

IN THE MATTER OF :
THE APPLICATION OF :
PF&M ASSOCIATES LTD. PARTNERSHIP, :
ET AL FOR APPROVAL OF A DENSITY :
TRANSFER ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF FALLS ROAD, :
172' NORTHWEST OF THE CENTERLINE :
OF GREENSPRING VALLEY ROAD :
8th ELECTION DISTRICT :
3rd COUNCILMANIC DISTRICT :

BEFORE :
COUNTY BOARD OF APPEALS :
OF :
BALTIMORE COUNTY :
CASE NO. 87-362-SPH :

AMENDED OPINION

This case is an appeal from the Order of the Zoning Commissioner dated April 3, 1987 granting in part the Petitioner's request for approval of a transfer of density from certain parcels zoned D.R. to other parcels zoned D.R. on property located on the northeast side of Falls Road, 172 feet northwest of the centerline of Greenspring Valley Road in the Eighth Election District of Baltimore County.

The Board has been advised by a letter from the Petitioner's Counsel filed December 11, 1987 (a copy of which is attached hereto and made a part hereof) that his client wishes to withdraw the Petition for Special Hearing.

The Board has also been advised by Counsel for the Appellant/Protestant by letter filed December 16, 1987 (a copy of which is attached hereto and also made a part hereof) that the appeal filed on behalf of said Appellant/Protestant be dismissed contingent upon the dismissal of Petitioner's appeal.

Agreement having been reached between all parties and requests having been made to this Board that all appeals be dismissed, the Board will so order.

ORDER

For the reasons set forth in the foregoing Amended Opinion, it is this 28th day of January, 1988 by the County Board of Appeals of

Case No. 87-362-SPH
PF&M Associates Ltd. Partnership

Baltimore County ORDERED that all appeals taken in this matter be and the same are DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett, Chairman

Arnold G. Foreman

Patricia Phipps

IN THE MATTER OF :
THE APPLICATION OF :
PF&M ASSOCIATES LTD. PARTNERSHIP, :
ET AL FOR APPROVAL OF A DENSITY :
TRANSFER ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF FALLS ROAD, :
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8th ELECTION DISTRICT :
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BEFORE :
COUNTY BOARD OF APPEALS :
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CASE NO. 87-362-SPH :

OPINION

This case is an appeal from the Order of the Zoning Commissioner dated April 3, 1987 granting in part the Petitioners' request for approval of a transfer of density from certain parcels zoned D.R. to other parcels zoned D.R. on property located on the northeast side of Falls Road, 172' northwest of the centerline of Greenspring Valley Road in the Eighth Election District of Baltimore County.

The Board has been advised by a letter from the Petitioner's Counsel filed December 11, 1987 (a copy of which is attached hereto and made a part hereof) that his client wishes to withdraw the Petition for Special Hearing.

The Board has also been advised by Counsel for the Appellant/Protestant by letter filed December 16, 1987 (a copy of which is attached hereto and also made a part hereof) that the appeal filed on behalf of said Appellant/Protestant be dismissed contingent upon the withdrawal of said Petition for Special Hearing.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 23rd day of December, 1987 by the County Board of Appeals of Baltimore County ORDERED that the decision of the Zoning Commissioner be REVERSED and the Petition for Special Hearing be and the same is hereby DENIED;

Case No. 87-362-SPH
PF&M Associates Ltd. Partnership, et al

IT IS FURTHER ORDERED that the appeal filed in this case be and the same is DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett, Chairman

Arnold G. Foreman

Patricia Phipps

IN RE: PETITION SPECIAL HEARING *
NE/S of Falls Road, 172' NW *
of the centerline of Green- *
spring Valley Road - *
8th Election District *
PF&M Associates Ltd. Partner- *
ship, et al, *
Petitioners *

BEFORE THE *
ZONING COMMISSIONER *
OF BALTIMORE COUNTY *
Case No. 87-362-SPH *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request approval for the transfer of density from certain parcels zoned D.R. to other parcels zoned D.R. which are included within a subdivision plan, as more particularly described on Petitioners' Exhibit 1.

The Petitioners, by Thomas Petty, appeared and were represented by Counsel. George E. Gavrelis, an expert land planner, testified on behalf of the Petitioners. Numerous protestants appeared, individually and collectively as the Meadows of Greenspring Homeowner's Association, Inc., which was represented by Counsel. Norris Lankford, an immediate adjoining property owner, appeared and testified in opposition. Memoranda were submitted by the parties. People's Counsel also submitted a Memorandum in opposition.

People's Counsel based its involvement on the broad authority granted to it by the Baltimore County Charter (Charter) to "defend the zoning maps". Its supposition is misplaced; it has no jurisdiction. Although the Board of Appeals of Baltimore County (Board) has sua sponte granted the People's Counsel broad authority to involve itself before the Board over the years, the Zoning Commissioner is not persuaded to be equally as magnanimous. In addition, People's Counsel has not followed the stricture mandated by the Charter to appear before the Zoning Commissioner in this matter. While it is true

that People's Counsel entered its appearance, it did not appear at the hearing. To permit People's Counsel to submit memorandum without hearing the testimony or reviewing the evidence presented would be to countenance an absurdity. On what is it basing its Memorandum? Certainly, it is not based on the testimony and evidence which People's Counsel did not hear or review. People's Counsel clothes itself with the mantle of protectionism while simultaneously waiving the Charter requirement to "appear" before the Zoning Commissioner. The Petition presented here is for an interpretation, not for a variance or special exception. Although density is certainly an issue of great significance, the argument that such a request for an interpretation as presented herein impinges on the zoning maps for which the Charter empowers the People's Counsel with the responsibility to protect is far-fetched.

Testimony indicated that the subject property, located on Falls and Joppa Roads, bounded by Seminary Avenue and Seminary Farm Road, and adjacent to the Greenspring Village Professional Center and Racquet Club, consists of four parcels with various zoning classifications. All four parcels together form one subdivision unit. Although each parcel is owned separately, there is a common thread attached to all, namely, Mr. Petty. However, the owners of those parcels have joined together and filed a subdivision plan with the County Review Group (CRG) requesting approval for the transfer of density from certain parcels zoned D.R. to other parcels zoned D.R. by way of a "bridge" zoned B.R. and from a portion of a parcel zoned D.R. which has a storm water management pond located on it to a contiguous parcel also zoned D.R.

The Petitioners propose to construct 53 dwelling units by concentrating 50 units on Parcel 1 and 3 units on Parcel 3. Parcel 1 is primarily zoned D.R.2, with a small portion zoned B.R.; Parcel 2 is zoned primarily O-1, with approximately 1.7 acres zoned D.R.2 and an even smaller portion zoned D.R.16; Parcel 3 is zoned O-1, B.R., and D.R.1; and Parcel 4 is zoned D.R.2, with a

small portion zoned B.R. See Petitioners' Exhibit 1A. The Petitioners propose to transfer density from those portions of Parcel 3 zoned O-1 and D.R. by way of that contiguous portion of Parcel 4 zoned B.R., through the D.R. portion of Parcel 4, to Parcel 1. Circuitous and imaginative but neither necessarily fatal.

The fatality of the Petitioners ingenuity lies in Section 1B01.2A.2, Baltimore County Zoning Regulations (BCZR). Unfortunately for the Petitioners, the language of the BCZR is clear; i.e., density transfer is permitted only if the portions lie within D.R. zones, even if of different D.R. classifications. Density may be transferred if the D.R.-zoned portions are contiguous. In the instant matter, while Parcel 3 is contiguous to Parcel 4, which is contiguous to Parcel 1, which is contiguous to Parcel 2, the D.R. zones are not all contiguous to each other. The D.R.1-zoned portion of Parcel 3 is contiguous to the O-1 and B.R.-zoned portions of Parcel 3 and to the B.R.-zoned portion of Parcel 4 but not to the D.R.-zoned portion of Parcel 4. The D.R.-zoned portion of Parcel 4 is contiguous to the D.R.-zoned portion of Parcel 1, which is contiguous to the D.R.-zoned portion of Parcel 2. The key is the "bridge", i.e., the B.R.-zoned portion of Parcel 4, which the Petitioners argue is the conduit through which the density transfer flows. As complicated as this may seem, the issues are really not.

Contiguity has been defined by the Court of Appeals in Gruver-Cooley v. Perlis, 252 Md. 684 (1968), wherein the Court interpreted the Montgomery County Code requirement that density transfer may occur only between "adjoining subdivisions". The Court ruled that the subdivisions did not need to be touching to be considered "adjoining" but could be "...close or near to, or nearest or most accessible..." at p. 695. "Adjoining may not require properties to touch but merely to be separated by no other property which can be put to private use." at p. 695. See also Grand Union Co. v. Laurel Plaza, 256 F

to private use." at p. 695. See also Grand Union Co. v. Laurel Plaza, 256 F Supp. 78 (Md., 1966). In Swarthmore Co. v. Kalstner, 258 Md. 517 (1970), the Court of Appeals interpreted the word "contiguous" as found in the Baltimore County Code, citing Gruver, supra, and defined "contiguous" as meaning "...in close proximity; near though not in contact..." at p. 530. As in Gruver, supra, the subject involved a roadway which separated the parcels.

While the parcels may be contiguous, the D.R. zones are not. The B.R.-zoned portion of Parcel 4, which is the key to the Petitioners' lock, can indeed be utilized for private use. If unlocked, the gate could be opened for the intensive development of Parcel 1. It does not provide the "bridge" unless the intent of the BCZR is to include by extrapolation a commercial zone within the meaning of "D.R. zones of different classifications", as found in Section 1B01.2A.2.

The Petitioners argued that such is the case and point to Section 230.1, BCZR. Section 230.1 permits uses in commercial zones that are allowed in residential zones immediately adjoining. Section 101, BCZR, defines "residential zone" as R.C., D.R., or R.A.E. Therefore, they argued, if undeveloped, the B.R.-zoned portion could be developed with any of those uses permitted in either the D.R.1-zoned portion of Parcel 3 or the D.R.2-zoned portion of Parcel 4. Section 102.2, BCZR, prohibits utilization of the minimum area required for a building or use to be considered as any part of the minimum area for another building or use. They interpret "use" to include density, which thus can be transferred. The syllogism is complete: the D.R.1-zoned portion of Parcel 3 has a certain density permitted; the B.R.-zoned portion of Parcel 4 can be developed with those residential uses permitted in a D.R.1 or D.R.2 Zone. Therefore, the density of the B.R.-zoned portion can be transferred. Conversely, if density is not a "use", the Petitioners' argument crumbles.

ORDER RECEIVED FOR FILING
Date April 3, 1988
By [Signature]

ORDER RECEIVED FOR FILING
Date April 3, 1988
By [Signature]

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Date April 3, 1988
By [Signature]

ORDER RECEIVED FOR FILING
Date April 3, 1988
By [Signature]

another side of the road where the Montgomery County Code only permitted such a transfer between "adjoining subdivisions". In holding that the subdivisions were adjoining within the meaning of the statute, the court ruled that the subdivisions did not need to actually touch to be adjoining as the term adjoining could be defined as "... close or near to, or nearest or most accessible..." Gruver, supra at 695. However, the court went on to state that from a premises perspective, "Adjoining may not require properties to touch but merely to be SEPARATED BY NO OTHER PROPERTY which can be put to private use." Gruver, supra at 695.

A similar view was taken by the Court of Appeals in Swarthmore Company v. Kaestner, 258 Md. 517 (1970) where the court was confronted with the need to analyze the word "contiguous" as utilized with the Baltimore County Code. In citing the Gruver case, supra, the Swarthmore case defined contiguous as meaning... "in close proximity; near though not in contact..." Swarthmore, supra at 530. Once again, as in Gruver, supra, the issue was whether two properties (Districts) were "contiguous" to one another when separated by a road.

In the instant case it is not a public road that separates the 0-1 and DR-1 zones of Parcel 3 from Parcel 1. It is also not a public road that separates those Parcel 3 zones from Parcel 4, assuming though not accepting the argument that petitioner can utilize Parcel 4 as a crossover

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from Parcel 3 to Parcel 1. The 0-1 zoned portion of Parcel 3 from which the petitioner seeks to transfer density is separated from Parcel 1 by both Parcel 4 and well over 20,000 square feet of property upon which both a racquet club and parking lot have been developed. The DR-1 zoned portion of Parcel 3 from which density is sought to be transferred is separated from Parcel 1 by both Parcel 4 and at its nearest point to Parcel 4, approximately 250 square feet of shrubbed land which in all likelihood had to be landscaped pursuant to Section 406A.501. Section 406A.501 requires that at least 15 percent of the total area of the site of any tennis facility must be landscaped. Even though the later portion between Parcel 4 and the DR-1 portion of Parcel 3 may seem relatively small, it is not a road and is not a property which can not be put to private use within the meaning of "adjoining" (contiguous) set forth by the Court of Appeals in Gruver, supra. In fact, that portion of land can and/or is being put to private use and is not zoned DR.

The petitioner's request for density transfer should be denied as the petitioner's request does not meet the requirements established either by the "long standing administrative policy" of the Baltimore County Department of Zoning, the requirements of the Baltimore County Zoning Regulations density transfer provision, or the law as discussed and analyzed by the Court of Appeals.

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III. THE PETITIONER SHOULD BE PROHIBITED FROM UTILIZING THE "UNDEVELOPED" PORTION OF PARCEL 3 AS A "BRIDGE" TO ACCOMPLISH ITS GOAL OF DENSITY TRANSFER THROUGH TWO PARCELS OF LAND AND THREE DIFFERENT ZONES

For reasons previously stated, the petitioner should not be permitted to utilize the presently undeveloped BR zoned portion of Parcel 3 to the south of the Greenspring Racquet Club and to the southeast of the parking lot adjacent to the club as a "bridge" to accomplish its goal of density transfer through two parcels of land and three different zones. Case law, past zoning office policy, and the clear language of 1B01.2A.2 prohibit such action. By virtue of both its BR zoning and present use as part of the landscaping requirements of Section 406A.5D.1. of the zoning regulations, this Parcel clearly separates the 0-1 zoned and DR-1 zoned portions of Parcel 3 from Parcel 4 to such an extent as to make those residentially capable portions noncontiguous within the meaning of Gruver-Cooley, supra. The Parcel can be, and is being, put to private use, and thus serves to separate the 0-1 and DR-1 portions of Parcel 3 not only from Parcel 1 but from Parcel 4 as well. Additionally, Parcels 3, 4, 1 and 2 are all parts of separate tracts and not part of "single tract divided by a zone boundary" requirement for density transfer clearly and unambiguously set forth in 1B01.2A.2.

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To allow the petitioner to utilize the aforementioned section as a bridge would be tantamount to authorizing any developer to accomplish a density transfer between non contiguous parcels of land by retaining a small strip of non DR zoned, but arguably residentially use permitted, land between two parcels. While separation of properties by a road may not prevent density transfers, separation by tennis courts, parking lots, and a small strip of required open space certainly should.

Regarding the parking lot and tennis facility, it is argued that Sections 406A.3, 406A.4, and 102.2 of the zoning regulations also prohibit the petitioners from using the small portion of BR land as a bridge to transfer density. Section 406A.4 requires that "parking spaces shall be provided on the site of a tennis facility". Section 406A.3 requires that "no tennis facility shall be established within 100 feet of any site boundary of an RC or DR zoned property. Section 102.2 requires that "No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use.". It is precisely the 100 feet wide L shaped strip of land required by 406A.3 that petitioner now wishes to use as a bridge for density transfer. As that 100 feet area is required by 406A.3, Section 102.2 should prohibit petitioner from using that area for any other purpose. Not even its use as a bridge for density transfer should be permitted.

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D. THE LANKFORD RESTRICTIVE COVENANT

Parcel 2, from which the petitioner seeks to transfer approximately 3.862 density units, is subject to a restrictive covenant entered into between Mr. Lankford and some of the principals in the instant case, P.F. & M. Associates. (A copy of this agreement is attached hereto.) This agreement was entered into when P.F. & M. Associates sought to develop a tract of land to the north of Mr. Lankford's property. That tract, now developed with the Green Spring Annex, contained the 1.7464 acre property now known as Parcel 2. Under the terms of the agreement, Mr. Lankford agreed to dismiss his appeals to zoning cases 85-321-SPH and CBA-85-138 in exchange for P.F. & M. Associates agreeing "That the DR zoned portion of the property shall only be used for the storm water, management facility, landscaping, and certain 'park-like' uses". While petitioners claim the right to utilize the available Parcel 2 DR density as the parcel would remain undeveloped, it is this writer's contention that the petitioners should be prohibited from transferring Parcel 2 density.

The agreement limits the purposes for which the property may be used, and density transfer is not among them. The uses permitted also qualify as DR uses within the meaning of Section 1B01.17.10 and/or as yard space or a minimum area required for a building or use. Under the terms of the agreement, PF&M was required to maintain the underdeveloped BR portion of Parcel 2 in order to develop

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the 0-1 portion of Parcel 2. Pursuant to Section 102.2 "No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use". The land area of Parcel 2 should not be considered as available for density transfer to the land area of Parcel 1.

That such restrictive covenants upon land use entered into as consideration for dismissing or not appealing a zoning action are valid was recognized by the Court of Special Appeals in Equitable Trust v. Towson Manor, 27 Md. App. 420 (1975). It has also been recognized that "In reaching a decision, it is proper for a zoning commissioner to consider the existence of lawful private restrictions on land use"... Capital Hill Restoration Society v. Zoning Commissioner (1977, Dist Co. App.) 380 A2d 174. The restrictive covenant placed upon Parcel 2 and the impact of Section 102.2 of the zoning regulations prohibit the transfer of any of the Parcel 2 density.

To allow a density transfer would violate the declared legislative policy in authorizing density transfers. The theory behind the density transfer provision is that in exchange for increased density in one DR zone within a single tract, a developer agrees to cause the other DR zoned portion within that same tract to permanently remain open space. The developer gives up something and the public gets something in return. If the petitioner in the instant case is allowed to transfer density from the

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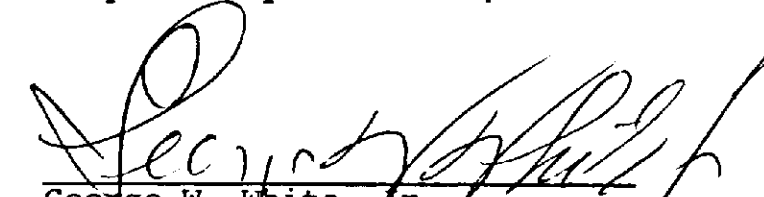
restricted portion of Parcel 2, what additional benefit would the public receive? To allow a transfer of density from land which is precluded from development by a restrictive covenant would only serve to allow the petitioner to accomplish indirectly that which it could not directly accomplish, and the public would receive no added benefit.

For the reasons aforementioned, the petitioners request to transfer density from Parcel 2 should be denied.

CONCLUSION

The Petitioner seeks that which is not authorized by Baltimore County Zoning Regulations or by existing Maryland Law and the Petition should be denied.

Respectfully submitted,


George W. White, Jr.
White, Mindel, Clarke & Hill
29 W. Susquehanna Avenue
Towson, Maryland 21204
(301) 828-1050

GWW/mst

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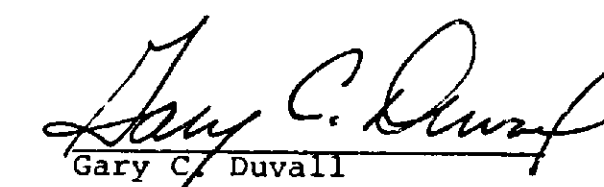
IN RE: PETITION SPECIAL HEARING * BEFORE THE
NE/S of Falls Road, 172' NW * ZONING COMMISSIONER
of the centerline of Green- * OF BALTIMORE COUNTY
spring Valley Road - *
8th Election District *
PF&M Associates Ltd. Part- * Case No. 87-362-SPH
nership, et al, *
Petitioners *

ORDER OF APPEAL OF NORRIS B. LANKFORD

Norris B. Lankford, by Gary C. Duvall and Miles & Stockbridge, his attorneys, pursuant to Section 500.10, Baltimore County Zoning Regulations, hereby notes an appeal from the Order of the Zoning Commissioner dated April 3, 1987 with respect to that portion of the Order transferring density from the DR-2 zoned portion of Parcel 2 to Parcel 1 in the within matter which was permitted pursuant to said Order. Please note this appeal to the Board of Appeals for Baltimore County.


APR 13 1987

ZONING OFFICE


GARY C. DUVALL
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 621-6565
Attorney for
Norris B. Lankford

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of April, 1987, a copy of the foregoing Order of Appeal was mailed to John B. Howard, Esquire, Cook, Howard, Downes & Tracy, 210 Allegheny

Avenue, P. O. Box 5517, Towson, MD 21204, attorneys for
Peddy, Fredsking and Mullan; to George White, Esquire and
Robert Berwick, Esquire, White, Mindel, Clarke and Hill,
Suite 600, The Susquehanna Building, 29 W. Susquehanna
Avenue, Towson, MD 21204, attorneys for Meadows of Green-
spring Community Association; and to the People's Counsel for
Baltimore County, Room 223, Court House, Towson, Maryland
21204.

Gary C. Duvall
Gary C. Duvall

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IN THE MATTER OF THE APPLICATION OF
NORRIS E. LANKFORD, ET AL
FOR SPECIAL HEARING RE
STORM WATER MANAGEMENT
AND
APPEAL FROM CRG APPROVAL
OF DEVELOPMENT PLAN
NE/S JOPPA ROAD 270'
E. OF C/L OF FALLS ROAD
8th DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
NO. 85-321-SPH
and
NO. CBA-85-138

AGREEMENT OF PARTIES
AND
ORDER OF DISMISSAL

This matter came before the Board of Appeals following an appeal
from the County Review Group's (CRG) approval of the development plan on
the subject property and on a petition for a special hearing.

On the day of the hearing the parties indicated that a resolution
of the matters in dispute was likely to take place and, in fact, the Board
has received an Agreement between all parties, the substance of which is
incorporated in this Order.

The County Board of Appeals, therefore, ORDERS that:

PF&M Associates Limited Partnership (PF&M) hereby agrees to the following:

1. That the drainage areas as shown on the approved CRG plan for the pro-
ject and submitted to the County shall be adjusted so that the following
will occur:
 - a. The amount of peak water runoff in a 100 year storm from the 1 acre
of land immediately to the north of, and contiguous to, the subject
site, or the amount of peak water runoff in the 100 year storm dis-
placed by one-half of the footprint of the building, whichever is
greater, shall be diverted from said one acre parcel to the north
of the subject site, or from the site itself, to a facility other
than storm water management facility No. 1 (as shown on the
approved CRG plan.)

LANKFORD - 85-321-SPH and CBA-85-138

2.

