4/7/99

IN RE: PETITION FOR SPECIAL HEARING
S/S Aigburth Road, 432' E of the c/l
York Road
(8 Aigburth Road)
9th Election District
4th Councilmanic District

Benjamin A. Petrilli, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 99-215-SPH
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Benjamin A. and Ida A. Petrilli. The Petitioners seek approval of the removal of Restriction No. 2 of the Order issued in prior Case No. 97-57-SPH. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Benjamin and Ida Petrilli, owners of the subject property. Also appearing in support of the request was Eric Dorn. Appearing as Protestants or as interested persons were several residents from the surrounding locale, including Mr. & Mrs. Jack L. Giacomo, John S. H. Chapman, Mr. & Mrs. Paul Hartman, Mr. & Mrs. George Sawyer, Anne Orrell, and Mauritz Anderson.

The zoning history and legal issues generated by the instant Petition are somewhat confusing. Nonetheless, based upon the testimony and evidence presented, County records and documents received, the following can be determined. Mr. & Mrs. Petrilli acquired the subject property in approximately 1987. At that time, the property consisted of a rectangularly-shaped lot, approximately 110' wide and 225' deep, which had frontage on Aigburth Road in Towson. The property was improved with an older dwelling which was in poor condition. Apparently, the dwelling had been used as a fraternity house by students of Towson State University. Suffice it to say that the property was somewhat deteriorated and was considered a neighborhood eyesore.

ORDER RECEIVED FOR FILING
Date 4/7/99

Soon after their acquisition, the Petrilli's decided to raze the dwelling, subdivide the lot and make improvements thereon. At that time, the property was zoned D.R.16, which is a residential zoning classification that permits high density housing. The D.R.16 classification also requires a 25-foot side yard setback from the side of a dwelling to the property line. No doubt when enacting this setback requirement in the D.R.16 zone, the County Council contemplated townhouse development and therefore apparently determined it appropriate that the end unit of a townhouse row should be set back 25 feet from the property line. In any event, the Petitioners submitted a minor subdivision plan to Baltimore County for approval. Under the development regulations, a "minor" subdivision is any subdivision of a single tract into three or fewer lots. A "regular" subdivision constitutes a division of a tract into more than three lots. The Petitioners' subdivision plan called for the creation of two lots from the original property. Thereafter, the lots were to be known as 8 Aigburth Road and 10 Aigburth Road. This subdivision plan was ultimately approved by Baltimore County.

In addition to the minor subdivision approval, the Petitioners sought variance relief through the Petition for Variance filed in Case No. 89-93-A. On the minor subdivision plan submitted, building envelopes on each of the two new lots were shown within 15 feet of the side property line in lieu of the 25 feet required. Following a public hearing in the matter, variance relief was granted by then Zoning Commissioner J. Robert Haines. Commissioner Haines allowed a 15-foot side yard setback, but added a restriction to the granting of his relief allowing "only single family dwellings shall be permitted to be constructed on each lot." This decision was not appealed and subsequently a house was constructed on the lot thereafter known as 8 Aigburth Road. That house apparently was completed in approximately 1989/1990 and Mr. & Mrs. Petrilli occupied the house as a single family residence.

In either 1992 or 1996, (Mr. Petrilli guessed 1996; however, one of the neighbors indicated it was 1992), the property was rezoned through the County's quadrennial zoning process. That process enables the Baltimore County Council to rezone property following an extensive review process, which occurs every 4 years. These two lots were down-zoned through that process to a D.R.5.5 classification, which permits less intense development as compared to a D.R.16 zoning classification. However, the D.R.5.5 regulations feature different setback requirements. Unlike the 25-foot side yard setback required in

the D.R.16 zone, the D.R. 5.5 zone requires only a 15-foot setback. Thus, the dwelling at 8 Aigburth Road technically became compliant with the side yard setback requirements when the property was down-zoned to D.R.5.5. That is, the dwelling now meets the current zoning requirements for side yard setbacks in a D.R.5.5 zone. Thus, the need for the variance granted by Commissioner Haines was eliminated.

Indeed, it might be argued that Commissioner Haines' Order became null and void at the time of the rezoning of the property to D.R.5.5. Following the hearing before me, the Petitioners engaged Counsel who submitted a two-page letter summarizing the Petitioners' arguments. This letter has been included in the case file and accepted as a post-hearing Memorandum. Indeed, that letter argues that commissioner Haines' Order became a nullity when the zoning changed.

Although this argument has merit, Baltimore County typically regulates individual lots within a subdivision pursuant to the zoning classification requirements which were in effect for that zone at the time the subdivision was approved. Most often, this policy is applied to regular and not "minor" subdivisions. However, it could be argued that these two lots continue to be bound by the requirements set out in the D.R.16 zoning regulations in that this subdivision was approved when the property was so zoned.

In any event, the next act of this ongoing drama occurred when the Petitioners filed a Petition for Special Hearing in Case No. 97-57-SPH. In that case, the Petitioners sought relief to approve the conversion of the dwelling known as 8 Aigburth Road to a three-apartment unit. The special hearing request was approved and an Order issued in that case following a public hearing by Deputy Commissioner Timothy M. Kotroco. Commissioner Kotroco's findings are fully set forth in his 6-page Opinion and Order. He noted that the Petitioners own sufficient acreage and could comply with the conversion table requirements found in Section 402 of the B.C.Z.R. Those requirements permit the conversion of a dwelling from a single family unit to a multi-family unit for so long as the property meets certain criteria. In this case, the property known as 8 Aigburth Road indeed met the conversion table requirements.

However, in approving the special hearing, Deputy Commissioner Kotroco imposed certain restrictions, Restriction No. 2 of which is the subject of the Petition before me. That restriction reads "The subject dwelling shall be utilized as three separate apartments only for so long as the property is occupied

ORDER RECEIVED FOR FILING
Date 3/7/07
By

by its owner of record. In the event the owner of record ceases to reside on the subject property, the dwelling shall be converted back to a single family dwelling."

It is evident why Commissioner Kotroco imposed such a requirement. The property had formerly been used as a fraternity house and is within close proximity of the Towson State University. There are other apartments in the immediate vicinity. No doubt Commissioner Kotroco feared a deterioration of this property, were it maintained by an absentee owner.

Based upon the testimony and evidence offered in this case, I am not persuaded to remove that restriction; however, I will clarify same. In my judgement, the relief granted by Deputy Commissioner Kotroco is not personal to Mr. & Mrs. Petrilli, but to any individual who comes into ownership/possession of 8 Aigburth Road. Therefore, any individual who hereafter owns 8 Aigburth Road may use the dwelling as a three apartment unit, for so long as that individual, as the owner of record, resides in the dwelling.

Pursuant to the advertisement, posting of the property, and public hearing held thereon and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 7th day May, 1999 that the Petition for Special Hearing to approve the removal of Restriction No. 2 of the Order issued in prior Case No. 97-57-SPH, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that Restriction No. 2 of the Order issued in prior Case No. 97-57-SPH be and is herewith clarified so as to allow any owner to use the property as a three apartment unit for so long as that individual, as the owner of record, resides therein.

IT IS FURTHER ORDERED that the Petitioners shall have thirty (30) days from the date of this Order to file an appeal of this decision.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 5/7/99
By bjs

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

May 6, 1999

Mr. & Mrs. Benjamin Petrilli
8 Aigburth Road
Towson, Maryland 21286

RE: PETITION FOR SPECIAL HEARING
S/S Aigburth Road, 432' E of the c/l York Road
(8 Aigburth road)
9th Election District – 4th Councilmanic District
Benjamin Petrilli, et ux – Petitioners
Case No. 99-215-SPH

Dear Mr. & Mrs. Petrilli:

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

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

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Howard L. Alderman, Jr., Esquire, Levin & Gann PA
305 W. Chesapeake Avenue, Towson, Md. 21204
Mr. & Mrs. Jack L. Giacomo, 17 Aigburth Road, Towson, Md. 21286
Mr. & Mrs. Paul S. Hartman, 18½ Cedar Avenue, Towson, Md. 21286
Mr. & Mrs. George W. Sawyer, 22 Aigburth Road, Towson, Md. 21286
Ms. Mauritz G. Anderson, 18 Maryland Avenue, Towson, Md. 21286
Ms. Anne P. Orrell, 23 Aigburth Road, Towson, Md. 21286
People's Counsel; Case File

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 8 AIGBURTH RD

which is presently zoned DR5.5

This Petition shall be filed with the Department of Permits & Development Management

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County to determine whether or not the Zoning Commissioner should approve removal of restriction no. 2 of the order issued in case no. 97-57-SPH

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

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

Contract Purchaser/Lessee

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner

(Type or Print Name)

Signature

Address Phone No

City State Zipcode

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

Legal Owner(s)

Ida A. PETRILLI
(Type or Print Name)

Ida A. Petrilli
Signature

BENJAMIN A. PETRILLI
(Type or Print Name)

Benjamin A Petrilli
Signature

8 AIGBURTH RD 410 823-4219
Address Phone No

TOWSON MD. 21286
City State Zipcode

Name, Address and phone number of representative to be contacted

Name

Address Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates Next Two Months

ALL OTHER

REVIEWED BY: JP DATE 11/23/98

ORDER RECEIVED FOR FILING
Date 12/23/98
By B

Revised 9/5/95

99-215-SPH

215

EXAMPLE 3 -- Zoning Description

3 COPIES

Three copies of the zoning description of your property are required. This is a sample to help you with the description - DO NOT USE THIS FORM FOR "FILL-IN THE BLANK". Type or print the description on 8-1/2" x 11" paper. COPIES OF DEEDS CANNOT BE USED FOR THE DESCRIPTION. The zoning description must be in the following form:

ZONING DESCRIPTION FOR 8 AIGBURTH RD. TOWSON, MD. 21286
(address)

Beginning at a point on the SOUTH side of
(north, south, east or west)

AIGBURTH RD. which is 50'
(name of street on which property fronts) (number of feet of right-of-way width)

wide at the distance of 432' EAST of the
(number of feet) (north, south, east or west)

centerline of the nearest improved intersecting street YORK RD.
(name of street)

which is 60' R/W wide. *Being Lot # 2,
(number of feet of right-of-way width)

Block _____, Section #_____ in the subdivision of AIGBURTH RD.
LIBER (name of subdivision)

as recorded in Baltimore County Plat Book # 7887, Folio # 669,

containing 0.3325 (14,482 SQ FT.). Also known as 8 AIGBURTH RD.
(square feet or acres) (property address)

and located in the 9 Election District, 4 Councilmanic District.

*If your property is not recorded by Plat Book and Folio Number, then DO NOT attempt to use the Lot, Block and Subdivision description as shown, instead state: "As recorded in Deed Liber __, Folio __" and include the measurements and *directions (metes and bounds only) here and on the plat* in the correct location.

Typical metes and bounds: N.87 12' 13" E. 321.1 ft., S.18 27' 03" E.87.2 ft., S.62 19' 00" W. 318 ft., and N.08 15' 22" W. 80 ft. to the place of beginning.

215

99-215-SPH

CERTIFICATE OF POSTING

RE Case No 99-215-SPH

Petitioner/Developer BEN PETRILLI, ETAL

Date of Hearing/Closing 1/5/98

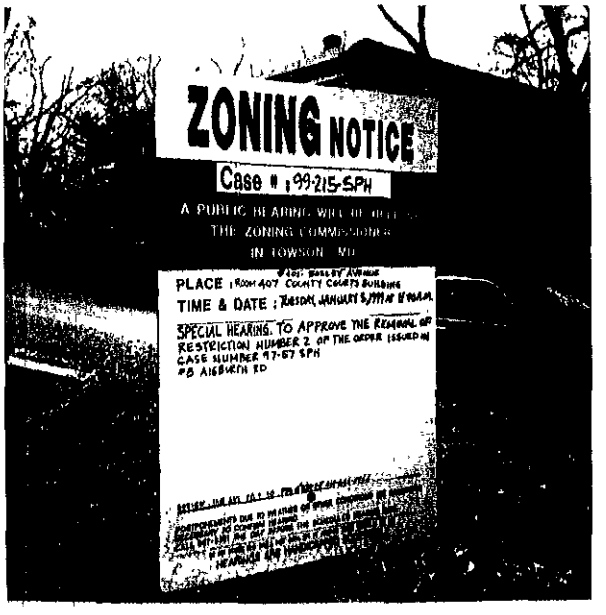
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms Gwendolyn Stephens

Ladies and Gentlemen

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at #8 · AIGBURTH RD.

The sign(s) were posted on 12/19/98
(Month, Day, Year)



99-215-SPH
#8-AIGBURTH RD
BEN PETRILLI H. 1/5/99

Sincerely,

Patrick O'Keefe 12/20/98
(Signature of Sign Poster and Date)

PATRICK M. O'KEEFE
(Printed Name)

523 PENNY LANE
(Address)

HUNT VALLEY, MD. 21030
(City, State, Zip Code)

410-666-5366 ; CELL-410-905-8571
(Telephone Number)

CERTIFICATE OF POSTING

RE: Case No.: 99-215-SPH

Petitioner/Developer: _____

BENJAMIN A. PETRILLI

Date of Hearing/Closing: _____

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 8 AIGBURTH RD.

The sign(s) were posted on 6/30/99
(Month, Day, Year)

Sincerely,

Gary Freund 6/30/99
(Signature of Sign Poster and Date)

GARY C FREUND
(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

9/99
T/C FROM PROP. OWNER.
WIND/RAIN TORE-UP
SIGN - PLEASE REPLACE.

Note: Repost Request
Sent to PDM
10/12/99 (w/ PLAN)

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #99-215-SPH
8 Algburth Road
S/S Algburth Road, 480' E of centerline York Road
9th Election District
4th Councilmanic District
Legal Owner(s):
Ida A. Petrilli & Benjamin A. Petrilli

Special Hearing: to approve the removal of restriction number 2 of the order issued in case number 97-57-SPH.
Hearing: Tuesday, January 5, 1999 at 11:00 a.m., in Room 407, County Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call (410) 887-3353.
(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391.

12/160 Dec. 17 C279480

CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/17, 1998

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/17, 1998.

THE JEFFERSONIAN,

A. Henrikson

LEGAL AD. - TOWSON

BALTIMORE COUNTY, MAR' 'D
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 060750

DATE Nov. 23 1998 ACCOUNT R-001-615-000

AMOUNT $ 50.00

RECEIVED FROM: Benjamin A. Petrilli

8 Aigburth Rd. ITEM #215

FOR: SPH Taken by: JRF

99-215-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PROCESS ACTUAL TIME
11/23/1998 11/23/1998 10:08:19
REG W69% CASHIER MARL MRW DRAWER 6
5 MISCELLANOUS CASH RECEIPT
Receipt # 055798 DPLN
CR NO. 060750
50.00 CHECK
Baltimore County, Maryland

BALTIMORE COUNTY, MARY' 'ND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 067079

DATE 6/4/99 ACCOUNT 001-6150

AMOUNT $ 210.00

RECEIVED FROM: Benjamin & Ida petrilli

FOR: Appeal - #99-215-SPH & Sign Fee

8 Aigburth Road

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PROCESS ACTUAL TIME
6/07/1999 6/04/1999 16:33:54
REG W903 CASHIER PWES PEW DRAWER 3
Dept 5 528 ZONING VERIFICATION
Receipt # 087582 DPLN
CR NO. 067079
Recpt Tot 210.00
210.00 CK .00 CA
Baltimore County, Maryland

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 215

Petitioner: BENJAMIN A PETRILLI

Location: 8 AIGBURTH RD

PLEASE FORWARD ADVERTISING BILL TO:

NAME: BENJAMIN A. PETRILLI

ADDRESS: 8 AIGBURTH RD.

TOWSON, MD. 21286

PHONE NUMBER: (410) 823-4219

AJ:ggs

(Revised 09/24/96)

99-215-SPH

Plat to accompany Petition for Zoning ☐ Variance ☐ Special Hearing

PROPERTY ADDRESS: _____ see pages 5 & 6 of the CHECKLIST for additional *required information*

Subdivision name: _____

plat book#____ ,folio#____ ,lot#____ ,section#_____

OWNER: _____

Vicinity Map
scale: 1"=1000'

LOCATION INFORMATION

Election District:

Councilmanic District:

1"=200' scale map#:

Zoning:

Lot size: _____ acreage _____ square feet

	public	private
SEWER:	☐	☐
WATER:	☐	☐

	yes	no
Chesapeake Bay Critical Area:	☐	☐

Prior Zoning Hearings:

Zoning Office USE ONLY!

reviewed by: *ITEM #:* CASE#:

North

date:_____

prepared by: _____ Scale of Drawing: 1"=_____

-15-

Exhibit B

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than _____.

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 99-215-SPH

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: _____

DATE AND TIME: _____

REQUEST: SPECIAL HEARING - To approve removal of restriction no. 2 of the order issued in case no. 97-57-SPH.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

Baltimore County
Department of Permits and
Development Management

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

December 3, 1998

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 99-215-SPH
8 Aigburth Road
S/S Aigburth Road, 480' E of centerline York Road
9th Election District – 4th Councilmanic District
Legal Owner: Ida A. Petrilli & Benjamin A. Petrilli

Special Hearing to approve the removal of restriction number 2 of the order issued in case number 97-57-SPH.

HEARING: Tuesday, January 5, 1999 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

c: Ida & Benjamin Petrilli

NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY DECEMBER 22, 1998.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
December 17, 1998 Issue – Jeffersonian

Please forward billing to:
Benjamin a. Petrilli 410-823-4219
8 Aigburth Road
Towson, MD 21286

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 99-215-SPH
8 Aigburth Road
S/S Aigburth Road, 480' E of centerline York Road
9th Election District – 4th Councilmanic District
Legal Owner: Ida A. Petrilli & Benjamin A. Petrilli

Special Hearing to approve the removal of restriction number 2 of the order issued in case number 97-57-SPH.

HEARING: Tuesday, January 5, 1999 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 410-887-3391.

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

October 12, 1999

NOTICE OF ASSIGNMENT

CASE #: 99-215-SPH

IN THE MATTER OF: IDA A. AND BENJAMIN A. PETRILLI -
Legal Owners 8 Aigburth Road
9th Election District; 4th Councilmanic

(5/07/99 -Decision of the Z.C. in which Petition for Special Hearing was DENIED; restriction in earlier Order clarified.)

ASSIGNED FOR: **TUESDAY, NOVEMBER 23, 1999 at 10:00 a.m. /Day #1**
WEDNESDAY, NOVEMBER 24, 1999 at 10:00 a.m. /Day #2

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

cc: Counsel for Appellants /Petitioners: Howard L. Alderman, Jr., Esquire
Appellants /Petitioners: Mr. & Mrs. Benjamin A. Petrilli

John S.H. Chapman
Mr. & Mrs. George Sawyer
Mauritz Anderson
Anne Orrell
Aigburth Manor Association of Towson, Inc.
c/o Judith Giacomo, President

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Reversed 10/20/99 - Only one day 11/23/99 ir

BALTIMORE OFFICE
MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
9TH FLOOR
BALTIMORE, MARYLAND 21201
410-539-3700
TELECOPIER 410-625-9050

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR.
halderma@bcpl.net

October 19, 1999

Kathleen C. Bianco, Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue
Room 49
Towson, Maryland 21204

Re: Ida and Benjamin Petrilli
Eight Aigburth Road
Case No. 99-215-SPH

Dear Ms. Bianco:

I am in receipt of a Notice of Assignment dated October 12, 1999, in the above-referenced case. That Notice indicates that this matter has been assigned for two separate days. I am unclear as to why two days would be necessary to present the issues involved in this case.

In any event, I am unavailable for the scheduled second day of the hearing which is Wednesday, November 24, 1999. If, for some as yet unknown reason a second day is necessary, I would appreciate it if you would reschedule that date after November 24, 1999.

Should you have any questions or need additional information in this regard, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman

Howard L. Alderman, Jr.

HLA,Jr./dmh
cc: Mr. and Mrs. Benjamin Petrilli (w/enclosure)

C:\WPWIN\HLA.LTR\Petrilli\ltr to bianco re reschedule

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

October 20, 1999

REVISED NOTICE OF ASSIGNMENT

CASE #: 99-215-SPH

IN THE MATTER OF: IDA A. AND BENJAMIN A. PETRILLI -
Legal Owners 8 Aigburth Road
9th Election District; 4th Councilmanic

(5/07/99 -Decision of the Z.C. in which Petition for Special Hearing was DENIED; restriction in earlier Order clarified.)

The assignment of this case (which previously had been for two days, i.e., 11/23 and 11/24/99) has been revised; only one day of hearing (11/23/99) is assigned for this matter; which is

ASSIGNED FOR: **TUESDAY, NOVEMBER 23, 1999 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

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cc: Counsel for Appellants /Petitioners: Howard L. Alderman, Jr., Esquire
Appellants /Petitioners: Mr. & Mrs. Benjamin A. Petrilli

John S.H. Chapman
Mr. & Mrs. George Sawyer
Mauritz Anderson
Anne Orrell
Aigburth Manor Association of Towson, Inc.
c/o Judith Giacomo, President

Francis X. Borgerding, Jr., Esq.
(entered appearance 11/18/99 as counsel for Aigburth Manor Assoc.)

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

4/15/00

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
IDA A. & BENJAMIN A. PETRILLI	*	COUNTY BOARD OF APPEALS
-LEGAL OWNERS /PETITIONERS		
FOR A SPECIAL HEARING ON	*	OF
PROPERTY LOCATED ON THE S/S		
AIGBURTH ROAD, 432' E OF C/L	*	BALTIMORE COUNTY
YORK ROAD (8 AIGBURTH ROAD)		
9TH ELECTION DISTRICT	*	CASE NO. 99-215-SPH
4TH COUNCILMANIC DISTRICT		

* * * * * * * * *

O P I N I O N

This case comes to the Board of Appeals for Baltimore County based on a timely appeal of a final decision of the Zoning Commissioner for Baltimore County dated May 7, 1999. In that decision, a Petition for Special Hearing was denied in part, and clarified in part. The Board held a public hearing on November 23, 1999. Howard L. Alderman, Jr., Esquire, appeared on behalf of the Petitioners /Appellants, Benjamin A. and Ida A. Petrilli. Francis X. Borgerding, Jr., Esquire, appeared on behalf of The Aigburth Manor Association of Towson, Inc. Carole S. Demilio, Deputy People's Counsel, appeared on behalf of the Office of People's Counsel for Baltimore County. At the conclusion of the hearing, counsel were requested to submit simultaneous briefs for review by the Board along with the testimony and evidence taken at the hearing. Public deliberation took place on December 27, 1999.

The facts of the case are relatively simple as referenced in the testimony and evidence produced at the hearing. On June 14, 1988, Mr. and Mrs. Petrilli purchased a property on Aigburth Road which consisted of a rectangularly shaped lot roughly 110 feet wide and 220 feet deep, with frontage on Aigburth Road. At the time of the purchase, the property consisted of an older dwelling, which

was acknowledged by all parties to be in very poor condition. The property was zoned D.R. 16, which allowed a number of uses which included single-family and apartment dwellings. Testimony was uncontradicted that the dwelling had been used by students of the nearby Towson University as a fraternity house, who had not properly maintained it; and at times, it caused nuisance problems usually associated with such fraternities.

As stated, the fraternity had not maintained the facility, and local residents were pleased when it was demolished after Mr. Petrilli had filed for a minor subdivision with the lot being separated into two lots under a minor subdivision plan which occurred in June 1998. It was the Petitioner's intention to build two large homes on each of the two lots created. Mr. Petrilli testified that he could have lined up the houses in straight fashion, but, in order to create architectural diversity, he opted to construct the facilities in an offset fashion. In order to proceed in this manner, it was necessary to seek a variance from the then-required 25-foot side yard setback. The Board took note that, had the Appellant elected to build one unit behind the other, no variance would have been required since both lots created on the original property were more than sufficient in width to build the houses as proposed.

Petitioner's Exhibit No. 1 reflects that Mrs. Ida Petrilli appeared and testified at the variance hearing without benefit of counsel and that no protestants were in opposition to the variance. The variance request was accordingly approved by the Zoning

Commissioner on October 6, 1998 with condition #2 attached thereto, stating, "Only single-family dwellings shall be permitted to be constructed on each lot." Subsequently, the Petitioners constructed on 8 Aigburth Road a very impressive home included in a series of photographs submitted by the Petitioner (Petitioner's Exhibits 5A through 5J). Four years later, in 1992, under the Comprehensive Zoning Map Process, the local community association, Aigburth Manor, filed an application to down zone the original property to D.R. 5.5. In filing the application, the community association sought the zoning change on the subject site, but not the adjacent property on which existed a four-rental unit.

The County Council approved the change to D.R. 5.5, and during the entire process, the Petitioner was apparently not aware of the down-zoning petition. Since different side yard setbacks are applicable in the various D.R. zones, the effect of the re-zoning was to render Commissioner Haines' variance relief somewhat moot since the minimum side yard setback in the D.R. 5.5 zone is 15 feet, rather than the 25 feet in the D.R. 16 zone (when the variance relief was requested back in October 1988).

Mr. Petrilli testified that in 1996 he filed a special hearing petition to remove the Haines restriction as to the "single-family" use in order to utilize the already constructed dwelling for three apartments. He had filed the petition on behalf of himself and his wife. At the hearing, he appeared pro se with several local residents also appearing in opposition to the special hearing. Since counsel had not been engaged, the Petitioner was unaware

that, under the then-existing Baltimore County Zoning Regulations (BCZR), a three-apartment use was permitted. In Case No. 97-57-SPH (Petitioner's Exhibit No. 2), the Petitioner stated that he currently resided in the relatively new dwelling constructed on lot #2 with his wife, their daughter, son-in-law and grandchild. Mr. Petrilli desired to install a kitchen on the second floor, creating a separate apartment for his daughter and son-in-law and family. Additionally, he desired to create a third floor apartment to be utilized as a separate rental unit to someone outside of the family. He stated that he would not operate the subject property as an absentee landlord. Deputy Zoning Commissioner Kotroco stated that "he [Petrilli] appears to be a responsible citizen who intends to live there in the house after it is converted. He has agreed to have the restriction imposed on him as a condition of approval of his request." For that reason, Deputy Zoning Commissioner Kotroco found that conversion of the subject property to a three-apartment unit was appropriate, as long as Mr. Petrilli resided on the property. He did so believing that the situation would not have any detrimental effect upon the surrounding community as long as he (Petrilli) and his family were residing on the subject site.

For that reason, the special hearing was granted subject to condition #2 "the subject dwelling shall be utilized as three separate apartments only so long as the property is occupied by its owner of record. In the event the owner of record ceases to reside on the subject property, the dwelling shall be converted back to a single-family dwelling." The Petitioner was also directed to

record a copy of the Order in the Land Records for Baltimore County to insure that any potential purchaser of the subject property would have notice that the property could only be used as a three-apartment dwelling for so long as the owner of record resided therein. Here again the decision of the Deputy Zoning Commissioner was not appealed.

Thereafter, in Case No. 99-215-SPH, Mr. and Mrs. Petrilli filed for a special hearing to remove the Kotroco restriction relative to occupancy of the facility by its owners of record. Again, local residents opposed the special hearing. The Petitioners had filed the special hearing and appeared *pro se* before Commissioner Schmidt. Commissioner Schmidt recognized that Deputy Zoning Commissioner Kotroco had imposed such a restriction since the prior usage had been that of a fraternity house, and feared deterioration of the property if managed by an absentee owner. To that extent, he "clarified" the Kotroco Order, and denied the Petitioner's request to remove restriction #2 of Case No. 97-57-SPH, but did clarify restriction #2 to "allow any owner to use the property as a three-apartment unit for so long as that individual, as the owner of record, resides therein." (Petitioner's Exhibit No. 3, Case No. 97-57-SPH) In reaching that decision, Commissioner Schmidt acknowledged that the existing improvements met the setbacks imposed by the current zoning of D.R. 5.5, and the need for variances created by Commissioner Haines was effectively eliminated.

Thereafter, the Petitioner engaged, for the first time, the

services of legal counsel, and Howard L. Alderman, Jr., Esquire, filed a timely appeal to this Board on behalf of Mr. and Mrs. Petrilli. Appearing in opposition to the special hearing were a number of local residents, Mrs. Judith Giacomo and Mr. Paul Hartman. Mrs. Giacomo testified as to general community association fears of growing multi-family uses in the area, and a particular fear of the ever-expanding nearby Towson University and disruption of community activities, and a desire on the part of the community to retain its single-family concept. Mrs. Giacomo has been an active member of the Aigburth Manor Association serving as President, Vice President, and Secretary. The Association represents approximately 135 households, and Mrs. Giacomo also described the nature and character of the neighborhood. She acknowledged that the house the Petitioner had constructed was a very attractive dwelling, and that other multi-family dwellings existed in the immediate neighborhood, and specifically, the Cardiff Hall Apartments in proximity to the subject site. She recited the efforts of Baltimore County in its community conservation efforts in the area, and the Southeast Towson Community Plan.

Mr. Paul Hartman also appeared in opposition to the special hearing, citing numerous problems with fraternity houses, traffic, noise, and generally what he perceived to be numerous other areas which, in his opinion, deterred from the quality of life in the area, and to which the area residents were experiencing difficulties. Most of the negatives expressed by Mr. Hartman were

personal and generic in nature, but serious as to an area resident who had to contend with the problems.

Finally, Ms. Laurie Hay of the Baltimore County Office of Planning testified. She has been the Fourth District Planner for the area since August 1998, and spoke concerning the Southeast Towson Community Plan. She also described the character of the area and the location and relationship to the Towson business area and Towson University. She described the Southeast Towson Community Plan, problems caused local residential areas by reason of the ever-growing campus of Towson University, and opined as to the position of the Planning Office that the restriction not be removed. She acknowledged that the Office of Planning had not put any restrictions on any such other properties in the area, nor the extension of any restrictions that already existed to her knowledge, and of a current Comprehensive Zoning Map Process request to change the Cardiff Hall Apartments to allow more intensified non-residential use.

The Board members, prior to public deliberation, reviewed the evidence submitted, their notes and the fine briefs submitted by Counsel and the Office of People's Counsel. The Board is not unsympathetic to the plight of the Petitioners, nor is it not cognizant of the concerns of the local residents. However, the facts of the case are most persuasive for a majority of the Board to conclude that the restriction placed on the site by Deputy Zoning Commissioner Kotroco, and clarified by Zoning Commissioner Schmidt, is not an unreasonable one, and must remain in place.

Admittedly, the Petitioners removed an eyesore that had previously existed on the site, and replaced it with a very attractive home. In seeking out the original variance, the Board concedes that the front placement of the houses on the lots was of benefit to the community, since they would be in an offset position, rather than one house directly behind the other. To an extent, this also benefited the Petitioner, since from a resale standpoint, such a positioning would be of benefit to the Petitioner. However, from the early stages of the lot purchase, through the Haines variance proceedings, the Kotroco special hearing proceedings, and the Schmidt proceedings, the Petitioner sought to handle the request on a "pro se" basis. Had legal representation been engaged at the early stages, many of the ensuing problems may have been avoided.

While the downsizing of the property in 1996 to D.R. 5.5 effectively changed the minimum side yard setback to 15 feet (rendering the Haines variance somewhat moot), Petitioner filed for a special hearing concerning the use of the property for three apartments. That proceeding was opposed by local residents of the community. Kotroco removed the Haines restriction (which no longer applied) but placed the "ownership/residency" requirement on the property. The Board notes that in neither the variance case nor the first special hearing case did the Petitioner appeal in a timely fashion. Indeed, the Petitioner agreed to restriction #2 after a thorough reading and analysis of the Opinion and Order in Case No. 97-57-SPH. In addition, the Petitioner complied with the Order by recording the decision in the Baltimore County Land

Records (restriction #3).

The Board concludes that the Petitioner had ample opportunity to appeal the Haines and Kotroco Orders but elected not to do so. Counsel for the Petitioner argues that there was (1) an erroneous application of the law and (2) that a discriminatory effect stemmed from that legal error. The Board believes otherwise. The zoning from D.R. 16 to D.R. 5.5 did not terminate the Haines 1988 Order. That Order granted conditional variances for single-family dwellings only. The zoning regulations in effect at the time of the hearing and Order under which the plan was approved govern the development (BCZR 103.1). In addition, the Zoning Commissioner's Policy Manual clearly states at 103.1.A that:

> (2) If the lot to be developed is in a recorded subdivision approved by the Planning Committee or Planning Board [now Hearing Officer], then the zoning regulations applicable would be those in effect at the time the plan was recorded.

The Board concurs that the only applicable zoning regulations for this site are those that govern the minimum subdivision of the 1988 Haines Order. In compliance with the development plan, the Petitioner erected the home on Aigburth Road. It is well settled Maryland law that if a Petitioner is going to challenge an alleged constitutionally invalid zoning ordinance, it must be done by seeking judicial review at the time the ordinance is enacted [Exxon Co., USA v. S. Hughes, 354 Md. 530, 731 A.2d 948 (1998)].

The Board acknowledges that the location of this community is a unique one. Its proximity to Towson University and the latter's remarkable student growth in recent years and accompanying housing

demands have placed an additional burden and stress on the area. Recognizing this factor, the County Council designated the locale as a Community Conservation District. The Southeast Towson Community Plan also favors strong consideration be given to preserving the neighborhood integrity as a single-family residential area. The Baltimore County Planning Office also supports the single-family concept.

This Board agrees that single-family dwellings will assist in preserving the integrity of the neighborhood. The majority of the Board also agrees that the addition of the owner occupancy restriction is a proper employment of the police powers of the County. The restriction runs with the land. There was no evidence or testimony that the property could not be sold with the restriction, nor that it could not be converted back to a single-family dwelling. The Board does not determine that the imposition of the restriction is one that is arbitrary, capricious, discriminatory or illegal. Indeed, the Petitioner's current request has the adverse effect of negating the "spirit and intent" of the restriction that was placed on the property with the Petitioner's consent and with the Petitioner acquiescing at the same time, recognizing the concerns of the community and the burden of compounding problems that do occur with absentee ownership of multi-family rental units.

For the reasons stated, the Board will hereby deny the Petitioner's request for special hearing.

Case No. 99-215-SPH /Ida A. & Benjamin A. Petrilli -Legal Owners1

O R D E R

THEREFORE, IT IS THIS 14th **day of** April **, 2000 by** the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing seeking removal of Restriction No. 2 of the Order issued by the Deputy Zoning Commissioner in prior Case No. 97-56-SPH be and the same is **DENIED**; and it is further

ORDERED that Restriction No. 2 of said Order issued in prior Case No. 97-57-SPH be and is herewith clarified so as to allow any owner to use the property as a three-apartment unit for so long as that individual, as the owner of record, resides therein.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Charles L. Marks, Panel Chairman

Donna M. Felling

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
IDA A. & BENJAMIN A. PETRILLI	*	COUNTY BOARD OF APPEALS
-LEGAL OWNERS /PETITIONERS		
FOR A SPECIAL HEARING ON	*	OF
PROPERTY LOCATED ON THE S/S		
AIGBURTH ROAD, 432' E OF C/L	*	BALTIMORE COUNTY
YORK ROAD (8 AIGBURTH ROAD)		
9TH ELECTION DISTRICT	*	CASE NO. 99-215-SPH
4TH COUNCILMANIC DISTRICT		

* * * * * * * * *

DISSENTING OPINION

This Board member respectfully dissents from the denial by the Majority of the Petition for Special Hearing which was sought for removal of a condition requiring that the owner of the property known as 8 Aigburth Road ("subject property") be required to reside at that address in order to maintain three apartments.

The original Haines Order of October 6, 1988, Case No. 89-93-A, granting variances with a restriction limiting construction on each lot to a single-family dwelling, was an erroneous application of the law in that the Zoning Commissioner was vested with the authority to grant variances from bulk and area requirements only pursuant to Baltimore County Zoning Regulations (BCZR) Section 307.1 and Baltimore County Code (BCC) Section 22-26. It was not until after March 30, 1990 that the County Council vested the Zoning Commissioner with the authority to apply conditions to variance relief. Thus, at the time of the granting of the variance from the then applicable D.R. 16 side yard setback requirements, condition #2 included in the Zoning Commissioner's 1988 Order stating, "Only single-family dwellings shall be permitted to be constructed on each lot," was an erroneous application of the law. The Zoning Commissioner had no authority to restrict the use of the

original property to single-family use only.

