ask you to consider that in making your decision.

MR. BOLLINGER: Let the record show that what Mr. Hackett just said is speaking as the Chairman of this Board, not as this particular hearing. This is strictly his prerogative to grant the postponement. He is in charge of scheduling and I guess he is like the administrative judge.

MR. HOFFMAN: I also want to say one more thing. I don't know what the Board's schedule is. Mr. Howard's unavailability is in no way attempting to delay for any great length of time the hearing on the merits of this case. We hope the Board has another alternative shortly following June 3rd. He will not be out of town for a great period of time. I ask you consider both of those things.

MR. BOLLINGER: Let me ask this, how long did this hearing take?

MR. SCHERR: That is very much of an issue. It took from 1 o'clock in the morning until about 9:30 in the evening. I think it is going to go over. I certainly have no intention of trying to introduce extraneous evidence, prolonging the thing. We have no desire to do that. The problem I have in continually postponing cases is that A, I want to get the thing heard. He wants to get moving. But in addition, we are

going to have witnesses. What do I tell them? I have told witnesses June 3rd, June 11. What date do I tell them? It is getting to be short notice. As a result of my telephone conversation with Mr. Hackett the other day, I called everybody up and said okay, now, the date is June the 3rd, not June the 11th. It is getting to be a little frustrating. By the same token, insofar the CRG issue is concerned, that could be decided reasonably quickly, I would suspect -- and I don't want to pre-judge it -- on the 3rd, whereas the zoning case could go on and on and on. So that is consideration in terms of continuing to postpone the thing indefinitely to accomodate vacation schedules.

Also, I might say if you want me here on the 11th, I will be here, but I am on the Board of Governors of the Maryland State Bar Association. I am scheduled to be in Ocean City.

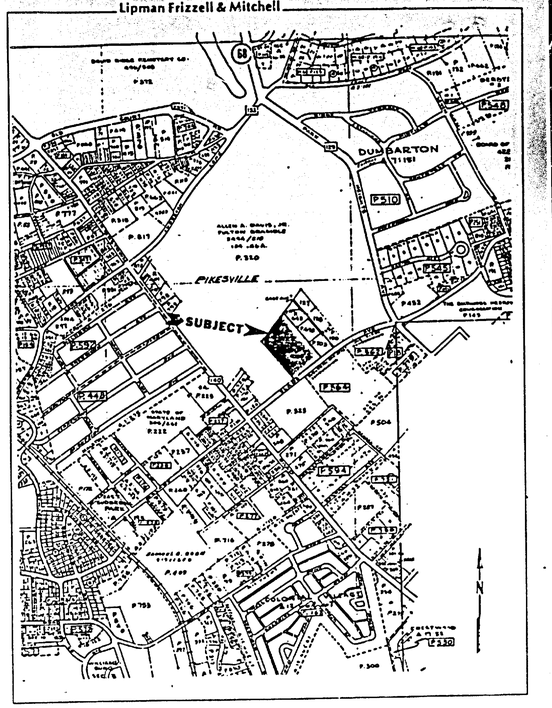
MR. BOLLINGER: I am Chairperson, so I won't be here either. We don't have to have the same Board.

MR. HACKETT: Off of the record. *

(Whereupon there was a discussion off of the record.)

* * *

Lipman Frizzell & Mitchell



87-48-A

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

Your petition has been received and accepted for filing this 30th day of June, 1986.

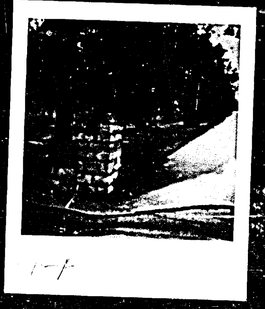
ARNOLD JABLON
Zoning Commissioner

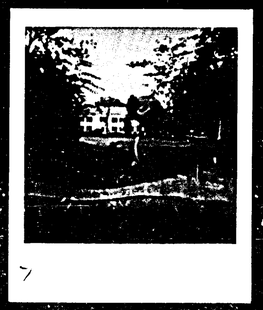
Petitioner David Cordish, et ux
Petitioner's Attorney Glenn Weinberg, Esquire

Received by: James E. Dyer
Chairman, Zoning Plans Advisory Committee









LAW OFFICES
KRAMON & GRAHAM, P. A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201

Photos

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204
494-3610

July 24, 1986

TED ZALESKI, JR.
DIRECTOR

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 451 Zoning Advisory Committee Meeting are as follows:

Property Owner: David Cordish, et ux
Location: N/S Slade Avenue, 1125 feet NE of Reisterstown Road
District: 3rd.

APPLICABLE ITEMS ARE CIRCLED:

(A.) All structures shall conform to the Baltimore County Building Code as adopted by Council Bill #17-85, the Maryland Code for the Handicapped and Aged (A.N.S.I. #117-1 - 1980) and other applicable Codes and Standards.

(B.) A building and other miscellaneous permits shall be required before the start of any construction.

C. Residential: Two sets of construction drawings are required to file a permit application. The seal of a registered in Maryland Architect or Engineer is/is not required on plans and technical data.

D. Commercial: Three sets of construction drawings sealed and signed by a registered in Maryland Architect or Engineer shall be required to file with a permit application. Reproduced seals are not acceptable.

NOTE: (E.) All Use Groups except R-4 Single Family Detached Dwellings require a minimum of 1 hour fire rating for exterior walls closer than 6'-0 to an interior lot line. R-4 Use Groups require a one hour wall if closer than 3'-0 to an interior lot line. Any wall built on an interior lot line shall require a fire or party wall. See Table 401, Section 1u07, Section 1u06.2 and Table 1u02. No openings are permitted in an exterior wall within 3'-0 of an interior lot line.

I. The structure does not appear to comply with Table 505 for permissable height/area. Reply to the requested variance by this office cannot be considered until the necessary data pertaining to height/area and construction type is provided. See Table 401 and 505 and have your Architect/Engineer contact this department.

G. The requested variance appears to conflict with Section(s) _____, _____, _____, of the Baltimore County Building Code.

H. When filing for a required Change of Use/Occupancy Permit, an alteration permit application shall also be filed along with three sets of acceptable construction plans indicating how the existing structure is to be altered in order to comply with the Code requirements for the new use. Maryland Architectural or Engineer seals are usually required. The change of Use Groups are from Use _____ to Use _____, or to Mixed Uses _____, _____, _____. See Section 312 of the Building Code.

I. The proposed project appears to be located in a Flood Plain, Tidal/Riverine. Please see the attached copy of Section 516.0 of the Building Code as adopted by Bill #17-85. Site plans shall show the correct elevations above sea level for the lot and the finish floor levels including basement.

J. Comments:

K. These abbreviated comments reflect only on the information provided by the drawings submitted to the Office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired the applicant may obtain additional information by visiting Room 122 of the County Office Building at 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Frank E. Burnham
BY: C. E. Burnham, Chief
Building Plans Review

6/22/86

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Office of the Zoning Commissioner Date April 29, 1988

FROM Kathleen C. Weidenhammer
County Board of Appeals

SUBJECT Closed File - Case No. 87-48-A
David Cordish, et ux

Inasmuch as no further appeal has been taken from the December 1, 1987 decision of the Circuit Court which affirmed the June 24, 1987 Order of this Board, we are closing the subject file.

There were four large exhibits in this case which were never requested by the Circuit Court. Included in these four exhibits were two which were entered before the Zoning Commissioner (Petitioner's Exhibit #4 and Protestant's Exhibit #4). I have written to respective counsel in this case, advising them that after a period of one year these exhibits will be destroyed unless they have been claimed. If your office wishes to have the above-referenced two exhibits returned to you, please let me know.

CPS-008

PETITION FOR VARIANCE N/S of Slade Ave. 1125' NE of Reisterstown Rd., Third District DAVID CORDISH, et ux.,	*	BEFORE THE DEPUTY
	*	ZONING COMMISSIONER OF
	*	BALTIMORE COUNTY
Petitioners	*	Case No.: 87-48-A

* * * * * * *

MEMORANDUM IN SUPPORT OF PETITION FOR VARIANCE

Petitioners, David Cordish and Penelope Cordish, by John B. Howard and Robert A. Hoffman, their attorneys, file this Memorandum in Support of Their Petition for Variance.

On June 6, 1986, Petitioners filed a Petition for Zoning Variance to permit a side yard setback of two feet in lieu of the required 25 feet so that an addition to their home, including a guest room and a bathhouse, could be constructed.

At the continued hearing on this matter on September 10, 1986, Jeffrey H. Scherr and Michael L. Heikes, on behalf of The Harlan Company submitted a Memorandum in Opposition to the Petitioners' Petition for Variance, the main thrust of which seeks protection of a contemplated project for the contiguous Harlan property described as a "beautiful, high rise, luxury, condominium project" (Harlan Memorandum, page 2). The described project is clearly an impermissible use under the existing D.R.16 zoning classification. In effect, the Harlan Company has described a project which would appropriately require a R.A.E. zoning classification.[1]

It is respectfully submitted that the sole issue before the Deputy Zoning Commissioner is whether Petitioners have met the requisite burden of proof under Section 307 of the Baltimore County Zoning regulations to permit a side yard setback variance. Clearly, uses that are not permitted as of right on adjoining properties should not be considered in determining the appropriateness of such a variance. The impact Petitioners' addition may have on such a proposed development is purely conjecture and speculation on the part of the Harlan Company and irrelevant in determining whether or not Petitioners' variances shoud be granted under the criteria of practical difficulty or hardship.

In Mclean v. Soley 270 Md. 208 (1973), the Court of Appeals stated the standard for granting a variance (although it may vary with specific language adopted in a zoning ordinance) is whether the strict compliance with

[1] Petitioners are of the opinion that a number of the issues raised in the Memorandum in Opposition filed herein relate to the Petitions for Special Hearing and Variance (including variances of 80% over permitted height and 47% over permitted length) filed for Harlan's proposed project and, accordingly, are not being addressed herein.

the zoning regulation would result in "practical difficulty or unreasonable hardship".

The Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974) applied the following definition of practical difficulty:

> 1. Whether compliance with the strict letter of the restrictions. . .would reasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome.
>
> 2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district or whether a lesser relaxation than that applied for would get substantial relief. . . .
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and safety and welfare secured. Id. at p. 39.

To place this addition in any other location, which would be possible without the need for a variance, would, it is respectfully submitted, present a practical difficulty and undue hardship on Petitioners under the above-stated criteria. Because of Petitioners' family commitments, the guest room and bathhouse have become necessary additions. Overriding considerations of light, security, and continuity with the existing house and formal garden results in any other location for the proposed structure being totally impractical.

The Harlan Company has stated that "Mr. Cordish is attempting to disrupt the Harlan Company's development of its property and that Mr. Cordish has an abundance of other available sites on which to construct his proposed jaccuzi, bathhouse and guest room for which no variance would be necessary" (Harlan Company Memorandum, page 11). In fact, Mr. Cordish had no prior knowledge that this proposed addition would have any effect on Harlan's property and was merely proceeding with an overall master plan for improvement to his home which pre-dated Mr. Harlan's purchase of the adjoining parcel.

For these reasons, and based upon the weight of the testimony which was presented on behalf of Petitioners it is respectfully requested that the Variance be granted.

Respectfully submitted,

John B. Howard

Robert A. Hoffman
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorney for Petitioners

ZONING OFFICE
RECEIVED
OCT 7 1986

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

JAMES D.C. DOWNES (1908-1979)

TELEPHONE (301) 823-4111

TELECOPIER (301) 821-0147

October 7, 1986

HAND-DELIVERED

Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Variance
David Cordish, Petitioner
Our File No.: 1557/19499

Dear Mrs. Jung:

Please accept the enclosed Memorandum in Support of Petition for Variance for filing with respect to the above referenced matter.

Thank you.

Sincerely,

Robert A. Hoffman

RAH/jhr
Enclosure

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

December 5, 1986

Glenn Weinberg, Esquire
Paul Cordish, Esquire
300 Water Street
Baltimore, Maryland 21202

RE: Petition for Zoning Variance
N/S of Slade Avenue, 1125' NE
of Reisterstown Road
3rd Election District
Case No. 87-48-A

Dear Messers. Weinberg & Cordish:

Enclosed please find a copy of the decision rendered in the above referenced case. Please be advised that your Petition for Zoning Variance has been granted, in part, in accordance with the attached Order.

If you have any further questions on the subject matter, please do not hesitate to contact this office.

Very truly yours,

JEAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:bjs

Enclosures

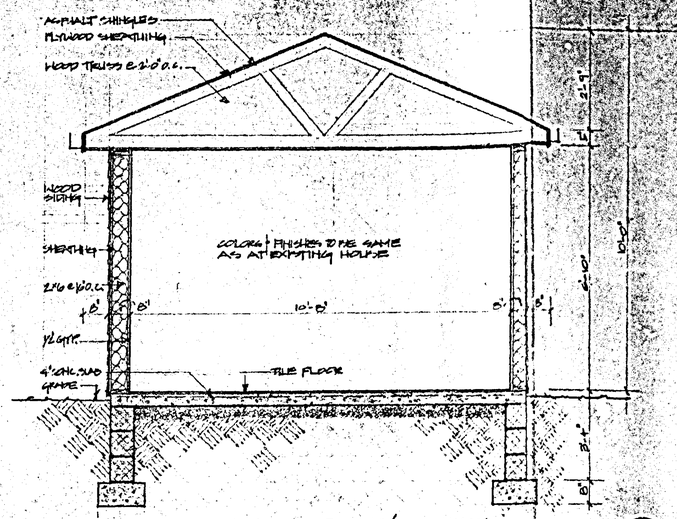
cc: Jeffrey Scherr, Esquire
Ackerman & Graham, Sun Life Bldg., Charles Center, Baltimore, Md. 21201

John B. Howard, Esquire & Robert A. Hoffman, Esquire
Cook, Howard, Downes & Tracy, 210 Allegheny Avenue, Towson, Md. 21204

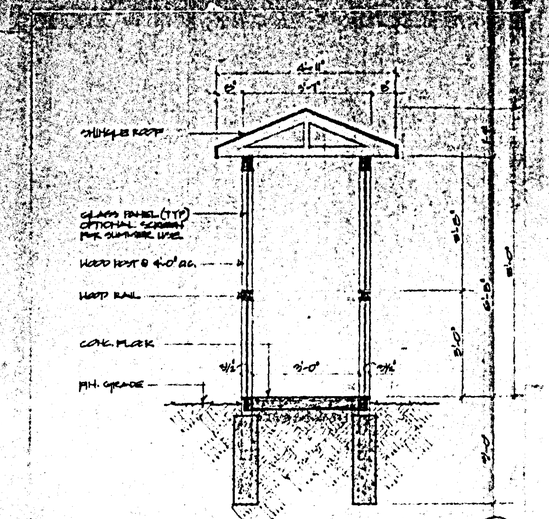
Mr. David S. Feldman
107 Sudbrook Lane, Pikesville, Md. 21208

Ms. Camille Blackburn, Owings Mills Times
409 Washington Avenue, 5th Floor, Towson, Md. 21204

