

125
87-228-SPH
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 and access through commercial parking in a residential zone (DR 3.5) pursuant to Section 409.4 B.C.Z.R. in phase one and two. Also to permit access for parking and loading through a D.R. 10.5 zone in phase three.

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

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

Legal Owner(s):

Woodholme Properties Limited Partnership

(Type or Print Name)

Signature Steven S. Koren, Trustee

(Type or Print Name)

Signature

1777 Reisterstown Road, Suite 275

Commerce East

Address

Baltimore, MD 21208

City and State

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

D.S. Thaler & Associates, Inc. 484-4100

Name

11 Warren Road, Baltimore, MD 21208

Address

Phone No.

ORDERED BY The Zoning Commissioner of Baltimore County, this 27th day

of October, 1986, that the subject matter of this petition be advertised, as

required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-

out 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 31st day of December, 1986, at 10:30 o'clock

A.M.

Cell Jablon
Zoning Commissioner of Baltimore County.

(over)

DESCRIPTION TO ACCOMPANY
PLAT OF PETITION FOR SPECIAL HEARING
BM PARKING IN A DR 10.5 ZONE
AND
INGRESS AND EGRESS THROUGH A DR 10.5 ZONE
TO A USE IN A BM ZONE
FESTIVAL AT WOODHOLME
BALTIMORE COUNTY, MARYLAND
THIRD ELECTION DISTRICT

Beginning at a point on the westerly line of Greene Tree Road (proposed) at its intersection with the northerly line of Hooks Lane; thence from said point North 04° 35' 77" East, 13.77 feet; thence by the arc of a circle curving to the right, having a radius of 700 feet a distance 107.30 feet to the true place of beginning; thence from said point of beginning the following five (5) courses and distances:

1. By the arc of a circle curving to the right, having a radius of 700 feet a distance of 642.59 feet;
2. By the arc of a circle curving to the left, having a radius of 640 feet a distance of 207.89 feet;
3. South 17° 11' 08" West, 425.21 feet;
4. By the arc of a circle curving to the left, having a radius of 395.00 feet a distance of 397.47 feet;
5. South 43° 13' 42" 68.18 feet;

Containing 0.559 acres, more or less. Being a portion of a parcel described by a deed dated January 7, 1986 and recorded among the Land Records of Baltimore County, Maryland in Liber 7071, folio 001, Third Election District.

recommence description
1987

OFFICE COPY

IN THE MATTER OF THE APPLICATION OF WOODHOLME PROPERTIES LIMITED PARTNERSHIP : COUNTY BOARD OF APPEALS OF : WEST SIDE OF GREENTREE RD., : OF : 1170' NORTH OF THE CENTER LINE : BALTIMORE COUNTY : OF HOOKS LANE AND 125' NORTH : : No. 87-228-SPH : OF THE CENTER LINE OF HOOKS LANE, : : 3rd DISTRICT

OPINION

This matter comes before the Board following a decision by the Zoning Commissioner that has been appealed by the Petitioner, the Protestants and the People's Counsel. In open hearing, the Petitioner dismissed its appeal to this Board. Petitioner provided a motion that People's Counsel be dismissed from this action. The Board denied this motion, however, following a discussion on the record on the issue of estoppel, People's Counsel withdrew from the case. On that point, the Board will note that the responsibility of People's Counsel is to review issues on a case by case basis and use their discretion in determining which issues on which cases they should present to this Board. No decision by People's Counsel on prior issues on other cases is viewed by this Board in any way as a waiver of their right to present such an issue on a subsequent case. Following the Board's statement on this point in open hearing and our holding that People's Counsel's rights in this regard are preserved, People's Counsel withdrew from this case for reasons which the record will clearly reflect.

The Petitioner requests that this Board grant a use permit for business parking in a residential zone and also to permit access for commercial vehicles to park and load in a commercial zone that requires such vehicles to traverse a residential zone. These requests are specifically noted in Petitioner's Exhibit No. 4.

The subject property is located off Hooks Lane at Reisterstown Road and is being proposed for development of office and commercial use.

APPEAL

Petition for Special Hearing
4/5 of Greentree Road,
1170' N of the c/l of Hooks Lane
and 125' N of the c/l of Hooks Lane
3rd Election District - 2nd Councilmanic District
Woodholme Properties Limited Partnership - Petitioner
Case No. 87-228-SPH

- Petition for Special Hearing
- Description of Property (2)
- 1st Amended CRG Plat of Phase 1 & 2 revised 09/04/86
- Certificate of Posting
- Certificates of Publication
- Zoning Plans Advisory Committee Comments
- Director of Planning & Zoning Comments
- Entry of Appearance of People's Counsel
- Zoning Commissioner's Order dated 01/29/87
- Petitioner's Exhibit 1 - Plat to Accompany Petition revised 10/27/86
- Petitioner's Exhibit 2 - Letter of support from Gaylord Brooks Realty Co. dat 12/05/86
- Petitioner's Exhibit 3 - Letter of support from Commercecentre dated 12/04/86
- Order of Appeal received 02/10/87

Steven Koren, Trustee
Woodholme Properties Ltd. Partnership Petitioner
1777 Reisterstown Rd., St. 275
Commercecentre East
Balto., MD. 21208

Benjamin Bronstein, Esquire Attorney for Petitioner
Suite 200
102 W. Pennsylvania Avenue
Towson, Maryland 21204

Request Notification: People's Counsel
Norman E. Gerber, Director of Planning
James Hoswell, Office of Planning & Zoning
Arnold Jablon, Zoning Commissioner
Jean M. H. Jung, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
Margaret E. DuBois, Docket Clerk

D. S. Thaler & Assoc., Inc.
11 Warren Rd. (21208)

Geo. W. Liebmann, Esq. Counsel for Protestants,
8 W. Hamilton St. (21201) Pikeville Comm. Growth Corp. / JJJJ

George E. Weber, Jr.
18 Castleton Ave.
Pikesville, MD. 21203

Jack Hillman
3411 Deep Willow Ave
21228

Woodholme Properties Ltd. Partnership - Case No. 87-228-SPH 2.

That portion of office use is confined to property zoned O-2. The commercial development is confined within a BM zone. Petitioner requests that the northernmost section of their property, which is presently zoned DR 3.5 and is just under three (3) acres, be used to construct 161 parking spaces. Though the office that would be serviced by this parking has as many spaces as is required by the Zoning Regulations without this additional parcel, it was the testimony of the Petitioner that the additional spaces are necessary to adequately service the office need that will be generated by the construction of the office building.

Petitioner provided David S. Thaler, an expert engineer, who described the Baltimore County requirements for Greentree Road, and in particular the road design that was dictated by the configuration of its intersection with Hooks Lane. Also testifying on behalf of Petitioner was Wesley Guckert, an expert traffic engineer. In his opinion, he stated that the additional parking requested in the DR zone would not be detrimental to the flow or level of service for the roads and intersections affected. It was both his and Mr. Thaler's opinion that the standard prescribed in Section 502.1 of the Baltimore County Zoning Regulations (BCZR) would be satisfied if parking in this area were permitted.

The Petitioner's second request is for permission to use a narrow strip of land that is adjacent to the west side of Greentree Road but east of the commercial development to permit access to commercial vehicles to serve the rear of the commercial building. This small parcel of land is zoned DR 10.5. It is necessary that this land be crossed in order to serve the rear of the commercial building under the present development configuration. It was Mr. Thaler's testimony that this strip could not be used for residential purposes and that it was created when the County required the configuration of the street to be at an angle other than that which was presumed when the

Woodholme Properties Ltd. Partnership - Case No. 87-228-SPH 3.

zoning reclassification was created.

The Board is of the opinion that the request for a use permit under Section 409.4, in effect, requires us to apply the standard that would be necessary for a special exception. It is the opinion of this Board that the use of this request would not be detrimental to this neighborhood. Petitioner's witnesses have satisfied this Board that the standards of 502.1 have and can be met and that this use would not adversely affect the public welfare.

Protestants did not satisfy the Board that use of this property as requested would have an adverse effect above and beyond that associated with a special exception use irrespective of its location within the zone. Schultz v Pritts, 432 A. 2d 1319 (1981). With respect to the residential strip of land that must be crossed in order to provide access to the rear of the commercial building, this Board believes that such a parcel is incapable of use residentially, will not be used for parking or service of the commercial use and should be permitted as an exception of the general rule prohibiting commercial use of residential property. It is therefore the position of this Board that the use permit be provided to Petitioner in accordance with Petitioner's Exhibit No. 4, so as to allow commercial parking in a residential zone and access to commercial property through a residential zone, subject to the restrictions stated below.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 29th day of April, 1987, by the County Board of Appeals, ORDERED that a use permit for business parking in a residential zone and to permit commercial access for parking, loading and servicing across a residential zone, be APPROVED, subject to the following restrictions:

Woodholme Properties Ltd. Partnership - Case No. 87-228-SPH 4.

1. No vehicles shall be permitted to park or load within the DR 10.5 zone and property west of Greentree Rd. and east of the proposed commercial development, nor shall any servicing of the commercial structure take place in the residential zone.
 2. No super market or other commercial establishment of a similar size and whose primary product is food, shall be permitted to occupy the commercial development of this project.
 3. No emergency medical office or 24 hour medical service shall be permitted in the office portion of the proposed development.
 4. This Opinion shall be recorded among the Land Records of Baltimore County at Petitioner's expense.
- Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
William T. Hackett, Chairman
Harry E. Buchmeister, Jr.

IN THE MATTER OF THE APPLICATION OF WOODHOLME PROPERTIES LIMITED PARTNERSHIP : COUNTY BOARD OF APPEALS OF : WEST SIDE OF GREENTREE ROAD, : OF : 1170' NORTH OF THE CENTER LINE : BALTIMORE COUNTY : OF HOOKS LANE AND 125' NORTH OF THE : : Case No. 87-228-SPH : CENTER LINE OF HOOKS LANE, : : 3rd ELECTION DISTRICT

AMENDED ORDER
The Board has reviewed the evidence and the Opinion and Order in this matter dated April 29, 1987 and finds that we have mistakenly excluded the possibility of the operation of a restaurant in our Opinion and Order.

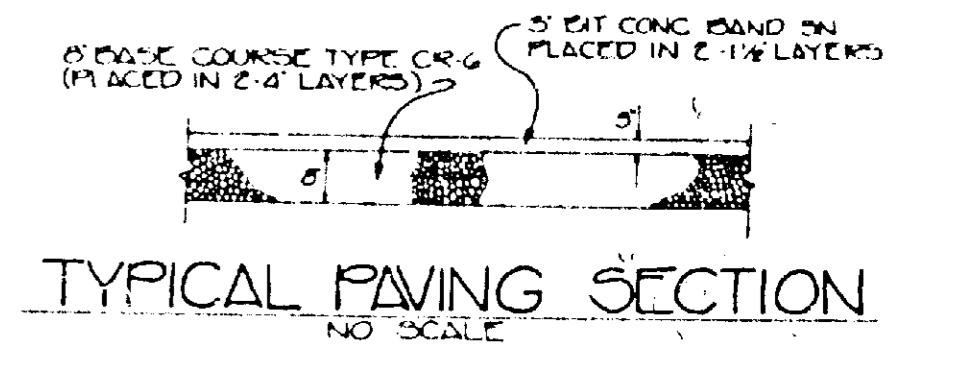
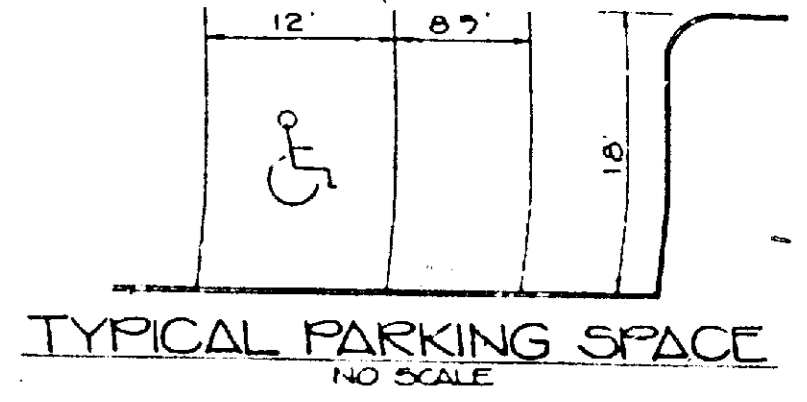
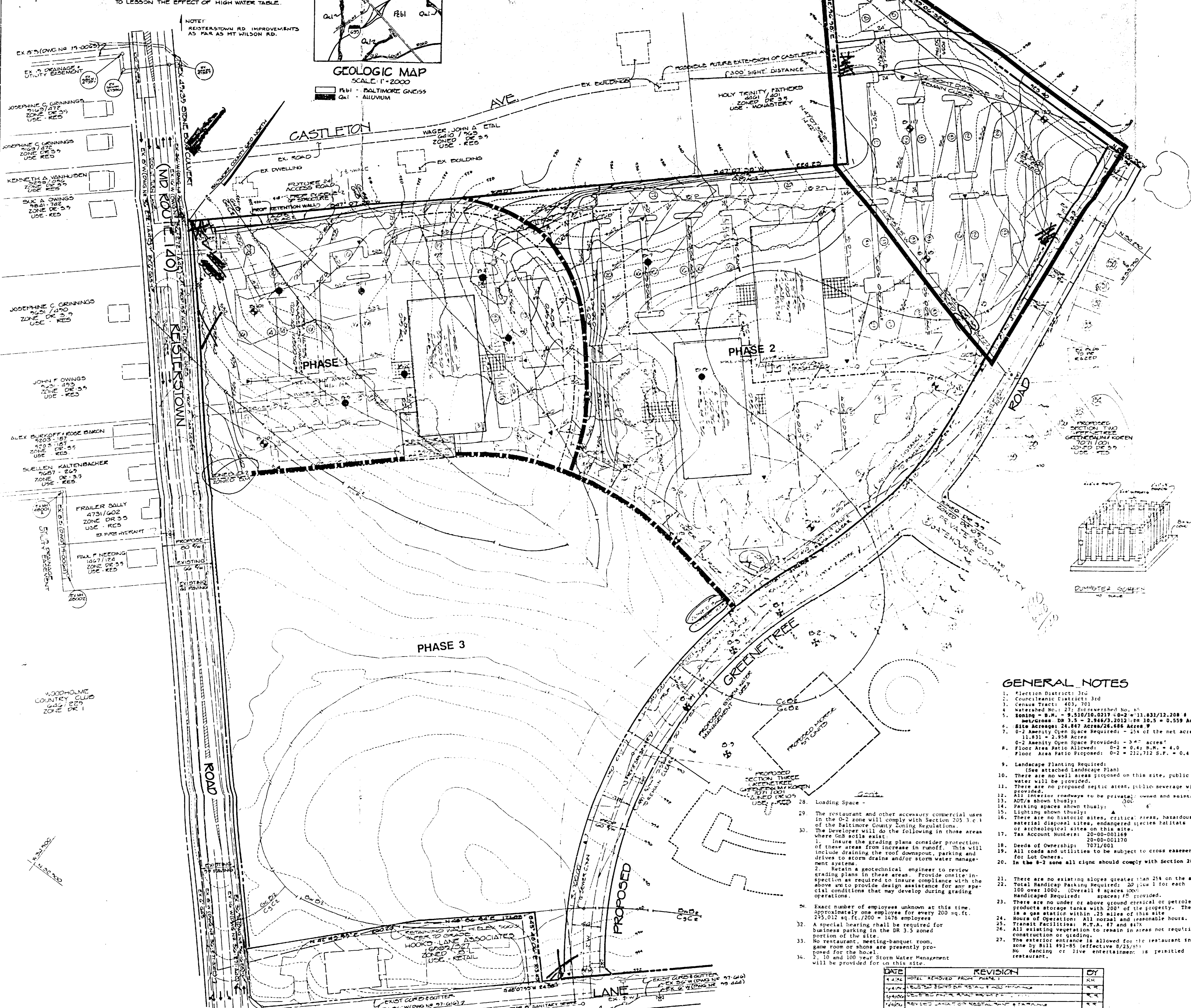
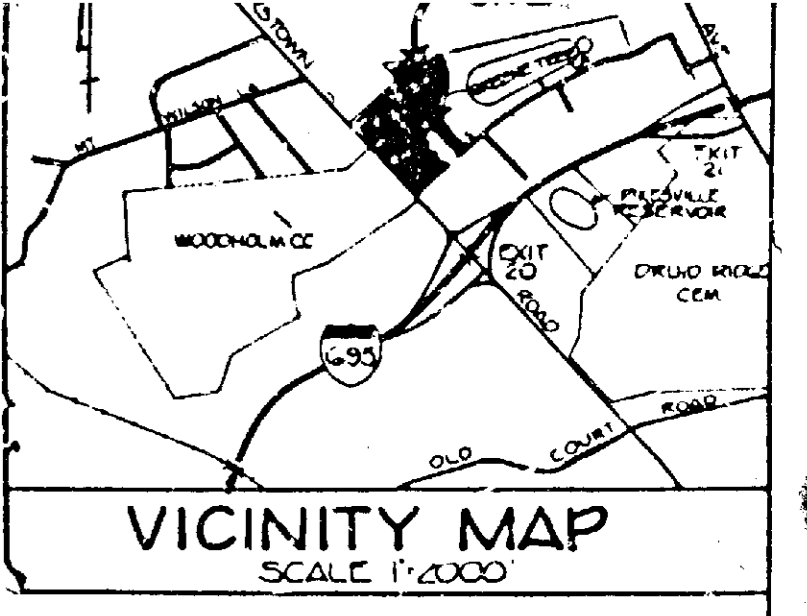
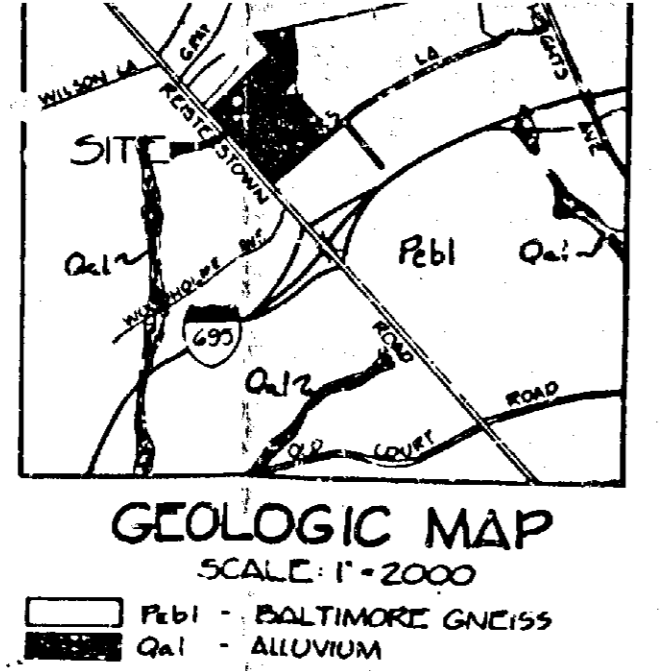
Under Rule 10, Rules of Practice and Procedure of County Board of Appeals, Appendix C, Baltimore County Code, the Board is exercising its revisory power because the Order incorrectly excluded the possibility of a restaurant, and this was not the intention of the Board upon consideration of the evidence presented.

ORDER

It is therefore this 29th day of May, 1987 by the County Board of Appeals ORDERED that restriction #2 in the above Order be changed to read:
2. No super market or other commercial establishment of a similar size and whose primary product is food, excluding a restaurant, shall be permitted to occupy the commercial development of this project.
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, Chairman
Harry E. Buchmeister, Jr.