- b. One-half of the peak water runoff in a 100 year storm which is dis-
placed by the roof of the proposed building shall be diverted from
the roof to the facility other than storm water management facility
No. 1 (as shown on the approved CRG plan.)
 2. That a Maryland professional engineer of Mr. Norris Lankford's choice
will be permitted to review the storm water management plan submitted to
the County, pursuant to existing County standards, to confirm the exact
displacement of peak water runoff from the building during the 100 year
storm and to confirm the diversion of water, as outlined above, from
storm water management facility No. 1.
 3. PF&M agrees to plant trees or shrubs in conformance with the landscape
plan attached as Exhibit A as supplied by the parties and incorporated
by reference herein. The original will be kept in the file on this case.
 4. That the DR-zoned portion of the property shall only be used for the
storm water management facility, landscaping, and certain "park-like"
uses (e.g., picnic tables, footpaths, etc.), unless:
 - a. The Lankford property adjacent to the project site becomes the
subject of any filing for County approval of development to other
than a farm or residential use;
 - b. The Lankford property is sold out of the Lankford family; or,
 - c. The parties agree in writing to remove this restriction.
- That the parties agree to evidence these restrictions by entering into a
restrictive covenant agreement to be recorded among the Land Records of
Baltimore County, the terms of which shall comply with the terms under
this paragraph 4.
5. PF&M agrees that the storm water management plans as reviewed by Mr.
Norris Lankford's engineer, pursuant to paragraph 2, and as approved
by Baltimore County, shall be used by the developer in connection with
the project.
 6. PF&M agrees to pay reasonable engineering fees for service contemplated
by paragraph 2 hereof.
 7. That the provisions herewith shall be binding upon the parties, their
successors and assigns.

All matters in dispute having been resolved and upon request by the
Petitioners and Appellants, case No. CBA-85-138 and case No. 85-321-SPH be and

LANKFORD - 85-321-SPH and CBA-85-138

3.

are hereby DISMISSED with prejudice.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Keith S. Franz, Acting Chairman

William R. Evans

LeRoy B. Spurrier

DATE: November 4, 1985



County Board of Appeals of Baltimore County

Room 203 Court House
Towson, Maryland 21204

(301) 494-3180

January 26, 1988

Gary C. Duvall, Esq.
Miles & Stockbridge
401 Washington Avenue
Towson, MD. 21204

Re: Case No. 87-362-SPH
PF & M Assoc. Ltd. Partnership

Dear Mr. Duvall:

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
cc: Norris B. Lankford



County Board of Appeals of Baltimore County

Room 203 Court House
Towson, Maryland 21204

(301) 494-3180

January 26, 1988

John B. Howard, Esq.
Robert A. Hoffman, Esq.
210 Allegheny Avenue
Towson, Md. 21204

Re: Case No. 87-362-SPH
PF&M Assoc. Ltd. Partnership

Gentlemen:

Notice is hereby given, in accordance with the
Rules of Procedure of the Court of Appeals of Maryland, that
an appeal has been taken to the Circuit Court for Baltimore
County from the decision of the County Board of Appeals rendered
in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen
June Holmen, Secretary

Encl.
cc: Foxleigh Enterprises, Inc.
George W. White, Jr., Esq.
Phyllis C. Friedman, Esq.
David Fields
James Howell
J. Robert Haines
Ann Nastarowicz
James Dyer
Docket Clerk

IN THE MATTER OF
THE APPLICATION OF
PF&M ASSOCIATES LTD. PARTNERSHIP,
ET AL. FOR APPROVAL OF A DENSITY
TRANSFER ON PROPERTY LOCATED ON
THE NORTHEAST SIDE OF FALLS ROAD,
172' NORTHWEST OF THE CENTERLINE
OF GREENSPRING VALLEY ROAD
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 87-362-SPH

ORDER FOR APPEAL

Mr. Clerk:

Please note an appeal from the Opinion and Order of
the County Board of Appeals of Baltimore County in Case No.
87-362-SPH rendered on December 23, 1987.

A copy of the Order for Appeal has been served upon
the Executive Secretary of the County Board of Appeals of
Baltimore County pursuant to Maryland Rule of Procedure B2(c).
Attached hereto and prayed to be made a part hereof is a
Certificate of Compliance.

Gary C. Duvall
Gary C. Duvall, Esquire
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of January,
1988, I served a copy by hand on the Executive Secretary for
the County Board of Appeals of Baltimore County.

Gary C. Duvall
Gary C. Duvall

GCD01.ORD

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The BCZR are inclusive in that a "use" is prohibited unless explicitly permitted. Section 102.1, BCZR. See Kowalski v. Lamar, 334 A.2d 536 (1975). Section 1B01.1.A, BCZR, delineates 16 uses permitted as of right in D.R. zones. Density or the transfer of density is not found. As Counsel for the Protestants quite correctly noted, no reference to density or the transfer of density as either a use permitted as of right or by special exception can be found in any zone classification. Density is the means by which residential dwelling units may be intensified for development, whether it be one such use per acre or 16 such uses per acre. If one acre exists in a D.R. Zone contiguous to a D.R.1 Zone, then the B.R.-zoned property may be developed with one dwelling unit. It does not mean that the one dwelling unit may be transferred.

There is no question that it is an appropriate exercise of the police power to limit density and provide for its transfer. It is also equally appropriate for the County to restrict as it has the procedure for such transfer. The Baltimore County Council (Council) has determined quite specifically that density may be transferred only from one D.R. zone to another D.R. zone as more definitively described in Section 1B01.2.A.2.

There is a strong presumption of the correctness of original zones and of comprehensive zoning. Howard County v. Dorsey, 438 A.2d 1339 (1982). There is a presumption of validity that must be accepted. Johnson & Wales College v. DiPietro, 446 A.2d 1271 (R.I., 1982). When interpreting the zoning regulations, the restrictive language contained must be strictly construed so as to allow the landowner the least restrictive use of his property. Mayor of Balto. v. Byrd, 62 A.2d 588 (1948); Lake Adventure, Inc. v. Zoning Hearing Bd. of Dingham Township, 440 A.2d 1284 (Pa. Cmwlth., 1982). When the language of a zoning regulation is clear and certain, there is nothing left for interpretation and the ordinance must be interpreted literally. Montgomery v.

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Bevilacqua, 432 A.2d 661 (R.I., 1981). Section 1B01.2.A is clear and unambiguous.

The meaning of the plainest words in a statute may be controlled by the context. A statute should be so construed that all its parts harmonize with each other and render them consistent with its general object and scope. Pittman v. Housing Authority, 25 A.2d 466.

The basic principles of statutory construction were comprehensively set out by the Court of Appeals in State v. Fabritz, 276 Md. 416 (1975), cert. denied, 425 U.S. 942 (1976):

The cardinal rule in the construction of statutes is to effectuate the real and actual intention of the Legislature. Purifoy v. Merc. Safe Dep. & Trust, 273 Md. 58, 327 A.2d 483 (1974); Scoville Serv., Inc. v. Comptroller, 269 Md. 390, 306 A.2d 534 (1973); Height v. State, 225 Md. 251, 170 A.2d 212 (1961). Equally well settled is the principle that statutes are to be construed reasonably with reference to the purpose to be accomplished, Walker v. Montgomery County, 244 Md. 98, 223 A.2d 181 (1966), and in light of the evils or mischief sought to be remedied, Mitchell v. State, 115 Md. 360, 80 A.2d 1020 (1911); in other words, every statutory enactment must be considered in its entirety, and in the context of the purpose underlying [its] enactment, Giant of Md. v. State's Attorney, 267 Md. 501 at 509, 298 A.2d 427, at 432 (1973). Of course, a statute should be construed according to the ordinary and natural import of its language, since it is the language of the statute which constitutes the primary source for determining the legislative intent. Grosvenor v. Supervisor of Assess., 271 Md. 232, 315 A.2d 758 (1974); Height v. State, supra. Where there is no ambiguity or obscurity in the language of a statute, there is usually no need to look elsewhere to ascertain the intent of the Legislature. Purifoy v. Merc. Safe Deposit & Trust, supra. Thus, where statutory language is plain and free from ambiguity and expresses a definite and sensible meaning, courts are not at liberty to disregard the natural import of words with a view towards making the statute express an intention which is different from its plain meaning. Gatewood v. State, 244 Md. 609, 224 A.2d 677 (1966). On the other hand, as stated in Maguire v. State, 192 Md. 615, 623, 65 A.2d 299, 302 (1949), "[a]dherence to the meaning of words does not require or permit isolation of words from their context***[since] the meaning of the plainest words in a statute may be controlled by the context...In construing

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statutes, therefore, results that are unreasonable, illogical or inconsistent with common sense should be avoided whenever possible consistent with the statutory language, with the real legislative intention prevailing over the intention indicated by the literal meaning. B. F. Saul Co. v. West End Park, 250 Md. 707, 246 A.2d 591 (1968); Sanza v. Md. Board of Censors, 245 Md. 319, 226 A.2d 317 (1967); Height v. State, supra.

The intent of the BCZR must be determined as being construed as a whole. See Smith v. Miller, 249 Md. 390. Thus, the specific language delineating the restrictions for transferring density in Section 1B01.2.A.2 must be construed in light of all of the provisions concerning the use regulations and density regulations in the BCZR so that the several parts of those regulations are given their intended effect. The relationship between those various provisions must be reconciled as a whole. See Smith, supra; Bowie Vol. Fire Dept. & Rescue Squad, Inc. v. Bd. of County Comms., 255 Md. 381; Anderson, American Law of Zoning, Section 16.08.

"Zoning regulations are in derogation or common law rights and they cannot be construed to include or to exclude by implication that which is not clearly within their express terms." Yokely, Zoning Law & Practice, Sections 1-4 and 25-8; Aspen Hill Venture v. Montgomery County, 265 Md. 303 (1972). Landay v. MacWilliams, 173 Md. 460 (1938) a/k/a Landay v. Bd. of Zoning Appeals. Zoning regulations must be strictly construed and cannot be extended by implication to prohibit uses not clearly within their scope. Gino's of Maryland, Inc. v. Baltimore, 250 Md. 621 (1968); McQuillin, Municipal Corp., Section 25.72.

An ordinance should be construed "so that no word, clause, sentence, or phrase shall be rendered surplusage, superfluous, meaningless or nugatory." Supervisor v. Southgate Harbor, 279 Md. 586 (1977).

The language of Section 1B01.2.A.2 is clear and unambiguous. If the Council had intended for density accruing to property zoned other than

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residential to be transferred, it would have so indicated. Therefore, the proposal to transfer density from the O-1 property shall be denied.

The Petitioners also propose to transfer density from the D.R.1 portion of Parcel 3 through the B.R. "bridge". This shall also be denied.

Although Section 1B01.2.A.2 does not specifically require contiguity of parcels for the transfer of density from one parcel to another, it has long been the practice and policy of the Zoning Commissioner to require that parcels be contiguous. The use of the term "single tract" is predicated by the use of the term "subdivision tract" in Section 1B01.2.A.1, which establishes density zoning. The clear intention of the BCZR is that D.R. zones within a subdivision tract be contiguous for density to be transferred from one D.R. zone to another. See also Section 1B00.2.C and E, BCZR. The language in Section 1B01.2.A.2 states that a "...single tract is divided by a zone boundary..." This limitation clearly implies that the new portions be contiguous. "Wherever a single tract is divided by a zone boundary so that portions of such tract lie within D.R. zones of different classification...of each portion...in the zone within which that portion lies..." The language is unambiguous, and the intent clear.

The B.R. "bridge", although contiguous to the D.R.1 portion of the D.R.2 portion of Parcel 4, does not provide the required contiguity for the two D.R.-zoned portions of Parcels 3 and 4. See Gruver, supra. Additionally, the "bridge" area had been part of the area reserved for a parking lot serving the racquet club. This area leased to the club, zoned B.R., is the "hatched" portion of Parcel 3, as shown on Petitioners' Exhibit 1A. The Petitioners, with ingenuity doubled, cut off a piece of this leased area, which had not been improved with the lot, and added it to what is now Parcel 4 to allow for the "bridge" effect. The Petitioners also pointed to a 50-foot reserved right of way which exists in the "bridge" portion.

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The Petitioners had executed a lease with the racquet club setting aside certain property which would be used for parking. Their attempt to separate a portion of the property from that leased area was to avoid the possibility of a conflict with Section 102.2, BCZR. The very division of the leased area, however, underscores the prohibition of density being transferred over that portion which actually touches both D.R. zones. Gruver, supra, permitted the transfer of density across the road because the road obviously could not be put to private use. The "bridge" area here could be; indeed, it had been. Notwithstanding the reserved right of way, this portion had been part of the property leased for parking. The Petitioners now wish to divide it and utilize its strategic location to develop Parcel 1 to a degree not otherwise available. For the same reasons described above, the right to use those permitted uses in residential zones on commercial property immediately adjoining does not mean that density may be transferred, either from the commercially-zoned property adjoining or through the commercially-zoned property. The Petitioners thereby lose on both counts. They cannot transfer across the "bridge" because Section 1B01.2.A.2 does not permit density to be transferred across a B.R. Zone, notwithstanding Section 230.1, BCZR, and the "bridge" area does not provide contiguity between the D.R.-zoned portions because it can be utilized for other private use. There is no conflict between the decision reached herein and the long-standing policies of the Zoning Commissioner, as delineated in Policy RSD-2, "Density Transfer". It is clear that under the circumstances found here, density cannot be transferred from the O-1-zoned portion of Parcel 3 nor can density be transferred through the B.R.-zoned portion of Parcel 4 to Parcel 1.

Although there is no need to belabor the point, it is important to note that the protestants also refer to Sections 406A.3 and 406A.4, BCZR, to

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further justify their opposition to the Petitioners' proposals. There was no evidence presented at the hearing to judge the merits of this argument.

The final proposal made by the Petitioners is to transfer the density from Parcel 2, which is that portion zoned D.R., to Parcel 1, which immediately adjoins.

As a result of an agreement executed by and between Mr. Lankford and one of the Petitioners herein, PF&M Associates, Inc., in Case No. 85-321-SPH, it was agreed that the portion of Parcel 2 zoned D.R.2 could be used only for storm-water management, landscaping, and certain "park-like" uses. This portion of Parcel 2 does in fact contain a storm-water management facility. There are no existing uses. Also, a storm-water management facility is not one of the categories of uses permitted in Section 1B01.1.A.

In Case No. 85-321-SPH, the placement of the storm-water management pond was approved by this Zoning Commissioner and was justified via three concepts: (1) as an accessory use to an office building located on the O-1-zoned portion of Parcel 2; (2) as an uncontrolled excavation; and (3) as not under the jurisdiction of the Zoning Commissioner. The decision was appealed but was never reviewed. In fact, the agreement executed by the parties which ended the appeal leaves the Findings of Facts and Conclusions of Law, as stated by the Zoning Commissioner, in full force and effect. In the instant case, the presence of the storm-water management facility does not prevent the transfer of density from that portion of Parcel 2 on which it is located to Parcel 1, immediately adjoining.

Although the BCZR does not provide a definition, the Courts have been clear that in the absence of a definition provided by law, the term must therefore be construed according to its plain, ^{usually} understood meaning. Arundel Supply Corp. v. Cason, 265 Md. 371 (1972).

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The American Heritage Dictionary, New College Edition, defines "use" as "[t]he enjoyment of property, as by occupying or exercising it." The concept of the pond comes within the grading requirements as determined by the Departments of Public Works and Health. Grading is permitted, period. There is no thought that grading is a "use" or that it be regulated by the BCZR; other regulations and ordinances govern. The same is true for a pond; a depression is created, but it is a form of grading and is required as a result of sound development control.

A storm-water management pond is not a use within the meaning of the BCZR, and therefore, such a pond does not come within the jurisdiction of the Zoning Commissioner. It may be a planning, engineering, or health function to determine where such a pond should be located; but, if it is not a use, it certainly would not be a zoning function, which is essentially limited to the establishment of land use districts through the imposition of zoning classifications. In other words, zoning is almost exclusively concerned with use regulations. Howard County v. Dorsey, 438 A.2d 1339 (1982). It could be argued that grading and storm-water management techniques are not uses but are land preservation techniques not subject to the BCZR.

Even assuming arguendo that a storm-water management pond can be categorized as "local open space tracts or other common amenity open space" (Section 1B01.1.A.10, BCZR), as listed under the general use regulations, density does not accrue to open space. Section 102.2 would be applicable if the open space was required pursuant to any overall area requirement for any use developed on the property, thereby preventing the transfer of unused density not part of the original parcel. However, if such is not the case, then the open space proviso cannot be considered as a "use" within its ordinary meaning. In other words, Sections 1B01.1.A.10 and 102.2 must be read in conjunction, not separately. If a D.R.-zoned parcel is not developed but left in open space,

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Therefore, IT IS ORDERED by the zoning Commissioner of Baltimore County, this 3rd day of April, 1987, that the transfer of density from the O-1-zoned portion of Parcel 3 is not permitted, that the transfer of density from the D.R.1-zoned portion of Parcel 3 through the B.R.-zoned portion of Parcel 4 is not permitted, and that the transfer of density from the D.R.2-zoned portion of Parcel 2 to Parcel 1 is permitted from and after the date of this Order.


Zoning Commissioner of
Baltimore County

AJ/srl

cc: John B. Howard, Esquire

George W. White, Jr., Esquire

Mr. Norris B. Lankford

People's Counsel

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IN THE MATTER OF
THE APPLICATION OF
PF&M ASSOCIATES LTD. PARTNERSHIP,
ET AL. FOR APPROVAL OF A DENSITY
TRANSFER ON PROPERTY LOCATED ON
THE NORTHEAST SIDE OF FALLS ROAD,
172' NORTHWEST OF THE CENTERLINE
OF GREENSPRING VALLEY ROAD
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Case No. 87-362-SPH

CERTIFICATE OF COMPLIANCE

Pursuant to Maryland Rule of Procedure B2(c), I hereby certify that a copy of the Order for Appeal was served upon the Executive Secretary for the County Board of Appeals of Baltimore County prior to the filing of the Order for Appeal in the within action.

I DO SOLEMNLY DECLARE AND AFFIRM under the penalties of perjury that the information contained in the Certificate of Compliance is true and correct.

Gary C. Duvall
Gary C. Duvall, Esquire
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Attorney for Appellant

IN THE MATTER OF
THE APPLICATION OF
PEDDY, FREDEKING, MULLAN, et al.
FOR SPECIAL HEARING RE
ZONING DENSITY TRANSFER
FEBRUARY 27, 1987
8TH DISTRICT

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
Case No. 87-362-SPH

MEMORANDUM

Norris B. Lankford, pro se, submits the following memorandum in support of his position pursuant to the request of the Commissioner, the Honorable Arnold Jablon.

STATEMENT OF FACTS

Peddy, Fredeking, and Mullen, the developers of the proposed condominiums, called for this zoning hearing to request approval of a zoning density transfer from nearby parcels owned by various parties with a common interest in developing the proposed site to be known as VALLEY ACRES.

The proposed two condominium buildings, providing 50 total units, are to be located on Parcel 1 consisting of 12 acres zoned DR2 (see Parcel No. 1 on the Attached Exhibit A). Since a maximum of 24 density units are provided by this parcel, the required other 26 density units are to be obtained from nearby parcels. The largest neighboring parcel, Parcel No. 3, does not physically touch (i.e. has no common boundary

or point of contact with) the proposed development site.

Another parcel, which is to supply density units, was already developed for storm water control with the adjacent office complex known as Greenspring Station Annex (see Parcel No. 2 on Attached Exhibit A). This Parcel No. 2 is under the control of a County Board of Appeals Order covering useage (Cases No. 85-321-SPH and CBA-85-138). Parcel No. 4 is proposed as a bridge for transferring density from the larger Parcel No. 3. This bridge parcel, (No. 4), was previously developed as part of a tract used for a residential location known as the Meadows of Greenspring. No transfer of density is currently proposed from the DR zoned Parcel No. 4 which does have a common boundary with the subject Parcel No. 1, on which the Valley Acres condominiums are planned.

Parcel No. 3 has a mixture of zoning including DR2, BR, and O (office) acreage. While DR covers the larger part of this tract, the transfer of DR zoning through Parcel No. 4 (unused herein) and ultimately to Parcel No. 1 must take place through a Parcel 3 section of BR land that is adjacent to Parcel 4 but is developed as parking for the business section (BR Zoned) of Parcel No. 3.

INTERPRETATION OF REGULATION 1B01.2

The regulation covers accumulation of density within a single tract zoned in a DR classification. This accumulated

density may be distributed over the tract in any concentration as long as the maximum density is not exceeded for the entire tract. The regulation allows for accumulation of density within a single tract divided by a zone boundary provided that portions of such tract lie within DR zones of different classifications. It does not mention accumulation of density between separate tracts; it does not mention or specify an equivalence of Office or Business Zoning to an equivalent number of DR Units.

DEFINITION OF SINGLE TRACT

A tract is an area of land. (Webster's Dictionary definition). For use in regulations on zoning and engineering, the term "single tract" is an area of land that has a sole purpose or ownership. Once sub-divided and developed, a parcel is no longer part of the original tract from which it came and cannot be combined with adjacent parcels to form a new single tract.

INCONSISTENCY OF THE ZONING REQUEST WITH THE INTENT
AND SPECIFICS OF ZONING REGULATION 1B01.2 ON
DENSITY CONTROLS (BILL NO. 100, 1970)

A. Parcel No. 3 from which most of the zoning is proposed to be transferred does not touch the building site

Parcel No. 1 and is not contiguous with it. There is no common boundary line.

B. The parcel intermediate between these two, Parcel No. 4, was developed as part of a previous, completed project; further no density is to be transferred from it into this project on Parcel No. 1. Because of its non-use with this Valley Acres Project and its part in and of a previous development tract for The Meadows of Greenspring, it cannot be used to join Parcel No. 3 to Parcel No. 1 to form a new tract.

C. The proposed zoning bridge within Parcel 3 to the proposed intermediate zone, Parcel 4, does not itself have correct zoning for this use. BR is Business Roadside and the Regulation 1B01.2 allows transfer of zoning for concentration of density only between parcels that are:

1. Zoned with a DR classification, and
2. Part of a single tract.

None of these conditions are extant. The bridge part of Parcel 3 is zoned BR and is in use for parking for the existing, developed business on this previously developed parcel.

D. Some of the transferred units are to come from previously zoned Office acreage which is located on Parcel No. 3. This has no DR equivalence.

E. Parcel No. 2 does have a common boundary with Parcel 1 but does not qualify for transfer of density because

of:

1. Board of Appeals of Baltimore County Order No. CBA-85-138 and No. 85-321-SPH, and
2. This Parcel No. 2 was developed previously to support development of an office building known as Greenspring Station Annex (or Foxleigh). This acreage is in use and it cannot be further transferred.

SUMMARY

Parcel No. 1, the proposed building site, is not part of a single tract with any of Parcels 2, 3, 4. Office zoned acreage has no exact equivalence with DR acreage and the zoning regulation on density restrictions does not recognize such transfer possibility.

With the above inconsistencies the original intent and purpose of zoning takes precedence. Specifically, as part of the 1983 - 1984 zoning cycle, then Councilman James T. Smith refused to award any residential zoning of DR 5.5 in this vicinity (Case 3-77 of the comprehensive zoning for third district) or any residential zoning with maximum density greater than DR2. The zoning of the proposed Valley Acres Parcel (No. 1) is DR2. It is not intended that any more than the 24 units for 12 acres be allowed. The maximum density zoning regulations offer accumulation of and concentration of density only through DR zoning transfers. In one particular instance this project proposes to transfer O zoning units

through DR and then through BR and then to unavailable DR to reach the final DR site to obtain some equivalent units. The regulation does not allow such multiple changes of density types and does not contain the concept of equivalence of units of O and BR zoning to be converted and transferred as DR units. No quantitative exactitude of conversion is practicable or relevant and the regulation does not suggest such arrangements.

The item 2 under Density Controls of regulation 1B01.2 is part of the law only to allow for flexibility of DR useage in situations of more difficult residential adaptations where a tract is divided by a DR zone boundary line. It provides the formula for calculations in such cases. It does not allow for transfer of density between separate tracts but only within a pure DR tract.