People's Counsel

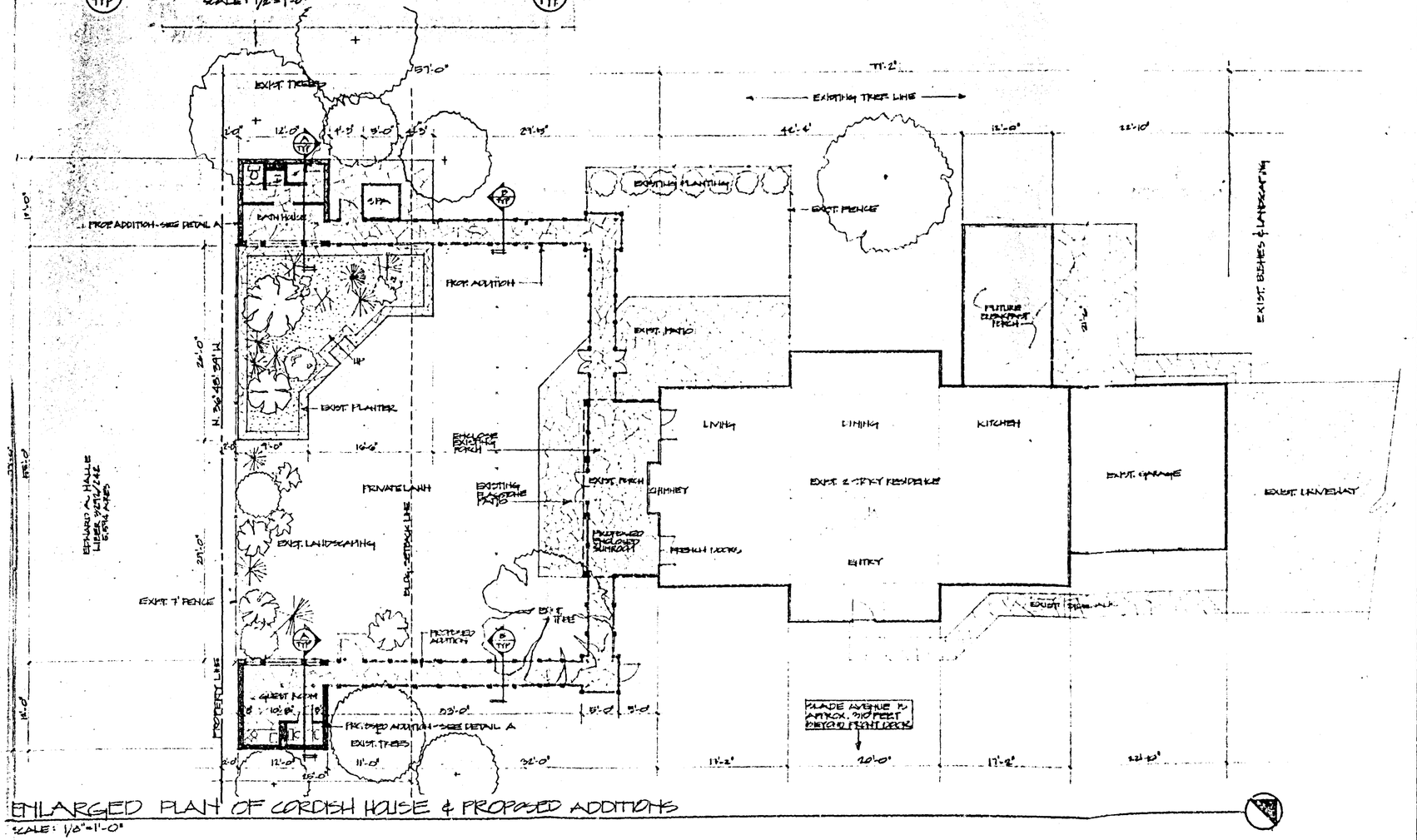


TYPICAL SECTION THRU GUEST ROOM/BATH HOUSE
SCALE: 1/2"=1'-0"



TYPICAL SECTION OF ENCLOSED WALKWAY
SCALE: 1/2"=1'-0"

ENLARGED DETAILS OF:
PLAT FOR ZONING VARIANCE
OWNER: DAVID & PENELOPE CORDISH
DIST. 9; ZONED D6
LIBER 5131 PAGE 207
UTILITIES IN SLADE AVENUE



ENLARGED PLAN OF CORDISH HOUSE & PROPOSED ADDITIONS
SCALE: 1/8"=1'-0"

ART AND ARCHITECTURAL DESIGN
A AND A
STEPHEN A GLASSMAN A.I.A.
ARCHITECTURE
INTERIOR DESIGN
LANDSCAPE ARCHITECTURE
612 PARK AVENUE BALTIMORE, MARYLAND 21201 301 539 7272
325 RIVERSIDE DRIVE 11A NEW YORK, NEW YORK 10025 212 864 1997

TITLE CASE # 87-484-A
FILED 6 JUNE 1986
SCALE AS NOTED

PROJECT DETAILED SKETCH OF PLAT FILED BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY
LOCATION 4 SLADE AVENUE PIKESVILLE, MARYLAND

DATE 20 AUGUST 1986
DRAWN BY
REVISIONS

SHEET 1 of 1

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 1986, a copy of the foregoing Memorandum in Support of Petition for Variance was mailed to Jeffrey H. Scherr, Esquire, and Michael L. Heikes, Esquire, Sun Life Building, Charles Center, Baltimore, Maryland 21201, Attorneys for the Harlan Company of Maryland.

ROBERT A. HOFFMAN

RE: Petition for Variance
N/S of Slade Avenue, 1125' NE of Reisterstown Rd.
3rd District
David Cordish, et ux, Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 87-48-A

* * * * * * *

MEMORANDUM OF THE HARLAN COMPANY OF MARYLAND IN OPPOSITION TO THE PETITION FOR VARIANCE OF DAVID CORDISH

The Harlan Company of Maryland, Inc., a Maryland corporation, ("The Harlan Company") owns a tract of land of approximately 6 acres adjacent to the property that is the subject of this zoning variance petition. The Harlan Company seeks to intervene in this proceeding because it will suffer direct and immediate harm should the Petitioner, David Cordish, be granted the zoning variance he seeks. For the reasons stated below, Petitioner has failed to meet the applicable legal requirements and his petition for variance should therefore be denied.

FACTUAL BACKGROUND

The Harlan Company acquired property adjacent to Mr. Cordish's property in November 1985. It is situated immediately to the west of Mr. Cordish's property which is comprised of three lots and contains 3.08± acres. Prior to its sale, The Harlan Company tract, like Mr. Cordish's property, was rezoned in 1984 from DR-3.5 to DR-16.

After purchasing its property, the Harlan Company began plans for development in order to take full advantage of the DR-16 zoning status. One of the first steps in the preparation of plans was for Leonard Harlan, President of The Harlan Company, to contact the neighboring property owners, including Mr. Cordish.

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SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MD. 21201
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During his meeting with Mr. Harlan, Mr. Cordish threatened to do everything possible to block the Harlan Company's development of the property. Thereafter, the Harlan Company hired an engineer, an architect, and devoted substantial time and resources to the prospective development of a beautiful, highrise, luxury condominium project. Presently a CRG Plan has been filed seeking to construct a highrise condominium building on the property.

The development of the Harlan Company property is subject to Baltimore County residential transition areas ("RTA") which provide that the Harlan Company must maintain an RTA of at least three hundred (300) feet between its development and the dwelling of Mr. Cordish (as well as other neighbors). See 1B01.1B1.(a) B.C.Z.R. Within the RTA, building restrictions apply which are inapplicable to other portions of the Harlan Company property.

Mr. Cordish's petition, seeks a zoning variance in order to construct an extended passageway, thirty-three (33) feet long, leading to a jacuzzi, a small bathhouse and a small guest room within two feet of the property line he shares with the Harlan Company. Should Mr. Cordish's petition be granted, and his construction completed the dimensions of the RTA for the Harlan Company property could be changed significantly, potentially reducing by ten thousand two hundred thirty-eight (10,238) square feet the area on which the Harlan Company may build. By permitting the variance and construction, the RTA may extend approximately forty-eight (48) feet further inside the Harlan Company's property line and would disrupt and adversely affect the Harlan Company's development plans.

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Notwithstanding Mr. Cordish's threats, the Harlan Company does not oppose Mr. Cordish's variance so long as the variance does not impact upon the Harlan Company's RTA. At a recent public hearing before the Pikesville Community Growth Corporation (PCGC), Leonard Harlan offered to drop all opposition to Mr. Cordish's proposed variance if Mr. Cordish would agree that the variance would not affect the Harlan Company's RTA. Responding on behalf of Mr. Cordish, Glenn Weinberg, Mr. Cordish's attorney, stated that Mr. Cordish was intent on blocking the Harlan Company's development and therefore Mr. Cordish would not be amenable to any such agreement.

Mr. Cordish's motivation for requesting the variance is plain in light of his refusal to agree that his variance would not impact the Harlan Company's RTA and its development of the neighboring property, and in light of the numerous available alternative sites on his 3.08± acres of property on which to construct his jacuzzi, bathhouse and guest room which would not require a zoning variance nor disrupt the Harlan Company's development of its property. Mr. Cordish cannot demonstrate any unreasonable hardship or practical difficulty caused by strict compliance with zoning regulations. In fact, granting Mr. Cordish's petition for variance would have a detrimental impact on the public welfare and the interests of the community and specifically The Harlan Company property next door.

A. As a party who would be adversely affected should Mr. Cordish's zoning variance be granted, the Harlan Company has standing to intervene and oppose Mr. Cordish's petition for variance.

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The Harlan Company, as explained in the foregoing factual summary has a significant stake in the outcome of this proceeding. As Mr. Cordish's neighbor, should the variance be permitted, the Harlan Company's RTA could be altered, thereby severely disrupting the Harlan Company's plan for developing its property. In light of the potential adverse impact of the proposed variance, there can be no question that the Harlan Company has standing to intervene and assert its reasons for opposing the zoning variance.

There is ample and uncontradicted support in Maryland law for the right of a neighboring landowner to intervene and participate in zoning proceedings when he has direct interest in the outcome. See, Hyson v. Montgomery County Council, 242 Md. 55, 67, 217 A.2d 578, 585-86 (1966) (rights of interested parties to present testimony and cross-examine witnesses), Baltimore County Code, Section 22-36 (right of affected landowner to sue to enjoin violations of zoning regulations or restrictions). The Court of Special Appeals in Boehm v. Anne Arundel County, 54 Md. App. 497, 459 A.2d 590 (1982), enumerated the procedural rights that due process affords those who may be adversely affected by the decision of an administrative agency. Quoting B. Schwartz, Administrative Law, § 67 (1976), the court recognized an affected party's right to notice, including an adequate formulation of the subjects and issues in the case, the right to present evidence and rebut adverse evidence, cross-examine witnesses, appear with counsel, have the decision based only upon evidence introduced into the record at the hearing, and have a complete record including a

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transcript of the testimony and arguments and documentary evidence. Bohem, 54 Md.App. at 512.

Because of the significant interest jeopardized by Mr. Cordish's proposed variance, the Harlan Company is entitled to the full panoply of due process rights necessary to protect its property interests in this matter. Maryland law affords the Harlan Company the right to meaningful participation in this proceeding in order to adequately protect its property rights.

B. The Residential Transition Area Regulations should be held inapplicable when, as here, two adjoining developments are proposed simultaneously.

Mr. Cordish's proposed construction, as explained in the introduction of this memorandum, once completed, could alter significantly the dimensions on which the Harlan Company could develop its adjacent property. However, because Mr. Cordish's additions are proposed simultaneously with the proposed development of the Harlan property, the Commissioner should find that even if the variance and development are permitted to Mr. Cordish, there should be no impact on the Harlan Company's RTA and Cordish's proposed development should not otherwise limit the Harlan Company's development.

There is authority in Baltimore County for the very sensible proposition that when adjacent properties are being simultaneously developed, it would be unreasonable to apply restrictive regulations on one development based on the proposed development of the other. The rationale behind this rule is that RTA regulations are designed to govern the area between an existing dwelling and proposed construction and have no applicability when both developments are simply proposals and not

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yet existing. Therefore, as in this case where two adjoining property owners seek to develop their properties simultaneously and the RTA cannot be maintained if both development proposals are permitted, it would be unfair to prohibit one development on the basis of a mere proposal for the other. The resolution under such circumstances is to waive the RTA regulations as to both developments.

This result was reached when, by letter of March 15, 1978 Leslie Graff, the Director of Planning and S. Eric DiNenna, the Zoning Commissioner (letter attached as Exhibit 1) held that when two developments were processed and received tenative approval at approximately the same time, the transition zone is not applicable between the two adjoining portions of the two developments. The identical situation was addressed in March, 1980 when in a letter by Robert Dyer, the Zoning Supervisor, (attached as exhibit 2), the opinion was once again expressed that RTA regulations are inapplicable when two adjoining developments are proceeding simultaneously. As Mr. Dyer explained, when "there are no existing record lots or dwellings which form the basis of establishing residential transition areas,... it would be unreasonable to apply restrictive use regulations on one development that are based on proposed lots in another development." Thus, the Baltimore County Office of Planning and Zoning has made clear on at least two occasions that RTAs are inapplicable in the case of simultaneous development of adjacent properties.

In light of the previous decisions of this office,

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the RTA regulations should be inapplicable to the proposed developments of the Harlan Company and David Cordish. Here, where Mr. Cordish has planned a jacuzzi, bathhouse and guestroom on his property, and the Harlan Company has proposed a luxury highrise condominium project on its property, neither development should be prohibited because of RTA regulations which would be applicable only if the development of either property had already been completed.

C. Mr. Cordish has not and cannot meet the legal requirements for obtaining a zoning variance.

Should the Commission decide that the RTA regulations are applicable to the Harlan Company development and that the Cordish construction would effect the area on which the Harlan Company could build, the Harlan Company strenuously objects to the granting of a variance to Mr. Cordish because he has failed to satisfy the legal requirements for a zoning variance. The legal requirements Mr. Cordish must satisfy in order to obtain a zoning variance are straightforward and a review of those requirements renders obvious the legal inadequacy of Mr. Cordish's petition. Baltimore County Zoning Regulations, Section 307 provides that the Zoning Commissioner has the authority to grant a variance or special exception only in cases where strict compliance with Baltimore County Zoning Regulations would result in practical difficulty or unreasonable hardship. McLean v. Soley, 270 Md. 208 (1973). These requirements were clarified by the Court of Appeals in Carney v. City of Baltimore, 201 Md. 130, 137, 93 A.2d 74 (1952) where the Court said:

> The need sufficient to justify an exception must be substantial and urgent and not merely for the con-

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venience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and the liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendancy to cause discrimination and eventually destroy the usefulness of the ordinance. (Citation omitted)

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

201 Md. at 137.

In the Carney case, the court upheld the decision of the Board of Appeals denying a variance to a homeowner who sought a lesser side yard requirement so that he could add a bedroom and bath on the ground floor of his house to accommodate his wife's physical condition. The adjacent property owner objected because the variance would deprive him of light in his dining room. The court upheld the Board's determination that the medical convenience to Mrs. Carney was insufficient to satisfy the legal requirements for a variance.

