10/1/91 - Circuit Court AFFIRMED Board of Appeals
90-120-SPH (Ashland Homeowners Assoc.)
Hon. John F. Fader, II

IN THE MATTER OF THE APPLICATION OF ASHLAND HOMEOWNERS' ASSOCIATION A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER ASHLAND & PAPER MILL RDS. 8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

* IN THE CIRCUIT COURT
* FOR BALTIMORE COUNTY
* CASE NO. 90 CG 3013

ORDER OF COURT AFFIRMING
BOARD OF APPEALS

It is ORDERED by the Circuit Court for Baltimore County this 26th day of September, 1991 that the decision of the Board of Appeals dated June 27, 1990 granting the Petition For Special Hearing to approve a 2nd Amendment to the development plan of Ashland located in the Texas/Cockeysville Section of Baltimore County is affirmed.

The Petition was sought by the Ashland Homeowners' Association to bring into compliance the development plan with the plat for the site and the true property lines. Opposition by Diane Golden (Golden), the owner of Lot One, Block A, in the Ashland subdivision, whose lot is affected by the change, is based on her allegations:

1. The Amendment is violative of Section 1B01.3A1 of the Baltimore County Zoning Regulations. (BCZR), and
2. That she relied upon representatives of the developer and her review of the initial final development plan, and if the 2nd Amendment is allowed, she will be deprived of property rights.

Granting the Petition means that the Final Development Plan of Ashland now shows a distance of six (6) feet from a garage on Golden's property to the end of her property line as opposed to a distance of fifteen (15) feet as shown on the plat initially filed.

FILED OCT 1 1991

There is no question but that the recorded plat, from which the Golden lot was deeded to her, the location survey and the deed metes and bounds reference all show the distance to be 15 feet.

A.

(Reliance and Misrepresentation)

There was conflicting evidence on the issue of what representations were made by the Developer, what Golden actually reviewed at the time she purchased her lot and how surprised she was to find there may be only a 6 foot setback building line as opposed to a fifteen foot distance between her property line and the garage.

Against the assertion by Golden that she relied on the designation of a 15 foot distance between a garage located on her property and her property line by reviewing the Development Plat and through the representations of the Developer, was the testimony of Jeanette Tansey (Tansey), a landscape architect, who helped prepare the Final Development Plan for Ashland. Tansey recounted a telephone conversation she had with Golden in April, 1989:

> A. ... she stated that she owned approximately 6 feet from the edge of her garage to her property line which was not sufficient property to screen her property from the adjacent homeowners.
>
> . . .
>
> A. ... she said that her house location survey and the record plat, although neither one of them actually had a dimension between her garage and the property line, they looked like they scaled about six feet, and that when she had the surveyor who had done the surveying go out there, stake out the line for her to confirm it, she said it looked like less, and she was concerned.

It was as a result of that phone call from Golden that Tansey discovered the error in the Final Development Plan. She

testified that she subsequently talked to Golden telling her of the discrepancy, "and I needed to go through all documents and find out what had happened, and that I would need a copy of her house location survey so we could see what was the line correctly staked."

> Q. In your conversation with Ms. Golden, did she indicate to you that she had prior familiarity with the final development plan?
>
> A. No, she didn't. When I mentioned it, the discrepancy on the Final Development Plan, she had asked me as to what that plan was. And I told her she should have seen it hanging in the trailer. And it didn't seem she knew anything about it.

Commenting on their responsibility to observe the demeanor of the witnesses, the Board of Appeals, though the conclusion should have been more directly stated, concluded in its written opinion that this factual dispute was resolved against Golden.

B.

(The Discrepancy Resolved)

BCZR 1B01.3A1 provides:

> A. Development Plans
>
> 1. Purpose. This paragraph is intended:
>
> a. To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; and
>
> b. To provide for review of residential-development plans to determine whether they comply with these regulations and with standards and policies adopted pursuant to the authority of Section 504.

The Developer of Ashland prepared plans for approval of the development including a Final Development Plan, containing two sheets and a record plat, all approved by Baltimore County. Page one of the Final Development Plan showed a distance of 15 feet from a garage structure existing on the Golden property and her property line. Page two of the Final Development Plan showed the metes and bounds of the lots and specifically showed a 6 foot dimension between the garage and the property line.

Initial plans on Ashland were the subject of a Petition for Special Hearing before the Zoning Commissioner for Baltimore County which was filed to permit the non-conforming setbacks of older homes which did not comply with zoning regulations in effect. The petition in that zoning case was granted and the Final Development Plan and record plat were amended to show the approvals, i.e. The First Amended Final Development Plan and Amended Plat 1 of Ashland.

Testimony showed that in April, 1989 Golden phoned Mr. Edmund Haile, a principal of Daft-McCune-Walker, Developer's engineers, to inquire about purchasing additional property from the Ashland Homeowners Association. At that time, Jeanette Tansey of Daft-McCune-Walker reviewed the project drawings and discovered the discrepancy between page one and page two of the First Amended Final Development Plan as it related to the distance between Golden's property line and her garage structure.

A Second Amended Final Development Plan was proposed to correct the discrepancy in the distance of the property line and a Petition for Special Hearing was filed by Ashland Homeowners Association. The petition was granted by the Zoning Commissioner for

Baltimore County and appealed by Golden to the County Board of Appeals. Upon receiving oral testimony and written exhibits, the Board of Appeals granted the approval for the Petition for Special Hearing to amend the development plan as requested. A distance of six feet was there shown between the Golden garage structure and her property line. Golden appealed to this court.

She claims the Board erred as follows:

(a) In its determination of the distance between Golden's garage building and the nearest property line;

(b) In finding that the 15 foot distance shown on the final development plan between the property line and the garage was a drafting error;

(c) In finding that the plat, deed description and location survey all clearly show a 6 feet distance from the building to the property line;

(d) In finding that obtaining a setback variance would solve Golden's problem and that the variance would be easily obtained;

(e) In failing to find that Golden would be harmed by the petition if granted;

(f) In finding that Golden had an obligation to make certain diligent efforts beyond that which is required by the statute.

Golden concludes that the error is on sheet 2 of the Final Development Plan and therefore the plat and the deed must be corrected to conform with sheet 1; so there will be a fifteen foot distance between her garage structure and her property line.

At the Board of Appeals hearing, Tansey, a landscape architect, who participated in the preparation of the Final Development Plan testified that she was the one who discovered what she believed to be an error on sheet 1 of the Final Development

Plan. She described sheet 1 as showing a 15 feet setback between the garage and property line on Golden's lot whereas sheet 2, which is a detail for the record plat, shows the exact bearings and distance on the property line, and a distance of 6 feet rather than 15 feet. Tansey testified that the actual measured lineal distance at the site is about 6 feet. She explained that the purpose of the First Amended Final Development Plan was to make a change in lot lines on other lots and to add some notes about a variance.

As to an explanation of how the discrepancy occurred, Tansey testified:

> The initial Final Development Plan had 15 feet on it and when the changes were made for the first Amendment, that was not one of the things that was being changed, and obviously no one saw that there was a problem. So it was shown because no one thought there was any reason not to show it. No one realized there was a problem.

Edmond Haile (Haile), a professional engineer and expert land surveyor, employed by Developer's engineers, testified that the record plat is the document that is intended to describe the property to be conveyed. He testified that the proposed amendment is in keeping with the spirit and intent of the Baltimore County Zoning Regulations and is in accordance with the requirements of the Comprehensive Manual of Development Policies. Haile explained that the Office of Zoning requires one plan which omits detailed property information and a second sheet which shows detailed property information (the same information that appeared on the record plat). Haile concluded that the 15 feet designation shown on sheet 1 of the Final Development Plan is a mistake.

Haile also testified that there is no distance stated in the deed but that the deed only refers to the lot lines. He related that sheet 2 of the Final Development Plan is the computation detail and it is not necessary that the Final Development Plan and the record plat conform exactly because the Final Development Plan is a guide to development. There is detail that is developed subsequent to the preparation of the Final Development Plan. Haile stated that the recorded plat is not consistent with the 15 feet scaled out on the First Amended Final Development Plan (sheet 1) but that the recorded plat is consistent with sheet 2 of the same document.

The Final Development Plan is not intended to be a conveyance and Haile testified that the deed actually conveying the property to Golden reflected the metes and bounds description on page two of the Final Development Plan. Therefore, the Petition requested was consistent with the Golden deed and the metes and boards description.

The issue on appeal is whether or not there was sufficient evidence before the Board of Appeals to make fairly debatable its approval of the application for approval of the Second Amended Final Development Plan.

The Board of Appeals determined,

> In conducting our hearing, the Board is obviously afforded with the opportunity to observe the demeanor of the witnesses before us and adjudge their credibility. Further, we are obligated to consider the merits of the Petition for Special Hearing in accordance with the standards of the BCZR and should not consider the present or proposed use for the property. After considering all of the evidence before us and applying these standards, we are persuaded that the Petition for Special Hearing should be granted. In our view, the nature of the amendment is to correct an obvious drafting error. Further, we are convinced that the Protestant had an opportunity had she

made further efforts as diligent as those she described to ascertain her true property line. The plat, location survey, and deed reference all clearly demonstrate the true boundary line between the Homeowners' Association open space and the Protestant's property. We may also favorably note Mr. Haile's testimony wherein he suggested that the property owner might obtain setback variances to solve her current dilemma. In view of the vast open space owned by the Homeowners' Association, this would seemingly be easily accomplished.

This court concludes, in reviewing the transcript of the testimony before the Board, that the Board's determination in approving the Second Amended Final Development Plan was at least fairly debatable and within the sound discretion of the Board.

In Storch v. Zoning Board of Howard County, 267 Md. 476, 298 A.2d 8 (1972), the Court cited the trial court oral opinion:

> In reaching this conclusion, the court has taken into consideration all the testimony that is on the record and proper to be admitted. It does not ignore that something may be said in support of a different view. There are few questions which do not admit of argument, but something more than admissible controversy is required. Citing: Lipsitz v. Parr, 164 Md. 222, 232, 164 A. 743.

267 Md. at 482.

The scope of judicial review of decisions by administrative agencies is narrow, recognizing that the Board members have expertise in a particular area and ordinarily should be free to exercise their discretion in their area of expertise. Judicial review of administrative agencies is discussed in Mayor and Alderman, etc. v. Annapolis Waterfront, 284 Md. 383, 396 A.2d 1085,

> [A]ccordingly, this Court adheres to the proposition that a reviewing court will not substitute its judgment for that of an administrative board where the issue is for that of an administrative board where the issue is fairly debatable and the record contains substantial evidence supporting the administrative decision (citations omitted).

When reviewing an administrative decision for arbitrariness or capriciousness, a court must first determine whether the question before the agency was fairly debatable. In Eger v. Stone, 253 Md. 533, 542, 253 A.2d 372 (1969), we defined the term "fairly debatable",

> We have made it quite clear that if the issue before the administrative body is 'fairly debatable', that is, its determination involved testimony from which reasonable men could come to different conclusions, the courts will not substitute their judgment for that of the administrative body, in the absence of an unconstitutional taking of private property for public use without the payment of just compensation. (Citations omitted)

The word debatable means, 'Liable to be debated; disputed; disputable; subject to controversy or contention; open to question or dispute.' Webster's New International Dictionary, 2d Ed. (Unabridged).

Whether an issue before an administrative agency is fairly debatable is an individualized determination based on the record evid ce of each case.

284 Md. at 395-96.

The court further said:

> Where the scope of review is not specified by statute, a corollary element in judicial review of administrative decisions for arbitrariness is a determination of whether the findings of the board were supported by substantial evidence.
>
> While a court reviewing a decision of a board . . . may not substitute its judgment for that of the board, it will examine the record upon which the board's decision is based to determine whether the findings of the board are supported by substantial evidence. The scope of this judicial inquiry is commonly described in the orthodox terminology of the substantial evidence rule. (Citations omitted) (Footnote omitted).

Id. at 397-98. The court cited Insurance Comm'r v. Nat'l Bureau, 248 Md. 292, 309-310, 236 A.2d 282 (1967):

> The question for the reviewing court is . . . whether the conclusions 'reasonably may be based upon the facts proven.' The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported.

> The test is reasonableness, not rightness. [4 K. Davis, Administrative Law, § 29.05, at 137, 139 (1958)]

284 Md. at 399.

In Brouillett v. Eudowood Shopping Plaza, Inc., 249 Md. 606, 241 A.2d 404 (1968) the issue was whether the zoning Board of Baltimore County made a decision based on substantial evidence before it. The Court stated,

> [T]he zoning authority is presumed to possess the expertise necessary for deciding the matters brought before it and if its decision is based on substantic] evidence then the courts may not substitute their judgment for that of the zoning authority . . .

249 Md. at 608

Further analysis on judicial review of administrative decisions is presented in Department of Nat. Res. v. Linchester Sand &G., Corp, 274 Md. 211, 334 A.2d 514 (1975)

> Whichever of the recognized tests the court uses - [whether it be the arbitrary, capricious, unreasonable or illegal standard (Balto. Import Car v. Md. Port Auth., 258 Md. at 342, 265 A.2d 192), or the tests of] substantiality of the evidence on the record as a whole, clearly erroneous, fairly debatable or against the weight or the preponderance of the evidence on the entire record - its appraisal or evaluation must be of the agency's fact-finding results and not an independent original estimate of or decision on the evidence. The required process is difficult to precisely articulate but it is plain that it requires restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions under any of the tests, all of which are similar (emphasis added).

274 Md. At 225.

At the very least then, the point before the Board of Appeals was fairly debatable. The decision of the Board that an obvious drafting error occurred and that the Petition should be granted, is affirmed.

C.

(The Title Comment)

The Board is incorrect to the extent it bases any part of its conclusion on its opinion that Golden could have ascertained her true property line through a diligent records search. Practically, that is probably not so and legally it begs the point. Board comment that Golden may obtain a setback variance to "solve her current dilemma" is also not pertinent to the legal and factual issue to be decided though it may be helpful to her in the future.

What rings loud and clear through all of this is that by legal title, the distance shown on the Final Development Plan of 15 feet from the Golden garage structure to her property line is in fact a mistake. Zoning regulations cannot be used to transfer a property interest. The recorded plat, location survey and deed reference all indicate the true amount of property included in the Golden lot.

Any suit to quiet title to property, to transfer title, to show entitlement to a title interest through the imposition of a constructive or resulting trust must be by a complaint filed in this court seeking equitable relief or relief at law. Wathen v. Brown, 48 Md. App. 655, 657, 429 A.2d 292 (1981) (Bill To Quiet Title Citing Md. Real Prop Code Ann. § 14-108), Wimmer v. Wimmer, 287 Md. 663, 674, 414 A.2d 1254 (1980) (Constructive Trust); Levin v. Levin, 43 Md. App. 380, 387, 405 A.2d 770 (1979) (Resulting and Constructive Trusts); Taylor v. Merc-Safe Dep. & Trust, 269 Md. 531, 539, 307 A.2d 670 (1973) (Resulting Trust); Greenbaum v. Harrison, 132 Md. 34, 38, 103 A.84 (1918) (Easements).

The Circuit Court of the County where the property lies may establish the boundary lines of real property where there is a dispute. Md. Real Prop. Code Ann. § 14-111 (c).

Even when a suit is filed asking a Circuit Court to affect title, there are many rules of title construction including the one that states metes and boards in the description of property always control courses and distances. East Washington Ry Co. v. Brooke, 244 Md. 287, 295, 223 A.2d 599 (1966). What law is or is not applicable must be decided in a Circuit Court action.

