

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

DATE: February 15, 2002

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton 
Board of Appeals

SUBJECT: **Michael Athas**
Case No.: 91-246 - SPH
Circuit Court Case No.: 92 CV 2604

Judge Jacobson of the Circuit Court issued a Memorandum Opinion and Order on August 12, 1992 AFFIRMING the Board of Appeals. The case was then appealed to the Court of Special Appeals. The Court of Special Appeals upheld the Circuit Court Order and issued a Mandate on November 12, 1993. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith.

Attachment: SUBJECT FILE ATTACHED

MICHAEL ATHAS
S/s Windsor Mill Road, 270' W of
c/l of Lord Baltimore Dr. (7207
Windsor Mill Road)

#91-246-SPHA
2nd Election District
2nd Councilmanic Dist.

January 9, 1991	Petition for Special Hearing to approve nonconforming status/rear travel aisle, interior parking lot, and existing stationary business sign filed by Michael Athas. Petition for Variances for setbacks and parking spaces also filed by Mr. Athas.
March 14	Comments of Baltimore County Zoning Plans Advisory Committee.
May 2	Publication in newspapers.
May 3	Certificate of Posting of property.
May 22, 1991	Hearing held on Petition by the Deputy Zoning Commissioner.
May 29	Order of the Deputy Zoning Commissioner GRANTING Petition for Variances with restrictions; DENYING Petition for Special Hearing.
June 18	Notice of Appeal received from Julius W. Lichter, Esquire on behalf of Protestants.
January 7, 1992	Hearing before the Board of Appeals.
February 19	Opinion and Order of the Board GRANTING Petition for Variances with restrictions.
March 19	<i>E</i> ✓ Order for Appeal filed in the Circuit Court for Baltimore County by Julius W. Lichter, Esquire on behalf of Protestants. Petition to accompany appeal also filed in the Circuit Court for Baltimore County by Mr. Lichter.
March 19	Certificate of Notice sent to interested parties.
April 16	✓ Transcript of testimony filed; Record of Proceedings filed in the Circuit Court for Baltimore County.
August 17	<i>E</i> ✓ CCT, BCo AFFIRMS C.B. of A. (Hon. Leonhard S. Jacobson)
September 9	<i>E</i> ✓ Order for appeal by Timanus La. Part. filed in CCT, BCo by Julius W. Lichter, Esq. for appeal to C of SA.

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IN THE MATTER OF THE
APPLICATION OF MICHAEL ATHAS
FOR A SPECIAL HEARING AND
VARIANCE ON PROPERTY LOCATED
ON THE SOUTH SIDE OF WINDSOR
MILL ROAD, 270' WEST OF THE
CENTERLINE OF LORD BALTIMORE
DRIVE (7207 WINDSOR MILL ROAD)

BEFORE THE BALTIMORE COUNTY
BOARD OF APPEALS

CASE NO.: 91-246-SPHA

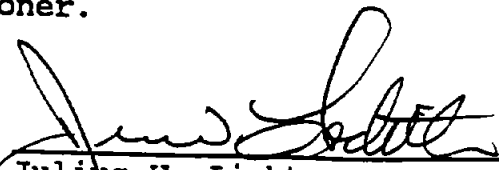
*
* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COURT
* CASE NO.: 92-CV-2604
* 17/315

RECEIVED
COUNTY BOARD OF APPEALS
92 SEP 17 PM 12:58

ORDER FOR APPEAL BY TIMANUS LANE PARTNERSHIP

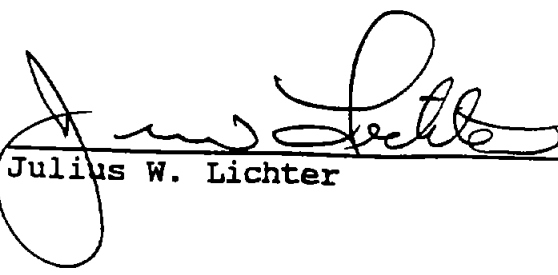
Dear Sir/Madam Clerk:

Please enter an appeal to the Court of Special Appeals on behalf of Timanus Lane Partnership from the decision of Judge Leonard S. Jacobson, which decision affirmed the decision of the County Board of Appeals of Baltimore County and the Baltimore County Deputy Zoning Commissioner.


Julius W. Lichter
Levin & Gann, P.A.
305 W. Chesapeake Avenue
Suite 113
Towson, MD 21204
(410) 321-0600
Attorney for Timanus Lane Partnership

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of SEPTEMBER 1992, a copy of the foregoing Order for Appeal was mailed, postage prepaid, to F. Vernon Boozer, Esquire, 614 Bosley Avenue, Towson, Maryland 21204.


Julius W. Lichter

CIRCUIT COURT FOR BALTIMORE COUNTY

CIVIL CATEGORY APPEAL

ATTORNEYS

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F. Vernon Boozer
614 Bosley Avenue
21204 828-9441(Athas)

TIMANUS LANE PARTNERSHIP

IN THE MATTER OF THE
APPLICATION OF MICHAEL ATHAS
FOR A SPECIAL HEARING AND
VARIANCE ON PROPERTY LOCATED
ON THE SOUTH SIDE OF WINDSOR
MILL ROAD, 270' WEST OF THE
CENTERLINE OF LORD BALTIMORE
DRIVE (7207 WINDSOR MILL ROAD)

THE BALTIMORE COUNTY
BOARD OF APPEALS

TRANSCRIPT IN BASEMENT
LOCATION: Box 51

CV GEN	COSTS	922604 #
CV CLK		80.00
B LERY		10.00
POST		2.00
CHECK TL		92.00
#13583 C001 R01		T08:17
		03/20/92

(1) March 19, 1992 - Appellant's Order for Appeal from the Decision/
Order of the Baltimore County Board of Appeals, Petition and Exhibits
fd.

(2) Mar 26, 1992 - Certificate of Notice fd. rec'd 3/19/92.

(3) April 13, 1992 App. of F. Vernon Boozer, atty. for Michael Athas and sameday
answer, fd.

(4) April 16, 1992 - Transcript of Record fd. (G-1).

(5) April 16, 1992 - Notice of Filing of Record fd. Copies sent.

6) May 18, 1992 Pltff.'s Memorandum, fd.

(7) June 4, 1992 - Appellee's Memorandum, fd.

(8) June 18, 1992 - Appellant's Reply Memorandum, fd.

July 24, 1992. Hon. Leonard S. Jacobson. Hearing had in re Appellant's appeal
from the Baltimore County Board of Appeals decision. Held sub curia. Opinion
and Order to be filed.

(9) Aug. 17, 1992 Memorandum Opinion and Order of Court that the
judgment of the Baltimore County Board of Appeals is hereby
AFFIRMED. fd. (LSJ)

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE
APPLICATION OF MICHAEL ATHAS
FOR A SPECIAL HEARING AND
VARIANCE ON PROPERTY LOCATED
ON THE SOUTH SIDE OF WINDSOR
MILL ROAD, 270' WEST OF THE
CENTERLINE OF LORD BALTIMORE
DRIVE (7207 WINDSOR MILL ROAD)

BEFORE THE BALTIMORE COUNTY
BOARD OF APPEALS

CASE NO.: 91-246-SPHA

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CASE NO.: 92-CV-2604

17/315

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APPELLANT'S REPLY MEMORANDUM

Timanus Lane Partnership (hereinafter, "Appellant"), by and through Julius W. Lichter and Levin & Gann, P.A., its attorneys, hereby request the Circuit Court to reverse the February 19, 1992 Order of the Baltimore County Board of Appeals (hereinafter, the "Board") granting a variance from the parking and other requirements of the Baltimore County Zoning Regulations (hereinafter, "BCZR"), and to grant such other and further relief as the nature of this case may require, and in support thereof states as follows:

LEGAL ARGUMENTS

I. **The Appellee Failed To Adequately Establish That Compliance With The BCZR Would Result In A Practical Difficulty Or Unreasonable Hardship.**

It is clearly acknowledged by both sides and the Board of Appeals in its written opinion that an area variance may only be granted where strict application of the BCZR would cause practical difficulty or unreasonable hardship to the Petitioner and his

property. Anderson v. Board of Appeals, Town of Chesapeake, 22 Md. App. 28 (1974). However, contrary to what the Appellee states in his Memorandum, the record does not provide substantial evidence of practical difficulty or unreasonable hardship as to why the Board should grant an excessive variance with respect to permitting 98 parking places in lieu of the required 150, as a result of Appellee's physical expansion of the premises occupied by his business. The Appellee contended in his memorandum that the seminal issue "received considerable attention and discussion before the board" but he failed to identify the testimony or other evidence in the record which supports this generalization.

The Appellant agrees that it is not necessary for the witnesses to directly refer to the Anderson test, however it is necessary, as a matter of law, for the witnesses' testimony to sufficiently satisfy all elements of the test. No evidence offered by the Appellee, including all of that introduced through Mr. Monk or Mr. Rizakos, satisfied the elements discussed in Anderson. Therefore, the Board's decision is not based on the necessary showing of practical difficulty or unreasonable hardship.

- A. Compliance with the strict letter of the law does not unreasonably prevent the owner from using the property for a permitted purpose nor is compliance with the restriction unnecessarily burdensome.**

The Appellee claims that the practical difficulty that he suffers is his inability to provide more than 106 spaces due to the physical size of the property. However, this argument is both irrelevant and deceptive. We acknowledge the fact that the

structure before the addition is, in all likelihood, a non-conforming use, as defined by section 104 of the BCZR, and as such would probably meet the "practical difficulty" prong of the Anderson test. Such practical difficulty may be sufficient to obtain the variance necessary to bring the existing building into compliance with the BCZR. However, that is not the difficulty we are disputing. The alleged difficulty in dispute is the proposed addition to the original structure, which itself requires increased variance from the BCZR and which removes the building from the non-conforming use shield applicable to the existing size and building configurations. The Appellee is proposing to make the existing building even more non-conforming by requesting a variance so that he might increase the number of patrons the establishment will be able to serve, while providing even less parking than currently exists.

We are not contending, as the Appellee has tried to imply, that the owners should reduce the square footage of the structure to bring the building into BCZR conformance. We are, instead, contesting the legal justification offered for the enlargement of a structure that already has too few parking spaces available, and which will cause even further burden and harm on other property owners by further reducing the number of presently available parking spaces. Permitting these changes will have the disastrous effect of forcing even greater numbers of patrons to park in the Appellant's parking lot and interfere with the Appellant's use and its tenant's use of its property, thereby imposing an additional

hardship on the Appellant directly related to the Appellee's further expansion of his business.

In addition, despite Appellee's ardent protests otherwise, the hardship that necessitates the variance is self-imposed. There would be no need to reduce the parking from the current, albeit deficient, number of 106 parking places to an even greater deficiency of only 98 spaces, if the Petitioner did not unilaterally decide to expand his business consuming portions of his existing parking lot. If the Appellee did not undertake this expansion there would be no need to obtain a variance. Therefore, the hardship which the Appellee claims - the forced compliance with zoning regulations which post date the site - are not truly hardships since the Appellee was never required to comply with the modern regulations until he proposed changes to the facility. It is obvious that the motivation for requesting the variances from the BCZR is not to create safer traffic conditions or the desire to service handicapped persons.

B. The grant of the variance did substantial injustice to the applicant as well as the other property owners in the district.

The importance of improving safety by correcting poor traffic patterns and improving the restroom facilities to meet federal and state laws regarding handicap facilities is not disputed. What is disputed is the Appellee's deceptive attempts to use these virtuous improvements as a guise to hide the true purpose of his addition - expansion of his business to accommodate additional patrons.

First, despite the Appellee's contentions that the variance

would improve unsafe traffic patterns, there is no evidence to establish that the proposed changes will improve, greatly or otherwise, the traffic hazards. Reducing the number of parking spaces and increasing the number of patrons and their length of stay, will exacerbate existing hazards and will create a greater traffic hazard to pedestrians. Because the proposed variance provides less parking for more cars, an even greater number of patrons will be forced to park their vehicles in the Appellant's parking lot. This will create a risk to the pedestrians because they will now have to cross Windsor Mill Road, a busy thoroughfare which runs between the properties of the Appellant and the Appellee.

The Appellee contends that the reward of a better traffic flow comes only at a cost of 5.5% reduction of parking spaces. This figure is, however, specious. The Appellee is, in fact, required to have a minimum of 150 parking places to safely accommodate a structure of the proposed size. Therefore, a reduction from 150 parking places to 98 parking places is obviously a much greater impact than the 5.5% that the Appellee claims.

Furthermore, this reduction in parking will directly and adversely impact the Appellant. The Appellee failed to address the direct impacts on the Appellant which are the inconvenience and deprivation of parking for Appellant's tenants as a result of the overflow from Windsor Inn, the revelry and litter which overflow into his parking lot and the additional costs of security and maintenance all as a direct result of the shortage of parking on

the Appellee's site. If the variance is granted, the impact on the Appellant will only be exacerbated by this reduction in parking. What the Appellee proposes will exacerbate the serious problem that exists and currently impacts the Appellant and its tenant's use of the property. Therefore, while the expansion may provide substantial justice to the Appellee only, it does not provide justice to the Appellant, a property owner in the district.

C. The proposed variance was not granted in a fashion such that the spirit of the ordinance was observed and public safety and welfare secured.

Despite the Appellee's attempts to persuade the court that this third element of the variance standard will be met with such a minimal amount of parking, it is readily apparent from the above analysis that there is an actual decrease in public safety.

The ordinance was enacted with the intention of providing adequate and safe parking conditions. Providing only 98 spaces in lieu of the required 150 will force people to park off the Appellee's lot and walk to the facility through dangerous traffic conditions, as there is no public parking available in the area proximate to the Appellant's property. Mr. Rizakos testified that the reason they did not wish to purchase the property offered by the Appellant for additional parking, was because "they would have to walk across the street and that is very dangerous." (T. 74). The lot the Appellant offered to sell to the Appellee is on the same side of Windsor Mill Road as the Appellant's property. Therefore, if the Appellee believes it will be unsafe for his patrons to park across the street in the lot the Appellant offered to sell to the

Appellee for additional parking, and that lot is closer to the Windsor Inn than the Appellant's Office Park parking lot, then it is clearly more unsafe for the patrons of the restaurant to park in Appellant's Office Park parking lot. It is obvious that the proposed variance jeopardizes public safety and as such, the Board did not grant the variance, within the spirit and intent of the ordinance nor was public safety secured.

II. The Board of Appeals Erred By Granting the Parking Variance When The Alleged Hardship, If Any Exists, Was Essentially Self-Imposed And Not Due Solely to the Manner of the Operation of the Ordinance Upon the Subject Property but for the Sole Purpose of Gaining Greater Profit.

The Appellant supports upgrading bathroom facilities to meet regulations concerning handicap facilities. However, it is reprehensible for the Appellee to use this positive improvement as an umbrella to foster major, for profit improvements. In fact, there is substantial evidence which identifies that the variance is being sought only to satisfy the Appellee's self interested goals. The testimony by Mr. Monk states that the Appellee's motivation for upgrading the bathrooms is not primarily to be consistent with the Americans with Disability Act but rather to:

"attract a different type of customer as opposed to a crab house operation, this will be adult population who would want to come in and sit down, have a nice meal." (T. 64)
[The current bathroom is] "in the bar/lounge section of the operation and they are pretty old, and the client's objective is to create nice restroom facilities for the dining patrons." (T. 61).

Meeting the code requirements is obviously the secondary motivation.

There is no doubt that the Appellee has expressed a present desire to meet the code requirements to satisfy self serving goals, as expressed by Mr. Rizakos's testimony to the Board, "But definitely whatever the code requires we are going to do it." (T. 80). The doubt lies in whether meeting the code requirements is a hardship as the Appellee contends, or rather a derivative of their self-motivated desire to make an even larger profit. The Anderson test only permits an applicant to deviate from the Code if the requested variance is as minimal a variance from the code requirements as is necessary.

The Appellee never testified as to whether he could meet the handicapped regulations without altering the existing size of the structure. Therefore, the Appellee never supported his need for the addition with the necessary evidence to grant the waiver. Furthermore, assuming arguendo, that the Appellee did show the need for the addition to meet the handicapped regulations he never substantiated his need to enlarge the building by 1,630 square feet, when only 360 square feet has been allotted for the restroom facilities.

The amount of square footage the Appellee has chosen to devote to each part of the addition, further supports that the addition is predominately for self benefit. The building is to be expanded by 1,690 square feet - only 360 square feet is devoted for the purpose of handicap facilities, the remaining 1,330 square

feet¹ is for renovations which will increase business profits and storage of dry goods and liquor so that the Appellee may buy items in large quantities at a lower cost to him and store the remaining goods. (T. 63) The amount of space allotted to the restrooms is not as large as claimed when you consider that the Appellee plans to remove the existing bathrooms and expand the dance floor into that space. (T. 82). Therefore, with larger, cleaner bathrooms and a larger dance floor the patrons are likely to extend their visit to the facility, thereby giving greater credence to the purely self-motivating purposes for the addition and to the fact that the Appellee's necessity for the variances are occasioned only by his own actions.

The requirements of the Anderson test, as established by the Maryland Courts and adopted in section 307, of the BCZR, indicate that there is no practical difficulty or undue hardship if the applicant is obtaining the variance just to gain the opportunity for greater profit. For the applicant to claim practical difficulty or undue hardship he must be unable to use his property

¹ The above figures are represented on the CRG plan as submitted by the Appellee to Baltimore County.

Proposed Addition:

Storage Area	1,330 sq. ft.
Rest Rooms and Vestibule	<u>360 sq. ft.</u>
Total	1,690 sq. ft.

Existing:

Restaurant	3,321 sq. ft.
Bar	2,584 sq. ft.
Package Goods Store/Storage	<u>1,035 sq. ft.</u>
Total	6,940 sq. ft.

Combined Total	8,630 sq. ft.
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in a reasonable manner. It is obvious from the applicant's already bustling business that there is no difficulty or hardship involved on this property; he is able to use his property in a reasonable manner and his motivation for gaining the variance is to make more profit at the further expense of property owners in the district. Furthermore, the record is void of any testimony that would reflect any consideration whatsoever that the Appellant has sought or would seek to eliminate the adverse impact of his business on the property owners in the district. Therefore despite contentions by the Appellee to the contrary, the variance should have been denied by the Board because of a lack of the necessary practical difficulty or undue hardship, and assuming arguendo that a difficulty or hardship exists, the alleged difficulty or hardship is due to the Appellee's own desire to expand across his already deficient parking lot, and not due to the manner of the operation of the ordinance upon the property. Therefore because the Board erred and rendered an arbitrary, capricious and illegal decision the Court has the authority to substitute the Court's judgment and apply the law as intended by the Courts.

CONCLUSION

For the reasons stated above and in their initial Memorandum, Appellant urges this Honorable Court to reverse the February 19, 1992 Order of the Board of Appeals granting a variance from BCZR Section 409.6A2, and for such other and further relief as the nature of this case may require.

Respectfully submitted,

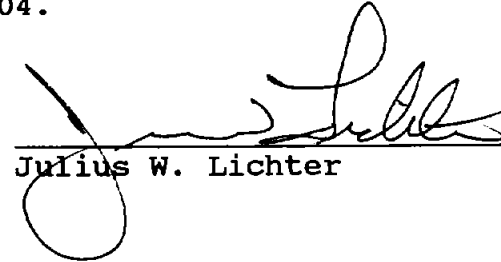


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(410) 321-0600

Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of June, 1992, a copy of the foregoing Appellant's Reply Memorandum was served on the Administrative Secretary, Board of Appeals of Baltimore County, Room 49 - Basement, 400 Washington Avenue, Towson, Maryland 21204, and a copy was mailed to F. Vernon Boozer, Esquire 614 Bosely Avenue, Towson, Maryland 21204.



Julius W. Lichter

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE *
APPLICATION OF MICHAEL ATHAS *
FOR A SPECIAL HEARING AND *
VARIANCE ON PROPERTY LOCATED *
ON THE SOUTH SIDE OF WINDSOR *
MILL ROAD 270' WEST OF THE *
CENTERLINE OF LORD BALTIMORE *
DRIVE (7207 WINDSOR MILL ROAD) *

Case No.: 92-CV-02604
17/315

BEFORE THE BALTIMORE COUNTY *
BOARD OF APPEALS *

CASE NO.: 91-246-SPHA *

* * * * *

APPELLEE'S MEMORANDUM

MICHAEL ATHAS, (hereinafter, "Appellee"), by his attorneys, F. Vernon Boozer and Covahey and Boozer, P.A., hereby requests that the Circuit Court for Baltimore County affirm the February 19, 1992 Order of the Baltimore County Board of Appeals (hereinafter, the "Board"), which granted a variance from the parking and other requirements of the Baltimore County Zoning Regulations (hereinafter, "BCZR"), and to grant such other and further relief as the nature of his cause may require, and in support thereof, states as follows:

FACTUAL BACKGROUND

On or about January 17, 1992, The Board held a de novo hearing on Appellee's Petition which requested, inter alia, a variance from Section 409.6(a)(2) of the BCZR to permit 98 parking spaces in lieu of the required 150 for the existing

restaurant at Appellee's site, known as the Windsor Inn, located at 7207 Windsor Mill Road, Baltimore County, Maryland.

That on or about February 29, 1992, the Board of Appeals rendered a final decision in that case and by Order granted, inter alia, the requested variance to permit 98 parking spaces in lieu of the required 150.

That Timanus Lane Partnership (hereinafter, "Appellant"), filed an Order of Appeal of the February 19, 1992 Order and seeks a reversal of the Board's Order. This Memorandum is offered in support of Appellee's Answer to Petition on Appeal.

LEGAL ARGUMENT

Appellant has advanced three arguments which it contends require a reversal of the Board's decision. This Memorandum shall address these issues in turn, demonstrating why each fails to provide Appellant with grounds for reversal.

I. The factual evidence of record in this case established that strict compliance with the BCZR would result in a practical difficulty or unreasonable hardship on the Appellee.

Contrary to Appellant's Memorandum, the Baltimore County Board of Appeals heard substantial testimony regarding the unreasonable hardship or practical difficulty which the Appellee would encounter if he were required to strictly comply with the BCZR. Specifically, the Board heard substantial

testimony from Mr. William Monk, a land use planning consultant hired by Appellee. Mr. Monk spoke directly to the issue of the specific variance from BCZR, Section 409.6(a)(2) to permit 98 parking spaces in lieu of the required 150.

Contrary to Appellant's Memorandum, the Board heard substantial testimony from Mr. Monk on this very issue. Appellant has made an issue of the fact that Mr. Monk used the word "hardship" only once in his testimony. This argument is a non-sequitur. This is so because the issue of whether the Board heard testimony on the issue of unreasonable hardship or practical difficulty is not dependent upon a given witnesses use of those terms. Rather, as the case was here, it is dependent upon whether the Board has inquired into this issue and whether those inquiries are responded to.

A review of the transcript of this case reveals that the issue of Appellee's compliance with BCZR, Section 409.6(a)(2) and the unreasonable hardship/practical difficulty which would ensue, received considerable attention and discussion before the Board.

Additionally, it is of no import that Mr. Monk did not address the Anderson Test (Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 1974), himself. Anderson does not require that a witness apply the "Anderson Test".

Rather, the Petitioner in a area variance case such as this, need only satisfy the burden of showing that the requirements of Anderson have been fulfilled. This may be accomplished by a witness who does not refer to Anderson and does not even know of Anderson. So long as the cumulative testimony presented to the decision-making body satisfies the Anderson Test, then no more is required.

In the case sub judice, the testimony of Mr. Monk sufficiently addressed the Anderson requirements. Those requirements are disjunctive in nature, resulting in a three (3) part test, not the four (4) part test which Appellant alleges on page 11 of its Memorandum. The test requires that a Petitioner shall show:

- (1) Whether compliance with the strict letter of the restrictions governing area, setbacks, 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.

Anderson at 39, citations omitted.

A review of the transcript makes clear that Mr. Monk addressed these topics in sufficient detail to satisfy Anderson. Taking the Anderson requirements in turn, it can be seen that this is so.

A. The components of the first prong of the Anderson Test as set forth above, were satisfied in the case at bar.

The Board heard substantial testimony relating to the subject property's inability to accommodate more than 106 vehicles, a figure which was substantially less than that which was required, even before the additions were made. Mr. Monk testified:

We are deficient at the present time. The addition to the building required 150 spaces. However, presently even before any additions were made, only 106 existed on site. So we are technically losing eight, although really only six if this plan is approved by the technical reviewing people to actually show a hundred spaces, which two are encroaching on the right of way. (T. 1)

Thus, even if no improvements were made, Appellee's parking capacity still failed to satisfy the BCZR and Appellee was always subject to a zoning violation, which would have necessitated an area variance at that time. Thus, even without the additions, Appellee was in a position where strict

compliance with the BCZR would have been unnecessarily burdensome. That this is so was evident from the testimony of Mr. Monk who testified that this site was, even prior to the improvements, incapable of accommodating more than 106 parking spaces. Specifically, he stated at (T. 52):

They have never been able to put any additional parking here to increase the total yield, and that is why the present layout only has 106 parking spaces.

In response to questions on cross-examination relating to why additional parking spaces could not be placed at certain locations on the lot, Mr. Monk repeatedly informed the Board that the size, shape and location of the lot, the size of the building and the location of Windsor Mill Road, made it a near impossibility to "create" any more than 106 existing parking spaces. In response to one such suggestion, Mr. Monk testified at (T. 53):

Angle parking could possibly pick up another space, but the problem is you would then interject one-way traffic movement onto the plan, which traffic engineering did not want us to do. In all honesty, we spent a lot of time coming up with the design solution I am explaining to you today, and they did not like that one.

The "one" Mr. Monk refers to above is one of the potential parking-space schemes suggested by counsel for

Appellant during cross-examination. Given the draconian action (such as reducing the physical structure of a building which largely pre-dates the zoning regulations at issue), which would be required of Appellee to bring his 106 parking space lot into conformance with the BCZR; there can be no questions that prior to the improvements, conformance with the BCZR would have been both unnecessarily burdensome and would have unreasonably prevented the owner from using the property for its permitted purpose. Again, this was established by the testimony of Mr. Monk relating to this site's long-standing inability to accommodate more than 106 parking spaces. It is beyond cavil that forcing a Petitioner to comply with the zoning regulations which post-date his site and which would entail great expense, loss of income and other hardships, constitutes a practical difficulty.

B. The grant of the variance applied for did substantial justice to the applicant as well as to other property owners in the district.

Additionally, Mr. Monk's testimony established that granting the variance, which would allow 98 parking spaces instead of the required number, would do substantial justice to the other property owners in the area. This fact was established by Mr. Monk's extensive testimony relevant to the increased safety which the variances would create. As a result

of the proposed parking scheme and the variances included therein, the Appellee has significantly improved the traffic situation at this site. Mr. Monk testified as to the hazardous traffic situation which currently exists and how the variance would help alleviate that problem. Specifically, he testified at (T.37):

"So although the previous operation only had 106 six parking spaces and we are now proposing 98 plus two, if you will, that reduction, in my opinion, is rather minor in light of our ability to address all these other traffic concerns, all these other traffic safety concerns as the elimination of all these parking spaces in here".

Later, in response to the question "Your variance necessitated because of your expansion?" Mr. Monk testified at (T.39):

The variance is necessitated because of our desire to create the safe traffic situation. We could have established the non-conformance status of the old parking situation which would not have addressed the traffic safety issue, and it was through the diligence of working with the County staff that we came up with this as a better solution to the problem and, therefore, we have come in and requested this.

Mr. Monk testified later, at (T. 65):

The practical difficulty, in my opinion, is the technical land planner has created, which is our desire, to eliminate the traffic safety problem which presently exist and they would be allowed to continue to operate that way. All these variances are a function of the.....Our desire is not to

impact the neighborhood by not reducing any further the number of parking spaces and to clean up a rather unsafe traffic situation whereby cars are backed out onto the street....

That an unsafe traffic situation existed and would be removed by virtue of the variance cannot be disputed based upon Mr. Monk's testimony. Similarly, it cannot be said that significantly increasing the traffic safety at this location is not doing substantial justice to other property owners in the district, specifically, Appellants. When a traffic hazard such as the one which existed on Appellant's site is removed, all property owners in the district, especially adjoining property owners, reap the benefits of that improvement. This is all the more so where the greatly increased safety comes at such a minimal cost, in this case, a reduction of only 5.5% of Appellee's current parking capacity (8 parking spaces). In a case such as this, the safety benefit will accrue to Appellant, Appellee, their respective customers and tenants, as well as the public at large which is using Windsor Mill Road. A public benefit as great as this certainly meets the second prong of the Anderson Test requiring substantial justice to the other property owners in the district.

C. The variances granted to Appellee were granted in such a fashion that the spirit of the Ordinance was observed and public safety and welfare secured.

The last prong of the Anderson Test is whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured. In light of the foregoing analysis under the second prong of the Anderson Test, it is manifestly obvious that the variances, as granted, will not only secure the public safety and welfare, but will actually increase same.

II. The Baltimore County Board of Appeals' written decision, including testimony, opinion and Order, provides legally adequate written findings of facts and conclusions.

Contrary to Appellant's Memorandum, the Board Order in the case sub judice is supported by adequate written findings of facts and conclusions.

The Board's opinion addresses the testimony received from all three (3) witnesses at the hearing, to wit: Mr. William Monk, Mr. Elias Rizakos and Mr. Arthur Adler. The Board's opinion notes the safety considerations which were the subject of much discussion at this hearing. At page five of the Board's opinion, the Board states:

In consideration of the exhibits and the testimony entered into the record of this case, it is evident that the Petitioner would experience practical difficulty or unreasonable hardship if the requested variances for width of traffic aisle and the number of parking spaces were denied.

The Board thus sets forth as the reason for its decision to be the testimony and exhibits entered in this case. Additionally, the Board's opinion in pages one through four references some of the testimony upon which that decision was made.

Appellant has referred the Court to Ocean Hideaway Condo v. Boardwalk Plaza, 68 Md. App. 650 (1986), which, while on point as to this particular legal issue, is easily distinguished from the case at bar based on the facts. In Boardwalk Plaza, the Court focused on the Board's (Appellees in that case) failure to comply with its statutory mandate and to otherwise fail to make adequate findings of fact and conclusions of law. By example, the Court in Boardwalk Plaza cited Turner v. Hammond, 270 Md. 41 (1973), wherein the Board in question simply made its findings by filling in a prepared form and signing it.

In contrast, in the case at bar, the Board complied with their statutory directive (Section 307.1 of the BCZR) by setting forth findings of fact specifying the reasons for the variance. (Said reasons set forth above in Section I of this Memorandum). Additionally, the Board's opinion is more than the "conclusory statements" which were the cause of concern in Boardwalk Plaza. Neither Boardwalk Plaza nor any other

Maryland case has set forth a bright-line test for what degree of specificity is required to provide sufficient findings of facts and conclusions of law. Thus, these cases are to be determined on a case by case basis. In the case sub judice, the Board has clearly met its statutory burden and its opinion is in compliance with the standards set forth in Boardwalk Plaza.

