



County Board of Appeals of Baltimore County

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

March 19, 1996

Robert A. Hoffman, Esquire.
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: REMAND /Case No. CR-93-305-SPH
Baker Land Company, et al
Civil Action No. 94-CV-02565

Dear Mr. Hoffman:

Enclosed please find a copy of the Board's Order, issued this date, in which the subject Petition for Reclassification is dismissed, pursuant to the February 14, 1996 Remand Order of the Circuit Court for Baltimore County, and the February 6, 1996 Mandate of the Court of Special Appeals of Maryland.

Very truly yours,

Kathleen C. Bianco
Administrative Assistant

encl

cc: Harrison & Grass
c/o Timothy C. Harrison
Patrick D. Hanley, Esquire
Michael and Penny Gerber
John M. Bearer
Tom Kelly /Greater Timonium
Community Council
The Honorable Thomas J. Bollinger, Judge
Circuit Court for Baltimore County
Copy /Circuit File No. 94-CV-02565
James Earl Kraft
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM



Printed with Soybean Ink
on Recycled Paper

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of April, 1995, a copy of the foregoing Notice of Appeal was mailed to John H. Zink, III, Esquire and Patricia A. Malone, Esquire, Venable, Baetjer and Howard, 210 Allegheny Avenue, P. O. Box 5517, Towson, MD 21204, attorney for Petitioner BAKER LAND CORPORATION, to Patrick D. Hanley, Esquire, 206 Washington Avenue, P. O. Box 5506, Towson, MD 21204, attorney for MICHAEL AND PENNY GERBER, and to MR. JOHN M. BEARER, 9 W. Main Boulevard, Timonium, MD 21093.


PETER MAX ZIMMERMAN

D. SABUNY
DOCKET clerk

CR-93-305-SPH -Baker Land Co.
CCT REMANDS (2nd time) to CBA
(Thomas J. Bollinger, J.)
3/30/95

1616-95
TO file

IN THE MATTER OF	*	IN THE
	*	CIRCUIT COURT
BAKER LAND COMPANY, ET AL	*	FOR
	*	BALTIMORE COUNTY
FOR RECLASSIFICATION	*	CASE NO. 94 CV 2565
	*	

* * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court as a Petition for Judicial Review of a decision reached by the Baltimore County Board of Appeals. This Court remanded this matter back to the Board for further proceedings pursuant to Maryland Rule 7-209. Specifically, the Board was ordered to make appropriate factual and legal findings so as to adequately comply with Baltimore County Code § 2-356(j)(2).

Petitioner now requests that this Court reverse the decision of the Board. In support of its position, Petitioner asserts that the Board has failed to address the requirements set forth by this Court in the Opinion and Order dated the 12th day of October, 1994 and Amended Memorandum Opinion and Order dated the 10th day of November, 1994. This Court agrees.

Section 2-356(j) of the Baltimore County Code outlines the conditions under which the Board of Appeals may grant reclassification. First, the Board must find that there has occurred a substantial change in the character of the neighborhood in which the property is located or that the last classification of the property was established in error. Baltimore County Code § 2-356(j)(1). The Amended Opinion issued the 22nd day of February, 1995 clearly states that the

30
TJS

FILED APR 3 1995

Board found, as a matter of fact, that the last reclassification of the property in question was established in error.

Second, the Board must find that the prospective reclassification is warranted by that change or error. In reaching this conclusion, the Board is required to adhere to the following:

...any finding that the prospective reclassification is warranted may be made only upon *consideration of factors* relating to the purposes of the zoning regulations and maps, including but not limited to all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classification with the master plan, the county plan for sewerage and water-supply facilities, and the capital program. (Emphasis added).

Baltimore County Code § 2-356(j)(2).

The Court of Special Appeals of Maryland has interpreted “consideration of factors” as requiring an articulation of the findings as to each of the articulable factors contained in § 2-356(j)(2). People’s Counsel v. Mockard, 73 Md. App. 340, 349 (1987). Thus, “... the Board must *at least* articulate its findings as to the thirteen (13) identified factors” listed in § 2-356(j)(2) before concluding that reclassification is warranted. Id. at 350. The Board is permitted to consider additional factors at its discretion. Id.

In the case at bar, the Board has failed to “consider,” as the word has been defined by Maryland case law, all of the identified factors found in § 2-356(j)(2). As such, this Court finds that the Board again committed error in failing to comply with the mandate of § 2-356(j)(2).

Although this Court is reluctant to remand this case yet again, it feels that it has no other choice in light of the standard set forth in Mockard, supra.

Accordingly, it is this 30th day of March, 1995, by the Circuit Court for Baltimore County,

ORDERED that this matter is hereby **REMANDED** to the Board of Appeals to make the appropriate factual and legal findings consistent with § 2-356 of the Baltimore County Code.

This Copy Test
Clerk
Tony [Signature]
Deputy Clerk

[Signature]
THOMAS J. BOLLINGER, JUDGE

Copies sent to:

John H. Zink, III, Esquire
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21285

Patrick Hanley, Esquire
206 Washington Avenue
P.O. Box 5506
Towson, MD 21204

Peter Max Zimmerman, Esquire
Room 47 Old Courthouse
400 Washington Avenue
Towson, MD 21204

Clerk:

Copies have
already been
sent.

Appealed to CSA
by PC

To be w/d & dismissed

need to scan



County Board of Appeals of Baltimore County

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

March 10, 1995

John H. Zink, III, Esquire
Patricia A. Malone, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that Supplemental Petitions for Judicial Review were filed on March 2, 1995 and March 6, 1995, in the Circuit Court for Baltimore County from the majority decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petitions must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 76/249/94-CV-02565.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Robert A. Hoffman, Esquire
Harrison & Grass
c/o Timothy C. Harrison
John M. Bearer
Tom Kelly /Greater Timonium
Community Council
James Earl Kraft
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /ZADM

RECEIVED

MAR 13 1995

ZADM

W. Carl Richards, Jr., /ZADM
Docket Clerk /ZADM

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY *
*
SUPPLEMENTAL PETITION OF *
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY *
400 Washington Avenue, Room 49 *
Towson, Maryland 21204 *
AND *
*
SUPPLEMENTAL PETITION OF MICHAEL *
GERBER & PENNY GERBER *
107 Harding Street *
Timonium, Maryland 21093 *
*
FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL
THE COUNTY BOARD OF APPEALS * ACTION
OF BALTIMORE COUNTY * No. 94-CV-02565
Room 49, Old Courthouse, 400 Washing- /76/249
ton Avenue, Towson, MD 21204 *
*
IN THE CASE OF: IN THE MATTER OF *
BAKER LAND COMPANY, ET AL *
FOR RECLASSIFICATION FROM M.L.R. & *
O-1 & D.R.3.5 TO B.M. ZONE ON PROP- *
ERTY LOCATED ON THE SWC PADONIA ROAD *
AND BROAD AVENUE (PARCEL 1) AND SE/S *
END ROOSEVELT STREET, SW BROAD AVENUE *
(PARCEL 2) *
8TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT *
CASE NO. CR-93-305-SPH *
(ITEM 3, CYCLE I) *
* * * * * * * * * * * * * * * * *
* * * * * * * * * * * * * * * * *

RECEIVED AND FILED
95 MAR 10 PM 12:17
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett and Harry E. Buchheister, Jr., constituting a majority of the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Supplemental Petitions for Judicial Review to the representative of every party to the proceeding before it; namely, Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, and Michael Gerber & Penny Gerber, 107 Harding Street, Timonium, Maryland 21093, Petitioners; Patrick D. Hanley, Esquire, HANLEY AND HANLEY, 206 Washington Avenue, P.O. Box 5506, Towson, Maryland 21204, Counsel for Mr. & Mrs. Gerber; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; John H.

SOPHIE

*Angelo - Thought you might
want to see - - Carl
Zoning-887-8098

CR-93-305-SPH BAKER LAND CO., ET AL
CCT REMANDS case to C.B. of A.
Hon. Thomas J. Bollinger
10/12/94

IN THE MATTER OF

BAKER LAND COMPANY, ET AL

FOR RECLASSIFICATION

*

*

*

*

* * * * *

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

CASE NO. 94 CV 2565

OPINION AND ORDER

This matter comes before the Court as a Petition for Judicial Review of a decision reached by the Baltimore County Board of Appeals. The Petition involves a 6.57 acre parcel of land located on the southwest corner of Padonia Road and Broad Avenue between Interstate 83 and York Road. Currently the site is zoned as a combination of the following: M.L.R. (manufacturing, light, restricted - 4.84 acres), O-1 (office building - 1.51 acres), and D.R. 3.5 (density residential, 3.5 dwellings per acre - .22 acres). Baker Land Company, et al, Appellee, has requested that the site be reclassified to B.M. (business, major) zoning.

The decision of the Board of Appeals and subsequent review by this Court are governed by §2-356 of the Baltimore County Code, which sets forth the procedures and standard applicable to requests for zoning reclassification. Additionally, pursuant to Maryland Rule 7-209, this Court may "dismiss the action for judicial review or may affirm, reverse, or modify the agency's order or action, remand the action to the agency for further proceedings, or an appropriate combination of the above."

Post-it™ Fax Note	7671	Date	10/20/94	# of pages	3
To	ANGELO D'ANNA	From	CARL RICHARDS		
Co./Dept.	MARS	Co.	ZONING		
Phone #		Phone #	887-8098		
Fax #	284-9098	Fax #	887-5708		

FILED OCT 14 1994

The Board of Appeals, in a two-to-one decision, approved the zoning reclassification in a written opinion issued February 24, 1994. The Court finds, however, that the majority committed error in failing to adequately comply with §2-356(j) of the Baltimore County Code. The Opinion merely summarizes the testimony presented at the hearing and fails to conduct the requisite analysis that would allow this Court to evaluate the Board's decision.

In fact, this Court is perplexed by the fact the Board failed to specifically consider the following:

...factors relating to the purposes of the zoning regulations and maps, including but not limited to all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

Baltimore County Code §2-356(j)(2).

Therefore, for the aforementioned reasons, it is this 12th day of October, 1994, by the Circuit Court for Baltimore County, ORDERED that this matter is hereby REMANDED to the Board of Appeals to make the appropriate factual and legal

findings consistent with §2-356(j)(2) of the Baltimore County
Code.


THOMAS J. BOLLINGER, JUDGE

TJB/am

Copies sent to:

John H. Zink, III, Esquire
210 Allegheny Avenue
P. O. Box 5517
Towson, MD 21285

Patrick Hanley, Esquire
206 Washington Avenue
P. O. Box 5506
Towson, MD 21204

Peter Max Zimmerman, Esquire
Room 47 Old Courthouse
400 Washington Avenue
Towson, MD 21204

John M. Bearer
9 W. Main Boulevard
Timonium, MD 21093

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
Room 47, Washington Avenue
Towson, Maryland 21204

AND

PETITION OF JOHN M. BEARER
9 W. Main Boulevard
Timonium, Maryland 21093

AND

PETITION OF MICHAEL GERBER &
PENNY GERBER
107 Harding Street
Timonium, Maryland 21093

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 94-CV-02565
/76/249

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, ET AL
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 TO B.M. ZONE ON PROP-
ERTY LOCATED ON THE SWC PADONIA ROAD
AND BROAD AVENUE (PARCEL 1) AND SE/S
END ROOSEVELT STREET, SW BROAD AVENUE
(PARCEL 2)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

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

RECEIVED AND FILED

94 MAY 19 PM 12:17

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett and Harry E. Buchheister, Jr.,
constituting a majority of the County Board of Appeals of Baltimore
County, and in answer to the Petitions for Judicial Review directed
against them in this case, herewith return the record of
proceedings had in the above-entitled matter, consisting of the
following certified copies or original papers on file in the Office
of Zoning Administration and Development Management and the Board
of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE COUNTY BOARD OF APPEALS AND
OFFICE OF ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT

No. CR-93-305-SPH

February 23, 1993	(1) Petition for Reclassification for property to be reclassified from an MLR, 0-1 and DR-3.5 zone to a BM-CCC zone; and (2) Petition for Special Hearing filed for business parking in an 0-1 zone; filed by Robert A. Hoffman, Esquire, on behalf of Harrison & Grass.
April 30	Comments from the Baltimore County Zoning Plans Advisory Committee.
August 27	Publication in newspapers.
September 10	Certificate of Posting of property.
September 28	Hearing before the County Board of Appeals.
October 19	Hearing concluded before the County Board of Appeals.
November 22	Petitioner's Memorandum in Support of Request for Reclassification, filed by Robert A. Hoffman, Esquire on behalf of the Petitioner.
November 22	People's Counsel Memorandum filed by Peter Max Zimmerman and Carole S. Demilio.
December 28	Petitioner's Reply Memorandum filed by Robert A. Hoffman, Esquire, in response to People's Counsel's Memorandum.
January 4, 1994	Open deliberation for final determination.
February 24	Majority Opinion and Order of the Board GRANTING the Petition for Reclassification (Hackett and Buchheister); Dissenting Opinion issued by Schuetz.
March 21	Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel.
March 22	Petition for Judicial Review filed in the Circuit Court for Baltimore County by John M. Bearer.
March 22	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Patrick D. Hanley, Esquire, on behalf of Michael

Gerber and Penny Gerber.

March 23	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County (People's Counsel).
March 24	Certificate of Notice sent to interested parties.
April 14	Copies of Petitions for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County (Bearer and Hanley).
April 14	Second Certificate of Notice sent to interested parties.
May 19	Transcript of testimony filed.

Petitioner's Exhibits No.1-Plat of site by G.W. Stevens
2-Colored view of buildings
2/18/93
3-Colored view of buildings
2/18/93
4-Colored drawing of lighting
and signage proposals
5A-Perry Hall store
5B-Produce display on mobile
stands
5C-Poultry area with attendants
5D-Meat Market, sausage kitchen
5E-Seafood with attendants
5F-Delicatessen computerized
5G-Dry goods section
5H-Checkout counters
6-Rule 8 papers of Sandy Earp
4/8/93
7-Report of Office of Planning
and Zoning 5/1/93
8-Resume of Samuel Crozier
9-Colored Map of zoning in
area.
10-Aerial Photo of area
11-Site perspective
illustration (color)
12-Resume of Richard Hillis
13-Environmental Impact
Statement (2-23-93)
14-F.E.M.A. Map of Flood Plain
15-Resume of J. Glazer
16-Resume of M. Cornelius
17-Transportation Map by M.
Cornelius
18-Resume of Robert Klein &

- samples of work
- 19-(A-E pages) -93' office /Industrial market study
 - 20-Resume of G. Gavrelis
 - 21-A-S -Photos of the properties around site
 - 22 -Master Plan page 104
 - 23 -Hunt Valley Study (five pages)
 - 24A -Map of 200 scale with numbered orange stamp
 - 24B -Board of photographs coinciding to orange stamp (IN BOA CLOSET)

ROS HOFFMAN
PICKED UP FOR
CCT HEARING TODAY 9/11/94

- People's Counsel's Exhibits No. 1 -Final Log of Issues -Comp. Zoning Map 10/15/92.
- 2 -Minutes of Council to retain zoning 10/15/92.
 - 3 -Inter-Office corres. from L. Pilson to A Jablon.
 - 4 -Letter from R. Powell to T.C. Julio.
 - 5 -Office memo from J. Dieter (DEPRM) 9/24/92.
 - 6 -List of people in attendance.
 - 7 -Letter from L. Thomas Kelly to Mr. Hackett.
 - 8 -Letter from J. M. Bearer to Mr. Ruppertsberger 10/5/92.
 - 9 -Portion of Zoning Map for area.
 - 10 -F.E.M.A. Map with colored locations.
 - 11 -Map of properties in green and yellow.
 - 12 -Map 1" -200' scale topography of area.
 - 13A-Y Photos of area by Mr. Bearer.
 - 13Z-Summary of Photographs above.
 - 14 -Hunt Valley study ch. 1, 7, pg. 9-8 of ch. 9.
 - 15 -Norman Gerber Vitae.
 - 16 -List of names.

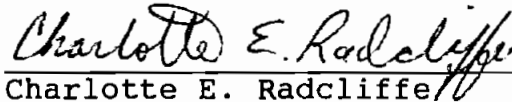
May 19, 1994

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

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court,

together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals' office and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Respectfully submitted,



Charlotte E. Radcliffe
Legal Secretary
County Board of Appeals of Baltimore
County, Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: Robert A. Hoffman, Esquire
Harrison & Grass
c/o Timothy C. Harrison
People's Counsel for Baltimore County
Patrick D. Hanley, Esquire
Michael Gerber and Penny Gerber
John M. Bearer

excludes the areas west of the railroad track between the subject site and Route 83. On cross-examination, Mr. Crozier admitted that the boundary included in the Hunt Valley study would include this portion of Deereco Road, which is zoned MLR and primarily developed as MLR. This is also a unique site because of the light rail line. The factors recognized in the Dissenting Opinion as to the logical development of property around the light rail transit stop and the negative effect of piecemeal zoning on the surrounding properties in such a unique site was ignored by the Petitioner. Interestingly, Mr. Crozier chose to include in his color-coded presentation the commercial area located on Timonium Road, nearly a mile from the subject site. On cross-examination, however, Mr. Crozier admitted:

"Q. There's no commercial zoning in this entire section of land from Padonia Road on the north to Timonium on the south, with the exception of the grouping near Timonium Road on the south and some properties that front York Road, on the west side of York Road?

A. Okay. Correct.

Q. The predominant zoning in the section I have just delineated, which, again, at Timonium Road and goes south, would be industrial zoning, residential zoning, and some office zoning, correct? Is that accurate?

A. Yes." (T.1, 112).

Mr. Crozier also attempted to imply that the small amount of commercial zoning on the north side of Padonia Road requires the same zoning classification on the south side of Padonia Road. However, on cross-examination, he altered that impression:

"Q. It's [Padonia Road] a wide road?

A. Very wide road.

Q. Is there any planning and zoning ruling that requires that the zoning on both sides of a road of that width be the same?

A. I don't believe there is a rule that calls for that, no." (T.1, 113).

Likewise, the testimony of George Gavrelis focuses on a perceived need for the commercial use and the attractiveness of the documented site plan. Mr. Gavrelis attempted to equate potential traffic congestion in the present zone versus the traffic generated by the proposed use as indicative of error. However, he overlooks the incompleteness of the studies performed by the Petitioner's traffic expert. There is no testimony from the Petitioner's expert as to the amount of traffic that would be generated by the proposed use. Rather, the testimony speculated that the proposed use would cause less peak hour traffic than development at the current zoning, although the expert admittedly did not consider all of the MLR uses in his analysis. Moreover, the traffic witness failed to recognize that industrial development in the MLR zone is not subject to the adequate facilities limitation of the Basic Service Maps. Traffic would not be an issue for development in the MLR zone.

Moreover, there is no dispute that the Warren Road exchange off I-83, opening the very day of the second day of testimony in the instant case, eliminates the crucial traffic congestion for York and Padonia Road.

Section 2-356(j)(2) of the Baltimore County Code sets forth a minimum of factors which must be considered by the Board of Appeals in a cycle zoning case. There is no indication from the Opinion of the Board of Appeals that these factors were considered by them in granting the Petition for Reclassification. The Opinion fails in the standards set forth in People's Counsel v. Mockard, supra at 349, where the Court, quoting from Anderson, American Law of Zoning, § 16.41, which

the Court noted, "states succinctly the reasons why administrative agencies should make express findings:

"Given express findings, the court can determine whether the findings are supported by the substantial evidence, and whether the findings warrant the decision of the board. If no findings are made, and if the court elects not to remand, its clumsy alternative is to read the record, speculate upon the portions which probably were believed by the board, guess at the conclusions drawn from credited portions, construct a basis for decision, and try to determine whether a decision thus arrived at should be sustained. In the process, the court is required to do much that is assigned to the board, and the latter becomes a relatively inefficient instrument for the construction of a record." (Emphasis previously added.)

IV. The Decision of the County Board of Appeals is Reversible Because it Recognizes and Relies on a) Covenants Between the Neighborhood and the Developer; b) An Agreement Between the Developer the Office of Planning and Zoning, All of Which Constitute Impermissible Contract Zoning.

The Baltimore County Code provision governing piecemeal zoning reclassifications gives the Petitioner the option to present a documented site plan, to which the Petitioner is restricted in the event the request for reclassification is granted. (Section 2-356(1)). Notwithstanding, this section does not alter the strong evidence required under the change mistake rule as specifically provided in Section 2-356(n), which states:

(n) Use of property.... Property may be not be reclassified solely on the basis of documentation relating to the property's proposed use."...

It has been established that conditional or contract zoning is invalid because it is not in accordance with the Comprehensive Zoning Plan. Montgomery County v. National Capital Realty Corp., 267 Md. 364 (1972). The statutory allowance of the documented site plan does not suggest a tolerance for contract zoning. Rather, the plan is a limitation by specific use of a property that merits reclassification based on fully sufficient proof of a mistake or error.

Despite this clear legislative intent and directives plainly stated in the legislation, the Petitioner offered the testimony of Mr. Jeffrey Long of the Office of Planning and Zoning as a supporter of the reclassification petition. Mr. Long equated approval of the proposed use for the site with support of the Petition for Reclassification, although he indicated in his testimony that his office does not comment on change or mistake (T.1, 71). However, his office's approval of the documented site plan implies support of the rezoning Petition to implement the plan.

In addition, Mr. Long admittedly attached the Covenants entered into between the developer and the neighborhood with OPZ's report to the Planning Board (T.1, 71). Although denying that such covenants influenced the OPZ's support of the proposed reclassification, such a presentation suggests a contract or conditional zoning arrangement.

It should be noted from Mr. Long's testimony that OPZ did not submit the subject site as an issue for commercial zoning in the 1992 Map Process (T.1, 75), yet OPZ now favors reclassification when the documented site plan and the neighborhood covenants are included in the proposal. Such evidence is clearly the problem contemplated by the Court in Mockard, supra, quoting from Board of County Commissioners of Washington County v. H. Manny Holtz, Inc., 65 Md.App. 574, 579 (1985), wherein it was stated, "When an area of land is rezoned from one classification to another and such change is not outright but subject to some type of conditions, then we are confronted with a conditional zoning problem."

V. The Petition for Reclassification is Defective for Failure to Comply with Statutory Requirements

A documented site plan cannot be fashioned to the Petitioner's whims. Rather, Section 2-58.1(1) of the Baltimore County Code sets forth specific requirements to qualify as a documented site plan. Petitioner, by its own admission, ignored those requirements as irrelevant to the reclassification procedure. Mr. Frederick Chadsey, the engineer for the Petitioner, did not express any concern that delineation of the hundred year flood plain, clearly applicable to the instant site, was notably absent from the documented site plan. Even the majority opinion had to note the deficiency when it stated that, "his office was still active in preparing solutions to any possible flood plain problems". The fact is, Mr. Chadsey chose to interpret the Zoning Regulations to his own convenience. Mr. James Dieter, head of the Department of Environmental Protection and Resource Management, diametrically contradicted the interpretation of Mr. Chadsey. Mr. Dieter stated in his testimony that the delineation of flood plains is required by the Department of Public Works. It relates to his department in that the appropriate buffers from the delineation would be established once the designation was accepted by the Department of Public Works. The incompleteness of the Petitioner's site plan is evident from Mr. Dieter's testimony:

"Q. But before your office could establish the appropriate buffers, you would require a proper delineation under the supervision of the Department of Public Works?

A. That is correct.

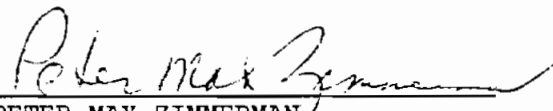
Q. And, to your knowledge, that has not yet been done?

A. To the best of my knowledge, right, that hadn't been completed yet." (T.2, 75-76)

The dissenting opinion from the Board of Appeals demonstrates clear understanding of the statutory requirements for a documented site plan and the failure of the Petitioner to comply with those requirements. Therein it was stated, "Failure to provide the floodplain delineation is most important for two reasons: First, the inclusion of a portion of the site within the hundred year flood plain would result in substantial changes to the documented site plan, thus invalidating the Petition for Reclassification; and, second, the Baltimore County Code requires delineation of the one hundred year flood plain, thus the Petition for Reclassification is incomplete and may be considered non-responsive. This point alone is sufficient to deny the Petition." (Dissenting Opinion, p. 2).

VI. CONCLUSION

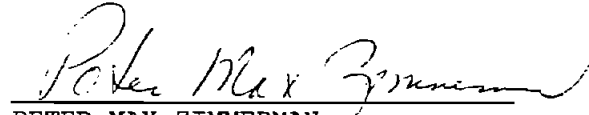
For the foregoing reasons, the C.B.A. Order dated February 24, 1994 should be reversed, and the petition for rezoning and special hearing should be denied.


PETER MAX ZIMMERMAN
People's Counsel


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June, 1994, a copy of the foregoing People's Counsel's Memorandum was mailed to Patrick D. Hanley, Esquire, 206 Washington Avenue, Towson, MD 21204, to John M. Bearer, 9 W. Main Boulevard, Timonium, MD 21093, to John H. Zink, III, Esquire and Patricia A. Malone, Esquire, Venable, Baetjer and Howard, 210 Allegheny Avenue, P. O. Box 5517, Towson, MD 21204.


PETER MAX ZIMMERMAN

(c) All fees shall be payable to Baltimore County, Maryland, and shall be collected by the agency at the time the appeal or petition is filed. (Code 1978, § 2-58.3)

Sec. 2-356. Delegation to board of interim power to change zoning classification of property; method of interim zoning reclassification; method for early action on reclassification due to public interest or emergency.

(a) *Powers generally.*

- (1) The board of appeals shall have the power to make a change as to the district, division, or zone within which a particular piece of property is classified (zoning reclassification) as hereinafter provided. As used in this section, the term "use" includes development, except where otherwise indicated by the context.
- (2) In addition to the authority vested in the board of appeals as described in subsection (a)(1) of this section, the board shall have the power to correct the official critical area map adopted pursuant to section 26-439 of this Code, subject to the requirements of this section.
- (3) The board of appeals shall be able to approve in conjunction with subsection (a)(1) or (a)(2) of this section any application for the use of growth allocation pursuant to the authority vested and procedure set forth herein and pursuant to section 26-123(g) and (h).
- (4) For the purpose of this section, the term "zoning reclassification" shall include all of the above.

(b) *Petition for zoning reclassification.* A petition for a zoning reclassification of a property (reclassification petition) may be filed with the board of appeals only by the legal owner of such property or by his legally authorized representative. Each such petition shall be filed no later than forty-five (45) days prior to the beginning of the

next succeeding cycle and shall include an explanation of the reasons why, in the petitioner's opinion, the reclassification sought should be made, set forth in sufficient detail to properly advise the county authorities required to review the petition. Any allegations of change in conditions as justification for the action sought shall be supported in the petition by precise description of such change and any allegation of error shall be so supported in similar detail and as further required by subsection (j) of this section. No such petition may be accepted for filing unless it meets the board of appeals' rules of practice and procedure, except that the petitioner may choose to submit plans that do not show any proposed use of the property under petition, regardless of any requirement in those rules to the contrary (see also subsection (a)(1)).

(c) *Schedule.* For the purpose of considering contemporaneous zoning reclassification petitions in relation to each other and according to a standard schedule, the following semiannually recurring schedule periods are hereby established, subject to provisions hereinafter set forth:

<i>April–October Cycle</i>	<i>October–April Cycle</i>
Period I April 16–May 31	and October 16–November 30
Period II June 1–July 31	and December 1–January 31
Period III August	and February
Period IV September 1–December 31	and March 1–June 30

(d) *Procedures.* With the exception of those reclassification petitions exempted under the procedure set forth in subsection (i) of this section, copies of all zoning reclassification petitions accepted for filing by the board of appeals shall be transmitted within five (5) days after receipt to the office of the zoning commissioner, who shall make the facilities and staff of his office available to the board of appeals for the purpose of:

- (1) Reviewing all such petitions for compliance with applicable statutes and regulations.
- (2) Preparing the appropriate advertisements.
- (3) Causing said advertisements to be published.

- (3) Posting the individual properties involved in the cycle; all as required by this section and rules of practice and procedure of the board of appeals. No later than five (5) days prior to Period I of the following cycle, the petition and appropriate comments shall be transmitted by the office of the zoning commissioner to the board of appeals.
 - (4) In the case of each petition pertaining to any land within the Chesapeake Bay Critical Area as defined in section 26-438, a copy of the petition and comments shall simultaneously be transmitted to the director of the department of environmental protection and resource management. The director of the department of environmental protection and resource management may adopt and, from time to time, may amend administrative regulations to be utilized by the office of the zoning commissioner when reviewing all such petitions for compliance with applicable statutes and regulations.
 - (5) The board of appeals shall transmit the petition and comments to the director of planning and zoning within the first five (5) days of Period I of the following cycle. Within fifteen (15) days thereafter, the director of planning and zoning and the board of appeals shall publish a listing of all such petitions, together with a map showing the locations of all properties under petition, in two (2) newspapers of general circulation in the county for a period of at least two (2) weeks. They also shall make such listing and map available in the form of a press release and, for a period of at least three (3) weeks, shall publicly display a copy of such listing and map in the county office building or other appropriate place for public inspection.
- (e) *Report on petitions by director of planning and zoning.* During each Period I, the director of planning and zoning shall review the petitions transmitted to him by the board of appeals and shall submit to the planning board and publish a report thereon containing at least the following information:
- (1) Maps showing properties under petition and the reclassifications sought therefor; such maps may also identify groups of such properties located close to each other and show other indications of the interrelation of petitions with respect to planning considerations.
 - (2) Recommendations on the petitions.
 - (3) Supporting data for the recommendations, including any pertinent data and recommendations submitted by other county agencies.
 - (4) Recommendations for scheduling of all hearings (to be held during the next Period IV), prepared in consultation with the board of appeals.
- (f) *Planning board duties.* During each Period II, the planning board shall:
- (1) Publish and submit to the board of appeals a report on all the reclassification petitions submitted during the preceding filing period, except those exempted under subsection (i) of this section, such report to contain the planning board's recommendations on such petitions, appropriate maps, and supporting data.
 - (2) Submit to the board of appeals a recommended schedule for its hearings on the petitions, so arranged that hearings on related petitions shall, with the petitioners' consent, be combined, and/or shall be held successively.
- (g) *Schedule of hearings; notice.* During each Period III, the board of appeals shall establish its schedule for hearings on petitions reported upon by the planning board during the preceding Period II, considering the schedule recommended by the planning board. The board of appeals with the assistance of the office of planning and zoning shall publish its entire schedule of hearings in at least two (2) newspapers of general circulation in the county within the first fifteen (15) days of such period, together with a map showing the locations of all properties under petition. For a period of at

least fifteen (15) days prior to the time of such hearing, each property shall be conspicuously posted with notice of the time and place of the hearing on the petition relating thereto; and individual notice thereof shall also be given in two (2) newspapers of general circulation in the county for the period in which on-premises posting is required.

(h) *Hearings.* The board of appeals, during each Period IV, shall hold the hearings scheduled pursuant to subsection (g) of this section, subject to such postponement or continuation as circumstances may require.

(i) *Exemption from cyclical procedures.* In any case where the planning board certifies to the county council that early action upon a zoning reclassification petition is manifestly required in the public interest or because of emergency and the county council by an affirmative vote approves said certification, such petition shall be exempted from the regular, cyclical procedure of subsections (c) through (h) of this section and also from the suspension of reclassification petition filing required under section 2-357 of this division. For any such petition, the board of appeals shall schedule a public hearing for a date not less than thirty (30) nor more than ninety (90) days after the county council's approval of the planning board's certification. For a period of at least fifteen (15) days prior to the time of such hearing, notice of the time and place of the hearing relating to the property under petition shall be conspicuously posted thereon and shall be given in at least two (2) newspapers of general circulation in the county. Such notice shall describe the property under petition and the action requested therein. Within five (5) days after receipt of such a petition, the board of appeals shall forward a copy of such petition to the office of the zoning commissioner and the director of planning and zoning and, in the case of each petition pertaining to any land within the Chesapeake Bay Critical Area, a copy to the director of the department of environmental protection and resource management, for consideration and written report thereon containing their findings thereon with regard to compliance with zoning regulations, planning factors, or critical area standards, subject to sections 26-123(g) and (h) and 26-124(d) of this Code.

* (j) *Findings prior to reclassification.* Before any property is reclassified pursuant to this section, the board of appeals must find:

- (1) That, except as limited by the terms of subsection (j)(3) of this section, there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified or that the last classification of the property was established in error.
- * (2) That the prospective reclassification of the property is warranted by that change or error. Any finding of such a change or error and any finding that the prospective reclassification is warranted may be made only upon consideration of factors relating to the purposes of the zoning regulations and maps, including but not limited to all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.
- (3) Any reclassification pertaining to land within the Chesapeake Bay Critical Area is subject to the following limitations:
 - a. 1. In accordance with Ann. Code of Md., Natural Resources article, § 8-1809(h), a reclassification, except for changes involving growth allocation that do not require changes to the underlying zones, may be granted only on proof of a mistake in the existing zoning or in the existing boundaries shown in the official critical area map or both; change in the character of the

neighborhood shall not be a basis for granting reclassification.

2. A reclassification involving growth allocation that does not require changes to the underlying zone or zones may be granted pursuant to the criteria set out in subsection (j)(3)b. of this section.

- b. In evaluating requests for reclassification, the board shall consider the criteria in COMAR 14.15.02 and the standards in appendix IV-B of the local protection program adopted by county council Resolution No. 13-88. No reclassification may be granted unless the board has made written findings that the proposed reclassification will:

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. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

- c. Reclassifications in cases involving growth allocation shall be referred to the county planning board by the board of appeals for consideration and written report thereon, subject to section 26-123(g) and (h) of this Code.

(k) *Limitations on granting reclassification.* No zoning reclassification of property shall, for a period of one (1) year after a zoning map applicable thereto may by an ordinance of the county council have been adopted, be granted on the ground that the character of the neighborhood has changed.

(l) *Documentation.* If a zoning reclassification petition includes documentation relating to the proposed use of the property under petition, that documentation must include:

- (1) Elevation drawings and a plan satisfying the zoning commissioner's rules of practice and procedure and showing locations, coverage, floor areas, heights, character, and exterior materials of all proposed structures and all existing structures to be retained; and all existing structures to be removed; signs visible outdoors; all principal uses; hours of operation, maximum number of employees, and maximum levels of emanations (including sound and other vibrations, dust, odors, gases, light, and heat); parking and loading facilities; existing and proposed public and quasipublic facilities on and adjacent to the site, including storm-drain systems, waterlines, sewerage, streets and drives, and railroad sidings; existing ponds and other bodies of water, watercourses, one-hundred-year floodplains, major vegetations, and unusual natural formations and proposed changes with respect to any of these; screening and landscaping; and existing topography and proposed major changes in grade; and
- (2) An environmental impact statement, as defined in the county zoning regulations, that concerns the proposed use of the property under petition and that has been competently prepared by a professional planner or engineer of appropriate qualifications.

A plan submitted pursuant to this subsection may show the location of a precise building envelope (a clearly delimited area within which a building is to be entirely located but which is larger than the area covered by the building itself) in lieu of the precise location of a building; may show precise maxima and minima in lieu of fixed values; may set forth lists of precisely described possible uses of a given space, in lieu of specifying a single use; and may otherwise reasonably allow for flexibility or alternatives, provided that appropriate precise limits are set forth.

(m) *Amendments.* A zoning reclassification petition (including any documentation relating to the proposed use of the property under petition)

may be amended only during a required public hearing proceeding on the petition. When a proposed amendment to such a petition is introduced, the hearing proceedings shall immediately be suspended, and, within two (2) business days thereafter, the hearing authority shall transmit a copy of the proposal to the director of planning and zoning, who:

- (1) In any case where a petition has been exempted under provisions of subsection (i) of this section, shall promptly refer the amendment to any agency that he considers appropriate, together with a request that the agency provide him with comments on the amendment. Within forty-five (45) days after the amendment has been transmitted to the director of the office of planning and zoning, he shall transmit to the hearing authority a report on the amendment.
- (2) In all other cases, the director of the office of planning and zoning shall promptly transmit copies to the members of the planning board. The director of planning and zoning shall also promptly refer the amendment to the office of the zoning commissioner and any other agency that he considers, upon reviewing files on the petition, to have an interest therein, together with a request that the agency provide him with comments on the amendment for distribution to the planning board, by a time he shall specify. Within forty-five (45) days after the copy of the amendments has been transmitted to the director of planning and zoning, the planning board shall adopt and transmit to the hearing authority a resolution embodying a report on the amendment.
- (3) Any documentation that relates to the proposed use of the property upon petition and that is submitted by the petitioner or his authorized agent after the first public newspaper advertisement of the filing of the petition as required in Period I shall be considered an amendment to the petition, whether or not documentation of that nature was included within the original petition, and shall be subject to the provisions of subsection (m)(1) as well as this subsection.

(n) *Use of property.* Property may be reclassified under this section only upon making the findings required under subsection (j) of this section. Property may not be reclassified solely on the basis of documentation relating to the property's proposed use. However, any provision of section 26-122 of the contrary notwithstanding, if the petition to reclassify the property does include such documentation and is granted, the property may be used only in accordance with the plan included within that documentation; the zoning classification of any such property will revert to the previous classification unless, within three (3) years after the date of the final order granting the petition, the property is being used in accordance with the plan or, in a case where development is necessary to implement the plan, unless the development either is completed or has been substantially undertaken and is being diligently pursued to completion. The requirement that such a property be utilized in accordance with a plan and the provision that otherwise the classification of the property will revert will not be affected by the subsequent enactment of a zoning map, pursuant to section 26-124 or 26-125 of this Code unless the zone classification of the property is further changed by that map.

(o) *Considerations in making determination.* In its hearing on any zoning reclassification petition, the county board of appeals shall consider in evidence without testimony thereto, absent objection by any party to the case, any report of the planning board of comments from the director of planning and zoning or other officer of the office of planning and zoning relating to the petition or any duly submitted relevant report or comments from any other county agency. If an objection is made by any party to the case, the item shall be entered by testimony of a proper witness, who shall be notified by the board of appeals.

(p) *Special exceptions and variances.* The board of appeals, subject to the appropriate principles, standards, rules, conditions, and safeguards as set forth in the zoning regulations, shall have original jurisdiction for the purpose of hearing and deciding petitions for special exceptions and/or variances, the granting of which is dependent upon the reclassification of the property involved in the petition for reclassification. Such special excep-

tions and variances shall be advertised and posted in accordance with the procedures provided in this section for advertising and posting reclassification petitions.

(Code 1978, § 2-58.1)

Sec. 2-357. Suspension of reclassification petition filing during preparation of new or revised zoning map.

No reclassification petitions other than those exempted under subsection (i) of section 2-356 shall be received for filing by the board of appeals from April 16 through October 15 of any year in which the county council is preparing or modifying the new or comprehensively revised zoning map then to be approved and adopted. Any request for zoning reclassification may be presented at the appropriate time of the planning board or county council during such a period, however, for consideration in the preparation or modification of the new or comprehensively revised zoning map then to be approved and adopted. The purpose of this section shall be to provide for the orderly nonduplicate consideration of reclassification requests within the context of a comprehensive zoning map, when such map is under review.

(Code 1978, § 2-58.2)

Secs. 2-358–2-375. Reserved.

DIVISION 4. COMMISSION ON ARTS AND SCIENCES

Sec. 2-376. Definitions.

The term "arts and sciences" shall include arts and sciences as now commonly understood or as may hereafter be so understood, including but not limited to all phases of the visual and performing arts and shall also include the exhibition of all forms of history and science, when such activities are conducted by nonprofit organizations.

(Code 1978, § 2-91)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 2-377. Established; purpose.

(a) There is hereby established in the office of the county executive in the executive branch of the county the county commission of arts and sci-

ences (hereinafter referred to as the "commission"), for the purpose of developing, coordinating, and promoting the performing and visual arts and the sciences, and without contracting therefor, negotiating for artistic services, performances, and exhibits, making accessible presentation of programs relating to the arts and sciences, all for the enjoyment, education, cultural enrichment, and benefit of the citizens of the county. In furtherance of said purpose, the commission shall attempt to accomplish the following objectives:

- (1) Stimulate greater governmental and public awareness and appreciation of the importance of the arts and sciences to the people of the county.
- (2) Encourage and implement greater and more efficient use of governmental and private resources for the development and support of the arts and sciences.
- (3) Encourage and implement opportunities for county residents to participate in artistic and scientific activities.
- (4) Promote the development of county artists, scientists, and institutions and regional organizations sponsoring arts, science activities, and audiences.
- (5) Survey and assess the needs of the arts and sciences and of the people of this county relating thereto and make such information promptly and regularly available to all interested agencies and persons upon request.
- (6) Support and implement the preservation and growth of the county's artistic and scientific resources.
- (7) Foster the development of a receptive climate for the arts and sciences, to culturally enrich and benefit the citizens of the county in their daily lives, and to attract to the county and its environs additional outstanding creators in the field of arts and sciences through appropriate programs, publicity, education, coordination, and activities, such as the presentation of lectures and exhibitions and central compila-

and land in violation of zoning regulations and restrictions adopted pursuant to this title and requiring the return of property, to the extent possible, to its condition prior to the violation, including removal of the source of the violation. (Code 1978, § 22-36; Bill No. 18, 1990, § 2; Bill No. 4, 1992, § 1)

Annotation—Similar section of 1955 County Code cited in *Commissioners of Baltimore County v. Oxford Company*, 209 Md. 373, 121 A.2d 239 (1956).

Sec. 26-121. Civil penalty for zoning violations.

(a) The director of zoning administration and development management shall interpret and enforce the county zoning regulations to insure that uses or buildings, including but not limited to structures, landscaping, roads, and streets, conform to plans approved by the county.

(b) As used in this section, the following words have the meanings indicated.

Defendant means the person charged with violating the zoning regulations and having a relationship to the property, including but not limited to any of the following:

- (1) *Owner* means the person listed in the tax records of the county.
- (2) *Occupant* means the person who has the actual use of the property.
- (3) *Landlord* means the person who owns or holds the property for the owner.
- (4) *Tenant* means the person who rents or leases the use of the property.
- (5) *Person* includes an individual, corporation, partnership, association, joint venture, firm, organization, representative, trustee, receiver, or other legal entity.

Cross reference—Definitions and rules of construction generally, § 1-2.

(c) If the use of property by a person, after inspection by a representative of the office of planning and zoning, is alleged to be in violation of the zoning regulations or policies, rules, or regulations interpreting the zoning regulations or orders of the zoning commissioner or board of appeals of the county, the person is subject to a civil

penalty as prescribed in subsection (c) of this section. Representatives of the office of planning and zoning have the duty of enforcing the zoning regulations and inspecting property for enforcement purposes and are authorized to enter upon open land during the performance of their duties.

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

(e) On receipt of the initial inspection report alleging a civil zoning violation of the zoning regulations, the director of zoning administration and development management shall issue a citation to the person alleged to be in violation of the zoning regulations. The citation shall be on a form adopted by the director of zoning administration and development management, shall affirm that the contents therein are correct to the best of his knowledge, and shall include:

- (1) The date of issuance of the citation.
 - (2) The name and address of the person charged.
 - (3) The section number(s) of the zoning regulation which has been violated.
 - (4) The nature of the civil zoning violation and the location and dates of the violation and whether the violation may be continuing in nature.
 - (5) The amount of the fine assessed as a civil penalty.
 - (6) The instructions for paying the fine.
 - (7) The right to elect to stand trial for the civil zoning violation, along with the instructions for making such election.
- (f) (1) Any person who receives a citation may pay the fine within thirty-five (35) days or may elect to stand trial for the violation by filing with the director of zoning administration and development management, at least five (5) days before the date of payment as set forth in the citation, a notice of intention to stand trial.

- (2) On receipt of a notice of intention to stand trial, the director of zoning administration and development management shall forward a copy of the citation and of the notice of intention to stand trial to the District Court of Maryland for Baltimore County.
- (3) If the fine remains unpaid at the expiration of the thirty-five (35) days from the date of the citation, the zoning commissioner may request adjudication of the case in district court, at which time the person is liable for an additional fine not to exceed twice the original fine.
- (4) The county attorney shall prosecute civil zoning violations in the district court.
- (g) (1) The director of zoning administration and development management shall send a formal notice of violation to any person who received a citation and who fails to either pay the fine or elect to stand trial for the civil zoning violation.
- (2) If the fine remains unpaid at the expiration of thirty-five (35) days from the date of the formal notice of violation, the director of zoning administration and development management may request adjudication of the case in the district court.
- (3) If the citation is not satisfied within fifteen (15) days from the date of the formal notice of violation, the person is liable for an additional fine not to exceed twice the original fine.
- (h) Nothing contained in this section shall prevent the county from instituting any appropriate action or proceeding at law or in equity for the enforcement of zoning violations or the correction of such violations, and the provisions of this section shall be in addition to any other remedy allowed by law to the county for this purpose. (Code 1978, § 22-36.1; Bill No. 18, 1990, § 2; Bill No. 88, 1990, § 1; Bill No. 4, 1992, § 1)

Sec. 26-122. Division of county into districts, etc.; uniformity of regulations.

For all or any of the purposes referred to in section 26-116 of this Code, the county shall be

divided into districts, divisions, or zones of such number, shape, and area as may be deemed best suited to carry out the purposes of this title, and within such districts, divisions, or zones the erection, construction, reconstruction, alteration, repair, and use of buildings, structures, and land may be regulated and restricted. All such regulations shall be uniform for each class or kind of building or structure throughout each district, division, or zone, but the regulations in one (1) district, division, or zone, may differ from those in other districts, divisions, or zones.

(Code 1978, § 22-20)

Annotation—Prior similar law cited in *Hedin v. Commissioners of Prince George's County*, 209 Md. 235, 120 A.2d 668 (1956).

State law reference—Authorized penalties, Ann. Code of Md. arts. 25A, § 5(A), 66B, §§ 7.01, 7.01(c).

Sec. 26-123. Preparation of zoning regulations, zoning maps and growth allocation procedure.

(a) The planning board shall from time to time recommend to the county council for adoption zoning regulations and zoning maps, showing the boundaries of the proposed districts, divisions, or zones into which the county is divided pursuant to this title. The zoning maps shall also identify properties, sites, and districts which have been officially placed on the preliminary or final landmarks list of the county landmarks preservation commission or the National Register of Historic Places.

(b) The planning board from time to time may also recommend for adoption amendments or supplements to such regulations and may at any time, with prior approval by an affirmative vote of the county council, review the existing zoning maps in effect throughout the county and recommend to the county council such comprehensive revisions thereof as the board may deem advisable in the light of changed conditions or whenever the board recommends revisions or updates to the master plan pursuant to sections 26-81 and 26-82 and section 523 of the Charter. Any legally adopted zoning map shall remain in effect until the county council shall have adopted a map or maps in substitution therefor. All such amendments or supplements to the zoning regulations and all such comprehensive revisions of the zoning maps shall be made in

accordance with the same procedure herein specified for the original adoption of such regulations and maps.

(c) After such zoning regulations and zoning maps have been approved by the planning board, it shall release a preliminary report thereon. Thereafter, and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation in the county, the planning board shall hold one (1) or more public hearings on the proposed zoning maps. The board may hold one (1) or more public hearings on the proposed regulations or on matters referred to the board by the county council, unless required to hold such hearings by resolution of the county council adopted pursuant to section 26-33. During the period of such notice, the preliminary report of the planning board, with accompanying maps and exhibits, if any, shall be available for public inspection in the county office building. After such hearing or hearings have been held, the director of planning shall submit to the county council a report containing the final recommendations of the planning board with regard to the proposed zoning regulations or maps as the case may be; and, in the case of zoning maps, a copy of the final map as approved by the planning board shall be attached to such report. In the event of any disagreement among the members of the planning board as to any part of the proposed zoning map or regulations, the dissenting member or members shall be entitled to file with the county council one (1) or more minority reports stating the basis for their disagreement with the majority, which shall be included with the final report of the majority.

(d) Within the one-year period immediately preceding June 30, 1988, and within each one-year period immediately preceding June 30 of every fourth year thereafter, the planning board, after completely reviewing the zoning map then in effect, shall recommend to the county council a new or comprehensively revised version of such map, in accordance with the procedure set forth above. Within twenty (20) days after each such action, the director of planning shall transmit said proposed new or revised zoning map to the county council. The map shall identify as a separate issue each area or parcel of land recommended or con-

sidered by the planning board for a change in zoning. The provisions of this subsection are mandatory and shall apply regardless of any optional actions taken under subsection (a), (b), or (c) of this section.

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

	<i>Beginning</i>	<i>Ending</i>
Period 1. Public and planning director	August 1	October 31
Period 2. Planning board and planning director	November 1	November 30
Period 3. County council	December 1	January 15

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

(f) Except in those instances where a request for change in zoning has been initiated by the property owner or owner's agent, the office of planning and zoning shall cause written notice to be sent by regular mail to all property owners whose property is being considered for a possible change or zoning classification. The notice shall advise the owner that the identified property is being considered for a possible change of zoning classification and that further information may be obtained from the office of planning and zoning. Notices shall be mailed to the owner at the address shown on the tax assessment records of the county at least thirty (30) days prior to the planning board's final vote on the recommended map or maps to be submitted to the county council. Failure to send the notice provided herein or failure of the property owner to have received the same shall not invalidate or otherwise affect any change or changes in the zoning of the subject property.

(g) Growth allocation may be awarded subject to the following distribution constraints:

- (1) The total growth allocation for the county is four hundred sixty-two (462) acres, of

which up to one-half may be used to reclassify resource conservation areas to either limited development areas or intensely developed areas. The remaining portion may be used to reclassify limited development areas to intensely developed areas. The apportionment of these four hundred sixty-two (462) acres shall be determined as follows:

- a. One hundred (100) acres shall be reserved for those projects accepted by the county review group as of December 1, 1985;
 - b. Twenty-two (22) acres have been approved by the county council through the phase 1 growth allocation process as adopted by Bill No. 35-88;
 - c. One hundred seventy (170) acres may be awarded through periodic design competitions, as set forth in subsection (h) of this section, by December 31, 1991:
 1. From these one hundred seventy (170) acres shall be reserved for minor developments which are defined as residential, commercial, or industrial uses that require a maximum of ten (10) acres of allocation per project. An additional thirty-four (34) acres shall be reserved from the remaining growth allocation acreage set aside for allocation after December 31, 1991, for minor developments which are defined as residential, commercial, or industrial uses that require a maximum of ten (10) acres of allocation per project.
 2. There shall be two (2) separate design competitions, one (1) occurring in the year 1989 and the other occurring in 1991. The planning board may recommend that a portion of the one hundred seventy (170) acres or none of the one hundred seventy (170) acres be awarded. If superior projects are submitted, the planning board may recommend that some of the allocation reserved for future use be awarded.
 3. By December 31, 1991, the department of environmental protection and resource management, in conjunction with the growth allocation review committee, shall evaluate the growth allocation system established in this section and forward an evaluation and recommendations to the county council for legislative review. No further growth allocation may be awarded until such time as the county council adopts legislation amending, changing, or continuing the existing process. A process by which the remaining growth allocation may be awarded shall be adopted by July 1, 1993, and implemented by December 31, 1993; said remaining growth allocation, however, need not be completed by that date.
- (2) All growth allocation applications shall be subject to the design competition evaluation factors set forth by the growth allocation review committee established pursuant to subsection (h) of this section. These factors shall be used for comparative evaluation of the degree to which the growth allocation applications achieve the objectives of resource management and protection, quality of design, location, and off-site community enhancement within the Chesapeake Bay Critical Area directly related to the proposal and its impacts. Except for minor developments, the burden of proof is upon the applicant to demonstrate that the application fulfills the environmental and community enhancement factors.
 - (3) New intensely developed areas must be at least twenty (20) acres.
 - (4) Record plats for projects awarded growth allocation shall not be renewed unless approved by the growth allocation review committee. If such a plat is denied renewal, the allocation shall be reapplied to the county's total.

- (5) The growth allocation review committee shall adopt and, from time to time, may amend its administrative procedures for the review of growth allocation applications under the provisions of this section.

(h) The following design competition procedure shall be used to award growth allocations in the critical area:

- (1) The department of environmental protection and resource management shall announce the opening of the growth allocation design competition through a notice in two (2) newspapers of general circulation in the county. At the time of the notice, the department of environmental protection and resource management shall have available for distribution copies of the procedural and submittal requirements and the evaluation objectives previously submitted to the Chesapeake Bay Critical Area Commission. Submittal requirements and evaluation objectives are subject to review and revision by the department of environmental protection and resource management (or growth allocation review committee) on an annual basis.
- (2) Growth allocation plans and data must be submitted to the department of environmental protection and resource management within ninety (90) days of the public notice. Within fifteen (15) business days of the receipt of the request and plans, the department of environmental protection and resource management shall review the plan for compliance with the growth allocation submission requirements; and if the plan is in compliance, the plan shall be accepted for filing and copies of the plan shall be forwarded to the growth allocation review committee (GARC) for its action. An incomplete plan shall be returned to the applicant with an explanation for its return.

The growth allocation review committee shall consist of the directors or their designated representatives of the department of environmental protection and resource management, office of planning and zoning,

department of public works, department of recreation and parks, and the economic development commission. The director of the department of environmental protection and resource management or his designated representative shall serve as chairperson.

- (3) The department of environmental protection and resource management shall prepare copies of the official county Chesapeake Bay Critical Area map and, if applicable, the official county zoning map showing the location of the requested growth allocations.
- (4) The growth allocation review committee shall review the submissions per the design competition evaluation objectives and make written recommendations to the planning board within ninety (90) days of the official acceptance deadline.
- (5) Subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation, the planning board shall hold one (1) or more public meetings to review the recommendations of the growth allocation review committee. The meeting(s) shall include:
 - a. A presentation of the plan by the applicant.
 - b. GARC recommendations.
 - c. Public comment.

During the period of notice, the plans with accompanying text and data, as well as the GARC's recommendations, shall be available for public inspection at the department of environmental protection and resource management.

- (6) Notice of the date, time, and place of the planning board's public meeting(s) shall be conspicuously posted by the county on the lot, parcel, or tract which is the subject of the plan at least fifteen (15) business days prior to the meeting.
- (7) Within thirty (30) days of the final public meeting, the planning board shall act on the GARC's recommendations. Recommendations that require a reclassification will be forwarded to the board of appeals for

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final determination pursuant to section 2-356 of this Code. Recommendations that require a zoning change to the official zoning map shall be forwarded to county council for approval and be subject to the provisions of section 26-124(d).

- (3) The department of environmental protection and resource management shall forward the approved amendments to the official critical area map or zoning map or both and all relevant information to the Chesapeake Bay Critical Area Commission for approval under Ann. Code of Md., Natural Resources article, § 8-1809.
(Code 1978, § 22-21; Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1)

Sec. 26-123.5. Comprehensive zoning map process fees.

- (a) The fees for filing issues pursuant to section 26-123 to be paid by the person raising an issue shall be as follows:
- | | |
|--|-----------|
| (1) Each noncontiguous lot of record of less than two (2) acres located with planned water and sewer service area, hereinafter called "planned service area" | \$ 500.00 |
| (2) Each noncontiguous lot of record of less than ten (10) acres located outside planned service area | 500.00 |
| (3) Each noncontiguous lot of record of two (2) or more acres located within the planned service area | 1250.00 |
| (4) Each noncontiguous lot of record of ten (10) or more acres located outside planned service area | 1250.00 |
| (5) Issues filed by a duly constituted civic, improvement, or community association as otherwise provided for and limited by section 26-209(a)(2)... | 75.00 |
- (b) For the purpose of this section, contiguous lots of record in the same ownership, included in

any issue, wherever situated, shall be considered as one (1) lot of record.

(c) As used in this section, the following words and terms have the meanings indicated:

Lot of record: A parcel of land with boundaries as recorded in the land records of the county on July 1, 1991, whether included within one (1) or more deeds.

Issue or issues: Refers to a lot or lots of record proposed for change in zone or district classification.

(d) Issues initiated by the office of planning, planning board, or by members of the county council shall be exempt from any and all fees established herein.

(e) The county administrative officer may change the above fees from time to time as deemed appropriate, subject to the provisions of section 15-9. In addition, the county administrative officer shall waive any or all fees established herein for the filing of an issue when filed by a county volunteer fire, ambulance or rescue company.
(Bill No. 64, 1991, § 1(22-21.1))

Sec. 26-124. Action by county council on adoption of zoning regulations and zoning maps and Chesapeake Bay Critical Area map procedures.

(a) After the county council has received a final report of the planning board recommending adoption of any zoning regulations or zoning maps, the county council shall hold one (1) or more public hearings thereon, giving at least ten (10) working days' notice thereof in a newspaper having a general circulation in the county. During such ten-day period, the final report of the planning board with accompanying one (1) inch to one thousand (1,000) feet scale maps and supporting exhibits, if any, together with any minority report and maps from any dissenting members of the planning board, shall be available for inspection at the office of planning and zoning, in each respective councilmanic district, and at such other public place as the county council may designate for public inspection. After the expiration of such period of notice and following the public hearing or hear-

ings, the county council may by ordinance adopt such regulations or maps, subject, however, to such changes or amendments therein as the county council may deem appropriate, but subject to the provisions of section 26-123(e).

(b) No change or amendment may be made in a zoning map to an area or parcel of land which was not considered by the planning board for a change in zoning prior to its submission of the map to the county council.

(c) (1) Each change or amendment to be made in a zoning map as proposed by the planning board shall be voted upon individually by the county council, and each vote thereon shall be recorded in the council minutes.

(2) The officially adopted zoning map shall be the one (1) inch to two hundred (200) feet scale maps.

(d) Notwithstanding any other provision of this Code relating to reclassifications or rezoning of land, the county council may amend at any time the official zoning map in conjunction with the approval of growth allocation applications and the related amendment of the official critical area map enacted pursuant to section 26-123(g) of this Code, but only after receipt of recommendations from the planning board pursuant to section 26-123(g) and (h) and subject to the procedures established in this subsection below:

- (1) That all requests for growth allocation that involve changes to the underlying zone or zones not subject to section 2-356(j)(3) of this Code shall be submitted to the director of the department of environmental protection and resource management, who shall process such requests pursuant to section 26-123(g) and (h);
- (2) Within a reasonable period from receipt of the recommendations from the planning board, pursuant to section 26-123(h), and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation, the county council shall hold a public hearing on the proposed zoning changes;

(3) Within sixty (60) days of the county council's public hearing, the county council shall take action on the planning board's recommendations.

(Code 1978, § 22-22; Bill No. 14, 1992, § 1)

Sec. 26-125. County council action on regularly revised zoning map.

Each time the county council receives a recommended zoning map from the director of planning under the procedure set forth in section 26-123(d), the county council shall forthwith schedule a hearing or hearings thereon, in accordance with the procedures set forth in section 26-124. Before October 16 of each year in which it is required in this title that the proposed version of said map be recommended by the planning board, the council shall adopt the complete county-wide zoning map last so recommended with such revisions as may be made in accordance with section 26-124.

(Code 1978, § 22-23)

Sec. 26-126. Planning board reports.

(a) Within two (2) years after the county council has received a final report of the planning board concerning amendments to the zoning regulations, the county council by ordinance may act upon the report. If the county council fails to so act within the two-year period, the final report of the planning board is null and void, and any action upon the subject matter of the final report requires compliance with the provisions of sections 26-123 and 26-124 regarding amendments to the zoning regulations.

(b) Within two (2) years after the county council has acted pursuant to subsection (a) of this section, the council by ordinance may take further action upon any issue related to the subject matter of the final report without the necessity of compliance with the provisions of section 26-123 regarding a prior recommendation of the planning board. However, prior to taking such action, the council shall prepare a specific proposal and hold a hearing on the proposal.

(Code 1978, § 22-24)

Sec. 26-127. Authority of zoning commissioner to provide for special exceptions and variances.

(a) Except as provided in section 2-356(p) of this Code and subject to the appropriate principles,

ARTICLE 1B--DENSITY RESIDENTIAL (D.R.) ZONES [Bill No. 100, 1970.]

Section 1B00--LEGISLATIVE STATEMENT OF FINDINGS; POLICY WITH RESPECT TO D.R. ZONES IN GENERAL. [Bill No. 100, 1970.]

1B00.1--Declaration of Findings. The Baltimore County Council finds: [Bill No. 100, 1970; Bill No 2, 1992.]

- A. that residential zoning regulations heretofore in effect have not been conducive to the creation of housing diversity in Baltimore County subdivisions; [Bill No. 100, 1970.]
- B. that minimum standards for individual lots, having been derived from maximum overall density standards, have resulted in an excessive spreading of residential development over subdivision tracts; such spreading of development has led to removal or undesirable transformation of natural vegetation and other features more properly left in their natural or previous states, and has led to visual monotony; [Bill No. 100, 1970.]
- C. that zoning reclassifications based on lot sizes and types of housing have, in some situations, prevented the construction of the maximum numbers of housing units intended to be permitted on development tracts, especially in cases of severe topographical variation, or have induced "cramped" layout or other undesirable subdivision-design characteristics as accommodation of maximum density is achieved; [Bill No. 100, 1970.]
- D. that evolving markets for types of housing units not permitted in lower-density zones have created pressures leading to frequent rezoning, ultimately resulting in vastly greater population levels than have been planned for, tending to nullify planning efforts and to overload and overcrowd public facilities; [Bill No. 100, 1970.]
- E. that, as a result of such rezoning, residential zoning classifications at the various density levels have not been applied to a satisfactory degree in proper relation or with sufficient regard to: location or size of commercial or industrial areas or uses; utilities, motorways, schools, or other public facilities; timeliness of development; conservation and allocation of land resources; and other factors which should be considered in planning for the development of the county on the basis of a comprehensive rationale; [Bill No. 100, 1970.]

F. that, in light of the above findings, it is in the interest of the general welfare that new zoning classifications, formulated so as to avoid such effects in future residential development, be established as hereinafter provided; [Bill No. 100, 1970.]

G. that the ability to distribute density across different zone boundaries, as provided for in Bill 100-70, has resulted in density patterns often unintended by the county during the comprehensive zoning map process; and [Bill No. 2, 1992.]

H. that the flexibility of density residential zoning has resulted, in some situations, in residential development that is incompatible with existing neighborhoods. [Bill No. 2, 1992.]

1B00.2--Purpose. The D.R. zoning classifications are established, pursuant to the legislative findings set forth above, in order to: [Bill No. 100, 1970.]

- A. foster a greater variety in housing types within future residential developments; [Bill No. 100, 1970.]
- B. allow more feasible preservation of natural features and induce the reservation of ample and more suitably designed open spaces and parks, in order to better satisfy the needs of residents without economic disadvantage to developers; [Bill No. 100, 1970.]
- C. allow greater flexibility in subdivision-development planning and provide for the inducement of more creative as well as more economic approaches to residential development, with the goal of desirable and distinctive identity and character of individual residential locales; [Bill No. 100, 1970.]
- D. provide the means to satisfy differing housing-market requirements without rezoning, and thus without disruptive changes in density potential; [Bill No. 100, 1970.]
- E. provide for the application of residential zoning classifications in a manner more nearly in accord with comprehensive plans and comprehensive-planning goals; and [Bill No. 100, 1970.]
- F. provide greater certainty about dwelling types and densities within existing communities with the goal of conserving and maintaining these areas. [Bill No. 2, 1992]

Section 1B01--REGULATIONS WITH RESPECT TO D.R. ZONES IN GENERAL {Bill No. 100, 1970.}

1B01.1--General Use Regulations in D.R. Zones. {Bill No. 100, 1970}

A.¹ Uses Permitted as of Right. The following uses, only, are permitted as of right in D.R. zones of all classifications, subject to the restrictions hereinafter prescribed: {Bills No. 100, 1970; No. 2, 1992.}

1. Dwellings as provided herein and as provided in Section 430 and subject to Section 402: {Bill No. 100, 1970; No. 2, 1992.}
 - a. In all D.R. zones: single-family detached, semi-detached or duplex dwellings. {Bill No. 2, 1992.}
 - b. In all D.R. zones: alternative site design dwellings, subject to findings of compatibility pursuant to Sections 26-206 and 26-282 of the County Code, and as provided for in the Comprehensive Manual of Development Policies. {Bill No. 2, 1992.}
 - c. In D.R. 5.5 zones, subject to findings of compatibility by the hearing officer: Group Houses, Group Houses, Back-to-Back; and Multi-Family Buildings. {Bill No. 2, 1992.}
 - d. In D.R. 10.5 and D.R. 16.0 zones: Group Houses; Group House; Back-to-Back; and Multi-Family Buildings. {Bill No. 2, 1992.}
 - e. In the case of housing for the elderly and assisted living facilities of fewer than four (see Section 432). {Bill No. 36, 1988.}
2. Trailers (see Section 415).
3. Churches, other buildings for religious worship, or other religious institutions.
4. Above-ground electrical-power, telephone, telegraph lines, except above-ground electrical power lines having a capacity of 35 kilovolts or more; pole-mounted transformers or transformer banks.
5. Other cables; conduits; gas, water, or sewer mains; or storm-drain systems: all underground.
6. Excavations, uncontrolled (as defined in Section 101).
7. Farms, produce stand in association with a farm, or limited-acreage wholesale flower farms (see Section 404). {Bill No. 41, 1992.}

8. Garages, community.
9. Hospitals. [Bill No. 37, 1988.]
10. Local open space tracts or other common amenity open space.
- 10a. Privately sponsored day care and nursery programs, as an ancillary use, within housing for the elderly projects, as defined in Section 101 of these regulations. [Bill No. 47, 1982.]
- 10b. Class A group child care centers and Class B group child care centers providing for up to 40 children, if not located in a residential transition area, subject to the requirements of Section 424, and family child care homes, group child care centers and nursery schools. [Bill No. 200, 1990.]
11. Research institutes or laboratories in existence at the time of the adoption of Bill No. 122, 1984, subject to the zoning regulations in effect at the time of the approval by Baltimore County of the institute or laboratory. [Bill No. 100, 1970; No. 122, 1984.]
12. Schools, except business or trade schools or such schools as are permitted by special exception (see Paragraph C, below), but including schools for agricultural training. [Bills No. 63, 1980; No. 47, 1982; No. 47, 1985.]
13. Signs, non-accessory, to the extent permitted under Section 413.
- 13a. Antennas used by CATV systems operated by companies franchised under Title 2, Article VI, Division 2 of the Baltimore County Code 1978, if situated on property owned by the county, state or federal government or by a governmental agency. [Bill No. 220, 1981.]
- 13b. Transit facilities. [Bill No. 91, 1990.]
14. Accessory uses or buildings other than those permitted only by special exception, including, but not limited to:
 - a. Accessory radio or television receiving antennas;

- b. wireless transmitting and receiving structures, provided that any such structure: is a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission; if it is an independent structure, shall be subject to the same requirements as are applied to buildings under Section 400; if it is a rigid-structure antenna, shall be no higher than 50 feet above grade level and with no supporting structure thereof closer than 10 feet to any property line; and does not extend closer to the street on which the lot fronts than the front building line; [Bill No. 100, 1970.]
 - c. automotive-service stations, but only within community garages (see Section 405); [Bill No. 100, 1970.]
 - d. home occupations, as defined in Section 101; [Bill No. 100, 1970.]
 - e.²
 - f. parking spaces, including accessory garage spaces; [Bill No. 100, 1970.]
 - g. offices for the conduct of business incidental to the rental, operation, service, or maintenance of apartment buildings; [Bill No. 100, 1970.]
 - h. accessory signs (see Section 413); [Bill No. 100, 1970.]
 - i. swimming pools, tennis courts, garages, utility shed, satellite receiving dishes (subject to Section 429) or other accessory structures or uses (all such accessory structures or uses subject to the height and area provisions for buildings as set forth in Section 400). [Bill No. 71, 1987.]
15. Commercial film production, subject to Section 435. [Bill No. 57, 1990.]
- B. Dwelling-Type and other supplementary use restrictions based on existing subdivision and development characteristics. [Bill No. 100, 1970; No. 124, 1981.]
- 1. Residential Transition Areas and Uses Permitted Therein. [Bill No. 100, 1970; No. 124, 1981; Bill No. 2, 1992.]
 - a. Definitions and purpose. [Bill No. 100, 1970; No. 124, 1981; Bill No. 2, 1992.]

- (1) The residential transition area (RTA) is a 100-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed.
- (2) The purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types.

b. Generation of residential transition area. {Bill No. 2, 1992.}

An RTA is generated if the property to be developed lies adjacent to land zoned D.R. 1, D.R. 2, D.R. 3.5, D.R. 5.5, or R.C. which:

- (1) contains a single-family detached, semi-detached or duplex dwelling within 150 feet of the tract boundary; or
- (2) is vacant, less than two acres in size, and contains a buildable area at least 20 feet by 30 feet on which a dwelling meeting all required setbacks can be erected.

c. Variance of RTA. {Bill No. 2, 1992.}

- (1) Notwithstanding the provisions of Section 307, the hearing officer, upon the recommendation of Public Works, Planning and Zoning, Environmental Protection and Resource Management, Zoning Administration and Development Management, Recreation and Parks, Community Development, or the Economic Development Commission, may determine the amount of RTA in cases where a single tract is more than two acres, is vacant, or contains no more than one single-family detached, semi-detached or duplex dwelling.
- (2) The RTA for a tract may be modified as directed by findings pursuant to Section 26-206 and Section 26-282 of the Code. However, the hearing officer may not reduce the amount of RTA unless the officer specifically finds and determines that such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed.

d. A residential transition use is any use: {Bill No. 2, 1992.}

- (1) permitted as of right under paragraph 1B01.1A; or

- (2) any use permitted by special exception under paragraph 1B01.1.C, except an accessory use permitted only by special exception; or
 - (3) any parking area permitted under paragraph 409.8.B, subject to the approval of a specific landscape plan for the buffer area which must meet the requirements for a Class A plan.
- e. Conditions in residential transition areas. {Bill No. 2, 1992.}
- (1) The RTA may contain single-family detached, semi-detached or duplex dwellings.
 - (2) Group-house, back-to-back group houses, multi-family building and parking lots shall be set back from the tract boundary 75 feet and provide a 50-foot RTA buffer.
 - (3) The 50-foot RTA buffer shall remain an upgraded, uncleared, landscaped buffer unless otherwise directed by the hearing officer, based upon recommendations of the county. It shall not contain cleared drainage areas, stormwater management ponds or accessory structures, but it may be bisected by roads, paths, and trails that are designed to connect to adjoining developments.
 - (4) The maximum height of any lighting fixtures in an RTA buffer area shall be 16 feet, except for public utility uses which must be of reasonable height. The fixtures shall be designed and placed so as to prevent the spillage of light into any adjoining dwelling or lot. The intensity of the fixture shall not exceed .2 candles at the tract boundary.
 - (5) Parking lots or structures, either as principal or accessory use, whether permitted by right, special exception, or pursuant to Section 409.8.B, shall provide a 50-foot buffer and 75-foot setback, and a height not to exceed 35 feet within the 100-foot transition area.
- f. Any subdivision of land or PUD that has received CRG approval or reclamation plan approval or has been accepted for filing prior to the date of adoption of Bills No. 2-92 or 3-92 is subject to the laws in effect at the time of the approval or filing. {Bill No. 2, 1992.}
- g. Exceptions to residential transition.

The restrictions contained in sub-subparagraph a. through e. above, of this Subparagraph B.1. do not apply to: {Bill NO. 124, 1981; No. 109, 1982; No. 40, 1992.}

- (1) A proposed dwelling to be placed in a RTA containing existing dwellings of the same type, or, if two or more types of dwellings exist, a proposed dwelling of the same type as the existing dwelling with the fewest number of dwelling units. Such dwellings shall be governed by the applicable laws, zoning regulations and policies otherwise applicable. As used herein, a "dwelling of the same type" means a dwelling which has the same or lesser number of dwelling units and party walls as the existing dwelling units. {Bills No. 124, 1981; No. 109, 1982; No. 40, 1992.}
- (2) Public utility uses (except public utility service centers and storage yards). Such uses shall be governed by the provisions of Section 411, 502 and such other applicable sections of these regulations. {Bills No. 124, 1981; No. 40, 1992.}
- (3) Notwithstanding the provisions of Section 104, the reconstruction of an existing church, community building, or other structure devoted to civic, social, recreational, fraternal, or educational activity which is destroyed by fire or other casualty. However, such reconstruction may not increase the size or ground floor area of the structure or alter the location or use of the structure. {Bills No. 124, 1981; No. 40, 1992.}
- (4) An addition to an existing church or other building for religious worship, including parking areas and driveways, provided all other applicable zoning regulations including setback, parking, and screening requirements, are maintained. {Bill No. 109, 1982; No. 40, 1992.}
- (5) A new church or other building for religious worship constructed on a parcel of land large enough to provide landscaped but otherwise unimproved yard areas of 100 feet between any improvement and any property line other than street frontages. {Bills No. 109, 1982; No. 40, 1992.}

- (6) A new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7. Any such hearing shall include a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. {Bills No. 109, 1982; No. 40, 1992.}
- (7) Shoreline fishing and shellfish facilities. Such uses shall be governed by the provisions of Section 500.4 and Subparagraphs 1A01.2C.9, 1A02.2B.10, 1A04.2B.7 and 1B01.1C.7.a of these regulations. {Bills No. 124, 1981; No. 109, 1982; No. 40, 1992.}
- (8) An addition to an existing trailer park or mobile home park or contiguous to such park. If the park is lawfully in existence in a D.R. zone on the effective date of this act. {Bills No. 109, 1982; No. 40, 1992.}
- (9) An addition to an existing community building, or other structure devoted to civic, social, recreational, fraternal or educational activity, including parking, and screening requirements, are maintained. {Bills No. 109, 1982; No. 40, 1992.}
- (10) A new community building, or other structures devoted to civic, social, recreational, fraternal or educational activity, if the zoning commissioner determines during the special exception process that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that the special exception can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. {Bills No. 109, 1982; No. 40, 1992.}
- (10a) Principal use Class A and Class B group child care centers, provided that the zoning commissioner determines, during the special exception process that the proposed improvements are planned in such a way that compliance with the bulk standards of Section 424.7 will be maintained and that the special

exception can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. {Bills No. 200, 1990; 59, 1991; No. 40, 1992.}

- (11) The conversion of a dwelling to a bed and breakfast home, bed and breakfast inn, or country inn pursuant to Section 402D or 402E. {Bills No. 113, 1988; No. 40, 1992.}
- (12) Notwithstanding the provisions of Section 104, the reconstruction of an existing nursing home which is destroyed by fire or other casualty. However, such reconstruction may not increase the size or ground floor area of the structure or alter the location or use of the structure. {Bills No. 37, 1988; No. 40, 1992.}
- (12a) Transit facilities and rail passenger stations shall be exempt from the RTA requirements. {Bills No. 91, 1990; No. 40, 1992.}
- h. The provisions contained in Sub-subparagraphs a. through e. of Subparagraph B.1., shall not apply to existing developments as described in Subparagraph A.1. of Subsection 1B02.3, nor to subdivision tracts for which tentatively approved plans remain in effect as described in Subparagraph A.2 of said subsection. {Bills No. 100, 1970; No. 124, 1981; No. 40, 1992.}
- 2. Use Regulations in Existing Developments. In existing developments as described in Subparagraph A.1. of Subsection 1B02.3 uses shall be limited to those now lawfully established or to those indicated in the subdivision plans on file with the Office of Planning and Zoning, except as may otherwise be permitted under provisions adopted pursuant to the authority of Section 504. {Bill No. 100, 1970.}
- 3. Use Regulations for Existing Subdivision Tracts. On subdivision tracts for which tentatively approved plans remain in effect as described in Subparagraph A.2 of Subsection 1B02.3. the uses permitted shall be those indicated in the plan or, where the use is not indicated and if not inconsistent with the plan, the uses shall be those permitted under zoning regulations in effect at the time the tentative approval was granted. {Bill No. 100, 1970.}
- C. ³ Uses Permitted by Special Exception. The following uses, only, are permitted by special exception in all D.R. zones, subject to the restrictions hereinafter prescribed: {Bills No. 105, 1982; No. 36, 1988.}

1. Boarding or rooming houses.
2. Boat yards, including marinas.
3. Camps, public or quasi-public, including day camps.
4. Conservatories for music or other arts.
5. Convalescent homes.
6. Community buildings, swimming pools, commercial beaches, golf courses, country clubs, or other similar civic, social, recreational, or educational uses, including tennis facilities, provided that no tennis facility in a D.R. 1 or D.R. 2 zone shall comprise more than 4 courts and no tennis facility in a D.R. 3.5, D.R.5.5, D.R. 10.5 or D.R. 16 zone shall comprise more than 6 courts (see Section 406A). {Bill No. 62, 1978.}
- 6a. Community Care Centers.{Bill No. 142, 1979.}
- 6b. Class B group child care centers for more than 40 children subject to the standards set forth in Section 424 (Family Child Care Homes, Group Child Care Centers, and Nursery Schools, and Principal Use Class A and Class B group child care centers providing for up to 40 children, if located in a residential transition area. {Bill Nos. 200, 1990; 59, 1991.}
7. Excavations, controlled (see Section 403).
- 7a. Fishing and shellfishing facilities, shoreline Class I or Class II, except that a facility existing on July 1, 1977, may continue without a special exception if a use permit has been granted for it, provided:
 - (1) that the owner (or his legally authorized representative) applies for the use permit within 6 months hereafter (see Section 500.4);
 - (2) that with the application for the use permit is filed a site plan in accordance with Zoning Commissioner's Rules of Practice and Procedure;
 - (3) that any fencing, screening, or other change in the site or limitations on the manner of selling the catch necessary to make the facility more compatible with its surroundings that is required by the zoning commissioner is completed within the time limits for partial and full compliance with a program of compliance submitted to him; and

- (4) that no increase in the amount of floor or site area or in the number of boats devoted to the use nor any other change in the site plan is made.
{Bill No. 30, 1978.}

8. Funeral Establishments.

9. Helistops.

9a. Home occupations of disabled persons, where the use is established in a structure originally constructed as a dwelling or as accessory to a dwelling or where the use is established in a structure that is situated on the same lot as a dwelling and which the Zoning Commissioner finds to be compatible with its surrounding neighborhood, provided that:

- (1) only three persons including the disabled person and the members of his immediate family who are residents of the dwelling are employed in the use on the premises; and
- (2) in any case the use is conducted by a disabled person whose domicile is the dwelling to which the use is accessory and whom the hearing authority finds is so severely disabled as to be unable to engage in this occupation away from the premises of his home.

Any provision of Subsection 502.2 to the contrary notwithstanding, any special exception granted pursuant to this item shall expire upon the first to occur of the following:

- (1) five years after the issuance of the permit;
- (2) the death of the disabled person;
- (3) the termination of the disability; or
- (4) the failure of the disabled person to permanently reside at the premises.

A new special exception for the use may be granted when the previous special exception expires but only upon the completion of the entire application and hearing process in the same manner as if it were the initial application for this special exception. It is the purpose of this provision to prevent the use of residential property for business purposes by an occupant other than a disabled person and to ensure that any occupation permitted pursuant to this item will be conducted in a manner appropriate to its surroundings. {Bill No. 27, 1981.}

- 9b. Office or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25 per cent of the total floor area of such residence; and does not involve the employment of more than one non-resident professional associate nor two other non-resident employees. {Bill No. 105, 1982.}
- 10. Poultry killing, commercial, as an accessory use on farms, only.
- 11. Private colleges (not including business or trade schools), dancing schools, dormitories, or fraternity or sorority houses. {Bill No. 47, 1985.}
- 12. Public-utility uses other than those permitted as of right, but excluding steam power plants, service centers, and storage yards.
- 13. Public-utility service centers.
- 14. Public-utility storage yards.
- 15. Radio studios.
- 15a. Rail passenger stations, subject to Section 434. {Bill No. 91, 1990.}
- 16. Television studios.
- 17. Tourist homes.
- 18. Veterinarians' offices.
- 19. Volunteer-fire-company stations.
- 20. Wireless transmitting and receiving structures, as principal uses or structures, provided that any exterior transmitting and receiving antenna greater than 50 feet above grade level shall be considered as a principal use or structure.
- 21. Continuing care facilities. (see Section 432) {Bill No. 36, 1988.}
- 22. Assisted living facilities of four or more (see Section 432). {Bill No. 36, 1988.}
- 23. Assisted living facilities developed in conjunction with a nursing home (see Section 432). {Bill No. 36, 1988.}

24. Housing for the elderly if the use involves a modification or waiver under Subsection 432.2, 432.3 or 432.4. {Bill No. 36, 1988.}

D. The following provision, which was enacted by Bill No. 140, 1962, took effect on November 17, 1962, and was heretofore designated as Subsection 200.16 of these zoning regulations, is re-enacted without amendment, and nothing in this article shall be construed to abrogate its effect:

Junk yards and open dumps as defined in Section 101. Any existing junk yards in this (R.40) or any other residential zone, and any existing open dumps in any zone shall be completely eliminated not later than two years after the date of effectuation of this amendment. {Bills No. 140, 1962; 100, 1970.}

PAGES 12 THROUGH 15 RESERVED

Section 204--D-1 (OFFICE BUILDING) ZONES. [Bill No. 167, 1980.]

204.1--Declaration of Findings.

- A. It is likely that continued residential use or moderate-density residential development of certain sites in predominantly residential areas near commercial zones or on heavily traveled, congested motorways would not be economically feasible. [Bill No. 167, 1980.]
- B. Because of their proximity to residences, business zoning of these sites is not appropriate. [Bill No. 167, 1980.]
- C. Because public facilities serving these sites are not designed to serve intensive residential development, high-density residential zoning of these sites is not appropriate. [Bill No. 167, 1980.]
- D. A repealed provision of these Zoning Regulations allowed construction of office buildings by special exception in D.R. 16 zones; R-O zoning regulations are too stringent for many sites on which office buildings have been constructed or their construction authorized under that provision. [Bill No. 167, 1980.]
- E. With appropriate restrictions, office-building development somewhat more intensive than that permitted or allowable under the R-O zoning classification is likely to be the most suitable and economically feasible use of these sites and zoning of the sites to make such development allowable would be in the public interest. [Bill No. 167, 1980.]

204.2--Statement of Legislative Policy.

- A. The D-1 zoning classification is established primarily to accommodate development or limited enlargement of medium-size conventional office buildings on sites that should not be restricted by regulations of the R-O or moderate-density D.R. classifications, for reasons stated in the declaration of findings above. [Bill No. 167, 1980.]
- B. It is intended that buildings and uses in D-1 zones shall be highly compatible with the present or prospective uses of nearby residential property. [Bill No. 167, 1980.]

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C. It is intended, generally, that property not be classified as O-1 unless at least 1 of the following criteria is met: it is well served by the public transit system; it lies along a heavily used highway near extensive frontage that has been developed or used commercially; or it is located near a commercial center. [Bill No. 167, 1980.]

D. It is intended that property not be classified as O-1 unless it is a minimum of approximately 2 acres. [Bill No. 221, 1980.]

204.3--Use Regulations of O-1 Zones. [Bill No. 167, 1980.]

A. Uses permitted as of right. The following uses, only, are permitted as of right:

1. Uses permitted as of right and as limited in D.R. 5.5 zones. [Bill No. 167, 1980.]
2. Class A, Class B, or Class C office buildings containing offices, medical offices, or medical clinics. [Bills No. 167, 1980; No. 37, 1988.]
3. The following accessory commercial uses within Class B or Class C office buildings (see also Paragraph C, below):
 - a. Photocopying establishments
 - b. Secretarial-service establishments
 - c. Eating or drinking establishments without dancing or live entertainment
 - d. Travel bureaus
 - e. Banks [Bill No. 167, 1980.]
4. Accessory uses not included under Item 1, above, but not any accessory commercial uses other than those listed in Item 3 (see Paragraph B, below) [Bill No. 167, 1980.]

B. Uses allowable by special exception. The following uses, only, are allowable by special exception:

1. Uses allowable by special exception and as limited in D.R. 5.5 zones; [Bill No. 167, 1980.]
2. The following accessory commercial uses within Class B or Class C, provided that the Zoning Commissioner or County Board of Appeals finds that each such use will primarily serve the principal uses of the lot (see also Paragraph C, below);

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- a. Drug stores
 - b. Personal-care establishments, including hair-care, facial-treatment, manicuring, or shoe-shining establishments
 - c. Stationery or office-supply shops. [Bill No. 167, 1980.]
3. Wireless transmitting or receiving structures. [Bill No. 64, 1986.]
- C. Supplementary use regulations (see also Section 206).
1. Accessory-commercial-use floor-area limitations.
- a. No more than 7.5 per cent of the adjusted gross floor area of any office building may be occupied by accessory commercial uses. [Bill No. 167, 1980.]
 - b. No single accessory commercial use other than an eating or drinking establishment may occupy more than 1,200 square feet of floor area. [Bill No. 167, 1980.]
2. Entrances to accessory commercial uses. No exterior entrance to any accessory commercial use within an office building is permitted unless 75% of the principal uses in the building have exterior entrances. [Bills No. 167, 1980; No. 24, 1983.]
3. Outdoor signs or display for office buildings. In addition to the temporary real estate signs and the temporary construction signs permitted under subsection 413.1--
- a. One (1) stationary building identification sign on each office building is permitted, provided that--
 - 1. It identifies only the name, address, or logo of the building, or a combination of these things;
 - 2. It is not illuminated other than by illumination that may be provided for the building or site;
 - 3. It does not project more than six (6) inches from the building and it does not extend above the roof line of the building; and
 - 4. Its surface area does not exceed two (2) square feet for every 1,000 square feet of floor area. [Bill No. 167, 1980.]
 - b. One (1) stationary freestanding identification sign is permitted on each lot on which a Class B or a Class C office building is situated, provided that--

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- f. Each bank located within an office building is permitted one (1) walk-up automatic teller machine. [Bill No. 167, 1980.]
- g. One (1) stationary identification sign is permitted for each accessory commercial use within an office building, provided that--
 - 1. The light from any one light source shall be shielded or directed so that the light intensity or brightness shall not adversely affect surrounding premises;
 - 2. It does not project more than twelve (12) inches from the building; and
 - 3. Its surface area does not exceed twenty-five (25) square feet. [Bill No. 167, 1980.]

No other signs or display visible outdoors are permitted. [Bill No. 167, 1980.]

204.4--Bulk Regulations of O-1 Zones

- A. Residential-zone uses, etc. Uses permitted under Item 204.3.A.1, uses allowable under Item 204.3.B.1, and new structures accessory to Class A office buildings are governed by the bulk regulations of D.R. 5.5 zones. (A Class A office building itself, which by definition may not be enlarged, is not subject to bulk regulations, nor is an unenlarged structure that was accessory to the building before it was converted to an office building.) [Bill No. 167, 1980.]
- B. Class B office buildings. The following bulk regulations apply to any Class B office building and its lot.
 - 1. Minimum setback from any lot line other than a street line: 20 feet or equal to the height of the buildings whichever is greater; [Bill No. 167, 1980.]
 - 2. Minimum setback from any street line: 35 feet; [Bill No. 167, 1980.]
 - 3. Minimum area devoted to amenity open space: 20 per cent of net lot area. [Bill No. 167, 1980.]
 - 4. New structures accessory to Class B office buildings are governed by the bulk regulations of D.R. 5.5 zones for accessory buildings. [Bill No. 126, 1986.]
 - 5. Maximum floor area ratio: 0.50 [Bill No. 151, 1988.]
 - 6. Maximum height of structures: 35 feet [Bill No. 151, 1988.]
- C. Class C office buildings. The following bulk regulations apply to any Class C office building and its lot.

1. Minimum setback from any boundary of a residential or R-O zone, other than a boundary that lies within a street: the distance equal to twice the height of the building, whichever is greater; [Bill No. 167, 1980.]
 2. Minimum setback from any street line: 35 feet, but if the building is attached to a building on a lot in a business zone the setback from the street line need not be greater than that of the latter building [Bill No. 167, 1980.]
 3. Maximum floor area ratio: 0.55 [Bill No. 167, 1980.]
 4. Minimum area devoted to amenity open space: 20 per cent of net lot area [Bill No. 167, 1980.]
- D. Height of Class C office buildings. The maximum height of any Class C office building is 60 feet. [Bill No. 167, 1980.]
- [E. Minimum area of an O-1 zone site: 2 acres. [Bill No. 167, 1980; deleted by Bill No. 221, 1980.]]

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Opp. 33

232B.5--The maximum average permitted height of any building shall be 1 1/2 times the maximum average height otherwise permitted in B.L. zones. [Bills No. 111, 1968, Subsection 232A.5; No. 100, 1970.]

B.M. Zone--Business, Major [B.C.Z.R., 1955.]

Section 233¹⁶--USE REGULATIONS

The following uses only are permitted (see Section 233.3):

233.1--Uses permitted in B.L. Zone.

233.2¹⁷--Animal boarding place, Class A. [Bill No. 85, 1967.]

["Animal hospital..." deleted by Bill No. 85, 1967.]

Automobile sales room and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operations on the highways shall not be stored outdoors.

["Billiard and pool rooms;" deleted by Bill No. 61, 1967.]

Boat yard. [Bills No. 64, 1963; No. 85, 1967.]

Bowling alleys.

Carpentry, electrical, plumbing, heating, sheetmetal, electroplating and painting shops.

Catering hall {Bill No. 110, 1993.}

Clothes cleaning and dyeing where not more than 2 units with combined capacity of not more than 50 pounds are employed.

Commercial beach, with provision of adequate parking area; and permitting dressing facilities, snack bar, picnic area, and boat rental. [Bills No. 64, 1963; No. 85, 1967.]

Commercial recreation enterprises, including dance halls, skating rinks, and others which--in the judgment of the zoning commissioner--are similar, but excluding merry-go-rounds and freak shows, shooting galleries and penny arcades.

Community building, swimming pool, or other structural or land use devoted to civic, social, recreational, and educational activities. [Bills No. 64, 1963; No. 85, 1967; No. 26, 1988.]

Funeral Establishment. [Bill No. 43, 1970.]

Garage, service.

Golf course, country club, or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot, or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line. [Bills No. 64, 1963; No. 85, 1967.]

Hotel.

Machinery sales store.

Marina. [Bills No. 64, 1963; No. 85, 1967.]

Night club.

Pawn shop.

Printing, lithographing, or publishing plant, employing not more than 25 persons.

Second-hand store.

["Tavern" deleted by Bill No. 85, 1967.]

Theatre, excluding drive-in.

Transit Centers, Subject to Section 434.

[Bill No. 91, 1990.]

Warehouses. [Bill No. 18, 1967.]

["Warehouses sales and storage" deleted by Bill No. 18, 1976.]

233.2A--Combinations of the above uses. [Bill No. 111, 1968.]

233.2B--Accessory uses or structures, including business signs (see Sections 413.2, 413.4, and 413.5), garages, and parking spaces for the use of owners, employees, tenants, and invitees. A maximum of six (6) coin-operated children's rides are permitted as an accessory use. [Bills No. 111, 1968; No. 29, 1982.]

233.3--All permitted uses are subject to the following conditions:

- A. They shall be contained, except in the case of signs, restaurants, swimming pools, outdoor sales or display areas, and parking lots, within a completely enclosed building.

- B. Not more than 25 employees shall be regularly engaged in fabrication, repair, cleaning, or other processing of goods or articles in any one establishment.
- C. Where the requirements in Section 233.3 would create undue hardship, the zoning commissioner may approve a modified plan upon petition and public hearing thereon.

233.4--Special Exceptions--The following uses when permitted as special exceptions (see Sections 270 and 502):

Arcade, subject to the provisions of Section 423B. [Bill No. 29, 1982.]
Automotive-service station, subject to the provisions of Section 405. [Bills No. 40, 1967; No. 85, 1967.]
Bus terminal.
Car wash. [Bills No. 108, 1964; No. 85, 1967]
Drive-in restaurant. [Bills No. 40, 1967; No. 85, 1967.]
Excavations, controlled (see Section 403).
["Filling station" deleted by Bill No. 40, 1967.]
Golf driving range, miniature golf, and baseball batting range.
Heliport, Type I. [Bill No. 85, 1967.]
Heliport, Type II. [Bill No. 85, 1967.]
Laboratory.
Living quarters in a commercial building.
[Motel or motor court; repealed by Bill No. 82, 1984.]
Public utility uses other than those noted in Sections 200.11¹⁹ and 230.9 (see Section 411).
Signs, outdoor advertising (see Sections 413.3 and 413.5).
Sludge Disposal Facility - Co-Landfilling (see Section 412A.2A). [Bill No. 46, 1982.]
Sludge Disposal Facility - Composting (see Section 412A.2B). [Bill No. 46, 1982.]
Sludge Disposal Facility - Handling in General (see Section 412.A2.C). [Bill No. 46, 1982.]
Sludge Disposal Facility - Incineration (see Section 412.A2.D). [Bill No. 46, 1982.]
Sludge Disposal Facility - Landspreading (see Section 412.A2.E). [Bill No. 46, 1982.]
Striptease Business. [Bill No. 137, 1990.]
Wireless transmitting or receiving structure not permitted by Section 426. [B.C.Z.R., 1955; Bills No. 61, 1967; No. 85, 1967; No. 64, 1986.]

M.L.R. Zone--Manufacturing⁹ Light, Restricted [Bill No. 56,
1961.]

Section 247¹⁰-PURPOSE [Bill No. 56, 1961.]

To permit grouping of high types of industrial plants in industrial subdivisions in locations with convenient access to expressways or other primary motorways so as to minimize the use of residential streets; to fill special locational needs of certain types of light industry; to permit planned dispersal of industrial employment centers so as to be conveniently and satisfactorily related to residential communities; and as transitional bands between residential or institutional areas and M.L. or M.H. zones. [Bill No. 56, 1961.]

Section 248--USE REGULATIONS: [Bill No. 56, 1961.]

The following uses only are permitted: [Bill No. 56, 1961.]

248.1--Uses permitted in the M.R. zone, except Heliport, Type II, which may be permitted only as a special exception; [Bills No. 56, 1961; No. 85, 1967.]

248.2--Uses permitted and as limited in the R.40¹¹ zone by Section 200.11,¹² except that animal boarding place, Class A and kennel are prohibited; [Bills No. 56, 1961; No. 85, 1967.]

248.3--Living quarters for watchmen and caretakers and their families living on the premises and engaged in connection with any lawful use in the M.L.R. zone; [Bill No. 56, 1961.]

Accessory buildings and uses in connection with living quarters (see above) and as limited by Section 400. [Bill No. 56, 1961.]

Hotels and motels when within an M.L.R. zone which is part of a contiguous area of 25 acres or more of industrial zoning, and provided that the combined tract areas developed for such uses do not occupy more than 25 percent of the particular contiguous area of industrial zoning in which they are located. Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426). [Bills No. 82, 1984; No. 64, 1986.]

Radio broadcasting studios, not including broadcasting towers. (Bill No. 32, 1990.)

248.4--Special Exceptions--When permitted as special exceptions (see Sections 270 and 502),¹³ [Bill No. 56, 1961.]

A.¹⁴The following uses:

Airstrips.

Automotive-service station, subject to the provisions of Section 405. [Bills No. 40, 1967; No. 85, 1967.]

Boat yard (including marine railway).
 Excavations, controlled (see Section 403).
 Heliport, Type II. [Bills No. 56, 1961; No. 85, 1967.]
 Public utility uses other than those noted in
 Section 200.11¹⁵ excluding steam power plant.
 Riding stable (commercial), golf driving range,
 miniature golf, baseball batting range; as interim
 income-producing uses.
 Sanitary or rubble landfills (see Section 412). [Bill
 No. 97, 1987.];
 Sludge Disposal Facility - Co-Landfilling (see
 Section 412.A2.A). [Bill No. 46, 1982.]
 Sludge Disposal Facility - Composting (see Section
 412.A2.B). [Bill No. 46, 1982.]
 Sludge Disposal Facility - Handling in General (see
 Section 412.A2.C). [Bill No. 46, 1982.]
 Sludge Disposal Facility - Incineration (see
 Section 412.A2.D). [Bill No. 46, 1982.]
 Sludge Disposal Facility - Landspreading (see
 Section 412.A2.E). [Bill No. 46, 1982.]
 Volunteer fire company.
 Wireless transmitting or receiving structure not
 permitted by Section 426. [Bills No. 56, 1961; No. 61,
 1967; No. 85, 1967; No. 64, 1986.]

B.¹⁶ The following commercial uses, when within an M.L.R.
 zone which is part of a contiguous area of 25 acres or more
 of industrial zoning and if the specific use proposed is
 demonstrably an appropriate service to industries existing,
 planned or normally to be expected to locate therein; and in
 no case shall the combined tract areas developed for one or
 more of these service commercial uses occupy more than 15%
 of M.L.R. tract in which they are located:

Bank.
 Business and trade schools.
 Carry-out, fast food and standard restaurant {Bill No.
 110, 1993.}
 {"Motel" repealed by Bill No. 82, 1984.}
 {"Public Restaurant" repealed by Bill No. 110, 1993.}

C. In order that the above-listed uses in Subsections A
 and B hereof will be located within the M.L.R. zone so as to
 assure their services' being rendered primarily
 to the industries therein, no building or structure
 connected with such commercial uses may be within 100'.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF JOHN M. BEARER
9 W. Main Boulevard
Timonium, Maryland 21093

AND

PETITION OF MICHAEL GERBER &
PENNY GERBER
107 Harding Street
Timonium, Maryland 21093

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 94-CV-02565
/76/249

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, ET AL
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 TO B.M. ZONE ON PROP-
ERTY LOCATED ON THE SWC PADONIA ROAD
AND BROAD AVENUE (PARCEL 1) AND SE/S
END ROOSEVELT STREET, SW BROAD AVENUE
(PARCEL 2)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

* * * * *

RECEIVED AND FILED
*54 APR 14 PM 2:57
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY
*

SECOND CERTIFICATE OF NOTICE

Madam Clerk:

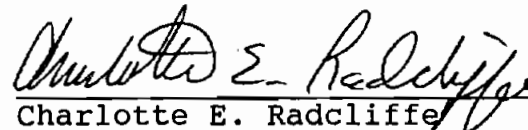
Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett and Harry E. Buchheister, constituting a majority of the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, John M. Bearer, 9 W. Main Boulevard, Timonium, Maryland 21093, and Michael Gerber & Penny Gerber, 107 Harding Street, Timonium, Maryland 21093, Petitioners; Patrick D. Hanley, Esquire, HANLEY AND HANLEY, 206 Washington Avenue, P.O. Box 5506, Towson, Maryland 21204, Counsel for Mr. & Mrs. Gerber; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Petitioner; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; Robert A. Hoffman, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD

Zink, III, Esquire, Patricia A. Malone, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21285-5517, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.



Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, and Michael Gerber & Penny Gerber, 107 Harding Street, Timonium, Maryland 21093, Petitioners; Patrick D. Hanley, Esquire, HANLEY AND HANLEY, 206 Washington Avenue, P.O. Box 5506, Towson, Maryland 21204, Counsel for Mr. & Mrs. Gerber; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; John H. Zink, III, Esquire, Patricia A. Malone, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21285-5517, on this 10th day of March, 1995.



Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

21285-5517, a copy of which second Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Second Certificate of Notice has been mailed to John M. Bearer, 9 W. Main Boulevard, Timonium, Maryland 21093, and Michael Gerber & Penny Gerber, 107 Harding Street, Timonium, Maryland 21093, Petitioners; Patrick D. Hanley, Esquire, HANLEY AND HANLEY, 206 Washington Avenue, P.O. Box 5506, Towson, Maryland 21204, Counsel for Mr. & Mrs. Gerber; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Petitioner; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; Robert A. Hoffman, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21285-5517, on this 14th day of April, 1994.

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

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

April 14, 1994

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD
210 Allegheny Avenue
Towson, MD 21204

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Mr. Hoffman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Second Petition for Judicial Review was filed on March 22, 1994 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 76/249/94-CV-02565.

Enclosed is a copy of the Second Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Harrison & Grass c/o Timothy C. Harrison
People's Counsel for Baltimore County
Tom Kelly
James Earl Kraft
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards
Docket Clerk /ZADM
Arnold Jablon /ZADM



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County Board of Appeals of Baltimore County

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

April 14, 1994

Patrick D. Hanley, Esquire
HANLEY AND HANLEY
206 Washington Avenue
P.O. Box 5506
Towson, MD 21204

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Mr. Hanley:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Michael Gerber and Penny Gerber
John M. Bearer



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on Recycled Paper

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
Room 47 Washington Avenue
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 94-CV-02565
/76/249

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, ET AL
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 TO B.M. ZONE ON PROP-
ERTY LOCATED ON THE SWC PADONIA ROAD
AND BROAD AVENUE (PARCEL 1) AND SE/S
END ROOSEVELT STREET, SW BROAD AVENUE
(PARCEL 2)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

* * * * *

CERTIFICATE OF NOTICE

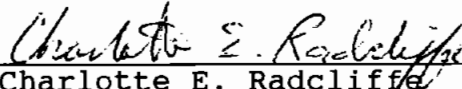
Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett and Harry E. Buchheister, constituting a majority of the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Petitioner; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; Robert A. Hoffman, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21285-5517, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

RECEIVED AND FILED
94 MAR 24 PM 1:22
CLERK OF BALTIMORE COUNTY

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Petitioner; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; Robert A. Hoffman, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21285-5517, on this 24th day of March, 1994.


Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

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

March 24, 1994

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD
210 Allegheny Avenue
Towson, MD 21204

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Mr. Hoffman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on March 21, 1994 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 76/249/94-CV-02565.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Harrison & Grass
c/o Timothy C. Harrison
Michael E. Gerber
John M. Bearer
Tom Kelly
James Earl Kraft
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards
Docket Clerk /ZADM
Arnold Jablon /ZADM



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County Board of Appeals of Baltimore County

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

March 24, 1994

Peter Max Zimmerman
People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Mr. Zimmerman

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure



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IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF JOHN M. BEARER
9 W. Main Boulevard
Timonium, Maryland 21093
Tel: (410) 561-2360

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, et al
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 to B.M. ZONE ON PROPERTY
LOCATED ON THE SWC PADONIA ROAD AND
BROAD AVENUE (PARCEL 1) AND SE/s/ END
ROOSEVELT STREET, SW BROAD AVENUE
(PARCEL 2)
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

CIVIL ACTION

NO: 76/245

94 CV 02561

* * * * *

PETITION FOR JUDICIAL REVIEW

John M. Bearer hereby requests judicial review of the
decision of the County Board of Appeals, in the case of:
In The Matter Of Baker Land Company, et al, for a Reclassification
from M.L.R. & O-1 & D.R.3.5 to B.M. Zone, Case No. CR-93-305-SPH
Cycle I, 1993, dated February 24, 1994. John M. Bearer was a
party to the proceeding before the County Board of Appeals of
Baltimore County in this matter.

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

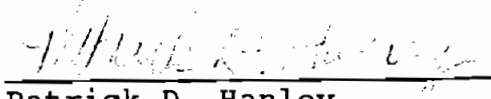
John M. Bearer
John M. Bearer
9 W. Main Boulevard
Timonium, Maryland 21093
Tel: (410) 561-2360

4
T PERCH

of the foregoing pleading/paper was mailed by first class mail
postage prepaid to:

Robert A. Hoffman, Esq.
Venable, Baetjer & Howard
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
Attorney for Appellee

Peter M. Zimmerman and
Carol S. Demilio
Office of Peoples' Counsel
Old Courthouse
400 Washington Avenue
Towson, Maryland 21204


Patrick D. Hanley

LAW OFFICES
HANLEY AND HANLEY
208 WASHINGTON AVE
P.O. BOX 5506
TOWSON, MARYLAND 21204

(410) 823-1174

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
Room 47 Washington Avenue
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, et al
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 to B.M.ZONE ON PROPERTY
LOCATED ON THE SWC PADONIA ROAD AND
BROAD AVENUE (PARCEL 1) AND SE/s/ END
ROOSEVELT STREET, SW BROAD AVENUE
(Parcel 2)
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

CIVIL ACTION

NO:

76/249/94CV2565

* * * * *

PETITION FOR JUDICIAL REVIEW

People's Counsel for Baltimore County hereby requests judicial
review of the decision of the County Board of Appeals, in the case of:
In The Matter Of Baker Land Company, et al, for a Reclassification
from M.L.R. & O-1 & D.R.3.5 to B.M. Zone, Case No. CR-93-305-SPH
Cycle I, 1993, dated February 24, 1994. People's Counsel was a party
to the proceeding before the County Board of Appeals of Baltimore
County in this matter.


Peter Max Zimmerman
People's Counsel
for Baltimore County

① OK
COPY sent
to agency
FILED MAR 21 1994

RECEIVED
COUNTY CLERK
94 MAR 23 PM 2:25



County Board of Appeals of Baltimore County

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

March 10, 1995

Peter Max Zimmerman
People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

Patrick D. Hanley
HANLEY and HANLEY
206 Washington Avenue
P.O. Box 5506
Towson, Maryland 21204

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Counsel:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the Supplemental petitions for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The record in this matter, including the transcript, was transmitted to the Circuit Court for Baltimore County on May 19, 1994 under Civil Action No. 94-CV-02565 /76/249. A Supplemental Record of Proceedings which included the County Board of Appeals' Amended Opinion was also filed on February 22, 1995 under Civil Action No. 94-CV-02565 /76/249.

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court. A supplement to the record will be filed by this office within 60 days.

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Michael Gerber and Penny Gerber



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on Recycled Paper

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
BAKER LAND COMPANY, ET AL	*	COUNTY BOARD OF APPEALS
PROPERTY OWNER; HARRISON & GRASS,	*	
DEVELOPER /PETITIONER FOR A ZONING	*	OF
RECLASSIFICATION ON PROPERTY		
LOCATED ON THE SWC PADONIA ROAD AND	*	BALTIMORE COUNTY
BROAD AVENUE (PARCEL 1); AND SE/S/		
END ROOSEVELT STREET, SW BROAD	*	CASE NO. CR-93-305-SPH
AVENUE (PARCEL 2)		Cycle I, 1993
8TH ELECTION DISTRICT	*	
3RD COUNCILMANIC DISTRICT		
* * * * *	*	* * * * *

O P I N I O N

This case comes before this Board on Petition for Reclassification from M.L.R. and 0-1 and D.R. 3.5 to B.M. In addition, a special hearing is requested to permit parking on a portion of the 0-1 zoned area involved. This case consumed two full days of hearing. The Board will note in this Opinion those witnesses who testified and a very brief encapsulation of their testimony, not to be confused with their full testimony contained in the official record. The Board will also note that the Petitioner is burdened to evidence that the existing classification is in error and that the requested classification is proper, if this Petition is to prevail.

First testifying for the Petitioner was Timothy Harrison, Developer, who went into great detail about the proposed center, the need for same, and presented the Documented Site Plan that accompanies the request for reclassification.

Jerome Trout, a real estate agent, testified as to the great need for the proposed use and the total lack of any other business-zoned sites in this entire corridor.

Testifying in favor the reclassification were neighbors Sandy Earp, President of the Timonium Heights Association; Jerome

Farinacci; David Young; and Howard Lendking, all concurring in favor of the reclassification.

Jeffrey Long, planner for Baltimore County, testified that he reviews all reclassification petitions and supports the granting of this Petition. He testified that it is in conformity with the Hunt Valley-Timonium Study and the Baltimore County Master Plan, and it was his opinion that present market conditions do not warrant any office or industrial use here.

Sam Crozier, a land planner, testified at length as to his studies of the site and his reasons why the Petition should be granted. His testimony was lengthy and persuasive in that the existing zoning was in error and the proper zoning would be B.M.

Richard Hillis, an environmental expert, prepared the environmental statement addressing this property, said statement showing no wetlands on the site and no environmental problems as to the proposed use.

Fred Chadsey, Professional Engineer, prepared the site plan and testified that it conforms to all Baltimore County requirements, and that his office was still active in preparing solutions to any possible flood plain problems.

Jeffrey Glazier, architect, prepared the drawings showing the proposed use and testified that this use addresses all the neighborhood problems, height, noise, lighting, etc., and that this would be a proper use.

The testimony of Mickey Cornelius, a traffic expert, was especially persuasive. The nearest intersection is York and

Padonia and is an "F" rated intersection. With the opening of the Warren Road bypass, this intersection will no longer be "F" but will be upgraded to "D". The proposed use will not add any additional traffic whatsoever to the peak hour problems. The traffic that would use the proposed facility would be existing traffic that is already there. However, any industrial or office use would significantly increase the traffic during peak hours as customers and employees would be coming from somewhere else to the site, and would have to use the above-named intersection. As far as any potential traffic problems, the proposed use is far more acceptable than any additional office or industrial use.

Robert Kleinpaste, a real estate expert, especially in the field of market analysis, testified that there is already too much office land available, too much M.L. land available, and no retail areas whatsoever available. He testified that this site has poor expectations of any use for offices or other M.L. uses, and that no office use is foreseeable for a minimum of 10 years.

George Gavrelis, a land planner, testified at length as to the reasons the existing zoning is in error and that the B.M. zone would be the proper classification. He testified that the proposed reclassification and use was in complete compliance with Section 502.1 and Section 409.A.1 of the Baltimore County Zoning Regulations. This concluded Petitioner's case.

People's Counsel presented as their first witness James Dieter, the Director of Baltimore County's Department of Environmental Protection and Resource Management (DEPRM). Mr.

Dieter noted that, as of the present time, there was no flood plain delineation shown on the site plan and that his office would not concur with the requested reclassification until this issue had been addressed.

John Bearer, a neighbor, testified he had attended all the town meetings and evidenced his concerns at each and every one. His main fear was that the proposed shopping center would be a detriment to the nearby area. He also noted that the site at present is used for the dumping of rubble.

Penny Gerber, a resident, testified there was no need for another shopping center; that there were plenty of shopping centers and stores already available.

Emmanuel Passas, a neighbor, opposes the proposal and fears that the proposed use may cause flooding to his property.

Michael Gerber, a neighbor, fears that the shopping center as proposed would be a detriment to the value and peaceful use of his home.

Norman Gerber, a land planner, testified that he reviewed the site and the proposed center. It was his opinion that an office use or a light M.L. use would be far preferable to the proposed shopping center. It was his opinion that the County Council committed no error in that they must consider the long-term use of the site and not the short-term use. This concluded the testimony in this case.

The Board has carefully considered all this testimony and is of the opinion that the existing zoning on this semi-isolated site

is in fact in error. The Board is especially impressed with the testimony of Mr. Long, Baltimore County planner for this area; Mr. Crozier, the land planner involved in the case; Richard Kleinpaste, the expert in market analysis; George Gavrelis, land planner; and Mickey Cornelius, the traffic expert. The Board will find as a fact from the testimony of these witnesses that the M.L.R. zoning assigned this site is in fact in error, and that the B.M. zoning, with due consideration afforded to the Documented Site Plan, is the proper zoning. The Board will also find that the parking of noncommercial vehicles on the requested portion of the 0-1 zoned area is proper, is not detrimental, and should be granted.

O R D E R

IT IS THEREFORE this 24th day of February, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Reclassification from the present combination of M.L.R., 0-1 and D.R. 3.5 to B.M. be and is hereby GRANTED; and it is further

ORDERED that the requested parking of noncommercial vehicles on the portion of 0-1 zoned area as shown on the site plan be and the same is GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

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

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
BAKER LAND COMPANY, ET AL	*	COUNTY BOARD OF APPEALS
PROPERTY OWNER; HARRISON & GRASS,	*	
DEVELOPER /PETITIONER FOR A ZONING	*	OF
RECLASSIFICATION ON PROPERTY		
LOCATED ON THE SWC PADONIA ROAD AND	*	BALTIMORE COUNTY
BROAD AVENUE (PARCEL 1); AND SE/S/		
END ROOSEVELT STREET, SW BROAD	*	CASE NO. CR-93-305-SPH
AVENUE (PARCEL 2)		Cycle I, 1993
8TH ELECTION DISTRICT	*	
3RD COUNCILMANIC DISTRICT		
* * * * *		

DISSENTING OPINION

This case came before the Board in open meetings on September 29, 1993 and October 19, 1993, with open deliberations on January 4, 1994. Despite argument and opinion in open deliberation from the majority, I am compelled to dissent from majority in this case.

Full transcripts of the hearings were provided, as well as closing and supplemental memoranda; therefore, I shall not recount the proceedings. From the evidence and testimony, I find the following facts:

The subject site is in an area of development/redevelopment opportunity known as Timonium Heights, as evidenced by extensive testimony on both sides, as well as that shown in the Hunt Valley /Timonium Redevelopment Study adopted by the Planning Board on April 15, 1993. Important features near the site include the new light rail line, the residential neighborhood, Interstate 83, Padonia Road, York Road and natural features. The Hunt Valley /Timonium Redevelopment Study names the area in which the site lies as an important area of consideration due to the dwindling supply of nearby vacant land, the area's proximity to the light rail line and the need for careful development near residential communities.

The County Council considered the subject site during the 1992

Comprehensive Zoning Map Process, voting unanimously with one (1) abstention to maintain the existing zoning. The Petitioners filed petition for reclassification less than one year following the County Council's adoption of the zoning maps. The petition for zoning reclassification must include, per Baltimore County Code, Section 2-356(1), delineation of 100-year floodplains; the instant petition does not include the required floodplain delineation despite the possible inclusion of a portion of the site within such a floodplain, as evidenced by the only official authority presented to the Board, the Federal Emergency Management Agency (FEMA) floodplain map. Failure to provide the floodplain delineation is most important for two reasons: first, the inclusion of a portion of the site within the 100-year floodplain would result in substantial changes to the documented site plan, thus invalidating the petition for reclassification; and, second, the Baltimore County Code requires delineation of the 100-year floodplain, thus the petition for reclassification is incomplete and may be considered non-responsive. This point alone is sufficient to deny the petition.

Baltimore County Code, Section 2-356(j), outlines conditions under which the Board of Appeals may reclassify any property. First, either a change has occurred in the character of the neighborhood since the property was last classified, or that the last classification was established in error. Baltimore County Code, Section 2-356(k), precludes a reclassification on the grounds of a change in the character of the neighborhood within a period of

one (1) year following the last classification, thus leaving the issue of error on the part of the County Council in 1992. Again the subject site was a specific issue considered by the County Council during the Comprehensive Zoning Map Process in 1992. As indicated by Jeffrey Long, County Office of Planning & Zoning, OPZ recommended retaining the existing zoning during the Comprehensive Zoning Map Process. Furthermore, recent construction of the light rail line has placed sites such as the instant case in the spotlight for tremendous development /redevelopment potential. In light of the fact that access /egress to the light rail in this area is severely limited due to site-specific geographic /ownership constraints, the County Council clearly realized that future development potential of properties adjoining the light rail and the subject site would be severely affected by a zoning change under the Comprehensive Zoning Map Process. Conversely, reclassification under this case would dismiss as moot the classification of those adjoining properties obtained or maintained during the Comprehensive Zoning Map Process. In fact, Norman E. Gerber, AICP, former Director of the Baltimore County Office of Planning & Zoning, confirmed that the subject site should be considered on the comprehensive zoning map so that the surrounding properties and, particularly the properties near the light rail, are given due consideration and opportunity for proper development. Thus, the County Council simply did not commit error in its 1992 classification of the subject property. As an editorial comment, I wish to commend the County Council for having the foresight and

understanding of development potential near mass transit opportunities.

The second test for reclassification under Baltimore County Code, Section 2-356(j) is in paragraph (2):

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

This second test is not examined exclusive of the tests for error; therefore, in light of my opinion that no error exists in the current classification, the second test is moot. However, I am compelled to opine concerning the instant case and how the second test applies.

Most of the Petitioner's case is presented on the issue that the prospective reclassification of the property would be warranted by the Council's error. Aside from my opinion that no error exists in the last classification under the Comprehensive Zoning Map Process, I believe that the proposed documented plan does not

satisfy all criteria enumerated in the above-noted paragraph. Mindful that the paragraph stipulates that the various criteria listed are not limited by their enumeration, and, therefore, should include other criteria unique to any subject case, I wish to first address those criteria listed with the Code Section.

The first criteria, population trends, was addressed in several areas: growth in the Mays Chapel area nearby, studies which illustrated the area's ability to support additional food market space and so forth. There is no doubt that the area's population and average household income have increased over time; however, I do not concur with the Petitioner's position that such growth constitutes "need" as an overriding factor for granting a reclassification. Further, my opinion is that the risk of development rests with the Petitioner and that the Petitioner plans to meet a possible need, and in addition to wrest a portion of market share from the numerous surrounding grocery stores. Such is the nature of retail business; therefore, fulfillment of a "need," real or not, is not an important issue in this case.

Availability and adequacy of present and proposed transportation facilities is an issue which was not thoroughly addressed. First at issue is the adequacy and appropriateness of traffic studies provided by the Petitioner. In-depth traffic studies were performed for peak "rush hour" times in comparing worst case uses under the existing classification versus the proposed use. When queried about the trip frequency and number totals for the proposed use in off-peak times and during a 24-hour



County Board of Appeals of Baltimore County

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

March 10, 1995

John H. Zink, III, Esquire
Patricia A. Malone, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that Supplemental Petitions for Judicial Review were filed on March 2, 1995 and March 6, 1995, in the Circuit Court for Baltimore County from the majority decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petitions must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 76/249/94-CV-02565.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Robert A. Hoffman, Esquire
Harrison & Grass
c/o Timothy C. Harrison
John M. Bearer
Tom Kelly /Greater Timonium
Community Council
James Earl Kraft
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /ZADM
Carmen D'Anna /Mars Supermarkets, Inc.

W. Carl Richards, Jr., /ZADM
Docket Clerk /ZADM



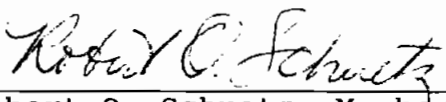
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period, the Petitioner's traffic expert conceded that the proposed use might, in fact, generate between five and ten times the total number of trips that an office building might generate. However, the expert did not produce empirical data to make such an assessment, nor did he supply data to substantiate any position (see Day 1 Transcript, pages 214 and 215). Second at issue is the apparent lack of substantive discussion, be it evidence or testimony, concerning the comparisons made of possible uses and their positive or negative impact on the nearby light rail line. Such an oversight is in direct conflict with the Hunt Valley /Timonium Study, page VII-5, "Issue: Optimizing light rail ridership through land use" (entire section). This omission is a gross miscalculation which cannot go forward unnoticed. Granting a reclassification with NO substantive discourse on this issue discounts the very important issues studied and adopted by the County in the Hunt Valley /Timonium Study.

Consistency of the current and prospective classifications with the master plan and the capital program has not been adequately addressed by the Petitioner. Existing zoning on the subject property serves several purposes consistent with the master plan as stated in Mr. Norman Gerber's testimony as an expert witness. Furthermore, the existing zoning and associated proximity to major highways and existing and future arterials are important to future development possibilities in the area, also as discussed by Mr. Gerber and his references to the Baltimore County Zoning Regulations. Finally, the Hunt Valley /Timonium Redevelopment

Study encompasses many considerations as they relate to the future of the area, including amendment of uses (See Study page I-5) in the industrial zones, obviously in deference to the importance of maintaining the existing zoning while expanding development possibilities in the area. Once again, granting a reclassification eschews the coordinated development effort specifically called for in the Hunt Valley /Timonium Study, most particularly as it relates to transportation and the light rail, as well as desirous development opportunities enumerated.

For all of the above findings, the petition for reclassification should be denied. I find the petition submission to be statutorily incomplete; I find the supporting documentation to be inadequate in addressing substantive issues; I find that the Petitioner failed to prove error by the County Council in the last Comprehensive Zoning Map Process; and, I find the proposed development under the documented plan to be contrary to the spirit and intent of the master plan. Development under the documented plan irrevocably reduces a most important development opportunity beyond its own site among a fast dwindling supply in the Hunt Valley /Timonium area.


Robert O. Schuetz, Member
County Board of Appeals

DATE: February 24, 1994

2-22 94

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY

PETITION OF
MICHAEL GERBER & PENNY GERBER
107 Harding Street
Timonium, Maryland 21093

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF
BAKER LAND COMPANY, et al
Case No. CR-93-305-SPH

CIVIL
ACTION
NO: ~~76-245-94 CV 02561~~

76/249/94 CV 2565

* * * * *

PETITION FOR JUDICIAL REVIEW

MICHAEL GERBER and PENNY GERBER, Petitioners, by their
attorney, Patrick D. Hanley, pursuant to Rule 7-202, represent:

1. They were parties to a proceeding before the County Board
of Appeals of Baltimore County, known as Baker Land Company, et
al, Case No. CR-93-305-SPH.
2. By Order dated February 24, 1994, the Board granted a
Petition for Reclassification and other relief in that proceeding.
3. Your Petitioners are aggrieved by that decision.

WHEREFORE your Petitioners request judicial review of th
decision of the County Board of Appeals of Baltimore County.

Patrick D. Hanley
Patrick D. Hanley
Hanley and Hanley
206 Washington Avenue
P.O. Box 5506
Towson, Maryland 21204
(410) 823-1174
Attorney for

RECEIVED AND FILED Michael & Penny Gerber, Petitioners

94 MAR 22 **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY this 22nd day of February, 1994, that a copy

LAW OFFICES
HANLEY AND HANLEY
206 WASHINGTON AVE
P.O. BOX 5506
TOWSON, MARYLAND 21204
(410) 823-1174

3

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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

210 ALLEGHENY AVENUE
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RICHARD H. VENABLE (1939-1910)
EDWIN G. BAETJER (1988-1945)
CHARLES MCH. HOWARD (1970-1942)

WRITER'S DIRECT NUMBER IS

December 28, 1993

(410) 494-6262

ROBERT A. HOFFMAN

HAND-DELIVERED

William T. Hackett, Chairman
County Board of Appeals of
Baltimore County
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Re: Baker Land Corporation
Case No.: CR-93-305-SPH

Dear Mr. Hackett:

Enclosed please find a Reply Memorandum which is being
submitted by the Petitioner in the above-referenced case.

Thank you.

Sincerely,



Robert A. Hoffman

enclosures
RAH/dok

cc: Peter Max Zimmerman, Esquire
Timothy C. Harrison, Esquire
Ted Julio

HACKETT4.GPW

RECORDED
COUNTY BOARD OF APPEALS
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B A L T I M O R E C O U N T Y , M A R Y L A N D

Inter-Offic Corr spondence

TO: W. Hackett
 R. Schuetz
 H. Buchheister

DATE: December 29, 1993

FROM: kathi

SUBJECT: Additional Material /Baker Land Company
 Deliberation Scheduled for Tuesday, 1/04/94

Enclosed for your information and review prior to the subject deliberation scheduled for 9:00 a.m. on 1/04/94 is a copy of the Reply Memorandum submitted by Rob Hoffman in response to People's Counsel's Memorandum.

Please note that a copy of the attached response, including all attachments, was also hand-delivered to Mr. Zimmerman's office.

kathi

*File
Docket*

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF	*	
<u>BAKER LAND CORPORATION,</u>	*	COUNTY BOARD
<u>ET AL.</u> FOR A ZONING	*	
RECLASSIFICATION FROM MLR,	*	OF APPEALS OF
0-1 AND DR 3.5 TO BM ON	*	
PROPERTY LOCATED AT THE SWC	*	BALTIMORE COUNTY
OF BROAD STREET AND PADONIA	*	
ROAD	*	
8TH ELECTION DISTRICT	*	
3RD COUNCILMANIC DISTRICT	*	CASE NO. CR-93-305-SPH
	*	
* * * * *		

PETITIONER'S REPLY MEMORANDUM

In accordance with the Board's instructions, the parties each submitted their respective memoranda in this case on November 23, 1993. In its memorandum, the Petitioner described in detail how the evidence adduced on its behalf at the hearing sessions on September 29 and October 19, 1993 established mistake or error in the last comprehensive zoning of the subject property. Although the Board made no provision for reply memoranda, there are several portions of People's Counsel's memorandum that are inaccurate or misleading, and the Petitioner feels it essential to clarify the record here.

- I. The Petitioner's current request does not represent an abrupt reversal of position within a few months.

People's Counsel would have the Board believe that the Petitioner actively pressed the County Council up until October, 1992 for ML-IM zoning for the subject property, and then turned around in February, 1993 to argue that industrial zoning was in error. This is simply not the case, and Mr. Harrison so testified when he appeared before the Board on September 29, 1993.

As Mr. Harrison stated, the Petitioner first became involved with the subject property in June, 1992, well after other owners had initiated a request to rezone the property as part of the 1992 Comprehensive Map process. Mr. Harrison was clear that during the initial weeks of their involvement, they realized that the ML-IM zone was not the correct zone for that location and that the request for the commercial zone would be incorporated into the remapping process. Mr. Harrison went on to state that they actively and diligently sought to rezone the property to its proper commercial classification.

It was some time, Mr. Harrison explained, before it was realized that their desire to come up with a plan that was acceptable to both the community and county for development under the commercial classification could not be accomplished before the adoption of the October, 1992 map. Therefore, even while the Comprehensive Map Process proceeded, Petitioner continued to work with the community and the county to prepare a documented site plan that would satisfy the needs of all concerned parties and of the county as a whole. In fact, Mr. Harrison stated that the County directed him to participate in the cycle zoning process in order to make use of the documented site plan and, therefore, Petitioner submitted this reclassification petition and documented site plan during the cycle zoning process after the 1992 Comprehensive Maps had been adopted.

Clearly, there was no abrupt reversal of position by this Petitioner within months of the adoption of the Comprehensive Map as People's Counsel asserts.

II. The Petitioner introduced ample evidence of each element required by the County Code and pertinent case law to establish error in the last comprehensive rezoning.

The bulk of People's Counsel's Memorandum is devoted to argument of a general nature to the effect that the Petitioner did not produce evidence of mistake, and that the Petitioner's witnesses merely testified in support of a vague theory of economic feasibility. Furthermore, People's Counsel devotes substantial space to discussing and quoting from cases that appear to bear little or no similarity to this one. In reading People's Counsel's Memorandum, the Board could obtain the impression that no Petitioner could ever prove mistake on the Comprehensive Map, a theory which belies Maryland law, the Baltimore County Code and this Board's long-standing application of the law. See Nottingham Properties, et al, Case No. CR-94-157-XA; Tell Bin Der, Case No. CR-90-407; Leroy M. Merritt, Case No. CR-89-451 and J. Darwin Ross, Case No. R-87-263-A, copies of which are attached.

In contrast, the Petitioner sets forth in its Memorandum point by point analysis of the evidence with respect to each of the factors enumerated in Section 2-356(J)(2) of the County Code, and explains how that evidence supports a requested reclassification under either or both of the methods for

proving mistake set out in the leading case of Boyce v. Sembly, 25 Md. App. 43, 1975.

One portion of People's Counsel's legal discussion is particularly misleading and thus calls for a direct response. That is the reference to and extended quotation from the case of Messenger v. County Commissioners, 259 Md. 693 (1970), appearing on pages 15-16 of People's Counsel's memorandum. The quotation, as it is presented, seems to suggest that the Board in this case is in the same position as a court reviewing the local zoning body's denial of a rezoning petition -- that is, that the Board cannot grant the Petitioner's request in this instance unless the Petitioner has established that the 1992 comprehensive zoning was arbitrary, capricious, or illegal. That suggestion is just plain wrong. This Board is acting in the first instance in accordance with its delegated authority under the County Code to grant cycle reclassifications where petitioners demonstrate the required change or mistake. This Board's decision will itself be upheld on judicial review, as long as the evidence makes the question of mistake fairly debatable.

Furthermore, People's Counsel's Memorandum appears to suggest that the Baltimore County Zoning Regulations preclude this Board from considering the Petitioner's documented site plan on the issue of mistake in the last comprehensive zoning. Such a suggestion is belied by Section 2-356(N) of the County Code, which merely states: "Property

may not be reclassified solely on the basis of documentation relating to the property's proposed use." (Emphasis added). The clear implication of § 2-356(n) is that this Board may consider a documented site plan as one factor in determining whether a Petitioner has proven change or mistake, and the Board has properly so construed the section. Caves Valley Club, Inc., Case No. CR-89-367 (May 31, 1989).

III. Plan recommendations for mixed use development do not preclude commercial retail uses.

Curiously, People's Counsel urges the Board that, while light manufacturing uses would be consistent with plans recommending "mixed use" redevelopment in the Hunt Valley/Timonium corridor, commercial retail uses would not. The fallacy in this argument is self-evident. "Mixed use" development is just that -- a balanced mix of residential with appropriate commercial and light industrial uses. The proposed Broad Street Market, which is intended to serve primarily a local clientele, can fit as well into a "mixed use" scheme as many uses that might be developed under the property's existing zoning.

IV. A fair consideration of compatibility and nearby uses cannot be confined to an examination of the Timonium Heights neighborhood or the "southwest quadrant" of the intersection of York and Padonia Roads.

In discussing the compatibility of the Petitioner's proposed Broad Street Market with surrounding uses, People's Counsel conveniently chooses to emphasize what he characterizes as a few commercial uses along the west side of

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY

SUPPLEMENTAL PETITION OF
MICHAEL GERBER & PENNY GERBER
107 Harding Street
Timonium, Maryland 21093

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF
BAKER LAND COMPANY, et al
Case No. CR-93-305-SPH

CIVIL
ACTION

NO: 76-249-94 CV 02565

SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW

MICHAEL GERBER and PENNY GERBER hereby request judicial review of the February 22, 1995 County Board of Appeals' Amended Opinion Pursuant to Remand Order and Amended Memorandum Opinion and Order of the Circuit Court in the above case. Michael Gerber and Penny Gerber were parties to the proceeding before the County Board of Appeals of Baltimore County and before the Circuit Court for Baltimore County in this matter.

This Supplemental Petition is filed pursuant to Rule 7-202 of the Maryland Rules of Procedure.

Patrick D. Hanley
Patrick D. Hanley
Hanley and Hanley
206 Washington Avenue
P.O. Box 5506
Towson, Maryland 21204
(410) 823-1174
Attorney for
Michael & Penny Gerber, Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 3rd day of March, 1995, that a copy of the foregoing Supplemental Petition for Judicial Review was mailed

LAW OFFICES
HANLEY AND HANLEY
206 WASHINGTON AVE.
P.O. BOX 5506
TOWSON, MARYLAND 21204
(410) 823-1174

RECEIVED AND FILED

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

(2)

York Road in the defined Timonium Heights community. In contrast, he chooses to look further afield, including to the north of Padonia Road and west of the light rail line, in his search for nearby industrial zoning.

The fact is that the subject site lies along Padonia Road, directly east of a 6-story office building (a commercial use in an industrial zone) and directly across from retail commercial uses, which are also found on both sides of Padonia to the east of York Road. As anyone at all familiar with the area knows, York Road is a major commercial thoroughfare. And while the Timonium Fairgrounds may carry an industrial zoning classification, its uses have little to do with manufacturing, but are far more commercial in nature. As Petitioner's expert witness Mr. Crozier testified, "once you pass the [light] rail line, there is almost no indication that industrial exists, or was even intended" T. 91 (9/24/93).

CONCLUSION

For all of the reasons set forth above and in the Petitioner's original memorandum, the Petitioner respectfully requests that the Board grant its Petition for Reclassification, as well as its application for a use permit.

Respectfully submitted,

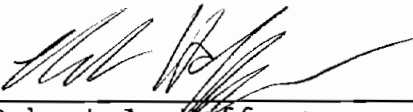


ROBERT A. HOFFMAN
Venable, Baetjer and Howard
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21204
(410) 494-6200

MEMO0126.RAH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of December, 1993, a copy of the foregoing Petitioner's Reply Memorandum was mailed to Peter Max Zimmerman, People's Counsel, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.



Robert A. Hoffman

• • • • •

O P I N I O N

This case comes before this Board on petition to reclassify a parcel of some 7.6 acres in the 15th Election District of Baltimore County from M.L.-C.S.1 and M.L.-I.M. to B.R.-C.S.1 and B.R.-I.M. In addition, several variances were requested on the original Petition but the request for variances was withdrawn prior to the taking of any testimony. The case was heard this day in its entirety.

Petitioners presented William Kirwin, Registered Land Planner, as their first and only witness. Mr. Kirwin reviewed the existing zoning and all the nearby uses and nearby zoning. He described in detail these surrounding uses, and entered exhibits documenting same. He testified that the present use being known as Balcon Products were the manufacturers of heavy concrete prestress slabs and pavings and that this use generates almost exclusively heavy truck traffic. It was his testimony that the commercial use requested would alleviate this heavy truck traffic and would generate almost exclusively automobile traffic. He noted in his testimony that the property is bordered on one side in its entirety by an M.L. classification now developed as an industrial park. He also noted that this property line is bounded by an elevated railroad line which effectively separates this parcel from the industrial park and there is no access to the industrial park from this site. He also noted that the Director of

Planning & Zoning and the Planning Board both recommended the commercial zoning for this site. It is apparent from the testimony and evidence received this day that the present use has outgrown this site and the property owner is in full support of the downgrading of his property from M.L. to B.R. This basically concluded Petitioners' testimony.

Mr. James Hoswell, Planner for Baltimore County, testified for People's Counsel. He testified that he has reviewed this Petition and prepared all the reports and while the Planning staff and the Planning Board both recommend the granting of the Petition, it was his testimony that the present zoning is not in error and does provide a legitimate M.L. use for this site. It was his opinion that any reclassification would be better accomplished comprehensively than through the petition process. This concluded testimony in this case.

The Board is of the opinion that when the 1984 maps were drawn the M.L. classification as was then in use was a proper zoning classification. It is apparent that the present use has outgrown the site and the existence of the railroad precludes any further expansion in that direction. It is also apparent from the testimony and evidence received and the exhibits that the ingress and egress point to the site is somewhat detrimental and is intensified by the principal use of the heavy concrete products to be transported on tractor/trailers. It is the opinion of this Board that this change in the intensification of the use, the intensification of the ingress and egress, and the existence of the railroad all constitute legitimate reasons to justify its reclassification. In reviewing all the nearby and abutting commercial uses and the situation as has been described, it is the opinion of this Board that the reclassification should be granted and the Board will so order.

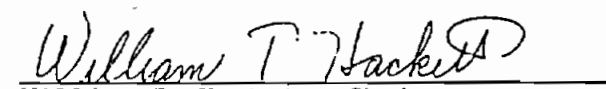
O R D E R

It is therefore this 12th day of May, 1987, by the County Board of Appeals ORDERED that the reclassification from M.L.-C.S.1 and M.L.-I.M. to B.R.-C.S.1 and B.R.-I.M. be and the same is GRANTED.

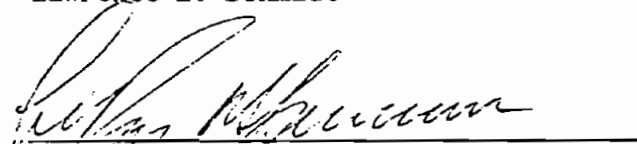
IT IS FURTHER ORDERED that the request for variances included in the original Petition be and the same is DISMISSED.

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

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY


William T. Hackett, Chairman


Lawrence E. Schmidt


LeRoy B. Spurrer

FILE COPY

IN THE MATTER OF	:	BEFORE
THE APPLICATION OF	:	
<u>CAVES VALLEY CLUB, INC.</u>	:	COUNTY BOARD OF APPEALS
<u>FOR A ZONING RECLASSIFICATION OF</u>	:	
PROPERTY LOCATED ON THE NORTHEAST	:	OF
SIDE OF PARK EIGHTS AVENUE, 931'	:	
NORTHWEST OF THE CENTERLINE OF	:	BALTIMORE COUNTY
CAVES ROAD FROM R.C. 2 to R.C. 5	:	
4th ELECTION DISTRICT	:	CASE NO. CR-89-367
3rd COUNCILMANIC DISTRICT	:	(out-of-cycle)
	:	

• • • • •

O P I N I O N

This case comes before the board as an out-of-cycle Petition for Zoning Reclassification from R.C. 2 to R.C. 5 of a significant portion of property located in northwestern Baltimore County known as the Caves Valley. The Petitioner herein has acquired or is contract purchaser of approximately 920 acres within the Caves Valley. As the Board ruled from the bench during the hearing, the subject Petition encompasses the entire site; however, the request for rezoning from R.C. 2 to R.C. 5 pertains only to approximately 123 acres of the site. Additionally, the Petition comes to the Board accompanied by a documented site plan, which restricts the use of the 123 acres to a maximum 32 homesites and protects from all future development the remaining acreage. This remaining acreage will be placed in an agricultural trust, forever preventing development of that acreage, either residentially or commercially.

The case consumed four full days of hearing including lengthy testimony and exhibits. The Board will not herein attempt to encapsulate the voluminous testimony and evidence. The record created surely speaks for itself as do the memorandums submitted by the Petitioner and People's Counsel wherein the testimony and evidence before us is summarized. Prior to considering the merits and issues generated by the subject Petition, the Board feels compelled to address two areas which, although not specifically germane to the narrow issue of the Petition before us, were the subject of significant testimony and

argument by the combatants to this case, namely the Petitioner and the Office of People's Counsel.

The first of these issues is the Board's consideration of that prior case before it known as "In the Matter of Conservation Associates," Case No. R-86-110. The Board was continually requested to consider the effect, or lack thereof, of its opinion in that case on the subject Petition. Although a rose by any other name may still be a rose, the subject Petition to reclassify this property is not merely a rehash of the Conservation Associates matter. The facts of these two cases are significantly different and this Board cannot be constrained to be bound by our decision within Conservation Associates. Two major areas of difference are noted. First, the subject site under the current Petition contains not only the Conservation Associates acreage but significantly more adjoining property. Thus, the Board is compelled to consider the subject Petition as it relates to the entire 920 acres and not merely reconsider that 300 acres which were the subject of the Conservation Associates request for reclassification. Secondly, and equally importantly, is the fact that the Petition for Reclassification instituted by Conservation Associates proceeded under an open site plan. In the subject case, a specifically detailed documented site plan accompanied this Petition governing not only the acreage which the Petitioner seeks to reclassify from R.C. 2 to R.C. 5 but also the balance of the site. This is specifically relevant when the Board addresses the issue as required under Section 2-58.1(j)(2); namely, whether the prospective reclassification of the property is warranted.

The second hidden issue confronted by this Board pertains to the concern, bordering on hysteria, associated with the precedent the Board's decision may or may not establish. Although the Board has no doubt that its

Opinion herein will be carefully reviewed and perhaps noted in other proceedings in the future, it must be emphasized that our findings concern only the subject property. It is a fundamental tenant of zoning law that the use and zoning reclassification of a property runs with that particular land and is not a personal right. Although the request before us is not for permission to employ a particular use on this property, that tenant is applicable here. It should be made clear that the Board considered only this specific property as it relates to the adjoining lands and as offered in the documented site plan. Thus, any other petition must stand, or fail, on its own merits. Laying these two issues to rest, the Board then proceeds to consideration of the subject Petition.

This parcel as indicated contains some 920 acres and is located in the Caves Valley. It has long been the target for residential development, however, ^{it (and)} has largely remained as virgin land heavily wooded in some portions and actively cultivated in others. The valley contains a fertile valley floor which then draws up steeply through sloped areas to a higher elevated ridge/plateau area whereon development of the 32 residential sites would occur. The steeply sloped hillsides and valley floor would remain under an R.C. 2 classification. According to the Petitioner, reclassification in this manner would not disturb the wetlands and streams on the valley slopes and floor; rather only affect the ridge/plateau area.

Reclassification of property pursuant to order of the County Board of Appeals of Baltimore County is governed by Section 2-58.1 of the Baltimore County Code. Section 2-58.1(1) sets forth the requirements of a documented site plan when the Petitioner seeks reclassification pursuant to such a plan. The Board has reviewed the documented site plan, with exhibits, submitted by the Petitioner herein and finds them to be in compliance with this section.

Further, subparagraph (i) of 2-58.1 governs out-of-cycle reclassifications. Again, after review, the Board concludes that this matter is properly before us in accordance with that Code Section. Having therefore found that the Petition is technically sound, the Board must address the fundamental issue in this case, to wit, whether the Petition meets the standard enunciated in Code Section 2-58.1(j).

As indicated, Section 2-58.1(j) offers a two-prong test. First, the Board must determine that there has occurred a substantial change in the character of the neighborhood since the last rezoning cycle or that the last classification of the property was in error. In view of the relatively recent rezoning of this property during the 1988 comprehensive zoning process, no change in the character of the neighborhood is offered. Thus, the request turns on the issue of error. The first rationale offered by the Petitioner as a basis for error is the unique features of that acreage sought to be reclassified. Petitioner's expert witness, George Gavrelis, testified that the reclassification of the subject 123 acres makes good topographic and geographic sense. Specifically, Mr. Gavrelis noted that the acreage sought to be reclassified was oriented in such a fashion so as to have an adverse effect on neighboring properties if permitted to remain in the R.C. 2 classification. For example, Mr. Gavrelis stated that the acreage requested to be reclassified was inappropriate for cultivation and that use of the land for silva-culture, as allowed under R.C. 2 zoning, would be impractical and adversely effect adjoining properties. Thus, Mr. Gavrelis concluded that the R.C. 2 designation was improper in that it promoted conflict with the residential R.C. 5 properties immediately adjacent to the subject acreage.

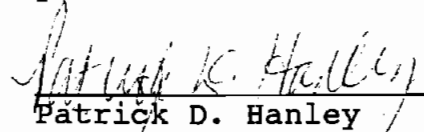
In order to contradict this testimony, the Office of the People's Counsel offered two arguments. First, People's Counsel relies heavily upon

by first class mail postag prepaid to:

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Patricia A. Malone, Esq.
Venable, Ba tjer & Howard
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Attorney for Appellee

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Old Courthouse
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Mr. John M. Bearer
9 W. Main Boulevard
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Patrick D. Hanley

LAW OFFICES
HANLEY AND HANLEY
208 WASHINGTON AVE.
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this Board's rationale in the Conservation Associates decision that the agricultural use of the property must be viewed in its entirety and that reclassification cannot be granted on the ground that any part of the site is found not to be suitable. As indicated earlier, the Conservation Associates case is uniquely different from the subject matter. The mere size of the acreage confronting the Board in this case convinces us that an examination and delineation of zoning designations within the total 920-acre area is warranted. Thus, at least when confronted with a parcel of this size and variety, the Board must take notice of geographic and topographic differences within the parcel.

As a second basis to contradict Mr. Gavrelis' opinion, the Office of the People's Counsel noted that zoning is historically done in accordance with property lines and that that format should remain valid in this case. Again, however, the Board must be mindful of the sheer size of this parcel and the irregularity of the topography within the total acreage. To be slavishly obedient to the property lines would ignore these valid considerations and not reflect the intent and spirit of the designated zoning classifications created by the legislature.

As a second basis for error, the Petitioner offered evidence that its proposal as presented was not known to the Council at the time of their adoption of the present zoning. It is clear that Councilman Ruppertsberger, representing this district, appointed a committee prior to the enactment of the 1988 zoning maps to study the Petitioner's proposal. However, it is equally clear that the proposal at that time was not definitively formulated and presented to the Council. Even if it had been, the Council within its zoning process cannot classify properties subject to compliance with documented site

plans as is permitted to the Board of Appeals by Section 2-58.1 of the County Code. Thus, the Petitioner argues that this Board may find error in the existing zoning classification under the purview of People's Counsel v. Mockard, 73 MD App 340, 533 A2d 1344 (1987) wherein the Court stated "the presumption of validity accorded comprehensive zoning may be overcome by evidence establishing that there were then existing factors which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account." We find that to be the case here and hold that the Council could not have taken into account the development of this plan as a subsequently occurring event.

The Board is of the opinion that to deny the requested reclassification would be an injustice to Baltimore County and to the residents whose properties abut the subject site. The Council, by approving the out-of-cycle reclassification petition, noted tacit approval of the documented site plan which they would not be able to incorporate in the comprehensive map process. In view of these factors, the Board is compelled to find that the zoning classification in this matter is in error.

Having therefore determined that the existing zoning classification is in error, the Board must address the second prong of the standard as it is set forth in 2-58.1(j)(2). Specifically, the Board must determine that the prospective reclassification is warranted. Section 2-58.1(j)(2) as interpreted by the Court of Appeals in Mockard (supra) mandates that this Board consider a variety of factors related to the purposes of the regulations and maps; including population trends, availability and adequacy of present and proposed transportation facilities, water supply facilities, etc. In this regard, the Board again carefully notes the testimony from Mr. George Gavrelis on behalf of the Petitioner. His consideration and treatment of each of these factors was

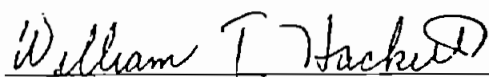
uncontradicted and is noted within the record of the case. The Board accepts his conclusions and therefore, based upon its consideration of these factors and others, finds that the prospective reclassification is so warranted. Because of the uniqueness of all of these factors in this particular case, the Board is of the opinion that the reclassification should be granted and will so order.

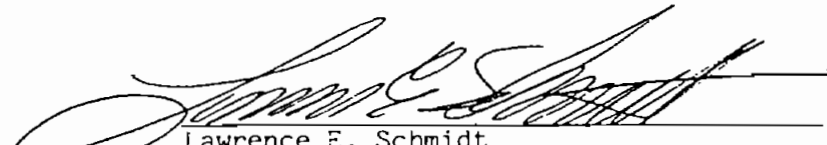
O R D E R

It is therefore this 31st day of May, 1989 by the County Board of Appeals of Baltimore County ORDERED that the out-of-cycle Petition for Zoning Reclassification from R.C. 2 to R.C. 5 of a significant portion of property located in northwestern Baltimore County known as the Caves Valley in Case No. CR-89-367 and as clearly documented on Petitioner's Exhibits No. 11-1 and 11-2 be and the same is GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


William T. Hackett, Chairman


Lawrence E. Schmidt


Henry H. Lewis

IN THE MATTER OF THE APPLICATION OF	*	BEFORE
LEROI M. MERRITT, FOR A ZONING	*	
RECLASSIFICATION ON PROPERTY LOCATED	*	COUNTY BOARD OF APPEALS
ON THE WEST SIDE OF COMMERCE DRIVE,	*	
175' NORTH OF CENTERLINE OF WASHING-	*	OF
TON BLVD. (3700-3798 COMMERCE DRIVE)	*	
13TH ELECTION DISTRICT	*	BALTIMORE COUNTY
1ST COUNCILMANIC DISTRICT	*	
	*	CASE NO. CR-89-451

* * * * *

O P I N I O N

This case comes before the Board for zoning reclassification from O.T. (Office and Technology) to M.L.-I.M. The twenty-two acre parcel of land is in the First Councilmanic District at the juncture of I-95, I-695 and U.S. 1. The case was heard this day in its entirety.

Opening remarks in this matter by Counsel for the Petitioner emphasized that the original objectives and purposes for the O.T. zone in 1984 for this parcel by the County Council have been rendered impractical in the past five years by newly designated and more attractive locations in O.T. zones in the area. The Petitioner's overall holdings in the area total 80 acres, all of which were zoned M.L. in the 1970's. The subject parcel was rezoned O.T. in 1984 with the purpose of attracting high-tech industry to the County.

People's Counsel defended the O.T. zoning of the parcel, remarking that the location offers a unique vantage point for a high-tech industry at the "gateway to Baltimore County" location.

In support of the Petition for Reclassification, Counsel for the property owner presented several witnesses who testified to the difficulties of the O.T. zoning at this location. Mr. Anthony Haile, Deputy Director of Baltimore County Dept. of Economic Development, reviewed the features required of a property for high-tech utilization. Mr. Haile mentioned several major corporations who rejected the site because of its limited access and lack of essential amenities expected in the O.T. zone. With the 1988 zoning of large acreage of government

owned property in this southwestern section of Baltimore County, at the UMBC and Spring Grove Campuses, Mr. Haile testified to the difficulty of a private developer in marketing any site for O.T. use, particularly the subject property.

Mr. Randy Warren, employee with the Merritt Company, reviewed the present trend in developing commercial sites with buildings that provide flex options for the lessee in the M.L.-I.M. zone, which predominates in the subject area. Since 1984, there was little or no interest in the location for O.T. development for reasons stated by Mr. Haile. In the 1988 Comprehensive Map Process, a change was not requested in hopes an O.T. use would occur, and the fact that they were not familiar with the pending UMBC - Spring Grove O.T. zoning of 300 acres. Mr. Warren ascertained that this nearby O.T. area has ruined his site's potential.

Mr. David Bavar, a commercial realtor serving the Merritt Company, reviewed several factors that detract from the high-tech use of the subject parcel. Mr. Bavar cited the deficiencies of poor accessibility, neighboring industrial users, and a lack of certain amenities in the area that go with providing services to high-tech employees. Mr. Bavar emphasized that M.L. land and the proposed documented use is needed in this part of the County. It was his opinion that it is an error to keep the O.T. zoning at this site.

Mr. William Kirwin, land planner and developer appeared as an expert witness involved with the site since 1983. Mr. Kirwin reviewed the requirements of an O.T. site today, allowing for lakes, recreational activity, parking and amenities for the health and well being of people. He cited the example of other highly desirable O.T. locations in Baltimore County and the size they offer to provide essential amenities to attract high-tech industry. Mr. Kirwin reviewed various illustrative exhibits depicting the proposed M.L. use of the parcel and its configuration in the proposed documented plan. He pointed to the transportation deficiencies of the site for O.T. use versus the assets of an M.L., flex

space use. Building elevation drawings were explained by this expert witness that bore out the fact that the documented site of five flex office/warehouse buildings would not be seen from the interstate highways. Access to the site would be from the U.S. 1 route utilized by various industrial users.

In respect to the high-tech potential for the site, Mr. Kirwin referred to Section 207.2 of the Baltimore County Zoning Regulations (BCZR) and its intent for the O.T. zone. His remarks pointed to various shortcomings of the parcel and the error of the zoning. There are no trends to office-tech use in the area, which has predominantly industrial use.

In opposition to the Petition for Reclassification, People's Counsel offered Mr. Pat Keller, Deputy Director of Planning and Zoning which recommended denial of this Petition to the Planning Board of Baltimore County. Acknowledging the fact that the Planning Board agreed to the zoning requested in this case, Mr. Keller reviewed a list of suggestions for the documented site plan in the event the County Board of Appeals granted the zoning reclassification.

The case for the Petitioner in this matter was thoroughly and convincingly presented in proving that the subject parcel as an office and technology zone has become impractical, and in error. Foremost in highlighting this error is the definition of the O.T. zone as stated in 207.2 BCZR as it is applicable to the subject location. Aerial photographs identify predominantly industrial warehouse utilization in the entire southwest area of this site. This O.T. zoned site is not in the proximity of a town center, residential growth, nor is it highly accessible. In fact the site has an access difficulty for traffic approaching the location via the inter-state highways, which do not have conveniently located exits to the location. In consideration of all the amenities that are prescribed for the office-technology location, the mere size of this site precludes the absence of these recommendations. Coupled with the existing

warehouse utilization of the neighboring properties, it is obvious that the Petitioner's property is practically obsolete as a high-tech location and hardly qualifies.

The opinion that the UMBC and Spring Grove office and technology zoning of 300 acres makes the subject site unattractive is understandable to this Board. As different counties and developers endeavor to attract high-tech industry, testimony in this case has clearly stated the difficulty of marketing land for the O.T. use. Prior to the UMBC designation, there may have been merit in the O.T. zone for the subject parcel, but as testified by several expert witnesses in this case, the Baltimore County Government will certainly promote the UMBC - Spring Grove acreage rather than the inaccessible parcel of the Petitioner.

Although this property was not an issue in the 1988 Comprehensive Map Process, testimony and convincing evidence gives strong indication that this site is not conducive to utilization as an office-technology zone. For the various reasons covered in the above, this Board is of the opinion that the reclassification of the subject parcel of 21.6 acres from O.T. to M.L.-I.M. should be granted and will so order.

In view of the stated willingness of the Petitioner to cooperate and accept suggestions for this documented plan, the Board stipulates that the proposals by the Director of Planning and Zoning be included in the documented plan.

O R D E R

It is therefore this 14th day of November, 1989 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Reclassification of the property from O.T. to M.L.-I.M. be and the same is hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

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

Arnold G. Foreman
Arnold G. Foreman

IN THE MATTER OF THE
THE APPLICATION OF
TELL BIN DER (ESTATE OF)
FOR A ZONING RECLASSIFICATION
FROM D.R. 3.5 TO B.L.
ON PROPERTY LOCATED ON THE
NORTHEAST SIDE REISTERSTOWN ROAD,
440' SOUTHEAST OF CENTERLINE OF
MT. WILSON LANE EXTENDED
3RD ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CR-90-407
* Item #8, Cycle III
* 1990
* (Documented Site Plan)
* * * *

* * * *

O P I N I O N

The Petitioners, the Estate of Tell Bin Der, have filed a Petition for Zoning Reclassification of their property from its present zoning designation of D.R. 3.5 to B.L. The Petitioners offered into evidence a documented site plan (Petitioners' Exhibit No. 1). The site plan, in addition to showing the dimensions of the property and its configuration with the proposed office building, depicted the existence of proposed landscaping and accesses. The subject property is located on the northeast side of Reisterstown Road, just north of the Festival at Woodholme property, and extends to Keller Road. The property is "T"-shaped and is approximately 2.6 acres.

In support of the Petition, the Petitioners offered the testimony of William Kirwin and Norman Gerber, both experts in the fields of planning and zoning; Wes Guckert, a traffic expert; and Richard Truelove, a licensed Professional Engineer. Their testimony established that the present residential zoning classification of D.R. 3.5, which was placed on the property as a result of the Comprehensive Zoning Map process in 1988, was inappropriate and not compatible with the surrounding zoning in the area. The zoning map for 1988 was offered into evidence and testified to by Mr. Kirwin. Both Mr. Kirwin and Mr. Gerber, in

their capacity as planners, pointed out to the Board that the property should be more appropriately zoned B.L. since it fronts on Reisterstown Road, is a unique piece of property, and has no desirability for residential use. They indicated to the Board that to develop the property residentially would result in residential housing with private driveways accessing onto Reisterstown Road. They also stressed to the Board that the property would be subject to residential transition area and setback requirements, which would be restrictive, and other considerations making the residential use unfeasible. Under the Baltimore County Code, a Petition for Zoning Reclassification may be granted if it is established by the Petitioner that mistake did in fact occur by the County Council in its Comprehensive Zoning Map process. The factors to be considered as set out in Section 2-356(j)(2) are as follows:

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

Mr. Kirwin in his direct testimony discussed each and every one of these factors and Mr. Gerber also made reference to these factors in his direct testimony. The Board is satisfied from the testimony of each of them that the criteria was considered, and that under

CIVIL ASSIGNMENT

PETITION OF

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF

THE COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

IN THE CASE OF

IN THE MATTER OF BAKER LAND
COMPANY, ET AL.
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5. to B.M ZONE ON
PROPERTY BROAD AVENUE (Parcel 1)
AND SE/s/ END ROOSEVELT STREET, SW
BROAD AVENUE (Parcel 2)

MICHAEL GERBER and
PENNY GERBER

JOHN M. BEARER

ATTORNEYS

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(atty for Michael & Penny Gerber)

P.P. (John M. Bearer)
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Timonium, MD 21093
561-2360

John H. Zink, III/Patricia A. Malone
210 Allegheny Avenue
P.O. Box 5517
21204 494-6200 (Baker Land Co, et.al)

D/E's Mailed 04/05/95

- tr(1) Mar. 21, 1994 Petition for judicial review, fd. Notice sent.
- rs(2)*Mar. 28, 1994 Certificate of Notice fd. (rec'd 3-24-94)
- rs(3) Apr. 4, 1994 Petition of MICHAEL GERBER and PENNY GERBER for Judicial Review fd. (rec'd 3-22-94)
- rs(4) Apr. 4, 1994 Petition of JOHN M. BEARER for Judicial Review fd. (rec'd 3-22-94)
- rs(5) Apr. 13, 1994 Response of BAKER LAND COMPANY, et.al. to Petition fd. (rec'd 4-11-94)
- rs*(6) Apr. 15, 1994 Second Certificate of Notice fd. (rec'd 4-14-94)
- *df (7) May 19, 1994 - Transcript of Record fd. *Box 207*
- *df (8) May 19, 1994 - Notice of Filing of Record fd. Copies Sent.
- am (9) Jun 17, 1994 People's Counsel's Memorandum, fd.
- am (10) Jun 17, 1994 Petitioner's Memorandum, fd. (John M. Bearer)
- am (11) Jun 28, 1994 Memorandum of Michael and Penny Gerber in support of appeal, fd. Rec.'d 6/22/94.

COSTS

Bolt. Co. No. 2

OVER

Docket

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Page

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Case

94 CV- 02565

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

SUPPLEMENTAL PETITION OF PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY
400 Washington Avenue, Room 47
Towson, MD 21204

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY
400 Washington Avenue, Room 49
Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF BAKER LAND COMPANY,
et al. FOR A ZONING RECLASSIFICATION
OF PROPERTY LOCATED ON THE SWC PADONIA
ROAD AND BROAD AVENUE (PARCEL 1); AND
SE/S/END ROOSEVELT STREET, SW BROAD
AVENUE (PARCEL 2)
From M.L.R. & O-1 and D.R.3.5 to B.M.
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD OF
APPEALS, CASE NO.: CR-93-305-SPH
(ITEM 3, CYCLE I)

Civil Action No.
76/249/94-CV-02565

SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial
review of the February 22, 1995 County Board of Appeals' Amended Opinion
Pursuant to Remand Order and Amended Memorandum Opinion and Order of the
Circuit Court in the above case. PEOPLE'S COUNSEL was a party to the
proceedings before the County Board of Appeals of Baltimore County and
before the Circuit Court for Baltimore County in this matter.

This Supplemental Petition is filed pursuant to Rule 7-202 of the
Maryland Rules of Procedure.

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

that criteria the property is mistakenly zoned D.R. 3.5. It should be pointed out that the present D.R. 3.5 zoning came about as a result of an issue on the property raised by the Planning staff, and that the zoning change was down-zoned from the B.L. classification, the same classification that the Petitioners seek today.

In addition to the expert testimony offered by the Petitioners in this case, the Report and Recommendations of the Planning Board was offered into the proceedings (Petitioners' Exhibit No. 13). It appears from a full reading of the Planning Board's report that it is in agreement with that of the expert witnesses in these proceedings to the extent that D.R. 3.5 zoning is not appropriate for the site. The experts have testified that the more appropriate zoning under the documented site plan should be B.L. The Planning Board proposes that it should be R.O. The Board has reviewed the Planning Board's report and is more persuaded by the testimony of the experts who testified in the proceedings indicating a change to B.L. zoning.

Counsel for Festival at Woodholme has argued to this Board that the site plan should not be admitted or considered by this Board on the basis that it fails to show the existence of a 100-year flood plan area, and that the failure to do so is contrary to the requirements for preparing and filing a site plan as set out in the Baltimore County Code. Mr. Richard Truelove addressed this issue and the reasons why the flood plain was not contained on the site plan. He stated that he performed an investigation and checked all of the sources known to him with Baltimore County to determine whether or not the subject site was within an existing

flood plain. He further stated that the results of his investigation were that Baltimore County maps did not disclose the existence of any flood plain or that a flood plain area had been defined. Further, the testimony showed that the flood plain map of the Federal Emergency Management Act (FEMA) did not disclose the existence of any flood plain as to the site. This Board feels that the Petitioners in the presentation of their case did not act in any improper manner in presenting to this Board for consideration the site plan without the existence of any flood plain thereon.

For the reasons as set out above, this Board is satisfied that the burden of proof has been met and will so order a change in zoning classification of this property as a reclassification to B.L. zoning in accordance with the documented site plan offered into evidence as Petitioners' Exhibit No. 1.

O R D E R

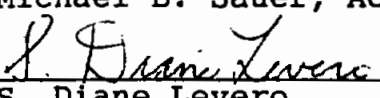
IT IS THEREFORE this 24th day of September, 1992 by the County Board of Appeals of Baltimore County

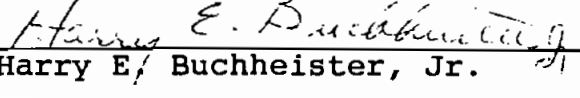
ORDERED that the Petitioners' request for reclassification of the subject property from D.R. 3.5 to B.L. as designated on Petitioners' Exhibit No. 1 be and is hereby GRANTED, subject to the Documented Site Plan entered as Petitioners' Exhibit No. 1 in these proceedings.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Michael B. Sauer, Acting Chairman


S. Diane Levero


Harry E. Buchheister, Jr.

IN THE MATTER OF
THE APPLICATION OF
NOTTINGHAM PROPERTIES, INC./LEGAL
OWNER AND RETIREMENT AND HEALTH
SERVICES, CORP. d/b/a/ SENIOR
CAMPUS LIVING /PETITIONERS FOR A
ZONING RECLASSIFICATION, SPECIAL
EXCEPTION AND VARIANCES ON PROPERTY
LOCATED ON THE SW SIDE JOPPA
ROAD AND WALTHER BOULEVARD, E OF
BURTON AVE. /CHARLESTOWN VILLAGE
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CR-94-157-XA
* (Out of Cycle)
*

* * * * *

O P I N I O N

This matter comes before the Board on Petition for Zoning Reclassification from R.O., B.L., D.R. 2, D.R. 5.5 and D.R. 10.5 to D.R. 16; for a special exception to permit a continuing care facility with a utilization period of five years; and for five zoning variances. Petitioner appeared and was represented by Stephen J. Nolan, Esquire. Participating in these proceedings was Peter Max Zimmerman, People's Counsel for Baltimore County. This case consumed some 1-1/2 days of direct testimony, and included testimony from 13 witnesses and argument from both Counsel.

Appearing and testifying in favor of the Petition was John Erickson, the President of Senior Campus Living, who operates a continuing care facility at Charlestown in which between 2,000 and 2,400 elderly people now reside. He explained at great length the entire operation of this facility and its many advantages.

Paul J. Marks, an architect, testified that he designed this plan and further explained the plan in great detail. He noted that the height requested was necessary in order to reduce the lateral distances that the elderly must travel. He further noted that the

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taller buildings reduce the amount of impervious surface and allow more green space than the same number of units would be with less elevation.

Edmond Haile, professional engineer, testified that his firm drew the documented site plan presented as Petitioner's Exhibit 1, and noted that everything on the site plan is from field information, and that adequate water and sewer are available.

Reed Huppman, an environmental scientist, studied the site, explained his conclusions at length, and it was his opinion that the proposed use was not detrimental to any of the surrounding areas, that it would be an improvement as far as the runoff and trash abatement and answered all the aspects of Section 502.1 necessary to obtain the special exception.

Wesley Guckert, traffic engineer, testified as to his study of the traffic situation. He noted this complex was the same as Charlestown as to cars and parking, and prepared both a traffic study of the site and the parking needs. He testified that the requested parking spaces from the study of Charlestown would be considerably more parking than will ever be needed. He also answered 502.1 that the proposed facility would create no congestion in streets or alleys and would not be detrimental to the neighborhood.

Amy Johanson, representing the Baltimore County Department of Community Development, testified that it was her job to promote elderly housing. Her office supports this project in its entirety. She noted that in this quadrant of the County, there is no

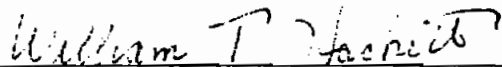
and is hereby GRANTED; and it is further

ORDERED that the petitioned variances to permit a building height as tall as 80 ft. in lieu of the maximum 60 ft.; to permit a non-residential principal building within the continuing care facility to have a maximum building length as long as 450 ft. in lieu of the permitted 200 ft. and width as long as 400 ft. in lieu of the permitted 200 ft.; to permit component elderly housing facility, institutional buildings separated by exterior passageways to have a maximum width and length as much as 440 ft. in lieu of the permitted 200 ft.; to permit a continuing care facility to provide 1,557 off-street parking spaces in lieu of the required 1,927 spaces; and to permit an externally-illuminated sign identifying the elderly housing community to have a double-faced sign with an area of 75 sq. ft. in lieu of the permitted 15 sq. ft. per face be and are hereby GRANTED; and it is further

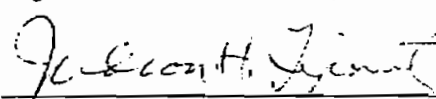
ORDERED that the Agreement between the Petitioner and the Ridgedale Mews Homeowners' Association, Inc., as set forth in Petitioner's Exhibit 28, shall be incorporated and become a part of this Order.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


William T. Hackett, Chairman


Michael B. Sauer


Judson H. Lipowitz

IN THE MATTER OF
THE APPLICATION OF
BAKER LAND COMPANY, ET AL.
FOR A ZONING RECLASSIFICATION
FROM MLR, O-1 AND DR 3.5
TO BM ON PROPERTY LOCATED ON
THE SWC OF BROAD AVENUE AND
PADONIA ROAD

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD
* OF APPEALS OF
* BALTIMORE COUNTY
*
* CASE NO. CR-93-305-SPH

* * * * *

PETITIONER'S MEMORANDUM IN SUPPORT
OF REQUEST FOR RECLASSIFICATION

Dear Ms. Weidenhammer:

Attached is Petitioner's Memorandum in Support of Request for
Reclassification, Table of Contents and attachments.

Respectfully submitted,


ROBERT A. HOFFMAN
Venable, Baetjer and Howard
210 Allegheny Avenue
P. O. Box 5517
Towson, Maryland 21204
(410) 494-6262

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IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF	*	COUNTY BOARD
<u>BAKER LAND COMPANY, ET AL.</u>	*	OF APPEALS OF
FOR A ZONING RECLASSIFICATION	*	BALTIMORE COUNTY
FROM MLR, O-1 AND DR 3.5	*	
TO BM ON PROPERTY LOCATED ON	*	
THE SWC OF BROAD AVENUE AND	*	
PADONIA ROAD	*	
8TH ELECTION DISTRICT	*	CASE NO. CR-93-305-SPH
3RD COUNCILMANIC DISTRICT	*	
* * * * *		

PETITIONER'S MEMORANDUM IN SUPPORT
OF REQUEST FOR RECLASSIFICATION

Baker Land Corporation, et al., legal owner, and Harrison & Grass Partnership, contract purchaser (collectively, "the Petitioner"), by its attorney, Robert A. Hoffman, with Venable, Baetjer and Howard, respectfully submits this Memorandum in support of its request for reclassification.

STATEMENT OF THE CASE

The Petitioner began this case by filing a Petition for Reclassification with the County Board of Appeals of Baltimore County (the "Board") on February 23, 1993. The Petition involves 6.57 acres at the southwest corner Padonia Road and Broad Avenue, between I-83 and York Road. It is a Cycle Rezoning Petition under § 2-356 of the Baltimore County Code, and it requests BM (Business, Major) zoning - subject to the restrictions set forth in the Documented Site Plan accompanying the Petition -- in lieu of the present combination of MLR, O-1 and DR 3.5 zoning, to accommodate the proposed development of the Broad Street Market.¹ If the rezoning is secured, the

¹ The petition also includes a request for less than an acre of existing O-1 zoning to be approved for parking necessary to support the proposed Broad Street Market.

contract purchaser, Harrison & Grass, will move forward with development of the Broad Street Market -- a small, high-quality shopping center, which is to include among other things a Metro Food Market and a Rite-Aid Drug Store.

SUMMARY OF ARGUMENT

Section 2-356(j) of the Baltimore County Code provides for the reclassification of zoning if a petitioner can show either change or mistake. In the instant case, the Petitioner proved mistake under both of the legal tests recognized in Maryland, and has done so with specific and overwhelming evidence as to the factors listed in § 2-356(j)(2) of the Code.

A. The Petitioner has demonstrated that the County Council failed in 1992 to take into account important facts, or projects or trends which were then reasonably foreseeable of fruition:

1. Population Trends and Market Conditions

- Population west of I-83 has significantly increased with no increase in available commercial land to support this population's needs.

2. Adequacy and Availability of Transportation and Other Public Facilities

- The existing MLR classification would allow for industrial development, notwithstanding the failed York/Padonia Road intersection; development under the Documented Site Plan could not occur until the failure is corrected.
- Office or industrial development generates "new trips" on the roadways. Under the Documented Site Plan, the proposed neighborhood shopping facility would intercept existing trips.
- The proposed BM zoning presents no difference in impact on other public facilities.

3. Character of the Surrounding Area -- Compatibility
of Uses under Present vs. Proposed Zoning

- The uses permitted under the proposed BM zone and the Documented Site Plan are more compatible with the surrounding area than the uses permitted under the existing MLR zone.

4. Consistency of the Proposed Zoning with
the Master Plan

- The current industrial classification is inconsistent with the Master Plan in that it places a greater strain on transportation infrastructure.