In this case Parcel 1, Parcel 2, Parcel 3, and Parcel 4 each belong to a different single tract and the maximum density arrangements apply independently of the different single tracts to which each of these parcels separately belong.

Respectfully submitted,

Norris B. Lankford
NORRIS B. LANKFORD
2310 West Joppa Road
Brooklandville, MD 21022
(w) 584-4495
(h) 823-6884

1629A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20 day of March, 1987, a copy of the foregoing was mailed, postage prepaid to: John Howard, Esquire, COOK, HOWARD, DOWNES & TRACY, 210 Allegheny Avenue, Post Office Box 5517, Towson, Maryland 21204, Attorneys for Peddy, Fredeking, and Mullan, George White, Esquire and Robert Berwick, Esquire, White, Mindel, Clarke, and Hill, Suite 600, The Susquehanna Building, 29 West Susquehanna Building, Towson, Maryland 21204, Attorney for the Meadows of Greenspring Community Association, and Lisa S. Keir, the Valleys Planning Council, Inc., Post Office Box 5402, 212 Washington Avenue, Towson, Maryland 21204.

Norris B. Lankford
NORRIS B. LANKFORD

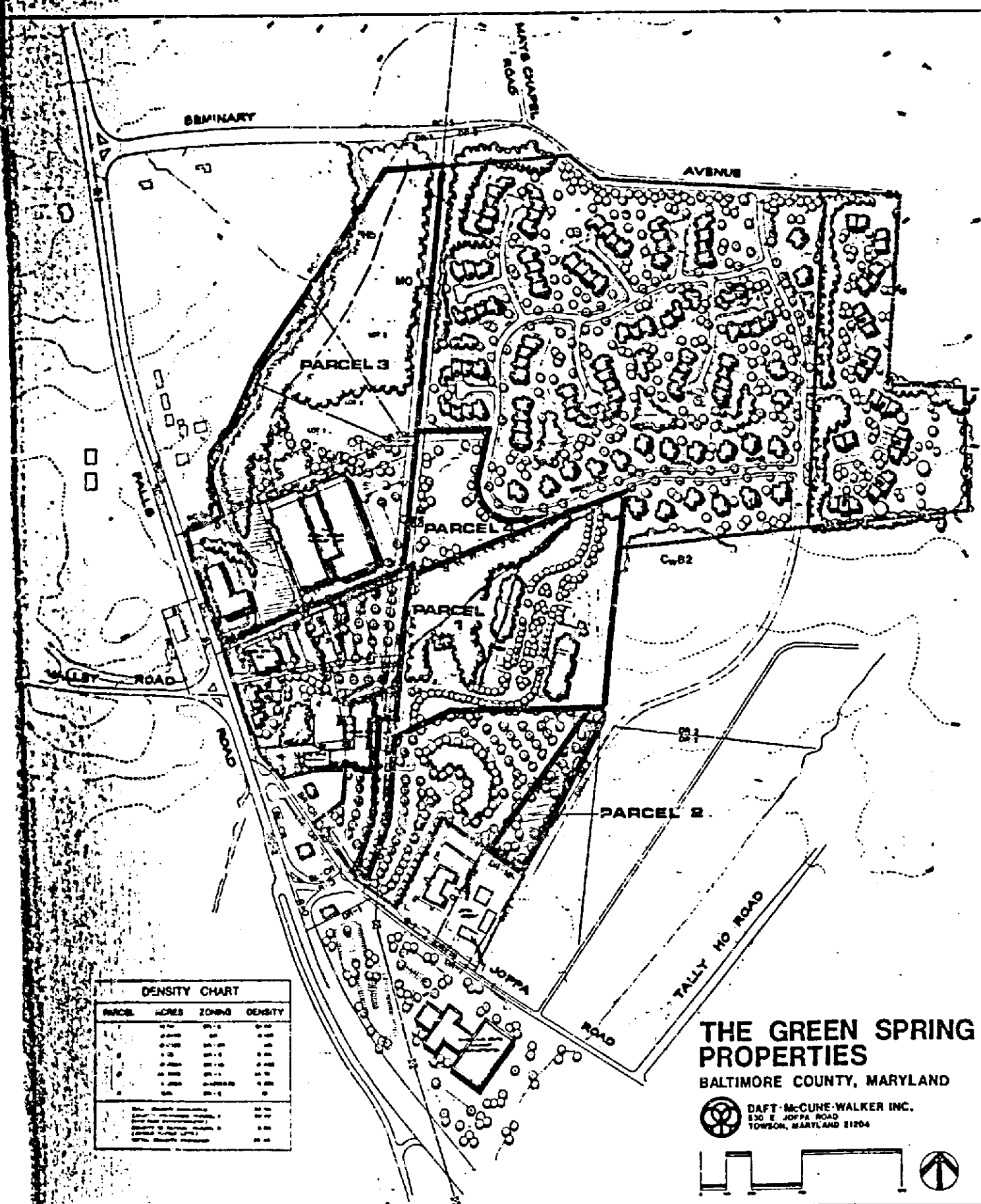


Exhibit A

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JAN 20 1987
RECEIVED
MAR 20 1987
IN RE: ZONING OFFICE * BEFORE THE
PETITION FOR SPECIAL HEARING * ZONING COMMISSIONER
FOXLEIGH ENTERPRISES, INC. * FOR
Petitioner * BALTIMORE COUNTY
Case No.: 87-362-SPH

MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL HEARING

In response to the request of Arnold E. Jablon, Zoning Commissioner of Baltimore County, at the hearing dated February 27, 1987, Foxleigh Enterprises, Inc. ("Foxleigh"), Petitioner, by John B. Howard and Robert A. Hoffman, with Cook, Howard, Downes & Tracy, its attorneys, files this Memorandum in support of its Petition for Special Hearing and states the following:

FACTS

Valley Acres is a proposed residential development located in the northeast quadrant of the intersection of Joppa Road and Falls Road south of Seminary Farm Road. The Petitioner intends to develop a portion of a larger tract by transferring density units from contiguous parcels. For convenience, the various parcels involved will be referred to as Parcel 1-4, in accordance with the plat entitled "Plat to Accompany Petition for Special Hearing, 1 of 2" filed with these proceedings (a reduced copy of which is appended hereto as Memorandum Exhibit A).

As proposed, the Valley Acres project will consist of two multi-family residential buildings of twenty-five units each (on Parcel 1), and three single family lots (on Parcel 3), for a total of 53 proposed dwelling units. There are 54 density units available from all of the Parcels.

Foxleigh, the developer, is the authorized representative of the owners of each of the parcels, all of which are held or controlled by members of the Peddy family. Thomas Peddy, a partner in four of the five ownership entities, is also an officer of Foxleigh. His wife, Catherine Peddy, is the fifth owner. All parties and entities have joined in the filing of the subject petition.

Pursuant to Section 22-25 of the Baltimore County Code, Foxleigh submitted a development plan for review by Baltimore County. A County Review Group ("CRG") meeting was held on January 2, 1987 and was continued at that time. The CRG imposed a requirement that there be a zoning hearing to determine the appropriateness of the transfer of density units through the commercially zoned portion of Parcel 3. The zoning hearing was held on February 27, 1987, at which time Commissioner Jablon requested that the parties submit memoranda addressing the issues discussed below.

Foxleigh maintains that the proposed development is consistent, as a matter of law and policy, with the Baltimore County Zoning and Development Regulations.

ISSUE PRESENTED

ISSUE I: Whether the language of Section 1 B01.2.A.2 of the Baltimore County Zoning Regulations (the "Regulations"), which provides for density transfers in "D.R. Zones of different classifications", limits such transfers to D.R. Zones only.

DISCUSSION

Section 1 B01.2.A.2 of the Regulations provides as follows:

Application to Tract Divided by Zone Boundary. Wherever a single tract is divided by a zone boundary so that portions of such tract lie within D.R. zones of different classifications, the total number of dwelling or density units permitted, as determined by multiplying the gross acreage of each portion by the maximum density permitted under Subsection 1 B02.2 in the zone within which that portion lies and totalling the results, shall be permitted without further regard to the zone boundary, and the units may be distributed over the tract as though it were in a single zone. [Bill No. 100, 1970.]

Although Section 1 B01.2.A.2 uses the term "D.R. zones", the provision should be interpreted to include O-1 zones, B.L. zones, B.M. zones and B.R. zones. Throughout Section 1 B01, the Regulations discuss use regulations in "D.R. zones", yet the regulations also apply to residential developments located in zones permitting more intense uses, such as O-1, B.L., B.M. and B.R. zones. For example, if a party is seeking to establish a residential development in a B.R. zone, paragraph 1.B01.2.A.1, which immediately

precedes the paragraph quoted above, will dictate the maximum density standards for such tract, even though the paragraph only refers to "D.R. zones". As another example, Section 230.1 allows "uses permitted and as limited in the residential zone immediately adjoining . . . 1 for B.L. zones, and the same type of provision applies to O-1, B.M. and B.R. zones. To determine the zoning restrictions on a residential development in such office and business zones, however, one must refer back to the D.R. provisions, where there is no specific reference to O-1, B.L., B.M. or B.R., but only to D.R. zones. (See e.g. Section 302 B.C.Z.R. where compliance with height and area standards in the D.R. zones is required for residential development in the commercial zones.)

A well-established principle of statutory construction was enunciated by the Court of Appeals in State v. Fabrit, 276 Md. 416, cert. denied, 425 U.S. 942 (1976):

Adherence to the meaning of words does not require or permit isolation of words from their context . . . (since) the meaning of the plainest words in a statute may be controlled by the context . . . "In construing statutes, therefore, results that are unreasonable, illogical or inconsistent

1 Section 101 of the Regulations defines "residential zone" as "[a] zone classified as R.C., D.R., or R.A.E. 'Zoned for residential purposes': within a residential zone."

with common sense would be avoided whenever possible consistent with the statutory language, with the real legislative intention prevailing over the intention indicated by the literal meaning. B.E. Saul Co. v. West End Park, 250 Md. 707, 248 A.2d 591 (1968); Sanza v. Md. Board of Censors, 245 Md. 319, 226 A.2d 317 (1967); Height v. State, supra.

Examining Section 1.B01.2.A.2, in the context of the entire Density Residential Article 1B, it is clear that the use regulations that only cite "D.R. zones" were meant to apply to and subsume business zones or office zones in which residential development is permitted in the alternative. In fact, it would have been too unwieldy for the legislative draftsmen to reference every commercial zone each time the D.R. regulations use the words "D.R. zone" in Article 1B, even though such regulations clearly apply to residential development in the commercial zones.

This interpretation is directly supported by the decision of the Zoning Commissioner in In Re: John B. Merryman, et ux, Zoning Commissioner of Baltimore County, Case No. 85-281-SPH, where the Commissioner stated that "although not specifically permitted, transfer of density is not specifically prohibited in the R.C.2 zone." The Commissioner then permitted a density transfer within an R.C.2 zone, although Section 1.B01.2.A.2 only refers to D.R. zones. As the foregoing discussion demonstrates, the Regulations do permit density transfers involving zones other than D.R.

ISSUE PRESENTED

ISSUE II: Whether density units from contiguous parcels may be transferred through a business zone in which a parking lot has been constructed, to permit the construction of a residential cluster development.

DISCUSSION

To determine whether density may be transferred under the above-stated facts, it must first be established that the parcels are "contiguous". The evidence presented at the hearing will show that each of the Parcels 1-4 are contiguous. [See Swarthmore Co. v. Koestner, 258 Md. 517 (1970)].

The Swarthmore court held that parcels need not abut to be contiguous, but rather needed only be in close proximity. Id. at 530. For example, in Gruver-Coolley v. Perlis, 252 Md. 684, 695-96 (1969), the Court found that two parcels separated by a roadway were "contiguous" (the term used in the relevant statute was "adjoining"). In the present case, as illustrated by the plat attached hereto as Exhibit A, the subject parcels exceed the Swarthmore definition of "contiguity" in that they actually abut one another. The evidence will further establish that there are common ownership interests among the various Parcels, and that each ownership entity has joined in the application for the relief requested in the subject Petition for Special Hearing.

Once the contiguity of the parcels is established, it must be determined if the density transfer is permitted under the Regulations. The policy of permitting transfer of density across zone lines in the D.R. as well as other zones is permissible where such a transfer is consistent with the spirit and intent of the Baltimore County Zoning Regulations and where there is a showing of no adverse impact on public health, safety and welfare of the community. See Baltimore County Zoning Policy Manual, RSD-2; In Re: Easter, Zoning Commissioner of Baltimore County, Case No. 86-216 (1986); In Re: Merryman, Zoning Commissioner of Baltimore County, Case No. 85-281-SPH (1985); In Re: Hamiltowne Improvement Assoc., Inc., Zoning Commissioner of Baltimore County, Case No. 86-509-SPH (1986) (stating policy, but prohibiting transfer on other grounds). Also, Section 1 B01.2.A.2 of the Regulations specifically permits the transfer of density in residential zones, as cited above.

Foxleigh submits that there is no prohibition within the Baltimore County Zoning Regulations, nor is there any policy, against transferring density through a commercial zone. To deny the transfer of density because a portion of a tract is zoned B.R. and is partially improved would extend a restriction in a case not clearly within the scope and intent of the above-cited zoning regulations.

13

4/17/87 - Following advised of hearing set for Tuesday, August 11, 1987 at 10 am:

John B. Howard, Esq.
Robert A. Hoffman, Esq.
Thomas L. Peddy - Foxleigh Enterprises
Gary C. Duvall, Esquire
Norris B. Lankford
George W. White, Jr., Esq.
Phyllis C. Friedman, Esq.
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

7/24/87 - Postponement requested by Counsel for Petitioner due to scheduling conflict and unavailability of key principal of Foxleigh. Per call 7/29 from R. Hoffman (Counsel for Petitioner), all counsel involved have agreed to postponement.

7/30/87 - above notified of hearing postponed and REASSIGNED to Wednesday, October 21 at 10:00 a.m.

10/1/87 - Above notified of hearing postponed and reassigned to Tues. Dec. 22, '87 at 10 a.m.

494-3180

County Board of Appeals

Room 219 Court House

TOWSON, MARYLAND 21204

October 1, 1987

NOTICE OF POSTPONEMENT and REASSIGNMENT

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

CASE NO. 87-362-SPH

P F & M Associates Ltd. Partnership et al

NE/s Falls Rd., 172' NW of c/1 of
Greenspring Valley Rd.

SPH-Density Transfer

8th Elec. Dist.
3rd Council. Dist.

4/3/87 - ZC permitted transfer of density
from D.R. 2-zoned portion of Parcel 2 to
Parcel 1 only.

The above case, set for hearing on Wednesday, Oct. 21, 1987, at 11 a.m.
has been POSTPONED by the Board at the request of Counsel for Protestant/
Appellant, and

REASSIGNED FOR:

TUESDAY, DECEMBER 22, 1987, at 10 a.m.

cc: John B. Howard, Esq. Counsel for Petitioner
Robert A. Hoffman, Esq.

Thomas L. Peddy, V. P. Petitioner
Foxleigh Enterprises, Inc.

Gary C. Duvall, Esq. Counsel for Appellant/Protestant

Mr. Norris B. Lankford Appellant/Protestant

George W. White, Jr., Esq. Counsel for Meadows of Green Spring
Homeowner's Association

Phyllis C. Friedman
Norman E. Gerber
Frank Fisher
J. Robert Haines
Ann Nastarowicz
James E. Dyer
Margaret E. duBois

June Holmen, Secretary

APPEAL

Petition for Special Hearing
NE/S of Falls Road, 172' NW of the Centerline
of Greenspring Valley Road
8th Election District - 3rd Councilmanic District
PF & M Associates Ltd. Partnership, et al - Petitioner
Case No. 87-362-SPH

Petition for Special Hearing
Description of Property
C.R.G. Plan to Accompany Petition for Special Hearing dated January 12, 1987
Certificate of Posting
Certificates of Publication
Entry of Appearance of People's Counsel
Zoning Plans Advisory Committee Comments
Director of Planning & Zoning Comments
Petitioner's Exhibits: 1 - Plat of Property revised 2/24/87
1a - Colored Plat of Property revised 2/24/87
Memorandum in Support of Petition from Norris B. Lankford dated 3/20/87
Memorandum in Support of Petition submitted by John B. Howard, Esquire, and Robert A. Hoffman, attorneys for Petitioner, dated 3/20/87
Protestant's Exhibits: 1 - Letter from Dennis F. Rasmussen to Marvin J. Kahn dated 1/9/87
2 - Memorandum of Law from George W. White, Jr., Esquire attorney for The Meadows of Green Spring Homeowners' Association, Inc., received 3/20/87
People's Counsel Memorandum in Opposition dated 3/11/87
Zoning Commissioner's Order dated April 3, 1987
Notice of Appeal received April 9, 1987 from John B. Howard, Esquire, Attorney for Petitioner

Foxleigh Enterprises, Inc. Developer
Thomas L. Peddy, V.P.
Suite 200, The Gatehouse
10749 Falls Road
Lutherville, Md. 21093

John B. Howard, Esquire, and
Robert A. Hoffman, Esquire, Attorneys for Petitioner
Cook, Howard, Downes & Tracy, 210 Allegheny Avenue, Towson, Md. 21204

George W. White, Jr., Esquire, White, Mindel, Clarke & Hill, 29 W. Susquehanna Ave., Towson, Md. 21204, Attorney for the Meadows of Green Spring Homeowner's Association, Protestants,

Mr. Norris B. Lankford, Protestant
2310 West Joppa Road, Brooklandville, Md. 21022

Phyllis Cole Friedman, Esquire,
People's Counsel of Baltimore County
Rm. 223, Old Courthouse, Towson, Maryland 21204

*Gary C. Duvall, Esq.
MILES & STOCKBRIDGE
401 Washington Ave 21204 Counsel for Protestant/Appellant
(Norris B. Lankford)

Request Notification: 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

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 80-7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the transfer (or accumulation) of density from the shaded portions of Parcels 2 and 3 to Parcel 1 as depicted on the Plat of the subject property accompanying this Petition, where the density in part is to be transferred through a R.R. zoned portion of the subject property.

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.

Developer:
Foxleigh Enterprises, Inc.
(Type or Print Name)
Signature: Thomas L. Peddy, Jr.
Vice President
Suite 200, The Gatehouse
Address: 10749 Falls Road
Lutherville, Maryland 21093
City and State

Legal Owner(s): (See Attached)
Dennis M. Peddy and Thomas L. Peddy
(Type or Print Name)
Signature: Thomas L. Peddy, Jr.
Seminary Associates Ltd. Partnership
(Type or Print Name)
Signature: Thomas L. Peddy, Jr.
PF&M Associates Ltd. Partnership
(Type or Print Name)
Signature: Thomas L. Peddy, Jr.

Attorney for Petitioner:

John B. Howard
(Type or Print Name)
Signature: John B. Howard
Address: 210 Allegheny Avenue
Towson, Maryland 21204
City and State
Attorney's Telephone No.: 823-4111

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
John B. Howard
Address: 210 Allegheny Avenue
Towson, Maryland 21204
City and State
Phone No. 823-4111

ORDER RECEIVED FOR FILING
Date: April 9, 1987
By: [Signature]

ESTIMATED LENGTH OF HEARING (over)
AVAILABLE FOR HEARING
ALL MON./TUES./WED. - NEXT TWO MONTHS
OTHER
FILED BY: CKB DATE: 1-12-87

ORDERED BY The Zoning Commissioner of Baltimore County, this 21st day of January, 1987, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 27th day of February, 1987, at 10:00 o'clock a.m.

[Signature]
Zoning Commissioner of Baltimore County.

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
NE/S Falls Rd., 172' NW of C/L : OF BALTIMORE COUNTY
of Greenspring Valley Rd.,
8th District
PF&M ASSOCIATES LTD. : Case No. 87-362-SPH
PARTNERSHIP, et al., Petitioners:

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 29th day of January, 1987, a copy of the foregoing Entry of Appearance was mailed to John B. Howard, Esquire, 210 Allegheny Ave., Towson, MD 21204, Attorney for Petitioners; and Thomas L. Peddy, Vice-President, Foxley Enterprises, Inc., Suite 200, The Gatehouse, 10749 Falls Rd., Lutherville, MD 21093, Developer.

Peter Max Zimmerman
Peter Max Zimmerman

Legal Owners: (Continued)

Valley Acres Partnership
(Type or Print Name)

Signature By: Thomas L. Peddy

Catherine C. Peddy
(Type or Print Name)

Signature: Catherine C. Peddy

PETITION FOR SPECIAL HEARING
8th Election District
Case No. 87-362-SPH
DATE AND TIME: Friday, February 27, 1987, at 10:00 a.m.
LOCATION: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland
PUBLIC HEARING
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, is hereby giving notice of a public hearing to determine whether or not the transfer of density from the shaded portions of Parcels 2 and 3 to Parcel 1 as depicted on the Plat of the subject property, where the density in part is to be transferred through a R.R. zoned portion of the subject property, should be approved.
The hearing will be held on the 27th day of February, 1987, at 10:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.
Any person desiring to be heard at the hearing must file a written request with the Zoning Commissioner of Baltimore County, at least five (5) days prior to the date of the hearing, and must appear at the hearing in person or by duly authorized agent.
By Order of:
ARNOLD JABLON
Zoning Commissioner
Baltimore County
1002 P.O. 5

NEWSPAPERS OF MARYLAND, INC.

minster, Md., Feb. 5, 1987.
hat the annexed ... Reg. #198564 ... P.O. #85049
February, 1987, in the
Times, a daily newspaper published
n Westminster, Carroll County, Maryland.
News, a weekly newspaper published
in Baltimore County, Maryland.
mes, a weekly newspaper published
in Baltimore County, Maryland.
NEWSPAPERS OF MARYLAND, INC.
Per. [Signature]

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 8th Date of Posting: February 6, 1987
Posted for: Special Hearing
Petitioner: P.F. & M. Associates Ltd. Partnership, et al.
Location of property: NE/S of Falls Rd., 172' NW of C/L of Greenspring Valley Rd.
Location of Signs: Signs of 172' NW of C/L of Greenspring Valley Rd. in front of parcel 1 and 2 and 3 to Parcel 1 as depicted on the Plat of the subject property.
Remarks: [Signature]
Posted by: [Signature] Date of return: February 13, 1987
Number of Signs: 3

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 8th Date of Posting: April 21, 1987
Posted for: Appeal
Petitioner: P.F. & M. Associates Ltd. Partnership, et al.
Location of property: NE/S Falls Rd., 172' NW of C/L of Greenspring Valley Rd.
Location of Signs: Signs of 172' NW of C/L of Greenspring Valley Rd. in front of parcel 1 and 2 and 3 to Parcel 1 as depicted on the Plat of the subject property.
Remarks: [Signature]
Posted by: [Signature] Date of return: April 24, 1987
Number of Signs: 3

CERTIFICATE OF PUBLICATION

TOWSON, MD, February 5, 1987
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 February 5, 1987.

THE JEFFERSONIAN,

[Signature]
Publisher

Cost of Advertising

35.75

DAFT-MCQUE-WALKER, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21204
Telephone: 301-296-3333
Land Planning Consultants
Landscape Architects
Engineers & Surveyors

Description

51.3 Acre Parcel, "Valley Acres", Northeast Side of Falls Road at Greenspring Valley Road, Eighth Election District, Baltimore County, Maryland.

