

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

PAUL H. RENCKE
CHIEF

August 1, 1985

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

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

Re: Property Owner: Nicholas B. Mangione
Location: S/E corner Greengridge and Tenbury Roads
Item No. 6 Zoning Agenda: Meeting of 7/16/85

Gentlemen:

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

1. Fire hydrants for the referenced property are required and shall be located at intervals of 300 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works. Additional hydrants required on entrance on Greengridge. If main to be tied into new main on Greengridge.

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 at beginning of operation. Entire site to be posted with fire law signs.

5. The buildings and structures existing or proposed in the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1984 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. Rencke* Noted and Approved: *Paul H. Rencke*
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb



BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204

TED ZALESKI, JR.
DIRECTOR

May 4, 1987

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

Dear Mr. Jablon:

Comments on Item # 6 Zoning Advisory Committee Meeting are as follows: (1985 Agenda)

Property Owner: Nicholas B. Mangione
Location: S/E Corner Greengridge & Tenbury Roads
District: 9th

APPLICABLE ITEMS ARE CIRCLED:

1. All structures shall conform to the Baltimore County Building Code as adopted by Council Bill 817-85, the Maryland Code for the Building and Code (A.L.S. 21-101) and other applicable Code and Standards.

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

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

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

5. All Two Group except P-1 Single Family Detached Buildings require a minimum of 1 hour fire rating for exterior walls closer than 5'-0" to an interior lot line. The Two Group 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 1207, Section 1208.2 and Table 1208. No openings are permitted in an exterior wall within 5'-0" of an interior lot line.

6. The structure does not appear to comply with Table 505 for permissible height/area. Reply to the requested variance by this office 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.

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

8. When filing for a Requested Change of Use/Temporary Permit, an alteration permit application shall also be filed along with these sets of construction drawings indicating how the existing structure is to be altered in order to comply with the Code requirement for the new use. Maryland Architectural or Engineer seals are usually required. The change of Use Change of Section 517 of the Building Code.

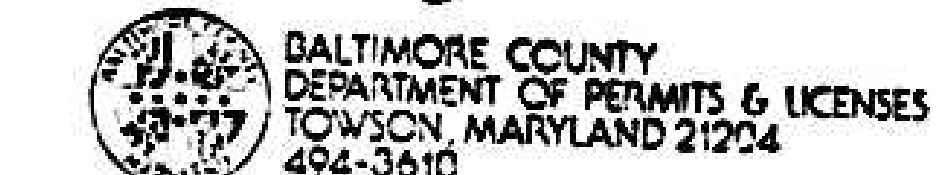
9. The proposed project appears to be located in a Flood Plain, Flood Hazard. Please see the attached copy of Section 110.0 of the Building Code as adopted by Bill 817-85. Site plans shall show the correct elevations above sea level for the lot and the finish floor levels including basement.

10. Comments _____

11. These observations 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 final action of any permit. If needed, the applicant may obtain additional information by visiting Room 125 of the County Office Building at 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Mark S. Schuman
Mr. C. E. Schuman, Chief
Building Plans Review

W777K



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

TED ZALESKI, JR.
DIRECTOR

August 21, 1985

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

Dear Mr. Jablon:

Comments on Item # 6 Zoning Advisory Committee Meeting are as follows:

Property Owner: Nicholas B. Mangione
Location: S/E Corner Greengridge and Tenbury Roads
District: 9th

APPLICABLE ITEMS ARE CIRCLED:

1. All structures shall conform to the Baltimore County Building Code as adopted by Council Bill 817-85, the Maryland Code for the Building and Code (A.L.S. 21-101) and other applicable Code and Standards.

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6. The structure does not appear to comply with Table 505 for permissible height/area. Reply to the requested variance by this office 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.

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

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10. Comments _____

11. These observations 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 final action of any permit. If needed, the applicant may obtain additional information by visiting Room 125 of the County Office Building at 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Mark S. Schuman
Mr. C. E. Schuman, Chief
Building Plans Review

W777K



BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

Arnold Jablon
To: Zoning Commissioner
Date: May 13, 1987

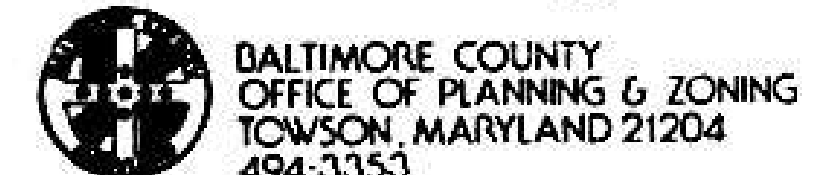
Norman E. Gerber, AICP, Director
From: Office of Planning and Zoning

SUBJECT: Zoning Petition No. 87-504-XA

This office is not opposed to the granting of the yard setback variances; however, it is recommended that the sign variance be denied. Detail as to the appearance of the sign is totally lacking on the plat. Further, this office is of the opinion that a smaller sign would be adequate for identification purposes.

Norman E. Gerber, AICP
Director

NEG:JGH:slb



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

ARNOLD JABLON
ZONING COMMISSIONER

November 13, 1986

JEAN M. M. JUNG
DEPUTY ZONING COMMISSIONER

Mr. Nicholas B. Commodari
York Road Associates
1205 York Road, Penthouse Suite
Lutherville, Maryland 21093

RE: Proposed Parking Area
Rear of 1205 York Road

Dear Mr. Commodari:

The Zoning Commissioner has referred your letter of October 1, 1986 to me for reply. The purpose of said letter being to verify your understanding of areas of agreement as discussed during our meeting on September 21, 1986.

Mr. Charles Held owns several parcels of land under various deeds and/or parcels within deeds at the rear of York Road and binding on the south side of Greengridge Road and the west side of Tenbury Road. Mr. Mangione owns land adjoining these parcels as well as land on the east side of Tenbury Road. Mr. Mangione has all of Mr. Held's property under lease and/or agreement to buy. Mr. Mangione is attempting to obtain use permits for parking on certain of the parcels that have been leased with option to buy from Mr. Held. Problems have been encountered with regard to RTA which was the basic topic of our meeting.

The Zoning Regulation defines a Residential Transition Area (RTA) as "any D.R. zone or part thereof which lies within 300 feet of any point on a dwelling other than an apartment building, or within 250 feet of any point lying within a vacant lot of record which is itself wholly or partially classified as D.R. and which is two acres or less in area". Some portions of the subject SITE are zoned R.O., however, for the most part the parcels are zoned D.R. are less than 2 acres and do create RTA. After much discussion it was agreed that if Mr. Held's holdings could be combined with Mr. Mangione's holding as one development tract and presented under signature of joint owners for the purpose of filing a Special Hearing petition for a parking use permit in a residential zone, it would have the effect of negating RTA requirements from any parcel within said developing tract. It also follows that once established as one tract with two joint owners transition would not be created from the Held property to the Mangione tract on the east side of Tenbury Road. It should be noted, however, that transition buffering requirements do exist as a result of off-site housing lots along the south property line of the entire Mangione-Held tract.

Sincerely,
James E. Dyer
JAMES E. DYER
Zoning Supervisor

JED:WCR:kbb



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 494-3180 887-3180

December 22, 1988

Michael P. Tanczyn, Esquire
Suite 106, 606 Baltimore Avenue
Towson, MD 21204

RE: Case No. 87-504-XA
Nicholas B. Mangione

Dear Mr. Tanczyn:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,
Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Ms. Barbara Poniatowski
Phyllis C. Friedman, Esquire
Planning Office
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk - Zoning



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 494-3180 887-3180

December 22, 1988

Richard J. DiPasquale, Esquire
4718 Harford Road
Baltimore, MD 21214

RE: Case No. 87-504-XA
Nicholas B. Mangione

Dear Mr. DiPasquale:

In accordance with Rule 8-7(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 (30) 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 (30) days from the date of any petition you file in Court, in accordance with Rule 8-7(a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,
Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

Encl.

cc: Mr. Louis Mangione



No. 465, September Term, 1990

People's Counsel for Baltimore County et al.
v.
Nicholas B. Mangione et ux.

JUDGMENT: February 1, 1991: Opinion by Cathell, J. Order of the Circuit Court for Baltimore County granting the motion to alter and/or amend judgment and remanding the case to the Board of Appeals is reversed; costs to be paid by appellees.

March 4, 1991: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for BALTIMORE COUNTY
88CG4968

Record.....	50.00
Stenographer Costs.....	236.50
Total *	286.50

In Court of Special Appeals:

Filing Record on Appeal.....	50.00
Printing Brief for Appellant.....	122.40
Reply Brief.....	75.60
Portion of Record Extract--Appellant.....	2268.00
Total *	2516.00
Printing Brief for Appellee.....	133.20
Total *	133.20

STATE OF MARYLAND, SS:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this 19th day of March, A.D. 1991.

John B. Smith
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

NICHOLAS B. MANGIONE 87-504-XA
SE/corner of Greenridge and Tenbury Roads
SE -for a nursing and convalescent home and domiciliary care
VAR -to permit front yard setback of 25' in lieu of the required 40' and
to permit a single-face illuminated sign with a total area of 32 sq. ft.
in lieu of the allowed 1 sq. ft.

April 27, 1987 Petition for Special Exception and Variance for Front
yard setback and single-face illuminated sign.
July 9 Order of Z.C. that Petition for Special Exception be
DENIED and Petition for Zoning Variances be DISMISSED.
July 17 Notice of Appeal to C.B. of A. from Richard J. DiPasquale,
Esq. on behalf of the Petitioner.
April 26 Hearing before the Board.
August 11 Continued hearing before Board.
August 23 Continued hearing before Board.
December 8 Order of Board that Petition for Special Exception is DENIED;
and Petition for Variances is DISMISSED.
December 20 Order for Appeal filed in CCB, BCO by DiPasquale; Petition to
accompany Appeal also filed.
December 22 Certificate of Notice sent.
March 31, 1989 Transcript of testimony filed; record of proceedings filed.
October 23, 1989 Memorandum Opinion and Order of the CCB, BCO AFFIRMING C.B. of A.
(Nickerson)
November 1 Motion to Alter or Amend Judgment filed by Appellants.
December 26 REMANDED to the Board consistent with the Court's Opinion.
January 16, 1990 Notice of Appeal filed in Court of Special Appeals by People's Counsel.
January 22, 1990 Notice of Appeal filed in CCB, BCO by Michael P. Tanczyn, Esq. on
behalf of Dulaney Valley Improvement Assoc., Inc.
Motion to File extended to April 1, 1990.
January 3, 1991 Order of the Court of Special Appeals REVERSING CCB, BCO's Order to
REMAND to the Board; AFFIRMING original CCB Order which AFFIRMED C.B.A.

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
PETITION FOR VARIANCES
SE Corner Greenridge & Tenbury : OF BALTIMORE COUNTY
Rds., 9th District
NICHOLAS B. MANGIONE, Petitioner : Case No. 87-504-XA

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 26th day of May, 1987, a copy
of the foregoing Entry of Appearance was mailed to Richard J. DiPasquale,
Esquire, 5718 Harford Rd., Baltimore, MD 21214, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-2188

August 5, 1987

Michael P. Tanczyn, Esquire
Suite 106, 606 Baltimore Avenue
Towson, MD 21204

RE: Case No. 87-335-SPH
and Case No. 87-504-XA

Dear Mr. Tanczyn:

In regard to your request that Case No. 87-335-SPH and Case
No. 87-504-XA be scheduled together, the Board does not look favorably
upon this request. Case No. 87-335-SPH is a special hearing regarding
a parking problem while Case No. 87-504-XA is a request for a special
exception for a nursing home on a separate site.

Although both cases involve the same parties, the sites and
requested relief are different and distinct, and, absent agreement of
all counsel, the Board will not consolidate these cases but will schedule
each independently as the docket permits.

Very truly yours,

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

WTH:kcv

cc: Dulaney Valley Improvement Association
Richard J. DiPasquale, Esquire

Baltimore County, Maryland
PEOPLE'S COUNSEL
ROOM 200, COUNTY OFFICE BUILDING
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
494-2188

September 19, 1988

The Honorable
William T. Hackett, Chairman
Baltimore County Board of Appeals
Room 315, County Office Building
Towson, Maryland 21204

RE: Nicholas B. Mangione, Petitioner
Zoning Cases 87-504-XA and 87-335-SPH

Dear Chairman Hackett:

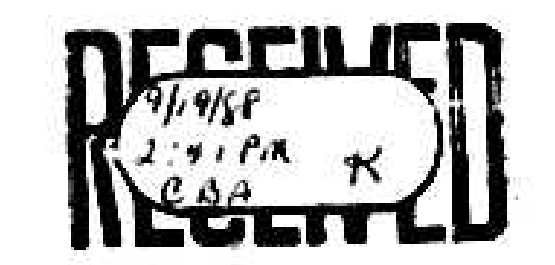
This letter will state concisely the separate views on each of the
cases recently heard by the Board:

I. SPECIAL EXCEPTION FOR A NURSING & CONValesCENT HOME
AND DOMICILIARY CARE AND VARIANCES (#87-504-XA)

Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) gives the general
standard and also has some specific relevance to this case. The chief
question is whether the proposal will have adverse effects, in light of
the statutory standards of BCZR 502.1, over and above those ordinarily
associated with such a proposal in a D.R. 5.5 zoning classification.
The Schultz case involved unique traffic and access problems of a pro-
posed funeral home in a residential district. The proposal was denied
and the Court of Special Appeals sustained it.

The proposal here presents far greater problems by being off the
major arterial road and toward the interior of the residential community.
This accentuates the traffic and access problems. In addition, the size
and bulk of the two buildings make it out of character with the neighborhood.

A fair amount of evidence was presented not only as to this site, but
also in comparison with other nursing facilities in residential zoning
classifications. The other facilities were substantially smaller and,
generally speaking, had direct access to arterial or significant collector
roads. I understand that the Board had some doubt about the relevance of
considering the other sites, but this sort of comparison seems not only
appropriate, but necessary under the guidelines set by the Schultz case.



I suspect that the traffic problems and size and bulk problems are,
to some extent, a matter within the judgment of the Board, and that the
Board's decision will, in all probability, be the controlling decision
in this case. The careful and patient consideration which the Board has
given to the issues is much appreciated.

II. THE PARKING CASE (#87-335-SPH)

There is no doubt that the 1205 York Road facility has presented
serious parking problems. The original intent was for a general office
building, without substantial medical use. The special exception was
granted on that basis and carefully limited after settlement of litigation.
However, unique factors caused the owner to make it effectively a medical
office building with the kind of traffic which that generates.

The only change in circumstances from the early to mid-1970's, the
time of the original approval, involves the business situation of the
developer and not anything relating to the physical or natural character-
istics of the property, or even the neighborhood. In the absence of a
significant change of circumstances involving the property or neighborhood,
I believe that the Board should not and cannot distinguish from the original
decision. Such a change of mind would be, by its very nature, arbitrary and
capricious.

The leading case here is *Whittle v. Board of Zoning Appeals of Baltimore
County*, 211 Md. 36, 125 A.2d 41 (1956), copy enclosed. This case makes
fairly clear the point that a change in conditions personal to the developer
will not suffice to justify a different decision and that other claims of
change will also be looked at with a skeptical eye. In the present case,
there was not any genuine argument of change in conditions, aside from the
marketing problems which the developer perhaps had not considered at the
time of the original decision. Of course, if these marketing problems were
known, the justification for a change now is even more specious.

Once a zoning decision is finalized, particularly those with the consent
of all interested parties, it should not be modified in the absence of the
most compelling circumstances. Otherwise, these decisions are used as the
first foot in the door to further expansion. After years go by, the tendency
is to forget that such decisions as were made here were arrived at after a
good deal of blood, sweat, and tears. It is necessary to guard against
attempts to chip away at these decisions so as to destroy the original
concepts.

Very truly yours,
Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

cc: Richard J. DiPasquale, Esquire
Michael P. Tanczyn, Esquire

PMZ:ah

WHITTLE v. BOARD OF ZONING APPEALS Md. 41
Cite as 125 A.2d 41

James L. WHITTLE et al.
v.
BOARD OF ZONING APPEALS OF
BALTIMORE COUNTY,
and
J. Lynn Wisniewski et al.
No. 210.
Court of Appeals of Maryland.
Aug. 20, 1956.

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Md. 434, 442, 26

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Article 3, Section
tion is applica-
Baltimore, we th-
he Court below
the passage of
alleged petition
and granting the

Certiorari proceeding to review de-
cision of Board of Zoning Appeals granting
special permit to use building in residential
area for funeral home. The Circuit Court,
Baltimore County, Letter L. Barrett, J.,
entered its order affirming board's order
and protestants appealed. The Court of
Appeals, Byrne, C. J., held that where
essentially same facts appeared in 1949
hearing on petition for special permit to use
building for funeral home as appeared or
could have been shown in hearing on pre-
sent petition and where Circuit Court had
entered judgment denying 1949 petition,
petitioners were barred by res judicata.

Reversed and remanded with direc-
tions.

1. Judgment C-542
Fact that decision on 1949 petition to
obtain special permit to use building in
residential area for funeral home was that
of a Circuit Court did not prevent opera-
tion of rule of res judicata.

2. Municipal Corporations C-621.82
Provisions of zoning ordinance pro-
hibiting board of zoning appeals until after
 lapse of 18 months from considering and
acting upon new application for special per-
mit previously denied does not dispense
with rule of res judicata.
125 A.2d-74

3. Municipal Corporations C-621.82
General rule is that after lapse of
such time as may be specified by ordi-
nance, a zoning appeals board may consider
and act upon new application for a special
permit previously denied, but that it may
properly grant such a permit only if there
has been a substantial change in conditions
because it would be arbitrary for board to
arrive at opposite conclusions on substan-
tially same state of facts and same law.

4. Judgment C-545(5)
Where facts are subject to change
which might reasonably lead to opposite
result from that arrived at in earlier case
and if there have been substantial changes
in facts and circumstances between first
and second case, the doctrine of res judicata
does not prevent granting of special per-
mit to use building as funeral home in
residential area.

5. Judgment C-545(5)
Where court's determination in 1949
denied petition for special permit to use
building on property in residential area
for funeral home, construction of new stone
church to replace wooden church adjacent
to property and addition of one new filling
station in neighborhood and in area con-
taining two such stations was not sufficient
change or increase in commercialization to
make doctrine of res judicata inapplicable
to 1954 petition to obtain permit for same
use.

6. Judgment C-545(5)
On hearing on 1954 petition for special
permit, previously denied by court's deter-
mination in 1949, to use building in resi-
dential area for funeral home, testimony
of increased population in area and need for
funeral home did not show materially dif-
ferent situation from that prevailing in
1949 and evidence of less opposition in
neighborhood did not show such change in
circumstances as to make doctrine of res
judicata inapplicable.

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

Arnold Jablon
Zoning Commissioner

July 21, 1987

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

RE: Petition for Special Exception and Zoning Variance
SE/corner of Greenridge and Tenbury Roads
Nicholas B. Mangione - Petitioner
Case No. 87-504-XA

Dear Board:

Please be advised that on July 17, 1987 an appeal of the decision ren-
dered in the above-referenced case was filed by Richard J. DiPasquale, Esquire,
attorney for the Petitioner.

Please notify all parties to the case of the appeal hearing date and
time when it has been scheduled. If you have any questions concerning this mat-
ter, please do not hesitate to contact this office.

Very truly yours,

Arnold Jablon
ARNOLD JABLON
Zoning Commissioner

AJbjs

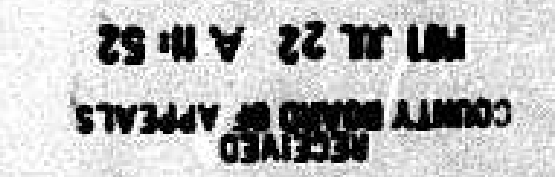
cc: Richard J. DiPasquale, Esquire
5718 Harford Road, Baltimore, Md. 21214

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106, Towson, Md. 21204

Ms. Barbara Poniatowski, President
Dulaney Valley Improvement Association
P.O. Box 102, Lutherville, Md. 21093

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

File



APPEAL
Petition for Special Exception and Zoning Variance
SE/corner of Greenridge and Tenbury Roads
9th Election District - 4th Councilmanic District
Nicholas B. Mangione - Petitioner
Case No. 87-504-XA

Petitions for Special Exception and Zoning Variance

Description of Property

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 3/16/87
 - 2) Letter to Arnold Jablon from Nicholas B. Comadari, York Road Associates, dated October 1, 1986
 - 3) Letter to Nicholas B. Comadari from James E. Dyer, Zoning Supervisor, dated November 13, 1986
 - 4a thru 4i) Black & White Photographs of the Site, dated June 15, 1987
 - 5) Letter with attachments to Robert N. Cofelli from Ruby Potter, Maryland Health Resources Planning Commission dated April 10, 1987
 - 6) Chart
 - 7) Lease Agreement between Charles W. and Harriette W. Heid, Jr. and Nicholas B. and Mary C. Mangione dated March 6, 1979.
 - 8) Agreement between Charles W. and Harriette W. Heid, Jr. and Louis and Rosemary Mangione dated March 1979
 - 9) Packets of Correspondence in Favor of Project (Manilla folder)
 - 10) Letter to Charlene C. Quinn, Maryland Health Resources Planning Commission from George L. McNew, Dulaney Valley Improvement Association dated September 20, 1986.

- Protestant's Exhibits:
- 1) Copy of Deed dated October 4, 1946 between Robert F. and Mildred W. Gamble and Charles W. and Harriette W. Heid, Jr.
 - 2) Staff Report prepared by Maryland Health Resources Planning Commission dated April 2, 1987

objection because this is the very essence of what we are trying to get at.

THE WITNESS: I believe, as Mr. Sollins stated in his opening remarks, the Community Association is not opposed to a nursing home in the community. The Community Association is opposed to Mr. Mangione's project because we've had a problem with him being a good neighbor to us at 1205 York Place. Our intent has never been to keep a nursing home out of our neighborhood. We are well aware of the need for beds in Baltimore County and we are well aware that, you know, the population is growing older and that this need will continue to increase.

BY MR. DIPASQUALE:

Q Ms. Poniatowski, thank you for being so honest in that particular statement. I really do --

A That was in our opening remarks. Mr. Sollins made that as . . .

Q Let me ask one further question on that line of the statement that you just made. If it were anyone but Mr. Mangione, could it be a success in that community?

MR. DIPASQUALE: Objection.

WALLS REPORTING, INC.

87-504-XA Nicholas B. Mangione
1/3/91 - Court of Special Appeals REVERSED
Circuit Court Order to REMAND to Board of Appeals.
Board of Appeals AFFIRMED.

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
No. 465
SEPTEMBER TERM, 1990

PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY et al.

v.

NICHOLAS B. MANGIONE et ux.

Bloom,
Karwacki,
Cathell,

JJ.

PER CURIAM

Filed: January 3, 1991

NICHOLAS B. MANGIONE, et al. * IN THE CIRCUIT COURT
Appellants, * FOR BALTIMORE COUNTY
vs. *
PEOPLE'S COUNSEL FOR *
BALTIMORE COUNTY, et al., *
Appellees. * Case No. 88-CG-4968

ORDER FOR APPEAL BY DULANEY VALLEY
IMPROVEMENT ASSOCIATION, INC. AND BARBARA PONIATOWSKI

On behalf of Dulaney Valley Improvement Association, Inc., P. O. Box 102, Lutherville, Maryland, 21093, and Barbara Poniatowski, 26 Greenridge Drive, Timonium, Maryland, 21093, please enter an appeal to the Court of Special Appeals from the Supplemental Memorandum Opinion and Order of the Circuit Court for Baltimore County entered in this action on December 26, 1989.

MICHAEL P. TANCZYK, ESQ.
Attorney for the Appellants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone (301) 296-8823

IN THE MATTER OF THE APPLICATION
OF NICHOLAS B. MANGIONE AND
MARY C. MANGIONE BEFORE THE
BOARD OF APPEALS OF BALTIMORE
COUNTY FOR A SPECIAL EXCEPTION
AND VARIANCE OF SOUTHWEST CORNER
OF GREENRIDGE RD. & TENBURY RD.
9th Legislative District;
4th Councilmanic District
Zoning Case No. 87-504-XA

ANSWER TO PETITION OF APPEAL

People's Counsel for Baltimore County, Protestant below and Appellee herein, answers the Petition of Appellant heretofore filed by the Appellant, viz:

1. That the Appellee denies the allegations made and contained in Paragraphs No. 1 through 7 of said Petition.
2. That the decision of the Board herein was proper and justified by the evidence before it.