C.W. 1	1974	C	MODERATELY SOFT	SILT	BRANDY WINE - LOAM
C.W. 2	1974	C	MODERATELY SOFT	CLAY	GRANULY SILT LOAM
C.W. 3	1974	C	SEVERE CLAY	Moderate clay	GLENDA - LOAM



PARKING DATA

USE	AREA	PARKING REQ.	PARKING TRAV.
RESTAURANT	1,500 SQ. FT.	100	100
OFFICE BLDG.	40,000 SQ. FT.	1,000	1,000
OFFICE BLDG.	40,000 SQ. FT.	1,000	1,000
OFFICE BLDG.	40,000 SQ. FT.	1,000	1,000
OFFICE BLDG.	40,000 SQ. FT.	1,000	1,000
OFFICE BLDG.	40,000 SQ. FT.	1,000	1,000
OFFICE BLDG.	40,000 SQ. FT.	1,000	1,000
OFFICE BLDG.	40,000 SQ. FT.	1,000	1,000
OFFICE BLDG.	40,000 SQ. FT.	1,000	1,000
OFFICE BLDG.	40,000 SQ. FT.	1,000	1,000

409.4 - Business or Industrial Parking in Residential Zones - When applicant the zoning Commission may issue a map permit for the use of land in residential zones for parking areas to meet the requirements of the foregoing schedule, subject to the following conditions: If granted, such permit shall be conditioned as follows, in lieu of the provisions in Section 409.2 (b), 18 C. Z. R., 1955, Resolution, November 21, 1956:

- The land to be used must be adjacent to a street or alley or street from the business or industry created. 18 C. Z. R., 1955, Resolution, November 21, 1956.
- Only passenger vehicles, excluding taxis, may use the parking area. 18 C. Z. R., 1955, Resolution, November 21, 1956.
- No loading, unloading, or any use other than parking shall be permitted. 18 C. Z. R., 1955, Resolution, November 21, 1956.
- Lighting shall be regulated in accordance with the provisions of the zoning ordinance, and shall be subject to the provisions of 18 C. Z. R., 1955, Resolution, November 21, 1956.
- Screening by a wall, fence, planting and/or other means shall be required in residential zones. 18 C. Z. R., 1955, Resolution, November 21, 1956.
- A permit for parking, properly placed, shall be required. 18 C. Z. R., 1955, Paragraph 409.4 (a) Resolution, November 21, 1956.
- A satisfactory plan showing parking arrangement and vehicular access must be provided. 18 C. Z. R., 1955, Resolution, November 21, 1956.
- Method and time of operation, provision for maintenance, and operating hours of use shall be specified, and regulated as required. 18 C. Z. R., 1955, Paragraph 409.4 (a) Resolution, November 21, 1956.

NO RTA'S GENERATED FROM OFF SITE DWELLINGS OR PARKING LOTS FROM THIS PROPERTY

LEGEND

- PROPOSED BUILDING
- SWM RETENTION CHAMBER
- 0-2 AMENITY OPEN SPACE
- TEST PIT - DEC 9 1985
- TEST PIT - FEB 15 1985
- TEST PIT - AUG 8 1985
- INTERIOR PROPERTY LINE
- PHASE DELIMITATION

GENERAL NOTES

- CONCRETE
- ALL PARKING SPACES TO BE 8' X 12'
- STREET LIGHTS SHOWN THUSLY
- STREET TREES SHOWN THUSLY
- ALL EXISTING MINOR TREES SHOWN THUSLY
- PARKING REQUIRED IN 0-2 ZONE IS 20 PER 1000 SQ. FT.
- PARKING PROVIDED IN 0-2 ZONE IS 20 PER 1000 SQ. FT.
- TOTAL: 100

GENERAL NOTES

- Election District: 3rd
- Census Tracts: 403, 701
- Waterfront No.: 27; Subwatershed No. 85
- Banning - B.M. - 9,516/10,0217 - 0-2 - 11,031/12,208 - 8
- Neighborhoods: DR 3.5 - 2,846/3,2012 - DR 10.5 - 0,559 AC./1,255A
- Site Area: 24.847 Acres/26,686 Acres
- 0-2 Amenity Open Space Required: 25% of the net acreage of 11,031 = 2,858 Acres
- 0-2 Amenity Open Space Provided: 3,477 acres
- Floor Area Ratio Allowed: 0-2 = 0.4; R.M. = 4.0
- Floor Area Ratio Proposed: 0-2 = 212,712 S.F. = 0.4
- Landscape Planting Required: (See attached Landscape Plan)
- There are no well areas proposed on this site, public water will be provided.
- There are no proposed septic areas, public sewerage will be provided.
- All interior roadways to be privately owned and maintained.
- ADT's shown thusly: 301
- Parking spaces shown thusly: 6
- Lighting shown thusly: A
- There are no historic sites, critical areas, hazardous material disposal sites, endangered species habitat or archeological sites on this site.
- Tax Account Numbers: 20-00-001169 20-00-001170
- Deeds of Ownership: 7071/001
- All roads and utilities to be subject to cross easements for lot owners.
- In the 0-2 zone all signs should comply with Section 205.3.C.2.

- There are no existing slopes greater than 25% on the site.
- Total Handicap Parking Required: 20 plus 1 for each 100 over 1000. (Overall 4 spaces) Handicap Required: 25 spaces; 15 provided.
- There are no under or above ground chemical or petroleum products storage tanks with 200' of the property. There is a gas station within .25 miles of this site.
- Hours of Operation: All normal and reasonable hours.
- Transfer Facilities: M.T.A. 47 and 447
- All existing vegetation to remain in areas not requiring construction or grading.
- The exterior entrance is allowed for the restaurant in the 0-2 zone by Bill 891-85 (effective 8/25/85)
- No dancing or live entertainment is permitted in the restaurant.

DATE	REVISION	BY
4/1/86	HOTEL REMOVED FROM PHASE 1	SK
4/1/86	REVISED SIGNAGE FOR PHASE 1	SK
4/1/86	REVISED SIGNAGE FOR PHASE 1	SK
4/1/86	REVISED SIGNAGE FOR PHASE 1	SK
4/1/86	REVISED SIGNAGE FOR PHASE 1	SK
4/1/86	REVISED SIGNAGE FOR PHASE 1	SK
4/1/86	REVISED SIGNAGE FOR PHASE 1	SK
4/1/86	REVISED SIGNAGE FOR PHASE 1	SK
4/1/86	REVISED SIGNAGE FOR PHASE 1	SK
4/1/86	REVISED SIGNAGE FOR PHASE 1	SK

CIVIL ENGINEERS, SURVEYORS & LANDSCAPE ARCHITECTS
D.S. THALER & ASSOCIATES INC.
11 WARREN ROAD
BALTIMORE, MD 21208
484-4100

OWNER / DEVELOPER
WOODHOLME PROPERTIES LIMITED PARTNERSHIP
STEVEN S. KOREN, TRUSTEE
COMMERCIAL EAST SUITE 279
1777 REGISTERSTOWN ROAD
BALTIMORE, MARYLAND 21208
301-463-8400

1ST AMENDED CRG PHASE 1 & 2
PLAT TO ACCOMPANY PETITION FOR
SPECIAL HEARING
FESTIVAL AT WOODHOLME
3RD ELECTION DISTRICT
SCALE 1" = 80'
BALTIMORE, MARYLAND
AUGUST 11, 1986
OFFICE C

IN RE: PETITION SPECIAL HEARING * BEFORE THE
 W/S of Greentree Road, 1,170' * ZONING COMMISSIONER
 N of the centerline of Hooks * OF BALTIMORE COUNTY
 Lane and 125' N of the center-
 line of Hooks Lane - *
 3rd Election District * Case No. 87-228-SPH
 Woodholme Properties Limited *
 Partnership, *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a use permit for business parking in a residential zone and to permit commercial access for parking and loading through a residential zone, as more particularly described on Petitioner's Exhibit 1.

The Petitioner, by Steven S. Koren, Trustee, appeared and was represented by Counsel. Testifying on behalf of the Petitioner were Dirk Mos's, who oversees commercial development for Trammell-Crowe, the engineer, and David Thaler, a registered civil engineer. Pikesville Community Growth Corporation, Pikesville Chamber of Commerce, Hooks Lane Improvement Association, Balston Improvement Association, and Long Meadow Association all had representatives appear in opposition and were represented by Counsel.

Testimony indicated that the subject property, zoned B.M. and D.R.3.5 and located off Hooks Lane, is proposed to be developed for commercial and office use in the B.M. portion. See Petitioner's Exhibit 1. The Petitioner proposes to construct 161 parking spaces in the D.R.3.5 portion, which contains approximately 2 1/4 acres and is located to the northeast of the B.M.-zoned property. Although more than what is required by law, this parking would enable the Petitioner to provide the parking it views as necessary for the proposed uses the spaces would serve. Primary access would be from Reisterstown Road, along the north property line to the proposed parking lot in the

rear, and secondary access would be from the proposed Greentree Road, leading from Hooks Lane off Reisterstown Road. Mr. Mosis concurred, based on a marketing standpoint.

Mr. Guckert testified that, in his opinion, the additional parking provided in the residential zone would not create a hazard. He estimated that approximately 95% of the vehicles using these spaces would be passenger and only about 5% of the traffic would be commercial. He further testified that the 161 spaces would create approximately 12 vehicle trips per peak hour, which is projected to be from 5:00 p.m. to 6:00 p.m. In his opinion, this is not significant, and there would be no adverse impact. He believes that the conditions precedent as delineated in Section 502.1, Baltimore County Zoning Regulations (BCZR), would be satisfied if the parking were permitted.

Greentree Road, required by Baltimore County to be constructed by the developer and dedicated to the County, would be four or five lanes, i.e., two in each direction with a turn lane. Greentree Road would terminate at the rear of the property, and any future extensions would be the responsibility of the property owners for whom the extended road would serve.

In addition to the parking lot, the Petitioner requests permission to use a narrow strip of land, zoned D.R.10.5, located between the proposed Greentree Road and a proposed retail building for the purpose of allowing a commercial drive to serve the retail use. Mr. Thaler testified that this D.R.10.5 strip was created when the geometry of the land and County requirements imposed the placement of Greentree Road, which could not follow along the existing zone boundary line and thereby created the slight zone deviation. He also testified that the strip could not be used for residential purpose and would not be useful for any other purpose.

ORDER RECORDED FOR FILING
 Date 2/29/87
 By [Signature]

The Protestants voiced concern about the potential traffic congestion; however, there was a more deep-seated resentment over the way they perceive the community was treated by the developer when the current zoning was created, and they feel that promises made to them have not been kept. The former issue is a valid concern and was appropriately raised; the latter, equally as valid and sincere, is one that cannot be considered in this hearing, but perhaps more appropriately, would be the subject of civil action.

The Petitioner requests relief from Section 409.4, pursuant to Sections 500.7 and 502.1, BCZR, for parking on residentially-zoned property and to use the strip of residentially-zoned property for commercial access.

It is clear that the use of the terms "use permit" and "special exception" are intended to be interchangeable and that the import of either is the same. See Hofmeister v. Frank Realty Co., 373 A.2d (1977). In reality, the request for a use permit under Section 409.4 is a request for a special exception. Therefore, in order for a use permit to be approved, the property owner must satisfy the burden of proof required by Section 502.1.

It is also clear that the BCZR permits the requested off-street parking in a D.R. zone by special permission. It is equally clear that the proposed use would not be detrimental to the primary uses in its vicinity. Therefore, it must be determined whether the conditions as delineated in Section 502.1 are satisfied by the Petitioner.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions, as more fully described below.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioner has shown that

ORDER RECORDED FOR FILING
 Date 2/29/87
 By [Signature]

the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the BCZR.

Regarding access via the residential strip, generally, the use of land in a residential zone as a means of ingress and egress to land or buildings in a commercial zone constitutes a violation of zoning restrictions in a residential district. Leimbach Const. Co. vs. Baltimore, 264 A.2d 109 (1970); Yokley, 3 Zoning Law & Practice, Section 28-21.1. Exceptions to the general rule have been made when the proposed route was already classified as a public road by force of statute or when the residential parcel in issue is too small or is subject to restrictions which prevent a residential use. Lapenas v. Zoning Bd. of Appeals, 226 NE.2d 361 (Mass., 1967). The strip referred to here will be created by the establishment of a public road. It definitely is too small for residential use and can be of no use other than what is requested here.

The strip of land through which access will be provided satisfies the exceptions to the general rule and is, therefore, approved for access. Based on the facts and circumstances of this case, the use of the strip in question

ORDER RECORDED FOR FILING
 Date 2/29/87
 By [Signature]

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
 W/S of Greentree Rd., 1,170' :
 N of C/L of Hooks Lane & 125' : OF BALTIMORE COUNTY
 N of C/L of Hooks Lane :
 3rd District :
 WOODHOLME PROPERTIES LIMITED : Case No. 87-228-SPH
 PARTNERSHIP, Petitioner :

NOTICE OF APPEAL

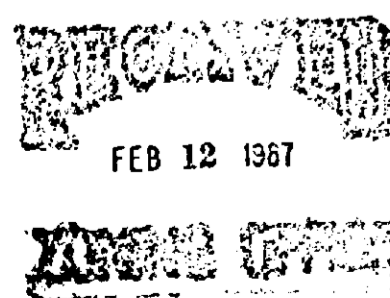
Please note an appeal from your decision in the above-captioned matter, under date of January 29, 1987, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

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

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

I HEREBY CERTIFY that on this 12th day of February, 1987, a copy of the foregoing Notice of Appeal was mailed to Benjamin Bronstein, Esquire, Suite 200, 102 W. Pennsylvania Ave., Towson, MD 21204; and George Liebman, Esquire, 8 W. Hamilton St., Baltimore, MD 21201.

Peter Max Zimmerman
 Peter Max Zimmerman



RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
 W/S of Green Tree Rd., 1170' :
 N of C/L of Hooks La. & 125' : OF BALTIMORE COUNTY
 N of C/L of Hooks La., 3rd Dist. :
 WOODHOLME PROPERTIES LIMITED : Case No. 87-228-SPH
 PARTNERSHIP, Petitioner :

ENTRY OF APPEARANCE

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

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

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

I HEREBY CERTIFY that on this 12th day of November, 1986, a copy of the foregoing Entry of Appearance was mailed to Benjamin Bronstein, Esquire, Suite 200, 102 W. Pennsylvania Ave., Towson, MD 21204, Attorney for Petitioner; and D. S. Thaler & Assoc., Inc., 11 Warren Rd., Baltimore, MD 21208, which requested notification.

Peter Max Zimmerman
 Peter Max Zimmerman

DESCRIPTION TO ACCOMPANY
 PLAT FOR PETITION FOR SPECIAL HEARING

0-2 PARKING IN A DR 3.5 ZONE

FESTIVAL AT WOODHOLME
 BALTIMORE COUNTY, MARYLAND
 THIRD ELECTION DISTRICT

Beginning at a point in the center of Greene Tree Road, 1170 feet, more or less, north of the centerline intersection of Greene Tree Road and Hooks Lane. Thence 36 feet in a westerly direction to the westerly edge of the right-of-way of Greene Tree Road, thence the following five (5) courses and distances:

1. North 75°15'23" West, 367.07 feet;
2. North 47°07'38" East, 14.42 feet;
3. North 42°56'58" West, 342.51 feet;
4. North 89°06'32" East, 523.40 feet;
5. South 08°32'47" East, 266.12 feet.

Containing 2.95 acres, more or less. Being a portion of a parcel described by a deed dated January 7, 1986 and recorded among the Land Records of Baltimore County, Maryland in Liber 7071, folio 001, Third Election District.

is permissible. See Beckmann v. Teakneck Tr., 79 A.2d 301; Hero Fuel Oil Co. v. M. of Adjustment, 68 A.2d 412. See also County Attorney Letters of Advice, dated September 19 and 20, 1979 and January 17, 1980.

Pursuant to the advertisement, posting of property, and public hearing held, and it appearing that by reason of the requirements of Section 502.1 having been met and the health, safety, and general welfare of the community not being adversely affected, the relief prayed for should be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 27th day of January, 1987, that a use permit for business parking in a residential zone and to permit commercial access for parking and loading through a residential zone be approved and, as such, the Petition for Special Hearing is hereby GRANTED, from and after the date of this Order, subject, however, to the following restriction which is a condition precedent to the relief granted:

1. No vehicle will be permitted to park, load, or unload within the D.R.10.5-zoned property used for access, which is the subject of this hearing.

AJ 81
 Benjamin Bronstein, Esquire
 George Liebman, Esquire
 People's Counsel

[Signature]
 Zoning Commissioner of
 Baltimore County

ORDER RECORDED FOR FILING
 Date 2/29/87
 By [Signature]

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 3rd Date of Posting 11-21-86
 Posted for: Special Hearing
 Petitioner: Woodholme Properties Limited Partnership
 Location of property: W/S of Green Tree Rd., 1170' N of the c/l of Hooks Ln. and 125' N of the c/l of Hooks Ln.
 Location of Signs: Large on east side of Plantation Rd. approx 250' north of Sutherland Ave. and large on north side of Hooks Ln. 500' east of Plantation Road.
 Remarks: 500' east of Plantation Road.
 Posted by: A. J. Jablon Signature Date of return: 12-5-86
 Number of Signs: 2

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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

December 3, 1986

Benjamin Bronstein, Esquire
Suite 200, 102 West Pennsylvania
Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
W/S of Green Tree Rd., 1170' N of the c/l
of Hooks Ln. and 125' N of the c/l of
3rd Election District
Woodholme Properties Limited Partnership
Case No. 87-228-SPH

Dear Mr. Bronstein:

This is to advise you that \$81.50 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.

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

No. 025740

DATE: 11/21/86 ACCOUNT: 025740
 2 SIGNS & POSTS AMOUNT \$ 81.50
 RECEIVED FROM: Benjamin Bronstein, Esq., Suite 200, Alex Brown Bldg., 102 W. Pennsylvania Ave., Towson, Md. 21204
 FOR: ADVERTISING & POSTING COSTS RE CASE 87-228-SPH
 VALIDATION OR SIGNATURE OF CASHIER

LAW OFFICES OF
GEORGE W. LIEBMAN, P.A.
8 WEST HAMILTON STREET
BALTIMORE, MARYLAND 21201
(300) 782-8887

February 13, 1987

Mr. Arnold Jablon
Zoning Commissioner
for Baltimore County
County Office Building
Towson, MD 21204

Re: Woodholme Properties
Limited Partnership
Case No. 87-228-SPH

Dear Mr. Jablon:

Enclosed herewith is an Order of Appeal together with my check in the amount of \$105.00 to cover the costs of filing the appeal and signs.

Very truly yours,

George W. Liebmann
George W. Liebmann

pm

Enclosure

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

No. 33080

DATE: 2/17/87 ACCOUNT: 33080
 AMOUNT \$ 105.00
 RECEIVED FROM: George W. Liebmann, Esquire
 FOR: Appeal filing fees for Case 87-228-SPH
 VALIDATION OR SIGNATURE OF CASHIER

FEB 17 1987

BENJAMIN BRONSTEIN
ATTORNEY AT LAW
SUITE 200
102 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(300) 828-4442

February 9, 1987

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

RE: Case No. 87-228-SPH
Woodholme Properties Ltd Partnership

Dear Mr. Jablon:

I am enclosing an Order of Appeal together with my check in the amount of \$105.00 to cover the costs of filing the appeal and signs.

Very truly yours,

Benjamin Bronstein
Benjamin Bronstein

BB/jaa
Encl.

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

No. 29922

DATE: 2/10/87 ACCOUNT: 29922
 AMOUNT \$ 105.00
 RECEIVED FROM: Benjamin Bronstein
 FOR: Appeal filing fees for Case 87-228-SPH
 VALIDATION OR SIGNATURE OF CASHIER

FEB 10 1987

CERTIFICATE OF PUBLICATION

TOWSON, MD., November 20, 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 November 20, 1986.