Certainly Mr. Cordish's asserted basis for the variance he seeks pales in comparison to that which was rejected in Carney. Mr. Cordish has asserted no medical reasons for the need to construct his jacuzzi, bathhouse and guest room, nor has he adequately explained why his proposed construction cannot be undertaken on another portion of his property aside from offering the frail excuse that "athletic fields" and a vegetable garden preclude alternative sites.

A view of Mr. Cordish's property reveals that what

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Mr. Cordish claims are "athletic fields" is simply open space. There are no baseball diamonds or football fields with goal posts on Mr. Cordish's property, only a substantial plot of vacant land. The slight inconvenience of removing or altering his alleged athletic fields or his vegetable garden pales in comparison to the burden on The Harlan Company caused by the potential changed to its RTA should Mr. Cordish's variance and construction be granted. Additionally, Mr. Cordish has not explained why the jacuzzi, bathhouse and guest room cannot be constructed closer to the house (a configuration which would require no variance at all) without the elongated covered passageway which, as proposed, extends beyond the side yard setback. Nowhere in Mr. Cordish's petition does he explain why the jacuzzi, bathhouse and guest room must be placed in such remote locations.

More recently, in the McLean decision, the Court of Appeals, in explaining how to determine whether the petitioner has demonstrated practical difficulty in complying with zoning regulations, set out the following three criteria:

(1) Whether compliance with the restrictions would unreasonably prevent the owner from using his property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

(2) Whether a grant of the variance would do substantial justice to the applicant as well as to other property owners.

(3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

McLean, 270 Md. at 214-15.

Mr. Cordish meets none of the McLean criteria. As

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the plat of his property reflects, Mr. Cordish could easily construct his jacuzzi, bathhouse and guest room on several other sites, all of which would be in conformity with the applicable regulations. Secondly, granting a variance to Mr. Cordish could work a substantial injustice to the Harlan Company whose development plans might would be unnecessarily hampered. Thirdly, by damaging a neighbor's development plans without justification and without exploring alternatives in conformity with the applicable regulations, Mr. Cordish's variance would certainly not be in the spirit of the ordinance nor would it further the public safety or welfare.

Moreover, the public welfare and the welfare of the Pikesville community would be significantly damaged should Mr. Cordish be permitted to thwart the Harlan Company's development. The Harlan Company has proposed a highrise, luxury condominium project which, once completed, would be occupied by residents who would be regular customers in Pikesville's shops, stores and banks, frequent users of Pikesville's services, and who would represent an increase in the Pikesville tax base. Therefore, the entire Pikesville community would stand to benefit and be further solidified by such an influx of affluent, desirable residents. To block the construction of the Harlan Company's condominium project would surely have a significant and detrimental impact on the welfare of the community.

D. Mr. Cordish's petition reflects an absence of good faith on his part and an intent to injure the Harlan Company.

A review of Mr. Cordish's petition in consideration of the relevant surrounding circumstances further highlights the

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admission by his attorney at the PCGC Meeting and reflects Mr. Cordish's true intent in this matter; to block the development of the property adjacent to his owned by the Harlan Company. As the evidence will indicate, Mr. Cordish was very bitter about the acquisition by the Harlan Company of the property next to his after the property had been rezoned DR-16. Mr. Cordish has made no secret of his intent to block, wherever possible, the Harlan Company's efforts to take advantage of the DR-16 zoning and develop the property. To that end, Mr. Cordish is attempting to obtain permission to constuct an elaborate passageway at the end of which he will place a jacuzzi, bathhouse and guest room, leaving only two feet between his proposed construction and the property line. By constructing these buildings so close to the property line, Mr. Cordish is attempting to alter significantly the RTA of the Harlan Company and force it to forego development of property which but for Mr. Cordish's variance, could be developed.

Mr. Cordish's ill-disguised plan to disrupt the Harlan Company's development of its property should be recognized as the attempt to injure the Harlan Company that it is. Mr. Cordish has an abundance of other available sites on which to construct his proposed jacuzzi, bathhouse and guest room for which no variance would be necessary.

Mr. Cordish's assertion that his mysterious "athletic fields" preclude construction in his spacious front yard is ludicrous and his logic defying proposal to construct his jacuzzi, bathhouse and guest room thirty-three (33) feet from his house

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when they could easily be built much closer to the house is further evidence that his true intention is to damage the Harlan Company's development plans and not to enhance his own property. Plainly, Mr. Cordish is attempting to use the Zoning Commission, not for a land use objective of his own, but instead for the improper purpose of injuring his neighbor. The Maryland Court of Appeals has suggested that under circumstances where an individual in bad faith or with a spiteful motive attempts to use public authorities to injure another's business, he may be held liable in tort for malicious interference with business. See, Beane v. McMullen, 265 Md. 585, 604 (1972). The Commission should recognize and resist Mr. Cordish's improper attempt to financially damage the Harlan Company through his proposed zoning variance.

CONCLUSION

Under these circumstances, the Commissioner should find that because the Cordish and Harlan properties are being developed simultaneously, the RTA regulations should be held inapplicable. Moreover, the Cordish variance should be denied because Mr. Cordish has not met his burden of showing any practical difficulty or undue hardship by strict compliance with the zoning regulations. In fact, the evidence reflects a multitude of alternatives for Mr. Cordish's construction which would neither require a variance nor interfere with the development of his neighbor's property. Because M . Cordish's sole purpose in seeking this variance is to maliciously disrupt

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CHARLES CENTER
BALTIMORE, MD. 21201
(301) 752-6030

the lawful development of his neighbor's land, his petition should be denied.

Respectfully submitted,

Jeffrey J. Scherr

Michael L. Helkes

Kramon & Graham, P.A.
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on this 10th day of September, 1986, a copy of the foregoing Memorandum was hand delivered to Glenn Weinberg, Esquire, 300 Water Street, Baltimore, Maryland 21201, Attorney for Petitioner.

Michael L. Helkes

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MD. 21201
(301) 752-6030

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

March 21, 1980

Julius W. Lichter, Esquire
305 West Chesapeake Avenue
Towson, Maryland 21204

RE: Developments of Oakhurst and Village of White Oak, Section 3
11th Election District

Dear Mr. Lichter:

Your letter of November 28, 1979, addressed to the Director of Planning, has been referred to me for reply.

I am enclosing a copy of this office's correspondence dated March 15, 1978, directed to Mr. Charles E. Fick, P.E., engineer for the development of Oakhurst. This correspondence correctly reflects this office's opinion of the effect, or in this case the noneffect, of the residential transition area regulations upon two adjoining subdivisions that are being processed simultaneously.

The above opinion was based, at least in part, on the following facts:

1. Both developers do have a right to begin processing their respective developments at the same time. They also have a right to be informed as to the Baltimore County Zoning Regulations that will affect the development of their property.

2. In many instances involving the simultaneous processing of two adjoining developments, there are no existing record lots or dwellings which form the basis of establishing residential transition areas and, in my opinion, it would be unreasonable to apply restrictive use regulations on one development that are based on proposed lots in another development; i.e., until such time as the lots are actually recorded, there is no guarantee that the subdivision will be processed to the point of recordation.

If you have any questions regarding the above, please call me.

Very truly yours,

JAMES E. DYER
Zoning Supervisor

JED/sf
Enclosure

cc: Mr. John D. Seyffert, Director, Office of Planning and Zoning
Mr. William E. Hammond, Zoning Commissioner
Mrs. Jean M. H. Jung, Deputy Zoning Commissioner
Mr. Leonard S. Jacobson, County Solicitor

Baltimore County
office of planning and zoning
TOWSON, MARYLAND 21204
(301) 494-3353

S. ERIC DINENNA
ZONING COMMISSIONER

March 15, 1978

Mr. Charles E. Fick, P.E.
George William Stephens, Jr.,
and Associates, Inc.
303 Allegheny Avenue
Towson, Maryland 21204

RE: Tentative Plans for Oakhurst,
Approved February 22, 1977,
and Village of White Oak, Section 3, Approved March 30,
1977 - 11th Election District

Dear Mr. Fick:

We are in receipt of your letter of February 2, 1978, in which you request information concerning the above referenced matter.

Inasmuch as both of these developments were processed and received tentative approval at approximately the same time, the transition zone is not applicable between the two adjoining portions of the two developments. It should be noted, however, that this decision is based upon the requirement that both developments proceed to final completion in accord with said tentative plans, including any subsequently approved development plans which must be in general accord with the above dated tentative approved plans.

If you have any further questions regarding this matter, please feel free to contact either one of us.

Very truly yours,

LESLIE H. GRAEF
Director of Planning

S. ERIC DI NENNA
Zoning Commissioner

LHG:SED:DAS:smw

PETITION FOR ZONING VARIANCE

3rd Election District

Case No. 87-48-A

LOCATION: North Side of Slade Avenue, 1125 feet Northeast of Reisterstown Road

DATE AND TIME: Tuesday, August 12, 1986, at 9:30 a.m.

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

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

Petition for Zoning Variance to permit a side yard setback of 2 feet in lieu of the required 25 feet

Being the property of David Cordish, et ux, as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) 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 JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

PC-637
Petition filed 9/23/86 by Counsel for Petitioner
Petitioner's Exhibit 1 - Plat to accompany Petition for Zoning Variance

RECEIVED
SEP 24 1986
ZONING OFFICE

LAW OFFICES
COOK, HOWARD, DOWNES & TRACY
210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21204

JAMES D. C. DOWNES (1906-1979)

TELEPHONE (301) 823-4111

TELECOPIER (301) 821-0147

September 24, 1986

HAND-DELIVERED

Mrs. Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
Case No.: 87-48-A
David S. Cordish, Petitioner

Dear Mrs. Jung:

Please enter John B. Howard's and this firm's appearance on behalf of Petitioner in the above referenced case.

As we have just been retained by Mr. Cordish, we respectfully request an extension of time for filing a reply memorandum to that submitted by the Harlan Company of Maryland. We believe an additional twelve days beyond the original two weeks, or October 8, will be sufficient. We would assume this is satisfactory unless we hear from you to the contrary.

Thank you for your attention to these matters.

Yours truly,

Robert A. Hoffman

RAH/jhr
cc: David S. Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey H. Scherr, Esquire

Phone to Hoffman
Please send copy of letter to attorney for protestants - talked to secretary - "was overlooked..." copy will be going out to Jeff Scherr". 9/24/86

9/24/86

RECEIVED
SEP 23 1986
ZONING OFFICE

...mber 23, 1986

...Variance

...ioner

Please enter John B. Howard's and this firm's appearance on behalf of Petitioner in the above referenced case.

As we have just been retained by Mr. Cordish, we respectfully request an extension of time for filing a reply memorandum to that submitted by The Harlan Company of Maryland. We believe an additional twelve days beyond the original two weeks, or October 8th, will be sufficient. We would assume this is satisfactory unless we hear from you to the contrary.

Thank you for your attention to these matters.

Yours truly,

Robert A. Hoffman

RAH/ddw

cc: David Cordish, Esquire
Glenn Weinberg, Esquire

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

Arnold Jablon
Zoning Commissioner

Dennis F. Rasmussen
County Executive

May 27, 1987

Jeffrey H. Scherr, Esquire
Kramon & Graham, P.A.
Sun Life Building, Charles Center
Baltimore, Maryland 21201

RE: Case Nos. 87-48-A, 87-196-SPH, and 87-213-XA
The Halle/Harlan Company Property

Dear Mr. Scherr:

Your letter of May 1, 1987 to Arnold Jablon, Zoning Commissioner, has been referred to me for reply. You have requested confirmation that the use of the existing residence at 6 Slade Avenue for a recreational social center (community building) exclusively for the residents of the condominium would not require any form of zoning approval (emphasis on a special exception requirement and R.T.A. requirements).

This particular question came up at the November 13, 1986 C.R.G. meeting wherein I indicated as a response to questions by yourself and Rob Hoffman that I was fairly certain that Mr. Jablon would take the direction of the Board of Appeals of Baltimore County in Case No. 84-52-X, through the Maryland Court of Special Appeals, and interpret that a change in a building use only with no apparent exterior changes would not be subject to the R.T.A. requirements. I have confirmed that a special exception would not be required with Mr. Dyer and Mr. Jablon, provided that the use is limited to the residents of the condominium, and that the R.T.A. requirements in Section 1B01.1.B.1.b, BCZR, would not apply, provided that there is no exterior change proposed to the building from the way it existed as a single family dwelling.

The required change of occupancy permits and final revised site plan would have to be approved by this office, provided that the special exception and variances in Case 87-213-XA are granted.

Very truly yours,

W. Carl Richards

W. CARL RICHARDS, JR.
Zoning Coordinator

WCR,Jr:kkb

cc: John B. Howard, Esquire

87-213-A
5/1/87 Faxed all parties

LAW OFFICES
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SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030
TELECOPIER
(301) 539-1269

BEL AIR OFFICE:
112 SOUTH MAIN STREET
BEL AIR, MARYLAND 21014
(301) 879-5040
(301) 838-9095
TELECOPIER
(301) 838-9298

ANDREW JAY GRAHAM*+
JAMES M. KRAMON*+
LEE H. OGBURN
JEFFREY H. SCHERR
NANCY E. GREGOR*
JAMES P. ULWICK*+
PHILIP M. ANDREWS
GERTRUDE C. BARTEL
MARILYN HOPE FISHER*◊
MICHAEL L. HICKEY
PAUL S. TEITELBAUM
KATHLEEN A. BIRRANE
NANCY FELIX MANGANI

*ALSO ADMITTED IN NY
+ALSO ADMITTED IN DC
◊ALSO ADMITTED IN NJ
#ALSO ADMITTED IN GA
ALSO ADMITTED IN FL

May 1, 1987

RECEIVED
MAY 5 1987
ZONING OFFICE

Arnold E. Jablon, Esquire
Zoning Commissioner
for Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Six Slade Avenue
Proposed Community Building

Dear Mr. Jablon:

As you are aware, The Harlan Company of Maryland, Inc. owns a six-acre tract known as Six Slade Avenue and plans to construct a multi-story luxury condominium building on the property. Situated on the property is a neo-Georgian brick mansion, which was the residence of the prior owner. This structure is in good condition and has, in fact, been selected as the 1987 Symphony Decorator's House.

The Harlan Company very much wants to retain this gracious old house and believes that, if incorporated into the plans for the project, it will be ideally suited for use as a recreational social center, to be used exclusively by the condominium owners. Such use is allowed pursuant to Section 1B01.1B.1.c.10 of the Baltimore County Zoning Regulations. I should note that there will be no structural changes made to the building, but that this three-story building is somewhat taller than thirty-five feet.

On April 26, 1987, I spoke with Mr. Carl Richards about use of the house as the community building described above. Based upon the information set forth above, Mr. Richards informed me that it will not be necessary to file a Petition for Special Exception to use the building for the purposes stated, and also that the fact that the house is above thirty-five feet in height does not necessitate that The Harlan Company secure any form of zoning approval. I would very much appreciate it if you would confirm Mr. Richard's position with respect to these matters.