WHEREFORE, it is prayed that the petitions be dismissed.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 304, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
(301) 887-2188

I HEREBY CERTIFY that on this 5th day of May, 1989, a copy of the foregoing Answer to Petition of Appellant was delivered to the Administrative Secretary, Baltimore County

IN THE MATTER OF : IN THE CIRCUIT COURT
NICHOLAS B. MANGIONE : FOR BALTIMORE COUNTY
FOR A SPECIAL EXCEPTION : CASE No. 88CG4968
AND :
ZONING VARIANCE :

NOTICE OF APPEAL

Please note an appeal to the Court of Special Appeals of Maryland from the Supplemental Memorandum Opinion and Order of the Circuit Court for Baltimore County in the above-captioned matter, under date of December 26, 1989, and forward all papers in connection therewith to the Clerk of the Court of Special Appeals of Maryland in accordance with the Maryland Rules.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 304, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
(301) 887-2188

I HEREBY CERTIFY that on this 16th day of January, 1990, a copy of the foregoing Notice of Appeal was mailed to Richard J. DiPasquale, Esquire, 5718 Harford Rd., Baltimore, MD 21214; and Michael P. Tanczyk, Esquire, Suite 106, 606 Baltimore Ave., Towson, MD 21204.

Peter Max Zimmerman
Peter Max Zimmerman

12/26/89 - REMANDED to C.B.A. consistent with Court Opinion.
1/16/90 - Appealed to Court of Special Appeals by People's Counsel

IN THE MATTER OF : IN THE
NICHOLAS B. MANGIONE : CIRCUIT COURT
FOR A SPECIAL EXCEPTION : FOR
AND : BALTIMORE COUNTY
ZONING VARIANCE : CASE NO. 88CG4968

SUPPLEMENTAL MEMORANDUM OPINION AND ORDER

Appellants, Nicholas B. Mangione and Mary C. Mangione, have filed herein a Motion To Alter or Amend Judgment on November 1, 1989, seeking amendment of the Opinion and Order of this Court filed on October 24, 1989 affirming the decision of the Baltimore County Board of Appeals. Answers have been filed to the Appellants' Motion by both the Dulaney Valley Improvement Association and the People's Counsel for Baltimore County.

Appellants' Motion principally focuses the Court's attention on the standards set out in Schultz v. Pritts, 291 Md. 1 (1981) and the application of those standards to the evidence produced before the Board.

The Court has again reviewed the evidence produced before the Board and, in particular, that produced by Protestants. The Court has taken note upon this review that Appellants refer in their Appeal Petition herein, filed December 20, 1988, for a special exception to construct a 120 bed nursing home and the Board, in its opinion and order issued on December 8, 1988 states: "Specifically, the Petitioner seeks approval to construct a 240 bed nursing home. . ."

IN THE MATTER OF
THE APPLICATION OF
NICHOLAS B. MANGIONE and
MARY C. MANGIONE
BEFORE THE BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO. 88CG4968

MEMORANDUM OPINION AND ORDER

This case came before this Court on October 13, 1989, pursuant to Appellants', Nicholas B. Mangione and Mary C. Mangione, Petition of Appeal (Paper #2) from a decision of the Baltimore County Board of Appeals filed on December 8, 1988. Appellants request this Court to reverse the Board of Appeal's decision and grant their petition for a special exception to construct a 120 bed nursing home at the southside of Greenridge Road and Tenbury Road in Baltimore County, Maryland. Appellants' Petition for Appeal (Paper #2) sets forth the alleged legal and fact finding errors.

This Court recognizes the limited scope of its review of administrative decisions. Md. State Gov't. Code Ann. Sec. 10-215(g) (1984). Maryland courts use the substantial evidence test to determine whether any fact finding by an agency violated subsection (g). Substantial evidence has been defined as "whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion." Toland v. State Bd. of Educ., 35 Md. App. 389, 371 A.2d 162 (1977).

John Adams - 484-3880
Civil Assignment Commissioner
Settlement Court
Maria Brodsky - 484-3882
Masters Assignment Clerk
Medical Records

TO: RICHARD DIPASQUALE, ESQ.
PHYLLIS C. FRIEDMAN, ESQ.
PETER M. ZIMMERMAN, ESQ.

County Board of Appeals (5/5/89)

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 8754
Towson, Maryland, 21204-0754

Kathy Roshon - 484-3889
Assignment - July - March
Shirley Fennell
Assistant Clerk Typist
Lynn Summers - 484-3881
Assignment - April - June
Freddie Green
Assistant Clerk Typist

RE: NOW JURY - 88-CG-4968 - NICHOLAS B. MANGIONE ET AL VS. PEOPLES COUNSEL FOR BALTIMORE COUNTY

SETTLEMENT CONFERENCE DATE: MONDAY, SEPTEMBER 11, 1989 @ 11:00 A.M. *How long continued*
Conference Room 4403 before the Honorable JUDGE FRANK E. COONE. Please direct all inquiries to the attention of John Adams.

All counsel and their clients MUST attend this Settlement Conference in person. All Insurance Representatives or, in domestic cases, a corroborating witness MUST attend this Settlement Conference in person. Failure of attendance in person of all parties listed above can result in sanctions being imposed, unless prior approval of the Court is obtained. THERE WILL BE NO EXCEPTIONS PER ORDER OF JUDGE FRANK E. COONE. Please direct all inquiries to the attention of John Adams.

HEARING DATE: FRIDAY, OCTOBER 13, 1989 @ 9:30 a.m. APPEAL: 1 day

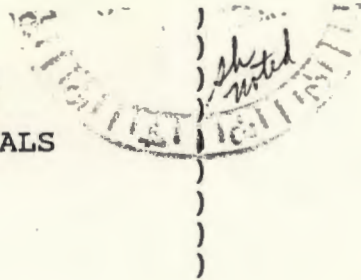
If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 15 DAYS OF TRIAL should be directed to the attention of John Adams. POSTPONEMENTS AFTER 15 DAYS OF TRIAL must be made to the attention of the Director of Counsel Assignments - Joyce Odum - 484-3497.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other to conform calendars for the above date(s). Claim of not receiving notice will not constitute excuse for postponement.

COUNTY CLERK'S OFFICE
89 MAY 10 PM 12:09

J. R. Haines
File

IN THE MATTER OF
THE APPLICATION OF
NICHOLAS B. MANGIONE and
MARY C. MANGIONE
BEFORE THE BOARD OF APPEALS
OF BALTIMORE COUNTY



IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE NO. 88CG4968

MEMORANDUM OPINION AND ORDER

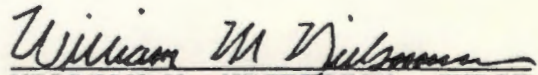
This case came before this Court on October 13, 1989, pursuant to Appellants', Nicholas B. Mangione and Mary C. Mangione, Petition of Appeal (Paper #2) from a decision of the Baltimore County Board of Appeals filed on December 8, 1988. Appellants request this Court to reverse the Board of Appeal's decision and grant their petition for a special exception to construct a 120 bed nursing home at the southside of Greenridge Road and Tenbury Road in Baltimore County, Maryland. Appellants' Petition for Appeal (Paper #2) sets forth the alleged legal and fact finding errors.

This Court recognizes the limited scope of its review of administrative decisions. Md. State Gov't. Code Ann. Sec. 10-215(g) (1984). Maryland courts use the substantial evidence test to determine whether any fact finding by an agency violated subsection (g). Substantial evidence has been defined as "whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion." Toland v. State Bd. of Educ., 35 Md. App. 389, 371 A.2d 162 (1977).

This Court has heard oral arguments and reviewed the hearing transcripts, the record, the exhibits, and the memoranda. This Court finds that there was substantial evidence, as that test is defined, before the Board of Appeals to support its findings of fact and decisions of law. The Court is not to substitute its judgment for that of the agency. Board of Educ. v. Ballard, 67 Md. App. 235, 507 A.2d 192 (1986).

Accordingly, it is this 23rd day of October, 1989 by the Circuit Court for Baltimore County,

ORDERED that the decision of the Baltimore County Board of Appeals be, and the same is hereby, AFFIRMED.


WILLIAM M. NICKERSON, JUDGE

COPIES SENT TO:

Richard J. DiPasquale, Esquire
5718 Harford Road
Baltimore, Maryland 21214

Phyllis Cole Friedman, Esquire,
Peter Max Zimmerman, Esquire
Room 304, County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Michael P. Tanczyn, Esquire
Suite 106
606 Baltimore Avenue
Towson, Maryland 21204

IN THE MATTER OF
THE APPLICATION OF
NICHOLAS B. MANGIONE
FOR A SPECIAL EXCEPTION AND ZONING
VARIANCE ON PROPERTY LOCATED ON THE
SOUTHEAST CORNER OF GREENRIDGE AND
TENBURY ROADS
9TH ELECTION DISTRICT

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REFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 87-504-XA

OPINION

The matter comes before the Board as an appeal from then Zoning Commissioner Jablon's Order of July 3, 1987, wherein he denied the Petition for Special Exception for a nursing home and dismissed the Petition for Zoning Variances. Within his petition, the property owner seeks a special exception as may be permitted pursuant to Baltimore County Zoning Regulation (hereinafter "B.C.Z.R.") Section 502.1 for a nursing home within a residential area. Further, the Petitioner seeks variances from B.C.Z.R. Section 1802.1.B, to allow a front yard building setback of 25 feet in lieu of the required 40 feet and a variance from B.C.Z.R. Section 413.1A to permit an illuminated single-face sign for an area of 32 square feet in lieu of the permitted 1 square foot illuminated area. Specifically, the Petitioner seeks approval to construct a 240-bed nursing home on his property located on the corner of Greenridge and Tenbury Roads in Lutherville. The site is approximately 4.0 acres (+/-) and is zoned D.R. 5-5. The proposed home would be built in a two-wing configuration; one wing being 60 feet by 210 feet (wing "A") and the other wing being 130 feet by 130 feet (wing "B"). The wings would be connected by a 15-foot by 20-foot passageway. Additionally, the Petitioner proposes improvements on the site to allow the construction of 160 parking spaces, a number well in excess of the 24 required by the B.C.Z.R. Thus, the Board is again called upon to determine the propriety of the development of a parcel to address a valid and recognized societal need

Case No. 87-504-XA
Nicholas B. Mangione

versus the impact of a development which may be characterized as inconsistent with its surrounding locale.

The testimony and evidence offered in this case was voluminous and consumed nearly three full days before the Board. Further, although the arguments and points raised were many, it seems apparent to this Board that the issues presented were in fact two in number. The Board will therefore address, in turn, the project's compliance with the B.C.Z.R.'s Residential Transition Area (RTA) requirements and, secondly, whether the project complies with the special exception standards enunciated in B.C.Z.R. 502.1.

As to RTA requirements, the Board must consider two different conditions, as contained within Article 18, Section 1800 of the B.C.Z.R. The preamble to that legislation is within B.C.Z.R. 1800.1 which, although we will not repeat herein, addresses the legislature's concerns about the sprawl of residential development and the undesirable subdivision design characteristics when maximum density is achieved. Born out of these concerns are the restrictions imposed by the RTA requirements as contained within B.C.Z.R. 1801.1.B.1.(b).

Addressing the initial RTA requirement, the regulations require RTA setbacks to be a minimum of 75 feet to the front and side of the subject parcel and 150 feet to the rear. In this case, the property fronts in a westerly direction along Tenbury Road with the sides to the north and south and the rear in an easterly direction facing that development known as McMullen's Green. Thus, the first RTA issue is whether the proposed project is prohibited because it does not comply with the front 75-foot setback requirement. In hearing before the Zoning Commissioner, evidence was taken that the property across Tenbury Road was not then owned by the Petitioner but by Mr. and Mrs. Charles W. Held. Further, it is noted within the Zoning Commissioner's Findings of Fact that those

Case No. 87-504-XA
Nicholas B. Mangione

lots were recorded as three distinct lots, each less than two acres in size. Based upon these findings, the Zoning Commissioner held that the development was violative of the front RTA setback requirement because a single lot of record across Tenbury Road was not created and "a combination of the lots held by deed of record by the Petitioner and Mr. and Mrs. Held does not comply with the law." Although we agree with the Zoning Commissioner's holding in that instance, testimony produced during the Board's de novo hearing disclosed that all of the Held property across Tenbury Road from the site was acquired by the Petitioner and was combined into one lot by deed dated October 3, 1987, then duly recorded among the Land Records of Baltimore County. Therefore, in our view, the combination of those parcels by recordation of a single deed has satisfied the RTA requirement as to the front yard setback. Thus, we hold that the Petitioner has complied with the RTA requirement of a 75-foot front yard setback.

The second RTA issue is raised by the Protestants and concerns the 15-foot by 20-foot passageway which connects the two wings of the proposed home. Specifically, the question presented is whether this passageway creates two detached buildings, therefore subject to RTA restrictions as to the distance of their separation. In support of their position that detached buildings are created, the Protestants point to Section 1801.1.B.1.(b).2, which requires that a maximum width or length of any elevation of a detached building or group of attached buildings is 130 feet. That section later states that passageways shall not be included when determining the maximum width or length of any elevation of a detached building and that buildings so connected by an exterior passageway "shall be considered as detached buildings." (emphasis added) Relying on this language, the Protestants then look to Section 1801.1.B.1.(b).4 which provides a minimum separation between detached principal buildings of a distance of 1.5 times the height of the higher building. Applying the mathematics in this

Case No. 87-504-XA
Nicholas B. Mangione

standard to the site, the Protestants argue that wings A and B must therefore be separated by a minimum distance of 52 feet. The passageway as shown on the Petitioner's plan is somewhat less.

Notwithstanding the seeming validity of this argument on its surface, the Protestants ignore the provisions of yet another PTA regulation, found within Section 1801.1.B.1. This section is specifically referred to in Section 1801.1.B.1.(b).2. Section 1801.2.B.1 states "in the application of the provisions of this Article, buildings shall be considered as detached if there are no above-grade structural connections between them. Where buildings are, in fact, structurally connected above grade, they shall be considered as...one building if situated on a single lot." Thus, the proposed wings of this project must be considered as one building and not detached buildings. Therefore, the wings are not subject to the separation distance provided in 1801.1.B.1.(b).4. The language upon which the Protestants rely designating these wings as detached buildings under Section 1801.1.B.1.(b).2 is inapplicable here. Clearly, buildings so connected are to be considered as detached only for the purpose of computing their length and width under 1801.1.B.1.(b).2 and not for other purposes. In summation, we believe the Petitioner has complied with all RTA requirements.

Having addressed the issues generated by the RTA requirements, the Board now turns to the Petition for Special Exception. As has been often stated, the Board is bound to consider any special exception within the mandates set forth in Section 502.1 of the B.C.Z.R. Further, the Board must construe that regulation in a manner consistent with the holding by the Court of Appeals in the leading case Schultz v. Pritts, 291 Md 1, 432 A 2d 1319 (1981). The Schultz standard requires the Protestants to demonstrate that the proposed use creates, opposes and/or engenders problems peculiar to that location over and above those

Case No. 87-504-XA
Nicholas B. Mangione

normally associated with such a proposal within the same zoning classification.

On this issue, the Board received lengthy testimony and exhibits. On behalf of the Petitioner, Mr. Paul Lee and Mr. John Strong Smith, civil engineers, both testified that the proposed nursing home would have no adverse impact on the surrounding community and that all delineated standards within 502.1 would not be violated.

Additionally, Wesley Guckert, traffic engineer, testified on behalf of the Petitioner. Mr. Guckert carefully explained the method and results of his traffic study analysis. He concluded, based upon traffic generation calculations, existing road characteristics and use, and projected traffic flow to the site, that the proposed development would not be detrimental to the surrounding community from a traffic standpoint.

Frederick Klaus, an expert real estate appraiser and land developer, testified as to his study of the property and his conclusions. He opined that the nursing home would not adversely affect the property value of the homes in the community and the project was in compliance with the spirit and intent of the standards contained within 502.1.

The Petitioner himself, Nicholas Mangione, also testified. Mr. Mangione testified as to the need for such a facility in this geographic area and explained the particulars of his proposal. He addressed storm water runoff concerns and traffic concerns. He also explained why his request was of the size, scope, and configuration as depicted in Petitioner's Exhibit No. 1.

In opposition to the project, numerous citizens from the surrounding community, known as Dulaney Valley, appeared and testified. They expressed a myriad of concerns covering the entire range of issues as presented within Section 502.1. Several of the adjoining neighbors were particularly concerned

Case No. 87-504-XA
Nicholas B. Mangione

with the effect of the project on storm water drainage from the property. Specifically, Mr. Donald Michael testified as to the effects of the development along the York Road corridor and the erosion created by development and storm water runoff. Mr. Lonnie McNew corroborated Mr. Michael's testimony as to the severe impact created by heavy storms in this immediate area.

Another Protestant, Barbara Poniatowski, addressed particular concerns about the intrusion of a project of this size, scope and character into the residential neighborhood presently existing around that site. She was concerned about increased traffic, waste generated from the building, and storm water management.

The Board has carefully considered all the evidence and testimony presented to it. As finders of fact, we are obligated to judge the credibility of each witness and apply each Board member's own knowledge, developed through experience and training, to the evidence presented. In doing so, the Board finds uncommon problems associated with this proposed development at this specific locale. Of particular concern is the size and scope of the proposal. The projected facility houses 260 beds, contained within two large wings. Additionally, a parking area large enough to house 100 vehicles is planned. Unquestionably, the project as proposed would overwhelm and dominate the surrounding landscape. This is particularly relevant in considering this site's location and surrounding community. Although not far from the commercial corridor of York Road, the proposal represents the deepest intrusion into the residential community of Dulaney Valley. The sheer size of the project from a building footprint standpoint would clearly exacerbate an already worsening storm water runoff situation within this community. Further, the Board remains unconvinced that the traffic generated by the home's employees and visitors would not overtax an interior community road system designed to accommodate residential traffic.

Case No. 87-504-XA
Nicholas B. Mangione

At its essence, the Board finds as fact that the Petitioner has not met his burden that the proposed use is not detrimental to the health, safety or general welfare of the locality as provided in B.C.Z.R. 502.1. Based upon the foregoing, the Board will deny the Petition for Special Exception and will so order. As to the Petitioner's request for variances, they are moot in view of the Board's holding as to the special exception.

ORDER

Based upon the foregoing, it is therefore this 8th day of December, 1988 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Exception in Case No. 87-504-XA be and the same is DENIED; and the Petition for Zoning Variances be and is hereby DISMISSED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Thomas J. Boellinger
Thomas J. Boellinger

Lawrence E. Schmidt
Lawrence E. Schmidt



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 496-8100 867-3180

December 8, 1988

Richard J. DiPasquale, Esquire
5718 Harford Road
Baltimore, MD 21214

Re: Case No. 87-504-XA
Nicholas B. Mangione

Dear Mr. DiPasquale:

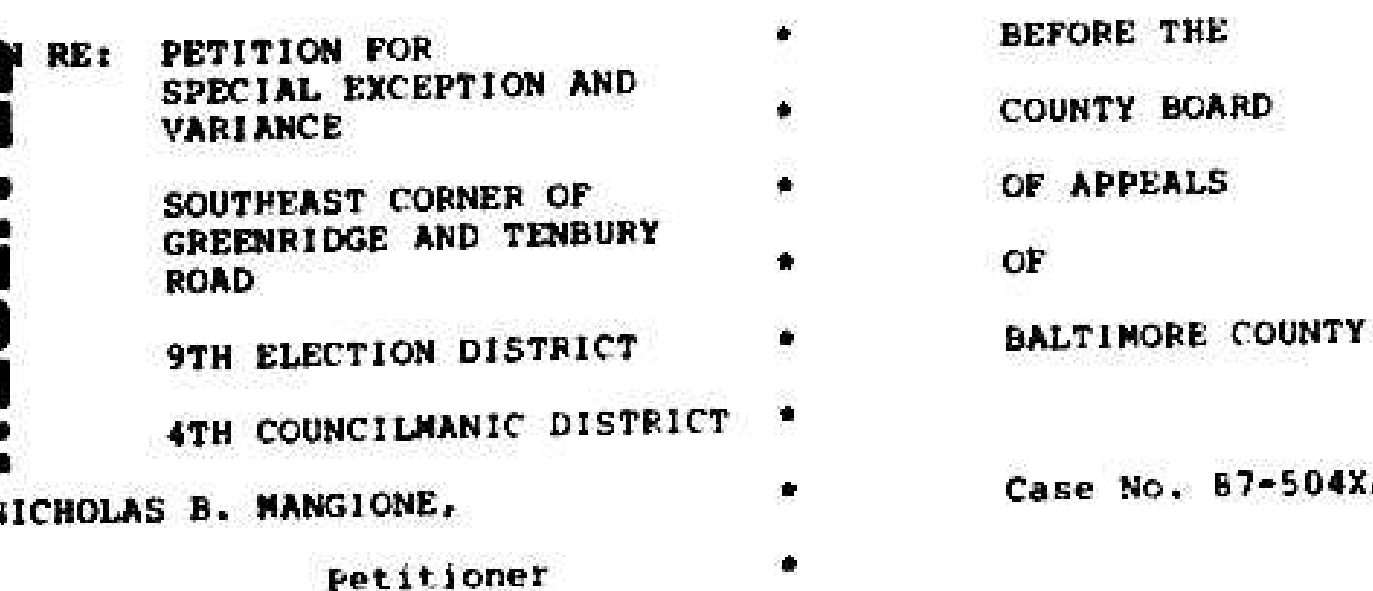
Enclosed is a copy of the final Opinion and Order issued this date by the County Board of Appeals in the subject case.

Sincerely,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Secretary

encl.

cc: Mr. Louis Mangione
Michael P. Tanczyn, Esquire
Ms. Barbara Poniatowski
Phyllis Cole Friedman, Esquire
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk - Zoning
Arnold Jablon, County Attorney



HISTORY

The variances requested are to permit a front yard setback of 25 feet in lieu of the required 40 foot, and a sign of 52 square feet in lieu of the one square foot, all of which are described in Petitioner's Exhibit No. 1.

The Protestants, either individually or as a member of the Dulaney Valley Improvement Association, Inc., appeared; namely, Donald Michael, who resides at 20 Ridgfield Road; Lonnie McNew, who resides at 9 Greenridge Road; and Barbara Poniatowski, who resides at 26 Greenridge Road. There being no other Protestants other than other individuals who appeared and signed in on a sign-in sheet.

The testimony of John Strong Smith set forth his association with George William Stevens, Jr. and Associates, Inc., civil engineers and land surveyors, that he prepared the plat submitted as Exhibit No. 1. The testimony of Paul Lee set forth his qualifications as a registered professional engineer who was also familiar with the plat prepared by John Strong Smith and the proposal of the Petitioner. The testimony of both engineers indicated that the subject property was zoned DR 5.5 and is located on Tenbury Road between Greenridge and Ridgefield

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The engineers both testified that the parcel is surrounded by three residential neighborhoods and, therefore, would be subject to the Residential Transition Area Regulations requiring 150 foot rear yard set-back to McKullens Green Development, which is along the east property line, and that there will be a 75 foot side yard set-back both on the north property line and the south property line. The property to the east across Tenbury Road is owned by the Petitioner, Nicholas B. Mangione and is unimproved except for the residence of Mr. and Mrs. Charles Held, which is entirely within an RO Zone. All of the Held property is combined into one lot by Deed dated the 3rd day of October, 1987 and recorded in the Land Records of Baltimore County in Liber 7695, Folio 474, as evidenced by Petitioners Exhibit No. 3, and contains in excess of two acres. The remainder of the property within either 250 feet or 350 feet of the subject property is owned by the Petitioner. All of the Petitioner's property in the Residential Zone contains in excess

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The Petition further requested a variance for a sign identifying the facility, to contain 32 square feet as set forth on the Petitioner's plat. This sign is anticipated to be a 4' x 8' sign located in the sign area, which sign will be an illuminated single faced sign in lieu of the permitted one square foot under Section 413.1 A(a). It was testified that this sign would serve to prevent unnecessary traffic entering the

Mr. Wesley Guckert, traffic engineer, testified and presented Petitioner's Exhibit No. 7, which Exhibit set forth the traffic impact analysis as computed by the Traffic Group, Inc., detailing the effect of the proposed nursing home on the surrounding Baltimore County roads system. The analysis provided a site location map, all of the existing land use, the existing peak hour volumes, trip generation analysis for existing nursing homes, trip generation for Lutherville Nursing Home, trip assignment for Lutherville Nursing Home, existing plus site generated peak hour volumes, results of intersection capacity analysis, and trip generation comparison of residential versus the proposed nursing home use of the subject site. The traffic impact analysis further took into consideration and used existing traffic counts, capacity work sheets, and traffic counts at

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Mr. Frederick Klaus, an expert real estate appraiser and land developer, testified of his familiarity of the area of the proposed nursing home, his study of the proposal, his knowledge of the Tenbury Road condemnation, the physical features of the property, and his knowledge of other nursing homes in the Towson-Lutherville-Timonium area. As an unopposed expert, he concluding that the construction of the nursing home on the proposed site would not adversely affect the values of the property in the community, but would have an advantageous affect

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Mr. Nicholas B. Mangione, the Petitioner, testified that he is the owner of the property which is the subject of the Petition and is also the owner of the property east of Tenbury Road or the contract purchaser of the property belonging to Charles W. and Harriet Held, who are the joint Petitioners with Nicholas B. Mangione in Case No. 87-335-SPH. Mr. Mangione testified of the need in the Lutherville area for the nursing home facility and of his contacts with Dulaney Valley Improvement Association and their attorney to involve the community in the planning of the nursing home as it relates to design and any other possible effect it may have on the community. The letters submitted by Mr. Mangione indicate that many letters have been written but that the community was totally uncooperative, and upon learning that the community would not object to this special exception if the proposal would be reduced to a 120 bed comprehensive bed facility in Wing "A", Mr. Mangione testified that his Petition for 240 beds was only for zoning purposes, but

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Mr. Mangione also testified that it would be in the best interests of all concerned if, upon granting of the special exception, a proviso would be included to eliminate parking on the east side of Tenbury Road, which was another community concern regarding traffic traversing Ridgefield Road to Greenridge Road or vice versa, enabling traffic in both directions to proceed without impediment. Mr. Mangione further testified that he was providing more parking spaces than required

because of his experience with the community regarding the parking problem at 1205 York Road and wanted to insure and assure the community that all parking relating to the nursing home facility will be on site. In Mr. Mangione's testimony, he addressed the height of the proposed building and stressed that the building would not exceed the 35 foot maximum as called for in the Baltimore County Zoning Regulations, and would comply with all directives from either this Board or the Baltimore County Building and Permits Department so as not to exceed the height proposed. All three witnesses, namely, Nicholas B. Mangione, John Strong Smith and Paul Lee, testified that the plat as submitted complies with the Residential Transition Area requirements as to set-backs, buffer requirements, etc. save and except for the 25 foot variance requested for Wing "A", as shown on the plat. The only other variance requested was to permit an illuminated single faced sign of 32 square feet in lieu of the one square foot under Section 413.1 A (a).

