Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

September 21, 1998

Mr. George E. Gavrelis
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, MD 21288

Dear Mr. Gavrelis:

RE: Towson Commons, Amenity Open Space Standard, 9th Election District

This is a response to your letter of September 14, 1998 concerning the right of Towson Commons to utilize Section 235.B.4, BCZR, for an adjustment to the Amenity Open Space (AOS) requirement (originally variranced under zoning case number 90-130-SPHA).

Based on the provided information, staff agrees with the right of application of Section 235.B.4., BCZR, to the site, subject to the following conditions:

1. Two copies of the red-lined site plan from the above zoning case showing all changes to include new compliance requirements and locations (per 235.B.4), as well as changes to the existing approved AOS areas along with any necessary calculation changes must be reviewed by this office for spirit and intent compliance with the zoning order and plan.

2. Compliance with all of Section 235.B.4. is required. This appears to include 235.B.4.B.3, which stipulates that "If streetscaping has already been provided, the Director of Permits and Development Management or the hearing officer shall require an applicant to pay a fee determined by the Director of Public Works...".

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Very truly yours,

John L. Lewis
Planner II
Zoning Review

JLL:scj

Come visit the County's Website at www.co.ba.md.us

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BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 058727

DATE 9/16/98 ACCOUNT 001-6150
AMOUNT $ 40.00 (JLL)
RECEIVED FROM: Daft McCune Walker Inc
FOR: VERIFICATION #98-3695
Towson Coonsons

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PROCESS ACTUAL TIME
9/16/1998 9/16/1998 11:12:09
REGISTER: CASHIER MARY BROWER
MISCELLANEOUS CASH RECEIPT
Receipt # 059646
CR NO. 058727
40.00 CHECK
Baltimore County, Maryland

9/15/98
98
with TO JLL 9/16/98
$ cashed

September 14, 1998

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
http://www.dmwcorp.com
410 296 3333
Fax 410 296 4705
A Team of Land Planners, Landscape Architects, Engineers, Surveyors & Environmental Professionals

Mr. Arnold Jablon, Director
Baltimore County Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Towson Commons
Amenity Open Space Standard
Project No. 86112.HH

Dear Mr. Jablon:

This letter seeks affirmation that the amenity open space standard now applicable to Towson Commons is that set forth in Section 235B.4 BCZR as amended by Bill No. 88-97. This amendment eliminated an amenity open space requirement based on a ratio to building area and established for the CT District of Towson a new requirement based on providing streetscaping in accordance with standards set forth in the Comprehensive Manual of Development Policies (CMDP). Copies are enclosed of Bill No. 88-97 and the Amenity Open Space, Towson Streetscape Standards as set forth in Division VI, Section F. of the CMDP.

This matter was discussed last week with John L. Lewis by Rob Hoffman and myself. He now is familiar with the issues.

Towson Commons is in the CT District of Towson and was developed under the previous amenity open space requirements. Zoning Case No. 90-130 SPHA granted a series of variances including one permitting 22,880 square feet of amenity open space in lieu of the required 39,943 square feet. The order included restrictions essentially aimed at streetscaping and pedestrian flows. Extraordinary landscaping plans were developed for Towson Commons, were approved by the County, and were implemented. They became the model for subsequent public streetscaping efforts in Towson. Details included in approved landscaping plans for Towson Commons were incorporated into the CMDP with attributions to both LaSalle Partners and DMW. Towson Commons is in eminent compliance with adopted Amenity Open Space and Streetscape Standards within the CT District of Towson.

RECEIVED
SEP 14 1998
98-3695
PDM

Mr. Arnold Jablon, Director
Page 2
September 14, 1998

Interior alterations are being considered for Towson Commons. They could be impacted by the previous amenity open space standards no longer in effect. Towson Commons could be "non-conforming" relative to amenity open space requirements as now established, especially and uniformly for the CT District of Towson. But, streetscaping planned and built at Towson Commons became the model for the new Towson amenity open space requirements. Towson Commons complies with the new standards. We believe that it should be considered as "conforming", with Section 235 B.4 of BCZR and relieved of any necessity to meet the previous amenity open space requirements.

Sincerely,

DAFT-McCUNE-WALKER, INC.

George E. Gavrelis

George E. Gavrelis

GEG/sd

Enclosures

cc: Robert A. Hoffman, Esquire
Mr. Maurice Walker

08/07/1998 10:04 14108875791 BALT CO COUNCIL PAGE 01

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1997, Legislative Day No. 14

Bill No. 88-97

Mr. Douglas B. Riley, Councilman

By the County Council, July 7, 1997

A BILL
ENTITLED

AN ACT concerning

Amenity Open Space in the C.T. District of Towson

FOR the purpose of amending the Baltimore County Zoning Regulations in order to establish amenity open space requirements for uniform streetscape improvements in the C.T. district of Towson; exempting the C.T. district of Towson from certain amenity open space requirements; requiring the placement of tree plantings and street furniture in accordance with certain standards; establishing the width of the streetscape area; requiring the payment of a fee for the maintenance of the streetscape in certain circumstances; and generally relating to amenity open space requirements in the C.T. district of Towson.

By repealing and re-enacting, with amendments

Section 235B.4
Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received a final report, dated April 4, 1997, from the Planning Board concerning the subject legislation, and has held a public hearing

Post-it® Fax Note 7671	Date 10/6/98	pages 3
To Nancy Rosenbusch	From Carole S. Demilio	
Co./Dept.	Co. County Council	
Phone #	Phone #	
Fax #	Fax #	

8302-92

10/6/92
9

File
90-130SPHA

TRANSMITTAL

DAFT-McCUNE-WALKER, INC.
Land Planning Consultants
Landscape Architects
Engineers & Surveyors

200 East Pennsylvania Avenue
Towson, Maryland 21204
Telephone: (301) 296-3333

RECEIVED
OCT - 8 1992
By SCJ

RECEIVED
OCT 6 1992
ZONING OFFICE

10/8/92

To: Arnold Jablon, Director
ZADM

Date: 10/5/92
Job no.: 86112-X1
Attention:
Reference: Towson Commons - Pedestrian Bridge CARRY

Gentlemen:
We are sending you ☐ attached ☐ under separate cover: ☐ via
☐ Shop drawings ☐ Samples ☐ Plans
☐ Specifications ☐

Copies	Date	Number	Description
1			Red-lined Planned Plat to accompany petition in Case 90-130 SPHA
1	10/5/92	10/8/92	Letter explaining changes

These are transmitted as checked below:
☑ For approval ☐ Approved as submitted ☐ Resubmit ____ copies for approval
☐ For your use ☐ Approved as noted ☐ Submit ____ copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return ____ corrected prints
☐ For review and comment ☐

Remarks: As our meetings suggested, we met with Lisa Dey to advise her of the bridge. She and Councilman Riley looked at location in the field. Lisa reports they have no problems. Many thanks, I love you. GEG

cc:

Signed: George E. Gavrelis

October 8, 1992

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
410 296 3333
Fax 296 4705
A Team of Land Planners, Landscape Architects, Engineers, Surveyors & Environmental Professionals

Mr. Arnold Jablon, Director
Zoning Administration and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Towson Commons Refinements
Zoning Case 90-130 SPHA
Project No. 86112.X1

Dear Mr. Jablon:

In connection with the needs of a major new tenant, Basset Books, Towson Commons is revising its plan to provide an additional pedestrian bridge to link the existing garage with the mezzanine level of the store. We have submitted a counterpart request that this change be considered a refinement to the approved CRG Plan. This letter seeks resolution of any issue which might arise from Zoning Case 90-130 SPHA which granted Towson Commons certain variances.

We have enclosed a copy of the plan and plat which accompanied the petition in Case 90-130 SPHA. It has been redlined to show:

- The proposed pedestrian bridge linking the garage with the store
- An updated zoning history
- The numbers of pertinent building permits
- Revised data on street level uses to reflect the area of existing street level restaurants (20,867 square feet) which are not required to provide parking within the CT district of Towson
- A reduction in the number of theater seats reflecting final plans.
- Revised parking computations reflecting updated uses within Towson Commons and final figures on parking available.

We believe that these revisions are in accordance with both the letter and the spirit and intent of the order of the Board of Appeals. Adding the pedestrian link from the garage to mezzanine retail space is not relevant to or in conflict with any of the variances granted. It is to be noted specifically that Sheet 3, Building Program states that, "These figures are schematic and may change."

Mr. Arnold Jablon, Director
Page 2
October 8, 1992

Pursuant to our conversation, this letter is to confirm that the proposed pedestrian bridge as described herein is a minor revision to the plan submitted in Case 90-130 SPHA and that no further action is required. If you agree, please sign in the space provided below.

Thank you for the counsel and advise which you provided when you met with Dean Lopez and me on short notice last week.

Sincerely,

George E. Gavrelis
George E. Gavrelis
Vice President

GEG/pms

Enclosures

ACCEPTED AND AGREED:

10/9/92
Arnold Jablon, Director Date
Zoning Administration and Development Management

Nowhere in its opinions does the Court limit the self-created hardship principle to use variance cases or to area variance cases in which only the unreasonable hardship standard is invoked to obtain the area variance. Nowhere in its opinons does the Court limit the self-created hardship principle to "an improper, affirmative act of commission by the property owner or his predecessor" as contended by Appellee. TCLP 1st Mem. 21-23.

On the contrary, the Court of Appeals, in AD + Soil, Inc., supra, 513 A.2d at 909-910, presents the correct legal analysis. First, the variances requested in AD + Soil, Inc. were area setback variances. Secondly, the Court analyzed the zoning ordinance in question. That ordinance permitted a variance where the particular characteristics of the real property would cause "unwarranted hardship and injustice." The Court did not conclude that AD + Soil committed an improper act. The Court reviewed the record and concluded that the subject site was large enough to comply with all the setback requirements. The Court concluded that there was adequate factual support in the record for the Board's decision to deny the variances on the bases of the Board's conclusions: (1) that AD + Soil's "hardship" was self-inflicted, and (2) that in any event, the "hardship" was not the result of exceptional or extraordinary characteristics of the land itself, and, therefore, not the kind of hardship cognizable under the zoning ordinance.

Application of the AD + Soil analysis to the case before this Court requires analysis of B.C.Z.R. Section 307.1 which provides for area variances based either on "practical difficulty" or "unreasonable hardship". Clearly, a problem self-created by the

petitioner for an area variance, whether the ordinance is written in terms of "practical difficulty", "unreasonable hardship" or "unwarranted hardship and injustice", cannot be the basis for the grant of the area variance requested, especially in the case, like the instant case and like the AD + Soil case, in which the problem is not caused by any particular physical characteristics of the subject real property. LYHI 1st Mem. 17-19, 27-29. AD + Soil, Inc., supra, 513 A.2d at 910.

Appellee has applied the self-created hardship principle only to the second prong of the fourth factor presented by Appellee in support of its requested York Road setback variance: the claim that the tenant General Cinema requires that the 8 theater auditoriums designed by its architects not be modified in any way or it will pull out of the project. LYHI 1st Mem. 27-29. Appellee, not having had the benefit of first reviewing Appellant's Memorandum of Law, incorrectly anticipated that Appellant was going to apply the self-created hardship principle to each of the three requested variances. TCLP 1st Mem. 21-23. The record demonstrates that when Appellee entered into the February 23, 1989 Assignment Agreement and thereby accepted the assignment of the May 23, 1988 Lease between its predecessor TCJV and General Cinema, Appellee gave General Cinema the absolute discretion to control all the design elements involving the theaters. (Pet. Exh. 25; Haile Corporation Exh. 21, p. 9). Like the applicant in Ad + Soil, Inc., Appellee knowingly inflicted upon itself the hardship or practical difficulty of not being able to fit the General Cinema theaters into a theater building that would be in compliance with the

B.C.Z.R. setback requirements.

II. Appellee's Memorandum Has Overlooked Material Record Evidence and Misinterpreted Appellant's Position.

First, Appellee's assertion that "[t]he evidence overwhelmingly establishes that the critical component uses developed for Towson Commons (retail, movie, restaurant and office) simply could not be physically constructed on TCLP's site, without variances from setback and open space requirements", TCLP 1st Mem. 14, is not supported by the record evidence. On the contrary, Appellee's expert witness Mr. George Gavrelis testified:

T., 3rd, a.m., 92-93:

Q. And if one really wanted to meet the amenity open space requirement, they could really plan it out, couldn't they?

T., 3rd, a.m., 93:

A. Oh, yes, one could really plan it out. But it would not be practical in terms of the other constraints that work on the project.

Q. But they could plan it out?

A. Sure. One can plan for anything. You know, that's not -- the issue here is how does this plan work for the Towson Commons as proposed and the constraints and opportunities that are presented to it.

Q. Can the project be physically completed in compliance with the zoning regulations? In your opinion, physically completed?

A. You know, I'm sure that I would have to say that one --

* * *

T., 3rd, a.m., 94:

A. My answer is exactly yes, one could do a plan that would fit the regulations. Whether it's a good plan or a feasible plan is somethig else. I will stop.

Furthermore, Appellee's Memorandum completely overlooks the testimony and documentary evidence presented by Appellant's expert witness Mr. George Holback, architect. The evidence which Mr. Holback presented was unrebutted. Mr. Holback demonstrated that the Towson Commons project could be construc d with each of the planned mixed uses, including General Cinema as the theater tenant, in compliance with the setback and amenity open space requirements of the B.C.Z.R. (T., 5th, 179-211; Haile Corporation Exh. 24, 25, 28A through 28L, and 29 through 34; K-D Association Exh. 2; Pet. Exh. 3, 6, 14, 15, 22, 23).

Second, Appellee's assertions that "Appellant Haile has and presumably will argue that the Board improperly granted the variances based on purely economic concerns," that "Appellant argues that the only justification for the variances was increased profits for TCLP," that "[t]his argument simply misrepresents the record and opinion in this case," and that "Haile's argument that the variances were improperly based on economics is unsupported by the record and unfounded," TCLP 1st Mem. 19-20, are incorrect interpretations of Appellant's legal position. Appellant's legal position is that in applying the first element of the practical difficulty standard, the Board failed to apply the well established principle of Maryland zoning law that the "mere fact that the

variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements." Dahl v. County Board of Appeals of Baltimore Co., 258 Md. 157, 265 A.2d 227, 232 (1970). LYHI 1st Mem. 19-20.

Furthermore, Appellee's assertions manifest the difference in the characterization of the five factors used by Appellee to base its contention that the first element of the practical difficulty standard was satisfied. LYHI 1st Mem. 19-30. If Appellee considers these five factors to be non-economic factors, Appellee is overlooking the reality of the attributes and effects of each of the five factors. There is no question that each of the five factors inherently is an economic factor. LYHI 1st Mem. 19-30.

Nevertheless, Appellant agrees that economics is relevant in certain limited cases, provided that denial of requested variances, required by the particular characteristics of the real property and not self-created by the applicant, would cause the failure of the project, and provided that the other elements of B.C.Z.R. Section 307.1 are considered. However, in the instant case, there is uncontroverted record evidence that the project will not fail if the requested variances are not granted, that the Towson Commons project can be developed physically for the same mixed uses desired by Appellee without the three subject variances, that the granting of the requested variances will not be in strict accord with the spirit and intent of the B.C.Z.R. setback and amenity open space requirements, and that the granting of the requested variances will substantially injure the public general welfare. In light of this uncontroverted record evidence, the requested variances must be

denied.

In addition, TCLP, in its Answer filed on May 9, 1990, requests that this Court "award TCLP all costs and fees incurred in connection with this Appeal". However, TCLP fails to present any statutory or case law support, or any reasons for such a request. The legal issues, the record evidence, the memoranda filed by the parties, and the Appellant's cooperation in expediting the appeal of this case clearly support the conclusion that this appeal has been in good faith and has been based on substantial justification.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Appellant's Memorandum of Law, the Opinion and Order of the County Board of Appeals of Baltimore County must be reversed, and the Appellee's requested setback and amenity open space variances must be denied.

Dated: May 15, 1990.

Respectfully,

Rudolph E. DeMeo
Mignini, Raab & Lidinsky
3410 White Avenue
Baltimore, Maryland 21214
(301) 426-3000
Attorneys for Appellant
Leroy Y. Haile, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May, 1990, a copy of the foregoing Reply Memorandum of Law was hand-delivered to the County Board of Appeals of Baltimore County, County Office Building, Room 315, 111 W. Chesapeake Avenue, Towson, Maryland 21204; and was hand-delivered to John B. Howard, Esquire, John H. Zink, III, Esquire, Cynthia M. Hahn, Esquire, and Robert A. Hoffman, Esquire, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, Maryland 21204, Attorneys for Appellee; and was mailed, first class, postage prepaid, to Mark J. Adams, Esquire, Birrane, Harlan & Sharretts, Jefferson Building, 9th Floor, 2 East Fayette Street, Baltimore, Maryland 21202, Attorney for Knollwood-Donnybrook Improvement Association, Inc.

Rudolph E. DeMeo
Attorney for Appellant
Leroy Y. Haile, Inc.

Service of a copy of the within Memorandum of Law of Appellant Leroy Y. Haile, Inc. admitted by the County Board of Appeals of Baltimore County on this 15th day of May, 1990.

Secretary, County Board of
Appeals of Baltimore County

COUNTY BOARD OF APPEALS
RECEIVED
90 MAY 15 PM 3:34

IN THE MATTER OF THE APPLICATION OF TOWSON COMMONS LIMITED PARTNERSHIP FOR A SPECIAL HEARING AND VARIANCES ON PROPERTY LOCATED ON THE WEST SIDE YORK ROAD BETWEEN SOUTH SIDE OF PENNSYLVANIA AVENUE AND THE NORTH SIDE OF CHESAPEAKE AVENUE 9th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	* * * * * * * *	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY Case No.: 90-CG-1513 Docket: 79 Folio: 313

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

MEMORANDUM OF LAW OF APPELLANT LEROY Y. HAILE, INC.

Leroy Y. Haile, Inc., the Appellant, by its attorneys, Rudolph E. DeMeo and Mignini, Raab & Lidinsky, pursuant to Rule 512. of the Maryland Rules, and pursuant to this Court's April 26, 1990 Consent Order expediting the time for filing of Memoranda of Law and for the other procedural steps in this Appeal, respectfully presents this Memorandum of Law.

STATEMENT OF THE CASE

Leroy Y. Haile, Inc. ("the Appellant" or "the Haile Corporation") is engaged in the business of real estate and has its principal office and place of business at 5 W. Chesapeake Avenue, Towson, Maryland 21204. Towson Commons Limited Partnership ("the Appellee" or "the Petitioner") is the successor in interest to Towson Commons Joint Venture ("TCJV") and is the present developer of the Towson Commons project in the 400 block on the West side of York Road in Towson, Baltimore County, Maryland. Appellee had requested a special hearing to approve a modified parking plan and had requested certain variances from certain of the height and area requirements of the Baltimore County Zoning Regulations ("B.C.Z.R."). On November 14, 1989, Deputy Zoning Commissioner Ann M. Nastarowicz issued Findings of Fact and

Conclusions of Law ("Zoning Commissioner's Decision"), granted certain of the requested variances, subject to certain restrictions set forth as conditions precedent to the relief granted, and dismissed the Petition for Special Hearing.

On December 13, 1989, the Appellant appealed the Zoning Commissioner's Decision with respect to the granting of the variances. On that same date, Protestants Knollwood-Donnybrook Improvement Association, Inc. ("K-D Association"), Northeast Towson Improvement Association, Inc., ("N-E Towson Association"), and Baltimore County ACCORD ("ACCORD"), and the Appellee also appealed the Zoning Commissioner's Decision. Prior to the commencement of the appeals hearing, N-E Towson Association and ACCORD withdrew their appeals. On December 29, 1989, and on January 4, 11, 19 and 26, 1990, a hearing was held in this case before the County Board of Appeals of Baltimore County ("the Board").

The Appellant takes this Appeal from the Opinion and Order of the Board issued on March 23, 1990 specifically with respect to the Board's premises, conclusions and Order which granted Appellee's requests for variances:

(1) from the front yard setback requirements of B.C.Z.R. Section 235.1, permitting setback as close as 0 feet (along Pennsylvania Avenue) in lieu of the required 15 feet ("the Pennsylvania Avenue setback variance"), and

(2) from the side yard setback requirements of B.C.Z.R. Sections 235.2 and 232.2, permitting side yard setbacks of 4 feet (along York Road) in lieu of the required 10 feet ("the York Road setback variance"), and

(3) from the amenity open space requirements of B.C.Z.R. Section 235B.4, permitting 22,880 square feet of amenity open space ("A.O.S.") in lieu of the required 39,943 square feet ("the A.O.S. variance").

STATEMENT OF FACTS AND EXPERT OPINION EVIDENCE

I. Appellee, the Baltimore County Government, and the Appellant Support the Towson Commons Multi-Use Project.

The Towson Commons multi-use project is enthusiastically supported by the Appellee, by the Baltimore County government, and by the Appellant. The project will be the cornerstone of the planned revitalization of the Towson commercial, town-center core district ("C.T. District"). The project will be successful and will result in economic, aesthetic, and other benefits to the C.T. District and to the surrounding residential communities, if the project is properly planned to fit into the C.T. District and to comply with the zoning requirements of the B.C.Z.R. for the C.T. District (Transcript ("T."), First Day[1] ("1st"), 137; Second Day ("2nd"), 5-7, 17; Haile Corporation Exhibit ("Exh.") 19, pp.1-2, 7-9, 14-15, 61-62, 72-73, 82-83, 103-104).

II. The Towson Commons Project.

Appellee proposes to construct a multi-use structure in the 400 block on the West side of York Road with an adjusted gross

[1]The transcript consists of five (5) volumes corresponding to the five days of the Board hearing. Each of the five volumes begins with its own page 1, except the volume for the third day, January 11, 1990, which volume has an a.m. or morning part and a p.m. or afternoon part, each of which begins with its own page 1. Transcript references will be to the day of the hearing, to the a.m. or to the p.m. part of the third day, and to the page(s) of the transcript.

floor area of 402,085 square feet. The project will have 5 uses; (1) 8-plex (8 screens or auditoriums or theaters) cinema, (2) street-oriented and other retail, (3) food court, (4) restaurants, and (5) Class A office. The project's street-oriented retail stores will be 2-stories along the South side of Pennsylvania Avenue, and 1 and 2 stories along the West side of York Road across from 1 and 2 story retail stores on the East side of York Road (T., 1st, 81-83, 105). The project's 8-story office tower will be placed above the 2 stories of retail stores along the South side of Pennsylvania Avenue across from the 6-story Loyola Federal office building on the North side of Pennsylvania Avenue (T., 1st, 143). The project's food court, restaurants, and other retail stores will be internalized. (T., 1st, 23-24). The project will have a 3-story rotunda structure at the Southwest corner of Pennsylvania Avenue and York Road (T., 1st, 139). The project also will have a 4-story, windowless, rectangular building housing the 8-plex cinema use, placed above the 1 and 2 stories of street-oriented retail stores along the West side of the 400 block of York Road. (T., 1st, 142-143, 183; Petitioner ("Pet.") Exh. 3, 4, and 5).

The project provides a sidewalk approximately 20 feet wide at the point of adjacency with the 17 West Pennsylvania building, and that sidewalk width increases to 22 or 23 feet as one approaches the corner of Pennsylvania Avenue and York Road. The width of the sidewalk along York Road is 19 feet to the face of the building column and 20 feet to the face of the retail store fronts. On Chesapeake Avenue, the sidewalk width is 20 feet. If Appellee

complied with the 15 foot setback requirement for Pennsylvania Avenue and the 10 foot setback requirement for York Road, the sidewalk widths would be 35 to 37 or 38 feet along Pennsylvania Avenue, 26 feet to the face of the retail store fronts along York Road, and 25 feet to the face of the building column along York Road. (T., 1st, 61-63).

III. The Determination of the Scale of the Project

Appellee's witness, Dean Lopez, Vice President of LaSalle Partners Limited ("LaSalle"), the entity managing the development of the Towson Commons project, testified that the scale of the Appellee's project was a program the determination of which was based upon a certain economic return ("ER"). That ER dictates the minimum scale of the project. Every effort is made by Appellee to achieve the minimum scale of the project within the parameters of the B.C.Z.R. To the extent that the minimum scale cannot be achieved in compliance with the B.C.Z.R., "it gives rise to the need for variances." (T., 1st, 56). Therefore, the Appellee's ER directly controls the Appellee's need for variances. In other words, Appellee first selected its ER goal, attempted to achieve the ER dictated minimum scale of the project within the requirements of the B.C.Z.R., and determined that it could not achieve its target project minimum scale and, consequently, its ER goal, within the B.C.Z.R. requirements. Appellee then, instead of adjusting its ER goal downward or reformulating its project components, development plans, and marketing strategies to achieve its desired ER goal within a minimum scale in compliance with the B.C.Z.R., decided to request the setback variances and the A.O.S.

variance at issue. Appellee's position is that the variance issues should be controlled by Appellee's desired ER. Appellant's position is that the variance issues are controlled by B.C.Z.R. Section 307.1 and Maryland zoning law.

The ER is directly related to the use of the project and the types of space that are provided in the project. For example, when Appellee's witness Mr. Lopez referred to the psychology of retail, he stated that the success and the ER of that retail is directly attributable or related to the arrangement of the retail space. Nevertheless, Mr. Lopez admitted that "[i]t's almost impossible to assign a value, to say from your experience and from the experience and expertise of our leasing consultants a greater setback, for example, would render the retail less desirable and more likely to fail." (T., 1st, 56-57). Mr. Lopez also admitted that, to his knowledge, no one in his organization did an analysis to determine whether building this project with the same uses on a smaller scale, for example, four cinemas instead of eight cinemas, would cause greater difficulty in securing for his organization a reasonable and economic return. (T., 1st, 58).

Appellee's witness Baltimore County Director of Economic Development Richard Story testified that, if a project like Towson Commons shrinks to a certain critical mass, it's no longer economically feasible to extract the rent from the tenants in office and retail. He added that he did not know where you reach the point of no return, if you put a smaller building on the site. He admitted that the practical difficulty for the Appellee could be economic. (T., 2nd, 39). Mr. Story's testimony hits the target

of Appellee's alleged practical difficulty or hardship- economics and the desire for the greatest posible investment return- and shows the significance of: (1) Appellee's witness Mr. Lopez' not being permitted to answer the question: Do you have the numbers for the projected profit for the first ten years from the project with the requested variances? (2) Mr. Lopez' admitting that he did not have the numbers for the cost of completion of the project in compliance with the zoning regulations; and (3) Appellee's failure to produce the existing analysis of where Appellee had to draw the line on reasonable return for the project. (T., 1st, 52-54). LaSalle's Senior Vice President Jonathan Bortz testified that Appellee projects sales from the project to be in the range of $30 to $35 million per year from the restaurant, fast food, retailers, and theater complex (T., 2nd, 68). Clearly, Appellee knows the projected profits of its project both with compliance with the zoning requirements and without such compliance.

Mr. Bortz also testified that the reason why the office building part of the project could not be reduced was that Class A office space must have the floor plates, i.e., the floor areas planned by Appellee of 23,000 square feet or more in order to attract larger tenants to the office building. Mr. Bortz testified that Appellee told its architects and planners that it wanted the largest office floor plate possible to attract Class A office tenants, that Court Towers is the only Towson building with Class A office space of 18,000 to 19,000 square feet per floor, and that Towson Commons' office tower plans approximately 22,900 square feet for each of the upper seven floors, and a smaller amount for the

lowest office floor. He testified that the office building could not be moved back from Pennsylvania Avenue, because it would reduce the desired office floor area and affect the core of the building, but he had no knowledge of the physical factors regarding the core of the building. (T., 2nd, 92-93, 161, 163, 3rd, a.m., 9-10, 15-17).

In addition, Mr. Bortz testified that the street-oriented retail stores along Pennsylvania Avenue and York Road needed 120 feet to 140 feet depth to be leasable, that for the food court tenants there is a minimum requirement for leasable area that varies from tenant to tenant, and that compliance with the setback requirements would eliminate the viability and leasability of said retailers. (T., 2nd. 52-54, 149-156, 3rd, a.m., 19-21).

Mr. Bortz also testified that if Appellee reduced the theater requirements at all, that would cause General Cinema to terminate the lease, and that, in turn, would eliminate the feasibility of the project. However, Mr. Bortz admitted that another theater operator, American Multi-Cinema Movie Screens, is interested in the Towson market, but that he has not followed up with that operator, because he does not want to offend General Cinema, Appellee's preferred theater tenant. (T., 2nd, 51, 109, 137-141).

Mr. Bortz testified that no one has costed out whether it makes sense for Appellee to stay in the project without the variances or to leave the project if it does not get the variances, because Appellee has every expectation of getting the variances and proceeding with the project. (T., 2nd, 118-119).

Mrs. Barbara Zenker, Director of Real Estate for General

Cinema Corp. of Maryland, Inc., ("General Cinema"), articulated the determination of the scale of her company's part of the project. She listed the factors for determining the economic viability of the 8-plex theater planned for the Towson Commons project: meeting General Cinema's standards of excellence, seating capacity, number of and dimensions of auditoriums, the screens surrounding the area, market factors, including competitive market and whether the market is economically viable, the grosses, the film distribution, psychological factors, expertise factors, competitive factors, experience, the physical theater building shell, economics, and what we plan to get. (T., 5th, 84-88, 107-108).

Mrs. Zenker admitted that there is no relevant precise mathematical formula for determining the economic viability of the theaters in any project. (T., 5th, 90). Mrs. Zenker was not permitted to answer the questions: (1) Have you made any projections on this seating capacity and the profits you determine from the size of your lobby and concession stand? and (2) Have you made any economic projections on profits from down-sizing seating capacity by 100 seats and what that will do to throw, with changing the throw and affecting profits? (T., 5th, 92-93).

IV. Factors On Which Appellee Based the Three Requested Variances.

According to Mr. Lopez, Appellee's retail development expert Lehr Jackson, its architectural expert Ron Henderer, and its planning expert George Gavrelis, the requested setback variances for Pennsylvania Avenue and York Road were determined by the use of the following five factors. The first factor is the psychology of successful street-oriented retail, the viability of which is

The following three (3) criteria for "unreasonable or undue hardship" were set forth by the Court of Special Appeals in Anderson v. Board of App., Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220, 226 (1974):

> 1) If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property... mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance ... [; and]
> 2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district ... [; and]
> 3) The hardship was not the result of the applicant's own actions. (Citatic s omitted.) (Emphasis supplied.)

In Anderson, supra, 322 A.2d at 226, the Court also reaffirmed the "practical difficulty" standard adopted in McLean v. Soley.

The Court of Special Appeals, in Anderson, relied upon the Court of Appeals' decision in Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810, 814 (1965), in which the Court held that a self-inflicted hardship, as was evident in that case, cannot be the basis for a variance. The Court, in Bounds, adopted the following general rule from 2 Rathkopf, The Law of Zoning and Planning, 48-1:

> [Section]... 1. Hardship Caused by Affirmative Acts of Commission.
> Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions of the zoning ordinance, hardship arises which is capable of being relieved through the grant of a variance. The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i.e., that the hardship be caused solely through the manner of operation of the ordinance upon the particular property, is lacking. In such case, a variance will not be granted; the hardship, arising as a result of the

> act of the owner or his predecessor will be regarded as having been self-created, barring relief. (Quotations omitted.)

C. The Board's Errors of Law.

1. The Board's granting of the Pennsylvania Avenue setback variance and its granting of the York Road setback variance were premised on errors of law.

The Board, in its Opinion, at page 12, based its granting of the setback variances along Pennsylvania Avenue and along York Road on its legal conclusions that the three elements of the "practical difficulty" standard were satisfied and on its legal conclusions that the second and third elements of B.C.Z.R. Section 307.1 were satisfied. The Board based its legal conclusion that the first element of the "practical difficulty" standard was satisfied in that adherence to the strict setback provisions of the B.C.Z.R. would be unnecessarily burdensome to the Appellee on the reasons set forth by Appellee's expert witness Mr. Gavrelis. However, in its Opinion, at pages 8-9, the Board, in its brief review of the testimony, does not set forth Mr. Gavrelis' "reasons" for his opinion that strict compliance with the B.C.Z.R. would be unnecessarily burdensome. The Board simply states that, in Mr. Gavrelis' view, the mixed use proposal before the Board could not survive without the variances.

The Board's legal conclusion that the Appellee satisfied the first element of the "practical difficulty" standard with respect to the two setback variances requested is premised on an error of law: the Board's failure to apply the well established principle of Maryland zoning law that the "mere fact that the variance would make the property more profitable is not a sufficient ground to

justify a relaxation of setback requirements." Dahl v. County Board of Appeals of Baltimore Co., 258 Md. 157, 265 A.2d 227, 232 (1970); Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491, 492 (1950); Anderson v. Board of App., Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220, 226-228 (1974). The Board in its Opinion and Order of March 23, 1990, never once invoked this established principle of Maryland zoning law. This important principle should have been applied by the Board, because the testimony in the record shows that the real reason for each of the three variances at issue that were requested by Appellee is to make the Towson Commons project more profitable.

The testimony in the record is clear that there are three reasons why the Appellee wants the setback variance along Pennsylvania Avenue:

(1) to rent office floors with a larger floor plate to attract higher quality office tenants;

(2) to have larger retail stores on the street level to attract better retail tenants; and

(3) to have the retail stores on the street level closer to Pennsylvania Avenue to attract a higher volume of retail customers.

The logical conclusion is that, if the setback variance along Pennsylvania Avenue is not granted, the office building floor plates will be smaller, the retail store square footages will be smaller, and the retail stores on the street level will be farther away from Pennsylvania Avenue. Clearly, the goal of the setback variance along Pennsylvania Avenue is to obtain higher profits for Appellee's project.

Regarding the requested setback variance along York Road, the testimony of Appellee's witnesses indicates three reasons for the requested variance:

(1) to have larger retail stores on the street level to attract better retail tenants;

(2) to have the retail stores on the street level closer to York Road to attract a higher volume of retail customers; and

(3) to have the movie theater building shell east wall closer to York Road to comply with potential tenant General Cinema's requirement for a certain size building shell.

There is no question that the goal of attracting better retail tenants and a higher volume of retail customers is to obtain higher profits for Appellee's project. With respect to the request for the York Road setback variance to satisfy General Cinema's requirement, the testimony of General Cinema's representative, Mrs. Barbara Zenker, indicates that General Cinema believes that the project location is excellent. In addition, Appellee's other witnesses testified that Appellee wants General Cinema to be the theater tenant, because General Cinema is the best theater operator, and that Appellee did not make any attempt to consider any other theater tenant, including American Multi-Cinema Movie Screens, the theater tenant at Union Station, a project also developed by LaSalle Partners. In fact, Appellee's representative, Jonathan Bortz, testified that American Multi-Cinema Movie Screens had telephoned him and indicated "they have a lot of interest in the Towson market", and that their nine (9) theaters in Union Station are doing very well. (T.2nd, 137-141). There is no

evidence in the record that Appellee cannot obtain another theater tenant and must retain General Cinema as the theater tenant for the Towson Commons project. There is no testimony in the record that indicates that without General Cinema, the Appellee would not be able to break even regarding the movie theater portion of the project or that the absence of General Cinema would cause the Towson Commons project to fail. The conclusion is logical that Appellee wants General Cinema to be its theater tenant in order to maximize Appellee's profits for the theater portion of the project.

In addition, there is no testimony in the record that indicates that having smaller floor plates in the office building on Pennsylvania Avenue or that having smaller retail store areas on the street level along Pennsylvania Avenue and/or York Road or that having retail store fronts set back farther from Pennsylvania Avenue or from York Road would prevent Appellee from breaking even or cause the Towson Commons project to fail.

The intent of the legal principle that the mere fact that a requested variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements is to prevent a developer or landowner from requesting a variance that is not needed to develop the real property within the requirements of the zoning regulations. Clearly, if the developer could not develop the real property for his or her selected uses without the variances, then the variances should be granted, provided that the elements required by B.C.Z.R. Section 307.1 have been established. However, the facts in this case do not support the conclusion that the Appellee cannot develop the real property

for its selected uses. On the contrary, the facts show that the Appellee wants the top of the line movie theater operator in its project and wants an office building floor size, retail store size and retail store placement of the highest monetary potential. These are permissible wants of the Appellee, but they are not needs of the Appellee that justify the requested variances within the intent and spirit of the B.C.Z.R. Appellee's wants: each of which has the goal of higher profits, must not be accepted as the bases for the requested setback variances. The subject legal principle must govern this case, and the variances requested by the Appellee must be denied.

Let us proceed to examine each of the factors presented by the Appellee in support of its request for the setback variances along Pennsylvania Avenue and York Road. The first factor is the psychology of successful street-oriented retail. This factor does not relate to the survival of the street-oriented retail use but relates only to the probability of increased profitability of the street-oriented retail use. As stated by Appellee's D. Lopez, the "retail alone, I cannot say would survive without the interplay of the other functions", i.e., the office, the restaurant, the mix of the retail, and the cinemas. (T., 1st, 72, 111-112, 2nd, 64-66). In short, the interplay between the multiple uses of the project makes the project survive, because the uses are complimentary and not competitive. The Appellee's first factor simply increases its chance to achieve its desired ER, i.e., the Appellee's desired economic return.

In addition, Appellant's urban planner and urban designer Mr.

Arthur Kutcher responded to Appellee's argument that the setback variances requested should be granted because the psychology of successful street-oriented retail requires narrow sidewalks. Mr. Kutcher presented his expert opinion, unrebutted by Appellee's witnesses, that the psychology of shopping should, first, require keeping the shoppers off a narrow sidewalk in a shopping street like York Road which has a lot of noise due to its slope and volume of traffic, and, second, can be implemented by having pedestrians near the shop windows and having a wide sidewalk with generous landscape buffering of one kind or another. Mr. Kutcher pointed out that there is no reason why, with a 25 foot sidewalk, one cannot devote 12 or 8 feet to plantings and still have pedestrians move near the shop windows, that these two circumstances, wide sidewalks and pedestrians close to retail shop windows, are not contradictory, and that, therefore, there is no practical difficulty for the Appellee in meeting the setback requirements along Pennsylvania Avenue and York Road. (T., 5th, 309-312).

The Appellee's second factor on which it bases its requested setback variances is the attempt to achieve harmony with the current 1 and 2-story retail stores along Pennsylvania Avenue, York Road, and Chesapeake Avenue. Its third factor is the attempt to create a consistent architectural expression and a continuous retail environment and retail shop frontage along Pennsylvania Avenue and York Road. (T., 1st, 81-83, 105, 171-175, 3rd, a.m., 65-68). The second and third factors on which Appellee bases its requested setback variances are factors of aesthetic and architectural taste and preference, which at best support the first

factor. Mr. Kutcher responded to Appellee's planner Mr. Gavrelis' opinion that the Towson Commons buildings should receive the setback variances so they can line up with Talbot's on Pennsylvania Avenue and with Wendy's and the Crease Restaurant on York Road. Mr. Kutcher presented his opinion, unrebutted by Appellee's witnesses, that where a building is of much larger scale and denser use - the Towson Commons buildings - there's a very good argument for setting that building back, because it is a different animal that requires more room. There, accordingly, is no practical difficulty in setting back such buildings and not having them line up with the much smaller Talbot's, Wendy's and Crease Restaurant. (T., 5th, 307-309).

The fourth factor on which Appellee bases its requested setback variances has two prongs. The first prong is the assertion, unsupported by any opinion evidence from a professional architect or other professional that Appellee could not set back the theater building farther back from York Road, because then the tenant General Cinema could not fit the theaters into the building. That assertion assumes that moving the theater building farther West requires taking space out of the movie theater building. Architect Henderer admitted that the theater building physically could be moved West. General Cinema's Mrs. Zenker testified that for the former 10-plex approximately 2,600 seat theater, the square footage of leasable floor area was 40,000 to 45,000 and that for the present 8-plex approximately 2,272 seat theater, the square footage of leasable floor area is approximately 42,218 as agreed between General Cinema and Appellee. According to Mrs. Zenker, the

number of seats and the square footage of leasable theater space never have been exact but always have been approximations to allow flexibility for the developer, the landlord, and the tenant operator. (T., 5th, 46-48).

The record shows that the Appellee's witnesses, including Mrs. Zenker, did not testify that one or more theaters or screens or auditoriums would be lost, if the ten foot setback along York Road were observed. Furthermore, Mrs. Zenker admitted that she does not know how many seats would be lost, if the 10 foot setback along York Road were observed. (T., 5th, 103-104, 122-123). Mrs. Zenker did not testify that General Cinema ever pulled out of a project due to insufficient seating capacity, concession or lobby space. The key factor, according to her testimony, is the market. The one project General Cinema left was in Houston, and the market there was depressed. Towson is a terrific market, in her words, and all General Cinema's theaters in Baltimore are doing very well. (T., 5th, 33-37, 53-55).

Appellant architect Mr. Holback presented unrebutted expert opinion evidence in the form of testimony and documents, including drawings. His expert opinion evidence established that the theater building can be set back in compliance with the 10 foot setback requirement along York Road and that the theater auditoriums can be reconfigured to retain 8 auditoriums, 8 screens, and 8 theaters in the theater building with the insubstantial loss of 50 seats out of a desired total of 2,272 seats. (T., 5th, 179-211; Haile Corporation Exh. 24, 25, 28A through 28L, and 29 through 34; K-D Association Exh. 2; Pet. Exh. 3, 6, 14, 15, 22, 23).

The second prong of Appellee's fourth factor is that the tenant General Cinema requires that the 8 theater auditoriums designed by its architects not be modified in any way or it will pull out of the project. General Cinema's position that it has such absolute discretion is set forth in Article IV, Section 1. of the lease between it and Appellee. (Haile Corporation Exh. 21, p. 9; Pet. Exh. 25). General Cinema's Mrs. Zenker testified that, if the theater building were compressed at all, General Cinema would not go ahead with the project. (T., 5th, 21-22).

Appellee's second prong of its fourth factor must be rejected as a matter of Maryland Law. In the Bounds case, the only evidence before the Board regarding hardship or injustice, the elements of the ordinance in that case, was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done by applicants for the variance could not be undone without financial hardship to applicants. The Court of Appeals reasoned that the construction of the fourth apartment and the resultant hardship could have been avoided if the applicants had used proper diligence in ascertaining what the density requirements were for a four apartment dwelling within the property's district and then made accurate measurements to see if this particular property met the square footage requirements. The Court held that the hardship was entirely self-created and that the Board properly refused to allow it to be used as a fulcrum to lift, by way of a variance, the valid zoning limitations.

In addition, the Court in Bounds pointed out: 1) that the

hardship was also shown to be of a purely financial nature, i.e., that the applicants' return on their investment would be somewhat lower if the fourth apartment should remain unoccupied; and 2) that the applicants did not make any attempt to show that further structural changes could not reasonably be made so that all the space in the house could be utilized in 3 apartment units, or that if the fourth apartment remained vacant the return on their investment would be other than reasonable. The Court ruled that, under such circumstances, the Board would have been correct in denying them the requested variance even if the hardship upon which it was based had not been self-inflicted.

In Ad + Soil, Inc., v. County Comm'rs, 307 Md. 307, 338-341, 513 A.2d 893, 909-910 (1986), the Court of Appeals affirmed the Board of Appeals' refusal to grant variances from setback requirements. The Court affirmed the Board's conclusion that the applicant's "hardship" was self-inflicted and, in any event, that the alleged "hardship" was not the result of exceptional or extraordinary characteristics of the land itself and therefore not the kind of hardship cognizable under the zoning ordinance. The essence of the applicant's argument in that case was that the setback requirements would cause applicant an unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of the local setback requirements.

The principles invoked by the Court of Appeals in Bounds and in Ad & Soil, Inc. must be applied in the instant case to reject the Appellee's second prong of its fourth factor. The third

criteria of the undue or unreasonable hardship standard also supports such rejection. When Appellee entered into the February 23, 1989 Assignment Agreement and thereby accepted the assignment of the May 23, 1988 Lease between its predecessor TCJV and General Cinema, Appellee gave General Cinema the absolute discretion to control all the design elements involving the theaters. (Pet. Exh. 25; Haile Corporation Exh. 21, p. 9). Like the applicants in Bounds and in Ad + Soil, Inc., Appellee knowingly inflicted upon itself the hardship or practical difficulty of not being able to fit the General Cinema theaters into a theater building that would be in compliance with the B.C.Z.R. setback requirements. See also Wilson v. Mayor & Com'rs of Town of Elkton, 35 Md. App. 417, 371 A.2d 443, 448-449 (1977).

The Appellee's fifth factor is a factor of economic preference for the largest leasable spaces possible to attract the best Class A office tenants and retail tenants. Indeed, close examination of each of the 5 factors used by Appellee to determine the requested variances shows that not one of the 5 factors was the result of any particular, exceptional, or extraordinary characteristic or quality or unique circumstance of the land itself and, therefore, not the kind of practical difficulty cognizable under the first criteria of the practical difficulty standard and not the kind of undue or unreasonable hardship cognizable under the second criteria of the undue or unreasonable hardship standard. Ad + Soil, Inc., supra, 513 A.2d at 910.

The facts of the instant case, accordingly, are: (1) distinguishable from the facts in Loyola Federal, supra, 176 A.2d

at 359, wherein the developer was forced by the land's subterranean water condition to seek the subject variance; and (2) distinguishable from the facts in McLean v. Soley, supra, 310 A.2d at 787, wherein the developer's variance request was based on the preservation of trees and the resulting benefits to the general public. Like the facts in Anderson, supra, 322 A.2d at 228, the facts in the case before us show that the only practical difficulty or hardship allegedly suffered by Appellee is "loss of profit" which fails to meet the Appellant's burden.

Neither of the Appellee's 5 factors arises from any particular characteristic or quality or unique circumstance of the physical site of the project. On the contrary, each of these 5 factors has been consciously selected by Appellee for application to the project's development in an effort to increase Appellee's chance to achieve its desired ER. When the Board considered Appellee's claim that compliance with the setback requirements along Pennsylvania Avenue and along York Road would be unnecessarily burdensome to the Appellee, the Board committed an error of law by not applying the established principle of zoning law that "the detriment to the applicant [for the variance] must be weighed against the benefit to the community in maintaining the general plan." Dahl v. County Board of Appeals of Baltimore Co., 258 Md. 157, 265 A.2d 227, 232 (1970); Burns v. Mayor & City Council of Baltimore, 251 Md. 554, 248 A.2d 103, 105 (1968); Mayor & City Council of Baltimore v. Polakoff, 233 Md. 1, 194 A.2d 819 (1963). The Board in its Opinion never balanced the alleged detriment to Appellee from compliance with the B.C.Z.R. requirements against the

benefit to the community in maintaining the general plan set forth in the B.C.Z.R. requirements and in requiring the Appellee to comply with the setback and amenity open space requirements.

The Board, in its Opinion, at page 12, presented the legal conclusions that the second and third elements of the "practical difficulty" standard set forth in the Anderson decision of the Court of Special Appeals were satisfied. However, the Board committed errors of law by incorrectly applying both the second and the third elements of the "practical difficulty" standard. The Board did not apply, and should have applied the second element of the "practical difficulty" standard: "[w]hether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners." Anderson v. Board of App., Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220, 226 (1974). (Emphasis supplied.) The Board's findings, at page 12 of its Opinion, that the project as contemplated is less in size and scope than would be permitted under the zoning regulations and that the record establishes that the zoning assigned to this locale promotes intensive office/retail use are irrelevant as a matter of law to the application of the second element and the third element of the "practical difficulty" standard.

The Board's factual findings, at page 12 of its Opinion, that based upon the competent and uncontradicted testimony by Appellee's witnesses Mrs. Zenker and Mr. Bortz this project, as presented,

could not go forward if the variances were not granted, and the Board's legal conclusion, at page 12 of its Opinion, that this result would cause substantial injustice to the applicant as well as to the property owners in the Towson area, such as Mr. Finkelstein, who are relying on a new infusion of commercial activity into central Towson to save the decaying present business climate, not only are clearly not supported by substantial evidence in the record, but also demonstrate the Board's failure to apply the second element of the "practical difficulty" standard. The second element of the subject standard required the Board to consider, but the Board failed to consider the question whether a lesser relaxation than that applied for by Appellee would give substantial relief to the Appellee and be more consistent with justice to other property owners. If the Board had considered that question, it could have selected Appellant's architect Mr. Holback's proposed compromise option for relaxation of the setback requirements along Pennsylvania Avenue and York Road. (T. 5th, 179-211; Haile Corporation Exh. 24, 25, 28A through 28L, and 29 through 34; K-D Exh. 2; Pet. Exh. 3, 6, 14, 15, 22, 23). Clearly, the unrebutted expert testimony of Appellant's architect Mr. Holbeck indicates that his proposed compromise option, which sets back the office tower in compliance with the B.C.Z.R. and has two stories of retail stores with a zero setback along Pennsylvania Avenue, has a better relationship to the immediate neighborhood, instead of a ten story office building hitting the ground right at the property line. (T., 5th, 184-105). Accordingly, the second element of the "practical difficulty" standard set forth in

Anderson calls for rejection of Appellee's requested variance from the setback requirement along Pennsylvania Avenue. The Board, at best, should have ordered a variance in the form of Architect Holback's compromise option for Pennsylvania Avenue. (Haile Corporation Exh. 28A, 28F, and 28G). Only in that manner could the Board have applied the second element of the established "practical difficulty" standard that a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners. The Board's failure to consider the question required by the second element of the "practical difficulty" standard was an error of law.

The Board did not apply the third element of the established "practical difficulty" standard: "[w]hether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured." (Emphasis supplied.) McLean v. Soley, 270 Md. 208, 310 A.2d 783, 787, (1973); Loyola Federal Savings & Loan Association v. Buschman, 227 Md. 243, 176 A.2d 355, 357-358 (1961). The Board, at page 12 of its Opinion, stated its legal conclusion that this third element was satisfied by simply asserting that, "As to the other prongs offered in Anderson, supra, we believe that they too are satisfied," and "Lastly, we believe that the spirit of the B.C.Z.R. will be observed and the public safety and welfare secured." However, in stating this legal conclusion with respect to the third element of the "practical difficulty" standard, the Board simply presented its assertion without any analysis and without any support from the

record. The Opinion of the Board does not analyse the application of the third element of the "practical difficulty" standard.

The proper analysis of the application of the subject third element is presented by the Court of Appeals in its decision in Loyola Federal Savings & Loan Association v. Buschman, supra, 176 A.2d at pages 357 and 358. As pointed out by the Court in the Loyola Federal case, the trial judge had stressed the testimony of Mr. Dill, the Director of Planning of Baltimore County and a principal draftsman of the regulations, to the effect that basically the purpose of putting a height regulation in the B.M. and apartment zones was to prevent one owner from pre-empting the advantages of light and air from the owners of abutting properties. The Court pointed out that the trial judge seems to have discounted heavily other testimony of Mr. Dill that the proposed building "complies with the element of providing, assuring light and air *** even more effectively than what could be done under the regulations without the variance, and I think that applies to the side yard setbacks, which would not have to be there at all." The Court pointed out that it would be difficult to maintain that the purpose of protecting the light and air of neighboring properties was defeated by a variance granted upon terms protecting such light and air better than it would have been protected if a building had been constructed on the same site in strict accord with the Regulations, without any variance at all. The Court, accordingly, reversed the decision of the Circuit Court which had reversed the action of the County Board of Appeals in granting a variance. See also Dahl v. County Board of Appeals of Baltimore Co., 258 Md.

157, 265 A.2d 227, 232 (1970).

If we use a similar analysis in the case before us, we must ask what the spirit of the B.C.Z.R. is with respect to setback requirements. Clearly, the spirit of the B.C.Z.R.'s setback requirements involves those factors presented by Appellant's expert witness Mr. Kutcher: the preservation of light and air, safety, pleasantness and ease of pedestrian movement, and the preservation of the public's option for future road widening. (T., 5th, 291-296, 299-308). The Board did not consider these factors and cannot be said to have ruled on the question whether the spirit of the ordinance will be observed by the granting of the setback variances in this case.

Based on the same reasoning, it is concluded that the Board did not apply, and should have applied to the setback variance issues the second and third statutory elements of B.C.Z.R. Section 307.1, because the second and third statutory elements are the equivalent of the third element of the "practical difficulty" standard.

The Board failed to apply the third statutory element of B.C.Z.R. Section 307.1 to the unrebutted testimony presented by Appellant's lay witnesses. The facts established by Appellant's lay witnesses (T., 4th, 16-229, 5th, 231-267), summarized at pp. 13-14 of this Memorandum of Law, directly relate to the third statutory element of B.C.Z.R. Section 307.1 and support the legal conclusion that the public general welfare will be substantially injured if the three subject variances as requested are granted.

2. The Board's granting of the Amenity Open Space Variance was premised on errors of law.

The Board, in its Opinion, at pp. 12-13, presents its legal conclusion that the A.O.S. variance should be granted based on the application of the "three-pronged test in Anderson", presumably referring to the "practical difficulty" standard. However, the Board simply asserted generally that strict compliance with the A.O.S. requirement would be unduly burdensome on Appellee "and, as stated previously, the proposal's scheme and design are consistent with the locale." The same analysis applied to show the Board's erroneous application of the "practical difficulty" standard to the requested setback variances applies to support the conclusion that the Board has erroneously applied the "practical difficulty" standard to the requested A.O.S. variance. The Board's findings of fact, at pg. 13 of its Opinion, that the Towson Commons project orients retail space towards the exterior street, that, by employing this configuration, which in the Board's view enhances the overall aesthetic appearance and compatibility with the neighborhood, the opportunity for the Appellee to obtain additional A.O.S. is reduced, and that the Appellee has provided quality A.O.S., are irrelevant to the proper application of the "practical difficulty" standard as a matter of law.

Appellee does not want to provide 100% of the A.O.S. required, because that will reduce the floor area for the office building along Pennsylvania Avenue: approximately one floor of that building, and will reduce the area available for retail stores on the second floor of the retail/food court area. Again, the result

of granting the A.O.S. variance is higher profits to Appellee. There is no testimony that the A.O.S. variance is needed for the Appellee to break even on its investment or to prevent the project's failure.

The testimony from Appellee's witnesses is that the A.O.S. provided by Appellee is valuable A.O.S. that provides the public with the kind of open space intended by the zoning regulations. There is no dispute that the Appellee's A.O.S. that is provided is valuable. The dispute is over the amount of A.O.S. provided. The zoning regulations require a certain specific amount of A.O.S., and Appellee did not present any evidence why it could not provide 100% of the A.O.S. required. Appellee's position is that it does not have to provide the required A.O.S. and needs the variance in order that its project as designed can be built. Appellee believes that its project's design should control the zoning and the variances and that the zoning regulations should not control the design or the development of the project. Appellee is incorrect as a matter of law, and the A.O.S. variance requested should be denied.

According to the opinions of Appellee's architect Mr. Henderer and its planner Mr. Gavrelis, the A.O.S. provided in the project is meaningful and accessible by the public. (T., 1st, 139; T., 3rd, a.m., 71-73, 81-82, 86-87). However, the project provides only 57% of the A.O.S. required by the regulations. Appellant urban planner and urban designer Mr. Kutcher testified that the A.O.S. requirement is one of the most important controls to limit over-development and that a developer must present a demonstrable, quantifiable good cause, something based on documented or

established fact to obtain a variance from the A.O.S. requirement. Mr. Kutcher's expert opinion evidence was not rebutted by Appellee's witnesses. (T., 5th, 296-299). The Appellee has not presented any evidence why it could not provide the 100% A.O.S. required by the B.C.Z.R.

Mr. Kutcher also testified that the 57% A.O.S. variance being sought by Appellee is a massive variance, because it is inadequate and inappropriate based on the crowded nature and use of the site: over 2,000 seat capacity movie theatres, food courts, and office use. This opinion was not rebutted by any of Appellee's witnesses. Mr. Kutcher also presented the opinion that if Appellee could provide, without practical difficulty or hardship, only 22,000 square feet of amenity open space, then Appellee should develop only 222,000 square feet of project, in compliance with the A.O.S. ratio of 0.1. He opined that such a project would significantly reduce the number of cars attracted to the site - an impact on surrounding neighborhoods - and would architecturally fit very well among the 5 to 7-story buildings being built in Towson. (T., 5th, 317-319, 322-324).

Appellant architect Holback presented unrebutted expert opinion evidence that the A.O.S. requirement could be satisfied by removing the lowest office floor and changing that square footage to A.O.S., and, if his compromise option is adopted, by adding 2,850 square feet (15 feet setback x 190 feet length) of A.O.S. over the roofs of the second floor of retail stores along Pennsylvania Avenue. This addition of approximately 20,000 square feet of A.O.S. corrects the present deficiency of 17,063

square feet of A.O.S. (39,943 square feet required minus 22,880 square feet presently planned). (T., 5th, 183-186; Haile Corporation Exh. 28D, 28F and 28G).

Furthermore, it was admitted by the Appellee's own witnesses that the purpose of the A.O.S. requirements is to permit customers to feel pleasant and to have elbow room (T., 1st, 188-189) and that the amenity open space must be meaningful. (T., 3rd, p.m. 91). However, the Board, in its opinion, at pages 12 -13, did not even address the spirit of the A.O.S. requirements. On the contrary, the Board simply accepted the Appellee's view that the amenity open space provided by Appellee is appropriate, without ruling whether Appellee can provide the full amenity open space required by the B.C.Z.R. Assuming for purposes of argument that the Appellee's position with respect to the quality of amenity open space provided in the project should be accepted, that does not avoid the clear factual conclusion supported by the record that the Appellee can provide 100% of the A.O.S. required by the B.C.Z.R. Moreover, as a matter of law, based on the third element of the "practical difficulty" standard, any variance in the amenity open space required by the B.C.Z.R. must be granted in such a fashion that the spirit of the B.C.Z.R. will be observed. There has been no ruling by the Board with respect to the third element. The Board's Opinion does not address the third element, and, therefore, the Board erred as a matter of law by granting the A.O.S. variance requested.

Based on the same reasoning, it is concluded that the Board did not apply, and should have applied the second and third

statutory elements of B.C.Z.R. Section 307.1 to the A.O.S. variance issue.

II. The Board's Order Must Be Reversed On Review For Arbitrariness or Capriciousness.

The material issues before the Board with respect to the Pennsylvania Avenue setback variance, the York Road setback variance, and the A.O.S. variance were not fairly debatable, because the determination of the material issues did not involve testimony from which a reasonable person could come to different conclusions. Mayor & Alderman, Etc. v. Annapolis Waterfront, supra, 284 Md. 383, 396 A.2d 1080, 1087-1088 (1979). Furthermore, the record does not contain substantial evidence supporting the Board's factual findings, legal conclusions and Order, because, the Board's factual findings, legal conclusions and Order with respect to the Pennsylvania Avenue setback variance, the York Road setback variance, and the A.O.S. variance are not supported by sufficient facts on the record so that a reasonable mind, based upon the facts proven, reasonably could have reached the same factual conclusions that the Board reached. AD + SOIL, Inc. v. County Comm'rs, 307 Md. 307, 338, 513 A.2d 893, 909 (1986); Mayor & Aldermen, Etc. v. Annapolis Waterfront, 284 Md. 383, 396 A.2d 1080, 1087-1089 (1979).

The record demonstrates, as has been discussed in the preceding parts of this Memorandum of Law, that the material issues with respect to the subject three variances are not fairly debatable. The record evidence is uncontroverted: that the Towson Commons project can be developed physically for the same mixed uses

desired by Appellee without the three subject variances; that the denial of the three subject variances serves to decrease the profits potential for the project but will not cause the project to fail; that the granting of the three subject variances serves to increase the profits potential for the project; that the Appellee's predicament that General Cinema, the Appellee's preferred movie theater operator, will leave the project if the 8 theater auditoriums are modified in any way as a result of the denial of the York Road setback variance, has been self-created by Appellee; that Appellee has not attempted to seek a replacement theater operator as an option in the event that General Cinema leaves the project, even though at least one other theater operator, American Multi-Cinema Movie Screens, whose 9-plex movie theaters are doing very well at LaSalle Partners' Union Station project, indicated its interest in the Towson market; that the Towson Commons project's economic success does not require any particular entity, including General Cinema, as a tenant in any of the project's mixed uses; and that the public general welfare will be substantially injured if the three subject variances as requested are granted.

Comparison of the foregoing uncontroverted facts with the findings of fact set forth by the Board in its Opinion results in the conclusion that a reasonable mind, based on the facts proven in the record, reasonably could not have reached the same factual conclusions reached by the Board. Therefore, the record does not contain substantial evidence supporting the Board's factual findings, legal conclusions and Order. Clearly, the Board's Order

must be reversed, because it is arbitrary and capricious and constitutes a denial of due process of law. Boehm v. Anne Arundel County, 54 Md. App. 497, 459 A.2d 590, 600 (1983), cert. denied (1983).

CONCLUSION

For the foregoing reasons, the Opinion and Order of the County Board of Appeals of Baltimore County must be reversed, and the Appellee's requested setback and amenity open space variances must be denied.

Dated: May 9, 1990.

Respectfully,

Rudolph E. DeMeo
Mignini, Raab & Lidinsky
3410 White Avenue
Baltimore, Maryland 21214
(301) 426-3000

Attorneys for Appellant
Leroy Y. Haile, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 1990, a copy of the foregoing Memorandum of Law was hand-delivered to the County Board of Appeals of Baltimore County, County Office Building, Room 315, 111 W. Chesapeake Avenue, Towson, Maryland 21204; and was hand-delivered to John B. Howard, Esquire, John H. Zink, III, Esquire, Cynthia M. Hahn, Esquire, and Robert A. Hoffman, Esquire, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, Maryland 21204, Attorneys for Appellee; and was mailed, first class, postage

prepaid, to Mark J. Adams, Esquire, Birrane, Harlan & Sharretts, Jefferson Building, 9th Floor, 2 East Fayette Street, Baltimore, Maryland 21202, Attorney for Knollwood-Donnybrook Improvement Association, Inc.

Rudolph E. DeMeo
Attorney for Appellant
Leroy Y. Haile, Inc.

Service of a copy of the within Memorandum of Law of Appellant Leroy Y. Haile, Inc. admitted by the County Board of Appeals of Baltimore County on this day of May, 1990.

Secretary, County Board of
Appeals of Baltimore County

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IN THE MATTER OF THE APPLICATION OF TOWSON COMMONS LIMITED PARTNERSHIP FOR A SPECIAL HEARING AND VARIANCES ON PROPERTY LOCATED ON THE WEST SIDE YORK ROAD BETWEEN SOUTH SIDE OF PENNSYLVANIA AVENUE AND THE NORTH SIDE OF CHESAPEAKE AVENUE 9th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	Case No.: 90-CG-1513
	*	Docket: 79
	*	Folio: 313

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

PETITION OF APPEAL

Leroy Y. Haile, Inc. the Appellant, by its attorneys, Rudolph E. DeMeo and Mignini, Raab & Lidinsky, pursuant to Rule B2.e. of the Maryland Rules, respectfully presents:

I. THE ACTION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY FROM WHICH THE APPEAL IS TAKEN.

The Appellant takes this Appeal from the Opinion and Order of the County Board of Appeals of Baltimore County ("the Board") issued on March 23, 1990 specifically with respect to the Board's premises, conclusions and Order which granted Appellee's requests for variances:

(1) from the front yard setback requirements of B.C.Z.R. Section 235.1, permitting setback as close as 0 feet (along Pennsylvania Avenue) in lieu of the required 15 feet ("the Pennsylvania Avenue setback variance"), and

(2) from the side yard setback requirements of B.C.Z.R. Sections 235.2 and 232.2, permitting side yard setbacks of 4 feet (along York Road) in lieu of the required 10 feet ("the York Road setback variance"), and

(3) from the amenity open space requirements of B.C.Z.R. Section 235B.4, permitting 22,880 square feet of amenity open space ("A.O.S.") in lieu of the required 39,943 square feet ("the A.O.S. variance").

II. THE ERROR COMMITTED BY THE BOARD IN TAKING THE ACTION IN ISSUE.

1. The Board's premises, conclusions, and Order with respect to the Pennsylvania Avenue setback variance, the York Road setback variance, and the A.O.S. variance are premised upon the following errors of law:

(1) The Board did not apply, and should have applied the established principle of zoning law that the "mere fact that the (requested) variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements." Daihl v. County Board of Appeals of Baltimore Co., 258 Md. 157, 265 A.2d 227, 232 (1970); Anderson v. Board of App., Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220, 226-228 (1974).

(2) The Board did not apply, and should have applied the second element of the following established "practical difficulty" standard of Maryland zoning law: "[w]hether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners." Anderson v. Board of App., Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220,226

(1974)(Emphasis supplied.)

(3) The Board did not apply, and should have applied the third element of the established "practical difficulty" standard: "[w]hether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured." (Emphasis supplied.) McLean v. Soley, 270 Md. 208, 310 A.2d 783, 787 (1973); Loyola Federal Savings & Loan Association v. Buschman, 227 Md. 243, 176 A.2d 355, 357-358 (1961).

(4) The Board did not apply, and should have applied the second statutory element of B.C.Z.R. Section 307.1 that the requested variance be granted "only if in strict harmony with the spirit and intent of said height, area [including setback and amenity open space requirements], offstreet parking, or sign regulations." (Emphasis supplied.) McLean v. Soley, supra, 310 A.2d at 787; Loyola Federal Savings & Loan Association v. Buschman, supra, 176 A.2d at 357-358.

(5) The Board did not apply, and should have applied the established zoning law principle that in the case where the "difficulty", "hardship", or "injustice", depending on the specific zoning ordinance involved, has been self-created or self-inflicted by the applicant for the variance, the variance request must be denied and the applicant must not be permitted to use the alleged "difficulty", "hardship", or "injustice" as a fulcrum to lift, by way of a variance, the valid zoning limitations, because the alleged "difficulty", "hardship", or "injustice" has been self-created or self-inflicted and, therefore, is not the kind of "difficulty", "hardship", or "injustice" cognizable under the

subject zoning ordinance. AD + SOIL, Inc. v. County Comm'rs, 307 Md. 307, 338-341, 513 A.2d 893, 909-910 (1986); Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810, 814 (1965).

(6) The Board did not apply, and should have applied the established principle of zoning law that "the detriment to the applicant (for the variance) must be weighed against the benefit to the community in maintaining the general plan." Daihl v. County Board of Appeals of Baltimore Co., 258 Md. 157, 265 A.2d 227, 232 (1970).

2. The record does not contain substantial evidence supporting the Board's conclusions and Order, i.e., the Board's conclusions and Order with respect to the Pennsylvania Avenue setback variance, the York Road setback variance, and the A.O.S. variance are not supported by sufficient facts on the record so that a reasonable mind, based upon the facts proven, reasonably could have reached the same factual conclusions that the Board reached. AD + SOIL, Inc. v. County Comm'rs, 307 Md. 307, 338, 513 A.2d 893, 909 (1986); Mayor & Aldermen, Etc. v. Annapolis Waterfront, 284 Md. 383, 396 A.2d 1080, 1087-1089 (1979).

3. The material issues before the Board with respect to the Pennsylvania Avenue setback variance, the York Road setback variance, and the A.O.S. variance were not fairly debatable, i.e., the determination of the material issues did not involve testimony from which a reasonable person could come to different conclusions. Mayor & Alderman, Etc. v. Annapolis Waterfront, supra, 396 A.2d at 1087-1088.

4. The Board's conclusions and Order were arbitrary and

capricious and a denial of due process of law. Boehm v. Anne Arundel County, 54 Md. App. 497, 459 A.2d 590, 600 (1983).

5. The Board did not deny, and should have denied the Appellee's variance requests with respect to the Pennsylvania Avenue setback variance, the York Road setback variance, and the A.O.S. variance, because Appellee did not meet its burden of proof to establish the elements required by B.C.Z.R. Section 307.1.

6. The Board did not, and should have found as a fact that Appellee knowingly inflicted upon itself the alleged hardship or practical difficulty of not being able to fit the General Cinema theaters into a theater building that would be in compliance with the B.C.Z.R. setback requirements of Sections 235.2 and 232.2.

7. The Board did not, and should have found as a fact that the only practical difficulty or hardship allegedly suffered by Appellee if it complies with the subject setback and A.O.S. requirements is a "loss of profit".

8. The Board did not, and should have concluded that the fact that the setback and A.O.S. variances requested by Appellee would make the Towson Commons project more profitable is not a sufficient ground to justify a relaxation of the B.C.Z.R. setback and A.O.S. requirements.

9. The Board did not, and should have concluded that the Appellee did not establish that strict compliance with the B.C.Z.R. setback and A.O.S. requirements would result in practical difficulty or unreasonable hardship under B.C.Z.R. Section 307.1 and under Maryland zoning law.

10. The Board's granting of the Pennsylvania Avenue setback

variance, the York Road setback variance, and the A.O.S. variance was not in strict harmony with the spirit and intent of the subject area regulations as required by B.C.Z.R. Section 307.1 and Maryland zoning law.

III. THE RELIEF SOUGHT BY APPELLANT.

The Appellant requests that this Court reverse the Opinion and Order of the Board with respect to the Board's granting of the Pennsylvania Avenue setback variance, the York Road setback variance, and the A.O.S. variance.

Dated: April 27, 1990.

Respectfully,

Rudolph E. DeMeo
Mignini, Raab & Lidinsky
3410 White Avenue
Baltimore, MD 21214
(301)426-3000
Attorneys for Appellant
Leroy Y. Haile, Inc.

Service of a copy of the within Petition of Appeal admitted by the County Board of Appeals of Baltimore County on this 27th day of April, 1990.

Secretary, County Board of Appeals
of Baltimore County

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COUNTY BOARD OF APPEALS
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LEROY Y. HAILE, INC.	:	TOWSON COMMONS #90-130-SPHA CIRCUIT COURT AFFIRMED C.B. of A. (Judge Levitz)
Appellant	:	IN THE
IN THE MATTER OF THE	:	
APPLICATION OF TOWSON COMMONS	:	CIRCUIT COURT
LIMITED PARTNERSHIP	:	
vs.	:	FOR BALTIMORE COUNTY
TOWSON COMMONS LIMITED	:	
PARTNERSHIP,	:	Case No. 90CG1513
Appellee	:	79/313

* * * * * * * * *

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OPINION OF COURT

This matter comes before the court on the appeal by Leroy Y. Haile, Incorporated from the decision of the Board of Appeals dated March the 23rd, 1990 granting three zoning variances, specifically a variance of the Pennsylvania Avenue setback requirement, a variance from the York Road setback requirement, and a variance from the amenity open space requirement of the Zoning Code. The Board of Appeals heard five days of testimony regarding these variances. After hearing that testimony the Board issued a written opinion extensively detailing their decision.

Upon an appeal to this court this court's function is to determine whether that decision was arbitrary, capricious, without substantial justification or illegal. This court does not decide conflicts in testimony. This court does not

FILED MAY 21 1990

True Copy Test
SUZANNE MENSH, Clerk
By Diane Fisher
Assistant Clerk

substitute its judgment for the judgment of the Board of Appeals. It's difficult for me to review the record in this case and understand how there can be a legitimate question about the substantial evidence being presented to the Board.

The variances granted in this case involve a 15 foot variance regarding the Pennsylvania Avenue setback, a six foot variance regarding the York Road setback, a modest variance regarding the amenity open space requirement. In short, the variances granted in this case are certainly minimal and modest. They are area variances, not use variances. There is extensive evidence in the record showing extreme practical difficulty of the developer if these variances are not granted. There is extensive evidence in the record to show that the three variances granted were based not upon mere economic loss of profit, with the emphasis being on the word mere, but upon other substantial evidence.

Parenthetically, it is difficult for this Court to accept the statement made by Appellant's counsel regarding the motivation for the Appellant's spending of thousands of dollars to protest these minimal variances. Regardless of what the motivation of the Appellant is for the filing and the prosecuting of these appeals, both to the Board of Appeals and to this court and who knows where else, it is this Court's view that this case is not difficult to decide based on the extensive record created by the Board of Appeals.

The Board's decision is not arbitrary. The Board's decision is not capricious. The Board's decision is with substantial justification. And the Board's decision is legal. This court therefore orders that the decision of the Board of Appeals be affirmed, and I am issuing that opinion as of this minute. The appeal of the appellant is therefore denied. Costs to be paid by the appellant. That concludes the matter.

4/17/90
Date

DANA M. LEVITZ, JUDGE

Copies to: Rudolph E. DeMeo, Esq.
Cynthia M. Hahn, Esq.

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

April 23, 1990

Rudolph E. DeMeo, Esquire
Mignini, Raab & Lidinsky
3410 White Avenue
Baltimore, Maryland 21214

Re: Case No. 90-130-SPHA (Towson Commons Ltd. Part.)

Dear Mr. DeMeo:

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,

Linda Lee M. Kuszmaul
Linda Lee M. Kuszmaul
Legal Secretary

Encl.
cc: Leroy Y. Haile, Inc.

IN THE MATTER OF THE APPLICATION OF TOWSON COMMONS LIMITED PARTNERSHIP FOR A SPECIAL HEARING AND VARIANCES ON PROPERTY LOCATED ON THE WEST SIDE YORK ROAD BETWEEN SOUTH SIDE OF PENNSYLVANIA AVENUE AND THE NORTH SIDE OF CHESAPEAKE AVENUE 9TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF BALTIMORE COUNTY
* CASE NO: 90-130-SPHA

* * * * * * * *

ORDER FOR APPEAL BY PROTESTANT LEROY Y. HAILE, INC.

MADAM CLERK:

Please enter an appeal on behalf of Leroy Y. Haile, Inc., Protestant, from the Order of the Board of Appeals of Baltimore County, passed in the above case on March 23, 1990.

Rudolph E. DeMeo
Mignini, Raab & Lidinsky
3410 White Avenue
Baltimore, MD 21214
(301) 426-3000
Attorneys for Protestant
Leroy Y. Haile, Inc.

Service of a copy of the within Order for Appeal admitted by the Board of Appeals of Baltimore County on this day of April, 1990.

4/20/90
Secretary, Board of Appeals of
Baltimore County

MIGNINI RAAB & LIDINSKY
ATTORNEYS AT LAW
3410 WHITE AVENUE
BALTIMORE, MARYLAND 21214
(301) 426-3000

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COUNTY BOARD OF APPEALS

CERTIFICATE OF COMPLIANCE AND SERVICE

I HEREBY CERTIFY that on this 20th day of April, 1990, in compliance with Rule 1-321 and Rule B2c. of the Maryland Rules, a copy of the foregoing Order for Appeal was hand-delivered to the Board of Appeals of Baltimore County, 111 W. Chesapeake Avenue, Towson, Maryland 21204, and was mailed, first class, postage prepaid, to John B. Howard, Esquire, and to Robert A. Hoffman, Esquire, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, Maryland 21204, Attorneys for Petitioner Towson Commons Limited Partnership, and was mailed, first class, postage prepaid, to Mark J. Adams, Esquire, Birrane, Harlan & Sharretts, Jefferson Building, 9th Floor, 2 East Fayette Street, Baltimore, Maryland 21202, Attorneys for Protestant Knollwood-Donnybrook Inprovement Association, Inc.

Rudolph E. DeMeo
Attorney for Protestant
Leroy Y. Haile, Inc.

MIGNINI RAAB & LIDINSKY
ATTORNEYS AT LAW
3410 WHITE AVENUE
BALTIMORE, MARYLAND 21214
(301) 426-3000

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IN THE MATTER OF THE APPLICATION OF TOWSON COMMONS LIMITED PARTNERSHIP FOR A SPECIAL HEARING AND VARIANCES ON PROPERTY LOCATED ON THE WEST SIDE OF YORK ROAD BETWEEN SOUTH SIDE OF PENNSYLVANIA AVENUE AND THE NORTH SIDE OF CHESAPEAKE AVENUE 9th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT

: BEFORE THE
: COUNTY BOARD OF APPEALS
: OF
: BALTIMORE COUNTY
: CASE NO. 90-130-SPHA

OPINION

In the subject case, the Board is called upon to decide the future of a Towson property of approximately 2.26 acres in gross area. Although this parcel is small when compared with the vast acreage which comprises Baltimore County, the effect of our decision will be far-reaching because of the particular location of the property. Specifically, the site is situated in the middle of the seat of County government and fronts along the west side of York Road, between West Pennsylvania and West Chesapeake Avenues.

The development of this property into the retail/office mixed project to be known as Towson Commons represents a significant cornerstone in the future appearance of Towson. It has been alternatively described by the witnesses before us as "a magnet" for revitalization, "a catalyst" for reinvigoration, and "a centerpiece" for the Towson of the 21st Century. To the litigants, the future of Towson hangs in the balance. As to its past, the long and remarkable history of Towson was documented throughout the 5 days of the Board's hearing of this case. There can be no doubt that Towson, the County seat for Baltimore County and center of much of the County's governmental and business activity, is a desirable and vibrant locale whose integrity must be protected. There can be no question that the residential communities which surround the Towson government/business center are among the most desirable in the State. The impact of Towson Commons on these residential communities, as well as the

government and business usage which comprise downtown Towson, is a factor that this Board must weigh carefully. We are not blind to our responsibilities in considering the issues generated by this case, and the impact of our decision on the future generations which will live and work in Towson.

However, all of that being said, the Board must restrict its scope of inquiry to the narrow issues before us. It must be recognized that the Board in this case does not sit as the County Council, the Planning Board, nor in the role we assume when considering a Petition for Reclassification. That is, this case is not about permissible zoning uses; or whether Towson should be a bustling urban center or a more traditional "small town" community. The zoning for this property and the uses permitted thereon as of right under that zoning have been predetermined. Whether Towson adopts a high visibility night-life agenda or whether it retains its present character is not for this Board to decide. Those decisions will be made by the elected officials of this County after input by the citizens thereof and governmental staff.

Rather, our narrow focus is the four Petitions for Variance filed herein by the property owner, Towson Commons Limited Partnership (hereinafter "TCLP"). TCLP proposes to construct a mixed use facility onsite, consisting of retail, office, restaurant, and theatre uses. In order to develop their plan, they request:

(1) A variance from the front yard setback requirements of Section 235.1, Baltimore County Zoning Regulations (hereinafter "B.C.Z.R."), to permit a front yard setback along Pennsylvania Avenue of as close as 0 feet, in lieu of the required 15 feet;

(2) A variance from the side yard setback requirements of Sections 235.2 and 232.2, B.C.Z.R., to permit a corner lot side yard setback along York Road of 4 feet, in lieu of the required 10 feet;

(3) A variance from the height limitations of Sections 235B.5, 234, and 231.d, B.C.Z.R., to permit 125 square feet of the building wall facing Pennsylvania Avenue and adjacent to the existing buildings at 17 West Pennsylvania Avenue to project above a plane sloping inward and upward from the lot line at 1 foot of horizontal distance for each 7.5 feet of vertical distance; and

(4) A variance from the amenity open space requirements of Section 235B.4, B.C.Z.R., to permit 22,880 square feet of amenity open space, in lieu of the required 39,943 square feet.

The matter arrives at the Board on these issues on appeal from the decision of the Deputy Zoning Commissioner which granted the variances, with restrictions, on November 14, 1989. Following that decision, an appeal to the Board was timely filed by Leroy Y. Haile Corporation, Inc. (hereinafter "Haile"); Knollwood-Donnybrook Improvement Association (hereinafter "Knollwood-Donnybrook"); Northeast Towson Improvement Association; and that citizen group known as ACCORD. Subsequently, the appeals by Northeast Towson Improvement Association and ACCORD were voluntarily dismissed; thus, only Haile and Knollwood-Donnybrook remain as Appellants. It is also to be noted that this

project's CRG approval under Case No. CBA-89-165 had been appealed by 17 West Pennsylvania Limited Partnership and Mr. Arthur Kutcher, individually. However, these appeals were likewise dismissed prior to the Board's taking testimony, thereby leaving only the variance appeals at issue.

Before reviewing the extensive testimony and evidence which were offered during the 5 days of hearing before this Board, a statement of the law to which this Board is bound is appropriate. In considering the variances requested, the Board is obligated to apply the standards stated in Section 307 of the B.C.Z.R. In its entirety, Section 307.1 of the B.C.Z.R. reads as follows:

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

The practical difficulty or unreasonable hardship guideline imposed by this regulation has been thoroughly examined and discussed by the appellate courts of this State. In Loyola Federal Savings & Loan Association v. Buschman, 227 Md. 243, 176 A.2d 355 (1961), the Court of Appeals considered this identical regulation. In fact, the Court in that case considered certain variances for

the Loyola Federal Building, which is but a stone's throw from the subject site in central Towson. As the Court noted: "Section 307 of the Regulations uses the two terms [practical difficulty or unreasonable hardship] in the disjunctive." Loyola Federal, p. 358. Thus, by the use of the term "or," Section 307 offers the Petitioner an opportunity to obtain its variance upon satisfaction of either the undue hardship or practical difficulty standard.

The distinction between these standards was clarified by the Court of Special Appeals in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974). Within that opinion, the Court held that the undue hardship standard applies to a petition for a use variance. The Court noted that a use variance, which permits a use on the property other than that specifically permitted in that particular district, requires the imposition of a higher standard. That is, to allow the change of use for a particular property requires the Petitioner to demonstrate real hardship, where the land cannot allow a reasonable return if used only in accordance with the use restrictions of the ordinance.

Compared with this heavy burden, the Court reviewed the practical difficulty standard applicable for area variance. The Court characterized area variances as having a much less drastic effect than use variances; in that they seek relief only from height, area, density, setback, or side line restrictions and would not affect the property's use, per se. Because the Court envisioned the impact of area variances on the surrounding locale to be less than that generated by use variances, the lesser practical difficulty standard applies. The prongs of that standard which must be satisfied by the Petitioner, as enunciated in Anderson, supra, are as follows:

> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage,

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PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-130-SPHA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a

Variance from Section 235.1 to permit a front yard setback of 0 ft. along Pennsylvania Avenue in lieu of the required 15 feet; section 235.2 to permit a street corner setback of 4 feet in lieu of the required 10 feet; Section 231.b & d and Section 235.B.5 to of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

permit the maximum averaged height to be 160 feet to roof elevation in lieu of the permitted average height of 144.7 feet and to permit 125 feet of the building to project 18 feet beyond and 80 feet above a plane sloping inward and upward at a 1 to 7.5 slope; Section 235.B.4 to permit 25,189 square feet of amenity open space in lieu the required 43,948 square feet; Section 307 to permit 985 parking spaces in lieu of the required 1065 parking spaces if the Zoning Commissioner determines a variance is appropriate.

To be determined at hearing

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

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

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s): please see attached

(Type or Print Name)

Signature

(Type or Print Name)

Signature

Attorney for Petitioner:
John B. Howard, Esquire
(Type or Print Name)
Signature
210 Allegheny Avenue
Address
Towson, Maryland 21204
City and State

Attorney's Telephone No.: 823-4111

c/o LaSalle Partners
Suite 410
1875 Eye Street, N.W. (202)659-4100
Address Phone No.
Washington, D.C. 20006
City and State

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

ORDERED By The Zoning Commissioner of Baltimore County, this 12th day of July, 19 89, 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 10th day of Oct, 19 89, at 11 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

(over)

ORDER RECEIVED FILING
Date 11/16/89
By Esther Schaffer

Legal Owner:

TOWSON COMMONS LIMITED PARTNERSHIP
a Maryland limited partnership

By: AMPROP MARYLAND I LIMITED PARTNERSHIP, an Illinois limited partnership

By: Martha E. Bub

586

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

Land Planning & Development Consultants

Land Planning
Engineering
Landscape Architecture
Surveying
Computer Design
Graphics

Description

To Accompany Zoning Petition

1.668 Acre Parcel

West Side of York Road

Between South Side of Pennsylvania Avenue and

North Side of Chesapeake Avenue

Ninth Election District, Baltimore County, Maryland

Beginning for the same at the end of the second of the two following courses and distances measured from the intersection of the centerline of York Road, 66 feet wide, with the centerline of Pennsylvania Avenue, 80 feet wide (1) Westerly 36 feet, more or less, measured along the centerline of Pennsylvania Avenue, and thence running (2) Southerly at right angles to said centerline 40 feet, more or less, thence leaving said point of beginning and the south side of Pennsylvania Avenue and running and binding on the west side of York Road, with all courses of this description referred to the Grid Meridian established in the Baltimore County Metropolitan District, (1) South 12 degrees 03 minutes 28 seconds West 340.17 feet, thence leaving the west side of York Road and running and binding on the north side of Chesapeake Avenue, (2) North 82 degrees 13 minutes 24 seconds West 122.92 feet, thence leaving the north side of Chesapeake Avenue and running (3) North 11 degrees 29 minutes 48 seconds East 184.00 feet, thence (4) North

79 degrees 24 minutes 32 seconds West 1.24 feet, thence (5) North 11 degrees 13 minutes 04 seconds East 3.52 feet, thence (6) North 83 degrees 04 minutes 45 seconds West 44.58 feet, thence (7) North 84 degrees 08 minutes 29 seconds West 36.00 feet, thence (8) South 07 degrees 49 minutes 04 seconds West 3.26 feet, thence (9) North 84 degrees 03 minutes 59 seconds West 119.63 feet, and thence (10) North 11 degrees 37 minutes 59 seconds East 153.76 feet to intersect the south side of Pennsylvania Avenue, thence running thereon, the two following courses and distances, viz: (11) South 84 degrees 08 minutes 29 seconds East 146.90 feet, and thence (12) South 83 degrees 04 minutes 32 seconds East 180.39 feet to the point of beginning; containing 1.668 acres of land, more or less.

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

June 27, 1989

Our Job No. 86112.B (L86112B)

STATE OF MARYLAND — ROBERT E. SOUTHERN — No. 22067 — REGISTERED — PROPERTY LINE SURVEYOR

Dec. 28, 1989

To: Board of Appeals.

A.C.C.O.R.D. wishes to withdraw its appeal of Towson Commons (90-130-SPHA) originally filed on Dec 13, 1989, in the interests of clarifying the appeals process and supporting the remaining appellants without complicating their arguments.

George W. Murphy
Member Executive Board
A.C.C.O.R.D.

RECEIVED
COUNTY BOARD OF APPEALS
89 DEC 28 PM 2:20

Northeast Towson Improvement Association, Inc.
441 EAST PENNSYLVANIA AVENUE
TOWSON, MD 21204

since 1948

RECEIVED
COUNTY BOARD OF APPEALS
89 DEC 28 PM 3:13

IN RE:
PETITION FOR ZONING VARIANCE
W/S of York Road between S/S of Pennsylvania Avenue and the N/S of Chesapeake Avenue
9th Election District
4th Councilmanic District
Towson Commons Ltd. Part.
Petitioners

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No.: 90-130-SPHA

****

NOTICE OF WITHDRAWALL OF APPEAL

Please be advised of this withdrawall of an appeal from your decision in the above - captioned matter, under the date of November 14, 1989, to the County Board of Appeals.

Michael A. Miller
Pres. for N.T.I.A., Inc.

I HEREBY CERTIFY that on this 27th DAY of December, copy of the foregoing Notice of Withdrawall of Appeal was mailed to Messrs. John B. Howard, Esq., and Robert A. Hoffman, Esq., 210 Allegheny Avenue, Towson, MD 21204, Attorneys for the Petitioner.

Michael A. Miller
Michael A. Miller
441 E. Pennsylvania Avenue
(301) 823-5585

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

J. Robert Haines
Zoning Commissioner

December 13, 1989

Dennis F. Rasmussen
County Executive

Baltimore County Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Towson Commons Limited Partnership
Appeal of Zoning Case No. 90-130-SPHA

Dear Board:

This office is in receipt of an Appeal of the above-referenced matter and the materials for processing same shall be forwarded to you under separate cover shortly. However, please be advised that a typographical error was discovered in the Findings of Fact and Conclusions of Law issued on November 14, 1989 regarding the section from which the variances were sought. Please note that the relief requested is pursuant to Section 235.1 and not Section 231.1 as indicated in the Order. An amended Order correcting this error was not issued prior to the filing of the appeal.

Thank you for your attention in this matter.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

ANN:bjs

cc: Case File

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

J. Robert Haines
Zoning Commissioner

December 14, 1989

Dennis F. Rasmussen
County Executive

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

RE: Petition for Variance
W/S of York Road between S/S of Pennsylvania Avenue and the N/S Chesapeake Avenue
9th Election District, 4th Councilmanic District
TOWSON COMMONS LIMITED PARTNERSHIP - Petitioner
Case No. 90-130-SPHA

Dear Board:

Please be advised that a fifth appeal on the variance portion only of the above-referenced case was filed in this office on December 14, 1989 by Robert A. Hoffman, Esquire on behalf of Towson Commons Limited Partnership, Petitioners. 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
J. ROBERT HAINES
Zoning Commissioner

JRH:scj

Enclosures

RECEIVED
COUNTY BOARD OF APPEALS
89 DEC 14 P 1:40

Appeal Cover Letter - Case Number 90-130-SPHA
TOWSON COMMONS LIMITED PARTNERSHIP - Petitioners
December 14, 1989
Page 2

cc: Rulolph E. DeMeo, President
Knollwood-Donnybrook Improvement Association, Inc.
906 Fairway Drive, Towson, MD 21204

Leroy Y. Haile, Jr.
Leroy Y. Haile, Inc.
5 West Chesapeake Avenue, Towson, MD 21204

Arthur Simon Kutcher
Baltimore County ACCORD
7728 Greenview Terrace, Towson, MD 21204

Michael Miller, President
Northeast Towson Improvement Association, Inc.
441 East Pennsylvania Avenue, Towson, MD 21204

John B. Howard, Esquire
Robert A. Hoffman, Esquire
210 Allegheny Avenue, Towson, MD 21204

Nancy Paige, Esquire
Gordon, Feinblatt, Rothman, Hoffberger & Hollander
233 East Redwood Street, Baltimore, MD 21202

Mr. & Mrs. William C. Raith
The Ridgely, 205 East Joppa Road, Towson, MD 21204

George W. Murphy, III, Executive Director
ACCORD, 6806 Windsor Mill Road, Baltimore, MD 21207

William Kirwin
28 East Susquehanna Avenue, Towson, MD 21204

Harvey Silbermann
3527 East Joppa Road, Baltimore, MD 21234

John W. Erdman
8600 LaSalle, Suite 336, Baltimore, MD 21204

Les Graef, Towson Development Corporation
29 West Susquehanna Avenue, Towson, MD 21204

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

File

height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."
Anderson, p. 39. See also McLean v. Soley, 270 Md. 208 (1973) at pps 214-215

It also follows from a review of Section 307 of the B.C.Z.R. and these cases that the mere application for a variance does not establish, prima facie, that the Petitioner is seeking relief contrary to the spirit and intent of the zoning regulations. Rather, the requested relief is from the strict terms of those regulations. Petitions for variances constitute a legislatively approved mechanism for a property owner to obtain relief from the hard and fast provisions of the ordinance. The protestants herein often suggested that the mere filing of the Petitions for Variance by TCLP constituted a deviation from the spirit and intent of the zoning regulations which were established to regulate orderly development in the County, and, as such, should be denied. This is simply not so. A request for variance seeks relief from the strict terms of the regulations, is wholly permissible, and should be granted when the property owner satisfies the practical difficulty standard described above.

Turning to the record before us gathered over 5 hearing days, suffice it to say there was extensive testimony both in support of and against the project. The testimony is, of course, contained within the record transcript of the case and what the parties considered crucial is contained within

their Memorandums. Although a detailed synopsis is impossible, a brief review of the salient testimony is in order.

The Board heard from Dean Lopez, a Vice President of LaSalle Partners (a principal in TCLP) and project manager for this site. He presented an overview of the project which he described as containing 190,000 rentable square feet of office use and 100,000 square feet of retail use. He also discussed the evolution of this project and described the efforts made by the property owner to develop Towson Commons in accordance with the terms of the B.C.Z.R. without the need for variances. He specifically described the original proposal, which provided for a ten-story office building and ten theatre screens, and how the plan had been reduced in magnitude and reconfigured to its current version, consisting of an eight-story office complex and eight theatre screens. He opined that the project with its proposed setbacks is compatible with the surrounding locale and that the front yard and side yard setback variances are needed to achieve the desired goal of orienting the retail use toward the adjacent streets.

Lehr Jackson, a retail development expert and a member of TCLP's project team, discussed the retail aspect of the proposed development. Again, he discussed the importance of the project's orientation along Pennsylvania and Chesapeake Avenues and York Road. In order to achieve a continuous flow of appealing retail use, he concurred that the setback variances were necessary.

The Board also received extensive testimony from the project architect, Ron Henderer. He discussed the unique nature of the site, including the sloping of the land in a southerly direction and the rock and water formations underground. He also discussed what he viewed as the impossibility of realigning the office and retail complex to comply with the strict terms of the existing

setback requirements. In his view, such a realignment would prohibit the placement of the theatres as presently proposed and would disrupt the retail configuration. He also stated that strict compliance with the terms of the B.C.Z.R. would cause a loss of viability of the entire project.

Leslie H. Graef, the Executive Director of the Towson Development Corporation, also testified. In his view, the project is "in scale" and appropriate. In his view, "when one looks at the whole project and all of the benefits...one makes a judgement that the variances are minor."

Baltimore County's Director of Economic Development, Richard W. Story, also expressed the County government's approval and enthusiasm for the project. He believes that the project will promote tourism, business and community interests.

Jon Bortz, Senior Vice President of LaSalle Partners, also testified. He echoed much of the testimony of Mr. Lopez. His testimony was significant in that it concentrated on his view that the success or failure of the entire project depended on the mix of office/retail use as shown on the Petitioners' plan. In his view, the viability of the retail/office use proposed here rests upon the configurations of the various components which exist within the project as a whole. If any of these components were altered, the project as a whole would no longer be workable. He opined that the current plan offered the minimum deviation from the strict standards of the B.C.Z.R. which would be practical.

George Gavrelis, a land planning expert employed by the firm of Daft, McCune & Walker, also testified extensively. He described the evolution of the development of that project to be known as Towson Commons, and opined that strict compliance with the B.C.Z.R. would be unnecessarily burdensome. He

also averred that the project would not adversely impact the surrounding area. In this witness's view, the mixed use proposal before the Board could not survive without the variances.

Jack Finkelstein, a retail merchant whose establishment neighbors the surrounding property, also testified. He described the merchant/retail history of Towson and expressed his support for the reinvigoration which this project would bring to the Towson retail core.

Lastly, on behalf of the Petitioners, the Board heard from Barbara Zenker, the Director of Real Estate for General Cinema Theatres. She discussed the requirements of her organization to participate as a tenant in Towson Commons. Presently, her company intends to lease and operate the theatres in Towson Commons. On behalf of her company, she voiced the requirement that any further reduction or realignment of the theatres would cause her company to withdraw from participating in the project. She described how the number of screens proposed has been reduced from ten to eight from the original plan and that any further reductions would be unacceptable. Although she could not describe any mathematical formula which her company employed in determining whether to lease theatres in Towson Commons, she explained the intuitive process used by General Cinemas in making this decision. We are not troubled by the lack of any mathematical formula. Quite simply, it is enough, when considering the case before us, that General Cinemas' position is well-founded on marketing and retail theatre expertise.

On behalf of the protestants, a number of witnesses appeared. They included Leroy Y. Haile, Jr., the principal in the Appellant, Haile Corporation. Mr. Haile described the history of his long-time association with Towson. He also expressed his opposition to Towson Commons. In his view, the size of the

proposed project is objectionable and overwhelming. As with the other protestants, however, Mr. Haile acknowledged the need for retail/office rebirth in the Towson core, but objected to the scale and scope of the proposal presented.

Other witnesses appeared and testified on behalf of the protestants. These included Richard Parsons, who lives in West Towson and is employed by the Baltimore County Public Library; Jean Duvall, of Rodgers Forge; Michael A. Miller, of Northeast Towson; Ruth Cullison, an opponent of the urbanization of Towson; Diane Carliner; and John Latrobe. All of these witnesses voiced similar objections. These protestants all expressed their desire that the Towson environment continue in its present state, and that urbanization and over-development should be discouraged. As we have previously stated within this Opinion, although we admire and respect these sentiments, they are not germaine to the narrow issue before us.

Testimony which we deem relevant from the protestants was offered by George Holback and Arthur Kutcher. Mr. Holback, a registered architect, suggested alternatives which the property owner might adopt in order to achieve the desired mixed use and comply with the zoning regulations. Although, on their face, many of these alternatives seemed reasonable, their viability was not established. On cross-examination, for example, Mr. Holback admitted his naivete regarding motion picture theatres, marketing strategies, and certain mechanical engineering considerations. Thus, we must question whether these alternatives are practical within the context of the proposed Towson Commons development.

Mr. Kutcher's testimony was also interesting. He has an extensive background in urban planning and designing, as well as architecture. Mr. Kutcher's chief concern with the project as proposed was a fear that it was

incompatible with the surrounding locale. He specifically objected to the width and breadth of that portion of the project which included the theatre operations. In his view, construction of the project as proposed would create a "sunless trench" in the center of Towson. He also felt that the large and imposing 20th Century structure which comprises Towson Commons was not consistent with the 19th Century architecture which comprises much of Towson's core. Again, however, we note Mr. Kutcher's unfamiliarity with the specifics of the proposed project.

In reviewing the evidence before us, the Board gave due consideration to the demeanor and credibility of the witnesses presented. Overall, we were impressed with the detail-oriented testimony offered by the Petitioners and their approach to the inter-dependent requirements of the components which encompass Towson Commons. Although we appreciate the testimony of the protestants, it is of note that that testimony centered upon the aesthetic impact of the project on central Towson. We did not hear from the protestants competent and knowledgeable testimony which was sufficiently detail-oriented as to the particulars of this project. However, we do find as fact that the Petitioners have met their burden of proof.

Applying the law previously set forth to the testimony presented, we make the following findings:

1) As to the variances from the height limitation of 235B.5, 234, and 231.d of the B.C.Z.R., we are persuaded that they should be granted. The variance in this instance is minute in nature when compared with the entire project. It requests relief only from a small slice from the plane which slopes inward and upward from the lot line. Granting of same is warranted under the Anderson, supra, test.

2) As to the setback requirements for the front and side yards, we are also persuaded that they should be granted. Applying the tenents expressed in Anderson, supra, and McLean, supra, we believe that adherence to the strict provisions of the B.C.Z.R. would be unnecessarily burdensome to the property owner for the reasons set forth by Mr. Gavrelis. As to the other prongs offered in Anderson, supra, we believe that they too are satisfied. Evidence offered established that the project as contemplated is less in size and scope than would be permitted under the zoning regulations. The record of the case before us also overwhelmingly establishes that the zoning assigned to this locale promotes intensive office/retail use. Based upon the competent and uncontradicted testimony offered by Ms. Zenker and Mr. Bortz, we concur that this project, as presented, could not go forward if the variances were not granted. This would cause substantial injustice to the applicant as well as to the property owners in the Towson area, such as Mr. Finkelstein, who are relying on a new infusion of commercial activity into central Towson to save the decaying present business climate. Lastly, we believe that the spirit of the B.C.Z.R. will be observed and the public safety and welfare secured.

3) As to the amenity open space variance, we are also persuaded that this should be granted. At first blush,

the variance appears to be significant in that TCLP offers only 22,880 square feet of amenity open space in lieu of the required 39,943 square feet. This significant difference of approximately 57 percent could be interpreted to be overwhelmingly deficient of what is required and therefore the variance should be denied. However, an examination of the Towson Commons project as a whole, as provided within the framework of the testimony of Messrs. Gavrelis, Bortz, and Henderer is appropriate. As proposed, the Towson Commons project orients retail space towards the exterior street. By employing this configuration, which in our view enhances the overall aesthetic appearance and compatibility with the neighborhood, the opportunity for the Petitioners to obtain additional amenity open space is reduced. The Petitioners' arguments about the quality of the open space are also well-reasoned. After applying the three-pronged test in Anderson, supra, we believe that the variance should be granted. Strict compliance with the open space requirement would be unduly burdensome on the property owner, and, as stated previously, the proposal's scheme and design are consistent with the locale.

For the aforegoing reasons, the Board shall approve the Petitions for Variance, with restrictions, and will so order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of April, 1990, a copy of the foregoing Petition of Appeal was hand-delivered to the County Board of Appeals of Baltimore County, County Office Building, Room 315, 111 W. Chesapeake Avenue, Towson, Maryland 21204; and was mailed first class, postage prepaid to John B. Howard, Esquire, John H. Zink, III, Esquire, Cynthia M. Hahn, Esquire and Robert A. Hoffman, Esquire, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, Maryland 21204, Attorneys for Appellee, and to Mark J. Adams, Esquire, Birrane, Harlan & Sharretts, Jefferson Building, 9th Floor, 2 East Fayette Street, Baltimore, Maryland 21202, Attorney for Knollwood-Donnybrook Improvement Association, Inc.

Rudolph E. DeMeo
Attorney for Appellant
Leroy Y. Haile, Inc.

TOWSON COMMONS LTD. PART. #90-130-SPHA
W/s York Rd. between S/s of Penn. Ave. & the N/s of Ches. Ave. 9th Election District 4th Councilmanic District

SPH-approve a modified parking plan permitting 985 spaces in lieu of the shered parking req. of 1,065 spaces.
VAR-setbacks, height & projection restrictions, amenity open space req.'s, and parking spaces.

July 12, 1989	Petition for Special Hearing filed by John B. Howard, Esquire on behalf of Towson Commons Ltd. Part. to approve a modified parking plan permitting 985 spaces in lieu of the shared parking requirements of 1,0[illegible] spaces.
" " "	Petition filed for Variance for setbacks, height and projection restrictions, amenity open space requirements, and parking spaces.
November 14	Order of the D.Z.C. DISMISSING Petition for Special Hearing and GRANTING Petition for Variances w/restrictions.
December 13	Notice of Appeals received from Rudolph E. DeMeo, Pres. of Knollwood-Donnybrook Impr. Assoc., Inc.; Leroy Y. Haile, Inc., Jr. for Leroy Y. Haile, Inc.; Arthur S. Kutcher for Baltimore County ACCORD; Michael Miller, Pres. of Northeast Towson Impr. Assoc., Inc., Protestants.
December 13	Notice of Appeal received from Robert A. Hoffman, Esquire on behalf of the Petitioner/Cross-Appellant.
December 28	Letter of Dismissal of appeal filed by George W. Murphy on behalf of ACCORD. (Incorporated in Board's Order of 3/23/90)
" "	Notice of Withdrawal of appeal filed by Michael Miller, Pres. of Northeast Towson Impr. Assoc., Inc. (Incorporated in Board's Order of 3/23/90)
December 29	Hearing before the Board (SRD)
January 4, 1990	Continued Hearing.
January 11	" "
January 19	" "
January 26	Hearing concluded before the Board.
February 13	Memorandum of Law of Protestant Leroy Yl Haile, Inc. filed by Rudolph E. DeMeo, Esquire.
February 13	Post-Hearing Memorandum of Towson Commons Ltd. Part. Owner/Developer filed by Counsel for Towson Commons Ltd. Part.
March 23	Opinion and Order of the Board GRANTING Petition for Variances w/restr.'s. (Schmidt, Sauer & Disney)
April 20	Order for Appeal filed in CCt,BCo by Rudolph E. DeMeo, Esq. on behalf of Leroy Y. Haile, Inc.
4/27/90	Petition to accompany appeal filed by Mr. DeMeo in CCt,BCo.
April 23	Certificate of Notice sent to all interested parties.
5/10/90	Transcript of testimony filed in CCt,BCo; Record of Proceedings also filed.
April 11 1990 MAY 21	Opinion and Order of the CCt,BCO AFFIRMING C.B. of A. (Dana M. Levitz)

IN THE MATTER OF THE APPLICATION OF TOWSON COMMONS LIMITED PARTNERSHIP FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE WEST SIDE OF YORK ROAD BETWEEN SOUTH SIDE OF PENNSYLVANIA AVENUE AND THE NORTH SIDE OF CHESAPEAKE AVENUE 9th ELECTION DISTRICT 4th COUNICLMANIC DISTRICT
LEROY Y. HAILE, INC., PLAINTIFF
ZONING CASE NO. 90-130-SPHA

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
CG Doc. No. 79
Folio NO. 313
File No. 90-CG-1513

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, Michael B. Sauer, 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. 90-130-SPHA

July 12, 1989	Petition filed by John B. Howard, Esquire on behalf of Towson Commons Ltd. Part. for a Special Hearing to approve a modified parking plan permitting 985 spaces in lieu of the shared parking requirement of 1,065 spaces.
	Petition filed for Variance for setbacks, height and projection restrictions, amenity open space requirements, and parking spaces.
September 7	Publication in newspaper.
September 21	Certificate of Posting of property.
September 27	Comments of Baltimore County Zoning Plans Advisory Committee.
October 10	Hearing held on Petitions by the Deputy Zoning Commissioner.
November 14	Order of the Deputy Zoning Commissioner DISMISSING Petition for Special Hearing and GRANTING Petition for Variance w/restrictions.
December 13	Notice of Appeal received from Rudolph E. DeMeo, Pres. of Knollwood-Donnybrook Impr. Assoc., Inc., Protestants.
December 13	Notice of Appeal received from Leroy Y. Haile, Jr. for Leroy Y. Haile, Inc., Protestant.
December 13	Notice of Appeal received from Arthur Simon Kutcher for Baltimore County ACCORD, Protestant.
December 13	Notice of Appeal received from Michael Miller, Pres. of Northeast Towson Impr. Assoc., Inc., Protestant.

Towson Commons Ltd. Part., File No. 90-CG-1513
Case No. 90-130-SPHA 2.

December 13, 1989	Notice of Appeal received from Robert A. Hoffman, Esquire on behalf of the Petitioner/Cross-Appellant.
December 28	Letter of dismissal of appeal filed by George W. Murphy on behalf of ACCORD. (Incorporated in Board's Order of 3/23/90)
December 28	Notice of Withdrawal of Appeal filed by Michael Miller, President of Northeast Towson Impr. Assoc., Inc. (Incorporated in Board's Order of 3/23/90)
December 29	Hearing on appeal before the Board of Appeals.
January 4, 1990	Continued hearing before the Board.
January 11	Continued hearing before the Boa[illegible]
January 19	Continued hearing before the Board.
January 26	Hearing concluded before the Board of Appeals.
February 13	Memorandum of Law of Protestant Leroy Y. Haile, Inc. filed by Rudolph E. DeMeo, Esquire.
February 13	Post-Hearing Memorandum of Towson Commons Limited Partnership, Owner/Developer filed by Counsel for Towson Commons Ltd. Part.
March 23	Opinion and Order of the Board GRANTING Petition for Variances with restrictions.
April 20	Order for Appeal filed in the Circuit Court for Baltimore County by Rudolph E. DeMeo, Esquire, Counsel for Leroy Y. Haile, Inc.
April 27	Petition to accompany appeal filed in the Circuit Court by Mr. DeMeo.
April 23	Certificate of Notice sent to interested parties.
May 10, 1990	Transcript of testimony filed.
(Haile)	Appellant's Exh. No. 1 -DMW Summons
"	" " 2 -RTKL Summons
"	" " 3 -T. Comm. Summons
"	" " 4 -LaSalle Summons
"	" " 5 -General Cinema Summons (See Exh. #6)
"	" " 6 -Board's Subpoena to General Cinema
"	" " 7 -Towson area map
"	" " 8 -Towson Times Article (12/4/69)
"	" " 9 -Photo of Trimity Episcopal Church
"	" " 10 -Photo of Legg Mason Bldg.
"	" " 11 -Towson Times Article 11/15/89 (I.D.only)
"	" " 12 -Letter from MacKenzie & Assoc.
"	" " 13 through 15 - Photos of garage
"	" " 16 -Photo of Library
"	" " 17 -Blue Pamphlet
"	" " 18 -White Pamphlet
"	" " 19 -Towson Plan Update 1989
"	" " 20 -Towson Trans. Issues Analysis (I.D.only)
"	" " 21 -Lease of 5/23/88 to General Cinema
"	" " 22 -A & B - Floor Plan security (I.D.only)
"	" " 23 - (none submitted) Prototype Theatre
"	" " 24 -Ltr. 7/31/89 & auditorium drawing
"	" " 25 -Memo to T/C file
"	" " 26 -Newspaper Article Towson Times p. 6 (Ramsey article)
"	" " 27 -VBH letter of 1/24/90 Hoffman to DeMeo

Towson Commons Ltd. Part., File No. 90-CG-1513
Case No. 90-130-SPHA 3.

(Haile)	Appellant's Exh. No. 28	-A -Drawing of Option Diagram (I.D.only) B-partial plan, C-N/s Pa. Ave., D-N/s Pa. Ave., E-N/s Pa. compromise, F- same as E with CSA, G-Artistic rendering, H-E/W, I-Partial Plan #5, J-L/L Level Plan, K-Upper Level, L-Partial copy 05 schem.'s
"	" " 29	-Letter 8/16/89 from Lopez to Perry
"	" " 30	-Letter 12/5/89 Spicer to Beacham
"	" " 31	-RTKL Minutes of mtg.
"	" " 32	-RTKL Drawing 4/7/89 Page 1
"	" " 33	-Ltr. 12/13/89 Lopez to Ferry
"	" " 34	-Ltr. 12/13/89 Perry to Lopez
"	" " 35	-Curriculum Vitae Mr. Kutcher
"	" " 36	-Looking at London
"	" " 37	-Draft Design Guidelines
"	" " 38	-Choice for the Future (I.D. only)
(Knollwood-Donnybrook)	Appellant's Exh. No. 1	- Nomination Form to National Register
"	" " 2	- Ltr. Davies RTKL to Spicer, Chart, side plan of auditorium
"	" " 3	- Chart 05
"	" " 4	- (2) Knollwood-Donnybrook Resolutions & 2 Affidavits.
	Developer's Exh. No. 1	-Brochure
"	" " 2	-Union Station
(IN BOARD'S CLOSET)	" " 3	-Site Plan 6/27/89 revised 10/6/89
"	" " 4	-Pa. side architectural rendering
"	" " 5	-York Rd. side architectural rendering
"	" " 6	-Page 4 of Site Plan 6/27/89 & 10/6/89
(IN BOARD'S CLOSET)	" " 7	-Compilation of photographs
"	" " 8	-Model
"	" " 9	-York Rd. South view
"	" " 10	-York Rd. north
"	" " 11	-View down Pa. Ave. east
"	" " 12	-View down Chesapeake
"	" " 13	-Lower Level Retail
"	" " 14	-Street Level
"	" " 15	-2nd Level
"	" " 16	-Resume of Wes Guckert
"	" " 17	-A-C -Comments from Planning & Zoning
"	" " 18	-A-C -Comments of Mr. Moore & ltr. of S.H.A.
"	" " 19	-Brochure
"	" " 20	-Photograph of Towson
"	" " 21	-Resume of George E. Gavrelis
"	" " 22	-Sheet 1 of 4 of Plat
(IN BOARD'S CLOSET)	" " 23	-Sheet 3 of 4 of Plat
"	" " 24	-Decision of Z.C. Court Towers Bldg.
"	" " 25	-Assignment of Lease

May 10, 1990 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals' office and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Towson Commons Ltd. Part., File No. 90-CG-1513
Case No. 90-130-SPHA 4.

Respectfully submitted,

Linda Lee M. Kuszmaul
LindaLee M. Kuszmaul, Legal Secretary
County Board of Appeals of Baltimore County

cc: Rudolph E. DeMeo, Esquire
Leroy Y. Haile, Inc.
John B. Howard, Esquire
Robert A. Hoffman, Esquire
Towson Commons Ltd. Part.

IN THE MATTER OF THE APPLICATION OF TOWSON COMMONS LIMITED PARTNERSHIP FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE WEST SIDE OF YORK ROAD BETWEEN SOUTH SIDE OF PENNSYLVANIA AVENUE AND THE NORTH SIDE OF CHESAPEAKE AVENUE 9th ELECTION DISTRICT 4th COUNICLMANIC DISTRICT
LEROY Y. HAILE, INC., PLAINTIFF
ZONING CASE NO. 90-130-SPHA

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
CG Doc. No. 79
Folio No. 313
File No. 90-CG-1513

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt, Michael B. Sauer, 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, Rudolph E. DeMeo, Esquire, 3410 White Ave., Balto., MD 21214, Counsel for Plaintiff; Leroy Y. Haile, Inc., 5 W. Ches. Ave., Towson, MD 21204, Plaintiff; John B. Howard, Esquire and Robert A. Hoffman, Esquire, 210 Allegheny Ave., Towson, MD 21204, Counsel for Towson Commons Ltd. Part.; Towson Commons Ltd. Part., 1875 I Street, Washington, D.C. 20006; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Bldg., Towson, MD 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Linda Lee M Kuszmaul
LindaLee M. Kuszmaul, Legal Secretary
County Board of Appeals of Baltimore Co.
Room 315, County Office Bldg., Towson, MD 21204 (301) 887-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to Rudolph E. DeMeo, Esq., 3410 White Ave., Balto., MD 21214, Counsel for Plaintiff; Leroy Y. Haile, Inc., 5 W. Ches. Ave., Towson, MD 21204, Plaintiff; John B. Howard, Esq. and Robert A. Hoffman, Esq., 210 Allegheny Ave., Towson, MD 21204, Counsel for Towson Commons Ltd. Part.; Towson Commons Ltd. Part., 1875 I Street, Washington, D.C. 20006; and Arnold G. Foreman, Esq., c/o County Board of Appeals, Room 315, County Office Bldg., Towson, MD 21204 on this 23rd day of April, 1990.

Linda Lee M Kuszmaul
LindaLee M. Kuszmaul, Legal Secretary
County Board of Appeals of Baltimore Co.

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

April 23, 1990

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

Re: Case No. 90-130-SPHA (Towson Commons Ltd. Part.)

Dear Mr. Howard:

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,

Linda Lee M Kuszmaul
LindaLee M. Kuszmaul
Legal Secretary

Encl.

cc: Robert A. Hoffman, Esquire
Towson Commons Ltd. Part.
Mark J. Adams, Esquire
Knollwood-Donnybrook Imp. Assn.
Mr. Arthur S. Kutcher
Mr. Michael Miller - Northeast Towson Imp. Assn., Inc.
Nancy Paige, Esquire
Mr. & Mrs. William C. Raith
George W. Murphy, III - ACCORD
Mr. William Kirwin
Mr. Harvey Silbermann
Mr. John W. Erdman
Les Graef - Towson Dev. Corp.
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

Case No. 90-130-SPHA
Towson Commons Limited Partnership 14.

ORDER

Therefore, it is this 23rd day of March, 1990 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Variance from the front yard setback requirements of B.C.Z.R. Section 235.1 (permitting setback as close as 0 feet in lieu of the required 15 feet); that the Petition for Variance from side yard setback requirements of B.C.Z.R. Sections 235.2 and 232.2 (permitting side yard setbacks of 4 feet in lieu of the required 10 feet); that the Petition from the height limitations of B.C.Z.R. Sections 235B.4, 234, and 231.d (permitting 125 square feet of building wall facing Pennsylvania Avenue to project above a plane sloping inward and upward from the lot line); and that a variance from the amenity open space requirements of B.C.Z.R. Section 235B.4 (permitting 22,880 square feet of amenity open space in lieu of the required 30,943 square feet) all be and are hereby GRANTED subject to the following restrictions:

1. The Petitioner shall landscape the property in accordance with and as required by the Baltimore County Landscaping Manual and as may be required by the Director of Planning and Zoning and the landscaping planner.

2. All signs and the scoring pattern in the brick and concrete at the entrances to the property shall be submitted to the Office of Planning for approval prior to construction.

3. That the final landscaping plan shall be maintained at all times by Petitioners and/or subsequent property owners.

4. The Petitioners shall implement, at their expense, any improvements as may be required by the State Highway Administration and/or

Case No. 90-130-SPHA
Towson Commons Limited Partnership 15.

the Baltimore County Bureau of Traffic Engineering to assure safe pedestrian travel at the intersections of York Road and Pennsylvania Avenue, and York Road and Chesapeake Avenue.

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

Michael B. Sauer

John G. Disney

IN THE MATTER OF PETITION FOR VARIANCES OF THE TOWSON COMMONS LIMITED PARTNERSHIP, YORK ROAD BETWEEN WEST PENNSYLVANIA AVENUE AND WEST CHESAPEAKE AVENUE 9th Election District 4th Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: 90-130-SPHA

POST-HEARING MEMORANDUM OF
TOWSON COMMONS LIMITED PARTNERSHIP, OWNER/DEVELOPER

This case involves a Petition for Variances filed by Towson Commons Limited Partnership ("TCLP"), a Maryland limited partnership, which owns frontage along the west side of York Road, between West Pennsylvania Avenue and West Chesapeake Avenue, in central Towson. TCLP plans to construct a mixed-use facility, consisting of retail, office, restaurant, and theater uses, on its property, and needs certain minor variances from area requirements of the Baltimore County Zoning Regulations ("BCZR") in order to proceed with the development as planned.

The variances requested by TCLP are as follows:

1) A variance from the front yard setback requirements of Section 235.1, BCZR, to permit a front yard along Pennsylvania Avenue of as close as zero feet, in lieu of the required 15 feet;

2) A variance from the side yard setback requirements of Sections 235.2 and 232.2, BCZR, to permit a corner lot side yard along York Road of four feet, in lieu of the required 10 feet;

3) A variance from the height limitations of Sections 235B.5, 234, and 231.d, BCZR, to permit 125 square feet of the building wall facing Pennsylvania Avenue and adjacent to the existing buildings at 17 West Pennsylvania Avenue to project above a plane sloping inward and upward from the lot line at one foot of horizontal distance for each 7.5 feet of vertical distance; and

4) A variance from the amenity open space requirements of Section 235B.4, BCZR, to permit 22,880 square feet of amenity open space, in lieu of the required 30,943 square feet.

The Deputy Zoning Commissioner conducted a hearing on October 10 and 24, 1989 and issued an order granting the variances, with certain restrictions, on November 14, 1989. The Commissioner's action was then appealed to this County Board of Appeals of Baltimore County (the "Board") by Leroy Y. Haile Corporation, Inc., the Northeast Towson Improvement Association, the Knollwood-Donnybrook Improvement Association, and a group known as "ACCORD"; a cross-appeal was filed by TCLP as to two of the restrictions imposed by the Deputy Zoning Commissioner. Subsequently, the appeals by the Northeast Towson Improvement Association and ACCORD were dismissed by those appellants.

Similarly, appeals from the CRG approval of the development (County Board of Appeals Case No. CBA-89-165) were dismissed by the immediate neighbor, 17 West Pennsylvania

Avenue Limited Partnership, and Mr. Arthur Kutcher, thus leaving only the variances at issue before the Board.

The Board heard five days of testimony in the case, on December 29, 1989 and on January 4, 11, 19, and 26, 1990. At the conclusion of the testimony, the parties agreed to make their final arguments to the Board in written memoranda. This Memorandum presents TCLP's arguments as to why it has made out a legally sufficient and compelling case for the requested variances and why this Board should therefore grant them, free from unduly burdensome and unwarranted restrictions.

(It should be noted that a transcript of the proceedings [partially in draft form] was made available to both the appellants and TCLP. Therefore, where appropriate, reference to the transcript is made and a transcript extract is attached for the Board's convenience.)

The Applicable Legal Principles

The Baltimore County Zoning Regulations permit the Zoning Commissioner, or this Board on appeal, to grant variances from height and area regulations, such as the regulations from which TCLP seeks relief here. Section 307, BCZR. The Commissioner and the Board may grant such variances, however, "only in cases where strict compliance with the [BCZR] would result in practical difficulty or unreasonable hardship." Id. Furthermore, they may grant relief only if the variance would be "in strict harmony with the spirit and intent" of the height and area regulations, and only if a variance can be

granted "without substantial injury to public health, safety, and general welfare." Id.

These Baltimore County variance requirements have been examined by the Court of Appeals of Maryland on at least two occasions, and that court has emphasized that Section 307, BCZR, permits the granting of area variances only (and not use variances) and uses the terms "practical difficulty" and "unreasonable hardship" in the disjunctive. Thus, the applicant for an area variance has made out a case if he or she has produced evidence of "practical difficulty"; the applicant need not meet the considerably more demanding standard of "undue hardship". McLean v. Soley, 270 Md. 208, 213-14 (1973); Loyola Federal Savings and Loan Association v. Buschman, 227 Md. 243, 248-50 (1961).

In McLean v. Soley, supra, the Court of Appeals set out the following criteria, taken from Rathkopf's treatise on The Law of Zoning and Planning, for determining whether "practical difficulty" has been established:

> "1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

270 Md. at 214-15. The last of these three criteria clearly overlaps the specific requirements of Section 307, BCZR.

> The Owner/Developer produced more than enough evidence to establish that strict compliance with the Zoning Regulations would result in practical difficulty.

TCLP called ten witnesses at the hearing before the Board, and their collective testimony leaves no doubt that the variances being requested in this case are fully justified. The witnesses for TCLP included not only TCLP officers and project personnel (also, the Director of Real Estate for General Cinema Theatres), but also the Director of Economic Development for Baltimore County, the Executive Director of the private Towson Development Corporation, a long-time Towson retail merchant, and a past president of the Knollwood-Donnybrook Improvement Association and resident of that community. All of these witnesses stressed the unique character of the Towson Commons project as a centerpiece for the revitalization of central Towson. It is clear that County officials and much of the community in general look forward with high expectations to the development of the project proposed by TCLP, and it is equally clear that there is no significant evidence to suggest that the project or the granting of the requested variances will be harmful to the public health, safety, or welfare.

TCLP provided testimony that original plans for the Towson Commons project, developed in about 1986, called for 10 floors of offices, together with retail, restaurants, and a 10-screen, below-grade theatre complex. Transcript 12/29, p. 24-25. For a number of reasons, including the discovery of unsuitable subsurface conditions, these original plans had to be abandoned, and the project was scaled down. Id., pp. 122-23. Dean Lopez, Vice President of LaSalle Partners and the Project Manager for Towson Commons, testified that the project as revised would consist of approximately 190,000 rentable square feet of Class A office space on eight floors (along Pennsylvania Avenue), 100,000 square feet of retail and restaurant space, and an eight-screen cinema on two floors (above retail space on York Road). Id., pp. 22-24. According to Mr. Lopez, the owner/developer "made every effort to achieve the minimum economically viable program within the parameters of the zoning ordinance." Id., p. 25. George Gavrelis, the developer's land planner, also pointed out that the revised proposal provides for a floor area ratio well below the maximum permitted under the BCZR and that an additional 139,450 square feet could be developed on the site without the need for variances. Transcript 1/11 A.M., p. 51.

Several witnesses noted the difficulty of designing a workable mixed-use project, in which a combination of very different but compatible uses must work together. Jon Bortz, a senior vice president of LaSalle Partners, who stated that

he was in charge of all of his firm's East Coast development, verified that the developer put together a design team, including architectural and planning firms familiar with Towson, and charged it with designing the Towson Commons project in accordance with all applicable zoning requirements. Transcript 1/4, p. 62. Mr. Gavrelis explained that plans for the mixed-use project evolved to a point where it was clear that, if the project were to be constructed entirely within the zoning requirements, the theater uses could not fit within the project. Transcript 1/11 A.M., pp. 62-63. Mr. Bortz explained the synergistic nature of mixed-use projects like Towson Commons; each component of the project contributes to the success of every other component. For instance, the theaters have a major impact on bringing people to the restaurants; those who eat in the restaurants frequent the retail shops or the theaters; office workers are attracted to the restaurants. According to Mr. Bortz, without one of the pieces, the projects tend not to be feasible. Transcript 1/4, pp. 64-66. (See also, Transcript 1/4, p. 117, where Mr. Bortz testified that, without the variances, this mixed-use project is not feasible.)

Barbara Zenker, Director of Real Estate for General Cinema Theaters, appeared as another witness on behalf of TCLP. She verified that original plans for the Towson Commons location called for a 10-screen theater to be located on a single subgrade level. Transcript 1/26, pp. 14-15. Because of the

discovery of rock in the area where the theaters were originally to be located, they had to be moved above-ground and placed on two separate levels, above the ground-level retail. The result was less usable floor space and a reduction in the number of theater screens. Id., pp. 15-17. Ms. Zenker told the Board that it was "vitally important" to General Cinema to have eight screens (id., p. 21) and that if the shell of the project as currently planned were reduced at all, General Cinema would not go ahead with its participation (id., p. 22; see also pages 57, 104, 126-27). According to Ms. Zenker, the developer had come to General Cinema with other plans in which the shell was smaller, and General Cinema had been unable to design a viable eight-screen theater. Id., p. 57. Ms. Zenker summarized: "We have gone for eight months to the limit of what we can reduce, and we are ... now at the bare bones." Id., p. 56. Even a reduction of 100 seats would mean that General Cinema would not go forward as a part of Towson Commons. Id., p. 84. See also testimony of Jon Bortz, Transcript 1/4, p. 51.

The Specific Variances

In addition to the testimony summarized above, which establishes that the developer has made every effort to design a workable project as nearly as possible within the constraints of the BCZR and that it has reached a minimum critical mass (Transcript 12/29, p. 227), there was testimony as to the practical difficulty that would result from having

to comply with each of the zoning requirements from which a variance is requested.

With respect to the height variance for a small triangle at the western edge of the office building wall along Pennsylvania Avenue, a number of witnesses observed that this variance would be insignificant to the overall mass of the project; indeed, appellants clearly indicated that to be their position. (E.g., Dean Lopez - Transcript 12/29, p. 25; Leslie Graef - Id., p. 230; George Gavrelis - Transcript 1/11 A.M., p. 61.) Ron Henderer, an associate principal of RTKL, the developer's project architect, explained that, to conform to the concept that the Towson Commons project would be lower along York Road, and to make room for the three-story, glass-enclosed rotunda planned for the corner of York Road and Pennsylvania Avenue -- the focal point and highlight of the entire project design -- the architects needed to place the office element of the project as far west as possible on Pennsylvania Avenue. The design as proposed, although requiring a variance, still leaves 15 feet between Towson Commons and its nearest neighbor to the west. Furthermore, when compared to other buildings in downtown Towson, the proposed building is significantly lower. Transcript 12/29, pp. 125-130; Developer's Exhibits 7 and 8. Both Mr. Henderer (id., pp. 130-31) and George Gavrelis (Transcript 1/11 A.M., p. 68) indicated that, if TCLP were forced to comply strictly with the BCZR, the office tower would have to move eight feet

closer to York Road, and the rotunda would thus have to be downsized. Such a movement would also adversely affect vertical circulation within the project and the placement of the food court. Id.

With respect to the setbacks along York Road and Pennsylvania Avenue, the evidence plainly showed that the facades of Towson Commons, as proposed, would be in line with or set back slightly more than the facades of adjacent and nearby buildings. Furthermore, the proposed building setbacks would be consistent with or greater than setbacks on the opposite or east side of York Road. (E.g., Dean Lopez - Transcript 12/29, p. 25; George Gavrelis - Transcript 1/11 A.M., pp. 53-54, 63-65). In fact, the sidewalk widths planned for the project are greater than those that previously existed on the site.

A major principle in the design of the Towson Commons project was to bring shopping and other pedestrian activities onto the streets of central Towson. Lehr Jackson, an expert on retail development and a part of TCLP's project team, noted that the developer could have built offices only on the subject site, without the need for variances; however, this would, in his opinion, have done a severe injustice to the future of retail business in Towson. Transcript 12/29, p. 83. Instead, the developer elected to restore the traditional Towson retail scheme by placing two stories of retail along Pennsylvania and Chesapeake Avenues and along York Road,

maintaining harmony with existing shops in the area. Id., p. 82. Mr. Jackson stressed the need to restore continuous shopping blocks. Id., pp. 84-85.

Mr. Henderer, TCLP's architect, also emphasized the developer's commitment to street-level, street-oriented retail. Transcript 12/29, p. 123. He noted that the developer could not comply strictly with the BCZR and align its retail shop frontage with adjacent and nearby shops. Thus, if the Towson Commons shops were set back as required by the zoning regulations, there would be no continuous retail street, and there would not be an appropriate relationship between the Towson Commons shops and the stores on the east side of York Road. Furthermore, if the Towson Commons project were pushed back to meet zoning regulations, it would simply be impossible to fit the theaters in. Id., pp. 132-33. See also the testimony of George Gavrelis, Transcript 1/11 A.M., pp. 65-68.

As far as the retail and office element along Pennsylvania Avenue is concerned, Mr. Bortz explained that a greater setback than that shown on the project plans would necessitate significant reductions in the office "floor plates" that the developer could offer. He observed that large floor plates were currently lacking in downtown Towson and were a feature that TCLP hoped would lure major office concerns to the project. Transcript 1/4, pp. 52-54, 58-59. Mr. Bortz also explained that increasing the setback along Pennsylvania

Avenue would adversely affect the depth of the food court and consequently eliminate the viability and leasability of that space. Transcript 1/4, pp. 53-54 (emphasis added). Mr. Bortz further testified that setting back the office tower beyond the retail storefronts, in order to comply with setbacks at least as to upper floors, would have a dramatic and negative impact on leasability of the offices. Id., p. 60. (Likewise, Mr. Jackson had testified that to cantilever the offices over the retail, thus creating a sidewalk arcade in the shadows, would, in his opinion, be a disaster. Transcript 12/29, pp. 86-87.)

The setback and height variances requested by TCLP are consistent with planning for the Towson Town Center. Mr. Lopez and Mr. Bortz both indicated that the Director of the Baltimore County Office of Planning and Zoning had reviewed and approved the Towson Commons plans, including the proposed setbacks. Transcript 12/29, p. 26; Transcript 1/4, p. 49. Mr. Gavrelis read into the record Planning Staff comments, dated October 24, 1989, which approved the general massing and site layout of the Towson Commons buildings as consistent with the intent of plans being developed for the Town Center. Transcript 1/11 P.M., p. 131; Developer's Exhibit 17.

The final variance request relates to amenity open space. TCLP is proposing to provide 22,880 square feet of amenity open space in lieu of the required 39,943 square feet. At the outset, it is important to recognize that Towson Commons is

not alone among downtown Towson projects in needing a variance from the demanding requirements of the BCZR on this point. Leslie Graef, a former Director of Planning for the County and presently Executive Director of the Towson Development Corporation, testified that most of the major projects in Towson have sought and received amenity open space variances. According to Mr. Graef, the current amenity open space requirements were developed 20 years ago for the entire County and are not appropriate at this time for Towson. Transcript 12/29, pp. 228-29. See also testimony of George Gavrelis, Transcript 1/11 A.M., p. 73 (to require strict compliance, when so many other variances have been granted throughout Towson, would be unnecessarily burdensome).

A major factor making it impossible for the Towson Commons project to provide a great deal of amenity open space is the concept of orienting the bulk of the retail space toward exterior streets. See testimony of Dean Lopez, Transcript 12/29, p. 26; testimony of Jon Bortz, Transcript 1/4, p. 61. According to Mr. Henderer, the project architect, internally-oriented retail (similar to an enclosed shopping mall) would have enabled the developer to provide more open space, but this would have conflicted with the development team's major commitment to generating pedestrian activity at the sidewalk level. Transcript 12/29, pp. 139-40.

Moreover, the development team is very proud of the quality of the amenity open space that is being proposed for

Towson Commons. Several of the witnesses pointed out that the proposed open space, centering on the three-story, glass-enclosed rotunda, will be year-round open space that can be enjoyed by members of the general public no matter what the weather. E.g., Dean Lopez - Transcript 12/29, p. 26; George Gavrelis, Transcript 1/11 A.M., pp. 72-73. As Mr. Henderer stated, "[w]e see the ... three story high rotunda space as tak[ing] on certain civic qualities. It will be a space ... residents of Towson will associate with and identify with .... [W]hen it comes to its ultimate fruition ...[,] it will be a space that all the residents of Towson will enjoy." Transcript 12/29, p. 139.

Further, there was testimony that the amenity open space provided is meaningful space and that Towson Commons avoided using generally unavailable space, such as roof areas, to meet the requirement. Mr. Gavrelis cited one neighboring building that had used roof space to comply technically with the amenity open space requirement. Transcript 1/11 A.M., p. 73.

Spirit and Intent of the Zoning Regulations

There was ample evidence that the design of the Towson Commons project satisfies the spirit and intent of the BCZR, despite the need for certain minor variances. Mr. Gavrelis, who was accepted as an expert in the field of land planning, gave his opinion that "this project is eminently in accord [with] the spirit and intent of the zoning regulations." Transcript 1/11 A.M., p. 74. He based this conclusion on the

fact that the project meets plans and expectations for the kind of development that should be located in a town center commercial core. Id. This view is shared by the County's Administration and Economic Development Commission, as Richard Story, the Director of Economic Development, affirmed. Transcript 1/4, p. 5. The same opinion is held by private development interests and retail merchants in Towson. Leslie Graef - Transcript 12/29, p. 227; Jack Finkelstein, Transcript 1/11 P.M., p. 137. See also testimony of Jon Bortz, Transcript 1/4, p. 3 ("We would describe these variances as minimal, because we believe that they fit within the general spirit of the zoning regulations and the Master Plan.")

Throughout the hearing, the Appellants asserted through cross-examination that the very granting of a variance from a prescribed standard is a violation of the spirit and intent of the zoning regulations. The Chairman appropriately pointed out on several occasions that the zoning regulations permit variances and that variances clearly can be granted within the spirit and intent of the BCZR. Transcript 1/11 A.M., p. 88.

The Public Health, Safety, and General Welfare

What has been said up to this point leaves little doubt that the variances requested here can be granted without substantial injury to the public health, safety, and general welfare. Mr. Gavrelis gave his expert opinion that there would be no adverse impact on the surrounding area or the immediate neighbors of the project if the requested variances

are granted. Transcript 1/11 A.M., p. 74. Likewise, Mr. Henderer felt that neither the height nor the setback variances would have an adverse impact; in fact, he saw "the Towson Commons project making a significant contribution to the quality of the downtown core in Towson." Transcript 12/29, pp. 131, 136-37. Mr. Henderer supported his opinion with several perspective drawings (Developer Exhibits 9-12), showing streetscapes along York Road and Pennsylvania and Chesapeake Avenues as they would appear if the Towson Commons project were built as proposed.

Wes Guckert, an expert traffic engineer, verified that the granting of the requested variances would have no impact whatsoever on the traffic that would be generated by the Towson Commons project. Transcript 12/29, pp. 218-19.

The Appellants' Case

Throughout five days of hearing, the Appellants concentrated on issues such as whether the area regulations in the BM-CT zone should be changed by the County Council, whether the proposed Towson Commons project is in accord with a draft "Towson Plan Update", a document as yet devoid of legal effect, and whether Towson Common fits in with Appellants' desire for a "small town" Towson. Although resolution of these issues may be of significant importance to Baltimore County, this Board is not the proper forum for debate, and clearly these issues are irrelevant to the variance case at hand.

The Appellants' expert testimony hinged on a proposed redesign of the Towson Commons project. Again, this testimony has no relevance to the variances being requested here. Clearly, the Appellants have no expertise in engineering that would enable them to consider subsurface conditions or other construction constraints, no facility with the requirements of the BCZR, no development expertise that would permit them to determine whether a scaled-back project is feasible, no experience with the development of theatres, and no marketing or retail sales expertise. It would be unfair and unreasonable to compare Appellants' "concepts" with TCLP's plans, which evolved over many months and received enormous input from both TCLP experts and all of the requisite County authorities.

Finally, the Appellants argued that the variances were requested to maximize profit and were based on "marketing" reasons. The record is replete with evidence that engineering constraints, site conditions, suitability of the theatre space, and other factors, in addition to certain marketing and retailing concepts, contributed to the practical difficulty TCLP would experience in meeting the area regulations of the BM-CT zone.

Conclusion

Based on the evidence produced by TCLP, evidence that was in no material respect countered by the Appellants here, there is no question of the proper outcome of this case; the Board

should grant the minor variances requested by the Owner/Developer, so that a project holding a tremendous potential for positive change within the Towson Town Center can move forward.

Throughout the hearing, the Appellants claimed that they were in favor of the Towson Commons project but felt compelled to object to the granting of the variances. When all is said and done, they provided not one shred of evidence that the variances were not appropriate or that a practical difficulty did not exist.

It is not often that County officials, the business community, and the majority of the general community are so enthusiastically supportive of a development project; TCLP is anxious to harness this enthusiasm -- and prepared to invest approximately $70 million dollars -- to assist community leaders in realizing their dreams for a thriving and revitalized downtown core. Were the requested variances not granted, both TCLP and Towson as a whole would suffer severe practical difficulty; indeed, a project labeled as "critical" to downtown Towson (Leslie Graef - Transcript 12/29, p. 227) and as "a magnet", "a catalyst for others", a "centerpiece" (Richard Story - Transcript 1/4, p. 6) would not come to fruition. On the other hand, if those variances are granted, the community stands to reap considerable financial and other benefits without sacrificing the spirit and intent of the

Baltimore County Zoning Regulations or experiencing adverse effects to public health, safety, or general welfare.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 1990, a copy of the foregoing Memorandum was mailed, first-class postage prepaid, to Rudolph E. DeMeo, Esquire, 3410 White Avenue, Baltimore, Maryland 21214, Attorney for Leroy Y. Haile Corporation, Inc., and Mark J. Adams, Esquire, 6020 Loch Raven Boulevard, Baltimore, Maryland 21239, Attorney for the Knollwood-Donnybrook Improvement Association.

Judith A. Arnold

MEMO0131.JAA

In Re: * BEFORE THE
PETITIONS FOR SPECIAL HEARING * BALTIMORE COUNTY
AND ZONING VARIANCE - W/S of * BOARD OF APPEALS ON
York Road between S/S of * APPEAL FROM THE
Pennsylvania Avenue and the * DEPUTY ZONING COMMISSIONER
N/S Chesapeake Avenue * OF BALTIMORE COUNTY
9th Election District * Case No. 90-130-SPHA
4th Councilmanic District *
Towson Commons Ltd. Part., *
Petitioner *

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

MEMORANDUM OF LAW OF PROTESTANT LEROY Y. HAILE, INC.

Protestant, Leroy Y. Haile, Inc., by its attorneys, Rudolph E. DeMeo and Mignini, Raab & Lidinsky, pursuant to Rule 4.b. of the Rules of Practice and Procedure of the Baltimore County Board of Appeals, respectfully presents this Memorandum of Law.

STATEMENT OF THE CASE

Protestant, Leroy Y. Haile, Inc. ("the Haile Corporation"), is engaged in the business of real estate and has its principal office and place of business at 5 W. Chesapeake Avenue, Towson, Maryland 21204. Petitioner, Towson Commons Limited Partnership, is the successor in interest to Towson Commons Joint Venture ("TCJV") and is the present devaloper of the Towson Commons project in the 400 block on the West side of York Road in Towson, Baltimore County, Maryland. Petitioner had requested a special hearing to approve a modified parking plan and had requested certain variances from certain of the height and area requirements of the Baltimore County Zoning Regulations ("BCZR"). On November 14, 1989, Deputy

Zoning Commissioner Ann M. Nastarowicz issued Findings of Fact and Conclusions of Law ("Zoning Commissioner's Decision"), granted certain of the requested variances, subject to certain restrictions set forth as conditions precedent to the relief granted, and dismissed the Petition for Special Hearing.

On December 13, 1989, the Haile Corporation appealed the Zoning Commissioner's Decision with respect to the granting of the variances. On that same date, Protestants Knollwood-Donnybrook Improvement Association, Inc. ("K-D Association"), Northeast Towson Improvement Association, Inc., ("N-E Towson Association"), and Baltimore County ACCORD ("Accord"), and the Petitioner also appealed the Zoning Commissioner's Decision. Prior to the commencement of the appeals hearing, N-E Towson Association and ACCORD withdrew their appeals. On December 29, 1989, and on January 4, 11, 19 and 26, 1990, a hearing was held in this case before the Board of Appeals.

STATEMENT OF FACTS AND EXPERT OPINION EVIDENCE

I. Petitioner, the Baltimore County Government, and the Haile Corporation Support a Towson Commons Multi-Use Project.

A Towson Commons multi-use project is enthusiastically supported by the Petitioner, by the Baltimore County government, and by the Haile Corporation. Such a project will be the cornerstone of the planned revitalization of the Towson commercial, town-center core district ("C.T. District"). Such a project will be successful and will result in economic, aesthetic, and other benefits to the C.T. District and to the surrounding residential communities, if the project is properly planned to fit into the

C.T. District and to comply with the zoning requirements of the BCZR for the C.T. District (Transcript ("T."), First Day ("1st"), 137; Second Day ("2nd"), 5-7, 17; Haile Corporation Exhibit ("Exh.") 19, pp.1-2, 7-9, 14-15, 61-62, 72-73, 82-83, 103-104).

II. The Variances Requested.

Petitioner requests four (4) variances from the requirements of the BCZR: (1) from Section 235.1 to permit a front yard setback of zero (0) feet along Pennsylvania Avenue in lieu of the required fifteen (15) feet; (2) from Section 235.2 to permit a side yard setback of four (4) feet along York Road in lieu of the required ten (10) feet; (3) from Section 235B.4 to permit 22,880 square feet of amenity open space ("A.O.S.") in lieu of the required 30,943 square feet; and (4) from Sections 231.d and 235B.5 to permit 125 feet of the building to project 30 feet above and 8 feet beyond a plane sloping inward and upward at a 1 to 7.5 slope.

III. The Towson Commons Project.

Petitioner proposes to construct a multi-use structure in the 400 block on the West side of York Road with an adjusted gross floor area of 402,085 square feet. The project will have 5 uses; (1) 8-plex (8 auditoriums) cinema, (2) street-oriented and other retail, (3) food court, (4) restaurants, and (5) Class A office. The project's street-oriented retail stores will be 2-stories along the South side of Pennsylvania Avenue, and 1 and 2 stories along the West side of York Road across from 1 and 2 story retail stores on the East side of York Road (T., 1st, 81-83, 105). The project's 8-story office tower will be placed above the 2 stories of retail stores along the South side of Pennsylvania Avenue across from the

6-story Loyola Federal office building on the North side of Pennsylvania Avenue (T., 1st, 143). The project's food court, restaurants, and other retail stores will be internalized. (T., 1st, 23-24). The project will have a 3-story rotunda structure at the Southwest corner of Pennsylvania Avenue and York Road (T., 1st, 139). The project also will have a 4-story, windowless, rectangular building housing the 8-plex cinema use, placed above the 1 and 2 stories of street-oriented retail stores along the West side of the 400 block of York Road. (T., 1st, 142-143, 183; Petitioner (Pet.) Exh. 3, 4, and 5).

The project provides a sidewalk approximately 20 feet wide at the point of adjacency with the 17 West Pennsylvania building, and that sidewalk width increases to 22 or 23 feet as one approaches the corner of Pennsylvania Avenue and York Road. The width of the sidewalk along York Road is 19 feet to the face of the building column and 20 feet to the face of the retail store fronts. On Chesapeake Avenue, the sidewalk width is 20 feet. If Petitioner complied with the 15 foot setback requirement for Pennsylvania Avenue and the 10 foot setback requirement for York Road, the sidewalk widths would be 35 to 37 or 38 feet along Pennsylvania Avenue, 26 feet to the face of the retail store fronts along York Road, and 25 feet to the face of the building column along York Road. (T., 1st, 61-63).

IV. The Determination of the Scale of the Project

The scale of the project was a program the determination of which was based upon a certain economic return ("ER"). That ER dictates the minimum scale of the project. Every effort is made

by Petitioner to achieve the minimum scale of the project within the parameters of the BCZR. To the extent that the minimum scale cannot be achieved in compliance with the BCZR, it gives rise to the need for variances. (T., 1st, 56).

The ER is directly related to the use of the project and the types of space that are provided in the project. For example, when Petitioner's witness, Dean Lopez, Vice President of LaSalle Partners Limited ("LaSalle"), referred to the psychology of retail, he stated that the success and the ER of that retail is directly attributable or related to the arrangement of the retail space. Nevertheless, Mr. Lopez admitted that "[i]t's almost impossible to assign a value, to say from your experience and from the experience and expertise of our leasing consultants a greater setback, for example, would render the retail less desirable and more likely to fail." (T., 1st, 56-57). Mr. Lopez also admitted that, to his knowledge, no one in his organization did an analysis to determine whether building this project with the same uses on a smaller scale, for example, four cinemas instead of eight cinemas, would cause greater difficulty in securing for his organization a reasonable and economic return. (T., 1st, 58).

Petitioner's witness Baltimore County Director of Economic Development R. Story testified that, if a project like Towson Commons shrinks to a certain critical mass, it's no longer economically feasible to extract the rent from the tenants in office and retail. He added that he did not know where you reach the point of no return, if you put a smaller building on the site. He admitted that the practical difficulty for the Petitioner could

be economic. (T., 2nd, 39). Mr. Story's testimony hits the target of Petitioner's alleged practical difficulty or hardship- economics and the desire for the greatest posible investment return- and shows the significance of: (1) Petitioner's witness D. Lopez' not being permitted to answer the question: Do you have the numbers for the projected profit for the first ten years from the project with the requested variances? (2) D. Lopez' admitting that he did not have the numbers for the cost of completion of the project in compliance with the zoning regulations; and (3) Petitioner's failure to produce the existing analysis of where Petitioner had to draw the line on reasonable return for the project. (T., 1st, 52-54). LaSalle's Senior Vice President J. Bortz testified that Petitioner projects sales from the project to be in the range of $30 to $35 million per year from the restaurant, fast food, retailers, and theater complex (T., 2nd, 68). Clearly, Petitioner knows the projected profits of its project both with compliance with the zoning requirements and without such compliance.

J. Bortz also testified that the reason why the office building part of the project could not be reduced was that Class A office space must have the floor areas planned by Petitioner of 23,000 square feet or more in order to attract larger tenants to the project. Mr. Bortz testified that Petitioner told its architects and planners that it wanted the largest office floor plate possible to attract Class A office tenants, that Court Towers is the only Towson building with Class A office space of 18,000 to 19,000 square feet per floor, and that Towson Commons' office tower plans approximately 22,900 square feet for each of the upper seven

floors, and a smaller amount for the lowest office floor. He testified that the office building could not be moved back from Pennsylvania Avenue, because it would reduce the desired office floor area and affect the core of the building, but he had no knowledge of the physical factors regarding the core of the building. (T., 2nd, 92-93, 161, 163, 3rd, a.m., 9-10, 15-17).

In addition, Mr. Bortz testified that the street-oriented retail stores along Pennsylvania Avenue and York Road needed 120 feet to 140 feet depth to be leasable, that for the food court tenants there is a minimum requirement for leasable area that varies from tenant to tenant, and that compliance with the setback requirements would eliminate the viability and leasability of said retailers. (T., 2d. 52-54, 149-156, 3rd, a.m., 19-21).

Mr. Bortz also testified that if Petitioner reduced the theater requirements at all, that would cause General Cinema to terminate the lease, and that, in turn, would eliminate the feasibility of the project. However, Mr. Bortz admitted that another theater operator, America Multi-Cinema Movie Screens, is interested in the project, but that he has not followed up with that operator, because he does not want to offend General Cinema, Petitioner's preferred theater tenant. (T., 2nd, 51, 109, 137-141).

He testified that no one has costed out whether it makes sense for Petitioner to stay in the project without the variances or to leave the project if it does not get the variances, because Petitioner has every expectation of getting the variances and proceeding with the project. (T., 2nd, 118-119).

Mrs. Barbara Zenker, Director of Real Estate for General Cinema Corp. of Maryland, Inc., ("General Cinema"), articulated the determination of the scale of her company's part of the project. She listed the factors for determining the economic viability of the 8-plex theater planned for the Towson Commons project: meeting General Cinema's standards of excellence, seating capacity, number of and dimensions of auditoriums, the screens surrounding the area, market factors, including competitive market and whether the market is economically viable, the grosses, the film distribution, psychological factors, expertise factors, competitive factors, experience, the physical theater building shell, economics, and what we plan to get. (T., 5th, 84-88, 107-108).

Mrs. Zenker admitted that there is no relevant precise mathematical formula for determining the economic viability of the theaters in any project. (T., 5th, 90). Mrs. Zenker was not permitted to answer the questions: (1) Have you made any projections on this seating capacity and the profits you determine from the size of your lobby and concession stand? and (2) Have you made any economic projections on profits from down-sizing seating capacity by 100 seats and what that will do to throw, with changing the throw and affecting profits? (T., 5th, 92-93).

V. Factors Used by Petitioner to Determine Requested Variances.

According to D. Lopez, L. Jackson, Petitioner's retail development expert, R. Henderer, its architectural expert, and G. Gavrelis, its planning expert, the requested setback variances for Pennsylvania Avenue and York Road were determined by the use of the following factors: (1) the psychology of successful street-oriented

retail, the viability of which is increased by narrower sidewalks which bring pedestrian shoppers and passing motorists into intimate and visual awareness of and access to the retail stores at street level (T., 1st, 36-39, 64-66, 84-87, 91-93, 114-115); (2) the attempt to achieve harmony with the current 1 and 2-story retail stores along Pennsylvania Avenue, York Road, and Chesapeake Avenue (T., 1st, 81-83, 105, 171-172); (3) the attempt to create a consistent architectural expression and a continuous retail environment and retail shop frontage in which (a) both the theater building and the office building are co-plainer with the retail stores underneath and with Talbot's on Pennsylvania Avenue and (b) there is a consistent profile to the cornice line along both York Road and Pennsylvania Avenue, and thereby to preclude the situation in which the Pennsylvania Avenue street-oriented retail stores and office building are set back farther than the York Road street-oriented retail stores and theater building are set back (T., 1st, 165-167, 174-175, 3rd, a.m., 65-66); (4) the Petitioner could not set back the theater building farther back from York Road because then the tenant, General Cinema, could not fit the theaters into the building, assuming that moving the theater building farther West requires taking space out of the movie theater building (T., 1st, 167-168). The theater building physically could be moved West; and architect Henderer was not sure of the calculation of how many theaters would be lost out of the 8, if the theater building were moved West. However, he testified that he was told that Petitioner would lose the lease with the movie theater operator, if even one more theater is lost. Architect Henderer testified that

the office building could be moved back from Pennsylvania Avenue without having to reduce the scale of the office building. (T., 1st, 169-170; 201-205); and (5) the Petitioner could not comply with the setback requirements, because such compliance would reduce the leasable Class A office floor area and affect the core of the office building, (T., 2nd, 51-109, 137-141), and such compliance would reduce the leasable street-oriented retail and food court retail space. (T., 2nd, 52-54, 149-156, 3rd, a.m., 19-21).

Petitioner's A.C.S. variance request was determined based on the professional determination of Petitioner's architects that the A.O.S. square footage designed by those architects was appropriate for the project. As stated by architect Henderer, the A.O.S. square footage for the project was not designed to meet the BCZR A.O.S. requirement. (T., 1st, 191-192).

VI. Hailе Corporation' Witnesses Testimony.

The testimony of the Haile Corporation's lay witnesses, its president L. Haile, and Baltimore County citizens and Towson residents, D. Carliner, R. Cullison, J. DuVall, J. Latrobe, M. Miller, and T. Phelps, presented testimony establishing the following points. These points were not rebutted by any of the Petitioner's witnesses. First, Towson is, and has been historically, an excellent community environment in which to live and to raise a family. Second, people have been drawn to live in Towson's neighborhoods based on its reputation for a good family-oriented environment, quiet and safe streets, excellent health care facilities, highly rated schools, and fine institutions of higher learning: Goucher College and Towson State University. Third,

people living in Towson expect the BCZR requirements to be applied to preserve the fine Towson environment according to appropriate geographic scale, consistent with the various distinctions between districts, including the C.T. District, and with the goal of encouraging well-planned, good development that fits in with, does not have a detrimental effect upon, and benefits both the C.T. District and the surrounding residential neighborhoods. Fourth, if the requested setback and A.O.S. variances are granted in this case, Towson will be a less desirable place in which to live, Towson's residents may consider the resulting over-development to be a significant reason for moving from Towson, and persons living outside Towson may consider said over-development to be a significant reason for not moving to Towson. (T., 4th, 16-229, 5th, 231-267).

Haile Corporation's expert witnesses' testimony will be presented at the appropriate points in the Argument section of this Memorandum of Law.

Questions Presented

1. Whether the variance of a 0 foot setback requested from the BCZR Section 235.1 front yard setback requirement of 15 feet along Pennsylvania Avenue must be denied, because Petitioner has not met its burden of proof to establish the elements required by BCZR Section 307.1?

2. Whether the variance of a 4 foot setback requested from the BCZR Section 235.2 side yard setback requirement of 10 feet along York Road must be denied, because Petitioner has not met its burden of proof to establish the elements required by BCZR Section

increased allegedly by narrower sidewalks which bring pedestrian shoppers and passing motorists into intimate and visual awareness of and access to the retail stores at street level (T., 1st, 36-39, 64-66, 84-87, 91-93, 114-115). The second factor is the attempt to achieve harmony with the current 1 and 2-story retail stores along Pennsylvania Avenue, York Road, and Chesapeake Avenue (T., 1st, 81-83, 105, 171-172). The third factor is the attempt to create a consistent architectural expression and a continuous retail environment and retail shop frontage in which (a) both the theater building and the office building are co-planer with the retail stores underneath and with Talbot's on Pennsylvania Avenue and (b) there is a consistent profile to the cornice line along both York Road and Pennsylvania Avenue, and thereby to preclude the situation in which the Pennsylvania Avenue street-oriented retail stores and office building are set back farther than the York Road street-oriented retail stores and theater building are set back (T., 1st, 165-167, 174-175, 3rd, a.m., 65-66).

The fourth factor used by Appellee to determine the requested setback variances is the assertion that the theater building could not be set back farther from York Road because then the tenant, General Cinema, could not fit the theaters into the building, assuming that moving the theater building farther West requires taking space out of the movie theater building (T., 1st, 167-168). The theater building physically could be moved West; and Mr. Henderer, Appellee's architect, was not sure of the calculation of how many theaters would be lost out of the 8, if the theater building were moved West. However, he testified that he was told

that Appellee would lose the lease with the movie theater operator, if even one more theater is lost. Architect Henderer testified that the office building could be moved back from Pennsylvania Avenue without having to reduce the scale of the office building. (T., 1st, 169-170; 201-205). The fifth factor is that compliance with the setback requirements would reduce the leasable Class A office floor area and affect the core of the office building, (T., 2nd, 51-109, 137-141), and such compliance would reduce the leasable street-oriented retail and food court retail space. (T., 2nd, 52-54, 149-156, 3rd, a.m., 19-21).

Appellee based its A.O.S. variance request on the professional determination of Appellee's architects that the A.O.S. square footage designed by those architects was appropriate for the project. As stated by Appellee's architect Henderer, the A.O.S. square footage for the project was not designed to meet the B.C.Z.R. A.O.S. requirement. (T., 1st, 191-192). As stated by Mr. Henderer and by Appellee's planner Mr. Gavrelis, the A.O.S. provided in the project is meaningful and accessible by the public. (T.1st, 139; T.3rd, a.m., 71-73, 81-82, 86-87). However, Appellee did not present any evidence why it could not provide the 100% A.O.S. required by the B.C.Z.R.

V. Appellant's Witnesses' Testimony.

Appellant's expert witnesses' testimony before the Board focused on the Appellee's alleged bases for its requested variances and the Appellee's attempts to establish through Appellee's expert witnesses the elements of the "practical difficulty" standard and the elements of the "unreasonable hardship" standard. These two

standards have been developed by the Maryland Court of Appeals and by the Maryland Court of Special Appeals and have been applied to the determination of zoning variance issues by the Maryland Courts. These two standards were utilized interchangeably by Appellee's expert witnesses during the Board hearing. The Board, in its Opinion and Order, utilized the "practical difficulty" standard upon which to base the granting of the three subject variances.

Appellant presented two expert witnesses before the Board: Mr. George Holback, Architect, and Mr. Arthur Kutcher, Urban Planner and Urban Designer. Appellee did not present any expert witnesses or any witnesses in rebuttal of the expert testimony and documentary evidence presented by Mr. Holback and by Mr. Kutcher. Appellant will discuss the expert witness testimony of Mr. Holback and Mr. Kutcher at appropriate points in the Argument Section of this Memorandum of Law in order to demonstrate that the Board's findings, conclusions and Order with respect to the Pennsylvania Avenue setback variance, the York Road setback variance, and the A.O.S. variance, are not supported by sufficient facts on the record so that a reasonable mind, based upon the facts proven, reasonably could have reached the same factual conclusions that the Board reached. Based on Mr. Holback's and Mr. Kutcher's expert testimony and documentary evidence in the record, and based on the application of the applicable principles of Maryland zoning law to their expert testimony and documentary evidence and to the testimony and documentary evidence presented by Appellee's expert witnesses, it is clear that the material issues before the Board with respect to the three subject variances were not fairly

debatable, because the determination of the material issues did not involve testimony and documentary evidence from which a reasonable person could come to different conclusions.

The testimony of the Appellant's lay witnesses, its president L. Haile, and Baltimore County citizens and Towson residents, D. Carliner, R. Cullison, J. DuVall, J. Latrobe, M. Miller, R. Parsons, and T. Phelps, presented testimony establishing the following points. These points were not rebutted by any of the Appellee's witnesses. First, Towson is, and has been historically, an excellent community environment in which to live and to raise a family. Second, people have been drawn to live in Towson's neighborhoods based on its reputation for a good family-oriented environment, quiet and safe streets, excellent health care facilities, highly rated schools, and fine institutions of higher learning: Goucher College and Towson State University. Third, people living in Towson expect the B.C.Z.R. requirements to be applied to preserve the fine Towson environment according to appropriate geographic scale, consistent with the various distinctions between districts, including the C.T. District, and with the goal of encouraging well-planned, good development that fits in with, does not have a detrimental effect upon, and benefits both the C.T. District and the surrounding residential neighborhoods. Fourth, if the requested setback and A.O.S. variances are granted in this case, Towson will be a less desirable place in which to live, Towson's residents may consider the resulting over-development to be a significant reason for moving from Towson, and persons living outside Towson may consider said

over-development to be a significant reason for not moving to Towson. (T., 4th, 16-229, 5th, 231-267).

ISSUES RAISED ON APPEAL

1. Whether the Board's Order must be reversed on review, for the Board's factual findings, legal conclusions, and Order with respect to the Pennsylvania Avenue setback variance, the York Road setback variance, and the amenity open space variance are premised upon errors of law?

2. Whether the Board's Order must be reversed on review for arbitrariness or capriciousness, for the material issues before the Board with respect to the Pennsylvania Avenue setback variance, the York Road setback variance, and the amenity open space variance were not fairly debatable, and the record does not contain substantial evidence supporting the Board's factual findings, legal conclusions and Order?

Summary of Argument

The analysis that applies the legislated zoning requirements of the B.C.Z.R. in light of the well established standards and principles of Maryland zoning law and in light of the spirit and intent of the B.C.Z.R. must be adopted by this Court. Based on the law and the evidence in the record, clearly the Board's granting of the setback variances along Pennsylvania Avenue and along York Road and its granting of the amenity open space variance must be reversed and the requests for those variances must be denied.

The Board, in its Opinion and Order, made fundamental errors of Maryland zoning law that necessitate that this Court reverse the Board's granting of the subject three variances. The Board

misapplied the well established "practical difficulty" standard of Maryland zoning law to record evidence. The record demonstrates that the material variance issues before the Board were not fairly debatable, and the record does not contain substantial evidence supporting the Board's factual findings, legal conclusions and Order. Therefore, the Board's conclusions and Order are arbitrary and capricious and constitute a denial of due process of law.

The benefits of the Towson Commons project to Towson and to Baltimore County can be achieved without granting the three variances at issue. In the long term, the benefits to Towson and to the County of a Towson Commons project that fully complies with the setback requirements along Pennsylvania Avenue and along York Road and with the amenity open space requirement will be evident. The Towson Commons project then will fit functionally and appropriately within the framework legislated in the B.C.Z.R. for the C.T. District and will constitute a strong example for other projects that can bring economic benefits and at the same time fully comply with the B.C.Z.R. zoning requirements.

Argument

I. The Board's Order Must Be Reversed on Review, for the Board's Factual Findings, Legal Conclusions, and Order with Respect to the Pennsylvania Avenue Setback Variance, the York Road Setback Variance, and the Amenity Open Space Variance are Premised Upon Errors of Law.

A. The Standard for Review of the Board's Opinion and Order.

The standard for review is well established that an order of an administrative agency, such as the Board, must be upheld on review, if it is not premised upon an error of law and if the agency's conclusions " 'reasonably may be based upon the facts

proven' ". AD + SOIL, INC. v. County Comm'rs, 307 Md. 307, 338, 513 A.2d 893, 909 (1986); Green v. Bair, 77 Md.App. 144, 549 A.2d 762, 764-766 (1988), cert. denied, 315 Md. 307, 554 A.2d 393 (1989). The first requirement of this standard supports reversal of the agency order, if it is premised upon an error of law. The second requirement of this standard supports reversal of an administrative decision for arbitrariness or capriciousness. Mayor & Aldermen, Etc. v. Annapolis Waterfront, 284 Md. 383, 396 A.2d 1080, 1087 (1979).

When reviewing an administrative decision for arbitrariness or capriciousness, a court must first determine whether the material question before the agency was fairly debatable, i.e., whether the determination of the material issues involved testimony and documentary evidence from which a reasonable person could come to different conclusions. Annapolis Waterfront, supra, 396 A.2d at 1087-1088. Where, as in this case, the scope of review is not specified by statute, a corollary element in judicial review of administrative decisions for arbitrariness is a determination whether the findings of the Board were supported by substantial evidence, i.e., whether the Board's factual findings, legal conclusions, and Order are supported by sufficient facts on the record so that a reasonable mind, based upon the facts proven, reasonably could have reached the same factual conclusions that the Board reached. Annapolis Waterfront, supra, 396 A.2d at 1087-1089.

B. The Elements of B.C.Z.R. Section 307.1.

B.C.Z.R. Section 307.1 provides the following three (3) elements that must be established before the Board of Appeals may

grant a variance from the area regulations of the B.C.Z.R.: (1) strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship; and (2) the requested variance shall be granted only if in strict harmony with the spirit and intent of said height, area [including setback and amenity open space requirements], offstreet parking, or sign regulations; and (3) the requested variance shall be granted only in such manner as to grant relief without substantial injury to public health, safety, and general welfare.

With respect to the first element of Section 307.1, the Court of Appeals, in Loyola Federal Savings & Loan Ass'n v. Buschman, 227 Md. 243, 176 A.2d 355, 359 (1961), construed "practical difficulty or unreasonable hardship" of B.C.Z.R. Section 307, the predecessor to Section 307.1, in the disjunctive and ruled that height and area variances could be based on either "practical difficulty" or "unreasonable hardship". In McLean v. Soley, 270 Md. 208, 310 A.2d, 783, 787 (1973), the Court of Appeals adopted the following criteria for determining whether "practical difficulty" has been established:

> 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome ... [; and]
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners ... [; and]
> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. (Quotations omitted.) (Emphasis supplied.)

307.1?

3. Whether the variance of 22,880 square feet of A.O.S. requested from the BCZR Section 235B.4 A.O.S. requirement of 39,943 square feet must be denied, because Petitioner has not met its burden of proof to establish the elements required by BCZR Section 307.1?

Argument:

I. Petitioner has not Met its Burden of Proof to Establish the Elements Required by BCZR Section 307.1 for Petitioner's Requested Variances from the Front Yard Setback Requirement of 15 Feet along P. avilvania Avenue and from the Side Yard Setback Requirement of 10 Feet along York Road.

A. The Elements of BCZR Section 307.1.

BCZR Section 307.1 provides the following three (3) elements that must be established before the Board of Appeals may grant a variance from the area regulations of the BCZR: (1) strict compliance with the BCZR would result in practical difficulty or unreasonable hardship; and (2) the requested variance shall be granted only if in strict harmony with the spirit and intent of said area regulations; and (3) the requested variance shall be granted only in such manner as to grant relief without substantial injury to public health, safety, and general welfare.

With respect to the first element of Section 307.1, the Court of Appeals, in Loyola Federal Savings & Loan Ass'n v. Buschman, 227 Md. 243, 176 A.2d 355, 359 (1961), construed "practical difficulty or unreasonable hardship" of BCZR Section 307, the predecessor to Section 307.1, in the disjunctive and ruled that height and area variances could be based on either "practical difficulty" or "unreasonable hardship". In McLean v. Soley, 270 Md. 208, 310

A.2d, 783, 787 (1973) the Court of Appeals adopted the following criteria for determining whether "practical difficulty" has been established:

> 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome ... [; and]
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners ... [; and]
> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. (Quotations omitted.) (Emphasis supplied.)

The following three (3) criteria for "unreasonable or undue hardship" were set forth by the Court of Special Appeals in Anderson v. Board of App., Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220, 226 (1974):

> 1) If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property... mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance ... [; and]
> 2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district ... [; and]
> 3) The hardship was not the result of the applicant's own actions. (Citations omitted.) (Emphasis supplied.)

The Court of Special Appeals, in Anderson, relied upon the Court of Appeals' decision in Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810, 814 (1965), in which the Court held that a self-inflicted hardship, as was evident in that case, cannot be the basis for a variance. The Court, in Bounds, adopted the following general rule from 2 Rathkopf, The Law of Zoning and Planning, 48-1:

> [Section]... 1. Hardship Caused by Affirmative Acts of Commission.
> Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions of the zoning ordinance, hardship arises which is capable of being relieved through the grant of a variance. The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i.e., that the hardship be caused solely through the manner of operation of the ordinance upon the particular property, is lacking. In such case, a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor will be regarded as having been self-created, barring relief. (Quotations omitted.)

B. Petitione, Has Not Established Each of the Three Criteria for Practical Difficulty and Has Not Established Each of the Three Criteria for Unreasonable or Undue Hardship and Has Not Met its Burden of Proof to Establish the Elements Required by BCZR Section 307.1 for Petitioner's Requested Setback Variances.

The first factor, i.e., the psychology of successful street-oriented retail, used by the Petitioner to determine the requested setback variances, does not relate to the survival of the street oriented retail use but relates only to the probability of increased profitability of the street-oriented retail use. As stated by D. Lopez, the "retail alone, I cannot say would survive without the interplay of the other functions", i.e., the office, the restaurant, the mix of the retail, and the cinemas. (T., 1st, 72, 111-112, 2nd, 64-66). In short, the interplay between the multiple uses of the project makes the project survive, because the uses are complimentary and not competitive. The Petitioner's first factor simply increases its chance to achieve its desired ER.

In addition, Haile Corporation urban planner and urban designer A. Kutcher responded to Petitioner's argument that the setback variances requested should be granted because the psychology of successful street-oriented retail requires narrow sidewalks. Mr. Kutcher presented his opinion, unrebutted by Petitioner's witnesses, that the psychology of shopping should, first, require keeping the shoppers off a narrow sidewalk in a shopping street like York Road which has a lot of noise due to its slope and volume of traffic, and, second, can be implemented by having pedestrians near the shop windows and having a wide sidewalk with generous landscape buffering of one kind or another. He pointed out that there is no reason why, with a 25 foot sidewalk, one cannot devote 12 or 8 feet to plantings and still have pedestrians move near the shop windows, that these two circumstances are not contradictory, and that, therefore, there is no practical difficulty for the Petitioner. (T., 5th, 309-312).

The second and third factors used by Petitioner to determine the requested setback variances are factors of aesthetic and architectural taste and preference, which at best support the first factor. Neither of the Petitioner's 5 factors arises from any particular characteristic or quality or unique circumstance of the physical site of the project. On the contrary, each of these 5 factors has been consciously selected by Petitioner for application to the project's development in an effort to increase Petitioner's chance to achieve its desired ER.

The fourth factor used by Petitioner to determine the requested setback variances has two prongs. The first prong is the

assertion, unsupported by any opinion evidence from a professional architect or other professional that Petitioner could not set back the theater building farther back from York Road, because then the tenant General Cinema could not fit the theaters into the building. That assertion assumes that moving the theater building farther West requires taking space out of the movie theater building. Architect Henderer admitted that the theater building physically could be moved West. General Cinema's Mrs. Zenker testified that for the former 10-plex approximately 2,600 seat theater, the square footage of leasable floor area was 40,000 to 45,000 and that for the present 8-plex approximately 2,272 seat theater, the square footage of leasable floor area is approximately 42,218 as agreed between General Cinema and Petitioner. The number of seats and the square footage of leasable theater space never have been exact but always have been approximations to allow flexibility for the developer, the landlord, and the tenant operator. (T., 5th, 46-48). Mrs. Zenker admitted that she does not know how many seats would be lost, if the 10 foot setback along York Road were observed. (T., 5th, 103-104, 122-123). Mrs. Zenker did not testify that General Cinema ever pulled out of a project due to insufficient seating capacity, concession or lobby space. The key factor, according to her testimony, is the market. The one project General Cinema left was in Houston, and the market there was depressed. Towson is a terrific market, in her words, and all General Cinema's theaters in Baltimore are doing very well. (T., 5th, 33-37, 53-55).

Haile Corporation architect G. Holback presented unrebutted expert opinion evidence in the form of testimony and documents,

including drawings. His expert opinion evidence established that the theater building can be set back in compliance with the 10 foot setback requirement along York Road and that the theater auditoriums can be reconfigured to retain 8 auditoriums in the theater building with the insubstantial loss of 50 seats out of a desired total of 2,272 seats. (T., 5th, 179-211; Haile Corporation Exh. 28A through 28L, and 29 through 34; K-D Association Exh. 2; Pet. Exh. 3, 6, 14, 15, 22, 23).

The second prong of Petitioner's fourth factor is that the tenant General Cinema requires that the 8 theater auditoriums designed by its architects not be modified in any way or it will pull out of the project. General Cinema's position that it has such absolute discretion is set forth in Article IV, Section 1. of the lease between it and Petitioner. (Haile Corporation Exh. 21, p. 9; Pet. Exh. 25). General Cinema's Mrs. Zenker testified that, if the theater building were compressed at all, General Cinema would not go ahead with the project. (T., 5th, 21-22).

Petitioner's second prong of its fourth factor must be rejected as a matter of Maryland Law. In the Bounds case, the only evidence before the Board regarding hardship or injustice, the elements of the ordinance in that case, was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done by applicants for the variance could not be undone without financial hardship to applicants. The Court of Appeals reasoned that the construction of the fourth apartment and the resultant hardship could have been avoided if the

applicants had used proper diligence in ascertaining what the density requirements were for a four apartment dwelling with the property's district and then made accurate measurements to see if this particular property met the square footage requirements. The Court held that the hardship was entirely self-created and that the Board properly refused to allow it to be used as a fulcrum to lift, by way of a variance, the valid zoning limitations.

In addition, the Court in Bounds pointed out: 1) that the hardship was also shown to be of a purely financial nature, i.e., that the applicants' return on their investment would be somewhat lower if the fourth apartment should remain unoccupied; and 2) that the applicants did not make any attempt to show that further structural changes could not reasonably made so that all the space in the house could be utilized in 3 apartment units, or that if the fourth apartment remained vacant the return on their investment would be other than reasonable. The Court ruled that, under such circumstances, the Board would have been correct in denying them the requested variance even if the hardship upon which it was based had not been self-inflicted.

In Ad + Soil, Inc., v. County Comm'rs, 307 Md. 307, 338-341, 513 A.2d 893, 909-910 (1986), the Court of Appeals affirmed the Board of Appeals' refusal to grant variances from setback requirements. The Court affirmed the Board's conclusion that the applicant's "hardship" was self-inflicted and, in any event, that the alleged "hardship" was not the result of exceptional or extraordinary characteristics of the land itself and therefore not the kind of hardship cognizable under the zoning ordinance. The

essence of the applicant's argument in that case was that the setback requirements would cause applicant an unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of the local setback requirements.

The principles invoked by the Court of Appeals in Bounds and in Ad & Soil, Inc. must be applied in the instant case to reject the Petitioner's second prong of its fourth factor. The third criteria of the undue or unreasonable hardship standard also supports such rejection. When Petitioner entered into the February 23, 1989 Assignment Agreement and thereby accepted the assignment of the May 23, 1988 Lease between its predecessor KCJV and General Cinema, Petitioner gave General Cinema the absolute discretion to control all the design elements involving the theaters. (Pet. Exh. 25; Haile Corporation Exh. 21, p. 9). Like the applicants in Bounds and in Ad + Soil, Inc., Petitioner knowingly inflicted upon itself the hardship or practical difficulty of not being able to fit the General Cinema theaters into a theater building that would be in compliance with the BCZR setback requirements.

The Petitioner's fifth factor is a factor of economic preference for the largest leasable spaces possible to attract the best Class A office tenants and retail tenants. Indeed, close examination of each of the 5 factors used by Petitioner to determine the requested variances shows that not one of the 5 factors was the result of any particular, exceptional, or extraordinary characteristic or quality or unique circumstance of the land itself and, therefore, not the kind of practical

difficulty cognizable under the first criteria of the practical difficulty standard and not the kind of undue or unreasonable hardship cognizable under the second criteria of the undue or unreasonable hardship standard. Ad + Soil, Inc., supra, 513 A.2d at 910. The facts of the instant case, accordingly, are: (1) distinguishable from the facts in Loyola Federal, supra, 176 A.2d at 359, wherein the developer was forced by the land's subterranean water condition to seek the subject variance; and (2) distinguishable from the facts in McLean v. Soley, supra, 310 A.2d at 787, wherein the developer's variance request was based on the preservation of trees and the resulting benefits to the general public. Like the facts in Anderson, supra, 322 A.2d at 228, the facts in the case before us show that the only practical difficulty or hardship allegedly suffered by Petitioner is "loss of profit" which fails to meet the Petitioner's burden.

Haile Corporation's expert urban planner and urban designer A. Kutcher presented opinion testimony, unrebutted by Petitioner's witnesses, that Petitioner's variance requests should have been presented in a form or manner that is quantifiable and based on well-established or demonstrable fact. He also testified that the variance requests should be examined by looking at the relation of the project to its neighbors and to promote continuity and avoid rapid, violent change of scale which totally transforms an area from one thing to another in a short period of time. (T., 5th, 290-292). He pointed out that the purposes of the setback requirements are to preserve light and air, safety, pleasantness and ease of pedestrian movement, and the public's option for future

road widening. (T., 5th, 294-296, 300-307).

Mr. Kutcher, in response to Petitioner's planner G. Gavrelis' opinion that the Towson Commons buildings should receive the setback variances so they can line up with Talbot's on Pennsylvania Avenue and with Wendy's and the Crease Restaurant on York Road, presented his opinion, unrebutted by Petitioner's witnesses, that where a building is of much larger scale and denser use -- the Towson Commons buildings - there's a very good argument for setting that building back, because it is a different animal that requires more room. There, accordingly, is no practical difficulty in setting back such buildings and not having them line up with the much smaller Talbot's, Wendy's and Crease Restaurant. (T., 5th, 307-309).

Furthermore, the Petitioner's requested setback variances would cause injustice to the other property owners of the surrounding office buildings. The unrebutted opinion evidence of Haile Corporation architect Holback is that the proposed compromise option, which sets back the office tower in compliance with the BCZR and has 2-stories of retail stores with a 0 setback along Pennsylvania Avenue, has a better relationship to the immediate neighborhood, instead of a ten-story office building hitting the ground right at the property line. (T., 5th, 184-185). Accordingly, the second criteria for "practical difficulty" set forth in McLean v. Soley, supra, calls for rejection of Petitioner's variance requested from the setback requirement along Pennsylvania Avenue, and requires this Board, at best, to order a variance in the form of architect Holback's compromise option

(Haile Corporation Exh. 28A, 28F, and 28G).

II. Petitioner Has Not Met Its Burden Of Proof To Establish The Elements Required By BCZR Section 307.1 For Petitioner's Requested Variance From The A.O.S. Requirement.

According to the opinions of Petitioner's architect R. Henderer and planner G. Gavrelis, the A.O.S. provided in the project is meaningful and accessible by the public. (T., 1st, 139; T., 3rd, 71-73, 81-82, 86-87). However, the project provides only 57% of the A.O.S. required by the regulations. Haile Corporation urban planner and urban designer Kutcher testified that the A.O.S. requirement is one of the most important controls to limit over-development and that a developer must present a demonstrable, quantifiable good cause, something based on documented or established fact to obtain a variance from the A.O.S. requirement. This expert opinion evidence was not rebutted by Petitioner's witnesses. (T., 5th, 296-299). The Petitioner has not presented any evidence why it could not provide the 100% A.O.S. required by the BCZR.

Mr. Kutcher also testified the 57% A.O.S. variance being sought by Petitioner is a massive variance, because it is inadequate and inappropriate based on the crowded nature and use of the site: over 2,000 seat capacity movie theatres, food courts, and office use. This opinion was not rebutted by any of Petitioner's witnesses. Mr. Kutcher also presented the opinion that if Petitioner could provide, without practical difficulty or hardship, only 22,000 square feet of amenity open space, then Petitioner should develop only 222,000 square feet of project, in compliance with the A.O.S. ratio of 0.1. He opined that such a

project would significantly reduce the number of cars attracted to the site - an impact on surrounding neighborhoods - and would architecturally fit very well among the 5 to 7-story buildings being built in Towson. (T., 5th, 317-319, 323-324).

Haile Corporation architect Holback presented unrebutted expert opinion evidence that the A.O.S. requirement could be satisfied by removing the lowest office floor and changing that square footage to A.O.S., and, if his compromise option is adopted, by adding 2, 850 square feet (15 feet setback x 190 feet length) of A.O.S. over the roofs of the second floor of retail stores along Pennsylvania Avenue. This addition of approximately 20,000 square feet of A.O.S. corrects the present deficiency of 17,063 square feet of A.O.S. (39,943 square feet required minus 22,880 square feet presently planned). (T., 5th, 183-186; Haile Corporation Exh. 28D, 28F and 28G). It is clear that Petitioner wants more leasable Class A office space than Petitioner wants A.O.S. Maryland law is well settled that the mere fact that the variance (in this case, 57% of the A.O.S. required) would make the property more profitable (in this case, more leasable Class A office space) is not a sufficient ground to justify a relaxation of setback requirements.. Daihl v. County Board of Appeals of Baltimore County., 258 Md. 157, 265 A.2d 227, 232 (1970); Anderson, supra, 322 A.2d at 228.

CONCLUSION

For the above reasons, the Petitioner's requested setback and amenity open space variances should be denied, for Petitioner has not met its burden to establish each of the elements of BCZR

Section 307.1.

Respectfully,

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(301) 426-3000

Attorneys for Leroy Y. Haile, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 1990, a copy of the foregoing Memorandum of Law was hand delivered to John B. Howard, Esquire and Robert A. Hoffman, Esquire, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, Maryland 21204, Attorneys for Petitioner, and was mailed first class, postage prepaid to Mark J. Adams, Esquire, Birrane, Harlan & Sharretts, Jefferson Building, 9th Floor, 2 East Fayette Street, Baltimore, Maryland 21202, Attorney for Knollwood-Donnybrook Improvement Association, Inc.

Rudolph E. DeMeo

Attorney for Leroy Y. Haile, Inc.

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By Kathi Schlaefer

IN RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE - W/S of York Rd. 1 between S/S of Pennsylvania Avenue and the N/S Chesapeake Avenue 9th Election District 4th Councilmanic District

Towson Commons Ltd. Part. Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-130-SPHA

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve a modified parking plan, pursuant to Section 409.12B, and under procedures of Section 409.8.B.1, permitting 985 spaces in lieu of the shared parking requirement of 1,065 spaces; and variances to permit a front yard setback of 0 feet along Pennsylvania Avenue in lieu of the required 15 feet, a street corner setback of 4 feet in lieu of the required 10 feet, a maximum average height of 160 feet to roof elevation in lieu of the maximum permitted average height of 144.7 feet, to permit 125 feet of the building to project 18 feet beyond and 80 feet above a plane sloping inward and upward at a 1 to 7.5 slope, to permit 25,169 sq.ft. of amenity open space (A.O.S.) in lieu of the required 43,948 sq.ft., and to permit 985 parking spaces in lieu of the required 1,065 spaces, all as more particularly described in Petitioner's Exhibit 1.

The Petitioners, by Dean Lopez, Vice President, LaSalle Partners Limited, Developer, appeared, testified, and were represented by John B. Howard, Esquire and Robert A. Hoffman, Esquire. Also appearing on behalf of the Petitions were Bernard J. Wulff, Architect with RTKL; George E. Gavrelis, Planner with Daft-McCune-Walker, Inc.; Wes Guckert, Traffic Consultant with The Traffic Group. Appearing as interested parties were Les Graef, Executive Director of Towson Development Corporation, and Mr. &

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Mrs. William C. Raith. Appearing as Protestants were George W. Murphy, III, Executive Director of Baltimore County Accord (Association of Community and Conservation Organizations to Respond to Development, Inc.), Arthur Kutcher, an architect and a member of Accord, Leroy Haile, Jr.,Bill Kirwin, Harvey Silbermann, John W. Erdman, and Mary P. Baxter for 17 West Limited Partnership and their Counsel, Nancy Paige, Esquire.

At the commencement of the hearing, Petitioners amended their request. Petitioners withdrew their Petition for Special Hearing indicating it was no longer necessary as there was compliance with the parking regulations under the shared parking adjustment ratio due to the reduction in size of the office building. Further the variances were modified to request the following: A variance from Section 231.1 to permit a front yard setback of 0 feet along Pennsylvania Avenue in lieu of the required 15 feet; from Section 235.2 to permit a street corner setback of 4 feet in lieu of the required 10 feet on York Road; from Sections 231.d and 235.B.5 to permit 125 feet of the building to project 30 feet above and 8 feet beyond a plane sloping inward and upward at a 1 to 7.5 slope; and from Section 235.B.4 to permit 22,880 sq.ft. of amenity open space in lieu of the required 39,943 sq.ft.

Testimony indicated that the subject property consists of 2.26 acres more or less zoned BM-CT and is located in the 400 Block of York Road between Pennsylvania and Chesapeake Avenues. Said property is the site of the proposed Towson Commons project, consisting of a combination of office, retail, food pavilion, restaurant, and cinema uses. Testimony indicated that the requested variances were modified as a result of a reduction in the size and scope of the proposed project. Petitioners reduced the size of the office portion of the building from 10 stories to

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8 stories. Dean Lopez and Bernard Wulff testified in detail regarding the proposed project, indicating that the setbacks requested for Pennsylvania Avenue and York Road are in keeping with the setbacks of existing buildings on York Road and the existing office building on the adjoining property on Pennsylvania Avenue. Mr. Wulff argued that to require strict compliance will result in practical difficulty and unreasonable hardship. He emphasized the importance of continuing the existing setbacks to promote the commercial continuity of the proposed retail uses and to accent their visibility. Both Mr. Lopez and Mr. Wulff emphasized the importance of the proposed retail use to the viability of the project and that the requested variances were not arbitrarily drawn but to promote the project.

Wes Guckert testified that The Traffic Group conducted a traffic analysis to determine what impact if any the proposed development might have on the current roadway system. To support his testimony, Mr. Guckert submitted the traffic study conducted marked Petitioner's Exhibit 3A (4). In his opinion, the traffic data gathered indicates that the development of the Towson Commons project as proposed will not adversely affect the nearby road system.

The Petitioners' witnesses argued that the granting of these variances will not result in any detriment to the health, safety or general welfare of the community and contend that the variance requested to the amenity open space is not unreasonable. The Petitioners further emphasized their desire to meet the spirit and intent of the zoning regulations and argued the hardship strict compliance would create in this instance.

Les Graef concurred with Petitioners as to the appropriateness of the setbacks requested. Testimony presented regarding the variances to Sections 231.d and 231.B.5 emphasized the smallness of the request due to

the reduction in the size of the project. The actual impact of the variances proposed is clearly depicted on Petitioner's Exhibit 1. Mr. Graef testified that in the opinion of the Towson Development Corporation, the amenity open space provided by Petitioners' project meets the spirit and intent of the zoning regulations. He contended that to require strict compliance with the regulations regarding amenity open space and setback requirements would interfere with the Town Center concept and efforts being made towards the revitalization of Towson.

Art Kutcher testified in opposition to the requested variances and questioned whether the granting of the variances would not result in a building that would overshadow the other surrounding commercial uses. He argued that if the variances are granted, the Petitioners will have less space to landscape. Mr. Kutcher questioned Petitioners' witnesses regarding the elevation plans, which had not yet been submitted.

Leroy Haile, Jr. appeared in opposition and expressed concern as to the impact the loss of the parking garage to the rear of the subject site will have on existing small businesses who currently use the parking facility. Said garage has been purchased by Petitioners from the County. As explained at the hearing, the issue of the sale of the garage to Petitioners was not before this forum. None of the other parties who signed as Protestants elected to speak at the hearing.

Mr. & Mrs. Raith, residents of Ridgely, indicated their appearance was as interested parties. The Raiths expressed their positive feelings towards the project, stating they look forward to the retail uses, restaurants, and theatres in the heart of Towson. However, they voiced concern over traffic congestion and noted their present experiences regarding cross-walks at various intersections in Towson. Following Mr. Guckert's

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presentation, the Raiths inquired as to the feasibility of providing an exclusive pedestrian walkway at York Road and Pennsylvania Avenue which would permit safer pedestrian travel. As requested, Mr. Guckert contacted Richard Moore of the Baltimore County Department of Traffic Engineering to inquire about the feasibility of such a walkway. Traffic Engineering has verbally advised the Zoning Office that, in their opinion, there is no need for any change or improvements at this time.

At the conclusion of the hearing, the hearing was continued to October 24, 1989 at 11:00 AM so that Petitioners could more fully address landscaping and exterior architectural design criteria for the proposed project. While Petitioners' Counsel argued the information was not relevant as the County had no architectural review authority, it was determined by the Deputy Zoning Commissioner that these issues needed to be addressed in light of Petitioners' request for variances to place the building closer to the road. Further, the exterior visual impact of the building was found to be relevant in this instance in light of Petitioners' request for variances to setback and amenity open space requirements. The exterior construction materials of the movie theatre buildings which face York Road are important in light of the setback variance request due to the lack of any windows above the first two levels of retail space, which were to be completed in a see-through glass material. Additionally, Petitioners were required to prepare a landscaping plan prior to closing the record which would set forth at a minimum the landscaping Petitioners proposed to provide.

At the hearing held on October 24, 1989, the following persons were present: Dean Lopez and Lynne Azamor with LaSalle Partners Limited; Rod Henderer, Architect with RTKL; George E. Gavrelis and Nicholas

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Linehan with Daft-McCune-Walker, Inc.; Les Graef of the Towson Development Corporation; and Arthur Kutcher, a member of Accord. Petitioners submitted an architectural rendering marked Petitioner's Exhibit 4 and a landscaping concept plan marked Petitioner's Exhibit 5. Testimony presented by Rod Henderer, Architect with RTKL indicated that the focal point of Petitioners' project was its entrance at York Road and Pennsylvnaia Avenue which is predominately glass with a glass skylight dome and permits access to the second level food pavilion and theatre complex, which runs along York Road to Chesapeake Avenue. Additionally, said entrance permits access to the retail use at ground level along both Pennsylvania Avenue and York Road. Mr. Henderer testified in great detail regarding the time and care that has been spent by Petitioners in choosing exterior materials that are both aesthetically pleasing and economically feasible.

Testimony presented indicated that Petitioners had presented the architectural elevation and materials plan and a landscaping plan, Exhibits 4 and 5, respectively, to the Director and Deputy Director of Planning and Zoning and other staff members. By comments dated October 24, 1989, the Planning Office indicated it was their opinion that "the general massing of the structure and site layout are appropriate for this location and meet the intent of the 1989 Towson Master Plan Update." Further, that "(i)n order to ensure the appropriate architectural review of this important development, this office will establish a registered licensed informal architectural review group with representatives from the Baltimore Chapter A.I.A. and B.A.L.A. to review the final design prior to the issuance of building permits."

While Mr. Kutcher concurred with many of the architectural comments presented by Mr. Henderer at the hearing, for example, the choosing

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of a light brick color for the exterior of the building, he expressed concern as to its massiveness. Mr. Kutcher contends the variances should be denied on that basis.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and

3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After considering all of the testimony, evidence, comments of the Office of Planning, elevations, and landscaping plans submitted, the relief requested should be granted as hereinafter restricted. It is clear from the testimony that if the variances are granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested in the special hearing shall be dismissed and the requested variances should be granted.

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Date 11/14/89
By Kathi Feldmann

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 14th day of November, 1989 that the Petition for Special Hearing to approve a modified parking plan, pursuant to Section 409.12B, and under procedures of Section 409.8.B.1, permitting 985 spaces in lieu of the shared parking requirement of 1,065 spaces, be and is hereby DISMISSED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 231.1 to permit a front yard setback of 0 feet along Pennsylvania Avenue in lieu of the required 15 feet; from Section 235.2 to permit a street corner setback of 4 feet in lieu of the required 10 feet on York Road; from Sections 231.d and 235.B.5 to permit 125 feet of the building to project 30 feet above and 8 feet beyond a plane sloping inward and upward at a 1 to 7.5 slope; and from Section 235.B.4 to permit 22,880 sq.ft. of amenity open space (A.O.S.) in lieu of the required 39,843 sq.ft., in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, 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 reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2) Petitioners shall landscape the property at a minimum as set forth in Petitioner's Exhibit 5. Further, Petitioners shall provide additional planting as required by the Baltimore County Landscaping Manual and as may be required by the Director of Planning and Zoning and the Landscaping Planner which permits enhancement without interfering with pedestrian traffic. For example, additional planting around trees, shrubs, and/or flowers, planters where deemed feasible, etc. The approved landscaping plan shall be submitted

ORDER RECEIVED FOR FILING
Date 11/14/89
By Kathi Feldmann

to the Deputy Zoning Commissioner for approval prior to the issuance of any occupancy permits.

3) The exterior building and landscaping plans, marked Petitioner's Exhibits 4 and 5 respectively, shall be submitted for approval by the informal architectural review group established by the Director of Planning and Zoning prior to the issuance of any permits. Said group shall consist of a minimum of five (5) individuals selected from the Baltimore Chapter A.I.A. and the B.A.L.A. The plans may be modified from that set forth in Petitioner's Exhibits 4 and 5, if approved by the architectural review group and then submitted to the Deputy Zoning Commissioner or Zoning Commissioner for approval.

4) The sign and scoring pattern in the brick and concrete at the entrance along Chesapeake Avenue, York Road, and Pennsylvania Avenues, and brick patterns at the entrances of the dome area and office building shall be submitted to the Office of Planning for approval prior to construction.

5) The exterior awnings on the building and the landscaping approved under the final landscaping plan shall be maintained at all times by Petitioners and/or any subsequent property owners.

6) Petitioners shall implement any improvements as may be required by the State Highway Administration and/or the Baltimore County Department of Traffic Engineering to insure safe pedestrian travel at the intersections of York Road and Pennsylvania Avenue and York Road and Chesapeake Avenue within the next four (4) years. The costs of implementing such improvements, if required, shall be borne by Petitioners.

7) When applying for a building permit, the site plan and elevation plans filed must reference this case and set forth and address the restrictions of this Order.

Ann M. Nastarowicz
ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

ORDER RECEIVED FOR FILING
Date 11/14/89
By Kathi Feldmann

586

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-130-SPHA

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 a modified parking plan pursuant to Section 409.12B and under procedures of 409.8.B.1 permitting 985 spaces in lieu of the shared parking requirement of 1065 spaces.

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:	Legal Owner(s): please see attached
(Type or Print Name)	(Type or Print Name)
Signature	Signature
Address	(Type or Print Name)
City and State	Signature
Attorney for Petitioner: John B. Howard, Esquire (Type or Print Name)	c/o LaSalle Partners, Suite 410, 1875 Eye Street, N.W. (202)659-4100 Address Phone No.
John Howard III Signature	Washington, D.C. 20006 City and State
210 Allegheny Avenue Address	Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Towson, Maryland 21204 City and State	John B. Howard, Esquire, 210 Allegheny Avenue, Towson, Maryland 21204 823-4111 Name Address Phone No.
Attorney's Telephone No.: 823-4111	

ORDERED By The Zoning Commissioner of Baltimore County, this 12th 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 10th day of Oct, 1989, at 11 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1 (over)

NE10A
BC
9A
2-1-91
BF
BF
G

Legal Owner:

TOWSON COMMONS LIMITED PARTNERSHIP
a Maryland limited partnership

By: AMPROP MARYLAND I LIMITED PARTNERSHIP, an Illinois limited partnership

By: [illegible]

VENABLE, BAETJER AND HOWARD
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

BALTIMORE, MD
WASHINGTON, D. C.
MCLEAN, VA
ROCKVILLE, MD
BEL AIR, MD

210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21285-5517
(301) 823-4111
FAX (301) 821-0147

RICHARD W. VENABLE (1930-1990)
EDWIN S. BAETJER (1899-1982)
CHARLES CASS HOWARD (1870-1962)

December 14, 1989

WRITER'S DIRECT NUMBER IS
301-494-9162

J. Robert Haines
Zoning Commissioner
of Baltimore County
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Notice of Appeal
Case No.: 90-130-SPHA
Towson Commons Limited Partnership, Appellant

Dear Mr. Zoning Commissioner:

Please note the appeal of the Towson Commons Limited Partnership, Suite 410, 1875 I Street, N. W., Washington, DC 20006, from the Findings Of Fact And Conclusions Of Law, with restrictions, in Case No. 90-130-SPHA.

Since the Petition for Special Hearing was withdrawn below, this appeal is noted from the decision and restrictions in the variance case. Accordingly, enclosed is a check for $175.00 to cover the cost of this appeal.

Yours truly,

Robert A. Hoffman
Attorney for Towson Commons
Limited Partnership

RAH:cns

Enclosure

RECEIVED
DEC 14 1989
ZONING OFFICE

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

J. Robert Haines
Zoning Commissioner

December 14, 1989

Dennis F. Rasmussen
County Executive

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

RE: Petition for Special Hearing and Zoning Variance
W/S York Road between S/S of Pennsylvania Avenue
and the N/S Chesapeake Avenue
9th Election District, 4th Councilmanic District
Towson Commons Ltd. Part. - Petitioner
Case No. 90-130-SPHA

Dear Board:

Please be advised that an appeal of the entire above-referenced case was filed in this office on December 13, 1989 by Rudolph E. DeNeo, President of Knollwood-Donnybrook Improvement Association, Inc., Protestants. Appeals on the variance portion only of the above-referenced case were filed in this office also on December 13, 1989 by Leroy Y. Haile, Jr. for Leroy Y. Haile, Inc., Protestant; and Arthur Simon Kutcher for Baltimore County ACCORD, Protestants; and Michael Miller, President for Northeast Towson Improvement Association, Inc., Protestants. 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

J. ROBERT HAINES
Zoning Commissioner

JRH:scj

Enclosures

IN RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE - W/S of York Road between S/S of Pennsylvania Avenue and the N/S Chesapeake Avenue 9th Election District 4th Councilmanic District
Towson Commons Ltd. Part.
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-130-SPHA

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

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of November 14, 1989, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

ATTEST:

Kathleen Dee Agee
Vice President,
Knollwood-Donnybrook Improvement Association, Inc.

Knollwood-Donnybrook Improvement Association, Inc.

By: Rudolph E. DeNeo, President
906 Fairway Drive
Towson, Maryland 21204
(301 296-1690

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December, 1989, a copy of the foregoing Notice of Appeal was mailed, first class, postage prepaid, to John B. Howard, Esquire, and Robert A. Hoffman, Esquire, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, Maryland 21204, Attorneys for Petitioners.

Rudolph E. DeNeo

RECEIVED DEC 13 1989

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

IN RE:
PETITION FOR ZONING VARIANCE
W/S of York Road between S/S of Pennsylvania Avenue and the N/S Chesapeake Avenue
9th Election District
4th Councilmanic District
Towson Commons Ltd. Part.
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-130-SPHA

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

NOTICE OF APPEAL

Please be advised of an appeal from your decision in the above-captioned matter, under date of November 14, 1989, to the County Board of Appeals.

I HEREBY CERTIFY that on this 13th day of December, a copy of the foregoing Notice of Appeal was mailed to Messrs. John B. Howard, Esq., and Robert A. Hoffman, Esq., 210 Allegheny Avenue, Towson, MD 21204, Attorneys for the Petitioner.

Leroy Y. Haile, Jr.
For Leroy Y. Haile, Inc.
5 W. Chesapeake Avenue
Towson, MD 21204
(301) 823-1656

RECEIVED DEC 13 1989

BALTIMORE COUNTY ACCORD
Association of Community and Conservation Organizations to Respond to Development, Inc.
P.O. Box 1175 • Brooklandville, Maryland 21022

IN RE:
PETITION FOR ZONING VARIANCE
W/S of York Road between S/S of Pennsylvania Avenue and the N/S Chesapeake Avenue
9th Election District
4th Councilmanic District
Towson Commons Ltd. Part.
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-130-SPHA

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

NOTICE OF APPEAL

Please be advised of an appeal from your decision in the above-captioned matter, under date of November 14, 1989, to the County Board of Appeals.

I HEREBY CERTIFY that on this 13 day of December, a copy of the foregoing Notice of Appeal was mailed to Messrs. John B. Howard, Esq., and Robert A. Hoffman, Esq., 210 Allegheny Avenue, Towson, MD 21204, Attorneys for the Petitioner.

For Accord
Arthur Simon Kutcher
Arthur Simon Kutcher
7728 Greenview Terrace
Towson, MD 21204
(301) 828-4991

RECEIVED DEC 13 1989

Northeast Towson Improvement Association, Inc.
441 EAST PENNSYLVANIA AVENUE
TOWSON, MD 21204

since 1948

IN RE:
PETITION FOR ZONING VARIANCE
W/S of York Road between S/S of Pennsylvania Avenue and the N/S Chesapeake Avenue
9th Election District
4th Councilmanic District
Towson Commons Ltd. Part.
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-130-SPHA

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

NOTICE OF APPEAL

Please be advised of an appeal from your decision in the above-captioned matter, under date of November 14, 1989, to the County Board of Appeals.

Michael Miller
Michael Miller
Pres. for N.T.I.A., Inc.

I HEREBY CERTIFY that on this 13th day of December, a copy of the foregoing Notice of Appeal was mailed to Messrs. John B. Howard, Esq., and Robert A. Hoffman, Esq., 210 Allegheny Avenue, Towson, MD 21204, Attorneys for the Petitioner.

Michael Miller
Michael Miller
441 E. Pennsylvania Avenue
(301) 823-5585

RECEIVED DEC 13 1989

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

NAME	ADDRESS
George E. Gavrelis	DMW · 200 E. Penn Ave Towson 21204
Rob Hoffman	210 Allegheny Ave Towson 21204
Dean Lopez	1875 I St. N.W. Wash. D.C. 20006
Bernard J. Wulff	RTKL · 1140 Connecticut Ave, NW, Wash DC 20036
John B. Howard	210 Allegheny Ave · 21204
Vic Gallant	414 E. Joppa 21204
John Bartz	1875 I St NW/D.C 20006
Lynne Hammar	"
Jack Train	1875 I St NW, Wash. D.C. 20006

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

NAME	ADDRESS
George W. Murphy III (Glenmar Assoc)	6906 W. Joppa Mill Rd. 21207
LeRoy Haile JR	5 W. Chesapeake Ave
Arthur Kutcher	17728 Greenview Terr.
Mary P. Barth	1714 Pennsylvania Ave
Nancy C. Page (Work)	233 E. Redwood St. Balto 21202
Bill Kirwin	28 E. Susque Ave Towson 21204
Harvey Silbermann	3527 East Joppa Road Balto 21234
John W. Erdman	8000 LaSalle, Suite 226, Balto 21204

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

NAME	ADDRESS
William C. Raith	The Ridgely · 205 E. Joppa Rd. #1406 21204
Mrs. William C. Raith	" " " " " " " "
Barbara Ramsey Towson	Times 409 Washington
Les Graef	TDC 29 W. Susq Av

Timothy J. Mullaney
Business Writer

THE SALTIMORE SUN
501 North Calvert Street
P.O. Box 1377
Baltimore, Maryland 212..-0001
301 332-6063

A Times Mirror Newspaper

10/24/89

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

NAME	ADDRESS
J.B. Howard	210 Allegheny Ave. Towson 21204
Robert A. Hoffman	"
Nicholas M. Linehan	DMW 200 E. Pennsylvania Towson
Les Graeff	TDC 29 W Susq Av
Lynne Hammar	1875 I St NW Wash. DC.
Bob Hendricker	RTKL 1140 Conn Av. NW. Wash DC.
George E. Gavrelis	DMW · 200 E. Pennsylvania
Barbara Ramsey	Towson Times · 409 Washington Ave
Arthur Kutcher	7728 Greenview Terr, Towson 21204
Dean Lopez	1875 I St. N.W., Wash. D.C.

LAW OFFICES

GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER

GARRETT BUILDING

233 E. REDWOOD STREET

BALTIMORE, MD. 21202

301-576-4000

1800 K STREET, N. W. SUITE 600

WASHINGTON, D. C. 20006

202-659-0555

TELEX 9-8041 BAL

D. C. FAX: 202-659-2799

BALTO FAX: 301-576-4246

BALTO FAX: 301-576-4167

DIRECT DIAL 301 576-4294

August 8, 1989

Ms. Gwendolyn Stephens
Office of the Zoning Commissioner
County Office Building, Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Towson Commons Petition for Variance/Special Hearing - Item 586

Dear Ms. Stephens:

This will confirm my recent request to receive notice of any hearings or other proceedings in the referenced case. Thank you for your cooperation and assistance.

Very truly yours,

Nancy E. Paige

Nancy E. Paige

NEP/ms

cc: John Leutkemeyer

RECEIVED
AUG 10 1989
ZONING OFFICE

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

210 ALLEGHENY AVENUE

P.O. BOX 5517

TOWSON, MARYLAND 21285-5517

(301) 494-6444

FAX (301) 821-0147

BALTIMORE, MD
WASHINGTON, D. C.
MCLEAN, VA
ROCKVILLE, MD
BEL AIR, MD

WRITER'S DIRECT NUMBER IS

December 14, 1989

301-494-9162

J. Robert Haines
Zoning Commissioner
of Baltimore County
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Notice of Appeal
Case No.: 90-130-SPHA
Towson Commons Limited Partnership, Appellant

Dear Mr. Zoning Commissioner:

Please note the appeal of the Towson Commons Limited Partnership, Suite 410, 1875 I Street, N. W., Washington, DC 20006, from the Findings Of Fact And Conclusions Of Law, with restrictions, in Case No. 90-130-SPHA.

Since the Petition for Special Hearing was withdrawn below, this appeal is noted from the decision and restrictions in the variance case. Accordingly, enclosed is a check for $175.00 to cover the cost of this appeal.

Yours truly,

Robert A. Hoffman
Attorney for Towson Commons
Limited Partnership

RAH:cns

Enclosure

RECEIVED
DEC 14 1989
ZONING OFFICE

BALTIMORE COUNTY ACCORD

Association of Community and Conservation Organizations to Respond to Development, Inc.

P.O. Box 1175 • Brooklandville, Maryland 21022

October 1, 1989

Dear Sirs:

The Board of Directors of ACCORD has authorized that Mr. Art Kuchter, a member of ACCORD, represent this organization at the zoning hearing for the Towson Commons project and at anyother public hearings regarding that project.

If you have any questions regarding this authorization, please contact me at 256-0312.

Vince Gardina

Vince Gardina
President, ACCORD

BALTIMORE COUNTY ACCORD

Association of Community and Conservation Organizations to Respond to Development, Inc.

P.O. Box 1175 • Brooklandville, Maryland 21022

IN RE:
PETITION FOR ZONING VARIANCE
W/S of York Road between S/S of Pennsylvania Avenue and the N/S Chesapeake Avenue
9th Election District
4th Councilmanic District
Towson Commons Ltd. Part.
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-130-SPHA

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

NOTICE OF APPEAL

Please be advised of an appeal from your decision in the above-captioned matter, under date of November 14, 1989, to the County Board of Appeals.

I HEREBY CERTIFY that on this 13 day of December, a copy of the foregoing Notice of Appeal was mailed to Messrs. John B. Howard, Esq., and Robert A. Hoffman, Esq., 210 Allegheny Avenue, Towson, MD 21204, Attorneys for the Petitioner.

For Accord
Arthur Simon Kutcher

Arthur Simon Kutcher
7728 Greenview Terrace
Towson, MD 21204
(301) 828-4991

RECEIVED DEC 1 3 1989

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

IN RE:
PETITION FOR ZONING VARIANCE
W/S of York Road between S/S of Pennsylvania Avenue and the N/S Chesapeake Avenue
9th Election District
4th Councilmanic District
Towson Commons Ltd. Part.
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-130-SPHA

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

NOTICE OF APPEAL

Please be advised of an appeal from your decision in the above-captioned matter, under date of November 14, 1989, to the County Board of Appeals.

I HEREBY CERTIFY that on this 13th day of December, a copy of the foregoing Notice of Appeal was mailed to Messrs. John B. Howard, Esq., and Robert A. Hoffman, Esq., 210 Allegheny Avenue, Towson, MD 21204, Attorneys for the Petitioner.

Leroy Y. Haile, Jr.
For Leroy Y. Haile, Inc.
5 W. Chesapeake Avenue
Towson, MD 21204
(301) 823-1656

RECEIVED DEC 1 3 1989

IN RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE - W/S of York Road between S/S of Pennsylvania Avenue and the N/S Chesapeake Avenue
9th Election District
4th Councilmanic District
Towson Commons Ltd. Part.
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-130-SPHA

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

NOTICE OF APPEAL

Please note an appeal from your decision in the above-captioned matter, under date of November 14, 1989, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

ATTEST:

Kathleen Dee Agee
Vice President,
Knollwood-Donnybrook Improvement Association, Inc.

Knollwood-Donnybrook Improvement Association, Inc.

By: Rudolph E. DeNeo, President
906 Fairway Drive
Towson, Maryland 21204
(301 296-1690

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December, 1989, a copy of the foregoing Notice of Appeal was mailed, first class, postage prepaid, to John B. Howard, Esquire, and Robert A. Hoffman, Esquire, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson, Maryland 21204, Attorneys for Petitioners.

Rudolph E. DeNeo

RECEIVED DEC 1 3 1989

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 13, 1989

Baltimore County Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Towson Commons Limited Partnership
Appeal of Zoning Case No. 90-130-SPHA

Dear Board:

This office is in receipt of an Appeal of the above-referenced matter and the materials for processing same shall be forwarded to you under separate cover shortly. However, please be advised that a typographical error was discovered in the Findings of Fact and Conclusions of Law issued on November 14, 1989 regarding the section from which the variances were sought. Please note that the relief requested is pursuant to Section 235.1 and not Section 231.1 as indicated in the Order. An amended Order correcting this error was not issued prior to the filing of the appeal.

Thank you for your attention in this matter.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

cc: Case File

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 Orlinsky

Publisher

P016307
vg M34185
ca 90-130-SPHA
price $112.93

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:

Petitions for Special Hearing and Zoning Variance
Case number: 90-130-SPHA
W/S of York Road between S/S of Pennsylvania Avenue and N/S of Chesapeake Ave.
9th Election District
4th Councilmanic
Petitioner(s):
Towson Commons Limited Partnership
Hearing Date: Tuesday, Oct. 10, 1989 at 11:00 a.m.

Special Hearings: To approve a modified parking plan and parking waiver to allow a total of 1,665 parking spaces in lieu of the required 1,850 spaces. To permit a front yard setback of 0 feet in lieu of the required 10 feet; to permit the maximum average height to be 160 feet in lieu of the maximum average height of 144.7 feet and to permit 126 feet of building to project 18 feet beyond and 80 feet above a plane sloping inward and originating at a 1 to 7.5 ratio; to permit 25,100 square feet of parking area in lieu of the required 50,000 square feet and to permit parking access to be via the public right of way in lieu of the required 1,845 private access of the Zoning Commissioner's Policy Manual.

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

CERTIFICATE OF POSTING

90-130-SPHA

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District 9th
Date of Posting September 22, 1989
Posted for: Special Hearing Variances
Petitioner: Towson Commons Limited Partnership
Location of property: W/S of York Road, between S/S of Pennsylvania Avenue N/S of Chesapeake Avenue
Location of Signs: North side of Chesapeake Avenue in front of subject property
Remarks:
Posted by S.J. Grata (Signature)
Date of return: September 29, 1989
Number of Signs: 2

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

Towson Commons Limited Partnership
c/o LaSalle Partners
1075 Eye Street, N.W., Suite 410
Washington, D.C. 20008

Re: Petitions for Special Hearing and Zoning Variance
CASE NUMBER: 90-130-SPHA
W/S of York Road, between S/S of Pennsylvania Avenue and
N/S of Chesapeake Avenue
9th Election District - 4th Councilmanic
Petitioner(s): Towson Commons Limited Partnership
HEARING SCHEDULED: TUESDAY, OCTOBER 10, 1989 at 11:00 a.m.

Gentlemen:

Please be advised that $ 192.93 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

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 077292
DATE 9/25/89 ACCOUNT R-01-615-000
AMOUNT $ 192.93
RECEIVED Venable, Baetjer, Howard
FOR P/A for 90-130
B 087*****19253:a $262F
VALIDATION OR SIGNATURE OF CASHIER

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

J. Robert Haines
Zoning Commissioner

August 22, 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:

Petitions for Special Hearing and Zoning Variance
CASE NUMBER: 90-130-SPHA
W/S of York Road, between S/S of Pennsylvania Avenue and
N/S of Chesapeake Avenue
9th Election District - 4th Councilmanic
Petitioner(s): Towson Commons Limited Partnership
HEARING SCHEDULED: TUESDAY, OCTOBER 10, 1989 at 11:00 a.m.

Special Hearing: To approve a modified parking plan and permitting 985 spaces in lieu of the shared parking requirement of 1,065 spaces.
Variance: To permit a front yard setback of 0 feet along Pennsylvania Avenue in lieu of the required 15 feet; to permit a street corner setback of 4 feet in lieu of the required 10 feet; to permit the maximum average height to be 160 feet to roof elevation in lieu of the permitted average height of 144.7 feet and to permit 125 feet of building to project 18 feet beyond and 80 feet above a plane sloping inward and upward at a 1 to 7.5 slope; to permit 25,189 square feet of amenity open space in lieu of the required 43,948 square feet; and to permit 985 parking spaces in lieu of the required 1,065 parking spaces if the Zoning Commissioner determines a variance is appropriate.

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

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

JRH:rgs
cc: Towson Commons Limited Partnership
John G. Howard, Esq.
Nancy C. Paige, Esq.
File

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Ann Nastarowicz, Deputy Zoning Commissioner DATE: December 12, 1989

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

SUBJECT: Towson Commons, No. 90-130-SPHA

In response to the Deputy Zoning Commissioner's order, the Office of Planning and Zoning has completed its review of the landscaping and architectural design of the Towson Commons project. Based upon the informal design advisory review, staff would suggest the following conditions and/or comments be provided as part of the order:

1. Some additional attention to the north elevation (Pennsylvania Avenue) needs to be undertaken regarding, 1) the garage entrance next to Talbot's should be reconfigured to reflect better transition and reconcile architectural and engineering inconsistencies; and 2) consideration should be given to maintaining open windows from the restaurant complex onto Pennsylvania Avenue.

2. The southeast corner of the structure (corner of York Road and Chesapeake Avenue), will have a high degree of visibility. In regards to this particular elevation, 1) the theatre complex along Chesapeake Avenue should receive the same "book-end" treatment as is being proposed for the York Road facade; and 2) any signage or treatment placed at this corner in the future should be reviewed by the Director, Office of Planning and Zoning, and approved by the Zoning Commissioner.

3. The existing Bradford Pear trees located along York Road are lower level fuller trees that have not withstood the rigors of traffic. A complete tree program integrating this site with the remainder of the York Road corridor should be investigated and implemented by the County.

The following conditions should be applied:

- A final landscape plan shall be reviewed and approved by the County Landscape Planner prior to the issuance of building permits.

- Future replacement of the existing Bradford Pear trees along York Road may be required by the petitioner.

PK
90130SPN/TXTGGL

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Ann Nastarowicz, Deputy Zoning Commissioner DATE: October 24, 1989

FROM: P. David Fields, Director, Office of Planning & Zoning

SUBJECT: TOWSON COMMONS

In response to the Deputy Zoning Commissioners request to review flexible guidelines for the architectural treatment of buildings, materials and landscaping, staff provides the following information.

Staff met with the petitioner on October 17, 1989 to review architectural elevations and materials, landscape treatment and general building design.

The Office of Planning and Zoning has reviewed the schematic landscape plan (street tree alternatives) and architectural elevations (protype treatment) and is of the opinion that the general massing of the structure and site layout are appropriate for this location and meet the intent of the 1989 Towson Master Plan Update.

The building is being designed by one of the leading architectural firms and we have confidence that the choice of materials and detailing of design for the final elevations will be a welcome addition to the Towson City scape.

In order to ensure the appropriate architectural review of this important development, this office will establish a registered licensed informal architectural review group with representatives from the Baltimore Chapter A.I.A. and B.A.L.A.to review the final design prior to the issuance of building permits.

P. David Fields

P. David Fields, Director

PDF:slb

cc: John Howard, for LaSalle Partners Limited
Bernard Wolf, RTKL
Ted Zaleski, Director Balto. Co. Permits & Licenses
A.I.A.
B.A.L.A.

RECEIVED
OCT 10 1989
ZONING OFFICE

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines, Zoning Commissioner DATE: October 9, 1989

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

SUBJECT: Towson Commons (As Amended), Item 586
Zoning Petition No.90-130-SPHA

Towson Commons Limited Partnership is requesting variances to 1) permit a front yard setback of 0 feet along Pennsylvania Ave. in lieu of the required 15 feet; 2) permit a corner setback of 4 feet in lieu of the required 10 feet; 3) to permit an average building height of 160 feet in lieu of 144.7 feet required; 4) permit 125 feet of the building to project 18 feet beyond and 80 feet above the required sloping plane; 5) permit 22,463 square feet of amenity open space in lieu of the reqiied 39,943 square feet.

In reference to this request staff provides the following information.

- The requested street setbacks along Pennsylvania, Chesapeake, and Allegheny Avenues are generated in large part due to the proximity of buildings to ultimate right-of-way lines. Based upon agreements with the developer setbacks not to be less than 20-feet from face of curb were established to provide for adequate pedestrian access and streetscape treatment. A 20-foot setback from the face of curb is being provided along York Road; a 22 to 24-foot setback is being provided along Pennsylvania Avenue and an 18-foot setback is being provided along Chesapeake. Building setbacks are designed to provide for street trees, street furniture, transit accessibility, pedestrian circulation and accommodation of commercial shoppers.

- The sloping height tent or plane has also generated variances. The height plane is designed to prevent crowding of streets by larger buildings that block sun, create unique wind patterns and tend to generate a harsher street level environment for pedestrians. The petitioner's building varies between 3 and 8 stories (revised) in height. The massing of the structure and the relation of the building to the street should not pose problems if adequate street level setbacks are provided.

J. Robert Haines
Page 2
October 9, 1989

- The petitioner is requesting some relief to the amenity open space provisions. The amenity open space definition is loosely defined in the zoning regulations and the definition includes su": wording as "suitably improved..." or "useable covered open areas" that are "designated by the owner for the use of occupants or the public." The amenity open space as depicted by the owner includes the public ways located inside the property lines. Although the petitioner is not providing the full range of amenity open space within the property lines staff suggests that the streetscape lying adjacent to the property be upgraded by the petitioner.

Based upon the information provided and analysis conducted staff recommends approval of the petitioner's request subject to the following.

- A landscape plan that includes streetscape shall be reviewed and approved by the Director, Office of Planning and Zoning or his designee prior to the issuance of building permits. Streetscape provided within the public right-of-way shall be maintained by the property owner.

- A minimum 20-foot building setback from the face of curb shall be maintained.

- Architectural elevations including building materials shall be reviewed and approved by the Director, Office of Planning and Zoning prior to the issuance of building permits. Section 502.1 of the Zoning Regulations outlines general standards for review of special exceptions, Section 259.2 states that the C.T. District is designated for "primary shopping areas within town centers." In accordance with the high profile of Towson as the government, medical and education center of the County special consideration for the architectural quality of the area should be considered. The 1979 and proposed 1989 Towson Master Plan points out the need for architectural quality in Towson.

If there should be any further questions or if this office can provide additional information, please contact me in the Office of Planning at 887-3211.

PK/JL/pat

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Ms. Ann McLaughlin-Nastarowicz, Deputy Zoning Commissioner Date: December 11, 1989

FROM: C. Richard Moore, Bureau Chief, Bureau of Traffic Engineering

SUBJECT: TOWSON COMMONS

As a follow-up to my memo of November 21st, we offer the following information:

The existing plan conforms to present traffic service as well as future pedestrian service in accordance with the Towson Master Plan. Therefore, no additional pedestrian features are necessary.

CRM:bza

RECEIVED
DEC 13 1989
ZONING OFFICE

CPS-008

file

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Ms. Ann McLaughlin-Nastarowicz, Deputy Zoning Commissioner Date: November 21, 1989

FROM: C. Richard Moore, Bureau Chief, Bureau of Traffic Engineering

SUBJECT: TOWSON COMMONS
90-130-SPHA

RECEIVED
NOV 22 1989
ZONING OFFICE

We are in receipt of a letter from the Traffic Group which indicates concerns raised by citizens during the Towson Commons project hearing.

The intersections of York Road, Dulaney Valley Road and Joppa Road as well as York Road and Chesapeake and York Road and Pennsylvania, all have pedestrian phases within the signal operations which are activated when the pedestrian pushbuttons are pushed.

The timing of those three signals have been checked and there is sufficient time for a pedestrian to safely cross during the "walk" and "flashing, don't walk" time period. Concerns usually arises from the public when they expect to be able to cross an intersection during the "walk" period alone and this is not possible. However, the "flashing, don't walk" is always set long enough so that if a pedestrian has just stepped off the curb, he will still have sufficient time to cross the street.

In the past, we did have exclusive pedestrian phases at the intersections of York and Chesapeake and York and Pennsylvania. However, less than 20% of the pedestrians used the intersections legally.

With the present signal operation, we find 80% of the pedestrians are crossing legally. We will also check the operation of all pedestrian pushbuttons to ensure that the equipment is functioning properly.

We hope these comments address the concerns of the citizens. However, if they do not, please don't hesitate to contact me and we can discuss this matter further.

CRM:bza

cc - Mr. John W. Guckert
Mr. Robert Hoffman

CPS-008

BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

7/17/89
Date

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

Zoning Item # 586, Zoning Advisory Committee Meeting of July 11, 1989

Property Owner: Towson Commons Limited Partnership

Location: W/S of York Rd. District: 9

Water Supply: metro Sewage Disposal: metro

COMMENTS ARE AS FOLLOWS:

(✓) Prior to approval of a Building Permit for construction, renovation and installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Bureau of Regional Community Services, for final review and approval.

(✓) Prior to new installation(s) of fuel burning equipment, the owner shall contact the Bureau of Air Quality Management, 887-3775, to obtain requirements for such installation(s) before work begins.

( ) A permit to construct from the Bureau of Quality Management is required for such items as spray paint processes, underground gasoline storage tank(s) (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.

( ) A permit to construct from the Bureau of Air Quality Management is required for any charbroiler generator which has a total cooking surface area of five (5) square feet or more.

( ) Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the, and service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.

( ) Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Environmental Protection and Resource Management for review and approval. For more complete information contact the Water Quality Monitoring Section, Bureau of Regional Community Services, 687-6500 x 315.

( ) Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulatic For more complete information, contact the Division of Maternal and Child Health.

( ) If lubrication work and oil changes are performed at this location, the method providing for the eliminati of waste oil must be in accordance with the State Department of the Environment.

( ) Prior to razing of existing structure(s), petitioner must contact the Division of Waste Management at 887-3745, regarding removal and/or disposal of potentially hazardous materials and solid wastes. Petitioner must contact the Bureau of Air Quality Management regarding removal of asbestoes, 887-3775.

( ) Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and tank removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Waste Management at 887-3745.

( ) Soil percolation tests, have been ___, must be ___, conducted.
( ) The results are valid until ___.
( ) Soil percolation test results have expired. Petitioner should contact the Division of Water and Sewer to determine whether additional tests are required.

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

( ) In accordance with Section 13-117 of the Baltimore County Code, the water well yield test
( ) shall be valid until ___
( ) is not acceptable and must be retested. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.

( ) Prior to occupancy approval, the potability of the water supply must be verified by collection of bacterio logical and chemical water samples.

(✓) If submission of plans to the County Review Group is required, a Hydrogeological Study and an Environmenta Effects Report must be submitted. For more information contact the Division of Environmental Management at 887-3980.

( ) In order to subdivide this property, the owner or developer will be required to comply with the subdivisio regulations of the State of Maryland and Baltimore County. If there are any questions regarding the subdivision process, please contact the Land Development Section at 887-2762.

( ) Others ___

BUREAU OF WATER QUALITY AND RESOURCE MANAGEMENT

LEGG MASON

Legg Mason Realty Group, Inc.

111 South Calvert Street
P.O. Box 1476
Baltimore, MD 21203-1476
(301) 539-3400

631 Anneslie Road
Towson, Maryland 21212
October 25, 1989

RECEIVED
OCT 30 1989
ZONING OFFICE

Ms. Ann Nastarowicz
Deputy Zoning Commissioner
Baltimore County
Towson, Maryland 21204

Subject: Towson Commons

Dear Ms. Nastarowicz: 90-130-SPHA

I have read probably every published article on the Towson Commons proposal. The technical aspects of the open space and setback requirements are such that "experts" must formulate the building size. However, regardless of the building ultimate size, I believe the citizens of Towson and Baltimore County will regret the method of development Towson Commons was afforded.

Specifically, the current building proposal has 402,000 square feet of mixed uses (The Sun, 10-25-89, page 14C). Little discussion has been voiced concerning parking. In reality, no additional parking is being provided. LaSalle purchased the Chesapeake public parking garage from the Revenue Authority with about 500 spaces. LaSalle has leased about 450 spaces in the proposed library parking garage, also a Revenue Authority project.

Assuming the Revenue Authority properly completes supply/demand and economic studies before undertaking its goal of providing public parking, both of the garages were "needed" before the Towson Commons project was announced. By transferring these public goods, i.e., the garage parking spaces, the Revenue Authority has reduced the true public parking available to existing and potential downtown users to accommodate one private building.

The question arises, where will the current parkers relocate from the Chesapeake parking garage and where will the anticipated parkers for the Library garage be relocated? When the reality sets in with the public that the anticipated Library garage has been significantly construed to Towson Commons and Towson Commons also controls the Chesapeake garage, one can rightly believe the private developers were benefited by the Revenue Authority and the Office of Planning and Zoning at the public's present and future parking.

LEGG MASON

Page Two
Ms. Ann Nastarowicz
October 25, 1989

I recommend you consider all aspects of the building and parking before deciding on variances which "enlarges" Towson Commons at the public interest.

Respectfully submitted,

Steve Noble

Steve Noble

SHA

Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

PLEASE REPLY TO
OFFICE OF DISTRICT ENGINEER
1115 WEST JOPPA ROAD
BROOKLANDVILLE, MARYLAND 21022

RECEIVED
DEC 14 1989
ZONING OFFICE

December 13, 1989

Ms. Ann McLaughlin-Nastarowics
Deputy Zoning Commissioner
111 West Chesapeake Avenue, Room 109
Towson, Maryland 21204

MD 45 (York Road)
Towson Commons
Baltimore County

90-130-SPHA

Dear Ms. McLaughlin-Nastarowics:

We were recently contacted both by Dick Moore of Baltimore County's Bureau of Traffic Engineering and The Traffic Group regarding the impacts of Towson Commons on pedestrian activities along MD 45.

We expect that the existing pedestrian facilities including the concurrent pedestrian phases at the traffic signals along MD 45 will be sufficient to handle the additional pedestrian traffic generated by this development. We recognize some pedestrian difficulties caused by the failure of motorists to comply with State law regarding pedestrian rights. However, even more commonly, we see problems as a result of pedestrian's failure to take advantage of devices placed for their benefit.

The Department of Transportation and State Highway Administration have been involved in a number of activities to improve education of both drivers and pedestrians to assist these problems and deal with the frequent misconceptions regarding the intent of the pedestrian signals as well. We'd be happy to discuss the concerns raised by the citizens during the hearing process in greater detail if you feel that would be helpful.

Sincerely,

Charles R. Olsen
Metropolitan District Engineer

CRO/DW:rlb

cc: Mr. C. Richard Moore
Mr. John W. Guckert

My telephone number is (301) 321-3461
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: Ann Nastarowics, Deputy Zoning Commissioner DATE: December 13, 1989

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

SUBJECT: Towson Commons, No. 90-130-SPHA
Amended Comment

In response to the Deputy Zoning Commissioner's order, the Office of Planning and Zoning has completed its review of the landscaping and architectural design of the Towson Commons project. Based upon the informal design advisory review, staff would suggest the following conditions and/or comments be provided as part of the order:

1. Some additional attention to the north elevation (Pennsylvania Avenue) needs to be undertaken regarding, 1) the garage entrance next to Talbot's should be reconfigured to reconcile the inconsistency between the architectural elevation and the floor plan; and 2) consideration should be given to maintaining open windows from the restaurant complex onto Pennsylvania Avenue.

2. The southeast corner of the structure (corner of York Road and Chesapeake Avenue), will have a high degree of visibility. In regards to this particular elevation, 1) the theatre complex facade along Chesapeake Avenue should receive an architectural treatment compatible with that being proposed for the York Road facade; and 2) any signage or treatment placed at this corner in the future should be reviewed by the Director, Office of Planning and Zoning, and approved by the Zoning Commissioner.

3. The existing Bradford Pear trees located along York Road are lower level fuller trees that have not withstood the rigors of traffic. A complete tree program integrating this site with the remainder of the York Road corridor should be investigated and implemented by the County.

The following conditions should be applied:

- A final landscape plan shall be reviewed and approved by the County Landscape Planner prior to the issuance of building permits.

- Future replacement of the existing Bradford Pear trees along York Road may be required by the petitioner.

Building Heights and Set-backs in the vicinity of the "Towson Commons" site

Building Address	Height	Set-backs
Layfayette Bldg. 40 W. Chesapeake	60'	27'-4" - 20'-8"
Ashly Bldg. 18 W. Chesapeake	20'	25'-6"
Jenifer Bldg. 20 W. chesapeake	21'	25'-6"
Equitable Bldg 401 Washington	120'	32'-6" - 26'-0"
Mercantile Bldg 409 Washington	120'	24'-10" in Washington
" " "	"	34'-4" in Pennsylvania
19 West Pennsylvania	20'	20'-0"
17 West Pennsylvania	55'-0"	22'-0"
Loyola Federal	60'-0"	28'-4"
Towson Commons (proposed)	160'	20'-0"
+ Office of Planning and Zoning recommended set-backs for Towson central area = 25'-0"		Protestants

---

7720 Greenview Terr. Rd.
Towson Md. 21204
16 October, 1989

John B. Howard, Esq.
Venable, Baetjer and Howard
Attorneys at Law
210 Allegheny Avenue
P.O. Box 5517
Towson Md. 21285-5517

Case # 90-130-SPHA
RECEIVED
OCT 17 1989
ZONING OFFICE

Dear Mr. Howard;

I am writing to express my agreement with your opposition to the Planning Office's comments (the last paragraph) concerning the Towson Commons projects requested variances.

In my opinion, making the granting of variances contingent upon the approval of architectural elevations at building permit stage by the Director of Planning is an ill-considered, unwarranted and inadmissable attempt at usurpation of authority on the part of the Planning Director. These are the reasons for my opinion:

1) Neither the Planning Director nor any of his staff are architects. On the basis of 14 month's experience working as an urban designer in the Planning Office it is my considered opinion that neither the Director nor his staff are qualified to pass judgment on architectural designs.

2) The Master Plan Design Advisory Group strongly recommended that architectural review in Baltimore County be carried out as part of the CRG process by a professional Design Review Board; this recommendation has been incorporated in the proposed Master Plan. An attempt to make the Director of Planning the arbiter of architectural taste in Baltimore County goes against the best professional advice, common sense, and respect for procedure.

3) The Building Permit stage of project approval is the wrong time for design review; it should take place much earlier - at pre-development and CRG stage or at variance hearings. Design review at working drawing stage makes the approval process unpredictible and can cause expensive alterations and delays. To recommend design review at this late stage of production is an example of the wilfullness and dilettantism which characterize the Planning Office.

Yours sincerely,

Arthur Kutcher

cc:
P.D. Fields, Esq.
Mr. Arnold Keller III
The Zoning Commissioner ✓
Mr. Bernard Wolfe, RTKL
The Members of the Design Advisory Group
The Urban Design Committee of the American Institute of Architects

---

THE TRAFFIC GROUP, INC.

Petitioner's Exhibit 6

414 East Joppa Road
Towson, Maryland 21204
Telephone 301-583-8405
Telecopier 301-321-8458

October 24, 1989

Baltimore County Department of
Traffic Engineering
Mr. Richard Moore
Suite 405
401 Bosley Avenue
New Courts Building
Towson, Maryland 21204

RE: Towson Commons
Baltimore County
Our Job No.: 90302
LaSalle Partners, Petitioner

Dear Dick:

At a variance hearing held for the Towson Commons Project on October 9, 1989, the Deputy Zoning Commissioner, as a result of citizen comments, requested that I contact you regarding the issue of "pedestrian crossings and pedestrian safety" along York Road in the Towson Core.

Of particular concern to residents East of York Road was the issue of pedestrians crossing York Road - Dulaney Valley Road in the Joppa Road - Allegheny Avenue area. Additionally, there were discussions and questions relating to having "exclusive pedestrians phases" for pedestrians to cross York Road at both Chesapeake Avenue and Pennsylvania Avenue. As you are aware, there are several elderly, high rise projects located in East Towson and the residents have difficulty in crossing York Road due to short pedestrian signal timings as well as conflicts with turning vehicles.

Mr. Richard Moore
October 24, 1989
Page Two

Please provide information to me or directly to the Deputy Zoning Commissioner relating to Baltimore County's plans to provide for safer pedestrians crossings in the Towson Core. Specifically, is possible to provide exclusive pedestrian phases or at least change the timing from a normal walking speed of 4 ft./second to 1-2 ft./second?

Thank you.

Sincerely,

John W. Guckert

John W. Guckert
President

JWC/njj

cc: John Howard
Robert Hoffman

(dn4)

Revised Variances

Petitioner's Exh. 3 of 2

Variance from Section 231.1 to permit a front yard setback of 0 feet along Pennsylvania Avenue in lieu of the required 15 feet; Section 235.2 to permit a street corner setback of 4 feet in lieu of the required 10 feet on York Road; ~~Section 235.B.5 to permit the maximum averaged height of 144.7 feet and to permit 125 feet of the building to project 18 feet beyond and 80 feet above a plane sloping inward and upward at a 1 to 7.5 slope;~~ Section 231.d and Section 235.B.5 to permit the building to project 30 feet above and 8 feet beyond a plane sloping inward and upward at a 1 to 7.5 slope; ~~Section 235.B.4 to permit 25,169 square feet of amenity open space in lieu of the required 43,948 square feet;~~ Section 235.B.4 to permit 22,463 square feet of amenity open space in lieu of the required 39,943 square feet; ~~Section 307 to permit 985 parking spaces in lieu of the required 1065 parking spaces if the Zoning Commissioner determines a variance is appropriate.~~

Revised Variances

Variance from Section 231.1 to permit a front yard setback of 0 feet along Pennsylvania Avenue in lieu of the required 15 feet; Section 235.2 to permit a street corner setback of 4 feet in lieu of the required 10 feet on York Road; ~~Section 235.B.5 to permit the maximum averaged height of 144.7 feet and to permit 125 feet of the building to project 18 feet beyond and 80 feet above a plane sloping inward and upward at a 1 to 7.5 slope;~~ Section 231.d and Section 235.B.5 to permit the building to project 30 feet above and 8 feet beyond a plane sloping inward and upward at a 1 to 7.5 slope; ~~Section 235.B.4 to permit 25,169 square feet of amenity open space in lieu of the required 43,948 square feet;~~ Section 235.B.4 to permit 22,463 square feet of amenity open space in lieu of the required 39,943 square feet; ~~Section 307 to permit 985 parking spaces in lieu of the required 1065 parking spaces if the Zoning Commissioner determines a variance is appropriate.~~

Revised Variances

Variance from Section 231.1 to permit a front yard setback of 0 feet along Pennsylvania Avenue in lieu of the required 15 feet; Section 235.2 to permit a street corner setback of 4 feet in lieu of the required 10 feet on York Road; ~~Section 235.B.5 to permit the maximum averaged height of 144.7 feet and to permit 125 feet of the building to project 18 feet beyond and 80 feet above a plane sloping inward and upward at a 1 to 7.5 slope;~~ Section 231.d and Section 235.B.5 to permit the building to project 30 feet above and 8 feet beyond a plane sloping inward and upward at a 1 to 7.5 slope; ~~Section 235.B.4 to permit 25,169 square feet of amenity open space in lieu of the required 43,948 square feet;~~ Section 235.B.4 to permit 22,463 square feet of amenity open space in lieu of the required 39,943 square feet; ~~Section 307 to permit 985 parking spaces in lieu of the required 1065 parking spaces if the Zoning Commissioner determines a variance is appropriate.~~

Syllabus.

suit to take possession of a trust fund from those entitled to it and fails, has no right to reimbursement of his expenses out of the trust fund.

The chancellor found that the instant case was in the nature of an interpleader. We agree. But, instead of being paid out of the fund paid into court, the costs and fees in an interpleader proceeding are generally payable by the defendant who has made the litigation necessary. *Hopkins v. Easton Nat. Bank*, 171 Md. 130, 187 A. 874 (1936). See also 4 Pomeroy *Equity Jurisprudence* § 1328 (5th ed. 1941); 30 Am. Jur. *Interpleader* § 28.

We think the costs should be paid out of a fund only in those proceedings in which the parties have a common interest or when the fund itself benefits from the action. When there is an adversary proceeding, such as this, to determine who is entitled to the fund in dispute, the losing party should pay the costs in the trial court and on appeal. In this instance the plaintiff-appellant should pay the costs in both courts.

Having arrived at the conclusion that the proceeds of the policy of insurance are payable to the estate of the insured and that the widow should pay the costs in the lower court and on this appeal, it is not necessary to consider whether the admission of the testimony of the widow was contrary to the provisions of Art. 35 § 3, *supra*.

Order affirmed, the appellant to pay the costs in the trial court and on this appeal.

CASSIDY ET AL. v. BALTIMORE COUNTY BOARD OF APPEALS ET AL.

[No. 125, September Term, 1958.]

ADMINISTRATIVE LAW—*Proper Notice of Hearing, Required by Law—Failure to Give, Fatal to Jurisdiction.* The failure of an administrative official or a board to give a proper notice of

Syllabus.

a hearing, required by law, is fatal to the jurisdiction of the official or the board to conduct the hearing. pp. 421-422

ZONING—Baltimore County—Notice Referring to Petition for Reclassification Only, and Not Mentioning Special Exception, Was Sufficient to Confer Jurisdiction to Grant Special Exception. A notice of a hearing upon a petition for a reclassification of property in Baltimore County substantially complied with the County Zoning Regulations and the law to confer jurisdiction to grant a special exception, even though no application had been made for a special exception and the notice did not specifically mention a request for one, but stated only that a reclassification was sought. The notice notified the public that the petitioner was seeking a reclassification of its property to the lowest (the least restricted) zoning category, and thus apprised the public "clearly of the character of the action proposed and enough of the basis upon which it rest(ed) to enable" them "to intelligently prepare for the hearing". Anyone who attended the hearing prepared to defeat the request for a reclassification would likewise have been prepared to defeat the granting of a special exception. In reaching this conclusion, the Court noted that the regulations do not explicitly require the notice to contain the words "special exception" in order to authorize the granting of one, and stressed the closeness with which the regulations deal with petitions for reclassifications and for special exceptions; the fact that the method of notice required for each is identical; and, among other things, that the recognized practice in Baltimore County is that a petition for each may be filed at the same time and a joint hearing held thereon. pp. 421-426

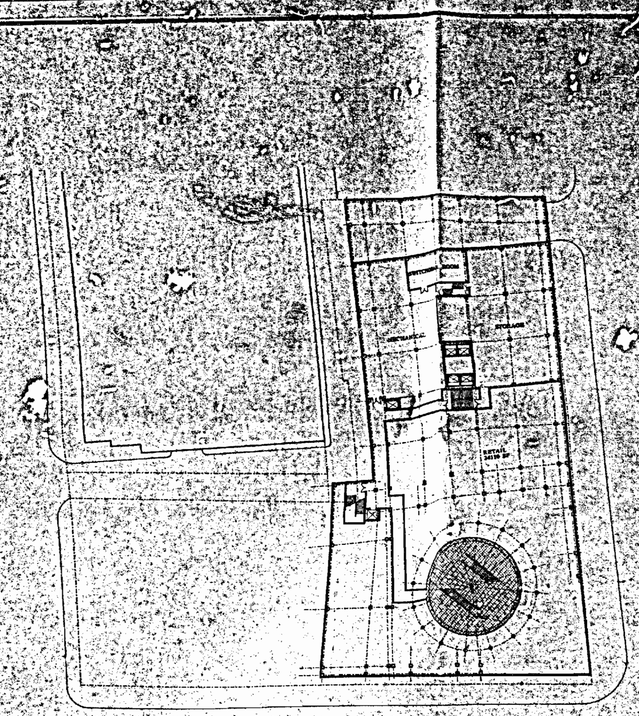
ZONING — *Baltimore County — Special Exception to Public Utility for Steam Generating Plants and Related Facilities in R.6 Zones.* The Baltimore County Zoning Regulations, in express terms, authorize a special exception to public utility companies for the operation in R.6 (residential) zones of steam generating plants and related facilities. pp. 427-428

ZONING — *Baltimore County — Special Exception to Public Utility for Steam Generating Station and Related Facilities in Residential Zone—Board's Decision to Grant, Fairly Debatable—*

TRANSCRIPT EXTRACT

CASE NO.: 90-130-SPHA

RECEIVED
FEB 16 PM 3:51
ZONING COMMISSIONER



LOWER LEVEL

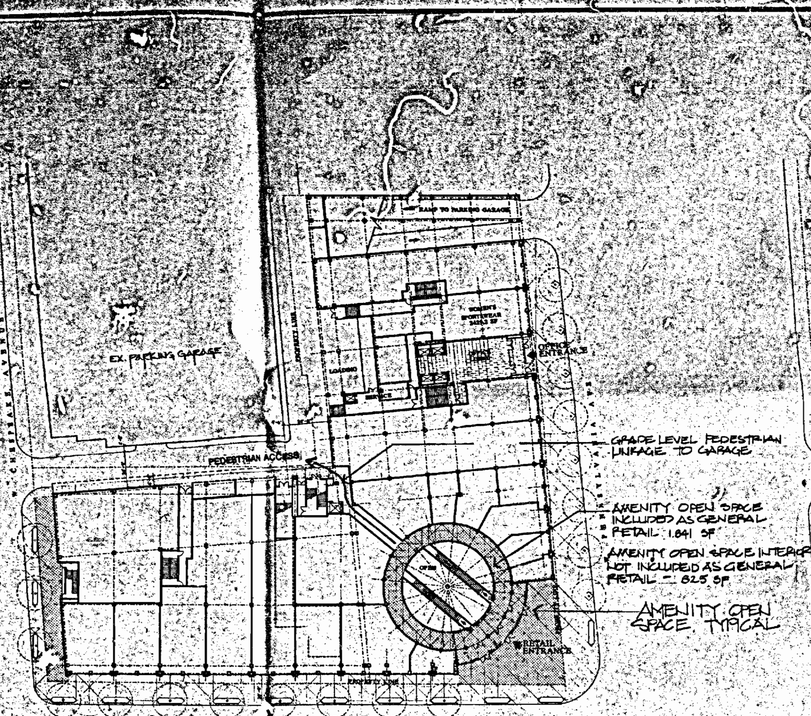
A. Excluded from Gross Floor Area
- 1. Switch Gear Room — 900 SF
- 2. Below Grade Mechanical and Storage Space — 14,610 SF
- Subtotal — 15,439 SF

B. Included in Gross Floor Area
- 1. Lower Level Amenity Open Space — 2,152 SF
- 2. General Retail Space — 87,230 SF
- Subtotal — 89,382 SF

C. Total Lower Level Floor Area — 46,972 SF

D. Area Included in Adjusted Gross Floor Area:
- 1. All Space Not Mechanical/Storage Space — 29,322 SF
- 2. Amenity Open Space — 2,152 SF

E. Required Parking @ 3 Spaces/1,000 SF = 447.1 spaces



STREET LEVEL

A. Excluded from Gross Floor Area
- 1. Ramp to Parking Garage — 3,314 SF
- 2. Transformer Areas Open on Side — 300 SF
- 3. Office Lobby, No Direct Tie to Stores — 1,579 SF
- 4. Interior Amenity Open Space Not in Front of Stores — 825 SF
- 5. Stairwell to Theatres — 785 SF
- Subtotal — 6,803 SF

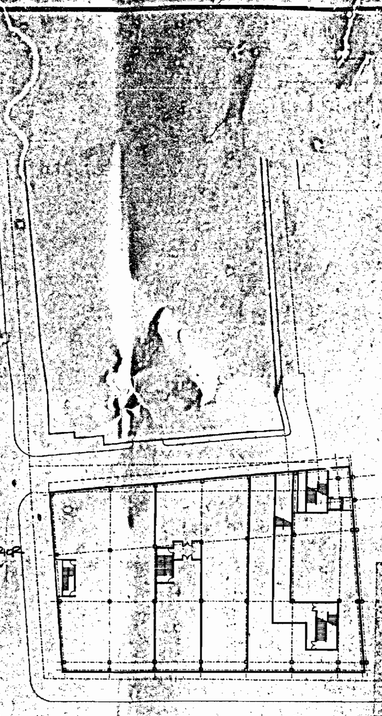
B. General Retail Gross Floor Area
- 1. Amenity Open Space in Front of Stores — 1,848 SF
- 2. General Retail Space — 40,775 SF
- 3. General Retail Space — 6,282 SF
- General Retail Subtotal — 48,905 SF
- 4. Required Parking at 3 Spaces/1,000 SF = 146.7 Spaces

C. General Office Gross Floor Area, Ground Level
- 1. Horizontal and Vertical Circulation, Loading Area and Service/Fire Center — 9,738 SF
- 2. Required Parking at 3.3 Spaces/1,000 SF = 18.9 Spaces

D. Total Street Level Floor Area — 61,447 SF

E. Area Included in Adjusted Gross Floor Area — 61,447 SF

F. Amenity Open Space
- 1. Interior at Rotunda — 2,673 SF
- 2. Street Level, Pennsylvania Avenue — 2,630 SF
- 3. Street Level, W. Chesapeake Avenue — 1,300 SF
- Street Level Amenity Open Space — 6,803 SF



RETAIL MEZZANINE LEVEL

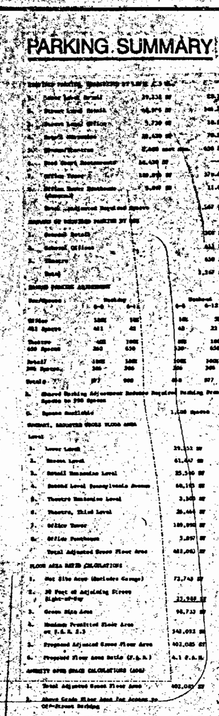
A. Excluded from gross floor area part of theatre area which house required parking on the number of seats
- 1. Horizontal and Vertical Circulation to Theatre Areas — 2,129 SF

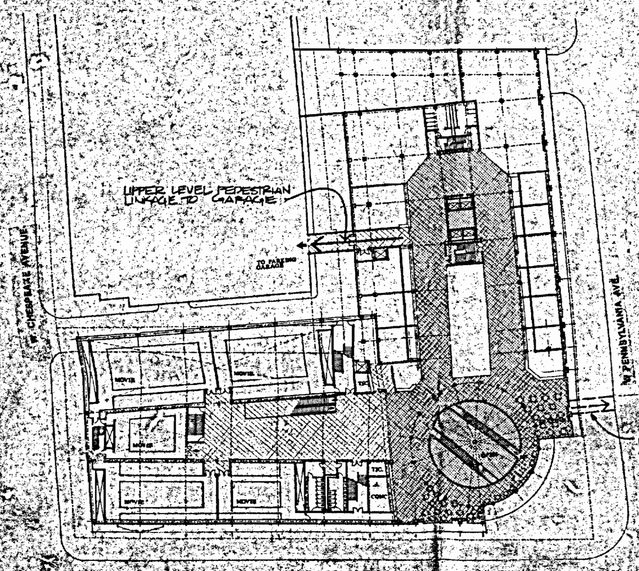
B. Included in Gross Floor Area
- 1. Upper Level General Retail — 23,420 SF
- 2. Required Parking at 3 Spaces/1,000 SF = 70.3 Spaces

C. Total Mezzanine Floor Area — 25,540 SF

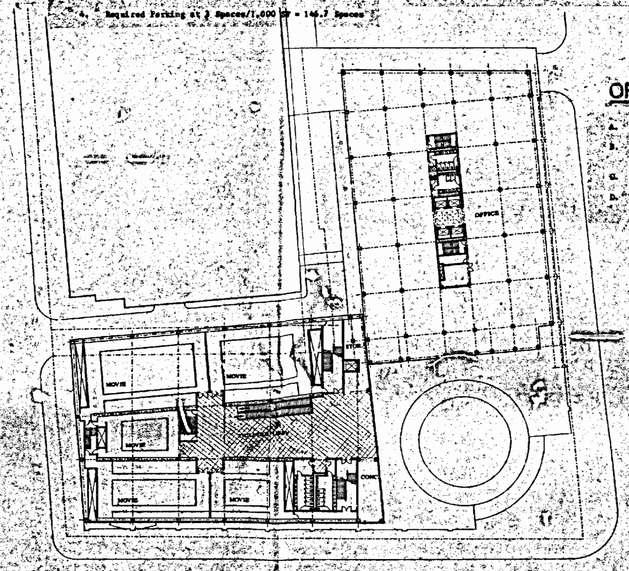
D. Area Included in Adjusted Gross Floor Area — 25,540 SF

PARKING SUMMARY F.A.R. A.O.S.





SECOND LEVEL



THIRD LEVEL

A. Theatre Area
- 1. Circulation, Theatre Lobby and Screens — 10,344 SF
- 2. Area in Theatre Adjusted Gross Floor Area — 31,466 SF

(Required parking already included in maximum 2,400 Theatre Seats)

OFFICE LEVELS

A. Third Level Office Area — 22,240 SF

B. Remaining Office Gross Floor Area (23,950 x 7 Levels) — 167,650 SF

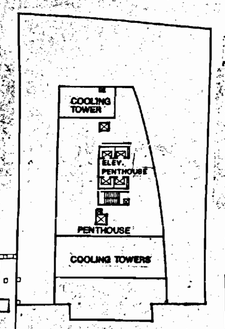
C. Total Office Gross Floor Area — 189,890 SF

D. Area Included in Adjusted Gross Floor Area — 189,890 SF

THEATRE MEZZANINE LEVEL

A. Vertical Circulation and Hallways — 3,300 SF
(No Parking Requirement, Included in 2,400 Maximum Number of Theatre Seats)

B. Area Included in Adjusted Gross Floor Area — 3,300 SF



ROOF / PENTHOUSE

A. Roof Plan Areas, Office Tower
- 1. Uncovered Cooling Towers — 1,222 SF
- 2. Covered Roof Penthouse Area — 6,777 SF
- 3. Excluded Elevator and Stair Bulkhead — 687 SF
- 4. Net Gross Floor Area — 8,897 SF
- 5. Required Parking at 2 Spaces/1,000 SF = 5.9 spaces

B. Roof Penthouse Area Included in Adjusted Gross Floor Area — 9,897 SF
- 1. Total Footprint Area of Roof — 23,950 SF
- 2. 25 Percent of Roof Area — 5,988 SF

NOTE: THESE FIGURES AND USES ARE SCHEMATIC AND MAY CHANGE

PRINTED OCT 10 1988

DAFT-McCUNE-WALKER, INC.

DAFT · McCUNE · WALKER INC.
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS & SURVEYORS
200 E. PENNSYLVANIA AVE.
TOWSON, MD. 21204
(301) 296-3820

BUILDING PROGRAM:

TOWSON COMMONS

SCALE: 1" = 40'

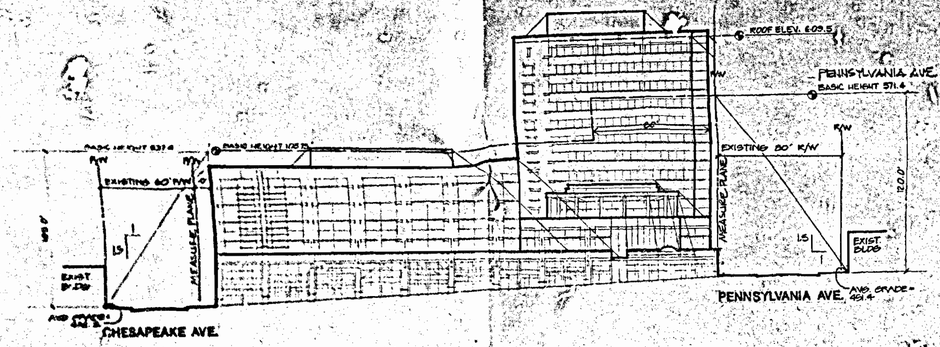
JOB ORDER NO.: 88112-F

ISSUE DATE: 6/27/88

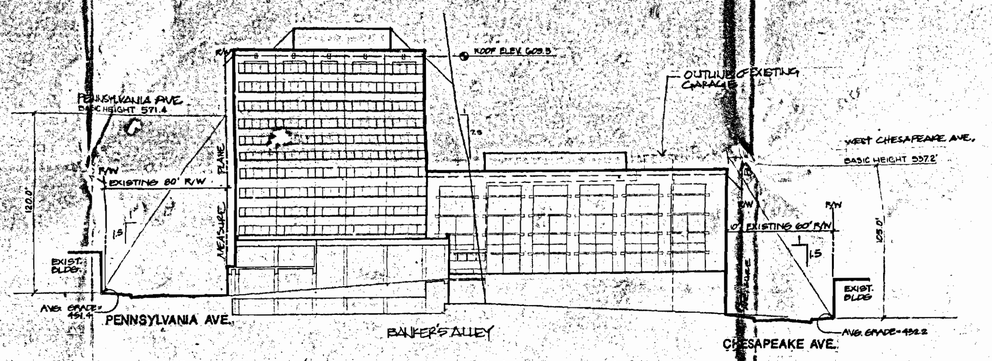
DATE:	REVISIONS
7.19.88	SEAL
7.28.88	AMENITY OPEN SPACE CLARIFICATION NOTES TO STREET LEVEL PLAN & PEDESTRIAN/ROOF LEVEL LINKAGE
10.6.88	FLOODPLAIN CALCULATIONS

3 of 4

OFFICE TOWER, ROTUNDA AND THEATER COOLING TOWER ALL PROJECT DOWNWARDS 45° AND ARE BELOW BASIC HEIGHT AT MEASURE PLANE ON YORK ROAD

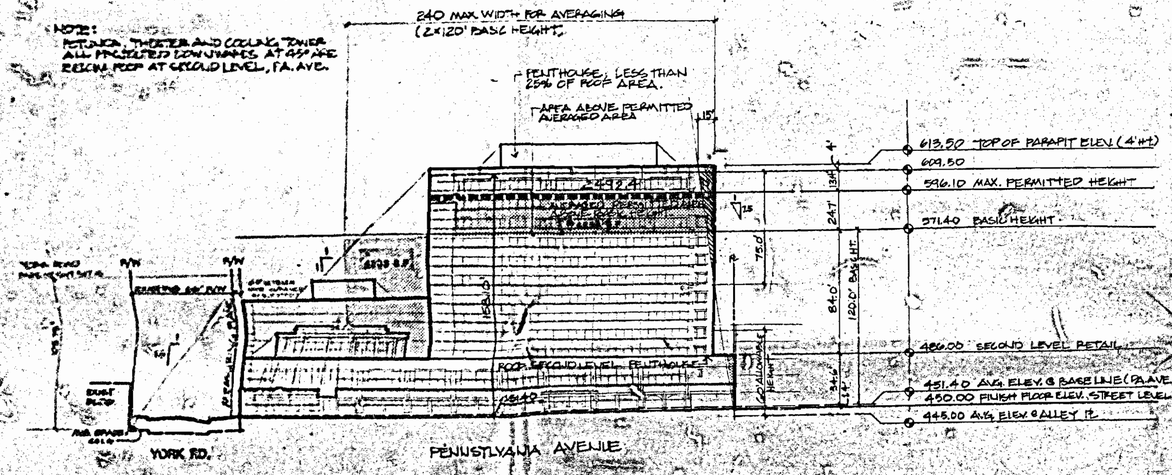


EAST ELEVATION • YORK ROAD



WEST ELEVATION • BANKERS' WAY

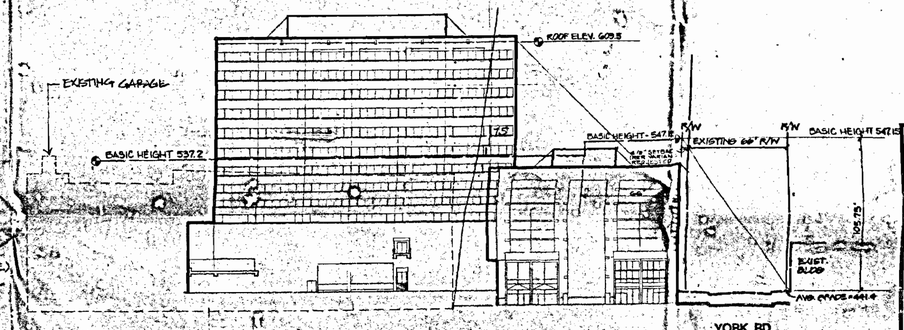
NOTE:
ROTUNDA, THEATER AND COOLING TOWER ALL PROJECTED DOWNWARDS AT 45° ARE BELOW ROOF AT GROUND LEVEL, PA. AVE.



HEIGHT AVERAGING

NORTH ELEVATION • PENNSYLVANIA AVENUE

NOTE:
BASIC HEIGHT IS ILLUSTRATED BY A 1 TO 1½ ANGLE BEGINNING AT AN AVERAGE GRADE ON THE OPPOSITE RIGHT-OF-WAY TO THE MEASURE PLANE. THIS ACHIEVES THE SAME RESULT AS USING A 45° ANGLE AND INCREASING THE RESULT BY 1.5.



SOUTH ELEVATION • CHESAPEAKE AVENUE

DAFT · McCUNE · WALKER INC.
LAND PLANNING CONSULTANTS
LANDSCAPE ARCHITECTS
ENGINEERS & SURVEYORS
200 E. PENNSYLVANIA AVE.
TOWSON, MD. 21286
TELEPHONE (301) 828-9330

HEIGHT TENT ELEVATIONS

TOWSON COMMONS

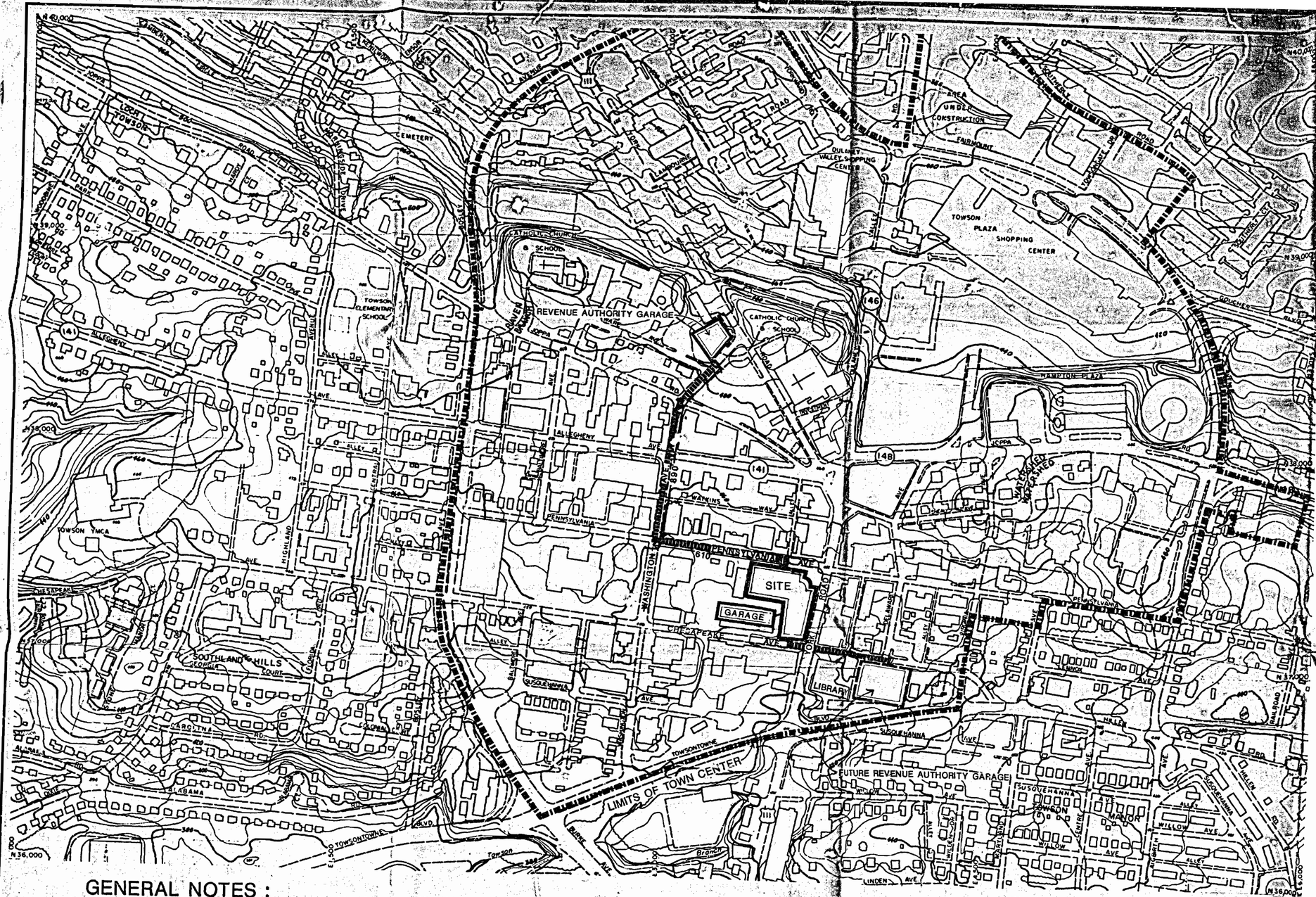
PLAN & PLAT TO ACCOMPANY ZONING PETITION

SCALE: 1" = 40'

JOB ORDER NO. 86112-B

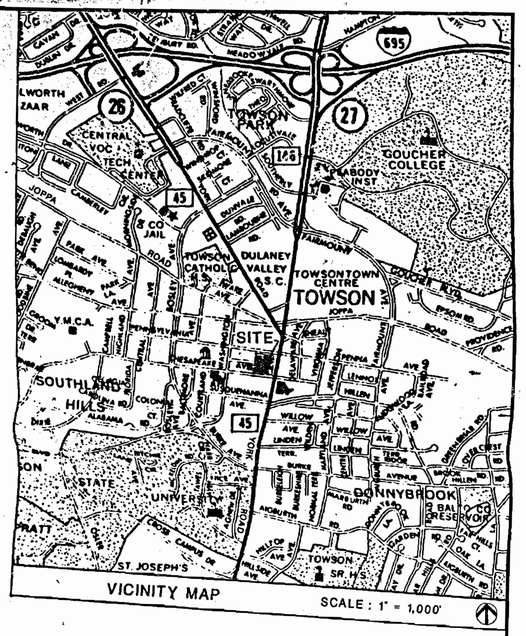
ISSUE DATE 6-27-1986

DATE	REVISIONS



SCALE : 1" = 200'

PROXIMITY MAP



VICINITY MAP SCALE : 1" = 1,000'

GENERAL NOTES :

1. Developer/Applicant: Towson Commons Limited Partnership
   1875 I Street, N.W.
   Washington, D.C. 20006
2. Election District 9, Councilmanic District 4, Census Tract No. 4707.02
3. Reverbed No. 35, Watershed No. 23.
4. Site Data:

   Current Zoning and Acreage:

   Net = 1.67 Acres+ BM-Cc (This site and all adjacent properties)

   Gross = 3.26 Acres+ BM-Cc (Includes 33' of York Road, Pennsylvania and Chesapeake Avenue Right-of-Way)

   Density Allowed (BAR 5.5)

   3.26 Ac. ± 3.5 = 341,451 SF Allowed

   Proposed Uses:

Theater	=	51,801
Restaurant	=	17,111
Retail	=	134,773
General Office	=	238,918
Total	=	444,5194 (BAR 4.5)

   *These figures and uses are schematic and may change.

Amenity Open Space:

Required: (Adj. Gross)

6,275 SF Above Ground Parking @ 0.02 = 1
438,220 SF Balance Adj. Gross @ 0.01 = 43,822 SF
Total Required = 43,948 SF

Proposed: = 25,169 SF

Variance required to Section 2153.4 to permit 25,169 SF of Amenity Open Space instead of the required 43,948 SF.

Parking:

Required:

101,036 SF Retail @ 3/1000	= 304
2,600 seats Theater @ 1/4 seats	= 650
5,633 SF Gen. Ofc. (street level) @ 3.3/1000	= 28
238,919 Gen. Ofc. (upper level) @ 2/1000	= 478
17,111 Restaurant	= 0
Total Required Unadjusted	= 1,452

Shared Parking Adjustment:

Use/Space	%	Weekday 6-12	Weekday 12-6	Weekend 6-12	Weekend 12-6
Office	100%	10%	100%	10%	5%
400 Spaces	400	40	400	40	20
Theater	0%	100%	100%	10%	10%
650 Spaces	650	0	650	65	65
Retail	100%	100%	100%	100%	
308 Spaces	308	308	308	308	
Totals	1,058	1,058	1,058	373	

Total Required Adjusted = 1,058 (- b/c)

Proposed:

Existing Adjacent Garage = 400 Spaces
Revenue Authority Garage = 585 Spaces
Total Proposed = 985 Spaces

Variances will be requested to permit 985 spaces instead of the required 1,065 spaces.

All spaces will be within 1,500 feet of this development.

Landscape Requirements:

Required = 810' L.F. Adj. Rd. @ 1/40' = 21 (11 Maj. Dec.)
170' L.F. interior alley @ 1/20 = 9 (5 Maj. Dec.)
Total = 30 (16 Maj. Dec.)

Proposed = 30 (16 Maj. Dec.)

All plantings will be in accordance with the Baltimore County Landscape Manual. A modification of requirements will be sought.

3. There are no existing or proposed well or septic areas on the site.
4. Soils: Entire site is Glenelg - urban land 8-15%, Hydro Class B.
5. The site is barren. Street tree plantings exist along York and Pennsylvania Avenues.
6. There are no existing streams, springs, bodies of waters or floodplains on this property.
7. The existing parking garage will be retained and is not historic.

10. Ownership: Towson Commons Limited Partnership
    1875 I Street, N.W.
    Washington, D.C. 20006

    Deed References and Tax Account Numbers:

8113/853	09-08-303000
8113/853	09-13-102120
8113/840	09-23-501373
8113/853	09-08-008975
8144/219	09-03-004404
8144/219	09-03-004401
8113/853	09-05-430690
8113/853	09-03-230290

11. Average Daily Trips:

Retail	101,036 SF @ 315.8/1000 SF	= 11,699.0
Theater	2,600 seats @ 4/seat	= 10,400.0
Restaurant		= 0.0
Office	244,642 SF @ 12.30/1000 SF	= 3,010.3
	Total	= 25,110.2 A.D.T.'s

12. A waiver of stormwater management will be applied for based on Section 3-150.3(a)(1)(2) of stormwater management regulations.
13. There are no known wetlands, critical areas, archeological sites, endangered species habitats or hazardous materials on the site.
14. Paving type shall be a durable and dustless surface such as tar and chip macadam or bituminous concrete.
15. Lighting shall be provided by existing street lights and architectural lighting.

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TEL. (PHONE) (301) 296-3333

PROXIMITY MAP

TOWSON COMMONS

PLAN & PLAT TO ACCOMPANY ZONING PETITION

586

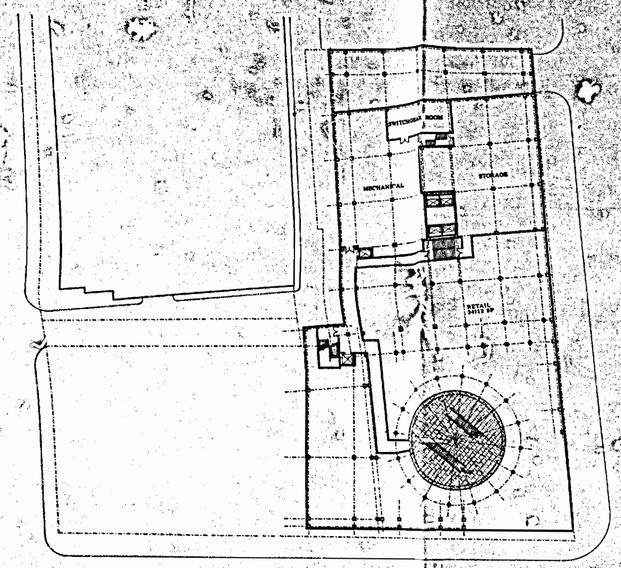
SCALE: 1" = 200'

JOB ORDER NO. 86112-3

ISSUE DATE 6/27/86

DATE	REVISIONS

EX. COMMERCIAL USES
RALPH P. ROCKS & THOMAS G. MARTIN
6832/354
#22
MARBURY B. FOX, JR., et.al.
4945/585
#14 #10 #8 #6
283/104
BENEVOLENT P.O.E. 469
TOWSON ELKS
ALLEY
RASHID A. KHATIB
8120/665
#2
RASHID A. KHATIB
8120/665
SERENA WAGNER
1718/24
#501 YORK RD.
EX. COMMERCIAL USES
0' SETBACK
REQUESTED
ADT'S
509.6
PENNSYLVANIA
AVENUE
EX. 16" W.
EX. 4" W.
PROP. GAS
PROP. 4" WATER
PROP. 8" FIRE SERVICE
EX. TREE & GRATE (TYP.)
PROP. CURB
EXIST. 80' PAVING
EX. 80' R/W
EX. PLANTER (TYP.)
EX. 6" GAS
E. PENNSYLVANIA
AVENUE
S 84°08'29" E
145.90
S 83°04'32" E
180.39
PROPOSED CONCRETE PAVING
15' FRONT BUILDING SETBACK LINE
MANO SWARTZ, 2nd,
MANO SWARTZ, 3rd,
LORA SWARTZ, 2nd,
RICHARD L. SWARTZ
7069/173
#424
(STATE ROUTE 45)
ROAD
YORK
MERCANTILE SAFE DEPOSIT & TRUST CO.
5686/408
MERCANTILE SAFE DEPOSIT & TRUST CO.
4997/2
TOWSON S & L ASSOC.
2467/10
JAMES G. HARRIS
4997/113
17 WEST LIMITED PARTNERSHIP
6745/672
PAD MOUNTED TRANSFORMER
PARKING GARAGE RAMP
PROPOSED 10 STORY BUILDING
PROPOSED 3 STORY BUILDING
STREET LEVEL F.F: 450.0
20' MIN. SIDEWALK WIDTH
CHARLES E. BROOKS,
KATHERINE M. BROOKS
7564/225
#423
JOHN H. PLATSIS,
MARIA PLATSIS &
LAMBIS PLATSIS,
et. al. 7728/114
JOHN H. PLATSIS,
MARIA PLATSIS &
LAMBIS PLATSIS,
et. al. 7728/114
EX. COMMERCIAL USES
BUILDING OVERHANG
S 07°49'04" W 3.26
N 84°08'29" W 36.00
N 83°04'45" W 44.58
N 11°13'04" E 3.52
N 79°24'32" W 1.24
N 11°29'48" E 15.72
119.63
CONCRETE PAVING
340.51
EX. ALLEY (TO REMAIN OPEN)
N 84°03'59" W
PROPOSED 5 STORY BUILDING
EDNA GORFINE
6022/138
HENRY PECK - TRUSTEE
3342/379
JOSEPH A. VARVARD
5577/386
ELLIS FINKELSTEIN, INC.
575/438
JOHN KARSOS
5905/272
#400
FIRST NATIONAL BANK OF MARYLAND
7334/233
FIRST NATIONAL BANK OF MARYLAND
4144/129
EXISTING PARKING GARAGE
120' x 270' = 32,400 SF±
(EXCLUDED FROM CRG)
TOWSON COMMONS JOINT VENTURE
8144/219
EX. ALLEY (TO REMAIN OPEN)
10' SIDE BUILDING SETBACK LINE
N 82°58'49" W
265.00
EXISTING RETAIL
ARCADE LAND CO.
5539/407
10' SIDE BUILDING SETBACK LINE
EX. FIRE HYDRANT (TYP.)
EX. 40' PAVING
EX. 66' R/W
N 82°30'58" W 11.08
N 11°02'20" E 14.75
N 82°13'24" W
140.18
COVERED CELLAR ENTR.
ADT'S:
509.6
CHESAPEAKE
AVENUE
EX. 60' R/W
4'-0" SETBACK REQUESTED
POINT OF BEGINNING
N 37,155.47
E 5,635.82
RAYMOND CARLTON SEITZ
7974/671
RAYMOND A. SEITZ
2012/200
RAYMOND A. SEITZ
2423/41
THOMAS FONG
2043/338
#13
JAMES CHARLES SCHWARTZ
5993/111
#11
LEROY Y. HAILE, JR.
2925/238
#9
W & S CORP.
c/o MELVIN WEINMAN
4536/066
#7
LEROY Y. HAILE, JR.
6485/508
#5
JAMES I. PARK
6879/434
#3 #1
EX. COMMERCIAL USES
LIBRARY
LEGEND
EXISTING STREET LIGHT
EXISTING TREE
+440.2 PROPOSED SPOT GRADE
PUBLIC SERVICES No:
PLANNING No:
DAFT McCUNE WALKER INC.
200 EAST PENNSYLVANIA AVENUE
TOWSON, MD. 21204
CRG PLAN
TOWSON COMMONS
PLAN & PLAT TO ACCOMPANY
ZONING PETITION
SCALE: 1" = 20'
JOB ORDER NO. 86112B
ISSUE DATE 6/27/89
DATE
REVISIONS
2 of 4
TBS



LOWER LEVEL

A. Included from Gross Floor Area

1.	Ramp to Parking Garage	1,022 SF
2.	Public Areas Mechanical and Storage Space	13,089 SF
	Subtotal	14,111 SF

B. Included in Gross Floor Area

1.	Horizontal and Vertical Circulation	2,040 SF
2.	Ground Level Leasing Open Spaces	2,620 SF
3.	Ground Retail Space	22,110 SF
	Subtotal	26,770 SF

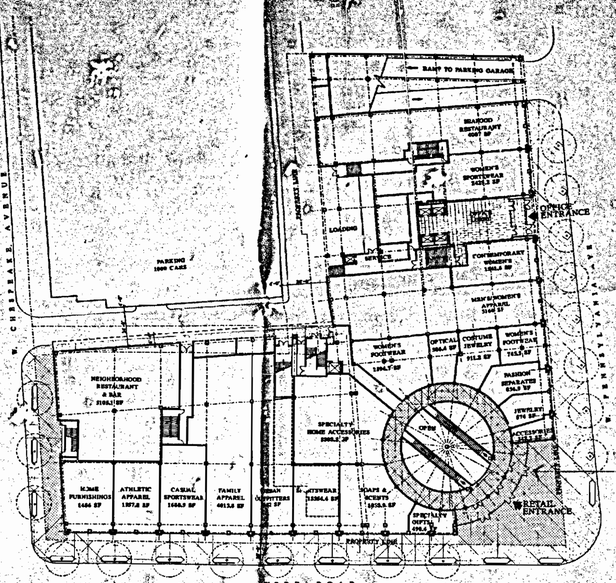
4. Required Parking @ 1 Space/1,000 SF = 28 spaces

C. Total Lower Level Floor Area 40,000 SF

D. Area Included in Adjacent Gross Floor Area

1. All Space Not Ramp to Garage and Mechanical/Storage Space 26,770 SF

E. Leasing Open Space 2,620 SF



STREET LEVEL

A. Included from Gross Floor Area

1.	Ramp to Parking Garage	1,022 SF
2.	Pedestrian Area Open on Mall	1,071 SF
3.	Office Lobby, No Direct Tie to Street (Lobby)	1,400 SF
4.	Interior Amenity Open Space Not in Front of Stores	1,317 SF
	Subtotal	4,810 SF

B. General Retail Gross Floor Area

1.	Vertical Circulation	720 SF
2.	Horizontal and Vertical Circulation	1,815 SF
3.	Amenity Open Space in Front of Stores	1,303 SF
4.	General Retail Space	61,951 SF
5.	Restaurant Restrooms/Service on Ground Level	1,000 SF
6.	General Retail	66,789 SF
7.	Required Parking at 3 Spaces/1,000 SF = 140 Spaces	

C. General Office Gross Floor Area, Ground Level

1.	Horizontal and Vertical Circulation	833 SF
2.	Loading Area	1,500 SF
3.	Service and Mtg Rooms	845 SF
4.	Horizontal and Vertical Circulation	2,153 SF
	General Office Subtotal	5,331 SF

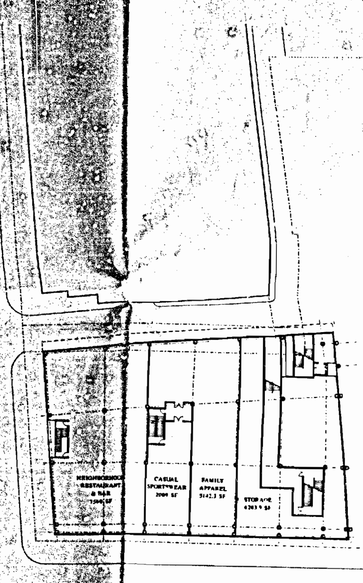
5. Required Parking at 3.3 Spaces/1,000 SF = 26 Spaces

D. Total Street Level Floor Area 66,560 SF

E. Area Included in Adjacent Gross Floor Area 61,560 SF

F. Amenity Open Space

1.	Retailer at Grounds	2,240 SF
2.	Street Level, Pennsylvania Avenue	2,240 SF
3.	Street Level, E. Chesapeake Avenue	1,200 SF
	Street Level Amenity Open Space	7,200 SF



RETAIL MEZZANINE LEVEL

A. Included from gross floor area part of theatre space which hosts required parking on the basis of amenity, i.e.

1.	Horizontal and Vertical Circulation on Theatre Mezz	3,806 SF

B. Included in Gross Floor Area

1.	Horizontal and Vertical Circulation	504 SF
2.	Upper Level Comm. Retail	1,134 SF
3.	Upper Level Rmps/Retail	4,344 SF
4.	Neighborhood Restaurant/Bar on Upper Level	7,004 SF
	General Retail	
	General Retail Subtotal	23,750 SF

5. Required Parking at 3 Spaces/1,000 SF = 84 Spaces

C. Total Mezzanine Floor Area 24,790 SF

D. Area Included in Adjacent Gross Floor Area 24,790 SF

PARKING SUMMARY

REQUIRED PARKING, BREAKDOWN BY LEVEL AND USE

1.	Lower Level Retail	20,779 SF	80 Spaces
2.	Street Level Retail	67,447 SF	240 Spaces
3.	Street Level Office	5,831 SF	26 Spaces
4.	Retail Mezzanine	21,739 SF	66 Spaces
5.	Ground Level Retail (Pedestrian Ramp)	1,051 SF	4 Spaces
6.	Cinema/Theatre (2,600 Seats Maximum)	(33,344 SF)	650 Spaces
7.	Food Court Restaurants	(17,111 SF)	———
8.	Office Tower	253,176 SF	467 Spaces
9.	Office Tower Penthouse (Ground)	5,7K	11 Spaces
	Total Unadjusted Required Spaces		1,455 Spaces

SUMMARY OF REQUIRED PARKING BY USE

1.	General Retail	306 Spaces
2.	General Office	499 Spaces
3.	Theatre	650 Spaces
	Total	1,455 Spaces

PHASED PARKING ADJUSTMENT

Use/Spaces	Weekday		Weekend	
	6-8	8-12	6-8	8-12
Office	100%	10%	10%	5%
499 Spaces	499	50	50	25
Theatre	40%	100%	100%	10%
650 Spaces	260	650	650	65
Retail	100%	100%	100%	100%
306 Spaces	306	306	306	306
Totals	1,065	1,006	1,006	396

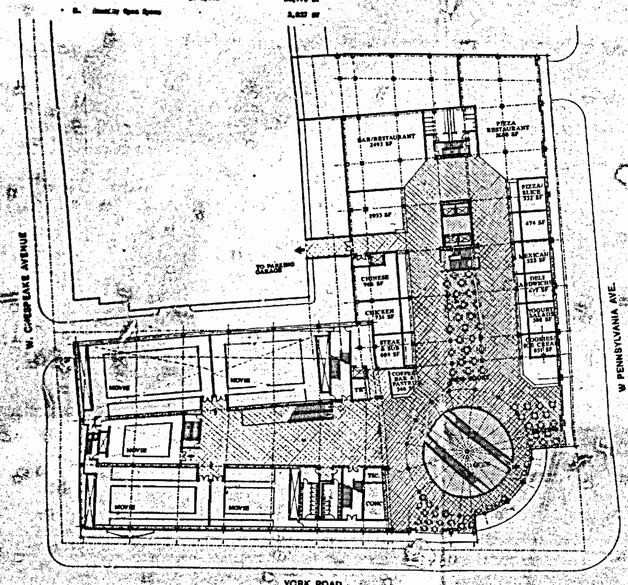
1. Phased Parking Adjustment Reduced Required Parking From 1,455 Spaces to 1,065 Spaces

2. Spaces Available 960 Spaces

3. Variance to Provide 960 Spaces Instead of the Required 1,065 Spaces

SUMMARY, ADJUSTED GROSS FLOOR AREA

Level	
1. Lower Level	26,779 SF
2. Street Level	61,560 SF
3. Retail Mezzanine Level	24,790 SF
4. Second Level Pennsylvania Avenue	66,799 SF
5. Theatre Mezzanine Level	3,812 SF
6. Theatre, Third Level	24,344 SF
7. Office Tower	253,176 SF



SECOND LEVEL

A. Theatre Section - Included from gross floor area because parking provided on same basis.

1.	Horizontal and Vertical Circulation	3,385 SF
2.	Theatre and Lobby Space	21,439 SF
	Theatre Subtotal	24,739 SF
3.	Required Total Parking Theatre (2,600 Maximum Seats @ 4/6 Seats)	650 Spaces

B. General Retail Gross Floor Area

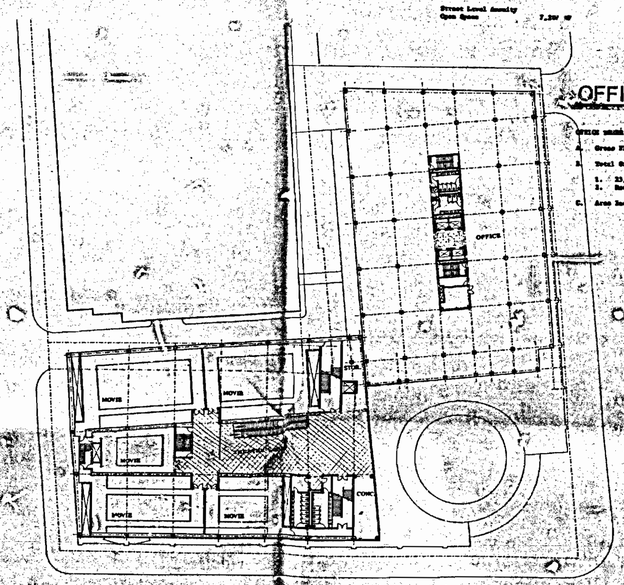
1.	Pedestrian Ramp to Parking Garage	1,051 SF
2.	Required Parking at 3 Spaces/1,000 = 4 Spaces	

C. Other Area Not Included in Gross Floor Area

1.	Ramp to Garage	1,738 SF
2.	Office Elevators and Stairwell	1,032 SF
	Subtotal	2,770 SF

D. Restaurant Area Included in Gross Floor Area with No Parking Requirement

1.	Food Court Including associated Vertical Circulation, Restroom, Seating Area	17,111 SF
E.	Amenity Open Space	13,135 SF
F.	Required Parking = C, D and E = 0 Spaces	
G.	Total Second Level Floor Area	66,799 SF
H.	Area Included in Adjacent Gross Floor Area	66,799 SF

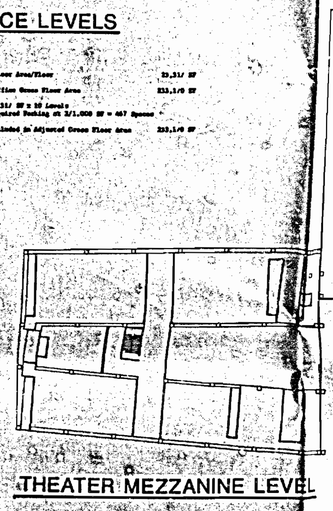


THIRD LEVEL

OFFICE LEVELS

OFFICE USAGE

A.	Gross Floor Area/Floor	23,331 SF
B.	Total Office Gross Floor Area	233,176 SF
	1. 23,331 SF x 10 Levels	
	2. Required Parking at 2/1,000 SF = 467 Spaces	
C.	Area Included in Adjacent Gross Floor Area	233,176 SF



ROOF / PENTHOUSE

OFFICE ROOF PLAN

A.	Roof Plan Areas, Office Tower	
1.	Total Area, Roof Penthouse	5,344 SF
2.	Uncovered Cooling Towers	2,134 SF
3.	Covered Roof Penthouse Area	3,210 SF
4.	Enclosed Elevator and Stair Bulkhead	780 SF
5.	Net Gross Floor Area	3,210 SF
6.	Required Parking at 3 Spaces/1,000 SF = 12 spaces	
B.	Roof Penthouse Area Included in Adjacent Gross Floor Area	3,748 SF
1.	Total Footprint Area of Roof	23,331 SF
2.	20 Percent of Roof Area	5,004 SF

THEATER MEZZANINE LEVEL

A. Included from Gross Floor Area

1.	Vertical Circulation on Mid-Level	3,811 SF

(No Parking Requirement Included on 2,600 Maximum Seating of Theatre Area)

B. Area Included in Adjacent Gross Floor Area 3,811 SF

NOTE: THESE FIGURES AND USES ARE SCHEMATIC AND MAY CHANGE.

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BUILDING PROGRAM

TOWSON COMMONS

PLAN & PLAT TO ACCOMPANY ZONING PETITION

SCALE: 1" = 40'

JOB ORDER NO. 86112-B

ISSUE DATE 6/27/8[illegible]

DATE	REVISIONS