Multi-family use on the subject property was permitted as of right in both the D.R. 16 and D.R. 5.5 zones, subject to compliance with the minimum lot size requirements contained in the conversion table of BCZR Section 402. The Petitioners sought relief to convert the home into a three-apartment dwelling to accommodate their family's needs in October 1996. Deputy Zoning Commissioner Kotroco, on October 3, 1996 in Case No. 97-57-SPH, determined the subject property "is of sufficient size and is appropriately zoned for use as a multi-family dwelling." His Order permitted the conversion, based upon the testimony from area residents on the quality of life issues presented when a single fraternity house was located on the original single lot. He required owner-occupancy as a condition of the conversion in order to maintain the "spirit and intent" of condition #2 of the Haines Order (which was already an erroneous application of the law).

In 1998, the Petrillis filed a Petition for Special Hearing requesting removal of restriction #2 of the Order issued in Case No. 97-57-SPH. Zoning Commissioner Schmidt denied the Petition for Special Hearing and opined:

> It is evident why Commissioner Kotroco imposed such a requirement. The property had formerly been used as a fraternity house and is within close proximity of Towson State University. There are other apartments in the immediate vicinity. No doubt Commissioner Kotroco feared deterioration of this property, were it maintained by an absentee owner.

The past transgressions of a single-family unit utilized as a fraternity house should not follow a multi-family unit where

capacity is controlled. Schmidt also concurred that the subject property still meets the conversion table requirements for multi-family units.

Protestants presented testimony from residents of the nearby neighborhood area and Ms. Hayes of the Baltimore County Office of Planning. The residents complained that single-family homes used as fraternity houses caused problems. No testimony was given on multi-family units. The testimony also revealed that the immediate neighborhood where the subject property is located contains only multi-family homes extending from 2 Aigburth Road through 15 Aigburth Road (and on which the subject property, at 8 Aigburth Road, is located). Ms. Hayes testified that Cardiff Hall Apartments, which is located immediately across the street from the subject property, has put in a request to allow more intensified non-residential use. Ms. Hayes acknowledged that the Petrillis are the only residents with a multi-family unit having the owner-occupied restriction.

The Petrillis have been discriminated against as a consequence of their efforts to remove an illegal act of restricting variance relief by Zoning Commissioner Haines in 1988. No witness called to testify at the hearing of this Board could identify any other property used for multi-family purposes that has a restriction that the owner of record must reside within the dwelling. No witness called to testify could state any problems with multi-family units; the only complaints related to single-family buildings utilized as fraternities. Multi-family dwellings in the D.R. 5.5 zone have

long been permitted as of right (BCZR 1B01.1A). As acknowledged by witnesses in opposition to the requested relief, it is only the property of the Petrillis that contains an owner-resident restriction.

Zoning is an orderly and lawful process that protects the rights of individuals, citizens and their communities while allowing planned, orderly and proper uses of all kinds in appropriate places and under appropriate conditions and restrictions. Like any set of rules, it is only as strong as the consistency of its application. This is a case where consistency was not applied and discrimination resulted. Therefore, this Member will dissent from the Majority Opinion that denies the Petitioners' request for Special Hearing.

Lynn Barranger

Lynn Barranger

DATE: April 14, 2000

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

April 14, 2000

Howard L. Alderman, Jr., Esquire
LEVIN & GANN, P.A.
305 W. Chesapeake Avenue
Suite 113
Towson, MD 21204

RE: In the Matter of Ida A. & Benjamin A. Petrilli
Owners/Petitioners Case No. 99-215-SPH

Dear Mr. Alderman:

Enclosed please find a copy of the final Majority Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of the Conurring /Dissenting Opinion of Ms. Barranger.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,
Charlotte E. Radcliffe for
Kathleen C. Bianco
Administrator

encl.

cc: Mr. and Mrs. Benjamin Petrilli
Francis X. Borgerding, Jr., Esquire
Aigburth Manor Assn. of Towson, Inc.
c/o Judith Giacomo, President
John S.H. Chapman
Mr. and Mrs. George Sawyer
Mauritz Anderson
Anne Orrell
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

12/27/99

BEFORE THE

COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case No. 99-215-SPH

BENJAMIN A. PETRILLI., *and wife,*

Appellants/Petitioners

Eight Aigburth Road
9th Election District
4th Councilmanic District
Towson, Maryland

APPELLANTS' POST-HEARING MEMORANDUM

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Attorneys for Appellants/Petitioners

BEFORE THE

COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

Case No. 99-215-SPH

BENJAMIN A. PETRILLI., *and wife,*

Appellants/Petitioners

Eight Aigburth Road
9th Election District
4th Councilmanic District
Towson, Maryland

APPELLANTS' POST-HEARING MEMORANDUM

Benjamin and Ida Petrilli (the "Appellants" or the "Petrillis"), by and through their undersigned legal counsel, hereby submit this Post-Hearing Memorandum in accordance with the direction of the County Board of Appeals at the hearing held on the above-referenced appeal, in lieu of closing and legal argument.

STATEMENT OF THE CASE

This case involves the appeal of a final decision of the Zoning Commissioner for Baltimore County, dated May 7, 1999, wherein Appellants' Petition for Special Hearing was denied in part and clarified in part. The Petition for Special Hearing sought removal of a condition requiring that the owner of the property known as Eight Aigburth Road (the "Subject Property") had to reside at that address in order to maintain three apartments at the

Subject Property, a use permitted as of right pursuant to the Baltimore County Zoning Regulations. As part of a previously granted side yard variance for the removal of a deteriorated structure and the construction of a modern, two-story dwelling, the then Zoning Commissioner restricted the Subject Property to "single family use" (the "Haines' Restriction"). Pursuant to a subsequent Petition for Special Hearing filed by the Petrillis, the Deputy Commissioner removed the Haines' Restriction and then imposed a new restriction that the Petrillis live at the Subject Property if they used that property as three separate apartments (the "Kotroco Restriction"). The instant Petition, heard by the current Zoning Commissioner, sought removal of the Kotroco Restriction. This Board conducted a nearly day-long hearing on the Petrillis' appeal, at which time members of the community in which the Subject Property is located, through private counsel and with the participation of the Office of People's Counsel, presented lay testimony in opposition of the relief prayed (collectively, the "Protestants"). The Protestants' case consisted solely of unsubstantiated concerns of lay witnesses in opposition to the requested relief. At the conclusion of the case, this Board requested that counsel for the respective parties submit written memoranda in lieu of closing argument.

THE RELEVANT FACTS

The Subject Property and an adjacent lot known as 10 Aigburth Road (referred to collectively hereafter as the "Original Property") have been owned by the Petrillis for approximately nine years. At the time that they purchased the Original Property it was zoned Density Residential 16 (DR 16) which permitted a variety of uses, including single-family dwellings and apartment houses. The Petrillis processed a minor subdivision plan, dividing

the Original Property into that lot now known as 10 Aigburth Road and the Subject Property. The Petrillis proposed to construct two, large dwellings on each of the two lots created. In order to maintain a level of architectural diversity, the Petrillis proposed to construct the dwellings in an offset fashion, rather than lining up the dwellings, one behind the other. In order to construct the dwellings in this offset fashion, a variance from the required 25 foot side yard setback was required to permit the proposed dwelling arrangement. Had the Petrillis proposed to construct one dwelling behind the other, no variance would have been needed as both lots created in the Original Property were of sufficient width to construct the dwellings as proposed.

The Haines Order and Restriction

The Petrillis filed a Petition for Variance, to permit a dwelling on the Subject Property and on 10 Aigburth Road to be located 15 feet from the side yard, in lieu of the required 25 foot distance. Viewing both lots from Aigburth Road, the Petrillis intended to construct the dwellings, one shifted to within 15 feet of the left property line and the other shifted to within 15 feet of the right property line, in offset fashion. Then Zoning Commissioner Haines heard the evidence offered by the Petrillis (appearing *pro se*) in support of the Petition for Variance in Case No. 89-93-A. As noted on page 1 of Mr. Haines' Order, "there were no Protestants" at the hearing.[1] Commissioner Haines granted the variance relief, subject to the condition that "only single-family dwellings shall be permitted to be constructed on each lot."

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[1] Commissioner Haines' Order is in the record of this Case as Petitioners' Exhibit No. 1.

During the Baltimore County 1992 Comprehensive Zoning Map Process, the Aigburth Manor Association (the "Association") filed an application to down zone the Original Property to a classification of DR 5.5. Testimony offered at the hearing conducted by this Board showed that the Association sought a zoning change on the property owned by the Petrillis, but not on the adjacent property on which is located a dwelling consisting of four rental apartments. The Association's down zoning request was approved by the County Council, effectively changing the zoning of 10 Aigburth Road and the Subject Property to Density Residential 5.5. The *Baltimore County Zoning Regulations* ("BCZR") require different side yard setbacks in the different DR zones. As a direct result of the down zoning, the variance relief granted by Commissioner Haines was rendered moot, as the minimum side yard setback in the DR 5.5 zone is 15 feet rather than the 25 feet in the DR 16 zone.

The Kotroco Order and Restriction

In 1996, being unaware that the down zoning action of the County Council rendered Commissioner Haines' order moot, the Petrillis sought, by way of a Petition for Special Hearing, to remove the Haines' Restriction, so as to permit the dwelling constructed on the Subject Property to be used for three apartments, a use permitted as of right under the BCZR. That Petition and the evidence in support and in opposition thereto was considered by Deputy Zoning Commissioner Kotroco. The Petrillis, proceeding *pro se*, in Case No. 97-57-SPH[2] presented evidence that they had improved the Subject Property, which had been in "deplorable condition" (Kotroco Order at 2) by replacing the prior, existing house, with a

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[2] Deputy Commissioner Kotroco's Order in Case No. 97-57-SPH is included in the record as Petitioners' Exhibit No. 2.

three-floor, 4,000 square foot dwelling, characterized by Deputy Commissioner Kotroco as "a beautiful home" which is "a nice addition to the community." and which is maintained "far and above those others in the immediate vicinity." Kotroco Order at 3.

Additional evidence presented in support of the 1996 Petition for Special Hearing showed that the Subject Property was "of sufficient size" and it was "appropriately zoned to meet the conversion standards that would allow a three-apartment use to operate thereon." Kotroco Order at 3. However, the Deputy Zoning Commissioner found correctly that the Haines' Restriction, if not removed, would not allow this otherwise permitted use of right. Kotroco Order at 3.

Over the objections offered through lay testimony of members of the surrounding community, Mr. Kotroco removed the Haines' Restriction. However, because in 1996 the Petrillis had intended to use the 3 apartments for their use, the use of their daughter's family and a separate rental unit, Mr. Kotroco asked if the Petrillis would agree to live in one of the "apartments". In an honest expression of the then present intent, and believing that such a concession was necessary to obtain an order removing the Haines' Restriction, Mr. Petrilli agreed. Mr. Kotroco modified the Haines' Restriction to provide that the Subject Property could be used for 3 apartments for so long as the property is occupied by its owner of record and that if the owner of record ceased to reside thereon, the dwelling "shall be converted back to a single family dwelling". Kotroco Order at 5. The Haines' Restriction was maintained as to the property now known as 10 Aigburth Road. Kotroco Order at 6. The Kotroco Order does not reflect any testimony or evidence, or any consideration at all by the Deputy Zoning Commissioner that the zoning classification of the Original Property had

changed, thereby rendering moot the Haines Order.

The Schmidt Order and "Clarification"

Finally, earlier this year, the Petrillis, again proceeding *pro se*, filed a Petition for Special Hearing, seeking removal of the Kotroco Restriction. After considering the testimony and evidence, both in support and in opposition to requested relief, Zoning Commissioner Schmidt merely clarified the Kotroco Restriction rather than removing it as requested. In his decision in Case No. 99-215-SPH[3], Commissioner Schmidt clarified that the Kotroco Restriction was not personal to Mr. and Mrs. Petrilli, but rather applied to any owner of record of the Subject Property who used the improvements located thereon as a three apartment dwelling. Mr. Schmidt, like Mr. Kotroco, correctly opined that the Subject Property met all requirements for use as a "multi-family unit". Schmidt Order at 3.

Having been retained subsequent to the hearing held before Commissioner Schmidt, the undersigned legal counsel, on behalf of the Petrillis, submitted a post-hearing memorandum to Commissioner Schmidt addressing the mootness of the Haines Order. Mr. Schmidt acknowledged the merits of the issues raised in the post hearing memorandum but suggested that "it could be argued" that the lots created in the Original Property "continue to be bound by the requirements set out in the D.R. 16 zoning regulations . . . ." Schmidt Order at 3. However, on the same page of the Order, Commissioner Schmidt acknowledges that the existing improvements meet the setbacks imposed by the current zoning classification of DR 5.5 and, therefore, the "need for the variance granted by Commissioner

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[3] Commissioner Schmidt's Order is included in the record before this Board as Petitioner's Exhibit No. 3.

Haines was eliminated." *Id.* Commissioner Schmidt's Order was appealed to this Board.

The Hearing Before This Board

At the hearing before this Board, Mr. and Mrs. Petrilli appeared in support of their appeal, without burdening the Board with extensive testimony of neighbors in support of the Petrillis legal and equitable argument. Mr. Petrilli testified as to the tortuous process that he and his wife had been through in an attempt to use the dwelling located on Subject Property for the permitted purpose of a multi-family dwelling. Mr. Petrilli noted that the Subject Property is the only property in the neighborhood restricted as to the use and occupancy of a multi-family dwelling. Using a portion of the current, official zoning map for the area, Mr. Petrilli identified how each of the structures on Aigburth Road in the immediate vicinity of the Subject Property are being used, including without limitation, the numerous multifamily dwellings.[4] Mr. Petrilli also offered photographs of the dwellings in the area, including those on Aigburth Road used for multifamily use.[5] The Association and other neighbors appeared and testified in opposition to the removal of the Kotroco Restriction, as "clarified" by Commissioner Schmidt, fearing that if that clarified restriction was removed, the dwelling on the Subject Property would fall into disrepair and the residents thereof would become a problem in the Aigburth Manor neighborhood.

Mr. Judith Giacomo, testifying as a resident, board member of the Aigburth Manor Association, and at times as an authorized representative of the Association, expressed

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[4] The partial zoning map is in the record before this Board as Petitioners' Exhibit No. 4.

[5] The Petrilli photographs are in the record before this Board as Petitioners' Exhibits No. 5A-J.

concern and fear of multi-family uses in the neighborhood. Acknowledging that the Subject Property and the neighborhood in general is located immediately across York Road from the Towson University, Ms. Giacomo testified that the neighborhood was primarily comprised of single-family dwellings and was a "close neighborhood". Ms. Giacomo testified further that the Association always runs into problems when only students rent but was unable to testify how many student renters there were within the geographic boundaries of the Association. On further direct examination, Ms. Giacomo testified that it is "not uncommon" in the immediate neighborhood to have 1 or 2 students rent. On cross-examination, Ms. Giacomo had to acknowledge the existence of the Cardiff Hall Apartments, as well as the other multifamily dwelling in the immediate neighborhood, many adjacent to the Subject Property and still others located along Aigburth Road. Ms. Giacomo, however, was unable to identify the location and/or number of multifamily dwellings in the Association neighborhood. The only real problem property identified by Ms. Giacomo was a former fraternity house, a use not permitted as of right in the DR zones.

Ms. Laurie Hay, the Office of Planning's Fourth District Planner since August of 1998, appeared and testified about the adoption of the South East Towson Community Plan in 1998 and in opposition to the relief requested by the Petrillis. Ms. Hay characterized the neighborhood in which the Subject Property is located relative to its direct proximity to Towson University and the Towson Business District Core. On cross-examination, Ms. Hay acknowledged that the owner of the Cardiff Hall Apartments has filed, during the 2000 Comprehensive Zoning Process, a request to change the zoning of that property (located directly across the street from the Subject Property) to permit more intensive non-residential

uses. Ms. Hay was unable to identify any other rental or multifamily uses in the area of the Subject Property that had a restriction like that imposed on the Subject Property. Likewise, Ms. Hay testified that, notwithstanding any purported concerns voiced during the development of the South East Towson Community Plan, the Office of Planning had not exercised its authority to petition any other properties in the area for consideration of such a use restriction.

The last witness to testify in opposition to the requested relief was Mr. Paul Hartman. Mr. Hartman testified as to his purported concern over: i) the number of people that attend parties held at a multifamily dwelling; ii) more people living in properties than are permitted; iii) additional rental properties in the area; and iv) the purported disruption of his children's sleep by the slamming of car doors and shouting by people attending parties at multifamily dwellings. On cross-examination, Mr. Hartman was unable to identify the maximum number of people that are permitted to attend a party either at a multifamily dwelling or at a single family dwelling. Likewise, Mr. Hartman was unable to testify as to the number of people or the number of properties in the neighborhood where there are more people living than are permitted. Finally, Mr. Hartman acknowledged that, as testified to by Ms. Giamoco, many of the homes in the area rented to students and there was nothing to prevent persons living in or attending a party at a single family dwelling from slamming their car doors or shouting.

Upon completion of all evidence and testimony at the hearing before this Board the parties and the Office of People's Counsel rested their respective cases. This Board closed the record in the above-captioned case except for the receipt of memoranda from counsel.

LEGAL ARGUMENT IN SUPPORT OF THE PETITION

The Illegal Haines' Restriction

Not unlike this Board, the Zoning Commissioner (and the Deputy) has only that authority vested in him by the County Charter and/or statutes enacted by the County Council pursuant to its authority under the Charter. Prior to March 30, 1990,the effective date of County Council Bill No. 18-90, the Zoning Commissioner was vested with the authority to grant variances from bulk and area requirements only pursuant to BCZR § 307.1 and *Baltimore County Code* ("Code") § 22-26[6]. The latter provision, in subsection (a)(1) provided that the Zoning Commissioner "may grant variances from area and height regulations . . . provided that the issuance of all such . . . variances shall be subject to appropriate principles, standards, rules, conditions and safeguards **set forth in the zoning regulations** . . . . " No principle, standard, rule, condition or safeguard of the BCZR imposes an owner occupant restriction on multifamily dwellings.

At the time of the variance petition before then Commissioner Haines, the power and authority of the Zoning Commissioner was very limited. There was no authority vested in the Zoning Commissioner to attach any conditions to any variance relief granted, unless such were "set forth in the zoning regulations." It was not until after March 30, 1990 (well after Commissioner Haines' October 6, 1988 Order) that the County Council vested in the Zoning Commissioner the authority to condition the grant of variance relief.

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[6] A copy of Code § 22-26, prior to the enactment County Council Bill 18-90, is included with this Memorandum under Tab 1 and is incorporated herein. This same language is repeated at page 18 of County Council Bill 18-90, attached hereto under Tab 2 and incorporated herein. Reviewing those provisions, the Board will find the limited authority of the Zoning Commissioner as it existed prior to the effect of that Council Bill.

The County Council adopted amendments to Code § 22-26, including without limitation, a new subsection (c) which provided, for the first time, that:

> Variances may be issued with such conditions or restrictions as determined appropriate by the zoning commissioner for the purpose of protecting the health, safety or general welfare of the surrounding community.

Code § 2-26(c); *See* County Council Bill 18-90 at page 20 under Tab 2.

Thus, at the time of the granting of the variance from the then applicable DR 16 side yard setback requirements, the Zoning Commissioner had no authority to restrict the use of the Original Property to single family use only. Neither Code Section 22-26 (as then adopted and now amended and codified as Code § 26-127(b)) nor BCZR § 307.1 permitted or authorized such restriction.

Multifamily use on the Original Property was permitted as of right, subject to compliance with the minimum lot size requirements contained in the conversion table of BCZR § 402. Deputy Commissioner Kotroco determined that the Subject Property "is of sufficient size and is appropriately zoned for use as a multi-family dwelling. **The only impediment to Mr. Petrilli is Restriction No. 2 of the Order issued in the prior** [Haines] **case**." Kotroco Order at 4. (Emphasis supplied.) Likewise, Mr. Schmidt ruled that the Subject Property meets "the conversion table requirements." Schmidt Order at 3.

A Classic "But For" Situation

The "but for" principles of law have never been more applicable then in this case. But for the illegal Haines Restriction, Mr. Petrilli would never have needed to seek additional Special Hearing relief before Deputy Commissioner Kotroco. But for the perceived need to

remove the [illegal] Haines Restriction, Mr. Petrilli would not have needed to appear before the Deputy Commissioner nor would he have ever felt pressured to accept a condition of owner residency as a *quid pro quo* for the removal of the Haines Restriction. But for the perceived need to remove the [illegal] Haines Restriction, Mr. Petrilli would not have needed to appear before Commissioner Schmidt to seek removal of the Kotroco Restriction nor would he have had to appeal to this Board the Schmidt Order which purported only to clarify the Kotroco Restriction.

A Restriction of Discrimination

The Petrillis have been discriminated against as a consequence of their efforts to remove an illegal act of restricting variance relief by a prior Zoning Commissioner. Their neighbors, the Office of People's Counsel and the Office of Planning urge this Board to continue and perpetuate this discrimination. Absolutely no witness called to testify at the hearing of this Board could identify any other property used for multifamily purposes that has a restriction that the owner of record must reside within the dwelling. Multifamily dwellings in the DR 5.5 zone have long been permitted as of right. *See* BCZR § 1B01.1.A. As acknowledged by the witnesses in opposition to the requested relief, it is **only** the property of the Petrillis that contains an owner resident restriction.

The Zoning Commissioner, the Office of Planning and the neighbors and members of the Association each have the absolute right, pursuant to BCZR § 507.1 to seek to apply to all multifamily dwellings within the boundaries of the Association, a restriction that the owner must reside on the premises. The testimony before this Board is that no such action has ever been taken or even attempted. If non-owner occupied, multifamily dwellings truly

create the types of problems suggested by the witnesses testifying in opposition to the requested relief, why have Petitions for Special Hearing not been filed by those individuals (pursuant to BCZR § 507.1) to save their neighborhood? Instead, the neighbors of this purportedly "close neighborhood" have singled out the Petrillis for imposition of such restriction. The Petrillis are to be afforded equal protection under the laws of this County. The disparate application of the subject restriction can not pass the rational basis test required by our constitutional framework.

No Credible Evidence by the Protestants

Witness after witness testifying in opposition to the requested relief failed to define correctly the term "multifamily dwelling" as used in the BCZR. Moreover, not one witness could identify for this Board the location of all multifamily dwellings within the boundaries of the Association or how many people were living in each such dwelling. Nor could any witness identify how many of the homes within the Association's boundaries were rented to the purported bane of the neighborhood — university students.

Instead, each witness offered in opposition, including Ms. Hay, testified as to their discontent with multifamily uses, their views on traffic and parking in the area (which in part has resulted from other, unrelated development over the years) and their fears that their "close neighborhood" will be affected adversely if the requested relief is granted. The appellate courts of this state have long held that:

> Zoning is not a plebiscite and therefore testimony in opposition restricted solely to lay witnesses, petitions of objection to the proposal by residents, and testimony amounting to unsupported dislike and fear of (a) project . . . **amounted to no evidence at all.**

Entzian v. Prince George's County, 32 Md. App. 256, 262-63 (1976), *quoting Rockville Fuel*

and Feed Company, Inc. V. Board of Appeals of the City of Gaithersburg, 257 Md. 183 (1970) (Emphasis supplied.)

If the Haines Restriction were never imposed, the Kotroco Restriction and Schmidt Clarification would not exist. Obviously, Deputy Commissioner Kotroco and Commissioner Schmidt issued Orders modifying/clarifying a prior, erroneous application of the law of variances in Baltimore County by then Commissioner Haines. In reviewing the requested relief, this Board is not required to defer in any way to the prior and erroneous application of law. *Belvoir Farms Homeowners Association, Inc. v. North*, 355 Md. 259 (1999) The only issue on appeal is the removal of the owner occupant restriction. Two separate hearings have been held in which the legality of multifamily use on the Subject Property has been addressed and in both cases the trier of fact has determined that the Subject Property meets all applicable criteria. Having no evidence before it (*see Entzian* and *Rockville Fuel* above) as to why the first illegal restriction and the subsequent restrictions modifying it should be upheld, this Board should grant the relief requested by the Petrillis and remove all restrictions imposed on the Original Property and the Subject Property by Commissioners Haines and Schmidt and Deputy Commissioner Kotroco.

CONCLUSION

This case concerns the erroneous application of law and the discriminatory effect of all that stems from that legal error. Commissioner Haines exceeded his statutory authority in imposing a single-family use restriction. The Opinion and Order of Commissioner Haines was rendered a nullity by the subsequent rezoning action of the County Council. All subsequent decisions of the Zoning Commissioner were believed to be required as a result of the Haines decision and are "poisoned" by the illegality inherent in the condition imposed

in connection with a setback variance that is no longer necessary. Perhaps there should be an owner occupant requirement for multifamily dwellings of a certain size or within certain areas. However, that is a determination to be made by the legislature. Alternatively, if the Aigburth Manor Association, the Office of People's Counsel, the Office of Planning or any of the witnesses testifying in opposition to the requested relief really believe that they can make a *prima facie* case for such owner occupant requirement, let them proceed in the manner set up by the legislative body under BCZR § 507.1 and let them seek such a restriction on all multifamily uses within the area of the Association rather than merely singling out the Petrillis.

This Board should apply the applicable law to the evidence presented and approve the relief requested and issue an Order negating the owner occupant restriction on the Subject Property and the single family only restriction on the remainder of the Original Property and require that its Order be recorded among the Land Records of Baltimore County to clear the title from the recordation of the Kotroco decision and Order.

Respectfully submitted,

Howard L. Alderman, Jr.
Levin & Gann, P.A.
305 West Chesapeake Avenue, Suite 113
Towson, Maryland 21204
(410) 321-0600
Attorneys for Appellants/Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of December, 1999, a copy of the foregoing Appellants' Post-Hearing Memorandum was mailed by first class mail, postage prepaid, to Carole S. Demilio, Esquire, Deputy People's Counsel for Baltimore County, 400 Washington Avenue, Room 47, Towson, Maryland 21204, and to Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue, Suite 600, Towson, Maryland 21204.

Howard L. Alderman, Jr.

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ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR.
Halderman@counsel.com

December 27, 1999

VIA HAND DELIVERY

Ms. Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue, Old Courthouse
Towson, Maryland 21204

RE: In Re: Benjamin Petrilli, et ux
Eight Aigburth Avenue
Case No. 99-215-SPH

Dear Ms. Bianco:

As directed by the Board at the conclusion of the hearing held on the above-referenced case, I am submitting herewith one original and three photocopies of the Appellants' Post-Hearing Memorandum. Copies have been forwarded to the parties named below.

Should you or the Board require any additional information in this regard, please do not hesitate to contact me.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosures
c (w/encl. [via mail]): Mr. and Mrs. Benjamin Petrilli
Carole S. Demilio, Esquire
Francis X. Borgerding, Jr., Esquire

99 DEC 27 AM 11:51
COUNTY BOARD OF APPEALS
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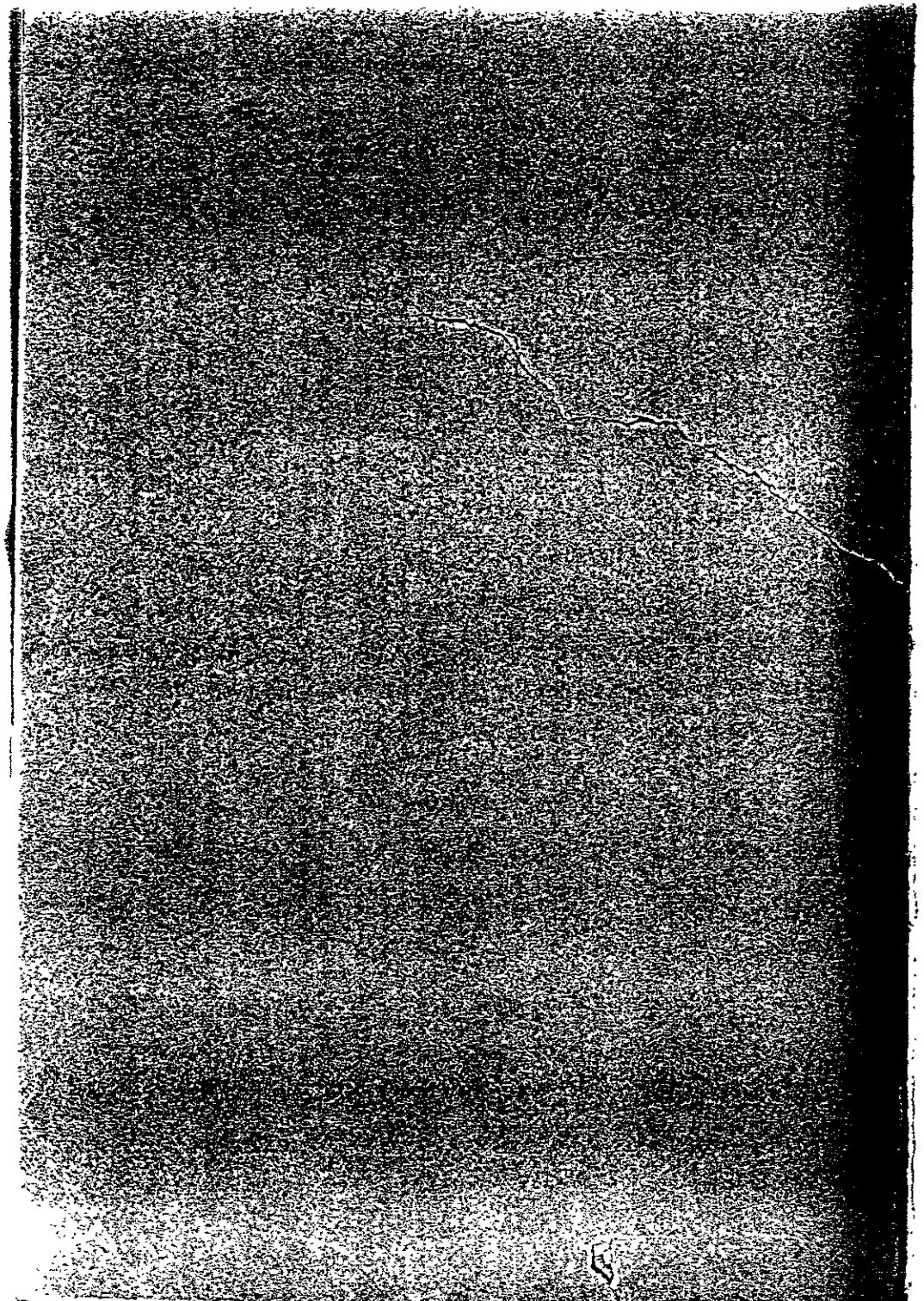

BALTIMORE COUNTY CODE 1978

1988/89 CUMULATIVE SUPPLEMENT

Containing all additions and amendments to the Baltimore County Code, 1978, through the 1989 Session of the Baltimore County Council, Bill No. 149-89

MUNICIPAL CODE CORPORATION

Tallahassee, Florida 1990

zoning regulations, the county council by ordinance may act upon the report. If the county council fails to so act within the two-year period, the final report of the planning board is null and void, and any action upon the subject matter of the final report requires compliance with the provisions of sections 22-21 and 22-22 regarding amendments to the zoning regulations.

(b) Within two (2) years after the county council has acted pursuant to subsection (a), the council by ordinance may take further action upon any issue related to the subject matter of the final report without the necessity of compliance with the provisions of section 22-21 regarding a prior recommendation of the planning board. However, prior to taking such action, the council shall prepare a specific proposal and hold a hearing on the proposal. (Bill No. 15, 1985, § 1)

Note—See the editor's note following § 22-25.

Sec. 22-25. Reserved.

Editor's note—Section 22-24, delegating the zoning commissioner the interim power to change the zoning classification of property and the method for such classification, derived from Bill No. 80, 1960, Bill No. 26, 1961, Bill No. 85, 1964, Bill No. 72, 1969, §4, Bill No. 42, 1970, § 3, Bill No. 122, 1978, and Balto. Co. Code, 1968, § 22-22; and § 22-25, providing for suspension of reclassification petition filing during preparation of new or revised zoning map, derived from Bill No. 72, 1969, § 5, Bill No. 42, 1970, § 4, and Balto. Co. Code, 1968, § 22-22.1, were both repealed by § 1 of Bill No. 46, 1979. Provisions dealing with the interim power to change zoning classifications are now contained in § 2-58.1. Subsequently, § 1 of Bill No. 15, 1985, added a new § 22-24.

Sec. 22-26. Authority of zoning commissioner to provide for special exceptions and variances.

Except as provided in section 2-58.1(p) of this Code and subject to the appropriate principles, standards, rules, conditions and safeguards as set forth in the zoning regulations, the zoning commissioner, upon petition, may grant variances from area and height regulations and may make special exceptions to the zoning regulations in harmony with their general purpose and intent; provided, that the issuance of all such special exceptions and variances shall be subject to appropriate principles, standards, rules, conditions and safeguards set forth in the zoning regulations, and that all decisions of the zoning commissioner

with respect to such matters shall be subject to appeal to the board of appeals as provided in this article. The zoning commissioner shall schedule a public hearing on any petition for such a variance or special exception for a date not less than thirty (30) nor more than ninety (90) days after the petition is accepted for filing. For a period of at least fifteen days prior to the time of such hearing, notice of the time and place of the hearing relating to the property under petition shall be conspicuously posted thereon and shall be given in at least two (2) newspapers of general circulation in the county. Such notice shall describe the property under petition and the action requested therein. Upon establishing a hearing date for such a petition, the zoning commissioner shall promptly forward a copy of the petition to the director of planning (or his deputy) for his consideration and written report thereon containing his findings thereon with regard to planning factors. (Bill No. 46, 1979, § 2)

Sec. 22-32. Appeals to county board of appeals.

(a) Any person or persons, jointly or severally, or any taxpayer or any official, office, department, board or bureau of the county, aggrieved or feeling aggrieved by any decision of the zoning commissioner shall have the right to appeal therefrom to the county board of appeals. Notice of such appeal shall be filed, in writing, with the zoning commissioner within thirty (30) days from the date of any final order appealed, together with the required fee as provided in the zoning regulations. Such appeals shall be heard and disposed of by the county board of appeals as may be provided in the Charter and the board's own rules of procedure. Any reclassification when granted by the county board of appeals shall, in the absence of an appeal therefrom, have the force and effect of law.

(b) For purposes of this section, the terms "person aggrieved or feeling aggrieved" includes a duly constituted civic, improvement, or community association if:

(1) The property or issue which is the subject of the final order being appealed is:

a. Located within the geographic limits of the association, said limits to be defined and determined by the first of the following criteria found applicable:

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1990, Legislative Day No. 2

Bill No. 18-90

Mr. C. A. Dutch Ruppersberger, III, Councilman
By Request of County Executive

By the County Council, January 16, 1990

A BILL
ENTITLED

AN ACT concerning

Title 22 "Planning, Zoning and Subdivision Control"

FOR the purpose of repealing sections providing for the composition of the Planning Board, appointment of the Planning Board, interim development controls for the Chesapeake Bay Critical Area, including sections establishing legislative findings of fact, legislative intent, definitions, establishment and duration of such controls, official interim map, limits on development activities, limits on reclassifications and special exceptions, on capital improvement projects, on grading activity, limited modification of controls, and for appropriations for the Historic Landmark Commission; of repealing and reenacting sections dealing with the administration of the Office of Planning and Zoning, powers and duties of the Planning Board, establishing the meetings and rules of the Planning Board, the experience and duties of the director of planning and the zoning commissioner, scope of the master plan, required action on specific projects before the planning board, applications for building permits where impacted by master plan, preparation of zoning regulations and zoning maps, authority of zoning commissioner to provide for special hearings, variances and special exceptions, review by the Board of Appeals of zoning commissioner decisions, custody of books and records by the zoning commissioner, validation of zoning regulations, appeals from the zoning commissioner to the Board of Appeals, maintenance of regulations and laws adopted by the County Council, penalty for violations, injunctive relief, civil penalties for zoning violations, scope of development regulations, general exemption from the development regulations, waivers, recording of unapproved plats, fees, compliance with laws and regulations, adding agencies to be notified of plans filed with the CRG, actions taken by the CRG, referral of the CRG plan to the planning board, amendments to the plan, requirements for approval and recordation of the plan, procedure for approval, time limit for validity of plats, extension of the time limit for validity of plats and plans, county participation, security required, slope protections and soils, development of property in RCC, RO, O-1, O-2 zones and CR districts, reclamation development plan, term and appointments to the historic landmark commission, officers of the commission, creation of historic districts, referral of applications for construction or alteration of any structure within a historic district, final historical landmarks list, agricultural land preservation district and sale of easements, official maps of the agricultural land preservation district, applicability of the critical area findings plan, procedure for reviewing findings law, non-tidal and tidal wetlands, buffers, habitat protections areas, and approval of use and occupancy permits; adding a new section dealing with ~~the authority of the zoning commissioner to adopt policies~~; limited exemptions from the development regulations, preparation of the plan, procedure before the planning board, adoption of the development manuals, and compilation and maintenance of the landmarks list.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

Sections 22-3, 22-4, 22-111 through 22-120 and 22-167

BY repealing and reenacting

Sections 22-2(a),(b)(4),(c), 22-5, 22-6, 22-11, 22-13, 22-17, 22-18(a),(b),(d), 22-21(b),(e), 22-26, 22-28, 22-30(b),(d), 22-31, 22-32, 22-34, 22-35, 22-36, 22-36.1(a),(b),(c),(d)(4),(e)(1)(3)(4), 22-40, 22-41, 22-42(5),(7), 22-43(a)(first paragraph),(b),(c), 22-45, 22-48, 22-51, 22-55(a), (b)(12), (13-17), (26), (27), (34), 22-57(a), (e), (h), 22-58(g),(h), 22-59(a)(2), 22-63, 22-66 (f)(3), 22-67(b),(c), (d), 22-68(c), 22-68.1(e), 22-70(b), 22-75(a), (c), 22-99 (a), (b), 22-104(c)(2)(first paragraph), 22-105(b)(2),(5), (e), (h), 22-106(c)(1)a., 22-107, 22-144, 22-146, 22-149, 22-159, 22-169, 22-172, 22-173, 22-207, 22-208(b), 22-211, 22-213(c) 22-215(a), 22-219.

BY adding

Sections 22-34.1 , 22-42(9), 22-55(b)(31)VII, (32)XII, (d), 22-60(b)(4), 22-105(b)(6), 22-150(g)

All of Title "Planning Zoning and Subdivision Control" Baltimore County Code, 1978, 1987 Cumulative Supplement, as amended by subsequent bills

SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland, that Sections 22-3, 22-4, 22-111 through 22-120 and 22-167 title "Planning, Zoning and Subdivision Control", Baltimore County Code, 1978, 1987 Cumulative Supplement, as amended, be and they are hereby repealed.

[Sec. 22-3. Planning Board-Composition; voting and nonvoting members.]

[The planning board shall consist of sixteen (16) members, of whom twelve (12) shall be lay members holding no other salaried position in the county government, and the remaining four (4) members shall be the county executive, the county superintendent of schools, the director of public works and the zoning commissioner, all of whom shall serve ex officio during their official tenures in such offices. The ex officio members of the planning board shall be nonvoting members.]

[Sec. 22-4. Same-Appointment, term and qualifications of lay members.]

[(a) The lay members of the planning board shall, at the time of their appointment and for two (2) years prior thereto, and during their full term of office, be residents of the county and shall be appointed by the county executive in the following manner: One member shall reside in the First or Second Councilmanic District, one shall reside in the Third,

Fourth or Fifth Councilmanic District, one shall reside in the Sixth or S[redacted]th Councilmanic District and nine sha[redacted]be appointed without requirements as to district residence.]

[(b) The terms of the lay members of the planning board shall be for four (4) years and shall be staggered so that the terms of no more than three (3) members shall expire in any one year. Vacancies in unexpired terms may be filled from time to time by appointment by the county executive.]

[(c) The lay members of the planning board holding office on the effective date of this amendment to the law shall continue to hold office for the balance of their respective terms.]

[DIVISION 6. CHESAPEAKE BAY CRITICAL AREA - IDA]

[Sec. 22-111. Legislative findings of fact.]

[(a) In June of 1984, the Chesapeake Bay Critical Area Law (SB664) was enacted. Therein, the general assembly found and declared that the cumulative effects of human activity have resulted in deteriorating water quality and biological productivity of the bay and its tributaries; that this activity has caused increased levels of pollutants, nutrients and toxics in the bay system, and has resulted in the decrease of more protective land uses such as forestland and agriculture; and that the restoration of the bay and its tributaries is dependent, in part, upon minimizing further adverse impacts to water quality and to the natural habitats of the shoreline and adjacent lands.]

[(b) The law requires that Baltimore County and each other local jurisdiction must prepare and, subject to state approval, must adopt and implement a critical area protection program, the "program," containing specified elements for achieving three (3) primary goals:]

[(1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that run off from surrounding lands;]

[(2) Conserve fish, wildlife, and plant habitat; and]

[(3) Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.]

[(c) In accordance with the law, the Chesapeake Bay Critical Area Commission has promulgated "criteria" in the form of regulations (COMAR title 14, subtitle 15) specifying the required content for a local program and the procedure for obtaining program approval from the commission.]

[(d) The county's program must consist of the plans, regulations and other elements specified in the criteria, including an integrated set of revisions and amendments to the master plan, the zoning, development and other county regulations, the capital improvements program, etc.]

[(e) Baltimore County's local program must be submitted to the commission within two hundred seventy (270) days from May 13, 1986, and must be adopted by the county within ninety (90) days after its approval by the commission; an extension of the 270-day deadline could be requested from the commission.]

[(f) In light of the schedule specified in the law, Baltimore County's program will not be approved for enactment until the summer of 1987 at the earliest.]

[(g) During the interim until the effective date of the approved local program, development, unless restricted, is likely to occur in areas that will be affected by the program which development, if allowed, will frustrate the purpose and intent of the program, will prevent the county from achieving the primary goals of the law and will destroy the program's integrity before it can be adopted and made effective through code revisions and other county legislative actions.]

[(h) Therefore, the county council finds that, pending completion of the necessary studies, hearings, reviews and other actions incident to the preparation, consideration, approval and adoption of the Baltimore County Critical Area Protection Program, the public interest requires that

appropriate controls must be adopted both to preserve the integrity of the proposed program, including its implementing measures, and to assure that opportunity for its proper consideration by the county council.]

[(i) The county council further finds that the controls in this division are an essential interim measure for promoting the public health, safety and general welfare of Baltimore County by facilitating the county's compliance with the critical area law and the orderly and appropriate future use of the critical area, including the conservation of its land and water resources.]

[Sec. 22-112. Legislative intent.]

[(a) The purpose of the county council in adopting these controls is to assure that, during the interim until the effective date of the county's approved program, the county's major planning and regulatory decision-making options under the critical area law will not unreasonably be foreclosed by the intrusion or enlargement of incompatible uses or land use patterns through premature or conflicting amendments to the zoning map or through approvals of special exceptions, development plans, or the like.]

[(b) It is further intended by the county council that this division is adopted independently of the Baltimore County Zoning Regulations and the development regulations of Baltimore County so that, to the extent necessary for achieving its intent, purposes, and requirements, this division supersedes and abrogates the rights to development which otherwise would accrue from the zoning or development regulations or other county laws.]

[Sec. 22-113. Definitions.]

[For the purposes of this division 6, the words and terms herein will have the same meaning as such words and terms in the county Code, the county zoning regulations, or the county development regulations, as the case may be; however, for the purposes of this division, the following terms have meanings indicated:]

[(a) Critical area means all lands and waters defined in section 8-1807(a) of the Natural Resources Article, Annotated Code of Maryland, namely:]

[(1) All waters and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the state wetlands maps, and all state and private wetlands designated under title 9 of the Natural Resources Article; and]

[(2) All land and water areas within one thousand (1,000) feet beyond the landward boundaries of state or private wetlands and the heads of tides designated under title 9 of the Natural Resources Article.]

[(b) (1) Development activities means the construction or substantial alteration of residential, commercial, industrial, institutional or transportation facilities or structures; "development" specifically includes all activities encompassed by the term as defined in the development regulations of Baltimore County. Development activities also include the approval of plans and plats under the development regulations and the approval of variances under the zoning regulations, but does not include the issuance of building permits.]

[(2) Development activity does not include, for purposes of these interim controls, the minor resubdivision of property in a circumstance conforming to all of the following conditions:]

[(i) The resubdivision involves only lots or parcels each of which has not lapsed or become invalid under the provisions of the development regulations of Baltimore County; and]

[(ii) The exterior perimeter of the lots affected does not encompass an area larger than five (5) acres; and]

[(iii) The number of lots resulting from the resubdivision is not larger than the number before the resubdivision.]

[(c) Intensely developed area means all territory within the critical area which is identified as such on the official interim map accompanying this division.]

[(d) Resource conservation area means all portions of critical area which are not identified as intensely developed area on the official interim map accompanying this division.]

[Sec. 22-114. Establishment and duration of interim development controls.]

[The provisions of this division 6 shall remain in full force and effect until the county's critical area protection program is accepted by the Chesapeake Bay Critical Area Commission, or until the county council establishes a termination date. During this interim period, the office of planning and zoning shall prepare the county's Chesapeake Bay Critical Area Protection Program in accordance with state law and regulations and shall also prepare for planning board review and recommendation new or revised comprehensive zoning maps and regulations for the Chesapeake Bay Critical Area as may be necessary to fully implement the county's program. Any new or revised comprehensive zoning maps or regulations shall be prepared and adopted in accordance with the procedures of sections 22-21, 22-22 and 22-23 of the Baltimore County Code.]

[Sec. 22-115. Official interim map.]

[The official interim map of the Baltimore County Critical Area is hereby adopted as part of this division. This map is prepared by the office of planning and zoning at a scale of one (1) inch equals six hundred (600) feet showing the boundaries and extent of the critical area, and of the intensely developed areas and the resource conservation area within the critical area.]

[Sec. 22-116. Limits on development activities and project approvals.]

[(a) Except as provided in subsections (b), (c), (d) and (e) hereof, no development activities shall be permitted in connection with property located in the critical area.]

[(b) In an area classified as an intensely developed area on the official interim map, development activity is permitted if it complies with:]

[(1) The final regulations of the Chesapeake Bay Critical

[(1) A[redacted] Commission promulgated in COMAR 14.15[redacted]02 and 14.15.02.03; and]

[(2) Such additional portions of the regulations as are applicable by the cross-references in COMAR 14.15.02.03.]

[(c) In an area classified as a resource conservation area on the official interim map, development activity is permitted if it complies with:]

[(1) The final regulations of the Chesapeake Bay Critical Area Commission promulgated in COMAR 14.15.02.02 and 14.15.02.05; and]

[(2) Such additional portions of the final regulations as are applicable by the cross-references in COMAR 14.15.02.05.]

[(d) Development activity is permitted in connection with property in the critical area for which application for plan approval was pending and not withdrawn as of June 16, 1986, provided that:]

[(1) All such development activity shall be subject to the provisions of section 8-1813 of the Natural Resources Article of the Annotated Code of Maryland.]

[(2) For every subdivision, or section or portion thereof, within the critical area, for which complete application for approval under the development regulations of Baltimore County was made after December 1, 1985, the plat and plan of such subdivision or part shall lapse and be invalid unless, by July 1, 1987, the subdivision or part shall have been developed in accordance with section 22-68(c) of the development regulations.]

[(e) A single lot or parcel of land that was legally of record as of June 16, 1986, may be developed with a single-family dwelling.]

[(f) Permitted development activities shall comply with all other laws and regulations of the county not inconsistent with the provisions of this division.]

[Sec. 22-117. Limits on reclassifications and special exceptions.]

[(a) No zoning map amendment or reclassification of property in the resource conservation area of the critical area may be granted, except that

a zoning map amendment may be granted to correct a mistake caused by a drafting or clerical error.]

[(b) No special exception may be granted for a marina.]

[Sec. 22-118. Limits on capital improvements projects.]

[Capital improvement projects of the county are permitted provided that an effort is made to conform the project to the requirements of COMAR title 14, subtitle 15, insofar as reasonably possible.]

[Sec. 22-119. Limits on grading activity.]

[No grading permit shall be approved except in conjunction with permitted development and capital improvement projects.]

[Sec. 22-120. Limited modification of controls.]

[(a) Regardless of the limitations imposed by section 22-116(c) and the classification as resource conservation area on the official interim map, the real property comprising parcel number 144 on map number 96 (now or formerly owned by John F. Luckhardt & wife, L. 5844/f. 423) may be developed and used for a manufacturing facility, provided that:]

[(1) The property will be developed for a manufacturing facility containing not more than one hundred twenty thousand (120,000) square feet of floor area, including accessory office area, along with parking, landscaping, stormwater-management and other necessary accessory elements; and]

[(2) The development of the site must be substantively in accord with the preliminary plan drawn by STV/Lyon Associates (7971-59-001, 3/2/87, as received by the office of planning and zoning 3/13/87) and with the notes thereon and including the limitation not to use more than seven (7) acres of land within the Chesapeake Bay Critical Area; and]

[(3) The development must be designed, constructed and maintained in compliance with the regulations by the Chesapeake Bay Critical Area Commission governing development in limited development areas (COMAR 14.15.02.04); and]

[(4) The development must be done in compliance with the development regulations of Baltimore County, the Baltimore County Zoning Regulations, and all other applicable county regulations.]

[Sec. 22-167. Appropriations for the commission.]

[There may be appropriated in the annual budget and appropriation ordinance of the county a sum of money which may be expended by the commission, subject to the existing Code provisions and executive orders as may be in effect at the time.]

SECTION 2. And be it further enacted, that Sections 22-2(a), (b)(4), (c), 22-5, 22-6, 22-11, 22-13, 22-17, 22-18(a), (b), (d), 22-21(b), (e), 22-26, 22-28, 22-30(b), (d), 22-31, 22-32, 22-34, 22-35, 22-36, 22-36.1(a), (b), (c), (d)(4), (e)(1)(3)(4), 22-40, 22-41, 22-42(5)(7), 22-43(a) (first paragraph), (b), (c), 22-45, 22-48, 22-51, 22-55(a), (b)(12), (13-17), (26), (27), (34), 22-57(a), (e), (h), 22-58(g), (h), 22-59(a)(2), 22-63, 22-66 (f)(3), 22-67(b), (c), (d), 22-68(c), 22-68.1(e), 22-70(b), 22-75(a), (c), 22-99 (a), (b), 22-104(c)(2) (first paragraph), 22-105(b)(2), (5), (e), (h), 22-106(c)(1)a., 22-107, 22-144, 22-146, 22-149, 22-159, 22-169, 22-172, 22-173, 22-207, 22-208(b), 22-211, 22-213(c), 22-215(a), and 22-219 of the Baltimore County Code, 1978, 1987 Cumulative Supplement, as amended by subsequent bills, be and they are hereby repealed and reenacted, to read as follows:

ARTICLE I. IN GENERAL

Sec. 22-2. Office of planning and zoning.

(a) The office of planning and zoning shall be composed of a director of planning and zoning WHO MAY BE REFERRED TO IN THIS CODE AS DIRECTOR OF PLANNING, AND who shall administer the office OF PLANNING AND ZONING, a planning board, a zoning commissioner WHO SHALL ADMINISTER THE OFFICE OF THE ZONING COMMISSIONER, and deputy zoning commissioner. The office shall perform such duties and functions as specified in or required by the laws and regulations of Baltimore County.

(b) The office of planning and zoning shall consist of the following divisions:

[(4) Zoning administration.]

(c) THE OFFICE OF ZONING COMMISSIONER SHALL CONSIST OF THE ZONING COMMISSIONER, DEPUTY ZONING COMMISSIONER AND ZONING ADMINISTRATION.

Sec. 22-5. Same-Powers and duties generally; reimbursement of expenses.

(a) The planning board shall have the right to exercise all powers and functions granted to it in this title and the power to do any and all acts necessary for the purpose of carrying out the provisions of this title. [A chairman shall be designated by the county executive from the lay members.]

(b) The members of the planning board shall be reimbursed for actual expenses as may be incurred and approved by the county administrative officer and as may be permitted by the budget; provided, however, that no salary shall be paid to the chairman or members of the planning board for their services as such.

Sec. 22-6. Same-Meetings; rules of procedure.

The planning board shall hold at least ten (10) regular monthly meetings each year, and specially called meetings may be held at any time, at the call of the chairman. *The planning board shall adopt rules for the* transaction of its business. It shall hold hearings at its discretion or upon the written request of the county executive, or on resolution of the county council, on any matter pending before the planning board. It shall keep a record of its resolutions, transactions, findings, determinations and decisions, and it shall keep minutes of its proceedings, all of which shall be filed in the office of [the] planning and zoning and shall be public record.

Sec. 22-11. Director of planning; deputy director of planning; zoning commissioner; deputy zoning commissioner.

(a) The county executive shall appoint a director of planning [subject, however, to confirmation by the county council,] PURSUANT TO SECTION 522 OF THE BALTIMORE COUNTY CHARTER, *and such person so appointed* shall continue to serve as director of planning until such time as he or she shall resign or be removed pursuant to the provisions of [this section]

CHARTER SECTION 522. [The director of planning may, with the approval of the county executive and the county council, appoint a deputy director of planning.] The director of planning shall be a person with experience in the field of planning and zoning, shall be a college graduate and shall have had at least ten (10) years experience in planning and zoning activities at least five (5) years of which shall involve a position of executive responsibility. [The deputy director of planning] THERE MAY BE ONE, OR MORE, DEPUTY DIRECTORS OF PLANNING WHO shall be [a] college graduateS and shall have had not less than five (5) years of responsible experience in the field of planning and zoning. [The director of planning or his deputy may be removed from office at any time on the recommendation of the county executive and with the affirmative vote of not less than five (5) members of the county council.]

[(b) The director of planning shall be recognized as the administrative head of the office of planning and zoning.]

(b) [(c)] The county executive shall appoint the zoning commissioner and deputy zoning commissioner[, subject, however, to confirmation by the county council, to serve for a term which shall expire on June 1, 1963, and on June 1 of every fourth year thereafter or until their successors are appointed and confirmed.] PURSUANT TO SECTION 522 OF THE BALTIMORE COUNTY CHARTER. The zoning commissioner and deputy zoning commissioner, as holders of the delegated legislative power conferred on them in this title, shall be appointed solely with regard to their qualifications for the duties of their office and shall have such training or experience as will qualify them to conduct quasi-judicial hearings on zoning matters and to discharge the other functions conferred upon them in this title, and shall hold no other appointive or elective public office or position in the county government except as provided herein. For budgetary [and other administrative] purposes, the zoning commissioner, [and] deputy zoning commissioner, OFFICE OF THE ZONING COMMISSIONER, DIRECTOR OF PLANNING, OFFICE OF PLANNING AND ZONING AND PLANNING BOARD shall be treated as [officers of the county government] BEING within the office of

planning and zoning. [The zoning commissioner or his deputy may be removed from office at any time on the recommendation of the county executive and with the affirmative vote of not less than five members of the county council.]

(c) [(d)] The deputy zoning commissioner shall assist the zoning commissioner in the performance of the duties conferred upon him in this title and shall, in the event of the absence or the inability of the zoning commissioner to act, have all the duties and powers of the zoning commissioner.

(d) [(e)] No employee in the county government shall have any interest directly or indirectly, in any proceeding for any zoning proceeding involving any property in the county, or in any fee, commission or other thing of value paid or payable with respect thereto during his term of office, unless he shall make public disclosure of such interest to the county council and unless the council shall by resolution determine that such interest does not contravene the public welfare. Any violation of this section shall constitute criminal misconduct in office.

[(f) Within thirty (30) days after July 25, 1960, the county executive shall appoint the first director of planning, the first zoning commissioner and deputy zoning commissioner to hold office hereunder, subject, however, to confirmation of such appointments by the county council. The persons holding office on July 25, 1960, shall continue in such offices until their successors are appointed and confirmed.]

ARTICLE II. PLANNING

Sec. 22-13. Same-Scope.

(a) In scope, the master plan may cover proposals for:

(1) Use of land and building for residential, commercial, industrial, institutional, mining, agricultural and park purposes and other like matters.

(2) [Services: Water supply, sewage and other utilities.] ZONING: NEW REGULATIONS OR MAPS TO ACCOMPLISH THE PLAN.

(3) Transportation: Streets, parking, public transit, freight facilities, airports, port facilities and other like matters.

(4) Housing: Residential standards, including studies to improve site planning and other like matters.

(5) Conservation: Water, forest, soil, flood control and other like matters.

(6) Public and semipublic facilities: Civic centers, schools, libraries, parks, playgrounds, fire houses, police structures, hospitals and other like matters.

(7) The distribution and density of population.

(8) Urban renewal, including rehabilitation, slum clearance, redevelopment and other like matters.

(9) Other elements of county growth and development.

(10) IMPLEMENTATION THROUGH APPROPRIATE REGULATIONS.

(b) OTHER PLANS MANDATED BY THE STATE OR FEDERAL GOVERNMENTS OR REQUIRED ELSEWHERE IN THESE REGULATIONS.

(c) [(b)] The master plan may include in its scope areas outside the boundaries of the county which the planning board deems to bear an essential relation to the planning of the county. The studies in connection with the master plan shall be conducted, wherever feasible and appropriate, with the cooperation of federal, state, regional, county or municipal or other agencies involved in planning.

Sec. 22-17. Same-Action on specific projects.

[Wherever the planning board, after public hearings, shall have adopted any portion of the master plan, the governing body or other public agency having jurisdiction over the subject matter of such portion of the master plan, before taking action necessitating the expenditure of any public funds incidental to the location, character or extent of one or more projects thereof, shall refer the proposed action involving such specific project or projects to the planning board for review and recommendation, and shall not act thereon without such recommendation or until forty-five (45) days after such reference shall have elapsed without such

recommendation. This requirement shall apply to action by a housing, parking, highway or other authority, redevelopment agency, school board or other similar public agency, federal, state, regional or county.]

WHENEVER THE COUNTY COUNCIL AFTER PUBLIC HEARING HAS ADOPTED BY RESOLUTION THE MASTER PLAN, THE COUNTY, BEFORE TAKING ACTION ON THE MASTER PLAN OR ON ANY PORTION OF THE MASTER PLAN NECESSITATING THE EXPENDITURE OF ANY PUBLIC FUNDS INCIDENTAL TO THE LOCATION, CHARACTER OR EXTENT OF ONE OR MORE PROJECTS THEREOF, SHALL REFER THE PROPOSED ACTION INVOLVING SUCH SPECIFIC PROJECT OR PROJECTS TO THE PLANNING BOARD FOR REVIEW AND RECOMMENDATION, AND SHALL NOT ACT THEREON WITHOUT SUCH RECOMMENDATION OR UNTIL FORTY-FIVE (45) DAYS AFTER SUCH REFERENCE SHALL HAVE ELAPSED WITHOUT SUCH RECOMMENDATION. THIS REQUIREMENT SHALL APPLY TO ACTION BY A HOUSING, PARKING, HIGHWAY OR OTHER AUTHORITY, REDEVELOPMENT AGENCY, SCHOOL BOARD OR OTHER SIMILAR PUBLIC AGENCY, FEDERAL, STATE, REGIONAL OR COUNTY.

Sec. 22-18. Effect of proposals in master plan on applications for building permits or for approval of preliminary subdivision plans.

(a) When any application for a building permit or for approval of [the preliminary] A plan [of any subdivision] shall be [forwarded] REFERRED to the [director of] planning BOARD for [his] ITS consideration PURSUANT TO SECTION 22-59 [and approval], [he] THE DIRECTOR OF PLANNING shall within fifteen (15) days OF THE FILING DATE, in the case of a building permit, and sixty (60) days OF THE CRG MEETING DATE, in the case of a [subdivision] plan, report to the planning board any condition or circumstance therein which may conflict with or in any manner interfere with, impede or delay any proposal in the master plan for any street or drainage right of way, as in this title defined[,] ; for ANY open space or OPEN area, [as defined in section 5-1201(b) of the unnumbered article Natural Resources of the Annotated Code of Maryland, 1974 volume] CHARACTERIZED BY GREAT NATURAL SCENIC BEAUTY, OR WHOSE EXISTING OPENNESS, NATURAL CONDITION, AND PRESENT STATE OF USE, IF RETAINED, WOULD ENHANCE THE PRESENT OR POTENTIAL VALUE OF ABUTTING OR SURROUNDING URBAN DEVELOPMENT, OR MAINTAIN OR ENHANCE THE CONSERVATION OF NATURAL OR SCENIC RESOURCES; or

for any flood area, school, park, playground or any other public improvement or facility whatever, except streets, roads, drainage rights of way of flood areas in fee which must be provided in whole or in part at the expense of the applicant under the [subdivision] DEVELOPMENT regulations or the policy manual of the department of public works, and local open space tracts, as required by the [subdivisions] DEVELOPMENT regulations OR THE OPEN SPACE MANUAL.

(b) If at its next meeting after the receipt of such report the planning board shall by resolution so direct, the director of planning shall then refer the question to the agency most nearly affected by or concerned with such proposals for any such public improvement or facility, whether such agency be the county board of education, the department of public works or any other governmental agency. Such agency shall then have thirty (30) days from the date of the receipt of the inquiry within which to notify the planning board and the county council whether or not it believes that it would be in the public interest to reserve any portion or all of the land involved in such application for a building permit or for approval of a preliminary subdivision plan. The agency's recommendation, if affirmative, shall include a map showing the boundaries and area of the parcel to be reserved and an estimate of the time, not to exceed [fourteen (14)] EIGHTEEN (18) months following the date of such application, required to complete the acquisition of the land involved in such application. The agency's report and recommendation, if affirmative, shall be sent to the county council and to the planning board. The planning board shall have a period of thirty (30) days from the date of the agency's report to submit its recommendations to the county council for their consideration. After receipt of the planning board's recommendations or after the expiration of thirty (30) days from the date of the agency's report, whichever shall first occur, the county council shall, if it determines that all or part of the land described in the agency report should be reserved, pass a resolution declaring the reservation and describing the land to be reserved. Failure by the county council to pass such resolution within

[sixty (60)] NINETY (90) days of the date of the agency's report and recommendation shall terminate the procedure under this section and shall prevent any or all of the land described in the agency's report and recommendation from being subject to the procedures of this section for a period of two (2) years from the date of the agency's report and recommendation.

(d) Notice of the public reservation shall be carried once each in two (2) newspapers of general circulation in the county. Certified copies of the resolution shall be sent to the applicant, the property owner, the governmental agency concerned with the acquisition, and to the office of planning and zoning. The resolution shall be recorded by the office of planning and zoning within fifteen (15) days among the land records of the county. Such recordation shall include notice of the date of the expiration of the reservation period.

ARTICLE III. ZONING

Sec. 22-21. Preparation of zoning regulations and zoning maps.

(b) The planning board from time to time may also recommend for adoption amendments or supplements to such regulations, and may at any time, with prior approval by an affirmative vote of the county council, review the existing zoning maps in effect throughout the county and recommend to the county council such comprehensive revisions thereof as the board may deem advisable in the light of changed conditions OR WHENEVER THE BOARD ADOPTS RECOMMENDS REVISIONS OR UPDATES TO THE MASTER PLAN PURSUANT TO SECTIONS 22-12 AND 22-13 AND SECTION 523 OF THE CHARTER. Any legally adopted zoning map shall remain in effect until the county council shall have adopted a map or maps in substitution therefore. All such amendments or supplements to the zoning regulations and all such comprehensive revisions of the zoning maps shall be made in accordance with the same procedure herein specified for the original adoption of such regulations and maps. [During the intervals between the comprehensive revisions of the zoning maps by the county council, petitions for

reclassifications, special exceptions and variances to the existing zoning maps shall be considered in the manner hereinafter in this title provided.]

(e) Beginning August 1, 1987, and August 1 of every fourth year thereafter and ending January 15, 1988, and January 15 of every fourth year thereafter, the following time periods for raising issues during the comprehensive zoning map process are hereby established:

	Beginning	Ending
Period 1. Public & Planning [Staff] DIRECTOR	August 1	October 31
Period 2. Planning Board AND PLANNING DIRECTOR	November 1	November 30
Period 3. County Council	December 1	January 15

During period 2, only members of the planning board AND PLANNING DIRECTOR may raise issues and during period 3, only members of the county council may raise issues. No new issue may be raised by anyone after January 15. The term "issue" or "issues" refers to a tract or parcel of land proposed for a change in zone or district classification.

Sec. 22-26. Authority of zoning commissioner to provide for SPECIAL HEARINGS, special exceptions and variances.

(a) (1) Except as provided in section 2-58.1(p) of this Code and subject to the appropriate principles, standards, rules, conditions and safeguards [as] set forth in the zoning regulations, the zoning commissioner, upon petition, may grant variances from area and height regulations, MAY INTERPRET THE ZONING REGULATIONS, and may make special exceptions to the zoning regulations in harmony with their general purpose and intent; provided, that the issuance of all such special exceptions and variances shall be subject to appropriate principles, standards, rules, conditions and safeguards set forth in the zoning regulations, and that all decisions of the zoning commissioner with respect to such matters shall be subject to appeal to the board of appeals as provided in this article. The zoning commissioner shall schedule a public hearing on any petition for such a variance or special exception for a date not less than thirty (30) nor more than ninety (90) days after the petition is accepted for filing. For a period of at least fifteen days prior to the time of such hearing,

notice of the time and place of the hearing relating to the property under petition shall be conspicuously posted thereon and shall be given in at least two (2) newspapers of general circulation in the county. [Such notice shall describe the property under petition and the action requested therein.] SUCH NOTICE SHALL PROVIDE THE ADDRESS OF THE PROPERTY UNDER PETITION, BUT IF NOT AVAILABLE, A DESCRIPTION, AND THE ACTION REQUESTED THEREON.

(2) Upon establishing a hearing date for such a petition, the zoning commissioner shall promptly forward a copy of the petition to the director of planning (or [his] deputy) for [his] consideration and written report thereon containing [his] findings thereon with regard to planning factors.

(b) (1) NOTWITHSTANDING THE ABOVE PROVISIONS, THE ZONING COMMISSIONER IS HEREBY EMPOWERED TO GRANT VARIANCES FROM AREA AND HEIGHT REGULATIONS, SUBJECT TO THE APPROPRIATE PRINCIPLES, STANDARDS, RULES, CONDITIONS AND SAFEGUARDS SET FORTH IN THE ZONING REGULATIONS, WITHOUT A PUBLIC HEARING IF THE SUBJECT OF THE VARIANCE PETITION INVOLVES AN OWNER OCCUPIED LOT ZONED RESIDENTIAL, AS DEFINED BY THE ZONING REGULATIONS, AND SUBJECT TO THE FOLLOWING CONDITIONS: (i) A SUPPORTING AFFIDAVIT UNDER OATH MADE ON THE PERSONAL KNOWLEDGE OF THE PETITIONER SETTING FORTH FACTS AS TO WHICH WOULD OTHERWISE SATISFY THE PETITIONER'S BURDEN OF PROOF AS REQUIRED BY THE ZONING REGULATIONS IF A HEARING WERE TO BE REQUIRED; (ii) THE FILING OF SUCH AFFIDAVIT WITH THE PETITION, TO BE IN ADDITION TO THE INFORMATION REQUIRED BY THE ZONING COMMISSIONER ON SUCH PETITION; AND (iii) ON THE LOT IN QUESTION, NOTICE OF THE PETITION SHALL BE CONSPICUOUSLY POSTED FOR A PERIOD OF AT LEAST FIFTEEN (15) DAYS FOLLOWING THE FILING OF THE APPLICATION. WITHIN THE FIFTEEN (15) DAY POSTING PERIOD, ANY OCCUPANT OR OWNER WITHIN 1000 FEET OF THE LOT IN QUESTION MAY FILE A FORMAL REQUEST FOR A PUBLIC HEARING WITH THE ZONING COMMISSIONER, AND SUCH HEARING SHALL BE SCHEDULED WITHIN SEVENTY-FIVE (75) DAYS FROM RECEIPT OF THE REQUEST FOR PUBLIC HEARING. IF A FORMAL REQUEST FOR A PUBLIC HEARING IS NOT FILED, THE ZONING COMMISSIONER, WITHOUT A PUBLIC HEARING,

MAY GRANT SUCH A VARIANCE AS DESCRIBED ABOVE IF THE PROPOSED REQUESTED VARIANCE IS IN STRICT HARMONY WITH THE SPIRIT AND INTENT OF THE HEIGHT AND AREA REQUIREMENTS OF THE ZONING REGULATIONS, AND ANY OTHER APPLICABLE REQUIREMENTS.

(2) IF A FORMAL REQUEST FOR A PUBLIC HEARING IS NOT FILED, AND NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, THE ZONING COMMISSIONER MAY, AT HIS OR HER DISCRETION, REQUIRE A PUBLIC HEARING WHEREAT THE PETITIONER SHALL BE REQUIRED TO SATISFY THE BURDEN OF PROOF REQUIRED BY THE ZONING REGULATIONS FOR SUCH VARIANCE TO BE GRANTED.

(c) VARIANCES MAY BE ISSUED WITH SUCH CONDITIONS OR RESTRICTIONS AS DETERMINED APPROPRIATE BY THE ZONING COMMISSIONER FOR THE PURPOSE OF PROTECTING THE HEALTH, SAFETY OR GENERAL WELFARE OF THE SURROUNDING COMMUNITY.

Sec. 22-28. Review of zoning commissioner's decisions by board of appeals.

Whenever the zoning commissioner renders a decision pursuant to a hearing proceeding and an appeal from such decision is taken before the board of appeals, the file with respect to the zoning commissioner's hearing proceeding shall remain part of the case file, and [item numbers (1), (2), and (3) as set forth in] THE ZONING COMMISSIONER'S FILE AND ALL OF THE DOCUMENTS CONTAINED THEREIN AS REQUIRED BY section 22-27 shall be considered in evidence by the board without testimony thereto, absent objection by any party to the case. If such objection is made, the item shall be entered by testimony of a proper witness, who shall be notified by the board.

Sec. 22-30. Custody of books and papers.

(b) [He] THE ZONING COMMISSIONER shall furnish with reasonable promptness a copy of any paper or record in his office to any person applying for same upon payment in advance of the sum of fifty cents ($0.50) per page OR AS OTHERWISE ESTABLISHED BY THE ADMINISTRATIVE OFFICER for transcribing, photographing or otherwise reproducing such paper. Such reproduction when so made and certified under the seal of the zoning

commissioner shall be evidence in any court or before any county board, commission or official.

(d) All records kept by the zoning commissioner shall be open to inspection by the county executive or any member of the county council at all reasonable times, whether or not such records are required to be kept by statute or ordinance. The zoning commissioner is authorized, in his discretion, to permit other county officials to remove a zoning file from his office; provided, such official signs a regular receipt book to be kept by the zoning commissioner as a permanent record which shall show the date and time that such file is taken and returned. When the file is returned, the receipt book must be signed by the person who had withdrawn the file and countersigned by the zoning commissioner or his deputy. [Papers, records and documents of which the zoning commissioner is the official custodian and which are now on loan to other officers of the county shall be transferred as soon as practicable after the effective date of this act to the zoning commissioner, and upon making such transfer every such official is hereby relieved from any duties or responsibilities in connection therewith.]

Sec. 22-31. Validation of existing zoning regulations.

The zoning regulations adopted by the county on March 30, 1955[, as amended on July 25, 1960,]AND AS THEREINAFTER AND WHENEVER ADOPTED AND AMENDED are hereby declared to be in full force and effect[;] provided, however, that in the case of any conflict between such regulations and the provisions of this title, these provisions shall control.

Sec. 22-32. Appeals to county board of appeals.

Any person or persons, jointly or severally, or any taxpayer, ~~or any official, office, department, or board (or bureau) of the county WITH THE PRIOR APPROVAL OF THE ADMINISTRATIVE OFFICER AND THE COUNTY ATTORNEY,~~ aggrieved or feeling aggrieved by any decision of the zoning commissioner shall have the right to appeal therefrom to the county board of appeals. NO OFFICIAL, OFFICE, DEPARTMENT, OR BOARD OF THE COUNTY AGGRIEVED OR FEELING AGGRIEVED BY ANY DECISION OF THE ZONING COMMISSIONER

SHALL HAVE THE RIGHT TO APPEAL THEREFROM TO THE COUNTY BOARD OF APPEALS WITHOUT THE PRIOR APPROVAL OF THE ADMINISTRATIVE OFFICER AND THE COUNTY ATTORNEY. PEOPLES COUNSEL IS NOT SUBJECT TO SUCH PRIOR APPROVAL. Notice of such appeal shall be filed, in writing, with the zoning commissioner within thirty (30) days from the date of any final order appealed from, together with the required fee as provided in the zoning regulations. Such appeals shall be heard and disposed of by the county board of appeals as may be provided in the Charter and the board's own rules of procedure. Any reclassification when granted by the county board of appeals shall, in the absence of an appeal therefrom, have the force and effect of law.

Sec. 22-34. Record and copies of rules, regulations, etc.; certified copies of rules, etc., as evidence.

The office of planning and zoning shall keep in a separate book all rules, regulations and restrictions adopted by the county council from time to time under the authority of this title, and any amendments or supplements thereto, and THE OFFICE OF LAW shall cause copies thereof to be printed and made available for general distribution. [Any such printed copy, together with any amendments and supplements when certified as accurate by the secretary of the county council shall be deemed prima facie evidence thereof in any judicial proceedings in this state.]

Sec. 22-35. Penalty for violation of regulations, etc.

Any violation of regulations, RULES, POLICIES, DIRECTIVES, or of any final written order made or adopted pursuant to this title shall be a misdemeanor. [punishable by a fine not to exceed one hundred dollars ($100.00) or by imprisonment not to exceed thirty (30) days, or both fine and imprisonment. Any person who shall violate such regulations, restrictions or final order shall be deemed guilty of a separate offense for every day that such violation shall continue.]

Sec. 22-36. Injunctive proceedings.

In addition to all other remedies provided by law, the zoning commissioner, or any person whose property is affected by any violation including abutting and adjacent property owners, whether specially damaged

or not, may maintain an action in any appropriate court for an injunction enjoining the erection, construction, reconstruction, alteration, repair or use of buildings, structures and land in violation of zoning regulations and restrictions adopted pursuant to this title[.], AND REQUIRING THE RETURN OF THE PROPERTY, TO THE EXTENT POSSIBLE, TO ITS CONDITION PRIOR TO THE VIOLATION, INCLUDING REMOVAL OF THE SOURCE OF THE VIOLATION.

Sec. 22-36.1. Civil penalty for zoning violations.

(a) THE ZONING COMMISSIONER SHALL INTERPRET AND ENFORCE THE BALTIMORE COUNTY ZONING REGULATIONS TO INSURE THAT USES OR BUILDINGS, INCLUDING BUT NOT LIMITED TO, STRUCTURES, LANDSCAPING, ROADS AND STREETS, CONFORM TO PLANS APPROVED BY BALTIMORE COUNTY.

[(a)](1) As used in this section, the following words have the meanings indicated.

(2) [Owner means the person whose name appears on the tax records of the county for the property which is the subject of an alleged civil violation and at the time of a violation.] DEFENDANT MEANS THE PERSON CHARGED WITH VIOLATING THE ZONING REGULATIONS AND HAVING A RELATIONSHIP TO THE PROPERTY INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOLLOWING:

(i) OWNER - MEANS THE PERSON LISTED IN THE TAX RECORDS OF THE COUNTY.

(ii) OCCUPANT - MEANS THE PERSON WHO HAS THE ACTUAL USE OF THE PROPERTY.

(iii) LANDLORD - MEANS THE PERSON WHO OWNS OR HOLDS THE PROPERTY FOR THE OWNER.

(iv) TENANT - MEANS THE PERSON WHO RENTS OR LEASES THE USE OF THE PROPERTY.

(3) Person includes an individual, corporation, partnership, association, joint venture, FIRM, ORGANIZATION, REPRESENTATIVE, TRUSTEE, RECEIVER, or other legal entity.

(b) If the use of property by a person, after inspection by a representative of the office of planning and zoning, is alleged to be in

violation of the zoning regulations, ~~RULES, POLICIES, ORDERS, OR DIRECTIVES,~~ OR ORDERS OF THE ZONING COMMISSIONER OR BOARD OF APPEALS OF BALTIMORE COUNTY the person is subject to a civil penalty as prescribed in subsection (c). Representatives of the office of planning and zoning have the duty of enforcing the zoning regulations and inspecting property for enforcement purposes and are authorized to enter upon open land during the performance of their duties.

(c) The amount of the civil penalty is two hundred dollars ($200.00) for each violation, and each day shall be considered a separate violation. A citation may charge the [owner] DEFENDANT with more than one (1) violation.

(d) On receipt of the initial inspection report alleging a civil zoning violation of the zoning regulations, the zoning commissioner shall issue a citation to the person alleged to be in violation of the zoning regulations. The citation shall be on a form adopted by the zoning commissioner, shall [attest to the truth of the matters set forth therein,] AFFIRM THAT THE CONTENTS THEREIN ARE CORRECT TO THE BEST OF HIS KNOWLEDGE, and shall include:

(4) The nature of the civil zoning violation and the location[, date and time of the violation.] AND DATES OF THE VIOLATION AND WHETHER THE VIOLATION MAY BE CONTINUING IN NATURE.

(e) (1) Any person who receives a citation may pay the fine WITHIN THIRTY-FIVE (35) DAYS or may elect to stand trial for the [offense] VIOLATION by filing with the zoning commissioner, at least five (5) days before the date of payment as set forth in the citation, a notice of intention to stand trial.

(3) IF THE FINE REMAINS UNPAID AT THE EXPIRATION OF THE THIRTY-FIVE (35) DAYS FROM THE DATE OF THE CITATION,THE ZONING COMMISSIONER MAY REQUEST ADJUDICATION OF THE CASE IN DISTRICT COURT, AT WHICH TIME THE PERSON IS LIABLE FOR AN ADDITIONAL FINE NOT TO EXCEED TWICE THE ORIGINAL FINE.

[(3)](4) The county attorney shall prosecute civil zoning violations in the district court.

ARTICLE IV. DEVELOPMENT REGULATIONS OF BALTIMORE COUNTY

DIVISION I. IN GENERAL

Sec. 22-40. Scope of regulations.

These regulations shall apply to all development except such development which, prior to the effective date of this article (June 11, 1982), has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance or public works agreement execution, as the case may be. PROPOSED DEVELOPMENT SHALL BE IN COMPLIANCE WITH THE PRESENT ZONING CLASSIFICATION ON THE SUBJECT PROPERTY.

Sec. 22-41. General exemption.

The subdivision of land for agricultural purposes is exempt from these regulations if no new streets are involved, SUBJECT TO COMPLIANCE WITH ALL APPLICABLE ZONING REGULATIONS.

Sec. 22-42. Limited exemptions.

The following development is exempt from division 2 of these regulations[;] ONLY. COMPLIANCE WITH DIVISIONS 3, 4, and 5 IS REQUIRED AS IS COMPLIANCE WITH ALL APPLICABLE ZONING REGULATIONS.

(5) The resubdivisions or lot line adjustment of industrially zoned OR COMMERCIALLY ZONED parcels of land which have been the subject of a previously approved plan and recorded plat.

(7) The construction of RESIDENTIAL accessory structures[.] OR MINOR COMMERCIAL STRUCTURES.

Sec. 22-43. Waivers.

(a) If the director of planning [and zoning] finds (i) that the size, scope and nature of a proposed development does not justify strict compliance with these regulations, and (ii) that a waiver would be within

the scope, purpose and intent of these regulations, and (iii) that all other county lands, ordinances and regulations have been complied with, [he] THE DIRECTOR may grant a waiver from any part of these regulations in the following cases:

(b) If the director of planning [and zoning] determines that a waiver is appropriate, prior to granting such waiver, the director shall give written notice to the planning board of the nature of the contemplated waiver action and the reasons therefor. At the next scheduled meeting of the planning board, a majority of the members of the board in attendance at said meeting may vote to deny or amend with the consent of the applicant, in writing, the director's contemplated waiver action; and the director shall deny or amend the waiver in accordance with the majority vote of the planning board. If no action is taken by the planning board at said meeting, the director may grant the waiver in accordance with the written notification to the planning board.

(c) Before proposing to grant a waiver for development within the critical area, the director of planning [and zoning] shall obtain recommended findings from the director of THE DEPARTMENT OF environmental protection and resource management which shall be based on the standards specified in section 22-58(b).

Sec. 22-45. Recording unapproved plat.

A person may not offer and the clerk of the circuit court may not accept any plat for recording in the plat records of Baltimore County unless the same has been approved for recording as required by these regulations. IF SUCH PLAT IS RECORDED, IT SHALL BE CONSIDERED A NULLITY.

Sec. 22-48. Fees.

The county administrative officer may establish, from time to time, the fees to be charged for any function of any county agency under the provisions of these regulations. [except that a fee may not be charged for the predevelopment conference required by section 22-54.]

Sec. 22-51. Compliance with other laws and regulations.

In addition to compliance with these development regulations, all development shall comply with all other applicable laws, rules or regulations of the county. All other laws, rules or regulations of the county affecting development are not superseded by these development regulations unless specifically so provided herein. THE COUNTY MAY NOT PROCESS PLANS OR PERMITS FOR ANY PROPOSED DEVELOPMENT IF THE APPLICANT OWNS OR *HAS ANY INTEREST IN ANY PROPERTY LOCATED IN BALTIMORE COUNTY UPON WHICH* THERE EXISTS, AT THE TIME OF THE APPLICATION OR DURING THE PROCESSING THEREOF, A VIOLATION OF THE ZONING OR DEVELOPMENT REGULATIONS OF BALTIMORE COUNTY.

DIVISION 2. DEVELOPMENT REVIEW AND APPROVAL PROCESS

Sec. 22-55. Plan.

(a) The plan shall set forth an informative, conceptual and schematic representation of the proposed development IN A CLEAR AND LEGIBLE MANNER by means of maps, graphs, charts or other written or drawn documents so as to enable the county and all reviewing agencies an opportunity to make reasonably informed decisions regarding the development.

(b) The plan shall be filed with the department of public works and shall contain the following information:

(12) Existing buildings AND ACCESS POINTS on property adjacent to the subject property;

(13) Designated areas of critical state concern identified as such under the procedures of [article 88c, section 2(b)(3) of the Annotated Code of Maryland] SECTION 5-611 OF THE STATE FINANCE AND PROCUREMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AS FROM TIME TO TIME AMENDED, and as mapped and available for inspection in the office of planning and zoning

(14) General schematic proposal for grading, including the anticipated alteration or removal of vegetation [of] OR other natural features[;] OR A DESIGNATED LIMIT OF DISTURBANCE LINE;

(15) Proposed lot or building layout with parking[;] INCLUDING ELEVATION DRAWINGS AND CROSS SECTIONS WHEN DEEMED NECESSARY BY THE DIRECTOR OF PLANNING.

(16) Proposed street layout with EXISTING AND FUTURE paving and right-of-way widths indicated;

(17) Proposed [common] open space and acreage;

(26) A chart indicating required and proposed area of [common] open space and parking spaces and indicating the number of units permitted and proposed;

(27) Location and description of [potentially] hazardous material as defined by [title 10, state department of health and mental hygiene, subtitle 51;] SECTION 7-101 OF THE ENVIRONMENTAL ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AS FROM TIME TO TIME AMENDED.

(34) A schematic landscape plan showing existing vegetation and proposed planting (location and quantity) shall be submitted [based on the standards contained in the Baltimore County Landscape Manual.] FOR ALL DEVELOPMENT EXCEPT RESIDENTIAL DEVELOPMENT WHERE PROPOSED PLANTING MAY BE INDICATED BY QUANTITY ONLY.

Sec. 22-57. County Review Group (CRG).

(a) The CRG consists of the directors of the department of public works and office of planning and zoning or their designated representatives.

(e) The chairman of the CRG shall provide copies of all filed plans to the following agencies and shall notify said agencies of all scheduled meetings of the CRG concerning said plans:

(1) [Health] DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT;

(2) Traffic engineering;

(3) Recreation and parks;

(4) Fire AND POLICE;

(5) COMMUNITY DEVELOPMENT;

(6) ECONOMIC DEVELOPMENT COMMISSION;

(7) OFFICE OF THE ZONING COMMISSIONER

[5] (8) The landmarks preservation commission, if the plan involves any building or site identified on any one (1) of the lists referred to in section 22-55(b)(8);

[6] (9) State highways administration; and

[7] (10) Any agency represented pursuant to subsection (d) of this section.

(h) Prior to the initial meeting of the CRG to review a plan, *representatives of the department of public works and office of planning* and zoning shall visit the site.

Sec. 22-58. CRG action.

(g) At the continued meeting, the CRG shall take either of the following actions as applicable and shall summarize the action taken, in writing, as a permanent part of the plan file:

(1) Final action on a plan; or

(2) REFERRAL OF A PLAN TO THE PLANNING BOARD IF, AS A RESULT OF ADDITIONAL INFORMATION OR RESOLUTION OF ANY DEVELOPMENT MATTER, SUCH REFERRAL IS REQUIRED PURSUANT TO SECTION 22-59; OR

[(2)] (3) Continuation of the CRG meeting in order to receive additional information or to resolve any development matter raised at the meeting regarding the plan.

(h) If a plan is disapproved, the chairman of the CRG shall mail a copy of the summary of the CRG action to the applicant at the address indicated in the plan.

Sec. 22-59. Referral to planning board.

(a) In accordance with section 22-58(b) or (d), the CRG shall refer the plan to the planning board in the following circumstances:

(2) A dispute exists concerning the location of streets WITHIN THE PROPERTY OR which connect the property which is the subject of the plan to adjoining properties or streets; or

Sec. 22-63. Amendments to plan.

Any material amendment to an approved plan shall be reviewed and approved in the same manner as the original plan OR IN ACCORDANCE WITH THE CRG COMPREHENSIVE MANUAL OF ADMINISTRATIVE POLICY.

Sec. 22-66. Same-Requirements for approval and recordation

(f) The record plat shall:

(3) Contain the endorsements by the directors of public works, planning [and zoning] and [health] DEPRM as required by section 22-67.

Sec. 22-67. Same-Procedure for approval.

(b) After receipt and approval of all items required in subsection(a) above, the director of public works shall promptly transmit the plat to the department of [health] ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT and office of planning and zoning for their review for conformity with the plan, unless said plat was already reviewed by the departments for such conformity.

(c) Within ten (10) days after receipt of the plat, the directors of public works, [health] ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT, and planning [and zoning], or their authorized representatives, shall approve, modify with the consent of the applicant, or disapprove the plat. The applicant shall be notified in writing of the reasons for modification or disapproval.

(d) No plat may be recorded unless it has been approved by all three (3) directors above AND the approvals have been so noted on the plat.

Sec. 22-68. Time limit for validity of subdivision plats.

(c) A subdivision, section or parcel thereof is hereby defined as developed, AND IS THEREFORE CONSIDERED TO BE VESTED, if any of the following has occurred with respect to such subdivision, section or parcel:

(1) Building permits have been issued; or

(2) Substantial construction on required public or private improvements has occurred on such subdivision, section or parcel pursuant to the applicable regulations and requirements of the department of public works.

Sec. 22-68.1. Extension of time limit for validity of subdivision plats and approved plans.

(e) The {office of the planning and zoning} DEPARTMENT OF PERMITS & LICENSES shall administer the provisions of this section.

DIVISION 3. PUBLIC AND PRIVATE IMPROVEMENTS OF DEVELOPMENT

Sec. 22-70. County participation.

(b) Subject to the provisions of section 30-1(13), of this Code, as amended, the county shall determine the cost sharing between the county and the applicant based upon a determination, BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS, of the benefit to the county. Such percentage of cost sharing may vary in accordance with such incentive program as is approved by the county.

Sec. 22-75. Security.

(a) Any required security shall comply with any statutory requirements and be approved by the county {solicitor} ATTORNEY as to form and legal sufficiency.

(c) Security includes cash, letter of credit, passbook, escrow fund or other form satisfactory to the county {solicitor} ATTORNEY and director of public works.

DIVISION 4. GENERAL DESIGN STANDARDS AND REQUIREMENTS

Sec. 22-99. Slope protection and soils.

(a) No plan or plat may be approved unless the county finds that the proposed development would include protective measures adequate to prevent erosion or sloughing of any steep or unstable slope and would promote the preservation of the natural topographic features of such a slope.

(b) {On soils which present a severe or moderate limitation to development, adequate measures must be taken to mitigate the effects of such limitations.} NO PLAN OR PLAT MAY BE APPROVED ON SOILS THAT PRESENT A SEVERE OR MODERATE LIMITATION TO DEVELOPMENT UNLESS THE COUNTY FINDS THAT ADEQUATE MEASURES HAVE BEEN TAKEN TO MITIGATE THE EFFECTS OF SUCH LIMITATIONS.

Sec. 22-104. Development in R.C.C., R-O, O-1, O-2, or O-T Zone and C.R. Districts.

(c) Development of property in an R.C.C. zone and C.R. district:

(2) In determining the appropriateness of buildings, design elements of proposed buildings and signs shall be evaluated in relation to existing adjacent or surrounding buildings. New buildings shall be rural in character. Unless determined otherwise by the director of [the office of] planning [and zoning], new buildings shall be similar to existing buildings in the following respects:

Sec. 22-105. Adoption of development manuals.

(b)(2) The department of [traffic engineering] PUBLIC WORKS shall prepare a manual of uniform traffic-control devices [and submit same to the planning board within thirty (30) days of the effective date of this article].

(5) The office of planning and zoning shall prepare a manual of landscaping standards and submit same to the planning board [within twelve (12) months of the effective date of this article].

(e) The appropriate county agencies periodically shall review all development manuals and recommend amendments as appropriate to the planning board for its approval and submission to the county council for adoption pursuant to subsection (c). The manuals shall be reviewed by the planning board at least every [two (2) years] FOUR (4) YEARS.

[(h) Notwithstanding the provisions of subsection 22-105(c)(3), the planning board shall approve the initial open space manual with any amendments and submit the same to the county council on or before August 1, 1983.]

DIVISION 5. RECLAMATION OF PROPERTY

Sec. 22-106. Reclamation development plan.

(c) (1) The reclamation development plan shall be filed with the planning board and the office of planning and zoning and shall contain the following information:

a. Property and location information:

(i) Boundary outline, courses and distances.

(ii) Deed reference or references, tax map, block and parcel numbers.

(iii) Owner's name and address.

(iv) Ownership of adjacent properties as shown on most recent tax maps.

(v) Vicinity maps.

(vi) Current zoning of the subject property and surrounding properties, including the location of residential transition areas.

Sec. 22-107. Prefiling conference.

(a) Prior to the filing of a reclamation development plan for approval, an applicant shall meet with the office of planning and zoning for a prefiling conference. The prefiling conference may be waived by written agreement of the applicant and the director of planning [and zoning]. The purpose of the conference is to provide the applicant with information about government policies, standards, and legislation which could pertain to the applicant's property.

(b) [Within thirty (30) days of] UPON the receipt of a reclamation development plan, the director of planning SHALL REFER THE PLAN TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT FOR REVIEW AND COMMENTS, AND WITHIN THIRTY (30) DAYS OF THE RECEIPT OF SAID PLAN THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT SHALL SUBMIT ITS COMMENTS TO THE DIRECTOR OF PLANNING WHO shall THEREUPON review the comments and the reclamation plan for compliance with this section, and if in compliance, shall accept the reclamation development plan and transmit the plan WITHIN TWENTY (20) DAYS AFTER RECEIPT FROM THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT to the planning board for action by the planning board as provided in this division. An incomplete reclamation development plan shall be returned to the applicant with an explanation for its return.

ARTICLE V. HISTORICAL AND ARCHITECTURAL PRESERVATION

Sec. 22-144. Same-Term; initial appointments.

Each of the commissioners shall serve for a term of four (4) years [except that the respective terms of the fifteen (15) members of the commission first appointed shall be as follows: calculated from the date of original appointment; one representative of the board of library trustees, one of the two (2) representatives of local historical preservation organizations, one of the two (2) citizens representing county residents and the attorney each shall serve for a term of one year; the realtor, the representative of the county council and the representative of colleges, each shall serve for a term of two (2) years; the agricultural representative, the representative of the board of recreation and parks, the representative of the county planning board, the second of the two (2) representatives of local historical preservation organizations, and the representative of the home building industry each shall serve for a term of three (3) years; and the architect, the teacher or historian and the second citizen representing county residents each shall serve a term of four (4) years.] AND SHALL BE STAGGERED SO THAT THE TERMS OF NO MORE THAN FOUR (4) MEMBERS SHALL EXPIRE IN ANY ONE (1) YEAR. No commissioner shall serve on the commission for more than three (3) consecutive terms.

Sec. 22-146. Same-Officers of the commission.

[The county executive shall appoint the first chairman and vice chairman of the commission from among its members, thereafter, the] THE commission shall elect a chairman and vice chairman from among its members at a meeting to be held in January of each [succeeding] year to serve during that year. The commission shall appoint an individual who is not a member of the commission as secretary of the commission, to perform such duties as set forth hereinafter or otherwise required by the commission. The secretary shall serve at the pleasure of the commission. County funding for a supporting staff may be provided as approved by the county council and provided for in the annual budget and appropriation ordinance of Baltimore County.

Sec. 22-149. Creation of historic districts.

On the petition of owners (DEFINED AS THOSE PERSONS WHO APPEAR AS THE OWNER OF RECORD IN THE ASSESSMENT RECORDS OF BALTIMORE COUNTY) of seventy-five (75) per cent of the property included in the proposed district, the commission is hereby authorized and empowered after making a full and proper study, to designate any area within the limits of the county as a proposed historic district and to determine the boundary lines of any such district. After any such area has been so designated and the boundary lines thereof have been determined as aforesaid, the commission shall REQUEST THE COUNTY ATTORNEY TO prepare an ordinance in such manner and form as to set forth the area, and the boundary lines thereof, which it recommends be declared an historic district, and submit same to the county executive for [review] APPROVAL prior to introduction in the county council. No such ordinance shall be passed upon by the county council, until the county council has given notice that the particular proposal is pending and has held a hearing thereon, giving at least twenty (20) days notice thereof in at least two (2) newspapers of general circulation throughout the county. During the period of such notice the historic district, as approved by the commission shall be shown and exhibited in the county office building or at such other public place as the county council may designate for public inspection and the commission shall, at least forty-five (45) days before the hearing, notify the owner of each property wholly or partially lying within the area described in the law of the time and place of the hearing. Such hearings shall be held twice in each year unless five (5) members of the county council agree otherwise for reasons of emergency. The notice to the property owner shall be sent by certified mail, return receipt requested, to the person whose name last appears on the tax rolls of the collector of state and county taxes for the county as owner of the property. IF SUCH SERVICE OF NOTICE IS UNSUCCESSFUL, NOTICE SUBSEQUENTLY MAY BE SENT BY REGULAR MAIL, POSTAGE PREPAID. For purposes of this section no area shall be deemed to be an historic district unless and until it has been so designated by a law subject to the provisions of section 308 of the Baltimore County Charter.

Sec. 22-159. Same-Referral of application back to buildings engineer.

If the commission determines that the proposed excavation, construction or erection, reconstruction, alteration, removal of an exterior architectural feature or demolition of any structures within such district, or on such preliminary landmarks list, or on the final landmarks list would be appropriate, or, although inappropriate, without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this article as aforesaid, the secretary of the commission shall cause forthwith to be forwarded to the buildings engineer a certificate of appropriateness or a notice to proceed, as applicable, along with the application and the plans and specifications relative thereto. If the commission determines that neither a certificate of appropriateness nor a notice to proceed shall be issued, the commission shall {forthwith spread upon its records the reasons} ISSUE WRITTEN FINDINGS AND CONCLUSIONS for such determination and may include a recommendation respecting the proposed excavation, construction or erection, reconstruction, alteration, removal of an exterior architectural feature or demolition. Thereupon, the commission shall cause the applicant and the buildings engineer to be notified of such determination, transmitting to each of them an attested copy of the reasons and recommendations. {, if any, spread upon the records of the commission.}

Sec. 22-169. Final historical landmarks list.

{(a) The following historical landmarks are hereby adopted as the final landmarks list:}

{(1) Baltimore County Courthouse;}

{(2) Ballestone (or Cedar Point Mansion);}

{(3) Fort Garrison;}

{(4) Auburn (at Towson State University);}

{(5) Mettam Memorial Baptist Church, Pikesville;}

{(6) Hampton (including outbuildings and cemetery);}

{(7) Hilton Estate, including:}

{a. Hilton Mansion;}

[b. Tudor House;]
[c. Bowling Alley;]
[d. Gardner's cottage;]
[e. McCulloh House;]

[(8) *Mount Gilboa Chapel (including cemetery);*]

[(9) Summit, or Gary House, 10 Stanley Drive, Catonsville;]

[(10) Old Salem Evangelical Lutheran Church, 701 Ingleside Avenue;]

[(11) Todd Farm House, 9000 Old North Point Road;]

[(12) St. Thomas' Episcopal Church, Garrison Forest Road;]

[(13) Villa Anneslie, 529 Dunkirk Road;]

[(14) Trentham (main house and immediate cluster of buildings), Craddock Lane in Queen Anne Apartments property;]

[(15) *Montmorenci, 3924 Worthington Avenue, Glyndon;*]

[(16) Quinn (or Sweet Air), Sweet Air Road;]

[(17) Beckley House, 202 Main Street, Reisterstown;]

[(18) Aquilla Randall Monument, Old North Point Road;]

[(19) Battle Acre, Old North Point Road;]

[(20) Jericho Covered Bridge, Franklinville Road;]

[(21) Hayfields, main house and immediate historic outbuildings and substructures, including stone wall;]

[(22) Loveton, 14,301 York Road, near Sparks;]

[(23) *Ravenhurst, 12,915 Dulaney Valley Road, Glen Arm;*]

[(24) Cockey Homestead, 10899 York Road, Cockeysville;]

[(25) Taylor's Hall, north side, Padonia Road, between I-83 and Northern Central Railroad, Texas vicinity;]

[(26) Shawan House, west side Falls Road, north side Tufton Avenue, Shawan;]

[(27) St. James Protestant Episcopal Church, Monkton;]

[(28) Lansdowne Christian Church (Hull Memorial);]

[(29) Cameron Miller's House, near Parkton;]

[(30) Fruitful Valley, Monkton and Shepperd Roads;]

[(31) Dover House, 3500 Butler Road;]

[(32) St. John's Protestant Episcopal Church and rectory, wall, stepping-stone, and graveyard, Butler Road;]

[(33) Oldfields School, "Old House";]

[(34) Gabriel Holmes House/Holmes-Lafley House E/S Markoe Road, 0.2 mile north of Monkton Road;]

[(35) Monkton Hotel, 1900 Monkton Road;]

[(36) St. Michael's Chapel, Hannah More Academy;]

[(37) Fort Howard, historic installations (i.e., in county park); namely, Battery Key, Battery Harris, Battery Stricker, Battery Nicholson and Azimuth Tower;]

[(38) Bellefield, Shepperd Road, 0.3 mile NW of J.M. Pearce Road, Monkton;]

[(39) Montrose Mansion, Montrose Chapel, 13,700 Hanover Road, Reisterstown;]

[(40) Trenton Mill, Trenton Mill Road at Trenton Road, 5th Election District;]

[(41) Stemmer House, 2627 Caves Road, Owings Mills;]

[(42) Turkey Cock Hall, 10,131 Falls Road, Rockland, Brooklandville P.O.;]

[(43) Stone Dwellings, Rockland Village:]

[a. Tavern;]
[b. Miller's House;]
[c. Rockland Post Office and General Store;]
[d. Row Houses, 10,106 through 10,112 Falls Road;]

[(44) Lutherville Railroad Station, 1601 Lutherville-Timonium Drive, Lutherville;]

[(45) County Home Property, 9811 Van Buren Lane, Cockeysville:]

[a. Alms House Building;]
[b. Pest House;]

[(46) Bare Hills House, 6222 Falls Road, 1 mile north of city line;]

[(47) Oakdene, formerly Summerfield, 1021 Green Spring Valley Road, Brooklandville;]

[(48) Prospect Hill, Kanes Road, Long Green;]

[(49) Oregon Furnace Store (Kurtz House), SW intersection of Shawan and Beaver Dam Roads, Oregon Ridge Park;]

[(50) Parkton Stone Arch Bridge, York Road (MD Route 463), Parkton;]

[(51) "Schnoerr House," 201 Gun Road, Avalon vicinity;]

[(52) Mount de Sales Academy, school structure and gate house, 700 Academy Lane, Catonsville;]

[(53) New Tavern, Liberty Road and Chapel Road, Holbrook;]

[(54) Blunt House, 10,322 Old Court Road, Granite vicinity;]

{(56) Homewood, 717 Edmondson Avenue, Catonsville;}

{(57) Greenwood, or the Deford House, 6901 N. Charles St., Towson;}

{(58) Krause Memorial Park Lime Kiln, east, south of Old Harford Road, north of Kingstree Road, Club Hill vicinity;}

{(59) St. John's Church, Ruxton, and cemetery, 7538 Bellona Avenue;}

{(60) St. John's Parsonage, 7538 Bellona Avenue, Ruxton;}

{(61) Oakwood Bungalow, 1301 Edmondson Avenue, Catonsville;}

{(62) Bacon-Crosby House, 2939 Monkton Road, Monkton;}

{(63) Hause-Phillips House (Manro's Tavern or Maidstone), 1810 Frederick Road, Catonsville;}

{(64) Cockey Tavern, 10,749 Falls Road, Brooklandville;}

{(65) Cockey Tavern Stable, 10,745 Falls Road, Brooklandville (immediately south of "Cockey Tavern");}

{(66) Homewood, or Lanier-Carson-Zink House, now called Goschemhaus, 910 Maiden Choice Lane, Arbutus;}

{(67) Cub Hill House, 9301 Old Harford Road;}

{(68) Mount Paran Presbyterian Church;}

{(69) Half-Way House or Wiseburg Inn, 18,200 York Road, Wiseburg;}

{(70) Plinlimmon, 9401 Lyons Mill Road, Owings Mills;}

{(71) Aigburth Vale and Gate House, 212 Aigburth Road, Towson;}

{(72) Old Towson High School, 308 Allegheny Avenue, Towson;}

{(73) Merry Meadows and Partnership, 14,300 and 14,302 Cooper Road, Phoenix.}

{(b) The final landmarks list set forth in subsection (a) above shall be made available for public inspection as provided in subsection (e) of section 22-150 of this article.}

THE PRELIMINARY AND FINAL HISTORICAL LANDMARK LIST AND THE LIST OF HISTORICAL DISTRICTS, AS PREVIOUSLY AND HEREAFTER APPROVED AND ADOPTED BY THE COUNTY COUNCIL, SHALL BE MAINTAINED BY THE COMMISSION AND SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION AT ALL PUBLIC LIBRARIES IN THE COUNTY AND

AT THE OFFICE OF PLANNING AND ZONING AS PROVIDED FOR IN SECTION 22-150 OF THIS TITLE.

ARTICLE VI. AGRICULTURAL LAND PRESERVATION

Sec. 22-172. Agricultural Land Preservation District: Sale of easements.

The sale of any development rights easements over any land including within an Agricultural Land Preservation District shall be approved by resolution of the county council; and when so approved the use and development of the land subject to the easement shall BE in accordance with Agriculture Article, section 2-513 and the terms and provisions of the deed of easement, notwithstanding any contrary provisions of the Baltimore County Zoning Regulations.

Sec. 22-173. Agricultural Land Preservation Districts; Official maps.

The boundaries of any Agricultural Land Preservation Districts created pursuant to this article VI shall be delineated on official agricultural land preservation district maps prepared and maintained by the director of the {office of planning and zoning} DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT. Said maps shall be revised and made current on an annual basis by June thirtieth of each year and shall be prepared on the same scale as department of assessment and taxation tax maps.

Sec. 22-207. Applicability.

The critical area findings plan is required for all development activity within the scope of this article. With the concurrence of the Director of THE DEPARTMENT OF Environmental Protection and Resource Management, the requirement for a critical area findings plan may be waived by the Director of Planning {and Zoning} for development proposals under the terms of Section 22-43.

Sec. 22-208. Procedure for reviewing findings plan.

(b) Within thirty (30) days after the plan has been accepted as filed, the Director of the Department of Environmental Protection and Resource Management, after consultation with the Director{s} of the Office

recommendation to the county review group in accordance with the standards in Section 22-58(b).

Sec. 22-211. Non-tidal and tidal wetlands.

Dredging, filling, or constructing other than approved bulkheading shall not be permitted in any non-tidal and tidal wetlands unless the proposed development consists of utility, bridge, or street development in a non-tidal wetland and unless the Director of THE DEPARTMENT OF Environmental Protection and Resource Management finds this proposed development not detrimental to the county's wetland management programs.

Sec. 22-213. Buffers.

(c) The buffer shall be expanded to 300 feet landward from the mean high water line of tidal waters and tidal wetlands for new residential developments of more than five dwelling units in LDAs and RCAs, the buffer can be reduced to the minimum 100 feet if the following conditions are satisfied:

(i) The 300 foot area does not contain contiguous habitat which directly drains into tidal waters; or

(ii) The 300 foot area does not provide breeding habitat for a minimum of four species of sensitive forest interior birds or one highly sensitive forest interior bird species as defined in the Chesapeake Bay Critical Area Commission Guidance Paper Number 3 dated July, 1986, or

(iii) The Director of THE DEPARTMENT OF Environmental Protection and Resource Management determines that greater water quality or habitat benefits could be achieved through other site specific measures.

Sec. 22-215. Habitat protection areas.

(a) Development activities or other land disturbances including commercial tree harvesting and agricultural activities, are prohibited within the delineated boundary of a habitat protection area unless:

(1) The Director of THE DEPARTMENT OF Environmental Protection and Resource Management certifies that the location of the activities and/or the limitations and restrictions placed on them will avoid adverse effects to the functioning of the area(s) or to the species dependent upon them; or

(2) There is not other physically feasible alternative for the location of roads, bridges, or utilities, in which case they shall be located, designed, constructed and maintained to provide maximum erosion-protection, to minimize adverse effects on wildlife, aquatic life and their habitats, and to maintain hydrologic processes and water quality.

Sec. 22-219. Approval of use and occupancy permits.

Before the issuance of any use and occupancy permit within the critical area by the Department of Permits and Licenses, the Director of the Department of Environmental Protection and Resource Management, or [his] designee, shall determine that the development is in compliance with the findings and findings plan as determined by the approving authority. The use and occupancy permit shall not be issued unless and until the Director of THE DEPARTMENT OF Environmental Protection and Resource Management, or [his] designee, certifies to the Director of Permits and Licenses that such development is in compliance with said findings and findings plan.

SECTION 3. And be it further enacted, that Sections 22-34.1; 22-42(9), 22-55(b)(31)VII, (32)XII, (d), 22-60(b)(4), 22-105(b)(6) and 22-150(g), be and they are hereby added to the Baltimore County Code, 1978, 1987 Cumulative Supplement, as amended by subsequent bills, to read as follows:

~~SECTION 22-34.1.--AUTHORITY OF THE ZONING COMMISSIONER.~~

~~(a)--THE ZONING COMMISSIONER SHALL HAVE THE FULL POWER AND AUTHORITY TO MAKE, ADOPT, PROMULGATE AND AMEND, FROM TIME TO TIME, SUCH RULES, REGULATIONS, ORDERS AND DIRECTIVES RELATING TO OR IN CONNECTION WITH THE ZONING REGULATIONS AS MAY BE DEEMED NECESSARY OR PROPER TO CARRY OUT AND~~

THEREWITH:

~~THE ZONING COMMISSIONER SHALL MAKE AVAILABLE FOR PUBLIC INSPECTION, RULES, POLICIES, ORDERS AND DIRECTIVES AVAILABLE TO THE PUBLIC WITHIN THE ZONING COMMISSIONER'S POLICY MANUAL.~~

Sec. 22-42. Limited exemptions.

(9) LOT LINE ADJUSTMENTS IN D.R. OR R.C. ZONES WHICH ARE NOT PART OF AN APPROVED FINAL DEVELOPMENT PLAN.

Sec. 22-55. Plan.

(b) The plan shall be filed with the department of public works and shall contain the following information:

(31) In the case of a plan involving development in an R-O Zone, the plan shall show the following additional items:

(vii) ELEVATION DRAWINGS AND CROSS SECTIONS.

(32) In the case of a plan involving development in an O-1, O-2 or OT zone, the plan shall show the following additional items:

(xii) ELEVATION DRAWINGS AND CROSS SECTIONS.

(d) THE PLAN SHALL BE SIGNED AND SEALED BY THE SURVEYOR, THE ENGINEER, AND THE LANDSCAPE ARCHITECT INDICATING THAT THE PLAN IS ACCURATE AND HAS BEEN PREPARED IN COMPLIANCE WITH THESE REGULATIONS.

Sec. 22-60. Procedure before planning board.

(b)(4) *DATE OF REFERRAL TO THE BOARD IS THE DATE OF THE FILING DATE* IN THE CASE OF A BUILDING PERMIT OR THE CRG MEETING DATE.

Sec. 22-105. Adoption of development manuals.

(b)(6) THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT SHALL PREPARE A MANUAL TO IMPLEMENT THE STANDARD SET OUT IN DIVISION 4, GRADING AND SEDIMENT CONTROL.

Sec. 22-150. Compilation and maintenance of landmarks list; removal therefrom.

(g) IN ORDER TO IMPLEMENT THE STANDARDS AND REQUIREMENTS SET FORTH IN THIS DIVISION, THE COMMISSION AND THE OFFICE OF PLANNING SHALL JOINTLY PREPARE A MANUAL OF HISTORIC PRESERVATION GUIDELINES AND REGULATIONS.

SECTION 4. And be it further enacted, that this Act shall take effect forty-five days from the date of its enactment.

READ AND PASSED this 5th day of February, 1990

BY ORDER

Thomas Toporovich
Secretary

PRESENTED to the County Executive for his approval this 6th day of February, 1990

Thomas Toporovich
Secretary

APPROVED AND ENACTED:

2/13/90

Dennis F. Rasmussen
County Executive

I HEREBY CERTIFY THAT BILL NO. 18-90 IS TRUE AND CORRECT AND TOOK EFFECT ON MARCH 30, 1990.

C. A. Dutch Ruppersberger, III
Chairman, County Council

IN THE MATTER OF BENJAMIN A. PETRILLI, et ux
PETITION FOR SPECIAL HEARING
8 AIGBURTH ROAD
9TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

BEFORE THE BALTIMORE COUNTY BOARD OF APPEALS

CASE NO. 97-57 SPH

MEMORANDUM OF PEOPLE'S COUNSEL

This Memorandum is filed by People's Counsel, in lieu of Closing Argument at the Hearing before the Baltimore County Board of Appeals on November 23, 1999, and in opposition to the Petition for Special Hearing filed by Petitioners, Benjamin A. and Ida A. Petrilli ("Petrilli").

I. CHRONOLOGY

6-14-88	Petrilli purchases .57205 Aigburth Ave. site zoned DR 16 and obtains minor subdivision for two lots: 8 Aigburth .33245 acre 10 Aigburth .2396 acre
7-13-88	Petrilli petitions for Variance for setbacks for both lots
9-28-88	Hearing before Zoning Commissioner Haines ("Haines") on Variances
10-6-88	Zoning Commissioner Haines grants variances with restriction limiting construction on each lot to single-family dwellings. No appeal was filed.
1992	Comprehensive Zoning rezones this site and others in area to DR 5.5 (See PC Exh.)
8-96	Petrilli petitions for Special Hearing for 8 Aigburth Ave.: "Petition to put Two Apartments in Owner Occupied Residence". Petition states site is DR 5.5
10-3-96	Deputy Zoning Commissioner Kotroco's ("Kotroco") Order permits conversion and requires owner- occupancy as a condition of conversion; if not owner occupied, structure must be returned to single-family dwelling. No appeal was filed.
11-23-98	Petrilli files Petition for Special Hearing requesting "removal of restriction #2 of the Order issued in Case No. 97-57-SPH"
5-7-99	Zoning Commissioner Schmidt ("Schmidt")denies Petition for Special Hearing and finds restriction in 10-3-96 Order is valid
11-23-99	CBA hearing on appeal of Schmidt's Order

II. LEGAL ARGUMENT

1. The rezoning from DR 16 to DR 5.5 in 1992 does not terminate Zoning Commissioner Haines' 1988 Order.

A. In 1988, Petrilli subdivided the site into two residential lots and requested variances from the setback requirements for each building. The Zoning Commissioner granted conditional variances for single family dwellings only.

B. Generally, once a site is developed under an approved plan, the plan controls. It is not affected by a rezoning or a change in area requirements for the use proposed in the Plan. This works both ways –whether the subsequent law is more restrictive or less restrictive than the law when the plan is approved. The property owner cannot stand behind the plan when it suits him and at other times ignore the requirements in an approved plan.

C. For a minor subdivision, the zoning regulations in effect at the time of the hearing and the Order under which the plan was approved regulate the development. BCZR 103.1 provides:

> ***"These regulations shall apply as of the date of their adoption but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the . . . Planning Board and approved or tentatively approved (including any approval made subject to any condition or conditions) under the then official procedure in Baltimore County, prior to the adoption of these regulations." ["Subdivision" is defined in Baltimore County Code (BCC) as the division of land into two or more lots].***

D. Additionally, the Zoning Commissioner's Policy Manual states at 103.1.A:

> ***"1. If the lot to be developed was recorded in a subdivision that was recorded prior to the existence of the Planning Commission (pre-1945) then the present height and area regulations would be required.***
> ***2. If the lot to be developed is in a recorded subdivision approved or tentatively approved by the Planning Commission or Planning Board*** [now Hearing officer] ***then the zoning regulations applicable would be those in effect at the time the plan was recorded.***
> ***3. If the lot to be developed qualifies under Planning Commission or Planning Board approvals but is being further subdivided, it must meet the current regulations."***

E. Under the Baltimore County Code, a development lapses if not utilized after a certain period of time. BCC 26-216 (d) exempts from the lapse provisions a subdivision under single ownership for three lots or less for single family homes. Thus the only applicable zoning regulations for this site are those that govern the minor subdivision under the 1988 Order. Moreover, Petrilli acquiesced to the terms of development and constructed the dwelling on 8 Aigburth Avenue in compliance with the site plan.

F. Zoning regulations are intended to operate in the future, not retroactively. Higgins v. City of Baltimore, 206 Md. 89 (1954).

G. Zoning Commissioner Haines' Order was a *quid pro quo*. (See Petitioner's Exhibit 1). A variance was granted provided the property owner adhered to a restriction. Petrilli had the benefit of building with a variance; he cannot now refute the Order after having constructed the building in the location he preferred.

H. Zoning would be in a state of chaos and confusion if a clear set of regulations did not apply consistently to a development at any point in time. The point of reference is generally the

approved surveyor's or engineer's plat that is required with a zoning petition or a development petition.

I. If the current law required stricter setbacks for his house than at the time of construction, Petrilli would certainly contest the application of current setback regulations, claiming his site plan approval controlled.

4. Haines' Order was a valid exercise of his authority.

A. The Zoning Commissioner has authority to impose restrictions when granting a variance. BCC 26-127 (c) states:

> ***"Variances may be issued with such conditions or restrictions as determined appropriate by the zoning commissioner for the purpose of protecting the health, safety, or general welfare of the surrounding community."***

See also Halle Companies v. Crofton Civic Ass'n, 339 Md. 131 (1995),which holds that the power to impose conditions on a grant of a special exception or variance is implicit in the statute itself. Regarding variances, see also McLean v. Soley, 270 Md. 208.

B. Haines' Order limiting the site to single family homes was reasonable both at the time and now. Petrilli's assertion that the neighborhood is predominantly apartments is unfounded. On the contrary, the neighborhood was and is predominantly single-family. Some of the multifamily sites existed for many years before Petrilli purchased, and most front York Road, a commercial corridor. It is undisputed that:

(i) the two small apartment buildings at 2 and 4 Aigburth , zoned DR 16, were constructed in the 1940's or 1950's.
(ii) Cardiff Hall fronts on York Road, is zoned DR 16, is proposed for a downzoning in the current 2000 Comprehensive Zoning Process, and was built in the 1960's.
(iii) "Sunrise" is an assisted living facility, zoned DR 16 and fronts on York Road.
(iv) 15 Aigburth was approved as a home office for a doctor.
(v) All of the homes behind the subject site on Hilltop Avenue are single family dwellings.
(vi) 9 Aigburth contained a small apartment for the family's mother/mother-in-law.

C. There was no evidence other sites are legal multifamily dwellings. See Park Shopping Center, Inc. v. Lexington Park Theatre Co., 216 Md. 271 (1958) where the Court says at 276:

> **"This Court has held that it is not proper to consider the existence of surrounding ill-advised or illegal zoning variances as grounds for granting additional variances."**

This theory applies to the Petition for Special Hearing that is traced to removal of a variance restriction.

D. Moreover, the existence of apartments in the vicinity of the subject site does not give him a preference for the relief requested. In Shadynook Imp. Ass'n v. Molley, 232 Md. 265, the Court of Appeals held that the existence of apartments across the street from the subject site, did not mean that rezoning the subject site to a one or two family residential use, rather than apartments, is erroneous.

The proximity to Towson University and the concomitant shortage of student housing, puts an added burden on this neighborhood The Southeast Towson Community Plan supports

preservation of the single- family neighborhood. The County Council designated the area a Community Conservation District. The Planning Office, in support of the District designation and the Community Plan, opposes the relief requested by Petrilli. From the beginning, Commissioner Haines' restriction of the site to single family homes upheld the integrity of the neighborhood.

E. Petrilli did not appeal the Order and proceeded to develop under the Order and the minor subdivision plan. See Skipjack Cove Marina, Inc. v. County Com'rs for Cecil Co., 252 Md. 440, (1969) which prohibited a subsequent collateral attack on restrictions on a special exception.

5. Deputy Commissioner Kotroco's Order was a valid exercise of his authority.

A. BCZR 500.7 grants the ZC the **"power to conduct such other hearings and pass such *orders thereon as shall, in his discretion, be necessary for the proper enforcement of all* zoning regulations . . ."** This authority is akin to special exceptions and variances and the rationale that controls the evidence and procedure in those zoning cases applies to special hearing relief as well.

B. The owner-occupancy restriction follows the land and is valid. Other provisions in BCZR require owner-occupancy. See BCZR 101 for definition of **Home Occupation**, and BCZR 1B01.1 C. 12 for definition of **Professional Office.**

C. The Petition for Special Hearing, signed by Petrilli, states the site is zoned DR 5.5. He is bound by the Order issued on evidence he raised or should have raised.

D. Deputy Commissioner Kotroco was aware of the zoning and referred to the site's DR 5.5 zoning in his Opinion and Order. Clearly, he did not believe the down-zoning rescinded Haines' 1988 Order. He issued his Order with an understanding of the current zone and its provisions.

E. Petrilli is barred from claiming in this hearing that the down-zoning invalidated Commissioner's Haines' Order because::

(i) He filed the Petition for Special Hearing to remove the restriction in Kotroco's 1996 Order, thus acknowledging the validity of the Order.
(ii) He is bound by the case he chose to present before the Deputy Zoning Commissioner.
(iii) He failed to file an appeal of Kotroco's Order.

F. BCZR does not provide for automatic conversion to multifamily dwellings in the D. R. 5.5 zone:

In D.R. 5.5 Zones, subject to findings of compatibility by the hearing officer: group houses and multifamily buildings. [Bill No. 85-1997]

Zoning Commissioner Schmidt had the benefit of this provisions in deciding the Petition for Special Hearing.

4 Petrilli consented to the owner-occupancy restriction in the Order of October 4, 1996.

A. The Opinion and Order of the Deputy Zoning Commissioner states Petrilli consented.

B. Petrilli admitted at the hearing before the CBA that he consented to the owner occupancy restriction as a condition to the conversion to a multi-family dwelling in 1996.

C. In *Board of Liquor v. Fells Point Café*, 344 Md. 120 (1996) an applicant for a liquor license transfer agreed to certain conditions in order to avoid neighborhood opposition. Among the conditions was a restriction that the site shall operate as a restaurant but not a nightclub or bar. The Board granted the transfer subject to the conditions. A year later, the Board held a hearing on alleged violations of the license. The property owner asserted the Board had no authority to impose restrictions on a liquor license in the first place and could not charge the owner with a violation. The Court of Appeals held the Liquor Board's specific authority did not provide for imposition of restrictions. However, the Court held,

> ***"Where a licensee consents to having a restriction placed upon his or license, however, a different result may be reached. The license . . . . . was transferred only after they convinced the Board that they intended to operate a restaurant and not a bar. . . . The Licensees now argue that the Board has no power to place restrictions on an individual license. Today we hold that the Board may place restrictions on a license with the consent of the licensee. . . . If a licensee feels aggrieved by the conditions sought to be placed on his or her license, he or she should seek judicial review at the time the conditions are imposed. . . .In this case, however, the Licensees did not seek judicial review at the time the original restrictions were imposed. Furthermore, it is reasonable to assume that the license would not have been transferred absent the agreement to the restrictions. . . it would be inequitable to allow a party who has accepted and retained the advantages of an agreement to attack the validity or propriety of the conditions to which the agreement was subject."***

D. As further evidence of his acceptance of Kotroco's Order, Petrilli elected to record the Order in the Land Records Office, although he testified in the instant case he did not feel compelled to do so.

5. The owner-occupancy restriction itself is legal.

A. Generally speaking, a grant of a special exception, variance, or special hearing relief runs with the land. As noted above in Paragraph 5, relief can be granted with conditions that must also run with the land. Here, Kotroco's owner occupancy restriction is not personal to Petrilli. Rather it applies to any and every owner of the site and is valid.

B. In J. Roland Dashiel Realty Co. v. Wicomo Co. 122 Md. App 239, cert. denied 351 Md. 285 (1998), the disposal of waste at a landfill granted by special exception was limited to the rubble from the company's own land clearance, demolition, and construction activities. The company was not permitted to import rubble from other sources.The Court found the restriction to be a valid condition to a special exception grant.

C. In French v. District of Columbia Bd. Of Zoning Appeals, 658 A2d 1023 (1995), the property owner sought a permit to rent a residential structure to a non-profit corporation under local zoning law, and to expand the facility with variances to meet the minimum square footage required for a non-profit office. The Board of Zoning Adjustment granted the relief was numerous conditions limiting the number of employees, the hours of operation, requirement to provide off-street parking, prohibition of large meetings and conferences, rear deliveries only, and establishment of a community liason program. The Court ruled the restrictions were valid since they are applicable to any non-profit tenant, and are not personal to the specific non-profit proposed when the case was heard.

6. Petrilli is barred under the doctrine of *res judicata*.

A. "If there is an identity of parties, an identity of subject matter, jurisdiction over both and a final decision on the merits, there arises the classic situation for the application of the doctrine of *res judicata*." (Citation omitted). *Res Judicata* bars a second trial if the aforementioned conditions exist.

B. The Court of Appeals clarified the application of *res judicata* to administrative hearings in Woodlawn Ass'n v. Bd. of Co. Comm's for Prince George's Co., 241 Md. 187 (1965). The Court reversed the grant of a reclassification that had been denied in a final action on the same site just two years before. The Court ruled that in zoning matters, the County Council acts as an

> **"adjudicatory agency . . .It must follow statutory authority and procedure, it must act lawfully, it must find support for its action in competent, material and substantial evidence adduced at a public hearing of which a transcript is made, and it must not act arbitrarily or capriciously.". . . "In light of the administrative procedures and adjudications . . . the principles of public policy which underlie the rule of *res judicata* logically would seem to be applicable to its actions in this respect."**
>
> The Court cited Schultze v. Montgomery Co. Bd., 230 Md. 76:
> **". . . the Board, in determining compliance of a subdivision plan . . . exercised a *quasi-judicial function* and could not disapprove a final plan after it had approved an identical plan, absent the development of new facts in the meantime, since this constituted a mere change of mind and was therefore arbitrary and capricious *conduct*."**
>
> The Court further referred to prior cases and stated that:
> **" . . . a mere change of mind was insufficient to justify a reversal of previous action."**
>
> The "good cause" required for a change in zoning is **"a change in conditions or other *considerations* materially affecting the merits, intervening since the former decisions. . ."** (citations omitted).
>
> A standard similar to the doctrine of *res judicata* prohibits the relief. The Court of Appeals decision in Whittle v. Bd. Of Zoning Appeals, 211 Md. 36, 45, also cited by the Court in Woodlawn, supra at 196 states:
>
> **"The general rule, where the question as arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may *consider and act upon a new application* for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions . . . This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law." (emphasis added).**
>
> The Court in Whittle (the final decision in this case came from the appeal to the Circuit Court) concluded:
> **"Because essentially the same facts appeared in the second case as appeared or as could have been shown in the first case, the appellees are barred by *res judicata*, and their petition should have been denied." (emphasis added)**

C. The Court of Appeals also applied the doctrine of *res judicata* to a hearing before the National Labor Relations Board. Citing the Supreme Court case, United States v. Utah Constr., 384 U.S. 394 (1966) the Court of Appeals quoted:

"When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose."

The Court cited numerous supporting cases in federal courts and stated, **"The rule in Maryland does not differ in any material respect from that adopted by the federal courts."**

Here Petrilli cannot challenge the validity of the owner occupancy restriction because of the 1992 rezoning of the site. The fact of the current zone, DR 5.5, was known Kotroco, who ruled that Petrilli needed zoning approval to convert to a multifamily dwelling in light of the 1988 restriction to single-family homes. Petrilli was also aware of the rezoning. If he made, or should have made, the down-zoning argument before Kotroco, it was nonetheless, rejected. He is barred from re-litigating an issue already decided by an agency in a judicial proceeding.

7. The 1996 Order cannot be challenged in this proceeding or at any time.

A. Petrilli did not appeal the 1996 Order. The Court of Appeals recently addressed this issue in Exxon v. State Highway Adm of the MD Dept. of Transportation, 354 Md. 530 (1999). There, Exxon sought to expand and modernize its existing service station under a Special Exception. The County possessed a right of way for future road expansion on a portion of the site. Exxon wanted to expand the service station into the right of way. The County permitted the expansion onto the right of way, subject to the condition "that at such time as the road is widened, Exxon shall remove, at its own expense, any structures and fixtures that are located on or in any part of the property acquired by a public body for the improvement or widening of Allentown Road." Exxon did not challenge the condition and the service station was expanded.

Two years late, the State Highway Administration, in a "quick take" condemnation, acquired the right of way portion of the site for widening of Allentown Road. Exxon was required to remove its fixtures from the area of acquisition. Exxon submitted a claim for "relocation assistance" under the Maryland Code for the cost to remove underground tanks and pumps from the right of way and to replace tanks and pumps elsewhere on the site. The claim was denied.

Exxon argued the condition was unconstitutional under condemnation law and further unenforceable because more land was taken by SHA than Exxon anticipated in the earlier case.

The Court of Appeals did not need to address Exxon's constitutional issue. The Court stated the claim of unconstitutionality should have been raised by an appeal of the prior case, and furthermore Exxon consented to the condition:

"The aggrieved property owner, however, ordinarily must directly challenge an alleged constitutionally invalid zoning ordinance by seeking judicial review at the time the ordinance is enacted, if there is an opportunity to do so, and not by collateral attack in a subsequent condemnation proceeding." The Court cited a 1950 case, ***"a collateral attack is not permissible, at least where, as in the instant case, a direct proceeding to challenge the validity of the classification, with the zoning authority as a party, was readily available. . . . In this case, Exxon could have challenged directly the validity of the condition inserted in the special exception and building permit under the review permitted by Article 66D of the Maryland Code. . . . This Exxon did not do. In addition Exxon has acquiesced in the condition that it pay the relocation expenses.*** The Court also cited Skipjack Cove Marina, Inc. v. County Comm'rs, 252 Md. 440 (1969) wherein "***current property owners could not attack in a collateral proceeding the***

conditions that their predecessors in title accepted with a special exception and did not challenge in a judicial review of the board's decision. (Citations omitted).

B. A collateral attack of an Order after the appeal period undermines BCC 26-132, which provides for an appeal within 30 days of the Zoning Commissioner's Order.

8. The Petition for Special Hearing to remove the restriction frustrates the Spirit and Intent of the prior orders.

A. There is no evidence of substantial changes in the area from 1996 to the present to support removal of the restriction.

(i) The Southeast Towson Community Plan was adopted by the County Council since the 1996 hearing on this site. BCC 26-166 provides, "All development of land must conform to the Master Plan, including adopted community plans, and these regulations." The Plan states the main problem in the area is rental housing, particularly student rentals. According to the Office of Planning Comment dated December 28, 1998 in opposition to the relief requested, (part of the CBA's file), the relief requested directly contradicts the recommendations in the Plan to reduce multi-family dwellings.

(ii) Laurie Hay, the 4th District Community Planner, testified that additional down-zonings from DR 16 are proposed for the area in the 2000 Comprehensive Zoning Process. Ms. Hay stated that the owner occupancy restriction on this site supports to the Community Plan's goals of stabilizing the neighborhood and encouraging home ownership. The Planning Office recognizes that owner occupancy encourages better property maintenance, accountability, and a quality of life standard commensurate with the provisions of the Community Plan.

(iii) The history and current demographics support, rather than diminish, the need for the restriction. For instance, the citizens testified about the extraordinary amount of time and effort required to eliminate zoning violations and nuisances. Mr Paul Hartman testified, without contradiction, that Towson University plans to expand its student body by 4000 students while adding only 800 residential spaces, causing further strains on the surrounding neighborhoods. The citizens welcome the university in the area but recognize that the lifestyle of most residents in the neighborhood differs markedly from that of many college students. If the owner is on-site, more transient renters such as college students, and the residents can better address any conflicts.

(iv) The area is within a Community Conservation District targeted for revitalization under BCC 9-101. Clearly, from the testimony of the Community Planner and the citizens, the neighborhood benefits from owner occupancy residential dwellings.

B. In opposing the relief, the Office of Planning, as stated in their comment and represented at the hearing by Ms. Hay, recognized that ". . . the decision to grant the multi-family use was largely based on the following conditions: 1) the applicant was the owner occupant of the property, 2) the applicant had made a substantial investment in the property, and 3) the applicant would provide on-site management of the property by committing to continue to reside in the property. The current request to remove the owner occupancy restriction would negate the "spirit and intent" of that restriction which was placed in the order to relieve the property owner of any practical difficulty or hardship, while at the same time protect the community from the burden of any additional problems associated with absentee owned, multi-family rental units."

The house was converted under those terms. Now that he has the conversion, Petrilli cannot refuse to abide by the restriction. Additionally, his request to remove the restriction at this time is unfair to the citizens. Mrs. Judith Giocomo, a long time resident and active in the community association, testified the community association would have appealed the conversion in 1996 if it did not include the owner occupancy restriction.

C. There is no authority for removal of the restriction. Kotroco's Order specifically prohibits apartments if the restriction is removed or unheeded. It requires the house to be converted to a single-family dwelling if the owner does not reside on site. The Order itself prohibits the relief Petrilli requests in this case. His only option was to challenge the restriction within the appeal period of the October 4, 1996 Order.

D. Petrilli has a choice. He can reside on the site, he can sell to an owner who must reside on the site, or he can convert the house to a single-family dwelling.

(i) Conversion to a single family dwelling is not unreasonable. Petrilli testified the site is suitable as a single family home. He testified he lived with his family in the home for many years and it was conducive to, and suitable as, a single family dwelling for him, his wife and his children.

(ii) Petrilli never claimed, nor offered evidence that he was unable to sell the house subject to the restriction.

(iii) Petrilli offered no evidence that the house could not be converted to a single family dwelling.

E. Petrilli requested to convert to apartments in August, 1996 under the guise that he and his wife would reside in one apartment and his daughter and her family would reside in a second apartment. Kotroco mentioned these facts in support of his decision. Now Petrilli reniegs on that favorable scenario altogether.

F. It was evident from his testimony, Petrilli intended from the beginning to develop this site with multifamily dwellings in order to maximize his investment. In 1988 he purchased a ½ acre lot with one house on site. Subdivision was not mandated by the size of the lot. (For instance, Mrs. Giocomo testified her single family lot is ¾ acre and Mr. Hartman's is slightly over 1/3 acre). Petrilli has been chipping away at the zoning regulations and the restrictions imposed, to ultimately get what he was prohibited from doing at the onset. In the meantime the house served him well as a personal residence, as a home for his daughter and her family, and as a rental unit. One has to assume that Petrilli plans the same path for 10 Aigburth Road, the second lot in his minor subdivision.

III. SUMMARY

In conclusion, Zoning Commissioner's 1988 Order granting a variance with a restriction controls development of the site. It was modified in 1996 by Deputy Zoning Commissioner Kotroco. Mr. Petrilli did not appeal either case. Zoning Commissioner Schmidt refused to remove the restriction. The CBA should deny the Petition for Special Hearing because (i) procedurally Mr. Petrilli cannot attack the restriction in a separate case from an appeal of the 1996 Order, (ii) the restriction is valid and reasonable on the merits and is permitted under zoning law, (iii) even if the restriction were unlawful, Mr. Petrilli consented to it and failed to file a timely appeal

Respectfully submitted,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

400 Washington Ave.
Towson, MD 21204
410-887-2188

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27 day of December, 1999, a copy of the Memorandum of People's Counsel was mailed, postage prepaid, to Howard Alderman, Esq., 305 W. Chesapeake Ave., Towson, MD 21204 and Frank Borgerding, Esq., Suite 600, 409 Washington Ave. Towson, MD 21204.

Peter Max Zimmerman

12/27/99

IDA A. and BENJAMIN A. PETRILLI 8 Aigburth Road 9th Election District 4th Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: 99-215-SPH

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

PROTESTANT'S MEMORANDUM

The Aigburth Manor Association of Towson, Inc., by and through its attorney, Francis X. Borgerding, Jr., submits its Memorandum in Opposition to the Petitioners' requested relief in the above-captioned case and says:

STATEMENT OF FACTS

Petitioner, Benjamin A. Petrilli, filed for relief requesting a variance to permit side yard setbacks of 15 feet in lieu of the required 25 feet for Lots 1 and 2 of the subject property (now 8 and 10 Aigburth Road) pursuant to case number 89-93-A. The subject property's zoning at the time of said case was D.R. 16. The Petitioner testified before this Board case that he represented himself without counsel in prosecuting case number 89-93-A, and that he did not seek the advice of counsel. The Petitioner also testified that upon receipt of the decision from the Zoning Commissioner for Baltimore County, he read the decision and further that he did not appeal the decision.

The decision rendered by Zoning Commissioner, J. Robert Haines, in case number 89-93-A contained restriction number 2 which read "only single family dwellings shall be permitted to be constructed on each lot."

Subsequently, the Petitioner filed case number 97-57-SPH which requested a Special Hearing for the property known as 8 Aigburth Road. The Special Hearing requested approval to add two apartments to an owner occupied residence and to amend restriction number 2 of the Order issued in prior case number 89-93-A. On the record before the Board in the present case, the Petitioner testified that he did not seek advice of counsel before filing case number 97-57-SPH and that he represented himself without counsel throughout the case. The Petitioner acknowledged in testimony that members of the community protested his requested relief at the public hearing in case number 97-57-SPH for reasons including the property's past use as a fraternity house. Petitioner further testified that he consented to restriction number 2 of the Order eventually entered in case number 97-57-SPH. Upon questioning by Petitioner's counsel, Petitioner testified that at the time of the hearing in case number 97-57-SPH he did not think that he had to consent to what was to become restriction number 2 in the

Order in case number 97-57-SPH to get rid of restriction number 2 in case number 89-93-A. The Petitioner further testified that upon receipt of the decision in case number 97-57-SPH he read the decision, understood the decision and understood he had a choice to appeal or not to appeal the decision. The Petitioner further acknowledged that he decided not to appeal the decision. In addition, the Petitioner acknowledged that he subsequently recorded the decision in the Land Records of Baltimore County as called for in restriction number 3 of the Order entered in case number 97-57-SPH.

The Order entered in case number 97-57-SPH by Timothy Kotroco, Deputy Zoning Commissioner for Baltimore County, indicates the property's zoning to be D.R. 5.5 at the time of hearing. The Petition for Special Hearing in case number 97-57-SPH also indicates the property's zoning to be D.R. 5.5 at the time of the filing of the Petition. Deputy Commissioner Kotroco's decision further indicates on page two of said decision

> "Mr. Petrilli and his wife reside in the house at this time, along with their daughter, son-in-law and grandchild. However, pursuant to this request, Mr. Petrilli wishes to install a kitchen on the second floor which would make the second floor a separate apartment and provide additional privacy for his daughter and son-in-law. In addition, Mr. Petrilli wishes to create a third apartment on the third floor

which would be utilized as a separate rental unit, not lived in by Mr. Petrilli or his daughter and son-in-law.

Further, the Order rendered in case number 97-57-SPH states on page four of said decision:

> "He (Mr. Petrilli) appears to be a responsible citizen who intends to live in the house after it is converted. He has agreed to have that restriction imposed upon him as a condition of approval of his request."

The Order entered in case number 97-57-SPH was entered on October 3, 1996 and contained the following restrictions numbers 2 through 5.

2) The subject dwelling shall be utilized as three separate apartments only for so long as the property is occupied by its owner of record. In the event the owner of record ceases to reside on the subject property, the dwelling shall be converted back to a single family dwelling.

3) The Petitioner shall record a copy of this Order in the Land Records for Baltimore County to ensure that any potential purchaser of the subject property shall have notice that the property can only be used as a three apartment dwelling for so long as the owner of record resides therein.

4) The adjacent property known as 10 Aigburth road shall remain limited to use as a single family dwelling. This Order shall not affect the restriction imposed upon that property in prior Case No. 89-93-A.

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

Subsequently, Petitioner again pro se filed case number 99-215-SPH requesting a special hearing to seek approval of the removal of restriction number 2 of the Order issued in prior case number 97-57-SPH. After denial of the Petitioner's present requested relief by the Baltimore County Zoning Commissioner pursuant to an Order entered May 7, 1999 the Petitioner through counsel filed the appeal now before this Board.

ARGUMENT

A. Restriction Number 2 of the Order issued in case number 97-57-SPH was a legal restriction entered by the Deputy Zoning Commissioner for Baltimore County.

Section No. 26-127 of the Baltimore County Code grants the Baltimore County Zoning Commissioner authority to enter restrictions when granting zoning relief. Section 26-127 says:

> "Variances may be issued with such conditions or restrictions as determined appropriate by the zoning commissioner for the purpose of protecting the health, safety, or general welfare of the surrounding community."

In addition, Section 500.7 of the Baltimore County Zoning Regulations (hereinafter "BCZR") says in pertinent part:

> "The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided."

Petitioner's counsel argues that the down zoning of the property from D.R. 16 to D.R. 5.5 between case numbers 89-93-A and case number 97-57-SPH made the order entered in case number 89-93-A moot, Petitioner further argues that in light of the above, the order and restrictions entered in case number 97-57-SPH were illegal as the set backs requested in case number 89-93-A were no longer required upon the hearing held in case number 97-57-SPH.

It is well settled in Baltimore County, however, that lots are controlled by the regulations in effect at the time of their sub-division. In the case at hand, there is no question that the lots in question were zoned D.R. 16 at the time of their sub-division. The BCZR Section 103 reads:

> "The Zoning Regulations applicable to any such development, subdivision or parcel of land as aforesaid shall be the Zoning Regulations in effect at the time such plan, as aforesaid, was originally submitted to the Baltimore County Planning Commission."

Counsel for the Petitioner, however, argues that at the time of the Petition and hearing in case number 97-57-SPH the Petitioner could have converted the subject property to a multi-family dwelling pursuant to BCZR Section 402 rather than proceeding with the hearing in case number 97-57-SPH. The

Petitioner, however, cannot now collaterally attack his own method of proceeding pursuant to the Petition filed in case number 97-57-SPH. The record before the Board in this case is clear that the Petitioner at the time of filing case number 97-57-SPH knew the subject property was zoned D.R. 5.5 and proceeded with the filing of the Petition in said case without being represented by counsel. Further, the record establishes that the Petitioner represented before the Deputy Zoning Commissioner in case number 97-57-SPH that he would continue to live on the subject property and would rent at least one of the two other apartments in the subject property to family. In addition, the neighbors of the subject property protested Petitioner's requested relief at the hearing in case number 97-57-SPH expressing concerns of impact on the community if the property were rented by an absentee landlord. These concerns were especially relevant to the property in light of the property's history of being rented to students who utilized the property as a fraternity house which caused disturbance to the community. Further, the record establishes that at the Deputy Zoning Commissioner's request in case number 97-57-SPH the Petitioner consented to what is now entered as restriction number 2 in that case. Further that upon receipt of the Order

entered in case number 97-57-SPH the Petitioner read the decision, understood it and decided not to appeal the decision at that time. The Petitioner also testified upon questioning by his own counsel that he did not feel that he had to consent to restriction number 2 in case number 97-57-SPH to eliminate restriction number 2 in case number 89-93-A. The Petitioner also acknowledged that he subsequently recorded the decision entered in case number 97-57-SPH in the Land Records of Baltimore County to restriction number 3 contained in said Order.

The Petitioner's argument before this Board that restriction number 2 in case number 97-57-SPH was illegally entered by the Deputy Zoning Commissioner Kotroco is without merit. Petitioner's own actions in proceeding with case number 97-57-SPH, consenting to the restrictions entered in said case, failing to appeal said order when entered and his affirmative step of recording said decision in the Land Records of Baltimore County in Liber 11902 Folio 498 invalidate any argument he may now put forward that said restriction was illegal when entered.

The Petitioner's argument also ignores the fact that based upon the record before Deputy Commissioner Kotroco, restriction number 2 was an entirely appropriate restriction based upon the

facts as presented by the parties before him, including the history of the use of the subject property.

Even assuming for the sake of argument that restriction number 2 in the Order entered in case number 97-57-SPH was illegal when entered the Petitioner has now waived his right to collaterally attack said restriction. This is true in light of the fact that the Petitioner himself filed the Petition which led to the hearing in the case, he consented to the restriction at the time of the hearing and most importantly he failed to appeal said restriction after receipt of the Order entered in the case. Further, the Petitioner affirmatively recorded the Decision in the Land Records of Baltimore County.

A property owner must directly challenge an alleged constitutionally invalid zoning ordinance by seeking judicial review at the time the ordinance is enacted not by collateral attack in a subsequent proceeding. See Exxon Company, USA v. State Highway Administration, 354 Md. 530, 731 A.2d 948 (1998).

B. The Testimony and Evidence before the Board in the subject hearing made clear that restriction number 2 in case number 97-57-SPH should be maintained.

Protestant's witnesses, Judith Giacomo, Paul Hartman and Laurie Hay, area planner from the Baltimore County Office of Planning, emphasized the problems experienced by the community in which the subject property lies stemming from absentee owned rental properties in the area. Mrs. Giacomo and Mr. Hartman, on behalf of the Aigburth Manor Association of Towson, Inc. testified about the problems the community has experienced throughout the years with absentee owned rental properties, especially those rented to students of nearby Towson University. Mrs. Giacomo testified as to the history of the subject property which was used prior to Petitioner's ownership thereof as a fraternity house while being rented by students from nearby Towson University. Mrs. Giacomo indicated that the property had fallen into a deplorable condition, that the students that lived on the subject property had frequent parties which were disruptive to the community in light of the noise, litter, etc. that they caused.

Mrs. Giacomo indicated that at the time of the hearing in case number 89-93-A the Board of the Aigburth Manor Association

of Towson, Inc. became aware of the Petitioner's requested relief and refrained from protesting said relief in light of the fact that the Petitioner was requesting approval of the lots for two single family dwellings. Mrs. Giacomo testified that based upon the Petitioner proceeding in that manner the Association decided not to appeal the order entered in case number 89-93-A.

Mrs. Giacomo, however, testified that when the Petitioner proposed his special hearing relief in case number 97-57-SPH the Community, in light of the history of the subject property and problems with many other properties in the area which were rented to students by absentee landlords, contested the Petitioner's requested relief in case number 97-57-SPH. Mrs. Giacomo testified that when the Petitioner consented to the restriction, which has now become restriction number 2, in the Order entered in case number 97-57-SPH, the Community decided not to appeal the decision. Mrs. Giacomo indicated the community's decision was based on the fact that the Petitioner had built a structure on the subject property which was aesthetically pleasing and that if Mr. Petrilli or a subsequent owner of the subject property would remain on the site while renting the two other apartments, the Community believed the

Petitioner or subsequent owner would ensure that the property was well maintained.

Mrs. Giacomo indicated that the Aigburth Manor Association of Towson, Inc. is currently protesting the Petitioner's requested relief to seek removal of restriction number 2 of the Order issued in case number 97-57-SPH in light of the problems the Community has had with absentee Landlord rental properties in the area. Mrs. Giacomo indicated these problems have only gotten more severe since case number 97-57-SPH. Mrs. Giacomo indicated that the community along with other communities in the area worked with the Office of Planning to establish the southeast Towson Plan to address community issues. Further, Mrs. Giacomo indicated that that Southeast Towson Plan, which has now been completed and adopted by the County Council, indicates that an absentee landlord rental properties are a problem in the community. Mrs. Giacomo indicated that the plan indicates that whenever possible conversion from multi-property to single family dwellings should be encouraged.

Paul Hartman, who resides at 18 and ½ Cedar Avenue, Towson, Maryland 21286 indicated during his testimony that the issue of absentee landlord rental properties continues to increase as a problem issue for the community especially in light of Towson

University's planned expansion from 16,000 to 20,000 students in the next several years. Mr. Hartman further indicated during his testimony that the University is planning to increase its on-campus housing by a small percentage of the additional students which will attend the University, which will only heighten the amount of students looking for rental properties in the area.

Laurie Hay, area planner for the Board's district, testified as to the basis for the County's planning offices comment issued in regard to the subject case which was entered before the Board as a Protestant's exhibit. Ms. Hay indicated during her testimony that the Office of Planning identified absentee landlord rental property as a problem in the area. Ms. Hay indicated that this issue was raised by a high number of respondents to a survey conducted for the Southeast Towson Plan. Ms. Hay testified that the office is attempting to encourage single family occupancy of structures in the area to promote a more stable community. Ms. Hay indicated that the Office of Planning through the Comprehensive Zoning Map Process has in the past and is presently seeking a down zoning of the property in the area to meet this goal. Ms. Hay noted in particular that the Office of Planning had requested down zoning of the Cartiff

Hall apartments pursuant to the year 2000 Comprehensive Zoning Map Process.

When the testimony and evidence before the Board are reviewed, it is clear that restriction number 2 of the Order issued in prior case number 97-57-SPH should not be removed.

CONCLUSION

In light of the above, the Petitioner's requested Special Hearing to seek approval of the removal of restriction number 2 of the Order issued in prior case number 97-57-SPH should be denied.

FRANCIS X. BORGERDING, JR.
409 Washington Avenue, Suite 600
Towson, Maryland 21204
410-296-6820
Attorney for the Aigburth Manor
Association of Towson, Inc.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of December, 1999, a copy of the aforegoing was mailed, postage prepaid, to:

Carol DeMilio, Esquire
People's Counsel for
Baltimore County
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Howard L. Alderman, Jr., Esquire
305 West Chesapeake Avenue
Suite 113
Towson, Maryland 21204-4435

FRANCIS X. BORGERDING, JR.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits and
Development Management

DATE: December 28, 1998

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: 8 Aigburth Road

INFORMATION:

Item Number:	215
Petitioner:	Ida A. and Benjamin A. Petrilli
Property Size:	.33 acres
Zoning:	D.R. 5.5
Requested Action:	Special Hearing
Hearing Date:	January 5, 1999

REQUEST

The request for a Special Hearing in this case is being sought to remove Restriction #2 of the order issued in case number 97-57-SPH. Restriction #2 was one of five restrictions included in the order for the Special Hearing for 8 Aigburth Road, previously approved on October 3, 1996. It states: "The subject dwelling shall be utilized as three separate apartments only for so long as the property is occupied by its owner of record, in the event the owner of record ceases to reside on the subject property, the dwelling shall be converted back to a single family dwelling."

SUMMARY OF RECOMMENDATIONS:

The subject property consisting of .33 acres and improved by a three story brick dwelling and a detached two car garage is zoned D.R. 5.5. It is located in the Aigburth Manor community and is within the boundaries of the Southeast Towson Community Plan area. It has been the subject of several prior cases in which subdivision and setback variances were requested and granted. The most recent of the cases, #97-57-SPH, which granted approval to add two

apartments to an owner occupied residence and amended a previous restriction which permitted only a single family dwelling, was granted subject to several conditions. A review of the testimony in the order issued for case # 97-57-SPH indicates that the decision by the Deputy Zoning Commissioner to grant the multifamily use was largely based on the following conditions: 1) the applicant was the owner occupant of the property, 2) the applicant had made a substantial investment in the property, and 3) the applicant would provide on-site management of the property by committing to continue to reside in the property. The current request to remove the owner occupancy restriction would negate the "spirit and intent" of that restriction which was placed in the order to relieve the property owner of any practical difficulty or hardship, while at the same time protect the community from the burden of any additional problems associated with absentee owned, multi-family rental units.

Additionally, this property is located within the boundaries of the Southeast Towson Community Plan that was adopted by County Council in October 1998. Several sections of that plan refer to the disproportionate number of rental units already located in the community and the recommendation that whenever possible, multifamily units should be converted back to single family homes.

Based on the testimony offered in previous special hearing #97- 57-SPH, and the goals and objectives of the recently adopted Southeast Towson Plan, this office recommends the request to remove restriction #2 be denied.

Section Chief: Jeffrey W. Long

AFK:JL:kma

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Management

Date: December 24, 1998

FROM: Robert W. Bowling, Supervisor
Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for December 14, 1998
Item No. 215

The Bureau of Developer's Plans Review has reviewed the subject zoning item. Our records indicate the Case Number was #97-56.

RWB:HJO:jrb

cc: File

ZONE1214.215

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: PDM DATE: December 10, 1998

FROM: R. Bruce Seeley RBS/gf
Permits & Development Review
DEPRM

SUBJECT: Zoning Advisory Committee

Meeting for: December 7, 1998

The Department of Environmental Protection and Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s: (215)
216
220
221

Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

December 11, 1998

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF December 7, 1998

Item No.: See Below Zoning Agenda:

Gentlemen:

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

8. The Fire Marshal's Office has no comments at this time, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

215, 217, 219, and 220

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor
David L. Winstead
Secretary
Parker F. Williams
Administrator

Date: 12·10·97

Ms. Gwen Stephens
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 215 (JRF)

Dear. Ms Stephens:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

L. J. Gredlein

for Michael M. Lenhart, Acting Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

RE: PETITION FOR SPECIAL HEARING 8 Aigburth Road, S/S Aigburth Rd, 480' E of c/l York Rd, 9th Election District, 4th Councilmanic	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	FOR
Legal Owners: Benjamin and Ida Petrilli	*	BALTIMORE COUNTY
Petitioner(s)	*	Case Number: 99-215-SPH

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December, 1998, a copy of the foregoing Entry of Appearance was mailed to Legal Owners Benjamin A. and Ida A. Petrilli, 8 Aigburth Road, Towson, MD 21286, Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

IDA A. and BENJAMIN A. PETRILLI 8 Aigburth Road 9th Election District 4th Councilmanic District	*	BEFORE
	*	COUNTY BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	Case No.: 99-215-SPH

SUBPOENA

Please issue a Subpoena to the following named witness to appear and bring the documents and materials as attached hereto before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on November 23, 1999, at 10:00 a.m. in Room 48, Basement, Old Court House, located at 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Laurie Hay
Address: Baltimore County Office of Planning
Suite 406, 401 Bosley Avenue
Towson, Maryland 21204

Requested by:
Name: Francis X. Borgerding, Jr.
409 Washington Avenue, Suite 600
Towson, Maryland 21204

The witness named above is hereby ordered to so appear before the County Board of Appeals on the date and time indicated above.

RECEIVED
COUNTY BOARD OF APPEALS
99 NOV 19 AM 10:36

Charlotte E. Radcliffe
County Board of Appeals of
Baltimore County

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: June 5, 2000

TO: Arnold Jablon, Director
Permits & Development Management

FROM: Charlotte E. Radcliffe
Board of Appeals

SUBJECT: **CLOSED FILES:**

99-11-SPH –Robert F. Webbert, et ux
99-54-SPHXA –David M. Coleman-LO; Francis Honeywell-CP
99-57-A –Stamatios Papastefanou, et ux
99-73-SPHXA –Donald E. Warrener, Jr.
99-113-A – Emil A. Budnitz, Jr. –LO;Jeff Budnitz-CP
99-215-SPH – Ida A & Benjamin A. Petrilli
99-242-XA –Ernest Diegert-LO; Eller Media Co.-CP
99-279-A – Ruth Phillips & Andrew Erdman
99-291-SPH –Schoolden's Automotive Repair, Inc.
99-310-X – Eastern Boulevard Center, Inc. (Famous Pawn, Inc.)
99-318 –Roddick Realty Partnership I-LO;
and Cloverland Farms Dairy, Inc.-CP
99-359-A –Shirley & David Morrison-LO; David Waldhauser-CP
99-492-SPH –William A. and Mary H. Kraft
99-504-SPHXA –Estate of Sol Goldman-LO; Eller Media-CP

Since the above captioned cases have been finalized and no further appeals were taken, we are hereby closing the files and returning same to your office herewith.

Attachments: Case File Nos.: 99-11-SPH; 99-54-SPHXA; 99-57-A; 99-73-SPHXA w/ large exhibit box; 99-113-A; 99-215-SPH w/ large exhibit; 99-242-XA; 99-279-A; 99-291-SPH; 99-310-X; 99-318-X; 99-359-A; 99-492-SPH; and 99-504-SPHXA

Baltimore County
Department of Permits and
Development Management

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

June 4, 1999

Judith M. Giacomo, President
The Aigburth Manor Association of Towson, Inc.
P.O. Box 20143
Towson, MD 21284-0143

Dear Ms. Giacomo:

RE: Petition for Special Hearing, Case No. 99-215-SPH, 8 Aigburth Road, District: 9c4, Legal Owners: Ida A. & Benjamin A. Petilli

Please be advised that an appeal of the above referenced case was filed in this office on June 4, 1999 by Howard L. Alderman, Jr., Esquire on behalf of Mr. & Mrs. Benjamin Petrilli, legal owners. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:scj

c: Howard L. Alderman, Jr., Esquire
Ida & Benjamin Petrilli
Eric Dorn
John S.H. Chapman
Susan & Paul Hartman
Camille & George Sawyer
Mauritz Anderson
Anne Orrell
People's Counsel

APPEAL

Petiton for Special Hearing
8 Aigburth Road
S/S Aigburth Road, 432' E of centerline York Road
9th Election District – 4th Councilmanic District
Ida A. & Benjamin A. Petrilli - Legal Owner
Case Number: 99-215-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting (Patrick M. O'Keefe – 12/19/98)

Certification of Publication (Jeffersonian – 12/17/98)

Entry of Appearance by People's Counsel

Petitioner(s) Sign-In Sheet

Protestant(s) Sign-In Sheet

Zoning Advisory Committee Comments

11 Photographs (not marked as exhibits)

Appraisal of Real Estate, published by the Appraisal Institute, 11th Edition

5 Misc. Letters from various neighbors, etc.

Letter from Howard Alderman, Jr. to Zoning Commissioner dated February 8, 1999

Petitioners' Exhibits:
1. Plat to accompany petition for zoning

Zoning Commissioner's Order dated May 7, 1999 (denied)

Notice of Appeal received on June 4, 1999 from Howard L. Alderman, Jr., Esquire, on behalf of Mr. & Mrs. Benjamin Petrilli, legal owners

c: Aigburth Manor Association of Towson, Inc.
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

Case No. 99-215-SPH

SPH -Approval to remove Restriction No. 2 of Order issued in prior 97-57-SPH which states that use remains as 3 apartments as long as the owner of record resides therein; if owner of record ceases to reside on property, dwelling reverts to single-family dwelling.

5/07/99 -Z.C.'s decision in which Petition for Special Hearing was DENIED; restriction to remain; however, the ZC clarified the prior 97-57-SPH so as to allow "any owner to use the property as a three apartment unit for so long as that individual, as the owner of record, resides therein"; relief granted in 97-57-SPH was not personal to Mr. & Mrs. Petrilli.

10/12/99 -Notice of Assignment for hearing scheduled for Tuesday, November 23, 1999 at 10:00 a.m. and Wednesday, November 24, 1999 at 10:00 a.m. sent to the following:

Howard L. Alderman, Jr., Esquire
Mr. & Mrs. Benjamin A. Petrilli
John S.H. Chapman
Mr. & Mrs. George Sawyer
Mauritz Anderson
Anne Orrell
Aigburth Manor Association of Towson, Inc.
c/o Judith Giacomo, President
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

10/19/99 -T/C from H. Alderman - has a conflict with 11/24/99 as day #2; will be sending letter to CBA indicating same. Upon receipt of Mr. Alderman's letter requesting same, Notice of Assignment to be sent indicating that only 11/23/99 would be assigned for this case, with any additional date to be assigned as needed.

10/20/99 -Letter from H. Alderman; questioning need for two days; also indicating his unavailability on 11/24/99; requesting that if additional day is needed, it be a day other than 11/24/99.
- Revised Notice of Assignment /as to number of hearing days sent to parties; assigned for 11/23/99 only; additional day to be assigned if needed at that time.

12/01/99 -Notice of Deliberation sent to parties. Date of deliberation set for Wednesday, January 12, 2000 at 9:30 a.m. (in lieu of date originally related to counsel at hearing of 11/23/99). Time for filing of briefs has been extended to Monday, December 27, 1999 (extension shown on Notice of Deliberation). Copy to C.F.B. for FYI and calendar.

12/27/99 -Appellants' Post-Hearing Memorandum filed by Howard L. Alderman, Jr., Esquire, on behalf of Benjamin and Ida Petrilli (Appellants /Petitioners).

SPH -Approval to remove Restriction No. 2 of Order issued in prior 97-57-SPH which states that use remains as 3 apartments as long as the owner of record resides therein; if owner of record ceases to reside on property, dwelling reverts to single-family dwelling.

12/27/99 -Memorandum of People's Counsel filed by Carole S. Demilio, Deputy eople's Counsel for Baltimore County, and Peter M. Zimmerman, People's Counsel.

-Protestant's Memorandum filed by Francis X. Borgerding, Jr., Esquire, on behalf of The Aigburth Manor Association of Towson, Inc.

- Copies of above memos to Marks, Felling, and Barranger by mail this date; deliberation scheduled for 1/12/2000.

1/12/2000 -Deliberation concluded; majority (C & F) - petition for special hearing to remove restriction is DENIED; Dissent by B. Written Opinion/Order to be issued by Board; appellate period to run from date of written Order.

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

December 1, 1999

NOTICE OF DELIBERATION

IN THE MATTER OF:
IDA A. & BENJAMIN A. PETRILLI -Legal Owners
CASE NO. 99-215-SPH

Having heard this matter on November 23, 1999, the following date/time has been scheduled for deliberation:

DATE AND TIME : WEDNESDAY, JANUARY 12, 2000 at 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

(NOTE: DELIBERATION HAS BEEN SCHEDULED FOR THE ABOVE DATE AS CONFIRMED BY TELEPHONE CALLS TO COUNSEL THIS DATE. TIME FOR FILING BRIEFS HAS BEEN EXTENDED TO MONDAY, DECEMBER 27, 1999. Please submit Original and three (3) copies.)

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Petitioners: Howard L. Alderman, Jr., Esquire
Appellants /Petitioners: Mr. & Mrs. Benjamin A. Petrilli

Counsel for Aigburth Manor Assn. : Francis Borgerding, Jr, Esquire

Aigburth Manor Association of Towson, Inc.
c/o Judith Giacomo, President
John S.H. Chapman
Mr. & Mrs. George Sawyer
Mauritz Anderson
Anne Orrell

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Copies to: C.F.B.

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: C. Marks
D. Felling
L. Barranger

DATE: December 1, 1999

FROM: Kathi

SUBJECT: Case No. 99-215-SPH /Ida A. & Benjamin A. Petrilli
Notice of Deliberation

Attached FYI is a copy of the Notice of Deliberation sent this date to the parties as shown.

Please note that the date of deliberation has been changed -- the deliberation **is now scheduled for Wednesday, January 12, 2000 at 9:30 a.m.** (originally this was to be 12/28; however, due to a schedule conflict with Chuck's calendar, deliberation was reassigned to the above date of 1/12/2000).

Memos from counsel will now be filed on Monday, December 27, 1999 (an additional week was allowed for this filing as a result of the later deliberation date). Copies of the memos will be sent out to you as soon as they are received.

Call me if you have any questions, etc.

kathi

Attachment

FILE

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: C. Marks
D. Felling
L. Barranger

DATE: December 27, 1999

FROM: Kathi

SUBJECT: Case No. 99-215-SPH /Benjaminn Petrilli, et ux

The subject matter has been scheduled for public deliberation on Wednesday, January 12, 2000 at 9:15 a.m. A copy of that Notice of Deliberation was mailed to you on December 1, 1999. Attached are the following documents filed by Counsel with regard to this case:

1. Appellants' Post-Hearing Memorandum filed by Howard L. Alderman, Jr., Esquire, on behalf of Benjamin and Ida Petrilli, Appellants /Petitioners.;

2. Memorandum of People's Counsel filed by Carole S. Demilio, Deputy People's Counsel for Baltimore County, and Peter M. Zimmerman, People's Counsel; and

3. Protestant's Memorandum filed by Francis X. Borgerding, Jr., Esquire, on behalf of The Aigburth Manor Association of Towson, Inc.

Should you have any questions regarding the above, or need any additional information, please call me.

kathi

Attachments

FILE

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Ida A. & Benjamin A. Petrilli -Legal Owners
Case No. 99-215-SPH

DATE : Wednesday, January 12, 2000

BOARD /PANEL : Charles L. Marks (CLM)
Donna M. Felling (DMF)
Lynn Barranger (LB)

SECRETARY : Kathleen C. Bianco
Administrator

PURPOSE: To deliberate Case No. 99-215-SPH /Petition for Special Hearing to remove restriction placed in previous case.

The Board, having convened for public deliberation as scheduled by notice dated December 1, 1999, and upon deliberation between panel members at the scheduled deliberation session, reached the following decision.

Panel members indicated review of file, exhibits, notes and briefs filed by Counsel. Reviewed history of case: Petitioner bought the land; removed older vacant building (former frat house); wanted to put two structures in an off-set manner, rather than one in front of the other; applied for variance to do so. Variance was granted by Haines, with conditions imposed (sfd only); ZC lacked authority at that time to impose such conditions. No appeal filed by Petitioner. (This later changed via legislation passed by the County Council regarding authority of ZC; property was also downzoned to DR 5.5.)

Petitioner came back before Kotroco in 1996 to have SFD restriction removed; wanted three apartments; Kotroco imposed restriction that Petrilli must reside therein; further that "this order" must be recorded in land records and condition to run with land. Petrilli agreed (apartment for him, daughter and one additional upstairs).

Kotroco removed SFD restriction; required that owner live there. No appeal filed; Order recorded in Land Records.

Petitioner now asked Schmidt, in instant case, to remove restriction regarding Petitioner residing in one of the three apartments as condition; Schmidt kept restriction but clarified that it applied to any owner of the property and not simply the instant Petitioner. Appeal filed from Schmidt's decision; counsel retained for Board hearing.

Discussion continued: There was no appeal taken from Haines' decision (in which condition imposed was done so illegally); there was no appeal from decision of Kotroco and the conditions he imposed (which conditions were now legally imposed); and the Petitioner is now before the ZC and ultimately the Board to have the condition removed.

Board reviewed neighborhood -- in context of -- has there been substantial change. Discussed existence of Cardiff Hall

(downzoning proposed) and Sunrise (assisted living facility); also other dwellings in the immediate neighborhood with apartments. Discussed definition of "substantial" when applied to change for zoning purposes.

Defect as seen by majority panel - there never was an appeal taken by Petitioner from the conditions imposed throughout the history of the case. While possibility exists that had he been represented by Counsel at those steps, appeal may have been taken does not permit appeal to be filed for removal of restriction at this point in time. Petitioner appeared pro se in those previous cases and up until this hearing before the Board. Petitioner had opportunity to appeal in the prior cases; he did not. Not retaining counsel does not allow an appeal after the 30-day period. Individuals appear pro se by choice.

Board again reviewed history of the case, including 1992 action by community association to down zone. Reviewed testimony and evidence for proof of change; none could be found. Considered to be community conservation area; conditions can be imposed. This Petitioner began process by requesting variance; ZC can legally impose conditions. If Petitioner feels conditions are unfair, has right of appeal. This was not done by this Petitioner in prior cases.

Disagreement by LB; concerned about definition of "substantial change" and whether or not this is unfair restriction on this particular property owner.

Upon conclusion of extensive discussion between panel members, DMF and CLM will issue majority opinion and order in which special hearing request to remove restriction as to owner-occupied is DENIED for reasons as stated above and for reasons to be stated in written Opinion; dissent to be issued by LB.

~~~~~~~~~~~~~~~~~~~

NOTE: Written Opinion and Order to be issued by the Board as required by statute. Appellate period to run from date of written Order; anyone feeling aggrieved by the Board's decision may file Petition for Judicial Review in Baltimore County's Circuit Court.

This document confirms for the file that public deliberation was held this date in the subject matter and a final decision rendered in which the requested relief was denied by majority decision.

Respectfully submitted,

Kathleen C. Bianco
Administrator
~~~~~~~~~~~~~~~~~~~

BALTIMORE OFFICE
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LEVIN & GANN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR
Halderman@counsel.com

February 8, 1999

The Honorable Lawrence E. Schmidt, Esquire
Zoning Commissioner for Baltimore County
401 Bosley Avenue, Room 405
Towson, Maryland 21204

FEB 10

RE: Eight Aigburth Road
Benjamin A. Petrilli, et al, Petitioners

Dear Mr. Schmidt:

As I have discussed with you informally, I have been consulted by Mr. Benjamin Petrilli, one of the Petitioners in Case No. 99-215-SPH, pertaining to the above-referenced property. The referenced property has been the subject of two past zoning hearings, namely in Case No. 89-93-A and Case No. 97-57-SPH.

At the time of the 1989 zoning case, which Order was dated October 6, 1988, the subject property was zoned DR-16. In that Order, then Zoning Commissioner Haines granted a variance for the two (2) lots shown on a Minor Subdivision Plan of the Property (known as MP88-89), permitting side yard set backs of fifteen (15) feet each for lot number one and lot number two in lieu of the required twenty-five (25) foot set back for each of the two proposed dwellings. Additionally, Commissioner Haines imposed a restriction that only "single-family dwellings shall be permitted to be constructed on each lot."

Subsequently, in Case No. 97-57-SPH, decided by Deputy Commissioner Kotroco on December 3, 1996, the Petitioners were permitted to have three (3) separate apartments for the property known as 8 Aigburth Road (Lot Number 2) "only for so long as the property is occupied by its owner of record. In the event the owner of record ceases to reside on the subject property, the dwelling shall be converted back to a single-family dwelling." Deputy Commissioner Kotroco's decision was recorded among the Land Records of Baltimore County in Liber 11902, Folio 498. Apparently, at the time of the hearing before Commissioner Kotroco no one realized that the property had been down zoned by action of the Baltimore County Council to a classification of DR5.5. The purpose of the hearing before Commissioner Kotroco was to remove the condition in Commissioner Haines' Order restricting the use to only a single-family dwelling. However, by operation of the County Council's action rezoning the subject property, the Variance granted pursuant to Commissioner Haines' Order was rendered moot.

In essence, we had one zoning decision granting a variance that was necessary at the time it was sought. The Order granting that Variance contained an arbitrary provision that only a single-family dwelling be erected on the lots affected. The County Council then rezoned the property and, pursuant to §402 of the Baltimore County Zoning Regulations, variance relief was rendered moot for the subject property because of its change in zoning classification. A hearing was then held before Deputy Commissioner Kotroco, at which time Commissioner Haines' restriction was removed (as to Lot Number 2) and a three-story apartment building was permitted to exist on that property. Commissioner Kotroco's Order attempts to make the modification of the condition on the Variance personal to Mr. Petrilli, rather than the effect specified in controlling case law that such variances run with the land.

Given the fact that the act of the County Council has negated the Order of former Commissioner Haines, Mr. Petrilli respectfully requests that you pass an Order in the case pending before you, rendering moot the Order in Case No. 89-93-A and in Case No. 97-57-SPH, recognizing that no variances are presently applicable to the subject property nor should there be any conditions imposed in connection with such previously granted variances which have now been rendered moot.

Upon your receipt and review of this letter I would appreciate it if you would advise me as quickly as possible as to the best manner of proceeding in this regard. Obviously, my client will want to record among the Land Records of Baltimore County a copy of your decision rendering the 1996 decision of Deputy Commissioner Kotroco moot.

I look forward to hearing from you shortly.

Very truly yours,

Howard L. Alderman, Jr.

HLA/mek
cc: Mr. and Mrs. Benjamin Petrilli

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ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR.
halderman@counsel.com

June 4, 1999

VIA HAND DELIVERY

Arnold Jablon, Director
Department of Permits & Development Management
111 West Chesapeake Avenue, Suite 109
Towson, Maryland 21204

RE: Petrilli Property
Eight Aigburth Road
Case No. 99-215-SPH/**Notice of Appeal**

Dear Mr. Jablon:

I represent Mr. and Mrs. Benjamin Petrilli, owners of the property located at Eight Aigburth Road and which was the subject of the above-referenced case. On behalf of my clients, an appeal of the decision of the Zoning Commissioner for Baltimore County, dated May 7, 1999, in the above-referenced case is hereby noted.

My clients have enclosed their check in the amount of $210.00; this figure represents the $175.00 filing fee for the appeal of the Special Hearing Order and a $35.00 posting fee (these fees were calculated using the *Revised Fee Schedule* which your Department has made available on the County's "web" page).

Should you, your staff and/or the Board of Appeals need additional information in this matter, please contact me. Thank you for your processing of this appeal.

Very truly yours,

Howard L. Alderman, Jr.

HLA/gk
Enclosure
c: Mr. and Mrs. Benjamin Petrilli

The Aigburth Manor Association of Towson, Inc.
P.O. Box 20143 • Towson, Maryland 21284-0143

Zoning Commissioner for Baltimore County
re; Casr # 99-215-SPH

January 4, 1999

Dear Zoning Commissioner,

These are additional notes added to our letter to you of 12/31/98.

This is the third zoning hearing Mr. Petrilli has requested with his requests escalating from the first case # 89-93-A in which Mr. Petrilli's newly purchased property was granted subdivision and setback variances. Our community did not oppose these requests as the intended home was to be an owner occupied single family residence.

In 1996 Mr. Petrilli requested that this single family home be converted to a 3 - apartment building. Our community was against this request but were at least heartened with the stipulation that this 3 apartment house be owner occupied.

Now, in this present hearing, Mr. Petrilli continues this escalation by asking that Restriction # 2 from the last hearing be removed. This further request is a continuing effort to modify the original zoning request.

The Aigburth Manor Association of Towson, Inc. strongly recommends that the removal of this restriction be denied.

Thank you for your further consideration.

Judith M. Giacomo, President

The Aigburth Manor Association of Towson, Inc.
P.O. Box 20143 • Towson, Maryland 21284-0143

Zoning Commissioner for Baltimore County
re: Case # 99-215-SPH
December 31, 1998

Dear Zoning Commissioner,

The Aigburth Manor Association of Towson, Inc. respectfully requests that restriction no. 2 of the past case # 97-57-SPH not be removed.

Two years ago, in the Fall 1996 Mr. Petrilli asked that his single family residence be permitted to change to a 3 apartment dwelling. Our association was against this division of the single family residence but accepted the Zoning Commissioner's ruling that the home could become a 3 apartment dwelling as long as it remained owner occupied. Furthermore, if the dwelling were to become no longer owner occupied, then the property would revert to a single family residence.

Our neighborhood is made up of approximately 135 households, predominately owner occupied, single family dwellings. Our neighborhood has been considered for Historic District status, as our homes date from the late 1700s (some of the oldest in Towson), with up to half of our homes dating from the early 1900's. The cornerstone of our neighborhood is Aigburth Vale, an historic property protected by the Historic Landmarks Commission. Our goal is for that beautiful house to be restored to its mid nineteenth century appearance.

It especially troubles us when any of our homes become rental poperties because of our proximity to Towson University. We have joined with two adjacent communities, Burkleigh Square and Towson Manor Village to form the new Southeast Towson Community Plan. This plan identifies our dedication to community conservation and our determination to retain well maintained owner occupied dwellings, on our lovely, tree-lined streets near the core of downtown Towson. This plan specifically identifies absentee landlord properties as a negative factor in our community.

The property at 8 Aigburth Road is well maintained and we welcome the Petrilli's presence in our community. However, the decision made a mere two years ago with due consideration for both the property holder and the community should be upheld The decision serves to maintain our strong neighborhood within the Southeast Towson Community Plan.

Our community thanks you for your consideration.

Judith M. Giacomo

Judith M. Giacomo, President

FRANCIS X. BORGERDING, JR.
Attorney at Law
MERCANTILE BUILDING - SUITE 600
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6820
FAX (410) 296-6884

Member of Maryland and District of Columbia Bar

November 17, 1999

County Board of Appeals
of Baltimore County
Room 48, Basement
Old Court House
400 Washington Avenue
Towson, Maryland 21204

RE: Ida A. & Benjamin A. Petrilli
Case No.: 99-215-SPH

Gentlemen/Ladies:

I am writing to enter my appearance on behalf of the Aigburth Manor Association of Towson, Inc. in relation to the above-referenced case. Please send all future notices with regard to this matter to undersigned counsel at the above-referenced address.

Thank you very much for your cooperation with regard to this mater.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk
cc: Howard L. Alderman, Jr., Esquire

Allstate
You're in good hands.

December 21, 1998

A John Southall
Senior Acct. Agent
6505 York Rd.
Suite 1
Baltimore, MD 21212
410 433-8787

BENJAMIN A PETRILLI
8 AIGBURTH ROAD
BALTIMORE, MD 21286

DEAR BEN,

Re: Policy 052 089 498
Benjamin A. & Ida A. Petrilli

I am writing persuant to our conversation this morning and a house you requested us to insure that was located on the property where your current house exists. The prior dwelling was in poor condition and I advised we could not insure it.

Accordingly, I do not remember the exact year but would guess it was around 1989. Trusting this is the information you need.

Very truly yours,

A. John Southall
Sr. Account Agent

December 27, 1999

Benjamin A. Petrilli
8 Aigburth Rd.
Towson, MD 21286

County Court of Appeals: Balto. Co.
400 Washington Ave.
Old Courthouse, Rm. 49
Towson, MD 21204

In reference to case #99-215-SPH

During the hearing on November 23, 1999, I was quite overwhelmed by the number of people who attended the hearing, and felt the central issue of the hearing was clouded in the emotionally charged atmosphere. I am also confused as to why two public officials were in attendance to testify, since my property does not violate zoning laws, and is not in opposition to the current planning of Baltimore County. I currently reside in one of the three legal apartments at the following address, 8 Aigburth Rd. The County Planner and the People's Counsel, who testified about the above mention property, offered no relevant information to clarify the central question of the hearing. The confusion caused by the sheer number of people in attendance and irrelevant testimony brought forth obscured the issue of the hearing. The issue is, does the owner of the aforementioned property have to live there to maintain his right to have three apartments? I would have to conclude on my own behalf that if the answer is no to this question, then it places an undue burden on the owner (myself) which does not apply to anyone else in the area. The following facts about the location of the property greatly clarify the central issue of the hearing.

Location

In my testimony I stated that my property was 300 yards from York Rd. This statement was incorrect. The map offered in testimony clearly shows that the property is 401.75 feet from York Rd. Beginning on the south side of Aigburth Rd from York Rd., and traveling west on Aigburth, are Sunrise Assisted Living, 2 Aigburth, 4 Aigburth, 8 Aigburth (my property), 12 Aigburth and 14 Aigburth Rd. Across the street on the north side is Cardiff Hall, an apartment complex. Directly in front of my property is a dental office and apartments with entrance and exit on Aigburth Rd., as shown on the map. Continuing west, next to Cardiff Hall is 9 Aigburth Rd, Mr. McLean's house, with two apartments. Next to Mr. McLean's house is 15 Aigburth Rd., which are a doctor's office and an apartment. **All of the above mentioned properties, as offered in intestimony, are legal apartments or offices, and are not owner occupied. I would again like to emphasize location; my property is situated in the center of apartments**. If my

request is granted the property would conform to the surrounding properties. **This would not create a hardship on any of the other homeowners because my house is over 200 feet from any individual house in the block. I do not live in a residential area; my area is an area of apartments as you can see by its location.** The 8 Aigburth property is ideally located 401.75 feet from public transportation and within walking distance from Towson's business district. Because of its location, this property will not create unwanted traffic in the area.

Down Zoning

The down zoning of my property from DR 16 to DR 5.5 puts my property in compliance with side yard set backs, and therefore made the restriction by Commissioner Haines, in case # 89-93A moot. After the hearing for case # 99-215 SH with Commissioner Schmidt, I went to the zoning office on Friday, January 8th at 10:00 a.m. I sought a clarification of the rules as they applied to my property and Commissioner Haine's ruling. I knew that Mr. Jablon, was once zoning commissioner, and presently head of PDM, so I sought clarification from Mr. Jablon. I felt he would have the best grasp of the rules and regulations. After speaking to the secretary in the zoning office, I was told I could not talk to him until I spoke to Mr. Carl Richards. After explaining the situation to Mr. Richards, he called in Mr. Mitch Kellman who was also advised of the situation. **Both men agreed that the down zoning of my property made Mr. Haine's restriction moot. I was told by Mr. Carl Richards and Mr. Mitch Kellman to write a letters to Commissioner Schmidt appraising him of the effect of the down zoning bringing my property in direct compliance for DR 5.5 zoning codes and making Commissioner Haine's restriction moot.** It was then that I sought the services of Mr. Alderman to write the letter and represent me. Two and a half months passed and I did not hear from Commissioner Schmidt, I called Mr. Jablon's secretary. I told her that I had already talked to Mr. Carl Richards and Mr. Mitch Kellman and I wanted to confirm the information that I had received from them with Mr. Jablon. After a brief tug of war I was able to meet with Mr. Jablon on Friday, April 30th at 2:30 p.m. **Mr. Jablon reviewed the situation and called Mr. Richards to verify that I had talked to him about my situation. Mr. Jablon concurred that Commissioner Haine's restriction was moot because of the down zoning. Mr. Jablon then attempted to call Commissioner Schmidt but it was late Friday afternoon and Commissioner Schmidt could not be reached. In summary, three experts, Mr. Carl Richards, Mr. Mitch Kellman and Mr. Arnold Jablon, all agreed the down zoning made Commissioner Haine's restriction, # 89.93, moot.**

No other property in the block, and for that matter the surrounding area, has the restriction "only a single family dwelling," as stated in Mr. Haine's restriction.

At present, my house is a legal multi-family dwelling, which must be owner occupied. No where in section 402 of the BCZC does it stipulate that the owner must reside in the building or on the lot of a rental building.

In summary, I feel that my property has the location and the support as set forth by section 402 of the BCZC.

I would like to thank you in advance for taking the time to read this letter and consider the points I have outlined.

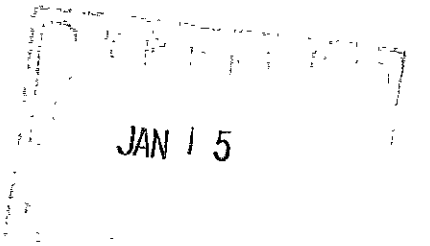
Thank you.

Sincerely,

Benjamin A. Petrilli

cc: A. Jablon
M. Kellman
C. Richards

January 12, 1999



Mr. Lawrence E. Schmidt, Zoning Commissioner
400 Washington Avenue
Towson, Maryland 21204

Re: Zoning Case # 99-215-SPH

Dear Mr. Schmidt:

I am writing to express my opposition to granting the request to remove restriction number 2 of the order issued in Case #97-57-SPH at 8 Aigburth Road. I live at 18 Aigburth Road . My husband and I purchased our home in 1984 at a time when some of the homes were slipping into disrepair. Since then, along with several of our neighbors, we have invested a great deal of our time and money in restoring these wonderful old homes . We have also invested a great deal of time in keeping our neighborhood a wonderful place to live and raise families.

The thorn in our side has been the rental properties between 8 Aigburth Road and 16 Aigburth Road and absentee landowners. If you would drive down Aigburth you will see the properties with cars parked all over the front yards and minimal maintenance on the grounds or structures are these properties. We don't want this to happen at 8 Aigburth. The owner of 8 Aigburth Road has been less than honorable since he received his first zoning varience. The home he constructed was to be a single family residence. We watched it being built-from the origin he built it as a 3 apartment structure . After the fact he went back to you (the county) and requested permission to have 3 apartments. Which he received permission to do- as long as he occupied it. Please don't reward someone for dishonesty. 8 Aigburth Road is a speculative property for its owner-who is interested only in his investment and not in the community at large. We are weary of those that think their fortunes will be made renting apartments on Aigburth to Towson University students.

Thank you for your time.

Sincerely,

Sally Malena

Sally Malena

Cc: Mr. Wayne Skinner

November 29, 1998

William H. McLean, III
9 Aigburth Road
Baltimore, Maryland 2186

Re: 8 Aigburth Road
Towson, Maryland 21286

To Whom It May Concern:

As a resident and current owner of the property known as 9 Aigburth Road, Towson, Maryland, 21286 for the time periods 7/52 through 11/70 and 10/84 through present I feel more than qualified to comment on various properties located on Aigburth Road between York Road and the Aigburth Road entrance to Towson Senior High School.

With regards to the above referenced property located at 8 Aigburth Road, Towson, Maryland 21286, and currently owned by Mr. & Mrs. Benjamin A. Petrilli , I first became familiar with said property in 1952 when it was owned and lived in by Mr. & Mrs. Theodore W. Mommers and their three children.

The structure located on the property when owned by the Mommers' family was always in a run down, decrepit condition. There never seemed to be any sense of pride or urgency into putting forth even the most minimum effort in maintaining the structure or the grounds. While Mr. & Mrs. Mommers were friends and lovely people, the maintenance and repair of their home was not on their A list. This attitude was contrary to the other home owners on Aigburth Road.

Subsequent to the deaths of Mr. & Mrs. Mommers and before its purchase by Mr. & Mrs. Petrilli the structure on 8 Aigburth Road went into a period of accelerated deterioration. This was evident by observations from the outside, discussions with renters and in the written report after an inspection by the Baltimore County Fire Department. Floors were rotted , stairways and exits blocked, and the electrical and plumbing services were faulty.

When Mr. & Mrs. Petrilli purchased the existing property and structure aforementioned, the house, garage and an incredible amount of trash were removed from the property. A new house was then built on the site along with a paved driveway and extensive landscaping.

The net result of the purchase of the property known as 8 Aigburth Road by the Petrilli's is that a grossly substandard dwelling has been replaced, the property enhanced and a property value increased.

Sincerely,

William H. McLean, III

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
JUDITH M. GIACOMO	17 AIGBURTH RD, Towson 21286
John S.H. Chapman	66 Cedar Ave, Towson 21286
Jack L Giacomo	17 Aigburth Rd, Towson 21286
Paul S. Hartman	18½ Cedar Ave, Towson 21286
Susan S. Hartman	18½ Cedar Ave Towson 21286
Camille E Sawyer	22 Aigburth Rd, Towson 21286
George W Sawyer	22 Aigburth Rd, Towson 21286
Maurice W Anderson	18 Maryland Ave 21286
Anne P. Orrell	23 Aigburth Rd 21286

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Ida Petrilli	8 Bigbarth Rd
Benjamin Petrilli	TOWSON MD 21286
Eric Dorn	315 Weatherbee Rd
	Towson MD 21286

IN RE: PETITION FOR SPECIAL HEARING
S/S Aigburth Road, 432' E of the c/l
York Road
(8 Aigburth Road)
9th Election District
4th Councilmanic District

Benjamin A. Petrilli, et ux
Petitioners

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 99-215-SPH

*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Benjamin A. and Ida A. Petrilli. The Petitioners seek approval of the removal of Restriction No. 2 of the Order issued in prior Case No. 97-57-SPH. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Benjamin and Ida Petrilli, owners of the subject property. Also appearing in support of the request was Eric Dorn. Appearing as Protestants or as interested persons were several residents from the surrounding locale, including Mr. & Mrs. Jack L. Giacomo, John S. H. Chapman, Mr. & Mrs. Paul Hartman, Mr. & Mrs. George Sawyer, Anne Orrell, and Mauritz Anderson.

The zoning history and legal issues generated by the instant Petition are somewhat confusing. Nonetheless, based upon the testimony and evidence presented, County records and documents received, the following can be determined. Mr. & Mrs. Petrilli acquired the subject property in approximately 1987. At that time, the property consisted of a rectangularly-shaped lot, approximately 110' wide and 225' deep, which had frontage on Aigburth Road in Towson. The property was improved with an older dwelling which was in poor condition. Apparently, the dwelling had been used as a fraternity house by students of Towson State University. Suffice it to say that the property was somewhat deteriorated and was considered a neighborhood eyesore.

Soon after their acquisition, the Petrilli's decided to raze the dwelling, subdivide the lot and make improvements thereon. At that time, the property was zoned D.R.16, which is a residential zoning classification that permits high density housing. The D.R.16 classification also requires a 25-foot side yard setback from the side of a dwelling to the property line. No doubt when enacting this setback requirement in the D.R.16 zone, the County Council contemplated townhouse development and therefore apparently determined it appropriate that the end unit of a townhouse row should be set back 25 feet from the property line. In any event, the Petitioners submitted a minor subdivision plan to Baltimore County for approval. Under the development regulations, a "minor" subdivision is any subdivision of a single tract into three or fewer lots. A "regular" subdivision constitutes a division of a tract into more than three lots. The Petitioners' subdivision plan called for the creation of two lots from the original property. Thereafter, the lots were to be known as 8 Aigburth Road and 10 Aigburth Road. This subdivision plan was ultimately approved by Baltimore County.

In addition to the minor subdivision approval, the Petitioners sought variance relief through the Petition for Variance filed in Case No. 89-93-A. On the minor subdivision plan submitted, building envelopes on each of the two new lots were shown within 15 feet of the side property line in lieu of the 25 feet required. Following a public hearing in the matter, variance relief was granted by then Zoning Commissioner J. Robert Haines. Commissioner Haines allowed a 15-foot side yard setback, but added a restriction to the granting of his relief allowing "only single family dwellings shall be permitted to be constructed on each lot." This decision was not appealed and subsequently a house was constructed on the lot thereafter known as 8 Aigburth Road. That house apparently was completed in approximately 1989/1990 and Mr. & Mrs. Petrilli occupied the house as a single family residence.

In either 1992 or 1996, (Mr. Petrilli guessed 1996; however, one of the neighbors indicated it was 1992), the property was rezoned through the County's quadrennial zoning process. That process enables the Baltimore County Council to rezone property following an extensive review process, which occurs every 4 years. These two lots were down-zoned through that process to a D.R.5.5 classification, which permits less intense development as compared to a D.R.16 zoning classification. However, the D.R.5.5 regulations feature different setback requirements. Unlike the 25-foot side yard setback required in

the D.R.16 zone, the D.R. 5.5 zone requires only a 15-foot setback. Thus, the dwelling at 8 Aigburth Road technically became compliant with the side yard setback requirements when the property was down-zoned to D.R.5.5. That is, the dwelling now meets the current zoning requirements for side yard setbacks in a D.R.5.5 zone. Thus, the need for the variance granted by Commissioner Haines was eliminated.

Indeed, it might be argued that Commissioner Haines' Order became null and void at the time of the rezoning of the property to D.R.5.5. Following the hearing before me, the Petitioners engaged Counsel who submitted a two-page letter summarizing the Petitioners' arguments. This letter has been included in the case file and accepted as a post-hearing Memorandum. Indeed, that letter argues that commissioner Haines' Order became a nullity when the zoning changed.

Although this argument has merit, Baltimore County typically regulates individual lots within a subdivision pursuant to the zoning classification requirements which were in effect for that zone at the time the subdivision was approved. Most often, this policy is applied to regular and not "minor" subdivisions. However, it could be argued that these two lots continue to be bound by the requirements set out in the D.R.16 zoning regulations in that this subdivision was approved when the property was so zoned.

In any event, the next act of this ongoing drama occurred when the Petitioners filed a Petition for Special Hearing in Case No. 97-57-SPH. In that case, the Petitioners sought relief to approve the conversion of the dwelling known as 8 Aigburth Road to a three-apartment unit. The special hearing request was approved and an Order issued in that case following a public hearing by Deputy Commissioner Timothy M. Kotroco. Commissioner Kotroco's findings are fully set forth in his 6-page Opinion and Order. He noted that the Petitioners own sufficient acreage and could comply with the conversion table requirements found in Section 402 of the B.C.Z.R. Those requirements permit the conversion of a dwelling from a single family unit to a multi-family unit for so long as the property meets certain criteria. In this case, the property known as 8 Aigburth Road indeed met the conversion table requirements.

However, in approving the special hearing, Deputy Commissioner Kotroco imposed certain restrictions, Restriction No. 2 of which is the subject of the Petition before me. That restriction reads "The subject dwelling shall be utilized as three separate apartments only for so long as the property is occupied

by its owner of record. In the event the owner of record ceases to reside on the subject property, the dwelling shall be converted back to a single family dwelling."

It is evident why Commissioner Kotroco imposed such a requirement. The property had formerly been used as a fraternity house and is within close proximity of the Towson State University. There are other apartments in the immediate vicinity. No doubt Commissioner Kotroco feared a deterioration of this property, were it maintained by an absentee owner.

Based upon the testimony and evidence offered in this case, I am not persuaded to remove that restriction; however, I will clarify same. In my judgement, the relief granted by Deputy Commissioner Kotroco is not personal to Mr. & Mrs. Petrilli, but to any individual who comes into ownership/possession of 8 Aigburth Road. Therefore, any individual who hereafter owns 8 Aigburth Road may use the dwelling as a three apartment unit, for so long as that individual, as the owner of record, resides in the dwelling.

Pursuant to the advertisement, posting of the property, and public hearing held thereon and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 7th day May, 1999 that the Petition for Special Hearing to approve the removal of Restriction No. 2 of the Order issued in prior Case No. 97-57-SPH, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that Restriction No. 2 of the Order issued in prior Case No. 97-57-SPH be and is herewith clarified so as to allow any owner to use the property as a three apartment unit for so long as that individual, as the owner of record, resides therein.

IT IS FURTHER ORDERED that the Petitioners shall have thirty (30) days from the date of this Order to file an appeal of this decision.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

PRODUCTS COUNSOR
PC 2

BALTIMORE COUNTY
COMPREHENSIVE ZONING MAP

Final Log of Issues

Adopted October 15, 1992

Every four years Baltimore County conducts a comprehensive review of the countywide zoning maps and adopts ordinances to implement the zoning changes that have been subjected to intensive public review.

This report is intended to be an information brochure that summarizes the 1992 process. The official record is represented by the maps and the actions taken by the County Council at its October 15, 1992 legislative session. The maps will, subject to some changes that might be made by the County Board of Appeals, remain in effect for four years until changed by the Council in 1996. That process will begin in the Office of Planning sometime around August of 1995.

On behalf of the County Council, I would like to express our deep appreciation to all those who have contributed so tirelessly to a process that provides an open forum for participants to have their immediate land use needs addressed and which also allows the County to review its long range land use plans.

At the top of the list of the many who deserve special recognition are Harold Reid and the citizen Planning Board members; the hours donated by them throughout this lengthy and exhaustive process are incalculable. We are grateful to David Fields and his community planners and staff for their efforts on behalf of the Council, Planning Board and public. A special thanks goes to our Aides and our Central office staff; the additional burdens which are placed upon them are great, yet they take them in stride and continue to produce excellent work for both us and our constituents. Finally, we would like to thank the citizens of Baltimore County. Our citizens work within the framework of the quadrennial process and contribute to making it a success. Working with them, we strive to make Baltimore County a great place to live. Again, we thank you for your participation.

Sincerely,

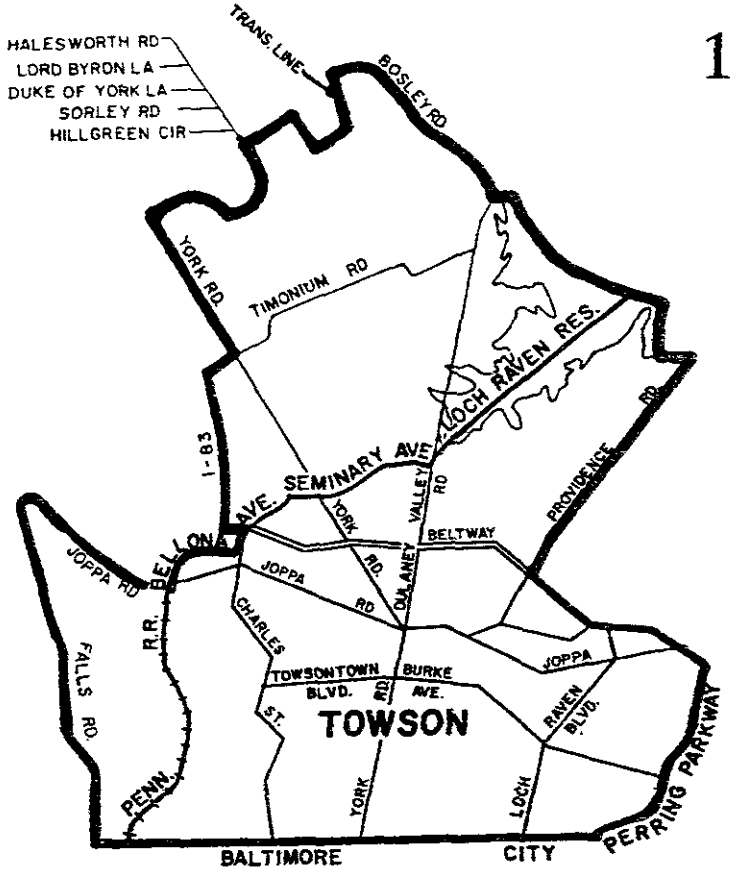
BALTIMORE COUNTY COUNCIL

William A. Howard IV

William A. Howard, IV
Chairman

BALTIMORE COUNTY COUNCIL

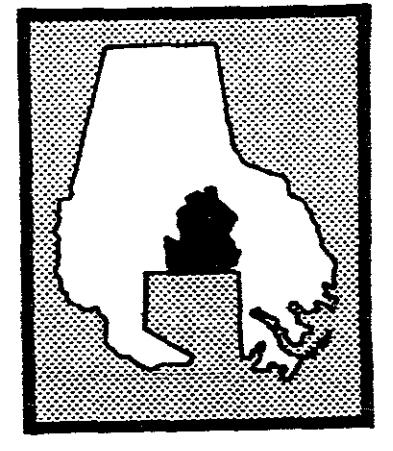
FOURTH COUNCILMANIC DISTRICT



1992

COMPREHENSIVE

ZONING PROCESS



BALTIMORE COUNTY
1992 COMPREHENSIVE ZONING MAP ISSUES

ISSUE NO	OWNER, PETITIONER	LOCATION	TOTAL ACRES	EXISTING ZONING AND ACRES	REQUESTED ZONING AND ACRES	PLANNING BOARD RECOMMEN-DATIONS	COUNTY COUNCIL DECISIONS	COMMENTS
4-025	John A Kiely By Michael E Marino	87' N of Locustvale Rd W Side Dulaney Valley Rd (1004 Dulaney Valley Rd)	0.25	DR 3.5 0.25	O-1 0.25	DR 3.5 0.25	DR 3.5 0.25	See Issues 4-024,4-026,4-038,4-044,4-055, 4-058
4-026	John A Kiely By Michael E Marino	N & S Side of Swarthmore Dr at inter of Swarthmore Dr & Dulaney Valley Rd (1008,1010,1012,1014,1016 Dulaney Valley Rd)	1.41	DR 3.5 1.41	O-1 1.41	DR 3.5 1.41	DR 3.5 1.41	See Issues 4-024,4-025,4-038,4-044,4-055, 4-058
4-027	Aigburth Manor Assoc of Towson	E Side of York Rd From Terrace Dale to approx 450' S, between York & Cedar	2.20	DR 16 2.20	DR 5.5 2.20 or ROA 0.85 DR 5.5 1.35	DR 5.5 1.35 ROA 0.85	DR 5.5 2.20	
4-028	Aigburth Manor Assoc of Towson	550'E of centerline York Rd N/S of Aigburth 450'E of centerline York Rd S/S of Aigburth NE corner York Rd & Hillside Ave	7.00	DR 16 7.00	DR 5.5 or DR 10.5 7.00	DR 5.5 4.50 DR 10.5 1.00 DR 16 1.50	DR 5.5 6.00 DR 10.5 1.00	Overlay adopted
4-029	Warren E & Anne Hays By Stuart D Kaplow	NE corner of Gibbons Blvd & Greenside Dr (38 Gibbons Blvd)	0.30	DR 3.5 0.30	BL 0.30	DR 3.5 0.30	DR 3.5 0.30	See Issue 4-016
4-030	Jospeh L Soley By Doris Alcarese, Agent	E Side Charles St 330' to centerline Bellona Ave (6303,6305,6311,6317 & 6321 N Charles St)	3.50	DR 3.5 3.50	BL 3.50	DR 3.5 3.50	DR 3.5 3.50	
4-031	Jeffrey T Healy By Dana Whitehead	N Side Seminary Ave 222' to intersection of York Rd (12 W Seminary Ave)	0.20	DR 5.5 0.20	RO or ROA 0.20	DR 5.5 0.20	DR 5.5 0.20	

PEOPLE'S COUNSEL
PC 3

DATE: 11/23/99

~~PEOPLE'S COUNSEL'S~~ (SIGN IN SHEET)

CASE: 99-215-SPH

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

Check if you wish to testify.	Name/Address Phone No.	(Community Group You Represent?) Basis of Your Concerns
	SALLY MALENA 410 337-3788 18 AIGBURTH RD TOWSON	AIGBURTH MANOR ASSOC. OF TOWSON
	George Sawyer 22 Aigburth Rd. Towson	"
	JACK L. GIACOMO 410-337-7848 17 AIGBURTH Rd. 21286	"
	Rosalie Gorhes Figge (Mrs. Frank H. Figge) 4 Maryland Ave - 21286	"
	Susan Hartman 18½ Cedar Ave Towson 21286	"
	Frances C. Holman 12 Cedar Ave. Towson 21286	"
	Camille E. Sawyer 22 Aigburth Rd. Towson 21286	
✓	Paul S. Hartman 18½ Cedar Ave. Towson 21286	"
✓	JUDITH M. GIACOMO 17 AIGBURTH RD, TOWSON 21286	"
	Lisa Kelly 74 Cedar Ave. Towson 21286	"
	John S.H. Chapman 66 Cedar Ave, Towson 21286	"
	Joe C. Bradley 19 Hillside Ave. TOWSON 21286	"
	Carolyn Hoffman 19 Hillside Rd Towson 21286	"
	Beth Kirby 203 Aigburth Rd. 21286	"

DATE: 11/23/99

~~PEOPLE'S COUNSEL'S~~ (SIGN IN SHEET)

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Check if you wish to testify.	Name/Address Phone No.	(Community Group You Represent?) Basis of Your Concerns
	CHARLES H. SLIKE 821-5280 7901 YORK RD., 21204	ALGBURTH MANOR ASSOC. OF TOWSON, INC.
	MARY JO BECK 823 17 HILLTOP RD. 6656	" "
	Mauritz G. Anderson 18 Maryland Ave	" "
	Brenda Ames-Ledbetter 9 Maryland Ave Towson 21286	" "

Nov. 22, 1999

To: Board of Appeals

From: Joyce Routson, Treasurer
Aigburth Manor Assoc.
142 Marburth Ave., 21286

Re: Petrilli Appeal - 11/23/99
8 Aigburth Rd.

Due to my work schedule I will be unable to attend the hearing on this appeal. I'm writing this letter in my absence. As a long time home-owner within the Aigburth Manor Assoc. I would like to state my feelings about the property at 8 Aigburth Road.

When Mr. Petrilli purchased this property in, I believe 1989, the property had zoning restrictions which our Association had approved. In hoping to work with Mr. Petrilli, the new owner, the property could be sub-divided to accomodate the building of two single family homes. He proceeded to build the house that now sits on the property. While the house was under construction it became very obvious to the neighbors that a multi-family dwelling was being built. As the President of the Association at that time I made quite a few phone calls to the Co. Office of Permits to speak to the building inspectors. I voiced our concerns

PROTESTANTS 4A

18 Maryland Ave
Towson, Maryland
November 23, 1999

County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Ave.
Towson, Maryland

Dear Sirs:

I have been a member of the Aigburth Manor Association for many years. People in the community are worried about the neighborhood. They feel as I do. There is an attempt to change the neighborhood from the residential into a business or a renting community. There are already signs of this.

The request by the owner asking for the removal of the owner occupancy requirement should be denied.

Yours truly

Dr. Maurice J. Anderson

Case # 99215-
SPH

PROTESTANTS
PR 4B

209 Aigburth Road
Towson, MD 21286
November 22, 1999

Baltimore County Board of Appeals
Towson, MD 21204

To Whom It May Concern:

This is in regard to the zoning appeal to be brought before the Board on November 23 concerning the property at 8 Aigburth Road in Towson by its owner, Benjamin Petrilli.

It is my understanding that when the original building permit was sought it was for a single family dwelling. It was clear from the construction of the building that three apartments were being put in. Thus it seems that from the beginning Mr. Petrilli was disingenuous with the Zoning Board and the neighborhood.

We who live on Aigburth Road have been deeply concerned about the gradual change from single family buildings to high-density housing. We are anxious to retain the family character of the neighborhood as far as possible. For this reason I oppose Mr. Petrilli's request for the rezoning of the property in question.

Sincerely,

Mary Lu Larsen

Mary Lu Larsen

PROTESTANTS
PR 4 C

PROTESTANTS PR4 D

Donald + Diana D'Agati
20 Aigburth Rd
Towson, MD 21286
11-19-89

To: County Board of Appeals
Re: Petrilli Property — 8 Aigburth Rd

Dear Madam or Sir:

As we will be unable to leave work to testify at the 11-23 hearing, please accept this written note.

Like all the neighbors we are aware of, we would like to add our voices to the view that this property should be owner-occupied.

The people in this neighborhood (which is right across the street from Towson U) have learned the hard way that — even when homes are rented out with the best screening and intentions by absentee landlords — the results usually degrade the community. Left totally unsupervised, college students will tend to degrade the neighborhood in

(over)

a number of ways, not intentionally but just by virtue of their being less mature and responsible. In such buildings we have seen untidiness (trash cans not removed from curbs, weekly Towson newspapers not picked up) and noise and commotion from late parties. These things are far less of a problem when a responsible adult is on the premises.

Being so close to both the University and Downtown Towson, our neighborhood is in a precarious position as a desirable residential area. Encroachment from either direction could easily tip the balance toward deterioration of quality of life. This is why the people who live here have taken so strong a stand on this issue and feel so passionate about it.

Sincerely,

Donald D'Agostino
20 Arbutus Rd 410-339-5488

11-22-99

County Board of Appeals of Baltimore County
Re: Case # 99-215-SPH.

Please deny the appeal in the above case, requesting the removal of the owner occupancy requirement for the property at 8 Aigburth Rd.

We are concerned to keep our community owner occupied residential.

Thank you

Leonard V. Kirby

Elizabeth C. Kirby

203 Aigburth Rd 21286

Protestants

Pr 4 G

11-22-99

County Board of Appeals
of Baltimore County

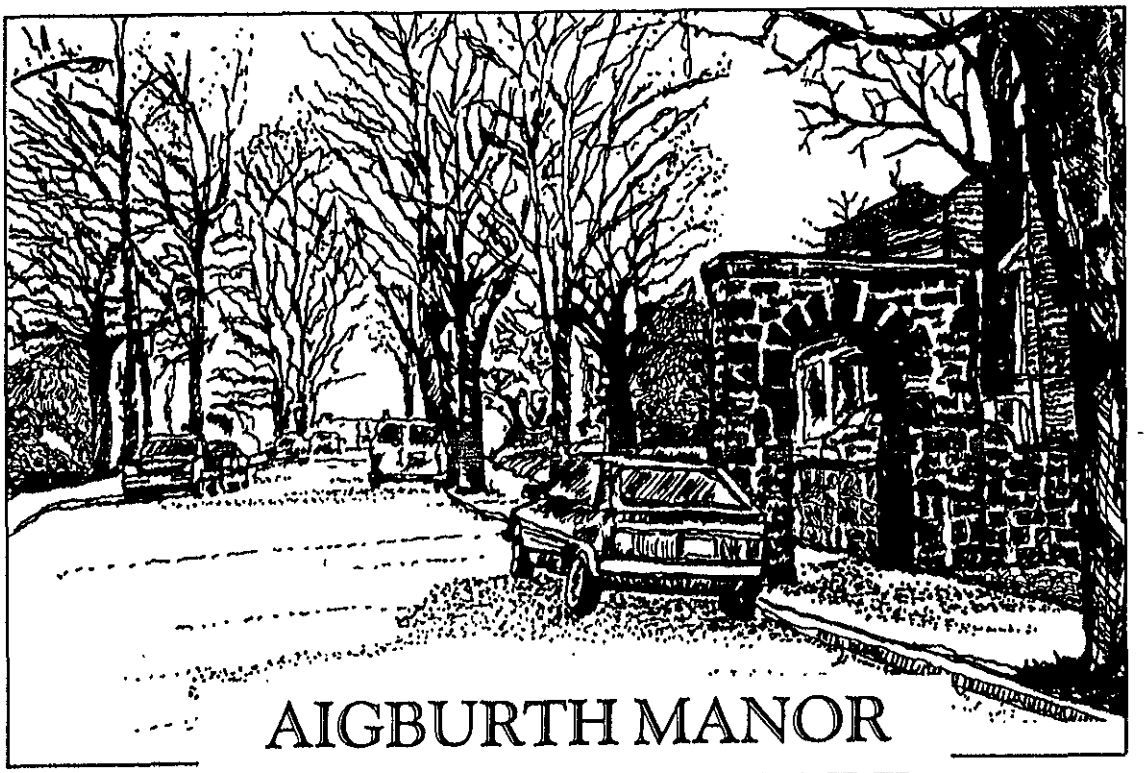
Ref: Case # 99-215-SPH

As a member of the Aeglurth Manor association of Towson In.. We are concerned to keep our Community owner occupied residential.

It is requested that you deny the appeal in the referenced case asking for the removal of the owner occupancy requirement for the appartment property lot 8 Aeglurth Road 9TH Election District: 4TH Councilmanic

Earl E. Buff
Mary Carol Buff
15 Hillside Ave
21286

PROTESTANTS
PR 4 4F



AIGBURTH MANOR
BURKLEIGH SQUARE
TOWSON MANOR VILLAGE

SOUTHEAST TOWSON COMMUNITY PLAN

As Adopted by the Baltimore County Council
October 19, 1998

PROTESTANTS
PR 3

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1998, Legislative Day No. 18

Resolution No. 76-98

Mr. Douglas B. Riley, Councilman

By the County Council, October 19, 1998

A RESOLUTION of the Baltimore County Council to adopt the Southeast Towson Community Plan as part of the Baltimore County Master Plan 1989-2000.

WHEREAS, the Baltimore County Council adopted the Baltimore County Master Plan 1989-2000 on February 5, 1990; and

WHEREAS, the Master Plan advocates the development and use of community plans for the established neighborhoods in the County; and

WHEREAS, a community plan for the Aigburth Manor, Burkleigh Square and Towson Manor Village neighborhoods in southeast Towson is a logical unit for planning within Baltimore County; and

WHEREAS, the Southeast Towson Community Plan was prepared in close cooperation with area residents, business owners and representatives of Towson University and was the subject of community meetings on June 2 and June 18, 1997; and

WHEREAS, the draft plan was the subject of a public hearing by the Planning Board on May 21, 1998, and was adopted by the Board on July 9, 1998; and

WHEREAS, the County Council held a public hearing on the recommended Southeast Towson Community Plan on September 8, 1998.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF

Baltimore County
Planning Board

401 Bosley Avenue
Towson, Maryland 21204
(410) 887-3495
Fax: (410) 887-5862

RESOLUTION
Adopting and Recommending the
SOUTHEAST TOWSON COMMUNITY PLAN

WHEREAS the Baltimore County Master Plan 1989 - 2000 places great importance on the development and use of community plans for the established neighborhoods in the County; and

WHEREAS the Community Conservation Committee of The Towson Partnership has assisted residents, business people and representatives of Towson University and Baltimore County government to draft a community action plan for the Aigburth Manor, Burkleigh Square and Towson Manor Village neighborhoods in southeast Towson, which is a logical area for planning in Baltimore County; and

WHEREAS the draft of the Southeast Towson Community Plan was the subject of community-wide meetings on June 2 and June 18, 1997; and

WHEREAS the draft plan, as presented to the Planning Board on April 23, 1998, was the subject of a public hearing by the Board on May 21, 1998, discussion on June 18, 1998, and further discussion and amendment by the Board on July 9, 1998;

NOW, THEREFORE, BE IT RESOLVED, pursuant to Section 26-81 of the Baltimore County Code, 1988, that the Baltimore County Planning Board hereby adopts the Southeast Towson Community Plan, as amended, to constitute a part of and an amendment to the Baltimore County Master Plan 1989-2000; and

BE IT FURTHER RESOLVED, that the Southeast Towson Community Plan shall be transmitted to the Baltimore County Council for adoption in accordance with Section 523(a) of the Baltimore County Charter.

DULY ADOPTED by vote of the Planning Board this 9th day of July, 1998.

Arnold F. 'Pat' Keller, III
Secretary to the Planning Board

Table of Contents

SUMMARY OF DATA COLLECTION

The Southeast Community Plan area includes the neighborhoods of Aigburth Manor, Burkleigh Square, and Towson Manor Village. Plan boundaries are as follows:

- North — Towsontown Boulevard
- West — West Burke Avenue and York Road
- South — Cedar Avenue and Aigburth Road
- East — Hillen Road and Aigburth Road

An estimated one thousand six hundred persons live within the boundaries which includes six hundred twenty three properties, four apartment buildings totaling one hundred thirty five units, fourteen commercial properties on York Road corridor with thirty one businesses, and seven commercial properties on Towsontown Boulevard with 31 businesses.

Methodology:

The members of The Towson Partnership's Community Conservation Committee worked with community residents in gathering the background information. A property survey form was completed for each of the six hundred twenty three properties in the study area from public information in the Tax Assessment Office and from visual inspection of each property. Information on property ownership, assessed value, purchase price, and date of purchase was gathered to establish a basis for determining the percentage of rental properties within the communities and for assessing trends in the value of properties. Teams of two persons looked at each property within each community to observe the exterior condition of the property. These teams also noted the type of home (attached, detached, etc.), availability of off-street parking and the general condition of lawns, landscaping, garages, etc. These teams also noted properties exhibiting maintenance needs, possible zoning violations and any other special features relevant to this survey. This information was then entered into a database.

Following the completion of the property survey, an opinion and demographic survey was distributed to all homes in the communities. Two hundred and twenty one surveys were returned. The survey gathered demographic information about residents in the communities and learned about the attitudes of the residents toward their community. Thirty three percent of the surveys were returned. The surveys allowed the respondents to remain anonymous.

State tax assessment data:

Data gathered on four hundred seventy seven homes show an average assessment of $37,888, translating to a selling average of $94,720. Of sixty two houses sold in the 1970's, the average selling price was $32,674. During the next decade that average price rose 79% to $58,618, based on eighty four houses sold. Between 1990 and 1995, one hundred four houses sold at 64% increased price versus the prior decade, for an average of $94,976.

Housing Values 1970-1995

Decade Sold	Number Sold	Average Sale Price	% Increase
1970's	62	32,674	—
1980's	84	58,618	79%
190-1995	104	94,976	64%

The tax information indicates that assessed value for the three communities varies depending upon the housing styles and size of lot, from a low of $29,841 for Susquehanna Avenue to a high of $68,337 for Aigburth Road. A historic review of the average purchase price indicates rising value with an average annual increase for 2½ decades exceeding the average increase for the metropolitan area. On Susquehanna Avenue, for example seven homes were sold in the 1970's for an average price of $27,782; fourteen were sold in the 1980's for an average price of $55,075, and fourteen were sold in the 1990's for an average of $91,174.

Sixty-nine percent or 423 properties are owner occupied. Thirty-one percent or 188 are rented. The apartments at Cardiff Hall were not counted as part of the rental totals. Census block data from 1990 which includes apartment complexes on a per unit basis is given in the following table for comparison.

Percentage of Owner/Renter: Study area vs. Greater Towson area

	Study area(%)	Towson, 2 mile radius(%)
Owner occupied	45.2	58.3
Renter occupied	50.3	37.1
Vacant	4.5	4.6

Residential inventory:

The above chart confirmed community residents belief that a disproportionally large percentage of homes in their neighborhoods were rental properties.

Residents noted on the inventory forms that :

- 25 properties were rented to students
- 36 were rented to singles/roommates
- 45 were rented to a family member
- 4 are group homes
- 20 properties have frequent tenant turnover
- 20 owners were listed on 2 or more deeds, 9 of whom live within the study area
- 13 properties were vacant
- 11 properties were listed for sale
- 62 homes (10%) were divided into 2 or more units (apartment conversions)

Perceptions and attitudes:

Respondents expressed very positive opinions about their community, especially:

- Close proximity to services; such as shopping, library, restaurants, stores, doctors' offices, houses of worship

comments about rental housing related to behavior of students - too many people, too many cars, too late hours, too much noise, too many parties, etc. The University in an on-going effort to address issues will work with the area neighborhood associations to develop "Good Neighbor Guidelines", which are now printed in the Student Handbook distributed to students who live off campus.

Maintenance /appearance:
In general, properties in this area are well maintained, neatly landscaped, and with sturdy porches and outbuildings, and fresh paint. Properties which do not adhere to the neighborhood standards are a source of aggravation to the nearby property owners, who are concerned that these properties will lower the standards of the neighborhood. Sixty-three homes were rated poor or terrible which meant that approximately 9.5% of the homes needed exterior work. In addition, 15% of properties were judged in need of landscaping improvements. Of these 63, 29 homes were owner occupied and 34 homes were rented. Subsequent mapping indicated that the homes in poor condition are clustered in one area, leading community residents to speculate that the unkempt rentals were a disincentive for property owners to carefully maintain their properties.

Density:
Limited parking is a problem in both Burkleigh Square and Towson Manor Village, especially on the streets with row homes. Therefore, the number of persons in each home and the number of cars was of special interest to them. The chart below indicates the increase pressure on parking spaces due to rental property density.

Property type	Average household size (# of persons)	Average vehicles per household
Owner occupied (69%)	2.1	1.7
Rentals (31%)	2.9	2.3
Total (100%)	2.3	1.8

RECOMMENDATIONS

Zoning classification issues:
In general the zoning classifications in the area are appropriate. The residential portion is mostly zoned DR 5.5; the Burkshire is RAE 2, and the York Road commercial corridor is zoned BM.

1. The triangle of land between Burke Avenue, York Road and Towsontown Boulevard should be considered for consolidated future development. The small narrow lots on this section of York Road do not lend themselves to cost-effective redevelopment for commercial uses, and the stream behind them further constrains their redevelopment potential.

2. The community will work with developers to bring this area to their attention as a redevelopment opportunity. The portion of the study area zoned DR 16 should be

Community/property maintenance issues:
Efficient zoning and code enforcement procedures are critical to maintain the appearance of properties. Community members need to understand the regulations and how they are enforced. The Office of Permits and Development Management needs to develop consistent policies and open lines of communication between the inspectors and the residents/community associations. Community concerns about enforcement policies include: fines for non-compliance for repeat violators, use of special exception hearings to rectify violations, lack of interior inspections, cross training of building inspectors to identify possible zoning violations, difficulty in finding posted building permits, accurate record keeping.

1. Work with the Office of Permits and Development Management to improve enforcement of Rooming House/Boarding House regulations.

2. Identify problem properties for investigation by Code Enforcement. Consider community wide enforcement if problems warrant.

3. Publicize programs which can help defray the costs of repairs for residents who need such assistance.

4. Develop a "community standards" list for property maintenance which can be distributed to all property owners and residents.

5. Identify non-traditional sources of help for low-income property owners to repair their properties.

6. Community associations will work with the Office of Community Conservation to develop a tenants' rights and responsibilities manual, including information about lease terms, property maintenance, housing code requirements, and the reporting of violations.

7. Community associations will work with the Commander of Precinct 6 to discuss how to call the police for help, what follow through they can expect from the officer, how to obtain copies of arrest reports, and how to coordinate with the University police.

8. The State needs to evaluate the way in which property ownership is listed in the tax records. Too often, an absentee property owner's address is not accurate, is a post office box, or is the address of the rental property which adjacent residents know is occupied by others. Of the 188 rental properties identified within the study area, ownership could not be determined for 42 properties, or 22% of the rentals. The lack of an accurate address where community residents may inform absentee landlords of problems which their properties are causing is a major frustration for both community residents and those attempting to enforce the Liveability Code.

Transportation/parking initiatives:
The heavy commuter traffic on Burke Avenue negatively impacts its residential character, resulting in many non-single family uses locating here. With the goal of lessening the impact of heavy traffic on this street, the following recommendations are designed to spread traffic over the whole study area and to endorse the use of routes, other than Burke Avenue, for commuter traffic. In an effort to spread out the flow of

Marketing initiatives:
Marketing programs can help maintain the viability of the residential neighborhoods.