Mr. Mangione emphasized in his testimony that the proposed project would not impact on the existing storm drain reservation which is south of the proposed nursing home site, which reservation is 30 feet in width and lies adjacent and south of a 12 foot easement for force main. He also noted that water in the existing 30 foot storm drain reservation originates on the west side of York Road and is created from new and completed construction at that point.

The testimony of all of the witnesses for the Petitioner clearly shows that the proposed nursing home is in compliance with the R.T.A. requirements, that the nursing home would not affect the existing or future storm water run-off, would not impact on traffic in the community, and that the subject site is appropriate for the use proposed.

Both Mr. Smith and Mr. Lee (the engineers) testified that landscaping would be in accordance with the Baltimore County Landscape Manual, as submitted by Petitioner as their Exhibit No. 5. Further Mr. Paul Lee assured the Board of Appeals that the storm water management pond would be constructed in accordance with the requirements of Baltimore County, State of Maryland and the Federal Government to minimize water run-off into the existing 30 foot storm drain reservation.

PROTESTANT'S PRESENTATION

Donald Michael testifying on behalf of the Protestants indicated he resided at 20 Ridgefield Road in one of the properties south of the proposed project. He has resided there for 25 years and that the existing 30 foot storm drain reservation was originally a drainage ditch, and that during the period of his residence, there was erosion at the stream bed and it became a full running stream at its origination west of York Road. Mr. Michael indicated that there was a natural spring north of the subject property which empties into the storm drain reservation, and that the storm drain reservation was maintained

by the Baltimore County authorities. Mr. Michael further testified that he experienced difficulty in traversing Tenbury Road when traffic was parked on both sides and could live with parking on the west side of Tenbury Road, which would permit traffic to flow freely on Tenbury as a result thereof.

Mr. Lonnie McNew also testified on behalf of the Protestants, indicating that he lived at 9 Greenridge Road which is located in McMullens Green, and he has lived there since 1962. He indicated that when it rains heavily for two days or more, water runs off of the site onto his property, and is concerned about storm water run-off if the present project is constructed. He unfortunately does not understand what a storm water management pond is and what its capabilities are and how it is designed and/or controlled or maintained. Mr. McNew also has difficulties with the traffic on Tenbury Road and indicates that when cars are parked on both sides, two cars can barely pass each other going in opposite directions. Mr. McNew expressed fears about the size of the proposed project as it relates to its dimensions and elevations, and that the buildings may block the breeze which ever comes from west, but will shield his house from any cold blustery winds. He further testified that the building may shade his property, and this Appeals Board took judicial notice that his property is located east of the proposed building and that the sun naturally rises in the east and sets in the west and would therefore not be possible to shade his property. He also expressed concern about the dumpster which on the Exhibit is

positioned 75 feet from the lot line and approximately 100 feet from his residence. Of course, the 75 foot buffer strip landscaped per the Landscape Manual stands between the dumpster and his property. Mr. McNew also indicated that the proposed project may impact on the traffic patterns in the community; however, the expert presented by the Petitioner concluded, "the proposed special exception use does not result in any difference of traffic impacts than could be expected by the development of the subject site with single family dwelling units."

The last Protestant who testified was Mrs. Barbara Poniatowski, who resides at 26 Greenridge Road, who gave the character of the neighborhood; that the neighborhood consisted mainly of single family dwellings with the border of the neighborhood being the commercial corridor on the east side of York Road and the commercial nature on the north side at Seminary Avenue. Mrs. Poniatowski was concerned about the fact that 96 employees would be utilized at the proposed facility, but realized that it would be broken down into shifts and that no more than 36 employees would be on site at any given time. She expressed concern that Johns Hopkins would be using this site as a research facility, but the past experience of Johns Hopkins shows that the use of a facility for research is on a limited time basis, with one individual conducting the research. Mrs. Poniatowski was concerned about medical waste at the premises at 1205 York Road, but indicates that she had never advised Mr. Mangione of her concern, nor did Baltimore County take any action

to satisfy Mrs. Poniatowski. However, this Board knows the regulation of medical waste is determined by Baltimore County, State of Maryland and Federal Regulations, and it goes without saying that the new proposed facility must comply with those Regulations.

Mrs. Poniatowski further was concerned about this project intruding into the community. Although Tenbury Road is the western boundary of the project, the Heaver Plaza parking lot and Fire Museum do project east of Tenbury Road, past the boundary line of the proposed project. The concern of Mrs. Poniatowski regarding the height of the building prompted her to make photographs of other nursing home sites in Baltimore County, and admitted that many of the homes are three stories in height and that eight of the homes are located in DR 5.5 zones. Mrs. Poniatowski also was concerned about the height of the proposed building overshadowing McMullens Green, which theory is preposterous since the property is located to the east of the property, with the sun rising in the east and setting in the west. Mrs. Poniatowski further was concerned about the storm water management pond and wanted assurance that the storm water management pond would control storm water run-off on the proposed site. (As testified to by the engineers, the storm water management pond must conform to Baltimore County, State of Maryland and Federal regulations.) This witness was concerned about the overutilization of this property, however, the granting of the special exception for 120 beds would eliminate th...

concern, along with the concern about the size of the project and the potential noise and/or traffic.

None of the witnesses, when questioned regarding the conditions delineated in Section 502.1 a, b, c, d, e, f, g, and h of the Baltimore County Zoning Regulations, indicated that they would be violated, and in fact, all of the witnesses had no objection to a nursing home being placed on the site if the granting of the special exception provided that the project would consist only of 120 comprehensive care beds, and that the proposal would comply with each and every regulation set by this Board, Baltimore County, the State of Maryland and the Federal Government. All of this, in effect, amounted to no evidence at all.

ARGUMENT OF COUNSEL

The Petitioner, pursuant to Baltimore County Zoning Regulations, specifically Section 500, filed a Petition with the Baltimore County Zoning Office for a Special Exception and a request for two variances to construct a nursing home in a Residential Zone, as set forth in the Baltimore County Zoning Regulations. With the Petition, a plat was prepared by the engineer setting forth the proposed use of the premises, keeping in mind that the premises were in a DR 5.5 Zone. Baltimore County Zoning Regulation, Section 1.B.01 sets forth the regulations with DR Zones in general, and Section 1.B.01.C sets forth the uses permitted by Special Exception in all DR Zones,

subject to the restrictions contained therein. Convalescent homes fall under that category, requiring the Petition for Special Exception. Since the site is in a DR Zone, it is subject under the Supplementary Use Restrictions based on existing sub-developments and characteristics. As a result, it becomes a Residential Transition Use and is subject to the Residential Transition Area restrictions. The site is within 300 feet of dwellings in the existing sub-division, and therefore becomes subject to the restrictions in Residential Transition Areas, namely, the maximum height of the building, the maximum width and length of the building, the set-back requirements, the bulk regulations, and the buffer area requirements. Of course, parking spaces are permitted under Section 409 of the Baltimore County Zoning Regulations.

From the testimony of the experts on behalf of the Petitioner, the proposed project complies with each and every Baltimore County Zoning Regulation, which testimony was uncontradicted throughout the proceeding. In fact, no experts were produced by the Protestants or People's Counsel to contradict the testimony of both registered professional engineers, the traffic engineer, and the Petitioner.

This hearing is an Appeal from the Zoning Commissioner de novo, at which time both the Petitioner and Protestants were represented by counsel, produced witnesses and submitted voluminous oral and written evidence. It goes without saying that most of the evidence is not relevant, but at administrative

hearings, this Board wisely admitted all evidence offered by all parties. Throughout the hearing, the Petitioner displayed to the Board all facets of the proposal to satisfy the Board as to compliance with the Baltimore County Zoning Regulations, specifically, the requirements of sub-paragraph 1.B.01.1 B.1 where applicable, with the ultimate goal of convincing the Board of Appeals that the use for which the special exception is requested will not contravene the principles and conditions set forth in Section 502.1 a, b, c, d, e, f, g, and h of the Baltimore County Zoning Regulations.

It is the position of the Petitioner "the function of this Board is to exercise the discretion of experts, determine the proper allegation and interpretation of the Baltimore County Zoning Regulations, the most appropriate use of the land, facilities for sewers, water, trash disposal and the ability of the County to supply such services, the ability of fire fighting equipment, and the effect of such use upon the peaceful enjoyment of people in their homes, traffic conditions, including facilities for pedestrians such as sidewalks, parking facilities available, and the access of cars to the roadway, the conservation of property values, the contribution, if any, such proposed use would make toward the deterioration of growth of the neighborhood and community.

Your Petitioner agrees with the Court in the case of Rockville Fuel vs. Board of Appeals, 257 Md. p. 183, et seq., wherein they stated, at page 187, that:

"It has been recognized that zoning regulations reasonable in substance and reasonably applied do, or are presumed to, promote the public safety, health, morals, welfare and prosperity and aid in community development. These recognitions take the form of a strong presumption of the validity and correctness of comprehensive zoning or rezoning. There cannot be validity and correctness in a comprehensive zoning plan unless it does promote the general welfare. It follows logically, as the decisions have held, that an attacker bears the heavy burden of overcoming the presumption that the legislative action was not in the interests of health, safety, morals or the general welfare. The conditional use or special exception, as it generally is called, is a part of comprehensive planning and shares the presumption that such a plan is in the interests of the general welfare and valid."

At page 188:

"We went to some pains to stress that the special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a specified use district, absent any fact or circumstance in a particular case which would change the presumptive finding. We said: 'The duties given the Board are to judge whether the neighboring properties and the general neighborhood would be adversely affected, and whether the use, in the particular case, is in harmony with the general purpose and intent of the zoning plan'."

At page 189:

"A special exception is a use that would not be appropriate generally or without restriction throughout the zone, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in each zone as

special exceptions, if specific provision for such special exceptions is made in this zoning ordinance."

The conclusion of the Court of Appeals of Maryland was set forth on page 193, at which point it stated:

"To deny the *prima facie* right of the property owner to enjoy the special exception, the Board would have had to have had before it evidence that the proposed use would 'unduly disturb or harmfully influence other uses in the area adjoining' or evidence that the proposed use would not be 'in harmony with the purpose and intent of this ordinance'. There simply was no evidence of any of these things and abundant probative evidence to the contrary."

The case of *Anderson v. Sawyer*, 23 Md. App. 612, is one for the Board to consider as the issues set forth in that case are similar to those at bar. In the *Anderson* case, the application for such special exception is for the construction of a funeral home, with the site similar to that of the present project. Therein, as in this case, the testimony was presented to show that the grant of the special exception satisfied all of the requirements of the Baltimore County Zoning Regulations. In opposition, the protestants, who were neighboring land owners, presented testimony intended to show that the grant of the requested special exception would tend to create congestion on neighboring roads and streets and would, in other respects, be detrimental to the health, safety and general welfare of the locality involved. In the *Anderson* case, as in this case, the protestants alleged that the proposed use would create traffic

congestion and would generally increase the amount of traffic moving throughout the residential community. Moreover, they alleged that the proposed use would create a wedge for future commercialization, and would have a depressing psychological effect that would interfere with the enjoyment of the adjoining properties, make them less saleable, and prevent them from appreciating in value. The Court of Appeals, on page 617, affirmatively stated:

"The conditional use or special exception is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan."

"Whereas the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to

decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal."

At page 618, the Court concluded:

"Thus, unsupported conclusions of witnesses to the effect that a proposed use will or will not result in harm amount to nothing more than vague and generalized expressions of opinion which are lacking in probative value."

In the *Anderson* case, as in this case, the applicant has presented much evidence to show that the proposed use would not interfere with the enjoyment of adjoining properties and would not depreciate the value of such homes. Extensive landscaping is to be provided in order to screen the nursing home operations from view. The 100 parking spaces proposed are more than ample so that it will be unnecessary for cars to park on Tenbury Road. A qualified expert in the field of real estate transactions and real estate appraisers, Frederick Klaus, testified that the grant of the special exception would not adversely affect the property values of the adjoining residences. In support of his position, he testified as to the original purchase price and the subsequent sale price of a number of homes in close proximity to other nursing homes in Baltimore County. His figures indicated that all of those homes had appreciated in value. Mr. Klaus further testified that the proposed use constituted an appropriate buffer between the existing commercial and residential zones and would stabilize the neighborhood by

preventing further expansion of the commercial uses located to the west of the subject property and to the north of the subject property. He concluded that given its location adjoining commercially developed land, the subject property is not likely ever to be developed with single family residences. In contrast, the Protestant property owners expressed the view that the requested special exception is an intrusion into the community and may create further commercialization. This conclusion is completely vitiated by the evidence and testimony in the record that there are existing single family residences on all of the property which adjoins the subject property, so that the possibility of commercial intrusion into the community is remote. Thus the testimony of the neighbors, which neither contradicts nor rebuts that of the experts, amounts to nothing more than a generalized fear unsupported by facts or reasons. It does not constitute probative evidence on the question of adverse effect.

In another case before the Court of Appeals in 270 Md. p. 41, *Turner v. Hammond* at page 54, Judge McWilliams stated:

"Occasionally the bar and less often the bench lose sight of the concept that the conditional use or special exception, as it is generally called, is a part of the comprehensive zoning plan sharing the presumption that as such it is in the interest of the general welfare and, therefore, valid. The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses the legislature has determined can be allowed, properly albeit *prima facie*, absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties and the general

neighborhood would be adversely affected, and whether the use, in the particular case, is in harmony with the general purpose and intent of the zoning plan."

"While the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. It he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material but if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal."

The *Turner* case has similarities to the case at bar in that this Board has accepted a document containing signatures of many members of the community regarding the project. The Board has also received letters from residents adjacent to the site in favor of the project. However, Judge McWilliams stated on Page 60:

"But we have said countless times that these matters cannot be resolved by a plebiscite. If the residents do not want apartments they should prevail upon the local legislature to change the ordinance. The property owner has a *prima facie* right to enjoy the benefits of the special exception if he brings himself within the specific requirements of the ordinance. To deny him this right the Board must have had before it evidence that the proposed use 'will substantially affect adversely the uses of adjacent and neighboring property permitted by this ordinance.' There is no such

evidence and there is abundant probative evidence to the contrary. The case will be remanded to the board for the granting of Turner's application for a special exception upon such conditions and safeguards as the Board may find appropriate under the ordinance and the evidence."

In *Schultz v. Pritts*, case, 291 Md., which is another funeral home case, and therein the Court addressed the standard to determine whether a requested special exception use should be granted. On page 11, the Court expressed:

"This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan."

"Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the

comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious and illegal."

Analogous to the present case, the Court of Appeals on pages 14 and 15 of *Schultz v. Pritts*, restated that by defining a convalescent home as an appropriate use by way of special exception, the legislature of Baltimore County has in essence declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community. As part of the comprehensive zoning plan, this legislative declaration shares in a presumption of validity and correctness which the courts will honor. The presumption that the general welfare is promoted by allowing convalescent homes in a residential use district cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegations of a convalescent home use is inherently psychologically depressing and adversely effects on adjoining property values as well as other evidence which confirms that, is generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community.

On page 17 of the Schultz v. Pritts case, the Court of Appeals appropriately concluded:

"We think it fully appropriate that [the trial court] found the proper test to be a comparison between the traffic problems that might arise under the proposed use and traffic problems that could arise from the use of the premises now permitted by law. We recognize that traffic impact is a sufficient basis to deny a zoning application, including an application for a special exception. But traffic impact on an application for a special exception ought to be measured against that which could arising under permissible use, and not merely on existing traffic loads around the undeveloped premises. Where, as here, the potential volume of traffic under the requested use would appear to be no greater than that which would arise from permitted uses, we believe it arbitrary, capricious and illegal to deny the application for special exception on vehicular traffic grounds."

The purpose of the Baltimore County Zoning Regulations are to provide a tool by which to establish general areas of districts devoted to selected uses. Generally, when a use district is established, the Zoning Regulations prescribe that certain uses are permitted as of right (permitted use), while other uses are permitted only under certain conditions (special exception). Here a convalescent home is a permitted use under certain conditions (special exception). The Court in Schultz v. Pritts, at page 22 concluded:

"We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above

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and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

Given this "legislative predetermination" that a special exception is "conditionally compatible", it is the duty of the Board to determine whether the special exception requested does meet the specified statutory requirements, and that the use contemplated does not adversely affect the neighboring properties and general neighborhood scheme and that the special exception be in harmony with the general purpose and intent of the Zoning Regulations.

The Petitioner feels that he has met his burden of producing probative and credible evidence on all of the issues to be proven, utilizing unopposed experts, and that the evidence of the Protestants was so vague and indefinite as to fail to raise fair dispute in a reasoning mind. A review of the holdings in the following cases would conclude that refusing to grant the special exception with the variances requested in this proceeding would be arbitrary, capricious and illegal:

Rockville Fuel and Feed Company, Inc. v. Board of Appeals, 257 Md. 183;
Anderson v. Sawyer, 23 Md. App. 612;
Turner v. Hammond, 270 Md. 41;
Schultz v. Pritts, 291 Md. 1;
Horbal v. City of Ham Lake, 393 N.W. 2d 5 (Minn. App. 1986);
Zengerle v. Board of County Commissioners, 262 Md. 1;
Prince George's County v. E. L. Gardner, Inc., 47 Md. App. 471;
City of Baltimore v. Cohn, 204 Md. 523;

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Skipjack Cove Marina v. Board of County Commissioners, 264 Md. 381;

Spaid v. Board of County Commissioners, 250 Md. 369;

Klein v. Colonial Pipeline Co., 55 Md. App. 324;

Miller v. Forty West Builders, Inc., 62 Md. App. 320;

Hofmeister v. The Frank Realty Company, 35 Md. App. 691; and

Montgomery Co. v. Merlands Club, 202 Md. 279;

Respectfully submitted,

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426-4538
Attorney for Petitioner

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY, that on this 23rd day of September, 1988, a copy of the foregoing Submission of Petitioner was mailed, postage prepaid, to:

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IN RE * BEFORE THE BOARD OF APPEALS
NICHOLAS B. MANGIONE, * FOR BALTIMORE COUNTY
SE Corner Greenridge Road *
and Tenbury Road * Case No. 87-504-XA
9th District *

PROTESTANTS' MEMORANDUM OF LAW

NOW COMES, Dulaney Valley Improvement Association, Inc., an individual Protestant, by its attorney, Michael P. Tanczyn, Esq., who respectfully submits the following Memorandum of Law.

The Petitioner, Nicholas B. Mangione, had filed a request for Special Exception in a DR 5.5 zone for a nominal 4.0 acre parcel located on the corner of Greenridge and Tenbury Roads in Lutherville, Maryland, and separately petitioned for a zoning variance to permit a parking lot setback of 25 feet lieu of the required 40 feet and to permit a single faced illuminated sign with a full area of 32 square feet in lieu of the allowed 1 square foot.

The Petitioner noted an appeal from the decision of the then Zoning Commissioner, Arnold Jablon, denying the Petition for Special Exception citing in pertinent part the failure to comply with RTA requirements and failure to meet the requirements of Section 502.1 and also denying the variance request.

The Protestants are the community association within whose geographical confines the Petitioner's property is located and individual residents from the neighborhood.

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Although the Petitioner's plat produced to describe this project was done by George William Stevens, Jr. and Associates, Inc., a Towson civil engineering firm, the Petitioner's engineering witness was Paul Lee, who was stipulated to be a professional engineer although not in the offices of George William Stevens, Jr. and Associates, Inc. but rather was self-employed. His testimony was that he had reviewed the plat some two years before April 26, 1988, the date he testified, that he had reviewed the zoning for the property, talked to the Petitioner and was relying on what the Petitioner had told him so far as the use proposed for the property; he had reviewed the Zoning Advisory Committee comments; was familiar with the Landscape Manual as well as the change in the County Parking Ordinance created by Bill No. 26-88.

He testified that the property could be used for townhomes and that the Petitioner's plat did not show storm drain easements and would meet the requirements of Section 502.1 in his opinion. On cross-examination he admitted that he had done no storm water calculations for the property, that he had done no soil studies for the property, that he had not visited the stream which was washed out to the south of the Petitioner's property to the rear of the Ridgefield Road homes; that in his opinion the RTA requirements were met based on a letter he had received from the Zoning Commissioner's office concerning common ownership of undeveloped residential lots on the west side of Tenbury Road

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across from the proposed project; and further that, in his opinion, the RTA area requirements concerning a connector between the two proposed buildings was not violated because of a discussion he had had with representatives of the Baltimore County Zoning office. It was Mr. Lee's opinion that the requirements of the law concerning storm water management and run-off and traffic engineering, another department, would require the Petitioner to create projects which would not damage the abutting or adjacent neighbors or the community at large.

The Petitioner's next witness was Wes Guckert of The Traffic Group, Inc. who testified as a traffic engineer and propounded a booklet exhibit concerning a traffic study done by his group for the subject site. According to the traffic study, comparisons were made with existing nursing homes to compare traffic experienced at those sites with Petitioner's proposed site here. Mr. Guckert had personally visited the subject place but had not visited the other sites, as that work was done by someone else for him. It was his opinion that the requirements of Section 502.1 would be met by the Petitioner's plan and that the traffic generated at this site would be less than what could be expected to be generated by other use of the property for townhomes or other permitted uses. On cross-examination Mr. Guckert admitted he was unaware of the size of the other nursing homes but he was aware that one of the sample nursing homes was another one owned by the Petitioner in Howard County and that the other nursing

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homes to his knowledge directly access main feeder roads as opposed to the Petitioner's site at Tenbury and Greenridge, which access York Road as the main feeder street some distance from the project.

The Petitioner also called Frederick Klaus, who was qualified as a real estate appraiser, who testified that he thought nursing home would represent an improvement in the neighborhood when compared to a townhome development, which is also permitted on the site; that he believed that the requirements of Section 502.1 would be met by the Petitioner's project as proposed and that he had compared the Petitioner's project with the Manor Care Nursing Center on Charles Street as well as other nursing centers and found Petitioner's project would enhance the neighborhood. He did respond on cross-examination that he further believes the buildings as proposed would not interfere with light or air for the downhill neighbors and that the County regulations would probably regulate the storm water run-off; and that the project would not negatively effect home values in the neighborhood.

The Petitioner, Nicholas B. Mangione, was called as a witness, who testified that he wished to construct a nursing home at this site; that he and his family had owned the property for years; that they had given up a portion of the site in order to have the Tenbury Road cut through from Ridgefield to Greenridge; that he had not charged the community any money for doing that;

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and that he testified generally as to the operation proposed, the number of employees, number of shifts and services to be offered to residents which would require outside visitors coming to the site. On cross-examination he stated that the proposal was a concept and that he could not say what the final grading would be for the site other than that he would follow all County regulations and that it would be built in accordance with County regulations. He admitted that his request for State approval of nursing care beds had been denied, which decision he had appealed. He testified that his project would meet the requirements of Section 502.1 and that the community opposition was caused by people who didn't want anything to be developed on that site. He further testified that the medical waste going next to the dumpster at 1205 York Road was cleaned up as soon as he became aware of it and that the community had never contacted him directly concerning that waste.

Numerous exhibits were propounded by the Petitioner.

The Protestants' witnesses include representatives of Dulaney Valley Improvement Association, Inc. and in addition George Lonnie McNew, who resided in an adjacent subdivision, Larry Rackson who resided in the neighborhood, Donald Michael, a past president of the community association and long time resident of the community, who resided on Ridgefield Road, and Barbara Poniatowski, past president of the community association and resident of Greenridge Road.

