IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
S/S Avalon Avenue, 240 ft. W
c/l Delmar Avenue * ZONING COMMISSIONER
49 Inverness Avenue
12th Election District * OF BALTIMORE COUNTY
7th Councilmanic District
Inverness Presbyterian Church * CASE No. 93-92-A
Petitioner

****

ORDER OF DISMISSAL

WHEREAS, the subject Petitioner, Inverness Presbyterian Church, filed a Petition for Variance requesting variances from Section 1B02.2.B to allow principal building setbacks for front, side and rear yards; a variance from Section 413.1.B. to permit an existing sign with an area of 105 sq. ft., in lieu of the maximum allowed 30 sq. ft.; and a variance from Section 409.7.B to allow offsite parking spaces to be located 970 ft. (walking distance) from the building entrance in lieu of the maximum allowed walking distance of 500 ft. All as more particularly shown on the site plan submitted with the Petition; and,

WHEREAS, the matter was set in for a public hearing on November 30, 1992; and,

WHEREAS, a letter was received, dated November 17, 1992, from attorney for the Petitioner, Francis X. Borgerding, Jr., requesting that the above captioned case and public hearing be dismissed, thereby withdrawing the Petition for Variance.

IT IS THEREFORE ORDERED by the Zoning Commissioner for Baltimore County, this 2nd day of December, 1992 that the Petition for Variance filed herein, be and the same is hereby DISMISSED without prejudice.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER OF
BALTIMORE COUNTY

LES:mmn

ORDER RECEIVED FOR FILING
Date 12/2/92
By [illegible]

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

December 2, 1992

Francis X. Borgerding, Jr., Esquire
DiNenna and Breschi
Mercantile Building, Suite 600
409 Washington Avenue
Towson, Maryland 21204

RE: Case No. 93-92-A
Petition for Variance
Inverness Presbyterian Church, Petitioner

Dear Mr. Borgerding:

As per your request, attached hereto is an Order of Dismissal regarding the above captioned matter.

Very truly yours,

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.

93-92-A **100**

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 49 Inverness Avenue
Baltimore, MD 21222
which is presently zoned D.R. 5.5

This Petition shall be filed with the Office of Zoning Administration & 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 Variance from Section(s)

See attached

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

1. Shape and configuration of property;
2. Such other and further reasons to be presented at hearing.

Property is to be posted and advertised as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessee:
(Type or Print Name)
Signature
Address
City State Zipcode

Attorney for Petitioner:
Francis X. Borgerding, Jr.
(Type or Print Name)
Signature 296-6820
409 Washington Ave., Ste. 600
Address Phone No
Towson, MD 21204
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):
[illegible]
(Type or Print Name)
x [illegible]
Signature [illegible] - Trustee
Charles E. Maynard
(Type or Print Name)
Charles E. Maynard
Signature Deacon Trustee
c/o William Rockey 243-[illegible]
Address Phone No
City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted
Name
Address Phone No

OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING 1 hr.
unavailable for Hearing
the following dates ____ Next Two Months
ALL ✓ OTHER ____
REVIEWED BY: MTK DATE 8/27/92

93-92-A 100

1. Requesting variances to Section 1B02.2.B(V.B.2) principal building setbacks to allow:
    - a) an existing front yard setback of 32 feet in lieu of the minimum required 40 feet.
    - b) a proposed rear yard setback of 8 feet in lieu of the minimum required 30 feet.
    - c) two (2) existing corner side yard setbacks of 4 feet in lieu of the minimum required 35 feet.
    - d) an existing combined corner side yard sum of 8 feet in lieu of the minimum required 55 feet.
    - e) a proposed corner side yard setback of 8 feet in lieu of the minimum required 35 feet.
    - f) a proposed side yard setback of 8 feet in lieu of the minimum required 20 feet.
    - g) a proposed combined corner side yard sum of 16 feet in lieu of the minimum required 55 feet.
2. Requesting a variance to Section 413.1.b. to permit an existing sign with an area of ~~[illegible]~~ 105 (ECS) square feet in lieu of the maximum allowed 30 square feet.
3. Requesting a variance to Section 409.7.B(1) to allow off-site parking spaces to be located 970 feet (walking distance) from the building entrance in lieu of the maximum allowed walking distance of 500 feet.

93-92-A 100

MCKEE & ASSOCIATES, INC.
Engineering - Surveying - Real Estate Development
SHAWAN PLACE, 5 SHAWAN ROAD HUNT VALLEY, MARYLAND 21030
Telephone: (410) 527-1555
Facsimile: (410) 527-1563

August 18, 1992

JAMES W. McKEE
No. 9012

ZONING DESCRIPTION OF
PROPERTY OF INVERNESS
PRESBYTERIAN CHURCH
49 INVERNESS AVENUE
12TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

Beginning at a point on the south side of Avalon Avenue (40 feet wide) at the distance of 240' west of the centerline of Delmar Avenue (40 feet wide); thence running South 29°19' West 85.10 feet, North 50°52' 06" West 71.04 feet and South 49°54' West 72.87 feet to a point on the north side of Del Rio Road; thence along said north side North 40°06' West 210.03 feet to a point and by a curve to the right with a radius of 34.80 feet and an arc length of 96.83 feet to the south side of Avalon Avenue; thence along said south side, South 60°41' East 280.00 fee to the place of beginning.

Containing 29,842 square feet or 0.685 acres of land, more or less. Also known as 49 Inverness Avenue and located in the 12th Election District of Baltimore County.

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 93-92-A
Towson, Maryland

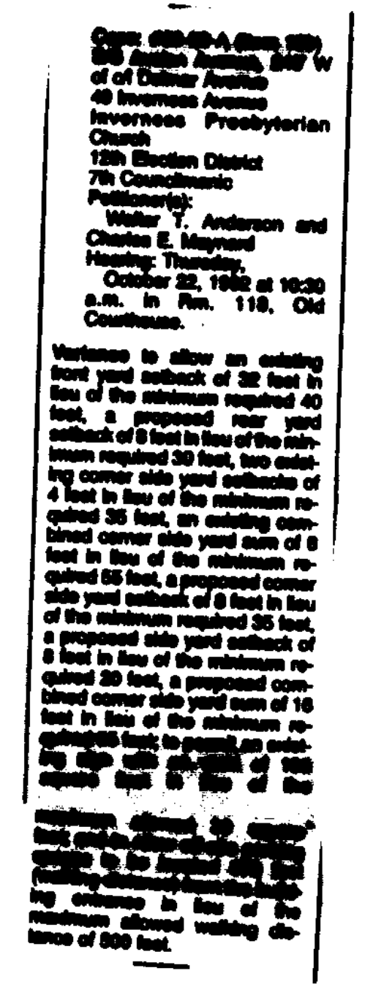
District 12th Date of Posting 9/30/92
Posted for: Variance
Petitioner: Walter T Anderson + Charles Maynard
Location of property: S/S Avalon Ave, 240' W/Delmar Ave
#49 Inverness Ave
Location of Signs:
Remarks:
Posted by [illegible] Date of return: 10/2/92
Signature
Number of Signs: 2

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY 93-92-A
Towson, Maryland

District 12th Date of Posting
Posted for:
Petitioner: Walter T. Anderson + Charles E. Maynard
Location of property: #49 Inverness Ave - Inverness Presbyterian Church
~~Location of Signs:~~ Talked to Rev Wm. Long, via phone - 11/13/92
He informed me the church had notified the Attorney to
~~Remarks:~~ cancel hearing - stated me not to post signs.
Posted by [illegible] Date of return:
Signature
Number of Signs: 2

93-92-A



[illegible]
S/S Avalon Avenue, 240' W of c/l Delmar Avenue
49 Inverness Avenue
Inverness Presbyterian Church
12th Election District
7th Councilmanic
Petitioner(s): Walter T. Anderson and Charles E. Maynard
Hearing: Thursday, October 22, 1992 at 10:30 a.m. in Rm. 118, Old Courthouse.

Variance to allow an existing front yard setback of 32 feet in lieu of the minimum required 40 feet, a proposed rear yard setback of 8 feet in lieu of the minimum required 30 feet, two existing corner side yard setbacks of 4 feet in lieu of the minimum required 35 feet, an existing combined corner side yard sum of 8 feet in lieu of the minimum required 55 feet, a proposed corner side yard setback of 8 feet in lieu of the minimum required 35 feet, a proposed side yard setback of 8 feet in lieu of the minimum required 20 feet, a proposed combined corner side yard sum of 16 feet in lieu of the minimum required [illegible] ing entrance in lieu of the maximum allowed walking distance of 500 feet.

CERTIFICATE OF PUBLICATION

TOWSON, MD., 10/2, 1992

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 10/1, 1992.

THE JEFFERSONIAN,
S. Zeke Orlan
Publisher

101.07

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 107850
#100

DATE [illegible] ACCOUNT [illegible]
AMOUNT $ [illegible]
RECEIVED FROM: [illegible]
FOR: [illegible]

04A04#0057MICHRL $250.00

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Baltimore County
Zoning Administration & Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number
Date
10-22-92 hearing

93-92

04A04#0106MICHRC $101.07
BA C012:04PM10-16-92

Please Make Checks Payable To: Baltimore County

Cashier Validation

The master plan for the Sandy Spring/Ashton planning area shows commercial development expansion in two Village Center areas which together are considered to be of sufficient size to service the planning area. The master plan indicates C-1 zoning for 1.65 acres of the surveyed site and Rural Cluster for the lot sought to be joined. Appellee argues persuasively that the C-1 zoning in an otherwise rural area is intended by the master plan to contain a degree of commercial development that could be supported on the 1.65 acre by well and septic system located on the 1.65 acre area. If the Planning Board were to approve appellant's request a degree of commercial development much greater [illegible] by reliance solely upon the [illegible] result. This attendant increase in the [illegible] commercial use on the 1.65 acres is far [illegible] by the master plan. This [illegible] the Planning Board's [illegible] plan fails to [illegible] that the [illegible] finding [illegible] conformance [illegible] debatable.

I [illegible] issue [illegible] substantial [illegible] appellant [illegible]

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appellant's preliminary plan is in conformance with the master plan is one of fact, not law. As such, the findings of the agency are entitled to a presumption of validity. Nationwide Mutual Ins., Co. v. Ins. Comm'r., 67 Md. App. 727, 737 cert. denied, 307 Md. 433 (1986). In O'Donnell v. Bassler, 289 Md. 501 (1981), the Court of Appeals stated, "It is a fundamental principle of administrative law that a reviewing court should not substitute its judgment for the expertise of the administrative agency from which the appeal is taken." This is true since decisions of administrative agencies are prima facie correct. Bulluck v. Pelham Wood Apts., 283 Md. 505, 511 (1978). The court must, therefore, view the agency's decision in the light most favorable to the agency. Motor Vehicle Admin. v. Lindsay, 309 Md. 557, 563 (1987). Here, the evidence before the Planning Board was sufficient to make the issue of conformance with the master plan fairly debatable. The circuit court, therefore, did not err in affirming the Planning Board.

III. Violation of Zoning Ordinance

Appellant contends the Planning Board [illegible] extended its jurisdiction in a subdivision proceeding [illegible] its determination that the placement of underground septic pipes to serve a commercial zone is not a permitted use in a Rural Cluster zone. We do not agree that the Planning Board exceeded its authority. As stated in [illegible] American Law of Zoning [illegible]:

> While the [illegible] power and authority [illegible] review plats are separate, it seems clear

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> that plats should not be approved which violate existing zoning regulations. There is little to be said for approving a plat, for example, which discloses substandard lots. Such an approval would be a disservice to the developer who would be unable to build on those lots and it would encourage deviations from those portions of the comprehensive plan which are implemented by the zoning regulations in issue.

In Miller v. Forty West Builders, 62 Md. App. 320, 334 (1985), this Court quoted with approval 1 E. Yokley, Zoning Law and Practice §17-10 (1979) as follows:

> Enactments in the field of zoning and subdivision control are necessarily related to each other and they should be read and considered together in order to ascertain the full meaning and import of each.
>
> . . . .
>
> A subdivider, seeking approval of a subdivision plot, must first meet applicable zoning regulations and then must comply with state and county subdivision regulations. Thus, where a preliminary plat indicates on its face that it is violative of zoning ordinances, the denial of approval of the plat will be sustained.

Applying this language to the case sub judice, it seems clear that the Planning Board did not exceed its authority in considering whether the application violated the zoning laws.

In the alternative, appellant avers that the Planning Board erroneously interpreted the zoning ordinance. Appellant insists, with some logic, that since pipelines serving commercial areas are permitted in Rural Cluster zones, a septic pipe should also be permitted. Appellant points to electric [illegible] and [illegible] as another example of utilization of [illegible] zones and [illegible]

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commercial area. While there are no Maryland cases dealing with precisely the same issue as in the case at bar, the Court of Appeals considered a similar proposal in Leimbach Constr. Co. v. City of Baltimore, 257 Md. 635 (1970). In Leimbach a property owner wished to construct a driveway over residential land owned by him to service commercial land also owned by him. The Court of Appeals affirmed the refusal of the circuit court to permit the proposed use on the basis that it was illegal to use residential zoned land for a business purpose. In Silitschanu v. Groesbeck, 208 Conn. 312, 543 A.2d 737, 739 (1988), the Supreme Court of Connecticut found that a septic system, including the septic tank and the leaching system was a structure and "its use for commercial purposes on residential property is not authorized." There are distinctions between the case at bar and Groesbeck, but we do not believe they are significant. We find that the Planning Board did not err in concluding that residential zoned land could not be used for commercial purposes and that this was sufficient justification for denying the application.

IV. Relationship of Pending Case to Other Actions of Planning Board

Appellant points out that the Planning Board, on other occasions, has approved the very procedure which it has disapproved in this case. Appellant states that at the intersection of [illegible] Road and Travelah Road in Montgomery County, Maryland, there was approved in 1980 in Board of Appeals cases A-[illegible] and A-672 a septic system located on

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residential zoned land [illegible] center. Appellant further [illegible] capricious for the Planning Board [illegible] with respect to the present [illegible] the "decision" relied [illegible] Planning Board Staff [illegible] building permits. It did [illegible] decision and the issue in [illegible] i.e., the use of septic system [illegible] service commercial property [illegible] Board of Appeals cases A-[illegible] and A-[illegible] [illegible] appellee points out that the Planning Board [illegible] building permits, but merely makes recommendations with respect to their issuance. We do not believe that the prior action of the Planning Board cited by appellant constitutes "binding administrative precedent."

V. Adequate Public Facilities

The last issue raised by appellant is that the Planning Board misapplied the provisions of Montgomery County Code Sec. 50-35(k) (adequate public facilities). Pursuant to Montgomery County Code Secs. 50-27(a) and (b) and [illegible] the Planning Board considers the adequacy of public water and sewer facilities as part of its review of a preliminary plan of subdivision. In this connection, the Planning Board found, "Given the evidence in the record that septic and well service for the commercial development cannot be achieved within the C-1 zoned portion of the lot, the Board

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finds that public facilities will not be adequate." [illegible] aside that appellant's plan does not envision the use [illegible] public facilities but rather, a private septic system [illegible] is clear that the Planning Board has missed the point. [illegible] there was no need to use the Rural Cluster zone [illegible] sewage dispersal, there would be no need to file the application which the Planning Board had under its consideration. The task of the Planning Board is to review the application to determine whether applicant's proposal is in compliance. To proceed as the Planning Board did in this case puts the applicant in an impossible position.

In summary, while we conclude that the circuit court erred in its refusal to admit additional evidence and that the Planning Board erred in its application of Section 50-35(k), we find, nonetheless, that the Planning Board had sufficient evidence before it upon which to base its conclusion that appellant's application fails to conform to the Master Plan and is in violation of the zoning ordinance. We, therefore, affirm the judgment of the circuit court.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT

IN RE.:
PETITION FOR SPECIAL HEARING
SOUTHEAST/SOUTH LONG GREEN PIKE,
170 FEET SW OF THE CENTER LINE OF
FORK ROAD (13523 LONG GREEN PIKE)
11th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT

LONG GREEN VALLEY ASSOCIATION,
et al.,

PETITIONERS/APPELLANTS

94 APR 22 PM 4:23

BEFORE THE BOARD OF APPEALS
FOR
BALTIMORE COUNTY

Case No. 93-93SPH

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

MEMORANDUM IN LIEU OF FINAL ARGUMENT

STATEMENT OF THE CASE

This matter comes before the County Board of Appeals (hereinafter "CBA") as a Petition for Special Hearing originally filed by the Long Green Valley Association, and various individuals residing near and adjacent to the property which is the subject of this Petition. The case was heard before the Zoning Commissioner on facts basically similar to that presented before the CBA. The Zoning Commissioner on August 24, 1993, granted approval for the use of adjoining properties zoned RC-2 and owned by Executive Auto and Paint Repair, Inc., to support a waste disposal system for the subject commercial property known as 13523 Long Green Pike, zoned BL-CR, and further denied the Petition for Special Hearing. An appeal was taken to the County Board of Appeals.

FACTS

The facts before the County Board of Appeals did not vary much from the facts presented before the Zoning Commissioner in regard to the actual use and ownership of the subject property. Before

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825-6961
FAX (410) 825-4923

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the Zoning Commissioner, it was acknowledged that the property owner, Orville Jones, owned commercial property known as 13523 Long Green Pike, zoned BL-CR. Furthermore, he had obtained an easement to certain property zoned RC-2 owned by Executive Auto and Paint Repair, Inc. Those facts have not changed before the County Board of Appeals.

Additional evidence was submitted by the Appellants Long Green Valley Association and various individuals to support evidence in regard to an argument of estoppel which was raised before the Zoning Commissioner and discussed in his Opinion. That evidence will be discussed at a later point in this Memorandum.

The facts as found by the Zoning Commissioner for the property use are pretty much the facts presented in regard to the subject property as presented before the CBA. Orville Jones owns the subject property, located in the community of Baldwin in Long Green Valley in Baltimore County. It is near the intersection of Long Green Pike and Fork Road. The area is largely agricultural and zoned RC-2. The property is approximately 1.056 acres in area and is roughly square-shaped and improved with a commercial building. Jones acquired the property in April 1987 when the building was previously know as the Long Green Hotel. Subsequent to his acquisition, Jones applied for a permit to renovate the existing Long Green Hotel; however, he then raised the building and replaced it with a brand new building constructed on the site which now houses a High's Dairy Store, a dentist's office, and a laundromat with a small parking area. The property does not enjoy public water and sewerage, and the evidence reflects that Jones originally intended to use sewage disposal by way of a septic system on the property. It is also clear that Jones and his agents destroyed the area of the property which had been approved by DEPRM of Baltimore County for a sand-mound sewage disposal system. As found by the Zoning Commissioner, the proposed sand-mound septic system was rendered unusable due to disturbance of the site by heavy equipment during the construction of the new building; thus, Jones was forced to look for an alternative to satisfy his sewage disposal needs. Jones reached an agreement with an adjacent property owner, Executive Auto and Paint Repair, Inc., to provide an area of their property zoned RC-2 for a private septic facility for which Jones paid the sum of twenty-five thousand dollars ($25,000.00).

Many of the same issues were raised before the Zoning Commissioner as were raised by both parties before the CBA. First, is this case properly before the Zoning Commissioner-CBA? The CBA ruled consistently with the Zoning Commissioner that the Petitioners Appellants were entitled to petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations and that matter will not be discussed in this Memorandum in view of the Board's ruling.

Secondly, is the proposed septic system a "use of the land"? The Zoning Commissioner found that "use" is defined in Webster's Third New International Dictionary as "the legal enjoyment of property that consists in its employment, occupation, exercise, or practice" and "the benefit in law of one or more persons, specifically, the benefit of or the profit arising from lands and tenements to which legal title is held by a person, or the act of practice of using something." From those definitions, the Zoning Commissioner concluded that the septic system is a "use" of the land. Furthermore, it is clear that evidence was presented by Paul Solomon and Norman Gerber, expert witnesses for the Appellants, that in their expert opinions, this was a "use" of the land. In addition, Gerber testified that the definition of "use" in Zoning Regulations for Harford, Anne Arundel, and Fairfax Counties have all been interpreted essentially that "use is the way the land is being used." This is consistent with the use definition currently accepted by the Baltimore County Office of Planning. The Illustrated Book of Definitions by Harvey Maskowitz and Lind Bloom, describes land use as "a description of how land is occupied or utilized."

Thirdly, is the septic system use permitted in the RC-2 parcel owned by Executive Auto and Paint Repair, Inc.? Likewise, this issue was the same as presented to the Zoning Commissioner, in which he found that the Baltimore County Zoning Regulations are inclusive. According to the case of Kowalski vs. Lamar 25 Md. App

493 (1975), the use must be identified in the Baltimore County Zoning Regulations as being permissible by right or by Special Exception in order to be legitimate. Private septic systems are not specified in either section. The Zoning Commissioner concluded that a private septic system is not permitted in an RC-2 zone. He further concluded that the use of the word "main" in Section 1A01.2.b.5 referred to public utilities, and that section read in accordance with its clear meaning contained no doubt that public services and utilities only were permitted to occupy RC-2 zoned land.

Finally, relying on the cases of Silitschanu v. Groesbeck, 208 Conn. 312 (1988) and GLT Development v. Maryland National Capital Park and Planning Commission, 1755, Sept. term, 1989, and Leimbach Construction Company v. City of Baltimore, 257 Md. 635 (1970), the Zoning Commissioner concluded that Jones could not utilize RC-2 property for a private septic system. The same result is urged on this Board.

Fourth, the Zoning Commissioner further considered the issue of whether or not the proposed septic system was accessory to the commercial development and therefore could be permitted. He concluded that in the case of In re.: Helix Health System, Case No. 92-186SPH, both the Zoning Commissioner and this County Board of Appeals required conclusions that an accessory use could not be on separate property not owned by the property owner. For similar

reasons, he reviewed two previous cases of the Zoning Commissioner: In re.: Langford and In re.: Windsor, Case Nos. 85-321SPH and 85-326XSPH and concluded that there was single ownership of the properties in question which have been approved by the then Commissioner Jablon as accessory uses. He found that such was not the case in the instant case before him.

Appellants would submit that none of the evidence related to these issues has changed before the County Board of Appeals.

It is with the Zoning Commissioner's final conclusion that Baltimore County and the Petitioners are estopped from enforcing an illegal use, that the Appellants appealed the Zoning Commissioner's decision and take issue with his finding. The evidence before the Board concerning the issue of estoppel is quite different than that presented before the Zoning Commissioner.

FACTS RELATING TO ESTOPPEL

The facts relating to alleged estoppel issue can be basically found between the exhibits submitted in the record and the testimony of Appellants' witnesses Ed Blanton, Carol Trella, and Kathy Tyler.

In summary, it was pretty obvious from the testimony and the documents submitted to the Board that the Long Green Valley Association through its President Mr. DeFord and Charlotte Pine and expressed concerns in regard to what the County was permitting on the site of the Long Green Hotel. It is likewise clear that over the period from 1987 until 1991 that the Appellants inquired of the County as to what was being permitted when and where in regard to Jones's use of the Long Green Hotel. It is also a fact that the permits, as submitted through Ed Blanton as Petitioners' Exhibit Number Six reflected a series of requested permits which first reflected a request for the renovation of the Long Green Hotel, which then progressed to the complete elimination of the hotel and permits for a new building to be constructed on that site. In addition, there were variations to the permit indicating private septic systems, which ultimately changed to a public system on the last application of Jones to the County. This is clearly a false and misleading application submitted by Jones, which was not rebutted by Jones when he took the stand to testify.

Without dignifying the Zoning Commissioner's determination of estoppel, it seems clear that the facts support the proposition that up until January 2, 1992, no decision by Baltimore County had been made upon which it could even remotely be argued that the citizens should have been alerted or responsible to take some action.

On January 2, 1992, the Long Green Valley Association, but not all of the individual Appellants, was advised by letter from the County that subject to certain conditions occurring, they would grant permission for the off-site septic field on RC-2 property. That letter is in evidence before the Board, and a careful reading of that letter from the County to the Long Green Valley Association produces a series of conditions which must be satisfied before approval would occur. Clearly, had the citizens taken some action at that point, they would have been premature.

The record also reflects that it was not until May 15, 1992, that the easement was actually recorded in the Land Records for Baltimore County, which could have provided notice to the community had they been aware of the recording that such final action and approval was taken by the County. Finally, three days later on May 18, the testimony and files from DEPRM reflected that they gave their approval. From any stretch of the imagination then, the citizens could have determined that such approval was finalized no earlier than May 18, 1992.

In fact, the testimony from Mr. Blanton and Kathy Tyler supported the theory that they were not alerted until the summer months of 1992 when Mr. Jones began in earnest the reconstruction of the hotel after a fifteen-month hiatus due to the County's "stop-work" order.