(This description has been prepared for Zoning purposes only.)

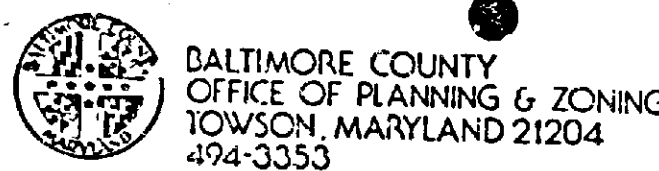
Beginning for the same at a point on the northeast side of Falls Road located North 66 degrees 34 minutes 56 seconds East 58 feet, more or less, from a point on the center line of said Falls Road, said last mentioned point being distant 172 feet, more or less, as measured North 19 degrees West along said center line from its intersection with the center line of Greenspring Valley Road, running from said beginning point binding on said northeast side of Falls Road, (1) North 22 degrees 09 minutes 23 seconds West 437.21 feet, thence twelve courses: (2) North 69 degrees 00 minutes 55 seconds East 52.47 feet, (3) North 20 degrees 59 minutes 25 seconds West 25.16 feet, (4) North 69 degrees 00 minutes 35 seconds East 113.01 feet, (5) North 25 degrees 37 minutes 44 seconds West 72.42 feet, (6) North 09 degrees 17 minutes 45 seconds West 57.37 feet, (7) North 04 degrees 32 minutes 32 minutes East 118.47 feet, (8) North 37 degrees 48 minutes 35 seconds East 120.23 feet, (9) North 23 degrees 18 minutes 16 seconds East 258.08 feet, (10) North 33 degrees 25 minutes 52 seconds East 928.89 feet, (11) North 85 degrees 38 minutes 14 seconds East 227.27 feet, (12) South 05 degrees 37 minutes 47 seconds West 1,042.03 feet, and (13) North 85 degrees 20 minutes 40 seconds East 284.02 feet, thence binding on the west, southwest and south side of Seminary Park Road shown on the recorded plat of "Section One, Plat Two, Resubdivision of The Meadows of Greenspring" five courses: (14) South 11 degrees 44 minutes 35 seconds West 187.76 feet, (15) southeasterly, by

curve to the left with the radius of 145.00 feet, the arc distance of 273.83 feet, (16) North 83 degrees 32 minutes 25 seconds East 102.78 feet, (17) northeasterly, by a curve to the left with the radius of 405.00 feet, the arc distance of 106.58 feet, and (18) North 68 degrees 27 minutes 45 seconds East 228.00 feet, thence four courses: (19) South 05 degrees 34 minutes 49 seconds West 898.27 feet, (20) South 26 degrees 32 minutes 26 seconds West 674.86 feet, (21) North 55 degrees 05 minutes 11 seconds West 400.47 feet, and (22) South 26 degrees 52 minutes 24 seconds West 400.04 feet, thence binding on the northeast side of Joppa Road four courses: (23) North 55 degrees 03 minutes 09 seconds West 10.11 feet, (24) North 34 degrees 45 minutes 30 seconds East 13.07 feet, (25) North 55 degrees 14 minutes 30 seconds West 100.00 feet, and (26) North 47 degrees 19 minutes 49 seconds West 97.10 feet, thence seven courses: (27) North 21 degrees 31 minutes 50 seconds East 182.98 feet, (28) North 02 degrees 48 minutes 35 seconds East 407.05 feet, (29) North 85 degrees 14 minutes 24 seconds East 66.58 feet, (30) North 02 degrees 48 minutes 35 seconds East 3.71 feet, (31) North 05 degrees 37 minutes 47 seconds East 608.29 feet, (32) South 69 degrees 01 minute 48 seconds West 516.79 feet, and (33) South 66 degrees 34 minutes 56 seconds West 273.75 feet to the place of beginning.

Containing 51.3 acres of land, more or less.

January 9, 1987

DWM Project No. 85142 (3D: 185142)



ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

February 17, 1987

Robert A. Hoffman, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
NE/S Falls Rd., 172' NW of the c/l of
Greenspring Valley Rd.
8th Election District - 3rd Councilmanic District
PF&M Associates Ltd. Partnership, et al - Petitioners
Case No. 87-362-SPH

Dear Mr. Hoffman:

This is to advise you that \$110.64 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

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

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

No. 33044

DATE 2/27/87 ACCOUNT 2-01-615-000

3 SIGNS & POSTS
RETURNED AMOUNT \$ 110.64

COOK, HOWARD, DOWNES & TRACY, 210 ALLEGHENY AVE., TOWSON, MD. 21204

RECEIVED FROM: Cook, Howard

ADVERTISING & POSTING COSTS RE CASE #87-362-SPH

FOR: B 0101*****110544a 5274F

VALIDATION OR SIGNATURE OF CASHIER

John B. Howard, Esquire
210 Allegheny Avenue
Towson, Maryland 21204

January 23, 1987

NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING
NE/S Falls Rd., 172' NW of the c/l of
Greenspring Valley Rd.
8th Election District
PF&M Associates Ltd. Partnership, et al - Petitioners
Case No. 87-362-SPH

TIME: 10:00 a.m.

DATE: Friday, February 27, 1987

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

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

No. 30478

DATE 1-12-87 ACCOUNT 01-615-000

AMOUNT \$ 100.00

RECEIVED FROM: Cook, Howard

FOR: Filing Fee for Special Hearing

FOR: Thomas L. Peddy, et al - Petitioner

VALIDATION OR SIGNATURE OF CASHIER

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

RECEIVED
APR 9 1987
ZONING OFFICE

HAND DELIVERY

April 9, 1987

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

Re: Petition for Special Hearing
Case No.: 87-362-SPH

Dear Mr. Zoning Commissioner:

Please note the Appeal from the Findings of Fact and Conclusions of Law in Case No. 87-362-SPH dated April 3, 1987, by PF&M Associates, Ltd., Partnership by Thomas L. Peddy, General Partner, and Thomas L. Peddy, individually, both at Suite 200, The Gatehouse, 10749 Falls Road, Lutherville, Maryland 21093.

Enclosed is a check for \$120.00 covering fees for this appeal plus the cost of posting.

Thank you for your attention to this matter.

Yours truly,

Arnold E. Jablon

No. 33089

RECEIVED
APR 10 1987
ZONING OFFICE

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

DATE 4/10/87 ACCOUNT 2-01-615-000

AMOUNT \$120.00

RECEIVED FROM: John B. Howard, Esquire

FOR: Cook, Howard, Downes & Tracy

FOR: 210 Allegheny Avenue, Towson, Md. 21204

FOR: Appeal Filing and Posting Fees in Case #87-362-SPH on behalf of PF & M Associates Ltd. - Petitioner

FOR: B 005*****120001a 4144F

VALIDATION OR SIGNATURE OF CASHIER

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

Arnold Jablon
Zoning Commissioner

April 14, 1987

Baltimore County Board of Appeals
Old Courthouse, Room #205
Towson, Maryland 21204

RE: Petition for Special Hearing
NE/S Falls Road, 172' NW of the c/l of Greenspring Valley Road
8th Election District, 3rd Councilmanic District
PF & M Associates, Ltd. Partnership, et al - Petitioner
Case No. 87-362-SPH

Dear Board:

Please be advised that on April 13, 1987, an appeal of the decision rendered in the above-referenced case was filed by Gary C. Duvall, Esquire, on behalf of Morris B. Lankford, a Protestant. All materials relative to the case have been forwarded to your office in response to an appeal previously filed on April 9, 1987.

If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

Arnold E. Jablon
ARNOLD JABLON
Zoning Commissioner

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

No. 33090

DATE 4/14/87 ACCOUNT 2-01-615-000

AMOUNT \$120.00

RECEIVED FROM: Appeal Filing and Posting Fees in Case #87-362-SPH from Gary C. Duvall, Esquire of Miles & Stockmayer on behalf of Morris Lankford

FOR: B 0034*****120001a 4144F

VALIDATION OR SIGNATURE OF CASHIER

Baltimore County, Maryland
Executive Office
Courthouse Melanline
Towson, Maryland 21204

January 9, 1987

Mr. Marvin J. Kahn
27 Seminary Farm Road
Lutherville, Maryland 21093

Dear Mr. Kahn:

I am writing in regard to your correspondence concerning the proposed development of Valley Acres.

As per your conversation with Judith Sussman, the plan was not approved, but continued at the County Review Group meeting. The following issues remain:

1. **Transfer or exchange of density** - The proposal for Valley Acres to transfer density from certain non-residential zoned areas to its residential tract, raises some interpretation questions about the language and intent of the Zoning Code. Currently, the Zoning Code would seem to permit all transfer of densities only between D.R. zones, and not from B.R. zones or Office (O-1 zones) to D.R. zones. A ruling on this issue will have to be made by the Zoning Commissioner. The impact of disallowing the transfer from Commercial Commissioner. The impact of disallowing the transfer from the loss of 9 dwelling units, thus reducing the proposal from 50 units to 41. In addition, the Planning Board is required to rule on compatibility of clustering units in the D.R.2 zone. Until the Planning Board has taken such action, CRG will not make a decision on this project.
2. **Traffic** - Both Public Works and Traffic Engineering indicated that while two points of access to the subdivision was shown on the proposed plan, only one would be required, from a regulatory viewpoint. Fire and emergency vehicle access requirements would be the province of the Fire Department. The access to this project via the private road adjacent to Greenspring Station rather than via the public road which crosses through The Meadows, seems a viable option from the above-mentioned agency's viewpoint. The possibility exists to provide for an emergency vehicle access point from the Meadows by chaining it off. The provision of movement through the private road/parking area of Greenspring Station would have to be guaranteed by covenants, etc., for the County to be satisfied that this was a viable means of access. If the developer's plans for clustering is not approved by the Zoning Commissioner or the Planning Board, they will only be able to develop single family homes. If that does occur, they will almost certainly have to use Seminary Farm Road for access.

Mr. Marvin J. Kahn
January 9, 1987
Page -2-

3. **Sewer** - The Sewer study, which is to resolve the capacity question is expected to be completed by mid-February.

In regard to your desire to assist me in my review of the CRG process, I will be in touch with you when my plans have been finalized.

Sincerely,

Dennis F. Rasmussen
Dennis F. Rasmussen
COUNTY EXECUTIVE

DFR:bk

*Good to hear from you!
We will be in touch shortly.
Your thoughts on the CRG are
welcome.*

MEMORANDUM OF LAW

RECEIVED
MAR 20 1987
ZONING OFFICE

TO: Mr. Arnold Jablon, Zoning Commissioner of Baltimore County

FROM: George W. White, Jr., counsel for The Meadows of Green Spring Homeowners' Association, Inc.

RE: Petition for Special Hearing No. 87-362-SPH filed by Developer, Foxleigh Enterprises, Inc.

ARGUMENT

For the reasons which follow, all of the issues raised below should be answered in the affirmative and petitioner's request for density transfer as requested should be denied.

I. BALTIMORE COUNTY ZONING REGULATIONS DO NOT PERMIT THE TRANSFER OF DENSITY FROM NON DR ZONES TO DR ZONES.

The section of the Baltimore County zoning regulations which authorizes density transfer is Section 1B01.2 A entitled "Density Controls". Subsection (2) of this section, the section applicable in the instant case specifically states:

"Application to Tract Divided by zone boundary. Wherever a single tract is divided by a zone boundary so that portions of such tract lie within D.R. zones of different classification, the total number of dwelling or density units permitted, as determined by multiplying the gross acreage of each portion by the maximum density permitted under Subsection 1B02.2 in the zone within which that portion lies and totaling the results, shall be permitted without further regard to the zone boundary, and the units may be

distributed over the tract as though it were in a single zone."

This provision is located in the section of the Baltimore County zoning regulations dealing with those zones which are classified as Density Residential. Although there are other sections of the regulations dealing with Office Zones, Elevator-Apartment Zones, and Business Zones, among others, it is interesting to note that provisions for density transfer are conspicuously absent from these other sections. Not only is a density transfer provision located only in the Density Residential section of the regulations, but the density transfer authorizing, provision specifically relates to density transfers among differently classed DR zones where a single tract is divided by a zone boundary creating different DR zones within a single tract.

In authorizing density transfers, the legislative body specifically intended that such transfers would only be permitted from are DR zone to another DR zone where the situation described in Section 1 B01.2A(2) existed. Had the legislative body intended other that density transfers would be permitted, the legislative body could have, and would have, used more general language or placed such a provision in other sections of the regulations. That such was the legislative intent is evidenced by both the clear and unambiguous language of 1 B01.2A and by the past policy of the Baltimore County Office of Planning and Zoning.

One well recognized rule of statutory construction is that a court will not substitute judicial construction

for legislative when the statutory language is "... clear, plain, and unambiguous." While "The cardinal rule of statutory interpretation is to determine the intent of the legislature..." (Miller v. Forty West Builders, 62 Md. App. 320, at 331 (1985)),

"...the legislative intent is ascertained by considering the words used in the legislation in their plain and ordinary meaning; and where those words are not ambiguous, there is no need for application of the rules of statutory construction."

City of Annapolis v. Anne Arundel County
271 Md. 265, at 292 (1974)

Only if the language is ambiguous or unclear will the courts utilize other tools to attempt to discover the legislative intent.

Another rule of statutory construction of ordinances is that zoning ordinances are to be strictly construed as they are in derogation of the common law. Gino's v. Baltimore City, 250 Md. 621 (1968). "Zoning restrictions should be strictly construed with respect to expansion." Morton Shores v. Carr, 265 N.W.2d 802, 61 Md. App. 715 (1978).

While it has also been recognized that "In determining the meaning of a zoning ordinance, a court may consider the uniform practice of the administrative officer charged with the duty of enforcing it." Baysufter Health Related Facility v. Karaghenzoff, 37NY 2d 408, 335 N.E. 2d. 282, it is equally true that "...there is no occasion to apply the rule of a long continued administrative practice where the language is clear, plain, and unambiguous."

Berwyn Heights v. Rogers, 228 Md. 271, at 279 (1962). It is equally true that:

"A zoning board is bound by the legislative definition... as defined in a statute rather than the definition given to the word in common usage where that meaning differs from the statutory definition."

Mayor & City Council v. Brice
46 Md. App. 704 (1980)

While it is true that certain portions of 1B01.2A(2) may be unclear and ambiguous (i.e. single tract) and call for the use of an analysis of both legislative intent and long continued administrative practice, it is clear that the density transfer provision refers specifically and exclusively to transfers from one DR portion of a tract to another DR portion of a single tract. From this perspective it must necessarily follow that even if residential density could be assigned to a Non DR zone, that density could not be transferred to a DR zone, let alone a DR zone in a different tract.

In the unlikely event that ambiguity is somehow found by the use of "DR Zone" in the density transfer provision, even further support for disallowing petitioner's request can be found by looking to uniform administrative practice and to other sections of the ordinance, both of which are well established tools of statutory construction.

In the definitional section of the Baltimore County Zoning Regulations, the legislative body has provided a specific definition for a "residential zone". Section 101

defines a "residential zone" as "A zone classified as R.C., D.R., or R.A.E. 'Zoned for Residential Proposes' : Within a residential zone." Section 100.1 A.2 sets up and classifies zones into 22 separate and distinct classes, among which are 4 R.C. zones, 6 D.R. zones, 2 R.A.E. zones, and 2 O zones. Had the legislative body intended that residential density could be transferred from one residential zone to another, it is clear that such a transfer would only be authorized from one "residential zone" to another. By specific statutory definition, neither an O zone or a DR zone is a "residential zone". Therefore, no density should be permitted to be transferred from an O zone to a DR zone even under this analysis.

While the specific and unambiguous reference to "DR zone" in the density transfer section authorizes transfers only from DR zones to DR zones, because a DR 5.5 "use" is permitted in an O-1 zone, petitioner may argue that the two are equivalent and therefore residential density from the O-1 should be permitted to the subject DR zoned parcel.

It is true that a DR5.5 "use" is permitted as a right in an O-1 zone pursuant to Section 204.3 A.1. It is equally true both that density transfer is not a "use" and that an O-1 zone is by no means equivalent to a DR5.5 zone. Section 1 B01.A specifically enumerates 14 uses permitted as of right in a DR zone. Nowhere among the 14 uses is the privilege to transfer density mentioned. Neither is any privilege to transfer density contained anywhere in the

Office Zone Section of the Baltimore County Zoning Regulations.

The developer in the instant case is clearly attempting to muddy the clear language of 1B01.2A2 in order to create more clustered density than authorized for the express purpose of maximizing monetary benefits by attempting to develop it's infinitely divided and disparate parts as though they simply were not so. That such an attempt to justify extensive investments can not prevail was decided by the Court of Appeals in Montgomery County Council v. Kacur, 253 Md. 220, 231 (1961) wherein it was stated that "... it is will settled that the purpose of the (Zoning) authority is not to guarantee the purchaser of a piece of property a use that will justify his investment." Petitioners attempt to obfuscate clear language to attempt to maximize profits can not succeed. As stated by the Court of Appeals in Hunt v. Montgomery County,

"A statute is not made unclear or ambiguous because one side in a controversy, in order to obtain a desired result, gives its words a meaning they do not or then face appear to have. If the words of a statute, given their normal meaning, are plain and sensible the legislature will be presumed to have meant the meanings the words in point. The court will not substitute for literal intent a real intent unless the literal words of a statute say something the legislature could not possibly have meant."

248 Md. 403, 414 (1967)

For the reasons aforementioned, and for the additional reasons to be hereinafter discussed, the developer's petition to transfer density from an O-1 zone to a non-contiguous DR zone across 3 separate zones and 2 separate parcels and/or tracts should be denied as unauthorized by the Baltimore County Zoning Regulations.

II. BALTIMORE COUNTY ZONING REGULATIONS AND MARYLAND CASE LAW PROHIBIT THE DENSITY TRANSFER AMONG NON CONTIGUOUS PARCELS REQUESTED BY THE PETITIONER

Where a transfer of residential density from one DR zoned piece of property to another DR zoned piece of property is requested, the pieces of property must be contiguous. That there is a requirement of contiguity of property in density transfer cases has been well established both by the "long continued administrative practice" of the Baltimore County Office of Planning and Zoning, by the language of the Baltimore County Zoning regulations, and by several Maryland Courts which have considered the issue.

Although the density transfer provisions of 1B01.2A.2 do not specifically mention the word contiguous, it is well recognized that it has been the practice of Baltimore County to require that the parcels be contiguous and that the contiguous parcels be zoned residential. There is even support in the Baltimore County Zoning Policy Manual to support the contention that the parcels be not only contiguous, but "adjoining" as well. As stated in Section

RSD-2, "Density Transfer" of the policy manual, "In order to transfer density from one section of a subdivision to another section, it is necessary to amend the tract boundary of the original subdivision so as to include the additional ADJOINING PROPERTY." (Emphasis supplied) In the instant case not only does the subject Parcel 1 to which density is sought to be transferred not adjoin Parcel 3 at any point, but the O-1 and DR-1 zoned portions of Parcel 3 from which density is sought to be transferred are at even greater distances from Parcel 1. Even assuming that the developer could utilize Parcel 4 which adjoins Parcel 1 in an attempt to establish the requirement of joinder with Parcel 4, only a brief view of the greatly downsized plats is needed to realize that those portions of parcel 3 from which the density transfer is sought do not adjoin Parcel 4. The developer's petition should be denied as it fails to meet both the standards set by the "long standing administrative practice" and the density transfer provisions set forth in the Policy Manual.

Further support for the proposition that the subject properties must be adjoining is found in the language of 1B01.2A2 of the Zoning Regulations. That section specifically refers to "a single tract divided by a zone boundary". When property is divided by "a" zone boundary, it necessarily and systematically follows that two adjoining pieces are created. As earlier indicated, the O-1 and DR

zoned portions of Parcel 3 from which density is sought to be transferred do not adjoin either Parcel 1 or Parcel 4.

Furthermore, it is strongly suggested that Parcels 1, 2, 3, and 4 are all part of separate and distinct tracts, and not part of "a single tract" as required by 1B01.2A.2 for density transfers.

Parcel 2 is part of the tract of land developed as The Greenspring Annex in the O-1 portion of Parcel 2. As part of the development of that tract, the DR-2 portion of Parcel 2 was created as a buffer zone between Greenspring Annex and Mr. Lankford's land to the south. Parcel 4 is part of the tract of land developed when The Meadows of Greenspring was developed and Parcel 3 itself is part of the tract of land developed when both the Greenspring Professional Center (utilizing the bulk of the O-1 zoned portion of Parcel 3) and the Greenspring Racquet Club were developed. From this perspective, once again, the developer's petition for density transfer should be denied.

While research of Maryland case law has been unavailing as to Maryland rulings on point with the factual situations present in the instant case, there have been several Maryland cases that have dealt with and recognized the proposition that transfers of density be between "contiguous" or "adjoining" properties.

In Gruver-Cooley v. Perlis, 252 Md. 684 (1968), the court had to decide whether density could be transferred from a subdivision on one side of a road to a subdivision on

another side of the road where the Montgomery County Code only permitted such a transfer between "adjoining subdivisions". In holding that the subdivisions were adjoining within the meaning of the statute, the court ruled that the subdivisions did not need to actually touch to be adjoining as the term adjoining could be defined as "... close or near to, or nearest or most accessible..." Gruver, supra at 695. However, the court went on to state that from a premises perspective, "Adjoining may not require properties to touch but merely to be SEPARATED BY NO OTHER PROPERTY which can be put to private use." Gruver, supra at 695.

A similar view was taken by the Court of Appeals in Swarthmore Company v. Kaestner, 258 Md. 517 (1970) where the court was confronted with the need to analyze the word "contiguous" as utilized with the Baltimore County Code. In citing the Gruver case, supra, the Swarthmore case defined contiguous as meaning... "in close proximity; near though not in contact..." Swarthmore, supra at 530. Once again, as in Gruver, supra, the issue was whether two properties (Districts) were "contiguous" to one another when separated by a road.

In the instant case it is not a public road that separates the O-1 and DR-1 zones of Parcel 3 from Parcel 1. It is also not a public road that separates those Parcel 3 zones from Parcel 4, assuming though not accepting the argument that petitioner can utilize Parcel 4 as a crossover

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE
February 17, 1987

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

John B. Howard, Esquire
210 Allegheny Avenue
Towson, Maryland 21204

RE: Item No. 304 - Case No. 87-362-SPH
Petitioner: PF&M Associates Limited
Partnership, et al
Petition for Special Hearing

Dear Mr. Howard:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above-referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

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

Very truly yours,

James E. Dyer, Jr.
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:kbb

Enclosures

cc: Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21204



BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3350

STEPHEN E. COLLINS
DIRECTOR

February 2, 1987

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

Item No. 304 -ZAC-
Property Owner:
Location:
Existing Zoning:
Proposed Zoning:

Meeting of January 27, 1987
PF&M Associates Ltd Partnership
NE/S Falls Road, 172 feet NW of center-
line of Greenspring Valley Road
D.R. 1, D.R. 2, D.R. 16, B.R. and O-1
Special Hearing to approve the transfer
(or accumulation) of density from the
shaded portions of Parcels 2 and 3 to
Parcel 1, where the density in part is to
be transferred through a B.R. zoned portion
of the subject property
51.3 acres
8th Election District

Area:
District:

Dear Mr. Jablon:

Please see the C.R.G. comments for this site.