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The neighbors' myriad concerns about this project had to do with the scale and scope of the two large buildings sitting on the prominent or dominant terrain above the neighborhood, which would in their opinion block out light from the west and with prevailing breezes from the west would bring whatever odors were generated by the central kitchen into their community as well as from the dumpster located closest to their community on the Petitioner's property. They noted that the Petitioner's project would represent the greatest incursion into their community on the east side of York Road and would represent a commercial project with a 24-hour operation to support the number of people proposed to be housed in the facility.

They further noted that they had participated in the Maryland State Health Service Cost Review Commission proceeding and that Mr. Mangione's petition for 116 beds had been denied and that the approval of the State had been given to the proposal of Village Care.

They further testified to community concerns about the small arterial streets whose only access to York Road from the community was by way of Greenridge Road since Ridgefield Road had been closed off adjacent to the exit from the Baltimore Beltway to the south years before. They cited the narrow, winding nature of their streets and their fear that children playing in the streets would be jeopardized by the increased traffic. They further testified as to the problems of traffic passing on Tenbury Road

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with the existing parking on both sides of Tenbury Road and to their concern for the washing out of the gully in the stream to the south of the Petitioner's property as well as the overflow of contaminated medical waste from the dumpster of 1205 York Road, also owned or controlled by the Petitioner, down a culvert into the streambed, threatening both the individual community and the larger community as the stream directly feeds into Long Quarter Branch which runs to the Loch Raven watershed.

Members of Dulaney Valley Improvement Association, Inc. had also done a survey of 20 nursing homes in Baltimore County, illustrated by pictures to accompany the survey charts, to compare those operations with the Petitioner's proposed project. The testimony was to establish the point that there were no nursing three stories in height as proposed by the Petitioner on prominent terrain compared to the residential neighbors or representing as deep an incursion into a residential community as would the Petitioner's project in the DR 5.5 zone at the proposed site. Further, the comparison of beds at the other nursing homes established that some of the nursing homes used by the Petitioner in its traffic study were homes which had fewer beds than those proposed by the Petitioner or homes which, in some cases, had beds administratively reduced by voluntary action on the part of the nursing homes.

ISSUE I

Requirements of Residential Transition of the Baltimore

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County Zoning Ordinance, Section 1801.1.B.1.(b), concerning side yard setbacks and the connector passageway between detached buildings designed to prevent overcrowding of land and to accomplish the objectives of residential transition regulations were violated by the Petitioner's proposal.

The property is located in a DR 5.5 zone and is thus subject to the residential transition requirements of 1801.1.B.1.(a).1.(b) and 2.

"1. A residential transition area is any D.R. zone or part thereof which lies . . . (b) within 250 feet of any point lying within a vacant lot of record which is itself wholly or partially classified as D.R. and which is two acres or less in area."

Further Section 1801.1.B.3.(a) requires a minimum building setback line of 75 feet from the front or side of any proposed building and 150 feet from the rear.

Section 1801.1.B.1.(b).2 requires where there are attached buildings a maximum width or length cannot exceed 130 feet and that buildings which are connected by an exterior passageway no more than one story in height shall be considered as detached buildings. Passageways shall not be included in determining width or length of the building, referring to 1801.1.B.1.(b).4, that section requires a minimum separation between detached principal buildings in a residential transition area. The minimum separation shall be a distance equal to 1-1/2 times the height of the higher building.

With regard to the first issue, it is the Petitioner's

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contention that RTA does not apply because of a letter he received from the Zoning Commissioner evidencing a Zoning Commissioner policy that since the Petitioner owns or controls the property across on the west side of Tenbury Road, which is zoned D.R. in part or in whole, that is not subject to the RTA regulations. That policy of the Zoning Commissioner has no basis in the law in that there is no such exception stated in the enabling legislation or in the zoning regulations themselves. It is clear that a zoning board may not grant an exception or variance where a statute or ordinance would be violated. Backus vs County Board of Appeals for Montgomery County, 224 Md 28, 166 A 2d 241 (1961). Town of Somerset vs Montgomery County Board of Appeals, 245 Md 52, 225 A 2d 294 (1966).

It is clear that the residential lots of record found to be called for in the ordinance and found by the Zoning Commissioner at the prior hearing to be 2 acres or less in area exist on the west side of Tenbury Road. There is nothing in the enabling legislation or the zoning ordinance as stated approving or prescribing a policy such as that propounded by the Petitioner as being the Zoning Commissioner's policy. An administrative or an enforcement body such as the Zoning Commissioner's office must interpret and enforce regulations and laws as passed by the Baltimore County Council and not to make its own law as the Petitioner would ask this Board to do would be to accept a letter from the Zoning Commissioner which postulates a particular policy

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which has no legal authority for its interpretation in the RTA ordinance, clearly being an ultra vires act on the part of the Zoning Commissioner who would render any decision by the Board to base thereon to be arbitrary and capricious ab initio.

Further, with regard to the minimum separation between buildings, it clear from the Petitioner's drawing that a one-story or less passageway is shown between Buildings A and B as proposed. It is further clear that the proposed height of either building is the maximum allowed by law, or 35 feet. Applying the provisions of the minimum separation statute, that would require a connector passageway of at least 52 feet to meet the requirements of the law. It is clear from the Petitioner's drawings that the distance is much shorter than that and for the authority previously stated, the Board would erroneously approve such a plan which did not provide a minimum separation between these two detached buildings.

The reason for the rule in considering residential transition areas is clearly to avoid overcrowding land by providing for a minimum distance between principal buildings or detached buildings as stated in the statute. The language used by the County Council was mandatory in the use of the word "shall" and the Petitioner's plan clearly does not meet that requirement of the law, notwithstanding again Mr. Lee's hearsay explanation that it had been approved by officials in the Baltimore County Zoning Commissioner's office.

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It is at once clear that the Petition for Variance ought be denied for failure of the Petitioner to evidence any practical difficulties or unnecessary hardship causing him a substantial or unnecessary injustice to comply with the zoning regulations.

The first requirement is that the owner must show that the difficulties or hardships were not the result of the owner's own actions. Marino vs City of Baltimore, 215 Md 206, 137 A 2d 198 (1958). Clearly the Petitioner's requests for two buildings housing 240 beds and ancillary services including day care and support services is created by himself in proposing such an overscaled project for this residentially zoned piece of land. In fact the Petitioner admitted that if his project was reduced in size he would not need the variance for the setback requirement on the front portion of the property or the oversized sign which the Planning Office recommended be disapproved.

Section 307 of the Baltimore County Zoning Ordinances deals with variances where strict compliance would result in practical difficulty or unreasonable hardship. Here there is no hardship not self-induced by the Petitioner in complying with the reasonable regulations of Baltimore County, particularly applicable to a proposed use in an area surrounded by residential properties as the Petitioner's property on all three sides.

ISSUE II

That the Petitioner failed to meet the requirements of Section 502.1.

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The leading and oft-quoted case of Schultz vs Pritts, 291 Md 1, 432 A 2d 1319 (1981) provides judicial interpretation of the standards to be imposed in considering a special exception request. Under the Schultz standard the Protestants bear the burden of showing that the proposed use at that site within, in this case a DR 5.5 zone, opposes or engenders problems peculiar to that location over and above the garden variety problems generated by such a use at any other place in a similar DR 5.5 zone. The Protestants' concerns in this case involve every prong of Section 502.1.

First they considered the health, safety or general welfare of the locality to be threatened by the inevitable storm water runoff generated by paving more than 2/3rds of the 4.0 acre site, topographically resembling a ski slope, with the hill created dumping water into the community stream and gully which have been washed out by earlier development, including Petitioner's property at 1205 York Road. They were concerned about the 3-story nursing home operation with central kitchen to feed 300 people per day, including staff being located as far into their community as Petitioner's project is proposed to tower over the residences on three sides. They are concerned with safety from the psycho-geriatric, traffic safety as it impacted on them concerning the small, narrow arterial winding streets utilized by them for their internal community road network to gain access either to York Road or to the feeder streets on to the east. They

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were similarly concerned for those reasons about congestion in the roads, streets or alleys based on the overflow parking being generated by the Petitioner's use of 1205 York Road for which there is was ample testimony. They were concerned about the ability of fire equipment getting to either the Petitioner's site or to the internal streets of the community because of the necessary access of Tenbury Road and Greenridge to get to York Road and the closest community hospital for the residents of the community on Greenridge and to the south of Greenridge.

The Petitioner's project as proposed clearly overcrows the land providing 240 patient beds, not including day care for the elderly estimated by the Petitioner to be between 20 and 30 additional individuals, and staff of up to 90 employees over a 24 hour period, plus visitors providing services, making deliveries or representing relatives or friends visiting residents of the two nursing home buildings. That was clearly in excess of the number of residences proposed by way of townhomes which, according to Petitioner's calculations, could not exceed 25 units based on 4.0 acres and which, considering the topography and the necessity for interior roads would likely be less than 25 dwelling units.

Further, the size and scale of the buildings proposed exceeded any of the other 20 nursing homes surveyed and particularly the fewer number also within a density residential zone for Baltimore County. There were no other 3-story buildings and there were no other homes which impacted on a community in

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such a way and by way of either geographic penetration of a community area or in requiring utilization of community streets to access main feeder roads as in Petitioner's property.

The Petitioner quite simply has done no storm water studies nor had his expert engineer, who also had not studied the soils on the site, but who both blithely maintained that County regulations would have to be met and that therefore the Petitioner's application would meet 502.1.e. and h. The experience of the neighbors for storm water runoff at present on an unimproved site belies such confident predictions, particularly when it was admitted by the Petitioner and his engineer that 2/3rds of the site would be paved over, either with buildings or proposed parking lots, all of which would bring to a down hill large area called a storm water reservation pond whose dimensions were conceptually stated since no calculations had been done, but would represent in itself an attractive nuisance to the neighborhood and a dangerous area for children because of the proposed depth, length and breadth of the storm water runoff system.

Finally, any storm water generated as piped from the reservation area would further wash out the gully which has been widened considerably since the commercial development of 1205 York Road back in the mid-70s to the present as well as other developments further to the west where the stream originates. The 3-story sitting on prominent topography would inevitably cause the

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shadow to be cast to the residential neighbors to the east, particularly considering that the topography shown as the high ground at Tenbury and Greenridge which continues on approximately or roughly from Tenbury to York Road which represents the high ground in the area. Therefore, any 3-story structures built on top of the existing topography would of necessity block the properties to the east for a combined frontage of in excess of 200 linear feet across the rear and south side of the building, having an impact on the residences on all three sides.

It is clear from the Petitioner's testimony that the central kitchen which is supposed to be located in Wing B to the rear would exhaust from the rear of the building and that the prevailing winds traveling from west to east would carry any odors into the community from such a structure.

Additionally, a dumpster was proposed to be in the closest paved corner to McMullen's Green, residential properties to the east and to the properties on Greenridge Road to the north, further providing odors to be disbursed through the communities by the prevailing winds.

The patent inconsistency of the Petitioner's progress with properties' zoning classifications can be shown by a review of the survey of other nursing homes located in DR 5.5 zones. No other project of this type has built in Baltimore County that is as large, as massive in building size, possesses as many beds, is located within a community's residential borders or requires

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access from narrow community roads in what was described as a village-type community to get access to a main feeder road as does the Petitioner's property. This is hardly the harmonious site use desired by the buffer between commercial uses and a residential use as portended in either the special exception uses and density residential zones or the RTA requirements.

Finally, the paving of 2/3rds of the property will exacerbate a storm water runoff problem caused naturally by the topography of the land and will be inconsistent with the surface and vegetative retention provisions of the Zoning Regulations. Traffic impact in and of itself is a sufficient basis to deny an application for special exception. Gowl vs Atlantic Richfield Company, 27 Md App 10, 341 A 2d 832 (1975).

It is clear that for the reasons stated the Protestants respectfully request this Honorable Board to deny the Petition for Special Exception and the Petition for the variances for the reasons stated.

Respectfully Submitted,

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone: (301) 296-8823

16

I HEREBY CERTIFY that on this 22nd day of September, 1988, a copy of the foregoing was mailed, postage prepaid, to Richard J. DiPasquale, Esq., 5718 Harford Road, Baltimore, Maryland, 21214, attorney for the Petitioner; and to Phyllis Cole Friedman, Esq. and Peter Max Zimmerman, Esq., People's Counsel for Baltimore County, 111 West Chesapeake Avenue, Suite 304, Towson, Maryland, 21204.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

17

IN RE * BEFORE THE BOARD OF APPEALS
NICHOLAS B. MANGIONE, * OF BALTIMORE COUNTY
SE Corner Greenridge Road
and Tenbury Road *
9th District * Case No. 87-504-XA
* * * * *

SUBPOENA DUCES TECUM

SECRETARY, please issue a Subpoena for the following person to appear and testify before the Board of Appeals of Baltimore County on Tuesday, April 19, 1988, at 10:00 a.m. to testify for the Protestant before the Board of Appeals, Second Floor, Old Courthouse, Towson, Maryland, 21204:

Mr. Jason Thompson
Zoning Enforcement Office
111 West Chesapeake Avenue
Towson, Maryland 21204

and to bring with him all Zoning Enforcement files relating to 1205 York Road, Lutherville, Maryland, 21093.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for the Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone: (301) 296-8823

12:50 4/11/88

Served Jason Thompson

for Jason Thompson

111 W. Chesapeake Ave

Towson Md

Michael Tanczyn

RECEIVED
COUNTY BOARD OF APPEALS
APR 19 8 2 34

IN RE * BEFORE THE BOARD OF APPEALS
NICHOLAS B. MANGIONE, * OF BALTIMORE COUNTY
SE Corner Greenridge Road
and Tenbury Road *
9th District * Case No. 87-504-XA
* * * * *

SUBPOENA DUCES TECUM

SECRETARY, please issue a Subpoena for the following person to appear and testify before the Board of Appeals of Baltimore County on Tuesday, April 19, 1988, at 10:00 a.m. to testify for the Protestant before the Board of Appeals, Second Floor, Old Courthouse, Towson, Maryland, 21204:

James Dyer
Baltimore County Zoning Office
111 West Chesapeake Avenue
Towson, Maryland 21204

and to bring with him copies of all zoning records pertaining to Nicholas B. Mangione and 1205 York Road.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for the Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone: (301) 296-8823

12:00 4/11/88

Served Jim Dyer

111 W Chesapeake Ave

Towson Md 21204

Michael Tanczyn

RECEIVED
COUNTY BOARD OF APPEALS
APR 19 8 2 34

IN RE * BEFORE THE BOARD OF APPEALS
NICHOLAS B. MANGIONE, * OF BALTIMORE COUNTY
SE Corner Greenridge Road
and Tenbury Road *
9th District * Case No. 87-504-XA
* * * * *

SUBPOENA DUCES TECUM

SECRETARY, please issue a Subpoena for the following person to appear and testify before the Board of Appeals of Baltimore County on Tuesday, April 19, 1988, at 10:00 a.m. to testify for the Protestant before the Board of Appeals, Second Floor, Old Courthouse, Towson, Maryland, 21204:

Custodian of Records
Baltimore County Office of Permits & Licenses
111 West Chesapeake Avenue
Towson, Maryland 21204

and to bring with him or her copies of any grading or building permits and files for 1205 York Road from 1973 through the present.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.
Attorney for the Protestants
Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
Telephone: (301) 296-8823

12:05 4/11/88

Served Jim Nolan

111 W Chesapeake Ave

Towson Md 21204

Michael Tanczyn

RECEIVED
COUNTY BOARD OF APPEALS
APR 19 8 2 34

RECEIVED
JUL 31 1987

RE: PETITION FOR SPECIAL EXCEPTION
S/E Corner Greenridge & Tenbury
Rds., 9th District

BEFORE THE ZONING OFFICE
OF BALTIMORE COUNTY

NICHOLAS B. MANGIONE, Petitioner: Case No. 87-504 XA

NOTICE OF APPEAL

Please note an appeal by Nicholas B. Mangione, 1205 York Road, Timonium, Maryland 21093, from the decision of the Zoning Commissioner under date of July 9, 1987, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

Richard J. DiPasquale
5718 Harford Road
Baltimore, Maryland 21214
(301) 426-4538

I HEREBY CERTIFY that on this 14 day of July, 1987, a copy of the foregoing Notice of Appeal was mailed to Michael P. Tanczyn, P.A. Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204.

Richard J. DiPasquale

IN RE: PETITION SPECIAL EXCEPTION
SE corner of Greenridge and
Tenbury Roads -
9th Election District
Nicholas B. Mangione,
Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 87-504-XA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special exception for a nursing home and, additionally, variances to permit a front yard setback of 25 feet in lieu of the required 40 feet and a sign containing 32 square feet in lieu of the permitted one square foot, as more particularly described on Petitioner's Exhibit 1.

The Petitioner appeared and testified and was represented by Counsel. Testifying on behalf of the Petitioner were John Strong Smith, a registered civil engineer, and Frederick Klaus, an expert real estate appraiser. Many protestants, individually and as members of the Dulany Valley Improvement Association, Inc., appeared and were also represented by Counsel.

Testimony indicated that the subject property, zoned D.R.5.5 and containing four acres, is located on Tenbury Road between Greenridge and Ridgefield Roads and is presently unimproved. The Petitioner proposes to construct a nursing home, no more than 35 feet in height as computed pursuant to Zoning Commissioner Policy No. RM-6. Two wings, one being 60' x 210' and the other being 130' x 130', would be connected with a 15' x 20' passageway. It will have 240 beds and three stories, and 100 parking spaces will be provided.

The property is surrounded by three residential neighborhoods and would be within a residential transition area (R.T.A.), thereby requiring a 150-foot rear yard setback to McShallens Green development, along the east property

line, and 75-foot side yard setbacks. The building will front on Tenbury Road, and the Petitioner is requesting a 25-foot front yard setback. The property across Tenbury Road, owned by the Petitioner and by Mr. and Mrs. Charles Held, is unimproved except for the Held's residence to the southwest, which is entirely within an R-0 Zone. The remainder of the property, within either 250 feet or 300 feet of the subject property, is zoned residential. The Petitioner, by deed, owns the parcel bordering Tenbury and Greenridge Roads, across Tenbury Road from the site, which consists of 0.77 acres and is known as Parcel E. The Helds own two other recorded lots adjacent thereto, one containing 1.87 acres and the other containing approximately one-half of an acre. The Petitioner has a lease agreement with the Helds for this property, with an option to purchase. Each of these three parcels is recorded as a distinct lot of record. Mr. Smith believes that under these circumstances, the property across from the site does not create an R.T.A. He contends that the agreement executed by the Petitioner and the Helds combines the lots into one tract and thereby creates a lot in excess of two acres. Therefore, the R.T.A. would not be applicable. He pointed to letters, introduced as Petitioner's Exhibits 2 and 3, which express the same conclusion reached by James E. Dyer, Zoning Supervisor. He also pointed to a decision rendered by the Deputy Zoning Commissioner in Case No. 87-355-SPH.

The Petitioner proposes 120 beds for domiciliary care, i.e., housing with no nursing care, and 116 beds for nursing patients. In addition, four psycho-geriatric beds will be available. An adult day care for up to 20 persons is also proposed. In order to provide the care necessary, the wings have been designed as indicated on Petitioner's Exhibit 1. The front yard setback is being requested to enable the Petitioner to construct a building large enough to provide adequate and acceptable patient care and still be in compliance with the R.T.A. requirements to the sides and rear. If the front yard setback

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were denied, the size of the building would need to be reduced, thereby negating the type of care that could be provided.

Mr. Klaus testified that, in his opinion, the nursing home would cause no adverse impact on property values and in fact would cause no impact to them at all.

Mr. Smith testified that, in his opinion, the nursing home would have no adverse impact on the surrounding community and that all of the conditions precedent as delineated in Section 502.1, Baltimore County Zoning Regulations (BCZR), will be satisfied. He further testified that, although he is not a traffic engineer, he felt that the proposed use would not create traffic congestion and would not overcrowd the existing roads. He indicated that the traffic generated will not add to the peak traffic patterns in the morning or early evening. Visitors, who will comprise a vast majority of the traffic, will normally come during off-peak hours, and the employees will usually arrive and leave earlier than the peak traffic times for the area.

The protestants argued that the R.T.A. requirements are applicable to the west property line and that the project, as proposed, should and must be denied since the appropriate buffer to the west property line has not been provided. They also argued that the nursing home would further aggravate an existing storm water run-off problem. They complained that the proposal would simply compound an already existing problem of traffic caused by businesses on York Road. They argued that the subject site is inappropriate for this use.

The Petitioner requests relief from Section 1B02.1.C.5, pursuant to Section 502.1, and from Sections 1B02.2.B (Section V.B.11, Comprehensive Manual of Development Policies (CMDP), and 413.1.a, pursuant to Section 307, BCZR.

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The primary issue presented is not whether the requested special exception complies with Section 502.1, but whether the R.T.A. requirements are applicable to the west property line, toward the front of the proposed building. If an R.T.A. exists, then this special exception must be denied. If it does not exist, then the issue of compliance with Section 502.1 must be determined.

Section 1B01.1.B.1.a.1.(b), BCZR, defines a "residential transition area" as any D.R. zone or part thereof which lies "within 250 feet of any point lying within a vacant lot of record which is itself wholly or partially classified as D.R. and which is two acres or less in area." Section 101, Definitions, defines "lot of record" as "[a] parcel of land with boundaries as recorded in the Land Records of Baltimore County on the same date as the effective date of the zoning regulation which governs the use, subdivision, or other condition thereof."

The testimony presented clearly shows that the property to the west of the subject site and within 250 feet of the site across Tenbury Road, owned by Mr. and Mrs. Held or by the Petitioner, is recorded within the Land Records of Baltimore County as three distinct lots, each less than two acres in size. The argument that the lease and option agreements create a single entity is not supported in the law. Certainly, a single lot of record is not created. A combination of the lots held by deed of record by the Petitioner and Mr. and Mrs. Held does not comply with the law. While it is true that the combination would create a development tract for the purposes of subdivision, this does not comply with Section 1B01.1.B.1.a.1.(b).

Although the Petitioner has been granted the right to utilize the property to the west for parking for commercial uses across the street (Case No. 87-355-SPH), this does not now mitigate the application to this case of the law, whether in conflict with that prior decision or not. If the parking

lots were in existence, perhaps this conclusion would be different, but they are not. These lots are in fact vacant. Notwithstanding the decision rendered in Case No. 87-355-SPH, the conclusion is inescapable that the subject property creates an R.T.A. from the west property line.

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 intention 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. Gabewood v. State, 244 Md. 609, 224 A.2d 677 (1966). On the other hand, as stated in Resque v. State, 192 Md. 615, 623, 65 A.2d 299, 302 (1949), "[a]bsence 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 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. R. 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.

Applying these principles to the BCZR now being considered, the conclusion is inescapable that under the plain wording of Section 1B01.1.B.1.a.1.(b), the subject site must comply with the R.T.A. requirements to the west property line.

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 use regulations in Section 1B01.1.B.1.a.1 must be construed in light of all of the provisions concerning R.T.A. requirements so that the several parts of those regulations are given their intended effect. Moreover, the relationship between those various provisions regulating residential transition areas must be reconciled as a whole. See Smith, supra; Bowie Vol. Fire Dept. & Rescue Squad, Inc. v. Bd. of County Comm., 255 Md. 381; Anderson, American Law of Zoning, Section 16.08.

"Zoning regulations are in derogation of 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 use not clearly within their scope. Gino's of Maryland, Inc. v. Baltimore, 250 Md. 621 (1968); McQuillin, Municipal Corp., Section 25.72.

Since the front setback for the proposed building is not 75 feet to the residential lot line on Tenbury Road and Section 1B01.1.B.1.b.7, BCZR, does not permit variances to this requirement, the proposed use cannot be granted. However, assuming arguendo that the Petitioner's argument is correct and that

the R.T.A. requirement is not applicable, the special exception and variances must still be denied.

The particular location of this site within the interior of a residential community with comparatively narrow feeder roads and limited access to the main roadway of York Road mitigate against the approval of this special exception. The surrounding road network is not sufficient to provide adequate ingress and egress to the nursing home.

It is clear that the BCZR permits the use requested by the Petitioner in a D.R.5.5 Zone by special exception. It is equally clear that the proposed use would be detrimental to the primary uses in the vicinity. Indeed, the Petitioner was not able to sustain his burden of proof as required under Section 502.1, BCZR.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1. In fact, the Petitioner has not shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have an adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will be detrimental to the health, safety, or general welfare of the locality and will tend to create congestion in roads, streets, or alleys therein. It will be inconsistent with the purposes of the property's zoning classification and inconsistent with the spirit and intent of the BCZR.

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- 7 -

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
date of April 1, 1987.