Arnold E. Jablon, Esquire
May 1, 1987
Page Two

Thank you very much for your cooperation.

Sincerely,

Jeffrey H. Scherr

JHS:amk

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

RECEIVED
MAY 21 1987
ZONING OFFICE

May 20, 1987

NOTICE OF POSTPONEMENT and REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 87-48-A

DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
VAR -side yard setback of 2 ft. in lieu of required 25 ft.
12/05/86 -D.Z.C. granted VAR.
3rd Election District
2nd Councilmanic District

Case No. CBA-86-157 (Halle Property) which had been assigned for hearing on Wednesday, June 3, has been POSTPONED and will be held sub curia; no reset date at this time.
Case No. 87-48-A (David Cordish, et ux) which had been assigned for hearing on Wednesday, June 3, has been POSTPONED at the request of Counsel for Appellant and has been

REASSIGNED FOR: TUESDAY, June 9, 1987 at 11:00 a.m.

cc: John B. Howard, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
Cynthia Hahn, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire — Counsel for Appellee
Jeffrey Scherr, Esquire — " " "
Paul Teitelbaum, Esquire
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
Patrick D. Hanley, Esquire — " " "
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Robert Covahey
David Fields
Edward McDonough
James A. Markle
Jorge Austrich — Jeanne Wachter

Kathi Weidenhammer
Administrative Secretary

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

July 27, 1987

filed 1/23/87 by Petitioner Paul Cordish

Jeffrey Scherr, Esquire
KRAMON & GRAHAM, P.A.
Sun Life Building
Charles Center
Baltimore, MD 21201

RE: Case No. 87-48-A
Paul Cordish, et ux

Dear Mr. Scherr:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Kathleen C. Weidenhammer

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Mr. David O. Feldman
Mr. Allan Hirsh
Ms. Jeanne Wachter
Phyllis Cole Friedman, Esquire
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

RECEIVED
JUL 29 1987
ZONING OFFICE

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/s OF SLADE AVENUE, 1125' NE OF REISTERSTOWN ROAD 3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT

: CIRCUIT COURT
: FOR
: BALTIMORE COUNTY
: AT LAW
: CG Doc. No. 44
: Folio No. 126
: File No. 87-CG-3256

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Thomas J. Bollinger, and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John B. Howard, Esquire, and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204, Counsel for Petitioners; Paul L. Cordish, Esquire, and Glenn L. Weinberg, Esquire, Suite 400, 300 Water Street, Baltimore, MD 21202; Jeffrey Scherr, Esquire, Kramon & Graham, P.A., Sun Life Building, Charles Center, Baltimore, MD 21201, Counsel for Protestant, The Harlan Company; David O. Feldman, 107 Sudbrook Lane, Baltimore, MD 21208, Protestant; Allan Hirsh, 11 Slade Avenue, Baltimore, MD 21208, Protestant; Jeanne Wachter, 301 Reisterstown Road, Baltimore, MD 21208; and Phyllis Cole Friedman, Esquire, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County, Room 200, Courthouse, Towson MD 21204

Case No. 87-48-A
David Cordish, et ux

2.

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John B. Howard, Esquire, and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204, Counsel for Petitioners; Paul L. Cordish, Esquire, and Glenn L. Weinberg, Esquire, Suite 400, 300 Water Street, Baltimore MD 21202; Jeffrey Scherr, Esquire, Kramon & Graham, P.A., Sun Life Building, Charles Center, Baltimore, MD 21201, Counsel for Protestant, The Harlan Company; David O. Feldman, 107 Sudbrook Lane, Baltimore, MD 21208, Protestant; Allan Hirsh, 11 Slade Avenue, Baltimore, MD 21208, Protestant; Jeanne Wachter, 301 Reisterstown Road, Baltimore, MD 21208; and Phyllis Cole Friedman, Esquire, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, on this 27th day of July, 1987.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore County

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

January 5, 1987

Jeffrey Scherr, Esquire
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201

John B. Howard, Esquire
Robert A. Hoffman, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
Towson, Maryland 21204

Mr. David O. Feldman
107 Sudbrook Lane
Baltimore, Maryland 21208

Mr. Allan Hirsh
11 Slade Avenue
Baltimore, Maryland 21208

Phyllis Cole Friedman, Esquire
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

RE: PETITION FOR ZONING VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd.
3rd Election District
David Cordish, et ux - Petitioners
Case No. 87-48-A

Ms. Friedman and Gentlemen:

Please be advised that on December 23, 1986, an appeal was filed by the Appellants/Petitioners, David S. and Penelope A. Cordish, from the decision rendered by the Deputy Zoning Commissioner in the above-entitled matter.

You will be notified of the date and time of the appeal hearing when it has been scheduled by the County Board of Appeals (494-3180).

Very truly yours,
Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ:med

cc: Paul L. Cordish, Esquire
Glenn L. Weinberg, Esquire
Suite 400, 300 Water Street
Baltimore, Maryland 21202

Date: 1/5/87

RE: PETITION FOR ZONING VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd.
3rd Election District
David Cordish, et ux - Petitioners
Case No. 87-48-A
APPEAL FILED BY: Appellants/Petitioners, David S. and Penelope A. Cordish

1. Petition
2. Description of Property
3. Certificate of Posting
4. Certificates of Publication
5. Zoning Advisory Committee Comments
6. Comments from the Director of Planning
7. Entries of Appearance
8. Order of Deputy Zoning Commissioner
9. Memorandum in Support of Petition
10. Memorandum of The Harlan Co. in Opposition to Petition for Variance
11. Letter of Appeal of David S. and Penelope A. Cordish, dated 12/22/86, and received for filing on 12/23/86
12. Letter to all parties from Arnold Jablon, Zoning Commissioner, dated 1/5/87, advising of the filing of Cordish appeal
13. Petitioners' Exhibits Nos.:

[ORIGINALS SENT TO BOARD OF APPEALS]
1. Plat, dated 5/19/8 (?)
2. Plat, dated 8/26/86
3a. Color photograph, dated 8/23/86
3b. Color photograph, dated 8/23/86
3c. Color photograph, dated 8/23/86
3d. Color photograph, dated 8/23/86
3e. Color photograph, dated 8/23/86
3f. Color photograph, dated 8/23/86
3g. Color photograph, dated 8/23/86
[Large Board Exhibit] 4. Colored plat, dated 8/26/86

14. Protestants' Exhibits Nos.:

[ORIGINALS SENT TO BOARD OF APPEALS]
1. Letter to Ron Lipman from David S. Cordish, dated 1/9/86
2. Letter to David S. Cordish from M. Ronald Lipman, dated 1/13/86
3. Letter to Ron Lipman from David S. Cordish, dated 1/16/86
[Large Board Exhibit] 4. 2 Drawings of 6 Slade Avenue by Beyer, Blinder, Belle
[Large Board Exhibit] 5. Site Plan with Typical Floor re: 6 Slade Avenue
[Large Board Exhibit] 6. Drawing of Buildable Area, Slade Avenue, dated 8/4/86
7. a. Letter to Jeffrey H. Scherr from M. Ronald Lipman, dated 11/19/85
b. Ticor Title Insurance Co. Commitment for Title Insurance
c. Blank Agreement of Sale, prepared 11/4/85 re: Edward A. and Ellen W. Halle
d. Map drawn by Lipman, Frizzell & Mitchell re: Slade Ave.
e. Aerial Photograph
f. Zoning Map drawn by Lipman, Frizzell & Mitchell
g. Plat, dated 11/21/85, re: Halle Property

8. Plat drawn by D. S. Thaler & Assoc., Inc., re: Halle Property
9a. Color polaroid, dated 8/14/86, re: West end Cordish House - full load of chipped wood
9b. Color polaroid, dated 8/14/86, re: West end of Cordish House
9c. Color polaroid, dated 8/14/86, re: West end of Cordish House - Tree Expert at Cordish Residence
9d. Color polaroid, dated 8/14/86, re: West end of Cordish House - Large tree removed
9e. Color polaroid, dated 8/15/86, re: West end of Cordish House - Cut up tree left by contractor
10. Impact of Proposed Cordish Expansion on Buidable Area, dated 8/12/36
11. Census Tract Map re: Market Area

Paul L. Cordish, Esquire — Attorney for Appellants/Petitioners, David S. and Penelope A. Cordish
Glenn L. Weinberg, Esquire
Suite 400, 300 Water Street
Baltimore, Maryland 21202
(539-4141)

Jeffrey Scherr, Esquire — Attorney for Appellees/Protestant, The Harlan Co.
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(752-6030)

John B. Howard, Esquire — Attorneys for Appellants/Petitioners, David S. and Penelope A. Cordish
Robert A. Hoffman, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
Towson, Maryland 21204
(823-4111)

Mr. David O. Feldman — Appellee/Protestant
107 Sudbrook Lane
Baltimore, Maryland 21208

Mr. Allan Hirsh — Appellee/Protestant
11 Slade Avenue
Baltimore, Maryland 21208

Phyllis Cole Friedman, Esquire
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

Norman E. Gerber — Request Notification
James Hoswell " "
Arnold Jablon " "
Jean M. H. Jung " "
James E. Dyer " "
Margaret E. du Bois, Appeals Clerk, Zoning Office " "

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

FEB 9 1987

ZONING OFFICE

February 5, 1987

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

CASE NO. 87-48-A — DAVID CORDISH, ET UX

N/s Slade Ave., 1125' NE of Reisterstown Rd.

3rd District

Variance-From Section 1B02.3.C.1 to permit a side yard setback of 2 ft. in lieu of the req. 25 ft.

ASSIGNED FOR: THURSDAY, JUNE 11, 1987, at 10 a.m.

CC: Paul Cordish, Esq. & Glenn L. Weinberg, Esq. — Counsel for Appellants/Petitioners
Jeffrey Scherr, Esq. — Counsel for Appellees/Protestant, The Harlan Co.
John B. Howard, ESq. Robert A. Hoffman, Esq. — Counsel for Appellants/Petitioners
David O. Feldman — Appellee/Protestant
Allan Hirsh — " "
Phyllis C. Friedman — People's Counsel
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean Jung
James Dyer
Betty duBois

June Holmen, Secretary

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

RECEIVED
JUN 25 1987
ZONING OFFICE

June 24, 1987

John B. Howard, Esquire
COOK, HOWARD, DOWNES & TRACY
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21204

RE: Case No. 87-48-A
David Cordish, et ux

Dear Mr. Howard:

Enclosed is a copy of the final Opinion and Order passed today by the County Board of Appeals in the subject case.

Sincerely,
Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

c: Robert A. Hoffman, Esquire
Paul L. Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire
Mr. David O. Feldman
Mr. Allan Hirsh
Phyllis Cole Friedman, Esquire
Jeanne Wachter
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

August 27, 1986

Jeffrey H. Scherr, Esquire
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201

RE: Petition for Zoning Variance
David Cordish, et ux, Petitioner
Case #87-48-A

Dear Mr. Scherr:

In response to your letter dated August 27, 1986 on the above-referenced matter, the hearing date of September 10, 1986 at 1:30 PM was mutually agreed upon with you and will proceed as scheduled.

Very truly yours,
Jean M. H. Jung
JEAN M. H. JUNG
Deputy Zoning Commissioner

JMHJ:bjs

cc: Paul Cordish, Esquire
300 Water Street
Baltimore, Maryland 21202

File

LAW OFFICES
KRAMON & GRAHAM, P. A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030
TELECOPIER
(301) 539-1269

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ANDREW JAY GRAHAM*†
JAMES M. KRAMON*†
LEE H. OSBURN
JEFFREY H. SCHERR
NANCY E. GREGORY†
JAMES P. ULWICK*†
PHILIP M. ANDREWS
GERTRUDE C. BARTEL
MARILYN HOPE FISHER*†

*ALSO ADMITTED IN NY
†ALSO ADMITTED IN DC
‡ALSO ADMITTED IN VA
§ALSO ADMITTED IN CA

September 5, 1986

RECEIVED
SEP 8 1986
ZONING OFFICE

Mrs. Jean M. H. Jung
Deputy Zoning Commissioner
Baltimore County Office of
Planning & Zoning
Room 109
County Office Building
Towson, Maryland 21204

Re: Petition for Zoning Variance
David Cordish, et ux, Petitioner
Case No. 87-48-A

Dear Mrs. Jung:

I received Messrs. Cordish's and Weinberg's letter to you of September 2, 1986. As soon as Mr. Weinberg advised that he had not received a copy of the Petition for Special Hearing and plat I immediately hand delivered the Petition to him and had our engineer make the plat immediately available to him.

The issue in this case, however, is not an oversight in the delivery of materials to Mr. Weinberg. It is whether or not Mr. Cordish's variance will severely impact our client's property if in fact it is held to have an impact on the Residential Transition Area. I do not desire to try this issue by letter and will present our client's case and reasoning at the time of the hearing on Wednesday, September 10, 1986.

If you have any questions or if there are any materials which you need to review at this point, I will make copies available to you and Mr. Weinberg.

Sincerely,

Jeffrey H. Scherr

JHS:ndc
cc: Paul L. Cordish, Esquire
Glenn L. Weinberg, Esquire
Mr. Leonard M. Harlan

LAW OFFICES
KRAMON & GRAHAM, P. A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030
TELECOPIER
(301) 539-1269

BEL AIR OFFICE:
118 SOUTH MAIN STREET
BEL AIR, MARYLAND 21014
(301) 879-5040
(301) 838-9095
TELECOPIER
(301) 838-9298

ANDREW JAY GRAHAM*†
JAMES M. KRAMON*†
LEE H. OSBURN
JEFFREY H. SCHERR
NANCY E. GREGORY†
JAMES P. ULWICK*†
PHILIP M. ANDREWS
GERTRUDE C. BARTEL
MARILYN HOPE FISHER*†

*ALSO ADMITTED IN NY
†ALSO ADMITTED IN DC
‡ALSO ADMITTED IN VA
§ALSO ADMITTED IN CA

September 24, 1986

RECEIVED
SEP 26 1986
ZONING OFFICE

HAND-DELIVERED

Mrs. Jean M. Jung
Deputy Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
Case No.: 87-48-A
David S. Cordish, Petitioner

Dear Mrs. Jung:

I received a copy of Mr. Hoffman's letter to you dated September 24, 1986 which requested an extension of time for filing the Memorandum. We oppose the requested extension.

During a telephone conversation Mr. Hoffman advised that he requested the extension so that he could review the transcript. The Memorandum which we submitted at the hearing was not, however, based upon any evidence submitted in the case. You will recall that we submitted the Memorandum before the introduction of any evidence and it was based upon applicable law.

To give new counsel an opportunity to review the transcript and provide another closing argument would be unfair without providing us with an opportunity for reply. Moreover, this procedure would also prolong this matter when it has already been continued from the original August 12, 1986 hearing date at the request of Petitioner.