THE JEFFERSONIAN,

Susan Shuler Roberts
Publisher

2750

Cost of Advertisement 275.00



December 4, 1986

Mr. Benjamin Bronstein
Alex Brown Building
Suite 200
102 W. Pennsylvania Avenue
Towson, MD 21204

RE: Festival at Woodholme
Petition for Special Hearing

Dear Mr. Bronstein,

Thank you for the opportunity to review the plans prepared in connection with your petition for special hearing to park in certain residential portions of the Festival at Woodholme project. Based on a review by our staff of the plans, and the intent of the petition, we, as developers and managers of the Commercentre project, have no objection to the petition for special hearing to park in the indicated residential zones.

Again, we thank you for the opportunity to review this proposal.

Very truly yours,

Clark F. MacKenzie
Clark F. MacKenzie
General Partner

CFM:jf

Developer
MacKenzie & Associates, Inc.
2321 Lind Jurga Road, Suite 570
Lutherville, Maryland 21093
(301) 521-8842

Owner THE COMMERCENTRE VENTURE
Howe Law Limited Partnership, Managing Partner
Clark F. MacKenzie, General Partner
F. W. L. Greenberg, Limited Partner

Benjamin Bronstein, Esquire
Suite 200, 102 West Pennsylvania
Avenue
Towson, Maryland 21204

October 31, 1986

NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING
W/S of Green Tree Rd., 1170' N of the c/l
of Hooks Ln. and 125' N of the c/l of
Hooks Ln.
3rd Election District
Woodholme Properties Limited Partnership
Case No. 87-228-SPH

TIME: 10:30 a.m.
 DATE: Monday, December 8, 1986
 PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

Arnold Jablon
Zoning Commissioner
Baltimore County

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

No. 300001

DATE: 10/31/86 ACCOUNT: 300001 net shop
 AMOUNT \$ 105.00
 RECEIVED FROM: Benjamin Bronstein
 FOR: Appeal filing fees for Case 87-228-SPH
 VALIDATION OR SIGNATURE OF CASHIER

IN RE: PETITION SPECIAL HEARING • BEFORE THE
 W/S of Greentree Road, • ZONING COMMISSIONER
 1,170' N of the centerline • of Hooks Lane and 125' N •
 of the centerline of Hooks •
 Lane • OF
 3rd Election District •
 Woodholme Properties • BALTIMORE COUNTY
 Limited Partnership •
 Case No. 87-228-SPH •

ORDER OF APPEAL

MR. COMMISSIONER:
 Please enter an appeal on behalf of the Petitioner, Woodholme Properties Limited Partnership from your decision of January 29, 1987.

Benjamin Bronstein
BENJAMIN BRONSTEIN
Suite 200
102 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 828-4442
ATTORNEY FOR THE APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 11th day of February, 1987, I mailed, postage prepaid, a copy of the foregoing Order of Appeal to George W. Liebmann, Esquire, 8 W. Hamilton Street, Baltimore, Maryland 21201, Attorney for Petitioner.

Benjamin Bronstein
BENJAMIN BRONSTEIN



Gaylord Brooks Realty Company

P.O. Box 193, Paper Mill Road, Phoenix, Maryland 21131 (301) 667-0800

December 5, 1986

Benjamin Bronstein, Esquire
Suite 200
102 West Pennsylvania Avenue
Towson, Maryland 21204

Dear Mr. Bronstein:

I have reviewed the copy of "Plat to Accompany Zoning Variance - Festival at Woodholme" dated September 23, 1986 which D.S. Thaler and Associates, Inc. sent to me. This letter is to advise that Valley Gate Limited Partnership, which owns the property immediately to the north of the subject site has no objection to the grant of petitioners request as indicated on the above referenced plan.

Very truly yours,

Richard A. Moore

RAM/bk

Handwritten notes and stamps: "RECEIVED", "EXHIBIT 2", "11/11/86"

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon TO: Zoning Commissioner Date: December 3, 1986
Norman E. Gerber, AICP, FROM: Director of Planning and Zoning
SUBJECT: Zoning Petition No. 87-228-SPH

The Office of Planning and Zoning supports the proposal to use D.R. zoned land for non-residential parking in the "Festival at Woodholme" project. This additional parking area has enabled the developer to pull parking back from Greentree Lane and to insert a wide planted "buffer" along the property frontage as requested by the Area Planner. The CRG plan for "Festival at Woodholme", approved October 3, 1986 accurately reflects the recommendations of this office with respect to this issue.

Handwritten signature: Norman E. Gerber, AICP, Director of Planning and Zoning

NEG:rh

CPS-008

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

November 25, 1986

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

Benjamin Bronstein, Esquire Suite 200 102 W. Pennsylvania Avenue Towson, Maryland 21204

RE: Item No. 125 - Case No. 87-228-SPH Petitioners: Woodholme Properties Limited Partnership Petition for Special Hearing

Dear Mr. Bronstein:

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,

Handwritten signature: James E. Dyer, Chairman, Zoning Plans Advisory Committee

JED:kbb Enclosures

cc: D.S. Thaler & Associates, Inc. 11 Warren Road Baltimore, Maryland 21208

Handwritten note: sent 11/28/86



Maryland Department of Transportation State Highway Administration

RECEIVED OCT 8 1986 ZONING OFFICE

William K. Heilmann Secretary Hal Kassoff Assistant Secretary

October 3, 1986

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

Att: Mr. James Dyer

Re: ZAC Meeting of 9-30-86 ITEM: #125. Property Owner: Woodholme Properties Limited Partnership Location: W/S Greentree Road, 1170 feet north of the centerline of Hooks Lane and 125 feet north of the centerline of Hooks Lane @ Reisterstown Road, Route 140 Existing Zoning: D.R. 3.5 and D.R. 10.5 Proposed Zoning: Special Hearing for commercial parking in a residential zone (D.R. 3.5) in phase one and two. Also, to permit access for parking and loading through a D.R. 10.5 zone in phase three. Area: 2.95 Acres (D.R. 3.5) and 0.559 (Net Acres D.R. 10.) District: 3rd Election District

Dear Mr. Jablon:

Attached for your use and review are our comments to Baltimore County CRG - "Festival @ Woodholme" dated 10-9-86.

Very truly yours,

Handwritten signature: Charles Lee, Chief, Bureau of Engineering Access Permits

By: George Wittman

CL:GW:maw Attachment

cc: Mr. J. Ogle (w-attachment)

My telephone number is (301) 659-1350. Teletypewriter for Impaired Hearing or Speech: 303 7555 Baltimore Metro - 365 0451 D.C. Metro - 1 800 492 5082 Statewide Toll Free P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 0717



Maryland Department of Transportation State Highway Administration

William K. Heilmann Secretary Hal Kassoff Assistant Secretary

October 3, 1986

Mr. J. Markle, Chief Bureau of Public Services County Office Building Towson, Maryland 21204

Re: Baltimore County CRG Meeting of 10-9-86 Festival at Woodholme Phase I, II, and III E/S Reisterstown Road Maryland Route 140 North of Hooks Lane

Dear Mr. Markle:

On review of revised submittals of 9-4-86 for Festival at Woodholme, Phase I, II and III, the State Highway Administration finds the concept for access to Reisterstown Road generally acceptable.

However, the State Highway Administration has serious concerns about the connection of Castleton Avenue at Greentree Road with Reisterstown Road. If the Castleton Avenue extension to Reisterstown Road is closed by a cul-de-sac prior to Reisterstown Road, we (State Highway Administration) have no objections, but if future plans would show a connection to Reisterstown Road, we (State Highway Administration) object, due to the close proximity of the Phase I access to Reisterstown Road.

It is requested all Baltimore County Building Permits be held until a site plan is provided to the State Highway Administration showing the entire five (5) lane section of Reisterstown Road from the limits of existing improvements located north of Hooks Lane to the Mt. Wilson Lane intersection.

All storm water management facility outfall making a direct connection to the S.H.A. storm drain system or outfalling within the State Highway Administration Right-of-Way must be reviewed by the S.H.A. Hydraulics Section prior to issuance of a State Access Permits.

Very truly yours,

Handwritten signature: Charles Lee, Chief, Bureau of Engineering Access Permits

CL:GW:maw

cc: Mr. J. Ogle

Mr. S. Plummer (w-attachment)

My telephone number is (301) 659-1350. Teletypewriter for Impaired Hearing or Speech: 303 7555 Baltimore Metro - 365 0451 D.C. Metro - 1 800 492 5082 Statewide Toll Free P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 0717

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING TOWSON, MARYLAND 21204 494-3211

NORMAN E. GERDER DIRECTOR

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

NOVEMBER 6, 1986

Re: Zoning Advisory Meeting of SEPTEMBER 23, 1986 Item #125 Property Owner: WOODHOLME PROPERTIES Location: LIMITED PARTNERSHIP 43/5 GREENTREE RD. 1170' N. OF THE & HOOKS LN. 125' NORTH OF E OF HOOKS LN.

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.

- () 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 forward 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 B111 178-79. No building permit 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 B111 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.
() Additional comments:



BALTIMORE COUNTY DEPARTMENT OF TRAFFIC ENGINEERING TOWSON, MARYLAND 21204 494-3550

STEPHEN E. COLLINS DIRECTOR

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

October 23, 1986

Item No. 125 -ZAC- Property Owner: Meeting of September 30, 1986 Woodholme Properties Limited Partnership W/S Greentree Road, 1170 feet north of the centerline of Hooks Lane and 125 feet north of the centerline of Hooks Lane D.R. 3.5 and D.R. 10.5

Existing Zoning: Proposed Zoning: Special Hearing for commercial parking in a residential zone (D.R. 3.5) in phase one and two. Also to permit access for parking and loading through a D.R. 10.5 zone in phase three.

Area: 2.95 Acres (D.R. 3.5) and 0.559 (Net Acres D.R. 10.) District: 3rd Election District

Dear Mr. Jablon:

Please see the CRG comments for this site.

Very truly yours,

Handwritten signature: Michael S. Flanigan, Traffic Engineer Associate II

MSF:lt



BALTIMORE COUNTY FIRE DEPARTMENT TOWSON, MARYLAND 21204 2586 494 4500

PAUL H. RENCKE CHIEF

September 29, 1986

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

Re: Property Owner: Woodholme Properties Ltd. Partnership Location: W/S Greentree Rd., 1170' north of the centerline of Hooks Lane Item No.: 125 Zoning Agenda: Meeting of 9/30/86

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

- 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County standards as published by the Department of Public Works.
2. A second means of vehicle access is required for the site.
3. The vehicle load and condition shown as _____ 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.
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 "Fire Safety Code", 1986 edition prior to occupancy.
6. Site plans are approved, as drawn.
7. The Fire Prevention Bureau has no comments, at this time. No comments at this time - see CRG comments.

REVIEWER: [Signature] Noted and Approved: [Signature] Special Inspection Division Fire Prevention Bureau

/ab

cc: James Hoswell

David Fields, Acting Chief Current Planning and Development

October 14, 1986

TED ZALESKI, JR. DIRECTOR

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

Dear Mr. Jablon:

Comments on Item # 125 Zoning Advisory Committee Meeting are as follows:

Property Owner: Woodholme Properties Limited Partnership W/S Greentree Road, 1170 ft. N of C/L Hooks Lane and 125 ft. N of C/L of Hooks Lane District: 3rd.

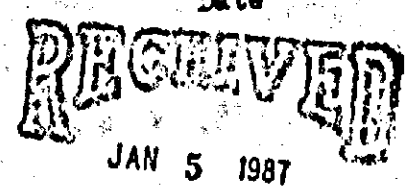
APPLICABLE CODES ARE CIRCLED:

- 1. 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.M.D.C. #17-1 - 1980) and other applicable Codes and Standards.
2. A building and other miscellaneous permits shall be required before the start of any construction.
3. 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.
4. 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.
5. All the Groups except R-1 Single Family Detached Dwellings require a minimum of 1 hour fire rating for their exterior walls.
6. The structure does not appear to comply with Table 505 for permissible height/area. Reply to the requested variance by this office must be considered until the necessary data pertaining to height/area and construction type is provided.
7. The proposed variance appears to conflict with Section(s) of the Baltimore County Building Code.
8. 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.
9. Comments: The legend indicates there is an interior property line abutting the restaurant wall.
10. These abbreviated comments reflect only on the information provided by the drawings submitted to the office as per the applicant may obtain additional information by visiting Room 122 of the County Office Building at 111 Chesapeake Avenue, Towson, Maryland 21204.

Marko P. Holman, Secretary Building Plans Rev.

1/27/86

11-6-86 Date



BALTIMORE COUNTY DEPARTMENT OF HEALTH

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

Zoning Item # 125, Zoning Advisory Committee Meeting of 9-30-86

Property Owner: Woodholme Properties Ltd. Partnership Location: W/S Greentree Rd. District 3 Water Supply: metro Sewage Disposal: metro

COMMENTS ARE AS FOLLOWS:

- 1. Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Environmental Support Services, for final review and approval.
2. Prior to new installation/s of fuel burning equipment, the owner should contact the Division of Air Pollution Control, 494-3775, to obtain requirements for such installation/s before work begins.
3. A permit to construct from the Division of Air Pollution Control is required for such items as spray paint processes, underground gasoline storage tank/s (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.
4. A permit to construct from the Division of Air Pollution Control is required for any charbroiler operation which has a total cooking surface area of five (5) square feet or more.
5. Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
6. Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Health for review and approval.
7. Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health.
8. If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with Water Resources Administration requirements.

WWQ 1 4/86

178 87-228

Zoning Item # 125, Zoning Advisory Committee Meeting of 9-30-86 Page 2

- 1. Prior to raising of existing structure/s, petitioner must contact the Division of Water Quality and Waste Management at 494-3768, regarding removal and/or disposal of potentially hazardous materials and solid wastes.
2. Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and either be removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Water Quality and Waste Management at 494-3768.
3. Soil percolation tests (have been/must be) conducted. The results are valid until. Soil percolation test results have expired. Petitioner should contact the Division of Environmental Support Services to determine whether additional tests are required.
4. Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled.
5. In accordance with Section 13-117 of the Baltimore County Code, the water well yield test shall be valid until. is not acceptable and must be retested. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.
6. Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.
7. If submission of plans to the County Review Group is required, a Hydrogeological Study and an Environmental Effects Report must be submitted.
8. Others: Site inspection has shown that the CMB soils are non-functioning wetland soils and require no special protection. Every effort should be made to prevent increased runoff to the adjacent river near location.

Ian J. Forrest, Director BUREAU OF ENVIRONMENTAL SERVICES

WWQ 2 4/86

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon To: Zoning Commissioner Date: December 3, 1986 Norman E. Gerber, AICP FROM: Director of Planning and Zoning SUBJECT: Zoning Petition No. 87-228-SPH

The Office of Planning and Zoning supports the proposal to use D.R. zoned land for non-residential parking in the "Festival at Woodholme" project. This additional parking area has enabled the developer to pull parking back from Greentree Lane and to insert a wide planted "buffer" along the property frontage as requested by the Area Planner.

CASE NO. 40/94/87-CG-2026 AT LAW Woodholme Properties Ltd. vs. Elkessville Comm. Growth Corp., et al RECEIVED FROM THE COUNTY BOARD OF APPEALS, EXHIBITS, BOARD'S ANSWER & TRANSCRIPT FILED IN THE ABOVE ENTITLED CASE, AND ZONING COMMISSIONER'S FILE & EXHIBITS. Ian J. Forrest Clerk's Office Date: June 18, 1987

Norman E. Gerber, AICP Director of Planning and Zoning

Pikesville, Md 21208 Phone 486-4036

RECEIVED COUNTY BOARD OF APPEALS 181 MAR - 11 A D 09

CPS-004

PETITION FOR SPECIAL HEARING

3rd Election District Case No. 87-228-SPH

LOCATION: West Side of Green Tree Road, 1170 feet North of the Centerline of Hooks Lane and 125 feet North of the Centerline of Hooks Lane

DATE AND TIME: Monday, December 8, 1986, at 10:30 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 Special Hearing to approve commercial parking in and access through a residential zone (D.R. 3.5) in phase one and two and to permit access for parking and loading through a D.R. 10.5 zone in phase three

Being the property of Woodholme Properties Limited Partnership as shown on plat 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



County Board of Appeals of Baltimore County

Room 200 Court House Towson, Maryland 21204 (301) 491-3180

April 29, 1987

Benjamin Bronstein, Esq. Suite 200, 102 W. Pennsylvania Ave. Towson, Md. 21204

Re: Case No. 87-228-SPH Woodholme Properties Ltd. Partnership

Dear Mr. Bronstein:

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

Very truly yours, June Holman, Secretary

- Encl. Steven Koren D. S. Thaler & Assoc., Inc. George W. Liebmann, Esq. Phyllis C. Friedman George E. Weber, Jr. Jack Millman Norman E. Gerber James Howwell Arnold Jablon Jean M. H. Jung James E. Dyer Margaret E. duBois

RECEIVED MAY 1 1987 ZONING OFFICE

Phyllis Cole Friedman, Esquire People's Counsel for Baltimore County Room 223, Old Courthouse Towson, Maryland 21204

RE: Petition for Special Hearing W/S of Greentree Road, 1170' N of the c/l of Hooks Lane, and 125' N of the c/l of Hooks Lane 3rd Election District Woodholme Properties Limited Partnership - Petitioner Case No. 87-228-SPH

Dear Ms. Friedman:

Please be advised that on February 10, 1987, an appeal of the decision rendered in the above-referenced case was filed by Benjamin Bronstein, attorney for the Petitioner.

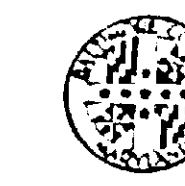
You will be notified of the date and time of the appeal hearing when it has been scheduled by the County Board of Appeals (494-3180).

Very truly yours,

ARNOLD JABLON Zoning Commissioner

AJ:bjs

cc: file



County Board of Appeals of Baltimore County

Room 200 Court House Towson, Maryland 21204 (301) 491-3180



ZONING OFFICE

Benjamin Bronstein, Esquire Suite 200, Susquehanna Building 29 W. Susquehanna Avenue Towson, MD 21204

RE: Case No. 87-228-SPH Woodholme Properties Ltd. Partnership

Dear Mr. Bronstein:

Enclosed is a copy of the Amended Order passed today by the County Board of Appeals in the subject matter.

Sincerely,

Kathleen C. Weidenhammer Administrative Secretary

Encl.

- cc: Mr. Steven Koren D. S. Thaler & Assoc., Inc. George W. Liebmann, Esquire Phyllis Cole Friedman, Esquire Mr. George E. Weber, Jr. Mr. Jack Millman Norman E. Gerber James E. Howwell Arnold Jablon Jean M. H. Jung James E. Dyer Margaret E. duBois

IN RE: PETITION SPECIAL HEARING * BEFORE THE
 W/S of Greentree Road * ZONING COMMISSIONER
 1,170' N of the centerline * OF BALTIMORE COUNTY
 of Hooks Lane and 125' N * Case No. 87-228-SPH
 3rd Election District *
 Woodholme Properties *
 Limited Partnership *

ORDER OF APPEAL

MR. COMMISSIONER:
 Please enter an appeal on behalf of the Protestants, Pikesville Community Growth Corporation, et al. from your decision of January 29, 1987.