Nothing in the legislative grant of zoning authority to the political subdivisions allows a county the right to affect title to property. See Md. Ann. Code Art. 66B Section 4.01, et al. The purpose of the zoning law is to promote the health, safety and general welfare of the public --- its very essence is "territorial division according to the character of the land and --- their peculiar suitability for uses, and uniformity within the zone." Harbor Island Marina v. Calvert Co., 286 Md. 303, 312, 407 A.2d 738 (1979).

However successful Golden may be or not in a court of law in a suit in damages for breach of contract or in tort or in an equity type action to quiet title or for conveyance of property, the zoning procedure or an error in that process cannot legally be used to convey title to land.

John F. Fader II
Judge

JFF:am

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The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

JOHN F. FADER, II
JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(301) 887-2598

September 26, 1991

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Re: In The Matter of
Ashland Homeowners' Association
Case No. 90 CG 3013

To each of you I am enclosing a photocopy of an Order of Court affirming the Board of Appeals in the above captioned case.

I apologize for the too long delay in forwarding this Opinion and Order to you.

Following Mr. Barhight's supplement of the record following the hearing, a work-up was done for me in April and from that point the matter got away from me. I am sorry for the apprehension and inconvenience this error on my part has caused you and your clients.

Very truly yours,

John F. Fader II
Judge

JFF:am

enclosure

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 83 PAGE 213 CASE NO. 90CG3013 CATEGORY APPEAL

CIVIL ASSIGNMENT

DIANE GOLDEN Protestant

V

IN THE MATTER OF THE
APPLICATION OF ASHLAND
HOMEOWNERS' ASSOCIATION FOR
A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTHEAST
CORNER ASHLAND AND PAPER MILL ROADS
8th Election District
3rd Councilmanic District

E

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(1) July 26, 1990 - Protestant's DIANE GOLDEN Order for Appeal from the Order of the County Board of Appeals of Baltimore County fd. (90-120-SPH)

(2) July 30,1990 - Certificate of Notice fd.

(3) Aug. 6, 1990 - Appellant's Petition on Appeal fd.

(4) Aug. 24, 1990 - Transcript of Record fd.

(5) Aug. 24, 1990 - Notice of Filing of Record fd. Copies Sent.

(6) Sept. 19, 1990 - Order to Enter the App. of Deborah C. Dopkin for the Appellee fd.

(7) Sept. 24,1990 - Appellant's Memorandum, fd.

(8) Oct. 23,1990 - Appellee's Memorandum, fd.

(9) Nov.8,1990- Appellant's Reply Memorandum, fd.

January 21, 1991 Hon. John F. Fader, II. Hearing had. Order to be filed.

(10) Jan. 30,1991 - Correspondence from Judge Fader, fd.

(11) May 13, 1991 - Order to Enter the App. of Bayard Z. Hochberg & Charles E. Wehland & Strike the App. of G. Scott Barhight for the Appellant (GOLDEN)

(12) Oct. 1,1991 - Order of Court Affirming Board of Appeals, fd (JFF,II)

COSTS

CV GEN	903013 #
CV CLK	80.00
B LBRY	10.00
POST	2.00
CKCHECK TL	92.00
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IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATON OF ASHLAND HOMEOWNERS' ASSOCIATION FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER ASHLAND AND PAPER MILL ROADS 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	CASE NO. 90-120-SPH CG DOCKET NO. 83 FOLIO NO. 213 FILE NO. 90-CG-3013
	*	

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

APPELLANT'S REPLY MEMORANDUM

Diane Golden, Appellant, by her attorneys, G. Scott Barhight and Whiteford, Taylor & Preston, pursuant to Maryland Rule B-12, respectfully submits this Reply Memorandum in response to Appellee's Memorandum and in support of its Petition on Appeal.

STATEMENT OF THE FACTS

In its Statement of Facts contained in Appellee's Memorandum, Appellee misstates a significant fact with regard to when Appellant became familiar with the existence of the "FDP." In the third paragraph on Page 2 Appellee asserts that Appellant first became familiar with the existence of the "FDP" in April, 1989. However, completely contrary to this assertion, Appellee later submits that Appellant was afforded the opportunity to review the Final Development Plan in advance of settlement consistent with Baltimore County law (Appellee's Memorandum, p.

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Order of the County Board of Appeals to the Circuit Court for Baltimore County. The Appellant filed its Petition on Appeal in a timely fashion. The Petition on Appeal requests that the Circuit Court for Baltimore County enter an Order reversing the decision of the County Board of Appeals for Baltimore County and ordering that the Second Amended Final Development Plan be disapproved.

STATEMENT OF FACTS

In the 1980s, the community of Ashland was purchased by the Strutt Group (the "Developer"). As a part of the development process, Amended Plat 1 of Ashland was recorded among the Land Records of Baltimore County at S.M.56, Folio 78 on May 5, 1987 (the "Plat") (Petitioner's Exhibit 3). Prior to the filing of the Plat, a Final Development Plan was approved by the appropriate agencies of Baltimore County (T.pp.34-36).

In March or April of 1988, Ms. Golden became interested in purchasing Lot 1, Block A of the Ashland subdivision. Lot 1 is improved with two buildings. A large building is situated towards the front of the lot. This building is a renovated school house (the "main building"). A smaller building is situated in the rear of the lot. This smaller L-shaped building contains a garage, a storage area, and dwelling area (the "rear building"). (See Protestant's Exhibits 2C, 2D, 2F, 2J, 3A-3D, 4A-4E.)

Sometime during March or April, 1988, Ms. Golden viewed the property with Mr. Strutt, the Developer. Mr. Strutt described the rear property line of Lot 1 as being along the crest of the hill to the rear of Lot 1, approximately 15 feet away from the rear building.

Also during the March-April, 1988 time frame, Ms. Golden met with the Developer at the Developer's sales office. In the sales office a copy of the Final Development Plan was posted on an interior wall of the sales office. Ms. Golden reviewed the Final Development Plan and was provided a copy. The Final Development Plan clearly showed a distance of 15 feet between the rear building and the rear property line. Ms. Golden also visited the Zoning Office for Baltimore County and was shown copies of the Final Development Plan which confirmed the 15 foot distance (T.pp.74-79).

While Ms. Golden was at the Zoning Office, she made inquiries regarding the rear yard setback requirements between the rear building and the rear property line. The Zoning technician indicated that if there were windows along the rear wall of the rear building, that a 15 foot setback would be required (T.p.79). The photographs introduced into evidence by the Appellant show the location of these windows. (See Protestant's Exhibits 2-4.)

On April 18, 1988, Ms. Golden entered into a contract with the Developer for the purchase of Lot 1, Block A of Ashland (T.p.78). On July 29, 1988, Ms. Golden went to settlement on the property. At settlement, Ms. Golden was provided with another

copy of the Final Development Plan and a copy of the Location Survey (Protestant's Exhibit 5). The Final Development Plan clearly dimensions a 15 foot rear yard setback. The Location Survey does not call out a dimension. Additionally, the location survey contains the following disclaimer "This plat is not intended for use in establishing property lines." Based upon the Final Development Plan and the representations of the Developer, Ms. Golden believed that she was purchasing property with a 15 foot rear yard area.

On or about November 14, 1988, the First Amended Final Development Plan was approved by Baltimore County (Protestant's Exhibit 1). The last revision date shown on the First Amended Final Development Plan is November 14, 1988. The First Amended Final Development Plan, which was revised by Daft-McCune-Walker subsequent to the settlement by Ms. Golden on Lot 1, also clearly contains a dimension showing a 15 foot rear yard setback between the rear building and the rear property line.

During April, 1989, Ms. Golden contacted Daft-McCune-Walker ("DMW"). Ms. Golden had several telephone conversations with Ms. Tansey of DMW. According to Ms. Tansey, Ms. Golden was inquiring about the possibility of purchasing additional land behind her house from the Homeowners' Association. It was at this point in time that DMW discovered the "error" of the Final Development Plan (T.pp.7-9). During this same time period, Ms. Golden also was in contact with the Zoning Office regarding her property (T.pp.88-91).

Sometime during the summer of 1989, the Second Amended Final Development Plan was submitted to Baltimore County for approval (Petitioner's Exhibit 1). The last revision date contained on the Second Amended Final Development Plan is June 19, 1989. The Petition for Special Hearing, which is the subject of this appeal, was filed on July 12, 1989.

ISSUES

ISSUE 1: Whether the Board of Appeals erred in finding that the 15 foot dimension shown on the First Amended Final Development Plan is a drafting error.

In its opinion, the County Board of Appeals for Baltimore County, (the "Board") found that the nature of the requested amendment was to correct an "obvious drafting error." This finding is not substantially supported by the evidence. In Eger v. Stone, 253 Md. 533, 253 A.2d 372 (1969), the Court of Appeals set forth the following standard for reviewing findings of fact by an administrative body:

> If the issue before the administrative body is "fairly debatable," that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the Courts will not substitute their judgment for that of the administrative body in the absence of an unconstitutional taking of private property for public use without the payment of just compensation. 253 Md. at 542.

Ms. Tansey, described the error as a discrepancy between Sheet 1 and Sheet 2 of the First Amended Final Development Plan. The First Amended Final Development Plan shows a 15 foot setback between the rear structure and the rear

property line. Sheet 2, according to Ms. Tansey, indicates the location of the rear property line closer than the 15 foot distance shown on Sheet 1 (T.pp.10-11). However, without performing the necessary engineering calculations, this discrepancy is not obvious. Sheet 2 does not locate the buildings of Lot 1, thereby prohibiting a measurement of the distance between the rear property line and the rear building. Mr. Haile makes several conclusary remarks describing the 15 foot dimension as a mistake (T.p.53). However, during direct examination, he also acknowledges that Sheet 2 has an error in that dimension (T.p.37, Line 5-7).

During cross-examination, Mr. Haile admitted that the 15 foot dimension on the first sheet of the Final Development Plan properly scales to 15 feet (T.p.49). He further agrees that the 15 foot distance is never dimensioned on the second page of the Final Development Plan, the Plat or the Deed (T.pp.52-53). In fact, he agrees that the only documents which have the rear yard distance dimensioned is on the first sheet of the Final Development Plan and the First Amended Final Development Plan (T.p.53).

The most curious portion of Ms. Tansey's and Mr. Haile's testimony relates to the explanation for the dimensioning of the 15 foot rear yard setback. Section V-B, VI-B of the Comprehensive Manual of Development Policies requires a minimum distance of 15 feet between any dwelling unit, windows, doors, and the property line (T.pp.19-20). A copy of this section is attached. Ms. Tansey agrees that neither of the two

statutory exceptions to the CMDP requirement apply. Additionally, she cannot say for sure whether this section of the CMDP was considered when the 15 feet was indicated on the Final Development Plan (T.p.20). In fact, Ms. Tansey had to admit that she did not know why the 15 foot dimension was shown on the Final Development Plan (T.p.19). However, Ms. Tansey did agree that if Ms. Golden were to use the rear building for dwelling purposes, that she would need a variance of the 15 foot rear yard setback requirement as less than 15 feet exists between the rear building and the rear property line (T.pp.32-33).

Although Mr. Haile is quick to conclude that the 15 foot dimension was an error on the Final Development Plan, he also has no explanation for why the 15 foot dimension was shown (T.p.49). Mr. Haile asserts that the only way to solve Ms. Golden's dilemmas, is to apply for a variance for the rear yard setback requirements (T.pp.63-64).

Neither of the Petitioner's witnesses were able to explain why the 15 foot dimension was placed on the Final Development Plan and the First Amended Final Development Plan. When asked whether Section V-B, IV-B of the CMDP explains the necessity for 15 feet, both merely state that they do not have personal knowledge of the reasons for the 15 foot dimension. The record clearly indicates that the 15 feet was dimensioned to show that the requirements of Section IV-B, V-B of the CMDP were being met.

Section 22-65 of the Baltimore County Code requires that the Plat be prepared in accordance with the approved Plan. The Plat, which is based upon the approved Plan, is prepared subsequent to the Final Development Plan. Any inconsistencies could be disastrous to the rights of parties who subsequently take title. The policy to require that the Plat be recorded in accordance with the regulations is so strongly enforced that Section 22-44 of the Baltimore County Code prohibits a person for conveying any lot of a subdivision unless the plat has been recorded in accordance with the regulations. The transferee of any lot conveyed in violation of that section may bring an action in the Circuit Court for rescission of the conveyance and return of any deposit or purchase money paid, as well as reimbursement for reasonable expenses.

In the current case, the "error" rendered the Plat inconsistent with the Final Development Plan. Since the Plat did not create a 15 foot rear yard between the rear building and rear property line of Lot 1, Block A, the Plat was not in accordance with the previously approved Final Development Plan.

There was clearly an error. However, the error was not in the 15 foot dimension shown on the Final Development Plan. Mr. Haile agreed that this dimension properly scaled out on the Plan. The error is on Sheet 2 of the Final Development Plan, and therefore the Plat and the Deed. The Plat must be corrected to conform to the Final Development Plan.

Issue 2: Whether the Board failed to properly apply the standards of Section 1B01.3 of the Baltimore County Zoning Regulations.

Section 1B01.3.A.1 of the Baltimore County Zoning Regulations (the "Regulations") contains two purposes for the Rules and Regulations governing development plans and plats. The purpose applicable to the instant case states as follows:

> A. To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein;

As Mr. Haile testified, Zoning Commissioner's Policy RSD 11 requires that persons be afforded an opportunity to view a copy of the approved development plan and be apprised of certain development information (T.p.55). Ms. Golden testified that she was afforded such opportunity by viewing the Final Development Plan prior to purchasing her property. She saw the Final Development Plan in the sales office and was also provided with a copy prior to executing the contract of sale (T.p.77).

A 15 foot rear yard setback is required for Ms. Golden to continue the dwelling use in the rear building (T.p.33). When she purchased Lot 1, she believed that the required 15 foot distance between the rear building and the property line was being purchased (T.p.83). It was not until after the surveyor came to mark the boundaries of her property, subsequent to settlement, that she discovered that the rear building was significantly closer to the rear property line and therefore in violation of the rear yard setback requirement (T.p.83).

It is clear from the admission of Ms. Tansey and Mr. Haile that Ms. Golden has been harmed by the failure of the Plat to be consistent with the approved Final Development Plan and the approved First Amended Final Development Plan. These documents, upon which she relied, showed that 15 feet existed between the rear building and the rear property line. Fifteen feet is required for her to maintain the dwelling use of the rear building.

Section 1B01.3 was established for the clear purpose of protecting prospective purchasers, like Ms. Golden. Ms. Golden is not a surveyor, she is not a civil engineer, and she is not an experienced developer. She justifiably relied upon the documents filed with Baltimore County and properly approved by Baltimore County. Now that she has been harmed, the Board merely suggests that she submit herself to the uncertainties of a zoning variance and cure the problem imposed upon her by the "error" of the Final Development Plan.

If Section 1B01.3 of the Regulations was not drafted to protect prospective purchasers like Ms. Golden, it is hard to imagine who it is intended to protect. If prospective purchasers like Ms. Golden cannot rely upon clear dimensions shown on final development plans, which plans they have a right to rely upon according to the Regulations, then the stated protections are worthless. It is no wonder that the public is suspicious of the real estate industry when bait and switch tactics are not only practiced but permitted to remain when discovered. The Developer must go back to the instance of the error, the Final Development

Plan, and cure its mistakes from that point in the process forward. If the Plat was not in accordance with the Final Development Plan, it is the Plat which should be corrected. Permitting the Final Development Plan to be amended as requested, lets the Developer get away with material misrepresentations to the substantial harm and injury of Ms. Golden.