Arnold Jablon
Arnold Jablon
Zoning Commissioner

Petitioner: Nicholas B. Mangione Received by: James B. Dyer
Petitioner's Attorney: Richard J. DiPasquale, Esq. Chairman, Zoning Plans Advisory Committee

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

No. 08553

DATE: 4/1/87 ACCOUNT: 87-504-XA

AMOUNT: \$ 100.00

RECEIVED FROM: *James B. Dyer*

FOR: *Payment for Zoning Office*

VALIDATION OR SIGNATURE OF CARRIER

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

No. 32450

DATE: 4/1/87 ACCOUNT: 87-504-XA

AMOUNT: \$ 100.00

RECEIVED FROM: *James B. Dyer*

FOR: *Payment for Zoning Office*

VALIDATION OR SIGNATURE OF CARRIER

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

No. 33149

DATE: 4/1/87 ACCOUNT: 87-504-XA

AMOUNT: \$ 100.00

RECEIVED FROM: *James B. Dyer*

FOR: *Payment for Zoning Office*

VALIDATION OR SIGNATURE OF CARRIER

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

No. 35904

DATE: 4/1/87 ACCOUNT: 87-504-XA

AMOUNT: \$ 100.00

RECEIVED FROM: *James B. Dyer*

FOR: *Payment for Zoning Office*

VALIDATION OR SIGNATURE OF CARRIER



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

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

June 10, 1987

Richard J. DiPasquale, Esquire
5718 Harford Road
Baltimore, Maryland 21214

RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCES
SE/cor. Greenridge Rd. and Tenbury Rd.
9th Election District - 4th Councilmanic District
Nicholas B. Mangione - Petitioner
Case No. 87-504-XA

Dear Mr. DiPasquale:

This is to advise you that \$111.89 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

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

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

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

Sincerely,

Arnold Jablon
Arnold Jablon
Zoning Commissioner

AJ:med

Richard J. DiPasquale, Esquire
5718 Harford Road
Baltimore, Maryland 21214

May 11, 1987

NOTICE OF HEARING

RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCES
SE/cor. Greenridge Rd. and Tenbury Rd.
9th Election District - 4th Councilmanic District
Nicholas B. Mangione - Petitioner
Case No. 87-504-XA

TIME: 10:15 a.m.

DATE: Wednesday, June 17, 1987

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

AJ:med

cc: Mr. Nicholas B. Mangione
2514 Proctor Lane
Baltimore, Maryland 21234

Mr. Nicholas B. Commodari
York Road Associates
1205 York Road
Penthouse Suite
Lutherville, Maryland 21093

P.S. TO MR. DIPASQUALE: Our file reveals that you, as the attorney of record in this case, have not as yet signed in triplicate the Petition for Zoning Variance. Please come into the Zoning Office and do so before the date of the hearing. Thank you. Zoning Office.



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. 87-335-SPH

NICHOLAS B. MANGIONE, ET AL

SW/cor Greenridge Road and Tenbury Road
9th Election District
4th Councilmanic District

SPH - Off-street parking; amend site plan in
Case No. 73-146-XSPH

6/29/87 - D.C.'s GRANTED Petition for Special Hearing
subject to restrictions

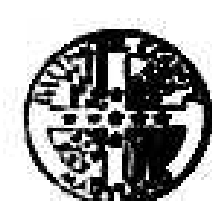
which had been set for hearing on Tuesday, November 3, 1987 at 10:00 a.m. has been POSTPONED at the request of Counsel for Petitioner due to schedule conflict and has been

REASSIGNED FOR:

WEDNESDAY, NOVEMBER 25, 1987 at 10:00 a.m.

cc: Nicholas B. Mangione, et al Petitioners
Richard J. DiPasquale, Esquire Counsel for Petitioners
Louis Mangione Contract Purchaser
Michael P. Tanczyn, Esquire Counsel for Protestants
Phyllis C. Friedman, Esq. People's Counsel for Baltimore Co.
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) 494-3180

September 24, 1987

NOTICE OF POSTPONEMENT

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. 87-335-SPH

NICHOLAS B. MANGIONE, ET AL

SW/cor. Greenridge Rd. and Tenbury Rd.

9th Elec. Dist. - 4th Council. Dist.

SPH-Off-street pky; amend site plan in

Case No. 73-146-XSPH

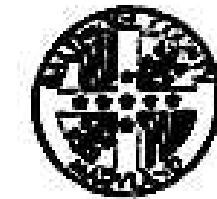
6/8/87 - D.C. GRANTED Petition for Special Hearing subj. to restrictions

which has been set for hearing on Wednesday, Nov. 25, 1987, has been POSTPONED at the request of People's Counsel and with agreement of all involved Counsel; to be reset at a later date for hearing after April 1, 1988, per correspondence from Counsel for Petitioner.

cc: Nicholas B. Mangione, et al Petitioners
Richard J. DiPasquale, Esq. Counsel for Petitioners
Louis Mangione Contract Purchaser
Michael P. Tanczyn, Esq. Counsel for Protestants
Phyllis C. Friedman, Esq. People's Counsel

Norman E. Gerber
Frank Fisher
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Margaret E. duBois

June Holman, Secretary



County Board of Appeals of Baltimore County

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

January 21, 1988

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). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 87-504-XA

NICHOLAS B. MANGIONE

SE/cor. Greenridge and Tenbury Rds.

9th E. Dist; 4th C. Dist.

SE-Nursing Home

Var.-Setback and Sign

7/9/87 - Z.C.'s Order-Special Exception DENIED; Variance DISMISSED

ASSIGNED FOR:

TUESDAY, APRIL 26, 1988, at 10 a.m.

cc: Mr. Louis Mangione

Richard DiPasquale, Esq. Counsel for Petitioner

Michael P. Tanczyn, Esq. Counsel for Protestants

Barbara Poniatowski

Phyllis C. Friedman, Esq. People's Counsel

David Fields Office of Planning

James Hoswell " " "

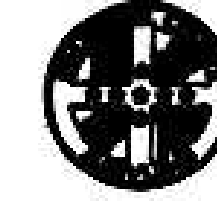
J. Robert Haines Zoning Office

Ann Nastarowicz " "

James E. Dyer " "

Docket Clerk " "

June Holman, Secy.



County Board of Appeals of Baltimore County

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

April 27, 1988

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). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

(CONTINUED FROM 4/26/88)

CASE NO. 87-504-XA
(Day #2)

NICHOLAS B. MANGIONE

SE/cor Greenridge and Tenbury Roads

9th Election District

4th Councilmanic District

SE -Nursing Home

VAR -setback and sign

7/9/87 - Z.C.'s Order -Special Exception DENIED; Variance DISMISSED

ASSIGNED FOR:

THURSDAY, AUGUST 11, 1988 at 10:00 a.m.

cc: Mr. Louis Mangione

Richard DiPasquale, Esquire Counsel for Petitioner/Appellant

Michael P. Tanczyn, Esquire Counsel for Protestants/Appellees

Barbara Poniatowski

Phyllis Cole Friedman, Esquire

P. David Fields

James G. Hoswell

J. Robert Haines

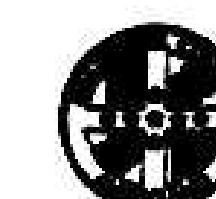
Ann M. Nastarowicz

James E. Dyer

Docket Clerk

Arnold Jablon, County Attorney

Kathleen C. Weidenhammer
Administrative Secretary



County Board of Appeals of Baltimore County

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

June 30, 1988

RELOCATION

PLEASE NOTE:

Effective July 11, 1988, all cases scheduled to be heard before the County Board of Appeals in Hearing Room 218 of the Old Courthouse will be heard in ROOM 301, THIRD FLOOR, COUNTY OFFICE BUILDING (111 W. Chesapeake Avenue--across the street from the Old Courthouse). Scheduled date and time remain the same.

In addition, the administrative offices of the Board will relocate on Friday, July 1, 1988 to Room 315, County Office Building.

If you have any questions, please call 494-3180 (the telephone number will remain the same).

Kathleen C. Weidenhammer
Administrative Secretary

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). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

Continued from 8/11/88
CASE NO. 87-504-XA
NICHOLAS B. MANGIONE
SE/cor Greenridge and Tenbury Roads
9th Election District
4th Councilmanic District
SE -Nursing Home
VAR -setback and sign
7/09/87 -Z.C.'s Order - Special Exception DENIED;
Variance DISMISSED

ASSIGNED FOR: TUESDAY, AUGUST 23, 1988 at 9:00 a.m. (ONE HOUR ONLY)
cc: Mr. Louis Mangione
Richard DiPasquale, Esquire Counsel for Petitioner/Appellant
Michael P. Tanczyn, Esquire Counsel for Protestants/Appellees
Barbara Poniatowski
Phyllis Cole Friedman, Esquire
P. David Fields
James G. Howell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk -Zoning
Arnold Jablon, County Attorney

Kathleen C. Weidenhamer
Administrative Secretary

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). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 87-504-XA
NICHOLAS B. MANGIONE
SE/cor Greenridge and Tenbury Roads
9th Election District
4th Councilmanic District
SE -Nursing Home
VAR -setback and sign
7/09/87 -Z.C.'s Order -Special Exception DENIED;
Variance DISMISSED

which had been assigned for a one-hour hearing on Tuesday, August 23, 1988 at 9:00 a.m. has been changed to 9:30 a.m. on the same date (8/23/88) due to a Circuit Court conflict on the part of Counsel for the Protestants.

REASSIGNED TO: TUESDAY, AUGUST 23, 1988 at 9:30 a.m.
cc: Mr. Louis Mangione
Richard DiPasquale, Esquire Counsel for Petitioner/Appellant
Michael P. Tanczyn, Esquire Counsel for Protestants/Appellees
Barbara Poniatowski, President
Dulaney Valley Imp. Assn.
Phyllis C. Friedman, Esquire
P. David Fields
James G. Howell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk -Zoning
Arnold Jablon, County Attorney

Kathleen C. Weidenhamer
Administrative Secretary

Richard J. DiPasquale, Esquire
5718 Warford Road
Baltimore, Maryland 21214
RE: Item No. 6 (1985) - Case No. 87-504-XA
Petitioner: Nicholas B. Mangione
Petitions for Special Exception and
Zoning Variance

Dear Mr. DiPasquale:
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 /KES
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:kbb
Enclosures
cc: Mr. Louis Mangione
1205 York Road
Lutherville, Maryland 21093
George W. Stephens, Jr. & Associates, Inc.
303 Allegheny Avenue
Towson, Maryland 21204

April 24, 1987
Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204
Dear Mr. Jablon:

The Department of Traffic Engineering has no comments for items number 6(1985), 367, 369, 371, 372, and 373.
Very truly yours,
Michael S. Flannigan
Traffic Engineer Associate II

MSF:lbt

Item No. 6
Property Owner: Nicholas B. Mangione
Location: S/E corner Greenridge and Tenbury Roads
Building Zoning: D.R. 5.5
Proposed Zoning: Special except for a nursing and convalescent home and domiciliary care

Acres: 4 acres ±
District: 9th

Dear Mr. Jablon:
The Department of Traffic Engineering has no comment on this particular item.
Very truly yours,
Michael S. Flannigan
Traffic Engineer Associate II

MSF/bza

Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204
Zoning Item # 6 (1985) Zoning Advisory Committee Meeting of 3-31-87

Property Owner: Nicholas Mangione
Location: Greenridge & Tenbury Rd District 9
Water Supply: mdtia Sewage Disposal: mdtia

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, 194-3775, to obtain requirements 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 chandelier 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 existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
- () 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

- () Prior to razing of existing structure/s, petitioner must contact the Division of Water Quality and Waste Management at 194-3768, regarding removal and/or disposal of potentially hazardous materials and solid wastes.
- () Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and either be removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Water Quality and Waste Management at 194-3768.
- () 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 Hydrogeological Study and an Environmental Effects Report must be submitted.
- () Others

James E. Dyer
Chairman
Bureau of Environmental Services

WWQ 2 4/86

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204
RE: Property Owner: Nicholas B. Mangione
Location: S/E corner Greenridge and Tenbury Roads
Item No.: 6 Zoning Agenda: Meeting of 3/31/87

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

- 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- 2. A second means of vehicle access is required for the site.
- 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
- 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of 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", 1978 edition prior to occupancy.
- 6. Site plans are approved, as drawn.
- X 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: Capt. James J. Kelly /JJK Noted and Approved: John F. O'Neill
Planning Group Fire Prevention Bureau
Special Inspection Division

- 3) Affidavit signed January 1, 1986 by Dulaney Valley Improvement Association
- 4) Pages (53) of Protestant's Signatures from Dulaney Valley Improvement Association to the Maryland Health Resources Commission
- 5a and 5b) Photographs of Site
- 5a and 6b) Photographs of Site
- 7a thru 7d) Photographs of Site
- 8a) Photograph of Site

Zoning Commissioner's Order dated July 9, 1987

Appeal received July 17, 1987 from Richard J. DiPasquale, Esquire, Attorney for Petitioner

Richard J. DiPasquale, Esquire, Attorney for Petitioner
5716 Harford Road, Baltimore, Md. 21214

Michael P. Tanczyn, Esquire, Attorney for Protestants
606 Baltimore Avenue, Suite 106, Towson, Md. 21204

Ms. Barbara Poniatowski, President
Dulaney Valley Improvement Assoc., Protestants
P.O. Box 102, Lutherville, Md. 21093

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

Request Notifications: Norman E. Gerber, Director of Planning
James Howell, 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

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

JUN 25 1987

ZONING OFFICE

TO: Arnold Jablon, Zoning Commissioner

Date: June 22, 1987

FROM: Councilwoman Barbara F. Bachus

SUBJECT: Case 87-504-XA

NICHOLAS B. MANGIONE

I am forwarding the enclosed letter from a property owner east of the proposed nursing home on Greenridge Road. I hope that you will add this to the case file.

BFB:mtf

cc: Mrs. Anne Jones

PETITIONS FOR SPECIAL EXCEPTION AND VARIANCES

9th Election District - 4th Councilmanic District

Case No. 87-504-XA

LOCATION: Southeast Corner of Greenridge Road and Tenbury Road

DATE AND TIME: Wednesday, June 17, 1987, at 10:15 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 Exception for a nursing and convalescent home and domiciliary care

Petition for Zoning Variances to permit a front yard setback of 25 feet in lieu of the required 40 feet and a single-faced illuminated sign with a total area of 32 square feet in lieu of the permitted 1 square foot

Being the property of Nicholas B. Mangione, 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

October 19, 1987

The Honorable Helen Delich Bentley
Congress of the United States
House of Representatives
200 East Joppa Road
Towson, Maryland 21204

Re: Special Exception for Nursing Home
Case 87-504-XA
Nicholas B. Mangione
9th Election District

Dear Congressman Bentley:

Reference is made to your inquiry dated September 22, 1987 regarding the above.

In accordance with provisions of the Zoning Regulations relative to the Density, Residential (D.R.3.5) zoning class, Mr. Mangione has petitioned for a special exception for a nursing home. The request has been denied at the Zoning Commissioner level by then Zoning Commissioner, Arnold Jablon and Mr. Mangione has appealed said request to the County Board of Appeals. Any one desiring to protest the granting of this request should make their objection known to the Board of Appeals at the time of the hearing. I am enclosing Section 502.1 which indicates the condition under which a special exception can be granted.

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

Sincerely,

James E. Dyer
JAMES E. DYER
Zoning Supervisor

JED:kdb
Enclosure

HELEN DELICH BENTLEY

2d DISTRICT, MARYLAND

WASHINGTON OFFICE

1810 Louisiana Building

Washington, DC 20515

202-229-3081

DISTRICT OFFICE

505 East Johns Road

Towson, MD 21204

201-227-1225

1456 Green Hill Road

Baltimore, MD 21223

201-226-1726

115 Federal Plaza

Baltimore, MD 21204

201-459-1768

Congress of the United States
House of Representatives
Washington, DC 20515

September 22, 1987

Mr. James Dyer, Zoning Supervisor
Baltimore County Department of Zoning
Room 113
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Dyer:

Enclosed are copies of correspondence I recently received from constituents of the Charmuth Road area.

They are very concerned about the proposed building of a Nursing Home at Tenbury and Green Ridge Roads. The Dulaney Valley Improvement Association has voiced their opposition in the building of this Nursing Home.

Please review this matter and advise my Towson District Office of your findings.

Sincerely,

Helen Delich Bentley
Helen Delich Bentley
Member of Congress

HBD:pd/h

RECEIVED
SEP 25 1987

ZONING OFFICE

SEP 6 1987

Sept. 4, 1987

Honorable Helen E. Bentley
Dear Mrs. Bentley:

I am asking your support in the case of Dulaney Valley Imp. Assoc. (D.V.I.A.) vs. Mr. Nicholas Mangione in his efforts to construct a Nursing Home on a lot at Greenridge & Tenbury Roads (Zoned Residential)

I am one of 901 residents in this area who oppose this construction. Mr. Mangione has used all means (fair & foul) to defeat us. He has been cited for zoning violations, etc.

I ask you to contact our president, Barbara Poniatowski of (D.V.I.A.) for details of what

over

has been happening regards this case.

Again I urge you to do what you can to stop Mr. Mangione who has been using various means to thwart us.

Thank you.

Sincerely,

Herbert E. Robinson
26 Tenbury Rd.
Lutherville, MD 21093

Margaret M. Davidson 828-1173

SEP 1 1987

SEP 1 1987

1217 Oak Croft Drive
Lutherville, Maryland 21093
Sept 8, 1987

The Honorable Helen D. Bentley
United States Congresswoman
200 East Joppa Road
Towson, MD 21204

Dear Mrs. Bentley:

I am writing to you to express my grave concerns over actions by Mr. Nicholas B. Mangione to establish a nursing home in our residential community.

Mr. Mangione has a history dating back to 1973 that reveals multiple episodes of zoning infractions. In addition, there is a seeming lack of respect for the rights of the members of the community as evidenced by his actions of renting to medical tenants (whose offices require more parking than Mr. Mangione has available) and providing illegal access by erecting a stairway without permit.

When the Dulaney Valley Improvement Association filed suit to seek Mr. Mangione's compliance, the case was lost because the County Attorney's staff made mistakes that caused the loss of the appeal.

The Deputy Commissioner, in June of 1987, wrote that "The petitioners (Nicholas Mangione, et al.) have not acted in good faith in their relationship with the neighboring community and have flagrantly and consistently violated the Baltimore County Zoning Regulations..." In spite of this unfavorable comment by Mrs. Jean Jung, Mr. Mangione still received permission to build the proposed off-street parking lot and to operate the building as a medical office building.

Mrs. Bentley, how can such an individual be allowed a special exception to establish a nursing home in a residential area? It does not make sense. But it especially does not make sense when dealing with a person with the history of zoning infractions and "getting around the rules" as Mr. Mangione has. Please do all in your power to prevent Mr. Mangione from setting up a nursing home in this community.

Sincerely,

Robert A. Cordes
Robert A. Cordes, M.D.

32 Tenbury Road
Lutherville, MD 21093
September 4, 1987

The Hon. Melon D. Bentley
United States Congresswoman
200 E. Joppa Road
Towson, MD 21204

Dear Congresswoman Bentley:

I am a resident in the community where the Dulaney Valley Improvement Association represents the community and where Nicholas B. Mangione is attempting to push through an unwanted nursing home. I urge you to eliminate the allowance of large nursing homes in residential areas by special exception.

Yours truly,

Irene Fremd
(Mrs.) Irene Fremd

Sept. 9, 1987

The Honorable Helen D. Bentley
United States Congresswoman
200 East Joppa Rd.
Towson, Md. 21204

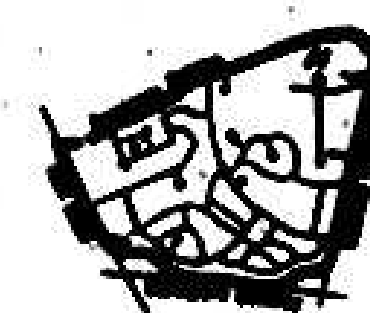
Subject: Eliminating the allowance of large nursing homes in residential areas by Special Exception.

For fourteen years our community has fought with Nicholas Mangione. I have always sat on the sidelines while others in the community have gone to the frontlines. I now firmly believe that something should be done to put an end to this situation. No matter how many times he has been denied or has lost he continues to keep fighting. Normally this is an admirable trait but in this case it smacks of favoritism. How else can someone get away with the tactics that have been used in the past. Either no fines or penalties have been issued or they are very minor in nature.

Please take five minutes of your time to read the enclosed history and help us eliminate the allowance of large nursing homes in residential areas by special exception. We also believe that a basic underlying motive to building this nursing home in the suggested area is to provide a nearby parking area for his office building at 1205 York Rd.

Very truly,

James W. Housh Jr.
James W. Housh Jr.
1205 Oak Croft Drive
Lutherville, Md. 21093



Dulaney Valley Improvement Association
P.O. Box 100
Lutherville, Md. 21093

DVIA ACTION MEMO

August 27, 1987

Because there have been numerous hearings and appeals concerning 1205 York Place and the four-acre tract at Tenbury and Greenridge roads, the DVIA Board of Directors has prepared this summary of events for the community. We hope the following brief histories will be helpful.

I. 1205 YORK ROAD

April 1973 Written Agreement. A written agreement between the DVIA and Nicholas B. Mangione was signed on April 12, 1973. DVIA agreed to dismiss its appeal of a zoning decision allowing the construction of the building at 1205 York Road. In return, Mangione agreed to construct an office building with parking and screening according to his plans and to insert a covenant in the lease of each tenant requiring the tenants and their employees to park on the building's parking lot and not on the streets of the adjoining neighborhood.

1973 Site Plan Approved. Mr. Mangione's development plan for 1205 York Place called for a general use office building. Over the years, more and more of the office suites in the building were leased for medical office use rather than general office use. At the present, 95% of the building is leased for medical use. Because medical offices require much more parking than do general offices, the demand for parking at the site has resulted in overflow parking in our community.

January 1981 Additional Parking. The Zoning Commissioner granted Mr. Mangione permission to expand the York Place parking lot northward to land which is owned by Charles and Harriet Held and which is leased and/or subject to a contract to purchase by Nicholas Mangione. The Zoning Commissioner denied permission for any parking spaces requested for a parcel of land zoned Residential DR 5.5. Mangione proceeded to illegally construct the requested parking spaces in the DR 5.5 residential zone.

September 1985 Zoning Violation: Improper Tenant Mix. Mangione was cited with a zoning violation. The majority of his tenants are medical offices. This is in violation of Mangione's agreement with the Zoning Commissioner and improper for existing parking. Subsequently, Mangione entered a petition for construction of additional parking spaces at 1205 York Place. The petition was denied by the zoning commissioner because it did not satisfy the technical requirements of the zoning regulations.

February 1986 Zoning Commissioner's Decision. Ruling on the parking petition, the Zoning Commissioner ordered Mangione to reduce the

DVIA ACTION MEMO August 27, 1987

Page 2

volume of medical office use in the building to conform to the number of existing parking spaces.

June, 1986 Illegal access. Mr. Mangione cut through a county guardrail on Tenbury Rd. and erected a stairway without permits. After the fact and without fine or penalty, the County allowed Mangione permits for this construction.

August 1, 1986 Permit Parking. After a three year campaign involving surveys, meetings with elected officials, and a public hearing, residents along the west end of Ridgefield Rd. and on Hensley Ct. were granted Residential Permit Parking for relief from overflow parking from 1205 York Place. This measure, inconvenient and costly to residents, was made necessary by the Mangione's illegal tenant mix.

August 12, 1986 Board of Appeals Hearing. The Board of Appeals heard Mangione's appeal of the Zoning Commissioner's February Ruling. A revised parking plan was submitted. The Board of Appeals denied the appeal because Mangione's plans didn't meet zoning regulations.

October 28, 1986 District Court Trial. Mangione was tried for a zoning violation because he proceeded to put down crusher run to allow parking to the rear of the paved 1205 York Place parking lot. He did so without the required permit and was cited by the Zoning Commissioner. The case was lost.

February 1987 Hearing on Parking Lot. At a hearing before the Deputy Zoning Commissioner, Nicholas Mangione introduced a petition to allow construction of a parking lot which would bring the building into compliance.

February 1987 Law Suit. DVIA filed suit in the Circuit Court to seek Mangione's compliance with the agreement into which he entered in 1973.

April 1987 Appeal of District Court Decision of Oct. 28, 1986. The county attorneys were again unprepared and the case was lost.

May 13, 1987 Letter from County Attorney. In a letter to Councilwoman Barbara Bachur, Mr. Malcolm Spicer, County Attorney, admitted that his staff made mistakes that caused the loss of the appeal.

June 8, 1987 Deputy Commissioner's Decision. The Deputy Zoning Commissioner, Jean Jung, wrote that "the Petitioners (Nicholas Mangione, et al.) have not acted in good faith in their relationship with the neighboring community and have flagrantly and consistently violated the BCZR (Baltimore County Zoning Regulations) in that a higher percentage of office space was rented or sold to medical tenants without providing the required number of parking spaces. In addition, the Petitioners have developed and utilized areas, for which they had no legal permission or permits, for parking." In spite of these assertions, Mrs. Jung ruled that Mangione would be permitted to build the proposed off-street parking lot and to operate the building as a medical office building.

DVIA immediately filed an appeal. As of this writing, the hearing date for this case has not yet been set by the Board of

DVIA ACTION MEMO August 27, 1987

Page 3

Appeals.