Very truly yours,

Michael S. Flanagan
Michael S. Flanagan
Traffic Engineer Associate II

MSF:lt



Maryland Department of Transportation
State Highway Administration

FEB 3 1987

William K. Hellmann
Secretary
Michael Kassoff
Administrator

January 30, 1987

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

Attention: Mr. James Dyer

Re: ZAC Meeting of 1-27-87
ITEM: #304.
Property Owner: PF&M Associates
Ltd. Partnership
Location: NE/S Falls Road, 172
feet NW of centerline of Greenspring
Valley Road
Existing Zoning: D.R.1, D.R.2,
D.R.16, B.R. and O-1
Proposed Zoning: Special Hearing
to approve the transfer (or
accumulation) of density from the
shaded portions of Parcels 2 and
3 to Parcel 1, where the density
in part is to be transferred
through a B.R. zoned portion of
the subject property
Area: 51.3 acres
District: 8th Election District

Dear Mr. Jablon:

The site to be served by Seminary Farm Road which
intersects with Seminary Avenue is satisfactory, therefore,
it should have no adverse affect on the State Highway.

Very truly yours,

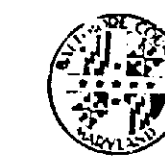
Charles Lee, Chief
Charles Lee, Chief
Bureau of Engineering
Access Permits

CL:GHG:maw

cc: Mr. J. Ogle

My telephone number is (301) 333-1350

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 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

JANUARY 30, 1987

Re: Zoning Advisory Meeting of JANUARY 27, 1987
Item #304
Property Owner: PF&M ASSOCIATES LTD.
PARTNERSHIP
NE/S FALLS RD. 172' NW COR. OF
GREENSPRING VALLEY RD.

Dear Mr. Jablon:

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

- ☒ There are no site planning factors requiring comment.
- ☒ A County Review Group Meeting is required.
- ☒ A County Review Group Meeting was held and the minutes will be
forwarded by the Bureau of Public Services.
- ☒ This site is part of a larger tract; therefore it is defined as a
subdivision. The plan must show the entire tract.
- ☒ A record plat will be required and must be recorded prior
to issuance of a building permit.
- ☒ The access is not satisfactory.
- ☒ The circulation on this site is not satisfactory.
- ☒ The parking arrangement is not satisfactory.
- ☒ Parking calculations must be shown on the plan.
- ☒ This property contains soils which are defined as wetlands, and
development on these soils is prohibited.
- ☒ Construction in or alteration of the floodplain is prohibited
under the provisions of Section 22-98 of the Development
Regulations.
- ☒ Development of this site may constitute a potential conflict with
the Baltimore County Master Plan.
- ☒ The amended Development Plan was approved by the Planning Board
on _____.
- ☒ Landscaping: Must comply with Baltimore County Landscape Manual.
The property is located in a deficient service area as defined by
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
are re-evaluated annually by the County Council.
- ☒ Additional comments:

cc: James Hoswell

David Fields, Acting Chief
Current Planning and Development

BALTIMORE COUNTY DEPARTMENT OF HEALTH

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

Zoning Item # 304, Zoning Advisory Committee Meeting of 1/27/87

Property Owner: PF&M Associates Ltd Partnership

Location: NE/S Falls Rd, 172' NW of centerline of Greenspring Valley Rd

Water Supply: Metro (proposed) Sewage Disposal: Metro (proposed)

COMMENTS ARE AS FOLLOWS:

- ☐ 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.
- ☒ Prior to new installation/s of fuel burning equipment, the owner should
contact the Division of Air Pollution Control, 494-3775, to obtain require-
ments for such installation/s before work begins.
- ☐ 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.
- ☐ 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.
- ☐ Prior to approval of a Building Permit Application for renovations to exist-
ing 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.
- ☐ 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. For more complete information,
contact the Recreational Hygiene Section, Division of Environmental Support
Services.
- ☐ 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.
- ☐ 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
87-362-SPH

Zoning Item # 304 Zoning Advisory Committee Meeting of 1/27/87
Page 2

☒ Prior to razing 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.

☒ Any abandoned underground storage tanks containing gasoline, waste oil, sol-
vents, 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.

☐ 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.

☐ Where water wells are to be used as a source of water supply, a well meeting
the minimum Baltimore County Standards must be drilled.

☐ 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.

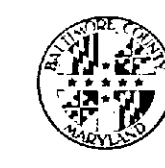
☐ Prior to occupancy approval, the potability of the water supply must be
verified by collection of bacteriological and chemical water samples.

☐ If submission of plans to the County Review Group is required, a Hydro-
geological Study and an Environmental Effects Report must be submitted.

☒ Others: existing existing is to be connected to metro
sewer & water. Wells & septic system must
be abandoned & properly backfilled
All wetland soils (i.e. Mollusks (Hs) and
bat holes (Hs) must be shown on the plans,
which must state "Wetlands - no clearing,
grading or disturbance except as per Baltimore
Water Quality Regulations."
EEB report must include Baltimore soil on list.
Sewer capacity must be adequate prior to CRG
approval

Building Permit is contingent on Resolution of
sewer capacity problem and must be shown on
Area has been designated as filled to capacity
with existing zoning.
Ian S. Forrester, Director
BUREAU OF ENVIRONMENTAL SERVICES

WWQ 2 4/86



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

PAUL H. REINCKE
CHIEF

January 28, 1987

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

RE: Property Owner: PF&M Assoc. Ltd. Partnership

Location: NE/S Falls Road, 172' NW of centerline of Greenspring Valley Road

Item No.: 304

Zoning Agenda: Meeting of 1/27/87

Gentlemen:

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

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

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

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

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

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

☐ 6. Site plans are approved, as drawn.

☐ 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Paul H. Reincke 1-28-87
Planning Group
Special Inspection Division

/mb



BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204

TED ZALESKI, JR.
DIRECTOR

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

Dear Mr. Jablon:

Comments on Item # 304, Zoning Advisory Committee Meeting are as follows:

Property Owner: PF&M Associates Ltd Partnership
Location: NE/S Falls Road, 172 feet NW of centerline of Greenspring Valley Road
District: D.R.1, D.R.2, D.R.16, B.R. and O-1

APPLICABLE ITEMS ARE CHECKED:

- ☒ All structures shall conform to the Baltimore County Building Code as adopted by Council Bill #17-85,
the Maryland Code for the Handicapped and Age (A.B.11, Bill 1-1980) and other applicable Codes and Standards.
- ☐ A building and other miscellaneous permits shall be required before the start of any construction.
- ☐ 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.
- ☒ 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.
- ☐ E. All Use Groups except B-4 Single Family Detached Dwellings require a minimum of 1 hour fire rating for
exterior walls closer than 6'-0" to an interior lot line. B-4 Use Groups require a one hour wall if closer
than 1'-0" to an interior lot line. Any wall built on an interior lot line shall require a fire or party
wall. See Table 401, Section 107, Section 108-2 and Table 102. No openings are permitted in an
exterior wall within 3'-0" of an interior lot line.
- ☐ F. The structure does not appear to comply with Table 505 for permissible height/area. Reply to the requested
variance by this office cannot be considered until the necessary data pertaining to height/area and
construction type is provided. See Table 401 and 505 and have your Architect/Engineer contact this department.
- ☐ G. The requested variance appears to conflict with Section(s) _____ of the Baltimore
County Building Code.
- ☐ H. When filing for a required Change of Use/Occupancy Permit, an alteration permit application shall also
be filed along with three sets of acceptable construction plans indicating how the existing structure
is to be altered in order to comply with the Code requirements for the new use. Maryland Architectural or
Engineer seals are usually required. The change of Use Groups are from Use _____ to Use _____ or
to Mixed Use _____. See Section 112 of the Building Code.
- ☐ I. The proposed project appears to be located in a Flood Plain, Flood Hazard Area. Please see the attached
copy of Section 516.2 of the Building Code as adopted by Bill #11-85. If the plan shall show the correct
elevations above sea level for the lot and the finished floor levels including basement.
- ☒ Comments: Buildings 15'-0" or higher from lowest point of grade require
a fire suppression system. If over 75'-0" the high rise package is
required, Section 1702.23 and/or 618.0. Separate permits are required
for the four structures as well as a change of occupancy permit for the
entire building.
- ☐ K. These abbreviated comments reflect only on the information provided by the drawings submitted to the Office
of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired
the applicant may obtain additional information by visiting Room 122 of the County Office Building at 111
W. Chesapeake Avenue, Towson, Maryland 21204.
Provide the required number of hand-drawn copies of the plans.

L7/27/86

from Parcel 3 to Parcel 1. The 0-1 zoned portion of Parcel 3 from which the petitioner seeks to transfer density is separated from Parcel 1 by both Parcel 4 and well over 20,000 square feet of property upon which both a racquet club and parking lot have been developed. The DR-1 zoned portion of Parcel 3 from which density is sought to be transferred is separated from Parcel 1 by both Parcel 4 and at its nearest point to Parcel 4, approximately 250 square feet of shrubbed land which in all likelihood had to be landscaped pursuant to Section 406A.501. Section 406A.501 requires that at least 15 percent of the total area of the site of any tennis facility must be landscaped. Even though the later portion between Parcel 4 and the DR-1 portion of Parcel 3 may seem relatively small, it is not a road and is not a property which can not be put to private use within the meaning of "adjoining" (contiguous) set forth by the Court of Appeals in Gruver, supra. In fact, that portion of land can and/or is being put to private use and is not zoned DR.

The petitioner's request for density transfer should be denied as the petitioner's request does not meet the requirements established either by the "long standing administrative policy" of the Baltimore County Department of Zoning, the requirements of the Baltimore County Zoning Regulations density transfer provision, or the law as discussed and analyzed by the Court of Appeals.

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III. THE PETITIONER SHOULD BE PROHIBITED FROM UTILIZING THE "UNDEVELOPED" PORTION OF PARCEL 3 AS A "BRIDGE" TO ACCOMPLISH ITS GOAL OF DENSITY TRANSFER THROUGH TWO PARCELS OF LAND AND THREE DIFFERENT ZONES

For reasons previously stated, the petitioner should not be permitted to utilize the presently undeveloped BR zoned portion of Parcel 3 to the south of the Greenspring Racquet Club and to the southeast of the parking lot adjacent to the club as a "bridge" to accomplish its goal of density transfer through two parcels of land and three different zones. Case law, past zoning office policy, and the clear language of 1B01.2A.2 prohibit such action. By virtue of both its BR zoning and present use as part of the landscaping requirements of Section 406A.5D.1. of the zoning regulations, this Parcel clearly separates the 0-1 zoned and DR-1 zoned portions of Parcel 3 from Parcel 4 to such an extent as to make those residentially capable portions noncontiguous within the meaning of Gruver-Cooley, supra. The Parcel can be, and is being, put to private use, and thus serves to separate the 0-1 and DR-1 portions of Parcel 3 not only from Parcel 1 but from Parcel 4 as well. Additionally, Parcels 3, 4, 1 and 2 are all parts of separate tracts and not part of "single tract divided by a zone boundary" requirement for density transfer clearly and unambiguously set forth in 1B01.2A.2.

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To allow the petitioner to utilize the aforementioned section as a bridge would be tantamount to authorizing any developer to accomplish a density transfer between non contiguous parcels of land by retaining a small strip of non DR zoned, but arguably residentially use permitted, land between two parcels. While separation of properties by a road may not prevent density transfers, separation by tennis courts, parking lots, and a small strip of required open space certainly should.

Regarding the parking lot and tennis facility, it is argued that Sections 406A.3, 406A.4, and 102.2 of the zoning regulations also prohibit the petitioners from using the small portion of BR land as a bridge to transfer density. Section 406A.4 requires that "parking spaces shall be provided on the site of a tennis facility". Section 406A.3 requires that "no tennis facility shall be established within 100 feet of any site boundary of an RC or DR zoned property. Section 102.2 requires that "No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use.". It is precisely the 100 feet wide L shaped strip of land required by 406A.3 that petitioner now wishes to use as a bridge for density transfer. As that 100 feet area is required by 406A.3, Section 102.2 should prohibit petitioner from using that area for any other purpose. Not even its use as a bridge for density transfer should be permitted.

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D. THE LANKFORD RESTRICTIVE COVENANT

Parcel 2, from which the petitioner seeks to transfer approximately 3.862 density units, is subject to a restrictive covenant entered into between Mr. Lankford and some of the principals in the instant case, P.F. & M. Associates. (A copy of this agreement is attached hereto.) This agreement was entered into when P.F. & M. Associates sought to develop a tract of land to the north of Mr. Lankford's property. That tract, now developed with the Green Spring Annex, contained the 1.7464 acre property now known as Parcel 2. Under the terms of the agreement, Mr. Lankford agreed to dismiss his appeals to zoning cases 85-321-SPH and CBA-85-138 in exchange for P.F. & M. Associates agreeing "That the DR zoned portion of the property shall only be used for the storm water, management facility, landscaping, and certain 'park-like' uses". While petitioners claim the right to utilize the available Parcel 2 DR density as the parcel would remain undeveloped, it is this writer's contention that the petitioners should be prohibited from transferring Parcel 2 density.

The agreement limits the purposes for which the property may be used, and density transfer is not among them. The uses permitted also qualify as DR uses within the meaning of Section 1B01.1A.10 and/or as yard space or a minimum area required for a building or use. Under the terms of the agreement, PF&M was required to maintain the underdeveloped DR portion of Parcel 2 in order to develop

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87-362-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
21st day of January, 1987.

ARNOLD JABLON
Zoning Commissioner

Petitioner PF&M Associates Limited
Petitioner's Partnership, et al
Attorney John B. Howard, Esquire
Received by: James E. Dyer

restricted portion of Parcel 2, what additional benefit would the public receive? To allow a transfer of density from land which is precluded from development by a restrictive covenant would only serve to allow the petitioner to accomplish indirectly that which it could not directly accomplish, and the public would receive no added benefit.

For the reasons aforementioned, the petitioners request to transfer density from Parcel 2 should be denied.

CONCLUSION

The Petitioner seeks that which is not authorized by Baltimore County Zoning Regulations or by existing Maryland Law and the Petition should be denied.

Respectfully submitted,

George W. White, Jr.
White, Mindel, Clarke & Hill
29 W. Susquehanna Avenue
Towson, Maryland 21204
(301) 828-1050

GWW/mst

16

the 0-1 portion of Parcel 2. Pursuant to Section 102.2 "No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use". The land area of Parcel 2 should not be considered as available for density transfer to the land area of Parcel 1.

That such restrictive covenants upon land use entered into as consideration for dismissing or not appealing a zoning action are valid was recognized by the Court of Special Appeals in Equitable Trust v Towson Manor, 27 Md. App. 420 (1975). It has also been recognized that "In reaching a decision, it is proper for a zoning commissioner to consider the existence of lawful private restrictions on land use"... Capital Hill Restoration Society v Zoning Commissioner (1977, Dist Co. App.) 380 A2d 174. The restrictive covenant placed upon Parcel 2 and the impact of Section 102.2 of the zoning regulations prohibit the transfer of any of the Parcel 2 density.

To allow a density transfer would violate the declared legislative policy in authorizing density transfers. The theory behind the density transfer provision is that in exchange for increased density in one DR zone within a single tract, a developer agrees to cause the other DR zoned portion within that same tract to permanently remain open space. The developer gives up something and the public gets something in return. If the petitioner in the instant case is allowed to transfer density from the

15

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Arnold Jablon
TO: Zoning Commissioner Date: February 20, 1987
Norman E. Gerber, AICP, Director
FROM: Office of Planning and Zoning
SUBJECT: Zoning Petition No. 87-362-SPH

As for the request for an interpretation, this office offers no comment; however, one item should be considered in addition to the question of interpretation.

Sufficient information should be provided by the petitioner to show that the "out parcels" meet all County regulations separate and apart from the acreage requested for the current proposal. Further, the D.R. 2 zoned portion in Parcel 2 contains the SWM pond for the adjacent development; consequently, it should not be counted for "available density".

Norman E. Gerber, AICP
Director

NEG:JGH:sib

FEB 20 1987

CPS-008

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3333

Arnold Jablon
Zoning Commissioner

April 14, 1987



Dennis F. Rasmussen
County Executive

Baltimore County Board of Appeals
Old Courthouse, Room #205
Towson, Maryland 21204

RE: Petition for Special Hearing
NE/S Falls Road, 172' NW of the c/l of Greenspring Valley Road
8th Election District, 3rd Councilmanic District
PF & M Associates, Ltd. Partnership, et al - Petitioner
Case No. 87-362-SPH

Dear Board:

Please be advised that on April 13, 1987, an appeal of the decision rendered in the above-referenced case was filed by Gary C. Duvall, Esquire, on behalf of Norris B. Lankford, a Protestant. All materials relative to the case have been forwarded to your office in response to an appeal previously filed on April 9, 1987.

If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJ:bjs

cc: John B. Howard, Esquire
Robert A. Hoffman, Esquire
210 Allegheny Avenue, Towson, Md. 21204

Mr. Norris B. Lankford
2310 West Joppa Road, Brooklandville, Md. 21022

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

File

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COUNTY BOARD OF APPEALS
1701 APR 15 P 2 14

LAW OFFICES
MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 304-668-0005
CABLE MILEBRIDGE
TELEX 87-34

10 LIGHT STREET
BALTIMORE, MARYLAND 20003
84 NORTH WEST STREET
EASTON, MARYLAND 20008
648 SUSSEXPORT COURT
ROCKVILLE, MARYLAND 20850
1704 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

GARY C. DUVAL

April 13, 1987

RECEIVED
APR 13 1987

HAND DELIVERY

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

RE: Case #87-362-SPH
PF&M Associates Ltd. Partnership,
et al., Petitioners

Dear Mr. Jablon:

Enclosed please find an Order of Appeal on behalf of Norris B. Lankford with respect to that portion of your April 3, 1987 Order transferring density from parcel 2 to parcel 1 at the subject site. We are also enclosing the required fee of \$120.00.

If there are any problems or questions with the Order, please contact the undersigned.

Thank you for your consideration.

Very truly yours,

Gary C. Duvall
Gary C. Duvall

GCD:ld

Encl.

cc: John B. Howard, Esquire
George W. White, Esquire
People's Counsel for Baltimore County
Mr. Norris B. Lankford

RECEIVED
COUNTY BOARD OF APPEALS
1701 APR 15 P 2 14

IN RE: PETITION SPECIAL HEARING * BEFORE THE
NE/S of Falls Road, 172' NW * ZONING COMMISSIONER
of the centerline of Green- * OF BALTIMORE COUNTY
spring Valley Road - *
8th Election District *
PF&M Associates Ltd. Part- * Case No. 87-362-SPH
nership, et al, *
Petitioners *

ORDER OF APPEAL OF NORRIS B. LANKFORD

Norris B. Lankford, by Gary C. Duvall and Miles & Stockbridge, his attorneys, pursuant to Section 500.10, Baltimore County Zoning Regulations, hereby notes an appeal from the Order of the Zoning Commissioner dated April 3, 1987 with respect to that portion of the Order transferring density from the DR-2 zoned portion of Parcel 2 to Parcel 1 in the within matter which was permitted pursuant to said Order. Please note this appeal to the Board of Appeals for Baltimore County.

RECEIVED
APR 13 1987

ZONING OFFICE

Gary C. Duvall
Gary C. Duvall
MILES & STOCKBRIDGE
401 Washington Avenue
Towson, Maryland 21204
(301) 821-6565

Attorney for
Norris B. Lankford

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of April, 1987, a copy of the foregoing Order of Appeal was mailed to John B. Howard, Esquire, Cook, Howard, Downes & Tracy, 210 Allegheny

Avenue, P. O. Box 5517, Towson, MD 21204, attorneys for Peddy, Fredeking and Mullan; to George White, Esquire and Robert Berwick, Esquire, White, Mindel, Clarke and Hill, Suite 600, The Susquehanna Building, 29 W. Susquehanna Avenue, Towson, MD 21204, attorneys for Meadows of Greenspring Community Association; and to the People's Counsel for Baltimore County, Room 223, Court House, Towson, Maryland 21204.

Gary C. Duvall
Gary C. Duvall

-2-

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3333

Arnold Jablon
Zoning Commissioner

April 13, 1987



Dennis F. Rasmussen
County Executive

George W. White, Jr., Esquire
White, Mindel, Clarke & Hill
29 W. Susquehanna Avenue
Towson, Maryland 21204

RE: Petition for Special Hearing
NE/S Falls Road, 172' NW of the c/l of Greenspring Valley Road
8th Election District, 3rd Councilmanic District
PF & M Associates, Ltd. Partnership, et al - Petitioner
Case No. 87-362-SPH

Dear Mr. White:

Please be advised that on April 9, 1987, an appeal of the decision rendered in the above-referenced case was filed by John B. Howard, Esquire, 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
ARNOLD JABLON
Zoning Commissioner

AJ:bjs

cc: John B. Howard, Esquire
Robert A. Hoffman, Esquire
210 Allegheny Avenue, Towson, Md. 21204

Mr. Norris B. Lankford
2310 West Joppa Road, Brooklandville, Md. 21022

Baltimore County Board of Appeals
Old Courthouse, Rm. 205
Towson, Maryland 21204

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

File

PETITION FOR SPECIAL HEARING

8th Election District

Case No. 87-362-SPH

LOCATION: Northeast Side of Falls Road, 172 feet Northwest of the Centerline of Greenspring Valley Road

DATE AND TIME: Friday, February 27, 1987, at 10:00 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 the transfer (or accumulation) of density from the shaded portions of Parcels 2 and 3 to Parcel 1 as depicted on the plat where the density in part is to be transferred through a B.R. zoned portion of the subject property

Being the property of PF&M Associates Ltd. Partnership/, as shown on plat plan filed with the Zoning Office.

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

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

April 13, 1987

George W. White, Jr., Esquire
White, Mindel, Clarke & Hill
29 W. Susquehanna Avenue
Towson, Maryland 21204

RE: Petition for Special Hearing
NE/S Falls Road, 172' NW of the c/l of Greenspring Valley Road
8th Election District, 3rd Councilmanic District
PF & M Associates, Ltd. Partnership, et al - Petitioner
Case No. 87-362-SPH

Dear Mr. White:

Please be advised that on April 9, 1987, an appeal of the decision rendered in the above-referenced case was filed by John B. Howard, Esquire, 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
ARNOLD JABLON
Zoning Commissioner

AJ:bjs

cc: John B. Howard, Esquire
Robert A. Hoffman, Esquire
210 Allegheny Avenue, Towson, Md. 21204

Mr. Norris B. Lankford
2310 West Joppa Road, Brooklandville, Md. 21022

Baltimore County Board of Appeals
Old Courthouse, Rm. 205
Towson, Maryland 21204

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

File



County Board of Appeals of Baltimore County

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

July 30, 1987

NOTICE OF POSTPONEMENT and REASSIGNMENT

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

CASE NO. 87-362-SPH

P F & M ASSOCIATES LTD. PARTNERSHIP ET AL
NE/s Falls Road, 172' NW of c/l of Greenspring Valley Road
SPH -Density Transfer
8th Election District
3rd Councilmanic District

4/03/87 -Z.C. permitted transfer of density from D.R. 2-zoned portion of Parcel 2 to Parcel 1 only.

which had been set for hearing on August 11, 1987 has been POSTPONED at the request of Counsel for Petitioner, and with agreement of all involved counsel, and has been

REASSIGNED FOR: WEDNESDAY, October 21, 1987 at 11:00 a.m.

cc: John B. Howard, Esquire Counsel for Appellant/Petitioner
Robert A. Hoffman, Esquire

Thomas L. Peddy, Vice President
Foxleigh Enterprises, Inc. Appellant/Petitioner

Gary C. Duvall, Esquire Counsel for Appellant/Protestant

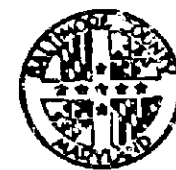
Mr. Norris B. Lankford Appellant/Protestant

George W. White, Jr., Esquire Counsel for Meadows of Green Spring
Homeowner's Association

Phyllis C. Friedman, Esquire

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

Kathi Weidenhammer
Administrative Secretary



County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3189

April 17, 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. 87-362-SPH

FF & M ASSOCIATES LTD. PARTNERSHIP, ET AL
NE/S FALLS ROAD, 172' NW OF C/L OF
GREENSPRING VALLEY ROAD
SPH -DENSITY TRANSFER
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
4/03/87 -Z.C. PERMITTED TRANSFER OF DENSITY
FROM D.R.2-ZONED PORTION OF PARCEL 2
TO PARCEL 1 ONLY

ASSIGNED FOR:

TUESDAY, AUGUST 11, 1987 at 10:00 a.m.

cc: John B. Howard, Esquire
Robert A. Hoffman, Esquire
Thomas L. Peddy, Vice Pres.
Foxleigh Enterprises, Inc.
Gary C. Duvall, Esquire
Mr. Norris B. Lankford
George W. White, Jr., Esquire
Phyllis Cole Friedman, Esquire
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. King
James E. Dyer
Margaret E. du Bois

Counsel for Appellant/Petitioner
Appellant/Petitioner
Counsel for Appellant/Protestant
Appellant/Protestant
Counsel for Meadows of Green Spring Homeowner's
Association
People's Counsel

Kathi C. Weidenhammer
Administrative Secretary

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

HAND DELIVERY

July 24, 1987

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

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

Re: Petition for Special Hearing
Case No.: 87-362-SPH
Foxleigh Enterprises, Inc., Petitioner (PF&M)

Dear Mr. Hackett:

The above referenced case is now scheduled for August 11, 1987 at 10:00 a.m. In accordance with Rule 2, Board of Appeal's Rules of Procedure, I respectfully request a postponement of the hearing due to a scheduling conflict and the unavailability of a key principal of Foxleigh Enterprises, Inc.

I will be contacting counsel of record listed below to determine if this request for postponement can be by consent of all parties.

Yours truly,

John B. Howard

JBH:bw

cc: Gary C. Duvall, Esquire
George W. White, Esquire
Phyllis Cole Friedman, Esquire

*Our case 739 from Rob Hoffman
all dismissed case agree
to postponement.
J.
RECEIVED
COUNTY BOARD OF APPEALS
JUL 24 P 4 48*

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

HAND DELIVERY

January 14, 1987

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

Arnold Jablon, Zoning Commissioner
Office of Zoning
County Office Building
1st Floor
Towson, Maryland 21204

Re: Petition for Special Hearing
Foxleigh Enterprises, Inc., Petitioner
Item 304

Dear Mr. Jablon:

A Petition for Special Hearing was filed on Monday, January 12, 1987, to determine primarily whether density may be transferred or accumulated among residentially zoned properties through a commercially zoned property.

Because of certain policies of the Zoning Office and our interpretation of the Baltimore County Zoning Regulations it was, in our opinion, clear that density could be transferred or accumulated among the residentially zoned properties. Therefore, the necessity for a hearing was unanticipated and the filing of this Petition for Special Hearing was delayed.

This delay when coupled with usual waiting period for a hearing date, could seriously jeopardize the contractual commitments and deadlines on this project which must be met by the Petitioner.

A hearing on these legal issues would be of short duration and, it is, therefore, respectfully requested that an expedited hearing be set.

Thank you for your attention to this matter.

Yours truly,

Robert A. Hoffman

RAH:bw

cc: George W. White, Jr., Esquire
Thomas L. Peddy

LAW OFFICES
MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 301-681-9555
CABLE MILBRIDGE
TELEX 87-51

April 13, 1987

HAND DELIVERY

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

RE: Case #87-362-SPH
PF&M Associates Ltd. Partnership,
et al., Petitioners

Dear Mr. Jablon:

Enclosed please find an Order of Appeal on behalf of Norris B. Lankford with respect to that portion of your April 3, 1987 Order transferring density from parcel 2 to parcel 1 at the subject site. We are also enclosing the required fee of \$120.00.

If there are any problems or questions with the Order, please contact the undersigned.

Thank you for your consideration.

Very truly yours,

Gary C. Duvall

GCD:ld

Encl.

cc: John B. Howard, Esquire
George W. White, Esquire
People's Counsel for Baltimore County
Mr. Norris B. Lankford

RECEIVED
APR 13 1987
ZONING OFFICE

LAW OFFICES
MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 301-681-9555
CABLE MILBRIDGE
TELEX 87-51

January 22, 1988

Mr. William T. Hackett,
Chairman
County Board of Appeals of
Baltimore County
401 Bosley Avenue
Room 200
Court House
Towson, MD 21204

Re: Case No. 87-362-SPH
Application of PF&M
Associates Limited
Partnership, et al.

Dear Mr. Hackett:

I have this day served upon the Executive Secretary for the Board of Appeals an Order of Appeal from the Board's Order of December 23, 1987. I regret having to take this action, but my client is insistent upon preserving his appeal rights if for some reason the Board does not issue the Amended Order which we have been assured would be forthcoming. If and when the Amended Order is filed, we will promptly dismiss our appeal.

Thank you for your understanding in this matter.

Very truly yours,

Gary C. Duvall

GCD:ld

cc: Robert A. Hoffman, Esquire
George W. White, Jr., Esquire
Phyllis Cole Friedman, Esquire
Mr. Norris B. Lankford

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

December 11, 1987

JAMES H. COOK
JOHN B. HOWARD
DAVID D. DOWNES
DANIEL O. TRACY, JR.
JOHN H. ZINK, JR.
JOSEPH C. WICK, JR.
HENRY B. PECK, JR.
HERBERT R. O'CONNOR, III
THOMAS L. HUDSON
C. CAREY DEELEY, JR.
N. KING HILL, III
GEORGE K. REYNOLDS, JR.
ROBERT A. HOFFMAN
CYNTHIA M. HAHN

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

Re: PFM Associates, Limited Partnership, Petitioner
Case No.: 87-362-SPH

Dear Mr. Hackett:

As counsel for PFM Associates Limited Partnership, et al, please withdraw the Petition for Special Hearing in the above-referenced case.

Yours truly,

Robert A. Hoffman

RAH:bw

cc: George W. White, Jr., Esquire
Gary C. Duvall, Esquire
Phyllis Cole Friedman, Esquire
Thomas L. Peddy

RECEIVED
COUNTY BOARD OF APPEALS
DEC 11 A P 18

LAW OFFICES
MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 301-681-9555
CABLE MILBRIDGE
TELEX 87-51

December 14, 1987

10 LIGHT STREET
BALTIMORE, MARYLAND 21208
101 RAY STREET
EASTON, MARYLAND 21828
1100 RANDOM HILLS ROAD
FAIRFAX, VIRGINIA 22030
GARY C. DUVAL

Mr. William Hackett, Chairman
County Board of Appeals
of Baltimore County
Room 200, Courthouse
Towson, MD 21204

RE: Case No. 87-363-SPH
PF&M Associates Limited Partnership
NE/S Falls Road, 172' NW of C/L of
Greenspring Valley Road

Dear Mr. Hackett:

Please dismiss the Cross-Appeal of Norris Lankford filed in the within matter. It is our understanding that the appellant, PF&M Associates Limited Partnership, has dismissed their appeal. Our dismissal is contingent upon the dismissal of their appeal.

If there are any questions, please do not hesitate to call.

Very truly yours,

Gary C. Duvall

GCD:ld

cc: Robert A. Hoffman, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
DEC 14 A 4 43

LAW OFFICES
MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 301-681-9555
CABLE MILBRIDGE
TELEX 87-51

December 28, 1987

10 LIGHT STREET
BALTIMORE, MARYLAND 21208
101 RAY STREET
EASTON, MARYLAND 21828
1100 RANDOM HILLS ROAD
FAIRFAX, VIRGINIA 22030
GARY C. DUVAL

HAND DELIVERY

Mr. William Hackett, Chairman
County Board of Appeals
of Baltimore County
Room 200, Courthouse
Towson, MD 21204

RE: Case No. 87-363-SPH
PF&M Associates Limited Partnership
NE/S Falls Road, 172' NW of C/L of
Greenspring Valley Road

Dear Mr. Hackett:

I received on Christmas Eve the Opinion and Order in the above-captioned case. As the file reflects, both sides dismissed their appeals in this case. Mr. Hoffman telephoned me and indicated that he was dismissing his appeal and subsequently followed up with his letter which was attached to the Board's Opinion and Order. My letter, which is also attached to the Petitioner had told us that they were dismissing their appeal and our dismissal was contingent upon their dismissal.

Given the foregoing, I do not understand how the Board could render an Opinion and Order in a matter which was no longer before it. The appeal was dismissed by the Board's Order of December 23, 1987, but the Board assumed jurisdiction to reverse the Zoning Commissioner's decision. Obviously, there is an anomaly in this reasoning.

The Decision of the Zoning Commissioner was expected by my client to remain in full force and effect upon dismissal of the appeal. It was obviously my belief that the Petitioner also expected this result, given the fact that they were dismissing their appeal.

I think it would be beneficial to all involved if the Board would clarify its Opinion and Order to let us know exactly what is taking place. It would seem to me that, since both sides were

Mr. William Hackett, Chairman
Page 2
December 28, 1987

MILES & STOCKBRIDGE

dismissing their appeal, a simple notice of dismissal in the record would suffice. In that manner, the Order of Commissioner Jablon would then be the final decision in this matter.

I look forward to hearing from you at your earliest convenience.

Very truly yours,

Gary C. Duvall
Gary C. Duvall

GCD:ld

cc: Mr. Morris Lankford
Robert A. Hoffman, Esquire
John B. Howard, Esquire
George W. White, Jr., Esquire
Phyllis Cole Friedman, Esquire - People's Counsel
Arnold Jablon, Esquire - County Attorney

RECEIVED
COUNTY BOARD OF APPEALS
JAN 13 1988 P 3 50

GEORGE W. WHITE, JR.
CHARLES MINDEL
SAMUEL D. HILL
JOSEPH L. JOHNSON
N. BRUCE ALDERMAN
JOHN F. ROLEY, JR.
STANLEY L. HOLMES
PHILIP D. TOWSE
JAMES D. STONE
EUGENE S. JONES, III
WILLIAM C. C. BARNES
ROBERT F. BOWNE, JR.
DENNIS F. O'BRIEN
EUGENE W. CUNNINGHAM, JR.
NANCY KASABA DOWLING
MARK T. JARBER
LINDA T. FERN
PATRICK A. FERRIS

LAW OFFICES
WHITE, MINDEL, CLARKE & HILL
6TH FLOOR, 29 W. SUSQUEHANNA AVENUE
TOWSON, MARYLAND 21204
(301) 628-1050

GEORGE L. CLARKE
(1908-1975)
COUNSEL
MORTON E. ROHE
HAYDE DE GRACE, MD. OFFICE
412 GREEN STREET, #107B
TOWSON, MD. 21204
(301) 828-0444

December 29, 1987

Mr. William Hackett, Chairman
County Board of Appeals
of Baltimore County
Room 200
Court House
401 Bosley Avenue
Towson, Maryland 21204

Re: Case No. 87-363-SPH
PF&M Associates Limited Partnership
NE/s Falls Road, 172' NW of
C/L of Greenspring Valley Road

Dear Mr. Hackett:

I concur with the opinion expressed in Gary Duvall's letter of December 28, 1987 and ask that the Board, pursuant to the powers granted to it by Rule 10 of the Rules of Practice and Procedure of County Board of Appeals, clarify and/or revise the opinion and order filed in the above captioned case.

I look forward to hearing from you at your earliest convenience.

Sincerely,

George W. White, Jr.
George W. White, Jr., Esquire

GWWJr./cb
cc: Gary C. Duvall, Esquire
Robert A. Hoffman, Esquire
John B. Howard, Esquire
Phyllis Cole Friedman, Esquire
People's Counsel
Arnold Jablon, Esquire
County Attorney

RECEIVED
COUNTY BOARD OF APPEALS
JAN 13 1988 A 15

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

TELEPHONE
(301) 823-4411
TELECOPIER
(301) 821-0147

October 2, 1987

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

Re: PF&M Associates Limited Partnership
Case No.: 87-363-SPH

Dear Mr. Hackett:

We have no objection to a continuance of the above-referenced case presently scheduled for October 21, 1987.

Thank you for your attention to this matter.

Yours truly,

Robert A. Hoffman
Robert A. Hoffman

RAH:bw

cc: Gary C. Duvall, Esquire
George W. White, Jr., Esquire

RECEIVED
COUNTY BOARD OF APPEALS
OCT 14 1987

JUDITH A. DORRIN
DEBORAH C. DOPPIN
KATHLEEN GALLAGHY COX
KEVIN H. SMITH
J. MICHAEL BRENNAN
H. BARRITT PETERSON, JR.
KATHRYN L. KOTZ
REGAN J. R. SMITH
JULIE A. STEINBERG
JAMES D. C. DOWNS
(1906-1975)

LAW OFFICES
MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 301-628-0666
CABLE MILEBRIDGE
TELEX 87-511

September 24, 1987

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

RE: Case No. 87-363-SPH
PF&M Associates Limited Partnership,
et al. - NE/s Falls Road, 172' NW of
C/L of Greenspring Valley Road
SPH - Density Transfer
8th Election District
3rd Councilmanic District

Dear Mr. Hackett:

With the agreement of all counsel, I would like to request that the above-captioned matter be continued from its presently scheduled hearing date of October 21, 1987. My client, Mr. Norris B. Lankford, has pressing matters regarding his employment on that date which would make him unable to appear and testify. Neither Mr. White's office nor Mr. Howard's office has any opposition to this requested continuance, as I have spoken to them prior to contacting you.

Thank you for your consideration of this request.

Very truly yours,

Gary C. Duvall
Gary C. Duvall

GCD:ld

cc: John B. Howard, Esquire
Robert A. Hoffman, Esquire
George W. White, Jr., Esquire
Phyllis Cole Friedman, Esquire
Mr. Norris B. Lankford, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
SEP 25 1987 A 10 00

MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

September 30, 1987

George W. White, Jr., Esquire
White, Mindel, Clarke & Hill
6th Floor, Susquehanna Building
29 W. Susquehanna Avenue
Towson, MD 21204
Robert A. Hoffman, Esquire
John B. Howard, Esquire
Cook, Howard, Downes & Tracy
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21204

RE: Case No. 87-363-SPH
PF&M Associates Limited Partnership
NE/s Falls Road, 172' NW of
C/L of Greenspring Valley Road
SPH - Density Transfer
8th Election District
3rd Councilmanic District

Gentlemen:
The Board of Appeals Office indicated that without confirmation from you that you are amenable to a continuance of the case presently scheduled for October 21st, they will not grant the same. I would appreciate it if you could drop the Board a short note indicating your concurrence.

Thank you for your assistance.

Very truly yours,

Gary C. Duvall
Gary C. Duvall

GCD:ld
cc: Mr. William Hackett, Chairman



County Board of Appeals of Baltimore County

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

January 26, 1988

John B. Howard, Esq.
Robert A. Hoffman, Esq.
210 Allegheny Avenue
Towson, Md. 21204

Re: Case No. 87-362-SPH
PF&M Assoc. Ltd. Partnership

Gentlemen:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen
June Holmen, Secretary

Encl.
cc: Foxleigh Enterprises, Inc.
George W. White, Jr., Esq.
Phyllis C. Friedman, Esq.
David Fields
James Hoswell
J. Robert Haines
Ann Nastarowicz
James Dyer
Locket Clerk

RECEIVED
COUNTY BOARD OF APPEALS
JAN 27 1988
ZONING OFFICE

IN THE MATTER OF THE APPLICATION OF PF & M ASSOCIATES LTD. PARTNERSHIP FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF FALLS RD., 172 FT. NORTHWEST OF THE CENTER LINE OF GREENSPRING VALLEY RD.	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW
8th ELECTION DISTRICT	CG Doc. No. 50
3rd COUNCILMANIC DISTRICT	Folio No. 234
NORRIS B. LANKFORD, PROTESTANT-PLAINTIFF	File No. 88-CG-234
FILE NO. 87-362-SPH	
CERTIFICATE OF NOTICE	

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland

Rules of Procedure, William T. Hackett, Arnold G. Foreman and Patricia Phipps, 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, Foxleigh Enterprises, Inc., Thomas L. Peddy, V.P., Suite 200, The Gatehouse, 10749 Falls Rd., Lutherville, MD. 21093, Developer; Gary C. Duvall, Esq., Miles & Stockbridge, 401 Washington Ave., Towson, Md. 21204, Counsel for Protestant-Plaintiff; Norris B. Lankford; John B. Howard, Esq. and Robert A. Hoffman, Esq., 210 Allegheny Ave., Towson, Md. 21204, Counsel for the Petitioner; George W. White, Jr., Esq., 29 W. Susquehanna Ave., Towson, Md. 21204, Counsel for the Meadows of Green Spring Homeowner's Association, Protestants; Norris B. Lankford, 2310 W. Joppa Rd., Brooklandville, Md. 21022, Protestant-Plaintiff; and Phyllis C. Friedman, Esq., Rm. 223, Old 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
Rm. 200, Court House, Towson, Md. 21204
494-3180

PF & M Associates Ltd. Partnership
Case No. 87-362-SPH

2.

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Foxleigh Enterprises, Inc., Thomas L. Peddy, V.P., Suite 200, The Gatehouse, 10749 Falls Rd., Lutherville, MD. 21093, Developer; Gary C. Duvall, Esq., Miles & Stockbridge, 401 Washington Ave., Towson, Md. 21204, Counsel for Protestant-Plaintiff; Norris B. Lankford; John B. Howard, Esq. and Robert A. Hoffman, Esq., 210 Allegheny Ave., Towson, Md. 21204, Counsel for the Petitioner; George W. White, Jr., Esq., 29 W. Susquehanna Ave., Towson, Md. 21204, Counsel for the Meadows of Green Spring Homeowner's Association, Protestants; Norris B. Lankford, 2310 W. Joppa Rd., Brooklandville, Md. 21022, Protestant-Plaintiff; and Phyllis C. Friedman, Esq., Rm. 223, Old Court House, Towson, Md. 21204, People's Counsel for Baltimore County, on this 26th day of January, 1988.

June Holmen
June Holmen
County Board of Appeals of Baltimore County



County Board of Appeals of Baltimore County

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

January 28, 1988

John B. Howard, Esquire
COOK, HOWARD, DOWNES & TRACY
Post Office Box 5517
Towson, MD 21204

RE: Case No. 87-362-SPH
PF&M Associates Ltd. Partnership

Dear Mr. Howard:

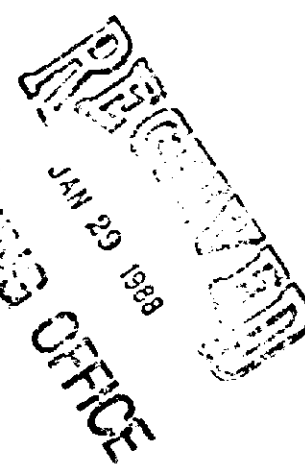
Enclosed is a copy of the Amended Opinion and Order passed today by the County Board of Appeals regarding the subject case.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Robert A. Hoffman, Esquire
Gary C. Duvall, Esquire
Mr. Thomas L. Peddy
Mr. Norris B. Lankford
George W. White, Jr., Esquire
Phyllis Cole Friedman, Esquire
P. David Fields
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Robyn Clark
Arnold Jablon, County Attorney



IN THE MATTER OF : BEFORE
THE APPLICATION OF : COUNTY BOARD OF APPEALS
PF&M ASSOCIATES LTD. PARTNERSHIP, :
ET AL FOR APPROVAL OF A DENSITY : OF
TRANSFER ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF FALLS ROAD, : BALTIMORE COUNTY
172' NORTHWEST OF THE CENTERLINE :
OF GREENSPRING VALLEY ROAD : CASE NO. 87-362-SPH
8th ELECTION DISTRICT :
3rd COUNCILMANIC DISTRICT :

AMENDED OPINION

This case is an appeal from the Order of the Zoning Commissioner dated April 3, 1987 granting in part the Petitioner's request for approval of a transfer of density from certain parcels zoned D.R. to other parcels zoned D.R. on property located on the northeast side of Falls Road, 172 feet northwest of the centerline of Greenspring Valley Road in the Eighth Election District of Baltimore County.

The Board has been advised by a letter from the Petitioner's Counsel filed December 11, 1987 (a copy of which is attached hereto and made a part hereof) that his client wishes to withdraw the Petition for Special Hearing.

The Board has also been advised by Counsel for the Appellant/Protestant by letter filed December 16, 1987 (a copy of which is attached hereto and also made a part hereof) that the appeal filed on behalf of said Appellant/Protestant be dismissed contingent upon the dismissal of Petitioner's appeal.

Agreement having been reached between all parties and requests having been made to this Board that all appeals be dismissed, the Board will so order.

ORDER

For the reasons set forth in the foregoing Amended Opinion, it is this 28th day of January, 1988 by the County Board of Appeals of

Case No. 87-362-SPH
PF&M Associates Ltd. Partnership

Baltimore County ORDERED that all appeals taken in this matter be and the same are DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Arnold G. Foreman
Arnold G. Foreman

Patricia Phipps
Patricia Phipps

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

TELEPHONE
(301) 852-4411
TELECOPIER
(301) 821-0147
DIRECT DIAL NUMBER
494-9162

December 11, 1987

JAMES H. COOK
JOHN B. HOWARD
DAVID O. DOWNES
DANIEL O. TRACY, JR.
JOHN M. ZINN, III
JOSEPH C. WICK, JR.
HENRY B. PECK, JR.
HERBERT R. O'CONNOR, III
THOMAS L. HUDSON
C. CAREY DEELEY, JR.
M. NINO HILL, III
GEORGE K. REYNOLDS, III
ROBERT A. HOFFMAN
CYNTHIA M. HARRN

JUDITH A. ARNOLD
DEBORAH C. DODMAN
KATHLEEN GALLOGLY COX
KEVIN H. SMITH
J. MICHAEL BRENNAN
H. BARRETT PETERSON, JR.
KATHRYN L. KOTZ
JAMES K. MACALISTER
REGAN J. R. SMITH
JULIE F. STEINBERG
JAMES D. C. DOWNES
(1908-1978)

HAND DELIVERY

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

Re: PFM Associates, Limited Partnership, Petitioner
Case No.: 87-362-SPH

Dear Mr. Hackett:

As counsel for PFM Associates Limited Partnership, et al, please withdraw the Petition for Special Hearing in the above-referenced case.

Yours truly,

Robert A. Hoffman
Robert A. Hoffman

RAH:bw
cc: George W. White, Jr., Esquire
Gary C. Duvall, Esquire
Phyllis Cole Friedman, Esquire
Thomas L. Peddy

RECEIVED
COUNTY BOARD OF APPEALS
131 DEC 11 A D 18

10 LIGHT STREET
BALTIMORE, MARYLAND 21202

101 BAY STREET
EASTON, MARYLAND 20001

4350 RANDOLPH HILLS ROAD
FAIRFAX, VIRGINIA 22030

GARY C. DUVAL

LAW OFFICES
MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

TELEPHONE 301 521-5555
CABLE MILDRED
TELEX 87-28

11 WEST PATRICK STREET
FREDERICK, MARYLAND 21701

342 HUNTERSPOUR COUNTY
ROCKVILLE, MARYLAND 20850

1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20005

December 14, 1987

Mr. William Hackett, Chairman
County Board of Appeals
of Baltimore County
Room 200, Courthouse
Towson, MD 21204

RE: Case No. 87-363-SPH
PF&M Associates Limited Partnership
NE/s Falls Road, 172' NW of C/L of
Greenspring Valley Road

Dear Mr. Hackett:

Please dismiss the Cross-Appeal of Norris Lankford filed in the within matter. It is our understanding that the appellant, PF&M Associates Limited Partnership, has dismissed their appeal. Our dismissal is contingent upon the dismissal of their appeal.

If there are any questions, please do not hesitate to call.

Very truly yours,

Gary C. Duvall
Gary C. Duvall

GCD:ld

cc: Robert A. Hoffman, Esquire

RECEIVED
COUNTY BOARD OF APPEALS
131 DEC 16 A 9 43



County Board of Appeals of Baltimore County

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

December 23, 1987

John B. Howard, Esquire
COOK, HOWARD, DOWNES & TRACY
Post Office Box 5517
Towson, MD 21204

RE: PF&M Assoc. Ltd. Partnership, et al
Case No. 87-362-SPH

Dear Mr. Howard:

Enclosed is a copy of the Board's Opinion and Order passed today with regard to the subject case.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Robert A. Hoffman, Esquire
Gary C. Duvall, Esquire
Mr. Thomas L. Peddy
Mr. Norris B. Lankford
George W. White, Jr., Esquire
Phyllis Cole Friedman, Esquire
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Robyn Clark
Arnold Jablon, County Attorney

IN THE MATTER OF : BEFORE
THE APPLICATION OF : COUNTY BOARD OF APPEALS
PF&M ASSOCIATES LTD. PARTNERSHIP, :
ET AL FOR APPROVAL OF A DENSITY : OF
TRANSFER ON PROPERTY LOCATED ON :
THE NORTHEAST SIDE OF FALLS ROAD, : BALTIMORE COUNTY
172' NORTHWEST OF THE CENTERLINE :
OF GREENSPRING VALLEY ROAD : CASE NO. 87-362-SPH
8th ELECTION DISTRICT :
3rd COUNCILMANIC DISTRICT :

OPINION

This case is an appeal from the Order of the Zoning Commissioner dated April 3, 1987 granting in part the Petitioners' request for approval of a transfer of density from certain parcels zoned D.R. to other parcels zoned D.R. on property located on the northeast side of Falls Road, 172' northwest of the centerline of Greenspring Valley Road in the Eighth Election District of Baltimore County.

The Board has been advised by a letter from the Petitioner's Counsel filed December 11, 1987 (a copy of which is attached hereto and made a part hereof) that his client wishes to withdraw the Petition for Special Hearing.

The Board has also been advised by Counsel for the Appellant/Protestant by letter filed December 16, 1987 (a copy of which is attached hereto and also made a part hereof) that the appeal filed on behalf of said Appellant/Protestant be dismissed contingent upon the withdrawal of said Petition for Special Hearing.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 23rd day of December, 1987 by the County Board of Appeals of Baltimore County ORDERED that the decision of the Zoning Commissioner be REVERSED and the Petition for Special Hearing be and the same is hereby DENIED;

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

JAMES H. COOK
JOHN B. HOWARD
DAVID D. DOWNES
DANIEL O.C. TRACY, JR.
JOHN H. ZINK, III
J. MICHAEL BRENNAN
HERBERT A. CONNOR, III
THOMAS L. HUSSON
C. CAREY DELEY, JR.
M. KING HILL, II
GEORGE K. REYNOLDS, III
ROBERT A. HOFFMAN
CYATHIA M. HAHN

TOWSON, MARYLAND 21204

TELEPHONE
(301) 823-4411
TELECOPIER
(301) 821-0147
DIRECT DIAL NUMBER
494-9162

December 11, 1987

HAND DELIVERY

William T. Hackett, Chairman
County Board of Appeals of
Baltimore County
Room 200, Courthouse
Towson, Maryland 21204

Re: PFM Associates, Limited Partnership, Petitioner
(Case No.: 87-362-SPH)

Dear Mr. Hackett:

As counsel for PFM Associates Limited Partnership, et al, please
withdraw the Petition for Special Hearing in the above-referenced case.

Yours truly,

Robert A. Hoffman

RAH:bw
cc: George W. White, Jr., Esquire
Gary C. Duvall, Esquire
Phyllis Cole Friedman, Esquire
Thomas L. Peddy

RECEIVED
COUNTY BOARD OF APPEALS
131 DEC 11 A 13-88

LAW OFFICES
MILES & STOCKBRIDGE
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

10 LLOYD STREET
BALTIMORE, MARYLAND 21201
101 BAY STREET
EASTON, MARYLAND 21828
1000 RAYMOND HILLS ROAD
FAIRFAX, VIRGINIA 22030
GARY C. DUVALL

TELEPHONE 301-821-0000
CABLE MILESDR
TELEX 87-58

December 14, 1987

Mr. William Hackett, Chairman
County Board of Appeals
of Baltimore County
Room 200, Courthouse
Towson, MD 21204

RE: Case No. 87-363-SPH
PFM Associates Limited Partnership
NE/s Falls Road, 172' NW of C/L of
Greenspring Valley Road

Dear Mr. Hackett:

Please dismiss the Cross-Appeal of Norris Lankford filed in
the within matter. It is our understanding that the appellant,
PFM Associates Limited Partnership, has dismissed their appeal.
Our dismissal is contingent upon the dismissal of their appeal.

If there are any questions, please do not hesitate to call.

Very truly yours,

Gary C. Duvall

GCD:ld

cc: Robert A. Hoffman, Esquire



County Board of Appeals of Baltimore County

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

January 6, 1988

Robert A. Hoffman, Esquire
COOK, HOWARD, DOWNES & TRACY
Post Office Box 5517
Towson, MD 21204

RE: PFM Associates Ltd. Partnership
Case No. 87-362-SPH

Dear Mr. Hoffman:

Following the issuance of the Board's Order of December 23, 1987,
correspondence has been received from Mr. Duvall, attorney for the Appellant,
Norris B. Lankford, and Mr. White. Those letters indicate that copies of
same have been forwarded to you.

We are in agreement with the conclusions expressed therein that,
in view of the fact that an evidentiary hearing was held by the Office
of the Zoning Commissioner and that a finding of facts and order was issued
by that office, the Petition may not be withdrawn at this time.

Therefore, we will amend our Order to so reflect that your appeal
be and is hereby dismissed and will interpret your letter of December 11,
1987, as a request for such a dismissal unless we hear from you within
ten days.

Sincerely,

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

cc: John B. Howard, Esquire
George W. White, Jr., Esquire
Gary C. Duvall, Esquire
Mr. Norris Lankford
Phyllis Cole Friedman, Esquire
Arnold Jablon, County Attorney

RECEIVED
MAR 20 1987

IN RE: ZONING OFFICE * BEFORE THE
PETITION FOR SPECIAL HEARING * ZONING COMMISSIONER
FOXLEIGH ENTERPRISES, INC. * FOR
Petitioner * BALTIMORE COUNTY
Case No.: 87-362-SPH

MEMORANDUM IN SUPPORT OF PETITION FOR SPECIAL HEARING

In response to the request of Arnold E. Jablon,
Zoning Commissioner of Baltimore County, at the hearing
dated February 27, 1987, Foxleigh Enterprises, Inc.
("Foxleigh"), Petitioner, by John B. Howard and Robert A.
Hoffman, with Cook, Howard, Downes & Tracy, its attorneys,
files this Memorandum in support of its Petition for
Special Hearing and states the following:

FACTS

Valley Acres is a proposed residential
development located in the northeast quadrant of the
intersection of Joppa Road and Falls Road south of
Seminary Farm Road. The Petitioner intends to develop a
portion of a larger tract by transferring density units
from contiguous parcels. For convenience, the various
parcels involved will be referred to as Parcel 1-4, in
accordance with the plat entitled "Plat to Accompany
Petition for Special Hearing, 1 of 2" filed with these
proceedings (a reduced copy of which is appended hereto as
Memorandum Exhibit A).

As proposed, the Valley Acres project will consist
of two multi-family residential buildings of twenty-five
units each (on Parcel 1), and three single family lots (on
Parcel 3), for a total of 53 proposed dwelling units. There
are 54 density units available from all of the Parcels.

Foxleigh, the developer, is the authorized
representative of the owners of each of the parcels, all of
which are held or controlled by members of the Peddy family.
Thomas Peddy, a partner in four of the five ownership
entities, is also an officer of Foxleigh. His wife,
Catherine Peddy, is the fifth owner. All parties and
entities have joined in the filing of the subject petition.

Pursuant to Section 22-25 of the Baltimore County
Code, Foxleigh submitted a development plan for review by
Baltimore County. A County Review Group ("CRG") meeting
was held on January 2, 1987 and was continued at that time.
The CRG imposed a requirement that there be a zoning hearing
to determine the appropriateness of the transfer of density
units through the commercially zoned portion of Parcel 3.
The zoning hearing was held on February 27, 1987, at which
time Commissioner Jablon requested that the parties submit
memoranda addressing the issues discussed below.

Foxleigh maintains that the proposed development
is consistent, as a matter of law and policy, with the
Baltimore County Zoning and Development Regulations.

ISSUE PRESENTED

ISSUE I: Whether the language of Section 1
B01.2.A.2 of the Baltimore County Zoning Regulations (the
"Regulations"), which provides for density transfers in
"D.R. Zones of different classifications", limits such
transfers to D.R. Zones only.

DISCUSSION

Section 1 B01.2.A.2 of the Regulations provides as
follows:

Application to Tract Divided by Zone
Boundary. Wherever a single tract is
divided by a zone boundary so that portions
of such tract lie within D.R. zones of
different classifications, the total number
of dwelling or density units permitted, as
determined by multiplying the gross acreage
of each portion by the maximum density
permitted under Subsection 1 B02.2 in the
zone within which that portion lies and
totalling the results, shall be permitted
without further regard to the zone boundary,
and the units may be distributed over the
tract as though it were in a single zone.
[Bill No. 100, 1970.]

Although Section 1 B01.2.A.2 uses the term "D.R.
zones", the provision should be interpreted to include O-1
zones, B.L. zones, B.M. zones and B.R. zones. Throughout
Section 1 B01, the Regulations discuss use regulations in
"D.R. zones", yet the regulations also apply to residential
developments located in zones permitting more intense uses,
such as O-1, B.L., B.M. and B.R. zones. For example, if a
party is seeking to establish a residential development in
a B.R. zone, paragraph 1.B01.2.A.1, which immediately

precedes the paragraph quoted above, will dictate the
maximum density standards for such tract, even though the
paragraph only refers to "D.R. zones". As another example,
Section 230.1 allows "uses permitted and as limited in the
residential zone immediately adjoining . . . 1 for B.L.
zones, and the same type of provision applies to O-1, B.M.
and B.R. zones. To determine the zoning restrictions on a
residential development in such office and business zones,
however, one must refer back to the D.R. provisions, where
there is no specific reference to O-1, B.L., B.M. or B.R.,
but only to D.R. zones. (See e.g. Section 302 B.C.Z.R.
where compliance with height and area standards in the D.R.
zones is required for residential development in the
commercial zones.)

A well-established principle of statutory
construction was enunciated by the Court of Appeals in
State v. Fabrit, 276 Md. 416, cert. denied, 425 U.S. 942
(1976):

Adherence to the meaning of words does not
require or permit isolation of words from
their context . . . (since) the meaning of
the plainest words in a statute may be
controlled by the context "In
construing statutes, therefore, results that
are unreasonable, illogical or inconsistent

1 Section 101 of the Regulations defines "residential
zone" as "[a] zone classified as R.C., D.R., or
R.A.E. 'Zoned for residential purposes': within a
residential zone."

with common sense would be avoided whenever
possible consistent with the statutory
language, with the real legislative intention
prevailing over the intention indicated by
the literal meaning. B.F. Saul Co. v. West
End Park, 250 Md. 707, 246 A.2d 531 (1968);
Sanza v. Md. Board of Censors, 245 Md. 319,
226 A.2d 317 (1967); Height v. State, supra.

Examining Section 1.B01.2.A.2, in the context of
the entire Density Residential Article 1B, it is clear that
the use regulations that only cite "D.R. zones" were meant
to apply to and subsume business zones or office zones in
which residential development is permitted in the
alternative. In fact, it would have been too unwieldy for
the legislative draftsmen to reference every commercial
zone each time the D.R. regulations use the words "D.R.
zone" in Article 1B, even though such regulations clearly
apply to residential development in the commercial zones.

This interpretation is directly supported by the
decision of the Zoning Commissioner in In Re: John B.
Merryman, et ux, Zoning Commissioner of Baltimore County,
Case No. 85-281-SPH, where the Commissioner stated that
"although not specifically permitted, transfer of density
is not specifically prohibited in the R.C.2 zone." The
Commissioner then permitted a density transfer within an
R.C.2 zone, although Section 1.B01.2.A.2 only refers to
D.R. zones. As the foregoing discussion demonstrates, the
Regulations do permit density transfers involving zones
other than D.R.

ISSUE PRESENTED

ISSUE II: Whether density units from contiguous parcels may be transferred through a business zone in which a parking lot has been constructed, to permit the construction of a residential cluster development.

DISCUSSION

To determine whether density may be transferred under the above-stated facts, it must first be established that the parcels are "contiguous". The evidence presented at the hearing will show that each of the Parcels 1-4 are contiguous. [See Swarthmore Co. v. Koestner, 258 Md. 517 (1970)].

The Swarthmore court held that parcels need not abut to be contiguous, but rather needed only be in close proximity. Id. at 530. For example, in Gruver-Coolley v. Perlis, 252 Md. 684, 695-96 (1969), the Court found that two parcels separated by a roadway were "contiguous" (the term used in the relevant statute was "adjoining"). In the present case, as illustrated by the plat attached hereto as Exhibit A, the subject parcels exceed the Swarthmore definition of "contiguity" in that they actually abut one another. The evidence will further establish that there are common ownership interests among the various Parcels, and that each ownership entity has joined in the application for the relief requested in the subject Petition for Special Hearing.

6

Once the contiguity of the parcels is established, it must be determined if the density transfer is permitted under the Regulations. The policy of permitting transfer of density across zone lines in the D.R. as well as other zones is permissible where such a transfer is consistent with the spirit and intent of the Baltimore County Zoning Regulations and where there is a showing of no adverse impact on public health, safety and welfare of the community. See Baltimore County Zoning Policy Manual, RSD-2; In Re: Easter, Zoning Commissioner of Baltimore County, Case No. 86-216 (1986); In Re: Merryman, Zoning Commissioner of Baltimore County, Case No. 85-281-SPH (1985); In Re: Hamiltowne Improvement Assoc., Inc., Zoning Commissioner of Baltimore County, Case No. 86-509-SPH (1986) (stating policy, but prohibiting transfer on other grounds). Also, Section 1 B01.2.A.2 of the Regulations specifically permits the transfer of density in residential zones, as cited above.

Foxleigh submits that there is no prohibition within the Baltimore County Zoning Regulations, nor is there any policy, against transferring density through a commercial zone. To deny the transfer of density because a portion of a tract is zoned B.R. and is partially improved would extend a restriction in a case not clearly within the scope and intent of the above-cited zoning regulations.

7

See Landay v. Zoning Appeals Board, 173 Md. 460 (1938); Gino's v. Baltimore City, 250 Md. 621 (1968).

In fact, where a B.R. zone abuts a residential zone, the Baltimore County Regulations specifically permit residential uses. (See Section 230.1 and 236.1 [B.C.Z.R.]). Accordingly, all rights permitted in the residential zone, including transfer of density, should clearly be permitted. (See Zoning Policy Manual, RSD-2, where the Zoning Commissioner cites §230.1 B.C.Z.R. [residential use in B.L. Zone] in discussing the right to transfer density.)

Finally, to permit a transfer of density through the B.R. zone would be in keeping with the rationale of permitting density transfers. Section 1B00.2 B.C.Z.R. states the following intent behind density transfer:

[to] foster a greater variety in housing types within future residential developments and to allow greater flexibility in subdivision development planning and provide for the inducement of more creative as well as more economic approaches to residential development See also, "Proposed Zoning Adjustments, 1969", final report, Baltimore County Planning Board, September 4, 1969.

Thus, the critical factor in determining if the density may be transferred is whether the tracts are "contiguous" and there is common ownership, not whether there is an intervening use.

For example, in In Re: Hamiltowne Improvement Association, Inc., the Zoning Commissioner permitted the

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transfer of density from one tract, across I-95, to a second tract. Similarly, in In Re: J. Hamilton Easter, et al., Zoning Commissioner of Baltimore County, Case No. 86-216-SPH, the Zoning Commissioner permitted the transfer of density from one tract to another across the Northwest Expressway. In each of these cases, an intervening parcel owned by a separate entity was continually in use by automobiles, yet the Commissioner found that neither of these factors defeated the party's right to transfer density. The Commissioner's decision followed an identical ruling by the Court of Appeals in Gruver-Coolley v. Perlis, 252 Md. 684 (1969), in which the Court determined that a property owner was entitled to transfer density across an intervening road, approximately 80 feet in width.

In the present case, under the Swarthmore decision cited above, the subject tracts are clearly contiguous, and under the "road" cases discussed in the preceding paragraph, the use of one of the tracts partially as a parking lot should not affect the Petitioner's ability to transfer density. The Petitioner is seeking the transfer of density across an unencumbered area near a parking lot, which area is certainly less intensely used than a highway, and which unlike an intervening highway, is fully owned by the Petitioner.

It is respectfully submitted in this regard that perhaps confusion has arisen because of the existence of

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the B.R. zone. It should be noted that no property or other rights from the B.R. zoned parcel are sought for utilization; that a portion of the B.R. parcel is sought merely for purposes of a conduit for transfer; and that the existence of the improvements thereon is immaterial as they may not, absent authority to the contrary, serve as a "barrier" to the transfer of density. This approach is clearly consistent with the logic and rationale of the "road" cases cited above.

In addition, even if the Commissioner determines that the proximity of the parking lot located on Parcel 3 somehow impedes the transfer, the Petitioner has reserved an unencumbered 50 foot right-of-way through Parcels 3 and 4 to provide access to the residential development (see Exhibit A). This well-defined right-of-way is owned in fee simple by the Petitioner, is specifically excluded from the property subject to the lease with the Greenspring Racquet Club, and because the right-of-way is reserved solely to provide access to the residential areas, it also provides an unencumbered conduit for the transfer of the density from Parcel 3 to Parcel 4. Consequently, the Commissioner's concern that the conduit or bridge could be unreasonably narrow is addressed by the Petitioner's provision of an objective standard, i.e. that the unencumbered conduit is of sufficient width to support access to the residential development.

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ISSUE III

Whether density may be transferred through two parcels owned by Petitioner and three different zones.

DISCUSSION

As noted in the preceding Discussion, under the relevant case law and zoning decisions the critical factor to determine the permissibility of density transfer in the present case is whether the parcels are contiguous and commonly owned, not whether there is some intervening use on a portion of the owner's property. Although the proposed transfer will pass through two parcels and three zones, all of the parcels are owned by the Petitioner and are contiguous. The Discussion immediately following Issue I establishes that the Regulations do permit a density transfer involving business and office zones and Section 1B01.2.A.2 contemplates transfers from tracts that "lie within D.R. zones of different classification" (emphasis added). Consequently, the presence of different zones should not prevent the proposed transfer under the express language of the Regulations. Similarly, the presence of several parcel should not obstruct the density transfer provided that the parcels are contiguous and commonly owned. See Gruver-Coolley v. Perlis, 252 Md. 684 at 695-696.

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Respectfully submitted,

JOHN B. HOWARD

ROBERT A. HOWMAN
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210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorneys for Petitioner

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 20th day of March, 1987, a copy of the foregoing Memorandum in Support of Petition for Special Hearing was sent to each of the following parties at the address set forth below.

Phyllis Cole Friedman, Esq.
People's Counsel for Baltimore County
Room 223, Court House
Towson, Maryland 21204

George W. White, Jr., Esq.
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29 W. Susquehanna Avenue
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P.O. Box 5517
Towson, Maryland 21204
301-823-4111
Attorney for Petitioner

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MEMORANDUM OF LAW

RECEIVED
MAR 20 1987

ZONING OFFICE

TO: Mr. Arnold Jablon, Zoning Commissioner of Baltimore County
FROM: George W. White, Jr., Counsel for The Meadows of Green Spring Homeowners' Association, Inc.
RE: Petition for Special Hearing No. 87-362-SPH filed by Developer, Foxleigh Enterprises, Inc.

ARGUMENT

For the reasons which follow, all of the issues raised below should be answered in the affirmative and petitioner's request for density transfer as requested should be denied.

I. BALTIMORE COUNTY ZONING REGULATIONS

DO NOT PERMIT THE TRANSFER OF DENSITY

FROM NON DR ZONES TO DR ZONES.

The section of the Baltimore County zoning regulations which authorizes density transfer is Section 1B01.2 A entitled "Density Controls". Subsection (2) of this section, the section applicable in the instant case specifically states:

"Application to Tract Divided by zone Boundary. Whenever a single tract is divided by a zone boundary so that portions of such tract lie within D.R. zones of different classification, the total number of dwelling or density units permitted, as determined by multiplying the gross acreage of each portion by the maximum density permitted under Subsection 1B02.2 in the zone within which that portion lies and totaling the results, shall be permitted without further regard to the zone boundary, and the units may be

distributed over the tract as though it were in a single zone."

This provision is located in the section of the Baltimore County zoning regulations dealing with those zones which are classified as Density Residential. Although there are other sections of the regulations dealing with Office Zones, Elevator-Apartment Zones, and Business Zones, among others, it is interesting to note that provisions for density transfer are conspicuously absent from these other sections. Not only is a density transfer provision located only in the Density Residential section of the regulations, but the density transfer authorizing provision specifically relates to density transfers among differently classed DR zones where a single tract is divided by a zone boundary creating different DR zones within a single tract.

In authorizing density transfers, the legislative body specifically intended that such transfers would only be permitted from one DR zone to another DR zone where the situation described in Section 1 B01.2A(2) existed. Had the legislative body intended other that density transfers would be permitted, the legislative body could have, and would have, used more general language or placed such a provision in other sections of the regulations. That such was the legislative intent is evidenced by both the clear and unambiguous language of 1 B01.2A and by the past policy of the Baltimore County Office of Planning and Zoning.

One well recognized rule of statutory construction is that a court will not substitute judicial construction

for legislative when the statutory language is "... clear, plain, and unambiguous." While "The cardinal rule of statutory interpretation is to determine the intent of the legislature..." [Miller v. Forty West Builders, 62 Md. App. 320, at 331 (1985)],

"...the legislative intent is ascertained by considering the words used in the legislation in their plain and ordinary meaning; and where those words are not ambiguous, there is no need for application of the rules of statutory construction."

City of Annapolis v. Anne Arundel County
271 Md. 265, at 292 (1974)

Only if the language is ambiguous or unclear will the courts utilize other tools to attempt to discover the legislative intent.

Another rule of statutory construction of ordinances is that zoning ordinances are to be strictly construed as they are in derogation of the common law. Gino's v. Baltimore City, 250 Md. 621 (1968). "Zoning restrictions should be strictly construed with respect to expansion." Morton Shores v. Carr, 265 N.W.2d 802, 81 Md.App. 715 (1978).

While it has also been recognized that "In determining the meaning of a zoning ordinance, a court may consider the uniform practice of the administrative officer charged with the duty of enforcing it." Baysupper Health Related Facility v. Karaghenzoff, 37 NY 2d 408, 335 N.E. 2d. 282, it is equally true that "...there is no occasion to apply the rule of a long continued administrative practice where the language is clear, plain, and unambiguous."

Perwyn Heights v. Rogers, 228 Md. 271, at 279 (1962). It is equally true that:

"A zoning board is bound by the legislative definition... as defined in a statute rather than the definition given to the work in common usage where that meaning differs from the statutory definition."

Mayor & City Council v. Brice
46 Md. App. 704 (1980)

While it is true that certain portions of 1B01.2A(2) may be unclear and ambiguous (i.e. single tract) and call for the use of an analysis of both legislative intent and long continued administrative practice, it is clear that the density transfer provision refers specifically and exclusively to transfers from one DR portion of a tract to another DR portion of a single tract. From this perspective it must necessarily follow that even if residential density could be assigned to a Non DR zone, that density could not be transferred to a DR zone, let alone a DR zone in a different tract.

In the unlikely event that ambiguity is somehow found by the use of "DR Zone" in the density transfer provision, even further support for disallowing petitioner's request can be found by looking to uniform administrative practice and to other sections of the ordinance, both of which are well established tools of statutory construction.

In the definitional section of the Baltimore County Zoning Regulations, the legislative body has provided a specific definition for a "residential zone". Section 101

defines a "residential zone" as "A zone classified as R.C., D.R., or R.A.E. 'Zoned for Residential Proposes': Within a residential zone." Section 100.1 A.2 sets up and classifies zones into 22 separate and distinct classes, among which are 4 R.C. zones, 6 D.R. zones, 2 R.A.E. zones, and 2 O zones. Had the legislative body intended that residential density could be transferred from one residential zone to another, it is clear that such a transfer would only be authorized from one "residential zone" to another. By specific statutory definition, neither an O zone or a DR zone is a "residential zone". Therefore, no density should be permitted to be transferred from an O zone to a DR zone even under this analysis.

While the specific and unambiguous reference to "DR zone" in the density transfer section authorizes transfers only from DR zones to DR zones, because a DR 5.5 "use" is permitted in an O-1 zone, petitioner may argue that the two are equivalent and therefore residential density from the O-1 should be permitted to the subject DR zoned parcel.

It is true that a DR5.5 "use" is permitted as a right in an O-1 zone pursuant to Section 204.3 A.1. It is equally true both that density transfer is not a "use" and that an O-1 zone is by no means equivalent to a DR5.5 zone. Section 1 B01.A specifically enumerates 14 uses permitted as of right in a DR zone. Nowhere among the 14 uses is the privilege to transfer density mentioned. Neither is any privilege to transfer density contained anywhere in the

Office Zone Section of the Baltimore County Zoning Regulations.

The developer in the instant case is clearly attempting to muddy the clear language of 1B01.2A2 in order to create more clustered density than authorized for the express purpose of maximizing monetary benefits by attempting to develop it's infinitely divided and disparate parts as though they simply were not so. That such an attempt to justify extensive investments can not prevail was decided by the Court of Appeals in Montgomery County Council v. Kacur, 253 Md. 220, 231 (1961) wherein it was stated that "... it is well settled that the purpose of the (Zoning) authority is not to guarantee the purchaser of a piece of property a use that will justify his investment." Petitioners attempt to obfuscate clear language to attempt to maximize profits can not succeed. As stated by the Court of Appeals in Hunt v. Montgomery County,

"A statute is not made unclear or ambiguous because one side in a controversy, in order to obtain a desired result, gives its words a meaning they do not or then face appear to have. If the words of a statute, given their normal meaning, are plain and sensible the legislature will be presumed to have meant the meanings the words in point. The court will not substitute for literal intent a real intent unless the literal words of a statute say something the legislature could not possibly have meant."

248 Md. 403, 414 (1967)

For the reasons aforementioned, and for the additional reasons to be hereinafter discussed, the developer's petition to transfer density from an O-1 zone to a non-contiguous DR zone across 3 separate zones and 2 separate parcels and/or tracts should be denied as unauthorized by the Baltimore County Zoning Regulations.

II. BALTIMORE COUNTY ZONING REGULATIONS AND MARYLAND CASE LAW PROHIBIT THE DENSITY TRANSFER AMONG NON CONTIGUOUS PARCELS REQUESTED BY THE PETITIONER

Where a transfer of residential density from one DR zoned piece of property to another DR zoned piece of property is requested, the pieces of property must be contiguous. That there is a requirement of contiguity of property in density transfer cases has been well established both by the "long continued administrative practice" of the Baltimore County Office of Planning and Zoning, by the language of the Baltimore County Zoning regulations, and by several Maryland Courts which have considered the issue.

Although the density transfer provisions of 1B01.2A.2 do not specifically mention the word contiguous, it is well recognized that it has been the practice of Baltimore County to require that the parcels be contiguous and that the contiguous parcels be zoned residential. There is even support in the Baltimore County Zoning Policy Manual to support the contention that the parcels be not only contiguous, but "adjoining" as well. As stated in Section

RSD-2, "Density Transfer" of the policy manual, "In order to transfer density from one section of a subdivision to another section, it is necessary to amend the tract boundary of the original subdivision so as to include the additional ADJOINING PROPERTY." (Emphasis supplied) In the instant case not only does the subject Parcel 1 to which density is sought to be transferred not adjoin Parcel 3 at any point, but the O-1 and DR-1 zoned portions of Parcel 3 from which density is sought to be transferred are at even greater distances from Parcel 1. Even assuming that the developer could utilize Parcel 4 which adjoins Parcel 1 in an attempt to establish the requirement of joinder with Parcel 4, only a brief view of the greatly downsized plats is needed to realize that those portions of parcel 3 from which the density transfer is sought do not adjoin Parcel 4. The developer's petition should be denied as it fails to meet both the standards set by the "long standing administrative practice" and the density transfer provisions set forth in the Policy Manual.

Further support for the proposition that the subject properties must be adjoining is found in the language of 1B01.2A2 of the Zoning Regulations. That section specifically refers to "a single tract divided by a zone boundary". When property is divided by "a" zone boundary, it necessarily and systematically follows that two adjoining pieces are created. As earlier indicated, the O-1 and DR

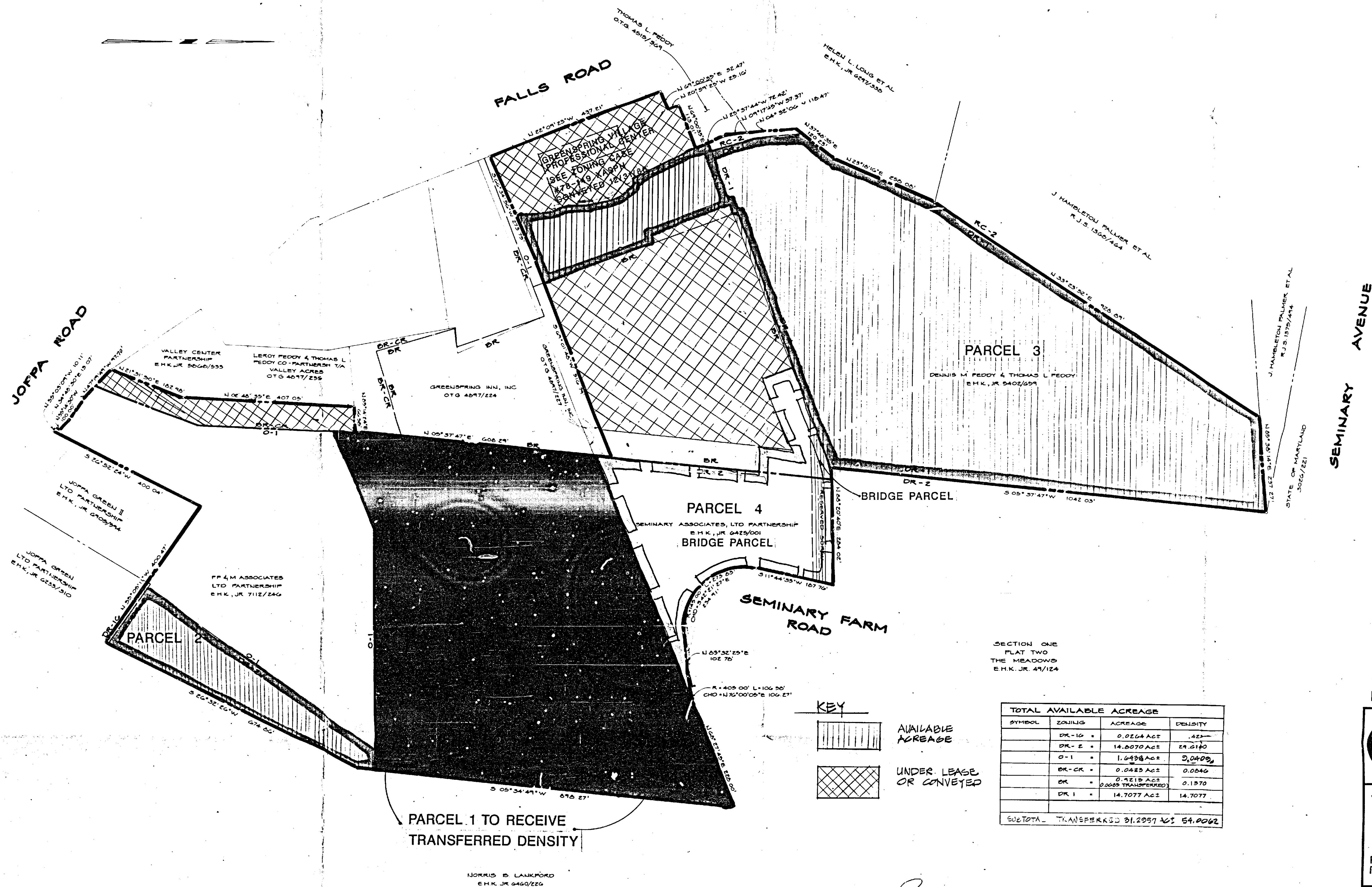
zoned portions of Parcel 3 from which density is sought to be transferred do not adjoin either Parcel 1 or Parcel 4.

Furthermore, it is strongly suggested that Parcels 1, 2, 3, and 4 are all part of separate and distinct tracts, and not part of "a single tract" as required by 1B01.2A.2 for density transfers.

Parcel 2 is part of the tract of land developed as The Greenspring Annex in the O-1 portion of Parcel 2. As part of the development of that tract, the DR-2 portion of Parcel 2 was created as a buffer zone between Greenspring Annex and Mr. Lankford's land to the south. Parcel 4 is part of the tract of land developed when The Meadows of Greenspring was developed and Parcel 3 itself is part of the tract of land developed when both the Greenspring Professional Center (utilizing the bulk of the O-1 zoned portion of Parcel 3) and the Greenspring Racquet Club were developed. From this perspective, once again, the developer's petition for density transfer should be denied.

While research of Maryland case law has been unavailing as to Maryland rulings on point with the factual situations present in the instant case, there have been several Maryland cases that have dealt with and recognized the proposition that transfers of density be between "contiguous" or "adjoining" properties.

In Gruver-Cooley v. Perlis, 252 Md. 684 (1968), the court had to decide whether density could be transferred from a subdivision on one side of a road to a subdivision on



PLAT TO ACCOMPANY
PETITION FOR SPECIAL HEARING



VALLEY ACRES

PUBLIC SERVICES CRG NO. 86330
PLANNING NO.

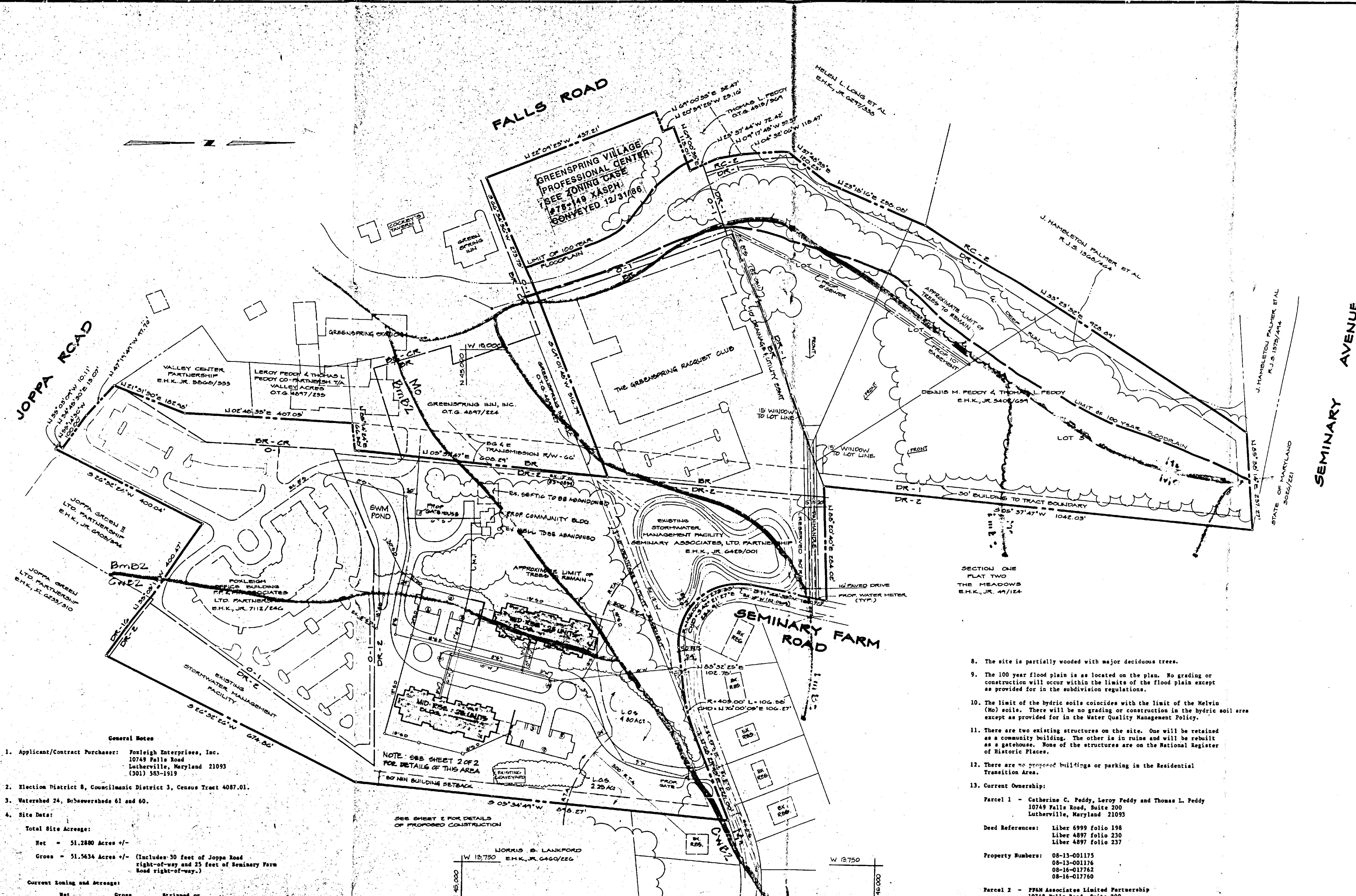
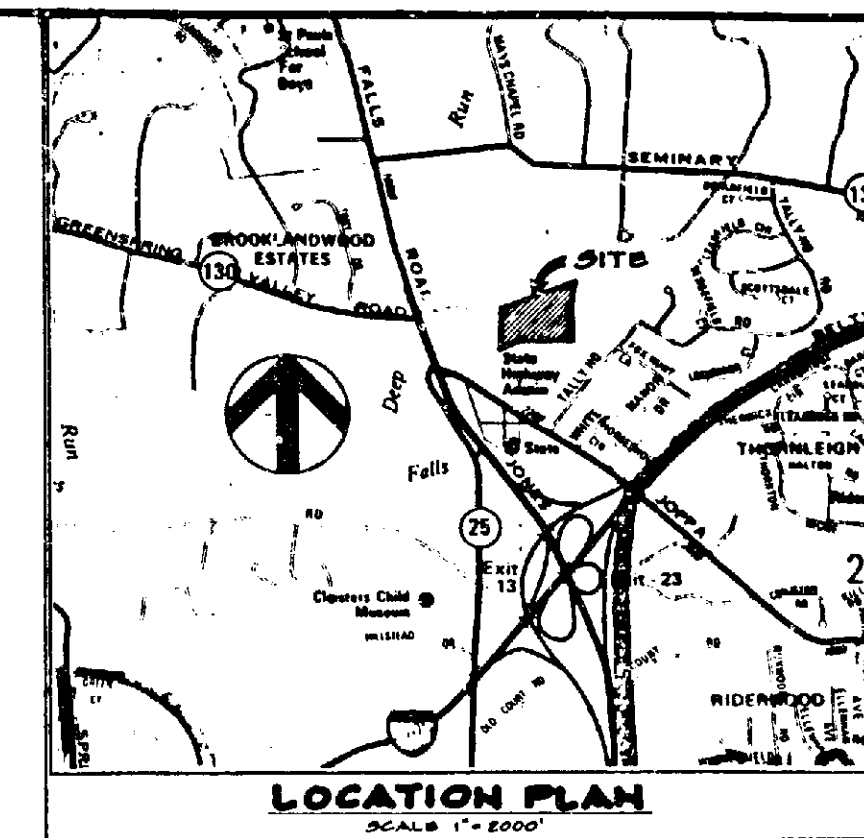
		SCALE: 1" = 100'
		JOB ORDER NO. 85142
		ISSUE DATE JAN 12, 1987

1 OF 2	
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Refiner's &

1A





- General Notes
1. Applicant/Contract Purchaser: Foxleigh Enterprises, Inc., 10749 Falls Road, Lutherville, Maryland 21093 (301) 583-1919
 2. Election District 8, Councilmanic District 3, Census Tract 4087.01.
 3. Watershed 24, Subwatershed 61 and 60.
 4. Site Data:

Total Site Acreage:
Net = 51.2880 Acres +/-
Gross = 51.5634 Acres +/- (Includes 30 feet of Joppa Road right-of-way and 25 feet of Seminary Farm Road right-of-way.)

Current Zoning and Acreage:				
Zone	Net Acreage	Gross Acreage	Setback or Leased Acreage	Available Acreage
DR-16	0.0264	0.0264		0.0264
DR-2	18.0032	18.1462	5.3392	12.7070
O-1	11.2206	11.3583	2.5706	8.7877
RR-CR	0.7029	0.7029	0.6606	0.0423
RE	6.5187	6.5187	5.5972	0.9215
RM-1	14.7079	14.7079	0.0002	14.7077
RM-2	0.1030	0.1030		0.1030

Total: 51.2880 Ac. +/- 51.5634 Ac. +/- 19.174 Ac. +/- 32.5554 Ac. +/-

Density:			
Zone	Net Acreage	Units Allowed	Units per Acre
DR-16	0.0264	4224	160,000
DR-2	18.0032	29,6140	1,645
O-1 (5.53)	1.7815	2,700.3	1,515
RR-CR	0.0423	16,707.7	395,000
RE	0.0423	0.0846	2,000

Total: 51.4334 Ac. +/- 54,704 Dwelling Units Allowed

Proposed Dwelling Units:
50 Mid-Rise Units
3 Single Family Lots
Total = 53 Dwelling Units

All units are for sale. Maximum height of buildings is 50 feet.

NOTE: SEE SHEET 2 OF 2 FOR DETAILS OF THIS AREA

SEE SHEET 2 FOR DETAILS OF PROPOSED CONSTRUCTION

WORKS BY LANKFORD E.H.K., JR. 6/60/22

W 13,750 N 45,000

W 13,750 N 45,000

W 13,750 N 45,000

W 13,750 N 45,000

W 13,750 N 45,000

NOTE: SEE SHEET 2 OF 2 FOR DETAILS OF THIS AREA

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W 13,750 N 45,000

W 13,750 N 45,000

W 13,750 N 45,000

W 13,750 N 45,000

W 13,750 N 45,000

8. The site is partially wooded with major deciduous trees.
9. The 100 year flood plain is as located on the plan. No grading or construction will occur within the limits of the flood plain except as provided for in the subdivision regulations.
10. The limit of the hydric soils coincides with the limit of the Melvin (Mo) soils. There will be no grading or construction in the hydric soil area except as provided for in the Water Quality Management Policy.
11. There are two existing structures on the site. One will be retained as a community building. The other is in ruins and will be rebuilt as a gatehouse. None of the structures are on the National Register of Historic Places.
12. There are no proposed buildings or parking in the Residential Transition Area.
13. Current Ownership:
Parcel 1 - Catherine C. Paddy, Leroy Paddy and Thomas L. Paddy
10749 Falls Road, Suite 200
Lutherville, Maryland 21093
Deed References: Liber 6999 folio 198
Liber 4897 folio 230
Liber 4897 folio 237
Property Numbers: 08-13-001175
08-13-001176
08-16-017762
08-16-017760
Parcel 2 - PF&M Associates Limited Partnership
10749 Falls Road, Suite 200
Lutherville, Maryland 21093
Deed Reference: Liber 7112 folio 246
Property Number: 08-09-035026
Parcel 3 - Dennis Paddy and Thomas Paddy
10749 Falls Road, Suite 200
Lutherville, Maryland 21093
Deed Reference: Liber 5402 folio 659
Property Number: 18-00-003271
Parcel 4 - Seminary Associates Limited Partnership
P. O. Box 121
Brooklandville, Maryland 21022
Deed Reference: Liber 6425 folio 001
Property Number: 19-00-006682
14. Estimated Average Daily Trips:
50 Units @ 5.0 A.D.T.'s (Elevator Apartments) = 250.0 A.D.T.'s
3 Units @ 12.4 A.D.T.'s (Large Singles) = 37.2 A.D.T.'s
Total 287.2 A.D.T.'s
15. Stormwater will be managed in a wet pond as shown on the plan and in the existing pond at the Meadows.
16. There are no known critical areas, archeological sites, endangered species habitats or hazardous materials on the site.
17. The community building will be for the use of the residents only.

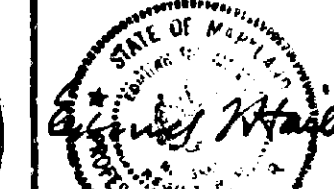
PLAT TO ACCOMPANY PETITION FOR SPECIAL HEARING



DAFT · McCune · WALKER INC.
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS
530 E. JOPPA ROAD
TOWSON, MD 21204
TELEPHONE: (301) 296-3333

VALLEY ACRES

PUBLIC SERVICES CRG NO. 86330
PLANNING NO.



DATE
2-9-87

REVISIONS
REVISED CALC. BASED ON GREENSPRING VILLAGE PROPOSED CONVIANCE

SCALE:
1" = 100'

JOB ORDER NO.
85142

ISSUE DATE
JAN 12, 1987

2 OF 2