WHEREFORE, the Appellant, Diane Golden, respectfully requests that the Order of the Board of Appeals be reversed and that the Petition for Special Hearing to Approve the Second Amended Final Development Plan be denied.

POINTS OF AUTHORITIES

Eger v. Stone, 253 Md. 533, 253 A.2d 372 (1969)
Comprehensive Manual of Development Policies, Section V-B, VI-B
Baltimore County Zoning Regulations, Section 1B01.3.A.1
Baltimore County Charter, Section 604

Respectfully submitted,

G. Scott Barhight
Whiteford, Taylor & Preston
500 Court Towers
210 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 832-2050

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Appellant's Memorandum was mailed this 27th day of September, 1990, to Deborah C. Dopkin, Esquire, 405 Allegheny Avenue, Towson, Maryland 21204 and the County Board of Appeals for Baltimore County, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

G. Scott Barhight

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF ASHLAND HOMEOWNERS' ASSOCIATION FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER ASHLAND & PAPER MILL ROADS 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
	*	CASE NO. 90-120-SPH CG DOCKET NO.: 83 FOLIO NO.: 213 FILE NO.: 90-CG-3013

* * * * * * * *

PETITION ON APPEAL

Appellant's petition on appeal pursuant to Md. Rule B.2.e. represents unto the Court;

1. The action appealed from is the Order of the County Board of Appeals of Baltimore County in the above-entitled matter dated June 27, 1990 which "* * * ORDERED that the Petition for Special Hearing to approve a second amendment to the development plan be and the same is hereby GRANTED."

2. The error committed by the Board in taking the action referred to in Paragraph 1 above relates both to the Board's factual findings and its conclusions of law.

The factual findings in the Board's Order are not substantiated by the evidence in the record. Among other things, the Board erred in its findings of fact with regard to the distance between the appellant's building and nearest property line, that the 15 foot dimension shown on the final development plan was a drafting error, that the plat, deed description and location survey all clearly show a 15 foot distance from the

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accessory structure to the property line, that obtaining a setback variance would solve the appellant's current dilemma and that the variance would be easily obtained. The Board further failed to find that the appellant would be harmed by the petition if granted and that the appellant justifiably relied upon the representations of the 15 foot dimension on the final development plan.

The Board has erred in its application of the law in that it asserts that the appellant has an obligation to make certain diligent efforts beyond that which is required by the statute, and that it failed to find that the requirements of Section 1B01.3.A had been violated.

The error committed by the Board will be more fully explained in the Memorandum to be filed by the appellant herein in accordance with Maryland Rule B-12.

3. The relief sought by appellant is for the Circuit Court for Baltimore County to enter an Order reversing the decision of the Board of Appeals as set forth in Paragraph 1 above, and ordering that the decision of the Board of Appeals be reversed so that the second amended final development plan in the subject case be disapproved.

G. Scott Barhight
Whiteford, Taylor & Preston
500 Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 832-2050
Attorney for Protestant/
Appellant

I HEREBY CERTIFY that on this 6th day of August, 1990, a copy of the foregoing Petition on Appeal was served upon the County Board of Appeals of Baltimore County, Room 315, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

G. Scott Barhight

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF ASHLAND HOMEOWNERS' ASSOCIATION FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER ASHLAND AND PAPER MILL ROADS 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
	*	CASE NO. 90-120-SPH

* * * * * * * * * * *

ORDER FOR APPEAL

MS. CLERK:

Please note an appeal on behalf of Protestant, Diane Golden, from the Order of the County Board of Appeals of Baltimore County in the above-entitled matter dated June 27, 1990.

G. Scott Barhight
Whiteford, Taylor & Preston
500 Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 832-2050
Attorney for Protestant

I HEREBY CERTIFY that prior to filing the foregoing ORDER FOR APPEAL, a copy was served upon the County Board of Appeals of Baltimore County.

G. Scott Barhight

RECEIPT of a copy of the foregoing ORDER FOR APPEAL is acknowledged this _____ day of July, 1990.

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

By 7/26/90
Kathy Widenhammer
Administrative Secretary

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IN THE MATTER OF THE APPLICATION OF ASHLAND HOMEOWNERS' ASSOCIATION FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER ASHLAND AND PAPER MILL ROADS 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
	*	CASE NO. 90-120-SPH

* * * * * * * * * *

OPINION

This matter comes before the Board on appeal from a decision by the Deputy Zoning Commissioner dated October 20, 1989 which granted the Petition for Special Hearing filed by Ashland Homeowners' Association. The Petitioner requested approval of a 2nd Amendment to the development plan for that subdivision known as Ashland, which is located at the corner of Ashland and Paper Mill Roads.

The Petitioner was represented by Counsel, Deborah C. Dopkin, and called two witnesses to testify in support of the Petition for Special Hearing to approve the amendment. Those witnesses were Jeanette Tansey, a landscape architect from the firm of Daft-McCune-Walker, Inc., and her supervisor, Edmund F. Haile. Mr. Haile is familiar to this Board as a professional engineer and expert land surveyor. Ms. Diane Golden, a resident of the Ashland community, appeared as a Protestant. She also was represented by Counsel, G. Scott Barhight, and testified as to her reasons in opposition of the proposed amendment.

The oral testimony and written exhibits received disclosed little dispute as to the material facts surrounding the case. The community of Ashland formerly existed as a small town which housed

the employees of the old Ashland Ironworks plant. With the plant's demise, the thriving community which had been Ashland ceased to exist. In the 1980's, the site containing this former community was acquired by a developer, the Strutt Group, with intentions to redevelop a residential community. The developer almost entirely redesigned and refurbished many of the existing homesites. Further, a new system of interior roadways was designed and constructed as well as new single and townhouse dwellings.

As part of the development process, the developer had created a final development plan outlining its plans for construction. The original final development plan contained two sheets, both depicting the footprint of the new Ashland community. Part of the plan showed the location of an existing property which was ultimately acquired by the Protestant, Ms. Golden. According to page one of the final development plan, an accessory structure on Ms. Golden's property was shown to be located 15 feet from the property line which bordered the Homeowners' Association common land. It is to be noted that page two of the final development plan did not depict this dimension.

Further evidence demonstrated that a first amended final development plan was eventually created. This plan was necessitated to show modifications to the original plan which were caused by a Petition for Special Exception which was granted by the Zoning Commissioner in 1986. According to the testimony, because of the developer's desire to maintain many of the older Ashland

properties, the developer requested numerous variances and a Special Hearing to approve same from the Zoning Commissioner.

The plan before this Board accompanying the current Special Hearing is labeled a 2nd amended final development plan. The purpose of this plan is to delete the 15 foot designation on page one of the final and 1st amended development plans which erroneously show the distance between Ms. Golden's accessory structure and the property line. It was agreed that in fact her accessory structure is but 6 feet and not 15 feet from the property line.

In support of the amendment, the Petitioners argue that the request for Special Hearing should be granted in order to bring into compliance the development plan with the plat for this site and the true property lines. They argue that the plat, deed description, and location survey all clearly show the 6 foot distance from the accessory structure to the property line. Further, they note that the 15 foot error is but a drafting error only and as such, should be corrected.

In opposition to the Petition for Special Hearing, the Protestant argues that the amendment should not be permitted in that it is violative of Section 1B01.3A1 of the Baltimore County Zoning Regulations (BCZR). In support of this position, Ms. Golden testified that she relied upon representations of the developer and her review of the initial final development plan when she made the decision to purchase her house. She stated that she made inquiry

from the accessory structure. Under her theory, the language of Section 1B01.3A1 prohibits the Board from granting this Special Hearing and amending the plan as to do so would defeat the express purpose of the regulations. In the alternative, she believes that other alternatives exist which would allow her to enjoy a 15 foot buffer area.

In conducting our hearing, the Board is obviously afforded with the opportunity to observe the demeanor of the witnesses before us and adjudge their credibility. Further, we are obligated to consider the merits of the Petition for Special Hearing in accordance with the standards of the BCZR and should not consider the present or proposed use for the property. After considering all of the evidence before us and applying these standards, we are persuaded that the Petition for Special Hearing should be granted. In our view, the nature of the amendment is to correct an obvious drafting error. Further, we are convinced that the Protestant had an opportunity had she made further efforts as diligent as those she described to ascertain her true property line. The plat, location survey, and deed reference all clearly demonstrate the true boundary line between the Homeowners' Association open space and the Protestant's property. We may also favorably note Mr. Haile's testimony wherein he suggested that the property owner might obtain setback variances to solve her current dilemma. In view of the vast open space owned by the Homeowners' Association, this would seemingly be easily accomplished.

ORDER

For the aforegoing reasons, it is this 27th day of June, 1990 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing to approve a 2nd amendment to the development plan be and the same is hereby GRANTED.

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

Lawrence E. Schmidt, Acting Chairman

Arnold G. Foreman

John G. Disney

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

June 27, 1990

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
500 Court Towers
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Case No. 90-120-SPH (Ashland Homeowners' Association)

Dear Mr. Barhight:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Sincerely,

LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Ms. Diane Latta-Ortel Golden
Deborah C. Dopkin, Esquire
Kimberly B. Strutt, Pres.
Ashland Homeowners' Association
Mr. George E. Gavrelis
Mr. Edmund F. Haile
Mr. Lee Rock
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

LAW OFFICES
HOCHBERG, CHIARELLO, COSTELLO & DOWELL
528 EAST JOPPA ROAD
TOWSON, MARYLAND 21204-5403

BAYARD Z. HOCHBERG
DONALD F. CHIARELLO
JOHN R. COSTELLO
ERIC G. DOWELL

TELEPHONE
(301) 823-2922
TELEX
285828-HCCD-UR
FAX (301) 321-0874

May 9, 1991

Clerk, Circuit Court for
Baltimore County
401 Bosley Avenue
Towson, Maryland 21204-0754

RE: IN THE MATTER OF
ASHLAND HOMEOWNERS' ASSOCIATION
No. 90-CG-3013

Dear Mr. Clerk:

I enclose for filing Order to Enter and Strike Appearance in the above matter.

This file is with Judge Fader who has the matter sub curia.

Please acknowledge receipt of same by signing, dating and returning the enclosed duplicate of this letter in the envelope provided for your convenience.

Sincerely,

Bayard Z. Hochberg

BZH/sld
Enclosure
cc: Deborah C. Dopkin, Esquire
Honorable John F. Fader, II
Baltimore County Board of Appeals

IN THE MATTER OF THE APPLICATION OF ASHLAND HOMEOWNERS' ASSOCIATION FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER ASHLAND AND PAPER MILL ROADS 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CASE NO.: 90-120-SPH CG DOCKET NO. 83 FOLIO NO. 83 FILE NO. 90-CG-3013

ORDER TO ENTER
AND STRIKE APPEARANCE

MR. CLERK:

Please enter the appearances of the undersigned as attorneys for Diane Golden, Appellant.

Bayard Z. Hochberg
528 East Joppa Road
Towson, Maryland 21204
(301) 823-2922

Charles E. Wehland
3677 Park Avenue
Ellicott City, Maryland 21043
Attorneys for Appellant
(301) 465-8755

MR. CLERK:

Please strike the appearance of the undersigned as attorney for Diane Golden, Appellant.

G. Scott Barhight
Whiteford, Taylor & Preston
500 Court Towers
210 W. Pennsylvania Avenue
Towson, Maryland 21204
(301) 832-2050

I HEREBY CERTIFY, that on this 9th day of May, 1991, copies of the foregoing Order to Enter and Strike Appearance were mailed to Deborah C. Dopkin, Esq., 405 Allegheny Avenue, Towson, Maryland 21204, and to Baltimore County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland, 21204.

Bayard Z. Hochberg
Attorney for Appellant

IN THE MATTER OF THE APPLICATION OF ASHLAND HOMEOWNERS' ASSOCIATION FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OF ASHLAND & PAPER MILL RDS. 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
DIANE GOLDEN, PLAINTIFF ZONING CASE NO. 90-120-SPH	*	CG Docket No. 83 Folio No. 213 File No. 90-CG-3013

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

ENTRY OF APPEARANCE

Dear Clerk:

Please enter the appearance of the undersigned as council for the above captioned Appellee.

Deborah C. Dopkin
405 Allegheny Avenue
Towson, Maryland 21204
825-1099
Attorney for Appellee

I hereby certify that on this 4th day of September, 1990, a copy of the aforegoing Entry of Appearance was mailed to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland

NEILMAN & REDMOND
ATTORNEYS AT LAW
405 ALLEGHENY AVENUE
TOWSON, MD. 21204
(301) 825-1099
FAX (301) 825-4150

IN RE: PETITION FOR SPECIAL HEARING
SE/Corner Ashland Road and
Paper Mill Road
9th Election District
3rd Councilmanic District

Ashland Homeowners' Assoc.
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-120-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve a second amendment to the Final Development Plan for Ashland, Lot 1, Block A in accordance with Petitioner's Exhibit 1.

The Petitioners, by Kimberly B. Strutt, President, appeared, testified and was represented by Deborah C. Dopkin, Esquire. Also appearing on behalf of the Petition were George E. Gavrelis and Edmund F. Haile, with Daft-McCune-Walker, Inc., and Lee Rock, a member of the Ashland Homeowners' Association. Diane Golden, a Protestant and the owner of Lot 1, appeared, testified and was represented by G. Scott Barhight, Esquire.

Testimony indicated that the subject property, known as Ashland, is a housing development consisting of 32.4 acres more or less, split zoned D.R. 3.5 and R.C. 4 and is located off of Ashland Road in Cockeysville. Said property was developed in an effort to permit an adaptive reuse of historic buildings on the site of an old iron mill in northern Baltimore County. In addition to the reuse of the historic buildings, the development includes a mixed number of new single-family homes and townhouse units for a total of 113 dwelling units. Mr. Gavrelis testified the instant Petition was filed to correct a technical error recently noted on

ORDER RECEIVED FOR FILING
Date 10/19/89
By Scott Barhight

the First Amended Final Development Plan for Ashland, pursuant to Section 1B01.3 of the Baltimore County Zoning Regulations (B.C.Z.R.). Testimony presented indicated that Lot 1, Block A, as set forth on Page 1 of the Final Development Plan and the First Amended Development Plan for Ashland, erroneously noted the building marked "existing garage" as being 15 feet from the property line. In reality, said garage is between 4 and 5 feet from the property line, as noted on the Second Amended Final Development Plan for Ashland, marked Petitioner's Exhibit 1, Page 1 of 2. Mr. Gavrelis testified that Page 2 of said plan is in no way modified and has the correct meets and bounds description of Lot 1. Testimony presented indicated that the record plat, identified herein as Petitioner's Exhibit 3, was filed in the Land Records of Baltimore County on May 5, 1987. Petitioner introduced the minutes of the Baltimore County Planning Board meeting of July 20, 1989 evidencing the Board's approval of the Second Amended Development Plan for Ashland as required by Section 1B01.3.A.7b.I. Further, Mr. Gavrelis testified as to the requirements of Sections 1B01.3A7 and 502.1.