DVIA's Position. Mr. Mangione created the parking problem. Since presenting the County with plans for a building for general office use, he has steadily increased the percentage of medical office tenants thus creating a demand for more parking spaces than available. If Mr. Mangione had not deviated from his originally planned building use, (1) he would not need the additional parking; (2) he would not be in violation of his 1973 agreement with DVIA; (3) residents on Ridgefield Rd. and Hensley Ct. would not have been forced to apply for permit parking; (4) he would have no need to build more parking lots on property zoned residential, and (5) the DVIA would not have been forced to spend large sums of money for legal costs to see that zoning regulations were enforced.

II. FIVE ACRE TRACT AT TENBURY AND GREENRIDGE ROADS

Most residents are aware that Nicholas Mangione is planning to build a nursing home on the lot at the southeast corner of Greenridge and Tenbury Roads. This project would include 240 beds with an adult day care center and will employ over 80 people. This is a 24 hour a day operation owned by an individual who has shown himself to be a very bad neighbor to residents of this community!

Following are timelines which trace two processes:

A. Mangione's application for a "Certificate of Need" (CON) for construction and operation of a nursing home (State process).
B. Mangione's pursuit of zoning decisions which would permit construction of the facility. (County process).

A. Certificate of Need

July 1986 DVIA learned of application. Early in the month, we became aware that Nicholas Mangione had applied to the Maryland Health Resources Planning Commission (MHRPC) for a Certificate of Need to build a nursing home on the property at Greenridge and Tenbury Roads. This came to the attention of an alert Board of Directors member almost by accident. Neither the County nor the State has any mechanism to advise communities of such applications. None of our elected officials notified us even though one of our state delegates testified at a hearing early in 1986 in support of additional nursing home beds for Baltimore County. Mangione was present at the hearing.

August 1986 DVIA participation. DVIA filed for status as an "Interested Person" so that we could monitor the process and receive all pertinent mailings.

August 1986 Consultant. DVIA retained the services of a health care consultant experienced in the CON process. At the recommendation of the consultant, DVIA filed for status as an "Interested Party" which, unlike "Interested Person" status, guarantees permission to testify. The request was denied because we filed too late. This was in spite of the fact that there is no provision for notifying communities in time to file.

DVIA ACTION MEMO August 27, 1987

Page 4

August 1986 Recommendation for Project. The Central Maryland Health Systems Agency recommended to the Maryland Health Resources Planning Commission (MHRPC) that Mr. Mangione be awarded the 113 additional nursing home beds allotted to Baltimore County.

September 1986 Letters to Commission and to Elected Officials. A letter from DVIA was hand delivered to the MHRPC. Letters from individual officers and Board members to the Commission and to county and state elected officials followed.

September 1986 DVIA Alert. DVIA prepared and distributed to residents a flyer containing factual information taken directly from the report of the Central Maryland Health Systems Agency.

September and October 1986 Petition. Area Representatives circulated a petition in opposition to the nursing home which was signed by 801 residents representing 85 percent of the 612 DVIA homes. Copies of the petition were sent to elected officials and to the MHRPC.

September and October 1986 Letters from Elected Officials. Letters in opposition to the nursing home were sent to the MHRPC by State Delegates Bishop, Gisriel and Klima and by County Councilwoman Bachur.

October 1986 Attempt to Squash DVIA. Nicholas Mangione filed a motion with the MHRPC to strike all DVIA information from the proceedings for the Certificate of Need. This was denied and our petition and letters are allowed to remain.

April 1987 Staff Recommendation. The MHRPC staff recommended against the Mangione project. This was an important development but not the final decision.

April 1987 Mangione's Campaign for Support. Mr. Mangione approached churches in the Towson/Lutherville/Timonius area and also Taboo Towers and Virginia Towers to solicit support for his nursing home project. Community residents were also contacted. Only four members of this community wrote letters supporting the nursing home. Many people at Taboo and Virginia Towers signed a form letter. Two churches, Immaculate Conception in Towson and St. Joseph's in Cockeysville, indicated support. The churches nearest our community declined to support the nursing home because they considered this a community matter and because they were aware of the community's objections to the project. Letters supporting the nursing home also came from Mercy High School, the Chairperson of the Nursing Department at Towson State University, a social worker at St. Joseph hospital, and social workers at GMS and Franklin Square Hospitals.

May 1987 Health Services Attorney. DVIA retained the services of Howard Bollins, Esq. of the law firm of Ober, Kaler, Grimes and Shriver. Mr. Bollins has expertise in the health care law field.

July and August 1987 CON Hearings. DVIA President Barbara Poniatowski testified against the Mangione nursing home project during the CON hearings at 301 West Preston St. Mrs. Poniatowski's testimony

DVIA ACTION MEMO August 27, 1987

Page 5

and cross examination lasted a total of 2 1/2 days in July and August. The hearings will continue on September 8th and 9th at 9:30 AM.

B. Zoning

A nursing home is an "allowed use by special exception" in a residential zone.

June 1987 Special Exception Hearing. At the Zoning Commissioner's hearing on Mangione's request for a special exception to build a nursing home, DVIA was represented by Michael Tanczyn, Esq. who is expert in zoning law. At the hearing, which was continued on June 30, 1987, DVIA Officers and individual residents testified and many residents attended the hearing.

July 1987 Special Exception Denied. The Zoning Commissioner issued a decision denying the special exception for the nursing home. Mr. Mangione has filed an appeal. The date for the appeal hearing has not been set.

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- 1 has with Mr. Mangione.
- 2 A Yes, sir.
- 3 May I get my copy of the agreement?
- 4 (There was a pause in the proceedings.)
- 5 MS. BROWN: Mr. DiPasquale, will this be your
- 6 Exhibit 3?
- 7 MR. DIPASQUALE: It will be as soon as I establish
- 8 that we are going to use it.
- 9 Q Do you have your original?
- 10 A Yes. I don't have the original, I have a copy.
- 11 Q You have your own copy?
- 12 A Yes, sir.
- 13 Q Is there any difference between your copy and the
- 14 copy that I have presented?
- 15 A No, sir.
- 16 Q Now, I'd like for you to scan that agreement and
- 17 tell me what part of that agreement Mr. Mangione has
- 18 violated?
- 19 A Number 5, number 5 says that the party of the
- 20 first part shall insert a covenant in each lease for tenants
- 21

IN THE MATTER OF THE APPLICATION OF NICHOLAS B. MANGIONE AND MARY C. MANGIONE BEFORE THE BOARD OF APPEALS FOR A SPECIAL EXCEPTION AND VARIANCE OF SOUTHWEST CORNER OF GREENRIDGE ROAD & TENBURY ROAD 9th Legislative District 4th Councilmanic District ZONING CASE NO. 87-504-XA

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

Case No. 88-CG-4968

ANSWER TO PETITION OF APPEAL

NOW COMES, Dulaney Valley Improvement Association, Inc., et al, Protestants and Appellees, by their attorney, Michael P. Tanczyn, Esq., and for Answer to the Petition of Appellant heretofore filed says,

1. That they deny the allegations contained in paragraphs numbered "1" through "7", inclusive, of said Petition.
2. That the Decision of the Board herein was proper and justified by the evidence before it.

WHEREFORE, the Protestants/Appellees request this Honorable Court dismiss the Petition of Appellant.

MICHAEL P. TANCZYN, ESQ.
Attorney for Appellees
Suite 106, 606 Baltimore Avenue
Towson, Maryland, 21204
Telephone (301) 296-8823

88-CG-4968 21 JAN 1989

IN THE MATTER OF THE APPLICATION OF NICHOLAS B. MANGIONE FOR A SPECIAL EXCEPTION AND ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF GREENRIDGE AND TENBURY ROADS 9th ELECTION DISTRICT

NICHOLAS B. MANGIONE, PLAINTIFF

ZONING FILE NO. 87-504-XA

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

FOR

BALTIMORE COUNTY

CG Doc. No. 63

Folio No. 168

File No. 88-CG-4968

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS FOR BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

ENTRIES FROM DOCKET OF BOARD OF APPEALS OF BALTIMORE COUNTY

April 27, 1987 Petitions of Nicholas B. Mangione for a special exception for a nursing and convalescent home and doilinary care and a variance to permit a frt. yd. setback and to permit a singleface illuminated sign with a total area of 32 sq. ft. in lieu of the allowed 1 sq. ft.

May 27 Publication in newspaper - filed

June 1 Certificate of Posting of property - filed

May 22 Comments of Baltimore County Zoning Plans Advisory Committee - filed

June 17 At 10:15 a.m. hearing held on petitions by the Zoning Commissioner.

July 9 Order of the Zoning Commissioner that the Petition for Special Exception for a nursing home be DENIED and also the Petition for Variances be DISMISSED.

July 17 Notice of Appeal received from Richard J. DiPasquale, Esq. on behalf of Petitioner.

IN THE MATTER OF THE APPLICATION OF NICHOLAS B. MANGIONE AND MARY C. MANGIONE BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY FOR A SPECIAL EXCEPTION AND VARIANCE OF SOUTHWEST CORNER GREENRIDGE ROAD AND TENBURY ROAD 9th District Baltimore County, Maryland

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

APPEAL FROM THE BOARD OF APPEALS

FOR BALTIMORE COUNTY

Case No. 88-CG-4968 63/168

ORDER

Upon consideration of the Appellants' Motion to Extend time to transmit record and any response thereto, it is by the Circuit Court for County this 10th day of January, 1989.

ORDERED, that the time within which the transcript shall be transmitted to this Court shall be extended to on or before April 1, 1989.

JUDGE

Copy Test
S. Spaulding
Deputy Clerk

24-011W 81 NOV 88

FILED JAN 11 1989

Form C-1
Judi Adams - 494-8888
Civil Assignment Commissioner
Solicitor General
Marka Harris - 494-8888
Solicitor General
Michael Rasmussen

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bayley Avenue
P.O. Box 6784
Towson, Maryland 21204-4784

January 23, 1989

Kathy Baskin - 494-8888
Assignment - Jury - Motion
Marka Harris
Assistant Clerk Typist
Bruce Summers - 494-8888
Assignment - Jury - Motion
Franklin Green
Assistant Clerk Typist

TO: Richard J. DiPasquale, Esq.

Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

County Board of Appeals
of Baltimore County

NOTE: CORRECTED NOTICE. CONFIRMING AN AGREED COUNSEL DATE.

RE: 88-CG-4968 In the Matter of Nicholas B. Mangione ET AL (Greenridge Rd. & Tenbury Rd.) vs. People's Counsel for Balto. Co.

HEARING DATE: Monday, April 24, 1989, @ 9:30 a.m.

ON THE FOLLOWING: ALL OPEN MOTIONS IN THIS CASE.
IF YOU DESIRE TO SUBMIT, PLEASE CONTACT CIVIL ASSIGNMENT.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

POSTPONEMENTS: If the above date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Civil Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved.

SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately.

RECEIVED
COUNTY BOARD OF APPEALS
89 JAN 24 AM 11:48

IN THE MATTER OF THE APPLICATION OF NICHOLAS B. MANGIONE FOR A SPECIAL EXCEPTION AND ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF GREENRIDGE AND TENBURY ROADS, 9th ELECTION DISTRICT

NICHOLAS B. MANGIONE, PLAINTIFF

ZONING FILE NO. 87-504-XA

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

AT LAW

Case No. 88-CG-4968

(Docket 63; Folio 168)

MOTION TO DISMISS AND REQUEST FOR HEARING

People's Counsel for Baltimore County, pursuant to Rule 89, moves to dismiss the Petition for these reasons:

1. The Petition is defective and not in proper form.
2. The Petition contains allegations of evidentiary detail, argument, and unnecessary recitals of law.
3. The Petition fails to state simply, concisely, and directly the action appealed from and the error committed.
4. The Petition should, therefore, be dismissed for legal insufficiency.

WHEREFORE, People's Counsel prays that the appeal be dismissed.

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

Peter Max Zimmerman
Deputy People's Counsel
Room 304, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
(301)867-2188

IN THE MATTER OF THE APPLICATION OF NICHOLAS B. MANGIONE AND MARY C. MANGIONE BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY FOR A SPECIAL EXCEPTION AND VARIANCE OF SOUTHWEST CORNER GREENRIDGE ROAD AND TENBURY ROAD 9th District Baltimore County, Maryland

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

FOR BALTIMORE COUNTY

APPEAL FROM THE BOARD OF APPEALS

FOR BALTIMORE COUNTY

Case No. 88-CG-4968 63/168

NOTICE TO EXTEND

Now comes Nicholas B. Mangione, Appellant, by his attorney, Richard J. DiPasquale, herein moves this Honorable Court, pursuant to Maryland Rule B-7, to extend the time within which the Appeal is to be transmitted to the Circuit Court for Baltimore County.

The Appeal was timely filed on December 19, 1988.

That there were two hearings before the Board of Appeals in which the parties were participants, extending over a long period of time.

Both decisions were appealed, and Carolyn Peatt has advised the Appellant that, due to the length of the hearings, along with her other work load, the record cannot reasonably be transcribed and forwarded to the Circuit Court within the time period contemplated by Maryland Rule B-7(a). She has further advised the Appellant that a continuance of ninety (90) days

IN THE MATTER OF THE APPLICATION OF NICHOLAS B. MANGIONE FOR A SPECIAL EXCEPTION AND ZONING VARIANCE ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF GREENRIDGE AND TENBURY ROADS 9th ELECTION DISTRICT

NICHOLAS B. MANGIONE, PLAINTIFF

ZONING FILE NO. 87-504-XA

IN THE CIRCUIT COURT

CIRCUIT COURT

FOR

BALTIMORE COUNTY

A7 LAW

CG Doc. No. 63

Folio No. 168

File No. 88-CG-4968

CERTIFICATE OF NOTICE

Mr. Clerks:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Thomas J. Bollinger, and Lawrence E. Schmidt, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it: namely, Louis Mangione, 1205 York Rd., Lutherville, MD. 21093, Contact Representative for Petitioner; Richard J. DiPasquale, Esq., 5718 Harford Rd., Balto., MD. 21214, Counsel for Petitioner-Plaintiff; Michael P. Tanczyn, Esq., 606 Balto. Ave., St. 106, Towson, MD. 21204, Counsel for Protestants; Barbara Poniatowski, Pres., Dulaney Valley Improvement Assoc., P. O. Box 102, Lutherville, MD. 21093, Protestants; and Phyllis C. Friedman, Esq., County Office Bldg., 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.

Judy Holmen
County Board of Appeals of Baltimore
County, Rm. 315, County Office Bldg.,
Towson, MD.
887-3180

IN THE MATTER OF THE APPLICATION OF NICHOLAS B. MANGIONE AND MARY C. MANGIONE BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY FOR A SPECIAL EXCEPTION AND VARIANCE OF SOUTHWEST CORNER GREENRIDGE ROAD AND TENBURY ROAD 9th District Baltimore County, Maryland

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

APPEAL FROM THE BOARD OF APPEALS

FOR BALTIMORE COUNTY

Case No. 87-504-XA

ORDER FOR APPEAL BY NICHOLAS B. MANGIONE AND MARY C. MANGIONE

Mr. Clerks:

Please enter an appeal on behalf of Nicholas B. Mangione and Mary C. Mangione, Applicants, from the Order of the Board of Appeals of Baltimore County passed in the above case on December 8, 1988.

Richard J. DiPasquale
5718 Harford Road
Baltimore, Maryland 21214
301-426-4538
Attorney for Appellant

RECEIVED
12/20/88
5:23 AM
8844

Name	Address	
Harold H. Felt	11 Liberty Rd	21093
Mary W. Harrington	216 Tilton Rd.	
John W. Harris	1203 Oak Crest Dr.	21093
Marion R. Conner, Jr.	11 Foxenridge Road (McMannan farm)	21093
Robert J. Woods	21 Greenridge Rd.	
Jacqueline M. Woods	21 Greenridge Road	
Walter L. Price	19 Greenridge Road	
Herbert Robinson	20 Foxbury Rd.	21093
Anne L. Robinson	20 Tenbury Rd.	21093
Logan A. Stephens	32 Ridgefield Rd.	21093
Jan B. Townsend	1111 Oxford Road	21093
Marion M. Jones	1109 Foxenridge Rd.	21093
Isabel D. DeLahun	1107 Foxenridge Rd.	21093
John F. Calvert	138 Greenridge Rd.	21093
Phyllis R. Schott	9 Newton Ct.	21093
Robert Schott	9 Winton St.	21093
Lydon Lambert	3 Ridgefield Rd.	2093
Charles Schuy	64 Belmont Rd.	21093
Wm. Koehner	33 TENBURY RD	21093
M. Louise M. Ke	2 GREENRIDGE RD	21093
Patricia Evans	25 Tenbury Rd.	21093
Nancy Arley	1304 Charmuth Rd.	21093
John Arley	1304 Charmuth Rd.	21093
David Jones	129 Greenridge Rd.	21093
David Johnston	1145 Belmont St.	21093
Barbara L. Lawrin	305 Valley Crest Rd.	"
Walter Jones	7 TENBURY RD	"

Calvin Lambert	3 RIDGEFIELD ROAD	
James H. Barnes JR	1203 OAK CROFT DR	21093
Lawrence M. Kackson	17 ALSTON RD	
G LONNIE M-NEN	9 BOEHLER RD.	21093
Ronald Price	19 GREEN RIDGE RD	21093
DON WATTS	308 STRATHCO WAY (not in city)	21093
Anna James	17 Greenridge Rd.	21093
Robert Wood	21 Greenridge Rd	21093
Joseph H. Woods	21 Greenridge Road	21093
John E. Calver	138 Secord Rd	21093
Blanca & Guy	64 Pekone Rd	21093
Paul K. Spator	62 Belmont Rd	21093
Danile Jan	129 Greenridge Rd.	21093
Doree Friend	32 Tenbury Rd	21093
Pyrraldo Reyes	1100 Hensley Ct	21093
BARRY V. BOWEN	106 Greenridge Ct.	21093
Eggs R. Branc	5 Tenbury Rd	21093
Cornelia Hsu	29 Ridgefield Rd.	21093
John C. Elliott	5 Alston Road	21093
Lowell Hovel	1403 Tenbury Rd	21093
Barrette L. Eld	14 Greenridge Rd	21093
Regina Papant	18 Greenridge Rd	21093
William Hsu	114 Ridgefield Rd	21093
William M. Childress	15 Ridgefield Rd	21093
Elizabeth Childress	15 Ridgefield Rd	21093
Angelo B. Barker	136 Olinville Rd. Greenwood	21093

AD - WITHIN MY NAME AND MATERIAL DEED
 (Material deed)
 RECORDS VOL 7 1940 AT 1100 P M A USE PER
 (date of sale)
 (Red W & B)
 129729 this Deed made this 5 day of October in the year nineteen hundred
 and twenty six by Robert F Gombie and Mildred Gombie his wife parties
 of the first part WITNESSE and MARION A Gombie his wife and
 Charles W Gombie Jr and
 US \$1.00 St \$3.00 Baltimore County State of Maryland
 WITH ADVISE that in consideration of the sum of five (\$5.00)
 dollars and other good and valuable considerations Receipt whereof is hereby acknowledged
 the said parties of the first part as hereby grant and convey unto the said second parties
 as tenants by the entireties their heirs and assigns the survivor or them and the heirs and
 assigns of each survivor in fee simple all that lot of ground situate lying and being in
 the Ninth Election District of Baltimore County State of Maryland and described as follows
 that is to say
 BEGINNING for the same in the centre of Green Ridge Road and at the beginning of the
 line which by deed dated June 28 1944 and recorded among the land records of Baltimore
 County in Liber 218 No 1354 rolls 89 90 is conveyed by Elmer E Goulemann and wife to
 Robert F Gombie and wife as running thence bounding on the centre of Green Ridge Road east
 7 1/2 degrees 30 minutes east 30 feet thence running for lines of division now made the two
 following courses and distances viz south 15 degrees 4 minutes east 120 feet and north 7 1/2
 degrees 30 minutes east 15 feet to intersect the second line of the line conveyed to Elmer
 and wife by Elmer E Goulemann and wife to Robert F Gombie and wife thence bounding on the
 of said land the three following courses and distances viz south 15 degrees 4 minutes east
 141.42 feet south 7 1/2 degrees 30 minutes west 211 feet and north 15 degrees 4 minutes west
 559.13 feet to the place of beginning
 Containing 1.30 acres of land more or less
 BEING part of the land conveyed as aforesaid by Elmer E Goulemann and wife to Robert
 F Gombie and wife
 TOGETHER with the buildings and improvements thereon and all and every the rights
 appurtenant ways waters privileges appurtenances and advantages to the same belonging or in any
 appertaining
 TO HAVE AND TO HOLD the said land and premises unto the said Charles W Gombie Jr and
 Marion A Gombie his wife as tenants by the entireties their heirs and assigns the survivor
 of them and the heirs and assigns of each survivor in fee simple
 And the parties of the first part covenant that they have not done or suffered to be
 done any act matter or thing whatsoever to encumber the property hereby granted and that
 they will warrant specially the property hereby granted and that they will execute such
 further assurances of the same as may be requisite
 WITNESS the hands and seals of the grantors
 Test Robert F Gombie (Seal)
 Mildred W Gombie (Seal)
 John G Crane
 Notary Public

**Ap. box 102
Lutherville, md. 21093**

I solemnly declare and affirm that Barbara Poniatowski occupies the office of President of the Dulaney Valley Improvement Association, and has been empowered, pursuant to a resolution of the Board of Directors to represent said Dulaney Valley Improvement Association in all zoning matters, and that said Barbara Poniatowski has an accurate knowledge of the number of members in the Association and its geographic limits.

Lonnie McNew 1/1/80
Lonnie McNew, Recording Secretary

EXHIBIT #

YORK PLACE
FILE 8
AUG 1 1986
OFFICE OF THE CONDOMINIUM
October 1, 1986
147 D. 147-14
FEE COLLECTOR'S
EXHIBIT 2
RE: Proposed Parking Area
Rear of 1205 York Road
Dear Mr. Jablon:
At the outset of this letter, I would like to thank Mr. Dyer for his time at our meeting of September 26, 1986 in reviewing the above matter. I had a number of questions, and he patiently and thoughtfully answered them in his usual efficient manner. However, at the conclusion of this meeting, we decided to address these questions and answers in this letter. By having the final approval from you, in writing, we feel that it is the best way to avoid any future controversy.
We know that an RTA does exist at the southerly portion of this overall development tract, and originates from the houses to the south and on both sides of Tenbury Road, but that matter will be addressed later. At this time, we are only trying to determine the correct procedure to file for a use permit for off-street parking on the subject property without being encumbered by RTA requirements that could originate from within the development tract.
As you can see from the attached plat, parking is proposed in two areas. The first is on a small portion to the north of and abutting Mr. Mangione's existing parking area located at the rear of his office building at 1205 York Road. This property is bisected by the G-1/D.R. 5.5 zoning line and was the subject of a previous zoning hearing (Case #81-122-CRM) in which off-street parking was granted on a portion of this area. The second area proposed for parking is larger and is located immediately to the east of and abutting the aforementioned office building parking area. At this time, the parking layout of these two areas, as shown, are for illustrative purposes only and will be redrawn to scale at a later date. All required buffer areas in accordance with any applicable residential transition areas that encompass the property will also be addressed at that time.
Mr. Nicholas Mangione currently owns the areas colored in light green, while Mr. Charles Held owns the entire area outlined in blue and shaded in various colors to indicate separate parcels
YORK ROAD ASSOCIATES / 1205 York Road, Penthouse Suite, Lutherville MD 21086-1011 824-8400

James E. [Signature]
JAMES E. [Name]
[Address]
[City] [State] [Zip]
PETITION FOR
EXHIBIT 3

PRISONER'S
EXHIBIT 5

PAGE NO. _____ **FILE NO.** _____

BALTIMORE COUNTY				
Applicants	Modification Since Staff Report	Pros	Cons	Staff Recommendation
Eastpoint 86-03-1311	- Clarified financial viability of current facility - Maintained willingness to take psychiatric patients (No plans for specific programs submitted, however)	- Low charge per day - Good location - Proposes to serve highest percentage of Medicaid patients	- Does not offer a wide variety of services - Financial statements indicate cash flow problems and high indebtedness	Staff's recommendation for disapproval of Eastpoint remains unchanged
Lutherville 86-03-1312	- Modified to request 116 general comprehensive care beds - Met conditions and Standard LTC-1-7 regarding public information	Offers fullest range of alternative services	- Located in an area with a substantial number of nursing homes - Community Association opposes the project	Approve Lutherville for 117 comprehensive care beds with the condition that they make a good faith effort to resolve problems with the Bulaney Valley Improvement Association
Maryland Masonic 86-03-1313	None	Funds services through endowments	- Low occupancy rates so no urgent need for additional beds - Services not available to the general public	Staff's recommendation for disapproval of Maryland Masonic remains unchanged
South West 86-03-1314	- Modified to request 117 general comprehensive care beds and 3 domiciliary care beds - Clarified intent to serve large percentage of Medicaid patients - Clarified that charge per day is high because they serve 75% heavy/moderate care patients	- Offers a range of alternative services - Good location	- Highest charge per day - Highest construction costs	Staff's recommendation for disapproval of South West remains unchanged
Village Care 86-03-1315	- Modified from 96 to 116 comprehensive care beds - Emphasized intent to offer special services to psychiatric patients	- Lowest charge per day - Offers a range of alternative services - Good location	- Lowest Medicaid population - Construction costs may be underestimated	Staff's recommendation for disapproval of Village Care remains unchanged

THIS OPTION, Made this 1st day of March, in the year One Thousand Nine Hundred and Seventy-Nine, by and between CHARLES W. HELD, JR. and HARRIETTE W. HELD, his wife, hereinafter referred to as "Sellers", and LOUIS MANGIONE and ROSEMARY MANGIONE, hereinafter referred to as "Buyers".