III. The practical difficulty and undue hardship which the BCZR imposes on Appellee was not self-imposed and was due solely to the manner of the operation of the Ordinance upon the subject property.

In this case, the testimony established that the Appellee's necessity for the variances were not occasioned by any act of the Appellee. The impetus for the improvements to Appellee's site were three-fold:

1. To remove the dangerous traffic conditions.
2. To make the site more accessible to handicapped persons.
3. To increase storage space and increase the number of bathrooms.

That bringing the site into conformance with the legal requirements required of public establishments relative to handicapped persons was the primary concern in initiating the improvements was affirmatively established by the testimony at the hearing. In response to the question of where the bathrooms would be located, Mr. Monk testified at (T.61):

"They are not being moved. They are being

retained. However, as I pointed out earlier, they are in the bar/lounge section of the operation and they are pretty old, and the client's objective is to create nice restroom facilities for the dining patrons as shown on their architect's plan, and to meet all of the handicapped requirements and everything else. (Emphasis Added).

Additionally, Mr. Elias Rizakos testified as to the Appellee's desire to conform with the handicapped requirements, stating at (T. 80):

"But definitely whatever the code requires, we are going to do it".

Appellee is required by law to provide a facility which is not discriminatory towards handicapped persons. Both Federal Law (The Americans With Disabilities Act of 1990, 42 U.S.C., Section 12-111, et seq.) and Maryland State Law (Article 83-B, Section 6-201) require that Appellee bring his building into conformance with these regulations. Appellant's assertion that Appellee's expansion may have used up space which could otherwise have been used for parking spaces is a non-issue. Some of the expansion was placed in a location where a deck was previously located and parking was not available at that location to begin with. The rest of the expansion was done in the location which would not safely accommodate new parking spaces. Thus, Appellee's attempts to comply with State and Federal handicapped requirements for this

establishment are what has brought them into conflict with the BCZR.

In the process of making the site comply with these requirements, Appellee's did enlarge the square footage of the establishment. However, the "new" portion of the building did not take up land which could otherwise be used safely for parking. Thus, the reduction in the number of parking spaces was really a function of creating the safer traffic situation, not a result of building the expansion. That the variance as to the number of parking spaces was necessitated by practical difficulty or undue hardship was established in Part I of this Memorandum.

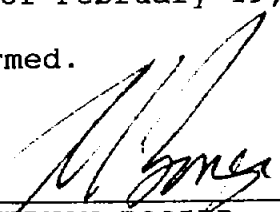
CONCLUSION

Based on the foregoing analysis, the decision was not arbitrary, capricious nor illegal. The testimony and evidence presented to the Board, established unequivocally that strict compliance with the BCZR would result in a practical difficulty or unreasonable hardship for the Appellee. Additionally, the Board properly applied the correct standard of law in making their determination. That is, they properly applied the law to the facts of this case. In addition, based on the foregoing analysis, it is clear that the Board generated specific findings of facts and conclusions in accordance with the

statutory requirements of the BCZR and the statutory requirements as set forth in Ocean Hideaway Condo v. Boardwalk Plaza at 68 Md. App. 650 (1986).

Finally, based on the foregoing analysis it is equally clear that the hardship which was encountered by Appellee was solely the result of a strict application of the BCZR requirements to his property and was in no way occasioned by any affirmative act of the Appellee.

For all of these reasons, the decision of the Baltimore County Board of Appeals of February 19, 1992 in case number 91-246-SPHA should be affirmed.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 1992, a copy of the foregoing Appellee's Memorandum was mailed, postage pre-paid to:

Julius W. Lichter, Esquire
LEVIN AND GANN, P.A.
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305 West Chesapeake Avenue
Towson, Maryland 21204
Attorneys for Appellant

Administrative Secretary
BOARD OF APPEALS OF BALTIMORE COUNTY
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ANNEX OFFICE
SUITE 101
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TOWSON, MD. 21204

June 3, 1992

* ALSO ADMITTED TO D. C. BAR

Clerk
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: In the Matter of the Application of Michael Athas for a
Special Hearing and Variance on the Property Located on
the South Side of Windsor Mill Road
Case No.: 92-CV-02604 17/315

Dear Clerk:

Enclosed herewith please find Appellee's Memorandum to be
filed in the above-captioned case.

Thank you for your attention to this matter.

Very truly yours,

F. Vernon Boozer
F. VERNON BOOZER

FVB/mdr
Enclosure

cc: Julius W. Lichter, Esquire
Administrative Secretary, Board of Appeals

03'mr.05

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE *
APPLICATION OF MICHAEL ATHAS *
FOR A SPECIAL HEARING AND *
VARIANCE ON PROPERTY LOCATED *
ON THE SOUTH SIDE OF WINDSOR *
MILL ROAD, 270' WEST OF THE *
CENTERLINE OF LORD BALTIMORE *
DRIVE (7207 WINDSOR MILL ROAD) *
BEFORE THE BALTIMORE COUNTY *
BOARD OF APPEALS *

CASE NO. 92-CV-2604

17/315

CASE NO.: 91-246-SPHA *

* * * * *

APPELLANT'S MEMORANDUM

Timanus Lane Partnership (hereinafter, "Timanus"), by and through Julius W. Lichter and Levin & Gann, P.A., its attorneys, hereby request the Circuit Court to reverse the February 19, 1992 Order of the Baltimore County Board of Appeals (hereinafter, the "Board") granting a variance from the parking and other requirements of the Baltimore County Zoning Regulations (hereinafter, "BCZR"), and to grant such other and further relief as the nature of this case may require, and in support thereof states as follows:

FACTUAL BACKGROUND

The Windsor Inn is an existing 6,940 square foot restaurant located at 7207 Windsor Mill Road in Baltimore County, Maryland. The property is owned by Michael Athas ("Athas"); Detetrios Vangelakos ("Vangelakos") is the alleged contract purchaser of the business which is located on property. (T.59.) The restaurant is

currently served by 106 parking spaces in lieu of the required 124.¹ Additionally, there is no on-street parking near the site.

See Dissenting Opinion of Board of Appeals member John G. Disney, at 4.

Across the street, and approximately 60-feet from the Windsor Inn, is the Executive Park West Office Park, which is owned by Timanus, Appellant herein. (T.49.) Undisputed testimony before the Board of Appeals indicated that Windsor Inn patrons frequently park in the Executive Park West Office parking lot, thus causing parking problems for, in particular, two principal tenants of Executive Park West, a telemarketing firm and the Federal Bureau of Investigation. (T.90-95.) These two tenants regularly staff their respective offices late in the evening, and/or in fluctuating shifts, corresponding with the peak hours of restaurant activity. (T.93-94.) Other undisputed testimony indicated that there have been complaints as to the revelry of restaurant patrons, and as to the litter these patrons leave behind on the Executive Park West property. (T.91.)

In seeking to expand their 6,940 square foot restaurant establishment by an additional 1,690 square feet (for a total of 8,630 square feet of restaurant establishment), Athas, through

¹ Required parking for the existing site is based on BCZR Section 409.6A2, and is computed as follows:

<u>Existing Use</u>	<u>Existing Square Footage</u>	<u>Required Spaces per 1000 sq.ft.</u>	<u>Spaces Required</u>
Retail/Package Goods	1,035 sq.ft.	5	= 6
Bar/Restaurant	5,905 sq.ft.	20	= 118
Property Total	6,940 sq.ft.		124

Vangelakos, filed with the Zoning Commissioner for Baltimore County an Amended Petition for Zoning Variances (the "Amended Petition"), pursuant to Zoning Case No. 91-246-SPHA.² Essential to this Amended Petition was the request for a variance from BCZR Section 409.6A2 to permit 98 parking spaces in lieu of the required 150 spaces.³

At the May 22, 1991 hearing on the Amended Petition before the Deputy Zoning Commissioner, Timanus Lane Partnership, through counsel, appeared to protest the variance request insofar as the request, if granted, would only exacerbate the parking/revelry/litter problems already existent; that is, the proposed expansion would not only increase the potential volume of patrons at the Windsor Inn, it would also reduce the available parking area on the site to serve those patrons. Nevertheless, the Deputy Zoning Commissioner, pursuant to a written Opinion and Order dated May 29, 1991, granted (as is relevant presently) the Petitioner's requested variance from BCZR Section 409.6A2 as well as other variances which were requested which all serve to reduce

² Pursuant to the Amended Petition, Athas requested variances from (1) Section 409.8.A.4 to permit a 0' parking setback in lieu of the required 10' setback adjacent to a R/W; 2) Section 409.6A2 to permit 98 parking spaces in lieu of the required 150 spaces; 3) Section 409.7 to allow 3 off street parking spaces to be located not on the same lot; and 4) Section 409.4A&C to allow a 1 way travel aisle to be 6 feet wide (balance of said travel aisle to be located within the public right of way) in lieu of the required 16' for 60 degree angled parking.

³ Recall that the property is currently served by 106 parking spaces in lieu of the required 124. Following the proposed expansion, the property would only be served by 98 spaces in lieu of the required 150.

the number of parking spaces available to serve the restaurant establishment and facilitate an expansion thereof.

Following a timely and proper appeal by Timanus of the Deputy Zoning Commissioner's decision, the Board of Appeals held a January 7, 1992 de novo hearing on the Amended Petition. At this de novo hearing, and in direct countervention to BCZR Section 307.1 (which controls the granting of variances),⁴ Athas failed to produce any testimony to substantiate that the variance was necessary to avoid any "practical difficulty" or "unreasonable hardship." Despite this failure to produce such evidence, the Board, in a majority written Opinion and Order dated February 19, 1992, granted the variance at issue. Notably, the granting of the variance at issue was opposed in a vigorous dissent authored by Board of Appeals member John G. Disney; therein Mr. Disney correctly argued, as discussed *infra*, that the petitioners failed to demonstrate on the record any

⁴ Pursuant to County Council Bill No. 2-92, which took effect on March 2, 1992, BCZR Section 307.1 currently reads in relevant part 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 special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship... 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 injury to public health, safety, and general welfare. They shall have no power to grant any other variances. ...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 making such variances. (Emphasis added.)

"practical difficulty" or "unreasonable hardship" to justify the granting of the variance.

In a timely and proper manner Timanus subsequently appealed the Board's decision, which resulted in this case being presently brought before the Circuit Court.

Athas and/or Vangelakos have made no attempts either before or during the course of these proceedings, to secure the use of any additional land near the Windsor Inn, which land would enable the restaurant to provide its customers with adequate off-site parking. Furthermore, Athas and/or Vangelakos have thus far refused to acknowledge that their business adversely impacts on the Appellant's property and the use thereof.

QUESTIONS PRESENTED

- I. WHETHER THE FACTUAL EVIDENCE OF RECORD IN THIS CASE FAILS TO ESTABLISH THAT STRICT COMPLIANCE WITH THE BCZR WOULD RESULT IN A PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP ON ATHAS.
- II. WHETHER THE BOARD OF APPEALS, IN ITS WRITTEN OPINION AND ORDER, FAILED TO ADEQUATELY RENDER A FINDING OF FACT WITH RESPECT TO EACH OF THE ELEMENTS NECESSARY TO JUSTIFY THE GRANTING OF A VARIANCE, THUS RESULTING IN A DECISION WHICH IS ARBITRARY AND CAPRICIOUS AND WHICH CANNOT BE JUSTIFIED BY SUBSTANTIAL EVIDENCE OF RECORD.
- III. WHETHER THE BOARD OF APPEALS ERRED BY GRANTING THE PARKING VARIANCE WHEN THE ALLEGED HARDSHIP ON ATHAS, IF ANY THERE BE, WAS ESSENTIALLY SELF-CREATED AND NOT DUE SOLELY TO THE MANNER OF THE OPERATION OF THE ORDINANCE UPON THE SUBJECT PROPERTY.

STANDARD OF REVIEW

The proper standard of review is conditioned on first determining whether what is at issue: (1) purely a question of law,

(2) purely a question of fact, or (3) a mixed question of law and fact. Gray v. Anne Arundel County, 73 Md. App. 301, 308-9, 533 A.2d 1325, 1329 (1987).

If the agency order being appealed is premised upon an erroneous conclusion of law, the appellate court may substitute its judgment for that of the administrative agency. Ramsay, Scarlett & Co., Inc. v. Comptroller of Treasury, 302 Md. 825, 834, 490 A.2d 1296, 1301 (1985).

If the agency did not err in interpreting or applying the applicable law, the reviewing court then determines whether the factual findings of the agency are "supported by substantial evidence" such that "a reasonable mind might accept [that evidence] as adequate to support [the agency's] conclusion." Gray, 73 Md. App. at 308, 533 A.2d at 1329 (citing Ramsay, Scarlett, 302 Md. at 885, 430 Md. at 1296).

Finally, the reviewing court examines how the agency applied the law to the facts; specifically, the reviewing court must determine whether "a reasoning mind could have reached the conclusion reached by the agency, consistent with a proper application of the controlling legal principles." Id. at 308-9, 533 A.2d at 1329 (quoting Ramsay, Scarlett, 320 Md. at 838, 490 A.2d 1296).

As is relevant presently, the Board correctly identified the appropriate legal standard which governs the outcome of this case, to wit: an area variance may only be granted where "strict application of the [BCZR] would cause practical difficulty to the Petitioner and his property." Opinion at 4-5 (citing McLean v. Soley, 270 Md 208 (1973)). See also BCZR Section 307.1. (Set forth in footnote 4, supra) The Board further correctly identified that the conditions for establishing practical difficulty are outlined in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974). See Opinion at 5. Anderson held that, in order to justify the granting of an area variance, an applicant must affirmatively show as a matter of record that:

1) [C]ompliance with the strict letter of the [governing] restrictions...would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) [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) [R]elief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." Anderson, 22 Md. App. at 39. (Emphasis added.)

However, irrespective of the fact that the Board correctly identified the applicable legal standard, the factual evidence of record in this case failed to establish that that standard was actually applied or met; that is, Athas failed to demonstrate of record that strict compliance with the BCZR would result in a practical difficulty or unreasonable hardship on him and his

property. Furthermore, Athas failed to adequately address what Anderson held to be a necessary element for establishing practical difficulty; that is, Athas failed to specify on record how the variance at issue, if granted, would do substantial justice to other property owners in the district. See Anderson, 22 Md. App. at 39. These being purely factual questions, this Court must now determine whether the variance at issue is supported by substantial evidence such that a reasonable mind might accept that evidence as adequate to support the granting of the variance.

In addition, the Board, in its written Opinion and Order, failed to adequately apply the law to the facts; that is, the Board's written Opinion and Order failed to adequately render a specific finding of fact with respect to each of the legal elements necessary to justify the granting of the variance. This being a mixed question of law and fact, this Court must now also determine whether the facts and law delineated in the Board's written Opinion and Order would permit a reasoning mind to reach the conclusion reached by the agency, consistent with a proper application of controlling legal principles.

Finally, irrespective of the fact that the Board correctly identified the proper standard for the granting of a variance, the Board erred as a matter of law by ignoring the threshold legal standard which governs whether Athas' request for a variance itself is proper; that is, if the alleged hardship on the applicant is essentially self-created and not due solely to the manner of the operation of the zoning ordinance upon the subject property, then

even the request for a variance is improper. Presently there is no question that the alleged hardship on Athas, if any there be, is solely due to his unilateral desire to expand his business; therefore any hardship on Athas would be essentially self-created. This Court must now decide as purely a matter of law, whether this self-created "hardship" precludes the granting of the variance at issue; as such, as to this issue, this Court may substitute its judgment for that of the administrative agency.

ARGUMENT

I. THE FACTUAL EVIDENCE OF RECORD IN THIS CASE FAILS TO ESTABLISH THAT STRICT COMPLIANCE WITH THE BCZR WOULD RESULT IN A PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP ON ATHAS.

As indicated above in the Factual Background section of this Memorandum, and as was clearly and correctly acknowledged by the Board of Appeals in its written Opinion and Order, the law is well established that an area variance may only be granted where strict application of the BCZR would cause practical difficulty or unreasonable hardship to the Petitioner and his property. Board's Opinion at 4-5 (citing McLean v. Soley, 270 Md. 208 (1973)). See also BCZR Section 307.1 (set forth in footnote 4, supra). Thus, it is necessary for the present Petitioner, namely Athas, to create a record which substantially evidences practical difficulty or unreasonable hardship with respect to (as is relevant here) the necessity to permit 98 parking spaces in lieu of the required 150, particularly when 106 parking spaces currently exist on the Petitioner's property.

The testimonial record in this case consists of a 107 page transcript documenting the testimony of three witnesses: William Monk, a land use planning consultant hired by Athas; Elias Rizakos, manager of the Windsor Inn; and protestant witness Arthur Adler, speaking on behalf of his employer David S. Brown Enterprises (the managing representative of the Appellant Timanus).

Of these three individuals, it was only Mr. Monk who purported to speak to the issues of the alleged necessity for the four variances requested in the Amended Petition. However, Mr. Monk's testimony primarily spoke to issues which are not currently before this Court; specifically, Mr. Monk discussed the alleged non-conforming use of the travel aisle, the alleged necessity for the travel aisle variance (from BCZR Section 409.4A et seq), the alleged non-conforming status of the landscaping on the property, the alleged necessity for the parking setback (from BCZR Section 409.8.A.4.), and the alleged necessity for a variance from BCZR Section 209.7 to locate 3 off-street parking spaces not on the same lot. None of these non-conformities affect the ability of the Petitioner to legally continue the operation of the restaurant establishment as now constituted. Mr. Monk's testimony did not address or identify the particular circumstances which establish practical difficulty or unreasonable hardship concerning the specific variance from BCZR Section 409.6A2 to permit 98 parking spaces in lieu of the required 150.

Indeed, far short of articulating the facts to support an alleged unreasonable hardship or practical difficulty as to the

variance at issue, Mr. Monk's only references to that variance request simply reiterate it. For example, Mr. Monk states that "[W]e are calling for the 98 parking spaces because they are all technically on the property." The closest Mr. Monk gets to discussing the applicable standard for granting the variance at issue, is his single use of the magic word "hardship" once in his reiteration: "The hardship would be we have a limited site." (T.40).

Significantly, Mr. Monk does not qualify this alleged hardship as being an unreasonable hardship. More significantly, Mr. Monk does not discuss whether the property meets the Anderson test for practical difficulty: (1) whether the BCZR unreasonably prevents the property to be used for a permitted purpose; (2) whether the BCZR restrictions are unnecessarily burdensome; (3) whether the variance applied for would do substantial justice to both the applicant and other property owners in the district; and (4) whether relief can be granted such that the spirit of the ordinance will be observed and public safety and welfare secured.

But most significant is Mr. Monk's decision not to elaborate on the fact that the limited site, i.e., his only alleged hardship or difficulty is caused not by the BCZR, but by the petitioner's unilateral decision to expand his business across his own existing parking lot and thereby eliminate existing parking space.

"[Y]ou wouldn't have to do anything [i.e., you wouldn't need this variance] unless you went through an expansion[across your

parking lot]?" Board of Appeals member John G. Disney asked Mr. Monk.

"That's correct[,] " Monk responded (T.39). ⁵

The law in Maryland is quite clear that variances are not properly granted in cases of self-inflicted hardship. Indeed, in several cases, the Maryland Appellate Courts have scoffed at attempts, similar to the one involved here, to use the petitioner's own acts as the basis for the variance request.

In Wilson v. Mayor of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977), where an applicant argued that he needed a variance for an exterior stairway so that he would not be unfairly deprived of the right to continue using a third dwelling unit that had been unlawfully established in a residential building, the court had little difficulty in turning aside the argument. The court stated:

It approaches the ridiculous to say that the unlawful extension of the non-conforming use from two units to three units entitles the owner to the blessing of legitimacy for the violation of yet another law.

35 Md. App. at 427

More recently, in Ad + Soil, Inc. v. County Commissioners, 307 Md. 307, 513 A. 2d 893 (1986), the Court of Appeals sustained the denial of a variance, where the property in question was large

⁵ It should be further noted that Mr. Monk once attempted to justify the parking variance at issue by stating that this variance "is necessitated because of our desire to create a safe traffic situation." (T.39). Mr. Monk failed to state, however, why the alleged existent "unsafe" traffic situation could only be alleviated by the addition of 1,690 sq.ft. of inside commercial space across his existing parking lot, thereby eliminating eight (8) important parking spaces which currently serve the property as presently constructed.

enough that the applicant could have complied with all setback requirements, but proceeded to establish a sewage sludge storage and distribution facility after obtaining a State permit and before learning of local zoning requirements. The court agreed with the county board of appeals that any hardship faced by the applicant was self-inflicted. 307 Md. at 340.

Just as in the cited cases, Athas cannot successfully obtain variances on grounds that the strict application of the BCZR's parking requirements would result in practical difficulty or unreasonable hardship, where the reason for any such difficulty or hardship is Athas' own unilateral choice to expand his restaurant facilities across his existing parking lot. This issue will be dealt with more fully in the third argument of this Memorandum, infra. For the moment, however, it is sufficient to indicate that the Petitioner failed to establish a factual record which demonstrated any hardship or practical difficulty concerning the existing property which necessitated the particular variance at issue.

Additionally, any testimony which referred to an alleged hardship absolutely failed to establish that such a hardship was unreasonable (See e.g., T 37-40) - recall that demonstrating an unreasonable hardship is a governing standard set forth in the BCZR Section 307.1 for the granting of variances,⁶ - nor did the

⁶ As discussed above, Mr. Disney's dissent concurs with Timanus' position; specifically, after reviewing all of the evidence on record in this case, Mr. Disney failed to find any hardship--let alone an unreasonable hardship--demonstrated by Athas. See Disney's Dissent, at 4.

Petitioner produce any testimony which supported each element necessary to meet the legal standard of practical difficulty. Finally, Petitioner absolutely failed to establish on the record that an unreasonable hardship or practical difficulty, if any there be, resulted from strict compliance with the BCZR.

II THE BOARD OF APPEALS' WRITTEN FINDINGS OF FACT AND WRITTEN CONCLUSIONS OF LAW ARE INADEQUATE, THUS RENDERING ITS ORDER ARBITRARY, CAPRICIOUS AND ILLEGAL.

Irrespective as to whether or not the factual evidence of record in this case establishes that strict compliance with the BCZR would result in a practical difficulty or unreasonable hardship on Athas, the Board of Appeals' February 19, 1992 Opinion and Order is not supported by adequate written findings of facts and conclusions. As mandated by BCZR Section 307.1, Baltimore County law requires any order by the Board of Appeals granting a variance to contain, "... a finding of fact setting forth and specifying the reason or reasons for making such variance."

As more fully expounded above, the only permissible reasons for granting a variance are that the Petitioner has sufficiently demonstrated on record that strict compliance with the BCZR would result in practical difficulty or unreasonable hardship. See BCZR Section 307.1 as set forth in footnote 4 supra. Therefore, for the Board's February 19, 1992 Opinion and Order to survive challenge on appeal, that Opinion and Order must set forth and specify (1) the facts on record establishing that strict compliance with the BCZR would result in practical difficulty or unreasonable hardship on

Athas with respect to the specific variance at issue, and (2) the Board's reasons for granting such variance.

Furthermore, it is well established in Maryland that the administrative agency's written opinion must do more than merely address and articulate the standards at issue; it must render a specific finding of fact with respect to each of them. See, e.g., Ocean Hideaway Condominium Association v. Boardwalk Plaza Venture, 68 Md. App 650, 655, 515 A.2d 485 (1986). As is relevant here, the Board of Appeals' Opinion and Order would only be sustainable on appeal if the Board rendered a specific finding of fact specifying what Athas's specific practical difficulty or unreasonable hardship is with respect to the alleged necessity for 98 parking spaces in lieu of the required 150. The Board's opinion, however, absolutely fails to make such findings of fact.

In reviewing Athas' prayed relief, the Board's written opinion contains slightly less than four pages of summarized factual testimony. Of these four pages, less than one paragraph specifically addressed the issue currently before this court, being the requested variance from BCZR Section 409.6A2 to permit 98 parking spaces in lieu of the required 150 spaces. That small section of the Board's recounting of the "factual testimony" is provided in its totality below for the Court's convenience, to wit:

"Essential to Petitioner's plan is the requested variance permitting a total of 98 parking spaces in lieu of the 150 required by the proposed expansion of the restaurant facility to 8,630 square feet from the present 6,940 square feet." (Opinion at 3.)

There are no facts in the Board's written Opinion and Order

which support the elements of practical difficulty necessary to justify granting the variance at issue; there are no facts supporting Athas' alleged unreasonable hardship to justify granting the variance; there are no facts supporting that strict compliance with the BCZR Section 409.6A2 would cause problems for the petitioner. That is, with respect to necessary elements to justify granting the variance at issue, the Board has failed to articulate any specific facts at all.

The Board's legal conclusion at page 5 of the Opinion is equally void of support by necessary facts. As is relevant here, that Opinion in its totality reads "Testimony affirms that the modifications will reduce parking from 106 spaces to 98, but will result in a much improved business location." That is, not only has the Board failed to articulate a factual analysis of the kind necessary to support the granting of the variance, the Board also utterly fails to even attempt to apply the law of practical difficulty/unreasonable hardship to the facts at hand.

As was briefly discussed above, it is worth noting that this failure of the Board to factually and legally support its conclusion generated a rare dissenting opinion from the Board's usually unanimous written decisions. In a five-page dissent, Board of Appeals member John G. Disney voiced some of the same concerns discussed by Appellant herein. Most relevant presently is Mr. Disney's observation that the evidence (and hence, by implication, the Board's Opinion based on the evidence) failed to identify the requisite elements for the granting of a variance:

After reviewing all of the evidence presented in this case, I ask myself where is the hardship [let alone] the unreasonable hardship?

Is it the hardship created by denying neighbors the use of their property as they desire? Or, is it the creation of a barnyard appearance [on] the neighbor's parking lot? Or is it the denying neighbor's tenants the ability to park near the building that they occupy? Or, is it the hardship that the operators of the Windsor Mill Inn created by their desire to enlarge their operation by 1630 square feet? Said enlargement will require 34 additional parking spaces, assuming that the existing site enjoys a legal non-conforming use.

(Dissenting Opinion at 4).

In contrast to the Board's absolute failure to adequately render specific findings of fact necessary to support a finding of unreasonable hardship or practical difficulty on Petitioner Athas, the harm on Timanus - Appellant herein and a property owner in the district - was well documented. The Board, in its written Order and Opinion, accurately summarized the uncontroverted testimony of Arthur Adler (managing officer for Timanus):

Arthur Adler, managing officer since 1990 for the Timanus Lane Partnership, testified to the increase in occupancy in the Executive Office Park and of the parking needs of his lessees. Citing the late and fluctuating hours of two principal tenants, a telemarketing firm and the Federal Bureau of Investigation, Mr. Adler reported his lessees' problems with restaurant patrons parking in the spaces of the office building some 60 feet from the Windsor Inn. There are also complaints of the revelry of patrons and litter left on the premises. Mr. Adler testified that rather than the normal 8 to 5 day, employees of the telemarketing lessee work evening hours, and the parking spaces have to be available and convenient to the office employees. Receiving protests from the telemarketing firm, Mr. Adler remarked about a conversation he had with the Windsor Inn proprietors about parking, and the possible purchase of [a] .4 acre lot. The response was negative because the Petitioner did not own the [restaurant] property and couldn't consider purchase at that time.

Opinion at 4.

Nevertheless, despite the uncontroverted testimony of Arthur Adler as to the harm caused to Timanus and the Executive Park West Office Park - a property owner in the district - by Windsor Inn's existing parking situation (which will only be exacerbated by the granting of the variance at issue), the Board's written Opinion essentially dismissed these problems with a single sentence:

"In regards to the testimony of unauthorized parking by restaurant patrons in spaces reserved for Executive Office Park, it is viewed by the Board as an occasional occurrence that can be resolved, and is not of such consequence to deny the variances requested."

Opinion at 5.

The Board's single-sentence summary dismissal of Arthur Adler's uncontroverted testimony suggests further evidence of the inadequacy of the Board's written Opinion. It is incumbent upon the Petitioner to prove as a matter of record, and it is incumbent upon the Board wishing to grant a variance, to sufficiently set forth written facts which support that the variance, if granted, would do substantial justice to other property owners in the district. Timanus, through Mr. Adler, was the only property owner to testify; the Board, however, failed to articulate how Timanus receives "substantial justice" by the variance at issue.

It is therefore for the foregoing reasons that the Board's written findings of fact and written conclusions of law are inadequate, thus rendering its order arbitrary, capricious and illegal.

III. THE BOARD OF APPEALS ERRED BY GRANTING THE PARKING VARIANCE WHEN THE ALLEGED HARDSHIP ON ATHAS, IF ANY THERE WAS, WAS ESSENTIALLY SELF-CREATED AND NOT DUE SOLELY TO THE MANNER OF THE OPERATION OF THE ORDINANCE UPON THE SUBJECT PROPERTY.

It is well-established law in Maryland that the purpose of granting variances is to alleviate the unusual circumstances which create a practical difficulty or unreasonable hardship connected to the operation of a zoning ordinance on an affected property. See, e.g., Wilson, 35 Md. App. 417. However, it is equally well established that, where the circumstances which necessitated the variance were or would be caused or created by the property owner (or his predecessor in title), unreasonable hardship or practical difficulty as such cannot be demonstrated since the circumstances necessitating the variance would be totally self-created and not due solely to the manner of the operation of the ordinance upon the affected property. This principle, which is well established in Maryland law, was fully and clearly set forth by the Court in Wilson, to wit:

"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." Wilson, 35 Md. App. at 427-8. (citing 2 Rathkopf, Law of Zoning and Planning, Section 48-1 (1972)).

This principle was reiterated more recently in the Ad & Soil, supra:

Where the circumstances necessitating the variance were "self-inflicted, and, in any event, [were] not the result of exceptional characteristics of the land itself, [such circumstances are] therefore not the kind of hardship cognizable under the Zoning Ordinance." Ad & Soil, 307 Md. at 340.

The record in this case clearly and repetitively reflects that the alleged hardship, if any there be, directly results from Athas's own desire to expand his restaurant facility. From the direct testimony of Mr. Monk, the Petitioner's own witness:

MR. DISNEY: But you wouldn't have to do anything [i.e., there would be no need to request the variance at issue] unless you went through an expansion?

[MR. MONK]: That's correct[.] (T. 39).

From the cross-examination of Mr. Monk:

Q. But the only reason these [variance] requests have been made is because you wanted to expand the building, isn't that correct? You wouldn't need anything [if you didn't expand the building], as Mr. Disney questioned you earlier?