George W. Liebmann
 George W. Liebmann
 8 West Hamilton Street
 Baltimore, MD 21201
 301/752-5887

Certificate of Service

I hereby certify that on this 13th day of February, 1987 a copy of the foregoing ORDER OF APPEAL was mailed first class, postage paid to:

Benjamin Bronstein, Esquire
 102 West Pennsylvania Avenue
 Towson, MD 21204

George W. Liebmann
 George W. Liebmann

FEB 17 1987
 ZONING COMMISSION

IN RE: PETITION SPECIAL HEARING * BEFORE THE
 W/S of Greentree Road, * ZONING COMMISSIONER
 1,170' N of the centerline * OF BALTIMORE COUNTY
 of Hooks Lane and 125' N * Case No. 87-228-SPH
 Lane *
 3rd Election District *
 Woodholme Properties *
 Limited Partnership *

ORDER OF APPEAL

MR. COMMISSIONER:
 Please enter an appeal on behalf of the Petitioner, Woodholme Properties Limited Partnership from your decision of January 29, 1987.

Benjamin Bronstein
 BENJAMIN BRONSTEIN
 Suite 200
 102 W. Pennsylvania Avenue
 Towson, Maryland 21204
 (301) 828-4442
 ATTORNEY FOR THE APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 9 day of February, 1987, I mailed, postage prepaid, a copy of the foregoing Order of Appeal to George W. Liebmann, Esquire, 8 W. Hamilton Street, Baltimore, Maryland 21201, Attorney for Protestants.

Benjamin Bronstein
 BENJAMIN BRONSTEIN

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
 IN RE: WOODHOLME PROPERTIES LIMITED * Case No.
 PARTNERSHIP, et al. *
 Plaintiffs *
 vs. *
 PIKESVILLE COMMUNITY GROWTH *
 CORPORATION, et al. *
 Defendants *

ORDER FOR APPEAL

Pikesville Community Growth Corporation appeals to the Circuit Court for Baltimore County from the order of the County Board of Appeals dated April 29, 1987 entered in the above captioned matter.

George W. Liebmann
 George W. Liebmann
 8 West Hamilton Street
 Baltimore, MD 21201
 301/752-5887

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 1987 a copy of the foregoing ORDER FOR APPEAL was mailed first class, postage prepaid to:

County Board of Appeals
 of Baltimore County
 Court House, Room 200
 Baltimore, MD 21204

George W. Liebmann
 George W. Liebmann

RECEIVED APPEALS
 COUNTY BOARD OF APPEALS
 1987 MAY 21 AM 11:51

LAW OFFICES OF
 GEORGE W. LIEBMANN, P.A.
 8 WEST HAMILTON STREET
 BALTIMORE, MARYLAND 21201
 (301) 752-5887

May 15, 1987

MESSENGER DELIVERED

William J. Hackett, Chairman
 Board of Appeals for
 Baltimore County
 County Courthouse Building
 401 Bosley Avenue
 Towson, MD 21204

Re: Hooks Lane/Greenebaum/
 Festival at Woodholme
 Case No. 87-228-SPH

Dear Mr. Hackett:

I am in receipt of Mr. Bronstein's letter of May 9 seeking modification of the Board's order to permit a restaurant in the business major zone.

1. A restaurant is characteristically served daily by a large number of large delivery trucks of different suppliers of fish, meat, vegetables, baked goods, dairy products, liquors, soft drinks, etc. and generates commercial traffic volumes not greatly differing from that of a supermarket.

2. The parking needs of a restaurant in the B M zone have not been considered in the CRG process.

3. As shown by the enclosed memorandum from counsel for the developer, paragraph 3 (c), page 2, the CRG plan deliberately did not place the restaurant in the B M zone "to avoid providing issue of discussion to organized resistance to development." Mr. Bronstein's letter is another of many impositions on the Board and on the protestants herein.

Very truly yours,

George W. Liebmann
 George W. Liebmann

pm

cc: Benjamin Bronstein, Esquire
 Fred Wolf III, Esquire

Enclosures

MEMORANDUM

TO: Isaac M. Neuberger
 Gerald Katz
 Stewart Greenebaum
 Steve Koren
 David Thaler
 Richard Rubin
 Gerald Bohm
 Frank Mileto

FROM: Jeffrey P. McEvoy

RE: Status of Prime Sheraton Project at Pikesville, Maryland

DATE: March 4, 1986

FILE: 0733-425

This memo will bring everyone up to date on the status of the Prime Motor Inn's Sheraton Hotel in Pikesville, Maryland. It will also serve as an allocation of ongoing responsibilities in the project.

Isaac Neuberger, Jeffrey McEvoy, Gerry Katz and Stewart Greenebaum by telephone met today in the offices of VB & H. The following issues and matters were discussed.

1. Parking Issues.

a. 220 total spaces allocated to Prime/Sheraton hotel and restaurant - 70 spaces allocated to restaurant in 0-2 zone and 150 spaces allocated to hotel in B-M zone.

b. Prime can ask for increase over 220 space allocation on the basis of stadium, valet, duplication or night parking.

c. Prime may make use of 800 +/- night spaces.

d. Prime may not ask for a zoning variance for parking request.

2. Cross-Easement Agreement Issues.

a. JPM to draft cross-easement agreement.

b. JPM to circulate to Thaler, Katz and Trammel Crow (Ercole and Wolf at Frank, Bernstein.)

c. Greenebaum to advise Prime of flat charge for one-time development costs, e.g. tarmac, utilities, sewer and water facilities, storm water management facilities, interior roads.

d. Allocations of continuing common area costs will be on a square foot basis as between commercial and office space and on the basis of parking allocations as between retail and hotel within the commercial designation.

e. Prime will have self-help remedies for any ongoing common area and facilities maintenance, e.g., snow removal, CAM, repairs, signs.

3. Development Plan ("CRG") Issues.

a. First draft CRG filed by Greenebaum on 2/20/86.

b. Thaler to provide CRG and any amendments to JPM. JPM to forward and review with Mileto.

c. 3,500 square foot restaurant now in 0-2 zone to eliminate need for parking variances in B-M zone - but after approval of CRG plan, Greenebaum will ask for special hearing for variance to move the restaurant to the B-M side of the zoning line - purpose is to avoid providing issue of discussion to organized resistance to development.

d. Peter Simon may have in his office a copy of the 2/20 CRG plan.

4. Deal Issues.

a. Prime and Greenebaum to renegotiate the 10-year, \$1.5 million buy-out price if depreciation and other tax benefits are not available to Greenebaum because of new "risk" rules - new price to reflect an earlier buy-out date.

b. No deposit due to Greenebaum pending execution of transaction documents.

c. Kent commencement issue to be negotiated by IMN/Simon/Greenebaum. Greenebaum suggests commencement at the beginning of construction - Prime wants earlier of scheduled opening date or actual opening date of hotel.

d. JPM/Mileto to supply time schedule of compliance and delivery of plans.

5. Plans Issues.

a. Mileto to review present CRG plan to determine if suitable to Prime and review revised plan after hotel is moved into the B-M zone.

b. Prime to use D.S. Thaler & Associates as site engineer - Thaler to keep separate time records for Prime.

c. Mileto to meet with Baltimore County and Thaler ASAP to discuss parking and site engineering issues.

6. Tasks.

a. Mileto/Prime to review CRG plan, approve footprint and revised footprint reflecting movement of restaurant into B-M zone.

b. Prime to retain D.S. Thaler & Associates as site engineer, JPM/Bohm to review engagement letter.

c. Thaler/Mileto/JPM to prepare parking (including request to be submitted after CRG approval for final plan approval?)

d. JPM/Mileto to monitor all CRG/planning activities through approval of final plan. Thaler to advise JPM/Mileto of all developments in planning process.

e. JPM/Katz to negotiate cross-easement agreement, lease, other transaction documents and management agreement.

f. Bohm to review management agreement and other transaction documents.

g. JPM to incorporate IMN comments in transaction documents.

h. JPM/Rubin to review cross-easement agreement.

JPM/adc

2212c:03/05/86:38

70178

LAW OFFICES OF
 EVANS, GEORGE AND BRONSTEIN
 SUSQUEHANNA BUILDING SUITE 205
 29 WEST SUSQUEHANNA AVENUE
 TOWSON, MARYLAND 21284
 (301) 228-0000

ROBERT EVANS
 HARRIS JAMES GEORGE
 BENJAMIN BRONSTEIN
 MICHAEL J. CHOMEL

May 8, 1987

William T. Hackett, Chairman
 Board of Appeals for Baltimore County
 Court House
 Towson, MD 21204

RE: In the Matter of the Application of
 Woodholme Properties Limited
 Partnership, Case No. 87-228-SPH

Dear Mr. Hackett:

Reference is made to the Opinion and Order dated April 29, 1987 in the above entitled and specifically Paragraph No. 2 of the Order. I would appreciate the Board's consideration in clarifying that paragraph by adding the words "excluding a restaurant" after the word "food" on the second line. Paragraph No. 2 would then read as follows:

"No supermarket or other commercial establishment of a similar size and whose primary product is food, excluding a restaurant, shall be permitted to occupy the commercial development of this project."

Thank you for your kind consideration.

Very truly yours,

EVANS, GEORGE AND BRONSTEIN

Benjamin Bronstein
 Benjamin Bronstein

RB/jam
 CC: George W. Liebmann, Esquire
 Fred H. Wolf, III, Esquire

LS 0 V 11 JAN 1987

RECEIVED
 COUNTY BOARD OF APPEALS

2c:03/05/86:38

70176

2c:03/05/86:38

7017



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

May 26, 1987

Benjamin Bronstein, Esq.
Suite 200, 102 W. Pennsylvania Ave.
Towson, Maryland 21204

Re: Case No. 87-228-SPH
Woodholme Properties Ltd.
Partnership

Dear Mr. Bronstein:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals for 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,

June Holmen
June Holmen, Secretary

Encl.
cc: Steven Koren
D. S. Thaler & Assoc., Inc.
George E. Weber, Jr.
Jack Hillman
People's Counsel for Balto. County
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. DuBois

Form CM

John Adams - 494-2660
Civil Assignment Commissioner
Circuit Court

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21286-6754

July 15, 1987
TO: Woodholme Properties Limited Partnership, Et. Al. (PP)

County Board of Appeals
George W. Liebmann, Esq.
Thomas J. Bollinger, Esq.

Kathy Rushion - 494-2660
Assistant Clerk - Moore
Marcia Fennell
Assistant Clerk - Type

Irene Summers - 494-2661
Assistant Clerk - Moore
Erudis Groves
Assistant Clerk - Type

RE: NON JURY - 87 CG 2024 - WOODHOLME PROPERTIES LIMITED PARTNERSHIP, ET. AL. VS PIKESVILLE COMM. GROWTH CORP., ET. AL.

HEARING DATE: Wednesday, September 23, 1987 @ 9:30 am.

ON THE FOLLOWING: APPEAL: 1 hour

Please see the below intimation.

RECEIVED
COUNTY BOARD OF APPEALS
JUN 26 1987

IF THE ABOVE HEARING DATE IS NOT AGREEABLE TO ANY COUNSEL, A REQUEST FOR A POSTPONEMENT MUST BE MADE IN WRITING TO THE ASSIGNMENT OFFICE AS SOON AS POSSIBLE, WITH A COPY TO ALL COUNSEL INVOLVED. POSTPONEMENTS PRIOR TO 14 DAYS OF TRIAL SHOULD BE DIRECTED TO THE ATTENTION OF JOHN ADAMS. POSTPONEMENTS WITHIN 14 DAYS OF TRIAL MUST BE MADE TO THE ATTENTION OF THE DIRECTOR OF CENTRAL ASSIGNMENTS - JOYCE CRIMM - 494-3497.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record in the order of satisfaction is filed prior to trial.

PIKESVILLE COMMUNITY GROWTH CORPORATION * IN THE
Appellant/Cross-Appellee * CIRCUIT COURT
vs. * FOR
WOODHOLME PROPERTIES LIMITED PARTNERSHIP * BALTIMORE COUNTY
Appellee/Cross-Appellant * CIVIL-GENERAL
* Case No.

PETITION FOR APPEAL

Woodholme Properties Limited Partnership ("Woodholme"), Appellee/Cross-Appellant, pursuant to Maryland Rule B2 files this Petition in support of its cross-appeal in the above-captioned case, and says:

1. Woodholme contends that the Board of Appeals of Baltimore County ("Board") erred in failing to grant Woodholme's Motion to Dismiss the appeal before the Board brought by Pikesville Community Growth Corporation (PCGC). Woodholme filed a Motion to Dismiss the appeal to the Board based on the lack of standing of either PCGC or People's Counsel for Baltimore County, to appeal to the Board from the decision of the Zoning Commissioner. After People's Counsel voluntarily withdrew its appeal to the Board, Woodholme's Motion to Dismiss remained open as to PCGC. The Board erred in failing to grant that Motion, in failing to dismiss the appeal of PCGC on the basis of lack of standing, and in failing to thereby affirm the decision of the Zoning Commissioner without modification.

2. The Board purported to attach certain conditions to the approval granted Woodholme to access a BM zoned parcel across a small, otherwise unusable strip of DR zoned land and certain limited business parking in the same DR zone. One of those conditions was that:

4. This Opinion shall be recorded among the Land Records of Baltimore County at Petitioner's expense.

3. Woodholme submits that the portion of the Board's Order requiring recordation in the Land Records is erroneous in that:

A. The Board's decision is unsupported by competent, material and substantial evidence;

B. The Board's decision exceeds the authority of the Board in that the Board lacks power to encumber realty in this manner. While the Board may have authority to construe and apply the zoning laws, the Board is without power to limit use of the property in futuro in such fashion;

C. The recording of the Opinion as specified could create a confusing chain of title, and creating a likelihood of uncertainty therein. The Board's action tends to disrupt the stability of title to real property and is contrary to the requirement of law that an instrument affecting title to realty be evidenced by a writing signed by the party sought to be charged;

D. The purported action of the Board exceeds the limited powers granted the Board by statute.

WHEREFORE, Woodholme petitions this Court to vacate the Order of the Board insofar as it purports to require that a copy

of the Board's Opinion be recorded in the Land Records of Baltimore County.

EVANS, GEORGE AND BRONSTEIN

Benjamin Bronstein
BENJAMIN BRONSTEIN
205 Susquehanna Building
29 West Susquehanna Avenue
Towson, MD 21204
(301) 296-0200

FRANK, BERNSTEIN, CONAWAY AND GOLDMAN

Fred H. Wolf, III
FRED H. WOLF, III
300 E. Lombard Street
Baltimore, MD 21202
(301) 625-3000

ATTORNEYS FOR CROSS-APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 22nd day of June, 1987, a copy of this Petition for Appeal was mailed, postage prepaid, first class mail, to George W. Liebmann, Esquire, 8 West Hamilton Street, Baltimore, Maryland, 21201, Attorney for Appellant and Cross-Appellee.

Benjamin Bronstein
BENJAMIN BRONSTEIN

BB/jaa
Encl.

Mrs. June Holman
Secretary, County Board of Appeals
Court House
Towson, MD 21204

RE: Pikesville Community Growth Corporation vs. Woodholme Properties Limited Partnership Case No. 87-CG-2024

Dear Mrs. Holman:

Enclosed please find a copy of the Petition for Appeal filed with the Circuit Court for Baltimore County on June 22, 1987, on behalf of Woodholme Properties Limited Partnership.

Thank you for your kind attention to this matter.

Very truly yours,

EVANS, GEORGE AND BRONSTEIN

Benjamin Bronstein
Benjamin Bronstein

BB/jaa
Encl.

L. ROBERT EVANS
HARRIS JAMES GEORGE
BENJAMIN BRONSTEIN
MICHAEL J. CHOMEL

June 24, 1987

LAW OFFICES
EVANS, GEORGE AND BRONSTEIN
SUSQUEHANNA BUILDING, SUITE 205
29 WEST SUSQUEHANNA AVENUE
TOWSON, MARYLAND 21204
(301) 296-0200

WALLACE DANN
COUNSEL

LAW OFFICES
EVANS, GEORGE AND BRONSTEIN
SUSQUEHANNA BUILDING, SUITE 205
29 WEST SUSQUEHANNA AVENUE
TOWSON, MARYLAND 21204
(301) 296-0200

June 22, 1987

Clerk, Civil-General Desk
Circuit Court for Baltimore County
P.O. Box 6754
Towson, MD 21204-0754

RE: Pikesville Community Growth Corporation vs. Woodholme Properties Limited Partnership Case No. 87-228-SPH

Dear Madam Clerk:

Enclosed please find Petition for Appeal to be filed on behalf of Woodholme Properties Limited Partnership, Appellee and Cross-Appellant, in the above entitled action.

Thank you for your kind attention to this matter.

Very truly yours,

EVANS, GEORGE AND BRONSTEIN

Benjamin Bronstein

BB/jaa
Encl.
George W. Liebmann, Esquire
Fred H. Wolf, III, Esquire

IN THE MATTER OF THE APPLICATIION OF WOODHOLME PROPERTIES LTD. PARTNERSHIP FOR SPECIAL HEARING FOR PROPERTY LOCATED ON THE WEST SIDE OF GREENGROVE RD., 1170' NORTH OF THE C/DL OF HENCKES LANE AND 150' NORTH OF THE C/DL OF HENCKES LANE THE BALTIMORE CIRCUIT COURT BALTIMORE COUNTY AT LAW
PIKESVILLE COMMUNITY GROWTH CORPORATION, ET AL., PLAINTIFFS
ZONING FILE NO. 87-228-SPH
Folio No. 94
File No. 87-CG-2024

CERTIFICATE OF NOTICE

Mr. Clerk:
Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Keith S. Franz and Harry E. Bucheister, Jr., 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, Steven Koren, Trustee, Woodholme Properties Ltd. Partnership, 1777 Beltsdown Rd., Suite 275, Commerce East, Baltimore, Md. 21204, Petitioner; Benjamin Bronstein, Esq., Suite 205, 102 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Petitioner; George W. Liebmann, Esq., 8 W. Hamilton St., Baltimore, Md. 21201, Counsel for Pikesville Community Growth Corporation, Plaintiffs; D. S. Thaler & Associates, Inc., 11 Warren Rd., Baltimore, Md. 21278; George E. Weber, Jr., 18 Justice Ave., Pikesville, Md. 21076; Jack Hillman, 3411 Deep Allow Ave., Pikesville, Md. 21076; and Phyllis J. Friedman, Court House, 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.

June Holmen
June Holmen
County Board of Appeals of Baltimore County
Room 200, Court House, Towson, Md. 21204
301-494-3180

87-6-2024

Woodholme Properties Ltd.
Partnership - Case No. 87-228-SPH

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Steven Koren, Trustee, Woodholme Properties Ltd. Partnership, 1777 Reisterstown Rd., Suite 275, Commercentre East, Baltimore, Md. 21208, Petitioner; Benjamin Bronstein, Esq., Suite 200, 102 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Petitioner; George W. Liebmann, Esq., 8 W. Hamilton St., Baltimore, Md. 21201, Counsel for Pikesville Community Growth Corporation, Plaintiffs; D. S. Thaler & Associates, Inc., 11 Warren Rd., Baltimore, Md. 21208; George E. Weber, Jr., 18 Castleton Ave., Pikesville, Md. 21208; Jack Millman, 3411 Deep Willow Ave., Pikesville, Md. 21208; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 26th day of May, 1987.

June Holmen
June Holmen
County Board of Appeals of Baltimore County

IN THE MATTER OF THE APPLICATION OF WOODHOLME PROPERTIES LIMITED PARTNERSHIP WEST SIDE OF GREENTREE RD., 1170' NORTH OF THE CENTER LINE OF HOOKS LANE AND 125' NORTH OF THE CENTER LINE OF HOOKS LANE 3rd ELECTION DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 87-228-SPH

ORDER FOR APPEAL

Woodholme Properties Limited Partnership, Appellee and Cross-Appellant, pursuant to the B Rules of the Maryland Rules of Procedure, orders an appeal from the Amended Order of the Board of Appeals of Baltimore County issued on May 28, 1987, and the Order amended thereby.

