

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATEGORY APPEAL

IN THE MATTER OF THE APPLICATION
OF THE FIRST NATIONAL BANK FOR
ZONING RECLASSIFICATION FROM
D.R. 16 TO B.L. AND VARIANCES
ON PROPERTY LOCATED ON THE SOUTH-
EAST SIDE OF EASTERN BOULEVARD
582' SOUTHWEST OF THE CENTERLINE
OF MARLYN AVENUE (809 EASTERN
BOULEVARD); 15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
CR-91-365-A
THE FIRST NATIONAL BANK OF MARYLAND

ATTORNEYS
Stephen J. Nolan
Suite 700-Court Towers
210 W. Pennsylvania Ave.
21204 823-7800
and
David M. Plott
145 Main Street
P.O. Box 31
Annapolis, Md. 21404 296-0045

BALTIMORE COUNTY, MARYLAND
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
(Appellee's)
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

TRANSCRIPT IN BASEMENT
LCB:TCB

TRANSCRIPT IN BASEMENT
LOCATION: 418

- See Actys page 146(1)
- 1) April 29, 1992 The First National Bank of Maryland's Order for Appeal from CV GEN 924035
the decision/order of County Board of Appeals of Balto. Co., fd. COSTS 80.00
CV CLK 80.00
 - (2) April 30, 1992 - Certificate of Notice, fd. B LBY 10.00
POST 2.00
 - (3) May 8, 1992 - Appellant's Petition for Appeal, fd. CHECKED TL 92.00
 - (4) May 28, 1992 Transcript of Record, fd. (G-1) #16628 0001 R01 716107
04/29/92
 - (5) May 28, 1992 Notice of filing of Record, fd. Notices sent.
 - (6) May 29, 1992 - App. of PHYLLIS COLE FRIEDMAN and PETER MAX ZIMMERMAN for the PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY and same day Answer to Petition for Appeal, fd.
 - (7) May 29, 1992 - Order to enter the app. of H. ENSLIE PARKS and MICHAEL J. MORAN for the
Appellee BALTIMORE COUNTY, MARYLAND, fd.
 - (8) May 29, 1992 - Appellee BALTIMORE COUNTY, MARYLAND and same day Answer to Petition for
Appeal, fd.
 - (9) July 15, 1992 Joint Stipulation of Extension for filing Appeal
Memoranda with Order of Court Granting same fd. (JNB)
 - (10) Dec 17, 1992 Joint stipulation and Order of Court dismissing case, fd.
(JTS, JR)

ON AUG 15 FILED IN

21 146 Case 92 CV- 4035

Continued from page 146 ATTORNEYS PAGE

BALTIMORE COUNTY, MARYLAND

H. Enslie Parks
Michael J. Moran
400 Washington Ave.
Towson, Md. 21204
(410)887-4420

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Phyllis Cole Friedman
Peter Max Zimmerman
Room 47 Courthouse
400 Washington Ave.
Towson, Maryland 21204
(410)887-2188

NO COPY OF
DISMISSAL ORDER
DOCKET SHEET
COPY ONLY!

C. RAGOFF
8-15-94

DOCKET 21 PAGE 146(A) CASE NO. 92CV4035

- 2 -

Towson, MD 21204; J. John Delaney, Esquire, and David M. Plott, Esquire,
Linowes and Blocher, 145 Main St., P.O. Box 31, Annapolis, MD 21404; and
Michael J. Moran, Esquire, Assistant County Attorney, Office of Law, Second
Floor, Courthouse, 400 Washington Ave., Towson, MD 21204; and a copy was
hand delivered to the Administrative Assistant, County Board of Appeals,
Rm. 49, Courthouse, 400 Washington Ave., Towson, MD 21204.

Peter Max Zimmerman
Peter Max Zimmerman

ANSWER TO PETITION FOR APPEAL

People's Counsel for Baltimore County, Appellee, answers the Petition
for Appeal as follows:

1. Appellee admits Paragraphs 1-3.
2. Appellee denies Paragraph 4.A., B. and C. and Paragraph 5.
3. Appellee further asserts that the Petition for Appeal fails
to state a claim upon which relief can be granted, and that the decision
of the County Board of Appeals, insofar as it denied the requested critical
area reclassification, was reasonable, based on substantial evidence,
and in accordance with the law.

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

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2188

I HEREBY CERTIFY that on this 29th day of May, 1992, a copy of
the foregoing Answer to Petition for Appeal was mailed to Stephen J. Nolan,
Esquire, Nolan, Plumbhoff & Williams, 210 W. Pennsylvania Ave., Suite 700,

THE FIRST NATIONAL BANK OF MARYLAND
SE/5 Eastern Blvd., 582' SW of c/l
Marlyn Ave. (809 Eastern Blvd.)
.91 acres. 1.31 acres overall
D.R. 16 to B.L.
VAR-driveway width; business signs

CR-92-241, #7, V, 1991
15th Election District
5th Councilmanic District
(Documented Plan)
(C.B. Critical Area)

March 1, 1991 Petition filed by Newton A. Williams, Esquire and
Stephen J. Nolan, Esquire on behalf of The First
National Bank of Maryland for Reclassification from
D.R.16 to B.L. and Variances.

August 14 Hearing held before the Board for the purpose of
accepting revised site plan and amended Petition.

November 6 Hearing held before the Board of Appeals.

November 13 Hearing completed before the Board of Appeals.

April 1, 1992 Opinion and Order of the Board that the Petition for
Reclassification to B.L. with I.D.A. is GRANTED
pursuant to Board's Opinion and Order and GRANTING
Petition for Variances.

April 8 Motion for Clarification Or, In the Alternative,
Motion for Reconsideration and Request for Expedited
Hearing and Stay filed by Stephen J. Nolan,
Esquire

April 14 People's Counsel's Answer to "Petitioner's Motion
for Clarification Or, In the Alternative, Motion for
Reconsideration and Request for Expedited Hearing
and Stay".

April 15 Board's Ruling on Petitioner's Motion for
Clarification Or, In the Alternative, Motion for
Reconsideration and Request for Expedited Hearing
and Stay DENYING same.

April 29 Order for Appeal filed in the Circuit Court for
Baltimore County by Stephen J. Nolan, Esquire and
David M. Plott, Esquire, Counsel for The First
National Bank of Maryland.

Petition to accompany appeal also filed.

April 30 Certificate of Notice sent to interested parties.

Transcript of testimony filed; Record of
Proceedings filed in the Circuit Court for
Baltimore County.

December 17, 1992 Joint stipulation and Order of Court dismissing case in the
Circuit Court for Baltimore County.

IN THE MATTER OF THE APPLICATION
OF THE FIRST NATIONAL BANK FOR
ZONING RECLASSIFICATION FROM
D.R. 16 TO B.L. AND VARIANCES
ON PROPERTY LOCATED ON THE SOUTH-
EAST SIDE OF EASTERN BOULEVARD,
582' SOUTHWEST OF THE CENTERLINE
OF MARLYN AVENUE (809 EASTERN
BOULEVARD); 15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

THE FIRST NATIONAL BANK OF
MARYLAND, PLAINTIFF

ZONING CASE NO. CR-91-365-A
ITEM #7, CYCLE V, 1991

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Michael B. Sauer, S. Diane Levero, and John G.
Disney, constituting the County Board of Appeals of Baltimore
County, and in answer to the Order for Appeal directed against them
in this case, herewith return the record of proceedings had in the
above-entitled matter, consisting of the following certified copies
or original papers on file in the Office of the Zoning Commissioner
and the Board of Appeals of Baltimore County:

No. CR-91-365-A

March 1, 1991 Petition filed by Newton A. Williams, Esquire and
Stephen J. Nolan, Esquire on behalf of The First
National Bank of Maryland for Reclassification from
D.R.16 to B.L. and Variances.

Publication in newspapers.

August 14 Hearing held before the Board for the purpose of
accepting revised site plan and amended Petition.

September 23 Planning Board Comments.

October 31 Supplemental Planning Board Comments.

November 4 Petitioner's PreHearing Memorandum of Law filed by
Stephen J. Nolan, Esquire in response to October 11,
1991 letter submitted by People's Counsel.

In the Matter of the Application
of the First National Bank

IN THE CIRCUIT COURT
FOR
BALTIMORE COUNTY
CASE # 21/146/92-CV-4035

vs.
County Board of Appeals of Balto. Co.

NOTICE OF FILING OF RECORD

TO:
Stephen J. Nolan, Esq.
David M. Plott, Esq.
Linda Lee M. Kuszmaul, Legal Sec.

In accordance with Maryland Rule of Procedure B12, you are notified that
the record in the above entitled case was filed on May 28th, 1992

Supervisor
CLERK

Case No. CR-91-365-A The First National Bank
File No. 92-CV-4035

November 6, 1991 Hearing held before the Board of Appeals.

November 13 Hearing completed before the Board of Appeals.

April 1, 1992 Opinion and Order of the Board that the Petition for
Reclassification to B.L. with I.D.A. is GRANTED
pursuant to Board's Opinion and Order and GRANTING
Petition for Variances.

April 8 Motion for Clarification Or, In the Alternative,
Motion for Reconsideration and Request for Expedited
Hearing and Stay filed by Stephen J. Nolan,
Esquire

April 14 People's Counsel's Answer to "Petitioner's Motion
for Clarification Or, In the Alternative, Motion for
Reconsideration and Request for Expedited Hearing
and Stay".

April 15 Board's Ruling on Petitioner's Motion for
Clarification Or, In the Alternative, Motion for
Reconsideration and Request for Expedited Hearing
and Stay DENYING same.

April 29 Order for Appeal filed in the Circuit Court for
Baltimore County by Stephen J. Nolan, Esquire and
David M. Plott, Esquire, Counsel for The First
National Bank of Maryland.

May 8 Petition to accompany appeal also filed.

April 30 Certificate of Notice sent to interested parties.

May 28 Transcript of testimony filed.

- Petitioner's Exhibit No. 1 -Plat 2/28/91 revision 10/21/91
2 -Drawing of Proposed site DEPRM
3 -Revised descr. of site from KCI
4 -Critical Areas Infor. Map 2/28/91
(revised 11/5/91)
5 -Description of site
6 -Drawing - color
7 -4 alternate schemes for design of
site
8 -A-F (Photos of site)
9 -Aerial Map of Area 1"-200' 1-1986
10-Critical Area Map 10 of 20 tax map
97
11-A-E (Photos and brochure)
12-Environmental Impact Statement
from KCI of site.
13-Memo from KCI on ground water
issues of site

500



Baltimore County, Maryland

PEOPLE'S COUNSEL
ROOM 304, COUNTY OFFICE BUILDING
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

October 11, 1991

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

RE: The First National Bank
of Maryland, Petitioner
Case No. CR-91-365-A
(Cycle 7, Cycle V)

Dear Chairman Hackett:

This office is responsible, under Section 524.1(b) of the
Baltimore County Charter, to defend the Baltimore County zoning
maps in reclassification and other zoning cases, including those
involving the critical areas. This case is the first involving a
request for a reclassification of a critical area designation.
The property is in Essex, at 809 Eastern Boulevard.

The front is occupied by The First National Bank building,
which has stood for many years. The rear is partly occupied by a
parking lot, and partly vacant, wooded and with vegetation.
Because of the importance of this case to the critical area
program, it is important that it be reviewed in a proper way.

The original petition for B.L. zoning did not involve a
critical area rezoning. It was also presented in the light that
it was inconsequential, merely adding some automatic teller
machines and upgraded parking improvements. The Planning Board
in its report of May 21, 1991, adopted the favorable staff
recommendation, but did not make a finding of mistake in the
existing zoning. Baltimore County Code Sec. 2-358(f).
Subsequently, perceiving that the proposed development conflicted
with the environmental (impermeable surface) constraints of the
Limited Development Area (LDA) critical area classification, the
petitioner amended its request to include the reclassification to
"Intensely Developed Area" (IDA).

The amendment was sent, in accordance with code
requirements, to the Director of the Office of Planning and
Zoning for review. Baltimore County Code Sec. 2-358(m). On

The Honorable
William T. Hackett, Chairman
County Board of Appeals
October 11, 1991

September 10, 1991, the Director made a report, which was adopted
by the Planning Board on September 23, 1991. This report is
favorable as to the reclassification to B.L., but makes no
mention of the request for reclassification of the critical area.
It simply does not address it. The only apparent addition to the
May 21, 1991 report is a statement that,

"All outstanding environmental issues shall
be resolved with the Department of
Environmental Protection and Resource
Management prior to any final determination."

The bottom line is that the Director of Planning and
Planning Board have failed to submit the necessary report on the
critical area rezoning issue. In the absence of a proper report,
the case is not ripe for review by the County Board of Appeals.
CF. Baltimore County v. American Oil Co., 245 Md. 719, 229 A.2d
78 (1987). Therefore, this case must be remanded for further
consideration by the Planning Board and the need to address
specifically the critical area issue according to the standards
defined by state law, regulations, and the county's implementing
legislation and policies. The Department of Environmental
Protection and Resource Management is currently the lead agency
in making such an evaluation, and its input would be important
for proper review by the Planning Director and Board.

In other words, without a proper report by the Planning
Board on the critical area amendment, this case should be
continued.

Separately, attention should be paid to the point that a
critical area reclassification cannot be approved without the
approval of the Chesapeake Bay Critical Area Commission, in
Annapolis. The most that the County Board of Appeals can do in
this case is propose that a critical area zoning map be amended,
on the basis of a mistake and that the amendment is warranted.
Before any final order, there would have to be Commission
approval under Natural Resources Article 8-1909(h) and (i). I
read the statute also as implying notice and opportunity to be
heard before the Commission - in other words, a hearing. Thus,
the process must include a proper review by the Baltimore County
Planning Board, on the front end, and a review by the Chesapeake
Bay Critical Area Commission (in the event that the County Board
of Appeals proposes an amendment) on the back end. We are
speaking here, of course, of piecemeal administrative amendments,

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The Honorable
William T. Hackett, Chairman
County Board of Appeals
October 11, 1991

rather than amendments made during a comprehensive review of the
program every four years (the equivalent of legislative
comprehensive rezoning).

In view of the posture of this case, the Petitioner's
request for an extended day of hearing on November 8, 1991 seems
academic, unless the Planning Board can conduct a further review
and issue a new report before then. If the Board determines to
proceed, notwithstanding the incompleteness of the review, to
hold the hearing on November 8th, this office will maintain the
position raised in this letter. In that event, we are also
available to cooperate in the scheduling of additional days of
hearing, if that becomes necessary.

If there is any point which has been overlooked relevant to
the procedure discussed above, I trust that counsel will not
hesitate to bring it to my attention. It seems best to bring up
these points now, rather than to wait until November 8th, so that
fellow counsel will have an opportunity to express their points
of view on the situation.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

cc: Stephen J. Nolan, Esquire
Newton A. Williams, Esquire
Lee R. Epstein, Esquire
David C. Flowers, DEPRM
P. David Fields, Director, OPZ
Andrea J. Van Arsdale, OPZ
Harold Reid, Chairman,
Planning Board
John C. North, II, Chairman
Chesapeake Bay Critical Area Commission

PHZ:sh

3

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning



111 West Chesapeake Avenue
Towson, MD 21204

887-3353

November 13, 1991

Newton A. Williams, Esquire
Nolan, Plumbhoff & Williams, Chtd.
700 Court Towers
210 West Pennsylvania Avenue
Towson, MD 21204

RE: Compliance with Sections
258.1(d)(1), B.C.C. and Board of
Appeals Rules of Practice and
Procedure, Rule 49
Revised reclassification Petition
Item #7 (Cycle V), Case #CR-91-365-A
Petitioner: The First National Bank
of Maryland
89/S Eastern Boulevard, 582' SW of
centerline Marlyn Avenue

Dear Mr. Williams:

Reference is made to the above sections of the Baltimore County
Code that includes a requirement that this office review cycle
reclassification petitions for the Board of Appeals for compliance with the
applicable statutes and regulations.

The following technical comments must be addressed for acceptance
of the revised petition by this office. The plan received October 30, 1991
was discussed with the Petitioner's engineer on November 6, 1991.

- 1. Correct the descriptions and plans to
agree for both the LDA/IDA and the B.L.
zone reclassification request areas.

INTEROFFICE MEMORANDUM

October 31, 1991

TO: William T. Hackett, Chairman
County Board of Appeals
FROM: Pat Keller, Deputy Director
Office of Planning and Zoning
SUBJECT: Case No. CR 91-365-A (First National Bank)

This memorandum is intended to supplement my report on behalf of
the Planning Board dated September 23, 1991, and is in response to a
copy of a letter we received from Deputy People's Counsel Peter Max
Zimmerman dated October 11, 1991, and addressed to you.

By way of clarifying our September 23, 1991 memorandum report, the
Planning Board at its September 19 meeting, fully considered the
amendment to the petition and the amended documented site plan, both
of which amendments involved the owner's request for a reclassifi-
cation of Limited Development Area (LDA) critical area classification
to an Intensely Developed Area (IDA) classification. At this same
September 19, 1991, meeting, the Planning Board heard and considered
the oral report presented by David C. Flowers, who appeared on behalf
of the Director of the Department of Environmental Protection and
Resource Management. The Planning Board was also addressed by the
owner's attorney, Newton A. Williams, on the subject of the critical
area reclassification request.

Contrary to Mr. Zimmerman's assertion in his October 11 letter,
we respectfully submit that no further report of the Planning Board
is required with respect to the subject petition inasmuch as the
Planning Board considered the DEPRM comments made at the September
19, 1991 and the petitioner has complied with the procedural
requirements governing Planning Board review.

In all other respects, our comments of September 23, 1991, remain
unchanged, namely, the Planning Board recommended conditional
approval of the amendments to the Petition and documented site plan
in Case-91-365-A (First National Bank of Maryland).

Pat Keller
Pat Keller
Deputy Director

PDF:rdn
cc: Peter Max Zimmerman, Esquire
Newton A. Williams, Esquire
Stephen J. Nolan, Esquire
Lee R. Epstein, Esquire
David C. Flowers, DEPRM

HAKTT/TXTTPOZ

68-5-102 4-40116

Newton A. Williams, Esquire
November 13, 1991
Page 2

- 2. Provide a memo to go with the plan to
justify the IDA/IDA change requested in
light of the fact that these are not
zones as defined by the B.C.Z.R., but
are critical area definitions.

If you have any questions, please do not hesitate to call me at
887-3391.

Very truly yours,

John L. Lewis
John L. Lewis
Planner II

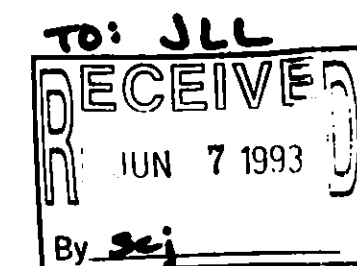
JLL:scj

cc: The First National Bank of Maryland
Kathi Weidenhamer, Board of Appeals
Pat Keller, Planning Office
Arnold Jablon, Zoning Administration & Development Management
James Dyer, Zoning Office
W. Carl Richards, Jr., Zoning Office

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

DATE: June 7, 1993

TO: Ms. Roche - Sr. Names
Mr. Irin - SWM
Mr. Powell - EIRD
Mr. Seelye - W&S
Mr. Rascoe - ZADM, Development Management (2)
Mr. Richards - ZADM, Development Control
Mr. Bowling - DED (3)
Capt. Pfeifer - Fire Dept.
Mr. McDougall - Rec & Parks
Mr. Small - SWA
Mr. McDaniel - Strategic Plan., Development Review (3)
FROM: Su in D. Wimbley
ZADM
SUBJECT: Project Name: First National Bank of MD
Project No.: 93088 Z Eastern Blvd
ZADM No.: NY-674
District: 15C5
Engineer: KCI Technologies
Phone No.: 331-5500



ACTION REQUESTED:
Waived CRG Meeting
CRG Plan Refinement
CRG Non-Material Amendment
X Limited Exemption (26-171.b.9)
Waived Hearing Officer Hearing

Please review the attached plan for compliance with current regulations and return
comments to our office by JUNE 23, 1993. If you have no comments or do not need
this plan, please indicate by placing your initials here. (This
procedure is similar to the waived CRG meeting procedure.) NONRESPONSIVENESS BY
THE AFOREMENTIONED DATE IS CONSIDERED TO BE CONCURRENCE BY YOUR OFFICE OF THE PLAN.

Thank you for your timely attention to our request.

SDW:scj
SUBDIV.DST (TXTSOPH)

FIRST NATIONAL BANK OF MD
Eastern Boulevard
93-086-Z

Limited Exemption
Plan Date:
Comments Due: 6/28/93
Comments Date: 6/10/93
Comments Completed: 6/10/93

This plan is approved for limited exemption as it agrees with the site plan
for reclassification and variance filed under zoning case #CR-91-365-A. This
case is now on appeal to Circuit Court.

Final zoning approval is contingent first, upon all plan comments being
addressed on the limited exemption 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 limited exemption file #93-086-Z and written correspondence
or revised plans must be accompanied by a copy of these comments.

John L. Lewis
Planner II

JLL:scj

cc: #CR-91-365-A

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: P. David Fields, Director
Office of Planning & Zoning
Attention: Jeffrey Long
Date: August 14, 1991

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

SUBJECT: Revised Documented Site Plan / Amended Petition --
Case No. CR-91-365-A / The First National Bank of Md.

Pursuant to the appropriate sections of the Baltimore County Code and a public hearing on August 14, 1991, we are transmitting to you a copy of the revised Documented Site Plan and Supplemental Petition submitted to the County Board of Appeals. This revised plan is being forwarded to you for processing with the Baltimore County Planning Board.

By copy of this memorandum, we are also forwarding ten copies of this revised Documented Site Plan and a copy of the Supplemental Petition to the Zoning Office.

William T. Hackett
William T. Hackett

Attachment (1 copy of revised Documented Site Plan and Supplemental Petition)

cc: Pat Keller
Carl Richards, Jr. w/10 copies of revised Documented Site Plan & 1 copy of Supplemental Petition

RECEIVED
AUG 15 1991
ZONING OFFICE

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. J. Robert Haines
Zoning Commissioner
DATE: May 3, 1991

FROM: David C. Flowers
SUBJECT: Zoning Hearing - Item 7

CR-91-365

RECEIVED
MAY 10 1991

ZONING OFFICE

The Chesapeake Bay Critical Area Program requests and extension for the review of the petition request for a Special Exception for The First National Bank of Maryland. A Critical Area Findings Plan is required before formal comments can be written. This property is located within an Intensely Developed Area (IDA) and therefore must submit information demonstrating a 10% pollutant reduction. Also, the property contains wetlands. These must be field verified by this Department and the appropriate buffers shown on the plan.

For further information, contact Ms. Nancy Sanford at 887-2904.

David Flowers
David C. Flowers, Coordinator
Chesapeake Bay Critical Area Program

DCF:JU

cc: Mrs. Janice B. Outen
Mr. Alan Kempske
Mr. Newton Williams, Esq.

RE: PETITION FOR RECLASSIFICATION FROM D.R. 16 TO B.L. AND FROM LDA TO IDA (CRITICAL AREA) BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

THE FIRST NATIONAL BANK OF MARYLAND, Petitioner

CASE NO. CR-91-365-A

NOTICE OF ENTRY OF APPEARANCE

Please enter the appearance of Michael J. Moran, Associate County Attorney, on behalf of Baltimore County, Maryland.