WITNESSETH, That for and in consideration of \$1.00, and the performance of the covenants and agreements, set forth hereinbelow, on the part of the respective parties hereto, the Sellers, for themselves, their heirs, personal representatives and assigns, do hereby grant unto the Buyers, their heirs, personal representatives and assigns, the exclusive option to purchase all that property known as No. 1 Greenridge Road situate in the Ninth Assessment District of Baltimore County, State of Maryland, and described as follows, to wit:

BEING all that three acres of land of the Lessors situate on the south side of Greenridge Road east of York Road as shown on the attached plat as Parcel No. 1 and Parcel No. 2.

For Title see the following conveyances to which reference is hereby made for a more particular description.

1. Dated April 15, 1936 and recorded among the Land Records of Baltimore County in Liber C.W.B.Jr. No. 973 folio 200 from B. Elmer Griffith and Hilda A. Griffith, his wife, unto Charles W. Held, Jr. and Harriette W. Held, his wife.
2. Dated March 1, 1941 and recorded among the Land Records of Baltimore County in Liber C.W.B.Jr. No. 1136 folio 567 from Elwood L. Wadsworth and wife, and Homer C. Wadsworth and wife, unto Charles W. Held, Jr. and Harriette W. Held, his wife.
3. Dated February 15, 1946 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1426 folio 203 from Hamilton H. Poole unto Charles W. Held, Jr. and Harriette W. Held, his wife.
4. Dated October 4, 1946 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1514 folio 298

ASSIGNMENT
BOOK 6355
PAGE 581

TRANSFER TAX NOT REQUIRED
RECORDED IN BALTIMORE
COUNTY RECORDS
FOR \$1.00
1-22-79

*Original in
noted situation
J.L. 516*

THIS LEASE AND AGREEMENT, Made this 6 day of March, in the year One Thousand Nine Hundred and Seventy-Nine, by and between CHARLES W. HELD, JR. and HARRIETTE W. HELD, his wife, hereinafter referred to as "Lessor", and NICHOLAS B. MANGIONE and MARY C. MANGIONE, his wife, hereinafter referred to as "Lessee".

WITNESSETH, That for and in consideration of the rent herein-after reserved, and the performance of the covenants and agreement set forth hereinbelow, on the part of the respective parties hereto, the Lessors, for themselves, their heirs, personal representatives and assigns, do hereby lease and demise unto the Lessees all that property known as No. 1 Greenridge Road situate in the Ninth Assessment District of Baltimore County, State of Maryland, and described as follows, to wit:

BEING all that three acres of land of the Lessors situate on the south side of Greenridge Road east of York Road as shown on the attached plat as Parcel Nos. 1, 2 and 3.

For Title see the following conveyances to which reference is hereby made for a more particular description.

1. Dated April 15, 1936 and recorded among the Land Records of Baltimore County in Liber C.W.B.Jr. No. 973 folio 200 from B. Elmer Griffith and Hilda A. Griffith, his wife, unto Charles W. Held, Jr. and Harriette W. Held, his wife.
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4. Dated October 4, 1946 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1514 folio 298 from Robert

*Original in
noted situation
J.L. 516*

DULANEY VALLEY
IMPROVEMENT ASSOCIATION
P. O. Box 102
Lutherville, Md. 21093
September 20, 1968

RECEIVED

SEP 24 1968

MARYLAND RESOURCES
PLANNING COMMISSION

Ms. Charlene C. Quinn
H. H. R. P. C.
201 West Preston St.
Baltimore, Md 21201

Dear Ms. Quinn:

I am submitting this letter in opposition to the M.H.R.P.C. staff recommendation to award a 120 bed comprehensive care allowance to the Lutherville Nursing and Rehabilitation Center.

My concern about this decision is not because I believe that a nursing home cannot coexist harmoniously in a residential neighborhood. Rather, I am opposed because the developer of this project has demonstrated to the people of this community that he will not do his part to make any such coexistence possible. He has shown that he has no regard for the citizens, no respect for the zoning laws which protect their property and no willingness to comply with his written agreements with their neighborhood association.

Mr. Mangione owns and operates a medical office building at 1205 York Rd. This facility is adjacent to the site of the proposed nursing home. The original building plan met parking requirements for an office building but not a medical office building. Yet, the owner has leased most of the space to tenants whose business is medical. The result has been a severe parking problem which he "solved" by prohibiting employees of the tenants from parking in the building lot. The employees had no choice but to park on our residential streets to the extreme inconvenience of residents. After our neighborhood association and Baltimore County officials arranged for permit parking in the area, Mr. Mangione illegally began constructing a lot in a residential transition area. This lot is in an area in which he agreed, in writing, to provide landscape screening. In summary, he is using his building for a purpose which his original zoning situation would not allow and he is breaking the law and a good faith agreement in an attempt to solve a parking problem he created.

We have absolutely no faith that Nicholas Mangione will operate this facility with any sensitivity to the needs or concerns of the citizens of our community. We respectfully ask that you deny his request for a Certificate Of Need.

RECORDED
10

Sincerely,
John L. McNew
John L. McNew
Recording Secretary

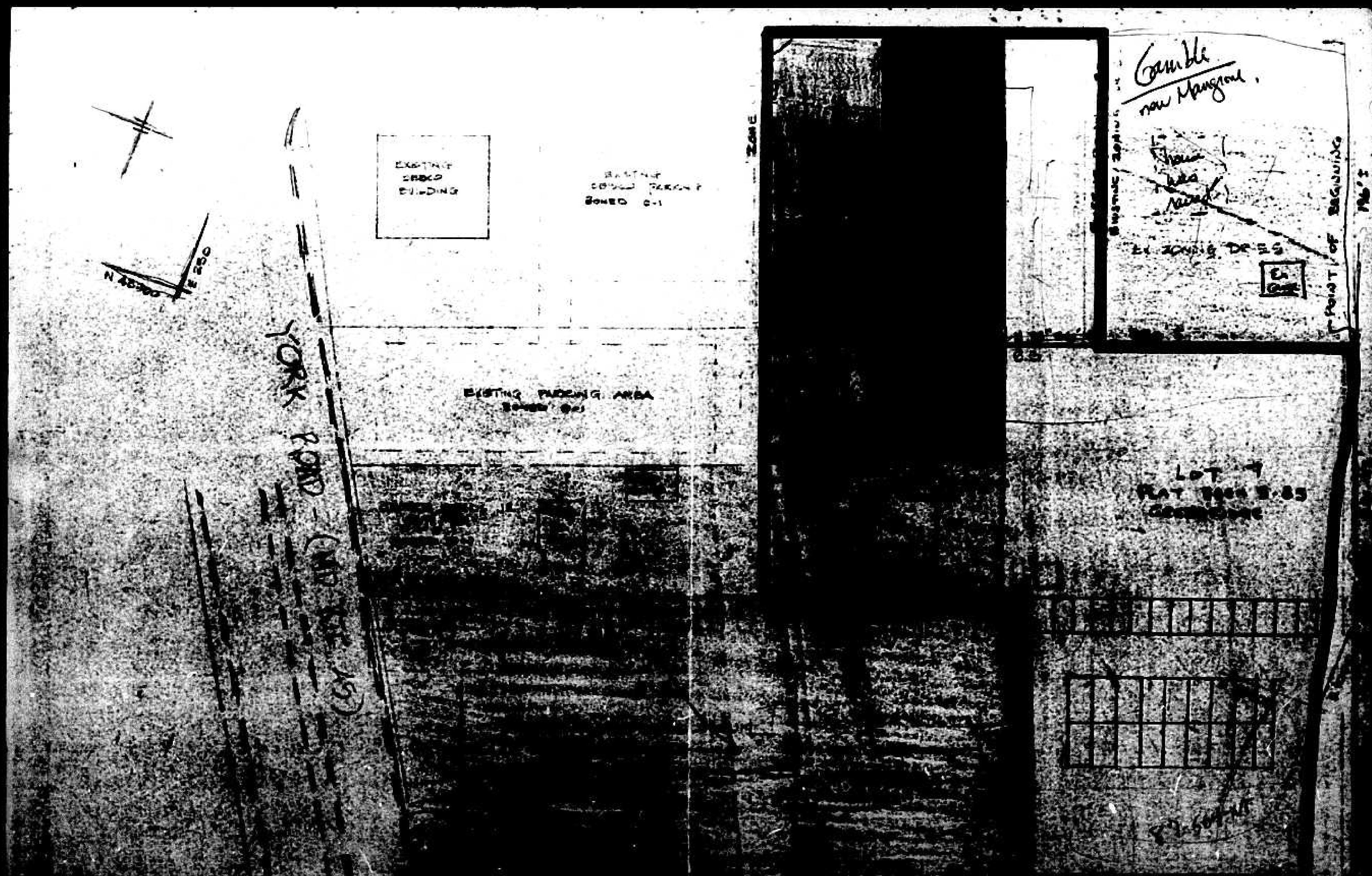
Traffic Impact Analysis
for

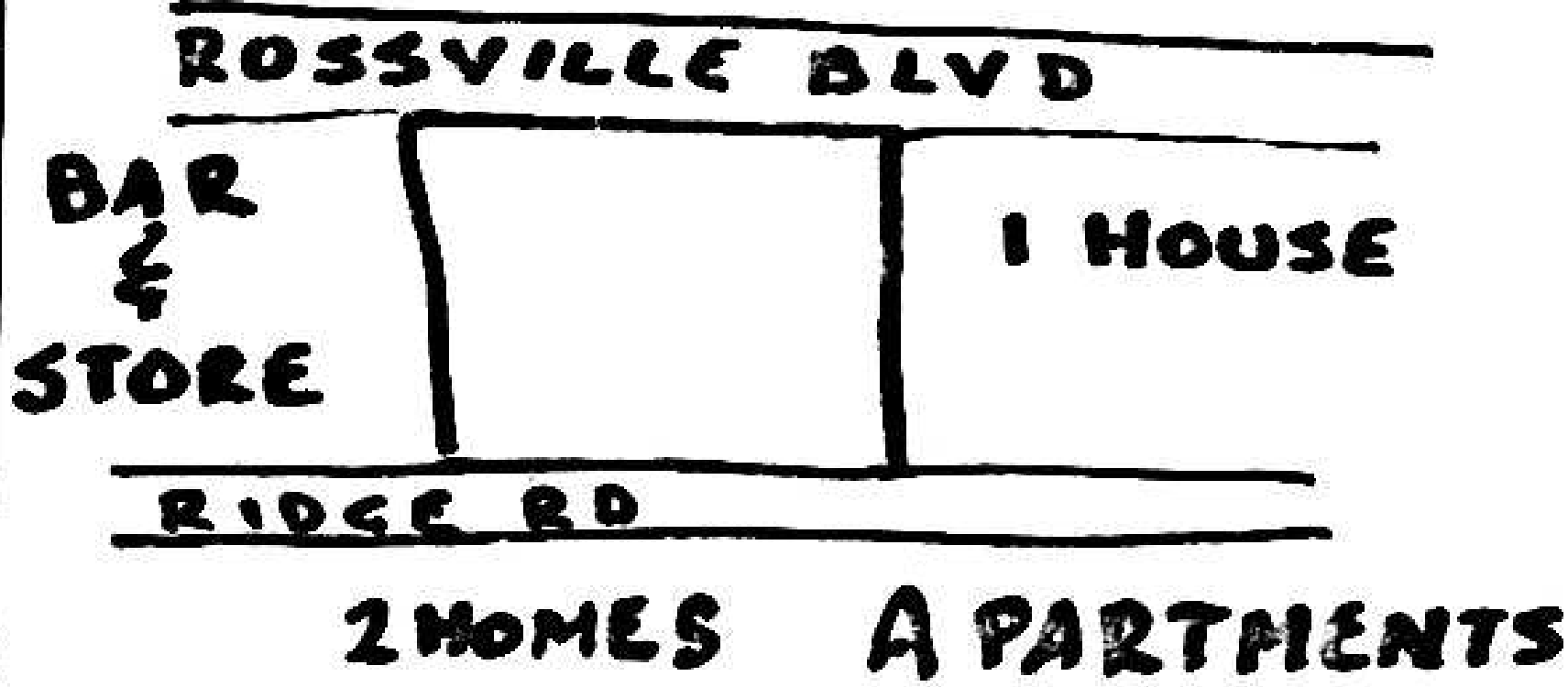
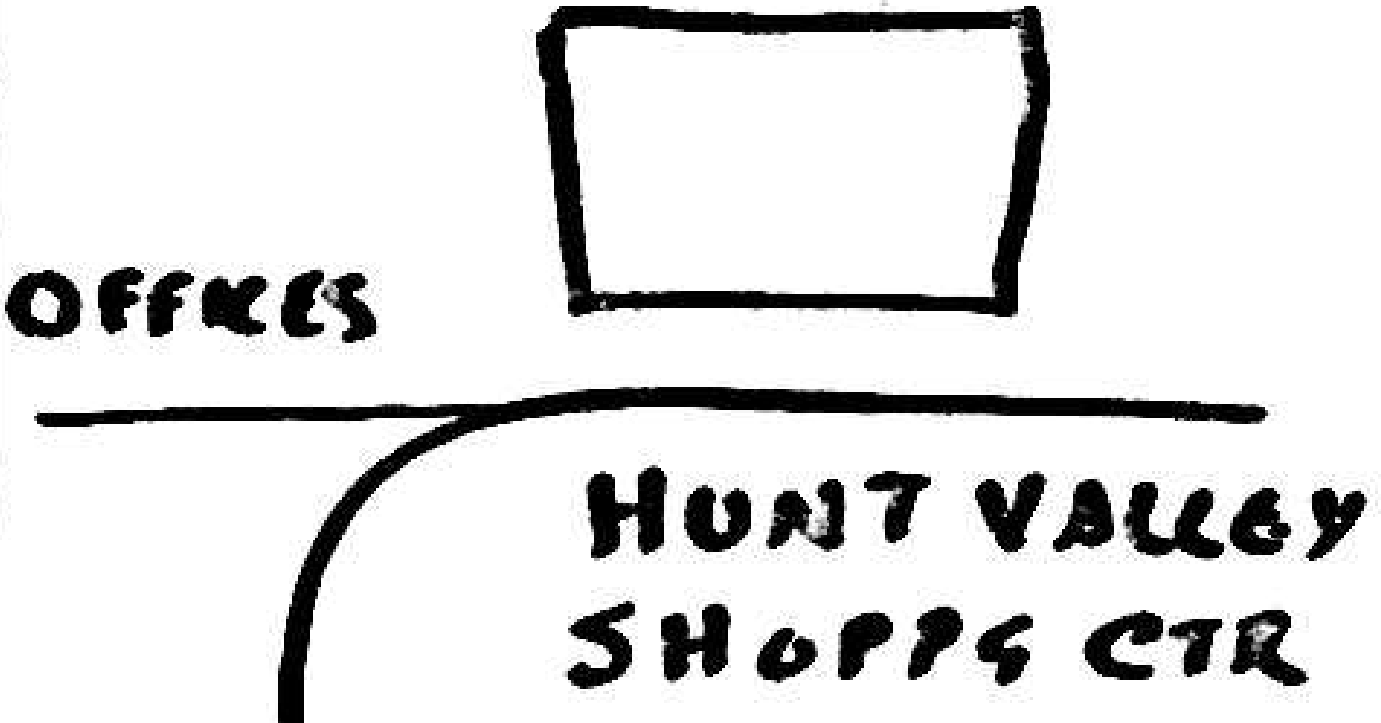
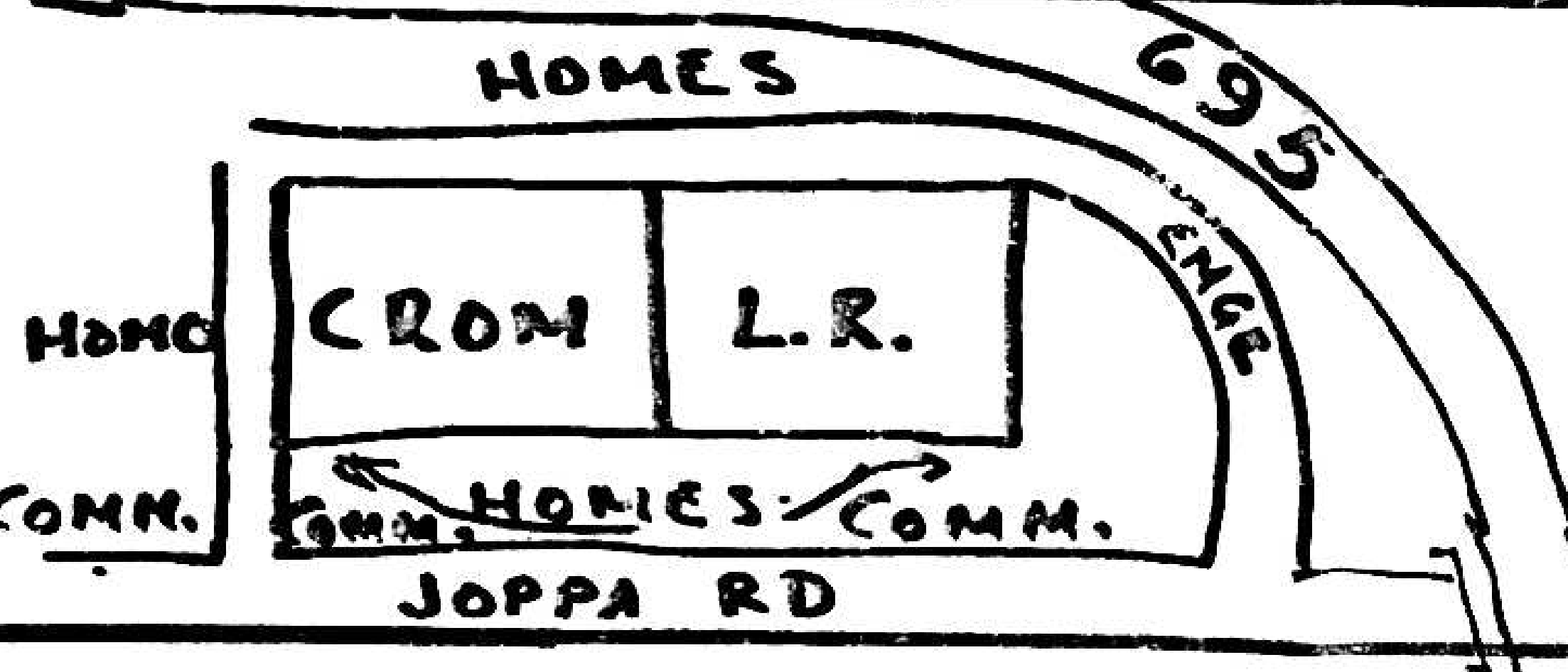
LUTHERVILLE NURSING HOME
Baltimore County, Maryland

Prepared for
MANGIONE FAMILY ENTERPRISES

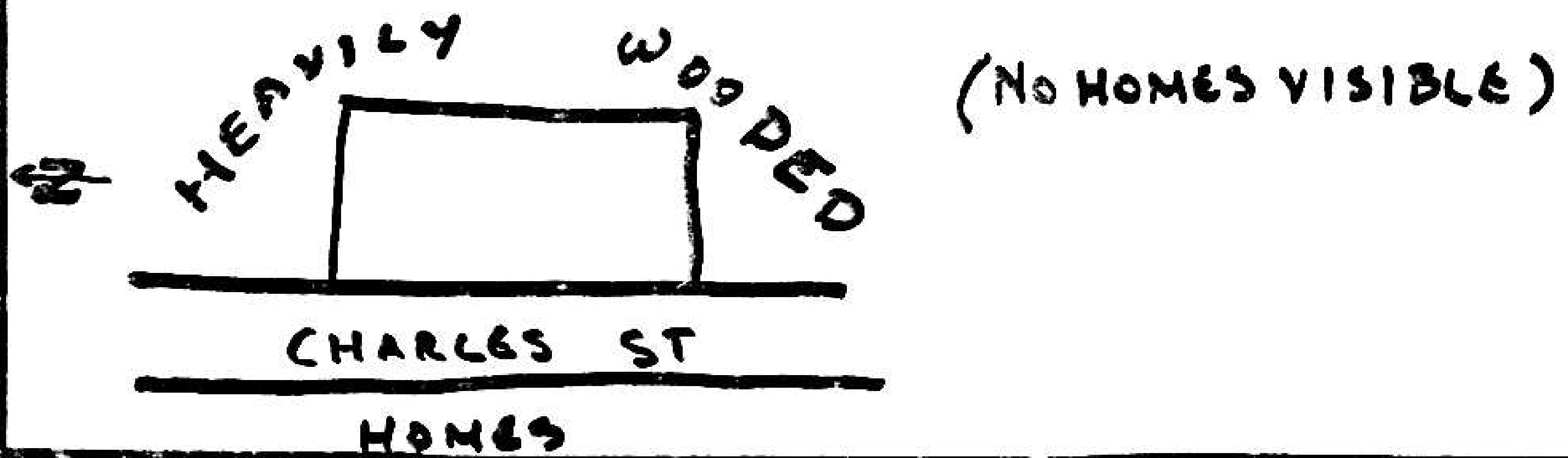
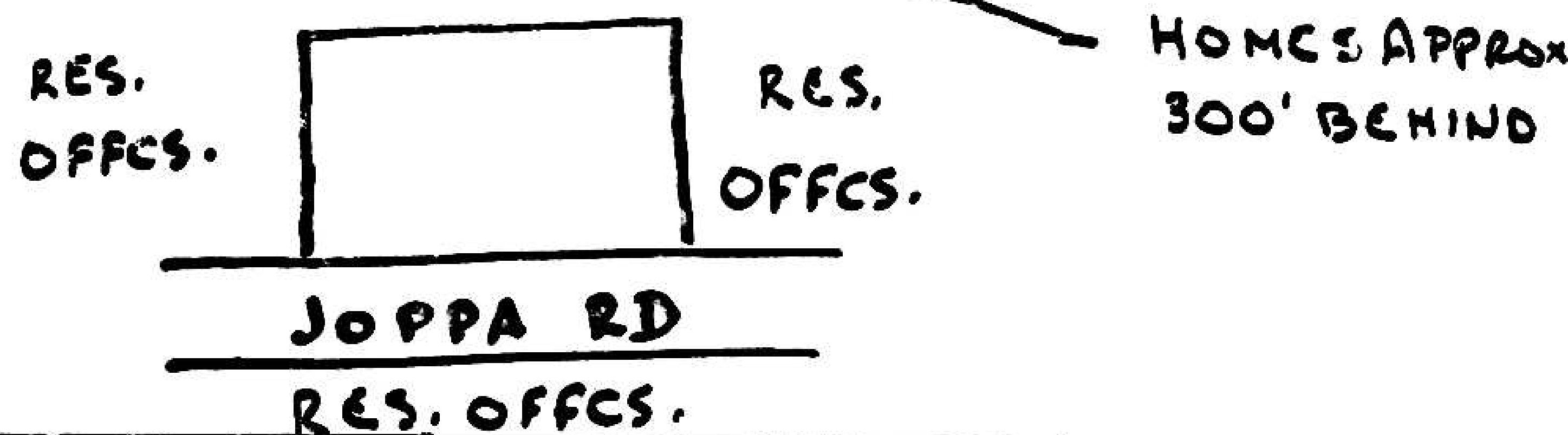
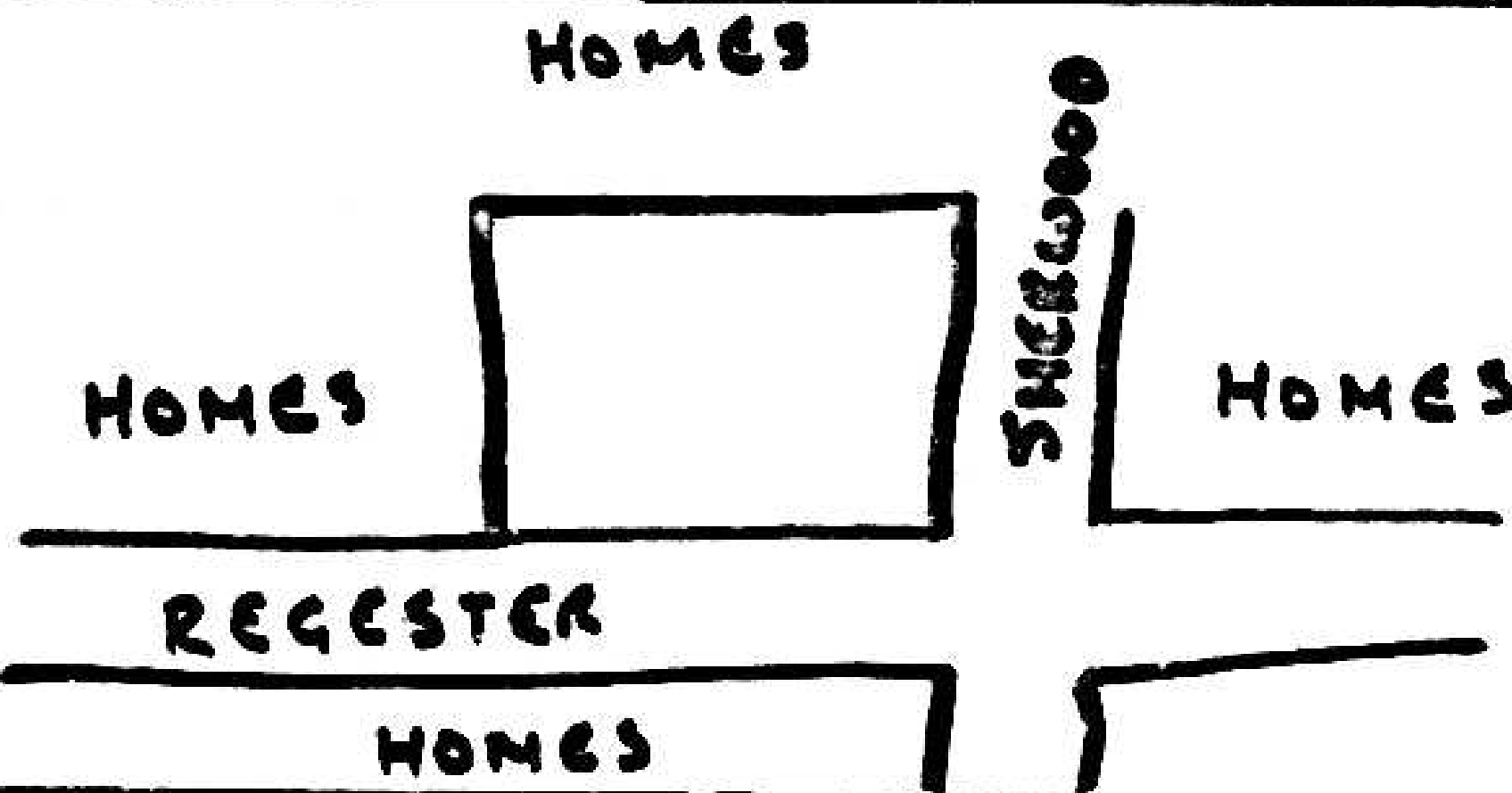
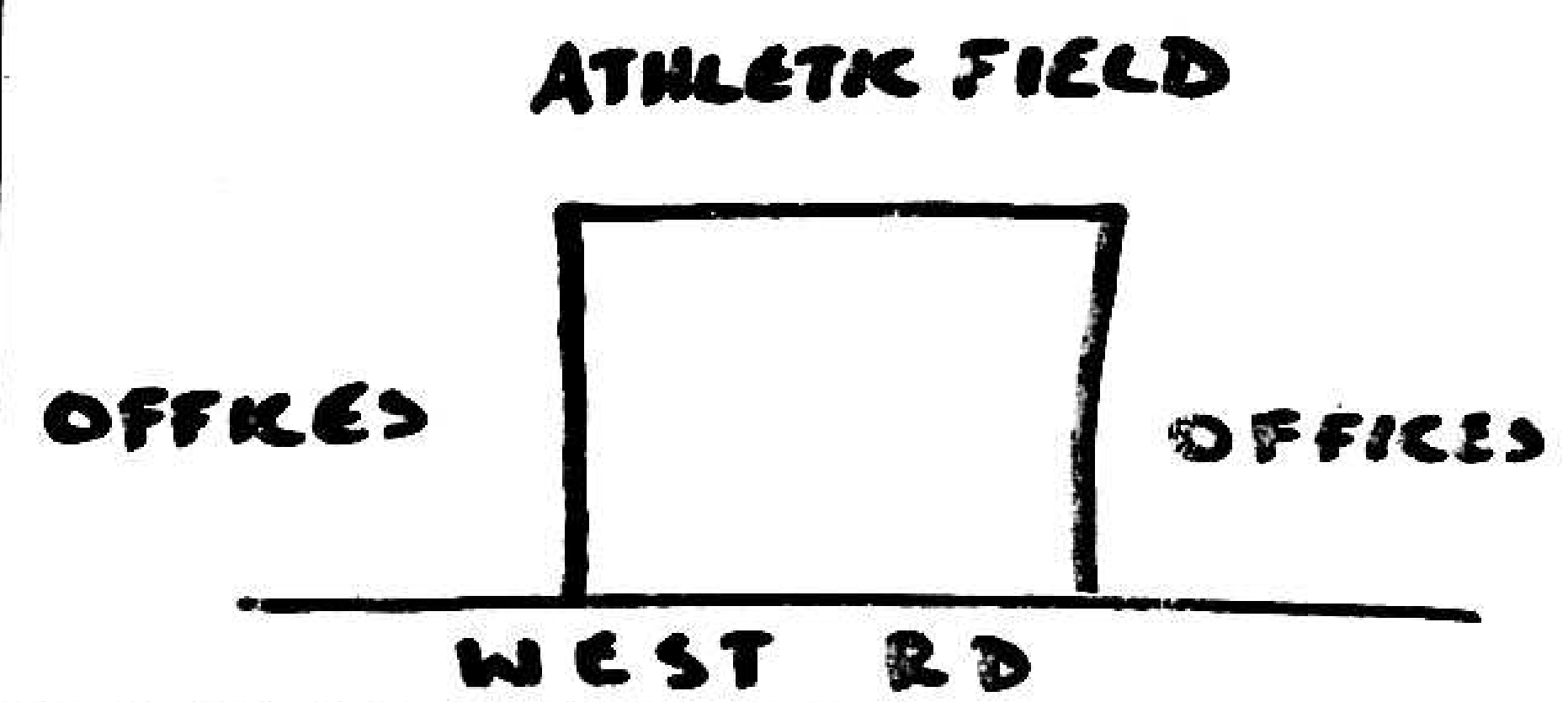
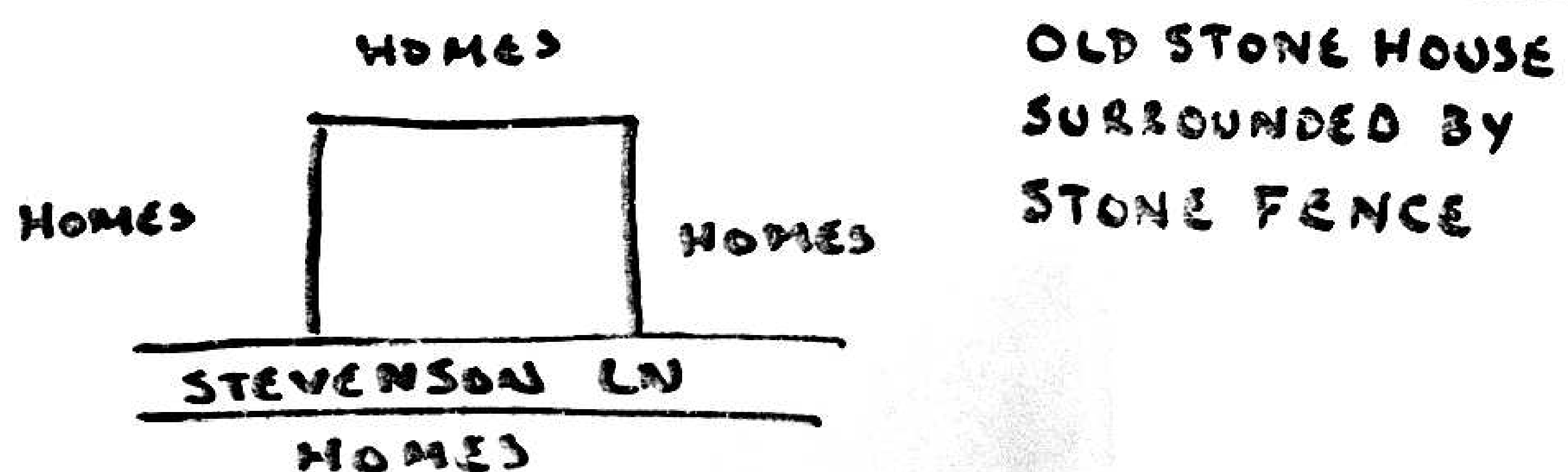
March 2, 1968

THE TRAFFIC GROUP, INC.



NURSING HOME	ZONED	NURS HOME BEDS	DOM. ICIL. 1A 27	ADULT DAY CARE	BLDG. HGT. (STORIES)	ACCESS ROAD	DESCRIPTION
EASTPOINT N.H. 1046 OLD NORTH POINT ROAD	R.O.	150	-	NO	2 STORIES (SITS ON HILL) 1 BLDG.	ON OLD NORTH POINT ROAD	ROW HOMES (APPROX 100' BEHIND)  BRICK CONST. PRIVACY FENCE BETW. N.H. & RESIDENCES
MANOR CARE ROSSVILLE ROSSVILLE BLVD.		201	-	NO	2 STORIES FACING HOMES 3 STORIES FACING ROAD *	RIDGE RD. TO ROSSVILLE BLVD.	ROSSVILLE BLVD  NO FURTHER COMMUNITY BEHIND TWO HOMES. * 1 BLDG.
MASONIC HOME COCKEYSVILLE	3.5	120	-	NO	3 STORIES 1 BLDG.	YORK RD.	OFFICES  APPROX 1/2 - 3/4 MILE TO NEAREST HOMES.
MERIDIAN CROMWELL 8710 EMGE RD	5.5	173	-	NO	2 STORY 1 BLDG	EMGE 100 YDS TO JOPPA RD.	HOMES  695
MERIDIAN LOCH RAVEN 8720 EMGE RD. P.C. 1984	5.5	130	-	NO	2 STORY 1 BLDG	"	" " APPROX 50 HOMES SURROUNDED BY BELTWAY & COMMERCIAL

NURSING HOME	NO. ZONED	NURS. HOME BEDS	DOM. HILARY	ADULT DAY CARE	BLDG. HGT.	ACCESS ROAD	DESCRIPTION
MERIDIAN HERITAGE 7232 GERMAN HILL RD.	16	181	4	NO	2 STORY 1 BLDG.	GERM. HILL	
MERIDIAN PERRING 1801 WENTWORTH RD.	RO	130	-	NO	2 STORY 1 BLDG.	WENT. APPROX 250' TO OAKLEIGH	
MERIDIAN CATONSVILLE 16 FUSTING AVE.	5.5	160	-	NO	2 STORY 1 BLDG	FUSTING 200' TO INGLESIDE	
MERIDIAN RANDALLS-TOWN 7109 LIBERTY RD.	BR C	250	4	NO	2 STORY SLOPES TO S 1 BLDG	LIBERTY RD.	
MERIDIAN MULTI-MED 7700 YORK RD. PCIC	OI	120	-	NO	2 STORY 1 BLDG	YORK RD.	

NURSING HOME	FOUNDED	NURS. HOME BEDS	DOM.	ADULT DAY CARE	BLDG. HGT. STORIES	ACCESS	DESCRIPTION
MANOR CARE RUXTON 7001 N. CHARLES	2	212	-	NO	2 STORY SLOPES TO 3 ON S. 1 BLDG.	CHARLES ST	
MANOR CARE TOWSON 509 E. JOPPA RD		127	-	NO	2 STORY 1 BLDG	JOPPA RD.	
ARMACOST 812 REGESTER AVE.	5.5	45	-	NO	2 STORY 1 BLDG.	REGEST. AVE	
DULANEY TOWSON 111 WEST RD	BL	150	-	NO	1 STORY 1 BLDG.	WEST RD.	
HOLLY HILL 531 STEVENSON LANE PC 1 "D"	5.5	55	-	NO	2 STORY 1 BLDG	STEV. LN.	

NURSING HOME	ZONED	NURS. HOME BEDS	DON.	ADULT DAY CARE	BLDG. HGT. STORIES	ACCESS	DESCRIPTION
INGLENOOK 329 HARLEM LN. (INNS OF EVERGREEN)	5.5	96	-	NO	1 STORY SLOPING TO 2 1 BLDG	OLD FRED. RD	
OLD COURT 5412 OLD COURT RD.	16	144	-	NO	2 STORY SLOPING TO 3 1 BLDG	OLD CT. RD.	
PICKERS-GILL 615 CHESTNUT AVE.	3.5 - 5.5	50	166	NO	2 STORY 1 BLDG	CHEST-NUT	
PIKESVILLE 7 SUD BROOK LN.	5.5	165	-	NO	2 STORY 1 BLDG	SUD-BROOK 400' TO REISTERS. TOWN RD	
RIVER-VIEW 1 EASTERN BLVD. PC "E"	B R C	308	-	NO	2 STORY 1 BLDG	EASTERN AVE	



VICINITY MAP

Requirements for all parking spaces or parking lots — All offstreet parking facilities shall be either contained within buildings or subject to the following requirements: [B.C. 2.4. 1955]

1. Screening—Offstreet parking facilities for more than five vehicles shall be screened by a wall, fence, or compact planting when adjoining or facing the side or rear lot line of residential or institutional premises or when they are across the street from such premises. Screening shall be at least 4 feet high. Planting shall not encroach an adjoining property. Screening shall not be so placed or maintained as to provide a traffic hazard through obstruction of visibility. [B.C.C.R., 1953.] ~~FOR LANDSCAPE MAINTENANCE~~
2. Surface—Any parking or storage space for more than 5 vehicles shall provide a durable and dustless surface, and shall be properly drained. [B.C.C.R., 1953.] ~~MAINTAIN CONCRETE OR ASPHALT SURFACES~~
3. Lighting—Any fixture used to illuminate any offstreet parking area shall be so arranged as to reflect the light away from residential lots. [B.C.C.R., 1953.]
4. Two parking space shall be closer than eight feet to a street. [B.C.C.R., 1953.]

SITE DATA

- [illegible]

90485.

559

- 2. 1. 1. BASED ON DEEDS AND RECORD PLAT
"RECORDS" BASED ON BALTIMORE COUNTY
RECORD SHEETS
- 3. 1. 1. BASED ON PREVIOUS AND SMALL LOTS
THAT CREATE AN RTA QUOTE ARE SHOWN
AND ARE NOT THEN SUFFICIENT IN THAT THEY
CONTACT A KITCHEN FACILITIES
FOR THE LIAISON CONNECTION IS ONLY ONE OTHER
FOR SECTION 101.11: #2 101.11

PLAT TO ACCOMPANY
REQUEST FOR SPECIAL EXCEPTION
FOR CONVALESCENT HOME
AND VARIANCES*
PROPOSED LUTHERVILLE REHABILITATION
AND DOWNSIDE CARE CENTER

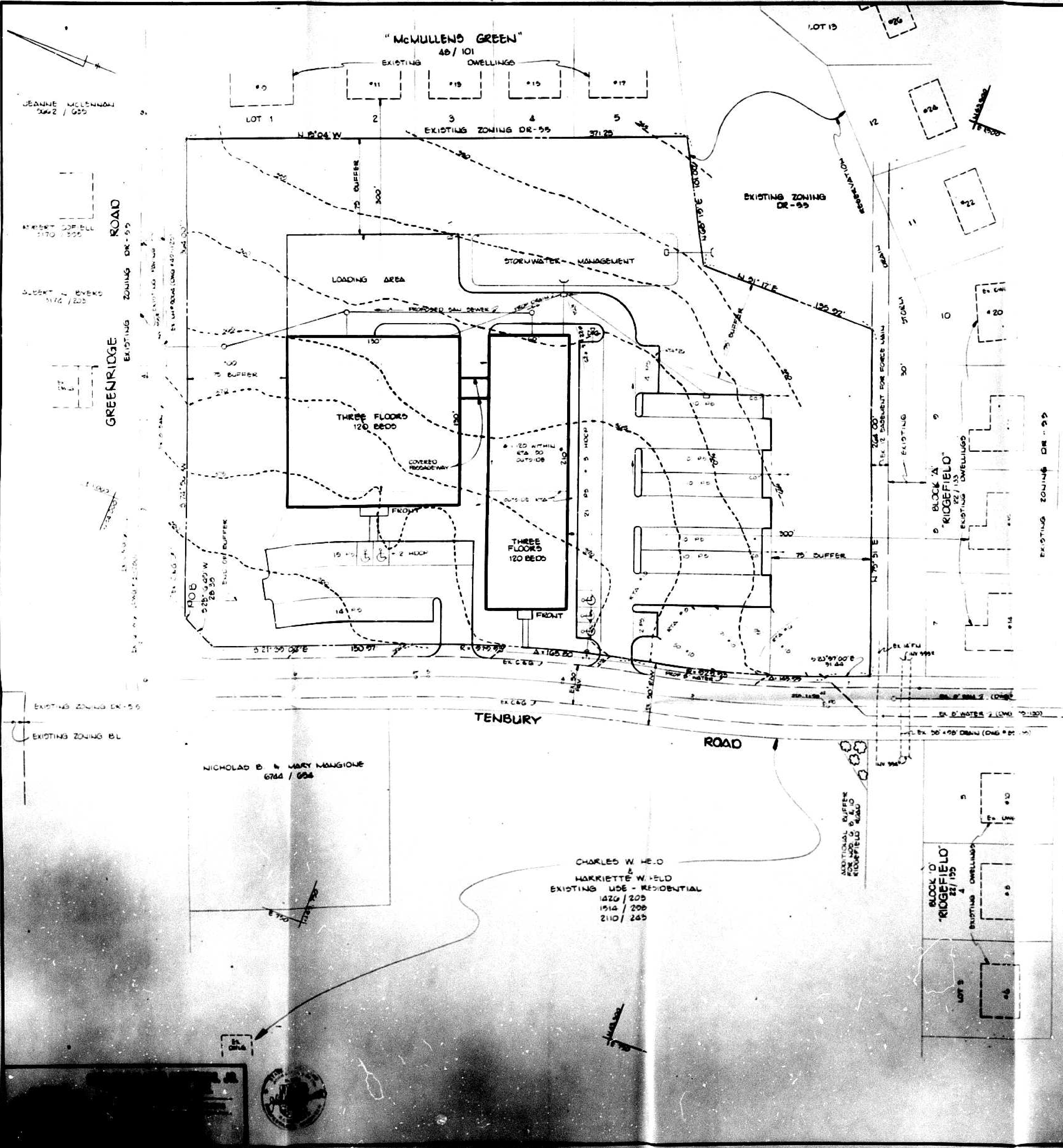
SCALE: 1" = 30'

1948年12月

25 JAN 67 JANUARY 20, 1967
 25 JAN 67 MARCH 10, 1967

**PETITIONER'S
EXHIBIT** 1

OWNER
NICHOLAS B & MARY MANSIONE
1205 YORK ROAD
EDMOND, MARYLAND
21204



- c. Requirements for all parking spaces or parking lots—All off-street parking facilities shall be either contained within buildings or subject to the following requirements. [B.C.Z.R., 1988.]
- (1) Screening—Off-street parking facilities for more than five vehicles shall be screened by a wall, fence, or landscape planting when adjoining or facing the side or rear lot line of residential or institutional premises or when they are across the street from such premises. Screening shall be at least 4 feet high. Planting shall not encroach on adjoining property. Screening shall not be so placed or maintained as to provide a traffic hazard through obstruction of visibility. [B.C.Z.R., 1988.]
 - (2) Surface—Any parking or storage space for more than five vehicles shall provide a durable and durable surface, and shall be properly drained. [B.C.Z.R., 1988.]
 - (3) Lighting—Any fixture used to illuminate any off-street parking area shall be so oriented as to reflect the light away from residential lots. [B.C.Z.R., 1988.]
 - (4) No parking space shall be closer than eight feet to a street property line. [B.C.Z.R., 1988.]

SITE DATA

1. AREA OF SITE: 4.0 AC ±
2. EXISTING ZONING: DR-55
3. DEED REFERENCE: 5510/575
4. OWNER: NICHOLAS B. & MARY C. MANGIONE
5. SETBACKS:
 - FRONT YARD: 25' (OUTSIDE ETA)
 - SIDE YARD: 75' (WITHIN ETA)
 - REAR YARD: 50' (WITHIN ETA)
6. PARKING REQUIRED:
 - 240 BEDS PROPOSED
 - REQUIRED PARKING SPACES = 24
 - PROPOSED PARKING SPACES = 111 (INCLUDES 5 HANDICAPPED SPACES)
7. SPECIAL EXCEPTION:

NOTES:

OUTLINE IS BASED ON DEEDS AND RECORD PLAT TOPOGRAPHY IS BASED ON COUNTY POSITION SHEETS

PLAT TO ACCOMPANY REQUEST FOR SPECIAL EXCEPTION FOR CONVALESCENT HOME

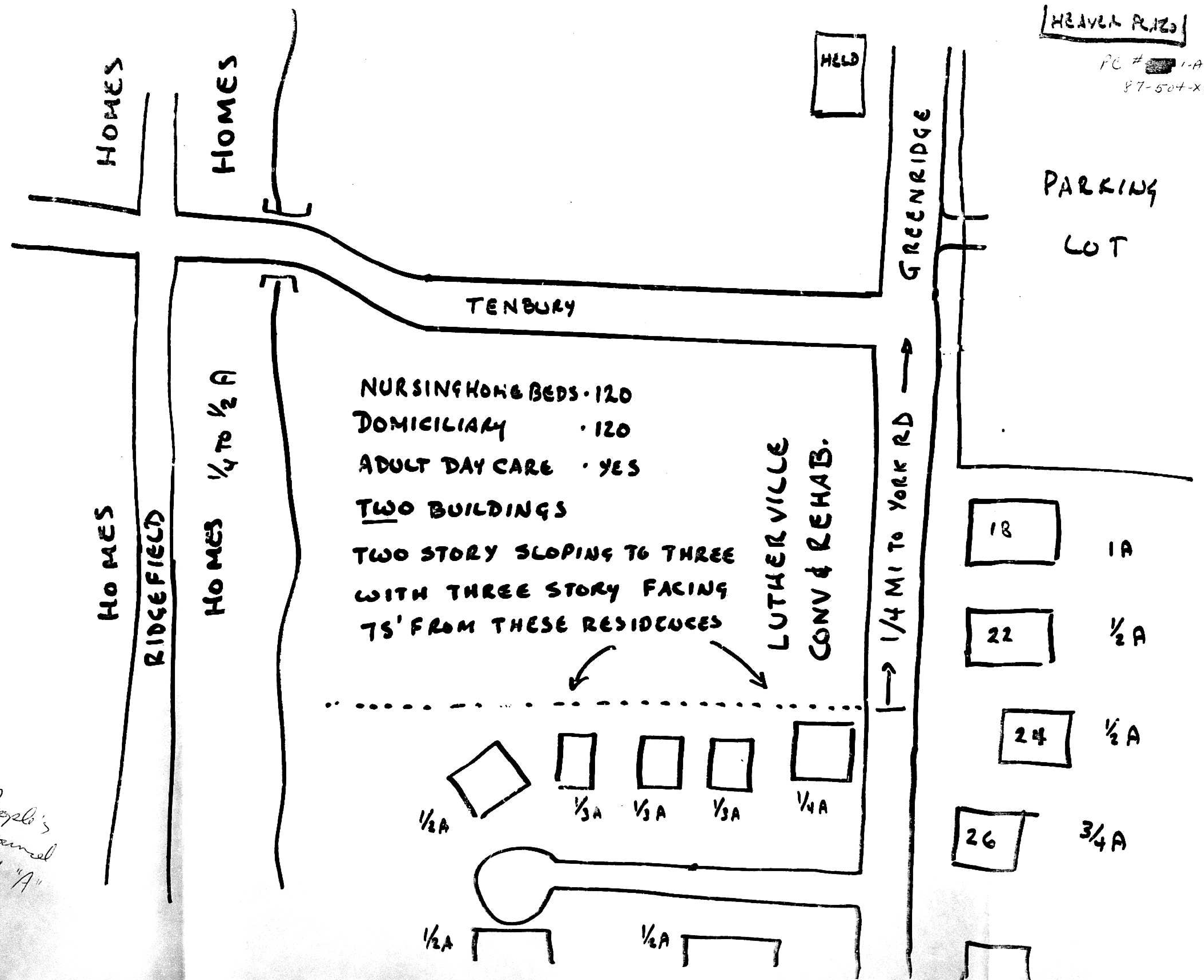
PROPOSED LUTHERVILLE REHABILITATION AND DOMICILIARY CARE CENTER

SCALE: 1" = 30'
JUNE 3, 1985

OWNER
NICHOLAS B. & MARY MANGIONE
1205 YORK ROAD
TOWSON, MARYLAND
21204

17-504-XA
#6

PL 5132



People's
Council
1 "A"