Ms. Golden appeared and testified in opposition to Petitioners' request. Through Counsel, she argued that rather than amending the Second Development Plan for Ashland as proposed, Petitioners should resubdivide the lots in such a manner so that a 15-foot setback exists from the building marked "existing garage" to the property line for Lot 1. Ms. Golden testified that prior to purchasing the property she reviewed the Final Development Plan and believed a 15-foot setback from the garage existed. She does not dispute that the property line as set forth in the Second Amended Development Plan is consistent with the meets and bounds descrip-

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Date 10/19/89
By Scott Barhight

tion in the deed to the property which was acquired on July 29, 1988. On cross, she admitted that the location survey of her property, identified as Petitioner's Exhibit 6, clearly evidences the property is in keeping with the Second Amended Development Plan. Petitioner's Exhibit 6 clearly depicts the building designated as "stone apartment & garage" is located approximately 4 feet from the property line.

There was much conflicting and unresolved testimony presented at the hearing regarding the use of the building shown on the plan as "existing garage." Since that issue is not relevant to the Petition filed and is the subject of a current zoning violation, said issue will not be addressed at this time.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the proposed amendment would be consistent with the spirit and intent of the zoning regulations and the original plan.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 30th day of October, 1989 that the Petition for Special Hearing to approve a second amendment to the Final Development Plan for Ashland, Lot 1, Block A in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restriction:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is

ORDER RECEIVED FOR FILING
Date 10/19/89
By Scott Barhight

reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

ORDER RECEIVED FOR FILING
Date 10/19/89
By Scott Barhight

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

October 20, 1989

Deborah C. Dopkin, Esquire
405 Allegheny Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
SE/Corner Ashland and Paper Mill Roads
8th Election District - 3rd Councilmanic District
Ashland Homeowners' Association - Petitioners
Case No. 90-120-SPH

Dear Ms. Dopkin:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

cc: Mr. Lee Rock
7 Foundry Court, Hunt Valley, Md. 21030

G. Scott Barhight, Esquire
500 Court Towers, Towson, Md. 21204

People's Counsel

File

506

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-120-SPH

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

Second Amendment to Ashland Final Development Plan affecting Homeowner's Association property and Lot 1, Block A.

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

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

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

Ashland Homeowner's Association
(Type or Print Name)

By: Kimberly B. Strutt, President
Signature

(Type or Print Name)

Signature

MAP 5D
E.D. 9th
DATE 2-4-71
200 DF
NOD DF
DP C

Attorney for Petitioner:

Deborah Dopkin
(Type or Print Name)

Signature

54 Scott Adam Road 628-2203
Address Phone No.

Hunt Valley, MD 21030
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Dean Tansey
Daft-McCune-Walker, Inc.
Name

200 E. Penna. Ave., 21204 296-3333
Address Phone No.

Attorney's Telephone No.:

ORDERED By The Zoning Commissioner of Baltimore County, this 12 day of July, 1989, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 31st day of October, 1989, at 10 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County

Z.C.O.—No. 1

(over)

ORDER RECEIVED FOR FILING
Date 10/19/89
By Scott Barhight

506

DAFT McCUNE WALKER, INC. 200 East Pennsylvania Avenue Towson, MD 21204 301 296-3333 FAX 301 296-4705

Land Planning & Development Consultants

Description to Accompany
Petition for Special Hearing
"Ashland"
Eighth Election District, Baltimore County, Maryland

Land Planning
Engineering
Landscape Architecture
Surveying
Computer Design
Graphics

Beginning for the same in the centerline of Ashland Road at the point distant 24 feet more or less as measured in an easterly direction on said centerline from its intersection with the centerline of Paper Mill Road, thence leaving said point of beginning and running the thirteen following courses and distances, viz: (1) North 35 degrees 21 minutes 22 seconds East 47 feet more or less, thence (2) North 30 degrees 46 minutes 08 seconds West 177.00 feet, thence (3) North 30 degrees 35 minutes 39 seconds West 156.02 feet, thence (4) North 04 degrees 19 minutes 05 seconds West 83.20 feet, thence (5) North 18 degrees 40 minutes 55 seconds East 195.40 feet, thence (6) South 85 degrees 04 minutes 05 seconds East 1423.00 feet, thence (7) South 26 degrees 41 minutes 28 seconds West 1382.08 feet, thence (8) South 89 degrees 00 minutes 28 seconds West 457.50 feet, thence (9) North 53 degrees 18 minutes 32 seconds West 608.50 feet, thence (10) North 16 degrees 59 minutes 28 seconds East 205.58 feet, thence (11) North 28 degrees 54 minutes 27 seconds East 78.19 feet, thence (12) South 69 degrees 14 minutes 45

Page 1 of 2

seconds East 29.58 feet, and thence (13) North 35 degrees 21 minutes 22 seconds East 189 feet more or less to the point of beginning; containing 32.4 acres of land more or less.

NOTE: THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR CONVEYANCE.

June 23, 1989

Our Job No. 84130 (1.84130)

Page 2 of 2

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF ASHLAND HOMEOWNERS' ASSOCIATION FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER ASHLAND & PAPER MILL ROADS 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 90-120-SPH CG DOCKET NO.: 83 FOLIO NO.: 21 FILE NO.: 90-CG-3013

APPELLEE'S MEMORANDUM

Ashland Homeowners Association, Appellee, by its attorneys, Deborah C. Dopkin and Hellman and Redmond, pursuant to Md. Rule B-12, respectfully submits this Memorandum in response to Appellant's Memorandum.

STATEMENT OF FACTS

Ashland, a community dating from the last century, was acquired by a developer for redevelopment in the mid-1980s. The development scheme included the adaptive reuse of the original homes as well as the construction of new single-family and townhouse dwellings arranged along a network of interior roadways. In accordance with the Baltimore County Development Regulations and the Baltimore County Zoning Regulations ("BCZR"), the developer, who is not a party to this proceeding (T., pp. 75-76), had prepared a number of plans required for approval of the development. These plans included a final development plan, which contained two sheets, and a record Plat, all of which were approved by the appropriate authorities of Baltimore County.

The final development plan for Ashland included a pre-existing parcel known as Lot 1 Block A, improved by a garage and by a principal structure, which is now owned by Appellant. The garage was shown to be fifteen (15) feet from the property line which borders land owned by the Appellee

Ashland Homeowners Association. The second page of the final development plan showed the metes and bounds of the lots, without the incorrect dimension.

The original plans were the subject of a Petition for Special Hearing before the Zoning Commissioner for Baltimore County, Case No.86-226 SPH, which was filed to permit the non-conforming setbacks of older homes which did not comply with the zoning regulations in effect. The petition in the zoning case was granted, and subsequently, the final development plan and record plat were amended to reflect the approvals, resulting in the First Amended Final Development Plan (Protestant's Exhibit No. 1) (the "FDP") and Amended Plat 1 of Ashland, recorded among the Land Records of Baltimore County at S.M. 56 page 78 (Petitioner's Exhibit No. 3).

Developer's engineer became aware of an error on Sheet one of the First Amended FDP in April of 1989 when Appellant telephoned Edmund F. Haile, a principal of Daft-McCune-Walker, to inquire how to acquire additional property from the Homeowners' Association for planting since her survey, along with the deed and record plat, indicated that she owned only six feet of property between the garage and the property line (T. pp. 6 & 37). In the process of reviewing the drawings to respond to Appellant's inquiry, Daft-McCune-Walker discovered their error and sought to correct it (T. p.8).

It is significant that in April, 1989, Jeanette Tansey, a landscape architect at Daft-McCune-Walker informed Appellant of the error on sheet one of the FDP, and it was only at that point in time that Appellant became familiar with the existence of the FDP (T. p.9).

The Second Amended Final Development Plan (Petitioner's Exhibit No. 1) was prepared and the Petition for Special Hearing filed in June, 1989 by petitioner, now Appellee, Ashland Homeowners Association, a party authorized to request such an amendment under §1B01.3.A.7 of the BCZR. By Order dated October 20, 1989 the petition was granted by the Zoning Commissioner for Baltimore County. Appellant, filed a timely Appeal of the Order of the Zoning Commissioner,

which Appeal was heard before the County Board of Appeals of Baltimore County in Case No. 90-120-SPH. The County Board of Appeals granted and approved the petition for special hearing to amend the development plan as requested.

ISSUES

I. THE BOARD OF APPEALS PROPERLY CONCLUDED THAT A DRAFTING ERROR HAD BEEN COMMITTED ON THE FINAL DEVELOPMENT PLAN AND ON THE FIRST AMENDED FINAL DEVELOPMENT PLAN.

The County Board of Appeals, sitting as an administrative agency, acts both as a finder of fact and a determiner of law in zoning matters brought to it on appeal. Appeals are heard *de novo* before the County Board of Appeals. Charter of Baltimore County, Maryland, § 603.

The role of an administrative agency to make factual determinations has long been accepted as valid in this state. Department of Natural Resources v. Linchester Sand and Gravel Corporation, 274 Md. 211, 334 A.2d 514 (1975). It is a settled principle of administrative and zoning law that a court will not substitute its judgment for that of the administrative body on review unless that body has acted arbitrarily, capriciously or unreasonably. When an administrative body is acting in a fact-finding capacity, review is limited to determining whether the decision was rendered in an illegal, arbitrary, capricious, oppressive or fraudulent manner. Linchester, *supra*, 274 Md. 211, 334 A.2d 514, 523; Storch v. Zoning Bd. of Howard Co., 267 Md. 476, 298 A.2d 8 (1972).

Appellant does not allege that the Board of Appeals acted illegally, arbitrarily, capriciously or unreasonably in reaching its decision, and review of the record fails to demonstrate such horrendous activity. In fact, Appellant's memorandum merely asserts the bald conclusion that "[t]here was clearly an error" (App. p. 8) without demonstrating grounds sufficient to justify reversal. Appellant's assertions fail to comply with the standard which she acknowledges as proper for achieving her goal.

The reviewing court shall not independently weigh the evidence presented on the record, but rather it shall uphold the decision of the Board if it determines that a reasoning mind reasonably could have reached the same factual conclusion. Linchester, *supra*, 274 Md. 211, 334 A.2d 514, 523, citing Insurance Comm'r v. Nat'l Bureau, 248 Md. 292, 236 A. 2d 282 (1967). "[I]f the issue before the administrative body is 'fairly debatable,' that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not substitute their judgment for that of the administrative body." Eger v. Stone, 253 Md. 533, 253 A. 2d 372, 377 (1969); Floyd v. County Council of Prince George's County, 55 Md. App. 246, 461 A.2d 76, 81 (1983).

The record is replete with references factually to the fact that the fifteen foot dimension shown on the First Amended Final Development Plan is a drafting error (T. pp. 10, 11, 16, 17, 22-25, 28, 37, 49). The Opinion of the County Board of Appeals concludes that "the nature of the amendment is to correct an obvious drafting error." (Opinion, p.4.) There is substantial evidence in the record to support this conclusion, and therefore, as a matter of law, it must be affirmed. Floyd, *supra*, 55 Md. App. 246, 461 A.2d 76, 82 (1983).

Appellant makes much over the fact that developer's engineer is only able to explain the inaccurate dimension as a mistake. The County Board of Appeals, in weighing the evidence presented by the witnesses, found that the dimension was an obvious drafting error. The Board found and, the record amply supports, the fact that the Protestant, the Appellant herein, had ample opportunity to ascertain the true dimension of the property had she made diligent efforts. The Board further found, that the plat, the location survey (Petitioner's Exhibit No. 6) and the deed reference "all clearly demonstrate the true boundary line..." (Opinion, p.4) This finding is clearly supported by the evidence (T. pp. 46, 82, 86, 93).

Pursuant to applicable regulations, case law and the evidence presented at the hearing, the County Board of Appeals correctly found a drafting error in the First Amended Final Development Plan. Appellant failed to meet her burden on appeal: that the findings are unsupported by the evidence and that the decision of the Board was arbitrary or capricious. Failing to meet its burden, Appellant cannot prevail on this issue.

II. THE COUNTY BOARD OF APPEALS PROPERLY APPLIED THE STANDARDS OF §1B01.3 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

Section 1B01.3 of the Baltimore County Zoning Regulations provides:

a. To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; and

b. To provide for review of residential-development plans to determine whether they comply with these regulations and with standards and policies adopted pursuant to the authority of Section 504.

A careful reading of § 1B01.3 in its entirety reveals that the final development plan is intended to address *newly created* lots in a subdivision, and such an interpretation was proffered in uncontradicted expert testimony at the hearing (T. p.98). Appellant's lot predates the subdivision of the Ashland subdivision, and the boundaries of her lot have never changed (T. p.60). Arguably, §1B01.3 does not even pertain to Appellant's property. However, even assuming the section may be applicable to this case, Appellant's position is without merit.

The Maryland Court of Appeals has recognized that courts in Maryland tend to defer to administrative agencies because of their expertise in the substantive matters being considered. Floyd, *supra*, 55 Md. App. 246, 461 A. 2d 76, 83 (1983); Brouillett v. Eudowood Shopping Plaza, Inc., 249 Md. 606, 241 A. 2d 404, (1968). Such deference is appropriate here.

Approval of the Seconded Amended Final Development Plan was recommended by the Office of Planning (T. p 42), and by the Baltimore County Planning Board (T. p.43 and Petitioner's

Exhibit 2). Similarly, the Deputy Zoning Commissioner approved the Petition when the case was first heard in 1989.

Expert testimony of Edmund Haile adduced at the hearing indicated that a final development plan is a schematic plan, a guide to development which does not ordinarily conform to the detailed documentation of the record plat (T. p. 48), and that the Second Amended Final Development Plan is consistent with the zoning regulations (T. p. 42). Mr. Haile testified that it is the record plat, not the FDP, that purports to describe property to be conveyed (T. p. 42).

Appellant admits that she was afforded the opportunity to review the Final Development Plan (T. p. 77) in a manner that conforms to the Policy of the Zoning Commissioner (Policy RSD 11) (T. p. 55). Appellant further admitted under questioning by the Chairman of the Board of Appeals that she *ignored* the conveyancing documents presented to her prior to her accepting title (T. p. 93), even though the location survey showed a dimension different than that on the FDP. Appellant's admitted lack of diligence surely preempts her from claiming inadequate disclosure of the dimensional error on the FDP.

Appellee avers that Appellant's failure to avail herself of a thorough investigation prior to settlement resulted in her late awareness of the dimensional discrepancy. The purpose §1B01.3 of the Baltimore County Zoning Regulations is not to relieve prospective purchasers of their own duty to investigate when entering into a legal contract to purchase real estate. Appellant should not be allowed to claim foul play now.

CONCLUSION

On the basis of the foregoing arguments and authority noted therein, Appellee contends that the decision of the Baltimore County Board of Appeals is soundly supported by the facts presented before it and the result of well-reasoned application of the law and regulations.

WHEREFORE, the Appellee, Ashland Homeowners' Association, respectfully requests that the Order of the Board of Appeals approving the Second Amended Final Development Plan be affirmed.

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INDEX OF CASES AND AUTHORITY

CERTIFICATE OF SERVICE

I HEREBY certify that on the 23 day of October, 1990, a copy of the foregoing Appellee's Memorandum was mailed to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204 and to the County Board of Appeals for Baltimore County, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Deborah C. Dopkin

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1B01.3

or after adoption of a revised Local Open Space Manual or other applicable policies as provided under Section 504, the location, design, establishment, and maintenance of local open space tracts shall become subject to the provisions thereof. [Bill No. 100, 1970.]