A. That's correct[.] (T.54).

Because the variance at issue was necessitated, not solely by the operation of the ordinance on the property, but rather by the unilateral desire of Athas to expand the use of his property, there cannot -- by definition -- be a hardship on Mr. Athas. As such, the Board erred by granting the parking variance at issue; the Board's decision is therefore arbitrary, capricious and illegal.

CONCLUSION

This Memorandum articulates three arguments why the Board's February 19, 1992, Opinion and Order, which granted, inter alia, a variance from BCZR Section 409.6A2 to permit 98 parking spaces in lieu of the required 150 spaces, was arbitrary, capricious and illegal and therefore should be reversed by this Court. First, Athas absolutely failed to create a factual record to establish that strict compliance with BCZR Section 409.6A2 would result in a practical difficulty or unreasonable hardship on him. Second, assuming arguendo that Athas did create the necessary factual record, the Board's written Opinion and Order failed to adequately render a sufficient finding of fact with respect to each of the elements necessary to justify the granting of a variance. Third, again assuming arguendo that Athas created the necessary factual record, any alleged hardship on him was due to his own unilateral desire to expand by 1,690 sq. ft. his facility across his parking lot thus reducing the number of parking spaces available to serve the restaurant, and not due to the manner of the operation of the ordinance upon the subject property; therefore this alleged hardship was self-created, and may not form the basis of a variance request.

For the reasons stated above in this Memorandum, and in the Appellant's Petition on Appeal, the Appellant hereby prays that this Honorable Court reverse the February 19, 1992 Order of the Board of Appeals granting a variance from BCZR Section 409.6A2, and

for such other and further relief as the nature of this case may require.

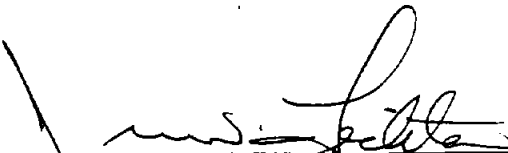
Respectfully submitted,



Julius W. Lichter
Levin & Gann, P.A.
113 Chesapeake Building
305 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 321-0600
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of MAY , 1992, a copy of the foregoing Appellant's Memorandum was served on the Administrative Secretary, Board of Appeals of Baltimore County, Room 49 - Basement, 400 Washington Avenue, Towson, Maryland 21204, and a copy was mailed to F. Vernon Boozer, Esquire, 614 Bosley Avenue, Towson, Maryland 21204.



Julius W. Lichter

CIRCUIT COURT FOR BALTIMORE COUNTY

ASSIGNMENT OFFICE
COUNTY COURTS BUILDING

401 Bosley Avenue

P.O. Box 6754

Towson, Maryland, 21285-6754

Kathy Rushton — 887-2660

Jury Assignments—Civil
General Settlement Conferences

Irene Summers — 887-2660

Civil Assignment Commissioner

— 887-2661

Non-Jury Assignments—Civil
Special Settlement Conferences

TO:

May 12, 1992

Julius W. Lichter, Esq.

F. Vernon Boozer, ESq.

**County Board of Appeals
of Balto. Co.**

Office of Law

RE: **Non-Jury 92-CV-2604 Timanus Lane Partnership vs. Baltimore County Bd. of Appeals**

HEARING DATE: **Friday, July 24, 1992, @ 9:30 a.m.**

ON THE FOLLOWING: **Appeal: 2 hours**

Please see the below notations.

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

If the above Hearing Date is not agreeable to any counsel, a request for a postponement **MUST BE MADE IN WRITING** to the Assignment Office **AS SOON AS POSSIBLE**, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 30 DAYS OF TRIAL should be directed to the attention of Irene Summers. POSTPONEMENTS WITHIN 30 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments-Joyce Grimm-887-3497.

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

TIMANUS LANE PARTNERSHIP
IN THE MATTER OF MICHAEL ATHAS

IN THE CIRCUIT COURT
FOR
BALTIMORE COUNTY

CASE # 92CV02604 17/315

vs.

THE BALTIMORE COUNTY BOARD OF APPEALS

NOTICE OF FILING OF RECORD

TO: Julius W. Lichter, Esquire
Levin & Gann, P.A.
305 W. Chesapeake Avenue,
Suite 113
Towson, MD 21204

F. Vernon Boozer
614 Bosley Avenue
Towson, MD 21204

Lindalee M. Kuszmaul,
County Board of Appeals,
Room 49
Old Courthouse, Basement
400 Washington Avenue
Towson, MD 21204

In accordance with Maryland Rule of Procedure B12, you are notified that
the record in the above entitled case was filed on April 22, 1992.

CLERK

FILED APR 16 1992

ENCLOSURE

5df

IN THE MATTER OF THE APPLICATION	*	IN THE
OF MICHAEL ATHAS FOR A SPECIAL		
HEARING AND ZONING VARIANCES	*	CIRCUIT COURT
ON PROPERTY LOCATED ON THE		
SOUTH SIDE OF WINDSOR MILL ROAD,	*	FOR
270' WEST OF THE CENTERLINE OF		
LORD BALTIMORE DRIVE (7207	*	BALTIMORE COUNTY
WINDSOR MILL ROAD)		
2ND ELECTION DISTRICT		
2ND COUNCILMANIC DISTRICT	*	CG Doc. No. <u>17</u>
TIMANUS LANE PARTNERSHIP	*	Folio No. <u>315</u>
	*	File No. <u>92-CV-2604</u>
ZONING CASE NO. 91-246-SPHA		
* * * * *		
PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE		
<u>BOARD OF APPEALS OF BALTIMORE COUNTY</u>		

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

No. 91-246-SPHA

January 9, 1991	Petition for Special Hearing to approve nonconforming status/rear travel aisle, interior parking lot, and existing stationary business sign filed by Michael Athas. Petition for Variances for setbacks and parking spaces also filed by Mr. Athas.
March 14	Comments of Baltimore County Zoning Plans Advisory Committee.
May 2	Publication in newspapers.
May 3	Certificate of Posting of property.

Michael Athas, File No. 92-CV-2604
Case No. 91-246-SPHA

May 22, 1991	Hearing held on Petition by the Deputy Zoning Commissioner.
May 29	Order of the Deputy Zoning Commissioner GRANTING Petition for Variances with restrictions; DENYING Petition for Special Hearing.
June 18	Notice of Appeal received from Julius W. Lichter, Esquire on behalf of Protestants.
January 7, 1992	Hearing before the Board of Appeals.
February 19	Opinion and Order of the Board GRANTING Petition for Variances with restrictions.
March 19	Order for Appeal filed in the Circuit Court for Baltimore County by Julius W. Lichter, Esquire on behalf of Protestants. Petition to accompany appeal also filed in the Circuit Court for Baltimore County by Mr. Lichter.
March 19	Certificate of Notice sent to interested parties.
April 16	Transcript of testimony filed.

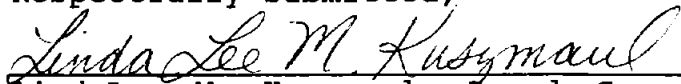
Petitioner's Exhibit No. 1 -Resume of William Monk
2 -Baltimore County Official Zoning Map (Jan. 1986)
3 -Aerial Photo Map (Jan. 1986)
4-A-E - Photos.
5-Photos (10).
6-Preliminary Site Plan (11/26/90)
7-Aerial Map 1972 & 1982
8-Aerial Map 1986 with site in yellow.
9-409.2 Parking Spaces
10-Electrostatic Copy of Site Plan.
11-CRG approved Plan 8/22/91.
12-Lack of landscape in front of site.
13-Letter from Director Public Works to William Monk (4/10/91)
14-Letter from Director Public Works to William Monk (8/16/91)
15-Architectural Contracting Co. 7/6/90.
16-Preliminary Site Plan with landscape notes revised 5/30/91.
17-Letter from Frank Fisher to Michael Athas (2 pgs. 4/19/91)

Michael Athas, File No. 92-CV-2604
Case No. 91-246-SPHA

April 16, 1992 Record of Proceedings filed in the Circuit
Court for Baltimore County.

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

Respectfully submitted,


LindaLee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 49
Old Courthouse, Basement
400 Washington Avenue
Towson, Maryland 21204 (410) 887-3180

cc: Julius W. Lichter, Esquire
Timanus Lane Partnership
F. Vernon Boozer, Esquire
Mr. Michael Athas
Mr. Demetrios Vangelakos
Mr. William Monk
Mr. Elias Rizakos

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE
APPLICATION OF MICHAEL ATHAS
FOR A SPECIAL HEARING AND
VARIANCE ON PROPERTY LOCATED
ON THE SOUTH SIDE OF WINDSOR
MILL ROAD, 270' WEST OF THE
CENTERLINE OF LORD BALTIMORE
DRIVE (7207 WINDSOR MILL ROAD)

BEFORE THE BALTIMORE COUNTY
BOARD OF APPEALS

CASE NO.: 91-246-SPHA

CASE NO.: _____

91-CV-2604

17/315

* * * * *

ORDER FOR APPEAL

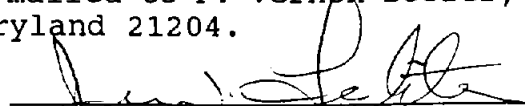
Timanus Lane Partnership, by and through its attorneys Julius W. Lichter and Levin & Gann, P.A., hereby appeal, in accordance with Maryland Rule B2, the February 19, 1992 Order of the Board of Appeals of Baltimore County rendered as a final decision in the above captioned matter. Timanus Lane Partnership, a party to the proceeding below, is aggrieved by said Order of the Board of Appeals.



Julius W. Lichter, Esquire
Levin & Gann, P.A.
305 W. Chesapeake Avenue, Suite 113
Towson, Maryland 21204
(410) 321-0600
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of March, 1992, prior to the filing of this Order for Appeal, a copy of said Order was served on the Administrative Secretary, Board of Appeals of Baltimore County, Room 49-Basement, 400 Washington Avenue, Towson, Maryland 21204 and a copy was mailed to F. Vernon Boozer, Esquire, 614 Bosley Avenue, Towson, Maryland 21204.



Julius W. Lichter, Esquire



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

March 19, 1992

F. Vernon Boozer, Esquire
Covahey & Boozer, P.A.
614 Bosley Avenue
Towson, Maryland 21204

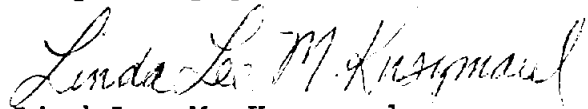
Re: Case No. 91-246-SPHA (Michael Athas)

Dear Mr. Boozer:

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,


LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Mr. Michael Athas
Mr. Demetrios Vangelakos
Mr. William Monk
Mr. Elias Rizakos
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk -Zoning
Arnold Jablon, Director of
Zoning Administration



IN THE MATTER OF THE APPLICATION	*	IN THE
OF <u>MICHAEL ATHAS</u> FOR A SPECIAL		
HEARING AND ZONING VARIANCES	*	CIRCUIT COURT
ON PROPERTY LOCATED ON THE		
SOUTH SIDE OF WINDSOR MILL ROAD,	*	FOR
270' WEST OF THE CENTERLINE OF		
LORD BALTIMORE DRIVE (7011	*	BALTIMORE COUNTY
WINDSOR MILL ROAD)		
2ND ELECTION DISTRICT		
2ND COUNCILMANIC DISTRICT	*	CG Doc. No. <u>17</u>
TIMANUS LANE PARTNERSHIP	*	Folio No. <u>315</u>
	*	File No. <u>92-CV-2604</u>
ZONING CASE NO. 91-246-SPHA		
* * * * *		* * * * *

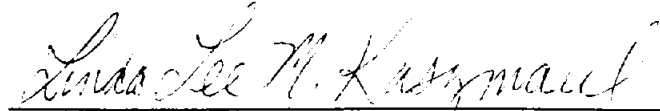
CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, John G. Disney and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Julius W. Lichter, Esquire, Levin & Gann, P.A., 305 W. Chesapeake Avenue, Suite 113, Towson, Maryland 21204, Counsel for Plaintiffs; Timanus Lane Partnerhsip, c/o Julius W. Lichter, Esquire, Levin & Gann, P.A., 305 W. Chesapeake Avenue, Suite 113, Towson, Maryland 21204, Plaintiffs; F. Vernon Boozer, Esquire, Covahey & Boozer, P.A., 614 Bosley Avenue, Towson, Maryland 21204, Counsel for Defendant; Mr. Michael Athas, 100 Galewood Road, Timonium, Maryland 21093, Defendant; Mr. Demetrios Vangelakos, 3906 Pinedale Drive, Baltimore, Maryland 21236; Mr. William Monk, William Monk, Inc., Courthouse Commons, 222 Bosley Avenue, Suite B-7, Towson, Maryland 21204; Mr. Elias Rizakos, 1011 Berrymans Lane, Reisterstown, Maryland 21136; and Michael B.

Michael Athas, File No. 92-CV-2604
Case No. 91-246-SPHA

Sauer, Esquire, c/o County Board of Appeals, Room 49, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.



LindaLee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 49, Old
Courthouse, 400 Washington Avenue,
Towson, Maryland 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Julius W. Lichter, Esquire, Levin & Gann, P.A., 305 W. Chesapeake Avenue, Suite 113, Towson, Maryland 21204, Counsel for Plaintiffs; Timanus Lane Partnerhsip, c/o Julius W. Lichter, Esquire, Levin & Gann, P.A., 305 W. Chesapeake Avenue, Suite 113, Towson, Maryland 21204, Plaintiffs; F. Vernon Boozer, Esquire, Covahey & Boozer, P.A., 614 Bosley Avenue, Towson, Maryland 21204, Counsel for Defendant; Mr. Michael Athas, 100 Galewood Road, Timonium, Maryland 21093, Defendant; Mr. Demetrios Vangelakos, 3906 Pinedale Drive, Baltimore, Maryland 21236; Mr. William Monk, William Monk, Inc., Courthouse Commons, 222 Bosley Avenue, Suite B-7, Towson, Maryland 21204; Mr. Elias Rizakos, 1011 Berrymans Lane, Reisterstown, Maryland 21136; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 on this 19th day of March, 1992.



LindaLee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 49, Old
Courthouse, 400 Washington Avenue,
Towson, Maryland 21204 (410) 887-3180

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE
APPLICATION OF MICHAEL ATHAS
FOR A SPECIAL HEARING AND
VARIANCE ON PROPERTY LOCATED
ON THE SOUTH SIDE OF WINDSOR
MILL ROAD, 270' WEST OF THE
CENTERLINE OF LORD BALTIMORE
DRIVE (7207 WINDSOR MILL ROAD)

BEFORE THE BALTIMORE COUNTY
BOARD OF APPEALS

CASE NO.: 91-246-SPHA

CASE NO.: _____

* * * * *

PETITION ON APPEAL

Timanus Lane Partnership, by and through its attorneys Julius W. Lichter and Levin & Gann, P.A., files this Petition on Appeal in accordance with Maryland Rule B2(e) and states as follows:

1. On January 7, 1992 the Board of Appeals of Baltimore County (the "Board of Appeals") held a de-novo hearing on a petition of Michael Athas et al seeking, inter alia, a variance from §409.6A2 of the Baltimore County Zoning Regulations (the "BCZR") to permit 98 parking spaces in lieu of the required 150 or 172 for an existing restaurant known as the Windsor Inn located at 7207 Windsor Mill Road in Baltimore County, Maryland. Said petition was assigned Case No. 91-246-SPHA.

2. Timanus Lane Partnership, owner of an existing office park located across the street from the Windsor Inn, was a party to the proceeding before the Board of Appeals and opposed the requested variance to reduce the number of required parking spaces.

3. On February 19, 1992 the Board of Appeals rendered a final decision in Case No. 91-246-SPHA and by Order granted, inter alia,

the requested variance to permit 98 parking spaces in lieu of the required 150 or 172. A copy of said Opinion and Order (along with a Dissenting Opinion filed by Board of Appeals Member John G. Disney) is attached hereto and made a part hereof as Exhibit "A".

4. The Appellant herein, Timanus Lane Partnership, has filed an Order of Appeal of the February 19, 1992 Order pursuant to Maryland Rule B2. This appeal is authorized by Article IV, §26-133 of the Baltimore County Code, by Article VI, §604 of the Baltimore County Charter, and by Article 25A, §5(U) of the Maryland Annotated Code.

5. The Board of Appeals erred in granting the requested parking variance for the following reasons:

(a) The evidence of record fails to establish that strict compliance with the BCZR would result in practical difficulty or unreasonable hardship.

(b) The granting of the requested parking variance was not in strict harmony with the spirit and intent of the BCZR.

(c) The granting of the requested parking variance has and will continue to cause substantial injury to adjacent and nearby property owners, and in particular, to the Timanus Lane Partnership property.

(d) The granting of the requested variance was not in accordance with law, resulting in a decision which is arbitrary and capricious and which cannot be justified by substantial evidence of record.

WHEREFORE, Appellant prays that this Honorable Court:

Respectfully submitted,

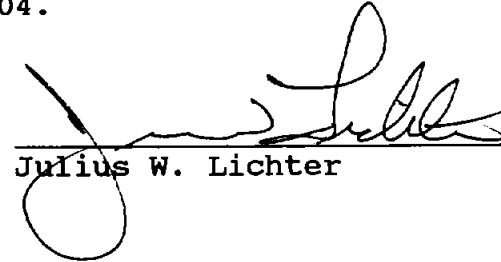


Julius W. Lichter
Levin & Gann, P.A.
113 Chesapeake Building
305 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 321-0600

Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of June, 1992, a copy of the foregoing Appellant's Reply Memorandum was served on the Administrative Secretary, Board of Appeals of Baltimore County, Room 49 - Basement, 400 Washington Avenue, Towson, Maryland 21204, and a copy was mailed to F. Vernon Boozer, Esquire 614 Bosely Avenue, Towson, Maryland 21204.



Julius W. Lichter



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

March 19, 1992

Julius W. Lichter, Esquire
LEVIN & GANN, P.A.
305 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 91-246-SPHA (Michael Athas)

Dear Mr. Lichter:

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, all costs 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,

A handwritten signature in cursive script that reads "Linda Lee M. Kuszmaul".

LindaLee M. Kuszmaul
Legal Secretary

Enclosure

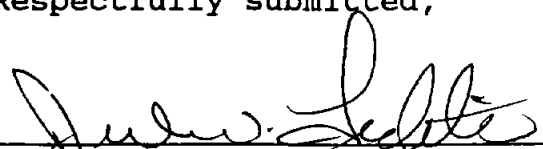
cc: Timanus Lane Partnership



A. Reverse the February 19, 1992 Order of the Board of Appeals granting a variance from the parking requirements of the Baltimore County Zoning Regulations; and

B. For such further relief as the nature of this case may require.

Respectfully submitted,

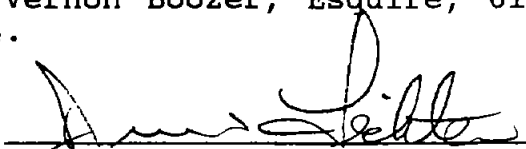


Julius W. Lichter, Esquire
Levin & Gann, P.A.
305 W. Chesapeake Avenue, Suite 113
Towson, Maryland 21204
(410) 321-0600

Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of March, 1992, a copy of the foregoing Petition On Appeal was served on the Administrative Secretary, Board of Appeals of Baltimore County, Room 49 -Basement, 400 Washington Avenue, Towson, Maryland 21204 and a copy was mailed to F. Vernon Boozer, Esquire, 614 Bosley Avenue, Towson, Maryland 21204.



Julius W. Lichter, Esquire

IN THE MATTER OF THE * BEFORE THE
 APPLICATION OF MICHAEL ATHAS * COUNTY BOARD OF APPEALS
 FOR A SPECIAL HEARING AND * OF
 VARIANCE ON PROPERTY LOCATED * BALTIMORE COUNTY
 ON THE SOUTH SIDE OF WINDSOR *
 MILL ROAD, 270' WEST OF THE *
 CENTERLINE OF LORD BALTIMORE *
 DRIVE (7207 WINDSOR MILL ROAD) *
 2ND ELECTION DISTRICT * CASE NO. 91-246-SPHA
 2ND COUNCILMANIC DISTRICT *
 * * * * *

DISSENTING OPINION

I disagree with the majority opinion and will only point out in my opinion where I believe the majority opinion is not supported by the evidence presented in this case.

This case was heard as a de-novo hearing. As such, the Petitioner below must prove that his use of the site is a legal non-conforming use. Existence prior to the enactment of County Council Bill No. 18-1976 is the requirement for a legal non-conforming use. There may have been a more or less restrictive regulation prior to Bill No. 18-1976, but I am not aware of any. County Council Bill No. 18-1976 is now Baltimore County Zoning Regulation (BCZR) 409.2 (3) which reads as follows:

Dance Halls, night clubs, restaurants,

1 parking space for each 50 square feet of total floor area.

There was no testimony presented at the hearing that the existing use has existed prior to the enactment of Bill No. 18-1976 or to the size of the use prior to the enactment of Bill No. 18-1976. In addition, there was no testimony that any granting authority has issued an order establishing a non-conforming use for this site.

On page three of the majority opinion, the required parking

spaces are 172 not 150.

Mr. Monk testified as a Professional Engineer as to the parking, traffic pattern, and to the increased safety to and from the site because of the proposed changes which require the requested variances. In addition, he testified that the variances requested would not be detrimental to the health, safety and general welfare of the community as stipulated in Section 502.1 of the BCZR. Unfortunately, Section 502.1 is the standard to which a special exception is granted not variances. The standard for which a variance may be granted are laid out in McLean v. Soley, 270 Md. 216, 1973, and are restated in Anderson v. Board of Appeals, 22 Md. App. 28, 1974:

McLean v. Soley, 270 Md. 216, 1973, established the following criteria for determining practical difficulty or unreasonable hardship:

"1) Whether compliance with the strict letter of the restrictions governing various variances 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."

In Anderson v. Board of Appeals, 22 Md., App. 28, 1974, on page 38, the Court stated:

"Use variances are customarily concerned with 'hardship' cases, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are customarily concerned with 'practical difficulty.' Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria:

- 1) If the applicant complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property.
- 2) The difficulties or hardship are peculiar to the property in question and contrast with those of the property owners in the same district.
- 3) The hardship was not the result of the applicant's own actions.

Where the standard of 'practical difficulty' applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the 'undue hardship' standard. In order to justify the grant of an area variance, the applicant need show only the three requirements as stated in McLean v. Soley, 270 Md., 208.

Mr. Elias Rizakos, restaurant manager, at first testified that the dining rooms will remain the same with no increase in capacity for patrons, but upon questioning by the Board it was stated that the moving of the restrooms indeed would enlarge the interior public area of the restaurant by enlarging the dance floor.

Additional testimony was given that the site plan as submitted to the Board would reduce the existing 106 parking spaces to 98, and that if and when the County increased the width of Windsor Mill Road, the 98 parking spaces would be reduced further.

Authur Adler, managing officer of a large office complex across Windsor Mill Lane, testified of the existing conditions of

the office complex parking and the problems the patrons of the Inn cause to his tenants.

I will take notice, as to the non-existence of any on-street parking around this site because of having my office on Ambassador Road around the corner from the Inn for nearly 15 years.

After reviewing all of the evidence presented in this case, I ask myself where is the hardship let along the unreasonable hardship?

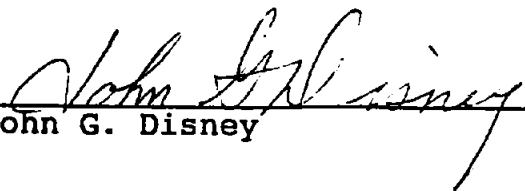
Is it the hardship created by denying neighbors the use of their property as they desire? Or, is it the creation of a barnyard appearance of the neighbor's parking lot? Or, is it the causing the neighbors the cost of hiring a security guard as the Petitioner's Counsel suggests? Or, is it the denying neighbor's tenants the ability to park near the building that they occupy? Or, is it the hardship that the operators of the Windsor Mill Inn created by their desire to enlarge their operation by 1630 square feet? Said enlargement will require 34 additional parking spaces, assuming that the existing site enjoys a legal non-conforming use.

There is no denying that additional parking is need without the enlargement, but where do you put it. Operator's of the restaurant do not have a place to put the required parking spaces; and there is no on-street parking near the site. There is a need for alternative parking sites not only from a legal sense but from a practical sense.

Therefore, after reviewing all the evidence and argument presented in this case, I am of the opinion that the Petitioner did

not meet the requirements for the granting of the parking variance
the standards of which are defined in McLean v. Soley, 270 Md.,
216, 1973, and I would deny the requested parking variance.

DATE: February 19, 1992



John G. Disney

2-1-91

IN THE MATTER OF THE	*	BEFORE THE
APPLICATION OF <u>MICHAEL ATHAS</u>	*	COUNTY BOARD OF APPEALS
FOR A SPECIAL HEARING AND	*	
VARIANCE ON PROPERTY LOCATED	*	OF
ON THE SOUTH SIDE OF WINDSOR	*	BALTIMORE COUNTY
MILL ROAD, 270' WEST OF THE	*	
CENTERLINE OF LORD BALTIMORE	*	CASE NO. 91-246-SPHA
DRIVE (7207 WINDSOR MILL ROAD)	*	
2ND ELECTION DISTRICT	*	
2ND COUNCILMANIC DISTRICT	*	
* * * *	*	* * * *

This case comes before the Board on appeal from a decision of the Deputy Zoning Commissioner dated May 29, 1991, granting with restrictions Petition for nonconforming status for rear travel aisle, interior parking lot, and existing stationary business sign and variances for setbacks and parking spaces for a restaurant expansion at 7207 Windsor Mill Road in the Second Councilmanic District. The case was heard this day in its entirety.

T E S T I M O N Y

The matter of nonconforming uses at the site of the restaurant, which dates back to the 1950's, as granted by the Deputy Zoning Commissioner were not subjects of concern by the Protestants. The issue of a variance for reduced parking from 106 to 98 spaces at an expanded facility requiring 150 spaces was the subject of protest in this Hearing.

Counsel for the Petitioner presented William Monk, expert land use planner and consultant who reviewed the revised plan submitted to the Department of Public Works and Traffic Engineering. A waiver of meeting with the County Review Group (CRG) was granted. Aerial maps and photographs showed the location to be entirely paved in an ML-IM zone with open access to Windsor Mill Road the length of the property.

As the site exists, there is no landscaping around the perimeter of the property. Plans for the subject site will establish landscaping amenities, although regulations now specified in Section 409 of the Baltimore County Zoning Regulations (BCZR) are not applicable to this long existing commercial location.

Mr. Monk and Counsel for the Petitioner emphasized the objective of overcoming negative traffic conditions for patrons entering and exiting a parking lot with no controlling directional patterns. In the proposed plan, Petitioner will dedicate to the County 10 feet of their property along Windsor Mill Road for further inclusion for highway right-of-way widening. Until the time of road widening, the County has agreed to Petitioner's request to place private parking and entrance improvements with a 5 foot wide landscaped strip of curbing within the dedicated right-of-way extending the length of the property (approximately 295 feet). Mr. Monk noted that the curbing would eliminate a present hazardous tendency of patrons backing their vehicles from the lot onto Windsor Mill Road. Traffic to and from the parking spaces would be controlled by two enter-exit driveways and one driveway for exit only passage. These are improvements that Windsor Inn's present nonconforming status does not address.

The Director of Public Works acknowledged (Petitioner's Exhibit No. 14) that the private improvements proposed a much safer movement of traffic. The agency does not object to temporary private improvements that would include the ten foot dedication, and thereby provide the required 16 foot travel aisle between the

landscaped strip and those parking spaces fronting the restaurant. Parking at this location will be at a 60 degree angle rather than a 90 degree angle.

Essential to Petitioner's plan is the requested variance permitting a total of 98 parking spaces in lieu of the 150 required by the proposed expansion of the restaurant facility to 8,630 square feet from the present 6,940 square feet. The present 106 spaces will be decreased to 98 with the land dedication to Baltimore County, and the traffic travel aisle improvements.

Mr. Monk stated that the changed traffic patterns to and on the parking lot assured a necessary safety condition and that the landscaping plan would greatly enhance the location.

He concluded his testimony stating that the variances requested would not be detrimental to the health, safety and general welfare of the community as stipulated in Section 502.1 of the BCZR.

Mr. Elias Rizakos, restaurant manager, testified to the purpose of the changes in the size of the Windsor Inn. Basically, he noted that the restaurant will gain an enlarged kitchen area, storage rooms, and an enlarged restroom facility. He asserted that the dining rooms will remain the same with no increased capacity for patrons. The revised plan (Petitioner's Exhibit No. 15), shows a "squaring-off" of the building, moving walls out to align with existing building lines and thereby creating needed work areas. Mr. Rizakos emphasized that improvements are also needed to accommodate handicapped patrons. He also testified that the inn

has never received complaints about patron parking from neighbors prior to this petition. Protestant in this matter, Timanus Lane Partnership, did suggest purchasing a .4 acre lot in their ownership which lies across Windsor Mill Road, some 160 feet west of the restaurant.

Arthur Adler, managing officer since 1990 for the Timanus Lane Partnership, testified to the increase in occupancy in the Executive Office Park and of the parking needs of his lessees. Citing the late and fluctuating hours of two principal tenants, a telemarketing firm and the Federal Bureau of Investigation, Mr. Adler reported his lessees' problems with restaurant patrons parking in the spaces of the office building some 60 feet from the Windsor Inn. There are also complaints of the revelry of patrons and litter left on the premises. Mr. Adler testified that rather than the normal 8 to 5 day, employees of the telemarketing lessee work evening hours, and the parking spaces have to be available and convenient to the office employees. Receiving protests from the telemarketing firm, Mr. Adler remarked about a conversation he had with the Windsor Inn proprietors about parking, and the possible purchase of the .4 acre lot. The response was negative because the Petitioner did not own the property and couldn't consider purchase at that time.

O P I N I O N

The law is well established that an area variance may be granted where strict application of the Baltimore County Zoning Regulations would cause practical difficulty to the Petitioner and

his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty, the Petitioner must meet those conditions outlined in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

In consideration of the exhibits and the testimony entered into the record of this case, it is evident that the Petitioner would experience practical difficulty or unreasonable hardship if the requested variances for width of traffic aisle and the number of parking spaces were denied.

Of special consideration in this case, are the traffic and safety improvements Petitioner's plan will bring to a location along a heavily travelled thoroughfare. The dedication of land for the future widening of the right-of-way of Windsor Mill Road, and the agreement of the Baltimore County Department of Public Works with Petitioner's plan for the strip of land is compelling. The Board also notes that the improvements proposed are not designed to increase the capacity for dining, but to better accommodate patrons through an upgrading of storage, kitchen and bathroom facilities. Testimony affirms that the modifications will reduce parking from 106 spaces to 98, but will result in a much improved business location.