EVANS, GEORGE AND BRONSTEIN

1/3/
BENJAMIN BRONSTEIN
205 Susquehanna Building
29 W. Susquehanna Avenue
Towson, MD 21204
(301) 296-0200

FRANK, BERNSTEIN, CONAWAY & GOLDMAN

1/3/
FRED H. WOLF, III
300 E. Lombard Street
Baltimore, MD 21202
(301) 625-3000
ATTORNEYS FOR CROSS-APPELLANT

RECEIVED
COUNTY BOARD OF APPEALS
MAY 27 1987

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June, 1987, a copy of this Order for Appeal was served on the Board of Appeals of Baltimore County prior to the filing of this Order.

1/3/
BENJAMIN BRONSTEIN



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

May 28, 1987

Benjamin Bronstein, Esquire
Suite 205, Susquehanna Building
29 W. Susquehanna Avenue
Towson, MD 21204

RE: Case No. 87-228-SPH
Woodholme Properties Ltd. Partnership

Dear Mr. Bronstein:

Enclosed is a copy of the Amended Order passed today by the County Board of Appeals in the subject matter.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Mr. Steven Koren
D. S. Thaler & Assoc., Inc.
George W. Liebmann, Esquire
Phyllis Cole Friedman, Esquire
Mr. George E. Weber, Jr.
Mr. Jack Millman
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 26, 1987

George W. Liebmann, Esq.
8 W. Hamilton St.
Baltimore, Md. 21201

Re: Case No. 87-228-SPH
Woodholme Properties Ltd.
Partnership

Dear Mr. Liebmann:

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,

June Holmen
June Holmen, Secretary

Enclosures

WOODHOLME PROPERTIES LTD. PARTNERSHIP
W/S of Greentree Road, 1170' N of C/L of Hooks Lane and 125' N of C/L of Hooks Lane
3rd Election District
2nd Councilmanic District
Case # 87-228-SPH

October 27, 1986 Petition of Woodholme Properties, Ltd. Partnership for special bring for use permit for business parking in residential zone and to permit commercial access for parking and loading through residential zone.
December 8 Hearing on petition by Zoning Commissioner.
January 29, 1987 Order of Zoning Commissioner GRANTED petition subject to restrictions.
February 9 Order for Appeal to CBA from Benjamin Bronstein, Esq., on behalf of Petitioner.
February 12 Order for Appeal to CBA from Phyllis C. Friedman, People's Counsel for Baltimore County.
February 17 Order for Appeal to CBA from George W. Liebmann, Esq., on behalf of Protestants.
April 29 Board of Appeals APPROVED use permit subject to restrictions.
May 21 Order for Appeal to CCT, BCo, by Geo. W. Liebmann, Esq., on behalf of Pikesville Comm. Growth Corp.
May 26 Certificate of Notice sent.
May 28 Amended Order of Board of Appeals.
June 12 Order for Appeal filed in CCT, BCo by Benjamin Bronstein, Esq., on behalf of Petitioner.
June 18 Record of proceedings filed in CCT, BCo.
Hearing had in CCT; Case dismissed on the record (Fader)
Nov 13 Stipulation of Dismissal with Prejudice that case be DISMISSED with prejudice filed in CCT.
Nov 16

IN THE MATTER OF THE PETITION FOR SPECIAL HEARING FOR W/S of Green Tree Rd., 1170' N of C/L of Hooks La., 125' N of C/L of Hooks La., 3rd District
WOODHOLME PROPERTIES LIMITED PARTNERSHIP, Petitioner

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO.: 87-228-SPH

MEMORANDUM OF APPEAL IN SUPPORT OF DECISION OF ZONING COMMISSIONER

Woodholme Properties Limited Partnership ("Woodholme"), Petitioner/Appellee, by Benjamin Bronstein, Evans, George & Bronstein and Fred Wolf III and Frank, Bernstein, Conaway & Goldman, its attorneys, files this Memorandum in opposition to the appeal filed herein by Pikesville Community Growth Corporation ("PCGC") and the People's Counsel for Baltimore County ("People's Counsel"), and says:

I. - APPELLANT PCGC LACKS SUFFICIENT STANDING TO MAINTAIN THIS APPEAL AND MUST BE DISMISSED AS A PARTY.

PCGC purported to take this appeal from the decision of the Zoning Commissioner dated January 29, 1987. PCGC has no standing to maintain this appeal.

This precise issue has been considered by the Court of Appeals and decided adversely to PCGC's standing in this case. CITIZENS Planning and Housing Association v. County Executive of Baltimore County, 273 Md. 333, 329 A.2d 681 (1974).

The Citizens Planning case involved an appeal from the attempted administrative "reorganization" of the Baltimore County "Office of Planning and Zoning." Various individuals and organizations appealed. The Court of Appeals found that the organizational appellants had no standing to maintain the appeal. 329 A.2d at 687-88.

The Court premised this result on the basis that it has generally been recognized in Maryland that an association lacks standing to sue (or maintain an appeal) where it has no property interest of its own -- separate and distinct from that of its individual members -- which may be affected by any of the acts complained of (on the appeal). Id. at 687, citing Maryland Naturopathic Association v. Kroman, 191 Md. 626, 62 A.2d 538 (1940). As the bill of complaint in Citizens Planning included no allegations remotely suggesting that any of the organizational appellants possessed such separate interests, the Court ruled that the organizations lacked the necessary standing to maintain the action. Id. at 688.

The evidence in the case at bar establishes that PCGC owns no property, and has no property interest of its own separate and distinct from that of its individual members, which may be affected by the decision of the Zoning Commissioner. As a result, PCGC has no standing to maintain this appeal and must be dismissed from this proceeding.

Additionally, assuming that PCGC owned property within the towncenter boundary, PCGC would not have standing in that the nearest boundary of the towncenter is several thousand feet distant from the subject property. As more fully set out in the recent opinion of Judge Fader of the Circuit Court for Baltimore County in Lindberg v. Baltimore County, Maryland, such distance is too remote to confer standing on PCGC to maintain this appeal. A copy of Judge Fader's opinion, as adopted by the Court of Special Appeals, is attached hereto as Exhibit A and adopted by Appellee as though more fully set out herein.

II - PEOPLE'S COUNSEL IS BARRED FROM MAINTAINING THIS APPEAL BY THE DOCTRINE OF ESTOPPEL.

In a series of decisions, pre-dating the decision of the Zoning Commissioner involved in the present appeal, Baltimore County authorities have consistently taken the position that use of a small strip of property zoned residential for access to adjoining property which is zoned business or commercial is proper where the strip in question is too small to accommodate a residential use. More recently, decisions by the Zoning Commissioner in Harple 85-302SPH and Racuhba 86-80SPH (the opinions in which have been offered a Motion exhibits) permitted access over residentially zoned strips of property to adjoining commercial property. In neither of these cases did People's Counsel appeal or indicate any dissatisfaction with the decision. In reliance on the inaction and

- 3 -

apparent acquiescence of People's Counsel in that result, the interpretation of local authorities as set out in the Policy & Procedure Manual of the office of zoning, and the County Solicitor's Opinions, Appellee undertook substantial expenditures and activity in preparing the plans and proceeding with the approval process. Even more importantly, Appellee refrained from redrafting the plan to accommodate the contemplated access to the rear of the commercial center from Greene Tree Road. If People's Counsel had made any indication that it would oppose use of such a small residential strip, it would have been a matter for discussion and negotiation between Appellee and the Baltimore County authorities concerning the location of Greene Tree Road. It must be kept in mind that Greene Tree Road is a "fixed" quantity in this equation, in that the southern terminus of Greene Tree Road is required by traffic-planning considerations to be located as shown on the plan submitted by Appellee. Had Appellee been put on notice that People's Counsel would object to access to the rear of the commercial center across the quite small (and totally unusable for residential purposes) strip in issue in this appeal, it might have been possible for Appellee to have reached an accommodation with respect to the physical layout of Greene Tree Road so as to obviate any such difficulty.

As a result of the inaction and apparent acquiescence of People's Counsel in the long-standing interpretation of the Baltimore County Zoning Regulations to permit access across a small

- 4 -

strip of residential zoned property which is too small to be utilized for residential purposes, the Appellee has suffered substantial detriment and prejudice. Appellee has proceeded through the hearing before the Zoning Commissioner, preparation of C.R.G. plans, presentations, and the like involving substantial expenditures of time, money and energy in reliance on the long-standing interpretation of the zoning regulations and failure to act of People's Counsel. This reliance was clearly apparent to People's Counsel whose appearance while entered in the case before the zoning commission failed to voice any objection or appear at the hearing.

By inducing Appellee to proceed as it has to this point, People's Counsel has in effect precluded Appellee from taking steps to meet any objections People's Counsel raises in the instant appeal by relocating or redesigning the location of Greene Tree Road. People's Counsel has permitted Appellee to proceed on its present course, while "holding back" on its intent to challenge Appellee at this advanced stage of the planning and development process. It should be noted that this plan has C.R.G. approval which was affirmed by this Board in Case Nos. CBA 86-121; CBA 86-134; and CBA 86-145. The Maryland Court of Appeals has recently determined that a developer (such as Appellee) is entitled to rely on a long-standing and reasonable interpretation of zoning regulations by local authorities. Permanent Financial Corporation v. Montgomery County, 308 Md. 239, 518 A.2d 123 (1986).

In Permanent Financial, the Court ruled that the County was equitably estopped from claiming that the upper floor of a

- 5 -

building exceeded the height limits imposed by the local zoning ordinance, where the builder had designed and constructed the building in reliance on the building permit and on the long-standing and reasonable interpretation of the County as to how a building's height should be calculated, 518 A.2d at 129-30.

In reaching this conclusion, the Court noted that the Maryland Courts have adopted and continually applied the definition of equitable estoppel set forth at 3 J. Pomeroy, Equity Jurisprudence, Section 804 (5th Ed., 1941), as follows:

"Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have otherwise existed, either of property, or contract or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worst and who on his part acquire some corresponding right, either of property, of contract, or of remedy." Id. at 127.

Equitable estoppel operates to prevent a party from asserting his rights under a general technical rule of law, when that party has so conducted himself that it would be contrary to equity and good conscience to allow him to do so. Id.; Pitch v. Double "U" Sales Corp., 212 Md. 324, 129 A.2d 92 (1957).

The Court in Permanent Finance found that the developer had clearly relied upon the interpretation the County had given to the height limitation in its design of the building. Id. at 129. The Court concluded that reliance on this interpretation was reasonable,

- 6 -

even though the county Board of Appeals subsequently determined the interpretation to be incorrect.

In the instant case, Baltimore County has a long-standing policy of permitting access across a residential strip which is too small for residential use for ingress and egress to adjoining commercial property. This interpretation has been at least tacitly approved by People's Counsel by the failure to appeal the Harple and Racuhba decisions. In light of the substantial expenditure of time, money and effort undertaken by Appellee in reliance on this long-standing consistent interpretation and the apparent acquiescence of People's Counsel, it would be inequitable and unjust to penalize the Appellee for a subsequent decision by People's Counsel to challenge this interpretation. As in Permanent Finance Corporation v. Montgomery County, supra, People's Counsel should be equitably estopped to challenge Appellee's use of the strip in question for access to the rear of the commercial center.

III. - PEOPLE'S COUNSEL FOR BALTIMORE COUNTY LACKS SUFFICIENT STANDING TO MAINTAIN THIS APPEAL AND MUST BE DISMISSED AS A PARTY.

The authority of People's Counsel is set forth in Section 524.1 of the Home Rule Charter of Baltimore County, which provides, inter alia, that People's Counsel

shall appear as a party before the Zoning Commissioner of Baltimore County...to defend

- 7 -

the comprehensive zoning maps as adopted by the county council, and in any manner or proceeding...involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations...."

The instant case involves neither the defense of the maps, zoning reclassification, variance nor special exception -- it involves, rather, an interpretation of the Baltimore County Zoning Regulations by the Zoning Commissioner. The present application involves a special hearing, not a request for the exercise of the Zoning Commissioner's authority in the nature of a special exception, variance or reclassification.

The People's Counsel is "the defender of the maps." Her role is to protect and preserve the integrity of the comprehensive zoning plan evidenced by the maps, and to prevent their subversion through the misuse of variances, special exceptions, or reclassifications. This case does not involve any of these considerations -- the strip in issue is useless by virtue of its small size, for residential purposes and it lies between Green Tree Road (whose location was prescribed by the County) and a small retail center. The strip whose use for access is being challenged in this appeal is more in the nature of a vestigial remnant of residential zoning, left behind by the location of Greene Tree Road.

Inasmuch as the present case involves no request for a reclassification, variance or special exception, People's Counsel -- defender of the maps -- has no standing to maintain this appeal.

- 8 -

In light of the fact that neither one of the two appellants has legal standing to assert the issues raised in this appeal, the appeal should be dismissed and the decision of the Zoning Commissioner affirmed.

IV. - THE ZONING COMMISSIONER PROPERLY PERMITTED USE OF THE STRIP FOR THE LIMITED ACCESS REQUESTED BY APPELLEE

In a long series of decisions, formal and informal, predating the decision of the Zoning Commissioner involved in the present appeal, Baltimore County authorities have consistently taken the position that use of a small strip of property zoned residential for access, i.e., ingress and egress, to adjoining property is proper where the strip is too small to accommodate a residential use.

For example, in a letter dated January 17, 1980, the Baltimore County Solicitor concluded that a right of ingress and egress over residential property to reach a commercial center was permissible, finding that the zoning configuration for the property negated the idea that the construction and use of driveways and service roads, (over the residentially zoned "buffer strip" as a means of ingress and egress was a violation of the zoning laws with respect to the surrounding residential zone.

In later correspondence dated September 20, 1979, the Baltimore County Solicitor opined that the owner of certain tract of property zoned in a manner so that only the center of the tract

- 9 -

could be used for commercial purposes and which had a residentially-zoned buffer strip barring access to the nearest road, had a right to construct driveways for the purpose of ingress and egress to the commercially-zoned central portion of the parcel.

In a letter dated September 19, 1979, the County Solicitor reached a similar result in a factual situation quite similar to that involved in the present case. The subject property involved was a 15.7 +/- acre parcel of land located in Baltimore County. The property was zoned BL except for a narrow strip of DR-16 zoned land extending 1377' immediately along its frontage on Belair Road. In the course of the 1976 mapping process, although it was agreed that the BL zone was appropriate for the subject tract, due to the concern of the residents of the east side of Belair Road a DR-16 zone was retained to preclude commercial development from encroaching on Belair Road. This resulted in a wider than usual buffer strip. In the course of the mapping process, it was noted that commercial development of the land was more likely than residential development due to costs related to the topography of the property.

Subsequently, a developer of the property sought to obtain access to Belair Road in order to permit commercial development of the property. On behalf of the developer, it was contended that the "unique" zoning on the parcel should not be construed to prohibit access to Belair Road, but rather to prohibit construction immediately adjacent to the roadway and thereby assure a generous

- 10 -

landscape buffer strip. It also appeared that the dimensions of the DR-16 strip actually precluded any use permitted in a residential zone other than landscaping, since a subsequent Belair Road widening dedication as well as front and rear yard set-backs reduced the available width of the DR-16 zone available for buildings to ten feet.

The issue was squarely presented, therefore, as to where a shopping center or other commercial use was to be developed on land adjacent to a buffer strip zoned residential which was too small to accommodate a residential use, might an access road be routed through the residential property.

The County Solicitor concluded that, inasmuch as the strip was too small to accommodate a residential use it was proper to establish an access route over the residential portion of the tract to the commercially zoned land.

It is not seriously disputed that the strip involved in the present case is too small for use as residential property. This case, therefore, falls within the scope of the decision in Lapenas v. Zoning Board of Appeals, 352 Mass. 530, 226 NE.2d 361 (1967), on which the Baltimore County Solicitor relied in the three decisions discussed above. In Lapenas, the strip of land was too small for residential use, and were the residential zoning strictly enforced it would bar access to the owner's adjacent commercially zoned land. The Court found that a variance relieving the owner from the literal operation of

- 11 -

the zoning ordinance and allowing him reasonable access roads over the residential area was proper.

In the case at bar, the dimensions of the residential strip preclude any use other than landscaping. This case is clearly distinguishable from Leimbach Construction Company v. City of Baltimore, 257 Md. 635, 264 A.2d 109 (1970). In Leimbach, the parcel of residential development was capable of being developed as residential. In the instant case, the subject residential parcel is too small for residential use. The landowner in Leimbach had access to his property, although the access was not as convenient as the landowner desired. In the present case, the previously determined location of Greene Tree Road precludes access to the rear of the commercial center except across the residential strip in question.

Secondly, in Leimbach the landowner had exercised an option to buy the property to which access was restricted after the Board of Municipal and Zoning Appeals of Baltimore City had denied his request for a permit to allow him access across a residentially zoned area.

Thirdly, the area surrounding the proposed use in Leimbach was residential, and the requested access would have traversed the heart of a residential area. In the present case, the strip at issue is a small slice of residentially zoned property, wholly isolated from the remaining property on the other side of Greene Tree Road. The property on the far side of Greene Tree Road from the commercial center has screening and buffers provided which have been approved.

- 12 -


Use of the strip in question for access as requested will not have the type of immediate, substantial adverse impact on a residential use as was presented in Leimbach. More importantly, denying access over the strip will have no positive benefit, it will serve only to impose an unreasonable burden on the operation of the commercial center. Greene Tree Road itself provides a buffer between the commercial center and the residential development on the east side of Greene Tree Road. Permitting access to the rear of the commercial center over the strip would impose no adverse affect on the residential property, which already has approved screening.

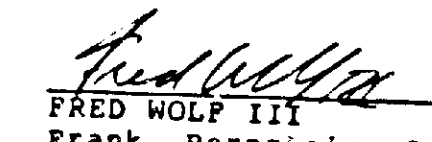
Denial of access over the residential strip, however, would wreak a negative impact on the operation of the center. The developer is seeking access across the residential strip so that supplies may be delivered to the rear of the retail operations involved in the commercial center. If access is denied, then the delivery operations would have to take place at the front of the retail outlets. This would not only increase truck traffic in the parking areas, but would also restrict free and unfettered access to the individual retail outlets in the commercial center, creating a situation where pedestrian traffic would be routed through areas in which commercial deliveries were being made. This would increase the risk of pedestrian-delivery vehicle occurrences.

This negative impact could be entirely avoided, without any concomitant adverse impact on the residentially-zoned property on

- 13 -

the east side of Greene Tree Road (which is being developed by common ownership), by permitting access to the rear of the retail center. Any type of cost-benefit analysis clearly establishes that permitting access across the strip would have positive effects, which will not be equalled by any benefit to the property on the far side of Greene Tree Road if access is denied.



BENJAMIN BRONSTEIN
Evans, George & Bronstein
200 Alex Brown Building
102 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 828-4442


FRED WOLF III
Frank, Bernstein, Conaway
and Goldman
300 E. Lombard Street
Baltimore, Maryland 21202
(301) 625-3500

CERTIFICATION OF MAILING

I HEREBY CERTIFY, that on this 9 day of April, 1987, a copy of the foregoing was hand delivered to Phyllis Cole Friedman and Peter Max Zimmerman, People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204 and George W. Liebman, P.A., 8 West Hamilton Street, Baltimore, Maryland 21201

- 14 -


BENJAMIN BRONSTEIN

IN THE MATTER OF THE PETITION FOR : BEFORE THE COUNTY BOARD OF APPEALS
SPECIAL HEARING
W/S of Green Tree Rd., 1170' : OF BALTIMORE COUNTY
N of C/L of Hooks La. & 125'
N of C/L of Hooks La., 3rd District :
WOODHOLME PROPERTIES LIMITED : Case No. 87-228-SPH
PARTNERSHIP, Petitioner : : : : :
1987 APR 3 11 4 21

PEOPLE'S COUNSEL'S HEARING MEMORANDUM

The People's Counsel for Baltimore County is concerned with the use of residentially zoned land as access to a commercial use. The Baltimore County Zoning Regulations (BCZR) do not permit such use. And, as is the custom, any use not specifically permitted is prohibited. See BCZR 102.1; Kowalski v. Lamar, 25 Md. App. 493, 334 A.2d 536 (1975). Put simply, this case is governed by Leimbach Construction Co. v. City of Baltimore, 257 Md. 635, 264 A.2d 109 (1970). There, despite the property owner's complaint that application of the rule prohibiting the use of residentially zoned land left him without access (with only a footpath), the Court of Appeals refused to allow the use of the land. Moreover, the application of the rule did not depend directly or indirectly on the size of the residentially zoned part.

The Petitioner has cited earlier decisions from Maryland and Massachusetts, as well as the Annotation at 58 ALR3d 1241 (1974). Close analysis of the case law shows that these situations arise under varying legal and factual settings. To be sure, courts have on some occasions permitted the use of residential land for access to commercial uses; but these cases either involved statutes which authorized approval, and/or factual situations in which the effect otherwise would be to confiscate the property.

The Baltimore County Zoning Regulations do not provide for use variances generally, and specifically do not provide for access to commercial uses via a

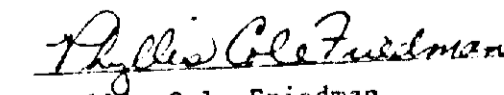
residential zone. Moreover, it is obvious in the present case that there is no question of confiscation of property.

We are also aware that the Zoning Commissioner has recently developed a more liberal policy for approving such uses. But it has never been tested at the County Board of Appeals or in the courts. We respectfully submit that this policy is in clear conflict with the Leimbach case.

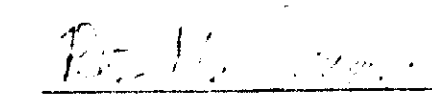
The effect of compliance with the law here would be that the developer would have to amend its site plan. It would not prevent commercial and office use.

We have also given consideration to the observation by the developer that the Zoning Commissioner had previously applied his more liberal interpretation in two cases. Those cases were not contested by Protestants in the community. As a result, those cases did not attract the intensive study and analysis which the present case has generated. If, indeed, the Zoning Commissioner's policy is mistaken and in conflict with the prevailing law, the incorrect approval in two cases does not justify continuation of the practice.

It is vital that the law be stated clearly in this case so that there is no misunderstanding for property owners and neighbors in the future. If the decision is, as we suggest, that such use is not permitted, there does remain one additional avenue of relief for property owners who believe it is too harsh. They may request the Planning Board and County Council to consider amending the zoning regulations, or they may request a zoning reclassification.


Phyllis Cole Friedman
People's Counsel for Baltimore County

- 3 -


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

I HEREBY CERTIFY that on this 2nd day of April, 1987, a copy of the foregoing People's Counsel's Hearing Memorandum was mailed to Fred Wolf, III, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard St., Baltimore, MD 21202; Benjamin Bronstein, Esquire, Suite 200, 102 W. Pennsylvania Ave., Towson, MD 21204; Newton A. Williams, Esquire, 204 W. Pennsylvania Ave., Towson, MD 21204; and George W. Liebman, P.A., 8 West Hamilton St., Baltimore, MD 21201.


Peter Max Zimmerman


Gaylord Brooks Realty Company
100 E. Baltimore Street, Baltimore, Maryland 21201


December 5, 1986

Benjamin Bronstein, Esquire
Suite 200
102 West Pennsylvania Avenue
Towson, Maryland 21204

Dear Mr. Bronstein:

I have reviewed the copy of "Plat to Accompany Zoning Variance - Festival at Woodholme" dated September 23, 1986 which D.S. Thaler and Associates, Inc. sent to me. This letter is to advise that Valley Gate Limited Partnership, which owns the property immediately to the north of the subject site has no objection to the grant of petitioners request as indicated on the above referenced plan.

Very truly yours,


Richard A. Moore

RAM/bk

COMMERCENTRE



December 4, 1986

Mr. Benjamin Bronstein
Alex Brown Building
Suite 200
102 W. Pennsylvania Avenue
Towson, MD 21204

RE: Festival at Woodholme
Petition for Special Hearing

Dear Mr. Bronstein,

Thank you for the opportunity to review the plans prepared in connection with your petition for special hearing to park in certain residential portions of the Festival at Woodholme project. Based on a review by our staff of the plans, and the intent of the petition, we, as developers and managers of the Commercentre project, have no objection to the petition for special hearing to park in the indicated residential zones.

Again, we thank you for the opportunity to review this proposal.

Very truly yours,

Clark F. Mackenzie
Clark F. Mackenzie
General Partner

CFM:jf

Developer:
MacKenzie & Associates, Inc.
2224 West Joppa Road, Suite 530
Lutherville, Maryland 21093
(301) 821-8585

Owner: THE COMMERCE CENTRE VENTURE
Hooks Lane Limited Partnership, Managing Partner
Clark F. Mackenzie, General Partner
Erwin L. Greenberg, Limited Partner



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

March 20, 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. 87-228-SPH WOODHOLME PROPERTIES LTD. PARTNERSHIP
W/s GREENETREE ROAD, 1170' N OF c/1 OF
HOOKS LANE AND 125' N OF c/1 OF HOOKS LANE
3rd ELECTION DISTRICT
2nd COUNCILMANIC DISTRICT

SPH -COMMERCIAL PARKING/ACCESS THROUGH
RESIDENTIAL ZONE (D.R. 3-5)-PHASES I & II
-ACCESS FOR PARKING/LOADING THROUGH
D.R. 10.5 ZONE -PHASE III

1/29/87 -Z.C. GRANTED SPH w/RESTRICTION

ASSIGNED FOR: Thursday, April 9, 1987 at 1:00 p.m.

cc: Steven Koren, Trustee Appellant/Petitioner
Woodholme Properties Counsel for Petitioner
Benjamin Bronstein, Esquire Counsel for Appellants/Protestants
George W. Liebmann, Esquire (Pikesville Comm. Growth Corp, et al)

D. S. Thaler & Assoc., Inc. Developer's Engineer
Phyllis Cole Friedman, Esquire Appellant/People's Counsel
Peter Max Zimmerman, Esquire Appellant/Deputy People's Counsel
George E. Weber, Jr.

Jack Millman
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

Kathi C. Weidenhammer
Administrative Secretary



County Board of Appeals of Baltimore County

Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

April 29, 1987

Benjamin Bronstein, Esq.
Suite 200, 102 W. Pennsylvania Ave.
Towson, Md. 21204

Re: Case No. 87-228-SPH
Woodholme Properties Ltd.
Partnership

Dear Mr. Bronstein:

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

Very truly yours,
June Holmen
June Holmen, Secretary

Encl.
cc: Steven Koren
D. S. Thaler & Assoc., Inc.
George W. Liebmann, Esq.
Phyllis C. Friedman
George E. Weber, Jr.
Jack Millman
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. duBois

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 700
September Term, 1986

FRANK LINDBERG, ET AL.

BAITMORE COUNTY, MARYLAND, ET AL.

Alpert,
Bloom,
Bell, Robert M.,
JC.

Per Curiam

RECEIVED
FEB 6 1987

filed: January 21, 1987

EVANS, & GEORGE

-2-

Seven residents of Baltimore County who live in the general vicinity of the Martin Marietta Corporation Research Institute, which is located in that county, seek to have declared null and void the comprehensive rezoning of the First Councilmanic District as enacted by the Baltimore County Council. Appellants specifically object to the reclassification of the Martin Marietta Complex from D.R. (residential) to 0-2 (office parks). The Circuit Court for Baltimore County (Fader, J.) found that the residents, none of whom live within 1500 feet of the complex, were not aggrieved by the Council's action; thus, the court dismissed the action for lack of standing. Appellants assert that the court erroneously relied on lack of proximity as dispositive of standing. We find no error.

Whether stated in the language of a statutory zoning appeal ("person aggrieved"), Brynarski v. Montgomery County, 247 Md. 137, 143 (1967), or the language generally applicable to suits filed in equity ("persons injuriously affected"), Cassel v. City of Baltimore, 195 Md. 348, 353 (1950), the legal concept of standing requires the court to dismiss any action attacking the validity of a zoning ordinance brought by one who lacks an interest in the outcome of the litigation that is distinct from the interest of the public at large. Richmark Realty Co. v. Whittliff, 226 Md. 273, 281-82 (1961). Although proximity is not itself dispositive

of the issue of standing, cf. Weinberg v. Kracke, 189 Md. 275 (1947), remoteness does reflect upon the sufficiency of the allegations of special damages. See Bauernschmidt v. Standard Oil Co., 153 Md. 647, 657 (1927). It is in this respect that the court below employed proximity to hold that appellants lacked standing.

We do not find error in the lower court's determination that the lack of proximity between appellants' property and the Martin Marietta facility belies appellants' bald assertion that the rezoning of the facility will result in a loss to them of property value. The rezoned property has served as a research institute for over twenty years; there is no indication that Martin Marietta intends to do more than continue its present use. Unlike the situation that may have been presented if the property had been rezoned for heavy industrial use as a paper mill or fertilizer plant, we find no reasonable grounds to infer that persons living as distant from the Martin Marietta Complex as appellants will suffer special damages from the rezoning enacted by the Baltimore County Council. Accordingly, we incorporate and adopt the well-reasoned opinion of Judge Fader as our own.

-3-

JUDGMENT AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.

LINDBERG, et al., IN THE
Plaintiffs CIRCUIT COURT
V. FOR
BALTIMORE COUNTY, MARYLAND, BALTIMORE COUNTY
Defendant CASE NO. 9/245/85-CO-1210

MEMORANDUM OPINION AND ORDER
DISMISSING CASE

Seven citizens of Baltimore County filed a suit against Baltimore County government seeking declaratory relief that an official zoning map for the First Councilmanic District enacted in 1984 is null and void as it affects property belonging to Martin Marietta Corporation. They allege a violation of their rights under the Fourteenth Amendment to the United States Constitution and Article 24 (Due Process), Declaration of Rights, Maryland Constitution. The Complaint is directed at the Baltimore County Council action in enacting the map. A previous ruling by this Court dismissed the Gun Road Historical and Protective Association as a plaintiff because of the lack of standing. Citizens Planning & Housing Ass'n v. County Exec., 273 Md. 333 (1974) (Association lacks standing to sue where it has no property interests of its own, separate and distinct from its individual members which may be affected by any of the alleged acts under attack). The Gun Road Association has no independent property interest. Nevertheless, the individual plaintiffs will hereafter be referred to as, "The Gun Road Group."

Both the People's Counsel for Baltimore County and Martin Marietta Corporation sought and were granted permission to intervene and were designated as defendants.

FILED MAY -1 1986

The Facts

On November 13, 1984, Baltimore County repealed existing zoning maps of the First Councilmanic District and adopted an official zoning map for that District pursuant to the Comprehensive Rezoning process mandated by § 22-22 of The Baltimore County Code. This new map became effective January 10, 1985. The Code requires the County Council to decide on the comprehensive rezoning only after receipt of Planning Board comments, public hearings and upon a review of maps and other documents.

Martin Marietta has an institute and laboratory facility located within the First District in the Gun Road area. The Company had plans to enlarge its research laboratory and institute, which expansion would require some change in the then existing zoning. The Gun Road Group opposed the expansion and rezoning. On May 7, 1984, Baltimore County Executive Donald Hutchinson wrote Martin Marietta that the expansion of its facility was fully supported by his administration.

Five of the seven Baltimore County Councilmen signed a letter dated May 7, 1984 to Martin Marietta. Referring to the intended expansion by Martin Marietta and to zoning classifications, the letter stated, "Councilman Ronald Hickernall, in whose district the subject site exists, has made it known to the members of the County Council that it is his intention to recommend the necessary land use zoning classification to accommodate a proposed expansion, future expansion consistent with this zoning and with corporate plans and opportunities and assurance that use of the property does not become a nonconforming use as a result of any change in the zoning regulations with respect

to research institutes."

Two paragraphs at the conclusion of the letter from the five Councilmen are the focal point of argument by the Gun Road Group who state they were denied their right to a meaningful hearing because the Council had made up its mind to rezone before the process of debate, public hearing and consideration had even begun:

The presence of major research and development facilities of the Martin Marietta Corporation is recognized for its importance to the County-wide program for the promotion and support of economic development efforts. The research laboratories, while important to the operations and ventures of your company, are also important as they serve as a standard for the high quality and respected image of the Baltimore area business community.

The County Council looks forward to continued support of the necessary land use classifications to provide for Martin Marietta Laboratories' long-term presence in Baltimore County in accordance with its authority and responsibility under the County Code and as is consistent with the Baltimore County Master Plan, 1979-90.

Alleging a violation of constitutional rights based on their being deprived of a meaningful hearing, The Gun Road Group also alleged the Council procedure violated the Baltimore County Charter and Baltimore County Code by the failure to hold open, public hearings prior to making a decision on the map.

The three defendants moved to dismiss the suit. Among the reasons advanced for dismissal are two which this Court addresses in this Memorandum Opinion and which are dispositive of the case in favor of the defendants. The defendants argue:

- 1. The plaintiffs have no standing to bring the action, and
2. The court has no right to interfere with the legislative decision to rezone.

When the Court questioned The Gun Road Group at two hearings, the Group conceded they could point to no specific procedure the County did not follow in the process of map consideration. This is not a question of an alleged failure to give notice, receive a report or hold a hearing. The issue generated is solely limited to the Group's claim that all steps in the debate, hearing and consideration process were meaningless because the Council had decided the issue in advance.

Martin Marietta had submitted a development plan for expansion (the addition of 87,000 sq. feet of space). The plan was processed in accord with the Baltimore County Code. An approval by the County Review Group (CRG) was appealed to the County Board of Appeals where the action by the CRG was intensely debated. The Board of Appeals affirmed the CRG on August 6, 1984. An appeal to this Court (Gun Road Historical and Protective Association, et al. v. County Board of Appeals, Case No. 2/356/84-CG-656) resulted in the Board of Appeals being affirmed on February 6, 1985. No further appeal has been taken from that decision. This Court ruled that the constitutional attack in this suit could not encompass any further consideration of the issues previously determined in the prior suit which reviewed the administrative process.

No doubt the issues here are very important. When government deals with its people in all matters, including comprehensive rezoning, it must follow the procedures mandated by its Constitution from which its power is derived and it must not act in derogation of the U.S. or State constitutional rights or the statutory rights of its citizens. And the judiciary must listen when it is permitted by law to listen

and always explain the reasons for the judicial decision it makes. In this case, The Gun Road Group has no standing to bring this action and no right to further inquire into the reasons for the legislative action taken. Neither has the judiciary the right to make the inquiry.

Analysis

I. Standing

Generally, a taxpayer in this State may challenge the actions of a public official or public body when such actions are "illegal or ultra vires, and may injuriously affect the taxpayer's rights and property." This challenge may be made when the taxpayer shows some special damage distinct from that of the general public. Citizens Planning & Housing at 339. To have standing to mount a contest against the decision by a zoning commissioner who acts as an administrative or quasi-judicial authority, a person must be aggrieved by the decision. A person aggrieved is one whose personal or property rights are adversely affected by the decision and affected in a way different from that suffered by the public generally. Bryniarski v. Montgomery Co., 247 Md. 137, 144 (1967). There is a distinction between the degree of certainty of allegations and proof of aggravement in cases in equity than in statutory appeals from the Board of the original court of record. When seeking declaratory relief nullifying a zoning ordinance for constitutional or other reasons, the allegations by the plaintiff of special damage by the zoning ordinance must be definite and must be met by showing such special damage by competent evidence. 247 Md. at 144. The fact that plaintiffs are residents and taxpayers is insufficient.

In the Complaint filed on April 18, 1985, the plaintiffs characterized themselves as "landowners & residents." Following a hearing before the Court on December 10, 1985 where strong doubt was expressed by the Court concerning the plaintiff's standing rights, an amendment to the complaint was filed on January 6, 1986. In the amendment, the plaintiffs allege they are in "close geographical proximity to Defendant Martin Marietta." They do not disagree with Baltimore County that the actual distance of their property from Martin Marietta is from 1500' (closest) to 2700'. Allegations are made by The Gun Road Group that they will suffer loss to the value of their property if the rezoning is allowed to stand. Affidavits from some residents are made a part of the file. These affidavits express individual opinion that the rezoning will decrease the property values because of increased commercialization of a residential area and because of increased traffic. No evidence is offered or proffered to support these opinions other than the stated opinion itself.

"A person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved." Bryniarski, 247 Md. at 145. The close proximity requirement is alleged but not demonstrated by the pleadings in this case. It is hard to imagine the absence of a property owner in any area where development or rezoning occurs who would not have some opinion and in many cases proof of an adverse effect by reason of the development or rezoning. While the close proximity requirement does not always mean the properties have to abut, there has to be some closeness and affect articulated and demonstrated in the pleadings which is not shown here. See Wier v. Witney Land Co., 257 Md. 600 (1970). No suit will lie

under a general theory that the plaintiff is a member of the public and a beneficiary of the public trust. There must be more. Kerpelman v. Board of Public Works, 261 Md. 436 (1971). And the Court points to the fact that the standing is denied to the plaintiffs under the rules applicable to administrative agency actions, much less any standing that would be required on a higher threshold level to contest the actions of a legislative body of government.

Though the standing issue is dispositive of the Motion to Dismiss, the Court feels a responsibility to explain further the constitutional limitation on it as a separate and independent branch of government that precludes inquiry into the legislative action.

II. Legislative Action

Although The Gun Road Group views the issue as somewhat up for discussion, prior appellate court opinions have held that the enactment of comprehensive zoning regulations and subsequent amendments to those regulations by the Council is considered a legislative act. Turf Valley v. Zoning Board, 262 Md. 632, 641 (1971); Trustees of McDonough Educ. Fund & Inst. v. Baltimore County, 221 Md. 550 (1960); Nottingham Village, Inc. v. Baltimore County, 266 Md. 339, 354 (1972).

Maryland law holds that the judicial branch of government cannot institute an inquiry into the motives of the legislature in the enactment of laws, less the legislature be subordinated to the courts. County Council v. District Land, 274 Md. 691, 704 (1974). Zoning decisions which are made during a comprehensive rezoning process are strongly presumed to be correct. When a County Council engages in the legislative function of comprehensive rezoning, it exercises what

has been described as its "plenary" legislative power. That power is broad and is limited only by the constitutional restriction that the Council's action bears a substantial relationship to the public health, comfort, order, safety, convenience and general welfare. Stump v. Grand Lodge, 45 Md. App. 263, 269 (1980). Accord 5 McQuillin, The Law of Municipal Corporations §§ 16.90 and 16.91 at pp. 266-273 (3rd ed. 1981). While these authorities say there may be some exception to the general rule when legislators act for their personal gain or pecuniary benefit, that is not an issue in this case.

In Turf Valley, supra, it was alleged that two members of the Howard County Council had political and philosophical bias and predisposition to delete Planned Communities from the County zoning law. The Court held that such bias, held in common with many other county citizens, did not disqualify those Council members from participating in a vote on a decision to delete Planned Communities.

Legislators frequently publicly or privately indicate they will or will not take certain positions on certain issues before any votes are cast. Turf Valley, supra and District Land, supra, make it clear that such prejudgment, predisposition or political promises do not disqualify a public official from voting, or invalidate the actions taken as a result of such vote. Maryland appellate court opinions have long adhered to this position.

The Gun Road Group has also cited the "Sunshine Laws" of Maryland codified in Md. State Gov't Code Ann. § 10-501 et seq. Again, there is no complaint that the meetings required to be held in a public atmosphere were not so held. Through receipt of Planning Board recommendations, public hearings and the opportunity afforded citizens

to voice their opinion, government makes itself available for comment and criticism on most subjects presented for legislative action. All of the evidence in this case shows great intensity in the presentation of conflicting positions on the rezoning issue before the County Council and at other hearings. The County Council acted and made a decision. The Sunshine Laws were complied with. All the procedural requirements having been fulfilled, it is constitutionally forbidden under the separation of powers doctrine for the judicial branch to make or allow further inquiry into the legislative action.

Conclusion

For the reasons stated above, the Motion to Dismiss by Baltimore County, the Martin Marietta Corporation and People's Counsel for Baltimore County is granted. No declaration of rights can be made except to declare the plaintiffs have no standing to bring the action requesting a declaratory judgment. And were standing to exist, the constitutional doctrine of separation of powers forbids the court from inquiring into the motives or questioning the reasons for the legislative enactment at issue. It is so ORDERED by the Circuit Court for Baltimore County this 20th day of April, 1986.

Signature of John F. Fader, II
JOHN F. FADER, II
Judge

cc: Robert D. Greenwalt, Esquire
Joseph P. Alcarese, Esquire
Michael J. McMahon, Esquire
Phyllis Cole Friedman, Esquire

IN THE MATTER OF THE APPLICATION OF WOODHOLME PROPERTIES LTD. PARTNERSHIP FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE WEST SIDE OF GREENTREE RD., 1170' NORTH OF THE C/L OF HOOKS LANE AND 125' NORTH OF THE C/L OF HOOKS LANE 3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Doc. No. 40

Folio No. 94

File No. 87-CG-2024

ZONING FILE NO. 87-228-SPH

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Keith S. Franz and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Board of Appeals of Baltimore County:

ENTRIES FROM DOCKET OF BOARD OF APPEALS OF BALTIMORE COUNTY

No. 87-228-SPH

October 27, 1986 Petition of Woodholme Properties Ltd. Partnership for a special hearing on property located on the west side of Greentree Rd., 1170' north of the c/l of Hooks Lane, and 125' north of the c/l of Hooks Lane.

November 19, 1986 Publication in newspaper - filed

November 21, 1986 Certificate of Posting of Property - filed

November 25, 1986 Comments of Balto. County Zoning Plans Advisory Committee filed

December 3, 1986 Comments of Balto. County Director of Planning - filed

Woodholme Properties Ltd. Partnership - Case No. 87-228-SPH

December 8, 1986 At 10:30 a.m. hearing held on petition by Zoning Commissioner

January 29, 1987 Order of Zoning Commissioner ordering that a use permit for business parking in a residential zone and to permit commercial access for parking and loading through a residential zone be approved, and, as such, the Petition for Special Hearing is GRANTED, subject to restriction.

February 9 Order for Appeal to the C.B. of A. from Benjamin Bronstein, Esq., on behalf of the Petitioner.

February 12 Order for Appeal to the C.B. of A. from Phyllis C. Friedman, People's Counsel for Baltimore County.

February 17 Order for Appeal to the C.B. of A. from George W. Liebmann, Esq., on behalf of Protestants.

April 9 Memorandum of Appellee in Support of Decision of Zoning Commissioner filed by Benjamin Bronstein, Esq., on behalf of Petitioner.

April 9 People's Counsel's Hearing Memorandum

April 29 Order of the County Board of Appeals ordering that a use permit for business parking in a residential zone and to permit commercial access for parking, loading and servicing across a residential zone, be APPROVED subject to restrictions.

May 21 Order for Appeal to the Circuit Ct. for Baltimore County by Geo. W. Liebmann, Esq., on behalf of Pikesville Comm. Growth Corporation.

May 26 Certificate of Notice sent to interested parties.

May 26 Transcript of testimony filed

May 28 Amended Order of the Board of Appeals

June 12 Petition to accompany Order for Appeal filed in the Circuit Ct. for Baltimore County.

Order for Appeal filed in Circuit Ct. for Baltimore County by Benjamin Bronstein, Esq., on behalf of Petitioner.

Petitioner's Exhibit No. 1 - Articles of Incorporation of Pikesville Comm. Growth Corp.

" " " 2 - Lists of Members of Pikesville C. G. C.

" " " 3 - Plat of Pikesville Towncenter

" " " 4 - Map of Festival at Woodholme showing subj. strip of residential zone in this case.

Woodholme Properties Ltd. Partnership - Case No. 87-228-SPH

Petitioner's Exhibit No. 5A & B - Comments from Dept. of Traffic & Engineering

" " " 6 - Zoning Policy Manual (9/85) with particular reference to page BM-1.

Appellants' Exhibit No. 1 - Letter from PCCG authorizing Evelyn Burns to testify for them.

" " " 2 - Zoning Request of the Turke property.

June 18, 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 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 whomsoever institutes the request.

Respectfully submitted,

June Holmen
County Board of Appeals of Baltimore County

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
May 26, 1987

Benjamin Bronstein, Esq.
Suite 200, 102 W. Pennsylvania Ave.
Towson, Maryland 21204

Dear Mr. Bronstein: Re: Case No. 87-228-SPH Woodholme Properties Ltd. Partnership

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that 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,

June Holmen
June Holmen, Secretary

Encl.
cc: Steven Koren
D. S. Thaler & Assoc., Inc.
George E. Weber, Jr.
Jack Millman
People's Counsel for Balto. County
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. DuBois

RECEIVED
MAY 28 1987
ZONING OFFICE

IN THE MATTER OF THE APPLICATION OF WOODHOLME PROPERTIES LTD. PARTNERSHIP FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE WEST SIDE OF GREENTREE RD., 1170' NORTH OF THE C/L OF HOOKS LANE AND 125' NORTH OF THE C/L OF HOOKS LANE 3rd ELECTION DISTRICT 2nd COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Doc. No. 40

Folio No. 94

File No. 87-CG-2024

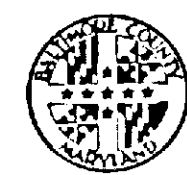
ZONING FILE NO. 87-228-SPH

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Keith S. Franz and Harry E. Buchheister, Jr., 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, Steven Koren, Trustee, Woodholme Properties Ltd. Partnership, 1777 Reisterstown Rd., Suite 275, Commercecenter East, Baltimore, Md. 21208, Petitioner; Benjamin Bronstein, Esq., Suite 200, 102 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Petitioner; George W. Liebmann, Esq., 8 W. Hamilton St., Baltimore, Md. 21201, Counsel for Pikesville Community Growth Corporation, Plaintiffs; D. S. Thaler & Associates, Inc., 11 Warren Rd., Baltimore, Md. 21208; George E. Weber, Jr., 18 Castleton Ave., Pikesville, Md. 21208; Jack Millman, 3411 Deep Willow Ave., Pikesville, Md. 21208; and Phyllis C. Friedman, Court House, 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.

June Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180
March 20, 1987
ZONING OFFICE

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 21(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 21(c), COUNTY COUNCIL BILL #59-79.

CASE NO. 87-228-SPH WOODHOLME PROPERTIES LTD. PARTNERSHIP
W/S GREENTREE ROAD, 1170' N OF C/L OF HOOKS LANE AND 125' N OF C/L OF HOOKS LANE
3rd ELECTION DISTRICT
2nd COUNCILMANIC DISTRICT
SPH -COMMERCIAL PARKING/ACCESS THROUGH RESIDENTIAL ZONE (D.R. 3-5)-PHASES I & II
-ACCESS FOR PARKING/LOADING THROUGH D.R. 10.5 ZONE -PHASE III
1/29/87 -Z.C. GRANTED SPH w/RESTRICTION
Assigned for: Thursday, April 9, 1987 at 1:00 p.m.

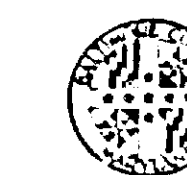
cc: Steven Koren, Trustee Woodholme Properties Appellant/Petitioner
Benjamin Bronstein, Esquire Counsel for Petitioner
George W. Liebmann, Esquire Counsel for Appellants/Protestants (Pikesville Comm. Growth Corp, et al)
D. S. Thaler & Assoc., Inc. Developer's Engineer
Phyllis Cole Friedman, Esquire Appellant/People's Counsel
Peter Max Zimmerman, Esquire Appellant/Deputy People's Counsel
George E. Weber, Jr.
Jack Millman
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

Kathi C. Weidenhammer
Administrative Secretary

Woodholme Properties Ltd. Partnership - Case No. 87-228-SPH

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Steven Koren, Trustee, Woodholme Properties Ltd. Partnership, 1777 Reisterstown Rd., Suite 275, Commercecenter East, Baltimore, Md. 21208, Petitioner; Benjamin Bronstein, Esq., Suite 200, 102 W. Pennsylvania Ave., Towson, Md. 21204, Counsel for Petitioner; George W. Liebmann, Esq., 8 W. Hamilton St., Baltimore, Md. 21201, Counsel for Pikesville Community Growth Corporation, Plaintiffs; D. S. Thaler & Associates, Inc., 11 Warren Rd., Baltimore, Md. 21208; George E. Weber, Jr., 18 Castleton Ave., Pikesville, Md. 21208; Jack Millman, 3411 Deep Willow Ave., Pikesville, Md. 21208; and Phyllis C. Friedman, Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 26th day of May, 1987.

June Holmen
County Board of Appeals of Baltimore County



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

April 29, 1987

Benjamin Bronstein, Esq.
Suite 200, 102 W. Pennsylvania Ave.
Towson, Md. 21204

Dear Mr. Bronstein: Re: Case No. 87-228-SPH Woodholme Properties Ltd. Partnership

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

Very truly yours,

June Holmen
June Holmen, Secretary

Encl.
cc: Steven Koren
D. S. Thaler & Assoc., Inc.
George W. Liebmann, Esq.
Phyllis C. Friedman
George E. Weber, Jr.
Jack Millman
Norman E. Gerber
James Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. duBois

RECEIVED
MAY 1 1987
ZONING OFFICE

IN THE MATTER OF THE APPLICATION OF WOODHOLME PROPERTIES LIMITED PARTNERSHIP WEST SIDE OF GREENTREE RD., 1170' NORTH OF THE CENTER LINE OF HOOKS LANE AND 125' NORTH OF THE CENTER LINE OF HOOKS LANE, 3RD DISTRICT

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. 87-228-SPH

OPINION

This matter comes before the Board following a decision by the Zoning Commissioner that has been appealed by the Petitioner, the Protestants and the People's Counsel. In open hearing, the Petitioner dismissed its appeal to this Board. Petitioner provided a motion that People's Counsel be dismissed from this action. The Board denied this motion, however, following a discussion on the record on the issue of estoppel, People's Counsel withdrew from the case. On that point, the Board will note that the responsibility of People's Counsel is to review issues on a case by case basis and use their discretion in determining which issues on which cases they should present to this Board. No decision by People's Counsel on prior issues on other cases is viewed by this Board in any way as a waiver of their right to present such an issue on a subsequent case. Following the Board's statement on this point in open hearing and our holding that People's Counsel's rights in this regard are preserved, People's Counsel withdrew from this case for reasons which the record will clearly reflect.

The Petitioner requests that this Board grant a use permit for business parking in a residential zone and also to permit access for commercial vehicles to park and load in a commercial zone that requires such vehicles to traverse a residential zone. These requests are specifically noted in Petitioner's Exhibit No. 4.

The subject property is located off Hooks Lane at Reisterstown Road and is being proposed for development of office and commercial use.

Woodholme Properties Ltd. Partnership - Case No. 87-228-SPH

That portion of office use is confined to property zoned O-2. The commercial development is confined within a BM zone. Petitioner requests that the northernmost section of their property, which is presently zoned DR 3.5 and is just under three (3) acres, be used to construct 161 parking spaces. Though the office that would be serviced by this parking has as many spaces as is required by the Zoning Regulations without this additional parcel, it was the testimony of the Petitioner that the additional spaces are necessary to adequately service the office need that will be generated by the construction of the office building.

Petitioner provided David S. Thaler, an expert engineer, who described the Baltimore County requirements for Greentree Road, and in particular the road design that was dictated by the configuration of its intersection with Hooks Lane. Also testifying on behalf of Petitioner was Wesley Guckert, an expert traffic engineer. In his opinion, he stated that the additional parking requested in the DR zone would not be detrimental to the flow or level of service for the roads and intersections affected. It was both his and Mr. Thaler's opinion that the standard prescribed in Section 502.1 of the Baltimore County Zoning Regulations (BCZR) would be satisfied if parking in this area were permitted.

The Petitioner's second request is for permission to use a narrow strip of land that is adjacent to the west side of Greentree Road but east of the commercial development to permit access to commercial vehicles to serve the rear of the commercial building. This small parcel of land is zoned DR 10.5. It is necessary that this land be crossed in order to serve the rear of the commercial building under the present development configuration. It was Mr. Thaler's testimony that this strip could not be used for residential purposes and that it was created when the County required the configuration of the street to be at an angle other than that which was presumed when the

Woodholme Properties Ltd. Partnership - Case No. 87-228-SPH

zoning reclassification was created.

The Board is of the opinion that the request for a use permit under Section 409.4, in effect, requires us to apply the standard that would be necessary for a special exception. It is the opinion of this Board that the use of this request would not be detrimental to this neighborhood. Petitioner's witnesses have satisfied this Board that the standards of 502.1 have and can be met and that this use would not adversely affect the public welfare. Protestants did not satisfy the Board that use of this property as requested would have an adverse effect above and beyond that associated with a special exception use irrespective of its location within the zone. Schultz v Pritts, 432 A. 2d 1319 (1981). With respect to the residential strip of land that must be crossed in order to provide access to the rear of the commercial building, this Board believes that such a parcel is incapable of use residentially, will not be used for parking or service of the commercial use and should be permitted as an exception of the general rule prohibiting commercial use of residential property. It is therefore the position of this Board that the use permit be provided to Petitioner in accordance with Petitioner's Exhibit No. 4, so as to allow commercial parking in a residential zone and access to commercial property through a residential zone, subject to the restrictions stated below.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 29th day of April, 1987, by the County Board of Appeals, ORDERED that a use permit for business parking in a residential zone and to permit commercial access for parking, loading and servicing across a residential zone, be APPROVED, subject to the following restrictions:

Woodholme Properties Ltd. Partnership - Case No. 87-228-SPH

- 1. No vehicles shall be permitted to park or load within the DR 10.5 zoned property west of Greentree Road and east of the proposed commercial development, nor shall any servicing of the commercial structure take place in the residential zone.
2. No super market or other commercial establishment of a similar size and whose primary product is food, shall be permitted to occupy the commercial development of this project.
3. No emergency medical office or 24 hour medical service shall be permitted in the office portion of the proposed development.
4. This Opinion shall be recorded among the Land Records of Baltimore County at Petitioner's expense.

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

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William T. Hackett, Chairman

John S. Evans

Harry E. Buchmeister, Jr.

CIRCUIT COURT FOR BALTIMORE COUNTY CIVIL GENERAL

DOCKET 40 PAGE 94 CASE NO. 87-CG-2024 CATEGORY APPEAL

WOODHOLME PROPERTIES LIMITED PARTNERSHIP, Et al. Benjamin Bronstein 29 W. Susquehanna Ave., Ste. 205 (301) 296-0200 Fred Wolf, III 300 E. Lombard St. (301) 625-3500
PIKESVILLE COMMUNITY GROWTH CORPORATION, Et al. George W. Liebmann 8 West Hamilton St. (410) 752-5887

- (1) May 21, 1987 - Appellant's Order for Appeal from the Decision of the County Board of Appeals, fd.
(2) May, 26, 1987 - Certificate of Notice fd.
(3) June 5, 1987 - Appellant's Petition for Appeal fd.
(4) June 18, 1987 - Transcript of Record fd.
(5) June 18, 1987 - Notice of Filing of Record, fd.
(6) July 1, 1987 - App. of Benjamin Bronstein & Fred Wolf, III for the Appellate Court's decision to dismiss & answer to Decision of Appeal fd. & Request for Hearing, fd.
(7) July 16, 1987 - Deft's Memorandum in Support of Motion to Dismiss Cross Appeal, fd.
(8) July 21, 1987 - Appellant's Motion to Dismiss Petition for Appeal of Woodholme Properties Limited Partnership fd.
(9) July 21, 1987 - Appellant's Motion to Strike Motion to Dismiss Appeal fd.
(10) July 24, 1987 - Plff's response in opposition to Appellant's Motion to Strike Appellant's Motion to Dismiss Appeal fd.
(11) July 24, 1987 - Appellate's Memorandum of Law in Support of Motion to Dismiss fd.
(12) July 30, 1987 - Plaintiff's Motion to consolidate with case with 07 CG 2325 fd.
(13) Aug. 21, 1987 - Order of Court that the above case is hereby consolidated with case #87CG2325 fd.(AOR)

CASE NO. 87 CG 2024

November 13, 1987 Hon. John F. Eader, II Hearing had. Case Dismissed on the record. Costs to the Defendants (Jones).

(14) Nov. 16, 1987 - Stipulation of dismissal with prejudice that this case be dismissed with prejudice fd.

(Zoning)

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

WOODHOLME PROPERTIES LIMITED PARTNERSHIP, et al.

Plaintiffs

PIKESVILLE COMMUNITY GROWTH CORPORATION, et al.

Defendants

STIPULATION OF DISMISSAL WITH PREJUDICE

It is stipulated and agreed by and between the parties that the above-captioned matter be dismissed with prejudice.

Benjamin Bronstein, George & Bronstein 27 West Susquehanna Avenue, Suite 205 Baltimore, Maryland 21204 (301) 296-0200

Fred Wolf, III Frank, Bernstein, Conaway & Goldman 300 East Lombard Street Baltimore, Maryland 21202 (301) 625-3500

Attorneys for Plaintiffs

George W. Liebmann 8 West Hamilton Street Baltimore, Maryland 21201 (301) 752-5887

Attorney for Defendants

FILED NOV 16 1987

CIRCUIT COURT FOR BALTIMORE COUNTY CIVIL GENERAL

INMAY 40 PAGE 395 CASE NO. 87CG2325 CATEGORY APPEAL

WOODHOLME PROPERTIES LIMITED PARTNERSHIP WEST SIDE OF GREENTREE RD., 1170' NORTH OF THE CENTER LINE OF HOOKS LANE AND 125' NORTH OF THE CENTER LINE OF HOOKS LANE, 3RD ELECTION DISTRICT
Evans, George & Bronstein Benjamin Bronstein 29 W. Susquehanna Ave. 205 Baltimore, Md. 21204
Frank, Bernstein, Conaway & Goldman 300 E. Lombard St. 1021 Baltimore, Md. 21202

- 111 June 12, 1987 - Appellant's order for Appeal from the Amended Order of the Board of Appeals of Baltimore County fd.
112 July 21, 1987 - Petition for Appeal fd.
113 July 21, 1987 - Appellate Cross-Appellant's Memorandum fd.
114 July 24, 1987 - Appellate's Memorandum of Law in Support of Motion to Dismiss fd.
115 July 24, 1987 - Appellate's Memorandum of Law in Support of Motion to Dismiss fd.
116 July 30, 1987 - Appellate's Memorandum of Law in Support of Motion to Dismiss fd.
117 Aug. 21, 1987 - Order of Court that the above case is hereby consolidated with case #87CG2325 fd.
118 November 13, 1987 - Hon. John F. Eader, II, Hearing had. Case dismissed on the record. Costs to Pikesville Community Growth Corporation.
119 Nov. 16, 1987 - Stipulation of dismissal with prejudice fd.