6. Under provisions adopted pursuant to the authority of Section 504, development in D.R. zones may be made subject to additional standards of lot area, yard space, open-space distribution, building distribution, or other aspects or characteristics of site planning or project design. Such standards shall be based upon specified existing, prospective, or stipulated conditions or circumstances of development, and shall be designed to further the specific purposes of this article and the purposes of these Zoning Regulations in general. [Bill No. 100, 1970.]

1B01.3--[illegible]ans and Plats. [Bill No. 100, 1970.]

A. Development Plans. [Bill No. 100, 1970.]

1. Purpose. This paragraph is intended:

a. To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; and

b. To provide for review of residential-development plans to determine whether they comply with these regulations and with standards and policies adopted pursuant to the authority of Section 504. [Bill No. 100, 1970.]

2. Partial Development Plan. For the purposes of this article, a "partial development plan" is a portion of a final development plan, and a partial or final development plan is "applicable" to a given lot if it covers all property in the subdivision within 300 feet of the given lot, in addition to the lot itself. [Bill No. 100, 1970.]

3. Subdivision Lot Sales, Development, and Use Subject to Partial Development Plan. No interest in any lot which is in a D.R. zone and is here-

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1B01.3

after created by subdivision of a record lot of the effective date of this article or created by consolidation of such lots may be sold unless a final or partial development plan applicable to the lot has been approved as required under Subparagraph 5, below; further, no use may be established and no construction may take place on any lot so created except in accordance with such a plan. [Bill No. 100, 1970.]

4. Notice in Conveyance. Any party who sells an interest in real property within an area covered by an approved partial or final development plan shall attach to the instrument of sale a notice directing the buyer's attention to the plan (including any amendment) and listing the location of the various certified copies which may be publicly inspected (see Subparagraph 6) together with a listing of the recorded plats covering all portions of the subdivision as a whole. The notice shall also generally apprise the buyer of the rights, requirements, and remedies provided under the development plan, those provided under this article and these zoning regulations in general, and those set forth in provisions adopted pursuant to the authority of Section 504, and, to this end, the notice shall be on a form issued by the County and approved by the Office of Law, the Zoning Commissioners, and the Planning Board as being clear and sufficient for the purpose. [Bill No. 100, 1970.]

5. Forms and Content of Plans.

a. Forms. Each partial development plan must be filed both as a separable document or set of documents and as part of a final development plan which includes all partial development plans as approved for other portions of the subdivision. Upon approval, each final development plan thus filed supersedes previous final development plans of the subdivision.

b. Content. Each partial and final development plan must show: the locations, types, and exterior dimensions of all proposed structures and all existing structures to be retained; generalized floor plans to scale; layout of parking facilities; streets and drives giving

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1B01.3

access to and lying within the tract; existing topography and major vegetation; proposed grading; common amenity open space (including local open space); all additional information that may be required under procedures adopted pursuant to the authority of Section 504; and all additional information which is necessary, as determined by the Zoning Commissioner and the Director of Planning, to ascertain whether the project will comply with the zoning and subdivision requirements of Baltimore County. The Plan shall contain the note that landscaping and screening shall conform to the standards contained in the Baltimore County Landscape Manual adopted pursuant to Section 22-105 of Title 22 of the Baltimore County Code. [Bill No. 100, 1970; No. 31, 1984.]

6. Initial Review and Approval Procedure. Procedural steps and requirements in the submission and review of various preliminary versions of partial and final development plans shall be as established under provisions adopted pursuant to the authority of Section 504 or, in the absence of such provisions, as established by the Office of Planning and Zoning. In formulating such steps and requirements, the Planning Board or the Office of Planning and Zoning shall effect maximum coordination between and integration with similar and related steps and requirements in the submission and review of plans pursuant to the subdivision regulations. If the partial and final development plans for a subdivision are approved by the Zoning Commissioner as complying with the Zoning Regulations, approved by the Director of Planning as being consistent with the subdivision regulations and any subdivision plans filed pursuant thereto, and approved in such other manner as may be prescribed under provisions adopted pursuant to the authority of Section 504, copies of the plans, certified by the Zoning Commissioner and the Director of Planning as having been so approved, shall be filed with such County or State agencies as they may direct and as may otherwise be required, and shall be retained in the files of the Office of Planning and Zoning, including the files of the Zoning Commissioner. [Bill No. 100, 1970.]

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1B01.3

7. Amendment of Approved Development Plans. After partial or final development plans have been approved as provided under Subparagraph 6, preceding, they may be amended only as provided below.

a. Amendment Prior to Sale of Interest in Nearby Property. The development plans may be amended by simple resubmission, or by the submission of appropriate documents of revision, subject to the same requirements as are applied to original plans, if there is no change with respect to any lot, structure, or use within 300 feet or a lot or structure which has been sold since the original plans were filed.

b. Amendment After Sale of Interest in Nearby Property or Upon Demand for Hearing. In the case of an amendment not allowed under Subsubparagraph a, by reason of sale of property within the area, or in case of a demand for hearing by an eligible individual or group, the plans may be amended through special-exception procedures, in the manner provided under Section 502 and subject to the following provisions:

i. The amendment must first be approved by the Planning Board as being in accord with provisions adopted under the authority of Section 504.

ii. The amendment must be in accord with the specific standards and requirements of this article, as determined by the Office of Planning and Zoning.

iii. Only an owner of a lot abutting or lying directly across a street or other right of way from the property in question, an owner of a structure on such a lot, or a homes association (as may be defined under the Subdivision Regulations or under provisions adopted pursuant to the authority of Section 504) having members who own or reside on property lying wholly or partially within 300 feet of the lot in question are eligible to file a demand for hearing.

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1B01.3

iv. It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article.

c. Amendment Upon Request by Owner of Lot Within Subdivision. The Zoning Commissioner may, without a public hearing but with the concurrence of the Director of Planning, amend the plans with respect to a structure on an individual lot created under the plans and used according to the purpose stated therein, or with respect to such lot, at the request of the lot owner, under the following requirements and conditions:

i. Reasonable notification, by a standard method established pursuant to the authority of Section 504 and approved by the County Solicitor, must be given to the occupants and owners of all real property which is fully or partially situated within 300 feet of the lot in question.

ii. It must be determined that a formal demand for hearing by an eligible individual or group, as described in Sub-subparagrpah b, has not been filed.

iii. It must be determined that standards adopted under the authority of Section 504, in addition to the specific requirements under these regulations, will not be violated by the amendment.

iv. The Zoning Commissioner and the Director of Planning must certify that the amendment is in keeping with the spirit and intent of this article and other Baltimore County land-use and development requirements administered by them, and both must certify that the amendment does not violate the spirit and intent of the original plan.

d. Any amended development plan and any document of amendment of such a plan must be filed with all agencies or officials with whom copies of the original plan have been filed pursuant to Subparagraph above, and no amendment takes effect otherwise. [Bill No. 100, 1970.]

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1B02.1

B. Final Subdivision Plat. [Bill No. 100, 1970.]

1. Purpose. Pursuant to the regulations for D.R. zones, a portion of a tract of land may be subdivided for development at a higher residential density than the maximum average density permitted, lessening the permitted density of development on the remainder of the tract; or a portion of the tract may be subdivided for development at less than the maximum average density, thus increasing the density at which the remainder of the tract may be developed. (See Paragraph 1B01.2.A) It is the purpose of this paragraph to assure that these factors will be identified in the sale of any portion of a development tract in a D.R. zone, and, in particular, to prevent the unknowing purchase of a tract which, as a result of such prior subdivision, may not itself be developed at the average gross density specified in the regulations. [Bill No. 100, 1970.]

2. Effect. No subdivision of a tract or a portion of a tract may be created after the effective date of this article, except as otherwise provided under subparagraph 1B02.3.A.2 unless the final subdivision plat therefor contains a summary showing the total number of dwelling or density units allowed for the entire tract under the applicable D.R. zones(s). The summary shall indicate, as appropriate, the number of dwelling or density units utilized by previous final subdivision plats for portions of the same tract, the number of dwelling or density units contained in the current subdivision plat, and the balance of dwelling or density units allowed for the remainder of the tract under the applicable D.R. zones (s).[9] It is the intent of these Zoning Regulations to prohibit subdivision or resubdivision of portions of a tract in a D.R. zone in a manner so as to exceed the total number of dwelling or density units[10] allowed under the applicable D.R. zones (s) for the entire tract. [Bill No. 100. 1970.]

Section 1B02--USE, PARKING, BULK, DENSITY, AND OPEN-SPACE REGULATIONS, STANDARDS, AND CONTROLS APPLIED ACCORDING TO ZONING CLASSIFICATION. [Bill No. 100, 1970.]

1B02.1[11]--Uses Permitted As of Right or by Special Exception According to Zoning Classification. The following uses are permitted in D.R. zones either as of right or by

1B-22

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF ASHLAND HOMEOWNERS' ASSOCIATION FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER ASHLAND & PAPER MILL ROADS 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	CASE NO. 90-120-SPH CG DOCKET NO. 83 FOLIO NO. 213 FILE NO. 90-CG-3013

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

APPELLANT'S MEMORANDUM

Diane Golden, Appellant, by her attorneys, G. Scott Barhight and Whiteford, Taylor & Preston, pursuant to Md. Rule B.12 respectfully submits this Memorandum in support of its Petition on Appeal.

STATEMENT OF THE CASE

The Petitioner below, Ashland Homeowners' Association, filed a Petition for Special Hearing to approve the Second Amended Final Development Plan for Ashland. By Order dated October 20, 1989, the Deputy Zoning Commissioner for Baltimore County granted the Petition for Special Hearing. The Deputy Zoning Commissioner's Order was appealed in a timely fashion by the Appellant to the County Board of Appeals of Baltimore County.

By Opinion dated June 27, 1990, the County Board of Appeals of Baltimore County granted the Petition for Special Hearing to approve the Second Amended Final Development Plan. By Order for Appeal, the Appellant filed a timely appeal of the

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6, second paragraph). Since several different documents are at issue (a Final Development Plan, a First Amended Final Development Plan, a Second Amended Final Development Plan, an Amended Plat 1 of Ashland) it is important that we review the actual words used in Appellee's Memorandum.

On Page 6 of its Memorandum, Appellee asserts that Appellant was afforded the opportunity to review the Final Development Plan, prior to the Contract of Sale (April 18, 1988) and settlement (July 29, 1988). On Page 2 of its Memorandum, Appellee asserts that April, 1989 was the first time Appellant became familiar with the existence of the "FDP." FDP is a defined term in Appellee's Memorandum meaning the First Amended Final Development Plan (Protestant's Exhibit No. 1). The First Amended Final Development Plan (the "FDP" in Appellee's Memorandum) was not approved by Baltimore County until on or about November 14, 1988. Therefore, the document which Appellee describes as the "FDP" was not in existence when Appellant entered into the Contract of Sale in April of 1988 or when she went to settlement in July of 1988. Therefore, Appellant may not have become familiar with the First Amended Final Development Plan (the "FDP" in Appellee's Memorandum) until April 1989. However, the unconstituted testimony of the Appellant is that she reviewed the Final Development Plan prior to executing the Contract of Sale in April, 1988.

An understanding of the factual progression is critical in this case. Prior to entering into the Contract of Sale and prior to settlement, Appellant was afforded the opportunity to

review the Final Development Plan. The Final Development Plan clearly showed a distance of 15 feet between the rear building and the rear property line. By Mr. Hale's admission, the Final Development Plan and the First Amended Final Development Plan were the only documents available to Ms. Golden which had the rear yard dimensioned to show the 15 foot distance between the rear building and the rear property line (T. p. 53). Therefore, the only document which would have had any meaning to a lay person, showed a 15 foot distance between the rear building and the rear property line. No other document was ever provided to the Appellant which shows the distance to be anything other than 15 feet.

ISSUES

ISSUE 1: Whether the Board of Appeals erred in finding that the 15 foot dimension shown on the First Amended Final Development Plan is a drafting error.

The Appellant agrees that an "error" was made. Sheet 1 and Sheet 2 of the First Amended Final Development Plan are admittedly inconsistent. Appellant's objection to the Board's finding that the nature of the requested amendment was to correct an "obvious drafting error," goes beyond the issue of whether an "error" occurred. The Board has ignored the uncontradicted evidence that the 15 foot dimension was shown for a purpose. Although an "error" occurred, there was no accident. The 15 foot rear yard setback was shown on the Final Development Plan and the First Amended Final Development Plan because it was required by Section V-B, VI-B of the Comprehensive Manual of Development

Policies ("CMDP") (T. pp. 19-20). The 15 foot dimension as shown was motivated by a legal requirement. The "error" is on Sheet 2 of the Final Development Plan, not on Sheet 1. Ms. Tansey admits that a 15 foot rear yard setback is required for the Appellant to continue to use the rear building for its existing dwelling purposes (T. pp. 32-33).

Zoning cases are difficult. An understanding of detailed regulations and difficult to read plats and documents is essential to this case. The Board needed to do more than merely find that "an obvious drafting error" had occurred. The nature of the error and an explanation and description of the error makes a difference in this case and to the Appellant. Appellant's property rights are being dramatically and negatively impacted by the Petition for Special Hearing, yet all anyone can say to Ms. Golden is: Go get a variance. Who is to pay for the variance? Can anyone guarantee the variance?

The Board erred in its findings of fact. The "error" supported by the evidence is on Page 2 of the Final Development Plan and the First Amended Final Development Plan. The 15 foot dimension was shown in order to comply with Section V-B, VI-B of the CMDP. The 15 feet were provided to induce the Appellant, or any other prospective purchaser, to believe the residential use of the rear building could be maintained.

ISSUE 2: Whether the Board failed to properly apply the standards of Section 1B01.3 of the Baltimore County Zoning Regulations.

Section 1B01.3 does not apply only to newly created

lots in a subdivision. The "careful reading" of Section 1B01.3 performed by Appellant's attorney does not reveal that the Final Development Plan is intended to address only newly created lots. In fact, Section 1B01.3 governs all development plans. Appellee also asserts that its careful interpretation of Section 1B01.3 was proffered in uncontradicted expert testimony on Page 98 of the transcript. A careful reading of Page 98 reveals that that page contains nothing more than statements and arguments of counsel and the Board Chairman. Appellee's assertion that Section 1B01.3 does not even pertain to Appellant's property is wholly unfounded, inaccurate and without merit.

Appellee asserts that this honorable Court should "defer" to the Board of Appeals because of their expertise in the substantive matters being considered. Since Appellee does not further explain what such "deference" might require, it is difficult to respond to this assertion. However, one doubts that Appellee is asserting that the Circuit Court for Baltimore County should dismiss all appeals from the County Board of Appeals for Baltimore County and affirm each ruling, thereby "deferring" to their overwhelming expertise. The standard of review set forth in Eger v. Store, 253 Md. 533, 253 A.2d 372 (1969), as set forth more fully in Appellant's Memorandum applies.

The Appellee misstates several critical facts on Page 6 of its Memorandum. In the first full paragraph, Appellee asserts that Mr. Hale testified that a final development plan "does not ordinarily confirm to the detailed documentation of the record plat." This summary gives the impression that the final

development plan bears little resemblance to the record plat and that significant and material changes are commonplace. A careful reading of Mr. Hale's testimony on Page 48 of the transcript reveals instead that "it's not necessary that they conform exactly" in referring to the record plats and final development plans. One is left with the impression that minor changes are not uncommon and that exact duplication of the plan to the plat is not required.