In regards to testimony of unauthorized parking by restaurant patrons in spaces reserved for the Executive Office Park, it is viewed by the Board as an occasional occurrence that can be resolved, and is not of such consequence to deny the variances requested.

The nonconforming status of the rear travel aisle, interior lot landscaping and roof signs, although not issues in this Hearing, have been established. The Board therefore will grant the relief requested in the Petition for Special Hearing, with the exception of the freestanding sign.

Testimony is indicative that the granting of the requested variances would not result in detriment to the public health, safety, and general welfare of the surrounding community. To conform to the present setback requirements would be to place an unnecessary burden upon the Petitioner.

O R D E R

IT IS THEREFORE this 19th day of February, 1992 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Zoning Variances to permit a setback of 0 feet in lieu of the required minimum of 10 feet for parking adjacent to a right-of-way; to permit 98 parking spaces in lieu of the required 150; to permit 3 off-street parking spaces to be located not on the same lot; and to permit a one-way travel aisle to be 6 feet wide in lieu of the required 16 feet for 60 degree angled parking, in accordance with Petitioner's Exhibit No. 15, be and is hereby GRANTED, subject to the following restrictions:

- 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) Prior to the issuance of any permits, Petitioner shall submit a landscape plan for approval by the Deputy Director of Planning. Said plan shall incorporate the comments submitted by the Office of Planning dated February 5, 1991. A copy of the approved plan shall be submitted to this Office for inclusion into the case file.

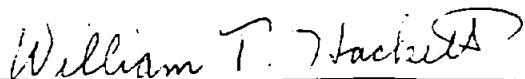
3) The freestanding sign shall be removed and replaced with a sign in compliance with the BCZR within one hundred twenty (120) days of the date of this Order.

4) Compliance with the Zoning Plans Advisory Committee comments submitted by the Office of Planning dated February 5, 1991, the Department of Traffic Engineering dated January 21, 1991, the Department of Environmental Protection and Resource Management (DEPRM), Bureau of Water Quality Division, dated January 2, 1991, and the Fire Department dated January 11, 1991.

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

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY



William T. Hackett, Chairman



Harry E. Buchheister, Jr.

CASE

92-CV-2604

Timanus Lane Part.

v.

Michael Athas

RECEIVED FROM THE COUNTY BOARD OF APPEALS
EXHIBITS, BOARD'S RECORD EXTRACT & TRANS-
SCRIPT FILED IN THE ABOVE-ENTITLED CASE,
AND ZONING COMMISSIONER'S FILE & EXHIBITS.

S. Saunders

Clerk's Office

Date:

4/16/92

Petition for Special Hearing and Zoning Variance
S/S Windsor Mill Road 270' W of the c/l of Lord Baltimore Drive
(7207 Windsor Mill Road)
2nd Election District - 2nd Councilmanic District
MICHAEL ATHAS - Petitioner
Case No. 91-246-SPHA

Petition for Special Hearing and Zoning Variance (Variance portion
appealed only)

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel (None submitted)

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Exhibits: ✓ 1. & A. - Plat to accompany petition

✓ 2A. - 2E. Photographs

✓ 3. 1988 Zoning Map

✓ 4. Site Plan showing conditions of site

✓ 5A. - 5J. - Photographs

✓ 6. Floor Plan

✓ 7. 1972 & 1982 - Aerial Maps

✓ 8. 1986 - Aerial Map

✓ 9. Photograph - Proposed Landscaping

✓ 10A & 10B - Photographs of Sign

Deputy Zoning Commissioner's Order dated May 29, 1991 (Granted with
restrictions)

Notice of Appeal received June 18, 1991 from Julius W. Lichter,
Attorney on behalf of Timanus Lane Partnership, Protestant (Variance
portion appealed only)

cc: Demetrios Vangelakos, 3906 Pinedale Dr., Balto., MD 21236

Michael Athas, 100 Galewood Road, Timonium, MD 21093

William Monk - William Monk, Inc., Campbell Building
100 W. Pennsylvania Avenue, Suite 305, Towson, MD 21204

J. Vernon Boozer, Esq. > entered appearance
Covaney & Boozer, P.A. 9/20/91 - Counsel
614 Bosley Ave., Towson, MD 21204 for
Petitioner

Appeal Checklist - Appeal No. 91-246-SPHA
Michael Athas - Petitioner
June 27, 1991
Page 2

Elias Rizakos, 1011 Berrymans Lane, Reisterstown, MD 21136

*Julius Lichter, Esquire - Levin & Gann
305 W. Chesapeake Avenue, Towson, MD 21204

People's Counsel of Baltimore County *out per Shirley 9/27/91*
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
~~Ann M. Nastarowicz~~, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, ~~Chief Deputy County Attorney~~
Public Services

out per Paula 9/12/91

Exhibits

Petitioner

- 1 William Monk - Resume 7 pages.
- 2 Baltimore County Official Zoning Map. Jan 1986
3. Aerial Photo Map Jan 1986
- 4a South View of adjacent land use
- b. Southwest view of adjacent land use
- c. View of adjacent land use (North side of Road)
- d. West Bound view of existing Road frontage.
- e. East Bound view of existing road frontage.
5. Series of Photo (10) of existing site and buildings
- 6 Preliminary Site Plan 11/26/90
- 7 Aerial Map 1972 & 1982
- 8 Aerial Map 1986 with site in yellow.
9. 409.2 Parking Space
- 10 Electrostatic Copy of Site Plan.
11. CRG approved Plan 8-22-91
- 12 Lack of landscape in front of site
- 13 Letter from Director Public Works to William Monk 4-10-91
- 14 " " " " " to William Monk 8-16-91
- 15 Architectural Contracting Co. 7-6-90
- 16 Preliminary Site Plan w/landscape notes revised 5-30-91
- 17 Letter from Frank Fisher to Michael Atkes 3 pages 10-19-91

BALTIMORE OFFICE
MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
9TH FLOOR
BALTIMORE, MARYLAND 21201
301-539-3700
TELECOPIER 301-625-9050

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
301-321-0600
TELECOPIER 301-296-2801
June 17, 1991

ELLIS LEVIN (1893-1960)
CARROLL COUNTY OFFICE
1137 LIBERTY ROAD
SYKESVILLE, MD 21784

JULIUS W. LICHTER

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

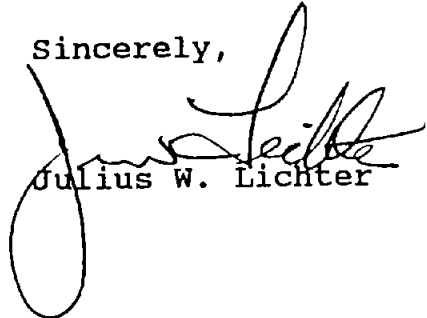
RE: Windsor Inn
Case #91-246-SPHA

Dear Commissioner Haines:

On behalf of Timanus Lane Partnership, Protestant, please note an appeal of former Deputy Zoning Commissioner Ann Nastarowicz's May 29, 1991 Order in the above referenced case. The requisite \$150.00 fee is enclosed.

VARIANCE PORTION ONLY

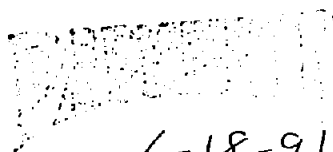
Sincerely,


Julius W. Lichter

JWL/lis

Enclosure

cc: Timanus Lane Partnership


6-18-91 *cm*
ZONING OFFICE

his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty, the Petitioner must meet those conditions outlined in Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

In consideration of the exhibits and the testimony entered into the record of this case, it is evident that the Petitioner would experience practical difficulty or unreasonable hardship if the requested variances for width of traffic aisle and the number of parking spaces were denied.

Of special consideration in this case, are the traffic and safety improvements Petitioner's plan will bring to a location along a heavily travelled thoroughfare. The dedication of land for the future widening of the right-of-way of Windsor Mill Road, and the agreement of the Baltimore County Department of Public Works with Petitioner's plan for the strip of land is compelling. The Board also notes that the improvements proposed are not designed to increase the capacity for dining, but to better accommodate patrons through an upgrading of storage, kitchen and bathroom facilities. Testimony affirms that the modifications will reduce parking from 106 spaces to 98, but will result in a much improved business location.

In regards to testimony of unauthorized parking by restaurant patrons in spaces reserved for the Executive Office Park, it is viewed by the Board as an occasional occurrence that can be resolved, and is not of such consequence to deny the variances

The nonconforming status of the rear travel aisle, interior lot landscaping and roof signs, although not issues in this Hearing, have been established. The Board therefore will grant the relief requested in the Petition for Special Hearing, with the exception of the freestanding sign.

Testimony is indicative that the granting of the requested variances would not result in detriment to the public health, safety, and general welfare of the surrounding community. To conform to the present setback requirements would be to place an unnecessary burden upon the Petitioner.

ORDER

IT IS THEREFORE this 19th day of February, 1992 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Zoning Variances to permit a setback of 0 feet in lieu of the required minimum of 10 feet for parking adjacent to a right-of-way; to permit 98 parking spaces in lieu of the required 150; to permit 3 off-street parking spaces to be located not on the same lot; and to permit a one-way travel aisle to be 6 feet wide in lieu of the required 16 feet for 60 degree angled parking, in accordance with Petitioner's Exhibit No. 15, be and is hereby GRANTED, subject to the following restrictions:

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2) Prior to the issuance of any permits, Petitioner shall submit a landscape plan for approval by the Deputy Director of Planning. Said plan shall incorporate the comments submitted by the Office of Planning dated February 5, 1991. A copy of the approved plan shall be submitted to this Office for inclusion into the case file.

3) The freestanding sign shall be removed and replaced with a sign in compliance with the ECZA within one hundred twenty (120) days of the date of this Order.

4) Compliance with the Zoning Plans Advisory Committee comments submitted by the Office of Planning dated February 5, 1991, the Department of Traffic Engineering dated January 21, 1991, the Department of Environmental Protection and Resource Management (DEPRM), Bureau of Water Quality Division, dated January 2, 1991, and the Fire Department dated January 11, 1991.

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

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

IN THE MATTER OF THE * BEFORE THE
APPLICATION OF MICHAEL ATHAS * COUNTY BOARD OF APPEALS
FOR A SPECIAL HEARING AND *
VARIANCE ON PROPERTY LOCATED * OF
ON THE SOUTH SIDE OF WINDSOR *
MILL ROAD, 270' WEST OF THE *
CENTERLINE OF LORD BALTIMORE * BALTIMORE COUNTY
DRIVE (7207 WINDSOR MILL ROAD) * CASE NO. 91-246-SPHA
2ND ELECTION DISTRICT *
2ND COUNCILMANIC DISTRICT * * * *

DISSENTING OPINION

I disagree with the majority opinion and will only point out in my opinion where I believe the majority opinion is not supported by the evidence presented in this case.

This case was heard as a de-novo hearing. As such, the Petitioner below must prove that his use of the site is a legal non-conforming use. Existence prior to the enactment of County Council Bill No. 18-1976 is the requirement for a legal non-conforming use. There may have been a more or less restrictive regulation prior to Bill No. 18-1976, but I am not aware of any. County Council Bill No. 18-1976 is now Baltimore County Zoning Regulation (BCZR) 409.2 (3) which reads as follows:

Dance Halls, night clubs, restaurants,
1 parking space for each 50 square feet of total floor area.

There was no testimony presented at the hearing that the existing use has existed prior to the enactment of Bill No. 18-1976. In addition, there was no testimony that any granting authority has issued an order establishing a non-conforming use for this site.

On page three of the majority opinion, the required parking

150.

Mr. Monk testified as a Professional Engineer as to the parking, traffic pattern, and to the increased safety to and from the site because of the proposed changes which require the requested variances. In addition, he testified that the variances requested would not be detrimental to the health, safety and general welfare of the community as stipulated in Section 502.1 of the BCZR. Unfortunately, Section 502.1 is the standard to which a special exception is granted not variances. The standard for which a variance may be granted are laid out in McLean v. Soley, 270 Md. 216, 1973, and are restated in Anderson v. Board of Appeals, 22 Md. App. 28, 1974:

McLean v. Soley, 270 Md. 216, 1973, established the following criteria for determining practical difficulty or unreasonable hardship:

- "1) Whether compliance with the strict letter of the restrictions governing various variances would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
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- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

In Anderson v. Board of Appeals, 22 Md., App. 28, 1974, on page 18, the Court stated:

"Use variances are customarily concerned with 'hardship' cases, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are customarily concerned with 'practical difficulty.' Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria:

- 1) If the applicant complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property.
- 2) The difficulties or hardship are peculiar to the property in question and contrast with those of the property owners in the same district.
- 3) The hardship was not the result of the applicant's own actions.

Where the standard of 'practical difficulty' applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the 'undue hardship' standard. In order to justify the grant of an area variance, the applicant need show only the three requirements as stated in McLean v. Soley, 270 Md., 208.

Mr. Elias Rizakos, restaurant manager, at first testified that the dining rooms will remain the same with no increase in capacity for patrons, but upon questioning by the Board it was stated that the moving of the restrooms indeed would enlarge the interior public area of the restaurant by enlarging the dance floor.

Additional testimony was given that the site plan as submitted to the Board would reduce the existing 106 parking spaces to 98, and that if and when the County increased the width of Windsor Mill Road, the 98 parking spaces would be reduced further.

Authur Adler, managing officer of a large office complex across Windsor Mill Lane, testified of the existing conditions of

the office complex parking and the problems the patrons of the Inn cause to his tenants.

I will take notice, as to the non-existence of any on-street parking around this site because of having my office on Ambassador Road around the corner from the Inn for nearly 15 years.

After reviewing all of the evidence presented in this case, I ask myself where is the hardship let along the unreasonable hardship?

Is it the hardship created by denying neighbors the use of their property as they desire? Or, is it the creation of a barnyard appearance of the neighbor's parking lot? Or, is it the causing the neighbors the cost of hiring a security guard as the Petitioner's Counsel suggests? Or, is it the denying neighbor's tenants the ability to park near the building that they occupy? Or, is it the hardship that the operators of the Windsor Mill Inn created by their desire to enlarge their operation by 1630 square feet? Said enlargement will require 34 additional parking spaces, assuming that the existing site enjoys a legal non-conforming use.

There is no denying that additional parking is need without the enlargement, but where do you put it. Operator's of the restaurant do not have a place to put the required parking spaces; and there is no on-street parking near the site. There is a need for alternative parking sites not only from a legal sense but from a practical sense.

Therefore, after reviewing all the evidence and argument presented in this case, I am of the opinion that the Petitioner did

not meet the requirements for the granting of the parking variance the standards of which are defined in McLean v. Soley, 270 Md., 216, 1973, and I would deny the requested parking variance.

DATE: February 19, 1992

John G. Disney
John G. Disney

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner

DATE: February 5, 1991

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

SUBJECT: Michael Athas, Item No. 254

The petitioner requests a Special Hearing to establish the non-conforming status of the rear travel aisle which is 21 ft. in lieu of the required 22 ft., to establish the non-conforming status of the existing stationary business sign, free-standing sign and two roof signs; and Variance to permit a zero ft. parking setback in lieu of the required 10 ft. setback to a R.O.W.; and to permit 101 parking spaces in lieu of the required 150 spaces.

Should the petitioner's request be granted, staff recommends the following:

- A landscape plan shall be submitted to the deputy director of the Office of Planning and Zoning prior to the issuance of any building permits. Said plan shall include an enhanced landscape treatment along Windsor Mill Road.
- The existing handicapped parking spaces shall be relocated to the area currently designated for 10 parking spaces. This location is preferred due to its proximity to the entrance of the business.

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

PK/JL/cmm
ITEM254/2AC1

received
1/2/91

BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL
PROTECTION AND RESOURCE MANAGEMENT

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

Zoning Item # 254, Zoning Advisory Committee Meeting of January 8, 1991

Property Owner: Michael Athas
Location: 2707 Windsor Mill Road District: 2
Water Supply: metre Sewage Disposal: metre

COMMENTS ARE AS FOLLOWS:

- () Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for new 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 generation which has a total cooking surface area of five (5) square feet or more.
- () Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
- () Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs, water and sewerage facilities or other appliances 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, 887-6500 x 315.
- () Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations for more complete information, contact the Division of Maternal and Child Health.
- () If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with 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 asbestos, 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 bacteriological and chemical water samples.
- () If submission of plans to the County Review Group is required, a hydrogeological study and an Environmental Effects Report must be submitted. 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 subdivision 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

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21204-5500

(301) 887-4500

JANUARY 11, 1991

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: MICHAEL ATHAS

Location: #2707 WINDSOR MILL ROAD

Item No.: 254 Zoning Agenda: JANUARY 8, 1991

Gentlemen:

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

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: *Noted and Approved*
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/KEK

received
1/2/91

BUREAU OF TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY, MARYLAND

DATE: January 21, 1991

TO: Mr. J. Robert Haines
Zoning Commissioner

FROM: Rahoe J. Famill

SUBJECT: Z.A.C. Comments

Z.A.C. MEETING DATE: January 8, 1991

ITEM NUMBER: 254

Dear Mr. Haines:

The easternmost access needs to be modified. Please see the attached sketch.

Rahoe J. Famill
Rahoe J. Famill
Traffic Engineer II

RJF/lvd

received
1/2/91

APPEAL

Petition for Special Hearing and Zoning Variance
S/S Windsor Mill Road, 270' W of the c/l of Lord Baltimore Drive
(7207 Windsor Mill Road)
2nd Election District - 2nd Councilmanic District
MICHAEL ATHAS - Petitioner
Case No. 91-246-SPHA

Petition for Special Hearing and Zoning Variance (Variance portion appealed only)

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel (None submitted)

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Exhibits: 1. & A. - Plat to accompany petition

2A. - 2E. Photographs

3. 1988 Zoning Map

4. Site Plan showing conditions of site

5A. - 5J. - Photographs

6. Floor Plan

7. 1972 & 1982 - Aerial Maps

8. 1986 - Aerial Map

9. Photograph - Proposed Landscaping

10A & 10B - Photographs of Sign

Deputy Zoning Commissioner's Order dated May 29, 1991 (Granted with restrictions)

Notice of Appeal received June 18, 1991 from Julius W. Lichter, Attorney on behalf of Timanus Lane Partnership, Protestant (Variance portion appealed only)

cc: Dimitrios Vangelakos, 3906 Pinedale Dr., Balto., MD 21236

Michael Athas, 100 Galewood Road, Timonium, MD 21093

William Monk - William Monk, Inc., Campbell Building
100 W. Pennsylvania Avenue, Suite 305, Towson, MD 21204

Appeal Cover Letter - Case No. 91-246-SPHA
MICHAEL ATHAS - Petitioner
June 26, 1991
Page 2

Elias Rizakos, 1011 Berryman Lane, Reisterstown, MD 21136

Julius Lichter, Esquire - Levin & Gann
305 W. Chesapeake Avenue, Towson, MD 21204

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

File

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

June 27, 1991

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

RE: Petition for Special Hearing and Zoning Variance
S/S Windsor Mill Road, 270' W of the c/l of Lord Baltimore Drive
(7207 Windsor Mill Road)
2nd Election District, 2nd Councilmanic District
MICHAEL ATHAS - Petitioner
Case No. 91-246-SPHA

Dear Board:

Please be advised that an appeal of the above-referenced case (Variance portion only) was filed in this office on June 18, 1991 by Julius W. Lichter, on behalf of Timanus Lane Partnership, Protestant. All materials relative to the case are being forwarded herewith.

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

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner

Enclosure

Enclosures

cc: Dimitrios Vangelakos, 3906 Pinedale Dr., Balto., MD 21236

Michael Athas, 100 Galewood Road, Timonium, MD 21093

William Monk - William Monk, Inc., Campbell Building
100 W. Pennsylvania Avenue, Suite 305, Towson, MD 21204

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee DATE: January 14, 1991

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for January 8, 1991

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 244, 249, 250, 251, 252, 253, 256, 258 and 259.

For Items 231 revised (Perring Plaza Shopping Center) and 247, the previous County Review Group comments are applicable.

For Items 254 and 255 and 257, County Review Group Meetings may be required.

Robert W. Bowling
ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

Appeal Checklist - Appeal No. 91-246-SHRA
Michael Athas - Petitioner
June 27, 1991
Page 2

Elias Kizakos, 1011 Berryman Lane, Reisterstown, MD 21136

Julius Lichter, Esquire - Levin & Gann
305 W. Chesapeake Avenue, Towson, MD 21204

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

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, Chief Deputy County Attorney
Public Services

9/5/91 - Following parties notified of hearing set for January 7,
1992 at 10:00 a.m.:

Julius W. Lichter, Esquire
Timanus Lane Partnership
Mr. Michael Athas
Mr. Demetrios Vangelakos
Mr. William Monk
Mr. Elias Kizakos
People's Counsel for Baltimore County
P. David Fields
Pat Keller
Public Services
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon-Director of
Zoning Administration

Baltimore County Government
Department of Public Works

April 10, 1991

William Monk, Inc.
Zetser Building
100 W. Pennsylvania Avenue
Suite 305
Towson, Maryland 21204

Re: Windsor Inn

Dear Mr. Monk:

Our office has reviewed your waiver request dated April 1, 1991. We find that your request for waiver of the 40-foot paving section is approved consistent with the site plan which was attached to your letter. However, your request for a reduced right-of-way width must be denied.

My office has contacted the Zoning Office to discuss the impact of this right-of-way requirement on your project. We understand that other zoning issues are being addressed under Case No. 91-246, and we suggest that you contact the Zoning Office to include this right-of-way issue with that case. By copy of this letter, I am advising the Deputy Zoning Commissioner of my Department's support in favor of your variance request relative to this issue.

If there are questions, please feel free to contact my office.

Very truly yours,

Signed by Gene L. Neff

Gene L. Neff, P.E.
Director of Public Works

GLN:DLT:jhe

cc: A. McLaughlin-Nastarowicz
C. Richards
P. Fisher/B. Johnson
R. E. Covashey
File

RECEIVED
APR 12 1991
ZONING OFFICE

Baltimore County Government
Department of Public Works

April 18, 1991

111 West Chesapeake Avenue
Towson, MD 21204

Mr. William F. Monk
William Monk, Inc.
Campbell Building
100 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Windsor Inn

Dear Mr. Monk:

This is to confirm our telephone conversation of April 15, 1991 in which you, Carl Richards and myself discussed your letter to Mr. Neff of April 12, 1991 concerning right-of-way and zoning variances. It is my understanding from Mr. Richards' office that the variance which would accommodate the full 60-foot right-of-way as requested by the Department of Public Works was filed by your office on the afternoon of April 15, 1991. As noted in the letter from the Director's office of April 10, 1991, the Department of Public Works has advised the Deputy Zoning Commissioner of support for this variance.

If you have any questions, please feel free to contact me at 887-3321.

Very truly yours,

David L. Thomas
David L. Thomas, P.E., Acting Chief
Bureau of Public Services

DLG:peg

cc: Gene L. Neff, P.E.
Ann McLaughlin-Nastarowicz
Carl Richards
Rahae Famili

MICROFILM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Wirth / SWM
Mr. Powell / EIRS
Mr. Pilson / W&S
Mr. Flowers / CBGA
Mr. Fisher / Current Planning
Mr. Richards / Zoning
Mr. Bowling / UED (2)
Mr. Fawell / Traffic Engineering
Mr. Weiss / Sanitation
Mr. Beaumont / Land Acquisition
Ms. Lutz / House Numbering
Capt. Kelly / Fire Department
Mr. Kincer / Recreation & Parks
Mr. Brocato / SHA
Mr. Butcher / C & P
Mr. Keller / OPZ Deputy Director (FYI)

FROM: Susan Wimbley
Bureau of Public Services

SUBJECT: District: 2 C 2
Project Name: WINDSOR MILL INN
Project No.: 90186
Engineer: Monk
Phone No.: 494-8931

ACTION REQUESTED:
CRG Plan Review (Meeting Waived) : X 4W-91-84
CRG Plan Refinement Review :
CRG Non-Material Amendment Review :
CRG Plan Approval Extension Review :
Planhandle Minor CRG Plan Review :
Minor Subdivision Review :

Please review the attached plan for compliance with current regulations and return comments to our office by May 23, 1991. If you have comments, please indicate by placing a checkmark in the appropriate box.

Thank you for your attention to our request.

cc: Wirth
Attachments
cc: Fisher

WINDSOR MILL INN

To: John L.
4/30/91 WCR
see 91246

WINDSOR MILL INN
W-91-84

Plan Date: 4/21/91
Comments Due: 5/21/91
Comments Date: 5/16/91
Comments Typed: 5/17/91

This site is currently the subject of zoning variance and special hearing requests as noted on the plan. As of the date of these comments, no Order has been written or plan approved. A review of this plan indicates the following is necessary prior to zoning C.R.G. approval.

Document the existence of the restaurant, tavern and liquor store existence prior to 9/19/70 so there is no conflict with Section 253.1.c or in addition to the hearings already requested, Windsor Mill Road is an arterial street which, under Section 253.1.c., will require that an additional variance be requested to permit direct access to the arterial street. Clarify the variance requested under variance plan note 9.D. If the two parking spaces are those within the public right-of-way, the Zoning Commissioner may not have authority to grant such a variance request.

Show front building orientation. Clarify the use and dimensions of the "Service Area" shown on the plan.

Signs: Clarify the location of the existing double-faced 108 square foot sign to be removed and brought into compliance with Section 413.6.b., B.C.Z.R. (under plan note 38). Clarify how the sign can be both removed and brought into compliance. Show a detail of all existing and proposed signs including the entrance only sign and do not enter sign to comply with Section 413.6 and Zoning Policy S.1.

Final zoning approval is contingent first, upon all plan comments being addressed on the C.R.G. plan; and secondly, upon the final resolution of all comments, the outcome of any requested zoning hearings and finally, the inclusion of the blue commercial checklist information being included on the building permit site plans.

Any requests for further information from the Zoning Office must include a reference to the waiver file #W-91-84 and written correspondence or revised plans must be accompanied by a copy of these comments.

JOHN L. LEWIS
PLANNER II

cc: Current Planning
Zoning File - #91-246
Waiver File

MICROFILM

PETITIONER(S) EXHIBIT ()

246 2
ELIAS KIZAKOS-
1988 for hotel
club & bar base
is operation for over 40 years-
fully doing -
add'l space for 1
Windsor Inn -
north side -

add'l - only -

Notes
1955 property HCR
1961 - property BL - HCR -
109.4c - travel abe
1988 - 26-1988
36-1988 -
min space 5.20 - NO Travel aisle
Required
B.11 =>

Roof - 8 -

PLEASE PRINT CLEARLY PETITIONER(S) SIGN-IN SHEET

NAME ADDRESS
 JULIUS W. LICHTER, ESQ. 305 W. CHESAPEAKE AVENUE 200
 ALBANY FOR TOWSON
 HAVE PARTNERSHIP

PLEASE PRINT CLEARLY PETITIONER(S) SIGN-IN SHEET

NAME ADDRESS
 BILL MONK 100 W. PENNSYLVANIA AVE
 ELIAS KRAVOS 1011 BAYVIEW LANE D 21136
 DIMITRIOS VAMAGIDAKIS 3 FOX KNOLL CT
 LUMI

PLEASE PRINT CLEARLY PETITIONER(S) SIGN-IN SHEET

NAME ADDRESS
 BILL MONK 100 W. PENNSYLVANIA AVE
 TOWSON, MD 21204
 DIMITRIOS VAMAGIDAKIS 3906 PINE OAK DR

IN THE MATTER OF * BEFORE THE
 WINDSOR MILL ROAD * COUNTY BOARD OF APPEALS
 (Michael Athas) * OF BALTIMORE COUNTY
 * Case No. CBA-246-SPHA
 * January 7, 1992
 * * * * *

The above-entitled matter came on for hearing
 before the County Board of Appeals of Baltimore County at
 the Old Courthouse, Towson, Maryland 21204 at 11 o'clock
 a.m., January 7, 1992.
 * * * * *

Reported by:
 C.E. Peatt

BOARD OF APPEALS

WILLIAM P. MONK RESUME

Campbell Building
 100 W. Pennsylvania Avenue
 Suite 305
 Towson, Maryland 21204
 (301) 494-8931

PROFESSIONAL EMPLOYMENT:

LAND PLANNING & ZONING CONSULTANT
 Maryland, Delaware, Virginia, New Jersey, and Pennsylvania
 Consultant to commercial and residential land developers and national corporations in site planning and zoning activities: involved in all consultant services including: site analysis, zoning, site plan development, landscape plan development, government liaison, building permit processing, presentations to community groups, governmental agencies and zoning boards.
 June 1980 - Present

MID ATLANTIC PROPERTIES, INC.
 Hunt Valley, Maryland
 Commercial and industrial real estate brokers.
 December 1987 - Present

OFFICE PARKS DIVISION: NATIONAL HOMES CORPORATION
 Lafayette, Indiana
 Regional Sales Manager-Mid Atlantic Region (NJ, Eastern PA, DE, MD, DC, VA) provide design/planning, marketing, and project feasibility consulting services to developers involved in suburban office parks.
 December 1983 - June 1986

THEODORE EMBER & COMPANY
 Baltimore, Maryland
 Commercial and industrial real estate brokers, emphasis on commercial pad site development with national corporations.
 January 1983 - November 1987

GENERAL AMERICAN REAL ESTATE AND DEVELOPMENT CORPORATION
 Commercial and industrial real estate brokers.
 April 1982 - December 1982

YORK ROAD PLANNING AREA COMMITTEE, INC.
 Baltimore, Maryland
 Assistant director of private, non-profit profit community planning and re-development corporation, national pilot program for commercial revitalization.
 April 1977 - June 1980

EXHIBIT 1

Section 409--OFFSTREET PARKING AND LOADING (see Section 409.5)
 [B.C.Z.R., 1955.]

409.1--Parking and Loading Spaces--There shall be provided, at the time of application for a building permit for the erection or enlargement of any building for which offstreet parking and/or loading space is hereinafter required, other than a dwelling, a plan showing such parking and loading spaces, including the means of access and interior circulation both from the standpoint of the project itself and in relation to its surroundings. [B.C.Z.R., 1955.]

409.2--Parking space--Each offstreet parking space shall be not less than 8 1/2 ft. wide by 18 ft. long, and there shall be not less than 300 sq. ft. per space in the case of lot or garage parking where there is no attendant, and not less than 250 sq. ft. where there is an attendant, such square foot figures to include access aisles. [B.C.Z.R., 1955; Resolution, November 21, 1956.]

a. Parking space for dwellings, including apartment houses--In any zone, except as otherwise provided below, at least 1 garage space or other usable offstreet parking space must be provided for each dwelling unit other than housing for the elderly. In all zones, in the case of a lodging, rooming or boarding house, fraternity or sorority house or dormitory, there shall be one offstreet parking space for each 5 guests or members residing on the premises, but not less than 2 parking spaces in any case. In the case of a hotel or apartment hotel, there shall be one such parking space for each guest room or suite. In the case of a motel, there shall be at least one parking space for each rental unit. Parking space as required above shall be provided on the same lot with the building which it serves or within 300 feet thereof (see Section 217.6). [B.C.Z.R., 1955; Bill No. 80, 1981.]

b. Parking space for uses other than dwellings - In all zones, permanently maintained offstreet parking spaces shall be provided as follows. For the purposes of measuring the floor area of a building in order to determine the number of required offstreet parking spaces, the floor area of any ambulatory, open or enclosed, shall be excluded. [B.C.Z.R., 1955; Bills No. 18, 1976; No. 85, 1983.]

4-33

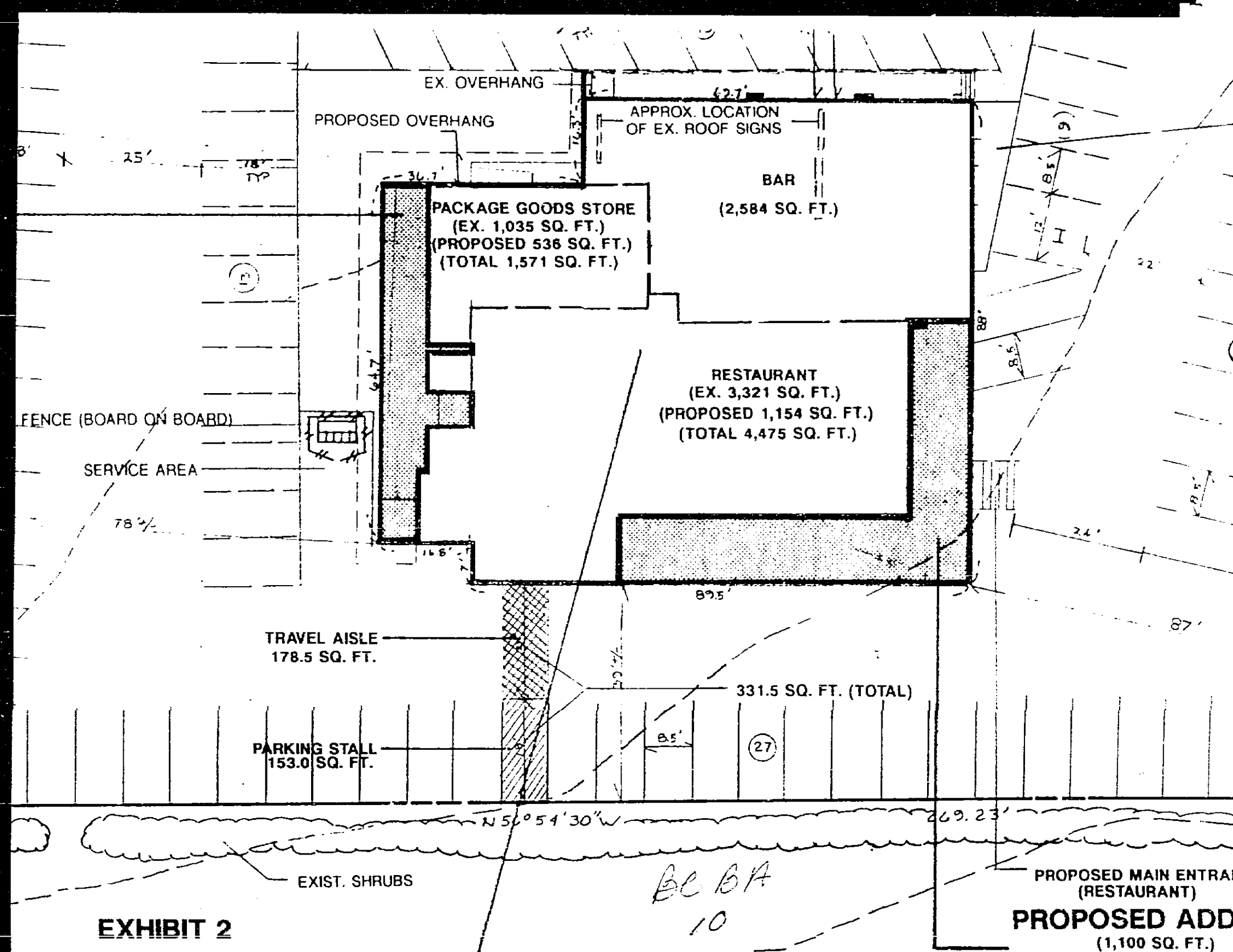


EXHIBIT 2

EXHIBIT 3

BALTIMORE COUNTY

LANDSCAPE MANUAL

ADOPTED BY
 RESOLUTION NO. 33-84
 May 7, 1984

A Memo to
 100-35
 11/12/85

other similar destinations. Walkways may also follow natural features such as a stream valley or shoreline. Walkways should be an integral part of the landscape design which takes into account unique environments, commercial establishments, views, historical sites, vegetation and safety.

When walkways are proposed as an alternative to sidewalks, special consideration shall be given to the design. It shall be constructed to include access for the handicapped and lighting for safety. The walkway should also be located on the natural grade and parallel to the contour of the land and wide enough to allow safe passage for pedestrian and bicycle traffic.

V. GENERAL STANDARDS

A. Compliance with the manual standards

1. All public and private development shall comply with the standards in this manual unless specifically exempted in paragraph B below.
2. All public facilities, including but not limited to, buildings, streets, parking structures and parking areas shall comply with the standards contained in this manual.
3. In commercial, office and industrial zones, an increase of 50 percent or greater of the floor area shall require that the entire site conform to the standards in this manual. Increases in the floor area of less than 50 percent shall require that the portion of the site impacted conform to the standards in this manual.
4. Residential - office development (Class A and Class B buildings) shall comply with the standards for commercial, office and industrial development.
5. Mobile home parks, regardless of the zoning classification in which they are located, shall comply with the standards for residential development.
6. For the purpose of substitution, two minor deciduous trees or two evergreen trees shall be equal to one major deciduous tree.

B. Exemptions

1. Resource-conservation zones 2, 3 and 4.
2. Residential subdivisions of 3 lots or less.
3. All heavy manufacturing (M.H.) zones not adjacent to residential zones or premises and/or public streets.

C. Nomenclature

All plants shall be identified in accordance with Hortus Third, by L. H. Bailey, 1976.

WILLIAM MONK, INC.

LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

April 12, 1991

Mr. Gene Neff, P.E.
Director of Public Works
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Windsor Inn

Dear Mr. Neff:

I am in receipt of your letter dated April 10, 1991 regarding my client's request to obtain a waiver to road widening and dedication of additional right-of-way for Windsor Mill Road. Based upon the facts which were presented, your office has concurred that a waiver to the 40 foot paving section is appropriate. However your office has denied the request for reduced right-of-way width, although you would support a variance to the zoning regulations which allows the applicant to park within the public right-of-way and any additional related variances that may be needed (i.e. 5 foot landscape area within the public right-of-way in lieu of the required 10 feet). We appreciate your offices' sensitivity and the practical approach that was taken in your assessment however we respectfully request that you reassess the right-of-way request based upon a few erroneous assumptions from which you were operating:

- 1) Apparently I did not make clear to Mr. David Thomas my client's desire to reserve the additional right-of-way for any future widening (up to 60 feet from center line of Windsor Mill Road), which would be dedicated to the County at no cost to them at a future point in time, as determined by them. This was our intent all along and when I relayed this position to Mr. Rahee Famill of the Bureau of Traffic Engineering after your letter of April 10, he stated that his office had no objection to this "solution". He too was under the impression after initial consultation with Mr. Thomas prior to the formulation of your position that my client simply wanted to reserve the land and was not going the next step which assures the County the ability to "take" the land at a later point in time at no cost to them. This was not our intent from the inception. My client is more than willing to meet the County half-way and I thought that I had conveyed this to Mr. Thomas prior to the drafting of your position. I apologize for any confusion or misunderstanding.

- 2) I believe that Mr. Thomas and the zoning office were initially under the wrong impression that another variance would have had to have been applied for any way (free standing sign). In my letter to the Deputy Zoning Commissioner, Mrs. Anne McLaughlin-Nastarowicz, dated April 2, 1991 (attached) we stated that we would not be pursuing the variance issue (p.4, item 4) and that no additional variances would be required. Therefore the assumption that your office was operating under "that other zoning issues are being addressed under Case #91-246, and we suggest that you contact the Zoning Office to include this right-of-way issue with that case" is not correct.

My client will have his attorney draft up the necessary legal documents to run with the land if you feel that a change in your department's position is warranted given this additional information.

If we are unsuccessful in reaching an agreement, the applicant would need another hearing or loose 16-20 parking spaces from a parking facility which is already deficient. This would place a significant hardship on the applicant which does not appear to be warranted when it appears that all parties are conceptually agreeable to the present solution as reflected on the site plan which was presented at the hearing. The only problem being how do we legally accomplish it and protect the County's ability to make the road improvements and widening at such time as they deem fit.

We had also met with Mr. Carl Richards of the Office of Planning and Zoning as recently as today and he is aware of the present situation.

We ask that your office review this information as quickly as possible in light of the Deputy Zoning Commissioners desire to resolve this issue and prepare the order.

Cordially,
William P. Monk
WPM:slk

cc: Ms. Anne Nastarowicz
Mr. Carl Richards
Mr. Rahee Famill

LEVIN & GANN

111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
FOUNDED 1960
TELEPHONE 301-246-0000

May 21, 1991

HAND DELIVERED

Ann Nastarowicz
Deputy Zoning Commissioner
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Case No.: 91-246-SPHA
Windsor Mill Inn

Dear Ms. Nastarowicz:

I represent Timanus Lane Partnership, the owner of Executive Park West. Executive Park West is an office complex located almost directly across the street from the Windsor Inn.

My client objects to the parking variance requested by the Petitioner in the above referenced matter. If the parking variance is granted, my client will be adversely impacted.

I would appreciate your consideration of my client's objections. I will be present at the May 22nd hearing to formally raise my client's concerns.

Sincerely,

Julius W. Lichter

JWL/lis

cc: Timanus Lane Partnership

LEVIN & GANN

111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
FOUNDED 1960
TELEPHONE 301-246-0000

June 1, 1991

JULIUS W. LICHTER

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

RE: Windsor Inn
Case #91-246-SPHA

Dear Commissioner Haines:

On behalf of Timanus Lane Partnership, Protestant, please note an appeal of former Deputy Zoning Commissioner Ann Nastarowicz's May 29, 1991 Order in the above referenced case. The requisite \$150.00 fee is enclosed.

Sincerely,

Julius W. Lichter

JWL/lis

Enclosure

cc: Timanus Lane Partnership

COVAHEY & BOOZER, P.A.

ATTORNEYS AT LAW
614 BODLEY AVENUE
TOWSON, MARYLAND 21204
AREA CODE 301
828-9441

EDWARD C. COVAHEY, JR.
P. VERNON BOOZER
MARK S. DEAN
ANTHONY J. DI PAOLA
THOMAS P. DORE

FAX 301-823-7530

ANNEX OFFICE
SUITE 10
606 BALTIMORE AVE.
TOWSON, MD 21204

September 18, 1991

County Board of Appeals of Baltimore County
County Office Building, Room 315
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case Number: 91-246-SPHA
Michael Athas/Demetrios Vangelakos-
Contract Purchaser
Windsor Mill Road

Dear Sir or Madam:

Please be advised that I have been retained to represent Michael Athas in the above matter. This letter is to inquire as to the possibility of obtaining an earlier hearing date. This matter is presently scheduled for January 7, 1992 at 10:00 a.m.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

P. Vernon Boozer

FVB/amp

March 20, 1991

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

Re: 7207 Windsor Mill Road, Baltimore County, Maryland

Dear Commissioner Haines:

I am the owner of the above referenced property. I am granting Demetrios Vangelakos or his representative(s) the authority to speak on my behalf on matters pertaining to the Windsor Mill Inn, whose application for a special hearing and variance(s) is before you.

Cordially,

Michael Athas
Property Owner: 7207 Windsor Mill Road

WPM:slk

January 6, 1991

Timanus Lane Partnership
9153 Reisterstown Road
Baltimore, MD 21053

Gentlemen:

I regret to inform you that I will be unable to attend the hearing that is scheduled for tomorrow morning. I've attached a letter that very clearly explains my perspective on our parking problem. I hope that this will serve as an effective substitute.

I'm looking forward to the resolution of this problem.

Sincerely,

James E. Buckingham
Office Manager, Consumer Savings Travel Network

Consumer Savings Travel Network
3100 Timanus Lane, Suite 210
Baltimore, MD 21207

January 2, 1992

Timanus Lane Partnership
9183 Reisterstown Road
Baltimore, MD 21053

Gentlemen:

I've phoned on several occasions to complain about the parking situation here in the Executive Park West. Our office overlooks the front parking lot, and since a majority of my staff works during the evening, we had looked forward to hassle-free parking in the front lot. Unfortunately, our lot is often crowded with overflow parking from the Windsor Inn tavern, which is located directly across the street.

This problem not only affects our parking situation, it also is a direct threat to my personnel and the security of their vehicles. Litterers often use our lot as a party spot. They frequently gather in groups on the premises. We've encountered them in the stairs leading from our suite to the parking lot, and around our cars.

I'm often in the office after 2:00 A.M., and when I leave, particularly on Fridays, I invariably encounter groups of bar patrons who have resumed their party in our lot following closing time at the Windsor Inn.

We certainly had not anticipated problems like this when we took the lease here in Timanus Lane. As a rent paying tenant, we have the right to these parking spots. I've urged my employees to avoid a confrontation with these Windsor Inn patrons, but I can't help but think that one is inevitable, and that could result in a lot of unpleasantness for all of us.

I trust that you and your staff will treat this issue with the seriousness it deserves. I appreciate your attention to our concerns.

Sincerely,

James E. Buckingham
Office Manager



County Board of Appeals of Baltimore County

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

February 19, 1992

Julius W. Lichter, Esquire
LEVIN & GANN, P.A.
305 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 91-246-SPHA (Michael Athas)

Dear Mr. Lichter:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of the Dissenting Opinion of John G. Disney.

Sincerely,

Linda Lee M. Kuzmaul
Linda Lee M. Kuzmaul
Legal Secretary

Enclosure

cc: Timanus Lane Partnership
F. Vernon Boozer, Esquire
Mr. Michael Athas
Mr. Dimitrios Vangelakos
Mr. William Monk
Mr. Elias Rizakos
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotzco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
✓ Arnold Jablon, Director
Zoning Administration

RECEIVED
FEB 20 1992
ZONING OFFICE

IN RE: PETITIONS FOR SPECIAL HEARING
AND ZONING VARIANCE - ETC.
7207 Windsor Mill Road, c/l of
the c/l of Lord Baltimore Drive
7207 Windsor Mill Road
2nd Election District
2nd Councilmanic District
Case No. 91-246-SPHA
Michael Athas
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special hearing to approve the nonconforming use of the existing rear travel aisle, which is 21 feet wide in lieu of the required 22 feet, interior parking lot landscaping areas, stationary business sign, freestanding sign and two roof signs, and variances to permit a setback of 0 feet in lieu of the required minimum of 10 feet for parking adjacent to a right-of-way, and to permit 101 parking spaces in lieu of the required 150, all as more particularly described in Petitioner's Exhibit 1.

At the original hearing held on March 27, 1991, the Petitioner, by Dimitrios Vangelakos, Contract Purchaser/Lessee, appeared and testified. Also appearing on behalf of the Petitions were William Monk, Landscape Planner, and Elias Rizakos. There were no Protestants.

At the conclusion of the testimony presented at the original hearing, the case was continued to allow Petitioner time to amend his Petition for Variance. The Petitioner subsequently filed an amended Petition requesting 98 parking spaces in lieu of the originally requested 101, and additional variances to permit 3 off-street parking spaces to be located not on the same lot, and to permit a one-way travel aisle to be 6 feet wide in lieu of the required 16 feet for 60-degree angled parking, all as

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Date 2/20/92
By [Signature]

more particularly described in the revised site plan marked Petitioner's Exhibit A.

At the continued hearing, held on May 22, 1991, the Petitioner, by Dimitrios Vangelakos, Contract Purchaser/Lessee, appeared and testified. Also appearing on behalf of the Petitions were William Monk, Landscape Planner, and Elias Rizakos. Julius Lichter, Esquire appeared as Counsel for Timanus Lane Partnership, owner of an office building across from the subject property.

Testimony at the original hearing indicated that the subject property, known as 7207 Windsor Mill Road, consists of 1.19 acres zoned M.L.-I.M. and is improved with a restaurant, night club and liquor store. Petitioner has entered into a contract to lease the property (with the option to buy) to Dimitrios Vangelakos who is desirous of constructing two additions to the existing structure as depicted on Petitioner's Exhibit 1. At the time of building application, Mr. Vangelakos was advised that prior to the issuance of any permits, the nonconforming use of the subject property must be established and variances were necessary. Petitioner subsequently filed the Petitions for Special Hearing and Zoning Variance, and Amended Petition for Zoning Variance. Testimony indicated that Mr. Athas purchased the subject property in 1988 at which time it had operated as a beer and crab house for over 40 years. The subject property is now also considered a family dining restaurant. As a result of growing business, Mr. Vangelakos is desirous of expanding current operations by adding the proposed additions as depicted on Petitioner's Exhibit 1. Said additions are primarily to upgrade entrances and bathroom facilities. Testimony indicated that the relief requested will not result in any detriment to the health, safety or general welfare of the surrounding community.

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Petitioner presented in detail testimony and photographs depicting the status of the property as to the nonconforming uses. The undisputed testimony indicated that the roof-mounted signs, lack of landscaping in the interior parking lot, and rear travel aisle enjoy a nonconforming status. Petitioner was unable to prove that the freestanding sign enjoys the same status.

At the hearing held on May 22, 1991, Petitioner submitted a revised site plan which has been marked Petitioner's Exhibit A. Said plan incorporates the modifications necessitated due to discussions with the Departments of Public Works and Traffic Engineering. The undisputed testimony was that the resulting variances and loss of additional three parking spaces, reducing it from the 101 to 98, was that the modifications result in a better and safer plan concerning traffic flow and access from Windsor Mill Road.

Julius Lichter appeared on behalf of Timanus Lane Partnership, owner of an office building located across the street from the subject site, principally to oppose the parking variance. Mr. Lichter indicated his client recently contacted him as a result of seeing the sign announcing the second hearing on the subject property.

After due consideration of the testimony and evidence presented, it appears that a nonconforming status of the rear travel aisle, interior parking lot landscaping, and roof signs has been established. Petitioner was unable to establish that the freestanding sign is a valid nonconforming sign and thus existed prior to the enactment of the zoning regulations. Therefore, the relief requested in the Petition for Special Hearing shall be granted in part and denied in part.

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Date 2/20/92
By [Signature]

... granted where strict application of the ... practical difficulty to the Petitioner and ... 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).

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 special hearing, as modified, and variances should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County on May 11, 1991 that the Petition for Special Hearing and Zoning Variance be granted in part and denied in part. The Petitioner is granted a special hearing on the existing rear travel aisle, and the following variances: 1) a setback of 0 feet in lieu of the required 10 feet, interior parking lot landscaping areas, stationary business sign, and building-mounted signs, and to permit 98 parking spaces in lieu of the required 150, all as more particularly described in Exhibit A, be and is hereby GRANTED;

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Date 2/20/92
By [Signature]

IT IS FURTHER ORDERED that the Petition for Zoning Variance to permit a setback of 0 feet in lieu of the required minimum of 10 feet for parking adjacent to a right-of-way, to permit 98 parking spaces in lieu of the required 150, to permit 3 off-street parking spaces to be located not on the same lot, and to permit a one-way travel aisle to be 6 feet wide in lieu of the required 16 feet for 60-degree angled parking, in accordance with Petitioner's Exhibit A, 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) Prior to the issuance of any permits, Petitioner shall submit a landscape plan for approval by the Deputy Director of Planning. Said plan shall incorporate the comments submitted by the Office of Planning dated February 5, 1991. A copy of the approved plan shall be submitted to this Office for inclusion into the case file.
- 3) The freestanding sign shall be removed and replaced with a sign in compliance with the B.C.Z.R. within one hundred twenty (120) days of the date of this Order.
- 4) Compliance with the Zoning Plans Advisory Committee's recommendations submitted by the Office of Planning, dated February 5, 1991, the Department of Traffic Engineering dated January 21, 1991, the Department of Environmental Protection and Resource Management (DEPRM), Bureau of Water Quality Division, dated January 2, 1991, and the Department of Planning dated January 11, 1991.

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

ORDER RECEIVED FOR FILING
Date 2/20/92
By [Signature]

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve the nonconforming use of an existing freestanding sign, as depicted on Petitioner's Exhibit 1, be and is hereby DENIED.

ANN:bjs

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

ORDER RECEIVED FOR FILING
Date 2/20/92
By [Signature]

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

May 29, 1991

887-3353

Mr. Elias Rizakos
1011 Berryman Lane
Reisterstown, Maryland 21136

RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE
S/S Windsor Mill Road, 270' W of the c/l of Lord Baltimore Drive
(7207 Windsor Mill Road)
2nd Election District - 2nd Councilmanic District
Michael Athas - Petitioner
Case No. 91-246-SPHA

Dear Mr. Rizakos:

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

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

Very truly yours,

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

cc: Mr. Michael Athas
100 Galewood Road, Timonium, Md. 21093

Mr. William Monk
100 W. Pennsylvania Avenue, Towson, Md. 21204

Julius Lichter, Esquire
Levin & Gann, 305 W. Chesapeake Avenue, Towson, Md. 21204

People's Counsel
File

receipt

Date

04405840441CHRC \$150.00

Please Make Checks Payable To: Baltimore County 90881354H06-20-91

Cashier Validation

receipt

Date 91-246

Account: R-001-6150 Number

04405840441CHRC \$151.25

Please Payable To: Baltimore County 90881354H06-27-91

County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150 Number

91-246-SPHA

Date

Please Make Checks Payable To: Baltimore County 90881354H06-27-91 \$250.00

Validation

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

DATE: 3-12-91

Michael Athas
100 Galewood Road
Timonium, Maryland 21093

RE:
Case Number: 91-246-SPHA
S/S Windsor Mill Road, 270' W of c/l Lord Baltimore Drive
2707 Windsor Mill Road
2nd Election District - 2nd Councilmanic
Legal Owner(s): Michael Athas
Contract Purchaser(s): Demetrios Vangelakos
HEARING: WEDNESDAY, MARCH 27, 1991 at 10:30 a.m.

Dear Petitioner(s):

Please be advised that \$ 131.25 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 OWNER 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.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

February 1, 1991

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:

Case Number: 91-246-SPHA
S/S Windsor Mill Road, 270' W of c/l Lord Baltimore Drive
2707 Windsor Mill Road
2nd Election District - 2nd Councilmanic
Legal Owner(s): Michael Athas
Contract Purchaser(s): Demetrios Vangelakos
HEARING: WEDNESDAY, MARCH 27, 1991 at 10:30 a.m.

Special Hearing to establish the non-conforming status of the rear travel aisle which is 21 ft. in lieu of the required 22 ft.; to establish the non-conforming status of the interior parking lot landscaping areas; to establish the non-conforming status of the existing stationary business sign, free-standing sign and two roof signs.
Variance to permit a zero ft. parking setback in lieu of the required 10 ft. setback adjacent to a right-of-way; to permit 101 parking spaces in lieu of the required 150 spaces.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

cc: Michael Athas
Demetrios Vangelakos
William P. Monk

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Towson, MD 21204

887-3353

APR 22 1991

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:

Case Number: 91-246-SPHA
S/S Windsor Mill Road, 270' W of c/l Lord Baltimore Drive
2707 Windsor Mill Road
2nd Election District - 2nd Councilmanic
Legal Owner(s): Michael Athas
Contract Purchaser(s): Demetrios Vangelakos
HEARING: WEDNESDAY, MAY 22, 1991 at 10:30 a.m.

Special Hearing to establish the non-conforming status of the rear travel aisle which is 21 ft. in lieu of the required 22 ft.; to establish the non-conforming status of the interior parking lot landscaping areas; to establish the non-conforming status of the existing stationary business sign, free-standing sign and two roof signs.
Variance to permit a zero ft. parking setback in lieu of the required 10 ft. setback adjacent to a right-of-way; to permit 98 parking spaces in lieu of the required 150 spaces; to allow 3 off street parking spaces to be located not on the same lot; to allow a one-way travel aisle to be 5 ft. wide (balance of said travel aisles to be located within its public right of way) in lieu of the required 10 ft. from 60 degree angled parking.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Room 301, County Office Bldg. September 3, 1991

NOTICE OF ASSIGNMENT

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

CASE NO. 91-246-SPHA

MICHAEL ATHAS/DEMETRIOS VANGELAKOS-
CONTRACT PURCHASER
S/S Windsor Mill Rd., 270' W of c/l
of Lord Baltimore Dr. (2707 Windsor
Mill Road)
2nd Election District
2nd Councilmanic District

SPH-Nonconforming status/rear
travel aisle, interior parking
lot, and existing stationary business
sign;
VAR-Setbacks and parking spaces

5/29/91 - D.Z.C.'s Order GRANTING Petition
with restrictions.

ASSIGNED FOR: TUESDAY, JANUARY 7, 1992 at 10:00 a.m.

cc: Julius W. Lichter, Esquire - Counsel for Timanus Lane Part.
Timanus Lane Partnership - Protesant
Mr. Michael Athas - Petitioner
Mr. Demetrios Vangelakos - Contract Purchaser
Mr. William Monk
Mr. Elias Risakos
People's Counsel for Baltimore County
P. David Fields
Pat Keller
Public Services
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon-Director of
Zoning Administration

LindaLee M. Kuszmaul
Legal Secretary

Baltimore County Government
Zoning Commissioner
Office of planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

March 14, 1991

Mr. Michael Athas
100 Galewood Road
Timonium, MD 21093

RE: Item No. 254, Case No. 91-246-SPHA
Petitioner: Michael Athas
Petition for Special Hearing and
Zoning Variance

Dear Mr. Athas:

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

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

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

Very truly yours,
James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw
Enclosures

cc: Mr. Demetrios Vangelakos
Mr. William P. Monk

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

Your petition has been received and accepted for filing this 9th day of January, 1990.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Received By:
James E. Dyer
Chairman
Zoning Plans Advisory Committee

Petitioner: Michael Athas
Petitioner's Attorney:

• • • • •

E D AUG 17 1992

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The law is well established that an area variance may be granted where strict application of the Baltimore County Zoning Regulations would cause practical difficulty to the Petitioner and

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April 1, 1991

Mr. Gene Neff, Director
Baltimore County Department of Public Works
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Windsor Inn, 7207 Windsor Mill Road
Baltimore County, Maryland

Dear Mr. Neff:

On behalf of my client, the Windsor Inn, I am requesting that a waiver be granted to permit a 40 foot right-of-way and 30 foot paving section (15' from center line) in lieu of the standard 60'/40' for Windsor Mill Road through the frontage of the subject property.

Our request is based upon the following site specific conditions:

- 1) The site is improved with a 1 story restaurant/tavern/package goods store, with parking covering the balance of the site.
- 2) This site was the subject of a recent special hearing and variance hearing before the Deputy Zoning Commissioner for Baltimore County. The case was heard on March 27, 1991 (Case # 91-246 SPHA). A decision has not been rendered at this time.
- 3) The zoning plat/site plan (attached), was reviewed by the Department of Traffic Engineering and the Office of Planning and Zoning. The plan shows the substandard right-of-way and paving width and all site improvements are predicated on this assumption. These agencies had no negative comments regarding this issue.
- 4) The sight visibility through this section of Windsor Mill Road is excellent. (photo attached)
- 5) No subdivision is required for this development.
- 6) The proposed plan provides for a 5 foot dedication and road widening through the entire frontage of the property.

Imposition of these requirements would result in both practical difficulty and hardship to the property owner based upon the following:

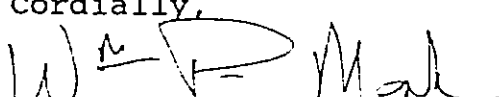
- 1) Elimination of approximately 20 parking spaces along the Windsor Mill Road frontage to accommodate the widening. The existing facility has a deficiency of 49 parking spaces already (150 spaces required per the code, 101 spaces shown per the proposed plan) and the resultant loss of 20 more spaces would have a severe negative impact on the business operation and require an additional variance hearing.
- 2) The widening would require the relocation of BGE and C&P poles, which are presently adjacent and parallel to the travel lanes on the south side of Windsor Mill Road.

The following exhibits have been enclosed for your review.

- 1) 1" = 200' aerial photograph with referenced site location
- 2) zoning plat/site plan
- 3) photographs

If you have any questions or require additional information, please do not hesitate to contact me.

Cordially,



William P. Monk
WPM:slk

Enclosures

cc: Elias Rizakos
Nicolas Bouyiouclis

RECEIVED

APR 2 1991

DEPARTMENT OF PUBLIC WORKS
OF BALTIMORE COUNTY

RECEIVED
APR 5 1981
ZONING OFFICE

WILCOX

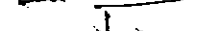
* Bill 7-84 was enacted (Section 413.6 BCZR) placing restrictions on business signs in a ML zoning district. The property had been rezoned through the comprehensive rezoning process in 1972 to ML-1N.

* At the time, double faced signs were permitted and only counted 1 side towards the total square footage permitted (Section 413.2 (g))

person once the order is written.

Hopefully, this information will help to clarify any outstanding issues. If I can be of any additional assistance, please do not hesitate to contact me.

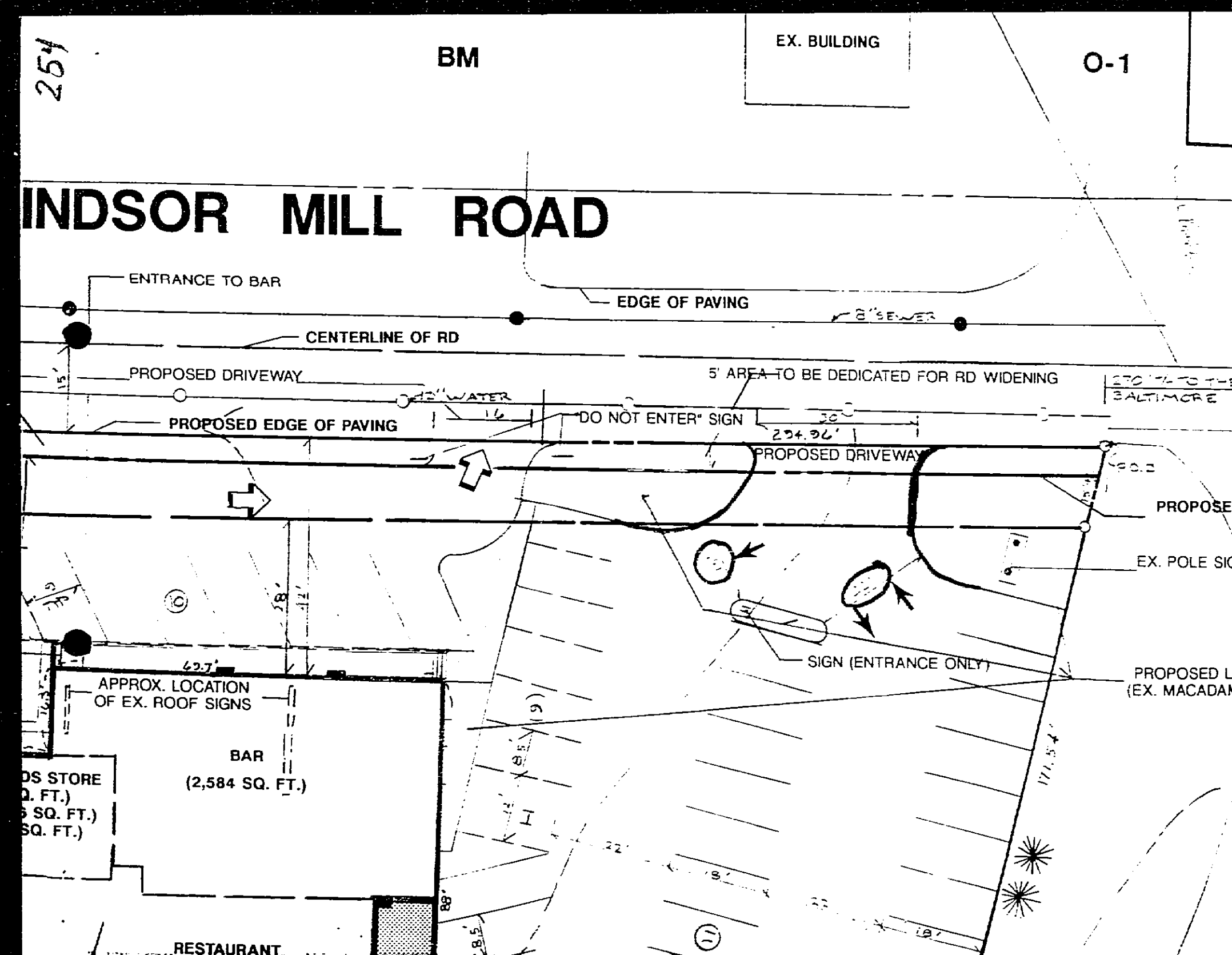
Cordially,


William P. Monk
WPM:slk

Enclosures

cc: Nicolas Bouyiouclis
Michael Athes
Elias Rizakos
Demetrios Vangelakos

554841



Baltimore County Government
Department of Public Works

111 West Chesapeake Avenue
Towson, MD 21204

April 10, 1991

William Monk, Inc.
Campbell Building
100 W. Pennsylvania Avenue
Suite 305
Towson, Maryland 21204

Re: Windsor Inn

Dear Mr. Monk:

Our office has reviewed your waiver request dated April 1, 1991. We find that your request for waiver of the 40-foot paving section is approved consistent with the site plan which was attached to your letter. However, your request for a reduced right-of-way width must be denied.

My office has contacted the Zoning Office to discuss the impact of this right-of-way requirement on your project. We understand that other zoning issues are being addressed under Case No. 21-226, and we suggest that you contact the Zoning Office to include this right-of-way issue with that case. By way of this letter, I am advising the Deputy Zoning Commissioner of my Department's support in favor of your variance request relative to this issue.

If there are questions, please feel free to contact my office.

Very truly yours,
Gene L. Neff
Gene L. Neff, P.E.
Director of Public Works

GLN:DLT:jha

cc: A. McLaughlin-Nastarowicz
C. Richards
F. Fisher/E. Johnson
R. E. Covahey
File

Baltimore County Government
Department of Public Works

111 West Chesapeake Avenue
Towson, MD 21204

August 16, 1991

Mr. William P. Monk
William Monk, Inc.
Campbell Building Suite 305
100 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Windsor Inn
7207 Windsor Mill Road

Dear Mr. Monk:

We have completed our review of your request to place certain private paving and entrance improvements, along with a 5-foot side landscape area, within the highway right-of-way widening along the frontage of the Windsor Inn property.

Since you have previously received a waiver from the requirements to widen Windsor Mill Road to its ultimate width in conjunction with this project, the private improvements which you have proposed within the highway right-of-way area should provide for a much safe movement of traffic as it enters and exits the property. Additionally, as long as the proposed landscaping is of a type which will not interfere with traffic sight distances, the Department of Public Works does not object to these temporary private improvements being constructed within the highway right-of-way.

With respect to the question of sidewalks, although we certainly expect that sidewalks will be required along this section of Windsor Mill Road, the actual installation will be deferred until such time as the ultimate highway improvements are made.

At this time the developer shall be responsible for the preparation of a right-of-way plat for the dedication of the highway right-of-way widening at no cost to Baltimore County.

I trust that these arrangements meet your present needs and will enable you to proceed with this project. Should you wish to further discuss any of these issues, please contact Mr. Robert Covahay at 887-3321.

Very truly yours,
Gene L. Neff
Gene L. Neff, P.E.
Director of Public Works

GLN:REC:pmg

cc: Robert W. Bowling, P.E.
Leslie C. Schreiber

Baltimore County Government
Office of Planning and Zoning

401 Bosley Avenue
Towson, MD 21204

887-3211
Fax 887-5862

April 19, 1991

Mr. Michael Athas
100 Galewood Road
Timonium, Maryland 21093

Re: Windsor Mill Inn
W-91-84

Dear Mr. Athas:

We have reviewed your waiver application for the above property and have determined that a waiver for the CRG meeting would be within the scope, purpose and intent of the Development Regulations of Baltimore County and is therefore approved. However, waiver of the CRG Plan has been DENIED. This development shall comply with all other applicable laws, rules and regulations of Baltimore County (Section 22-51).

Should you have any questions, please contact Frank Fisher, Chief, Current Planning and Development at 887-3335 or Pat Keller, Deputy Director of Planning at 887-3211.

A combined CRG/Landscape Plan or separate CRG and schematic Landscape Plan shall be submitted to the Bureau of Public Services for distribution to the appropriate County Agencies for review and approval prior to the issuance of Building Permits. Please include the waiver number that appears at the top of the letter on the submitted Plan.
(Call 887-3340)

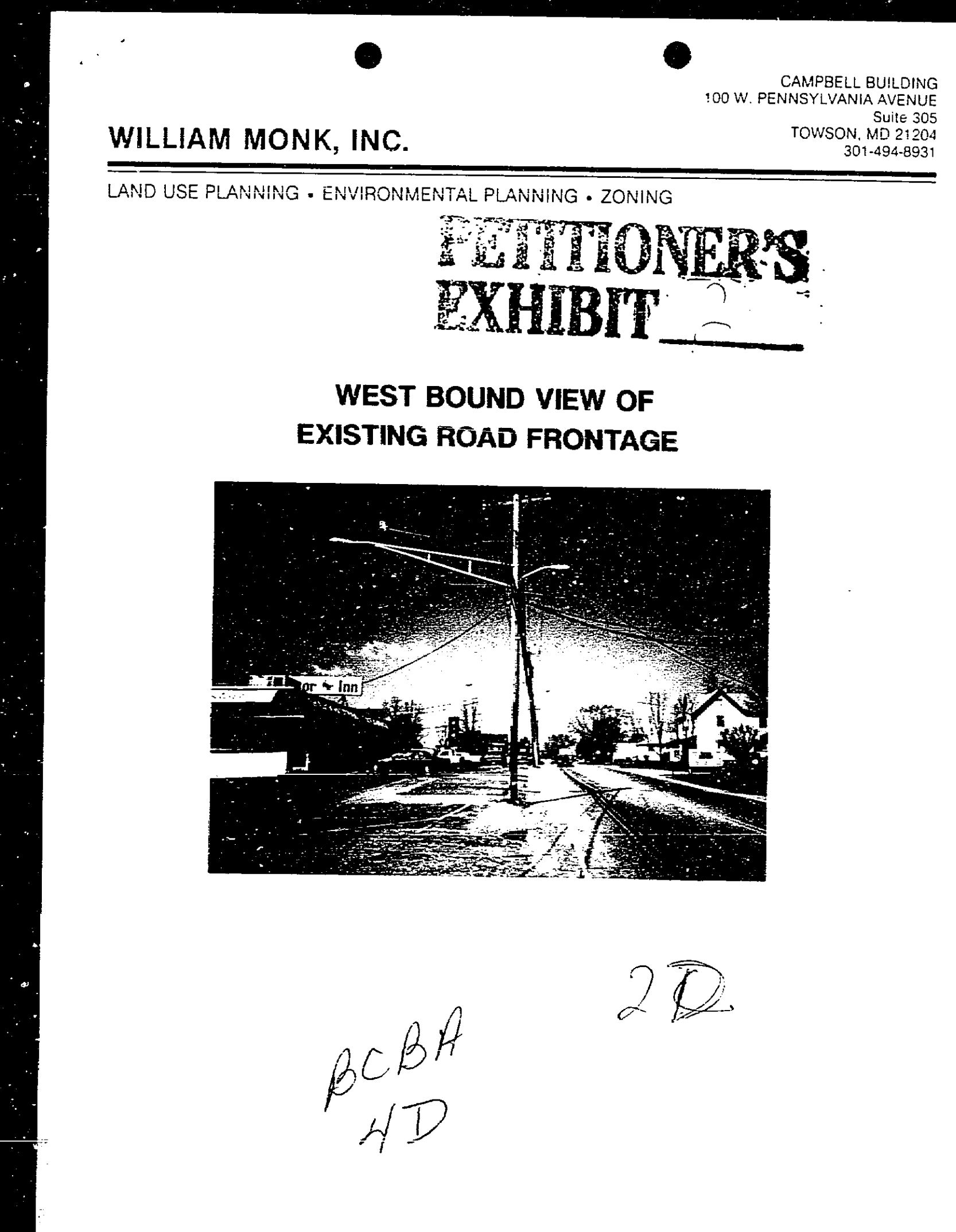
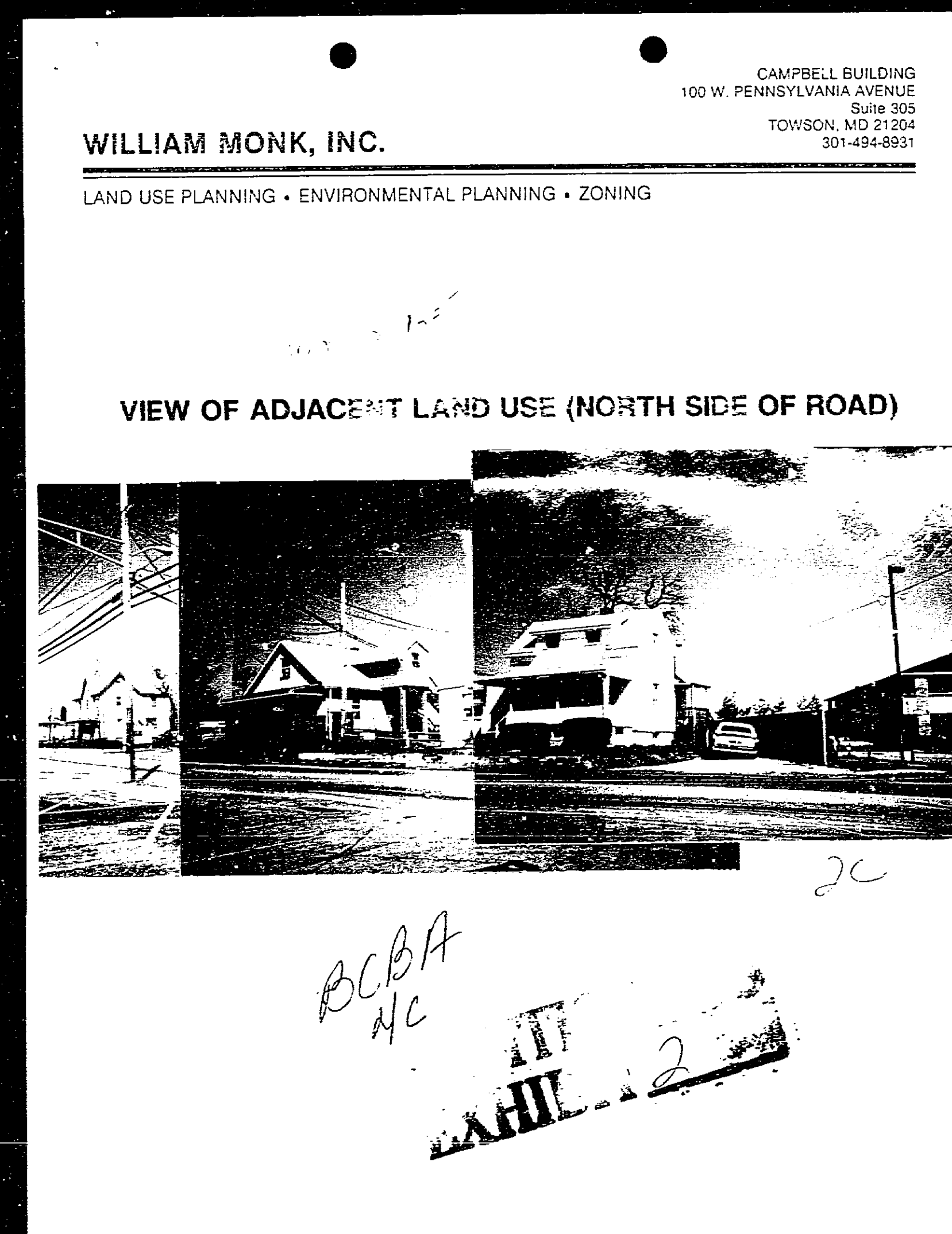
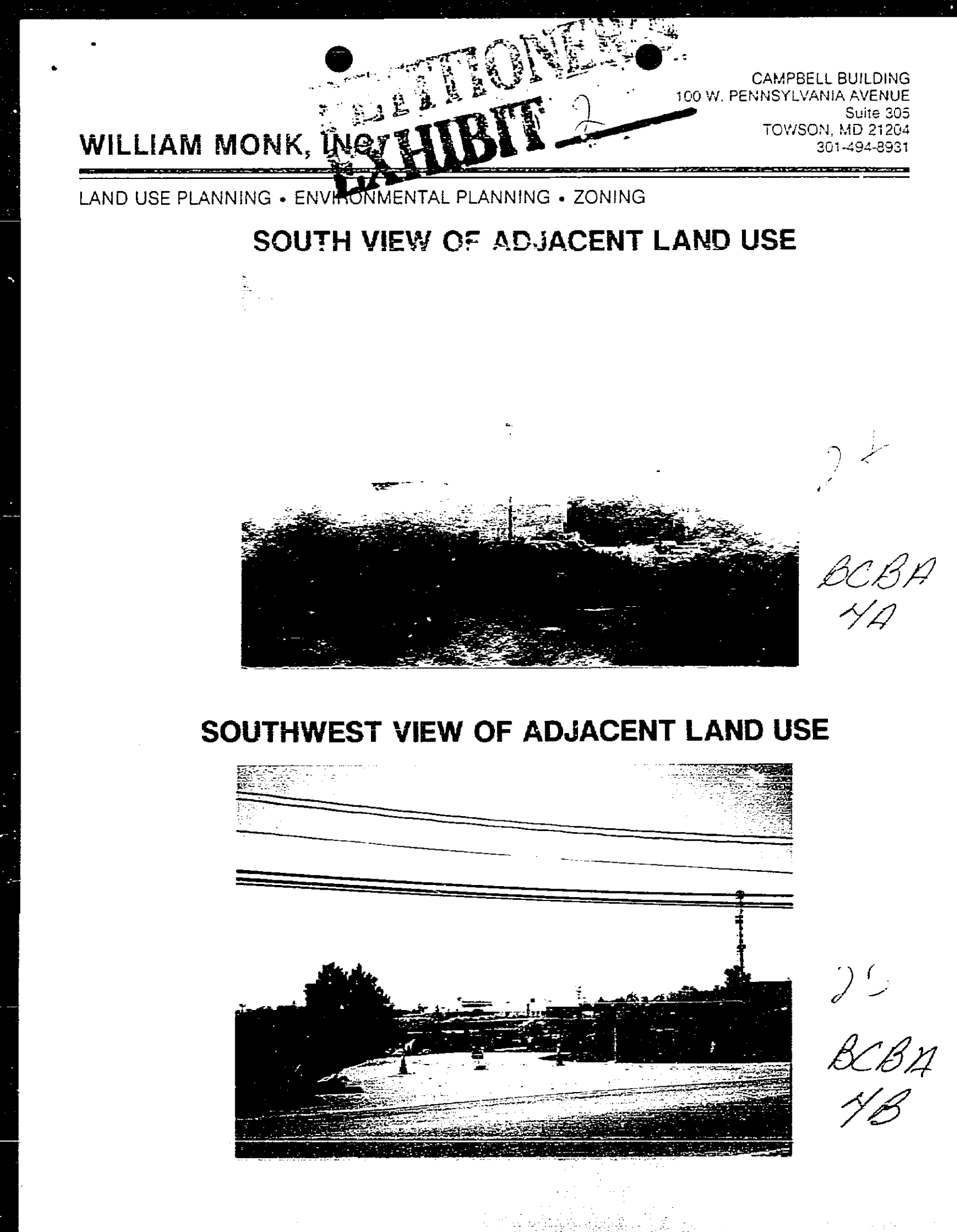
NOTE: This waiver approval letter shall be presented by the applicant when applying for a building permit.

Respectfully yours,
Frank H. Fisher
Frank H. Fisher, Chief
Current Planning and Development

FHF:cab

cc: Demetrios Vangelakos, 3906 Pinedale Drive, Baltimore, MD 21236
William Monk Inc., Campbell Building, 100 W. Pennsylvania Avenue, Suite 305, Towson, MD 21204
David Thomas, Assistant Bureau Chief MS 1301
Brenda Payne, Public Services M.S. 1301
Susan Wimbley, Bureau of Public Services MS 1301
File

BCBA 17



WILLIAM MONK, INC.
CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
SUITE 305
TOWSON, MD 21204
301-494-8931
LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

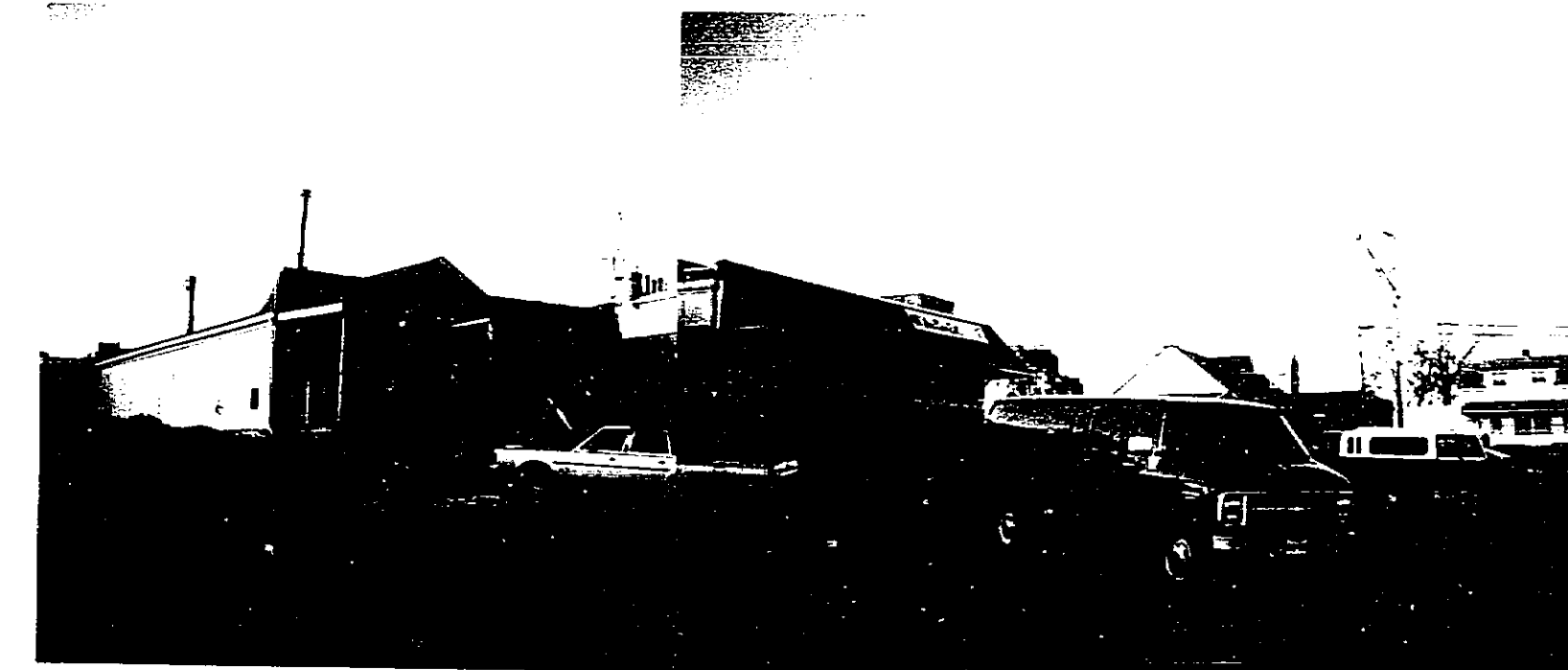
PETITIONER'S
EXHIBIT 5

WINDSOR INN, WINDSOR MILL ROAD ELEVATION



5A

EAST ELEVATION, PARKING & MAIN ENTRANCE TO RESTAURANT



PETITIONER'S
EXHIBIT 5B

WILLIAM MONK, INC.
CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
SUITE 305
TOWSON, MD 21204
301-494-8931
LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

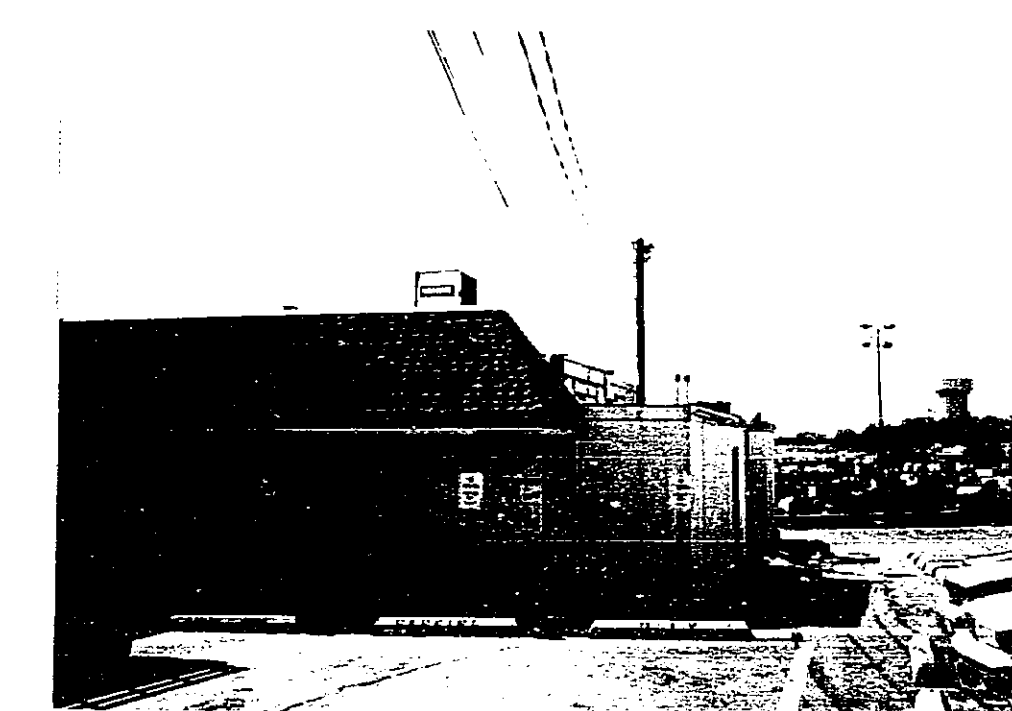
PETITIONER'S
EXHIBIT 5

VIEW OF EXISTING ENTRANCE TO RESTAURANT & LOUNGE



5C

VIEW OF EXISTING ENTRANCE TO LIQUOR STORE



5D

WILLIAM MONK, INC.
CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
SUITE 305
TOWSON, MD 21204
301-494-8931
LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

PETITIONER'S
EXHIBIT 5



VIEWS OF EASTERN PROPERTY LINE

5E



5F

VIEWS OF REAR PROPERTY LINE



5F

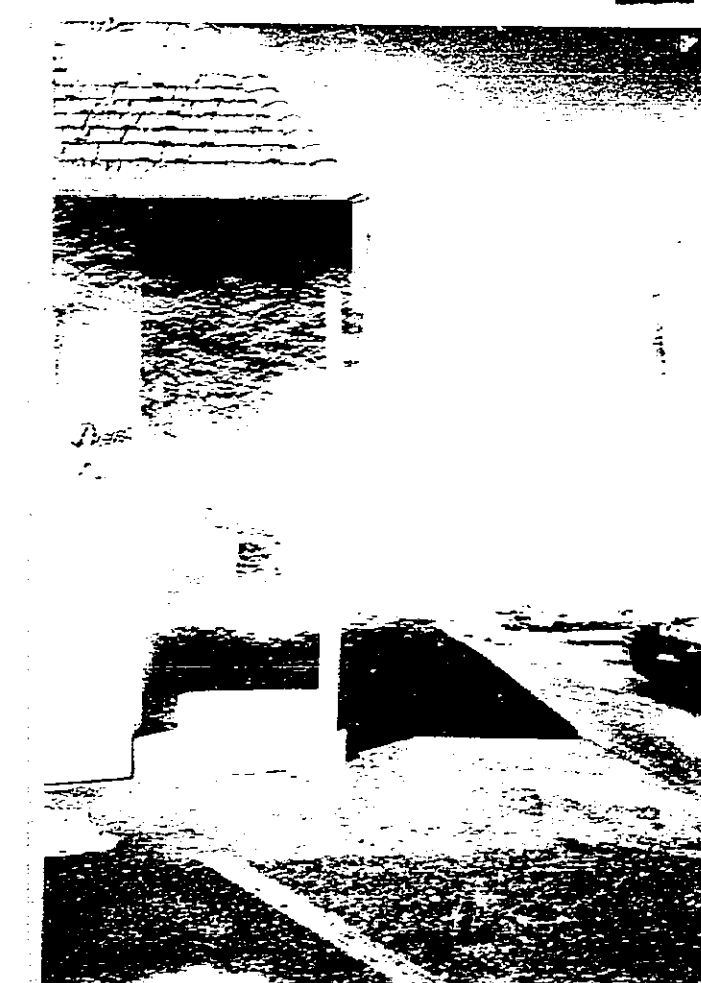
WILLIAM MONK, INC.
CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
SUITE 305
TOWSON, MD 21204
301-494-8931
LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

PROPOSED AREA FOR LANDSCAPING
ALONG WINDSOR MILL ROAD



WILLIAM MONK, INC.
CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
SUITE 305
TOWSON, MD 21204
301-494-8931
LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

PETITIONER'S
EXHIBIT 5



VIEWS OF FRONT OF
THE EXISTING RESTAURANT

5G

5J



PETITIONER'S
EXHIBIT 5

BCBA
10

WILLIAM MONK, INC.
CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
SUITE 305
TOWSON, MD 21204
301-494-8931
LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

PETITIONER'S
EXHIBIT 10A

EXISTING FREE-STANDING
POLE SIGN



PETITIONER'S
EXHIBIT 10B





1988 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 13, 1988
BCE Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88
[Signature]
Chairman, County Council

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING EXHIBIT 3 OFFICIAL ZONING MAP

| | | |
|-------------------------------------|--------------------------------------|-----------------------|
| SCALE
1" = 200' ± | LOCATION
HEBBVILLE
<i>BCBA</i> | SHEET
N. W.
4-G |
| DATE OF PHOTOGRAPHY
JANUARY 1986 | | |

AREA UNDER CONSTRUCTION
D.R. 16
L-NE
BY PHOTOGRAPHIC METHODS
BALTIMORE, MD. 21210



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

SCALE
1" = 200' ±

DATE
OF
PHOTOGRAPHY
JANUARY
1986

LOCATION
HEBBVILLE

SHEET
N.W.
4-G

*Section
4-G
Sheet #3*

972



1982



PETITIONER'S
EXHIBIT 7

be BA
7



PETITIONER'S
EXHIBIT 8

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

SCALE
1" = 200' ±

DATE
OF
PHOTOGRAPHY
JANUARY
1986

LOCATION

HEBBVILLE
BCBA
8

SHEET

N.W.
4-G

NOTES:

- 1) ZONING:
EXISTING- ML-IM
PROPOSED- ML-IM
- 2) LOT AREA: SEE #22
- 3) EXISTING USE: RESTAURANT, NIGHTCLUB & LIQUOR STORE
- 4) PROPOSED USE: RESTAURANT, NIGHTCLUB & LIQUOR STORE
- 5) BUILDING AREA: SEE #19
- 6) BUILDING SETBACKS:

| | REQUIRED | PROVIDED |
|---------------------|----------|----------|
| FRONT- | 25' | 28' |
| INTERIOR SIDE- | 30' | 78' 8" |
| REAR- | 30' | 33' |
| STREET CORNER SIDE- | N/A | N/A |
- 7) PARKING: SEE #26
REQUIRED- 130 SPACES
PROVIDED- 28 SPACES
- 8) UTILITIES:
SEWER-PUBLIC
WATER-PUBLIC
- 9) VARIANCES:
 - a) To section 408.8.A.4. to permit a 0' parking setback in lieu of the required 10' setback adjacent to R/W
 - a) To section 409.4.A.2. to permit 98 parking spaces in lieu of the required 150 spaces (see #26)
 - c) To section 409.4.A.6. to permit a one way travel alley, 6' in width (balance 10 feet) to be located within the public R/W in lieu of the required 16' for 60 degree angled parking
 - d) To section 409.7 to allow 2 off street parking spaces to be located not on the same lot
- 10) Special Exception/Conditional Use: None
- 10A) Special Hearing:
 - To establish the non-conforming status of the rear parking lot in lieu of the required 22'.
 - To establish the non-conforming status of the interior travel lot landscaping area.
 - To establish the non-conforming status of the existing building mounted stationary business sign, and two roof signs (see #38).

LANDSCAPE NOTES

1. All plant materials shall be nursery grown and shall conform to American Association of Nurserymen, Inc. standards.
2. All planting procedures and specifications shall conform to "Landscape specification guidelines for Baltimore-Washington metro area" latest edition.
3. Contractor shall guarantee all plant materials for a period of one year after installation is completed and approved.
4. Contractor shall be responsible for any damage to utilities and may make adjustments in spacing and location of plant materials to avoid conflicts with utilities.
5. When specified plants are not available as determined by the contractor, substitutions may be made as directed by the engineer.
6. The information shown on this plan is for the convenience of those concerned only. The correctness or completeness of the information is not warranted or guaranteed. The contractor shall verify all information to his own satisfaction. Survey information provided per a Plan prepared by APK & Assoc., Inc. on 8/9/1990.
7. Contractor will contact landscape architect/designer 48 hours prior to construction and on completion.
8. Contractor will contact landscape architect if soil or drainage problems are identified in the field.

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
SIGNATURE AND CERTIFICATION BLOCK

1. I certify that this Final Landscape Plan meets all requirements (check where appropriate):

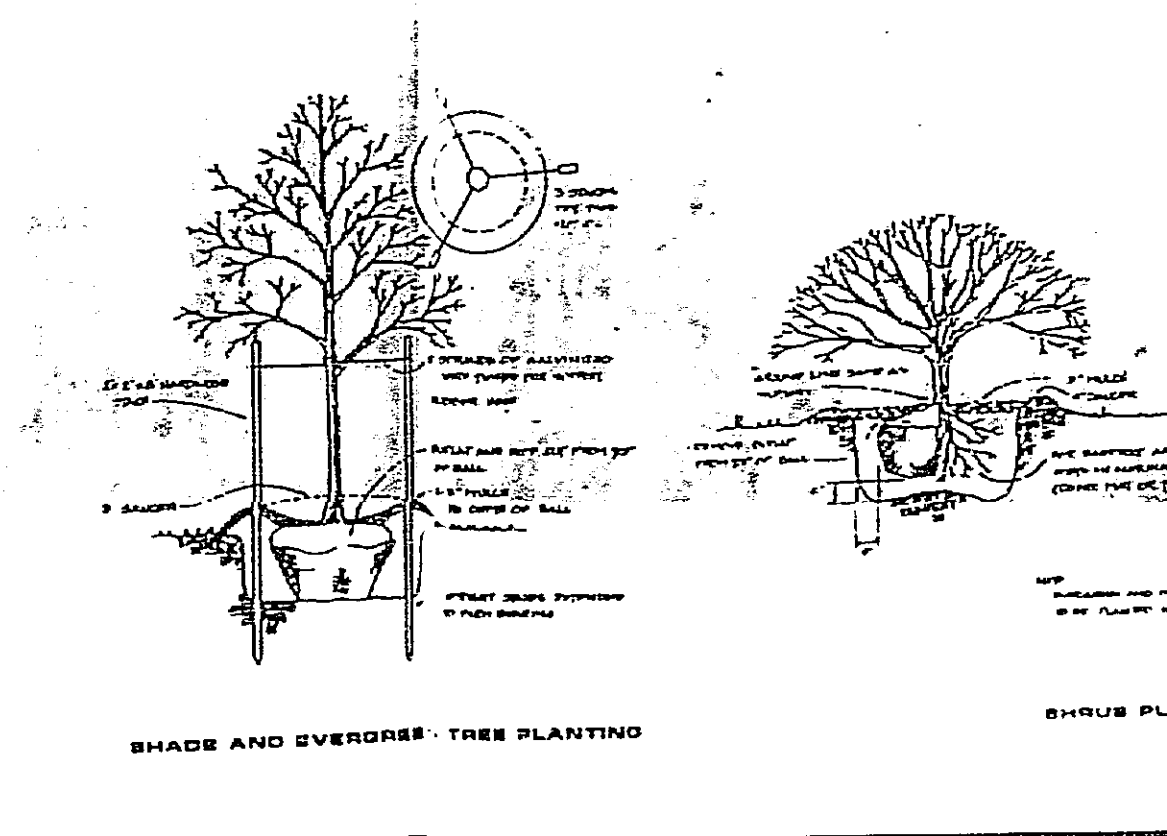
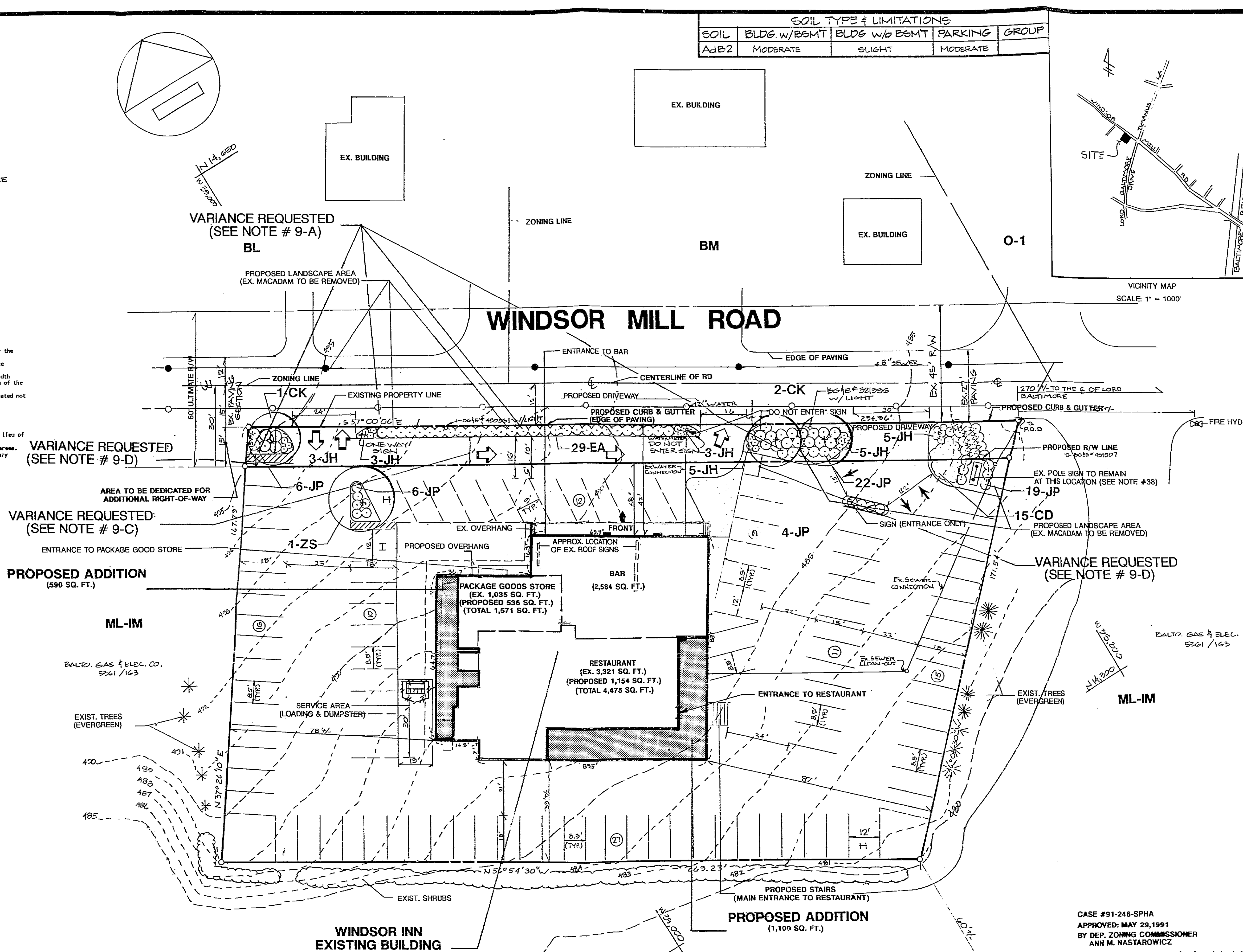
| | |
|--|--|
| ☒ Baltimore County Landscape Manual | ☒ Office of Planning Zoning Ord or Water No. 12-1-86 |
| ☒ Special Exception/Variance/Ordinance No. 21-2-2-86 | ☒ Reasoning, Documented Site Plan No. |

Signature of Landscape Architect
Address City State Zip Phone

2. "I certify that I have reviewed this Final Landscape Plan, that I am aware of the regulations presented in the Baltimore County Landscape Manual, and I agree to comply with these regulations and all applicable policy, guidelines and ordinances. I agree to implement this plan and certify to Baltimore County its implementation within one year of approval."

Owner's Signature Date Owner's Name (please print)
Address City State Zip Phone

3. REVIEWED BY:

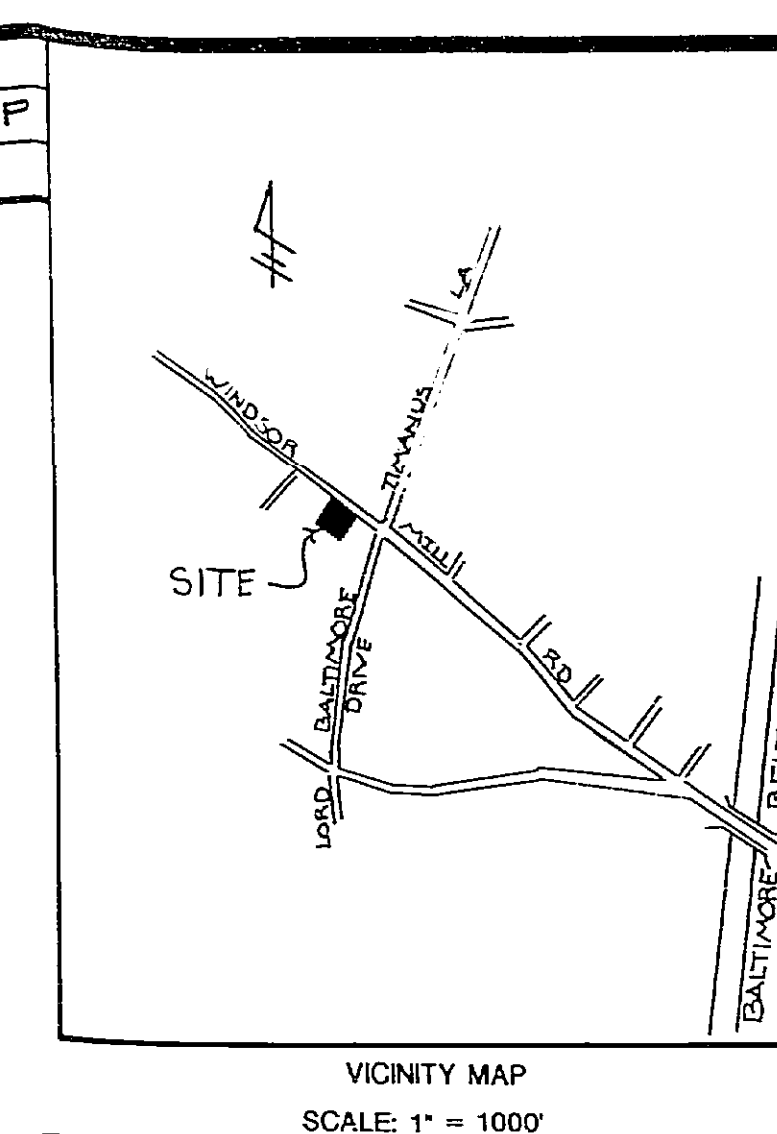


| STN | BOTANICAL NAME | COMMON NAME | NO. | SIZE | CONDITION |
|-----|------------------|---------------|-----|--------------|-----------|
| 25 | SELOVA SERRATA | VILLAGE GREEN | 1 | 2-2 1/2 CAL. | SAB |
| 26 | CORNUS KOUSA | KORUS DOGWOOD | 3 | 1 1/2-2 CAL. | SAB |
| 27 | QUERCUS PRINCEPI | PRINCEPI OAK | 3 | 24-30" | CONT. |
| 28 | QUERCUS PRINCEPI | PRINCEPI OAK | 24 | 12-15" | CONT. |
| 29 | QUERCUS PRINCEPI | PRINCEPI OAK | 15 | 12-15" | CONT. |
| 30 | QUERCUS PRINCEPI | PRINCEPI OAK | 29 | 24-30" | CONT. |

D.C. - ON CENTER
SAB - SMALL & DURLAP
CAL. - CALIPER

Landscaping/Planted
Trees (Minor Deciduous) - 3-15 PU
Trees (Major Deciduous) - 1-25 PU
Shrubs - 125-25 PU
Total - 27 PU

| SOIL | BLDG. W/BSMT | BLDG. W/O BSMT | PARKING | GROUP |
|------|--------------|----------------|----------|-------|
| A&B2 | MODERATE | SLIGHT | MODERATE | |



PRELIMINARY SITE PLAN

PROPOSED ADDITIONS: WINDSOR INN
7207 WINDSOR MILL ROAD
BALTIMORE COUNTY, MARYLAND

PREPARED BY:
WILLIAM P. MOK, INC.
100 W. PENNSYLVANIA AVENUE
SUITE 305
BALTIMORE, MARYLAND 21204
(301) 468-8851

PREPARED FOR:
MICHAEL A. HARRIS
100 W. PENNSYLVANIA AVENUE
SUITE 305
BALTIMORE, MARYLAND 21204
(301) 252-4116

- CASE #91-246-SPIA
APPROVED: MAY 29, 1991
BY DEP. ZONING COMMISSIONER
ANN M. NASTAROWICZ
- 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) Prior to the issuance of any permits, Petitioners shall submit a landscape plan for approval by the Deputy Director of Planning. Said plan shall incorporate the comments submitted by the Office of Planning dated February 5, 1991. A copy of the approved plan shall be submitted to this office for inclusion into the case file.
 - 3) The freestanding sign shall be removed and replaced with a sign in compliance with the S.C.R. within one hundred twenty (120) days of the date of this Order.
 - 4) Compliance with the Zoning Plans Advisory Committee's recommendations submitted by the Office of Planning dated January 21, 1991, the Department of Environmental Protection and Resource Management (DEPRM), Bureau of Water Quality Division, dated January 2, 1991, and the Fire Department dated January 11, 1991.
 - 5) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

| | |
|-----------|-------------------|
| SCALE: | 1" = 20' |
| DRAWN BY: | BPB |
| DATE: | 11/26/1990 |
| REVISED: | 4/2/91
5/20/91 |

| SOIL TYPE & LIMITATIONS | | | | |
|-------------------------|---------------|---------------|----------|--------|
| SOIL | BLOGS W/ PENT | BLOGS W/ PENT | PARKING | GROU'P |
| Asic 2 | MODERATE | FLIGHT | MODERATE | |

1) ZONING: EXISTING- M-1A
PROPOSED- M-1A

2) LOT AREA: SEE #24

3) EXISTING USE: RESTAURANT, NIGHT CLUB & LIQUOR STORE

4) PROPOSED USE: RESTAURANT, NIGHT CLUB & LIQUOR STORE

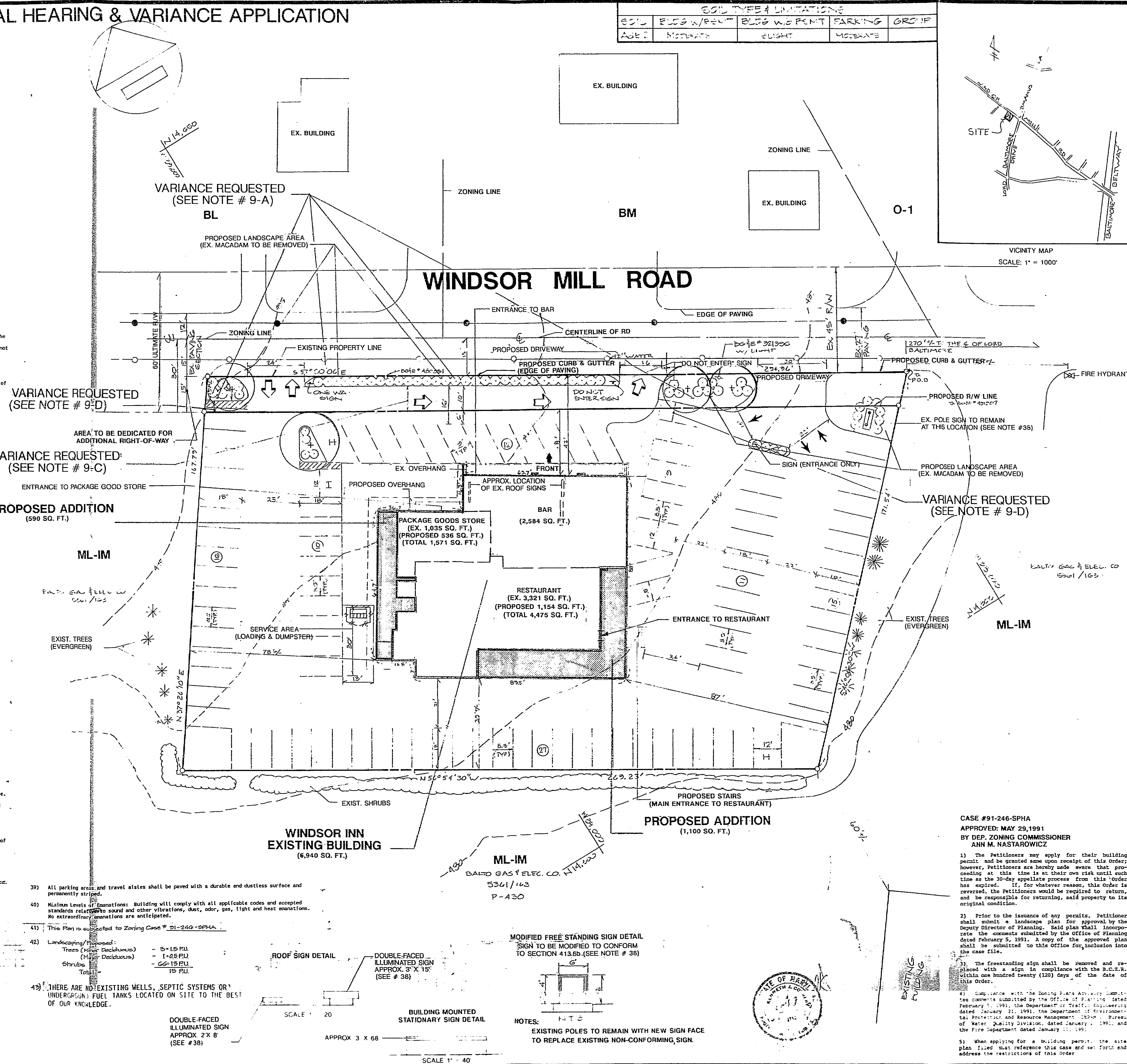
5) BUILDING AREA: SEE #19

6) BUILDING SETBACKS:

| | REQUIRED | PROVIDED |
|---------------------|----------|----------|
| FRONT- | 25' | 28' |
| INTERIOR SIDE- | 30' | 78'/87' |
| REAR- | 30' | 39' |
| STREET CORNER SIDE- | N/A | N/A |

- 7) PARKING: 150 SPACES
REQUIRED- 150 SPACES
PROVIDED- 96 SPACES
- 8) UTILITIES:
SEWER- PUBLIC
WATER- PUBLIC
- 9) VARIANCES: A: To section 608.4.A.2, to permit a 0' parking setback in lieu of the required 10' setback adjacent to R/M
B: To section 609.4.A.2, to permit 96 parking spaces in lieu of the required 150 spaces (see 925)
Amended C: To section 609.4.A.B.C to permit a one way travel aisle, 6' in width (balance 10 feet) to be located within the public R/M in lieu of the required 16' for 40 degree angled parking
D: To section 609.7 to allow 2 off street parking spaces to be located not on the same lot
- 10) Special Exception/Conditional Use: None
- 106) Special Hearing:
* To establish the non-conforming status of the rear parking aisle which is 21' in lieu of the required 22'.
* To establish the non-conforming status of the interior parking lot landscaping areas.
* To establish the non-conforming status of the existing building mounted stationary business sign, and two roof signs (see 830).
- 11) Election District: 2
- 12) Councilmanic District: 2
- 13) Census tract: 4023.03
- 14) Watershed: 27
- 15) Subwatershed: 70
- Deed Reference: 7052/317
- 17) Property Account No.: 0208003462
- 18) Tax Map 87, Grid 12, Parcel 40
- 19) Building Area Computations:
Existing:
Restaurant 3,321 sq.ft.
Bar 2,584 sq.ft.
Package Goods Store & Storage 1,035 sq.ft.
Total 6,940 sq.ft.
Proposed Addition
Storage Area 1,330 sq.ft.
Rest Rooms & Vestibule 560 sq.ft.
Total 1,890 sq.ft.
Combined Total 8,830 sq.ft.
- 20) Floor Area Ratio (F.A.R.):
Max F.A.R. Permitted: 2.0
F.A.R. Proposed: 0.18
- 21) Height of Building:
Existing: 15' +/-
Proposed: 15' +/-
- 22) Lot Size Tabulations:
Gross Area 1.19 AC +/-
Road Dedication 0.10 AC +/-
Net Area 1.09 AC +/-
- 23) No. of Employees: N/A
- 24) Hours of Operations: N/A
- 25) Mass Transit Adjustment: N/A
- 26) Parking Tabulations:
Existing Parking Required:
Retail/Package Goods (50/1000) 1,035 sq.ft. = 6 spaces
Bar/Restaurant (20/1000) 5,905 sq.ft. = 118 spaces
Total Required 124 spaces
Total Provided 106 spaces
Proposed Parking Required:
Retail: Storage (50/1000) 536 sq.ft.(proposed) 8 spaces
1000 sq.ft.(existing) 757 sq.ft. =
Bar/Restaurant: Storage & Vestibule (20/1000) 1156 sq.ft.(proposed)
= 5905 sq.ft.(existing) 7005 sq.ft. = 140 spaces
Total Parking Required 150 spaces
Total Parking Provided 96 spaces
- 27) Average Daily Trips (ADT/5): N/A
- 28) No existing flood plains, streams, bodies of water or springs located on or adjacent to site.
- 29) No wetlands, critical areas, archeological sites, existing historic buildings or endangered species habitats on site.
- 30) This site does not contain hazardous materials to the best of our knowledge.
- 31) Landscaping/Buffer: Due to the limited size of the proposed additions (less than 50% Increase in G.F.A.) only the impacted areas of the site are required to meet the standards of the Baltimore County Landscape Manual. Additional landscaping shall be provided within the landscape areas shown. (See Note #42.)
- 32) Amenity Open Space: N/A
- 33) Stormwater Management: This site is exempt from SM requirements due to the fact that the site is currently entirely paved and with runoff in less than 5000 sq.ft. of disturbance.
- 34) All outdoor lighting will be directed away from adjacent residential homes, where applicable.
- 35) The proposed building shall be designed and constructed in accordance with the B.F.F.A. 101 Life Safety Code.
- 36) Handicapped ramps to be provided where necessary.
- 37) Utilities:
A) A waiver to CHS has been granted on April 15, 1993 (WV-01-04).
B) A public works standards for road widening has been approved to permit a 30' paving section in lieu of the required 40' paving section.
- 38) Sign Note: The existing signs shall remain in their current location and the Modified from Planning Dept. For maximum conform to be made.
- Existing Signs:
12 sq. ft. to be removed and brought into compliance
12 sq. ft. to be removed and brought into compliance
56 sq. ft. to be removed and brought into compliance
757 sq. ft. (total)

ASSOC INC ON 3/31/1988



PREPARED BY:

WILLIAM P. MONK, INC.
LAND USE PLANNING • ZONING • ENVIRONMENTAL
CAMPBELL BUILDING
SUITE 305
100 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(301) 494-9831

PREPARED FOR:
MICHAEL ATHAS
100 GALEWOOD ROAD
TIMONIUM, MARYLAND 21093
(201) 262-4116

PRELIMINARY SITE PLAN/

**PROPOSED ADDITIONS: WINDSOR INN
7207 WINDSOR MILL ROAD
BALTIMORE COUNTY, MARYLAND**

REVISED PLAN FOR ZONING-PHASE
REUD ZONING- 6/12/91
OK PER JED 7/15/91 WJL

| | | | |
|-------------------|-------------------|---------------------|--------------------------------|
| SCALE:
1" = 3' | DRAWN BY:
LSTB | DATE:
11/26/1970 | REVISED:
A 5/1-1
5/24/70 |
|-------------------|-------------------|---------------------|--------------------------------|

PLAN TO ACCOMPANY VARIANCE AND SPECIAL HEARING APPLICATION

NOTES:

- 1) ZONING:
EXISTING- ML-IM
PROPOSED- ML-IM
- 2) LOT AREA: SEE #23
- 3) EXISTING USE: RESTAURANT, NIGHTCLUB & LIQUOR STORE
- 4) PROPOSED USE: RESTAURANT, NIGHTCLUB & LIQUOR STORE
- 5) BUILDING AREA: SEE #19
- 6) BUILDING SETBACKS:

| | REQUIRED | PROVIDED |
|---------------------|----------|----------|
| FRONT- | 25' | 28' |
| INTERIOR SIDE- | 30' | 78'/87' |
| REAR- | 30' | 33' |
| STREET CORNER SIDE- | N/A | N/A |
- 7) PARKING: SEE #26
REQUIRED- 150 SPACES
PROVIDED- 101 SPACES
- 8) UTILITIES:
SEWER-PUBLIC
WATER-PUBLIC
- 9) VARIANCES: TO SECTION 403.8 A 4 TO PERMIT A 0' SETBACK ADJACENT TO A R/W/ TO SECTION 403.6 2 TO PERMIT 101 PARKING SPACES IN LIEU OF THE REQUIRED 150 SPACES (SEE #26)
- 10) SPECIAL EXCEPTION/CONDITIONAL USE: NONE

- 10A) SPECIAL HEARING:
 - TO ESTABLISH THE NON-CONFORMING STATUS OF THE EXISTING BUILDING WHICH IS 21 FT. IN LIEU OF THE REQUIRED 22 FT.
 - TO ESTABLISH THE NON-CONFORMING STATUS OF THE INTERIOR PARKING LOT LANDSCAPING AREAS
 - TO ESTABLISH THE NON-CONFORMING STATUS OF THE EXISTING STATIONARY BUSINESS SIGN, FREE STANDING SIGN AND TWO ROOF SIGNS

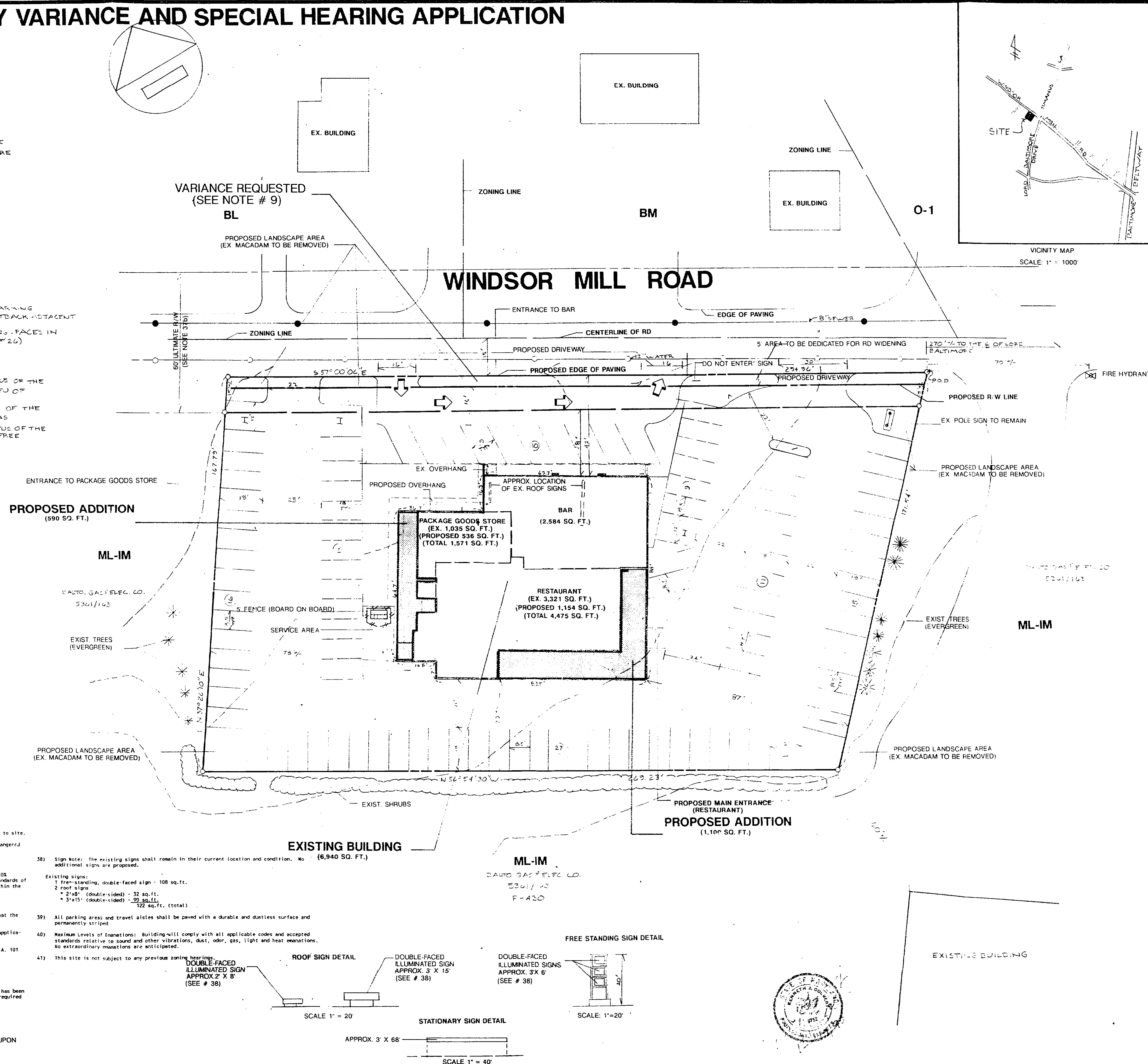
- 11) Election Districts: 2
- 12) Councilmanic Districts: 2
- 13) Census Tracts: 4025.05
- 14) Watersheds: 27
- 15) Subwatersheds: 70
- 16) Deed Reference: 7052/317
- 17) Property Account No.: 0208093462
- 18) Tax Map 87, Grid 12, Parcel 492
- 19) Building Area Computations:

| Building Area | Existing | Proposed | Total |
|-------------------------------|----------------------|----------------------|-----------------------|
| Restaurant | 3,321 sq. ft. | 2,584 sq. ft. | 5,905 sq. ft. |
| Package Goods Store & Storage | 1,035 sq. ft. | 1,035 sq. ft. | 2,070 sq. ft. |
| Bar | 2,584 sq. ft. | 2,584 sq. ft. | 5,168 sq. ft. |
| Storage Area | 1,330 sq. ft. | 1,330 sq. ft. | 2,660 sq. ft. |
| Rest Room & Vestibule | 360 sq. ft. | 360 sq. ft. | 720 sq. ft. |
| Combined Total | 8,630 sq. ft. | 8,630 sq. ft. | 17,260 sq. ft. |
- 20) Floor Area Ratio (F.A.R.): 2.0
Max F.A.R. Permitted: 0.10
- 21) Height of Building:
Existing: 15' +/-
Proposed: 15' +/-
- 22) Lot Size Tabulations:

| | Gross Area | Road Reservation | Net Area |
|-------------|-------------|------------------|----------|
| 1.19 AC +/- | 0.10 AC +/- | 1.07 AC +/- | |
- 23) No. of Employees: N/A
- 24) Hours of Operation: N/A
- 25) Mass Transit Adjustment: N/A
- 26) Parking Tabulations:

| Parking Required | Existing | Proposed | Total |
|---|---------------------------------|---------------------------------|----------------------------------|
| Existing Parking Required: | 1,035 sq. ft. (proposed) | 1,035 sq. ft. (proposed) | 2,070 sq. ft. (proposed) |
| Bar/Restaurant (20/1000) | 5,905 sq. ft. (proposed) | 5,905 sq. ft. (proposed) | 11,810 sq. ft. (proposed) |
| Total Required | 6,940 sq. ft. (proposed) | 6,940 sq. ft. (proposed) | 13,880 sq. ft. (proposed) |
| Proposed Parking Provided: | 101 spaces | 101 spaces | 202 spaces |
| Retail: Storage (5/1000) 536 sq. ft. (proposed) | 101 spaces | 101 spaces | 202 spaces |
| Bar/Restaurant: Storage & Vestibule (20/1000) | 101 spaces | 101 spaces | 202 spaces |
| Total Parking Provided | 202 spaces | 202 spaces | 404 spaces |
- 27) Average Daily Trips (ADT): N/A
- 28) No existing flood plains, streams, bodies of water or springs located on or adjacent to site.
- 29) No wetlands, critical areas, archeological sites, existing historic buildings or endangered species habitats on site.
- 30) This site does not contain hazardous materials to the best of our knowledge.
- 31) Landscaping/Buffer: Due to the limited size of the proposed additions (less than 50% increase in G.F.A.) only the impacted areas of the site are required to meet the standards of the Baltimore County Landscape Manual. Additional landscaping shall be provided within the landscape areas shown.
- 32) Amenity Open Space: N/A
- 33) Stormwater Management: This site is exempt from SWM requirements due to the fact that the site is currently entirely paved.
- 34) All outdoor lighting will be directed away from adjacent residential houses, where applicable.
- 35) The proposed building will be designed and constructed in accordance with the W.F.P.A. 101 Life Safety Code.
- 36) Handicap Ramps to be provided where necessary.
- 37) Valuers:
 - A) A Valuer to CGS plan and meeting has been requested.
 - B) A Valuer to public works standards for road widening and right-of-way dedication has been requested to permit a 40' right-of-way with a 30' paving section in lieu of the required 60' right-of-way with a 40' paving section.

NOTE: BOUNDARY OUTLINE AND LOCATION OF EXISTING IMPROVEMENTS BASED UPON A PLAN PREPARED BY APR & ASSOC. INC. ON 3/31/1988



PRELIMINARY SITE PLAN

PROPOSED ADDITIONS
2707 WINDSOR MILL ROAD
BALTIMORE COUNTY, MARYLAND

PREPARED BY:
WILLIAM P. MONK, INC.
100 W. PENNSYLVANIA AVENUE
SUITE 305
TOWSON, MARYLAND 21204
(410) 424-6851

PREPARED FOR:
MICHAEL ATLAS
100 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(410) 424-6851

SCALE: 1" = 40'
DRAWN BY: B/S
DATE: 11/26/1990
REVISED:

91-244-SPHA
254

1) ZONING: EXISTING= M-L-TM
PROPOSED= M-L-TM

2) LOT AREA: SEE #22

3) EXISTING USE: RESTAURANT, NIGHTCLUB LIQUOR STORE

4) PROPOSED USE: RESTAURANT, NIGHTCLUB LIQUOR STORE

5) BUILDING AREA: SEE #19

6) BUILDING SETBACKS:

| | REQUIRED | PROVIDED |
|---------------------|----------|-----------|
| FRONT- | 25' | 28' |
| INTERIOR SIDE- | 30' | 78' / 87' |
| REAR- | 30' | 39' |
| STREET CORNER SIDE- | N/A | N/A |

7) PARKING: SEE #26
REQUIRED- 150 SPACES
PROVIDED- 101 SPACES

8) UTILITIES:
SEWER-PUBLIC
WATER-PUBLIC

9) VARIANCES: "COLLECTION 403 B A 4 TO PERMIT A 2 PARKING
STREACH IN LIEU OF THE REQUIRED 101: PARKING ADJACENT
TO A PAV
TO SECTION 403 G 2 TO PERMIT 101 PARKING SPACES IN
LIEU OF THE REQUIRED 150 SPACES (SEE #26)

10) SPECIAL EXCEPTION/CONDITIONAL USE: NONE

10a) SPECIAL HEARING:

- TO ESTABLISH THE NON-CONFORMING STATUS OF THE REAR TRAVEL AISLE WHICH IS 21 FT IN LIEU OF THE REQUIRED 22 FT.
- TO ESTABLISH THE NON-CONFORMING STATUS OF THE INTERIOR PARKING LOT LANDSCAPING AREAS
- TO ESTABLISH THE NON-CONFORMING STATUS OF THE EXISTING STATUS OF THE TRAILING SIGN, FREE STANDING SIGN AND ROOF ROOF SIGNS.

| | | |
|-----|-----------------------------------|--------------|
| 113 | Election District: 2 | |
| 123 | Councilmatic District: 2 | |
| 133 | Census tract: 4093.05 | |
| 143 | Watershed: 27 | |
| 153 | Subwatershed: 70 | |
| 163 | Deed Reference: 7052/317 | |
| 173 | Property Account No.: 02/08093662 | |
| 183 | Tax Map 87, Grid 12, Parcel 492 | |
| 193 | Building Area Computations: | |
| | Existing: | |
| | Restaurant | 3,321 sq.ft. |
| | Bike | 2,586 sq.ft. |
| | Pack Goods Store & Storage | 1,035 sq.ft. |
| | Total | 6,942 sq.ft. |
| | Proposed Addition: | |
| | Storage Area | 1,330 sq.ft. |
| | Rest Room & Vestibule | 360 sq.ft. |
| | Total | 1,690 sq.ft. |
| | Combined Total | 8,630 sq.ft. |
| 203 | Floor Area Ratio (F.A.R.) | |
| | Max F.A.R. Permitted: | 2.10 |
| | F.A.R. Proposed: | 0.8 |
| 213 | Height of Building: | |
| | Existing: 15' +/- | |
| | Proposed: 15' +/- | |
| 223 | Lot Size Tabulations: | |
| | Gross Area | 1.19 AC +/- |
| | Road Reservation | 0.10 AC +/- |
| | Net Area | 1.09 AC +/- |

26) Parking Tabulations:

| | | |
|-------------------------------|----------------|------------|
| Existing Parking Required: | | |
| Retail/Package Goods (5/1000) | 1,035 sq.ft. = | 6 spaces |
| Bar/Restaurant (20/1000) | 5,905 sq.ft. = | 118 spaces |
| Total Required | | 124 spaces |
| Total Provided | | 106 spaces |

Proposed Parking Required:

| | | |
|--|--|------------|
| Retail: Storage (5/1000): 536 sq.ft.(proposed) | | |
| + 1035 sq.ft.(existing): 1571 sq.ft. = | | 8 spaces |
| Bar/Restaurant: Storage & Vestibule (20/1000) | | |
| 1156 sq.ft.(proposed) | | |
| + 5905 sq.ft.(existing): 7095 sq.ft. = | | 142 spaces |
| Total Parking Required | | 150 spaces |
| | | 103 spaces |

27) Average Daily Trips (ADT'S): N/A

28) No existing flood plains, streams, bodies of water or springs located on or adjacent to site.

29) No wetlands, critical areas, archeological sites, existing historic buildings or endangered species habitats on site.

30) This site does not contain hazardous materials to the best of our knowledge.

31) Landscaping/Buffers: Due to the limited size of the proposed additions (less than 50% increase in G.F.A.) only the impacted areas of the site are required to meet the standards of the Baltimore County Landscape Manual. Additional landscaping shall be provided within the landscape areas shown.

33) Stormwater Management: This site is exempt from SWM requirements due to the fact that the site is currently entirely paved.

34) All outdoor lighting will be directed away from adjacent residential houses, where applicable.

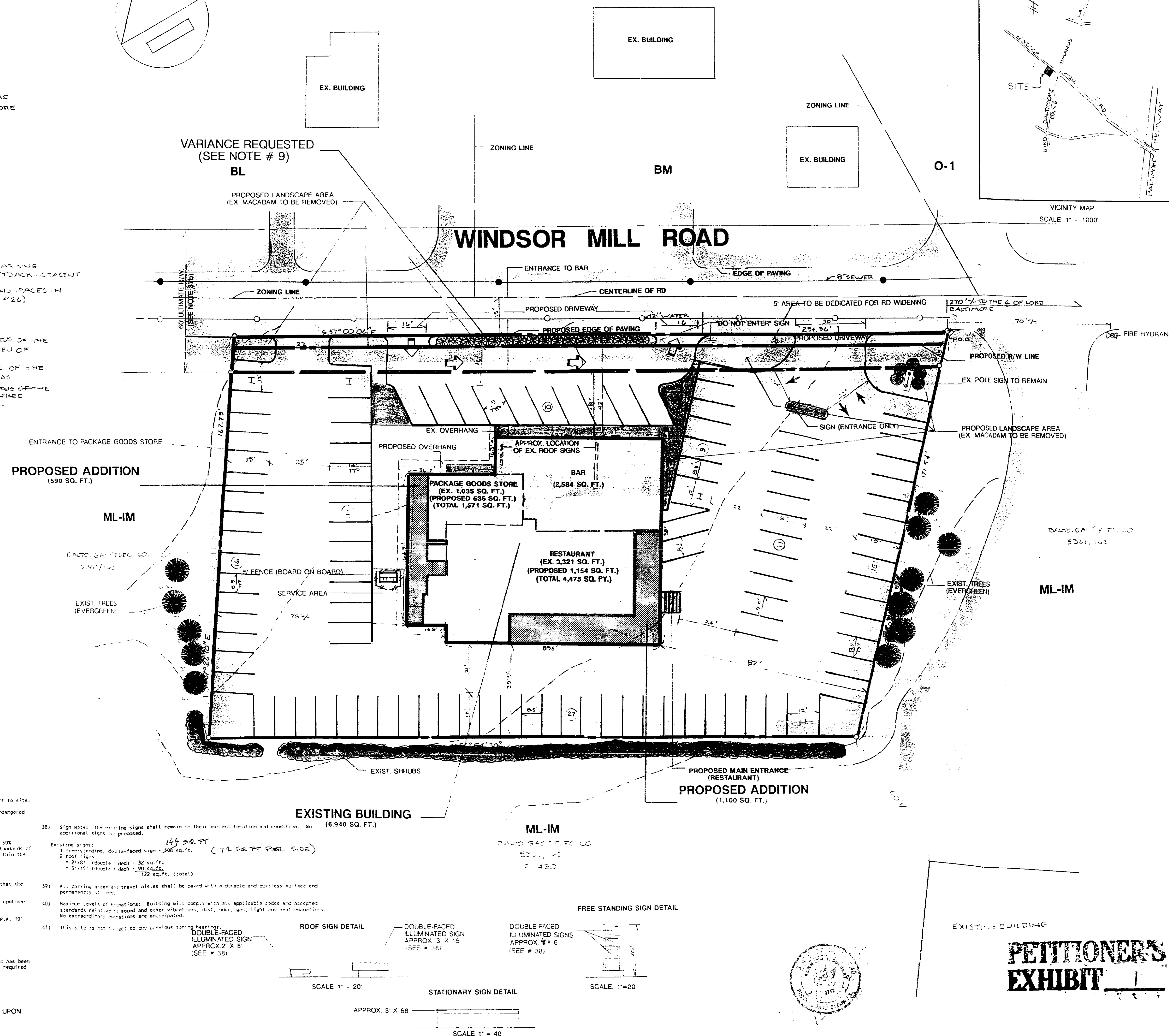
35) The proposed building will be designed and constructed in accordance with the N.F.P.A. 101 Life Safety Code.

36) Handicap Ramps to be provided where necessary.

37) Waivers:
A) A waiver to CRG plan and meeting has been requested.
B) A waiver to public works standards for road widening and right-of-way dedication has been requested to permit a 10' right-of-way with a 30' paving section in lieu of the required

Requested to permit a 40' right-of-way with a 30' paving section in lieu of the required 60' right-of-way with a 40' paving section.

NOTE: BOUNDARY OUTLINE AND LOCATION OF EXISTING IMPROVEMENTS BASED UPON
A PLAN PREPARED BY APR & ASSOC. INC. ON 3/31/1988



PREPARED BY:
WILLIAM P MONK, INC.
LAND USE PLANNING • ZONING • ENVIRONMENTAL
CAMPBELL BUILDING
SUITE 305
100 W PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(301) 494-8831

PREPARED FOR:
MICHAEL ATHAS
100 GALEWOOD ROAD
TIMONIUM, MARYLAND 21093

PRELIMINARY SITE PLAN

**PROPOSED ADDITIONS
7207 WINDSOR MILL ROAD
BALTIMORE COUNTY, MARYLAND**

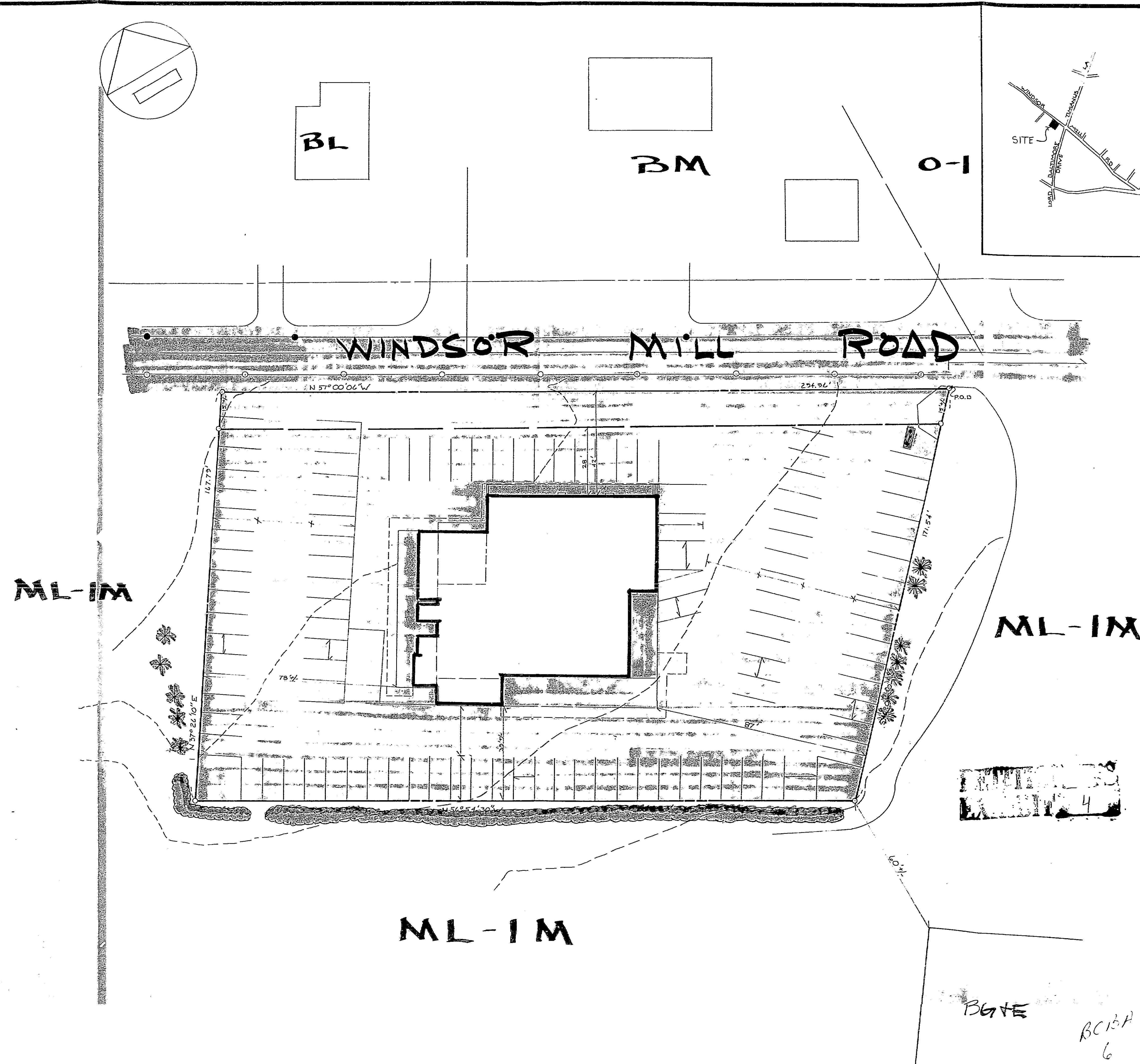
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| SCALE:
1" = 30' | DRAWN BY:
BFB | DATE:
11/26/1990 | REVISED: |
|--------------------|------------------|---------------------|----------|

NOTES:

- 1) ZONING:
EXISTING-
PROPOSED-
- 2) LOT AREA: SEE #23
- 3) EXISTING USE: RESTAURANT, NIGHTCLUB & LIQUOR STORE
- 4) PROPOSED USE: RESTAURANT, NIGHTCLUB & LIQUOR STORE
- 5) BUILDING AREA: SEE #19
- 6) BUILDING SETBACKS:

| | REQUIRED | PROVIDED |
|---------------------|----------|----------|
| FRONT- | 25' | 28' |
| INTERIOR SIDE- | 30' | 76'/37' |
| REAR- | 30' | 39' |
| STREET CORNER SIDE- | N/A | N/A |
- 7) PARKING:
REQUIRED-
PROVIDED- 106 (EXISTING)
- 8) UTILITIES:
SEWER-PUBLIC
WATER-PUBLIC
- 9) VARIANCES:

10) SPECIAL EXCEPTION/CONDITIONAL USE:



PRELIMINARY SITE PLAN

PREPARED BY:
WILLIAM P. MONK, INC.
100 W. PENNSYLVANIA AVENUE
SUITE 305
TOWSON, MARYLAND 21204
(410) 484-8831

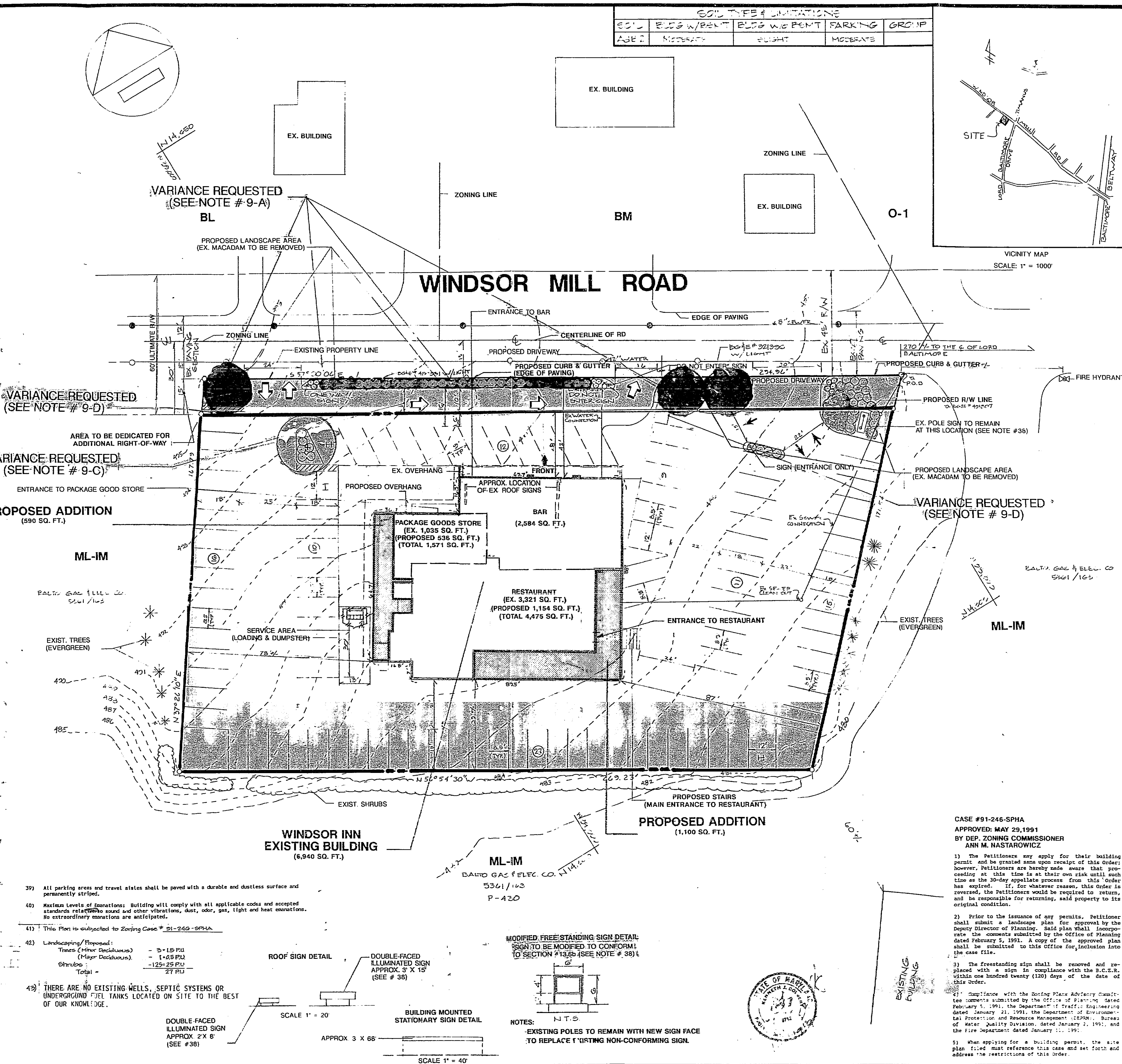
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| SCALE:
1" = 20' | DRAWN BY:
BFB | DATE:
11/26/1990 | REVISED: |
|--------------------|------------------|---------------------|----------|

BGTE
BCIA
6

NOTES:

- 1) ZONING:
EXISTING- ML-IM
PROPOSED- ML-IM
- 2) LOT AREA: SEE #22
- 3) EXISTING USE: RESTAURANT, NIGHTCLUB & LIQUOR STORE
- 4) PROPOSED USE: RESTAURANT, NIGHTCLUB & LIQUOR STORE
- 5) BUILDING AREA: SEE #19
- 6) BUILDING SETBACKS: REQUIRED PROVIDED
FRONT- 25' 28'
INTERIOR SIDE- 30' 78'/87'
REAR- 30' 33'
STREET CORNER SIDE- N/A N/A
- 7) PARKING: SEE #22
REQUIRED- 136 SPACES
PROVIDED- 208 SPACES
- 8) UTILITIES:
SEWER-PUBLIC
WATER-PUBLIC
- 9) VARIANCES: A: To section 408.2.A.4. to permit a 0' parking setback in lieu of the required 10' setback adjacent to R/W
B: To section 409.2.A.2. to permit 98 parking spaces in lieu of the required 150 spaces (see #22)
C: To section 409.2.A.2. to permit a one way travel aisle, 6' in width (distance 10 feet) to be located within the public R/W in lieu of the required 16' for 60 degree angled parking
D: To section 409.2.1 to allow 2 off street parking spaces to be located not on the same lot
- 10) Special Exception/Conditional Use None
- 10a) Special Hearing:
* To establish the non-conforming status of the rear travel aisle which is 21' in lieu of the required 22'
* To establish the non-conforming status of the interior parking lot landscaping areas.
* To establish the non-conforming status of the existing building mounted stationary business sign, and two roof signs (see #38).
- 11) Election District: 2
- 12) Councilmanic District: 2
- 13) Census tract: 4023.03
- 14) Watershed: 27
- 15) Subwatershed: 70
- 16) Deed Reference: 7052/317
- 17) Property Account No.: 0208003462
- 18) Tax Map 87, Grid 12, Parcel 492
- 19) Building Area Computations:
Existing:
Restaurant 3,321 sq. ft.
Bar 2,584 sq. ft.
Package Goods Store & Storage 1,035 sq. ft.
Total 6,940 sq. ft.
Proposed Addition:
Storage Area 1,330 sq. ft.
Rest Room & Vestibule 300 sq. ft.
Total 1,630 sq. ft.
Combined Total 8,570 sq. ft.
- 20) Floor Area Ratio (F.A.R.):
Max F.A.R. Permitted: 2.0
F.A.R. Proposed: 0.18
- 21) Height of Buildings:
Existing: 15' +/-
Proposed: 15' +/-
- 22) Lot Size Tabulations:
Cross Area 1.19 AC +/-
Road Dedication 0.10 AC +/-
Net Area 1.09 AC +/-
- 23) No. of Employees: N/A
- 24) Hours of Operations: N/A
- 25) Mass Transit Adjustments: N/A
- 26) Parking Tabulations:
Existing Parking Required:
Retail/Package Goods (5/1000) 1,035 sq. ft. = 6 spaces
Bar/Restaurant (20/1000) 5,905 sq. ft. = 118 spaces
Total Required 124 spaces
Total Provided 105 spaces
Proposed Parking Required:
Retail: Storage (5/1000) 536 sq. ft. (proposed) = 3 spaces
Bar/Restaurant: Storage & Vestibule (20/1000) 1,630 sq. ft. (proposed) = 8 spaces
Total Required 11 spaces
Total Provided 11 spaces
Total Parking Required 135 spaces
Total Parking Provided 116 spaces
- 27) Average Daily Trips (ADT'S): N/A
- 28) No existing flood plains, streams, bodies of water or springs located on or adjacent to site.
- 29) No wetlands, critical areas, archaeological sites, existing historic buildings or endangered species habitats on site.
- 30) This site does not contain hazardous materials to the best of our knowledge.
- 31) Landscaping/Buffer: Due to the limited size of the proposed additions (less than 50% increase in G.F.A.) only the impacted areas of the site are required to meet the standards of the Baltimore County Landscape Manual. Additional landscaping shall be provided within the landscape areas shown (See Note #25).
- 32) Amenity Open Space: N/A
- 33) Stormwater Management: This site is exempt from DM requirements due to the fact that the site is currently entirely paved and will result in less than 5000 sq. ft. of disturbance.
- 34) All outdoor lighting will be directed away from adjacent residential houses, where applicable.
- 35) The proposed building will be designed and constructed in accordance with the M.F.P.A. 101 Life Safety Code.
- 36) Handicap Ramps to be provided where necessary.
- 37) Utilities:
A) A waiver to DGS has been granted on April 10, 1991 (WT-91-04).
B) A waiver to public works standards for road widening has been approved to permit a 30' +/- paving section in lieu of the required 40' paving section.
C) A waiver to the existing status of the existing building mounted stationary business sign, and two roof signs shall remain in their current location (see #38). The modified free standing sign detail for modifications to be made.
- 38) Sign Notes:
Existing signs:
1. 12' x 18' double faced sign 128 sq. ft. (to be removed and brought into compliance with the M.F.P.A. 101 Life Safety Code)
2. 12' x 18' double faced sign 128 sq. ft. (to be removed and brought into compliance with the M.F.P.A. 101 Life Safety Code)
3. 12' x 18' double faced sign 128 sq. ft. (to be removed and brought into compliance with the M.F.P.A. 101 Life Safety Code)
Total 384 sq. ft. (total)
- 39) All parking areas and travel aisles shall be paved with a durable and dustless surface and permanently striped.
- 40) Maximum Levels of Emissions: Building will comply with all applicable codes and accepted standards relating to sound and other vibrations, dust, odor, gas, light and heat emissions. No extraordinary emissions are anticipated.
- 41) This Plan is submitted to Zoning Case # 21-240-SPHA
- 42) Landscaping/Buffer:
Trees (other Deciduous) - 5-15 FU
Major Deciduous - 1-6 FU
Shrubs - 12-25 FU
Total - 21 FU
- 43) THERE ARE NO EXISTING WELLS, SEPTIC SYSTEMS OR UNDERGROUND FUEL TANKS LOCATED ON SITE TO THE BEST OF OUR KNOWLEDGE.

NOTE: BEARING AND LOCATION OF EXISTING IMPROVEMENTS BASED UPON A SURVEY CONDUCTED BY APR & ASSOC. INC. ON 3/31/1988



PREPARED BY:
WINDSOR INN, INC.
WINDSOR INN BUILDING
SUITE 305
100 WINDSOR MILL ROAD
BALTIMORE, MARYLAND 21204
(301) 494-5931

PREPARED FOR:
MICHAEL KATAS
TIMONUM MARYLAND 21083
(301) 552-4116

BALTIMORE COUNTY MD.
COUNTY REVIEW GROUP

This Plan was Reviewed By The CRG On
8-22-91 With The Following Action Taken

W 91-84 PLAN APPROVED
Plan Approved DPW 8-22-91
Plan Approved DPZ 8-22-91
Approval Expiration Date 8-22-96
Plan Disapproved Continued Mfg. Required

PRELIMINARY SITE PLAN/CRG PLAN
PROPOSED ADDITIONS: WINDSOR INN
7207 WINDSOR MILL ROAD
BALTIMORE COUNTY, MARYLAND

13C18A
11

CASE #91-246-SPHA
APPROVED: MAY 29, 1991
BY DEP. ZONING COMMISSIONER
ANN M. HASTAROWICZ

- 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) Prior to the issuance of any permits, Petitioner shall submit a landscape plan for approval by the Deputy Director of Planning. Said plan shall incorporate the comments submitted by the Office of Planning dated February 5, 1991. A copy of the approved plan shall be submitted to this Office for inclusion into the case file.
- 3) The freestanding sign shall be removed and replaced with a sign in compliance with the M.F.P.A. within one hundred twenty (120) days of the date of this order.
- 4) Compliance with the Zoning Plan Advisory Committee comments submitted by the Office of Planning dated February 5, 1991, the Department of Traffic Engineering dated January 21, 1991, the Department of Environmental Protection and Resource Management (DEPRM), Bureau of Water Quality Division, dated January 11, 1991, and the Fire Department dated January 11, 1991.
- 5) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this order.

| | |
|-----------|-------------------|
| SCALE: | 1" = 100' |
| DRAWN BY: | WFS |
| DATE: | 1/26/1990 |
| REVISED: | 4/21/91
5/2/92 |