Appellants would then submit that they were at the very best first put on notice as of July 1992 that something had occurred that allowed Jones to proceed with he construction of the new commercial facility on his site. At that point, they testified that they went to the land records and discovered that back on May 15, 1992, the easement had in fact been recorded from Executive Auto and Paint Repair, Inc., to Jones. The Petitioners then filed their petition in September 1992.

It is submitted by Petitioners/Appellants that clearly that time frame does not constitute laches, delay, or estoppel in this case. Secondly, Petitioners would argue that having notified the County of their belief that such permission granted on May 18, 1992, was illegal and not in accordance with the Zoning Regulations, Petitioners had no responsibility at all to even bring a Petition for Special Hearing, but had a right to rely upon the County enforcing its own zoning regulations.

In rebuttal, Mr. Jones submitted many exhibits through Robert Powell of DEPRM. Petitioners would point out that all of the correspondence related to 1991 and is irrelevant to the consideration of estoppel in view of the fact that the date that the Long Green Valley Association was notified was January 2, 1992. It seems to the Petitioners that the conditional nature of the County's letter to Long Green on January 2, 1992, clearly establishes the earliest possible time that the community could be

considered to have been formally notified was May 18, 1992, and laches would not begin to run except from that date at the earliest.

Also in rebuttal, Jones presented the testimony of Carl Richards from ZADM which related to a series of prior decisions by their office allegedly permitting other uses such a s stormwater management in RC zoned property. Richards' testimony is easily distinguishable, as Norman Gerber pointed out, that none of those cases dealt with RC-2 property, but more importantly, Richards did not address the issue of accessory use to a piece of property that is not owned by the same property owner. Clearly, this Board would have great difficulty in reversing its position in the Helix Health case to find that the septic system on the RC-2 property is accessory to a commercial operation in a commercial zone, no under the same ownership. The net effect of Richards' testimony, then, is basically worthless when analyzed from the standpoint that Mr. Jones does not have fee-simple ownership of the site upon which the septic system is placed.

LEGAL ARGUMENT

Petitioners hereby adopt the arguments before the Zoning Commissioner previously made by the office of the People's counsel and the Petitioners as it relates to the illegal use of RC-2 zoned property to support a commercial operation, including a septic system thereon. **As previously stated in this Memorandum, the** Zoning Commissioner **basically adopted the legal posture that such** a use as proposed by **Orville Jones in this case was an illegal use.** With that conclusion **and legal analysis, we agree. The People's** Counsel and **Petitioners previously submitted a Memorandum of legal** points, including, **but not limited to the cases of** **Kowalski**, Leimbach, **Silitschanu**, **GLT Development**, **and** **Lipsitz**, **164 Md. 222.** In addition, **Petitioners submitted the case of** **Helix Health System** for the proposition **that property not under the same ownership** could not be utilized **for purposes of an accessory use. These** arguments will **not be herein again restated, but adopted as** previously made.

In addition, the People's Counsel on July 26, 1993, in a letter to the Zoning Commissioner set forth those cases and an analysis that the use of agriculturally zoned land was not allowed where the entire property was split-zoned under the same ownership, and surely appears prohibited where the agriculture and commercial parcels are owned separately.

Furthermore, People's counsel in the instant case submitted a 1994 Long Green Zoning case legal analysis relating to various court decisions which is hereby adopted for purposes of this Memorandum.

Estoppel - Petitioners of course disagree with the Zoning Commissioner's conclusion that somehow the County and the citizens are precluded from challenging a clear illegal use.

First, the citizens through the Long Green Valley Association had constantly complained of the County's approval of this type of project using RC-2 land, and certainly there can be no requirement that the citizens had to expend their own monies and resources in filing a Petition for Special Hearing to bring this to the Zoning Commissioner's attention, when in fact they had brought it to the attention of all the County departments required to sign off on such an approval. Clearly, this Board of Appeals should not burden the community with the need to file petitions for Special Hearings every time they call a situation to the attention of the County.

Secondly, Orville Jones's reliance on some alleged "County policy" or practice which is contrary to law, can not form the basis of "estoppel," nor can laches apply where the relevant time period is at most measured between May 18 and September of 1992. As submitted by People's Council, none of these defenses constitute justification where the citizens are excluded from the crucial zoning approval phase and where the developer's plans change. It is important to note in this regard that the developer's plans did change, and in fact , there may have been fraudulent information provided on the permit applications when developer indicated that this was merely to be a renovation. It is clear from all of the

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evidence that he never intended to renovate the existing building, but rather expected to tear it down an build a new building from the very beginning; yet, that is exactly the information that was provided to all the County departments. From these facts, it is easy to conclude that the normal County review in terms of setbacks and other requirements would have taken a different posture had the initial building applications indicated a "new building" versus a "renovation of an existing structure." Finally, Mr. Jones never explained why his permit applications suddenly changed the nature of this sewage from private to public. Clearly, with these irregularities in the permitting process, the Petitioners should not be precluded on the basis of an estoppel or laches argument.

Again, in the case of Lipsitz, 164 Md. 222, Gontrum, 182 Md. 370, Hagerstown, 264 Md. 481, and Inlet, 313 Md. 413, estoppel was applicable against the City and laches should not apply in this case.

OPEN MEETINGS DELIBERATION

The CBA has raised the issue of whether or not this case falls within the previously litigated matter requiring Board deliberations to be open to the public. In that one of the three types of hearing held in accordance with the Baltimore County Zoning Regulations is a Special Hearing pursuant to Section 500.7, Petitioners do not believe that this case falls within an exception

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to the open meetings deliberations requirement of the Annotated Code of Maryland as previously defined by the Honorable Judge Howe in the case of the Villa Julie appeal. For that reason, Petitioners submit that such requirement is legislatively dictated to the CBA in this case.

Respectfully submitted,

J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Att'y for Appellants/Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 25th day of April 1994, a copy of the foregoing Memorandum in Lieu of Final Argument was mailed, postage pre-paid, to John Gontrum, Esquire, 814 Eastern Boulevard, Baltimore, Maryland, 21221; and Peter Max Zimmerman, Suite 204, 606 Baltimore Avenue, Towson, Maryland, 21204.

J. Carroll Holzer

memo7\LGVA.mem

RE: Petition for Special Hearing
Regarding Use of RC2 Land to
Support BL, BM Zone
13523 Long Green Pike
6th Councilmanic District
Long Green Valley Assn., et al.
Petitioners

Before The Zoning
Commissioner For
Baltimore County
Case No: 93-93-SPH

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

NOTICE OF APPEAL

Appellants, Long Green Valley Association et al, by and through their attorney, J. Carroll Holzer, hereby note an appeal to the County Board of Appeals from the decision rendered by the Zoning Commissioner on August 24 1993.

J. Carroll Holzer P.A.
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961

CERTIFICATE OF SERVICE

I HEREBY **CERTIFY** that on this 15th day of September, 1993, a copy of the foregoing Notice of Appeal was mailed to John B. Gontrum, Esquire, 814 Eastern Boulevard, Baltimore, Maryland 21221 and Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

J. Carroll Holzer, Esquire

9/13

RE: PETITION FOR SPECIAL HEARING
REGARDING USE OF PROPERTY ZONED
RC2 & OWNED BY EXECUTIVE AUTO
PAINT & REPAIR, INC. LOCATED
BEHIND 13523 LONG GREEN PIKE TO
SUPPORT A WASTE DISPOSAL SYSTEM
FOR COMMERCIALLY ZONED PROPERTY
(BL, BM) KNOWN AS 13523 LONG
GREEN PIKE, OWNED BY ORVILLE
JONES.

LONG GREEN VALLEY ASSN., et al.,
Petitioners

BEFORE THE ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 93-93-SPH

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NOTICE OF APPEAL

Please note an appeal from the decision of the Zoning Commissioner in the above-captioned matter, under date of August 24, 1993, to the County Board of Appeals and forward all papers in connection therewith to the Board for hearing.

Peter Max Zimmerman

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

I HEREBY CERTIFY that on this 10th day of September, 1993, a copy of the foregoing Notice of Appeal was mailed to John B. Gontrum, Esquire, 814 Eastern Blvd., Baltimore, MD 21221, Attorney for Property Owner: and J. Carroll Holzer, Esquire, 305 W. Chesapeake Ave., Suite 105, Towson, MD 21204, Attorney for Petitioners.

Peter Max Zimmerman

Peter Max Zimmerman

9/10/93
ZONING OFFICE

IN RE: PETITION FOR SPECIAL HEARING
SE/S Long Green Pike, 170' SW
of the c/l of Fork Road
(13523 Long Green Pike)
11th Election District
6th Councilmanic District

Long Green Valley Assoc., et al
Petitioners

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 93-93-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing originally filed by the Long Green Valley Association, the Greater Kingsville Civic Association, and various individuals who reside near the property which is the subject of this Petition. At the beginning of the public hearing held for this case, the Greater Kingsville Civic Association withdrew as a Petitioner. Thus, the matter proceeded through the efforts of the Long Green Valley Association and those individuals previously referred to above and designated on the Petition. The Petition seeks a determination as to whether approval should be given to permit the use of adjoining property, zoned R.C. 2 and owned by Executive Auto and Paint Repair, Inc., to support a waste disposal system for the subject commercial property, known as 13523 Long Green Pike, zoned B.L.-C.R. The subject property and waste disposal system are more particularly described on Petitioner's Exhibit 2.

The vast majority of zoning petitions filed in Baltimore County are submitted by or on behalf of the owner of the property which is the subject of the Petition. However, the instant case arises for consideration in a different manner. As noted above, the Petition has been filed by the local community associations and a number of interested parties as individuals. The relief which they request pertains not to a property

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owned by them but located within the geographic boundaries of the Long Green Valley Association.

At the hearing held in this matter, the Petitioners were represented by J. Carroll Holzer, Esquire. The property owner, Orville Jones, was represented by John Gontrum, Esquire. The parties and their counsel appeared at the public hearing held for this case at which time testimony and evidence were taken as to the issues presented. Subsequently, counsel submitted lengthy memoranda in support of their respective positions.

FINDINGS OF FACT

As is the case with many cases which present difficult legal issues, the facts in the instant case are relatively simple and largely not in dispute. As noted above, Mr. Jones owns the subject property at 13523 Long Green Pike located near the quiet country community of Baldwin. The property is located near the intersection of Long Green Pike and Fork Road. As is the case with similar commercially hubbed rural areas in Baltimore County, the subject property serves as part of the small commercial center of a rural locale. That is, although the subject property and some abutting properties are zoned for business/commercial use, this is largely an agricultural area zoned R.C. 2. The property is approximately 1.056 acres in area, is roughly square shaped, and is improved with a commercial building.

Testimony and evidence presented was that Mr. Jones acquired the subject property in April 1987 at public auction. The building located thereon at that time was built in 1904. The building was previously known as the Long Green Hotel and existed as a hotel/general store for many years. Subsequent to his acquisition, Mr. Jones decided to raze the building and replace same with another commercial use. A new building was

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constructed which now houses a High's dairy store, a dentist's office and a laundromat. Further, a small parking area is provided.

The thrust of the case relates to the septic system proposed for this site. Being rural in location, the property does not enjoy public water and sewer service. Apparently, Mr. Jones originally intended that sewage disposal for the subject property would be accomplished by way of a septic system which would be situated entirely on the property. (See Jones' Exhibit [illegible], letter from the State of Maryland, Department of the Environment dated July 28, 1988). Specifically, Mr. Jones intended to install a [illegible] mound sewage disposal system. Unfortunately, however, this system was never installed. Although governmental approval had been given [illegible] from the Baltimore County Department of [illegible] and Resource Management (DEPRM), the proposed [illegible] system was rendered [illegible] due to disturbance of the [illegible] during construction of the new building. Thus, [illegible] satisfy his sewage [illegible] Baltimore County [illegible] to replace [illegible]

[illegible] was offered [illegible] the property [illegible] private septic [illegible] easement [illegible] from the Maryland [illegible] and from [illegible] proposed [illegible]

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to the reviewing government authorities. It is of particular note that the surrounding residents were well aware of these plans. Specifically, testimony and evidence received included a letter from the Long Green Valley Association to DEPRM dated November 25, 1991. That letter questioned the wisdom and propriety of the proposed off-site septic system. Mr. Jones, who received a copy of that letter, responded both to DEPRM and the Long Green Valley Association by way of his letter dated December 17, 1991. DEPRM likewise responded to Long Green Valley Association's concerns by way of correspondence dated January 2, 1992. Further, the record discloses correspondence from DEPRM to Ms. Charlotte Pine of the Long Green Valley Association on November 20, 1991. Based on this exchange of correspondence, it is clear that all concerned were well aware of Mr. Jones' proposed alternative. As noted in DEPRM's letter of January 2, 1992, the County's stop work order "will be rescinded upon compliance with all requirements set forth...and recordation of the necessary sewage disposal area easements in the Land Records of Baltimore County." Clearly, the Long Green Valley Association and its members were aware that the County and State had given their blessing to the proposed alternative septic system. Armed with the County's approval, Mr. Jones then went about the process of obtaining the necessary easements from the adjoining property owner, Executive Auto Paint and Repair, Inc. As noted above, this adjacent tract is zoned R.C. 2 and is unimproved.

Testimony and evidence presented was that Mr. Jones negotiated with Executive Auto Paint and Repair, Inc. and consummated the agreement to obtain the necessary easements. A deed was recorded among the Land Records of Baltimore County at Liber [illegible], Page [illegible], evidencing that agreement. The deed provides that Mr. Jones was provided the right to con-

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struct, lay and maintain a private septic system in, on, through and across the land owned by Executive Auto Paint and Repair, Inc. This easement was more fully described on a site plan of the subject property which was attached thereto. Apparently, the easement was not conditional. Moreover, Mr. Jones paid the sum of $25,000 for said easement. The easement was to continue until such time as Mr. Jones' property at 13523 Long Green Pike could be serviced with a public sewer line.

Having obtained and recorded the necessary easements, and having obtained governmental approval, Mr. Jones then went about constructing the septic system. Testimony and evidence received was that the system has been substantially completed. The High's store and dentist's office are apparently now up and running.

The instant case arose in approximately September 1992 when the Petitioners filed the subject Petition for Special Hearing. It is to be noted that this filing was made approximately four months after Mr. Jones executed and recorded the subject easement and over nine months after the County's exchange of correspondence with the community advising them of the County's approval of the proposed off-site sewage disposal system.

Having recited these facts, attention must now be given to the numerous issues presented herein. Those issues will be addressed in turn.

1) IS THIS CASE PROPERLY BEFORE THE ZONING COMMISSIONER

As the litigants and their counsel were no doubt well aware during their presentation of the case before me, I actively participated at the Board of Appeals' level in the case entitled United Parcel Service, Inc. v. Peoples' Counsel for Baltimore County, 93 Md. App. [illegible] (1992) which is presently pending on a writ of certiorari before the Maryland Court of Appeals. Since my appointment to my present position, I am

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frequently reminded of the language of my dissenting opinion in that case, the opinion of the Honorable Joseph Murphy of the Circuit Court of Maryland for Baltimore County, and the reported decision by the Court of Special Appeals of Maryland. In their memoranda, the parties in the instant case quoted the law and facts discussed in UPS and their applicability to this matter. Both sides cite this case in discussing the issue as to whether the Zoning Commissioner can properly hear this case. In considering that question, one must be mindful of the form in which the original cases were brought. The instant case is now before me as Zoning Commissioner. UPS originally reared its head for the first time in the quasi-judicial review process before the County Board of Appeals. These cases have arisen differently and are easily distinguishable. Long Green Hotel is not UPS.

The Petition brought in the instant case is properly before me pursuant to the language set forth in Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). Therein, a broad and sweeping statement of authority is provided to the Zoning Commissioner. It is specifically provided that he "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..." Further on, the Section provides that such authority "shall include the right of any interested party to petition the Zoning Commissioner for a public hearing...to determine any rights whatsoever of such person and any property in Baltimore County insofar as they are affected by these regulations." As it relates to my jurisdiction under this section, the timing of the Petitioner's request is meaningless. Unlike UPS, the instant case does not come before me as an appeal or for review of a prior decision. The authority conferred in Section 500.7 of the B.C.Z.R. is broad indeed. The case is properly

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[illegible] before [illegible]

[illegible]

[illegible] SEPTIC SYSTEM A [illegible]

[illegible] system can be permitted under the circumstances [illegible] can a private septic system be [illegible] property, not owned by the property owner [illegible] when the subject property is zoned [illegible] and the easement [illegible] zoned R.C. 2. Before determining this issue [illegible] proposed septic system is indeed a use is necessary.

[illegible] "use" is not defined in Section [illegible] of the B.C.Z.R. [illegible] regulations require the reader to consult with the definitions [illegible] Webster's Third New International Dictionary. Therein, the [illegible] defined and enjoys a lengthy list of definitions which occupy [illegible] The definitions include "the legal enjoyment of property [illegible] its employment, occupation, exercise or practice," and [illegible] of one or more persons, specifically, the benefit of [illegible] arising from lands and tenements to which legal title is [illegible] or the act or practice of using something." Clearly, [illegible] suggest a broad scope of the term "use". The property [illegible] the proposed septic system is not a use because it is [illegible] and that the surface of the land may still be used [illegible] grazing, and similar agricultural purposes. However, this [illegible] narrow in scope. Coal and diamond mining, as well as [illegible] clearly uses of land, notwithstanding the fact that the [illegible] entails a subterranean effort. Thus, it is clear that [illegible] installation of a septic system, for the privilege of which he

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paid the property owner $25,000, constitutes a use of the Executive Auto Paint and Repair, Inc. parcel.

[illegible] IS THE SEPTIC SYSTEM USE PERMITTED ON THE R.C. 2 PARCEL OWNED BY EXECUTIVE AUTO PAINT AND REPAIR, INC.?

A great amount of testimony and legal argument was presented about this issue. The Petitioners aver that the proposed use of the property is not permitted by the B.C.Z.R. and is thus, illegal. Mr. Jones argues that the use is properly permitted under a variety of theories.

As is well settled, the B.C.Z.R. are inclusive; that is, only designated uses are allowed. If a particular use is not specifically delineated as permissible by right or special exception, it is not allowed. This conclusion is well settled and is stated both within the regulations and at law. Specifically, Section 102.1 of the B.C.Z.R. provides that "No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations..." (emphasis added). Further, the Appellate Court's construction of this language is clear.

In an early and leading case before the Court of Special Appeals the inclusive nature of the B.C.Z.R. was discussed. (See Kowalski v. Lamar, 25 Md. App. 493, 334 A2d. 536 (1975). Therein, the Court comprehensively discussed the B.C.Z.R. and noted that, "any use other than those permitted and being carried on as of right or by special exception is prohibited." Kowalski, Page 539. Thus, it is clear that the use must be identified in the B.C.Z.R. as being permissible by right or by special exception in order to be legitimate.

Moreover, Section 1A01.2.B of the B.C.Z.R. identifies uses permitted as of right in an R.C. 2 zone. Private septic systems are not specifi-

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cally listed in that Section. Additionally, Section 1A01.2.C identifies uses permitted in an R.C. 2 zone by special exception. Again, a private septic system is not listed therein. Thus, by the clear meaning of the words used to describe the enumerated uses allowed by right or special exception, a private septic system (as a primary use of the property) is not permitted in an R.C. 2 zone.

Unable to locate specifically identified private septic systems within Sections 1A01.2.B or 2.C, the property owner attempts to carve a niche for the subject use under Section 1A01.2.B.5 of the B.C.Z.R. Therein, certain "utility type" uses are permitted as of right in an R.C. 2 zone. The Section permits telephone, telegraph, electric power or other lines or cable, as well as underground gas, water or sewer mains or storm drains as of right in an R.C. 2 zone. The property owner avers that this language should be expanded to not only include public utilities, but private systems as well. As stated in Mr. Jones' memoranda, individual septic system facilities serve the same purpose and function as larger, public facilities.

Although appreciative of these arguments, I believe that the property owner has improperly expanded the scope of permitted uses under Section 1A01.2.B.5 of the B.C.Z.R. Clearly, the precise terms used therein include only public utilities. It is a cardinal rule of statutory construction that the natural and ordinary import of the words used should be given to effectuate the real and actual intent of the Legislature. See State v. Fabritz, 276 Md. 416 (1975). The words of this Section, read in accordance with their clear meaning, no doubt contemplates public services and utilities will be permitted to occupy R.C. 2 zoned land. Further, although sewer mains are not defined in the B.C.Z.R., Webster's

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defines "mains" as "a pipe, duct or circuit to or from which leads tributary branches of a utility system and which carries their combined flow." Thus, sewer mains are part of a larger system and clearly accommodate a public as opposed to a private service. The language in this Section is clear; only public utilities are allowed. Thus, the property owner's reliance on and attempted expansion of this Section are misplaced.

While both litigants agreed that private septic systems were not precisely identified as permitted uses in the B.C.Z.R., substantial testimony, evidence and argument was offered regarding similar cases considered by this Office, the appellate courts of this State, and Courts of other jurisdictions. A review of those authorities are helpful in determining whether a private septic system is permissible in this instance.

Both parties cite one of the few reported decisions on point with the subject case. That case arose in Stamford, Connecticut and wound its way through the appellate process to the Supreme Court of Connecticut. (See Silitschanu v. Groesbeck, 208 Conn. 312, 543 A2d. 737 (1988). In that case, a similar issue was presented. Mr. Silitschanu, and others, owned real property in Stamford that was in close proximity to property owned by Mr. Groesbeck. Mr. Silitschanu and his partners desired to construct a three-story office building on the commercially zoned land with its appurtenant septic system to be located on an adjoining residential lot. The propriety of the construction of the proposed septic system was at issue. The Supreme Court of Connecticut concluded that the septic system in fact, was a structure (use) within the local zoning code. Further, since that use was not specifically authorized, it was not permitted.

This case was referenced with favor in an unreported decision by our own Court of Special Appeals. In GLP Development v. Maryland National

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Capital Park and Planning Commission (No. 1755, September term, 1989) the Court acknowledged the Silitschanu decision and found same persuasive in the case before it. As were the facts in Silitschanu and the instant case, the property owner in the GLP Development case owned a commercially zoned tract which was proposed for development with commercial buildings, a septic system tank, parking and driveways. An adjoining parcel, zoned Rural-Cluster, was proposed to house the underground septic field consisting of filtering pipes for sewage disposal. The Court of Special Appeals affirmed the decision of the local planning board and concluded that the residentially zoned land could not be used for commercial purposes.

The Court in the GLP Development case also referenced the Court of Appeals' decision in Leimbach Construction Company v. City of Baltimore, 257 Md. 635 (1970). In that case, the Court of Appeals affirmed the judgment of the lower court which disallowed a commercial use on residentially zoned property. In that instance, the property owner proposed construction of a driveway over residential land to service the commercial property. In Leimbach, the court concluded that said use was impermissible.

Thus, it appears that the uniform appellate decisions cited above, as applied to the instant case, would prohibit Mr. Jones' private septic field on his neighbor's [illegible] property.

Notwithstanding the absence of this particular use in the B.C.Z.R., and the apparent unanimity of the appellate decisions referenced above prohibiting said use, the property owner puts forth another argument to support its claim that the use is permitted. This argument centers upon the claim that the proposed septic system is accessory to the commercial development and thus is entitled to be permitted. As authority for this proposition, Mr. Jones cites the [illegible] decisions of the

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Zoning Office and similar agencies of Baltimore County. As to DEPRM's practices in the past, they cannot be considered authoritative or binding upon me. There appears no doubt that in certain other instances, DEPRM has approved arrangements which allow storm water management systems and similar uses on adjacent properties to serve an abutting commercial development. There is no doubt that this practice may be sound for environmental purposes. In fact, it appears in the instant case that Mr. Jones' solution to his septic disposal woes is appropriate. The proposed off-site septic system has been approved by both the Maryland Department of Natural Resources (DNR) as well as Baltimore County's Department of Environmental Protection and Resource Management (DEPRM). From a technical environmental standpoint, the proposed system may be the most proper alternative. However, the fact that it works from a DEPRM standpoint and that similar practices have been employed at other locations in Baltimore County does not impact the issue before me. As I see it, this is a case of first impression presenting a novel question before this Office. Whether DEPRM or the Office of Planning and Zoning or other County agencies believe this to be a good approach is not persuasive; rather, the issue is presented in the context of a permitted use pursuant to the purview of the B.C.Z.R.