Appellee further misstates one of the most significant fact in this case. Appellee asserts that the location survey showed a dimension different than that on the FDP. If Appellee means that the location survey did not show any dimension, thereby showing one different than that on the FDP, then Appellee correctly stated the facts of the case. However, it appears that Appellee is asserting that the location survey shows a dimension other than the 15 foot dimension shown on the FDP. A review of the location survey (Protestant's Exhibit No. 5) clearly shows that no dimension of the rear yard setback is provided. The dimensions shown on the location survey refer to the widths of the building walls. There is no dimension shown on the location survey for the rear yard setback. Additionally, the location survey contains the following critical disclaimer: "This plat is not intended for use in establishing property lines."

Appellee asserts that Appellant admitted a lack of diligence in investigating the subject property prior to settlement. In fact, the Appellant viewed the property with the Developer, and reviewed the Final Development Plan in the

Developer's sales office. Appellant also visited the Zoning Office for Baltimore County and was shown copies of the Final Development Plan which confirmed the 15 foot dimension (T. pp. 74-79). One strongly doubts whether the average home buyer goes to the degree of effort evidenced by Appellant. How many home buyers walk the site with the Developer and make inquiries regarding the location of their rear property line? How many home buyers review the Final Development Plans provided to them by their Developers? How many home buyers travel to the Zoning Office and make inquiries regarding the rear yard setbacks required for the continued residential use of their ancillary structures? Appellant was more than diligent. The only document showing any distance between the rear building and the rear property line, as admitted by Mr. Hale, was the Final Development Plan.

Everyone agrees that an "error" was made. The Appellees would have the Court assert that the errors made by their predecessor's civil engineers are merely "drafting errors" of little consequence. That is an easy assertion for the Homeowners' Association who now holds title to the lands the Appellant thought she was purchasing. It is also easy for the Homeowners' Association to point a finger at the Developer's civil engineer. However, the law cannot be ignored. Section 1B01.3 of the Baltimore County Zoning Regulations was enacted to protect prospective residents like the Appellant. The Appellant justifiably relied upon the 15 foot dimension shown on the development plans provided. The Appellant should not be made to

suffer for the errors of others. Any rights afforded Appellant for the failure of Developer to abide by the Final Development Plan and the First Amended Final Development Plan should not be negated by the approval of the Petition for Special Hearing.

WHEREFORE, the Appellant, Diane Golden, respectfully requests that the Order of the Board of Appeals be reversed and that the Petition for Special Hearing to approve the Second Amended Final Development Plan be denied.

POINTS OF AUTHORITIES

Eger v. Stone, 253 Md. 533, 253 A.2d 372 (1969)
Comprehensive Manual of Development Policies, Section V-B, VI-B
Baltimore County Zoning Regulations, Section 1B01.3.A.1
Baltimore County Charter, Section 604

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Appellant's Reply Memorandum was mailed this 8th day of November, 1990, to Deborah C. Dopkin, Esquire, 405 Allegheny Avenue, Towson, Maryland 21204 and the County Board of Appeals for Baltimore County, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

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/s/
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4-24-89 E2

DIANE GOLDEN, Protestant

vs.

IN THE MATTER OF THE APPLICATION OF ASHLAND HOMEOWNERS' ASSOCIATION

IN THE CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE # 90CG3013 83/213

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Towson, Maryland 21204

Lindalee M. Kuszmaul, Legal Secretary
County Board of Appeals, Room 315
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

In accordance with Maryland Rule of Procedure B12, you are notified that the record in the above entitled case was filed on August 24, 1990.

CLERK

FILED AUG 24 1990

IN THE MATTER OF THE APPLICATION OF ASHLAND HOMEOWNERS' ASSOCIATION FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER ASHLAND & PAPER MILL RDS. 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	IN THE
	*	CIRCUIT COURT FOR
	*	BALTIMORE COUNTY
	*	CG Doc. No. 83
	*	Folio No. 213
DIANE GOLDEN, PLAINTIFF ZONING CASE NO. 90-120-SPH	*	File No. 90-CG-3013

* * * * * * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence E. Schmidt, Arnold G. Foreman, and John G. Disney, 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 Zoning Commissioner and the Board of Appeals of Baltimore County:

No. 90-120-SPH

July 12, 1989	Petition filed for Special Hearing to approve Second Amendment to Ashland Final Development Plan affecting Homeowners' Association property and Lot 1, Block A by Deborah C. Dopkin, Esquire on behalf of Petitioner, Ashland Homeowners' Association.
September 7	Publication in newspaper.
September 15	Certificate of Posting of property.
September 22	Comments of Baltimore County Zoning Plans Advisory Committee.
October 3	Hearing held on Petition by the Deputy Zoning Commissioner.
October 20, 1989	Order of the Deputy Zoning Commissioner GRANTING Petition with restrictions.
November 17	Notice of Appeal received from G. Scott Barhight, Esquire, Counsel for Ms. Diane Golden, Prot.

Ashland Homeowners' Association, File No. 90-CG-3013
Case No. 90-120-SPH

June 20, 1990	Hearing before the Board of Appeals.
June 27	Opinion and Order of the Board GRANTING the Second Amendment to development plan.
July 26	Order for Appeal filed in the Circuit Court for Baltimore County by G. Scott Barhight, Esquire on behalf of Ms. Diane Golden, Protestant.
August 6	Petition to accompany appeal filed in the Circuit Court by Mr. Barhight.
July 30	Certificate of Notice sent to interested parties.
August 24	Transcript of testimony filed.
Petitioners' Exhibit No. 1	-2nd Amended Final Development Plan Last Revision 6/19/89
	2 -Planning Board Minutes 7/20/89
Protestants' Exhibit No. 1	-First Amended Final Development Plan 11/14/88
	2 -Photos A-J
	3 -Photos A-D
	4 -Photos A-E
	5 -Location Survey
August 24	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted,

Lindalee M. Kuszmaul, Legal Secretary
County Board of Appeals, Room 315
County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 (301) 887-3180

cc: G. Scott Barhight, Esquire
Ms. Diane Golden
Deborah C. Dopkin, Esquire
Ms. Kimberly B. Strutt, President
Ashland Homeowners' Association

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

July 30, 1990

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
500 Court Towers
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Case No. 90-120-SPH (Ashland Homeowners Assoc.)

Dear Mr. Barhight:

In accordance with Rule B-7(a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. In addition, the cost incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in Court, in accordance with Rule B-7(a).

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

Very truly yours,

Lindalee M. Kuszmaul
Legal Secretary

Enclosure

cc: Ms. Diane Golden

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

July 30, 1990

Deborah C. Dopkin, Esquire
405 Allegheny Avenue
Towson, Maryland 21204

Re: Case No. 90-120-SPH (Ashland Homeowners Assoc.)

Dear Ms. Dopkin:

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,

Lindalee M. Kuszmaul
Legal Secretary

Enclosure

cc: Ms. Kimberly B. Strutt, President
Ashland Homeowners Assoc.
Mr. George E. Gavrelis
Mr. Edmund F. Haile
Mr. Lee Rock
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

IN THE MATTER OF THE APPLICATION OF ASHLAND HOMEOWNERS' ASSOCIATION FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER ASHLAND & PAPER MILL RDS. 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	IN THE
	*	CIRCUIT COURT FOR
	*	BALTIMORE COUNTY
	*	CG Doc. No. 83
	*	Folio No. 213
DIANE GOLDEN, PLAINTIFF ZONING CASE NO. 90-120-SPH	*	File No. 90-CG-3013

* * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt, Arnold G. Foreman, and John G. Disney, 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, G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, Counsel for Plaintiff; Ms. Diane Golden, 200 Ashland Road, Cockeysville, Maryland 21030, Plaintiff; Deborah C. Dopkin, Esquire, 405 Allegheny Avenue, Towson, Maryland 21204, Counsel for Defendant; Kimberly B. Strutt, President, Ashland Homeowners' Association, 8 Stag Court, Phoenix, Maryland 21131, Defendant; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake

Ashland Homeowners Association, File No. 90-CG-3013
Case No. 90-120-SPH

Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Lindalee M. Kuszmaul, Legal Secretary
County Board of Appeals, Room 315
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204 (301) 887-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, Counsel for Plaintiff; Ms. Diane Golden, 200 Ashland Road, Cockeysville, Maryland 21030, Plaintiff; Deborah C. Dopkin, Esquire, 405 Allegheny Avenue, Towson, Maryland 21204, Counsel for Defendant; Kimberly B. Strutt, President, Ashland Homeowners' Association, 8 Stag Court, Phoenix, Maryland 21131, Defendant; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 on this 30th day of July, 1990.

Lindalee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 315
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204 (301) 887-3180

County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

HEARING ROOM - Room 301, County Office Bldg.

(301) 887-3180
February 8, 1990

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. 90-120-SPH ASHLAND HOMEOWNERS' ASSOCIATION
SE/corner Ashland and Paper Mill Roads
8th Election District
3rd Councilmanic District

SPH -to approve 2nd Amendment to Development Plan

10/20/89 - D.Z.C.'s Order GRANTING Petition with restrictions.

ASSIGNED FOR: WEDNESDAY, JUNE 20, 1990 at 10:00 a.m.

cc: Diane Latta-Ortel Golden — Protestant/Appellant
G. Scott Barhight, Esquire — Counsel for Protestant/Appellant
Kimberly B. Strutt, Pres. Ashland Homeowners' Assoc. — Petitioner
Deborah C. Dopkin, Esquire — Counsel for Petitioner
Mr. George E. Gavrelis
Edmund F. Haile
Lee Rock Ashland Homeowners' Assoc.
People's Counsel for Baltimore County
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
√Docket Clerk - Zoning
Arnold Jablon, County Attorney

LindaLee M. Kuszmaul
Legal Secretary

MICROFILMED

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

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

000

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

September 22, 1989

Ms. Kimberly B. Strutt
Ashland Homeowner's Association
54 Scott Adam Road
Hunt Valley, MD 21030

RE: Item No. 576, Case No. 90-120-SPH
Petitioner: Kimberly B. Strutt, et al
Petition for Special Hearing

Dear Ms. Strutt:

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. 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.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

James E. Dyer

JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Ms. Jean Tansey
Daft-McCune-Walker, Inc.
200 E. Pennsylvania AVenue
Towson, MD 21204

MICROFILMED

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

Your petition has been received and accepted for filing this

12th day of July, 1989.

J. Robert Haines

J. ROBERT HAINES
ZONING COMMISSIONER

Received By:

James E. Dyer

Chairman,
Zoning Plans Advisory Committee

Petitioner: Kimberly B. Strutt, et al

Petitioner's Attorney:

MICROFILMED

Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

RECEIVED
OCT 4 1989
ZONING OFFICE

September 27, 1989

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Attn: Mr. James Dyer

Re: Baltimore County
ZAC Meeting of 7-11-89
Ashland Homeowners Assoc.
S/S Ashland Road
(MD 145)
2300' West of York Road
Hearing to approve the second amendment to Ashland final development plan
Item #576

Dear Mr. Haines:

Subsequent to our letter to you of July 7, 1989, we were informed that the construction of the intersection of the new Ashland Road with the State Ashland Road (MD 145) has been completed to the satisfaction of the State Highway Administration and is in compliance with the approved plan which indicates the standard lane widths and acceleration, deceleration and bypass lanes. With this being the situation, we have no problem with approval of the subject amendment to the final development plan. In researching the situation, we found that the plan submitted for the zoning approval is an older plan which does not indicate the existing geometrics of the intersection.

If you have any questions, please contact John Meyers at 333-1350.

Very truly yours,

Charles Rose - J.M.

MICROFILMED

Charles Rose, Acting Chief
Engineering Access Permits
Division

JEM:maw

cc: Ms. D. Dopkin
Mr. L. Brocato

OCT 0 2 1989

called 9th AM Attorney Left office for hearing JM

My telephone number is (301)333-1350 (Fax #333-1041)

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

July 7, 1989

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204
Att: James Dyer

Re: Baltimore County
Z.A.C. meeting 7/11/89
Ashland Homeowners Assoc.
S/S Ashland Road
(MD 145
2300' west of York Road
Hearing to approve the second amendment to Ashland final development plan
Item #576

Dear Mr. Haines:

The plan is unacceptable. The intersection of the development, Ashland Road with State Highway Administration (SHA) Ashland Road does not comply with our standards. The lanes of the development road must have a minimum width of 20'. The plans must indicate a 30' radii at the intersection, There must be a 322' deceleration lane, a 250' acceleration lane and a 550' by-pass lane, along the State MD 145, Ashland Road with a total 48' width across the highway.

It is requested that approval be withheld until the plan is revised.

If you have any questions, contact John Meyers (333-1350).

Very truly yours,

for John Meyers Assistant Chief
Engineering Access Permits
Division

JM/es

cc: Larry Brocato

RECEIVED
JUL 14 1989
ZONING OFFICE

MICROFILMED

My telephone number is (301) 333-1350

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines — DATE: September 25, 1989
Zoning Commissioner

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Ashland Homeowners Association, Item 576
Zoning Petition No. 90-120-SPH

The Petitioner requests a Special Hearing to approve the Second Amendment to Ashland Final Development Plan affecting Homeowners Association property and Lot 1, Block A.

In reference to this request, staff offers the following comments.

This office has no objection to the proposed amendment.

The purpose of this hearing is to amend the Final Development Plan for "Ashland" and bring it into compliance with Record Plat 56:76. The change involves adjusting the lot line for Lot 1, Block B. The owner of Lot 1 is opposed to this change since it moves the lot line closer to the "garage." However, the deed agrees with the record plat, and therefore, with this change.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

PK/JL/pat

MICROFILMED

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
(301) 887-3554

RECEIVED
AUG 3 1989
ZONING OFFICE

July 31, 1989

Dennis F. Rasmussen
County Executive

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, MD 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 515, 574, 575, 576, 577, 578, 579, 580, 581, and 582.

Very truly yours,

Michael S. Flanigan

Michael S. Flanigan
Traffic Engineer Associate II

MSF/lab

MICROFILMED

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

December 6, 1989

Dennis F. Rasmussen
County Executive

Baltimore County Board of Appeals
County Office Building, Room 315
Towson, Maryland 21204

RE: Petition for Special Hearing
SE/corner Ashland Road and Paper Mill Road
8th Election District, 3rd Councilmanic District
Ashland Homeowners' Association - Petitioner
Case No. 90-120-SPH

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on November 17, 1989 by G. Scott Barhight, attorney on behalf of Diane Latta-Ortel Golden, Protestant. All materials relative to the case are being forwarded herewith.