Petitioner has had since August 12, 1986 to prepare a legal memorandum. Mr. Weinberg and Mr. Paul Cordish and Mr. David Cordish, all lawyers, were well aware of the requirements to submit a memorandum within two weeks of the hearing. It appears that they have waited until the last possible moment to hire new counsel. I am sure, that these gentlemen as well as new counsel are aware of the law as it pertains to this case and could have complied with the two week requirement. Since the date for filing a memorandum has passed I respectfully submit

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MARILYN HOPE FISHER*†

*ALSO ADMITTED IN NY
†ALSO ADMITTED IN DC
‡ALSO ADMITTED IN VA
§ALSO ADMITTED IN CA

August 21, 1986

RECEIVED
AUG 25 1986
ZONING OFFICE

HAND DELIVERED

Mr. James E. Dyer
Zoning Supervisor
Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Room 113
Towson, Maryland 21204

case 87-48-A scheduled for Sept 10, '86 per Jean Jung

RE: Petition for Special Hearing
Six Slade Avenue

Dear Mr. Dyer:

Enclosed is the Petition for Special Hearing for the above-captioned property. I have enclosed for filing three original Petitions for Special Hearing, ten plats, ten legal descriptions and the appropriate filing fee for the Baltimore County property owned by The Harlan Company of Maryland, Inc.

We respectfully request that this Petition be consolidated with Case No. 87-48-A because we believe that the issues presented by Case No. 87-48-A and this Petition for Special Hearing can be best considered and presented simultaneously. We understand that consolidation of this Petition and Case No. 87-48-A will not be heard on September 10, 1986, the date on which Case No. 87-48-A is now scheduled to be considered. This delay will be caused the required regulations respecting the posting and advertising of the affected property. We request, however, that the consolidated cases be heard together prior to October 1, 1986 so that this matter may be resolved as quickly as possible.

Mr. James E. Dyer
August 21, 1986
Page Two

Please call me or Jeff Scherr with any questions you may have regarding this matter.

Sincerely,

Marilyn Hope Fisher

MHF:hsm
Enclosures
cc: Mr. Arnold M. Jablon (w/copy of Petition only)
Ms. Jean Jung (w/copy of Petition only)
Mr. Leonard M. Harlan (w/copy of Petition only)
Mr. D. Pike Aloian (w/copy of Petition only)
Mr. Stanley E. Galinsky (w/copy of Petition only)
Mr. David S. Thaler (w/copy of Petition only)
Mr. David Mullman (w/copy of Petition only)

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 44 PAGE 126 CASE NO. 87CG3256 CATEGORY APPEAL

ATTORNEYS

Julius W. Lichter
113 Chesapeake Bldg, 305 W. Chesa.
(04) 321-0600

~~John B. Howard~~
~~Robert A. Hoffman~~
~~Cook, Howard, Downs & Tracy~~
~~210 Allegheny Ave PO Box 5517~~
~~(04)---823-4111~~

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD

THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

True Copy Test
SUZANNE ECKERT, Clerk
Per Diane Williams
Assistant Clerk

THE HARLAN COMPANY OF MARYLAND, INC.
Appellee

ZONING FILE NO. 87-48-A

Jeffrey H. Scherr
Paul S. Teitelbaum
Sun Life Bldg. - Charles Center
(01) 752-6030

COSTS
CV GEN 813256 #
CV CLK 70.00
B LBRY 5.00
POST 2.00
CKCHECK TL 77.00
#17793 C001 R02 T14:46
01/29/87

(1) July 23, 1987 - Appellant's Order for Appeal from the denial of variance petition by the County Board of Appeals of Balto. Co., and Petition fd

(2) July 27, 1987 - Certificate of Notice fd.

(3) Aug 21, 1987 - Transcript of Record fd.

(4) Aug 21, 1987 - Notice of Filing of Record fd.

(5) Aug. 24, 1987 - App. of Jeffrey H. Scherr & Paul S. Teitelbaum for the Appellee & Same day Answer to Petition fd.

(6) Aug. 24, 1987 - Appellee's Motion to Dismiss & Request for Costs & Attorneys Fees fd.

(7) Sept 18, 1987 - Order to Strike the App of John B. Howard, Robert A. Hoffman and Cook, Howard, Downes & Tracy and Enter the App of Julius W. Lichter as counsel for the Pltffs fd.

(8) Sept 18, 1987 - Pltffs' Request for Extension of Time and Order of Court Granting Same fd. (JFF)

(9) Sept 21, 1987 - Motions Ruling--Appellee's Motion to Dismiss, etc. is DENIED. (JFH)

(10) October 5, 1987 - Appellant's (David Cordish & Penelope Cordish) Memorandum & Exhibits, fd.

(11) Nov 12, 1987 - Appellee's Memorandum fd. (Received on 11/10/87 @ 4:38 p.m. JTS

December 1, 1987 Hon. John F. Fader, II. Hearing had. Verbal motion by the Appellee for costs is Denied. Finding of the County Board of Appeals of Baltimore County is Affirmed.

44 126 87CG3256

David Cordish, et ux Zoning File No. 87-48-A 87 CG 3256 44/126

DATE	COURT MINUTES
12/1/87	Hon. JFF II. Hearing had. The Verbal Motion by the Appellee for Costs is Denied. The Finding of the County Board of Appeals of Baltimore Co. is Affirmed.

True Copy Test
SUZANNE ECKERT, Clerk
Per Diane Williams
Assistant Clerk

no order in file

RE: Petition for Variance
N/s of Slade Avenue, 1125' NE of Reisterstown Road

Case No. 87-48-A
3rd Election District
2nd Councilmanic District

David Cordish, et ux -Petitioners

June 30, 1986	Petition of David Cordish, et ux for a zoning variance to permit side yard setback of 2 feet in lieu of required 25 feet for dwelling.
August 12	Hearing held on petition by Deputy Zoning Commissioner.
December 5	Order of the D.Z.C. GRANTING zoning variance to permit side yard setback of 2 feet for two accessory buildings and to permit one of those structures in the front yard in lieu of required rear yard; original request to permit zoning variance for side yard setback for dwelling DENIED.
December 23	Letter of Appeal from Paul L. Cordish Esq. and Glenn L. Weisberg, Esq., to C.B. of A. on behalf of Petitioner.
May 18, 1987	Entry of Appearance from John B. Howard, Esq. as Counsel for Petitioner.
May 20	Hearing before C.B. of A. on motions only. No testimony or evidence received on merits of case; case set for hearing.
June 9	Hearing on appeal before C.B. of A.
June 24	Order of C.B. of A. DENYING variance for side yard setback of 2 feet in lieu of required 25 feet.
July 23	Order for Appeal to CCt, BCo from John B. Howard, Esq. and Robert A. Hoffman, Esq. on behalf of Petitioner.
July 23	Petition to accompany Order for appeal filed in CCt, BCo.
July 27	Certificate of Notice sent to interested parties.
August 21	Record of Proceedings filed in CCt, BCo; transcript of testimony filed.
December 1	Hearing had in CCt (Hon. John F. Fader II). Verbal motion motion by Appellee for costs denied; Finding of the CB of A is AFFIRMED.

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVE, 1,125 FEET N/E OF REISTERSTOWN ROAD THIRD ELECTION DISTRICT SECOND COUNCILMANIC DISTRICT

Vs.

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

Docket 44 Folio 126

Case No. 87CG3256

NOTICE OF FILING OF RECORD

TO: JOHN B. HOWARD
ROBERT A. HOFFMAN
COOK, HOWARD, DOWNES & TRACY
210 Allegheny Ave PO Box 5517 Balto. MD 21204

KATHLEEN C. WEIDENHAMMER
COUNTY BOARD OF APPEALS OF BALTO. CO.
Room 200, Courthouse
Towson, MD 21204

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on August 21, 1987.

Clerk

RECEIVED
COUNTY BOARD OF APPEALS
1987 AUG 25 P 1:46

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

May 13, 1987

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. CBA-86-157 — HALLE PROPERTY
6 Slade Avenue
and
RE: CRG Decision
11/13/86 -CRG conditional approval

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
VAR -side yard setback of 2' in lieu of req. 25'
12/05/86 -D.Z.C. granted VAR.

Case No. CBA-86-157 (Halle Property) and Case No. 87-48-A (David Cordish, et ux) will be consolidated on a single day's hearing since, while there are two properties involved, there is only one issue involved. The hearing on these two cases will be at 9:00 a.m. on June 3, 1987. The Board will note for all parties involved that the Board will sit from 9:00 a.m. to 11:00 a.m. and recess from 11:00 a.m. to 12:30 p.m., and reconvene for the balance of the taking of testimony. This somewhat unusual circumstance is occasioned by the desire of the Board not to lose the entire day's hearing which would be the only alternative to providing the early lunch recess.

ASSIGNED FOR: WEDNESDAY, June 3, 1987 at 9:00 a.m.

cc: John B. Howard, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire — Counsel for Appellee
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
Patrick D. Hanley, Esquire — Office of Law
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Robert Covahey
David Fields
Edward McDonough
James A. Markle
Jorge Austrich

RECEIVED
MAY 18 1987
ZONING OFFICE

Kathi Weidenhammer
Administrative Secretary

County Board of Appeals of Baltimore County
Room 200 Court House (Hearing Room #218)
Towson, Maryland 21204
(301) 494-3180

May 13, 1987
(REVISED NOTICE)

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. CBA-86-157 — HALLE PROPERTY
6 Slade Avenue
and
RE: CRG Decision
11/13/86 -CRG conditional approval

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Avenue, 1125' NE of Reisterstown Rd.
VAR -Side yard setback of 2' in lieu of req. 25'
12/05/86 -D.Z.C. granted VAR.
3rd Election District
2nd Councilmanic District

These cases will be assigned for the following date for hearing on motions ONLY. NO TESTIMONY OR EVIDENCE WILL BE RECEIVED ON THE MERITS OF THESE CASES.

ASSIGNED FOR: WEDNESDAY, May 20, 1987 at 1:30 p.m.

cc: John B. Howard, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire — Counsel for Appellee
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
Patrick D. Hanley, Esquire — " " "
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James E. Dyer
Margaret E. du Bois
Robert Covahey
David Fields
Edward McDonough
James A. Markle
Jorge Austrich

Kathi Weidenhammer
Administrative Secretary

RECEIVED
MAY 18 1987
ZONING OFFICE

IN RE: PETITION FOR ZONING VARIANCE
N/S of Slade Avenue, 1125' NE of Reisterstown Road
3rd Election District
David Cordish, et ux
Petitioners

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-48-A

* * * * * * * * * * * * * *

The Petitioners herein request a zoning variance to permit a side yard setback of 2 feet in lieu of the required 25 feet for a dwelling.

Testimony by and on behalf of the Petitioners indicates that David Cordish has resided on the site in an estate-type setting for the past 16 years. He proposes to construct two low buildings, no more than 12' x 12', which would be connected to the main residence by a covered passageway. The northern building, a bathhouse, is to include a toilet, shower, vanity and bench; the southern building, a guest room, is to include a toilet, vanity and sleep area. This guest room is needed because there is only one in the dwelling; the bathhouse is needed as a shower/locker room, especially for three teen-aged sons. The covered walkway is considered necessary to permit year-round use of the buildings by the family and guests. The front yard (south) is used for athletic fields; the east end contains the driveway. The rear yard (north) will remain partially wooded and contain vegetable gardens, as well as a breakfast porch and living area. The west yard is occupied by a somewhat formal garden which existed prior to the Petitioner's purchase of the property. A representative of the architectural firm testified that if the guest room and bathhouse were moved eastward so as to be within the building setback line, the symmetry of the garden would be destroyed and there would be less visual security for the buildings. The proposed buildings will appear as scaled down, wood frame garden structures. A landscape architect testified that the enclosed passageway will provide strong vertical limits to add to the formality of the garden as well as provide protection from the weather.

RECEIVED FOR FILING
Date 12/5/86
By Kathi Weidenhammer

Testimony on behalf of the adjacent property owner (The Harlan Company of Maryland, Inc.) indicates that it does not oppose the improvements, but has deep concerns that the proposed structures, attached to the main residence so as to be considered additions, would move the residential transition area (RTA) 48 feet to the west. Such a change in the RTA would prevent the quality of their proposed project and make it impossible to accomplish the design goals. The board of the Pikesville Community Growth Corporation voted to "approve and support the Harlan development and support the Cordish variance, only in so far as its granting would be compatible with the Harlan development and not change the setback required now pertaining to the Harlan development." An architect was of the opinion that the present garden is modest and that aesthetics could be better served by something other than a glassed in walkway; i.e. a trellis or a hedge. In addition, in his opinion, there are many available locations for a guest room and bathhouse.

All parties to the hearing stipulated that the Deputy Zoning Commissioner could visit the site and the general neighborhood.

Following a visit to the site, and after due consideration of all testimony and evidence presented on this case, in the opinion of the Deputy Zoning Commissioner, the granting of a variance that would permit the two buildings to be connected by a covered passageway, with walking distance of approximately 47 and 56 feet from the rooms to the existing porch, and referring to the structures as additions to the main residence, would extend the footprint of the residence in an unreasonable and ludicrous fashion. To the Deputy Zoning Commissioner's knowledge, no breezeway or covered passageway anywhere near the length proposed in this case has been approved in Baltimore County so as to connect an addition to the main building. Notwithstanding the language of Section 400.1 of the Baltimore County Zoning Regulations (BCZR), which obviously refers to utilitarian, relatively short covered passageways, and without venturing to establish

RECEIVED FOR FILING
Date 12/5/86
By Kathi Weidenhammer

-2-

Affidavit of Process Server

Zoning Commissioner of Baltimore County, Maryland
(NAME OF COURT)

David Cordish, et ux — PLAINTIFF PETITIONER
vs
DEFENDANT RESPONDENT
87-48-A — CASE #

I declare that I am a citizen of the United States, over the age of eighteen and not a party to this action. And that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served David Cordish (NAME OF PERSON ENTITY BEING SERVED)
with the (documents) Subpoena Duces Tecum, Petition for the Issuance of a Subpoena Duces Tecum
by serving David Cordish (NAME) — (RELATIONSHIP)
at ☐ Home
☒ Business in front of Cordish & Cordish Law Offices, 300 E. Water Street, Balto., Md. 21202
on August 26, 1986 (DATE) at 0805 hours (TIME)

Thereafter copies of the documents were mailed by prepaid, first class mail on (DATE)
from (CITY) (STATE)

Manner of Service: ☒ By personally delivering copies to the person/authorized agent of entity being served
☐ By leaving, during office hours, copies at the office of the person/entity being served, leaving same with the person apparently in charge thereof.
☐ By leaving copies at the dwelling house or usual place of abode of the person being served, with a member of the household 18 or older and explaining the general nature of the papers
☐ By posting copies in a conspicuous manner to the address of the person entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above I have been unable to effect process upon the person entity being served because of the following reason(s):
☐ Unknown at Address ☐ Evading ☐ Moved, Left no Forwarding ☐ Other.
☐ Address Does Not Exist ☐ Service Cancelled by Litigant ☐ Unable to Serve in a Timely Fashion

Service Attempts: Service was attempted on ( ) (DATE) (TIME) ( ) (DATE) (TIME) ( ) (DATE) (TIME)
( ) (DATE) (TIME) ( ) (DATE) (TIME) ( ) (DATE) (TIME)

Description: Age 41 Sex male Race cauc Hgt 5'10" Wgt 170 Hair gray Glasses

I declare under penalty of perjury that the information contained herein is true and correct and this affidavit was executed on
8/26/86 (DATE) at Balto (CITY) Md (STATE)

Elias Sheriff (SIGNATURE OF PROCESS SERVER)
A P Legal Support Services
508 St. Paul Place - Baltimore, MD 21202
(301) 539-2313

State of
County of
Subscribed and sworn before me, a notary public, this ____ day of ____

WITNESS MY HAND AND OFFICIAL SEAL TO

NOTARY PUBLIC
My commission expires:

FORM 2 NATIONAL ASSOCIATION OF PROFESSIONAL PROCESS SERVERS

RE: PETITION FOR VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd., 3rd District
DAVID CORDISH, et ux, Petitioners

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-48-A

* * * * * * * * * * * * * * *

SUBPOENA DUCES TECUM

You, David S. Cordish, 4 Slade Avenue, Pikesville, Maryland 21208, are hereby commanded to appear on September 10, 1986 at 1:30 p.m. before the Zoning Commission of Baltimore County, Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 and to testify from day-to-day until completed regarding all matters concerning or relating to the Petition for Zoning Variance, Case No. 87-48-A. You are hereby requested to bring with you the documents set forth in the Petition for the Issuance of a Subpoena Duces Tecum attached hereto.