B. The Petitioner has produced clear evidence of subsequently occurring facts and events that have proven that the assumptions upon which the Council acted in 1992 were erroneous.

1. Population Trends and Market Conditions

- The increase in population does not equate to any increase in demand for office or industrial space. There is a clear increase in demand for neighborhood shopping with no available commercial space.

2. Character of the Surrounding Area -- Compatibility
of Uses under Present vs. Proposed Zoning

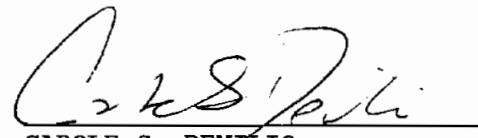
- The Documented Site Plan clearly establishes compatibility with the surrounding neighborhood in contrast to possible development under the existing zoning classification.

3. Recommendation of the Planning Board and the Office
of Planning and Zoning

- The Office of Planning and Zoning and the Planning Board support the Petitioner's request.

4. Consistency of the Proposed Zoning with the Master Plan

- The Hunt Valley/Timonium Redevelopment Study and Legg Mason's update, not available to the County Council until after the adoption of the Comprehensive Map clearly indicates that the existing zoning provides no reasonable use of the property and that the proposed BM zoning with the Documented Site Plan is necessary to allow for a reasonable and necessary use.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 1995, a copy of the foregoing Supplemental Petition for Judicial Review was mailed to Patrick D. Hanley, Esquire, 206 Washington Avenue, Towson, MD 21204, to John M. Bearer, 9 W. Main Boulevard, Timonium, MD 21093, to John H. Zink, III, Esquire and Patricia A. Malone, Esquire, Venable, Baetjer and Howard, 210 Allegheny Avenue, P. O. Box 5517, Towson, MD 21204.



PETER MAX ZIMMERMAN

ISSUES

- I. Has the Petitioner proven that the current zoning is a mistake and that the requested zoning should be granted?

Section 2-356(j) of the Baltimore County Code provides for the reclassification of zoning if a petitioner can show either change or mistake. Specifically, that section requires that, before the Board of Appeals grants a reclassification request, the Board must find:

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

(Emphasis added.)

In People's Counsel v. Mockard, 73 Md. App. 340 (1987), a Baltimore County case, the Court of Special Appeals held that the petitioner in a cycle rezoning case must provide evidence as to the factors listed in § 2-356(j)(2), and that the Board of Appeals'

findings in such a case must be based on a consideration of those factors.

The "change or mistake rule" embodied in § 2-356(j) has been interpreted in many Maryland cases over the years. When discussing the "mistake" side of the rule, the courts have generally used the terms "mistake" and "error" interchangeably. Error, as that term has been interpreted in zoning law, is established when a petitioner shows that the local zoning authority made a basic and actual mistake when it adopted a comprehensive zoning map placing the subject property in its present classification. Coppolino v. County Bd. of Appeals of Baltimore County, 23 Md. App. 358 (1974).

The Maryland courts have made it clear that error may be established in two ways. First, the petitioner may submit evidence of certain facts, projects or trends that existed at the time of the last comprehensive rezoning that the zoning authority failed to take into account. Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975). Second, the petitioner may show that events occurring subsequent to the comprehensive zoning have proven that the zoning body's initial premises at the time of the last comprehensive rezoning were incorrect. Bellanca v. County Comm'rs, 86 Md. App. 219, 231 (1991); Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975).² The Petitioner here

² It is important to note that although a finding of mistake by the Board typically means that the decision of whether to grant the requested rezoning lies within the Board's discretion, this is not the case where the Petitioner can show that the existing zoning classification deprives him of any reasonable use of the property. In such cases, if the Petitioner can show that the existing zoning classification unconstitutionally deprives him of any reasonable use of the property, then the requested rezoning is not within the Board's discretion, but is mandatory. Anne Arundel County v. A-Pac

has met its burden of proof with regard to both of these tests for establishing error.

A. The Petitioner established that the 1992 classification of the property was in error because it failed to take into account then-existing facts, projects or trends.

As stated above, a Petitioner asserting error makes out a case by showing that certain facts, projects or trends existed at the time of the last comprehensive rezoning and that these were not taken into account by the zoning body. Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975). Typically, this evidence consists of expert testimony or available County records, documents and plans. "It is presumed . . . that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing." Dorsey, 292 Md. at 357-58.

In this case, the Petitioner presented strong evidence that the County Council failed to take into account certain facts, projects or trends -- including factors specifically enumerated in § 2-356(j)(2) -- that were present in 1992.

1. Population Trends and Market Conditions

Timothy Harrison testified at length as to the studies that were conducted and the analysis that was prepared by the Petitioner as to the population and demographics of the area surrounding the subject site. See Transcript from September 29, 1993 Hearing, a copy of which is enclosed, hereafter cited as (Sept. 29, 1993, T. 23-28). In addition to the demand for retail services generated by the significant residential developments located to the west of the

Limited, 67 Md.App. 122, 129-30 (1986).

subject property, along Falls Road, Mr. Harrison (and later Mr. Gavrelis) noted that additional demand was being created by the residents moving to Mays Chapel North, Mays Chapel Village, Chapelgate and several other new residential developments. (Sept. 29, 1993, T. 26). See also Transcript from October 19, 1993 Hearing, a copy of which is enclosed, hereafter cited as (Oct. 19, 1993, T. 57). The Petitioner's analysis concluded that the rezoning and subsequent development of the Broad Street Market would "serve the needs of thousands of families living on the west side of I-83" and alleviate the current necessity for these residents to travel through the York and Padonia Road intersection and up and down the York Road corridor for grocery shopping. (Sept. 29, 1993, T. 28).

Robert T. Kleinpaste, of the Legg Mason Realty Group, testified to the extent of the office/industrial real estate recession in the area and the resulting overabundance of office and industrial space; according to his testimony, these conditions developed in the early 1990's and were apparent even in 1992, at the time of Baltimore County's last comprehensive zoning. (Oct. 19, 1993, T. 11-12). Similarly, George E. Gavrelis, an expert in planning and zoning with Daft-McCune-Walker, Inc., stated that in his opinion the County Council erred by failing to provide for needed retail/commercial zoning in this area, or even to recognize that such a need existed. (Oct. 19, 1993, T. 11-12).

Given the presumption that the County Council was aware of these population and market changes, which were well underway in 1992, it is apparent that the Council failed to take them into account with

respect to the subject property, when it declined to zone the property commercially, and instead maintained the MLR, O-1 and DR 3.5 zoning classification.

2. Adequacy and Availability of Transportation and Other Public Facilities

From a traffic perspective, Mickey Cornelius, a traffic engineer with the Traffic Group, Inc., testified in detail about the history of the traffic shed in which the subject property is located and the problems associated with the nearest major intersection -- the intersection of York and Padonia Roads -- less than half a mile from the subject site. Mr. Cornelius explained that the York and Padonia intersection had been a Level F or "failing intersection" (in terms of traffic flow at peak hours) for several years. (Sept. 29, 1993, T. 193-94, 197-200). Mr. Cornelius further explained how, under Baltimore County's Basic Services legislation, a Level F designation would preclude development, except development on industrially-zoned sites, such as the subject property with its existing MLR zoning.

In other words, the requested reclassification would give the County greater control over development of the subject site and enable it to prevent development that might exacerbate traffic problems. Mr. Cornelius testified as to why retail/commercial uses, such as the one proposed by the Petitioner, generate less peak hour traffic than do office or industrial uses, to and from which large numbers of people travel during peak morning and evening rush hours. (Sept. 29, 1993, T. 196-98).

On the basis of Mr. Cornelius' testimony, it is reasonable to conclude that the County Council failed to address the need to

balance infrastructure with appropriate development in the area of the subject property. Notwithstanding that the County Council knew at the time of the 1992 comprehensive zoning that the intersection of York and Padonia Roads was a failing intersection, and that it knew or should have known that a retail/commercial classification would produce much less negative impact on crucial peak hour conditions than an industrial one, the Council maintained on the property an industrial zoning classification that would permit development that could severely exacerbate the existing traffic problem.

The opening of the Warren Road interchange at I-83, a development that was certainly anticipated at the time of the 1992 comprehensive zoning, does not obviate the fact that the County Council failed to take into consideration the traffic problems of the area when it retained existing zoning on the property. As the testimony indicated, the Warren Road interchange is only a partial interchange, and it can only be expected to raise the York and Padonia Road intersection from a Level F to a Level D. Thus, notwithstanding the Warren Road interchange, if industrial development were permitted on the subject property where new traffic trips are generated by new employees, it would, over time, aggravate traffic problems at the intersection of York and Padonia Roads, likely causing them to revert to a Level F. (Sept. 29, 1993, T. 205, 210). This is in contrast to a retail/commercial development where shoppers represent traffic trips already using the same road network.

As to public facilities other than transportation, the Petitioner's expert witness was Frederick N. Chadsey, IV, a

professional engineer with G.W. Stephens & Associates. Mr. Chadsey compared the Petitioner's proposed use to those uses permitted under the existing industrial zoning and concluded that there would be no significant difference in the impact on these other public facilities. (Sept. 29, 1993, T. 157-58). As to possible storm drainage problems, Mr. Chadsey testified about research and studies he had conducted and concluded that the proposed development, as designed, would provide adequate safeguards. (Sept. 29, 1993, T. 160-65, 177-78).

Additional expert testimony on public facilities was given by Mr. Gavrelis of Daft-McCune-Walker, Inc. In addition to echoing the testimony of Mr. Cornelius with regard to traffic in the area and how the proposed use would have less impact than would the type of use permitted under current zoning, Mr. Gavrelis confirmed that other public facilities (water, sewerage, solid waste disposal, etc.) were adequate to support the proposed development. (Oct. 19, 1993, T. 41, 51, 58-59).

3. Character of the Surrounding Area -- Compatibility of Uses under Present vs. Proposed Zoning

Both Mr. Gavrelis and Samuel G. Crozier, a land planner and landscape architect with Crozier & Associates, testified for the Petitioner as planning experts. Mr. Crozier clearly articulated his belief that the existing zoning on the subject site was in error. (Sept. 29, 1993, T. 85). Specifically, Mr. Crozier explained that a great deal of the land in the area that had been zoned industrial had not been developed with industrial uses, but with other, non-industrial uses permitted in the ML zone. (Sept. 29, 1993, T. 88-

92). As a result, Mr. Crozier stated, the area around the subject site gives almost no indication that industrial zoning exists. Indeed, an industrial classification is not consistent with the character of the area. (Sept. 29, 1993, T. 93-94).

Mr. Gavrelis explained at length how the character of the Padonia Road corridor was commercial rather than industrial, oriented towards office and retail uses, and how the uses proposed by the Petitioner were much more compatible with that character -- especially in light of the Documented Site Plan -- than were those permitted under the existing MLR zoning. (Oct. 19, 1993, T. 53-56). In support of this testimony, the Petitioner submitted numerous photographs, keyed to the 200-scale zoning map, to depict the commercial character of the area. See Petitioner's Exhibit 24A and 24B.

4. Consistency of the Proposed Zoning with the Master Plan

The Baltimore County Master Plan: 1989-2000, adopted in 1990, is the County's fundamental planning document. Mr. Gavrelis testified that the current industrial zoning of the subject property is inconsistent with the Master Plan as it relates to this area of the County, in that the Master Plan declares that there should be more advantageous use of existing infrastructure, whereas the current zoning reflects the County Council's erroneous failure to consider the different effects that industrial and commercial development would have on the transportation network. (Oct. 19, 1993, T. 41-42). More important, Mr. Gavrelis explained why, with the Documented Site Plan, the Petitioner's requested rezoning to BM would correct

the Council's error by lessening the strain on the transportation infrastructure. (Oct. 19, 1993, T. 59).

B. The Petitioner established that events occurring since the 1992 comprehensive zoning have proven that the Council's initial premises were incorrect.

As noted earlier, the Petitioner may also establish error or mistake by showing that events occurring subsequent to the last comprehensive zoning have proven that the Council's premises at that time were incorrect. Bellanca v. County Comm'rs, 86 Md. App. 219, 231 (1991); Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975). In Rockville v. Stone, 271 Md. 655, 662 (1974), the Court of Appeals stated:

On the question of original mistake, this Court has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize rezoning.

Accordingly, if there are "facts occurring subsequent to a comprehensive zoning [which] were not in existence at th[at] time, and, therefore could not have been considered," they may be considered as evidence in determining whether the Council was in error. Dorsey, 292 Md. at 356 (quoting Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975)). Of course, since such facts were not in existence at the time of the previous comprehensive rezoning and "could not have been considered, there is no necessity "to present evidence that such facts were not taken into account by the Council" Id.

In this case, the Petitioner has presented an abundance of evidence relating to facts and circumstances occurring subsequent to the comprehensive zoning in 1992, such as the findings and

recommendations of the Baltimore County Planning Staff and Planning Board contained in the Hunt Valley/Timonium Redevelopment Study, the Documented Site Plan (which, should the reclassification be granted, would, by law, control the use and manner of development of the property), and the numerous changes in the area. This evidence is summarized below as it relates to the factors set out in § 2-356(j)(2) of the Zoning Regulations.

1. Population Trends and Market Conditions

Expert witness Robert T. Kleinpaste testified to the overabundance of office and industrial space in the area. Mr. Kleinpaste conducted the initial market analysis that is part of the Hunt Valley/Timonium Redevelopment Study, as well as a 1993 update of that market analysis. (Oct. 19, 1993, T. 6, 8). He testified that there was a "gross oversupply of office space" in the market and a "gross oversupply of land zoned for future office construction. . . ." (Oct. 19, 1993, T. 10). He also explained how the office market for the area had worsened considerably since 1992 (the date of the last comprehensive rezoning), with vacancies rising to approximately 18.4%. (Oct. 19, 1993, T. 11). With such an overabundance of office space, as well as a lack of demand, Mr. Kleinpaste concluded that it would be "at least ten years" before any office construction was demanded in the area. (Oct. 19, 1993 T. 12). The picture Mr. Kleinpaste painted with regard to industrial space was even harsher; he noted that the current vacancy rate in the Hunt Valley/Timonium area had "skyrocketed" from 6.5% in 1990 to 15.5% in 1993, and this equated to a thirteen-year supply of industrial space.

2/11/94

IN THE MATTER OF	*	ON REMAND FROM THE
THE APPLICATION OF	*	CIRCUIT COURT
<u>BAKER LAND COMPANY, ET AL</u>	*	
PROPERTY OWNER; HARRISON & GRASS,	*	FOR
DEVELOPER /PETITIONER FOR A ZONING	*	
RECLASSIFICATION ON PROPERTY	*	BALTIMORE COUNTY
LOCATED ON THE SWC PADONIA ROAD AND	*	
BROAD AVENUE (PARCEL 1); AND SE/S/	*	CIVIL ACTION
END ROOSEVELT STREET, SW BROAD	*	No. <u>94-CV-02565</u>
AVENUE (PARCEL 2)	*	
8TH ELECTION DISTRICT	*	(Case No. CR-93-305-SPH)
3RD COUNCILMANIC DISTRICT	*	
* * * * *		* * * * *

**AMENDED OPINION PURSUANT TO REMAND ORDER
AND AMENDED MEMORANDUM OPINION AND ORDER OF THE CIRCUIT COURT**

This case comes before this Board on remand from the Circuit Court for Baltimore County in which this Board was ordered to address the issue of "mistake" pursuant to Baltimore County Code Section 2-356(j); to address the flood plain issue pursuant to Code Section 2-356(1)(1); and to comply with the requirements of the Circuit Court's Order of October 12, 1994, which specifically designated that the Board make the appropriate factual and legal findings so as to adequately comply with Code Section 2-356(j)(2).

At the earlier proceedings before the Board, Jeffrey Long, Planner for Baltimore County, testified that he reviews all reclassification petitions and supports the granting of this Petition. He testified that it is in conformity with the Hunt Valley-Timonium Study and the Baltimore County Master Plan, and, in his opinion, current market conditions do not warrant office use. Sam Crozier, an expert land planner, testified at length as to why the Petition should be granted, and why the present zoning was in error, and further testified that the proper zoning would be B.M. for this site.

The Board will find as a fact from this testimony that the

(Oct. 19, 1993, T. 12). According to Mr. Kleinpaste, the recession in the office/industrial market is not cyclical, but "structural and very fundamental to . . . this region in particular." (Oct. 19, 1993, T. 14).

Mr. Kleinpaste's testimony was buttressed by that of another expert witness, Jerome B. Trout. Mr. Trout is a recognized expert in commercial real estate, who represents numerous major retail companies. He testified to the general unavailability of retail/commercial sites in the Timonium area and, specifically, to the "very serious shortage of land available in th[e] corridor for retailers of a size in excess of 20,000 square feet." (Sept. 29, 1993, T. 47). In fact, based upon his continuous market search since 1992 on behalf of Harrison & Grass, as well as his work for several major retailers, Mr. Trout concluded that there were no other appropriate sites available for development or redevelopment for a project of this size in the subject area. (Sept. 29, 1993, T. 47).

The ongoing length and intensity of the office and industrial real estate recession and the shortage of retail/commercial space attested to by Messrs. Kleinpaste and Trout are factors that were not and could not have been accurately taken into account when the County Council decided in 1992 to retain current zoning on the subject property. Although there was a recession in these markets in 1992 (and had been for some time), the worsening of the situation was not known or predicted at that time. Moreover, the true extent of the office/warehouse glut that has developed in the Hunt Valley/Timonium area was not then appreciated. The first draft of the Hunt

Valley/Timonium Redevelopment Study was not released by the Office of Planning and Zoning until November 19, 1992, a month after the comprehensive zoning, and the Study was not adopted by the Baltimore County Planning Board until April 15, 1993. Only now is the Study under consideration by the County Council. The Study is an important fact or circumstance appearing since the 1992 comprehensive zoning that helps to demonstrate that the County Council's action in 1992 in connection with this property was a mistake. Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975).

2. Character of the Surrounding Area -- Compatibility of Uses under Present vs. Proposed Zoning

Without question, the most significant occurrence relating to compatibility of the proposed zoning has been the submission by the Petitioner of a Documented Site Plan. The importance of this plan is underlined by the testimony of Mr. Long, a planner from the County Office of Planning and Zoning and the Director-Secretary to the Baltimore County Planning Board, who stated that his office supported the Petitioner's request "based on our analysis of the documented site plan. . . ." (Sept. 29, 1993, T. 67). Mr. Long indicated that representatives from the Office of Planning and Zoning had visited the subject site on several occasions, had reviewed the Documented Site Plan in conjunction with both the Baltimore County Master Plan: 1989-2000 and the Hunt Valley/Timonium Redevelopment Study, and had determined that the Petitioner's request is more compatible with the surrounding area than development under current zoning would be. (Sept. 29, 1993, T. 67-68, 70).

In addition, Mr. Gavrelis testified that, because the Comprehensive Map process does not allow for the submission of documented site plans, there is no way the County Council could have considered development controls such as those provided by the Documented Site Plan during the 1992 Map process. (Oct. 19, 1993, T. 38-39). Mr. Cornelius likewise testified that, from a traffic perspective, the Documented Site Plan would generate traffic mostly from nearby, and not during morning or evening peak hours. (Sept. 29, 1993, T. 196). Hence, the requested rezoning would result in a benefit to traffic conditions in this area, when compared to conditions that would result from development of those uses permitted under the existing MLR classification.

In this Board's opinion in Caves Valley Club, Inc., Case No. CR-89-367 (May 31, 1989) at 5-6, the Board recognized that a documented site plan is, in effect, a subsequently occurring event that can support a rezoning on the basis of mistake, since the County Council was unable to consider such a plan during the last comprehensive zoning process.

One final point that should be noted with regard to compatibility, was the testimony of Sandy Earp, President of the Timonium Heights Community Association. The Timonium Heights Community Association represents those residents living in the residential community adjacent to the proposed development (ie. between the southside of Padonia Road and the northside of the Timonium Fairgrounds and between the west side of York Road and the east side of the light rail). (Sept. 29, 1993, T. p. 51). Ms. Earp

testified that her community association had held meetings to discuss the proposed Broad Street Market and had subsequently decided to support the project because they felt it would be more compatible with their residential neighborhood than those use permitted under the existing industrial zoning. (Sept. 29, 1993, T. p. 53-56). Similar testimony from Michael Farinacci, who lives directly behind the property, as well as David Young and Howard Lenderking, concurred with that of Ms. Earp's as to the compatibility of the proposed project with the surrounding area. (Sept. 29, 1993, T. p. 60-62, 64).

3. Recommendation of the Planning Board and the Office of Planning and Zoning

As stated above, Mr. Long appeared at the hearing and testified that both his office, the Office of Planning and Zoning, and the Planning Board supported the Petitioner's reclassification request. (Sept. 29, 1993, T. 67).

4. Consistency of the Proposed Zoning with the Master Plan

Mr. Gavrelis pointed out that the Baltimore County Master Plan 1989-2000 contemplates redevelopment in the area near the subject property, as long as that development protects "the integrity of the adjacent residential communities . . . from noise, traffic, intrusion of nonresidential land uses and so forth." (Oct. 19, 1993, T. 44). Mr. Gavrelis then gave his expert opinion that this is exactly what the subject petition does:

It establishes a viable land use. At the same time, it protects by means of landscaping, berming, buffering and limitation on use by virtue of the use permit for parking that, in effect, does not result in intrusion of nonresidential

land uses into the residential component of the Timonium Heights area.

(Oct. 19, 1993, T. 44).

The Master Plan itself is intended to be been supplemented and amended by the Hunt Valley/Timonium Redevelopment Study.³ See Study at p. II-6. Mr. Long, of the Office of Planning and Zoning, testified that the market analysis prepared by Legg Mason and contained in the Study found high vacancy rates for office and industrial uses in the Hunt Valley/Timonium corridor, and that, based upon these rates, the Study calls into question the appropriateness of additional office and industrial facilities in the area. (Sept. 29, 1993, T. 68). Moreover, the Study recommends that the County support "appropriate development of vacant sites within the redevelopment and/or employment areas where quality design will limit negative impacts on any surrounding residential or employment areas."

There was ample testimony, as noted above, that the development proposed by the Petitioner here would have limited impact on the surrounding residential area. (Oct. 19, 1993, T. 49). As to the quality of the design, there was testimony from Mr. Harrison, Geoffrey Glazer, the project architect, and others as to the quality and attractive design of the proposed Broad Street Market. (Sept. 29, 1993, T. 19-24, 28, 180-86). Thus, the proposed development is consistent with the recommendation of the Hunt Valley/Timonium Redevelopment Study and, as such, with the Master Plan.

³ As yet the County Council has not adopted the Hunt Valley/Timonium Redevelopment Study, but has held the required public hearing. Formal adoption is anticipated in the near future.

II. Has the Petitioner shown that the requested use permit for parking should be granted?

As part of the Documented Site Plan, the Petitioner has also requested a use permit, so that part of the parking for the Broad Street Market can be located on the Petitioner's O-1 zoned land. The requirements for such a permit are set out in § 409.8.B of the Baltimore County Zoning Regulations. There was specific testimony that the Petitioner's request met these requirements.

First, Mr. Harrison testified that the parking for which the use permit was needed would be used only during the hours of operation of the stores, from 8:00 a.m. to 10:00 p.m. (Sept. 29, 1993, T. 40). He also stated that the use permit area would not be used for loading or service vehicles, or for trash trucks or dumpsters. (Sept. 29, 1993, T. 40). According to Mr. Harrison, lighting for the use permit area would be sufficiently regulated in conjunction with the lighting for the entire parking lot as noted on the Documented Site Plan. (Sept. 29, 1993, T. 40). Mr. Harrison stated that he was familiar with § 502.1 of the Zoning Regulations, referenced in § 409.8.B, and that, the use permit would meet the requirements of that section and have no adverse impact on the surrounding community. (Sept. 29, 1993, T. 40).

Mr. Crozier testified that the proposed parking lot would not be connected with the neighborhood, and, that it would be well-landscaped to provide screening for adjacent properties. (Sept. 29, 1993, T. 106-07). Like Mr. Harrison, he concluded that the use permit would not be detrimental to the health, safety or general welfare of the community. (Sept. 29, 1993, T. 106).

Mr. Gavrelis provided the most specific testimony about how the Petitioner's request for a use permit satisfied County requirements:

It's my opinion that the plan as laid out[,] which limits parking only to passenger vehicles [and] provides proper screening and lighting constraints, will have no adverse impact on the adjoining properties and is consistent with the standards required for a special exception in [§] 502.1 of the [Z]oning [R]egulations, i.e. will not overcrowd the land, will not have any adverse impact on health, safety and welfare, etc.

(Oct. 19, 1993, T. 60). Mr. Gavrelis also concluded that granting the requested use permit would be consistent with the requirements contained in § 409.8.B.2. He pointed out that those landowners who lived closest to the subject site did not object to the parking layout and, in fact, supported the Petitioner's request. (Oct. 19, 1993, T. 61).

Based upon this expert testimony, it is clear that the Petitioner met its burden of proof under §§ 409.8.B and 502.1 to obtain the requested use permit.

CONCLUSION

The Petitioner has presented compelling evidence to show that the current zoning of the subject property is a mistake. Indeed, it has made out a case under each of the methods for proving error that are recognized under Maryland law: first, it has demonstrated that the County Council failed in 1992 to take into account important facts, or projects or trends which were then reasonably foreseeable of fruition; second, it has produced clear evidence of subsequently occurring facts and events that have proven that the assumptions upon which the Council acted in 1992 were erroneous.

As to facts, projects and trends that existed but were not taken into account by the County Council in 1992, the Petitioner produced persuasive expert testimony and exhibits, including testimony as to why the current zoning conflicts with the County Master Plan and why development under that zoning would exacerbate traffic problems, as well as how the development proposed in the Documented Site Plan would be consistent with the surrounding uses and preferable in nearly every respect.

As to subsequently occurring facts and events that prove the County Council's assumptions in 1992 were incorrect, the Petitioner again presented abundant expert testimony, together with the Documented Site Plan, the Hunt Valley/Timonium Redevelopment Study, and the updated 1993 Legg Mason Analysis for the area.

Moreover, the evidence presented by the Petitioner established that, with the Documented Site Plan, the requested zoning reclassification to BM would correct the error made by the County Council in 1992.⁴

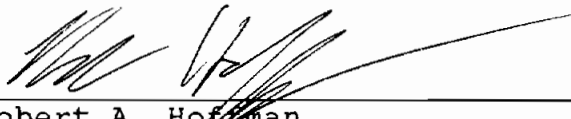
Finally, as to the requested use permit for parking, the Petitioner provided ample testimony that there would be no adverse impact and that the other requirements of in §§ 409.8.B and 502.1 of

⁴ The Petitioner would respectfully submit to this Board that in light of the expert testimony that established that under present and projected future market conditions it will not be economically feasible to develop the property at all as either an office or industrial site, the requested zoning reclassification is not only warranted, but mandated since without the ability to develop the property under the present zoning, the Petitioner is being deprived of all reasonable use of the property.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of November, 1993, a copy of the foregoing Memorandum in Support of Reclassification Request was mailed to:

Peter Max Zimmerman, Esquire
People's Counsel
Old Courthouse
400 Washington Avenue
Towson, Maryland 21204


Robert A. Hoffman

MEMO0096.GPW

IN THE MATTER OF
 THE APPLICATION OF
BAKER LAND COMPANY, et al
 FOR A ZONING RECLASSIFICATION
 FROM M.L.R. O-1 & D.R. 3.5 TO
 B.M. ON PROPERTY LOCATION ON
 THE SWC BROAD & PADONIA
 8TH ELECTION DISTRICT
 3RD COUNCILMANIC DISTRICT

BEFORE THE
 COUNTY BOARD OF APPEALS
 OF
 BALTIMORE COUNTY
 CASE NO. CR-93-305-SPH

* * * * *

People's Counsel's Memorandum

I. Introduction

This Petition for Reclassification involves approximately 6.57 acres of unimproved land located on the southwest corner of the intersection of Padonia Road and Broad Avenue. The site is located on the west side of Padonia Road between York Road and the Harrisburg Expressway. The 6.57 acres are zoned as follows: 4.84 acres M.L.R., 1.51 acres O-1, and .22 acres D.R. 3.5. The Petitioner is requesting a reclassification of 5.86 acres to B.M. He is also requesting business parking in the O-1 zone. A Hearing on these matters was held on September 28, 1993 before this Board and continued on October 19, 1993.

II. Facts and Argument

The subject property is a vacant parcel located in the Timonium Heights residential community which consists of approximately 70 homes. The site is bounded by Padonia Road to the north, York Road to the east, the Timonium Fairgrounds to the south and the Central Light Rail Line to the west. Broad Avenue bounds the subject site immediately to the east and ends at or near the southern boundary of the site. The southwest

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Case No. CR-93-305-SPH /94-CV-02565 Baker Land Co., et al/Remand2
existing zoning is in error, and that the proper zoning for this parcel is B.M.

With regard to the flood plain issue, testimony on this matter was presented by Fred Chadsey, a Professional Engineer who prepared the site plan and testified that his office and his staff were still active in preparing specific answers to possible flood plain problems. These specific individual problems must be addressed by the project engineer when grading or building permits are applied for.

The Board is satisfied that the possible flood plain problems are being properly addressed.

It is obvious that the proposed use of the property for a large food store would have no effect on increasing the population trends in the area. Testimony from the engineer indicates that there is available adequate water supply facilities, sewerage facilities, and transportation facilities. The Board will find as a fact that, in the very near future, another access to Interstate 83 is to be provided, known as Warren Road, and thereupon the nearest intersection to the proposed Metro store will be reduced to a non-failing intersection. The proposed use of this site for a Metro food store would certainly be in character with the surrounding area, and consistent with the current and prospective classifications, and the Master Plan and Capital Program.

The Board will therefore find as a fact, from the above testimony, that the Petition as entered should be granted, and the property reclassified to B.M. to permit the use of the property for

quadrant of the intersection of Padonia and York Road in which the subject site is located, is primarily zoned M.L.-I.M., O-1, R.O. and D.R. 3.5. The exception is a small sliver of B.L. zoned property located at the intersection of Padonia and York Road. The Timonium Light Rail transit stop is located at the southwest corner of Timonium Heights. It should be noted that other vacant properties exist in this quadrant. To the east of the subject site along Padonia Road toward York Road, a vacant parcel is zoned O-1, R.O. and D.R. 3.5. Likewise near the Light Rail stop to the south and southwest of the property, a large vacant parcel is zoned D.R. 3.5. The decision in this case may impact the development of those parcels. In addition to the residential community and the transit stop, this southwest quadrant is improved exclusively by office buildings to the west. The only commercial area in the quadrant is the aforementioned small strip of B.L. fronting on York Road at its intersection with Padonia. The Master Plan and the Hunt Valley/Timonium Redevelopment Study identifies this area as a mixed use redevelopment area.

The subject site was a specific issue in the 1992 Comprehensive Map Process as Issue No. 3-151. The Petitioner requested M.L.-I.M. zoning but the County Council retained the current zoning.

The developer of the site is an out-of-state partnership. A documented site plan was submitted for a shopping center consisting of a 60,000 square foot Metro Food Supermarket, a

Rit Aid Drug Store, and an Engore Book Store. The development is referred to as the Broad Street Market.

The following witnesses testified for the Petitioner:

Timothy C. Harrison of Harrison & Grass of Harrisburg, Pennsylvania, George E. Gavrelis, land developer, Frederick Chadsey of G. W. Stevens Engineering Company, Robert T. Kleinpaste of the Legg Mason Realty Group, Jerome B. Trout, a commercial real estate broker, Richard M. Hillis of Hillis-Carnes, Engineers, Jeffrey Long of the Office of Planning and Zoning, the architect for the project, and three citizens who reside in the Timonium Heights residential community.

These witnesses testified to either the economic advantages to the property owner to rezone, or the suitability of the documented site plan. Neither premise supports the claim of error or mistake. Economic considerations may have a probative value if the Petitioner presents evidence that he has no reasonable use of his property because it could not be used for any permitted uses in the existing zone. The Petitioner has presented no such testimony in the instant case. Likewise the Baltimore County Zoning Regulations are clear on the value of a site plan in a reclassification case. "Property may not be reclassified solely on the basis of documentation relating to the property's proposed use." (BCZR 2-58.1 n). Testimony describing the site plan by the Petitioner's experts or the

George Gavarelis described the zoning in the surrounding area consisting of a mixed use. Since the proposed commercial zoning exists elsewhere in the area, he believed the reclassification to be appropriate in order to support the documented site plan. The witness also relied on the population growth west of I-83 (Mays Chapel) as supportive of this reclassification. There was no evidence that the Council was unaware of Mays Chapel which has been developed for some time. Moreover, the witness failed to offer proof that additional commercial zoning was needed to balance the current mixed uses. Although instrumental in a mixed use area, Mr. Gavarelis ignored the use of the M.L. or M.L.R. zones as a proper buffer to the impact of a B.L. zone adjoining a D.R. zone. He could only state that B.L. uses would generate less concentrated peak hour traffic than M.L. uses. He stated no facts or legal argument to suggest an error. Rather he based his expert opinion on the viability of the site plan and the fact that other commercial uses existed along York Road. Notably, the witness failed to explain the proposed zoning as a better fit than the current zoning in the Comprehensive Plan.

The Petitioner offered the testimony of Mr. Robert Kleinpaste of the Legg Mason Realty Group, and Jerome B. Trout, a commercial real estate broker. Both witnesses focused on the vacant office space in Baltimore County, particularly in Hunt Valley. The existence of a sufficient amount office space in Baltimore County was projected into the future. Such

projections were based on economic forecasts which the witnesses acknowledged may be unpredictable and inaccurate. Neither witness commented on the impracticability of other uses in the current zone other than office buildings.

The Petitioner also presented residents of Timonium Heights and the current President of the Timonium Heights Community Association as supporting the proposed development. However, residents of Timonium Heights opposed to the rezoning were also in attendance and testified in opposition to the proposal.

The People's Counsel/Protestants called the following witnesses:

James Dieter of the Baltimore County Department of Economic Protection and Resource Management (DEPRM), Norman Gerber, land planner, Michael E. Gerber and Penny M. Gerber, residents of the Timonium Heights Residential Community, Emmanuel Passas, a resident of Timonium Heights, John M. Bearer, a resident of Timonium Heights.

James Dieter testified that the evaluation of the subject site has not been completed by DEPRM. He testified his office reviews all comprehensive rezoning issues and petitions to reclassify with regard to stream and forest buffers. DEPRM could not render a comment on the proposed development until such studies are completed. Mr. Dieter pointed out the absence of flood plain delineation on the documented site plan

which must be reviewed by the Baltimore County Department of Public Works. Therefore the Petitioner has not met the burden of proving the proposed zoning is appropriate since he has not satisfied all review requirements. {See Baltimore County Code §2-356(L)}.

The citizens who testified in opposition to the Petition focused on (1) the incompatibility of the proposed use and (2) the appropriateness of the uses permitted under the current zone.

John Bearer resides at 9 West Main Street in Timonium Heights. Mr. Bearer described the neighborhood with photographs. He pointed out that the owner of the subject site owns additional adjoining property. Mr. Bearer fears that a rezoning of this site would support reclassification of the property owner's other sites, thus squeezing out the residential community of Timonium Heights by retail development. He also believes the retail development will reduce property values. In addition, the traffic generated by the retail development would be significantly more than if developed under the current zone. Mr. Bearer noted the York and Padonia intersection is an F-level until the Warren Road exit off I-83 is completed. The increased traffic generated by the proposed development would exacerbate a heavy volume of traffic on York Road and jeopardize the safety of the Timonium Heights residents who must exit and enter their development on York Road.

Penny Gerber concurred with Mr. Bearer's concerns of the effect of the proposed development on property values, traffic and safety. She focused on the need for a supermarket as suggested by the developer. Mrs. Gerber testified there are eight supermarkets along York Road from Timonium Road to Shawan Road. She has visited all of the stores. These current supermarkets provide the same products and services as the proposed Metro Food Market to the surrounding neighborhoods. None of the residential communities in the area are more than a fifteen minute drive from at least one of the eight supermarkets. Mrs. Gerber refuted any claims made by the Petitioner that driving across York Road was a deterrent to the Timonium Heights residents or any other residences located on the west side of York Road. Nor did the proposed supermarket offer an additional convenience to the quick stop stores located within walking distance of Timonium Heights. Mrs. Gerber suggested that Timonium Heights residents who testified in favor of the Broad Street Market may have motives differing from the residents opposed to the reclassification.

Mr. Michael Gerber identified his residence located approximately 150 feet from the subject site. He fears the encroachment of retail into the residential community will decrease property values. He agrees that increased traffic generated by retail development including delivery trucks, will jeopardize the safety of the neighborhood children. He also feared the level of noise on weekends as well as weekdays will

disturb th neighborhood.

Emmanuel Passas, a resident of Broad Avenue echoed the concerns of the other residents. Mr. Passas particularly feared the noise and traffic intrusion on weekends and evenings. He preferred office or light industrial use as less intrusive into the Timonium Heights residential area. Mr. Passas also confirmed the existence of streams and wetlands on the site.

The People's Counsel's/Petitioner's expert witness, Norman Gerber testified that no error or mistake was made by the County Council. The present zoning is compatible with the area and complies with the Master Plan and the Hunt Valley/Timonium Redevelopment Study; conversely he believes the proposed use is incompatible and conflicts with the aforesaid Master Plan and Redevelopment Study.

Mr. Gerber identified the boundaries of the subject site as the North Central Railroad Line, Padonia Road, York Road and the Timonium Fairgrounds. Mr. Gerber viewed the current M.L.R. zoning as entirely appropriate for the area. A review of the zoning map supports the position. A purpose of the M.L.R. zone is to serve as "traditional bands between residential or institutional areas and M.L. or M.H. zones." (BCZR §247.) The subject site provides such a buffer between the R.O. and D.R. 3.5 zones east of the subject site and the M.L.-I.M. zone west of the subject site. Mr. Gerber stated that the manufacturing zones also serve as buffers between residential

and commercial development. (BCZR §247). North of the subject site, across Padonia, is commercial development. The subject site serves as a buffer between that commercial zone and the D.R. 3.5 Timonium Heights residential community south of the subject site. Another purpose of the M.L.R. zone is "to permit grouping of high types of industrial plants in locations with convenient access to the expressways...and to fill special occasional needs of certain types of light industry;". The M.L.R. zone should also "permit planned dispersal of industrial employment centers so as to be conveniently and satisfactorily related to residential communities;". (BCZR §247.) Since the Master Plan in the Hunt Valley/Timonium Study calls for a mixed use in this area, Mr. Gerber testified as to the correctness of the current zoning which provides employment opportunities near the Light Rail Station, has access to I-83, has the acreage to accommodate light industry and serves accurately as one of the mixed uses along with the D.R. 3.5 in the interior of the quadrant and the commercial areas fronting on York Road. Other parcels adjacent to or within the neighborhood of the subject site are zoned manufacturing, namely M.L.-I.M. across Padonia Road to the north, M.L.R.-I.M. south of the Timonium Heights residential neighborhood and the Maryland State Fairgrounds zoned M.R.- I.M. Thus the current zoning on the subject site is not an aberration in the area and maintains the mixed use called for. Mr. Gerber testified to the uses provided in the M.L.R. zone. In addition to office buildings, the M.L.R. uses

includ light industry, warehouses and some manufacturing uses. These uses would balance and compliment the mixed use concept. However, the proposed zoning for the subject site, would be inconsistent with other commercial development in the southwest quadrant. Such commercial activity is limited to property fronting on York Road. Also, the commercial zone north of the subject site across Padonia Road differs from the subject site since it is not surrounded by residential property. All other residentially zoned property in the immediate area is surrounded by R.O. or manufacturing zones except for the commercial sites fronting on York Road.

III. Legal Argument

In February, 1993, the Petitioner requested a reclassification of the subject property. A mere four months before, the County Council adopted the Baltimore County Comprehensive Zoning Map. The subject site was a specific issue in the Comprehensive Map Process wherein the property owner requested M.L.-I.M. zoning. The County Council retained the current M.L.R. zoning on the majority of the subject site and retained the D.R. 3.5 and O-1 zoning on the remainder of the subject site. Within one year after proposing that M.L.-I.M. zoning is warranted, the Petitioner now states to this Board that the manufacturing zone is in error and that a commercial zone is appropriate. In truth, the Petitioner's request to reclassify the property is merely a response to the latest proposed development rather than based on a mistake or error in the

current zoning.

Maryland case law has enumerated basic principles applicable to reclassification cases alleging mistake or error:

1. A strong presumption of correctness in the original or last comprehensive zoning process.
2. The existence of strong evidence of a mistake in the original or comprehensive rezoning.
3. A presumption that at the time of the adoption of the Comprehensive Maps, the County Council had before it and did in fact consider, all the relevant facts and circumstances then existing.

Thus, in Coppolino v. County Board of Appeals of Baltimore County, 23 Md. App. 358(1974), Judge Rita Davison stated:

"While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced, Rockville v. Henley, 268 Md. 469 (1973); Heller v. Prince George's Co., 264 Md. 410, 412 (1972); Creswell v. Baltimore Aviation, 257 Md. 712, 721 (1970). Since, as we have also said, this burden is onerous, Cabin John Ltd. v. Montgomery Co., 259 Md. 661 (1970); Creswell v. Baltimore Aviation, *supra*; Wells v. Pierpont, 253 Md. 554 (1969), the task confronting appellants [appellees], whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one.'" (emphasis in original). 23 Md. App. at 367, citing Stratakis v. Beauchamp, 268 Md.

a Metro store.

O R D E R

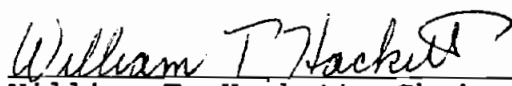
ACCORDINGLY, IT IS this 22nd day of February, 1995
by the County Board of Appeals of Baltimore County

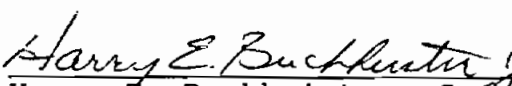
ORDERED that the Opinion and Order of the Board dated February
24, 1994 be and is hereby AMENDED as set forth in the foregoing
Opinion; and it is further

ORDERED that the Petition for Reclassification from the
present combination of M.L.R., 0-1 and D.R. 3.5 to B.M. be and is
hereby GRANTED; and it is further

ORDERED that the requested parking of noncommercial vehicles
on the portion of 0-1 zoned area as shown on the site plan be and
the same is GRANTED, all as previously ordered in this Board's
Opinion and Order dated February 24, 1994.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


William T. Hackett, Chairman


Harry E. Buchheister, Jr.

In order for the Petition to be sustained, the applicant who alleges that the County Council did not consider all the relevant facts and circumstances then existing must show:

- "1. That specific physical facts were not readily visible or discernable at the time of the comprehensive zoning;
2. That such existing facts were not taken in account;
3. Or, ...that the Council failed to make any provision to accommodate any project, trend, or need which it, itself, recognized as existing at the time of the comprehensive zoning." Boyce v. Sembly, 25 Md. App. 43 (1975)."

The Petitioner in the instant case offered no testimony that physical facts existed at the time of the 1992 comprehensive zoning which would indicate an error in retaining the present zoning. Even if the Petitioner has alleged such physical facts, there is no evidence that the County Council was not aware of all existing facts with regard to the subject site. In fact, the subject property was a specific issue on the 1992 map process, thus necessitating specific attention to the site by the County Council. Likewise, the Petitioner offered no evidence of project, trends or needs acknowledged to exist by the County Council but disregarded by it in 1992.

The County Council's retention of the present zoning does not conflict with the Master Plan. The Master Plan or the Hunt Valley/Timonium Redevelopment Study (hereafter "Study") does not suggest the need for more retail uses in the corridor. More pointedly, there is a concern about the spread of retail

uses into the adjacent residential neighborhoods. (Study p. III-9.) The Study clearly identifies a large concentration of office buildings near the subject site at Padonia and Deereco Roads, suggesting that this area presents no particular environmental, traffic or other concerns that would not support industrial development. A further intrusion into the existing stable and well maintained residential developments by commercial uses, without the buffer zones provided in the Regulations (i.e. M.L.R. and R.O.) would disturb the mixed use balance fostered by the Master Plan.

In addition, the Petitioner failed to present any evidence of changes in trends or needs arising subsequent to the 1992 map process. The Petitioner's witnesses testified to cyclical economic changes and vacant office space. There was no evidence that, even if correct, these facts were not known to the County Council in 1992. Moreover, the Court of Appeals has dismissed vague "economic infeasibility" as a basis to rezone property. Testimony that suggests the best suitable use for property requires a rezoning because uses permitted in the existing zone are not "profitable" is not evidence of a mistake or error. The Court of Appeals was not persuaded by several expert witnesses testifying on the economic advantages of rezoning in Trainer v. Lipchin, 269 Md. 667 (1973). There the subject site was also in the Timonium/Lutherville area on Ridgely Avenue nears its intersection with York Road. The Court rejected a request to rezone from D.R. 16 and D.R. 3.5 to

B.L. filed immediately after the Comprehensive Maps were adopted by the County Council. The Court viewed the Trainer and other cases filed immediately after the adoption of the Maps as "another assault on the county-wide Comprehensive Zoning Maps adopted by the Baltimore County Council..." (Id. 668) In dismissing the Petitioner's experts, the Court stated:

"To the extent that the testimony of the latter two witnesses is intended to support a claim of unconstitutional confiscation, it is strikingly reminiscent of the testimony we rejected in Stratakis v. Beauchamp and Rockville v. Henley, both supra, as "generalizations of economic infeasibility." As Judge Diggs said for the Court in Henley:

"Here, the vague and unsupported expert testimony, however emphatic, does not take the place of the necessary factual support that would prove an applicant is denied all reasonable use of his property. Appellee's experts merely invoked economic infeasibility as some form of magic incantation in hope of transposing one zoning use to another. Such general statements and use of magic words are ineffective. In order to obtain rezoning on the basis of an unconstitutional confiscation an applicant must show that he has been deprived of all reasonable use of his property and that it could not be used for any of the permitted uses in the existing zone. Cabin John Ltd. v. Montgomery Co., 259 Md. 661, 271 A.2d 174 (1970); Montgomery Co. Council v. Kacur, 253 Md. 220, 252 A.2d 832 (1969); Baltimore City v. Borinsky, 239 Md. 611, 212 A. 2d 508 (1965)." 268 Md. at 477 (emphasis in original).

In the past, property owners in neighborhoods with a mixture of uses have requested rezoning believed to increase

the profitability of their properties. Also, property owners have attempted to equate highway improvements as evidence of mistake. But the Court of Appeals of Maryland has addressed such situations for many years and rejected similar claims of mistake or change as insufficient to overcome the reasonable exercise of legislative judgment. In Baltimore County alone, the high Court reversed commercial rezonings granted by the County Board of Appeals in Wells v. Pierpont, 253 Md. 554 (1960); Westview Park Improvement and Civic Assn. v. Hayes, 256 Md. 575 (1970); and Miller v. Abrahams, 257 Md. 126 (1970). In a Prince George's County case involving another request for commercial zoning in a mixed neighborhood, the Court stated in Messenger v. Board of County Commissioners, 259 Md. 693 (1970):

The drawing of the line between zones is a function of the legislative body and the fact that the legislative body has rezoned an adjoining or nearby property does not require it to rezone the property under consideration. See Board of County Commissioners for Prince George's County v. Farr, 242 Md. 315, 218 A.2d 923 (1966). In Farr, Judge Oppenheimer, for the Court, stated:

"In County Council for Montgomery County v. Gendleman, 227 Md. 491, 498, 177 A.2d 687, 690 (1962), Chief Judge Brune, for the Court, stated the principle which we find to be applicable to the present case, as follows: 'Even if there were facts which would have justified the Council in rezoning the property, this would not of itself prove the denial of rezoning illegal. There is still the area of debatability, and one who attacks the refusal of rezoning must meet the heavy burden of proving that the action of the legislative body in refusing it was arbitrary, capricious or illegal.' Chief Judge Brune said, further: 'Zoning and rezoning do require the drawing of lines, and the legislative body may draw them

subject to the same limitations as are applicable to other phases of the zoning process.' It was held in that case that, on the record before the Council, its action in refusing to rezone the property involved was not beyond the field in which its action was fairly debatable. The Council was not bound to extend that classification [commercial-office use] beyond the lot at which it had elected to stop." 271 A.2d at 171-72.

Similarly, the Court of Special Appeals rejected an administrative commercial rezoning in Lutherville, just north of the beltway in Boyce v. Sembly, 25 Md. App. 43 (1975).

A recent reclassification decision of this Board in Timonium Heights cannot be ignored. The Board in 1991 denied a Petition to rezone a .3 acre parcel in Timonium Heights from D.R. 3.5 to B.L. for the seasonal sale of snowballs and Christmas decorations. (In the matter of the Application of Warren J. Hays, Sr., et al, Case No. R-91-116, Item 10, Cycle IV). The Petitioner in that case sought but was denied reclassification in the 1988 Comprehensive Zoning Map Process. Mr. Gavarelis, a witness in that case, also described the site to be in a transitional area, and stated that the submission of a site plan supported a reclassification based on mistake or error. However, the Board stated "Despite the restrictive Documented Site Plan, granting B.L. zoning to this property would be an intrusion into the residential nature of the neighborhood and would, the Board finds, produce increased hazards to public safety and welfare." (p.7.)

IV. Conclusion

This case is severely lacking in any evidence of mistake or error in the current zoning and certainly falls short of the legal burden of substantial evidence. Rather it presents an attempt by the property owner to use the zoning process to enhance profitability, according to the development proposals that may from time to time come his way. Also, the developer in this case is exploiting the residences near this site to attract business and profits from a market (i.e. Mays Chapel) that will not bear the negative factors of commercial intrusion into a residential neighborhood. The Petitioner is another landowner who attempts to utilize the zoning process to isolate him from the risks, including economic, that are inherent to land speculation and development.

It is incumbent upon this Board to recognize the purposes of Comprehensive Zoning and the dangers of piecemeal zoning to satisfy the economic goals of real estate developers. This is particularly important in highly developed areas such as the instant case wherein any change to zoning has significant impact on the high concentrations of population in the neighborhood. For these reasons, it is respectfully submitted that the Petition for Reclassification should be denied.

Respectfully submitted,



PETER MAX ZIMMERMAN
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

CS
CAROLE S. DEMILIO
DEPUTY PEOPLES COUNSEL

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of November, 1993, a copy of the foregoing ~~Petition for Reclassification~~ *Peoples' Counsel's Memorandum* was mailed, postage prepaid to: Robert A. Hoffman, Esquire, 210 Allegheny Avenue Towson, Md. 21204.

CS
CAROLE S. DEMILIO_

IN THE MATTER OF THE
THE APPLICATION OF WARREN
J. HAYS, SR., ET AL
FOR A ZONING RECLASSIFICATION
FROM D.R. 3.5 TO B.L.
ON PROPERTY LOCATED ON THE
NORTHEAST CORNER OF GIBBONS
BOULEVARD & GREENSIDE DRIVE
8TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

* BEFORE THE COUNTY
* BOARD OF APPEALS
* OF BALTIMORE COUNTY
* CASE NO. R-91-116
* Item #10, CYCLE IV
* 1990-1991

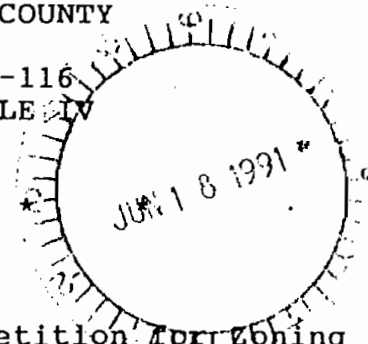
* * * * *

O P I N I O N

This matter comes before the Board as a Petition Approving Reclassification, seeking a change from the existing D.R. 3.5 classification to B.L. zoning. The property of .3 acre is located on the northeast corner of Gibbons Boulevard at Greenside Drive in the Fourth Councilmanic District of Baltimore County. The property is owned by the Petitioner, Warren J. Hays, Sr., and is currently being occupied as a family residence. Petitioners were represented by Stuart D. Kaplow, Esquire. The Office of People's Counsel was represented by Peter Max Zimmerman, Esquire. The hearing on this matter was two days in length.

When considering Petitions for Reclassification, this Board is governed by Section 2-58(j) of the Baltimore County Code which states, in essence, that before any property may be reclassified, the Board must find that there has occurred substantial change in the character of the neighborhood, or that the last classification of the property was established in error.

Petitioners presented a Documented Site Plan for the proposed reclassification merging two seasonal retail uses with the residence by altering the existing building and installing appropriate signage, lighting and parking spaces. Petitioners have



resided on the site since 1956. Thomas E. Hays, son of the Petitioners, testified that he and his brothers began operating a snowball stand on the site in 1977 to supplement their college finances. The operation has continued since that time with seasonal sale of Christmas trees, wreaths and decorations added to the snowball sales. The Hays' grandchildren have since become involved in the operation and a number (up to 18) of part-time student employees have been hired. Mr. Hays further testified that the retail operation was moved off-site in 1987 as a result of a complaint filed with the County Office of Zoning. It is currently situated in a trailer which is stored on the subject property and placed curbside on Greenside Drive north of Gibbons Boulevard for daily operation. The retail operations cannot be continued on the subject site unless its zoning is reclassified to B.L. Mr. Hays testified that the neighborhood, known as Timonium Heights, is essentially residential with an office building located directly across the street, Padonia Elementary School, and a County Library branch in the immediate vicinity. On cross-examination, Mr. Hays stated that he sought a reclassification of the property under the Comprehensive Zoning Map Process in 1988.

George E. Gavrelis, accepted by the Board as an expert witness in land planning, testified on behalf of the Petitioners. Mr. Gavrelis testified that the subject site is in a transitional area, "just at the edge of an R.O. zone," which is appropriate for B.L. classification. He pointed out that the Documented Site Plan in evidence provides severely restricted use of the site, without

adding buildings; landscape buffers are included; and that hours of operation are limited to 11 a.m. to 11 p.m. from May 1 through October 5 and December 1 through December 24, annually. Mr. Gavrelis further testified that while B.L. zoning would allow 56,610 square feet of retail space, the Documented Site Plan limits retail space to 2,127 square feet. He also opined that an error had been made in the 1988 Comprehensive Zoning Map review because the County Council did not (in fact, could not, by law) consider the Documented Site Plan and because the use was already on site. Mr. Gavrelis, in his capacity as a land-use expert, further stated that the proposed zoning offered no compromise to the health, safety and general welfare of the community; that it was in keeping with the concept of the County's Master Plan; and that the use was appropriate for a Community Conservation Area. The Planning Board has recommended the approval of reclassification within the constraints of the Documented Site Plan.

Mr. Thomas Hays was then recalled for continued cross-examination. Responding to questions by People's Counsel, he stated that neither he nor his brothers who are the operators of the business reside on the subject property. He also testified that some products - ice, flavors, cups and spoons - are sold from the site to other snowball retailers.

Mr. Kaplow proffered that Stanley Kennedy, a neighbor residing four doors west of the subject site, was unable to appear at this hearing, but would have testified in favor of the Petitioners' request.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
Room 47, Washington Avenue
Towson, Maryland 21204

AND

PETITION OF JOHN M. BEARER
9 W. Main Boulevard
Timonium, Maryland 21093

AND

PETITION OF MICHAEL GERBER &
PENNY GERBER
107 Harding Street
Timonium, Maryland 21093

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 94-CV-02565
/76/249

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, ET AL
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 TO B.M. ZONE ON PROP-
ERTY LOCATED ON THE SWC PADONIA ROAD
AND BROAD AVENUE (PARCEL 1) AND SE/S
END ROOSEVELT STREET, SW BROAD AVENUE
(PARCEL 2)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

* * * * *
SUPPLEMENTAL RECORD OF PROCEEDINGS
BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett and Harry E. Buchheister, Jr.,
constituting a majority of the County Board of Appeals of Baltimore
County, and herewith supplement the previously filed record with
the following document:

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

John Cook of The Traffic Group, accepted as an expert by the Board, testified that he had conducted a study of the site and surrounding streets. In his opinion, traffic in the area would not be increased by the B.L. use since the business is already in operation. Mr. Cook's study revealed that all signalized intersections in the immediate area are operating at acceptable levels and that the closes "F" level intersection - York and Padonia Roads - is on a highly developed business corridor. Mr. Cook further testified that the B.L. classification and its required on-site parking would remove some cars from the traffic pattern while the drivers were patronizing the business, thus relieving traffic and parking congestion.

People's Counsel began its case with the testimony of Arnold F. Keller, III, Deputy Director of Planning for Baltimore County. Mr. Keller testified that his agency's review of the Petition did not find adequate reasons to reclassify the subject property. The 1989 Master Plan supports residential use of the site as part of its Community Conservation precept. While the Petitioner has been "innovative" in developing his Documented Site Plan, the agency feels the alterations to the site are not appropriate to a residential neighborhood. Mr. Keller further testified that there is no commercial development in the area except the R.O. office building earlier described. He added that the Planning Office staff is of the opinion that the Petitioner's only viable option is to relocate the business in a nearby commercial zone.

Stephen Weber, a neighbor and registered professional

engineer, then testified. Mr. Weber is employed by the County's Bureau of Traffic Engineering but his testimony is that of a private citizen. Mr. Weber stated his concerns that reclassification of the Hays property, located at "the gateway to residential Timonium Heights," would open the community to further commercial intrusion. The R.O. site serves as a buffer between the heavily developed York - Padonia corridor and the residential neighborhood. Mr. Weber then described traffic and parking patterns in the neighborhood, continued violation of posted parking restrictions by customers of the current operation, and traffic hazards caused by those customers.

Robert Underwood of 45 Gibbons Boulevard, 2 doors from the Hays property, testified that his residence is situated above the subject site. Customers of the retail operation, when it was located on-site as well as at its current location, use private driveways to turn around on Gibbons Boulevard and violate posted parking restrictions. Mr. Underwood feels that a reclassified commercial operation on the Hays property would increase traffic problems in the neighborhood.

Robert E. Fink of 18 Gibbons Boulevard, a retired police officer, testified to the physical limitations of Greenside Drive which curves "sharply" above Gibbons Boulevard and has a posted speed limit of 25 miles per hour. Mr. Fink testified that parked cars whose drivers are customers of the retail operation often block sight lines and force residents to pull out into Gibbons Boulevard under unsafe conditions. He further testified that cars

continue a use not permitted by law on a residential site. The requested zoning is incompatible with the neighborhood which has no commercial or business zoning except the R.O. buffer site described. People's Counsel further argued that no error exists in the current zoning classification because the County Council cannot, by law, consider Documented Site Plans during the Comprehensive Zoning Map Review Process. Further, the Documented Site Plan now in evidence for the subject property did not exist at the time of the 1988 Council review when this property was an issue. The next review is slated in 1992, when this site could once again be designated an issue for review. People's Counsel believes an issue of this magnitude to a residential community should be in the hands of the County Council.

The Board finds as a fact that no error exists in the classification of the subject property as D.R.3.5. It is clearly located in a stable residential neighborhood, meeting the parameters of a Community Conservation Area. While the Hays' commercial operation on and off-site seems, at face value, to be a simple family-operated small business, the Board finds as a fact that it is a business which has expanded through the years and is not appropriate to this neighborhood. Despite the restrictive Documented Site Plan, granting B.L. zoning to this property would be an intrusion into the residential nature of the neighborhood and would, the Board finds, produce increased hazards to public safety and welfare.

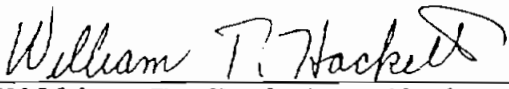
For the reasons indicated above, this Board shall deny the Petition for Reclassification.

O R D E R

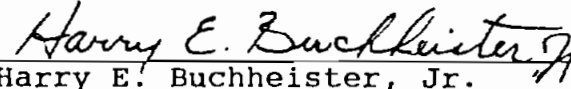
IT IS THEREFORE this 18th day of June, 1991 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Reclassification of the .3 acre from D.R. 3.5 to B.L. as shown on the Documented Site Plan, be and the same is hereby DENIED.

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

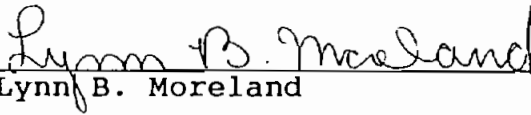
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY



William T. Hackett, Chairman



Harry E. Buchheister, Jr.



Lynn B. Moreland

4-28-90

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF
FROM M.L.R., O-1 & D.R. 3.5
TO B.M. ZONE FOR PARCEL 1; & : APPEALS OF BALTIMORE COUNTY
PETITION FOR SPECIAL HEARING
FOR BUSINESS PARKING IN AN :
O-1 ZONE FOR PARCEL 2;
Parcel 1: SWC Padonia Rd. and :
Broad Ave.; Parcel 2: SE/S
End Roosevelt St., SW Broad : Case No. CR-93-305-SPH
Ave., 8th Election District, (Item 3, Cycle I)
3rd Councilmanic District :
HARRISON & GRASS, Petitioner;
(Baker Land Company, et al., :
Owners).
:

: : : : : : : : :

ENTRY OF APPEARANCE

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

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

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

I HEREBY CERTIFY that on this 28th day of April, 1993,
a copy of the foregoing Entry of Appearance was mailed to Robert
A. Hoffman, Esquire, Venable, Baetjer & Howard, 210 Allegheny
Ave., Towson, MD 21204, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman



Petition for Reclassification

to the Board of Appeals of Baltimore County

for the property located at SW corner of intersection of Broad Street and Padonia Road

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 (1) that the zoning status of the herein described property be reclassified, pursuant to the

MLR 0-1 and DR-3,5
Zoning Law of Baltimore County, from an / zone to an BM-C26 zone, for the reasons given in the attached statement;
and (2) for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for:
/ Special Hearing

business parking in an 0-1 zone
pursuant to Sec. 409.8.B.1, B.C.Z.R.

and (3) for the reasons given in the attached statement, a variance from the following sections of the Zoning Regulations of Baltimore County:

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

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

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

~~XXXXXXXXXX~~ Developer/Petitioner:
Harrison & Grass

(Type or Print Name)

By: Timothy C. Harrison
Signature Timothy C. Harrison
100 Chestnut Street

Address

Harrisburg, PA 17101

City

State

Zipcode

Attorney for Petitioner:

Robert A. Hoffman, Esquire

(Type or Print Name)

Signature Venable, Baetjer & Howard

210 Allegheny Avenue

Address

Towson, Maryland 21204

Phone No.

494-6200

City

State

Zipcode

Legal Owner(s):

See Attached

(Type or Print Name)

Signature

(Type or Print Name)

Signature

Address

Phone No.

City

State

Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Robert A. Hoffman, Esquire

Name Venable, Baetjer & Howard

210 Allegheny Avenue, Towson, MD 21204

Address

Phone No.

494-6200

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY:

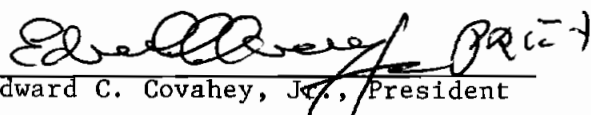
DATE

LEGAL OWNERS:
(May be signed in counterparts)

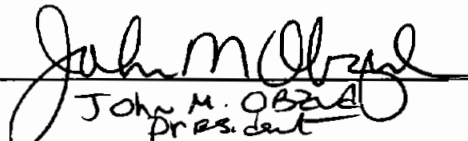
Baker Land Company

By: 
Lloyd Markitt, Agent

Title Warantee Corporation

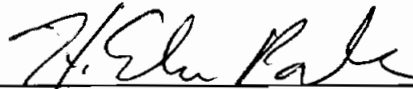
By: 
Edward C. Covahey, Jr., President

Maryland Title Guarantee

By: 
John M. O'Shea
President


Richard Fogel

Baltimore County, Maryland

By: 
H. EMSLIE PARKS, ESQ

2nd 2/23/73

CR-93-305-SPH
REV 3/31/93

FROM THE OFFICE OF
GEORGE WILLIAM STEPHENS, JR., & ASSOCIATES, INC.
ENGINEERS
658 KENILWORTH DRIVE, SUITE 100, TOWSON, MARYLAND 21204

Description to Accompany
Petition for Reclassification.

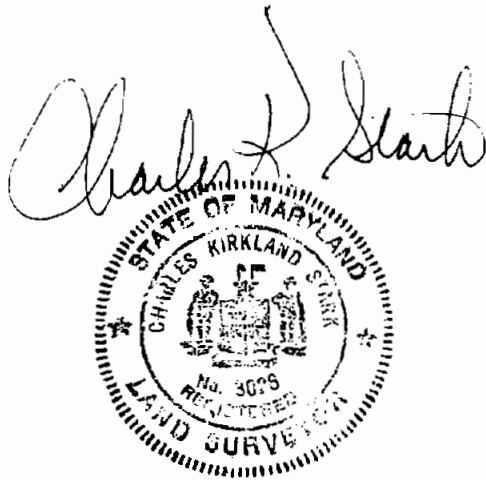
February 22, 1993

Beginning for the same at the corner formed by the intersection of the west right-of-way line of Broad Avenue 40 feet wide with the south right-of-way line of Padonia Road thence binding on the west right-of-way line of Broad Avenue

- 1 - South 18° 10' 41" East 356.03 feet thence
- 2 - South 71° 49' 19" West 305.00 feet thence
- 3 - South 18° 10' 41" East 126.00 feet thence
- 4 - South 71° 49' 19" West 40.00 feet thence
- 5 - South 18° 10' 41" East 30.00 feet thence
- 6 - South 71° 49' 19" West 326.72 feet thence
- 7 - North 22° 44' 43" West 133.80 feet thence
- 8 - South 67° 15' 17" West 30.00 feet thence
- 9 - North 5° 47' 17" East 445.26 feet thence
- 10 - North 74° 27' 43" East 488.10 feet and thence
- 11 - North 76° 11' 08" East 43.96 feet to the place of beginning.

Containing 6.57 acres of land more or less.

THIS DESCRIPTION FOR ZONING PURPOSES ONLY.



CR-93-345-SPH

REV 3/31/93

FROM THE OFFICE OF
GEORGE WILLIAM STEPHENS, JR., & ASSOCIATES, INC.
ENGINEERS

658 KENILWORTH DRIVE, SUITE 100, TOWSON, MARYLAND 21204

Description to Accompany Petition for
Special Hearing for Commercial Parking in
An O-1 Zone.

March 31, 1993

Beginning for the same at a point on the south right-of-way line of Roosevelt Street (Paper Street) 30 feet wide distant 345 feet South 71° 49' 19" West from the west right-of-way line of Broad Avenue 40 feet wide thence binding on the said south right-of-way line of Roosevelt Street

- 1 - South 71° 49' 19" West 326.72 feet thence
 - 2 - South 22° 44' 43" East 126.40 feet thence
 - 3 - North 71° 49' 19" East 316.66 feet and thence
 - 4 - North 18° 10' 41" West 126.00 feet to the place of beginning.
- Containing 0.93 acres of land more or less.

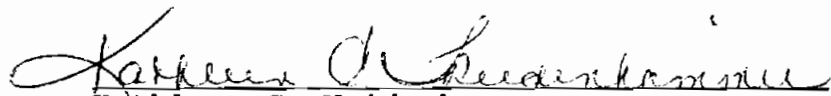
THIS DESCRIPTION FOR ZONING PURPOSES ONLY.



CR-93-305-SPH /Baker Land Company, et al
Supplemental Extract File No. 94-CV-02565 /76 /249

February 22, 1995 Amended Opinion issued by the County Board of Appeals, pursuant to the October 12, 1994 remand order and December 20, 1994 Amended Memorandum Opinion and Order of the Circuit Court for Baltimore County /Civil Action No. 94-CV-02565.

Respectfully submitted,



Kathleen C. Weidenhammer
Administrative Assistant, County Board
of Appeals of Baltimore County
Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: Robert A. Hoffman, Esquire
Harrison & Grass
c/o Timothy C. Harrison
People's Counsel for Baltimore County
Patrick D. Hanley, Esquire
Michael Gerber and Penny Gerber
John M. Bearer

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

CR-93-305-SPH

District 8th Date of Posting 9/10/93
Posted for: Reclassification
Petitioner: Baltimore Co. & Title Warehouse Corp & Md. Title Corp & R. F. & B. Co.
Location of property: SW/Cor. Padonia Rd. & Broad Ave. & SE/S. & end Rogers St
SW/ Broad Ave
Location of Sign: Sign posted at intersection of Broad & Rogers St.
Location of property added to sign
Remarks: Property could not be reached from Padonia Rd.
Posted by M. Stealy Date of return: 9/17/93
Signature
Number of Signs: 1



CERTIFICATE OF PUBLICATION

NOTICE OF HEARING
Case Number: CR-83-305-SPH
Parcel 1: SWC, Padonia
Road and Broad Avenue
Parcel 2: SE/S end,
Roosevelt Street, SW
SW Board Avenue
8th Election District
3rd Councilmanic
Petitioner(s):
Baker Land Company and
Title Warrant Corporation,
Maryland Title Guarantee,
Richard Fogel and Baltimore
County Maryland
HEARING: TUESDAY,
SEPTEMBER 28, 1993 at
10:00 a.m. in Rm. 48, Old
Courthouse, 400 Washington
Avenue, Towson, Maryland
21204
Petition: to reclassify the prop-
erty's zoning from M.L.R., O-1
and D.R. 3.5 to B.M. (Parcel 1)
Petition for Special Hearing for
business parking in an O-1 zone
(Parcel 2)
WILLIAM T. HACKETT,
Chairman
County Board of Appeals
NOTES: (1) Hearings are Handi-
capped accessible; for special
accommodations Please Call
887-3353.
8/241 August 26.

TOWSON, MD., Aug 27, 1993

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 Aug. 26, 1993.

THE JEFFERSONIAN,

A. Henickson
LEGAL AD., TOWSON

PETITION OF: People's Counsel; John M.
Bearer; & Michael & Penny Gerber
CIVIL ACTION # 94-CV-02565 76/249

IN THE MATTER OF BAKER LAND COMPANY ETAL

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

Susan Wilton
Clerk's Office

Date: 5-19-94



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

CR-93-305-SPH

Receipt

Account: R-001-6150

#2

RECLASS

Number

2/23/93
VENNARD, BAETLER & HOWARD
W. EGHENY AVE.
TOWSON, MD, 21204

ED.-8
C.D.-3

657 A ST.

10110 PADONIA RD, &
BROAD AVE.

\$1,250-RECLASS-
1,250-SP. HEARING
\$1,500.00

\$1,500.00

02A02H0007610HRC
BA, F002:47PH02-23-93

Please Make Checks Payable To: Baltimore County

2/23/93

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

JUNE 4, 1993

HARRISON & Grass
c/o Timothy C. Harrison
100 Chestnut Street
Harrisburg, Pennsylvania 17101

RE: PAYMENT OF POSTING AND ADVERTISING FEES - RECLASSIFICATION PETITION
CASE NUMBER: CR-93-305-SPH
Parcel 1 -SWC Padonia Road and Broad Avenue and
Parcel 2 -SE/S end Roosevelt Street, SW Broad Avenue
8th Election District - 3rd Councilmanic
Petitioner(s): Baker Land Company and Title Warantee Corporation and
Maryland Title Guarantee and Richard Fogel and
Baltimore County, Maryland

Dear Petitioners:

Be advised that a new policy has been established to handle the fees with regard to property posting and legal advertising. As in the past, this office will ensure that the legal requirements for posting and advertising are satisfied; the policy change will effect to whom and when these fees are paid.

Cycle Reclassification Petitions are required to be heavily advertised. The initial ads, one-half page in size and running in four separate newspaper issues, contained a map of Baltimore County and a listing of all the reclass petitions in the cycle. The newspapers have billed the County \$2,740.50, this is charged back to you, equally divided among the petitioners.

Posting charges of \$35.00 and advertising charges of \$391.50 ; for a total of \$426.50, are now due. Your check in this amount should be made payable to "Baltimore County, Maryland" and immediately mailed to this office.

Individual ads for each petition will run approximately one month before the scheduled hearing date. Billing for the individual ads, due upon receipt, will come from and should be remitted directly to the newspaper.

Non-payment of fees will stay the issuance of the Order. If you have any questions concerning this letter, you may contact Gwen Stephens at 887-3391.

ARNOLD JABLON
DIRECTOR

AJ:ggs



Printed on Recycled Paper

Baltimore County Government
Office of Zoning Administration
and Development Management

7015-73
MS



111 West Chesapeake Avenue
Towson, MD 21204

POSTED

(410) 887-3353

JUNE 29, 1993

HARRISON & Grass
c/o Timothy C. Harrison
100 Chestnut Street
Harrisburg, Pennsylvania 17101

RE: PAYMENT OF POSTING AND ADVERTISING FEES - RECLASSIFICATION PETITION
CASE NUMBER: CR-93-305-SPH
Parcel 1 -SWC Padonia Road and Broad Avenue and
Parcel 2 -SE/S end Roosevelt Street, SW Broad Avenue
8th Election District - 3rd Councilmanic
Petitioner(s): Baker Land Company and Title Warantee Corporation and
Maryland Title Guarantee and Richard Fogel and
Baltimore County, Maryland

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22 IN FULL ON 8-17-93
Posting charges of \$35.00 and advertising charges of \$391.50, for a total of \$426.50, are now due. Your check in this amount should be made payable to "Baltimore County, Maryland" and immediately mailed to this office.

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RECEIVED

AUG 16 1993

ARNOLD JABLON
DIRECTOR

ZADM

AJ:ggs



Printed on Recycled Paper

Dear Petitioners:

Be advised that a new policy has been established to handle the fees with regard to property posting and legal advertising. As in the past, this office will ensure that the legal requirements for posting and advertising are satisfied; the policy change will effect to whom and when these fees are paid.

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23-1-44-2-12-93

BALTIMORE COUNTY, MARYLAND		No. 186459
OFFICE OF FINANCE - REVENUE DIVISION		
MISCELLANEOUS CASH RECEIPT		
DATE <u>8/17/93</u>	ACCOUNT <u>R-001-LIKE</u>	
	AMOUNT \$ <u>426.50</u>	
RECEIVED FROM: <u>Harrison, Linda</u>		
FOR: <u>RA CR-93-305-EFH</u>		
VALIDATION OR SIGNATURE OF CASHIER		
DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER		

of \$391.50, for a total of should be made payable to this office.

ately one month before the due upon receipt, will come

r. If you have any questions 887-3391.

RECEIVED

AUG 16 1993

ADM

TO: PUTUXENT PUBLISHING COMPANY
August 26, 1993 Issue - Jeffersonian

Please forward billing to:

Harrison & Grass
20 Erford Road, Suite 201
Lemoyne, Pennsylvania 17043
ATTN: Timothy C. Harrison
717-737-7800

NOTICE OF HEARING

CASE NUMBER: CR-93-305-SPH
Parcel 1 - SWC Padonia Road and Broad Avenue
Parcel 2 - SE/S end Roosevelt Street, SW Broad Avenue
8th Election District - 3rd Councilmanic
Petitioner(s): Baker Land Company and Title Warantee Corporation, Maryland Title Guarantee, Richard Fogel
and Baltimore County Maryland.

HEARING: TUESDAY, SEPTEMBER 28, 1993 at 10:00 a.m. in Rm. 48, Old Courthouse, 400 Washington Avenue,
Towson, Maryland 21204.

Petition to reclassify the property's zoning from M.L.R. , 0-1 and D.R. 3.5 to B.M. (Parcel 1)
Petition for Special Hearing for business parking in an 0-1 zone (Parcel 2)

William T. Hackett, Chairman
County Board of Appeals

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3180



County Board of Appeals of Baltimore County

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

April 16, 1993

NOTICE OF HEARING

CASE NUMBER: CR-93-305-SPH

Parcel 1 -SWC Padonia Road and Broad Avenue and

Parcel 2 -SE/S end Roosevelt Street, SW Broad Avenue

8th Election District - 3rd Councilmanic

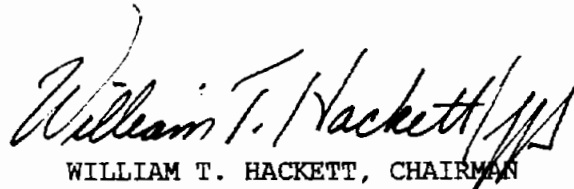
Petitioner(s): Baker Land Company and Title Warantee Corporation and
Maryland Title Guarantee and Richard Fogel and Baltimore
County, Maryland

Petition to reclassify the property's zoning from M.L.R., O-1 and D.R. 3.5
to B.M. (for Parcel 1)

Petition for Special Hearing for business parking in an O-1 zone (for
Parcel 2).

HEARING: TUESDAY, SEPTEMBER 28, 1993 at 10:00 a.m.

LOCATION: COUNTY COURTHOUSE, ROOM 48
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204


WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS

cc: Harrison & Grass
Robert A. Hoffman, Esq.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

April 30, 1993

Robert A. Hoffman, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, MD 21204

RE: Item No. 335
Case No. CR-93-305-SPH
Petitioner: Baker Land Company, et al
Reclassification Petition

Dear Mr. Hoffman:

This reclassification petition has been timely filed with the Board of Appeals for a public hearing within the April-October reclassification cycle (Cycle I). It has been reviewed by the zoning office as to form and content and has also been reviewed by the Zoning Plans Advisory Committee. The review and enclosed comments from the Committee are intended to provide you and the Board of Appeals with an insight as to possible conflicts or problems that could arise from the requested reclassification or uses and improvements that may be specified as part of the request. They are not intended to indicate the appropriateness of the zoning action requested.

If it has been suggested that the petition forms, descriptions, briefs, and/or the site plans be amended so as to reflect better compliance with the zoning regulations and/or commenting agencies' standards and policies, you are requested to review these comments, make your own judgment as to their accuracy and submit the necessary amendments and appropriate fee to this office on or before May 6, 1993. In the event that any requested amendments are not received prior to this date, the petition will be advertised as originally submitted.

In view of the fact that the submitted site plan does not indicate a proposed use at this time, the comments from this Committee are general in nature. If the request is granted and an additional hearing is required at a later date, more detailed comments will be submitted at that time.



Printed on Recycled Paper



County Board of Appeals of Baltimore County

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

February 22, 1995

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD
210 Allegheny Avenue
Towson, MD 21204

RE: Case No. CR-93-305-SPH
Baker Land Company, et al
Civil Action No. 94-CV-02565

Dear Mr. Hoffman:

Enclosed please find a copy of the Amended Opinion Pursuant to Remand Order and Amended Memorandum Opinion and Order of the Circuit Court issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Also, enclosed is a copy of the Supplemental Record of Proceedings Before the County Board of Appeals of Baltimore County, filed in the Circuit Court for Baltimore County this date.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

cc: Harrison & Grass
c/o Timothy C. Harrison
Patrick D. Hanley, Esquire
Michael and Penny Gerber
John M. Bearer
Tom Kelly /Greater Timonium
Community Council
The Honorable Thomas J. Bollinger
Circuit Court for Baltimore County
James Earl Kraft
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

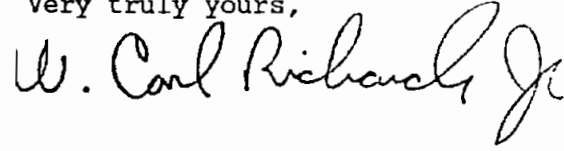


Printed with Soybean Ink
on Recycled Paper

Robert A. Hoffman, Esquire
April 30, 1993
Page 2

If you have any questions concerning the enclosed comments, please feel free to contact the Zoning Office at 887-3391 or the commenting agency.

Very truly yours,

A handwritten signature in cursive script that reads "W. Carl Richards, Jr." The signature is written in dark ink and is positioned above the typed name.

W. CARL RICHARDS, JR.
Zoning Coordinator

WCR:hek

Enclosures

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: April 21, 1993
Zoning Administration and Development Management

FROM: *Sub* Robert W. Bowling, Senior Engineer
Development Plan Review

RE: Zoning Advisory Committee Meeting
for Zoning Reclassification Cycle I
April, 1993 - October, 1993
Case No. 93-305-SPH Item 3 7# 335

The Development Plan Review Division has reviewed the subject zoning item. The proposed parking lot will have to be modified to meet the 7% interior landscape area requirement. A full review of the landscape plan will occur with the Development Review Process.

RWB:s

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

April 21, 1993

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

FROM: J. Lawrence Pilson *JLP*
Development Coordinator, DEPRM

SUBJECT: Zoning Item #CR-93-305-SPH *# 335*
Baker Land Company
Zoning Advisory Committee Meeting of April 1993 - October 1993

The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which the Regulations for the Protection of Water Quality, Streams, Wetlands, Floodplains, and Forest Conservation apply to the site.

The project as proposed will require a variance from Section 14-341 and must be thoroughly evaluated, before a recommendation is given regarding this zoning item.

JLP:JAW:tmr

BAKER/TXTRMP



Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

4-21-93

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

Re: Baltimore County
CASE ~~Item~~ No.: 93-305-SPH
HEARING DATE: 9-28-93

335

Dear Ms. Kehring:

This office has reviewed the referenced ^{CASE}~~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 Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small

for

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: Zoning Advisory Committee

DATE: April 16, 1993

FROM: Jerry L. Pfeifer, Captain
Fire Department

SUBJECT: Zoning Reclassifications

R-93-303	No comments
R-93-304	No comments
CR-93-305-SPH 335	Buildings on site shall comply with the applicable provisions of the 1990 Life Safety Code and the Baltimore County Fire Prevention Code. Posted fire lanes shall be provided on site for Fire Department access.
R-93-306	Site and proposed buildings on site shall, at the time of development, shall comply with applicable provisions of the 1990 Life Safety Code and the Baltimore County Fire Prevention Code.
R-93-307	The zoning variance is approved. There may be the need at the time of concept and Development plan submittal to locate some buildings to provide better fire access.
R-93-308A	Posted fire lanes shall be provided on site for Fire Department access. 35' turning radius shall be maintained on site for fire equipment maneuverability.
R-93-309	No comments

JLP/dal

cc: File

9/28/93 -Day #1 of hearing; to be continued for second hearing day;
possible dates of 10/19 and 10/27/93 cleared w/all counsel and
Board members. Notices to be sent upon confirmation of
availability of on of these dates.

10/06/93 -Notice of Assignm nt for day #2 scheduled for Tuesday,
October 19, 1993 at 10:00 a.m. sent to following:

Robert A. Hoffman, Esquire
Harrison & Grass
c/o Timothy C. Harrison
James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr.
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

10/19/93 - Case Concluded. Memos due 11/22/93.

11/22/93 -People's Counsel's Memorandum filed.

11/22/93 -Petitioner's Memorandum in Support of Request for Reclassification filed
by Robert Hoffman, Esquire, on behalf of the Petitioner. ~~(complete copy
of transcript included)~~. (Complete copy of transcript included).



County Board of Appeals of Baltimore County

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

November 24, 1993

NOTICE OF DELIBERATION

With all Post-Hearing Memoranda having been filed, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

BAKER LAND COMPANY, ET AL
CASE NO. CR-93-305-SPH

DATE AND TIME : Tuesday, January 4, 1994 at 9:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

cc: Robert A. Hoffman, Esquire Counsel for Petitioners
Harrison & Grass Petitioners
Michael E. Gerber Protestant
John M. Bearer Protestant

James Earl Kraft
People's Counsel for Baltimore County
P. David Fields /Planning Director
Jeffrey Long /Planning
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant



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on Recycled Paper

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Baker Land Company, et al
Case No. CR-93-305-SPH

DATE : January 4, 1994 /9 a.m.

BOARD /PANEL : William T. Hackett, Chairman (WTH)
Robert O. Schuetz (ROS)
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

- Opening statements by Chairman Hackett

Those present included Robert A. Hoffman, Esquire, on behalf of Petitioner; People's County for Baltimore County, Peter Max Zimmerman. Also present were John and Mary Bearer.

Purpose --to deliberate issues and matter of petition for reclassification and special hearing filed before the Board; testimony and evidence taken on September 28 and October 19, 1993; memorandums filed November 22, 1993. Opinion and Order to be issued by Board setting forth written findings of fact.

WTH: Reviewed and studied memorandums provided by parties; reviewed transcript from both hearing days; reviewed and compared notes.

Decision is to grant reclassification; necessary for Board to find facts to support reclassification; large number of witnesses; briefly highlighted reasons why M.L.R. zoning is in error and reclassification should be granted. Particularly highlighted testimony of Gavrelis; request for reclassification is supported by documented site plan. Also referenced M. Cornelius' testimony as to traffic; the support of the Office of Planning & Zoning for the proposed use; and the support of the Hunt Valley redevelopment group.

Petitioner proved error; reclassification should be granted.

Petition should be granted; from M.L.R. to B.M.

ROS: Thanked parties for memorandums filed; recommends denial of rezoning for several reasons, including legal reasons; belief that 100-year flood plain should be shown on the documented site plan; cannot argue change in neighborhood to support reclassification only error; all issues were considered by Council during map process; all properties along light rail



County Board of Appeals of Baltimore County

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

March 24, 1995

John H. Zink, III, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

Re: Case No. CR-93-305-SPH
Civil Action No. 94-CV-2565
Baker Land Co., et al

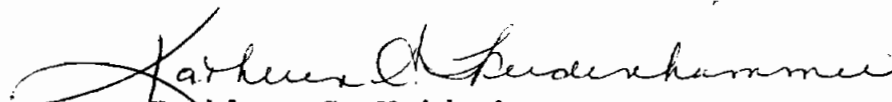
Dear Mr. Zink:

The Board is in receipt of your letter of March 23rd concerning a meeting with Chairman Hackett on Tuesday, March 28, 1995 at 9:15 a.m.

The above-referenced meeting has been cancelled by the Board until further notice. This letter will confirm my telephone calls made this date to all copied parties regarding this cancellation.

Should you have any questions, please call me at 887-3180.

Very truly yours,


Kathleen C. Weidenhammer
Administrative Assistant

cc: Patrick D. Hanley, Esquire
Mr. John M. Bearer
People's Counsel for Baltimore County
The Honorable Thomas J. Bollinger



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John H. Zink, III
(410) 494-6254

March 23, 1995

561-2360

Patrick D. Hanley, Esquire
Hanley and Hanley
206 Washington Avenue
P. O. Box 5506
Towson, Maryland 21204

Mr. John M. Bearer
9 W. Main Boulevard
Timonium, Maryland 21093

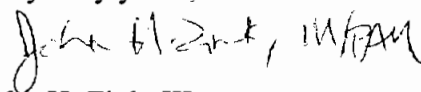
Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
Deputy People's Counsel for Baltimore County
Room 47, Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of Baker Land Co., et al
for Reclassification
Civil Action Number: 94-CV-2565
Zoning Case Number: CR-93-305-SPH
Our File Number: 23150/110694

Gentlemen:

This letter should serve to notify you that we are planning to meet with Chairman William T. Hackett on Tuesday, March 28, 1995, at 9:15 a.m. to discuss a possible revision of the Board's Opinion. Everyone is invited to attend.

Very truly yours,


John H. Zink, III

JHZ/pam

cc: The Honorable Thomas J. Bollinger
Chairman William T. Hackett



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 28, 1994

Mr. William T. Hackett, Chairman
Board of Appeals of Baltimore County
Room 49 Courthouse
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of Baker Land Co.,
et al. for Reclassification
Zoning Case No. CR-93-305-SPH
Civil Action No. 94-CV-2565

Dear Chairman Hackett:

Enclosed please find copy of Memorandum of People's Counsel filed with the Circuit Court for Baltimore County in the aforementioned case.

In his December 19, 1994 letter to you, John Zink, attorney for Petitioner, indicated that Judge Kahl remanded this case to the Board for additional factual and legal findings. Please note that Judge Kahl did not hear this case in the Circuit Court. This matter was heard by Judge Bollinger, who issued his Orders on October 12 and November 10, 1994.

In light of Judge Bollinger's Order requiring the Board to make additional factual and legal findings, this office respectfully requests that counsel have an opportunity to reargue this matter before the County Board of Appeals and that the Board comply with the Open Meetings Law.

Very truly yours,

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

CSD/caf
Enclosure

Dictated but not read

cc: John H. Zink, III, Esquire (Without enclosure)
Patrick D. Hanley, Esquire (Without enclosure)
Mr. John M. Bearer (Without enclosure)

DEC 29 1994



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OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

Robert A. Hoffman
(410) 494-6262

October 23, 1995

Robert O. Schuetz, Chairman
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: Petition for Reclassification of Property located at the Southwest
Corner of the Intersection of Broad Street and Padonia Road
Zoning Case No. CR-93-305-SPH

Dear Mr. Schuetz:

On February 23, 1994, on behalf of Baker Land Company, et al., legal owners, and Harrison & Grass Partnership, contract purchaser, a Petition for Reclassification was filed with the County Board of Appeals of Baltimore County for 6.57 acres located on the southwest corner of Padonia Road and Broad Avenue. In this interim or "cycle" rezoning petition, which was filed in accordance with Section 2.356 of the Baltimore County Code, the Petitioners requested B.M. (Business Major) zoning, in lieu of the present zoning combination of M.L.R. (Manufacturing Light Restricted), O-1 (Office Building), and D.R. 3.5 (Density Residential).

On February 24, 1994, the Board of Appeals granted the requested reclassification for this property. The Board's decision was then appealed to the Circuit Court for Baltimore County. Upon remand to the Board of Appeals for further legal and factual findings in support of its decision, this case was then appealed to the Court of Special Appeals.

Since this cycle reclassification request has become a Comprehensive Map issue, to be decided by the Baltimore County Council in October of 1996, and because the Petitioners cannot get the requested relief prior to the adoption of the 1996

583 A.2d 1344

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

v.

Robert W. MOCKARD et al.

No. 451, Sept. Term, 1987.

Court of Special Appeals of Maryland.

Dec. 7, 1987.

Landowner petitioned County Board of Appeals for reclassification of property. On appeal from Board's order conditionally granting reclassification, the Circuit Court, Baltimore County, William M. Nickerson, J., reversed in part and remanded in part, and appeal was taken. The Court of Special Appeals, Rosalyn B. Bell, J., held that: (1) Board's limitation on future use of subject property was invalid condition on reclassification, and (2) Board improperly found error in comprehensive zoning plan absent evidence that Board properly considered factors enumerated in county code.

Affirmed.

1. Zoning and Planning §=160

"Conditional zoning" is zoning reclassification subject to conditions not generally applicable to land similarly zoned.

See publication Words and Phrases for other judicial constructions and definitions.

2. Zoning and Planning §=160

Conditional zoning is invalid under Maryland law.

3. Zoning and Planning §=191

County board's granting of specific site reclassification to automobile dealership was improper where dealership requested unconditional reclassification and did not follow

county code procedure necessary for granting of specific site reclassification.

4. Zoning and Planning §=726

Remand was required upon determination that county zoning board improperly granted reclassification to owner, conditioned upon owner's putting property to specific use, in that it was possible that board would not have granted reclassification unless it could attach condition, which had been determined to be invalid.

5. Zoning and Planning §=199

County code provision mandating "consideration" of certain factors prior to finding error in comprehensive zoning and granting prospective reclassification, requires that board articulate findings as to each of applicable factors contained in provision; board must make such findings in both finding of error in comprehensive plan and in decision that reclassification is warranted.

6. Zoning and Planning §=30

County board improperly found error in comprehensive zoning plan absent evidence that board properly considered factors enumerated in county code.

Peter Max Zimmerman (Phyllis Cole Friedman, on brief), Towson, for appellant.

Robert W. Cannon (Steven C. Hilsee and Weinberg and Green, on brief), Baltimore, for appellees.

Argued before WILNER, ALPERT and ROSALYN B. BELL, JJ.

ROSALYN B. BELL, Judge.

People's Counsel for Baltimore County appeals from a decision of the Circuit Court for Baltimore County, reversing in part and remanding in part, the administrative order of the County Board of Appeals of Baltimore County. Upon a finding of error in the county-wide comprehensive

zoning, the County Board had conditionally granted Robert W. Mockard, et al., appellees, a piecemeal zoning reclassification. Appellees filed a cross-appeal. The issues we will deal with on appeal are:

1. Whether the Board's limitation on the future use of the subject property is an invalid condition on the reclassification.
2. Whether the Board failed to make proper findings as required by the Baltimore County Code.
3. Whether there was an error in the comprehensive zoning.

Appellees, Robert W. Mockard, et al., petitioned the Baltimore County Board of Appeals for a reclassification of property zoned Business, Local (BL-CS-2). They claimed that there was an error in the 1984 comprehensive zoning map and requested a reclassification of the property to the next higher intensity business zone, Business, Major (BM-CS-2). Appellees filed an "open plat" reclassification which, if granted, authorizes any permitted use within the designated classification. The Board, finding error, granted the reclassification for the specific purpose of expanding appellees' existing used and new car dealership.

Both parties appealed the Board's decision to the Circuit Court for Baltimore County. The court affirmed the Board's finding of error in the comprehensive zoning but found that the conditional zoning was invalid. The court remanded the case to the Board to determine whether, based on the factors delineated by the county code, the prospective classification was warranted. Both appellant and appellees agree with the circuit court's finding regarding the invalidity of conditional zoning. Appellant appeals the court's finding of error. It claims that the evidence before the Board demonstrated that the requested reclassification was unwarranted. Appellees cross-appeal, contesting the court's remand to the Board for findings under the Baltimore County Code. They argue that the finding of error in the comprehensive zoning should be affirmed, and the con-

dition should be stricken without remanding the case to the Board.

Conditional Zoning

[1] Conditional zoning is a zoning reclassification subject to conditions not generally applicable to land similarly zoned. "[W]hen an area of land is rezoned from one classification to another, and such change is not outright but subject to some type of conditions, then we are confronted with a conditional zoning problem." *Board of County Comm'rs of Washington County v. H. Manny Holtz, Inc.*, 65 Md.App. 574, 579, 501 A.2d 489 (1985), quoting Miller, *The Current Status of Conditional Zoning*, Institute on Planning, Zoning, & Eminent Domain 122 (1974).

[2] In *Montgomery County v. National Capital Realty Corp.*, 267 Md. 364, 297 A.2d 675 (1972), the Court said, "The invalidity of conditional zoning in Maryland is not seriously open to question." *National Capital Realty Corp.*, 267 Md. at 373, 297 A.2d 675. This Court continues to reaffirm the invalidity of conditional zoning. *H. Manny Holtz, Inc.*, 65 Md.App. at 586, 501 A.2d 489. In *Holtz*, appellant argued that the Maryland Code provision granting local legislative bodies the general authority to rezone land contained an express grant of conditional zoning power. *H. Manny Holtz, Inc.*, 65 Md.App. at 580, 501 A.2d 489. We held that, although "various states have been attracted to conditional rezoning as a valuable planning tool, we are not inclined to construe the statute to provide for conditional use zoning in Maryland." *H. Manny Holtz, Inc.*, 65 Md.App. at 586, 501 A.2d 489.

In chartered counties such as Baltimore County, there are certain limitations to the general rule invalidating conditional zoning. The Baltimore County Code provides two alternative methods for those seeking reclassification.

Sections 2-58.1(1)-(n) permit a form of conditional zoning.¹ Baltimore County, Md.Code § 2-58.1(1) (1985 Cum.Supp.) allows a petitioner to submit a specific site plan.² That section requires petitioners to provide extensive documentation, including a specific site plan and an environmental impact statement. § 2-58.1(1) & (2). If a petitioner chooses to submit a site plan, the requirements set forth in § 2-58.1(j)³ must be satisfied before a reclassification will

1. Section 2-58.1(m) deals with amending zoning reclassification petitions and is not relevant to this case.

2. Section 2-58.1(1) provides:

"(1) If a zoning reclassification petition includes documentation relating to the proposed use of the property under petition, that documentation must include:

"(i) Elevation drawings and a plan satisfying the zoning commissioner's rules of practice and procedure and showing locations, coverage, floor areas, heights, character, and exterior materials of all proposed structures and all existing structures to be retained; and all existing structures to be removed; signs visible outdoors; all principal uses; hours of operation, maximum number of employees, and maximum levels of emanations (including sound and other vibrations; dust, odors, gases, light and heat); parking and loading facilities; existing and proposed public and quasi-public facilities on and adjacent to the site, including stormdrain systems, waterlines, sewerage, streets and drives, and railroad sidings; existing ponds and other bodies of water, watercourses, 100 year floodplains, major vegetations, and unusual natural formations, and proposed changes in grade; and

"(2) An environmental impact statement, as defined in the Baltimore County Zoning Regulations, that concerns the proposed use of the property under petition and that has been competently prepared by a professional planner or engineer of appropriate qualifications.

"A plan submitted pursuant to this subsection may show the location of a precise building envelope (a clearly delimited area within which a building is to be entirely located but which is larger than the area covered by the building itself) in lieu of the precise location of a building; may show precise maxima and minima in lieu of fixed values; may set forth lists of precisely described possible uses of a given space, in lieu of specifying a single use; and may otherwise reasonably allow for flexibility or alternatives, provided that appropriate precise limits are set forth."

3. Section 2-58.1(j) provides:

"(j) Before any property is reclassified pursuant to this section, the board of appeals must find:

"(1) That there has occurred a substantial change in the character of the neighborhood in which the property is located since the

be granted. The reclassification is contingent upon compliance with the submitted site plan and is specifically exempted from the uniformity requirement of Baltimore County Code § 22-20, Baltimore County, Md.Code, § 2-58.1(n) (1985 Cum.Supp.).⁴ Appellees did not choose to proceed under this method of reclassification.

In the case *sub judice*, appellees sought an unconditional (or "open plat") reclassification. Section 2-58.1(j) sets forth

property was last classified, or that the last classification of the property was established in error; and

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

4. Section 2-58.1(n) provides:

"(n) Property may be reclassified under this section only upon making the findings required under subsection (j) of this section. Property may not be reclassified solely on the basis of documentation relating to the property's proposed use. However, any provision of section 22-20 to the contrary notwithstanding, if the petition to reclassify the property does include such documentation and is granted, the property may be used only in accordance with the plan included within that documentation; the zoning classification of any such property will revert to the previous classification unless, within three (3) years after the date of the final order granting the petition, the property is being used in accordance with the plan or, in a case where development is necessary to implement the plan, unless the development either is completed or has been substantially undertaken and is being diligently pursued to completion. The requirement that such a property be utilized in accordance with a plan, and the provision that otherwise the classification of the property will revert, will not be affected by the subsequent enactment of a zoning map, pursuant to section 22-22 or 22-23 of this

the requirement for such an unconditional reclassification.⁵ Appellees were not required to submit any of the documentation necessary for a specific site reclassification. An unconditional reclassification, if granted, allows appellees to engage in any use permitted by the new zoning classification.

Even though appellees proceeded under and requested an unconditional reclassification, they introduced substantial evidence at the hearing of their intent to use the property to expand the existing car dealership. Neighboring property owners testified that they were concerned about a general reclassification, but had no objections to appellees' extension plans. Thus, it is not surprising that in finding error, the Board specifically conditioned the reclassification "for the specific purpose of expanding the existing used and new car dealership." In this way, the Board apparently felt it could grant the reclassification and at the same time protect the quality of life of the surrounding neighborhood.

[3] While we appreciate the Board's concerns, we cannot ignore the method it chose to implement them. Appellees requested an unconditional reclassification. The Board did not grant it. Appellees did not follow the procedure necessary for the granting of a specific site reclassification. The Board did grant that type of reclassification. Thus, we affirm the trial judge's decision that the Board's conditional granting of the reclassification was invalid.

[4] Appellees propose that we strike the condition but affirm the Board's decision to reclassify the property. We disagree. It is possible that the Board would have granted the reclassification despite the invalidity of the condition. But it is equally as likely that the Board would not have granted the reclassification unless it could attach the condition. Thus, it is necessary to remand the case to the Board

Code unless the zone classification of the property is further changed by that map.

5. See *supra* n. 3.

to determine whether *all* permitted uses under the prospective classification are, in fact, warranted.⁶

Section 2-58.1(j)(2)

The circuit court found that in granting the reclassification the Board's opinion did not reflect the requisite consideration of factors enumerated in § 2-58.1(j)(2). The court remanded the case to the Board to consider whether, based on those factors, the reclassification to BM was warranted. Section 2-58.1(j)(2) provides:

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

Under that provision, the Board must make two findings: 1) that there was error in the comprehensive zoning, and 2) that the prospective reclassification is warranted. Both of those findings may be made "only upon consideration of factors . . . including, but not limited to, all of the following"

6. On remand, appellees may choose to amend and proceed in accordance with the specific site plan provisions.

Two issues are before us on appeal. The first involves an interpretation of the phrase "consideration of factors." The second issue is whether the Board's finding of error in the comprehensive zone plan was in accordance with § 2-58.1(j)(2).

Consideration of Factors

Appellees filed a cross-appeal, arguing that § 2-58.1(j)(2) does *not* require the Board to enter specific findings as to each factor. They claim that the Board is only required to "consider" the factors. In support of their argument, appellees quote a provision from the Anne Arundel County, Md.Code dealing with specific factors to be taken into account in rezoning cases. That provision provides in pertinent part:

"Rezoning shall be granted or denied ... but a rezoning may not be granted except on the basis of an *affirmative finding* that:" (Specific factors omitted.) (Emphasis added.)

Anne Arundel County, Md.Code, art. 28, § 11-102 (1985).

Appellees argue that the words "affirmative finding" necessitate express findings. Conversely, they claim that the Baltimore County Board need only "consider" certain factors, hence the Board did not need to objectively deal with the factors. We do not agree with appellees' conclusion.

The threshold question is, irrespective of the specific language used in a given statute, on what basis does a court review an agency's actions? In *United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 272 A.2d 62 (1984), the Court answered that question as follows:

"Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by

the trial court. However, in judicial review of agency action, the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency."

United Steel Workers, 298 Md. at 679, 272 A.2d 62. See also Abrams, *Guide to Maryland Zoning Decisions* 92-93 (2d ed. 1984). The court may not supply factual findings which were not made by the Board. *Ocean Hide Away Condominium Ass'n v. Boardwalk Plaza Venture*, 68 Md.App. 650, 664-65, 515 A.2d 485 (1986). It is only when the Board's finding is contradicted from other sources and only one conclusion could be reached, that a lack of findings will not warrant remand. *Gough v. Board of Zoning Appeals for Calvert County*, 21 Md.App. 697, 704, 321 A.2d 315 (1974).

Anderson, *American Law of Zoning*, § 16.41, states succinctly the reasons why administrative agencies should make express findings:

"Given express findings, the court can determine whether the findings are supported by substantial evidence, and whether the findings warrant the decision of the board. If no findings are made, and if the court elects not to remand, its clumsy alternative is to *read* the record, *speculate* upon the portions which probably were believed by the board, *guess* at the conclusions drawn from credited portions, *construct* a basis for decision, and *try to determine* whether a decision thus arrived at should be sustained. In the process, the court is required to do much that is assigned to the board, and the latter becomes a relatively inefficient instrument for the construction of a record." (Emphasis added.)

[5] Hence, we hold that "consideration of factors" requires an articulation of the findings as to each of the applicable factors contained in § 2-58.1(j)(2). The Board must make such findings in *both* a finding of error in the comprehensive plan and in a decision that the reclassification was warranted.

Finding of Error

As discussed earlier, in finding error or that a reclassification is warranted, the Board must consider factors, "including, *but not limited to*, all of the following...." Section 2-58.1(j)(2). This means that, in order to make either of those findings, the Board must *at least* articulate its findings as to the 13 identified factors. Under that section, the Board is not limited in its determination to consideration of just those factors. A petitioner can also establish error in the comprehensive zoning with probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive (re)zoning were invalid. The presumption of validity accorded comprehensive zoning may be overcome by evidence establishing that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account. *Howard County v. Dorsey*, 292 Md. 351, 356-58, 438 A.2d 1339 (1982), citing *Boyer v. Sembly*, 25 Md.App. 43, 50-53, 334 A.2d 137 (1975).

[6] In the case *sub judice*, the Board's decision failed to include findings relative to the factors set forth in the Code. It is conclusory in nature and lacks sufficient indication of which, if any, factors the Board considered in making its determination. In this case, the evidence introduced at the hearing does not lead to the inevitable conclusion that there was an error in the existing comprehensive plan. There was testimony by appellees' own witness that the present zoning provides for a reasonable use of the subject property. While some of the nearby property is zoned BM, the property to the immediate west is zoned BL and BR. Finally, there is no indication that there was any evidence before the Board demonstrating that the Council relied on erroneous assumptions or premises in formulating the comprehensive zoning plan.

We hold that the Board's finding of error in the comprehensive plan was not made in accordance with § 2-58.1(j)(2).

There is no evidence that the Board properly considered the factors contained in that section. Thus, we are unable to reach the issues of whether there was convincing evidence of error and whether the Board's finding of error was fairly debatable.

Although with more specificity than expressed by the trial judge, we affirm the remand of the case for the Board to decide whether there was an error in the comprehensive zoning plan. In making that determination, the Board must at least "consider," as we have defined that word, the factors found in § 2-58.1(j)(2). Secondly, the Board must at least "consider" those factors and make specific findings as to whether the proposed reclassification is warranted.

JUDGMENT AFFIRMED. COSTS TO BE DIVIDED EQUALLY BY APPELLANTS/CROSS-APPELLEES AND APPELLEES/CROSS-APPELLANTS.

533 A.2d 1350

NEW SUMMIT ASSOCIATES LIMITED
PARTNERSHIP et al.

v.

Sylvia NISTLE.

No. 466, Sept. Term, 1987.

Court of Special Appeals of Maryland.

Dec. 7, 1987.

Tenant brought action against former landlord and its agent for breach of covenants of quiet enjoyment contained in her lease by permitting invasion of her privacy in course of renovation of adjacent apartment. The Circuit Court, Montgomery County, L. Leonard Ruben, J., found in favor of tenant and awarded compensatory and punitive damages. Landlord and company appealed. The Court of Special

W. Carl Richards, Jr.
John Lewis
March 31, 1993
Page 2

the reclassification of the property involved in the Petition for
Reclassification.

This letter should comply with your request for information.

Yours truly,



Robert A. Hoffman

RAH/tls

BAKER LAND COMPANY, ET AL
Property Owners; HARRISON & GRASS
Developer/Petitioner
Parcel 1: SWC Padonia Road and
Broad Avenue; Parcel 2: SE/s/
end Roosevelt Street, SW Broad Ave.

#CR-93-305-SPH
Item #3, Cycle I, 1993
8th Election District
3rd Councilmanic District

RE: M.L.R. & 0-1 & D.R.3.5
to B.M. for Parcel 1
Special Hearing for business
parking in an 0-1 zone (for
Parcel 2)

Parcel 1: 6.57 acres
Parcel 2: 0.93 acre

(Documented Site Plan)

No. CR-93-305-SPH

February 23, 1993	(1) Petition for Reclassification for property to be reclassified from an MLR, 0-1 and DR-3.5 zone to a BM-CCC zone; and (2) Petition for Special Hearing filed for business parking in an 0-1 zone; filed by Robert A. Hoffman, Esquire, on behalf of Harrison & Grass.
September 28	Hearing before the County Board of Appeals.
October 19	Hearing concluded before the CBA.
November 22	Petitioner's Memorandum in Support of Request for Reclassification, filed by Robert A. Hoffman, Esquire on behalf of the Petitioner.
November 22	People's Counsel Memorandum filed.
December 28	Petitioner's Reply Memorandum filed by Robert A. Hoffman, Esquire, in response to People's Counsel's Memorandum.
January 4, 1994	Open deliberation for final determination.
February 24	Majority Opinion and Order of the Board GRANTING the Petition for Reclassification (Hackett and Buchheister); Dissenting Opinion issued by Schuetz.
March 21	Petition for Judicial Review filed in the CCT by People's Counsel. (Received 3/23/94)
March 22	Petition for Judicial Review filed in the CCT by John M. Bearer. (Received 4/14/94)
March 22	Petition for Judicial Review filed in the CCT by Patrick D. Hanley, Esquire, on behalf of Michael Gerber and Penny Gerber. (Received 4/14/94)
March 24	Certificate of Notice sent to interested parties.
May 19	Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.
October 12	✓ E Opinion and Order of the Circuit Court for Baltimore County in which the case was REMANDED to the C.B. of A. (Bollinger).

Baker Land Company, et al
CR-93-305-SPH

11/22/93 -Hearing concluded before Board on 10/19/93; Memos due and filed 11/22/93 by PC and Counsel for Petitioner; Deliberation date to be set.

11/24/93 -Notice of Deliberation sent to parties, posted on Board, and copy sent to HRB (HRB had previously picked up their respective copy of Memorandums; included two binders).

1/04/94 -Deliberation held as scheduled; final decision of Board -Petition for Reclassification GRANTED by majority decision (H & B); Schuetz to write dissent for denial of petition. Written Opinion and Order to be issued; 30-day appellate period to write from date of that written Opinion/Order.

4/11/94- ~~As a result of People's Counsel informing CBA of other Petitions filed in this case...~~
Telephone call to Ms. Ashford in CCt. She confirmed two other Petitions for Judicial Review were filed on March 22, 1994 by Hanley for Gerber and by Bearer. Copies of Petitions forthcoming this date.

4/14/94 Charlotte went to CCt to retrieve copies of two other Petitions as they have not been received by mail from Ms. Ashford. Notices sent today.

IN THE MATTER OF
BAKER LAND COMPANY, ET AL
FOR RECLASSIFICATION

* IN THE CIRCUIT COURT
* FOR BALTIMORE COUNTY
* CASE NO. 94 CV 2565
*

* * * * *

AMENDED MEMORANDUM OPINION AND ORDER

This matter comes before the Court as a Petition for Judicial Review of a decision reached by the Baltimore County Board of Appeals. Subsequent to a hearing and thorough review of the record, this Court, pursuant to Maryland Rule 7-209, remanded this matter to the Board for further proceedings. Specifically, the Board was ordered to make the appropriate factual and legal findings so as to adequately comply with Baltimore County Code §2-356(j)(2).

The Court is now presented with a Motion to Alter or Amend the judgment, filed by People's Counsel for Baltimore County. People's Counsel asserts that the Opinion and Order rendered by this Court fails to direct the Board to further address the issue of "mistake" standard established by Maryland case law and Baltimore County Code §2-356(j) and address the issue of the Petitioner's failure to delineate the flood plain as required by Baltimore County Code §2-356(1)(1). This Court agrees.

Additionally, People's Counsel urges this Court to reverse, as well as remand the decision of the Board so as to preserve certain appellate issues. Despite a lack of case law specifically addressing this issue, this Court does not believe

✓E October 1994 E November 10 Q February 22, 1995 Q February 22 E March 2 E March 6 March 10 March 10 E March 30 ✓E April 5 April 26 April 28 ✓E February 6, 1996 E February 14 ✓E March 19	People's Counsel's Motion to Alter or Amend Judgement and Request for Hearing filed in Circuit Court for Baltimore County Amended Memorandum Opinion and Order of the Circuit Court clarifying its October 12, 1994 Order and retaining jurisdiction until CBA issues amended Opinion to Court for further reconsideration and final disposition. (J. Thomas J. Bollinger) Amended Opinion Pursuant to Remand Order and Amended Memorandum Opinion and Order of the Circuit Court issued by the Board. (Majority /Hackett and Buchheister) Supplemental Record of Proceedings Before the County Board of Appeals of Baltimore County filed in the Circuit Court. Supplemental Petition for Judicial Review filed in the Circuit Court for Balto. Co. by People's Counsel. Supplemental Petition for Judicial Review filed in the Circuit Court for Balto. Co. by Patrick D. Hanley, Esquire, on behalf of Michael Gerber and Penny Gerber. Copy of both Supplemental Petitions for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County. Certificate of Notice sent to interested parties. Memorandum Opinion and Order issued by the CCt for Balto. Co., wherein the case was REMANDED a second time to the CBA (Petitioner asserts & the Court agrees that Board failed to address requirements of the Court. (NOTE: Second Supplemental Record of Proceedings apparently was not necessary to be filed by the CBA) (Order issued by J. Thomas J. Bollinger). Notice of Appeal filed in the Court of Special Appeals by People's Counsel. Notice of Appeal filed in CSA by John M. Bearer. Notice of Appeal filed by CSA by Michael & Penny Gerber. Mandate from the CSA of MD REMANDING case to CBA and GRANTING Motion to Dismiss appeal. Order from Judge T.J. Bollinger, CCt for Balto. Co., REMANDING case to the CBA (as ord'd by CSA). Order, on remand from the Order of the CCt for Balto Co., pursuant to Mandate of the CSA, wherein this Board is instructed to dismiss the Petition for Reclassification filed by Baker Land Company (Schuetz and Buchheister); Petition DISMISSED.

BAKER LAND COMPANY, ET AL,
Property Owners; HARRISON &
GRASS, Developer/Petitioner
Parcel 1: SWC Padonia Road and
Broad Avenue; Parcel 2: SE/s/
end Roosevelt Street, SW Broad
Avenue

#CR-93-305-SPH
Item #3, Cycle I, 1993
8th Election District
3rd Councilmanic District

M.L.R. & O-1 & D.R. 3.5
to B.M. for Parcel 1
Special Hearing for business
parking in an O-1 zone (for
Parcel 2)

Parcel 1: 6.57 acres
Parcel 2: 0.93 acre

(Documented Site Plan)

February 23, 1993

Petition filed.

* Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21285-5517
Telephone: 494-6200

Counsel for Petitioners

Harrison & Grass
c/o Timothy C. Harrison
100 Chestnut Street
Harrisburg, PA 17101

Petitioners

see new address
20 ERFORD ROAD
SUITE 201
LEMOYNE PA 17043

James Earl Kraft
Baltimore County Board of Education
940 York Road MS 1102-3
Towson, Maryland 21204

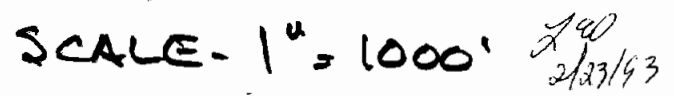
People's Counsel for
Baltimore County

P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

✓
Protestants added at the request
of P. Zimmerman 10/06/93
Michael E. Gerber
107 Harding Street
Timonium, MD 21093

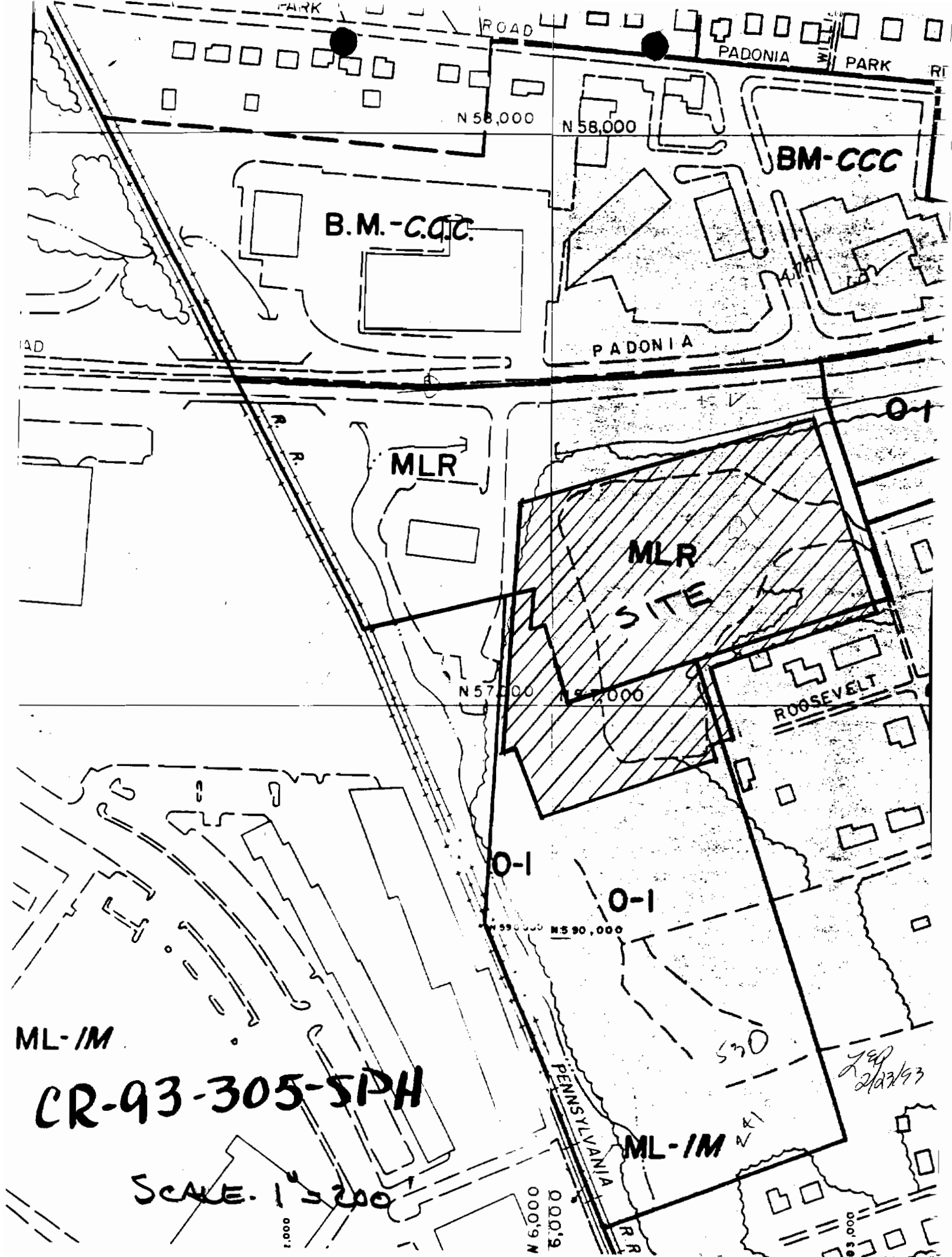
John M. Bearer
9 W. Main Boulevard
Timonium, MD 21093

COPY OF BOARD'S OPINION/ORDER TO:
Mr. Tom Kelly
127 Tregarone Road
Timonium, MD 21093
(Greater Timonium Comm Council)





REV 3/31/93



RECEIVED
COUNTY BOARD OF APPEALS
94 APR 14 PM 3:56
LAW OFFICES
HANLEY AND HANLEY
206 WASHINGTON AVENUE
P. O. BOX 5506
TOWSON, MARYLAND 21204
(410) 823-1174

DANIEL J. HANLEY
PATRICK D. HANLEY
PAUL J. HANLEY

CLAUDE A. HANLEY
(1898-1976)
FAX: (410) 823-6229

April 12, 1994

Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Board Case No. CR-93-305-SPH
Baker Land Company, et al
Circuit Court Case No. 76-245-94 CV 02561

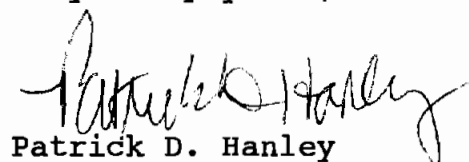
Dear Mrs. Weidenhammer:

I previously have filed a Petition for Judicial Review in the Circuit Court on behalf of Michael Gerber and Penny Gerber in the above matter.

Could you please notify me when the record has been transmitted to the Circuit Court?

Thank you for your co-operation in this matter.

Very truly yours,


Patrick D. Hanley

PDH/mtf
Enclosure(s)

cc: Michael & Penny Gerber

4/14/94

T/C to Pat Hanley -
he will receive copy
of Record Extract when
record of proceedings
is filed in Ct.
H

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

BALTIMORE, MD
WASHINGTON, D. C.
MCLEAN, VA
ROCKVILLE, MD
BETHESDA, MD

210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21285-5517
(410) 823-4111
FAX (410) 821-0147

RICHARD M. VENABLE (1839-1910)
EDWIN G. BAETJER (1868-1945)
CHARLES MCH. HOWARD (1870-1942)

ROBERT A. HOFFMAN

WRITER'S DIRECT NUMBER IS

(410) 494-9162

February 23, 1993

William T. Hackett, Chairman
Baltimore County Board of Appeals
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Re: - Cycle Zoning Reclassification
- Harrison & Grass - Broad Street Market
- Property located in the southwest quadrant of the
intersection of Padonia Road and Broad Street

Dear Mr. Hackett:

This firm represents Harrison & Grass, the Petitioner in the proposed reclassification and documented site plan to permit the Broad Street Market -- a shopping facility of the highest quality to be located at the southwest quadrant of the intersection of Padonia Road and Broad Street (between I-83 and York Road). The subject property is predominantly zoned MLR with a lesser amount of O-1 and a small area of DR 3.5. The Petitioner is requesting BM-CCC zoning and other zoning relief to permit the proposed development which would consist of a food store, pharmacy and bookstore along with several other small shops and would total approximately 83,600 square feet.

As you are probably aware, the subject property is situated in a corridor of predominantly commercial uses and, in fact, is located directly across the street from several retail uses zoned BM-CCC, including the Padonia Park Retail Center. Accordingly, the proposed BM zoning would be quite consistent with the general character of the area.

Moreover, to the property's south lies a substantial area of residential housing which would be more appropriately abutted by the proposed commercial zoning, rather than the current industrial

LEB
2/23/93

William T. Hackett, Chairman
February 23, 1993
Page 2

zoning. This is particularly true in light of the Petitioner's documented site plan, which provides the highest quality use of this sort and extensive buffering and screening that utilizes a berm, fence and landscaping to eliminate any adverse impact on the surrounding neighborhood. The Petitioner submits that it is a mistake for the current zoning to abut the residential zoning to the south and that the County Council should have considered it as an appropriate site for BM zoning.

For these and further reasons to be fully presented at the hearing, it is respectfully submitted that the subject property should be reclassified to BM.

Very truly yours,

Robert A. Hoffman / PW

Robert A. Hoffman

RAH/bw

cc: Timothy C. Harrison
Theodore C. Julio
H. Emslie Parks, Esquire

RAH
2/23/93

150H - Original Jurisdiction
Brief

WCK
3318-R3

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

210 ALLEGHENY AVENUE

P.O. BOX 5517

TOWSON, MARYLAND 21285-5517

(410) 823-4111

FAX (410) 821-0147

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

RICHARD M. VENABLE (1839-1910)
EDWIN G. BAETJER (1868-1945)
CHARLES MCH. HOWARD (1870-1942)

ROBERT A. HOFFMAN

93-305 SP14
Item #3, Cycle I

WRITER'S DIRECT NUMBER IS

(410) 494-9162

March 31, 1993

Carl W. Richards, Jr.
Zoning Supervisor
County Office Building, 1st Flr.
111 W. Chesapeake Avenue
Towson, Maryland 21204

John L. Lewis
Office of Planning and Zoning
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Petition for Reclassification
Property Located at Padonia Road and Broad Street
Baker Land Company, et al, Legal Owners

Dear Carl and John:

As you are aware, the referenced Petition for Reclassification includes a request for a special hearing/special exception to allow parking in an O-1 zone to support the proposed Broad Street Market under the prospective zoning classification of BM. Section 2-58.1(p) of the Baltimore County Code gives the County Board of Appeals for Baltimore County "original jurisdiction for the purpose of hearing and deciding petitions for special exceptions and/or variances, the granting of which is dependent upon the reclassification of the property involved in the petition for reclassification."

As you should note from the documented site plan, unless the property is rezoned to BM with the documented site plan, the use permit to park is moot. Therefore, the granting of the special hearing/special exception for a use permit to park is dependent upon

RECEIVED

APR 1 1993

ZADM

Robert O. Schuetz, Chairman
October 23, 1995
Page 2

Comprehensive Zoning Map, by way of this letter, the Petitioners are hereby withdrawing their original Petition for Reclassification from further consideration.

Very truly yours,



Robert A. Hoffman

RAH:pvb

cc: Peter Max Zimmerman, Esquire
Patrick D. Hanley, Esquire
Mr. John M. Bearer
Arnold Jablon, Director, Permits and Development Management
Mr. Timothy C. Harrison
Mr. Theodore C. Julio
Isaac M. Neuberger, Esquire

TO1DOCS1/RAH01/0013481.01

df (12) July 26, 1994 - Appellee's Answering Memorandum fd.

mar(13) Aug 9, 1994 Reply memorandum of Michael and Penny Gerber, to Petition for judicial review, fd. (rec'd 8/5/94)

September 1, 1994 Hon. Thomas J. Bollinger hearing had written opinion and orders to be filed.

PH(14) Oct 14, 1994 Opinion and Order of Court Remanding case to the Board of Appeals for further proceedings, etc, fd. (TJB)

Mar(15) Oct 24, 1994 Appellants' (Michael & Penny Gerber) motion to alter/amend revise judgment, fd. (rec'd 10/20/94)

jh*(16) October 26, 1994, People's Counsel's Motion To Alter Or Amend Judgment And Request For Hearing)(rec'd 10/21/94)

jh*(17) October 26, 1994, Pltffs' Reply Memorandum in Support of Their Motion For Summary Judgment, exhibit, fd.(rec'd 10/21/94)

mar(18) Oct 31, 1994 Appellees' response to people's counsel's motion to alter or amend the judgment, fd. (rec'd 10/27/94)

as (19) November 16, 1994 Memorandum and Order from Judge Thomas J. Bollinger that the Board address certain specified issues, etc., fd. (TJB)

dd(20) Feb. 27, 1995 Supplemental Record of Proceedings , fd. (rec'd 2/22/95)

(21) Feb. 27, 1995 Amended Opinion pursuant to remand Order and Amended Menorandum Opinion and Order with exhibit, fd. (rec'd 2/22/95)

df(22) March 2, 1995 - Petitioner's PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Supplemental Petition for Judicial Review fd.

CG (23) Mar 6, 1995 Michael Gerber and Penny Gerber's supplemental petition for judicial review, fd.

CG (24) Mar 10, 1995 John M. Bearer's supplemental petition for judicial review, i

jh(25) March 17, 1995, Responses Supplemental Response To Petition For Judicial Review, fd.(rec'd 3/16/95)

mar(26) Mar 28, 1995 Petitioners' supplemental memorandum, fd. (rec'd 3/27/95)

mar(27) Mar 28, 1995 Appellees' supplemental memorandum, fd. (rec'd 3/27/95)

mar(28) Mar 28, 1995 Supplemental memorandum of Michael and Penny Gerber in support of appeal, fd. (rec'd 3/27/95)

mar(29) Mar 28, 1995 Petitioners memorandum to supplemental petition for judicial review, fd. (rec'd 3/24/95)

CONTINUED

that a remand under Maryland Rule 7-209 constitutes a final judgment upon which an appeal may be taken. However, this Court will clarify the issue for counsel's benefit.

Therefore, it is this 10th day of November, 1994, by the Circuit Court for Baltimore County,

ORDERED that the Board address the issue of "mistake" pursuant to Baltimore County Code §2-356(j);

AND IT IS FURTHER ORDERED that the Board address the flood plain issue pursuant to Baltimore County Code §2-356(l)(1);

AND IT IS FURTHER ORDERED that the Board comply with the requirements of this Court's Order of October 12, 1994;

AND IT IS FURTHER ORDERED that this Court will retain jurisdiction over this matter until such time that the Board issues an amended Opinion to this Court for further reconsideration and final disposition.


THOMAS J. BOLLINGER, JUDGE

TJB/am

Copies sent to:

John H. Zink, III, Esquire
210 Allegheny Avenue
P. O. Box 5517
Towson, MD 21285

Patrick D. Hanley, Esquire
206 Washington Avenue
P. O. Box 5506
Towson, MD 21204

✓ Peter Max Zimmerman, Esquire
Room 47 Old Courthouse
400 Washington Avenue
Towson, MD 21204

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517
(410) 494-6200, Fax (410) 821-0147

VENABLE
ATTORNEYS AT LAW

OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

John H. Zink, III
(410) 494-6254

January 4, 1995

William T. Hackett, Chairman
County Board of Appeals of
Baltimore County
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of Baker Land Co., et al for
Reclassification
Zoning Case: CR-93-305-SPH
Civil Action No.: 94-CV-2565

Dear Mr. Hackett:

We have received a letter, dated December 28, 1994, from Carole Demilio, Deputy People's Counsel, which requests the opportunity to reargue this case before the Board. We do not believe that reargument is necessary as the record is complete.

In this regard, we have extracted the transcripts of the prior hearings with respect to the thirteen factors contained in Section 2-356(j)(2) of the Baltimore County Code, which must be considered by the Board in accordance with People's Counsel v. Mockard (copy enclosed), as follows:¹

1. Population trends: Harrison at p. 35; Crozier at p. 89; Gavrelis at p. 57;

¹ The testimony of Harrison, Crozier, Long, Chadsey, Hillis, Earp, and Farinacci can be found in the Transcript of the Hearing before the Board of Appeals, dated September 29, 1993. The testimony of Gavrelis can be found in the Transcript of the Hearing before the Board of Appeals, dated October 19, 1993.

95 JAN -5 PM 12:39

William T. Hackett, Chairman
January 4, 1995
Page 2

2. Availability and adequacy of present and proposed transportation facilities: Crozier at p. 95-96; Cornelius at pp. 192-200, 201-207; Gavrelis at p. 58;

3. Water supply facilities: Chadsey at p. 158; Gavrelis at pp. 58-59; Hillis at pp. 140-141;

4. Sewer: Chadsey at p. 158; Gavrelis at pp. 58-59; Hillis at pp. 140-141;

5. Solid waste disposal facilities: Gavrelis at pp. 58-59;

6. Schools: Gavrelis at pp. 58-59.

7. Recreational facilities: Gavrelis at pp. 58-59;

8. Other public facilities: Gavrelis at pp. 58-59;

9. Compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area: Harrison at pp. 36-39; Earp at p. 54; Farinacci at pp. 61-62; Crozier at pp. 93-95, 98-105; Gavrelis at pp. 54-56:

10. Pertinent recommendation of the Planning Board or Office of Planning and Zoning: Long at pp. 66-70; Gavrelis at p. 59:

11. Consistency of the current and prospective classifications with the Master Plan: Long at pp. 67-69; Gavrelis at pp. 43-47.

12. County Plan for sewage and water supply facilities: Hillis at p. 140:

13. Capital Programs: Chadsey at p. 158.

The testimony cited above, as well as exhibits entered in the case, including the documented site plan and all the information contained thereon, is evidence that can serve as the basis for your findings on each of the above factors. Certainly

William T. Hackett, Chairman
January 4, 1995
Page 3

all of these factors are not relevant. However, we would request the Board to detail how it considered each factor, even though it is possible that the conclusion to be drawn from the testimony and the exhibits is that certain factors are not relevant to a finding of error and/or to a finding that the prospective reclassification is warranted. Also, the Board may, of course, consider other factors, such as that the assumptions relied on by the County Council were invalid.

The time and effort the Board has put into this case is greatly appreciated.

Very truly yours,

John H. Zink, III /PAM

John H. Zink, III

JHZ/tls

cc: Peter Max Zimmerman, Esquire
Patrick D. Hanley, Esquire
Mr. John M. Bearer

LETRO384.PAM

February 23, 1993

Harrison-Grass, Inc.
c/o Hill Management Services, Inc,
9640 Deereco Road
Timonium, Maryland 21093

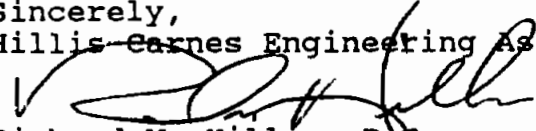
Attention: Mr. Ted Julio
President

Re: Broad Street Market
Environmental Impact Statement
HCEA Project Number 92074B

Gentlemen:

Submitted here is the Environmental Impact Statement recently completed for the referenced project. Should you have any questions or require additional information after reviewing it, please do not hesitate to contact me.

Sincerely,
Hillis-Carnes Engineering Associates, Inc.


Richard M. Hillis, P.E.

Potential Impacts of Proposed Action on the Environment

Potential short term and long term adverse impacts of the proposed development on the environment have been identified. These impacts are the result of development in general, and not specifically related to any change in zoning. Methods are generally presented to mitigate impacts, where identified. Potential impacts within the following categories are addressed:

Removal of vegetation
Disturbance to drainage course
Soil erosion
Water and wastewater
Noise and air pollution
Loss of wildlife habitat

Removal of Vegetation

As described, most of the site is cleared and already disturbed land. Secondary growth trees, shrubs and vines exist around the perimeter of the site. The proposed development will involve clearing approximately 1.5 acres to accommodate pavements and roads. Vegetative buffers will remain to screen the property from the existing residential developments and the concrete drainage course.

A short term environmental impact will occur from removal of existing vegetation during the construction and site grading activities. Upon completion of construction, all disturbed areas around buildings and pavements will be vegetatively stabilized according to an approved grading plan. Where possible, existing specimen trees, if present will be saved in accordance with sound urban forestry practices. Suitable replacement plantings will be included in landscape plans whenever saving large trees is not possible or practical.

Over the long term, there will be a net loss of 1.5 acres of existing woods. While this loss is irreversible, careful landscape planting will reduce the long term effects of these losses and enhance the site. Undeveloped secondary growth areas of the site will continue to develop and mature into a mature hardwood stand. This development and maturation process will provide water and air quality benefits, as well as wildlife habitat.

Disturbance to Stream

The small concrete drainage course along the northern property line is believed to be a tributary to Beaver Dam Run, a class III stream.

HILLIS-CARNES

2/20
2/23/93

Vehicle emissions can impact air quality. However, all vehicles in Baltimore County built after 1971 require annual emissions testing for control of hydrocarbons and carbon monoxide levels from vehicle exhaust.

It is anticipated that the facility will use electricity or natural gas for heating and cooling. No incineration will be performed onsite. Solid waste will be handled and removed by private commercial hauler.

Noise pollution is recognized as an environmental impact by regulatory agencies. The greatest impact will be short term effects from construction noise. Maryland Environmental regulations (COMAR 26.02.03) restrict noise levels from construction site activities to 90 dBA during daytime hours and 55 dBA at night time. Once construction is completed, noise will be limited to that generated by regular vehicular traffic and occasional delivery trucks. These noise levels are not anticipated to be troublesome to nearby residential neighbors, nor are they expected to add significantly to existing noise levels from the adjacent developments.

Wildlife Habitat

The proposed development will entail the permanent conversion of approximately 1.5 acres of wooded and viney lands to parking and road areas. The removal of vegetation will likely cause dislocation of small animals like rabbits and birds to adjacent wooded areas. Noise from construction traffic will likely cause disturbances to wildlife as well.

Habitat value may be increased by incorporating wildlife enhancement and development into the landscaping plans. Certain plant types can attract various species. Stormwater management plans can also be used to promote wildlife.

Summary

No serious, irreversible environmental effects have been identified with development of the site as planned. Some short term effects have been identified, most or all of which can be alleviated or negated by sound design and construction practices and following local codes and regulations. The short term effects noted in the statement apply to any development, including those allowed by current zoning classifications. Some, more serious long-term effects could actually be generated by light industrial or manufacturing development as opposed to commercial-retail development as proposed.

HILLIS-CARNES

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2/23/93



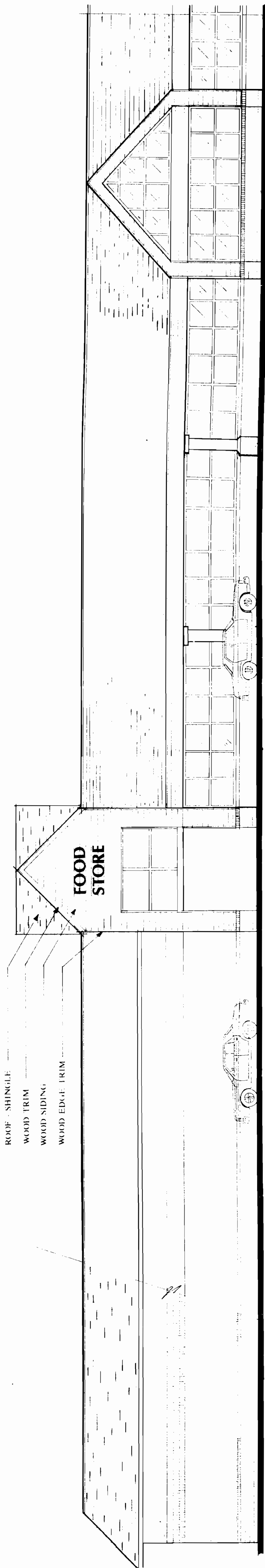
Karn and Associates Inc.
Architectural
Planning
Interior Design
Facilities Management
410 539 4921 Fax
410 534 0900
Baltimore, Maryland 21201



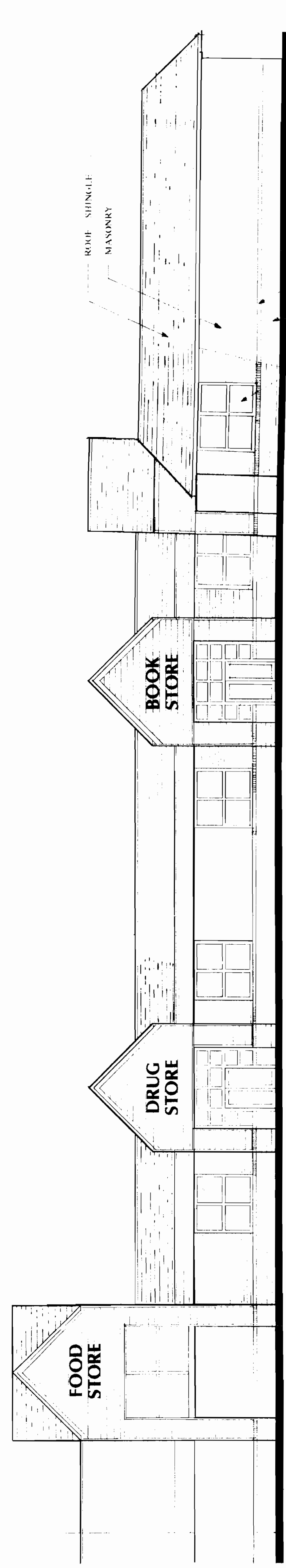
BROAD STREET MARKET
CR-93-305-SPH
REVISED 3/31/93

Revised for:	Revised for:
Client:	Client:
Contract:	Contract:
Date:	Date:
Order No.:	Order No.:
Design:	Design:
Track:	Track:
File:	File:
ELEVATIONS	

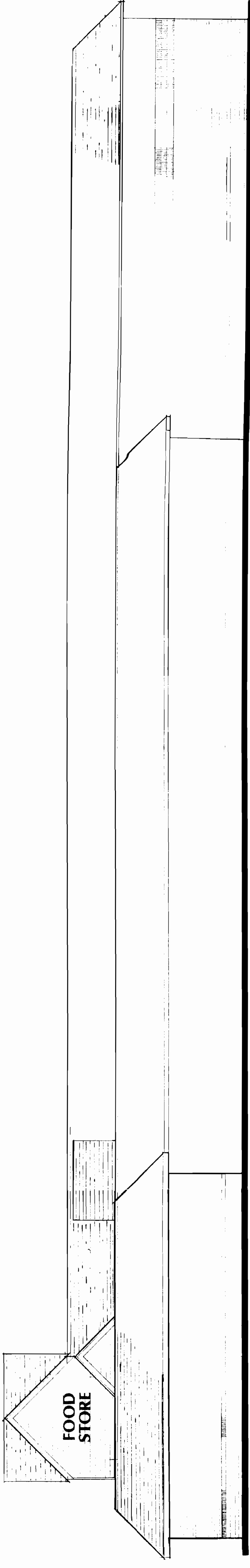
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EAST ELEVATION -A



EAST ELEVATION -B



NORTH ELEVATION

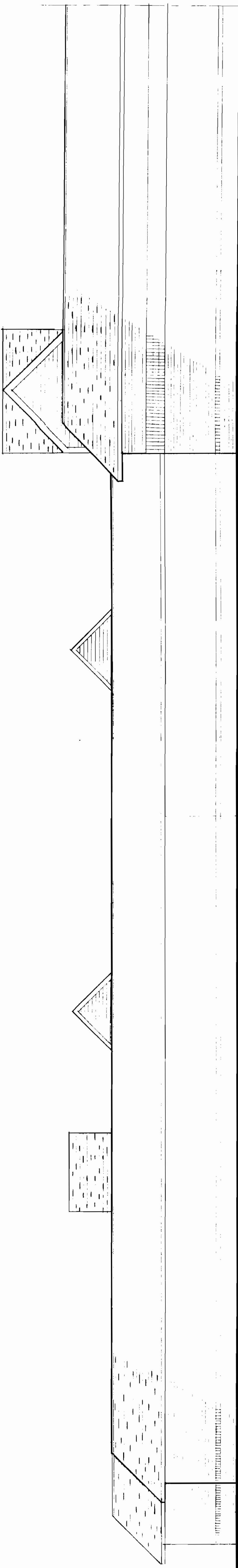


Kern and Associates Inc.
Architecture
Planning
Preservation
Interior Design
Facilities Management
410 234 0900
410 539 4921 Fax
319 West Pratt Street
Baltimore, Maryland 21201

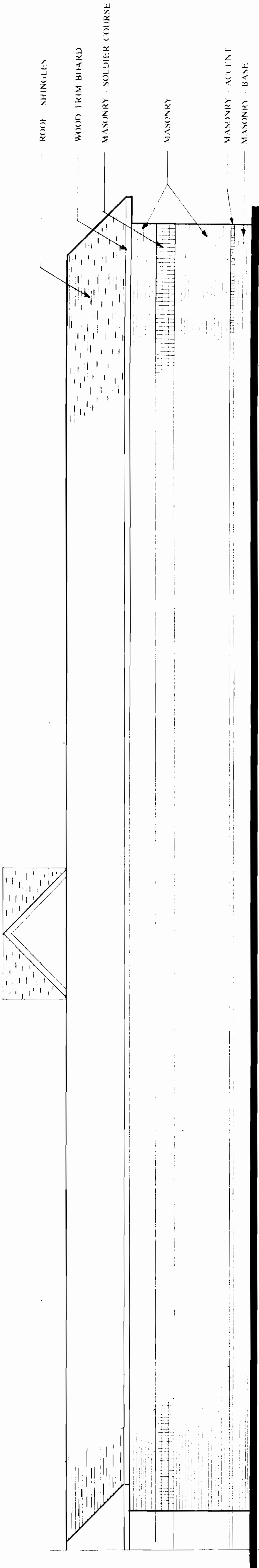


BROAD STREET MARKET

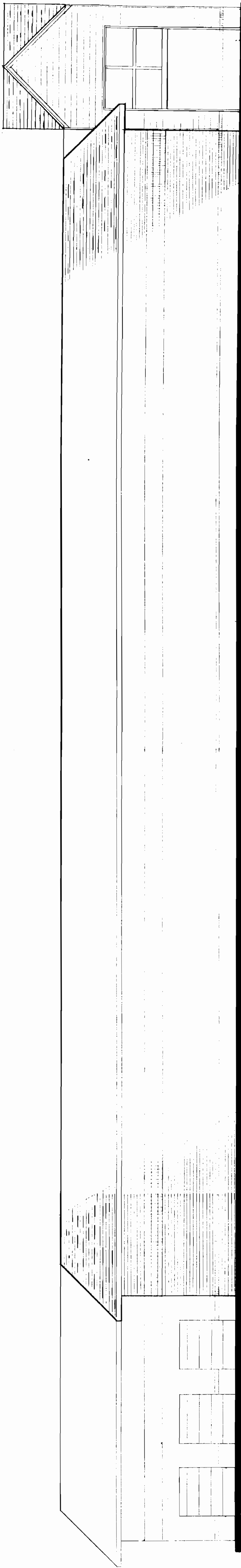
Revised for Bidding Prepared by Checked by Date FEB. 18, 1993 Project No. Designed Check	THE ELEVATIONS



WEST ELEVATION -A

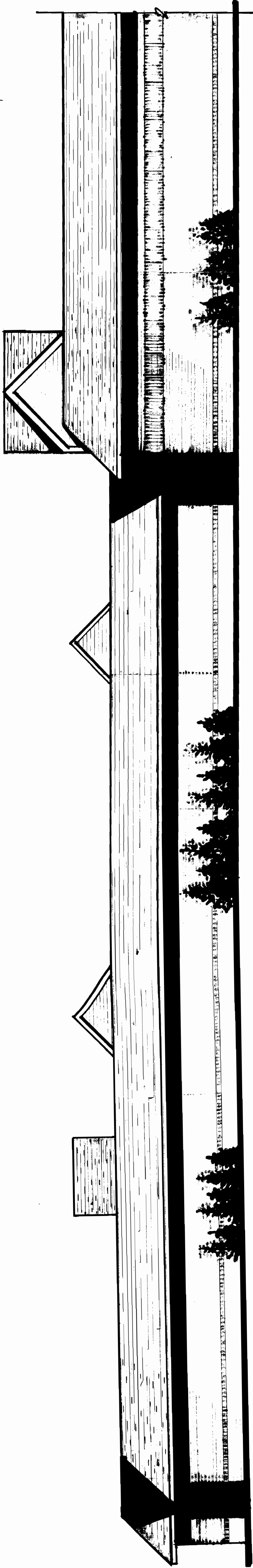


WEST ELEVATION -B

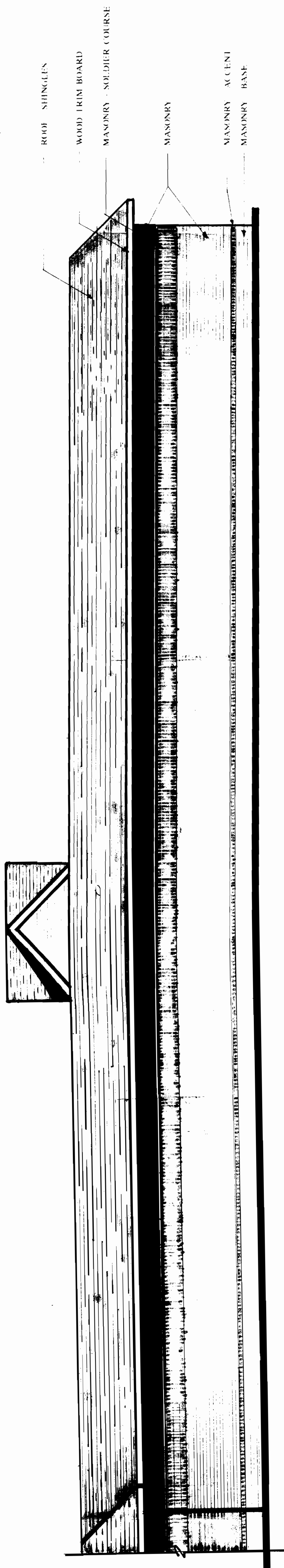


SOUTH ELEVATION

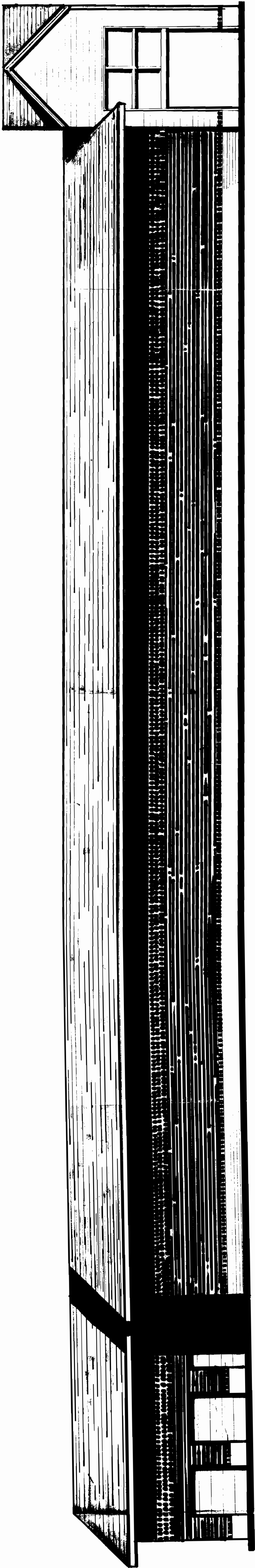
Revisions
EX 2b



WEST ELEVATION -A



WEST ELEVATION -B



SOUTH ELEVATION

BROAD STREET MARKET

Kern and Associates Inc. Architecture
111 West 101st Street
Baltimore, Maryland 21201
Planning
Preservation
Interior Design
Facilities Management
410 539 4921 Fax
410 539 4900



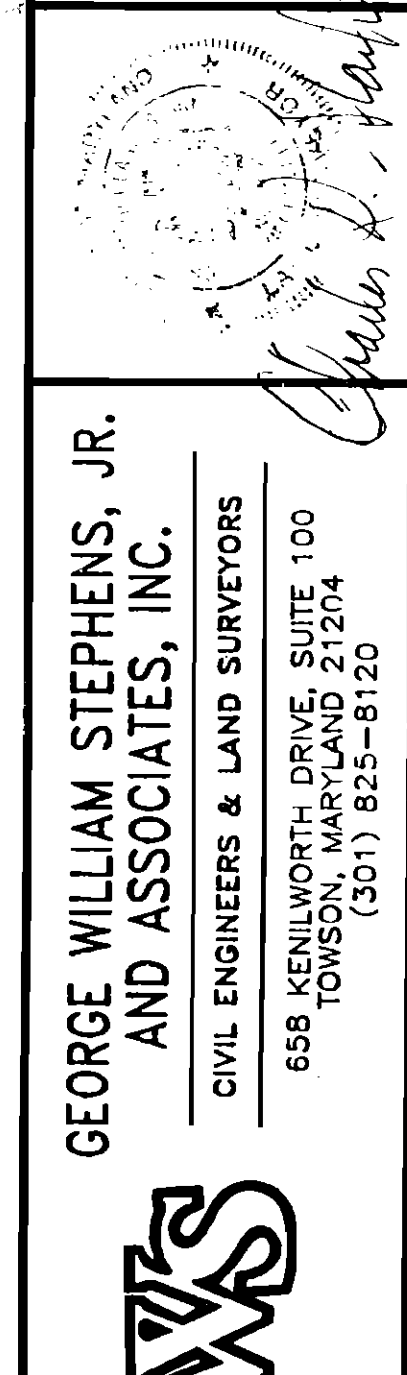
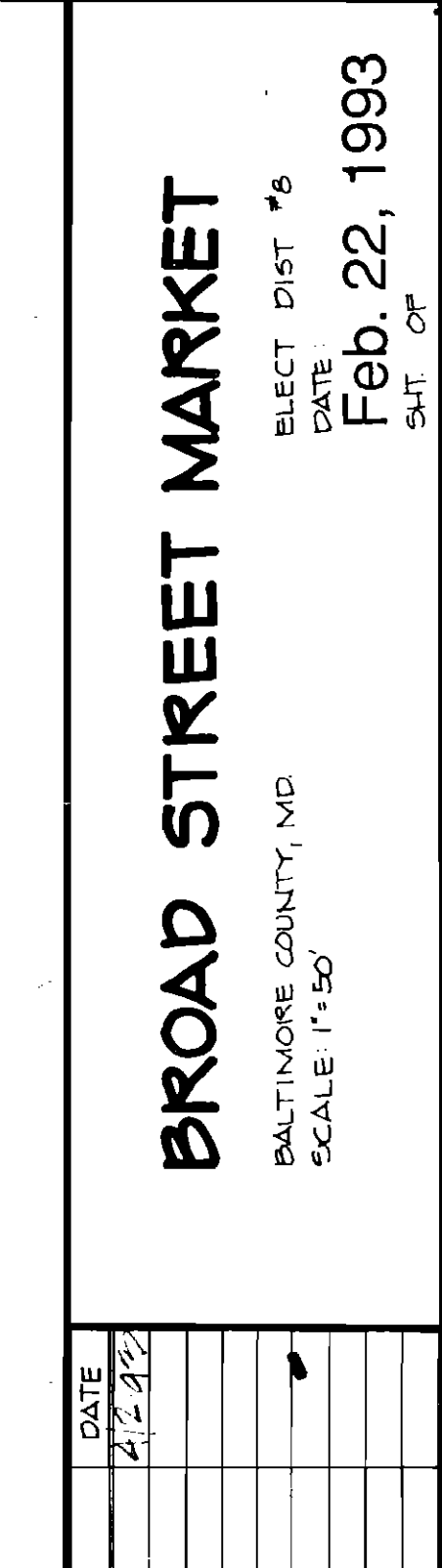
Revised:

Revised by:
Checked by:
Designed by:
Drawn by:

Rev. FEB 18, 1993

Revised by:
Checked by:
Designed by:
Drawn by:

ELEVATIONS



10-19 94

ad of app

CIRCUIT COURT FOR BALTIMORE COUNTY

CIVIL CATEGORY JUDICIAL REVIEW 76/249/94CV2565

PETITION OF

ATTORNEYS

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

Peter Max Zimmerman
Rm. 47 Courthouse
400 Wasington Ave. 21204
887-2188

IN THE CASE OF

IN THE MATTER OF BAKER LAND
COMPANY, ET AL.
FOR RECLASSIFICATION FROM M.L.R. &
0-1 & D.R.3.5. to B.M ZONE ON
PRPERTY BROAD AVENUE (Parcel 1)
AND SE/s/ END ROOSEVELT STREET, SW
BROAD AVENUE (Parcel 2)

Patrick D. Hanley
Hanley and Hanley
206 Washington Avenue
P.O. Box 5506
21204 823-1174
(atty for Michael & Penny Gerber)

MICHAEL GERBER and
PENNY GERBER

P.P. (John M. Bearer)
9 W. Main Boulevard
Timonium, MD 21093
561-2360

JOHN M. BEARER

John H. Zink, III/Patricia A. Malone
210 Allegheny Avenue
P.O. Box 5517
21204 494-6200 (Baker Land Co,et.a

CIVIL ASSIGNMENT

tr(1) Mar. 21, 1994 Petition for judicial review, fd. Notice sent.

COSTS

s(2)*Mar. 28, 1994 Certificate of Notice fd. (rec'd 3-24-94)

s(3) Apr. 4, 1994 Petition of MICHAEL GERBER and PENNY GERBER for Judicial
Review fd. (rec'd 3-22-94)

s(4) Apr. 4, 1994 Petition of JOHN M. BEARER for Judicial Review fd.(rec'd
3-22-94)

s(5) Apr. 13, 1994 Response of BAKER LAND COMPANY, et.al. to Petition fd.
(rec'd 4-11-94)

s*(6) Apr. 15, 1994 Second Certificate of Notice fd. (rec'd 4-14-94)

df (7) May 19, 1994 - Transcript of Record fd. *Box 207*

df (8) May 19, 1994 - Notice of Filing of Record fd. Copies Sent.

am (9) Jun 17, 1994 People's Counsel's Memorandum, fd.

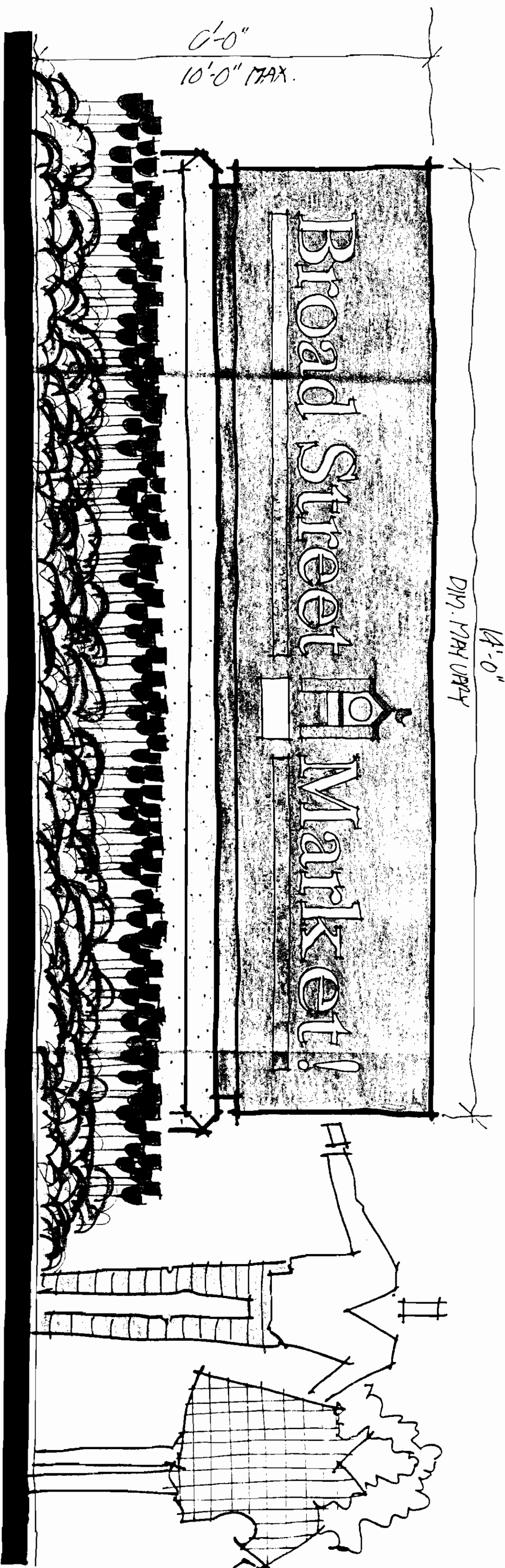
am (10) Jun 17, 1994 Petitioner's Memorandum, fd. (John M. Bearer)

am (11) Jun 28, 1994 Memorandum of Michael and Penny Gerber in support of
appeal, fd. Rec.'d 6/22/94.

94 OCT 19 PM 2:48

OVER

Entry signage shall have horizontal emphasis and a 10'-0" height limitation.
Refer to site plan for location

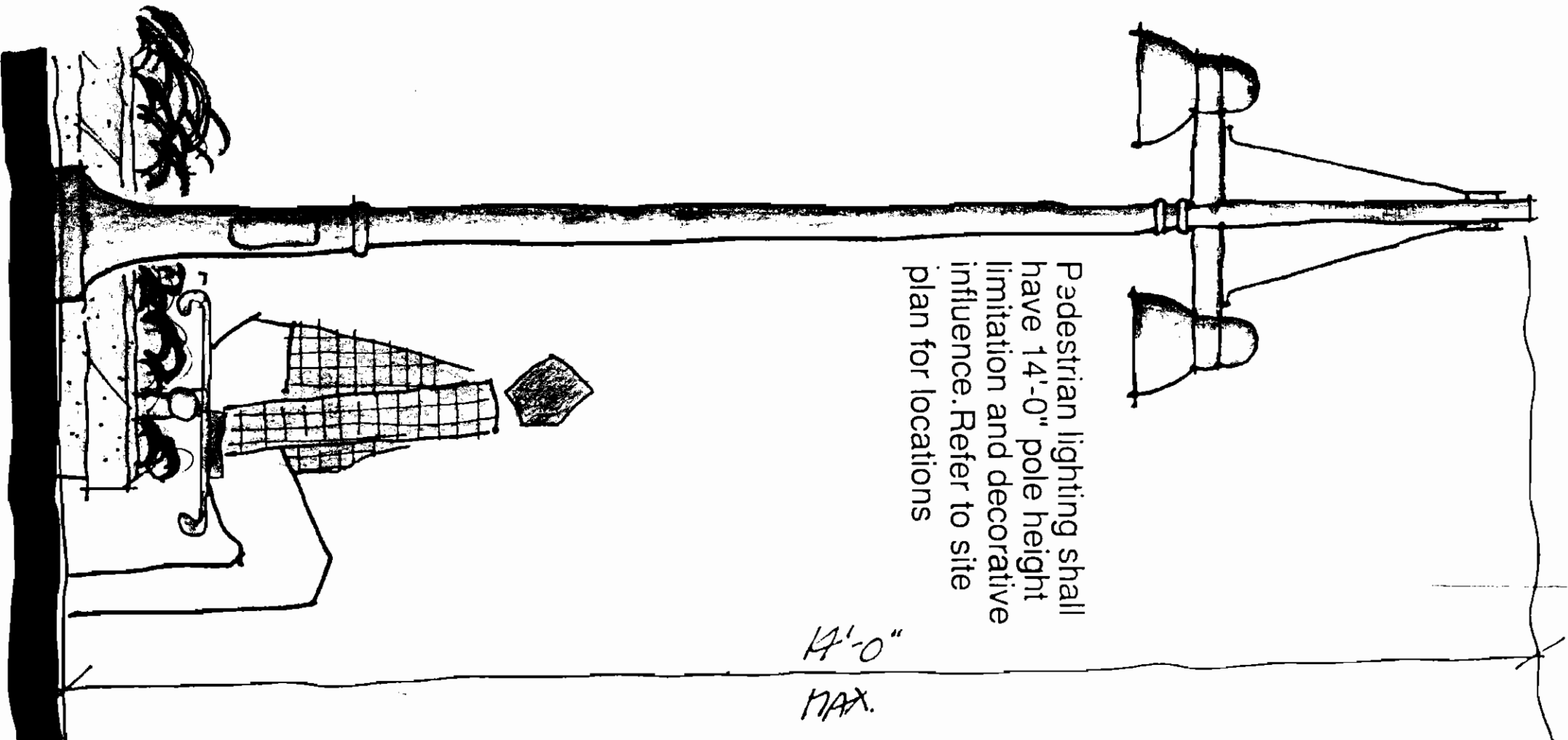


Project Identification / Entry Signage

Scale: 3/4"=1'-0"

Note: All proposed signs shall comply with
Section 413 of the Baltimore County
Zoning Code.