(Zoning)
IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

WOODHOLME PROPERTIES LIMITED PARTNERSHIP, et al.,
Plaintiffs
v.
PIKESVILLE COMMUNITY GROWTH CORPORATION, et al.,
Defendants
Case No. 87CG2024
87082325

STIPULATION OF DISMISSAL WITH PREJUDICE

It is stipulated and agreed by and between the parties that the above-captioned matter be dismissed with prejudice.

Benjamin Bronstein
Benjamin Bronstein
George & Bronstein
29 West Sdsquehanna Avenue
Sdsquehanna Building, Suite 205
Towson, Maryland 21204
(301) 296-0200

Fred Wolf III
Fred Wolf, III
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202
(301) 625-3500

Attorneys for Plaintiffs

George W. Liebmann
George W. Liebmann
8 West Hamilton Street
Baltimore, Maryland 21201
(301) 752-5887

Attorney for Defendants

FILED NOV 1 6 1987

MEMORANDUM

TO: MICHAEL J. CHMEL
FROM: BENJAMIN BRONSTEIN
RE: FESTIVAL ZONING CASE
DATE: June 8, 1987
Attached is the Petition for Appeal filed by George Liebmann. Please prepare the appropriate Motions.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN RE
WOODHOLME PROPERTIES LIMITED PARTNERSHIP, et al.
vs.
PIKESVILLE COMMUNITY GROWTH CORPORATION
Case No. 872024

PETITION FOR APPEAL

Pikesville Community Growth Corporation, et al. (PCGC), by their attorney, George W. Liebmann, appeal from the order of the County Board of Appeals, dated April 29, 1987 and the subsequent purported amendment thereto entered after the Board had been ousted of jurisdiction by the Notice of Appeal and state:

1. Appellants are parties to the proceedings before the County Board of Appeals and authorized by statute to appeal. PCGC is an interested person within the meaning of Article 25A, § 5U and a party aggrieved within the meaning of Article VI, § 604 of the Baltimore County Charter. In addition, the Appellants are parties "feeling aggrieved" within the meaning of §22-32 of the Baltimore County Code.

PCGC is a Maryland nonprofit membership corporation whose members are twelve neighborhood community associations including Ralston Community Association and Colonial Village Association as well as the Pikesville Chamber of Commerce, and Pikesville Senior Center. The PCGC and its constituent members have an interest in the orderly development of the Pikesville Town Center defined by Baltimore County Ordinance, the deterioration of which will have an adverse affect on both the purposes of the PCGC and the Pikesville Chamber of Commerce and upon the neighboring residential area and the twelve member associations. The PCGC is concerned with the prevention of unsightly strip sprawl development along Reisterstown Road which will have the affect by generation of additional traffic, multiplication of curb cuts and traffic lights, unsightliness and destruction of natural landscape rendering the Pikesville area less attractive for residential and commercial development, and less accessible to

RECEIVED

customers of its business establishments. The proposed development here at issue is located just north of the Baltimore Beltway contiguous to and immediately outside the Pikesville Town Center as defined by the Baltimore County Code.

2. The member associations of PCGC have a common interest in resisting intrusions upon the principles of law restricting the use of residentially zoned land.

3. The Appellants were initially joined in opposition to the requested special exception before the County Board of Appeals by People's Counsel of Baltimore County. Because of the effective representation of Appellants by private counsel and because of the limited direct impact of the requested special exception upon neighboring residences, People's Counsel without prejudice to the correctness of its legal position or its right to assert the legal position in other proceedings withdrew its appearance in this action. Appellants believe that the hearing memorandum of People's Counsel annexed hereto sets forth relevant principles of law transgressed by the decision of the Board of Appeals in this case.

4. The decision of the Board of Appeals permitting the use of residentially zoned land as access to a commercial use contravenes § 102.1 of the Baltimore County Zoning Regulations, see the memorandum of People's Counsel, annexed hereto as Exhibit A.

5. The decision of the Board of Appeals in permitting business parking on residentially zoned land, subject to certain restrictions which it properly recognized to be imperative was likewise improper. The residentially zoned land together with the office zoned land in connection with which it is sought to be used were originally under common ownership. It is well established that where "the peculiar circumstances which rendered the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance i.e., that the hardship should be caused solely through the manner of operation of the ordinance upon the particular piece of property is lacking. In such case a variance will not be granted; the hardship arising as a result of the act of the owner or its predecessor will be regarded as being

self-created barring relief. This rule is simple and of general application in the several states." 2 Rathkopf, The Law of Zoning and Planning, § 48-1, see Salisbury Board vs. Bounds, 240 Md. 547, 554.

6. The special exception for business parking in a residential zone conceived as a buffer zone is not "in harmony with the general purpose and intent" of the zoning regulations as required by § 22-26 of the Baltimore County Code and is in direct conflict with the purpose of the residential zoning proposed by the very developer now seeking a special exception or permit. No showing of confiscation or special hardship is possible. The Board erred in holding that use of property zoned DR3.5 for 161 parking places would not have an adverse effect above and beyond that associated with a special exception use by generating additional traffic which would burden Reisterstown Road.

WHEREFORE, Appellants pray that the decision of the Board of Zoning Appeals be stayed without bond pursuant to Maryland Rule B-6, that the decision be reversed, and that Appellants be awarded their costs, together with such other and further relief as may be proper and just.

George W. Liebmann
George W. Liebmann
8 West Hamilton Street
Baltimore, MD 21201
301/752-5887

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 1987 copies of the foregoing PETITION FOR APPEAL were mailed first class, postage prepaid to:

Benjamin Bronstein, Esquire
102 West Pennsylvania, Suite 200
Towson, MD 21204

Fred Wolf III, Esquire
300 East Lombard Street
Baltimore, MD 21202

George W. Liebmann
George W. Liebmann

IN THE MATTER OF THE PETITION FOR SPECIAL HEARING : BEFORE THE COUNTY BOARD OF APPEALS
W/S of Green Tree Rd., 1170' : OF BALTIMORE COUNTY
N of C/L of Hooks La. & 125'
N of C/L of Hooks La., 3rd District :
WOODHOLME PROPERTIES LIMITED : Case No. 87-228-SPH
PARTNERSHIP, Petitioner

PEOPLE'S COUNSEL'S HEARING MEMORANDUM

The People's Counsel for Baltimore County is concerned with the use of residentially zoned land as access to a commercial use. The Baltimore County Zoning Regulations (BCZR) do not permit such use. And, as is the custom, any use not specifically permitted is prohibited. See BCZR 102.1; Kowalaki v. Lamar, 25 Md. App. 493, 334 A.2d 536 (1975). Put simply, this case is governed by Leimbach Construction Co. v. City of Baltimore, 257 Md. 635, 264 A.2d 109 (1970). There, despite the property owner's complaint that application of the rule prohibiting the use of residentially zoned land left him without access (with only a footpath), the Court of Appeals refused to allow the use of the land. Moreover, the application of the rule did not depend directly or indirectly on the size of the residentially zoned part.

The Petitioner has cited earlier decisions from Maryland and Massachusetts, as well as the Annotation at 58 ALR3d 1241 (1974). Close analysis of the case law shows that these situations arise under varying legal and factual settings. To be sure, courts have on some occasions permitted the use of residential land for access to commercial uses; but these cases either involved statutes which authorized approval, and/or factual situations in which the effect otherwise would be to confiscate the property.

The Baltimore County Zoning Regulations do not provide for use variances generally, and specifically do not provide for access to commercial uses via a

residential zone. Moreover, it is obvious in the present case that there is no question of confiscation of property.

We are also aware that the Zoning Commissioner has recently developed a more liberal policy for approving such uses. But it has never been tested at the County Board of Appeals or in the courts. We respectfully submit that this policy is in clear conflict with the Leimbach case.

The effect of compliance with the law here would be that the developer would have to amend its site plan. It would not prevent commercial and office use.

We have also given consideration to the observation by the developer that the Zoning Commissioner had previously applied his more liberal interpretation in two cases. Those cases were not contested by Protestants in the community. As a result, those cases did not attract the intensive study and analysis which the present case has generated. If, indeed, the Zoning Commissioner's policy is mistaken and in conflict with the prevailing law, the incorrect approval in two cases does not justify continuation of the practice.

It is vital that the law be stated clearly in this case so that there is no misunderstanding for property owners and neighbors in the future.

If the decision is, as we suggest, that such use is not permitted, there does remain one additional avenue of relief for property owners who believe it is too harsh. They may request the Planning Board and County Council to consider amending the zoning regulations, or they may request a zoning reclassification.

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

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 221, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 3rd day of April, 1987, a copy of the foregoing People's Counsel's Hearing Memorandum was mailed to Fred Wolf, III, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard St., Baltimore, MD 21202; Benjamin Bronstein, Esquire, Suite 200, 102 N. Pennsylvania Ave., Towson, MD 21204; Newton A. Williams, Esquire, 204 W. Pennsylvania Ave., Towson, MD 21204; and George W. Liebman, P.A., 8 West Hamilton St., Baltimore, MD 21201.

Peter Max Zimmerman
Peter Max Zimmerman

12/30/86
 RECEIVED
 DEC 29 1986
 ZONING OFFICE

LAW OFFICES OF
GEORGE W. LIEBMAN, P.A.
 8 WEST HAMILTON STREET
 BALTIMORE, MARYLAND 21201
 (301) 782-5807

December 24, 1986

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

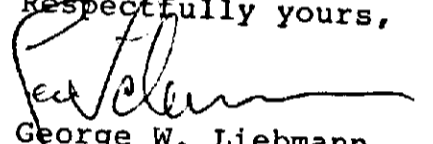
Re: Festival at Woodholme
 87-228 SPH

Dear Mr. Jablon:

Pursuant to leave granted at the recent hearing on requested parking and loading variances, this letter is submitted in lieu of a memorandum.

With respect to the requested permission to load across a residential zone, as well as with respect to the request for business parking from a street zoned residential, the full and sufficient answer is found in the doctrine of self-inflicted hardship. The property on both sides of Greentree Road (named for the developer, Mr. Greenebaum) is under his common ownership. Having immortalized himself by laying out this road, he cannot be heard to complain that its location destroys the value of the residential strip over which it is proposed to load, or that enforcement of the residential restriction against the street proposed as access for business parking causes hardship.

"If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i.e. that the hardship be caused solely through the manner of operation of the ordinance upon the particular piece of property, is lacking. In such case, a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor will be regarded as being self-created, barring relief. This rule is simple and of general application in the several states." 2 Rathkopf, The Law of Zoning and Planning, 48-1, quoted in Co. v. City of Baltimore, 240 Md. 547, 554; see also Pem Construction Co. v. City of Baltimore, 240 Md. 547; Marino v. City of Baltimore, 215 Md. 206."

Respectfully yours,

 George W. Liebmann

cc: Benjamin Bronstein, Esq.

102 W. Pennsylvania Avenue
 Towson, Md. 21204

Fred Wolf III, Esq.
 300 E. Lombard Street
 Baltimore, Md. 21202

of 60
 C-111

LAW OFFICES
FRANK, BERNSTEIN, CONAWAY & GOLDMAN

3300 GREENSBORO DRIVE
 McLEAN, VIRGINIA 22102
 (703) 892-4870

300 EAST LOMBARD STREET
 BALTIMORE, MARYLAND 21202
 (301) 878-3800
 (703) 892-9878
 TELECOMMER (301) 878-3708
 CABLE FRANKOP
 TELEF 87838

AMERICAN CITY BUILDING
 COLUMBIA, MARYLAND 21044
 (301) 730-8477

WRITER'S DIRECT NUMBER
 (301) 878-3751

BY MESSENGER

December 23, 1986

RECEIVED
 DEC 23 1986
 ZONING OFFICE

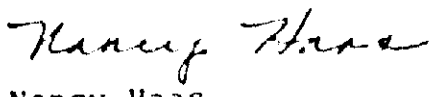
Arnold Jablon, Esquire
 Zoning Commissioner
 County Office Building
 111 W. Chesapeake Avenue
 Room 109
 Towson, Maryland 21204

RE: Woodholme Property Limited Partnership
 Item No. 125
 Case No. 87-228-SPH

Dear Commissioner Jablon:

Enclosed please find Petitioner's memorandum in support of its request for a special hearing and for permission to utilize a residentially-zoned strip of land adjacent to the proposed commercial development for commercial access thereto.

If there is any additional information we can provide, please do not hesitate to contact us.

Sincerely yours,

 Nancy Haas

NH:djw
 Enclosure
 cc: Benjamin Bronstein, Esquire
 Fred Wolf, III, Esquire
 Vicki B. Finkelstein, Esquire

IN THE MATTER FOR PETITION
 FOR SPECIAL HEARING

WOODHOLME PROPERTY LIMITED
 PARTNERSHIP,

Petitioner

BEFORE THE

ZONING COMMISSIONER
 OF BALTIMORE COUNTY

ITEM NO. 125

CASE NO. 87-228-SPH

FACTS

The Petitioner herein requests permission to utilize a residentially-zoned strip of land adjacent to the proposed commercial development for commercial access. The commercial property at issue is located at the intersections of Greentree Road, Hooks Lane and Reisterstown Road. The Petitioner proposes to locate a loading zone for a retail shopping area off of Greentree Road a short distance north of Hooks Lane in that part of the property zoned Business Major (BM), which borders on a residential area zoned DR 10.5. Greentree Road is at present a paper roadway which, upon completion of its construction pursuant to a public works agreement, will be dedicated to Baltimore County. The proposed ingress and egress to and from the loading zone is through the DR zone, more specifically, across a small residentially-zoned strip of land between Greentree Road and the commercial property. The office park, zoned O-2, borders on a residential area zoned DR 3.5. As noted above, in order to enter or exit from the property via Greentree Road vehicles must cross a narrow strip of residentially-zoned property which is separated from the

remainder of the residential zone by Greentree Road, or simply exit into Greentree Road. Under these circumstances, Petitioner believes that special permission for the requested access should be granted.

ARGUMENT

The Baltimore County Office of Planning and Zoning has issued a statement regarding access to Business Major zones. It provides that

Access through a residential zone ... for a commercial or industrial use may be permitted if it is the sole access to the site... and/or the residential land in issue is too small... and/or the land in issue is subject to other restrictions which prevents (sic) a residential use.

(Emphasis in original.) In addition, commercial access may be had where the proposed route has been classified as a public road by force of statute. See Lapenas v. Zoning Board of Appeals, 226 N.E.2d 361 (1967). The instant case is precisely such a case. The un rebutted testimony of David Thaler, the project's engineer, and Dirk Mosis, a general partner of the developer, indicates that the residential strip of land adjacent to the loading zone is too small for residential use. The testimony of David Thaler further indicated that Greentree Road is being constructed pursuant to specifications of Baltimore County including, without limitation, the termini at Hooks Lane and at the north end of the property line, the width of the road, and its configuration. Also, upon its

construction Greentree Road is to be dedicated as a public roadway and as such, is not subject to residential zoning restrictions. See 4 Rathkopf, The Law of Zoning and Planning, §13, at 71-122 & nn.6-7 (1986).

The Zoning Commissioner for Baltimore County, in cases similar to this case, has granted permission for commercial access through residentially-zoned land. In In re PETITION SPECIAL HEARING SE/corner of Security Boulevard and Brookdale Road (Chadwick Shopping Center) 1st Election District, Lawrence R. Rachuba, Petitioner ("Rachuba"), Case No. 86-80-SPH, the Commissioner permitted an amendment to the site plan where the requested entrance required ingress to and egress from a shopping center via a stretch of road zoned residential. The Commissioner found that there would be no impact upon any of the residential properties and that the request would satisfy the spirit and intent of the County Zoning Regulations. In In re PETITION SPECIAL HEARING Beginning 187' NW of the centerline of Belair Road, 272' NE of the centerline of India Avenue 11th Election District, Howard Harple, Petitioner ("Harple"), Case No. 85-302-SPH, the Commissioner granted a restaurant access through a residential strip of land. The strip of land was deeded to Baltimore County for a public right of way. The Commissioner relied on the fact that the strip was too small for residential use and was only wide enough to satisfy the legal requirements for a right of way. See Harple, at 4. The Commissioner also found that:

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way inconsistent with the spirit and intent of the BCZR.

Id. at 3.

In addition, in Lapenas v. Zoning Board of Appeals, 226 N.E.2d 361 (1967), the Supreme Judicial Court of Massachusetts held that reasonable access roadways over a residential strip of land would be permitted where this was the sole access to the business property, where the local ordinance prohibited a structure from being built on the residential strip, and where the residential area on the other side of the access road would be protected by an area free of buildings. Id. at 363-64. In Mayor and City Council of Baltimore v. Sapero, 230 Md. 291 (1962), the court permitted a two-story office building to be constructed on a residentially-zoned parcel due to the irregular shape of the parcel and the large amount of commercial development in the particular area along Reisterstown Road. Id. at 296-97. The test used by the court was whether the hardship complained of affected the particular premises and was not generally common to other property in the neighborhood, and whether, as presently zoned, the land could be put to a reasonable use. Id. See also Frankel v. City of Baltimore, 223 Md. 97 (1959).

In Roberge v. Zoning Board of Review, 157 A. 304 (R.I. 1931), discussed in Annot., 58 A.L.R. 3d 1241, 1269 (1974), the court affirmed the granting of a special exception for use of a residentially-zoned portion of a parcel of land for a driveway and receiving room for a market on the business-zoned portion of the parcel. The court noted that the town's zoning regulations gave the zoning board authority to grant extensions of up to 50 feet beyond the boundary line of the district in which the use was authorized, when, in its judgment, the public convenience and welfare would be substantially served and the appropriate use of neighboring property would not be substantially or permanently injured. The court also noted that the granting of the special exception would further the purposes of the zoning laws by lessening congestion in the streets and encouraging the most appropriate use of the land. Congestion would be avoided since access from a side street would lessen congestion on the main street. The court also found that while some annoyance to neighboring landowners might result from the driveway's use, they also benefited from the light and air provided from the open land. See also Hauger v. Arness, 44 Wash. 2d 758, 267 P.2d 691 (1954) (residential land used as driveway for logging trucks) (discussed in Annot., 58 A.L.R. 3d at 1280). Certainly all of the factors supporting the decision in Roberge would also favor the granting of a special exception under the facts of this case.

In the within case, as noted above, there has been un rebutted testimony of the project engineer and the developer to the effect that the residential strip of land between Greenetree Road and the loading zone is situated, sized and shaped such that the property cannot be put to any residential use. As such, the proposed use meets the requirements of the County's statement regarding access to BM zones. In addition, the evidence shows that the proposed use will not adversely affect the general welfare of the locality since vehicles going to and from Greenetree Road need not pass any further into the residential area. Nor will the use tend to create congestion in nearby roads. Furthermore, Greenetree Road will be a public roadway that will cut off the residentially-zoned strip of land from other residentially-zoned property, thus rendering the strip too small for residential use. Finally, the proposed use herein is consistent with the zoning regulations because the land will be put to a necessary and productive use with little, if any, adverse impact to the community. Accordingly, and for

the reasons stated herein, Petitioner requests that the Commissioner grant the requested relief.

Respectfully submitted,

Fred Wolf, III / rd
Fred Wolf, III

Frank, Bernstein, Conaway & Goldman
300 E. Lombard Street
Baltimore, Maryland 21202

Benjamin Bronstein / rd
Benjamin Bronstein

Suite 200
102 W. Pennsylvania Avenue
Towson, Maryland 21204

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 33rd day of December, 1986, I caused a copy of this Petition to be mailed postage prepaid to the following:

George W. Liebman, P.A.
8 West Hamilton Street
Baltimore, Maryland 21201

Benjamin Bronstein / rd
Benjamin Bronstein

NH:dah
1793s

67-228-SPH

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
27th day of October, 1986.

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

Petitioner Woodholme Properties L.P.
Petitioner's Attorney Benjamin Bronstein, Esquire

Received by: James E. Iyer
Chairman, Zoning Plans
Advisory Committee