Jeffrey H. Scherr

Michael L. Heikes

KRAMON & GRAHAM, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

Attorneys for The Harlan Company of Maryland, Inc.

Zoning Commission for Baltimore County

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MD. 21201
(301) 752-6030

RE: PETITION FOR VARIANCE
N/S of Slade Ave., 1125' NE of Reisterstown Rd., 3rd District
DAVID CORDISH, et ux, Petitioners

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-48-A

* * * * * * * * * * * * * * *

SUBPOENA DUCES TECUM

You, David S. Cordish, 4 Slade Avenue, Pikesville, Maryland 21208, are hereby commanded to appear on August 12, 1986 at 9:30 a.m. before the Zoning Commission of Baltimore County, Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 and to testify from day-to-day until completed regarding all matters concerning or relating to the Petition for Zoning Variance, Case No. 87-48-A. You are hereby requested to bring with you the documents set forth in the Petition for the Issuance of a Subpoena Duces Tecum attached hereto.

Jeffrey H. Scherr

Michael L. Heikes

KRAMON & GRAHAM, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

Attorneys for The Harlan Company of Maryland, Inc.

Zoning Commission for Baltimore County

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MD. 21201
(301) 752-6030

a precise length at which a passageway would cease to function as a mere connection. It is quite apparent that the proposed guest room and bathhouse are, for all intents and purposes, and within the spirit and intent of the BCZR, merely accessory structures according to the meaning of Section 101. In the instant case, the covered passageway was incorporated into the design for the aesthetic, increased formality of the garden, as well as convenience and protection in inclement weather. To interpret the proposed two small far-distant rooms as part of the principal building in accordance with Section 400.1 stretches the meaning of that section in exactly the same way the Petitioners have stretched their covered walkway, i.e. to the absurd. In the opinion of the Deputy Zoning Commissioner, the Petition was incorrectly worded, although the need for a guest room and bathhouse, as well as the practical difficulty or unreasonable hardship of locating the structures elsewhere, has been proven. The structures should be permitted, therefore, as accessory structures connected to the main residence by a walkway that is, at times, enclosed.

Therefore, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 5th day of December 1986, that a zoning variance to permit a side yard setback of 2 feet in lieu of the required 25 feet for a dwelling be and is hereby granted, subject to the following restrictions which must appear in the deed and plat:

1) The proposed guest room and bathhouse shall be used only as accessory structures to the principal dwelling on the property.

2) The proposed guest room, bath and passageway shall be constructed in accordance with the plan submitted, prepared by Stephen A. Glassman dated August 20, 1986, and identified as Petitioner's Exhibit 1, be and is hereby GRANTED from and after the date of this Order.

IT IS FURTHER ORDERED that the original request for a zoning variance to permit a side yard setback of 2 feet for a dwelling be and is hereby denied.

Deputy Zoning Commissioner
for Baltimore County

RECEIVED FOR FILING
Date 12/5/86
By Kathi Weidenhammer

-3-

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

Petitioner's position that the jacuzzi bath, bathhouse, guest house and passage ways of 45 feet and 58 feet sought to be constructed by Petitioner's neighbor on the east side of Petitioner's property, in (See Addendum to Petition for Special Hearing)

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

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

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

THE HARLAN COMPANY OF MARYLAND, INC.
(Type or Print Name)

By: Leonard M. Harlan
Signature Leonard M. Harlan, President

(Type or Print Name)

Signature

Attorney for Petitioner:

Jeffrey H. Scherr
(Type or Print Name)

Signature

Kramon & Graham, P.A.
Sun Life Building, Charles Center
Address

Baltimore, Maryland 21201
City and State

Attorney's Telephone No.: (301) 752-6030

c/o Kramon & Graham, P.A. (301) 752-6030
Address Phone No.
Sun Life Building, Charles Center
Baltimore, Maryland 21201
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

Jeffrey H. Scherr
Name
Kramon & Graham, P.A.
Sun Life Building, Charles Center
Address Phone No.
Baltimore, Maryland 21201

ORDERED By The Zoning Commissioner of Baltimore County, this _____ day of _____, 19____, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the _____ day of _____, 19____, at _____ o'clock _____M.

Zoning Commissioner of Baltimore County.

ADDENDUM TO PETITION FOR SPECIAL HEARING

accordance with the variance sought by Petitioner for Zoning Variance in Case No. 87-48-A, do not constitute a "dwelling" and therefore will not cause the Residential Transition Area on Petitioner's property to be moved 48 feet to the west of Petitioner's property, causing Petitioner a loss of approximately 10,000 square feet of buildable land, as shown on the Plan to Accompany Special Hearing filed simultaneously and made a part hereof.

The Petitioner intends to develop its property in accordance with DR-16 zoning designation as a high-rise luxury condominium/apartment building. If the Residential Transition Area is altered as aforesaid, it will render such development impracticable.

In the alternative, assuming arguendo that the neighboring improvements would constitute a dwelling and, therefore, that the variance sought by Petitioner's east side neighbor in Case No. 87-48-A is granted, then Petitioner's position would be that because that development and Petitioner's development of its property is proceeding simultaneously, the neighboring development should not have any impact in the Residential Transition Area of Petitioner's property.

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112 SOUTH MAIN STREET
BEL AIR, MARYLAND 21014
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(301) 838-9298

ANDREW JAY GRAHAM**
JAMES N. KRAMON**
LEE M. OSBURN
JEFFREY H. SCHERR
NANCY E. GREGOR**
JAMES P. ULWICK**
PHILIP M. ANDREWS
GERTRUDE C. BARTEL
MARILYN HOPE FISHER**
MICHAEL L. MEYERS
PAUL S. TEITELBAUM
KATHLEEN A. BIRRANE
NANCY FELIX MANGANI*

*ALSO ADMITTED IN NY
**ALSO ADMITTED IN DC
***ALSO ADMITTED IN VA
****ALSO ADMITTED IN GA
*****ALSO ADMITTED IN FL

August 24, 1987

HAND DELIVERED

Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

RE: In The Matter Of The Application Of David Cordish, ex ux. For A Zoning Variance On Property Located On The N/S Of Slade Avenue Avenue, 1,125 Feet N/E Of Reisterstown Road
Third Election District
Second Councilmanic District
Case No. 87-48-A

Dear Sir/Madam:

Enclosed please find the Harlan Company's Answer to Petition, Motion to Dismiss and Request for Costs and Attorney's Fees, and Memorandum in Support of Motion to Dismiss and Request for Costs and Attorney's Fees to be filed in the above-referenced case.

Your prompt attention to this matter is greatly appreciated.

Sincerely,

Paul S. Teitelbaum

PST:jes
Enclosures
cc: Baltimore County Board of Appeals
(h/dlvd., w/encl.)
John B. Howard, Esquire
(h/dlvd., w/encl.)
Robert A. Hoffman, Esquire
(h/dlvd., w/encl.)

RECEIVED
COUNTY BOARD OF APPEALS
1987 AUG 24 P 3:28

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ex ux. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD
THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT
* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 87-48-A

* * * * * * * * * * * * *

ANSWER TO PETITION

The Harlan Company of Maryland, Inc. (the "Harlan Company"), by its attorneys, Jeffrey H. Scherr, Paul S. Teitelbaum and Kramon & Graham, P.A., pursuant to Maryland Rule B9, answers the Petition filed by Appellants as follows:

1. The Harlan Company admits the factual allegations of Paragraph 1 of the Petition insofar as that paragraph purports to state that the action appealed from is the denial of a requested variance of a sideyard setback of two (2) feet in lieu of the required twenty-five (25) feet. It denies the remaining factual allegations of Paragraph 1.

2-3. The Harlan Company denies the factual allegations of Paragraphs 2 and 3 of the Petition.

4. Further answering, the Harlan Company affirmatively states that Appellants presented no evidence to the Board of Appeals that practical difficulty or unreasonable hardship would result from strict compliance with the Baltimore County Zoning Regulations, and the Board committed no error when it found that no such evidence was presented.

5. Further answering, the Harlan Company asserts that Paragraph 3 of the Petition is improper and contravenes Maryland Rule B2(e), which requires the Appellants to set forth

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SUN LIFE BUILDING
CHARLES CENTER
BALTIMORE, MARYLAND 21201
(301) 752-6030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 1987, a copy of the foregoing Answer was hand-delivered to: John B. Howard, Esquire and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, Maryland 21204; and the Baltimore County Board of Appeals, Room 200, Court House, Towson, Maryland 21204.

Paul S. Teitelbaum
Paul S. Teitelbaum

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 44 PAGE 126 CASE NO. 87CG3256 CATEGORY APPEAL

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET +/E OF LEISTERSTOWN ROAD

THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

THE HARLAN COMPANY OF MARYLAND, INC.
Appellee

ZONING FILE NO. 87-48-A

ATTORNEYS

Julius W. Lichter
113 Chesapeake Bldg. 305 W. Chesa.
(04) 321-0600

~~John B. Howard~~
~~Robert A. Hoffman~~
~~Cook, Howard, Downes & Tracy~~
~~210 Allegheny Ave. PO Box 5517~~
~~(4043 823-4111~~

True Copy Test
SUZANNE MENSH, Clerk
Per Diane Williams
Assistant Clerk

Jeffrey H. Scherr
Paul S. Teitelbaum
Sun Life Bldg. - Charles Center
(01) 752-6030

(1) July 23, 1987 - Appellant's Order for Appeal from the denial of variance petition by the County Board of Appeals of Balto. Co., and Petition fd.

(2) July 27, 1987 - Certificate of Notice fd.

(3) Aug 21, 1987 - Transcript of Record fd.

(4) Aug 21, 1987 - Notice of Filing of Record fd.

(5) Aug. 24, 1987 - App. of Jeffrey H. Scherr & Paul S. Teitelbaum for the Appellee & Same day Answer to Petition fd.

(6) Aug. 24, 1987 - Appellee's Motion to Dismiss & Request for Costs & Attorneys Fees fd.

(7) Sept 18, 1987 - Order to Strike the App of John B. Howard, Robert A. Hoffman and Cook, Howard, Downes & Tracy and Enter the App of Julius W. Lichter as counsel for the Pltffs fd.

(8) Sept 18, 1987 - Pltffs' Request for Extension of Time and Order of Court Granting Same fd. (JFF)

(9) Sept 21, 1987 - Motions Ruling--Appellee's Motion to Dismiss, etc. is DENIED. (JFH)

(10) October 5, 1987 - Appellant's (David Cordish & Penelope Cordish) Memorandum & Exhibits, fd.

(11) Nov 12, 1987 - Appellee's Memorandum fd. (Received on 11/10/87 @ 4:38 p.m. JTS

December 1, 1987 Hon. John F. Fader, II. On the Merits Heard. Verdict motion by the Appellee for costs is Denied. Finding of the County Board of Appeals of Baltimore County is Affirmed.

COSTS	
CV GEN	315.50
CV CLK	70.00
B LIBY	5.00
POST	2.00
CHECK TL	77.00
#17793 C001 R02 T1414	
07/29/8	

DOCKET 44 PAGE 126 CASE NO 87CG3256

David Cordish, et ux Zoning File No. 87-48-A 87 CG 3256 44/126

DATE	COURT MINUTES
12/1/87	Hon. JFF II. Hearing held. The Verbal Motion by the Appellee for Costs is Denied. The Finding of the County Board of Appeals of Baltimore Co. is Affirmed.

True Copy Test
SUZANNE MENSH, Clerk
Per Diane Williams
Assistant Clerk

no order in file

specifically each ground of error committed by the Agency from whose decision appeal is taken. Paragraph 3 of the Petition should be stricken, and can not create in the Appellants the right to assert in their Memorandum, to be filed pursuant to Maryland Rule B12, "other and further" unspecified reasons why Appellants believe the Board committed error.

6. Further answering, the Harlan Company asserts that the instant appeal, and the proceedings below, were initiated by Cordish for improper purposes, on an inaccurate factual predicate. Accordingly, this appeal should be dismissed, with costs and attorney's fees awarded to the Harlan Company, for the reasons set forth in The Harlan Company's Motion to Dismiss and accompanying Memorandum, filed hereinbefore and hereby incorporated herein.

Jeffrey H. Scherr
Jeffrey H. Scherr

Paul S. Teitelbaum
Paul S. Teitelbaum

Kramon & Graham, P.A.
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

Attorneys for The Harlan Company of Maryland, Inc.

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ex ux. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD
THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 87-48-A

* * * * * * * * * * * *

MOTION TO DISMISS, AND REQUEST FOR COSTS AND ATTORNEY'S FEES

The Harlan Company of Maryland, Inc. (the "Harlan Company"), by its attorneys, Jeffrey H. Scherr, Paul S. Teitelbaum and Kramon & Graham, P.A., pursuant to Maryland Rules B9 and 1-341, moves to dismiss the above-captioned appeal and requests that this Court grant the Harlan Company its costs, including attorney's fees, incurred in these proceedings. As grounds for its Motion, the Harlan Company states:

1. On June 23, 1986, Appellant David Cordish ("Cordish"), filed with the Zoning Commissioner a Petition for Variance (the "Petition") solely with the intent of injuring the Harlan Company's project at Six Slade Avenue.

2. Cordish filed the Petition, declaring under penalties of perjury that the subject property, Four Slade Avenue, is owned by Cordish and his wife, Penelope. In fact, as was established at the hearing below, the property is owned by Cordish alone. Cordish is an attorney and a seasoned real estate developer, and is well aware of the distinction between joint and sole ownership. At no time did Cordish seek to amend the Petition to correct the misrepresentation.