Nonetheless, there are similar cases which have been adjudged by this Office. Although not precedent, prior construction of the B.C.Z.R. by past Zoning Commissioner's is helpful. Two such cases were presented for my review and examination, namely, In Re: Marris N. Langford, et al., Case No. 85-121-SPH, and In Re: Walter Windsor, Case No. [illegible] I have reviewed both cases thoroughly. Well reasoned and comprehensive opinions were offered in both instances by then Zoning Commissioner Arnold Jablon. In both cases, the Petitioner owned a commercial property and an

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adjacent residential tract. In Windsor, the Petitioner desired placement of a storm water management pond on a D.R. 3.5 zoned property to serve an adjacent R.O. tract. In Langford, the Petitioner proposed to construct a Class C office building on an O-1 parcel with the storm water management pond serving said building on the D.R. 2 zoned portion of the site. In both instances, Commissioner Jablon approved the proposed use. He determined that the proposed use was proper as an accessory use. Mr. Jones urges that I adopt the same course in this case.

Accessory uses are defined in Section 101 of the B.C.Z.R. Therein, the term is defined as "A use or structure which: a) is customarily incident, subordinate to and serves a principal use and structure; b) is subordinate in area, extent or purpose to the principal use or structure; c) is located on the same lot as the principal use or structure served; and, d) contributes to the comfort, convenience and necessity of occupants, business or industry in the principal use or structure served." Clearly, the proposed septic system complies with subsections (a), (b) and (d) of the definition. That is, the septic system is there only to serve the commercial use on the Jones' tract, is subordinate to same, and contributes to the comfort, convenience and necessity of the business located thereon. The problem for Mr. Jones is whether the use complies with subsection (c) which requires that same be located on the same lot.

I considered a similar issue in a prior zoning case entitled In Re: Helix Health System, Case No. 92-186-SPH. Therein, I considered whether two hospitals located at opposite ends of the County, could share an incinerator located on one of the hospital's campuses. I concluded that said incinerator use, although accessory to the hospital on whose property the incinerator was located, could not be used as an accessory use to the

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other hospital. That is, in that the incinerator was not located on the same lot as the principal use or structure served, it could not be accessory thereto.

The same logic must be applied here. The Jones' property is clearly defined on the site plan submitted at the hearing and contained in the metes and bounds description thereof. The septic system is not located within that lot, but is located off-site. Thus, it cannot be an accessory use or structure under the plain meaning of the words set forth in the definition.

The property owner attempts to save this argument by noting the easement acquired by Mr. Jones in May, 1992. He argues that this easement, in effect, makes the adjacent strip of land owned by Executive Auto Paint and Repair, Inc. part and parcel of the same lot owned by Mr. Jones. Without delving into the nature of easements at length, I must conclude that the property owner's position here is erroneous. A lot of record is likewise defined in the B.C.Z.R. as "a parcel of land with boundaries as recorded in the Land Records of Baltimore County..." Although Mr Jones has an easement in his neighbor's property, he does not own same in fee. The easement allows him only to use a portion of the property for a permitted purpose. It does not convey title. It does not make that portion of the property conveyed the same lot as Mr. Jones' tract. Thus, for all of these reasons, the use is not accessory.

4) ARE BALTIMORE COUNTY AND/OR THE PETITIONERS ESTOPPED FROM ENFORCING A PROHIBITION OF THE USE?

I have concluded that the case is properly before me as Zoning Commissioner pursuant to the broad authority set forth in Section 500.7 of the B.C.Z.R. I have likewise concluded that the septic system is in fact

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a use of the Executive Auto Paint and Repair, Inc. parcel, [illegible] is not permitted as of right in the R.C. 2 zone, nor allowed by special exception, does not fall within any of the definitions of such permitted or special exception uses in the B.C.Z.R., and is not accessory to the Jones property. For all of these reasons, the proposed septic system is illegal. However, can the Petitioners or Baltimore County force a termination of the use of the system? The answer must be no.

As the rescitation of the facts above makes clear, the septic system alternative proposed for the adjacent tract was not Mr. Jones' first choice in regard to development of his property. He originally proposed a septic system within the four corners of the Long Green Hotel site. Only when this sytem was not workable and public utilities were not available did Mr. Jones look elsewhere. Further, there has clearly been extensive governmental review of the propriety of Mr. Jones' suggested alternative. The record of the case is clear that extensive governmental reviews were undertaken before the project was approved. Further, it is clear the Petitioners were aware of this activity. The record contains copies of correspondence by and between DEPRM and the Long Green Valley Association. Despite these reviews and concerns, however, it was not until September 1992 that the instant Petition was filed. This was well after Mr. Jones had spent a significant sum to acquire an easement on the Executive Auto Paint and Repair, Inc. property and constructed the septic system. In fact, the system has now been completed and the property is being used for commercial purposes. Although I have jurisdiction to consider the issues presented, equitable estoppel prohibits the Petitioners and the County's insistence that this use be terminated. The doctrine of an equitable estoppel has been defined as "...the effect of the voluntary conduct of

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the party whereby he is absolutely procluded, both at law and in equity, from asserting rights which might have otherwise existed, either of property, contract or remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, contract or remedy." Salisbury Beauty Schools v. State Board, 268 Md. 32, 300 A2d 367 (1973). "Equitable estoppel operates to prevent a party from asserting his rights under a general technical rule of law, when that party has so conducted himself that it would be contrary to equity and good conscience to allow him to do so." Fitch v. Double "U" Sales Corp., 212 Md. 324, 129 A2d 93 (1957). There is no settled rule as to when equitable estoppel should be applied. However, it can be applied against municipalities. See Kent Co. Planning Inspector v. Abel, 246 Md. 395, 228 A2d. 247 (1967).

As noted above, the facts presented in the record of this case are clear regarding the ongoing review and ultimate approval of the proposed septic system by Baltimore County. The knowledge of the Petitioners in this process are also clear. Despite this knowledge and participation, neither Baltimore County nor the Petitioners objected. No Petition for Special Hearing was filed until well after the fact. There must be some sense of fundamental fairness in the interpretation and enforcement of the B.C.Z.R. Property owners in Baltimore County must be assured that if they openly consult with their neighbors and undergo the scrutiny of the State and local review process, that their actions will be upheld as permissible. Therefore, notwithstanding my conclusion that the proposed use (actually implemented use) is illegal, I cannot in good conscience penalize Mr. Jones

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By

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based upon the facts and record presented. Thus, the Petition for Special Hearing must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24th day of August, 1993 that approval should be given to the use of adjoining property zoned R.C. 2 and owned by Executive Auto and Paint Repair, Inc. to support a waste disposal system for the subject commercial property, known as 13523 Long Green Pike, zoned B.L.-C.R., in accordance with Jones' Exhibit 5, and as such, the Petition for Special Hearing is hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

MICROFILMED

ORDER RECEIVED FOR FILING
Date 8/24/93
By

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

August 24, 1993

J. Carroll Holzer, Esquire
305 W. Chesapeake Avenue, Suite 105
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
SE/S Long Green Pike, 170' SW of the c/l of Fork Road
(13523 Long Green Pike)
11th Election District - 6th Councilmanic District
Long Green Valley Assn., et al - Petitioners
Case No. 93-93-SPH

Dear Mr. Holzer:

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

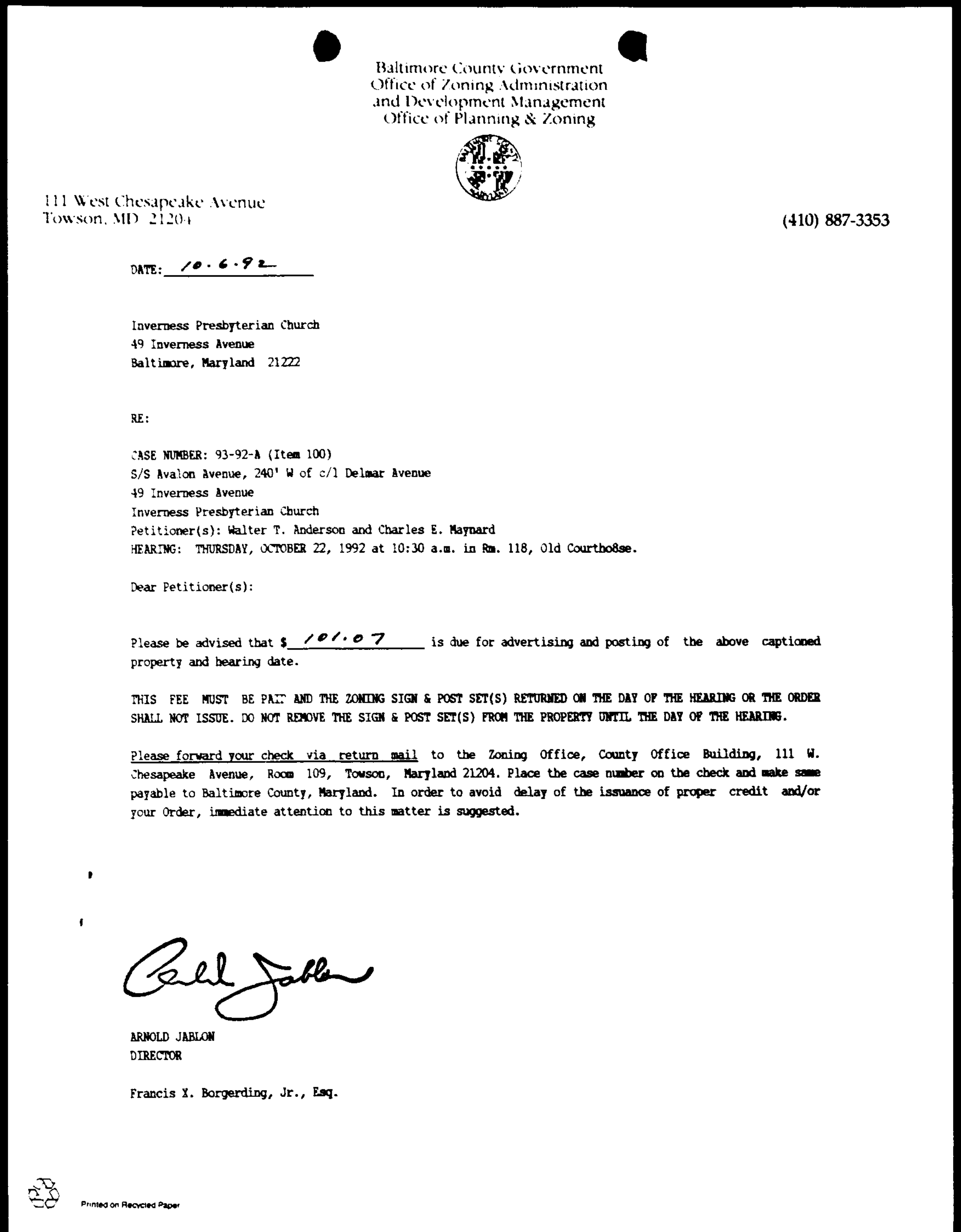
cc: John B. Gontrum, Esquire
809 Eastern Boulevard, Baltimore, Md. 21221

Mr. Orville Jones
13523 Long Green Pike, Baldwin, Md. 21013

Ms. Charlotte Pine, President,
Long Green Valley Assoc., 13310 Fork Road, Baldwin, Md. 21013

People's Counsel; File

MICROFILMED



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

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

DATE: 10·6·92

Inverness Presbyterian Church
49 Inverness Avenue
Baltimore, Maryland 21222

RE:

CASE NUMBER: 93-92-A (Item 100)
S/S Avalon Avenue, 240' W of c/l Delmar Avenue
49 Inverness Avenue
Inverness Presbyterian Church
Petitioner(s): Walter T. Anderson and Charles E. Maynard
HEARING: THURSDAY, OCTOBER 22, 1992 at 10:30 a.m. in Rm. 118, Old Courtho8se.

Dear Petitioner(s):

Please be advised that $ 101.07 is due for advertising and posting of the above captioned property and hearing date.

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

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 109, Towson, Maryland 21204. Place the case number on the check and make same payable to Baltimore County, Maryland. In order to avoid delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

Arnold Jablon

ARNOLD JABLON
DIRECTOR

Francis X. Borgerding, Jr., Esq.

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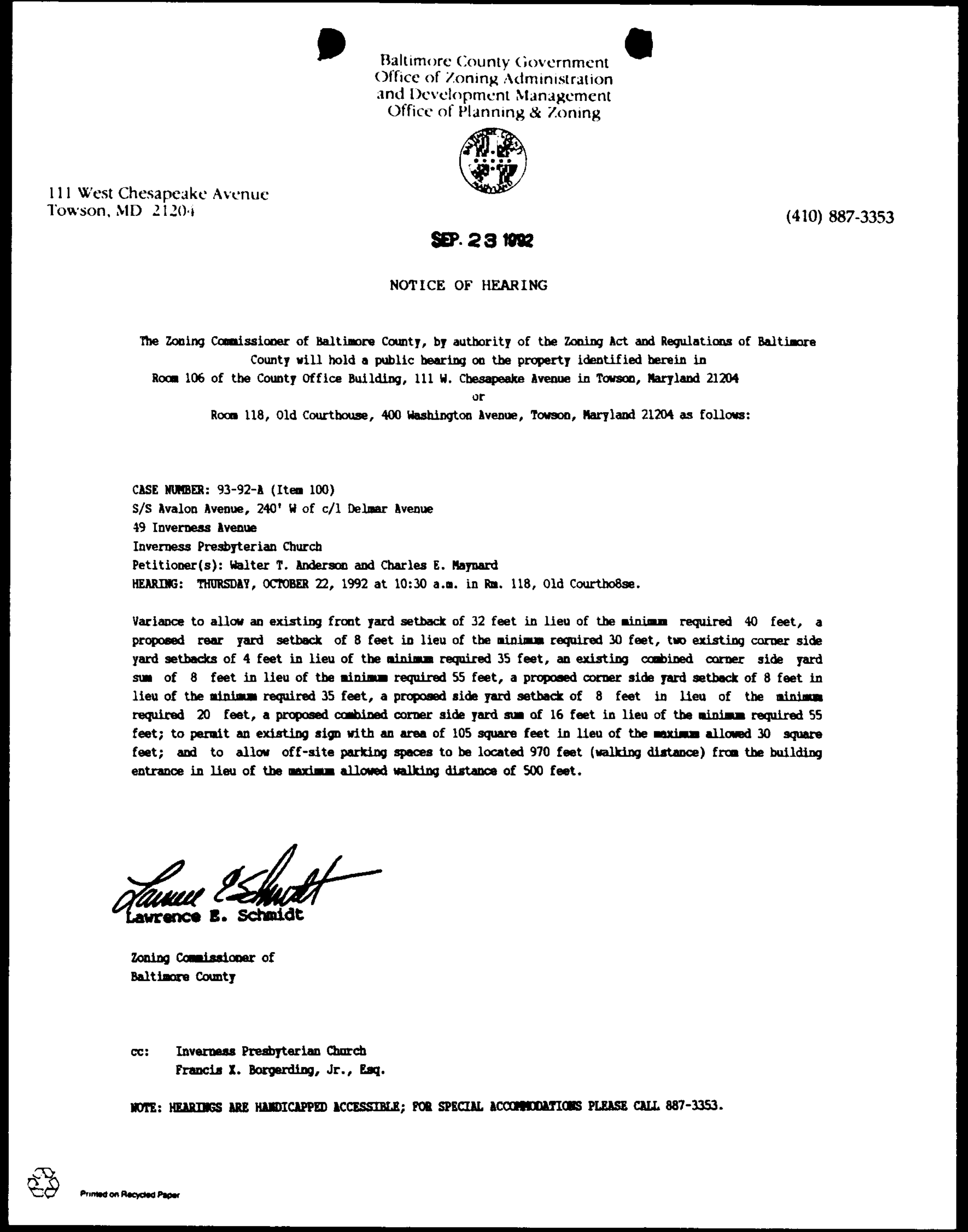

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

SEP. 23 1992

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 93-92-A (Item 100)
S/S Avalon Avenue, 240' W of c/l Delmar Avenue
49 Inverness Avenue
Inverness Presbyterian Church
Petitioner(s): Walter T. Anderson and Charles E. Maynard
HEARING: THURSDAY, OCTOBER 22, 1992 at 10:30 a.m. in Rm. 118, Old Courtho8se.

Variance to allow an existing front yard setback of 32 feet in lieu of the minimum required 40 feet, a proposed rear yard setback of 8 feet in lieu of the minimum required 30 feet, two existing corner side yard setbacks of 4 feet in lieu of the minimum required 35 feet, an existing combined corner side yard sum of 8 feet in lieu of the minimum required 55 feet, a proposed corner side yard setback of 8 feet in lieu of the minimum required 35 feet, a proposed side yard setback of 8 feet in lieu of the minimum required 20 feet, a proposed combined corner side yard sum of 16 feet in lieu of the minimum required 55 feet; to permit an existing sign with an area of 105 square feet in lieu of the maximum allowed 30 square feet; and to allow off-site parking spaces to be located 970 feet (walking distance) from the building entrance in lieu of the maximum allowed walking distance of 500 feet.

Lawrence E. Schmidt
Lawrence E. Schmidt

Zoning Commissioner of
Baltimore County

cc: Inverness Presbyterian Church
Francis X. Borgerding, Jr., Esq.

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

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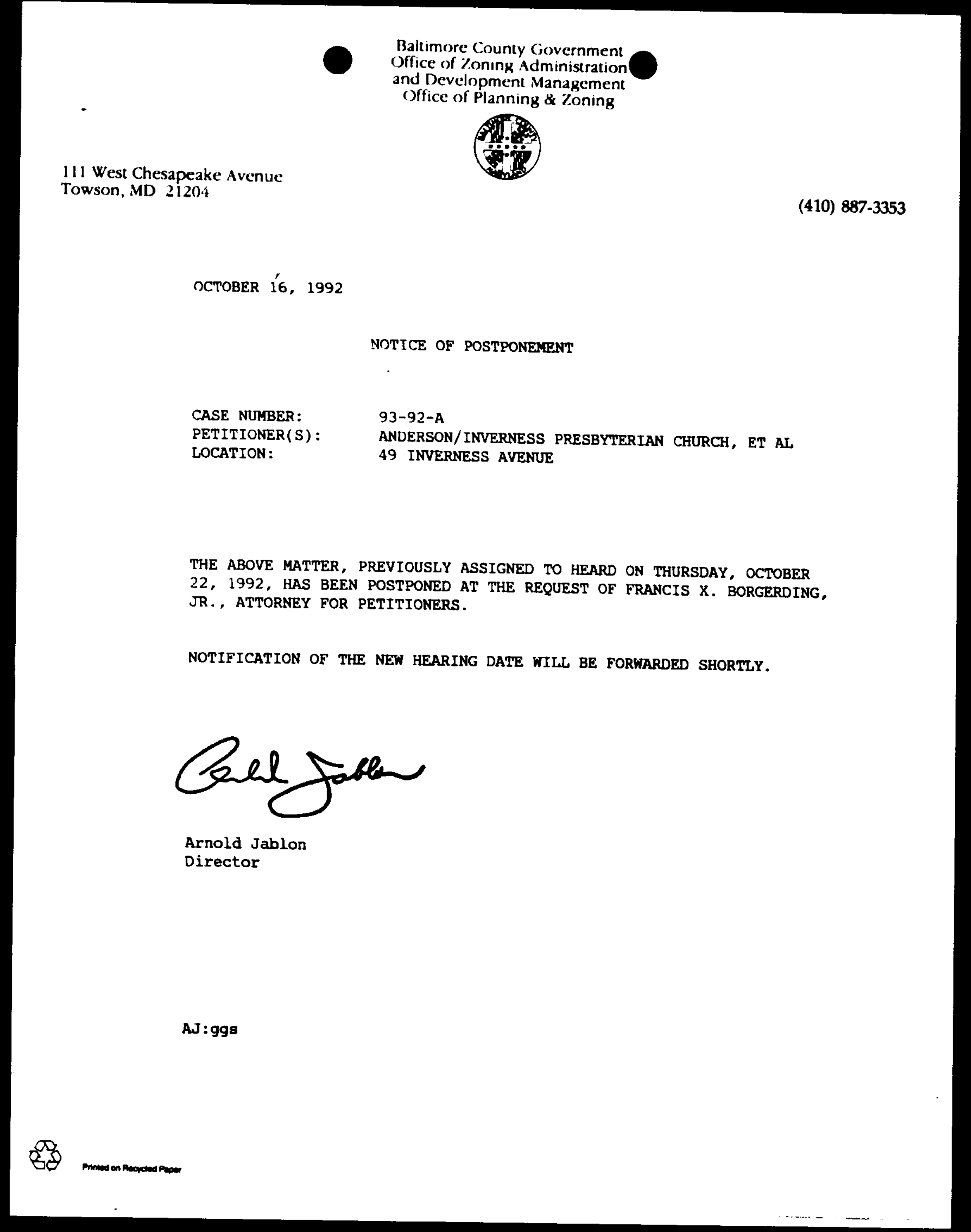

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

OCTOBER 16, 1992

NOTICE OF POSTPONEMENT

CASE NUMBER:	93-92-A
PETITIONER(S):	ANDERSON/INVERNESS PRESBYTERIAN CHURCH, ET AL
LOCATION:	49 INVERNESS AVENUE

THE ABOVE MATTER, PREVIOUSLY ASSIGNED TO HEARD ON THURSDAY, OCTOBER 22, 1992, HAS BEEN POSTPONED AT THE REQUEST OF FRANCIS X. BORGERDING, JR., ATTORNEY FOR PETITIONERS.

NOTIFICATION OF THE NEW HEARING DATE WILL BE FORWARDED SHORTLY.

Arnold Jablon

Arnold Jablon
Director

AJ:ggs

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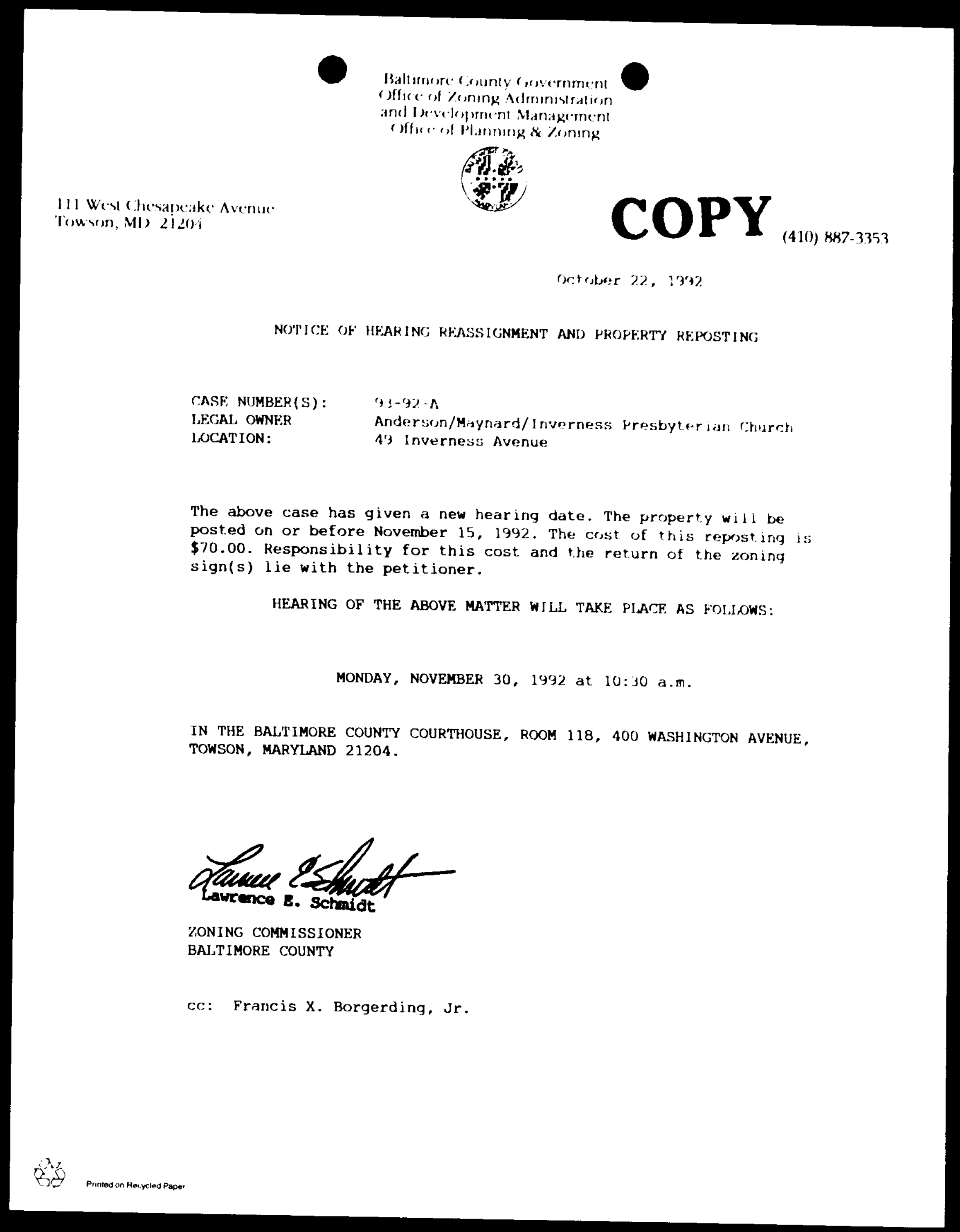

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

COPY

October 22, 1992

NOTICE OF HEARING REASSIGNMENT AND PROPERTY REPOSTING

CASE NUMBER(S):	93-92-A
LEGAL OWNER	Anderson/Maynard/Inverness Presbyterian Church
LOCATION:	49 Inverness Avenue

The above case has given a new hearing date. The property will be posted on or before November 15, 1992. The cost of this reposting is $70.00. Responsibility for this cost and the return of the zoning sign(s) lie with the petitioner.

HEARING OF THE ABOVE MATTER WILL TAKE PLACE AS FOLLOWS:

MONDAY, NOVEMBER 30, 1992 at 10:30 a.m.

IN THE BALTIMORE COUNTY COURTHOUSE, ROOM 118, 400 WASHINGTON AVENUE, TOWSON, MARYLAND 21204.

Lawrence E. Schmidt
Lawrence E. Schmidt

ZONING COMMISSIONER
BALTIMORE COUNTY

cc: Francis X. Borgerding, Jr.

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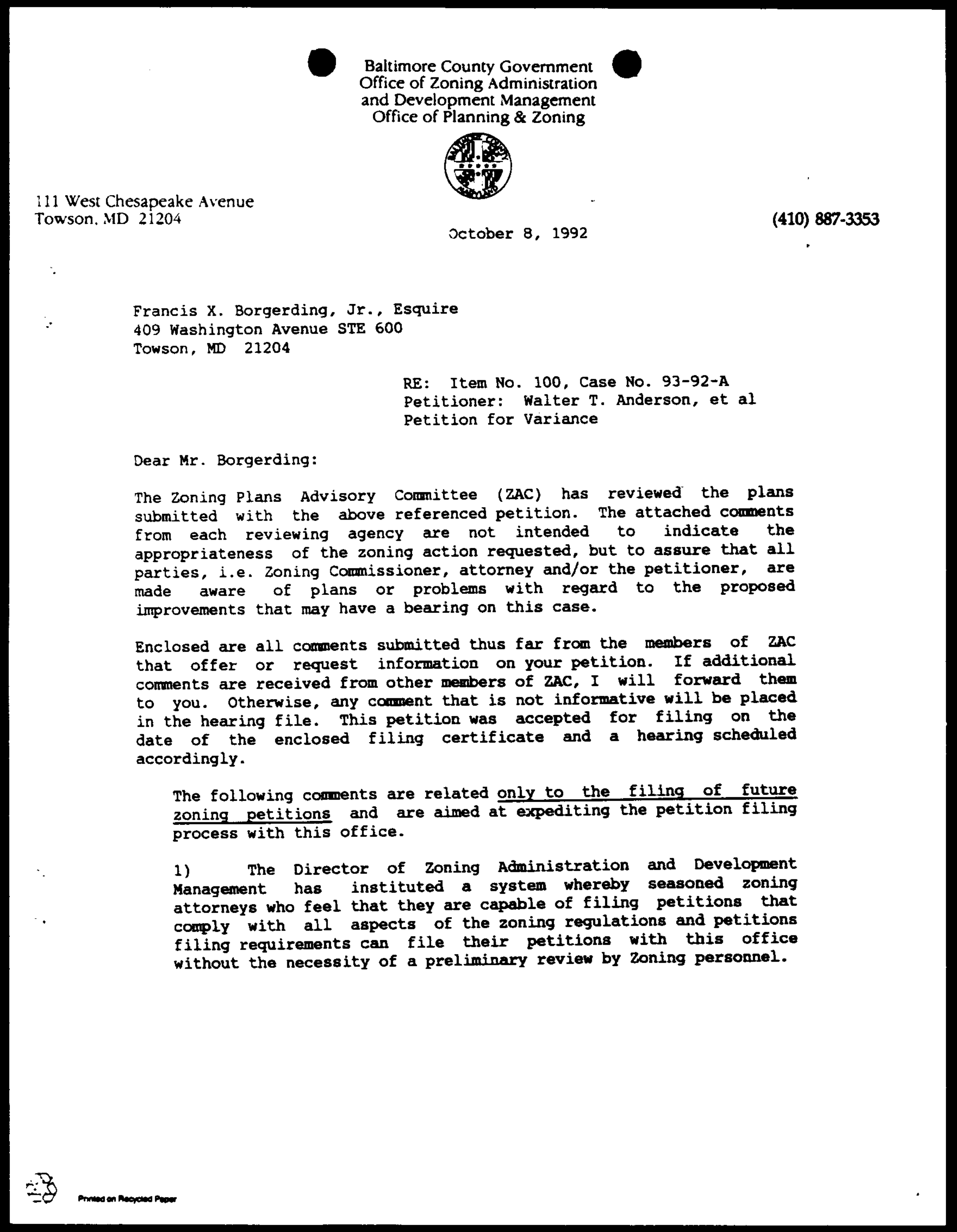

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

October 8, 1992

Francis X. Borgerding, Jr., Esquire
409 Washington Avenue STE 600
Towson, MD 21204

RE: Item No. 100, Case No. 93-92-A
Petitioner: Walter T. Anderson, et al
Petition for Variance

Dear Mr. Borgerding:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

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

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

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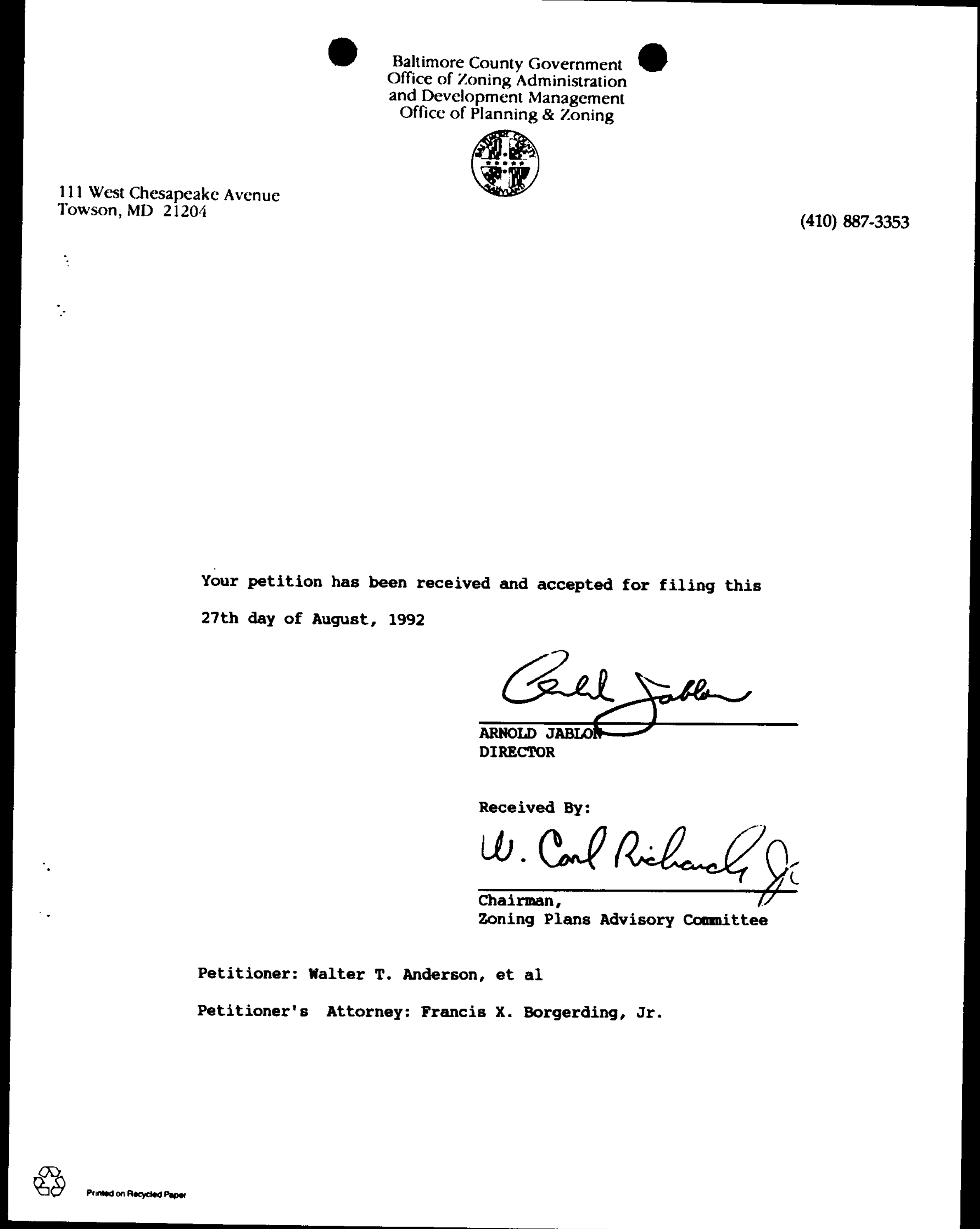

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

Your petition has been received and accepted for filing this

27th day of August, 1992

Arnold Jablon
ARNOLD JABLON
DIRECTOR

Received By:

W. Carl Richards, Jr.
Chairman,
Zoning Plans Advisory Committee

Petitioner: Walter T. Anderson, et al

Petitioner's Attorney: Francis X. Borgerding, Jr.

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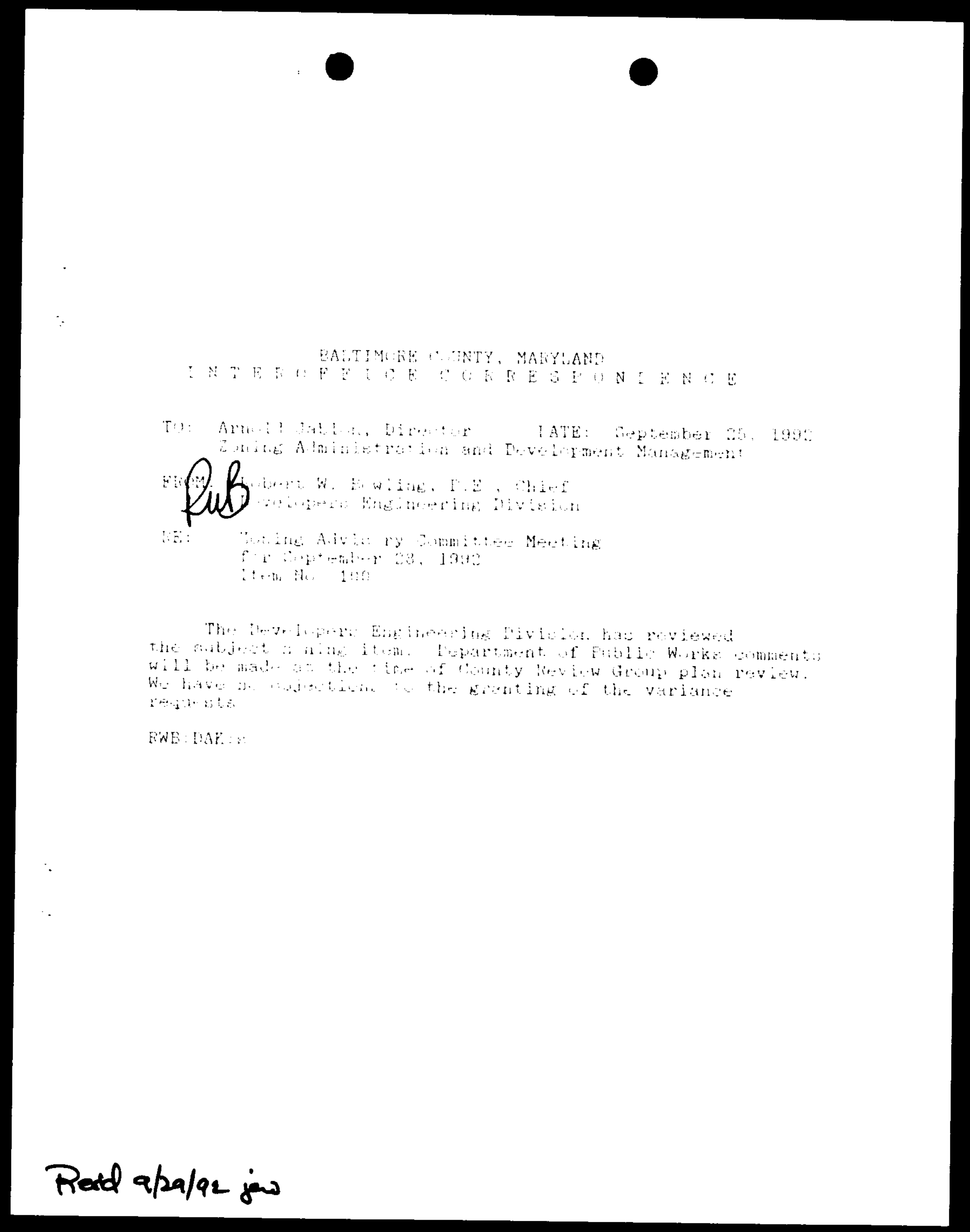


BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: September 25, 1992
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief
Developers Engineering Division

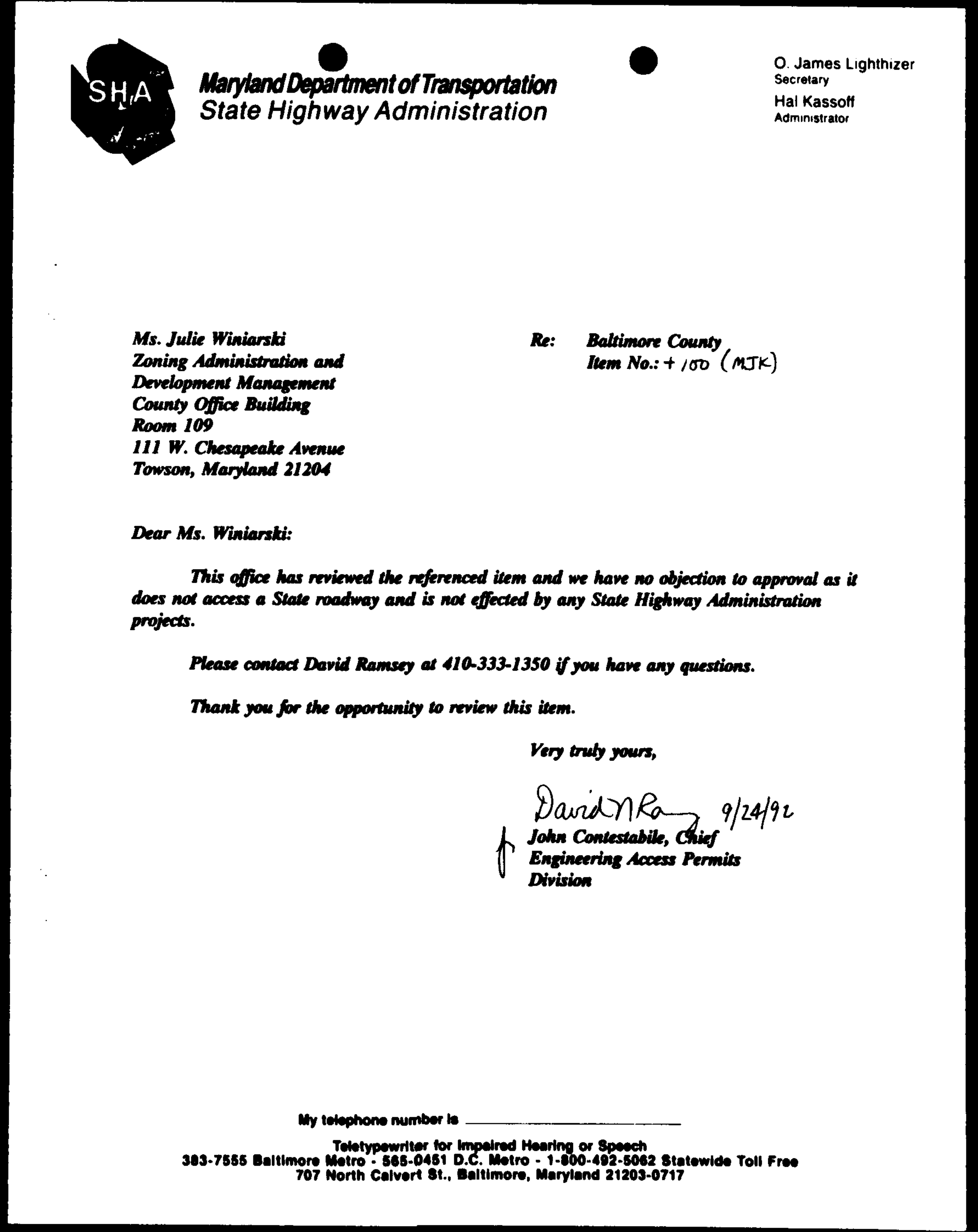
RWB

RE: Zoning Advisory Committee Meeting
for September 28, 1992
Item No. 100

The Developers Engineering Division has reviewed the subject zoning item. Department of Public Works comments will be made at the time of County Review Group plan review. We have no objections to the granting of the variance requests.

RWB:DAK:s

Rec'd 9/29/92 jw



Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

Ms. Julie Winiarski
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: + 100 (MJK)

Dear Ms. Winiarski:

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 effected by any State Highway Administration projects.

Please contact David Ramsey at 410-333-1350 if you have any questions.

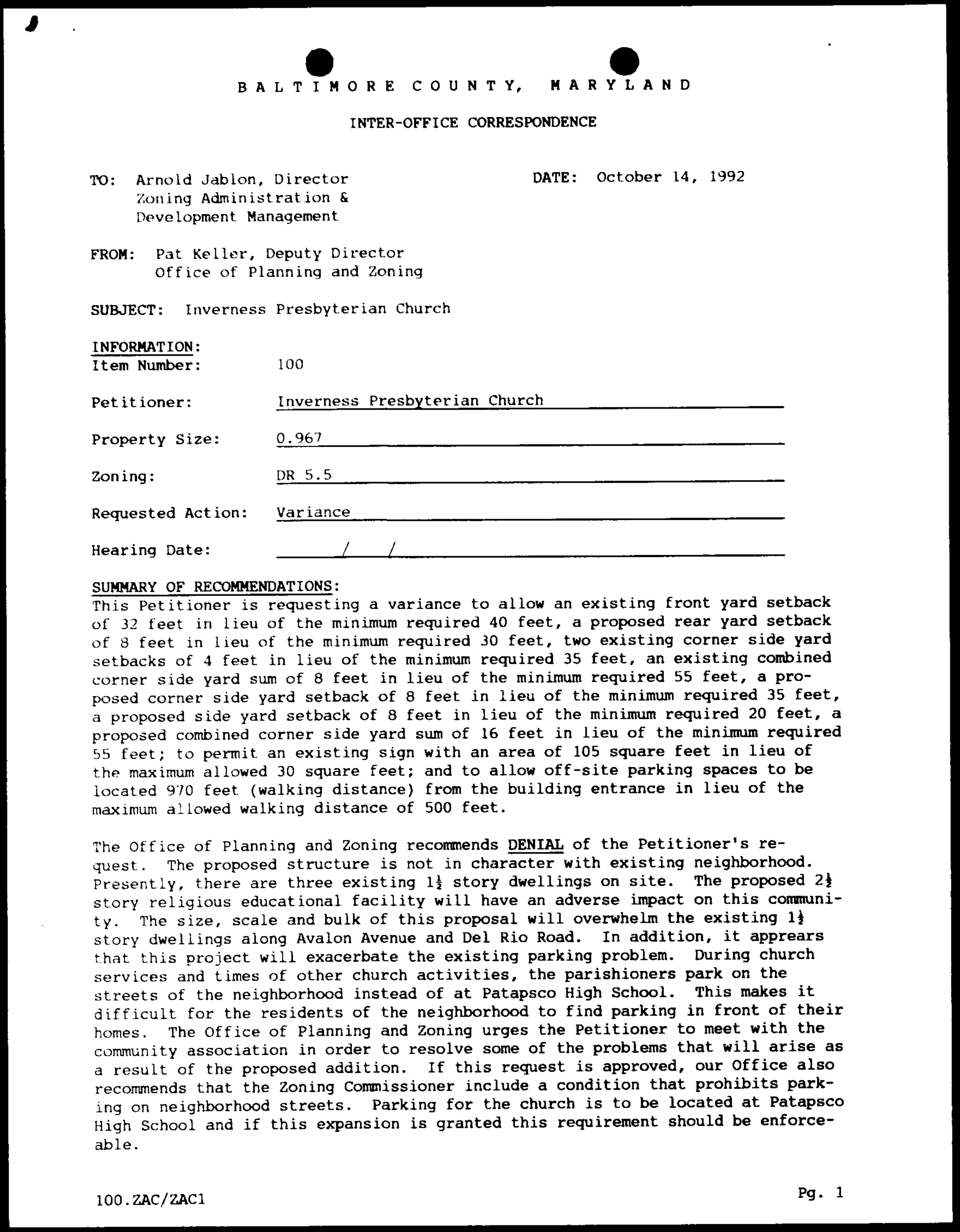
Thank you for the opportunity to review this item.

Very truly yours,

David N Ramsey 9/24/92
John Contestabile, Chief
Engineering Access Permits
Division

My telephone number is ____________________

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



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

DATE: October 14, 1992

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

SUBJECT: Inverness Presbyterian Church

INFORMATION:
Item Number: 100

Petitioner: Inverness Presbyterian Church

Property Size: 0.967

Zoning: DR 5.5

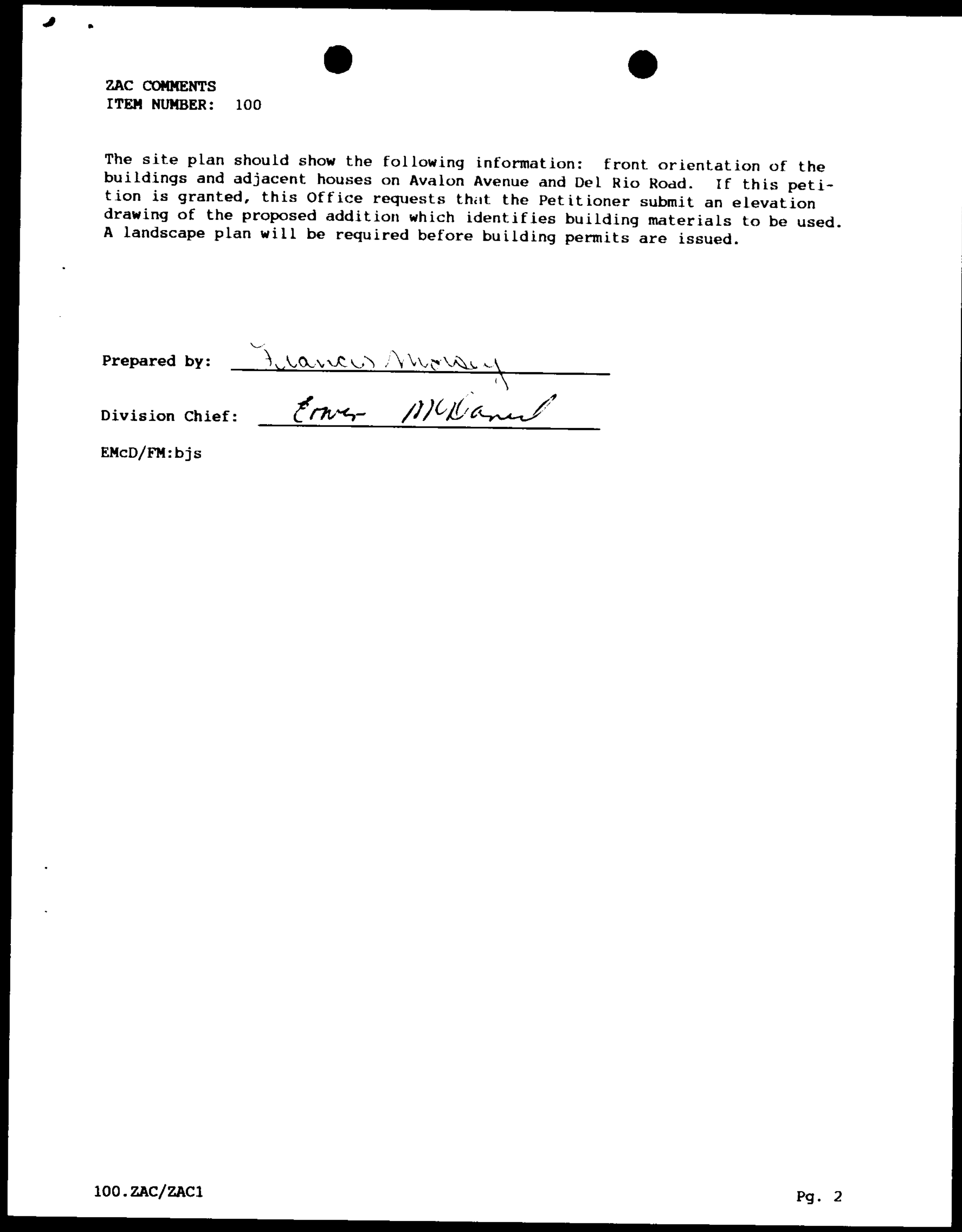
Requested Action: Variance

Hearing Date: ___/___/___

SUMMARY OF RECOMMENDATIONS:
This Petitioner is requesting a variance to allow an existing front yard setback of 32 feet in lieu of the minimum required 40 feet, a proposed rear yard setback of 8 feet in lieu of the minimum required 30 feet, two existing corner side yard setbacks of 4 feet in lieu of the minimum required 35 feet, an existing combined corner side yard sum of 8 feet in lieu of the minimum required 55 feet, a proposed corner side yard setback of 8 feet in lieu of the minimum required 35 feet, a proposed side yard setback of 8 feet in lieu of the minimum required 20 feet, a proposed combined corner side yard sum of 16 feet in lieu of the minimum required 55 feet; to permit an existing sign with an area of 105 square feet in lieu of the maximum allowed 30 square feet; and to allow off-site parking spaces to be located 970 feet (walking distance) from the building entrance in lieu of the maximum allowed walking distance of 500 feet.

The Office of Planning and Zoning recommends DENIAL of the Petitioner's request. The proposed structure is not in character with existing neighborhood. Presently, there are three existing 1½ story dwellings on site. The proposed 2½ story religious educational facility will have an adverse impact on this community. The size, scale and bulk of this proposal will overwhelm the existing 1½ story dwellings along Avalon Avenue and Del Rio Road. In addition, it apprears that this project will exacerbate the existing parking problem. During church services and times of other church activities, the parishioners park on the streets of the neighborhood instead of at Patapsco High School. This makes it difficult for the residents of the neighborhood to find parking in front of their homes. The Office of Planning and Zoning urges the Petitioner to meet with the community association in order to resolve some of the problems that will arise as a result of the proposed addition. If this request is approved, our Office also recommends that the Zoning Commissioner include a condition that prohibits parking on neighborhood streets. Parking for the church is to be located at Patapsco High School and if this expansion is granted this requirement should be enforceable.

100.ZAC/ZAC1 Pg. 1



ZAC COMMENTS
ITEM NUMBER: 100

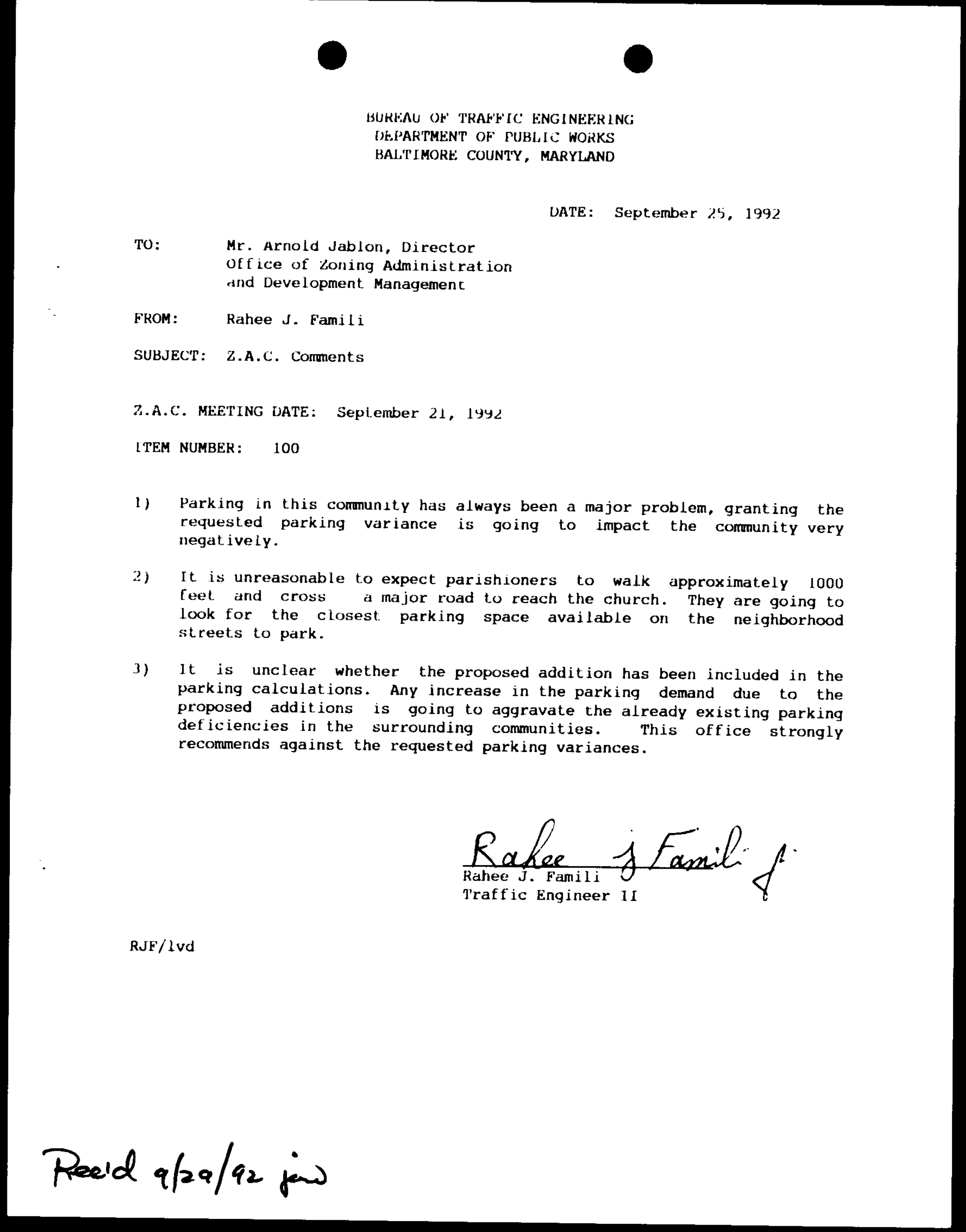
The site plan should show the following information: front orientation of the buildings and adjacent houses on Avalon Avenue and Del Rio Road. If this petition is granted, this Office requests that the Petitioner submit an elevation drawing of the proposed addition which identifies building materials to be used. A landscape plan will be required before building permits are issued.

Prepared by: Frances Morley

Division Chief: Ervin McDaniel

EMcD/FM:bjs

100.ZAC/ZAC1 Pg. 2



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

DATE: September 25, 1992

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

FROM: Rahee J. Famili

SUBJECT: Z.A.C. Comments

Z.A.C. MEETING DATE: September 21, 1992

ITEM NUMBER: 100

1) Parking in this community has always been a major problem, granting the requested parking variance is going to impact the community very negatively.

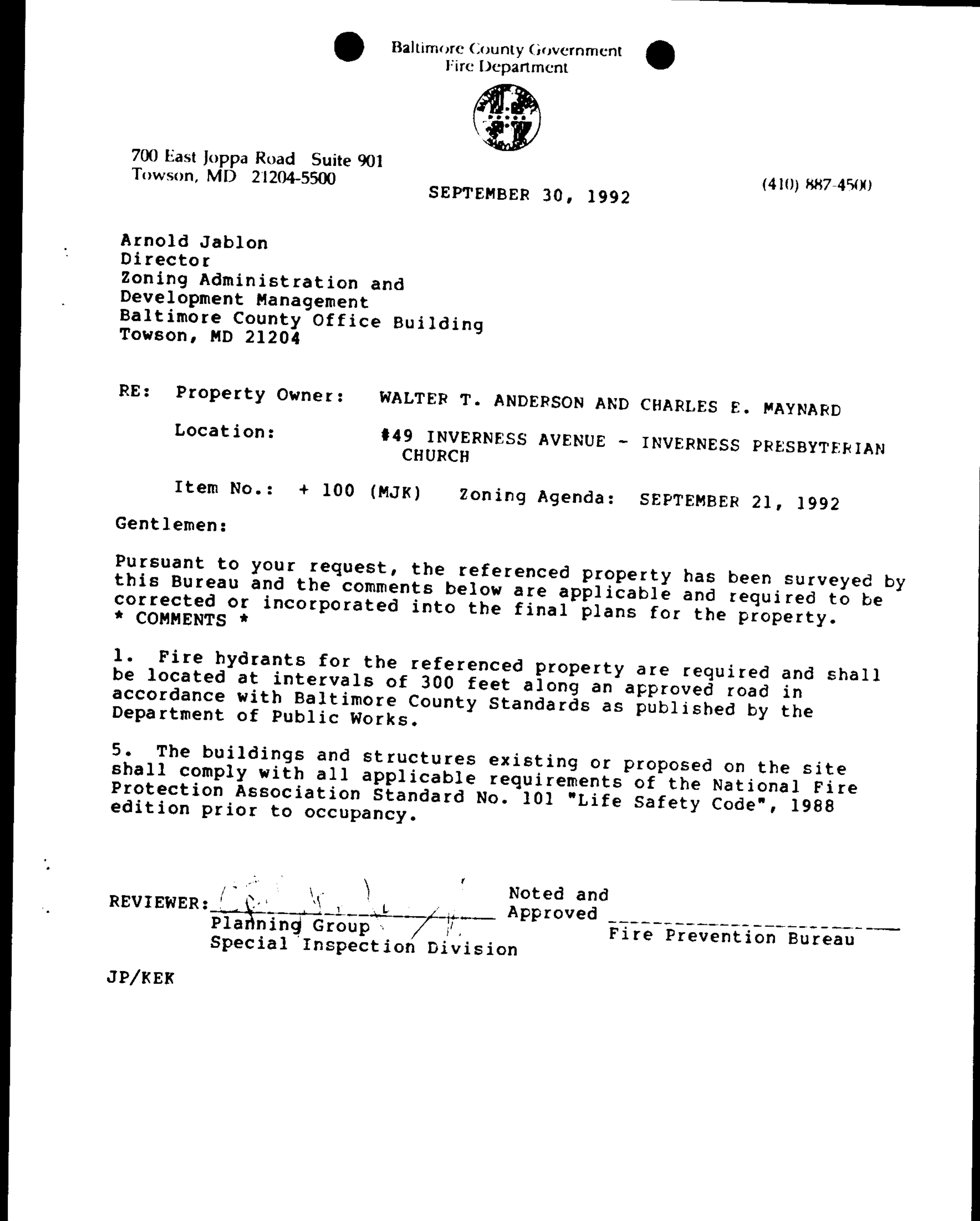
2) It is unreasonable to expect parishioners to walk approximately 1000 feet and cross a major road to reach the church. They are going to look for the closest parking space available on the neighborhood streets to park.

3) It is unclear whether the proposed addition has been included in the parking calculations. Any increase in the parking demand due to the proposed additions is going to aggravate the already existing parking deficiencies in the surrounding communities. This office strongly recommends against the requested parking variances.

Rahee J. Famili
Rahee J. Famili
Traffic Engineer II

RJF/lvd

Rec'd 9/29/92 jw



Baltimore County Government
Fire Department

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

(410) 887-4500

SEPTEMBER 30, 1992

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

RE: Property Owner: WALTER T. ANDERSON AND CHARLES E. MAYNARD

Location: #49 INVERNESS AVENUE - INVERNESS PRESBYTERIAN CHURCH

Item No.: + 100 (MJK) Zoning Agenda: SEPTEMBER 21, 1992

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.
* COMMENTS *

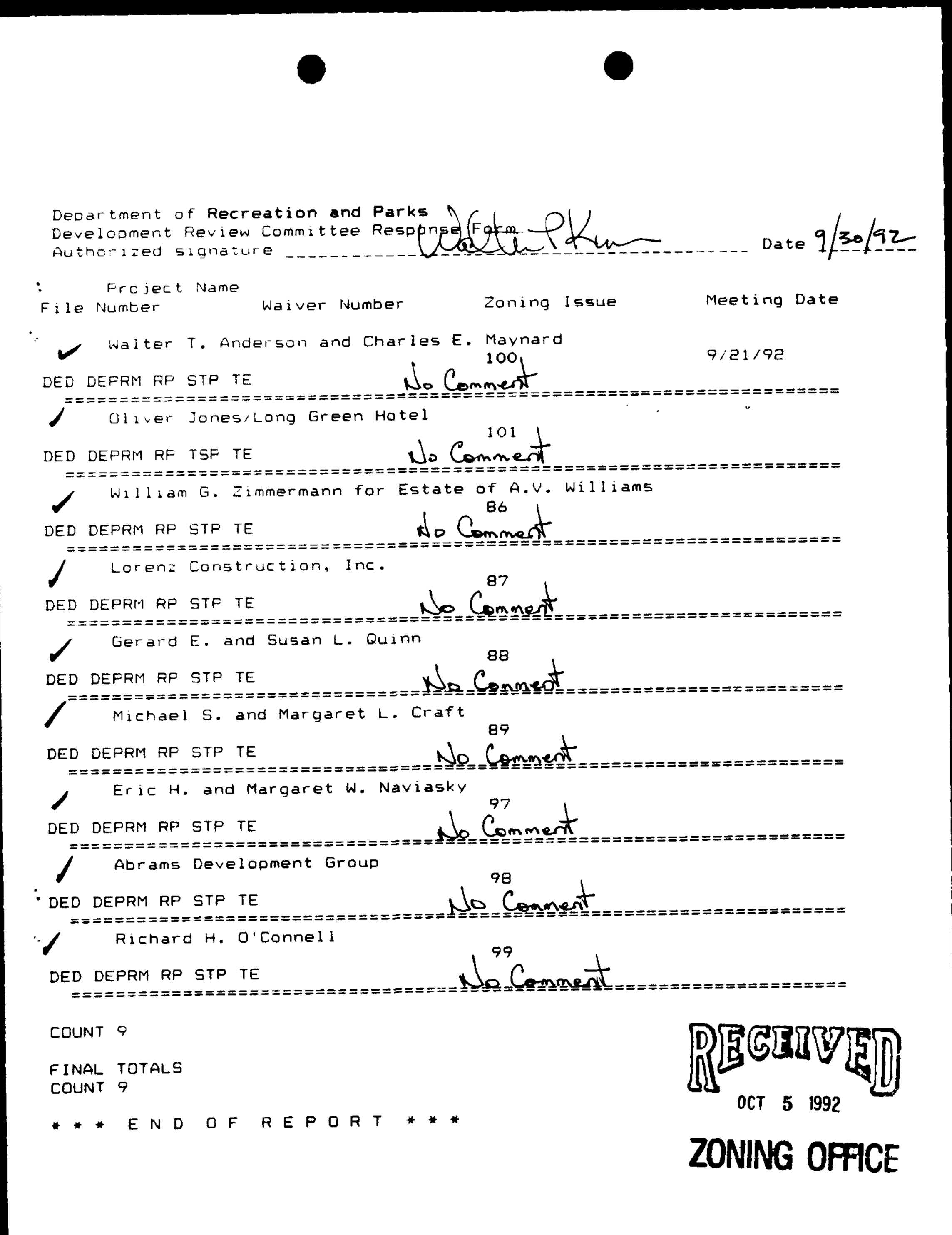
1. Fire hydrants for the referenced property are required and shall be located at intervals of 300 feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

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

REVIEWER: ________________
Planning Group
Special Inspection Division

Noted and
Approved ________________
Fire Prevention Bureau

JP/KEK



Department of Recreation and Parks
Development Review Committee Response Form
Authorized signature ________________ Date 9/30/92

```
  Project Name
File Number          Waiver Number       Zoning Issue        Meeting Date

✓ Walter T. Anderson and Charles E. Maynard
                                    100                      9/21/92
DED DEPRM RP STP TE            No Comment
=========================================================================
✓ Oliver Jones/Long Green Hotel
                                    101
DED DEPRM RP TSP TE            No Comment
=========================================================================
✓ William G. Zimmermann for Estate of A.V. Williams
                                    86
DED DEPRM RP STP TE            No Comment
=========================================================================
✓ Lorenz Construction, Inc.
                                    87
DED DEPRM RP STP TE            No Comment
=========================================================================
✓ Gerard E. and Susan L. Quinn
                                    88
DED DEPRM RP STP TE            No Comment
=========================================================================
✓ Michael S. and Margaret L. Craft
                                    89
DED DEPRM RP STP TE            No Comment
=========================================================================
✓ Eric H. and Margaret W. Naviasky
                                    97
DED DEPRM RP STP TE            No Comment
=========================================================================
✓ Abrams Development Group
                                    98
DED DEPRM RP STP TE            No Comment
=========================================================================
✓ Richard H. O'Connell
                                    99
DED DEPRM RP STP TE            No Comment
=========================================================================

COUNT 9

FINAL TOTALS
COUNT 9

* * *   E N D   O F   R E P O R T   * * *
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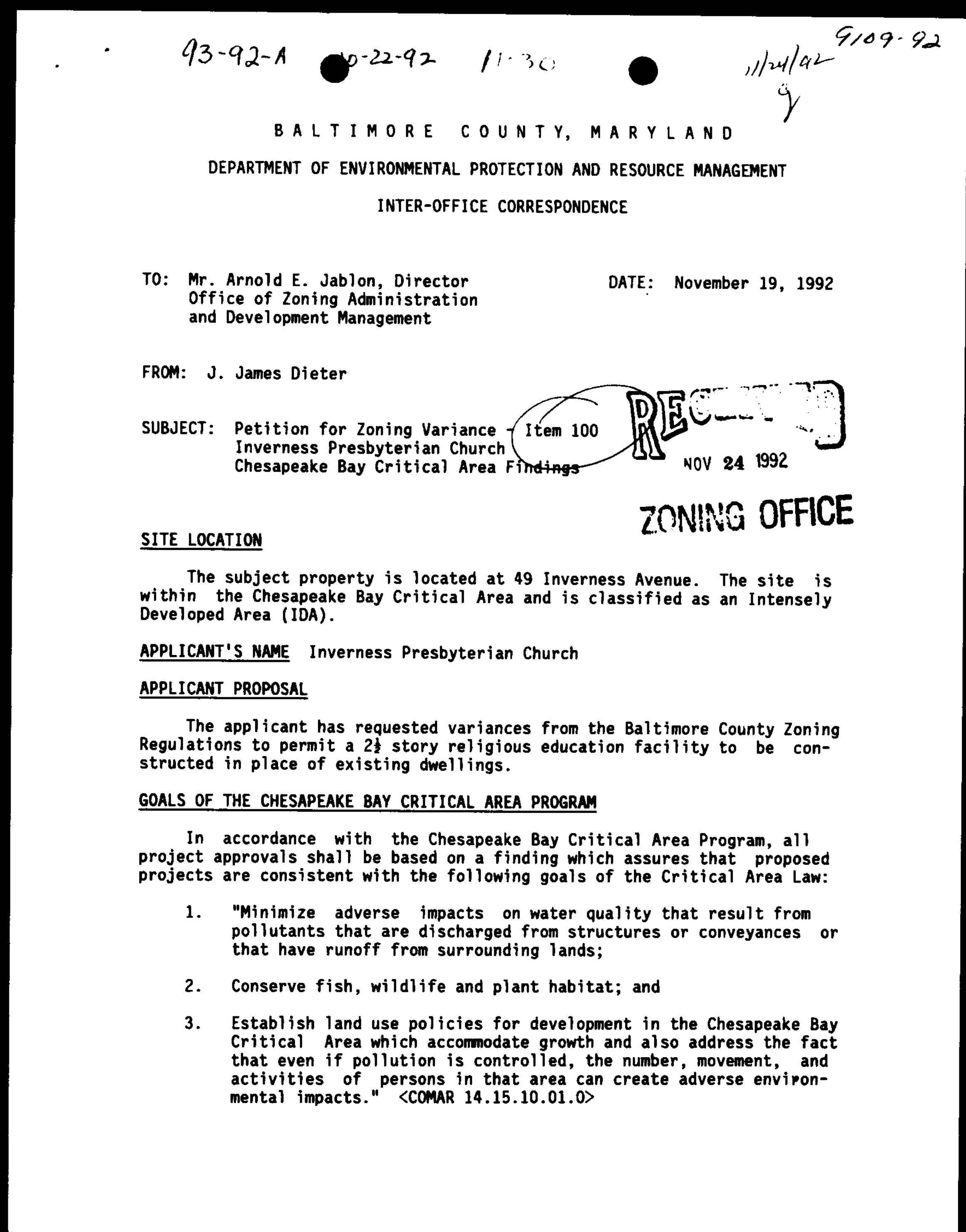
RECEIVED
OCT 5 1992
ZONING OFFICE



93-92-A 10-22-92 11·30 11/24/92 9109-92 y

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold E. Jablon, Director
Office of Zoning Administration
and Development Management

DATE: November 19, 1992

FROM: J. James Dieter

SUBJECT: Petition for Zoning Variance - Item 100
Inverness Presbyterian Church
Chesapeake Bay Critical Area Findings

RECEIVED
NOV 24 1992
ZONING OFFICE

SITE LOCATION

The subject property is located at 49 Inverness Avenue. The site is within the Chesapeake Bay Critical Area and is classified as an Intensely Developed Area (IDA).

APPLICANT'S NAME Inverness Presbyterian Church

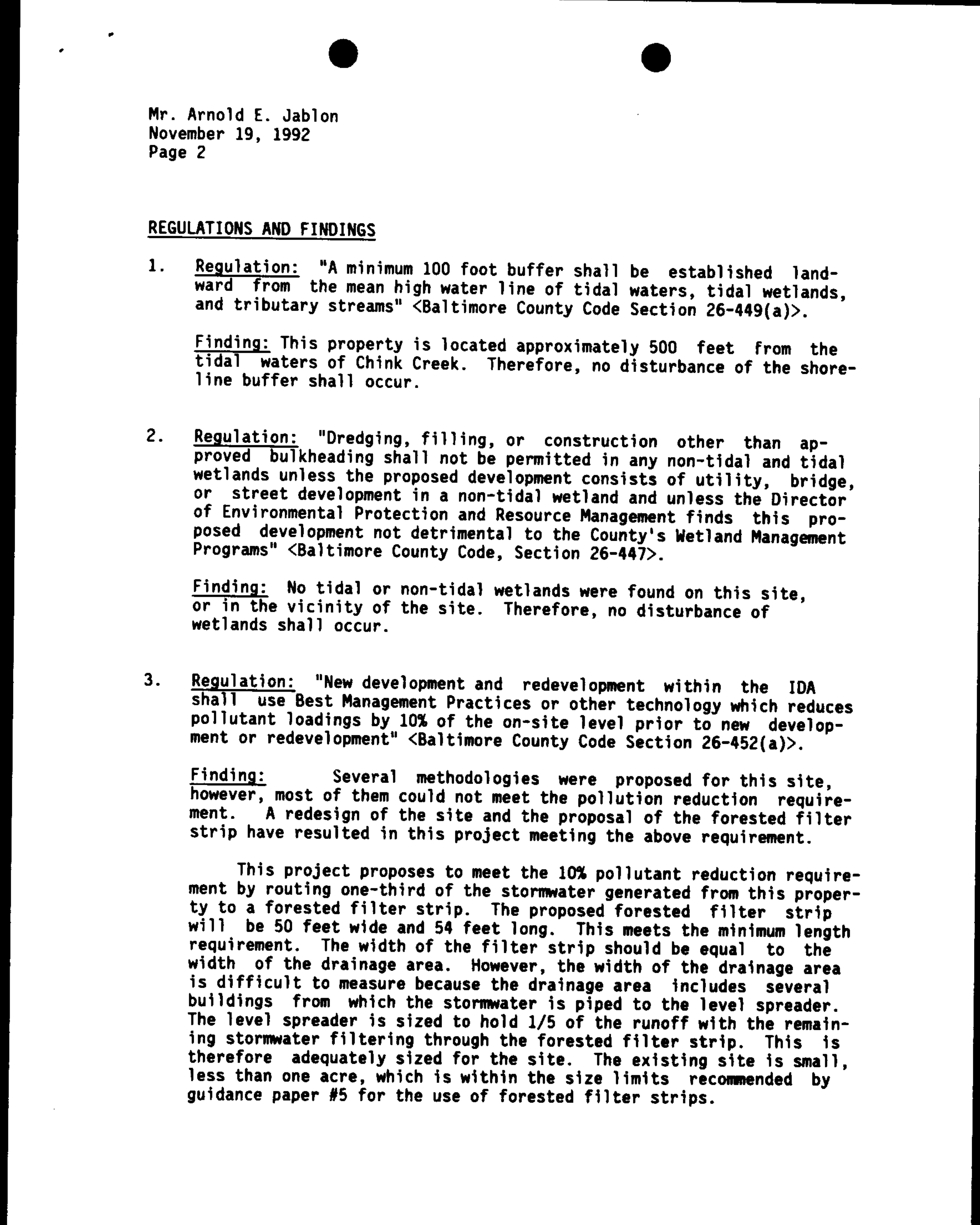
APPLICANT PROPOSAL

The applicant has requested variances from the Baltimore County Zoning Regulations to permit a 2½ story religious education facility to be constructed in place of existing dwellings.

GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a finding which assures that proposed projects are consistent with the following goals of the Critical Area Law:

1. "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff 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." <COMAR 14.15.10.01.0>



Mr. Arnold E. Jablon
November 19, 1992
Page 2

REGULATIONS AND FINDINGS

1. Regulation: "A minimum 100 foot buffer shall be established landward from the mean high water line of tidal waters, tidal wetlands, and tributary streams" <Baltimore County Code Section 26-449(a)>.

   Finding: This property is located approximately 500 feet from the tidal waters of Chink Creek. Therefore, no disturbance of the shoreline buffer shall occur.

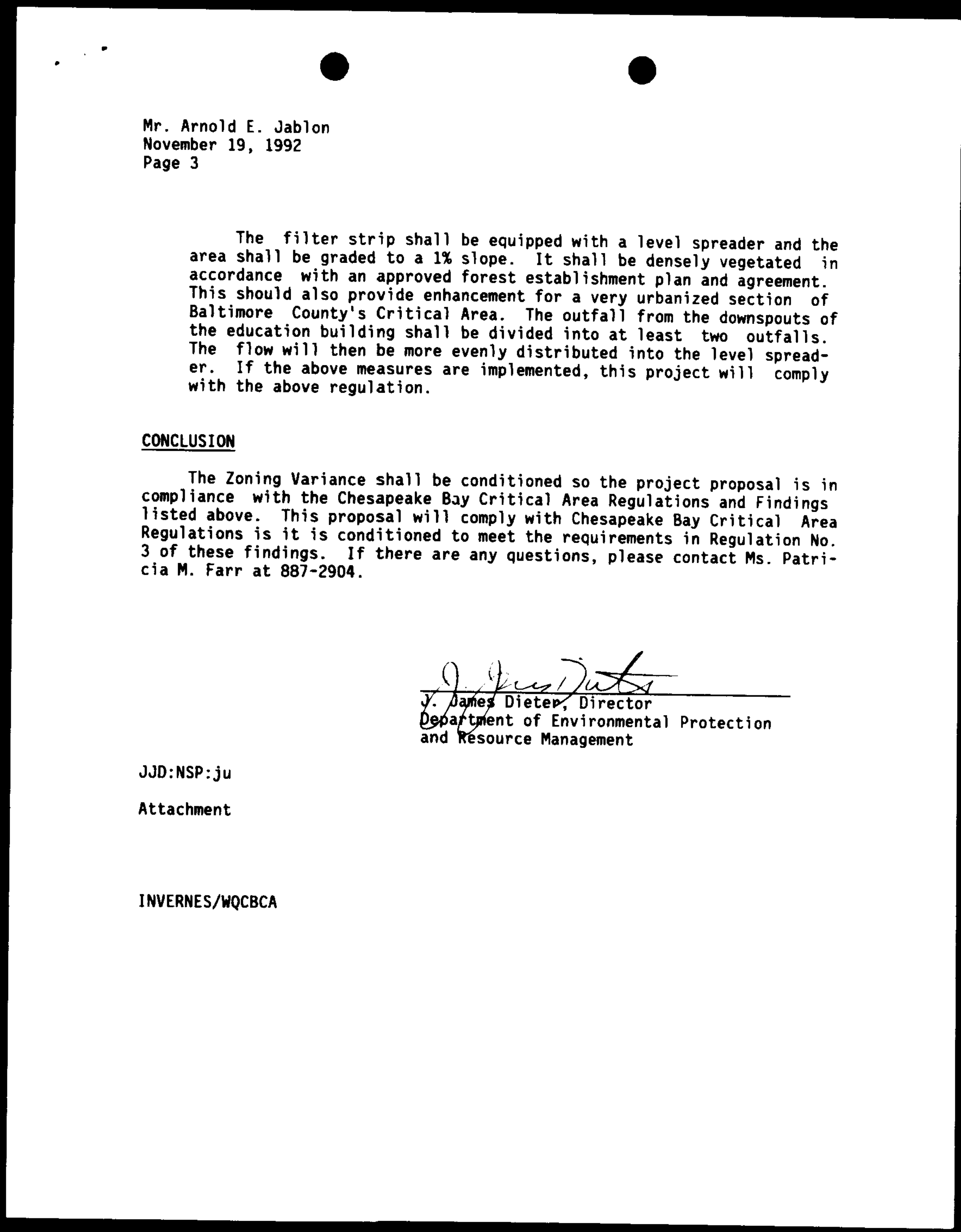
2. Regulation: "Dredging, filling, or construction other than approved bulkheading shall not be permitted in any non-tidal and tidal wetlands unless the proposed development consists of utility, bridge, or street development in a non-tidal wetland and unless the Director of Environmental Protection and Resource Management finds this proposed development not detrimental to the County's Wetland Management Programs" <Baltimore County Code, Section 26-447>.

   Finding: No tidal or non-tidal wetlands were found on this site, or in the vicinity of the site. Therefore, no disturbance of wetlands shall occur.

3. Regulation: "New development and redevelopment within the IDA shall use Best Management Practices or other technology which reduces pollutant loadings by 10% of the on-site level prior to new development or redevelopment" <Baltimore County Code Section 26-452(a)>.

   Finding: Several methodologies were proposed for this site, however, most of them could not meet the pollution reduction requirement. A redesign of the site and the proposal of the forested filter strip have resulted in this project meeting the above requirement.

   This project proposes to meet the 10% pollutant reduction requirement by routing one-third of the stormwater generated from this property to a forested filter strip. The proposed forested filter strip will be 50 feet wide and 54 feet long. This meets the minimum length requirement. The width of the filter strip should be equal to the width of the drainage area. However, the width of the drainage area is difficult to measure because the drainage area includes several buildings from which the stormwater is piped to the level spreader. The level spreader is sized to hold 1/5 of the runoff with the remaining stormwater filtering through the forested filter strip. This is therefore adequately sized for the site. The existing site is small, less than one acre, which is within the size limits recommended by guidance paper #5 for the use of forested filter strips.



Mr. Arnold E. Jablon
November 19, 1992
Page 3

The filter strip shall be equipped with a level spreader and the area shall be graded to a 1% slope. It shall be densely vegetated in accordance with an approved forest establishment plan and agreement. This should also provide enhancement for a very urbanized section of Baltimore County's Critical Area. The outfall from the downspouts of the education building shall be divided into at least two outfalls. The flow will then be more evenly distributed into the level spreader. If the above measures are implemented, this project will comply with the above regulation.

CONCLUSION

The Zoning Variance shall be conditioned so the project proposal is in compliance with the Chesapeake Bay Critical Area Regulations and Findings listed above. This proposal will comply with Chesapeake Bay Critical Area Regulations is it is conditioned to meet the requirements in Regulation No. 3 of these findings. If there are any questions, please contact Ms. Patricia M. Farr at 887-2904.

J. James Dieter
J. James Dieter, Director
Department of Environmental Protection
and Resource Management

JJD:NSP:ju

Attachment

INVERNES/WQCBCA

9026-92
11/18/92

DiNenna and Breschi
ATTORNEYS AT LAW

GEORGE A. BRESCHI
FRANCIS X. BORGERDING, JR.‡
ROBERT A. BRESCHI

MERCANTILE BLDG. - SUITE 600
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6820
FAX (410) 296-6884

S. ERIC DiNENNA
(1938-1991)

OF COUNSEL
JENKINS & AWALT

November 17, 1992

Baltimore County Office of Zoning
  Administration and Development Management
111 West Chesapeake Avenue
Room 109
Towson, Maryland 21204

ATTN: Gwen

RE: Case No.: 93-92-A
Legal Owner: Anderson/Maynard/
  Inverness Presbyterian Church
Location: 49 Inverness Avenue
Hearing Date: 11/30/92 @ 10:30 A.M.

Dear Gwen:

Pursuant to our recent telephone conversation, I am writing on behalf of my client, Inverness Presbyterian Church, to request that the above-referenced petition for relief be withdrawn and the hearing scheduled for November 30, 1992 be dismissed. The members of the church have notified the Inverness Community Association and the surrounding neighbors of their intent to withdraw the above-referenced petition.

Thank you very much for your consideration in this matter and if you have any questions, please feel free to contact me.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk
cc: William B. Rockey
     Thomas L. Shannahan

RECEIVED
NOV 18 1992
ZONING OFFICE

8415-92
10/16/92

DiNenna and Breschi
ATTORNEYS AT LAW

GEORGE A. BRESCHI
FRANCIS X. BORGERDING, JR.‡
ROBERT A. BRESCHI

MERCANTILE BLDG. - SUITE 600
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6820
FAX (410) 296-6884

S. ERIC DiNENNA
(1938-1991)

OF COUNSEL
JENKINS & AWALT

October 15, 1992

Arnold Jablon, Esquire
Director
Zoning Administration and
  Development Management
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Case No.: 93-92-A
Petitioner: Anderson, et al.
Hearing Date: 10/22/92 @
  10:30 A.M.

Dear Mr. Jablon:

I am writing to request a postponement of the above-referenced case scheduled for hearing on Thursday, October 22, 1992, at 10:30 A.M. The reason for my request for postponement is that I am scheduled as an attorney in the case of State Roads Administration v. Healy, et al., case number 88CG3260 in the Circuit Court for Baltimore County. That case is a jury trial which will commence on October 20, 1992 and which in all probability will run into October 22, 1992 and/or in any event impede my ability to properly prepare for the above-referenced matter.

Thank you very much for your understanding and assistance in this matter. If you have any questions, please feel free to contact me.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk

RECEIVED
15 1992
ZONING OFFICE

P.01

11/16/92 8996-92

Inverness Presbyterian Church in America
49 Inverness Avenue
BALTIMORE MARYLAND [illegible]
Pastor WILLIAM JONES, D.Min.
Pastor's Study 282-[illegible]
Church Office 282-[illegible]

November [illegible] 1992

D[illegible] & Breschi
S[illegible] 600
409 Washington Avenue
Towson, MD 21204

ATTN: Mr. Francis X. Borgerding, Esquire

RE: Inverness Presbyterian Church

As a follow up to a recent telephone conversation, by this letter [illegible] direct you to stop work on the zoning variance package for the Inverness [illegible]byterian Church.

A recent meeting with the Community Association has revealed that strong opposition exists within the surrounding neighborhood concerning this pr[illegible] We realize now this project does not fully resolve our largest ne[illegible], that of close, ample parking. We further understand that [illegible]tive comments have been received from the Bureau of Traffic Engineering [illegible] the Deputy Director of Zoning concerning the parking situation and the [illegible]'s impact on the neighborhoo[illegible] Given all these factors the church [illegible]ship recently vo[illegible] to term[illegible] this project.

We request that [illegible] work immed[illegible]ly cease on this project. Please [illegible]fy the Office of [illegible]ning and Zoning of our [illegible]t to terminate this [illegible]ject. Any input tha[illegible] you may have or which th[illegible] Office of Planning & Zoning may give regarding the return of the signs [illegible]ld also be appreciated.

On behalf of the Inverness Presbyterian Church, we would like to thank y[illegible] for your counsel in this matter.

Very truly yours,

Inverness Presbyterian Church

William B. Rockey
[illegible]am B. Rockey, P.E.
[illegible]er-Planning Committee

Thomas O. Shannahan
Ruling Elder

Cancelation of Zoning hearing [illegible] Novem[illegible] [illegible] 992

Dundalk Eagle, Dundalk, Md. October 29, 1992 Page 13

West Inverness Church Cancels Zoning Variance

by Darcy Spencer

WEST INVERNESS PRESBYTERIAN CHURCH canceled a variance Monday that asked for permission to construct a Sunday school building. The church would have torn down three of its house behind the church & built one large facility. Some community members opposed the plan because parking would be tighter than it already is. Pictured is Donna Hutchinson, who stopped to write down some information about the variance before it was canceled. *photo by Mary Gardella*

West Inverness Presbyterian Church canceled a zoning variance Monday that would have authorized the construction of a Sunday school building, provided access for handicapped people & allowed other additions.

The cancellation came amid community opposition to the project, which could have stretched the church's boundaries & caused parking problems.

The church is nestled between single homes on Del Rio Road & Avalon Avenue.

"The problem is our location," said Rev. William Jones, who has been pastor of the church for 23 years.

"We're quite aware of what people are saying. That's why we postponed it," he said during an interview last week. The church's planning committee announced the decision to cancel during services last Sunday morning.

When asked if the church foresaw community opposition to the building, he said, "That's always the way life is, especially today."

The church planned to tear down three houses it owns behind the church & build a single Sunday school building.

An elevator also would have been installed to provide access for physically handicapped & elderly people.

Services are delivered on the second floor of the church, so those who cannot walk up the stairs have to be carried, Rev. Jones said.

A Del Rio Road resident & a member of the church who asked not to be identified said she has mixed feelings about the additions.

She said it isn't fair for people who live next to the church to have to see a big building when they look out their door.

She added that the already tight parking situation would have been worse, assuming more people come to the church following the building's construction.

The church collected over $34,000 for the now defunct project, according to a bulletin given out at the church last Sunday.

He said the money could be used for improvements, but the church's elected officers will determine how the money is now spent.

School Board To Meet

The next meeting of the Board of Education of Baltimore County will be held Thursday, November 5, at the Greenwood office, 6901 Charles Street in Towson at 5 pm.

After the board adjourns to meet in executive session, the open meeting will reconvene at 8 pm. The public is welcome at all open sessions.

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ANNAPOLIS MALL (Near Ward's)
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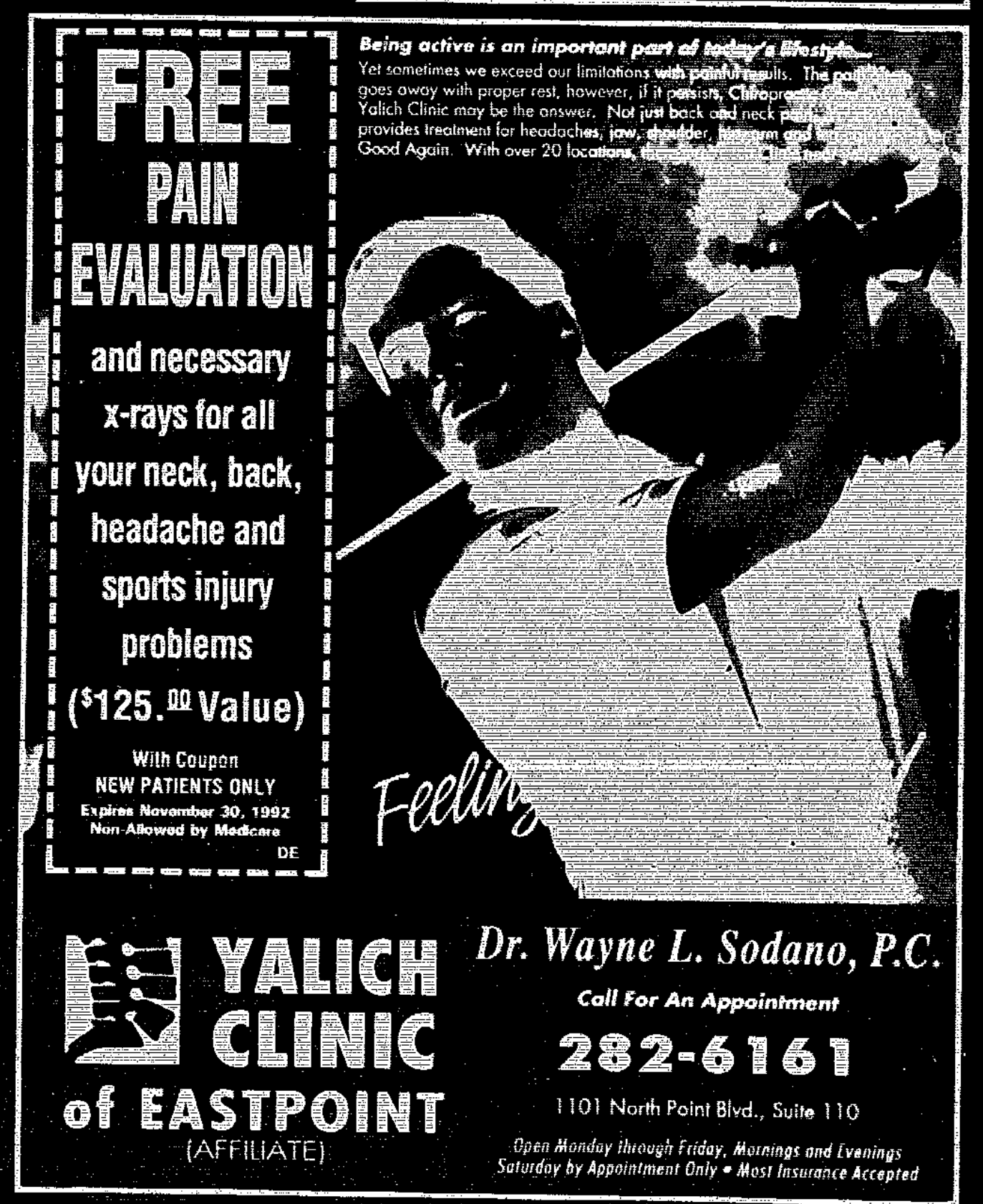
State and federally funded programs, insurance co-payment, prior orders and special group discounts not included. On other discounts, lowest price will apply.



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SITE TABULATION

1. Existing Zoning of Site DR-55
2. Gross Area of Property 42,131 S.F. = 0.967 Ac. ±
3. Net Area of Property 29,842 S.F. = 0.685 Ac. ±
4. Existing Uses

   Bldg. A - Religious Worship
   Bldg. B - Religious Education
   Bldg. C - Religious Education
   Bldg. D - Religious Education

5. Proposed Uses

   Bldg. A - Religious Worship
   Bldg. B - To Be Razed
   Bldg. C - To Be Razed
   Bldg. D - To Be Razed
   Bldg. E - Religious Education

6. Parking Data

   Principal Use = Religious worship facility
   No. of Seats = 400
   No. of Parking Spaces Required = 400/4 = 100 spaces
   No. of Parking Spaces Provided On-Site = 0

IMPERVIOUS TABULATION

1.	Existing Area of Site		29,842 S.F. 0.685 Ac. ±
2.	Existing Impervious Areas		12,559 S.F. 0.288 Ac. ±
	Structures	8818 S.F.	
	Roadway	0 S.F.	
	Other	3741 S.F.	
3.	Proposed Impervious Areas		**8,150** S.F. **0.187** Ac.
	Structures	6854 S.F.	
	Roadway	**1,296** S.F.	
	Other	0 S.F.	
4.	Impervious Areas to be Removed		4,911 S.F. 0.113 Ac.
	Structures	2335 S.F.	
	Roadway	0 S.F.	
	Other	2576 S.F.	
5.	Pre-Development Impervious		12,559 S.F. 0.288 Ac.
6.	Post-Development Impervious		**15,798** S.F. **0.363** Ac.

970 FEET WALKING DISTANCE TO FURTHEST SHARED PARKING SPACE AT PATAPSCO SENIOR HIGH.

POLLUTANT LOADING DATA

WORKSHEET A: REDEVELOPMENT

Step 1: Estimate parameters.

	Pre-development	Post-development
P (normal year)	= 40 inches	= 40 inches
Pj (annual)	= 0.9	= 0.9
A (within Critical Area)	= 0.685 acres	= 0.685 acres
Ia. structures	= ____ acres	= ____ acres
parking lot	= ____ acres	= ____ acres
roadway	= ____ acres	= ____ acres
other	= ____ acres	= ____ acres
	= ____ acres	= ____ acres
	= ____ acres	= ____ acres
total	= 0.288 acres	= 0.363 acres
I = (Ia total/A)	= 42 %	= 53 %
Rv = 0.05 + 0.009(I)	= 0.428	= 0.527
C: I = to or > 20%	= 1.08 mg/l	= 1.08 mg/l
I < 20%	= 0.26 mg/l	= 0.26 mg/l

Step 2: Calculate the pre-development load (L pre).

L pre = (P)(Pj)(Rv)/(12) * (C)(A)(2.72)
= (40)(0.9)(0.428)/(12) * (1.08)(0.685)(2.72) = 2.58 lbs/year

Step 3: Calculate the post-development load (L post).

L post = (P)(Pj)(Rv)/(12) * (C)(A)(2.72)
= (40)(0.9)(0.527)/(12) * (1.08)(0.685)(2.72) = 3.18 lbs/year

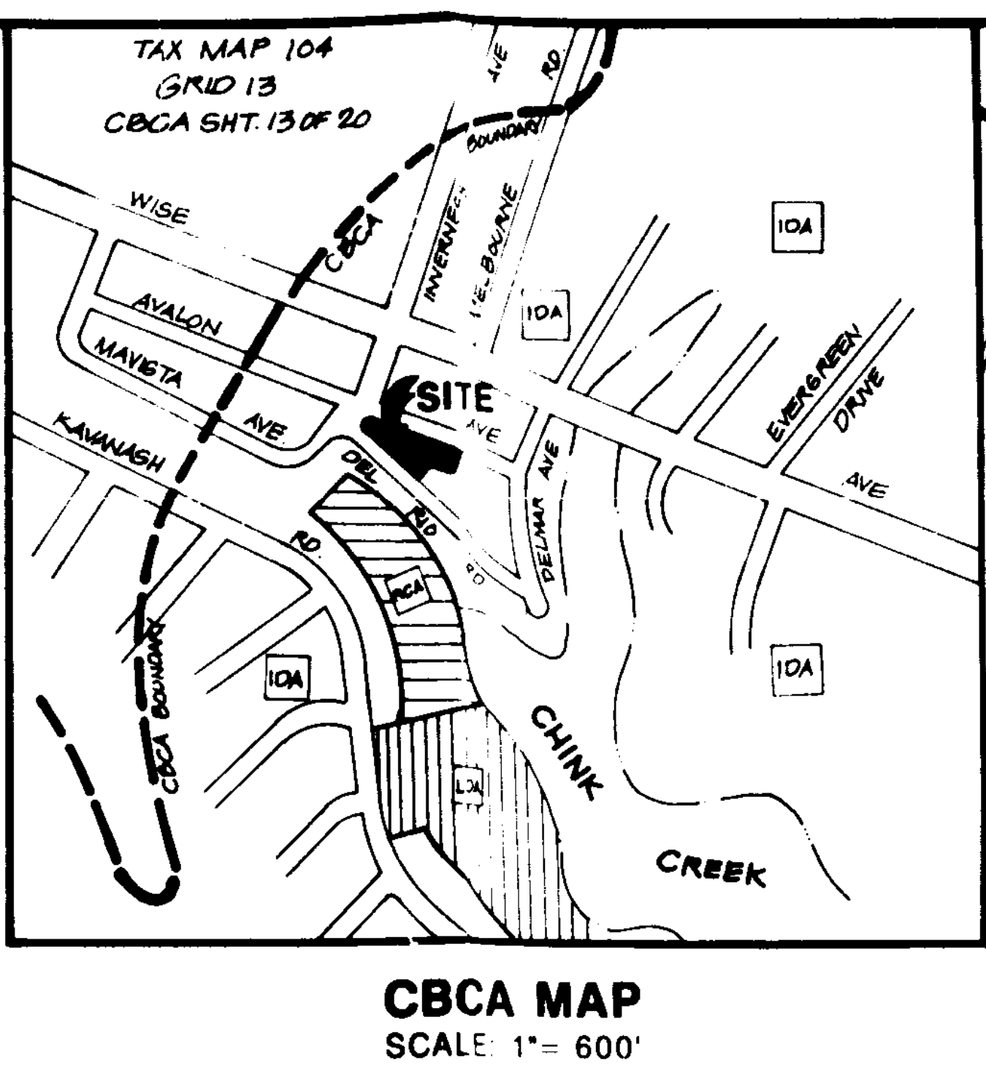
Step 4: Calculate the pollutant removal requirement (RR).

RR = L post - (0.9 * L pre)
= 3.18 - (0.9 * 2.58) = 0.86 lbs

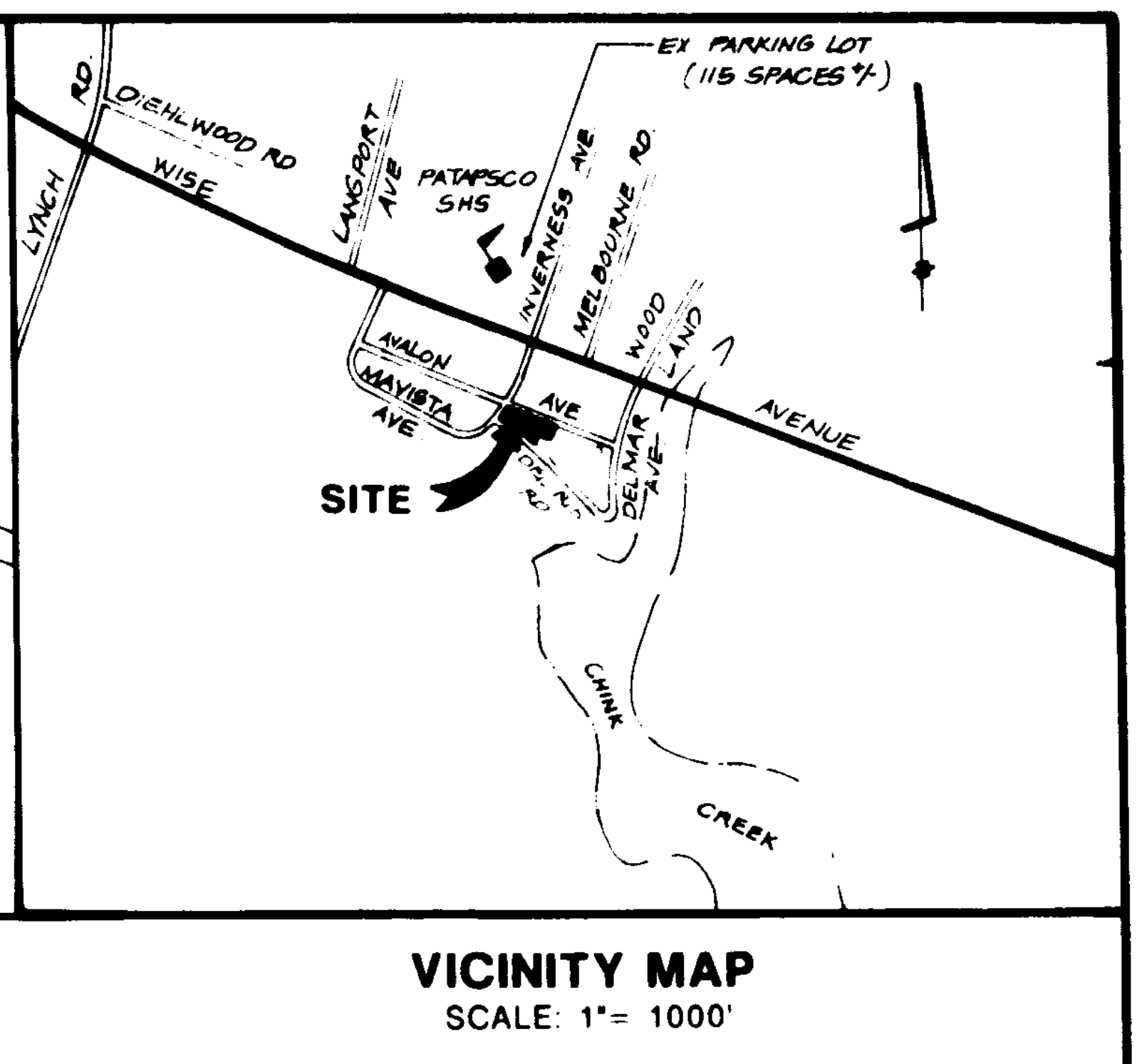
Step 5: Select BMP options using the screening tools and list them below. Then calculate the load removed for each option.

Selected Option	Removal Efficiency (%/100)		Fraction of Drainage Area Served		L post (Step 3)		Load Removed	
Design 13	75%	*	0.362	*	3.18	=	0.86	lbs
		*		*		=		lbs
		*		*		=		lbs
		*		*		=		lbs

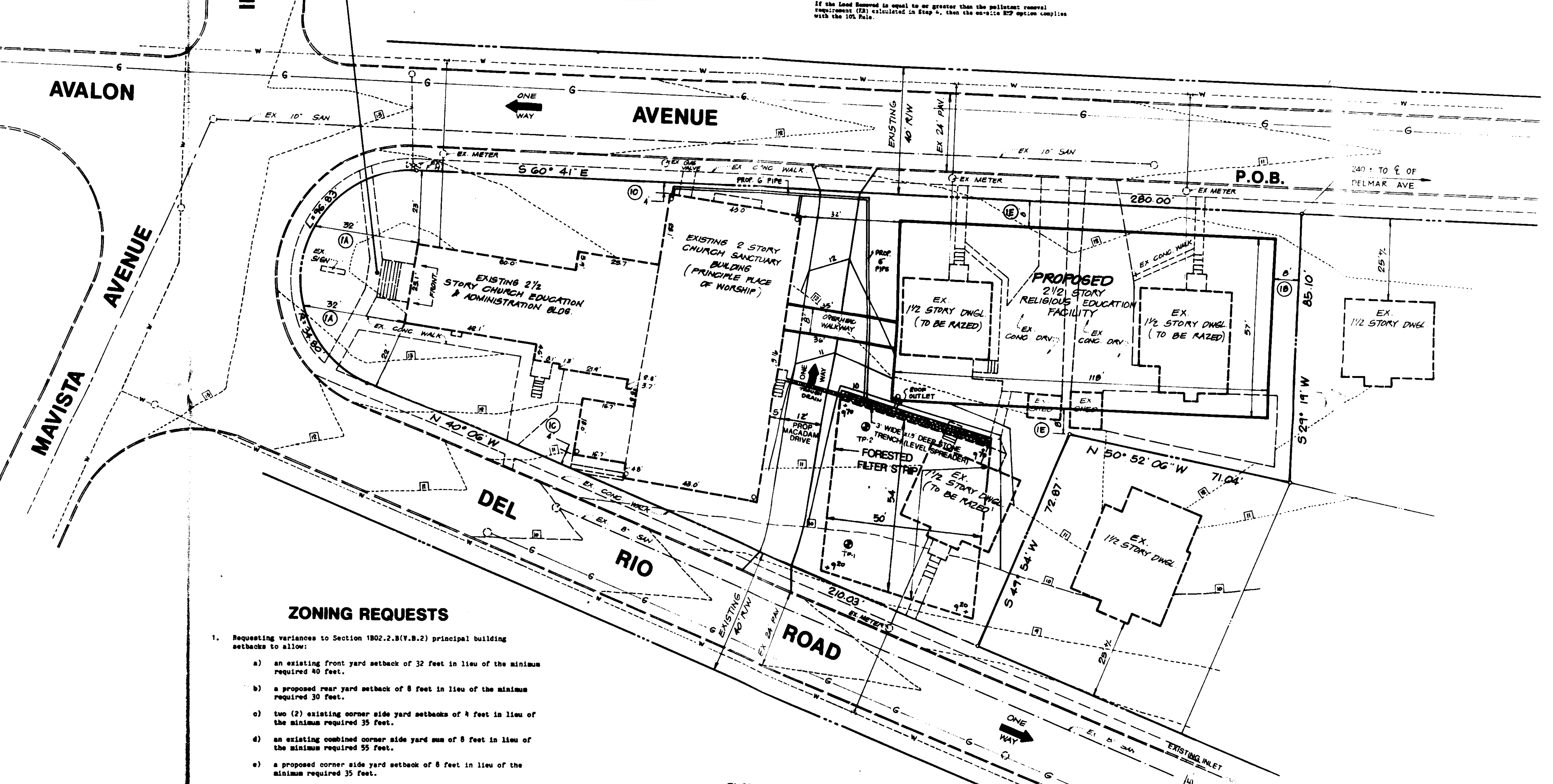
If the Load Removed is equal to or greater than the pollutant removal requirement (RR) calculated in Step 4, then the on-site BMP option complies with the 10% Rule.

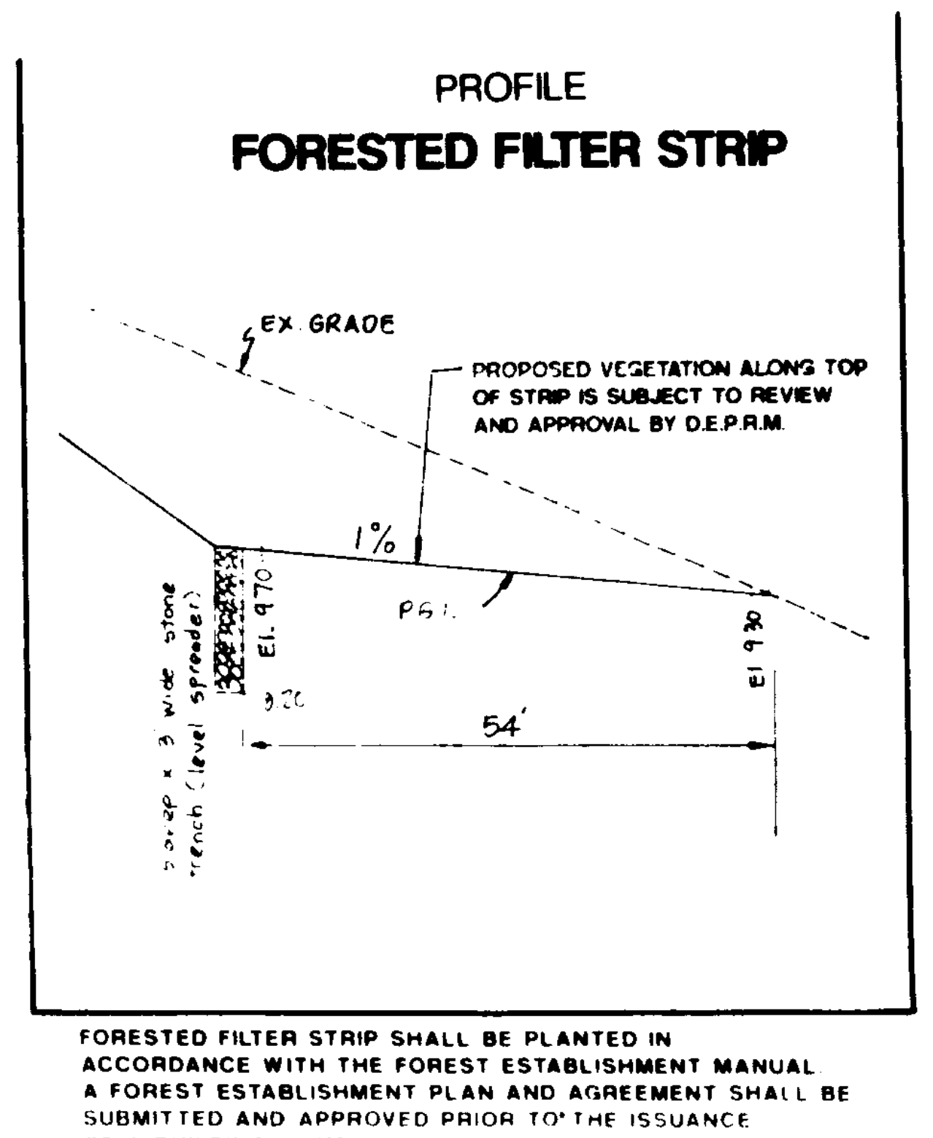


CBCA MAP
SCALE: 1"= 600'



VICINITY MAP
SCALE: 1"= 1000'




PROFILE
FORESTED FILTER STRIP
EX GRADE
PROPOSED VEGETATION ALONG TOP OF STRIP IS SUBJECT TO REVIEW AND APPROVAL BY D.E.P.R.M.
1%
PGL
EL 970
EL 930
54'
3' WIDE STONE TRENCH (LEVEL SPREADER)

FORESTED FILTER STRIP SHALL BE PLANTED IN ACCORDANCE WITH THE FOREST ESTABLISHMENT MANUAL. A FOREST ESTABLISHMENT PLAN AND AGREEMENT SHALL BE SUBMITTED AND APPROVED PRIOR TO THE ISSUANCE OF A BUILDING PERMIT

93-92-A

GENERAL NOTES

1. This site lies within

   A. Election District No. 12
   B. Councilmanic District No. 7
   C. Census Tract No. 4204.02
   D. Watershed No. 35
   E. Subsewershed No. 42
   F. Regional Planning District No. 330

2. Soil Type Data: Site consists entirely of SnB soils (Sassafras). Limitations for building are slight. Limitations for streets and parking areas are moderate due to slope.
3. There are no streams, floodplains, steep slopes, or wetlands on-site or within 100 feet of the boundary, and there are no applicable forest buffer easement regulations or setbacks.
4. To the best of our knowledge, there are no historical buildings, endangered species habitats, or hazardous materials on-site, nor does the site have any archeological significance.
5. This site lies within the boundaries of the Chesapeake Bay Area (CBCA designation IDA).
6. There is no open space proposed for this site.
7. Topography shown hereon has been field run.
8. This site is served by public water, sewer, and gas.
9. Off-site parking for the church is accommodated at Patapsco Senior High School approximately 500 feet due north of the site along Inverness Avenue by agreements dated July 12, 1988 and November 9, 1990. Greater than 115 parking spaces are available.