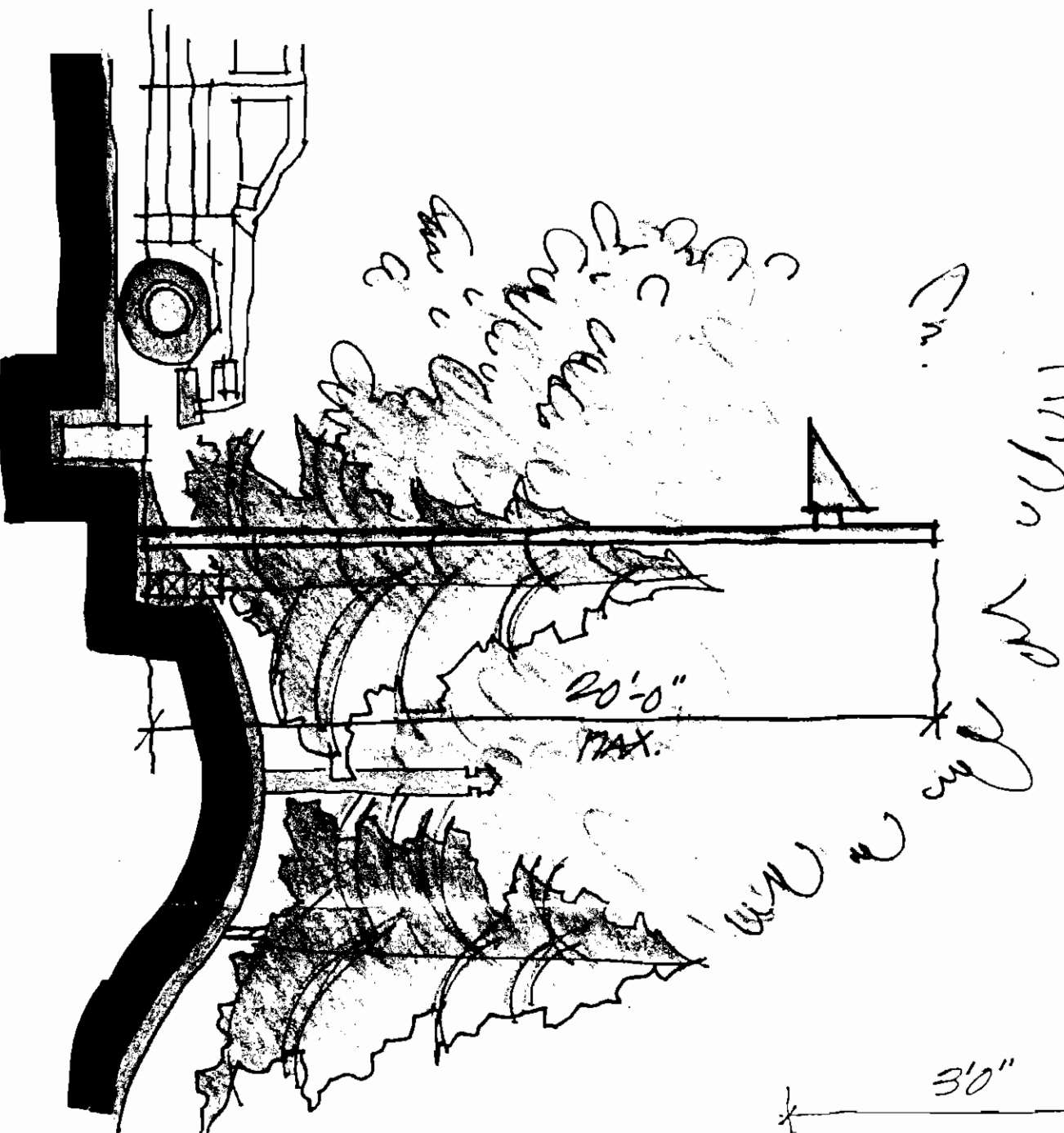
Pedestrian lighting shall have 14'-0" pole height limitation and decorative influence. Refer to site plan for locations



Pedestrian Lighting

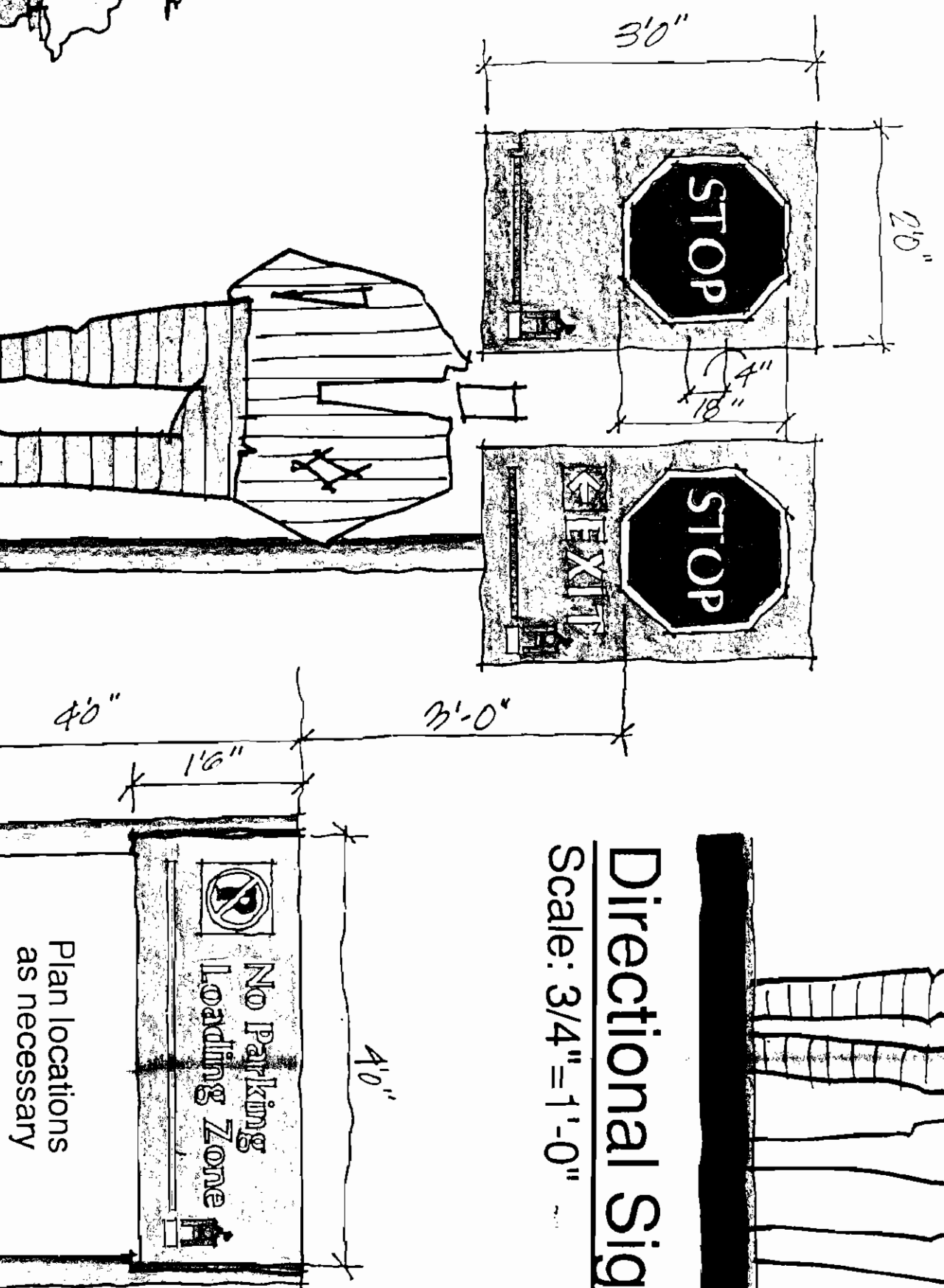
Scale: 3/4"=1'-0"

Site lighting shall have 20'-0" pole height limitation. All fixtures shall have "cut-off" features shielding adjacent uses from light exposure. Refer to site plan for locations



Site Lighting

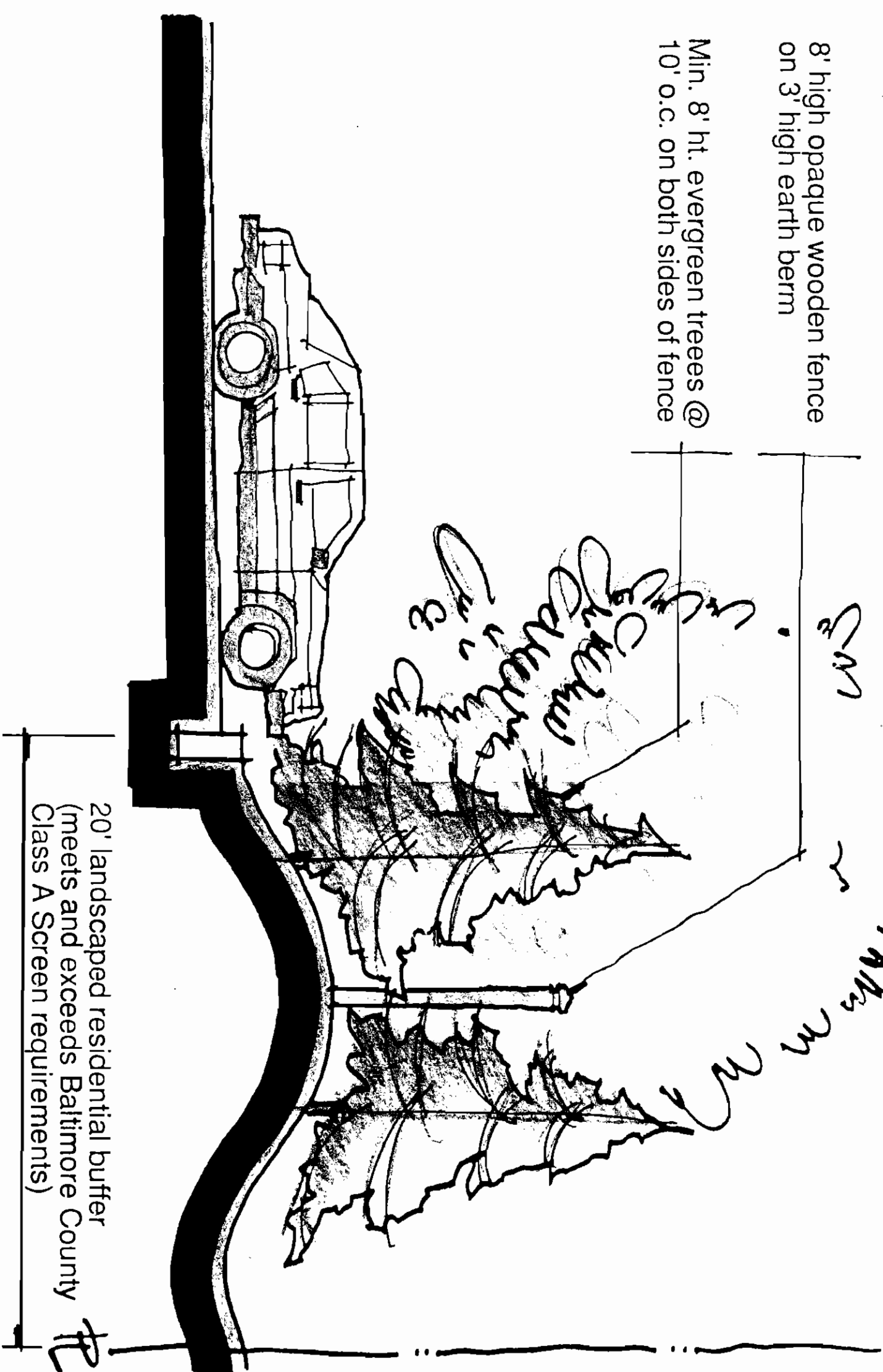
Scale: 1/4"=1'-0"



Regulatory Signage

Scale: 3/4"=1'-0"

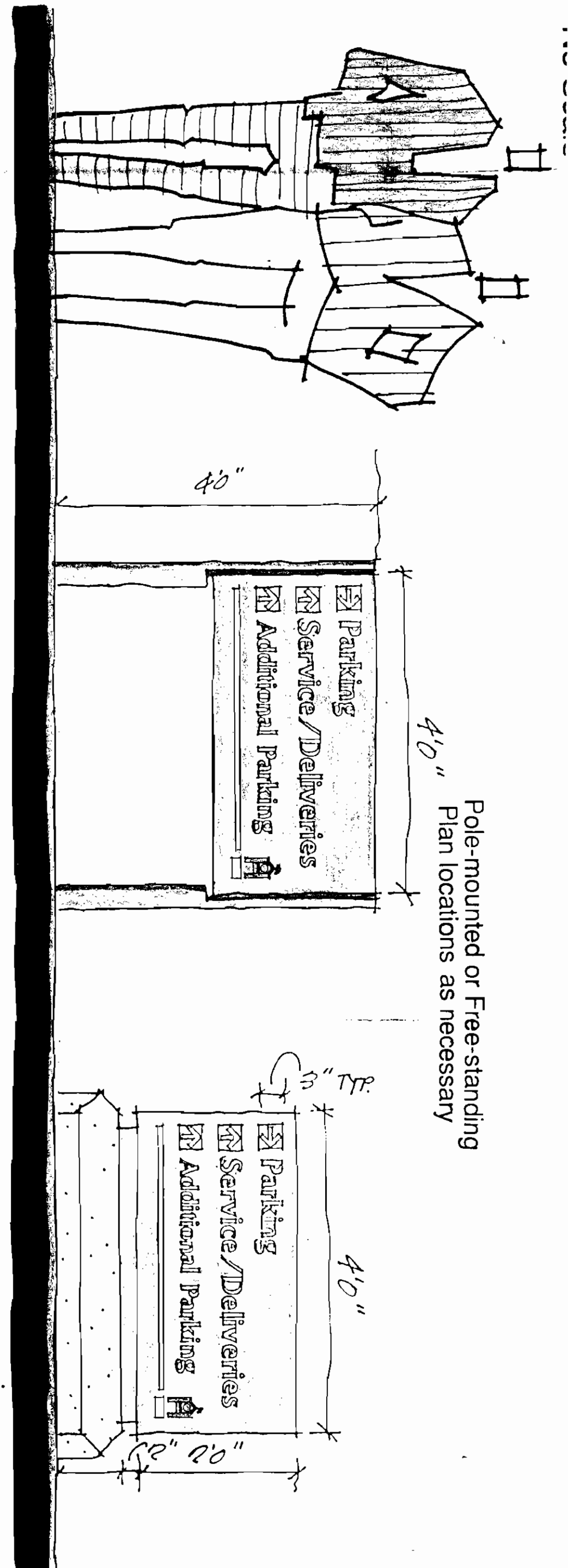
8' high opaque wooden fence on 3' high earth berm
Min. 8' ht. evergreen trees @ 10' o.c. on both sides of fence



Berm Section /Residential Buffer

Scale: 1/4"=1'-0"

Pole-mounted or Free-standing
Plan locations as necessary



Directional Signage

Scale: 3/4"=1'-0"

SITE SIGNAGE AND LIGHTING

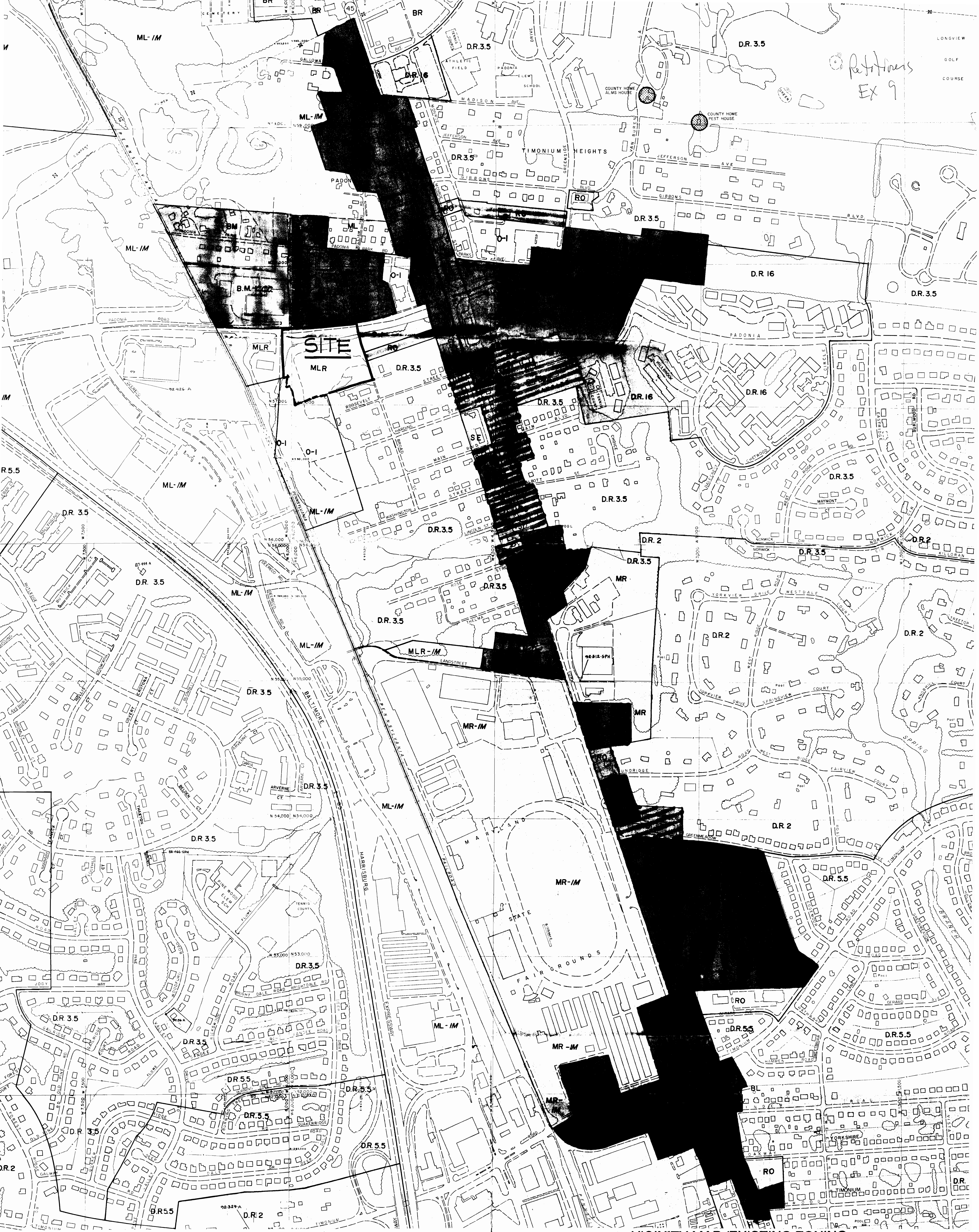
Feb. 22, 1993

Broad Street Market

The signage and lighting drawings(land graphics)represented on this sheet are to communicate the scale, proportions, and character of the proposed elements. They are not finished designs. Graphics and text may vary from images shown.

GROZIER ASSOCIATES
LANDSCAPE ARCHITECTURE
1111 Centre Street, Suite 202
3000 Chestnut Avenue
Baltimore, Maryland 21215
410-528-1500

Petitions Ex 4



Ref: Plans
Ex 9

SITE

VICINITY MAP / EXISTING ZONING

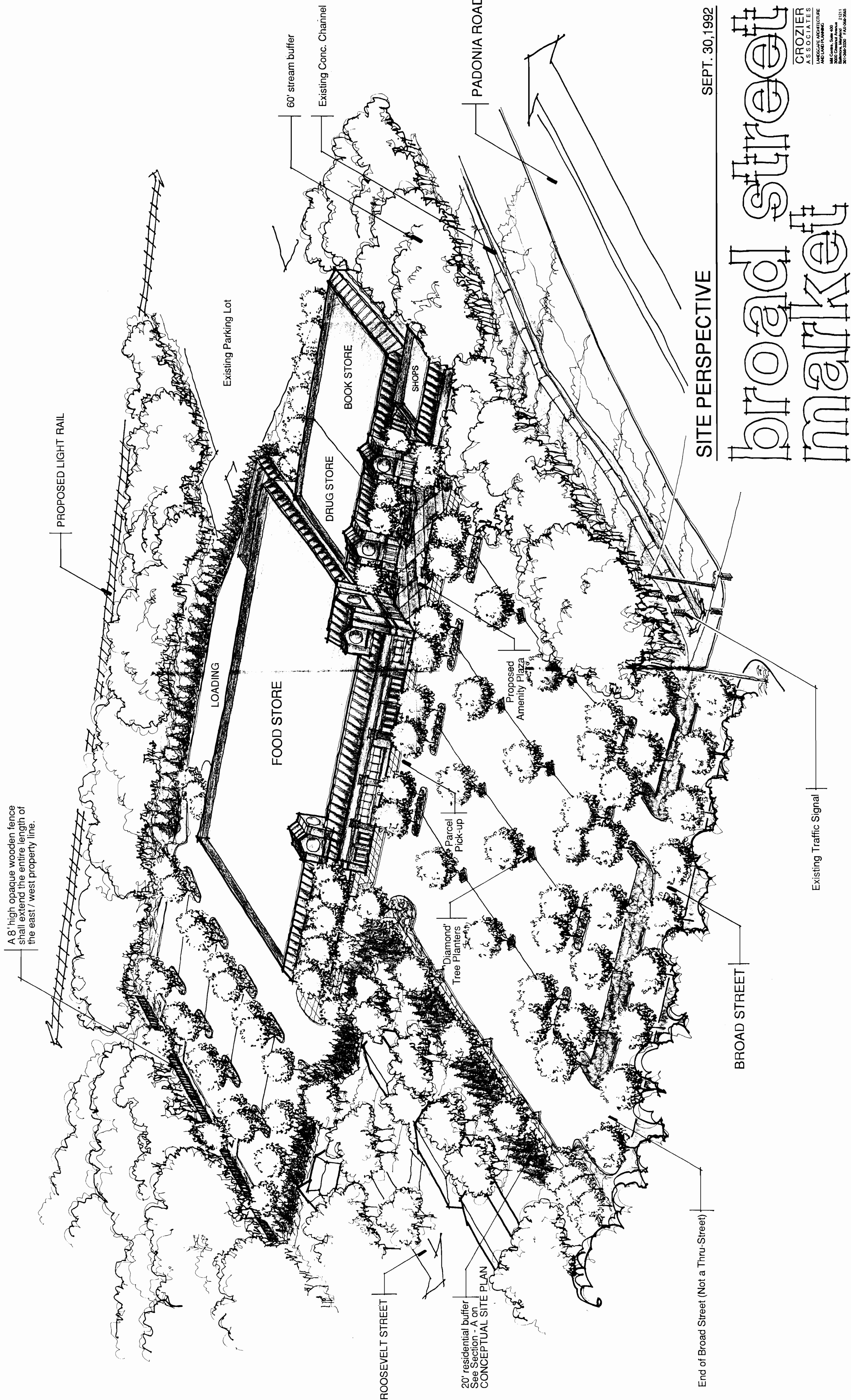
DEC. 30, 1992

broad street market

**CROZIER
ASSOCIATES**
LANDSCAPE ARCHITECTURE
PLANNING & DESIGN
1000 Central Avenue
Baltimore, MD 21201
410-528-1200 FAX 410-528-1205

200'

Revisions Ex 11



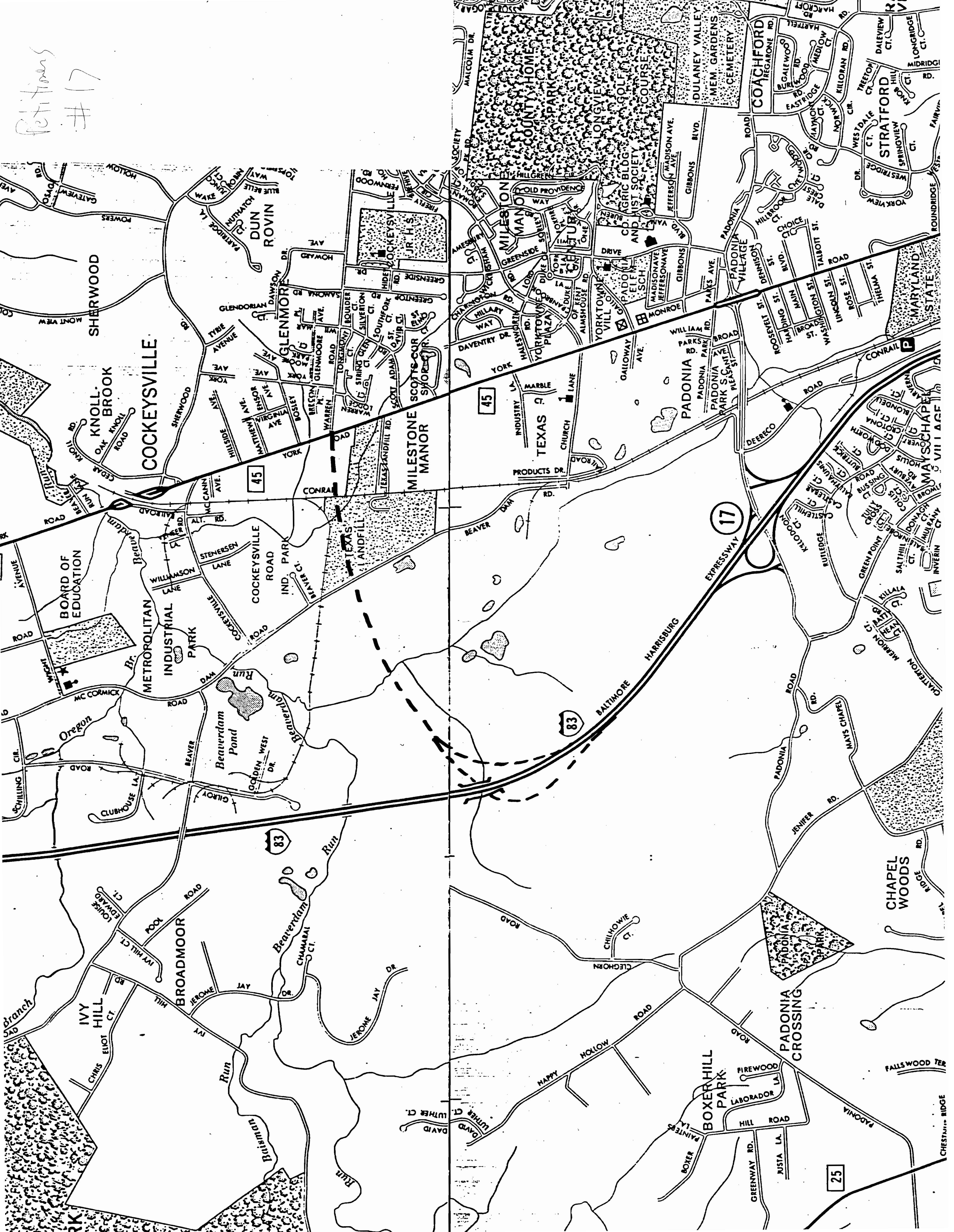
SITE PERSPECTIVE

SEPT. 30, 1992

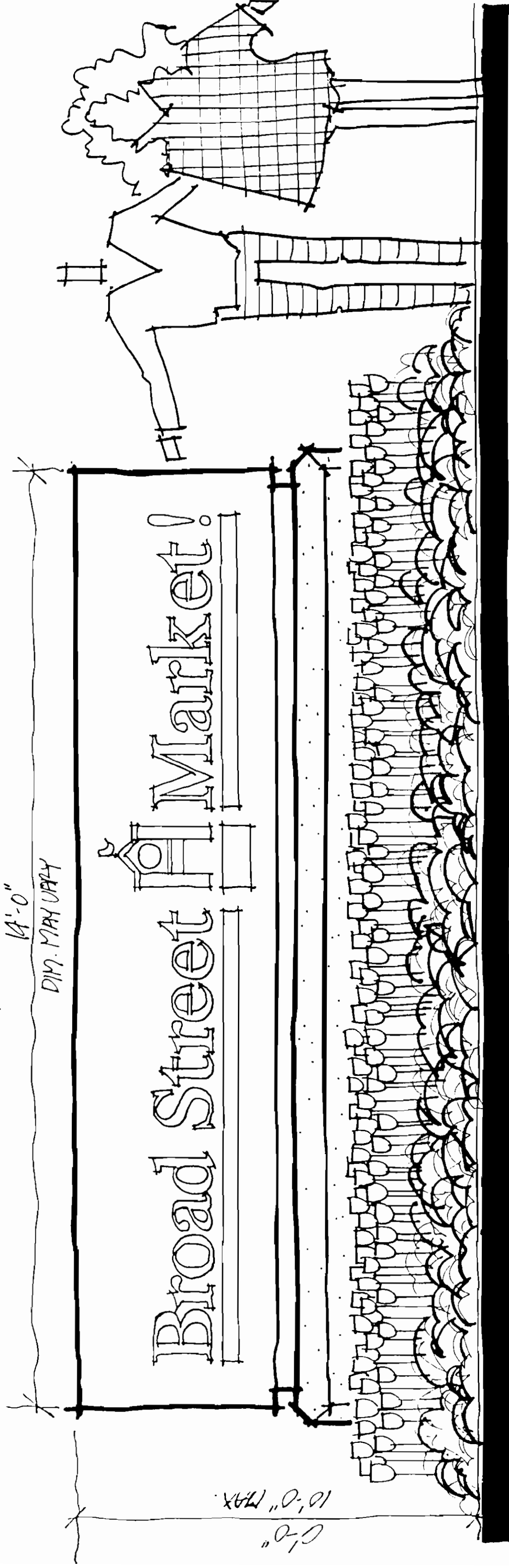
broad street market

CROZIER ASSOCIATES
LANDSCAPE ARCHITECTURE
AND LAND PLANNING
301 N. Green, Suite 400
Baltimore, Maryland 21211
301-955-3330 FAX 301-955-3335

Petitions
#17



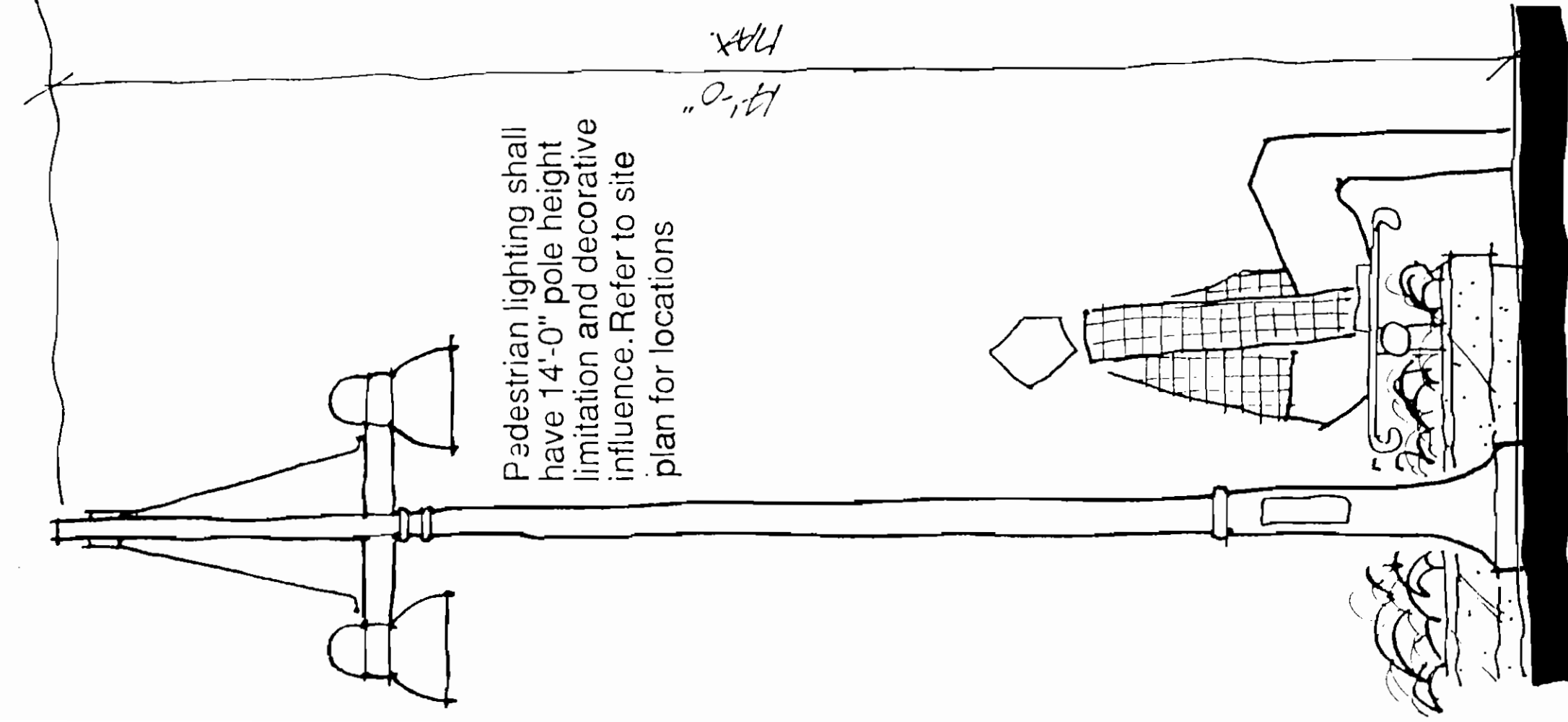
Entry signage shall have horizontal emphasis and a 10'-0" height limitation.
Refer to site plan for location



Project Identification / Entry Signage

Scale: 3/4"=1'-0"

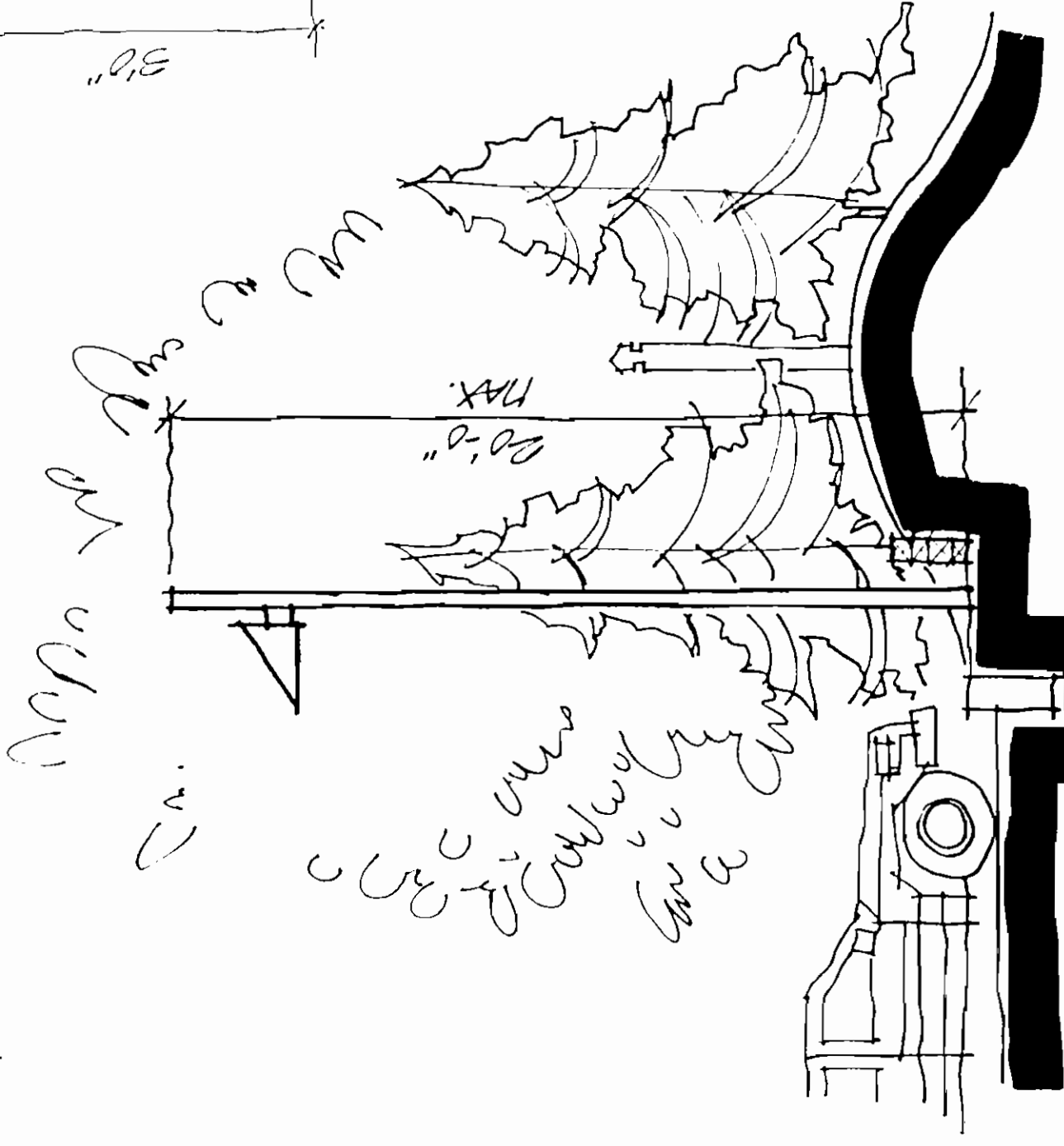
Note: All proposed signs shall comply with
Section 413 of the Baltimore County
Zoning Code.



Pedestrian Lighting

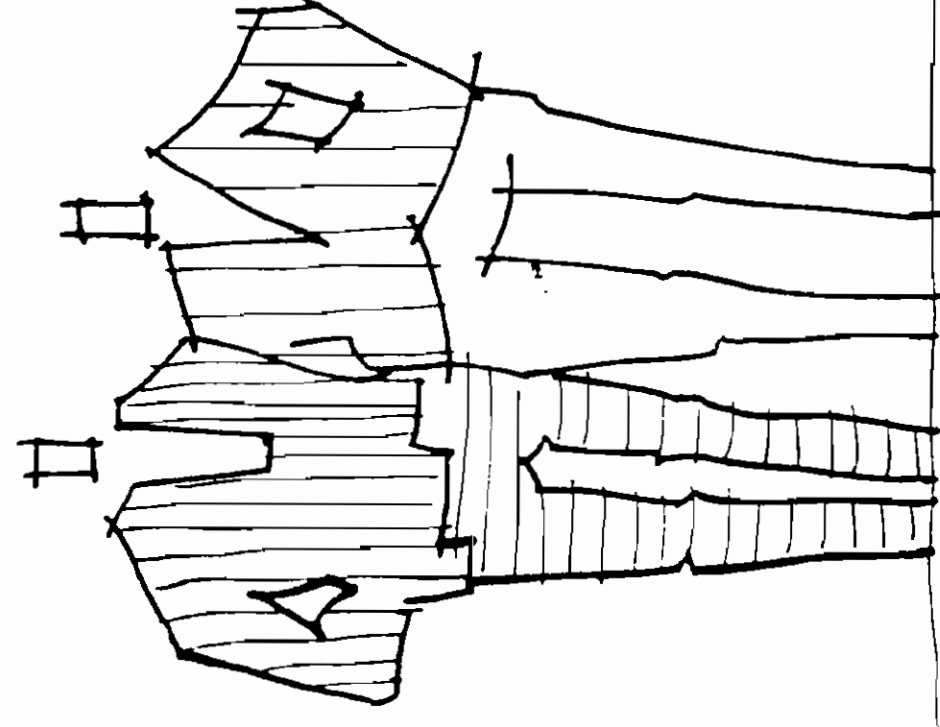
Scale: 3/4"=1'-0"

Site lighting shall have 20'-0" pole height limitation.
All fixtures shall have "cut-off" features shielding
adjacent uses from light exposure. Refer to site
plan for locations



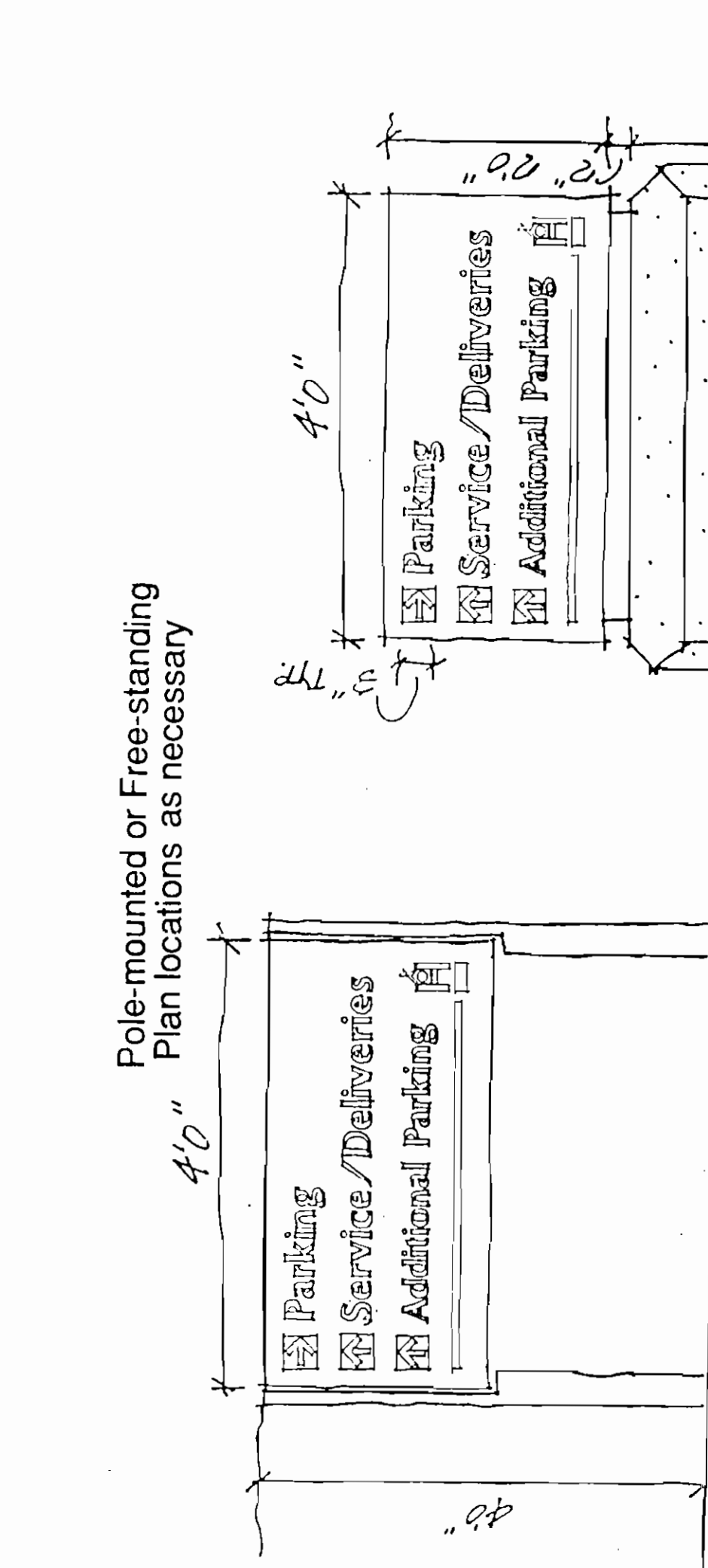
Site Lighting

Scale: 1/4"=1'-0"



Directional Signage

Scale: 3/4"=1'-0"



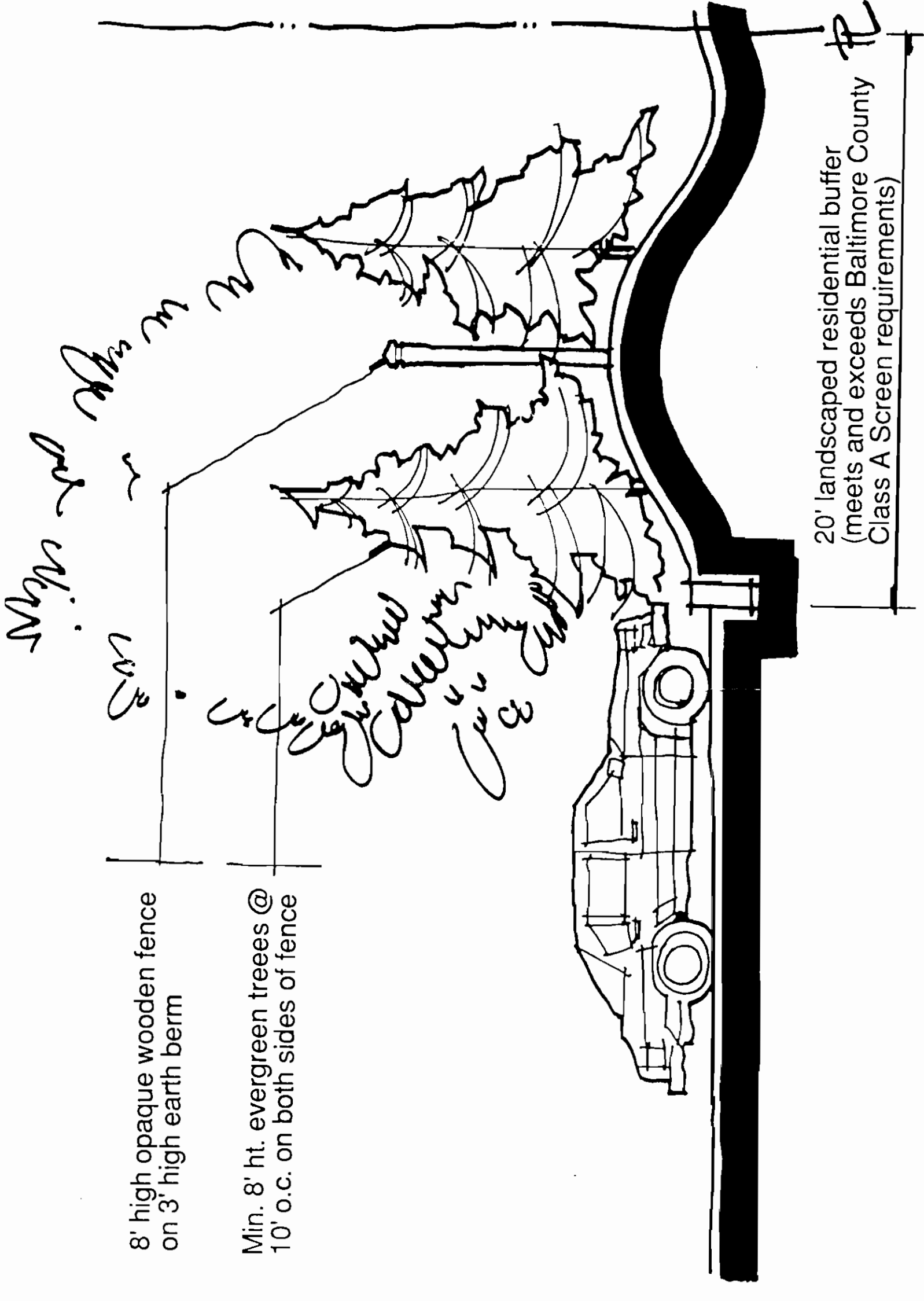
Directional Signage

Scale: 3/4"=1'-0"

Pole-mounted or Free-standing
Plan locations as necessary

Berm Section / Residential Buffer

Scale: 1/4"=1'-0"



SITE SIGNAGE AND LIGHTING

Feb. 22, 1993

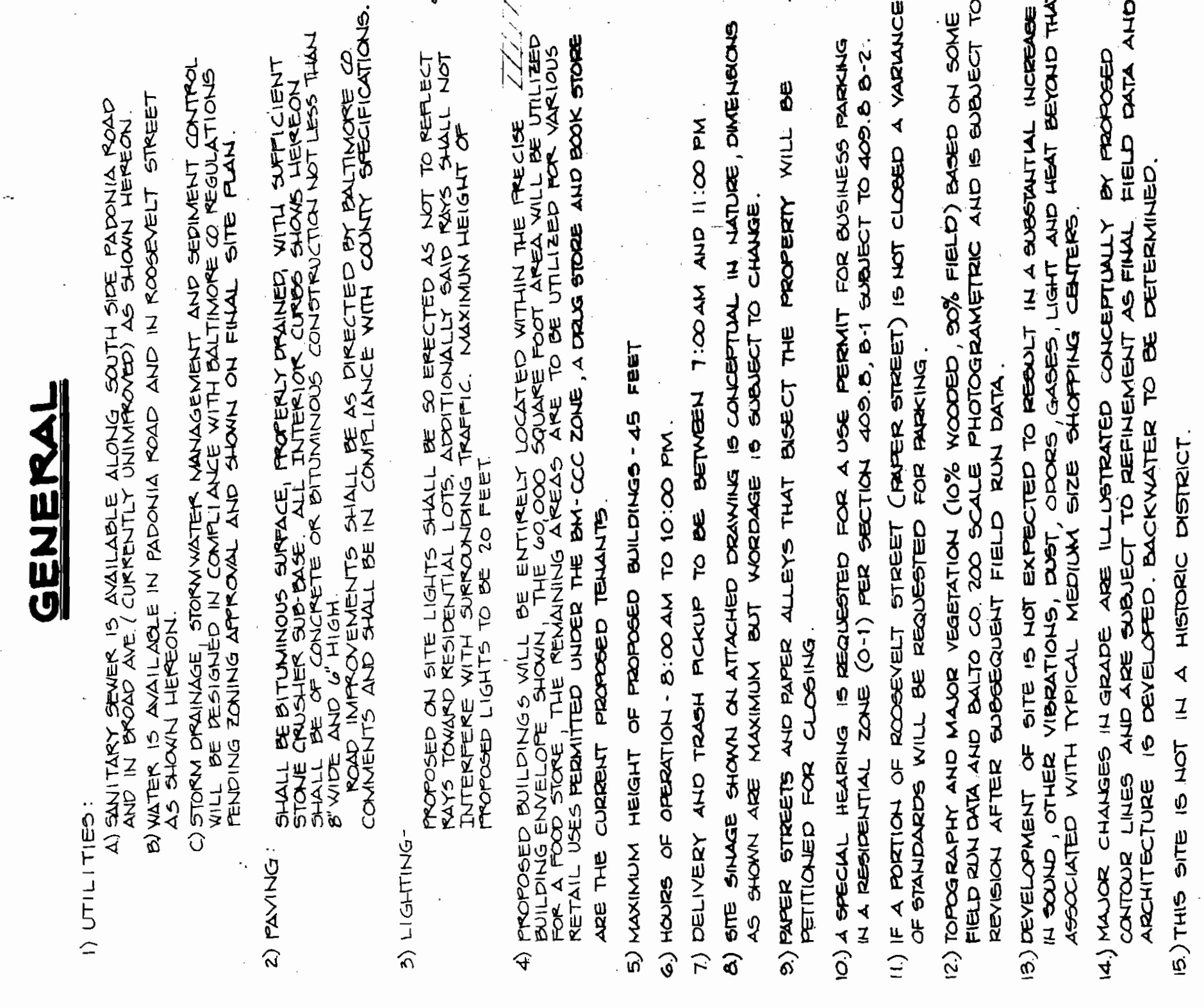
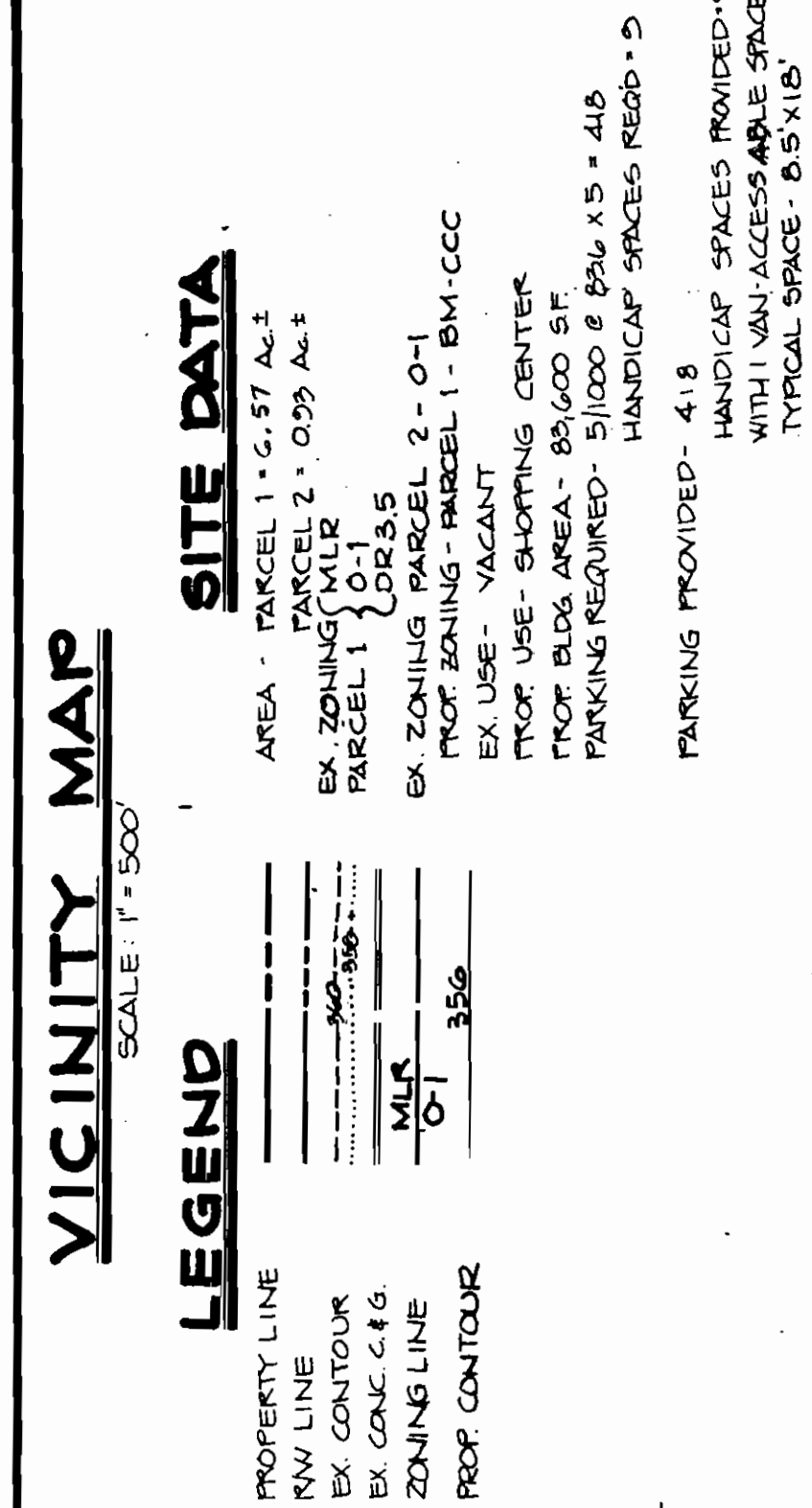
broad street market

CROZIER
ASSOCIATES
LANDSCAPE ARCHITECTURE
AND LAND PLANNING
M. Crozier, Assoc. AIA
3333 Oakridge Avenue, Suite 201
301-986-3330 / FAX-366-3555



The signage and lighting drawings (and graphics) represented on this sheet are to communicate the scale, proportions, and character of the proposed elements. They are not finished designs. Graphics and text may vary from images shown.

CR-93-305-SPA
REV 3/31/93

[illegible]

DEVELOPER
HARRISON & GRASS
100 CHESTNUT STREET
HARRISBURG, PA. 17101
(717) 231-2800

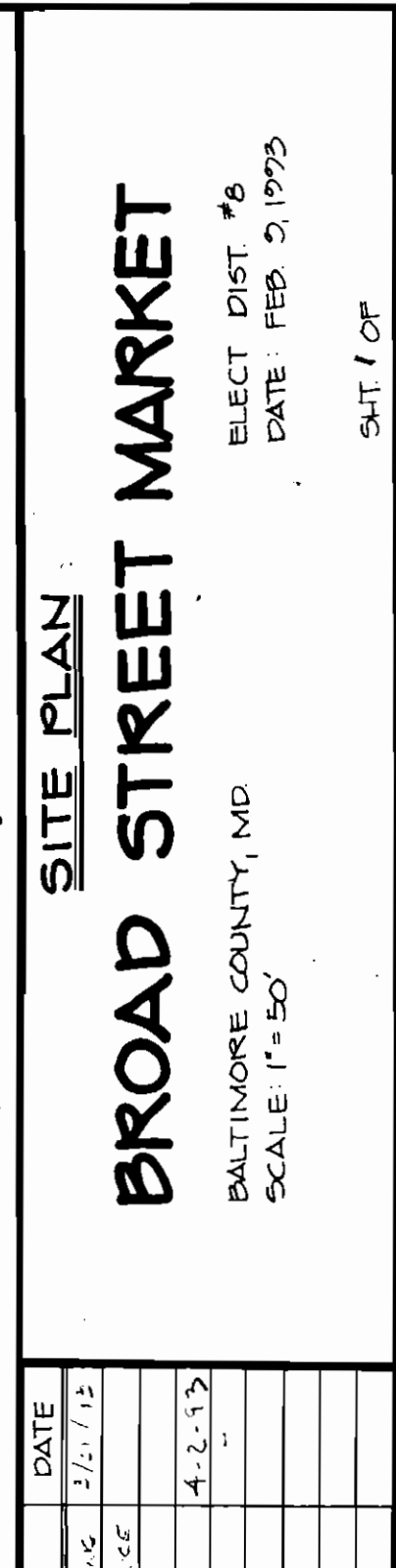
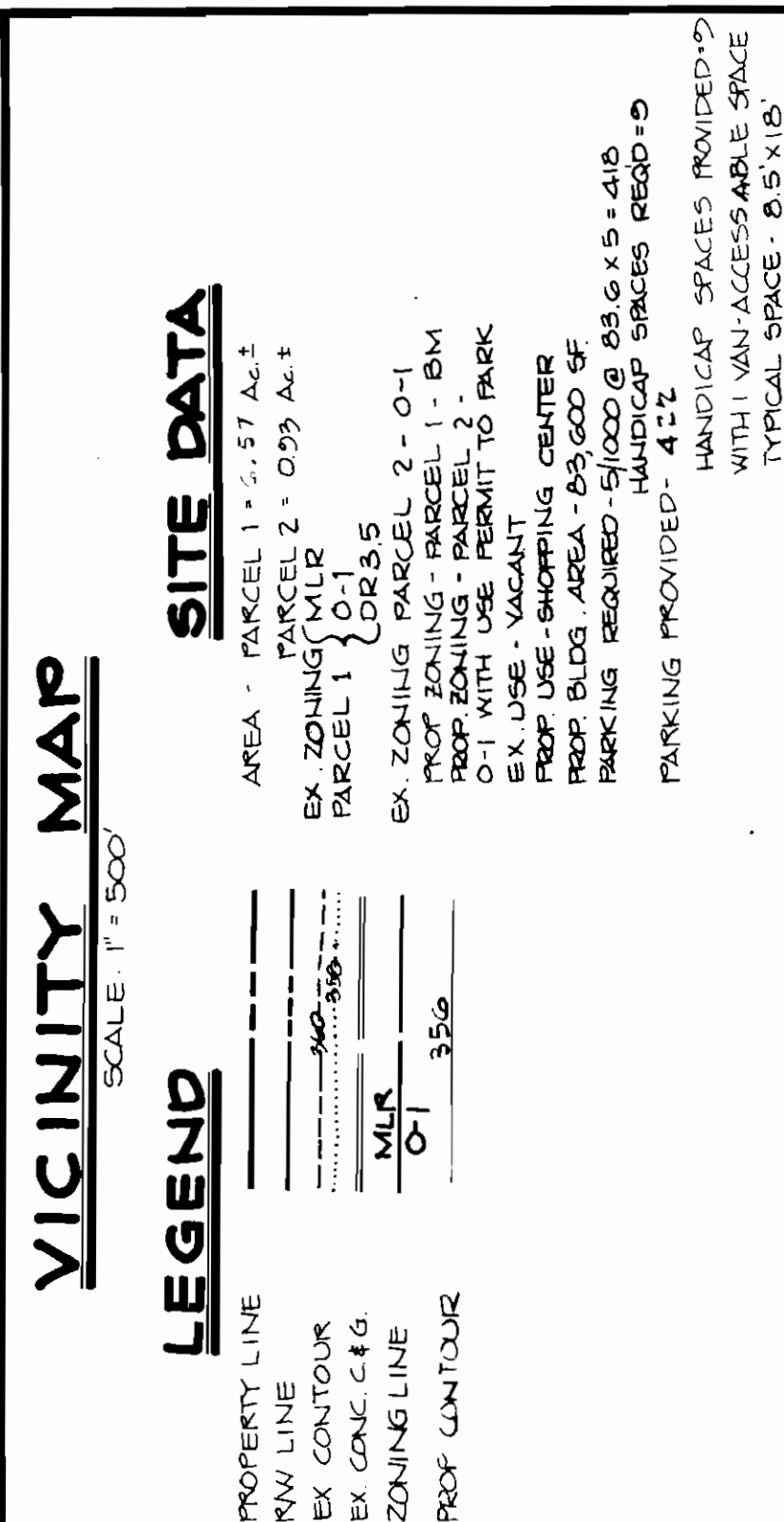
**GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.**

CIVIL ENGINEERS & LAND SURVEYORS

658 KENNA WORTH DRIVE SUITE 100
TOWSON, MARYLAND 21204
(301) 625-8120

Charles J. Stephens

GWS



- a. The land to be used must adjoin or be across an alley or street from the business or industry involved.
- b. Only passenger vehicles, excluding buses, may use the parking facility.
- c. No loading, service, or any use other than parking shall be permitted.
- d. Lighting shall be regulated as to location, distribution, color of illumination, glare, and intensity, as required.
- e. A satisfactory plan showing parking arrangement and vehicular access must be provided.
- f. Method and area of operation, provision for maintenance, and permitted hours of use shall be specified, and regulated as required.
- g. Any conditions not listed above which, in the judgment of the zoning commissioner, are necessary to ensure that the parking facility will not be detrimental to adjacent properties.

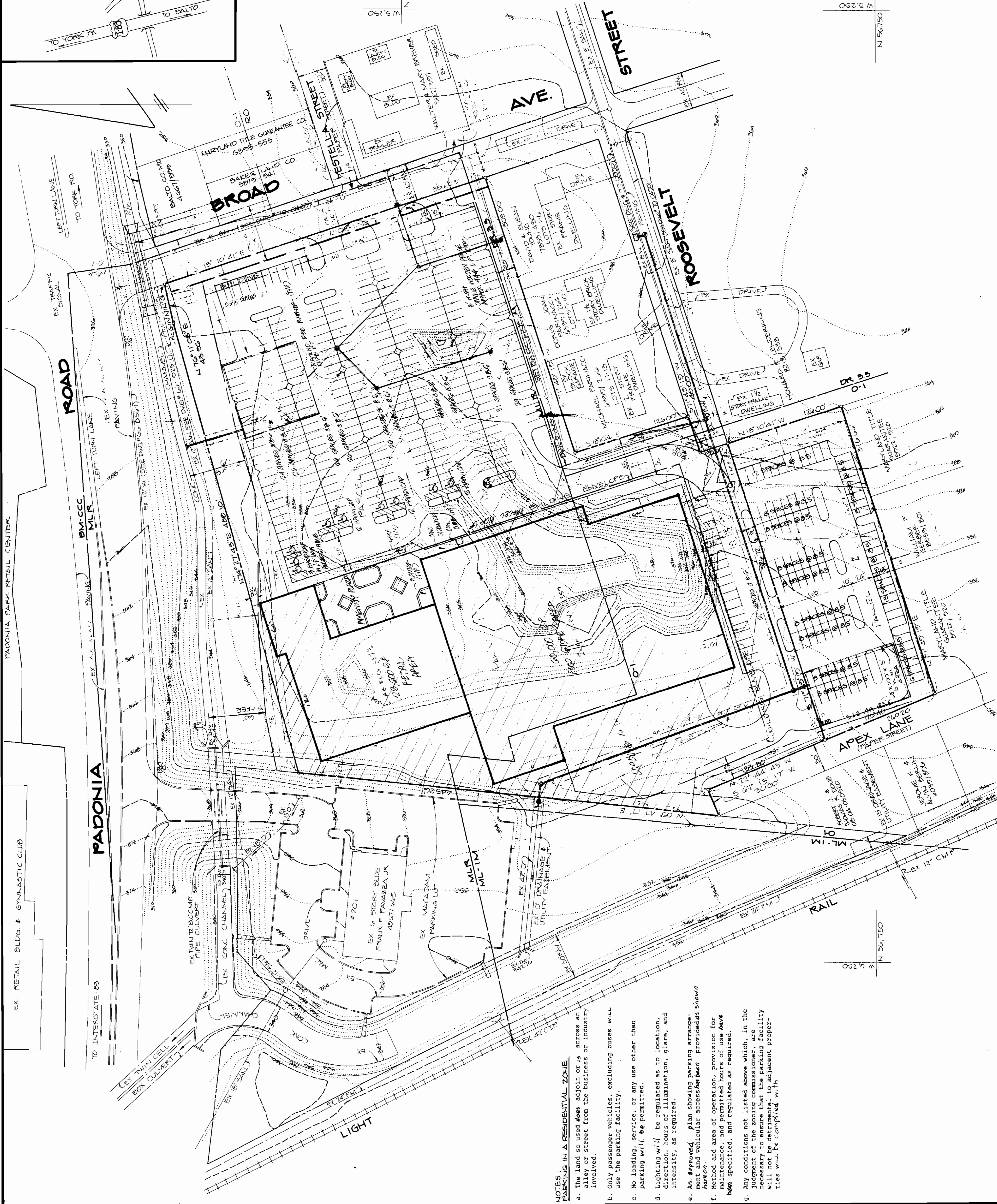
DEVELOPER
HARRISON & GRASS
100 CHESTNUT STREET
HARRISBURG, PA. 17101
(717) 231-2800

1880

DESIGNED: CA
DRAWN: PLS
CHECKED: CLK

DT	REVISIONS	DATE
005	ADDED 20.000 INMATIC NUMBER OF CATHODE TUBE FINISHES	2/2/72
006	MAX. HEIGHT OF PRT. PLUGS - 10.000 IN. TO EXCEED TOLERANCES, P. 400	2/2/72
007	20.000 INMATIC NO. 17.000	
008	REWORKING REV	
009	RAW MATS 15 4 76 P. 174 2.000 2.000 3	4-2-73

SITE PLAN
BROAD STREET MARKET
BALTIMORE COUNTY, MD
ELECT. DIST. #6
SCALE: 1" = 50'
DATE: FEB. 2, 1973
SHT. 1 OF 1



SCALE 1" = 500'

PROPERTY LINE
R/W LINE
EX CONTOUR
EX CONC C & G
ZONING LINE
MLR
0-1
356
PROP CONTOUR

AREA - PARCEL 1 - .57 AC ±
PARCEL 2 - .023 AC ±
X-ZONING (MLR)
PARCEL 1 } 0-1
PARCEL 2 } DR35
X-ZONING PARCEL 2 - 0-1
PROP ZONING - PARCEL 1 - BM
PROP ZONING - PARCEL 2 -
0-1 WITH USE PERMIT TO PARK
EX. USE - VACANT
PROP USE - SHOPPING CENTER
PROP BLDG. AREA - 63,000 SF
EST. BLDG. AREA - 63,000 SF
PARKING REQUIRED - 51,000 @ .85
HANDICAP - 5
PARKING PROVIDED - 41 ±

UTILITIES:

- 1) SANITARY SEWER IS AVAILABLE ALONG SOUTH SIDE PADONIA ROAD AND IN BROAD AVE. (CURRENTLY UNIMPROVED) AS FLOWN HEREON
- 2) WATER IS AVAILABLE IN PADONIA ROAD AND IN ROOSEVELT STREET AS SHOWN HEREON
- 3) STORM DRAINAGE, STORMWATER MANAGEMENT AND SEWAGE TREATMENT PLANT ARE IMPLEMENTED WITH BALTIMORE REGULATIONS PENDING ZONING APPROVAL AND SHOWN ON FINAL SITE PLAN
- 4) SHALL BE BITUMINOUS SURFACE, PROPERLY DRAINED WITH SUFFICIENT STONE GRAVELLY SUB-BASE. ALL INTERIOR CURBS SHOWN HEREON SHALL BE OF SUFFICIENT OR BITUMINOUS CONSTRUCTION NOT LESS THAN 6" WIDE AND 4" HIGH
- 5) ROAD IMPROVEMENTS SHALL BE AS DIRECTED BY BALTIMORE CO. CONVENTS AND SHALL BE IN COMPLIANCE WITH COUNTY SPECIFICATIONS.
- 6) PROPOSED ON SITE LIGHTS SHALL BE SO ERRECTED AS NOT TO REFLECT RAYS TOWARD RESIDENTIAL LOTS. ADDITIONALLY SAID RAYS SHALL NOT INTERFERE WITH SURROUNDING TRAFFIC. MAXIMUM HEIGHT OF PROPOSED LIGHTS TO BE 20 FEET
- 7) PROPOSED BUILDINGS SHALL BE SO ERRECTED AS NOT TO REFLECT RAYS TOWARD RESIDENTIAL LOTS. ADDITIONALLY SAID RAYS SHALL NOT INTERFERE WITH SURROUNDING TRAFFIC. MAXIMUM HEIGHT OF PROPOSED LIGHTS TO BE 20 FEET
- 8) PROPOSED BUILDINGS WILL BE ENTIRELY LOCATED WITHIN THE PRECISE BUILDING ENVELOPE SHOWN. THE 60,000 SQUARE FOOT AREA WILL BE UTILIZED FOR A FOOD STORE. THE REMAINING AREAS ARE TO BE UTILIZED FOR VARIOUS RETAIL USES PERMITTED UNDER THE BM-CO ZONE, 1. DRUG STORE AND BOOK STORE ARE THE CURRENT PROPOSED TENANTS.
- 9) MAXIMUM HEIGHT OF PROPOSED BUILDINGS - 4' FEET
- 10) HOURS OF OPERATION - 8:00 AM TO 10:00 PM
- 11) DELIVERY AND TRASH PICKUP TO BE BETWEEN 7:00 AM AND 11:00 PM
- 12) SITE SHOWN ON ATTACHED DRAWING IS CONCEPTUAL IN NATURE. DIMENSIONS AS SHOWN ARE MAXIMUM BUT VARIANCE IS SUBJECT TO CHANGE.
- 13) PAPER, STREETS AND PAPER ALLEYS THAT BISECT THE PROPERTY WILL BE PETITIONED FOR CLOSING.
- 14) A SPECIAL HEARING IS REQUESTED FOR A USE PERMIT FOR BUSINESS PARKING IN A RESIDENTIAL ZONE (O-1) PER SECTION 409.8.1-1 SUBJECT TO 409.8.1-2.
- 15) IF A PORTION OF ROOSEVELT STREET (PAPER STREET) IS NOT CLOSED A VARIANCE OF STANDARDS WILL BE REQUESTED FOR PARKING.
- 16) TOPOGRAPHY AND MAJOR VEGETATION (10% WOODED, 90% FIELD) BASED ON SOME FIELD RUN DATA AND BALTO CO 200 SCALE PHOTOGRAMETRIC AND IS SUBJECT TO REVISION AFTER SUBSEQUENT FIELD RUN DATA.
- 17) DEVELOPMENT OF SITE IS NOT EXPECTED TO RESULT IN A SUBSTANTIAL INCREASE IN SOUND, OTHER VIBRATIONS, DUST, GLASS, LIGHT AND HEAT BEYOND THAT ASSOCIATED WITH TYPICAL MEDIUM SIZE SHOPPING CENTERS.
- 18) MAJOR CHANGES IN GRADE ARE ILLUSTRATED CONCEPTUALLY BY PROPOSED CONTOUR LINES AND ARE SUBJECT TO REFINEMENT AS FINAL FIELD DATA AND ARCHITECTURE IS DEVELOPED. BACKWATER TO BE DETERMINED.
- 19) THIS SITE IS NOT IN A HISTORIC DISTRICT.
- 20) COUNCILMANIC DISTRICT # 3
- 21) PERPENDICULAR PARKING LAYOUT APPROVED BY RAHIM FAMILI ON 4-1-93
- 22) MAXIMUM NUMBER OF EMPLOYEES ESTIMATED 72

AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS



ON, MARYLAND 2
(301) 825-8120

HARRISON & GRASS
100 CHESTNUT STREET
HARRISBURG, PA. 17101
(717) 231-2800

Charles D. Stanley

DESIGNED. *h*
DRAWN. *h*

[illegible]

BROAD STREET MARKET

BALTIMORE COUNTY, MD
SCALE 1"=50'

ELECT DIST. #8

5/10/15

CR-93-305-SPH

PLAN FOR RECLASSIFICATION

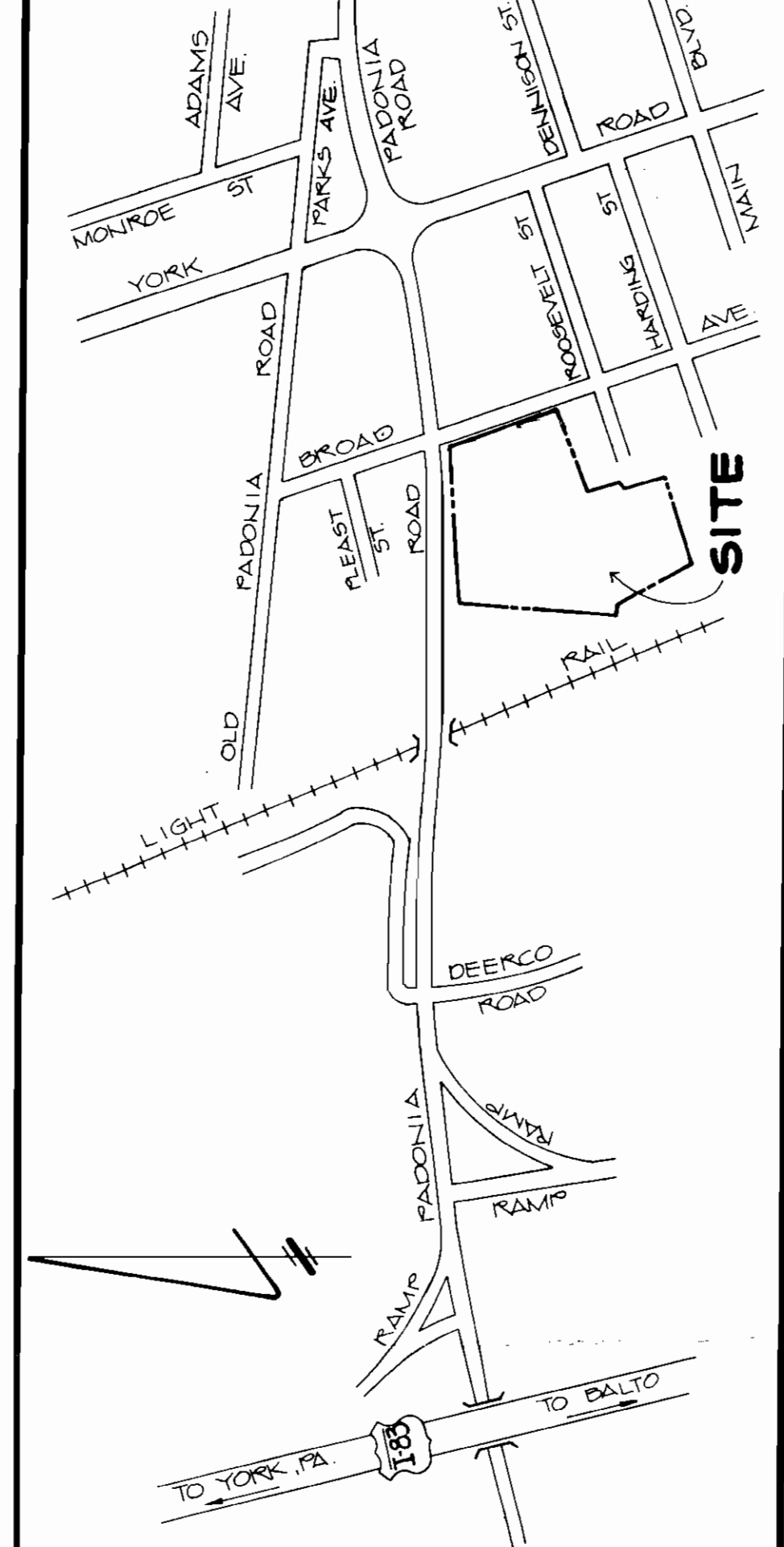
94CV2565 76/249
CASE NO. _____

df (12) July 26, 1994 - Appellees' Answering Memorandum fd.

mar(13) Aug 9, 1994 Reply memorandum of Michael and Penny Gerber, to Petition
for judicial review, fd. (rec'd 8/5/94)

September 1, 1994 Hon. Thomas J. Bollinger hearing had written opinion and orders to be filed.

PH(14) Oct 14, 1994 Opinion and Order of Court Remanding case to the Board of Appeals for further
proceedings, etc, fd. (TJB)



VICINITY MAP

SCALE 1" = 500'

LEGEND

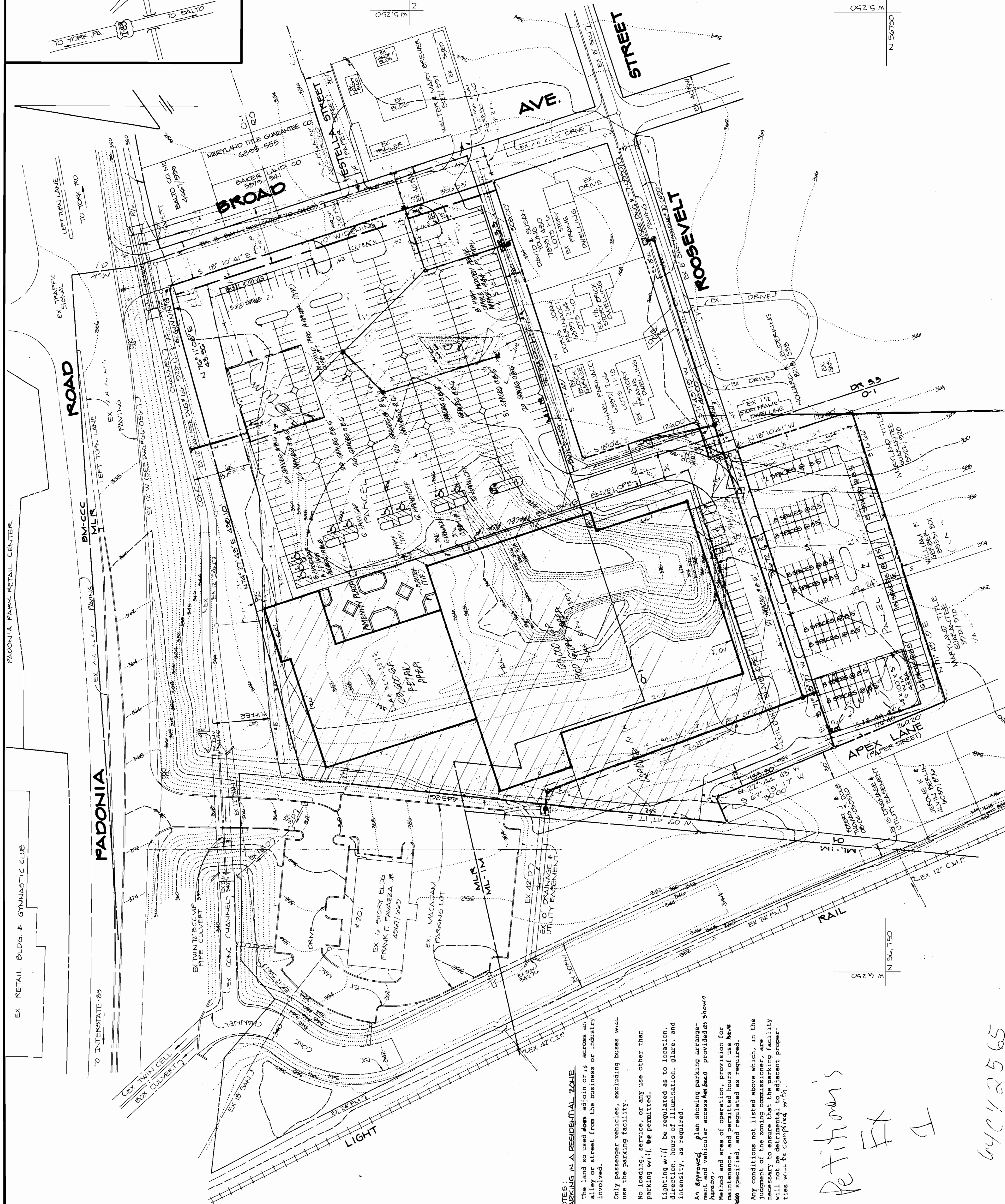
- PROPERTY LINE
- EXISTING LOT
- EXISTING CONTOUR
- EXISTING CONC. CURB
- EXISTING ZONING LINE
- EXISTING PROFILE
- PROPOSED LOT
- PROPOSED CONTOUR
- PROPOSED CONC. CURB
- PROPOSED ZONING LINE
- PROPOSED PROFILE

SITE DATA

- AREA - PARCEL 1 - 1.57 AC ±
- AREA - PARCEL 2 - 0.03 AC ±
- EX. ZONING - MLR
- PARCEL 1 - 0-1
- PARCEL 2 - DR 3.5
- EX. ZONING - PARCEL 2 - 0-1
- PROF. ZONING - PARCEL 1 - BM
- PROF. ZONING - PARCEL 2 - BM
- EX. USE - VACANT
- PROF. USE - SHOPPING CENTER
- PROF. BLDG. AREA - 83,600 SF
- PARKING REQUIRED - 51,000 @ 0.61 X 5 = 410
- HANDICAP SPACES REQUIRED - 5
- PARKING PROVIDED - 422
- HANDICAP SPACES PROVIDED - 5
- WITH 1 VAN-ACCESSIBLE SPACE
- TYPICAL SPACE - 8.5 X 18

GENERAL

- UTILITIES:
 - A) SANITARY SEWER IS AVAILABLE ALONG SOUTH SIDE PADONIA ROAD AND IN BROAD AVE (CURRENTLY UNIMPROVED) AS SHOWN HEREON.
 - B) WATER IS AVAILABLE IN PADONIA ROAD AND IN ROOSEVELT STREET AS SHOWN HEREON.
 - C) STORMWATER MANAGEMENT AND SEWAGE TREATMENT PLANT SHALL BE DESIGNED IN COMPLIANCE WITH BALTIMORE COUNTY REGULATIONS PENDING ZONING APPROVAL AND SHOWN ON FINAL SITE PLAN.
- PAVING:
 - SHALL BE BITUMINOUS SURFACE, PROPERLY DRAINED WITH SUFFICIENT STONE CRUSHER SUBBASE. ALL INTERIOR CURBS SHOWS HEREON SHALL BE 6" CONCRETE OR BITUMINOUS CONSTRUCTION NOT LESS THAN 4" THICK.
 - ROAD IMPROVEMENTS SHALL BE AS DIRECTED BY BALTIMORE COUNTY COMMENTS AND SHALL BE IN COMPLIANCE WITH COUNTY SPECIFICATIONS.
- LIGHTING:
 - PROPOSED ON SITE LIGHTS SHALL BE 50 FEET AS NOT TO REFLECT RAYS TOWARD RESIDENTIAL LOTS. ADDITIONAL SOD RAYS SHALL NOT INTERFERE WITH SURROUNDING TRAFFIC. MAXIMUM HEIGHT OF PROPOSED LIGHTS TO BE 20 FEET.
- PROPOSED BUILDINGS WILL BE ENTIRELY LOCATED WITHIN THE PRECISE BUILDING ENVELOPE SHOWN. THE 40,000 SQUARE FOOT AREA WILL BE UTILIZED FOR A FOOD STORE. THE REMAINING AREAS ARE TO BE UTILIZED FOR VARIOUS RETAIL USES PERMITTED UNDER THE BM-CDC ZONE, A DRUG STORE AND BOOK STORE ARE THE CURRENT PROPOSED TENANTS.
- MAXIMUM HEIGHT OF PROPOSED BUILDINGS - 40 FEET
- HOURS OF OPERATION - 8:00 AM TO 10:00 PM.
- DELIVERY AND TRASH PICKUP TO BE BETWEEN 7:00 AM AND 11:00 PM
- SITE SIGNAGE SHOWN ON ATTACHED DRAWING IS CONCEPTUAL IN NATURE, DIMENSIONS AS SHOWN ARE MAXIMUM BUT VORADAGE IS SUBJECT TO CHANGE.
- PAPER STREETS AND PAPER ALLEYS THAT BISECT THE PROPERTY WILL BE PETITIONED FOR CLOSING.
- A SPECIAL HEARING IS REQUESTED FOR A USE PERMIT FOR BUSINESS PARKING IN A RESIDENTIAL ZONE (0-1) PER SECTION 403.5, B-1 SUBJECT TO 403.5 B-2.
- IF A PORTION OF ROOSEVELT STREET (PAPER STREET) IS NOT CLOSED A VARIANCE OF STANDARDS WILL BE REQUESTED FOR PARKING.
- TOPOGRAPHY AND MAJOR VEGETATION (10% WOODED, 90% FIELD) BASED ON SOME FIELD RUN DATA AND BALTO CO 200 SCALE PHOTOGRAMMETRIC AND IS SUBJECT TO REVISION AFTER SUBSEQUENT FIELD RUN DATA.
- DEVELOPMENT OF SITE IS NOT EXPECTED TO RESULT IN A SUBSTANTIAL INCREASE IN SOUND, OTHER VIBRATIONS, DUST, ODORS, GASES, LIGHT AND HEAT BEYOND THAT ASSOCIATED WITH TYPICAL MEDIUM SIZE SHOPPING CENTERS.
- MAJOR CHANGES IN GRADE ARE ILLUSTRATED CONCEPTUALLY BY PROPOSED CONTOUR LINES AND ARE SUBJECT TO REFINEMENT AS FINAL FIELD DATA AND ARCHITECTURE IS DEVELOPED. BACKWATER TO BE DETERMINED.
- THIS SITE IS NOT IN A HISTORIC DISTRICT.
- COUNCILMANIC DISTRICT # 3
- PERPENDICULAR PARKING LAYOUT APPROVED BY RAHIM FAMILI ON 4-11-93.
- MAXIMUM NUMBER OF EMPLOYEES ESTIMATED 72



NOTES:

- THE LAND SO USED DOES ADJOIN OR IS ACROSS AN ALLEY OR STREET FROM THE BUSINESS OR INDUSTRY INVOLVED.
- ONLY PASSENGER VEHICLES, EXCLUDING BUSES WILL USE THE PARKING FACILITY.
- NO LOADING, SERVICE, OR ANY USE OTHER THAN PARKING WILL BE PERMITTED.
- LIGHTING WILL BE REGULATED AS TO LOCATION, DIRECTION, HOURS OF ILLUMINATION, GLARE, AND INTENSITY, AS REQUIRED.
- AN APPROVED PLAN SHOWING PARKING ARRANGEMENTS AND VEHICULAR ACCESS HAS BEEN PROVIDED AS SHOWN HEREON.
- METHOD AND AREA OF OPERATION, PROVISION FOR MAINTENANCE, AND PERMITTED HOURS OF USE HAVE BEEN SPECIFIED, AND REGULATED AS REQUIRED.
- ANY CONDITIONS NOT LISTED ABOVE WHICH, IN THE JUDGMENT OF THE ZONING COMMISSIONER, ARE NECESSARY TO ENSURE THAT THE PARKING FACILITY WILL NOT BE A NUISANCE TO ADJACENT PROPERTIES WILL BE COMPLIED WITH.

Petitioner's
EX
1

64012565

GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.

CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(301) 825-8120



DEVELOPER
HARRISON & GRASS
100 CHESTNUT STREET
HARRISBURG, PA. 17101
(717) 231-2800

DESIGNED: E.A.
DRAWN: J.P.
CHECKED: J.P.

BY	REVISIONS	DATE
WKS	1. REVISION: 1.00	11/11/93
WKS	2. REVISION: 2.00	11/11/93
WKS	3. REVISION: 3.00	11/11/93
WKS	4. REVISION: 4.00	11/11/93
WKS	5. REVISION: 5.00	11/11/93
WKS	6. REVISION: 6.00	11/11/93
WKS	7. REVISION: 7.00	11/11/93
WKS	8. REVISION: 8.00	11/11/93
WKS	9. REVISION: 9.00	11/11/93
WKS	10. REVISION: 10.00	11/11/93

PLAN FOR RECLASSIFICATION

SITE PLAN

BROAD STREET MARKET

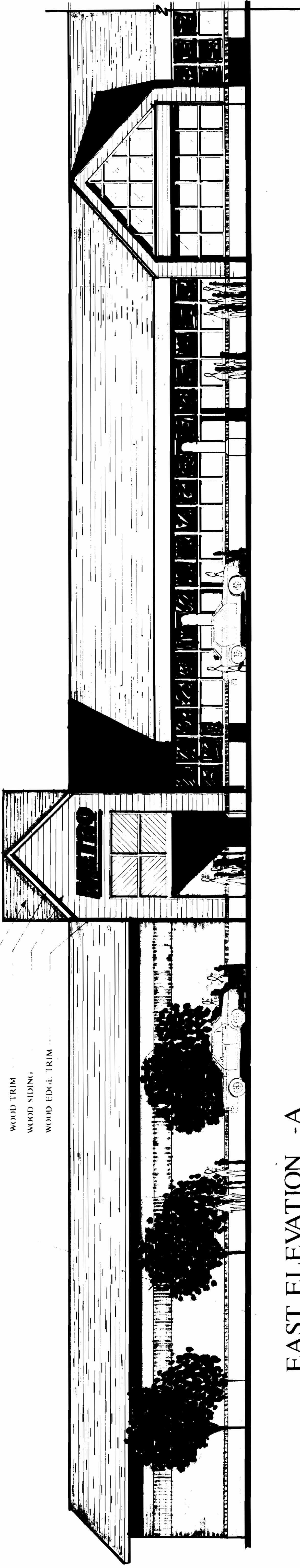
BALTIMORE COUNTY, MD
SCALE: 1" = 50'

ELECT DIST #8
DATE: FEB 2, 1993

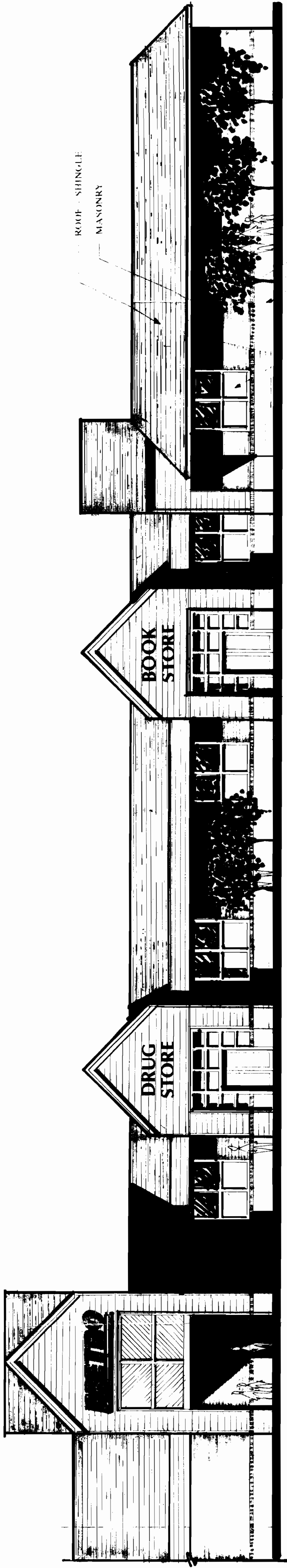
SHEET 1 OF 1

Revisions
Ex 2a

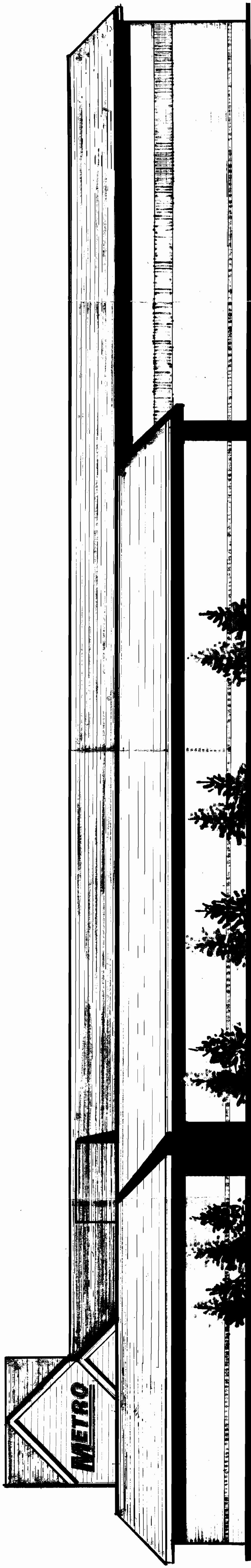
ROOF - SHINGLE
WOOD TRIM
WOOD SIDING
WOOD EDGE TRIM



EAST ELEVATION -A



EAST ELEVATION -B



NORTH ELEVATION

BROAD STREET MARKET

Kenn and Associates Inc. Architecture
200 West North Street
Baltimore, Maryland 21201
410 224 0900
410 539 4921 Fax
Interior Design
Facilities Management



Revised for
Construction
01/20/03
02/18/03
03/18/03
04/18/03
05/18/03
06/18/03
07/18/03
08/18/03
09/18/03
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ELEVATIONS

1 IN THE MATTER OF * BEFORE THE
2 BAKER LAND CORPORATION, et al * COUNTY BOARD OF APPEALS
3 property owner, * OF BALTIMORE COUNTY
4 HARRISON & GRASS * Case No. CR-93-305-SPH
5 * September 29, 1993

6 * * * * *

7 The above-entitled matter came on for
8 hearing before the County Board of Appeals of Baltimore
9 County at the Old Courthouse, Towson, Maryland 21204 at 10
10 o'clock a.m., September 29, 1993.

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20 Reported by:

21 C.E. Peatt

1 IN THE MATTER OF * BEFORE THE
2 BAKER LAND CORPORATION, et al * COUNTY BOARD OF APPEALS
3 property owner, * OF BALTIMORE COUNTY
4 HARRISON & GRASS * Case No. CR-93-305-SPH
5 * October 19, 1993

6 * * * * *

7 The above-entitled matter came on for
8 hearing before the County Board of Appeals of Baltimore
9 County at the Old Courthouse, Towson, Maryland 21204 at 10
10 o'clock a.m., October 19, 1993.

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20 Reported by:

21 C.E. Peatt

CURRICULUM VITAE
NORMAN E. GERBER, AICP

35 Pickburn Court
Cockeysville, MD 21030

C.C. Ex #15

Business
(410)667-4543

Home
(410)667-4232

**PROFESSIONAL
EXPERIENCE**

Preparation of Master Plans and Land Use Regulations

Prepared comprehensive, policy, small-area, facility and revitalization plans, capital programs and capital budgets.

Prepared zoning and development ordinances, agricultural land preservation and historic district regulations and growth management programs.

Conducted demographic, transportation, economic and market studies.

Implementation of Plans and Programs

Reviewed and approved new development.

Enforced zoning, agricultural and historic preservation regulations.

Negotiated plan and facilities projects with community groups, local and state legislative bodies and private sector business.

Other

Testified before local, state and national boards, commissions and legislatures on the behalf of plans and programs.

Testified before boards of appeals, circuit courts and the U. S. Tax Court of Appeals on land use issues.

Prepared RFP's, grant applications, selected consultants and administered contracts.

**WORK
EXPERIENCE**

2/88 to present

NORMAN E. GERBER, AICP, Cockeysville, MD

Principal

Private practice as planning consultant specializing in land planning, preparation of land use regulations, property evaluation for potential use and expert testimony in zoning and development issues.

2/89 to 10/90

The City of Laurel, Laurel, MD

The Office of Planning and Zoning

Director

Administered the planning program and enforced the zoning code.



<u>9/80 to 1/88</u>	<u>Baltimore County</u> , Baltimore County Maryland The Office of Planning and Zoning Director Administered the planning program, and the budgets of the Office of Zoning and the Peoples Council. Baltimore County Baltimore County Maryland The Office of Planning and Zoning
<u>1977 to 1980</u>	The Office of Planning and Zoning Deputy Director Designed and supervised the planning program.
<u>1956 to 1977</u>	The Office of Planning and Zoning Various titles Performed a variety of planning studies and services.

EDUCATION

Morgan State University, Baltimore, MD
Urban & Regional Planning Masters 1975

The Johns Hopkins University, Baltimore, Md
Bachelor of Science in Engineering, 1963
Minor: Civil Engineering

PROFESSIONAL SOCIETIES

<u>1/69 to Present</u>	<u>American Planning Association</u> Past member of the Board of Directors and treasurer of the Maryland Chapter.
<u>6/69 to Present</u>	<u>American Institute of Certified Planners</u>
<u>1975 to 1988</u>	<u>The Maryland Association of Planning Officials</u> Past President and member of the Board of Directors
<u>2/89 to 10/90</u>	<u>Technical Advisory Committee, the Patuxent River Commission</u>
<u>6/89 to 10/90</u>	<u>The Patuxent River Commission</u> Alternate Member (for the Mayor)

PERSONAL

<u>1985 to 1988</u>	<u>The University of MD at Baltimore</u> Advise on planning program
<u>1992 to Present</u>	<u>The Baltimore County Commission for the Disabled, Vice Chairman of the Transportation Committee</u> Coordinates activities of providers of services.

REFERENCES	Furnished on request.

DATE: 10/19/03 (2nd DAY)

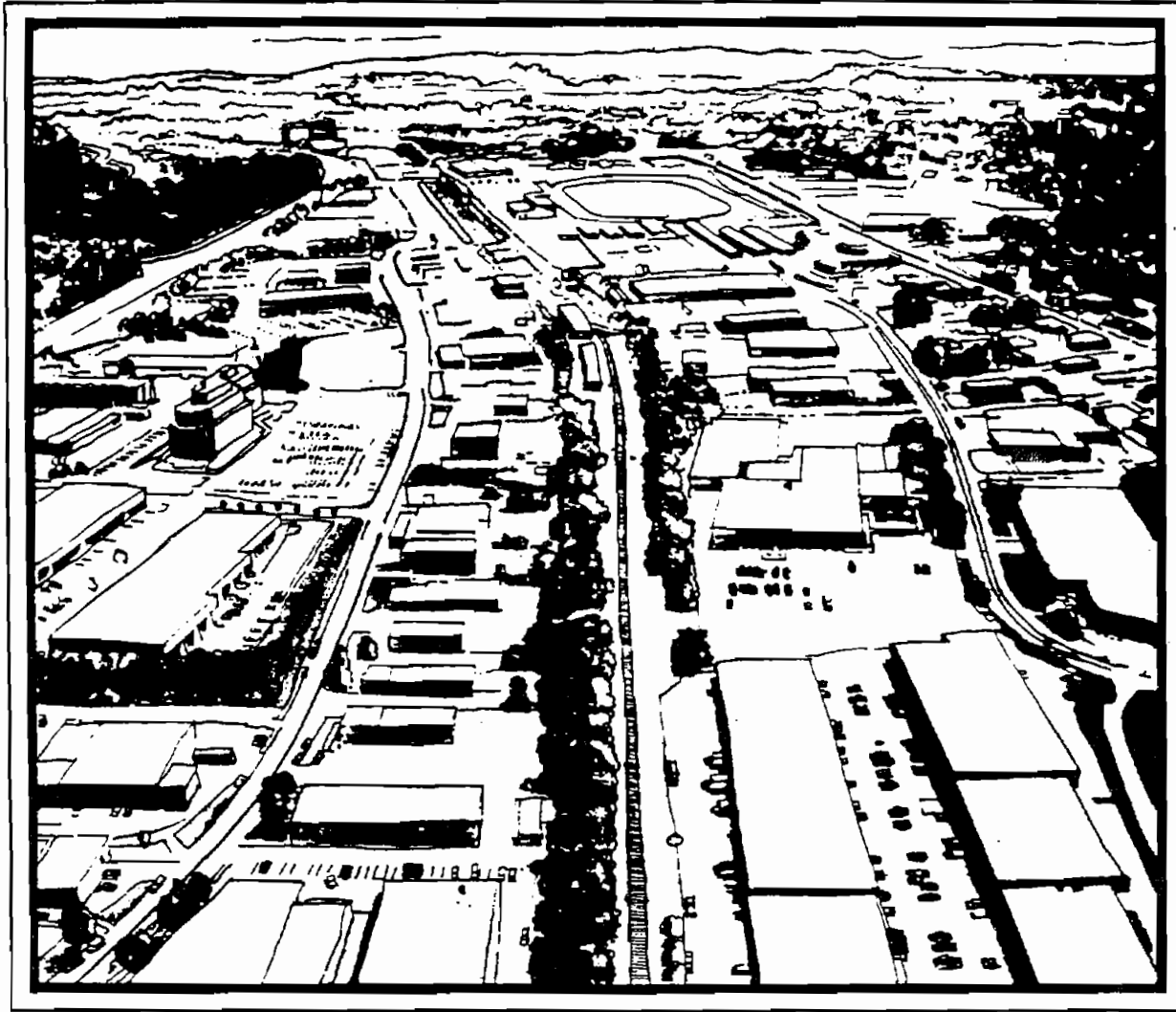
PEOPLE'S COUNSEL'S SIGN IN SHEET

CASE: CR 93-305-SPH (BACE EXHIBIT)
MARSHALL GRASS

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

[illegible]

C.C. Gph
#14



•Baltimore County •Focus on Community•

HUNT VALLEY/TIMONIUM

Redevelopment Study

As Adopted by the Baltimore County Planning Board on April 15, 1993



Executive Summary

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PETITION FOR JUDICIAL REVIEW * IN THE
IN THE MATTER OF BAKER LAND *
COMPANY, et al. * CIRCUIT COURT FOR
FROM THE * BALTIMORE COUNTY
COUNTY BOARD OF APPEALS *
* Case No. 76/245/94-CV-02565
* * * * *

PEOPLE'S COUNSEL'S MOTION TO ALTER OR AMEND JUDGMENT
AND REQUEST FOR HEARING

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, by Peter Max Zimmerman and
Carole S. Demilio, in accordance with Maryland Rule 2-534, files this
Motion to Alter or Amend the Judgment entered by this Court on October
12, 1994, and requests as follows:

1. That the Court clarify its ruling on the question of the
sufficiency or strength of the evidence to satisfy the "mistake"
standard established by prevailing case law and Baltimore County Code
Section 2-356(j). It is unclear whether the Court is reserving that
issue for further consideration after the remand, or whether the Court
implies any opinion or resolution of that issue.

2. That the Court similarly address the issue of Petitioner's
failure to delineate the flood plain as required by Baltimore County
Code Section 2-356(1)(1).

3. That the Court clarify in an Amended Order that it is
reversing, as well as remanding, the decision of the County Board of
Appeals in this matter on the issues raised in this Motion and all
issues raised in the appeal of the administrative decision of the County
Board of Appeals dated February 24, 1994.

4. PEOPLE'S COUNSEL is concerned that, in the absence of
clarification, a question may arise whether the remand forecloses

I. EXECUTIVE SUMMARY

The Hunt Valley/Timonium Redevelopment Study was undertaken by the Baltimore County Office of Planning and Zoning as one of several community action plan areas identified for study by the Baltimore County Master Plan 1989-2000. The Hunt Valley/Timonium (HV/T) area is one of the most important employment areas in the county, employing over 10% of the county's total workforce, and approximately 1/4 of the county's manufacturing workers. The majority of the area developed in the 1950's through the 1980's as a suburban business location, now almost built-out.

New transportation improvements have been planned which are likely to spur the development of the few remaining vacant parcels, and even more importantly, the redevelopment of the more marginal or transitional properties into developments which are larger, denser and more urban in nature. It is a County objective, as stated in the Master Plan, to maximize its investment in these transportation improvements by promoting development which can optimize, but not overburden their use.

The new light rail service, in particular, presents opportunities to plan land uses at the stop locations which will support transit use. Mixed-use development projects provide the greatest opportunity to maximize transit usage. The association of medium density residential uses with these mixed use developments, including some affordable housing for moderate income families and seniors, provides opportunities for convenient pedestrian access to the transit system and lessens the need for the private auto. Some locations in the HV/T study area which may have potential for mixed-use development are identified for future site specific studies - these areas include Timonium Heights West, the Old Padonia Road-Texas area, and Cockeysville. Other future potential mixed use redevelopment areas include the Hunt Valley Mall, and the Timonium Fairgrounds, if it should ever redevelop.

Equally important in promoting new and appropriate growth within the study area is the protection and enhancement of the surrounding residential communities. The community conservation strategies recommended by the study include zoning strategies which guide growth along the York Road corridor, and limit the intrusion of non-residential uses into the communities.

New development and redevelopment also offers opportunities to help improve the area's natural environment. Because the bulk of the area was developed before the importance of preserving natural features was recognized, little effort was made to preserve woodland, wetlands or streams. The Department of Environmental Protection and Resource Management (DEPRM) is working on developing strategies for stream restoration, groundwater protection and regional stormwater management.

A complete listing of the recommendations of this plan can be found in the last section entitled "Plan Implementation." Some additional highlights of these recommendations are:

1. Perform transportation studies to include traffic forecasts, recommendations for transportation policies and improvements, methods of financing future improvements and pedestrian/bicycle access.
2. Develop strategies and incentive packages to encourage transit use.
3. Require transportation impact studies for any large scale development/redevelopment proposals which would also address potential conflicts with existing truck traffic.
4. Designate Beaver Dam, McCormick and Timonium Roads as arterials which will limit the amount of retail development permitted access to these roads and thereby facilitate a free flow of traffic.

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5. Undertake a York Road Streetscape Study to include recommendations for limiting curb cuts, burying overhead wires, improving landscaping, controlling signage, and buffering adjoining residential uses.
 6. Adopt advisory design guidelines for office, retail and industrial development.
 7. Amend the permitted uses in the manufacturing zones to allow day care, health clubs and recreational facilities.
 8. Develop a greenway system with jogging and bike paths to help preserve sensitive environmental areas as well as provide recreational opportunities, and alternative transportation routes for pedestrians and bike riders.

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This Hunt Valley Timonium Redevelopment Study is intended to be a first step - laying the groundwork for future studies which will provide in-depth examination and recommendations for specific issues. The continuing development and redevelopment of the study area will be monitored, and periodic updates of the plan will be performed in association with the Comprehensive Zoning Map Process or the Master Plan.

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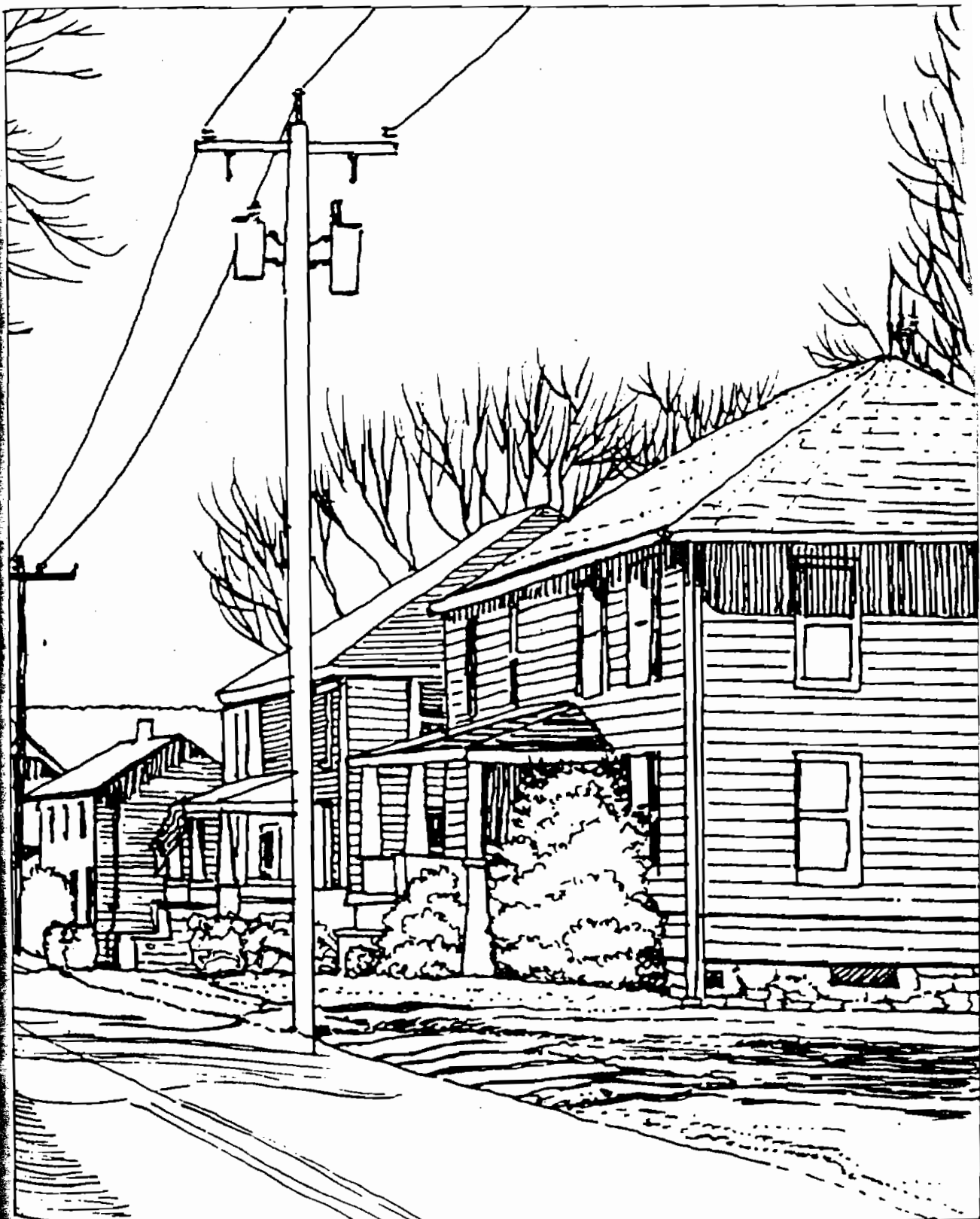
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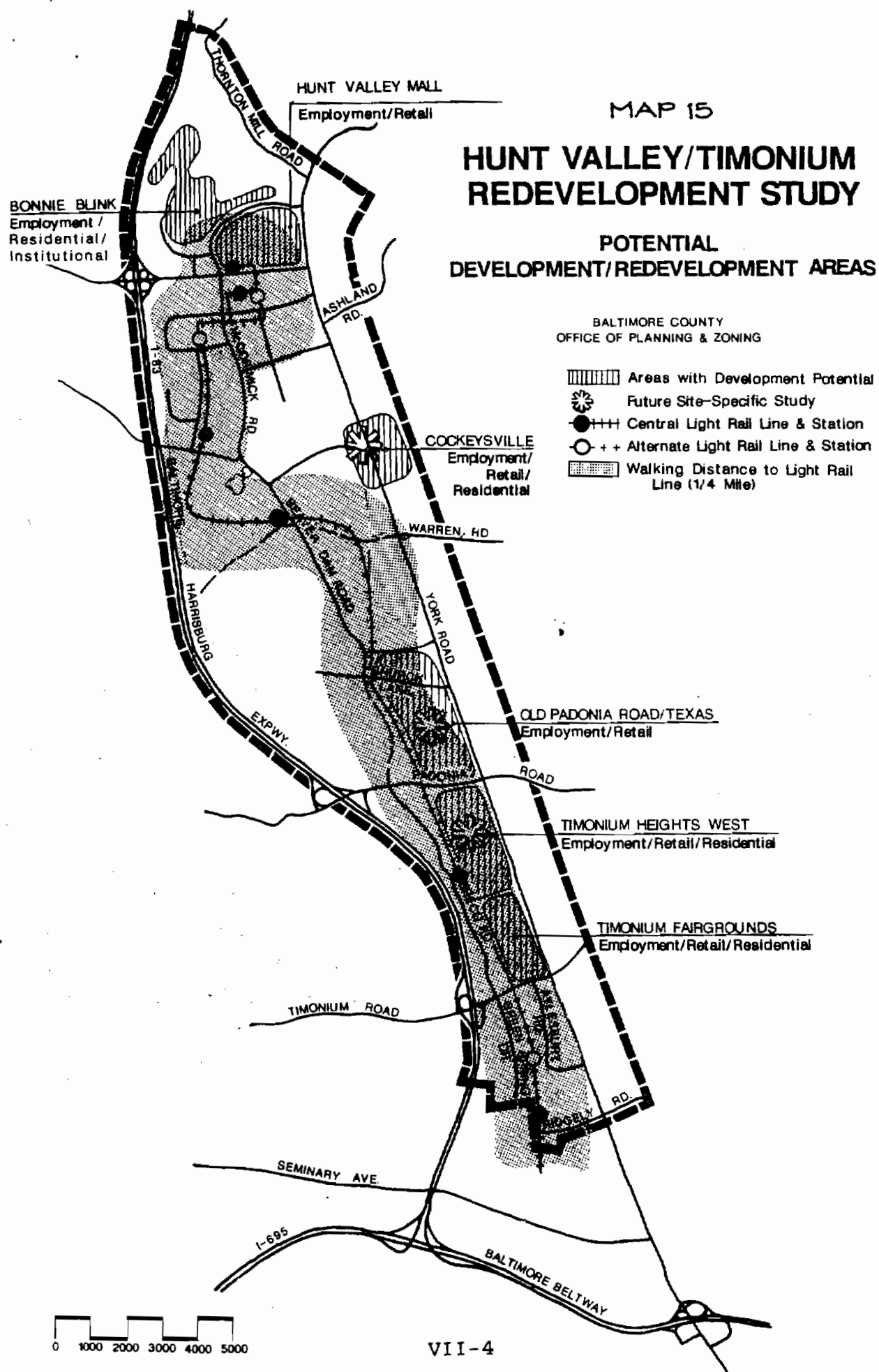
VII. Development & Redevelopment Opportunities

VII. DEVELOPMENT/REDEVELOPMENT OPPORTUNITIES

The Hunt Valley/Timonium study area has become almost fully developed. There is only a limited amount of vacant land available for development. Much of this land is owned by major corporations and is likely to be used for the expansion of their own facilities.

Within the surrounding area, there is very little vacant land available for future development of office, industrial, retail or non-rural residential uses. County policy limits additional development of these uses north of the study area, above the Urban Rural Demarcation Line. Two small development areas zoned for business uses, Loveton and Highlands Corporate Centers, lie north of the study area, with most of its new development directed at office uses. Mays Chapel North, west of I-83, is the last large parcel in the area for development of urban residential uses.

Redevelopment of land within the study area to higher density uses is appropriate because the transportation system improvements have already been planned. In fact, the completion of the road improvements and the introduction of light rail into the study area is very likely to spur demands for development of the existing vacant parcels, intensification of existing uses, and redevelopment of the more marginal, older and less valuable properties. The areas which have the greatest potential for development/ redevelopment are shown on the accompanying map.



The challenge of development growth with the introduction of a light rail system is to plan a rational study area

Issue: (

Prior to extensive study of a light rail system, planning, mental a

Typically, transport transit radius, however, stop, use is

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TIMONIUM STUDY

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The challenge of this study is to recommend land uses for these potential development/redevelopment areas which will provide economic growth while maximizing the County's investment in infrastructure. The introduction of light rail in particular provides an opportunity to plan land uses which can optimize its use, and thereby support a rational solution to the traffic and environmental problems of the study area and the County.

Issue: Optimizing light rail ridership through land use.

Prior to beginning the Hunt Valley/Timonium Study, OPZ undertook extensive research into the land use implications of the introduction of a light rail system. In addition to a review of available literature, planning officials of other jurisdictions with light rail systems were contacted. Experts agree that the most successful light rail systems are those which are planned comprehensively, with the planning of the rail coordinated with land use and other environmental and economic factors.

Typically, there are changes in land use associated with a major transportation improvement such as the implementation of light rail transit. In many cases, development potential exists within a ¼ mile radius, or walking distance of light rail stops. However, there is overwhelming evidence that suggests that the presence of a light rail stop, in and of itself, is not enough to stimulate development. Land use is shaped by many other factors, including:

1. availability of land with development potential
2. public policies toward development
3. real estate market condition
4. zoning of adjacent properties
5. relative placement of stations
6. accessibility of site
7. transit alignment and ridership potential

Where the light rail will pass through stable, fully-developed employment areas, such as the Hunt Valley Business Community, the County should assist in the provision of adequate walkways, lighting, etc, to facilitate the movement of employees from the light rail (or bus) stop to their place of employment.

In other parts of the study area, however, the light rail will pass through vacant, marginal or transitional areas which are likely to be developed or redeveloped. Here, the County should assure that new development is of a nature that will provide the greatest benefit.

Land use planning has the potential to create an environment more conducive to light rail usage. By actively promoting higher density development adjacent to the light rail, ridership can be increased, and traffic congestion reduced. In addition, such development can be a significant source of revenue, improving the local economy and quality of life. Development adjacent to the light rail stop is the most effective way to capitalize on the benefit potential of light rail transit.

Mixed use types of development -- which would provide residences, employment, and shopping in the same project -- allows the greatest opportunity for people to maximize their transit use in the course of a day. Light rail stops are relatively inexpensive to construct and can occur more frequently along the route than heavy rail transit. Research has shown that development potential around a light rail stop can be threatened, however, if the stops are located closer than 1/4 mile of each other.

There are a number of strategies which can be employed to spur development, including parking controls -- reducing the amount of parking spaces available at destinations to increase ridership, -- air rights development, public lease or sale of land, tax increment financing, zoning revisions, provisions for pedestrian amenities, the creation of special transit development districts or authorities, and density bonuses.

One of the private full advantages that as the Hunt Valley would typically commercial

In The Hunt Valley Doug Ke development community environment location

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One of the best strategies is joint development, where public and private resources are coordinated to build a project that will take full advantage of a public transportation facility and produce benefits that can be enjoyed by both sectors. In a suburban area, such as the Hunt Valley/Timonium corridor, joint development projects would typically take the form of residential and mixed use office/commercial complexes.

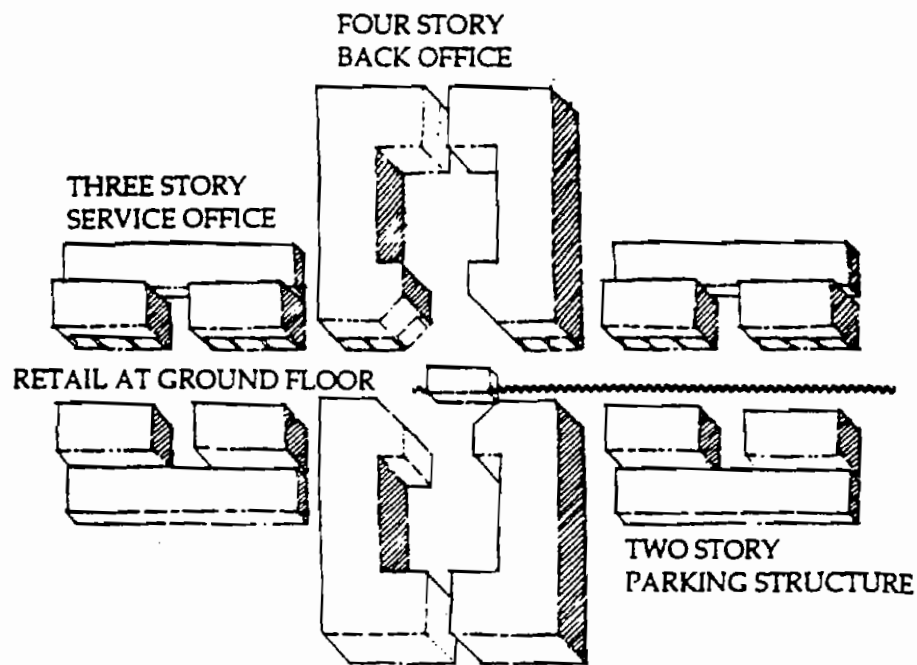
In The Pedestrian Pocket Book, A New Suburban Design Strategy,

Doug Kelbaugh promotes small, pedestrian-scale mixed use development oriented to a transit line as an alternative form of community providing attractive, efficient and highly livable environments. This type of development could have merit in some locations in the Hunt Valley/Timonium study area.

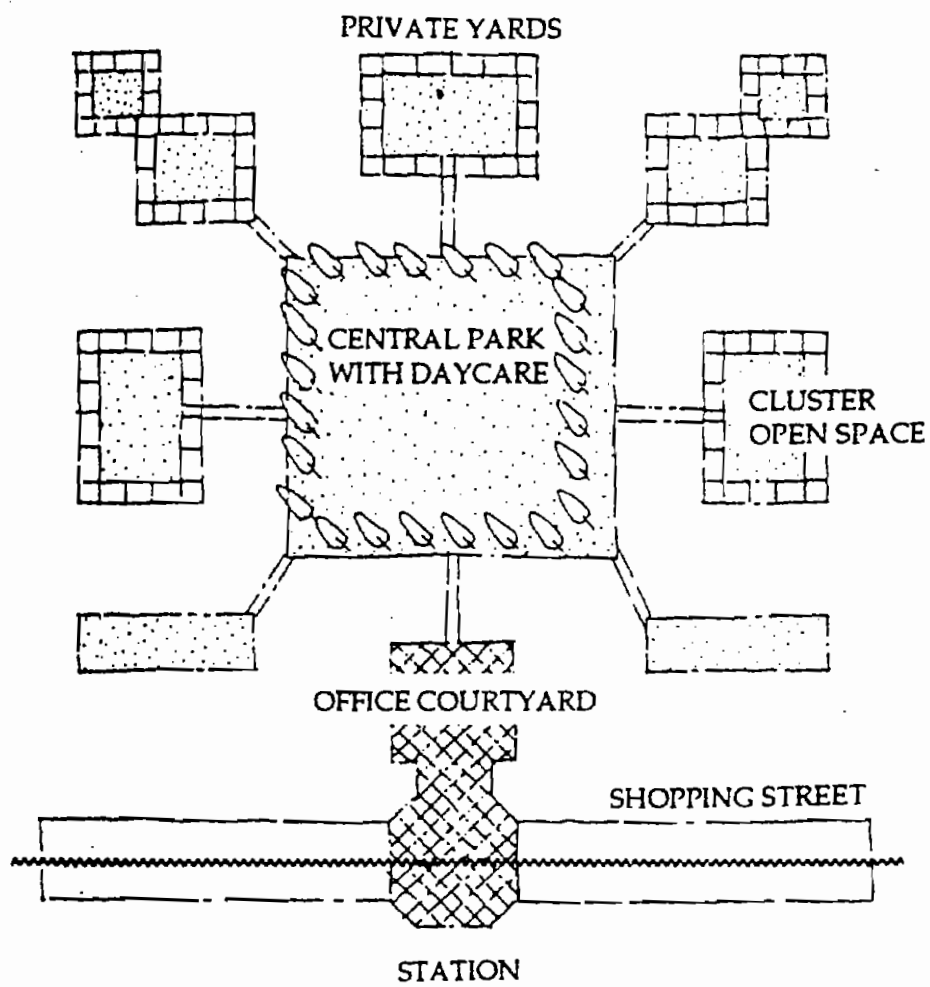
Legg Mason Realty Group examined the opportunities for development at the three proposed transit stops in the southern half of the study area--Ridgely Road, Timonium South and Timonium Fairgrounds. They determined the Timonium Fairgrounds stop to have the most development potential because it is the largest site, is close to a growing office/industrial area and has under-utilized parcels nearby. The other two sites have development potential, but will probably develop more slowly because of existing and adjacent land uses. The Hunt Valley Mall site also has considerable development potential if the light rail line can be effectively linked to it.

LMRG examined the development potential for residential and mixed office/retail/residential development at other locations near the light rail line. Residential development opportunities are limited because of the well-established industrial and commercial land uses along the light rail line in the study area and because of specific site conditions. Timonium Heights West appears to offer the best opportunity for new residential development but the existing residents of the area would have to agree to more intensive development in their community in order to provide development opportunities.

The commercial center of the Pedestrian Pocket mixes large ground-floor retail, restaurants and smaller business. Retail faces the light rail line, and all employees are within walking distance of the station. Cars circulate on the shopping street and have access to parking structures.



The Pedestrian Pocket provides diverse open space: private yards for families, semi-public space for a group of houses, central parks to be used by all, and courtyards and a "Main Street" shopping area for the extended population. The central park offers a lunch place for workers, an after school playground for the kids, a site for shared day-care facilities, and an evening or weekend focus for the whole community. Walking paths connect the entire site without requiring the pedestrian to cross any streets.



FROM: THE PEDESTRIAN POCKET BOOK, A NEW SUBURBAN DESIGN STRATEGY,
Doug Kelbaugh, ed., Princeton Architectural Press, New York,
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IN THE MATTER OF	*	IN THE CIRCUIT COURT
BAKER LAND COMPANY, ET AL	*	FOR BALTIMORE COUNTY
FOR RECLASSIFICATION	*	CASE NO. 94 CV 2565
	*	

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OPINION AND ORDER

This matter comes before the Court as a Petition for Judicial Review of a decision reached by the Baltimore County Board of Appeals. The Petition involves a 6.57 acre parcel of land located on the southwest corner of Padonia Road and Broad Avenue between Interstate 83 and York Road. Currently the site is zoned as a combination of the following: M.L.R. (manufacturing, light, restricted - 4.84 acres), O-1 (office building - 1.51 acres), and D.R. 3.5 (density residential, 3.5 dwellings per acre - .22 acres). Baker Land Company, et al, Appellee, has requested that the site be reclassified to B.M. (business, major) zoning.

The decision of the Board of Appeals and subsequent review by this Court are governed by §2-356 of the Baltimore County Code, which sets forth the procedures and standard applicable to requests for zoning reclassification. Additionally, pursuant to Maryland Rule 7-209, this Court may "dismiss the action for judicial review or may affirm, reverse, or modify the agency's order or action, remand the action to the agency for further proceedings, or an appropriate combination of the above."

FILED OCT 14 1994

Two other locations in the study area may also offer opportunities for development/redevelopment in association with the light rail. One is the Texas-Old Padonia Road area which has been experiencing small, piecemeal office development, and which will become even more attractive for development once Beaver Dam Road is extended. There are also some larger, vacant parcels in this area which may soon be available for development.

RE The other location is Cockeysville. While not adjacent to the light rail, Cockeysville is likely to face strong redevelopment pressures now that the underpass at York road is removed. The opportunity exists to provide mixed use development, including some residential, which could be tied to the light rail through shuttle bus service, or, at some future date, extensions of the light rail on the existing rail line.

LMRG suggested two other alternatives which may be effective in increasing ridership and reducing traffic congestion. While the study area itself does not include much residential development, the surrounding area contains significant residential land uses. High quality feeder buses, walkway and road links between the adjacent residential areas and the light rail line is one alternative for promoting ridership on the line.

CE In addition, a considerable amount of traffic in the Hunt Valley/ Timonium study area arises not from commuter trips into the area but from trips throughout the business day to locations within the area. A second alternative for promoting ridership is the development of retail and service businesses, along with attractive public spaces, adjoining the light rail line with an effective link between the light rail line and Hunt Valley Mall. If this is undertaken in conjunction with a free or reduced-fare zone in the Hunt Valley/ Timonium study area, it could encourage use of the transit line by area workers during the day. This approach could be further enhanced by transportation and parking management programs, directing commuters to central parking facilities near the light rail line who would then

use light rail service to reach their employer. With this approach the County would work to link large parking areas to office and industrial locations which might be required to limit the parking provided for employees or charge for parking near their site.

Action 1: Create zoning which will permit higher density mixed use developments in manufacturing zones in association with a transit stop, and with controls against negative impacts on existing residential communities. Possible alternatives are:

a) Create an overlay district which could be applied only in manufacturing zones within walking distance ($\frac{1}{4}$ mile) of a transit stop. The zone would allow increased density, and increased commercial use and residential uses in exchange for increased design standards. The district would be applied as a zoning change and require County Council approval.

b) Create a P.U.D. applicable to nonresidential development for small parcels (2 acres or more) within walking distance of a transit stop which would allow increased density, and increased commercial use and residential uses in exchange for increased design standards, including buffers when adjacent to existing residential areas. A P.U.D. Authorization Plan approved by the Planning Board may be required.

Action 2: In the event all or part of the Timonium Fairgrounds becomes available for redevelopment, support more intense use oriented toward a light rail stop. Potential uses could include expanded exhibition and convention facilities, retail, office and higher density

Action 3

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residential development. Community concerns for intensifying development at the fairgrounds site will need to be addressed by any redevelopment. The fairgrounds site, however, could offer a unique opportunity for development associated with light rail.

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Action 3:

Support light rail access and intensification of use at the Hunt Valley Mall. The mall could become the commercial focal point of the study area if it is interconnected to the surrounding employment area with light rail access. A free or reduced fare zone could be effective in bringing people to the mall at lunch time. The mall site presents opportunities for additional office and retail development. New retail uses closer to Shawan Road would also help in making a pedestrian connection with the employment area.

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Action 4:

Site-specific studies are needed to examine the development potential of the Timonium Heights West area, Texas-Old Padonia Road area and Cockeysville. While these areas have been identified as having development/redevelopment potential, each area also presents development constraints because of existing land uses and ownership patterns. Texas and Cockeysville also contain historic resources that need to be considered. OPZ shall perform individual studies of each area to evaluate their potential for redevelopment.

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Action 5:

DED to consider expanding the authority of the Baltimore County Development Corporation to act as a redevelopment authority in the Hunt Valley/Timonium corridor through Council action. The BCDC would have the ability to assemble parcels and to work with private

developers to construct mixed use developments at transit stops.

Issue: Community Conservation: Protecting and enhancing existing residential communities.

The Baltimore County Master Plan 1989-2000 designates the area to the east of York Road, and the residential area to the south of the study area as "community conservation areas." The intent of the designation is to give priority to protecting and enhancing these and other similarly designated existing residential neighborhoods.

For the communities surrounding the Hunt Valley/Timonium Study Area, community conservation measures would include:

- a) restricting nonresidential land uses from encroaching into residential areas
- b) discouraging traffic in the neighborhood which is unrelated to the residences
- c) reducing the amount of traffic congestion on York Road to make it easier for residents to access their neighborhood
- d) improving the visual quality of the York Road Corridor
- e) insuring future redevelopment of sites in the study area doesn't create negative impacts on existing communities

York Road is home to a large number and wide range of offices, businesses, and industries. The existing zoning provides many opportunities for expansion and redevelopment of nonresidential uses. This expansion should be directed to business nodes along the York Road corridor. Existing nodes occur at the intersection of Ridgely Road, Timonium Road, the north side of Cranbrook Road and the southeast

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side of Shawan. Nodes on the east side should feature businesses and services which support residential uses, such as grocery and hardware stores. Nodes on the west side should support employment uses, emphasizing such things as secretarial services and office supplies. In this manner some traffic congestion could be reduced by minimizing the need to cross York Road.

An in-depth planning study should be undertaken as part of a York Road Streetscape Study (See Design Quality) to determine the specific boundaries of these and future additional nodes. The study should also address means of assisting businesses to operate successfully at these locations while providing strong design guidelines for development.

In between these commercial nodes, the planning approach should attempt to match existing uses with the appropriate zoning. In some locations, for example, the existing uses are Class A offices but the zoning is business zoning. (A "Class A" office is a house that has been converted to an office use but retains the character of the original house). Business zoning allows redevelopment of a site for commercial use, and is not necessary in order to convert an existing house to an office use. Residential-Office (R-O or R-O-A) zoning is appropriate for Class A buildings.

A good example of where the zoning could be changed to match the present use is between Greenmeadow Drive and Roundridge Road. An area of B.L. (Business-Local) zoning exists between two R-O zones. Behind the properties on York Road are houses zoned D.R. 2 (low density residential). The use in the B.L. area is an attractive Columbia-Freestate Medical Center that is fairly new. This area should be rezoned to R-O or O-1 (office use) to protect the houses in the rear from future potential commercial uses.

Another area that should be considered for protection of the present use is the historic Cockeysville school and its grounds between Bosley and Matthews Avenues. Because common open space is limited

along the corridor, the York Road Streetscape Study should address the possibility of preserving this school site as open space. Garden apartments and townhouses are located below Warren Road, and development of additional housing should be investigated for the area on both sides of Sherwood Road to the north. The Cockeysville school open space could serve both of these areas. Current plans for the site includes senior housing and a senior center, and retention of most of the open space for continued recreational uses.

Another Community Conservation approach could be taken in the Cockeysville commercial area. The elimination of the underpass will change the character of York Road and increase traffic speed and flow through this area. It is important to continue to support Cockeysville as a small, historic shopping locality. Designation of these few blocks as a revitalization area would eventually provide funds for development of an attractive streetscape and other amenities to assure that the character of Cockeysville remains.

Action 1: As part of the York Road Streetscape Study,

- a) identify commercial nodes -- areas for future business development/redevelopment
- b) identify parcels between the commercial nodes which may be suitable for residential use, or for re-zoning to match their existing use
- c) formulate design guidelines for non-residential uses which adjoin residential ones.

Action 2: Locate new commercial development that supports the employment area in commercial nodes on the west side of York Road.

Action 3: Locate commercial uses that support the residential area in commercial nodes on the east side of York Road.

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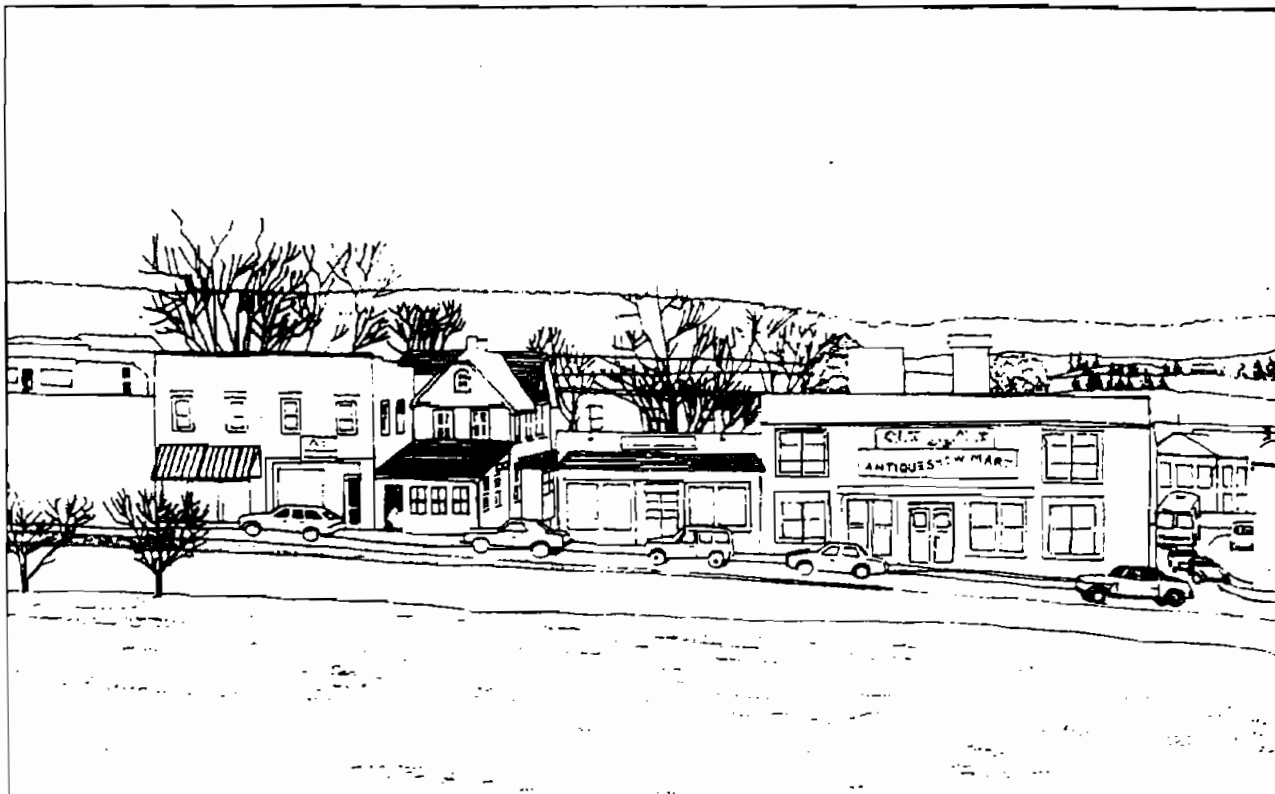
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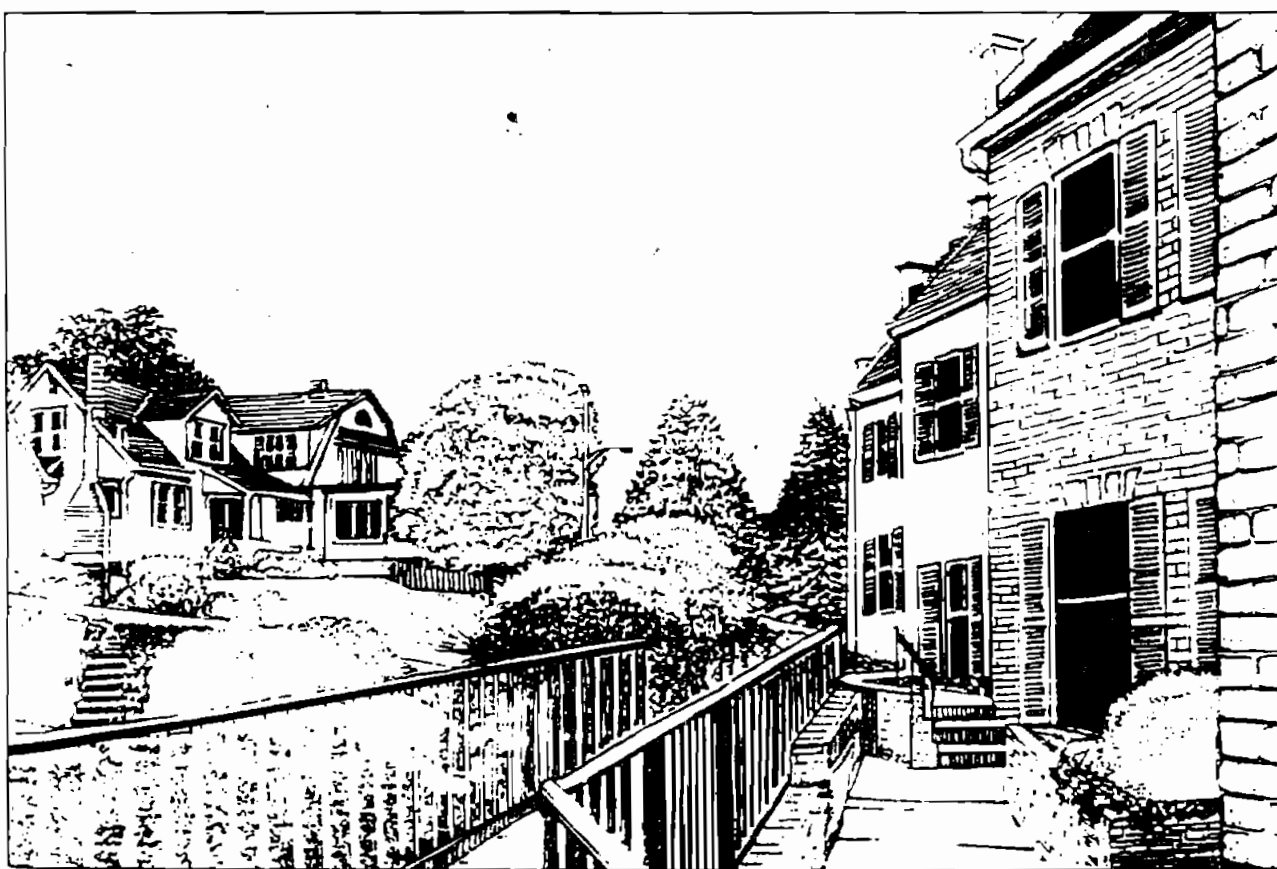
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Designation of Cockeysville as a Revitalization Area will help to maintain its historic character.



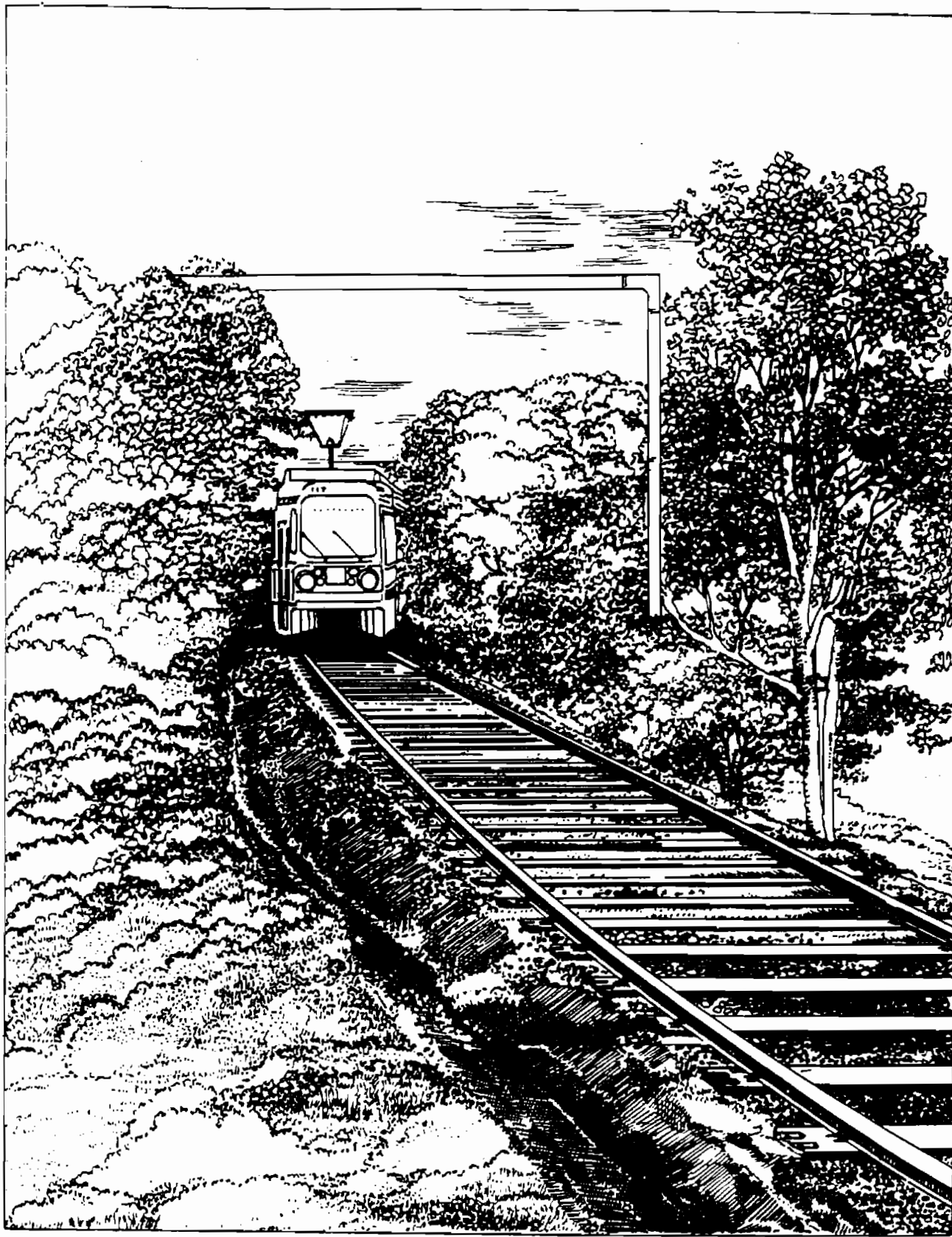
Office development adjacent to residential neighborhoods can be sensitively designed for visual compatibility.

- Action 4: Support zoning of parcels to match their existing use, except at designated commercial nodes.
- Action 5: In general, limit further rezoning of residential parcels to nonresidential use. Employ R-O or R-O-A residential office zones in areas requiring a greater buffer between disparate uses.
- Action 6: Support further higher-density residential use along the east side of York Road at appropriate locations with compatibility guidelines and limited impacts on schools, as a means of promoting residential use and as a buffer for the adjacent lower density residential area.
- Action 7: Consider designation of Cockeysville's commercial center as a Revitalization Area.

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IX. Plan Implementation

IX-1

- OPZ to support the creation of local business organizations.

DEPR

OPZ to support local business and community groups who institute an annual contest for improving the visual quality of York Road.

DED

PLANNING STUDIES

OPZ

- Detailed potential redevelopment studies for Timonium Heights West, Cockeysville and the Texas - Old Padonia Road area, to include a feasibility study for residential development, including affordable housing.
- York Road Streetscape Study

HUNT

OPZ, H.V.T.A., BUREAU OF TRAFFIC ENGINEERING AND CONSULTANT

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- Transportation Study to include:
 - safety issues
 - traffic forecasts
 - recommendations for transportation policies and improvements
 - financing of future improvements
 - pedestrian/bicycle access
- A Task Force should be established to recommend alternative methods of financing transportation improvements in the study area.
- A Task Force should be convened to develop recommendations for providing pedestrian/bicycle amenities such as sidewalks, bikeways, lighting, newspaper boxes, telephones, transit shelters, bicycle storage and appropriate design considerations through a public/private partnership.

The Board of Appeals, in a two-to-one decision, approved the zoning reclassification in a written opinion issued February 24, 1994. The Court finds, however, that the majority committed error in failing to adequately comply with §2-356(j) of the Baltimore County Code. The Opinion merely summarizes the testimony presented at the hearing and fails to conduct the requisite analysis that would allow this Court to evaluate the Board's decision.

In fact, this Court is perplexed by the fact the Board failed to specifically consider the following:

...factors relating to the purposes of the zoning regulations and maps, including but not limited to all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

Baltimore County Code §2-356(j)(2).

Therefore, for the aforementioned reasons, it is this 12th day of October, 1994, by the Circuit Court for Baltimore County, ORDERED that this matter is hereby REMANDED to the Board of Appeals to make the appropriate factual and legal

C.C. #13Z
(Description of Photos A-F)

ZONING APPEAL HEARING
"BROAD STREET MARKET"
PHOTOS TAKEN 5 OCTOBER, 1993

CASE NO. CR-93-305-SPH
28 SEPTEMBER, 1993
CONTINUED 19 OCTOBER, 1993

1. From South side of Roosevelt Street
Nos. 4 & 2 Roosevelt Street
2. From South side of Roosevelt Street, near York Road
No. 4 Roosevelt Street, Brewer property, Padonia (Favazza)
Building visible above trees
3. From York Road, just North of Harding Street
Looking West on Harding Street toward Broad Avenue
4. From York Road
Looking West on Harding Street toward Broad Avenue
5. From near York Road
Looking West on Main Boulevard, Nos. 12 & 8 W. Main
Boulevard, Broad Avenue in background
6. From York Road
Looking West on Washington Street
7. From South side of Washington Street
Nos. 12, 8, 6 & 4A Washington Street
8. From Broad avenue, between W. Main Boulevard and Washington
Street (highest point on Broad Avenue)
Looking North toward Roosevelt Street
9. From Broad Avenue and W. Main Boulevard
Looking East toward York Road, 9 W. Main Boulevard
10. From Broad Avenue, between W. Main Boulevard and Harding
Street
Looking Southeast, Nos. 12, 5 (under construction) &
9 W. Main Boulevard
11. From Broad Avenue and Harding Street
Looking East, Nos. 14, 12, 10 & 4 Harding Street
12. From Broad avenue, just South of Roosevelt Street
No. 100 Roosevelt street (lowest building in community)
Visible to left is No. 106 Roosevelt Street with
Padonia (Favazza) Building above it
13. From Broad avenue, just North of Roosevelt Street
Looking South toward highest point between W. Main Boulevard
and Washington Street

14. From Broad Avenue North of Roosevelt Street
Looking North toward Padonia Road (buildings visible in background), Broad Avenue regraded for "Broad Street Market" (entrance visible as bank beyond brush)
15. From Broad Avenue, at entrance to "Broad Street Market" construction site
Looking Northwest at "Broad Street Market" construction fill, building on Padonia Road visible in background
16. From West side of Broad Avenue, North of Padonia Road
Looking East at Padonia Road and "Broad Street Market" construction site
17. From South side of Padonia Road, West of Broad Avenue
Looking Southeast at "Broad Street Market" construction site, concrete culvert in foreground
18. From Light Rail/Conrail tracks, North of Timonium stop
Goodwin Run as it emerges from under the tracks
19. From West side of Conrail tracks, approximately 150 feet South of Washington avenue (rear of house on Washington Avenue visible through trees)
Looking East at Conrail tracks and Goodwin Run (Goodwin Run is not visible due to trees and brush.)
20. From South side of Padonia Road, East of bridge over Conrail tracks
Goodwin Run as it enters culvert under Padonia Road
21. From North side of Padonia Road, West of Broad Avenue
Looking East on Padonia Road toward York Road
22. From East side of York Road, South of entrance to Padonia Village Shopping Center
Looking North along York Road at intersection with Padonia Road
23. From Southeast corner of York and Padonia Roads
Looking Northwest, across intersection at Southbound traffic on York Road
24. From right turn island in Southeast corner of York and Padonia Roads
Looking South on York Road at Northbound traffic backed up from York and Padonia Road intersection
25. From right turn island in Southeast corner of York and Padonia Roads
Looking Northeast on Padonia Road at Westbound traffic backed up from York and Padonia Road intersection

YORK ROAD

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EXXON
SERVICE
STA.

HEALTH
F130
MED
CTR.
AMARI

WALTER
PLUMBING
CHILCAT
BREWERS

NEVILL
BREWERS
WALTER
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30 SERVICE
STATION

WIEDEFELD
DIRECTOR

MADISON RD.

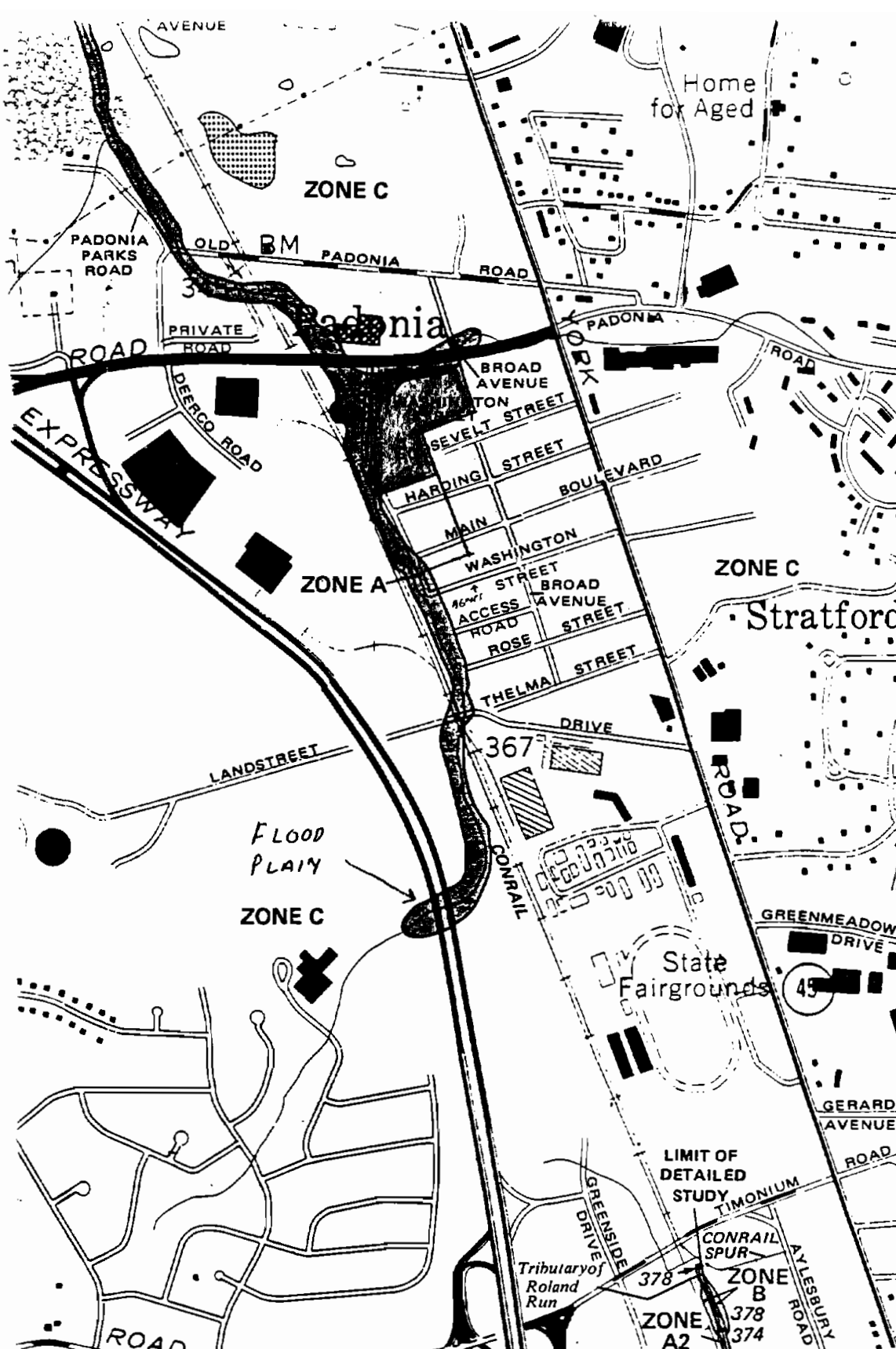
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BROAD AVE.

B



"BROAD ST. MARKET"
ZONED O-1 1988
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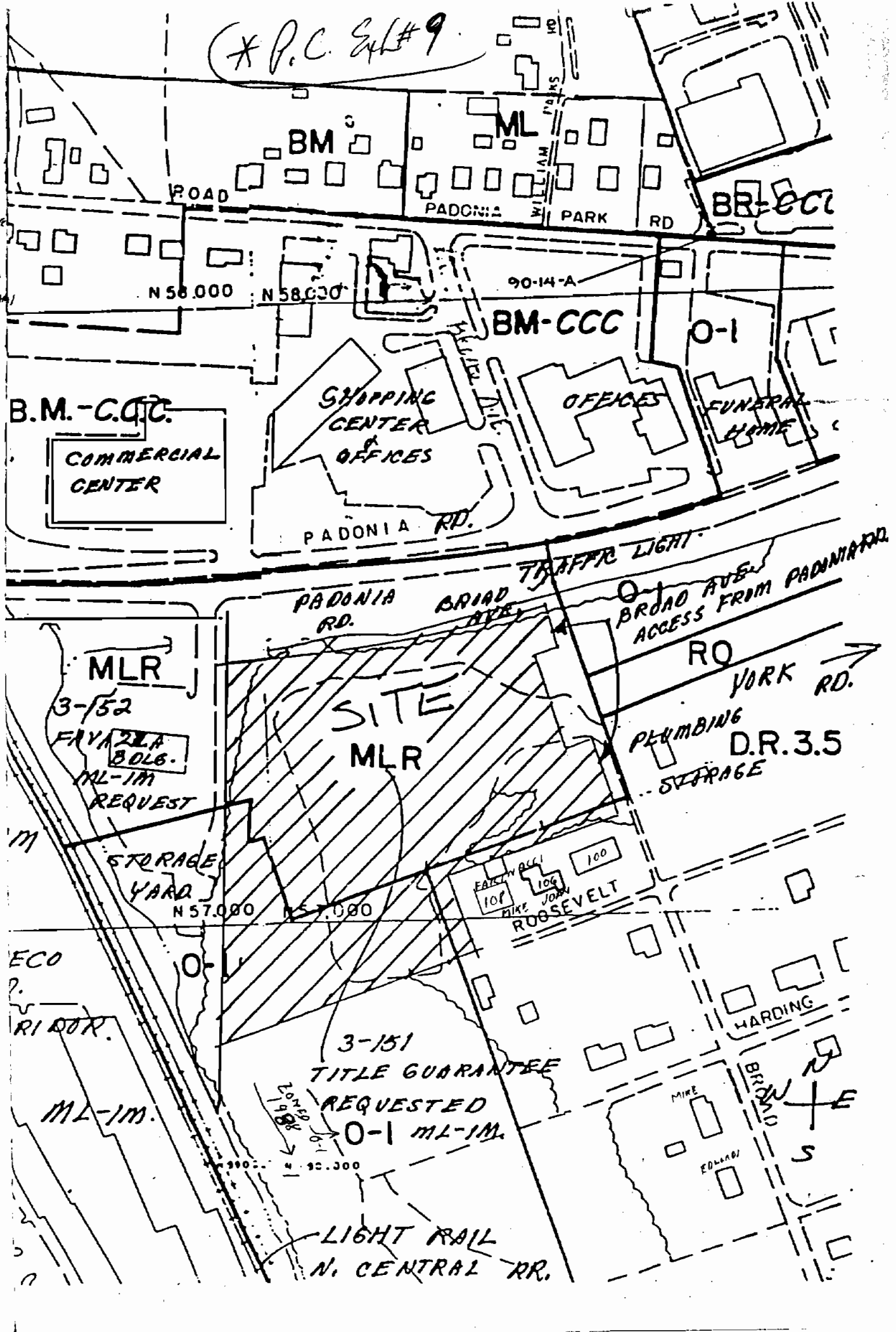
C.C. Sub # 10

14 FEMA Map

(* P.C. #9

SEPT 14,
1992

COMPREHENSIVE
ZONING
REQUEST FROM
NEWTOM WILLIAM
ATTY FOR
TCO JULIO



P.C. 24h #8

• Residents of Timonium Heights
c/o Mr. & Mrs. John M. Bearer
9 W. Main Boulevard
Timonium, Maryland 21093
October 5, 1992

Hon. C.A. Ruppertsberger III
Councilman, Third District, Baltimore County
Second Floor, Court House
Towson, Maryland 21204

Dear Councilman Ruppertsberger:

This is to advise you of the serious concern that the residents of Timonium Heights have over the request for rezoning the Padonia Road/Broad Avenue property identified as Issue 3-151.

The zoning requested by the developer would permit the construction of a "Strip Shopping Center" fronting on Broad Avenue with a BASICS food store, a RITE AID drug store and an ENCORE BOOKS store. Our community of approximately 50 homes lies directly adjacent to this proposed development.

A review of the issues involved should be sufficient grounds for making the rational decision to retain the present zoning.

First, it should be noted that the County Office of Planning and Zoning wisely recommended No Change from the present zoning status.

Secondly, our community presently suffers from the daily noise, traffic and pollution from York and Padonia Roads intersection which is classified "F", meaning that it cannot handle the 40,000 to 50,000 trips presently generated. Certainly, dumping several thousand more cars into the intersection each day from a strip shopping center can only cause havoc. Any relief from the opening of the Warren Road interchange will undoubtedly be offset by the extra traffic generated as the result of extending Padonia Road to Pot Spring Road.

RECEIVED
OCT 10 1992
BALTIMORE COUNTY
PLANNING & ZONING DEPT.

Thirdly, in reviewing the recent D.E.P.R.M. Environmental Report, one can only conclude that this land is really not suited for any development, much less a strip shopping center containing a major store like BASICS. It is a low lying piece of ground with the potential for flooding and stream contamination. The report does state that with some extensive and expensive additions, some development may be possible; however, they state that more studies would be required on this impact before approvals would be granted thus creating more doubt. The question of future expense to Baltimore County should be considered should present infrastructure fail to accommodate any proposed development.

Finally, Timonium Heights has nothing to gain and everything to lose if this land is developed as proposed. Property values will drop, the crime rate will increase and noise and pollution will increase. There is no assurance that Broad Avenue will not be cut through and every indication that it will and this newly created traffic will jeopardize the safety of our residents and their children.

As our Council representative, we are relying on you to support our community in denying the requested zoning. Accordingly, we have affixed our signatures to the enclosed petition.

Residents of Timonium Heights

Petition attached: 7 sheets containing
a total of 75 names

PETITIONTO: COUNCILMAN C.A. RUPPERSBERGER

WE, THE UNDERSIGNED, STRENUOUSLY OBJECT TO THE REQUEST FOR
REZONING THE PADONIA ROAD/BROAD AVENUE PROPERTY ISSUE NO. 3-151.

THE ZONING REQUESTED WOULD PERMIT THE CONSTRUCTION OF
ANOTHER STRIP SHOPPING CENTER WITH A "BASICS" STORE, "RITE AID",
AND OTHERS. OUR RESIDENTIAL COMMUNITY LIES DIRECTLY ADJACENT
TO THIS PROPOSED DEVELOPMENT

ALLOWING THE REQUESTED ZONING WOULD RESULT IN AN ENCROACHMENT
INTO OUR RESIDENTIAL NEIGHBORHOOD, WHICH BY ANY STANDARDS,
WOULD INFLECT A SERIOUS HARDSHIP UPON WE, THE RESIDENTS.

AS OUR COUNCIL REPRESENTATIVE, WE ARE RELYING ON YOU TO
SUPPORT OUR COMMUNITY IN DENYING THE REQUESTED ZONING.

<u>NAME</u>	<u>ADDRESS</u>
John M. Bearer	9 W. MAIN BLVD.
Mary L. Bearer	9 W. Main Blvd.
Quincy R. Hent	12 W Main Blvd.
Marshall E. Hent	17 W main Blvd.
Misspell L. Oehl	8 W. Main Blvd.
Frederick C. Oehl	8 W. MAIN Blvd.
Rita K. Oehl	4 W. MAIN Blvd.
Alvin E. Culbertson	3 W. main Blvd.
Beverly A. Fayt	15 W Main Blvd
Wesley D. Edwards	1400 BROAD Ave.
Lisa K. Edwards	2400 Broad Ave.
Edna B. Burke	7 W. Main Blvd
Jane R. Boyd	15 W. MAIN BLVD
Rosa DeCarano	11 - Hardy St
1012 Fair	11 HARDY ST.
Daniel M. [Signature]	100 Roosevelt St.
[Signature]	100 Roosevelt St

PETITION

TO: COUNCILMAN C.A. RUPPERSBERGER

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ALLOWING THE REQUESTED ZONING WOULD RESULT IN AN ENCROACHMENT INTO OUR RESIDENTIAL NEIGHBORHOOD, WHICH BY ANY STANDARDS, WOULD INFLICT A SERIOUS HARDSHIP UPON WE, THE RESIDENTS.

AS OUR COUNCIL REPRESENTATIVE, WE ARE RELYING ON YOU TO SUPPORT OUR COMMUNITY IN DENYING THE REQUESTED ZONING.

NAME

ADDRESS

John R. Dukes Jr.

4-LINCOLN ST TIMONIAN 21093

Turner Sea Raker

4 Lincoln St. - minimum 21093

John G. Hughes

4 Lincoln St Torrington, MD 21093

Robert Holland

6. Lincoln St. Tuxedo Md 21092

Martha C Hinnant

6 Lincoln & Timonium Rd 21093

Cheryl A. Southard

7 Washington Street Timonium MD 21081

Steven M. Kessick

5 Lincoln St. Timonium MD 21093

Wendene L. Kesnick

5 Lincoln St Gurnee, Ill 21093

Christina Habicht

8 Rose St Torrington MD. 21091

John R. Vank A

4 Lincoln St. Timonium MD 21083

Chester S. Sufferd

3 Washington St. Farmington, Md

CARL B. BENTLEY

145th St. 44 11 11

[illegible]

findings consistent with §2-356(j)(2) of the Baltimore County
Code.


THOMAS J. BOLLINGER, JUDGE

TJB/am

Copies sent to:

John H. Zink, III, Esquire
210 Allegheny Avenue
P. O. Box 5517
Towson, MD 21285

Patrick Hanley, Esquire
206 Washington Avenue
P. O. Box 5506
Towson, MD 21204

Peter Max Zimmerman, Esquire
Room 47 Old Courthouse
400 Washington Avenue
Towson, MD 21204

John M. Bearer
9 W. Main Boulevard
Timonium, MD 21093

PETITION

TO: COUNCILMAN C.A. RUPPERSBERGER

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WOULD INFLICT A SERIOUS HARDSHIP UPON WE, THE RESIDENTS.

AS OUR COUNCIL REPRESENTATIVE, WE ARE RELYING ON YOU TO
SUPPORT OUR COMMUNITY IN DENYING THE REQUESTED ZONING.

NAME	ADDRESS
James E. Cullen	105 Washington St. Timonium 21043
James E. Cullen	105 WASHINGTON ST. Timonium, MD 21093
Tom Cole	16 Washington St. Timonium 21093
Paul Cole	16 Washington St. Timonium 21093
Harriet Cole	16 Washington St. Timonium 21093
Emma J. Gault	13 Washington St. Timonium, MD
Jay Gault	15 WASHINGTON ST. Timonium 21093
Tom Gault	102 Washington St. Timonium 21093
Virginia S. Wheatley	102 Washington St. Timonium 21093
Doug Cebal	101 Washington St. Timonium 21093
Tom Gault	15 Washington St. Timonium 21093
Raymond Cloninger	106 Washington St.
Bettie Ford	12 Harding St. Timonium 21093
Clarence H. Ford	12 Harding St. Timonium 21093
Don Lenderking	109 Roosevelt St. Tim. 21093
Howard Lenderking	109 Roosevelt St. Tim. 21093

PETITION

TO: COUNCILMAN C.A. RUPPERSBERGER*

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INTO OUR RESIDENTIAL NEIGHBORHOOD, WHICH BY ANY STANDARDS,
WOULD INFLICT A SERIOUS HARDSHIP UPON WE, THE RESIDENTS.

AS OUR COUNCIL REPRESENTATIVE, WE ARE RELYING ON YOU TO
SUPPORT OUR COMMUNITY IN DENYING THE REQUESTED ZONING.

NAME	ADDRESS
Mr. & Mrs. P. Pellegrini	14 HARDING ST
~~Joseph Pellegrini~~	~~14 HARDING ST~~
Paul and Kathryn Smith	102 Harding St.
Pauline K. Doda	104 Harding St.
Mr. & Mrs. Gahler	107 Harding St.
Permy M. Gable	107 Harding St.
Ammon H. Chilcoat	7 Harding St.
Richard L. Chilcoat	7 Harding St.
William J. Chilcoat	10 Harding St.
Leila Genevieve Chilcoat	10 Harding St.
Charles Albright	4 Harding St.
Lucia Albright	4 Harding St.
Tom. Wiest	7 Harding St.
Harriet P. Eickler	3 Harding St.
Donson Eickler	3 Harding St.
Clarence Dilworth Brown	9 Roosevelt St

101 Washington St. 21093

PETITION

Received from John M. Bearer
for Councilman C.A. Ruppertsberger III

Cover Letter: Two Pages
Petition: Seven Pages

From Residents of Timonium Heights

Relating to Baltimore County Zoning Issue 3-151

Disanne Gilbert

Date: October 5, 1992; Time: 11:04 a.m.

RECEIVED
COUNTY BOARD OF APPEALS

C.C. Sch # 7

MR. WILLIAM HACKETT
BALTIMORE COUNTY
BOARD OF APPEALS
OLD COURT HOUSE
TOWSON, MARYLAND 21204

127 TREGARONE ROAD
TIMONIUM, MARYLAND
OCTOBER 16, 1993

DEAR MR. HACKETT,

I AM THE PRESENT ZONING AND DEVELOPMENT REPRESENTATIVE FOR THE GREATER TIMONIUM COMMUNITY COUNCIL. I HAVE BEEN INVOLVED WITH THIS UMBRELLA GROUP OF TWENTY COMMUNITY ASSOCIATIONS IN NORTHERN BALTIMORE COUNTY FOR THE LAST SEVENTEEN YEARS SERVING AS ONE OF ITS EARLY PRESIDENTS.

THIS LETTER IS BEING WRITTEN TO ADDRESS AND CLARIFY A ZONING ISSUE AT HAND - CR 93-305-SPH, PROPOSING A RECLASSIFICATION OF SIX AND ONE HALF ACRES FOR THE DEVELOPMENT OF A FOOD MARKET AND STRIP OF OTHER SHOPS NEAR PADONIA ROAD AND BROAD AVENUE.

AS I RECALL G.T.C.C. BECAME INVOLVED WITH THIS PROPERTY AS FAR BACK AS 1978 WHEN THERE WAS A REQUEST TO PERMIT A CADILLAC DEALERSHIP TO BE BUILT. IT WAS DENIED.

THERE ARE SO MANY QUESTIONABLE CIRCUMSTANCES SURROUNDING THE DEVELOPMENT OF THIS ACREAGE I FEEL IT IMPERATIVE THAT AT LEAST SEVERAL OBSERVATIONS BE CONSIDERED IN YOUR FINAL DECISION.

FIRST, THIS PARCEL IS A LOW-LYING SPREAD RUNNING ADJACENT TO PADONIA ROAD WHICH, BECAUSE OF ITS TOPOGRAPHY, MAY REQUIRE ENORMOUS AMOUNTS OF FILL AND EARTH MOVING PRIOR TO ANY CONSTRUCTION.

FOR VARIOUS REASONS OVER THE PAST YEARS THE COUNTY PLANNERS HAVE, IN THEIR WISDOM, OPPOSED ANY DEVELOPMENT BECAUSE OF THE POTENTIAL FOR FLOODING AND ENVIRONMENTAL PROBLEMS. TO MY KNOWLEDGE THE COUNTY STILL OWNS SEVERAL LOTS WHICH ARE INCLUDED IN THE DEVELOPER'S SITE PLAN THAT HAVE BEEN RETAINED BY THE COUNTY AS A BUFFER TO PROTECT THE STREAM AND GREEN WAY (AS DESIGNATED IN THE CURRENT COUNTY MASTER PLAN). TO MY KNOWLEDGE THERE ARE NO PLANS TO RELEASE THESE LOTS AT THIS TIME.

THE DEVELOPER IS PROPOSING THE INSTALLATION OF A VERY ELABORATE AND EXPENSIVE SYSTEM OF HOLDING PONDS TO CONTROL FUTURE DRAINAGE PROBLEMS. CAN WE BE ASSURED THAT THE RUN-OFF FROM SIX ACRES OF HARD SURFACE (BUILDINGS AND PARKING LOT) CAN BE HANDLED ADEQUATELY DURING A SERIOUS STORM? I UNDERSTAND THIS ENTIRE AREA WAS INUNDATED WHEN "AGNES" HIT.

SECOND, AS YOU ARE AWARE THE ENTRANCE AND EXIT TO THIS SHOPPING CENTER WOULD BE VIA BROAD AVENUE TO PADONIA ROAD ONE BLOCK WEST OF YORK ROAD. YORK AND PADONIA IS A FAILED INTERSECTION. TRAFFIC ON PADONIA ROAD NORMALLY EXPERIENCES BACKUPS DURING PEAK HOURS. ITS HARD TO IMAGINE THE CONSEQUENCES OF INTRODUCING HUNDREDS OF ADDITIONAL VEHICLES FROM THE MARKET'S FOUR HUNDRED CAR PARKING LOT, SAY ON A FRIDAY AFTERNOON WHEN MANY PEOPLE DO THEIR SHOPPING.

PLANNING THE FUTURE OF THIS INTERSECTION IS CRITICAL. OPENING PADONIA TO POT SPRING ROAD AND BEAVER DAM ROAD TO PADONIA WILL AGGRAVATE PRESENT CONDITIONS. AND THOUGHT MUST BE GIVEN TO THE FUTURE DEVELOPMENT OF "MAYS CHAPEL" AND THE TRAFFIC WHICH COULD RESULT FROM ANOTHER 2000 LIVING UNITS.

THIRD, THE PROPOSED DEVELOPMENT ABUTS THE COMMUNITY OF TIMONIUM HEIGHTS, ABOUT EIGHTY FIVE SINGLE FAMILY DWELLINGS. THE RESIDENTS ARE MOSTLY GOOD, WORKING CLASS PEOPLE MANY HAVING LIVED THERE FOR YEARS. FOR THE MOST PART IT IS A PASSIVE NEIGHBORHOOD WHERE PEOPLE JUST WANT TO BE LEFT ALONE.

IN HIS LETTER TO YOU ERIC ROCKEL EXPLAINED THAT THE RESIDENTS ARE CLEARLY SUPPORTIVE OF THIS SHOPPING CENTER. FOR CLARIFICATION, DURING THE LAST ZONING CYCLE ABOUT SIXTY OF THE RESIDENTS SIGNED A PETITION OPPOSING THIS NEW DEVELOPMENT. THEY WERE CONCERNED OVER THE PROBLEMS IT WOULD IMPACT ON THEIR COMMUNITY. THE DEVELOPER PULLED THE ISSUE AT THE END OF THE CYCLE.

I ENCOURAGED THE RESIDENTS TO FORM AN ASSOCIATION, WHICH THEY DID. I BELIEVE AT THIS POINT THE DEVELOPER THROUGH A SERIES OF MEETINGS, SOME OF WHICH WERE CLOSED, EXPLAINED TO THE RESIDENTS THE BENEFITS OF HAVING THE SHOPPING CENTER IN PREFERENCE TO OTHER POSSIBLE LAND USES. MR. JULIO SHOULD BE COMPLIMENTED ON HIS METHODICAL PRESENTATIONS. HIS SITE PLAN AND PROPOSED LANDSCAPING WHICH WERE COMPLIMENTARY AND APPEALING.

UNFORTUNATELY THE PRESENT TIMONIUM HEIGHTS ASSOCIATION, WHICH AS ERIC STATED, IS SUPPORTIVE OF THE SHOPPING CENTER, IS NOT TRULY REPRESENTATIVE OF THE COMMUNITY ABOUT THIRTY OUT OF EIGHTY FIVE HOMES ARE MEMBERS. THERE ARE STILL MANY WHO OPPOSE THE CENTER AND THERE ARE STILL OTHERS THAT JUST DON'T CARE.

AS A COMMENT ON THE COMMUNITY SURVEY TAKEN RECENTLY. WE ASK THE WHOLE TIMONIUM COMMUNITY WOULD THEY PREFER A SHOPPING CENTER RATHER THAN OFFICES OR WAREHOUSES IN THIS LOCATION? ABOUT HALF OF THE RESPONSES SAID THEY WOULD. HOWEVER, MANY OF THESE COMMENTED THAT THERE WAS NO NEED FOR ANY NEW DEVELOPMENT AT ALL. THIS IS THE GENERAL CONSENSUS OF THE MAJORITY OF RESIDENTS.

MR. HACKETT I HAVE BEEN A RESIDENT OF TIMONIUM FOR TWENTY EIGHT YEARS AND SEEN MANY CHANGES NOT ALL THE RESULT OF SOUND PLANNING, FOR EXAMPLE THE RIDGELY AND HUNT VALLEY SHOPPING CENTERS ARE FOR THE MOST PART NOW DEAD. WE ARE OVER-BUILT! WE ARE SEEING THE URBANIZATION AND ITS RELATED PROBLEMS IN TIMONIUM, A ONCE TRANQUIL AREA-TRAFFIC, CRIME, NOISE, POLLUTION, EXCESS SIGNING AND LIGHTING. TO NAME A FEW.

FINALLY, ITS SAD THAT OUR ZONING AND DEVELOPMENT PROCESS DOESN'T CONSIDER SOME RESTRICTIONS ON REPETITIOUS GROWTH IN A GIVEN AREA. FOR EXAMPLE THE PROPOSED FOOD MARKET WILL BE DIRECTLY ACROSS THE STREET FROM THE "MARS SUPER MARKET" WHICH INCIDENTALLY ALREADY HAS A "RITE AID" STORE IN THAT STRIP. THERE ARE FIVE OTHER MAJOR FOOD MARKETS WITHIN FIVE MINUTES OF THE PROPOSED SITE.

I UNDERSTAND THE NEED FOR CREATING JOBS, FOR A PERSON'S RIGHT TO DEVELOP HIS LAND, AND FOR EXPANDING THE COUNTY TAX BASE BUT NOT AT THE COST OF DESTROYING A COMMUNITY.