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3. The reasons advanced by Cordish in support of the Petition were pretextual, for his true intent was to cause the Harlan project to fail by enlarging the Residential Transition Area ("RTA") created by his dwelling, which is located on property adjoining the Harlan Company property.

4. With the intent of injuring the Harlan Company, Cordish couched his variance proposal to seek approval of the construction of long covered walkways ending in small rooms stretching to within two (2) feet of the Harlan Company property. The sole purpose of this construction was to enlarge the "footprint" of the Cordish dwelling and thereby expand the RTA created by that structure, causing a commensurate reduction in the size of the building "envelope" in which the Harlan Company may erect its multifamily condominium building.

5. Cordish appealed the grant by Deputy Zoning Commissioner Jean Jung of the relief requested in the Petition. That appeal to the Board of Appeals was brought because the Deputy Zoning Commissioner approved the proposed structures as "accessory" structures, not a part of the Cordish dwelling, and as so designated they would not create an RTA.

6. The Board of Appeals, hearing the case de novo, denied the requested variance. It held that no evidence had been adduced to indicate that strict compliance with the Baltimore County Zoning Regulations would cause practical difficulty or unreasonable hardship. Despite this finding of a complete absence of substantive grounds upon which the variance request

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could be premised, Cordish noted the instant appeal to this Court.

7. This appeal has been filed with the intent to further impede the Harlan Company's development of its property at Six Slade Avenue.

8. Cordish seeks by this action to exploit for improper purposes Baltimore County's administrative and judicial bodies by filing a claim that is devoid of merit and intended solely to injure the Harlan Company in its lawful business enterprises.

9. A brief Memorandum of points and authorities is attached hereto and made a part hereof.

WHEREFORE, the Harlan Company requests that this Court dismiss the appeal, and, pursuant to Maryland Rule 1-341, grant the Harlan Company's request for costs, including attorney's fees.

Jeffrey H. Scherr PST
Jeffrey H. Scherr

Paul S. Teitelbaum
Paul S. Teitelbaum

Kramon & Graham, P.A.
Kramon & Graham, P.A.
Sun Life Building
Charles Center
Baltimore, Maryland 21201
(301) 752-6030

Attorneys for The Harlan Company of Maryland, Inc.

LAW OFFICES
KRAMON & GRAHAM, P.A.
SUN LIFE BUILDING
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BALTIMORE, MARYLAND 21201
(301) 752-6030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 1987, a copy of the foregoing Motion to Dismiss and Request for Costs and Attorney's Fees and attached Memorandum in Support of Motion to Dismiss and Request for Costs and Attorney's Fees were hand-delivered to: John B. Howard, Esquire and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, Maryland 21204; and the Baltimore County Board of Appeals, Room 200, Court House, Towson, Maryland 21204.

Paul S. Teitelbaum
Paul S. Teitelbaum

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IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ex ux. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD
THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 87-48-A

* * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND REQUEST FOR COSTS AND ATTORNEY'S FEES

The factual bases for the Motion to Dismiss are set forth in that pleading, and will not be repeated here. Briefly summarized, it is evident that Cordish has brought this appeal in bad faith and without substantial justification. His bad faith is clearly manifested by the fact, inter alia, that he appealed the Deputy Zoning Commissioner's decision--permitting Cordish's requested construction--solely for the reason that the basis of her decision would not result in an enlargement of the RTA. See letter of December 22, 1986 from Paul L. Cordish and Glenn L. Weinberg to the Zoning Commissioner of Baltimore County, attached hereto as Exhibit A. In addition, Cordish permitted the variance petition to proceed on a glaringly inaccurate factual predicate, for Cordish represented that he alone owned the subject property. Significantly, the Board of Appeals found that grant of the variance requested by Cordish would reduce the usable area of the Harlan property and thereby injure the Harlan Company. This was Cordish's intention.

It is equally clear that the instant appeal was filed without substantial justification. The Board of Appeals found that Cordish adduced "no testimony or evidence indicating the

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need for the variance by way of practical difficulty or unreasonable hardship." Decision of Board of Appeals in In the Matter of the Application of David Cordish, et ux., Case No. 87-48-A, at 2 (emphasis added). Despite the complete absence of substantive grounds to support his request for a variance, Cordish has appealed the Board's decision to this Court. There is no substantial justification for bringing an appeal on the record, when that record has been found to provide no support for the appellant's position.

The law in Maryland is clear that in any civil action brought in bad faith or without substantial justification, the opposing party is entitled to costs, including attorney's fees. See Maryland Rule 1-341; Blanton v. Equitable Bank, 61 Md. App. 158, 485 A.2d 694 (1985); Singer v. Steven Kokes, Inc., 39 Md. App. 180, 384 A.2d 463 (1978). Once a finding of bad faith or lack of substantial justification is made, application of Rule 1-341 is mandatory. Hess v. Chalmers, 33 Md. App. 541, 365 A.2d 294 (1976). Under the circumstances, the appeal should be dismissed, and the Harlan Company is entitled to relief under Maryland Rule 1-341.

Respectfully submitted,

Jeffrey H. Scherr PST
Jeffrey H. Scherr

Paul S. Teitelbaum
Paul S. Teitelbaum

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Attorneys for The Harlan Company of Maryland, Inc.

LAW OFFICES
CORDISH AND CORDISH
200 WATER STREET SUITE 400
NE CORNER SOUTH & WATER STS
BALTIMORE, MARYLAND 21202

PAUL L. CORDISH
DAVID A. CORDISH

TELEPHONE
(301) 539-4161

December 22, 1986

Zoning Commissioner
County Office Building
Towson, Maryland 21204

RE: Appeal to the County Board of Appeals
for Baltimore County Maryland
Petition for Zoning Variance
N/S of Slade Avenue, 1125' NE of
Reisterstown Road
3rd District
Case #87-84-A

Gentlemen:

This letter is intended to constitute an Appeal to the County Board of Appeals of Baltimore County from the decision of December 5, 1986 in above matter, of the Honorable Jean M.H. Jung, Deputy Zoning Commissioner. The persons entering this appeal to the County Board of Appeals of Baltimore County from the decision rendered December 5, 1986 in the above case are David S. Cordish and Penelope A. Cordish whose addresses are 4 Slade Avenue, Pikesville, Baltimore County, Maryland 21208.

This Appeal is hereby filed within thirty (30) days from December 5, 1986 which is the date of the final Order in this matter.

You will find enclosed herewith check in the amount of $90.00, payable to Baltimore County, Maryland, in payment of the required Fees for this Appeal. The sum remitted herewith covers the appeal fee of $75.00 plus $15.00 for the cost of posting. David S. Cordish and Penelope A. Cordish, feeling aggrieved by the said decision, are hereby exercising their right to appeal therefrom to the County Board of Appeals of Baltimore County in accordance with Section 500.10 and Section 501.8 of the Baltimore County Zoning Regulations. The reason for this appeal is that portion of the decision appealed from which denies their request for a zoning variance to permit a side yard set back of two feet for a dwelling.

Very truly yours,

Paul L. Cordish

Zoning Commissioner
Page Two
December 22, 1986

Glenn L. Weinberg
Suite 400
300 Water Street
Baltimore, Maryland 21202
(301) 539-4141
Attorneys for David S. Cordish
and Penelope A. Cordish,
Appellants

PLC/GLW
CC: Jeffrey Scherr,Esquire
Kramon & Graham, Sun Life Bldg.
Charles Center,Balto., MD. 21201

John B. Howard, Esquire
Robert A. Hoffman,Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Ave.,Towson,MD. 21204

Mr. David O. Feldman
107 Sudbrook Lane
Pikesville, MD. 21208

Ms. Camille Blackburn
Owings Mills Times
409 Washington Ave., 5th Floor.
Towson, MD. 21204

Ms. Phyllis Cole Friedman
People's Counsel for Baltimore County
Room 223, Courthouse
Towson, Maryland 21204

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/s OF SLADE AVENUE, 1125' NE of REISTERSTOWN ROAD 3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT

DAVID CORDISH, ET UX, PETITIONER-PLAINTIFF

ZONING FILE NO. 87-48-A

CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

CG Doc. No. 44
Folio No. 126
File No. 87-CG-3256

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Thomas J. Bollinger, and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Zoning Office of Baltimore County:

No. 87-48-A

June 30, 1986	Petition of David Cordish, et ux, for a zoning variance to permit a side yard setback of 2 feet in lieu of the required 25 feet for a dwelling
June 30	Order of the Zoning Commissioner directing advertisement and posting of property - date of hearing set for August 12, 1986, at 9:30 a.m.
July 17	Comments of Baltimore County Zoning Plans Advisory Committee - filed
July 21	Comments of Baltimore County Director of Planning - filed
July 23	Certificate of Posting of property - filed
July 24	Certificate of Publication in newspaper - filed
August 12	At 9:30 a.m. hearing held on petition by Deputy Zoning Commissioner

David Cordish, et ux
Case No. 87-48-A
2.

December 5, 1986	Order of the Deputy Zoning Commissioner GRANTING a zoning variance to permit a side yard setback of 2 feet for two accessory buildings (guest room and bathhouse) and to permit one of those accessory structures (guest room) in the front yard in lieu of the required rear yard, in accordance with plan submitted; and FURTHER ORDERED that the original request for a zoning variance to permit a side yard setback of 2 feet for a dwelling be DENIED.
December 23	Letter of Appeal to the C.B. of A. from Paul L. Cordish, Esq., and Glenn L. Weinberg, Esq., Attorneys for Petitioner.
May 18, 1987	Entry of Appearance from John B. Howard, Esq. and Cook, Howard, Downes & Tracy as Counsel for Petitioner.
May 20	Hearing before County Board of Appeals on motions only. No testimony or evidence received on merits of case. Case set for hearing before the C.B. of A. on June 9, 1987.
June 9	Hearing on appeal before the County Board of Appeals.
June 24	Order of the Board of Appeals ordering that the requested variance of a side yard setback of 2 feet in lieu of the required 25 feet be DENIED.
July 23	Order for Appeal to the Circuit Court for Baltimore County from John B. Howard, Esquire, and Robert A. Hoffman, Esquire, Counsel for Petitioner.
July 23	Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County.
July 27	Certificate of Notice sent to interested parties.
August 21	Transcript of testimony filed.
	Petitioner's Exhibit No. 1 - Plat
	" " No. 1A - Smaller plat showing proposed site improvements-4 Slade Ave- attached to Petitioner's Exhibit No. 1
	" " No. 2A - Photo, Slade Avenue view to house
	" " No. 2B - Photo, Backyard toward kitchen and garage
	" " No. 2C - Photo, Common driveway and garage

Case No. 87-43-A
David Cordish, et ux
3.

	Petitioner's Exhibit No. 2D - Photo, Backyard towards garden
	" " No. 2E - Photo, Close-up of garden
	" " No. 2F - Photo, Fence toward Halle property, interior of garden
	" " No. 2G - Photo, Porch, to be enclosed
	" " No. 3 - Resume of William F. Kirwin
	" " No. 4 - Identical to Petitioner's Exhibit No. 1 except as marked (plat)
	Protestant's Exhibit No. 1 -) Letters to and from
	" " No. 2 -) Cordish, to Lippman
	" " No. 3 -) " " "
	" " No. 4 - Md. Title to Cordish for property No. 4 Slade -9/18/79
	" " No. 5 - 9/25/79 -Md. Title to Cordish for a lot adjoining house
	" " No. 6 - Letter to Scherr from Lippman dated 11/19/85
	" " No. 7 - Halle Property, Daft Job Order 75-83, 11/21/85
	" " No. 8 - CRG plan by Thaler
	" " No. 9 - Architectural sketch of Harlon project (in Bd's closet)
	" " No. 10- Colored drawing of Harlan project showing RTA (in Board's closet)
	" " No. 11- Chart showing detrimental effects.
August 21, 1987	Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material

CBA Pet #9 - M-#10
in Bd's closet
(Family 2C right)
Pet #4 } in closet
Pet #4

Case No. 87-48-A
David Cordish, et ux
4.

or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals office, and upon request of the parties or the Court will be transmitted to the court by whomever institutes the request.

Respectfully submitted,

Kathleen C. Weidenhammer
County Board of Appeals
of Baltimore County

CASE NO. 87-CG-3256 AT Law
David Cordish, et ux VS.

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S ANSWER & TRANSCRIPT FILED IN THE ABOVE ENTITLED CASE. ALSO FILED IS THE ZONING COMMISSIONER'S FILE AND EXHIBITS.

S Sanders
Clerk's Office

Date: August 21, 1987

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/s OF SLADE AVENUE, 1125' NE OF REISTERSTOWN ROAD 3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT

CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

CG Doc. No. 44
Folio No. 126
File No. 87-CG-3256

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Thomas J. Bollinger, and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, John B. Howard, Esquire, and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204, Counsel for Petitioners; Paul L. Cordish, Esquire, and Glenn L. Weinberg, Esquire, Suite 400, 300 Water Street, Baltimore, MD 21202; Jeffrey Scherr, Esquire, Kramon & Graham, P.A., Sun Life Building, Charles Center, Baltimore, MD 21201, Counsel for Protestant, The Harlan Company; David O. Feldman, 107 Sudbrook Lane, Baltimore, MD 21208, Protestant; Allan Hirsh, 11 Slade Avenue, Baltimore, MD 21208, Protestant; Jeanne Wachter, 301 Reisterstown Road, Baltimore, MD 21208; and Phyllis Cole Friedman, Esquire, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Kathleen C. Weidenhammer
County Board of Appeals of Baltimore
County, Room 200, Courthouse, Towson
MD 21204

Case No. 87-48-A
David Cordish, et ux
2.

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to John B. Howard, Esquire, and Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21204, Counsel for Petitioners; Paul L. Cordish, Esquire, and Glenn L. Weinberg, Esquire, Suite 400, 300 Water Street, Baltimore MD 21202; Jeffrey Scherr, Esquire, Kramon & Graham, P.A., Sun Life Building, Charles Center, Baltimore, MD 21201, Counsel for Protestant, The Harlan Company; David O. Feldman, 107 Sudbrook Lane, Baltimore, MD 21208, Protestant; Allan Hirsh, 11 Slade Avenue, Baltimore, MD 21208, Protestant; Jeanne Wachter, 301 Reisterstown Road, Baltimore, MD 21208; and Phyllis Cole Friedman, Esquire, Room 223, Courthouse, Towson, MD 21204, People's Counsel for Baltimore County, on this 27th day of July, 1987.

Kathleen C. Weidenhammer
County Board of Appeals
of Baltimore County

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

July 27, 1987

John B. Howard, Esquire
COOK, HOWARD, DOWNES & TRACY
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21204

RE: Case No. 87-48-A
Paul Cordish, et ux

Dear Mr. Howard:

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Secretary

Enclosures

cc: Robert A. Hoffman, Esquire
Paul L. Cordish, Esquire
Glenn L. Weinberg, Esquire

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

July 27, 1987

Jeffrey Scherr, Esquire
KRAMON & GRAHAM, P.A.
Sun Life Building
Charles Center
Baltimore, MD 21201

RE: Case No. 87-48-A
Paul Cordish, et ux

Dear Mr. Scherr:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Mr. David O. Feldman
Mr. Allan Hirsh
Ms. Jeanne Wachter
Phyllis Cole Friedman, Esquire
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

file

bcc of Cert. of Notice: B. du Bois J. Hoswell

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July, 1987, a copy of the foregoing Order of Appeal was hand delivered to the County Board of Appeals of Baltimore County, Old Court, Second Floor, Towson, Maryland 21204, in accordance with Rule B2.c, Maryland Rules of Procedure.