10. A waiver to STORMWATER MANAGEMENT has been granted for this site. (DATE OF WAIVER 7/06/92)

ZONING REQUESTS

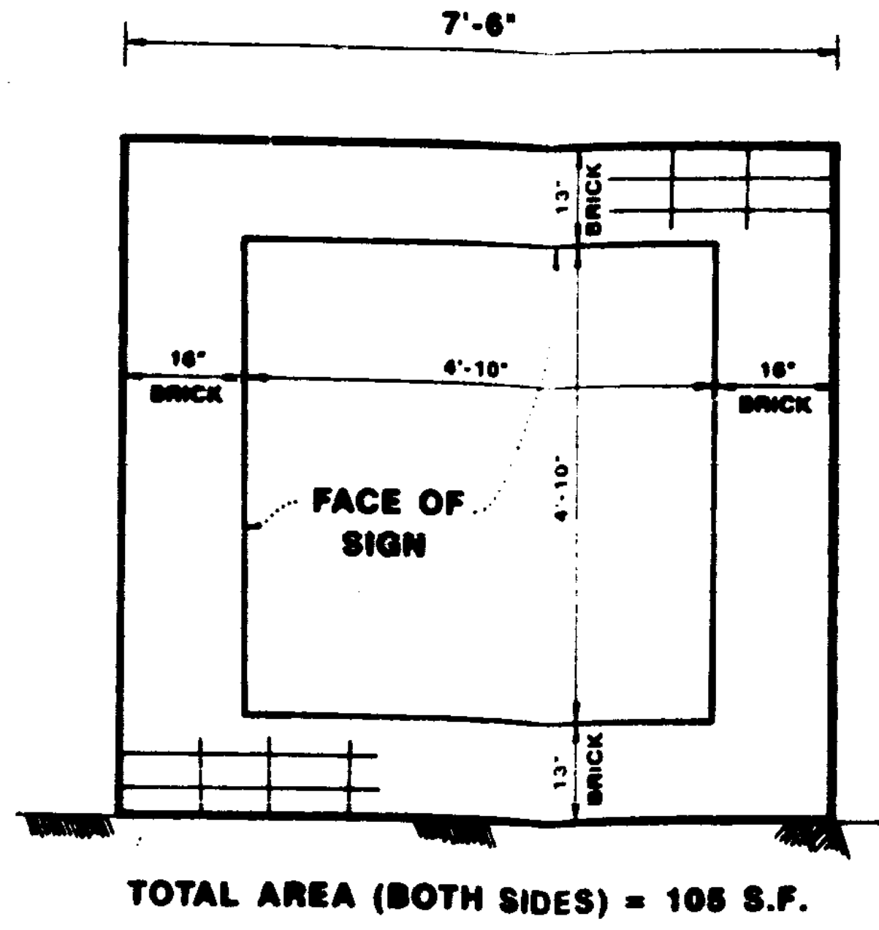
1. Requesting variances to Section 1B02.2.B(V.B.2) principal building setbacks to allow:
   a) an existing front yard setback of 32 feet in lieu of the minimum required 40 feet.
   b) a proposed rear yard setback of 8 feet in lieu of the minimum required 30 feet.
   c) two (2) existing corner side yard setbacks of 4 feet in lieu of the minimum required 35 feet.
   d) an existing combined corner side yard sum of 8 feet in lieu of the minimum required 55 feet.
   e) a proposed corner side yard setback of 8 feet in lieu of the minimum required 35 feet.
   f) a proposed side yard setback of 8 feet in lieu of the minimum required 20 feet.
   g). a proposed combined corner side yard sum of 16 feet in lieu of the minimum required 55 feet.

   * See attached drawing for specifically referenced setback variances.

2. Requesting a variance to Section 413.1.b. to permit an existing sign with an area of 105 square feet in lieu of the maximum allowed 30 square feet.
3. Requesting a variance to Section 409.7.B(1) to allow off-site parking spaces to be located 970 feet (walking distance) from the building entrance in lieu of the maximum allowed walking distance of 500 feet.

ZONING NOTES

1. The existing church was constructed prior to the Residential Transition Area Requirements.
2. The maximum height, the existing building and proposed addition is less than the maximum permitted 50 feet.
3. The proposed building length is 274 feet which is less than the maximum allowed length of 300 feet.
4. The existing sign was constructed prior to applicable zoning laws.



TOTAL AREA (BOTH SIDES) = 105 S.F.

SIGN DETAIL
NO SCALE

DATE	REVISION
5/21/92	AS PER PRE-ZONING FILING MEETING
7-23-92	REMOVE INFILTRATION TRENCH & ADD GRASS SWALES
	AND WATER QUALITY INLET.
8-2-92	REVISED WATER QUALITY FEATURES TO INCORPORATE FILTER STRIP
8/28/92	ADDED SIGN DETAIL

McKEE & ASSOCIATES, INC.
Engineering - Surveying - Real Estate Development
SHAWAN PLACE, 5 SHAWAN ROAD HUNT VALLEY, MARYLAND 21030
(301) 527-1555

Computed by G.C.S.
Drawn by J.G.K.
Checked by G.C.S.
Job Number 91-133

JWMcK 5/10/92
James W McKee Date
(Maryland Registered No 9012)

PROPERTY DATA
INVERNESS ANNEX No. 1
CHK 13/27
LOT 135 - ACCT. No. 12-08-069460
LOT 136 - ACCT. No. 12-16-017470
LOT 150 - ACCT. No. 12-09-035110
CHURCH LOT - ACCT. No. 12-09-035111

ZONING PLAT
AND
CRG/CBCA FINDINGS PLAN
FOR
INVERNESS PRESBYTERIAN CHURCH

12TH ELECTION DISTRICT BALTIMORE COUNTY, MD.
SCALE: 1'= 20' MARCH 10, 1992

OWNER/APPLICANT
INVERNESS PRESBYTERIAN CHURCH
49 INVERNESS AVENUE
BALTIMORE MD. 21222

100

WAIVER No. W-92-28

PLANNING No.____	PUBLIC SERVICES CRG No.____

93-93-SPH /Long Green Valley Assn etal
CCt AFFIRMS CBA; except
estoppel issue REVERSED
(James T. Smith, Jr., J.) 3/7/96

PETITION OF SHARON RORBAUGH,	*	IN THE CIRCUIT COURT
CHARLOTTE PINE, KATHY TYLER		FOR BALTIMORE COUNTY
And LONG GREEN VALLEY ASSOC.	*	
FOR JUDICIAL REVIEW OF THE		
DECISION OF THE BALTIMORE	*	CASE NO. 94-CV-10257
COUNTY BOARD OF APPEALS OF		
BALTIMORE COUNTY IN THE CASE	*	
OF ORVILLE JONES, HIGHS OF		
BALTIMORE, INC. PETITION FOR		
SPECIAL HEARING		

OPINION and ORDER

Hearing was held on appeals from a decision of the Board of Appeals (hereinafter referred to as "Board") dated October 26, 1994 filed by Sharon Rohrbaugh, Charlotte Pine, Kathy Tyler, Appellants (hereinafter sometimes referred to as "Individual Appellants") and by Long Green Valley Association, Appellant (hereinafter sometimes referred to as "Association Appellant") and on behalf of People's Counsel for Baltimore County, Appellant (hereinafter referred to as "People's Counsel") and Answer

thereto filed on behalf of Orville Jones, Appellee (hereinafter referred to as "Appellee") on May 15, 1995. Thereafter, pursuant to Order of this Court, re-hearing and oral argument was held on October 24, 1995. Counsel for Baltimore County appeared at both hearings and adopted and supported Appellee's position in this appeal. The Court reviewed the various Memoranda submitted by counsel for all parties and the transcript of the proceedings before the Board.

The Individual Appellants, Association Appellant and People's Counsel all posit two questions in their appeals, namely:

1) Whether a septic system connected to a commercially zoned convenience store is a legal use in the agricultural zones, and

2) Whether the estoppel doctrine may excuse or allow the continuation of such an illegal use.

The Individual Appellants and the Association Appellant filed their Petition for Judicial Review on November 9, 1994 pursuant to Rule 7-202 of the Maryland Rules and identified the issues described above in their appeal Memoranda. The Board, in its Opinion affirming the Zoning Commissioner, found that Baltimore County, through its actions, and the Association Appellant, through its inaction, were estopped and denied the Petition for Special Hearing. The Zoning Commissioner likewise had denied Petitioner's (some of the Appellants) request for special hearing, refused to order cessation of what the Zoning Commissioner determined was an illegal use, and, on the contrary, granted approval of Appellee's illegal use of adjoining RC2 property to support a waste disposal system on Appellee's adjacent commercial property known as 13523 Long Green Pike.

On November 17, 1994, People's Counsel, consistent with and pursuant to Rule 7-203(b) filed a Petition for Judicial Review of the Board's decision, which filing was within ten days of the filing of the original Petition for Judicial Review by the Individual and Association Appellants.

Appellee, on the other hand, did not file a Petition for Judicial Review, but, pursuant to Maryland Rule 7-204, filed an answer to the Petitions for Judicial Review filed by Appellants, indicating his intention to continue to participate in the case. On April 6, 1995, Appellee filed a Memorandum raising five issues, namely:

> 1) Was this case to declare the existing septic system serving the Jones' property improperly brought under the Special Hearing Procedure of Sec. 500.7 of the Baltimore County Zoning Regulations (BCZR)?; and
>
> 2) Did the Zoning Commissioner and the Board properly apply estoppel considerations to the case?; and
>
> 3) Are septic drainage field uses properly regulated as zoning uses under the Baltimore County Zoning Code?; and
>
> 4) Are septic draining fields "conduits" or "sewer mains" permitted as of right in the RC2 zones?; and
>
> 5) Is a septic drainage field an accessory use or can it be considered an accessory use permitted in an RC2 zone even though it serves a commercial building?

Appellee's first issue seems to be a challenge to the standing of Appellants to request a special hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations. Since Appellee did not file a Petition for Judicial Review, and since this issue was in no way raised by Appellants in their Petition, the issue of Appellants' standing is not before this Court in this appeal. In the exercise of caution, however, it may be that Appellee is contending that this issue presents a question of

jurisdiction. It will be addressed, therefore, but only briefly in this Opinion.

Section 500.7 of the Baltimore County Zoning Regulations provides that:

> "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. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported non-conforming use on any premises or to determine any rights whatsoever of such person and any property in Baltimore County insofar as they are affected by these regulations."

Although "interested persons" can request a special hearing, it is not the exclusive method of using Sec. 500.7 of the Baltimore County Zoning Regulations. The Zoning Commissioner has the power in his discretion to conduct special hearings pursuant to the very regulation itself. As stated by the Zoning Commissioner on page 6 of his opinion:

> "The Petition brought in the instant case is properly before me pursuant to the language as set forth in Sec. 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). Therein, a broad and sweeping statement of authority is provided to the Zoning Commissioner. It is specifically provided that he '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 ...' Further on, the section provides that such authority 'shall include the right of any interested party to petition the Zoning Commissioner for a public hearing... to determine any rights whatsoever of such persons and any property in Baltimore County insofar as they are affected by these regulations.' As it relates to my jurisdiction under this Section, the timing of the Petitioner's request is meaningless... The authority conferred in Sec. 500.7 of the B.C.Z.R. is broad indeed. The case is properly before me under the proposed Petition for Special Hearing from a pure jurisdictional standpoint."

The Zoning Commissioner has broad discretion to grant a special hearing pursuant to Sec. 500.7 of the BCZR, and the Board, on Appellants' appeal from the Zoning Commissioner's decision, was correct in denying Appellee's Motion to Dismiss that appeal.

Appellee cites the Court to Baltimore County Code Sections 26-121 and following, which sections deal with penalties for zoning violations and injunctive proceedings. There is nothing in the Baltimore County Code, however, which indicates any preemption which would preclude the Zoning Commissioner from conducting a special hearing pursuant to Section 500.7 of the BCZR.

It should be noted that both the Zoning Commissioner and the Board in rendering their decisions indicated respectively that the "Petition for Special Hearing is hereby DENIED." What the Zoning Commissioner explained, and the Board obviously meant, and counsel for all parties agreed at the rehearing on October 24, 1995, was that the respective decisions denied any zoning order to stop Appellee's illegal land use, not that the request for special hearing was denied.

Both the Zoning Commissioner and the Board conducted the special hearing and, in fact, both decided the substantive issue presented to them as Appellants contend the issue should have been decided. Appellants' complaint is not with the decision of the Zoning Commissioner and the Board that a septic system connected to a commercially zoned use of an adjacent property is not a legal use allowed in an RC2 zone. Appellants' complaint relates to the finding by the Zoning Commissioner, affirmed by the Board, that Appellants are estopped from obtaining the relief through the Baltimore

County's zoning authority of an order directing Appellee to cease and desist his illegal use of the RC2 land.

This brings the Court to the next problem with this appeal, namely, that the first issue raised by Appellants in their Memoranda is not really an issue for Appellants on appeal, as both the Zoning Commissioner and the Board found in favor of Appellants' position, namely, that a septic system in an agricultural zone which is connected to an adjacent commercially zoned convenience store is an illegal land use. Both the Zoning Commissioner and the Board so found. Appellants have nothing about which to complain on appeal as to their first issue and their appeals as to this issue should be dismissed.

Since Appellants raised this issue, however, Appellee, in its answer to Appellants' Petition for Judicial Review, has raised three issues of his own which are related to this issue, namely, Appellee's Issues No. 3, 4 and 5 described above. Because Appellee may have been misled by Appellants' raising of the issue of illegal land use in an RC2 zone and, as a result, Appellee may not have filed his own Petition for Judicial Review and or because once an issue is raised, even if raised by the party who prevailed below, such issue may be subject to review as to complaints of the other party to the appeal, this Court will address Appellees' third, fourth and fifth issues presented.

As to Appellees third and fifth issues, it is undisputed that the term "use" is not defined in the Definitions Section 101 of the Baltimore County Zoning Regulations. If not specifically defined, Sec. 101 BCZR provides that the definition set forth in the most recent edition of Webster's Third New

International Dictionary shall be utilized. The "Use" definitions in Webster's include "...the legal enjoyment of property that consists in its employment, occupation, exercise ..." and "the benefit in law of one or more persons, specifically the benefit of or the profit arising from lands and tenements to which legal title is held by a person or the act or practice of using something."

The Board, in affirming the decision of the Zoning Commissioner, followed the requirements of the BCZR and determined that Appellee's installed septic system was a "use" of the RC2 land. This determination was consistent with the definitions in Webster's Third New International Dictionary and was supported in the record by the expert testimony of Norman Gerber and Paul Solomon. As a "use" of property, Appellee's proposed use is subject to the Baltimore County Zoning Regulations and the BCZR makes no provision for Appellee's proposed use by right or special exception, or as an accessory use by right or special exception.

As held in Kowalski vs. Lamar, 25 Md App. 493, 498 (1975) "any use other than those permitted and being carried on as of right or by special exception is prohibited." Section 102.1 of the Baltimore County Zoning Regulations provides that "no land shall be used except in conformity with these regulations." Section 1A01.2B identifies uses permitted as of right in the RC2 Zone. Private septic systems are not so permitted as primary uses.

Accessory use is defined in Section 101 of the BCZR as "a use... which...c) is located on the same lot as the principal use or structure served..." It is undisputed that the septic system in this case was installed on an RC-2 property adjacent to Appellee's commercial site over which Appellee had

acquired an easement for the commercial site's septic drainage field. By definition, Appellee's septic system cannot qualify as an "accessory use."

Appellee also fails with regard to his fourth contention. Septic drainage fields are just not "conduits" or "sewer mains" which are permitted as of right in RC2 zones. Section 1A01.2B5 of the BCZR does provide for the following uses permitted as of right in all RC2 zones, namely: "Telephone, telegraph, electrical power or other lines with cables, provided that any such line or cable is underground; underground gas, water or sewer mains or storm drains; or other underground conduits, except interstate or international pipelines." The Board determined that Appellee's septic system failed to fall within the definitions "underground conduits" or "sewer main". This determination is supported by expert testimony in the record, is not clearly erroneous, and is not erroneous as a matter of law.

The Court will now get to the real issue raised in this appeal, Appellants' Issue No. 2 and Issue No. 2 raised in Appellee's Answer. Appellee's subject property is a 1.056 acre tract improved by a building occupied by a convenience store, dentist office and laundry mat with associated parking. It is located at 13523 Long Green Pike. Prior to the new construction, Appellee razed an existing structure. In light of site constraints and environmental concerns related to a nearby stream, Appellee originally agreed to install a sand mound sewer disposal system on his commercial property. Due to heavy equipment traffic on the construction site, the ground where the sand mound system was to have been installed was severely compacted, leaving the area unusable for such purpose. As a result, Baltimore County issued a Stop Work Order on Appellee's new construction on March residential and a commercial drainage field. There is no distinction in the BCZR.

Mr. Gerber acknowledged that in his opinion the property owner would have a much stronger case if the drainage field area was on the same property as the commercial use. By conceding this point and by acknowledging that such a use in D.R. zones was acceptable, Mr. Gerber all but conceded the property owner's case. Mr. Solomon conceded that the distinction between easement area and ownership was not important. The issue of whether the easement area qualifies as an accessory use area is not new territory.

Easement areas frequently have been acknowledged as providing accessory use area. Most frequently in the context of parking easement areas have been accepted. In many development cases offsite easement acquisition is required for storm water management or other utilities. Never is this questioned and for good reason.

By operation of law an easement subjects one property to another. An easement imposes a burden on one tract of land, the subservient property for the use and benefit of another, the dominant property. The two are linked in the easement deed. Both are described. Black's Law Dictionary (4th ed.) defines an easement as: "A right in the owner of one parcel of land by reason of such ownership, to use the land of another for a special purpose not inconsistent with the general property in the owner." An easement may not exist without reference, therefore, to the dominant property, and in this respect is distinguished from two adjacent lots. In this case, however, the point is almost moot.

Mr. Jones has expressed his willingness to put the properties under one deed since the inception of the idea. His December, 1991, letter expresses this offer, if required (Prop. Own. Ex. 3).

People's Counsel takes the radical position that a residential zone may never be used to serve a commercial use. He presents in support of this Leimbach Construction Co. v. City of Baltimore, 257 Md. 635, 264 A.2d 109 (1970). The fact that he has never in the past advocated this position or this case is noteworthy. Leimbach's ruling was that a commercial business in Baltimore City could not use residential properties to enhance its access. In Baltimore County there is a policy that is exactly contrary to this. Zoning Commissioner's Policy Manual, Sec. 102.6A. There is also a clear recognition in the County that accessory uses permitted in residential zones are not limited to commercial uses. Again, one must look at the proliferation of overhead wires and cabling linking commercial structures to public lines. These wires and cabling are not underground conduits permitted as of right. These wires and cabling, if recognized as zoning uses, must be recognized as accessory uses inextricably linking properties. If not permitted in the County, not one of the cases cited by the property owner in this case would have been allowed to go forward, and all occurred after Leimbach.

In this case there simply was no other alternative available to the property owner. According to Mr. Powell this was the only safe alternative. The area was designed not to permit expansion but only to permit what had previously been permitted. In the

event that the Board finds that the community is entitled to a special hearing on whether the use should be permitted, then this hearing would serve the purpose, for the safety of the issue has been addressed. No one questioned the safety of the project or its size. No one raised personal, property interests as in Lankford or in Windsor. In this case there is no clear cut illegality. There is, if anything, precedent over many years permitting such use, supported by statutory wording. This is not a case of not knowing what the use is or of applying the wrong standard. This is not a case where the wrong person was asked the wrong question. In this case the correct procedure was followed; the correct people were questioned, and everyone knew what the response was in a timely fashion. This use should be permitted to continue.