WE HOPE THAT UNTIL A BETTER PROPOSAL COMES ALONG FOR THIS PARCEL YOU WILL DENY ANY CHANGE IN THE PRESENT ZONING.

THANK YOU FOR YOUR CONSIDERATION.

SINCERELY
Tom Kelly
L. THOMAS KELLY

COPIES TO:

MR. PETER ZIMMERMAN
COUNCILMAN C. A. RUPPERSBERGER

PAT- File

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

September 24, 1992

P.C. Exh # 5

TO: File

FROM: J. James Dieter

SUBJECT: Julio Property Proposal
Padonia Road and Broad Avenue

A meeting was held on September 23, 1992 with Mr. Ted Julio and his consultants (Dennis Labare, Richard Hillis) to discuss a potential site plan for property located at Padonia Road and Broad Avenue. Messrs. David Lykens and J. James Dieter represented DEPRM.

The plan was proposed as a concept to show a particular retail development scheme which required certain zoning changes. Departmental issues were discussed as a result of previous field visits and Mr. Lykens' preliminary wetland assessment of September 22, 1992. The following is a synopsis of site constraints, potential problems and possible resolutions:

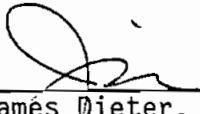
1. Wetlands - The preliminary wetland assessment of September 22, 1992 indicated wetlands were not as extensive as originally thought. Two areas of wetlands were indicated which might require some site plan modification. Formal wetlands delineation could also lessen one of these areas.
2. Floodplain - The floodplain issue is one which could seriously affect the site design. The Department of Public Works must be involved to make this call. A buffer will be required off the floodplain but cannot be established until the floodplain is delineated. If the floodplain is associated with the existing stream location and does not extend into the site, the design might not be affected.
3. Buffer - The 100 foot buffer restriction can be varianced to the existing tree line (approximately 60+ feet). A formal variance as part of the Development process will have to take place. The reduction of buffer also affects stormwater quality management in that it increases pond size. The forest buffer will affect parking spaces as shown on the plan.

Memo to File
September 24, 1992
Page 2

Subject: Julio Property Proposal
Padonia Road and Broad Avenue

4. Quality Stormwater Management - In order to compensate for buffer reduction overmanagement of stormwater for quality benefits must occur. This involves treating off-site as well as on-site stormwater. The size of the stormwater pond as shown on the concept plan will most probably have to be expanded. This could affect parking space shown on the plan. Adjoining property owned by Mr. Julio has the potential to be utilized, but wetland and floodplain delineations must be done before a judgment can be made. It should be noted that the size of the pond might have to expand for normal quantity management. An underground facility alternative is also possible. However, the owner was cautioned that this type of facility is usually very expensive to construct and maintain.

These discussions involve only a conceptual development scheme. Our comments should not be construed as final approvals. With the series of assumptions made by the owner, the plan could become workable. The greatest risk for site changes would result from the floodplain determinations and expansion of the stormwater management pond.



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

JJD/jbm

DATE: 9/28/93

PEOPLE'S COUNSEL'S SIGN IN SHEET

CASE: HARRISON & GRASS (BAKER AND CO.)
CR-93-305 SPH

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

[illegible]

PETITION OF PEOPLE'S COUNSEL * IN THE
 FOR BALTIMORE COUNTY, et al. * CIRCUIT COURT
 FOR JUDICIAL REVIEW
 IN THE MATTER OF BAKER * FOR
 LAND COMPANY, et al. FOR * BALTIMORE COUNTY
 RECLASSIFICATION
 Zoning Case: CR-93-305-SPH * Case No. 94-CV-02565
 76/249

* * * * *

APPELLEES' ANSWERING MEMORANDUM

Baker Land Company, et al., legal owners, and Harrison & Grass Partnership, contract purchaser, Appellees, by John H. Zink, III and Patricia A. Malone with Venable, Baetjer and Howard, their attorneys, in accordance with Maryland Rule 7-207, submit their Answering Memorandum in this administrative appeal, as follows:

STATEMENT OF THE CASE

Appellees filed a Petition for Reclassification with the County Board of Appeals for Baltimore County ("Board of Appeals") on February 24, 1993. This Petition involved 6.57 acres located on the southwest corner of Padonia Road and Broad Avenue between I-83 and York Road. This interim or "cycle" rezoning petition, which was filed in accordance with Section 2-356 of the Baltimore County Code, requested B.M. (business, major) zoning, subject to the restrictions set forth in the Documented Site Plan accompanying the Petition, in lieu of the present zoning combination of M.L.R. (manufacturing, light, restricted - 4.84 acres), O-1 (office building - 1.51 acres), and D.R. 3.5 (density residential, 3.5

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BALTIMORE COUNTY COUNCIL MINUTES
LEGISLATIVE SESSION 1992, SPECIAL SESSION
OCTOBER 15, 1992 7:00 P.M.

P.C. Egh
#2

A. The meeting was called to order by Chairman Howard at 7:20 P.M.
The Chairman asked the audience to rise for a moment of silent meditation and the Pledge of Allegiance to the Flag. There were approximately 150 persons in attendance and the following Councilmembers were present:

BERCHIE L. MANLEY	FIRST DISTRICT
MELVIN G. MINTZ	SECOND DISTRICT
C. A. DUTCH RUPPERSBERGER, III	THIRD DISTRICT
DOUGLAS B. RILEY	FOURTH DISTRICT
VINCENT J. GARDINA	FIFTH DISTRICT
WILLIAM A. HOWARD, IV	SIXTH DISTRICT
DONALD C. MASON	SEVENTH DISTRICT

B. CALL OF BILLS FOR FINAL READING AND VOTE

BILL 183-92, Comprehensive Zoning Maps - First District, was called. Councilwoman Manley moved to accept the Planning Board's recommendation on the following issues:

1-001	1-002	1-003	1-004	1-005
1-006	1-007	1-008	1-009	1-011
1-012	1-013	1-014	1-015	1-016
1-017	1-018	1-019	1-020	1-022
1-024	1-028	1-030	1-031	1-032
1-033	1-034	1-035	1-037	1-038
1-039	1-040	1-042	1-043	1-044
1-045	1-047	1-048	1-049	1-050
1-051	1-052	1-053	1-054	1-055
1-057	1-059	1-060		

Councilman Howard seconded the motion and these issues were passed unanimously.

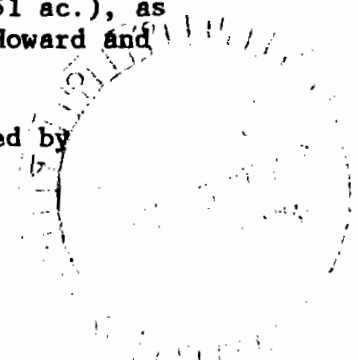
Councilwoman Manley then moved for the following changes in the First District Comprehensive Zoning Map:

Issue 1-010 from RO to DR 5.5. Motion was seconded by Councilman Howard and passed unanimously.

Issue 1-021 from DR 3.5 to ROA. Motion was seconded by Councilman Howard and passed unanimously.

Issue 1-023 from RC 2 to RC 2 (13.2 ac.) & RC 5 (1.51 ac.), as shown on the overlay. Motion was seconded by Councilman Howard and passed unanimously.

Issue 1-025 from RC 3 to DR 5.5. Motion was seconded by Councilman Howard and passed unanimously.



BALTIMORE COUNTY COMPREHENSIVE ZONING MAP

*Final Log of Issues
Adopted October 15, 1992*

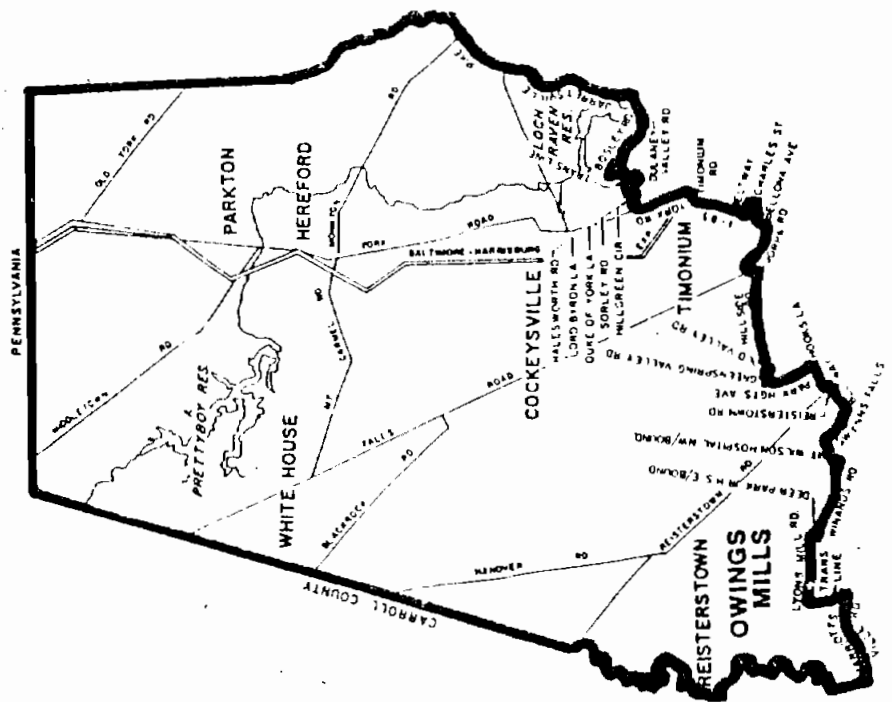
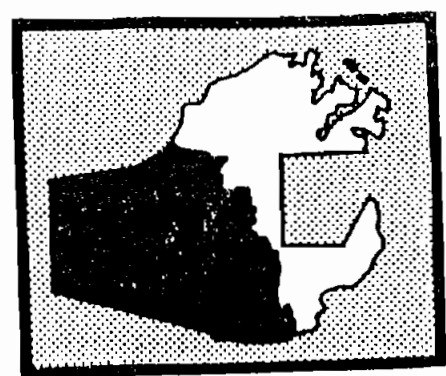


Rd) 1.80 1.80 1.80

BALTIMORE COUNTY COUNCIL

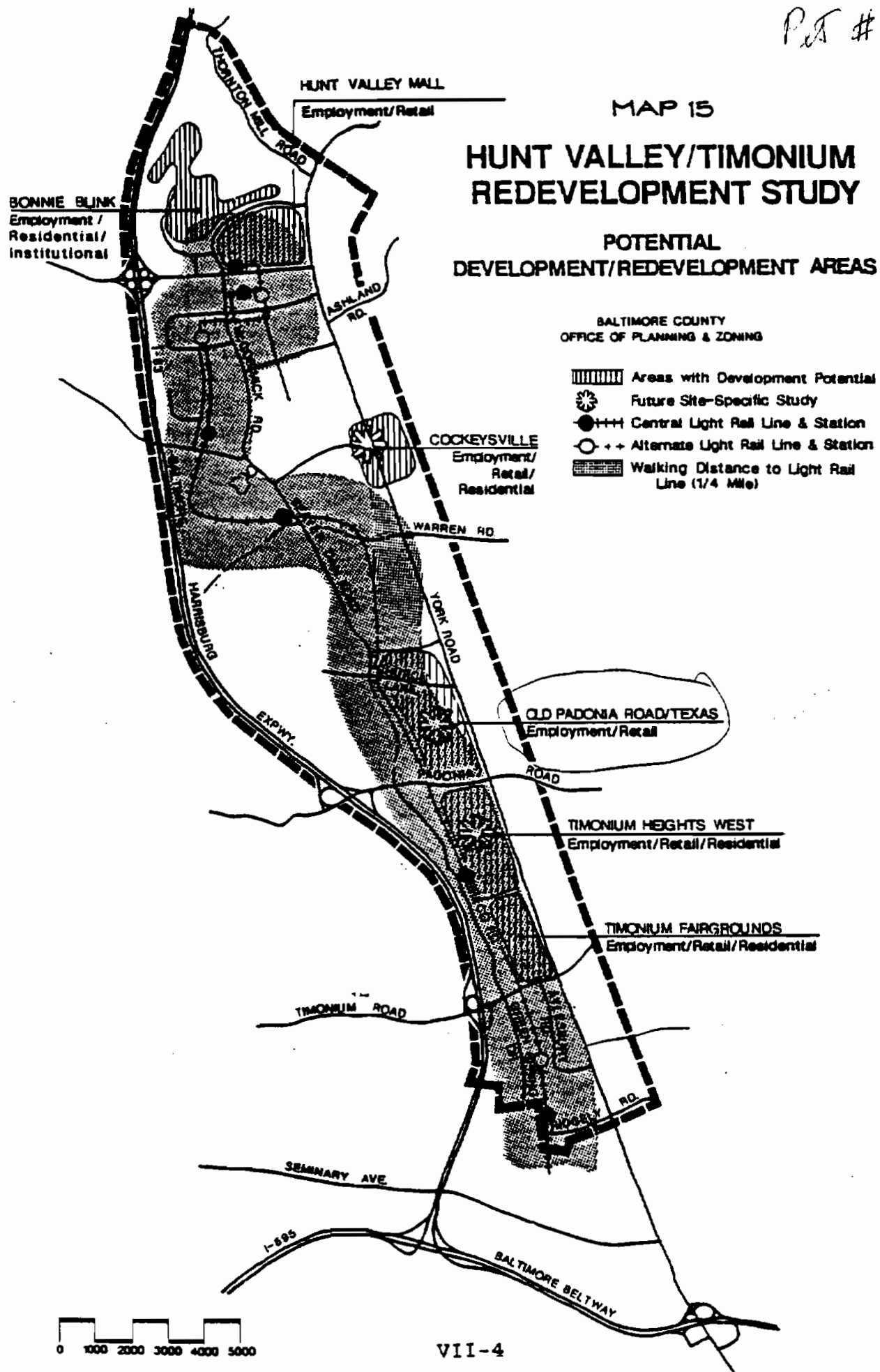
THIRD COUNCILMANIC DISTRICT

1992 COMPREHENSIVE ZONING PROCESS



BALTIMORE COUNTY
1992 COMPREHENSIVE ZONING MAP ISSUES

ISSUE NO	OWNER, PETITIONER	LOCATION	TOTAL ACRES	EXISTING ZONING AND ACRES	REQUESTED ZONING AND ACRES	PLANNING BOARD RECOMMENDATIONS	COUNTY COUNCIL DECISIONS	COMMENTS
3-148	William & Rosa Lee Rothe By William Monk	S Side McDonogh Rd 50' W of Crossroads Dr (8005 McDonogh Rd)	1.90	DR 1 1.90	DR 3.5 1.90	DR 2 1.90	DR 2 1.90	See Issue 3-147
3-149	Randolph & Yvonne Shelley	E Side York Rd (15129 York Rd)	1.10	RC 5 1.10	RC 5 1.10	RC 5 1.10	RC 5 1.10	
3-150	Thomas & Maria Rafailides By Newton A Willaime, Esq	SW corner of York Rd & Lincoln St (2334 York Rd)	0.28	DR 3.5 0.28	NO 0.28	DR 3.5 0.28	DR 3.5 0.28	
3-151	Maryland Title Guarantee Co. By Newton A Williams, Esq	W Side of Broad Ave 126' to Broad Ave & Roosevelt St (2424/2454 Broad Ave)	6.57	DR 3.5 0.22 MLR 4.84 O-1 1.51	ML-IM ML-IM MLR O-1 6.57	ML-IM ML-IM MLR O-1 1.51	DR 3.5 0.22 MLR 4.84 O-1 1.51	
3-152	Frank P Pavazza Jr By Newton A Williams, Esq	S Side of Padonia Rd 1200 W of York Rd (201 Padonia Rd)	3.10	MLR 2.00 O-1 1.10	ML-IM ML-IM O-1 3.10	ML-IM ML-IM MLR 2.00	ML-IM ML-IM MLR 2.00	
3-153	Lion Brothers Company Inc By Susan J Ganz, President	210' S of Reisterstown Rd 550' W of Painters Mill Rd (10246 Reisterstown Rd)	5.28	ML-IM 5.28	BM 5.28	ML-IM 5.28	ML-IM 5.28	
3-154	American Legion, Dept of MD By S Eric DiNenna, Esq	NE & SE corners Thelma St & Landstreet St	0.80	MLR-IM 0.12 DR 3.5 0.68	ML-IM or BR 0.80	MLR-IM 0.12 DR 3.5 0.68	MLR-IM 0.12 DR 3.5 0.68	
3-155	Timothy Hearn & James Hottes	NE corner of York Rd and Matthews Ave (10615 York Rd)	0.34	NO 0.34	BL 0.34	NO 0.34	NO 0.34	



DEPRM to continue to coordinate the County's responsibility for stormwater management under the NPDES Storm Water Discharge Permit.

OPZ and DEPRM to encourage an increase in open space/pervious area through the use of open concrete paver blocks in selected areas or sharing of parking facilities.

- DEPRM to implement the Ground Water Management and Protection Strategy.
- DEPRM to continue to implement the County's responsibilities with respect to State and Federal air quality management programs.
- DEPRM to review development proposals to ensure new nonresidential development minimizes potential noise conflicts for residential areas.

Development/Redevelopment Opportunities

- OPZ to support intensification of use at locations which are oriented toward light rail stops, with mechanisms for public review and adequate controls to limit negative impacts on surrounding residential areas.
- OPZ to initiate legislation to create a commercial P.U.D. zone and/or overlay district for manufacturing zones to allow mixed use development; legislation to include some access restrictions on McCormick and Beaver Dam Roads.
- EDC to consider designating Cockeysville's commercial center as a Revitalization Area.

OPZ will support appropriate development of vacant sites within redevelopment and/or employment areas where quality design will limit negative impacts on any surrounding residential or employment areas.

Design Quality

- OPZ to recommend the incorporation of the Hunt Valley/Timonium Design Guidelines into the Baltimore County Comprehensive Manual of Development Policies for Planning Board action.
- OPZ to initiate legislation to amend the zoning regulations to allow employee support services in manufacturing zones.
- OPZ and the Department of Recreation and Parks to require dedication/reservation of a public greenway system through the development process.
- OPZ to recommend to the Planning Board and County Council an amendment to the Landscape Manual which would require a 15' wide (min.) landscaped and fenced buffer along the light rail line.
- OPZ, in conjunction with other County agencies, to encourage "clean-up" programs for the light rail right-of-way and for existing development adjacent to the light rail line.
- As part of the current OPZ signage study, OPZ to submit a recommendation to amend the Baltimore County Zoning Regulations to limit commercial signage visible from the light rail, excluding stations and "clean-up" incentive signs.
- OPZ to discourage sign variances along York Road.
- Zoning Enforcement will be encouraged to provide stricter enforcement of sign regulations along York Road.

DEPRM STUDY

Hunt Valley/Timonium Area Watershed Study

DED STUDIES

- Study and promote economical locations within Baltimore County for manufacturing and support uses which are relocating out of the Hunt Valley/Timonium area.
- Examine feasibility of the Baltimore County Development Corporation to act as a redevelopment authority in the Hunt Valley/Timonium corridor.

HUNT VALLEY/TIMONIUM ZONING GUIDELINES

The following list of guidelines was prepared to help in making recommendations for zoning requests. The guidelines are formulated to promote future development that is consistent with the plan, or to defer new development in some areas until a more detailed area plan is completed. The guidelines are intended to be general and advisory. Specific situations may warrant zoning decisions that are not consistent with these guidelines.

1. East Side of York Road

- a) No change of residential zoning to nonresidential zoning. Employ R-O or R-O-A residential office zones in areas requiring a greater buffer between disparate uses.
- b) Support higher density residential zoning at appropriate locations with compatibility guidelines and limited impact on schools.

- c) No increase in intensity of business or manufacturing zones which would create traffic increases.
- d) Support zoning of properties to match existing use.

2. West Side of York Road

- ✓ a) Timonium Heights West - no change in residential zoning, including along York Road, until a local area study is completed.
- b) Cockeysville - limit changes to existing zoning until a local area plan is completed.
- c) Old Padonia - Church Lane area - limit changes to existing zoning until a local area plan is completed.

3. Employment Area

- a) No new business zoning adjacent to McCormick or Beaver Dam Road, except for mixed use developments associated with transit stops.
- ✓ b) Support zoning changes in the employment and/or redevelopment area, which includes the buildable area between I-83 and York Road, Ridgely Road and Thornton Mill Road, which will foster growth in employment, business and employee services and amenities and/or light rail usage, providing there will be minimal negative impacts on existing transportation systems and on the surrounding residential areas. Zoning requests for properties which are located in the Padonia Road commuter shed and which may result in traffic increases should not be supported unless a transportation study is submitted demonstrating no increase in traffic.

dwelling per acre - .22 acres), to accommodate the proposed development of the Broad Street Market. Broad Street Market, as proposed, is a small high-quality shopping center, which is to include a Metro Food Market, a Rite-Aid Drug Store, and a third store, possibly a bookstore. The Petition also requested that less than an acre of existing O-1 zoning be approved for parking necessary to support the proposed Broad Street Market.

During two full days of hearings before the Board of Appeals, September 29, 1993, and October 19, 1993, Appellees produced strong and substantial evidence, through numerous expert witnesses, lay witnesses, and exhibits, that the present classification was established in error and that the proposed classification is warranted. On January 4, 1994, the Board of Appeals openly deliberated on the reclassification request. On February 24, 1994, the Board of Appeals rendered its Opinion and Order, granting the requested reclassification and parking variance. Appellants promptly noted this appeal, requesting judicial review of the Board's decision.

1992 COMPREHENSIVE ZONING MAP PROCESS

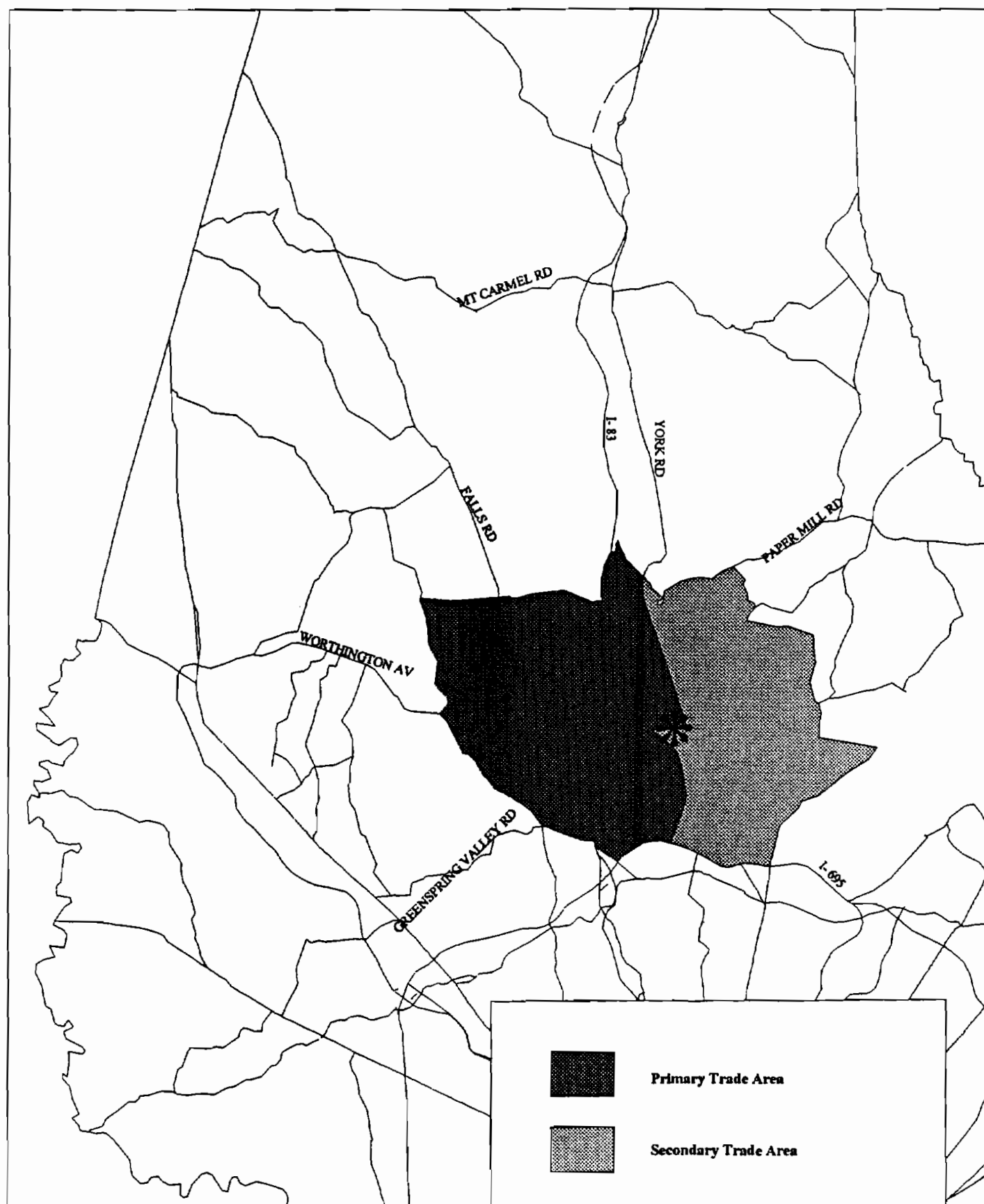
Because the zoning for this site was a specific issue before the County Council of Baltimore County ("County Council") during the 1992 Comprehensive Zoning Map Process, a review of that process is necessary in the context of Appellees' subsequent Petition for Reclassification, which they submitted to the Board of Appeals.

1993
OFFICE/INDUSTRIAL MARKET
HUNT VALLEY-TIMONIUM

C.J. Sk #19
(Page A-B)

1990*		1993**
12.2%	Office Market Vacancies	18.4%
6.5%	Industrial Market Vacancies	15.5%

* Hunt Valley/Timonium Analysis, October 1990.
** Market Research, October 1993.



B

**1993
SUPERMARKET INVENTORY**

Company	Shopping Center	Area (Sq.Ft.)
Giant	York-Ridgely Shopping Center	50,000
Giant	Yorktowne Plaza	25,000
Mars	Padonia Village	25,000
Mars	Ridgely Plaza	33,000
Safeway	Cranbrook Shopping Center	33,000
Super Fresh	Scotts Corner Shopping Center	25,000
Super Fresh	Yorkridge Shopping Center	27,000
TOTAL SUPERMARKET SQUARE FOOTAGE		218,000

6

1993
MARKET SUPPORT FOR SUPERMARKET

Primary Trade Area		Secondary Trade Area
\$66,000	Estimated Household Income	\$66,000
\$56,100	Disposable Household Income	\$56,100
7,457	Households	13,848
\$418,337,700	Aggregate Disposable Income	\$776,872,800
\$38,068,731	Supermarket Expenditures (9.1%)	\$70,695,425
\$26,648,112	70% ---- Capture Rate ---- 10%	\$7,069,543
51,538	Supportable Area at \$500 PSF Sales	14,139

TOTAL SUPPORTABLE AREA
65,700 SQ. FT.

D

1993
MARKET SUPPORT FOR COMMUNITY CENTER
NON-SUPERMARKET RETAIL

<u>Primary Trade Area</u>		<u>Secondary Trade Area</u>
\$66,000	Estimated Household Income	\$66,000
\$56,100	Disposable Household Income	\$56,100
7,457	Households	13,848
\$418,337,700	Aggregate Disposable Income	\$776,872,800
\$41,833,770	Other Retail Expenditures (10.0%)	\$77,687,280
\$6,275,066	15% ---- Capture Rate ---- 2%	\$1,553,746
19,308	Supportable Area at \$325 PSF Sales	4,781

TOTAL SUPPORTABLE AREA
24,100 SQ. FT.

E

Vice President



George Gavrelis has broad, extensive training and background in planning and zoning, particularly in Baltimore County. He has a thorough knowledge of planning and zoning procedures, as well as the detailed requirements and standards of the zoning and development regulations. His expertise assures that projects comply with applicable standards and move more expediently through the approval process.

Mr. Gavrelis is recognized as an expert witness in planning, zoning and land use issues and testifies before the Zoning Commissioner, the Board of Appeals and the Circuit Court.

Professional Background

Daft-McCune-Walker, Inc.
Towson, Maryland
1984 - Present

Private Planning Consultant
1982 - 1984

Developers General
Corporation
1972 - 1982

Baltimore County Office of
Planning and Zoning
Towson, Maryland
1951 - 1972
Director, 1963 - 1972

Education

Master of City Planning
Harvard University Graduate
School of Design

Bachelor of Arts
Harvard College

Associations

American Institute of
Certified Planners, Charter
Member

American Planning
Association

Committees

The Towson Partnership
Urban Design Subcommittee

Executive Steering
Committee, Baltimore
County Master Plan, Strategic
Plan 2000

Parking Committee, Towson
Development Corporation

Land Use Committee
Baltimore County
Chamber of Commerce

Long Range Planning
Committee, Trinity Episcopal
Church

Advisory Group
1992 Comprehensive Zoning
Map Guidelines

Significant Projects

Towson Commons
Towson, Maryland

Mays Chapel North Planned
Unit Development
Timonium, Maryland

Caves Valley Club
Documented Site Plan
Reclassification and Special
Exception

Land Owners Council,
Reciprocal Regional
Development Agreement
Owings Mills Growth Area
Baltimore County, Maryland

New Density Residential
Zones
Baltimore County, Maryland

The Guideplan, a
Comprehensive Plan for
Baltimore County, Maryland

Guest Lecturer

National Conventions,
National Association of
Home Builders
Houston, Texas
Las Vegas, Nevada

Development Seminar,
National Association of
Home Builders
Phoenix, Arizona

Home Builders Institute,
Home Builders Association
of Maryland

Awards

Home Builders Association
of Maryland, Distinguished
Service Award
1979 and 1980

Baltimore County Chamber
of Commerce Leadership
Award, Growth
Management Committee
1981



LEGG
MASON

LEGG
MASON

Advising Investors Since 1899

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Frederick, Maryland
6. **LIST OF CLIENTS**

Get. Exh #18

ROBERT T. KLEINPASTE

POSITION: Managing Director

SPECIALTIES: Strategic Planning, Project Management, New Communities and Large Scale Development, Product Design and Presentation

EXPERIENCE: 18 years in real estate development and marketing

EDUCATION: B.S. in business administration - University of Maryland, College Park

RECENT PROJECTS:

- o Investment Committee, Legg Mason/USF&G Realty Partners
- o Consultant to NVR Development and NV Homes
- o Consultant for Development of a New Downtown Strategy for Baltimore, Maryland

Mr. Kleinpaste has a particularly keen sense for the design and marketing of residential products; he is regularly consulted by builders throughout the Baltimore-Washington area on product design, product positioning, and marketing programs. Mr. Kleinpaste's areas of expertise include analyses of shopping centers, industrial buildings, mixed-use commercial and residential projects and new towns, high- and low-density residential feasibility studies, product development analyses, and optimum land use studies for both commercial and residential uses.

Mr. Kleinpaste joined Legg Mason Realty, Inc., upon Legg Mason's acquisition of Mr. Kleinpaste's Real Property Research Group (RPRG) in December 1986. At the time of its acquisition, RPRG, a real estate research and consulting firm founded by Mr. Kleinpaste in Columbia, Maryland, in 1976, had become one of the area's most widely respected market study and research organizations. In 1988, Mr. Kleinpaste was appointed Managing Director of Legg Mason Realty Group, Inc. As managing director, Mr. Kleinpaste directs the operations of all three of the organizational divisions, Appraisal Services, Research Services, and Information Services.

Prior to founding RPRG, Mr. Kleinpaste was involved in the marketing of both commercial and residential properties in the New Town of Jonathan near Minneapolis, Minnesota. He was also previously a partner in the firm of Briggs Napier Consultants, where he conducted market analyses for developers and builders throughout the United States and Canada. Mr. Kleinpaste has also served as Vice President of Chesapeake Homes, a division of Olin Corporation's housing subsidiary. While employed by this production housing company, he was responsible for market research, land acquisition, product planning and other marketing functions.

Mr. Kleinpaste is a lecturer in the Real Estate Program offered by The Johns Hopkins University and regularly conducts seminars for business and professional organizations.

**RESUME OF
ROBERT T. KLEINPASTE**

Experience

- 1989 - Present

President, Legg Mason Realty Group, Inc.
Baltimore, Maryland
Has operational responsibility for this multi-office real estate advisory firm offering research, consultation, appraisal, information systems, and corporate real estate services.
- 1986 - 1988

President, Legg Mason Real Estate Research
Baltimore, Maryland
Managed this wholly-owned subsidiary founded upon Legg Mason's acquisition of Real Property Research Group (RPRG).
- 1978 - 1986

President, Real Property Research Group
Columbia, Maryland
Operated this real estate research and consulting firm which was founded by myself in 1976. The company was purchased by Legg Mason in 1986.
- 1976 - 1978

Vice President, Chesapeake Homes, Division of Olin Corporation's Housing Subsidiary
Baltimore, Maryland
Was responsible for market research, land acquisition, product planning and other marketing functions.
- 1975 - 1976

Partner, Briggs Napier Consultants
Minneapolis, Minnesota
Conducted market analyses for developers and builders throughout the United States and Canada.
- 1973 - 1975

Sales Manager, Jonathan Development Corporation
Minneapolis, Minnesota
Marketed both commercial and residential properties in the New Town Jonathan near Minneapolis.

Education

- 1969

University of Maryland, College Park, Maryland
Bachelor of Science

People's Counsel would have this Court believe that the Appellees actively pressed the County Council for M.L.-I.M. (manufacturing, light - industrial, major) zoning, a more intensive industrial classification than the present M.L.R. classification, up until the Comprehensive Map was adopted in October, 1992 and, then, turned around in February, 1993 to argue that industrial zoning was a mistake. More importantly, People's Counsel would have the Court believe that the County Council seriously reviewed the classification of the property during that process and reaffirmed that the present classification is correct. This simply is not the case.

As Timothy Harrison described, Harrison & Grass, the contract purchaser and proposed developer, first became involved with the subject property in June, 1992, well after the legal owners had initiated a request to rezone the property as part of the 1992 Comprehensive Zoning Map Process. (Sept. 29, 1993, T. 29-30) During the initial weeks of Harrison & Grass' involvement, though, the Appellees realized that M.L.-I.M. was, in fact, not the correct classification for that location and that a request for commercial classification should be incorporated into the remapping process. (Sept. 29, 1993, T. 29-30) Thereafter, the Appellees actively and diligently sought to rezone the property to its proper commercial classification. (Sept. 29, 1993, T. 30-31)

Resume of Robert T. Kleinpaste

Affiliations

National Association of Corporate Real Estate Executives
National Association of Home Builders
National Association of Office and Industrial Parks
National Multi-Housing Council
Urban Land Institute
National Association of Realtors

Teaching

John Hopkins University, School of Building and Development

MICKEY A. CORNELIUS
PRINCIPAL



Mickey Cornelius is a registered Professional Engineer with over ten years experience in the Highway Transportation and Traffic Engineering profession. He has served as a consulting traffic engineer for more than eight years. His experience in both the public and private sectors has provided Mr. Cornelius with a broad range of knowledge.

Mr. Cornelius is responsible for managing all aspects of the firm's traffic engineering and transportation planning studies. His experience in traffic engineering and transportation planning includes traffic capacity analysis, traffic forecasting and associated modeling,

Master Plan analysis, needs analysis, development of alternatives, geometric design, operations analysis, parking and circulation, traffic signal warrant studies, traffic signal design, traffic control plans, Transportation Systems Management and Travel Demand Management evaluations.

Mr. Cornelius' educational and professional background have qualified him as an expert in the field of traffic engineering and transportation planning before numerous County and municipal planning and zoning boards in Maryland, Pennsylvania, and New Jersey.

JOB HISTORY

1984-Present

Traffic Engineering Consultant

1982-1984

Civil Engineer, Highway Construction
S.J. Groves and Sons Co.

EDUCATIONAL BACKGROUND

B.S. in Civil Engineering with emphasis in Transportation —
The Pennsylvania State University
Traffic Engineering Courses: Northwestern University Traffic
Institute; Polytechnic Institute of New York

AFFILIATIONS

Registered Professional Engineer (P.E.)
Institute of Transportation Engineers (I.T.E.)
National Society of Professional Engineers (N.S.P.E.)
Urban Land Institute (U.L.I.)
Maryland Association of Engineers (M.A.E.)
Consulting Engineers Council of Pennsylvania (CEC/PA)

PLACES WHERE
MR. CORNELIUS HAS
QUALIFIED AS AN EXPERT WITNESS

MARYLAND

City of Annapolis-City Council
Anne Arundel County-Board of Appeals, Zoning Hearing
Examiner
City of Baltimore-City Council, Planning Commission
Baltimore County-County Review Group, Zoning
Commissioner, Board of Appeals, Circuit Court
Town of Bel Air-Planning Board, Town Commissioners,
Zoning Hearing Examiner
City of Bowie-Planning Advisory Board, Mayor and
City Council
Cecil County-Technical Advisory Committee
Charles County-Board of Appeals
Dorchester County-Board of Appeals
Frederick County-Planning Board, County Commissioners
Howard County-Planning Board, Zoning Board,
County Council

Montgomery County-Planning Board, Zoning Hearing
Examiner, Board of Appeals
Town of North East-Planning Commission
Prince George's County-Planning Board, County Council
Washington County-Board of Appeals
City of Westminster-Mayor and Common Council
Wicomico County-Board of Zoning Appeals

NEW JERSEY

Cumberland County-Fairfield Township Zoning Board

PENNSYLVANIA

York County-Manchester Township Zoning Hearing Board,
Planning Commission of Shrewsbury Borough

Ref. Exp #16

**BROAD STREET MARKET
Environmental Impact Statement**

Cat. Exh #13

Project Description

2/23/93

Harrison-Grass, Inc. proposes to develop a commercial shopping center on a 7.50 acre tract in the southwest quadrant of the intersection of Padonia Road and Broad Street in the Timonium area of northern Baltimore County, Maryland; 6.57 acres will require zoning reclassification. Approximately 83,600 square feet of proposed building area and parking for 418 cars are proposed. Existing zoning is predominantly MLR with some O-1 and a small amount of DR-3.5. Proposed zoning is BM.

An environmental impact statement has been prepared in accordance with the proposed zoning change and the requirements of the Baltimore County Code Section 2-356.

General Site Description

The project site is surrounded by existing commercial, retail and residential development. An existing concrete drainage course lies along the northern property line of the site. Approximately 80 percent of the site area is disturbed land on which large amounts of fill have been placed since 1978 under various grading and stockpile permits issued by Baltimore County. Sparse grasses and shrub vegetation exists in these areas. Woods remain around the extreme site perimeter. These include the northern edge of the site along Padonia Road, a narrow area of proposed Broad Avenue extended in the northeast corner and the extreme southwest corner of the site below Roosevelt Street.

The site is located in the Eastern Piedmont Meta-sedimentary physiographic province and is underlain by residual soils formed through the decomposition of underlying crystalline bedrocks. The rock is believed to be the Baltimore Gneiss, and derived soils are micaceous sand silts of low to no plasticity. The United States Department of Agriculture (USDA) shows site soils to be Alluvial Land and Baltimore Silt Loam, 3-8 % slopes.

The topography is very irregular due to the presence of very high fill mounds, but generally falls to natural land and elevations to the north, south and west sides of the site.

The vegetation where present consists of upland scrub shrubs and vines and secondary growth trees.

The existing concrete drainage course has very low volume flow. A wetland delineation was performed on the site in late 1992. No wetlands were found on the site.

HILLIS-CARNES

Potential Impacts of Proposed Action on the Environment

Potential short term and long term adverse impacts of the proposed development on the environment have been identified. These impacts are the result of development in general, and not specifically related to any change in zoning. Methods are generally presented to mitigate impacts, where identified. Potential impacts within the following categories are addressed:

Removal of vegetation
Disturbance to drainage course
Soil erosion
Water and wastewater
Noise and air pollution
Loss of wildlife habitat

Removal of Vegetation

As described, most of the site is cleared and already disturbed land. Secondary growth trees, shrubs and vines exist around the perimeter of the site. The proposed development will involve clearing approximately 1.5 acres to accommodate pavements and roads. Vegetative buffers will remain to screen the property from the existing residential developments and the concrete drainage course.

A short term environmental impact will occur from removal of existing vegetation during the construction and site grading activities. Upon completion of construction, all disturbed areas around buildings and pavements will be vegetatively stabilized according to an approved grading plan. Where possible, existing specimen trees, if present will be saved in accordance with sound urban forestry practices. Suitable replacement plantings will be included in landscape plans whenever saving large trees is not possible or practical.

Over the long term, there will be a net loss of 1.5 acres of existing woods. While this loss is irreversible, careful landscape planting will reduce the long term effects of these losses and enhance the site. Undeveloped secondary growth areas of the site will continue to develop and mature into a mature hardwood stand. This development and maturation process will provide water and air quality benefits, as well as wildlife habitat.

Disturbance to Stream

The small concrete drainage course along the northern property line is believed to be a tributary to Beaver Dam Run, a class III stream.

HILLIS-CARNES

No disturbance to this drainage course is anticipated as a result of the development. Baltimore County requires a 60 foot forest stream buffer to be maintained from the drainage course.

The existing woods line at the stream is proposed to be maintained as part of the development.

County and State laws require sediment and erosion control during construction, and stormwater management for water quality and quantity controls. These controls will be met by the proposed development. These requirements as well as those of building and forest buffer setbacks will protect the drainage course from any short or long term environmental effects of the development.

Soil Erosion

Construction site grading poses the greatest potential for erosion. These concerns will be alleviated by the erosion and sediment control plans, which require the approval of the Baltimore County Department of Environmental Protection and Resource Management prior to implementation. Grade design work will insure that final slopes are stable and that runoff from the site is minimized. Proper stormwater management will provide long-term control of runoff and protection against erosion problems.

Water and Sewer System

The Broad Street Market site lies within the Metropolitan District and within the existing W-1 and S-1 service areas for water and sewer services. Adequate water and sewer capacity will be assured by proper design and review by the Department of Public Works. No long-term environmental effects are anticipated from the provision of water and sewer services to the project.

Air Quality and Noise

Potential adverse effects to air quality on and around the site during the construction were considered. The Maryland Environmental Regulations (COMAR 10.18.06.03D) and the Baltimore County Bureau of Air Quality Management have prepared guidelines to control the amount of airborne dust produced by site activities during construction. Stone stabilized construction entrances, wheel-wash stations, hosing operations, labor-intensive and mechanical sweeping, and water trucks are some of the best management practices recommended to control mud and dust during site activities. These practices will be incorporated into project plans and specifications, and rigorously enforced in contracts with project subcontractors to insure compliance with appropriate regulations. These short-term environmental effects will be removed once the site is stabilized in accordance with the approved sediment and erosion control plan.

HILLIS-CARNES

Vehicle emissions can impact air quality. However, all vehicles in Baltimore County built after 1971 require annual emissions testing for control of hydrocarbons and carbon monoxide levels from vehicle exhaust.

It is anticipated that the facility will use electricity or natural gas for heating and cooling. No incineration will be performed onsite. Solid waste will be handled and removed by private commercial hauler.

Noise pollution is recognized as an environmental impact by regulatory agencies. The greatest impact will be short term effects from construction noise. Maryland Environmental regulations (COMAR 26.02.03) restrict noise levels from construction site activities to 90 dBA during daytime hours and 55 dBA at night time. Once construction is completed, noise will be limited to that generated by regular vehicular traffic and occasional delivery trucks. These noise levels are not anticipated to be troublesome to nearby residential neighbors, nor are they expected to add significantly to existing noise levels from the adjacent developments.

Wildlife Habitat

The proposed development will entail the permanent conversion of approximately 1.5 acres of wooded and viney lands to parking and road areas. The removal of vegetation will likely cause dislocation of small animals like rabbits and birds to adjacent wooded areas. Noise from construction traffic will likely cause disturbances to wildlife as well.

Habitat value may be increased by incorporating wildlife enhancement and development into the landscaping plans. Certain plant types can attract various species. Stormwater management plans can also be used to promote wildlife.

Summary

No serious, irreversible environmental effects have been identified with development of the site as planned. Some short term effects have been identified, most or all of which can be alleviated or negated by sound design and construction practices and following local codes and regulations. The short term effects noted in the statement apply to any development, including those allowed by current zoning classifications. Some, more serious long-term effects could actually be generated by light industrial or manufacturing development as opposed to commercial-retail development as proposed.

HILLIS-CARNES

Ret. Encl # 12

RESUME

Name: Richard M. Hillis

Education:

B.S. Civil Engineering	1973 Johns Hopkins University Baltimore, MD
M.B.A. Management Science	1982 Loyola College Baltimore, MD
M.S. Civil Engineering	1987 University of Maryland College Park, MD

Registration:

Professional Engineer	Maryland	No. 11211
Professional Engineer	New Jersey	No. 33131
Professional Engineer	Virginia	No. 18042
Professional Engineer	Washington D.C.	No. 8844
National Council Of Engineering Examiners		No. 7566
Master Well Driller	Maryland	No. MWD 343

Experience:

Civil Engineering: Directed a 72 person division for an ENR top 500 engineering firm which specialized in geotechnical and environmental engineering as well as site investigations, construction materials testing, and forensic engineering. Handled liability problems, administrative affairs, and managed complex projects. Projects include the foundation investigation and supervision of remedial stone column ground modification treatment; Fort Lauderdale, Fla. Composting Facility, foundation investigation and construction supervision of 400,000 sq.ft. manufacturing plant; Tucker Housewares, Leominster, Mass., chief geotechnical engineer and construction supervisor of soil surcharging, 1.5 million cubic yard fill, pile foundation, soil cement pavement, utility installation, and structural construction: Owings Mills Town Center, Maryland.

Directed engineering design and managed construction of various civil, works projects for local county government. Projects included road widening and rehabilitation, EPA grant funded interceptor and collector sewers, landfill management and individual engineered solutions to maintenance problems and selection of new county well sites for public water system.

HILLIS-CARNES

RICHARD M. HILLIS, P.E.

Groundwater Hydrology: Directed hydrogeologic investigations of projects involving individual septic system/ well interaction, stormwater management, municipal landfills, water supply and hazardous materials. Projects include pumping tests, aquifer drawdown and transmissivity analysis to secure permit approval by the Department of Environment for the first use of septic systems below the permanent groundwater table in a residential subdivision; test methods became basis for COMAR regulations in Maryland, Cove Creek Club, Phase II, Queen Anne's County, Maryland. Used a subsurface investigation and performed pump tests to investigate the feasibility of lowering the groundwater table to facilitate stormwater infiltration; Southwest Forty Trailer Park, Newark, Delaware. Performed hydrogeologic analysis, interpreted groundwater flow regime and prepared hydrogeologic report for ash fill; Polk County, Minn. Landfill.

Construction Quality Control: Supervised quality control testing of the construction of shallow spread footings, caissons, piles, and "hardspot" foundation systems and ground modification procedures. Evaluated construction of steel and reinforced concrete structures. Inspected the placement of controlled compacted fill and pavement. Projects include a one million cubic yard fill; Piney Orchard, Odenton, Maryland, a 1/2 million cubic yard fill; Washington Commerce Center, Prince Georges County, Md. a 10 story masonry residential building; Quaker Hill Place, Wilmington, Delaware.

Environmental Inspections, Assessments and Reports: Directed Phase I, II, and III environmental site assessments for residential and commercial projects. Project scopes have included geologic literature searches, topographic map and aerial photographic analysis, Agency record reviews, site reconnaissance, electromagnetic, soil gas and infrared telemetry surveys, well installation and groundwater chemical analysis. Projects include New Ridge, Anne Arundel County, Md. Germantown Country Club Development, Montgomery County, Md. and the Standard Equipment Site, Harford County, Md.

Performed site inspections, analyses and wetland delineations for various commercial and residential projects including Glen Burnie Commerce Center in Anne Arundel County, Maryland; Capital Gateway in Prince Georges County, Maryland; Maier Industrial Park and Baltimore Washington Industrial Park Parcel O in Howard County, Maryland; Hilltop Place, BJ's Wholesale Club at White Marsh, Walnut Grove, Mays Chapel North SWMP #5 and Broad Street Market in Baltimore County, Maryland.

Prepared Environmental Effects and Impact reports for Wakefield Subdivision in Carroll County, Maryland; Hilltop Place Subdivision and Broad Street Market in Baltimore County; Hammock Island Marina in Anne Arundel County, Maryland.

HILLIS-CARNES

Direct preparation of Health and Safety Specifications for construction operations for Key Highway Renovation; Baltimore, Maryland. Principal in Charge of Health and Safety construction monitoring for various projects and sites for Exxon, USA in New Jersey, Pennsylvania, Virginia and West Virginia.

Memberships

American Society of Civil Engineers
Maryland ASCE Geotechnical Group, Program Chairman

Publications/Seminars

"The Case Against Project Peer Review" Presented at the ASCE Spring Convention, Nashville, Tennessee May 1988

"Settlement Characteristics from Insitu Tests in Flyash Structural Fills" with Ramesh C. Gupta; selected for presentation at the 1989 ASCE Foundation Engineering Congress in Chicago, June 1989

"Cement-Bentonite Cutoff Wall Remediation of Small Earthen Dam" with Harald W. Van Aller, P.E.; selected for presentation and published in the proceedings of the 1992 Annual Conference The Association of State Dam Safety Officials, Baltimore, Maryland September 1992

Certifications:

40 hour course for hazardous waste site workers in compliance with 29 CFR 1910

HILLIS-CARNES

ps (30) April 3, 1995 Memorandum Opinion and Order of Court REMANDING above case to Board of Appeals to make the appropriate factual and legal findings consistent with § 2-356 of the Baltimore County Code, etc., fd. (●)

PH(31)* Apr 5, 1995 Pltffs Notice of Appeal to the Court of Special Appeals of Maryland, fd. (7/115)

jh*(32) April 26, 1995, Notice of Appeal of John M. Bearer from the Memorandum Opinion and Order filed and dated March 30, 1995, fd.(rec'd 4/26/95) (7/123)

*df (33) April 28, 1995 - Petitioners' MICHAEL & PENNY GERBER, Notice of Appeal to the Court of Special Appeals fd. (7/125).

jc*(34) May 2, 1995 Order from the Court of Special Appeals that the Appeal proceed without a Prehearing Conference, fd.

Transcript Box 336

PH(35) Feb 6, 1996 Mandate from the Court of Special Appeals of Maryland Remanding case to the County Board of Appeals of Baltimore County and Granting Motion to dismiss Appeal, fd.

PH(36) Feb 14, 1996 Order from Judge T.J. Bollinger Remanding case to the County Board of Appeals, etc, fd.

FEBRUARY 29, 1996 ORIGINAL RECORD AND DOCKET ENTRIES TRANSFERRED TO BALTIMORE COUNTY BOARD OF APPEALS BY CERTIFIED MAIL p 368 008 246. (CAB).

Appellees eventually realized, however, that their intention to come up with a plan that was acceptable to both the community and the County for development under the commercial classification could not be accomplished before the adoption of 1992 Comprehensive Zoning Map in October, 1992. (Sept. 29, 1993, T. 30-31) Recognizing this, the County Council advised the Appellees to participate in the cycle zoning process in which a documented site plan could be utilized. (Sept. 29, 1993, T. 30-31) Therefore, Appellees continued to work with the community and the County to prepare a documented site plan that would satisfy the needs of all concerned parties and of the county as a whole. (Sept. 29, 1993, T. 30-31) Appellees then submitted their Petition for Reclassification and Documented Site Plan to the Board of Appeals during the cycle zoning process after the 1992 Comprehensive Zoning Map had been adopted.

The facts clearly indicate that, in retaining the present zoning, the County Council was merely maintaining the status quo in recognition that Appellees would be submitting an interim zoning reclassification request with a documented site plan to the Board of Appeals. The County Council, therefore, did not actually assess the appropriateness of the present zoning classification at that time even though that zoning was then inappropriate for the site. In effect, Appellees' contention that the present zoning is in error was

Cet Ekh
#8

Samuel G. Crozier
Landscape Architect Land Planner

EDUCATION

Master of Landscape Architecture - University of Michigan 1964
Bachelors of Landscape Architecture - Ohio State University 1962

PROFESSIONAL ASSOCIATIONS

Member American Society of Landscape Architects;
President, Maryland Chapter, ASLA. (Past)
Governor's appointment, State of Maryland, Board of Examiners of Landscape Architects.
Registered Landscape Architect nationally by examination.

EXPERIENCE

Twenty four years in the profession has given Sam Crozier a broad based experience in feasibility studies, design and implementation of projects. Major emphasis has been in the planning process beginning with regional/local context, site analysis, program development, concept formulation and testing, criteria development, and ending with site plans, detailed design and construction documents. Within this framework, Sam Crozier has provided leadership and direction for reviewing projects with participating citizen associations, government staffs and private concerns.

After three years with the Rouse Company working with multi disciplinary teams on large scale land planning projects in the new town of Columbia, Maryland and on land use feasibility studies for housing, industrial and commercial projects throughout the country, Sam Crozier developed his own firm in Baltimore, Maryland. He has continued as a private consultant to the Rouse Company for twelve years and has won two national awards for Rouse Company projects. Prior to the Rouse Company and his own firm, experience working with allied professionals was developed by three years with one architectural firm and six years with landscape architectural firms.

Project emphasis has been in land planning for office/commercial projects, shopping malls, housing complexes and community planning, as well as master plans for industrial parks and parks and recreation facilities. Many of these projects included public hearings, zoning appeals, community advocacy planning, demographic and facility analysis and user studies. The process has been graphically illustrated through reports and master plans from site analysis through site plans and included landscape architectural details such as; plant materials, street furniture, fountains, lighting, and earthworks planning.

Sam Crozier has coordinated planning efforts with marketing studies, engineering reports, and architectural and graphic consultants. He is vitally concerned with improving man's environment and with rationale, economical as well as environmentally sound use of the earth's natural resources.

LANDSCAPE ARCHITECTURE
AND LAND PLANNING

Mill Centre, Suite 400
3000 Chestnut Avenue
Baltimore, Maryland 21211
301/366-3330

PETITIONER:

Baker Land Company & Title Warrantee Corporation
Maryland Title Guarantee, Richard Fogel & Baltimore County

REQUESTED ACTION:

Reclassification to B.M.-C.C.C. (Business Major) and a Special
Hearing for business parking in an O-1 zone.

EXISTING ZONING:

M.L.R., O-1 and D.R. 3.5

LOCATION:

Southwest corner of the intersection of Padonia Road and
Broad Avenue

AREA OF SITE:

6.57 acres ±

ZONING OF ADJACENT PROPERTY/USE:

North: B.M.-C.C.C. (N/S Padonia Road) Commercial
East: O-1, RO, D.R. 3.5 - Vacant, storage
South: D.R. 3.5 - Residential, vacant
West: O-1, M.L.-I.M., M.L.R. - Office, contractor storage
yard, vacant

SITE DESCRIPTION:

The site is vacant, and has been used as a stockpile and fill
area. A concrete drainage channel lies along the northern
property line. Another stream lies beyond the property to the
west, and may impact the development of the parcel. The
perimeter of the property is wooded.

PROPERTIES IN THE VICINITY:

The site is located in the Timonium Heights subdivision which
is bounded by Padonia Road to the north, York Road to the east,
the Timonium Fairgrounds to the south and the Central Light Rail
line to the west. The Timonium Light Rail stop is located at
the southwest corner of the community. Timonium Heights is
primarily residential, with residential office and low-intensity
strip retail uses along York Road and significant vacant land at
the north and west sides of the community. North of the site,

on the opposite side of Padonia Road, lies a retail center. Directly west of the site is a six-story office building and contractor storage yard. Further west of the light rail line are the office/industrial uses of the Deereco Road area.

WATER AND SEWERAGE:

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

TRAFFIC AND ROADS:

The site fronts on Padonia Road and Broad Avenue, which is unimproved between Padonia and Roosevelt Street. A traffic signal already exists at the Padonia Road and Broad Avenue intersection, however, the proposed Broad Avenue access will not be connected through to the residential area. The site is located within the Padonia Road "F" level traffic shed. This traffic condition is expected to be alleviated when the Warren Road interchange at I-83 is completed (FY 1994). The completion of the Beaver Dam Road extension to Padonia Road (FY 1996) is also expected to improve traffic conditions in this corridor.

ZONING HISTORY:

- 1992 - Comprehensive Zoning Map Issue 3-151
Request for M.L.-I.M. denied
- 1984 - Comprehensive Zoning Map Issue 3-081
D.R. 3.5 existing
Request for M.L.R. denied
- 1980 - Comprehensive Zoning Map Issue 3-017
M.L.R., D.R. 16 and D.R. 3.5, B.M. proposed
(M.L.R. and D.R. 3.5 approved) (M.L.R. was expanded)
- 1976 - Comprehensive Zoning Map Issue 3-225
D.R. 3.5 existing, (request for area between RR & Broad,
Padonia and Land Street)
M.L.R. granted along Padonia
Petition for Reclassification No. 79-64-R (Item No. 15)
B.L. granted with conditions

In the 1992 Comprehensive Zoning Map Process, a request was made for M.L.-I.M. zoning in order to develop the site for commercial use. Initially, many residents and the area umbrella community

association expressed concerns over the proposed zoning change. The process ended with the understanding that if a documented site plan is submitted, and certain conditions of the community are met by the developer, the zoning change would be supported.

See attached letter of support from the Timonium Heights Community Association.

MASTER PLAN/COMMUNITY PLANS:

The Master Plan identifies the Hunt Valley/Timonium corridor, of which the site is a part, for a land use study as a mixed-use redevelopment area. The Hunt Valley/Timonium Redevelopment Study identifies the Timonium Heights area as one with potential for employment/retail/residential mixed use redevelopment.

PROPOSED VS. EXISTING ZONING:

The regulations governing D.R. zoning may be found in Section 1B01 of the Baltimore County Zoning Regulations. Regulations for the M.L.R. and O-1 zoning classifications may be found in the B.C.Z.R., Sections 248 and 204, respectively.

The B.M. zone permits a wide range of uses in addition to those permitted in the B.L. zone. Density is regulated by a floor area ratio of 4.0. Density is realistically limited by parking requirements, as well as economic and environmental constraints. Building height is also limited.

DOCUMENTED SITE PLAN:

A documented site plan which includes architectural elevations, and site/landscape details has been submitted. The plan depicts a 83,600 square foot shopping center, which includes a 60,000 square foot Food Store.

OFFICE OF PLANNING AND ZONING SUMMARY AND RECOMMENDATIONS:

Staff has reviewed the zoning request and the documented site plan and is of the opinion that as proposed, the uses and site development are generally appropriate for this location. The one outstanding concern is that the B.M.-C.C.C. zoning requested permits a range of uses which may be too intense for or incompatible with, the surrounding residential community. Following discussions with the applicants, it has been agreed that the documented site plan will specifically state that development of this property will be limited to only those uses

permitted as a matter of right and by Special Exception in the B.L. zone. As a result, staff recommends B.M. zoning (without the C.C.C. district) for this property, with the conditions noted on the documented site plan. The following additional conditions should also be met.

1. No variance of basic service maps should be granted. The shopping center should not be constructed until the Padonia Road "F" level traffic shed condition is removed.
2. The location of the proposed Master Plan greenway in the vicinity should be established. Any forest buffer required along the stream paralleling the light rail should be deeded to the County as a greenway.
3. The plan should demonstrate that the loading area is sufficiently sized and configured for use by tractor-trailers.
4. Maintenance of planting areas on both sides of the fence is the responsibility of the owner, and should be so noted.
5. The rear of the retail stores facing the Favazza office building should be landscaped.
6. Pedestrian access to the shopping center should be provided along Padonia Road, and from Broad Avenue for Timonium Heights residents.
7. The barricade on Broad Avenue should be permanently installed, attractively designed, and should permit pedestrian access.
8. No sign variances should be approved. Signage should follow the spirit and intent of the elevations submitted. All sign locations should be shown on the plan.
9. Trees along Padonia Road and other forest buffers are to be preserved. An effective barrier should be erected along the edge of the buffer to protect root systems during construction. Supplemental planting may be required in the forest buffer adjacent to Padonia Road.

CYCZ93.305/CYCLE

**Timonium Heights
Community Association**

9 Washington Street
Timonium, MD 21093

April 13, 1993

William T. Hackett, Chairman
County Board of Appeals of
Baltimore County
Old Court House
400 Washington Avenue
Towson, Maryland 21204

RE: Cycle Zoning Reclassification
Harrison & Grass - Broad Street Market
Property located in the southwest quadrant of the
intersection of Padonia Road and Broad Street

Dear Chairman Hackett:

I am the president of the Timonium Heights Community Association, representing the predominately residential community bound by Padonia Road to the north, York Road to the east, the Timonium Fairgrounds to the south and the light rail line to the west. Our Association represents approximately 60 families who are all interested in preserving the quality of life and the character of our neighborhood by limiting the impact of any development within our borders.

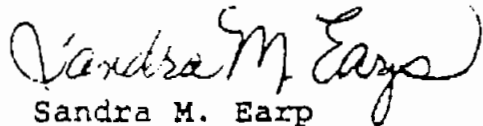
Our Association's Officers and many of our families have met with the developers of the proposed Broad Street Market to discuss the required zoning reclassification of this property and the ways in which its impact can be minimized. We are aware that the property's current zoning classification is predominately an industrial one which would permit uses totally inconsistent with our goals.

Therefore, the Timonium Heights Community Association supports efforts to rezone this property to a commercial classification that would allow the proposed Broad Street Market to be constructed so long as an originally executed copy of the enclosed "Declaration of Restrictive Covenants" is recorded among the land records of Baltimore County. This "Declaration of Restrictive Covenants", which addresses all of our community's concerns, will surely provide for the construction of a quality project consistent with the goals of our association.

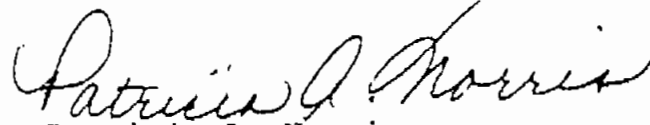
William T. Hackett
April 13, 1993
Page 2

In conclusion, let me repeat that the decision of our Association has been made after much discussion and many meetings between our members and the Broad Street Market development team; and we trust that the Board will take our recommendation into account when making its decision.

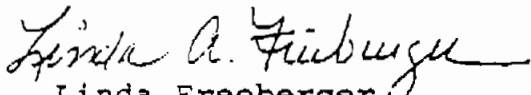
Very truly yours,



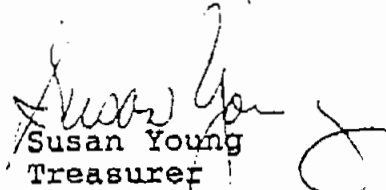
Sandra M. Earp
President
Timonium Heights
Community Association



Patricia A. Norris
Vice President
Timonium Heights
Community Association



Linda Freeberger
Secretary
Timonium Heights
Community Association



Susan Young
Treasurer
Timonium Heights
Community Association

cc: P. David Fields, Director, OPZ
Members of the Baltimore County Planning Board,
c/o David Fields

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION (the "Declaration") is made as of this _____ day of _____, 1993 by MARYLAND TITLE GUARANTEE COMPANY, a Maryland corporation (the "Owner"), in favor of the TIMONIUM HEIGHTS COMMUNITY ASSOCIATION, INC., a Maryland Corporation (the "Community").

RECITALS:

A. Owner owns certain property containing approximately 6.57 acres of land, more or less, located on the south side of Padonia Road at its intersection with Broad Avenue in Baltimore County, Maryland (the "Property").

B. The Property is currently zoned predominantly MLR, along with O-1 and a minor amount of DR 3.5 and the Owner has submitted a request to change the zoning for the Property to BM under the reclassification zoning process pursuant to Section 2-356 of the Baltimore County Code (the "Cycle Reclassification").

C. The Community has agreed not to oppose Owner's request to change the zoning for the Property to BM, provided that the Owner enters into this Declaration in favor of and enforceable by the Community, representing the residential property owners in the Timonium Heights subdivision, as shown on the Plat recorded in the Land Records of Baltimore County at Plat Book WPC-5, Page 82.

NOW, THEREFORE, THIS DECLARATION WITNESSETH, the Owner hereby agrees that the Property shall be held, sold and conveyed subject to the covenants, conditions and restrictions set forth below:

1. The Owner agrees that if approval is granted to permit Owner to construct a shopping center at the Property, the improvements will be constructed substantially in accordance with the site plan attached hereto as Exhibit A. In such event, the landscaping shall be in substantial accord with the drawing shown on Exhibit A, including but not limited to the creation of a berm and buffer and the installation and maintenance of an eight (8) foot high screening fence along the southern boundary of the Property, as shown on Exhibit A. The buildings and related improvements to be constructed on the Property shall be substantially in accordance with the schematic architectural designs shown on Exhibit B attached hereto. In addition, the signage and lighting shall be designed in substantial accord with Exhibit C attached hereto.

2. The Owner agrees that the berm to be created along the southern boundary of the Property shall be designed and constructed so that it will not cause any flooding of adjacent off-site properties. Storm water shall be managed in strict accordance with all applicable county and state regulations. In addition, the Owner will install a storm drain in Roosevelt Street to collect storm water and convey it through the Property into the storm drainage system.

3. The parties acknowledge that Broad Avenue will have to be extended in a southerly direction from Padonia Road along the eastern boundary of the Property, to provide a means of ingress and egress to and from the Property to permit the development of the Property. The Owner agrees that it shall not extend Broad Avenue beyond the southern boundary of the Property. This shall not prevent the establishment of a service drive for the exclusive use of property owners in the Community that currently use Broad Avenue as a means of access.

4. The Owner agrees that no trash shall be picked up from the Property between the hours of 9:00 p.m. and 9:00 a.m. or any deliveries made to the Property between the hours of 11:00 p.m. and 7:00 a.m.

5. Any signage to be installed on the Property shall comply with all applicable zoning laws and regulations, and any such sign(s) shall be substantially in compliance with the signage shown on Exhibit A.

6. Broad Avenue shall be constructed to provide the construction entrance from Padonia Road to the Property prior to the commencement of construction on the Property. No construction vehicles shall enter the Property from the existing section of Broad Avenue to the south.

7. The Community shall have the right to enforce the covenants and declarations contained herein by instituting a lawsuit to enjoin any breach or enforce any covenant contained herein, including but not limited to seeking an injunction. If Owner is found to have breached any of its obligations under this Declaration, the Owner shall reimburse the Community for any reasonable costs or expenses incurred by the Community, including court costs and reasonable attorney's fees.

8. The covenants, conditions and restrictions set forth in this Declaration shall run with the land and bind the Property for a period of twenty-five (25) years from the date hereof; provided, however, that if the Property is not rezoned to BM during the Cycle Reclassification, this Declaration shall automatically terminate and be of no further force or effect. In addition, if subsequently the Property is rezoned to a classification other than BM, this Declaration shall automatically terminate and be of no further force or effect. In the event this Declaration is automatically terminated, Owner may record an affidavit among the Land Records of Baltimore County stating, as the case may be, either (a) the Property was not rezoned to BM during the Cycle Reclassification, or (b) the Property has been rezoned to a classification other than BM. Upon the filing of such affidavit, without the necessity for joinder or consent by any other party, this Declaration shall be void as of record and of no effect.

Report by the
Baltimore County
Office of Planning and Zoning
to the
Baltimore County Planning Board

ZONING RECLASSIFICATION PETITIONS

Cycle I, 1993

May 31, 1993



*POT
Exhibit
#7*

specifically preserved by the Council's deferral to the Board of Appeals.

THE STANDARD OF REVIEW ON APPEAL

The Appellants, in their respective Memoranda, have failed to articulate the correct standard of review for this administrative appeal. Contrary to People's Counsel's mistaken premise, upon which his entire Memorandum is based, the Circuit Court is not being asked to review the action taken by the County Council during the 1992 Comprehensive Zoning Map Process to determine whether that action was "reasonable." Instead, in this appeal, the Circuit Court must review the decision by the Board of Appeals, which was acting as an administrative zoning body, to grant the Appellees' interim zoning reclassification request.

The standard of review in this case is, in fact, no different than the standard of review applied to any other administrative appeal. The Board's decision in this case must be reviewed in a "light most favorable to the [Board], since 'decisions of administrative agencies are prima facie correct,'...and 'carry with them the presumption of validity.'" Anderson v. Department of Pub. Safety & Correctional Servs., 330 Md. 187, 213, 623 A.2d 198 (1993) (quoting Bulluck v. Pelham Woods Apts., 283 Md. 505, 513, 390 A.2d 1119 (1978)). Consequently, the reviewing court must affirm the decision of the Board of Appeals if the issue decided, here reclassification, was "fairly debatable" in

Ret. Exh
#6

TIMONIUM HEIGHTS COMMUNITY ASSOCIATION

RESOLVED: That the position of the Timonium Heights Community Association as adopted by the Zoning Committee on April 18, 1993 with respect to the zoning matter known as:

Broad Street Market

is that:

the Association conditionally supports approval of this zoning matter.

AS WITNESS OUR HANDS AND SEALS THIS 28th day of September, 1993.

ATTEST:

TIMONIUM HEIGHTS COMMUNITY ASSOCIATION

Linda A. Freeburger
Linda A. Freeburger, Secretary

Sandra M. Earp
Sandra M. Earp, President

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly
elected member of the Zoning Committee of the Timonium Heights Community
Association.

ATTEST:

TIMONIUM HEIGHTS COMMUNITY ASSOCIATION

Linda A. Freeburger
Linda A. Freeburger, Secretary

Sandra M. Earp
Sandra M. Earp, President

DATE: September 28, 1993

TIMONIUM HEIGHTS COMMUNITY ASSOCIATION

RESOLVED: That at the first annual meeting of the Timonium Heights Community Association held on April 18, 1993, it was decided by the Association that responsibility for review and action on all zoning matters for the period April 18, 1993 to April 18, 1994 be placed in the Zoning Committee consisting of the following officers of the Association:

Sandra M. Earp, President

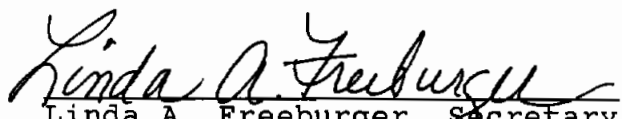
Patricia Norris, Vice President

Linda A. Freeburger, Secretary

AS WITNESS OUR HANDS AND SEALS THIS 28th day of September, 1993.

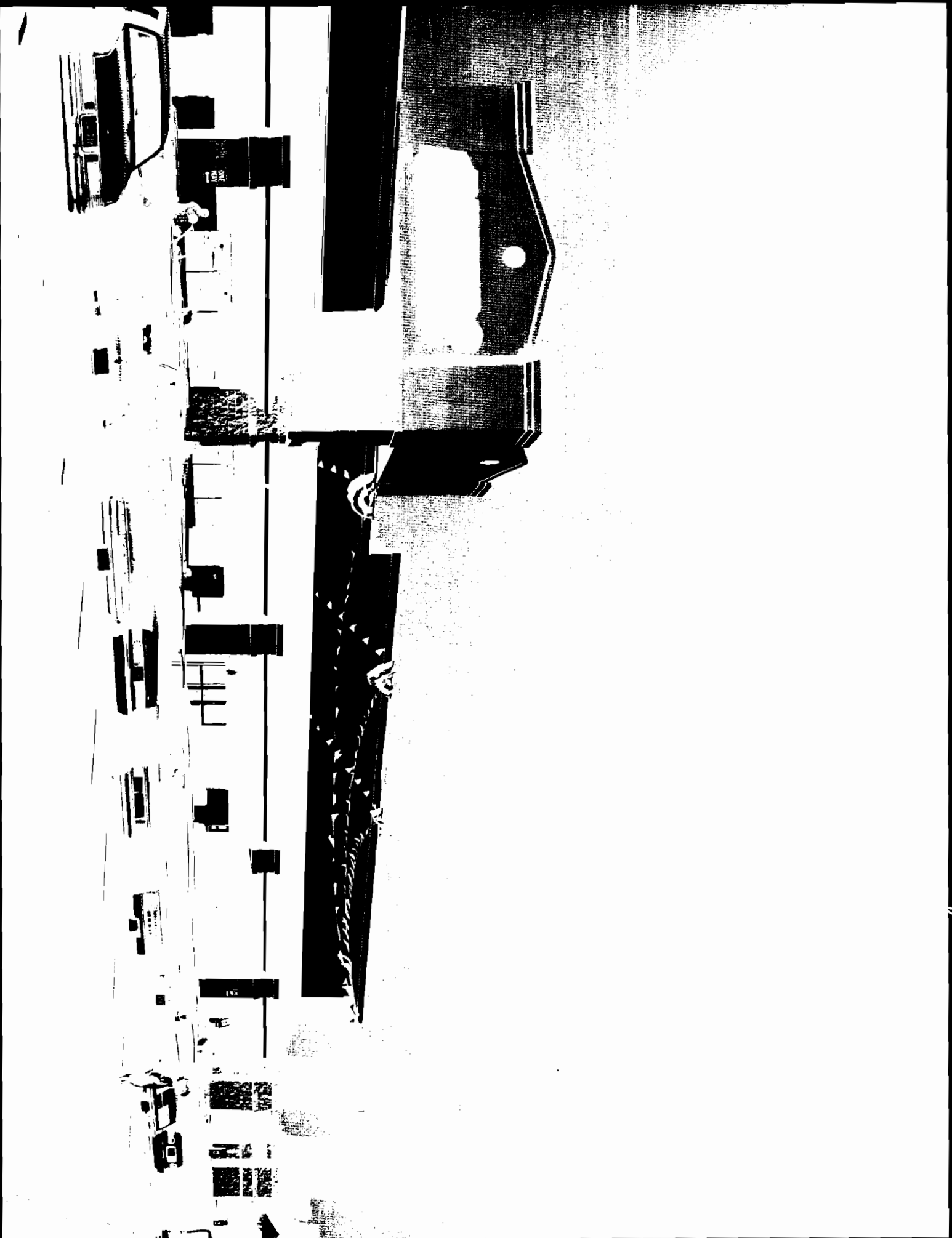
ATTEST:

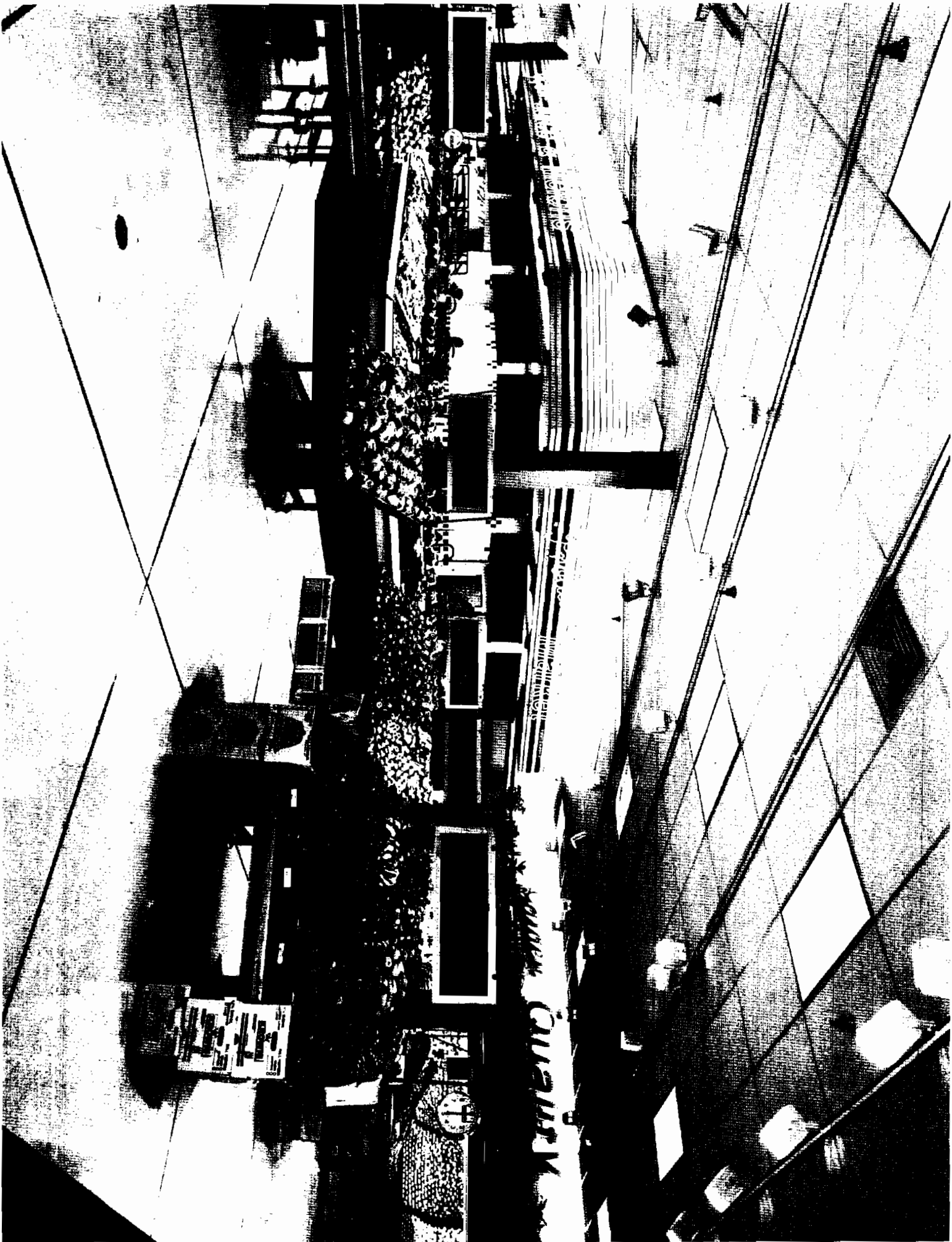
TIMONIUM HEIGHTS COMMUNITY ASSOCIATION


Linda A. Freeburger, Secretary

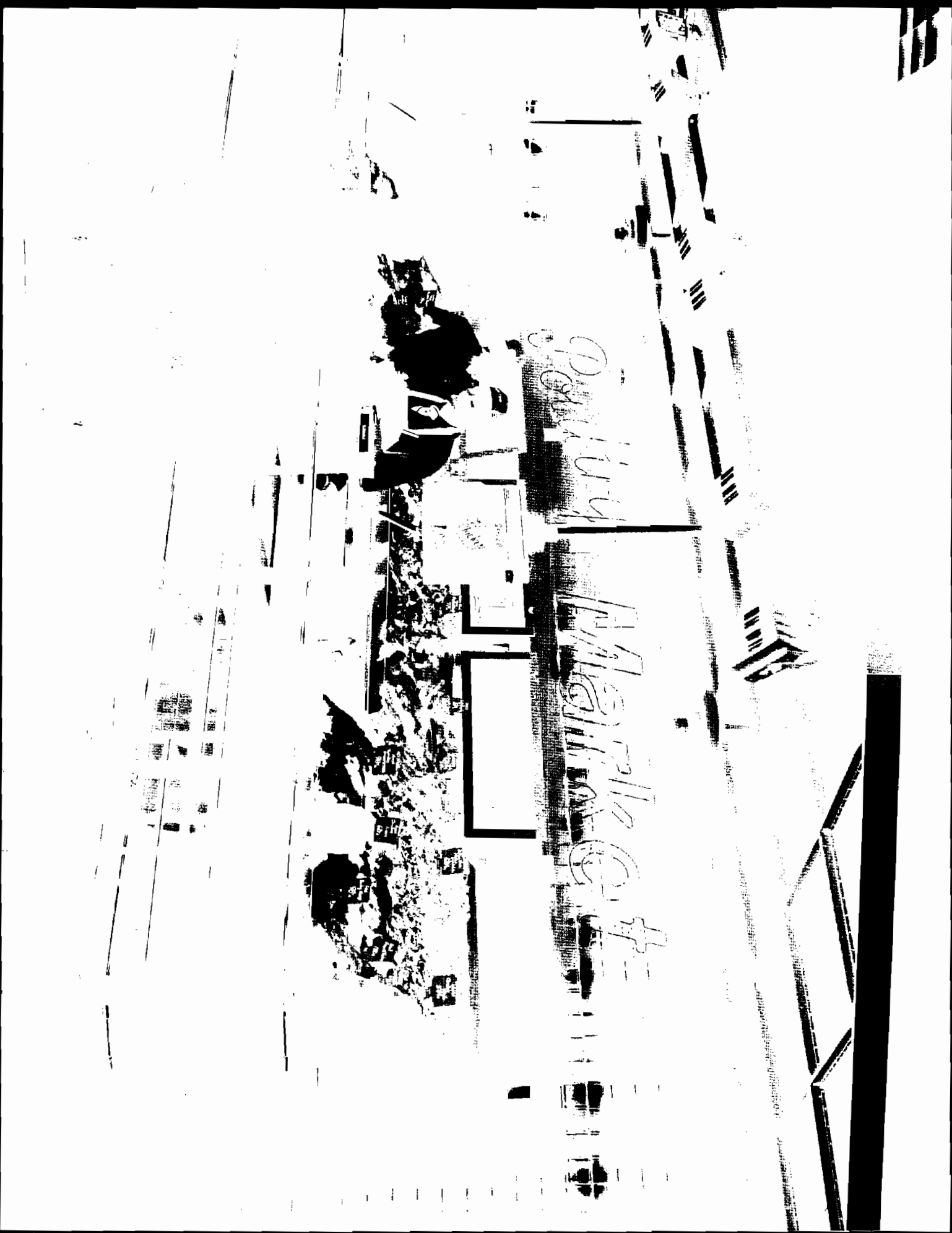

Sandra M. Earp, President

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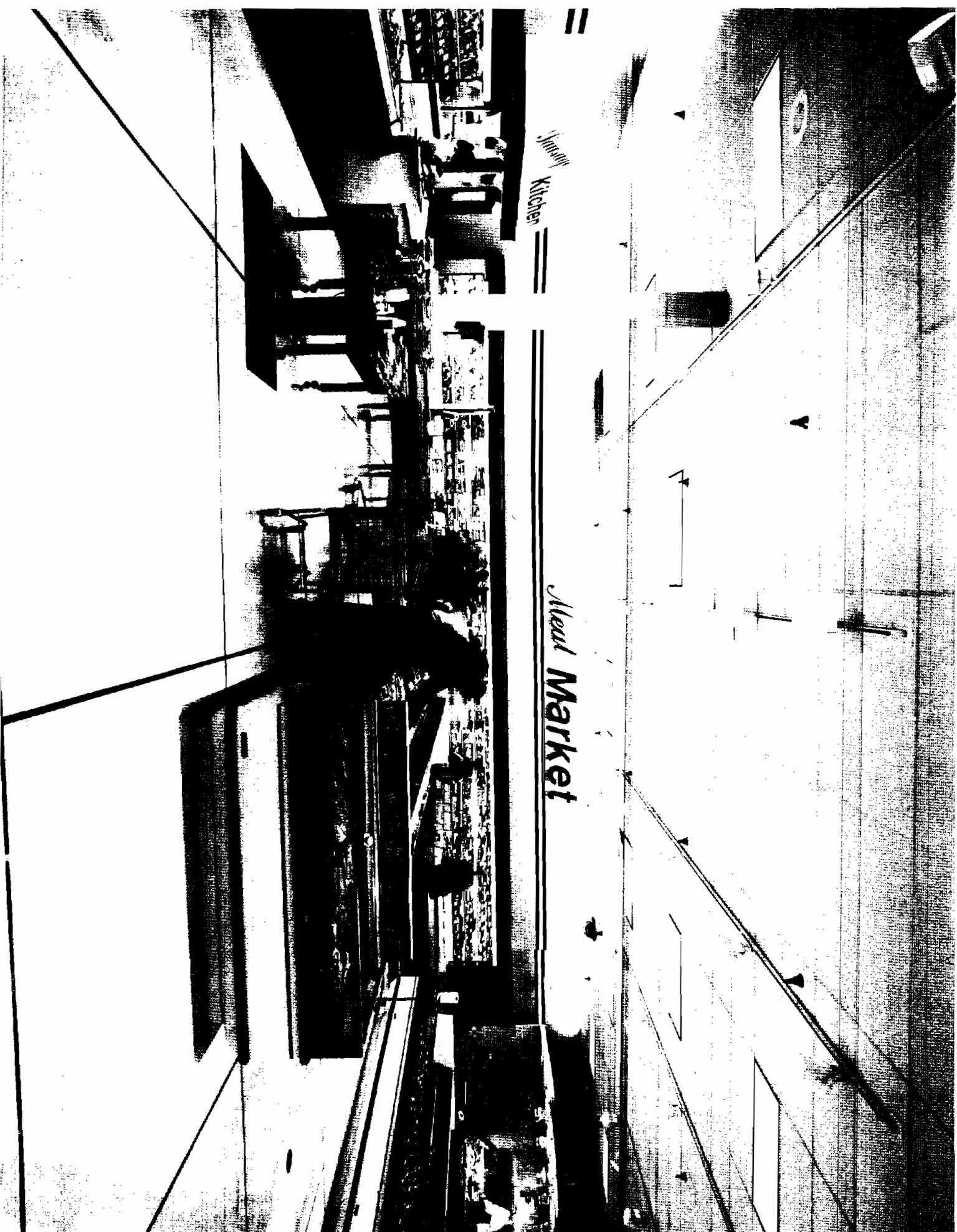




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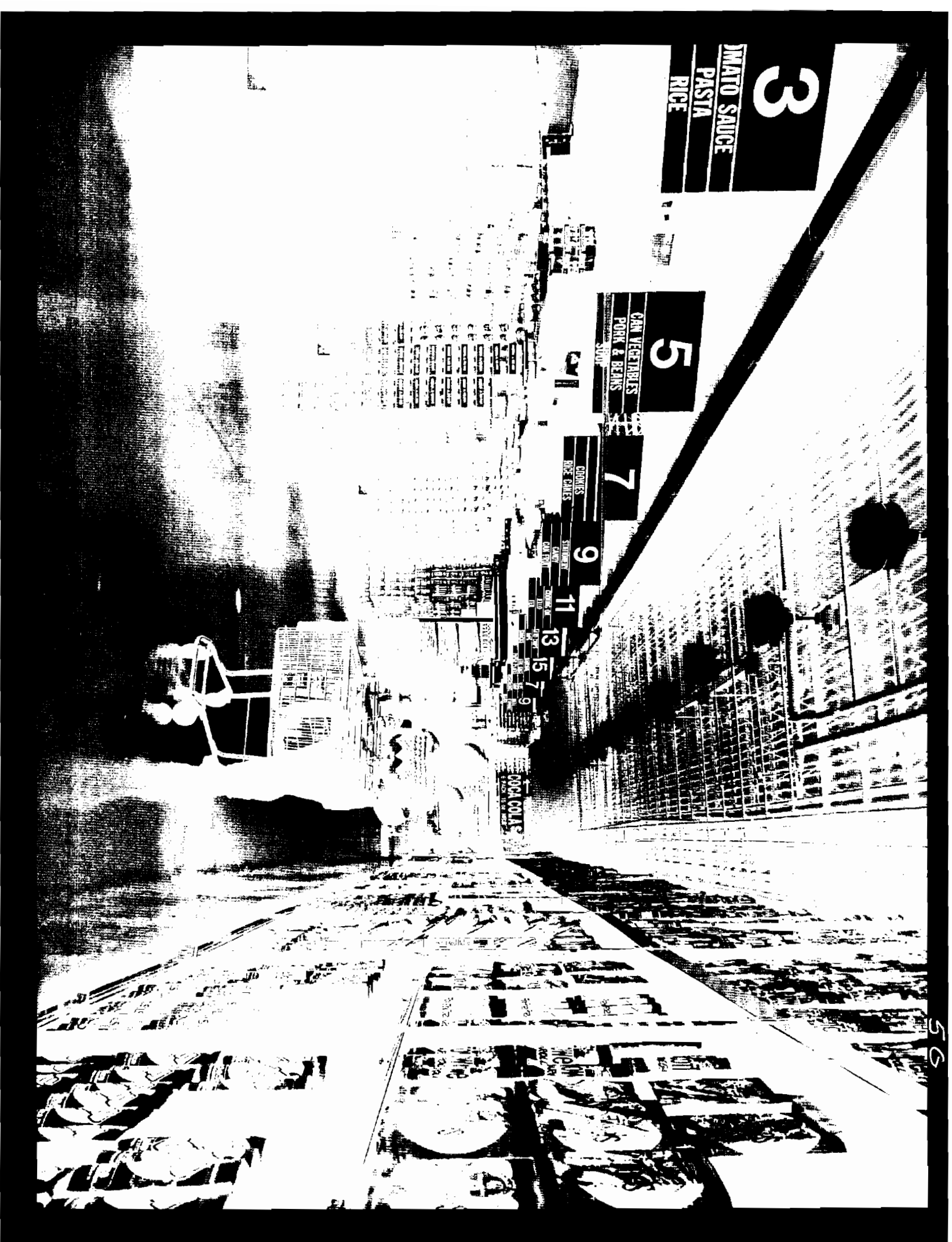
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light of the evidence adduced before the Board. Howard County v. Dorsey, 292 Md. 351, 356, 438 A.2d 1339 (1982); Bosley v. Hospital for Consumptives of Md., 246 Md. 197, 203-204, 227 A.2d 746 (1967); Anne Arundel County v. A-PAC, Ltd., 67 Md. App. 122, 126, 506 A.2d 671 (1986); Boyce v. Sembly, 25 Md. App. 43, 49-50, 334 A.2d 137 (1975).

An issue is "fairly debatable" when there is evidence upon which the administrative decision can be reasonably based, regardless of the presence of conflicting evidence or inferences, regardless of questions of credibility, and regardless of whether the administrative body came to a conclusion that the Court would not have reached on the same evidence. Anderson, 330 Md. at 212-213; A-PAC, Ltd., 67 Md. App. at 126-127. It is not the function of this Court to substitute its judgment for that of the Board of Appeals. Bosley, 246 Md. at 204. The "fairly debatable" rule has been said to be akin, if not identical, to the "clearly erroneous rule." Enviro-Gro Technologies v. Bockelman, 88 Md. App. 323, 334, 594 A.2d 1190, cert. denied, 325 Md. 94, 599 A.2d 447 (1991).

In order for the Board of Appeals to grant Appellees' reclassification request, Appellees had the burden of showing, by strong evidence, that the present classification was established in error. Baltimore County Code ("County Code"), § 2-356(j)(1) (1988). Additionally, Appellees had the burden of showing that the prospective reclassification is warranted



54



County Board of Appeals of Baltimore County

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

March 19, 1996

Robert A. Hoffman, Esquire.
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: REMAND /Case No. CR-93-305-SPH
Baker Land Company, et al
Civil Action No. 94-CV-02565

Dear Mr. Hoffman:

Enclosed please find a copy of the Board's Order, issued this date, in which the subject Petition for Reclassification is dismissed, pursuant to the February 14, 1996 Remand Order of the Circuit Court for Baltimore County, and the February 6, 1996 Mandate of the Court of Special Appeals of Maryland.

Very truly yours,

Kathleen C. Bianco
Administrative Assistant

encl

cc: Harrison & Grass
c/o Timothy C. Harrison
Patrick D. Hanley, Esquire
Michael and Penny Gerber
John M. Bearer
Tom Kelly /Greater Timonium
Community Council
The Honorable Thomas J. Bollinger, Judge
Circuit Court for Baltimore County
Copy /Circuit File No. 94-CV-02565
James Earl Kraft
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /PDM
Docket Clerk /PDM
Arnold Jablon, Director /PDM



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on Recycled Paper

CIVIL ASSIGNMENT

PETITION OF

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

IN THE CASE OF

IN THE MATTER OF BAKER LAND
COMPANY, ET AL.
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5. to B.M ZONE ON
PROPERTY BROAD AVENUE (Parcel 1)
AND SE/s/ END ROOSEVELT STREET, SW
BROAD AVENUE (Parcel 2)

MICHAEL GERBER and
PENNY GERBER

JOHN M. BEARER

ATTORNEYS

Carole S. Demilio
Peter Max Zimmerman
Rm. 47 Courthouse
400 Washington Ave. 21204
887-2188

Patrick D. Hanley
Hanley and Hanley
206 Washington Avenue
P.O. Box 5506
21204 823-1174
(atty for Michael & Penny Gerber)

P.P. (John M. Bearer)
9 W. Main Boulevard
Timonium, MD 21093
561-2360

John H. Zink, III/Patricia A. Malone
210 Allegheny Avenue
P.O. Box 5517
21204 494-6200 (Baker Land Co, et.al)

Des' Mailed 04/05/95

- tr(1) Mar. 21, 1994 Petition for judicial review, fd. Notice sent.
- rs(2)*Mar. 28, 1994 Certificate of Notice fd. (rec'd 3-24-94)
- rs(3) Apr. 4, 1994 Petition of MICHAEL GERBER and PENNY GERBER for Judicial Review fd. (rec'd 3-22-94)
- rs(4) Apr. 4, 1994 Petition of JOHN M. BEARER for Judicial Review fd. (rec'd 3-22-94)
- rs(5) Apr. 13, 1994 Response of BAKER LAND COMPANY, et.al. to Petition fd. (rec'd 4-11-94)
- rs*(6) Apr. 15, 1994 Second Certificate of Notice fd. (rec'd 4-14-94)
- *df (7) May 19, 1994 - Transcript of Record fd. *Box 207*
- *df (8) May 19, 1994 - Notice of Filing of Record fd. Copies Sent.
- am (9) Jun 17, 1994 People's Counsel's Memorandum, fd.
- am (10) Jun 17, 1994 Petitioner's Memorandum, fd. (John M. Bearer)
- am (11) Jun 28, 1994 Memorandum of Michael and Penny Gerber in support of appeal, fd. Rec.'d 6/22/94.

COSTS

Bolt. Co. No. 2

OVER

df (12) July 26, 1994 - Appellee's Answering Memorandum fd.

mar(13) Aug 9, 1994 Reply memorandum of Michael and Penny Gerber, to Petition for judicial review, fd. (rec'd 8/5/94)

September 1, 1994 Hon. Thomas J. Bollinger hearing had written opinion and orders to be filed.

PH(14) Oct 14, 1994 Opinion and Order of Court Remanding case to the Board of Appeals for further proceedings, etc, fd. (TJB)

Mar(15) Oct 24, 1994 Appellants' (Michael & Penny Gerber) motion to alter/amend revise judgment, fd. (rec'd 10/20/94)

jh*(16) October 26, 1994, People's Counsel's Motion To Alter Or Amend Judgment And Request For Hearing)(rec'd 10/21/94)

jh*(17) October 26, 1994, Pltffs' Reply Memorandum in Support of Their Motion For Summary Judgment, exhibit, fd.(rec'd 10/21/94)

mar(18) Oct 31, 1994 Appellees' response to people's counsel's motion to alter or amend the judgment, fd. (rec'd 10/27/94)

as (19) November 16, 1994 Memorandum and Order from Judge Thomas J. Bollinger that the Board address certain specified issues, etc., fd. (TJB)

dd(20) Feb. 27, 1995 Supplemental Record of Proceedings , fd. (rec'd 2/22/95)

(21) Feb. 27, 1995 Amended Opinion pursuant to remand Order and Amended Menorandum Opinion and Order with exhibit, fd. (rec'd 2/22/95)

df(22) March 2, 1995 - Petitioner's PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Supplemental Petition for Judicial Review fd.

CG (23) Mar 6, 1995 Michael Gerber and Penny Gerber's supplemental petition for judicial review, fd.

CG (24) Mar 10, 1995 John M. Bearer's supplemental petition for judicial review, i

jh(25) March 17, 1995, Responses Supplemental Response To Petition For Judicial Review, fd.(rec'd 3/16/95)

mar(26) Mar 28, 1995 Petitioners' supplemental memorandum, fd. (rec'd 3/27/95)

mar(27) Mar 28, 1995 Appellees' supplemental memorandum, fd. (rec'd 3/27/95)

mar(28) Mar 28, 1995 Supplemental memorandum of Michael and Penny Gerber in support of appeal, fd. (rec'd 3/27/95)

mar(29) Mar 28, 1995 Petitioners memorandum to supplemental petition for judicial review, fd. (rec'd 3/24/95)

CONTINUED

ps (30) April 3, 1995 Memorandum Opinion and Order of Court REMANDING above case to Board of Appeals to make the appropriate factual and legal findings consistent with § 2-356 of the Baltimore County Code, etc., fd. (●)

PH(31)* Apr 5, 1995 Pltffs Notice of Appeal to the Court of Special Appeals of Maryland, fd. (7/115)

jh*(32) April 26, 1995, Notice of Appeal of John M. Bearer from the Memorandum Opinion and Order filed and dated March 30, 1995, fd.(rec'd 4/26/95) (7/123)

*df (33) April 28, 1995 - Petitioners' MICHAEL & PENNY GERBER, Notice of Appeal to the Court of Special Appeals fd. (7/125).

jc*(34) May 2, 1995 Order from the Court of Special Appeals that the Appeal proceed without a Prehearing Conference, fd.

Transcript Box 336

PH(35) Feb 6, 1996 Mandate from the Court of Special Appeals of Maryland Remanding case to the County Board of Appeals of Baltimore County and Granting Motion to dismiss Appeal, fd.

PH(36) Feb 14, 1996 Order from Judge T.J. Bollinger Remanding case to the County Board of Appeals, etc, fd.

FEBRUARY 29, 1996 ORIGINAL RECORD AND DOCKET ENTRIES TRANSFERRED TO BALTIMORE COUNTY BOARD OF APPEALS BY CERTIFIED MAIL p 368 008 246. (CAB).



The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

THOMAS J. BOLLINGER
JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(410) 887-2693
TDD (410) 887-3018

PEOPLE'S COUNSEL FOR BALT. CO.

NUMBER: 94 CV 2565

V.

RULING DATE: 9 FEBRUARY 1996

BAKER LAND CORPORATION

HEARING DATE: N/A

MS. CLERK, Please:

1. File this **ORDER** and
2. Send copies to:
 - a) counsel of record XXX
 - b) distribution list below _____

ORDER

Pursuant to the Mandate of the Court of Special Appeals (Wilner, C.J.) dated January 24, 1996, it is this 9th day of February, 1996, by the Circuit Court for Baltimore County, **ORDERED** that the above captioned case is hereby remanded to the Baltimore County Board of Appeals with instructions to dismiss the Petition for Reclassification filed by Baker Land, Inc., et al.


THOMAS J. BOLLINGER JUDGE

FILED FEB 14 1996

(26) CC, Dennis, Harlow, Zirk, Bearn

4-6-95

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATEGORY JUDICIAL REVIEW 76/249/94CV2565

CIVIL ASSIGNMENT

PETITION OF

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

IN THE CASE OF

IN THE MATTER OF BAKER LAND
COMPANY, ET AL.
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5. to B.M ZONE ON
PRPERTY BROAD AVENUE (Parcel 1)
AND SE/s/ END ROOSEVELT STREET, SW
BROAD AVENUE (Parcel 2)

MICHAEL GERBER and
PENNY GERBER

JOHN M. BEARER

ATTORNEYS

Carole S. Demilio
Peter Max Zimmerman
Rm. 47 Courthouse
400 Wasington Ave. 21204
887-2188

Patrick D. Hanley
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(atty for Michael & Penny Gerber)

P.P. (John M. Bearer)
9 W. Main Boulevard
Timonium, MD 21093
561-2360

John H. Zink, III/Patricia A. Malone
210 Allegheny Avenue
P.O. Box 5517
21204 494-6200 (Baker Land Co,et.al)

tr(1) Mar. 21, 1994 Petition for judicial review, fd. Notice sent.

COSTS

s(2) Mar. 28, 1994 Certificate of Notice fd. (rec'd 3-24-94)

Bolt, Co. No 4

s(3) Apr. 4, 1994 Petition of MICHAEL GERBER and PENNY GERBER for Judicial
Review fd. (rec'd 3-22-94)

s(4) Apr. 4, 1994 Petition of JOHN M. BEARER for Judicial Review fd. (rec'd
3-22-94)

s(5) Apr. 13, 1994 Response of BAKER LAND COMPANY, et.al. to Petition fd.
(rec'd 4-11-94)

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Box 207

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am (11) Jun 28, 1994 Memorandum of Michael and Penny Gerber in support of
appeal, fd. Rec.'d 6/22/94.

True Copy Test

Tommy M. Stangor

OVER

Docket

76

Page

249

Case

94 CV- 02565

df (12) July 26, 1994 - Appellees' Answering Memorandum fd.

mar(13) Aug 9, 1994 Reply memorandum of Michael and Penny Gerber, to Petition for judicial review, fd. (rec'd 8/5/94)

September 1, 1994 Hon. Thomas J. Bollinger hearing had written opinion and orders to be filed.

PH(14) Oct 14, 1994 Opinion and Order of Court Remanding case to the Board of Appeals for further proceedings, etc, fd. (TJB)

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mar(29) Mar 28, 1995 Petitioners memorandum to supplemental petition for judicial review, fd. (rec'd 3/24/95)

CONTINUED

CASE NO. 76/249A/94CV2565

ps (30) April 3, 1995 Memorandum Opinion and Order of Court REMANDING above case to Board of Appeals to make the appropriate factual and legal findings consistent with § 2-356 of the Baltimore County Code, etc., fd. (TJB)

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
PETITIONS (AND SUPPLEMENTAL PETITIONS)
OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, MICHAEL AND PENNY
GERBER, and JOHN M. BEARER

FOR JUDICIAL REVIEW OF THE
DECISIONS OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF: IN THE MATTER OF
BAKER LAND CORPORATION
FOR A ZONING RECLASSIFICATION FROM
M.L.R. 0-1 AND D.R. 3.5 TO B.M.
ON PROPERTY LOCATED AT THE SWC OF
BROAD STREET AND PADONIA ROAD
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD
OF APPEALS, CASE NO.: CR-93-305-SPH

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CIVIL ACTION

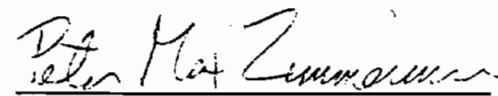
No. 76/249/94-CV-2565

* * * * *

NOTICE OF APPEAL

Dear Madam Clerk:

Please enter an appeal on behalf of the PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY from the Memorandum Opinion and Order filed in the
above-captioned case and dated March 30, 1995.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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95 APR -5 PM 3:51

by that error. § 2-356(j)(2). "Error" or "mistake", as the terms are used interchangeably, is established when a petitioner shows that the local zoning authority made a basic and actual mistake when it adopted a comprehensive zoning map and placed the subject property in its present classification. Howard County v. Dorsey, 292 Md. 351, 353, 356-357, 438 A.2d 1339 (1982); Boyce v. Sembly, 25 Md. App. 43, 49-50, 334 A.2d 137 (1975).

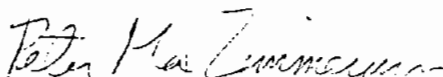
Error may be established in one of two ways. The petitioner may submit evidence of certain facts, projects, or trends that existed or were reasonably foreseeable at the time of the last comprehensive rezoning that the zoning authority failed to take into account. Boyce, 25 Md. App. at 50-51. Alternatively, the petitioner may show that events occurring subsequent to the comprehensive zoning have proven that the zoning body's initial premises at the time of the last comprehensive zoning were incorrect. Id. at 51-52.¹ See also Dorsey, 292 Md. at 356-357.

At the hearings before the Board, under both of the recognized methods, Appellees produced strong and substantial evidence to prove mistake as to the present classification of

¹ Although a finding of mistake by the Board of Appeals typically means that the decision of whether to grant the requested reclassification lies within the Board's discretion, where the petitioner can show that the existing zoning classification deprives him of any reasonable use of his property, the requested rezoning is not within the Board's discretion, but is mandatory. Anne Arundel County v. A-PAC, Ltd., 67 Md. App. 122, 129-130, 506 A.2d 671 (1986).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of April, 1995, a copy of the foregoing Notice of Appeal was mailed to John H. Zink, III, Esquire and Patricia A. Malone, Esquire, Venable, Baetjer and Howard, 210 Allegheny Avenue, P. O. Box 5517, Towson, MD 21204, attorney for Petitioner BAKER LAND CORPORATION, to Patrick D. Hanley, Esquire, 206 Washington Avenue, P. O. Box 5506, Towson, MD 21204, attorney for MICHAEL AND PENNY GERBER, and to MR. JOHN M. BEARER, 9 W. Main Boulevard, Timonium, MD 21093.


PETER MAX ZIMMERMAN

D. SABUNY
DOCKET clerk

CR-93-305-SPH -Baker Land Co.
CCT REMANDS (2nd time) to CBA
(Thomas J. Bollinger, J.)
3/30/95

1616-95
TO file

IN THE MATTER OF	*	IN THE
	*	CIRCUIT COURT
BAKER LAND COMPANY, ET AL	*	FOR
	*	BALTIMORE COUNTY
FOR RECLASSIFICATION	*	CASE NO. 94 CV 2565
	*	

* * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court as a Petition for Judicial Review of a decision reached by the Baltimore County Board of Appeals. This Court remanded this matter back to the Board for further proceedings pursuant to Maryland Rule 7-209. Specifically, the Board was ordered to make appropriate factual and legal findings so as to adequately comply with Baltimore County Code § 2-356(j)(2).

Petitioner now requests that this Court reverse the decision of the Board. In support of its position, Petitioner asserts that the Board has failed to address the requirements set forth by this Court in the Opinion and Order dated the 12th day of October, 1994 and Amended Memorandum Opinion and Order dated the 10th day of November, 1994. This Court agrees.

Section 2-356(j) of the Baltimore County Code outlines the conditions under which the Board of Appeals may grant reclassification. First, the Board must find that there has occurred a substantial change in the character of the neighborhood in which the property is located or that the last classification of the property was established in error. Baltimore County Code § 2-356(j)(1). The Amended Opinion issued the 22nd day of February, 1995 clearly states that the

30
TJS

FILED APR 3 1995

Board found, as a matter of fact, that the last reclassification of the property in question was established in error.

Second, the Board must find that the prospective reclassification is warranted by that change or error. In reaching this conclusion, the Board is required to adhere to the following:

...any finding that the prospective reclassification is warranted may be made only upon *consideration of factors* relating to the purposes of the zoning regulations and maps, including but not limited to all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classification with the master plan, the county plan for sewerage and water-supply facilities, and the capital program. (Emphasis added).

Baltimore County Code § 2-356(j)(2).

The Court of Special Appeals of Maryland has interpreted “consideration of factors” as requiring an articulation of the findings as to each of the articulable factors contained in § 2-356(j)(2). People’s Counsel v. Mockard, 73 Md. App. 340, 349 (1987). Thus, “... the Board must *at least* articulate its findings as to the thirteen (13) identified factors” listed in § 2-356(j)(2) before concluding that reclassification is warranted. Id. at 350. The Board is permitted to consider additional factors at its discretion. Id.

In the case at bar, the Board has failed to “consider,” as the word has been defined by Maryland case law, all of the identified factors found in § 2-356(j)(2). As such, this Court finds that the Board again committed error in failing to comply with the mandate of § 2-356(j)(2).

Although this Court is reluctant to remand this case yet again, it feels that it has no other choice in light of the standard set forth in Mockard, supra.

Accordingly, it is this 30th day of March, 1995, by the Circuit Court for Baltimore County,

ORDERED that this matter is hereby **REMANDED** to the Board of Appeals to make the appropriate factual and legal findings consistent with § 2-356 of the Baltimore County Code.

This Copy Test
Clerk
Tony Fitzgerald
Deputy Clerk

Thomas J. Bollinger
THOMAS J. BOLLINGER, JUDGE

Copies sent to:

John H. Zink, III, Esquire
210 Allegheny Avenue
P.O. Box 5517
Towson, MD 21285

Patrick Hanley, Esquire
206 Washington Avenue
P.O. Box 5506
Towson, MD 21204

Peter Max Zimmerman, Esquire
Room 47 Old Courthouse
400 Washington Avenue
Towson, MD 21204

Clerk:

Copies have
already been
sent.

*Appealed to CSA
by PC*

To be w/d & dismissed

IN THE CIRCUIT COURT	*	
FOR BALTIMORE COUNTY	*	
SUPPLEMENTAL PETITION OF	*	
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	*	
400 Washington Avenue, Room 49	*	
Towson, Maryland 21204	*	
AND	*	
SUPPLEMENTAL PETITION OF MICHAEL	*	
GERBER & PENNY GERBER	*	
107 Harding Street	*	
Timonium, Maryland 21093	*	
FOR JUDICIAL REVIEW OF THE DECISION OF	*	CIVIL
THE COUNTY BOARD OF APPEALS	*	ACTION
OF BALTIMORE COUNTY	*	No. 94-CV-02565
Room 49, Old Courthouse, 400 Washing-	*	76/249
ton Avenue, Towson, MD 21204	*	
IN THE CASE OF: IN THE MATTER OF	*	
BAKER LAND COMPANY, ET AL	*	
FOR RECLASSIFICATION FROM M.L.R. &	*	
0-1 & D.R.3.5 TO B.M. ZONE ON PROP-	*	
ERTY LOCATED ON THE SWC PADONIA ROAD	*	
AND BROAD AVENUE (PARCEL 1) AND SE/S	*	
END ROOSEVELT STREET, SW BROAD AVENUE	*	
(PARCEL 2)	*	
8TH ELECTION DISTRICT	*	
3RD COUNCILMANIC DISTRICT	*	
CASE NO. CR-93-305-SPH	*	
(ITEM 3, CYCLE I)	*	
* * * * *	*	

RECEIVED AND FILED
95 MAR 10 PM 12:17
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF NOTICE

Madam Clerk:

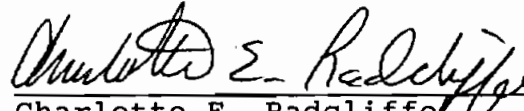
Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett and Harry E. Buchheister, Jr., constituting a majority of the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Supplemental Petitions for Judicial Review to the representative of every party to the proceeding before it; namely, Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, and Michael Gerber & Penny Gerber, 107 Harding Street, Timonium, Maryland 21093, Petitioners; Patrick D. Hanley, Esquire, HANLEY AND HANLEY, 206 Washington Avenue, P.O. Box 5506, Towson, Maryland 21204, Counsel for Mr. & Mrs. Gerber; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; John H.

Zink, III, Esquire, Patricia A. Malone, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21285-5517, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.



Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, and Michael Gerber & Penny Gerber, 107 Harding Street, Timonium, Maryland 21093, Petitioners; Patrick D. Hanley, Esquire, HANLEY AND HANLEY, 206 Washington Avenue, P.O. Box 5506, Towson, Maryland 21204, Counsel for Mr. & Mrs. Gerber; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; John H. Zink, III, Esquire, Patricia A. Malone, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21285-5517, on this 10th day of March, 1995.



Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

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

March 10, 1995

Peter Max Zimmerman
People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

Patrick D. Hanley
HANLEY and HANLEY
206 Washington Avenue
P.O. Box 5506
Towson, Maryland 21204

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Counsel:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the Supplemental petitions for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The record in this matter, including the transcript, was transmitted to the Circuit Court for Baltimore County on May 19, 1994 under Civil Action No. 94-CV-02565 /76/249. A Supplemental Record of Proceedings which included the County Board of Appeals' Amended Opinion was also filed on February 22, 1995 under Civil Action No. 94-CV-02565 /76/249.

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court. A supplement to the record will be filed by this office within 60 days.

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Michael Gerber and Penny Gerber



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on Recycled Paper



County Board of Appeals of Baltimore County

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

March 10, 1995

John H. Zink, III, Esquire
Patricia A. Malone, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that Supplemental Petitions for Judicial Review were filed on March 2, 1995 and March 6, 1995, in the Circuit Court for Baltimore County from the majority decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petitions must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 76/249/94-CV-02565.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Robert A. Hoffman, Esquire
Harrison & Grass
c/o Timothy C. Harrison
John M. Bearer
Tom Kelly /Greater Timonium
Community Council
James Earl Kraft
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /ZADM
Carmen D'Anna /Mars Supermarkets, Inc.

W. Carl Richards, Jr., /ZADM
Docket Clerk /ZADM



Printed with Soybean Ink
on Recycled Paper

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY

SUPPLEMENTAL PETITION OF
MICHAEL GERBER & PENNY GERBER
107 Harding Street
Timonium, Maryland 21093

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF
BAKER LAND COMPANY, et al
Case No. CR-93-305-SPH

CIVIL
ACTION

NO: 76-249-94 CV 02565

SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW

MICHAEL GERBER and PENNY GERBER hereby request judicial review of the February 22, 1995 County Board of Appeals' Amended Opinion Pursuant to Remand Order and Amended Memorandum Opinion and Order of the Circuit Court in the above case. Michael Gerber and Penny Gerber were parties to the proceeding before the County Board of Appeals of Baltimore County and before the Circuit Court for Baltimore County in this matter.

This Supplemental Petition is filed pursuant to Rule 7-202 of the Maryland Rules of Procedure.

Patrick D. Hanley
Patrick D. Hanley
Hanley and Hanley
206 Washington Avenue
P.O. Box 5506
Towson, Maryland 21204
(410) 823-1174
Attorney for
Michael & Penny Gerber, Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 3rd day of March, 1995, that a copy of the foregoing Supplemental Petition for Judicial Review was mailed

LAW OFFICES
HANLEY AND HANLEY
206 WASHINGTON AVE.
P.O. BOX 5506
TOWSON, MARYLAND 21204
(410) 823-1174

RECEIVED AND FILED

01-21-95 01 PM 56

95 MAR -5 AM 11:41

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

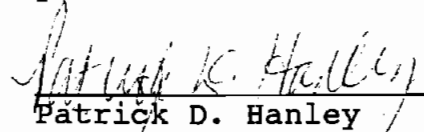
(2)

by first class mail postag prepaid to:

John H. Zink, III, Esq.
Patricia A. Malone, Esq.
Venable, Ba tjer & Howard
210 All gheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
Attorney for Appellee

Peter M. Zimmerman and
Carol S. Demilio
Office of Peoples' Counsel
Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Mr. John M. Bearer
9 W. Main Boulevard
Timonium, Maryland 21093


Patrick D. Hanley

LAW OFFICES
HANLEY AND HANLEY
208 WASHINGTON AVE.
P.O. BOX 5508
TOWSON, MARYLAND 21204
(410) 823-1174

the property and to prove that the proposed classification is, in fact, the appropriate classification.

ARGUMENT

I. The Board of Appeals Properly Granted Appellees' Request for Zoning Reclassification because the Evidence Confirms that the Current Zoning Classification, as Restricted by the Documented Site Plan, was Established in Error and that the Proposed Classification was Warranted.

A. The Appellees Presented Strong Evidence that the County Council Failed to Take into Account Then-Existing Facts, Projects, or Trends; Therefore, the Present Classification was Established in Error.

The evidence produced by the Appellees confirms that the County Council failed to take into account certain facts, projects, or trends that existed or were foreseeable at the time the 1992 Comprehensive Zoning Map was adopted.

Purposes of M.L.R. Zones

Error is explicit in this case because, even though it was obvious from the facts as they existed in 1992 that the stated purposes of M.L.R. zoning could not be served by the subject site, the County Council specifically deferred to the cycle zoning process.

The stated purposes for M.L.R. zoning are:

To permit grouping of high types of industrial plants in industrial subdivisions in locations with convenient access to expressways or other primary motorways so as to minimize the use of residential streets; to fill special locational needs of certain types of light industry; to permit planned dispersal of industrial employment centers so as to be conveniently and satisfactorily related to residential communities; and as transitional bands between residential or institutional areas and M.L. or M.H. zones.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

SUPPLEMENTAL PETITION OF PEOPLE'S
COUNSEL FOR BALTIMORE COUNTY
400 Washington Avenue, Room 47
Towson, MD 21204

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY
400 Washington Avenue, Room 49
Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF BAKER LAND COMPANY,
et al. FOR A ZONING RECLASSIFICATION
OF PROPERTY LOCATED ON THE SWC PADONIA
ROAD AND BROAD AVENUE (PARCEL 1); AND
SE/S/END ROOSEVELT STREET, SW BROAD
AVENUE (PARCEL 2)
From M.L.R. & O-1 and D.R.3.5 to B.M.
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD OF
APPEALS, CASE NO.: CR-93-305-SPH
(ITEM 3, CYCLE I)

Civil Action No.
76/249/94-CV-02565

SUPPLEMENTAL PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial
review of the February 22, 1995 County Board of Appeals' Amended Opinion
Pursuant to Remand Order and Amended Memorandum Opinion and Order of the
Circuit Court in the above case. PEOPLE'S COUNSEL was a party to the
proceedings before the County Board of Appeals of Baltimore County and
before the Circuit Court for Baltimore County in this matter.

This Supplemental Petition is filed pursuant to Rule 7-202 of the
Maryland Rules of Procedure.

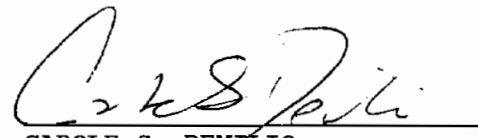
RECEIVED AND FILED
95 MAR -2 PM 3:11

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

22df

95 MAR 10 PM 12:40



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 1995, a copy of the foregoing Supplemental Petition for Judicial Review was mailed to Patrick D. Hanley, Esquire, 206 Washington Avenue, Towson, MD 21204, to John M. Bearer, 9 W. Main Boulevard, Timonium, MD 21093, to John H. Zink, III, Esquire and Patricia A. Malone, Esquire, Venable, Baetjer and Howard, 210 Allegheny Avenue, P. O. Box 5517, Towson, MD 21204.



PETER MAX ZIMMERMAN

IN THE MATTER OF
 THE APPLICATION OF
BAKER LAND COMPANY, ET AL
 PROPERTY OWNER; HARRISON & GRASS,
 DEVELOPER /PETITIONER FOR A ZONING *
 RECLASSIFICATION ON PROPERTY *
 LOCATED ON THE SWC PADONIA ROAD AND*
 BROAD AVENUE (PARCEL 1); AND SE/S/
 END ROOSEVELT STREET, SW BROAD *
 AVENUE (PARCEL 2) *
 8TH ELECTION DISTRICT *
 3RD COUNCILMANIC DISTRICT *
 * * * * *

ON REMAND FROM THE
 CIRCUIT COURT
 FOR
 BALTIMORE COUNTY
 CIVIL ACTION
 No. 94-CV-02565
 (Case No. CR-93-305-SPH)
 * * * * *

AMENDED OPINION PURSUANT TO REMAND ORDER
 AND AMENDED MEMORANDUM OPINION AND ORDER OF THE CIRCUIT COURT

This case comes before this Board on remand from the Circuit Court for Baltimore County in which this Board was ordered to address the issue of "mistake" pursuant to Baltimore County Code Section 2-356(j); to address the flood plain issue pursuant to Code Section 2-356(1)(1); and to comply with the requirements of the Circuit Court's Order of October 12, 1994, which specifically designated that the Board make the appropriate factual and legal findings so as to adequately comply with Code Section 2-356(j)(2).

At the earlier proceedings before the Board, Jeffrey Long, Planner for Baltimore County, testified that he reviews all reclassification petitions and supports the granting of this Petition. He testified that it is in conformity with the Hunt Valley-Timonium Study and the Baltimore County Master Plan, and, in his opinion, current market conditions do not warrant office use. Sam Crozier, an expert land planner, testified at length as to why the Petition should be granted, and why the present zoning was in error, and further testified that the proper zoning would be B.M. for this site.

The Board will find as a fact from this testimony that the

Case No. CR-93-305-SPH /94-CV-02565 Baker Land Co., et al/Remand2
existing zoning is in error, and that the proper zoning for this parcel is B.M.

With regard to the flood plain issue, testimony on this matter was presented by Fred Chadsey, a Professional Engineer who prepared the site plan and testified that his office and his staff were still active in preparing specific answers to possible flood plain problems. These specific individual problems must be addressed by the project engineer when grading or building permits are applied for.

The Board is satisfied that the possible flood plain problems are being properly addressed.

It is obvious that the proposed use of the property for a large food store would have no effect on increasing the population trends in the area. Testimony from the engineer indicates that there is available adequate water supply facilities, sewerage facilities, and transportation facilities. The Board will find as a fact that, in the very near future, another access to Interstate 83 is to be provided, known as Warren Road, and thereupon the nearest intersection to the proposed Metro store will be reduced to a non-failing intersection. The proposed use of this site for a Metro food store would certainly be in character with the surrounding area, and consistent with the current and prospective classifications, and the Master Plan and Capital Program.

The Board will therefore find as a fact, from the above testimony, that the Petition as entered should be granted, and the property reclassified to B.M. to permit the use of the property for

a Metro store.

O R D E R

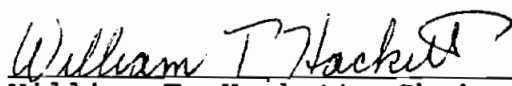
ACCORDINGLY, IT IS this 22nd day of February, 1995
by the County Board of Appeals of Baltimore County

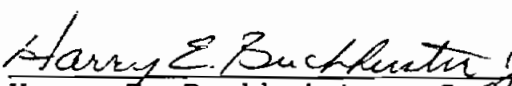
ORDERED that the Opinion and Order of the Board dated February
24, 1994 be and is hereby AMENDED as set forth in the foregoing
Opinion; and it is further

ORDERED that the Petition for Reclassification from the
present combination of M.L.R., 0-1 and D.R. 3.5 to B.M. be and is
hereby GRANTED; and it is further

ORDERED that the requested parking of noncommercial vehicles
on the portion of 0-1 zoned area as shown on the site plan be and
the same is GRANTED, all as previously ordered in this Board's
Opinion and Order dated February 24, 1994.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


William T. Hackett, Chairman


Harry E. Buchheister, Jr.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
Room 47, Washington Avenue
Towson, Maryland 21204

AND

PETITION OF JOHN M. BEARER
9 W. Main Boulevard
Timonium, Maryland 21093

AND

PETITION OF MICHAEL GERBER &
PENNY GERBER
107 Harding Street
Timonium, Maryland 21093

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 94-CV-02565
/76/249

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, ET AL
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 TO B.M. ZONE ON PROP-
ERTY LOCATED ON THE SWC PADONIA ROAD
AND BROAD AVENUE (PARCEL 1) AND SE/S
END ROOSEVELT STREET, SW BROAD AVENUE
(PARCEL 2)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

* * * * *
SUPPLEMENTAL RECORD OF PROCEEDINGS
BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

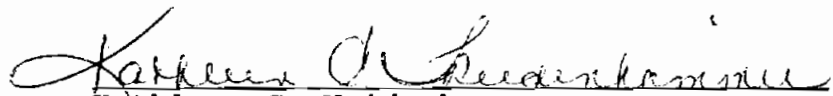
And now come William T. Hackett and Harry E. Buchheister, Jr.,
constituting a majority of the County Board of Appeals of Baltimore
County, and herewith supplement the previously filed record with
the following document:

RECEIVED AND FILED
95 FEB 22 PM 12:40
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CR-93-305-SPH /Baker Land Company, et al
Supplemental Extract File No. 94-CV-02565 /76 /249

February 22, 1995 Amended Opinion issued by the County Board of Appeals, pursuant to the October 12, 1994 remand order and December 20, 1994 Amended Memorandum Opinion and Order of the Circuit Court for Baltimore County /Civil Action No. 94-CV-02565.

Respectfully submitted,



Kathleen C. Weidenhammer
Administrative Assistant, County Board
of Appeals of Baltimore County
Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: Robert A. Hoffman, Esquire
Harrison & Grass
c/o Timothy C. Harrison
People's Counsel for Baltimore County
Patrick D. Hanley, Esquire
Michael Gerber and Penny Gerber
John M. Bearer



County Board of Appeals of Baltimore County

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

February 22, 1995

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD
210 Allegheny Avenue
Towson, MD 21204

RE: Case No. CR-93-305-SPH
Baker Land Company, et al
Civil Action No. 94-CV-02565

Dear Mr. Hoffman:

Enclosed please find a copy of the Amended Opinion Pursuant to Remand Order and Amended Memorandum Opinion and Order of the Circuit Court issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Also, enclosed is a copy of the Supplemental Record of Proceedings Before the County Board of Appeals of Baltimore County, filed in the Circuit Court for Baltimore County this date.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

cc: Harrison & Grass
c/o Timothy C. Harrison
Patrick D. Hanley, Esquire
Michael and Penny Gerber
John M. Bearer
Tom Kelly /Greater Timonium
Community Council
The Honorable Thomas J. Bollinger
Circuit Court for Baltimore County
James Earl Kraft
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM



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Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 28, 1994

Mr. William T. Hackett, Chairman
Board of Appeals of Baltimore County
Room 49 Courthouse
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of Baker Land Co.,
et al. for Reclassification
Zoning Case No. CR-93-305-SPH
Civil Action No. 94-CV-2565

Dear Chairman Hackett:

Enclosed please find copy of Memorandum of People's Counsel filed with the Circuit Court for Baltimore County in the aforementioned case.

In his December 19, 1994 letter to you, John Zink, attorney for Petitioner, indicated that Judge Kahl remanded this case to the Board for additional factual and legal findings. Please note that Judge Kahl did not hear this case in the Circuit Court. This matter was heard by Judge Bollinger, who issued his Orders on October 12 and November 10, 1994.

In light of Judge Bollinger's Order requiring the Board to make additional factual and legal findings, this office respectfully requests that counsel have an opportunity to reargue this matter before the County Board of Appeals and that the Board comply with the Open Meetings Law.

Very truly yours,

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

CSD/caf
Enclosure

Dictated but not read

cc: John H. Zink, III, Esquire (Without enclosure)
Patrick D. Hanley, Esquire (Without enclosure)
Mr. John M. Bearer (Without enclosure)

DEC 29 1994

IN THE MATTER OF
BAKER LAND COMPANY, ET AL
FOR RECLASSIFICATION

* IN THE CIRCUIT COURT
* FOR BALTIMORE COUNTY
* CASE NO. 94 CV 2565
*

* * * * *

AMENDED MEMORANDUM OPINION AND ORDER

This matter comes before the Court as a Petition for Judicial Review of a decision reached by the Baltimore County Board of Appeals. Subsequent to a hearing and thorough review of the record, this Court, pursuant to Maryland Rule 7-209, remanded this matter to the Board for further proceedings. Specifically, the Board was ordered to make the appropriate factual and legal findings so as to adequately comply with Baltimore County Code §2-356(j)(2).

The Court is now presented with a Motion to Alter or Amend the judgment, filed by People's Counsel for Baltimore County. People's Counsel asserts that the Opinion and Order rendered by this Court fails to direct the Board to further address the issue of "mistake" standard established by Maryland case law and Baltimore County Code §2-356(j) and address the issue of the Petitioner's failure to delineate the flood plain as required by Baltimore County Code §2-356(1)(1). This Court agrees.

Additionally, People's Counsel urges this Court to reverse, as well as remand the decision of the Board so as to preserve certain appellate issues. Despite a lack of case law specifically addressing this issue, this Court does not believe

Baltimore County Zoning Regulations, § 247 (1993). In looking at the realities of the subject site, even as existed in 1992, it is obvious that these purposes are not being served and, in fact, cannot be served at this particular location.

Therefore, as Samuel G. Crozier, a land planner and landscape architect with Crozier & Associates, clearly articulated, the existing zoning on the subject site was established in error. (Sept. 29, 1993, T. 85)

Specifically, Mr. Crozier explained that a great deal of the land in the area that had been zoned industrial had not been developed with industrial uses, but, instead, were developed with other, non-industrial uses permitted in the M.L. zone. (Sept. 29, 1993, T. 88-92) See Petitioner's Exhibit No. 9, which identifies the zoning of the surrounding area. As a result, Mr. Crozier stated, the area around the subject site gives almost no indication that industrial zoning exists. Therefore, it is impossible for the above-stated purposes to be served on this site. There can be no "grouping" of industrial plants on this small, semi-isolated site. Nor is there any need for this property to act as a transitional zone when, in fact, no such industry has developed in the surrounding area. Furthermore, as Mr. Crozier testified, the existing railroad tracks and Light Rail already form a natural boundary between the M.L.- I.M. zoned property and the subject site. (Sept. 29, 1993, T. 89-91, 110) There is no dispute that these facts were available to

that a remand under Maryland Rule 7-209 constitutes a final judgment upon which an appeal may be taken. However, this Court will clarify the issue for counsel's benefit.

Therefore, it is this 10th day of November, 1994, by the Circuit Court for Baltimore County,

ORDERED that the Board address the issue of "mistake" pursuant to Baltimore County Code §2-356(j);

AND IT IS FURTHER ORDERED that the Board address the flood plain issue pursuant to Baltimore County Code §2-356(l)(1);

AND IT IS FURTHER ORDERED that the Board comply with the requirements of this Court's Order of October 12, 1994;

AND IT IS FURTHER ORDERED that this Court will retain jurisdiction over this matter until such time that the Board issues an amended Opinion to this Court for further reconsideration and final disposition.


THOMAS J. BOLLINGER, JUDGE

TJB/am

Copies sent to:

John H. Zink, III, Esquire
210 Allegheny Avenue
P. O. Box 5517
Towson, MD 21285

Patrick D. Hanley, Esquire
206 Washington Avenue
P. O. Box 5506
Towson, MD 21204

✓ Peter Max Zimmerman, Esquire
Room 47 Old Courthouse
400 Washington Avenue
Towson, MD 21204

10-19 94

ad of app

CIRCUIT COURT FOR BALTIMORE COUNTY

CIVIL CATEGORY JUDICIAL REVIEW 76/249/94CV2565

PETITION OF

ATTORNEYS

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

Peter Max Zimmerman
Rm. 47 Courthouse
400 Wasington Ave. 21204
887-2188

IN THE CASE OF

IN THE MATTER OF BAKER LAND
COMPANY, ET AL.
FOR RECLASSIFICATION FROM M.L.R. &
0-1 & D.R.3.5. to B.M ZONE ON
PRPERTY BROAD AVENUE (Parcel 1)
AND SE/s/ END ROOSEVELT STREET, SW
BROAD AVENUE (Parcel 2)

Patrick D. Hanley
Hanley and Hanley
206 Washington Avenue
P.O. Box 5506
21204 823-1174
(atty for Michael & Penny Gerber)

MICHAEL GERBER and
PENNY GERBER

P.P. (John M. Bearer)
9 W. Main Boulevard
Timonium, MD 21093
561-2360

JOHN M. BEARER

John H. Zink, III/Patricia A. Malone
210 Allegheny Avenue
P.O. Box 5517
21204 494-6200 (Baker Land Co,et.a

CIVIL ASSIGNMENT

tr(1) Mar. 21, 1994 Petition for judicial review, fd. Notice sent.

COSTS

s(2) Mar. 28, 1994 Certificate of Notice fd. (rec'd 3-24-94)

s(3) Apr. 4, 1994 Petition of MICHAEL GERBER and PENNY GERBER for Judicial
Review fd. (rec'd 3-22-94)

s(4) Apr. 4, 1994 Petition of JOHN M. BEARER for Judicial Review fd.(rec'd
3-22-94)

s(5) Apr. 13, 1994 Response of BAKER LAND COMPANY, et.al. to Petition fd.
(rec'd 4-11-94)

s*(6) Apr. 15, 1994 Second Certificate of Notice fd. (rec'd 4-14-94)

df (7) May 19, 1994 - Transcript of Record fd. Box 207

df (8) May 19, 1994 - Notice of Filing of Record fd. Copies Sent.

am (9) Jun 17, 1994 People's Counsel's Memorandum, fd.

am (10) Jun 17, 1994 Petitioner's Memorandum, fd. (John M. Bearer)

am (11) Jun 28, 1994 Memorandum of Michael and Penny Gerber in support of
appeal, fd. Rec.'d 6/22/94.

94 OCT 19 PM 2:48

OVER

94CV2565 76/249
CASE NO. _____

df (12) July 26, 1994 - Appellees' Answering Memorandum fd.

mar(13) Aug 9, 1994 Reply memorandum of Michael and Penny Gerber, to Petition
for judicial review, fd. (rec'd 8/5/94)

September 1, 1994 Hon. Thomas J. Bollinger hearing had written opinion and orders to be filed.

PH(14) Oct 14, 1994 Opinion and Order of Court Remanding case to the Board of Appeals for further
proceedings, etc, fd. (TJB)

PETITION FOR JUDICIAL REVIEW * IN THE
IN THE MATTER OF BAKER LAND *
COMPANY, et al. * CIRCUIT COURT FOR
FROM THE *
COUNTY BOARD OF APPEALS * BALTIMORE COUNTY
*
* Case No. 76/245/94-CV-02565
*
* * * * *

PEOPLE'S COUNSEL'S MOTION TO ALTER OR AMEND JUDGMENT
AND REQUEST FOR HEARING

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, by Peter Max Zimmerman and
Carole S. Demilio, in accordance with Maryland Rule 2-534, files this
Motion to Alter or Amend the Judgment entered by this Court on October
12, 1994, and requests as follows:

1. That the Court clarify its ruling on the question of the
sufficiency or strength of the evidence to satisfy the "mistake"
standard established by prevailing case law and Baltimore County Code
Section 2-356(j). It is unclear whether the Court is reserving that
issue for further consideration after the remand, or whether the Court
implies any opinion or resolution of that issue.

2. That the Court similarly address the issue of Petitioner's
failure to delineate the flood plain as required by Baltimore County
Code Section 2-356(1)(1).

3. That the Court clarify in an Amended Order that it is
reversing, as well as remanding, the decision of the County Board of
Appeals in this matter on the issues raised in this Motion and all
issues raised in the appeal of the administrative decision of the County
Board of Appeals dated February 24, 1994.

4. PEOPLE'S COUNSEL is concerned that, in the absence of
clarification, a question may arise whether the remand forecloses

IN THE MATTER OF	*	IN THE CIRCUIT COURT
BAKER LAND COMPANY, ET AL	*	FOR BALTIMORE COUNTY
FOR RECLASSIFICATION	*	CASE NO. 94 CV 2565
	*	

* * * * *

OPINION AND ORDER

This matter comes before the Court as a Petition for Judicial Review of a decision reached by the Baltimore County Board of Appeals. The Petition involves a 6.57 acre parcel of land located on the southwest corner of Padonia Road and Broad Avenue between Interstate 83 and York Road. Currently the site is zoned as a combination of the following: M.L.R. (manufacturing, light, restricted - 4.84 acres), O-1 (office building - 1.51 acres), and D.R. 3.5 (density residential, 3.5 dwellings per acre - .22 acres). Baker Land Company, et al, Appellee, has requested that the site be reclassified to B.M. (business, major) zoning.

The decision of the Board of Appeals and subsequent review by this Court are governed by §2-356 of the Baltimore County Code, which sets forth the procedures and standard applicable to requests for zoning reclassification. Additionally, pursuant to Maryland Rule 7-209, this Court may "dismiss the action for judicial review or may affirm, reverse, or modify the agency's order or action, remand the action to the agency for further proceedings, or an appropriate combination of the above."

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The Board of Appeals, in a two-to-one decision, approved the zoning reclassification in a written opinion issued February 24, 1994. The Court finds, however, that the majority committed error in failing to adequately comply with §2-356(j) of the Baltimore County Code. The Opinion merely summarizes the testimony presented at the hearing and fails to conduct the requisite analysis that would allow this Court to evaluate the Board's decision.

In fact, this Court is perplexed by the fact the Board failed to specifically consider the following:

...factors relating to the purposes of the zoning regulations and maps, including but not limited to all of the following: Population trends; availability and adequacy of present and proposed transportation facilities, water-supply facilities, sewerage, solid-waste-disposal facilities, schools, recreational facilities, and other public facilities, compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area; any pertinent recommendation of the planning board or office of planning and zoning; and consistency of the current and prospective classifications with the master plan, the county plan for sewerage and water-supply facilities, and the capital program.

Baltimore County Code §2-356(j)(2).

Therefore, for the aforementioned reasons, it is this 12th day of October, 1994, by the Circuit Court for Baltimore County, ORDERED that this matter is hereby REMANDED to the Board of Appeals to make the appropriate factual and legal

findings consistent with §2-356(j)(2) of the Baltimore County
Code.


THOMAS J. BOLLINGER, JUDGE

TJB/am

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PETITION OF PEOPLE'S COUNSEL * IN THE
 FOR BALTIMORE COUNTY, et al. * CIRCUIT COURT
 FOR JUDICIAL REVIEW
 IN THE MATTER OF BAKER * FOR
 LAND COMPANY, et al. FOR * BALTIMORE COUNTY
 RECLASSIFICATION
 Zoning Case: CR-93-305-SPH * Case No. 94-CV-02565
 76/249

* * * * *

APPELLEES' ANSWERING MEMORANDUM

Baker Land Company, et al., legal owners, and Harrison & Grass Partnership, contract purchaser, Appellees, by John H. Zink, III and Patricia A. Malone with Venable, Baetjer and Howard, their attorneys, in accordance with Maryland Rule 7-207, submit their Answering Memorandum in this administrative appeal, as follows:

STATEMENT OF THE CASE

Appellees filed a Petition for Reclassification with the County Board of Appeals for Baltimore County ("Board of Appeals") on February 24, 1993. This Petition involved 6.57 acres located on the southwest corner of Padonia Road and Broad Avenue between I-83 and York Road. This interim or "cycle" rezoning petition, which was filed in accordance with Section 2-356 of the Baltimore County Code, requested B.M. (business, major) zoning, subject to the restrictions set forth in the Documented Site Plan accompanying the Petition, in lieu of the present zoning combination of M.L.R. (manufacturing, light, restricted - 4.84 acres), O-1 (office building - 1.51 acres), and D.R. 3.5 (density residential, 3.5

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dwelling per acre - .22 acres), to accommodate the proposed development of the Broad Street Market. Broad Street Market, as proposed, is a small high-quality shopping center, which is to include a Metro Food Market, a Rite-Aid Drug Store, and a third store, possibly a bookstore. The Petition also requested that less than an acre of existing O-1 zoning be approved for parking necessary to support the proposed Broad Street Market.

During two full days of hearings before the Board of Appeals, September 29, 1993, and October 19, 1993, Appellees produced strong and substantial evidence, through numerous expert witnesses, lay witnesses, and exhibits, that the present classification was established in error and that the proposed classification is warranted. On January 4, 1994, the Board of Appeals openly deliberated on the reclassification request. On February 24, 1994, the Board of Appeals rendered its Opinion and Order, granting the requested reclassification and parking variance. Appellants promptly noted this appeal, requesting judicial review of the Board's decision.

1992 COMPREHENSIVE ZONING MAP PROCESS

Because the zoning for this site was a specific issue before the County Council of Baltimore County ("County Council") during the 1992 Comprehensive Zoning Map Process, a review of that process is necessary in the context of Appellees' subsequent Petition for Reclassification, which they submitted to the Board of Appeals.

People's Counsel would have this Court believe that the Appellees actively pressed the County Council for M.L.-I.M. (manufacturing, light - industrial, major) zoning, a more intensive industrial classification than the present M.L.R. classification, up until the Comprehensive Map was adopted in October, 1992 and, then, turned around in February, 1993 to argue that industrial zoning was a mistake. More importantly, People's Counsel would have the Court believe that the County Council seriously reviewed the classification of the property during that process and reaffirmed that the present classification is correct. This simply is not the case.

As Timothy Harrison described, Harrison & Grass, the contract purchaser and proposed developer, first became involved with the subject property in June, 1992, well after the legal owners had initiated a request to rezone the property as part of the 1992 Comprehensive Zoning Map Process. (Sept. 29, 1993, T. 29-30) During the initial weeks of Harrison & Grass' involvement, though, the Appellees realized that M.L.-I.M. was, in fact, not the correct classification for that location and that a request for commercial classification should be incorporated into the remapping process. (Sept. 29, 1993, T. 29-30) Thereafter, the Appellees actively and diligently sought to rezone the property to its proper commercial classification. (Sept. 29, 1993, T. 30-31)

the County Council in 1992. Therefore, it is clear that the County Council erred in not changing the classification of the subject site from M.L.R. when the express reasons for having such a classification are inapplicable to this site. In fact, the Council deferred the reclassification issue to the Board of Appeals to review and correct the error.

Character of the Surrounding Area -- Compatibility
of Uses under Present vs. Proposed Zoning

Further, as Mr. Crozier testified, the County Council failed to take into consideration that this industrial classification is inconsistent with the character of the area. (Sept. 29, 1993, T. 93-94) Mr. Gavrelis explained at length how the character of the Padonia Road corridor was, in fact, commercial rather than industrial, oriented towards office and retail uses. Therefore, the uses proposed by the Appellees were much more compatible with that character, especially in light of the Documented Site Plan, than were those uses permitted under the existing M.L.R. zoning, such as assembly plants, manufacturing establishments, and warehouses. (Oct. 19, 1993, T. 53-56) In support of this testimony, the Appellees submitted numerous photographs, keyed to the 200-scale zoning map, to depict the commercial character of the area. See Petitioner's Exhibits 24A and 24B.

Population Trends and Market Conditions

In retaining the present zoning, the County Council failed to take into account the increased demand for retail services generated by the significant residential developments

Appellees eventually realized, however, that their intention to come up with a plan that was acceptable to both the community and the County for development under the commercial classification could not be accomplished before the adoption of 1992 Comprehensive Zoning Map in October, 1992. (Sept. 29, 1993, T. 30-31) Recognizing this, the County Council advised the Appellees to participate in the cycle zoning process in which a documented site plan could be utilized. (Sept. 29, 1993, T. 30-31) Therefore, Appellees continued to work with the community and the County to prepare a documented site plan that would satisfy the needs of all concerned parties and of the county as a whole. (Sept. 29, 1993, T. 30-31) Appellees then submitted their Petition for Reclassification and Documented Site Plan to the Board of Appeals during the cycle zoning process after the 1992 Comprehensive Zoning Map had been adopted.

The facts clearly indicate that, in retaining the present zoning, the County Council was merely maintaining the status quo in recognition that Appellees would be submitting an interim zoning reclassification request with a documented site plan to the Board of Appeals. The County Council, therefore, did not actually assess the appropriateness of the present zoning classification at that time even though that zoning was then inappropriate for the site. In effect, Appellees' contention that the present zoning is in error was

specifically preserved by the Council's deferral to the Board of Appeals.

THE STANDARD OF REVIEW ON APPEAL

The Appellants, in their respective Memoranda, have failed to articulate the correct standard of review for this administrative appeal. Contrary to People's Counsel's mistaken premise, upon which his entire Memorandum is based, the Circuit Court is not being asked to review the action taken by the County Council during the 1992 Comprehensive Zoning Map Process to determine whether that action was "reasonable." Instead, in this appeal, the Circuit Court must review the decision by the Board of Appeals, which was acting as an administrative zoning body, to grant the Appellees' interim zoning reclassification request.

The standard of review in this case is, in fact, no different than the standard of review applied to any other administrative appeal. The Board's decision in this case must be reviewed in a "light most favorable to the [Board], since 'decisions of administrative agencies are prima facie correct,'...and 'carry with them the presumption of validity.'" Anderson v. Department of Pub. Safety & Correctional Servs., 330 Md. 187, 213, 623 A.2d 198 (1993) (quoting Bulluck v. Pelham Woods Apts., 283 Md. 505, 513, 390 A.2d 1119 (1978)). Consequently, the reviewing court must affirm the decision of the Board of Appeals if the issue decided, here reclassification, was "fairly debatable" in

light of the evidence adduced before the Board. Howard County v. Dorsey, 292 Md. 351, 356, 438 A.2d 1339 (1982); Bosley v. Hospital for Consumptives of Md., 246 Md. 197, 203-204, 227 A.2d 746 (1967); Anne Arundel County v. A-PAC, Ltd., 67 Md. App. 122, 126, 506 A.2d 671 (1986); Boyce v. Sembly, 25 Md. App. 43, 49-50, 334 A.2d 137 (1975).

An issue is "fairly debatable" when there is evidence upon which the administrative decision can be reasonably based, regardless of the presence of conflicting evidence or inferences, regardless of questions of credibility, and regardless of whether the administrative body came to a conclusion that the Court would not have reached on the same evidence. Anderson, 330 Md. at 212-213; A-PAC, Ltd., 67 Md. App. at 126-127. It is not the function of this Court to substitute its judgment for that of the Board of Appeals. Bosley, 246 Md. at 204. The "fairly debatable" rule has been said to be akin, if not identical, to the "clearly erroneous rule." Enviro-Gro Technologies v. Bockelman, 88 Md. App. 323, 334, 594 A.2d 1190, cert. denied, 325 Md. 94, 599 A.2d 447 (1991).

In order for the Board of Appeals to grant Appellees' reclassification request, Appellees had the burden of showing, by strong evidence, that the present classification was established in error. Baltimore County Code ("County Code"), § 2-356(j)(1) (1988). Additionally, Appellees had the burden of showing that the prospective reclassification is warranted

by that error. § 2-356(j)(2). "Error" or "mistake", as the terms are used interchangeably, is established when a petitioner shows that the local zoning authority made a basic and actual mistake when it adopted a comprehensive zoning map and placed the subject property in its present classification. Howard County v. Dorsey, 292 Md. 351, 353, 356-357, 438 A.2d 1339 (1982); Boyce v. Sembly, 25 Md. App. 43, 49-50, 334 A.2d 137 (1975).

Error may be established in one of two ways. The petitioner may submit evidence of certain facts, projects, or trends that existed or were reasonably foreseeable at the time of the last comprehensive rezoning that the zoning authority failed to take into account. Boyce, 25 Md. App. at 50-51. Alternatively, the petitioner may show that events occurring subsequent to the comprehensive zoning have proven that the zoning body's initial premises at the time of the last comprehensive zoning were incorrect. Id. at 51-52.¹ See also Dorsey, 292 Md. at 356-357.

At the hearings before the Board, under both of the recognized methods, Appellees produced strong and substantial evidence to prove mistake as to the present classification of

¹ Although a finding of mistake by the Board of Appeals typically means that the decision of whether to grant the requested reclassification lies within the Board's discretion, where the petitioner can show that the existing zoning classification deprives him of any reasonable use of his property, the requested rezoning is not within the Board's discretion, but is mandatory. Anne Arundel County v. A-PAC, Ltd., 67 Md. App. 122, 129-130, 506 A.2d 671 (1986).

the property and to prove that the proposed classification is, in fact, the appropriate classification.

ARGUMENT

I. The Board of Appeals Properly Granted Appellees' Request for Zoning Reclassification because the Evidence Confirms that the Current Zoning Classification, as Restricted by the Documented Site Plan, was Established in Error and that the Proposed Classification was Warranted.

A. The Appellees Presented Strong Evidence that the County Council Failed to Take into Account Then-Existing Facts, Projects, or Trends; Therefore, the Present Classification was Established in Error.

The evidence produced by the Appellees confirms that the County Council failed to take into account certain facts, projects, or trends that existed or were foreseeable at the time the 1992 Comprehensive Zoning Map was adopted.

Purposes of M.L.R. Zones

Error is explicit in this case because, even though it was obvious from the facts as they existed in 1992 that the stated purposes of M.L.R. zoning could not be served by the subject site, the County Council specifically deferred to the cycle zoning process.

The stated purposes for M.L.R. zoning are:

To permit grouping of high types of industrial plants in industrial subdivisions in locations with convenient access to expressways or other primary motorways so as to minimize the use of residential streets; to fill special locational needs of certain types of light industry; to permit planned dispersal of industrial employment centers so as to be conveniently and satisfactorily related to residential communities; and as transitional bands between residential or institutional areas and M.L. or M.H. zones.

Baltimore County Zoning Regulations, § 247 (1993). In looking at the realities of the subject site, even as existed in 1992, it is obvious that these purposes are not being served and, in fact, cannot be served at this particular location.

Therefore, as Samuel G. Crozier, a land planner and landscape architect with Crozier & Associates, clearly articulated, the existing zoning on the subject site was established in error. (Sept. 29, 1993, T. 85)

Specifically, Mr. Crozier explained that a great deal of the land in the area that had been zoned industrial had not been developed with industrial uses, but, instead, were developed with other, non-industrial uses permitted in the M.L. zone. (Sept. 29, 1993, T. 88-92) See Petitioner's Exhibit No. 9, which identifies the zoning of the surrounding area. As a result, Mr. Crozier stated, the area around the subject site gives almost no indication that industrial zoning exists. Therefore, it is impossible for the above-stated purposes to be served on this site. There can be no "grouping" of industrial plants on this small, semi-isolated site. Nor is there any need for this property to act as a transitional zone when, in fact, no such industry has developed in the surrounding area. Furthermore, as Mr. Crozier testified, the existing railroad tracks and Light Rail already form a natural boundary between the M.L.- I.M. zoned property and the subject site. (Sept. 29, 1993, T. 89-91, 110) There is no dispute that these facts were available to

the County Council in 1992. Therefore, it is clear that the County Council erred in not changing the classification of the subject site from M.L.R. when the express reasons for having such a classification are inapplicable to this site. In fact, the Council deferred the reclassification issue to the Board of Appeals to review and correct the error.

Character of the Surrounding Area -- Compatibility
of Uses under Present vs. Proposed Zoning

Further, as Mr. Crozier testified, the County Council failed to take into consideration that this industrial classification is inconsistent with the character of the area. (Sept. 29, 1993, T. 93-94) Mr. Gavrelis explained at length how the character of the Padonia Road corridor was, in fact, commercial rather than industrial, oriented towards office and retail uses. Therefore, the uses proposed by the Appellees were much more compatible with that character, especially in light of the Documented Site Plan, than were those uses permitted under the existing M.L.R. zoning, such as assembly plants, manufacturing establishments, and warehouses. (Oct. 19, 1993, T. 53-56) In support of this testimony, the Appellees submitted numerous photographs, keyed to the 200-scale zoning map, to depict the commercial character of the area. See Petitioner's Exhibits 24A and 24B.

Population Trends and Market Conditions

In retaining the present zoning, the County Council failed to take into account the increased demand for retail services generated by the significant residential developments

located to the west of the subject property, along Falls Road and by residents moving to Mays Chapel North, Mays Chapel Village, Chapelgate, and several other new residential developments as Timothy Harrison, developer, and George E. Gavrelis, an expert in land planning with Daft-McCune-Walker, Inc., testified. (Sept. 29, 1993, T. 23-28); (Oct. 19, 1993, T. 57) Based on various studies as to population trends and demographics, Mr. Harrison concluded that the rezoning and subsequent development of the Broad Street Market would "serve the needs of thousands of families living on the west side of I-83" and alleviate the current necessity for these residents to travel through the York and Padonia Road intersection and up and down the congested York Road corridor for grocery shopping. (Sept. 29, 1993, T. 28)

Mr. Gavrelis stated that, in his opinion, the County Council erred in failing to provide for needed retail/commercial zoning in this area, or even to recognize that such a need existed. (Oct. 19, 1993, T. 39-40)

Robert T. Kleinpaste, President of the Legg Mason Realty Group, testified as to another equally important trend also not taken into account by the County Council, which is the office/industrial real estate recession in the area and the resulting overabundance of office and industrial space. (Oct. 19, 1993, T. 9-14) According to his testimony, these conditions developed in the early 1990's and were apparent

even in 1992, at the time of Baltimore County's last comprehensive zoning. (Oct. 19, 1993, T. 11-13)

Given the presumption that the County Council was aware of these population and market changes, which were well underway in 1992, it is apparent that the Council failed to take them into account with respect to the subject property, when it declined to rezone the property commercially and, instead, maintained the M.L.R., O-1 and D.R. 3.5 zoning classifications. That the County Council failed to act in accordance with these above-described trends proves that the existing zoning was in error at the time the 1992 Comprehensive Zoning Map was adopted. Bosley v. Hospital for Consumptives of Md., 246 Md. 197, 204, 227 A.2d 746 (1967) (finding that need for additional commercial zoning to supply the needs of the increased population justified rezoning the subject property); Rohde v. County Bd. of Appeals, 234 Md. 259, 267-268, 199 A.2d 216 (1964) (holding that failure to act to meet need and demand for apartment development constituted error).

Adequacy and Availability of Transportation
and Other Public Facilities

Mickey Cornelius, a traffic engineer with the Traffic Group, Inc., testified in detail about the history of the traffic shed in which the subject property is located and the problems associated with the nearest major intersection, the intersection of York Road and Padonia Road, less than half a mile from the subject site. Mr. Cornelius explained that the

York and Padonia intersection had been a Level F or "failing intersection" (in terms of traffic flow at peak hours) for several years. (Sept. 29, 1993, T. 193-194) Mr. Cornelius further explained how, under Baltimore County's Basic Services legislation, a Level F designation would preclude development, except development on industrially-zoned sites, such as the subject property with its existing M.L.R. zoning. (Sept. 29, 1993, T. 193-194, 199-201) The requested reclassification would, therefore, give the County greater control over development of the subject site and enable it to prevent development that might exacerbate traffic problems.

Mr. Cornelius further testified that retail/commercial uses, such as the one proposed by the Appellees, generate less peak hour traffic than do office or industrial uses, to and from which large numbers of people travel during peak morning and evening rush hours. (Sept. 29, 1993, T. 195-202)

On the basis of Mr. Cornelius' testimony, it is reasonable to conclude that the County Council failed to address the need to balance infrastructure with appropriate development in the area of the subject property.

Notwithstanding that the County Council knew at the time of the 1992 comprehensive zoning that the intersection of York and Padonia Roads was a failing intersection, and that it knew or should have known that a retail/commercial classification would produce much less negative impact on crucial peak hour conditions than an industrial one, the Council maintained on

located to the west of the subject property, along Falls Road and by residents moving to Mays Chapel North, Mays Chapel Village, Chapelgate, and several other new residential developments as Timothy Harrison, developer, and George E. Gavrelis, an expert in land planning with Daft-McCune-Walker, Inc., testified. (Sept. 29, 1993, T. 23-28); (Oct. 19, 1993, T. 57) Based on various studies as to population trends and demographics, Mr. Harrison concluded that the rezoning and subsequent development of the Broad Street Market would "serve the needs of thousands of families living on the west side of I-83" and alleviate the current necessity for these residents to travel through the York and Padonia Road intersection and up and down the congested York Road corridor for grocery shopping. (Sept. 29, 1993, T. 28)

Mr. Gavrelis stated that, in his opinion, the County Council erred in failing to provide for needed retail/commercial zoning in this area, or even to recognize that such a need existed. (Oct. 19, 1993, T. 39-40)

Robert T. Kleinpaste, President of the Legg Mason Realty Group, testified as to another equally important trend also not taken into account by the County Council, which is the office/industrial real estate recession in the area and the resulting overabundance of office and industrial space. (Oct. 19, 1993, T. 9-14) According to his testimony, these conditions developed in the early 1990's and were apparent

the property an industrial zoning classification that would permit development that could severely exacerbate the existing traffic problem.

The opening of the Warren Road interchange at I-83, a development that was certainly anticipated at the time of the 1992 comprehensive zoning, does not obviate the fact that the County Council failed to take into consideration the traffic problems of the area when it retained existing zoning on the property. As the testimony indicated, the Warren Road interchange is only a partial interchange, and it will only raise the York and Padonia Road intersection from a Level F to a Level D. (Sept. 29, 1993, T. 204-205, 208-209) Thus, notwithstanding the Warren Road interchange, if industrial development were permitted on the subject property where new traffic trips are generated by new employees, it would, over time, aggravate traffic problems at the intersection of York and Padonia Roads, likely causing that intersection to revert back to a Level F. (Sept. 29, 1993, T. 201-205, 210) This must be contrasted with a retail/commercial development where shoppers represent traffic trips already using the same road network. (Sept. 29, 1993, T. 195-198)

As to the appropriateness of the proposed classification with respect to public facilities other than transportation, Frederick N. Chadsey, IV, a professional engineer with G.W. Stephens & Associates, compared the Appellees' proposed use to those uses permitted under the existing industrial zoning and

concluded that there would be no significant difference in the impact on these other public facilities. (Sept. 29, 1993, T. 157-58) The adequacy of transportation and other public facilities under the proposed classification was further confirmed by Mr. Gavrelis. (Oct. 19, 1993, T. 41, 51, 58-59)

Consistency of the Proposed Zoning with the Master Plan

Mr. Gavrelis testified that the current industrial zoning of the subject property is, in fact, inconsistent with the Baltimore County Master Plan: 1989-2000, the County's fundamental planning document, as it relates to this area of the County, in that the Master Plan declares that there should be more advantageous use of existing infrastructure. The current zoning reflects the County Council's erroneous failure to consider the different effects that industrial and commercial development would have on the transportation network. (Oct. 19, 1993, T. 41-42) More importantly, Mr. Gavrelis explained why, with the Documented Site Plan, the Appellees' requested classification of B.M. would correct the Council's error by lessening the strain on the transportation infrastructure. (Oct. 19, 1993, T. 51, 58)

B. The Appellees Established that Events Occurring since the 1992 Comprehensive Zoning Map Process have Proven the County Council's Initial Premises to be Incorrect.

In this case, the Appellees presented an abundance of evidence relating to facts and circumstances occurring subsequent to the comprehensive zoning in 1992, which demonstrate that retention of the present zoning is a mistake.

Population Trends and Market Conditions

Expert witness Robert T. Kleinpaste testified to the overabundance of office and industrial space in the area. Mr. Kleinpaste conducted the initial market analysis that is part of the Hunt Valley/Timonium Redevelopment Study, as well as a 1993 update of that market analysis. (Oct. 19, 1993, T. 6-8) He testified that there is a "gross oversupply of office space" in the market and a "gross oversupply of land zoned for future office construction...." (Oct. 19, 1993, T. 10) He also explained how the office market for the area had worsened considerably since 1992 (the date of the last comprehensive rezoning) with vacancies rising to approximately 18.4%. (Oct. 19, 1993, T. 11) With such an overabundance of office space, as well as a lack of demand, Mr. Kleinpaste concluded that it would be "at least ten years" before any office construction would be demanded in the area. (Oct. 19, 1993 T. 12)

The picture Mr. Kleinpaste painted with regard to industrial space was even harsher. He noted that the current vacancy rate in the Hunt Valley/Timonium area had "skyrocketed" from 6.5% in 1990 to 15.5% in 1993 and that this equated to a thirteen-year supply of industrial space. (Oct. 19, 1993, T. 12-13) According to Mr. Kleinpaste, the recession in the office/industrial market is not cyclical, but is "structural and very fundamental to...this region in particular." (Oct. 19, 1993, T. 13-14)

Mr. Kleinpaste's testimony was buttressed by that of another expert witness, Jerome B. Trout, a recognized expert in commercial real estate, who represents numerous major retail companies. Mr. Trout testified to the general unavailability of retail/commercial sites in the Timonium area and, specifically, to the "very serious shortage of land available in th[e] corridor for retailers of a size in excess of 20,000 square feet." (Sept. 29, 1993, T. 47) In fact, based upon his continuous market search since 1992 on behalf of Harrison & Grass, as well as his work for several major retailers, Mr. Trout concluded that there were no other appropriate sites available in the subject area for development or redevelopment of a project of this size. (Sept. 29, 1993, T. 47)

The duration and intensity of the office and industrial real estate recession and the shortage of retail/commercial space attested to by Mr. Kleinpaste and Mr. Trout are factors that were not and could not have been accurately taken into account when the County Council decided in 1992 to retain current zoning on the subject property. Although there was a recession in these markets in 1992 (and had been for some time), the worsening of the situation was not known or predicted at that time. Moreover, the true extent of the office/industrial glut that has developed in the Hunt Valley/Timonium area was not then appreciated.

The first draft of the Hunt Valley/Timonium Redevelopment Study was not released by the Office of Planning and Zoning until November 19, 1992, a month after the comprehensive zoning, and the Study was not adopted by the Baltimore County Planning Board until April 15, 1993. At the time of the hearing before the Board, the Study was only then under consideration by the County Council.

The Study, therefore, is an important fact or circumstance appearing since the 1992 comprehensive zoning, which demonstrates that the retention of the present zoning on this property was a mistake. People's Counsel v. Williams, 45 Md. App. 617, 625-626, 415 A.2d 585 (1980) (holding that evidence that hundreds of acres of nearby industrially-zoned land had been underdeveloped for many years supported the conclusion that industrial classification on the subject site was in error).

Character of the Surrounding Area -- Compatibility
of Uses under Present vs. Proposed Zoning

Another significant occurrence relating to compatibility of the proposed zoning has been the submission by the Appellee of a Documented Site Plan.² Mr. Gavrelis confirmed that, because the Comprehensive Zoning Map Process does not allow for the submission of documented site plans, there is no way,

² A documented site plan has been recognized by the County Board of Appeals for Baltimore County as a subsequently occurring event that can support a rezoning on the basis of mistake, since the County Council was unable to consider such a plan during the last comprehensive zoning process. Caves Valley Club, Inc., Case No. CR-89-367 (May 31, 1989) at 5-6.

during the 1992 Map Process, the County Council could have considered development controls such as those provided by the Document d Sit Plan. (Oct. 19, 1993, T. 38-39)

Mr. Jeffrey Long, a land planner with the Office of Planning and Zoning, indicated that representatives from the Office of Planning and Zoning had visited the subject site on several occasions, had reviewed the Documented Site Plan in conjunction with both the Master Plan and the Hunt Valley/Timonium Redevelopment Study, and had determined that the Appellees' request would be more compatible with the surrounding area than development under current zoning. (Sept. 29, 1993, T. 67, 70)

Mr. Cornelius likewise testified that, from a traffic perspective, the proposed use would generate traffic mostly from nearby and would not generate traffic during morning or evening peak hours. (Sept. 29, 1993, T. 195-197) Hence, the requested rezoning would result in a benefit to traffic conditions in this area, when compared to conditions that would result from development of those uses permitted under the existing M.L.R. classification. (Sept. 29, 1993, T. 196-202)

The endorsement of the Timonium Heights Community Association, the neighborhood community association, is especially telling on the issue of compatibility. As Ms. Sandy Earp, President of the Timonium Heights Community Association, testified, it was generally agreed that the

proposed Broad Street Market would be more compatible with the residential neighborhood than any use permitted under the existing industrial zoning. (Sept. 29, 1993, T. p. 55-56) Similar testimony from Michael Farinacci, who lives directly behind the property, as well as David Young and Howard Lenderking, supported that of Ms. Earp's with respect to the compatibility of the proposed project with the surrounding area. (Sept. 29, 1993, T. p. 59-62, 64-65)

Consistency of the Proposed Zoning with the Master Plan

Mr. Gavrelis pointed out that the Master Plan contemplates redevelopment in the area near the subject property, as long as that development protects "the integrity of the adjacent residential communities...from noise, traffic, intrusion of nonresidential land uses and so forth." (Oct. 19, 1993, T. 43-44) Mr. Gavrelis then gave his expert opinion that this is exactly what the subject petition does:

It establishes a viable land use. At the same time, it protects by means of landscaping, berming, buffering and limitation on use by virtue of the use permit for parking that, in effect, does not result in intrusion of nonresidential land uses into the residential component of the Timonium Heights area.

(Oct. 19, 1993, T. 44)

The Master Plan itself is intended to be supplemented and amended by the Hunt Valley/Timonium Redevelopment Study. See Study at p. II-6. As discussed in detail above, the Hunt Valley/Timonium Redevelopment Study was not available to the County Council at the time it adopted the 1992 Comprehensive Zoning Map.

Mr. Long, Office of Planning and Zoning, testified that the market analysis prepared by Legg Mason and contained in the Study found high vacancy rates for office and industrial uses in the Hunt Valley/Timonium corridor, and that, based upon these rates, the Study calls into question the appropriateness of additional office and industrial facilities in the area. (Sept. 29, 1993, T. 69)

Moreover, the Study recommends that the County support "appropriate development of vacant sites within the redevelopment and/or employment areas where quality design will limit negative impacts on any surrounding residential or employment areas." There was ample testimony, as noted above, that the development proposed by the Appellee here would have limited impact on the surrounding residential area. (Oct. 19, 1993, T. 44) As to the quality of the design, there was testimony from Mr. Harrison, Geoffrey Glazer, the project architect, and others as to the quality and attractive design of the proposed Broad Street Market. (Sept. 29, 1993, T. 19-25, 28, 180-86) Thus, the proposed development is consistent with the recommendation of the Hunt Valley/Timonium Redevelopment Study and, as such, with the Master Plan.³

³ In light of the expert testimony establishing that, under present and projected future market conditions, developing the property as either an office or industrial site is not economically feasible, the requested zoning reclassification is not only warranted, but mandated, since, without the ability to develop the property under the present zoning, the Appellees are being deprived of all reasonable use of the property.

II. The Decision by the Board of Appeals to Grant the Requested Reclassification is in No Way Tainted by Impermissible Conditional or Contract Zoning.

Despite having no support from the record or the law, People's Counsel argues for reversal of the Board's decision because, he alleges, that decision is somehow tainted by impermissible contract or conditional zoning. This argument is simply without merit.

"Contract zoning" or "conditional zoning" refers to a zoning reclassification on which conditions or restrictions, not generally applicable to land similarly zoned, are imposed by way of an agreement between a petitioner and the zoning authority. People's Counsel v. Mockard, 73 Md. App. 340, 343, 533 A.2d 1344 (1987); Board of County Comm'rs v. H. Manny Holtz, Inc., 65 Md. App. 574, 579-580, 501 A.2d 489 (1985). In the absence of statutory authority for the imposition of such conditions, Maryland courts have uniformly declared contract or conditional zoning invalid. Attman/Glazer P.B. Co. v. Mayor & Alderman of Annapolis, 314 Md. 675, 685, 552 A.2d 1277 (1989); Mockard, 73 Md. App. at 343.

In Baltimore County, though, a statutory exception to the general rule invalidating conditional zoning has been made. County Code, §§ 2-356(1)-(n) (1988). Sections 2-356(1)-(n), which provide for the submission of a documented site plan along with a petition for reclassification, permit one form of conditional zoning. Mockard, 73 Md. App. at 344. Section 2-356(1) requires that a petitioner provide the Board of Appeals

with extensive documentation relating to the proposed use of the property, along with a specific site plan and an environmental impact statement. If the r classification is then granted, the property may be used only in accordance with the submitted site plan. § 2-356(n). In fact, the property will revert back to its previous classification if, within three years, the property is not being used in accordance with that plan. Id.

From this project's inception, Appellees worked with the neighboring property owners and the Timonium Heights Community Association in an attempt to alleviate their concerns. (Sept. 29, 1993, T. 30-31) An agreement was eventually reached with the Timonium Heights Community Association in which restrictive covenants were executed for the benefit of the community association in return for the association's support of the project. (Sept. 29, 1993, T. 31) The Documented Site Plan, which included, almost verbatim, this agreement, was created and submitted as part of the Appellees' Petition for Reclassification in accordance with Section 2-356(1). (Sept. 29, 1993, T. 32-33) The Documented Site Plan showed the proposed use of the property as a high-quality shopping center with the anchor store being a Metro Food Market. See Petitioner's Exhibit 1.

People's Counsel contends that the Board's decision is reversible because it relies, in part, upon the recommendation of the Office of Planning and Zoning, which impermissibly

even in 1992, at the time of Baltimore County's last comprehensive zoning. (Oct. 19, 1993, T. 11-13)

Given the presumption that the County Council was aware of these population and market changes, which were well underway in 1992, it is apparent that the Council failed to take them into account with respect to the subject property, when it declined to rezone the property commercially and, instead, maintained the M.L.R., O-1 and D.R. 3.5 zoning classifications. That the County Council failed to act in accordance with these above-described trends proves that the existing zoning was in error at the time the 1992 Comprehensive Zoning Map was adopted. Bosley v. Hospital for Consumptives of Md., 246 Md. 197, 204, 227 A.2d 746 (1967) (finding that need for additional commercial zoning to supply the needs of the increased population justified rezoning the subject property); Rohde v. County Bd. of Appeals, 234 Md. 259, 267-268, 199 A.2d 216 (1964) (holding that failure to act to meet need and demand for apartment development constituted error).

Adequacy and Availability of Transportation
and Other Public Facilities

Mickey Cornelius, a traffic engineer with the Traffic Group, Inc., testified in detail about the history of the traffic shed in which the subject property is located and the problems associated with the nearest major intersection, the intersection of York Road and Padonia Road, less than half a mile from the subject site. Mr. Cornelius explained that the

based its decision to recommend approval of the Petition for Reclassification on the "attractiveness" of the Documented Site Plan and/or on the restrictive covenants executed by the Appellees in favor of the neighborhood community association. Neither of these contentions has any merit.

With respect to the Documented Site Plan, People's Counsel has ignored the existence of Section 2-356, which expressly permits consideration of a documented site plan in determining whether or not to reclassify a particular piece of property. There is no conceivable reason to permit a petitioner to submit such a plan if that plan may not, in fact, be considered by the Office of Planning and Zoning in making its recommendation and by the Board of Appeals in reaching its final decision.

People's Counsel likewise has ignored the testimony of Jeffrey Long, land planner with the Office of Planning and Zoning, that, in making this recommendation, his office not only examined the Documented Site Plan, but also reviewed the proposed classification and proposed use for consistency with the Master Plan and the Hunt Valley/Timonium Redevelopment Study; the appropriateness of the present classification in light of the glut of unleased office and industrial space in the area; and the compatibility of the proposed classification and proposed use with the surrounding community. (Sept. 29, 1993, T. 66-70) Ultimately, he concluded that development of the property under its present classification was not

feasible. (Sept. 29, 1993, T. 68-69) It is evident, therefore, that, in deciding to support this Petition for Reclassification, the Office of Planning and Zoning certainly considered much more than the "attractiveness" of the Documented Site Plan. Therefore, the Board's reliance on this recommendation was entirely proper.

Further, People's Counsel contends that the Office of Planning and Zoning based its decision of the existence of restrictive covenants entered into by the Appellees in favor of the Timonium Heights Community Association and that this amounted to impermissible contract zoning.⁴ Again, People's Counsel has ignored Mr. Long's testimony on this issue. When questioned by People's Counsel as to whether the Office of Planning and Zoning's recommendation was based in part on the agreement between the Appellees and the neighborhood, with no hesitation, Mr. Long responded that it was not. (Sept. 29, 1993, T. 70-71)⁵

⁴ It is important to note that these restrictive covenants were included, almost verbatim, in the Documented Site Plan, rendering the restrictive covenants superfluous.

⁵ Even if the Office of Planning and Zoning had based its recommendation on these restrictive covenants, this still would not constitute illegal contract zoning. Agreements with those not having final zoning authority, as in this case, do not constitute illegal contract zoning. It is only when the decision-making authority is a party to the covenants, and, in essence, contracts away its right to exercise that zoning power that illegal contract zoning exists. Funger v. Mayor of Somerset, 249 Md. 311, 328, 239 A.2d 748 (1968); City of Greenbelt v. Bresler, 248 Md. 210, 215-216, 236 A.2d 1 (1967). See also Montgomery County v. National Capital Realty Corp., 267 Md. 364, 374-375, 297 A.2d 675 (1972). In this case, the agreement restricting use of the property under the proposed classification was between two private parties, the

Because Appellants have no support for their allegations that the Office of Planning and Zoning improperly based its decision solely on the "attractiveness" of the Documented Site Plan" or on the restrictive covenants, its recommendation and the final decision of the Board of Appeals granting the requested reclassification could not have, in any way, been tainted by illegal contract zoning. Therefore, the Board's decision should be affirmed.

III. Finding that the Appellees Sufficiently Identified the Location of the 100-Year Floodplain on the Subject Property, the Board Properly Denied People's Counsel's Motion to Dismiss.

At the conclusion of the Appellees' case, People's Counsel moved to dismiss the Petition for Reclassification on the basis that the location of the One-Hundred-Year Floodplain was not identified on the Documented Site Plan, which was introduced in support of the Petition for Reclassification. People's Counsel argued that, because Section 2-356(1) of the County Code requires designation of the floodplain, the failure to indicate this item on the Documented Site Plan itself was fatal to the Appellees' case. (Oct. 19, 1993, T. 63-64)

The Board of Appeals denied this motion, finding that, through expert testimony, the Appellees had sufficiently identified the location of the floodplain on the Documented Site Plan. (Oct. 19, 1993. T. 65-66) Appellants contend that

Appellees and the neighborhood community association.

the Board of Appeals improperly denied this Motion to Dismiss and erred in ultimately granting the requested reclassification.⁶

Although Section 2-356(1) contains a list of items to be included on a documented site plan, this provision specifically allows for flexibility as far as the contents of the plan are concerned. Regardless of this flexibility, in the presentation of their case, Appellees did, in fact, identify the location and impact of the One-Hundred-Year Floodplain on the subject property.

Specifically, Frederick Chadsey, Appellees' expert engineer, testified that, although he and the County agencies were still in the process of resolving the exact location of the floodplain, it had been pinpointed to within a "couple of inches." (Sept. 29, 1993, T. 168) On the Documented Site Plan, Mr. Chadsey identified the One-Hundred-Year Floodplain, on the western boundary of the property, as being confined to the existing stream channel that runs parallel to the light rail track. (Sept. 29, 1993, T. 164) With respect to the northern boundary along Padonia Road, the One-Hundred-Year Floodplain was identified by Mr. Chadsey on the Documented

⁶ By virtue of Rule 4(b) of the Rules of Practice and Procedure of the County Board of Appeals, the Chairman of the Board, in concurrence with a majority of the other Board members, has discretionary authority to rule upon matters that arise during the hearing, including motions and procedural matters.

Site Plan as being located within the sixty-foot stream buffer shown on the plan. (Sept. 29, 1993, T. 163)⁷

James Dieter, Director of the Department of Environmental Protection and Resource Management, confirmed that the floodplain associated with this property is confined to the two stream channels running along the property to the west and the north. (Oct. 19, 1993, T. 74)⁸ As demonstrated by this testimony of these experts, neither of these locations of the floodplain will affect the Documented Site Plan.

Because the Board had sufficient evidence upon which to find that the Appellees had, in fact, identified the One-Hundred-Year Floodplain on the Documented Site Plan by way of expert testimony, it acted properly in exercising its discretion and denying the Motion to Dismiss.

⁷ The County Code specifically authorizes the Director of the Department of Environmental Protection and Resource Management to grant a variance from the regulations governing stream buffers as long as a certain burden of proof is met. § 14-334. Contrary to the impression left by the Memorandum of Appellants Michael and Penny Gerber, this legislatively sanctioned procedure is an appropriate method of requesting and receiving a variance. Regardless, the grant or denial of such a variance is not relevant to the issue whether the floodplain was properly identified on the property.

⁸ While Mr. Dieter did testify that, in order for his office to establish the appropriate buffers, the floodplain would need to be delineated by the Department of Public Works, at no time did he suggest that this issue would prevent the Board of Appeals from granting the reclassification. The establishment of the appropriate buffers is actually handled as part of the Development Plan Approval Process.

IV. The Board of Appeals Made Adequate Findings of Fact in its Opinion and Order.

Appellants contend that the Board of Appeals failed to set forth in its Opinion, dated February 24, 1994, sufficient factual findings to support its grant of the requested zoning reclassification at issue in this case. The Opinion rendered by the Board of Appeal, though, contains adequate factual findings and grounds for its decision and, therefore, fully complies with Section 2-356(j) of the County Code. See Opinion and Order of the Board of Appeals, dated February 24, 1994. Remand to the Board of Appeals, thus, is not warranted.

The requirement that the Board of Appeals support its decision with factual findings and provide its reasons for making that decision ensures that the parties are apprised of the facts relied upon by the Board in reaching its decision and, further, permits meaningful judicial review of those findings. Mossburg v. Montgomery County, 329 Md. 494, 507, 620 A.2d 886 (1993); Harford County v. Preston, 322 Md. 493, 505, 588 A.2d 772 (1991).

In this case, the Board of Appeals summarized and evaluated the evidence produced at the hearing and the testimony of the various witnesses that appeared before it. Further, the Board summarized Appellees' burden of proof with respect to the granting of a reclassification. Additionally, the Board highlighted the testimony and evidence it found important in making the decision to grant the requested reclassification.

Specifically, on pages 1 through 3, the Board outlined the testimony of the numerous witnesses appearing on behalf of Appellants, highlighted the points it found important in making the decision to grant the reclassification, and made findings of fact with respect to the evidence. Opinion, pp. 1-3.

Next, the Board briefly summarized the evidence and the testimony produced by the Appellants. Opinion, p. 4. The Board's summary of the testimony of the four lay witnesses, in which it couches this testimony in terms of "fears" and "concerns," demonstrates that the Board attributed no probative value to what amounts to pure speculation on the part of these witnesses. Opinion, p. 4. The Board evidently found equally unconvincing the testimony of the sole expert witness offered by the Appellants. Opinion, pp. 4-5.

Next, the Board of Appeals specifically addressed what Appellees were required to prove in order for the requested reclassification to be granted, that the present classification was in error and that the proposed reclassification is warranted, and concluded, based on the evidence, that Appellees had met their burden of proof. Opinion, pp. 4-5. On the issue of this reclassification, the Board specifically noted that it had found several of the Appellees' expert witnesses to be particularly convincing. Opinion, p. 5.

Contrary to the Appellants' assertions, it is further evident from the Board's Opinion that the Board considered the

"applicable" factors contained in Section 2-356(j)(2) of the County Code as required by People's Counsel v. Mockard, 73 Md. App. 340, 349, 533 A.2d 1344 (1987). Of those factors contained in Section 2-356(j)(2), the only factors that are even arguably relevant and applicable to this reclassification are: (1) population trends and market changes; (2) the adequacy of transportation facilities; (3) compatibility with the character of the surrounding area; (4) the recommendation of the planning board or office of planning and zoning; and (5) consistency of proposed zoning with the Master Plan. As is evident from Section I of this Memorandum, Appellees presented testimony and introduced evidence on each of these factors at the hearings before the Board. Further, as the Board's Opinion evidences, each of these relevant factors was considered by the Board, and sufficient findings of fact were made as to each factor.

In its Opinion, the Board of Appeals demonstrated that it found that the County Council erred in failing to act in accordance with the changing population trends and market conditions of the area. Specifically, the Board found, based upon the testimony of many of the Appellees' witnesses, that there is an oversupply of land zoned for office or industrial uses, rendering development of this site under the present classification unfeasible, and a corresponding undersupply of land zoned for retail uses to meet the demands of the population. Opinion, pp. 1-3.

Further, with respect to the effect that the proposed use would have on transportation facilities, noting that Mickey Cornelius, Appellees' traffic engineer, was "especially persuasive," the Board found the present classification to be in error and the proposed classification to be warranted. Specifically, the Board found that the present traffic facilities would be adequate if the property were developed in accordance with the Documented Site Plan because the proposed use would not add additional traffic during the peak times. Opinion, pp. 2-3. In fact, when compared to the uses permissible under the present classification, the Board specifically found that the proposed classification to be the correct classification because:

any industrial or office use would significantly increase the traffic during peak hours as customers and employees would be coming from somewhere else to the site, and would have to use the above-named intersection [Padonia Road and York Road]. As far as any potential traffic problems, the proposed use is far more acceptable than any additional office or industrial use.

Opinion, p. 3.

Additionally, the Board of Appeals considered and specifically found that the requested classification and proposed use would be compatible with the surrounding area. For instance, the Board found, based on testimony from the architect for the project, Geoffrey Glazier, that the proposed classification (with the proposed use) would be appropriate in this area and that Appellees, through the Documented Site Plan, had addressed all concerns with respect to the

neighborhood. Opinion, p. 2. Further, the Board found that the testimony of the President of the Timonium Heights Association, Ms. Sandy Earp, and the three closest neighbors to the project, supported this conclusion of compatibility. Opinion, pp. 2-3.

The Board of Appeals also properly considered that the Office of Planning and Zoning for Baltimore County, as testified to by Jeffrey Long, had recommended approval of the Petition for Reclassification as restricted by the Documented Site Plan. Opinion, p. 2.

Lastly, testimony was heard and the Board properly found that the proposed classification was consistent with the Master Plan. Specifically, the Board found, again based on Mr. Long's testimony, that reclassification to be in conformity with the Master Plan and the Hunt Valley/Timonium Redevelopment Study. Opinion, p. 2.

As this summary demonstrated, all of the factors applicable and relevant to the proposed classification and Documented Site Plan were addressed by the Board in its Opinion and Order. Like the Opinion and Order at issue in Gray v. Anne Arundel County, "[a]lthough the findings are not set out in the form that appellants would prefer," in reviewing the Board's Opinion and Order in context and in their entirety, the findings of fact made by the Board of Appeals in this case are sufficient to indicate the basis for the decision and to permit judicial review. 73 Md. App. 301,

York and Padonia intersection had been a Level F or "failing intersection" (in terms of traffic flow at peak hours) for several years. (Sept. 29, 1993, T. 193-194) Mr. Cornelius further explained how, under Baltimore County's Basic Services legislation, a Level F designation would preclude development, except development on industrially-zoned sites, such as the subject property with its existing M.L.R. zoning. (Sept. 29, 1993, T. 193-194, 199-201) The requested reclassification would, therefore, give the County greater control over development of the subject site and enable it to prevent development that might exacerbate traffic problems.

Mr. Cornelius further testified that retail/commercial uses, such as the one proposed by the Appellees, generate less peak hour traffic than do office or industrial uses, to and from which large numbers of people travel during peak morning and evening rush hours. (Sept. 29, 1993, T. 195-202)

On the basis of Mr. Cornelius' testimony, it is reasonable to conclude that the County Council failed to address the need to balance infrastructure with appropriate development in the area of the subject property.

Notwithstanding that the County Council knew at the time of the 1992 comprehensive zoning that the intersection of York and Padonia Roads was a failing intersection, and that it knew or should have known that a retail/commercial classification would produce much less negative impact on crucial peak hour conditions than an industrial one, the Council maintained on

313-314, 533 A.2d 1325 (1987). Therefore, remand is unwarranted.

Even if this Court agrees with Appellants that the Board of Appeals' Opinion lacks adequate findings of fact, remand still is not warranted as the Board's conclusion is uncontradicted by other sources, and only one conclusion could reasonably be reached. People's Counsel v. Mockard, 73 Md. App. 340, 349, 533 A.2d 1344 (1987); Gough v. Board of Zoning Appeals, 21 Md. App. 697, 704, 321 A.2d 315 (1974). Appellants produced no probative evidence in opposition to Appellees' expert testimony that each of the applicable requirements for granting the reclassification was satisfied. Norman Gerber, the uncle of Appellant Michael Gerber and, in fact, Appellants' only expert witness, offered no probative testimony to rebut the testimony of the Appellees' numerous experts. Nor did Mr. Gerber, or any other witness offered by the Appellants, raise an issue with respect to any factor not addressed in the above discussion. Therefore, the Board's conclusion granting the reclassification was the only reasonable one.

CONCLUSION

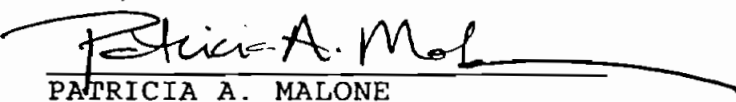
By virtue of the power reserved for it in Section 2-356 of the Baltimore County Code, the Board of Appeals for Baltimore County had full authority to grant the requested reclassification. The Board of Appeals, further, properly exercised this authority after finding that Appellees had met

their burden of proof, by a showing of strong and substantial evidence, that the present classification was in error and that the prospective reclassification is warranted. Because Appellees submitted sufficient evidence before the Board of Appeals to make the granting of the reclassification at least fairly debatable, this Court should affirm the Board's decision.

Respectfully submitted,



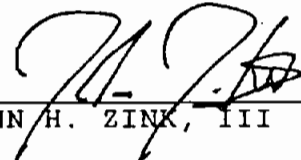
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 1994, a copy of the foregoing APPELLEES' ANSWERING MEMORANDUM was mailed to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 47, Courthouse, 400 Washington Avenue, Towson, Maryland 21204; Patrick D. Hanley, Esquire, Hanley and Hanley, 206 Washington Avenue, P.O. Box 5506, Towson, Maryland 21204, Attorney for Appellants Michael and Penny Gerber; and John M. Bearer, 9 W. Main Boulevard, Timonium, Maryland 21093, Appellant.



JOHN H. ZINK, III

MEMO0318.PAM

6/17/94

PETITION FOR JUDICIAL REVIEW * IN THE
IN THE MATTER OF BAKER LAND *
COMPANY, et al. * CIRCUIT COURT FOR
FROM THE *
COUNTY BOARD OF APPEALS * BALTIMORE COUNTY
* Case No. 76/245/94-CV-02561-
249 2565
* * * * *

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PETITION FOR JUDICIAL REVIEW	*	IN THE
IN THE MATTER OF BAKER LAND	*	CIRCUIT COURT FOR
COMPANY, et al.	*	BALTIMORE COUNTY
FROM THE	*	
COUNTY BOARD OF APPEALS	*	Case No. 76/245/94-CV-02561
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PEOPLE'S COUNSEL'S MEMORANDUM

I. STATEMENT OF THE CASE

The PEOPLE'S COUNSEL FOR BALTIMORE COUNTY filed a Petition for Judicial Review of the decision of the County Board of Appeals dated February 24, 1994, in which, in a 2 to 1 decision, the Board of Appeals approved the Petition for Zoning Reclassification.

The subject site was a specific issue (Issue 3-151) before the County Council in the 1992 Comprehensive Map Process. In Bill 189-92, adopted October 15, 1992, the County Council maintained the MLR, 0-1, and DR3.5 zoning on the subject site. The decision of the County Board of Appeals rezoned the site to BM, as requested by Petitioner, and granted the variance request for parking of non-commercial vehicles on a portion of the remaining 0-1 zone, subject to a documented site plan for a 60,000 square foot supermarket and other retail establishments.

II. QUESTIONS PRESENTED

1. Whether the County Board of Appeals usurped the zoning power of the Baltimore County Council?
2. Whether the decision of the Baltimore County Council in the 1992 Comprehensive Map Process as to the instant site was reasonable and fairly debatable?

3. Whether the decision of the County Board of Appeals as to mistake or error is reversible for failure to make certain findings required by statute and for defective reasoning?

4. Whether the decision of the County Board of Appeals is based on the unauthorized principal of contract zoning by recognizing and relying on a) covenants between the neighborhood and the developer; and/or b) an agreement between the developer and the Office of Planning and Zoning?

5. Whether the Petition for Reclassification is deficient for failure to comply with the requirements of Section 2-356(j) as to floodplain designation?

III. RELEVANT LEGISLATION

The Comprehensive Zoning Process of the Baltimore County Council is set forth in Sections 26-121 to 26-126 of the Baltimore County Code. (Appendix 7). These sections enumerate the details of the process which occurs every four years throughout the entire County. It is a legislative function authorized by the Express Powers Act as found in the Annotated Code of Maryland, Article 25A, Section 5(X).

The administrative process for rezoning is piecemeal and site specific and is presented by Petition before the County Board of Appeals. The regulations governing this cycle process are found in Section 2-356 of the Baltimore County Code. (Appendix 1). This process is quasi-judicial and will be sustained only if certain factual and legal findings are enumerated by the County Board of Appeals. These standards, found in BCC Section 2-356(j), include the "change/mistake" rule, which, along with the lesser used "change in neighborhood" rule, provide the parameters within which the County

Board of Appeals can act. If the County Board of Appeals finds mistake or change in neighborhood, then the Board must also specifically find that the requested zoning is warranted. Moreover, a finding of mistake or change in neighborhood must be supported in the opinion by specific findings as to certain factors enumerated in Section 2-356(j) of the Baltimore County Code.

In the instant case, the zoning established by the Baltimore County Council was MLR, DR 3.5 and 0-1. The requested zoning for the MLR and DR 3.5 zone is BM. Uses permitted as of right and by special exception in the MLR zone are in BCZR 248 and 248.4 (Appendix 37). Uses permitted as of right and special exception in the BM zone are in BCZR 233.1 and 233.4 (Appendix 34).

IV. STATEMENT OF FACTS

Location

The Petition for Reclassification requests rezoning on approximately 6.57 acres of unimproved land located in the southwest corner of the intersection of Padonia Road and Broad Avenue. The site is on the south side of Padonia Road between York Road and the Harrisburg Expressway. The total site consists of 7½ acres. Only 6.57 acres of that site are the subject of the Petition for Reclassification. The remaining .93 acres is zoned 0-1 and the Petitioner requests a variance for parking but not rezoning.

The subject site is a crucial unimproved parcel just east of the light rail system. The subject site is bounded on the south by the significant and stable residential development of single family homes known as Timonium Heights. The site is bound by Padonia Road on the north, York Road to the east, and the Timonium Fairgrounds to the

south. Broad Avenue bounds the subject site immediately to the east and ends at or near the southern boundary of the site. The southwest quadrant of the intersection of Padonia and York Roads in which the subject site is located, is primarily zoned ML-IM, O-1, R-O, DR 3.5. The exception is a small sliver of BL zoned property located at the immediate intersection of Padonia and York Roads. The Timonium light rail transit stop is located at the southwest corner of the Timonium Heights residential development. It should be noted that other vacant properties exist in this quadrant. To the east of the subject site, along Padonia Road toward York Road, a vacant parcel is zoned O-1, RO, and DR 3.5. Likewise, near the light rail stop to the south and southwest of the subject site, a large vacant parcel is zoned DR 3.5. In addition to the residential community and the transit stop, the southwest quadrant is improved exclusively by office buildings to the west. The only commercial area in the quadrant is the aforementioned small strip of BL fronting on York Road at its intersection with Padonia.

The mixed use development of this quadrant is a microcosm of the mixed use development evident in the Hunt Valley-Timonium area and sanctioned in the Hunt Valley-Timonium Redevelopment Study (hereinafter "Redevelopment Study"). The zoning in this quadrant and on the subject site itself, is the product of a planned geographic zoning pattern fashioned by the existence of the transit system, the infrastructure, and the mixed use envisioned by the Baltimore County Council for this vital area in northern Baltimore County. The successor to the railroad line, the central light rail system, continues to impact the types of uses for the surrounding properties.



The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

THOMAS J. BOLLINGER
JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(410) 887-2693
TDD (410) 887-3018

PEOPLE'S COUNSEL FOR BALT. CO.

NUMBER: 94 CV 2565

V.

RULING DATE: 9 FEBRUARY 1996

BAKER LAND CORPORATION

HEARING DATE: N/A

MS. CLERK, Please:

1. File this **ORDER** and
2. Send copies to:
 - a) counsel of record XXX
 - b) distribution list below _____

ORDER

Pursuant to the Mandate of the Court of Special Appeals (Wilner, C.J.) dated January 24, 1996, it is this 9th day of February, 1996, by the Circuit Court for Baltimore County, **ORDERED** that the above captioned case is hereby remanded to the Baltimore County Board of Appeals with instructions to dismiss the Petition for Reclassification filed by Baker Land, Inc., et al.


THOMAS J. BOLLINGER JUDGE

FILED FEB 14 1996

(26) CC, Dennis, Harlow, Zirk, Bearn

the property an industrial zoning classification that would permit development that could severely exacerbate the existing traffic problem.

The opening of the Warren Road interchange at I-83, a development that was certainly anticipated at the time of the 1992 comprehensive zoning, does not obviate the fact that the County Council failed to take into consideration the traffic problems of the area when it retained existing zoning on the property. As the testimony indicated, the Warren Road interchange is only a partial interchange, and it will only raise the York and Padonia Road intersection from a Level F to a Level D. (Sept. 29, 1993, T. 204-205, 208-209) Thus, notwithstanding the Warren Road interchange, if industrial development were permitted on the subject property where new traffic trips are generated by new employees, it would, over time, aggravate traffic problems at the intersection of York and Padonia Roads, likely causing that intersection to revert back to a Level F. (Sept. 29, 1993, T. 201-205, 210) This must be contrasted with a retail/commercial development where shoppers represent traffic trips already using the same road network. (Sept. 29, 1993, T. 195-198)

As to the appropriateness of the proposed classification with respect to public facilities other than transportation, Frederick N. Chadsey, IV, a professional engineer with G.W. Stephens & Associates, compared the Appellees' proposed use to those uses permitted under the existing industrial zoning and

enhance the stability and permanence of zoning classifications by assuring that the majority of zoning classifications are determined in accordance with a carefully considered integrated plan of development, based upon a full understanding of the present and future needs of a broad area, rather than upon a piecemeal review of limited scope." Coppolino, at 369-370. The County Council has before it an abundance of information from the various Baltimore County departments. In addition, public hearings are held, giving the citizens an opportunity to express their opinion. Naturally, the Master Plan and adopted community plans are also available for County Council consultation.

While the County Council reviews the zoning maps for the entire County, the property owners have the option of designating specific parcels as particular issues for review by the County Council. The subject site was designated as specific issue 3-151 in the 1992 Comprehensive Map Process. At that time, the property owner requested ML-IM zoning for the 6.57 acres. The request was specifically reviewed by the County Council as part of a special issue in the Comprehensive Map Process. In fact, a witness for the Petitioner in the instant case testified to the attention given to this site in the Process. Mr. Jeffrey Long, a County planner for the Office of Planning and Zoning stated as follows:

"Q. So it's clear that the Council looked at the issue?

"A. Yes. There were meetings in Mr. Ruppertsberger's office regarding this issue."

(Transcript, September 29, 1993, hereinafter referred to as "T.1", p. 75).

After completion of the Comprehensive Map Process, the County Council rejected the request for reclassification of the subject site and retained the existing zoning. The soundness of this decision is evident from the testimony in the instant case, both from the witnesses for the Petitioner and the protestants. Notably, the majority opinion of the County Board of Appeals failed to mention the decision of the County Council in the 1992 Comprehensive Map Process; the Board's decision on a Petition for Reclassification requires a determination of the reasonableness and the fairly debatableness of the County Council's decision.

It is not surprising that the majority of the Board of Appeals failed to comment on the 1992 Comprehensive Map Process. The Petitioner failed to present any testimony to overcome the presumption that the County Council's decision was reasonable and fairly debatable. To be sure, George Gavrelis, a land planner testifying for Petitioner, mentioned the word "error" in his testimony, but its use had no connection to the opinion rendered by him. Rather, Mr. Gavrelis spoke of such irrelevant matters as "an unmet need for retail commercial facilities in this area" (Transcript, October 19, 1993, hereinafter referred to as "T.2", p. 40), traffic congestion which may occur "over time" (T.2, 41), the sanctioning of retail under the provisions of the Hunt Valley-Timonium Redevelopment Study. In fact, the Study described the area as an "Employment/Retail/Residential land", with no additional weight or sanction given to retail as opposed to the other uses. Mr. Gavrelis then attempted to establish error by equating the compatibility and desirability of the proposed use. Such

a basis to establish error is clearly prohibited by the Baltimore County Code, Section 2-356(n).

The significance of the County Council's decision in the 1992 Comprehensive Map Process was not lost on the dissenting Board Member in the instant case. The Dissenting Opinion recognized "the subject site was a specific issue considered by the County Council during the Comprehensive Zoning Map Process in 1992." (Dissenting Opinion, p. 3). Moreover, the Dissenting Opinion recognized the significance of comprehensive zoning to the instant site as it relates to the nearby light rail line. The Dissenting Opinion is so intuitive regarding this matter that it merits specific attention:

"Furthermore, recent construction of the light rail line has placed sites such as the instant case in the spotlight for tremendous development/redevelopment potential. In light of the fact that access/egress to the light rail in this area is severely limited due to site-specific geographic/ownership constraints, the County Council clearly realized that future development potential of properties adjoining the light rail and the subject site would be severely affected by a zoning change under the Comprehensive Zoning Map Process. Conversely, reclassification under this case would dismiss as moot the classification of those adjoining properties obtained or maintained during the Comprehensive Zoning Map Process. In fact, Norman E. Gerber, AICP, former Director of the Baltimore County Office of Planning & Zoning, confirmed that the subject site should be considered on the comprehensive zoning map so that the surrounding properties, and particularly the properties near the light rail, are given due consideration and opportunity for proper development. Thus, the County Council simply did not commit error in its 1992 classification of the subject property. As an editorial comment, I wish to commend the County Council for having the foresight and understanding of development potential near mass transit opportunities." [Dissenting Opinion, p. 3-4].

In addition, Norman Gerber, the expert land planner who testified in the People's Counsel's case, supported the decision of the County Council in the 1992 Comprehensive Map Process to retain the zoning on the site with an analysis of the purposes and effects of the MLR zone. In his testimony, Mr. Gerber stated:

"Q. Have you also looked at the purpose of the MLR zone and the MLR zoning regulations generally?

A. Yes.

Q. What observations did you make pertinent to this case as to the fit of the property within the MLR zone?

A. I believe the MLR zone is being utilized in the manner it was intended to be utilized. I think the location fits the purpose of the description pretty closely.

Q. In what respects?

A. Well, it's a grouping of high type of industrial plants in industrial subdivisions in locations convenient to expressways and other primary motorways, very convenient to Padonia Road and very convenient to I-83, not far away. I think it fits that very well.

To minimize use of residential streets, clearly, no residential street has to be utilized for this property to be utilized in MLR."...

"I think it's convenient and satisfactorily relates to the residential community. It's one of the purposes.

And the last purpose, as a transitional band between residential or institutional areas and ML or MH zones. It acts as a transition band between the residents and the highway, Padonia Road, and to some extent, to the ML, to the west of the property.

So, I think it really meets the intent and spirit of that part of the purpose.

Q. Considering your review of the documents and observation on the purpose of the zone, as well as your review of the neighborhood, do you have an opinion as to whether or not the existing zoning is a mistake?

A. I do have an opinion.

Q. What is your opinion?

A. I think, all things considered, that the MLR is the appropriate zone for this location.

Q. Is that based in part on some of the comments you made a few minutes ago about the purpose of the MLR zone?

A. In part. I think zoning is placed in comprehensive map processes with a number of factors in mind.

Probably the major two factors are the existing uses in the area and what the potential seems to be for use of the property as it relates to what the county decides it wants to do on the master plan.

It also relates to the environment, what kind of environmental issues are involved. It relates to traffic and the infrastructure and its ability to support whatever is in this zone."...

"Q. Why does the MLR zoning make sense from the long-term point of view, in your view?

A. I think the long-term point of view, it's one of the kinds of locations reasonably close to the freeway system, I-83. It has good access to the arteries of Padonia Road.

And it is one of those areas where employment can be provided. Not all locations can be utilized to provide good employment uses, and even if it's not going to be used today, if it's going to be used ten years from now or 15 years from now, it's perfectly appropriate to zone that in the zoning classification that's going to result in the best overall good for the community." [T.2, 166-169].

The Master Plan and the Hunt Valley-Timonium Redevelopment Study

The subject site is located within the Central Sector of the Master Plan Baltimore County 1989-2000. The Hunt Valley-Timonium corridor was described as follows:

"ISSUE: Role of the Hunt Valley - Timonium Corridor

The imminent construction of major transportation improvements within this area should significantly increase the value of land and thereby spur private market high quality redevelopment in the Corridor as has recently occurred along Deere's Road southward from Padonia Road.

ACTIONS:

1. Recognize the Hunt Valley - Timonium Corridor as a unique economic development opportunity and prepare a comprehensive Urban Center Plan for the area. The planning should be done with full participation by economic interests, County agencies and neighboring communities, and should cover these major topics:

- Acknowledgement that this area is different from other Growth Areas and that its redevelopment must be planned so that the integrity of the adjacent residential communities is protected from noise, traffic, intrusion of nonresidential land uses, etc.

- The light rail and the need to attract land uses that reinforce and take advantage of the system."... [p. 104 Master Plan]

In addition, as to the effect of the central corridor light rail line to the subject site, the Master Plan noted at page 105:

"ACTIONS:

...2. Light rail station locations might become appropriate nodes for developing office or other employment or commercial centers, but this should only occur in accordance with full planning studies approved as an element of a community plan. Such centers should not be planned unless clearly beneficial to the affected communities, and would not ordinarily be appropriate in exclusively residential or recreational areas."... [p. 105 Master Plan]

The Hunt Valley-Timonium Redevelopment Study was adopted by the Planning Board on April 15, 1993. It has not been adopted by the County Council. The zoning of the subject site by the County Council in 1992 supports the "issue", and the "actions" recommended under the Master Plan. Ironically, the testimony of Mr. Gavrelis with regard to the Master Plan was limited. He stated that the proposed zoning was recognized for the area by the Master Plan. There was no dispute that the current zoning on the subject site conformed to the Master Plan. Amazingly, Mr. Gavrelis recognized those portions of the Master Plan which identified the Hunt Valley-Timonium corridor as "a unique economic development opportunity...". He also noted that the Master Plan said that any planning should be done with "full participation by economic interests, county agencies and neighboring communities...". In total disregard for legislative zoning, Mr. Gavrelis considered the documented site plan as the planning contemplated in the terms of the Master Plan. His testimony is tantamount to substituting comprehensive zoning by the County Council with documented site plan zoning. Mr. Gavrelis reiterates this theme throughout his testimony and resorts to

a discussion of the site plan as a substitute for conflicts with the Master Plan, and the Hunt Valley-Timonium Redevelopment Study.

Petitioners also presented Mr. Sam Crozier who commented on the Master Plan and Hunt Valley-Timonium Redevelopment Study. He admitted in cross-examination his visual aids neglected to include all of the properties identified as included in the Hunt Valley-Timonium Redevelopment Study. Conveniently, these excluded areas were in MLR zones. Therefore, Mr. Crozier's testimony is weakened by his failure to recognize the boundaries of the area identified by the redevelopment study, providing a distorted zoning picture to the Board.

Mr. Norman Gerber, an expert land planner testifying in the People's Counsel's case, explained in detail how the current zoning was appropriate based on the recommendations and provisions of the Hunt Valley-Timonium Redevelopment Study and the Master Plan. Mr. Gerber emphasized that the site was significant for its mixed use and the location of the light rail. In order to evaluate the recommendations of the Master Plan and the Redevelopment Study, Mr. Gerber reviewed the purposes of the MLR zoning. The purposes of the MLR fit with the location of the MLR zone property in the area and reflected appropriate zoning resulting from a comprehensive approach to the entire area. Mr. Gerber reiterated that MLR zoning provided a buffer to the residential areas which were afforded a protected status in the Master Plan. To the contrary, Mr. Gerber indicated that piecemeal commercial rezoning of the subject site would destroy the integration of the mixed zones in the area as well as prove disruptive to future zoning considerations for the undeveloped sites. Mr. Gerber noted that other MLR property had been developed in the area in conformance with the Master Plan and

the Redevelopment Study. Mr. Gerber makes important note of the concerns in the Master Plan with the proposed zoning.

"A. One of the concerns in this plan (Master Plan) deals with the desire to limit expansion of strip commercial.

Q. If you would refer to pages 19 and 20?

A. I think it's page 20. First full paragraph on the top of the page on page 20, certainly the policy limiting strip development should continue. The effort to revitalize too must be strengthened." (T.2, 173).

Mr. Gerber went on to note that there are commercial uses permitted in the industrial zone and determined by the zoning regulations to be supportive of the industrial area. However, he noted that shopping centers are not supportive of the industry area. They primary support residential neighborhood areas. In that regard, he stated that the proposed zoning is not consistent with the goals in the Master Plan. (T.2, 174).

Mr. Gerber also identified the further study suggested by the Hunt Valley-Timonium Redevelopment Study. Mr. Gerber made particular note of the area around the mass transit stop, presently zoned O-1, and accessed to that zone. Mr. Gerber stated,

"They are talking about what would be uses of the land the shopping center is going through. That's just an example of how the shopping center is going to reduce and limit the potential for development, I think, of that O-1 zone. I don't know how that's going to be worked out. Nobody has worked out the details of how that can happen."

I think that's a very important goal for the county and it's stated so in the corridor plan.

The area around that light rail stop should be developed in mixed uses. Mixed uses means some commercial. It doesn't mean a shopping center. It means some offices. It may mean some high-rise residents. That's what mixed use means around transit stops.

I just think that if this property developed as a shopping center, it's going to preclude at least one of the offers for

providing better access to the O-1 and could be done without the shopping center, without impacting this neighborhood directly."...

"So I think from a standpoint of a planner if I were ready to do that plan for that mass transit center, I would say this is premature because it's locking me into some things that I may not want once I do that study. And that kind of study is what's called for in the Hunt Valley plan for almost all of those issues." (T.2, 176-177)

Covenants and Contract Zoning

The Petitioner devoted the bulk of his presentation with testimony concerning the documented site plan. Mr. Jeffrey Long of the Office of Planning based the support of his office on the site plan and made no comment as to mistake or error. Although the Office of Planning and Zoning can recommend zoning changes under the Comprehensive Map Process, OPZ did not recommend BM zoning to the subject site in the 1992 process in the support of the MLR designation. Now, however, when a documented site plan is presented, OPZ supports BM zoning. This is contrary to case law. Although the Baltimore County Code allows for a documented site plan, its effect is limited by statute. The rezoning cannot be granted on the attractiveness of the documented site plan. However, the land planners and the representative from OPZ who testified for the Petitioner couched their support of the reclassification in terms of the attractiveness of the documented site plan which is clearly in violation of the burden of proof required in cycle rezoning cases.

The Petitioner's witnesses also attempted to satisfy the required "strong" evidence of mistake or error with the covenants between the developer and the community association. Although the County planner disclaimed any connection between the submission of the OPZ report to

the Planning Board and the aforesaid covenants, he saw fit to attach the two documents and present them as mutually supportive.

The County Board of Appeals is prevented by statute and case law from granting rezoning based on the covenants between the developer and a community group and the documented site plan.

The Hearing Before the County Board of Appeals

The two days of hearing on September 29, 1993 and October 19, 1993 produced numerous witnesses. However, the Petitioner's witnesses provided scant probative evidence of mistake or error. Timothy Harrison, the developer, testified at length on his ability to produce a better product than the existing eight supermarkets on the surrounding York Road corridor. He cited the Mays Chapel residential development west of York Road as a factor to support rezoning. Yet it must be noted that this development and its projected growth existed well before the 1992 Comprehensive Map Process and was certainly familiar to the County Council.

Many other witnesses detailed the potential for greater commercial success for the developer with the proposed use. These witnesses equated business success and marketability with need. A privately retained land planner then attempted to equate need with proof of mistake. Such a presentation is non-sequential and illogical, and more importantly, rejected by case law (see Heller v. Segner, 260 Md. 393).

Other professional witnesses for the Petitioner elaborated on the details of the documented site plan. The witnesses attempted to convey that the authority of the County Council to rezone diminished in proportion to the attractiveness of the site plan. The Petitioner attempted to legitimize this disregard for the legislative process by

concluded that there would be no significant difference in the impact on these other public facilities. (Sept. 29, 1993, T. 157-58) The adequacy of transportation and other public facilities under the proposed classification was further confirmed by Mr. Gavrelis. (Oct. 19, 1993, T. 41, 51, 58-59)

Consistency of the Proposed Zoning with the Master Plan

Mr. Gavrelis testified that the current industrial zoning of the subject property is, in fact, inconsistent with the Baltimore County Master Plan: 1989-2000, the County's fundamental planning document, as it relates to this area of the County, in that the Master Plan declares that there should be more advantageous use of existing infrastructure. The current zoning reflects the County Council's erroneous failure to consider the different effects that industrial and commercial development would have on the transportation network. (Oct. 19, 1993, T. 41-42) More importantly, Mr. Gavrelis explained why, with the Documented Site Plan, the Appellees' requested classification of B.M. would correct the Council's error by lessening the strain on the transportation infrastructure. (Oct. 19, 1993, T. 51, 58)

B. The Appellees Established that Events Occurring since the 1992 Comprehensive Zoning Map Process have Proven the County Council's Initial Premises to be Incorrect.

In this case, the Appellees presented an abundance of evidence relating to facts and circumstances occurring subsequent to the comprehensive zoning in 1992, which demonstrate that retention of the present zoning is a mistake.

implying that the mere existence of a documented site plan is evidence of mistake or error. Elevating the status of a documented site plan to this level is contrary to statute. See Baltimore County Code, Section 2-356(n), which states, "Property may not be reclassified solely on the basis of documentation relating to the property's proposed use."

The People's Counsel presented Norman Gerber as its expert witness. He reviewed the purpose and effect of MLR zoning and its appropriateness to the subject site. In summary, Mr. Gerber explained the reasonableness of the zoning to the site and the adverse effects of the requested zoning. Mr. Gerber reviewed the zoning regulations, revisited the site and the surrounding area, consulted with the Master Plan and the Hunt Valley-Timonium Redevelopment Study as well as the County Council logs for the 1992 map process. Mr. Gerber pointed out the extent of undeveloped land from the office building on the south side of Padonia Road to York Road and the area west of the Harding Street in the Timonium Heights residential area to the railroad (T.2, 163). The witness testified to the zoning pattern in the area. With few minor exceptions, the business zones fronted on York Road. He viewed the MLR zone on the site as appropriate to the purpose of the MLR zone and the criteria of the Master Plan and the Hunt Valley-Timonium Redevelopment Study for the area. Mr. Gerber made some poignant observations regarding current market demand as a factor in a rezoning case.

A. ... "I think probably, least of all, whether or not there's an actual demand for use today or not, may be a factor, but the real factor is what's going to be in the long run, the long term, the best zoning, to encourage the best uses that's consistent with the overall long-term health, safety and welfare of the county and the community."...

Q. In that context, does the testimony in the petitioners case that the current market demand for office or industrial space is low or not, and/or not existent, how does that impress you in relation to the question of mistake in zoning?

A. Not a lot. Otherwise there would be no need for zoning, or very little need for zoning if this was the case, because we would all be developing based on what could be developed today and feel we would make a decision on what could be developed tomorrow, and the following days make the same decision again, and just carry on."

I think zoning is -- one the major roles of zoning is to bring order to the community, And that order may not mean development today or tomorrow. It may mean sometime in the future." (T.2, 168-170).

The People's Counsel also produced several neighborhood residents opposed to the Petition. Mr. John Bearer testified that zoning at the instant site will have a serious impact on the zoning of the surrounding undeveloped land, some of which Mr. Bearer testified is owned by the Petitioner. Mr. Bearer characterized it as "a corner stone in a program which will surround the community and eventually squeeze it out of existence as a residential community." (T.2, 89). Mr. Bearer also is concerned that Broad Avenue may be opened from Padonia Road into the residential neighborhood in the future, thus extending the impact of the commercial use. Mr. Bearer feared that cut-through traffic would access the Timonium Heights residential community. Mr. Bearer feared the interference of the delivery trucks with the quiet enjoyment of the residential homes adjacent to the site. He also stated that the visual impact given the topography of the surrounding area would cause the residential neighborhood to look directly onto commercial development.

Mrs. Penny Gerber emphasized the lack of need for another supermarket, given the multitude of markets, many with similar amenities to the proposed supermarket (T.2, 122).

Mr. Emmanuel Passas feared commercial intrusion into a residential area and the quiet enjoyment of his home. He also was concerned about draining problems with development of the site and has himself experienced flooding at his residence. (T.2, 133).

Mr. Michael Gerber stated that the proposed development would, in his opinion, have a negative impact on the neighborhood and property values because of the commercial intrusion and noise every day of the week. Mr. Gerber also expressed concern about the traffic and jeopardizing the safety of the children in the neighborhood (T.2, 142).

The People's Counsel presented substantial and significant testimony from an expert, and the residents of the neighborhood to support the reasonableness of the zoning decision of the County Council in 1992. Their testimony provided evidence that the County Council designated the appropriate zoning for both the surrounding communities and the unique elements concerning transportation and the infrastructure particular to the site as well as in accordance with the criteria of the Master Plan and the Hunt Valley-Timonium Redevelopment Study.

The Opinion of the County Board of Appeals

The majority opinion of the Board of Appeals gave no indication of an analysis required in their standard of review. The opinion made no mention of the County Council's 1992 Comprehensive Map decision as applied to the instant site. In addition, the majority overlooked the completeness of the plan with regard to designation on the floodplain area despite the convincing testimony of Mr. James Dieter of DEPRM. The majority opinion of the Board of Appeals simply failed to carry out its statutory duties with regard to the instant case.

The Board merely listed the witnesses presented at both days of the hearing but provided no analysis or understanding of their testimony, much less an indication of the "strong evidence" required to establish mistake or error. There is no attempt to make any of the findings required by Section 2-356(j)(2) of the Baltimore County Code.

In contrast, the dissenting opinion offers a detailed analysis of the evidence presented and the degree of persuasiveness. The dissenting opinion notes the legislative prerogative under the 1992 Comprehensive Map Process and the failure of the Petitioner to overcome the presumption of correctness. The dissenting opinion is correct in the lack of proof of mistake or error, and in the observations about the deficiencies in the documented site plan despite statutory requirements.

V. ARGUMENT

I. The County Board of Appeals Usurped the Authority of the Baltimore County Council in Granting the Petition for Reclassification

An appeal to the Circuit Court of a rezoning case decided by the County Board of Appeals differs markedly from an appeal of other zoning cases, such as special exceptions or variances. In the latter cases, the evidentiary hearing before the Board of Appeals is de novo. A decision is rendered based on the facts of the case and the applicable law. The decision on appeal enjoys a presumption of correctness.

Conversely, in the piecemeal rezoning case at hand, the Board of Appeals reviews the legislative decision of the County Council to zone the subject site. There is a presumption of correctness to the County Council's decision. To overcome that presumption, there must be strong evidence presented by the Petitioner that the current zoning

is a mistake (also referred to as "error"),or, that a change in the neighborhood has occurred to warrant a rezoning. This is the first burden required of the Petitioner. There must be sufficient evidence to overcome a presumption of correctness to the County Council's actions. If the Petitioner can overcome this burden, he must then prove that the requested zoning is warranted.

In a rezoning appeal, the Circuit Court's scope of review is two-tiered. The Circuit Court must necessarily determine if the review accorded the County Council's decision by the County Board of Appeals was proper. There is no presumption that the County Board of Appeals is correct. Rather, as the second tier, the Circuit Court must look to the underlying decision of the County Council where a presumption of correctness does exist, to judge for itself, whether the County Council's decision in applying the zone to the subject site was reasonable and fairly debatable. Clearly, there is no testimony available from the County Council. Rather, the tests of "reasonableness" and "fairly debatable" are applied (a) to the Comprehensive Zoning Map process applied by the County Council to the particular site, and (b) to the evidence in the case at hand. If the evidence reveals facts which support the legal standards, the tests of reasonableness and fairly debatable have been satisfied.

The authority of the County Council to establish Comprehensive Zoning is well-settled. It was recognized by the Supreme Court in Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), as an exercise of the police powers of the government to provide for the public health, safety and welfare. This power to zone comprehensively was accorded a presumption of correctness if the zoning designation was fairly

debatable. That is, the legislative prerogative to zone is presumed correct.

The type of evidence required to overcome this presumption has come to be measured in terms of mistake/error or change in neighborhood. The degree of proof required must be "strong evidence". A series of Maryland cases have upheld the principle that the County Board of Appeals or similar agency shall not overturn the Comprehensive Zoning decision of the legislature, unless strong evidence produced at the hearing indicates that the decision of the County Council was unreasonable and without foundation. Coppolino v. County Board of Appeals of Baltimore County, 23 Md.App. 358 (1974); Boyce v. Sembly, 25 Md.App. 43 (1975); Howard County v. Dorsey, 292 Md. 351 (1982). Recently, the Court of Appeals reinforced the doctrine in County Council of Prince George's County v. Offen, 334 Md. 499 (1994). Moreover, the recommendations of a planning body or master plan are advisory only, and not binding upon the legislature. Miller v. Abrahams, 239 Md. 263, 272 (1965); Nottingham Village v. Baltimore County, 266 Md. 339, 354 (1972); Coppolino, supra, at 374.

In People's Counsel v. Mockard, 73 Md.App. 340 (1987), the Court recognized the scope of review required of both the agency and the Circuit Court. At page 348, the Court reiterated the standard of judicial review set forth in an earlier case, when it stated:

"The threshold question is, irrespective of the specific language used in a given statute, on what basis does a court review an agency's actions? In United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corp., 298 Md. 665, 272 A.2d 62 (1984), the Court answered that question as follows:

'Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will

sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action, the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency.'

United Steel Workers, 298 Md. at 679, 272 A.2d 62."

The majority opinion in the instant case is devoid of any indication that the County Board of Appeals understood its role and function. There is no evidence of an examination of the County Council's decision. Moreover, there are no findings of fact to refute the reasonableness of the County Council's decision nor a finding of arbitrariness on the part of the County Council in its zoning designation. The majority opinion lacks analysis and interpretation. Instead it merely lists the names of the Petitioner's witnesses as support for the Board's decision. In light of the extensive testimony from the Protestants/People's Counsel's witnesses, including the expert testimony of Mr. Norman Gerber, the Board's opinion violates the holding in Mockard. Therein, the Court stated at 349:

"Hence, we hold that 'consideration of factors' requires an articulation of the findings as to each of the applicable factors contained in § 2-58.1(j)(2). The Board must make such findings in both a finding of error in the comprehensive plan and in a decision that the reclassification was warranted." [Emphasis original].

In its scope of review, the Circuit Court cannot provide factual findings which are not made by the County Board of Appeals.

II. The Decision of the Baltimore County Council as to the Instant Site in the 1992 Comprehensive Map Process Was Reasonable and Fairly Debatable

The subject site was a specific issue before the County Council in the 1992 Comprehensive Map Process. As such, it is certain the subject

site merited the attention of the County Council members. Petitioner's own witness, the County Planner Mr. Jeffrey Long, admitted that the Third District Councilman held meetings in his office concerning this issue. The County Council declined the Petitioner's request to rezone the property and maintained the current zoning in the 1992 Map Process.

The testimony of Norman Gerber provides ample evidence as to the reasonableness of this decision. (T.2, 166-168). Mr. Gerber reviewed the purposes of the MLR zone and the MLR zoning regulations. The zone represents potential for industrial development convenient to expressways and primary motorways. The MLR zone would serve as a traditional band between residential or institutional areas and ML or MH zones. Mr. Gerber also testified that the MLR zone at this site is supported by the Master Plan which desires to limit expansion of strip commercial property in this area. His description of the surrounding area indicates that it has been developed in accordance with this Master Plan goal. These goals will be frustrated by not only the rezoning of the subject site to commercial but the impact on the surrounding undeveloped land if the Board of Appeals decision is upheld in the instant case. Mr. Gerber also noted that the Redevelopment Plan strongly suggests that additional studies are needed to accomplish the goals and objectives for development in the area encompassed by the Plan. The Plan talks about mixed uses but does not suggest the implementation of those uses in view of the light rail and the zoning immediately surrounding the light rail without further study. In other words, the Dissenting Opinion in the instant case crystallizes the need for additional studies as called for in the Redevelopment Plan in order to properly assess a zoning scheme for all of the surrounding property

to the light rail transit stop. Piecemeal zoning fails to take into account the need for a comprehensive approach to this area in particular, and thus frustrates the goals of both the Redevelopment Plan and the Master Plan. More importantly, the decision of the County Council as to the subject site in the 1992 Map Process to reject piecemeal rezoning recognizes the significance of the comprehensive approach.

All of these factors support the reasonableness of the County Council's decision. The consideration of the zoning requested by the Petitioner in 1992, and the attention given to the site in the Comprehensive Map Process as testified to by the Petitioner's witness, only reinforces that the decision of the County Council in 1992 to maintain current zoning is fairly debatable.

Moreover, there is no dispute that the property can be developed in the current zone.

III. The Opinion of the County Board of Appeals as to Mistake or Error is Deficient and Reversible Because: a) The Reasoning of the Board of Appeals is Defective; b) The Opinion Fails to Make Certain Factual Findings as to Statutory Criteria as Required

The Opinion of the County Board of Appeals lacks any indication that evidence of mistake or error entered into the Board's decision. The majority Opinion of the Board of Appeals is contained in five pages. One-half page is the introductory paragraph, and one-half page consists of the specific order. The Board devotes three and one-half pages to identification of the witnesses appearing at the hearing and a brief summary of their testimony. The Board provides no analysis of the testimony to support a zoning reclassification. The only mention of error came in a description of the testimony of Sam Crozier, a

land planner testifying for the Petitioner, when the Board stated, "His testimony was lengthy and persuasive in that the existing zoning was in error and the proper zoning would be BM." (Opinion, p. 2).

There simply is no reasoning whatsoever within the Opinion to support the Board's decision, much less the strong evidence of mistake required to support a rezoning. Review of the testimony of Messrs. Crozier and Gavrelis may explain why the Board failed to include any evidence of mistake or error. There were no factors presented by either witness relevant to this burden of proof required of the Petitioner.

For instance, Mr. Crozier's graphic presentation of the zoning in the area supports the mixed use zoning recognized and recommended by the Master Plan and the Hunt Valley-Timonium Redevelopment Study. Mr. Crozier attempted to make light of the MLR developments by differentiating the warehouse and office use from the heavy industrial within the MLR zone. This serves as the only basis for Mr. Crozier's conclusion that the purposes of the MLR zoning classification are not fulfilled at these locations. Nonetheless, it is evident that the MLR developed sites were contemplated uses in the zone, and serve as the buffers intended at particular sites. The balance of Mr. Crozier's testimony relates to a need for commercial shopping centers to service the residential development west of I-83. Need has virtually no relationship to mistake or error. This testimony is irrelevant to the Petitioner's burden of proving strong evidence of mistake or error in the current zoning.

It is significant to note that in the color-coded zoning designations for the area submitted by Mr. Crozier, he conveniently

Population Trends and Market Conditions

Expert witness Robert T. Kleinpaste testified to the overabundance of office and industrial space in the area. Mr. Kleinpaste conducted the initial market analysis that is part of the Hunt Valley/Timonium Redevelopment Study, as well as a 1993 update of that market analysis. (Oct. 19, 1993, T. 6-8) He testified that there is a "gross oversupply of office space" in the market and a "gross oversupply of land zoned for future office construction...." (Oct. 19, 1993, T. 10) He also explained how the office market for the area had worsened considerably since 1992 (the date of the last comprehensive rezoning) with vacancies rising to approximately 18.4%. (Oct. 19, 1993, T. 11) With such an overabundance of office space, as well as a lack of demand, Mr. Kleinpaste concluded that it would be "at least ten years" before any office construction would be demanded in the area. (Oct. 19, 1993 T. 12)

The picture Mr. Kleinpaste painted with regard to industrial space was even harsher. He noted that the current vacancy rate in the Hunt Valley/Timonium area had "skyrocketed" from 6.5% in 1990 to 15.5% in 1993 and that this equated to a thirteen-year supply of industrial space. (Oct. 19, 1993, T. 12-13) According to Mr. Kleinpaste, the recession in the office/industrial market is not cyclical, but is "structural and very fundamental to...this region in particular." (Oct. 19, 1993, T. 13-14)

excludes the areas west of the railroad track between the subject site and Route 83. On cross-examination, Mr. Crozier admitted that the boundary included in the Hunt Valley study would include this portion of Deereco Road, which is zoned MLR and primarily developed as MLR. This is also a unique site because of the light rail line. The factors recognized in the Dissenting Opinion as to the logical development of property around the light rail transit stop and the negative effect of piecemeal zoning on the surrounding properties in such a unique site was ignored by the Petitioner. Interestingly, Mr. Crozier chose to include in his color-coded presentation the commercial area located on Timonium Road, nearly a mile from the subject site. On cross-examination, however, Mr. Crozier admitted:

"Q. There's no commercial zoning in this entire section of land from Padonia Road on the north to Timonium on the south, with the exception of the grouping near Timonium Road on the south and some properties that front York Road, on the west side of York Road?

A. Okay. Correct.

Q. The predominant zoning in the section I have just delineated, which, again, at Timonium Road and goes south, would be industrial zoning, residential zoning, and some office zoning, correct? Is that accurate?

A. Yes." (T.1, 112).

Mr. Crozier also attempted to imply that the small amount of commercial zoning on the north side of Padonia Road requires the same zoning classification on the south side of Padonia Road. However, on cross-examination, he altered that impression:

"Q. It's [Padonia Road] a wide road?

A. Very wide road.

Q. Is there any planning and zoning ruling that requires that the zoning on both sides of a road of that width be the same?

A. I don't believe there is a rule that calls for that, no." (T.1, 113).

Likewise, the testimony of George Gavrelis focuses on a perceived need for the commercial use and the attractiveness of the documented site plan. Mr. Gavrelis attempted to equate potential traffic congestion in the present zone versus the traffic generated by the proposed use as indicative of error. However, he overlooks the incompleteness of the studies performed by the Petitioner's traffic expert. There is no testimony from the Petitioner's expert as to the amount of traffic that would be generated by the proposed use. Rather, the testimony speculated that the proposed use would cause less peak hour traffic than development at the current zoning, although the expert admittedly did not consider all of the MLR uses in his analysis. Moreover, the traffic witness failed to recognize that industrial development in the MLR zone is not subject to the adequate facilities limitation of the Basic Service Maps. Traffic would not be an issue for development in the MLR zone.

Moreover, there is no dispute that the Warren Road exchange off I-83, opening the very day of the second day of testimony in the instant case, eliminates the crucial traffic congestion for York and Padonia Road.

Section 2-356(j)(2) of the Baltimore County Code sets forth a minimum of factors which must be considered by the Board of Appeals in a cycle zoning case. There is no indication from the Opinion of the Board of Appeals that these factors were considered by them in granting the Petition for Reclassification. The Opinion fails in the standards set forth in People's Counsel v. Mockard, supra at 349, where the Court, quoting from Anderson, American Law of Zoning, § 16.41, which

the Court noted, "states succinctly the reasons why administrative agencies should make express findings:

"Given express findings, the court can determine whether the findings are supported by the substantial evidence, and whether the findings warrant the decision of the board. If no findings are made, and if the court elects not to remand, its clumsy alternative is to read the record, speculate upon the portions which probably were believed by the board, guess at the conclusions drawn from credited portions, construct a basis for decision, and try to determine whether a decision thus arrived at should be sustained. In the process, the court is required to do much that is assigned to the board, and the latter becomes a relatively inefficient instrument for the construction of a record." (Emphasis previously added.)

IV. The Decision of the County Board of Appeals is Reversible Because it Recognizes and Relies on a) Covenants Between the Neighborhood and the Developer; b) An Agreement Between the Developer the Office of Planning and Zoning, All of Which Constitute Impermissible Contract Zoning.

The Baltimore County Code provision governing piecemeal zoning reclassifications gives the Petitioner the option to present a documented site plan, to which the Petitioner is restricted in the event the request for reclassification is granted. (Section 2-356(1)). Notwithstanding, this section does not alter the strong evidence required under the change mistake rule as specifically provided in Section 2-356(n), which states:

(n) Use of property.... Property may be not be reclassified solely on the basis of documentation relating to the property's proposed use."...

It has been established that conditional or contract zoning is invalid because it is not in accordance with the Comprehensive Zoning Plan. Montgomery County v. National Capital Realty Corp., 267 Md. 364 (1972). The statutory allowance of the documented site plan does not suggest a tolerance for contract zoning. Rather, the plan is a limitation by specific use of a property that merits reclassification based on fully sufficient proof of a mistake or error.

Despite this clear legislative intent and directives plainly stated in the legislation, the Petitioner offered the testimony of Mr. Jeffrey Long of the Office of Planning and Zoning as a supporter of the reclassification petition. Mr. Long equated approval of the proposed use for the site with support of the Petition for Reclassification, although he indicated in his testimony that his office does not comment on change or mistake (T.1, 71). However, his office's approval of the documented site plan implies support of the rezoning Petition to implement the plan.

In addition, Mr. Long admittedly attached the Covenants entered into between the developer and the neighborhood with OPZ's report to the Planning Board (T.1, 71). Although denying that such covenants influenced the OPZ's support of the proposed reclassification, such a presentation suggests a contract or conditional zoning arrangement.

It should be noted from Mr. Long's testimony that OPZ did not submit the subject site as an issue for commercial zoning in the 1992 Map Process (T.1, 75), yet OPZ now favors reclassification when the documented site plan and the neighborhood covenants are included in the proposal. Such evidence is clearly the problem contemplated by the Court in Mockard, supra, quoting from Board of County Commissioners of Washington County v. H. Manny Holtz, Inc., 65 Md.App. 574, 579 (1985), wherein it was stated, "When an area of land is rezoned from one classification to another and such change is not outright but subject to some type of conditions, then we are confronted with a conditional zoning problem."

V. The Petition for Reclassification is Defective for Failure to Comply with Statutory Requirements

A documented site plan cannot be fashioned to the Petitioner's whims. Rather, Section 2-58.1(1) of the Baltimore County Code sets forth specific requirements to qualify as a documented site plan. Petitioner, by its own admission, ignored those requirements as irrelevant to the reclassification procedure. Mr. Frederick Chadsey, the engineer for the Petitioner, did not express any concern that delineation of the hundred year flood plain, clearly applicable to the instant site, was notably absent from the documented site plan. Even the majority opinion had to note the deficiency when it stated that, "his office was still active in preparing solutions to any possible flood plain problems". The fact is, Mr. Chadsey chose to interpret the Zoning Regulations to his own convenience. Mr. James Dieter, head of the Department of Environmental Protection and Resource Management, diametrically contradicted the interpretation of Mr. Chadsey. Mr. Dieter stated in his testimony that the delineation of flood plains is required by the Department of Public Works. It relates to his department in that the appropriate buffers from the delineation would be established once the designation was accepted by the Department of Public Works. The incompleteness of the Petitioner's site plan is evident from Mr. Dieter's testimony:

"Q. But before your office could establish the appropriate buffers, you would require a proper delineation under the supervision of the Department of Public Works?

A. That is correct.

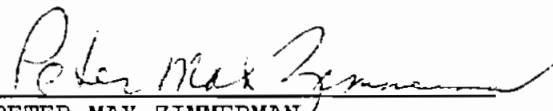
Q. And, to your knowledge, that has not yet been done?

A. To the best of my knowledge, right, that hadn't been completed yet." (T.2, 75-76)

The dissenting opinion from the Board of Appeals demonstrates clear understanding of the statutory requirements for a documented site plan and the failure of the Petitioner to comply with those requirements. Therein it was stated, "Failure to provide the floodplain delineation is most important for two reasons: First, the inclusion of a portion of the site within the hundred year flood plain would result in substantial changes to the documented site plan, thus invalidating the Petition for Reclassification; and, second, the Baltimore County Code requires delineation of the one hundred year flood plain, thus the Petition for Reclassification is incomplete and may be considered non-responsive. This point alone is sufficient to deny the Petition." (Dissenting Opinion, p. 2).

VI. CONCLUSION

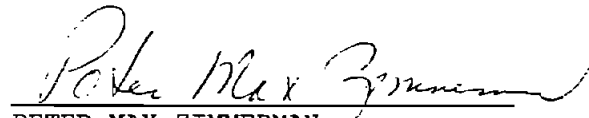
For the foregoing reasons, the C.B.A. Order dated February 24, 1994 should be reversed, and the petition for rezoning and special hearing should be denied.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June, 1994, a copy of the foregoing People's Counsel's Memorandum was mailed to Patrick D. Hanley, Esquire, 206 Washington Avenue, Towson, MD 21204, to John M. Bearer, 9 W. Main Boulevard, Timonium, MD 21093, to John H. Zink, III, Esquire and Patricia A. Malone, Esquire, Venable, Baetjer and Howard, 210 Allegheny Avenue, P. O. Box 5517, Towson, MD 21204.


PETER MAX ZIMMERMAN

(c) All fees shall be payable to Baltimore County, Maryland, and shall be collected by the agency at the time the appeal or petition is filed. (Code 1978, § 2-58.3)

Sec. 2-356. Delegation to board of interim power to change zoning classification of property; method of interim zoning reclassification; method for early action on reclassification due to public interest or emergency.

(a) *Powers generally.*

- (1) The board of appeals shall have the power to make a change as to the district, division, or zone within which a particular piece of property is classified (zoning reclassification) as hereinafter provided. As used in this section, the term "use" includes development, except where otherwise indicated by the context.
- (2) In addition to the authority vested in the board of appeals as described in subsection (a)(1) of this section, the board shall have the power to correct the official critical area map adopted pursuant to section 26-439 of this Code, subject to the requirements of this section.
- (3) The board of appeals shall be able to approve in conjunction with subsection (a)(1) or (a)(2) of this section any application for the use of growth allocation pursuant to the authority vested and procedure set forth herein and pursuant to section 26-123(g) and (h).
- (4) For the purpose of this section, the term "zoning reclassification" shall include all of the above.

(b) *Petition for zoning reclassification.* A petition for a zoning reclassification of a property (reclassification petition) may be filed with the board of appeals only by the legal owner of such property or by his legally authorized representative. Each such petition shall be filed no later than forty-five (45) days prior to the beginning of the

next succeeding cycle and shall include an explanation of the reasons why, in the petitioner's opinion, the reclassification sought should be made, set forth in sufficient detail to properly advise the county authorities required to review the petition. Any allegations of change in conditions as justification for the action sought shall be supported in the petition by precise description of such change and any allegation of error shall be so supported in similar detail and as further required by subsection (j) of this section. No such petition may be accepted for filing unless it meets the board of appeals' rules of practice and procedure, except that the petitioner may choose to submit plans that do not show any proposed use of the property under petition, regardless of any requirement in those rules to the contrary (see also subsection (a)(1)).

(c) *Schedule.* For the purpose of considering contemporaneous zoning reclassification petitions in relation to each other and according to a standard schedule, the following semiannually recurring schedule periods are hereby established, subject to provisions hereinafter set forth:

<i>April–October Cycle</i>	<i>October–April Cycle</i>
Period I April 16–May 31	and October 16–November 30
Period II June 1–July 31	and December 1–January 31
Period III August	and February
Period IV September 1–December 31	and March 1–June 30

(d) *Procedures.* With the exception of those reclassification petitions exempted under the procedure set forth in subsection (i) of this section, copies of all zoning reclassification petitions accepted for filing by the board of appeals shall be transmitted within five (5) days after receipt to the office of the zoning commissioner, who shall make the facilities and staff of his office available to the board of appeals for the purpose of:

- (1) Reviewing all such petitions for compliance with applicable statutes and regulations.
- (2) Preparing the appropriate advertisements.
- (3) Causing said advertisements to be published.

- (3) Posting the individual properties involved in the cycle; all as required by this section and rules of practice and procedure of the board of appeals. No later than five (5) days prior to Period I of the following cycle, the petition and appropriate comments shall be transmitted by the office of the zoning commissioner to the board of appeals.
 - (4) In the case of each petition pertaining to any land within the Chesapeake Bay Critical Area as defined in section 26-438, a copy of the petition and comments shall simultaneously be transmitted to the director of the department of environmental protection and resource management. The director of the department of environmental protection and resource management may adopt and, from time to time, may amend administrative regulations to be utilized by the office of the zoning commissioner when reviewing all such petitions for compliance with applicable statutes and regulations.
 - (5) The board of appeals shall transmit the petition and comments to the director of planning and zoning within the first five (5) days of Period I of the following cycle. Within fifteen (15) days thereafter, the director of planning and zoning and the board of appeals shall publish a listing of all such petitions, together with a map showing the locations of all properties under petition, in two (2) newspapers of general circulation in the county for a period of at least two (2) weeks. They also shall make such listing and map available in the form of a press release and, for a period of at least three (3) weeks, shall publicly display a copy of such listing and map in the county office building or other appropriate place for public inspection.
- (e) *Report on petitions by director of planning and zoning.* During each Period I, the director of planning and zoning shall review the petitions transmitted to him by the board of appeals and shall submit to the planning board and publish a report thereon containing at least the following information:
- (1) Maps showing properties under petition and the reclassifications sought therefor; such maps may also identify groups of such properties located close to each other and show other indications of the interrelation of petitions with respect to planning considerations.
 - (2) Recommendations on the petitions.
 - (3) Supporting data for the recommendations, including any pertinent data and recommendations submitted by other county agencies.
 - (4) Recommendations for scheduling of all hearings (to be held during the next Period IV), prepared in consultation with the board of appeals.
- (f) *Planning board duties.* During each Period II, the planning board shall:
- (1) Publish and submit to the board of appeals a report on all the reclassification petitions submitted during the preceding filing period, except those exempted under subsection (i) of this section, such report to contain the planning board's recommendations on such petitions, appropriate maps, and supporting data.
 - (2) Submit to the board of appeals a recommended schedule for its hearings on the petitions, so arranged that hearings on related petitions shall, with the petitioners' consent, be combined, and/or shall be held successively.
- (g) *Schedule of hearings; notice.* During each Period III, the board of appeals shall establish its schedule for hearings on petitions reported upon by the planning board during the preceding Period II, considering the schedule recommended by the planning board. The board of appeals with the assistance of the office of planning and zoning shall publish its entire schedule of hearings in at least two (2) newspapers of general circulation in the county within the first fifteen (15) days of such period, together with a map showing the locations of all properties under petition. For a period of at

least fifteen (15) days prior to the time of such hearing, each property shall be conspicuously posted with notice of the time and place of the hearing on the petition relating thereto; and individual notice thereof shall also be given in two (2) newspapers of general circulation in the county for the period in which on-premises posting is required.

(h) *Hearings.* The board of appeals, during each Period IV, shall hold the hearings scheduled pursuant to subsection (g) of this section, subject to such postponement or continuation as circumstances may require.

(i) *Exemption from cyclical procedures.* In any case where the planning board certifies to the county council that early action upon a zoning reclassification petition is manifestly required in the public interest or because of emergency and the county council by an affirmative vote approves said certification, such petition shall be exempted from the regular, cyclical procedure of subsections (c) through (h) of this section and also from the suspension of reclassification petition filing required under section 2-357 of this division. For any such petition, the board of appeals shall schedule a public hearing for a date not less than thirty (30) nor more than ninety (90) days after the county council's approval of the planning board's certification. For a period of at least fifteen (15) days prior to the time of such hearing, notice of the time and place of the hearing relating to the property under petition shall be conspicuously posted thereon and shall be given in at least two (2) newspapers of general circulation in the county. Such notice shall describe the property under petition and the action requested therein. Within five (5) days after receipt of such a petition, the board of appeals shall forward a copy of such petition to the office of the zoning commissioner and the director of planning and zoning and, in the case of each petition pertaining to any land within the Chesapeake Bay Critical Area, a copy to the director of the department of environmental protection and resource management, for consideration and written report thereon containing their findings thereon with regard to compliance with zoning regulations, planning factors, or critical area standards, subject to sections 26-123(g) and (h) and 26-124(d) of this Code.

* (j) *Findings prior to reclassification.* Before any property is reclassified pursuant to this section, the board of appeals must find:

(1) That, except as limited by the terms of subsection (j)(3) of this section, there has occurred a substantial change in the character of the neighborhood in which the property is located since the property was last classified or that the last classification of the property was established in error.

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

(3) Any reclassification pertaining to land within the Chesapeake Bay Critical Area is subject to the following limitations:

- a. 1. In accordance with Ann. Code of Md., Natural Resources article, § 8-1809(h), a reclassification, except for changes involving growth allocation that do not require changes to the underlying zones, may be granted only on proof of a mistake in the existing zoning or in the existing boundaries shown in the official critical area map or both; change in the character of the

Mr. Kleinpaste's testimony was buttressed by that of another expert witness, Jerome B. Trout, a recognized expert in commercial real estate, who represents numerous major retail companies. Mr. Trout testified to the general unavailability of retail/commercial sites in the Timonium area and, specifically, to the "very serious shortage of land available in th[e] corridor for retailers of a size in excess of 20,000 square feet." (Sept. 29, 1993, T. 47) In fact, based upon his continuous market search since 1992 on behalf of Harrison & Grass, as well as his work for several major retailers, Mr. Trout concluded that there were no other appropriate sites available in the subject area for development or redevelopment of a project of this size. (Sept. 29, 1993, T. 47)

The duration and intensity of the office and industrial real estate recession and the shortage of retail/commercial space attested to by Mr. Kleinpaste and Mr. Trout are factors that were not and could not have been accurately taken into account when the County Council decided in 1992 to retain current zoning on the subject property. Although there was a recession in these markets in 1992 (and had been for some time), the worsening of the situation was not known or predicted at that time. Moreover, the true extent of the office/industrial glut that has developed in the Hunt Valley/Timonium area was not then appreciated.

neighborhood shall not be a basis for granting reclassification.

2. A reclassification involving growth allocation that does not require changes to the underlying zone or zones may be granted pursuant to the criteria set out in subsection (j)(3)b. of this section.

- b. In evaluating requests for reclassification, the board shall consider the criteria in COMAR 14.15.02 and the standards in appendix IV-B of the local protection program adopted by county council Resolution No. 13-88. No reclassification may be granted unless the board has made written findings that the proposed reclassification will:

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. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

- c. Reclassifications in cases involving growth allocation shall be referred to the county planning board by the board of appeals for consideration and written report thereon, subject to section 26-123(g) and (h) of this Code.

(k) *Limitations on granting reclassification.* No zoning reclassification of property shall, for a period of one (1) year after a zoning map applicable thereto may by an ordinance of the county council have been adopted, be granted on the ground that the character of the neighborhood has changed.

(l) *Documentation.* If a zoning reclassification petition includes documentation relating to the proposed use of the property under petition, that documentation must include:

- (1) Elevation drawings and a plan satisfying the zoning commissioner's rules of practice and procedure and showing locations, coverage, floor areas, heights, character, and exterior materials of all proposed structures and all existing structures to be retained; and all existing structures to be removed; signs visible outdoors; all principal uses; hours of operation, maximum number of employees, and maximum levels of emanations (including sound and other vibrations, dust, odors, gases, light, and heat); parking and loading facilities; existing and proposed public and quasipublic facilities on and adjacent to the site, including storm-drain systems, waterlines, sewerage, streets and drives, and railroad sidings; existing ponds and other bodies of water, watercourses, one-hundred-year floodplains, major vegetations, and unusual natural formations and proposed changes with respect to any of these; screening and landscaping; and existing topography and proposed major changes in grade; and
- (2) An environmental impact statement, as defined in the county zoning regulations, that concerns the proposed use of the property under petition and that has been competently prepared by a professional planner or engineer of appropriate qualifications.

A plan submitted pursuant to this subsection may show the location of a precise building envelope (a clearly delimited area within which a building is to be entirely located but which is larger than the area covered by the building itself) in lieu of the precise location of a building; may show precise maxima and minima in lieu of fixed values; may set forth lists of precisely described possible uses of a given space, in lieu of specifying a single use; and may otherwise reasonably allow for flexibility or alternatives, provided that appropriate precise limits are set forth.

(m) *Amendments.* A zoning reclassification petition (including any documentation relating to the proposed use of the property under petition)

may be amended only during a required public hearing proceeding on the petition. When a proposed amendment to such a petition is introduced, the hearing proceedings shall immediately be suspended, and, within two (2) business days thereafter, the hearing authority shall transmit a copy of the proposal to the director of planning and zoning, who:

- (1) In any case where a petition has been exempted under provisions of subsection (i) of this section, shall promptly refer the amendment to any agency that he considers appropriate, together with a request that the agency provide him with comments on the amendment. Within forty-five (45) days after the amendment has been transmitted to the director of the office of planning and zoning, he shall transmit to the hearing authority a report on the amendment.
- (2) In all other cases, the director of the office of planning and zoning shall promptly transmit copies to the members of the planning board. The director of planning and zoning shall also promptly refer the amendment to the office of the zoning commissioner and any other agency that he considers, upon reviewing files on the petition, to have an interest therein, together with a request that the agency provide him with comments on the amendment for distribution to the planning board, by a time he shall specify. Within forty-five (45) days after the copy of the amendments has been transmitted to the director of planning and zoning, the planning board shall adopt and transmit to the hearing authority a resolution embodying a report on the amendment.
- (3) Any documentation that relates to the proposed use of the property upon petition and that is submitted by the petitioner or his authorized agent after the first public newspaper advertisement of the filing of the petition as required in Period I shall be considered an amendment to the petition, whether or not documentation of that nature was included within the original petition, and shall be subject to the provisions of subsection (m)(1) as well as this subsection.

(n) *Use of property.* Property may be reclassified under this section only upon making the findings required under subsection (j) of this section. Property may not be reclassified solely on the basis of documentation relating to the property's proposed use. However, any provision of section 26-122 of the contrary notwithstanding, if the petition to reclassify the property does include such documentation and is granted, the property may be used only in accordance with the plan included within that documentation; the zoning classification of any such property will revert to the previous classification unless, within three (3) years after the date of the final order granting the petition, the property is being used in accordance with the plan or, in a case where development is necessary to implement the plan, unless the development either is completed or has been substantially undertaken and is being diligently pursued to completion. The requirement that such a property be utilized in accordance with a plan and the provision that otherwise the classification of the property will revert will not be affected by the subsequent enactment of a zoning map, pursuant to section 26-124 or 26-125 of this Code unless the zone classification of the property is further changed by that map.

(o) *Considerations in making determination.* In its hearing on any zoning reclassification petition, the county board of appeals shall consider in evidence without testimony thereto, absent objection by any party to the case, any report of the planning board of comments from the director of planning and zoning or other officer of the office of planning and zoning relating to the petition or any duly submitted relevant report or comments from any other county agency. If an objection is made by any party to the case, the item shall be entered by testimony of a proper witness, who shall be notified by the board of appeals.

(p) *Special exceptions and variances.* The board of appeals, subject to the appropriate principles, standards, rules, conditions, and safeguards as set forth in the zoning regulations, shall have original jurisdiction for the purpose of hearing and deciding petitions for special exceptions and/or variances, the granting of which is dependent upon the reclassification of the property involved in the petition for reclassification. Such special excep-

tions and variances shall be advertised and posted in accordance with the procedures provided in this section for advertising and posting reclassification petitions.
(Code 1978, § 2-58.1)

Sec. 2-357. Suspension of reclassification petition filing during preparation of new or revised zoning map.

No reclassification petitions other than those exempted under subsection (i) of section 2-356 shall be received for filing by the board of appeals from April 16 through October 15 of any year in which the county council is preparing or modifying the new or comprehensively revised zoning map then to be approved and adopted. Any request for zoning reclassification may be presented at the appropriate time of the planning board or county council during such a period, however, for consideration in the preparation or modification of the new or comprehensively revised zoning map then to be approved and adopted. The purpose of this section shall be to provide for the orderly nonduplicate consideration of reclassification requests within the context of a comprehensive zoning map, when such map is under review.
(Code 1978, § 2-58.2)

Secs. 2-358–2-375. Reserved.

DIVISION 4. COMMISSION ON ARTS AND SCIENCES

Sec. 2-376. Definitions.

The term "arts and sciences" shall include arts and sciences as now commonly understood or as may hereafter be so understood, including but not limited to all phases of the visual and performing arts and shall also include the exhibition of all forms of history and science, when such activities are conducted by nonprofit organizations.
(Code 1978, § 2-91)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 2-377. Established; purpose.

(a) There is hereby established in the office of the county executive in the executive branch of the county the county commission of arts and sci-

ences (hereinafter referred to as the "commission"), for the purpose of developing, coordinating, and promoting the performing and visual arts and the sciences, and without contracting therefor, negotiating for artistic services, performances, and exhibits, making accessible presentation of programs relating to the arts and sciences, all for the enjoyment, education, cultural enrichment, and benefit of the citizens of the county. In furtherance of said purpose, the commission shall attempt to accomplish the following objectives:

- (1) Stimulate greater governmental and public awareness and appreciation of the importance of the arts and sciences to the people of the county.
- (2) Encourage and implement greater and more efficient use of governmental and private resources for the development and support of the arts and sciences.
- (3) Encourage and implement opportunities for county residents to participate in artistic and scientific activities.
- (4) Promote the development of county artists, scientists, and institutions and regional organizations sponsoring arts, science activities, and audiences.
- (5) Survey and assess the needs of the arts and sciences and of the people of this county relating thereto and make such information promptly and regularly available to all interested agencies and persons upon request.
- (6) Support and implement the preservation and growth of the county's artistic and scientific resources.
- (7) Foster the development of a receptive climate for the arts and sciences, to culturally enrich and benefit the citizens of the county in their daily lives, and to attract to the county and its environs additional outstanding creators in the field of arts and sciences through appropriate programs, publicity, education, coordination, and activities, such as the presentation of lectures and exhibitions and central compila-

and land in violation of zoning regulations and restrictions adopted pursuant to this title and requiring the return of property, to the extent possible, to its condition prior to the violation, including removal of the source of the violation. (Code 1978, § 22-36; Bill No. 18, 1990, § 2; Bill No. 4, 1992, § 1)

Annotation—Similar section of 1955 County Code cited in *Commissioners of Baltimore County v. Oxford Company*, 209 Md. 373, 121 A.2d 239 (1956).

Sec. 26-121. Civil penalty for zoning violations.

(a) The director of zoning administration and development management shall interpret and enforce the county zoning regulations to insure that uses or buildings, including but not limited to structures, landscaping, roads, and streets, conform to plans approved by the county.

(b) As used in this section, the following words have the meanings indicated.

Defendant means the person charged with violating the zoning regulations and having a relationship to the property, including but not limited to any of the following:

- (1) *Owner* means the person listed in the tax records of the county.
- (2) *Occupant* means the person who has the actual use of the property.
- (3) *Landlord* means the person who owns or holds the property for the owner.
- (4) *Tenant* means the person who rents or leases the use of the property.
- (5) *Person* includes an individual, corporation, partnership, association, joint venture, firm, organization, representative, trustee, receiver, or other legal entity.

Cross reference—Definitions and rules of construction generally, § 1-2.

(c) If the use of property by a person, after inspection by a representative of the office of planning and zoning, is alleged to be in violation of the zoning regulations or policies, rules, or regulations interpreting the zoning regulations or orders of the zoning commissioner or board of appeals of the county, the person is subject to a civil

penalty as prescribed in subsection (c) of this section. Representatives of the office of planning and zoning have the duty of enforcing the zoning regulations and inspecting property for enforcement purposes and are authorized to enter upon open land during the performance of their duties.

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

(e) On receipt of the initial inspection report alleging a civil zoning violation of the zoning regulations, the director of zoning administration and development management shall issue a citation to the person alleged to be in violation of the zoning regulations. The citation shall be on a form adopted by the director of zoning administration and development management, shall affirm that the contents therein are correct to the best of his knowledge, and shall include:

- (1) The date of issuance of the citation.
 - (2) The name and address of the person charged.
 - (3) The section number(s) of the zoning regulation which has been violated.
 - (4) The nature of the civil zoning violation and the location and dates of the violation and whether the violation may be continuing in nature.
 - (5) The amount of the fine assessed as a civil penalty.
 - (6) The instructions for paying the fine.
 - (7) The right to elect to stand trial for the civil zoning violation, along with the instructions for making such election.
- (f) (1) Any person who receives a citation may pay the fine within thirty-five (35) days or may elect to stand trial for the violation by filing with the director of zoning administration and development management, at least five (5) days before the date of payment as set forth in the citation, a notice of intention to stand trial.

- (2) On receipt of a notice of intention to stand trial, the director of zoning administration and development management shall forward a copy of the citation and of the notice of intention to stand trial to the District Court of Maryland for Baltimore County.
- (3) If the fine remains unpaid at the expiration of the thirty-five (35) days from the date of the citation, the zoning commissioner may request adjudication of the case in district court, at which time the person is liable for an additional fine not to exceed twice the original fine.
- (4) The county attorney shall prosecute civil zoning violations in the district court.
- (g) (1) The director of zoning administration and development management shall send a formal notice of violation to any person who received a citation and who fails to either pay the fine or elect to stand trial for the civil zoning violation.
- (2) If the fine remains unpaid at the expiration of thirty-five (35) days from the date of the formal notice of violation, the director of zoning administration and development management may request adjudication of the case in the district court.
- (3) If the citation is not satisfied within fifteen (15) days from the date of the formal notice of violation, the person is liable for an additional fine not to exceed twice the original fine.
- (h) Nothing contained in this section shall prevent the county from instituting any appropriate action or proceeding at law or in equity for the enforcement of zoning violations or the correction of such violations, and the provisions of this section shall be in addition to any other remedy allowed by law to the county for this purpose. (Code 1978, § 22-36.1; Bill No. 18, 1990, § 2; Bill No. 88, 1990, § 1; Bill No. 4, 1992, § 1)

Sec. 26-122. Division of county into districts, etc.; uniformity of regulations.

For all or any of the purposes referred to in section 26-116 of this Code, the county shall be

divided into districts, divisions, or zones of such number, shape, and area as may be deemed best suited to carry out the purposes of this title, and within such districts, divisions, or zones the erection, construction, reconstruction, alteration, repair, and use of buildings, structures, and land may be regulated and restricted. All such regulations shall be uniform for each class or kind of building or structure throughout each district, division, or zone, but the regulations in one (1) district, division, or zone, may differ from those in other districts, divisions, or zones.

(Code 1978, § 22-20)

Annotation—Prior similar law cited in *Hedin v. Commissioners of Prince George's County*, 209 Md. 235, 120 A.2d 668 (1956).

State law reference—Authorized penalties, Ann. Code of Md. arts. 25A, § 5(A), 66B, §§ 7.01, 7.01(c).

Sec. 26-123. Preparation of zoning regulations, zoning maps and growth allocation procedure.

(a) The planning board shall from time to time recommend to the county council for adoption zoning regulations and zoning maps, showing the boundaries of the proposed districts, divisions, or zones into which the county is divided pursuant to this title. The zoning maps shall also identify properties, sites, and districts which have been officially placed on the preliminary or final landmarks list of the county landmarks preservation commission or the National Register of Historic Places.

(b) The planning board from time to time may also recommend for adoption amendments or supplements to such regulations and may at any time, with prior approval by an affirmative vote of the county council, review the existing zoning maps in effect throughout the county and recommend to the county council such comprehensive revisions thereof as the board may deem advisable in the light of changed conditions or whenever the board recommends revisions or updates to the master plan pursuant to sections 26-81 and 26-82 and section 523 of the Charter. Any legally adopted zoning map shall remain in effect until the county council shall have adopted a map or maps in substitution therefor. All such amendments or supplements to the zoning regulations and all such comprehensive revisions of the zoning maps shall be made in

accordance with the same procedure herein specified for the original adoption of such regulations and maps.

(c) After such zoning regulations and zoning maps have been approved by the planning board, it shall release a preliminary report thereon. Thereafter, and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation in the county, the planning board shall hold one (1) or more public hearings on the proposed zoning maps. The board may hold one (1) or more public hearings on the proposed regulations or on matters referred to the board by the county council, unless required to hold such hearings by resolution of the county council adopted pursuant to section 26-33. During the period of such notice, the preliminary report of the planning board, with accompanying maps and exhibits, if any, shall be available for public inspection in the county office building. After such hearing or hearings have been held, the director of planning shall submit to the county council a report containing the final recommendations of the planning board with regard to the proposed zoning regulations or maps as the case may be; and, in the case of zoning maps, a copy of the final map as approved by the planning board shall be attached to such report. In the event of any disagreement among the members of the planning board as to any part of the proposed zoning map or regulations, the dissenting member or members shall be entitled to file with the county council one (1) or more minority reports stating the basis for their disagreement with the majority, which shall be included with the final report of the majority.

(d) Within the one-year period immediately preceding June 30, 1988, and within each one-year period immediately preceding June 30 of every fourth year thereafter, the planning board, after completely reviewing the zoning map then in effect, shall recommend to the county council a new or comprehensively revised version of such map, in accordance with the procedure set forth above. Within twenty (20) days after each such action, the director of planning shall transmit said proposed new or revised zoning map to the county council. The map shall identify as a separate issue each area or parcel of land recommended or con-

sidered by the planning board for a change in zoning. The provisions of this subsection are mandatory and shall apply regardless of any optional actions taken under subsection (a), (b), or (c) of this section.

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

	<i>Beginning</i>	<i>Ending</i>
Period 1. Public and planning director	August 1	October 31
Period 2. Planning board and planning director	November 1	November 30
Period 3. County council	December 1	January 15

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

(f) Except in those instances where a request for change in zoning has been initiated by the property owner or owner's agent, the office of planning and zoning shall cause written notice to be sent by regular mail to all property owners whose property is being considered for a possible change or zoning classification. The notice shall advise the owner that the identified property is being considered for a possible change of zoning classification and that further information may be obtained from the office of planning and zoning. Notices shall be mailed to the owner at the address shown on the tax assessment records of the county at least thirty (30) days prior to the planning board's final vote on the recommended map or maps to be submitted to the county council. Failure to send the notice provided herein or failure of the property owner to have received the same shall not invalidate or otherwise affect any change or changes in the zoning of the subject property.

(g) Growth allocation may be awarded subject to the following distribution constraints:

- (1) The total growth allocation for the county is four hundred sixty-two (462) acres, of

which up to one-half may be used to reclassify resource conservation areas to either limited development areas or intensely developed areas. The remaining portion may be used to reclassify limited development areas to intensely developed areas. The apportionment of these four hundred sixty-two (462) acres shall be determined as follows:

- a. One hundred (100) acres shall be reserved for those projects accepted by the county review group as of December 1, 1985;
 - b. Twenty-two (22) acres have been approved by the county council through the phase 1 growth allocation process as adopted by Bill No. 35-88;
 - c. One hundred seventy (170) acres may be awarded through periodic design competitions, as set forth in subsection (h) of this section, by December 31, 1991:
 1. From these one hundred seventy (170) acres shall be reserved for minor developments which are defined as residential, commercial, or industrial uses that require a maximum of ten (10) acres of allocation per project. An additional thirty-four (34) acres shall be reserved from the remaining growth allocation acreage set aside for allocation after December 31, 1991, for minor developments which are defined as residential, commercial, or industrial uses that require a maximum of ten (10) acres of allocation per project.
 2. There shall be two (2) separate design competitions, one (1) occurring in the year 1989 and the other occurring in 1991. The planning board may recommend that a portion of the one hundred seventy (170) acres or none of the one hundred seventy (170) acres be awarded. If superior projects are submitted, the planning board may recommend that some of the allocation reserved for future use be awarded.
 3. By December 31, 1991, the department of environmental protection and resource management, in conjunction with the growth allocation review committee, shall evaluate the growth allocation system established in this section and forward an evaluation and recommendations to the county council for legislative review. No further growth allocation may be awarded until such time as the county council adopts legislation amending, changing, or continuing the existing process. A process by which the remaining growth allocation may be awarded shall be adopted by July 1, 1993, and implemented by December 31, 1993; said remaining growth allocation, however, need not be completed by that date.
- (2) All growth allocation applications shall be subject to the design competition evaluation factors set forth by the growth allocation review committee established pursuant to subsection (h) of this section. These factors shall be used for comparative evaluation of the degree to which the growth allocation applications achieve the objectives of resource management and protection, quality of design, location, and off-site community enhancement within the Chesapeake Bay Critical Area directly related to the proposal and its impacts. Except for minor developments, the burden of proof is upon the applicant to demonstrate that the application fulfills the environmental and community enhancement factors.
 - (3) New intensely developed areas must be at least twenty (20) acres.
 - (4) Record plats for projects awarded growth allocation shall not be renewed unless approved by the growth allocation review committee. If such a plat is denied renewal, the allocation shall be reapplied to the county's total.

- (5) The growth allocation review committee shall adopt and, from time to time, may amend its administrative procedures for the review of growth allocation applications under the provisions of this section.

(h) The following design competition procedure shall be used to award growth allocations in the critical area:

- (1) The department of environmental protection and resource management shall announce the opening of the growth allocation design competition through a notice in two (2) newspapers of general circulation in the county. At the time of the notice, the department of environmental protection and resource management shall have available for distribution copies of the procedural and submittal requirements and the evaluation objectives previously submitted to the Chesapeake Bay Critical Area Commission. Submittal requirements and evaluation objectives are subject to review and revision by the department of environmental protection and resource management (or growth allocation review committee) on an annual basis.
- (2) Growth allocation plans and data must be submitted to the department of environmental protection and resource management within ninety (90) days of the public notice. Within fifteen (15) business days of the receipt of the request and plans, the department of environmental protection and resource management shall review the plan for compliance with the growth allocation submission requirements; and if the plan is in compliance, the plan shall be accepted for filing and copies of the plan shall be forwarded to the growth allocation review committee (GARC) for its action. An incomplete plan shall be returned to the applicant with an explanation for its return.

The growth allocation review committee shall consist of the directors or their designated representatives of the department of environmental protection and resource management, office of planning and zoning,

department of public works, department of recreation and parks, and the economic development commission. The director of the department of environmental protection and resource management or his designated representative shall serve as chairperson.

- (3) The department of environmental protection and resource management shall prepare copies of the official county Chesapeake Bay Critical Area map and, if applicable, the official county zoning map showing the location of the requested growth allocations.
- (4) The growth allocation review committee shall review the submissions per the design competition evaluation objectives and make written recommendations to the planning board within ninety (90) days of the official acceptance deadline.
- (5) Subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation, the planning board shall hold one (1) or more public meetings to review the recommendations of the growth allocation review committee. The meeting(s) shall include:
 - a. A presentation of the plan by the applicant.
 - b. GARC recommendations.
 - c. Public comment.

During the period of notice, the plans with accompanying text and data, as well as the GARC's recommendations, shall be available for public inspection at the department of environmental protection and resource management.
- (6) Notice of the date, time, and place of the planning board's public meeting(s) shall be conspicuously posted by the county on the lot, parcel, or tract which is the subject of the plan at least fifteen (15) business days prior to the meeting.
- (7) Within thirty (30) days of the final public meeting, the planning board shall act on the GARC's recommendations. Recommendations that require a reclassification will be forwarded to the board of appeals for

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final determination pursuant to section 2-356 of this Code. Recommendations that require a zoning change to the official zoning map shall be forwarded to county council for approval and be subject to the provisions of section 26-124(d).

- (3) The department of environmental protection and resource management shall forward the approved amendments to the official critical area map or zoning map or both and all relevant information to the Chesapeake Bay Critical Area Commission for approval under Ann. Code of Md., Natural Resources article, § 8-1809.
(Code 1978, § 22-21; Bill No. 18, 1990, § 2; Bill No. 63, 1992, § 1)

Sec. 26-123.5. Comprehensive zoning map process fees.

(a) The fees for filing issues pursuant to section 26-123 to be paid by the person raising an issue shall be as follows:

(1) Each noncontiguous lot of record of less than two (2) acres located with planned water and sewer service area, hereinafter called "planned service area"	\$ 500.00
(2) Each noncontiguous lot of record of less than ten (10) acres located outside planned service area	500.00
(3) Each noncontiguous lot of record of two (2) or more acres located within the planned service area	1250.00
(4) Each noncontiguous lot of record of ten (10) or more acres located outside planned service area	1250.00
(5) Issues filed by a duly constituted civic, improvement, or community association as otherwise provided for and limited by section 26-209(a)(2)...	75.00

(b) For the purpose of this section, contiguous lots of record in the same ownership, included in

any issue, wherever situated, shall be considered as one (1) lot of record.

(c) As used in this section, the following words and terms have the meanings indicated:

Lot of record: A parcel of land with boundaries as recorded in the land records of the county on July 1, 1991, whether included within one (1) or more deeds.

Issue or issues: Refers to a lot or lots of record proposed for change in zone or district classification.

(d) Issues initiated by the office of planning, planning board, or by members of the county council shall be exempt from any and all fees established herein.

(e) The county administrative officer may change the above fees from time to time as deemed appropriate, subject to the provisions of section 15-9. In addition, the county administrative officer shall waive any or all fees established herein for the filing of an issue when filed by a county volunteer fire, ambulance or rescue company.
(Bill No. 64, 1991, § 1(22-21.1))

Sec. 26-124. Action by county council on adoption of zoning regulations and zoning maps and Chesapeake Bay Critical Area map procedures.

(a) After the county council has received a final report of the planning board recommending adoption of any zoning regulations or zoning maps, the county council shall hold one (1) or more public hearings thereon, giving at least ten (10) working days' notice thereof in a newspaper having a general circulation in the county. During such ten-day period, the final report of the planning board with accompanying one (1) inch to one thousand (1,000) feet scale maps and supporting exhibits, if any, together with any minority report and maps from any dissenting members of the planning board, shall be available for inspection at the office of planning and zoning, in each respective councilmanic district, and at such other public place as the county council may designate for public inspection. After the expiration of such period of notice and following the public hearing or hear-

ings, the county council may by ordinance adopt such regulations or maps, subject, however, to such changes or amendments therein as the county council may deem appropriate, but subject to the provisions of section 26-123(e).

(b) No change or amendment may be made in a zoning map to an area or parcel of land which was not considered by the planning board for a change in zoning prior to its submission of the map to the county council.

(c) (1) Each change or amendment to be made in a zoning map as proposed by the planning board shall be voted upon individually by the county council, and each vote thereon shall be recorded in the council minutes.

(2) The officially adopted zoning map shall be the one (1) inch to two hundred (200) feet scale maps.

(d) Notwithstanding any other provision of this Code relating to reclassifications or rezoning of land, the county council may amend at any time the official zoning map in conjunction with the approval of growth allocation applications and the related amendment of the official critical area map enacted pursuant to section 26-123(g) of this Code, but only after receipt of recommendations from the planning board pursuant to section 26-123(g) and (h) and subject to the procedures established in this subsection below:

- (1) That all requests for growth allocation that involve changes to the underlying zone or zones not subject to section 2-356(j)(3) of this Code shall be submitted to the director of the department of environmental protection and resource management, who shall process such requests pursuant to section 26-123(g) and (h);
- (2) Within a reasonable period from receipt of the recommendations from the planning board, pursuant to section 26-123(h), and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation, the county council shall hold a public hearing on the proposed zoning changes;

(3) Within sixty (60) days of the county council's public hearing, the county council shall take action on the planning board's recommendations.

(Code 1978, § 22-22; Bill No. 14, 1992, § 1)

Sec. 26-125. County council action on regularly revised zoning map.

Each time the county council receives a recommended zoning map from the director of planning under the procedure set forth in section 26-123(d), the county council shall forthwith schedule a hearing or hearings thereon, in accordance with the procedures set forth in section 26-124. Before October 16 of each year in which it is required in this title that the proposed version of said map be recommended by the planning board, the council shall adopt the complete county-wide zoning map last so recommended with such revisions as may be made in accordance with section 26-124.

(Code 1978, § 22-23)

Sec. 26-126. Planning board reports.

(a) Within two (2) years after the county council has received a final report of the planning board concerning amendments to the zoning regulations, the county council by ordinance may act upon the report. If the county council fails to so act within the two-year period, the final report of the planning board is null and void, and any action upon the subject matter of the final report requires compliance with the provisions of sections 26-123 and 26-124 regarding amendments to the zoning regulations.

(b) Within two (2) years after the county council has acted pursuant to subsection (a) of this section, the council by ordinance may take further action upon any issue related to the subject matter of the final report without the necessity of compliance with the provisions of section 26-123 regarding a prior recommendation of the planning board. However, prior to taking such action, the council shall prepare a specific proposal and hold a hearing on the proposal.

(Code 1978, § 22-24)

Sec. 26-127. Authority of zoning commissioner to provide for special exceptions and variances.

(a) Except as provided in section 2-356(p) of this Code and subject to the appropriate principles,

The first draft of the Hunt Valley/Timonium Redevelopment Study was not released by the Office of Planning and Zoning until November 19, 1992, a month after the comprehensive zoning, and the Study was not adopted by the Baltimore County Planning Board until April 15, 1993. At the time of the hearing before the Board, the Study was only then under consideration by the County Council.

The Study, therefore, is an important fact or circumstance appearing since the 1992 comprehensive zoning, which demonstrates that the retention of the present zoning on this property was a mistake. People's Counsel v. Williams, 45 Md. App. 617, 625-626, 415 A.2d 585 (1980) (holding that evidence that hundreds of acres of nearby industrially-zoned land had been underdeveloped for many years supported the conclusion that industrial classification on the subject site was in error).

Character of the Surrounding Area -- Compatibility
of Uses under Present vs. Proposed Zoning

Another significant occurrence relating to compatibility of the proposed zoning has been the submission by the Appellee of a Documented Site Plan.² Mr. Gavrelis confirmed that, because the Comprehensive Zoning Map Process does not allow for the submission of documented site plans, there is no way,

² A documented site plan has been recognized by the County Board of Appeals for Baltimore County as a subsequently occurring event that can support a rezoning on the basis of mistake, since the County Council was unable to consider such a plan during the last comprehensive zoning process. Caves Valley Club, Inc., Case No. CR-89-367 (May 31, 1989) at 5-6.

ARTICLE 1B--DENSITY RESIDENTIAL (D.R.) ZONES [Bill No. 100, 1970.]

Section 1B00--LEGISLATIVE STATEMENT OF FINDINGS; POLICY WITH RESPECT TO D.R. ZONES IN GENERAL. [Bill No. 100, 1970.]

1B00.1--Declaration of Findings. The Baltimore County Council finds: [Bill No. 100, 1970; Bill No 2, 1992.]

- A. that residential zoning regulations heretofore in effect have not been conducive to the creation of housing diversity in Baltimore County subdivisions; [Bill No. 100, 1970.]
- B. that minimum standards for individual lots, having been derived from maximum overall density standards, have resulted in an excessive spreading of residential development over subdivision tracts; such spreading of development has led to removal or undesirable transformation of natural vegetation and other features more properly left in their natural or previous states, and has led to visual monotony; [Bill No. 100, 1970.]
- C. that zoning reclassifications based on lot sizes and types of housing have, in some situations, prevented the construction of the maximum numbers of housing units intended to be permitted on development tracts, especially in cases of severe topographical variation, or have induced "cramped" layout or other undesirable subdivision-design characteristics as accommodation of maximum density is achieved; [Bill No. 100, 1970.]
- D. that evolving markets for types of housing units not permitted in lower-density zones have created pressures leading to frequent rezoning, ultimately resulting in vastly greater population levels than have been planned for, tending to nullify planning efforts and to overload and overcrowd public facilities; [Bill No. 100, 1970.]
- E. that, as a result of such rezoning, residential zoning classifications at the various density levels have not been applied to a satisfactory degree in proper relation or with sufficient regard to: location or size of commercial or industrial areas or uses; utilities, motorways, schools, or other public facilities; timeliness of development; conservation and allocation of land resources; and other factors which should be considered in planning for the development of the county on the basis of a comprehensive rationale; [Bill No. 100, 1970.]

F. that, in light of the above findings, it is in the interest of the general welfare that new zoning classifications, formulated so as to avoid such effects in future residential development, be established as hereinafter provided; [Bill No. 100, 1970.]

G. that the ability to distribute density across different zone boundaries, as provided for in Bill 100-70, has resulted in density patterns often unintended by the county during the comprehensive zoning map process; and [Bill No. 2, 1992.]

H. that the flexibility of density residential zoning has resulted, in some situations, in residential development that is incompatible with existing neighborhoods. [Bill No. 2, 1992.]

1B00.2--Purpose. The D.R. zoning classifications are established, pursuant to the legislative findings set forth above, in order to: [Bill No. 100, 1970.]

- A. foster a greater variety in housing types within future residential developments; [Bill No. 100, 1970.]
- B. allow more feasible preservation of natural features and induce the reservation of ample and more suitably designed open spaces and parks, in order to better satisfy the needs of residents without economic disadvantage to developers; [Bill No. 100, 1970.]
- C. allow greater flexibility in subdivision-development planning and provide for the inducement of more creative as well as more economic approaches to residential development, with the goal of desirable and distinctive identity and character of individual residential locales; [Bill No. 100, 1970.]
- D. provide the means to satisfy differing housing-market requirements without rezoning, and thus without disruptive changes in density potential; [Bill No. 100, 1970.]
- E. provide for the application of residential zoning classifications in a manner more nearly in accord with comprehensive plans and comprehensive-planning goals; and [Bill No. 100, 1970.]
- F. provide greater certainty about dwelling types and densities within existing communities with the goal of conserving and maintaining these areas. [Bill No. 2, 1992]

Section 1B01--REGULATIONS WITH RESPECT TO D.R. ZONES IN GENERAL {Bill No. 100, 1970.}

1B01.1--General Use Regulations in D.R. Zones. {Bill No. 100, 1970}

A.¹ Uses Permitted as of Right. The following uses, only, are permitted as of right in D.R. zones of all classifications, subject to the restrictions hereinafter prescribed: {Bills No. 100, 1970; No. 2, 1992.}

1. Dwellings as provided herein and as provided in Section 430 and subject to Section 402: {Bill No. 100, 1970; No. 2, 1992.}
 - a. In all D.R. zones: single-family detached, semi-detached or duplex dwellings. {Bill No. 2, 1992.}
 - b. In all D.R. zones: alternative site design dwellings, subject to findings of compatibility pursuant to Sections 26-206 and 26-282 of the County Code, and as provided for in the Comprehensive Manual of Development Policies. {Bill No. 2, 1992.}
 - c. In D.R. 5.5 zones, subject to findings of compatibility by the hearing officer: Group Houses, Group Houses, Back-to-Back; and Multi-Family Buildings. {Bill No. 2, 1992.}
 - d. In D.R. 10.5 and D.R. 16.0 zones: Group Houses; Group House; Back-to-Back; and Multi-Family Buildings. {Bill No. 2, 1992.}
 - e. In the case of housing for the elderly and assisted living facilities of fewer than four (see Section 432). {Bill No. 36, 1988.}
2. Trailers (see Section 415).
3. Churches, other buildings for religious worship, or other religious institutions.
4. Above-ground electrical-power, telephone, telegraph lines, except above-ground electrical power lines having a capacity of 35 kilovolts or more; pole-mounted transformers or transformer banks.
5. Other cables; conduits; gas, water, or sewer mains; or storm-drain systems: all underground.
6. Excavations, uncontrolled (as defined in Section 101).
7. Farms, produce stand in association with a farm, or limited-acreage wholesale flower farms (see Section 404). {Bill No. 41, 1992.}

8. Garages, community.
9. Hospitals. [Bill No. 37, 1988.]
10. Local open space tracts or other common amenity open space.
- 10a. Privately sponsored day care and nursery programs, as an ancillary use, within housing for the elderly projects, as defined in Section 101 of these regulations. [Bill No. 47, 1982.]
- 10b. Class A group child care centers and Class B group child care centers providing for up to 40 children, if not located in a residential transition area, subject to the requirements of Section 424, and family child care homes, group child care centers and nursery schools. [Bill No. 200, 1990.]
11. Research institutes or laboratories in existence at the time of the adoption of Bill No. 122, 1984, subject to the zoning regulations in effect at the time of the approval by Baltimore County of the institute or laboratory. [Bill No. 100, 1970; No. 122, 1984.]
12. Schools, except business or trade schools or such schools as are permitted by special exception (see Paragraph C, below), but including schools for agricultural training. [Bills No. 63, 1980; No. 47, 1982; No. 47, 1985.]
13. Signs, non-accessory, to the extent permitted under Section 413.
- 13a. Antennas used by CATV systems operated by companies franchised under Title 2, Article VI, Division 2 of the Baltimore County Code 1978, if situated on property owned by the county, state or federal government or by a governmental agency. [Bill No. 220, 1981.]
- 13b. Transit facilities. [Bill No. 91, 1990.]
14. Accessory uses or buildings other than those permitted only by special exception, including, but not limited to:
 - a. Accessory radio or television receiving antennas;

- b. wireless transmitting and receiving structures, provided that any such structure: is a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission; if it is an independent structure, shall be subject to the same requirements as are applied to buildings under Section 400; if it is a rigid-structure antenna, shall be no higher than 50 feet above grade level and with no supporting structure thereof closer than 10 feet to any property line; and does not extend closer to the street on which the lot fronts than the front building line; [Bill No. 100, 1970.]
 - c. automotive-service stations, but only within community garages (see Section 405); [Bill No. 100, 1970.]
 - d. home occupations, as defined in Section 101; [Bill No. 100, 1970.]
 - e.²
 - f. parking spaces, including accessory garage spaces; [Bill No. 100, 1970.]
 - g. offices for the conduct of business incidental to the rental, operation, service, or maintenance of apartment buildings; [Bill No. 100, 1970.]
 - h. accessory signs (see Section 413); [Bill No. 100, 1970.]
 - i. swimming pools, tennis courts, garages, utility shed, satellite receiving dishes (subject to Section 429) or other accessory structures or uses (all such accessory structures or uses subject to the height and area provisions for buildings as set forth in Section 400). [Bill No. 71, 1987.]
15. Commercial film production, subject to Section 435. [Bill No. 57, 1990.]
- B. Dwelling-Type and other supplementary use restrictions based on existing subdivision and development characteristics. [Bill No. 100, 1970; No. 124, 1981.]
- 1. Residential Transition Areas and Uses Permitted Therein. [Bill No. 100, 1970; No. 124, 1981; Bill No. 2, 1992.]
 - a. Definitions and purpose. [Bill No. 100, 1970; No. 124, 1981; Bill No. 2, 1992.]

- (1) The residential transition area (RTA) is a 100-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed.
- (2) The purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types.

b. Generation of residential transition area. {Bill No. 2, 1992.}

An RTA is generated if the property to be developed lies adjacent to land zoned D.R. 1, D.R. 2, D.R. 3.5, D.R. 5.5, or R.C. which:

- (1) contains a single-family detached, semi-detached or duplex dwelling within 150 feet of the tract boundary; or
- (2) is vacant, less than two acres in size, and contains a buildable area at least 20 feet by 30 feet on which a dwelling meeting all required setbacks can be erected.

c. Variance of RTA. {Bill No. 2, 1992.}

- (1) Notwithstanding the provisions of Section 307, the hearing officer, upon the recommendation of Public Works, Planning and Zoning, Environmental Protection and Resource Management, Zoning Administration and Development Management, Recreation and Parks, Community Development, or the Economic Development Commission, may determine the amount of RTA in cases where a single tract is more than two acres, is vacant, or contains no more than one single-family detached, semi-detached or duplex dwelling.
- (2) The RTA for a tract may be modified as directed by findings pursuant to Section 26-206 and Section 26-282 of the Code. However, the hearing officer may not reduce the amount of RTA unless the officer specifically finds and determines that such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed.

d. A residential transition use is any use: {Bill No. 2, 1992.}

- (1) permitted as of right under paragraph 1B01.1A; or

- (2) any use permitted by special exception under paragraph 1B01.1.C, except an accessory use permitted only by special exception; or
 - (3) any parking area permitted under paragraph 409.8.B, subject to the approval of a specific landscape plan for the buffer area which must meet the requirements for a Class A plan.
- e. Conditions in residential transition areas. {Bill No. 2, 1992.}
- (1) The RTA may contain single-family detached, semi-detached or duplex dwellings.
 - (2) Group-house, back-to-back group houses, multi-family building and parking lots shall be set back from the tract boundary 75 feet and provide a 50-foot RTA buffer.
 - (3) The 50-foot RTA buffer shall remain an upgraded, uncleared, landscaped buffer unless otherwise directed by the hearing officer, based upon recommendations of the county. It shall not contain cleared drainage areas, stormwater management ponds or accessory structures, but it may be bisected by roads, paths, and trails that are designed to connect to adjoining developments.
 - (4) The maximum height of any lighting fixtures in an RTA buffer area shall be 16 feet, except for public utility uses which must be of reasonable height. The fixtures shall be designed and placed so as to prevent the spillage of light into any adjoining dwelling or lot. The intensity of the fixture shall not exceed .2 candles at the tract boundary.
 - (5) Parking lots or structures, either as principal or accessory use, whether permitted by right, special exception, or pursuant to Section 409.8.B, shall provide a 50-foot buffer and 75-foot setback, and a height not to exceed 35 feet within the 100-foot transition area.
- f. Any subdivision of land or PUD that has received CRG approval or reclamation plan approval or has been accepted for filing prior to the date of adoption of Bills No. 2-92 or 3-92 is subject to the laws in effect at the time of the approval or filing. {Bill No. 2, 1992.}
- g. Exceptions to residential transition.

The restrictions contained in sub-subparagraph a. through e. above, of this Subparagraph B.1. do not apply to: {Bill NO. 124, 1981; No. 109, 1982; No. 40, 1992.}

- (1) A proposed dwelling to be placed in a RTA containing existing dwellings of the same type, or, if two or more types of dwellings exist, a proposed dwelling of the same type as the existing dwelling with the fewest number of dwelling units. Such dwellings shall be governed by the applicable laws, zoning regulations and policies otherwise applicable. As used herein, a "dwelling of the same type" means a dwelling which has the same or lesser number of dwelling units and party walls as the existing dwelling units. {Bills No. 124, 1981; No. 109, 1982; No. 40, 1992.}
- (2) Public utility uses (except public utility service centers and storage yards). Such uses shall be governed by the provisions of Section 411, 502 and such other applicable sections of these regulations. {Bills No. 124, 1981; No. 40, 1992.}
- (3) Notwithstanding the provisions of Section 104, the reconstruction of an existing church, community building, or other structure devoted to civic, social, recreational, fraternal, or educational activity which is destroyed by fire or other casualty. However, such reconstruction may not increase the size or ground floor area of the structure or alter the location or use of the structure. {Bills No. 124, 1981; No. 40, 1992.}
- (4) An addition to an existing church or other building for religious worship, including parking areas and driveways, provided all other applicable zoning regulations including setback, parking, and screening requirements, are maintained. {Bill No. 109, 1982; No. 40, 1992.}
- (5) A new church or other building for religious worship constructed on a parcel of land large enough to provide landscaped but otherwise unimproved yard areas of 100 feet between any improvement and any property line other than street frontages. {Bills No. 109, 1982; No. 40, 1992.}

- (6) A new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7. Any such hearing shall include a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. {Bills No. 109, 1982; No. 40, 1992.}
- (7) Shoreline fishing and shellfish facilities. Such uses shall be governed by the provisions of Section 500.4 and Subparagraphs 1A01.2C.9, 1A02.2B.10, 1A04.2B.7 and 1B01.1C.7.a of these regulations. {Bills No. 124, 1981; No. 109, 1982; No. 40, 1992.}
- (8) An addition to an existing trailer park or mobile home park or contiguous to such park. If the park is lawfully in existence in a D.R. zone on the effective date of this act. {Bills No. 109, 1982; No. 40, 1992.}
- (9) An addition to an existing community building, or other structure devoted to civic, social, recreational, fraternal or educational activity, including parking, and screening requirements, are maintained. {Bills No. 109, 1982; No. 40, 1992.}
- (10) A new community building, or other structures devoted to civic, social, recreational, fraternal or educational activity, if the zoning commissioner determines during the special exception process that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that the special exception can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. {Bills No. 109, 1982; No. 40, 1992.}
- (10a) Principal use Class A and Class B group child care centers, provided that the zoning commissioner determines, during the special exception process that the proposed improvements are planned in such a way that compliance with the bulk standards of Section 424.7 will be maintained and that the special

exception can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. {Bills No. 200, 1990; 59, 1991; No. 40, 1992.}

- (11) The conversion of a dwelling to a bed and breakfast home, bed and breakfast inn, or country inn pursuant to Section 402D or 402E. {Bills No. 113, 1988; No. 40, 1992.}
- (12) Notwithstanding the provisions of Section 104, the reconstruction of an existing nursing home which is destroyed by fire or other casualty. However, such reconstruction may not increase the size or ground floor area of the structure or alter the location or use of the structure. {Bills No. 37, 1988; No. 40, 1992.}
- (12a) Transit facilities and rail passenger stations shall be exempt from the RTA requirements. {Bills No. 91, 1990; No. 40, 1992.}
- h. The provisions contained in Sub-subparagraphs a. through e. of Subparagraph B.1., shall not apply to existing developments as described in Subparagraph A.1. of Subsection 1B02.3, nor to subdivision tracts for which tentatively approved plans remain in effect as described in Subparagraph A.2 of said subsection. {Bills No. 100, 1970; No. 124, 1981; No. 40, 1992.}
- 2. Use Regulations in Existing Developments. In existing developments as described in Subparagraph A.1. of Subsection 1B02.3 uses shall be limited to those now lawfully established or to those indicated in the subdivision plans on file with the Office of Planning and Zoning, except as may otherwise be permitted under provisions adopted pursuant to the authority of Section 504. {Bill No. 100, 1970.}
- 3. Use Regulations for Existing Subdivision Tracts. On subdivision tracts for which tentatively approved plans remain in effect as described in Subparagraph A.2 of Subsection 1B02.3. the uses permitted shall be those indicated in the plan or, where the use is not indicated and if not inconsistent with the plan, the uses shall be those permitted under zoning regulations in effect at the time the tentative approval was granted. {Bill No. 100, 1970.}
- C. ³ Uses Permitted by Special Exception. The following uses, only, are permitted by special exception in all D.R. zones, subject to the restrictions hereinafter prescribed: {Bills No. 105, 1982; No. 36, 1988.}

during the 1992 Map Process, the County Council could have considered development controls such as those provided by the Document d Sit Plan. (Oct. 19, 1993, T. 38-39)

Mr. Jeffrey Long, a land planner with the Office of Planning and Zoning, indicated that representatives from the Office of Planning and Zoning had visited the subject site on several occasions, had reviewed the Documented Site Plan in conjunction with both the Master Plan and the Hunt Valley/Timonium Redevelopment Study, and had determined that the Appellees' request would be more compatible with the surrounding area than development under current zoning. (Sept. 29, 1993, T. 67, 70)

Mr. Cornelius likewise testified that, from a traffic perspective, the proposed use would generate traffic mostly from nearby and would not generate traffic during morning or evening peak hours. (Sept. 29, 1993, T. 195-197) Hence, the requested rezoning would result in a benefit to traffic conditions in this area, when compared to conditions that would result from development of those uses permitted under the existing M.L.R. classification. (Sept. 29, 1993, T. 196-202)

The endorsement of the Timonium Heights Community Association, the neighborhood community association, is especially telling on the issue of compatibility. As Ms. Sandy Earp, President of the Timonium Heights Community Association, testified, it was generally agreed that the

1. Boarding or rooming houses.
2. Boat yards, including marinas.
3. Camps, public or quasi-public, including day camps.
4. Conservatories for music or other arts.
5. Convalescent homes.
6. Community buildings, swimming pools, commercial beaches, golf courses, country clubs, or other similar civic, social, recreational, or educational uses, including tennis facilities, provided that no tennis facility in a D.R. 1 or D.R. 2 zone shall comprise more than 4 courts and no tennis facility in a D.R. 3.5, D.R.5.5, D.R. 10.5 or D.R. 16 zone shall comprise more than 6 courts (see Section 406A). {Bill No. 62, 1978.}
- 6a. Community Care Centers.{Bill No. 142, 1979.}
- 6b. Class B group child care centers for more than 40 children subject to the standards set forth in Section 424 (Family Child Care Homes, Group Child Care Centers, and Nursery Schools, and Principal Use Class A and Class B group child care centers providing for up to 40 children, if located in a residential transition area. {Bill Nos. 200, 1990; 59, 1991.}
7. Excavations, controlled (see Section 403).
- 7a. Fishing and shellfishing facilities, shoreline Class I or Class II, except that a facility existing on July 1, 1977, may continue without a special exception if a use permit has been granted for it, provided:
 - (1) that the owner (or his legally authorized representative) applies for the use permit within 6 months hereafter (see Section 500.4);
 - (2) that with the application for the use permit is filed a site plan in accordance with Zoning Commissioner's Rules of Practice and Procedure;
 - (3) that any fencing, screening, or other change in the site or limitations on the manner of selling the catch necessary to make the facility more compatible with its surroundings that is required by the zoning commissioner is completed within the time limits for partial and full compliance with a program of compliance submitted to him; and

- (4) that no increase in the amount of floor or site area or in the number of boats devoted to the use nor any other change in the site plan is made.
{Bill No. 30, 1978.}

8. Funeral Establishments.

9. Helistops.

9a. Home occupations of disabled persons, where the use is established in a structure originally constructed as a dwelling or as accessory to a dwelling or where the use is established in a structure that is situated on the same lot as a dwelling and which the Zoning Commissioner finds to be compatible with its surrounding neighborhood, provided that:

- (1) only three persons including the disabled person and the members of his immediate family who are residents of the dwelling are employed in the use on the premises; and
- (2) in any case the use is conducted by a disabled person whose domicile is the dwelling to which the use is accessory and whom the hearing authority finds is so severely disabled as to be unable to engage in this occupation away from the premises of his home.

Any provision of Subsection 502.2 to the contrary notwithstanding, any special exception granted pursuant to this item shall expire upon the first to occur of the following:

- (1) five years after the issuance of the permit;
- (2) the death of the disabled person;
- (3) the termination of the disability; or
- (4) the failure of the disabled person to permanently reside at the premises.

A new special exception for the use may be granted when the previous special exception expires but only upon the completion of the entire application and hearing process in the same manner as if it were the initial application for this special exception. It is the purpose of this provision to prevent the use of residential property for business purposes by an occupant other than a disabled person and to ensure that any occupation permitted pursuant to this item will be conducted in a manner appropriate to its surroundings. {Bill No. 27, 1981.}

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- 9b. Office or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25 per cent of the total floor area of such residence; and does not involve the employment of more than one non-resident professional associate nor two other non-resident employees. {Bill No. 105, 1982.}
- 10. Poultry killing, commercial, as an accessory use on farms, only.
- 11. Private colleges (not including business or trade schools), dancing schools, dormitories, or fraternity or sorority houses. {Bill No. 47, 1985.}
- 12. Public-utility uses other than those permitted as of right, but excluding steam power plants, service centers, and storage yards.
- 13. Public-utility service centers.
- 14. Public-utility storage yards.
- 15. Radio studios.
- 15a. Rail passenger stations, subject to Section 434. {Bill No. 91, 1990.}
- 16. Television studios.
- 17. Tourist homes.
- 18. Veterinarians' offices.
- 19. Volunteer-fire-company stations.
- 20. Wireless transmitting and receiving structures, as principal uses or structures, provided that any exterior transmitting and receiving antenna greater than 50 feet above grade level shall be considered as a principal use or structure.
- 21. Continuing care facilities. (see Section 432) {Bill No. 36, 1988.}
- 22. Assisted living facilities of four or more (see Section 432). {Bill No. 36, 1988.}
- 23. Assisted living facilities developed in conjunction with a nursing home (see Section 432). {Bill No. 36, 1988.}

24. Housing for the elderly if the use involves a modification or waiver under Subsection 432.2, 432.3 or 432.4. {Bill No. 36, 1988.}

D. The following provision, which was enacted by Bill No. 140, 1962, took effect on November 17, 1962, and was heretofore designated as Subsection 200.16 of these zoning regulations, is re-enacted without amendment, and nothing in this article shall be construed to abrogate its effect:

Junk yards and open dumps as defined in Section 101. Any existing junk yards in this (R.40) or any other residential zone, and any existing open dumps in any zone shall be completely eliminated not later than two years after the date of effectuation of this amendment. {Bills No. 140, 1962; 100, 1970.}

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Section 204--D-1 (OFFICE BUILDING) ZONES. [Bill No. 167, 1980.]

204.1--Declaration of Findings.

- A. It is likely that continued residential use or moderate-density residential development of certain sites in predominantly residential areas near commercial zones or on heavily traveled, congested motorways would not be economically feasible. [Bill No. 167, 1980.]
- B. Because of their proximity to residences, business zoning of these sites is not appropriate. [Bill No. 167, 1980.]
- C. Because public facilities serving these sites are not designed to serve intensive residential development, high-density residential zoning of these sites is not appropriate. [Bill No. 167, 1980.]
- D. A repealed provision of these Zoning Regulations allowed construction of office buildings by special exception in D.R. 16 zones; R-O zoning regulations are too stringent for many sites on which office buildings have been constructed or their construction authorized under that provision. [Bill No. 167, 1980.]
- E. With appropriate restrictions, office-building development somewhat more intensive than that permitted or allowable under the R-O zoning classification is likely to be the most suitable and economically feasible use of these sites and zoning of the sites to make such development allowable would be in the public interest. [Bill No. 167, 1980.]

204.2--Statement of Legislative Policy.

- A. The D-1 zoning classification is established primarily to accommodate development or limited enlargement of medium-size conventional office buildings on sites that should not be restricted by regulations of the R-O or moderate-density D.R. classifications, for reasons stated in the declaration of findings above. [Bill No. 167, 1980.]
- B. It is intended that buildings and uses in D-1 zones shall be highly compatible with the present or prospective uses of nearby residential property. [Bill No. 167, 1980.]

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C. It is intended, generally, that property not be classified as O-1 unless at least 1 of the following criteria is met: it is well served by the public transit system; it lies along a heavily used highway near extensive frontage that has been developed or used commercially; or it is located near a commercial center. [Bill No. 167, 1980.]

D. It is intended that property not be classified as O-1 unless it is a minimum of approximately 2 acres. [Bill No. 221, 1980.]

204.3--Use Regulations of O-1 Zones. [Bill No. 167, 1980.]

A. Uses permitted as of right. The following uses, only, are permitted as of right:

1. Uses permitted as of right and as limited in D.R. 5.5 zones. [Bill No. 167, 1980.]
2. Class A, Class B, or Class C office buildings containing offices, medical offices, or medical clinics. [Bills No. 167, 1980; No. 37, 1988.]
3. The following accessory commercial uses within Class B or Class C office buildings (see also Paragraph C, below):
 - a. Photocopying establishments
 - b. Secretarial-service establishments
 - c. Eating or drinking establishments without dancing or live entertainment
 - d. Travel bureaus
 - e. Banks [Bill No. 167, 1980.]
4. Accessory uses not included under Item 1, above, but not any accessory commercial uses other than those listed in Item 3 (see Paragraph B, below) [Bill No. 167, 1980.]

B. Uses allowable by special exception. The following uses, only, are allowable by special exception:

1. Uses allowable by special exception and as limited in D.R. 5.5 zones; [Bill No. 167, 1980.]
2. The following accessory commercial uses within Class B or Class C, provided that the Zoning Commissioner or County Board of Appeals finds that each such use will primarily serve the principal uses of the lot (see also Paragraph C, below);

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- a. Drug stores
 - b. Personal-care establishments, including hair-care, facial-treatment, manicuring, or shoe-shining establishments
 - c. Stationery or office-supply shops. [Bill No. 167, 1980.]
3. Wireless transmitting or receiving structures.
[Bill No. 64, 1986.]
- C. Supplementary use regulations (see also Section 206).
1. Accessory-commercial-use floor-area limitations.
- a. No more than 7.5 per cent of the adjusted gross floor area of any office building may be occupied by accessory commercial uses. [Bill No. 167, 1980.]
 - b. No single accessory commercial use other than an eating or drinking establishment may occupy more than 1,200 square feet of floor area. [Bill No. 167, 1980.]
2. Entrances to accessory commercial uses. No exterior entrance to any accessory commercial use within an office building is permitted unless 75% of the principal uses in the building have exterior entrances. [Bills No. 167, 1980; No. 24, 1983.]
3. Outdoor signs or display for office buildings. In addition to the temporary real estate signs and the temporary construction signs permitted under subsection 413.1--
- a. One (1) stationary building identification sign on each office building is permitted, provided that--
 - 1. It identifies only the name, address, or logo of the building, or a combination of these things;
 - 2. It is not illuminated other than by illumination that may be provided for the building or site;
 - 3. It does not project more than six (6) inches from the building and it does not extend above the roof line of the building; and
 - 4. Its surface area does not exceed two (2) square feet for every 1,000 square feet of floor area. [Bill No. 167, 1980.]
 - b. One (1) stationary freestanding identification sign is permitted on each lot on which a Class B or a Class C office building is situated, provided that--

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- f. Each bank located within an office building is permitted one (1) walk-up automatic teller machine. [Bill No. 167, 1980.]
- g. One (1) stationary identification sign is permitted for each accessory commercial use within an office building, provided that--
 - 1. The light from any one light source shall be shielded or directed so that the light intensity or brightness shall not adversely affect surrounding premises;
 - 2. It does not project more than twelve (12) inches from the building; and
 - 3. Its surface area does not exceed twenty-five (25) square feet. [Bill No. 167, 1980.]

No other signs or display visible outdoors are permitted. [Bill No. 167, 1980.]

204.4--Bulk Regulations of O-1 Zones

- A. Residential-zone uses, etc. Uses permitted under Item 204.3.A.1, uses allowable under Item 204.3.B.1, and new structures accessory to Class A office buildings are governed by the bulk regulations of D.R. 5.5 zones. (A Class A office building itself, which by definition may not be enlarged, is not subject to bulk regulations, nor is an unenlarged structure that was accessory to the building before it was converted to an office building.) [Bill No. 167, 1980.]
- B. Class B office buildings. The following bulk regulations apply to any Class B office building and its lot.
 - 1. Minimum setback from any lot line other than a street line: 20 feet or equal to the height of the buildings whichever is greater; [Bill No. 167, 1980.]
 - 2. Minimum setback from any street line: 35 feet; [Bill No. 167, 1980.]
 - 3. Minimum area devoted to amenity open space: 20 per cent of net lot area. [Bill No. 167, 1980.]
 - 4. New structures accessory to Class B office buildings are governed by the bulk regulations of D.R. 5.5 zones for accessory buildings. [Bill No. 126, 1986.]
 - 5. Maximum floor area ratio: 0.50 [Bill No. 151, 1988.]
 - 6. Maximum height of structures: 35 feet [Bill No. 151, 1988.]
- C. Class C office buildings. The following bulk regulations apply to any Class C office building and its lot.

1. Minimum setback from any boundary of a residential or R-O zone, other than a boundary that lies within a street: the distance equal to twice the height of the building, whichever is greater; [Bill No. 167, 1980.]
 2. Minimum setback from any street line: 35 feet, but if the building is attached to a building on a lot in a business zone the setback from the street line need not be greater than that of the latter building [Bill No. 167, 1980.]
 3. Maximum floor area ratio: 0.55 [Bill No. 167, 1980.]
 4. Minimum area devoted to amenity open space: 20 per cent of net lot area [Bill No. 167, 1980.]
- D. Height of Class C office buildings. The maximum height of any Class C office building is 60 feet. [Bill No. 167, 1980.]
- [E. Minimum area of an O-1 zone site: 2 acres. [Bill No. 167, 1980; deleted by Bill No. 221, 1980.]]

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232B.5--The maximum average permitted height of any building shall be 1 1/2 times the maximum average height otherwise permitted in B.L. zones. [Bills No. 111, 1968, Subsection 232A.5; No. 100, 1970.]

B.M. Zone--Business, Major [B.C.Z.R., 1955.]

Section 233¹⁶--USE REGULATIONS

The following uses only are permitted (see Section 233.3):

233.1--Uses permitted in B.L. Zone.

233.2¹⁷--Animal boarding place, Class A. [Bill No. 85, 1967.]

["Animal hospital..." deleted by Bill No. 85, 1967.]

Automobile sales room and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operations on the highways shall not be stored outdoors.

["Billiard and pool rooms;" deleted by Bill No. 61, 1967.]

Boat yard. [Bills No. 64, 1963; No. 85, 1967.]

Bowling alleys.

Carpentry, electrical, plumbing, heating, sheetmetal, electroplating and painting shops.

Catering hall {Bill No. 110, 1993.}

Clothes cleaning and dyeing where not more than 2 units with combined capacity of not more than 50 pounds are employed.

Commercial beach, with provision of adequate parking area; and permitting dressing facilities, snack bar, picnic area, and boat rental. [Bills No. 64, 1963; No. 85, 1967.]

Commercial recreation enterprises, including dance halls, skating rinks, and others which--in the judgment of the zoning commissioner--are similar, but excluding merry-go-rounds and freak shows, shooting galleries and penny arcades.

proposed Broad Street Market would be more compatible with the residential neighborhood than any use permitted under the existing industrial zoning. (Sept. 29, 1993, T. p. 55-56) Similar testimony from Michael Farinacci, who lives directly behind the property, as well as David Young and Howard Lenderking, supported that of Ms. Earp's with respect to the compatibility of the proposed project with the surrounding area. (Sept. 29, 1993, T. p. 59-62, 64-65)

Consistency of the Proposed Zoning with the Master Plan

Mr. Gavrelis pointed out that the Master Plan contemplates redevelopment in the area near the subject property, as long as that development protects "the integrity of the adjacent residential communities...from noise, traffic, intrusion of nonresidential land uses and so forth." (Oct. 19, 1993, T. 43-44) Mr. Gavrelis then gave his expert opinion that this is exactly what the subject petition does:

It establishes a viable land use. At the same time, it protects by means of landscaping, berming, buffering and limitation on use by virtue of the use permit for parking that, in effect, does not result in intrusion of nonresidential land uses into the residential component of the Timonium Heights area.

(Oct. 19, 1993, T. 44)

The Master Plan itself is intended to be supplemented and amended by the Hunt Valley/Timonium Redevelopment Study. See Study at p. II-6. As discussed in detail above, the Hunt Valley/Timonium Redevelopment Study was not available to the County Council at the time it adopted the 1992 Comprehensive Zoning Map.

Community building, swimming pool, or other structural or land use devoted to civic, social, recreational, and educational activities. [Bills No. 64, 1963; No. 85, 1967; No. 26, 1988.]

Funeral Establishment. [Bill No. 43, 1970.]

Garage, service.

Golf course, country club, or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot, or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line. [Bills No. 64, 1963; No. 85, 1967.]

Hotel.

Machinery sales store.

Marina. [Bills No. 64, 1963; No. 85, 1967.]

Night club.

Pawn shop.

Printing, lithographing, or publishing plant, employing not more than 25 persons.

Second-hand store.

["Tavern" deleted by Bill No. 85, 1967.]

Theatre, excluding drive-in.

Transit Centers, Subject to Section 434.

[Bill No. 91, 1990.]

Warehouses. [Bill No. 18, 1967.]

["Warehouses sales and storage" deleted by Bill No. 18, 1976.]

233.2A--Combinations of the above uses. [Bill No. 111, 1968.]

233.2B--Accessory uses or structures, including business signs (see Sections 413.2, 413.4, and 413.5), garages, and parking spaces for the use of owners, employees, tenants, and invitees. A maximum of six (6) coin-operated children's rides are permitted as an accessory use. [Bills No. 111, 1968; No. 29, 1982.]

233.3--All permitted uses are subject to the following conditions:

- A. They shall be contained, except in the case of signs, restaurants, swimming pools, outdoor sales or display areas, and parking lots, within a completely enclosed building.

- B. Not more than 25 employees shall be regularly engaged in fabrication, repair, cleaning, or other processing of goods or articles in any one establishment.
- C. Where the requirements in Section 233.3 would create undue hardship, the zoning commissioner may approve a modified plan upon petition and public hearing thereon.

233.4--Special Exceptions--The following uses when permitted as special exceptions (see Sections 270 and 502):

Arcade, subject to the provisions of Section 423B. [Bill No. 29, 1982.]
Automotive-service station, subject to the provisions of Section 405. [Bills No. 40, 1967; No. 85, 1967.]
Bus terminal.
Car wash. [Bills No. 108, 1964; No. 85, 1967]
Drive-in restaurant. [Bills No. 40, 1967; No. 85, 1967.]
Excavations, controlled (see Section 403).
["Filling station" deleted by Bill No. 40, 1967.]
Golf driving range, miniature golf, and baseball batting range.
Heliport, Type I. [Bill No. 85, 1967.]
Heliport, Type II. [Bill No. 85, 1967.]
Laboratory.
Living quarters in a commercial building.
[Motel or motor court; repealed by Bill No. 82, 1984.]
Public utility uses other than those noted in Sections 200.11¹⁹ and 230.9 (see Section 411).
Signs, outdoor advertising (see Sections 413.3 and 413.5).
Sludge Disposal Facility - Co-Landfilling (see Section 412A.2A). [Bill No. 46, 1982.]
Sludge Disposal Facility - Composting (see Section 412A.2B). [Bill No. 46, 1982.]
Sludge Disposal Facility - Handling in General (see Section 412.A2.C). [Bill No. 46, 1982.]
Sludge Disposal Facility - Incineration (see Section 412.A2.D). [Bill No. 46, 1982.]
Sludge Disposal Facility - Landspreading (see Section 412.A2.E). [Bill No. 46, 1982.]
Striptease Business. [Bill No. 137, 1990.]
Wireless transmitting or receiving structure not permitted by Section 426. [B.C.Z.R., 1955; Bills No. 61, 1967; No. 85, 1967; No. 64, 1986.]

M.L.R. Zone--Manufacturing⁹ Light, Restricted [Bill No. 56,
1961.]

Section 247¹⁰-PURPOSE [Bill No. 56, 1961.]

To permit grouping of high types of industrial plants in industrial subdivisions in locations with convenient access to expressways or other primary motorways so as to minimize the use of residential streets; to fill special locational needs of certain types of light industry; to permit planned dispersal of industrial employment centers so as to be conveniently and satisfactorily related to residential communities; and as transitional bands between residential or institutional areas and M.L. or M.H. zones. [Bill No. 56, 1961.]

Section 248--USE REGULATIONS: [Bill No. 56, 1961.]

The following uses only are permitted: [Bill No. 56, 1961.]

248.1--Uses permitted in the M.R. zone, except Heliport, Type II, which may be permitted only as a special exception; [Bills No. 56, 1961; No. 85, 1967.]

248.2--Uses permitted and as limited in the R.40¹¹ zone by Section 200.11,¹² except that animal boarding place, Class A and kennel are prohibited; [Bills No. 56, 1961; No. 85, 1967.]

248.3--Living quarters for watchmen and caretakers and their families living on the premises and engaged in connection with any lawful use in the M.L.R. zone; [Bill No. 56, 1961.]

Accessory buildings and uses in connection with living quarters (see above) and as limited by Section 400. [Bill No. 56, 1961.]

Hotels and motels when within an M.L.R. zone which is part of a contiguous area of 25 acres or more of industrial zoning, and provided that the combined tract areas developed for such uses do not occupy more than 25 percent of the particular contiguous area of industrial zoning in which they are located. Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426). [Bills No. 82, 1984; No. 64, 1986.]

Radio broadcasting studios, not including broadcasting towers. (Bill No. 32, 1990.)

248.4--Special Exceptions--When permitted as special exceptions (see Sections 270 and 502),¹³ [Bill No. 56, 1961.]

A.¹⁴The following uses:

Airstrips.

Automotive-service station, subject to the provisions of Section 405. [Bills No. 40, 1967; No. 85, 1967.]

Boat yard (including marine railway).
 Excavations, controlled (see Section 403).
 Heliport, Type II. [Bills No. 56, 1961; No. 85, 1967.]
 Public utility uses other than those noted in
 Section 200.11¹⁵ excluding steam power plant.
 Riding stable (commercial), golf driving range,
 miniature golf, baseball batting range; as interim
 income-producing uses.
 Sanitary or rubble landfills (see Section 412). [Bill
 No. 97, 1987.];
 Sludge Disposal Facility - Co-Landfilling (see
 Section 412.A2.A). [Bill No. 46, 1982.]
 Sludge Disposal Facility - Composting (see Section
 412.A2.B). [Bill No. 46, 1982.]
 Sludge Disposal Facility - Handling in General (see
 Section 412.A2.C). [Bill No. 46, 1982.]
 Sludge Disposal Facility - Incineration (see
 Section 412.A2.D). [Bill No. 46, 1982.]
 Sludge Disposal Facility - Landspreading (see
 Section 412.A2.E). [Bill No. 46, 1982.]
 Volunteer fire company.
 Wireless transmitting or receiving structure not
 permitted by Section 426. [Bills No. 56, 1961; No. 61,
 1967; No. 85, 1967; No. 64, 1986.]

B.¹⁶ The following commercial uses, when within an M.L.R.
 zone which is part of a contiguous area of 25 acres or more
 of industrial zoning and if the specific use proposed is
 demonstrably an appropriate service to industries existing,
 planned or normally to be expected to locate therein; and in
 no case shall the combined tract areas developed for one or
 more of these service commercial uses occupy more than 15%
 of M.L.R. tract in which they are located:

Bank.
 Business and trade schools.
 Carry-out, fast food and standard restaurant {Bill No.
 110, 1993.}
 {"Motel" repealed by Bill No. 82, 1984.}
 {"Public Restaurant" repealed by Bill No. 110, 1993.}

C. In order that the above-listed uses in Subsections A
 and B hereof will be located within the M.L.R. zone so as to
 assure their services' being rendered primarily
 to the industries therein, no building or structure
 connected with such commercial uses may be within 100'.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
Room 47, Washington Avenue
Towson, Maryland 21204

AND

PETITION OF JOHN M. BEARER
9 W. Main Boulevard
Timonium, Maryland 21093

AND

PETITION OF MICHAEL GERBER &
PENNY GERBER
107 Harding Street
Timonium, Maryland 21093

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 94-CV-02565
/76/249

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, ET AL
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 TO B.M. ZONE ON PROP-
ERTY LOCATED ON THE SWC PADONIA ROAD
AND BROAD AVENUE (PARCEL 1) AND SE/S
END ROOSEVELT STREET, SW BROAD AVENUE
(PARCEL 2)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

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

RECEIVED AND FILED

94 MAY 19 PM 12:17

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett and Harry E. Buchheister, Jr.,
constituting a majority of the County Board of Appeals of Baltimore
County, and in answer to the Petitions for Judicial Review directed
against them in this case, herewith return the record of
proceedings had in the above-entitled matter, consisting of the
following certified copies or original papers on file in the Office
of Zoning Administration and Development Management and the Board
of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE COUNTY BOARD OF APPEALS AND
OFFICE OF ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT

No. CR-93-305-SPH

February 23, 1993	(1) Petition for Reclassification for property to be reclassified from an MLR, 0-1 and DR-3.5 zone to a BM-CCC zone; and (2) Petition for Special Hearing filed for business parking in an 0-1 zone; filed by Robert A. Hoffman, Esquire, on behalf of Harrison & Grass.
April 30	Comments from the Baltimore County Zoning Plans Advisory Committee.
August 27	Publication in newspapers.
September 10	Certificate of Posting of property.
September 28	Hearing before the County Board of Appeals.
October 19	Hearing concluded before the County Board of Appeals.
November 22	Petitioner's Memorandum in Support of Request for Reclassification, filed by Robert A. Hoffman, Esquire on behalf of the Petitioner.
November 22	People's Counsel Memorandum filed by Peter Max Zimmerman and Carole S. Demilio.
December 28	Petitioner's Reply Memorandum filed by Robert A. Hoffman, Esquire, in response to People's Counsel's Memorandum.
January 4, 1994	Open deliberation for final determination.
February 24	Majority Opinion and Order of the Board GRANTING the Petition for Reclassification (Hackett and Buchheister); Dissenting Opinion issued by Schuetz.
March 21	Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel.
March 22	Petition for Judicial Review filed in the Circuit Court for Baltimore County by John M. Bearer.
March 22	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Patrick D. Hanley, Esquire, on behalf of Michael

Gerber and Penny Gerber.

March 23	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County (People's Counsel).
March 24	Certificate of Notice sent to interested parties.
April 14	Copies of Petitions for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County (Bearer and Hanley).
April 14	Second Certificate of Notice sent to interested parties.
May 19	Transcript of testimony filed.

Petitioner's Exhibits No.1-Plat of site by G.W. Stevens
2-Colored view of buildings
2/18/93
3-Colored view of buildings
2/18/93
4-Colored drawing of lighting
and signage proposals
5A-Perry Hall store
5B-Produce display on mobile
stands
5C-Poultry area with attendants
5D-Meat Market, sausage kitchen
5E-Seafood with attendants
5F-Delicatessen computerized
5G-Dry goods section
5H-Checkout counters
6-Rule 8 papers of Sandy Earp
4/8/93
7-Report of Office of Planning
and Zoning 5/1/93
8-Resume of Samuel Crozier
9-Colored Map of zoning in
area.
10-Aerial Photo of area
11-Site perspective
illustration (color)
12-Resume of Richard Hillis
13-Environmental Impact
Statement (2-23-93)
14-F.E.M.A. Map of Flood Plain
15-Resume of J. Glazer
16-Resume of M. Cornelius
17-Transportation Map by M.
Cornelius
18-Resume of Robert Klein &

- samples of work
- 19-(A-E pages) -93' office /Industrial market study
 - 20-Resume of G. Gavrelis
 - 21-A-S -Photos of the properties around site
 - 22 -Master Plan page 104
 - 23 -Hunt Valley Study (five pages)
 - 24A -Map of 200 scale with numbered orange stamp
 - 24B -Board of photographs coinciding to orange stamp (IN BOA CLOSET)

ROS HOFFMAN
PICKED UP FOR
CCT HEARING TODAY 9/11/94

- People's Counsel's Exhibits No. 1 -Final Log of Issues -Comp. Zoning Map 10/15/92.
- 2 -Minutes of Council to retain zoning 10/15/92.
 - 3 -Inter-Office corres. from L. Pilson to A Jablon.
 - 4 -Letter from R. Powell to T.C. Julio.
 - 5 -Office memo from J. Dieter (DEPRM) 9/24/92.
 - 6 -List of people in attendance.
 - 7 -Letter from L. Thomas Kelly to Mr. Hackett.
 - 8 -Letter from J. M. Bearer to Mr. Ruppertsberger 10/5/92.
 - 9 -Portion of Zoning Map for area.
 - 10 -F.E.M.A. Map with colored locations.
 - 11 -Map of properties in green and yellow.
 - 12 -Map 1" -200' scale topography of area.
 - 13A-Y Photos of area by Mr. Bearer.
 - 13Z-Summary of Photographs above.
 - 14 -Hunt Valley study ch. 1, 7, pg. 9-8 of ch. 9.
 - 15 -Norman Gerber Vitae.
 - 16 -List of names.

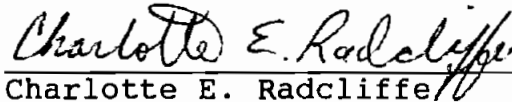
May 19, 1994

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

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court,

together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals' office and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Respectfully submitted,



Charlotte E. Radcliffe
Legal Secretary
County Board of Appeals of Baltimore
County, Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: Robert A. Hoffman, Esquire
Harrison & Grass
c/o Timothy C. Harrison
People's Counsel for Baltimore County
Patrick D. Hanley, Esquire
Michael Gerber and Penny Gerber
John M. Bearer

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF JOHN M. BEARER
9 W. Main Boulevard
Timonium, Maryland 21093

AND

PETITION OF MICHAEL GERBER &
PENNY GERBER
107 Harding Street
Timonium, Maryland 21093

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 94-CV-02565
/76/249

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, ET AL
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 TO B.M. ZONE ON PROP-
ERTY LOCATED ON THE SWC PADONIA ROAD
AND BROAD AVENUE (PARCEL 1) AND SE/S
END ROOSEVELT STREET, SW BROAD AVENUE
(PARCEL 2)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

* * * * *

RECEIVED AND FILED
*54 APR 14 PM 2:57
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY
*

SECOND CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett and Harry E. Buchheister, constituting a majority of the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, John M. Bearer, 9 W. Main Boulevard, Timonium, Maryland 21093, and Michael Gerber & Penny Gerber, 107 Harding Street, Timonium, Maryland 21093, Petitioners; Patrick D. Hanley, Esquire, HANLEY AND HANLEY, 206 Washington Avenue, P.O. Box 5506, Towson, Maryland 21204, Counsel for Mr. & Mrs. Gerber; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Petitioner; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; Robert A. Hoffman, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD

Mr. Long, Office of Planning and Zoning, testified that the market analysis prepared by Legg Mason and contained in the Study found high vacancy rates for office and industrial uses in the Hunt Valley/Timonium corridor, and that, based upon these rates, the Study calls into question the appropriateness of additional office and industrial facilities in the area. (Sept. 29, 1993, T. 69)

Moreover, the Study recommends that the County support "appropriate development of vacant sites within the redevelopment and/or employment areas where quality design will limit negative impacts on any surrounding residential or employment areas." There was ample testimony, as noted above, that the development proposed by the Appellee here would have limited impact on the surrounding residential area. (Oct. 19, 1993, T. 44) As to the quality of the design, there was testimony from Mr. Harrison, Geoffrey Glazer, the project architect, and others as to the quality and attractive design of the proposed Broad Street Market. (Sept. 29, 1993, T. 19-25, 28, 180-86) Thus, the proposed development is consistent with the recommendation of the Hunt Valley/Timonium Redevelopment Study and, as such, with the Master Plan.³

³ In light of the expert testimony establishing that, under present and projected future market conditions, developing the property as either an office or industrial site is not economically feasible, the requested zoning reclassification is not only warranted, but mandated, since, without the ability to develop the property under the present zoning, the Appellees are being deprived of all reasonable use of the property.

21285-5517, a copy of which second Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Second Certificate of Notice has been mailed to John M. Bearer, 9 W. Main Boulevard, Timonium, Maryland 21093, and Michael Gerber & Penny Gerber, 107 Harding Street, Timonium, Maryland 21093, Petitioners; Patrick D. Hanley, Esquire, HANLEY AND HANLEY, 206 Washington Avenue, P.O. Box 5506, Towson, Maryland 21204, Counsel for Mr. & Mrs. Gerber; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Petitioner; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; Robert A. Hoffman, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21285-5517, on this 14th day of April, 1994.

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

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

April 14, 1994

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD
210 Allegheny Avenue
Towson, MD 21204

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Mr. Hoffman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Second Petition for Judicial Review was filed on March 22, 1994 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 76/249/94-CV-02565.

Enclosed is a copy of the Second Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Harrison & Grass c/o Timothy C. Harrison
People's Counsel for Baltimore County
Tom Kelly
James Earl Kraft
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards
Docket Clerk /ZADM
Arnold Jablon /ZADM



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on Recycled Paper



County Board of Appeals of Baltimore County

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

April 14, 1994

Patrick D. Hanley, Esquire
HANLEY AND HANLEY
206 Washington Avenue
P.O. Box 5506
Towson, MD 21204

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Mr. Hanley:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Michael Gerber and Penny Gerber
John M. Bearer



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on Recycled Paper

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
Room 47 Washington Avenue
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 94-CV-02565
/76/249

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, ET AL
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 TO B.M. ZONE ON PROP-
ERTY LOCATED ON THE SWC PADONIA ROAD
AND BROAD AVENUE (PARCEL 1) AND SE/S
END ROOSEVELT STREET, SW BROAD AVENUE
(PARCEL 2)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

* * * * *

CERTIFICATE OF NOTICE

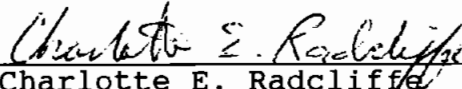
Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett and Harry E. Buchheister, constituting a majority of the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Petitioner; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; Robert A. Hoffman, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21285-5517, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

RECEIVED AND FILED
94 MAR 24 PM 1:22
CLERK OF BALTIMORE COUNTY

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, Petitioner; Harrison & Grass, c/o Timothy C. Harrison, 20 Erford Road, Suite 201, Lemoyne, PA 17043; Robert A. Hoffman, Esquire, VENABLE, BAETJER & HOWARD, 210 Allegheny Avenue, P.O. Box 5517, Towson, MD 21285-5517, on this 24th day of March, 1994.


Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

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

March 24, 1994

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD
210 Allegheny Avenue
Towson, MD 21204

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Mr. Hoffman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on March 21, 1994 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 76/249/94-CV-02565.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Harrison & Grass
c/o Timothy C. Harrison
Michael E. Gerber
John M. Bearer
Tom Kelly
James Earl Kraft
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards
Docket Clerk /ZADM
Arnold Jablon /ZADM



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County Board of Appeals of Baltimore County

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

March 24, 1994

Peter Max Zimmerman
People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: Civil Action No. 94-CV-02565
BAKER LAND COMPANY, ET AL

Dear Mr. Zimmerman

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure



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on Recycled Paper

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF JOHN M. BEARER
9 W. Main Boulevard
Timonium, Maryland 21093
Tel: (410) 561-2360

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, et al
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 to B.M. ZONE ON PROPERTY
LOCATED ON THE SWC PADONIA ROAD AND
BROAD AVENUE (PARCEL 1) AND SE/s/ END
ROOSEVELT STREET, SW BROAD AVENUE
(PARCEL 2)
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

CIVIL ACTION

NO: 76/245

94 CV 02561

* * * * *

PETITION FOR JUDICIAL REVIEW

John M. Bearer hereby requests judicial review of the
decision of the County Board of Appeals, in the case of:
In The Matter Of Baker Land Company, et al, for a Reclassification
from M.L.R. & O-1 & D.R.3.5 to B.M. Zone, Case No. CR-93-305-SPH
Cycle I, 1993, dated February 24, 1994. John M. Bearer was a
party to the proceeding before the County Board of Appeals of
Baltimore County in this matter.

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BALTIMORE COUNTY

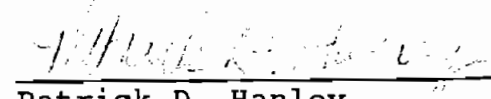
John M. Bearer
John M. Bearer
9 W. Main Boulevard
Timonium, Maryland 21093
Tel: (410) 561-2360

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T PERCH

of the foregoing pleading/paper was mailed by first class mail
postage prepaid to:

Robert A. Hoffman, Esq.
Venable, Baetjer & Howard
210 Allegheny Avenue
P.O. Box 5517
Towson, Maryland 21285-5517
Attorney for Appellee

Peter M. Zimmerman and
Carol S. Demilio
Office of Peoples' Counsel
Old Courthouse
400 Washington Avenue
Towson, Maryland 21204


Patrick D. Hanley

LAW OFFICES
HANLEY AND HANLEY
208 WASHINGTON AVE
P.O. BOX 5506
TOWSON, MARYLAND 21204

(410) 823-1174

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
Room 47 Washington Avenue
Towson, Maryland 21204

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

IN THE CASE OF: IN THE MATTER OF
BAKER LAND COMPANY, et al
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5 to B.M.ZONE ON PROPERTY
LOCATED ON THE SWC PADONIA ROAD AND
BROAD AVENUE (PARCEL 1) AND SE/s/ END
ROOSEVELT STREET, SW BROAD AVENUE
(Parcel 2)
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
CASE NO. CR-93-305-SPH
(ITEM 3, CYCLE I)

CIVIL ACTION

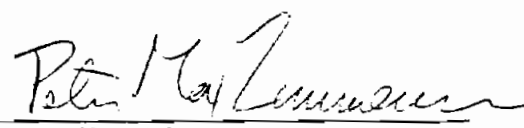
NO:

76/249/94CV2565

* * * * *

PETITION FOR JUDICIAL REVIEW

People's Counsel for Baltimore County hereby requests judicial
review of the decision of the County Board of Appeals, in the case of:
In The Matter Of Baker Land Company, et al, for a Reclassification
from M.L.R. & O-1 & D.R.3.5 to B.M. Zone, Case No. CR-93-305-SPH
Cycle I, 1993, dated February 24, 1994. People's Counsel was a party
to the proceeding before the County Board of Appeals of Baltimore
County in this matter.


Peter Max Zimmerman
People's Counsel
for Baltimore County

① OK
copy sent
to agency
FILED MAR 21 1994

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II. The Decision by the Board of Appeals to Grant the Requested Reclassification is in No Way Tainted by Impermissible Conditional or Contract Zoning.

Despite having no support from the record or the law, People's Counsel argues for reversal of the Board's decision because, he alleges, that decision is somehow tainted by impermissible contract or conditional zoning. This argument is simply without merit.

"Contract zoning" or "conditional zoning" refers to a zoning reclassification on which conditions or restrictions, not generally applicable to land similarly zoned, are imposed by way of an agreement between a petitioner and the zoning authority. People's Counsel v. Mockard, 73 Md. App. 340, 343, 533 A.2d 1344 (1987); Board of County Comm'rs v. H. Manny Holtz, Inc., 65 Md. App. 574, 579-580, 501 A.2d 489 (1985). In the absence of statutory authority for the imposition of such conditions, Maryland courts have uniformly declared contract or conditional zoning invalid. Attman/Glazer P.B. Co. v. Mayor & Alderman of Annapolis, 314 Md. 675, 685, 552 A.2d 1277 (1989); Mockard, 73 Md. App. at 343.

In Baltimore County, though, a statutory exception to the general rule invalidating conditional zoning has been made. County Code, §§ 2-356(1)-(n) (1988). Sections 2-356(1)-(n), which provide for the submission of a documented site plan along with a petition for reclassification, permit one form of conditional zoning. Mockard, 73 Md. App. at 344. Section 2-356(1) requires that a petitioner provide the Board of Appeals

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
BAKER LAND COMPANY, ET AL	*	COUNTY BOARD OF APPEALS
PROPERTY OWNER; HARRISON & GRASS,	*	
DEVELOPER /PETITIONER FOR A ZONING	*	OF
RECLASSIFICATION ON PROPERTY		
LOCATED ON THE SWC PADONIA ROAD AND	*	BALTIMORE COUNTY
BROAD AVENUE (PARCEL 1); AND SE/S/		
END ROOSEVELT STREET, SW BROAD	*	CASE NO. CR-93-305-SPH
AVENUE (PARCEL 2)		Cycle I, 1993
8TH ELECTION DISTRICT	*	
3RD COUNCILMANIC DISTRICT		
* * * * *	*	

O P I N I O N

This case comes before this Board on Petition for Reclassification from M.L.R. and 0-1 and D.R. 3.5 to B.M. In addition, a special hearing is requested to permit parking on a portion of the 0-1 zoned area involved. This case consumed two full days of hearing. The Board will note in this Opinion those witnesses who testified and a very brief encapsulation of their testimony, not to be confused with their full testimony contained in the official record. The Board will also note that the Petitioner is burdened to evidence that the existing classification is in error and that the requested classification is proper, if this Petition is to prevail.

First testifying for the Petitioner was Timothy Harrison, Developer, who went into great detail about the proposed center, the need for same, and presented the Documented Site Plan that accompanies the request for reclassification.

Jerome Trout, a real estate agent, testified as to the great need for the proposed use and the total lack of any other business-zoned sites in this entire corridor.

Testifying in favor the reclassification were neighbors Sandy Earp, President of the Timonium Heights Association; Jerome

Farinacci; David Young; and Howard Lendking, all concurring in favor of the reclassification.

Jeffrey Long, planner for Baltimore County, testified that he reviews all reclassification petitions and supports the granting of this Petition. He testified that it is in conformity with the Hunt Valley-Timonium Study and the Baltimore County Master Plan, and it was his opinion that present market conditions do not warrant any office or industrial use here.

Sam Crozier, a land planner, testified at length as to his studies of the site and his reasons why the Petition should be granted. His testimony was lengthy and persuasive in that the existing zoning was in error and the proper zoning would be B.M.

Richard Hillis, an environmental expert, prepared the environmental statement addressing this property, said statement showing no wetlands on the site and no environmental problems as to the proposed use.

Fred Chadsey, Professional Engineer, prepared the site plan and testified that it conforms to all Baltimore County requirements, and that his office was still active in preparing solutions to any possible flood plain problems.

Jeffrey Glazier, architect, prepared the drawings showing the proposed use and testified that this use addresses all the neighborhood problems, height, noise, lighting, etc., and that this would be a proper use.

The testimony of Mickey Cornelius, a traffic expert, was especially persuasive. The nearest intersection is York and

Padonia and is an "F" rated intersection. With the opening of the Warren Road bypass, this intersection will no longer be "F" but will be upgraded to "D". The proposed use will not add any additional traffic whatsoever to the peak hour problems. The traffic that would use the proposed facility would be existing traffic that is already there. However, any industrial or office use would significantly increase the traffic during peak hours as customers and employees would be coming from somewhere else to the site, and would have to use the above-named intersection. As far as any potential traffic problems, the proposed use is far more acceptable than any additional office or industrial use.

Robert Kleinpaste, a real estate expert, especially in the field of market analysis, testified that there is already too much office land available, too much M.L. land available, and no retail areas whatsoever available. He testified that this site has poor expectations of any use for offices or other M.L. uses, and that no office use is foreseeable for a minimum of 10 years.

George Gavrelis, a land planner, testified at length as to the reasons the existing zoning is in error and that the B.M. zone would be the proper classification. He testified that the proposed reclassification and use was in complete compliance with Section 502.1 and Section 409.A.1 of the Baltimore County Zoning Regulations. This concluded Petitioner's case.

People's Counsel presented as their first witness James Dieter, the Director of Baltimore County's Department of Environmental Protection and Resource Management (DEPRM). Mr.

Dieter noted that, as of the present time, there was no flood plain delineation shown on the site plan and that his office would not concur with the requested reclassification until this issue had been addressed.

John Bearer, a neighbor, testified he had attended all the town meetings and evidenced his concerns at each and every one. His main fear was that the proposed shopping center would be a detriment to the nearby area. He also noted that the site at present is used for the dumping of rubble.

Penny Gerber, a resident, testified there was no need for another shopping center; that there were plenty of shopping centers and stores already available.

Emmanuel Passas, a neighbor, opposes the proposal and fears that the proposed use may cause flooding to his property.

Michael Gerber, a neighbor, fears that the shopping center as proposed would be a detriment to the value and peaceful use of his home.

Norman Gerber, a land planner, testified that he reviewed the site and the proposed center. It was his opinion that an office use or a light M.L. use would be far preferable to the proposed shopping center. It was his opinion that the County Council committed no error in that they must consider the long-term use of the site and not the short-term use. This concluded the testimony in this case.

The Board has carefully considered all this testimony and is of the opinion that the existing zoning on this semi-isolated site

is in fact in error. The Board is especially impressed with the testimony of Mr. Long, Baltimore County planner for this area; Mr. Crozier, the land planner involved in the case; Richard Kleinpaste, the expert in market analysis; George Gavrelis, land planner; and Mickey Cornelius, the traffic expert. The Board will find as a fact from the testimony of these witnesses that the M.L.R. zoning assigned this site is in fact in error, and that the B.M. zoning, with due consideration afforded to the Documented Site Plan, is the proper zoning. The Board will also find that the parking of noncommercial vehicles on the requested portion of the 0-1 zoned area is proper, is not detrimental, and should be granted.

O R D E R

IT IS THEREFORE this 24th day of February, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Reclassification from the present combination of M.L.R., 0-1 and D.R. 3.5 to B.M. be and is hereby GRANTED; and it is further

ORDERED that the requested parking of noncommercial vehicles on the portion of 0-1 zoned area as shown on the site plan be and the same is GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

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

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
BAKER LAND COMPANY, ET AL	*	COUNTY BOARD OF APPEALS
PROPERTY OWNER; HARRISON & GRASS,	*	
DEVELOPER /PETITIONER FOR A ZONING	*	OF
RECLASSIFICATION ON PROPERTY		
LOCATED ON THE SWC PADONIA ROAD AND	*	BALTIMORE COUNTY
BROAD AVENUE (PARCEL 1); AND SE/S/		
END ROOSEVELT STREET, SW BROAD	*	CASE NO. CR-93-305-SPH
AVENUE (PARCEL 2)		Cycle I, 1993
8TH ELECTION DISTRICT	*	
3RD COUNCILMANIC DISTRICT		
* * * * *		

DISSENTING OPINION

This case came before the Board in open meetings on September 29, 1993 and October 19, 1993, with open deliberations on January 4, 1994. Despite argument and opinion in open deliberation from the majority, I am compelled to dissent from majority in this case.

Full transcripts of the hearings were provided, as well as closing and supplemental memoranda; therefore, I shall not recount the proceedings. From the evidence and testimony, I find the following facts:

The subject site is in an area of development/redevelopment opportunity known as Timonium Heights, as evidenced by extensive testimony on both sides, as well as that shown in the Hunt Valley /Timonium Redevelopment Study adopted by the Planning Board on April 15, 1993. Important features near the site include the new light rail line, the residential neighborhood, Interstate 83, Padonia Road, York Road and natural features. The Hunt Valley /Timonium Redevelopment Study names the area in which the site lies as an important area of consideration due to the dwindling supply of nearby vacant land, the area's proximity to the light rail line and the need for careful development near residential communities.

The County Council considered the subject site during the 1992

Comprehensive Zoning Map Process, voting unanimously with one (1) abstention to maintain the existing zoning. The Petitioners filed petition for reclassification less than one year following the County Council's adoption of the zoning maps. The petition for zoning reclassification must include, per Baltimore County Code, Section 2-356(1), delineation of 100-year floodplains; the instant petition does not include the required floodplain delineation despite the possible inclusion of a portion of the site within such a floodplain, as evidenced by the only official authority presented to the Board, the Federal Emergency Management Agency (FEMA) floodplain map. Failure to provide the floodplain delineation is most important for two reasons: first, the inclusion of a portion of the site within the 100-year floodplain would result in substantial changes to the documented site plan, thus invalidating the petition for reclassification; and, second, the Baltimore County Code requires delineation of the 100-year floodplain, thus the petition for reclassification is incomplete and may be considered non-responsive. This point alone is sufficient to deny the petition.

Baltimore County Code, Section 2-356(j), outlines conditions under which the Board of Appeals may reclassify any property. First, either a change has occurred in the character of the neighborhood since the property was last classified, or that the last classification was established in error. Baltimore County Code, Section 2-356(k), precludes a reclassification on the grounds of a change in the character of the neighborhood within a period of

one (1) year following the last classification, thus leaving the issue of error on the part of the County Council in 1992. Again the subject site was a specific issue considered by the County Council during the Comprehensive Zoning Map Process in 1992. As indicated by Jeffrey Long, County Office of Planning & Zoning, OPZ recommended retaining the existing zoning during the Comprehensive Zoning Map Process. Furthermore, recent construction of the light rail line has placed sites such as the instant case in the spotlight for tremendous development /redevelopment potential. In light of the fact that access /egress to the light rail in this area is severely limited due to site-specific geographic /ownership constraints, the County Council clearly realized that future development potential of properties adjoining the light rail and the subject site would be severely affected by a zoning change under the Comprehensive Zoning Map Process. Conversely, reclassification under this case would dismiss as moot the classification of those adjoining properties obtained or maintained during the Comprehensive Zoning Map Process. In fact, Norman E. Gerber, AICP, former Director of the Baltimore County Office of Planning & Zoning, confirmed that the subject site should be considered on the comprehensive zoning map so that the surrounding properties and, particularly the properties near the light rail, are given due consideration and opportunity for proper development. Thus, the County Council simply did not commit error in its 1992 classification of the subject property. As an editorial comment, I wish to commend the County Council for having the foresight and

understanding of development potential near mass transit opportunities.

The second test for reclassification under Baltimore County Code, Section 2-356(j) is in paragraph (2):

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

This second test is not examined exclusive of the tests for error; therefore, in light of my opinion that no error exists in the current classification, the second test is moot. However, I am compelled to opine concerning the instant case and how the second test applies.

Most of the Petitioner's case is presented on the issue that the prospective reclassification of the property would be warranted by the Council's error. Aside from my opinion that no error exists in the last classification under the Comprehensive Zoning Map Process, I believe that the proposed documented plan does not

satisfy all criteria enumerated in the above-noted paragraph. Mindful that the paragraph stipulates that the various criteria listed are not limited by their enumeration, and, therefore, should include other criteria unique to any subject case, I wish to first address those criteria listed with the Code Section.

The first criteria, population trends, was addressed in several areas: growth in the Mays Chapel area nearby, studies which illustrated the area's ability to support additional food market space and so forth. There is no doubt that the area's population and average household income have increased over time; however, I do not concur with the Petitioner's position that such growth constitutes "need" as an overriding factor for granting a reclassification. Further, my opinion is that the risk of development rests with the Petitioner and that the Petitioner plans to meet a possible need, and in addition to wrest a portion of market share from the numerous surrounding grocery stores. Such is the nature of retail business; therefore, fulfillment of a "need," real or not, is not an important issue in this case.

Availability and adequacy of present and proposed transportation facilities is an issue which was not thoroughly addressed. First at issue is the adequacy and appropriateness of traffic studies provided by the Petitioner. In-depth traffic studies were performed for peak "rush hour" times in comparing worst case uses under the existing classification versus the proposed use. When queried about the trip frequency and number totals for the proposed use in off-peak times and during a 24-hour

with extensive documentation relating to the proposed use of the property, along with a specific site plan and an environmental impact statement. If the r classification is then granted, the property may be used only in accordance with the submitted site plan. § 2-356(n). In fact, the property will revert back to its previous classification if, within three years, the property is not being used in accordance with that plan. Id.

From this project's inception, Appellees worked with the neighboring property owners and the Timonium Heights Community Association in an attempt to alleviate their concerns. (Sept. 29, 1993, T. 30-31) An agreement was eventually reached with the Timonium Heights Community Association in which restrictive covenants were executed for the benefit of the community association in return for the association's support of the project. (Sept. 29, 1993, T. 31) The Documented Site Plan, which included, almost verbatim, this agreement, was created and submitted as part of the Appellees' Petition for Reclassification in accordance with Section 2-356(1). (Sept. 29, 1993, T. 32-33) The Documented Site Plan showed the proposed use of the property as a high-quality shopping center with the anchor store being a Metro Food Market. See Petitioner's Exhibit 1.

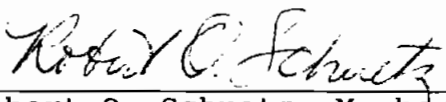
People's Counsel contends that the Board's decision is reversible because it relies, in part, upon the recommendation of the Office of Planning and Zoning, which impermissibly

period, the Petitioner's traffic expert conceded that the proposed use might, in fact, generate between five and ten times the total number of trips that an office building might generate. However, the expert did not produce empirical data to make such an assessment, nor did he supply data to substantiate any position (see Day 1 Transcript, pages 214 and 215). Second at issue is the apparent lack of substantive discussion, be it evidence or testimony, concerning the comparisons made of possible uses and their positive or negative impact on the nearby light rail line. Such an oversight is in direct conflict with the Hunt Valley /Timonium Study, page VII-5, "Issue: Optimizing light rail ridership through land use" (entire section). This omission is a gross miscalculation which cannot go forward unnoticed. Granting a reclassification with NO substantive discourse on this issue discounts the very important issues studied and adopted by the County in the Hunt Valley /Timonium Study.

Consistency of the current and prospective classifications with the master plan and the capital program has not been adequately addressed by the Petitioner. Existing zoning on the subject property serves several purposes consistent with the master plan as stated in Mr. Norman Gerber's testimony as an expert witness. Furthermore, the existing zoning and associated proximity to major highways and existing and future arterials are important to future development possibilities in the area, also as discussed by Mr. Gerber and his references to the Baltimore County Zoning Regulations. Finally, the Hunt Valley /Timonium Redevelopment

Study encompasses many considerations as they relate to the future of the area, including amendment of uses (See Study page I-5) in the industrial zones, obviously in deference to the importance of maintaining the existing zoning while expanding development possibilities in the area. Once again, granting a reclassification eschews the coordinated development effort specifically called for in the Hunt Valley /Timonium Study, most particularly as it relates to transportation and the light rail, as well as desirous development opportunities enumerated.

For all of the above findings, the petition for reclassification should be denied. I find the petition submission to be statutorily incomplete; I find the supporting documentation to be inadequate in addressing substantive issues; I find that the Petitioner failed to prove error by the County Council in the last Comprehensive Zoning Map Process; and, I find the proposed development under the documented plan to be contrary to the spirit and intent of the master plan. Development under the documented plan irrevocably reduces a most important development opportunity beyond its own site among a fast dwindling supply in the Hunt Valley /Timonium area.


Robert O. Schuetz, Member
County Board of Appeals

DATE: February 24, 1994

2-22 94

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY

PETITION OF
MICHAEL GERBER & PENNY GERBER
107 Harding Street
Timonium, Maryland 21093

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF
BAKER LAND COMPANY, et al
Case No. CR-93-305-SPH

CIVIL
ACTION
NO: ~~76-245-94 CV 02561~~

76/249/94 CV 2565

* * * * *

PETITION FOR JUDICIAL REVIEW

MICHAEL GERBER and PENNY GERBER, Petitioners, by their
attorney, Patrick D. Hanley, pursuant to Rule 7-202, represent:

1. They were parties to a proceeding before the County Board
of Appeals of Baltimore County, known as Baker Land Company, et
al, Case No. CR-93-305-SPH.
2. By Order dated February 24, 1994, the Board granted a
Petition for Reclassification and other relief in that proceeding.
3. Your Petitioners are aggrieved by that decision.

WHEREFORE your Petitioners request judicial review of th
decision of the County Board of Appeals of Baltimore County.

Patrick D. Hanley
Patrick D. Hanley
Hanley and Hanley
206 Washington Avenue
P.O. Box 5506
Towson, Maryland 21204
(410) 823-1174
Attorney for

RECEIVED AND FILED Michael & Penny Gerber, Petitioners

94 MAR 22 **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY this 22nd day of February, 1994, that a copy

LAW OFFICES
HANLEY AND HANLEY
206 WASHINGTON AVE
P.O. BOX 5506
TOWSON, MARYLAND 21204
(410) 823-1174

3

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

BALTIMORE, MD
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ROCKVILLE, MD

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FAX (410) 821-0147

RICHARD H. VENABLE (1939-1910)
EDWIN G. BAETJER (1988-1945)
CHARLES MCH. HOWARD (1970-1942)

WRITER'S DIRECT NUMBER IS

December 28, 1993

(410) 494-6262

ROBERT A. HOFFMAN

HAND-DELIVERED

William T. Hackett, Chairman
County Board of Appeals of
Baltimore County
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Re: Baker Land Corporation
Case No.: CR-93-305-SPH

Dear Mr. Hackett:

Enclosed please find a Reply Memorandum which is being
submitted by the Petitioner in the above-referenced case.

Thank you.

Sincerely,



Robert A. Hoffman

enclosures
RAH/dok

cc: Peter Max Zimmerman, Esquire
Timothy C. Harrison, Esquire
Ted Julio

HACKETT4.GPW

RECORDED
COUNTY BOARD OF APPEALS
93 DEC 29 AM 8:53

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

Inter-Offic Corr spondence

TO: W. Hackett
 R. Schuetz
 H. Buchheister

DATE: December 29, 1993

FROM: kathi

SUBJECT: Additional Material /Baker Land Company
 Deliberation Scheduled for Tuesday, 1/04/94

Enclosed for your information and review prior to the subject deliberation scheduled for 9:00 a.m. on 1/04/94 is a copy of the Reply Memorandum submitted by Rob Hoffman in response to People's Counsel's Memorandum.

Please note that a copy of the attached response, including all attachments, was also hand-delivered to Mr. Zimmerman's office.

kathi

*File
Docket*

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF	*	
<u>BAKER LAND CORPORATION,</u>	*	COUNTY BOARD
<u>ET AL.</u> FOR A ZONING	*	
RECLASSIFICATION FROM MLR,	*	OF APPEALS OF
0-1 AND DR 3.5 TO BM ON	*	
PROPERTY LOCATED AT THE SWC	*	BALTIMORE COUNTY
OF BROAD STREET AND PADONIA	*	
ROAD	*	
8TH ELECTION DISTRICT	*	
3RD COUNCILMANIC DISTRICT	*	CASE NO. CR-93-305-SPH
	*	
* * * * *		

PETITIONER'S REPLY MEMORANDUM

In accordance with the Board's instructions, the parties each submitted their respective memoranda in this case on November 23, 1993. In its memorandum, the Petitioner described in detail how the evidence adduced on its behalf at the hearing sessions on September 29 and October 19, 1993 established mistake or error in the last comprehensive zoning of the subject property. Although the Board made no provision for reply memoranda, there are several portions of People's Counsel's memorandum that are inaccurate or misleading, and the Petitioner feels it essential to clarify the record here.

- I. The Petitioner's current request does not represent an abrupt reversal of position within a few months.

People's Counsel would have the Board believe that the Petitioner actively pressed the County Council up until October, 1992 for ML-IM zoning for the subject property, and then turned around in February, 1993 to argue that industrial zoning was in error. This is simply not the case, and Mr. Harrison so testified when he appeared before the Board on September 29, 1993.

As Mr. Harrison stated, the Petitioner first became involved with the subject property in June, 1992, well after other owners had initiated a request to rezone the property as part of the 1992 Comprehensive Map process. Mr. Harrison was clear that during the initial weeks of their involvement, they realized that the ML-IM zone was not the correct zone for that location and that the request for the commercial zone would be incorporated into the remapping process. Mr. Harrison went on to state that they actively and diligently sought to rezone the property to its proper commercial classification.

It was some time, Mr. Harrison explained, before it was realized that their desire to come up with a plan that was acceptable to both the community and county for development under the commercial classification could not be accomplished before the adoption of the October, 1992 map. Therefore, even while the Comprehensive Map Process proceeded, Petitioner continued to work with the community and the county to prepare a documented site plan that would satisfy the needs of all concerned parties and of the county as a whole. In fact, Mr. Harrison stated that the County directed him to participate in the cycle zoning process in order to make use of the documented site plan and, therefore, Petitioner submitted this reclassification petition and documented site plan during the cycle zoning process after the 1992 Comprehensive Maps had been adopted.

Clearly, there was no abrupt reversal of position by this Petitioner within months of the adoption of the Comprehensive Map as People's Counsel asserts.

II. The Petitioner introduced ample evidence of each element required by the County Code and pertinent case law to establish error in the last comprehensive rezoning.

The bulk of People's Counsel's Memorandum is devoted to argument of a general nature to the effect that the Petitioner did not produce evidence of mistake, and that the Petitioner's witnesses merely testified in support of a vague theory of economic feasibility. Furthermore, People's Counsel devotes substantial space to discussing and quoting from cases that appear to bear little or no similarity to this one. In reading People's Counsel's Memorandum, the Board could obtain the impression that no Petitioner could ever prove mistake on the Comprehensive Map, a theory which belies Maryland law, the Baltimore County Code and this Board's long-standing application of the law. See Nottingham Properties, et al, Case No. CR-94-157-XA; Tell Bin Der, Case No. CR-90-407; Leroy M. Merritt, Case No. CR-89-451 and J. Darwin Ross, Case No. R-87-263-A, copies of which are attached.

In contrast, the Petitioner sets forth in its Memorandum point by point analysis of the evidence with respect to each of the factors enumerated in Section 2-356(J)(2) of the County Code, and explains how that evidence supports a requested reclassification under either or both of the methods for

proving mistake set out in the leading case of Boyce v. Sembly, 25 Md. App. 43, 1975.

One portion of People's Counsel's legal discussion is particularly misleading and thus calls for a direct response. That is the reference to and extended quotation from the case of Messenger v. County Commissioners, 259 Md. 693 (1970), appearing on pages 15-16 of People's Counsel's memorandum. The quotation, as it is presented, seems to suggest that the Board in this case is in the same position as a court reviewing the local zoning body's denial of a rezoning petition -- that is, that the Board cannot grant the Petitioner's request in this instance unless the Petitioner has established that the 1992 comprehensive zoning was arbitrary, capricious, or illegal. That suggestion is just plain wrong. This Board is acting in the first instance in accordance with its delegated authority under the County Code to grant cycle reclassifications where petitioners demonstrate the required change or mistake. This Board's decision will itself be upheld on judicial review, as long as the evidence makes the question of mistake fairly debatable.

Furthermore, People's Counsel's Memorandum appears to suggest that the Baltimore County Zoning Regulations preclude this Board from considering the Petitioner's documented site plan on the issue of mistake in the last comprehensive zoning. Such a suggestion is belied by Section 2-356(N) of the County Code, which merely states: "Property

may not be reclassified solely on the basis of documentation relating to the property's proposed use." (Emphasis added). The clear implication of § 2-356(n) is that this Board may consider a documented site plan as one factor in determining whether a Petitioner has proven change or mistake, and the Board has properly so construed the section. Caves Valley Club, Inc., Case No. CR-89-367 (May 31, 1989).

III. Plan recommendations for mixed use development do not preclude commercial retail uses.

Curiously, People's Counsel urges the Board that, while light manufacturing uses would be consistent with plans recommending "mixed use" redevelopment in the Hunt Valley/Timonium corridor, commercial retail uses would not. The fallacy in this argument is self-evident. "Mixed use" development is just that -- a balanced mix of residential with appropriate commercial and light industrial uses. The proposed Broad Street Market, which is intended to serve primarily a local clientele, can fit as well into a "mixed use" scheme as many uses that might be developed under the property's existing zoning.

IV. A fair consideration of compatibility and nearby uses cannot be confined to an examination of the Timonium Heights neighborhood or the "southwest quadrant" of the intersection of York and Padonia Roads.

In discussing the compatibility of the Petitioner's proposed Broad Street Market with surrounding uses, People's Counsel conveniently chooses to emphasize what he characterizes as a few commercial uses along the west side of

4-6-95

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATEGORY JUDICIAL REVIEW 76/249/94CV2565

CIVIL ASSIGNMENT

PETITION OF

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

IN THE CASE OF

IN THE MATTER OF BAKER LAND
COMPANY, ET AL.
FOR RECLASSIFICATION FROM M.L.R. &
O-1 & D.R.3.5. to B.M ZONE ON
PRPERTY BROAD AVENUE (Parcel 1)
AND SE/s/ END ROOSEVELT STREET, SW
BROAD AVENUE (Parcel 2)

MICHAEL GERBER and
PENNY GERBER

JOHN M. BEARER

ATTORNEYS

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21204 494-6200 (Baker Land Co,et.al)

tr(1) Mar. 21, 1994 Petition for judicial review, fd. Notice sent.

COSTS

s(2) Mar. 28, 1994 Certificate of Notice fd. (rec'd 3-24-94)

Bolt, Co. No 4

s(3) Apr. 4, 1994 Petition of MICHAEL GERBER and PENNY GERBER for Judicial
Review fd. (rec'd 3-22-94)

s(4) Apr. 4, 1994 Petition of JOHN M. BEARER for Judicial Review fd. (rec'd
3-22-94)

s(5) Apr. 13, 1994 Response of BAKER LAND COMPANY, et.al. to Petition fd.
(rec'd 4-11-94)

s*(6) Apr. 15, 1994 Second Certificate of Notice fd. (rec'd 4-14-94)

df (7) May 19, 1994 - Transcript of Record fd.

Box 207

df (8) May 19, 1994 - Notice of Filing of Record fd. Copies Sent.

am (9) Jun 17, 1994 People's Counsel's Memorandum, fd.

am (10) Jun 17, 1994 Petitioner's Memorandum, fd. (John M. Bearer)

am (11) Jun 28, 1994 Memorandum of Michael and Penny Gerber in support of
appeal, fd. Rec.'d 6/22/94.

True Copy Test

Tommy M. Stangor

OVER

Docket

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Case

94 CV- 02565

based its decision to recommend approval of the Petition for Reclassification on the "attractiveness" of the Documented Site Plan and/or on the restrictive covenants executed by the Appellees in favor of the neighborhood community association. Neither of these contentions has any merit.

With respect to the Documented Site Plan, People's Counsel has ignored the existence of Section 2-356, which expressly permits consideration of a documented site plan in determining whether or not to reclassify a particular piece of property. There is no conceivable reason to permit a petitioner to submit such a plan if that plan may not, in fact, be considered by the Office of Planning and Zoning in making its recommendation and by the Board of Appeals in reaching its final decision.

People's Counsel likewise has ignored the testimony of Jeffrey Long, land planner with the Office of Planning and Zoning, that, in making this recommendation, his office not only examined the Documented Site Plan, but also reviewed the proposed classification and proposed use for consistency with the Master Plan and the Hunt Valley/Timonium Redevelopment Study; the appropriateness of the present classification in light of the glut of unleased office and industrial space in the area; and the compatibility of the proposed classification and proposed use with the surrounding community. (Sept. 29, 1993, T. 66-70) Ultimately, he concluded that development of the property under its present classification was not

York Road in the defined Timonium Heights community. In contrast, he chooses to look further afield, including to the north of Padonia Road and west of the light rail line, in his search for nearby industrial zoning.

The fact is that the subject site lies along Padonia Road, directly east of a 6-story office building (a commercial use in an industrial zone) and directly across from retail commercial uses, which are also found on both sides of Padonia to the east of York Road. As anyone at all familiar with the area knows, York Road is a major commercial thoroughfare. And while the Timonium Fairgrounds may carry an industrial zoning classification, its uses have little to do with manufacturing, but are far more commercial in nature. As Petitioner's expert witness Mr. Crozier testified, "once you pass the [light] rail line, there is almost no indication that industrial exists, or was even intended" T. 91 (9/24/93).

CONCLUSION

For all of the reasons set forth above and in the Petitioner's original memorandum, the Petitioner respectfully requests that the Board grant its Petition for Reclassification, as well as its application for a use permit.

Respectfully submitted,

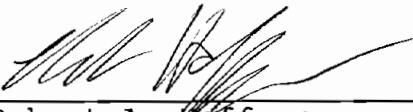


ROBERT A. HOFFMAN
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P.O. Box 5517
Towson, Maryland 21204
(410) 494-6200

MEMO0126.RAH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of December, 1993, a copy of the foregoing Petitioner's Reply Memorandum was mailed to Peter Max Zimmerman, People's Counsel, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.



Robert A. Hoffman

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O P I N I O N

This case comes before this Board on petition to reclassify a parcel of some 7.6 acres in the 15th Election District of Baltimore County from M.L.-C.S.1 and M.L.-I.M. to B.R.-C.S.1 and B.R.-I.M. In addition, several variances were requested on the original Petition but the request for variances was withdrawn prior to the taking of any testimony. The case was heard this day in its entirety.

Petitioners presented William Kirwin, Registered Land Planner, as their first and only witness. Mr. Kirwin reviewed the existing zoning and all the nearby uses and nearby zoning. He described in detail these surrounding uses, and entered exhibits documenting same. He testified that the present use being known as Balcon Products were the manufacturers of heavy concrete prestress slabs and pavings and that this use generates almost exclusively heavy truck traffic. It was his testimony that the commercial use requested would alleviate this heavy truck traffic and would generate almost exclusively automobile traffic. He noted in his testimony that the property is bordered on one side in its entirety by an M.L. classification now developed as an industrial park. He also noted that this property line is bounded by an elevated railroad line which effectively separates this parcel from the industrial park and there is no access to the industrial park from this site. He also noted that the Director of

Planning & Zoning and the Planning Board both recommended the commercial zoning for this site. It is apparent from the testimony and evidence received this day that the present use has outgrown this site and the property owner is in full support of the downgrading of his property from M.L. to B.R. This basically concluded Petitioners' testimony.

Mr. James Hoswell, Planner for Baltimore County, testified for People's Counsel. He testified that he has reviewed this Petition and prepared all the reports and while the Planning staff and the Planning Board both recommend the granting of the Petition, it was his testimony that the present zoning is not in error and does provide a legitimate M.L. use for this site. It was his opinion that any reclassification would be better accomplished comprehensively than through the petition process. This concluded testimony in this case.

The Board is of the opinion that when the 1984 maps were drawn the M.L. classification as was then in use was a proper zoning classification. It is apparent that the present use has outgrown the site and the existence of the railroad precludes any further expansion in that direction. It is also apparent from the testimony and evidence received and the exhibits that the ingress and egress point to the site is somewhat detrimental and is intensified by the principal use of the heavy concrete products to be transported on tractor/trailers. It is the opinion of this Board that this change in the intensification of the use, the intensification of the ingress and egress, and the existence of the railroad all constitute legitimate reasons to justify its reclassification. In reviewing all the nearby and abutting commercial uses and the situation as has been described, it is the opinion of this Board that the reclassification should be granted and the Board will so order.

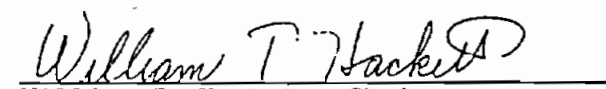
O R D E R

It is therefore this 12th day of May, 1987, by the County Board of Appeals ORDERED that the reclassification from M.L.-C.S.1 and M.L.-I.M. to B.R.-C.S.1 and B.R.-I.M. be and the same is GRANTED.

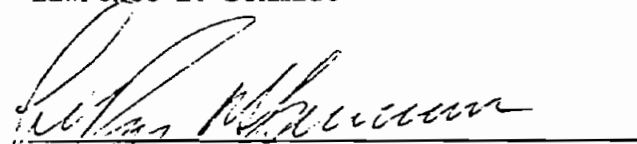
IT IS FURTHER ORDERED that the request for variances included in the original Petition be and the same is DISMISSED.

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

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY


William T. Hackett, Chairman


Lawrence E. Schmidt


LeRoy B. Spurrer

FILE COPY

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O P I N I O N

The case consumed four full days of hearing including lengthy testimony and exhibits. The Board will not herein attempt to encapsulate the voluminous testimony and evidence. The record created surely speaks for itself as do the memorandums submitted by the Petitioner and People's Counsel wherein the testimony and evidence before us is summarized. Prior to considering the merits and issues generated by the subject Petition, the Board feels compelled to address two areas which, although not specifically germane to the narrow issue of the Petition before us, were the subject of significant testimony and

argument by the combatants to this case, namely the Petitioner and the Office of People's Counsel.

The first of these issues is the Board's consideration of that prior case before it known as "In the Matter of Conservation Associates," Case No. R-86-110. The Board was continually requested to consider the effect, or lack thereof, of its opinion in that case on the subject Petition. Although a rose by any other name may still be a rose, the subject Petition to reclassify this property is not merely a rehash of the Conservation Associates matter. The facts of these two cases are significantly different and this Board cannot be constrained to be bound by our decision within Conservation Associates. Two major areas of difference are noted. First, the subject site under the current Petition contains not only the Conservation Associates acreage but significantly more adjoining property. Thus, the Board is compelled to consider the subject Petition as it relates to the entire 920 acres and not merely reconsider that 300 acres which were the subject of the Conservation Associates request for reclassification. Secondly, and equally importantly, is the fact that the Petition for Reclassification instituted by Conservation Associates proceeded under an open site plan. In the subject case, a specifically detailed documented site plan accompanied this Petition governing not only the acreage which the Petitioner seeks to reclassify from R.C. 2 to R.C. 5 but also the balance of the site. This is specifically relevant when the Board addresses the issue as required under Section 2-58.1(j)(2); namely, whether the prospective reclassification of the property is warranted.

The second hidden issue confronted by this Board pertains to the concern, bordering on hysteria, associated with the precedent the Board's decision may or may not establish. Although the Board has no doubt that its

Opinion herein will be carefully reviewed and perhaps noted in other proceedings in the future, it must be emphasized that our findings concern only the subject property. It is a fundamental tenant of zoning law that the use and zoning reclassification of a property runs with that particular land and is not a personal right. Although the request before us is not for permission to employ a particular use on this property, that tenant is applicable here. It should be made clear that the Board considered only this specific property as it relates to the adjoining lands and as offered in the documented site plan. Thus, any other petition must stand, or fail, on its own merits. Laying these two issues to rest, the Board then proceeds to consideration of the subject Petition.

This parcel as indicated contains some 920 acres and is located in the Caves Valley. It has long been the target for residential development, however, ^{it (and)} has largely remained as virgin land heavily wooded in some portions and actively cultivated in others. The valley contains a fertile valley floor which then draws up steeply through sloped areas to a higher elevated ridge/plateau area whereon development of the 32 residential sites would occur. The steeply sloped hillsides and valley floor would remain under an R.C. 2 classification. According to the Petitioner, reclassification in this manner would not disturb the wetlands and streams on the valley slopes and floor; rather only affect the ridge/plateau area.

Reclassification of property pursuant to order of the County Board of Appeals of Baltimore County is governed by Section 2-58.1 of the Baltimore County Code. Section 2-58.1(1) sets forth the requirements of a documented site plan when the Petitioner seeks reclassification pursuant to such a plan. The Board has reviewed the documented site plan, with exhibits, submitted by the Petitioner herein and finds them to be in compliance with this section.

Further, subparagraph (i) of 2-58.1 governs out-of-cycle reclassifications. Again, after review, the Board concludes that this matter is properly before us in accordance with that Code Section. Having therefore found that the Petition is technically sound, the Board must address the fundamental issue in this case, to wit, whether the Petition meets the standard enunciated in Code Section 2-58.1(j).

As indicated, Section 2-58.1(j) offers a two-prong test. First, the Board must determine that there has occurred a substantial change in the character of the neighborhood since the last rezoning cycle or that the last classification of the property was in error. In view of the relatively recent rezoning of this property during the 1988 comprehensive zoning process, no change in the character of the neighborhood is offered. Thus, the request turns on the issue of error. The first rationale offered by the Petitioner as a basis for error is the unique features of that acreage sought to be reclassified. Petitioner's expert witness, George Gavrelis, testified that the reclassification of the subject 123 acres makes good topographic and geographic sense. Specifically, Mr. Gavrelis noted that the acreage sought to be reclassified was oriented in such a fashion so as to have an adverse effect on neighboring properties if permitted to remain in the R.C. 2 classification. For example, Mr. Gavrelis stated that the acreage requested to be reclassified was inappropriate for cultivation and that use of the land for silva-culture, as allowed under R.C. 2 zoning, would be impractical and adversely effect adjoining properties. Thus, Mr. Gavrelis concluded that the R.C. 2 designation was improper in that it promoted conflict with the residential R.C. 5 properties immediately adjacent to the subject acreage.

In order to contradict this testimony, the Office of the People's Counsel offered two arguments. First, People's Counsel relies heavily upon

feasible. (Sept. 29, 1993, T. 68-69) It is evident, therefore, that, in deciding to support this Petition for Reclassification, the Office of Planning and Zoning certainly considered much more than the "attractiveness" of the Documented Site Plan. Therefore, the Board's reliance on this recommendation was entirely proper.

Further, People's Counsel contends that the Office of Planning and Zoning based its decision of the existence of restrictive covenants entered into by the Appellees in favor of the Timonium Heights Community Association and that this amounted to impermissible contract zoning.⁴ Again, People's Counsel has ignored Mr. Long's testimony on this issue. When questioned by People's Counsel as to whether the Office of Planning and Zoning's recommendation was based in part on the agreement between the Appellees and the neighborhood, with no hesitation, Mr. Long responded that it was not. (Sept. 29, 1993, T. 70-71)⁵

⁴ It is important to note that these restrictive covenants were included, almost verbatim, in the Documented Site Plan, rendering the restrictive covenants superfluous.

⁵ Even if the Office of Planning and Zoning had based its recommendation on these restrictive covenants, this still would not constitute illegal contract zoning. Agreements with those not having final zoning authority, as in this case, do not constitute illegal contract zoning. It is only when the decision-making authority is a party to the covenants, and, in essence, contracts away its right to exercise that zoning power that illegal contract zoning exists. Funger v. Mayor of Somerset, 249 Md. 311, 328, 239 A.2d 748 (1968); City of Greenbelt v. Bresler, 248 Md. 210, 215-216, 236 A.2d 1 (1967). See also Montgomery County v. National Capital Realty Corp., 267 Md. 364, 374-375, 297 A.2d 675 (1972). In this case, the agreement restricting use of the property under the proposed classification was between two private parties, the

this Board's rationale in the Conservation Associates decision that the agricultural use of the property must be viewed in its entirety and that reclassification cannot be granted on the ground that any part of the site is found not to be suitable. As indicated earlier, the Conservation Associates case is uniquely different from the subject matter. The mere size of the acreage confronting the Board in this case convinces us that an examination and delineation of zoning designations within the total 920-acre area is warranted. Thus, at least when confronted with a parcel of this size and variety, the Board must take notice of geographic and topographic differences within the parcel.

As a second basis to contradict Mr. Gavrelis' opinion, the Office of the People's Counsel noted that zoning is historically done in accordance with property lines and that that format should remain valid in this case. Again, however, the Board must be mindful of the sheer size of this parcel and the irregularity of the topography within the total acreage. To be slavishly obedient to the property lines would ignore these valid considerations and not reflect the intent and spirit of the designated zoning classifications created by the legislature.

As a second basis for error, the Petitioner offered evidence that its proposal as presented was not known to the Council at the time of their adoption of the present zoning. It is clear that Councilman Ruppertsberger, representing this district, appointed a committee prior to the enactment of the 1988 zoning maps to study the Petitioner's proposal. However, it is equally clear that the proposal at that time was not definitively formulated and presented to the Council. Even if it had been, the Council within its zoning process cannot classify properties subject to compliance with documented site

plans as is permitted to the Board of Appeals by Section 2-58.1 of the County Code. Thus, the Petitioner argues that this Board may find error in the existing zoning classification under the purview of People's Counsel v. Mockard, 73 MD App 340, 533 A2d 1344 (1987) wherein the Court stated "the presumption of validity accorded comprehensive zoning may be overcome by evidence establishing that there were then existing factors which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account." We find that to be the case here and hold that the Council could not have taken into account the development of this plan as a subsequently occurring event.

The Board is of the opinion that to deny the requested reclassification would be an injustice to Baltimore County and to the residents whose properties abut the subject site. The Council, by approving the out-of-cycle reclassification petition, noted tacit approval of the documented site plan which they would not be able to incorporate in the comprehensive map process. In view of these factors, the Board is compelled to find that the zoning classification in this matter is in error.

Having therefore determined that the existing zoning classification is in error, the Board must address the second prong of the standard as it is set forth in 2-58.1(j)(2). Specifically, the Board must determine that the prospective reclassification is warranted. Section 2-58.1(j)(2) as interpreted by the Court of Appeals in Mockard (supra) mandates that this Board consider a variety of factors related to the purposes of the regulations and maps; including population trends, availability and adequacy of present and proposed transportation facilities, water supply facilities, etc. In this regard, the Board again carefully notes the testimony from Mr. George Gavrelis on behalf of the Petitioner. His consideration and treatment of each of these factors was

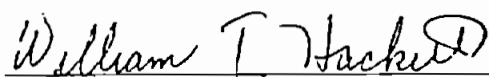
uncontradicted and is noted within the record of the case. The Board accepts his conclusions and therefore, based upon its consideration of these factors and others, finds that the prospective reclassification is so warranted. Because of the uniqueness of all of these factors in this particular case, the Board is of the opinion that the reclassification should be granted and will so order.

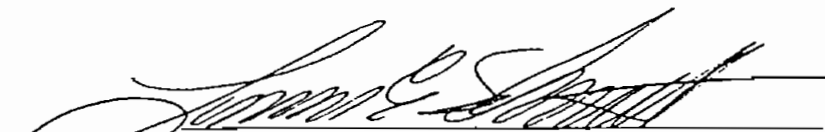
O R D E R

It is therefore this 31st day of May, 1989 by the County Board of Appeals of Baltimore County ORDERED that the out-of-cycle Petition for Zoning Reclassification from R.C. 2 to R.C. 5 of a significant portion of property located in northwestern Baltimore County known as the Caves Valley in Case No. CR-89-367 and as clearly documented on Petitioner's Exhibits No. 11-1 and 11-2 be and the same is GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


William T. Hackett, Chairman


Lawrence E. Schmidt


Henry H. Lewis

IN THE MATTER OF THE APPLICATION OF	*	BEFORE
LEROY M. MERRITT, FOR A ZONING	*	
RECLASSIFICATION ON PROPERTY LOCATED	*	COUNTY BOARD OF APPEALS
ON THE WEST SIDE OF COMMERCE DRIVE,	*	
175' NORTH OF CENTERLINE OF WASHING-	*	OF
TON BLVD. (3700-3798 COMMERCE DRIVE)	*	
13TH ELECTION DISTRICT	*	BALTIMORE COUNTY
1ST COUNCILMANIC DISTRICT	*	
	*	CASE NO. CR-89-451

* * * * *

O P I N I O N

This case comes before the Board for zoning reclassification from O.T. (Office and Technology) to M.L.-I.M. The twenty-two acre parcel of land is in the First Councilmanic District at the juncture of I-95, I-695 and U.S. 1. The case was heard this day in its entirety.

Opening remarks in this matter by Counsel for the Petitioner emphasized that the original objectives and purposes for the O.T. zone in 1984 for this parcel by the County Council have been rendered impractical in the past five years by newly designated and more attractive locations in O.T. zones in the area. The Petitioner's overall holdings in the area total 80 acres, all of which were zoned M.L. in the 1970's. The subject parcel was rezoned O.T. in 1984 with the purpose of attracting high-tech industry to the County.

People's Counsel defended the O.T. zoning of the parcel, remarking that the location offers a unique vantage point for a high-tech industry at the "gateway to Baltimore County" location.

In support of the Petition for Reclassification, Counsel for the property owner presented several witnesses who testified to the difficulties of the O.T. zoning at this location. Mr. Anthony Haile, Deputy Director of Baltimore County Dept. of Economic Development, reviewed the features required of a property for high-tech utilization. Mr. Haile mentioned several major corporations who rejected the site because of its limited access and lack of essential amenities expected in the O.T. zone. With the 1988 zoning of large acreage of government

owned property in this southwestern section of Baltimore County, at the UMBC and Spring Grove Campuses, Mr. Haile testified to the difficulty of a private developer in marketing any site for O.T. use, particularly the subject property.

Mr. Randy Warren, employee with the Merritt Company, reviewed the present trend in developing commercial sites with buildings that provide flex options for the lessee in the M.L.-I.M. zone, which predominates in the subject area. Since 1984, there was little or no interest in the location for O.T. development for reasons stated by Mr. Haile. In the 1988 Comprehensive Map Process, a change was not requested in hopes an O.T. use would occur, and the fact that they were not familiar with the pending UMBC - Spring Grove O.T. zoning of 300 acres. Mr. Warren ascertained that this nearby O.T. area has ruined his site's potential.

Mr. David Bavar, a commercial realtor serving the Merritt Company, reviewed several factors that detract from the high-tech use of the subject parcel. Mr. Bavar cited the deficiencies of poor accessibility, neighboring industrial users, and a lack of certain amenities in the area that go with providing services to high-tech employees. Mr. Bavar emphasized that M.L. land and the proposed documented use is needed in this part of the County. It was his opinion that it is an error to keep the O.T. zoning at this site.

Mr. William Kirwin, land planner and developer appeared as an expert witness involved with the site since 1983. Mr. Kirwin reviewed the requirements of an O.T. site today, allowing for lakes, recreational activity, parking and amenities for the health and well being of people. He cited the example of other highly desirable O.T. locations in Baltimore County and the size they offer to provide essential amenities to attract high-tech industry. Mr. Kirwin reviewed various illustrative exhibits depicting the proposed M.L. use of the parcel and its configuration in the proposed documented plan. He pointed to the transportation deficiencies of the site for O.T. use versus the assets of an M.L., flex

space use. Building elevation drawings were explained by this expert witness that bore out the fact that the documented site of five flex office/warehouse buildings would not be seen from the interstate highways. Access to the site would be from the U.S. 1 route utilized by various industrial users.

In respect to the high-tech potential for the site, Mr. Kirwin referred to Section 207.2 of the Baltimore County Zoning Regulations (BCZR) and its intent for the O.T. zone. His remarks pointed to various shortcomings of the parcel and the error of the zoning. There are no trends to office-tech use in the area, which has predominantly industrial use.

In opposition to the Petition for Reclassification, People's Counsel offered Mr. Pat Keller, Deputy Director of Planning and Zoning which recommended denial of this Petition to the Planning Board of Baltimore County. Acknowledging the fact that the Planning Board agreed to the zoning requested in this case, Mr. Keller reviewed a list of suggestions for the documented site plan in the event the County Board of Appeals granted the zoning reclassification.

The case for the Petitioner in this matter was thoroughly and convincingly presented in proving that the subject parcel as an office and technology zone has become impractical, and in error. Foremost in highlighting this error is the definition of the O.T. zone as stated in 207.2 BCZR as it is applicable to the subject location. Aerial photographs identify predominantly industrial warehouse utilization in the entire southwest area of this site. This O.T. zoned site is not in the proximity of a town center, residential growth, nor is it highly accessible. In fact the site has an access difficulty for traffic approaching the location via the inter-state highways, which do not have conveniently located exits to the location. In consideration of all the amenities that are prescribed for the office-technology location, the mere size of this site precludes the absence of these recommendations. Coupled with the existing

warehouse utilization of the neighboring properties, it is obvious that the Petitioner's property is practically obsolete as a high-tech location and hardly qualifies.

The opinion that the UMBC and Spring Grove office and technology zoning of 300 acres makes the subject site unattractive is understandable to this Board. As different counties and developers endeavor to attract high-tech industry, testimony in this case has clearly stated the difficulty of marketing land for the O.T. use. Prior to the UMBC designation, there may have been merit in the O.T. zone for the subject parcel, but as testified by several expert witnesses in this case, the Baltimore County Government will certainly promote the UMBC - Spring Grove acreage rather than the inaccessible parcel of the Petitioner.

Although this property was not an issue in the 1988 Comprehensive Map Process, testimony and convincing evidence gives strong indication that this site is not conducive to utilization as an office-technology zone. For the various reasons covered in the above, this Board is of the opinion that the reclassification of the subject parcel of 21.6 acres from O.T. to M.L.-I.M. should be granted and will so order.

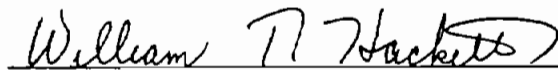
In view of the stated willingness of the Petitioner to cooperate and accept suggestions for this documented plan, the Board stipulates that the proposals by the Director of Planning and Zoning be included in the documented plan.

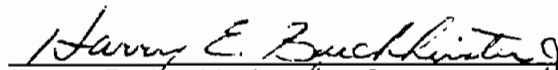
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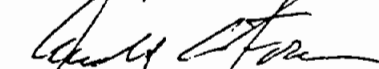
It is therefore this 14th day of November, 1989 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Reclassification of the property from O.T. to M.L.-I.M. be and the same is hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


William T. Hackett, Chairman


Harry E. Buchheister, Jr.


Arnold G. Foreman

IN THE MATTER OF THE
THE APPLICATION OF
TELL BIN DER (ESTATE OF)
FOR A ZONING RECLASSIFICATION
FROM D.R. 3.5 TO B.L.
ON PROPERTY LOCATED ON THE
NORTHEAST SIDE REISTERSTOWN ROAD,
440' SOUTHEAST OF CENTERLINE OF
MT. WILSON LANE EXTENDED
3RD ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CR-90-407
* Item #8, Cycle III
* 1990
* (Documented Site Plan)
* * * *

* * * *

O P I N I O N

The Petitioners, the Estate of Tell Bin Der, have filed a Petition for Zoning Reclassification of their property from its present zoning designation of D.R. 3.5 to B.L. The Petitioners offered into evidence a documented site plan (Petitioners' Exhibit No. 1). The site plan, in addition to showing the dimensions of the property and its configuration with the proposed office building, depicted the existence of proposed landscaping and accesses. The subject property is located on the northeast side of Reisterstown Road, just north of the Festival at Woodholme property, and extends to Keller Road. The property is "T"-shaped and is approximately 2.6 acres.

In support of the Petition, the Petitioners offered the testimony of William Kirwin and Norman Gerber, both experts in the fields of planning and zoning; Wes Guckert, a traffic expert; and Richard Truelove, a licensed Professional Engineer. Their testimony established that the present residential zoning classification of D.R. 3.5, which was placed on the property as a result of the Comprehensive Zoning Map process in 1988, was inappropriate and not compatible with the surrounding zoning in the area. The zoning map for 1988 was offered into evidence and testified to by Mr. Kirwin. Both Mr. Kirwin and Mr. Gerber, in

their capacity as planners, pointed out to the Board that the property should be more appropriately zoned B.L. since it fronts on Reisterstown Road, is a unique piece of property, and has no desirability for residential use. They indicated to the Board that to develop the property residentially would result in residential housing with private driveways accessing onto Reisterstown Road. They also stressed to the Board that the property would be subject to residential transition area and setback requirements, which would be restrictive, and other considerations making the residential use unfeasible. Under the Baltimore County Code, a Petition for Zoning Reclassification may be granted if it is established by the Petitioner that mistake did in fact occur by the County Council in its Comprehensive Zoning Map process. The factors to be considered as set out in Section 2-356(j)(2) are as follows:

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

Mr. Kirwin in his direct testimony discussed each and every one of these factors and Mr. Gerber also made reference to these factors in his direct testimony. The Board is satisfied from the testimony of each of them that the criteria was considered, and that under

Because Appellants have no support for their allegations that the Office of Planning and Zoning improperly based its decision solely on the "attractiveness" of the Documented Site Plan" or on the restrictive covenants, its recommendation and the final decision of the Board of Appeals granting the requested reclassification could not have, in any way, been tainted by illegal contract zoning. Therefore, the Board's decision should be affirmed.

III. Finding that the Appellees Sufficiently Identified the Location of the 100-Year Floodplain on the Subject Property, the Board Properly Denied People's Counsel's Motion to Dismiss.

At the conclusion of the Appellees' case, People's Counsel moved to dismiss the Petition for Reclassification on the basis that the location of the One-Hundred-Year Floodplain was not identified on the Documented Site Plan, which was introduced in support of the Petition for Reclassification. People's Counsel argued that, because Section 2-356(1) of the County Code requires designation of the floodplain, the failure to indicate this item on the Documented Site Plan itself was fatal to the Appellees' case. (Oct. 19, 1993, T. 63-64)

The Board of Appeals denied this motion, finding that, through expert testimony, the Appellees had sufficiently identified the location of the floodplain on the Documented Site Plan. (Oct. 19, 1993. T. 65-66) Appellants contend that

Appellees and the neighborhood community association.

that criteria the property is mistakenly zoned D.R. 3.5. It should be pointed out that the present D.R. 3.5 zoning came about as a result of an issue on the property raised by the Planning staff, and that the zoning change was down-zoned from the B.L. classification, the same classification that the Petitioners seek today.

In addition to the expert testimony offered by the Petitioners in this case, the Report and Recommendations of the Planning Board was offered into the proceedings (Petitioners' Exhibit No. 13). It appears from a full reading of the Planning Board's report that it is in agreement with that of the expert witnesses in these proceedings to the extent that D.R. 3.5 zoning is not appropriate for the site. The experts have testified that the more appropriate zoning under the documented site plan should be B.L. The Planning Board proposes that it should be R.O. The Board has reviewed the Planning Board's report and is more persuaded by the testimony of the experts who testified in the proceedings indicating a change to B.L. zoning.

Counsel for Festival at Woodholme has argued to this Board that the site plan should not be admitted or considered by this Board on the basis that it fails to show the existence of a 100-year flood plan area, and that the failure to do so is contrary to the requirements for preparing and filing a site plan as set out in the Baltimore County Code. Mr. Richard Truelove addressed this issue and the reasons why the flood plain was not contained on the site plan. He stated that he performed an investigation and checked all of the sources known to him with Baltimore County to determine whether or not the subject site was within an existing

flood plain. He further stated that the results of his investigation were that Baltimore County maps did not disclose the existence of any flood plain or that a flood plain area had been defined. Further, the testimony showed that the flood plain map of the Federal Emergency Management Act (FEMA) did not disclose the existence of any flood plain as to the site. This Board feels that the Petitioners in the presentation of their case did not act in any improper manner in presenting to this Board for consideration the site plan without the existence of any flood plain thereon.

For the reasons as set out above, this Board is satisfied that the burden of proof has been met and will so order a change in zoning classification of this property as a reclassification to B.L. zoning in accordance with the documented site plan offered into evidence as Petitioners' Exhibit No. 1.

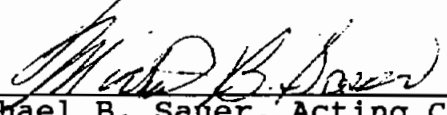
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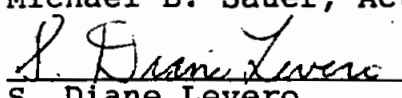
IT IS THEREFORE this 24th day of September, 1992 by the County Board of Appeals of Baltimore County

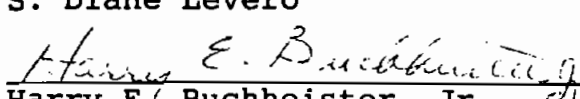
ORDERED that the Petitioners' request for reclassification of the subject property from D.R. 3.5 to B.L. as designated on Petitioners' Exhibit No. 1 be and is hereby GRANTED, subject to the Documented Site Plan entered as Petitioners' Exhibit No. 1 in these proceedings.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Michael B. Sauer, Acting Chairman


S. Diane Levero


Harry E. Buchheister, Jr.

IN THE MATTER OF
THE APPLICATION OF
NOTTINGHAM PROPERTIES, INC./LEGAL
OWNER AND RETIREMENT AND HEALTH
SERVICES, CORP. d/b/a/ SENIOR
CAMPUS LIVING /PETITIONERS FOR A
ZONING RECLASSIFICATION, SPECIAL
EXCEPTION AND VARIANCES ON PROPERTY
LOCATED ON THE SW SIDE JOPPA
ROAD AND WALTHER BOULEVARD, E OF
BURTON AVE. /CHARLESTOWN VILLAGE
11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CR-94-157-XA
* (Out of Cycle)
*

* * * * *

O P I N I O N

This matter comes before the Board on Petition for Zoning Reclassification from R.O., B.L., D.R. 2, D.R. 5.5 and D.R. 10.5 to D.R. 16; for a special exception to permit a continuing care facility with a utilization period of five years; and for five zoning variances. Petitioner appeared and was represented by Stephen J. Nolan, Esquire. Participating in these proceedings was Peter Max Zimmerman, People's Counsel for Baltimore County. This case consumed some 1-1/2 days of direct testimony, and included testimony from 13 witnesses and argument from both Counsel.

Appearing and testifying in favor of the Petition was John Erickson, the President of Senior Campus Living, who operates a continuing care facility at Charlestown in which between 2,000 and 2,400 elderly people now reside. He explained at great length the entire operation of this facility and its many advantages.

Paul J. Marks, an architect, testified that he designed this plan and further explained the plan in great detail. He noted that the height requested was necessary in order to reduce the lateral distances that the elderly must travel. He further noted that the

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taller buildings reduce the amount of impervious surface and allow more green space than the same number of units would be with less elevation.

Edmond Haile, professional engineer, testified that his firm drew the documented site plan presented as Petitioner's Exhibit 1, and noted that everything on the site plan is from field information, and that adequate water and sewer are available.

Reed Huppman, an environmental scientist, studied the site, explained his conclusions at length, and it was his opinion that the proposed use was not detrimental to any of the surrounding areas, that it would be an improvement as far as the runoff and trash abatement and answered all the aspects of Section 502.1 necessary to obtain the special exception.

Wesley Guckert, traffic engineer, testified as to his study of the traffic situation. He noted this complex was the same as Charlestown as to cars and parking, and prepared both a traffic study of the site and the parking needs. He testified that the requested parking spaces from the study of Charlestown would be considerably more parking than will ever be needed. He also answered 502.1 that the proposed facility would create no congestion in streets or alleys and would not be detrimental to the neighborhood.

Amy Johanson, representing the Baltimore County Department of Community Development, testified that it was her job to promote elderly housing. Her office supports this project in its entirety. She noted that in this quadrant of the County, there is no

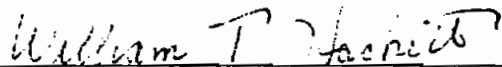
and is hereby GRANTED; and it is further

ORDERED that the petitioned variances to permit a building height as tall as 80 ft. in lieu of the maximum 60 ft.; to permit a non-residential principal building within the continuing care facility to have a maximum building length as long as 450 ft. in lieu of the permitted 200 ft. and width as long as 400 ft. in lieu of the permitted 200 ft.; to permit component elderly housing facility, institutional buildings separated by exterior passageways to have a maximum width and length as much as 440 ft. in lieu of the permitted 200 ft.; to permit a continuing care facility to provide 1,557 off-street parking spaces in lieu of the required 1,927 spaces; and to permit an externally-illuminated sign identifying the elderly housing community to have a double-faced sign with an area of 75 sq. ft. in lieu of the permitted 15 sq. ft. per face be and are hereby GRANTED; and it is further

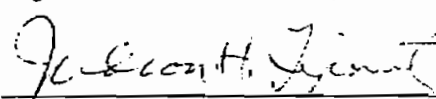
ORDERED that the Agreement between the Petitioner and the Ridgedale Mews Homeowners' Association, Inc., as set forth in Petitioner's Exhibit 28, shall be incorporated and become a part of this Order.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


William T. Hackett, Chairman


Michael B. Sauer


Judson H. Lipowitz

IN THE MATTER OF
THE APPLICATION OF
BAKER LAND COMPANY, ET AL.
FOR A ZONING RECLASSIFICATION
FROM MLR, O-1 AND DR 3.5
TO BM ON PROPERTY LOCATED ON
THE SWC OF BROAD AVENUE AND
PADONIA ROAD

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD
* OF APPEALS OF
* BALTIMORE COUNTY
*
* CASE NO. CR-93-305-SPH

* * * * *

**PETITIONER'S MEMORANDUM IN SUPPORT
OF REQUEST FOR RECLASSIFICATION**

Dear Ms. Weidenhammer:

Attached is Petitioner's Memorandum in Support of Request for
Reclassification, Table of Contents and attachments.

Respectfully submitted,


ROBERT A. HOFFMAN
Venable, Baetjer and Howard
210 Allegheny Avenue
P. O. Box 5517
Towson, Maryland 21204
(410) 494-6262

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IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF	*	COUNTY BOARD
<u>BAKER LAND COMPANY, ET AL.</u>	*	OF APPEALS OF
FOR A ZONING RECLASSIFICATION	*	BALTIMORE COUNTY
FROM MLR, O-1 AND DR 3.5	*	
TO BM ON PROPERTY LOCATED ON	*	
THE SWC OF BROAD AVENUE AND	*	
PADONIA ROAD	*	
8TH ELECTION DISTRICT	*	CASE NO. CR-93-305-SPH
3RD COUNCILMANIC DISTRICT	*	
* * * * *		

PETITIONER'S MEMORANDUM IN SUPPORT
OF REQUEST FOR RECLASSIFICATION

Baker Land Corporation, et al., legal owner, and Harrison & Grass Partnership, contract purchaser (collectively, "the Petitioner"), by its attorney, Robert A. Hoffman, with Venable, Baetjer and Howard, respectfully submits this Memorandum in support of its request for reclassification.

STATEMENT OF THE CASE

The Petitioner began this case by filing a Petition for Reclassification with the County Board of Appeals of Baltimore County (the "Board") on February 23, 1993. The Petition involves 6.57 acres at the southwest corner Padonia Road and Broad Avenue, between I-83 and York Road. It is a Cycle Rezoning Petition under § 2-356 of the Baltimore County Code, and it requests BM (Business, Major) zoning - subject to the restrictions set forth in the Documented Site Plan accompanying the Petition -- in lieu of the present combination of MLR, O-1 and DR 3.5 zoning, to accommodate the proposed development of the Broad Street Market.¹ If the rezoning is secured, the

¹ The petition also includes a request for less than an acre of existing O-1 zoning to be approved for parking necessary to support the proposed Broad Street Market.

contract purchaser, Harrison & Grass, will move forward with development of the Broad Street Market -- a small, high-quality shopping center, which is to include among other things a Metro Food Market and a Rite-Aid Drug Store.

SUMMARY OF ARGUMENT

Section 2-356(j) of the Baltimore County Code provides for the reclassification of zoning if a petitioner can show either change or mistake. In the instant case, the Petitioner proved mistake under both of the legal tests recognized in Maryland, and has done so with specific and overwhelming evidence as to the factors listed in § 2-356(j)(2) of the Code.

A. The Petitioner has demonstrated that the County Council failed in 1992 to take into account important facts, or projects or trends which were then reasonably foreseeable of fruition:

1. Population Trends and Market Conditions

- Population west of I-83 has significantly increased with no increase in available commercial land to support this population's needs.

2. Adequacy and Availability of Transportation and Other Public Facilities

- The existing MLR classification would allow for industrial development, notwithstanding the failed York/Padonia Road intersection; development under the Documented Site Plan could not occur until the failure is corrected.
- Office or industrial development generates "new trips" on the roadways. Under the Documented Site Plan, the proposed neighborhood shopping facility would intercept existing trips.
- The proposed BM zoning presents no difference in impact on other public facilities.

3. Character of the Surrounding Area -- Compatibility
of Uses under Present vs. Proposed Zoning

- The uses permitted under the proposed BM zone and the Documented Site Plan are more compatible with the surrounding area than the uses permitted under the existing MLR zone.

4. Consistency of the Proposed Zoning with
the Master Plan

- The current industrial classification is inconsistent with the Master Plan in that it places a greater strain on transportation infrastructure.

B. The Petitioner has produced clear evidence of subsequently occurring facts and events that have proven that the assumptions upon which the Council acted in 1992 were erroneous.

1. Population Trends and Market Conditions

- The increase in population does not equate to any increase in demand for office or industrial space. There is a clear increase in demand for neighborhood shopping with no available commercial space.

2. Character of the Surrounding Area -- Compatibility
of Uses under Present vs. Proposed Zoning

- The Documented Site Plan clearly establishes compatibility with the surrounding neighborhood in contrast to possible development under the existing zoning classification.

3. Recommendation of the Planning Board and the Office
of Planning and Zoning

- The Office of Planning and Zoning and the Planning Board support the Petitioner's request.

4. Consistency of the Proposed Zoning with the Master Plan

- The Hunt Valley/Timonium Redevelopment Study and Legg Mason's update, not available to the County Council until after the adoption of the Comprehensive Map clearly indicates that the existing zoning provides no reasonable use of the property and that the proposed BM zoning with the Documented Site Plan is necessary to allow for a reasonable and necessary use.

the Board of Appeals improperly denied this Motion to Dismiss and erred in ultimately granting the requested reclassification.⁶

Although Section 2-356(1) contains a list of items to be included on a documented site plan, this provision specifically allows for flexibility as far as the contents of the plan are concerned. Regardless of this flexibility, in the presentation of their case, Appellees did, in fact, identify the location and impact of the One-Hundred-Year Floodplain on the subject property.

Specifically, Frederick Chadsey, Appellees' expert engineer, testified that, although he and the County agencies were still in the process of resolving the exact location of the floodplain, it had been pinpointed to within a "couple of inches." (Sept. 29, 1993, T. 168) On the Documented Site Plan, Mr. Chadsey identified the One-Hundred-Year Floodplain, on the western boundary of the property, as being confined to the existing stream channel that runs parallel to the light rail track. (Sept. 29, 1993, T. 164) With respect to the northern boundary along Padonia Road, the One-Hundred-Year Floodplain was identified by Mr. Chadsey on the Documented

⁶ By virtue of Rule 4(b) of the Rules of Practice and Procedure of the County Board of Appeals, the Chairman of the Board, in concurrence with a majority of the other Board members, has discretionary authority to rule upon matters that arise during the hearing, including motions and procedural matters.

ISSUES

- I. Has the Petitioner proven that the current zoning is a mistake and that the requested zoning should be granted?

Section 2-356(j) of the Baltimore County Code provides for the reclassification of zoning if a petitioner can show either change or mistake. Specifically, that section requires that, before the Board of Appeals grants a reclassification request, the Board must find:

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

(Emphasis added.)

In People's Counsel v. Mockard, 73 Md. App. 340 (1987), a Baltimore County case, the Court of Special Appeals held that the petitioner in a cycle rezoning case must provide evidence as to the factors listed in § 2-356(j)(2), and that the Board of Appeals'

findings in such a case must be based on a consideration of those factors.

The "change or mistake rule" embodied in § 2-356(j) has been interpreted in many Maryland cases over the years. When discussing the "mistake" side of the rule, the courts have generally used the terms "mistake" and "error" interchangeably. Error, as that term has been interpreted in zoning law, is established when a petitioner shows that the local zoning authority made a basic and actual mistake when it adopted a comprehensive zoning map placing the subject property in its present classification. Coppolino v. County Bd. of Appeals of Baltimore County, 23 Md. App. 358 (1974).

The Maryland courts have made it clear that error may be established in two ways. First, the petitioner may submit evidence of certain facts, projects or trends that existed at the time of the last comprehensive rezoning that the zoning authority failed to take into account. Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975). Second, the petitioner may show that events occurring subsequent to the comprehensive zoning have proven that the zoning body's initial premises at the time of the last comprehensive rezoning were incorrect. Bellanca v. County Comm'rs, 86 Md. App. 219, 231 (1991); Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975).² The Petitioner here

² It is important to note that although a finding of mistake by the Board typically means that the decision of whether to grant the requested rezoning lies within the Board's discretion, this is not the case where the Petitioner can show that the existing zoning classification deprives him of any reasonable use of the property. In such cases, if the Petitioner can show that the existing zoning classification unconstitutionally deprives him of any reasonable use of the property, then the requested rezoning is not within the Board's discretion, but is mandatory. Anne Arundel County v. A-Pac

has met its burden of proof with regard to both of these tests for establishing error.

A. The Petitioner established that the 1992 classification of the property was in error because it failed to take into account then-existing facts, projects or trends.

As stated above, a Petitioner asserting error makes out a case by showing that certain facts, projects or trends existed at the time of the last comprehensive rezoning and that these were not taken into account by the zoning body. Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975). Typically, this evidence consists of expert testimony or available County records, documents and plans. "It is presumed . . . that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing." Dorsey, 292 Md. at 357-58.

In this case, the Petitioner presented strong evidence that the County Council failed to take into account certain facts, projects or trends -- including factors specifically enumerated in § 2-356(j)(2) -- that were present in 1992.

1. Population Trends and Market Conditions

Timothy Harrison testified at length as to the studies that were conducted and the analysis that was prepared by the Petitioner as to the population and demographics of the area surrounding the subject site. See Transcript from September 29, 1993 Hearing, a copy of which is enclosed, hereafter cited as (Sept. 29, 1993, T. 23-28). In addition to the demand for retail services generated by the significant residential developments located to the west of the

Limited, 67 Md.App. 122, 129-30 (1986).

subject property, along Falls Road, Mr. Harrison (and later Mr. Gavrelis) noted that additional demand was being created by the residents moving to Mays Chapel North, Mays Chapel Village, Chapelgate and several other new residential developments. (Sept. 29, 1993, T. 26). See also Transcript from October 19, 1993 Hearing, a copy of which is enclosed, hereafter cited as (Oct. 19, 1993, T. 57). The Petitioner's analysis concluded that the rezoning and subsequent development of the Broad Street Market would "serve the needs of thousands of families living on the west side of I-83" and alleviate the current necessity for these residents to travel through the York and Padonia Road intersection and up and down the York Road corridor for grocery shopping. (Sept. 29, 1993, T. 28).

Robert T. Kleinpaste, of the Legg Mason Realty Group, testified to the extent of the office/industrial real estate recession in the area and the resulting overabundance of office and industrial space; according to his testimony, these conditions developed in the early 1990's and were apparent even in 1992, at the time of Baltimore County's last comprehensive zoning. (Oct. 19, 1993, T. 11-12). Similarly, George E. Gavrelis, an expert in planning and zoning with Daft-McCune-Walker, Inc., stated that in his opinion the County Council erred by failing to provide for needed retail/commercial zoning in this area, or even to recognize that such a need existed. (Oct. 19, 1993, T. 11-12).

Given the presumption that the County Council was aware of these population and market changes, which were well underway in 1992, it is apparent that the Council failed to take them into account with

respect to the subject property, when it declined to zone the property commercially, and instead maintained the MLR, O-1 and DR 3.5 zoning classification.

2. Adequacy and Availability of Transportation and Other Public Facilities

From a traffic perspective, Mickey Cornelius, a traffic engineer with the Traffic Group, Inc., testified in detail about the history of the traffic shed in which the subject property is located and the problems associated with the nearest major intersection -- the intersection of York and Padonia Roads -- less than half a mile from the subject site. Mr. Cornelius explained that the York and Padonia intersection had been a Level F or "failing intersection" (in terms of traffic flow at peak hours) for several years. (Sept. 29, 1993, T. 193-94, 197-200). Mr. Cornelius further explained how, under Baltimore County's Basic Services legislation, a Level F designation would preclude development, except development on industrially-zoned sites, such as the subject property with its existing MLR zoning.

In other words, the requested reclassification would give the County greater control over development of the subject site and enable it to prevent development that might exacerbate traffic problems. Mr. Cornelius testified as to why retail/commercial uses, such as the one proposed by the Petitioner, generate less peak hour traffic than do office or industrial uses, to and from which large numbers of people travel during peak morning and evening rush hours. (Sept. 29, 1993, T. 196-98).

On the basis of Mr. Cornelius' testimony, it is reasonable to conclude that the County Council failed to address the need to

balance infrastructure with appropriate development in the area of the subject property. Notwithstanding that the County Council knew at the time of the 1992 comprehensive zoning that the intersection of York and Padonia Roads was a failing intersection, and that it knew or should have known that a retail/commercial classification would produce much less negative impact on crucial peak hour conditions than an industrial one, the Council maintained on the property an industrial zoning classification that would permit development that could severely exacerbate the existing traffic problem.

The opening of the Warren Road interchange at I-83, a development that was certainly anticipated at the time of the 1992 comprehensive zoning, does not obviate the fact that the County Council failed to take into consideration the traffic problems of the area when it retained existing zoning on the property. As the testimony indicated, the Warren Road interchange is only a partial interchange, and it can only be expected to raise the York and Padonia Road intersection from a Level F to a Level D. Thus, notwithstanding the Warren Road interchange, if industrial development were permitted on the subject property where new traffic trips are generated by new employees, it would, over time, aggravate traffic problems at the intersection of York and Padonia Roads, likely causing them to revert to a Level F. (Sept. 29, 1993, T. 205, 210). This is in contrast to a retail/commercial development where shoppers represent traffic trips already using the same road network.

As to public facilities other than transportation, the Petitioner's expert witness was Frederick N. Chadsey, IV, a

professional engineer with G.W. Stephens & Associates. Mr. Chadsey compared the Petitioner's proposed use to those uses permitted under the existing industrial zoning and concluded that there would be no significant difference in the impact on these other public facilities. (Sept. 29, 1993, T. 157-58). As to possible storm drainage problems, Mr. Chadsey testified about research and studies he had conducted and concluded that the proposed development, as designed, would provide adequate safeguards. (Sept. 29, 1993, T. 160-65, 177-78).

Additional expert testimony on public facilities was given by Mr. Gavrelis of Daft-McCune-Walker, Inc. In addition to echoing the testimony of Mr. Cornelius with regard to traffic in the area and how the proposed use would have less impact than would the type of use permitted under current zoning, Mr. Gavrelis confirmed that other public facilities (water, sewerage, solid waste disposal, etc.) were adequate to support the proposed development. (Oct. 19, 1993, T. 41, 51, 58-59).

3. Character of the Surrounding Area -- Compatibility of Uses under Present vs. Proposed Zoning

Both Mr. Gavrelis and Samuel G. Crozier, a land planner and landscape architect with Crozier & Associates, testified for the Petitioner as planning experts. Mr. Crozier clearly articulated his belief that the existing zoning on the subject site was in error. (Sept. 29, 1993, T. 85). Specifically, Mr. Crozier explained that a great deal of the land in the area that had been zoned industrial had not been developed with industrial uses, but with other, non-industrial uses permitted in the ML zone. (Sept. 29, 1993, T. 88-

92). As a result, Mr. Crozier stated, the area around the subject site gives almost no indication that industrial zoning exists. Indeed, an industrial classification is not consistent with the character of the area. (Sept. 29, 1993, T. 93-94).

Mr. Gavrelis explained at length how the character of the Padonia Road corridor was commercial rather than industrial, oriented towards office and retail uses, and how the uses proposed by the Petitioner were much more compatible with that character -- especially in light of the Documented Site Plan -- than were those permitted under the existing MLR zoning. (Oct. 19, 1993, T. 53-56). In support of this testimony, the Petitioner submitted numerous photographs, keyed to the 200-scale zoning map, to depict the commercial character of the area. See Petitioner's Exhibit 24A and 24B.

4. Consistency of the Proposed Zoning with the Master Plan

The Baltimore County Master Plan: 1989-2000, adopted in 1990, is the County's fundamental planning document. Mr. Gavrelis testified that the current industrial zoning of the subject property is inconsistent with the Master Plan as it relates to this area of the County, in that the Master Plan declares that there should be more advantageous use of existing infrastructure, whereas the current zoning reflects the County Council's erroneous failure to consider the different effects that industrial and commercial development would have on the transportation network. (Oct. 19, 1993, T. 41-42). More important, Mr. Gavrelis explained why, with the Documented Site Plan, the Petitioner's requested rezoning to BM would correct

the Council's error by lessening the strain on the transportation infrastructure. (Oct. 19, 1993, T. 59).

B. The Petitioner established that events occurring since the 1992 comprehensive zoning have proven that the Council's initial premises were incorrect.

As noted earlier, the Petitioner may also establish error or mistake by showing that events occurring subsequent to the last comprehensive zoning have proven that the Council's premises at that time were incorrect. Bellanca v. County Comm'rs, 86 Md. App. 219, 231 (1991); Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975). In Rockville v. Stone, 271 Md. 655, 662 (1974), the Court of Appeals stated:

On the question of original mistake, this Court has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize rezoning.

Accordingly, if there are "facts occurring subsequent to a comprehensive zoning [which] were not in existence at th[at] time, and, therefore could not have been considered," they may be considered as evidence in determining whether the Council was in error. Dorsey, 292 Md. at 356 (quoting Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975)). Of course, since such facts were not in existence at the time of the previous comprehensive rezoning and "could not have been considered, there is no necessity "to present evidence that such facts were not taken into account by the Council" Id.

In this case, the Petitioner has presented an abundance of evidence relating to facts and circumstances occurring subsequent to the comprehensive zoning in 1992, such as the findings and

recommendations of the Baltimore County Planning Staff and Planning Board contained in the Hunt Valley/Timonium Redevelopment Study, the Documented Site Plan (which, should the reclassification be granted, would, by law, control the use and manner of development of the property), and the numerous changes in the area. This evidence is summarized below as it relates to the factors set out in § 2-356(j)(2) of the Zoning Regulations.

1. Population Trends and Market Conditions

Expert witness Robert T. Kleinpaste testified to the overabundance of office and industrial space in the area. Mr. Kleinpaste conducted the initial market analysis that is part of the Hunt Valley/Timonium Redevelopment Study, as well as a 1993 update of that market analysis. (Oct. 19, 1993, T. 6, 8). He testified that there was a "gross oversupply of office space" in the market and a "gross oversupply of land zoned for future office construction. . . ." (Oct. 19, 1993, T. 10). He also explained how the office market for the area had worsened considerably since 1992 (the date of the last comprehensive rezoning), with vacancies rising to approximately 18.4%. (Oct. 19, 1993, T. 11). With such an overabundance of office space, as well as a lack of demand, Mr. Kleinpaste concluded that it would be "at least ten years" before any office construction was demanded in the area. (Oct. 19, 1993 T. 12). The picture Mr. Kleinpaste painted with regard to industrial space was even harsher; he noted that the current vacancy rate in the Hunt Valley/Timonium area had "skyrocketed" from 6.5% in 1990 to 15.5% in 1993, and this equated to a thirteen-year supply of industrial space.

Site Plan as being located within the sixty-foot stream buffer shown on the plan. (Sept. 29, 1993, T. 163)⁷

James Dieter, Director of the Department of Environmental Protection and Resource Management, confirmed that the floodplain associated with this property is confined to the two stream channels running along the property to the west and the north. (Oct. 19, 1993, T. 74)⁸ As demonstrated by this testimony of these experts, neither of these locations of the floodplain will affect the Documented Site Plan.

Because the Board had sufficient evidence upon which to find that the Appellees had, in fact, identified the One-Hundred-Year Floodplain on the Documented Site Plan by way of expert testimony, it acted properly in exercising its discretion and denying the Motion to Dismiss.

⁷ The County Code specifically authorizes the Director of the Department of Environmental Protection and Resource Management to grant a variance from the regulations governing stream buffers as long as a certain burden of proof is met. § 14-334. Contrary to the impression left by the Memorandum of Appellants Michael and Penny Gerber, this legislatively sanctioned procedure is an appropriate method of requesting and receiving a variance. Regardless, the grant or denial of such a variance is not relevant to the issue whether the floodplain was properly identified on the property.

⁸ While Mr. Dieter did testify that, in order for his office to establish the appropriate buffers, the floodplain would need to be delineated by the Department of Public Works, at no time did he suggest that this issue would prevent the Board of Appeals from granting the reclassification. The establishment of the appropriate buffers is actually handled as part of the Development Plan Approval Process.

(Oct. 19, 1993, T. 12). According to Mr. Kleinpaste, the recession in the office/industrial market is not cyclical, but "structural and very fundamental to . . . this region in particular." (Oct. 19, 1993, T. 14).

Mr. Kleinpaste's testimony was buttressed by that of another expert witness, Jerome B. Trout. Mr. Trout is a recognized expert in commercial real estate, who represents numerous major retail companies. He testified to the general unavailability of retail/commercial sites in the Timonium area and, specifically, to the "very serious shortage of land available in th[e] corridor for retailers of a size in excess of 20,000 square feet." (Sept. 29, 1993, T. 47). In fact, based upon his continuous market search since 1992 on behalf of Harrison & Grass, as well as his work for several major retailers, Mr. Trout concluded that there were no other appropriate sites available for development or redevelopment for a project of this size in the subject area. (Sept. 29, 1993, T. 47).

The ongoing length and intensity of the office and industrial real estate recession and the shortage of retail/commercial space attested to by Messrs. Kleinpaste and Trout are factors that were not and could not have been accurately taken into account when the County Council decided in 1992 to retain current zoning on the subject property. Although there was a recession in these markets in 1992 (and had been for some time), the worsening of the situation was not known or predicted at that time. Moreover, the true extent of the office/warehouse glut that has developed in the Hunt Valley/Timonium area was not then appreciated. The first draft of the Hunt

Valley/Timonium Redevelopment Study was not released by the Office of Planning and Zoning until November 19, 1992, a month after the comprehensive zoning, and the Study was not adopted by the Baltimore County Planning Board until April 15, 1993. Only now is the Study under consideration by the County Council. The Study is an important fact or circumstance appearing since the 1992 comprehensive zoning that helps to demonstrate that the County Council's action in 1992 in connection with this property was a mistake. Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975).

2. Character of the Surrounding Area -- Compatibility of Uses under Present vs. Proposed Zoning

Without question, the most significant occurrence relating to compatibility of the proposed zoning has been the submission by the Petitioner of a Documented Site Plan. The importance of this plan is underlined by the testimony of Mr. Long, a planner from the County Office of Planning and Zoning and the Director-Secretary to the Baltimore County Planning Board, who stated that his office supported the Petitioner's request "based on our analysis of the documented site plan. . . ." (Sept. 29, 1993, T. 67). Mr. Long indicated that representatives from the Office of Planning and Zoning had visited the subject site on several occasions, had reviewed the Documented Site Plan in conjunction with both the Baltimore County Master Plan: 1989-2000 and the Hunt Valley/Timonium Redevelopment Study, and had determined that the Petitioner's request is more compatible with the surrounding area than development under current zoning would be. (Sept. 29, 1993, T. 67-68, 70).

In addition, Mr. Gavrelis testified that, because the Comprehensive Map process does not allow for the submission of documented site plans, there is no way the County Council could have considered development controls such as those provided by the Documented Site Plan during the 1992 Map process. (Oct. 19, 1993, T. 38-39). Mr. Cornelius likewise testified that, from a traffic perspective, the Documented Site Plan would generate traffic mostly from nearby, and not during morning or evening peak hours. (Sept. 29, 1993, T. 196). Hence, the requested rezoning would result in a benefit to traffic conditions in this area, when compared to conditions that would result from development of those uses permitted under the existing MLR classification.

In this Board's opinion in Caves Valley Club, Inc., Case No. CR-89-367 (May 31, 1989) at 5-6, the Board recognized that a documented site plan is, in effect, a subsequently occurring event that can support a rezoning on the basis of mistake, since the County Council was unable to consider such a plan during the last comprehensive zoning process.

One final point that should be noted with regard to compatibility, was the testimony of Sandy Earp, President of the Timonium Heights Community Association. The Timonium Heights Community Association represents those residents living in the residential community adjacent to the proposed development (ie. between the southside of Padonia Road and the northside of the Timonium Fairgrounds and between the west side of York Road and the east side of the light rail). (Sept. 29, 1993, T. p. 51). Ms. Earp

testified that her community association had held meetings to discuss the proposed Broad Street Market and had subsequently decided to support the project because they felt it would be more compatible with their residential neighborhood than those use permitted under the existing industrial zoning. (Sept. 29, 1993, T. p. 53-56). Similar testimony from Michael Farinacci, who lives directly behind the property, as well as David Young and Howard Lenderking, concurred with that of Ms. Earp's as to the compatibility of the proposed project with the surrounding area. (Sept. 29, 1993, T. p. 60-62, 64).

3. Recommendation of the Planning Board and the Office of Planning and Zoning

As stated above, Mr. Long appeared at the hearing and testified that both his office, the Office of Planning and Zoning, and the Planning Board supported the Petitioner's reclassification request. (Sept. 29, 1993, T. 67).

4. Consistency of the Proposed Zoning with the Master Plan

Mr. Gavrelis pointed out that the Baltimore County Master Plan 1989-2000 contemplates redevelopment in the area near the subject property, as long as that development protects "the integrity of the adjacent residential communities . . . from noise, traffic, intrusion of nonresidential land uses and so forth." (Oct. 19, 1993, T. 44). Mr. Gavrelis then gave his expert opinion that this is exactly what the subject petition does:

It establishes a viable land use. At the same time, it protects by means of landscaping, berming, buffering and limitation on use by virtue of the use permit for parking that, in effect, does not result in intrusion of nonresidential

land uses into the residential component of the Timonium Heights area.

(Oct. 19, 1993, T. 44).

The Master Plan itself is intended to be been supplemented and amended by the Hunt Valley/Timonium Redevelopment Study.³ See Study at p. II-6. Mr. Long, of the Office of Planning and Zoning, testified that the market analysis prepared by Legg Mason and contained in the Study found high vacancy rates for office and industrial uses in the Hunt Valley/Timonium corridor, and that, based upon these rates, the Study calls into question the appropriateness of additional office and industrial facilities in the area. (Sept. 29, 1993, T. 68). Moreover, the Study recommends that the County support "appropriate development of vacant sites within the redevelopment and/or employment areas where quality design will limit negative impacts on any surrounding residential or employment areas."

There was ample testimony, as noted above, that the development proposed by the Petitioner here would have limited impact on the surrounding residential area. (Oct. 19, 1993, T. 49). As to the quality of the design, there was testimony from Mr. Harrison, Geoffrey Glazer, the project architect, and others as to the quality and attractive design of the proposed Broad Street Market. (Sept. 29, 1993, T. 19-24, 28, 180-86). Thus, the proposed development is consistent with the recommendation of the Hunt Valley/Timonium Redevelopment Study and, as such, with the Master Plan.

³ As yet the County Council has not adopted the Hunt Valley/Timonium Redevelopment Study, but has held the required public hearing. Formal adoption is anticipated in the near future.

II. Has the Petitioner shown that the requested use permit for parking should be granted?

As part of the Documented Site Plan, the Petitioner has also requested a use permit, so that part of the parking for the Broad Street Market can be located on the Petitioner's O-1 zoned land. The requirements for such a permit are set out in § 409.8.B of the Baltimore County Zoning Regulations. There was specific testimony that the Petitioner's request met these requirements.

First, Mr. Harrison testified that the parking for which the use permit was needed would be used only during the hours of operation of the stores, from 8:00 a.m. to 10:00 p.m. (Sept. 29, 1993, T. 40). He also stated that the use permit area would not be used for loading or service vehicles, or for trash trucks or dumpsters. (Sept. 29, 1993, T. 40). According to Mr. Harrison, lighting for the use permit area would be sufficiently regulated in conjunction with the lighting for the entire parking lot as noted on the Documented Site Plan. (Sept. 29, 1993, T. 40). Mr. Harrison stated that he was familiar with § 502.1 of the Zoning Regulations, referenced in § 409.8.B, and that, the use permit would meet the requirements of that section and have no adverse impact on the surrounding community. (Sept. 29, 1993, T. 40).

Mr. Crozier testified that the proposed parking lot would not be connected with the neighborhood, and, that it would be well-landscaped to provide screening for adjacent properties. (Sept. 29, 1993, T. 106-07). Like Mr. Harrison, he concluded that the use permit would not be detrimental to the health, safety or general welfare of the community. (Sept. 29, 1993, T. 106).

Mr. Gavrelis provided the most specific testimony about how the Petitioner's request for a use permit satisfied County requirements:

It's my opinion that the plan as laid out[,] which limits parking only to passenger vehicles [and] provides proper screening and lighting constraints, will have no adverse impact on the adjoining properties and is consistent with the standards required for a special exception in [§] 502.1 of the [Z]oning [R]egulations, i.e. will not overcrowd the land, will not have any adverse impact on health, safety and welfare, etc.

(Oct. 19, 1993, T. 60). Mr. Gavrelis also concluded that granting the requested use permit would be consistent with the requirements contained in § 409.8.B.2. He pointed out that those landowners who lived closest to the subject site did not object to the parking layout and, in fact, supported the Petitioner's request. (Oct. 19, 1993, T. 61).

Based upon this expert testimony, it is clear that the Petitioner met its burden of proof under §§ 409.8.B and 502.1 to obtain the requested use permit.

CONCLUSION

The Petitioner has presented compelling evidence to show that the current zoning of the subject property is a mistake. Indeed, it has made out a case under each of the methods for proving error that are recognized under Maryland law: first, it has demonstrated that the County Council failed in 1992 to take into account important facts, or projects or trends which were then reasonably foreseeable of fruition; second, it has produced clear evidence of subsequently occurring facts and events that have proven that the assumptions upon which the Council acted in 1992 were erroneous.

As to facts, projects and trends that existed but were not taken into account by the County Council in 1992, the Petitioner produced persuasive expert testimony and exhibits, including testimony as to why the current zoning conflicts with the County Master Plan and why development under that zoning would exacerbate traffic problems, as well as how the development proposed in the Documented Site Plan would be consistent with the surrounding uses and preferable in nearly every respect.

As to subsequently occurring facts and events that prove the County Council's assumptions in 1992 were incorrect, the Petitioner again presented abundant expert testimony, together with the Documented Site Plan, the Hunt Valley/Timonium Redevelopment Study, and the updated 1993 Legg Mason Analysis for the area.

Moreover, the evidence presented by the Petitioner established that, with the Documented Site Plan, the requested zoning reclassification to BM would correct the error made by the County Council in 1992.⁴

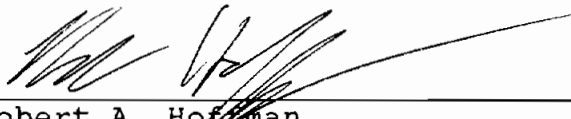
Finally, as to the requested use permit for parking, the Petitioner provided ample testimony that there would be no adverse impact and that the other requirements of in §§ 409.8.B and 502.1 of

⁴ The Petitioner would respectfully submit to this Board that in light of the expert testimony that established that under present and projected future market conditions it will not be economically feasible to develop the property at all as either an office or industrial site, the requested zoning reclassification is not only warranted, but mandated since without the ability to develop the property under the present zoning, the Petitioner is being deprived of all reasonable use of the property.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of November, 1993, a copy of the foregoing Memorandum in Support of Reclassification Request was mailed to:

Peter Max Zimmerman, Esquire
People's Counsel
Old Courthouse
400 Washington Avenue
Towson, Maryland 21204


Robert A. Hoffman

MEMO0096.GPW

IN THE MATTER OF
 THE APPLICATION OF
BAKER LAND COMPANY, et al
 FOR A ZONING RECLASSIFICATION
 FROM M.L.R. O-1 & D.R. 3.5 TO
 B.M. ON PROPERTY LOCATION ON
 THE SWC BROAD & PADONIA
 8TH ELECTION DISTRICT
 3RD COUNCILMANIC DISTRICT

BEFORE THE
 COUNTY BOARD OF APPEALS
 OF
 BALTIMORE COUNTY
 CASE NO. CR-93-305-SPH

* * * * *

People's Counsel's Memorandum

I. Introduction

This Petition for Reclassification involves approximately 6.57 acres of unimproved land located on the southwest corner of the intersection of Padonia Road and Broad Avenue. The site is located on the west side of Padonia Road between York Road and the Harrisburg Expressway. The 6.57 acres are zoned as follows: 4.84 acres M.L.R., 1.51 acres O-1, and .22 acres D.R. 3.5. The Petitioner is requesting a reclassification of 5.86 acres to B.M. He is also requesting business parking in the O-1 zone. A Hearing on these matters was held on September 28, 1993 before this Board and continued on October 19, 1993.

II. Facts and Argument

The subject property is a vacant parcel located in the Timonium Heights residential community which consists of approximately 70 homes. The site is bounded by Padonia Road to the north, York Road to the east, the Timonium Fairgrounds to the south and the Central Light Rail Line to the west. Broad Avenue bounds the subject site immediately to the east and ends at or near the southern boundary of the site. The southwest

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IV. The Board of Appeals Made Adequate Findings of Fact in its Opinion and Order.

Appellants contend that the Board of Appeals failed to set forth in its Opinion, dated February 24, 1994, sufficient factual findings to support its grant of the requested zoning reclassification at issue in this case. The Opinion rendered by the Board of Appeal, though, contains adequate factual findings and grounds for its decision and, therefore, fully complies with Section 2-356(j) of the County Code. See Opinion and Order of the Board of Appeals, dated February 24, 1994. Remand to the Board of Appeals, thus, is not warranted.

The requirement that the Board of Appeals support its decision with factual findings and provide its reasons for making that decision ensures that the parties are apprised of the facts relied upon by the Board in reaching its decision and, further, permits meaningful judicial review of those findings. Mossburg v. Montgomery County, 329 Md. 494, 507, 620 A.2d 886 (1993); Harford County v. Preston, 322 Md. 493, 505, 588 A.2d 772 (1991).

In this case, the Board of Appeals summarized and evaluated the evidence produced at the hearing and the testimony of the various witnesses that appeared before it. Further, the Board summarized Appellees' burden of proof with respect to the granting of a reclassification. Additionally, the Board highlighted the testimony and evidence it found important in making the decision to grant the requested reclassification.

quadrant of the intersection of Padonia and York Road in which the subject site is located, is primarily zoned M.L.-I.M., O-1, R.O. and D.R. 3.5. The exception is a small sliver of B.L. zoned property located at the intersection of Padonia and York Road. The Timonium Light Rail transit stop is located at the southwest corner of Timonium Heights. It should be noted that other vacant properties exist in this quadrant. To the east of the subject site along Padonia Road toward York Road, a vacant parcel is zoned O-1, R.O. and D.R. 3.5. Likewise near the Light Rail stop to the south and southwest of the property, a large vacant parcel is zoned D.R. 3.5. The decision in this case may impact the development of those parcels. In addition to the residential community and the transit stop, this southwest quadrant is improved exclusively by office buildings to the west. The only commercial area in the quadrant is the aforementioned small strip of B.L. fronting on York Road at its intersection with Padonia. The Master Plan and the Hunt Valley/Timonium Redevelopment Study identifies this area as a mixed use redevelopment area.

The subject site was a specific issue in the 1992 Comprehensive Map Process as Issue No. 3-151. The Petitioner requested M.L.-I.M. zoning but the County Council retained the current zoning.

The developer of the site is an out-of-state partnership. A documented site plan was submitted for a shopping center consisting of a 60,000 square foot Metro Food Supermarket, a

Rit Aid Drug Store, and an Engore Book Store. The development is referred to as the Broad Street Market.

The following witnesses testified for the Petitioner:

Timothy C. Harrison of Harrison & Grass of Harrisburg, Pennsylvania, George E. Gavrelis, land developer, Frederick Chadsey of G. W. Stevens Engineering Company, Robert T. Kleinpaste of the Legg Mason Realty Group, Jerome B. Trout, a commercial real estate broker, Richard M. Hillis of Hillis-Carnes, Engineers, Jeffrey Long of the Office of Planning and Zoning, the architect for the project, and three citizens who reside in the Timonium Heights residential community.

These witnesses testified to either the economic advantages to the property owner to rezone, or the suitability of the documented site plan. Neither premise supports the claim of error or mistake. Economic considerations may have a probative value if the Petitioner presents evidence that he has no reasonable use of his property because it could not be used for any permitted uses in the existing zone. The Petitioner has presented no such testimony in the instant case. Likewise the Baltimore County Zoning Regulations are clear on the value of a site plan in a reclassification case. "Property may not be reclassified solely on the basis of documentation relating to the property's proposed use." (BCZR 2-58.1 n). Testimony describing the site plan by the Petitioner's experts or the

George Gavarelis described the zoning in the surrounding area consisting of a mixed use. Since the proposed commercial zoning exists elsewhere in the area, he believed the reclassification to be appropriate in order to support the documented site plan. The witness also relied on the population growth west of I-83 (Mays Chapel) as supportive of this reclassification. There was no evidence that the Council was unaware of Mays Chapel which has been developed for some time. Moreover, the witness failed to offer proof that additional commercial zoning was needed to balance the current mixed uses. Although instrumental in a mixed use area, Mr. Gavarelis ignored the use of the M.L. or M.L.R. zones as a proper buffer to the impact of a B.L. zone adjoining a D.R. zone. He could only state that B.L. uses would generate less concentrated peak hour traffic than M.L. uses. He stated no facts or legal argument to suggest an error. Rather he based his expert opinion on the viability of the site plan and the fact that other commercial uses existed along York Road. Notably, the witness failed to explain the proposed zoning as a better fit than the current zoning in the Comprehensive Plan.

The Petitioner offered the testimony of Mr. Robert Kleinpaste of the Legg Mason Realty Group, and Jerome B. Trout, a commercial real estate broker. Both witnesses focused on the vacant office space in Baltimore County, particularly in Hunt Valley. The existence of a sufficient amount office space in Baltimore County was projected into the future. Such

projections were based on economic forecasts which the witnesses acknowledged may be unpredictable and inaccurate. Neither witness commented on the impracticability of other uses in the current zone other than office buildings.

The Petitioner also presented residents of Timonium Heights and the current President of the Timonium Heights Community Association as supporting the proposed development. However, residents of Timonium Heights opposed to the rezoning were also in attendance and testified in opposition to the proposal.

The People's Counsel/Protestants called the following witnesses:

James Dieter of the Baltimore County Department of Economic Protection and Resource Management (DEPRM), Norman Gerber, land planner, Michael E. Gerber and Penny M. Gerber, residents of the Timonium Heights Residential Community, Emmanuel Passas, a resident of Timonium Heights, John M. Bearer, a resident of Timonium Heights.

James Dieter testified that the evaluation of the subject site has not been completed by DEPRM. He testified his office reviews all comprehensive rezoning issues and petitions to reclassify with regard to stream and forest buffers. DEPRM could not render a comment on the proposed development until such studies are completed. Mr. Dieter pointed out the absence of flood plain delineation on the documented site plan

which must be reviewed by the Baltimore County Department of Public Works. Therefore the Petitioner has not met the burden of proving the proposed zoning is appropriate since he has not satisfied all review requirements. {See Baltimore County Code §2-356(L)}.

The citizens who testified in opposition to the Petition focused on (1) the incompatibility of the proposed use and (2) the appropriateness of the uses permitted under the current zone.

John Bearer resides at 9 West Main Street in Timonium Heights. Mr. Bearer described the neighborhood with photographs. He pointed out that the owner of the subject site owns additional adjoining property. Mr. Bearer fears that a rezoning of this site would support reclassification of the property owner's other sites, thus squeezing out the residential community of Timonium Heights by retail development. He also believes the retail development will reduce property values. In addition, the traffic generated by the retail development would be significantly more than if developed under the current zone. Mr. Bearer noted the York and Padonia intersection is an F-level until the Warren Road exit off I-83 is completed. The increased traffic generated by the proposed development would exacerbate a heavy volume of traffic on York Road and jeopardize the safety of the Timonium Heights residents who must exit and enter their development on York Road.

Penny Gerber concurred with Mr. Bearer's concerns of the effect of the proposed development on property values, traffic and safety. She focused on the need for a supermarket as suggested by the developer. Mrs. Gerber testified there are eight supermarkets along York Road from Timonium Road to Shawan Road. She has visited all of the stores. These current supermarkets provide the same products and services as the proposed Metro Food Market to the surrounding neighborhoods. None of the residential communities in the area are more than a fifteen minute drive from at least one of the eight supermarkets. Mrs. Gerber refuted any claims made by the Petitioner that driving across York Road was a deterrent to the Timonium Heights residents or any other residences located on the west side of York Road. Nor did the proposed supermarket offer an additional convenience to the quick stop stores located within walking distance of Timonium Heights. Mrs. Gerber suggested that Timonium Heights residents who testified in favor of the Broad Street Market may have motives differing from the residents opposed to the reclassification.

Mr. Michael Gerber identified his residence located approximately 150 feet from the subject site. He fears the encroachment of retail into the residential community will decrease property values. He agrees that increased traffic generated by retail development including delivery trucks, will jeopardize the safety of the neighborhood children. He also feared the level of noise on weekends as well as weekdays will

disturb th neighborhood.

Emmanuel Passas, a resident of Broad Avenue echoed the concerns of the other residents. Mr. Passas particularly feared the noise and traffic intrusion on weekends and evenings. He preferred office or light industrial use as less intrusive into the Timonium Heights residential area. Mr. Passas also confirmed the existence of streams and wetlands on the site.

The People's Counsel's/Petitioner's expert witness, Norman Gerber testified that no error or mistake was made by the County Council. The present zoning is compatible with the area and complies with the Master Plan and the Hunt Valley/Timonium Redevelopment Study; conversely he believes the proposed use is incompatible and conflicts with the aforesaid Master Plan and Redevelopment Study.

Mr. Gerber identified the boundaries of the subject site as the North Central Railroad Line, Padonia Road, York Road and the Timonium Fairgrounds. Mr. Gerber viewed the current M.L.R. zoning as entirely appropriate for the area. A review of the zoning map supports the position. A purpose of the M.L.R. zone is to serve as "traditional bands between residential or institutional areas and M.L. or M.H. zones." (BCZR §247.) The subject site provides such a buffer between the R.O. and D.R. 3.5 zones east of the subject site and the M.L.-I.M. zone west of the subject site. Mr. Gerber stated that the manufacturing zones also serve as buffers between residential

and commercial development. (BCZR §247). North of the subject site, across Padonia, is commercial development. The subject site serves as a buffer between that commercial zone and the D.R. 3.5 Timonium Heights residential community south of the subject site. Another purpose of the M.L.R. zone is "to permit grouping of high types of industrial plants in locations with convenient access to the expressways...and to fill special occasional needs of certain types of light industry;". The M.L.R. zone should also "permit planned dispersal of industrial employment centers so as to be conveniently and satisfactorily related to residential communities;". (BCZR §247.) Since the Master Plan in the Hunt Valley/Timonium Study calls for a mixed use in this area, Mr. Gerber testified as to the correctness of the current zoning which provides employment opportunities near the Light Rail Station, has access to I-83, has the acreage to accommodate light industry and serves accurately as one of the mixed uses along with the D.R. 3.5 in the interior of the quadrant and the commercial areas fronting on York Road. Other parcels adjacent to or within the neighborhood of the subject site are zoned manufacturing, namely M.L.-I.M. across Padonia Road to the north, M.L.R.-I.M. south of the Timonium Heights residential neighborhood and the Maryland State Fairgrounds zoned M.R.- I.M. Thus the current zoning on the subject site is not an aberration in the area and maintains the mixed use called for. Mr. Gerber testified to the uses provided in the M.L.R. zone. In addition to office buildings, the M.L.R. uses

includ light industry, warehouses and some manufacturing uses. These uses would balance and compliment the mixed use concept. However, the proposed zoning for the subject site, would be inconsistent with other commercial development in the southwest quadrant. Such commercial activity is limited to property fronting on York Road. Also, the commercial zone north of the subject site across Padonia Road differs from the subject site since it is not surrounded by residential property. All other residentially zoned property in the immediate area is surrounded by R.O. or manufacturing zones except for the commercial sites fronting on York Road.

III. Legal Argument

In February, 1993, the Petitioner requested a reclassification of the subject property. A mere four months before, the County Council adopted the Baltimore County Comprehensive Zoning Map. The subject site was a specific issue in the Comprehensive Map Process wherein the property owner requested M.L.-I.M. zoning. The County Council retained the current M.L.R. zoning on the majority of the subject site and retained the D.R. 3.5 and O-1 zoning on the remainder of the subject site. Within one year after proposing that M.L.-I.M. zoning is warranted, the Petitioner now states to this Board that the manufacturing zone is in error and that a commercial zone is appropriate. In truth, the Petitioner's request to reclassify the property is merely a response to the latest proposed development rather than based on a mistake or error in the

current zoning.

Maryland case law has enumerated basic principles applicable to reclassification cases alleging mistake or error:

1. A strong presumption of correctness in the original or last comprehensive zoning process.
2. The existence of strong evidence of a mistake in the original or comprehensive rezoning.
3. A presumption that at the time of the adoption of the Comprehensive Maps, the County Council had before it and did in fact consider, all the relevant facts and circumstances then existing.

Thus, in Coppolino v. County Board of Appeals of Baltimore County, 23 Md. App. 358(1974), Judge Rita Davison stated:

"While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced, Rockville v. Henley, 268 Md. 469 (1973); Heller v. Prince George's Co., 264 Md. 410, 412 (1972); Creswell v. Baltimore Aviation, 257 Md. 712, 721 (1970). Since, as we have also said, this burden is onerous, Cabin John Ltd. v. Montgomery Co., 259 Md. 661 (1970); Creswell v. Baltimore Aviation, supra; Wells v. Pierpont, 253 Md. 554 (1969), the task confronting appellants [appellees], whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one.'" (emphasis in original). 23 Md. App. at 367, citing Stratakis v. Beauchamp, 268 Md.

Specifically, on pages 1 through 3, the Board outlined the testimony of the numerous witnesses appearing on behalf of Appellants, highlighted the points it found important in making the decision to grant the reclassification, and made findings of fact with respect to the evidence. Opinion, pp. 1-3.

Next, the Board briefly summarized the evidence and the testimony produced by the Appellants. Opinion, p. 4. The Board's summary of the testimony of the four lay witnesses, in which it couches this testimony in terms of "fears" and "concerns," demonstrates that the Board attributed no probative value to what amounts to pure speculation on the part of these witnesses. Opinion, p. 4. The Board evidently found equally unconvincing the testimony of the sole expert witness offered by the Appellants. Opinion, pp. 4-5.

Next, the Board of Appeals specifically addressed what Appellees were required to prove in order for the requested reclassification to be granted, that the present classification was in error and that the proposed reclassification is warranted, and concluded, based on the evidence, that Appellees had met their burden of proof. Opinion, pp. 4-5. On the issue of this reclassification, the Board specifically noted that it had found several of the Appellees' expert witnesses to be particularly convincing. Opinion, p. 5.

Contrary to the Appellants' assertions, it is further evident from the Board's Opinion that the Board considered the

In order for the Petition to be sustained, the applicant who alleges that the County Council did not consider all the relevant facts and circumstances then existing must show:

- "1. That specific physical facts were not readily visible or discernable at the time of the comprehensive zoning;
2. That such existing facts were not taken in account;
3. Or, ...that the Council failed to make any provision to accommodate any project, trend, or need which it, itself, recognized as existing at the time of the comprehensive zoning." Boyce v. Sembly, 25 Md. App. 43 (1975)."

The Petitioner in the instant case offered no testimony that physical facts existed at the time of the 1992 comprehensive zoning which would indicate an error in retaining the present zoning. Even if the Petitioner has alleged such physical facts, there is no evidence that the County Council was not aware of all existing facts with regard to the subject site. In fact, the subject property was a specific issue on the 1992 map process, thus necessitating specific attention to the site by the County Council. Likewise, the Petitioner offered no evidence of project, trends or needs acknowledged to exist by the County Council but disregarded by it in 1992.

The County Council's retention of the present zoning does not conflict with the Master Plan. The Master Plan or the Hunt Valley/Timonium Redevelopment Study (hereafter "Study") does not suggest the need for more retail uses in the corridor. More pointedly, there is a concern about the spread of retail

uses into the adjacent residential neighborhoods. (Study p. III-9.) The Study clearly identifies a large concentration of office buildings near the subject site at Padonia and Deereco Roads, suggesting that this area presents no particular environmental, traffic or other concerns that would not support industrial development. A further intrusion into the existing stable and well maintained residential developments by commercial uses, without the buffer zones provided in the Regulations (i.e. M.L.R. and R.O.) would disturb the mixed use balance fostered by the Master Plan.

In addition, the Petitioner failed to present any evidence of changes in trends or needs arising subsequent to the 1992 map process. The Petitioner's witnesses testified to cyclical economic changes and vacant office space. There was no evidence that, even if correct, these facts were not known to the County Council in 1992. Moreover, the Court of Appeals has dismissed vague "economic infeasibility" as a basis to rezone property. Testimony that suggests the best suitable use for property requires a rezoning because uses permitted in the existing zone are not "profitable" is not evidence of a mistake or error. The Court of Appeals was not persuaded by several expert witnesses testifying on the economic advantages of rezoning in Trainer v. Lipchin, 269 Md. 667 (1973). There the subject site was also in the Timonium/Lutherville area on Ridgely Avenue nears its intersection with York Road. The Court rejected a request to rezone from D.R. 16 and D.R. 3.5 to

B.L. filed immediately after the Comprehensive Maps were adopted by the County Council. The Court viewed the Trainer and other cases filed immediately after the adoption of the Maps as "another assault on the county-wide Comprehensive Zoning Maps adopted by the Baltimore County Council..." (Id. 668) In dismissing the Petitioner's experts, the Court stated:

"To the extent that the testimony of the latter two witnesses is intended to support a claim of unconstitutional confiscation, it is strikingly reminiscent of the testimony we rejected in Stratakis v. Beauchamp and Rockville v. Henley, both supra, as "generalizations of economic infeasibility." As Judge Diggs said for the Court in Henley:

"Here, the vague and unsupported expert testimony, however emphatic, does not take the place of the necessary factual support that would prove an applicant is denied all reasonable use of his property. Appellee's experts merely invoked economic infeasibility as some form of magic incantation in hope of transposing one zoning use to another. Such general statements and use of magic words are ineffective. In order to obtain rezoning on the basis of an unconstitutional confiscation an applicant must show that he has been deprived of all reasonable use of his property and that it could not be used for any of the permitted uses in the existing zone. Cabin John Ltd. v. Montgomery Co., 259 Md. 661, 271 A.2d 174 (1970); Montgomery Co. Council v. Kacur, 253 Md. 220, 252 A.2d 832 (1969); Baltimore City v. Borinsky, 239 Md. 611, 212 A. 2d 508 (1965)." 268 Md. at 477 (emphasis in original).

In the past, property owners in neighborhoods with a mixture of uses have requested rezoning believed to increase

the profitability of their properties. Also, property owners have attempted to equate highway improvements as evidence of mistake. But the Court of Appeals of Maryland has addressed such situations for many years and rejected similar claims of mistake or change as insufficient to overcome the reasonable exercise of legislative judgment. In Baltimore County alone, the high Court reversed commercial rezonings granted by the County Board of Appeals in Wells v. Pierpont, 253 Md. 554 (1960); Westview Park Improvement and Civic Assn. v. Hayes, 256 Md. 575 (1970); and Miller v. Abrahams, 257 Md. 126 (1970). In a Prince George's County case involving another request for commercial zoning in a mixed neighborhood, the Court stated in Messenger v. Board of County Commissioners, 259 Md. 693 (1970):

The drawing of the line between zones is a function of the legislative body and the fact that the legislative body has rezoned an adjoining or nearby property does not require it to rezone the property under consideration. See Board of County Commissioners for Prince George's County v. Farr, 242 Md. 315, 218 A.2d 923 (1966). In Farr, Judge Oppenheimer, for the Court, stated:

"In County Council for Montgomery County v. Gendleman, 227 Md. 491, 498, 177 A.2d 687, 690 (1962), Chief Judge Brune, for the Court, stated the principle which we find to be applicable to the present case, as follows: 'Even if there were facts which would have justified the Council in rezoning the property, this would not of itself prove the denial of rezoning illegal. There is still the area of debatability, and one who attacks the refusal of rezoning must meet the heavy burden of proving that the action of the legislative body in refusing it was arbitrary, capricious or illegal.' Chief Judge Brune said, further: 'Zoning and rezoning do require the drawing of lines, and the legislative body may draw them

subject to the same limitations as are applicable to other phases of the zoning process.' It was held in that case that, on the record before the Council, its action in refusing to rezone the property involved was not beyond the field in which its action was fairly debatable. The Council was not bound to extend that classification [commercial-office use] beyond the lot at which it had elected to stop." 271 A.2d at 171-72.

Similarly, the Court of Special Appeals rejected an administrative commercial rezoning in Lutherville, just north of the beltway in Boyce v. Sembly, 25 Md. App. 43 (1975).

A recent reclassification decision of this Board in Timonium Heights cannot be ignored. The Board in 1991 denied a Petition to rezone a .3 acre parcel in Timonium Heights from D.R. 3.5 to B.L. for the seasonal sale of snowballs and Christmas decorations. (In the matter of the Application of Warren J. Hays, Sr., et al, Case No. R-91-116, Item 10, Cycle IV). The Petitioner in that case sought but was denied reclassification in the 1988 Comprehensive Zoning Map Process. Mr. Gavarelis, a witness in that case, also described the site to be in a transitional area, and stated that the submission of a site plan supported a reclassification based on mistake or error. However, the Board stated "Despite the restrictive Documented Site Plan, granting B.L. zoning to this property would be an intrusion into the residential nature of the neighborhood and would, the Board finds, produce increased hazards to public safety and welfare." (p.7.)

IV. Conclusion

This case is severely lacking in any evidence of mistake or error in the current zoning and certainly falls short of the legal burden of substantial evidence. Rather it presents an attempt by the property owner to use the zoning process to enhance profitability, according to the development proposals that may from time to time come his way. Also, the developer in this case is exploiting the residences near this site to attract business and profits from a market (i.e. Mays Chapel) that will not bear the negative factors of commercial intrusion into a residential neighborhood. The Petitioner is another landowner who attempts to utilize the zoning process to isolate him from the risks, including economic, that are inherent to land speculation and development.

It is incumbent upon this Board to recognize the purposes of Comprehensive Zoning and the dangers of piecemeal zoning to satisfy the economic goals of real estate developers. This is particularly important in highly developed areas such as the instant case wherein any change to zoning has significant impact on the high concentrations of population in the neighborhood. For these reasons, it is respectfully submitted that the Petition for Reclassification should be denied.

Respectfully submitted,



PETER MAX ZIMMERMAN
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

CS
CAROLE S. DEMILIO
DEPUTY PEOPLES COUNSEL

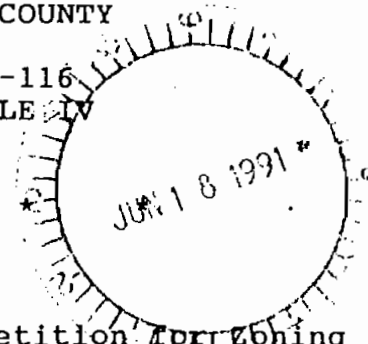
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of November, 1993, a copy of the foregoing ~~Petition for Reclassification~~ *Peoples' Counsel's Memorandum* was mailed, postage prepaid to: Robert A. Hoffman, Esquire, 210 Allegheny Avenue Towson, Md. 21204.

CS
CAROLE S. DEMILIO_

IN THE MATTER OF THE
THE APPLICATION OF WARREN
J. HAYS, SR., ET AL
FOR A ZONING RECLASSIFICATION
FROM D.R. 3.5 TO B.L.
ON PROPERTY LOCATED ON THE
NORTHEAST CORNER OF GIBBONS
BOULEVARD & GREENSIDE DRIVE
8TH ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT
* * * *

* BEFORE THE COUNTY
* BOARD OF APPEALS
* OF BALTIMORE COUNTY
* CASE NO. R-91-116
* Item #10, CYCLE IV
* 1990-1991
* * *



O P I N I O N

This matter comes before the Board as a Petition Approving Reclassification, seeking a change from the existing D.R. 3.5 classification to B.L. zoning. The property of .3 acre is located on the northeast corner of Gibbons Boulevard at Greenside Drive in the Fourth Councilmanic District of Baltimore County. The property is owned by the Petitioner, Warren J. Hays, Sr., and is currently being occupied as a family residence. Petitioners were represented by Stuart D. Kaplow, Esquire. The Office of People's Counsel was represented by Peter Max Zimmerman, Esquire. The hearing on this matter was two days in length.

When considering Petitions for Reclassification, this Board is governed by Section 2-58(j) of the Baltimore County Code which states, in essence, that before any property may be reclassified, the Board must find that there has occurred substantial change in the character of the neighborhood, or that the last classification of the property was established in error.

Petitioners presented a Documented Site Plan for the proposed reclassification merging two seasonal retail uses with the residence by altering the existing building and installing appropriate signage, lighting and parking spaces. Petitioners have

resided on the site since 1956. Thomas E. Hays, son of the Petitioners, testified that he and his brothers began operating a snowball stand on the site in 1977 to supplement their college finances. The operation has continued since that time with seasonal sale of Christmas trees, wreaths and decorations added to the snowball sales. The Hays' grandchildren have since become involved in the operation and a number (up to 18) of part-time student employees have been hired. Mr. Hays further testified that the retail operation was moved off-site in 1987 as a result of a complaint filed with the County Office of Zoning. It is currently situated in a trailer which is stored on the subject property and placed curbside on Greenside Drive north of Gibbons Boulevard for daily operation. The retail operations cannot be continued on the subject site unless its zoning is reclassified to B.L. Mr. Hays testified that the neighborhood, known as Timonium Heights, is essentially residential with an office building located directly across the street, Padonia Elementary School, and a County Library branch in the immediate vicinity. On cross-examination, Mr. Hays stated that he sought a reclassification of the property under the Comprehensive Zoning Map Process in 1988.

George E. Gavrelis, accepted by the Board as an expert witness in land planning, testified on behalf of the Petitioners. Mr. Gavrelis testified that the subject site is in a transitional area, "just at the edge of an R.O. zone," which is appropriate for B.L. classification. He pointed out that the Documented Site Plan in evidence provides severely restricted use of the site, without

adding buildings; landscape buffers are included; and that hours of operation are limited to 11 a.m. to 11 p.m. from May 1 through October 5 and December 1 through December 24, annually. Mr. Gavrelis further testified that while B.L. zoning would allow 56,610 square feet of retail space, the Documented Site Plan limits retail space to 2,127 square feet. He also opined that an error had been made in the 1988 Comprehensive Zoning Map review because the County Council did not (in fact, could not, by law) consider the Documented Site Plan and because the use was already on site. Mr. Gavrelis, in his capacity as a land-use expert, further stated that the proposed zoning offered no compromise to the health, safety and general welfare of the community; that it was in keeping with the concept of the County's Master Plan; and that the use was appropriate for a Community Conservation Area. The Planning Board has recommended the approval of reclassification within the constraints of the Documented Site Plan.

Mr. Thomas Hays was then recalled for continued cross-examination. Responding to questions by People's Counsel, he stated that neither he nor his brothers who are the operators of the business reside on the subject property. He also testified that some products - ice, flavors, cups and spoons - are sold from the site to other snowball retailers.

Mr. Kaplow proffered that Stanley Kennedy, a neighbor residing four doors west of the subject site, was unable to appear at this hearing, but would have testified in favor of the Petitioners' request.

"applicable" factors contained in Section 2-356(j)(2) of the County Code as required by People's Counsel v. Mockard, 73 Md. App. 340, 349, 533 A.2d 1344 (1987). Of those factors contained in Section 2-356(j)(2), the only factors that are even arguably relevant and applicable to this reclassification are: (1) population trends and market changes; (2) the adequacy of transportation facilities; (3) compatibility with the character of the surrounding area; (4) the recommendation of the planning board or office of planning and zoning; and (5) consistency of proposed zoning with the Master Plan. As is evident from Section I of this Memorandum, Appellees presented testimony and introduced evidence on each of these factors at the hearings before the Board. Further, as the Board's Opinion evidences, each of these relevant factors was considered by the Board, and sufficient findings of fact were made as to each factor.

In its Opinion, the Board of Appeals demonstrated that it found that the County Council erred in failing to act in accordance with the changing population trends and market conditions of the area. Specifically, the Board found, based upon the testimony of many of the Appellees' witnesses, that there is an oversupply of land zoned for office or industrial uses, rendering development of this site under the present classification unfeasible, and a corresponding undersupply of land zoned for retail uses to meet the demands of the population. Opinion, pp. 1-3.

John Cook of The Traffic Group, accepted as an expert by the Board, testified that he had conducted a study of the site and surrounding streets. In his opinion, traffic in the area would not be increased by the B.L. use since the business is already in operation. Mr. Cook's study revealed that all signalized intersections in the immediate area are operating at acceptable levels and that the closes "F" level intersection - York and Padonia Roads - is on a highly developed business corridor. Mr. Cook further testified that the B.L. classification and its required on-site parking would remove some cars from the traffic pattern while the drivers were patronizing the business, thus relieving traffic and parking congestion.

People's Counsel began its case with the testimony of Arnold F. Keller, III, Deputy Director of Planning for Baltimore County. Mr. Keller testified that his agency's review of the Petition did not find adequate reasons to reclassify the subject property. The 1989 Master Plan supports residential use of the site as part of its Community Conservation precept. While the Petitioner has been "innovative" in developing his Documented Site Plan, the agency feels the alterations to the site are not appropriate to a residential neighborhood. Mr. Keller further testified that there is no commercial development in the area except the R.O. office building earlier described. He added that the Planning Office staff is of the opinion that the Petitioner's only viable option is to relocate the business in a nearby commercial zone.

Stephen Weber, a neighbor and registered professional

engineer, then testified. Mr. Weber is employed by the County's Bureau of Traffic Engineering but his testimony is that of a private citizen. Mr. Weber stated his concerns that reclassification of the Hays property, located at "the gateway to residential Timonium Heights," would open the community to further commercial intrusion. The R.O. site serves as a buffer between the heavily developed York - Padonia corridor and the residential neighborhood. Mr. Weber then described traffic and parking patterns in the neighborhood, continued violation of posted parking restrictions by customers of the current operation, and traffic hazards caused by those customers.

Robert Underwood of 45 Gibbons Boulevard, 2 doors from the Hays property, testified that his residence is situated above the subject site. Customers of the retail operation, when it was located on-site as well as at its current location, use private driveways to turn around on Gibbons Boulevard and violate posted parking restrictions. Mr. Underwood feels that a reclassified commercial operation on the Hays property would increase traffic problems in the neighborhood.

Robert E. Fink of 18 Gibbons Boulevard, a retired police officer, testified to the physical limitations of Greenside Drive which curves "sharply" above Gibbons Boulevard and has a posted speed limit of 25 miles per hour. Mr. Fink testified that parked cars whose drivers are customers of the retail operation often block sight lines and force residents to pull out into Gibbons Boulevard under unsafe conditions. He further testified that cars

continue a use not permitted by law on a residential site. The requested zoning is incompatible with the neighborhood which has no commercial or business zoning except the R.O. buffer site described. People's Counsel further argued that no error exists in the current zoning classification because the County Council cannot, by law, consider Documented Site Plans during the Comprehensive Zoning Map Review Process. Further, the Documented Site Plan now in evidence for the subject property did not exist at the time of the 1988 Council review when this property was an issue. The next review is slated in 1992, when this site could once again be designated an issue for review. People's Counsel believes an issue of this magnitude to a residential community should be in the hands of the County Council.

The Board finds as a fact that no error exists in the classification of the subject property as D.R.3.5. It is clearly located in a stable residential neighborhood, meeting the parameters of a Community Conservation Area. While the Hays' commercial operation on and off-site seems, at face value, to be a simple family-operated small business, the Board finds as a fact that it is a business which has expanded through the years and is not appropriate to this neighborhood. Despite the restrictive Documented Site Plan, granting B.L. zoning to this property would be an intrusion into the residential nature of the neighborhood and would, the Board finds, produce increased hazards to public safety and welfare.

For the reasons indicated above, this Board shall deny the Petition for Reclassification.

O R D E R

IT IS THEREFORE this 18th day of June, 1991 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Reclassification of the .3 acre from D.R. 3.5 to B.L. as shown on the Documented Site Plan, be and the same is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

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

Lynn B. Moreland
Lynn B. Moreland

4-28-90

RE: PETITION FOR RECLASSIFICATION : BEFORE THE COUNTY BOARD OF
FROM M.L.R., O-1 & D.R. 3.5
TO B.M. ZONE FOR PARCEL 1; & : APPEALS OF BALTIMORE COUNTY
PETITION FOR SPECIAL HEARING
FOR BUSINESS PARKING IN AN :
O-1 ZONE FOR PARCEL 2;
Parcel 1: SWC Padonia Rd. and :
Broad Ave.; Parcel 2: SE/S
End Roosevelt St., SW Broad : Case No. CR-93-305-SPH
Ave., 8th Election District, (Item 3, Cycle I)
3rd Councilmanic District :
HARRISON & GRASS, Petitioner;
(Baker Land Company, et al., :
Owners).
:

: : : : : : : : :

ENTRY OF APPEARANCE

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

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

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

I HEREBY CERTIFY that on this 28th day of April, 1993,
a copy of the foregoing Entry of Appearance was mailed to Robert
A. Hoffman, Esquire, Venable, Baetjer & Howard, 210 Allegheny
Ave., Towson, MD 21204, Attorney for Petitioner.

Peter Max Zimmerman
Peter Max Zimmerman



Petition for Reclassification

to the Board of Appeals of Baltimore County

for the property located at SW corner of intersection of Broad Street and Padonia Road

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 (1) that the zoning status of the herein described property be reclassified, pursuant to the MLR 0-1 and DR-3,5

Zoning Law of Baltimore County, from an BM-C26 zone to an BM-C26 zone, for the reasons given in the attached statement; and (2) for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for:

/ Special Hearing

business parking in an 0-1 zone pursuant to Sec. 409.8.B.1, B.C.Z.R.

and (3) for the reasons given in the attached statement, a variance from the following sections of the Zoning Regulations of Baltimore County:

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

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

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

~~XXXXXXXXXX~~ Developer/Petitioner:
Harrison & Grass

(Type or Print Name)

By: Timothy C. Harrison
Signature Timothy C. Harrison
100 Chestnut Street

Address

Harrisburg, PA 17101

City

State

Zipcode

Attorney for Petitioner:

Robert A. Hoffman, Esquire

(Type or Print Name)

Signature Venable, Baetjer & Howard

210 Allegheny Avenue

Address

Towson, Maryland 21204

Phone No.

494-6200

City

State

Zipcode

Legal Owner(s):

See Attached

(Type or Print Name)

Signature

(Type or Print Name)

Signature

Address

Phone No.

City

State

Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

Robert A. Hoffman, Esquire

Name Venable, Baetjer & Howard

210 Allegheny Avenue, Towson, MD 21204

Address

Phone No.

494-6200

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following date

Next Two Months

ALL

OTHER

REVIEWED BY:

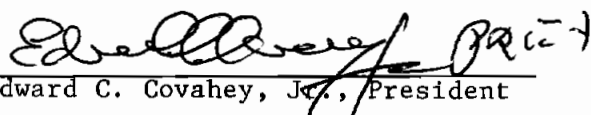
DATE

LEGAL OWNERS:
(May be signed in counterparts)

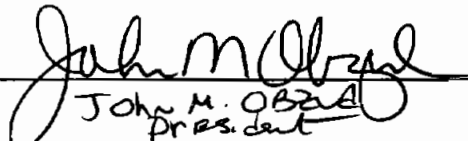
Baker Land Company

By: 
Lloyd Markitt, Agent

Title Warantee Corporation

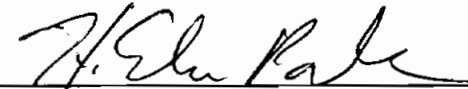
By:  PR-7
Edward C. Covahey, Jr., President

Maryland Title Guarantee

By: 
John M. O'Shea
President


Richard Fogel

Baltimore County, Maryland

By: 
H. Emslie Parks, ESQ

2nd 2/23/73

CR-93-305-SPH
REV 3/31/93

FROM THE OFFICE OF
GEORGE WILLIAM STEPHENS, JR., & ASSOCIATES, INC.
ENGINEERS
658 KENILWORTH DRIVE, SUITE 100, TOWSON, MARYLAND 21204

Description to Accompany
Petition for Reclassification.

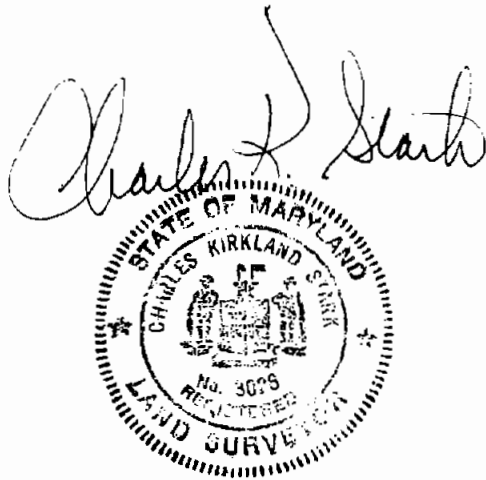
February 22, 1993

Beginning for the same at the corner formed by the intersection of the west right-of-way line of Broad Avenue 40 feet wide with the south right-of-way line of Padonia Road thence binding on the west right-of-way line of Broad Avenue

- 1 - South 18° 10' 41" East 356.03 feet thence
- 2 - South 71° 49' 19" West 305.00 feet thence
- 3 - South 18° 10' 41" East 126.00 feet thence
- 4 - South 71° 49' 19" West 40.00 feet thence
- 5 - South 18° 10' 41" East 30.00 feet thence
- 6 - South 71° 49' 19" West 326.72 feet thence
- 7 - North 22° 44' 43" West 133.80 feet thence
- 8 - South 67° 15' 17" West 30.00 feet thence
- 9 - North 5° 47' 17" East 445.26 feet thence
- 10 - North 74° 27' 43" East 488.10 feet and thence
- 11 - North 76° 11' 08" East 43.96 feet to the place of beginning.

Containing 6.57 acres of land more or less.

THIS DESCRIPTION FOR ZONING PURPOSES ONLY.



CR-93-345-SPH

REV 3/31/93

FROM THE OFFICE OF
GEORGE WILLIAM STEPHENS, JR., & ASSOCIATES, INC.
ENGINEERS
658 KENILWORTH DRIVE, SUITE 100, TOWSON, MARYLAND 21204

Description to Accompany Petition for
Special Hearing for Commercial Parking in
An O-1 Zone.

March 31, 1993

Beginning for the same at a point on the south right-of-way line of Roosevelt Street (Paper Street) 30 feet wide distant 345 feet South 71° 49' 19" West from the west right-of-way line of Broad Avenue 40 feet wide thence binding on the said south right-of-way line of Roosevelt Street

- 1 - South 71° 49' 19" West 326.72 feet thence
 - 2 - South 22° 44' 43" East 126.40 feet thence
 - 3 - North 71° 49' 19" East 316.66 feet and thence
 - 4 - North 18° 10' 41" West 126.00 feet to the place of beginning.
- Containing 0.93 acres of land more or less.

THIS DESCRIPTION FOR ZONING PURPOSES ONLY.



Further, with respect to the effect that the proposed use would have on transportation facilities, noting that Mickey Cornelius, Appellees' traffic engineer, was "especially persuasive," the Board found the present classification to be in error and the proposed classification to be warranted. Specifically, the Board found that the present traffic facilities would be adequate if the property were developed in accordance with the Documented Site Plan because the proposed use would not add additional traffic during the peak times. Opinion, pp. 2-3. In fact, when compared to the uses permissible under the present classification, the Board specifically found that the proposed classification to be the correct classification because:

any industrial or office use would significantly increase the traffic during peak hours as customers and employees would be coming from somewhere else to the site, and would have to use the above-named intersection [Padonia Road and York Road]. As far as any potential traffic problems, the proposed use is far more acceptable than any additional office or industrial use.

Opinion, p. 3.

Additionally, the Board of Appeals considered and specifically found that the requested classification and proposed use would be compatible with the surrounding area. For instance, the Board found, based on testimony from the architect for the project, Geoffrey Glazier, that the proposed classification (with the proposed use) would be appropriate in this area and that Appellees, through the Documented Site Plan, had addressed all concerns with respect to the

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

CR-93-305-SPH

District 8th Date of Posting 9/10/93
Posted for: Reclassification
Petitioner: Baltimore Co. & Title Warehouse Corp & Md. Title Corp & R. F. & B. Co.
Location of property: SW/Cor. Padonia Rd. & Broad Ave. & SE/S. & end Rogers St
SW/ Broad Ave
Location of Sign: Sign posted at intersection of Broad & Rogers St.
Location of property added to sign
Remarks: Property could not be reached from Padonia Rd.
Posted by M. Stealy Date of return: 9/17/93
Signature
Number of Signs: 1



CERTIFICATE OF PUBLICATION

NOTICE OF HEARING
Case Number: CR-83-305-SPH
Parcel 1: SWC, Padonia
Road and Broad Avenue
Parcel 2: SE/S end,
Roosevelt Street, SW
SW Board Avenue
8th Election District
3rd Councilmanic
Petitioner(s):
Baker Land Company and
Title Warantee Corporation,
Maryland Title Guarantee,
Richard Fogel and Baltimore
County Maryland
HEARING: TUESDAY,
SEPTEMBER 28, 1993 at
10:00 a.m. in Rm. 48, Old
Courthouse, 400 Washington
Avenue, Towson, Maryland
21204.
Petition: to reclassify the prop-
erty's zoning from M.L.R., O-1
and D.R. 3.5 to B.M. (Parcel 1).
Petition for Special Hearing for
business parking in an O-1 zone
(Parcel 2).
WILLIAM T. HACKETT,
Chairman
County Board of Appeals
NOTES: (1) Hearings are Handi-
capped accessible; for special
accommodations Please Call
887-3353.
8/241 August 26.

TOWSON, MD., Aug 27, 1993

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 Aug. 26, 1993.

THE JEFFERSONIAN,

A. Henickson
LEGAL AD., TOWSON

PETITION OF: People's Counsel; John M.
Bearer; & Michael & Penny Gerber
CIVIL ACTION # 94-CV-02565 76/249

IN THE MATTER OF BAKER LAND COMPANY ETAL

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

Susan Wilton
Clerk's Office

Date: 5-19-94



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

CR-93-305-SPH
ITEM #335

Account: R-001-6150

#2

RECLASS

Number

2/23/93
VENNIE BAETJER & HOWARD
W. EGHENY AVE.
TOWSON, MD, 21204

ED.-8
C.D.-3

657 A ST.

1010 PADONIA RD. &
BROAD AVE.

\$1,250-RECLASS-
1,250-SP. HEARING
\$1,500.00

\$1,500.00

02A02H0007610HRC
BA, P002:47PH02-23-93

Please Make Checks Payable To: Baltimore County

2/23/93

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

JUNE 4, 1993

HARRISON & Grass
c/o Timothy C. Harrison
100 Chestnut Street
Harrisburg, Pennsylvania 17101

RE: PAYMENT OF POSTING AND ADVERTISING FEES - RECLASSIFICATION PETITION
CASE NUMBER: CR-93-305-SPH
Parcel 1 -SWC Padonia Road and Broad Avenue and
Parcel 2 -SE/S end Roosevelt Street, SW Broad Avenue
8th Election District - 3rd Councilmanic
Petitioner(s): Baker Land Company and Title Warantee Corporation and
Maryland Title Guarantee and Richard Fogel and
Baltimore County, Maryland

Dear Petitioners:

Be advised that a new policy has been established to handle the fees with regard to property posting and legal advertising. As in the past, this office will ensure that the legal requirements for posting and advertising are satisfied; the policy change will effect to whom and when these fees are paid.

Cycle Reclassification Petitions are required to be heavily advertised. The initial ads, one-half page in size and running in four separate newspaper issues, contained a map of Baltimore County and a listing of all the reclass petitions in the cycle. The newspapers have billed the County \$2,740.50, this is charged back to you, equally divided among the petitioners.

Posting charges of \$35.00 and advertising charges of \$391.50 ; for a total of \$426.50, are now due. Your check in this amount should be made payable to "Baltimore County, Maryland" and immediately mailed to this office.

Individual ads for each petition will run approximately one month before the scheduled hearing date. Billing for the individual ads, due upon receipt, will come from and should be remitted directly to the newspaper.

Non-payment of fees will stay the issuance of the Order. If you have any questions concerning this letter, you may contact Gwen Stephens at 887-3391.

ARNOLD JABLON
DIRECTOR

AJ:ggs



Printed on Recycled Paper

Baltimore County Government
Office of Zoning Administration
and Development Management

7015-73
MS



111 West Chesapeake Avenue
Towson, MD 21204

POSTED

(410) 887-3353

JUNE 29, 1993

HARRISON & Grass
c/o Timothy C. Harrison
100 Chestnut Street
Harrisburg, Pennsylvania 17101

RE: PAYMENT OF POSTING AND ADVERTISING FEES - RECLASSIFICATION PETITION
CASE NUMBER: CR-93-305-SPH
Parcel 1 -SWC Padonia Road and Broad Avenue and
Parcel 2 -SE/S end Roosevelt Street, SW Broad Avenue
8th Election District - 3rd Councilmanic
Petitioner(s): Baker Land Company and Title Warantee Corporation and
Maryland Title Guarantee and Richard Fogel and
Baltimore County, Maryland

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22 IN FULL ON 8-17-93
Posting charges of \$35.00 and advertising charges of \$391.50, for a total of \$426.50, are now due. Your check in this amount should be made payable to "Baltimore County, Maryland" and immediately mailed to this office.

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RECEIVED

AUG 16 1993

ARNOLD JABLON
DIRECTOR

ZADM

AJ:ggs



Printed on Recycled Paper

Dear Petitioners:

Be advised that a new policy has been established to handle the fees with regard to property posting and legal advertising. As in the past, this office will ensure that the legal requirements for posting and advertising are satisfied; the policy change will effect to whom and when these fees are paid.

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23-1-44-2-12-93

BALTIMORE COUNTY, MARYLAND		No. 186459
OFFICE OF FINANCE - REVENUE DIVISION		
MISCELLANEOUS CASH RECEIPT		
DATE <u>8/17/93</u>	ACCOUNT <u>R-001-LIKE</u>	
	AMOUNT \$ <u>426.50</u>	
RECEIVED FROM: <u>Harrison, Linda</u>		
FOR: <u>RA CR-93-305-EFH</u>		
VALIDATION OR SIGNATURE OF CASHIER		
DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER		

of \$391.50, for a total of should be made payable to this office.

ately one month before the due upon receipt, will come

r. If you have any questions 887-3391.

RECEIVED

AUG 16 1993

ADM

TO: PUTUXENT PUBLISHING COMPANY
August 26, 1993 Issue - Jeffersonian

Please forward billing to:

Harrison & Grass
20 Erford Road, Suite 201
Lemoyne, Pennsylvania 17043
ATTN: Timothy C. Harrison
717-737-7800

NOTICE OF HEARING

CASE NUMBER: CR-93-305-SPH
Parcel 1 - SWC Padonia Road and Broad Avenue
Parcel 2 - SE/S end Roosevelt Street, SW Broad Avenue
8th Election District - 3rd Councilmanic
Petitioner(s): Baker Land Company and Title Warantee Corporation, Maryland Title Guarantee, Richard Fogel
and Baltimore County Maryland.

HEARING: TUESDAY, SEPTEMBER 28, 1993 at 10:00 a.m. in Rm. 48, Old Courthouse, 400 Washington Avenue,
Towson, Maryland 21204.

Petition to reclassify the property's zoning from M.L.R. , 0-1 and D.R. 3.5 to B.M. (Parcel 1)
Petition for Special Hearing for business parking in an 0-1 zone (Parcel 2)

William T. Hackett, Chairman
County Board of Appeals

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3180



County Board of Appeals of Baltimore County

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

April 16, 1993

NOTICE OF HEARING

CASE NUMBER: CR-93-305-SPH

Parcel 1 -SWC Padonia Road and Broad Avenue and

Parcel 2 -SE/S end Roosevelt Street, SW Broad Avenue

8th Election District - 3rd Councilmanic

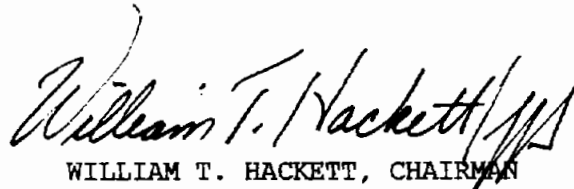
Petitioner(s): Baker Land Company and Title Warantee Corporation and
Maryland Title Guarantee and Richard Fogel and Baltimore
County, Maryland

Petition to reclassify the property's zoning from M.L.R., O-1 and D.R. 3.5
to B.M. (for Parcel 1)

Petition for Special Hearing for business parking in an O-1 zone (for
Parcel 2).

HEARING: TUESDAY, SEPTEMBER 28, 1993 at 10:00 a.m.

LOCATION: COUNTY COURTHOUSE, ROOM 48
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204


WILLIAM T. HACKETT, CHAIRMAN
COUNTY BOARD OF APPEALS

cc: Harrison & Grass
Robert A. Hoffman, Esq.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

April 30, 1993

Robert A. Hoffman, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, MD 21204

RE: Item No. 335
Case No. CR-93-305-SPH
Petitioner: Baker Land Company, et al
Reclassification Petition

Dear Mr. Hoffman:

This reclassification petition has been timely filed with the Board of Appeals for a public hearing within the April-October reclassification cycle (Cycle I). It has been reviewed by the zoning office as to form and content and has also been reviewed by the Zoning Plans Advisory Committee. The review and enclosed comments from the Committee are intended to provide you and the Board of Appeals with an insight as to possible conflicts or problems that could arise from the requested reclassification or uses and improvements that may be specified as part of the request. They are not intended to indicate the appropriateness of the zoning action requested.

If it has been suggested that the petition forms, descriptions, briefs, and/or the site plans be amended so as to reflect better compliance with the zoning regulations and/or commenting agencies' standards and policies, you are requested to review these comments, make your own judgment as to their accuracy and submit the necessary amendments and appropriate fee to this office on or before May 6, 1993. In the event that any requested amendments are not received prior to this date, the petition will be advertised as originally submitted.

In view of the fact that the submitted site plan does not indicate a proposed use at this time, the comments from this Committee are general in nature. If the request is granted and an additional hearing is required at a later date, more detailed comments will be submitted at that time.



Printed on Recycled Paper

neighborhood. Opinion, p. 2. Further, the Board found that the testimony of the President of the Timonium Heights Association, Ms. Sandy Earp, and the three closest neighbors to the project, supported this conclusion of compatibility. Opinion, pp. 2-3.

The Board of Appeals also properly considered that the Office of Planning and Zoning for Baltimore County, as testified to by Jeffrey Long, had recommended approval of the Petition for Reclassification as restricted by the Documented Site Plan. Opinion, p. 2.

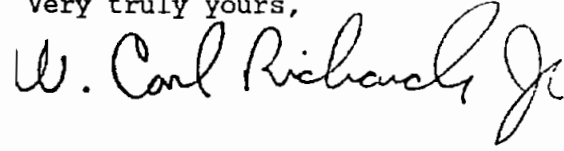
Lastly, testimony was heard and the Board properly found that the proposed classification was consistent with the Master Plan. Specifically, the Board found, again based on Mr. Long's testimony, that reclassification to be in conformity with the Master Plan and the Hunt Valley/Timonium Redevelopment Study. Opinion, p. 2.

As this summary demonstrated, all of the factors applicable and relevant to the proposed classification and Documented Site Plan were addressed by the Board in its Opinion and Order. Like the Opinion and Order at issue in Gray v. Anne Arundel County, "[a]lthough the findings are not set out in the form that appellants would prefer," in reviewing the Board's Opinion and Order in context and in their entirety, the findings of fact made by the Board of Appeals in this case are sufficient to indicate the basis for the decision and to permit judicial review. 73 Md. App. 301,

Robert A. Hoffman, Esquire
April 30, 1993
Page 2

If you have any questions concerning the enclosed comments, please feel free to contact the Zoning Office at 887-3391 or the commenting agency.

Very truly yours,

A handwritten signature in cursive script, reading "W. Carl Richards, Jr.", written in dark ink.

W. CARL RICHARDS, JR.
Zoning Coordinator

WCR:hek

Enclosures

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: April 21, 1993
Zoning Administration and Development Management

FROM: *Sub* Robert W. Bowling, Senior Engineer
Development Plan Review

RE: Zoning Advisory Committee Meeting
for Zoning Reclassification Cycle I
April, 1993 - October, 1993
Case No. 93-305-SPH Item 3 7# 335

The Development Plan Review Division has reviewed the subject zoning item. The proposed parking lot will have to be modified to meet the 7% interior landscape area requirement. A full review of the landscape plan will occur with the Development Review Process.

RWB:s

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

April 21, 1993

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

FROM: J. Lawrence Pilson *JLP*
Development Coordinator, DEPRM

SUBJECT: Zoning Item #CR-93-305-SPH *# 335*
Baker Land Company
Zoning Advisory Committee Meeting of April 1993 - October 1993

The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which the Regulations for the Protection of Water Quality, Streams, Wetlands, Floodplains, and Forest Conservation apply to the site.

The project as proposed will require a variance from Section 14-341 and must be thoroughly evaluated, before a recommendation is given regarding this zoning item.

JLP:JAW:tmr

BAKER/TXTRMP



Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

4-21-93

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

Re: Baltimore County
CASE ~~Item~~ No.: 93-305-SPH
HEARING DATE: 9-28-93

335

Dear Ms. Kehring:

This office has reviewed the referenced ^{CASE}~~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 Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small

for

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: Zoning Advisory Committee

DATE: April 16, 1993

FROM: Jerry L. Pfeifer, Captain
Fire Department

SUBJECT: Zoning Reclassifications

R-93-303	No comments
R-93-304	No comments
CR-93-305-SPH 335	Buildings on site shall comply with the applicable provisions of the 1990 Life Safety Code and the Baltimore County Fire Prevention Code. Posted fire lanes shall be provided on site for Fire Department access.
R-93-306	Site and proposed buildings on site shall, at the time of development, shall comply with applicable provisions of the 1990 Life Safety Code and the Baltimore County Fire Prevention Code.
R-93-307	The zoning variance is approved. There may be the need at the time of concept and Development plan submittal to locate some buildings to provide better fire access.
R-93-308A	Posted fire lanes shall be provided on site for Fire Department access. 35' turning radius shall be maintained on site for fire equipment maneuverability.
R-93-309	No comments

JLP/dal

cc: File

9/28/93 -Day #1 of hearing; to be continued for second hearing day;
possible dates of 10/19 and 10/27/93 cleared w/all counsel and
Board members. Notices to be sent upon confirmation of
availability of on of these dates.

10/06/93 -Notice of Assignm nt for day #2 scheduled for Tuesday,
October 19, 1993 at 10:00 a.m. sent to following:

Robert A. Hoffman, Esquire
Harrison & Grass
c/o Timothy C. Harrison
James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr.
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

10/19/93 - Case Concluded. Memos due 11/22/93.

11/22/93 -People's Counsel's Memorandum filed.

11/22/93 -Petitioner's Memorandum in Support of Request for Reclassification filed
by Robert Hoffman, Esquire, on behalf of the Petitioner. ~~(complete copy
of transcript included)~~. (Complete copy of transcript included).



County Board of Appeals of Baltimore County

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

November 24, 1993

NOTICE OF DELIBERATION

With all Post-Hearing Memoranda having been filed, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

BAKER LAND COMPANY, ET AL
CASE NO. CR-93-305-SPH

DATE AND TIME : Tuesday, January 4, 1994 at 9:00 a.m.

LOCATION : Room 48, Basement, Old Courthouse

cc: Robert A. Hoffman, Esquire Counsel for Petitioners
Harrison & Grass Petitioners
Michael E. Gerber Protestant
John M. Bearer Protestant

James Earl Kraft
People's Counsel for Baltimore County
P. David Fields /Planning Director
Jeffrey Long /Planning
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant



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on Recycled Paper

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Baker Land Company, et al
Case No. CR-93-305-SPH

DATE : January 4, 1994 /9 a.m.

BOARD /PANEL : William T. Hackett, Chairman (WTH)
Robert O. Schuetz (ROS)
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

- Opening statements by Chairman Hackett

Those present included Robert A. Hoffman, Esquire, on behalf of Petitioner; People's County for Baltimore County, Peter Max Zimmerman. Also present were John and Mary Bearer.

Purpose --to deliberate issues and matter of petition for reclassification and special hearing filed before the Board; testimony and evidence taken on September 28 and October 19, 1993; memorandums filed November 22, 1993. Opinion and Order to be issued by Board setting forth written findings of fact.

WTH: Reviewed and studied memorandums provided by parties; reviewed transcript from both hearing days; reviewed and compared notes.

Decision is to grant reclassification; necessary for Board to find facts to support reclassification; large number of witnesses; briefly highlighted reasons why M.L.R. zoning is in error and reclassification should be granted. Particularly highlighted testimony of Gavrelis; request for reclassification is supported by documented site plan. Also referenced M. Cornelius' testimony as to traffic; the support of the Office of Planning & Zoning for the proposed use; and the support of the Hunt Valley redevelopment group.

Petitioner proved error; reclassification should be granted.

Petition should be granted; from M.L.R. to B.M.

ROS: Thanked parties for memorandums filed; recommends denial of rezoning for several reasons, including legal reasons; belief that 100-year flood plain should be shown on the documented site plan; cannot argue change in neighborhood to support reclassification only error; all issues were considered by Council during map process; all properties along light rail



County Board of Appeals of Baltimore County

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

March 24, 1995

John H. Zink, III, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

Re: Case No. CR-93-305-SPH
Civil Action No. 94-CV-2565
Baker Land Co., et al

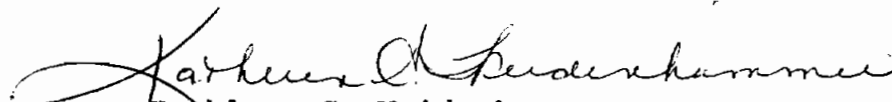
Dear Mr. Zink:

The Board is in receipt of your letter of March 23rd concerning a meeting with Chairman Hackett on Tuesday, March 28, 1995 at 9:15 a.m.

The above-referenced meeting has been cancelled by the Board until further notice. This letter will confirm my telephone calls made this date to all copied parties regarding this cancellation.

Should you have any questions, please call me at 887-3180.

Very truly yours,


Kathleen C. Weidenhammer
Administrative Assistant

cc: Patrick D. Hanley, Esquire
Mr. John M. Bearer
People's Counsel for Baltimore County
The Honorable Thomas J. Bollinger



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on Recycled Paper

VENABLE, BAETJER AND HOWARD, LLP
Including professional corporations

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517
(410) 494-6200, Fax (410) 821-0147

VENABLE
ATTORNEYS AT LAW

OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

John H. Zink, III
(410) 494-6254

March 23, 1995

561-2360

Patrick D. Hanley, Esquire
Hanley and Hanley
206 Washington Avenue
P. O. Box 5506
Towson, Maryland 21204

Mr. John M. Bearer
9 W. Main Boulevard
Timonium, Maryland 21093

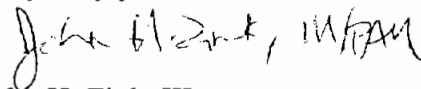
Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
Deputy People's Counsel for Baltimore County
Room 47, Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of Baker Land Co., et al
for Reclassification
Civil Action Number: 94-CV-2565
Zoning Case Number: CR-93-305-SPH
Our File Number: 23150/110694

Gentlemen:

This letter should serve to notify you that we are planning to meet with Chairman William T. Hackett on Tuesday, March 28, 1995, at 9:15 a.m. to discuss a possible revision of the Board's Opinion. Everyone is invited to attend.

Very truly yours,


John H. Zink, III

JHZ/pam

cc: The Honorable Thomas J. Bollinger
Chairman William T. Hackett

df (12) July 26, 1994 - Appellees' Answering Memorandum fd.

mar(13) Aug 9, 1994 Reply memorandum of Michael and Penny Gerber, to Petition for judicial review, fd. (rec'd 8/5/94)

September 1, 1994 Hon. Thomas J. Bollinger hearing had written opinion and orders to be filed.

PH(14) Oct 14, 1994 Opinion and Order of Court Remanding case to the Board of Appeals for further proceedings, etc, fd. (TJB)

mar(15) Oct 24, 1994 Appellants' (Michael & Penny Gerber) motion to alter/amend revise judgment, fd. (rec'd 10/20/94)

jh*(16) October 26, 1994, People's Counsel's Motion To Alter Or Amend Judgment And Request For Hearing)(rec'd 10/21/94)

jh*(17) October 26, 1994, Pltffs' Reply Memorandum in Support of Their Motion For Summary Judgment, exhibit, fd.(rec'd 10/21/94)

mar(18) Oct 31, 1994 Appellees' response to people's counsel's motion to alter or amend the judgment, fd. (rec'd 10/27/94)

as (19) November 16, 1994 Memorandum and Order from Judge Thomas J. Bollinger that the Board address certain specified issues, etc., fd. (TJB)

dd(20) Feb. 27, 1995 Supplemental Record of Proceedings , fd. (rec'd 2/22/95)

(21) Feb. 27, 1995 Amended Opinion pursuant to remand Order and Amended Memorandum Opinion and Order with exhibit, fd. (rec'd 2/22/95)

df\ (22) March 2, 1995 - Petitioner's PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Supplemental Petition for Judicial Review fd.

CG (23) Mar 6, 1995 Michael Gerber and Penny Gerber's supplemental petition for judicial review, fd.

CG (24) Mar 10, 1995 John M. Bearer's supplemental petition for judicial review, f

jh(25) March 17, 1995, Responses Supplemental Response To Petition For Judicial Review, fd.(rec'd 3/16/95)

mar(26) Mar 28, 1995 Petitioners' supplemental memorandum, fd. (rec'd 3/27/95)

mar(27) Mar 28, 1995 Appellees' supplemental memorandum, fd. (rec'd 3/27/95)

mar(28) Mar 28, 1995 Supplemental memorandum of Michael and Penny Gerber in support of appeal, fd. (rec'd 3/27/95)

mar(29) Mar 28, 1995 Petitioners memorandum to supplemental petition for judicial review, fd. (rec'd 3/24/95)

CONTINUED

313-314, 533 A.2d 1325 (1987). Therefore, remand is unwarranted.

Even if this Court agrees with Appellants that the Board of Appeals' Opinion lacks adequate findings of fact, remand still is not warranted as the Board's conclusion is uncontradicted by other sources, and only one conclusion could reasonably be reached. People's Counsel v. Mockard, 73 Md. App. 340, 349, 533 A.2d 1344 (1987); Gough v. Board of Zoning Appeals, 21 Md. App. 697, 704, 321 A.2d 315 (1974). Appellants produced no probative evidence in opposition to Appellees' expert testimony that each of the applicable requirements for granting the reclassification was satisfied. Norman Gerber, the uncle of Appellant Michael Gerber and, in fact, Appellants' only expert witness, offered no probative testimony to rebut the testimony of the Appellees' numerous experts. Nor did Mr. Gerber, or any other witness offered by the Appellants, raise an issue with respect to any factor not addressed in the above discussion. Therefore, the Board's conclusion granting the reclassification was the only reasonable one.

CONCLUSION

By virtue of the power reserved for it in Section 2-356 of the Baltimore County Code, the Board of Appeals for Baltimore County had full authority to grant the requested reclassification. The Board of Appeals, further, properly exercised this authority after finding that Appellees had met



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October 23, 1995

Robert O. Schuetz, Chairman
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: Petition for Reclassification of Property located at the Southwest
Corner of the Intersection of Broad Street and Padonia Road
Zoning Case No. CR-93-305-SPH

Dear Mr. Schuetz:

On February 23, 1994, on behalf of Baker Land Company, et al., legal owners, and Harrison & Grass Partnership, contract purchaser, a Petition for Reclassification was filed with the County Board of Appeals of Baltimore County for 6.57 acres located on the southwest corner of Padonia Road and Broad Avenue. In this interim or "cycle" rezoning petition, which was filed in accordance with Section 2.356 of the Baltimore County Code, the Petitioners requested B.M. (Business Major) zoning, in lieu of the present zoning combination of M.L.R. (Manufacturing Light Restricted), 0-1 (Office Building), and D.R. 3.5 (Density Residential).

On February 24, 1994, the Board of Appeals granted the requested reclassification for this property. The Board's decision was then appealed to the Circuit Court for Baltimore County. Upon remand to the Board of Appeals for further legal and factual findings in support of its decision, this case was then appealed to the Court of Special Appeals.

Since this cycle reclassification request has become a Comprehensive Map issue, to be decided by the Baltimore County Council in October of 1996, and because the Petitioners cannot get the requested relief prior to the adoption of the 1996

583 A.2d 1344

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

v.

Robert W. MOCKARD et al.

No. 451, Sept. Term, 1987.

Court of Special Appeals of Maryland.

Dec. 7, 1987.

Landowner petitioned County Board of Appeals for reclassification of property. On appeal from Board's order conditionally granting reclassification, the Circuit Court, Baltimore County, William M. Nickerson, J., reversed in part and remanded in part, and appeal was taken. The Court of Special Appeals, Rosalyn B. Bell, J., held that: (1) Board's limitation on future use of subject property was invalid condition on reclassification, and (2) Board improperly found error in comprehensive zoning plan absent evidence that Board properly considered factors enumerated in county code.

Affirmed.

1. Zoning and Planning §=160

"Conditional zoning" is zoning reclassification subject to conditions not generally applicable to land similarly zoned.

See publication Words and Phrases for other judicial constructions and definitions.

2. Zoning and Planning §=160

Conditional zoning is invalid under Maryland law.

3. Zoning and Planning §=191

County board's granting of specific site reclassification to automobile dealership was improper where dealership requested unconditional reclassification and did not follow

county code procedure necessary for granting of specific site reclassification.

4. Zoning and Planning §=726

Remand was required upon determination that county zoning board improperly granted reclassification to owner, conditioned upon owner's putting property to specific use, in that it was possible that board would not have granted reclassification unless it could attach condition, which had been determined to be invalid.

5. Zoning and Planning §=199

County code provision mandating "consideration" of certain factors prior to finding error in comprehensive zoning and granting prospective reclassification, requires that board articulate findings as to each of applicable factors contained in provision; board must make such findings in both finding of error in comprehensive plan and in decision that reclassification is warranted.

6. Zoning and Planning §=30

County board improperly found error in comprehensive zoning plan absent evidence that board properly considered factors enumerated in county code.

Peter Max Zimmerman (Phyllis Cole Friedman, on brief), Towson, for appellant.

Robert W. Cannon (Steven C. Hilsee and Weinberg and Green, on brief), Baltimore, for appellees.

Argued before WILNER, ALPERT and ROSALYN B. BELL, JJ.

ROSALYN B. BELL, Judge.

People's Counsel for Baltimore County appeals from a decision of the Circuit Court for Baltimore County, reversing in part and remanding in part, the administrative order of the County Board of Appeals of Baltimore County. Upon a finding of error in the county-wide comprehensive

zoning, the County Board had conditionally granted Robert W. Mockard, et al., appellees, a piecemeal zoning reclassification. Appellees filed a cross-appeal. The issues we will deal with on appeal are:

1. Whether the Board's limitation on the future use of the subject property is an invalid condition on the reclassification.
2. Whether the Board failed to make proper findings as required by the Baltimore County Code.
3. Whether there was an error in the comprehensive zoning.

Appellees, Robert W. Mockard, et al., petitioned the Baltimore County Board of Appeals for a reclassification of property zoned Business, Local (BL-CS-2). They claimed that there was an error in the 1984 comprehensive zoning map and requested a reclassification of the property to the next higher intensity business zone, Business, Major (BM-CS-2). Appellees filed an "open plat" reclassification which, if granted, authorizes any permitted use within the designated classification. The Board, finding error, granted the reclassification for the specific purpose of expanding appellees' existing used and new car dealership.

Both parties appealed the Board's decision to the Circuit Court for Baltimore County. The court affirmed the Board's finding of error in the comprehensive zoning but found that the conditional zoning was invalid. The court remanded the case to the Board to determine whether, based on the factors delineated by the county code, the prospective classification was warranted. Both appellant and appellees agree with the circuit court's finding regarding the invalidity of conditional zoning. Appellant appeals the court's finding of error. It claims that the evidence before the Board demonstrated that the requested reclassification was unwarranted. Appellees cross-appeal, contesting the court's remand to the Board for findings under the Baltimore County Code. They argue that the finding of error in the comprehensive zoning should be affirmed, and the con-

dition should be stricken without remanding the case to the Board.

Conditional Zoning

[1] Conditional zoning is a zoning reclassification subject to conditions not generally applicable to land similarly zoned. "[W]hen an area of land is rezoned from one classification to another, and such change is not outright but subject to some type of conditions, then we are confronted with a conditional zoning problem." *Board of County Comm'rs of Washington County v. H. Manny Holtz, Inc.*, 65 Md.App. 574, 579, 501 A.2d 489 (1985), quoting Miller, *The Current Status of Conditional Zoning*, Institute on Planning, Zoning, & Eminent Domain 122 (1974).

[2] In *Montgomery County v. National Capital Realty Corp.*, 267 Md. 364, 297 A.2d 675 (1972), the Court said, "The invalidity of conditional zoning in Maryland is not seriously open to question." *National Capital Realty Corp.*, 267 Md. at 373, 297 A.2d 675. This Court continues to reaffirm the invalidity of conditional zoning. *H. Manny Holtz, Inc.*, 65 Md.App. at 586, 501 A.2d 489. In *Holtz*, appellant argued that the Maryland Code provision granting local legislative bodies the general authority to rezone land contained an express grant of conditional zoning power. *H. Manny Holtz, Inc.*, 65 Md.App. at 580, 501 A.2d 489. We held that, although "various states have been attracted to conditional rezoning as a valuable planning tool, we are not inclined to construe the statute to provide for conditional use zoning in Maryland." *H. Manny Holtz, Inc.*, 65 Md.App. at 586, 501 A.2d 489.

In chartered counties such as Baltimore County, there are certain limitations to the general rule invalidating conditional zoning. The Baltimore County Code provides two alternative methods for those seeking reclassification.

Sections 2-58.1(1)-(n) permit a form of conditional zoning.¹ Baltimore County, Md.Code § 2-58.1(1) (1985 Cum.Supp.) allows a petitioner to submit a specific site plan.² That section requires petitioners to provide extensive documentation, including a specific site plan and an environmental impact statement. § 2-58.1(1) & (2). If a petitioner chooses to submit a site plan, the requirements set forth in § 2-58.1(j)³ must be satisfied before a reclassification will

1. Section 2-58.1(m) deals with amending zoning reclassification petitions and is not relevant to this case.

2. Section 2-58.1(1) provides:

"(1) If a zoning reclassification petition includes documentation relating to the proposed use of the property under petition, that documentation must include:

"(i) Elevation drawings and a plan satisfying the zoning commissioner's rules of practice and procedure and showing locations, coverage, floor areas, heights, character, and exterior materials of all proposed structures and all existing structures to be retained; and all existing structures to be removed; signs visible outdoors; all principal uses; hours of operation; maximum number of employees; and maximum levels of emanations (including sound and other vibrations; dust, odors, gases, light and heat); parking and loading facilities; existing and proposed public and quasi-public facilities on and adjacent to the site, including stormdrain systems, waterlines, sewerage, streets and drives, and railroad sidings; existing ponds and other bodies of water, watercourses, 100 year floodplains, major vegetations, and unusual natural formations, and proposed changes in grade; and

"(2) An environmental impact statement, as defined in the Baltimore County Zoning Regulations, that concerns the proposed use of the property under petition and that has been competently prepared by a professional planner or engineer of appropriate qualifications.

"A plan submitted pursuant to this subsection may show the location of a precise building envelope (a clearly delimited area within which a building is to be entirely located but which is larger than the area covered by the building itself) in lieu of the precise location of a building; may show precise maxima and minima in lieu of fixed values; may set forth lists of precisely described possible uses of a given space, in lieu of specifying a single use; and may otherwise reasonably allow for flexibility or alternatives, provided that appropriate precise limits are set forth."

3. Section 2-58.1(j) provides:

"(j) Before any property is reclassified pursuant to this section, the board of appeals must find:

"(1) That there has occurred a substantial change in the character of the neighborhood in which the property is located since the

be granted. The reclassification is contingent upon compliance with the submitted site plan and is specifically exempted from the uniformity requirement of Baltimore County Code § 22-20, Baltimore County, Md.Code, § 2-58.1(n) (1985 Cum.Supp.).⁴ Appellees did not choose to proceed under this method of reclassification.

In the case *sub judice*, appellees sought an unconditional (or "open plat") reclassification. Section 2-58.1(j) sets forth

property was last classified, or that the last classification of the property was established in error; and

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

4. Section 2-58.1(n) provides:

"(n) Property may be reclassified under this section only upon making the findings required under subsection (j) of this section. Property may not be reclassified solely on the basis of documentation relating to the property's proposed use. However, any provision of section 22-20 to the contrary notwithstanding, if the petition to reclassify the property does include such documentation and is granted, the property may be used only in accordance with the plan included within that documentation; the zoning classification of any such property will revert to the previous classification unless, within three (3) years after the date of the final order granting the petition, the property is being used in accordance with the plan or, in a case where development is necessary to implement the plan, unless the development either is completed or has been substantially undertaken and is being diligently pursued to completion. The requirement that such a property be utilized in accordance with a plan, and the provision that otherwise the classification of the property will revert, will not be affected by the subsequent enactment of a zoning map, pursuant to section 22-22 or 22-23 of this

the requirement for such an unconditional reclassification.⁵ Appellees were not required to submit any of the documentation necessary for a specific site reclassification. An unconditional reclassification, if granted, allows appellees to engage in any use permitted by the new zoning classification.

Even though appellees proceeded under and requested an unconditional reclassification, they introduced substantial evidence at the hearing of their intent to use the property to expand the existing car dealership. Neighboring property owners testified that they were concerned about a general reclassification, but had no objections to appellees' extension plans. Thus, it is not surprising that in finding error, the Board specifically conditioned the reclassification "for the specific purpose of expanding the existing used and new car dealership." In this way, the Board apparently felt it could grant the reclassification and at the same time protect the quality of life of the surrounding neighborhood.

[3] While we appreciate the Board's concerns, we cannot ignore the method it chose to implement them. Appellees requested an unconditional reclassification. The Board did not grant it. Appellees did not follow the procedure necessary for the granting of a specific site reclassification. The Board did grant that type of reclassification. Thus, we affirm the trial judge's decision that the Board's conditional granting of the reclassification was invalid.

[4] Appellees propose that we strike the condition but affirm the Board's decision to reclassify the property. We disagree. It is possible that the Board would have granted the reclassification despite the invalidity of the condition. But it is equally as likely that the Board would not have granted the reclassification unless it could attach the condition. Thus, it is necessary to remand the case to the Board

Code unless the zone classification of the property is further changed by that map.

5. See *supra* n. 3.

to determine whether *all* permitted uses under the prospective classification are, in fact, warranted.⁶

Section 2-58.1(j)(2)

The circuit court found that in granting the reclassification the Board's opinion did not reflect the requisite consideration of factors enumerated in § 2-58.1(j)(2). The court remanded the case to the Board to consider whether, based on those factors, the reclassification to BM was warranted. Section 2-58.1(j)(2) provides:

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

Under that provision, the Board must make two findings: 1) that there was error in the comprehensive zoning, and 2) that the prospective reclassification is warranted. Both of those findings may be made "only upon consideration of factors . . . including, but not limited to, all of the following"

6. On remand, appellees may choose to amend and proceed in accordance with the specific site plan provisions.

Two issues are before us on appeal. The first involves an interpretation of the phrase "consideration of factors." The second issue is whether the Board's finding of error in the comprehensive zone plan was in accordance with § 2-58.1(j)(2).

Consideration of Factors

Appellees filed a cross-appeal, arguing that § 2-58.1(j)(2) does *not* require the Board to enter specific findings as to each factor. They claim that the Board is only required to "consider" the factors. In support of their argument, appellees quote a provision from the Anne Arundel County, Md.Code dealing with specific factors to be taken into account in rezoning cases. That provision provides in pertinent part:

"Rezoning shall be granted or denied ... but a rezoning may not be granted except on the basis of an *affirmative finding* that:" (Specific factors omitted.) (Emphasis added.)

Anne Arundel County, Md.Code, art. 28, § 11-102 (1985).

Appellees argue that the words "affirmative finding" necessitate express findings. Conversely, they claim that the Baltimore County Board need only "consider" certain factors, hence the Board did not need to objectively deal with the factors. We do not agree with appellees' conclusion.

The threshold question is, irrespective of the specific language used in a given statute, on what basis does a court review an agency's actions? In *United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 272 A.2d 62 (1984), the Court answered that question as follows:

"Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by

the trial court. However, in judicial review of agency action, the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency."

United Steel Workers, 298 Md. at 679, 272 A.2d 62. See also Abrams, *Guide to Maryland Zoning Decisions* 92-93 (2d ed. 1984). The court may not supply factual findings which were not made by the Board. *Ocean Hide Away Condominium Ass'n v. Boardwalk Plaza Venture*, 68 Md.App. 650, 664-65, 515 A.2d 485 (1986). It is only when the Board's finding is contradicted from other sources and only one conclusion could be reached, that a lack of findings will not warrant remand. *Gough v. Board of Zoning Appeals for Calvert County*, 21 Md.App. 697, 704, 321 A.2d 315 (1974).

Anderson, *American Law of Zoning*, § 16.41, states succinctly the reasons why administrative agencies should make express findings:

"Given express findings, the court can determine whether the findings are supported by substantial evidence, and whether the findings warrant the decision of the board. If no findings are made, and if the court elects not to remand, its clumsy alternative is to *read* the record, *speculate* upon the portions which probably were believed by the board, *guess* at the conclusions drawn from credited portions, *construct* a basis for decision, and *try to determine* whether a decision thus arrived at should be sustained. In the process, the court is required to do much that is assigned to the board, and the latter becomes a relatively inefficient instrument for the construction of a record." (Emphasis added.)

[5] Hence, we hold that "consideration of factors" requires an articulation of the findings as to each of the applicable factors contained in § 2-58.1(j)(2). The Board must make such findings in *both* a finding of error in the comprehensive plan and in a decision that the reclassification was warranted.

Finding of Error

As discussed earlier, in finding error or that a reclassification is warranted, the Board must consider factors, "including, *but not limited to*, all of the following...." Section 2-58.1(j)(2). This means that, in order to make either of those findings, the Board must *at least* articulate its findings as to the 13 identified factors. Under that section, the Board is not limited in its determination to consideration of just those factors. A petitioner can also establish error in the comprehensive zoning with probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive (re)zoning were invalid. The presumption of validity accorded comprehensive zoning may be overcome by evidence establishing that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account. *Howard County v. Dorsey*, 292 Md. 351, 356-58, 438 A.2d 1339 (1982), citing *Boyer v. Sembly*, 25 Md.App. 43, 50-53, 334 A.2d 137 (1975).

[6] In the case *sub judice*, the Board's decision failed to include findings relative to the factors set forth in the Code. It is conclusory in nature and lacks sufficient indication of which, if any, factors the Board considered in making its determination. In this case, the evidence introduced at the hearing does not lead to the inevitable conclusion that there was an error in the existing comprehensive plan. There was testimony by appellees' own witness that the present zoning provides for a reasonable use of the subject property. While some of the nearby property is zoned BM, the property to the immediate west is zoned BL and BR. Finally, there is no indication that there was any evidence before the Board demonstrating that the Council relied on erroneous assumptions or premises in formulating the comprehensive zoning plan.

We hold that the Board's finding of error in the comprehensive plan was not made in accordance with § 2-58.1(j)(2).

There is no evidence that the Board properly considered the factors contained in that section. Thus, we are unable to reach the issues of whether there was convincing evidence of error and whether the Board's finding of error was fairly debatable.

Although with more specificity than expressed by the trial judge, we affirm the remand of the case for the Board to decide whether there was an error in the comprehensive zoning plan. In making that determination, the Board must at least "consider," as we have defined that word, the factors found in § 2-58.1(j)(2). Secondly, the Board must at least "consider" those factors and make specific findings as to whether the proposed reclassification is warranted.

JUDGMENT AFFIRMED. COSTS TO BE DIVIDED EQUALLY BY APPELLANTS/CROSS-APPELLEES AND APPELLEES/CROSS-APPELLANTS.

NEW SUMMIT ASSOCIATES LIMITED
PARTNERSHIP et al.

v.

Sylvia NISTLE.

No. 466, Sept. Term, 1987.

Court of Special Appeals of Maryland.

Dec. 7, 1987.

Tenant brought action against former landlord and its agent for breach of covenants of quiet enjoyment contained in her lease by permitting invasion of her privacy in course of renovation of adjacent apartment. The Circuit Court, Montgomery County, L. Leonard Ruben, J., found in favor of tenant and awarded compensatory and punitive damages. Landlord and company appealed. The Court of Special

W. Carl Richards, Jr.
John Lewis
March 31, 1993
Page 2

the reclassification of the property involved in the Petition for
Reclassification.

This letter should comply with your request for information.

Yours truly,



Robert A. Hoffman

RAH/tls

BAKER LAND COMPANY, ET AL
Property Owners; HARRISON & GRASS
Developer/Petitioner
Parcel 1: SWC Padonia Road and
Broad Avenue; Parcel 2: SE/s/
end Roosevelt Street, SW Broad Ave.

#CR-93-305-SPH
Item #3, Cycle I, 1993
8th Election District
3rd Councilmanic District

RE: M.L.R. & 0-1 & D.R.3.5
to B.M. for Parcel 1
Special Hearing for business
parking in an 0-1 zone (for
Parcel 2)

Parcel 1: 6.57 acres
Parcel 2: 0.93 acre

(Documented Site Plan)

No. CR-93-305-SPH

February 23, 1993	(1) Petition for Reclassification for property to be reclassified from an MLR, 0-1 and DR-3.5 zone to a BM-CCC zone; and (2) Petition for Special Hearing filed for business parking in an 0-1 zone; filed by Robert A. Hoffman, Esquire, on behalf of Harrison & Grass.
September 28	Hearing before the County Board of Appeals.
October 19	Hearing concluded before the CBA.
November 22	Petitioner's Memorandum in Support of Request for Reclassification, filed by Robert A. Hoffman, Esquire on behalf of the Petitioner.
November 22	People's Counsel Memorandum filed.
December 28	Petitioner's Reply Memorandum filed by Robert A. Hoffman, Esquire, in response to People's Counsel's Memorandum.
January 4, 1994	Open deliberation for final determination.
February 24	Majority Opinion and Order of the Board GRANTING the Petition for Reclassification (Hackett and Buchheister); Dissenting Opinion issued by Schuetz.
March 21	Petition for Judicial Review filed in the CCT by People's Counsel. (Received 3/23/94)
March 22	Petition for Judicial Review filed in the CCT by John M. Bearer. (Received 4/14/94)
March 22	Petition for Judicial Review filed in the CCT by Patrick D. Hanley, Esquire, on behalf of Michael Gerber and Penny Gerber. (Received 4/14/94)
March 24	Certificate of Notice sent to interested parties.
May 19	Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.
October 12	✓ E Opinion and Order of the Circuit Court for Baltimore County in which the case was REMANDED to the C.B. of A. (Bollinger).

Baker Land Company, et al
CR-93-305-SPH

11/22/93 -Hearing concluded before Board on 10/19/93; Memos due and filed 11/22/93 by PC and Counsel for Petitioner; Deliberation date to be set.

11/24/93 -Notice of Deliberation sent to parties, posted on Board, and copy sent to HRB (HRB had previously picked up their respective copy of Memorandums; included two binders).

1/04/94 -Deliberation held as scheduled; final decision of Board -Petition for Reclassification GRANTED by majority decision (H & B); Schuetz to write dissent for denial of petition. Written Opinion and Order to be issued; 30-day appellate period to write from date of that written Opinion/Order.

4/11/94- ~~As a result of People's Counsel informing CBA of other Petitions filed in this case...~~
Telephone call to Ms. Ashford in CCt. She confirmed two other Petitions for Judicial Review were filed on March 22, 1994 by Hanley for Gerber and by Bearer. Copies of Petitions forthcoming this date.

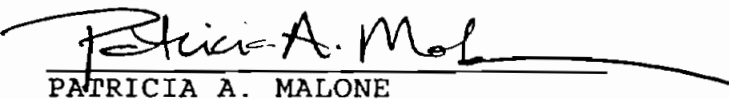
4/14/94 Charlotte went to CCt to retrieve copies of two other Petitions as they have not been received by mail from Ms. Ashford. Notices sent today.

their burden of proof, by a showing of strong and substantial evidence, that the present classification was in error and that the prospective reclassification is warranted. Because Appellees submitted sufficient evidence before the Board of Appeals to make the granting of the reclassification at least fairly debatable, this Court should affirm the Board's decision.

Respectfully submitted,



JOHN H. ZINK, III



PATRICIA A. MALONE
Venable, Baetjer and Howard
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(410) 494-6200
Attorneys for Appellees

✓E October 1994 E November 10 Q February 22, 1995 Q February 22 E March 2 E March 6 March 10 March 10 E March 30 ✓E April 5 April 26 April 28 ✓E February 6, 1996 E February 14 ✓E March 19	People's Counsel's Motion to Alter or Amend Judgement and Request for Hearing filed in Circuit Court for Baltimore County Amended Memorandum Opinion and Order of the Circuit Court clarifying its October 12, 1994 Order and retaining jurisdiction until CBA issues amended Opinion to Court for further reconsideration and final disposition. (J. Thomas J. Bollinger) Amended Opinion Pursuant to Remand Order and Amended Memorandum Opinion and Order of the Circuit Court issued by the Board. (Majority /Hackett and Buchheister) Supplemental Record of Proceedings Before the County Board of Appeals of Baltimore County filed in the Circuit Court. Supplemental Petition for Judicial Review filed in the Circuit Court for Balto. Co. by People's Counsel. Supplemental Petition for Judicial Review filed in the Circuit Court for Balto. Co. by Patrick D. Hanley, Esquire, on behalf of Michael Gerber and Penny Gerber. Copy of both Supplemental Petitions for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County. Certificate of Notice sent to interested parties. Memorandum Opinion and Order issued by the CCt for Balto. Co., wherein the case was REMANDED a second time to the CBA (Petitioner asserts & the Court agrees that Board failed to address requirements of the Court. (NOTE: Second Supplemental Record of Proceedings apparently was not necessary to be filed by the CBA) (Order issued by J. Thomas J. Bollinger). Notice of Appeal filed in the Court of Special Appeals by People's Counsel. Notice of Appeal filed in CSA by John M. Bearer. Notice of Appeal filed by CSA by Michael & Penny Gerber. Mandate from the CSA of MD REMANDING case to CBA and GRANTING Motion to Dismiss appeal. Order from Judge T.J. Bollinger, CCt for Balto. Co., REMANDING case to the CBA (as ord'd by CSA). Order, on remand from the Order of the CCt for Balto Co., pursuant to Mandate of the CSA, wherein this Board is instructed to dismiss the Petition for Reclassification filed by Baker Land Company (Schuetz and Buchheister); Petition DISMISSED.

BAKER LAND COMPANY, ET AL,
Property Owners; HARRISON &
GRASS, Developer/Petitioner
Parcel 1: SWC Padonia Road and
Broad Avenue; Parcel 2: SE/s/
end Roosevelt Street, SW Broad
Avenue

#CR-93-305-SPH
Item #3, Cycle I, 1993
8th Election District
3rd Councilmanic District

M.L.R. & O-1 & D.R. 3.5
to B.M. for Parcel 1
Special Hearing for business
parking in an O-1 zone (for
Parcel 2)

Parcel 1: 6.57 acres
Parcel 2: 0.93 acre

(Documented Site Plan)

February 23, 1993

Petition filed.

* Robert A. Hoffman, Esquire
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Counsel for Petitioners

Harrison & Grass
c/o Timothy C. Harrison
100 Chestnut Street
Harrisburg, PA 17101

Petitioners

see new address
20 ERFORD ROAD
SUITE 201
LEMOYNE PA 17043

James Earl Kraft
Baltimore County Board of Education
940 York Road MS 1102-3
Towson, Maryland 21204

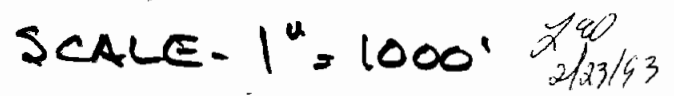
People's Counsel for
Baltimore County

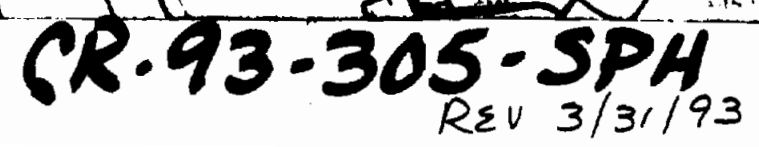
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

✓
Protestants added at the request
of P. Zimmerman 10/06/93
Michael E. Gerber
107 Harding Street
Timonium, MD 21093

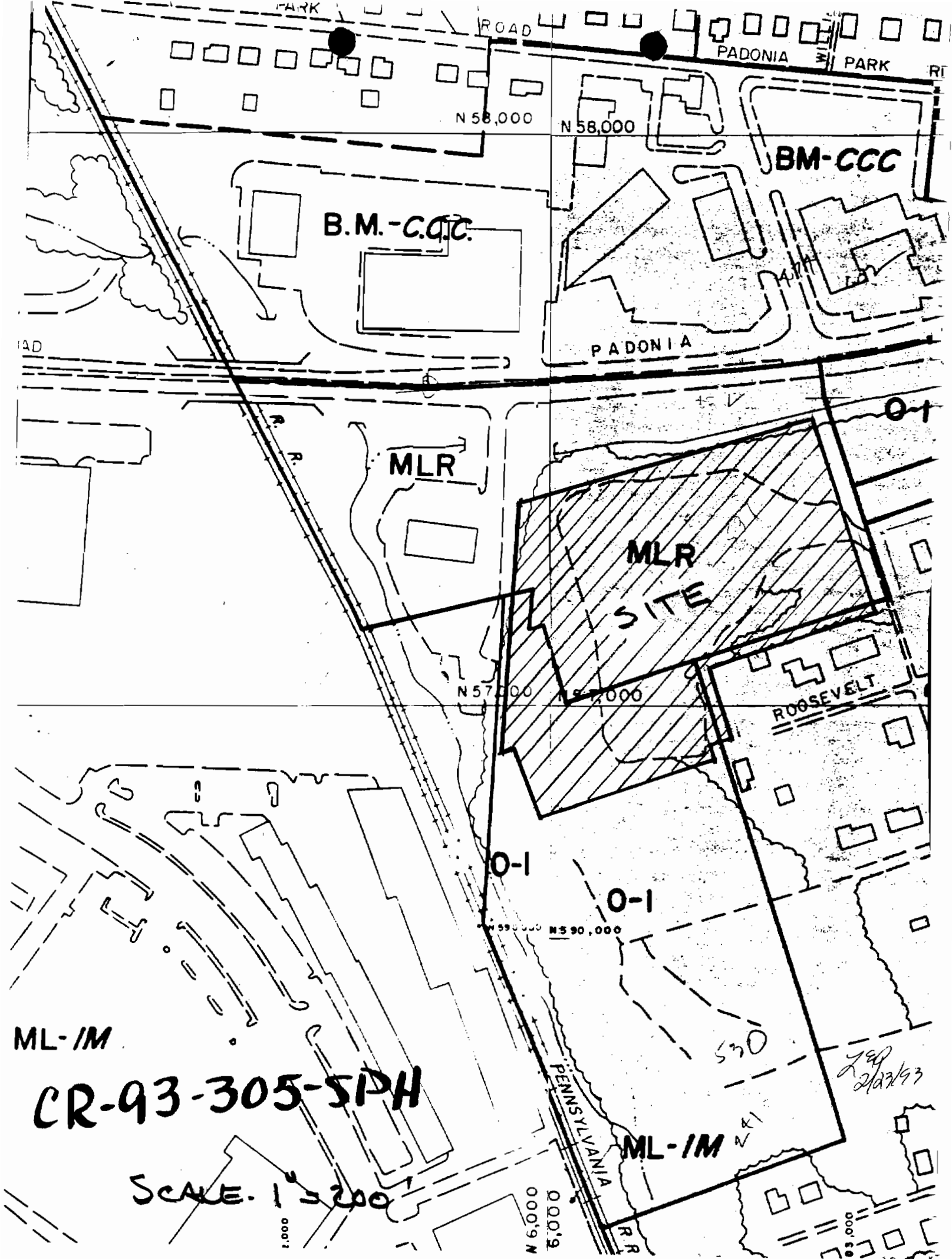
John M. Bearer
9 W. Main Boulevard
Timonium, MD 21093

COPY OF BOARD'S OPINION/ORDER TO:
Mr. Tom Kelly
127 Tregarone Road
Timonium, MD 21093
(Greater Timonium Comm Council)





REV 3/31/93



RECEIVED
COUNTY BOARD OF APPEALS
94 APR 14 PM 3:56
LAW OFFICES
HANLEY AND HANLEY
206 WASHINGTON AVENUE
P. O. BOX 5506
TOWSON, MARYLAND 21204

DANIEL J. HANLEY
PATRICK D. HANLEY
PAUL J. HANLEY

(410) 823-1174

CLAUDE A. HANLEY
(1898-1976)
FAX: (410) 823-6229

April 12, 1994

Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Board Case No. CR-93-305-SPH
Baker Land Company, et al
Circuit Court Case No. 76-245-94 CV 02561

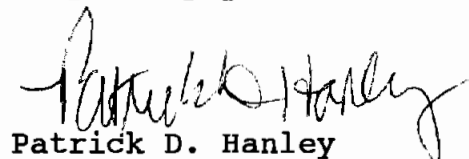
Dear Mrs. Weidenhammer:

I previously have filed a Petition for Judicial Review in the Circuit Court on behalf of Michael Gerber and Penny Gerber in the above matter.

Could you please notify me when the record has been transmitted to the Circuit Court?

Thank you for your co-operation in this matter.

Very truly yours,


Patrick D. Hanley

PDH/mtf
Enclosure(s)

cc: Michael & Penny Gerber

4/14/94

T/C to Pat Hanley -
he will receive copy
of Record Extract when
record of proceedings
is filed in Ct.
H

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

BALTIMORE, MD
WASHINGTON, D. C.
MCLEAN, VA
ROCKVILLE, MD
BETHESDA, MD

210 ALLEGHENY AVENUE
P.O. BOX 5517
TOWSON, MARYLAND 21285-5517
(410) 823-4111
FAX (410) 821-0147

RICHARD M. VENABLE (1839-1910)
EDWIN G. BAETJER (1868-1945)
CHARLES MCH. HOWARD (1870-1942)

ROBERT A. HOFFMAN

WRITER'S DIRECT NUMBER IS

(410) 494-9162

February 23, 1993

William T. Hackett, Chairman
Baltimore County Board of Appeals
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Re: - Cycle Zoning Reclassification
- Harrison & Grass - Broad Street Market
- Property located in the southwest quadrant of the
intersection of Padonia Road and Broad Street

Dear Mr. Hackett:

This firm represents Harrison & Grass, the Petitioner in the proposed reclassification and documented site plan to permit the Broad Street Market -- a shopping facility of the highest quality to be located at the southwest quadrant of the intersection of Padonia Road and Broad Street (between I-83 and York Road). The subject property is predominantly zoned MLR with a lesser amount of O-1 and a small area of DR 3.5. The Petitioner is requesting BM-CCC zoning and other zoning relief to permit the proposed development which would consist of a food store, pharmacy and bookstore along with several other small shops and would total approximately 83,600 square feet.

As you are probably aware, the subject property is situated in a corridor of predominantly commercial uses and, in fact, is located directly across the street from several retail uses zoned BM-CCC, including the Padonia Park Retail Center. Accordingly, the proposed BM zoning would be quite consistent with the general character of the area.

Moreover, to the property's south lies a substantial area of residential housing which would be more appropriately abutted by the proposed commercial zoning, rather than the current industrial

LEB
2/23/93

William T. Hackett, Chairman
February 23, 1993
Page 2

zoning. This is particularly true in light of the Petitioner's documented site plan, which provides the highest quality use of this sort and extensive buffering and screening that utilizes a berm, fence and landscaping to eliminate any adverse impact on the surrounding neighborhood. The Petitioner submits that it is a mistake for the current zoning to abut the residential zoning to the south and that the County Council should have considered it as an appropriate site for BM zoning.

For these and further reasons to be fully presented at the hearing, it is respectfully submitted that the subject property should be reclassified to BM.

Very truly yours,

Robert A. Hoffman / PW

Robert A. Hoffman

RAH/bw

cc: Timothy C. Harrison
Theodore C. Julio
H. Emslie Parks, Esquire

RAH
2/23/93

150H - Original Jurisdiction
Brief

WCK
3318-R3

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

210 ALLEGHENY AVENUE

P.O. BOX 5517

TOWSON, MARYLAND 21285-5517

(410) 823-4111

FAX (410) 821-0147

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

RICHARD M. VENABLE (1839-1910)
EDWIN G. BAETJER (1868-1945)
CHARLES MCH. HOWARD (1870-1942)

ROBERT A. HOFFMAN

93-305 SP14
Item #3, Cycle I

WRITER'S DIRECT NUMBER IS

(410) 494-9162

March 31, 1993

Carl W. Richards, Jr.
Zoning Supervisor
County Office Building, 1st Flr.
111 W. Chesapeake Avenue
Towson, Maryland 21204

John L. Lewis
Office of Planning and Zoning
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Petition for Reclassification
Property Located at Padonia Road and Broad Street
Baker Land Company, et al, Legal Owners

Dear Carl and John:

As you are aware, the referenced Petition for Reclassification includes a request for a special hearing/special exception to allow parking in an O-1 zone to support the proposed Broad Street Market under the prospective zoning classification of BM. Section 2-58.1(p) of the Baltimore County Code gives the County Board of Appeals for Baltimore County "original jurisdiction for the purpose of hearing and deciding petitions for special exceptions and/or variances, the granting of which is dependent upon the reclassification of the property involved in the petition for reclassification."

As you should note from the documented site plan, unless the property is rezoned to BM with the documented site plan, the use permit to park is moot. Therefore, the granting of the special hearing/special exception for a use permit to park is dependent upon

RECEIVED

APR 1 1993

ZADM

Robert O. Schuetz, Chairman
October 23, 1995
Page 2

Comprehensive Zoning Map, by way of this letter, the Petitioners are hereby withdrawing their original Petition for Reclassification from further consideration.

Very truly yours,



Robert A. Hoffman

RAH:pvb

cc: Peter Max Zimmerman, Esquire
Patrick D. Hanley, Esquire
Mr. John M. Bearer
Arnold Jablon, Director, Permits and Development Management
Mr. Timothy C. Harrison
Mr. Theodore C. Julio
Isaac M. Neuberger, Esquire

TO1DOCS1/RAH01/0013481.01

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July, 1994, a copy of the foregoing APPELLEES' ANSWERING MEMORANDUM was mailed to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 47, Courthouse, 400 Washington Avenue, Towson, Maryland 21204; Patrick D. Hanley, Esquire, Hanley and Hanley, 206 Washington Avenue, P.O. Box 5506, Towson, Maryland 21204, Attorney for Appellants Michael and Penny Gerber; and John M. Bearer, 9 W. Main Boulevard, Timonium, Maryland 21093, Appellant.



JOHN H. ZINK, III

MEMO0318.PAM

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517
(410) 494-6200, Fax (410) 821-0147

VENABLE
ATTORNEYS AT LAW

OFFICES IN

MARYLAND
WASHINGTON, D.C.
VIRGINIA

John H. Zink, III
(410) 494-6254

January 4, 1995

William T. Hackett, Chairman
County Board of Appeals of
Baltimore County
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Re: In the Matter of Baker Land Co., et al for
Reclassification
Zoning Case: CR-93-305-SPH
Civil Action No.: 94-CV-2565

Dear Mr. Hackett:

We have received a letter, dated December 28, 1994, from Carole Demilio, Deputy People's Counsel, which requests the opportunity to reargue this case before the Board. We do not believe that reargument is necessary as the record is complete.

In this regard, we have extracted the transcripts of the prior hearings with respect to the thirteen factors contained in Section 2-356(j)(2) of the Baltimore County Code, which must be considered by the Board in accordance with People's Counsel v. Mockard (copy enclosed), as follows:¹

1. Population trends: Harrison at p. 35; Crozier at p. 89; Gavrelis at p. 57;

¹ The testimony of Harrison, Crozier, Long, Chadsey, Hillis, Earp, and Farinacci can be found in the Transcript of the Hearing before the Board of Appeals, dated September 29, 1993. The testimony of Gavrelis can be found in the Transcript of the Hearing before the Board of Appeals, dated October 19, 1993.

95 JAN -5 PM 12:39

William T. Hackett, Chairman
January 4, 1995
Page 2

2. Availability and adequacy of present and proposed transportation facilities: Crozier at p. 95-96; Cornelius at pp. 192-200, 201-207; Gavrelis at p. 58;

3. Water supply facilities: Chadsey at p. 158; Gavrelis at pp. 58-59; Hillis at pp. 140-141;

4. Sewer: Chadsey at p. 158; Gavrelis at pp. 58-59; Hillis at pp. 140-141;

5. Solid waste disposal facilities: Gavrelis at pp. 58-59;

6. Schools: Gavrelis at pp. 58-59.

7. Recreational facilities: Gavrelis at pp. 58-59;

8. Other public facilities: Gavrelis at pp. 58-59;

9. Compatibility of uses generally allowable under the prospective classification with the present and projected development or character of the surrounding area: Harrison at pp. 36-39; Earp at p. 54; Farinacci at pp. 61-62; Crozier at pp. 93-95, 98-105; Gavrelis at pp. 54-56:

10. Pertinent recommendation of the Planning Board or Office of Planning and Zoning: Long at pp. 66-70; Gavrelis at p. 59:

11. Consistency of the current and prospective classifications with the Master Plan: Long at pp. 67-69; Gavrelis at pp. 43-47.

12. County Plan for sewage and water supply facilities: Hillis at p. 140:

13. Capital Programs: Chadsey at p. 158.

The testimony cited above, as well as exhibits entered in the case, including the documented site plan and all the information contained thereon, is evidence that can serve as the basis for your findings on each of the above factors. Certainly

William T. Hackett, Chairman
January 4, 1995
Page 3

all of these factors are not relevant. However, we would request the Board to detail how it considered each factor, even though it is possible that the conclusion to be drawn from the testimony and the exhibits is that certain factors are not relevant to a finding of error and/or to a finding that the prospective reclassification is warranted. Also, the Board may, of course, consider other factors, such as that the assumptions relied on by the County Council were invalid.

The time and effort the Board has put into this case is greatly appreciated.

Very truly yours,

John H. Zink, III /PAM

John H. Zink, III

JHZ/tls

cc: Peter Max Zimmerman, Esquire
Patrick D. Hanley, Esquire
Mr. John M. Bearer

LETRO384.PAM

February 23, 1993

Harrison-Grass, Inc.
c/o Hill Management Services, Inc.,
9640 Deereco Road
Timonium, Maryland 21093

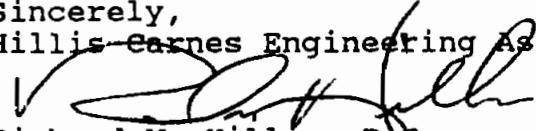
Attention: Mr. Ted Julio
President

Re: Broad Street Market
Environmental Impact Statement
HCEA Project Number 92074B

Gentlemen:

Submitted here is the Environmental Impact Statement recently completed for the referenced project. Should you have any questions or require additional information after reviewing it, please do not hesitate to contact me.

Sincerely,
Hillis-Carnes Engineering Associates, Inc.


Richard M. Hillis, P.E.

Potential Impacts of Proposed Action on the Environment

Potential short term and long term adverse impacts of the proposed development on the environment have been identified. These impacts are the result of development in general, and not specifically related to any change in zoning. Methods are generally presented to mitigate impacts, where identified. Potential impacts within the following categories are addressed:

Removal of vegetation
Disturbance to drainage course
Soil erosion
Water and wastewater
Noise and air pollution
Loss of wildlife habitat

Removal of Vegetation

As described, most of the site is cleared and already disturbed land. Secondary growth trees, shrubs and vines exist around the perimeter of the site. The proposed development will involve clearing approximately 1.5 acres to accommodate pavements and roads. Vegetative buffers will remain to screen the property from the existing residential developments and the concrete drainage course.

A short term environmental impact will occur from removal of existing vegetation during the construction and site grading activities. Upon completion of construction, all disturbed areas around buildings and pavements will be vegetatively stabilized according to an approved grading plan. Where possible, existing specimen trees, if present will be saved in accordance with sound urban forestry practices. Suitable replacement plantings will be included in landscape plans whenever saving large trees is not possible or practical.

Over the long term, there will be a net loss of 1.5 acres of existing woods. While this loss is irreversible, careful landscape planting will reduce the long term effects of these losses and enhance the site. Undeveloped secondary growth areas of the site will continue to develop and mature into a mature hardwood stand. This development and maturation process will provide water and air quality benefits, as well as wildlife habitat.

Disturbance to Stream

The small concrete drainage course along the northern property line is believed to be a tributary to Beaver Dam Run, a class III stream.

HILLIS-CARNES

2/20
2/23/93

Vehicle emissions can impact air quality. However, all vehicles in Baltimore County built after 1971 require annual emissions testing for control of hydrocarbons and carbon monoxide levels from vehicle exhaust.

It is anticipated that the facility will use electricity or natural gas for heating and cooling. No incineration will be performed onsite. Solid waste will be handled and removed by private commercial hauler.

Noise pollution is recognized as an environmental impact by regulatory agencies. The greatest impact will be short term effects from construction noise. Maryland Environmental regulations (COMAR 26.02.03) restrict noise levels from construction site activities to 90 dBA during daytime hours and 55 dBA at night time. Once construction is completed, noise will be limited to that generated by regular vehicular traffic and occasional delivery trucks. These noise levels are not anticipated to be troublesome to nearby residential neighbors, nor are they expected to add significantly to existing noise levels from the adjacent developments.

Wildlife Habitat

The proposed development will entail the permanent conversion of approximately 1.5 acres of wooded and viney lands to parking and road areas. The removal of vegetation will likely cause dislocation of small animals like rabbits and birds to adjacent wooded areas. Noise from construction traffic will likely cause disturbances to wildlife as well.

Habitat value may be increased by incorporating wildlife enhancement and development into the landscaping plans. Certain plant types can attract various species. Stormwater management plans can also be used to promote wildlife.

Summary

No serious, irreversible environmental effects have been identified with development of the site as planned. Some short term effects have been identified, most or all of which can be alleviated or negated by sound design and construction practices and following local codes and regulations. The short term effects noted in the statement apply to any development, including those allowed by current zoning classifications. Some, more serious long-term effects could actually be generated by light industrial or manufacturing development as opposed to commercial-retail development as proposed.

HILLIS-CARNES

220
8/23/93



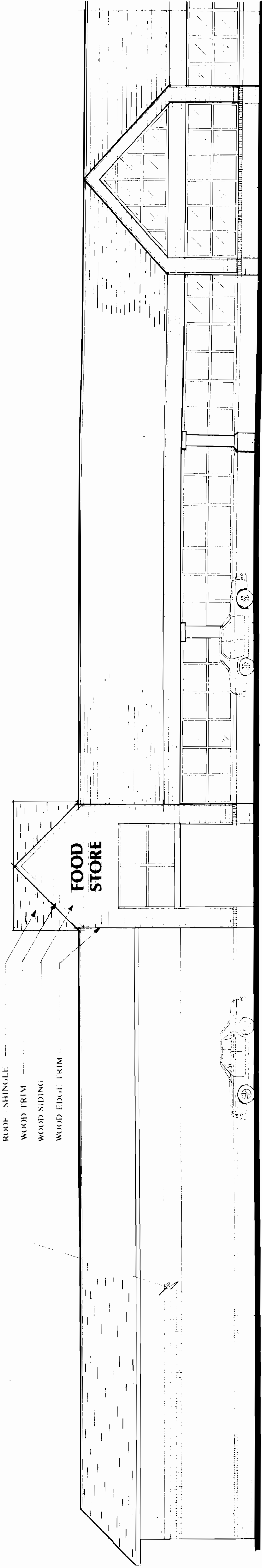
Karn and Associates Inc.
Architectural
Planning
Interior Design
Facilities Management
410 539 4921 Fax
410 534 0900
Baltimore, Maryland 21201



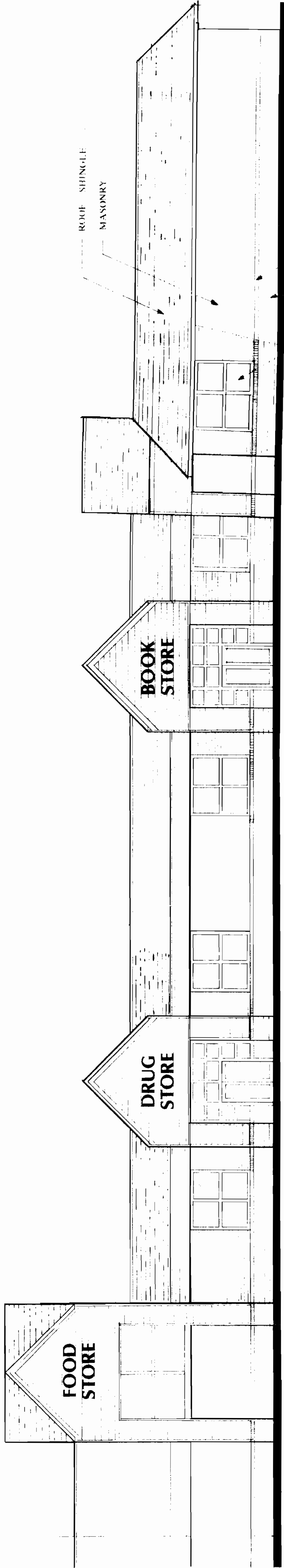
BROAD STREET MARKET
CR-93-305-SPH
REVISED 3/31/93

Revised for:	Revised for:
Client:	Client:
Contract:	Contract:
Date:	Date:
Drawn:	Drawn:
Checked:	Checked:
Project:	Project:
ELEVATIONS	

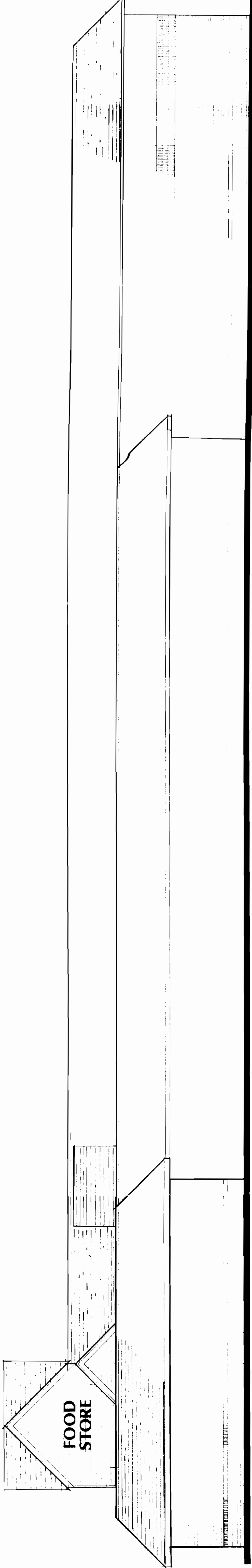
1



EAST ELEVATION -A



EAST ELEVATION -B



NORTH ELEVATION



Kern and Associates Inc.
Architecture
Planning
Preservation
Interior Design
Facilities Management
410 234 0900
410 539 4921 Fax
319 West Pratt Street
Baltimore, Maryland 21201

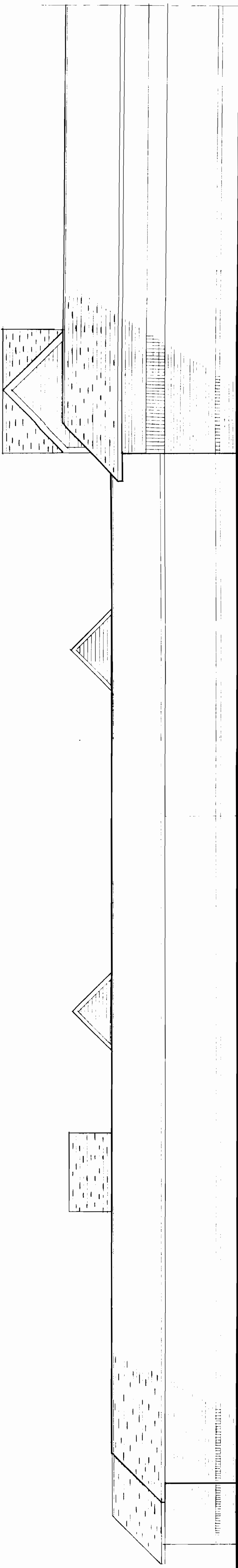


BROAD STREET MARKET

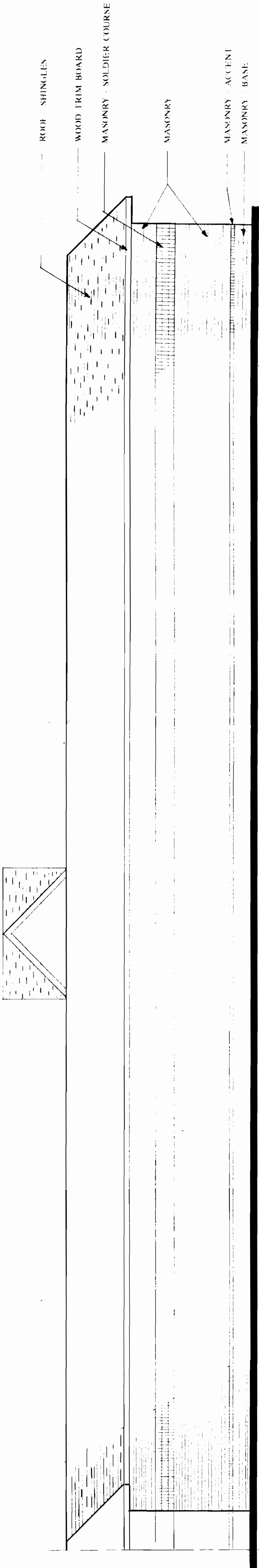
Revised for Bidding Prepared by Checked by Date FEB. 18, 1993 Project No. Designed Check

Reviewed for Bidding Prepared by Checked by Date FEB. 18, 1993 Project No. Designed Check

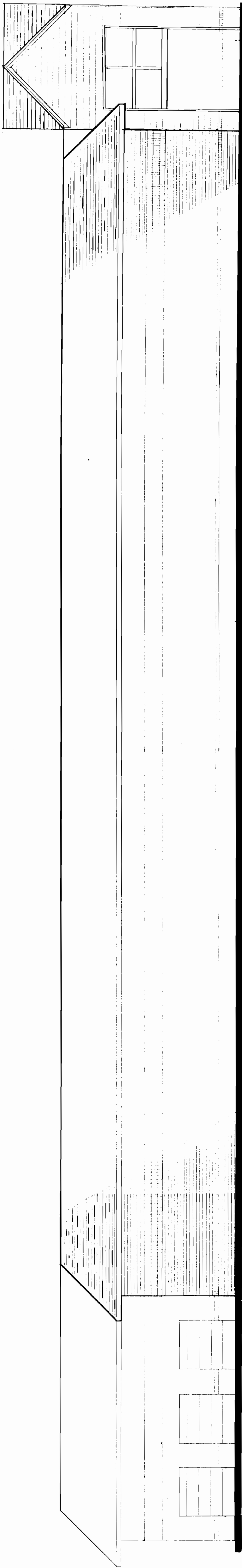
ELEVATIONS



WEST ELEVATION -A

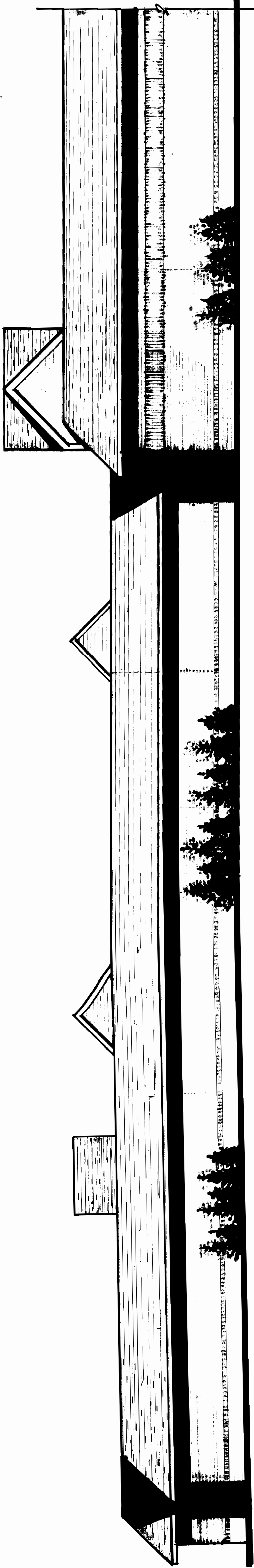


WEST ELEVATION -B

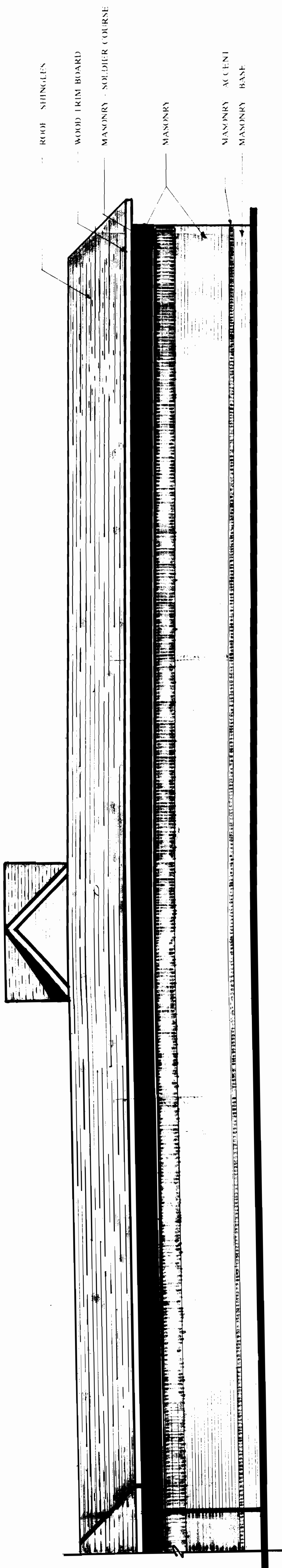


SOUTH ELEVATION

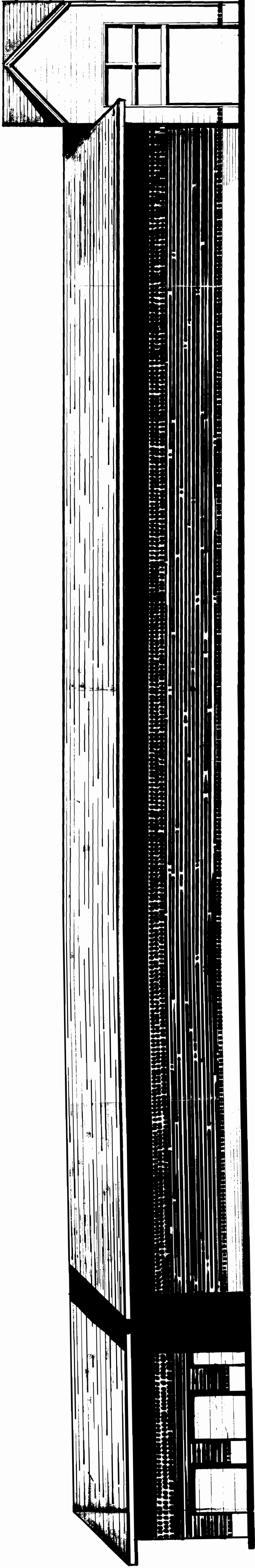
Revisions
EX 2b



WEST ELEVATION -A



WEST ELEVATION -B



SOUTH ELEVATION

BROAD STREET MARKET

Kern and Associates Inc. Architecture
111 West 101st Street
Baltimore, Maryland 21201
Planning
Preservation
Interior Design
Facilities Management
410 539 4921 Fax
410 539 4900



Revised:

Revised by:
Checked by:
Designed by:
Drawn by:
Client:

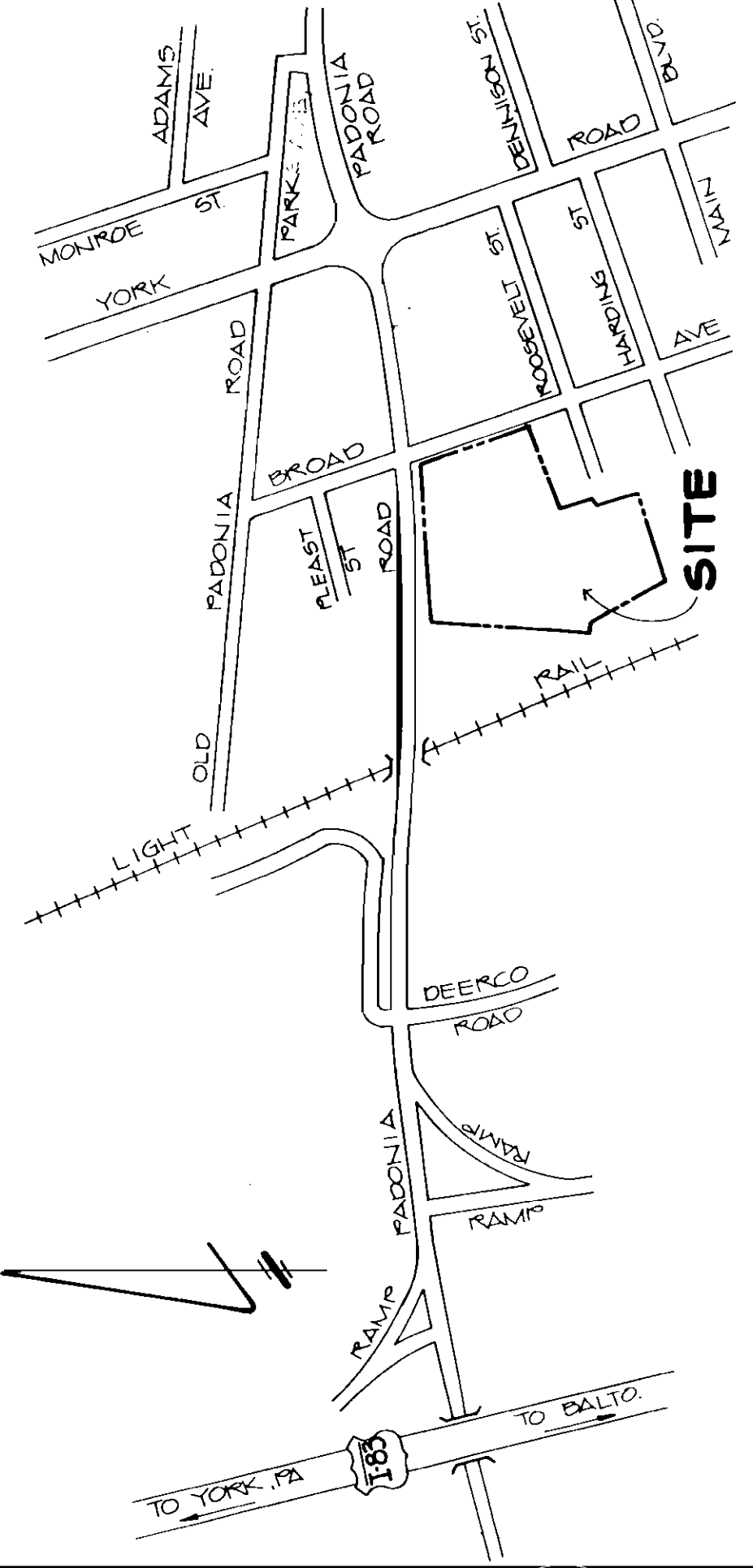
Rev. FEB 18, 1993

Project No.
Project Name
Project Location
Project Description

ELEVATIONS

Schematic Landscape Plan

DESIGNED	BY	REVISIONS	DATE
DRAWN	WLS	1. Initial Design	4-2-92
CHECKED			



VICINITY MAP
SCALE: 1" = 500'

LEGEND

PROPERTY LINE	---
RAIL LINE	----
EX. CONTOUR	
EX. CONC. C&G	----
ZONING LINE	----
MLR	0-1
DR 35	0-1

SITE DATA

AREA - PARCEL 1 - 657 AC ±
PARCEL 2 - 0.29 AC ±
EX. ZONING - MLR
PROF. ZONING - BM
EX. USE - VACANT
PROF. USE - SHOPPING CENTER
PROF. BLDG. AREA - 83,600 SF
PARKING REQUIRED - 5,100 @ 85% X 5 = 418
HANDICAP SPACES REQ'D - 5
PARKING PROVIDED - 418
HANDICAP SPACES PROVIDED - 5
WITH 1 VAN ACCESSIBLE SPACE

Landscape Requirements per Balto. County Landscape Manual Section IX.C.2.

- a. **GENERAL PLANTING REQUIREMENTS** - For the purpose of establishing the minimum quantity of plant materials required, the following formulas shall be used:
- One planting unit shall be required for every 20 linear feet (measured along the centerline) of interior road, and 40 linear feet of adjacent road. A minimum of 50% of these planting units shall be major trees.
 - SPECIAL CONDITIONS** - In addition to the General Planting Requirements, the following formulas shall be used:
 - Seven percent (7%) of all surface parking lot areas shall be reserved for landscaping at the rate of one planting unit per 12 parking spaces. A minimum of 75% of these planting units shall be major trees. When parking spaces about a building, the face of the curb shall be a minimum of six feet from the face of the building.
 - Screening parking lots from adjacent public rights-of-way shall be required. Setbacks should be in compliance with Section 105 B C.Z.H. Screening shall comply with Class 'B' Screening Requirements. See Applicable Definitions.
 - Screening of Commercial, Office, Industrial and Public Buildings shall be required. Screening shall be in compliance with Section 105 B C.Z.H. Screening shall comply with Class 'A' Screening Requirements. See Applicable Definitions. A minimum ten foot wide area shall be provided to accommodate this planting.
 - Screening of dumpsters, loading, service and outside storage areas from all adjacent residentially zoned or used properties, public or private rights of way excepting other than similar industrial uses shall be required. Screening shall comply with Class 'A' Screening Requirements. See Applicable Definitions.

Applicable Definitions

Planting Unit - A unit of measurement for determining the quantity of plant materials required.
One planting unit equals:
one major deciduous tree or,
two minor deciduous trees or,
five shrubs or,
five hundred square feet of groundcover

Screening, Class 'A' - One planting unit per 15 linear feet of the area to be screened. Plants shall provide a minimum five foot high year round visual screen at maturity. Minimum height of screen at installation shall be 30 inches.
A live foot high, opaque fence or wall may be required in conjunction with a planting screen under the Modification to Standards provisions in this manual.

Screening, Class 'B' - One planting unit per 15 linear feet of the area to be screened. Plants shall provide a minimum three foot high year round visual screen at maturity. Minimum height of screen at installation shall be 18 inches.
A three foot high solid fence or wall may be required in conjunction with planting screen under the Modification to Standards provisions in this manual.

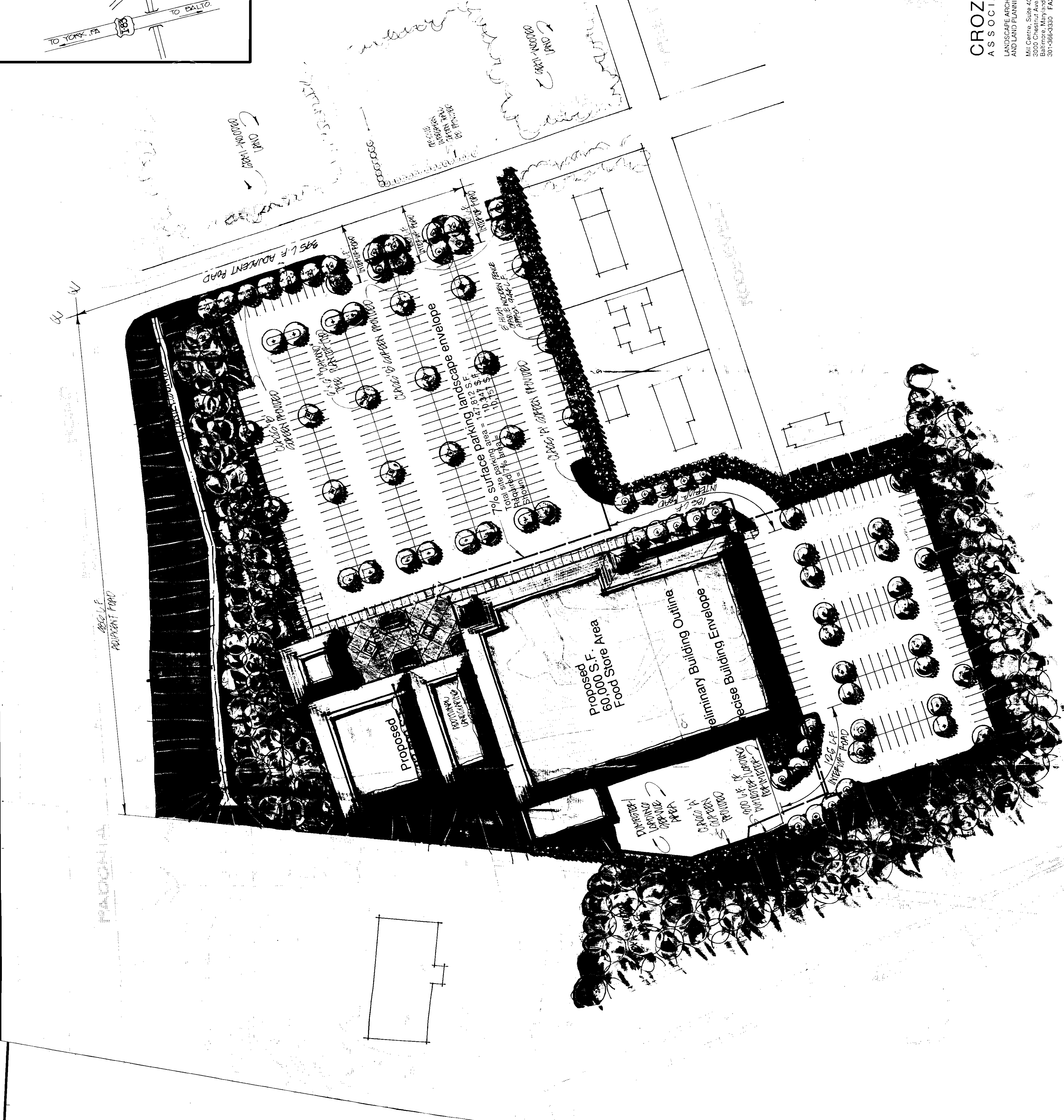
Requirement Worksheet

Formula	Required	Provided
1. 475 Linear feet of interior road + 20	=24pu's	26 major trees
2. 880 Linear feet of adjacent road + 40	=22pu's	12 major trees
3. 422 Parking Spaces + 12	=35pu's	46 major trees
4. 625 Linear feet of parking lot adjacent to r.o.w. + 15	=42pu's	42 shrubs
5. 575 Linear feet of dumpster area + 15	=28pu's	37 major trees
6. 300 Linear feet of dumpster (SI) + 15	=20pu's	18 evergreen trees
7. Total Planting Units Required / Provided	=192	199
Major Deciduous (@ 1 tree / unit)		84
Evergreen Trees (@ 2 trees / unit)		73
Shrubs (@ 5 shrubs / unit)		199

Note: In addition to the above provided landscape, the owner has agreed to provide off-site screening and access for the Brewer Property (see plan) and will provide enhancement landscaping in the proposed 'amenity plaza' (to be determined at a later design phase).

CROZIER ASSOCIATES
LANDSCAPE ARCHITECTURE
AND LAND PLANNING
Mill Centre, Suite 400
3030 Chestnut Avenue
Baltimore, Maryland 21211
301-386-3330 FAX-386-3565

Petersons Ex 3



6/17/94

PETITION FOR JUDICIAL REVIEW * IN THE
IN THE MATTER OF BAKER LAND *
COMPANY, et al. * CIRCUIT COURT FOR
FROM THE *
COUNTY BOARD OF APPEALS * BALTIMORE COUNTY
* Case No. 76/245/94-CV-02561-
249 2565
* * * * *

PEOPLE'S COUNSEL'S MEMORANDUM

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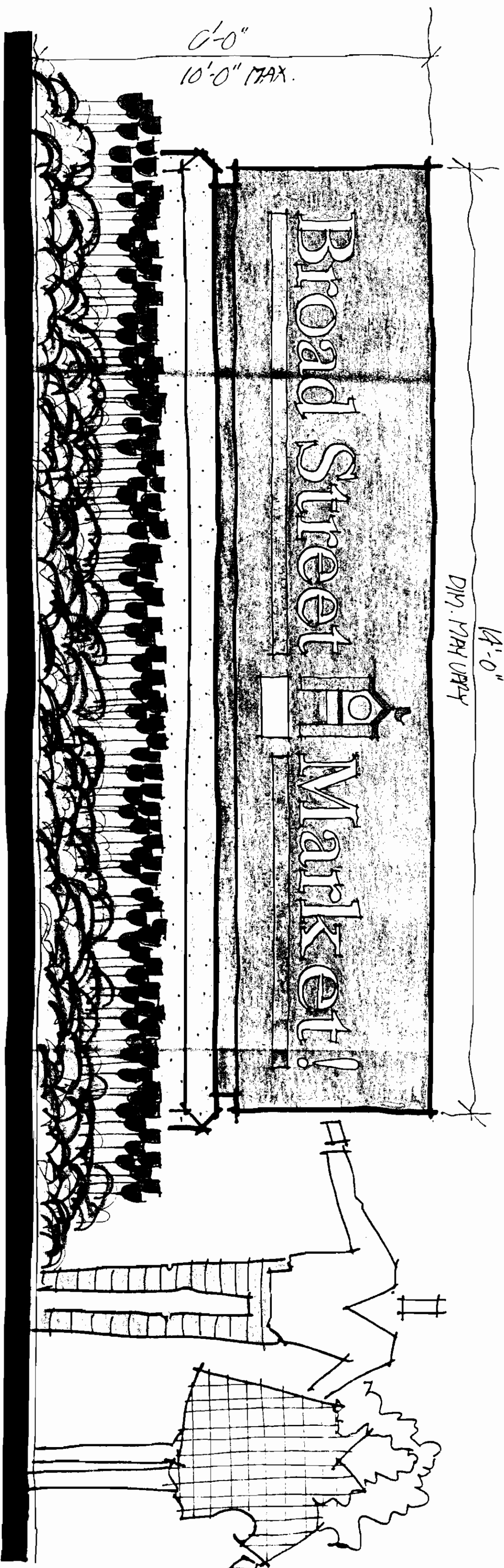
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RECEIVED AND FILED
96 JUN 17 1994
CLERK OF THE COURT

Entry signage shall have horizontal emphasis and a 10'-0" height limitation.
Refer to site plan for location

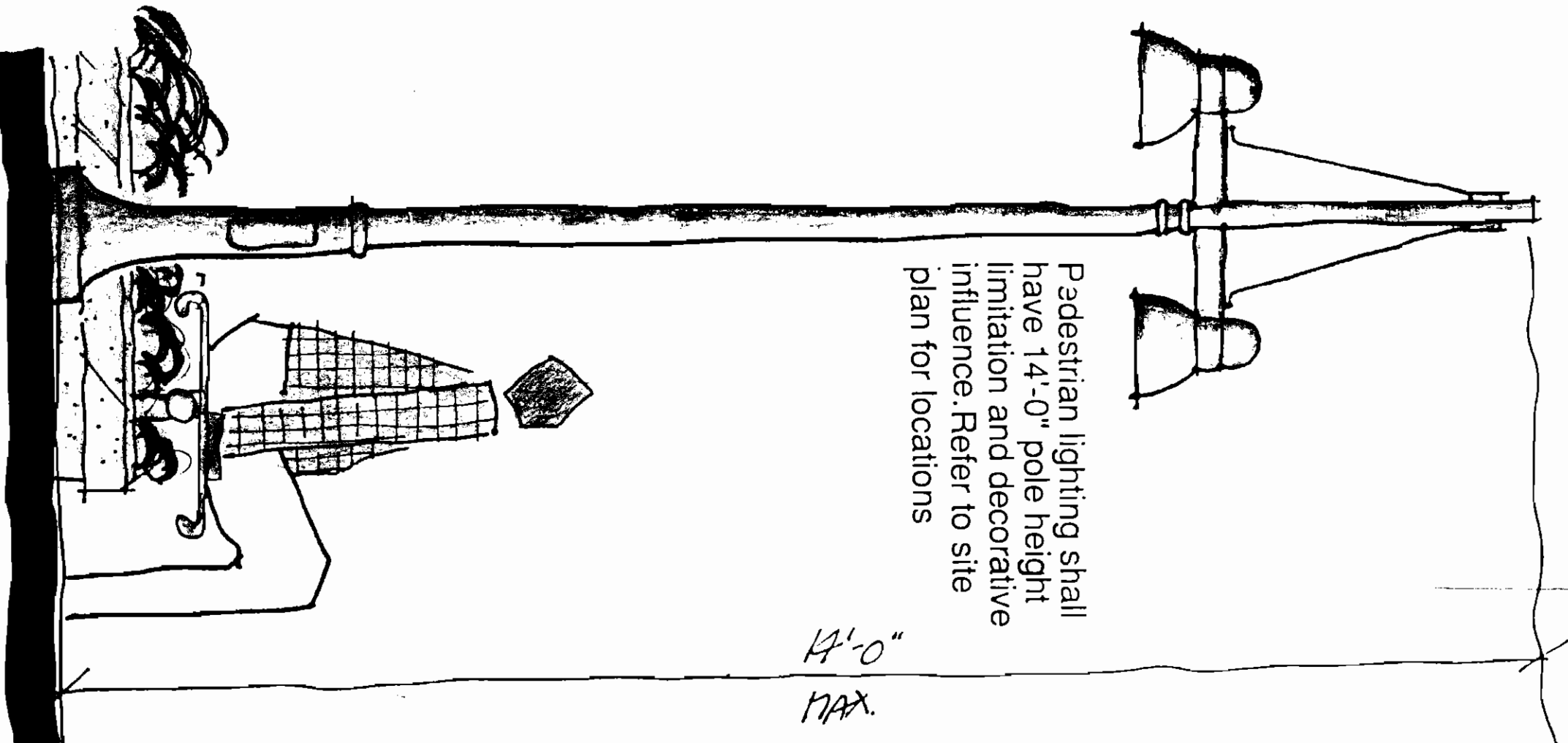


Project Identification / Entry Signage

Scale: 3/4"=1'-0"

Note: All proposed signs shall comply with
Section 413 of the Baltimore County
Zoning Code.

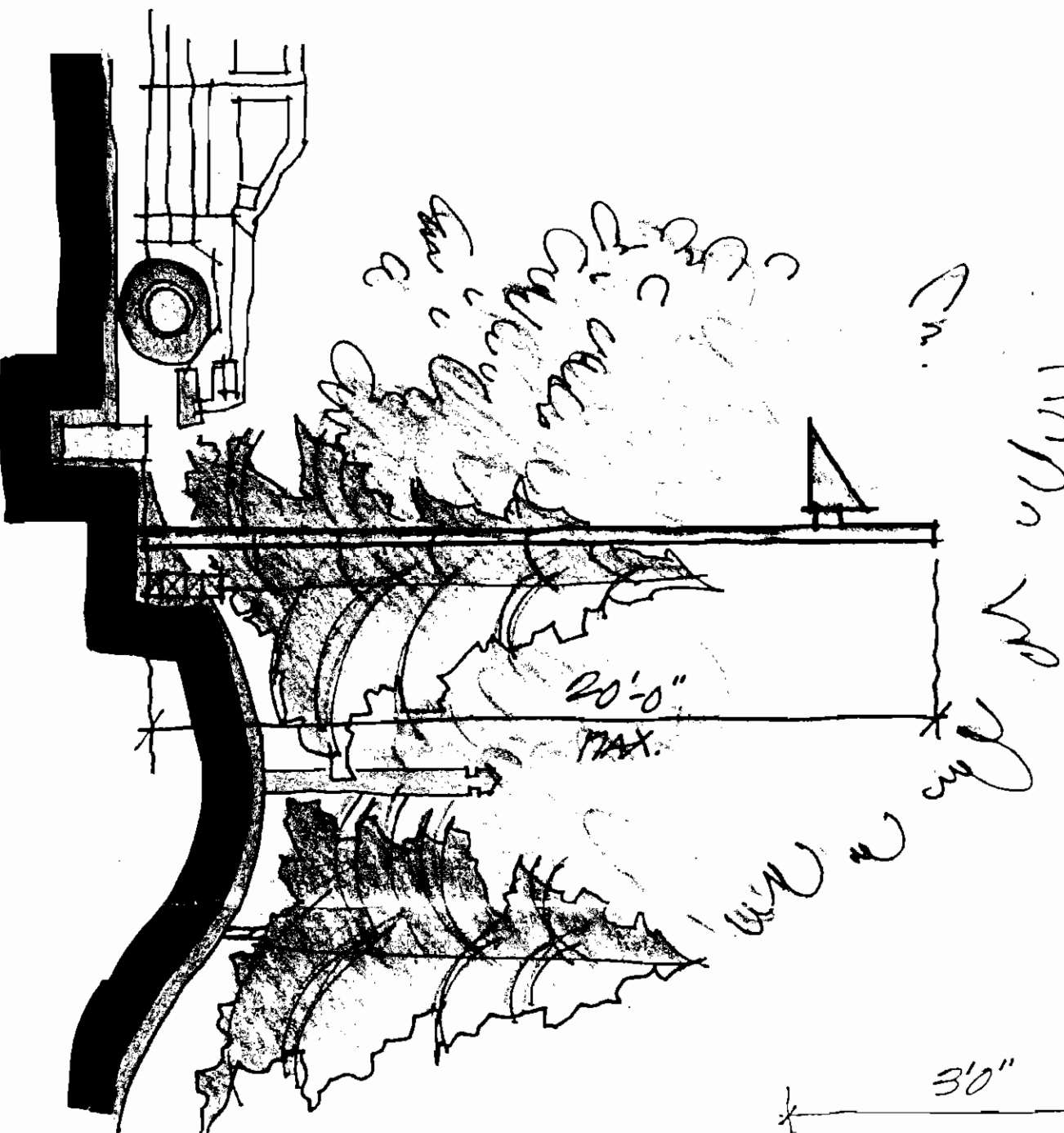
Pedestrian lighting shall have 14'-0" pole height limitation and decorative influence. Refer to site plan for locations



Pedestrian Lighting

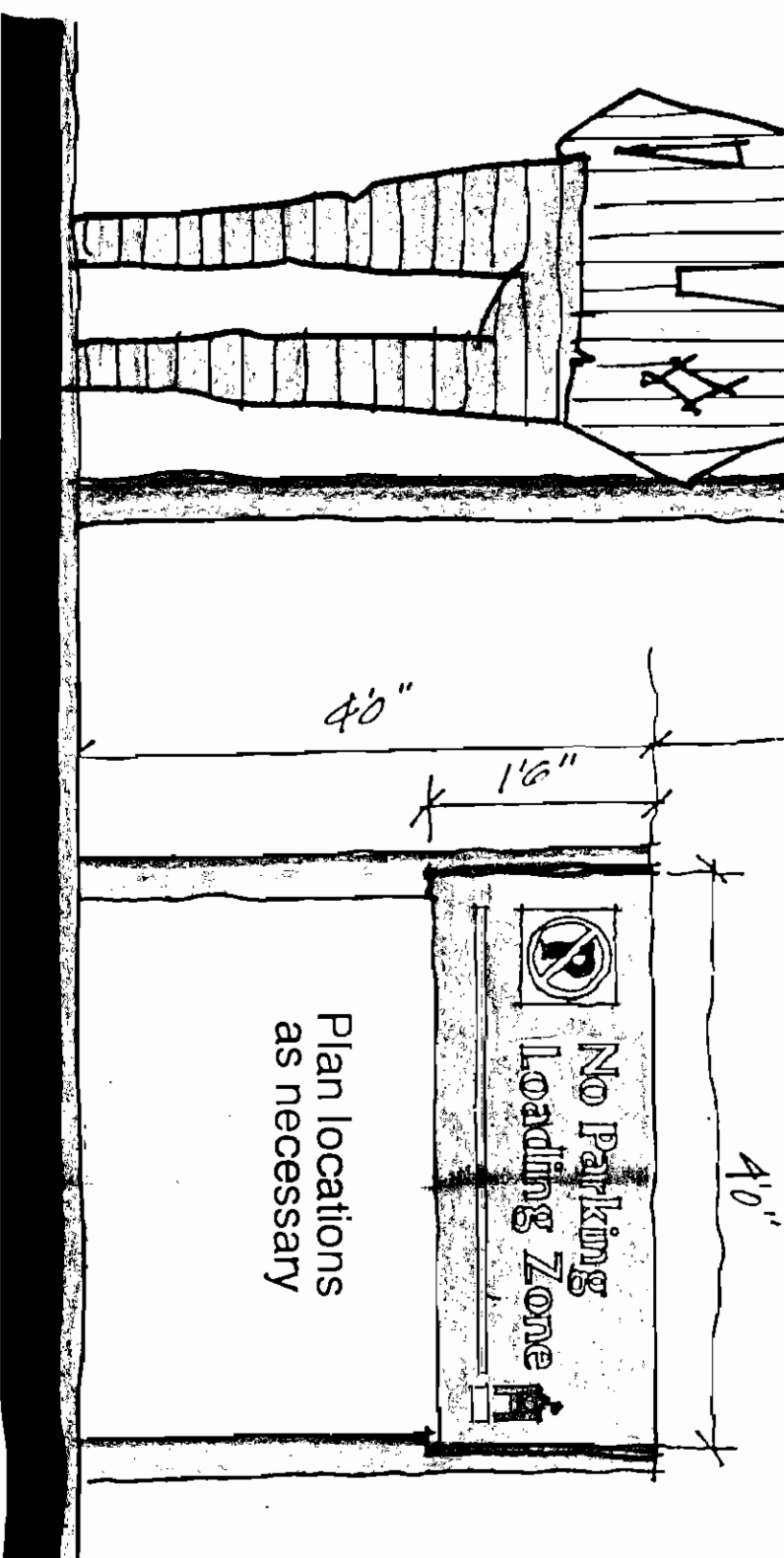
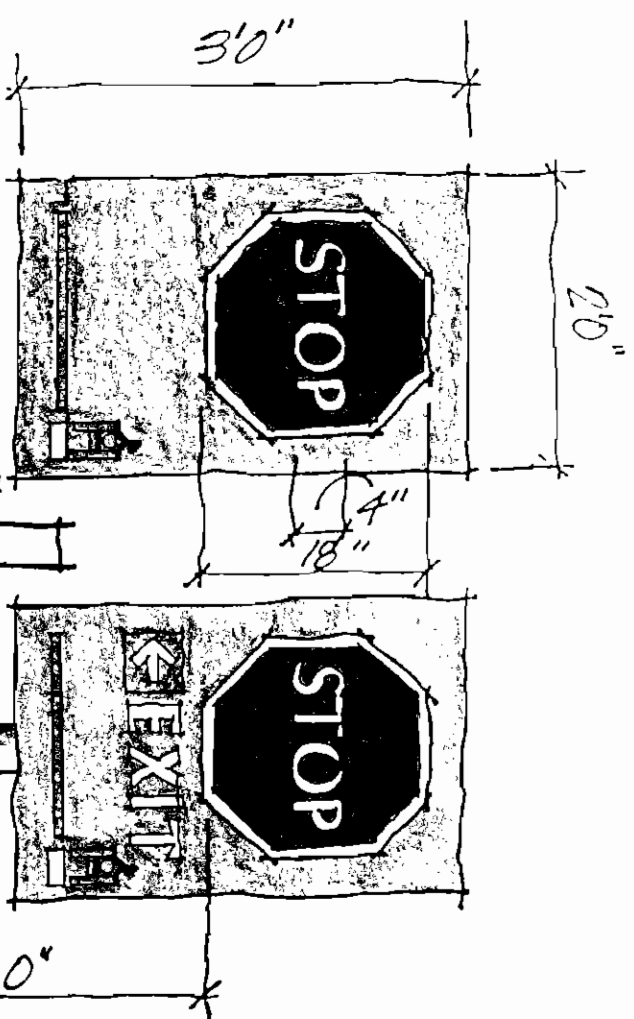
Scale: 3/4"=1'-0"

Site lighting shall have 20'-0" pole height limitation. All fixtures shall have "cut-off" features shielding adjacent uses from light exposure. Refer to site plan for locations



Site Lighting

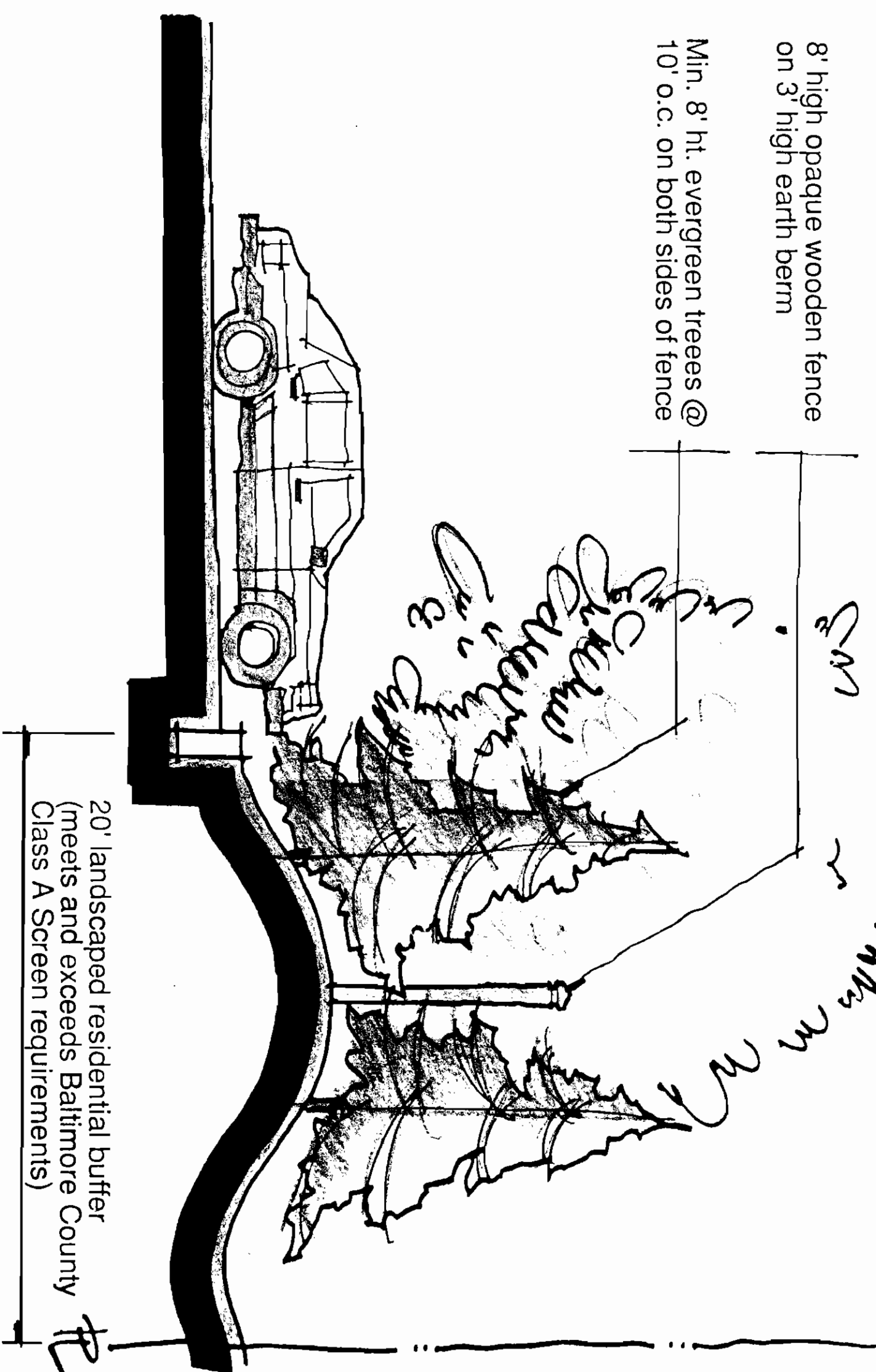
Scale: 1/4"=1'-0"



Regulatory Signage

Scale: 3/4"=1'-0"

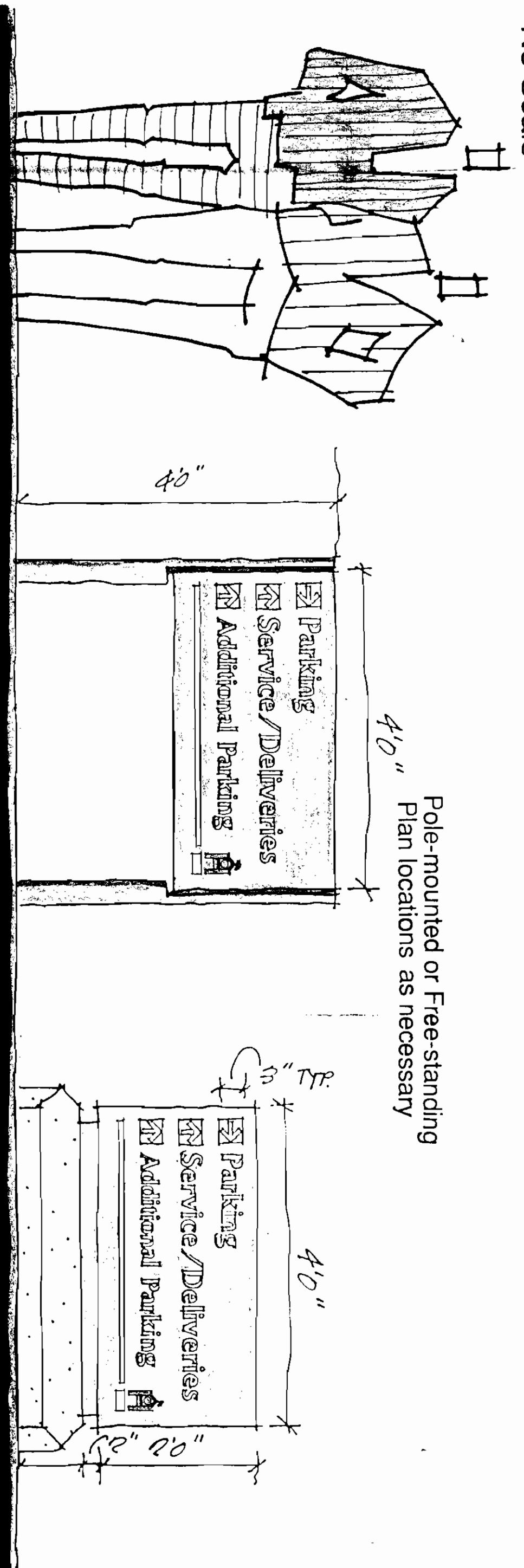
8' high opaque wooden fence on 3' high earth berm
Min. 8' ht. evergreen trees @ 10' o.c. on both sides of fence



Berm Section /Residential Buffer

Scale: 1/4"=1'-0"

Pole-mounted or Free-standing
Plan locations as necessary



Directional Signage

Scale: 3/4"=1'-0"

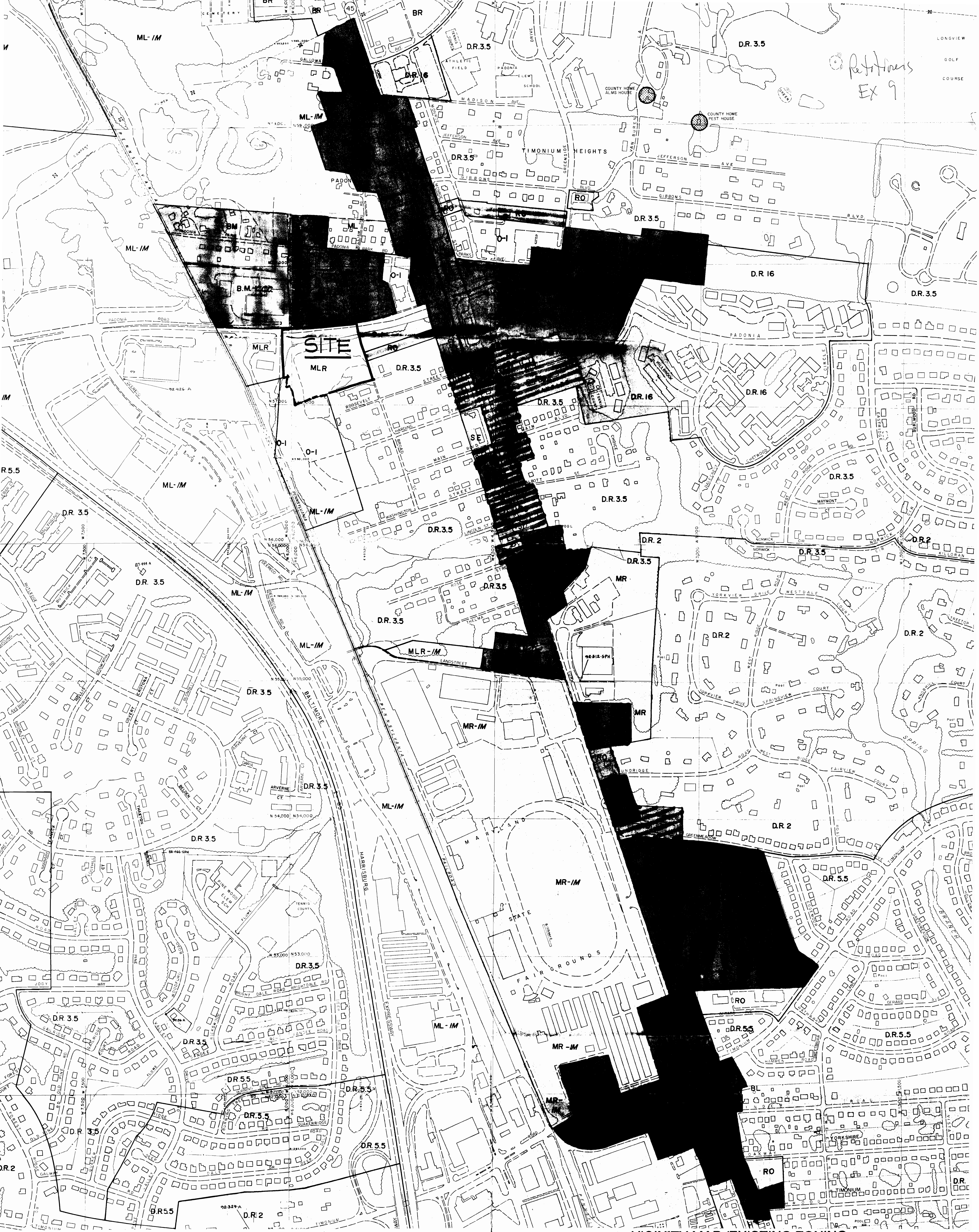
SITE SIGNAGE AND LIGHTING

Feb. 22, 1993

Broad Street Market

The signage and lighting drawings(land graphics)represented on this sheet are to communicate the scale, proportions, and character of the proposed elements. They are not finished designs. Graphics and text may vary from images shown.

GROZIER ASSOCIATES
LANDSCAPE ARCHITECTURE
1111 Centre Street, Suite 202
3000 Chestnut Avenue
Baltimore, Maryland 21215
Tel: 781-388-1500 Fax: 781-388-1501



Ref: Plans
Ex 9

SITE

VICINITY MAP / EXISTING ZONING

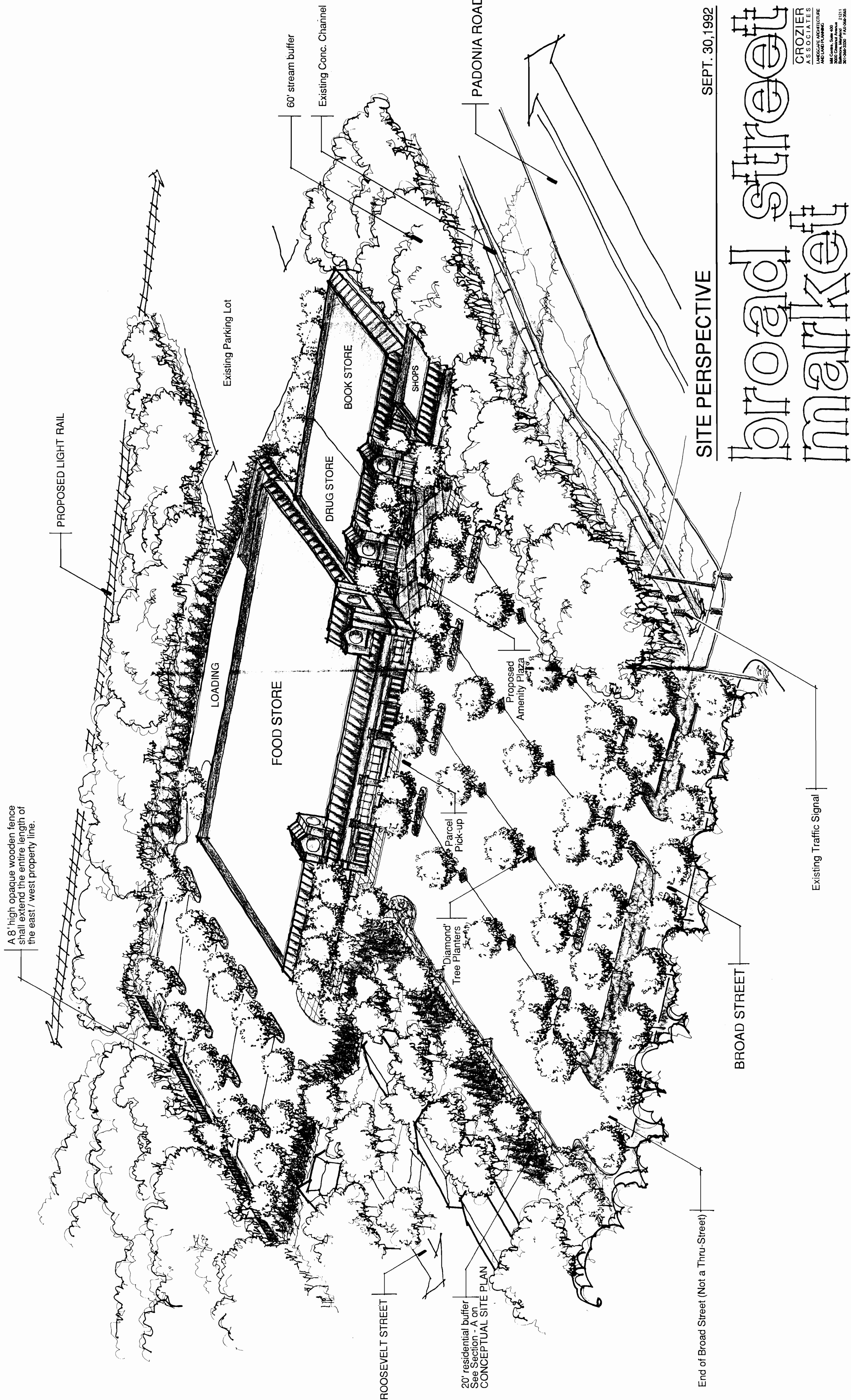
DEC. 30, 1992

broad street market

CROZIER ASSOCIATES
LANDSCAPE ARCHITECTURE
PLANNING & DESIGN
1000 Capital Avenue
201-988-3300 FAX 201-988-3365

200'

Revisions Ex 11



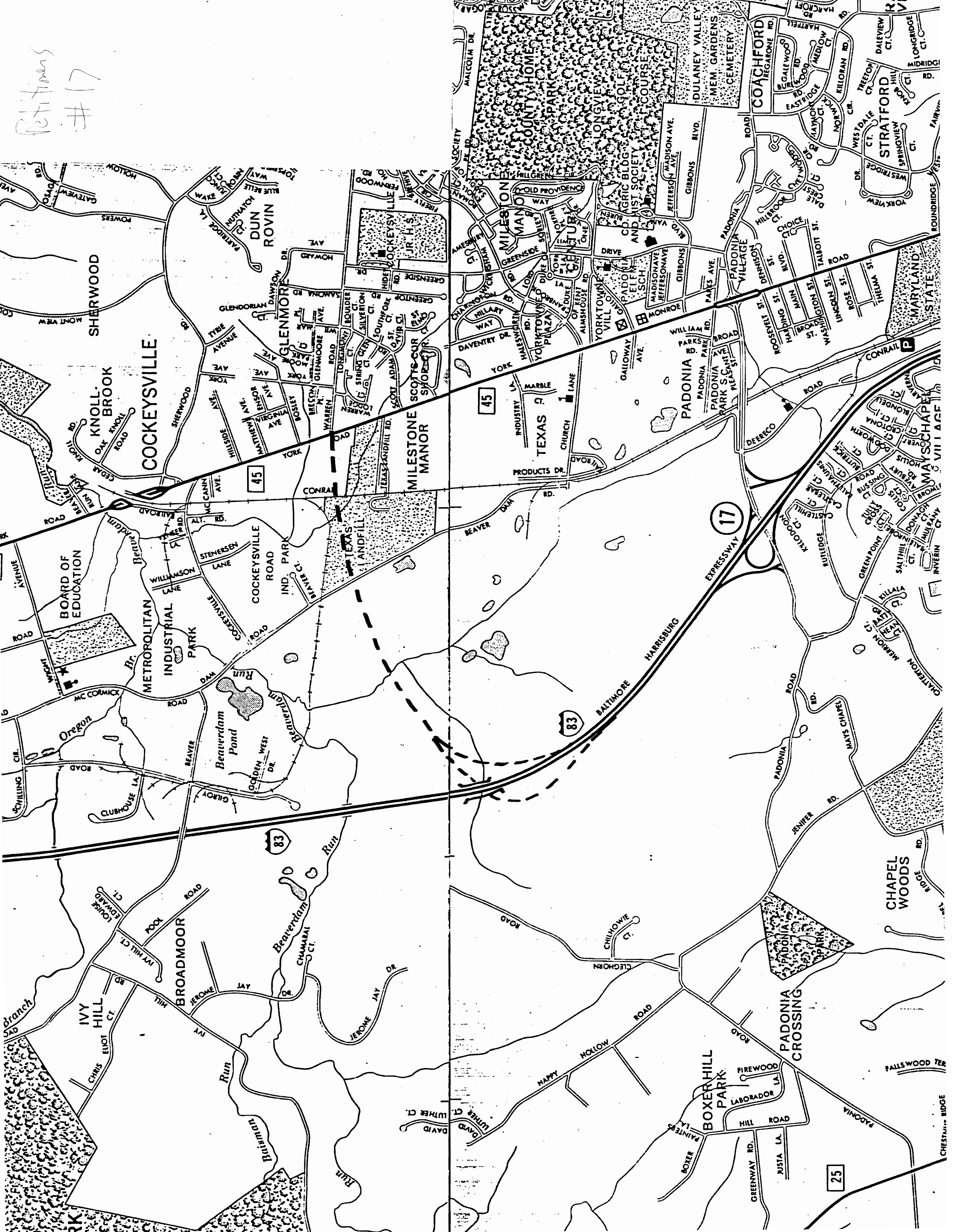
SITE PERSPECTIVE

SEPT. 30, 1992

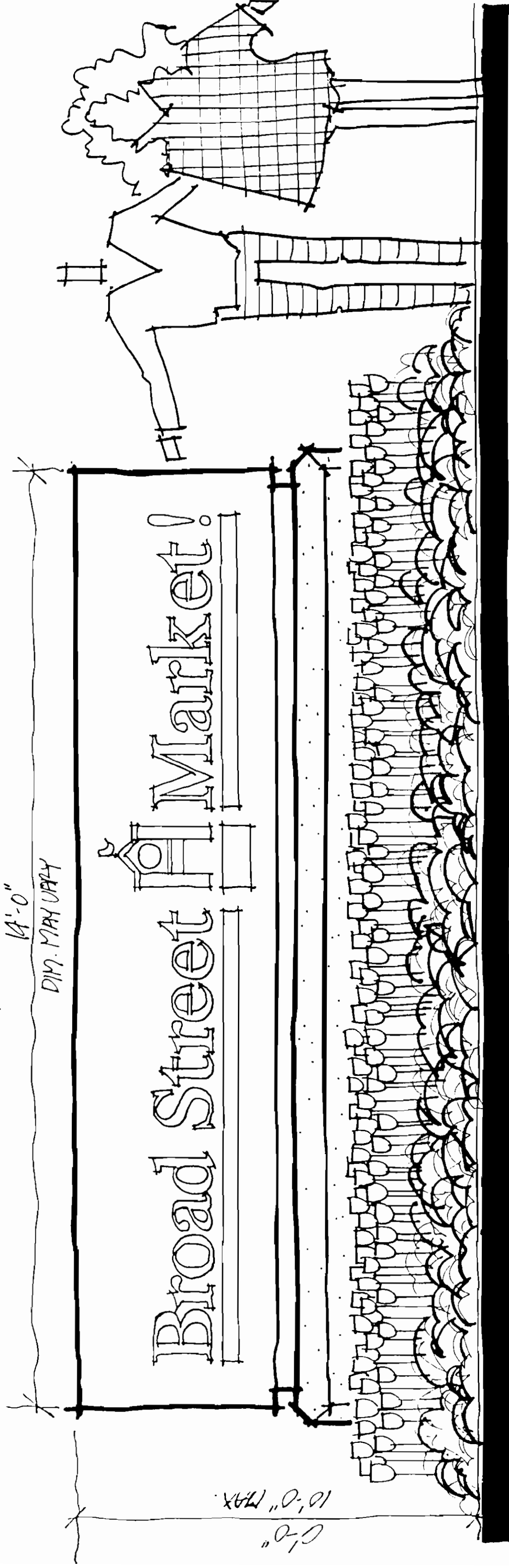
Broad Street Market

CROZIER ASSOCIATES
LANDSCAPE ARCHITECTURE
AND LAND PLANNING
301 N. Green Street, Suite 400
Baltimore, Maryland 21211
301-955-3330 FAX 301-955-3335

Petitions
#17



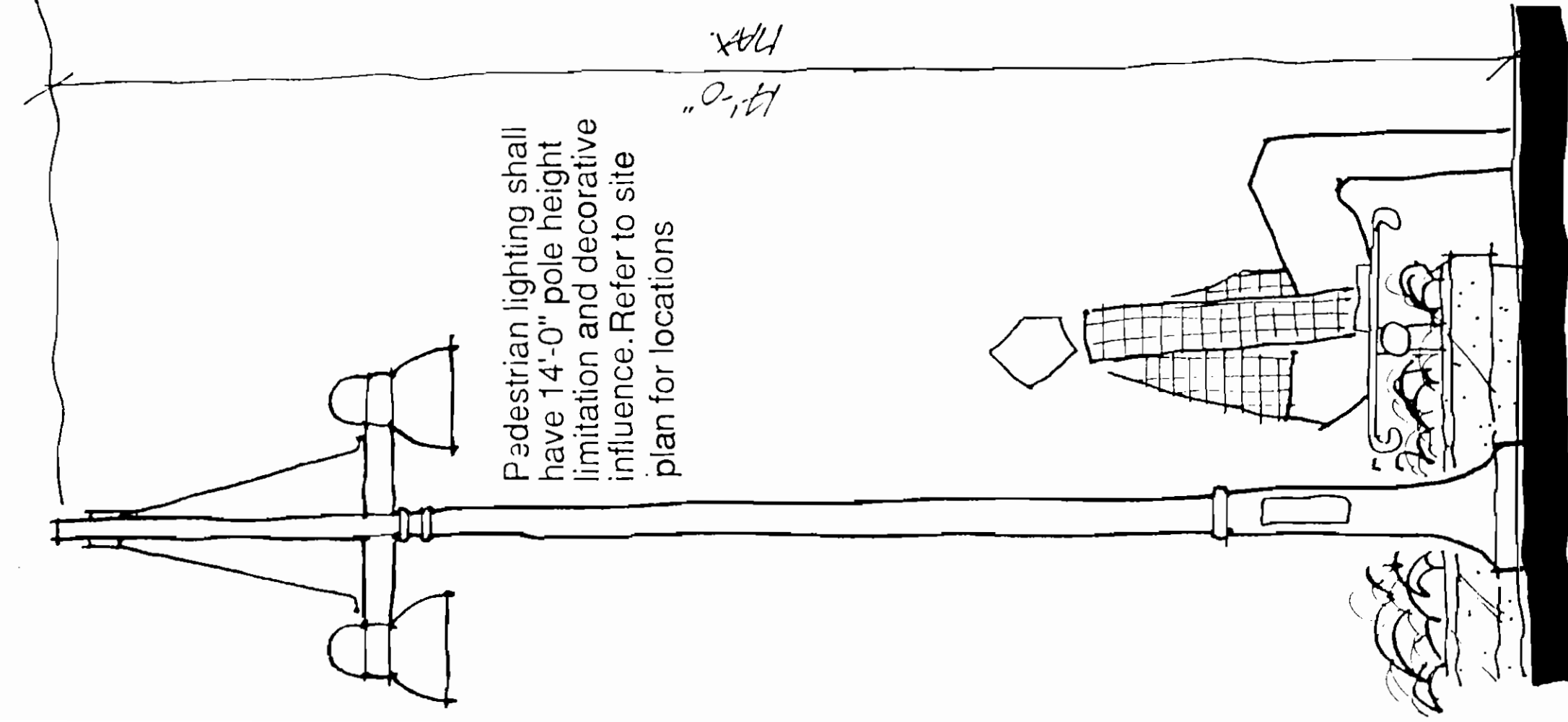
Entry signage shall have horizontal emphasis and a 10'-0" height limitation.
Refer to site plan for location



Project Identification / Entry Signage

Scale: 3/4"=1'-0"

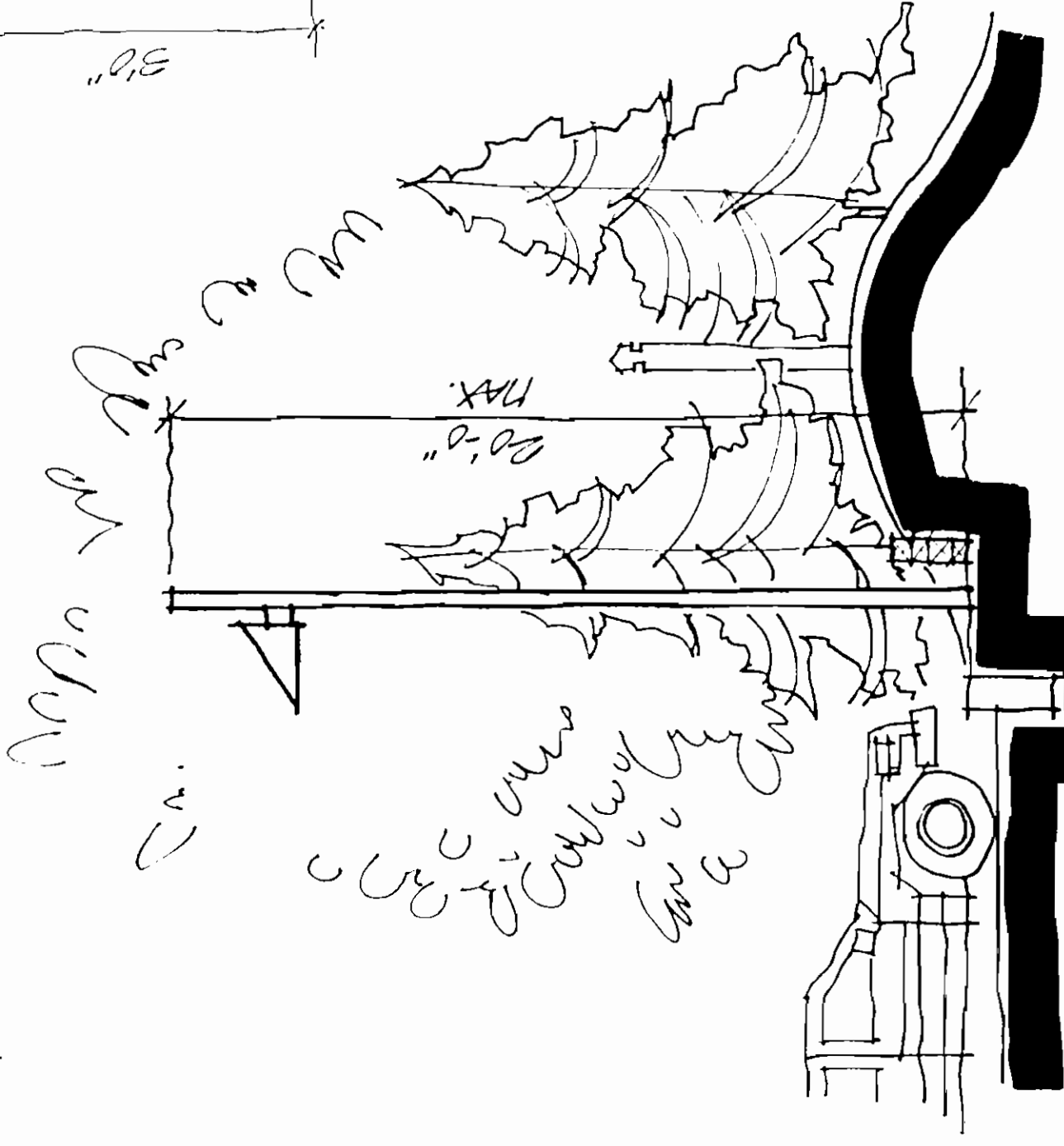
Note: All proposed signs shall comply with
Section 413 of the Baltimore County
Zoning Code.



Pedestrian Lighting

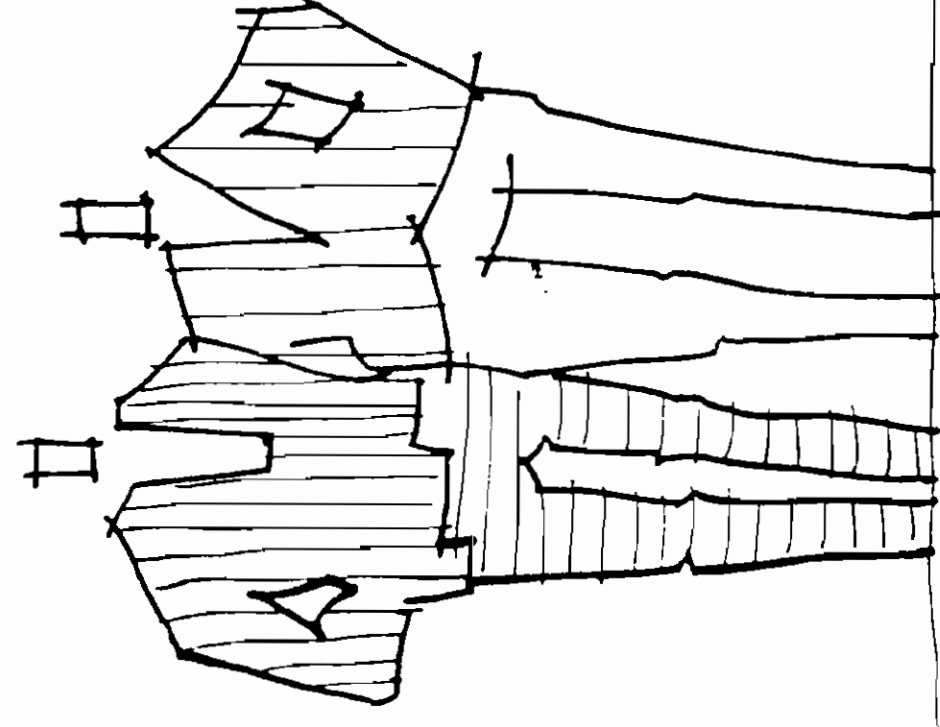
Scale: 3/4"=1'-0"

Site lighting shall have 20'-0" pole height limitation.
All fixtures shall have "cut-off" features shielding
adjacent uses from light exposure. Refer to site
plan for locations



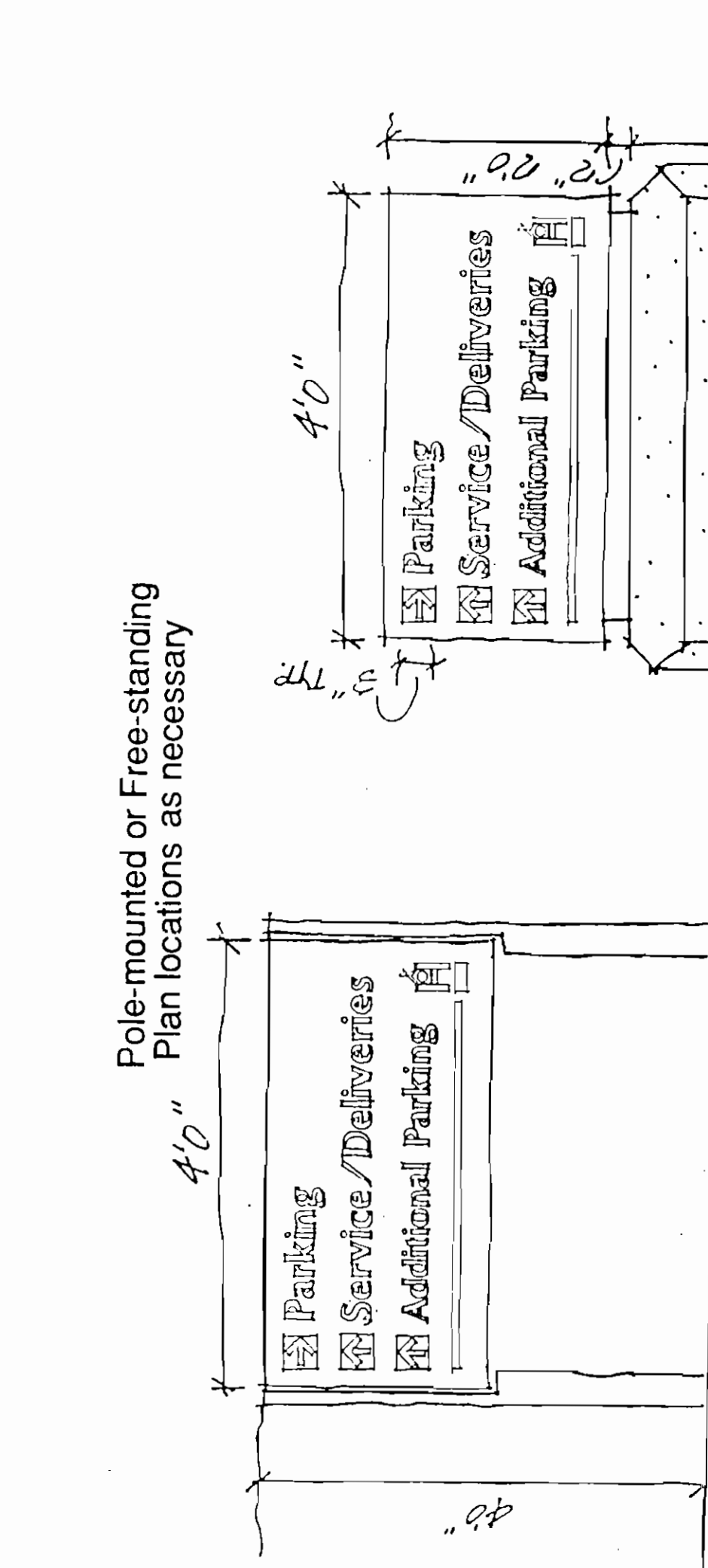
Site Lighting

Scale: 1/4"=1'-0"



Directional Signage

Scale: 3/4"=1'-0"



Berm Section / Residential Buffer

Scale: 1/4"=1'-0"

SITE SIGNAGE AND LIGHTING

Feb. 22, 1993

broad street market

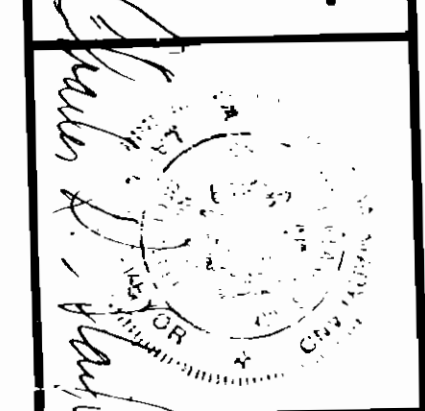
CROZIER
ASSOCIATES
LANDSCAPE ARCHITECTURE
AND LAND PLANNING
M. Crozier, Assoc. AIA
3333 Oakridge Avenue, Suite 201
301-986-3330 / FAX-366-3555



The signage and lighting drawings (and graphics) represented on this sheet are to communicate the scale, proportions, and character of the proposed elements. They are not finished designs. Graphics and text may vary from images shown.

CR-93-305-SPA
REV 3/31/93





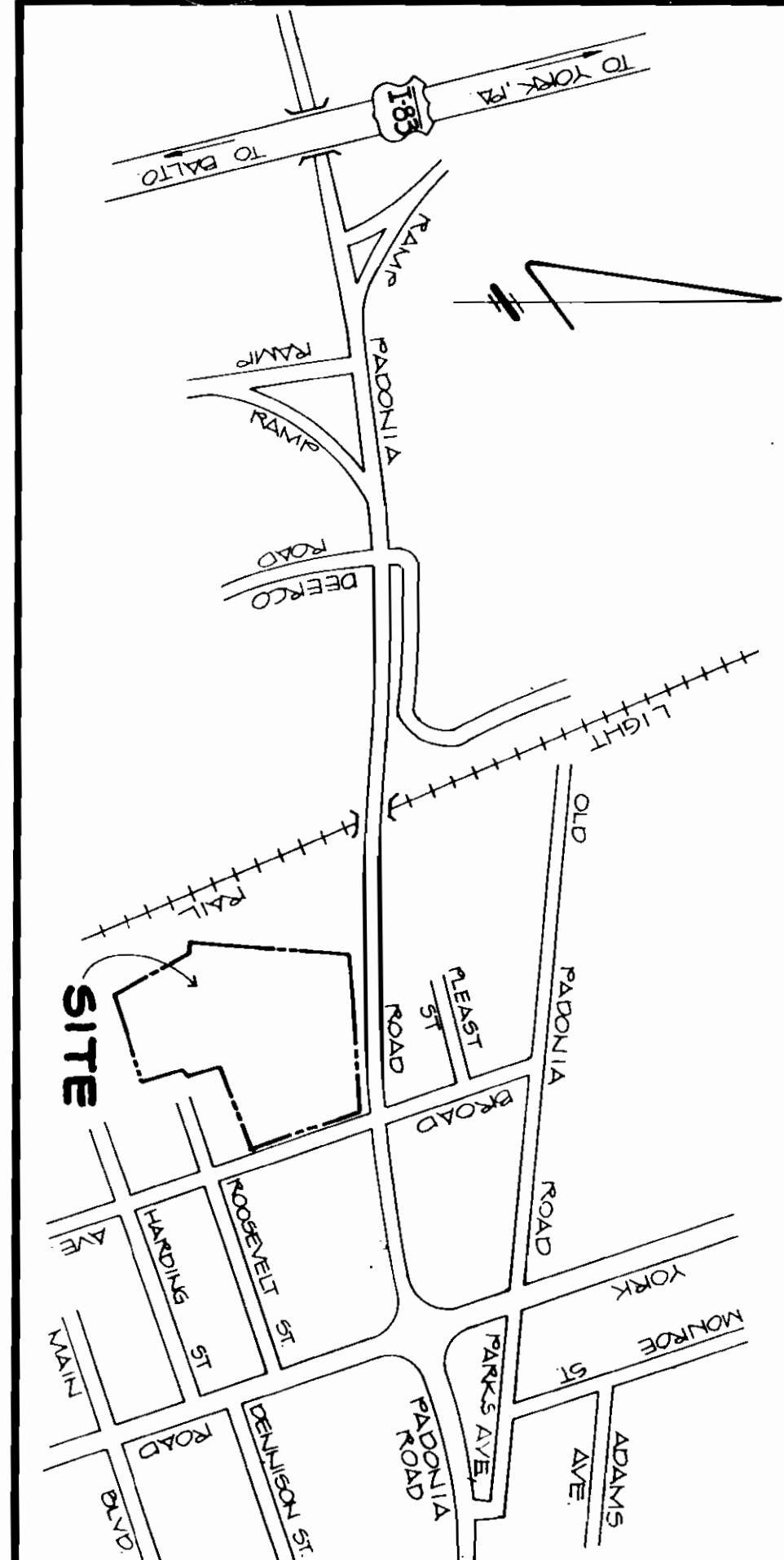
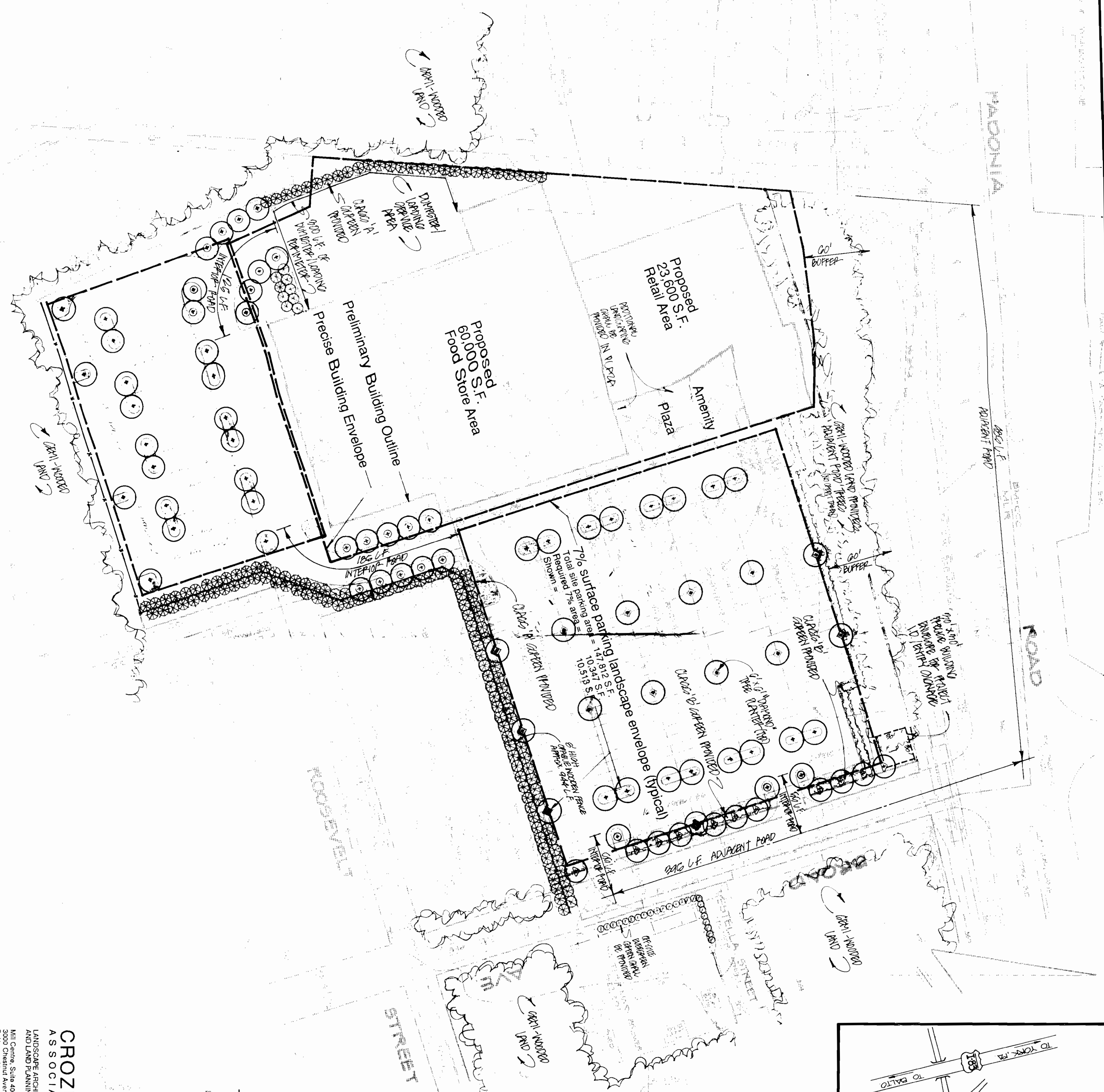
Schematic Landscape Plan

DESIGNED	DRAWN	CHECKED
BY		
REVISIONS		
DATE		

BY	
REVISIONS	
DATE	

CROZIER ASSOCIATES
LANDSCAPE ARCHITECTURE
AND LAND PLANNING
Mill Centre, Suite 400
2000 North Avenue
Baltimore, Maryland 21201
301-956-3330 FAX: 306-3555

CR-93-305-SPH
REV 3/31/93



VICINITY MAP

SCALE: 1"=500'

LEGEND

PROPERTY LINE	AREA - PARCEL 1 - 6.57 AC.±
NW LINE	PARCEL 2 - 0.93 AC.±
EX. C/OUTLINE	EX. ZONING - M1R
EX. CONC. & 16	EX. ZONING - M1R
ZONING LINE	DR. 35
DR. 35	EX. USE - VACANT
EX. USE - VACANT	PROP. USE - SHOPPING CENTER
PROP. BLDG. AREA - 85,000 S.F.	PARKING REQUIRED - 51,000 @ 85% X 5 = 418
PARKING PROVIDED - 418	HANDICAP SPACES REQUIRED - 5
HANDICAP SPACES PROVIDED - 5	WITH 1 VAN ACCESSIBLE SPACE

Landscape Requirements per Balto. County Landscape Manual Section IX.C.2.

- GENERAL PLANTING REQUIREMENTS** - For the purpose of establishing the minimum quantity of plant materials required, the following formulas shall be used.
- One planting unit shall be required for every 20 linear feet (measured along the centerline) of interior road, and 40 linear feet of adjacent road. A minimum of 50% of these planting units shall be major trees.
 - SPECIAL CONDITIONS** - In addition to the General Planting Requirements, the following formulas shall be used.
 - Seven percent (7%) of all surface parking lot areas shall be reserved for landscaping at the rate of one planting unit per 12 parking spaces. A minimum of 75% of these planting units shall be major trees. When parking spaces abut a building, the back of the curb shall be a minimum of 30 feet from the building. Screenings should be in compliance with Section 4.03 B C.2.A. Screening shall comply with Class "B" Screening Requirements. See Applicable Definitions.
 - Screening of Commercial, Office, Industrial and Public Development from adjacent residentially zoned or used property shall be in compliance with Section 4.03 B C.2.A. Screening shall comply with Class "B" Screening Requirements. See Applicable Definitions. A minimum of 75% of the screening shall be evergreen trees.
 - Screening of dumpsites, loading, service and outside storage areas from all adjacent residentially zoned or used properties, public or private rights-of-way excepting other than similar industrial uses shall be required. Screening shall comply with Class "A" Screening Requirements. See Applicable Definitions.

Applicable Definitions

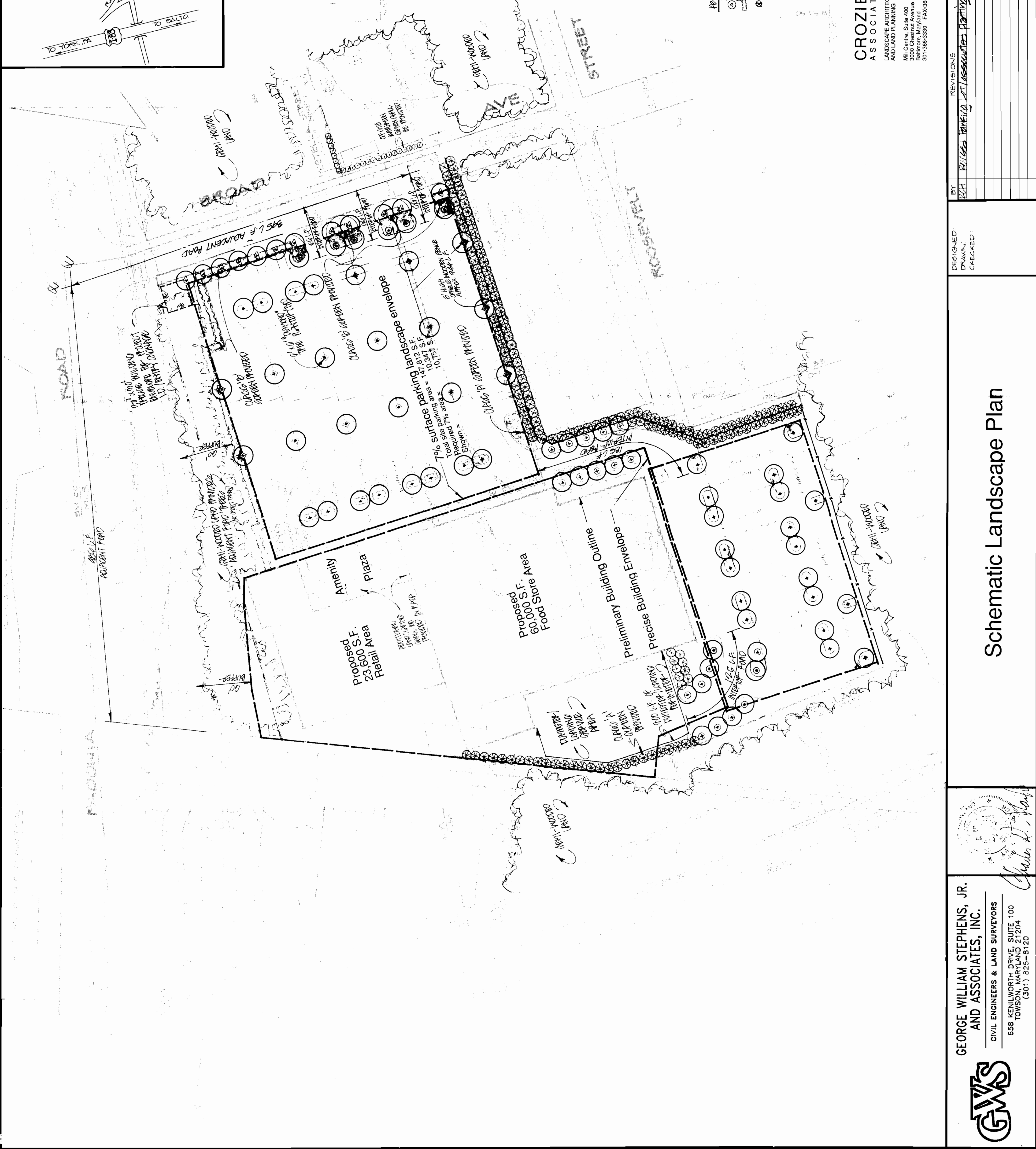
Planting Unit - A unit of measurement for determining the quantity of plant materials required. One planting unit shall be equal to:
Two minor deciduous trees or
Two evergreen trees or
One hundred square feet of groundcover

Screening, Class "A" - One planting unit per 15 linear feet of the area to be screened. Plants shall provide a minimum five foot high year round visual screen at maturity. Minimum height of screen at installation shall be 30 inches.
Screening, Class "B" - One planting unit per 15 linear feet of the area to be screened. Plants shall provide a minimum three foot high year round visual screen at maturity. Minimum height of screen at installation shall be 18 inches.
Screening, Class "C" - One planting unit per 15 linear feet of the area to be screened. Plants shall provide a minimum three foot high year round visual screen at maturity. Minimum height of screen at installation shall be 18 inches.

Requirement Worksheet

Item	Formula	Required	Provided
1	820 Linear feet of interior road + 20	20pu's	23 major trees
2	880 Linear feet of adjacent road + 40	22pu's	12 major trees
3	418 Parking Spaces + 12	35pu's	48 major trees
4	120 Linear feet of adjacent to 1/2 W. + 15	2pu's	25 evergreen trees
5	527 Linear feet of adjacent residential + 15	2pu's	25 evergreen trees
6	300 Linear feet of dumpster (S) + 15	2pu's	18 evergreen trees
7	Total Parking Units Required / Provided	+ 179	198
Major Deciduous @ 100' (unit)			
Evergreen Trees @ 20' (unit)			
Shrub @ 5' (unit)			
Total			

Note: In addition to the above provided landscape, the owner has agreed to provide off-site screening and access for the Brewer Property (see plan) and will provide enhancement landscaping in the proposed amenity plaza (to be determined at a later design phase).



SCALE: 1" = 500'

PROPERTY LINE
N/W LINE
EX. CONTOUR
EX. CONC. C. & G.
ZONING LINE

AREA - PARCEL 1 - 657 AC ±
PARCEL 2 - 0.93 AC ±
EX ZONING - MLR
O-1
DR 35

Landscape Requirements per Balto. County Landscape Manual Section IX.C.2.

- a. GENERAL PLANTING REQUIREMENTS:** For the purpose of establishing the minimum quantity of plant materials required, the following formulas shall be used.
1. One planting unit shall be required for every 20 linear feet (measured along the centerline) of interior road, and 40 linear feet of adjacent road. A minimum of 50% of these planting units shall be major trees.
- b. SPECIAL CONDITIONS:** In addition to the General Planting Requirements, the following formulas shall be used.

Applicable Definitions

Planting Unit - A unit of measurement for determining the quantity of plant materials required.
One planting unit equals: one major deciduous tree or,

Scenario, Class: "A". One planting unit per 15 linear feet of the area to be screened. Plants shall provide a minimum live foot high year round visual screen at maturity. Minimum height of screen at installation shall be 30 inches.

A live foot high opaque fence or wall may be required in conjunction with a planting screen under the Modification to Standards provisions in this manual.

Scenario, Class: "B". One planting unit per 15 linear feet of the area to be screened. Plants shall provide a minimum three foot high year round visual screen at maturity. Minimum height of screen at installation shall be 18 inches.

A three foot high opaque fence or wall may be required in conjunction with planting screen under the Modification to Standards provisions in this manual.

Requirement Worksheet

Formula	Required	Provided
1. 800 Linear feet of sidewalk (road) - 20	20	20
2. 800 Linear feet of sidewalk (road) - 40	20	12 major trees
3. 422 Parking Spaces + 12	50	46 major trees
4. 507 Linear feet of sidewalk (to adjacent r.o.w. + 15	50	25 emergent trees
5. 507 Linear feet of sidewalk (residential) + 15	50	18 emergent trees
6. 300 Linear feet of dumpster (9) - 15	20	18 emergent trees
7. Total Parking Units Required/Provided	162	193
Major Deciduous @ 1 tree/unit		
Major Coniferous @ 1 tree/unit		
Shrub (605 plants @ 12)		
Shrub (605 plants @ 12)		

Note: In addition to the above provided landscape, the owner has agreed to provide off-site screening and access for the Brewer Property (see plan) and will provide enhancement landscaping in the proposed 'amenity plaza' (to be determined at a later design phase).

CROZIER
ASSOCIATES
LANDSCAPE ARCHITECTURE
AND LAND PLANNING

Mill Centre, Suite 400
3000 Chestnut Avenue
Baltimore, Maryland 21211
301-366-3330 FAX: 306-358555

CR-93-305-SPH
REVISED 3/31/93

GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.

CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(301) 825-8120



Schematic Landscape Plan

Charles D. Smith

DESIGNED
DRAWN:
CHECKED:

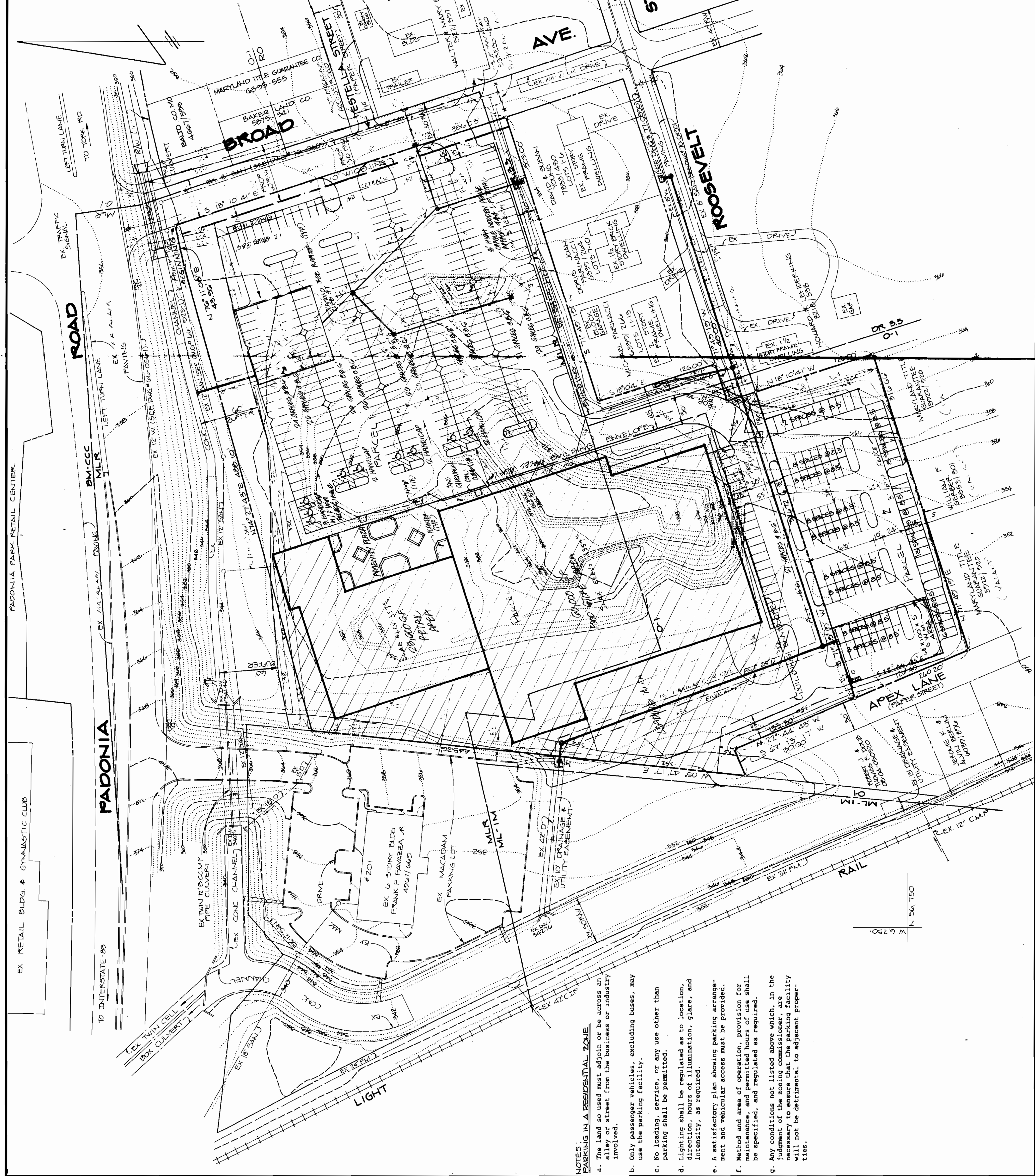
REVISIONS

DATE	4/2/22
	WINTER

BROAD STREET MARKET

BALTIMORE COUNTY, MD
SCALE: 1"=50'

ELECT. DIST. #8
DATE: Feb. 22, 1993
SHT. OF



SCALE. 1" = 500'

PROPERTY LINE
RAW LINE
EX. CONTOUR
EX. CONC. C&G.
ZONING LINE
PROP. CONTOUR

AREA - PARCEL 1 - 57.57 AC.1
PARCEL 2 - 0.29 AC.2
Z. ZONING - MUR
PARCEL 1 } DR35
PARCEL 2 }
1. ZONING PARCEL 2 - O-1
2. MUR ZONING - PARCEL 1 - BM
3. PRO ZONING - PARCEL 2 -
O-1 WITH USE PERMIT TO PARK
EX. USE - VACANT
PROP. USE - SHOPPING CENTER
PROP. BLDG. AREA - 51,000 SF
PARKING REQUIRED - 51,000 @ 8
HANDICAP - 4.22
PARKING PROVIDED - 4.22

GENERAL

- 1) UTILITIES:
 - A) SANITARY SEWER IS AVAILABLE ALONG SOUTH SIDE PADONIA ROAD AND IN BROAD AVE. (CURRENTLY UNIMPROVED) AS SHOWN HEREON.
 - B) WATER IS AVAILABLE IN PADONIA ROAD AND IN ROOSEVELT STREET AS SHOWN HEREON.
 - C) STORM DRAINAGE, STORMWATER MANAGEMENT AND SEDIMENT CONTROL WILL BE DESIGNED IN COMPLIANCE WITH BALTIMORE CO. REGULATIONS PENDING ZONING APPROVAL AND SHOWN ON FINAL SITE PLAN.
- 2) PAVING:

STONE CRUSHING SURFACE, PROPERLY DRAINED, WITH SUFFICIENT SLOPE BEHIND SUB-BASE ALL INTERIOR CURBS SHOWN HEREON SHALL BE OF CONCRETE OR BITUMINOUS CONSTRUCTION NOT LESS THAN 8" WIDE AND 6" HIGH.

PAVING REPAIRS SHALL BE AS DIRECTED BY BALTIMORE CO. CONTRACTORS AND SHALL BE IN COMPLIANCE WITH COUNTY SPECIFICATIONS.
- 3) LIGHTING:-

PROPOSED ON SITE LIGHTS SHALL BE SO ERRECTED AS NOT TO REFLECT RAYS TOWARD RESIDENTIAL LOTS. ADDITIONALLY, RAY LIGHTS SHALL NOT BE ERRECTED TOWARD TRAFFIC. MAXIMUM HEIGHT OF PROPOSED LIGHTS TO BE 20 FEET.
- 4) PROPOSED BUILDINGS WILL BE ENTIRELY LOCATED WITHIN THE PRECISE PLANNED STREET GRID. THE REMAINING AREAS ARE TO BE UTILIZED FOR RETAIL USES PERMITTED UNDER THE BM-CDC ZONE, A DRUG STORE AND BOOK STORE ARE THE CURRENT PROPOSED TENANTS.
- 5) MAXIMUM HEIGHT OF PROPOSED BUILDINGS - 40 FEET
- 6) HOURS OF OPERATION - 8:00 AM TO 10:00 PM.
- 7) DELIVERY AND TRASH PICKUP TO BE BETWEEN 7:00 AM AND 11:00 PM
- 8) SITE SHADE SHOWN ON ATTACHED DRAWING IS CONCEPTUAL IN NATURE, DIMENSIONS AS SHOWN ARE MAXIMUM BUT WARDAGE IS SUBJECT TO CHANGE.
- 9) PAPER STREETS AND PAPER ALLEYS THAT BISECT THE PROPERTY WILL BE REITERATED FOR CLOSING.
- 10) A SPECIAL HEARING IS REQUESTED FOR A USE PERMIT FOR BUSINESS PARKING IN A RESIDENTIAL ZONE (O-1) PER SECTION 403.6, 6-1 SUBJECT TO 405.6 B-2.
- 11) IF A PORTION OF ROOSEVELT STREET (PAPER STREET) IS NOT CLOSED A SOME OF STANDARDS WILL BE REQUESTED FOR PARKING.
- 12) TOPOGRAPHY AND MAJOR VEGETATION (10% WOODED, 90% FIELD) BASED ON SOME FIELD RUN DATA AND BALTO CO. ZOO SCALE PHOTOGRAMETRIC AND IS SUBJECT TO REVISION AFTER SUBSEQUENT FIELD RUN DATA.
- 13) DEVELOPMENT OF SITE IS NOT EXPECTED TO RESULT IN A SUBSTANTIAL INCREASE IN SOUND, OTHER VIBRATIONS, DUST, ODORS, GASES, LIGHT AND HEAT BEYOND THAT ASSOCIATED WITH TYPICAL MEDIUM SIZE SHOPPING CENTERS.
- 14) MAJOR CHANGES IN GRADE ARE ILLUSTRATED CONCEPTUALLY BY PROPOSED CONTOUR LINES AND ARE SUBJECT TO REFINEMENT AS FINAL FIELD DATA AND ANCHITECTURE IS DEVELOPED. BACKWATER TO BE DETERMINED.
- 15) THIS SITE IS NOT IN A HISTORIC DISTRICT.
- 16) COUNCILMANIC DISTRICT # 5.
- 17) PERMISSUM PARKING LAYOUT APPROVED BY RAHIM FAMILI ON 4-1-09.
- 18) MAXIMUM NUMBER OF EMPLOYEES ESTIMATED 75.

SITE PLAN

BROAD STREET MARKET

BALTIMORE COUNTY, MD.

ELECT DIST. #8

SHT. 1 OF

532

DEVELOPER

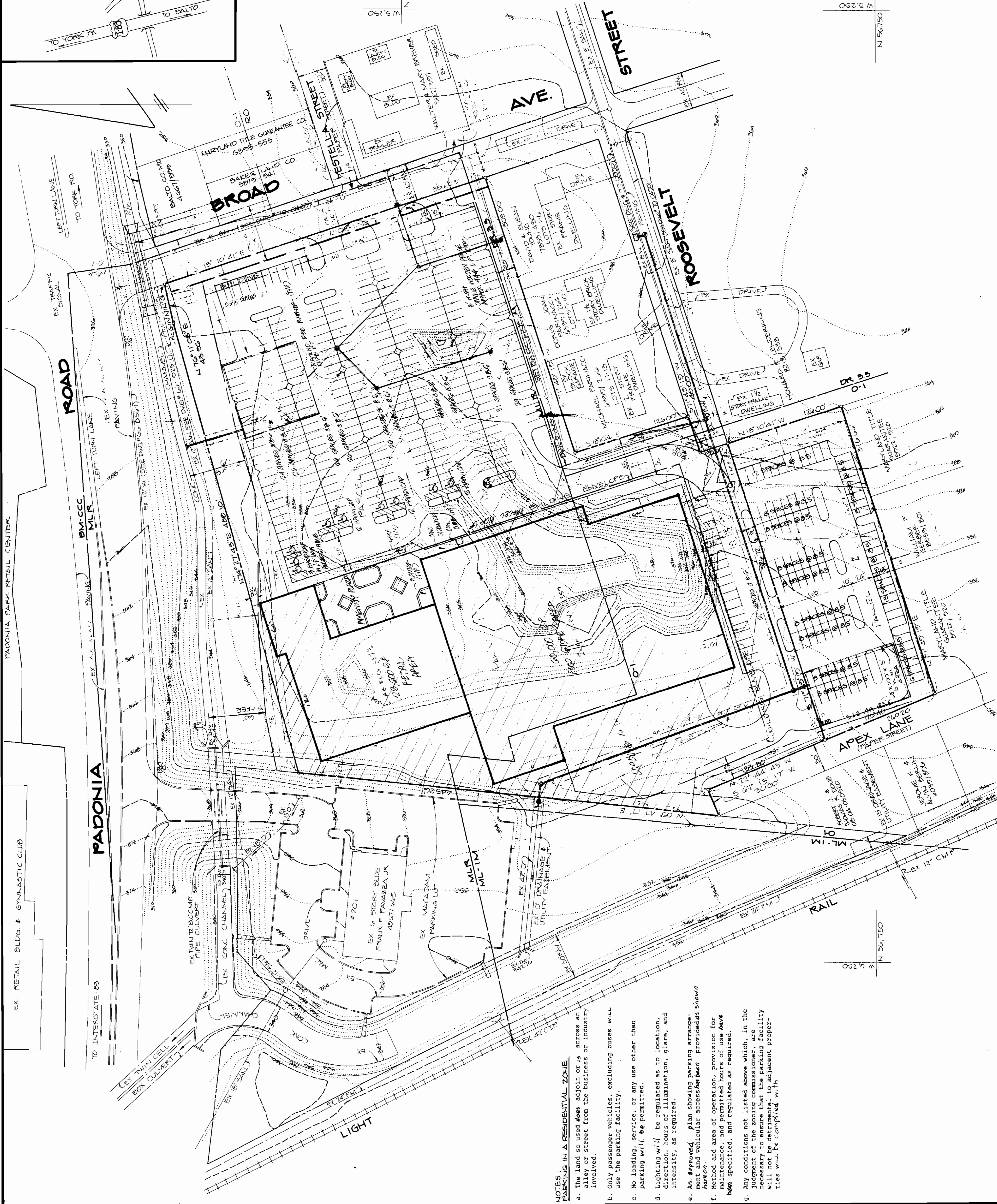
HARRISON & GRASS
100 CHESTNUT STREET
HARRISBURG, PA. 17101
(717) 231-2800

**GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.**

CIVIL ENGINEERS & LAND SURVEYORS

658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(301) 825-8120

GWS



SCALE 1" = 500'

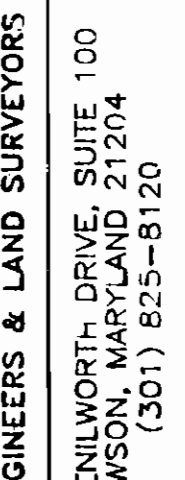
PROPERTY LINE
R/W LINE
EX CONTOUR
EX CONC C & G
ZONING LINE
MLR
0-1
356
PROP CONTOUR

AREA - PARCEL 1 - .57 AC ±
PARCEL 2 - .023 AC ±
X-ZONING (MLR)
PARCEL 1 } 0-1
PARCEL 2 } DR35
X-ZONING PARCEL 2 - 0-1
PROP ZONING - PARCEL 1 - BM
PROP ZONING - PARCEL 2 -
0-1 WITH USE PERMIT TO PARK
EX. USE - VACANT
PROP USE - SHOPPING CENTER
PROP BLDG. AREA - 63,000 SF
EST. BLDG. AREA - 63,000 SF
PARKING REQUIRED - 51,000 @ .85
HANDICAP - 5
PARKING PROVIDED - 41 ±

1) UTILITIES:

- 2) PAVING - SHALL BE BITUMINOUS SURFACE, PROPERLY DRAINED WITH SUFFICIENT STONE CRUSHER SURFACE. ALL INTERIOR CURBS SHOWS HEREON SHALL BE CONCRETE OR BITUMINOUS CONSTRUCTION NOT LESS THAN 8" WIDE AND 6" HIGH.
- 3) LIGHTING - ROAD IMPROVEMENTS SHALL BE AS DIRECTED BY BALTIMORE CO. COMMENTS AND SHALL BE IN COMPLIANCE WITH COUNTY SPECIFICATIONS. PROPOSED ON SITE LIGHTS SHALL BE SO ERRECTED AS NOT TO REFLECT RAYS TOWARD RESIDENTIAL LOTS. ADDITIONALLY SAID RAYS SHALL NOT INTERFERE WITH SURROUNDING TRAFFIC. MAXIMUM HEIGHT OF PROPOSED LIGHTS TO BE 20 FEET.
- 4) PROPOSED BUILDINGS WILL BE ENTIRELY LOCATED WITHIN THE PRECISE BUILDING ENVELOPE SHOWN. THE 40,000 SQUARE FOOT AREA WILL BE UTILIZED FOR A FOODS RETAILER. THE REMAINING AREAS ARE TO BE UTILIZED FOR VARIOUS TYPES OF FOODS RETAILERS UNDER THE BM-COC ZONE, A DRUG STORE AND BOOK STORE ARE THE CURRENT PROPOSED TENANTS.
- 5) MAXIMUM HEIGHT OF PROPOSED BUILDINGS - 40' FEET
- 6) HOURS OF OPERATION - 8:00 AM TO 10:00 PM
- 7) DELIVERY AND TRASH PICKUP TO BE BETWEEN 7:00 AM AND 11:00 PM
- 8) SITE SHOWN ON ATTACHED DRAWING IS CONCEPTUAL IN NATURE. DIMENSIONS AS SHOWN ARE MAXIMUM BUT VARIAGE IS SUBJECT TO CHANGE.
- 9) PAPER STREETS AND PAPER ALLEYS THAT BISECT THE PROPERTY WILL BE PETITIONED FOR CLOSING.
- 10) A SPECIAL HEARING IS REQUESTED FOR A USE PERMIT FOR BUSINESS PARKING IN A RESIDENTIAL ZONE (O-1) PER SECTION 405.8.1-1 SUBJECT TO 405.8-2.2. IF A PORTION OF ROOSEVELT STREET (PAPER STREET) IS NOT CLOSED A VARIANCE OF STANDARDS WILL BE REQUESTED FOR PARKING.
- 11) TOPOGRAPHY AND MAJOR VEGETATION (10% WOODED, 50% FIELD) BASED ON SOME FIELD RUN DATA AND BALTO CO ZOO SCALE PHOTOGRAMMETRIC AND IS SUBJECT TO REVISION AFTER SUBSEQUENT FIELD RUN DATA.
- 12) DEVELOPMENT OF SITE IS NOT EXPECTED TO RESULT IN A SUBSTANTIAL INCREASE IN SOUND, OTHER VIBRATIONS, AIR POLLUTION, LIGHT AND HEAT BEYOND THAT ASSOCIATED WITH TYPICAL MEDIUM SIZE SHOPPING CENTERS.
- 13) MAJOR CHANGES IN GRADE ARE ILLUSTRATED CONCEPTUALLY BY PROPOSED CONTOUR LINES AND ARE SUBJECT TO REFINEMENT AS FINAL FIELD DATA AND ARCHITECTURE IS DEVELOPED. BACKWATER TO BE DETERMINED.
- 14) THIS SITE IS NOT IN A HISTORIC DISTRICT.
- 15) COUNCILMANIC DISTRICT # 3
- 16) PERPENDICULAR PARKING LAYOUT APPROVED BY RAHIM FAMILI ON 4-1-93
- 17) MAXIMUM NUMBER OF EMPLOYEES ESTIMATED 75

AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204



DEVELOPER
HARRISON & GRASS
100 CHESTNUT STREET
HARRISBURG, PA. 17101
(717) 231-2800

DESIGNED. A.
DRAWN. '.

[illegible]

BROAD STREET MARKET

BALTIMORE COUNTY, MD
SCALE 1"=50'

5451 OP

CR-93-305-SPH
4-7-93
REVISED

REVISED
4-7-93

PLAN FOR RECLASSIFICATION

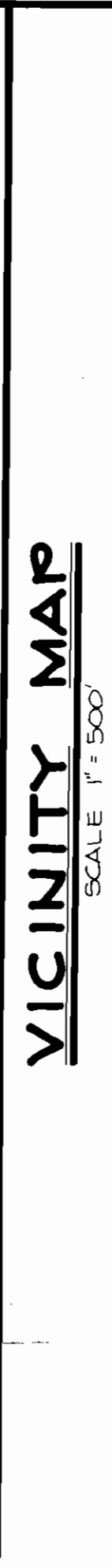
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Baltimore County Zoning Regulations Sec. 204.....	App. 28
Baltimore County Zoning Regulations Sec. 233.1 and 233.4...	App. 34
Baltimore County Zoning Regulations Sec. 248 and 248.4.....	App. 37

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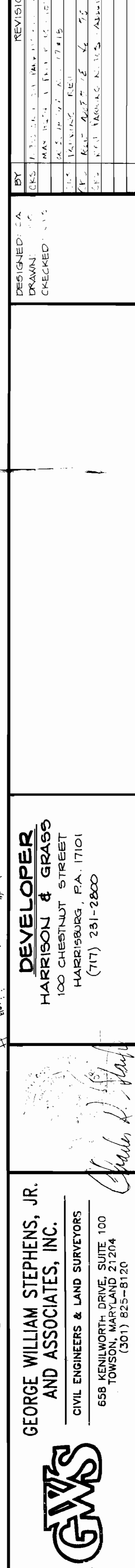


1) UTILITIES:
A) SANITARY SEWER IS AVAILABLE ALONG SOUTH SIDE PADONIA ROAD AND IN BROAD AVE / CURRENTLY UNDERGROUND AND BELOW HEREON.
B) WATER IS AVAILABLE IN PADONIA ROAD AND IN ROOSEVELT STREET AS SHOWN HEREON.
C) STORM DRAINAGE, STORMWATER MANAGEMENT AND SEDIMENT CONTROL WILL BE DESIGNED IN COMPLIANCE WITH BALTIMORE CO REGULATIONS PENDING ZONING APPROVAL AND SHOWN ON FINAL SITE PLAN.

2) PAVING:
SHALL BE BITUMINOUS SURFACE, PROPERLY DRAINED WITH SUFFICIENT SLOPE TO PREVENT STAGNATION OF WATER.
SHALL BE OF CONCRETE OR BITUMINOUS CONSTRUCTION NOT LESS THAN 8" WIDE AND 6" HIGH.
ROAD IMPROVEMENTS SHALL BE AS DIRECTED BY BALTIMORE CO COMMENTS AND SHALL BE IN COMPLIANCE WITH CONSTRUCTION SPECIFICATIONS.

8" G.S.M.

- 1) UTILITIES:
A) SANITARY SEWER IS AVAILABLE ALONG SOUTH SIDE PADONIA ROAD AND IN BROAD AVE / CURRENTLY UNDERGROUND AND BELOW HEREON.
B) WATER IS AVAILABLE IN PADONIA ROAD AND IN ROOSEVELT STREET AS SHOWN HEREON.
C) STORM DRAINAGE, STORMWATER MANAGEMENT AND SEDIMENT CONTROL WILL BE DESIGNED IN COMPLIANCE WITH BALTIMORE CO REGULATIONS PENDING ZONING APPROVAL AND SHOWN ON FINAL SITE PLAN.
- 2) PAVING:
SHALL BE BITUMINOUS SURFACE, PROPERLY DRAINED WITH SUFFICIENT SLOPE TO PREVENT STAGNATION OF WATER.
SHALL BE OF CONCRETE OR BITUMINOUS CONSTRUCTION NOT LESS THAN 8" WIDE AND 6" HIGH.
ROAD IMPROVEMENTS SHALL BE AS DIRECTED BY BALTIMORE CO COMMENTS AND SHALL BE IN COMPLIANCE WITH CONSTRUCTION SPECIFICATIONS.
- 8" SAND



HARRISON & GRASS
100 CHESTNUT STREET
HARRISBURG, PA. 17101
(717) 231-2800

GWS

**GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.**

CIVIL ENGINEERS & LAND SURVEYORS

658 KENILWORTH DRIVE, SUITE 100
TOWNSON, MARYLAND 21204
(301) 825-8120

GWS

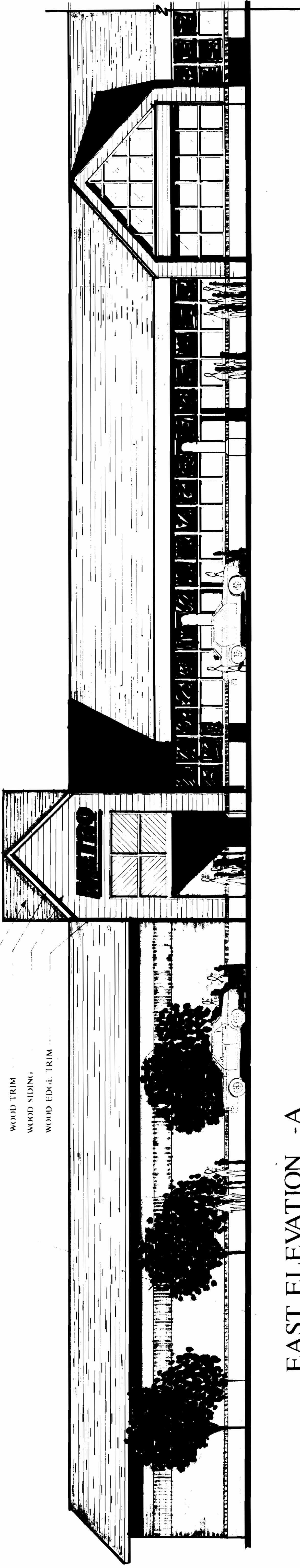
**GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.**

CIVIL ENGINEERS & LAND SURVEYORS

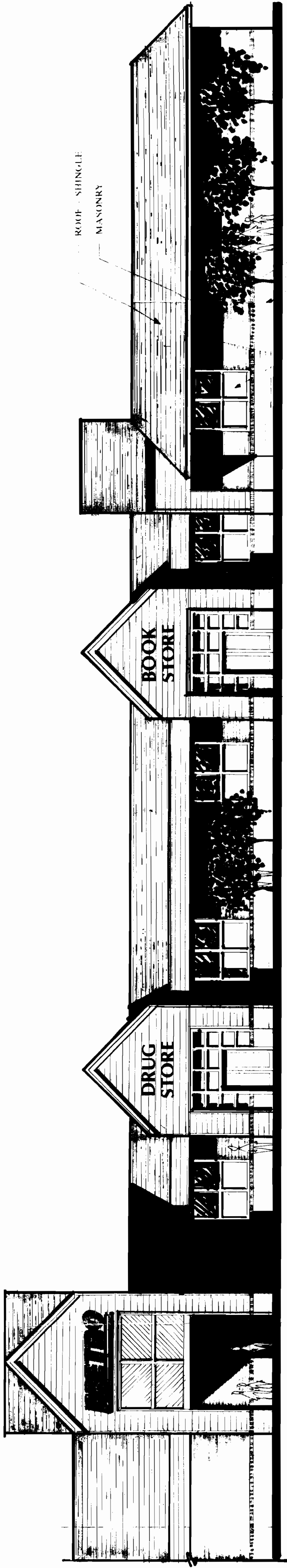
658 KENILWORTH DRIVE, SUITE 100
TOWNSON, MARYLAND 21204
(301) 825-8120

Revisions
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WOOD SIDING
WOOD EDGE TRIM

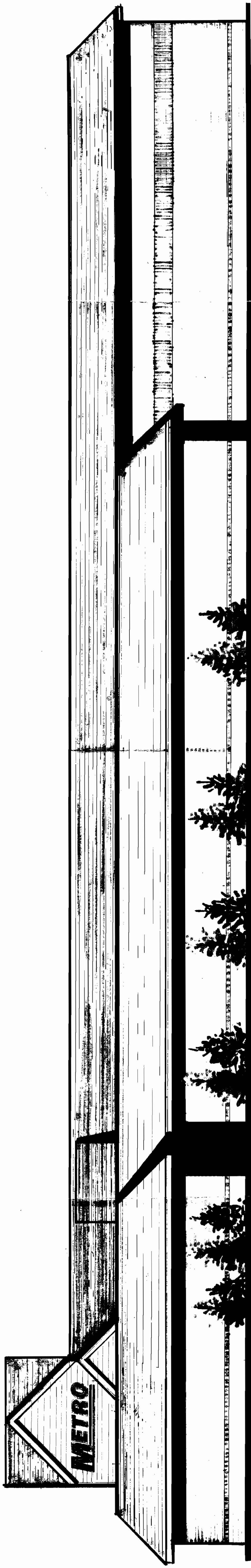


EAST ELEVATION -A



EAST ELEVATION -B

— MASONRY - ACCENT
— MASONRY - BASE
— ALUMINUM STOREFRONT & GLAZING



NORTH ELEVATION

BROAD STREET MARKET

Kenn and Associates Inc. Architecture
200 West North Street
Baltimore, Maryland 21201
Phone: 410 539 4921 Fax: 410 539 4921
Interior Design
Facilities Management



Revised for
Construction
Drawing
Date
FEB 18, 1993
Designed
Drawn
Title

ELEVATIONS

1 IN THE MATTER OF * BEFORE THE
2 BAKER LAND CORPORATION, et al * COUNTY BOARD OF APPEALS
3 property owner, * OF BALTIMORE COUNTY
4 HARRISON & GRASS * Case No. CR-93-305-SPH
5 * September 29, 1993

6 * * * * *

7 The above-entitled matter came on for
8 hearing before the County Board of Appeals of Baltimore
9 County at the Old Courthouse, Towson, Maryland 21204 at 10
10 o'clock a.m., September 29, 1993.

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20 Reported by:

21 C.E. Peatt

1 IN THE MATTER OF * BEFORE THE
2 BAKER LAND CORPORATION, et al * COUNTY BOARD OF APPEALS
3 property owner, * OF BALTIMORE COUNTY
4 HARRISON & GRASS * Case No. CR-93-305-SPH
5 * October 19, 1993

6 * * * * *

7 The above-entitled matter came on for
8 hearing before the County Board of Appeals of Baltimore
9 County at the Old Courthouse, Towson, Maryland 21204 at 10
10 o'clock a.m., October 19, 1993.

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ORIGINAL

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20 Reported by:

21 C.E. Peatt

CURRICULUM VITAE
NORMAN E. GERBER, AICP

35 Pickburn Court
Cockeysville, MD 21030

C.C. Ex #15

Business
(410)667-4543

Home
(410)667-4232

**PROFESSIONAL
EXPERIENCE**

Preparation of Master Plans and Land Use Regulations

Prepared comprehensive, policy, small-area, facility and revitalization plans, capital programs and capital budgets.

Prepared zoning and development ordinances, agricultural land preservation and historic district regulations and growth management programs.

Conducted demographic, transportation, economic and market studies.

Implementation of Plans and Programs

Reviewed and approved new development.

Enforced zoning, agricultural and historic preservation regulations.

Negotiated plan and facilities projects with community groups, local and state legislative bodies and private sector business.

Other

Testified before local, state and national boards, commissions and legislatures on the behalf of plans and programs.

Testified before boards of appeals, circuit courts and the U. S. Tax Court of Appeals on land use issues.

Prepared RFP's, grant applications, selected consultants and administered contracts.

**WORK
EXPERIENCE**

2/88 to present

NORMAN E. GERBER, AICP, Cockeysville, MD

Principal

Private practice as planning consultant specializing in land planning, preparation of land use regulations, property evaluation for potential use and expert testimony in zoning and development issues.

2/89 to 10/90

The City of Laurel, Laurel, MD

The Office of Planning and Zoning

Director

Administered the planning program and enforced the zoning code.



<u>9/80 to 1/88</u>	<u>Baltimore County</u> , Baltimore County Maryland The Office of Planning and Zoning Director Administered the planning program, and the budgets of the Office of Zoning and the Peoples Council. Baltimore County Baltimore County Maryland The Office of Planning and Zoning
<u>1977 to 1980</u>	The Office of Planning and Zoning Deputy Director Designed and supervised the planning program.
<u>1956 to 1977</u>	The Office of Planning and Zoning Various titles Performed a variety of planning studies and services.

EDUCATION

Morgan State University, Baltimore, MD
Urban & Regional Planning Masters 1975

The Johns Hopkins University, Baltimore, Md
Bachelor of Science in Engineering, 1963
Minor: Civil Engineering

PROFESSIONAL SOCIETIES

<u>1/69 to Present</u>	<u>American Planning Association</u> Past member of the Board of Directors and treasurer of the Maryland Chapter.
<u>6/69 to Present</u>	<u>American Institute of Certified Planners</u>
<u>1975 to 1988</u>	<u>The Maryland Association of Planning Officials</u> Past President and member of the Board of Directors
<u>2/89 to 10/90</u>	<u>Technical Advisory Committee, the Patuxent River Commission</u>
<u>6/89 to 10/90</u>	<u>The Patuxent River Commission</u> Alternate Member (for the Mayor)

PERSONAL

<u>1985 to 1988</u>	<u>The University of MD at Baltimore</u> Advise on planning program
<u>1992 to Present</u>	<u>The Baltimore County Commission for the Disabled, Vice Chairman of the Transportation Committee</u> Coordinates activities of providers of services.

REFERENCES	Furnished on request.

DATE: 10/19/03 (2nd DAY)

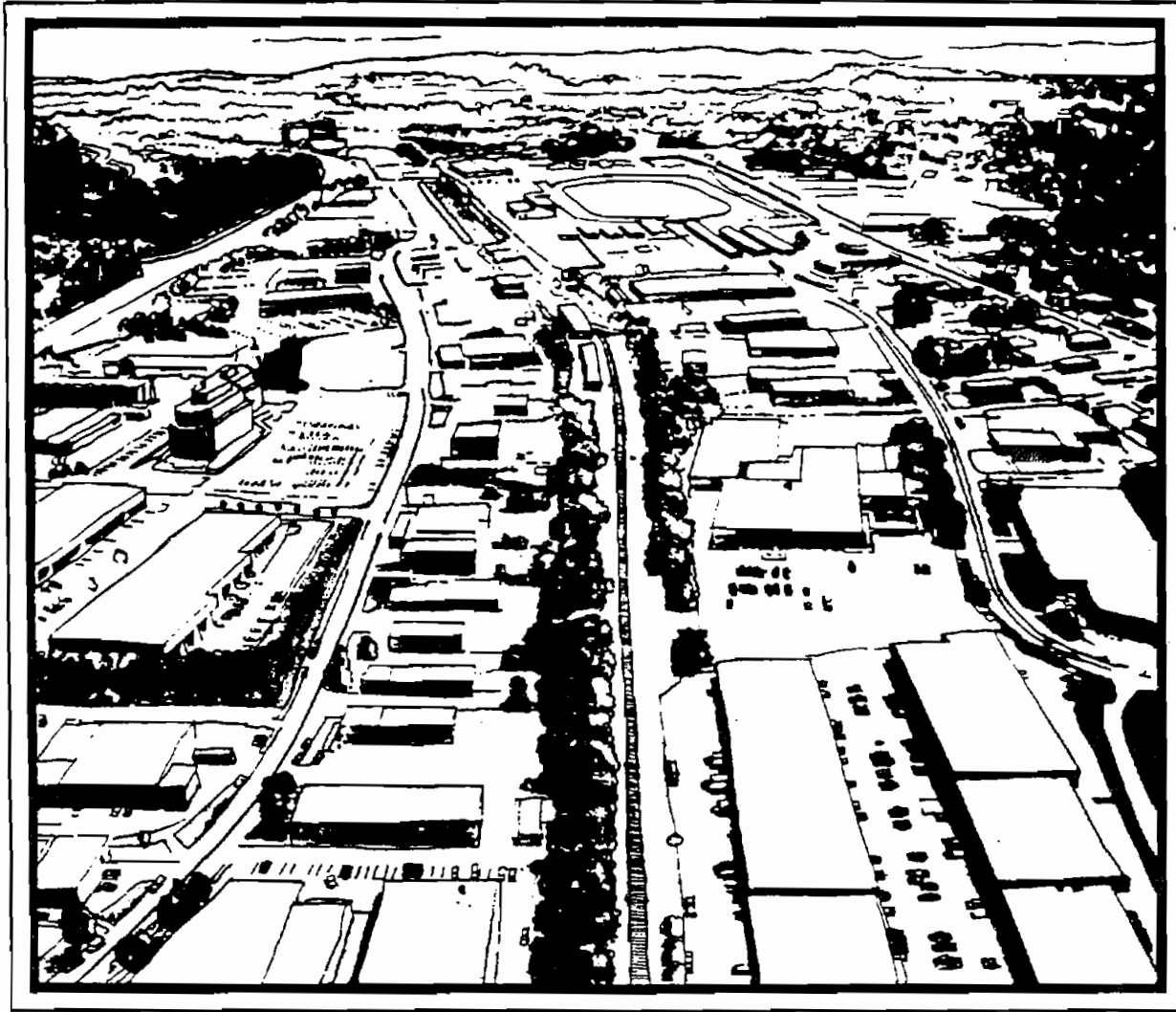
PEOPLE'S COUNSEL'S SIGN IN SHEET

CASE: CR 93-305-SPH (BACE EXHIBIT)
MARSHALL GRASS

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

[illegible]

C.C. Gph
#14



•Baltimore County •Focus on Community•

HUNT VALLEY/TIMONIUM

Redevelopment Study

As Adopted by the Baltimore County Planning Board on April 15, 1993



Executive Summary

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I. EXECUTIVE SUMMARY

The Hunt Valley/Timonium Redevelopment Study was undertaken by the Baltimore County Office of Planning and Zoning as one of several community action plan areas identified for study by the Baltimore County Master Plan 1989-2000. The Hunt Valley/Timonium (HV/T) area is one of the most important employment areas in the county, employing over 10% of the county's total workforce, and approximately 1/4 of the county's manufacturing workers. The majority of the area developed in the 1950's through the 1980's as a suburban business location, now almost built-out.

New transportation improvements have been planned which are likely to spur the development of the few remaining vacant parcels, and even more importantly, the redevelopment of the more marginal or transitional properties into developments which are larger, denser and more urban in nature. It is a County objective, as stated in the Master Plan, to maximize its investment in these transportation improvements by promoting development which can optimize, but not overburden their use.

The new light rail service, in particular, presents opportunities to plan land uses at the stop locations which will support transit use. Mixed-use development projects provide the greatest opportunity to maximize transit usage. The association of medium density residential uses with these mixed use developments, including some affordable housing for moderate income families and seniors, provides opportunities for convenient pedestrian access to the transit system and lessens the need for the private auto. Some locations in the HV/T study area which may have potential for mixed-use development are identified for future site specific studies - these areas include Timonium Heights West, the Old Padonia Road-Texas area, and Cockeysville. Other future potential mixed use redevelopment areas include the Hunt Valley Mall, and the Timonium Fairgrounds, if it should ever redevelop.

Equally important in promoting new and appropriate growth within the study area is the protection and enhancement of the surrounding residential communities. The community conservation strategies recommended by the study include zoning strategies which guide growth along the York Road corridor, and limit the intrusion of non-residential uses into the communities.

New development and redevelopment also offers opportunities to help improve the area's natural environment. Because the bulk of the area was developed before the importance of preserving natural features was recognized, little effort was made to preserve woodland, wetlands or streams. The Department of Environmental Protection and Resource Management (DEPRM) is working on developing strategies for stream restoration, groundwater protection and regional stormwater management.

A complete listing of the recommendations of this plan can be found in the last section entitled "Plan Implementation." Some additional highlights of these recommendations are:

1. Perform transportation studies to include traffic forecasts, recommendations for transportation policies and improvements, methods of financing future improvements and pedestrian/bicycle access.
2. Develop strategies and incentive packages to encourage transit use.
3. Require transportation impact studies for any large scale development/redevelopment proposals which would also address potential conflicts with existing truck traffic.
4. Designate Beaver Dam, McCormick and Timonium Roads as arterials which will limit the amount of retail development permitted access to these roads and thereby facilitate a free flow of traffic.

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5. Undertake a York Road Streetscape Study to include recommendations for limiting curb cuts, burying overhead wires, improving landscaping, controlling signage, and buffering adjoining residential uses.
 6. Adopt advisory design guidelines for office, retail and industrial development.
 7. Amend the permitted uses in the manufacturing zones to allow day care, health clubs and recreational facilities.
 8. Develop a greenway system with jogging and bike paths to help preserve sensitive environmental areas as well as provide recreational opportunities, and alternative transportation routes for pedestrians and bike riders.

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This Hunt Valley Timonium Redevelopment Study is intended to be a first step - laying the groundwork for future studies which will provide in-depth examination and recommendations for specific issues. The continuing development and redevelopment of the study area will be monitored, and periodic updates of the plan will be performed in association with the Comprehensive Zoning Map Process or the Master Plan.

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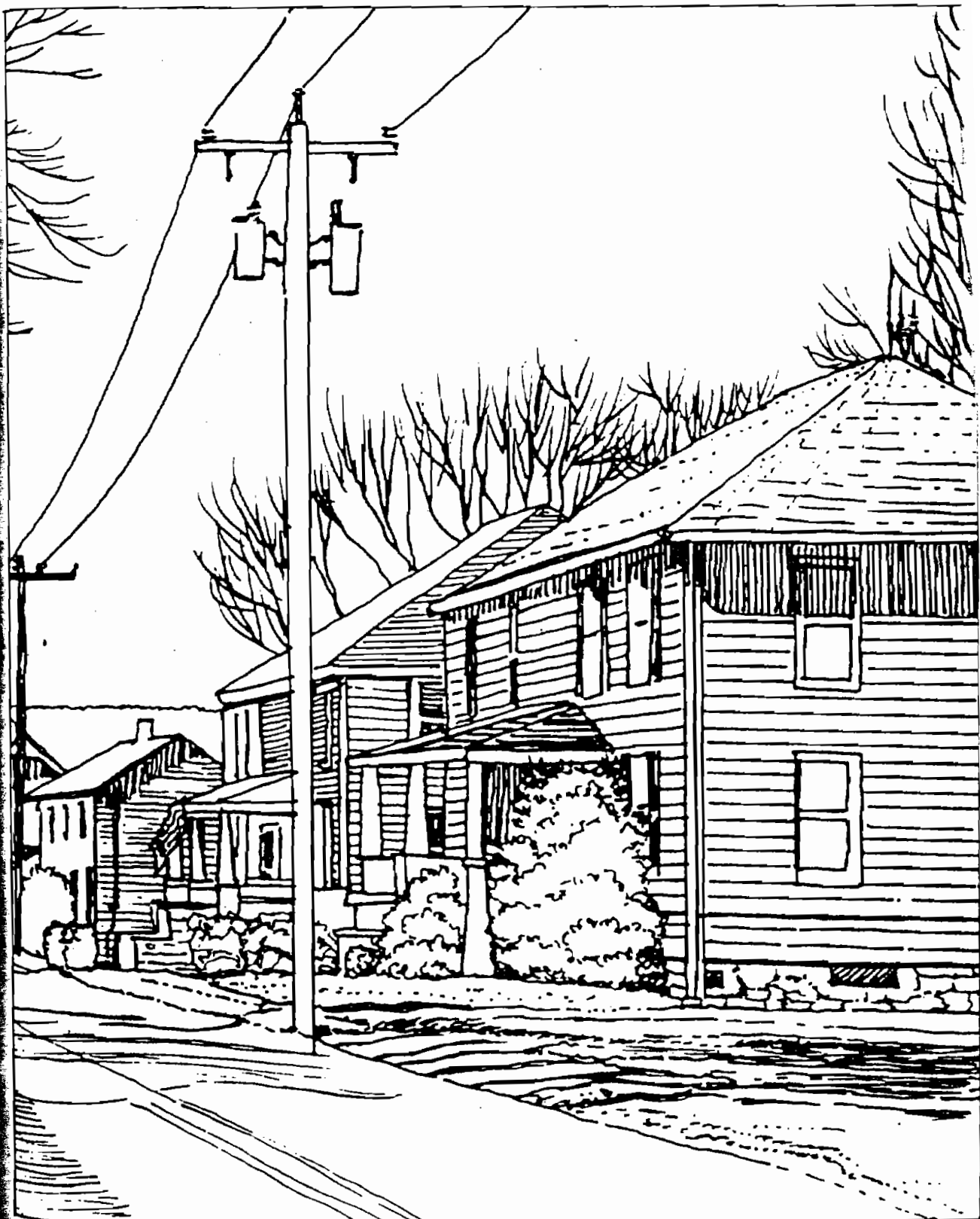
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VII. Development & Redevelopment Opportunities

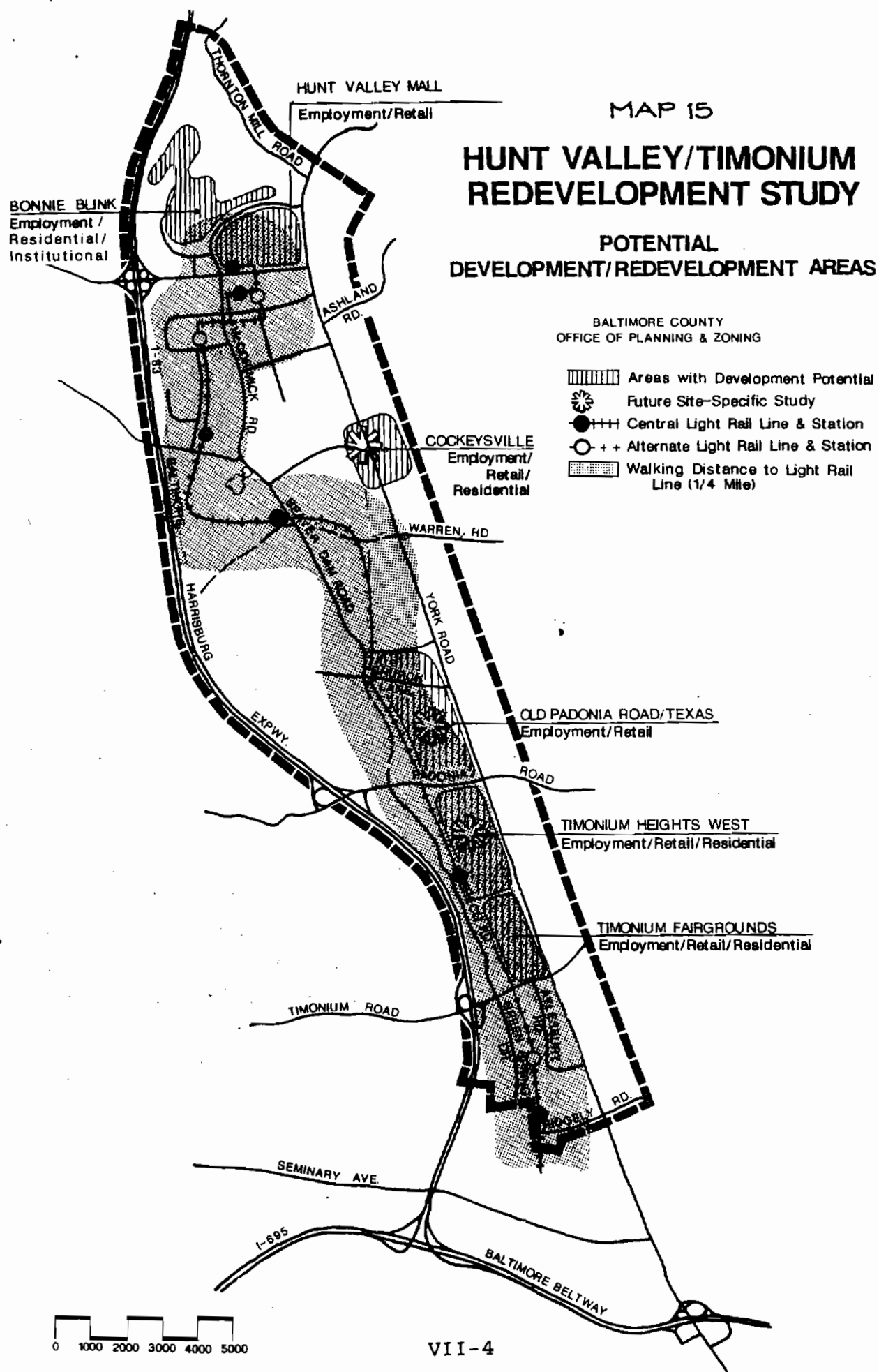
VII-1

VII. DEVELOPMENT/REDEVELOPMENT OPPORTUNITIES

The Hunt Valley/Timonium study area has become almost fully developed. There is only a limited amount of vacant land available for development. Much of this land is owned by major corporations and is likely to be used for the expansion of their own facilities.

Within the surrounding area, there is very little vacant land available for future development of office, industrial, retail or non-rural residential uses. County policy limits additional development of these uses north of the study area, above the Urban Rural Demarcation Line. Two small development areas zoned for business uses, Loveton and Highlands Corporate Centers, lie north of the study area, with most of its new development directed at office uses. Mays Chapel North, west of I-83, is the last large parcel in the area for development of urban residential uses.

Redevelopment of land within the study area to higher density uses is appropriate because the transportation system improvements have already been planned. In fact, the completion of the road improvements and the introduction of light rail into the study area is very likely to spur demands for development of the existing vacant parcels, intensification of existing uses, and redevelopment of the more marginal, older and less valuable properties. The areas which have the greatest potential for development/ redevelopment are shown on the accompanying map.



The challenge of development growth with the introduction of a light rail system to plan a rational study are

Issue: (

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The challenge of this study is to recommend land uses for these potential development/redevelopment areas which will provide economic growth while maximizing the County's investment in infrastructure. The introduction of light rail in particular provides an opportunity to plan land uses which can optimize its use, and thereby support a rational solution to the traffic and environmental problems of the study area and the County.

Issue: Optimizing light rail ridership through land use.

Prior to beginning the Hunt Valley/Timonium Study, OPZ undertook extensive research into the land use implications of the introduction of a light rail system. In addition to a review of available literature, planning officials of other jurisdictions with light rail systems were contacted. Experts agree that the most successful light rail systems are those which are planned comprehensively, with the planning of the rail coordinated with land use and other environmental and economic factors.

Typically, there are changes in land use associated with a major transportation improvement such as the implementation of light rail transit. In many cases, development potential exists within a ¼ mile radius, or walking distance of light rail stops. However, there is overwhelming evidence that suggests that the presence of a light rail stop, in and of itself, is not enough to stimulate development. Land use is shaped by many other factors, including:

1. availability of land with development potential
2. public policies toward development
3. real estate market condition
4. zoning of adjacent properties
5. relative placement of stations
6. accessibility of site
7. transit alignment and ridership potential

Where the light rail will pass through stable, fully-developed employment areas, such as the Hunt Valley Business Community, the County should assist in the provision of adequate walkways, lighting, etc, to facilitate the movement of employees from the light rail (or bus) stop to their place of employment.

In other parts of the study area, however, the light rail will pass through vacant, marginal or transitional areas which are likely to be developed or redeveloped. Here, the County should assure that new development is of a nature that will provide the greatest benefit.

Land use planning has the potential to create an environment more conducive to light rail usage. By actively promoting higher density development adjacent to the light rail, ridership can be increased, and traffic congestion reduced. In addition, such development can be a significant source of revenue, improving the local economy and quality of life. Development adjacent to the light rail stop is the most effective way to capitalize on the benefit potential of light rail transit.

Mixed use types of development -- which would provide residences, employment, and shopping in the same project -- allows the greatest opportunity for people to maximize their transit use in the course of a day. Light rail stops are relatively inexpensive to construct and can occur more frequently along the route than heavy rail transit. Research has shown that development potential around a light rail stop can be threatened, however, if the stops are located closer than $\frac{1}{4}$ mile of each other.

There are a number of strategies which can be employed to spur development, including parking controls -- reducing the amount of parking spaces available at destinations to increase ridership, -- air rights development, public lease or sale of land, tax increment financing, zoning revisions, provisions for pedestrian amenities, the creation of special transit development districts or authorities, and density bonuses.

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One of the best strategies is joint development, where public and private resources are coordinated to build a project that will take full advantage of a public transportation facility and produce benefits that can be enjoyed by both sectors. In a suburban area, such as the Hunt Valley/Timonium corridor, joint development projects would typically take the form of residential and mixed use office/commercial complexes.

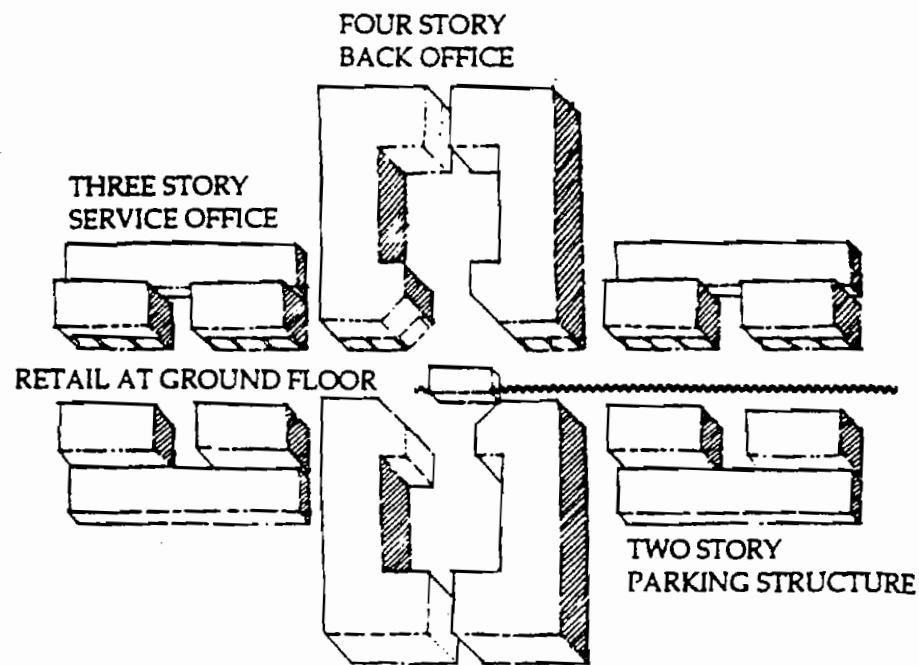
In The Pedestrian Pocket Book, A New Suburban Design Strategy,

Doug Kelbaugh promotes small, pedestrian-scale mixed use development oriented to a transit line as an alternative form of community providing attractive, efficient and highly livable environments. This type of development could have merit in some locations in the Hunt Valley/Timonium study area.

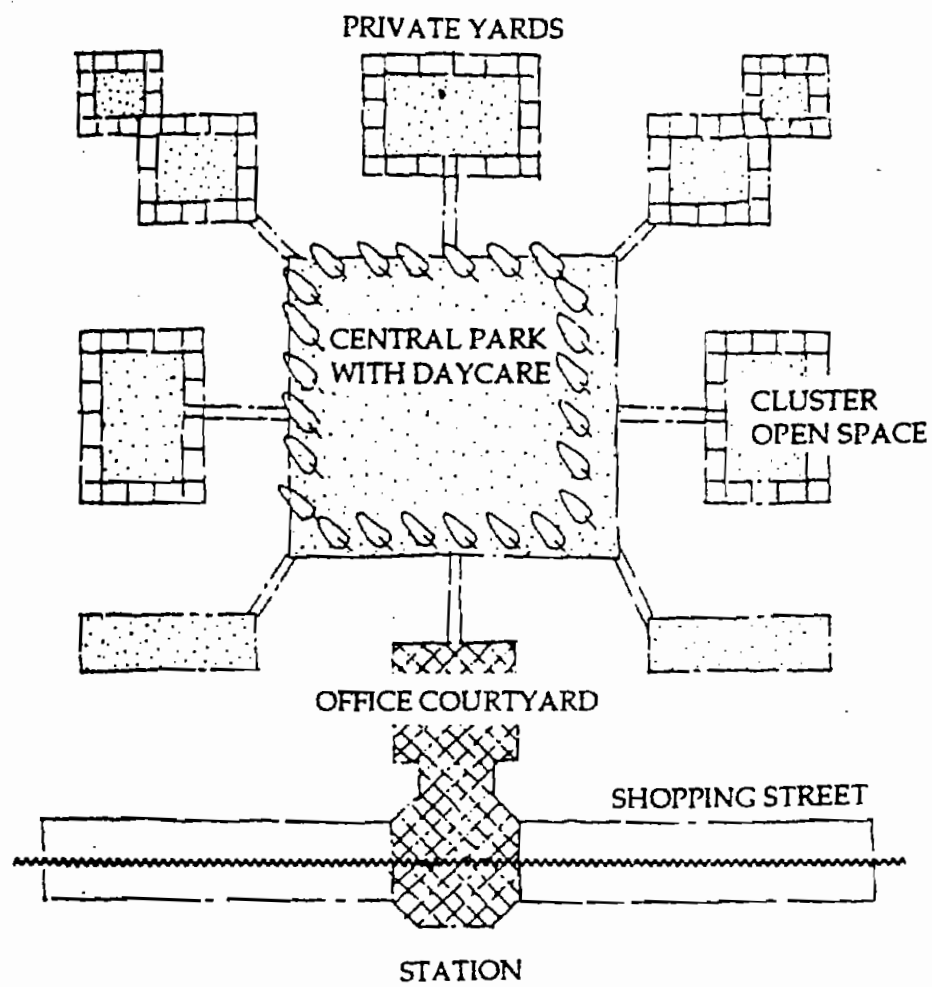
Legg Mason Realty Group examined the opportunities for development at the three proposed transit stops in the southern half of the study area--Ridgely Road, Timonium South and Timonium Fairgrounds. They determined the Timonium Fairgrounds stop to have the most development potential because it is the largest site, is close to a growing office/industrial area and has under-utilized parcels nearby. The other two sites have development potential, but will probably develop more slowly because of existing and adjacent land uses. The Hunt Valley Mall site also has considerable development potential if the light rail line can be effectively linked to it.