ROBERT A. HOFFMAN

2

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD
THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

* IN THE CIRCUIT COURT
* FOR BALTIMORE COUNTY
* County Board of Appeals
* Case No. 87-48-A

* * * * * * *

ORDER FOR APPEAL

David S. Cordish, Appellant (Petitioner below), by John B. Howard, Robert A. Hoffman with Cook, Howard, Downes & Tracy, his attorneys, hereby notes an appeal from the denial of Appellant's variance petition by the County Board of Appeals of Baltimore County in the above-captioned case.

John B. Howard RH
JOHN B. HOWARD

ROBERT A. HOFFMAN
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorneys for the Apppellant

RECEIVED
COUNTY BOARD OF APPEALS
1987 JUL 23 P 4: 18

IN THE MATTER OF THE APPLICATION OF DAVID CORDISH, ET UX. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE N/S OF SLADE AVENUE, 1,125 FEET N/E OF REISTERSTOWN ROAD
THIRD ELECTION DISTRICT
SECOND COUNCILMANIC DISTRICT

* IN THE CIRCUIT COURT
* FOR BALTIMORE COUNTY
* County Board of Appeals
* Case No. 87-48-A

* * * * * * *

PETITION

David S. Cordish, Appellant, by John B. Howard, Robert A. Hoffman with Cook, Howard, Downes & Tracy, his attorneys, heretofore having filed an Order of Appeal pursuant to Rule B2, Maryland Rules of Procedure, files this Petition and states the following:

1. The action appealed from in this case is a decision of the County Board of Appeals of Baltimore County (the "Board") in Case No. 87-48-A, which denied the application of Appellant for a sideyard setback of two feet in lieu of the permitted 25 feet for two additions to Appellant's single-family dwelling; and

2. The Board committed error in that the weight of the evidence before the Board mandated a finding of practical difficulty or undue hardship upon the Appellant should the required 25 foot setback for the additions have to be met; and

RECEIVED
COUNTY BOARD OF APPEALS
1987 JUL 23 P 4: 18

3. The Board committed error for such other and further reasons as may be stated in Appellant's memorandum to be filed pursuant to Rule B12, Maryland Rules of Procedure.

Therefore, Appellant respectfully requests that the Order of the Board be reversed and the requested variance be granted, or that such other and further relief as deemed appropriate by this Court be granted.

John B. Howard RH
JOHN B. HOWARD

ROBERT A. HOFFMAN
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorneys for the Appellant

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July, 1987, a copy of the foregoing Petition was hand delivered to the County Board of Appeals of Baltimore County, Old Court, Second Floor, Towson, Maryland 21204, in accordance with Rule B2.e, Maryland Rules of Procedure.

ROBERT A. HOFFMAN

2

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

June 24, 1987

John B. Howard, Esquire
COOK, HOWARD, DOWNES & TRACY
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21204

RE: Case No. 87-48-A
David Cordish, et ux

Dear Mr. Howard:

Enclosed is a copy of the final Opinion and Order passed today by the County Board of Appeals in the subject case.

Sincerely,

Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Robert A. Hoffman, Esquire
Paul L. Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire
Mr. David O. Feldman
Mr. Allan Hirsh
Phyllis Cole Friedman, Esquire
Jeanne Wachter
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

May 20, 1987

NOTICE OF POSTPONEMENT and REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. 87-48-A — DAVID CORDISH, ET UX
N/s Slade Ave., 1125' NE of Reisterstown Rd.
VAR -side yard setback of 2 ft. in lieu of required 25 ft.
12/05/86 -D.Z.C. granted VAR.
3rd Election District
2nd Councilmanic District

Case Nr. CBA-86-157 (Halle Property) which had been assigned for hearing on Wednesday, June 3, has been POSTPONED and will be held sub curia; no reset date at this time.
Case No. 87-48-A (David Cordish, et ux) which had been assigned for hearing on Wednesday, June 3, has been POSTPONED at the request of Counsel for Appellant and has been

REASSIGNED FOR: TUESDAY, June 9, 1987 at 11:00 a.m.

cc: John B. Howard, Esquire — Counsel for Appellant
Robert A. Hoffman, Esquire — " " "
Cynthia Hahn, Esquire — " " "
David S. Cordish — Appellant
Paul Cordish, Esquire
Glenn L. Weinberg, Esquire
Jeffrey Scherr, Esquire — Counsel for Appellee
Paul Feldmeham, Esquire — " " "
The Harlan Co. of Maryland — Appellee
David O. Feldman
Allan Hirsh
D. S. Thaler & Assoc., Inc.
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — Office of Law
Patrick D. Hanley, Esquire — " " "
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Robert Covahey
David Fields
Edward McDonough
James A. Markle

Kathi Weidenhammer
Administrative Secretary

2/5/87 - Following were notified of hearing set for Thursday, June 11, 1987, at 10 a.m.:

Paul Cordish, Esq.
Glenn Weinberg, Esq.
Jeffrey Scherr, Esq.
John B. Howard, Esq.
Rob Hoffman
David O. Feldman
Allan Hirsh
Phyllis Friedman
Norman Gerber, James Hoswell
Arnold Jablon, Jean Jung, James Dyer, B. duBois
Jeanne Wachter

5/13/87 -REVISED notice sent to above (also included cc: listing for Case No. CBA-86-157 Halle Property) for consolidated hearing set for Wednesday, June 3, 1987 at 9:00 a.m.; included notation re early lunch recess (11:00 a.m. to 12:30 p.m.)

5/13/87 - Notice sent to above (and listing for Case No. CBA-86-157) re hearing for motions ONLY set for Wednesday, May 20, 1987 at 1:30 p.m.-NO TESTIMONY/EVIDENCE ON MERITS OF CASES.

5/20/87 - Hearing held on Motions only; Case No. CBA-86-157 to be held sub curia pending outcome of zoning issues; Case No. 87-48-A set for hearing; Above notified of hearing set for Tuesday, June 9 at 11:00 a.m.

DAVID CORDISH, et ux. * BEFORE THE BALTIMORE COUNTY

In Re: N/S Slade Avenue, 1125' NE of Reisterstown Road Third Election District * BOARD OF APPEALS

* Case No.: 87-48-A

* * * * * * *

RESPONSE TO MOTION TO DISMISS APPEAL
OF DECISION OF DEPUTY ZONING COMMISSIONER

Appellants David and Penelope Cordish, by John B. Howard and Robert A. Hoffman with Cook, Howard, Downes & Tracy, their attorneys, submit this response to the Motion to Dismiss filed by the Harlan Company of Maryland, Inc. ("Harlan").

-BACKGROUND-

In June of 1986, Mr. and Mrs. Cordish filed a petiton for zoning variance in order to obtain permission to construct a certain addition to the west side of their dwelling. Their contemplated addition, which had been designed by an architect, involved the construction of a guest bedroom and a bathhouse, both of which would be connected to the Cordish residence by glass-enclosed, covered passageways. A variance was necessary to proceed with the addition, as it required a two-foot side yard setback to the west of the dwelling in lieu of the required setback of twenty-five feet. The only relief sought by the variance petition was a change in the side yard setback to accommodate the planned addition. A

photocopy of the Cordish petition for variance is attached as Exhibit A and is incorporated by reference.

On September 10, 1986, Deputy Zoning Commissioner Jean M. Jung conducted a hearing on the petition for variance. The case presented by the Cordishes was straightforward. From the testimony of just four witnesses and from a viewing of the Cordish property, the Deputy Zoning Commissioner had no apparent difficulty in concluding that: "the need for a guest room and bathhouse, as well as the practical difficulty or unreasonable hardship of locating the structures elsewhere [on the Cordish property], has been proven." Opinion of Deputy Zoning Commissioner attached as Exhibit B and incorporated by reference). As a result, the Deputy Zoning Commissioner granted the Cordishes a zoning variance.

However, the September 10 hearing before the Deputy Zoning Commissioner and her subsequent written opinion involved a second critical issue. At the hearing, Harlan appeared as the developer of a highrise project planned for a parcel adjacent to the Cordish residence. While the developer did not oppose the proposed addition to the Cordish property at the hearing below, it nevertheless proceeded to litigate the separate issue of what effect the addition should be deemed to have on the

developer's project. Indeed, through the testimony of seven separate witnesses called on Harlan's behalf and through the admission of numerous exhibits, Harlan submitted evidence and then argued that the Cordish addition must not be permitted to affect the Residential Transition Area ("R.T.A.") applicable to the developer's property.

From the opening remarks of counsel for both parties, it was clear that the Cordishes objected to the developer's attempt to come in through the rear door to litigate the R.T.A. issue at their variance proceeding. Indeed, the developer itself had filed a separate petition for hearing on this issue, which had not been consolidated with the Cordish petition. A photocopy of the developer's separate action is attached as Exhibit C and is incorporated by reference. Nevertheless, over the objection of the Cordishes, the Deputy Zoning Commissioner received the developer's extensive testimony and numerous exhibits on this issue.

Had the Deputy Zoning Commissioner simply granted the Cordish variance and left the R.T.A. issue undecided, the Appellants would not have appealed. However, the Deputy Zoning Commissioner eventually went on in her written opinion to decide the R.T.A. issue. In particular, she ruled that while the Cordish addition

should be permitted, it should be considered an accessory structure connected to the Cordish residence, as opposed to an addition to the Cordish dwelling. Opinion at 3. The critical effect of this additional holding was to rule that the developer's R.T.A., which could only be affected by an addition to the Cordish dwelling, would be left unchanged by the addition.

In so ruling, the Deputy Zoning Commissioner committed at least two errors. First, she went beyond the scope of her authority to rule on the separate issue of the R.T.A. which was not before her (i.e., by classifying the nature of the Cordish addition as an accessory use). Second, she violated the well-established principle embodied in the zoning regulations that an addition connected to a main residence by covered passageways is not an accessory use but is rather an addition to the actual dwelling. See, B.C.Z.R. ("A structure connected to a principal building by a covered passageway or with one wall in common shall not be considered an accessory building.") (emphasis added).

Most importantly, the Deputy Zoning Commissioner's unorthodox ruling was actually a ruling in favor of the developer on the issue of the R.T.A. There was only one reason for the Deputy Zoning Commissioner to classify the Cordish addition as an accessory structure:

in order to protect the adjacent developer from the impact that an extension of the Cordish dwelling might have on the applicable R.T.A. This she gratuitously did, notwithstanding that the nature of the addition and its effect (if any) on the R.T.A. were the subject of a wholly separate action.

The decision to this extent is in direct conflict with the interest of the Cordishes. It is no secret that the Cordishes oppose the Harlan project. The developer is clearly overreaching by hiding a highrise development, appropriate in an RAE zone, behind variance requests in a DR-16 zone. It is the developer who has chosen this case as its battleground on the R.T.A. issue; the Cordishes are merely responding to an attack which has serious ramifications to their single family dwelling.

Faced with the Deputy Zoning Commissioner's adverse ruling that the Cordish addition constitutes an accessory use, the Cordishes filed the appeal in this case. In noting their appeal, they carefully stated the sole issue raised: "The reason for this appeal is that portion of the decision appealed from which denies the request for a zoning variance to permit a side yard set back of two feet for a dwelling." A photocopy of the notice of appeal is attached as Exhibit D and is incorporated by reference.

-ARGUMENT-

The developer has moved to dismiss this appeal for three apparent reasons: (1) it claims that the appeal is actually intended to block the highrise development; (2) it claims that the Cordishes cannot appeal a ruling which was purportedly in their favor; and (3) it claims that the Cordish appeal is inconsistent with the homeowners' prior action and that it is therefore subject to the doctrine of "judicial estoppel."

The first of these arguments involves numerous questions of fact improperly supported by references to testimony below, which is irrelevant to the de novo proceedings before this board. See Baltimore County Code, §603. The third argument presents a concept selectively applied in judicial proceedings, which is unsupported by any Maryland authority. See Harlan's Memorandum in Support of Motion to Dismiss at 14-18. Indeed, it is ironic that the developer itself made the R.T.A. an issue in this litigation, yet it now argues that the Appellants should not be able to appeal from the Deputy Zoning Commissioner's adverse determination related to this very issue. Finally, the second argument appears to be one of standing, (i.e., that the Cordishes lack standing because of the "favorable" ruling).

What all three arguments overlook is the critical fact that the Cordishes are "aggrieved" parties by virtue of the Deputy Zoning Commissioner's unorthodox ruling, and that they are thus entitled to pursue this appeal, as of right. See, B.C.Z.R. 500.10 ("Any person... feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the [County Board of Appeals of Baltimore County]") (Emphasis added).

THIS APPEAL IS PROPER
SINCE THE CORDISHES ARE AGGRIEVED PARTIES

It is axiomatic that a party must be "aggrieved" in order to pursue an appeal to this Board from an ajudication by the Zoning Commissioner. B.C.Z.R. 500.10; Baltimore County Code, Sec. 22-32. In zoning cases, an aggrieved party is simply defined as one "whose personal or property rights are adversely affected" by the decision from which an appeal was taken. See, e.g., Byrniarski v. Montgomery County Board of Appeals, 247 Md. 137, 143-48 (1967); DuBay v. Crane, 240 Md. 180, 185 (1965); Marcus v. Montgomery County Council, 235 Md. 535 (1964). In other words, an appellant will be considered aggrieved if he can demonstrate that his personal or property rights have been adversely affected by an administrative ruling.

In this case, the requisite aggrievement is apparent. The Deputy Zoning Commissioner went beyond the scope of the Cordish petition for variance to rule that

the homeowners' proposed addition will constitute an accessory structure and not a part of the Cordish dwelling. In so ruling, she effectively ruled that the R.T.A. applicable to the adjacent highrise project would be measured from the original Cordish residence, and not from the Cordish addition.

Where, as in this instance, such a determination adversely affects the personal and property rights of the Cordishes, the adjacent homeowners should be able to argue that the R.T.A. applicable to the highrise development should be measured from the point of their addition closest to the highrise project. The developer's Motion to Dismiss is a blatant attempt to foreclose this right.

Had the Deputy Zoning Commissioner confined her ruling strictly to the grant of the variance requested below, the Cordishes would agree that they would have no ground for appeal. However, once the Deputy Zoning Commissioner went beyond the granting or denial of the variance, to determine that the Cordish addition would only be an accessory structure which could have no impact on the adjacent developer's R.T.A., she went on to rule adversely to the rights of Mr. and Mrs. Cordish. Consequently, the Cordishes are aggrieved parties who have properly asserted this appeal from that portion of the Deputy Zoning Commissioner's ruling.