1. Establish a marketing program with the nearby institutions to market the area for residential use by staff, etc. Develop a "Live Near Your Work" program with Towson's institutions to encourage their employees to live in close proximity to the institutions where they work.

2. Establish special relationships with College/University and communities to promote better understanding of the needs of both and to understand how each impacts the other.

3. Notify HARBEL of properties which could be purchased by homeowners instead of investors.

4. Contact Neighborhood Design Center for help with remodeling strategies that will make housing in the Plan area attractive to today's home buyer.

5. Create a "Good Neighbor" award.

6. Organize a "contractor fair" in the community to have contractors available to meet with residents to discuss multiple projects.

7. Establish a marketing plan to cooperate with Towson's Realtors, local businesses, the local schools, Towson University, Goucher and other area colleges to invite home buyers into the community. Develop packets with all of the neighborhood brochures for Realtors.

8. Create special incentives to encourage converting rental properties into owner occupied homes. For example, extend the tax credit from the Greater Hillendale area to Southeast Towson.

9. Develop a map of historic properties, possibly based on the 1898 tax map, which would emphasize the history of the area.

Responsibility for Implementation

The following chart assigns the responsibility for ensuring implementation for each action to a specific group.

Zoning Classification issues	Community/ Business Initiatives	Community/ Property Maintenance Issues	Transportation/ Parking Initiatives	Marketing Initiatives
1. Community	1. Community and University	1. Permits and Development Management	1. Community and Bureau of Traffic Engineering	1. Community Conservation
2. Planning	2. Businesses	2. Permits and Development Management	1a. First National Bank and Traffic Engineering	2. Community and University
	3. Community and Business	3.Community and Code Enforcement	1b. Traffic Engineering	3. Community
	4. Community and landlords	4. Community Conservation	1b. Traffic Enforcement	4. Community
	5. Planning	5. Community	1d. Traffic Engineering	5. Community
		6. Community and Community Conservation	1e. Traffic Engineering and Parking Enforcement	6. Community
		7. Community and Police	1f. Planning	7. Community
			1g. Planning	8. Community Conservation
				9. Planning

Appendix A:

The Baltimore County Department of Recreation and Parks has noted that the only County owned parkland in the study area is Towson Manor Park, though Towson High School Recreation Center is located just outside of the study area boundaries. Based on the State of Maryland's prescribed local parkland goal of 30± acres per 1,000 residents, the study area's estimated population of 1,600 would result in a parkland acreage goal of 48± acres. Thus, subtracting out the existing 2.5± acre Towson Manor Park (including the recently acquired Stebbins Anderson addition), the study area has a parkland deficiency of approximately 45.5± acres. It must be recognized, however, that achieving this goal will in all likelihood have to be met outside the study area. The challenge for the future is finding available land that could be utilized as parkland (especially quality land).

As a general note, greater Towson is an area in which the Department of Recreation and Parks has great interest in obtaining additional parkland to meet community recreational needs. Therefore, should a sizable property such as the Towson American Legion become available, the Department should consider acquiring a portion of the parcel for use as parkland. This is especially true of the American Legion property as the ball diamond at the site is currently utilized for some recreational programs of the Towson Recreation and Parks Council.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits and
Development Management

DATE: December 28, 1998

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: 8 Aigburth Road

INFORMATION:

Item Number:	215
Petitioner:	Ida A. and Benjamin A. Petrilli
Property Size:	.33 acres
Zoning:	D.R. 5.5
Requested Action:	Special Hearing
Hearing Date:	January 5, 1999

REQUEST

The request for a Special Hearing in this case is being sought to remove Restriction #2 of the order issued in case number 97-57-SPH. Restriction #2 was one of five restrictions included in the order for the Special Hearing for 8 Aigburth Road, previously approved on October 3, 1996. It states: "The subject dwelling shall be utilized as three separate apartments only for so long as the property is occupied by its owner of record, in the event the owner of record ceases to reside on the subject property, the dwelling shall be converted back to a single family dwelling."

SUMMARY OF RECOMMENDATIONS:

The subject property consisting of .33 acres and improved by a three story brick dwelling and a detached two car garage is zoned D.R. 5.5. It is located in the Aigburth Manor community and is within the boundaries of the Southeast Towson Community Plan area. It has been the subject of several prior cases in which subdivision and setback variances were requested and granted. The most recent of the cases, #97-57-SPH, which granted approval to add two

PROTESTANTS
PR 5

apartments to an owner occupied residence and amended a previous restriction which permitted only a single family dwelling, was granted subject to several conditions. A review of the testimony in the order issued for case # 97-57-SPH indicates that the decision by the Deputy Zoning Commissioner to grant the multifamily use was largely based on the following conditions: 1) the applicant was the owner occupant of the property, 2) the applicant had made a substantial investment in the property, and 3) the applicant would provide on-site management of the property by committing to continue to reside in the property. The current request to remove the owner occupancy restriction would negate the "spirit and intent" of that restriction which was placed in the order to relieve the property owner of any practical difficulty or hardship, while at the same time protect the community from the burden of any additional problems associated with absentee owned, multi-family rental units.

Additionally, this property is located within the boundaries of the Southeast Towson Community Plan that was adopted by County Council in October 1998. Several sections of that plan refer to the disproportionate number of rental units already located in the community and the recommendation that whenever possible, multifamily units should be converted back to single family homes.

Based on the testimony offered in previous special hearing #97- 57-SPH, and the goals and objectives of the recently adopted Southeast Towson Plan, this office recommends the request to remove restriction #2 be denied.

Section Chief: Jeffrey W. Kay

AFK:JL:kma

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT: Paul S. Hartman

I, hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) (~~Zoning Committee~~) of the Aigburth Manor Association of Towson, Inc. Association.

ATTEST: Aigburth Manor Association of Towson, Inc.

Brenda Jones-Baldwin
Secretary

Joe C. Bradley
President

DATE: 11/17/89

Signed: Paul S. Hartman

PROTESTANTS
PR 6

Aigburth Manor ASSOCIATION of Towson, Inc.

RESOLVED: That at the May 12, 1999 meeting of the Aigburth Manor Association of Towson Inc Association held on May 12, 1999 [DATE], it was decided by the Association that responsibility for review and action on all zoning matters for the period May 1999 through May 2000 be placed in the (Board of Directors) ~~(Zoning Committee)~~ consisting of the following members, each of whom is hereby authorized to testify on behalf of the Association before the County Board of Appeals or other duly constituted zoning agency, body, or commission:

Judith M. Giacomo
Paul S. Hartman

AS WITNESS OUR HANDS AND SEAL THIS 17th day of November, 1999

ATTEST:

Aigburth Manor Association of Towson Inc.

Secretary

President

PRI A

Aigburth Manor Assoc. ASSOCIATION of Towson, Inc.

RESOLVED: That the position of the Aigburth Manor Association as adopted by the (Board of Directors) ~~(Zoning Committee)~~ on the zoning matter known as:

Case 99-215-SPH

is that:

The appeal to remove restriction No. 2 be denied.

AS WITNESS OUR HANDS AND SEAL THIS 17th day of November, 1999.

ATTEST:

Aigburth Manor Association of Towson, Inc.

Secretary

President

DRIB

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT: JUDITH M. GIACOMO

I, hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) ~~(Zoning Committee)~~ of the AIGBURTH MANOR ASSOC. OF TOWSON, ~~Inc~~ Association.

ATTEST: AIGBURTH MANOR Association OF TOWSON, INC.

Linda Ames Zdlatte
Secretary

Joe C. Bradley
President

DATE: 11/17/99

signed: Judith M. Giacomo

PRIC

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT: JUDITH M. GIACOMO

I, hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) ~~(Zoning Committee)~~ of the AIGBURTH MANOR ASSOC. OF TOWSON, INC Association.

ATTEST: AIGBURTH MANOR Association OF TOWSON, INC.

Linda Ames Zedlitz
Secretary

Joe C. Bradley
President

DATE: 11/17/99

signed: Judith M. Giacomo

RRIC
2ND COPY

The relationship of the subject property (8 Aigburth Road) to its surroundings is commonly referred to as the principl f balance, which is one of the factor. iat greatly influence value. In other words, the compatible land uses surrounding the subject property, consisting of multifamily improvements, creates and sustains the value for the subject property. Therefore, a multifamily improvement, such as the subject property, that is located adjacent to other multifamily improvements has much more market appeal than a single-family detached house that is adjacent to other multifamily improvements.

A major consideration in this instance is the value creating principle of conformity. This is the concept that the form, manner and character of properties should be in relative harmony with one another in order to maximize values. In other words, the multifamily environment in which the subject property is located strongly influences the highest and best use of the site. Moreover, a single-family detached improvement in the midst of multifamily improvements would significantly effect the texture and character of the subject's neighborhood would most probably appear out of place and cause a reduction in the subject property value under single-family use.

Appraisal of Real Estate
11th edition
Published by the Appraisal Institute

0011902 498

IN RE: PETITION FOR SPECIAL HEARING
S/S Aigburth Road, 432' E of
York Road
(8 Aigburth Road)
9th Election District
4th Councilmanic District

Benjamin A. Petrilli, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 97-57-SPH
*

IMP FD SURE $ 2.00
RECORDING FEE 20.00
TOTAL 22.00
Rcpt # BA01 Rcpt. # 22930
SM SR Blk # 1540
Nov 19, 1996 16:23 am

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing for that property known as 8 Aigburth Road, located in the vicinity of York Road in Towson. The Petition was filed by the owners of the property, Benjamin A. and Ida A. Petrilli. The Petitioners seek approval to add two apartments to an owner-occupied residence and to amend Restriction No. 2 of the Order issued in prior Case No. 89-93-A which permits only a single family dwelling use. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Benjamin and Ida Petrilli, owners of the property. Appearing as Protestants in the matter were Judith M. Giacomo, John S. H. Chapman, Anne P. Orrell and I. Paul Hartman, all residents from the surrounding community.

Testimony and evidence offered revealed that the subject property consists of .33 acres, more or less, zoned D.R. 5.5 and is improved with a three-story brick dwelling and a detached two car garage. The property was the subject of prior Case No. 89-93-A in which the Petitioners were granted variance relief by then Commissioner J. Robert Haines to permit the creation of two lots (to be known as 8 and 10 Aigburth Road) with side yard setbacks of 15 feet each side for both lots. As a condition to the

P2

relief granted, a restriction was imposed wherein the proposed dwellings for each lot were limited to use as single family dwellings. Mr. Petrilli now comes before me seeking an amendment to that restriction to allow the use of the dwelling at 8 Aigburth Road as a three-apartment dwelling.

On behalf of the request, Mr. Petrilli testified that he purchased the property known as 10 Aigburth Road in 1988 at which time the property was improved with an older home approximately 100 years in age. The house was occupied at that time by eight Towson State University students who were utilizing the house as a fraternity. The house and grounds were in deplorable condition at the time and Mr. Petrilli purchased the property with the intention of constructing his own single family dwelling. Soon after his purchase of the property, Mr. Petrilli subdivided the property to create two lots, Lot 1 of which would be known as 10 Aigburth Road, and Lot 2, known as 8 Aigburth Road. Mr. Petrilli subsequently tore down the old house and constructed a dwelling on Lot 2. That dwelling is known as 8 Aigburth Road, and is the subject of this request. The subject dwelling consists of 4,000 sq.ft. over three floors. Mr. Petrilli and his wife reside in the house at this time, along with their daughter, son-in-law, and grandchild. However, pursuant to this request, Mr. Petrilli wishes to install a kitchen on the second floor which would make the second floor a separate apartment and provide additional privacy for his daughter and son-in-law. In addition, Mr. Petrilli wishes to create a third apartment on the third floor which would be utilized as a separate rental unit, not lived in by Mr. Petrilli or his daughter and son-in-law.

In support of his request, Mr. Petrilli argued that the surrounding homes are utilized as apartment dwellings. Furthermore, he testified,

and the evidence supports that, his property is of sufficient size and is appropriately zoned to meet the conversion standards that would allow a three-apartment use to operate thereon. However, as a result of the restriction imposed by Commissioner Haines in the prior case, the relief requested is necessary in order to establish the two additional apartments proposed herein. Mr. Petrilli asserted that he would not operate the subject property as an absentee landlord. He testified that he intends to reside in the first floor apartment and that his daughter, son-in-law and their small child would reside in the second floor apartment.

Mr. Petrilli submitted photographs of his property and surrounding homes and apartments. The photographs submitted by Mr. Petrilli show that his property is extremely well-maintained and that the house is a nice addition to the community. Mr. Petrilli testified that he has spent a great deal of money improving the property and those efforts are reflected in the beautiful home that is located on this property. It is clear from the photographs that the subject property is maintained far and above those others in the immediate vicinity.

As stated previously, several residents from the surrounding community appeared in opposition to the Petitioners' request. The cumulative testimony offered by these individuals was that they would like to see Commissioner Haines' decision upheld and Restriction No. 2 thereof remain in force. Testimony revealed that the neighborhood has encountered problems with apartment houses and has worked hard to promote an environment where single family residences will prevail. These individuals are concerned that the community will lose the benefit of a single family residence on the subject property if the relief is granted to allow its conversion to an apartment house. These individuals believe that apart-

ment houses have a detrimental effect upon the quality of life of the community in which they exist and have asked that this property remain limited to a single family use.

After considering all of the testimony offered by the Petitioners as well as the Protestants who attended the hearing, I am inclined to grant the relief requested in the special hearing. Mr. Petrilli has demonstrated that he has invested a tremendous amount of money in this property and has made a substantial inprovement to the community at large. Both properties on either side of the subject site are utilized as apartment houses. Across the street from the Petrilli property is an apartment building. The subject property itself is of sufficient size and is appropriately zoned for use as a multi-family dwelling. The only impediment to Mr. Petrilli is Restriction No. 2 of the Order issued in the prior case.

Mr. Petrilli appears to be an extremely responsible individual. He testified that he was employed by the Baltimore County Board of Education as a guidance counselor both at Towson High School and Loch Raven High School. He appears to be a responsible citizen who intends to live in the house after it is converted. He has agreed to have that restriction imposed upon him as a condition of approval of his request. This would provide on-site management of the property given the fact that the owner will reside therein. Therefore, I find that the conversion of the subject property to a three apartment dwelling is appropriate, for so long as Mr. Petrilli resides on the property. Furthermore, as stated previously, the second floor apartment, at least initially, will be occupied by Mr. Petrilli's daughter, son-in-law, and grandchild. I believe that situation to not have any detrimental effect upon the surrounding community. I'm sure Mr. Petrilli will use great care in selecting a suitable

tenant for the third floor apartment, given the fact that he and his family will be residing on the property.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 3rd day of October, 1996 that the Petition for Special Hearing seeking approval to add two apartments to an owner-occupied residence and to amend Restriction No. 2 of the Order issued in prior Case No. 89-93-A which permits only a single family dwelling use, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) The subject dwelling shall be utilized as three separate apartments only for so long as the property is occupied by its owner of record. In the event the owner of record ceases to reside on the subject property, the dwelling shall be converted back to a single family dwelling.

Benjamin A Petrilli
8 Deglentt Rd.
Towson, Md. 21286

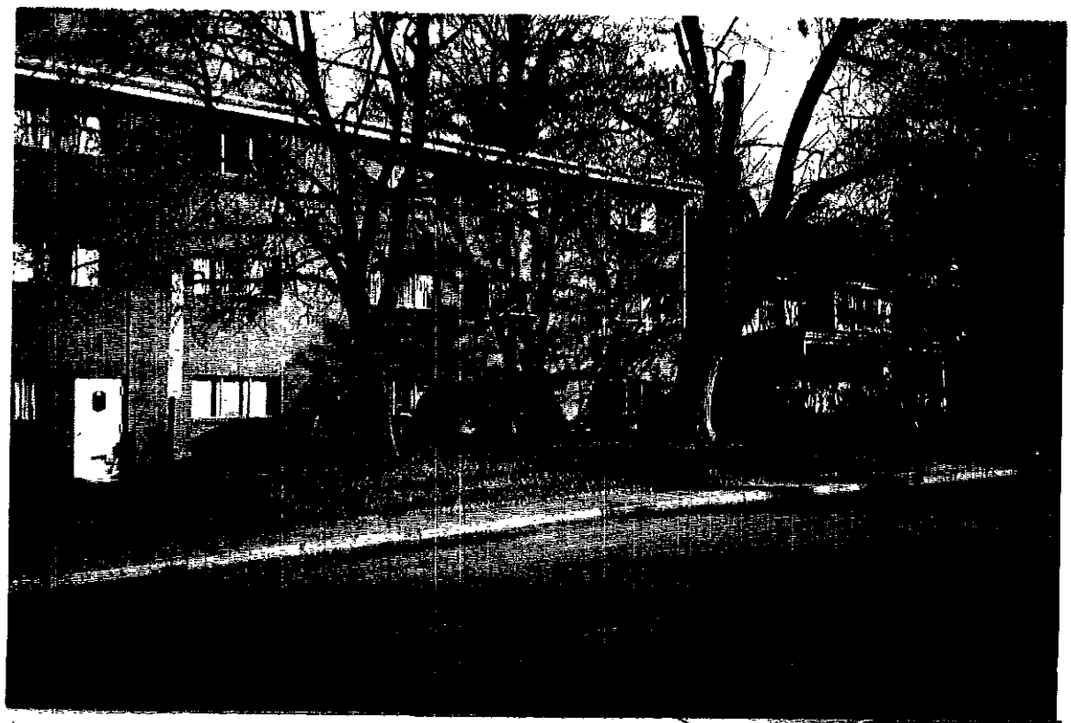
3) The Petitioner shall record a copy of this Order in the Land Records for Baltimore County to ensure that any potential purchaser of the subject property shall have notice that the property can only be used as a three apartment dwelling for so long as the owner of record resides therein.

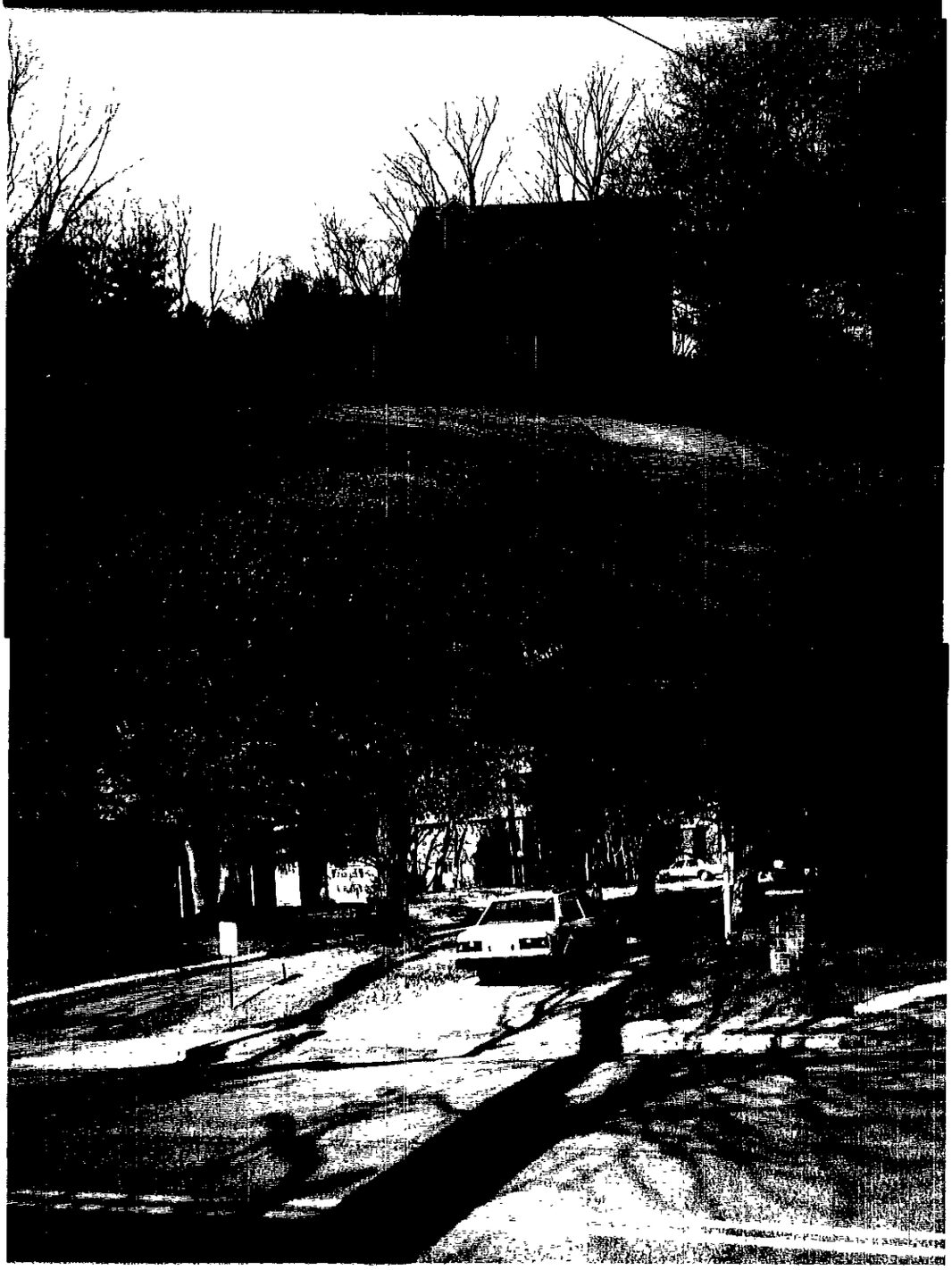
4) The adjacent property known as 10 Aigburth Road shall remain limited to use as a single family dwelling. This Order shall not affect the restriction imposed upon that property in prior Case No. 89-93-A.

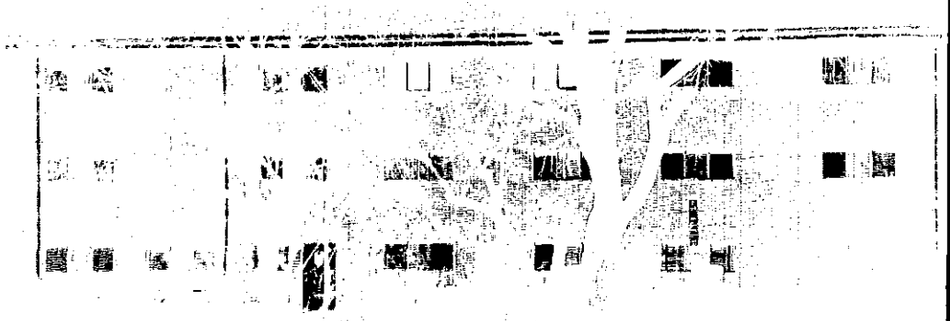
5) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

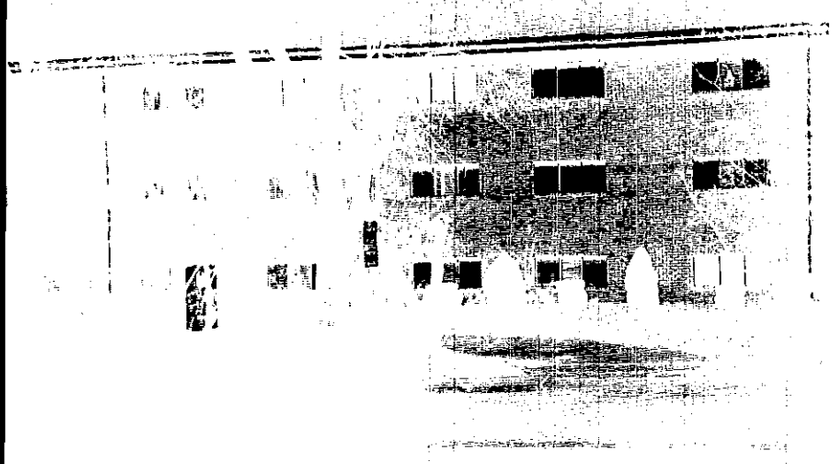
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

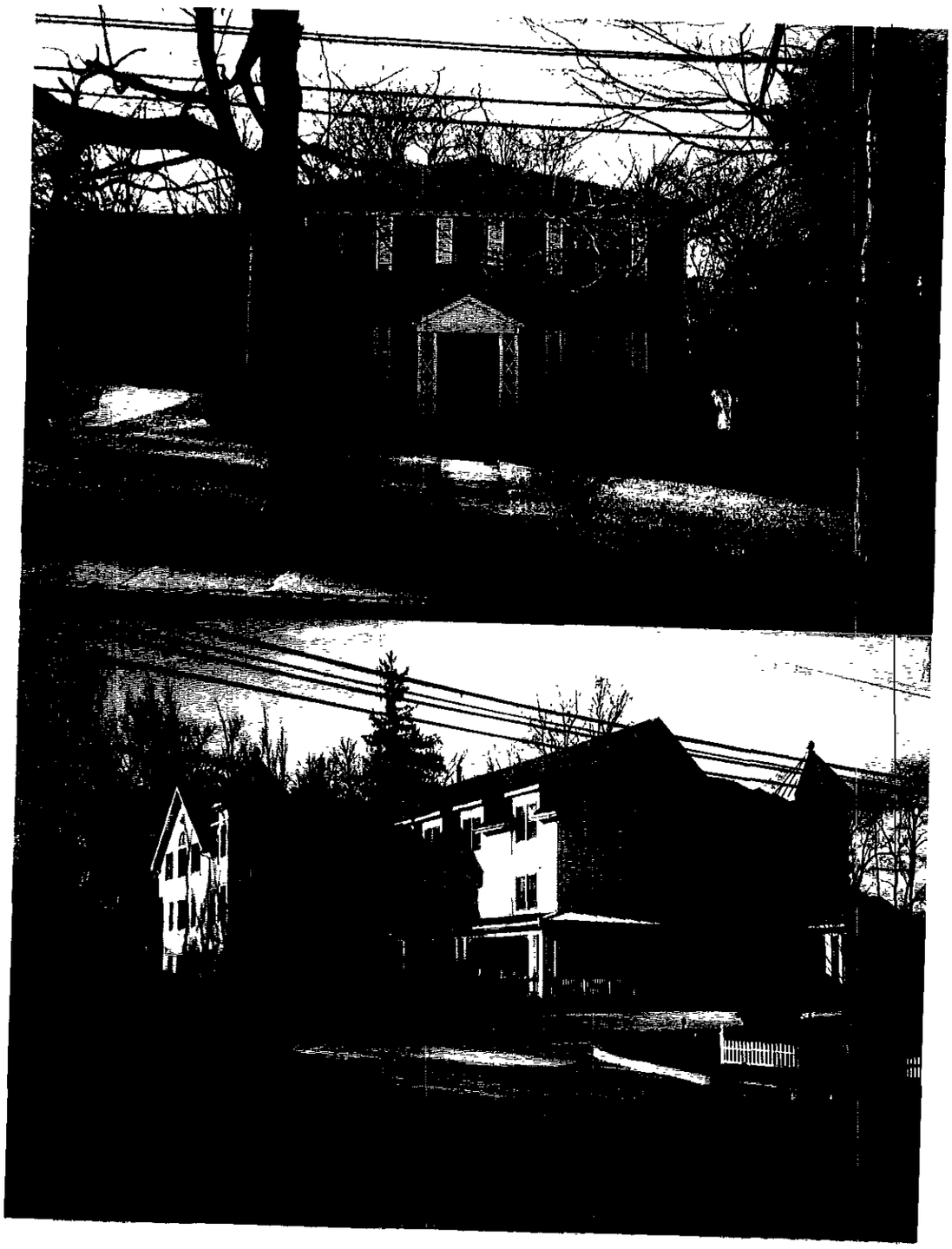
TMK:bjs











County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

99-215-SPH
Petrilli

Petitioners # 5A - 5J
(photos - 10)

CR-82-69A

AVE

BM

BURKE

D.R.5.5

TOWSON MANOR

CENTRE

BL

D.R. 10.5

AVENUE

D.R.5.5

AVENUE

95-301-SPH

ALLEY

RD

95-112-A

D.R.10.5

BURKLEIGH

BURKESHIRE RD.

ALLEY

NORMAL TERRACE

BURMA RD

ALLEY

MARBURTH ROAD

AIGBURTH

AVE.

NICE

ROAD

DR.

MARYLAND

ALLEY

D.R. 10.5

STACK

D.R. 16

DONNYBROOK

LANE

NE 9A

GARDEN

D.R. 16

Sun Rise

92-431-SPH

93-346-SPH

ASSN'T LIVING

AIGBURTH RD.

D.R. 5.5

AIGBURTH GATEHOUSE

CUPOLA

AGNEW

AVE

HILLTOP

HILLSIDE

AVE

AVENUE

AIGBURTH VALE

D.R. 5.5

ROAD

FAIRWAY

CT.

PARKING AREA

COURT

ATHLETIC FIELDS

SOCCER FIELD

TENNIS COURTS

TOWSON HIGH SCHOOL

OR-1

DR.

DRIVE

ATHLETIC FIELDS

PETITIONERS 4

AGNEW DR.

CUPOLA

NE 9A

NICE AVE.

CR-82-69 A

ROAD

OR-1

HILLSIDE AVE

HILLTOP

92-431-SPH
93-346-SPH

SIGN RISE

D.R.16

BURKELEIGH RD.

ALLEY

BM

BURKESHIRE RD.

D.R.10.5

D.R.5.5

AIGBURTH RD.

NORMAL TERRACE

MARYLAND AVENUE

TOWSON HIGH SCHOOL

TENNIS COURTS

PARKING AREA

SOCCER FIELD

ATHLETIC FIELDS

FUTURE ASSN'T LIVING

AIGBURTH VALE

AIGBURTH GATEHOUSE

ALLEY

STACK

AIGBURTH ROAD

DONNYBROOK LANE

GARDEN ROAD

FAIRWAY CT.

DRIVE

TOWSON MANOR

BURMA ROAD

CENTRE

RIDGE AVENUE

BL

Plat to accompany Petition for Zoning ☐ Variance ☐ Special Hearing

see pages 5 & 6 of the CHECKLIST for additional required information

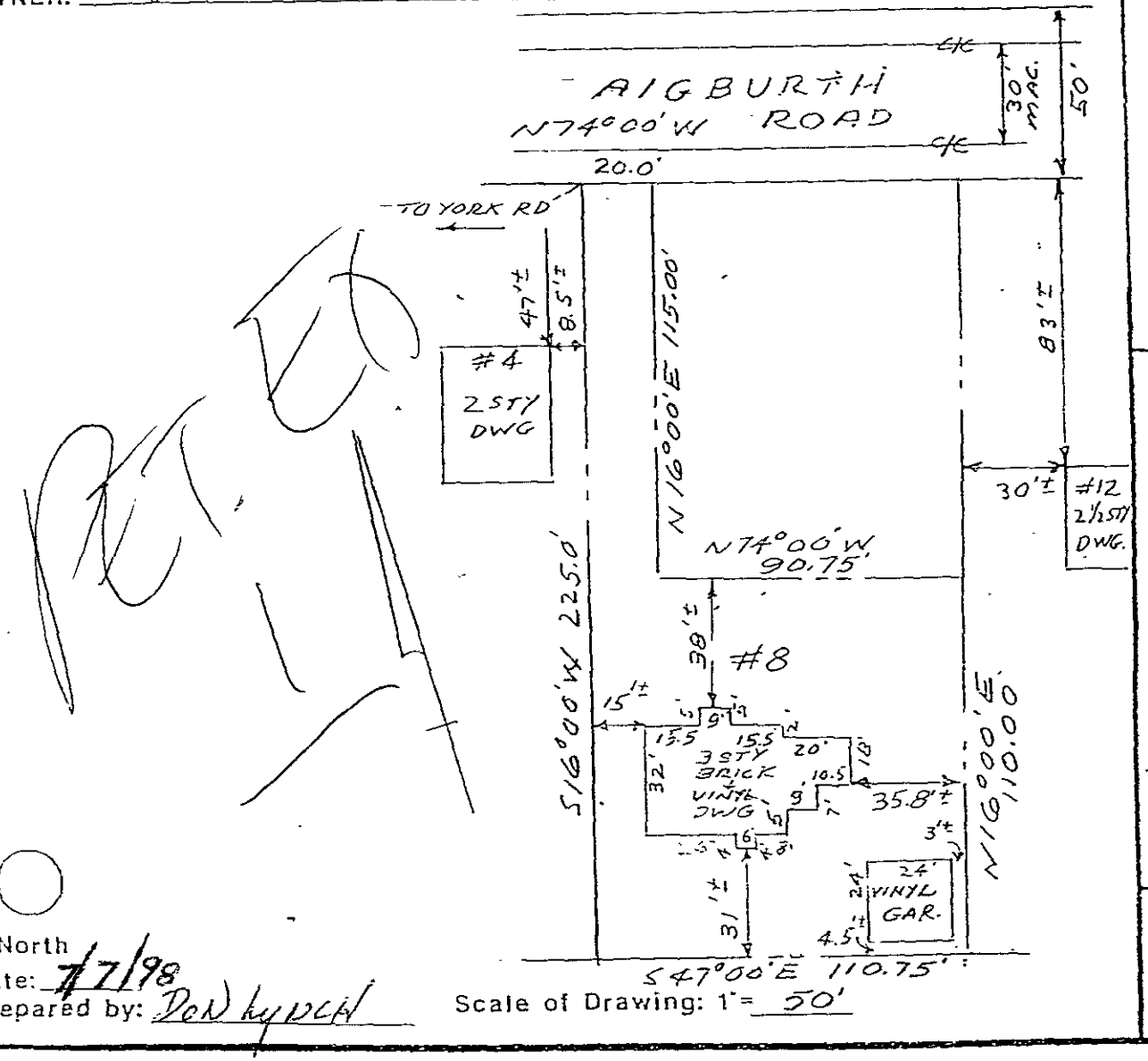
PROPERTY ADDRESS: 8 Aigburth Road

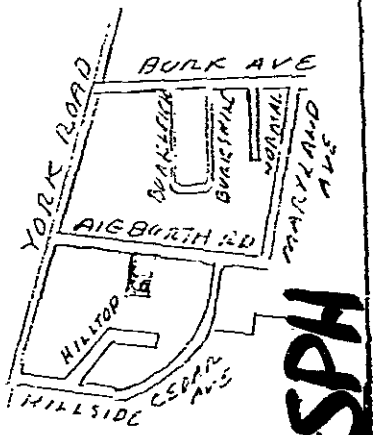
Subdivision name: "AIGBURTH"

plat book# ____ ,folio# ____ ,lot# ____ ,section# ____ Liber 7887, Folio 669-673

OWNER: Benjamin Pettrilli

99-215-SPH





LOCATION INFORMATION

Election District: 9

Councilmanic District: 4

1"=200' scale map#: NE 9A

Zoning: DR 5.5

Lot size: .33246 14482
acreage square feet

	public	private
SEWER:	☒	☐
WATER:	☒	☐

	yes	no
Chesapeake Bay Critical Area:	☐	☐

Prior Zoning Hearings: 97 57 SPH
89-93-A

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE#:
JF	215	

date: 7/7/98

prepared by: DeW by DCA

SHEET N.E. 10A

SHEET N.W. 9A

SHEET N.E. 9B

SHEET N.E. 8A

O-NE N-NW

1996 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 8, 1996
Bills Nos. 129-96, 130-96, 131-96, 132-96, 133-96, 134-96, 135-96

Kevin Kamenetz
Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	WILTONDALE TOWSON	N.E. 9-A
DATE OF PHOTOGRAPHY JANUARY 1986		

DRAWING NUMBER
NE 9-A
PLAN-HOLO CORPORATION - IRVINE CALIFORNIA

DRAWING NUMBER
PLAN-HOLO CORPORATION - IRVINE CALIFORNIA

DRAWING NUMBER
PLAN-HOLO CORPORATION - IRVINE CALIFORNIA

PROPUS COPY
PC 1

SHEET NE 10A

SHEET NW 9A

SHEET NE 9B

SHEET NE 8A

O-NE N-NW

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992
Bill Nos. 183-92,184-92,185-92,186-92,187-92,188-92,189-92

William A. Howard III
Chairman, County Council

SCALE	LOCATION	SHEET
1" = 200' ±	WILTONDALE TOWSON	N.E. 9-A
DATE OF PHOTOGRAPHY JANUARY 1986		

PROTESTANTS
DR 2