LMRG examined the development potential for residential and mixed office/retail/residential development at other locations near the light rail line. Residential development opportunities are limited because of the well-established industrial and commercial land uses along the light rail line in the study area and because of specific site conditions. Timonium Heights West appears to offer the best opportunity for new residential development but the existing residents of the area would have to agree to more intensive development in their community in order to provide development opportunities.

The commercial center of the Pedestrian Pocket mixes large ground-floor retail, restaurants and smaller business. Retail faces the light rail line, and all employees are within walking distance of the station. Cars circulate on the shopping street and have access to parking structures.



The Pedestrian Pocket provides diverse open space: private yards for families, semi-public space for a group of houses, central parks to be used by all, and courtyards and a "Main Street" shopping area for the extended population. The central park offers a lunch place for workers, an after school playground for the kids, a site for shared day-care facilities, and an evening or weekend focus for the whole community. Walking paths connect the entire site without requiring the pedestrian to cross any streets.



FROM: THE PEDESTRIAN POCKET BOOK, A NEW SUBURBAN DESIGN STRATEGY,
Doug Kelbaugh, ed., Princeton Architectural Press, New York,
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PETITION FOR JUDICIAL REVIEW	*	IN THE
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COMPANY, et al.	*	BALTIMORE COUNTY
FROM THE	*	
COUNTY BOARD OF APPEALS	*	Case No. 76/245/94-CV-02561
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PEOPLE'S COUNSEL'S MEMORANDUM

I. STATEMENT OF THE CASE

The PEOPLE'S COUNSEL FOR BALTIMORE COUNTY filed a Petition for Judicial Review of the decision of the County Board of Appeals dated February 24, 1994, in which, in a 2 to 1 decision, the Board of Appeals approved the Petition for Zoning Reclassification.

The subject site was a specific issue (Issue 3-151) before the County Council in the 1992 Comprehensive Map Process. In Bill 189-92, adopted October 15, 1992, the County Council maintained the MLR, 0-1, and DR3.5 zoning on the subject site. The decision of the County Board of Appeals rezoned the site to BM, as requested by Petitioner, and granted the variance request for parking of non-commercial vehicles on a portion of the remaining 0-1 zone, subject to a documented site plan for a 60,000 square foot supermarket and other retail establishments.

II. QUESTIONS PRESENTED

1. Whether the County Board of Appeals usurped the zoning power of the Baltimore County Council?
2. Whether the decision of the Baltimore County Council in the 1992 Comprehensive Map Process as to the instant site was reasonable and fairly debatable?

Two other locations in the study area may also offer opportunities for development/redevelopment in association with the light rail. One is the Texas-Old Padonia Road area which has been experiencing small, piecemeal office development, and which will become even more attractive for development once Beaver Dam Road is extended. There are also some larger, vacant parcels in this area which may soon be available for development.

RE The other location is Cockeysville. While not adjacent to the light rail, Cockeysville is likely to face strong redevelopment pressures now that the underpass at York road is removed. The opportunity exists to provide mixed use development, including some residential, which could be tied to the light rail through shuttle bus service, or, at some future date, extensions of the light rail on the existing rail line.

LMRG suggested two other alternatives which may be effective in increasing ridership and reducing traffic congestion. While the study area itself does not include much residential development, the surrounding area contains significant residential land uses. High quality feeder buses, walkway and road links between the adjacent residential areas and the light rail line is one alternative for promoting ridership on the line.

CE In addition, a considerable amount of traffic in the Hunt Valley/ Timonium study area arises not from commuter trips into the area but from trips throughout the business day to locations within the area. A second alternative for promoting ridership is the development of retail and service businesses, along with attractive public spaces, adjoining the light rail line with an effective link between the light rail line and Hunt Valley Mall. If this is undertaken in conjunction with a free or reduced-fare zone in the Hunt Valley/ Timonium study area, it could encourage use of the transit line by area workers during the day. This approach could be further enhanced by transportation and parking management programs, directing commuters to central parking facilities near the light rail line who would then

use light rail service to reach their employer. With this approach the County would work to link large parking areas to office and industrial locations which might be required to limit the parking provided for employees or charge for parking near their site.

Action 1: Create zoning which will permit higher density mixed use developments in manufacturing zones in association with a transit stop, and with controls against negative impacts on existing residential communities. Possible alternatives are:

a) Create an overlay district which could be applied only in manufacturing zones within walking distance ($\frac{1}{4}$ mile) of a transit stop. The zone would allow increased density, and increased commercial use and residential uses in exchange for increased design standards. The district would be applied as a zoning change and require County Council approval.

b) Create a P.U.D. applicable to nonresidential development for small parcels (2 acres or more) within walking distance of a transit stop which would allow increased density, and increased commercial use and residential uses in exchange for increased design standards, including buffers when adjacent to existing residential areas. A P.U.D. Authorization Plan approved by the Planning Board may be required.

Action 2: In the event all or part of the Timonium Fairgrounds becomes available for redevelopment, support more intense use oriented toward a light rail stop. Potential uses could include expanded exhibition and convention facilities, retail, office and higher density

Action 3

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residential development. Community concerns for intensifying development at the fairgrounds site will need to be addressed by any redevelopment. The fairgrounds site, however, could offer a unique opportunity for development associated with light rail.

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Action 3:

Support light rail access and intensification of use at the Hunt Valley Mall. The mall could become the commercial focal point of the study area if it is interconnected to the surrounding employment area with light rail access. A free or reduced fare zone could be effective in bringing people to the mall at lunch time. The mall site presents opportunities for additional office and retail development. New retail uses closer to Shawan Road would also help in making a pedestrian connection with the employment area.

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Action 4:

Site-specific studies are needed to examine the development potential of the Timonium Heights West area, Texas-Old Padonia Road area and Cockeysville. While these areas have been identified as having development/redevelopment potential, each area also presents development constraints because of existing land uses and ownership patterns. Texas and Cockeysville also contain historic resources that need to be considered. OPZ shall perform individual studies of each area to evaluate their potential for redevelopment.

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Action 5:

DED to consider expanding the authority of the Baltimore County Development Corporation to act as a redevelopment authority in the Hunt Valley/Timonium corridor through Council action. The BCDC would have the ability to assemble parcels and to work with private

developers to construct mixed use developments at transit stops.

Issue: Community Conservation: Protecting and enhancing existing residential communities.

The Baltimore County Master Plan 1989-2000 designates the area to the east of York Road, and the residential area to the south of the study area as "community conservation areas." The intent of the designation is to give priority to protecting and enhancing these and other similarly designated existing residential neighborhoods.

For the communities surrounding the Hunt Valley/Timonium Study Area, community conservation measures would include:

- a) restricting nonresidential land uses from encroaching into residential areas
- b) discouraging traffic in the neighborhood which is unrelated to the residences
- c) reducing the amount of traffic congestion on York Road to make it easier for residents to access their neighborhood
- d) improving the visual quality of the York Road Corridor
- e) insuring future redevelopment of sites in the study area doesn't create negative impacts on existing communities

York Road is home to a large number and wide range of offices, businesses, and industries. The existing zoning provides many opportunities for expansion and redevelopment of nonresidential uses. This expansion should be directed to business nodes along the York Road corridor. Existing nodes occur at the intersection of Ridgely Road, Timonium Road, the north side of Cranbrook Road and the southeast

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side of Shawan. Nodes on the east side should feature businesses and services which support residential uses, such as grocery and hardware stores. Nodes on the west side should support employment uses, emphasizing such things as secretarial services and office supplies. In this manner some traffic congestion could be reduced by minimizing the need to cross York Road.

An in-depth planning study should be undertaken as part of a York Road Streetscape Study (See Design Quality) to determine the specific boundaries of these and future additional nodes. The study should also address means of assisting businesses to operate successfully at these locations while providing strong design guidelines for development.

In between these commercial nodes, the planning approach should attempt to match existing uses with the appropriate zoning. In some locations, for example, the existing uses are Class A offices but the zoning is business zoning. (A "Class A" office is a house that has been converted to an office use but retains the character of the original house). Business zoning allows redevelopment of a site for commercial use, and is not necessary in order to convert an existing house to an office use. Residential-Office (R-O or R-O-A) zoning is appropriate for Class A buildings.

A good example of where the zoning could be changed to match the present use is between Greenmeadow Drive and Roundridge Road. An area of B.L. (Business-Local) zoning exists between two R-O zones. Behind the properties on York Road are houses zoned D.R. 2 (low density residential). The use in the B.L. area is an attractive Columbia-Freestate Medical Center that is fairly new. This area should be rezoned to R-O or O-1 (office use) to protect the houses in the rear from future potential commercial uses.

Another area that should be considered for protection of the present use is the historic Cockeysville school and its grounds between Bosley and Matthews Avenues. Because common open space is limited

along the corridor, the York Road Streetscape Study should address the possibility of preserving this school site as open space. Garden apartments and townhouses are located below Warren Road, and development of additional housing should be investigated for the area on both sides of Sherwood Road to the north. The Cockeysville school open space could serve both of these areas. Current plans for the site includes senior housing and a senior center, and retention of most of the open space for continued recreational uses.

Another Community Conservation approach could be taken in the Cockeysville commercial area. The elimination of the underpass will change the character of York Road and increase traffic speed and flow through this area. It is important to continue to support Cockeysville as a small, historic shopping locality. Designation of these few blocks as a revitalization area would eventually provide funds for development of an attractive streetscape and other amenities to assure that the character of Cockeysville remains.

Action 1: As part of the York Road Streetscape Study,

- a) identify commercial nodes -- areas for future business development/redevelopment
- b) identify parcels between the commercial nodes which may be suitable for residential use, or for re-zoning to match their existing use
- c) formulate design guidelines for non-residential uses which adjoin residential ones.

Action 2: Locate new commercial development that supports the employment area in commercial nodes on the west side of York Road.

Action 3: Locate commercial uses that support the residential area in commercial nodes on the east side of York Road.

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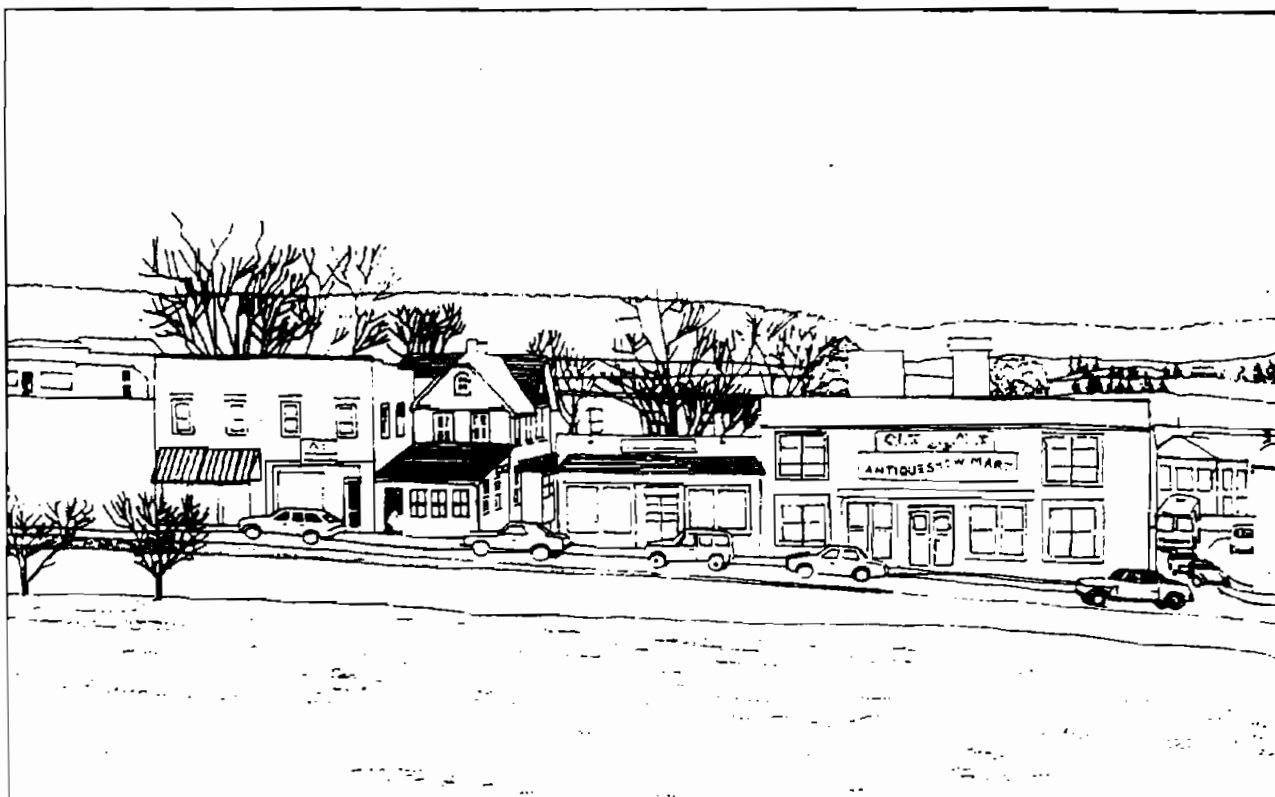
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Designation of Cockeysville as a Revitalization Area will help to maintain its historic character.



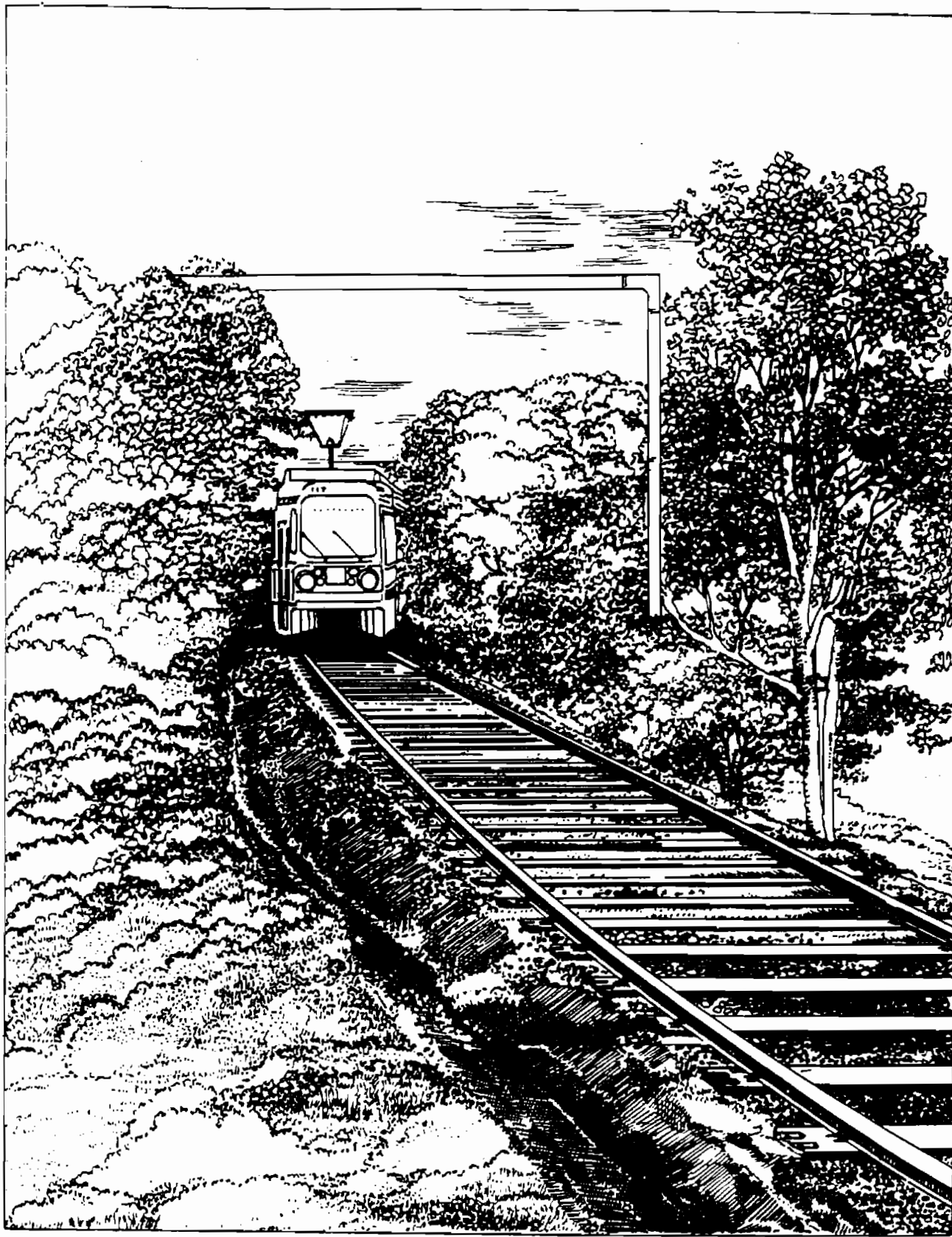
Office development adjacent to residential neighborhoods can be sensitively designed for visual compatibility.

- Action 4: Support zoning of parcels to match their existing use, except at designated commercial nodes.
- Action 5: In general, limit further rezoning of residential parcels to nonresidential use. Employ R-O or R-O-A residential office zones in areas requiring a greater buffer between disparate uses.
- Action 6: Support further higher-density residential use along the east side of York Road at appropriate locations with compatibility guidelines and limited impacts on schools, as a means of promoting residential use and as a buffer for the adjacent lower density residential area.
- Action 7: Consider designation of Cockeysville's commercial center as a Revitalization Area.

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IX. Plan Implementation

IX-1

- OPZ to support the creation of local business organizations.

DEPR

OPZ to support local business and community groups who institute an annual contest for improving the visual quality of York Road.

DED

PLANNING STUDIES

OPZ

- Detailed potential redevelopment studies for Timonium Heights West, Cockeysville and the Texas - Old Padonia Road area, to include a feasibility study for residential development, including affordable housing.
- York Road Streetscape Study

HUNT

OPZ, H.V.T.A., BUREAU OF TRAFFIC ENGINEERING AND CONSULTANT

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- Transportation Study to include:
 - safety issues
 - traffic forecasts
 - recommendations for transportation policies and improvements
 - financing of future improvements
 - pedestrian/bicycle access
- A Task Force should be established to recommend alternative methods of financing transportation improvements in the study area.
- A Task Force should be convened to develop recommendations for providing pedestrian/bicycle amenities such as sidewalks, bikeways, lighting, newspaper boxes, telephones, transit shelters, bicycle storage and appropriate design considerations through a public/private partnership.

3. Whether the decision of the County Board of Appeals as to mistake or error is reversible for failure to make certain findings required by statute and for defective reasoning?

4. Whether the decision of the County Board of Appeals is based on the unauthorized principal of contract zoning by recognizing and relying on a) covenants between the neighborhood and the developer; and/or b) an agreement between the developer and the Office of Planning and Zoning?

5. Whether the Petition for Reclassification is deficient for failure to comply with the requirements of Section 2-356(j) as to floodplain designation?

III. RELEVANT LEGISLATION

The Comprehensive Zoning Process of the Baltimore County Council is set forth in Sections 26-121 to 26-126 of the Baltimore County Code. (Appendix 7). These sections enumerate the details of the process which occurs every four years throughout the entire County. It is a legislative function authorized by the Express Powers Act as found in the Annotated Code of Maryland, Article 25A, Section 5(X).

The administrative process for rezoning is piecemeal and site specific and is presented by Petition before the County Board of Appeals. The regulations governing this cycle process are found in Section 2-356 of the Baltimore County Code. (Appendix 1). This process is quasi-judicial and will be sustained only if certain factual and legal findings are enumerated by the County Board of Appeals. These standards, found in BCC Section 2-356(j), include the "change/mistake" rule, which, along with the lesser used "change in neighborhood" rule, provide the parameters within which the County

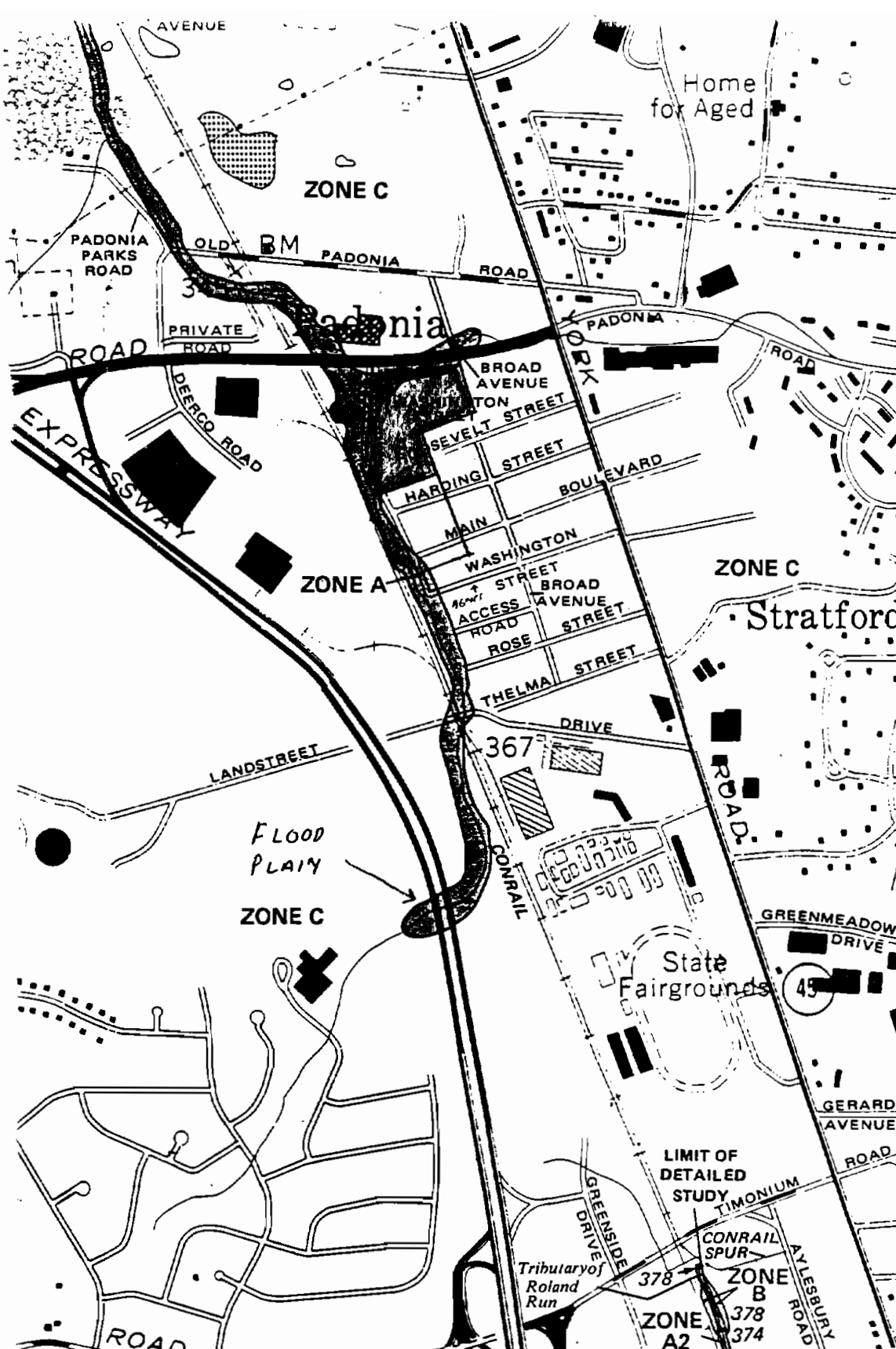
C.C. #13Z
(Description of Photos A-Y)

ZONING APPEAL HEARING
"BROAD STREET MARKET"
PHOTOS TAKEN 5 OCTOBER, 1993

CASE NO. CR-93-305-SPH
28 SEPTEMBER, 1993
CONTINUED 19 OCTOBER, 1993

1. From South side of Roosevelt Street
Nos. 4 & 2 Roosevelt Street
2. From South side of Roosevelt Street, near York Road
No. 4 Roosevelt Street, Brewer property, Padonia (Favazza)
Building visible above trees
3. From York Road, just North of Harding Street
Looking West on Harding Street toward Broad Avenue
4. From York Road
Looking West on Harding Street toward Broad Avenue
5. From near York Road
Looking West on Main Boulevard, Nos. 12 & 8 W. Main
Boulevard, Broad Avenue in background
6. From York Road
Looking West on Washington Street
7. From South side of Washington Street
Nos. 12, 8, 6 & 4A Washington Street
8. From Broad avenue, between W. Main Boulevard and Washington
Street (highest point on Broad Avenue)
Looking North toward Roosevelt Street
9. From Broad Avenue and W. Main Boulevard
Looking East toward York Road, 9 W. Main Boulevard
10. From Broad Avenue, between W. Main Boulevard and Harding
Street
Looking Southeast, Nos. 12, 5 (under construction) &
9 W. Main Boulevard
11. From Broad Avenue and Harding Street
Looking East, Nos. 14, 12, 10 & 4 Harding Street
12. From Broad avenue, just South of Roosevelt Street
No. 100 Roosevelt street (lowest building in community)
Visible to left is No. 106 Roosevelt Street with
Padonia (Favazza) Building above it
13. From Broad avenue, just North of Roosevelt Street
Looking South toward highest point between W. Main Boulevard
and Washington Street

14. From Broad Avenue North of Roosevelt Street
Looking North toward Padonia Road (buildings visible in background), Broad Avenue regraded for "Broad Street Market" (entrance visible as bank beyond brush)
15. From Broad Avenue, at entrance to "Broad Street Market" construction site
Looking Northwest at "Broad Street Market" construction fill, building on Padonia Road visible in background
16. From West side of Broad Avenue, North of Padonia Road
Looking East at Padonia Road and "Broad Street Market" construction site
17. From South side of Padonia Road, West of Broad Avenue
Looking Southeast at "Broad Street Market" construction site, concrete culvert in foreground
18. From Light Rail/Conrail tracks, North of Timonium stop
Goodwin Run as it emerges from under the tracks
19. From West side of Conrail tracks, approximately 150 feet South of Washington avenue (rear of house on Washington Avenue visible through trees)
Looking East at Conrail tracks and Goodwin Run (Goodwin Run is not visible due to trees and brush.)
20. From South side of Padonia Road, East of bridge over Conrail tracks
Goodwin Run as it enters culvert under Padonia Road
21. From North side of Padonia Road, West of Broad Avenue
Looking East on Padonia Road toward York Road
22. From East side of York Road, South of entrance to Padonia Village Shopping Center
Looking North along York Road at intersection with Padonia Road
23. From Southeast corner of York and Padonia Roads
Looking Northwest, across intersection at Southbound traffic on York Road
24. From right turn island in Southeast corner of York and Padonia Roads
Looking South on York Road at Northbound traffic backed up from York and Padonia Road intersection
25. From right turn island in Southeast corner of York and Padonia Roads
Looking Northeast on Padonia Road at Westbound traffic backed up from York and Padonia Road intersection



"BROAD ST. MARKET"
ZONED O-1 1988
17.4A 3-124

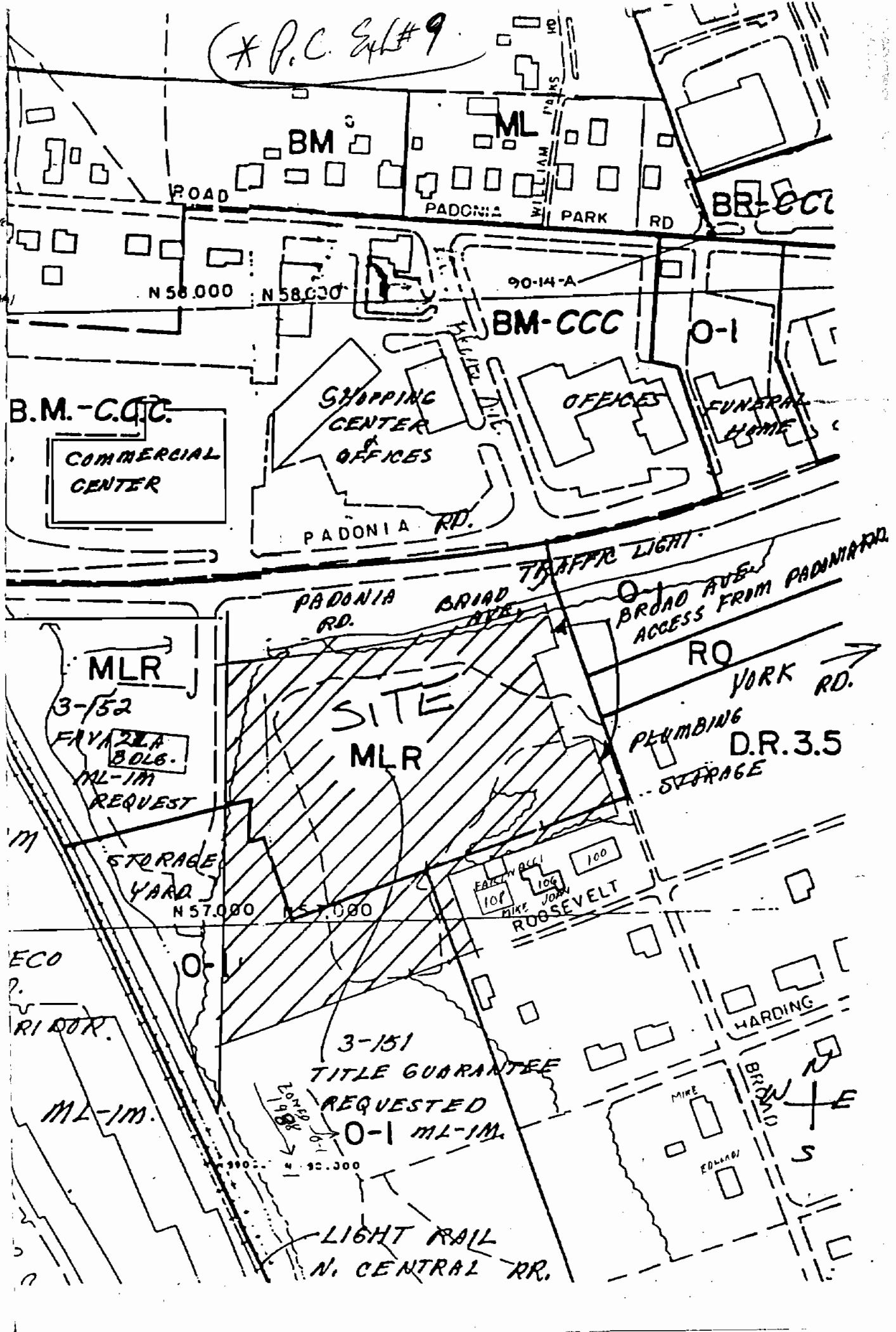
C.C. Sub # 10

14 FEMA Map

(* P.C. #9

SEPT 14,
1992

COMPREHENSIVE
ZONING
REQUEST FROM
NEWTOM WILLIAMS
ATTY FOR
TCO JULIO



P.C. 24h #8

• Residents of Timonium Heights
c/o Mr. & Mrs. John M. Bearer
9 W. Main Boulevard
Timonium, Maryland 21093
October 5, 1992

Hon. C.A. Ruppertsberger III
Councilman, Third District, Baltimore County
Second Floor, Court House
Towson, Maryland 21204

Dear Councilman Ruppertsberger:

This is to advise you of the serious concern that the residents of Timonium Heights have over the request for rezoning the Padonia Road/Broad Avenue property identified as Issue 3-151.

The zoning requested by the developer would permit the construction of a "Strip Shopping Center" fronting on Broad Avenue with a BASICS food store, a RITE AID drug store and an ENCORE BOOKS store. Our community of approximately 50 homes lies directly adjacent to this proposed development.

A review of the issues involved should be sufficient grounds for making the rational decision to retain the present zoning.

First, it should be noted that the County Office of Planning and Zoning wisely recommended No Change from the present zoning status.

Secondly, our community presently suffers from the daily noise, traffic and pollution from York and Padonia Roads intersection which is classified "F", meaning that it cannot handle the 40,000 to 50,000 trips presently generated. Certainly, dumping several thousand more cars into the intersection each day from a strip shopping center can only cause havoc. Any relief from the opening of the Warren Road interchange will undoubtedly be offset by the extra traffic generated as the result of extending Padonia Road to Pot Spring Road.

RECEIVED
OCT 10 1992
BALTIMORE COUNTY
PLANNING & ZONING DEPT.

Thirdly, in reviewing the recent D.E.P.R.M. Environmental Report, one can only conclude that this land is really not suited for any development, much less a strip shopping center containing a major store like BASICS. It is a low lying piece of ground with the potential for flooding and stream contamination. The report does state that with some extensive and expensive additions, some development may be possible; however, they state that more studies would be required on this impact before approvals would be granted thus creating more doubt. The question of future expense to Baltimore County should be considered should present infrastructure fail to accommodate any proposed development.

Finally, Timonium Heights has nothing to gain and everything to lose if this land is developed as proposed. Property values will drop, the crime rate will increase and noise and pollution will increase. There is no assurance that Broad Avenue will not be cut through and every indication that it will and this newly created traffic will jeopardize the safety of our residents and their children.

As our Council representative, we are relying on you to support our community in denying the requested zoning. Accordingly, we have affixed our signatures to the enclosed petition.

Residents of Timonium Heights

Petition attached: 7 sheets containing
a total of 75 names

PETITIONTO: COUNCILMAN C.A. RUPPERSBERGER

WE, THE UNDERSIGNED, STRENUOUSLY OBJECT TO THE REQUEST FOR
REZONING THE PADONIA ROAD/BROAD AVENUE PROPERTY ISSUE NO. 3-151.

THE ZONING REQUESTED WOULD PERMIT THE CONSTRUCTION OF
ANOTHER STRIP SHOPPING CENTER WITH A "BASICS" STORE, "RITE AID",
AND OTHERS. OUR RESIDENTIAL COMMUNITY LIES DIRECTLY ADJACENT
TO THIS PROPOSED DEVELOPMENT

ALLOWING THE REQUESTED ZONING WOULD RESULT IN AN ENCROACHMENT
INTO OUR RESIDENTIAL NEIGHBORHOOD, WHICH BY ANY STANDARDS,
WOULD INFLECT A SERIOUS HARDSHIP UPON WE, THE RESIDENTS.

AS OUR COUNCIL REPRESENTATIVE, WE ARE RELYING ON YOU TO
SUPPORT OUR COMMUNITY IN DENYING THE REQUESTED ZONING.

<u>NAME</u>	<u>ADDRESS</u>
John M. Bearer	9 W. MAIN BLVD.
Mary L. Bearer	9 W. Main Blvd.
Quincy R. Hent	12 W Main Blvd.
Marshall E. Hent	17 W main Blvd.
Misspell L. Oehl	8 W. Main Blvd.
Frederick C. Oehl	8 W. MAIN Blvd.
Rita K. Oehl	4 W. MAIN Blvd.
Alvin E. Culbertson	3 W. main Blvd.
Beverly A. Fayt	15 W Main Blvd.
Wesley D. Edwards	1400 BROAD Ave.
Lisa K. Edwards	2400 Broad Ave.
Edna B. Burke	7 W. Main Blvd.
Jane R. Boyd	15 W. MAIN BLVD.
Rosa DeCarano	11 - Hardy St
1012 Fair	11 HARDY ST.
Daniel M. [Signature]	100 Roosevelt St.
[Signature]	100 Roosevelt St.

PETITION

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ALLOWING THE REQUESTED ZONING WOULD RESULT IN AN ENCROACHMENT INTO OUR RESIDENTIAL NEIGHBORHOOD, WHICH BY ANY STANDARDS, WOULD INFLICT A SERIOUS HARDSHIP UPON WE, THE RESIDENTS.

AS OUR COUNCIL REPRESENTATIVE, WE ARE RELYING ON YOU TO SUPPORT OUR COMMUNITY IN DENYING THE REQUESTED ZONING.

NAME

ADDRESS

John R. Dukes Jr.

4-LINCOLN ST TIMONIAN 21093

Timor Sea Raker

4 Lincoln St. - minimum 21093

Lot's G. Hakes

4 Lincoln St Timonium, MD 21093

Robert Holland

6. Lincoln St. Tuxedo Md 21092

Martha C Hinnant

6 Lincoln & Timonium Rd 21093

Cheryl A. Southard

7 Washington Street Timonium MD 21081

Steven M. Kessick

5 Lincoln St. Timonium MD 21093

Wendene L. Kesnick

5 Lincoln St Gurnee, Ill 21093

Christina Halvick

8 Rose St Torrington MD. 21091

John R. Vanhook

4 Lincoln St. Timonium MD 21083

Charles S. Sufferd

3 Washington St. Farmington, Md

(CARL B) BENTLEY

145th St. 4th 11

Bebe George, Jr.	7 LINCOLN ST. - TIMONIUM, MD. 21093
Lophia F. Jones	7 Lincoln St. - Timonium, MD. 21093
Linda M. (Ellis)	7-A Lincoln St. - Timonium, MD 21093
Patricia A. Harris	10 Rose St. Timonium Md. 21093
Donald H. Norris	10 ROSE ST. TIMONIUM MD. 21093
Mary S. Eckhart	101 Washington St. Tim. Md. 21093
Julie Donach	101 Washington St. Tim. Md. 21093
John Herbert	83 ROSE ST TIMONIUM 21093

Board of Appeals can act. If the County Board of Appeals finds mistake or change in neighborhood, then the Board must also specifically find that the requested zoning is warranted. Moreover, a finding of mistake or change in neighborhood must be supported in the opinion by specific findings as to certain factors enumerated in Section 2-356(j) of the Baltimore County Code.

In the instant case, the zoning established by the Baltimore County Council was MLR, DR 3.5 and 0-1. The requested zoning for the MLR and DR 3.5 zone is BM. Uses permitted as of right and by special exception in the MLR zone are in BCZR 248 and 248.4 (Appendix 37). Uses permitted as of right and special exception in the BM zone are in BCZR 233.1 and 233.4 (Appendix 34).

IV. STATEMENT OF FACTS

Location

The Petition for Reclassification requests rezoning on approximately 6.57 acres of unimproved land located in the southwest corner of the intersection of Padonia Road and Broad Avenue. The site is on the south side of Padonia Road between York Road and the Harrisburg Expressway. The total site consists of 7½ acres. Only 6.57 acres of that site are the subject of the Petition for Reclassification. The remaining .93 acres is zoned 0-1 and the Petitioner requests a variance for parking but not rezoning.

The subject site is a crucial unimproved parcel just east of the light rail system. The subject site is bounded on the south by the significant and stable residential development of single family homes known as Timonium Heights. The site is bound by Padonia Road on the north, York Road to the east, and the Timonium Fairgrounds to the

PETITION

TO: COUNCILMAN C.A. RUPPERSBERGER

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TO THIS PROPOSED DEVELOPMENT

ALLOWING THE REQUESTED ZONING WOULD RESULT IN AN ENCROACHMENT
INTO OUR RESIDENTIAL NEIGHBORHOOD, WHICH BY ANY STANDARDS,
WOULD INFLICT A SERIOUS HARDSHIP UPON WE, THE RESIDENTS.

AS OUR COUNCIL REPRESENTATIVE, WE ARE RELYING ON YOU TO
SUPPORT OUR COMMUNITY IN DENYING THE REQUESTED ZONING.

NAME	ADDRESS
<u>James E. Cullen</u>	<u>105 Washington St. Timonium 21043</u>
<u>James E. Cullen</u>	<u>105 WASHINGTON ST. Timonium, MD 21093</u>
<u>Tom Cole</u>	<u>16 Washington St. Timonium 21093</u>
<u>Paul Cole</u>	<u>16 Washington St. Timonium 21093</u>
<u>Harriet Cole</u>	<u>16 Washington St. Timonium 21093</u>
<u>Emma J. Gault</u>	<u>13 Washington St. Timonium, MD</u>
<u>Jay Gault</u>	<u>15 WASHINGTON ST. Timonium 21093</u>
<u>Tom Gault</u>	<u>102 Washington St. Timonium 21093</u>
<u>Virginia S. Wheatley</u>	<u>102 Washington St. Timonium 21093</u>
<u>Doug Cebal</u>	<u>101 Washington St. Timonium 21093</u>
<u>Tom Gault</u>	<u>15 Washington St. Timonium 21093</u>
<u>Raymond Cloninger</u>	<u>106 Washington St.</u>
<u>Bettie Ford</u>	<u>12 Harding St. Timonium 21093</u>
<u>Clarence H. Ford</u>	<u>12 Harding St. Timonium 21093</u>
<u>Don Lenderking</u>	<u>109 Roosevelt St. Tim. 21093</u>
<u>Howard Lenderking</u>	<u>109 Roosevelt St. Tim. 21093</u>

PETITION

TO: COUNCILMAN C.A. RUPPERSBERGER*

WE, THE UNDERSIGNED, STRENUOUSLY OBJECT TO THE REQUEST FOR
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INTO OUR RESIDENTIAL NEIGHBORHOOD, WHICH BY ANY STANDARDS,
WOULD INFLICT A SERIOUS HARDSHIP UPON WE, THE RESIDENTS.

AS OUR COUNCIL REPRESENTATIVE, WE ARE RELYING ON YOU TO
SUPPORT OUR COMMUNITY IN DENYING THE REQUESTED ZONING.

NAME	ADDRESS
Mr. & Mrs. P. Pellegrini	14 HARDING ST
~~Joseph Pellegrini~~	~~14 HARDING ST~~
Paul and Kathryn Smith	102 Harding St.
Pauline K. Doda	104 Harding St.
Mr. & Mrs. Gahler	107 Harding St.
Permy M. Gable	107 Harding St.
Ammon H. Chilcoat	7 Harding St.
Richard L. Chilcoat	7 Harding St.
William H. Chilcoat	10 Harding St.
Leila Genevieve Chilcoat	10 Harding St.
Charles Albright	4 Harding St.
Lucia Albright	4 Harding St.
Tom. Wiest	7 Harding St.
Harriet P. Eickler	3 Harding St.
Donson Eickler	3 Harding St.
Clarence Dilworth Brown	9 Roosevelt St

101 Washington St. 21093

Gaspar Aguirre W. B. Washington ST

Received from John M. Bearer
for Councilman C.A. Ruppertsberger III

Cover Letter: Two Pages
Petition: Seven Pages

From Residents of Timonium Heights

Relating to Baltimore County Zoning Issue 3-151

Disanne Gilbert

Date: October 5, 1992; Time: 11:04 a.m.

RECEIVED
COUNTY BOARD OF APPEALS

C.C. Sch # 7

MR. WILLIAM HACKETT
BALTIMORE COUNTY
BOARD OF APPEALS
OLD COURT HOUSE
TOWSON, MARYLAND 21204

127 TREGARONE ROAD
TIMONIUM, MARYLAND
OCTOBER 16, 1993

DEAR MR. HACKETT,

I AM THE PRESENT ZONING AND DEVELOPMENT REPRESENTATIVE FOR THE GREATER TIMONIUM COMMUNITY COUNCIL. I HAVE BEEN INVOLVED WITH THIS UMBRELLA GROUP OF TWENTY COMMUNITY ASSOCIATIONS IN NORTHERN BALTIMORE COUNTY FOR THE LAST SEVENTEEN YEARS SERVING AS ONE OF ITS EARLY PRESIDENTS.

THIS LETTER IS BEING WRITTEN TO ADDRESS AND CLARIFY A ZONING ISSUE AT HAND - CR 93-305-SPH, PROPOSING A RECLASSIFICATION OF SIX AND ONE HALF ACRES FOR THE DEVELOPMENT OF A FOOD MARKET AND STRIP OF OTHER SHOPS NEAR PADONIA ROAD AND BROAD AVENUE.

AS I RECALL G.T.C.C. BECAME INVOLVED WITH THIS PROPERTY AS FAR BACK AS 1978 WHEN THERE WAS A REQUEST TO PERMIT A CADILLAC DEALERSHIP TO BE BUILT. IT WAS DENIED.

THERE ARE SO MANY QUESTIONABLE CIRCUMSTANCES SURROUNDING THE DEVELOPMENT OF THIS ACREAGE I FEEL IT IMPERATIVE THAT AT LEAST SEVERAL OBSERVATIONS BE CONSIDERED IN YOUR FINAL DECISION.

FIRST, THIS PARCEL IS A LOW-LYING SPREAD RUNNING ADJACENT TO PADONIA ROAD WHICH, BECAUSE OF ITS TOPOGRAPHY, MAY REQUIRE ENORMOUS AMOUNTS OF FILL AND EARTH MOVING PRIOR TO ANY CONSTRUCTION.

FOR VARIOUS REASONS OVER THE PAST YEARS THE COUNTY PLANNERS HAVE, IN THEIR WISDOM, OPPOSED ANY DEVELOPMENT BECAUSE OF THE POTENTIAL FOR FLOODING AND ENVIRONMENTAL PROBLEMS. TO MY KNOWLEDGE THE COUNTY STILL OWNS SEVERAL LOTS WHICH ARE INCLUDED IN THE DEVELOPER'S SITE PLAN THAT HAVE BEEN RETAINED BY THE COUNTY AS A BUFFER TO PROTECT THE STREAM AND GREEN WAY (AS DESIGNATED IN THE CURRENT COUNTY MASTER PLAN). TO MY KNOWLEDGE THERE ARE NO PLANS TO RELEASE THESE LOTS AT THIS TIME.

THE DEVELOPER IS PROPOSING THE INSTALLATION OF A VERY ELABORATE AND EXPENSIVE SYSTEM OF HOLDING PONDS TO CONTROL FUTURE DRAINAGE PROBLEMS. CAN WE BE ASSURED THAT THE RUN-OFF FROM SIX ACRES OF HARD SURFACE (BUILDINGS AND PARKING LOT) CAN BE HANDLED ADEQUATELY DURING A SERIOUS STORM? I UNDERSTAND THIS ENTIRE AREA WAS INUNDATED WHEN "AGNES" HIT.

SECOND, AS YOU ARE AWARE THE ENTRANCE AND EXIT TO THIS SHOPPING CENTER WOULD BE VIA BROAD AVENUE TO PADONIA ROAD ONE BLOCK WEST OF YORK ROAD. YORK AND PADONIA IS A FAILED INTERSECTION. TRAFFIC ON PADONIA ROAD NORMALLY EXPERIENCES BACKUPS DURING PEAK HOURS. ITS HARD TO IMAGINE THE CONSEQUENCES OF INTRODUCING HUNDREDS OF ADDITIONAL VEHICLES FROM THE MARKET'S FOUR HUNDRED CAR PARKING LOT, SAY ON A FRIDAY AFTERNOON WHEN MANY PEOPLE DO THEIR SHOPPING.

PLANNING THE FUTURE OF THIS INTERSECTION IS CRITICAL. OPENING PADONIA TO POT SPRING ROAD AND BEAVER DAM ROAD TO PADONIA WILL AGGRAVATE PRESENT CONDITIONS. AND THOUGHT MUST BE GIVEN TO THE FUTURE DEVELOPMENT OF "MAYS CHAPEL" AND THE TRAFFIC WHICH COULD RESULT FROM ANOTHER 2000 LIVING UNITS.

THIRD, THE PROPOSED DEVELOPMENT ABUTS THE COMMUNITY OF TIMONIUM HEIGHTS, ABOUT EIGHTY FIVE SINGLE FAMILY DWELLINGS. THE RESIDENTS ARE MOSTLY GOOD, WORKING CLASS PEOPLE MANY HAVING LIVED THERE FOR YEARS. FOR THE MOST PART IT IS A PASSIVE NEIGHBORHOOD WHERE PEOPLE JUST WANT TO BE LEFT ALONE.

IN HIS LETTER TO YOU ERIC ROCKEL EXPLAINED THAT THE RESIDENTS ARE CLEARLY SUPPORTIVE OF THIS SHOPPING CENTER. FOR CLARIFICATION, DURING THE LAST ZONING CYCLE ABOUT SIXTY OF THE RESIDENTS SIGNED A PETITION OPPOSING THIS NEW DEVELOPMENT. THEY WERE CONCERNED OVER THE PROBLEMS IT WOULD IMPACT ON THEIR COMMUNITY. THE DEVELOPER PULLED THE ISSUE AT THE END OF THE CYCLE.

I ENCOURAGED THE RESIDENTS TO FORM AN ASSOCIATION, WHICH THEY DID. I BELIEVE AT THIS POINT THE DEVELOPER THROUGH A SERIES OF MEETINGS, SOME OF WHICH WERE CLOSED, EXPLAINED TO THE RESIDENTS THE BENEFITS OF HAVING THE SHOPPING CENTER IN PREFERENCE TO OTHER POSSIBLE LAND USES. MR. JULIO SHOULD BE COMPLIMENTED ON HIS METHODICAL PRESENTATIONS. HIS SITE PLAN AND PROPOSED LANDSCAPING WHICH WERE COMPLIMENTARY AND APPEALING.

UNFORTUNATELY THE PRESENT TIMONIUM HEIGHTS ASSOCIATION, WHICH AS ERIC STATED, IS SUPPORTIVE OF THE SHOPPING CENTER, IS NOT TRULY REPRESENTATIVE OF THE COMMUNITY ABOUT THIRTY OUT OF EIGHTY FIVE HOMES ARE MEMBERS. THERE ARE STILL MANY WHO OPPOSE THE CENTER AND THERE ARE STILL OTHERS THAT JUST DON'T CARE.

AS A COMMENT ON THE COMMUNITY SURVEY TAKEN RECENTLY. WE ASK THE WHOLE TIMONIUM COMMUNITY WOULD THEY PREFER A SHOPPING CENTER RATHER THAN OFFICES OR WAREHOUSES IN THIS LOCATION ? ABOUT HALF OF THE RESPONSES SAID THEY WOULD. HOWEVER, MANY OF THESE COMMENTED THAT THERE WAS NO NEED FOR ANY NEW DEVELOPMENT AT ALL. THIS IS THE GENERAL CONSENSUS OF THE MAJORITY OF RESIDENTS.

MR. HACKETT I HAVE BEEN A RESIDENT OF TIMONIUM FOR TWENTY EIGHT YEARS AND SEEN MANY CHANGES NOT ALL THE RESULT OF SOUND PLANNING, FOR EXAMPLE THE RIDGELY AND HUNT VALLEY SHOPPING CENTERS ARE FOR THE MOST PART NOW DEAD. WE ARE OVER-BUILT! WE ARE SEEING THE URBANIZATION AND ITS RELATED PROBLEMS IN TIMONIUM, A ONCE TRANQUIL AREA-TRAFFIC, CRIME, NOISE, POLLUTION, EXCESS SIGNING AND LIGHTING. TO NAME A FEW.

FINALLY, ITS SAD THAT OUR ZONING AND DEVELOPMENT PROCESS DOESN'T CONSIDER SOME RESTRICTIONS ON REPETITIOUS GROWTH IN A GIVEN AREA. FOR EXAMPLE THE PROPOSED FOOD MARKET WILL BE DIRECTLY ACROSS THE STREET FROM THE "MARS SUPER MARKET" WHICH INCIDENTALLY ALREADY HAS A "RITE AID" STORE IN THAT STRIP. THERE ARE FIVE OTHER MAJOR FOOD MARKETS WITHIN FIVE MINUTES OF THE PROPOSED SITE.

I UNDERSTAND THE NEED FOR CREATING JOBS, FOR A PERSON'S RIGHT TO DEVELOP HIS LAND, AND FOR EXPANDING THE COUNTY TAX BASE BUT NOT AT THE COST OF DESTROYING A COMMUNITY.

WE HOPE THAT UNTIL A BETTER PROPOSAL COMES ALONG FOR THIS PARCEL YOU WILL DENY ANY CHANGE IN THE PRESENT ZONING.

THANK YOU FOR YOUR CONSIDERATION.

SINCERELY
Tom Kelly
L. THOMAS KELLY

COPIES TO:

MR. PETER ZIMMERMAN
COUNCILMAN C. A. RUPPERSBERGER

PAT- File

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

September 24, 1992

P.C. Exh # 5

TO: File

FROM: J. James Dieter

SUBJECT: Julio Property Proposal
Padonia Road and Broad Avenue

A meeting was held on September 23, 1992 with Mr. Ted Julio and his consultants (Dennis Labare, Richard Hillis) to discuss a potential site plan for property located at Padonia Road and Broad Avenue. Messrs. David Lykens and J. James Dieter represented DEPRM.

The plan was proposed as a concept to show a particular retail development scheme which required certain zoning changes. Departmental issues were discussed as a result of previous field visits and Mr. Lykens' preliminary wetland assessment of September 22, 1992. The following is a synopsis of site constraints, potential problems and possible resolutions:

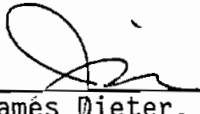
1. Wetlands - The preliminary wetland assessment of September 22, 1992 indicated wetlands were not as extensive as originally thought. Two areas of wetlands were indicated which might require some site plan modification. Formal wetlands delineation could also lessen one of these areas.
2. Floodplain - The floodplain issue is one which could seriously affect the site design. The Department of Public Works must be involved to make this call. A buffer will be required off the floodplain but cannot be established until the floodplain is delineated. If the floodplain is associated with the existing stream location and does not extend into the site, the design might not be affected.
3. Buffer - The 100 foot buffer restriction can be varianced to the existing tree line (approximately 60+ feet). A formal variance as part of the Development process will have to take place. The reduction of buffer also affects stormwater quality management in that it increases pond size. The forest buffer will affect parking spaces as shown on the plan.

Memo to File
September 24, 1992
Page 2

Subject: Julio Property Proposal
Padonia Road and Broad Avenue

4. Quality Stormwater Management - In order to compensate for buffer reduction overmanagement of stormwater for quality benefits must occur. This involves treating off-site as well as on-site stormwater. The size of the stormwater pond as shown on the concept plan will most probably have to be expanded. This could affect parking space shown on the plan. Adjoining property owned by Mr. Julio has the potential to be utilized, but wetland and floodplain delineations must be done before a judgment can be made. It should be noted that the size of the pond might have to expand for normal quantity management. An underground facility alternative is also possible. However, the owner was cautioned that this type of facility is usually very expensive to construct and maintain.

These discussions involve only a conceptual development scheme. Our comments should not be construed as final approvals. With the series of assumptions made by the owner, the plan could become workable. The greatest risk for site changes would result from the floodplain determinations and expansion of the stormwater management pond.



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

JJD/jbm

DATE: 9/28/93

PEOPLE'S COUNSEL'S SIGN IN SHEET

CASE: HARRISON & GRASS (BAKER AND CO.)
CR-93-305 SPH

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

[illegible]

south. Broad Avenue bounds the subject site immediately to the east and ends at or near the southern boundary of the site. The southwest quadrant of the intersection of Padonia and York Roads in which the subject site is located, is primarily zoned ML-IM, O-1, R-O, DR 3.5. The exception is a small sliver of BL zoned property located at the immediate intersection of Padonia and York Roads. The Timonium light rail transit stop is located at the southwest corner of the Timonium Heights residential development. It should be noted that other vacant properties exist in this quadrant. To the east of the subject site, along Padonia Road toward York Road, a vacant parcel is zoned O-1, RO, and DR 3.5. Likewise, near the light rail stop to the south and southwest of the subject site, a large vacant parcel is zoned DR 3.5. In addition to the residential community and the transit stop, the southwest quadrant is improved exclusively by office buildings to the west. The only commercial area in the quadrant is the aforementioned small strip of BL fronting on York Road at its intersection with Padonia.

The mixed use development of this quadrant is a microcosm of the mixed use development evident in the Hunt Valley-Timonium area and sanctioned in the Hunt Valley-Timonium Redevelopment Study (hereinafter "Redevelopment Study"). The zoning in this quadrant and on the subject site itself, is the product of a planned geographic zoning pattern fashioned by the existence of the transit system, the infrastructure, and the mixed use envisioned by the Baltimore County Council for this vital area in northern Baltimore County. The successor to the railroad line, the central light rail system, continues to impact the types of uses for the surrounding properties.

THE AMERICAN GEOGRAPHICAL SOCIETY
PUBLISHED BY THE SOCIETY



1875-1876

P.C. Exh #4

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BALTIMORE COUNTY COUNCIL MINUTES
LEGISLATIVE SESSION 1992, SPECIAL SESSION
OCTOBER 15, 1992 7:00 P.M.

P.C. Egh
#2

A. The meeting was called to order by Chairman Howard at 7:20 P.M.
The Chairman asked the audience to rise for a moment of silent meditation and the Pledge of Allegiance to the Flag. There were approximately 150 persons in attendance and the following Councilmembers were present:

BERCHIE L. MANLEY	FIRST DISTRICT
MELVIN G. MINTZ	SECOND DISTRICT
C. A. DUTCH RUPPERSBERGER, III	THIRD DISTRICT
DOUGLAS B. RILEY	FOURTH DISTRICT
VINCENT J. GARDINA	FIFTH DISTRICT
WILLIAM A. HOWARD, IV	SIXTH DISTRICT
DONALD C. MASON	SEVENTH DISTRICT

B. CALL OF BILLS FOR FINAL READING AND VOTE

BILL 183-92, Comprehensive Zoning Maps - First District, was called. Councilwoman Manley moved to accept the Planning Board's recommendation on the following issues:

1-001	1-002	1-003	1-004	1-005
1-006	1-007	1-008	1-009	1-011
1-012	1-013	1-014	1-015	1-016
1-017	1-018	1-019	1-020	1-022
1-024	1-028	1-030	1-031	1-032
1-033	1-034	1-035	1-037	1-038
1-039	1-040	1-042	1-043	1-044
1-045	1-047	1-048	1-049	1-050
1-051	1-052	1-053	1-054	1-055
1-057	1-059	1-060		

Councilman Howard seconded the motion and these issues were passed unanimously.

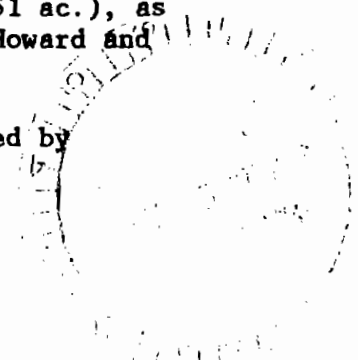
Councilwoman Manley then moved for the following changes in the First District Comprehensive Zoning Map:

Issue 1-010 from RO to DR 5.5. Motion was seconded by Councilman Howard and passed unanimously.

Issue 1-021 from DR 3.5 to ROA. Motion was seconded by Councilman Howard and passed unanimously.

Issue 1-023 from RC 2 to RC 2 (13.2 ac.) & RC 5 (1.51 ac.), as shown on the overlay. Motion was seconded by Councilman Howard and passed unanimously.

Issue 1-025 from RC 3 to DR 5.5. Motion was seconded by Councilman Howard and passed unanimously.



BALTIMORE COUNTY COMPREHENSIVE ZONING MAP

*Final Log of Issues
Adopted October 15, 1992*

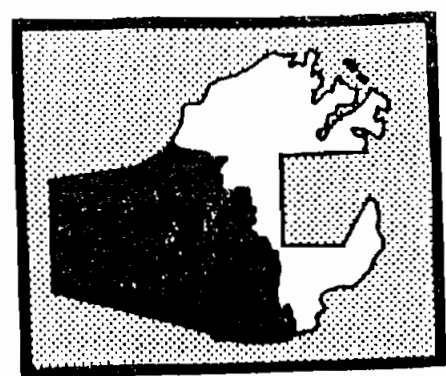
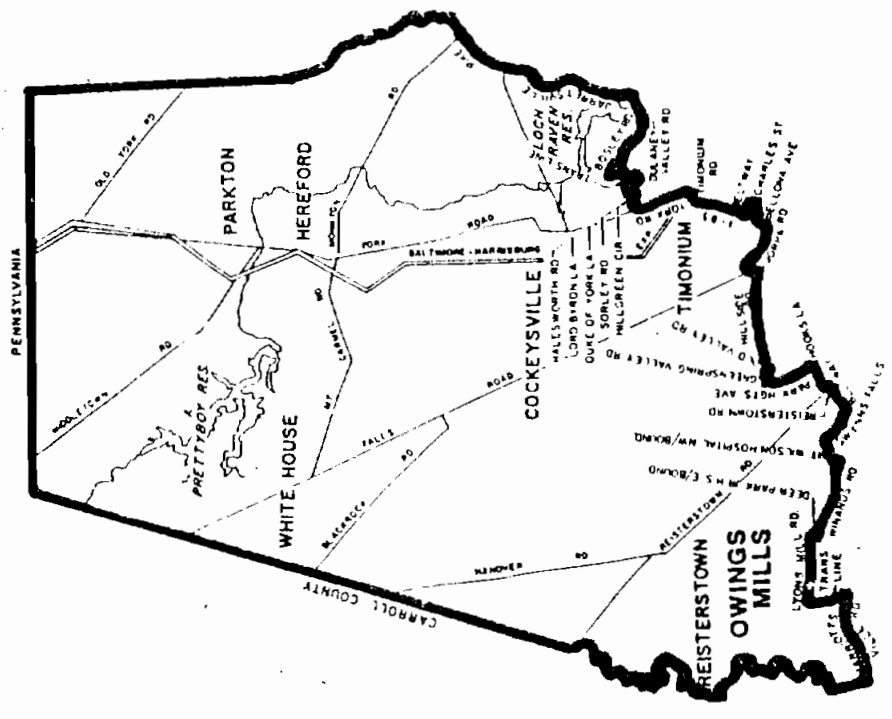


Rd) 1.80 1.80 1.80

BALTIMORE COUNTY COUNCIL

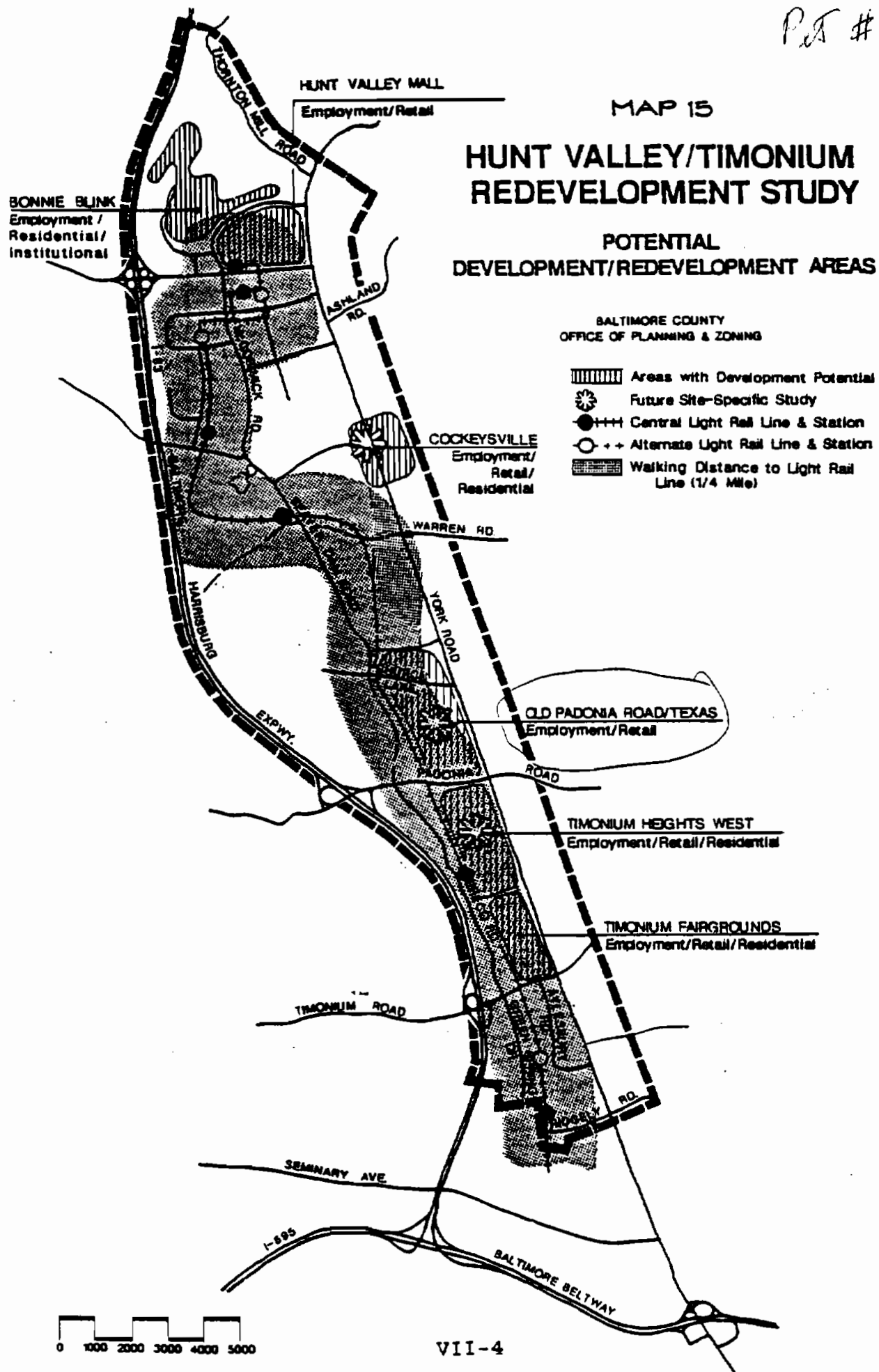
THIRD COUNCILMANIC DISTRICT

1992 COMPREHENSIVE ZONING PROCESS



BALTIMORE COUNTY
1992 COMPREHENSIVE ZONING MAP ISSUES

ISSUE NO	OWNER, PETITIONER	LOCATION	TOTAL ACRES	EXISTING ZONING AND ACRES	REQUESTED ZONING AND ACRES	PLANNING BOARD RECOMMENDATIONS	COUNTY COUNCIL DECISIONS	COMMENTS
3-148	William & Rosa Lee Rothe By William Monk	S Side McDonogh Rd 50' W of Crossroads Dr (8005 McDonogh Rd)	1.90	DR 1 1.90	DR 3.5 1.90	DR 2 1.90	DR 2 1.90	See Issue 3-147
3-149	Randolph & Yvonne Shelley	E Side York Rd (15129 York Rd)	1.10	RC 5 1.10	RC 5 1.10	RC 5 1.10	RC 5 1.10	
3-150	Thomas & Maria Rafailides By Newton A Willaime, Esq	SW corner of York Rd & Lincoln St (2334 York Rd)	0.28	DR 3.5 0.28	NO 0.28	DR 3.5 0.28	DR 3.5 0.28	
3-151	Maryland Title Guarantee Co. By Newton A Williams, Esq	W Side of Broad Ave 126' to Broad Ave & Roosevelt St (2424/2454 Broad Ave)	6.57	DR 3.5 0.22 MLR 4.84 O-1 1.51	ML-IM ML-IM MLR O-1 6.57	ML-IM ML-IM MLR O-1 1.51	DR 3.5 0.22 MLR 4.84 O-1 1.51	
3-152	Frank P Pavazza Jr By Newton A Williams, Esq	S Side of Padonia Rd 1200 W of York Rd (201 Padonia Rd)	3.10	MLR 2.00 O-1 1.10	ML-IM ML-IM O-1 3.10	ML-IM ML-IM MLR 2.00	ML-IM ML-IM MLR 2.00	
3-153	Lion Brothers Company Inc By Susan J Ganz, President	210' S of Reisterstown Rd 550' W of Painters Mill Rd (10246 Reisterstown Rd)	5.28	ML-IM 5.28	BM 5.28	ML-IM 5.28	ML-IM 5.28	
3-154	American Legion, Dept of MD By S Eric DiNenna, Esq	NE & SE corners Thelma St & Landstreet St	0.80	MLR-IM 0.12 DR 3.5 0.68	ML-IM or BR 0.80	MLR-IM 0.12 DR 3.5 0.68	MLR-IM 0.12 DR 3.5 0.68	
3-155	Timothy Hearn & James Hottes	NE corner of York Rd and Matthews Ave (10615 York Rd)	0.34	NO 0.34	BL 0.34	NO 0.34	NO 0.34	



DEPRM to continue to coordinate the County's responsibility for stormwater management under the NPDES Storm Water Discharge Permit.

OPZ and DEPRM to encourage an increase in open space/pervious area through the use of open concrete paver blocks in selected areas or sharing of parking facilities.

- DEPRM to implement the Ground Water Management and Protection Strategy.
- DEPRM to continue to implement the County's responsibilities with respect to State and Federal air quality management programs.
- DEPRM to review development proposals to ensure new nonresidential development minimizes potential noise conflicts for residential areas.

Development/Redevelopment Opportunities

- OPZ to support intensification of use at locations which are oriented toward light rail stops, with mechanisms for public review and adequate controls to limit negative impacts on surrounding residential areas.
- OPZ to initiate legislation to create a commercial P.U.D. zone and/or overlay district for manufacturing zones to allow mixed use development; legislation to include some access restrictions on McCormick and Beaver Dam Roads.
- EDC to consider designating Cockeysville's commercial center as a Revitalization Area.

OPZ will support appropriate development of vacant sites within redevelopment and/or employment areas where quality design will limit negative impacts on any surrounding residential or employment areas.

Design Quality

- OPZ to recommend the incorporation of the Hunt Valley/Timonium Design Guidelines into the Baltimore County Comprehensive Manual of Development Policies for Planning Board action.
- OPZ to initiate legislation to amend the zoning regulations to allow employee support services in manufacturing zones.
- OPZ and the Department of Recreation and Parks to require dedication/reservation of a public greenway system through the development process.
- OPZ to recommend to the Planning Board and County Council an amendment to the Landscape Manual which would require a 15' wide (min.) landscaped and fenced buffer along the light rail line.
- OPZ, in conjunction with other County agencies, to encourage "clean-up" programs for the light rail right-of-way and for existing development adjacent to the light rail line.
- As part of the current OPZ signage study, OPZ to submit a recommendation to amend the Baltimore County Zoning Regulations to limit commercial signage visible from the light rail, excluding stations and "clean-up" incentive signs.
- OPZ to discourage sign variances along York Road.
- Zoning Enforcement will be encouraged to provide stricter enforcement of sign regulations along York Road.

DEPRM STUDY

Hunt Valley/Timonium Area Watershed Study

DED STUDIES

- Study and promote economical locations within Baltimore County for manufacturing and support uses which are relocating out of the Hunt Valley/Timonium area.
- Examine feasibility of the Baltimore County Development Corporation to act as a redevelopment authority in the Hunt Valley/Timonium corridor.

HUNT VALLEY/TIMONIUM ZONING GUIDELINES

The following list of guidelines was prepared to help in making recommendations for zoning requests. The guidelines are formulated to promote future development that is consistent with the plan, or to defer new development in some areas until a more detailed area plan is completed. The guidelines are intended to be general and advisory. Specific situations may warrant zoning decisions that are not consistent with these guidelines.

1. East Side of York Road

- a) No change of residential zoning to nonresidential zoning. Employ R-O or R-O-A residential office zones in areas requiring a greater buffer between disparate uses.
- b) Support higher density residential zoning at appropriate locations with compatibility guidelines and limited impact on schools.

- c) No increase in intensity of business or manufacturing zones which would create traffic increases.
- d) Support zoning of properties to match existing use.

2. West Side of York Road

- ✓ a) Timonium Heights West - no change in residential zoning, including along York Road, until a local area study is completed.
- b) Cockeysville - limit changes to existing zoning until a local area plan is completed.
- c) Old Padonia - Church Lane area - limit changes to existing zoning until a local area plan is completed.

3. Employment Area

- a) No new business zoning adjacent to McCormick or Beaver Dam Road, except for mixed use developments associated with transit stops.
- ✓ b) Support zoning changes in the employment and/or redevelopment area, which includes the buildable area between I-83 and York Road, Ridgely Road and Thornton Mill Road, which will foster growth in employment, business and employee services and amenities and/or light rail usage, providing there will be minimal negative impacts on existing transportation systems and on the surrounding residential areas. Zoning requests for properties which are located in the Padonia Road commuter shed and which may result in traffic increases should not be supported unless a transportation study is submitted demonstrating no increase in traffic.

CASE NO. 76/249A/94CV2565

ps (30) April 3, 1995 Memorandum Opinion and Order of Court REMANDING above case to Board of Appeals to make the appropriate factual and legal findings consistent with § 2-356 of the Baltimore County Code, etc., fd. (TJB)

enhance the stability and permanence of zoning classifications by assuring that the majority of zoning classifications are determined in accordance with a carefully considered integrated plan of development, based upon a full understanding of the present and future needs of a broad area, rather than upon a piecemeal review of limited scope." Coppolino, at 369-370. The County Council has before it an abundance of information from the various Baltimore County departments. In addition, public hearings are held, giving the citizens an opportunity to express their opinion. Naturally, the Master Plan and adopted community plans are also available for County Council consultation.

While the County Council reviews the zoning maps for the entire County, the property owners have the option of designating specific parcels as particular issues for review by the County Council. The subject site was designated as specific issue 3-151 in the 1992 Comprehensive Map Process. At that time, the property owner requested ML-IM zoning for the 6.57 acres. The request was specifically reviewed by the County Council as part of a special issue in the Comprehensive Map Process. In fact, a witness for the Petitioner in the instant case testified to the attention given to this site in the Process. Mr. Jeffrey Long, a County planner for the Office of Planning and Zoning stated as follows:

"Q. So it's clear that the Council looked at the issue?

"A. Yes. There were meetings in Mr. Ruppertsberger's office regarding this issue."

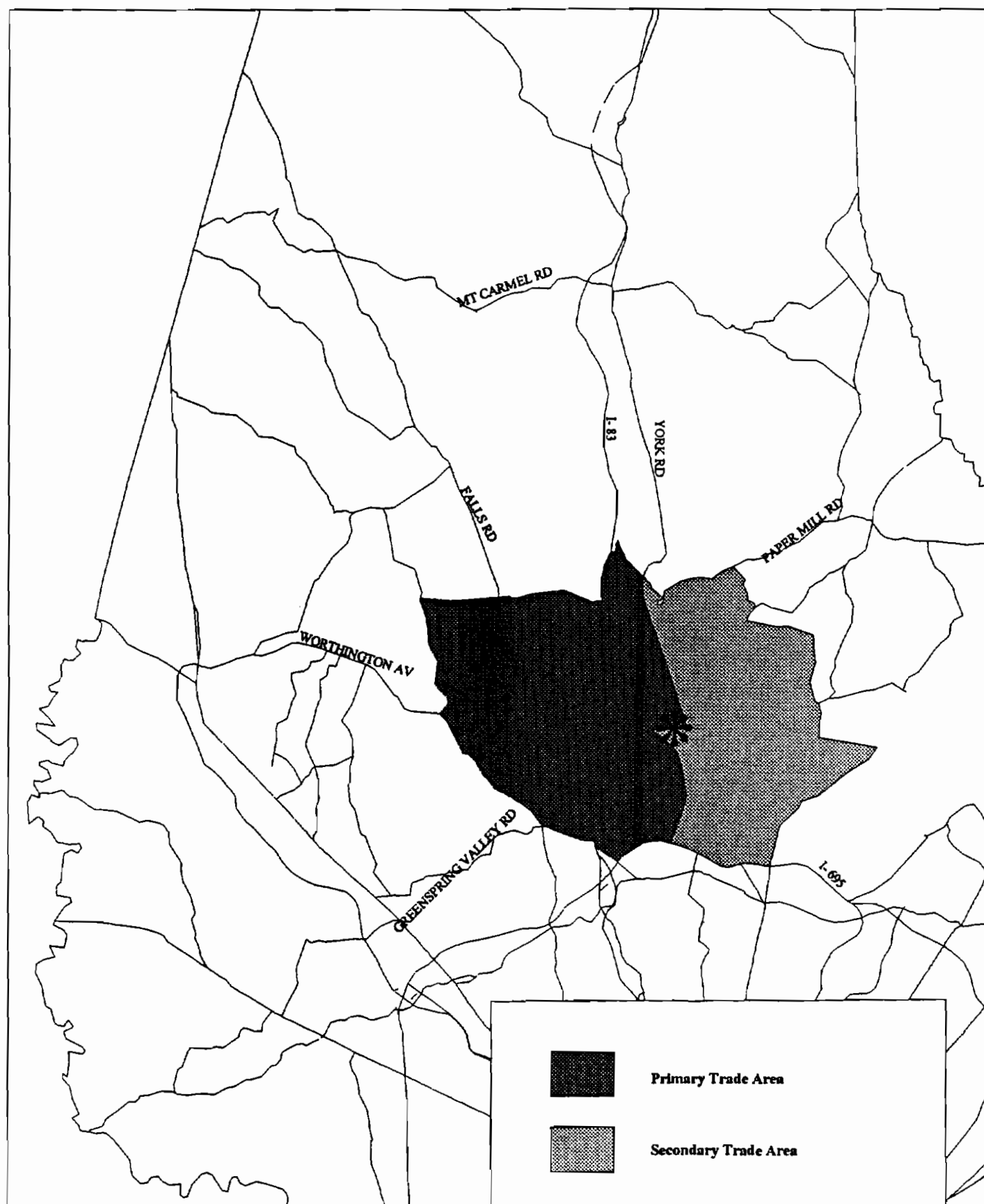
(Transcript, September 29, 1993, hereinafter referred to as "T.1", p. 75).

1993
OFFICE/INDUSTRIAL MARKET
HUNT VALLEY-TIMONIUM

C.J. Sk #19
(Page A-B)

1990*		1993**
12.2%	Office Market Vacancies	18.4%
6.5%	Industrial Market Vacancies	15.5%

* Hunt Valley/Timonium Analysis, October 1990.
** Market Research, October 1993.



B

**1993
SUPERMARKET INVENTORY**

Company	Shopping Center	Area (Sq.Ft.)
Giant	York-Ridgely Shopping Center	50,000
Giant	Yorktowne Plaza	25,000
Mars	Padonia Village	25,000
Mars	Ridgely Plaza	33,000
Safeway	Cranbrook Shopping Center	33,000
Super Fresh	Scotts Corner Shopping Center	25,000
Super Fresh	Yorkridge Shopping Center	27,000
TOTAL SUPERMARKET SQUARE FOOTAGE		218,000

6

1993
MARKET SUPPORT FOR SUPERMARKET

Primary Trade Area		Secondary Trade Area
\$66,000	Estimated Household Income	\$66,000
\$56,100	Disposable Household Income	\$56,100
7,457	Households	13,848
\$418,337,700	Aggregate Disposable Income	\$776,872,800
\$38,068,731	Supermarket Expenditures (9.1%)	\$70,695,425
\$26,648,112	70% ---- Capture Rate ---- 10%	\$7,069,543
51,538	Supportable Area at \$500 PSF Sales	14,139

TOTAL SUPPORTABLE AREA
65,700 SQ. FT.

0

1993
MARKET SUPPORT FOR COMMUNITY CENTER
NON-SUPERMARKET RETAIL

<u>Primary Trade Area</u>		<u>Secondary Trade Area</u>
\$66,000	Estimated Household Income	\$66,000
\$56,100	Disposable Household Income	\$56,100
7,457	Households	13,848
\$418,337,700	Aggregate Disposable Income	\$776,872,800
\$41,833,770	Other Retail Expenditures (10.0%)	\$77,687,280
\$6,275,066	15% ---- Capture Rate ---- 2%	\$1,553,746
19,308	Supportable Area at \$325 PSF Sales	4,781

TOTAL SUPPORTABLE AREA
24,100 SQ. FT.

E

GEORGE E. GAVRELIS

Vice President



George Gavrelis has broad, extensive training and background in planning and zoning, particularly in Baltimore County. He has a thorough knowledge of planning and zoning procedures, as well as the detailed requirements and standards of the zoning and development regulations. His expertise assures that projects comply with applicable standards and move more expediently through the approval process.

Mr. Gavrelis is recognized as an expert witness in planning, zoning and land use issues and testifies before the Zoning Commissioner, the Board of Appeals and the Circuit Court.

Professional Background

Daft-McCune-Walker, Inc.
Towson, Maryland
1984 - Present

Private Planning Consultant
1982 - 1984

Developers General
Corporation
1972 - 1982

Baltimore County Office of
Planning and Zoning
Towson, Maryland
1951 - 1972
Director, 1963 - 1972

Education

Master of City Planning
Harvard University Graduate
School of Design

Bachelor of Arts
Harvard College

Associations

American Institute of
Certified Planners, Charter
Member

American Planning
Association

Committees

The Towson Partnership
Urban Design Subcommittee

Executive Steering
Committee, Baltimore
County Master Plan, Strategic
Plan 2000

Parking Committee, Towson
Development Corporation

Land Use Committee
Baltimore County
Chamber of Commerce

Long Range Planning
Committee, Trinity Episcopal
Church

Advisory Group
1992 Comprehensive Zoning
Map Guidelines

Significant Projects

Towson Commons
Towson, Maryland

Mays Chapel North Planned
Unit Development
Timonium, Maryland

Caves Valley Club
Documented Site Plan
Reclassification and Special
Exception

Land Owners Council,
Reciprocal Regional
Development Agreement
Owings Mills Growth Area
Baltimore County, Maryland

New Density Residential
Zones
Baltimore County, Maryland

The Guideplan, a
Comprehensive Plan for
Baltimore County, Maryland

Guest Lecturer

National Conventions,
National Association of
Home Builders
Houston, Texas
Las Vegas, Nevada

Development Seminar,
National Association of
Home Builders
Phoenix, Arizona

Home Builders Institute,
Home Builders Association
of Maryland

Awards

Home Builders Association
of Maryland, Distinguished
Service Award
1979 and 1980

Baltimore County Chamber
of Commerce Leadership
Award, Growth
Management Committee
1981



DAFT-McCUNE-WALKER, INC.

LEGG
MASON

LEGG
MASON

Advising Investors Since 1899

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Get. Exh #18

ROBERT T. KLEINPASTE

POSITION: Managing Director

SPECIALTIES: Strategic Planning, Project Management, New Communities and Large Scale Development, Product Design and Presentation

EXPERIENCE: 18 years in real estate development and marketing

EDUCATION: B.S. in business administration - University of Maryland, College Park

RECENT PROJECTS:

- o Investment Committee, Legg Mason/USF&G Realty Partners
- o Consultant to NVR Development and NV Homes
- o Consultant for Development of a New Downtown Strategy for Baltimore, Maryland

Mr. Kleinpaste has a particularly keen sense for the design and marketing of residential products; he is regularly consulted by builders throughout the Baltimore-Washington area on product design, product positioning, and marketing programs. Mr. Kleinpaste's areas of expertise include analyses of shopping centers, industrial buildings, mixed-use commercial and residential projects and new towns, high- and low-density residential feasibility studies, product development analyses, and optimum land use studies for both commercial and residential uses.

Mr. Kleinpaste joined Legg Mason Realty, Inc., upon Legg Mason's acquisition of Mr. Kleinpaste's Real Property Research Group (RPRG) in December 1986. At the time of its acquisition, RPRG, a real estate research and consulting firm founded by Mr. Kleinpaste in Columbia, Maryland, in 1976, had become one of the area's most widely respected market study and research organizations. In 1988, Mr. Kleinpaste was appointed Managing Director of Legg Mason Realty Group, Inc. As managing director, Mr. Kleinpaste directs the operations of all three of the organizational divisions, Appraisal Services, Research Services, and Information Services.

Prior to founding RPRG, Mr. Kleinpaste was involved in the marketing of both commercial and residential properties in the New Town of Jonathan near Minneapolis, Minnesota. He was also previously a partner in the firm of Briggs Napier Consultants, where he conducted market analyses for developers and builders throughout the United States and Canada. Mr. Kleinpaste has also served as Vice President of Chesapeake Homes, a division of Olin Corporation's housing subsidiary. While employed by this production housing company, he was responsible for market research, land acquisition, product planning and other marketing functions.

Mr. Kleinpaste is a lecturer in the Real Estate Program offered by The Johns Hopkins University and regularly conducts seminars for business and professional organizations.

**RESUME OF
ROBERT T. KLEINPASTE**

Experience

- 1989 - Present

President, Legg Mason Realty Group, Inc.
Baltimore, Maryland
Has operational responsibility for this multi-office real estate advisory firm offering research, consultation, appraisal, information systems, and corporate real estate services.
- 1986 - 1988

President, Legg Mason Real Estate Research
Baltimore, Maryland
Managed this wholly-owned subsidiary founded upon Legg Mason's acquisition of Real Property Research Group (RPRG).
- 1978 - 1986

President, Real Property Research Group
Columbia, Maryland
Operated this real estate research and consulting firm which was founded by myself in 1976. The company was purchased by Legg Mason in 1986.
- 1976 - 1978

Vice President, Chesapeake Homes, Division of Olin Corporation's Housing Subsidiary
Baltimore, Maryland
Was responsible for market research, land acquisition, product planning and other marketing functions.
- 1975 - 1976

Partner, Briggs Napier Consultants
Minneapolis, Minnesota
Conducted market analyses for developers and builders throughout the United States and Canada.
- 1973 - 1975

Sales Manager, Jonathan Development Corporation
Minneapolis, Minnesota
Marketed both commercial and residential properties in the New Town Jonathan near Minneapolis.

Education

- 1969

University of Maryland, College Park, Maryland
Bachelor of Science

After completion of the Comprehensive Map Process, the County Council rejected the request for reclassification of the subject site and retained the existing zoning. The soundness of this decision is evident from the testimony in the instant case, both from the witnesses for the Petitioner and the protestants. Notably, the majority opinion of the County Board of Appeals failed to mention the decision of the County Council in the 1992 Comprehensive Map Process; the Board's decision on a Petition for Reclassification requires a determination of the reasonableness and the fairly debatableness of the County Council's decision.

It is not surprising that the majority of the Board of Appeals failed to comment on the 1992 Comprehensive Map Process. The Petitioner failed to present any testimony to overcome the presumption that the County Council's decision was reasonable and fairly debatable. To be sure, George Gavrelis, a land planner testifying for Petitioner, mentioned the word "error" in his testimony, but its use had no connection to the opinion rendered by him. Rather, Mr. Gavrelis spoke of such irrelevant matters as "an unmet need for retail commercial facilities in this area" (Transcript, October 19, 1993, hereinafter referred to as "T.2", p. 40), traffic congestion which may occur "over time" (T.2, 41), the sanctioning of retail under the provisions of the Hunt Valley-Timonium Redevelopment Study. In fact, the Study described the area as an "Employment/Retail/Residential land", with no additional weight or sanction given to retail as opposed to the other uses. Mr. Gavrelis then attempted to establish error by equating the compatibility and desirability of the proposed use. Such

Resume of Robert T. Kleinpaste

Affiliations

National Association of Corporate Real Estate Executives
National Association of Home Builders
National Association of Office and Industrial Parks
National Multi-Housing Council
Urban Land Institute
National Association of Realtors

Teaching

John Hopkins University, School of Building and Development

MICKEY A. CORNELIUS
PRINCIPAL



Mickey Cornelius is a registered Professional Engineer with over ten years experience in the Highway Transportation and Traffic Engineering profession. He has served as a consulting traffic engineer for more than eight years. His experience in both the public and private sectors has provided Mr. Cornelius with a broad range of knowledge.

Mr. Cornelius is responsible for managing all aspects of the firm's traffic engineering and transportation planning studies. His experience in traffic engineering and transportation planning includes traffic capacity analysis, traffic forecasting and associated modeling,

Master Plan analysis, needs analysis, development of alternatives, geometric design, operations analysis, parking and circulation, traffic signal warrant studies, traffic signal design, traffic control plans, Transportation Systems Management and Travel Demand Management evaluations.

Mr. Cornelius' educational and professional background have qualified him as an expert in the field of traffic engineering and transportation planning before numerous County and municipal planning and zoning boards in Maryland, Pennsylvania, and New Jersey.

JOB HISTORY

1984-Present

Traffic Engineering Consultant

1982-1984

Civil Engineer, Highway Construction
S.J. Groves and Sons Co.

EDUCATIONAL BACKGROUND

B.S. in Civil Engineering with emphasis in Transportation —
The Pennsylvania State University
Traffic Engineering Courses: Northwestern University Traffic
Institute; Polytechnic Institute of New York

AFFILIATIONS

Registered Professional Engineer (P.E.)
Institute of Transportation Engineers (I.T.E.)
National Society of Professional Engineers (N.S.P.E.)
Urban Land Institute (U.L.I.)
Maryland Association of Engineers (M.A.E.)
Consulting Engineers Council of Pennsylvania (CEC/PA)

PLACES WHERE
MR. CORNELIUS HAS
QUALIFIED AS AN EXPERT WITNESS

MARYLAND

City of Annapolis-City Council
Anne Arundel County-Board of Appeals, Zoning Hearing
Examiner
City of Baltimore-City Council, Planning Commission
Baltimore County-County Review Group, Zoning
Commissioner, Board of Appeals, Circuit Court
Town of Bel Air-Planning Board, Town Commissioners,
Zoning Hearing Examiner
City of Bowie-Planning Advisory Board, Mayor and
City Council
Cecil County-Technical Advisory Committee
Charles County-Board of Appeals
Dorchester County-Board of Appeals
Frederick County-Planning Board, County Commissioners
Howard County-Planning Board, Zoning Board,
County Council

Montgomery County-Planning Board, Zoning Hearing
Examiner, Board of Appeals
Town of North East-Planning Commission
Prince George's County-Planning Board, County Council
Washington County-Board of Appeals
City of Westminster-Mayor and Common Council
Wicomico County-Board of Zoning Appeals

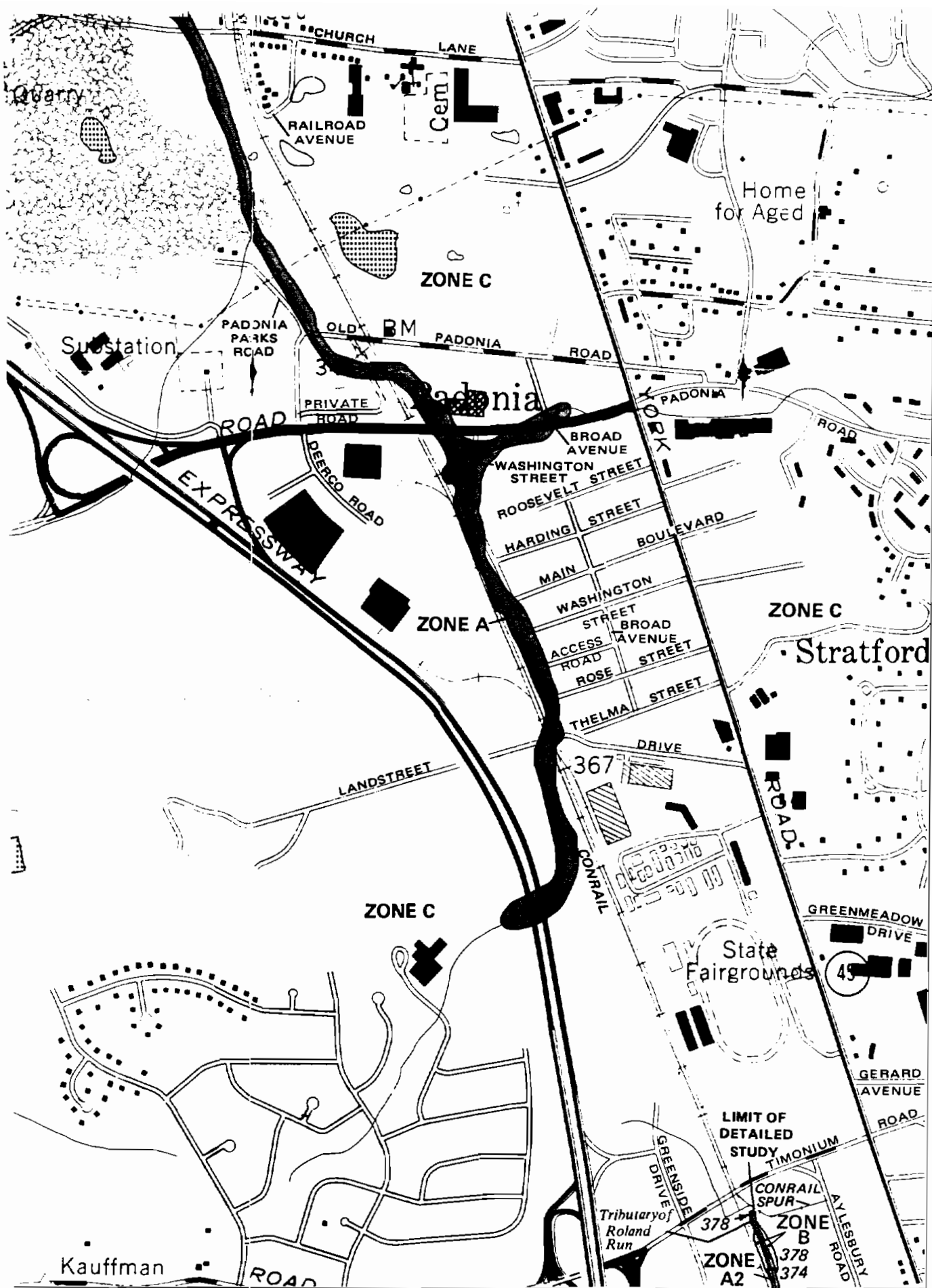
NEW JERSEY

Cumberland County-Fairfield Township Zoning Board

PENNSYLVANIA

York County-Manchester Township Zoning Hearing Board,
Planning Commission of Shrewsbury Borough

Ref. Exp #16



Federal Emergency
Mngt.

F.E.M.A.
1st Exhibit
#14

**BROAD STREET MARKET
Environmental Impact Statement**

Cat. Exh #13

Project Description

2/23/93

Harrison-Grass, Inc. proposes to develop a commercial shopping center on a 7.50 acre tract in the southwest quadrant of the intersection of Padonia Road and Broad Street in the Timonium area of northern Baltimore County, Maryland; 6.57 acres will require zoning reclassification. Approximately 83,600 square feet of proposed building area and parking for 418 cars are proposed. Existing zoning is predominantly MLR with some O-1 and a small amount of DR-3.5. Proposed zoning is BM.

An environmental impact statement has been prepared in accordance with the proposed zoning change and the requirements of the Baltimore County Code Section 2-356.

General Site Description

The project site is surrounded by existing commercial, retail and residential development. An existing concrete drainage course lies along the northern property line of the site. Approximately 80 percent of the site area is disturbed land on which large amounts of fill have been placed since 1978 under various grading and stockpile permits issued by Baltimore County. Sparse grasses and shrub vegetation exists in these areas. Woods remain around the extreme site perimeter. These include the northern edge of the site along Padonia Road, a narrow area of proposed Broad Avenue extended in the northeast corner and the extreme southwest corner of the site below Roosevelt Street.

The site is located in the Eastern Piedmont Meta-sedimentary physiographic province and is underlain by residual soils formed through the decomposition of underlying crystalline bedrocks. The rock is believed to be the Baltimore Gneiss, and derived soils are micaceous sand silts of low to no plasticity. The United States Department of Agriculture (USDA) shows site soils to be Alluvial Land and Baltimore Silt Loam, 3-8 % slopes.

The topography is very irregular due to the presence of very high fill mounds, but generally falls to natural land and elevations to the north, south and west sides of the site.

The vegetation where present consists of upland scrub shrubs and vines and secondary growth trees.

The existing concrete drainage course has very low volume flow. A wetland delineation was performed on the site in late 1992. No wetlands were found on the site.

HILLIS-CARNES

Potential Impacts of Proposed Action on the Environment

Potential short term and long term adverse impacts of the proposed development on the environment have been identified. These impacts are the result of development in general, and not specifically related to any change in zoning. Methods are generally presented to mitigate impacts, where identified. Potential impacts within the following categories are addressed:

Removal of vegetation
Disturbance to drainage course
Soil erosion
Water and wastewater
Noise and air pollution
Loss of wildlife habitat

Removal of Vegetation

As described, most of the site is cleared and already disturbed land. Secondary growth trees, shrubs and vines exist around the perimeter of the site. The proposed development will involve clearing approximately 1.5 acres to accommodate pavements and roads. Vegetative buffers will remain to screen the property from the existing residential developments and the concrete drainage course.

A short term environmental impact will occur from removal of existing vegetation during the construction and site grading activities. Upon completion of construction, all disturbed areas around buildings and pavements will be vegetatively stabilized according to an approved grading plan. Where possible, existing specimen trees, if present will be saved in accordance with sound urban forestry practices. Suitable replacement plantings will be included in landscape plans whenever saving large trees is not possible or practical.

Over the long term, there will be a net loss of 1.5 acres of existing woods. While this loss is irreversible, careful landscape planting will reduce the long term effects of these losses and enhance the site. Undeveloped secondary growth areas of the site will continue to develop and mature into a mature hardwood stand. This development and maturation process will provide water and air quality benefits, as well as wildlife habitat.

Disturbance to Stream

The small concrete drainage course along the northern property line is believed to be a tributary to Beaver Dam Run, a class III stream.

HILLIS-CARNES

No disturbance to this drainage course is anticipated as a result of the development. Baltimore County requires a 60 foot forest stream buffer to be maintained from the drainage course.

The existing woods line at the stream is proposed to be maintained as part of the development.

County and State laws require sediment and erosion control during construction, and stormwater management for water quality and quantity controls. These controls will be met by the proposed development. These requirements as well as those of building and forest buffer setbacks will protect the drainage course from any short or long term environmental effects of the development.

Soil Erosion

Construction site grading poses the greatest potential for erosion. These concerns will be alleviated by the erosion and sediment control plans, which require the approval of the Baltimore County Department of Environmental Protection and Resource Management prior to implementation. Grade design work will insure that final slopes are stable and that runoff from the site is minimized. Proper stormwater management will provide long-term control of runoff and protection against erosion problems.

Water and Sewer System

The Broad Street Market site lies within the Metropolitan District and within the existing W-1 and S-1 service areas for water and sewer services. Adequate water and sewer capacity will be assured by proper design and review by the Department of Public Works. No long-term environmental effects are anticipated from the provision of water and sewer services to the project.

Air Quality and Noise

Potential adverse effects to air quality on and around the site during the construction were considered. The Maryland Environmental Regulations (COMAR 10.18.06.03D) and the Baltimore County Bureau of Air Quality Management have prepared guidelines to control the amount of airborne dust produced by site activities during construction. Stone stabilized construction entrances, wheel-wash stations, hosing operations, labor-intensive and mechanical sweeping, and water trucks are some of the best management practices recommended to control mud and dust during site activities. These practices will be incorporated into project plans and specifications, and rigorously enforced in contracts with project subcontractors to insure compliance with appropriate regulations. These short-term environmental effects will be removed once the site is stabilized in accordance with the approved sediment and erosion control plan.

HILLIS-CARNES

Vehicle emissions can impact air quality. However, all vehicles in Baltimore County built after 1971 require annual emissions testing for control of hydrocarbons and carbon monoxide levels from vehicle exhaust.

It is anticipated that the facility will use electricity or natural gas for heating and cooling. No incineration will be performed onsite. Solid waste will be handled and removed by private commercial hauler.

Noise pollution is recognized as an environmental impact by regulatory agencies. The greatest impact will be short term effects from construction noise. Maryland Environmental regulations (COMAR 26.02.03) restrict noise levels from construction site activities to 90 dBA during daytime hours and 55 dBA at night time. Once construction is completed, noise will be limited to that generated by regular vehicular traffic and occasional delivery trucks. These noise levels are not anticipated to be troublesome to nearby residential neighbors, nor are they expected to add significantly to existing noise levels from the adjacent developments.

Wildlife Habitat

The proposed development will entail the permanent conversion of approximately 1.5 acres of wooded and viney lands to parking and road areas. The removal of vegetation will likely cause dislocation of small animals like rabbits and birds to adjacent wooded areas. Noise from construction traffic will likely cause disturbances to wildlife as well.

Habitat value may be increased by incorporating wildlife enhancement and development into the landscaping plans. Certain plant types can attract various species. Stormwater management plans can also be used to promote wildlife.

Summary

No serious, irreversible environmental effects have been identified with development of the site as planned. Some short term effects have been identified, most or all of which can be alleviated or negated by sound design and construction practices and following local codes and regulations. The short term effects noted in the statement apply to any development, including those allowed by current zoning classifications. Some, more serious long-term effects could actually be generated by light industrial or manufacturing development as opposed to commercial-retail development as proposed.

HILLIS-CARNES

Ret. Encl # 12

RESUME

Name: Richard M. Hillis

Education:

B.S. Civil Engineering	1973 Johns Hopkins University Baltimore, MD
M.B.A. Management Science	1982 Loyola College Baltimore, MD
M.S. Civil Engineering	1987 University of Maryland College Park, MD

Registration:

Professional Engineer	Maryland	No. 11211
Professional Engineer	New Jersey	No. 33131
Professional Engineer	Virginia	No. 18042
Professional Engineer	Washington D.C.	No. 8844
National Council Of Engineering Examiners		No. 7566
Master Well Driller	Maryland	No. MWD 343

Experience:

Civil Engineering: Directed a 72 person division for an ENR top 500 engineering firm which specialized in geotechnical and environmental engineering as well as site investigations, construction materials testing, and forensic engineering. Handled liability problems, administrative affairs, and managed complex projects. Projects include the foundation investigation and supervision of remedial stone column ground modification treatment; Fort Lauderdale, Fla. Composting Facility, foundation investigation and construction supervision of 400,000 sq.ft. manufacturing plant; Tucker Housewares, Leominster, Mass., chief geotechnical engineer and construction supervisor of soil surcharging, 1.5 million cubic yard fill, pile foundation, soil cement pavement, utility installation, and structural construction: Owings Mills Town Center, Maryland.

Directed engineering design and managed construction of various civil, works projects for local county government. Projects included road widening and rehabilitation, EPA grant funded interceptor and collector sewers, landfill management and individual engineered solutions to maintenance problems and selection of new county well sites for public water system.

HILLIS-CARNES

RICHARD M. HILLIS, P.E.

Groundwater Hydrology: Directed hydrogeologic investigations of projects involving individual septic system/ well interaction, stormwater management, municipal landfills, water supply and hazardous materials. Projects include pumping tests, aquifer drawdown and transmissivity analysis to secure permit approval by the Department of Environment for the first use of septic systems below the permanent groundwater table in a residential subdivision; test methods became basis for COMAR regulations in Maryland, Cove Creek Club, Phase II, Queen Anne's County, Maryland. Used a subsurface investigation and performed pump tests to investigate the feasibility of lowering the groundwater table to facilitate stormwater infiltration; Southwest Forty Trailer Park, Newark, Delaware. Performed hydrogeologic analysis, interpreted groundwater flow regime and prepared hydrogeologic report for ash fill; Polk County, Minn. Landfill.

Construction Quality Control: Supervised quality control testing of the construction of shallow spread footings, caissons, piles, and "hardspot" foundation systems and ground modification procedures. Evaluated construction of steel and reinforced concrete structures. Inspected the placement of controlled compacted fill and pavement. Projects include a one million cubic yard fill; Piney Orchard, Odenton, Maryland, a 1/2 million cubic yard fill; Washington Commerce Center, Prince Georges County, Md. a 10 story masonry residential building; Quaker Hill Place, Wilmington, Delaware.

Environmental Inspections, Assessments and Reports: Directed Phase I, II, and III environmental site assessments for residential and commercial projects. Project scopes have included geologic literature searches, topographic map and aerial photographic analysis, Agency record reviews, site reconnaissance, electromagnetic, soil gas and infrared telemetry surveys, well installation and groundwater chemical analysis. Projects include New Ridge, Anne Arundel County, Md. Germantown Country Club Development, Montgomery County, Md. and the Standard Equipment Site, Harford County, Md.

Performed site inspections, analyses and wetland delineations for various commercial and residential projects including Glen Burnie Commerce Center in Anne Arundel County, Maryland; Capital Gateway in Prince Georges County, Maryland; Maier Industrial Park and Baltimore Washington Industrial Park Parcel O in Howard County, Maryland; Hilltop Place, BJ's Wholesale Club at White Marsh, Walnut Grove, Mays Chapel North SWMP #5 and Broad Street Market in Baltimore County, Maryland.

Prepared Environmental Effects and Impact reports for Wakefield Subdivision in Carroll County, Maryland; Hilltop Place Subdivision and Broad Street Market in Baltimore County; Hammock Island Marina in Anne Arundel County, Maryland.

HILLIS-CARNES

Direct preparation of Health and Safety Specifications for construction operations for Key Highway Renovation; Baltimore, Maryland. Principal in Charge of Health and Safety construction monitoring for various projects and sites for Exxon, USA in New Jersey, Pennsylvania, Virginia and West Virginia.

Memberships

American Society of Civil Engineers
Maryland ASCE Geotechnical Group, Program Chairman

Publications/Seminars

"The Case Against Project Peer Review" Presented at the ASCE Spring Convention, Nashville, Tennessee May 1988

"Settlement Characteristics from Insitu Tests in Flyash Structural Fills" with Ramesh C. Gupta; selected for presentation at the 1989 ASCE Foundation Engineering Congress in Chicago, June 1989

"Cement-Bentonite Cutoff Wall Remediation of Small Earthen Dam" with Harald W. Van Aller, P.E.; selected for presentation and published in the proceedings of the 1992 Annual Conference The Association of State Dam Safety Officials, Baltimore, Maryland September 1992

Certifications:

40 hour course for hazardous waste site workers in compliance with 29 CFR 1910

HILLIS-CARNES

a basis to establish error is clearly prohibited by the Baltimore County Code, Section 2-356(n).

The significance of the County Council's decision in the 1992 Comprehensive Map Process was not lost on the dissenting Board Member in the instant case. The Dissenting Opinion recognized "the subject site was a specific issue considered by the County Council during the Comprehensive Zoning Map Process in 1992." (Dissenting Opinion, p. 3). Moreover, the Dissenting Opinion recognized the significance of comprehensive zoning to the instant site as it relates to the nearby light rail line. The Dissenting Opinion is so intuitive regarding this matter that it merits specific attention:

"Furthermore, recent construction of the light rail line has placed sites such as the instant case in the spotlight for tremendous development/redevelopment potential. In light of the fact that access/egress to the light rail in this area is severely limited due to site-specific geographic/ownership constraints, the County Council clearly realized that future development potential of properties adjoining the light rail and the subject site would be severely affected by a zoning change under the Comprehensive Zoning Map Process. Conversely, reclassification under this case would dismiss as moot the classification of those adjoining properties obtained or maintained during the Comprehensive Zoning Map Process. In fact, Norman E. Gerber, AICP, former Director of the Baltimore County Office of Planning & Zoning, confirmed that the subject site should be considered on the comprehensive zoning map so that the surrounding properties, and particularly the properties near the light rail, are given due consideration and opportunity for proper development. Thus, the County Council simply did not commit error in its 1992 classification of the subject property. As an editorial comment, I wish to commend the County Council for having the foresight and understanding of development potential near mass transit opportunities." [Dissenting Opinion, p. 3-4].

In addition, Norman Gerber, the expert land planner who testified in the People's Counsel's case, supported the decision of the County Council in the 1992 Comprehensive Map Process to retain the zoning on the site with an analysis of the purposes and effects of the MLR zone. In his testimony, Mr. Gerber stated:

Cet Ekh
#8

Samuel G. Crozier
Landscape Architect Land Planner

EDUCATION

Master of Landscape Architecture - University of Michigan 1964
Bachelors of Landscape Architecture - Ohio State University 1962

PROFESSIONAL ASSOCIATIONS

Member American Society of Landscape Architects;
President, Maryland Chapter, ASLA. (Past)
Governor's appointment, State of Maryland, Board of Examiners of Landscape Architects.
Registered Landscape Architect nationally by examination.

EXPERIENCE

Twenty four years in the profession has given Sam Crozier a broad based experience in feasibility studies, design and implementation of projects. Major emphasis has been in the planning process beginning with regional/local context, site analysis, program development, concept formulation and testing, criteria development, and ending with site plans, detailed design and construction documents. Within this framework, Sam Crozier has provided leadership and direction for reviewing projects with participating citizen associations, government staffs and private concerns.

After three years with the Rouse Company working with multi disciplinary teams on large scale land planning projects in the new town of Columbia, Maryland and on land use feasibility studies for housing, industrial and commercial projects throughout the country, Sam Crozier developed his own firm in Baltimore, Maryland. He has continued as a private consultant to the Rouse Company for twelve years and has won two national awards for Rouse Company projects. Prior to the Rouse Company and his own firm, experience working with allied professionals was developed by three years with one architectural firm and six years with landscape architectural firms.

Project emphasis has been in land planning for office/commercial projects, shopping malls, housing complexes and community planning, as well as master plans for industrial parks and parks and recreation facilities. Many of these projects included public hearings, zoning appeals, community advocacy planning, demographic and facility analysis and user studies. The process has been graphically illustrated through reports and master plans from site analysis through site plans and included landscape architectural details such as; plant materials, street furniture, fountains, lighting, and earthworks planning.

Sam Crozier has coordinated planning efforts with marketing studies, engineering reports, and architectural and graphic consultants. He is vitally concerned with improving man's environment and with rational, economical as well as environmentally sound use of the earth's natural resources.

LANDSCAPE ARCHITECTURE
AND LAND PLANNING

Mill Centre, Suite 400
3000 Chestnut Avenue
Baltimore, Maryland 21211
301/366-3330

PETITIONER:

Baker Land Company & Title Warrantee Corporation
Maryland Title Guarantee, Richard Fogel & Baltimore County

REQUESTED ACTION:

Reclassification to B.M.-C.C.C. (Business Major) and a Special
Hearing for business parking in an O-1 zone.

EXISTING ZONING:

M.L.R., O-1 and D.R. 3.5

LOCATION:

Southwest corner of the intersection of Padonia Road and
Broad Avenue

AREA OF SITE:

6.57 acres ±

ZONING OF ADJACENT PROPERTY/USE:

North: B.M.-C.C.C. (N/S Padonia Road) Commercial
East: O-1, RO, D.R. 3.5 - Vacant, storage
South: D.R. 3.5 - Residential, vacant
West: O-1, M.L.-I.M., M.L.R. - Office, contractor storage
yard, vacant

SITE DESCRIPTION:

The site is vacant, and has been used as a stockpile and fill
area. A concrete drainage channel lies along the northern
property line. Another stream lies beyond the property to the
west, and may impact the development of the parcel. The
perimeter of the property is wooded.

PROPERTIES IN THE VICINITY:

The site is located in the Timonium Heights subdivision which
is bounded by Padonia Road to the north, York Road to the east,
the Timonium Fairgrounds to the south and the Central Light Rail
line to the west. The Timonium Light Rail stop is located at
the southwest corner of the community. Timonium Heights is
primarily residential, with residential office and low-intensity
strip retail uses along York Road and significant vacant land at
the north and west sides of the community. North of the site,

on the opposite side of Padonia Road, lies a retail center. Directly west of the site is a six-story office building and contractor storage yard. Further west of the light rail line are the office/industrial uses of the Deereco Road area.

WATER AND SEWERAGE:

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

TRAFFIC AND ROADS:

The site fronts on Padonia Road and Broad Avenue, which is unimproved between Padonia and Roosevelt Street. A traffic signal already exists at the Padonia Road and Broad Avenue intersection, however, the proposed Broad Avenue access will not be connected through to the residential area. The site is located within the Padonia Road "F" level traffic shed. This traffic condition is expected to be alleviated when the Warren Road interchange at I-83 is completed (FY 1994). The completion of the Beaver Dam Road extension to Padonia Road (FY 1996) is also expected to improve traffic conditions in this corridor.

ZONING HISTORY:

- 1992 - Comprehensive Zoning Map Issue 3-151
Request for M.L.-I.M. denied
- 1984 - Comprehensive Zoning Map Issue 3-081
D.R. 3.5 existing
Request for M.L.R. denied
- 1980 - Comprehensive Zoning Map Issue 3-017
M.L.R., D.R. 16 and D.R. 3.5, B.M. proposed
(M.L.R. and D.R. 3.5 approved) (M.L.R. was expanded)
- 1976 - Comprehensive Zoning Map Issue 3-225
D.R. 3.5 existing, (request for area between RR & Broad,
Padonia and Land Street)
M.L.R. granted along Padonia
Petition for Reclassification No. 79-64-R (Item No. 15)
B.L. granted with conditions

In the 1992 Comprehensive Zoning Map Process, a request was made for M.L.-I.M. zoning in order to develop the site for commercial use. Initially, many residents and the area umbrella community

association expressed concerns over the proposed zoning change. The process ended with the understanding that if a documented site plan is submitted, and certain conditions of the community are met by the developer, the zoning change would be supported.

See attached letter of support from the Timonium Heights Community Association.

MASTER PLAN/COMMUNITY PLANS:

The Master Plan identifies the Hunt Valley/Timonium corridor, of which the site is a part, for a land use study as a mixed-use redevelopment area. The Hunt Valley/Timonium Redevelopment Study identifies the Timonium Heights area as one with potential for employment/retail/residential mixed use redevelopment.

PROPOSED VS. EXISTING ZONING:

The regulations governing D.R. zoning may be found in Section 1B01 of the Baltimore County Zoning Regulations. Regulations for the M.L.R. and O-1 zoning classifications may be found in the B.C.Z.R., Sections 248 and 204, respectively.

The B.M. zone permits a wide range of uses in addition to those permitted in the B.L. zone. Density is regulated by a floor area ratio of 4.0. Density is realistically limited by parking requirements, as well as economic and environmental constraints. Building height is also limited.

DOCUMENTED SITE PLAN:

A documented site plan which includes architectural elevations, and site/landscape details has been submitted. The plan depicts a 83,600 square foot shopping center, which includes a 60,000 square foot Food Store.

OFFICE OF PLANNING AND ZONING SUMMARY AND RECOMMENDATIONS:

Staff has reviewed the zoning request and the documented site plan and is of the opinion that as proposed, the uses and site development are generally appropriate for this location. The one outstanding concern is that the B.M.-C.C.C. zoning requested permits a range of uses which may be too intense for or incompatible with, the surrounding residential community. Following discussions with the applicants, it has been agreed that the documented site plan will specifically state that development of this property will be limited to only those uses

permitted as a matter of right and by Special Exception in the B.L. zone. As a result, staff recommends B.M. zoning (without the C.C.C. district) for this property, with the conditions noted on the documented site plan. The following additional conditions should also be met.

1. No variance of basic service maps should be granted. The shopping center should not be constructed until the Padonia Road "F" level traffic shed condition is removed.
2. The location of the proposed Master Plan greenway in the vicinity should be established. Any forest buffer required along the stream paralleling the light rail should be deeded to the County as a greenway.
3. The plan should demonstrate that the loading area is sufficiently sized and configured for use by tractor-trailers.
4. Maintenance of planting areas on both sides of the fence is the responsibility of the owner, and should be so noted.
5. The rear of the retail stores facing the Favazza office building should be landscaped.
6. Pedestrian access to the shopping center should be provided along Padonia Road, and from Broad Avenue for Timonium Heights residents.
7. The barricade on Broad Avenue should be permanently installed, attractively designed, and should permit pedestrian access.
8. No sign variances should be approved. Signage should follow the spirit and intent of the elevations submitted. All sign locations should be shown on the plan.
9. Trees along Padonia Road and other forest buffers are to be preserved. An effective barrier should be erected along the edge of the buffer to protect root systems during construction. Supplemental planting may be required in the forest buffer adjacent to Padonia Road.

CYCZ93.305/CYCLE

**Timonium Heights
Community Association**

9 Washington Street
Timonium, MD 21093

April 13, 1993

William T. Hackett, Chairman
County Board of Appeals of
Baltimore County
Old Court House
400 Washington Avenue
Towson, Maryland 21204

RE: Cycle Zoning Reclassification
Harrison & Grass - Broad Street Market
Property located in the southwest quadrant of the
intersection of Padonia Road and Broad Street

Dear Chairman Hackett:

I am the president of the Timonium Heights Community Association, representing the predominately residential community bound by Padonia Road to the north, York Road to the east, the Timonium Fairgrounds to the south and the light rail line to the west. Our Association represents approximately 60 families who are all interested in preserving the quality of life and the character of our neighborhood by limiting the impact of any development within our borders.

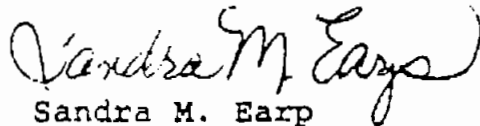
Our Association's Officers and many of our families have met with the developers of the proposed Broad Street Market to discuss the required zoning reclassification of this property and the ways in which its impact can be minimized. We are aware that the property's current zoning classification is predominately an industrial one which would permit uses totally inconsistent with our goals.

Therefore, the Timonium Heights Community Association supports efforts to rezone this property to a commercial classification that would allow the proposed Broad Street Market to be constructed so long as an originally executed copy of the enclosed "Declaration of Restrictive Covenants" is recorded among the land records of Baltimore County. This "Declaration of Restrictive Covenants", which addresses all of our community's concerns, will surely provide for the construction of a quality project consistent with the goals of our association.

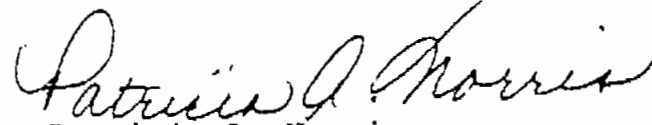
William T. Hackett
April 13, 1993
Page 2

In conclusion, let me repeat that the decision of our Association has been made after much discussion and many meetings between our members and the Broad Street Market development team; and we trust that the Board will take our recommendation into account when making its decision.

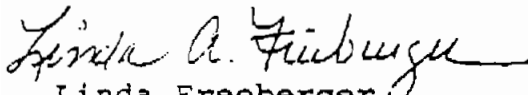
Very truly yours,



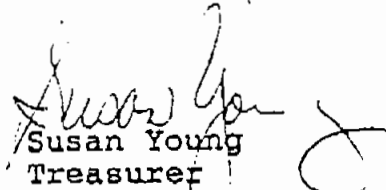
Sandra M. Earp
President
Timonium Heights
Community Association



Patricia A. Norris
Vice President
Timonium Heights
Community Association



Linda Freeberger
Secretary
Timonium Heights
Community Association



Susan Young
Treasurer
Timonium Heights
Community Association

cc: P. David Fields, Director, OPZ
Members of the Baltimore County Planning Board,
c/o David Fields

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION (the "Declaration") is made as of this _____ day of _____, 1993 by MARYLAND TITLE GUARANTEE COMPANY, a Maryland corporation (the "Owner"), in favor of the TIMONIUM HEIGHTS COMMUNITY ASSOCIATION, INC., a Maryland Corporation (the "Community").

RECITALS:

A. Owner owns certain property containing approximately 6.57 acres of land, more or less, located on the south side of Padonia Road at its intersection with Broad Avenue in Baltimore County, Maryland (the "Property").

B. The Property is currently zoned predominantly MLR, along with O-1 and a minor amount of DR 3.5 and the Owner has submitted a request to change the zoning for the Property to BM under the reclassification zoning process pursuant to Section 2-356 of the Baltimore County Code (the "Cycle Reclassification").

C. The Community has agreed not to oppose Owner's request to change the zoning for the Property to BM, provided that the Owner enters into this Declaration in favor of and enforceable by the Community, representing the residential property owners in the Timonium Heights subdivision, as shown on the Plat recorded in the Land Records of Baltimore County at Plat Book WPC-5, Page 82.

NOW, THEREFORE, THIS DECLARATION WITNESSETH, the Owner hereby agrees that the Property shall be held, sold and conveyed subject to the covenants, conditions and restrictions set forth below:

1. The Owner agrees that if approval is granted to permit Owner to construct a shopping center at the Property, the improvements will be constructed substantially in accordance with the site plan attached hereto as Exhibit A. In such event, the landscaping shall be in substantial accord with the drawing shown on Exhibit A, including but not limited to the creation of a berm and buffer and the installation and maintenance of an eight (8) foot high screening fence along the southern boundary of the Property, as shown on Exhibit A. The buildings and related improvements to be constructed on the Property shall be substantially in accordance with the schematic architectural designs shown on Exhibit B attached hereto. In addition, the signage and lighting shall be designed in substantial accord with Exhibit C attached hereto.

2. The Owner agrees that the berm to be created along the southern boundary of the Property shall be designed and constructed so that it will not cause any flooding of adjacent off-site properties. Storm water shall be managed in strict accordance with all applicable county and state regulations. In addition, the Owner will install a storm drain in Roosevelt Street to collect storm water and convey it through the Property into the storm drainage system.

3. The parties acknowledge that Broad Avenue will have to be extended in a southerly direction from Padonia Road along the eastern boundary of the Property, to provide a means of ingress and egress to and from the Property to permit the development of the Property. The Owner agrees that it shall not extend Broad Avenue beyond the southern boundary of the Property. This shall not prevent the establishment of a service drive for the exclusive use of property owners in the Community that currently use Broad Avenue as a means of access.

4. The Owner agrees that no trash shall be picked up from the Property between the hours of 9:00 p.m. and 9:00 a.m. or any deliveries made to the Property between the hours of 11:00 p.m. and 7:00 a.m.

5. Any signage to be installed on the Property shall comply with all applicable zoning laws and regulations, and any such sign(s) shall be substantially in compliance with the signage shown on Exhibit A.

6. Broad Avenue shall be constructed to provide the construction entrance from Padonia Road to the Property prior to the commencement of construction on the Property. No construction vehicles shall enter the Property from the existing section of Broad Avenue to the south.

7. The Community shall have the right to enforce the covenants and declarations contained herein by instituting a lawsuit to enjoin any breach or enforce any covenant contained herein, including but not limited to seeking an injunction. If Owner is found to have breached any of its obligations under this Declaration, the Owner shall reimburse the Community for any reasonable costs or expenses incurred by the Community, including court costs and reasonable attorney's fees.

8. The covenants, conditions and restrictions set forth in this Declaration shall run with the land and bind the Property for a period of twenty-five (25) years from the date hereof; provided, however, that if the Property is not rezoned to BM during the Cycle Reclassification, this Declaration shall automatically terminate and be of no further force or effect. In addition, if subsequently the Property is rezoned to a classification other than BM, this Declaration shall automatically terminate and be of no further force or effect. In the event this Declaration is automatically terminated, Owner may record an affidavit among the Land Records of Baltimore County stating, as the case may be, either (a) the Property was not rezoned to BM during the Cycle Reclassification, or (b) the Property has been rezoned to a classification other than BM. Upon the filing of such affidavit, without the necessity for joinder or consent by any other party, this Declaration shall be void as of record and of no effect.

Report by the
Baltimore County
Office of Planning and Zoning
to the
Baltimore County Planning Board

ZONING RECLASSIFICATION PETITIONS

Cycle I, 1993

May 31, 1993



*POT
Exhibit
#7*

"Q. Have you also looked at the purpose of the MLR zone and the MLR zoning regulations generally?

A. Yes.

Q. What observations did you make pertinent to this case as to the fit of the property within the MLR zone?

A. I believe the MLR zone is being utilized in the manner it was intended to be utilized. I think the location fits the purpose of the description pretty closely.

Q. In what respects?

A. Well, it's a grouping of high type of industrial plants in industrial subdivisions in locations convenient to expressways and other primary motorways, very convenient to Padonia Road and very convenient to I-83, not far away. I think it fits that very well.

To minimize use of residential streets, clearly, no residential street has to be utilized for this property to be utilized in MLR."...

"I think it's convenient and satisfactorily relates to the residential community. It's one of the purposes.

And the last purpose, as a transitional band between residential or institutional areas and ML or MH zones. It acts as a transition band between the residents and the highway, Padonia Road, and to some extent, to the ML, to the west of the property.

So, I think it really meets the intent and spirit of that part of the purpose.

Q. Considering your review of the documents and observation on the purpose of the zone, as well as your review of the neighborhood, do you have an opinion as to whether or not the existing zoning is a mistake?

A. I do have an opinion.

Q. What is your opinion?

A. I think, all things considered, that the MLR is the appropriate zone for this location.

Q. Is that based in part on some of the comments you made a few minutes ago about the purpose of the MLR zone?

A. In part. I think zoning is placed in comprehensive map processes with a number of factors in mind.

Pet. Exh
#6

TIMONIUM HEIGHTS COMMUNITY ASSOCIATION

RESOLVED: That the position of the Timonium Heights Community Association as adopted by the Zoning Committee on April 18, 1993 with respect to the zoning matter known as:

Broad Street Market

is that:

the Association conditionally supports approval of this zoning matter.

AS WITNESS OUR HANDS AND SEALS THIS 28th day of September, 1993.

ATTEST:

TIMONIUM HEIGHTS COMMUNITY ASSOCIATION

Linda A. Freeburger
Linda A. Freeburger, Secretary

Sandra M. Earp
Sandra M. Earp, President

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly
elected member of the Zoning Committee of the Timonium Heights Community
Association.

ATTEST:

TIMONIUM HEIGHTS COMMUNITY ASSOCIATION

Linda A. Freeburger
Linda A. Freeburger, Secretary

Sandra M. Earp
Sandra M. Earp, President

DATE: September 28, 1993

TIMONIUM HEIGHTS COMMUNITY ASSOCIATION

RESOLVED: That at the first annual meeting of the Timonium Heights Community Association held on April 18, 1993, it was decided by the Association that responsibility for review and action on all zoning matters for the period April 18, 1993 to April 18, 1994 be placed in the Zoning Committee consisting of the following officers of the Association:

Sandra M. Earp, President

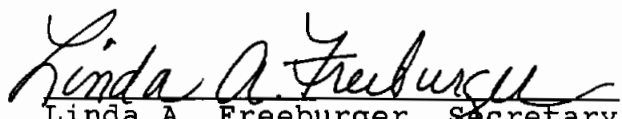
Patricia Norris, Vice President

Linda A. Freeburger, Secretary

AS WITNESS OUR HANDS AND SEALS THIS 28th day of September, 1993.

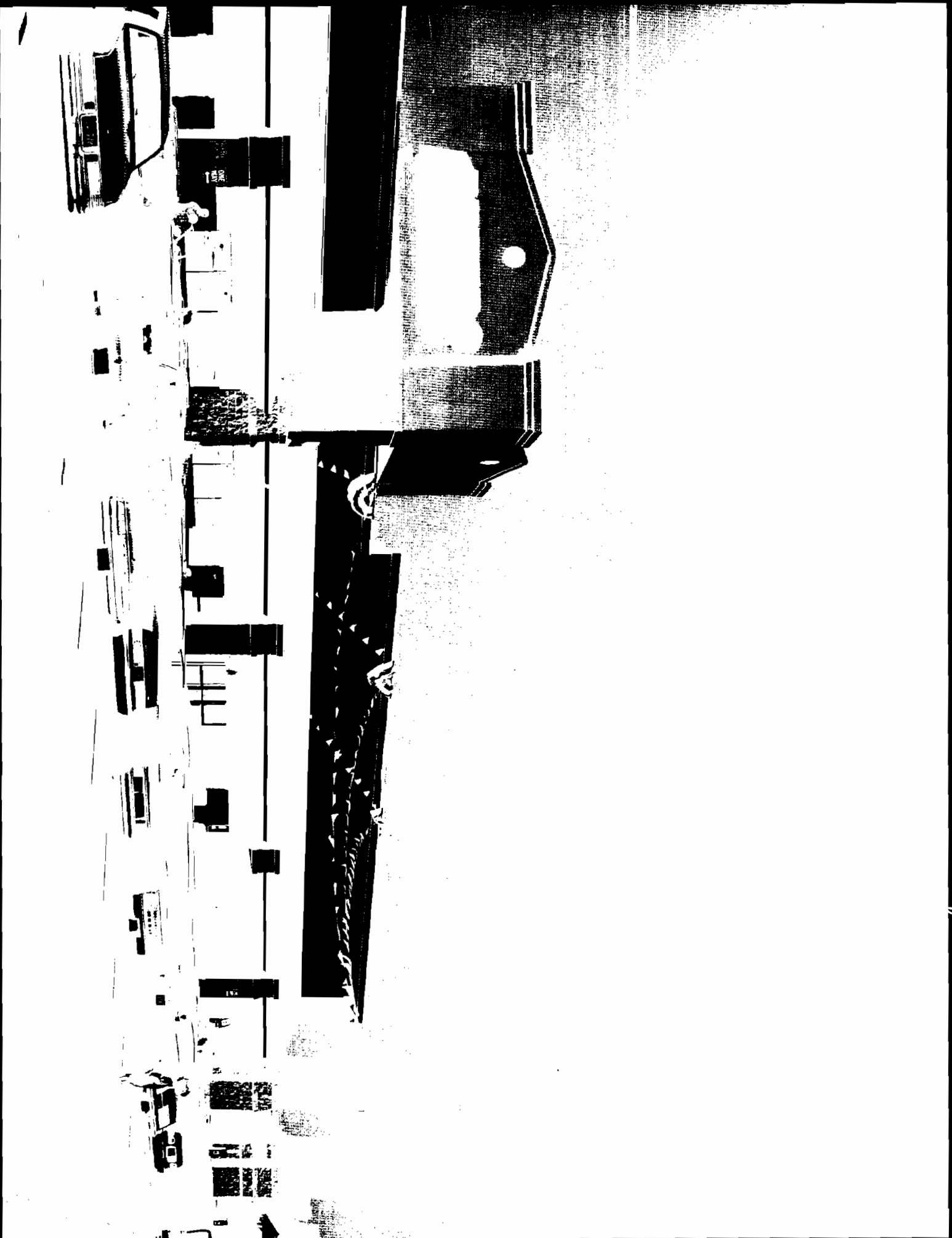
ATTEST:

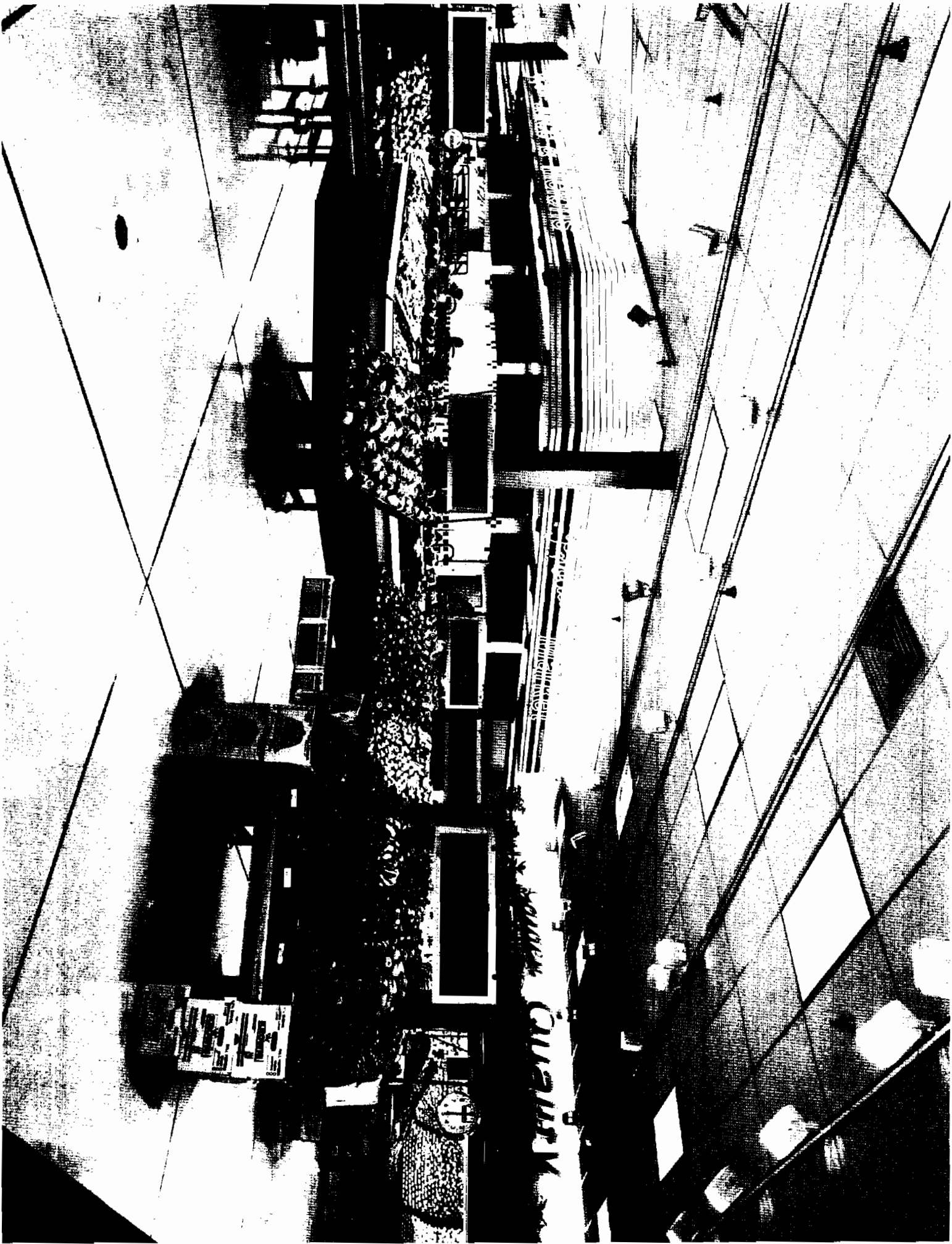
TIMONIUM HEIGHTS COMMUNITY ASSOCIATION


Linda A. Freeburger, Secretary

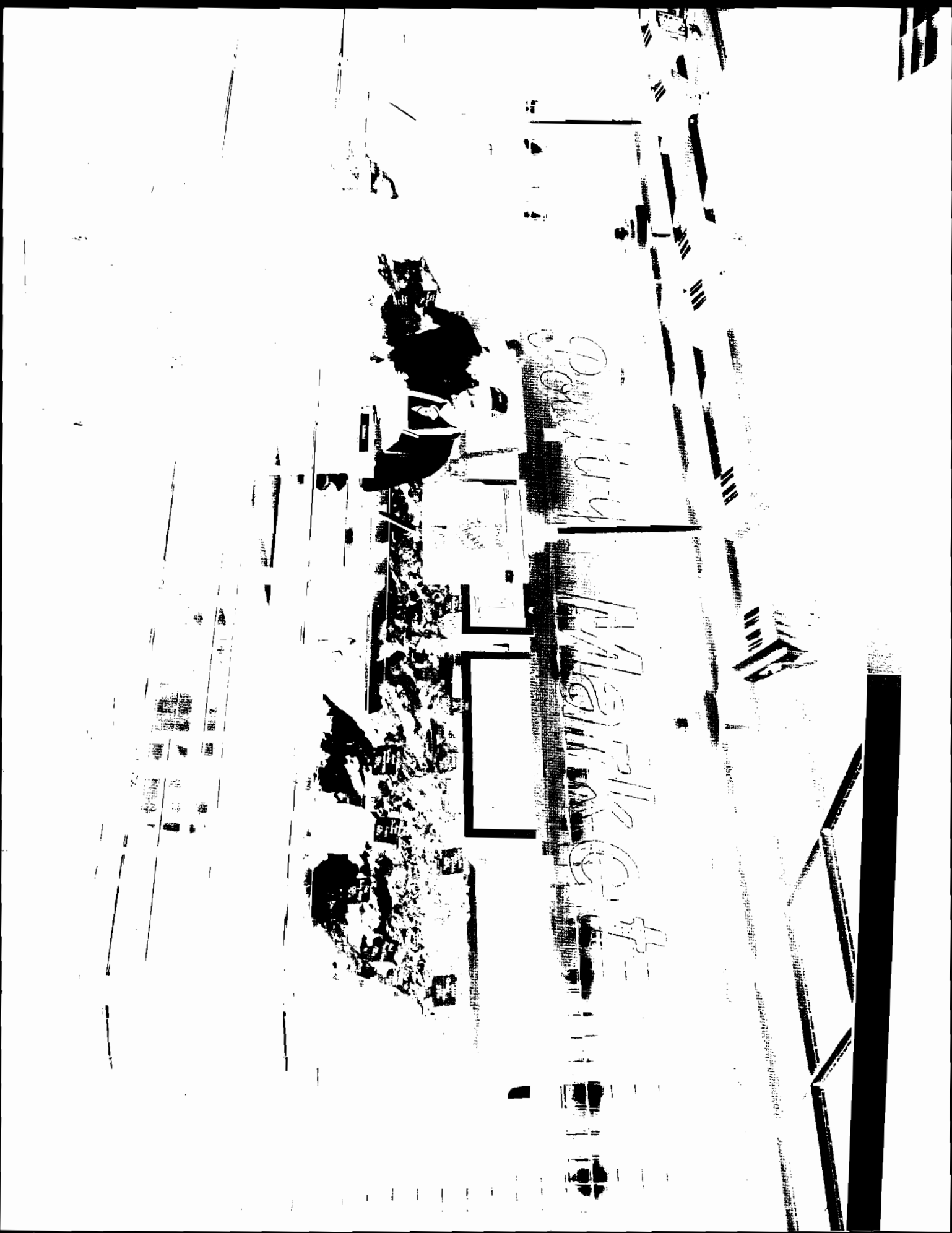

Sandra M. Earp, President

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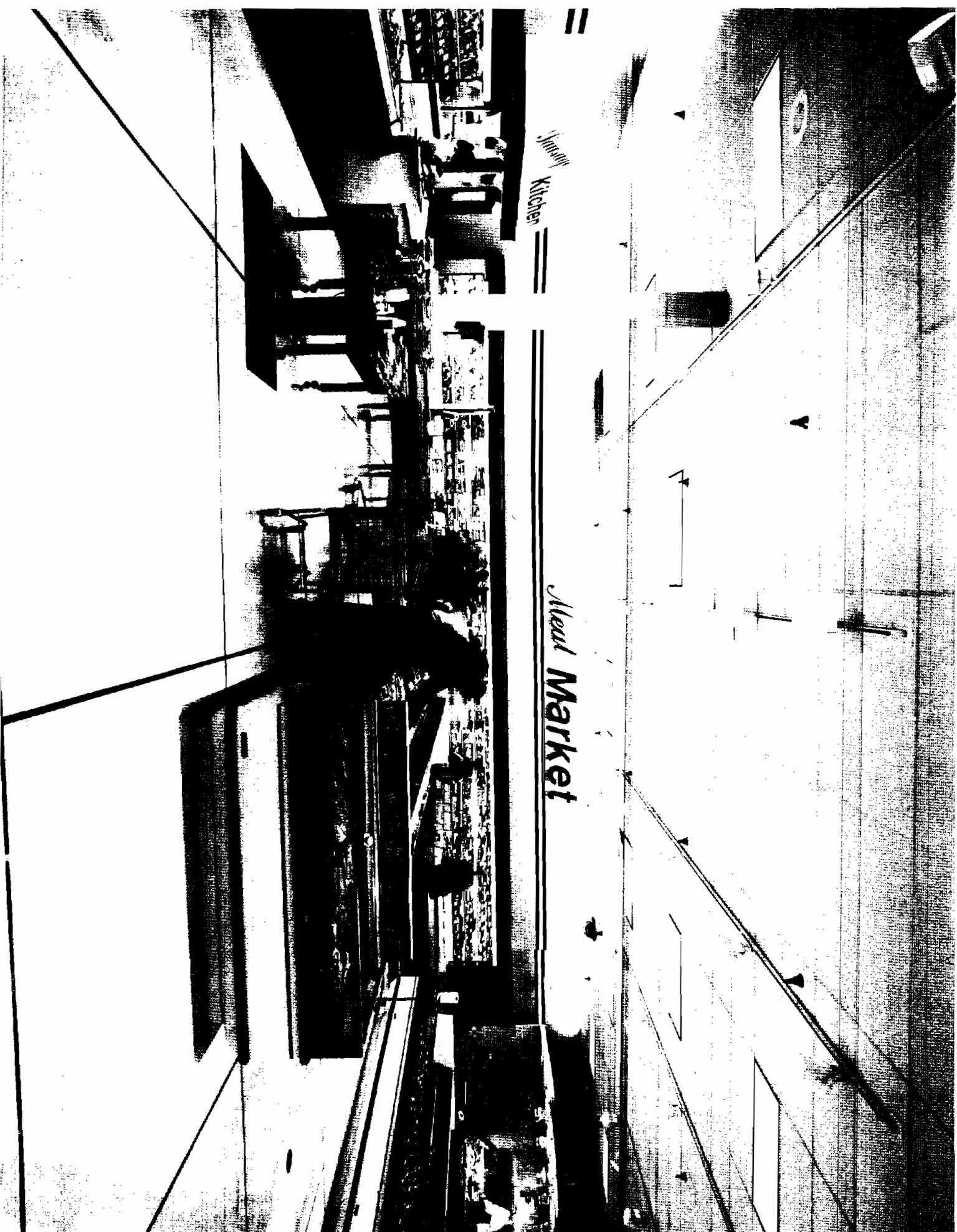




SP



5D



SE

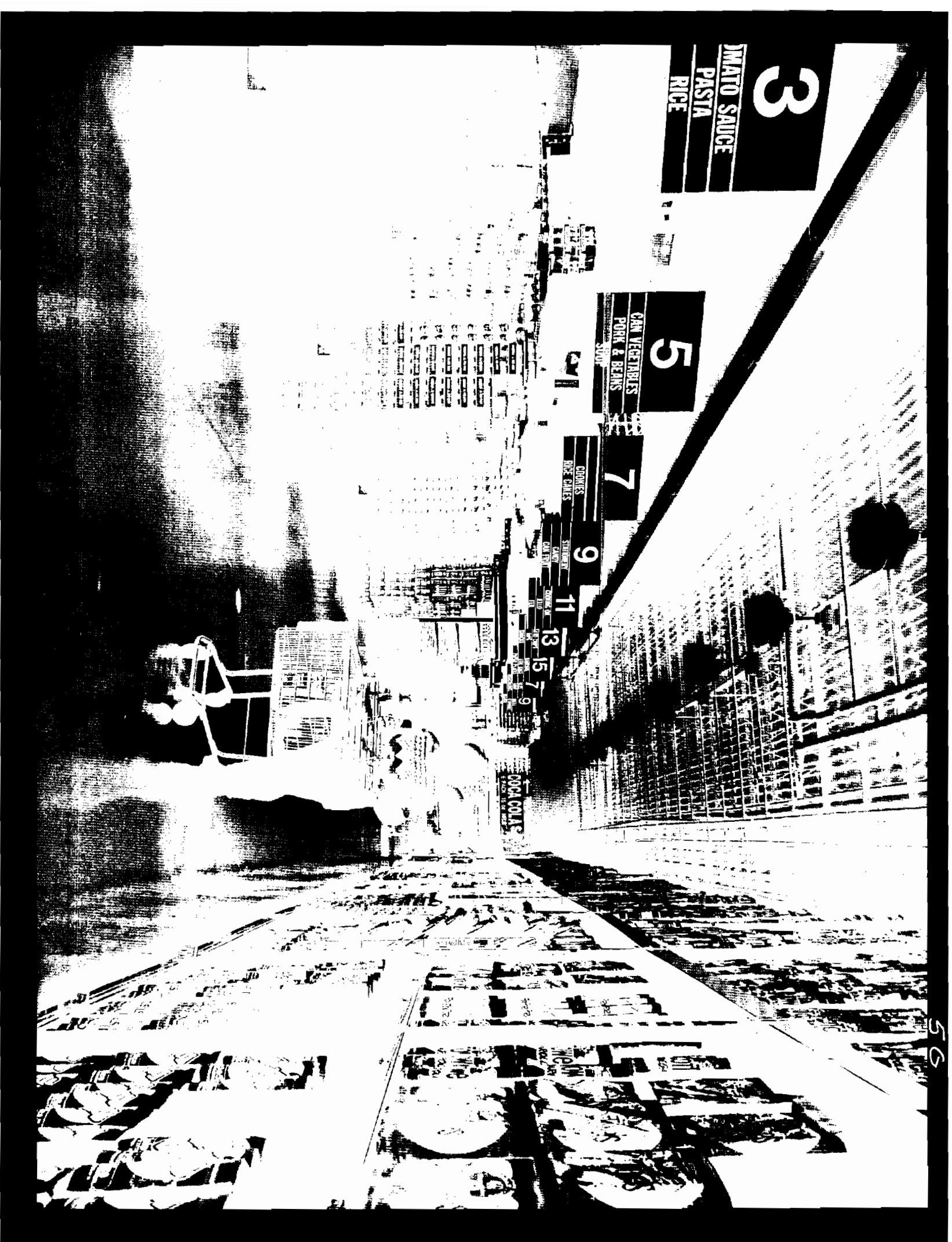
Fresh From The Sea

Did you order
a new order
in 1977



SF





Probably the major two factors are the existing uses in the area and what the potential seems to be for use of the property as it relates to what the county decides it wants to do on the master plan.

It also relates to the environment, what kind of environmental issues are involved. It relates to traffic and the infrastructure and its ability to support whatever is in this zone."...

"Q. Why does the MLR zoning make sense from the long-term point of view, in your view?

A. I think the long-term point of view, it's one of the kinds of locations reasonably close to the freeway system, I-83. It has good access to the arteries of Padonia Road.

And it is one of those areas where employment can be provided. Not all locations can be utilized to provide good employment uses, and even if it's not going to be used today, if it's going to be used ten years from now or 15 years from now, it's perfectly appropriate to zone that in the zoning classification that's going to result in the best overall good for the community." [T.2, 166-169].

The Master Plan and the Hunt Valley-Timonium Redevelopment Study

The subject site is located within the Central Sector of the Master Plan Baltimore County 1989-2000. The Hunt Valley-Timonium corridor was described as follows:

"ISSUE: Role of the Hunt Valley - Timonium Corridor

The imminent construction of major transportation improvements within this area should significantly increase the value of land and thereby spur private market high quality redevelopment in the Corridor as has recently occurred along Deere's Road southward from Padonia Road.

ACTIONS:

1. Recognize the Hunt Valley - Timonium Corridor as a unique economic development opportunity and prepare a comprehensive Urban Center Plan for the area. The planning should be done with full participation by economic interests, County agencies and neighboring communities, and should cover these major topics:

- Acknowledgement that this area is different from other Growth Areas and that its redevelopment must be planned so that the integrity of the adjacent residential communities is protected from noise, traffic, intrusion of nonresidential land uses, etc.



54

- The light rail and the need to attract land uses that reinforce and take advantage of the system."... [p. 104 Master Plan]

In addition, as to the effect of the central corridor light rail line to the subject site, the Master Plan noted at page 105:

"ACTIONS:

...2. Light rail station locations might become appropriate nodes for developing office or other employment or commercial centers, but this should only occur in accordance with full planning studies approved as an element of a community plan. Such centers should not be planned unless clearly beneficial to the affected communities, and would not ordinarily be appropriate in exclusively residential or recreational areas."... [p. 105 Master Plan]

The Hunt Valley-Timonium Redevelopment Study was adopted by the Planning Board on April 15, 1993. It has not been adopted by the County Council. The zoning of the subject site by the County Council in 1992 supports the "issue", and the "actions" recommended under the Master Plan. Ironically, the testimony of Mr. Gavrelis with regard to the Master Plan was limited. He stated that the proposed zoning was recognized for the area by the Master Plan. There was no dispute that the current zoning on the subject site conformed to the Master Plan. Amazingly, Mr. Gavrelis recognized those portions of the Master Plan which identified the Hunt Valley-Timonium corridor as "a unique economic development opportunity...". He also noted that the Master Plan said that any planning should be done with "full participation by economic interests, county agencies and neighboring communities...". In total disregard for legislative zoning, Mr. Gavrelis considered the documented site plan as the planning contemplated in the terms of the Master Plan. His testimony is tantamount to substituting comprehensive zoning by the County Council with documented site plan zoning. Mr. Gavrelis reiterates this theme throughout his testimony and resorts to

a discussion of the site plan as a substitute for conflicts with the Master Plan, and the Hunt Valley-Timonium Redevelopment Study.

Petitioners also presented Mr. Sam Crozier who commented on the Master Plan and Hunt Valley-Timonium Redevelopment Study. He admitted in cross-examination his visual aids neglected to include all of the properties identified as included in the Hunt Valley-Timonium Redevelopment Study. Conveniently, these excluded areas were in MLR zones. Therefore, Mr. Crozier's testimony is weakened by his failure to recognize the boundaries of the area identified by the redevelopment study, providing a distorted zoning picture to the Board.

Mr. Norman Gerber, an expert land planner testifying in the People's Counsel's case, explained in detail how the current zoning was appropriate based on the recommendations and provisions of the Hunt Valley-Timonium Redevelopment Study and the Master Plan. Mr. Gerber emphasized that the site was significant for its mixed use and the location of the light rail. In order to evaluate the recommendations of the Master Plan and the Redevelopment Study, Mr. Gerber reviewed the purposes of the MLR zoning. The purposes of the MLR fit with the location of the MLR zone property in the area and reflected appropriate zoning resulting from a comprehensive approach to the entire area. Mr. Gerber reiterated that MLR zoning provided a buffer to the residential areas which were afforded a protected status in the Master Plan. To the contrary, Mr. Gerber indicated that piecemeal commercial rezoning of the subject site would destroy the integration of the mixed zones in the area as well as prove disruptive to future zoning considerations for the undeveloped sites. Mr. Gerber noted that other MLR property had been developed in the area in conformance with the Master Plan and

the Redevelopment Study. Mr. Gerber makes important note of the concerns in the Master Plan with the proposed zoning.

"A. One of the concerns in this plan (Master Plan) deals with the desire to limit expansion of strip commercial.

Q. If you would refer to pages 19 and 20?

A. I think it's page 20. First full paragraph on the top of the page on page 20, certainly the policy limiting strip development should continue. The effort to revitalize too must be strengthened." (T.2, 173).

Mr. Gerber went on to note that there are commercial uses permitted in the industrial zone and determined by the zoning regulations to be supportive of the industrial area. However, he noted that shopping centers are not supportive of the industry area. They primary support residential neighborhood areas. In that regard, he stated that the proposed zoning is not consistent with the goals in the Master Plan. (T.2, 174).

Mr. Gerber also identified the further study suggested by the Hunt Valley-Timonium Redevelopment Study. Mr. Gerber made particular note of the area around the mass transit stop, presently zoned O-1, and accessed to that zone. Mr. Gerber stated,

"They are talking about what would be uses of the land the shopping center is going through. That's just an example of how the shopping center is going to reduce and limit the potential for development, I think, of that O-1 zone. I don't know how that's going to be worked out. Nobody has worked out the details of how that can happen."

I think that's a very important goal for the county and it's stated so in the corridor plan.

The area around that light rail stop should be developed in mixed uses. Mixed uses means some commercial. It doesn't mean a shopping center. It means some offices. It may mean some high-rise residents. That's what mixed use means around transit stops.

I just think that if this property developed as a shopping center, it's going to preclude at least one of the offers for

providing better access to the 0-1 and could be done without the shopping center, without impacting this neighborhood directly."...

"So I think from a standpoint of a planner if I were ready to do that plan for that mass transit center, I would say this is premature because it's locking me into some things that I may not want once I do that study. And that kind of study is what's called for in the Hunt Valley plan for almost all of those issues." (T.2, 176-177)

Covenants and Contract Zoning

The Petitioner devoted the bulk of his presentation with testimony concerning the documented site plan. Mr. Jeffrey Long of the Office of Planning based the support of his office on the site plan and made no comment as to mistake or error. Although the Office of Planning and Zoning can recommend zoning changes under the Comprehensive Map Process, OPZ did not recommend BM zoning to the subject site in the 1992 process in the support of the MLR designation. Now, however, when a documented site plan is presented, OPZ supports BM zoning. This is contrary to case law. Although the Baltimore County Code allows for a documented site plan, its effect is limited by statute. The rezoning cannot be granted on the attractiveness of the documented site plan. However, the land planners and the representative from OPZ who testified for the Petitioner couched their support of the reclassification in terms of the attractiveness of the documented site plan which is clearly in violation of the burden of proof required in cycle rezoning cases.

The Petitioner's witnesses also attempted to satisfy the required "strong" evidence of mistake or error with the covenants between the developer and the community association. Although the County planner disclaimed any connection between the submission of the OPZ report to

the Planning Board and the aforesaid covenants, he saw fit to attach the two documents and present them as mutually supportive.

The County Board of Appeals is prevented by statute and case law from granting rezoning based on the covenants between the developer and a community group and the documented site plan.

The Hearing Before the County Board of Appeals

The two days of hearing on September 29, 1993 and October 19, 1993 produced numerous witnesses. However, the Petitioner's witnesses provided scant probative evidence of mistake or error. Timothy Harrison, the developer, testified at length on his ability to produce a better product than the existing eight supermarkets on the surrounding York Road corridor. He cited the Mays Chapel residential development west of York Road as a factor to support rezoning. Yet it must be noted that this development and its projected growth existed well before the 1992 Comprehensive Map Process and was certainly familiar to the County Council.

Many other witnesses detailed the potential for greater commercial success for the developer with the proposed use. These witnesses equated business success and marketability with need. A privately retained land planner then attempted to equate need with proof of mistake. Such a presentation is non-sequential and illogical, and more importantly, rejected by case law (see Heller v. Segner, 260 Md. 393).

Other professional witnesses for the Petitioner elaborated on the details of the documented site plan. The witnesses attempted to convey that the authority of the County Council to rezone diminished in proportion to the attractiveness of the site plan. The Petitioner attempted to legitimize this disregard for the legislative process by

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
PETITIONS (AND SUPPLEMENTAL PETITIONS)
OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, MICHAEL AND PENNY
GERBER, and JOHN M. BEARER

FOR JUDICIAL REVIEW OF THE
DECISIONS OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

IN THE CASE OF: IN THE MATTER OF
BAKER LAND CORPORATION
FOR A ZONING RECLASSIFICATION FROM
M.L.R. 0-1 AND D.R. 3.5 TO B.M.
ON PROPERTY LOCATED AT THE SWC OF
BROAD STREET AND PADONIA ROAD
8th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD
OF APPEALS, CASE NO.: CR-93-305-SPH

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CIVIL ACTION

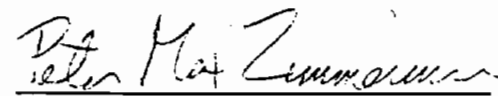
No. 76/249/94-CV-2565

* * * * *

NOTICE OF APPEAL

Dear Madam Clerk:

Please enter an appeal on behalf of the PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY from the Memorandum Opinion and Order filed in the
above-captioned case and dated March 30, 1995.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

RECEIVED AND FILED
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implying that the mere existence of a documented site plan is evidence of mistake or error. Elevating the status of a documented site plan to this level is contrary to statute. See Baltimore County Code, Section 2-356(n), which states, "Property may not be reclassified solely on the basis of documentation relating to the property's proposed use."

The People's Counsel presented Norman Gerber as its expert witness. He reviewed the purpose and effect of MLR zoning and its appropriateness to the subject site. In summary, Mr. Gerber explained the reasonableness of the zoning to the site and the adverse effects of the requested zoning. Mr. Gerber reviewed the zoning regulations, revisited the site and the surrounding area, consulted with the Master Plan and the Hunt Valley-Timonium Redevelopment Study as well as the County Council logs for the 1992 map process. Mr. Gerber pointed out the extent of undeveloped land from the office building on the south side of Padonia Road to York Road and the area west of the Harding Street in the Timonium Heights residential area to the railroad (T.2, 163). The witness testified to the zoning pattern in the area. With few minor exceptions, the business zones fronted on York Road. He viewed the MLR zone on the site as appropriate to the purpose of the MLR zone and the criteria of the Master Plan and the Hunt Valley-Timonium Redevelopment Study for the area. Mr. Gerber made some poignant observations regarding current market demand as a factor in a rezoning case.

A. ... "I think probably, least of all, whether or not there's an actual demand for use today or not, may be a factor, but the real factor is what's going to be in the long run, the long term, the best zoning, to encourage the best uses that's consistent with the overall long-term health, safety and welfare of the county and the community."...

Q. In that context, does the testimony in the petitioners case that the current market demand for office or industrial space is low or not, and/or not existent, how does that impress you in relation to the question of mistake in zoning?

A. Not a lot. Otherwise there would be no need for zoning, or very little need for zoning if this was the case, because we would all be developing based on what could be developed today and feel we would make a decision on what could be developed tomorrow, and the following days make the same decision again, and just carry on."

I think zoning is -- one the major roles of zoning is to bring order to the community, And that order may not mean development today or tomorrow. It may mean sometime in the future." (T.2, 168-170).

The People's Counsel also produced several neighborhood residents opposed to the Petition. Mr. John Bearer testified that zoning at the instant site will have a serious impact on the zoning of the surrounding undeveloped land, some of which Mr. Bearer testified is owned by the Petitioner. Mr. Bearer characterized it as "a corner stone in a program which will surround the community and eventually squeeze it out of existence as a residential community." (T.2, 89). Mr. Bearer also is concerned that Broad Avenue may be opened from Padonia Road into the residential neighborhood in the future, thus extending the impact of the commercial use. Mr. Bearer feared that cut-through traffic would access the Timonium Heights residential community. Mr. Bearer feared the interference of the delivery trucks with the quiet enjoyment of the residential homes adjacent to the site. He also stated that the visual impact given the topography of the surrounding area would cause the residential neighborhood to look directly onto commercial development.

Mrs. Penny Gerber emphasized the lack of need for another supermarket, given the multitude of markets, many with similar amenities to the proposed supermarket (T.2, 122).

Mr. Emmanuel Passas feared commercial intrusion into a residential area and the quiet enjoyment of his home. He also was concerned about draining problems with development of the site and has himself experienced flooding at his residence. (T.2, 133).

Mr. Michael Gerber stated that the proposed development would, in his opinion, have a negative impact on the neighborhood and property values because of the commercial intrusion and noise every day of the week. Mr. Gerber also expressed concern about the traffic and jeopardizing the safety of the children in the neighborhood (T.2, 142).

The People's Counsel presented substantial and significant testimony from an expert, and the residents of the neighborhood to support the reasonableness of the zoning decision of the County Council in 1992. Their testimony provided evidence that the County Council designated the appropriate zoning for both the surrounding communities and the unique elements concerning transportation and the infrastructure particular to the site as well as in accordance with the criteria of the Master Plan and the Hunt Valley-Timonium Redevelopment Study.

The Opinion of the County Board of Appeals

The majority opinion of the Board of Appeals gave no indication of an analysis required in their standard of review. The opinion made no mention of the County Council's 1992 Comprehensive Map decision as applied to the instant site. In addition, the majority overlooked the completeness of the plan with regard to designation on the floodplain area despite the convincing testimony of Mr. James Dieter of DEPRM. The majority opinion of the Board of Appeals simply failed to carry out its statutory duties with regard to the instant case.

The Board merely listed the witnesses presented at both days of the hearing but provided no analysis or understanding of their testimony, much less an indication of the "strong evidence" required to establish mistake or error. There is no attempt to make any of the findings required by Section 2-356(j)(2) of the Baltimore County Code.

In contrast, the dissenting opinion offers a detailed analysis of the evidence presented and the degree of persuasiveness. The dissenting opinion notes the legislative prerogative under the 1992 Comprehensive Map Process and the failure of the Petitioner to overcome the presumption of correctness. The dissenting opinion is correct in the lack of proof of mistake or error, and in the observations about the deficiencies in the documented site plan despite statutory requirements.

V. ARGUMENT

I. The County Board of Appeals Usurped the Authority of the Baltimore County Council in Granting the Petition for Reclassification

An appeal to the Circuit Court of a rezoning case decided by the County Board of Appeals differs markedly from an appeal of other zoning cases, such as special exceptions or variances. In the latter cases, the evidentiary hearing before the Board of Appeals is de novo. A decision is rendered based on the facts of the case and the applicable law. The decision on appeal enjoys a presumption of correctness.

Conversely, in the piecemeal rezoning case at hand, the Board of Appeals reviews the legislative decision of the County Council to zone the subject site. There is a presumption of correctness to the County Council's decision. To overcome that presumption, there must be strong evidence presented by the Petitioner that the current zoning

is a mistake (also referred to as "error"),or, that a change in the neighborhood has occurred to warrant a rezoning. This is the first burden required of the Petitioner. There must be sufficient evidence to overcome a presumption of correctness to the County Council's actions. If the Petitioner can overcome this burden, he must then prove that the requested zoning is warranted.

In a rezoning appeal, the Circuit Court's scope of review is two-tiered. The Circuit Court must necessarily determine if the review accorded the County Council's decision by the County Board of Appeals was proper. There is no presumption that the County Board of Appeals is correct. Rather, as the second tier, the Circuit Court must look to the underlying decision of the County Council where a presumption of correctness does exist, to judge for itself, whether the County Council's decision in applying the zone to the subject site was reasonable and fairly debatable. Clearly, there is no testimony available from the County Council. Rather, the tests of "reasonableness" and "fairly debatable" are applied (a) to the Comprehensive Zoning Map process applied by the County Council to the particular site, and (b) to the evidence in the case at hand. If the evidence reveals facts which support the legal standards, the tests of reasonableness and fairly debatable have been satisfied.

The authority of the County Council to establish Comprehensive Zoning is well-settled. It was recognized by the Supreme Court in Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), as an exercise of the police powers of the government to provide for the public health, safety and welfare. This power to zone comprehensively was accorded a presumption of correctness if the zoning designation was fairly

debatable. That is, the legislative prerogative to zone is presumed correct.

The type of evidence required to overcome this presumption has come to be measured in terms of mistake/error or change in neighborhood. The degree of proof required must be "strong evidence". A series of Maryland cases have upheld the principle that the County Board of Appeals or similar agency shall not overturn the Comprehensive Zoning decision of the legislature, unless strong evidence produced at the hearing indicates that the decision of the County Council was unreasonable and without foundation. Coppolino v. County Board of Appeals of Baltimore County, 23 Md.App. 358 (1974); Boyce v. Sembly, 25 Md.App. 43 (1975); Howard County v. Dorsey, 292 Md. 351 (1982). Recently, the Court of Appeals reinforced the doctrine in County Council of Prince George's County v. Offen, 334 Md. 499 (1994). Moreover, the recommendations of a planning body or master plan are advisory only, and not binding upon the legislature. Miller v. Abrahams, 239 Md. 263, 272 (1965); Nottingham Village v. Baltimore County, 266 Md. 339, 354 (1972); Coppolino, supra, at 374.

In People's Counsel v. Mockard, 73 Md.App. 340 (1987), the Court recognized the scope of review required of both the agency and the Circuit Court. At page 348, the Court reiterated the standard of judicial review set forth in an earlier case, when it stated:

"The threshold question is, irrespective of the specific language used in a given statute, on what basis does a court review an agency's actions? In United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corp., 298 Md. 665, 272 A.2d 62 (1984), the Court answered that question as follows:

'Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will

sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. However, in judicial review of agency action, the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency.'

United Steel Workers, 298 Md. at 679, 272 A.2d 62."

The majority opinion in the instant case is devoid of any indication that the County Board of Appeals understood its role and function. There is no evidence of an examination of the County Council's decision. Moreover, there are no findings of fact to refute the reasonableness of the County Council's decision nor a finding of arbitrariness on the part of the County Council in its zoning designation. The majority opinion lacks analysis and interpretation. Instead it merely lists the names of the Petitioner's witnesses as support for the Board's decision. In light of the extensive testimony from the Protestants/People's Counsel's witnesses, including the expert testimony of Mr. Norman Gerber, the Board's opinion violates the holding in Mockard. Therein, the Court stated at 349:

"Hence, we hold that 'consideration of factors' requires an articulation of the findings as to each of the applicable factors contained in § 2-58.1(j)(2). The Board must make such findings in both a finding of error in the comprehensive plan and in a decision that the reclassification was warranted." [Emphasis original].

In its scope of review, the Circuit Court cannot provide factual findings which are not made by the County Board of Appeals.

II. The Decision of the Baltimore County Council as to the Instant Site in the 1992 Comprehensive Map Process Was Reasonable and Fairly Debatable

The subject site was a specific issue before the County Council in the 1992 Comprehensive Map Process. As such, it is certain the subject

site merited the attention of the County Council members. Petitioner's own witness, the County Planner Mr. Jeffrey Long, admitted that the Third District Councilman held meetings in his office concerning this issue. The County Council declined the Petitioner's request to rezone the property and maintained the current zoning in the 1992 Map Process.

The testimony of Norman Gerber provides ample evidence as to the reasonableness of this decision. (T.2, 166-168). Mr. Gerber reviewed the purposes of the MLR zone and the MLR zoning regulations. The zone represents potential for industrial development convenient to expressways and primary motorways. The MLR zone would serve as a traditional band between residential or institutional areas and ML or MH zones. Mr. Gerber also testified that the MLR zone at this site is supported by the Master Plan which desires to limit expansion of strip commercial property in this area. His description of the surrounding area indicates that it has been developed in accordance with this Master Plan goal. These goals will be frustrated by not only the rezoning of the subject site to commercial but the impact on the surrounding undeveloped land if the Board of Appeals decision is upheld in the instant case. Mr. Gerber also noted that the Redevelopment Plan strongly suggests that additional studies are needed to accomplish the goals and objectives for development in the area encompassed by the Plan. The Plan talks about mixed uses but does not suggest the implementation of those uses in view of the light rail and the zoning immediately surrounding the light rail without further study. In other words, the Dissenting Opinion in the instant case crystallizes the need for additional studies as called for in the Redevelopment Plan in order to properly assess a zoning scheme for all of the surrounding property

to the light rail transit stop. Piecemeal zoning fails to take into account the need for a comprehensive approach to this area in particular, and thus frustrates the goals of both the Redevelopment Plan and the Master Plan. More importantly, the decision of the County Council as to the subject site in the 1992 Map Process to reject piecemeal rezoning recognizes the significance of the comprehensive approach.

All of these factors support the reasonableness of the County Council's decision. The consideration of the zoning requested by the Petitioner in 1992, and the attention given to the site in the Comprehensive Map Process as testified to by the Petitioner's witness, only reinforces that the decision of the County Council in 1992 to maintain current zoning is fairly debatable.

Moreover, there is no dispute that the property can be developed in the current zone.

III. The Opinion of the County Board of Appeals as to Mistake or Error is Deficient and Reversible Because: a) The Reasoning of the Board of Appeals is Defective; b) The Opinion Fails to Make Certain Factual Findings as to Statutory Criteria as Required

The Opinion of the County Board of Appeals lacks any indication that evidence of mistake or error entered into the Board's decision. The majority Opinion of the Board of Appeals is contained in five pages. One-half page is the introductory paragraph, and one-half page consists of the specific order. The Board devotes three and one-half pages to identification of the witnesses appearing at the hearing and a brief summary of their testimony. The Board provides no analysis of the testimony to support a zoning reclassification. The only mention of error came in a description of the testimony of Sam Crozier, a

land planner testifying for the Petitioner, when the Board stated, "His testimony was lengthy and persuasive in that the existing zoning was in error and the proper zoning would be BM." (Opinion, p. 2).

There simply is no reasoning whatsoever within the Opinion to support the Board's decision, much less the strong evidence of mistake required to support a rezoning. Review of the testimony of Messrs. Crozier and Gavrelis may explain why the Board failed to include any evidence of mistake or error. There were no factors presented by either witness relevant to this burden of proof required of the Petitioner.

For instance, Mr. Crozier's graphic presentation of the zoning in the area supports the mixed use zoning recognized and recommended by the Master Plan and the Hunt Valley-Timonium Redevelopment Study. Mr. Crozier attempted to make light of the MLR developments by differentiating the warehouse and office use from the heavy industrial within the MLR zone. This serves as the only basis for Mr. Crozier's conclusion that the purposes of the MLR zoning classification are not fulfilled at these locations. Nonetheless, it is evident that the MLR developed sites were contemplated uses in the zone, and serve as the buffers intended at particular sites. The balance of Mr. Crozier's testimony relates to a need for commercial shopping centers to service the residential development west of I-83. Need has virtually no relationship to mistake or error. This testimony is irrelevant to the Petitioner's burden of proving strong evidence of mistake or error in the current zoning.

It is significant to note that in the color-coded zoning designations for the area submitted by Mr. Crozier, he conveniently