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

Very truly yours,

J. Robert Haines DCJ

J. ROBERT HAINES
Zoning Commissioner

JRH:scj

Enclosures

cc: Diane Latta-Ortel Golden
200 Ashland Road, Cockeysville, MD 21030

G. Scott Barhight - Whiteford, Taylor & Preston
500 Court Towers, 210 West Pennsylvania Avenue, Towson, MD 21204

Kimberly B. Strutt, President, Ashland Homeowners' Association
8 Stag Court, Phoenix, MD 21131

MICROFILMED

Appeal Cover Letter - Case No. 90-120-SPH
ASHLAND HOMEOWNERS' ASSOCIATION, Petitioners
December 6, 1989
Page 2

Deborah C. Dopkin, Esquire
405 Allegheny Avenue, Towson, MD 21204

George E. Gavrelis - Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue, Towson, MD 21204

Edmund F. Haile - Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue, Towson, MD 21204

Lee Rock - Ashland Homeowners' Association
7 Foundry Court, Hunt Valley, MD 21030

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

File

APPEAL

Petition for Special Hearing

SE/corner Ashland Road and Paper Mill Road
8th Election District - 3rd Councilmanic District
Ashland Homeowners' Association - Petitioner
Case No. 90-120-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel - none submitted

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Violation Memo dated August 31, 1989

Petitioner's Exhibits:
1. 2nd Amended Final Development Plan of Ashland
2. 1st Amended Final Development Plan of Ashland
3. Amended Plat One of Ashland
4. Index to the Minutes, Baltimore County Planning Board, July 20, 1989
5. Copy of Deed between Ashland Joint Venture and Diane Latta-Ortel Golden
6. Plat of 200 Ashland Road

Zoning Commissioner's Order dated October 20, 1989

Notice of Appeal received November 17, 1989

Diane Latta-Ortel Golden
200 Ashland Road, Cockeysville, MD 21030

G. Scott Barhight - Whiteford, Taylor & Preston
500 Court Towers, 210 West Pennsylvania Avenue, Towson, MD 21204

Kimberly B. Strutt, President, Ashland Homeowners' Association
8 Stag Court, Phoenix, MD 21131

Deborah C. Dopkin, Esquire
405 Allegheny Avenue, Towson, MD 21204

George E. Gavrelis - Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue, Towson, MD 21204

Edmund F. Haile - Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue, Towson, MD 2..04

Appeal Checklist - Case No. 90-120-SPH
ASHLAND HOMEOWNERS' ASSOCIATION - Petitioner
Page 2

Lee Rock - Ashland Homeowners' Association
7 Foundry Court, Hunt Valley, MD 21030

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
Docket Clerk

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James E. Dyer July 11, 1989
Zoning Supervisor

FROM: James H. Thompson
Zoning Enforcement Coordinator

RE: Item No. 576
Ashland Homeowner's Association - Petitioner

When the above subject matter is scheduled for a public hearing, please notify:

Philip J. Kotschenreuther, Esquire
Fedder and Garten
36 South Charles Street
2300 Charles Center South
Baltimore, Maryland 21201

Our active case number is C-89-2326.

ZONING ENFORCEMENT

Baltimore County Zoning Office Towson, Maryland 21204

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James E. Dyer DATE: August 31, 1989
Zoning Supervisor

FROM: James H. Thompson
Zoning Enforcement Coordinator

RE: Item No. (if known)
Petitioner: Diane Latta-Ortel Golden (if known)

VIOLATION CASE # 90-43

LOCATION OF VIOLATION 200 Ashland Road (Lot 1)

DEFENDANT Diane Latta-Ortel Golden

ADDRESS 200 Ashland Road Cockeysville, MD 21030

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME	ADDRESS
G. Scott Barhight, Esquire	Whiteford, Taylor & Preston 300 Lafayette Bldg. 40 W. Chesapeake Avenue Towson, MD 21204
Philip J. Kotschenreuther, Esquire	Fedder & Garten 2300 Charles Center South 36 S. Charles Street Baltimore, MD 21201

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

ech/

ASHLAND HOMEOWNERS ASSOCIATION 90-120-SPH

SE/cor Ashland and Paper Mill Roads 8th Election District
3rd Councilmanic District

SPH- Approve Second Amendment to Ashland Final Development Plan affecting Homeowners' Association property and Lot 1, Block A.

July 12, 1989	Petition filed for Special Hearing to approve Second Amendment to Ashland Final Development Plan affecting Homeowners' Association property and Lot 1, Block A by Deborah C. Dopkin, Esquire on behalf of Petitioner, Ashland Homeowners' Association.
October 20, 1989	Order of the Deputy Zoning Commissioner GRANTING Petition with restrictions.
November 17	Notice of Appeal received from G. Scott Barhight, Esquire, Counsel for Ms. Diane Golden, Prot.
June 20, 1990	Hearing before the Board of Appeals.
June 27	Opinion and Order of the Board GRANTING the Second Amendment to development plan.
July 26	Order for Appeal filed in the Circuit Court for Baltimore County by G. Scott Barhight, Esquire on behalf of Ms. Diane Golden, Protestant.
August 6	Petition to accompany appeal filed in the Circuit Court by Mr. Barhight.
July 30	Certificate of Notice sent to interested parties.
August 24	✓ Transcript of testimony filed; Record of Proceedings filed in the Circuit Court for Baltimore County.
October 1, 1991	✓ Order of the CCt,BCo AFFIRMING C.B. of A. (Hon. John F. Fader, II).

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

HEARING ROOM -
Room 301, County Office Building

APPEAL HEARINGS SCHEDULED FOR THE
WEEK OF JUNE 18, 1990

TUESDAY 6/19/90 10:00 a.m. #90-116-A	NEAL A. FISHER, ET UX N/s Joppa Road, 825' E of c/l of Mylander Road (1420 E. Joppa Road) 9th Election District 4th Councilmanic District VAR-to permit 2-way driveway width of 6.7' in lieu of the required 20'
WEDNESDAY 6/20/90 10:00 a.m. #90-120-SPH	ASHLAND HOMEOWNERS' ASSOCIATION SE/corner Ashland Road and Paper Mill Road 8th Election District 3rd Councilmanic District SPH-to approve 2nd amendment to Development Plan
THURSDAY 6/21/90 10:00 a.m. #CBA-89-190	BEAR CREEK INN 601 Wise Avenue Dundalk, Maryland 21222 RE: Amusement Device Violations
THURSDAY 6/21/90 1:00 p.m. #CBA-89-193	PARADISE TAVERN 6412 Frederick Road Baltimore, Maryland 21228 RE: Amusement Device Violations

FRIDAY 6/22/90 HEARING ROOM NOT AVAILABLE FOR CBA HEARING

cc: Executive Office
County Council
Law Office
People's Counsel
Planning Office
Current Planning
Board Members
Court Reporter
Information Desks (2)
✓Docket Clerk - Zoning

Baltimore County
Zoning Commissioner
(Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

December 18, 1989

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston
500 Court Towers
210 West Pennsylvania Avenue
Towson, MD 21204-2015

RE: 200 Ashland Road
Cockeysville, MD 21030
Ashland, Lot 1, Block A
SE/C Ashland & Paper Mill Roads
Zoning: D.R.-3.5

Dear Mr. Barhight:

Your letter of December 5 regarding the above referenced property has been referred to me for reply. According to your correspondence, your client proposes to connect the free-standing garage to the existing dwelling and utilize said garage for one of the following uses:

1. Garage
2. Dwelling Area
3. Storage Area
4. Home Occupation
5. Bed and Breakfast
6. Farms or Limited-Acre Wholesale Flower Farms
7. Agricultural Training School
8. Combinations of the Above Uses

Provided the connection between the two buildings can be made in accordance with the spirit and intent of residential construction for a one-family dwelling, the first four of the above referenced uses would be permitted. It should be pointed out, however, that the garage and the storage area would be permitted without making such a connection. The home occupation would require a description of the proposed home occupation in order that this office can determine that the use will fall within the definition of home occupation as defined in the zoning regulations, also new policy RM-17. Item number 5, bed

G. Scott Barhight, Esquire
December 18, 1989
Page 2

and breakfast, would certainly appear to be prohibited by the definition of bed and breakfast homes in Section 101 of the Baltimore County Zoning Regulations; i.e. "A bed and breakfast home is allowable only in a building originally constructed as a one-family dwelling--". Item number 6, farms or limited-acre wholesale flower farms, also appears to conflict with the definition of a limited acreage wholesale flower farm. While the definition does not place a limit on the minimum acreage required, any improvements thereon should be used primarily for growing flowers, small plants and the wholesale distribution thereof, it would appear that considering the size of the lot and the improvements; i.e., the dwelling, parking, etc., make up the primary use of this property. Item number 7, agricultural training school, is not permitted in the D.R. zones. Item number 8, combinations of the above uses, would be permitted only in certain instances; i.e., items 1, 2, 3 e possibly 4.

You also ask for verification that a 15 foot rear yard setback would be required for any of the above described uses if the existing structure were connected. If the garage structure is connected and approved by this office, a 15 foot rear yard setback will be required only if the garage portion of the dwelling has a window facing a property line or if a structure on the adjoining lot is of such a height that a distance between structures as required by the zoning regulations would require a 15 foot or larger setback. This does not appear to be the case. It should also be noted that a special hearing to amend the development plan will be required to connect the garage and the house.

Should you have any questions concerning any of the above, please do not hesitate to contact me at your convenience or you may, of course, file a special hearing for an official Order concerning any of the above points.

Sincerely,

JAMES E. DYER
Zoning Supervisor

JED:scj

MICROFILMED

HELLMAN & REDMOND
ATTORNEYS-AT-LAW
405 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
TELEPHONE (301) 825-1099
FAX (301) 828-4120

STANLEY H. HELLMAN
PAUL J. REDMOND
RICHARD V. LYNAS

OF COUNSEL
DEBORAH C. DOPKIN

June 11, 1990

J. Robert Haines, Esquire,
Zoning Commissioner
Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
JUN 12 1990
ZONING OFFICE

Re: Case No. 90-120 SPH
Ashland Homeowners' Association
Hearing date - October 3, 1989

Dear Commissioner Haines:

The above captioned matter is the subject of an appeal hearing on June 20, 1990. In preparing for that hearing, I would like to purchase from your office a copy of the audio tape recordings of the original hearing of October 3, 1989. I understand there is a fee, per tape, for these.

Since the hearing is imminent, I would like to pick these up at the earliest opportunity, and would appreciate someone from your office calling me at 825-1099 when the tapes are ready. Thank you for your attention to this matter.

Sincerely,

Deborah C. Dopkin

MICROFILMED

HELLMAN & REDMOND
ATTORNEYS-AT-LAW
405 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
TELEPHONE (301) 825-1099
FAX (301) 828-4120

STANLEY H. HELLMAN
PAUL J. REDMOND
RICHARD V. LYNAS

OF COUNSEL
DEBORAH C. DOPKIN

July 20, 1989

J. Robert Haines, Esquire
Zoning Commissioner for Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
JUL 24 1989
ZONING OFFICE

RE: Item No. 576
Petition for Special Hearing
Second Amendment Final
Development Plan - Ashland

Dear Mr. Haines:

Please enter my appearance on behalf of the Petitioner Ashland Homeowner's Association in the above captioned case.

Thank you.

Sincerely,

Deborah C. Dopkin

cc: Jean Tansey
Kim Strutt

LETR0117

MICROFILMED

8-24-3-320

FEDDER AND GARTEN
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
36 SOUTH CHARLES STREET
2300 CHARLES CENTER SOUTH
BALTIMORE, MARYLAND 21201

AREA CODE 301
539-2800

FAX
301-659-0543
TELECOPIER "FEDGAR"

OFFICE OF MORRIS FEDDER 8926-60

RECEIVED
AUG 23 1989
ZONING OFFICE

August 21, 1989

Mr. James E. Dyer
Zoning Supervisor
Office of Planning and Zoning
Towson, Maryland 21204

Re: Ashland Development, Item 576
Petition for Special Hearing

Dear Mr. Dyer:

Please strike my appearance on behalf of Diane Golden in the above captioned matter.

Thank you for your attention to this matter.

Very truly yours,

Phillip J. Kotschenreuther

PJK/dlj

cc: G. Scott Barhight, Esquire

MICROFILMED

FEDDER AND GARTEN
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
36 SOUTH CHARLES STREET
2300 CHARLES CENTER SOUTH
BALTIMORE, MARYLAND 21201

AREA CODE 301
539-2800

FAX
301-659-0543
TELECOPIER "FEDGAR"

OFFICE OF MORRIS FEDDER 8926-60

RECEIVED
AUG 23 1989
ZONING OFFICE

August 21, 1989

The Honorable J. Robert Haines
Baltimore County Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

RE: Ashland Development
Case No.: 90-120-SPH

Dear Commissioner Haines:

Please strike my appearance on behalf of Diane Golden in the above captioned matter.

Thank you for your attention to this matter.

Very truly yours,

Phillip J. Kotschenreuther

PJK/dlj

cc: G. Scott Barhight, Esquire

MICROFILMED

LAW OFFICES
WHITEFORD, TAYLOR & PRESTON

SUITE 1600
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 301-347-8700

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
301-832-2000
FAX: 301-832-2015

SUITE 400
888 17TH STREET, NW
WASHINGTON, D.C. 20006
TELEPHONE 202-835-0606

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

November 16, 1989

HAND DELIVERED

The Honorable J. Robert Haines
Zoning Commissioner
Baltimore County Office of
Planning & Zoning
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Notice of Appeal
Petition for Special Hearing
Petitioners: Ashland Homeowners' Association
Case No.: 90-120-SPH

Dear Commissioner Haines:

Please note an appeal of the above-referenced case to the County Board of Appeals on behalf of my client, Diane Latta-Ortel Golden. Ms. Golden's address is 200 Ashland Road, Cockeysville, Maryland 21030.

Enclosed is a check made payable to Baltimore County, Maryland in the amount of $150.00 as payment for the filing fee and sign costs associated with this appeal.

Should you have any questions or comments, please feel free to contact me. Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:acs
cc: Honorable Ann M. Nastarowicz
Ms. Diane Latta-Ortel Golden
Mr. Lee Rock
Deborah C. Dopkin, Esquire

MICROFILMED

PAYMENT
11-17-89
ZONING OFFICE

12-8-4 SED

LAW OFFICES
WHITEFORD, TAYLOR & PRESTON

SUITE 1600
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 301-347-8700

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
301-832-2000
FAX: 301-832-2015

SUITE 400
888 17TH STREET, NW
WASHINGTON, D.C. 20006
TELEPHONE 202-835-0606

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

December 5, 1989

The Honorable J. Robert Haines
Zoning Commissioner
Baltimore County Office of
Planning & Zoning
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: 200 Ashland Road
Cockeysville, Maryland 21030
Ashland, Lot 1, Block A
SE Corner Ashland Road and Paper Mill Road
Zoning: D.R. 3.5

Dear Commissioner Haines:

Diane Golden and I wish to thank you, Tim Kotroco, Jim Thompson and Frank DiMeglio for meeting with me on November 13 regarding the above property. As we discussed, Ms. Golden is investigating the potential uses of her property. To that end, a question has come up regarding the necessary rear yard setback for her property.

As you probably recall, Ms. Golden's lot is improved with two existing structures. The main house fronts on Ashland Road. The rear building contains a garage, storage area and a living area. Ms. Golden is considering connecting the two structures. As stated earlier, she is also considering various uses which may be permitted as a matter of right or by special exception.

The question which we need answered by your office is whether the rear yard setback required to connect the two structures will be 15 feet. If the answer to this question is dependent upon the potential uses of the existing rear structure, please assume that the following uses are being contemplated.