CONCLUSION

In conclusion the Petition for Special Hearing brought in this case should be dismissed. If the right of hearing is granted, the existing use of a drainage field in the R.C. 2 area should be allowed to continue as a permitted use.

Respectfully submitted,

John B. Gontrum
Attorney for Orville M. Jones

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 1994, I mailed a copy of the aforegoing Memorandum of Orville M. Jones, Property Owner, postage prepaid to Carroll J. Holzer, Esquire, 305 Washington Ave., Suite 502, Towson, Maryland 21204; and to Peter Zimmerman, Esquire, People's Counsel for Baltimore County, Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

John B. Gontrum, Esquire
ROMADKA, GONTRUM & McLAUGHLIN, P.A.
814 Eastern Blvd.
Essex, Maryland 21221
(410)686-8274

[illegible]

IN THE MATTER OF
LONG GREEN VALLEY ASSOCIATION
PETITION FOR SPECIAL HEARING
13523 LONG GREEN PIKE

BEFORE THE
COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY
CASE NO. [illegible]

PEOPLE'S COUNSEL'S MEMORANDUM

People's Counsel for Baltimore County submitted a table of legal analysis at the conclusion of the March 31, 1994 hearing, also attached here, and now submits this memorandum.

1. The Baltimore County Zoning Regulations are structured so that in each zoning district only uses enumerated as permitted by right or by special exception are allowed. BCZR [illegible]. Kowalski v. Lamar 25 Md. App. 491 (1975).

2. Commercial uses are not generically allowed in density residential or resource conservation zones. BCZR 1B01, BCZR 1A01-1A04. Food stores, such as the High's store at 13523 Long Green Pike, are specifically not allowed in the RC2 (agricultural) or any of the other density residential or agricultural zones. BCZR 1A01. Correlatively, there is no provision for the allowance of commercially connected individual sewage disposal (septic) systems.

3. The purpose of the agricultural zone, discernible in the clear language, is to foster conditions favorable to agriculture and to prevent urban intrusion and sprawl which corrode insidiously the base of agricultural use. BCZR 1A01.1.A.1.c,d; 1A01.1B. The uses allowed by right or by special exception support or fit within the pattern of agricultural land use and industry. BCZR 1A01.2.

4. Paul Solomon, the environmental planner responsible in large part for the legislative development, drafting, and mapping of the RC zones, gave uncontradicted testimony of the

historical and practical contradiction between their purposes and the proposal here for a septic field to support adjoining commercial zone use, in effect expanding into a satellite commercial zone. The presence of the septic system, albeit subterranean, inevitably impairs and frustrates to some extent the designated agricultural use. The character and degree of the impairment will necessarily vary depending on the property and the situation and type of system; but the law treats them all the same. Nor does it matter which section of the system is on the agricultural land. Again, the law is and must be consistent.

5. The Court of Appeals has held that commercial uses, including those which otherwise arguably are accessory, such as road access and private beaches, are not allowed in a residential zone. Leimbach Construction Co. v. City of Baltimore 257 Md. 635 (1970); Delbrook Homes v. Mayers 248 Md. 89 (1967); see Board of County Comm'rs v. Snyder 186 Md. 342 (1946).

6. The Court of Special Appeals has held that a septic field is an impermissible use in a residential-agricultural zone when it services adjacent commercially zoned and used property even under common ownership.. GLP Dev. Co. v. Md-Nat'l Cap. P & P Comm'n, Court of Special Appeals, Sept. Term, 1989. The main substantive issues in the attached opinion are identical to the present situation. The Connecticut Supreme Court held that a septic system is an impermissible use in a residential zone. Silitschanu v. Groesbeck 543 A.2d 737 (Conn. 1988). There are no known appellate decisions to the contrary.

7. There was introduced in evidence the Maryland Department of Environment regulation defining individual sewage supply system (COMAR 26). This expands on the nature of the system and its use.

8. Baltimore County has provided explicitly a use permit process for business or industrial parking in residential zones. BCZR 409.8B. But there is no allowance for any other commercial use of residential zones in combination with a commercial zone use.

9. A commercial septic system on agriculturally zoned land is not accessory because it is commercial, and unrelated to legitimate agricultural use. Leimbach, Delbrook, Snyder, supra. In this context, Carl Richards, the zoning official who approved the system after a brief unrecorded conversation with his supervisor, conceded that such placement of the system is unusual, and not customary. This further takes it out of the "accessory use" definition. BCZR 101. So does the fact that the system is not on the same lot as the food store. But even if it otherwise seemed to fit the "accessory" concept, it would not qualify simply because an accessory use must relate to a permitted use in the zone in which the purported accessory is found, here agriculture.

10. For all these reasons, as a matter of law, the proposed use here is illegal. To the extent that the Zoning Commissioner also found that the use is illegal, we agree with his opinion.

11. Contrary to the Commissioner's opinion, however, estoppel cannot justify the clearly illegal commercial use of the agricultural zone. The Maryland Court of Appeals has long held that estoppel is no defense to a plain violation of use restrictions, notwithstanding any administrative interpretation and/or permit approval.. Lipsitz v. Parr 164 Md. 222 (1933); Board of County Comm'rs v. Snyder 186 Md. 342 (1946); Delbrook Homes v. Mayers 248 Md. 80 (1967); City of Hagerstown v. Long Meadow Shopping Center 264 Md. 481 (1972).

12. Where the violation is fundamental, such as here, estoppel is all the more inapplicable. See Inlet Associates v. Assateague House 313 Md. 413 (1988).

13. Correspondingly, laches is not a defense where the alleged delay involves a matter of months. Lipsitz, Inlet Associates, supra.

14. Even were estoppel and/or laches conceptually applicable, the record in the present case does not support their application.

The property owner, Orville Jones, acting as his own general contractor, bulldozed over the original sand mound septic system located properly on the commercially zoned property. Subsequently, he entered into discussions with the Baltimore County Department of Environment (DEPRM). He failed to explore potential alternative systems on site. He failed to explore potential alternatives utilizing adjacent commercially zoned property. In addition, he changed his plans and proposals substantially during the course of the project.

It is important to pause and consider that if the sand mound system had not been destroyed, the present controversy would not exist. Even then, if there had been exploration of alternatives, the record leaves a reasonable inference that other on-site or proximate commercial zone septic systems were feasible. Paul Solomon, upon review of the pertinent DEPRM correspondence, testified that it was silent as to consideration of an on-site system, which Solomon stated should have been considered. Moreover, Robert Powell, of DEPRM, when questioned about a system crossing over to neighboring commercial property, could only say that he thought it undesirable, not impermissible.

Instead, while aware of intense interest and concern expressed by some citizens in the neighborhood, Mr. Jones went ahead without a public hearing to acquire an easement and obtain a permit to place the septic system on agriculturally zoned land. He changed his construction plans in order to raze the existing building and put up a new one as he saw fit. When asked by panel member William Clark upon what did he rely in moving forward, Mr. Jones candidly and bluntly said that he made a financial decision to go ahead. In other words, his decision was independent of any concern for the legal niceties, the propriety of a public hearing, or the concerns of the neighborhood. To put a long story short, Mr. Jones assumed the risk and/or went ahead regardless.

The permit approval was casual at best. There were some brief telephone calls between DEPRM and the zoning staff, and a brief informal conversation among zoning staff to the effect that it seemed like some situations approved in the past. The zoning office put nothing in writing, not to mention anything passing for a rational application of [illegible].

Many citizens had no knowledge of the [illegible] came reasonably to believe, as a result of correspondence, that they would [illegible] of any significant specific proposal and the opportunity to be heard.

There was no notice to People's Counsel [illegible] the citizens under Sec. 524.1 of the Baltimore County Charter [illegible] the comprehensive zoning maps and thus the integrity of the agricultural [illegible] alone, even if estoppel were available to sustain an illegal commercial use, and [illegible] there were facts sympathetic to Mr. Jones, there could be no [illegible] against the People's Counsel.

Anyway, there are no equities to support Mr. Jones [illegible] the neighboring citizens, some having made reasonable efforts to keep abreast [illegible] without notice, have been dealt with harshly and indifferently [illegible] the public

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interest in the enforcement of the law, have been overridden, just like the bulldozed sand mound system at the start.

15. There have been cited a number of zoning commissioner decisions legalizing storm water management systems and the like in residential zones, serving or adjacent to commercially zoned properties. These involved other neighborhoods and parties. Generally, there was no objection and/or no appeal. In any case appealed to the County Board of Appeals, there was a compromise resolution without a hearing on the merits of the commercial use of the residential zone. Moreover, none of these cases involved the commercial use of the agricultural zone.

These zoning commissioner approvals are contrary to law. They do not justify the present illegal use or constitute grounds for estoppel. See Lipsitz, Inlet, supra. Two wrongs do not make a right. Nor do three or four. This is the first time there has been an actual controversy presented to the County Board of Appeals on the issue. Moreover, the implications of commercial use of the agricultural zone are grave for the thousands of acres so zoned in the northern, western, and other sections of the county. Paul Solomon's testimony reveals the magnitude of the problem. The previous zoning commissioner approvals of the commercial use of residential zones were inappropriate, but they were not of the public import of the present transgression. Nor were they carried out with disregard of the public interest in notice and opportunity to be heard.

Conclusion

On this record, the case comes down to clear issues of law. There is nothing fairly debatable. There is no ambiguity or latitude. There is one fundamental conclusion.

The commercial septic system use in the agricultural zone for the High's store at 13523 Long Green Pike is illegal. There is no excuse or justification for it.

At the same time, the stakes of the case should be put in perspective. It is not the existence of the High's store itself in question. It could flourish if connected to a proper commercially zoned system.

Rather, the focus is on the commercial sewage disposal system and its implications for the entire county. Upon this controversy at Long Green Pike rests a major land use consequence for the agricultural, and by implication, the rest of the resource conservation and density residential zones.

Properly understood, this is one of the most important cases to come for decision before the County Board of Appeals in this year, and any year. We hope that the Board will side with the law, as analyzed here, rather than against it.

Peter Max Zimmerman
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400 Washington Avenue
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887-2188

Certificate of Service

I certify that a copy of this memorandum was mailed to John Gontrum, Esq. and [illegible] Holzer, Esq. attorneys for other interested parties in this case.

Peter Max Zimmerman

199[illegible] Long Green Zoning Case: Legal Analysis

Court Decisions

Case Name	Court	Use	Zoning	Decision	Comments
Leimbach 257Md635	MdCtApp 1970	Commercial Access Road	Residential	Illegal	Business use of land in residential district.
Kowalski 25MdA491	MdCtSpec App 1975	Commercial fishing	Residential	Illegal	BaltCo;BCZR102.1;Not Specifically Allowed.
Silitschanu 543A2d737	ConnSupCt 1988	Septic System	Residential	Illegal	Serves adjacent business use
GLP Dev	MdCtSpec App 1989T	Septic System	Rural Residential	Illegal	Serves adjacent business use; aff'ms PlBd denial.
Lipsitz164 Md 222	MdCtApp 1933	Ice Factory	Comm'l	Illegal	Estoppel cannot justify use; no laches.
Gontrum 182 Md370	MdCtApp 1943	PubSewerRt WayGranted	----------	City:NoDuty toOpenStreet	Estoppel not applicable against City.
Hagerstwn 264 Md481	MdCtApp 1972	Shopping CtrTheater	Commun. ShopCtr	Illegal	No estoppel: City policy contrary to law.
Inlet 313 Md 413	MdCtApp 1988	Right Way& RiparianRts: Hotel Marina	----------	Illegal; Lack of Ordinance	No estoppel based on City Resolution, no laches against city and citizens;Developer's plans change during process

Summary: 1. A use is allowed only when explicitly permitted by the zoning ordinance.
2. The law is settled that it is impermissible to place in residential and agricultural zones roads, septic systems and similar private transportation or utility uses which serve adjacent or nearby commercial land uses (unless explicitly authorized, such as parking under BCZR 409). These are not justified as "accessory uses."
3. Reliance on county "policy" or practice which is contrary to law (and thus a usurpation of legislative authority) cannot form the basis of an "estoppel."
4. Laches does not apply where the relevant time period is measured in months.
5. None of these defenses constitutes justification where the citizens and People's Counsel are excluded from the crucial zoning approval phase, and where the developer's plans change.

Conclusion: **The commercial septic system in the RC2 zone is unlawful. The Zoning Commissioner's decision to allow it in this particular case should be reversed.**

Respectfully Submitted, **People's Counsel for Baltimore County**

[illegible]

Maryland National Capital Park and Planning Commission

Garrity,
Bell, Bissell, [illegible]
Fischer

Per Curiam

Filed: July 31, 19[illegible]

Appellant [illegible] appeals [illegible] Court for Montgomery County [illegible] the Montgomery County [illegible] Maryland National Capital Park and Planning Commission [illegible] application for approval [illegible] preliminary plan of subdivision.

The following issues are raised by appellant:

I. Whether the circuit court committed error in refusing to allow the introduction of additional evidence, consisting of [illegible] records, to demonstrate the arbitrary, capricious and illegal quality of the Planning Board's decision.

II. Whether the Planning Board's determination that the appellant's preliminary plan did not conform with the master plan pursuant to Montgomery County Code Section 50-35(l) was arbitrary, capricious and erroneous, and contrary to the substantial evidence of record.

III. Whether the Planning Board's finding that the proposed septic field violated the zoning ordinance is an unlawful decision beyond the jurisdiction of the Planning Board in a Chapter 50 Subdivision proceeding; Alternatively, whether the decision was arbitrary, capricious, and an erroneous interpretation of the zoning ordinance.

IV. Whether the Planning Board's finding that the septic field supporting a commercially zoned parcel may not extend into a rural cluster residential zone is arbitrary and capricious in light of other actions by the Planning Board approving similar preliminary plans of subdivision.

V. Whether the Planning Board applied the provisions of Montgomery County Code Sec. 50-35(k) (adequate public facilities) in an erroneous, arbitrary, capricious and unlawful manner, contrary to the substantial evidence of record.

On December [illegible] application to the [illegible] Maryland National [illegible] (Planning Board) [illegible] subdivision plan [illegible] parcels of land [illegible] containing [illegible] a 1.65 acre [illegible] parcel zoned Rural Cluster [illegible]

Appellant [illegible] proposed to [illegible] comprised of two buildings [illegible] retail commercial use [illegible] The parcel zoned C-1 is to contain the [illegible] system tank, parking [illegible] The area zoned Rural Cluster is proposed to contain the underground septic field consisting of filtering pipes for sewage disposal.

After taking testimony, the Planning Board disapproved appellant's preliminary plan [illegible]:

1. The plan does not comply with the Subdivision Regulations (Chapter 50, Montgomery County Code).

2. The plan does not conform to the Zoning Ordinance (Chapter 59, Montgomery County Code).

Judge Sanders heard appellant's appeal in the circuit court and affirmed the Planning Board.

I. Additional Evidence

The first issue raised by appellant is that the circuit

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court erred in refusing to allow the introduction of additional evidence. Subtitle B of the Maryland Rules of Procedure governs appeals from administrative agencies. Rule B[illegible] states: "Additional evidence may be allowed when permitted by law." Appellant sought to introduce evidence of [illegible] wherein the Planning Board had approved [illegible] located on residential zoned property supporting commercial development. In Aspen Hill Venture v. Montgomery County Council, 265 Md. 303 (1972), the Court of Appeals approved the introduction of additional evidence similar to the evidence sought to be introduced in the case sub judice. Judge Sanders denied appellant's request to introduce additional evidence, and after considering a motion for reconsideration of the issue again denied appellant's request. We find that he erred in doing so, but in the context of this dispute, a reversal is not mandated.

II. Conformance with Master Plan

Appellant avers that its preliminary plan is in substantial conformance with the master plan, and, therefore, the Planning Board's decision, that it did not so conform was arbitrary, capricious and erroneous.

Section 50-35(l) of the Montgomery County Code provides:

> In determining the acceptability of the preliminary plan submitted under the provisions of this chapter, the Planning Board must consider the applicable master plan, including maps and text, unless the Planning Board finds that events have occurred to render the relevant master plan recommendation no longer appropriate.