Michael J. Moran
MICHAEL J. MORAN
Associate County Attorney
Courthouse, Second Floor
Towson, Maryland 21204
887-4420
Attorney for
Baltimore County, Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 1st day of November, 1991, a copy of the foregoing Notice was hand delivered to Peter Max Zimmerman, Esquire, Deputy People's Counsel, 111 West Chesapeake Avenue, Towson, Maryland 21204; and a copy was mailed, postage prepaid, to Stephen J. Nolan, Esquire, Suite 700, Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland 21204.

Michael J. Moran
MICHAEL J. MORAN

RE: PETITION FOR RECLASSIFICATION FROM D.R. 16 TO B.L. AND FROM LDA TO IDA (CRITICAL AREA) BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

SE/S Eastern Blvd., 582' SW C/L Marilyn Ave. (809 Eastern Blvd.), 15th Election District; 5th Councilmanic District

THE FIRST NATIONAL BANK OF MARYLAND, Petitioner

Case No. CR-91-365-A (Item 7, Cycle V, 1991)

ENTRY OF APPEARANCE

Please enter the appearance of Lee R. Epstein, Esquire, Linowes and Blocher, for the Petitioner in the above-captioned matter. Any notices of hearing dates or other proceedings in this matter, or concerning the entry of preliminary or final orders, should be sent to the address below.

Lee R. Epstein
Lee R. Epstein
Linowes and Blocher
Tenth Floor
1010 Wayne Avenue
P. O. Box 8728
Silver Spring, Maryland 20907
(301) 650-7024

I HEREBY CERTIFY that on this 9th day of August, 1991, a copy of the foregoing entry of appearance was mailed to Peter Max Zimmerman, Deputy People's Counsel for Baltimore County, Room 304, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Lee R. Epstein
Lee R. Epstein

RE: PETITION FOR RECLASSIFICATION FROM D.R. 16 TO B.L. SE/S Eastern Blvd., 582' SW of C/L Marilyn Ave. (809 Eastern Blvd.), 15th Election District; 5th Councilmanic District. PETITION FOR VARIANCE

THE FIRST NATIONAL BANK OF MARYLAND, Petitioner

Case No. CR-91-365-A (Item 7, Cycle V, 1991)

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final order.

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

I HEREBY CERTIFY that on this 26th day of July, 1991, a copy of the foregoing Entry of Appearance was mailed to Newton A. Williams, Esquire, and Stephen J. Nolan, Esquire, Nolan, Plumhoff & Williams, Chtd., 700 Court Towers, 210 W. Pennsylvania Ave., Towson, MD 21204, Attorneys for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

Appealed to DC Ct April 20, 1992
no decision
CRCT# 92-CV-4035

Revised Reclassm't 11/4/91 on Plans R2 and 10/30/91
The #3 follow the LDA/IDA description has 52' west 150' while plan shows 50' west 150'
The #6 (B.C.M.) description call has some problem.

As previously discussed with Newton Williams (Attng) provide as memo to go with the plans to justify the request for IDA/IDA since zoning reqs don't govern this.

** 11/6/91 Called Dick Smith left May to call me*

Revised Reclassm't Plans R2 and 10/30/91

Need to check out the 52' west 150' vs 50' west 150' discrepancy. Per 887-2904.

The #3 description call has some problem. The #6 (B.C.M.) description call has some problem.

Revised Reclassm't Plans R2 and 10/30/91

11/6/91 Called Dick Smith left May to call me

11/6/91 Called Dick Smith left May to call me

- Petitioner's Exhibit No. 14-Letter dated 12/08/86 from Director of Planning to Councilman Norman Lauenstein listing various critical area IDCA issues numbering 18, plus a specific letter on 209 Eastern Avenue from the Petitioner.
- 15-Council Bill No. 9-87 /Chesapeake Bay Critical Area -Official Interim Map
- 16-Photograph of site on Eastern Avenue looking east.
- 17-Photograph of Eastern Avenue looking west from in front of site.
- 18-Resume of Norman E. Gerber AICP.
- 19-Letter dated 9/23/91 from P. David Fields, Secretary, County Planning Board /Case No. CR-91-365-A /Planning Board recommendation.
- 20-Letter dated 10/31/91 from Pat Keller to William T. Hackett /supplement of Report of Planning Board dated September 23, 1991.
- 21-Zoning map of part of the 15th Election District including the area of the site.
- 22-1971 Zoning Map.
- 23-1976 Zoning Map.
- 24-1980 Zoning Map.
- 25-1984 Zoning Map.
- 26-1988 Zoning Map.
- 27-Colored-in plat for 809 Eastern Avenue dated 3/01/91.
- 28-Mapping of Intensely Developed Areas, Limited Development Areas, etc. /Code of Maryland Regulations.
- 29-Appendix IV-B /Procedures and Standards for Mapping Land Use "Areas."
- 30-Critical Area Map Assessment for Mapping Inconsistencies at the LDA/IDA Boundaries: Baltimore County Critical Area Map #97.
- 31-Habitat Assessment Report: For Selected Portions of the Property at 809 Eastern Boulevard.
- 32-Baltimore County Code, Section 2.356 and other selected sections (12 pages).

rear paved parking lot on the northeast side as shown for illustrative purposes as the hatched (////) area on the attached drawing marked "Exhibit D". That portion of the Board's decision is arbitrary, capricious, unlawful and contrary to the great weight of the evidence at the hearing below.

B. The Board's denial of the requested Critical Area reclassification to Intensely Developed Area ("IDA") with regard to the Fifty Foot Strip is arbitrary, capricious and unlawful and contrary to the substantial evidence which was presented at the hearing.

C. In denying the Critical Area reclassification for the Fifty Foot Strip, the Board impermissibly applied the "grandfathering" provisions of COMAR Title 14, specifically COMAR 14.15.02.07, and such application is arbitrary, capricious and contrary to law.

5. Furthermore, Appellant respectfully contends that in granting the B.L./I.D.A. reclassification for the existing paved parking lot, the Board impermissibly restricted use of the site and prohibited "intensification or expansion of any use on the site." Such restriction is *ultra vires* and constitutes an abuse of administrative discretion and is arbitrary, capricious and contrary to law.

- People's Counsel Exhibit No. 1-Chesapeake Bay Critical Areas Land Use Map
- 2-Baltimore County Planning & Zoning Photographic Map of Essex /NE, 2-G
- 3-Case /Bellanca v. County Commissioners, 86 Md. App. 219 (1991)
- 4-Chesapeake Bay Critical Area Commission: Law 1984, Amendments and Criteria, 1986 edition.

May 28, 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
Lindalee M. Kuszmaul, Legal Secretary
County Board of Appeals, Room 49, Old
Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (301) 887-3180

cc: Stephen J. Nolan, Esquire
David M. Platt, Esquire
Alan W. Kempke, Asst. V.P.
The First National Bank of Maryland
Phyllis C. Friedman
People's Counsel for Baltimore County
Michael J. Moran, Asst. County Attorney

WHEREFORE, Appellant petitions this Court to reverse the Board's April 1, 1992 Order with respect to the denial of the requested zoning and Critical Area reclassification of the Fifty Foot Strip and also with respect to the restrictions imposed on the future use of the site.

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Stephen J. Nolan
Nolan, Plumhoff & Williams
210 W. Pennsylvania Avenue
Suite 700
Towson, Maryland 21204
(410) 823-7800

David M. Platt
John J. Delaney
David M. Platt
Linowes and Blocher
145 Main Street
P.O. Box 31
Annapolis, Maryland 21404
(410) 269-0045

Attorneys for Appellant
The First National Bank
of Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May, 1992, pursuant to Md. Rule B2(e), a copy of the foregoing Petition was served on the County Board of Appeals of Baltimore County, Court House, Towson, Maryland 21204.

Stephen J. Nolan
Stephen J. Nolan

IN THE MATTER OF THE APPLICATION OF THE FIRST NATIONAL BANK FOR ZONING RECLASSIFICATION FROM D.R. 16 TO B.L. AND VARIANCES ON PROPERTY LOCATED ON THE SOUTH-EAST SIDE OF EASTERN BOULEVARD, 582' SOUTHWEST OF THE CENTERLINE OF MARLYN AVENUE (809 EASTERN BOULEVARD); 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* Case No. 92CV4035/21/
* 146

THE FIRST NATIONAL BANK OF MARYLAND
Appellant

PETITION FOR APPEAL

THE FIRST NATIONAL BANK OF MARYLAND, Appellant, pursuant to Md. Rule B2 and by its undersigned attorneys, files this petition for appeal regarding the April 1, 1992 Order of the County Board of Appeals of Baltimore County (the "Board") in Board Case No. CR-91-365-A and says:

1. The action appealed from is the Opinion and Order issued by the County Board of Appeals on April 1, 1992 (the "Order"). A copy of the Order is attached hereto as "Exhibit A".

2. The proceedings before the Board arose out of The First National Bank of Maryland's ("First National") Petition for Zoning Reclassification and Variance originally filed on March 1, 1991, seeking commercial zoning for the rear of its 809 Eastern Boulevard Branch. Subsequently, First National filed an amended petition and amended site plan in order to incorporate a request for a Chesapeake Bay Critical Area

EXHIBIT

IN THE MATTER OF THE APPLICATION OF THE FIRST NATIONAL BANK FOR ZONING RECLASSIFICATION FROM D.R. 16 TO B.L. AND VARIANCES ON PROPERTY LOCATED ON THE SOUTH-EAST SIDE OF EASTERN BOULEVARD, 582' SOUTHWEST OF THE CENTERLINE OF MARLYN AVENUE (809 EASTERN BOULEVARD); 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY

* CASE NO. CR-91-365-A
* Item #7, CYCLE V

* * * * *
* O P I N I O N

This case comes before the Board on a Petition requesting a zoning reclassification to B.L. of a long-standing parking lot zoned D.R.16 which is located behind an existing office building/bank. This long-standing parking lot is used for the required off-street parking of the office building/bank. In addition, the Petitioner requests a critical area reclassification of the long-standing parking lot and related area from Limited Development (LDA) to Intensely Developed Area (IDA). Two variances are also being requested.

This is the first time this Board has heard an alleged mistake or map error concerning a critical area classification. The Deputy People's Counsel, in his closing argument, argued that the hearing before this Board was not the proper procedure for a correction of a map error or drafting error. This Board will decide, because of quasi judicial economy reasons, this case on this Petition and will not reject the critical area classification portion of the Petition for procedural reasons.

There were many witnesses in this case. The most significant witnesses being Tim Dugan of the Office of Planning and Zoning, David Flowers of the Department of Environmental Protection and Resource Management (DEPRM), an officer of First National Bank/owners, the commercial neighbors on either side of the site,

("Critical Area") reclassification of the parking lot and a related fifty foot strip area (the "Fifty Foot Strip"). The Board held hearings on August 14, November 6 and 13, 1991 which resulted in the Board's Order of April 1, 1992, granting in part and denying in part the requested zoning relief and Critical Area reclassification. The Board granted the zoning reclassification and related variances for the existing paved parking lot and designated the same as B.L./I.D.A. The Board denied the requested zoning and Critical Area reclassification of the Fifty Foot Strip.

3. On April 8, 1992, Appellant filed a Motion for Clarification or, in the Alternative, Motion for Reconsideration with regard to numerous ambiguities and omissions in the Board's Order. A copy of that Motion is attached hereto, incorporated herein by reference and marked "Exhibit B." On April 15, 1992, the Board issued a Ruling denying the motion, a copy of which Ruling is also attached hereto and marked "Exhibit C."

4. Appellant respectfully submits that that portion of the Board's Order which denied the requested zoning and Critical Area reclassification of the Fifty Foot Strip is erroneous and in support thereof states as follows:

A. The Board erred in denying B.L. commercial zoning for the subject Fifty Foot Strip which adjoins First National's

and Norman Gerber - former Director of the Office of Planning and Zoning and now a consultant on urban planning and zoning.

Of the four issues before this Board, the two variances requested are the easiest to decide. There is no apparent conflict as to the testimony from the witnesses or from the Office of People's Counsel.

This site has constructed on it a large building with undersized driveways on either side of the building which has been used for a bank or savings and loan for a very long period of time. In addition, there is a sign on the site that also has been on the site for a long period of time.

First National Bank, after taking ownership of the site, investigated the zoning for the site and found that the size of the driveways and the sign does not conform to the Baltimore County Zoning Regulations (BCZR). The bank then petitioned the County to grant them variances for the driveways and the sign.

In order for a variance to be granted by this Board, the evidence presented must establish a practical difficulty or unreasonable hardship as defined in *McLean v. Soley*, 270 Md. 216, 1973.

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 variances 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

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THOMAS J. REINER
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1918-1980
WRITER'S DIRECT DIAL
823-7856

April 4, 1991

The Honorable Harold Reid
and Members of the Baltimore County Planning Board
4th Floor
Office of Planning and Zoning
Courts Building
Towson, Maryland 21204

Dear Chairman Reid and Members of the Planning Board:

RE: Request by
The First National Bank of Maryland
to accelerate pending cycle case,
the rear of 809 Eastern Boulevard,
former Irvington Federal and
office building site, Case No. CR-91-365-A

For the reasons, set out in this letter we are asking the Planning Board to accelerate this pending cycle case, so that if granted we can break winter with our landscaping and pavement improvements. These improvements to the parking area at 809 Eastern Boulevard are favored by the Essex Development Corporation, the Essex Middle River Chamber of Commerce and by the Economic Development Office.

During the recent zoning cycle which will be heard in the fall, this office filed a petition on behalf of The First National Bank of Maryland to reclassify a portion of the existing parking area in the rear of 809 Eastern Boulevard.

First National recently purchased the property from Irvington Federal, who in turn had purchased it from the original owners and builders, Germania Federal. Germania Federal developed the site in the early 1960's.

LO-11 11-11-1991

Chairman Reid and Members of the Planning Board
Page Two
April 4, 1991

Due to some inadvertent mapping error, and oversight by former owners, the rear of this long established commercial and office property is only partially zoned BL, with the majority of the parking area and adjacent areas zoned DR 16.

First National Bank wishes to upgrade the rear of the property, including a revised better circulation pattern, upgraded screening and landscaping, a security fence, and outdoor, remote teller lanes to be serviced from the building.

In order to accomplish these improvements, which will allow First National Bank, the present tenant of the first floor of the building to better serve its customers in Essex, the rear of the property must be properly zoned BL as is the front.

Under the applicable sections of the Zoning Regulations, the Baltimore County Council upon recommendation of the Planning Board may provide that a zoning case be heard out of cycle, in the public interest and/or in an emergency situation.

If this existing parking area is to be upgraded, and the additional lanes added on the eastside of the parking area for the proposed remote teller locations with better landscaping, then it should be done before winter sets in once again in the late fall.

However, if this case is not heard until sometime in September or October by the Board of Appeals, then it is unlikely that the improvements can be done before winter, (assuming that the Board agrees that the Council erred in not properly zoning the rear of this property over the years.)

We have discussed this proposal with Councilman Gardina, and he is thoroughly familiar with it. We are attaching a letter dated March 19, 1991 from the Councilman indicating that we must first go to the County Board of Appeals, and this Board before Council action can be taken to take it out of the cycle.

Furthermore, we have discussed this proposal with the Essex Revitalization Organization, and we attach the letter of the Essex Development Corporation dated March 27, 1991 endorsing our request.

April 23, 1991
Page Two

cc: The Honorable Vince Gardina
Fifth District Councilman

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

Mr. Richard Story, Director
Mr. Adam Wasserman
Mr. Daniel R. O'Donnell
Economic Development Commission

Mr. Richard L. Smith
Kilde Consultants, Inc.

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October 7, 1991

HAND DELIVERY

Honorable William T. Hackett
Chairman
County Board of Appeals of
Baltimore County
County Office Building, 3rd Floor
Towson, Maryland 21204

Re: Case No.: CR-91-365-A
Item 87, V, 1991
Petitioner: The First National Bank of Maryland
Reclassification Hearing: November 6, 1991

Dear Mr. Chairman:

As co-counsel for the Petitioner in the above case, I am respectfully requesting that the Board consider a longer hearing session on the afternoon of November 6, 1991 if it appears to the Board at that time that the entire case can be completed by staying somewhat longer.

Although I spoke with the Board's Administrative Secretary on October 3 about the possibility of starting earlier than 10:00 a.m., I understand that this may not be possible because of considerations of adequate notice and the prior advertisements.

Lastly, we are also respectfully requesting that the Board assign a second hearing day as close to November 6 as the Board's docket will permit, in the event the case is not completed on that date.

Thank you for your kind consideration of this request.

Very truly yours,

Stephen J. Nolan
Stephen J. Nolan

SJN/mao

Chairman Reid and Members of the Planning Board
Page Three
April 4, 1991

We have also discussed this matter with the Essex Chamber of Commerce, and we are told that the Essex Chamber of Commerce has no objection to these improvements either.

For all of these reasons, we respectfully request that in accordance with the applicable provisions of the Baltimore County Zoning Regulations, that the Planning Board recommend to the Council that it be heard out of cycle at the earliest opportunity of the Board of Appeals, in the public interest and due to the emergency nature of the request.

Thanking the Board for its review of this matter, and ready to answer any questions which the Board may have, I am

Respectfully,

Newton A. Williams
Newton A. Williams

NAW/psk

Enclosures

cc: The Honorable Vince Gardina, 5th District Councilman
The Essex Development Corporation
The Essex Chamber of Commerce
The Baltimore County Board of Appeals
The First National Bank of Maryland
Mr. David Fields, Director, OPZ
Mr. Timothy Dugan, OPZ
Mr. Richard Story, Director, Economic Development
Mr. Adam Wasserman, Economic Development
Mr. Daniel O'Donnell, Economic Development
Mr. Richard L. Smith, Kilde Consultants
Mr. Gerard A. Baxter, A.I.A.

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OF COUNSEL
T. BAYARD WILLIAMS, JR.
RICHARD L. SCHAEFFER
WRITER'S DIRECT DIAL
823-7856

October 18, 1991

HAND DELIVERY

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

Re: Case No.: CR-91-365A
Item 7, V, 1991
Petitioner: The First National Bank of Maryland
Hearing Date: November 6, 1991

Dear Mr. Chairman:

Reference is made to Mr. Zimmerman's letter dated October 11, 1991, concerning the above-captioned case. In that letter, Deputy People's Counsel states that this case should be continued because he contends that the Director of Planning and the Planning Board "failed to submit the necessary report on the critical area rezoning issue."

In sharp contrast to Mr. Zimmerman's assertion, we are confident that this case is properly before the Board and ready for presentation on November 6. To assist the Board's understanding of this case as a whole and to more fully respond to Mr. Zimmerman's letter, we will be submitting very shortly a Prehearing Memorandum of Law.

Additionally, we have learned from the Board's administrative staff that the Board may have November 13 available as a second hearing date for this case. Consistent with my October 7 letter, we are respectfully requesting that the Board assign November 6 and 13 as hearing dates for this case.

Thank you for your consideration of this letter.

Very truly yours,

Newton A. Williams
Stephen J. Nolan

SJN/mao

NEWTON A. WILLIAMS
WILLIAM M. HESSON, JR.
THOMAS J. REINER
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823-7856

April 23, 1991

Alan W. Kempske
Assistant Vice President
and Assistant Counsel
First National Bank of Maryland
Mail Code 109-820
P.O. Box 1596
Baltimore, Maryland 21203

RE: Request for Certification by Planning Board
to Recommend Expediting Scheduling of a
Reclassification Hearing for 809 Eastern Boulevard

Dear Mr. Kempske:

I am pleased to tell you that First National Bank did receive a favorable vote at the work session of the Committee on Development Plans and Issues of the Baltimore County Planning Board. We did attend that meeting on your behalf and did speak on behalf of the expedited scheduling.

Subsequently, a hearing was held in front of the entire Planning Board for the requested certification. Said request was based on Section 2-58.1(i) of the Baltimore County Code which requires that expediton be "manifestly in the public interest" or an "emergency". Once again, the vote was favorable and the motion for expediting was carried.

The Planning Board certification now proceeds to the County Council, where they must by affirmative vote approve the certification. Once the Council approves the certification, the Board of Appeals must schedule a hearing in not less than 30 days or more than 90 days from the date of certification.

We will follow up with the Council to lobby for approval of an expedited hearing.

Thank you for allowing Nolan, Plumhoff and Williams, Chartered to be of service.

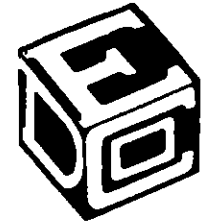
Very truly yours,

Newton A. Williams
Newton A. Williams

NAW/bid

cc: Peter Max Zimmerman, Esquire
Deputy People's Counsel

Lee R. Epstein, Esquire
John J. Dieter, DEPRM
David C. Flowers, DEPRM
P. David Fields, OPZ
Andrea J. Van Arsdale, OPZ
Harold G. Reid, Chairman, Planning Board
Alan W. Kempske, Esquire
John C. North, II, Chairman
Chesapeake Bay Critical Area Commission



ESSEX DEVELOPMENT CORPORATION
439 Eastern Blvd. • Essex, Md. 21221 • 687-9080

March 27, 1991

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS
Suite 700 - Court Towers
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Dear Mr. Williams:

At the Board of Directors meeting of the Essex Development Corporation held on March 18, EDCO's board unanimously agreed to support the out of cycle Zoning issue for the First National Bank property at 809 Eastern Boulevard. We believe the improvements you propose will enhance the Essex commercial corridor and will help First National Bank best serve its customers in Essex.

Sincerely,
Maelda Liberatore
Maelda Liberatore
President

LL/bkh



COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

VINCE GARDINA
COUNCILMAN FIFTH DISTRICT

COUNCIL OFFICE: 887-3184

March 19, 1991

Mr. Newton A. Williams
Nolan, Plumhoff & Williams
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Dear Newton:

I will support the rezoning request for the First National Bank of Maryland at 809 Eastern Boulevard. However, as you know, it must go before the Planning Board and Board of Appeals first.

If I can answer any questions, please let me know.

Sincerely,

Vince Gardina
Vince Gardina, Councilman
Fifth District

VG:st



* RCVD 10/30/91

1020 Cromwell Bridge Road
Baltimore, MD 21204-3346
(301) 321-5500
Direct Dial Number

To: John Lewis
DATE: C. Office of Zoning

Date: October 30, 1991
Re: 809 EASTERN BOULEVARD
1-31023
ZONING CASE NO. CR-91-365A

Attention: John

Gentlemen:

- We are submitting
- We are forwarding
- We are returning
- We request

Herewith

Under separate cover

No.	Description
3	Revised Plans to Accompany the Petition for Reclassification
3	Copies of the Revised Zoning Description
3	Copies of the Description to Accompany the Request for a Change to the Chesapeake Bay Critical Area Designation

Remarks:

- In accordance with your request
- For your review
- For processing
- Plans reviewed and accepted
- Plans reviewed and accepted as noted
- For revision by you

- For your use
- Please call when ready
- Please return to this office
- Approval requested
- Conference requested at your convenience

For further information, please contact the writer at this office.

Very truly yours,

KCI TECHNOLOGIES, INC.

cc: Files

Enclosures:
Nolan, Plumhoff & Williams
First National Bank of Md.

Richard L. Smith, Jr. Associate

ENGINEERS AND PLANNERS

Case No. CR-91-365-A /First National Bank Day #2 11/13/91

Petitioner's Exhibits (continued):

11. (A) Three photos of remote teller (various sites).
- (B) One photo of another site.
- (C) Two photos of automatic teller machine at another site.
- (D/E) Sales brochure from Diebold Corp. /automatic teller.
12. Environmental Impact Statement from Kilde Consultants of site.
13. Memorandum from KCI Technologies on ground water issues of site.
14. Letter dated 12/08/86 from Director of Planning to Councilman Norman Lauenstein listing various critical area IDCA issues numbering 18, plus a specific letter on 209 Eastern Avenue from the Petitioner.
15. Council Bill No. 9-87 /Chesapeake Bay Critical Area - Official Interim Map
16. Photograph of site on Eastern Avenue looking east.
17. Photograph of Eastern Avenue looking west from in front of site.
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30. Habitat Assessment Report: For Selected Portions of the Property at 809 Eastern Boulevard.
31. Baltimore County Code, Section 2.356 and other selected sections (12 pages).

1st National Bank CR-91-365-A

People's Counsel Exhibits:

1. Chesapeake Bay Critical Areas Land Use Map
2. Baltimore County Planning & Zoning Photographic Map of Essex /NE, 2-G
3. Case /Bellanca v. County Commissioners, 86 Md. App. 219 (1991)
4. Chesapeake Bay Critical Area Commission: Law 1984, Amendments and Criteria, 1986 edition.

THE FIRST NATIONAL BANK
SE/s Eastern Blvd., 582' SW of
c/1 Marlyn Ave. (809 Eastern
Boulevard)

CR-91-365-A
Item #7, Cycle V, 1991
15th Election District
5th Councilmanic District

D.R.-16 to B.L. .91 acres, 1.31 acres overall
VAR-driveaway width; business
signs (Documented Plan)
(C.B. Critical Area)

March 1, 1991

Petition filed.

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Suite 700, Court Towers
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Towson, Maryland 21204

Counsel for Petitioner

Stephen J. Nolan, Esquire
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210 W. Pennsylvania Avenue
Towson, Maryland 21204

Counsel for Petitioner

The First National Bank
Alan W. Kampke, Asst. V.P.
P.O. Box 1596
Baltimore, Maryland 21203

Petitioner

Mr. James Earl Kraft
Baltimore County Board of Education
940 York Road
Towson, Maryland 21204

Phyllis C. Friedman, Esquire People's Counsel for Baltimore
County

P. David Fields
Pat Keller
Public Services
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.

Docket Clerk - Zoning
Approved Station, Chief Deputy Attorney
Mike Moran, Assoc. County Attorney

Lee R. Epstein, Esq. - Counsel for Petitioner
Linowes & Blocher
1010 Wayne Ave, 10th Fl.
P.O. Box 8738
Silver Spring, MD 20907
8/12/91

CR-91-365-A

Day #1

1st Nat'l Bank

11/13

11/10/91

11/10/91

11/10/91

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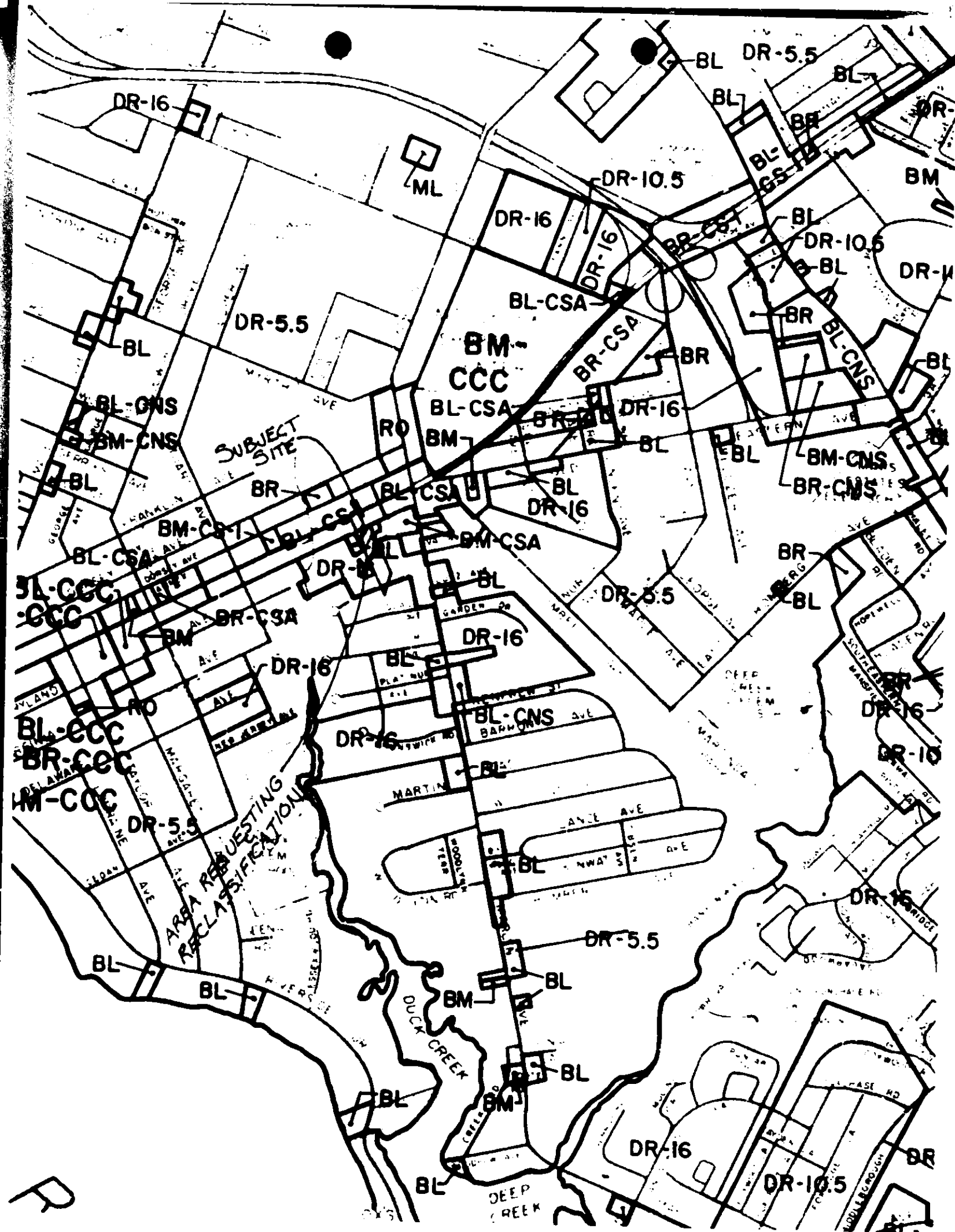
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safety and welfare secured.

This Board believes First National Bank has established that there would be an unreasonable hardship or a practical difficulty created if it were required to conform to the BCZR at this late date and that the standards stated in "Soley" have been met.

The third request by the Petitioner is a request to rezone a long-standing parking lot from D.R.16 to B.L. zoning. This site is used as an office building with a rear parking lot. This parking lot serves as the off-street parking for the site as required by the BCZR. The rear parking lot is zoned D.R.16 and is non-conforming with the BCZR. The proper zoning is B.L. Here again, there is no conflict with the testimony of the witnesses or the People's Counsel.

This parking lot has been used with and for the office building on the site for a long period of time. First National Bank discovered the incorrect zoning for the site after becoming the owners of this site. In order for the Board to reclassify this site, the Board must find that the site is or will conform to Bill No. 46, 1979:

(2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the

IN THE MATTER OF THE APPLICATION OF THE FIRST NATIONAL BANK FOR ZONING RECLASSIFICATION FROM D.R. 16 TO B.L. AND VARIANCES ON PROPERTY LOCATED ON THE SOUTH-EAST SIDE OF EASTERN BOULEVARD, 582' SOUTHWEST OF THE CENTERLINE OF MARLEN AVENUE (809 EASTERN BOULEVARD); 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

PETITIONER'S MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION AND REQUEST FOR EXPEDITED HEARING AND STAY

THE FIRST NATIONAL BANK OF MARYLAND, by its attorneys, Stephen J. Nolan, Nolan, Plumhoff & Williams and David M. Flott and Linowes and Blocher, moves, pursuant to Board Rule 10, for a revised Order clarifying, or in the alternative, reconsidering the terms of the Board's April 1, 1992 Opinion and Order as entered in the above case. Petitioner further seeks herein a stay of the transmittal of the Board's decision to the Chesapeake Bay Critical Area Commission until such time as the Board rules on the instant motion. The grounds of this motion are as follows:

1. This case is before the County Board of Appeals on The First National Bank of Maryland's (the "Bank") Petition for Zoning Reclassification and Variance originally filed on March 1, 1991, seeking B.L. zoning for the rear of its Eastern Boulevard Branch. On August 14, 1991, the Bank filed an Amended Petition and amended site plan at a public hearing. The purpose of that amendment was to incorporate in this case a request for a critical area classification of the existing

EXHIBIT B

LAW OFFICE NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

county plan for sewerage and water-supply facilities, and the capital program. [Bill No. 46, 1979.]

In addition, if one were to look at Surhovich v. Doub, 258, Md. 263, on page 275,

the original zoning on the 1960 map was in error because of the complete failure of the Council to consider existing uses at the time, and its complete failure to follow the logical recommendations of the Planning Board which did not only recognize existing uses of the subject property, but was completely in accord with reasonable uses in the immediate vicinity which the map as adopted,

with the testimony of a neighbor who at the time was the Vice-Chairman of the Planning Board who stated that he believed the parking lot was zoned B.L. and that if he had known that it was not he would have recommended to the Council B.L. zoning for the site.

The Board believes that there was error on the zoning of the existing parking lot and that the proper zoning for the existing parking lot is B.L.

The fourth and most difficult request by the Petitioner is a request to change the Critical Area designation of the site from a Limited Developed Area to an Intensely Developed Area.

The critical areas were established by the State of Maryland for the protection of the Chesapeake Bay. A Commission was created and charged with the development of criteria that will accommodate growth, and also provide for the conservation of habitat and the protection of water quality in Chesapeake Bay Critical Areas.

COMAR Title 14, Subsection 15, Chapter 02.03 defines Intensely Developed Areas as:

A. Intensely Developed Areas are those areas where residential, commercial, institutional, and/or industrial, developed land uses predominate, and where relatively little natural habitat occurs. These areas shall have at least one of the following features:

parking lot and a related 50 foot strip area from Limited Development Area ("LDA") to an Intensely Developed Area ("IDA") designation.

2. Subsequent to the August 14 hearing, the Board heard testimony on November 6, 1991 and the hearing concluded on November 13, 1991.

3. On April 1, 1992, the Board filed the attached Opinion and Order (hereinafter the "Order" and marked "Exhibit A") in which it noted that this was "the first time this Board has heard an alleged mistake or map error concerning a critical area reclassification." For the reasons enumerated below, Petitioner most respectfully contends that in this case of first impression there are the following ambiguities and omissions within the Order which are in need of clarification. In the alternative, your Petitioner requests that the Board reconsider its Order so that the following mistakes and inadvertent errors in the Order may be corrected:

a. Through inadvertence or mistake, the Board's Order fails to clearly address and rule on the outcome of that portion of the Petitioner's B.L. zoning request that dealt with the 50 foot strip (see hatched area [///] on "Exhibit B" hereto) which adjoins the existing paved parking lot on the east.

b. The overwhelming weight of the evidence clearly established that there was a mistake in the designation of

LAW OFFICE NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

(1) Housing density equal to or greater than four dwelling units per acre;

(2) Industrial, institutional, or commercial uses are concentrated in the area; or

(3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

B. In addition, these features shall be concentrated in an area of at least 20 adjacent acres, or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.

The Board believes that the existing site "used" for parking and office building conform to COMAR 14.15.02.3.A and B.

Tim Dugan of the Office of Planning and Zoning testified that this existing site's area used as parking and office building was to be and was listed as an IDA but somehow it was not placed on the maps submitted to the Critical Area Commission for their approval.

David Flowers of DEPRM testified that DEPRM had no objection to the existing parking lot and office building being designated an IDA, but would oppose any expansion or intensification of the existing site.

Norman Gerber's, former Director of the Office of Planning and Zoning, testimony was essentially the same as Tim Dugan's.

The Board believes that there was a mistake made in the maps submitted to the Commission and that the proper designation of the site is IDA, but does not believe that the site should be expanded or intensified. In addition, the Board is of the opinion that COMAR 14.15.02.07 may be the proper procedure to follow in this case on this issue.

.07 Grandfathering.

A. After program approval, local jurisdictions shall permit the continuation, but not necessarily the

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intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 14.15.11.

Therefore after considering all of the evidence, memorandum, and argument, the Board is of the opinion that the proper designation for the existing site is B.L. with an IDA critical area designation, but only for the site that is presently being used for the office building/bank and parking lot with no intensification or expansion of any use on the site.

ORDER

IT IS THEREFORE this 1st day of April, 1992 by the County Board of Appeals of Baltimore County ORDERED that the Petitions for Variances are hereby GRANTED; and

IT IS FURTHER ORDERED that the granting of the IDA designation for the site from LDA designation must be approved by the Chesapeake Bay Critical Area Commission before such designation shall become effective.

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

Michael B. Saug, Acting Chairman
S. Diane Levero
John G. Disney

LAW OFFICE NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

of wildlife and plant habitat, and consistency with land use policies for development in the Critical Area. Although the Petitioner made a prima facie showing with substantial evidence concerning those three added requirements, the Opinion and Order do not contain the required written findings even though they may be implied. This failure may cause the Critical Area Commission to remand for the purpose of meeting the finding requirements.

e. The Order segment of the Opinion is ambiguous and unclear in that it fails to state the Board's final ruling on the Petition for Zoning Reclassification.

4. As stated in Redding v. Board of County Commissioners, 263 Md. 94, 111 (1971) citing Zoning Appeals Board v. McKinney, 174 Md. 551, 564-566 (1938), an administrative body has the right to reconsider a decision if an error has been caused by fraud, surprise, mistake or inadvertence. This is just such a case and substantial injustice will result to your Petitioner unless the Order is clarified and/or reconsidered.

WHEREFORE, Petitioner prays as follows:

A. That the Board set this matter in for an expedited hearing on this Motion; and

B. That the Board stay the transmittal of its Opinion and Order to the Chesapeake Bay Critical Area Commission until this matter is resolved.

LAW OFFICE NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

Stephen J. Nolan
STEPHEN J. NOLAN
NOLAN, PLUMHOFF & WILLIAMS, CHTD
Suite 700, Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204
(410) 823-7800

David M. Plott
DAVID M. PLOTT
LINOWES & BLOCHER
145 Main Street
P.O. Box 31
Annapolis, Maryland 21404
(301) 269-0045

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of April 1992, a copy of the foregoing Petitioner's Motion For Clarification Or, In The Alternative, Motion For Reconsideration And Request For Expedited Hearing And Stay was mailed, postage prepaid, to Phyllis Cole Friedman and Peter Max Zimmerman, Office of People's Counsel for Baltimore County, Court House, Towson, Maryland 21204.

Stephen J. Nolan
Stephen J. Nolan

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LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

-5-

IN THE MATTER OF THE APPLICATION OF THE FIRST NATIONAL BANK FOR ZONING RECLASSIFICATION FROM D.R. 16 TO B.L. AND VARIANCES ON PROPERTY LOCATED ON THE SOUTH-EAST SIDE OF EASTERN BOULEVARD, 582' SOUTHWEST OF THE CENTERLINE OF MARLYN AVENUE (809 EASTERN BOULEVARD); 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

THE BOARD IS IN RECEIPT OF PETITIONER'S MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION AND REQUEST FOR EXPEDITED HEARING AND STAY FILED IN THE SUBJECT MATTER.

THE BOARD HAS CONSIDERED THE PETITION AND DOES NOT FIND THAT ITS OPINION AND ORDER DATED APRIL 1, 1992 CONTAINS ANY ERROR CAUSED BY FRAUD, SURPRISE, MISTAKE OR INADVERTENCE; NOR DOES THE BOARD FEEL THAT THE OPINION IS AMBIGUOUS OR UNCLEAR. IT IS THEREFORE DENYING THE REQUEST THAT IT RECONSIDER ITS DECISION. SHOULD THE PETITIONER FEEL AGGRIEVED BY THE BOARD'S DECISION, IT HAS THE REMEDY TO FILE AN APPEAL TO THE CIRCUIT COURT FOR BALTIMORE COUNTY WITHIN 30 DAYS FROM THE DATE OF THE BOARD'S ORIGINAL ORDER.

IT IS THEREFORE THIS 15th DAY OF APRIL, 1992 BY THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

ORDERED THAT THE PETITIONER'S MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION AND REQUEST FOR EXPEDITED HEARING AND STAY BE AND IS HEREBY DENIED; AND

EXHIBIT

C

Case No. CR-91-365-A First National Bank/ Ruling

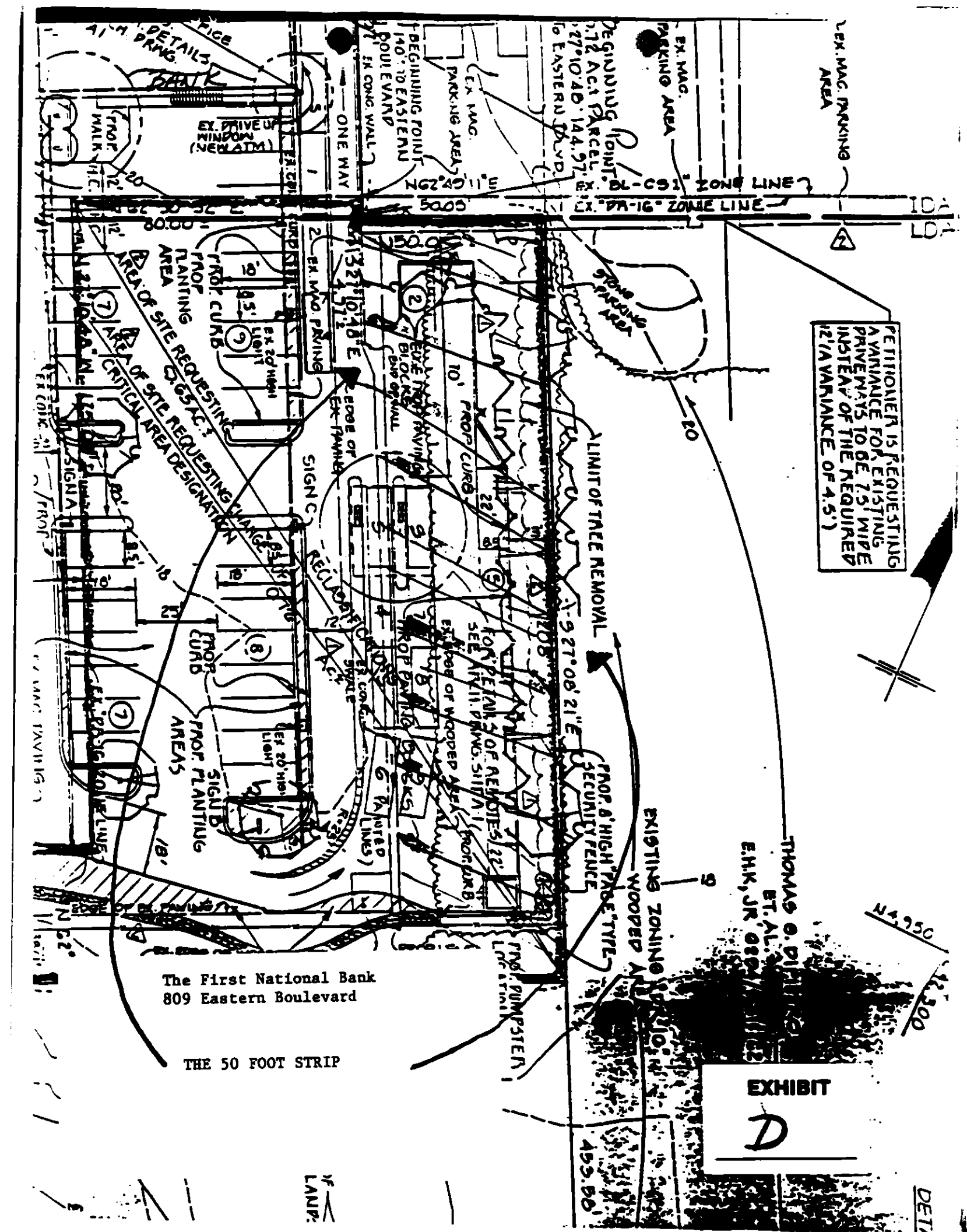
IT IS FURTHER ORDERED that the request for stay for the transmittal of the Board's Opinion and Order to the Chesapeake Bay Critical Area Commission is also DENIED.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Michael B. Sauer
Michael B. Sauer, Acting Chairman

S. Diane Levero
S. Diane Levero

John G. Disney
John G. Disney



NEWTON A. WILLIAMS
THOMAS J. HENERT
WILLIAM P. ENGLISH, JR.
STEPHEN J. NOLAN
ROBERT L. HANLEY, JR.
ROBERT S. GURBANOVICH
STEPHEN M. SCHENNING
DOUGLAS S. BURGESS
ROBERT E. CARROLL, JR.
LOUIS G. CLORSE, III
E. BRUCE JONES, III
GREGORY J. JONES
J. JOSEPH CURRAN, III
ALSO ADMITTED IN N.J.

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, COURT TOWERS
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TOWSON, MARYLAND 21204-5340
(410) 823-7800
TELEFAX (410) 298-2765

JAMES D. NOLAN
1940-1980
J. EARLE PLUMHOFF
1940-1981
RALPH E. DEITZ
1908-1980
OF COUNSEL
T. BAYARD WILLIAMS, JR.
RICHARD L. SCHEFFER
WRITER & DIRECT DIAL
893 7853

May 8, 1992

VIA HAND DELIVERY

Clerk of the Court
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: The First National Bank of Maryland
Case No.: 92CV4035/21/146
PETITION FOR APPEAL

Dear Madam Clerk:

Enclosed please find Appellant's Petition for Appeal to be filed in the above-referenced case.

Thank you for your assistance in this matter.

Very truly yours,

Stephen J. Nolan
Stephen J. Nolan

SJN/mao

encl.

cc: County Board of Appeals of Baltimore County ✓
John J. Delaney, Esquire
David M. Plott, Esquire
Phyllis Cole Friedman, Esquire
Alan W. Kempfske, Esquire

IN THE MATTER OF THE APPLICATION OF THE FIRST NATIONAL BANK FOR ZONING RECLASSIFICATION FROM D.R. 16 TO B.L. AND VARIANCES ON PROPERTY LOCATED ON THE SOUTH-EAST SIDE OF EASTERN BOULEVARD, 582' SOUTHWEST OF THE CENTERLINE OF MARLYN AVENUE (809 EASTERN BOULEVARD); 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
Doc. No. 21
Folio No. 146
File No. 92-CV-4035

Madam Clerk: CERTIFICATE OF NOTICE

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Michael B. Sauer, S. Diane Levero, and John G. Disney, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Stephen J. Nolan, Esquire, Nolan, Plumhoff & Williams, Chtd., Suite 700, Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, Counsel for Plaintiff; David M. Plott, Esquire, Linowes & Blocher, 145 Main Street, P.O. Box 31, Annapolis, Maryland 21404, Co-Counsel for Plaintiff; Alan W. Kempfske, Assistant Vice-President, The First National Bank of Maryland, P.O. Box 1596, Baltimore, Maryland 21203, Plaintiff; Phyllis C. Friedman, People's Counsel for Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204; Michael J. Moran, Asst. County Attorney, Office of Law, Old Courthouse, Second Floor, 400 Washington Avenue, Towson, Maryland 21204; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland

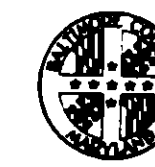
Case No. CR-91-365-A The First National Bank
File No. 92-CV-4035

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

LindaLee M. Kuszmaul
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 Stephen J. Nolan, Esquire, Nolan, Plumhoff & Williams, Chtd., Suite 700, Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, Counsel for Plaintiff; David M. Plott, Esquire, Linowes & Blocher, 145 Main Street, P.O. Box 31, Annapolis, Maryland 21404, Co-Counsel for Plaintiff; Alan W. Kempfske, Assistant Vice-President, The First National Bank of Maryland, P.O. Box 1596, Baltimore, Maryland 21203, Plaintiff; Phyllis C. Friedman, People's Counsel for Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204; Michael J. Moran, Asst. County Attorney, Office of Law, Old Courthouse, Second Floor, 400 Washington Avenue, Towson, Maryland 21204; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 on this 30th day of April, 1992.

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



County Board of Appeals of Baltimore County

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

April 30, 1992

Phyllis C. Friedman
People's Counsel for Baltimore County
Room 47, Basement - Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. CR-91-365-A (The First National Bank of Maryland)

Dear Ms. Friedman:

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
LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Mr. James Earl Kraft
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotrocco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration
Michael J. Moran, Asst. County Attorney



County Board of Appeals of Baltimore County

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

April 30, 1992

Stephen J. Nolan, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Case No. CR-91-365-A (The First National Bank of Maryland)

Dear Mr. Nolan:

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,
LindaLee M. Kuszmaul
LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: David M. Plott, Esquire
Alan W. Kempske, Asst. V.P.
The First National Bank of Maryland

NEWTON A. WILLIAMS
THOMAS J. REINER
WILLIAM H. FROELICHMANT, JR.
STEPHEN J. NOLAN
ROBERT L. HANLEY, JR.
ROBERT S. GUSHAROW
STEPHEN M. SCHWENK
DOUGLAS L. BURRESS
ROBERT E. SHILL, JR.
LOUIS G. KLOSE, III
E. BRUCE JONES
GREGORY J. JONES
J. JOSEPH CURRAN, III
*ALSO ADMITTED N.J.C.
*ALSO ADMITTED N.J.S.J.

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
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SUITE 700 COURT TOWERS
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JAMES D. NOLAN
WETHEO 9800
J. EARLE PLUMHOFF
1840-9888
RALPH E. DEITZ
1884-9800
OF COUNSEL
T. BAYARD WILLIAMS, JR.
RICHARD L. SCHAEFFER
WRITER'S DIRECT DIAL
NO. 7853

April 29, 1992

HAND DELIVERY
Suzanne Mench
Clerk of the Court
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: New Administrative Appeal from
the County Board of Appeals of Baltimore County
Appellant, The First National Bank of Maryland

Dear Madam Clerk:

As co-counsel with the law firm of Linowes and Blocher, I am hand delivering herewith the enclosed Order for Appeal on behalf of our client, The First National Bank of Maryland. Also enclosed is our firm's check in the amount of \$92.00 to cover the filing fee for docketing this new case.

A separate Petition on Appeal shall be filed in accordance with the Maryland Rules.

Thank you for your attention to this matter.

Very truly yours,
Stephen J. Nolan
Stephen J. Nolan

SJN/mao

cc: Administrative Secretary
County Board of Appeals of
Baltimore County
Peter Max Zimmerman, Esquire
Office of People's Counsel
David M. Plott, Esquire
Linowes and Blocher
Alan W. Kempske, Esquire
The First National Bank of Maryland
Mr. Richard Smith
KCI Consultants

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

IN THE MATTER OF THE APPLICATION
OF THE FIRST NATIONAL BANK FOR
ZONING RECLASSIFICATION FROM
D.R. 16 TO B.L. AND VARIANCES
ON PROPERTY LOCATED ON THE SOUTH-
EAST SIDE OF EASTERN BOULEVARD,
582' SOUTHWEST OF THE CENTERLINE
OF MARLYN AVENUE (809 EASTERN
BOULEVARD); 15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. _____
* Appeal from the County
* Board of Appeals of
* Baltimore County

Appellant * * * * *

ORDER FOR APPEAL

THE FIRST NATIONAL BANK OF MARYLAND, Appellant herein, by its attorneys, Stephen J. Nolan and David M. Plott, pursuant to Md. Rule B2, hereby files this appeal from the Opinion and Order of the County Board of Appeals of Baltimore County dated April 1, 1992 in Board Case No. CR-91-365-A. A copy of the order being appealed is attached to this notice of appeal.

Stephen J. Nolan
Stephen J. Nolan
NOLAN, PLUMHOFF & WILLIAMS, CHTD
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Towson, Maryland 21204
(410) 823-7800

David M. Plott
David M. Plott
LINOWES AND BLOCHER
145 Main Street
P.O. Box 31
Annapolis, Maryland 21404
(401) 269-0045
Attorneys for Appellant

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

CERTIFICATE OF COMPLIANCE WITH
RULE B2 SERVICE REQUIREMENT

I HEREBY CERTIFY on this 29th day of April, 1992, that in accordance with Md. Rule B2(c), a copy of the foregoing Order for Appeal was served by hand delivery on Kathi Wiedenhammer, Administrative Secretary to the County Board of Appeals of Baltimore County at the Board's offices in the Old Court House, Ground Floor, Washington Avenue, Towson, Maryland 21204.

Stephen J. Nolan
Stephen J. Nolan

0872C(3-4)

IN THE MATTER OF THE APPLICATION * BEFORE THE
OF THE FIRST NATIONAL BANK FOR * COUNTY BOARD OF APPEALS
ZONING RECLASSIFICATION FROM * OF
D.R. 16 TO B.L. AND VARIANCES * BALTIMORE COUNTY
ON PROPERTY LOCATED ON THE SOUTH- *
EAST SIDE OF EASTERN BOULEVARD, *
582' SOUTHWEST OF THE CENTERLINE *
OF MARLYN AVENUE (809 EASTERN *
BOULEVARD); 15TH ELECTION DISTRICT * CASE NO. CR-91-365-A
5TH COUNCILMANIC DISTRICT * Item #7, CYCLE V

OPINION

This case comes before the Board on a Petition requesting a zoning reclassification to B.L. of a long-standing parking lot zoned D.R.16 which is located behind an existing office building/bank. This long-standing parking lot is used for the required off-street parking of the office building/bank. In addition, the Petitioner requests a critical area reclassification of the long-standing parking lot and related area from Limited Development (LDA) to Intensely Developed Area (IDA). Two variances are also being requested.

This is the first time this Board has heard an alleged mistake or map error concerning a critical area classification. The Deputy People's Counsel, in his closing argument, argued that the hearing before this Board was not the proper procedure for a correction of a map error or drafting error. This Board will decide, because of quasi judicial economy reasons, this case on this Petition and will not reject the critical area classification portion of the Petition for procedural reasons.

There were many witnesses in this case. The most significant witnesses being Tim Dugan of the Office of Planning and Zoning, David Flowers of the Department of Environmental Protection and Resource Management (DEPRM), an officer of First National Bank/owners, the commercial neighbors on either side of the site,

Case No. CR-91-365-A The First National Bank 2
and Norman Gerber - former Director of the Office of Planning and Zoning and now a consultant on urban planning and zoning.
Of the four issues before this Board, the two variances requested are the easiest to decide. There is no apparent conflict as to the testimony from the witnesses or from the Office of People's Counsel.

This site has constructed on it a large building with undersized driveways on either side of the building which has been used for a bank or savings and loan for a very long period of time. In addition, there is a sign on the site that also has been on the site for a long period of time.

First National Bank, after taking ownership of the site, investigated the zoning for the site and found that the size of the driveways and the sign does not conform to the Baltimore County Zoning Regulations (BCZR). The bank then petitioned the County to grant them variances for the driveways and the sign.

In order for a variance to be granted by this Board, the evidence presented must establish a practical difficulty or unreasonable hardship as defined in McLean v. Soley, 270 Md. 216, 1973.

- 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

Case No. CR-91-365-A The First National Bank 3
safety and welfare secured.

This Board believes First National Bank has established that there would be an unreasonable hardship or a practical difficulty created if it were required to conform to the BCZR at this late date and that the standards stated in "Soley" have been met.

The third request by the Petitioner is a request to rezone a long-standing parking lot from D.R.16 to B.L. zoning. This site is used as an office building with a rear parking lot. This parking lot serves as the off-street parking for the site as required by the BCZR. The rear parking lot is zoned D.R.16 and is non-conforming with the BCZR. The proper zoning is B.L. Here again, there is no conflict with the testimony of the witnesses or the People's Counsel.

This parking lot has been used with and for the office building on the site for a long period of time. First National Bank discovered the incorrect zoning for the site after becoming the owners of this site. In order for the Board to reclassify this site, the Board must find that the site is or will conform to Bill No. 46, 1979:

- (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the

Case No. CR-91-365-A The First National Bank 4
county plan for sewerage and water-supply facilities, and the capital program. [Bill No. 46, 1979.]
In addition, if one were to look at Surhovich v. Doub, 258, Md. 263, on page 275,

the original zoning on the 1960 map was in error because of the complete failure of the Council to consider existing uses at the time, and its complete failure to follow the logical recommendations of the Planning Board which did not only recognize existing uses of the subject property, but was completely in accord with reasonable uses in the immediate vicinity which the map as adopted,

with the testimony of a neighbor who at the time was the Vice-Chairman of the Planning Board who stated that he believed the parking lot was zoned B.L. and that if he had known that it was not he would have recommended to the Council B.L. zoning for the site.

The Board believes that there was error on the zoning of the existing parking lot and that the proper zoning for the existing parking lot is B.L.

The fourth and most difficult request by the Petitioner is a request to change the Critical Area designation of the site from a Limited Developed Area to an Intensely Developed Area.

The critical areas were established by the State of Maryland for the protection of the Chesapeake Bay. A Commission was created and charged with the development of criteria that will accommodate growth, and also provide for the conservation of habitat and the protection of water quality in Chesapeake Bay Critical Areas.

COMAR Title 14, Subsection 15, Chapter 02.03 defines Intensely Developed Areas as:

- A. Intensely Developed Areas are those areas where residential, commercial, institutional, and/or industrial, developed land uses predominate, and where relatively little natural habitat occurs. These areas shall have at least one of the following features:

Commissioners, 271 Md. 352, 317 A.2d 142 (1974), it was said at 361 [147]:

"To support a zoning reclassification, there must be evidence before the legislative body which establishes that 'mistake' was 'basic and actual'; and that it was made 'at the time' the property was zoned, which in this case would have been at the time of the original zoning in 1965. *Surkovich v. Doub*, 259 Md. 263, 271, 265 A.2d 447 (1970); *Miller v. Abrahams*, 239 Md. 263, 266, 211 A.2d 309 (1965) (emphasis in original). Furthermore, the 'mistake' alleged to have occurred must relate to the specific property for which the rezoning is sought, and may not consist of generalities. *see Surkovich v. Doub, supra* at 271."

The evidence to be presented in this case will clearly show that R.A. zoning of the parking lot by the County Council on the Comprehensive Zoning Map for the Northeastern Planning Area adopted September 6, 1966, was a basic and actual mistake. This error was perpetuated with DR16 zoning throughout the adoption of the 1971, 1976, 1980, 1984 and 1988 comprehensive zoning maps. Although R-A (Residential, Apartment) zoning of the rear portion of this property may have been appropriate as adopted in 1955, Germania Federal's construction of the building and parking lot in the early 1960's should have resulted in sufficient B.L. zoning in 1966 to accommodate and recognize the commercial nature of that parking lot rather than overlaying a high density residential zone on such a commercial use.

Additionally, the Planning Staff and the Planning Board have twice recommended the requested B.L. reclassification during the prehearing phases of this case. Furthermore, this

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damage to the jurisdictions' local critical area programs. Indeed, that is why the statute recognized a standard and a process for rectifying the mistake that it is only human to make -- especially in the whirlwind and massive local critical area program development and mapping tasks which hard-pressed county staffs had to undertake in 1986 and 1987.

As a factual matter, the 38-car parking lot immediately behind and adjacent to the three (3)-story commercial office building that houses the First National Bank of Maryland is entirely paved and has been so since the building was constructed in about 1961; it thus existed at the purported date of mapping, December 1, 1985. The parking and driveways, a vital, integral part of the use, serves the Bank and the office building, and is subject to regular and intensive human activity. Indeed, active parking lots adjacent to commercial uses may be among the most intense kind of land uses, given their usual impervious nature and the constant, random movement of automobiles and people about them.

When this area was mapped, however, a straight IDA-LDA line of convenience was drawn along the backs of all the building units in this short strip. Only in this case did the IDA-LDA line separate a supporting parking lot from its commercial use at the Eastern Boulevard frontage, to which it clearly (primarily) relates and which it assuredly supports. Due in part to its location on the area aerial photograph

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mistake in DR16 zoning contributed to an incorrect critical area designation in that a repeated failure to correctly zone the parking lot led in part to a failure to properly designate this same lot on the final Official Critical Area Map.

III.

THE EVIDENCE WILL SHOW THAT ALL CODE REQUIREMENTS HAVE BEEN MET TO SUPPORT THE CRITICAL AREA RECLASSIFICATION TO IDA

A.

Background of the Critical Area Law and Land Classifications and the Process for Map Changes

In 1984, the State legislature created a special environmental protection program for a minimum 1000-foot band around the Chesapeake Bay and its tributaries. Known as the Critical Area Program and created by state statute, the central idea was for an appointed, broad-based State Critical Area Commission ("CAC") to develop state-wide criteria which were then to be applied in locally-developed and administered programs. The three overarching goals were (and are) water quality protection, habitat conservation, and accommodation of reasonable development with environmental safeguards.

Baltimore County adopted and gained CAC approval for its Critical Area Program in the 1987-1988 time frame. An integral part of the local program was the adoption and use of official critical area maps that split the critical area into three land use classifications, within a Critical Area "Overlay" zone: Intensely Developed Areas ("IDAs"), Limited Development Areas

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(i.e., in a corner) and the shadow distortion characteristic of such a location, and due to other aerial photographic problems with adjacent woods, shadows or clarity, an unstudied or hurried look at this mapping aid may have given the impression that the parking lot was either not extensive or not fully paved; on the other hand, it is both. Even if field-checked with a "windshield survey" (and there seems to be no direct evidence on hand in the County that such occurred in this location), unless the automobile went aside and behind each building, the actual, fully developed nature of the back of this site would remain undiscovered.

Even if the use was discovered in the final mapping, and the placement of the IDA-LDA line was considered an intentional, however, it is clear that a legal error was made. This developed property, from Eastern Boulevard to the back of its paved parking lot and logically inclusive of the contiguous strip of currently undeveloped land that is adjacent to its northeast property line, precisely meets IDA criteria from Appendix IV-B at Part C:

... areas where ... commercial developed land uses predominate and where relatively little natural habitat occurs. [Additionally,] industrial, institutional, or commercial uses are concentrated in the area[.]

Emphasis added. While about one half of this two-acre site, behind the parking area, is wooded, the northern half is

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("LDAs"), and Resource Conservation Areas ("RCAs"). Definitions for the three were contained in the State criteria (COMAR 14.15.02.03, .04, and .05) (Exhibit F) and are incorporated by reference in the Baltimore County Code (the "Code") in Sections 26-438. Each of their special development restrictions and other requirements are contained in the Code at Sections 26-452 and 26-453. In brief, these mapped areas were to reflect the primary or predominant land use in existence late in 1985. Rules were developed by the County to produce the maps, and these are contained in Appendix IV-B to the County's Critical Area Program (Exhibit G).

IDAs are primarily and predominantly intensively developed with residential, commercial, institutional and/or industrial land uses "... and where relatively little natural habitat occurs" (i.e., recognizing that some might occur therein). LDAs contain primarily low to moderate intensity development, and also contain areas of natural plant and animal habitat. RCAs are characterized by mostly nature-dominated or open space uses or natural resource-utilization activities such as farming or forestry.

Once officially mapped, a piecemeal-type mapping change may be sought by a landowner based solely upon proof of mistake in the original classification or mistake in the boundaries shown in the official critical area map. Baltimore County Code, Section 2-58.1(j) (3)a.(i). The Board of Appeals, in evaluating a reclassification request, is to consider the CAC

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clearly dominated by intense development and relates solely to the Eastern Boulevard commercial area. The upper half of this site is clearly not "currently developed in low or moderate intensity uses...", in accordance with the LDA criteria at Appendix IV-B at D, where "the quality of runoff has not been substantially altered or impaired." Pursuant to the legal definition, this is an Intensely Developed Area.

C.

Environmental Impacts and Environmental Improvement

Finally, the environmental impacts from this proposed reclassification (and planned development of two automatic teller machines in the unpaved strip) will not be significant. Stormwater runoff pollutant loadings from the existing parking and newly developed areas will be improved by at least ten (10) percent pursuant to the Code at section 26-452; thus, not only will water quality impacts be minimized, existing adverse impacts will be lessened with the proposed development. The proposal will also not likely adversely affect the groundwater recharge regime. No "habitate protection areas" or other significant critical area fish, plant or wildlife habitat will be adversely impacted. The proposed reclassification will recognize existing fact, and will serve to accommodate needed and useful economic development of commercial Essex without imposing new environmental impacts of any significance. Thus, the standards set out in the Code at Sections 2-356(j) (3)b.1-3 are fully met.

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criteria in COMAR 14.15.02 and the Appendix IV-B mapping standards, as well as make certain written findings. These are referenced below.

B.

Factual and Legal Bases for Mistake in the Mapping of the First National Bank Property

Petitioner's factual and legal bases for asserting error in the original critical area mapping of its property are especially strong. At the Board's hearing, these bases will be supported by expert testimony of the highest caliber and credibility.

It should be noted that while this mistake case appears to be one of first impression in Baltimore County, mistake cases have been heard and decided favorably for petitioners in several Critical Area counties, and that many of those proposed map changes were subsequently approved by the CAC.¹ Those map changes, justifiably made because an error was satisfactorily demonstrated, did not do severe or lasting

¹ For example, in one recent case in Somerset County, a 7.4 acre parcel had been originally mischaracterized and mapped an RCA, whereas due to the presence of several housing units, it should be LDA. This was recognized by the County Commissioners and approved by the CAC. (*D&A Island Limited Partnership, CBCA/MA 90-1*) In another in Cecil County, a 43.3 acre campground had erroneously been classified as RCA, but won LDA designation based on the earlier mistake. (*Corridor Land Services Rezoning Decision*, 21 February 1989.)

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CONCLUSION

Petitioner First National Bank of Maryland respectfully urges the grant of its amended petition as filed herein.

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Lee R. Epstein
Lee R. Epstein
LITWOMES AND BLOCKER
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The Atrium at Station Square
Silver Spring, Maryland 20910
(301) 588-6580

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of November, 1991, a copy of the foregoing Petitioner's Prehearing Memorandum of Law was hand delivered, to Peter Max Zimmerman, Esquire, Deputy People's Counsel, County Office Building, 3rd Floor, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Stephen J. Nolan
Stephen J. Nolan

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- (1) Housing density equal to or greater than four dwelling units per acre;
- (2) Industrial, institutional, or commercial uses are concentrated in the area; or
- (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

B. In addition, these features shall be concentrated in an area of at least 20 adjacent acres, or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.

The Board believes that the existing site "used" for parking and office building conform to COMAR 14.15.02.3.A and B.

Tim Dugan of the Office of Planning and Zoning testified that this existing site's area used as parking and office building was to be and was listed as an IDA but somehow it was not placed on the maps submitted to the Critical Area Commission for their approval.

David Flowers of DEPRM testified that DEPRM had no objection to the existing parking lot and office building being designated an IDA, but would oppose any expansion or intensification of the existing site.

Norman Gerber's, former Director of the Office of Planning and Zoning, testimony was essentially the same as Tim Dugan's.

The Board believes that there was a mistake made in the maps submitted to the Commission and that the proper designation of the site is IDA, but does not believe that the site should be expanded or intensified. In addition, the Board is of the opinion that COMAR 14.15.02.07 may be the proper procedure to follow in this case on this issue.

.07 Grandfathering.

A. After program approval, local jurisdictions shall permit the continuation, but not necessarily the

Intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 14.15.11.

Therefore after considering all of the evidence, memorandum, and argument, the Board is of the opinion that the proper designation for the existing site is B.L. with an IDA critical area designation, but only for the site that is presently being used for the office building/bank and parking lot with no intensification or expansion of any use on the site.

ORDER

IT IS THEREFORE this 1st day of April, 1992 by the County Board of Appeals of Baltimore County ORDERED that the Petitions for Variances are hereby GRANTED; and

IT IS FURTHER ORDERED that the granting of the IDA designation for the site from LDA designation must be approved by the Chesapeake Bay Critical Area Commission before such designation shall become effective.

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

Michael B. Sauser
Michael B. Sauser, Acting Chairman
S. Diane Levero
S. Diane Levero
John G. Disney
John G. Disney

IN THE MATTER OF THE APPLICATION * BEFORE THE
OF THE FIRST NATIONAL BANK FOR * COUNTY BOARD OF APPEALS
ZONING RECLASSIFICATION FROM * OF
D.R. 16 TO B.L. AND VARIANCES * OF
ON PROPERTY LOCATED ON THE SOUTH- * BALTIMORE COUNTY
EAST SIDE OF EASTERN BOULEVARD, *
582' SW. CORNER OF THE CENTERLINE * CASE NO. CR-91-365-A
OF MARLYN AVENUE (809 EASTERN * Item #7, CYCLE V
BOULEVARD); 15TH ELECTION DISTRICT *
5TH COUNCILMANIC DISTRICT

**RULING ON PETITIONER'S MOTION FOR CLARIFICATION
OR, IN THE ALTERNATIVE, MOTION FOR RECONSIDERATION
AND REQUEST FOR EXPEDITED HEARING AND STAY**

The Board is in receipt of Petitioner's Motion for Clarification or, in the Alternative, Motion for Reconsideration and Request for Expedited Hearing and Stay filed in the subject matter.

The Board has considered the Petition and does not find that its Opinion and Order dated April 1, 1992 contains any error caused by fraud, surprise, mistake or inadvertence; nor does the Board feel that the Opinion is ambiguous or unclear. It is therefore denying the request that it reconsider its decision. Should the Petitioner feel aggrieved by the Board's decision, it has the remedy to file an appeal to the Circuit Court for Baltimore County within 30 days from the date of the Board's original Order.

IT IS THEREFORE this 15th day of April, 1992 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioner's Motion for Clarification or, in the Alternative, Motion for Reconsideration and Request for Expedited Hearing and Stay be and is hereby DENIED; and

IT IS FURTHER ORDERED that the request for stay for the transmittal of the Board's Opinion and Order to the Chesapeake Bay Critical Area Commission is also DENIED.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Michael B. Sauser
Michael B. Sauser, Acting Chairman
S. Diane Levero
S. Diane Levero
John G. Disney
John G. Disney

IN THE MATTER OF THE APPLICATION : BEFORE THE
OF THE FIRST NATIONAL BANK FOR : COUNTY BOARD OF APPEALS
ZONING RECLASSIFICATION FROM : OF
D.R. 16 TO B.L. AND VARIANCES ON : BALTIMORE COUNTY
PROPERTY LOCATED ON THE SOUTH- :
SIDE OF EASTERN BOULEVARD, 582' :
SOUTHWEST OF THE CENTERLINE OF :
MARLYN AVENUE (809 EASTERN : CASE NO. CR-91-365-A
BOULEVARD); 15TH ELECTION DISTRICT : Item #7, CYCLE V
5TH COUNCILMANIC DISTRICT

**PEOPLE'S COUNSEL'S ANSWER TO "PETITIONER'S MOTION
FOR CLARIFICATION OR, IN THE ALTERNATIVE,
MOTION FOR RECONSIDERATION AND REQUEST
FOR EXPEDITED HEARING AND STAY"**

People's Counsel for Baltimore County, by the undersigned, answers the Petitioner's Motion, as follows:

1. The County Board of Appeals was correct to deny the critical area reclassification for the 50 foot strip which adjoins the existing paved parking lot on the east. The Board stated, on page 8,

"Therefore after considering all of the evidence, memorandum, and argument, the Board is of the opinion that the proper designation for the existing site is B.L. with an IDA critical area designation, but only for the site that is presently being used for the office building/bank and parking lot with no intensification or expansion of any use on the site."

The Board's intent that its grant of the requested reclassification was limited to the existing bank building and parking lot is manifest from the above language. The Order which immediately follows obviously has reference to this intent.

2. If the Board is disposed to clarify the Order, it would be simple to add that the Board granted the reclassification as to the existing building and parking lot, but denied the reclassification as to any expanded area, that is to

say, the 50 foot strip or any other area outside of the existing paved area.

3. As to the Petitioner's request that the Board reconsider and reverse its decision to deny the expansion, People's Counsel replies that the denial was clearly correct on the record, and that no other result is warranted by the evidence. Moreover, there was no evidence to support any finding of error in reference to the entire case, and the Board's Opinion does not include such specific findings as would warrant any rezoning. It is apparent that such rezoning as was granted was done more as a matter of convenience and in view of the fact that it is inconsequential as long as there results no expansion into the undeveloped portion of the critical area on this site.

WHEREFORE, People's Counsel requests that the Petitioner's Motion be denied.

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2188

I HEREBY CERTIFY that on this 14 day of April, 1992, a copy of the foregoing Answer of People's Counsel to Petitioner's Motion for Clarification or Reconsideration, etc., was mailed to Stephen J. Nolan, Esquire, Nolan, Plumhoff & Williams, Chtd., Suite 700, Court Towers, 210 W. Pennsylvania Ave., Towson, MD 21204-5340; and Lee R. Epstein, Esquire, Linowes and Blocker,

1010 Wayne Ave., The Atrium at Station Square, Silver Spring, MD 20910, Attorneys for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman

IN THE MATTER OF THE APPLICATION * BEFORE THE
OF THE FIRST NATIONAL BANK FOR * COUNTY BOARD OF APPEALS
ZONING RECLASSIFICATION FROM * OF
D.R. 16 TO B.L. AND VARIANCES * BALTIMORE COUNTY
ON PROPERTY LOCATED ON THE SOUTH- *
EAST SIDE OF EASTERN BOULEVARD, * CASE NO. CR-91-365-A
582' SW. CORNER OF THE CENTERLINE * ITEM #7, CYCLE V
OF MARLYN AVENUE (809 EASTERN *
BOULEVARD); 15TH ELECTION DISTRICT *
5TH COUNCILMANIC DISTRICT

**PETITIONER'S MOTION FOR CLARIFICATION
OR, IN THE ALTERNATIVE, MOTION FOR
RECONSIDERATION AND REQUEST FOR
EXPEDITED HEARING AND STAY**

THE FIRST NATIONAL BANK OF MARYLAND, by its attorneys, Stephen J. Nolan, Nolan, Plumhoff & Williams and David M. Plott and Linowes and Blocher, moves, pursuant to Board Rule 10, for a revised Order clarifying, or in the alternative, reconsidering the terms of the Board's April 1, 1992 Opinion and Order as entered in the above case. Petitioner further seeks herein a stay of the transmittal of the Board's decision to the Chesapeake Bay Critical Area Commission until such time as the Board rules on the instant motion. The grounds of this motion are as follows:

1. This case is before the County Board of Appeals on The First National Bank of Maryland's (the "Bank") Petition for Zoning Reclassification and Variance originally filed on March 1, 1991, seeking B.L. zoning for the rear of its Eastern Boulevard Branch. On August 14, 1991, the Bank filed an Amended Petition and amended site plan at a public hearing. The purpose of that amendment was to incorporate in this case a request for a critical area classification of the existing

LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

parking lot and a related 50 foot strip area from Limited Development Area ("LDA") to an Intensely Developed Area ("IDA") designation.

2. Subsequent to the August 14 hearing, the Board heard testimony on November 6, 1991 and the hearing concluded on November 13, 1991.

3. On April 1, 1992, the Board filed the attached Opinion and Order (hereinafter the "Order" and marked "Exhibit A") in which it noted that this was "the first time this Board has heard an alleged mistake or map error concerning a critical area reclassification." For the reasons enumerated below, Petitioner most respectfully contends that in this case of first impression there are the following ambiguities and omissions within the Order which are in need of clarification. In the alternative, your Petitioner requests that the Board reconsider its Order so that the following mistakes and inadvertent errors in the Order may be corrected:

a. Through inadvertence or mistake, the Board's Order fails to clearly address and rule on the outcome of that portion of the Petitioner's B.L. zoning request that dealt with the 50 foot strip (see hatched area [///] on "Exhibit B" hereto) which adjoins the existing paved parking lot on the east.

b. The overwhelming weight of the evidence clearly established that there was a mistake in the designation of

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& WILLIAMS,
CHARTERED

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the parking lot as DR16 when it should have been B.L., and that sound planning practice dictates that such B.L.-IDA should run boundary to boundary, side to side and the 50 foot strip should not be orphaned as DR16-LDA. Therefore, the Board should reconsider its decision and grant the IDA classification on the subject 50 foot strip because all applicable IDA requirements were shown to be met.

c. On page 5 of the subject Opinion, the Board expressly approved the reclassification of the parking lot to IDA. However, the Board then cites the grandfathering language from the Critical Area criteria and states that the B.L. zoning and IDA Critical Area classification "only [applies] for the site that is presently being used for the office building/bank and parking lot with no intensification or extension of any use on the site." (Opinion, page 6). First, this language is ambiguous and could be interpreted to unfairly restrict future development of the IDA portions of the subject property, even if such development was in full accordance with all IDA and other zoning requirements. Secondly, there was no testimony at the hearing concerning the "grandfathering" provisions of the Critical Area Criteria. Indeed, grandfathering provisions are irrelevant to a critical area reclassification based on mistake.

d. Section 2-356(j)(3)(b) of the Baltimore County Code (1988) requires that the Board in this case make written findings concerning mitigation of adverse impacts, conservation

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& WILLIAMS,
CHARTERED

-3-

of wildlife and plant habitat, and consistency with land use policies for development in the Critical Area. Although the Petitioner made a prima facie showing with substantial evidence concerning those three added requirements, the Opinion and Order do not contain the required written findings even though they may be implied. This failure may cause the Critical Area Commission to remand for the purpose of meeting the finding requirements.

e. The Order segment of the Opinion is ambiguous and unclear in that it fails to state the Board's final ruling on the Petition for Zoning Reclassification.

4. As stated in Redding v. Board of County Commissioners, 263 Md. 94, 111 (1971) citing Zoning Appeals Board v. McKinney, 174 Md. 551, 564-566 (1938), an administrative body has the right to reconsider a decision if an error has been caused by fraud, surprise, mistake or inadvertence. This is just such a case and substantial injustice will result to your Petitioner unless the Order is clarified and/or reconsidered.

WHEREFORE, Petitioner prays as follows:

A. That the Board set this matter in for an expedited hearing on this Motion; and

B. That the Board stay the transmittal of its Opinion and Order to the Chesapeake Bay Critical Area Commission until this matter is resolved.

LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

-4-

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(301) 269-0045

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of April, 1992, a copy of the foregoing Petitioner's Motion For Clarification Or, In The Alternative, Motion For Reconsideration And Request For Expedited Hearing And Stay was mailed, postage prepaid, to Phyllis Cole Friedman and Peter Max Zimmerman, Office of People's Counsel for Baltimore County, Court House, Towson, Maryland 21204.

Stephen J. Nolan
Stephen J. Nolan

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LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

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EXHIBIT
A

IN THE MATTER OF THE APPLICATION OF THE FIRST NATIONAL BANK FOR ZONING RECLASSIFICATION FROM D.R. 16 TO B.L. AND VARIANCES ON PROPERTY LOCATED ON THE SOUTH-EAST SIDE OF EASTERN BOULEVARD, 582' SOUTHWEST OF THE CENTERLINE OF MARLYN AVENUE (809 EASTERN BOULEVARD); 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

CASE NO. CR-91-365-A
Item #7, CYCLE V

OPINION

This case comes before the Board on a Petition requesting a zoning reclassification to B.L. of a long-standing parking lot zoned D.R.16 which is located behind an existing office building/bank. This long-standing parking lot is used for the required off-street parking of the office building/bank. In addition, the Petitioner requests a critical area reclassification of the long-standing parking lot and related area from Limited Development (LDA) to Intensely Developed Area (IDA). Two variances are also being requested.

This is the first time this Board has heard an alleged mistake or map error concerning a critical area classification. The Deputy People's Counsel, in his closing argument, argued that the hearing before this Board was not the proper procedure for a correction of a map error or drafting error. This Board will decide, because of quasi judicial economy reasons, this case on this Petition and will not reject the critical area classification portion of the Petition for procedural reasons.

There were many witnesses in this case. The most significant witnesses being Tim Dugan of the Office of Planning and Zoning, David Flowers of the Department of Environmental Protection and Resource Management (DEPRM), an officer of First National Bank/owners, the commercial neighbors on either side of the site,

Case No. CR-91-365-A The First National Bank 2
and Norman Gerber - former Director of the Office of Planning and Zoning and now a consultant on urban planning and zoning.

Of the four issues before this Board, the two variances requested are the easiest to decide. There is no apparent conflict as to the testimony from the witnesses or from the Office of People's Counsel.

This site has constructed on it a large building with undersized driveways on either side of the building which has been used for a bank or savings and loan for a very long period of time. In addition, there is a sign on the site that also has been on the site for a long period of time.

First National Bank, after taking ownership of the site, investigated the zoning for the site and found that the size of the driveways and the sign does not conform to the Baltimore County Zoning Regulations (BCZR). The bank then petitioned the County to grant them variances for the driveways and the sign.

In order for a variance to be granted by this Board, the evidence presented must establish a practical difficulty or unreasonable hardship as defined in McLean v. Soley, 270 Md. 216, 1973.

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

Case No. CR-91-365-A The First National Bank 3
safety and welfare secured.

This Board believes First National Bank has established that there would be an unreasonable hardship or a practical difficulty created if it were required to conform to the BCZR at this late date and that the standards stated in "Soley" have been met.

The third request by the Petitioner is a request to rezone a long-standing parking lot from D.R.16 to B.L. zoning. This site is used as an office building with a rear parking lot. This parking lot serves as the off-street parking for the site as required by the BCZR. The rear parking lot is zoned D.R.16 and is non-conforming with the BCZR. The proper zoning is B.L. Here again, there is no conflict with the testimony of the witnesses or the People's Counsel.

This parking lot has been used with and for the office building on the site for a long period of time. First National Bank discovered the incorrect zoning for the site after becoming the owners of this site. In order for the Board to reclassify this site, the Board must find that the site is or will conform to Bill No. 46, 1979:

(2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the

LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

-4-

Case No. CR-91-365-A The First National Bank 4
county plan for sewerage and water-supply facilities, and the capital program. [Bill No. 46, 1979.]
In addition, if one were to look at Surhovich v. Doub, 258, Md. 263, on page 275,

the original zoning on the 1960 map was in error because of the complete failure of the Council to consider existing uses at the time, and its complete failure to follow the logical recommendations of the Planning Board which did not only recognize existing uses of the subject property, but was completely in accord with reasonable uses in the immediate vicinity which the map as adopted,

with the testimony of a neighbor who at the time was the Vice-Chairman of the Planning Board who stated that he believed the parking lot was zoned B.L. and that if he had known that it was not he would have recommended to the Council B.L. zoning for the site.

The Board believes that there was error on the zoning of the existing parking lot and that the proper zoning for the existing parking lot is B.L.

The fourth and most difficult request by the Petitioner is a request to change the Critical Area designation of the site from a Limited Developed Area to an Intensely Developed Area.

The critical areas were established by the State of Maryland for the protection of the Chesapeake Bay. A Commission was created and charged with the development of criteria that will accommodate growth, and also provide for the conservation of habitat and the protection of water quality in Chesapeake Bay Critical Areas.

COMAR Title 14, Subsection 15, Chapter 02.03 defines Intensely Developed Areas as:

A. Intensely Developed Areas are those areas where residential, commercial, institutional, and/or industrial, developed land uses predominate, and where relatively little natural habitat occurs. These areas shall have at least one of the following features:

Case No. CR-91-365-A The First National Bank

- (1) Housing density equal to or greater than four dwelling units per acre;
- (2) Industrial, institutional, or commercial uses are concentrated in the area; or
- (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

B. In addition, these features shall be concentrated in an area of at least 20 adjacent acres, or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.

The Board believes that the existing site "used" for parking and office building conform to COMAR 14.15.02.3.A and B.

Tim Dugan of the Office of Planning and Zoning testified that this existing site's area used as parking and office building was to be and was listed as an IDA but somehow it was not placed on the maps submitted to the Critical Area Commission for their approval.

David Flowers of DEPRM testified that DEPRM had no objection to the existing parking lot and office building being designated an IDA, but would oppose any expansion or intensification of the existing site.

Norman Gerber's, former Director of the Office of Planning and Zoning, testimony was essentially the same as Tim Dugan's.

The Board believes that there was a mistake made in the maps submitted to the Commission and that the proper designation of the site is IDA, but does not believe that the site should be expanded or intensified. In addition, the Board is of the opinion that COMAR 14.15.02.07 may be the proper procedure to follow in this case on this issue.

.07 Grandfathering.

A. After program approval, local jurisdictions shall permit the continuation, but not necessarily the

Case No. CR-91-365-A The First National Bank

intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances. If any existing use does not conform with the provisions of a local program, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in COMAR 14.15.11.

Therefore after considering all of the evidence, memorandum, and argument, the Board is of the opinion that the proper designation for the existing site is B.L. with an IDA critical area designation, but only for the site that is presently being used for the office building/bank and parking lot with no intensification or expansion of any use on the site.

ORDER

IT IS THEREFORE this 1st day of April, 1992 by the County Board of Appeals of Baltimore County ORDERED that the Petitions for Variances are hereby GRANTED; and

IT IS FURTHER ORDERED that the granting of the IDA designation for the site from LDA designation must be approved by the Chesapeake Bay Critical Area Commission before such designation shall become effective.

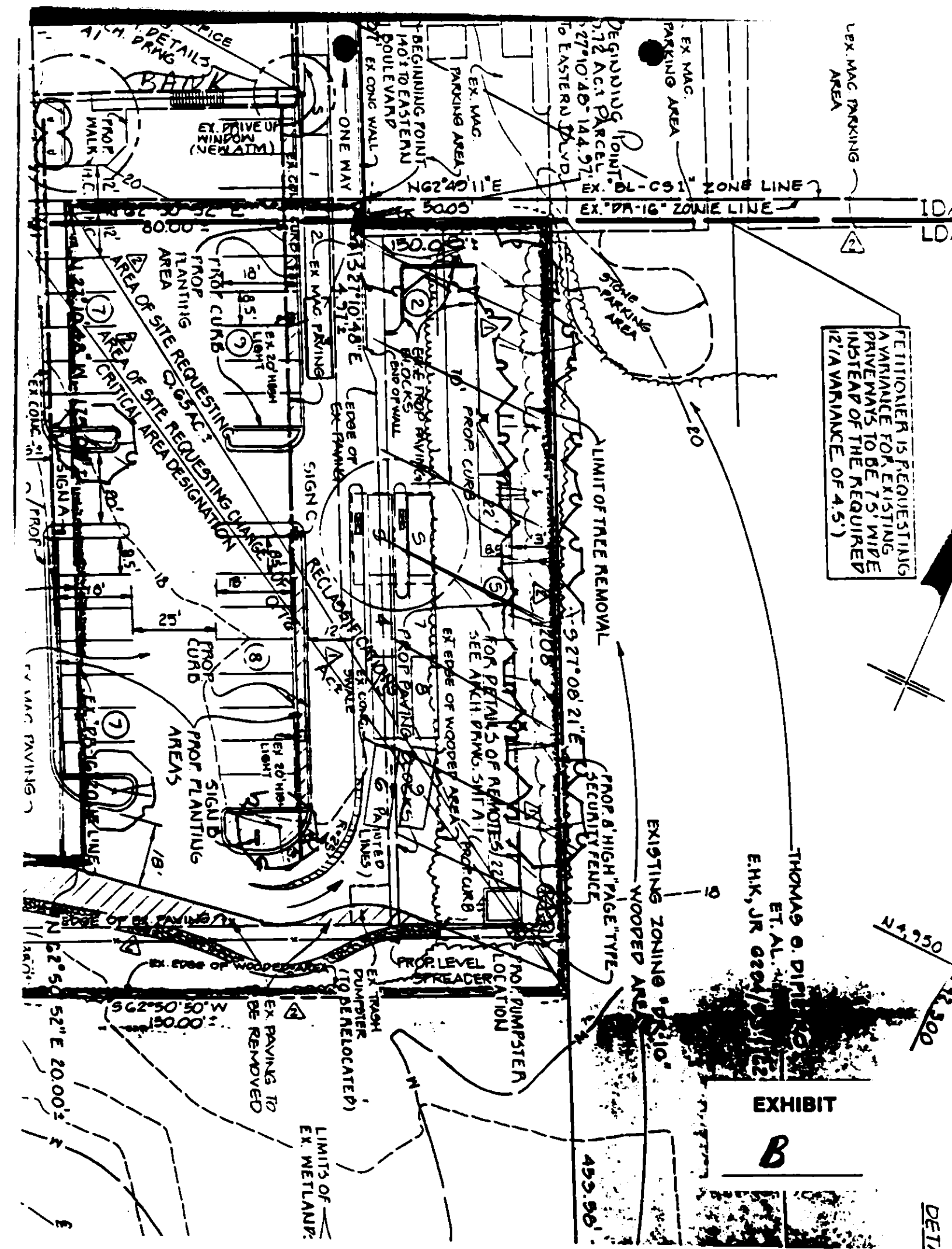
Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Michael B. Sauger, Acting Chairman

S. Diane Levero

John G. Disney



Case No. CR-91-365-A The First National Bank

and Norman Gerber - former Director of the Office of Planning and Zoning and now a consultant on urban planning and zoning.

Of the four issues before this Board, the two variances requested are the easiest to decide. There is no apparent conflict as to the testimony from the witnesses or from the Office of People's Counsel.

This site has constructed on it a large building with undersized driveways on either side of the building which has been used for a bank or savings and loan for a very long period of time. In addition, there is a sign on the site that also has been on the site for a long period of time.

First National Bank, after taking ownership of the site, investigated the zoning for the site and found that the size of the driveways and the sign does not conform to the Baltimore County Zoning Regulations (BCZR). The bank then petitioned the County to grant them variances for the driveways and the sign.

In order for a variance to be granted by this Board, the evidence presented must establish a practical difficulty or unreasonable hardship as defined in *McLean v. Soley*, 270 Md. 216, 1973.

- 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

Case No. CR-91-365-A The First National Bank

safety and welfare secured.

This Board believes First National Bank has established that there would be an unreasonable hardship or a practical difficulty created if it were required to conform to the BCZR at this late date and that the standards stated in "Soley" have been met.

The third request by the Petitioner is a request to rezone a long-standing parking lot from D.R.16 to B.L. zoning. This site is used as an office building with a rear parking lot. This parking lot serves as the off-street parking for the site as required by the BCZR. The rear parking lot is zoned D.R.16 and is non-conforming with the BCZR. The proper zoning is B.L. Here again, there is no conflict with the testimony of the witnesses or the People's Counsel.

This parking lot has been used with and for the office building on the site for a long period of time. First National Bank discovered the incorrect zoning for the site after becoming the owners of this site. In order for the Board to reclassify this site, the Board must find that the site is or will conform to Bill No. 46, 1979:

- (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including, but not limited to, all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities; prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the

Case No. CR-91-365-A The First National Bank

county plan for sewerage and water-supply facilities, and the capital program. [Bill No. 46, 1979.]

In addition, if one were to look at *Surhovich v. Doub*, 258, Md. 263, on page 275,

the original zoning on the 1960 map was in error because of the complete failure of the Council to consider existing uses at the time, and its complete failure to follow the logical recommendations of the Planning Board which did not only recognize existing uses of the subject property, but was completely in accord with reasonable uses in the immediate vicinity which the map as adopted,

with the testimony of a neighbor who at the time was the Vice-Chairman of the Planning Board who stated that he believed the parking lot was zoned B.L. and that if he had known that it was not he would have recommended to the Council B.L. zoning for the site.

The Board believes that there was error on the zoning of the existing parking lot and that the proper zoning for the existing parking lot is B.L.

The fourth and most difficult request by the Petitioner is a request to change the Critical Area designation of the site from a Limited Developed Area to an Intensely Developed Area.

The critical areas were established by the State of Maryland for the protection of the Chesapeake Bay. A Commission was created and charged with the development of criteria that will accommodate growth, and also provide for the conservation of habitat and the protection of water quality in Chesapeake Bay Critical Areas.

COMAR Title 14, Subsection 15, Chapter 02.03 defines Intensely Developed Areas as:

- A. Intensely Developed Areas are those areas where residential, commercial, institutional, and/or industrial, developed land uses predominate, and where relatively little natural habitat occurs. These areas shall have at least one of the following features:

IN THE MATTER OF THE APPLICATION OF THE FIRST NATIONAL BANK FOR ZONING RECLASSIFICATION FROM D.R. 16 TO B.L. AND VARIANCES ON PROPERTY LOCATED ON THE SOUTH-EAST SIDE OF EASTERN BOULEVARD, 582' SOUTHWEST OF THE CENTERLINE OF MARLIN AVENUE (809 EASTERN BOULEVARD); 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

CASE NO. CR-91-365-A Item #7, CYCLE V

OPINION

This case comes before the Board on a Petition requesting a zoning reclassification to B.L. of a long-standing parking lot zoned D.R.16 which is located behind an existing office building/bank. This long-standing parking lot is used for the required off-street parking of the office building/bank. In addition, the Petitioner requests a critical area reclassification of the long-standing parking lot and related area from Limited Development (LDA) to Intensely Developed Area (IDA). Two variances are also being requested.

This is the first time this Board has heard an alleged mistake or map error concerning a critical area classification. The Deputy People's Counsel, in his closing argument, argued that the hearing before this Board was not the proper procedure for a correction of a map error or drafting error. This Board will decide, because of quasi-judicial economy reasons, this case on this Petition and will not reject the critical area classification portion of the Petition for procedural reasons.

There were many witnesses in this case. The most significant witnesses being Tim Dugan of the Office of Planning and Zoning, David Flowers of the Department of Environmental Protection and Resource Management (DEPRM), an officer of First National Bank/owners, the commercial neighbors on either side of the site,

Case No. CR-91-365-A The First National Bank

- (1) Housing density equal to or greater than four dwelling units per acre;
- (2) Industrial, institutional, or commercial uses are concentrated in the area; or
- (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre.

B. In addition, these features shall be concentrated in an area of at least 20 adjacent acres, or that entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.

The Board believes that the existing site "used" for parking and office building conform to COMAR 14.15.02.3.A and B.

Tim Dugan of the Office of Planning and Zoning testified that this existing site's area used as parking and office building was to be and was listed as an IDA but somehow it was not placed on the maps submitted to the Critical Area Commission for their approval.

David Flowers of DEPRM testified that DEPRM had no objection to the existing parking lot and office building being designated an IDA, but would oppose any expansion or intensification of the existing site.

Norman Gerber's, former Director of the Office of Planning and Zoning, testimony was essentially the same as Tim Dugan's.

The Board believes that there was a mistake made in the maps submitted to the Commission and that the proper designation of the site is IDA, but does not believe that the site should be expanded or intensified. In addition, the Board is of the opinion that COMAR 14.15.02.07 may be the proper procedure to follow in this case on this issue.

.07 Grandfathering.

A. After program approval, local jurisdictions shall permit the continuation, but not necessarily the

intensification or expansion, of any use in existence on the date of program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinances.

Therefore after considering all of the evidence, memorandum, and argument, the Board is of the opinion that the proper designation for the existing site is B.L. with an IDA critical area designation, but only for the site that is presently being used for the office building/bank and parking lot with no intensification or expansion of any use on the site.

ORDER

IT IS THEREFORE this 1st day of April, 1992 by the County Board of Appeals of Baltimore County ORDERED that the Petitions for Variances are hereby GRANTED; and

IT IS FURTHER ORDERED that the granting of the IDA designation for the site from LDA designation must be approved by the Chesapeake Bay Critical Area Commission before such designation shall become effective.

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

Michael B. Baum, Acting Chairman
S. Diane Levero
John G. Disney

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

April 1, 1992

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Case No. CR-91-365-A (The First National Bank)

Dear Mr. Williams:

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

Sincerely,

LindaLee M. Kuszmaul
LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Stephen J. Nolan, Esquire
Lee R. Epstein, Esquire
Mr. Alan W. Kempske, Vice-President
The First National Bank
Mr. James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy M. Rotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director
Zoning Administration

RECEIVED
ZONING OFFICE

Intensely Developed Area ("IDA") designation. Section 2-356(a)(2) of the Code vests this Board with the authority and interim power to change a zoning classification of property including corrections to the Official Critical Area Map. For the reasons set forth below, Petitioner First National Bank respectfully contends that substantial evidence to be presented at the November 6 hearing will clearly show that the D.R.16 zoning classification of the existing parking lot and the corresponding LDA critical area classification constitute a mistake warranting reclassification by this Board and the grant of the Petition.

STATEMENT OF FACTS

By way of a brief description of the underlying facts, the subject property is comprised of 2.24 Acre, more or less, fronting on the northeast side of Eastern Boulevard. Originally developed in the early 1960s by Germania Federal Savings and Loan Association, the property is improved with a three story brick building with bank services on the first floor and professional offices on the second and third floors. In about December, 1985, Germania merged with Irvington Federal Savings and Loan which continued to operate the thrift until it was acquired in December, 1990 by The First National Bank of Maryland.

In the course of planning the modernization of this facility to include remote teller units and other improvements,

First National discovered that the property was split zoned and that it did not possess B.L. zoning on the long standing parking lot. In the course of this reclassification case, the Bank also discovered that the property was located within the Chesapeake Bay Critical Area Program, being split zoned IDA and LDA.

The evidence will show that the area of the subject property which the Bank seeks to reclassify actually relates to the commercial bank and office building and not to a very distant tributary of the Chesapeake Bay. The evidence will also show that the reclassifications as requested will enable First National to undertake site improvements and critical area mitigative measures which will reduce existing levels of pollutant runoff by at least 10%, as well as enhance the appearance of the site.

I

ALL PROCEDURAL REQUIREMENTS
HAVE BEEN MET AND THIS CASE
IS PROPERLY BEFORE THE BOARD

In a letter dated October 11, 1991, Deputy People's Counsel wrote to the Chairman of this Board and urged that this case "be remanded for further consideration by the Planning Board and the need to address specifically the critical area issue..." Deputy People's Counsel further contends that there was not "a proper report by the Planning Board on the critical area amendment, [and] this case should be continued."

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
3011 823-7800
TELEFAX 1301 298-2785
November 4, 1991

HAND DELIVERY

Honorable William T. Hackett
Chairman
County Board of Appeals of
Baltimore County
County Office Building - 3rd Floor
Towson, Maryland 21204

Re: Case No.: CR-91-365A
Item 7, V, 1991
Petitioner: The First National Bank of Maryland
Hearing Dates: November 6 and 13, 1991

Dear Chairman Hackett:

As co-counsel to the Petitioner in the above case and consistent with my October 18, 1991 letter, I am enclosing herewith an original and three (3) copies of Petitioner's Prehearing Memorandum of Law.

We respectfully submit that this memorandum fully responds to the points raised by Deputy People's Counsel in his October 11 letter and that this case should proceed as scheduled on November 6 and 13, 1991.

Thanking the Board for its consideration of the enclosed memorandum, I am

Very truly yours,

Stephen J. Nolan

SJN/mao

cc: Peter Max Zimmerman, Esquire
Deputy People's Counsel
Lee R. Epstein, Esquire
Linowes and Blocher
Mr. Alan W. Kempske
The First National Bank of Maryland

RECEIVED NOV 16

RE: PETITION FOR RECLASSIFICATION * BEFORE THE
FROM D.R. 16 TO B.L. * COUNTY BOARD OF APPEALS
AND FROM LDA TO IDA * OF
(CRITICAL AREA) * BALTIMORE COUNTY
SE/S Eastern Blvd., 582' SW * Case No.: CR-91-365-A
C/L Marlyn Avenue * Hearing Dates: November 6
(809 Eastern Blvd.) * and 13, 1991
15th Election District
5th Councilmanic District

PETITIONER'S PREHEARING MEMORANDUM OF LAW

THE FIRST NATIONAL BANK OF MARYLAND, Petitioner, by its attorneys, Stephen J. Nolan and Lee R. Epstein, respectfully submits this memorandum of law for the Board's consideration in connection with the hearing scheduled to commence on November 6, 1991.

INTRODUCTION

This case is before the County Board of Appeals of Baltimore County on The First National Bank of Maryland's (the "Bank") Petition for Zoning Reclassification, Special Exception And/or Variance originally filed on March 1, 1991. Pursuant to Section 2-356(m) of the Baltimore County Code (1988), Petitioner filed an Amended Petition and amended site plan at a public hearing of the Board on August 14, 1991. The purpose of that amendment was to incorporate in this case a request for a critical area reclassification of the existing parking lot and related area from Limited Development Area ("LDA") to an

As demonstrated hereinbelow, the Petitioner has properly met all procedural requirements concerning Planning Board and DEPRM review and this case is fully ripe for hearing on November 6 and 13, 1991.

Sections 2-356(d), (e) and (f) of the Code set forth the prehearing procedures which must be followed in a reclassification case. Attached hereto as exhibits are the following:

- "Exhibit A" - Planning Board Agenda for September 19, 1991 Work Sessions and Regular Monthly Meeting;
"Exhibit B" - Letter of Petitioner's Counsel dated September 17, 1991, to Harold G. Reid, Chairman of the Planning Board, and to Planning Board Members
"Exhibit C" - Minutes of the Planning Board dated September 19, 1991
"Exhibit D" - Report of the Planning Director dated September 23, 1991
"Exhibit E" - Supplemental Report of the Deputy Planning Director dated October 31, 1991, in response to Deputy People's Counsel's letter.

The attached exhibits, particularly Exhibit E, clearly demonstrate that the Director of DEPRM was not only furnished with a copy of the amended petition pursuant to Section 2-356(d)(4), but that his department was represented at and participated at the September 19, 1991, Planning Board meeting. There is absolutely no foundation to support Mr. Zimmerman's assertion and Baltimore County v. American Oil, 245

Md. 719 (1967) as cited by him, is wholly inapposite.

Mr. Zimmerman next asserts in his letter of October 11, 1991, that "attention should be paid to the point that a Critical Area reclassification cannot be approved without the approval of the Chesapeake Bay Critical Area Commission in Annapolis." He further states that the County Board of Appeals can only propose Critical Area classifications based on mistake and that the Board's decision is subject to concurrence by the Critical Area Commission.

Mr. Zimmerman's statements regarding the approval procedure for Critical Area reclassifications are accurate, but gratuitous and perhaps confusing to the Board. The Commission's Critical Area procedure is wholly irrelevant to the Board of Appeals' current consideration of the merits of this case and requires no special "attention" by the Board. We recognize that Critical Area Commission approval must be obtained subsequent to the Board's decision. We are simply following the necessary local approval procedures, and the Board of Appeals hearing on the merits is appropriate at this step in the process.

II.

THE EVIDENCE WILL CLEARLY ESTABLISH
A BASIC AND ACTUAL MISTAKE IN THE
DR16 ZONING OF THE SUBJECT PARKING LOT

Pursuant to Section 2-356(j), the Petitioner First National Bank is seeking a reclassification to B.L. zoning of 0.65 acre which is predominantly used as a paved parking lot and now zoned DR16. As stated in Pattey v. Board of County

Baltimore County Government
Planning Board



101 B
To

887-3211

Advance Tentative Agenda *
for the
Thursday, September 19, 1991
WORK SESSIONS
and
MONTHLY MEETING
of the
BALTIMORE COUNTY PLANNING BOARD
beginning at 4:00 p.m. in
Room 106, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland
and the
PUBLIC HEARING
beginning at 5:00 p.m. in Room 106

WORK SESSION
of the
ad hoc Committee on Development Plans and Issues
Mr. Foss, Chairperson

1. Call to order, introduction of Committee members, and review of the Agenda
2. Waivers from certain provisions of the Development Regulations - September 1991 Staff Report: Committee's recommendations
3. Proposed development in conflict with the Master Plan 1989-2000 - "12 East Susquehanna Avenue": Committee's recommendations
4. Proposed development involving a site on the Baltimore County Landmarks List - "Oliver Landing": Committee's recommendations
5. Out-of-cycle action on zoning reclassification Petition - "Rolling Wind" HCFA candidate property: Committee's recommendation
6. Proposed "Affordable Housing Plan, Owings Mills New Town": Committee's recommendations
7. Additional amendment to zoning reclassification Petition - Carmelo S. and Joanne M. DiForte property (Case No. R-91-119; Cycle IV, Item 13): Committee's recommendations
8. Amendment to zoning reclassification Petition - First National Bank (809 Eastern Blvd.) property (Case No. CR-91-365-A; Cycle V, Item 7): Committee's recommendations



9. Compatibility of proposed "cluster" development - "Stratford Court," as amended: Committee's recommendations
10. Proposed development involving a site on the Baltimore County Landmarks List - "Graystone Golf Course" (Half Way House/Weisburg Inn): Committee's recommendations
11. Other Business

WORK SESSION
of the
ad hoc Committee on Master Plan and Comprehensive Zoning
Mr. Madigan, Chairman

1. Call to order, introduction of Committee members, and review of the Agenda
2. Amendment to the Master Plan - Towson Community Plan: Committee's recommendations
3. Amendment to the Master Plan - Guidelines for the 1992 Comprehensive Zoning Map Process: Committee's recommendations
4. Other Business

WORK SESSION
of the
ad hoc Committee on Regulations and Standards
Mr. Chase, Chairman

1. Call to order, introduction of Committee members, and review of the Agenda
2. Amendments to the Development Regulations regarding the development review process and the creation of an administrative hearing process: Committee's recommendations
3. Amendments to the Zoning Regulations regarding Density Residential Zones (Part 1): Committee's recommendations
4. Amendments to the Baltimore County Zoning Regulations regarding Planned Unit Developments - Residential (Part 2): Committee's recommendations
5. Other Business

REGULAR MEETING
of the
BALTIMORE COUNTY PLANNING BOARD
Mr. Reid, Chairman

1. Call to order, pledge of allegiance to the Flag, introduction of Board members, and announcements
2. Review of today's Agenda
3. Minutes of Meeting of July 18, 1991
4. Comments by Citizens - Items on today's Planning Board Agenda
5. Report by the ad hoc Committee on Development Plans and Issues
 - a. Waivers from the Development Regulations - September 1991 Staff Report
 - b. Development in conflict with the Master Plan - "12 East Susquehanna Avenue"
 - c. Development involving a County Landmarks List site - "Oliver Landing"
 - d. Out-of-cycle action on zoning Petition - "Rolling Wind"
 - e. "Affordable Housing Plan, Owings Mills New Town"
 - f. Additional amendment to zoning Petition - DiForte property (Case No. R-91-119)
 - g. Amendment to zoning Petition - First National Bank property (Case No. R-91-365-A)
 - h. Compatibility of "cluster" development - "Stratford Court"
 - i. Development involving a County Landmarks List site - "Graystone Golf Course" (Weisburg Inn)
6. Report by the ad hoc Committee on Regulations and Standards
 - a. Legislation regarding a new "Service-Employment (S.E.)" zone
 - b. Legislation regarding Development of Undersized Lots
 - c. Legislation regarding Density Residential (D.R.) zones (Part 1)
 - d. Legislation regarding Planned Unit Developments (Part 2)
 - e. Amendments to the Development Regulations regarding review and hearing processes

TOTAL P.04

NEWTON A. WILLIAMS
THOMAS J. REIMER
WILLIAM F. ENGLISH, JR.
STEPHEN J. NOLAN, JR.
ROBERT L. HANLEY, JR.
ROBERT S. GILBERTSON
STEPHEN R. SCHNEIDERMAN
DOUGLAS L. BURGESS
ROBERT E. CAVALLI, JR.
LOUIS G. CLOSE, JR.
L. BRUCE JONES
GREGORY J. JONES

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WALTER 8801
A. EARLE PLUMHOFF
8801-8801
RALPH E. DEWITT
188-7800
WALTER S. SHEETS, DALL
882-7856

September 17, 1991

The Honorable Harold G. Reid, Chairman
Baltimore County Planning Board
4th Floor, Courts Building
Towson, Maryland 21204

Dear Chairman Reid and Members of the Planning Board:

RE: Planning Board Meeting of Thursday,
September 19, 1991
Item No. 8
Amendment to Zoning Reclassification
Petition - First National Bank
809 Eastern Boulevard property
(Case No. CR-91-365-A; Cycle V, Item No. 7)

As the Board will recall, First National Bank of Maryland, the purchaser of the former Germania Federal, then Irvington Federal property at 809 Eastern Boulevard has sought to place all of the developed portion of the property, including the rear parking lot, within the B.L. Zoned portion of the property.

For unknown reasons, the long continued paved rear parking area has been erroneously zoned D.R. 16, when, in fact, it should have always been zoned B.L.

The Planning Board and the planning staff have previously recommended that this reclassification to uniform B.L., in the nature of confirmatory zoning, be granted.

Subsequent study has revealed that the property, in our opinion, is also erroneously reclassified as to the Critical Areas. We believe that the placement of the parking lot area and allied areas in the rear in an L.D.A., that is a lightly developed area, is erroneous, and that the entire developed portion and allied areas of the property should have been placed in an I.D.A., intensely developed area.



Chairman Reid and Members of the Planning Board
Page Two
September 17, 1991

The First National Bank is proposing to upgrade this site and building, and in order to do so wishes to locate remote teller machines, landscaping and other improvements in the rear. In order to do so the B.L. Zoning requested is needed, as well as the correct placement of the parking lot and allied areas in an I.D.A. category.

We know that the rear portion of the property, including the parking lot and allied areas meets the Critical Area criteria for intensely developed areas, and we know that the property can best be utilized if entirely classified I.D.A. as to the developed, utilized portions.

We further trust that the Board to be consistent will affirm its earlier action, and the recommendation of the Office of Planning and Zoning, and recommend that the amendment sought, that is L.D.A. to I.D.A., be granted.

We will be glad to answer any questions or comments that the Board or any members may have.

Thanking the Board for its consideration of this request, and trusting that the Board will recommend the requested L.D.A. to I.D.A. amendment, I am,

Respectfully,
Newton A. Williams
Newton A. Williams

NAM/psk

cc: Baltimore County Planning Board
The First National Bank
Linowes and Blocher
Attn: Lee R. Epstein, Esquire
David M. Plott, Esquire
The Office of Planning and Zoning
DEPRM



NEWTON A. WILLIAMS
THOMAS J. REIMER
WILLIAM F. ENGLISH, JR.
STEPHEN J. NOLAN, JR.
ROBERT L. HANLEY, JR.
ROBERT S. GILBERTSON
STEPHEN R. SCHNEIDERMAN
DOUGLAS L. BURGESS
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WALTER S. SHEETS, DALL
882-7856

September 17, 1991

The Honorable Harold G. Reid, Chairman
Baltimore County Planning Board
4th Floor, Courts Building
Towson, Maryland 21204

Dear Chairman Reid and Members of the Planning Board:

RE: Planning Board Meeting of Thursday,
September 19, 1991
Item No. 8
Amendment to Zoning Reclassification
Petition - First National Bank
809 Eastern Boulevard property
(Case No. CR-91-365-A; Cycle V, Item No. 7)

As the Board will recall, First National Bank of Maryland, the purchaser of the former Germania Federal, then Irvington Federal property at 809 Eastern Boulevard has sought to place all of the developed portion of the property, including the rear parking lot, within the B.L. Zoned portion of the property.

For unknown reasons, the long continued paved rear parking area has been erroneously zoned D.R. 16, when, in fact, it should have always been zoned B.L.

The Planning Board and the planning staff have previously recommended that this reclassification to uniform B.L., in the nature of confirmatory zoning, be granted.

Subsequent study has revealed that the property, in our opinion, is also erroneously reclassified as to the Critical Areas. We believe that the placement of the parking lot area and allied areas in the rear in an L.D.A., that is a lightly developed area, is erroneous, and that the entire developed portion and allied areas of the property should have been placed in an I.D.A., intensely developed area.

Chairman Reid and Members of the Planning Board
Page Two
September 17, 1991

The First National Bank is proposing to upgrade this site and building, and in order to do so wishes to locate remote teller machines, landscaping and other improvements in the rear. In order to do so the B.L. Zoning requested is needed, as well as the correct placement of the parking lot and allied areas in an I.D.A. category.

We know that the rear portion of the property, including the parking lot and allied areas meets the Critical Area criteria for intensely developed areas, and we know that the property can best be utilized if entirely classified I.D.A. as to the developed, utilized portions.

We further trust that the Board to be consistent will affirm its earlier action, and the recommendation of the Office of Planning and Zoning, and recommend that the amendment sought, that is L.D.A. to I.D.A., be granted.

We will be glad to answer any questions or comments that the Board or any members may have.

Thanking the Board for its consideration of this request, and trusting that the Board will recommend the requested L.D.A. to I.D.A. amendment, I am,

Respectfully,
Newton A. Williams
Newton A. Williams

NAM/psk

cc: Baltimore County Planning Board
The First National Bank
Linowes and Blocher
Attn: Lee R. Epstein, Esquire
David M. Plott, Esquire
The Office of Planning and Zoning
DEPRM



MINUTES
Baltimore County Planning Board
September 19, 1991

The regular meeting of the Planning Board was called to order at 9:15 p.m. by the Chairman, Mr. Reid.

Board Members Present
Mr. Harold Gibbs Reid, Chairman
Ms. Elizabeth L. Healey, Vice Chairman
Mr. William J. Bauman
Mr. I. William Chase
Mr. Alfred E. Clasing, Jr.
Mr. Charles H. Culbertson
Mr. Philip Edwards
Ms. Dorothy Foss
Mr. Michael D. Johnson
Mr. Joseph M. Leshko
Mr. Melvin L. Patterson

Board Members Not Present
Dr. Nancy Love Connor
Mr. Stephen W. Lafferty
Mr. Chester J. Madigan
Mr. Phillip W. Worrall

OPZ staff present included David Fields, Secretary to the Planning Board, Pat Keller, Robert Bendler, Jeffrey Long, Michele LeFavre, Ed Johnson, Tim Dugan, Carol McEvoy, Michael DeLuca, Hilorie Richman, Joseph Maranto, Steve Osborne, Andrea Van Arsdale, Wallace Lippincott, Wayne Feuerborn, William Hughey, Emery Hines, Brent Flickinger, Patty Beere, Gary Kerns, Karin Brown and Martin French.

Other County staff present included Louis Waldner, Executive Office; Oscar Keys, Public Works; and David Flowers, DEPRM.

1. Introduction of Board members, and announcements

After reciting the Pledge of Allegiance to the Flag, Chairman Reid and the other members of the Board introduced themselves.

2. Review of today's Agenda

There were no changes to the printed Agenda, a copy of which is filed with the Minutes as Appendix A-1

3. Minutes of the July 18, 1991 meeting

Ms. Healey moved to approve the Minutes, as mailed, for the July 18, 1991 meeting. The motion was seconded by Mr. Bauman and passed by acclamation. Absent were Dr. Connor, Mr. Lafferty, Mr. Madigan and Mr. Worrall.

A copy of the Minutes is filed as Appendix A-2.

4. Comments by citizens

Only thirteen of the 22 citizens who had registered to speak were still present and interested in doing so. Five spoke in favor of the Greystone Golf Course project, and eight opposed the project.

The speaker registration list is filed with the Minutes as Appendix A-3.

5. Report by the ad hoc Committee on Development Plans and Issues

a. Ms. Foss moved the Committee's recommendation to approve the granting of waivers as proposed in the Director's September 6, 1991 report, plus item 13 in the Addendum, subject to the following amendments:

- (i) The approved action on item 4 (McDonogh School) is to grant the waiver of the CRG Plan and the CRG meeting under the condition that, prior to the issuance of any building permits, a plan of the School's campus core area shall be submitted to the Department of Environmental Protection & Resource Management for review and approval.
- (ii) The approved action on item 3 (6401 Frederick Road) is to grant the waiver of the CRG meeting subject to receipt of a letter indicating the developer's willingness to meet with the neighboring community for resolving traffic and other community concerns, and also to authorize the denial of the CRG Plan if the meeting has not been held.

The motion was seconded by Mr. Chase and passed by acclamation, with Mr. Reid abstaining on item 11, Mr. Chase on item 7, Mr. Johnson on item 5 and Mr. Worrall on items 4 and 17. Absent were Dr. Connor, Mr. Lafferty, Mr. Madigan and Mr. Worrall.

A copy of the Director's report is filed with the Minutes as Appendix B-1.

b. Ms. Foss moved the Committee's recommendation to approve the draft Resolution requesting advice from the Department of Recreation & Parks on the reservation of the 12 East Susquehanna Street property in Towson. The motion was seconded by Ms. Healey and approved by acclamation, with Mr. Chase abstaining. Absent were Dr. Connor, Mr. Lafferty, Mr. Madigan and Mr. Worrall.

A copy of the Resolution is filed with the Minutes as Appendix B-2.

c. Ms. Foss reported that the Oliver Landing issue had been tabled to the October 17th meeting.

d. Ms. Foss moved the Committee's recommendation and the accompanying staff report to certify to the County Council that early action on the zoning reclassification petition by Rolling Wind Limited Partnership is manifestly required. The motion was seconded by Mr. Edwards and passed by acclamation, with Mr. Patterson abstaining. Absent were Dr. Connor, Mr. Lafferty, Mr. Madigan and Mr. Worrall.

A copy of the staff report is filed with the Minutes as Appendix B-3.

e. Ms. Foss moved the Committee's recommendation to approve the report entitled "Owings Mills New Town; An Affordable Housing Plan." The motion was seconded by Mr. Chase and passed by acclamation. Absent were Dr. Connor, Mr. Lafferty, Mr. Madigan and Mr. Worrall.

A copy of the report is filed with the Minutes as Appendix B-4.

f. Ms. Foss reported that the DiForte property zoning matter had been tabled in Committee.

g. Ms. Foss moved the Committee's recommendation to adopt the staff report dated September 10, 1991 to constitute a report by the Planning Board to the County Board of Appeals conditionally recommending approval of the amendments to the reclassification petition in Case No. CR-91-365-A, First National Bank of Maryland. The motion was seconded by Ms. Healey and passed by acclamation. Absent were Dr. Connor, Mr. Lafferty, Mr. Madigan and Mr. Worrall.

A copy of the Staff Report is filed with the Minutes as Appendix B-5.

h. Ms. Foss reported that the "Stratford Court" matter had been withdrawn.

c. Mr. Johnson moved the Committee's recommendation to adopt the draft Resolution adopting and recommending a Report, as amended by the Committee, on Guidelines for the 1991-1992 Comprehensive Zoning Process to constitute a Final Report by the Planning Board and an amendment to the Master Plan 1989-2000. The motion was seconded by Mr. Patterson and passed by acclamation. Absent were Dr. Connor, Mr. Lafferty, Mr. Madigan and Mr. Worrall.

A copy of the Resolution, with the Report and the September 19, 1991 memorandum containing the three amendments, is filed with the Minutes as Appendix D-3.

d. Mr. Reid approved the Committee's recommendation that action on the Towson Community Plan be postponed to special meetings of the Committee and the Board on October 3, 1991.

8. Other Business

a. Mr. Reid agreed that, because of the temporary inability to obtain a quorum for a meeting of the County Ethics Commission, the discussion of principles for Board members' participation in the 1991-92 comprehensive zoning process should be postponed until receipt of the Commission's advice.

b. Without objection, it was unanimously agreed to postpone to a later meeting the discussion of scheduling public hearings on days other than regular meeting days.

The meeting was adjourned at 9:22 p.m.

PDF/TD/mjm
SEPT19.MIN/TXTMJM

CASE NO. CR-91-365-A

CYCLE V, ITEM 7

PETITIONER:

The First National Bank of Maryland

REQUESTED ACTION:

Reclassification to B.L. (Business Local). Variances to permit and continue existing driveways 7.5 feet wide in lieu of the required 12 ft.; to permit "other business" signs of 242 sq. ft. in lieu of the permitted 100 sq. ft.

EXISTING ZONING:

D.R. 16 (Density Residential)

LOCATION:

Southeast side Eastern Blvd., .582 ft. southwest of the centerline of Marlyn Avenue (#809 Eastern Blvd.)

AREA OF SITE:

.91 acres (part of a 1.31 acre site)

ZONING OF ADJACENT PROPERTY/USE:

North - BL-CS-1 - Commercial Strip
South - D.R. 16 - Vacant, Forested
East - D.R. 16 - Vacant, Forested
West - B.L. and D.R. 16 - Commercial Strip, Vacant, Forested

SITE DESCRIPTION:

This site is relatively flat from the road frontage to the rear property line. It is improved with a three-story masonry building with a macadam off-street parking area behind the building.

PROPERTIES IN THE VICINITY:

A Burger King restaurant is located directly across Eastern Boulevard from the existing First National Bank building; an antique store is located just east of the site and; the Outdoor Sportsmen sporting goods store exists to the west.

WATER AND SEWERAGE:

The area is served by public water and sewer, and is designated as W-1, S-1 (existing service area) according to the Master Water and Sewer Plan.

The First National Bank of Maryland
Case No. CR-91-365-A, Cycle V, Item 7
Page 2

TRAFFIC AND ROADS:

The site has direct access to Eastern Boulevard (a minor arterial) and is located approximately 600' west of the junction of South Marlyn Avenue and Eastern Boulevard.

ZONING HISTORY:

The portion of the site under review for reclassification has been zoned D.R. 16 since 1976. Part of the remainder of the site, fronting on Eastern Boulevard was rezoned from BR-CS-1 to BL-CS-1 in 1980.

MASTER PLAN/COMMUNITY PLANS:

The Baltimore County Master Plan stresses that commercial corridors such as Eastern Boulevard be carefully examined in terms of new development or redevelopment. In particular, it states "the more intense land use creates a stronger impact on the surrounding community, and therefore recommends...design standards concerning amenities such as open space, buffer yards, landscaping, site design...will be created for such places experiencing high levels of redevelopment."

PROPOSED VS. EXISTING ZONING:

The regulations for DR zones may be found in Section 1B01.1A of the Baltimore County Zoning Regulations (B.C.Z.R.). Regulations governing the B.L. zone can be found in Section 230.

The B.L. zone permits a wide range of light business uses by right. The zone also permits a number of uses by Special Exceptions. Density is regulated by a floor area ratio of 3.0. Density is realistically limited by parking requirements and economic constraints. Building height is limited by height regulations. Setbacks include front yards not less than 10 feet from the front property line and not less than 40 feet from the center line of any street. Side yard setbacks are not required on interior lots, except where the lot abuts a lot in a residence zone, there must be a side yard not less than the greater minimum width required for a dwelling on the abutting lot. Rear yard setbacks are not required except that where the rear lot line abuts a lot in a residence zone there shall be a rear yard not less than 20 feet deep. All parking must be set back eight (8) ft. from residential zones.

The First National Bank of Maryland
Case No. CR-91-365-A, Cycle V, Item 7
Page 3

DOCUMENTED SITE PLAN:

The documented site plan reveals both existing and proposed improvements to area of the site subject to the reclassification and the remainder of the property owned by the applicant. The Petitioner proposes to upgrade the parking area with a remote vacuum transport teller system. A new entrance to the rear of the building is also indicated. The hours of operation are to be as follows:

- Bank and remote machines
 - a. Monday thru Thursday - 9:00 a.m. to 5:00 p.m.
 - b. Friday - 9:00 a.m. to 8:00 p.m.
 - c. Saturday - 9:00 a.m. to 2:00 p.m.
- A.T.M. will be operational 24 hours, 7 days a week

- Other offices within the existing building will operate 7:00 a.m. - 9:00 p.m. daily.

OFFICE OF PLANNING AND ZONING SUMMARY AND RECOMMENDATIONS:

Based upon the analysis conducted and the information provided, staff recommends the Petitioner's request be "APPROVED" subject to the following:

- All outstanding environmental issues shall be resolved with the Department of Environmental Protection and Resource Management prior to any final determination.
- The applicant shall amend the site plan to indicate the right-of-way for Virginia Avenue.
- Any lighting fixtures used for illumination and security purposes should be arranged to reflect the light away from adjacent residential properties and public streets.
- The dumpster should be fully enclosed and landscaped.
- The Petitioner shall submit a landscape plan to the Deputy Director of the Office of Planning and Zoning prior to the issuance of any building permits. Trees proposed to be lost on site shall be replaced on a one to one basis.

CYCCR913.65A/TXTROZ

Baltimore County Government
Planning Board



401 Bosley Avenue
Towson, MD 21284

887-3211

September 23, 1991

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

FROM: P. David Fields, Secretary
County Planning Board

SUBJECT: Case No. CR-91-365-A (First National Bank)

At the regular monthly meeting on September 19, 1991, the enclosed September 10, 1991 staff report was adopted by Resolution to constitute a report by the Planning Board recommending conditional approval of the amendments to the Petition and documented site plan in Case No. CR-91-365-A (First National Bank of Maryland).

P. David Fields
P. David Fields

PDF/TD/mjm
BANK/TXTMJM

Enclosure

65-8 HW 92 JES 16
STREET OF BALTIMORE COUNTY



BALTIMORE COUNTY, MARYLAND
INTEROFFICE MEMORANDUM

October 31, 1991

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

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

SUBJECT: Case No. CR 91-365-A (First National Bank)

This memorandum is intended to supplement my report on behalf of the Planning Board dated September 23, 1991, and is in response to a copy of a letter we received from Deputy People's Counsel Peter Max Zimmerman dated October 11, 1991, and addressed to you.

By way of clarifying our September 23, 1991 memorandum report, the Planning Board at its September 19 meeting, fully considered the amendment to the petition and the amended documented site plan, both of which amendments involved the owner's request for a reclassification of Limited Development Area (LDA) critical area classification to an Intensely Developed Area (IDA) classification. At this same September 19, 1991, meeting, the Planning Board heard and considered the oral report presented by David C. Flowers, who appeared on behalf of the Director of the Department of Environmental Protection and Resource Management. The Planning Board was also addressed by the owner's attorney, Newton A. Williams, on the subject of the critical area reclassification request.

Contrary to Mr. Zimmerman's assertion in his October 11 letter, we respectfully submit that no further report of the Planning Board is required with respect to the subject petition inasmuch as the Planning Board considered the DEPRM comments made at the September 19, 1991 and the petitioner has complied with the procedural requirements governing Planning Board review.

In all other respects, our comments of September 23, 1991, remain unchanged, namely, the Planning Board recommended conditional approval of the amendments to the Petition and documented site plan in Case-91-365-A (First National Bank of Maryland).

Pat Keller
Pat Keller
Deputy Director

PDF:rdn
cc: Peter Max Zimmerman, Esquire
Newton A. Williams, Esquire
Stephen J. Nolan, Esquire
Lee R. Epstein, Esquire
David C. Flowers, DEPRM

HAKT/TXTROZ



PETITION FOR ZONING RE-CLASSIFICATION SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY: The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from all D.R.16 zone to an B.L. (Business, Local) zone, for the reasons given in the attached statement; and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for

and (3) for the reasons given in the attached statement, a variance from the following sections of the Zoning Law and Zoning Regulations of Baltimore County: (A.) 409.4A, to permit and continue existing driveways 7.5 feet wide in lieu of the required 12 feet; (B.) From Section 413.2f, to permit "other business" signs of (228 + 14 = 242) 242 S.F. in lieu of the permitted 100 S.F. (228 S.F. existing, permitted sign).

ok to file w/CR 3/1/91

Property is to be posted and advertised as prescribed by The Baltimore County Code.

I, or we, agree to pay expenses of above Re-classification, Special Exception and/or Variance, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser: Legal Owner(s): The First National Bank of Maryland (Type or Print Name) Signature: Alan M. Kempeke, Assistant Vice President (Type or Print Name) Address: 700 Court Towers 210 N. Pennsylvania Avenue Towson, Maryland 21204 City and State: Name, address and phone number of legal owner, contract purchaser or representative to be contacted: Newton Williams, 700 Court Towers 210 N. Pennsylvania Avenue 823-7800 Towson, Maryland 21204

816 114 1-11-91

and also provided that the remaining undeveloped portion of the property is less than 20 acres.

- 7. Differences Within Developed Areas - In accordance with the State's policy that the "prevailing character" of an area governs future development in Limited Development Areas (COMAR 14.15.02.04.B(3)(b)), the character of existing development also can be a consideration in differentiating, within developed areas, between LDA and IDA classifications, i.e., if the character of development (lot sizes, unit types, etc.) clearly differs on opposite sides of a road or other appropriate boundary, the density was calculated separately on each side, and the opposite sides might thereby be classified differently (e.g. Hawthorne). 8. Federal Exception - All Federally-owned land (i.e., Aberdeen Proving Ground, and the VA's portion of Fort Howard) is excluded from the County's program (COMAR 14.15.02.06(1)), since no County regulations could be made binding on Federal property. 9. Partial State Exemption - State-owned land (e.g., Gunpowder State Park, Martin State Airport, Dundalk Marine Terminal) is included in the classification mapping. The Critical Area Commission is arranging separate agreements with the relevant State agencies for compliance with the Commission's requirements, and, under certain circumstances, the private use of State land is subject to County zoning and other regulations. 10. Transportation Lines - Major transportation corridors (roads, railroads, transmission lines) generally are used as boundaries where otherwise appropriate, and are not separately classified; the classification of the abutting territory is carried to the center of the corridor.

C. Mapping of "Intensely Developed Areas" (IDA)

- 1. Quasi-definition - As described in the State regulations (COMAR 14.15.02.03A and B): A. Intensely Developed Areas are those areas where residential, commercial, institutional, and/or industrial developed land uses predominate, and where relatively little natural habitat occurs. These areas shall have at least one of the following: (1) Housing density equal to or greater than four dwelling units per acre; (2) Industrial, institutional, or commercial uses are concentrated in the area; or (3) Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre. B. In addition, these features shall be concentrated in an area of at least 20 adjacent acres, or that entire upland

CRITICAL AREA Statement in Support of Requested Reclassification from D.R. 16 to B.L. and Out of Cycle Treatment

The First National Bank of Maryland, Property Owner and recent purchaser of 809 Eastern Boulevard, the former Germania Federal/Irvington Federal Building, seeks a reclassification from D.R. 16 to BL for the long used parking area and adjacent parcel and areas in the rear of its site, and out of cycle treatment for the following reasons: 1. 809 Eastern Boulevard is zoned BL-CS-1 along the Eastern Boulevard frontage, but the long used rear parking area is in a D.R.16 Zone. 2. That First National Bank has purchased the site from Irvington Federal for a bank on the first floor, and offices on the second and third floors. 3. That to properly serve its customers, and be competitive, First National wishes to upgrade the parking area with new, remote teller vacuum transport systems, as well as adding a new rear entrance to the building, and other improvements. 4. That the BL zoning has always been of inadequate depth, and the major portion parking lot is located in a D.R. 16 Zone, which D.R. 16 Zone is otherwise largely vacant and unused. 5. That First National could continue to use the parking lot as is, but without the BL zoning to the correct depth no improvements can be made due to R.T.A. constraints.

portion of the Critical Area within the boundary of a municipality, whichever is less."

- 2. Limited Relevance of Utilities - The mere presence of water and sewer lines is pertinent to IDA classification only in conjunction with existing residential development (at more than 3 units/acre density) (COMAR 14.15.02.03 A(3)). Water and/or sewer lines are not a factor for IDA classification either of non-residential uses (COMAR 14.15.02.03 A(2)), or of undeveloped land bordering IDA territory (Compare COMAR 14.15.02.04A(4)).

D. Mapping of Limited Development Areas (LDA)

- 1. Quasi-definition - As described in the State regulations (COMAR 14.15.02.04): A. Limited Development Areas are those areas which are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats, and the quality of runoff from these areas has not been substantially altered or impaired. These areas shall have at least one of the following features: (1) Housing density ranging from one dwelling unit per 5 acres up to four dwelling units per acre; (2) Areas not dominated by agriculture, wetland, forest, barren land, surface water or open space; (3) Areas meeting the conditions of [Intensely Developed Areas, but less than 20 contiguous acres]; (4) Areas having public sewer or public water, or both." 2. The final criterion in the State's list ("areas having" public utilities) is manifestly vague. Although the Commission has been urged to issue further guidance for clarifying the geographic ambiguity of the terms "area" and "having", the response has been that the Commission is purposely allowing flexibility for local decision-making to fit local condition. Accordingly, the County needs to achieve a responsible balance between the fundamental purposes of the Critical Area Law [B-1808(b)]; see especially (b)(3)) and the best interests of Baltimore County, i.e., including factors such as the County's prior capital investments and basic fairness to the landowners affected. To achieve this balance, the Urban-Rural Demarcation Line (URDL) was incorporated into the mapping. Inside the URDL, "areas having public sewer or water or both" are defined to be areas that fall within the S-1 or S-3 territories on the adopted maps in the Baltimore County Water and Sewerage Plan (i.e., areas where sewer service exists or is intended to exist within the six-year Capital Improvement Program). Exceptions to this rule are publically-owned recreational lands and dedicated open space, Habitat Protection Areas delineated in accordance with COMAR 14.15.09.03 and .04, and Sparrows Point Country Club, all of which are classified as RCAs. Areas falling within S-5 and S-7 sewer designations are also classified as RCAs.

Outside the URDL, Limited Development Areas are areas of at least 20 contiguous acres that meet the LDA use or density standards (COMAR 14.15.02.04(A)(1) and (2)).

E. Mapping of Resource Conservation Areas (RCA)

- 1. Quasi-definition - As described in the State regulations (COMAR 14.15.02.05): A. Resource Conservation Areas are those areas characterized by nature-dominated environments (that is, wetlands, forests, abandoned fields) and resource-utilization activities (that is, agriculture, forestry, fisheries activities, or aquaculture). These areas shall have at least one of the following features: (1) Density is less than one dwelling units per 5 acres; or (2) Dominant land use is in agriculture, wetland, forest, -barren land, surface water, or open space." 2. General Principle - Restating paragraph D.2 above, RCAs within the URDL are Habitat Protection Areas as delineated in accordance with COMAR 14.15.09.03 and .04; areas that fall within the S-5 and S-7 sewer classifications, publically-owned recreational areas and dedicated open space, and Sparrows Point Country Club. Outside the URDL, RCAs are all land except those areas of at least twenty contiguous acres that meet the use or density criteria for LDAs or IDAs. 3. Temporary Intensive Uses - Temporary uses such as surface mines and landfills as classified as RCAs. The future uses for these operations are recreational, agricultural, or for open space, which are uses compatible with RCA criteria. Also, surface mines are generally in more remote locations and do not have the infrastructure needed to support more intense uses.

SUPPLEMENTAL PETITION FOR ZONING RE-CLASSIFICATION SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY: The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an Intensely Developed Area zone to an Intensely Developed Area zone, for the reasons given in the attached statement; and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for Not applicable.

and (3) for the reasons given in the attached statement, a variance from the following sections of the Zoning Law and Zoning Regulations of Baltimore County: The justification for the requested Critical Area correction is attached hereto, and is incorporated as a part hereof.

Property is to be posted and advertised as prescribed by The Baltimore County Code.

I, or we, agree to pay expenses of above Re-classification, Special Exception and/or Variance, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser: Legal Owner(s): The First National Bank of Maryland (Type or Print Name) Signature: Alan M. Kempeke, Assistant Vice President (Type or Print Name) Address: 700 Court Towers 210 N. Pennsylvania Avenue Towson, Maryland 21204 City and State: Name, address and phone number of legal owner, contract purchaser or representative to be contacted: Stephen J. Nolan, 700 Court Towers 210 N. Pennsylvania Avenue 823-7800 Towson, Maryland 21204

Petitioner's Statement In Support Of Requested
Reclassification From LDA to IDA, Critical
Area Designation And Zone.

The First National Bank of Maryland, property owner and recent purchaser of 809 Eastern Boulevard, the former Germania Federal/Irvington Federal Building, seeks a reclassification from LDA (Limited Developed Area) to IDA (Intensely Developed Area), as to the Chesapeake Bay Critical Area designation for the long used parking area and parts of the adjacent parcel and area, in the rear of its long established, three (3) story commercial office and banking building, for the following reasons:

1. The subject site is a commercial, long utilized, largely paved parking, maneuvering and drive way area, which has clearly, and fully existed on the subject site since the building was first built in about 1960.
2. This developed and paved commercial parking and driveway area is a necessary and vital supporting part of the commercial and office complex which it serves. It is an integral part thereof, and, along with a narrow undeveloped strip or finger that is part of this overall development, it should be classified IDA in the same manner as the office and bank building itself.
3. The subject property relates to the commercial bank and office building and to Eastern Boulevard, and not to a very distant tributary of the Chesapeake Bay, and according to all criteria for IDA Classification

UNRECORDED

should have been in fact properly classified IDA. That is, the property to the back of its paved parking area and inclusive of the contiguous strip of currently unpaved land that marks a portion of its northeast boundary with the neighboring property precisely meets IDA criteria from Appendix IV-B of the County's Critical Area Program: "areas where ... commercial ... developed land uses predominate and where relatively little natural habitat occurs. [Additionally,] industrial, institutional or commercial uses are concentrated in the area[.] Emphasis added. The words "predominant" and "relatively little" indicate that while some undeveloped portions may exist, the area is dominated by fairly intense development. In contrast, LDAs are "currently developed in low or moderate intensity uses..." Eastern Boulevard and its adjacent uses and parking areas in this part of Essex are undoubtedly "intense" under Critical Area criteria, as is this property both front and back, to the edge of its side property lines and the rear edge of its parking lot.

4. Based upon First National's documented site plan, Baltimore County's Office of Planning and Zoning has acknowledged that the D.R. 16, High Density Residential, designation of this parking area is incorrect, and that the property could have been and should have been zoned B.L. as is the main office and bank building site, and has so recommended to the Board of Appeals in the current Zoning Cycle.
5. The subject site is visible on aerial photographs, photogrammetric materials, and from observation in the

field, and should have been classified IDA at the time of the initial Chesapeake Bay critical area review. However, due to the magnitude of the mapping process, the sheer number of properties to be dealt with, the difficulty of interpreting aerial photographs at small scale, not to mention the 600 scale Critical Area Maps, the site was mistakenly and incorrectly identified as LDA. Since fully developed, intensive use extends to the back of its parking area, the entire site, to that line, should have been correctly classified as IDA pursuant to applicable criteria. This is evident by looking at the aerials, in which a quick scan might seem to show substantial vegetation on the parking area, and thus justify a straight IDA line across the back of the buildings. On closer inspection, however, along that commercial strip, the Bank's parking area is the only fully developed land behind the buildings which is called "LDA".

6. The site is proposed to be upgraded with remote teller locations, additional landscaping and screen planting, and additional stormwater run off and critical area mitigative measures, which will improve the water quality by at least 10%, as well as enhance the appearance of the site.
7. The site as IDA, and with the current plans by the owner, will far better serve the goals of the Critical Area program, including all applicable statutory requirements thereof. In this regard, the reclassification will promote water quality improvements in non-point source pollutant runoff; will have no adverse impact on significant fish, plant and wildlife habitat; and will accommodate needed

economic development without creating any adverse environmental impacts of note.

8. The subject reclassification has been endorsed by the commercial community of Essex, including, but not only, the Essex/Middle River Chamber of Commerce and the Essex Revitalization Program, and this reclassification will help to effectuate this endorsement and upgrading of the site, to the benefit of the Bay, of the Bank's commercial and elderly residential users, and assist in the revitalization efforts of the Essex Community as a whole.

Dated: August 14, 1991 Respectfully submitted,

Stephen J. Nolan
STEPHEN J. NOLAN
NEWTON A. WILLIAMS
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
700 Court Towers
210 W. Chesapeake Avenue
Towson, Maryland 21204
(301) 823-7800

Lee R. Epstein
LEE R. EPSTEIN
LINDNES and BLOCHER
Tenth Floor
1010 Wayne Avenue
P.O. Box 8728
Silver Spring, Maryland 20907
(301) 650-7024
Attorneys for Petitioner First
National Bank of Maryland

7990B



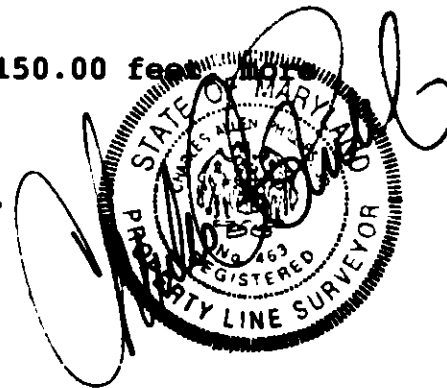
DESCRIPTION
PORTION OF NO. 809 EASTERN BOULEVARD
15TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

This description is to accompany a request for a re-designation of a portion of the property within the Chesapeake Bay Critical Area from "LDA" to "IDA".

BEGINNING FOR THE SAME at the end of the South 27 degrees 10 minutes 48 seconds East 144.97 foot line of said property where it is intersected by the Chesapeake Bay Critical Area Line "LDA" & "IDA" shown on Baltimore County Critical Area Map No. 97; said point of beginning being South 62 degrees 50 minutes 52 seconds West 582.00 feet, more or less from the center line of Marlyn Avenue; thence from the point of beginning

- (1) North 62 degrees 49 minutes 11 seconds East 50.05 feet; thence
- (2) South 27 degrees 08 minutes 21 seconds East 208.00 feet, more or less, to intersect a line drawn parallel to and 354.00 feet, more or less, southeasterly from the southeasterly side of Eastern Boulevard; thence binding on said line
- (3) South 62 degrees 50 minutes 52 seconds West 150.00 feet, more or less, to intersect the southwest boundary line of the subject tract; thence binding on said line in a northwesterly direction
- (4) North 27 degrees 10 minutes 48 seconds West 208.00 feet, more or less, to intersect the aforementioned "LDA/IDA" Critical Area Line; thence binding on said line as shown
- (5) North 62 degrees 50 minutes 52 seconds East 150.00 feet, more or less to the place of beginning.

CONTAINING 0.72 acres or land, more or less.



REVISED DESCRIPTION
PORTION OF NO. 809 EASTERN BOULEVARD
15TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

This description is to accompany a request for reclassification to "BL" for a portion of the captioned property.

BEGINNING FOR THE SAME at a point on the South 27 degrees 10 minutes 48 seconds East 144.97 foot line of said property where it is intersected by the "BL-CS1/DR-16" Zone Line shown on Baltimore County Zoning Map "NE 2-H"; said point of beginning being South 27 degrees 10 minutes 48 seconds East 140.00 feet, more or less, from the southeast side of Eastern Boulevard and South 62 degrees 50 minutes 52 seconds West 582.00 feet, more or less from the center line of Marlyn Avenue; thence from the point of beginning

- (1) South 27 degrees 10 minutes 48 seconds East 4.97 feet, more or less; thence
- (2) North 62 degrees 49 minutes 11 seconds East 50.05 feet; thence
- (3) South 27 degrees 08 minutes 21 seconds East 208.00 feet, more or less, to intersect a line drawn parallel to and 354.00 feet, more or less, southeasterly from the southeasterly side of Eastern Boulevard; thence binding on said line
- (4) South 62 degrees 50 minutes 52 seconds West 150.00 feet, more or less, to intersect the southwest boundary line of the subject tract; thence binding on said line in a northwesterly direction
- (5) North 27 degrees 10 minutes 48 seconds West 38.00 feet, more or less, to intersect the "BL/DR-16" Zone Line shown on the aforementioned Baltimore County Zoning Map "NE 2-H"; thence binding

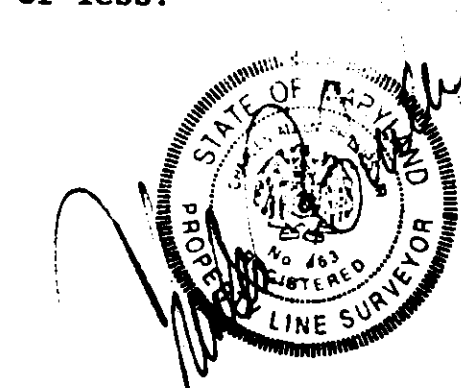


Revised Description
Portion of 809 Eastern Boulevard
October 29, 1991
Page No. 2

on said zoning lines as shown

- (6) North 62 degrees 50 minutes 52 seconds East 20.00 feet, more or less, and
- (7) North 27 degrees 10 minutes 48 seconds West 175.00 feet, more or less, to intersect the aforementioned "BL-CS1/DR-16" Zone Line; thence binding on said line
- (8) North 62 degrees 50 minutes 52 seconds East 80.00 feet, more or less, to the place of beginning.

CONTAINING 0.65 acres or land, more or less.



KIDDE CONSULTANTS, INC.

CR-91-365-A
#7 CRITICAL AREA

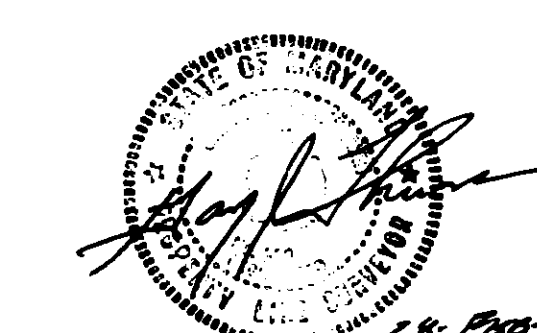
DESCRIPTION

PORTION OF NO. 809 EASTERN BOULEVARD
15TH ELECTION DISTRICT, BALTIMORE COUNTY, MD.

This description is to accompany a request for reclassification to "BL" for a portion of the captioned property.

BEGINNING FOR THE SAME at a point on the S 27° 10' 48" E 144.97' foot line of said property where it is intersected by the "BL-CS1/DR-16" Zone Line shown on Baltimore County Zoning Map "NE 2-H"; said point of beginning being S 27° 10' 48" E 140.00 feet, more or less from the southeast side of Eastern Boulevard and S 62° 50' 52" W 582 feet, more or less from the center line of Marlyn Avenue; thence from the point of beginning (1) S 27° 10' 48" E 4.97 feet, more or less, thence (2) N 62° 49' 11" E 50.05', thence (3) S 27° 08' 21" E 285 feet, more or less to intersect a line drawn parallel to and 430 feet, more or less southeasterly from the southeasterly side of Eastern Boulevard, thence binding on said line (4) S 62° 50' 52" W 150.00 feet, more or less to intersect the southwest boundary line of the subject tract, thence binding on said line in a northwesterly direction (5) N 27° 10' 48" W 115 feet, more or less to intersect the "BL/DR-16" Zone Line shown on the aforementioned Baltimore County Zoning Map "NE 2-H", thence binding on said zoning lines as shown (6) N 62° 50' 52" E 20.00', more or less and (7) N 27° 10' 48" W 175 feet, more or less to intersect the aforementioned "BL-CS 1"/"DR-16" Zone Line, thence binding on said line (8) N 62° 50' 52" E 80.00', more or less to the place of beginning.

CONTAINING 0.91 Acres of land, more or less.



KIDDE CONSULTANTS, INC.

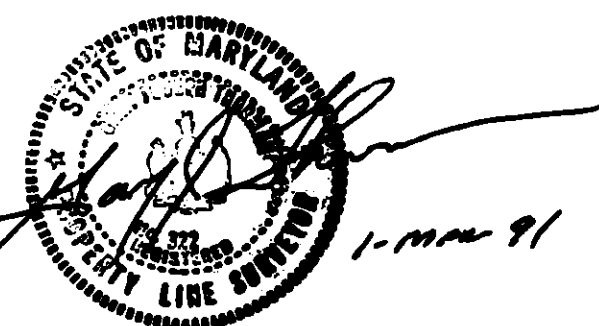
DESCRIPTION

PORTION OF NO. 809 EASTERN BOULEVARD
15TH ELECTION DISTRICT, BALTIMORE COUNTY, MD.

This description is to accompany a request for variances in the existing and requested "BL" portion of the captioned property.

BEGINNING FOR THE SAME at a point on the southeast side of Eastern Boulevard S 62° 50' 52" W 582 feet, more or less from the center line of Marilyn Avenue; thence from the point of beginning (1) S 27° 10' 48" E 144.97 feet, (2) N 62° 49' 11" E 50.05', thence (3) S 27° 09' 21" E 285 feet, more or less to intersect a line drawn parallel to and 430 feet, more or less southeastly from the southeasterly side of Eastern Boulevard, thence binding on said line (4) S 62° 50' 52" W 150.00 feet, more or less to intersect the southwest boundary line of the subject tract, thence binding on said line in a northwesterly direction (5) N 27° 10' 48" W 430 feet, more or less to intersect the aforementioned southeast side of Eastern Boulevard, thence binding on the said southeast side of Eastern Boulevard (6) N 62° 50' 52" E 100.00 feet to the place of beginning.

CONTAINING 1.31 Acres of land, more or less.



Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21284

Case #CR-91-365-A receipt

See hand-written receipt dated 3/1/91

Account: R-001-4150
Number

Please Make Checks Payable To: Baltimore County

Address

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

DATE

The First National Bank of Maryland
P. O. Box 1596
Baltimore, Maryland 21203

ATTN: ALAN W. KEMPSKE

Re: Petition for Zoning Reclassification and Zoning Variance
CASE NUMBER: CR-91-365-A
562 1/2 Eastern Boulevard, 562' SW of c/l Marilyn Avenue
809 Eastern Boulevard
15th Election District - 5th Councilmanic
Petitioner(s): The First National Bank of Maryland
HEARING: WEDNESDAY, NOVEMBER 6, 1991 at 10:00 a.m.

not billed per Gwen

Dear Petitioner(s):

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

THIS FEE MUST BE PAID AND THE RECLASSIFICATION SIGN AND POST RETURNED TO THE BALTIMORE COUNTY ZONING OFFICE ON THE DAY OF THE BOARD OF APPEALS' HEARING OR THE ORDER WILL NOT BE ISSUED.

Please make your check payable to "Baltimore County, Maryland" and immediately mail same to the attention of G. Stephens, Zoning Office, Room 113, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204, before the hearing.

Very truly yours,

J. Robert Haines
Zoning Commissioner

cc: Newton A. Williams, Esq.

County Board of Appeals of Baltimore County

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

August 15, 1994

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-5340

RE: Case No. CR-91-365-A
THE FIRST NATIONAL BANK

Dear Mr. Williams:

As no further action has been taken regarding the subject matter since the December 17, 1992 Dismissal Order of the Circuit Court for Baltimore County, we have returned the Board's copy of the subject zoning file to the office of Zoning Administration and Development Management.

Anyone interested in this case can contact the Gwen Stephens of Zoning Administration at 887-3391 upon receipt of this letter. By copy of this letter, all parties of record that may have an interest in this file have been notified.

Sincerely,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

cc: Alan W. Kempcke
The First National Bank
People's Counsel for Baltimore County
Arnold Jablon /ZADM
Docket Clerk /ZADM
Michael J. Moran /Asst. County Attorney

Printed with Soy-based Ink on Recycled Paper

Baltimore County Government
Planning Board

401 Bosley Avenue
Towson, MD 21204

887-3211

April 22, 1991

Hon. Douglas B. Riley
Chairman, Baltimore County Council
County Courthouse
Towson, MD 21204

Re: Certification on Reclassification Petition (First National Bank of Maryland)

Dear Councilman Riley:

At its regular monthly meeting on April 18, 1991, the Baltimore County Planning Board voted, in accordance with Section 2-58.1(1) of the County Code, to certify to the County Council that early action upon the enclosed petition for zoning reclassification of a property at 809 Eastern Boulevard, filed on behalf of the First National Bank of Maryland (Case No. 91-365-A), is manifestly required.

Enclosed herewith are the copies of the Petition and accompanying information, including a site plan, as submitted by the Petitioner and forwarded from the Board of Appeals. The County planning staff will be pleased to assist the Council in the consideration of this matter.

Sincerely yours,

David Fields
P. David Fields

Secretary to the Planning Board

PDE/TD/prh
FSINATL.BNK/TXTPRH

Enclosures

cc: Members, Baltimore County Council
Marreen Kelly, Administrative Officer
Thomas Toporovich, Secretary-Administrator, County Council
J. Robert Haines, Zoning Commissioner
William T. Hackett, Chairman, Board of Appeals
Phyllis Cole Friedman, Esquire, People's Counsel
Newton A. Williams, Esquire

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

DATE

The First National Bank of Maryland
P. O. Box 1596
Baltimore, Maryland 21203

ATTN: ALAN W. KEMPSKE

Re: Petition for Zoning Reclassification and Zoning Variance
CASE NUMBER: CR-91-365-A
562 1/2 Eastern Boulevard, 562' SW of c/l Marilyn Avenue
809 Eastern Boulevard
15th Election District - 5th Councilmanic
Petitioner(s): The First National Bank of Maryland
HEARING: WEDNESDAY, NOVEMBER 6, 1991 at 10:00 a.m.

Dear Petitioner(s):

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

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Very truly yours,

J. Robert Haines
Zoning Commissioner

cc: Newton A. Williams, Esq.

Baltimore County Government
Planning Board

401 Bosley Avenue
Towson, MD 21204

887-3211

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David Fields
P. David Fields

Secretary to the Planning Board

PDE/TD/prh
FSINATL.BNK/TXTPRH

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Thomas Toporovich, Secretary-Administrator, County Council
J. Robert Haines, Zoning Commissioner
William T. Hackett, Chairman, Board of Appeals
Phyllis Cole Friedman, Esquire, People's Counsel
Newton A. Williams, Esquire

RECEIVED
APR 25 1991

ZONING OFFICE

RECEIVED
APR 25 1991
By: DCJ

Environmental Impact Statement
First National Bank Site
809 Eastern Blvd.
Baltimore, MD 21221

EXECUTIVE SUMMARY

The purpose of this report is to provide an assessment of the environmental consequences or enhancements resulting from the expansion of the parking area associated with the First National Bank facility on this site. The paving of the new parking area will require surface water run-off be treated prior to its discharge into the wetland that occupies a portion of the back end of the parcel. This proposed treatment in conjunction with the removal of solid waste in the existing wetland will enhance wetland functions and will counteract any potential negative environmental impacts that might result from this project.

Based on the physical characteristics of the site, the relatively minor alterations proposed, and the proposed enhancements, a **Finding of No Significant Impact (FONSI)** is appropriate for this project.

DESCRIPTION OF THE PROJECT

There is an existing three-story masonry building with a macadam off-street parking area behind the building. The existing parking area is approximately 225' by 105'. This project proposes to add an additional 175' by 38' macadam surface to this parking area. The newly paved area will contain two remote teller machines with a canopy over them. Pavement not required for the teller machines and access will provide additional parking for the facility. The accompanying plan sheets depict the existing conditions on-site and the proposed modifications.

PROBABLE IMPACTS ON THE ENVIRONMENT

An environmental assessment of this site was conducted in order to determine the nature of any environmental resources present. In particular, the site was examined for the presence of wetland ecosystems, wildlife habitat and any other significant ecological factors that might be impacted by the proposed project. This jurisdictional wetland identified is classified as a temporarily flooded, palustrine, broad-leaf forested wetland. The attached environmental assessment examines the relevant environmental factors. This assessment is included as an appendix to this document.

The First National Bank building is located in an area that is for the most part "built-out" and is a designated Limited Development Area as defined in the Chesapeake Bay Critical Area Protection Program. The bank site is surrounded by commercial and residential structures in this section of Eastern Avenue. The most significant environmental impact identified that could result from this project is an increase of untreated surface water run-off in this area. Given the level of development in the adjacent areas, it is felt any such impacts will not be significant. Paving of this new area will not add significantly to the impervious cover in the immediate vicinity.

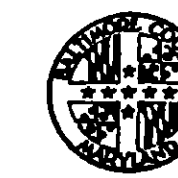
The subject parcel is relatively flat with little topographic variation. In general, drainage of surface water on-site is to the center of the parcel where it ponds and ultimately flows into Duck Creek. Because the proposed project is located in a designated Limited Development Area, the addition of 6,650 square feet of impervious surface must meet the 10% rule governing sediment and chemical pollutant loading. This rule states "In the case of redevelopment, if these technologies do not reduce pollutant loadings by at least 10% below the level of pollution on the site prior to development, then offsets shall be provided." [COMAR 14.15.02.03, D(3)(b)] This requirement can be accomplished by incorporating a drainage configuration that will allow run-off to flow across a 10 foot turf filter strip and into a level spreader. From this point, the run-off would sheet flow across a forested filter strip and into the existing wetland area.

Since any development in this Limited Development Area must meet criteria that dictate a net gain in environmental protection, the proposed project will not adversely affect the ecological systems associated with this parcel. With a treatment plan as described above, in-place, potential environmental impacts from run-off will be less than current conditions. Therefore, there will be no

adverse impacts from any increased run-off. In addition, the project proposes to improve wetland functions by removing solid waste that had been disposed of in the wetland. Consequently, there should be a significant improvement in environmental conditions as a result of this project.

Other environmental impacts examined include impacts to wildlife habitat from developmental activities. Impacts to wildlife habitat were considered to be minimal in that this area is heavily developed and wildlife usage is already limited to those species acclimated to an urban environment. Although not actually observed, it is expected such species might include eastern grey squirrel, raccoon, white-footed field mouse, norway rat, and assorted song birds. Actual reduction in habitat from the paving is limited to several trees in the new parking area and is not significant. Loss of tree cover would be compensated by landscape planting.

Based on the above evaluation of no significant impact, no alternative actions were evaluated. The proposed project, if developed in the manner described will not create any significant adverse environmental impacts and there will be no irreversible or irretrievable commitment of resources.



Baltimore County, Maryland

PEOPLE'S COUNSEL
ROOM 304, COUNTY OFFICE BUILDING
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21284
937-7882188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

October 25, 1991

George E. H. Gay, Esquire
Attorney General's Office
Dept. of Natural Resources
Taves State Office Bldg., C-4
580 Taylor Avenue
Annapolis, Maryland 21401

RE: The First National Bank of Maryland,
Petitioner - Case No. CR-91-365-A
(Item 7, Cycle V)

Dear Mr. Gay:

Enclosed is a copy of the letter dated October 11, 1991 to William T. Hackett, Chairman, Baltimore County Board of Appeals, in the above case. I am pleased that, as counsel to the Chesapeake Bay Critical Area Commission, you should be kept informed of the progress of this matter. If you have any questions or comments, as the case proceeds, please do not hesitate to make your views known.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel

Enclosure

cc: William T. Hackett, Chairman, CBA
Stephen J. Nolan, Esquire
David C. Flowers, DEPRM

PMZ:ah

93-6 11 02 100 16

Baltimore County Government
Planning Board



401 Bosley Avenue
Towson, MD 21204

887-3211

September 23, 1991

TO: William T. Hackett, Chairman
County Board of Appeals
FROM: P. David Fields, Secretary
County Planning Board
SUBJECT: Case No. CR-91-365-A (First National Bank)

At the regular monthly meeting on September 19, 1991, the enclosed September 10, 1991 staff report was adopted by Resolution to constitute a report by the Planning Board recommending conditional approval of the amendments to the Petition and documented site plan in Case No. CR-91-365-A (First National Bank of Maryland).

P. David Fields
P. David Fields

PDF/TD/mjm
BANK/TXTMJM

Enclosure

65-8 11 92 J3S 16

CASE NO. CR-91-365-A

CYCLE V, ITEM 7

PETITIONER:

The First National Bank of Maryland

REQUESTED ACTION:

Reclassification to B.L. (Business Local). Variances to permit and continue existing driveways 7.5 feet wide in lieu of the required 12 ft.; to permit "other business" signs of 242 sq. ft. in lieu of the permitted 100 sq. ft.

EXISTING ZONING:

D.R. 16 (Density Residential)

LOCATION:

Southeast side Eastern Blvd., 582 ft. southwest of the centerline of Marlyn Avenue (#809 Eastern Blvd.)

AREA OF SITE:

.91 acres (part of a 1.31 acre site)

ZONING OF ADJACENT PROPERTY/USE:

North - BL-CS-1 - Commercial Strip
South - D.R. 16 - Vacant, Forested
East - D.R. 16 - Vacant, Forested
West - B.L. and D.R. 16 - Commercial Strip, Vacant, Forested

SITE DESCRIPTION:

This site is relatively flat from the road frontage to the rear property line. It is improved with a three-story masonry building with a macadam off-street parking area behind the building.

PROPERTIES IN THE VICINITY:

A Burger King restaurant is located directly across Eastern Boulevard from the existing First National Bank building; an antique store is located just east of the site and; the Outdoor Sportsmen sporting goods store exists to the west.

WATER AND SEWERAGE:

The area is served by public water and sewer, and is designated as W-1, S-1 (existing service area) according to the Master Water and Sewer Plan.

The First National Bank of Maryland
Case No. CR-91-365-A, Cycle V, Item 7
Page 2

TRAFFIC AND ROADS:

The site has direct access to Eastern Boulevard (a minor arterial) and is located approximately 600' west of the junction of South Marlyn Avenue and Eastern Boulevard.

ZONING HISTORY:

The portion of the site under review for reclassification has been zoned D.R. 16 since 1976. Part of the remainder of the site, fronting on Eastern Boulevard was rezoned from BR-CS-1 to BL-CS-1 in 1980.

MASTER PLAN/COMMUNITY PLANS:

The Baltimore County Master Plan stresses that commercial corridors such as Eastern Boulevard be carefully examined in terms of new development or redevelopment. In particular, it states "the more intense land use creates a stronger impact on the surrounding community, and therefore recommends...design standards concerning amenities such as open space, buffer yards, landscaping, site design...will be created for such places experiencing high levels of redevelopment."

PROPOSED VS. EXISTING ZONING:

The regulations for DR zones may be found in Section 1B01.1A of the Baltimore County Zoning Regulations (B.C.Z.R.). Regulations governing the B.L. zone can be found in Section 230.

The B.L. zone permits a wide range of light business uses by right. The zone also permits a number of uses by Special Exceptions. Density is regulated by a floor area ratio of 3.0. Density is realistically limited by parking requirements and economic constraints. Building height is limited by height tent regulations. Setbacks include front yards not less than 10 feet from the front property line and not less than 40 feet from the center line of any street. Side yard setbacks are not required on interior lots, except where the lot abuts a lot in a residence zone, there must be a side yard not less than the greater minimum width required for a dwelling on the abutting lot. Rear yard setbacks are not required except that where the rear lot line abuts a lot in a residence zone there shall be a rear yard not less than 20 feet deep. All parking must be set back eight (8) ft. from residential zones.

The First National Bank of Maryland
Case No. CR-91-365-A, Cycle V, Item 7
Page 3

DOCUMENTED SITE PLAN:

The documented site plan reveals both existing and proposed improvements to area of the site subject to the reclassification and the remainder of the property owned by the applicant. The Petitioner proposes to upgrade the parking area with a remote vacuum transport teller system. A new entrance to the rear of the building is also indicated. The hours of operation are to be as follows:

- Bank and remote machines
 - a. Monday thru Thursday - 9:00 a.m. to 5:00 p.m.
 - b. Friday - 9:00 a.m. to 8:00 p.m.
 - c. Saturday - 9:00 a.m. to 2:00 p.m.
- A.T.M. will be operational 24 hours, 7 days a week
- Other offices within the existing building will operate 7:00 a.m. - 9:00 p.m. daily.

OFFICE OF PLANNING AND ZONING SUMMARY AND RECOMMENDATIONS:

Based upon the analysis conducted and the information provided, staff recommends the Petitioner's request be "APPROVED" subject to the following:

- All outstanding environmental issues shall be resolved with the Department of Environmental Protection and Resource Management prior to any final determination.
- The applicant shall amend the site plan to indicate the right-of-way for Virginia Avenue.
- Any lighting fixtures used for illumination and security purposes should be arranged to reflect the light away from adjacent residential properties and public streets.
- The dumpster should be fully enclosed and landscaped.
- The Petitioner shall submit a landscape plan to the Deputy Director of the Office of Planning and Zoning prior to the issuance of any building permits. Trees proposed to be lost on site shall be replaced on a one to one basis.

CYCCR913.65A/TXTROZ