MICROFILMED

RECEIVED
DEC 7 1989
ZONING OFFICE

The Honorable J. Robert Haines
December 5, 1989
Page 2

1. Garage
2. Dwelling Area
3. Storage Area
4. Home Occupation
5. Bed and Breakfast
6. Farms or Limited-Acre Wholesale Flower Farms
7. Agricultural Training School
8. Combinations of the Above Uses

Based upon earlier conversations with the Zoning Office, it is our understanding that a 15 foot rear yard setback would be required for any of the above-described uses if the existing structures were connected. Enclosed is a check made payable to Baltimore County, Maryland in the amount of $35.00 as the charge for this zoning opinion. If you are in need of any additional information, please feel free to contact me.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Ms. Diane Latta-Ortel Golden

MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

90-120-SPH

District 8th Date of Posting 9/15/89
Posted for: Special Hearing
Petitioner: Ashland Homeowners Assn.
Location of property: Cor. S/S Ashland Rd & S/S Paper Mill Rd.
Location of Signs: Facing Paper Mill Rd., approx. 10' Fr. roadway
Remarks:
Posted by _____ Signature Date of return: 9/22/89
Number of Signs: 2

MICROFILMED

CERTIFICATE OF PUBLICATION

TOWSON, MD., Sept 7, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Sept 7, 1989

THE JEFFERSONIAN
TOWSON TIMES,

S. Zeke Orlan
Publisher

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petition for Special Hearing
Case number: 90-120-SPH
Corner of SE/S Ashland Rd. and SE/S of Paper Mill Rd.
8th Election District
3rd Councilmanic
Petitioner(s):
Ashland Homeowners' Association
Hearing Date: Tuesday, Oct. 3, 1989 at 10:00 a.m.

Special Hearing: Second Amendment to Ashland Final Development Plan affecting Homeowners' Association property and Lot 1, Block A.

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

J. ROBERT HAINES
Zoning Commissioner of Baltimore County

TU9013 Sept. 7.

PO 16319
req M 34173
so 90-120-SPH
price $95.29

MICROFILMED

Tracking System
Baltimore County
Zoning Commissioner
Office of Planning & Zoning

Date	Receipt	FEE	Identification Number	Council District	Election District	Zip Code
Day Month Year	Number	TYPE				
8/16/89	0670795	04	0 1 - 6 1 5	4	08	21152

Petitioner: Ashland Homeowner's Association (First)
Property Address: Ashland Rd. & Paper Mill Rd. (Number) (Street)

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 067953
DATE 8/16/89 ACCOUNT 01-615
AMOUNT $100.00
RECEIVED FROM Daft-McCune-Walker
FOR Special Hearing (Item #57C)
B B110****10000:a 8274F
VALIDATION OR SIGNATURE OF CASHIER
DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt
Account: R-001-6150
Number № 2734

90-120-SPH

Date 6/13/90

COPIES:	QTY	PRICE
7200 - PHOTO TAPE	01	$35.00
	TOTAL:	$35.00

B B025*****1500:a 8135F
Please make checks payable to: Baltimore County
Cashier Validation:

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt
Account: R-001-6150
Number № 837

Date 12/29/89

ZONING VERIFICATION REQUESTED	QTY	PRICE
710 - WRITTEN VER OF ZONING UNDER	1	$35.00
LAST NAME OF OWNER: BARIGHT	TOTAL:	$35.00

B B117*****3510:a 5025F
Please make checks payable to: Baltimore County
Cashier Validation:

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt
Account: R-001-6150
Number № 354

Date

ADVERTISING	QTY	PRICE
POST AND SIGN DEPOSIT	1	$35.00
ZONING VERIFICATION	1	35.00
LAST NAME OF OWNER: BARIGHT	TOTAL:	$120.29

CASE # 90-120-SPH

B B078*****1500:a 8272F
Please make checks payable to: Baltimore County
Cashier Validation:

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

DATE 9/12/89

Dennis F. Rasmussen
County Executive

Ashland Homeowner's Association
c/o Kimberly B. Strutt
54 Scott Adam Road
Hunt Valley, Maryland 21030

Re: Petition for Special Hearing
CASE NUMBER: 90-120-SPH
Corner of SE/S Ashland Road and SE/S of Paper Mill Road
8th Election District -3rd Councilmanic
Petitioner(s): Ashland Homeowners' Association
HEARING SCHEDULED: TUESDAY, OCTOBER 3, 1989 at 10:00 a.m.

Gentlemen:

Please be advised that $ 120.29 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign & post set(s), there will be an additional $50.00 added to the above amount for each such set not returned.

Very truly yours,
J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

JRH:gs
cc: Deborah C. Dopkin, Esq.
File

MICROFILMED

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE-REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 077291
DATE 10/3/89 ACCOUNT R-01-615-000
AMOUNT $ 120.29
RECEIVED FROM Daft-McCune-Walker
FOR Pd A 10/3/89 Comm 90-120-SPH
VALIDATION OR SIGNATURE OF CASHIER
DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Form CA4

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

Irene Summers — 887-2660
Civil Assignment Commissioner

Kathy Rushton — 887-2660
Jury Assignments—Civil
General Settlement Conferences

Margo Tyler — 887-2661
Non-Jury Assignments—Civil
Special Settlement Conferences

TO:

September 18, 1990

G. Scott Barhight, Esq.

Baltimore County Board of Appeals

Arnold Jablon, Esq.

RECEIVED
COUNTY BOARD OF APPEALS
90 SEP 20 PM 12:19

RE: NON JURY 90-CG-3013 DIANE GOLDEN VS. IN THE MATTER OF - HOMEOWNERS' ASSOCIATION

HEARING DATE: MONDAY, JANUARY 7, 1991 @ 9:30 A.M.

ON THE FOLLOWING: APPEAL: 1 HOUR

Please see the below notations.

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.

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 30 DAYS OF TRIAL should be directed to the attention of Irene Summers. POSTPONEMENTS WITHIN 30 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments-Joyce Grimm-887-3497.

SETTLEMENTS: If a settlement if reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

Form CA4

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

Irene Summers — 887-2660
Civil Assignment Commissioner

Kathy Rushton — 887-2660
Jury Assignments—Civil
General Settlement Conferences

Margo Tyler — 887-2661
Non-Jury Assignments—Civil
Special Settlement Conferences

TO:

October 5, 1990

G. Scott Barhight, Esq.

Deborah C. Dopkin, ESq.

Baltimore County Board of Appeals

Arnold Jablon, Esq.

NOTE: CORRECTED NOTICE.

RECEIVED
COUNTY BOARD OF APPEALS
90 OCT 11 AM 11:06

RE: Non-Jury 90-CG-3013 Diane Golden In the Matter of Ashland Homeowners' Assn.

HEARING DATE: Thursday, January 24, 1991, @ 9:30 a.m.

ON THE FOLLOWING: Appeal: 1 hour

Please see the below notations.

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.

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 30 DAYS OF TRIAL should be directed to the attention of Irene Summers. POSTPONEMENTS WITHIN 30 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments-Joyce Grimm-887-3497.

SETTLEMENTS: If a settlement if reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

August 17, 1989

Dennis F. Rasmussen
County Executive

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Hearing
CASE NUMBER: 90-120-SPH
Corner of SE/S Ashland Road and SE/S of Paper Mill Road
8th Election District -3rd Councilmanic
Petitioner(s): Ashland Homeowners' Association
HEARING SCHEDULED: TUESDAY, OCTOBER 3, 1989 at 10:00 a.m.

Special Hearing: Second Amendment to Ashland Final Development Plan affecting Homeowners' Association property and Lot 1, Block A.

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

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

MICROFILMED

JRH:gs
cc: Ashland Homeowner's Association, c/o Kimberly Strutt
Deborah C. Dopkin, Esq.
Philip J. Kotschenreuther, Esq.
File

LAW OFFICES

WHITEFORD, TAYLOR & PRESTON

SUITE 1400
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 301-347-8700

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
301-832-2000
FAX: 301-832-2015

SUITE 400
888 17TH STREET, NW
WASHINGTON, D.C. 20006
TELEPHONE 202-835-3600

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

October 2, 1990

Ms. Irene Summers
Civil Assignment Commissioner
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21285-6754

Re: Golden v. Homeowners' Association
Non-Jury: 90-CG-3913
Hearing Date: January 7, 1991
Request for Postponement

Dear Ms. Summers:

Please postpone the appeal hearing in the above matter until after January 8, 1991. My client, the Appellant, is unavailable for the January 7 hearing date. Ms. Golden will not be returning from a previously scheduled trip out of state until January 8.

Should you have any questions or comments, please feel free to contact me. Currently, my calendar is free for the remainder of January. Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Baltimore County Board of Appeals
Arnold Jablon, Esquire
Deborah C. Dopkin, Esquire

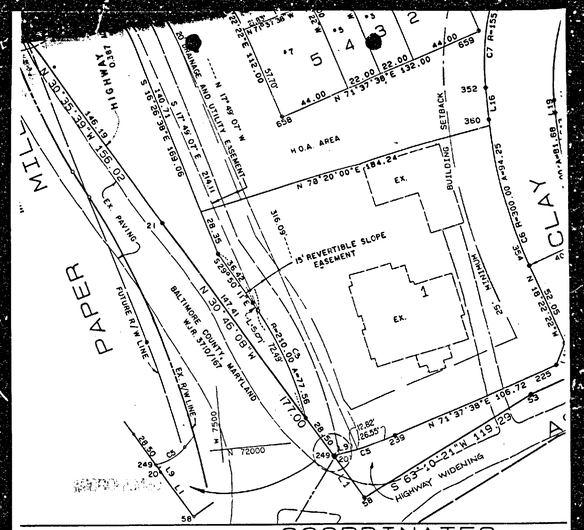
RECEIVED
COUNTY BOARD OF APPEALS
90 OCT -3 AM 11:46

PLEASE PRINT CLEARLY — PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
G. Scott Barhight Atty For D. Golden	500 Court Towers, 210 W Penn Ave, Towson, MD 21204
D. Golden	201 ASHLAND ROAD Cockeysville, MD. 21030

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Deborah C Dopkin	405 Allegheny Ave 21204
Kimberly B. Streett	8 Stage CT, Phoenix MD
George E. Gavrelis	DNW 200 E. Pond Avenue
Edmund F. Haile	Towson 21204
Lee Rock	7 Foundry Ct, Hunt Valley, MD 21030



COORDINATES

PTING	NORTHING	POINT	NORTHING	WESTING	POINT	NORTHING
1.771	7,546.132	286	72,288.155	7,532.356	525	72,209.383
2.249	7,432.531	290	72,343.531	7,365.625	547	72,271.212
2.330	7,523.078	292	72,381.492	7,378.233	548	72,386.000
2.627	7,602.483	293	72,305.321	7,284.627	549	72,381.390
2.592	7,608.747	294	72,320.558	7,284.508	550	72,248.780
2.649	6,984.727	295	72,346.267	7,253.884	555	72,274.088
2.836	7,033.532	296	72,343.716	7,238.861	559	72,286.365
2.458	7,063.642	352	72,206.991	7,318.986	560	72,269.770
2.462	7,172.071	354	72,094.706	7,303.572	563	72,382.189
2.558	7,310.282	356	72,107.314	7,265.611	565	72,412.366
2.720	7,416.737	358	72,187.573	7,278.859	573	72,466.749
2.835	7,543.395	360	72,187.313	7,318.858	575	72,447.161
2.209	7,539.075	361	72,195.316	7,278.910	578	72,471.147
2.350	7,481.562	363	72,300.856	7,095.105	583	72,382.799
2.354	7,474.271	481	72,249.120	6,854.997	587	72,450.340

1

IN THE MATTER OF * BEFORE THE
ASHLAND HOMEOWNERS' * COUNTY BOARD OF APPEALS
ASSOCIATION * OF BALTIMORE COUNTY
* Case No. 90-120-SPH
* June 20, 1990

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the County Office Building, at 10 o'clock a.m., June 20, 1990.

* * * * *

BOARD MEMBERS:

LAWRENCE E. SCHMIDT, Acting Chairman
ARNOLD G. FORMAN
JOHN G. DISNEY

APPEARANCES:

DEBORAH C. DOPKIN, Esquire
On behalf of Petitioner

G. SCOTT BARHIGHT, Esquire
On behalf of Protestant/Appellant

Reported by:

C.E. Pratt

ORIGINAL

BOARD OF APPEALS

Petitioner's Exhibit 4

INDEX TO THE
MINUTES
Baltimore County Planning Board
July 20, 1989

1. Introduction of Board Members, and Announcements
2. Review of Agenda
3. Minutes of Meeting of June 15, 1989
4. Citizens Comments
5. Recommendations by the ad hoc Committee on Regulations and Standards
6. Recommendations by the ad hoc Committee on Development Plans and Issues
7. Recommendations by the ad hoc Committee on Master Plan and Comprehensive Zoning Map
8. Other Business

APPENDIX A - Minutes of Planning Board meeting, June 15, 1989

APPENDIX B-1 - Proposed Amendments to the Baltimore County Zoning Regulations Concerning Transit Facilities

APPENDIX B-2 - Proposed Amendment to the Comprehensive Manual of Development Policies and Proposed Legislation regarding Microwave Path Protection

APPENDIX B-3 - Resolution of the Baltimore County Planning Board to Amend the Comprehensive Manual of Development Policies

APPENDIX C-1 - Section 22-43 Waivers (Director's Report to the Baltimore County Planning Board)

APPENDIX C-2 - Memorandum dated July 17, 1989 from P. David Fields: Request for Certification - Shelter Development Corporation

APPENDIX D - Baltimore County Water & Sewerage Plan, Amendment Cycle 7

(over)

MICROFILMED

Petitioner's Exhibit 5

1942 / 199 MAIL TO:

DEED — FEE SIMPLE — INDIVIDUAL GRANTOR — LONG FORM

BAY STATE TITLE CO.
1 East Redwood Street
Baltimore, Md. 21202
539-5878

File # 40639/aak

This Deed, MADE THIS 29th day of July

in the year one thousand nine hundred and eighty-eight by and between

ASHLAND JOINT VENTURE, a Maryland General Partnership,

of Baltimore County, State of Maryland, party of the first part, and

DIANE LATIA-ORIEL GOLDEN, party

of the second part.

WITNESSETH, That in consideration of the sum of --TWO HUNDRED SIXTY-FOUR THOUSAND FIVE HUNDRED AND 00/100---------- ($ 264,500.00) DOLLARS, the actual consideration paid or to be paid, and other good and valuable considerations, the receipt whereof is hereby acknowledged,

D RCPT 18.00
D TAX 1197.50
D RECS 1322.50
DEED 0 #
SM CLERK 2939.00
470894 COOZ R02 14:10
08/15/88

the said ASHLAND JOINT VENTURE, a Maryland General Partnership

do es grant and convey to the said DIANE LATIA-ORIEL GOLDEN, party of the second part, her

personal representatives/~~successors~~ and assigns , in fee simple, all

that lot of ground situate in Baltimore County, State of Maryland, and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot No. 1, Block A, as shown on the Plat entitled "Amended Plat One Of Ashland", which Plat is recorded among the Land Records of Baltimore County in Plat Book S. M., No. 56, folio 76. The improvements thereon being known as No. 200 Ashland Road, also known as No. 201 Clay Hill Circle.

BEING part of the property which by Deed dated December 28, 1984 and recorded among the Land Records of Baltimore County in Liber E.H.K.,Jr.No. 6846, folio 512, was granted and conveyed by Weisberger Kennels, Incorporated, et al unto Ashland Joint Venture, a Maryland General Partnership, the herein Grantor.

BEING ALSO part of the property which by Confirmatory Deed dated February 4, 1985 and recorded among the Land Records of Baltimore County in Liber E.H.K.,Jr. No. 6866, folio 544, was granted and conveyed by Weisberger Kennels, Incorporated, et al unto Ashland Joint Venture, a Maryland General Partnership, the herein Grantor.

Towson Service Corporation, one of the general partners of Ashland Joint Venture, hereby certifies that this conveyance is not part of a transaction in which there is a sale, lease, exchange or transfer of all or substantially all, the property or assets of Towson Service Corporation.

RECEIVED FOR TRANSFER
State Department of Assessments & Taxation
for Baltimore City

MICROFILMED

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE