

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

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
NORTH PROPERTY / 6500 FALLS
ROAD, L.L.P.

CASE NO. 03-C-96-010921

MEMORANDUM OPINION AND ORDER

This matter comes before the Court as a Petition for Judicial Review pursuant to Maryland Rule 7-201, et seq., from a decision of the Baltimore County Board of Appeals dated October 3, 1996. A hearing took place April 15, 1997, at which time the Court entertained the arguments of Henry R. Lord, Esquire, and Peter Max Zimmerman, Esquire, who appeared on behalf of the Appellants and People's Counsel, respectively, and Michael T. Wyatt, Esquire, who appeared on behalf of the Appellees. The Court has carefully considered the arguments of counsel, the fine legal memoranda filed, and the applicable statutory and case law in rendering its decision on this matter.

The facts of this case are undisputed. The subject property occupies 1.28 acres on the northwest corner of Falls Road and Old Pincock Road. Along its Falls Road frontage, the property is flat, but slopes steeply downward west to the streams running in back. The property is owned by 6500 Falls Road, L.L.C., and is zoned Manufacturing, Light, Restricted (M.L.R.). The property adjoins a residential zone line which runs north/south along Falls Road. Baltimore County Zoning Regulations § 250.4 establishes a boundary for the required building setback of

100 feet from the nearest such line. The owners of said property seek to construct an office building of 3,620 square feet consisting of two stories.

As certain zoning restraints on the property exist, the owners proposed two variances in order to conform with the topography to the land. First, to stay away from the streams and steep slopes that adjoin the property, the developers have proposed to situate the building 85 feet away from the residential zone line, which requires a zoning variance. Additionally, the rear of the building will be within 10 feet of the stream area, rather than the required 125 feet (100 feet of easement, plus 25 feet of setback). This necessitates an environmental setback variance from the Department of Environmental Protection and Resource Management (D.E.P.R.M.). At the hearing below, the Board of Appeals affirmed the findings of the Zoning Commissioner who approved the variances requested by the Appellees. This appeal ensued.

In reviewing a decision of the Board of Appeals, the Circuit Court is limited to whether that decision is "in accordance with the law." Maryland Code Annotated, Article 25A § 5(U) (1957, 1994 Repl. Vol.). The Circuit Court may correct any abuse of discretion by an administrative agency, such as the County Board of Appeals. The Court may also reverse or modify the Board's actions when they are unsupported by facts, arbitrary, illegal, capricious, or unreasonable. *Hogan v. Cobb*, 185 Md. 372 (1945); *Art Woods Enterprises v. Wicburg Community Assoc.*, 88 Md. App. 723, 727 (1991). However, the scope of judicial review of decisions by administrative agencies is markedly narrow, recognizing that the Board members have expertise in a particular area and, ultimately, should be free to exercise their discretion as such. *Eisner v. Hall*, 241 Md. 224 (1966).

Thus a reviewing court will not substitute its judgment for that of an administrative board.

where the issue is freely debatable and the record contains substantial evidence supporting the administrative decision. *Moutgomery County v. Woodward and Lothrop, Inc.*, 280 Md. 686 (1977). Accordingly, the Circuit Court's role is limited to determining whether or not there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine whether or not the agency's decision is premised upon a proper construction of the law. *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 509, 577 (1994).

The Court has taken great care to examine the applicable statutory and case law concerning this appeal. After a thorough review of the proceedings below and the extensive memoranda filed by counsel, this Court is simply not convinced that the Appellants have met their burden to show that the Board should be reversed. The findings and Opinion of the Board are presumptively correct based upon the Board's expertise in the subject matter at hand. This Court refuses to substitute its judgment for that of the Board, as nothing in the Board's findings can be construed to be arbitrary, capricious, or based upon an improper construction or interpretation of the law, and substantial evidence exists to support same.

Accordingly, it is this 2nd day of November, 1997, by the Circuit Court for Baltimore County.

ORDERED that the decision of the Baltimore County Board of Appeals in the above referenced matter be and is hereby **AFFIRMED**. Any open cost are to be paid by the Appellants.

True Copy Test
Suzanne M. Hinch, Clerk
For *Thomas J. Bollinger, Jr.*
Attorney at Law

Thomas J. Bollinger, Jr.
THOMAS J. BOLLINGER, JR.
Attorney at Law

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne M. Hinch
Clerk of the Circuit Court
County Courts Building
401 Bowley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY For Deaf: (800)-735-2258

Case Number: 03-C-96-010921 AE
TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
Room 47
Towson, MD 21204

A ruling by the court was made in the attached case. Enclosed is a copy of docket entries reflecting that ruling.

Very truly,

Suzanne M. Hinch
Suzanne M. Hinch
Clerk of the Circuit Court



CC: County Board of Appeals of Baltimore County The
CC: Michael T. Wyatt
CC: Carole Demillo
CC: Peter M. Zimmerman
CC: Henry R. Lord
CC: Klaunberg North Property

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne M. Hinch
Clerk of the Circuit Court
County Courts Building
401 Bowley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY For Deaf: (800)-735-2258

02/27/97 Case Number: 03-C-96-010921 AE
Date Filed: 10/25/96
Status Open/Active
Reference Number: CRA6148 94366A
Judge Assigned: To Be Assigned,
In the Matter Of: Peoples Counsel for Baltimore County

CASE HISTORY

OTHER REFERENCE NUMBERS

Description	Number
Reference Number	CRA6148 94366

INVOLVED PARTIES

Type Num	Name/Last First Middle Initial	Dispo	Entered
03	03 Klaunberg North Property		10/25/96
PT	001 Lee Park, Robert E		10/25/96
AT	002 Lee Park, Robert E		10/25/96
AT	003 Lee Park, Robert E		10/25/96
AT	004 Lee Park, Robert E		10/25/96
AT	005 Lee Park, Robert E		10/25/96
AT	006 Lee Park, Robert E		10/25/96
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03-C-96-010921 Date: 02/27/97 Time: 08:46 Page: 2

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03-C-96-010921 Date: 02/27/97 Time: 08:46 Page: 3

Attorney 000600 Wyatt, Michael T
Walter A. Wyatt
401 Bowley Avenue
Towson, MD 21285
(410)881-1011

CALENDAR EVENTS

Date	Time	Our Court	Jury Day	Day of Rest	By Request	Day of Notice	Rec
04/15/97	09:30A	001	001	001	001	001	001

JUDGE HISTORY

Judge Assigned	Type Assigned	Date Assigned	Rec
TBA	To Be Assigned	10/25/96	001

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Reached	Ruling	Closed	User ID
001000	Petition for Judicial Review	10/25/96	10/30/96	TBA	000			001
002000	Notice of Appeal and Certification	11/01/96	10/31/96	TBA	000			001
003000	Petition for Judicial Review	11/01/96	10/31/96	TBA	000			001
004000	Notice of Appeal Sent	11/01/96	11/01/96	TBA	000			001
005000	Notice of Appeal Sent	11/01/96	11/01/96	TBA	000			001
006000	Notice of Appeal Sent	11/01/96	11/01/96	TBA	000			001
007000	Notice of Appeal Sent	11/01/96	11/01/96	TBA	000			001
008000	Notice of Appeal Sent	11/01/96	11/01/96	TBA	000			001
009000	Notice of Appeal Sent	11/01/96	11/01/96	TBA	000			001
010000								

Code Description: Status Expires: When Autoexpire Submittal From Type
 03-C-96-010921 For Multiple CANCELS 02/27/97 22 Mo NO MND D
 1987 One Year Traffic Load OPEN 11/28/96 365 Mo NO DAM D
 03-C-96-010921 For Multiple CANCELS 11/28/96 22 Mo NO MND D
 1987 One Year Traffic Load OPEN 11/28/96 0 Mo NO MND D
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EXHIBITS

Line # Marked Code Description Sign Date Network Strip Dr. By
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DIFFERENTIATED CASE MANAGEMENT TRACKS AND MILESTONES

Track # Description: EXHIBIT/DIFFERENTIAL TRACK Custom Yes
 Assign Date: 01/02/97 Order Date: 01/02/97
 Start Date: 01/02/97 Review Date:

Milestone	Scheduled Target	Actual	Status
Notations to Districts under MND Rule 2-322	01/02/97	01/02/97	OPEN
All Notations including Notations to Districts	01/02/97	01/02/97	OPEN
Final Date: 15	04/15/97	04/15/97	OPEN

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

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

AND
 PETITION OF ROBERT E. LEE PARK CONSERVANCY, INC.
 Mrs. Louise Hildreth & Jane S. B. Lawrence, Co-Founders
 912 Rolandwood Avenue, Ruston, MD 21204

AND
 RUSTON RIDGEWOOD-LAKE ROLAND AREA IMPROVEMENT ASSOCIATION, INC.
 Mr. Laurie Long, Executive Director
 P.O. Box 204, Ridgewood, MD 21219

AND
 PLEASANT VIEW CIVIC ASSOCIATION
 Mr. Clydes Reed, President
 1415 Garman Avenue, Balt., MD 21205

AND
 LAKE ROLAND PROTECTIVE ASSOCIATION
 Mr. Helga Morrow, President
 1203 Hollins Lane, Balt., MD 21209

AND
 JAMES S.B. LAWRENCE
 6137 Barroll Road, Balt., MD 21209

AND
 SARAH F. LOND
 6134 Barroll Road, Balt., MD 21209

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

IN THE CASE OF: IN THE MATTER OF THE APPLICATION OF KLAUBERG-NORTH PROPERTY /6500 FALLS ROAD, LLP FOR APPROVAL OF DEVELOPMENT PLAN AND FOR A PETITION FOR VARIANCE ON PROPERTY LOCATED ON THE NORTH AND SOUTH SIDES OLD PINEGROVE ROAD, WEST OF FALLS ROAD, EAST OF JONES FALLS EXPRESSWAY (6500 FALLS ROAD)

3RD ELECTION DISTRICT
 3RD COUNCILMANIC DISTRICT
 CASE NOS. CBA-96-148 (PDM III-389) & 94-368-A

CIVIL ACTION
 No. 3-C-96-10921

RECEIVED AND FILED
 02/23/97

CBA-96-148 & 94-368-A, Klauberg-North Property
 File No. 3-C-96-10921

PROCEEDINGS BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence M. Stahl, S. Diane Levero, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, and in answer to the Petitioners 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 Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

No. CBA-96-148

December 21, 1992 Concept Plan Conference.

February 9, 1993 Community Input Meeting.

April 14, 1993 Second Community Input Meeting.

April 13, 1994 Development Plan Conference.

Note: DEPRN Variances applied for by Owner/Developer (relating to storm water management as well as required forest conservation plan as part of the Forest Conservation Act) initially variances were denied; project delayed while the Developer submitted alternatives; ultimately, variances from DEPRN requirements were granted and the matter back on track through the development review process.

March 20, 1996 Second development plan conference.

April 12 Order remanding matter back for a third community input meeting by the Hearing Officer due to the long lapse of time from the original submission of the development plan.

May 7 Third Community Input Meeting.

CBA-96-148 & 94-368-A, Klauberg-North Property
 File No. 3-C-96-10921

94-368-A

March 23, 1994 Petition for Variance filed by Frederick H. Klauberg, Jr., to allow a building setback of 85' to a residential zone line in lieu of the required 100'.

April 22 ZAC comments.

1994 - 1996 See "Note" under CBA-96-148 - Page 2

CBA-96-148 and 94-368-A

June 13, 1996 Hearing Officer's Hearing rescheduled and conducted. (see Developer's Exhibit 1A for a full chronology of events related to this project).

June 27 Order of the Zoning Commissioner/Hearing Officer. Development Plan APPROVED; Petition for Variance GRANTED w/ restrictions.

August 5 Notice of Appeal filed by Sarah Lord, et al. (the Robert E. Lee Conservancy, et al.)

August 5 Petition Stating Grounds for Appeal filed by C. William Clark, Esquire, on behalf of the Robert E. Lee Conservancy, Inc., et al.

August 20 Hearing before the Board of Appeals (Day #1)

August 21 Hearing before the Board of Appeals (Day #2)

August 28 Official transcript of the testimony taken before the Zoning Commissioner completed and submitted by C. William Clark, Esquire.

September 11 Appellants'/Protestants' Memorandum in Support of Appeal filed by C. William Clark, Esquire.

September 11 Memorandum of 6500 Falls Road, LLP in Support of Development Plan and Petition for Variance, filed by Michael T. Wyatt, Esquire.

September 13 Correction of memorandum letter submitted by Michael T. Wyatt, Esquire.

September 19 Deliberation conducted by the Board.

October 3 Opinion and Order of the Board; decision of the Hearing Officer to approve Development Plan was AFFIRMED; Petition for Variance GRANTED.

October 24 Petition for Judicial Review filed in the

CBA-96-148 & 94-368-A, Klauberg-North Property
 File No. 3-C-96-10921

Circuit Court for Baltimore County by People's Counsel for Baltimore County.

October 29, 1996 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

October 30 Certificate of Notice sent to interested parties.

October 31 Second Petition for Judicial Review filed in the Circuit Court for Baltimore County by the Robert E. Lee Park Conservancy, Inc. et al.

November 8 Copy of second Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

November 8 Second Certificate of Notice sent to interested parties.

December 23, 1996 Transcript of testimony filed.

Developer's Exhibit No. 1-Certification by State Dept. of Assessments & Taxation re: Pleasant View Civic Association 8/16/96
 2-Certification by State Dept. of Assessments & Taxation re: Lake Roland Protective Association 8/16/96
 3-Thomas W. Wolfe's resume.
 4-No variance site Proposal Map.
 5-Red line Development Plan to Accompany Zoning Variance Petition

Appellants' Exhibit No. 1-Three tapes from Hearing Officer's hearing
 2-No. #2
 3-Rule 8 documents -Ruston Ridgewood - Lake Roland Area Improvement Association,
 4-Curriculum Vitae -Norman Gerber
 5-Portion of County Council Zoning Map
 6-Topographical Map -sheet WVCB (photogrammetric map)
 7-Photos A thru M
 A-Copper Hill Road on left -looking north on Falls Rd. 2 properties above subject property
 B-Rt edge of subject property where proposed driveway would be, looking north.
 C-Same location as B, looking south
 D-Lambros property -use is office and residential, on westside of

CBA-96-148 & 94-368-A, Klauberg-North Property
 File No. 3-C-96-10921

Falls Road.
 E-Landscape architect's studio -southernmost of Nick Lambros complex
 F-North on Falls Road standing on eastside
 G-Sorrento Run -residential areas (secluded) on Falls Road north
 H-Lettlers: A-From Bare Hills Community Assoc.
 B-Friends of the Falls Rd. Corridor
 C-Falls Rd. Scenic Route Group
 D-6/20/96 -Friedman Assoc.
 E-Bruggman
 F-Lake Falls Assoc. 6/20/96
 G-List of Attendees (Protestants)

December 23, 1996 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Board acted are permanent records of the originating agency in Baltimore County. Certified copies of these records in the Board's file are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,

Charles E. Radcliffe
 Charles 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: Henry R. Lord, Esquire
 Robert E. Lee Park Conservancy, Inc., et al
 Michael T. Wyatt, Esquire
 Thomas Koch and John Riehl
 6500 Falls Road, LLC
 People's Counsel for Baltimore County
 Douglas N. Silber, Assistant County Attorney

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Menah
 Clerk of the Circuit Court
 County Courts Building
 401 Bowley Avenue
 P.O. Box 6754
 Towson, MD 21285-6754
 (410)-887-2601, TTY for Deaf: (800)-735-2258

NOTICE OF RECORD

Case Number: 03-C-96-010921
 Old Case number: CBA 96/15 94361A
 C I V I L

In The Matter of: Peoples Counsel For Baltimore County

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 23rd day of December, 1996.

Suzanne Menah
 Suzanne Menah
 Clerk of the Circuit Court, per *DF*

Date issued: 12/23/96

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
 400 Washington Avenue
 Room 47
 Towson, MD 21204

CIRCUIT COURT FOR BALTIMORE COUNTY

Suzanne Menah
 Clerk of the Circuit Court
 County Courts Building
 401 Bowley Avenue
 P.O. Box 6754
 Towson, MD 21285-6754
 (410)-887-2601, TTY for Deaf: (800)-735-2258

Case Number: 03-C-96-010921

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
 400 Washington Avenue
 Room 47
 Towson, MD 21204

97-3261-9
 97-3261-9
 97-3261-9

IN RE: * IN THE
6500 FALLS ROAD, LLP * CIRCUIT COURT
FOR APPROVAL OF * FOR
DEVELOPMENT PLAN * BALTIMORE COUNTY
PETITION FOR VARIANCE * Case No. 3-C-96-10921

ORDER

UPON CONSIDERATION OF Appellants' Motion to Alter Judgment and Motion for Reconsideration and the consolidated response thereto, it is this 3rd day of

Dec, 1997, by the Circuit Court for Baltimore County

ORDERED, That Appellants' Motion to Alter Judgment and Motion for Reconsideration are hereby **DENIED**.

Charlotte E. Radcliffe
Judge

True Copy Test
SUBMITTED BY: [Signature]
[Signature]
[Signature]

FILED DEC 04 1997

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
PETITION OF ROBERT E. LEE PARK
CONSERVANCY, INC.
Mrs. Louise Hildreth & Jane S. B.
Lawrence, Co-Founders
912 Rolandus Avenue
Ruxton, MD 21204

AND
WIXTON-RIDENWOOD-LAKE ROLAND AREA
IMPROVEMENT ASSOCIATION, INC.
Ms. Laurie Long, Executive Director
P.O. Box 304
Ridgwood, MD 21139

AND
PLEASANT VIEW CIVIC ASSOCIATION
Ms. Gladys Reed, President
1415 Garmen Avenue
Baltimore, MD 21209

AND
LAKE ROLAND PROTECTIVE ASSOCIATION
Ms. Helga Morrow, President
1203 Hollins Lane
Baltimore, MD 21209

AND
JANE S.B. LAWRENCE
6117 Carroll Road
Baltimore, MD 21209

AND
SARAH F. LORD
6134 Carroll Road
Baltimore, MD 21209

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 THE
APPLICATION OF KLAUBERG NORTH
PROPERTY /6500 FALLS ROAD, LLP
FOR APPROVAL OF DEVELOPMENT PLAN AND
FOR A PETITION FOR VARIANCE ON
PROPERTY LOCATED ON THE NORTH AND
SOUTH SIDES OLD PIMLICO ROAD, WEST
OF FALLS ROAD, EAST OF JONES FALLS
EXPRESSWAY (6500 FALLS ROAD)
3RD ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NOS. CBA-96-148 (PDM III-389)
& 94-368-A

RECEIVED AND FILED
55 OCT 30 PM 3:42

CIVIL
ACTION
No. 3-C-96-10921

CBA-96-148 and 94-368-A, Klauberg Property North
File No. 3-C-96-10921 (Second Certificate of Notice)

SECOND CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Lawrence M. Stahl, S. Diane Levero, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Second Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Henry R. Lord, Esquire, PIPER AND HARBURY, LLP, 36 South Charles Street, Baltimore, Maryland 21201, Attorney for Robert E. Lee Park Conservancy, Inc., et al; Robert E. Lee Park Conservancy, Inc., et al, 912 Rolandus Avenue, Ruxton, Maryland 21204, Petitioners; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204; Frederick H. Klauberg, Jr., 6400 Falls Road, Baltimore, Maryland 21209; Thomas Koch and John Riehl, 6500 Falls Road, LLC, 19 Inverin Circle, Timonium, Maryland 21093; Michael T. Wyatt, Esquire, MARLOW AND WYATT, 404 Allegheny Avenue, Towson, Maryland 21204, Counsel for 6500 Falls Road, LLC; and Douglas M. Silber, Assistant County Attorney, 400 Washington Avenue, 2nd Floor, Towson, Maryland 21204, 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

CBA-96-148 and 94-368-A, Klauberg Property North
File No. 3-C-96-10921 (Second Certificate of Notice)

I HEREBY CERTIFY that a copy of the foregoing Second Certificate of Notice has been mailed to Henry R. Lord, Esquire, PIPER AND HARBURY, LLP, 36 South Charles Street, Baltimore, Maryland 21201, Attorney for Robert E. Lee Park Conservancy, Inc., et al; Robert E. Lee Park Conservancy, Inc., et al, 912 Rolandus Avenue, Ruxton, Maryland 21204, Petitioners; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204; Frederick H. Klauberg, Jr., 6400 Falls Road, Baltimore, Maryland 21209; Thomas Koch and John Riehl, 6500 Falls Road, LLC, 19 Inverin Circle, Timonium, Maryland 21093; Michael T. Wyatt, Esquire, MARLOW AND WYATT, 404 Allegheny Avenue, Towson, Maryland 21204, Counsel for 6500 Falls Road, LLC; and Douglas M. Silber, Assistant County Attorney, 400 Washington Avenue, 2nd Floor, Towson, Maryland 21204, this 8th day of November, 1996.

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

November 8, 1996

Henry R. Lord, Esquire
PIPER & HARBURY, LLP
36 South Charles Street
Baltimore, MD 21201

RE: Civil Action No. 3-C-96-10921
KLAUBERG NORTH PROPERTY
/6500 FALLS ROAD, LLP

Dear Mr. Lord:

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, in addition to all costs incurred for certified copies of documents, must be paid prior to transmittal of the record to the Circuit Court for Baltimore County within sixty days.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Robert E. Lee Park Conservancy, Inc., et al

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
PETITION OF PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
400 Washington Avenue, Room 47
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 THE
APPLICATION OF KLAUBERG NORTH
PROPERTY /6500 FALLS ROAD, LLP
FOR APPROVAL OF DEVELOPMENT PLAN AND
FOR A PETITION FOR VARIANCE ON
PROPERTY LOCATED ON THE NORTH AND
SOUTH SIDES OLD PIMLICO ROAD, WEST
OF FALLS ROAD, EAST OF JONES FALLS
EXPRESSWAY (6500 FALLS ROAD)
3RD ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NOS. CBA-96-148 (III-389)
& 94-368-A

CIVIL
ACTION
No. 3-C-96-10921

RECEIVED AND FILED
55 OCT 30 PM 3:42

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Lawrence M. Stahl, S. Diane Levero, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the 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, Maryland 21204, Petitioner; Frederick H. Klauberg, Jr., 6400 Falls Road, Baltimore, Maryland 21209; Thomas Koch and John Riehl, 6500 Falls Road, LLC, 19 Inverin Circle, Timonium, Maryland 21093; Michael T. Wyatt, Esquire, MARLOW AND WYATT, 404 Allegheny Avenue, Towson, Maryland 21204,

CBA-96-148 and 94-368-A, Klauberg Property North
File No. 3-C-96-10921

Counsel for 6500 Falls Road, LLC; Sarah F. Lord, et al, 6134 Carroll Road, Baltimore, Maryland 21209; C. William Clark, Esquire, NOLAN, PLUMBHOFF & WILLIAMS, CHTD, Suite 700, Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204-4528, Counsel for Sarah Lord, et al; and Douglas M. Silber, Assistant County Attorney, 400 Washington Avenue, 2nd Floor, Towson, Maryland 21204, 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

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, Maryland 21204, Petitioner; Frederick H. Klauberg, Jr., 6400 Falls Road, Baltimore, Maryland 21209; Thomas Koch and John Riehl, 6500 Falls Road, LLC, 19 Inverin Circle, Timonium, Maryland 21093; Michael T. Wyatt, Esquire, MARLOW AND WYATT, 404 Allegheny Avenue, Towson, Maryland 21204, Counsel for 6500 Falls Road, LLC; Sarah F. Lord, et al, 6134 Carroll Road, Baltimore, Maryland 21209; C. William Clark, Esquire, NOLAN, PLUMBHOFF & WILLIAMS, CHTD, Suite 700, Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204-4528, Counsel for Sarah Lord, et al; and Douglas M. Silber, Assistant County Attorney, 400 Washington Avenue, 2nd Floor, Towson, Maryland 21204, this 30th day of October, 1996.

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

October 30, 1996

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

RE: Civil Action No. 3-C-96-10921
KLAUBERG NORTH PROPERTY
/6500 FALLS ROAD, LLP

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



County Board of Appeals of Baltimore County

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

October 30, 1996

Michael T. Wyatt, Esquire
404 Allegheny Avenue
Towson, MD 21204

RE: Civil Action No. 03-C-96-10921
KLAUNBERG NORTH PROPERTY
/6500 FALLS ROAD, LLP

Dear Mr. Wyatt:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on October 24, 1996, 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. 3-C-96-10921.

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: Thomas Koch and John Riehl /6500 Falls Road, LLC
Frederick H. Klauenberg, Jr.
Timothy W. Wolfe /Spotts, Stevens & McCoy, Inc.
Sarah F. Lord, et al
C. William Clark, Esquire
Pat Keller
Lawrence E. Schadt
Arnold Jablon /PDM
Douglas M. Silber, Asst. County Attorney
Virginia W. Barnhart, County Attorney

CERTIFICATE OF MAILING

The undersigned attorney for the named Petitioners herein states that on this 29th day of October, 1996, he mailed by first class U.S. mail, postage prepaid, a copy of this Petition for Judicial Review to Michael T. Wyatt, Esq., 404 Allegheny Avenue, Towson, Maryland 21204-4255, attorney for the Developer/Appellee below, 6500 Falls Road, LLC, and to Peter Max Zimmerman, Esq., People's Counsel for Baltimore County, Room 47, 400 Washington Avenue, Towson, Maryland 21204-4026, also a Petitioner herein.

Henry R. Lord
Henry R. Lord

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

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Civil Action No. 3-C-96-10921

PETITION OF:

ROBERT E. LEE PARK
CONSERVANCY, INC.
Max. Louise Hildreth & Jane S.B. Lawrence.
Co-Founders
912 Roland Avenue
Ruxton, MD. 21204

RUXTON-RIDERWOOD-LAKE ROLAND
AREA IMPROVEMENT ASSOCIATION, INC.

Ms. Laurie Long, Executive Director
P.O. Box 204
Riderwood, MD. 21139

PLEASANT VIEW CIVIC ASSOCIATION
Ms. Gladys Reed, President
1415 Gardiner Avenue
Baltimore, MD 21209

LAKE ROLAND PROTECTIVE ASSOCIATION
Ms. Helga Morrow, President
1203 Hollins Lane
Baltimore, MD. 21209

JANE S.B. LAWRENCE
6137 Barnoll Road
Baltimore, MD. 21209

SARAH F. LORD
6134 Barnoll Road
Baltimore, MD. 21209

RECEIVED AND FILED
95 OCT 31 PM 3:14

Copy for Board of Appeals

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

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

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF KLAUNBERG NORTH PRO-
PERTY / 6500 FALLS ROAD, LLP FOR DEVELOP-
MENT PLAN APPROVAL AND PETITION FOR
VARIANCE ON PROPERTY LOCATED ON THE
NORTH AND SOUTH SIDES OF OLD PUBLIC ROAD,
WEST OF FALLS ROAD, EAST OF JONES FALLS
EXPRESSWAY (6500 FALLS ROAD)
3rd ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT

IN THE BALTIMORE COUNTY BOARD OF
APPEALS, CASE NOS.: CBA-96-148 (FOM III-389)
and 96-368-A

IN THE

C. 96-10921

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Civil Action No.

PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial review of the decision of the County Board of Appeals dated October 3, 1996 in the above case, CBA Case Nos. CBA-96-148 (FOM III-389) and 96-368-A. PEOPLE'S COUNSEL was a party to the proceeding before the County Board of Appeals of Baltimore County in this matter.

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

RECEIVED AND FILED
95 OCT 24 PM 4:00

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County
Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF COMPLIANCE

The undersigned attorney for the named Petitioners states that on this 29th day of October, 1996, he mailed to the Clerk, Circuit Court of Baltimore County, an additional copy of this Petition for Judicial Review for prompt mailing of that copy by said Clerk, along with additional specified information, to the Board of Appeals of Baltimore County, pursuant to Rule 7-202(d)(1) of the Maryland Rules of Procedure.

Henry R. Lord
Henry R. Lord

IN THE MATTER OF
KLAUNBERG NORTH PROPERTY
/PDM III-382 - N & S OLD
PUBLIC RD, W OF FALLS RD, E
OF JONES FALLS EXPRESSWAY
(6500 FALLS ROAD)
3RD ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

RE: DEVELOPMENT PLAN APPROVAL
AND
PETITION FOR VARIANCE

Agency Caption:
CBA-96-148 (PDM III-389) and CBA-96-368-A

PETITION FOR JUDICIAL REVIEW

Now come Petitioners, all of whom were parties to the agency proceedings below, by their attorney, pursuant to Rule 7-202 of the Maryland Rules of Procedure, seeking judicial review of the Opinion and Order dated October 3, 1996, entered in these consolidated cases by the Board of Appeals of Baltimore County, Maryland, a political subdivision of the State of Maryland. This appeal is authorized inter alia by Section 604 of the Charter of Baltimore County, Maryland and by Rule 7-203 of the Maryland Rules of Procedure.

Henry R. Lord
Henry R. Lord
Piper and Harbury LLP
36 South Charles Street
Baltimore, Maryland 21201
(410) 576-1602

Attorney for Certain Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of October, 1996, a copy of the foregoing Petition for Judicial Review was mailed to C. William Clark, Esq., Nolan, Plumbhoff & Williams, 210 W. Pennsylvania Avenue, Suite 700, Towson, MD 21204, attorney for Protestants, and to Michael T. Wyatt, Esq., 404 Allegheny Avenue, Towson, MD 21204, attorney for Developer/Petitioner.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mennah
Clerk of the Circuit Court
County Courts Building
401 Bowley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

Case Number: 03-C-96-009081

TO: CAROLE DEMILIO
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204

Case Number: 03-C-96-00901

TO: PETER M ZIMMERMAN
Room 47 Courthouse
400 Washington Avenue
Towson, MD 21204

IN THE MATTER OF
KLAUBERG-NORTH PROPERTY
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BEFORE
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COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. CBA-96-148
AND
CASE NO. 94-348-A

OPINION

This matter comes before the Board of Appeals as a result of the Order of Approval by the Hearing Officer on June 27, 1996 of a development plan for the subject property, as well as the granting of a Petition for Variance in which the required 100-foot building setback from a residential zone line is to be reduced to 85 feet. Appellants /Protestants, the Robert E. Lee Park Conservancy, Inc.; the Ruxton-Ridewood-Lake Roland Area Improvement Association, Inc.; Pleasant View Civic Association, Inc.; the Lake Roland Protective Association; and individuals Jane S.B. Lawrence and Sarah F. Lord, were represented before the Board by C. William Clark, Esquire; Developer /Appellee, 6500 Falls Road, LLC, was represented by Michael T. Wyatt, Esquire.

DEVELOPMENT PLAN PROCESS

The subject development plan was originally submitted by Frederick Klausberg in 1994. In June 1995, the property was sold by him to 6500 Falls Road, LLC, whose principals are the Developers /Appellees, Thomas E. Koch and John Riehl IV. The Development Plan proposes the building of a 3,620 sq. ft., two-story office building with adjacent parking on the site.

Case No. CBA-96-148 AND Case No. 94-348-A
Klausberg Property North /PDM III-389

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It is uncontradicted that an initial concept plan was filed by Mr. Klausberg in December 1992. Community Input Meetings were held on February 8, 1993 and April 14, 1993. A Development Plan was submitted and a Development Plan Conference was held relative to it on April 13, 1994. Mr. Klausberg had contemporaneously applied to the Department of Environmental Protection and Resource Management (DEPRM) for variances related to stormwater management and forest buffers necessary to allow the plan to proceed. DEPRM, by its letter of July 7, 1994, denied those requests. An appeal was noted by Mr. Klausberg to the Board of Appeals. The matter was postponed and was never heard by the Board. It is also uncontradicted that, subsequent to the sale by Mr. Klausberg to 6500 Falls Road, LLC, the new owners embarked upon a program to resolve the objections raised by DEPRM which had resulted in the earlier denial. Their efforts, on-site and off, resulted in the filing by 6500 Falls Road, LLC, of another application for the necessary variances on December 8, 1995. Based upon the new application, DEPRM granted the requested variances on March 28, 1996. No appeal to the Board of Appeals was taken from the granting of said DEPRM variances. A second Development Plan Conference was held on March 20, 1996. Due to the lapse of time since the inception of the original Development Plan, the Hearing Officer /Zoning Commissioner (hereinafter "Hearing Officer") remanded the matter back for a third Community Input Meeting, which was held on May 7, 1996. The Hearing Officer's hearing, from whose resulting Order the instant case arises, was held on June 13, 1996.

Case No. CBA-96-148 AND Case No. 94-348-A
Klausberg Property North /PDM III-389

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Appellants /Protestants have raised various procedural objections to the manner in which this Development Plan was approved. They contend that the Hearing Officer did not have jurisdiction to conduct a hearing on the final Development Plan when an appeal from the previous variance denial of DEPRM was still docketed before the Baltimore County Board of Appeals. The record reflects that during the hearing before the Hearing Officer, counsel for the present Developers /Appellees filed a paper with the Board of Appeals requesting dismissal of Mr. Klausberg's appeal from the previous variance denial by DEPRM. Appellants /Protestants suggest that this dismissal renders the previous DEPRM denial a final decision; and that, therefore, the Hearing Officer erred in ruling that he had jurisdiction to conduct a hearing on the final Development Plan.

This Board believes that the present Baltimore County Development Plan Process is dynamic in nature. That is, it is a procedure by which all concerned in the question of development, i.e., government, the public, and Developers, work together in a continuing process by which growth is permitted and encouraged in a manner most beneficial to the continuing needs and concerns of society and the public at large. Such a process recognizes the need for input, comment, and, as a result thereof, alteration, amendment, or other change, in the proposed Development Plans in order to render them appropriate and efficacious in their result. Without the inherent ability to respond to comment and input by alteration and amendment, the development process would likely

Case No. CBA-96-148 AND Case No. 94-348-A
Klausberg Property North /PDM III-389

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result in little or no development at all. We do not believe that the process set in place by the County Council was meant to terminate development, but rather to encourage it within appropriate and beneficial parameters.

In the instant matter, the denial of the Klausberg variance request was not necessarily an end unto itself. The present Developers /Appellees, as subsequent purchasers, addressed the perceived reasons for the previous denial and worked toward resolving those differences to DEPRM's satisfaction. We have reviewed the testimony of Bruce Seeley, the representative of DEPRM at the Development hearing, as well as the testimony of Timothy W. Wolfe, the Developers /Appellees' project engineer, both at the Development hearing and before this Board. As a result of the continuing responses, discussions and resubmissions on behalf of the Developers /Appellees, DEPRM ultimately approved a subsequent variance petition submitted by them. Having resolved the DEPRM objections, the Developers /Appellees quite appropriately proceeded with the development plan process for the site.

Once the variances required by the development plan had been approved, the process could therefore proceed. The Hearing Officer was not barred from completing the process, as the previous denial (and its subsequent effect on the development process) had been rendered moot by DEPRM's subsequent variance approval. Likewise, for the reasons set forth above, as well as those enunciated by the Hearing Officer, we find that DEPRM had the right and authority to grant the variance request submitted by the Developers /Appellees.

Case No. CBA-96-148 AND Case No. 94-348-A
Klausberg Property North /PDM III-389

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Having so found, it is unnecessary to address whether or not the appeal (or dismissal of appeal) of the original variance request has any effect whatsoever. Having been superseded by the subsequent approval by DEPRM of the second variance request, that issue is also rendered moot.

Appellants /Protestants' contention that DEPRM is somehow estopped by the doctrine of Res Judicata is also without application in this matter. Counsel on both sides of this case point to the case of Gaywood Community Association, Inc., v. Metropolitan Transit Authority, 246 Md. 93 (1967) in support of their opposing positions on this issue. In that decision, the Court reaffirmed that the doctrine of Res Judicata does not apply where the earlier, as well as later, decision is made by an administrative agency. Id. at 99. Moreover, Judge Horney states "while the action of an administrative agency may resemble Res Judicata, it is not, as the cases show, the same as the final decision of a proceeding on its merits by a Court of competent jurisdiction." Id. at 100.

In his concurring opinion, Judge Barnes opined that the action of administrative bodies is always legislative or executive, and not judicial, and therefore Res Judicata should not apply. He felt that any agency, in exercising its delegated legislative power, had the authority to come to a different conclusion than it or a predecessor agency had on a previous occasion on the same facts, unless that action was arbitrary, unreasonable or capricious. While this sentiment is not presented by the majority, it is

Case No. CBA-96-148 AND Case No. 94-348-A
Klausberg Property North /PDM III-389

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certainly in tune with the responsibility granted DEPRM under Title 14, Article 9 of the Baltimore County Code (and specifically Sections 14-334 and 14-335). Moreover, assuming, arguendo, that the facts of this case were subjected to a Res Judicata standard, we find that it would be inapplicable. The record is clear that the original variance application was filed by 6500 Falls Road, LLC. Further, the record at the development hearing and before the Board as noted above, includes abundant testimony setting forth the differences in the activity and submissions related to both variance requests. Clearly Res Judicata would not apply to estop DEPRM from granting the variance request of 6500 Falls Road, LLC, by virtue of its denial of the earlier Klausberg request.

The Appellants /Protestants have raised other objections as to the propriety of the approval by DEPRM of the variances granted to Developers /Appellees, as well as the Hearing Officer's role relative to those approvals. Based upon our review of the development hearing record below, taken in the light of the clear authority granted DEPRM in the County Code, we find that the granting of the variances was appropriate. It is interesting to note that, despite the Appellants /Protestants' reliance on arguments regarding the filing and effect of an appeal to this Board from a DEPRM finding, the record reflects that no appeal to the granting of the variance by DEPRM was ever initiated by Appellants /Protestants. The net effect of that inaction is to leave the DEPRM approvals in place and in effect. It is clear from a review of the transcript below that the Hearing Officer heard all

Case No. CBA-96-148 AND Case No. 94-348-A
Klausberg Property North /PDM III-389

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relevant testimony relating to these issues and in fact imposed conditions (to the economic detriment of the Appellants /Protestants) that were called for as appropriate by expert witnesses testifying on behalf of Appellants /Protestants. We find, therefore, that no error on the part of the Hearing Officer may be found in his actions thereto.

Finally, Appellants /Protestants suggest that the Hearing Officer committed error in not following appropriate procedures related to the convening of a Development Plan Conference. As we noted above, a Development Plan Conference was held on March 20, 1996. The record of the April 9, 1996 hearing relates that, after consultation and discussion among all concerned, including numerous Appellants /Protestants, the hearing was postponed to its ultimate date of June 13, 1996, and a third Community Input Meeting was scheduled. We find no merit in the contention that this rescheduling would have required that the Development Conference be convened again. The timeframes between the Development Conference and completion of the Hearing Officer's hearing were sufficiently contemporary such that to have required that another Development Conference be held would have served no practical, useful or judicious purpose.

In sum, we find that the Hearing Officer acted properly and within his authority in approving the Development Plan for the subject site. We further find that, in light of all the testimony, facts and circumstances, as well as the conditions imposed by his Final Order, the Hearing Officer's decision did not exceed his

statutory authority or jurisdiction; did not result from an unlawful procedure; was not affected by any other error of law; was supported by competent, material, and substantial evidence in light of the entire record as submitted; and was neither arbitrary nor capricious. It is therefore affirmed.

PETITION FOR BUILDING SETBACK LINE VARIANCE

Section 250.4 of the Baltimore County Zoning Regulations (BCZR) requires that a building in the M.L.R. zone be set back 100 feet in the front from the adjoining residential zone line. The subject site is zoned M.L.R. with a D.R. 1 zone adjoining it to the east across Falls Road. The zone boundary line lies in the center of the existing right-of-way, which is slightly off-center from the middle of the pavement constituting Falls Road. The Developers /Appellees request a variance reducing that 100-foot distance down to an 85-foot front setback from the zone line dividing D.R. 1 and M.L.R. zones.

This variance is requested under the guidelines set down in Section 307.1 of the BCZR. The seminal case in point regarding the granting of variances is the well-known matter of Cromwell v. Ward, 102 Md.App. 691, 651 A.2nd 424 and cases cited therein. In order to obtain a variance, such as the one requested here, the BCZR and case law require the following:

- Subject site must be unique; that is, that special circumstances or conditions exist that are peculiar to the land or structure;
- That strict compliance with the Zoning Ordinance would

result in practical difficulty or unreasonable hardship; and

- That the granting of the variance would be in keeping with the spirit of the BCZR.

In the instant matter, the Board heard extensive testimony from Mr. Timothy Wolfe, the project engineer. He described the property in relation to its extreme physical requirements, forest buffer setbacks and steep slopes. Further, he described the various highway and public works easements that exist on the subject site, and the resulting severe restrictions of the building envelope therefrom. The Board also heard Norman E. Gerber, an expert in land use, planning and zoning issues, who testified on behalf of the Appellants /Protestants that, since the topography was shared to some extent by neighboring properties, as well as the site in question, the uniqueness "standard" had not been satisfied.

The Board finds that the imposition of the various easements described by Mr. Wolfe and their resultant effect on the available building envelope are sufficient in and of themselves to render the subject site sufficiently unique to satisfy the requirements of the BCZR and applicable cases. Moreover, the Board is convinced by the testimony presented that, although some facets of topography are common to the subject site and its neighbors, the extreme degree to which that topography adversely affects the permissible development area of the subject site renders it, as compared to its neighbors, "unique" in the area in which it is located. Appellants /Protestants have cited North v. St. Mary's County, 99 Md.App. 512,

638 A.2nd 1175 (1994) as supporting their position that the subject property herein is not unique. Developers /Appellees have successfully distinguished the language in North, pointing out that the decision therein is based on a local statute which the Court itself describes "...as strict as can be imagined. ... [W]e have seen none tougher." North at 512. Based upon the applicable Baltimore County statute, we find that Developers /Appellees have met their burden in establishing the unique quality and condition required.

The Board having found that the subject property is unique based on either or both of the factors set forth above, the Developers /Appellees must establish that strict compliance with the regulations would result in practical difficulty or unreasonable hardship. The Appellants /Protestants, by way of Mr. Gerber's testimony, sought to establish a plethora of alternative uses to which the site might be put without a need to grant the requested setback variance. Substantial testimony presented by Mr. Riehl conceded that theoretically other structures could be placed on the site as suggested. However, Mr. Riehl also testified that, while there might be a market for other uses (primarily a smaller office building than proposed by the Developers /Appellees), construction costs for such a small building would be, in and of themselves, prohibitive; the resulting high rent would effectively render the project a non-starter in terms of likelihood of economic viability. Indeed, Developers /Appellees cite Loyola Loan Association v. Buschmann, 227 Md. 243 (1961) in which the

restriction of a building to "uneconomic size" constituted practical difficulty as well as unreasonable hardship. The word "practical," as utilized in the statute and case law applicable herein, reminds this Board that the determination of this factor is not a purely academic exercise. The Board believes that it is insufficient for Appellants /Protestants merely to point out that in theory other "uses" are available, whether or not such uses are economically and realistically viable. It is, therefore, clear from the testimony and exhibits, that in real life terms, there clearly would be practical difficulty and unreasonable hardship in utilizing the subject site for the permissible use requested by Developers /Appellees without the granting of the variance requested.

Appellants /Protestants argue that the purchase of the property by the Developers /Appellees with the knowledge that a variance would be necessary to develop it was, in fact, a "self-imposed hardship." They quote McClean v. Soley, 270 Md. 208 (1973) in support of their position. However, that case and others cited therein clearly refer to the difference between "use variance" and "area variance." Read with Cromwell, it is clear that the rule against self-inflicted or self-created hardship is applied primarily in relation to "use" variances rather than "area" variances. It is most particularly applied when the applicant for a variance creates the nonconformity or affirmatively does something within his control to create the hardship. Cromwell, at 722. In the case at Bar, we find (and can find no Maryland case to

the contrary) that the mere purchase of the property by Developers /Appellees, knowing that setback restrictions existed which would require a variance for development, did not, in and of itself, constitute self-infliction which is proscribed by the case law.

This Board further finds that the third requirement, that the requested variance satisfy the spirit of the Zoning Regulations as they relate to the surrounding area, has clearly been established by the Developers /Appellees. Virtually all of the surrounding property had already been developed prior to the imposition of the setback requirements. The proposed development will result in a setback that is substantially closer to that required by the statute than any of the adjoining or neighboring properties in the area. The proposed development requires a minimal deviation from the BCZR requirement, and, given the reality of the surrounding area, will in fact result in its being virtually the only property in the area to reasonably comply with the applicable setback requirement. It is, therefore, clearly within the "spirit of the regulation."

Accordingly, having found that the proposed site for development in this case is unique in both degree and content in relation to its neighbors; and that the failure to grant the requested variance would result in practical difficulty and unreasonable hardship to the Developers /Appellees; and that the granting of the requested variance would clearly be in the spirit of the Zoning Regulations as they exist, the requested setback variance reduction to 85 feet from the 100 feet required by statute

is hereby granted.

ORDER

IT IS THEREFORE THIS 3rd day of October, 1996 by the County Board of Appeals of Baltimore County

ORDERED that the decision of the Hearing Officer which approved the subject Development Plan be and is hereby **AFFIRMED**; and it is further

ORDERED that Petition for Variance from Section 250.4 of the Baltimore County Zoning Regulations to permit a building setback from a residential zone line of 85 feet in lieu of the required 100 feet for the proposed building be and is hereby **GRANTED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Acting Chairman

Harry E. Buchheiser, Jr.

IN RE: DEVELOPMENT PLAN AND PETITION
FOR VARIANCE - N & S/D Old
Pimlico Road, W of Falls Road
E of JFX (Klaunberg North
Property) 3rd Election District
3rd Concomitant District

6500 FALLS ROAD, LLP
Developer/Appellee

**MEMORANDUM OF 6500 FALLS ROAD, LLP
IN SUPPORT OF DEVELOPMENT PLAN
AND PETITION FOR VARIANCE**

6500 FALLS ROAD, LLP, Appellee (hereinafter sometimes "Developer"), by its attorney, Michael T. Wyatt, pursuant to Order of the County Board of Appeals of Baltimore County, hereby submits this memorandum in support of its Development Plan and Petition for Variance.

I. PROCEDURAL BACKGROUND

This matter was originally heard on April 9, 1996 before Hearing Officer/Zoning Commissioner Lawrence E. Schmidt. An issue was raised concerning the long lapse of time from the original submittal of the development plan and latest community input meetings. The Hearing Officer remanded the matter for a third community input which was held on May 7, 1996. The hearing was re-convened on June 13, 1996 at which time testimony and evidence were received from developer and protestors.

On June 27, 1996 Hearing Officer Schmidt issued his opinion and order (hereinafter the "Order") granting the developer's request for variance and approving the development plan (with conditions). Sarah F. Lord, on behalf of Robert E. Lee Conservancy, Inc., Ruston-Riderwood-Lake

- * BEFORE THE
- * COUNTY BOARD,
- * OF APPEALS
- * OF
- * BALTIMORE COUNTY
- * Case No: 94-348-A
- * CBA-96-148
- * PDM III-389

Roland Improvements Association, Inc., Pleasant View Civic Association, Lake Roland Protective Association and Jane S.B. Lawrence" (hereinafter sometimes "Protestants" or "Appellants"), filed an appeal on or about July 24, 1996. Appellants' counsel, C. William Clark, filed a Petition against the development plan approval on August 5, 1996.

This matter was heard before the County Board of Appeals of Baltimore County (hereinafter sometimes the "Board") on August 20 and 21, 1996. Argument was heard on the development plan and extensive testimony and evidence on the petition for variance was received by the Board. The Board ordered that the Hearing Officer's hearing transcripts be completed by Appellants by August 28, 1996, and memoranda filed on or before September 11, 1996. Final deliberation by the Board was scheduled for September 19, 1996.

II. PROPOSED PROJECT

Developer is the owner of an unimproved 1.28 +/- acre parcel of land situate on the northwest corner of Falls and Old Pimlico Roads. The subject lot is zoned MLR (Manufacturing Light Restricted). The development plan was originally submitted by Frederick Klaunberg in 1994. During June of 1995, Mr. Klaunberg sold the property to 6500 Falls Road, LLP. The two principals of 6500 Falls Road, LLP are Thomas E. Koch and John H. Riehl, IV.

Developer proposes to build a 3620 square foot two (2) story office building and ancillary parking. Developer also requests a variance to permit a building setback from a residential zone line of 85 feet in lieu of the required 100 feet for the proposed building.

III. DEVELOPMENT PLAN

Appellants, in accordance with Baltimore County Code (Balt. Co. Code) § 26-209, filed a

"For clarification, none of the protestors are adjacent property owners."

petition stating the grounds for their record appeal from the Hearing Officer's approval of the development plan. A brief review of the issues presented in the Petition and at the hearing is followed by Appellee's responses thereto.

A. Whether the Hearing Officer had jurisdiction to conduct a hearing on the final development plan.

Several issues (at paragraphs 1-2 of the Petition) raised in this appeal allege the hearing on the development plan was marred by a perceived jurisdictional defect.

At the June 13, 1996 development plan hearing a great deal of preliminary testimony and argument focused on the issue of whether the hearing could go forward. It was noted that Appellee's predecessor in interest, Frederick Klausberg, filed an appeal to the County Board of Appeals after the Department of Environmental Protection and Resource Management ("DEPRM") denied his earlier request for administrative variance (the "1994 DEPRM request or appeal"). That appeal was never acted on by the Board of Appeals nor was it pursued by the litigants. Instead, the developer submitted revised plans to DEPRM and continued negotiations with that agency to support a variance. DEPRM ultimately granted the variance relief to 6500 Falls Road, LLP in March of 1996. [T.13, 15-16, 43-47]. According to Appellants' counsel, this deprived the Hearing Officer of the right to approve the development plan.³

During argument on Mr. Clark's preliminary motion, developer hand-filed a request to dismiss the 1994 appeal which was received by the Board and entered into evidence at the hearing officer's hearing prior to consideration of the merits of the development plan. [T. 47-48, Developer's

³The July 1, 1994 DEPRM denial is more particularly set forth in a letter, of even date, from James Dieter to Tim Wolfe which is part of the development file.

⁴Appellee does not concede that Appellants may challenge the propriety or procedural impact of the 1996 DEPRM variance. The variance was granted on March 26, 1996 and no appeal was entered. Therefore, the DEPRM variance is final and does not arrive for appellate review at either the June 13, 1996 hearing or August 20, 1996 appeal. For purposes of this Memorandum, however, Appellee responds as if the 1996 DEPRM variance is reviewable or constitutes reviewable material.

Exhibit 1]

Moreover, the 1994 DEPRM request sought by Klausberg is markedly different than the variances granted by DEPRM to 6500 Falls Road, LLP in 1996. At the June 13, 1996 hearing, Timothy Wolfe, the project engineer, testified that when DEPRM denied the variance in 1994, the developer, DEPRM and the U.S. Army Corps of Engineers examined many alternatives to support a variance from DEPRM standards. [T.43-46]. There were ongoing negotiations between the developer and DEPRM from June of 1994 through early 1996. Developer hired an environmental consultant (Ernie Peck) and submitted alternative proposals. [See Developer's Exhibit 1A]. All of these efforts are reflected in developer's numerous supplemental submissions to DEPRM. [T.43-46].

The long history of developer/DEPRM negotiations regarding the variance was confirmed by Mr. Bruce Seely, agency representative of DEPRM. Important was Mr. Seely's corroboration of the differences between the 1994 request and the 1996 DEPRM variance. [T. 22-30]. These differences can be summed up as follows:

1994 -	a.	Applicant - Frederick Klausberg.
	b.	Forest Mitigation - none.
	c.	Classification of site - "Drainage Ditch".
	d.	Construction Techniques - unspecified.
1996 -	a.	Applicant - 6500 Falls Road, LLP.
	b.	Forest Mitigation - on-site and off-site.
	c.	Classification of site - "Intermittent Stream".
	d.	Construction Techniques - rear wall and slab from within building footprint, continuing construction away from intermittent stream.

As stated, DEPRM granted the variance/waiver on March 28, 1996 (the "1996 DEPRM variance") which is more particularly set forth in Developer's Exhibit 11. In view of the dismissal of the 1994 DEPRM appeal and testimony regarding the DEPRM variances, Hearing Officer Schmidt correctly ruled that the 1994 DEPRM appeal did not constitute an impediment to his considering the development plan. Having listened to the testimony of Bruce Seely and Tim Wolfe,

of the various regulations and enabling legislation is appropriate. Title 14, Article IX of the Baltimore County Code establishes the Water Quality standards and confers upon DEPRM exclusive responsibility "for enforcing the provisions" of that title. See Balti. Co. Code, §14-335. Variances from design standards, building setbacks and forest buffer requirements are available under § 14-334 which provides, in pertinent part:

(a) The director of the department (DEPRM) may grant a variance:

(1) For those projects where strict compliance with the requirements of the regulations herein would result in practical difficulty or unreasonable hardship

(c) In granting a request for a variance, the director of the department may require site design, landscape planning, fencing, the placement of signs, and the establishment of water quality "best management practices".

Baltimore County's Development Regulations which authorize final action by the Hearing Officer are found at § 26-206 of the Balti. Co. Code. The hearing "shall be conducted on any comment or proposed or requested condition which remains unresolved". Accordingly, the Hearing Officer, after receiving the March 28, 1996 DEPRM variance approval, had no authority to "re-litigate" the appropriateness of that decision. To do so would disregard the principle of law which precludes an endless succession of collateral attacks on the authority vested exclusively with DEPRM to make a final administrative ruling. The Baltimore County Code explicitly confers the authority to consider and grant or deny DEPRM variance requests on the director of the department. Appellants' recourse, if any, would have been an appeal to this Board from the March 28, 1996 approval.

Before this Board, Mr. Clark treats this case as a DEPRM appeal (Petition, paragraph 4), while also suggesting at the hearing that his clients did not appeal the DEPRM variance because "they didn't know". This representation is at odds with the extensive chronology of this project. The

⁵Sarah F. Lord, individually, and presumably on behalf of the numerous associations for which she presently speaks.

the Hearing Officer concluded that the earlier 1994 DEPRM appeal was mooted out by the subsequent negotiations and off-site mitigation approval.

Appellants rely on Gaywood Community Assoc. Inc. v. Metropolitan Transit Authority, 246 Md. 93 (1967). A review of that case only reinforces developer's contention that DEPRM acted properly in 1996 and was not bound by the 1994 denial. In Gaywood, the Court of Appeals of Maryland, in considering whether the Metropolitan Transit Authority could authorize a bus route change which it previously denied, held that administrative agencies may consider and act on questions previously denied where there is "some change in fact or in law to support the reversal". Gaywood, 246 Md. at 99. There was substantial evidence of a change in the variance package submitted to DEPRM by developer. Ongoing negotiations, site-work and revised technical submissions were provided to DEPRM. [T. 22-32, 43-46]. DEPRM assessed the existence of the change of conditions as a basis for its 1996 approval. This was a decision for DEPRM to make, not the Hearing Officer or Appellants. There was no appeal from 1996 DEPRM's variance approval.

Thus, Appellants' appeal before this Board is a collateral attack on an agency ruling. The Court in Gaywood was also mindful that it (or the Hearing Officer and Board in this case) "has no power to substitute [its] judgment for the judgment of [an agency], whose orders are *prima facie* correct and to which body the legislature had intrusted the duty and discretion of hearing and passing [variance requests]". Gaywood, supra, at 101.

Appellants, as a corollary to the above, argue that the Hearing Officer could not proceed with the hearing since the Board had jurisdiction over the 1994 variance appeal. This argument is also unsupported by Maryland law. In Crofton v. Anne Arundel County, 99 Md. App. 233 (1994), the Court of Special Appeals held that where extraordinary circumstances are present a court or

B. Whether Development Plan Complies with Regulations.

Although not mentioned at the Board hearing, Appellants' Petition claims the Development Plan fails to show "suitable outfall for stormwater and storm drainage." (Petition, paragraph 5). The Development Plan (Developer's Exhibit 2) must provide "verification of the suitable outfall" as required by Balti. Co. Code, §26-203(d)(10). The Hearing Officer listened to Timothy Wolfe unequivocally state that the "storm water runoff led to suitable outfall". [T. 64, 65]. Mr. Wolfe further pointed out that preliminary hydraulic computations were submitted to the County and are "on record with EPLU." [Id.] After finding this testimony to be both credible and uncontested, the Hearing Officer ruled that the plan complied with the requirements for "verification of suitable outfall". [Order, p.6].

Appellants next complain that "[t]he Hearing Officer erred in not requiring the director of ZADM to conduct a development plan conference". As discussed earlier, the procedural history of this matter indicates that a development plan conference was, in fact, held two weeks prior to the April 9, 1996 hearing (i.e. March 20, 1996). The Hearing Officer's Order dated April 12, 1996 remanded the matter to a third Community Input Meeting and "re-convened" the hearing on June 13, 1996. The sign-in sheet from the April 9, 1996 hearing reflects the attendance of many of the protestants in this appeal. After full discussion about the need for a Community Input Meeting, these same protestants wholeheartedly endorsed the idea of: (1) remanding for a third CIM; and (2) continuing the hearing after the CIM. It was agreed by all interested parties that no new development plan conference would be scheduled. After that point, another development plan conference would have been complete surplus since all comments and issues had either been resolved or would be addressed at the June 13, 1996 hearing.

administrative agency may assume concurrent jurisdiction over the same matter." In this case, such circumstances clearly existed - modified developer proposals, DEPRM approval, and developer's dismissal of the 1994 DEPRM appeal. The Hearing Officer, after being fully apprised of the status (or lack thereof) of the 1994 DEPRM appeal, found the appeal "irrelevant at this point...properly dismissed...[i]t constitutes no impediment to consideration of the development plan at this time". [T. 49-50, Order, p. 4].

The converse of Appellants' argument (Petition, paragraph 2) is also without merit. To suggest that the 1994 DEPRM denial ended the development process in this case is incorrect. DEPRM changed its position after months of hammering out with developer revised forest mitigation plans and construction techniques which comport with the regulations. There exists no authority in this state or elsewhere which precludes negotiation and issue resolution during the pendency of an appeal.

After the Hearing Officer ruled on the same issues raised in this appeal, he was asked by Mr. Clark to review the propriety of DEPRM's approval. For legal reasons, the Hearing Officer refused to do so. In his decision, Hearing Officer Schmidt noted:

"DEPRM has exclusive jurisdiction over the implementation of its regulations. The Baltimore County Code clearly provides a procedure by which a property owner may request relief from DEPRM's standards through the variance process. It is of particular note that this variance is not granted by the Zoning Commissioner/Hearing Officer, rather an internal procedure within DEPRM has been established. I am not inclined, and am not permitted by law, to interfere with the process. It is the employees of DEPRM who possess the technical expertise to administer their regulations, not the Hearing Officer" [Order, pp. 5-6].

In order to more fully appreciate the soundness of the Hearing Officer's decision, a review

⁶Again, it is conceded for purposes of this memorandum that the Hearing Officer actually exercised "concurrent jurisdiction". Appellee, however, submits that "concurrent jurisdiction" does not apply where the revised variance submissions reflect markedly different proposals and the 1994 appeal was dismissed before the hearing officer's hearing began on the merits.

IV. PETITION FOR BUILDING SETBACK LINE VARIANCE

As a result of the limited building envelope depth available on the 6500 Falls Road site, a petition for variance from building setback line was heard by the Board on August 20 and 21, 1996. Many of the factors impacting the development plan are relevant to resolution of this issue.

As shown on the plan, the building is 85 feet from the residential zone line (middle of Falls Road). The 1.28 acre parcel is zoned MLR (Manufacturing Light Restricted). The owner propose to construct a 3620 square foot two story office building on the site. The elevation drawings, landscape plans and architectural plan all confirm the building will be constructed of brick and appear colonial/residential in style. The Petition for Variance has also undergone scrutiny through agency comment and was, most notably, approved by the Office of Planning and Zoning. [See Comment from Arnold F. (Pat) Keller, III, Office of Planning, dated March 20, 1996]. Comprehensive photographs of the surrounding locale and property uses were submitted by both developer and protestants. Immediately adjacent to the subject property is:

- To the north:
 - one residence converted to office use (Lambros property) which sits approximately 60 feet from the residential setback line (zoned MLR and BL); and
 - a large recreation center and related facilities known as "Garrison Academy" (zoned MLR).
- To the west:
 - Garrison complex; and
 - Interstate 83 - "Jones Falls Expressway" (mix of MLR and O-1 zoning).
- To the east:
 - Undeveloped land owned by the City of Baltimore (zoned DR 1); and
 - area businesses (Sunnyfield's, Princeton Sports, etc.) south of Old Timonium Road (zoned BR).

4. To the south: various industrial and commercial businesses including Carpet World, Inc. and F. H. Klausberg and Lazant Construction Company (mix of ML, BL, and MLR).

The adjacent property owners submitted letters supporting the project. These letters constitute Developer's Exhibits J and 5A-D. The ground at 6500 Falls Road is the only undeveloped parcel in the predominantly MLR or BL zoned areas of Falls and Old Pimlico Roads.

Variances from height and area regulations are available under §307.1 of the Baltimore County Zoning Regulations. This section and its supporting caseload require the following:

1. The subject property must be unique - special circumstances or conditions exist peculiar to the land;
2. Strict compliance with the regulations would result in practical difficulty or unreasonable hardship; and
3. The granting of a variance would not be detrimental to the surrounding area.

The Board heard contradictory opinion testimony as to whether the request fulfills the requirements of §307.1 of the Baltimore County Zoning Regulations. With or without the opinion testimony, the factual evidence satisfies the required elements.

As the only undeveloped, non-utilized MLR-zoned property in the area developer's parcel contains several highway and public works easements, stream considerations, forest buffer setbacks, and steep slopes. It is bound on two sides by public highways. These features, contrary to what Appellants claim, do not exist to any comparable extent on the property north of 6500 Falls Road and clearly do not exist elsewhere in the neighborhood. Moreover, these inherent land features are not material to any of the adjacent properties. They are already developed. The environmental constraints, topography and easements on 6500 Falls Road force a building envelope to the front of the site. The evidence establishes that the adjacent MLR/BL properties were developed prior to

DEPRM regulations and in contravention of current residential set-back requirements. The conditions imposed on the subject property set it apart from other properties in the area. Uniqueness is found by virtue of the steep topography, environmental and other site constraints featured on the development plan.

The development plan itself indicates that strict adherence to the 100 foot setback would reduce the depth of the building from 30 feet to 15 feet. As illustrated on the development plan (reviewed and accepted by applicable county agencies) a reduced building would be unreasonably shallow and impractical. Although protestors would have the Board believe a whole host of other uses could be pursued (i.e. church, cold-storage facility, etc.) their opposition to the setback variance is nothing more than a stalking horse against any use whatsoever on this site. Simply put, Appellee has expended considerable resources on a development plan for a residential-style office building. This is, in the hierarchy of permitted MLR uses, a very modest use. It is interesting to note that, based on the testimony offered by developer, a smaller or 'other' MLR use in the reduced building envelope would be impractical as the site constraints limit the use of the property. See Loyola Loan Act v. Buchman, 227 Md. 243 (1961) (restriction of building to "uneconomic size" constitutes practical difficulty as well as unreasonable hardship).

"It is anticipated that Appellants will cite North v. St. Mary's County, 99 Md. App. 502 (1994) for the proposition that uniqueness does not refer to the extent of improvements upon property, or upon neighboring property. Taken out of context, this proposition is true. Appellee would point out that the St. Mary's County variance provision applicable in that case requires that the "variance request is not...the result of actions by the land owner, nor that the request arises from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property." North v. St. Mary's County, 99 Md. App. at 512. This factor, like others present in the North case, is not required in this case. The stringency of these requirements prompted the Court of Special Appeals to comment that the St. Mary's County ordinance "is as strict as can be imagined...[w]e have seen none tougher". Id. Based on this, Appellee maintains the North v. St. Mary's County case to be inapposite.

"In essence, to opine the property is not unique or is similar to other properties is to ascribe to it similar development potential, lot configuration and improvements which, in fact, do not exist.

Questioning at the hearing suggests Appellants may argue "self-imposed hardship" in an attempt to defeat "practical difficulty". In other words, Appellants place reliance on the fact that developer was charged with knowing building set back requirements when it purchased the property. Appellants' reliance is misplaced as the Court of Appeals in McClean v. Soley, 270 Md. 208 (1973) foreclosed that argument. In McClean v. Soley a protestant tried to defeat a variance by asserting the purchaser knew zoning regulations required an area variance. The Court of Appeals stated:

[w]e see no merit in this argument. We noted in Zengerle v. Bd. of Co. Comm'rs, 262 Md. 1 (1971), that the "rule" is more strictly applied in "use variance" than in cases of "area variances" such as the one at bar. In other words, it has less significance where we are concerned with "practical difficulty".

McClean v. Soley, supra, at 215. Compare, Gleason v. Kewick Improvement Association, 197 Md. 46 (1951) (where a person purchases property with the intention to apply for a special exception from use restrictions [retail store versus residence] he cannot contend such restrictions cause him peculiar hardship). (Emphasis supplied).

Most recently, the Court of Special Appeals discussed self-created hardship in Cronwell v. Ward, 102 Md. App. 691 (1995). While affirming the general rule against self-inflicted hardship, the Court of Special Appeals pointed out that "self-inflicted or self-created" hardship arises only where the applicant creates the non-conformity or affirmatively does something within his control to create hardship. Cronwell, 102 Md. App. at 722. No Maryland case holds that the mere act of purchasing undeveloped property, aware of setback restrictions, constitutes self-imposed (let alone self-inflicted) hardship sufficient to defeat an area variance.

The third element required by BCZR, §307.1 is easily satisfied in this case. As pointed out at the hearing, nearly every business structure adjacent to the subject property (and other residential structures further to the south) enjoy some type of setback non-conformance or variance. These setback non-conformities place these other structure in close proximity to Falls Road. In fact, given

developer's proposed landscape screening, road-widening on Falls Road and high quality design, the proposed building with the requested 85' in lieu 100' setback variance would be less obtrusive than existing structures in the area. From an aesthetic viewpoint, the proposed building would arguably be an improvement over the monolithic "Gerstung Academy" to the north and block-style warehouses buildings to the south.

Comments from various county agencies have addressed public health, safety and general welfare concerns. The variance requested does not affect any residential dwellings and is consistent with the setbacks of adjacent properties. Moreover, the developer seeks a de minimis setback variance of only 15 feet where other owners enjoy more. Protestants, however, are cognizant that this minor variance request is the linchpin upon which the entire development is premised. Although it is not clear how this setback variance would negatively impact any of the protestors, they have seized on this as an opportunity to defeat development of any type at 6500 Falls Road. In the last analysis, protestors overlook the MLR classification of this property evidences an intention by the Baltimore County Council that the site has development potential for permitted uses. A residential-style office building is a permitted use in a MLR zone and over 75% of the site will remain undisturbed due to the forest conservation area.

V. CONCLUSION

For the reasons stated herein, 6500 Falls Road, LLP respectfully requests that the Hearing Officer's June 27, 1996 decision be AFFIRMED and the Petition for Variance be GRANTED.

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Respectfully submitted,

Michael T. Wyatt
MARLOW & WYATT
404 Allegheny Avenue
Towson, Maryland 21204
(410) 821-1013
Attorney for Developer/Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of September, 1996 a copy of the foregoing was hand-delivered to:

C. William Clark, Esquire
Noian, Plunhoff & Williams
210 W. Pennsylvania Avenue
Towson, Maryland 21204

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

Michael T. Wyatt

IN RE: DEVELOPMENT PLAN HEARING AND PETITION FOR VARIANCE - N & S/O Old Pimlico Road, N of Falls Rd., E of JFX (Klausberg-North Property) 3rd Election District 3rd Councilmanic District * BEFORE THE DEPUTY ZONING COMMISSIONER * OF BALTIMORE COUNTY * Case Nos. III-389 & 94-368-A 6500 Falls Road, LLC Owner/Developer

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

This matter comes before this Hearing Officer for consideration of a development plan prepared by Spotts, Stevens & McCoy, Inc., for the proposed development of the subject property by 6500 Falls Road, LLC, formerly, Frederick H. Klausberg, Jr., Owner/Developer, with a two-story office building and ancillary parking area. In addition to development plan approval, the Owner/Developer seeks variance relief, pursuant to the Petition for Variance filed in Case No. 94-368-A, from Section 250.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a building setback from a residential zone line of 85 feet in lieu of the required 100 feet for the proposed building. The subject property consists of a gross area of 1.28 acres, more or less, zoned M.L.R., and is presently unimproved. The proposed development and variance relief requested are more particularly described on the development plan/site plan submitted which was accepted into evidence and marked respectively as Developer's Exhibit 1 and Petitioner's Exhibit 1.

Appearing at the public hearing required for this project were Tom Koch and John Riehl, representatives of 6500 Falls Road LLC, Owner/Developer, Timothy W. Wolfe, Professional Engineer with Spotts, Stevens & McCoy, Inc., the engineering/consulting firm which prepared the development plan for this project, Ernest Peck of Peck/Smith, Inc., and James Green, a nearby property owner. The Owner/Developer was represented by

Michael T. Wyatt, Esquire. Appearing as interested persons were numerous citizens from the surrounding locale. These included Henry R. Lord and Sarah Lord, as well as Laurie S. Long with the Roland Run-Lake Roland Area Improvement Association. These individuals were represented by C. William Clark, Esquire. A Citizens Sign-In Sheet reflecting the attendance of all who appeared at the hearing is contained within this file. Numerous representatives of the various Baltimore County reviewing agencies attending the hearing. These included Chris Rorka, Project Manager, and Timothy Fitts, with the Department of Permits and Development Management (DPDM), R. Bruce Sealey and Gail Parker with the Department of Environmental Protection and Resource Management (DEPRM), Bob Bowling with the Development Plans Review Division of PDM, Carol McVoy with the Office of Planning, Stephanie Wright from the Land Acquisition Division of PDM, and Bob Small with the State Highway Administration (SHA). Additionally, numerous letters, both in support of and in opposition to the project, were received from residents and business owners of the surrounding locale.

The history of this project through the development/zoning review process is long and of significance. Initially, a concept plan for this project was filed and reviewed on December 21, 1992. As required, a community input meeting was held on February 8, 1993, with a second community input meeting held shortly thereafter on April 14, 1993. A development plan was subsequently submitted and a conference held thereon on April 13, 1994. Contemporaneously with the filing of the development plan, the Owner/Developer applied for certain variances from specific standards of the Department of Environmental Protection and Resource Management (DEPRM). These variances related to storm water management as well as the required forest conservation plan as part of the Forest Conservation Act.

Initially, these variances were denied by DEPRM. In view of this denial, review of the project through the development process was delayed while the Developer submitted alternatives. Ultimately, the variances from DEPRM requirements were granted and the matter came back on track through the development review process. A second development plan conference was held on March 20, 1996 after which a Hearing Officer's Hearing was scheduled before this Zoning Commissioner on April 9, 1996. Due to the long lapsed of time from the original submission of the development plan and prior community input meetings in 1993, this Hearing Officer remanded the matter back for a third community input meeting which was held on May 7, 1996. The Hearing Officer's Hearing was subsequently rescheduled and conducted on June 13, 1996. A full chronology of events related to this project are shown on Developer's Exhibit 1A.

A review of the site plan, shows that the subject property is located in the northwest corner of the intersection of Falls Road and Old Pimlico Road, adjacent to Robert E. Lee Park and near the Jones Falls Expressway (I-83) and south central Baltimore County. The Developer proposes to construct a 3620 sq.ft. two-story office building on the subject property, which is zoned M.L.R. (Manufacturing-Light Restricted) a classification which permits the proposed use as of right. This zoning classification is significant in that same evidences the County's intent that the property is appropriate for manufacturing and related uses. This was confirmed during a site visit conducted by this Hearing Officer. At that time, I observed similar uses in the neighborhood. The long development review history of this project was the basis of an Initial Motion at the hearing before this Hearing Officer regarding the propriety of the project being considered for approval at this time. Specifically, Mr. Clark, on

behalf of his clients, noted that an appeal from the denial of the forest buffer waiver had been filed by the Owner/Developer in July 1994. He produced the testimony of Kathleen Weidenhamer Bianco with the County Board of Appeals. Ms. Weidenhamer indicated that an appeal of DEPN's denial of the requested waiver was received by her agency. However, at the request of the Appellant, the matter was postponed from consideration and is presently pending before the Board. Mr. Clark objects to the project being considered at this time, claiming that it is premature while the appeal is pending.

On behalf of the Developer, Mr. Wyatt contemporaneously dismissed the appeal and produced a copy of his request for dismissal. He indicated that the appeal was taken when DEPN initially denied the waiver; however, the appeal was not actively pursued while negotiations with that agency continued. When the waiver was ultimately obtained, the issue surrounding the appeal became moot.

For these reasons, I easily find that Mr. Clark's objection is one more of form than of substance. The appeal is irrelevant at this point and has been properly dismissed. It constitutes no impediment to consideration of the development plan at this time.

Having disposed of that issue, attention was next turned to the development plan. Section 26-206 of the Baltimore County Code requires that the Hearing Officer identify any open issues or unresolved comments on the plan. The Hearing Officer is also required to identify any proposed restrictions or conditions on the relief requested. In this regard, the County and State agency representatives present indicated that there were no open or outstanding issues which would prohibit approval of the plan. Mr. Small of the SHA indicated that road improvements to Falls Road are

proposed which will bring access to the site into compliance with SHA requirements. Mitch Kellman with POM indicated that the plan was acceptable to his agency, except for the requested variance from setback requirements as set forth in the Petition for Variance. Carol McVoy with the Office of Planning indicated that a schematic landscape plan and architectural renderings of the project were necessary and should be appended to the development plan. But for these technical requirements, the plan is appropriate to her agency. R. Bruce Sealey with DEPN also indicated his agency was satisfied with the plan. Moreover, the Owner/Developer's attorney, Michael Wyatt, indicated that there were no outstanding issues.

On behalf of the Protestants, Mr. Clark identified a number of open issues. Many of these related to the potential environmental impact of the project. For example, he stated that wetlands and seep areas were not shown on the plan as required by Section 14-338 (C) of the Baltimore County Code. He also questioned whether storm water runoff was shown on the plan as being directed to an area of suitable outfall. He also questioned whether the areas which will be disturbed by construction are properly shown on the plan, and generally objected to DEPN's ultimate issuance of a waiver.

As to DEPN's actions, it is to be noted that DEPN has exclusive jurisdiction over the implementation of its regulations. The Baltimore County Code clearly provides a procedure by which a property owner may request relief from DEPN's standards through the variance process. It is of particular note that this variance is not granted by the Zoning Commission/Hearing Officer, rather, an internal procedure within DEPN has been established. I am not inclined, and am not permitted by law, to interfere

with that process. It is the employees of DEPN who possess the technical expertise to administer their regulations, not the Hearing Officer.

This is not to say that environmental concerns and constraints cannot be a relevant subject before the Hearing Officer. As ultimate approving authority for the plan, I am compelled to consider the project's potential impact on off-site resources and neighboring properties. However, the strict implementation of DEPN standards is a matter left to the technicians in that agency.

Timothy W. Wolfe, the engineer retained by the Developer, testified in response to many of the issues identified by Mr. Clark. He noted that the SHA concerns had been satisfied and that the plan had been amended to show the 85-foot setback for which the variance is being requested. He also confirmed that a landscape plan and architectural drawings would be appended to the plan, as requested by the Office of Planning. Moreover, he noted where the limits of wetlands and seep areas were shown on the plan and confirmed that a suitable outfall for storm water is available. Lastly, the limits of disturbance caused by the construction of the proposed building are shown and will be more fully depicted in subsequent grading and erosion control plans. Under law, these plans must comply with the development plan which has been submitted for approval.

Also testifying was James Green, a nearby property owner, and Thomas E. Koch, a principal in the limited liability company which owns the property. Both of these gentlemen testified about the neighborhood and the project and voiced their support for same. Mr. Koch, in particular, produced letters of support from surrounding neighbors and submitted a series of photographs of the site. He testified that procedures would be

put in place, both during construction and after the project was completed, to reduce and minimize runoff and environmental impacts.

Testifying in opposition to the request was Richard Klein of Community Environmental Defense Services. Although not a professional engineer, Mr. Klein has significant experience in environmental issues and impacts of development on environmentally sensitive areas. Mr. Klein identified two streams on the subject property, a small intermittent stream and Moores Run, a Class III designated trout stream. Moores Run ultimately flows into the Jones Falls. Mr. Klein testified that the proposed building improvements on the site will adversely affect these sensitive stream systems. He noted that minimal distances were being observed between the building and the intermittent streams. Specifically, a 10-foot buffer is being maintained from the center of the stream and an additional 3-foot setback, for a total of 13-feet, to the edge of the building. These distances are inappropriate in Mr. Klein's view. Moreover, he offered extensive testimony regarding the storm water management system which is proposed on the site. He noted that the plan shows that DEPN has required a water quality inlet to collect and disperse the storm water which falls on impervious surface areas. In view of the reduction of the forest buffer and potential adverse impacts, Mr. Klein proposes an alternative system to the water quality inlet box. Specifically, he proposed what is known as a peat/sand filter system, or bio-retention facility.

Sarah Lord, a resident who lives approximately one-half mile from the site, also testified. She inaccurately characterized the Hearing Officer as an "agent for the County" and urged that approval for the project be denied. In fact, the Hearing Officer's role is to act as a quasi-judicial, independent Hearing Officer. I neither enforce nor advocate

quasi-judicial independent Hearing Officer. I neither enforce nor advocate the County's development regulations; rather, I act as an independent quasi-judicial officer charged with the responsibility of fairly considering the positions offered by the litigants. In any event, Ms. Lord believes that the proposed building is shown too close to the intersection, that the project requires too many waivers and deviations from agency requirements, and that the proposed development will cause environmental degradation.

Mr. Timothy Wolfe was called to the stand in rebuttal to the claims made by Mr. Klein. He testified that the Owner/Developer would employ best management practices during both the construction and operation phase of the proposed building to reduce disturbance and impact on the environment. He also testified that the water quality inlet structure shown on the plan is appropriate for the site and that the alternatives suggested by Mr. Klein are inappropriate, given the size of the project. He testified that the storm water runoff generated would be minimal, owing to the limited size of the development.

This is a difficult issue. Although recognizing DEPN's jurisdiction over environmental issues, generally, I must consider the impact of the project on environmental ecosystems of the area as a whole. Although DEPN's granting of waivers is appropriate and should not be second-guessed, it is noted that the waiver is granted because of off-site mitigation efforts to be made by the Developer. These efforts do little to safeguard the environmental features on this site.

Based on the testimony and the evidence offered in this regard, I am persuaded to adopt Mr. Klein's recommendations. The long history of the environmental review of this site is, in and of itself, persuasive

reduce the impact of the proposal on the streams and watershed. In order to minimize these impacts, I will require the Developer to submit, at the direction of DEPN, either a peat/sand filter or a bio-retention facility in lieu of the water quality inlet proposed. I am persuaded by Mr. Klein's testimony that this is an appropriate step and will leave the ultimate decision to DEPN as to which method/facility is appropriate.

Other than this restriction, the development plan should and must be approved. On balance, the testimony and evidence presented are persuasive that the plan complies with all County standards, regulations, and procedures relating to development, and thus, consistent with the comments contained herein, the development plan should be approved.

Having considered the development plan, attention is next turned to the Petition for Variance. This variance request springs from the proposed location of the building. As shown on the plan, the building is located 85 feet from the residential zone line. In essence, the building is placed within the front portion of the site, immediately adjacent to Falls Road. According to the Developer, the building's placement at this location is necessary because of site constraints, including the subject stream discussed above, and steep slopes towards the rear of the property. Mr. Wolfe testified in support of the variance. His testimony was legally sufficient to support a finding that a variance should be granted.

Zoning variances are regulated by Section 307 of the B.C.Z.R. That section requires that the Petitioner demonstrate that a practical difficulty or unreasonable hardship would result if variance relief were denied. Moreover, the Petitioner must show that the variance can be granted without detriment to the surrounding locale. The variance statute in Baltimore County was recently the subject of review by the Court of

Special Appeals in *Cromwell v. Ward*, 102 Md. App. 691 (1995). The opinion issued by the Court in that case comprehensively discusses the statute.

The variance test is not whether the proposed use is consistent with surrounding properties. Rather, the Petitioner must first demonstrate that the property carries with it some unique characteristic which justifies a variance. In this instance, the uniqueness is found by virtue of the environmental constraints featured on the property. As was obvious during my site visit, opportunities for development of this property are very limited, owing to its environmental characteristics and topography. The streams on the site, the steep slopes to the rear of the property, and topography are all factors which require that the building envelope be located towards the front portion of the site. Thus, I find that the property is unique.

The practical difficulty is found based on Mr. Wolfe's testimony. As he indicated, strict adherence to the 100-foot setback required would result in a building envelope of impractical dimension. The building shown is 47-feet wide by 30 feet deep with a 20' x 20' wing. If the 100-foot setback were maintained, the depth of the building would be unreasonably shallow and impractical.

As to the third test, the impact on surrounding properties, I find no adverse impact in this regard. My site examination showed that other buildings in the area are as close to the roadway as what is proposed here. The building will not be out of character and will not adversely impact the surrounding properties. Moreover, the property's M.S.R. zoning classification is significant. Obviously, the County Council intended the property to be utilized as proposed or for a similar use. For these reasons, the Petition for Variance shall be granted.

Therefore, pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertising of the property and public hearing held thereon, the development plan shall be approved and the Petition for Variance granted, consistent with the comments contained herein and the restrictions set forth hereinafter.

THEREFORE, IT IS ORDERED by the Zoning Commission/Hearing Office for Baltimore County this 24th day of June, 1996 that the development plan for Klumbers-North Property, identified herein as Developer's Exhibit 1, be and is hereby APPROVED, subject to the restrictions set forth below; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 250.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a building setback of 85 feet to a residential zone line in lieu of the required 100 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) The Developer shall submit for review and approval by DEPN, a revised storm water management plan, utilizing either a peat/sand filter or a bio-retention facility in lieu of the water quality inlet proposed.

Any appeal of this decision must be taken in accordance with Section 26-209 of the Baltimore County Code.

LAURENCE E. SCHMIDT
Hearing Officer
for Baltimore County

LE:bjs

ORDER RECEIVED FOR FILING
Date 6/28/96
By [Signature]

ORDER RECEIVED FOR FILING
Date 6/28/96
By [Signature]

ORDER RECEIVED FOR FILING
Date 6/28/96
By [Signature]

ORDER RECEIVED FOR FILING
Date 6/28/96
By [Signature]

(Revised 04/09/93)

Please forward billing to:
Frederick H. Klausberg, Jr.
1640 Belknap Road
Sparks, Maryland 21152
771-4797

NOTICE OF HEARING

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

CASE NUMBER: 94-368-A (Item 360)
6500 Falls Road
S.E. of Old Placido Road, W of Falls Road, E of Jones Falls Expressway
3rd Election District - 3rd Councilmember
Petitioner(s): Frederick H. Klausberg, Jr.
HEARING: WEDNESDAY, MAY 4, 1994 at 2:00 p.m. in Room 118, Old Courthouse.

Variance to allow a building setback of 85 feet to a residential zone line in lieu of the required 100 ft.

LAWRENCE E. SCHLITZ
SARAH CONSTRUCTION FOR BALTIMORE COUNTY

NOTES: (1) HEARING IS NOT UNOFFICIAL RECORDING; FOR SPECIAL RECOMMENDATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3353.

Zoning Plans Advisory Committee Comments
Frederick H. Klausberg, Jr.
Date: April 22, 1994
Page 2

2. Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the zoning commission will deny the petition due to errors or incompleteness.
3. Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72-hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e., 72 hours, will result in the forfeiture loss of the filing fee.

If you have any questions concerning the enclosed comments, please feel free to contact Charlotte Minton in the zoning office at 887-3391 or the commenting agency.

Sincerely,

W. Carl Richards, Jr.

W. Carl Richards, Jr.
Zoning Supervisor

WCR:cm
Enclosures



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

MARCH 29, 1994

NOTICE OF HEARING

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

Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

DEVELOPMENT PLAN HEARING
Project Name: KLAUSBERG - NORTH
Project Number: 111-109
Location: 6500 Falls Road
Applicant: Frederick H. Klausberg, Jr.
Engineer: Thomas M. Wolfe, P.E.
Proposed: 1 story office building with 1/7 basement.

CASE NUMBER: 94-368-A (Item 360)
6500 Falls Road
S.E. of Old Placido Road, W of Falls Road, E of Jones Falls Expressway
3rd Election District - 3rd Councilmember
Petitioner(s): Frederick H. Klausberg, Jr.

Variance to allow a building setback of 85 feet to a residential zone line in lieu of the required 100 ft.

HEARING: WEDNESDAY, MAY 4, 1994 at 2:00 p.m. in Room 118, Old Courthouse.

Bel Jan

Arnold Jablon
Director

001 Frederick H. Klausberg, Jr.
Timothy M. Wolfe, P.E.

NOTES: (1) HEARING IS NOT UNOFFICIAL RECORDING; FOR SPECIAL RECOMMENDATIONS PLEASE CALL 887-3353.
(2) HEARING IS NOT UNOFFICIAL RECORDING; FOR SPECIAL RECOMMENDATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT POC OFFICE AT 887-3353.

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 418
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room -
Room 418, Old Courthouse

July 31, 1996

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), BOARD'S RULES OF PRACTICE & PROCEDURE, APPENDIX C, BALTIMORE COUNTY CODE.

CASE NO. CBA-96-148 KLAUSBERG-NORTH PROPERTY /PDM 111-109
W & S of Old Placido Road, W of Falls Road, East of JFX (6500 Falls Road)
3rd Election District
2nd Councilmember District
RE: Development Plan Approval
AND CASE NO. 94-368-A
VAR: To permit building setback from residential zone line of 85' in lieu of 100'.

6/27/96 - Hearing Officer's Order in which the subject Development Plan was APPROVED; and Petition for Variance GRANTED, subject to restriction.

ASSIGNED FOR: TUESDAY, AUGUST 20, 1996 at 12:30 p.m. /Day #1
WEDNESDAY, AUGUST 21, 1996 at 12:30 p.m. /Day #2
* (as required)

CC: Robert E. Lee Park Conservancy, Inc. Appellant /Protestant
Ruxton-Riverwood-Lake Roland Area Improvement Association, Inc. " "
Pleasant View Civic Association " "
Lake Roland Protective Association " "
Jane S.B. Lawrence (individual) " "
Sarah F. Lord (individual) " "
C. William Clark, Esquire " "
Michael T. Wyatt, Esquire Counsel for Developer
Thomas Koch and John Riehl " "
6500 Falls Road, LLC Developer
Timothy M. Wolfe
Spotts, Stevens & McCoy, Inc.
Frederick H. Klausberg, Jr.
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schlitz
David Flowers, Project Manager /PDM
Arnold Jablon, Director/PDM
Douglas R. Silber, Asst. County Attorney
Virginia W. Barnhart, County Attorney

Nathleen C. Bianco
Legal Administrator

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Maryland Department of Transportation
State Highway Administration

O. James Lightizer
Secretary
Hal Kasloff
Administrator

April 11, 1994

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

Re: Baltimore County
MD 25
Klausberg-North
6500 Falls Road
Variance Request
Item #360 (JIS)
Mile Post 1.13

Dear Ms. Minton:

This office has reviewed the plan for the referenced item and offer the following:

In a previous review of the concept plan for the referenced development, we indicated the following improvements to the property frontage would be a condition of plan approval:

1. A 30' entrance with 15' radii returns with a 10' tangent section being provided from the north property corner.
2. Curb and gutter along the property frontage set 24' from the existing center of MD 25, to include the radius of Old Pimlico Road.

However, although we have no objection to approval for the variance request to allow a building setback of 85' to a residential zone line in lieu of the required 100', the entrance improvements indicated on the plan are not consistent with our aforementioned comments to the concept plan, and will be subject to the following:

1. The 30' entrance indicated on the plan is acceptable to the State Highway Administration (SHA) however, this entrance must be 10' to the south to allow for a 10' curb and gutter tangent section from the north property line.
2. The curb and gutter section along the property frontage must be set 24' from center of MD 25, from the P.C. of the southernmost radius of the entrance to the P.C. of the radius of Old Pimlico Road, to include the radius of Old Pimlico Road. The curb and gutter indicated on the plan is set only 22' from center of MD 25 at the P.C. of the radius of Old Pimlico Road.

My telephone number is 410-333-1350 (Fax# 333-1041)

Shuttle Service for Impaired Hearing or Speech

1-800-755-2228 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717

Street Address: 787 North Calvert Street • Baltimore, Maryland 21202



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

April 22, 1994

Frederick H. Klausberg, Jr.
1640 Belknap Road
Sparks, Maryland 21152

RE: Case No. 94-368-A, Item No. 360
Petitioner: Frederick H. Klausberg, Jr.
Petition for Variance

Dear Mr. Klausberg:

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

Enclosed are all comments submitted thus far from the members of ZAC that offer no request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on March 23, 1994, and a hearing was scheduled accordingly.

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

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

Ms. Charlotte Minton
Page Two
April 11, 1994

Entrance construction shall be subject to the terms and conditions of an access permit issued by this office, with the following submittals required:

- a. Eight (8) copies of the site plan showing the SHA requirements.
- b. Completed application.
- c. Performance bond, letter of credit, or certified check (include Federal ID number or social security number or certified checks only) in the amount of 150% of the actual entrance construction cost (to include the cost of relocating any affected utilities) and in an even thousand dollar increment. These must be made payable to the State of Maryland. (Please note that it takes 6-8 weeks for a certified check to be returned after project completion and SHA final inspection).
- d. An engineering fee check in the amount of \$50.00 for each point of access, made payable to the State of Maryland.
- e. A letter of authorization from the appropriate agency relative to the relocation of any utilities which may be necessitated by this construction. Or, a letter from the developer acknowledging and agreeing to the financial responsibility for relocating any affected utilities, provided the cost for the utility relocation is included in the surety submitted for the permit.

The surety for entrance construction must be received by this office prior to our approving any building permits for this development.

Should you have any questions, or require additional information, please contact Bob Small at (410) 333-1350. Thank you for your cooperation.

Very truly yours,

David M. Ramsey
David Ramsey, Acting Chief
Engineering Access Permits
Division

BSes

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

April 8, 1994

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

FROM: J. Lawrence Pilsner, DEPDM
Development Coordinator, DEPDM

SUBJECT: Zoning Item #360 - Klaumber North
6500 Falls Road
Zoning Advisory Committee Meeting of April 4, 1994

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.

Development of the property must comply with the Regulations for Forest Conservation.

This site is severely constrained by streams and steep slopes. Development of the site may prove to be infeasible.

JLP:KSP

KLAUMBER/DEPRM/TATSP

Baltimore County Government
Fire Department

700 East Joppa Road, Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 03/30/94

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

RE: Fire Prevention Bureau SEE BELUGA

LOCATION: SEE BELUGA

Item No.: SEE BELUGA

Zoning Appendix

Comments:

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

B. The Fire Prevention Bureau has no comments at this time. IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 356,357,360,362,363, 364 AND 365.

REVIEWER: LT. ROBERT P. SAUTER
Fire Prevention, PHONE: 887-4891, HS-1108F

cc: File

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

TO: Lawrence E. Schmidt, Zoning Commissioner DATE: March 25, 1996

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

SUBJECT: Scheduling of Hearing Officer's Hearing
6500 Falls Road PDM No. 88-389

A question has been raised about the continuance and rescheduling of the Hearing Officer's Hearing for the referenced property. The Concept Plan Conference was originally scheduled under the name of Klaumber North on December 21, 1992. A Community Input Meeting (CIM) was scheduled for January 19, 1993, and a second CIM was held on April 14, 1993. The Development Plans and filing fee were received by this office on March 24, 1994. A Hearing Officer's Hearing and a concurrent zoning variance were scheduled for May 4, 1994. The Development Plan Conference was held on April 13, 1994.

At the Development Plan Conference on that date, the engineer, Tim Wolfe of Spotts, Stevens and McCoy, Inc., received comments of what must be resolved for agency approval recommendations. Valerie Klam of DEPDM noted that the "drainage ditch" shown on the plan is actually a stream and must be labeled as such. This finding requires that the current slope analysis and variance request must be revised and approved prior to approval of the Development Plans.

Because of the implications of that comment, Mr. Wolfe wrote to Timothy Kotroco and requested a postponement of the Hearing Officer's Hearing and zoning variance. Following that, he met with DEPDM, the Army Corps of Engineers, and other public and private agencies to resolve the outstanding issues.

Based on the belief that a development plan did not expire if it had been filed within twelve (12) months after the first community input meeting (Sec 26-203 (c), Baltimore County Code), the developer submitted revised development plans to be distributed with the rescheduling of the Hearing Officer's Hearing.

After the Hearing Officer's Hearing was scheduled and plans were distributed, a question was raised about the validity of the continuance. This office is of the opinion that the project has expired, because the provisions of Section 26-204 (c), BCC, which require that the hearing be scheduled before the hearing officer no earlier than 21 days and no later than 30 days after the plan has been accepted as filed. This office is also of the opinion that any unresolved issues be ruled on by the hearing officer pursuant to Section 26-206 (a), BCC.

APPEAL

Development Plan and Zoning Variance Appeal
SWC of Falls Road and Old Penick Road
6500 Falls Road (originally submitted as Klaumber North)
6500 Falls Road, LLC - Developer
3rd Election District - 2nd Councilmanic District
File Nos. 88-389 and 94-368-A

- ✓ Petition for Zoning Variance - Case No. 94-368-A
- ✓ Petition form - Item No. 360
- ✓ Letter and board description
- ✓ Zoning Plans Advisory Committee comments
- ✓ Site plan to accompany zoning variance petition
- ✓ Notices of Hearing Officer's Hearing and Zoning Variance hearing for June 13, 1996
- ✓ Hearing Officer's Hearing sign-in sheets for hearing of June 13, 1996 (3)

Developers (Petitioner's) Exhibits

- ✓ Letter to County Board of Appeals - CBA-94-156
- ✓ A - Chronology of Development Process
- ✓ B - Various information regarding postponement and rescheduling of HOH (16)
- ✓ C - Development plan and Schematic landscape plan with pink highlights
- ✓ Letter from James G. Green to Baltimore County Office of Planning & Zoning dated June 10, 1996
- ✓ A - Notice from the State Department of Assessments and Taxation
- ✓ A to D - Letters in support of the proposed office building
- ✓ D - Deed ref. 11093053 et seq. from Frederick H. Klaumber, Jr. to 6500 Falls Road, L.L.P.
- ✓ Elevation drawing of proposed building
- ✓ A and B - Photographs
- ✓ A to K - Photographs
- ✓ A - Letter from George C. Perdikakis to Timothy Wolfe dated March 28, 1996 (with highlights)

Protestant Exhibits

- ✓ Letter from James Dieter to Tim Wolfe dated July 7, 1994
- ✓ Letter from E. Harrison Stone to Arnold Jablon dated August 5, 1994
- ✓ Memo from J. Lawrence Pilsner to Kathleen C. Woodhammer dated August 10, 1994
- ✓ Notice of Postponement for Board of Appeals Case No. CBA-94-156
- ✓ Application for variance to forest buffer requirements signed June 24, 1994
- ✓ Application for variance to forest buffer requirements signed December 8, 1995
- ✓ Resume of Richard D. Klein
- ✓ A to K - Letters of opposition to development
- ✓ Copy of portion of zoning map NW 9C with red notations
- ✓ Copy of portion of lot map detail 694

Miscellaneous correspondence and documents (3)

- ✓ Zoning Commissioner's Order dated June 27, 1996 ~~approved~~ with restrictions, PFP APPROVED
- ✓ Notice of Appeal received July 24, 1996 from Sarah Lord on behalf of the Robert E. Lee Park Conservancy, Inc., the Ruston-Ridgeway-Lake Roland Area Improvement Association, Inc., the Pleasant View Civic Association, the Lake Roland Protective Association, Jane S. Lawrence, and Sarah F. Lord
- ✓ Petition on Appeal dated 1-25-96 (from 1 Petition has not been received as of July 30, 1996)

7/31/96 - Notice of Assignment sent to following for hearing scheduled for Tuesday, August 20, 1996 at 12:30 p.m. and Wednesday, August 21, 1996 at 12:30 p.m. for Day #2 as required was sent to the following: (Riding W/94-368-A)

Robert E. Lee Park Conservancy, Inc.
Ruston-Ridgeway-Lake Roland Area
Improvement Association, Inc.
Pleasant View Civic Association
Lake Roland Protective Association
Jane S. Lawrence (individual)
Sarah F. Lord (individual)
C. William Clark, Esquire
Michael T. Wyatt, Esquire
Thomas Koch and John Riehl
6500 Falls Road, LLC
Timothy W. Wolfe
Spotts, Stevens & McCoy, Inc.
Frederick H. Klaumber, Jr.
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
David Flowers, Project Manager / PDM
Arnold Jablon, Director / POM
Douglas M. Silber, Asst. County Attorney
Virginia W. Barnhart, County Attorney

8/19/96 - Letter from Peter Zimmerman confirming interest as a party; may not participate in questioning and oral argument, but that office maintain interest in the case.

8/27/96 - Conclude Day #1 before Board; to convene on Wednesday, August 21, 1996 to Day #2. NOTE: To consult with counsel on 8/21/96 re: 1) Completion of tape transcription by Mr. Clark by August 28, 1996; 2) Submittal of Memos by Counsel by Sept. 11th; 3) Deliberation scheduled for September 19th at 9:30 a.m. as to 94-368-A.

8/22/96 - Case concluded on Wednesday, August 21st; Notice of Deliberation sent to parties; scheduled for Thursday, September 19, 1996 at 9:30 a.m.; copy to L.H.W. (Will forward copies of memos upon filing of same by counsel).

8/17/96 - Appellants' / Protestants' Memorandum in Support of Appeal filed by C. William Clark on behalf of Appellants. - Memorandum of 6500 Falls Road, LLC, in Support of Development Plan and Petition for Variance filed by Michael T. Wyatt on behalf of Developer. - Copies of Memo filed given to SDL and LMS this date; i.e. for HEB; to pick up his copies 9/12/96.

9/13/96 - Letter from W. Wyatt; correction sheets enclosed / page 1 of Memorandum / to correct typographical error; correct date: April 9, 1996. Copies provided for Board members

Michael T. Wyatt, Esq., Marlow and Wyatt, 404 Alhambra Avenue, Towson, MD 21204
C. William Clark, Esq., Nolan, Plumb and Williams, 210 W. Pennsylvania Ave., Suite 700, Towson, MD 21204
McTimothy W. Wolfe, Spotts, Stevens & McCoy, Inc., 555 Fairmont Avenue, Towson, MD 21204
Sarah F. Lord, The Lake Roland Protective Association, 1303 Hollins Lane, Baltimore, MD 21209

Arnold F. Keller, III, Director, Office of Planning and Community Conservation
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director, Department of Permits and Development Management
Christine K. Runka, Project Manager

Lawrence E. Schmidt
March 25, 1996
Page 2

It is recommended that this issue be addressed by you prior to the hearing on the merits and the issue can be considered whether the applicant must begin with a new concept plan.

C. Timothy W. Wolfe, P.E., Spotts, Stevens, and McCoy, Inc.
Thomas E. Koch, property owner
Christine K. Runka, PDM, Project Manager
JLE

Klaumber North Property
18300 Falls Road, LLC

Re: CBA 94-156 (111-389) and 94-368-A

December 21, 1992 Concept Plan Conference.
January 19, 1993 Community Input Meeting.
April 14, 1993 Second Community Input Meeting.
April 14, 1993 Development Plan Conference.

Note: DEPDM Variance applied for by developer/reviewer (relating to water management as well as required forest conservation plan) on part of the Forest Conservation Act. Initially variance was denied, project delayed while the developer submitted alternatives. Ultimately, variance from DEPDM requirements were granted and the matter took on track through the development review process.

March 24, 1994 Second Development Plan Conference.

April 12 Order requesting matter back for a third community input meeting by the Hearing Officer due to the long delay of time from the original submission of the development plan.

May 7 Third Community Input Meeting.

94-368-A

March 24, 1994 Petition for Variance filed by Frederick H. Klaumber, Jr., to allow a building setback of 85' to a residential zone line in lieu of the required 100'.

CBA 94-156 and 94-368-A

June 13, 1994 Hearing Officer's Hearing conducted and conducted. (see Developer's Exhibit 18 for a full chronology of events related to this project).

June 27 Order of the Zoning Commissioner/Hearing Officer: Development Plan APPROVED; Petition for Variance DENIED w/ restrictions.

August 9 Notice of Appeal filed by Sarah Lord, et al. (the Robert E. Lee Conservancy, et al.)

August 9 Petition listing grounds for Appeal filed by C. William Clark, Esquire, on behalf of the Robert E. Lee Conservancy, Inc., et al.

August 20 Hearing before the Board of Appeals (Day #1)

August 21 Hearing before the Board of Appeals (Day #2)

August 28 Official transcripts of the testimony taken before the Hearing Commissioner completed and submitted by C. William Clark, Esquire.

September 11 Appellants'/Protestants' Memorandum in Support of Appeal filed by C. William Clark, Esquire.

September 11 Memorandum of 6500 Falls Road, LLC in Support of Development Plan and Petition for Variance, filed by Michael T. Wyatt, Esquire.

September 13 Correction of memorandum letter submitted by Michael T. Wyatt, Esquire.

September 19 Deliberation conducted by the Board.

October 3 Opinion and Order of the Board's decision of the Hearing Officer to approve Development Plan was APPROVED; Petition for Variance DENIED.

October 24 Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County. (copy re'd in CBA 10/26/96)

October 30 Certificate of Motion sent to Intervenor parties.

October 31 Second Petition for Judicial Review filed in the Circuit Court for Baltimore County by the Robert E. Lee Park Conservancy, Inc., et al. (per 4/18/96)

November 8 Second Certificate of Motion re'd to Intervenor parties.

December 23, 1994 Transcripts of testimony and record of Proceedings filed in the Circuit Court for Baltimore County.

February 27, 1995 Motion to Dismiss Appeal (lack of standing) filed by Michael Wyatt, Esq.; DENIED by CC.

March 3, 1997 Opinion and Order issued by the CC Affirmed CBA (Thomas J. Hollinger, J)

LMS: All the more reason that if you are coming along and it's close, close, close and then it goes like this [gestured with hands], then it's stopped back -- I find it difficult to find there is a tremendous difference in spirit of zoning to drop from 100 to 85. From 100 to 10 or 100 to 0 -- the more concerned I would be about it. I do not really see where 15' from what zoning says is so egregious that I would say it's against the spirit of the zoning.

SDL: That's another thing -- if it were setting precedent -- but this was the last developable property.

LMS: If everybody else was 100' and these people wanted to be different from that, then I would say that the clear spirit of the zoning argument here -- here is an area keeping with zoning regulations, doing what they wanted to do -- someone wants to differ. Developer who wants to get much closer to the law.

HEB: You have answered to my satisfaction the question of practical difficulty and unreasonable hardship -- I think that in my thoughts here -- the Director of DEPM and his staff obviously viewed the subject site and after extensive negotiations for 1-1/2 years, felt that this was a unique property for the planned development.

LMS: And so did the Planning people --

HEB: The question is -- would the granting of the variance be detrimental to the surrounding area. Petition for Variance was approved by the Office of Planning & Zoning -- does the variance request affect residential dwellings -- across the road is public park. 15' setback variance is actually less than that of other property owners along Falls Road. I feel that the question in my mind, as in many cases on Cromwell v. Ward, is this thing of unique -- for that reason, I think, in my comments, I had to go along with Mr. Gerber.

LMS: It's always struck me that Cromwell v. Ward is one of the most followed cases I've ever seen; a case where they have gone back and said they granted so few variances -- we are not here to rubber stamp; where we have agonized over Cromwell v. Ward, more times we have said no than yes. And I look at this issue, is the problem -- uniqueness is never black and white issue.

It's very often perception on whether or not it's unique; I keep trying to define unique. North v. St. Mary's County case -- even though they are not here officially -- again I am a

trial attorney -- I read and write briefs a lot; I read the briefs here a lot and broke down the pages and re-packaged it to read both sides at the same time; I'm not as -- I think the North case is a real extreme one -- in the sense that it's based upon a statute, as all of these cases are, and the statute in St. Mary's County is very strict. The Court was probably correct in what they did. Let's look at why everyone says it's unique or not unique -- interesting thing is that everything is already developed. Is it unique in terms of topography? Is it only unique as to topography; unique in terms of use; unique in terms of comparison with other properties already there?

For instance -- everything is already developed; if so, are we comparing it to those properties as they presently are being used? Or do we say we cannot compare them because it could be changed next year?

HEB: My consideration was strictly the land.

LMS: Is it only the topography? There's another question -- yes, they all have streams; they have slopes; the colored lines cut through a bunch of the properties.

HEB: Do they all have easements?

LMS: Something that struck me was someone's comment -- that the building envelope had been reduced to almost zero because of the easements and some of the other things -- stuck with the fact that -- sure they all have some of these characteristics, but are the characteristics, does uniqueness come at a matter also of degree?

HEB: They are not comparable.

LMS: Is it unique formation -- are they all the same shape, size, made of dirt not gravel. Or is it unique in the sense they are different from the others in sense that the degree -- the thing that's hanging me up is that they share things but the impression I got from the exhibits and testimony, frankly, Wolf, impressed me as a witness. In his discussion of angles, of what could or could not be done. It's obvious from the pictures, and even in the charts, that whatever existed in that swath of land making up the area is in a more extreme extent on this property than others.

Is it different -- substantially different? It's a judgment call; would then make it unique if it's substantially different; not related to other properties. Add to that the

assessment issue -- and it makes it a little more objective than subjective.

I would like to see you take your land as you find it -- meaning everyone else has already developed it before the zoning -- unique in that it was after the zoning; not sure that holds up; Cromwell is a fine case, but something needs to be defined further.

Seems that I am moved that you cannot look at things in a usual context that they are; not black and white but degrees. In terms of degrees, this property is different in degree and in its effect on an attempt to develop it than the other properties are in.

For objective reasons, and for some subjective reasons, that I'm talking about -- Cromwell gives you that wriggle room. No way does it say it's a black and white issue.

I think Cromwell and the judges want to do this. Do not define things because they do not want to deal with the issues they don't want to deal with. Maybe somebody someday will say what we are talking about.

If something is different, unique -- and we are the ones to decide that -- and if someone disagrees with us, we may find answer from a judge but given things the way they are now, I would say that I find it's unique under Cromwell, so I would say that variance should be granted.

HEB: I would like to review again some of the things I closed with the variance -- granting of the variance -- does not affect residential dwellings; 15' setback variance is actually going to place his farther from the road than the other structures existing -- I would like to have driven that road; I don't know the area at all.

But I would imagine that this type building would not detract from the rural scenic drive. But that answers really the question of detriment to surrounding area. It will not be.

But uniqueness is what I was hung up on; and Mr. Gerber's testimony. In most of the cases, I have heard of (very impressive); but I think I can appreciate what Mr. Wolf said -- Landrose property is not impacted as much -- do they have easements?

SDL: There was no testimony.

LMS: No testimony to that.

As Mr. Wolf said, these features existed everywhere -- to the extent they are on this particular property. That in itself -- I agree with what you said is reasonable; this property is unique -- I would also agree, based on what you said, that variance should be granted.

LMS: Okay. Now what we need to do is the development plan. If we had determined to deny the variance, that probably would have rendered moot a lot of discussion about community in meetings, and so forth as to the development plan. Appropriate that we will now go into some detail and discuss it.

Fifteen days from today, the decision must be issued. After the 10:00 a.m. case today, we will deal with the development plan in this matter and arrange for the writing of the opinion.

Thank you.

Respectfully submitted,

Matthew C. Bianco
Matthew C. Bianco
Legal Administrator

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 40
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180
November 20, 1996

Mr. Frederick H. Klaunberg, Jr.
1640 Belfast Road
Sparks, MD 21152

RE: Civil Action No. 03-C-96-10921
Klaunberg Property North /PDM III-389

Dear Mr. Klaunberg:

In response to your request, the reason your name was included in the notice of civil action, was in the normal course of events of notifying key players of the Petition for Judicial Review filed in the Circuit Court for Baltimore County, your name was picked up from the original file.

Since the Circuit Court corresponds with only the attorneys in this case, you will not receive any other notices from the Court. If you would like to have your name removed, please contact Michael T. Wyatt, Esquire (882-1013) or the Circuit Court for Baltimore County (887-2614).

Thank you for notifying us of your current status; we will note our file.

Very truly yours,
Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

C: Michael T. Wyatt, Esquire



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-1353
Fax: (410) 887-5708

January 29, 1998

John H. Richl, IV
The Richl Essex Company, Inc.
2212 Old Court Road
Baltimore, Maryland 21208

Dear Mr. Richl:

Re: Case No. 94-368-A - 6500 Falls Road, 3rd Election District

County Executive C.A. Dutch Ruppersberger has requested that I respond to the concerns raised in your January 8, 1998, letter.

Although we fully understand the frustration you feel about the delays caused by incessant appeals taken by those opposed to a proposed development and recognize the burden this places on any proposal, it all must be placed into context. We this morning would agree that there must be due process provided to both the applicant and the proponent of any proposed development. The question, therefore, must be, how much is too much due process? To this issue, there is no answer. How much due process should be permitted to someone who is charged with a crime or to someone who has been a victim, to a person next to whom a development is proposed or to the applicant who is proposing the development?

When the county council was debating changes to the development process in 1991, local communities argued strenuously for more meaningful input into the development approval process, while the development community argued for a more expeditious plan and building permit review process. The outcome was an amalgam of both. Communities were provided the opportunity to make their concerns known at community input meetings and to make their objections known at a development plan hearing. The development community was guaranteed more expeditious review and approval. The hearing would be conducted by an impartial hearing officer, who would have the authority to approve, deny, or amend the proposed project. As a counterpart to this increased input provided to local communities, the new law severely limited the ability to have the hearing officer's decision reversed on appeal. The new law requires that the appeal be heard on the record made before the hearing officer. This means that the county board of appeals cannot reverse the hearing officer's decision unless there was an illegality or the decision was arbitrary. The board cannot impose its own decision. In addition, the board must hear the

appeal within a mandated time frame. If an appeal were to be taken, the council ensured that the appeal would be heard and decided more quickly than before.

These changes were within the prerogative of the county council. What the council cannot do is to prohibit appeals to the courts. Today, society is more litigious, more sophisticated. We know how to make use of the "system" as never before. The biggest criticism communities had about the development process over the years was the ability of the developer to "play the system." It is obvious that the communities have joined the "game" and are now equally adept at "playing the system." We have constructed brakes and warning lights into the system; we have raised red flags to warn anyone who is proposing to take a frivolous appeal. The ultimate arbiter, however, regardless of whether an appeal is unwarranted, is the courts to which the appeal is taken. For instance, on any appeal from circuit court to an appellate court, there is a provision for a bond to be required of the appellant. Did your attorneys move to have the court require a bond? The law is that the person appealing must be "aggrieved." The courts have defined the term. One who lives in Hunt Valley and appeals a project for Sparrows Point would not be "aggrieved" as that term has been defined. Therefore, such a person would not be permitted to take an appeal. In fact, county law defines the term, and while it is broader perhaps than that which is used by the courts, it would prevent such an occurrence as you cite.

We agree that frivolous and unnecessary appeals should not be permitted. Our laws have attempted to address the issue by requiring that the appellants be "aggrieved" and that they spell out the reasons for the appeal. Additionally, the appeal must be taken in a certain time frame and the appeal hearing before the board must be heard expeditiously. The ultimate questions you unwarranted or frivolous, then the courts should make that clear when rendering its decision. It should avoid costs and damages. It has the authority.

It is the county council's responsibility to ensure that everyone has the opportunity to be heard in a meaningful manner. We believe that the current law provides for that and establishes reasonable parameters within which this is assured. While not perfect it is the best we can do. We will continue to look at the system, weigh the merits and the problems, and change it if it is deemed appropriate in order to make it better.

Sincerely,

Arnold Jablon
Arnold Jablon
Director

A/J:ab

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: October 27, 1999
Permits & Development Management
FROM: Charlotte E. Radcliffe
County Board of Appeals
SUBJECT: Closed Files:
Case No. 94-368-A / 6500 Falls Road, LLP riding
w/ CBA-96-148 / Klaunberg North - PDM III-389
Case No. R-95-137 / Larry E. Knight

Since no further appeals have been taken from the Circuit Court opinions, we are hereby closing and returning the Board's case files to you herewith. The original/certified files and exhibits will be returned to your office by John Almond, Records Manager /CC.

Attachments: -Case 894-368-A (CBA-96-148 - PDM file PDM III-389 return - Chris Rocke)
-Case 89-95-137 w/ 2 photo board exhibits

JAMES G. GREEN
CONSULTANT APPRAISER
1111 15th Ave NW
Baltimore, MD 21202
(410) 276-2755

June 10, 1998
Baltimore County
Office of Planning & Zoning
County Office Building
Towson, MD 21204

Re: Zoning case 98-388-A - 54-368-A
6500 Falls Road

Gentlemen:

The undersigned represents ownership of property in the Bare Hills area, from some 30 years ago and within a short distance from the above location. I am writing in support of the petition for an Office Building and feel it is provides a natural transition from a "BL" area into the residential areas some distance north and east of petition location.

In addition, this proposed building will be an improvement to the intersection of Falls and Pimlico Roads - providing better sight lines for traffic and improved landscaping from the current overgrown condition.

for FALLS ROAD ASSOCIATES
1501-08 Saratoga Road

James G. Green, Managing Partner

12 1998

MARLOW & WYATT

ATTORNEYS AT LAW
404 ALLEGHENY AVENUE
BALTIMORE, MARYLAND 21204
(410) 821-1813
TELEFAX (410) 821-5432

WILLIAM F.C. MARLOW, JR.
MICHAEL T. WYATT
ADMITTED IN MARYLAND AND
THE DISTRICT OF COLUMBIA

June 11, 1998

The Honorable Suzanne Mench
Clerk
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: 6500 Falls Road, LP
Circuit Court Case No: 03-C-96-10921
Court of Special Appeals, September Term, 1997 PHC No. 1188

Dear Ms. Mench:

I am enclosing Mr. Fernando's June 2, 1998 letter relative to my request for inclusion to the record a transcript of the April 12, 1996 hearing portion of the above-referenced matter. It appears that, after Appellants failed to have this tape transcribed in their various prior appeals, the tape is no longer available for use in the present appeal to the Court of Special Appeals of Maryland.

Accordingly, I would appreciate your including a copy of this letter in the record.

Very truly yours,

Michael T. Wyatt

MTW:gle
Enclosure:
cc: Henry R. Lind, Esquire
Ms. Catherine C. Blum
The Honorable Lawrence E. Schmitt
Ms. John I. Rader
Ms. Thomas E. Koch

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MARLOW & WYATT
ATTORNEYS AT LAW
404 ALLEGHENY AVENUE
BALTIMORE, MARYLAND 21204
(410) 821-1813
TELEFAX (410) 821-5432

WILLIAM F.C. MARLOW, JR.
MICHAEL T. WYATT
ADMITTED IN MARYLAND AND
THE DISTRICT OF COLUMBIA

March 28, 1998

VIA HAND-DELIVERY

Lawrence E. Schmidt
Zoning Commissioner/Hearing Officer
Baltimore County, Maryland

RE: Project No. III-389
6500 Falls Road
Hearing Date: April 9, 1998 at 2:00 PM

Dear Commissioner Schmidt:

This firm represents 6500 Falls Road, LLC and Messrs. Koch and Riehl, owner and principals thereof, respectively, of the above-referenced real property. This will confirm that my clients and I will be prepared to go forward at the April 9, 1998 hearing with witnesses and evidence on the substantive development issues. In the event you wish for us to brief prior to the hearing the procedural issues raised in Mr. Jablon's March 25, 1998 letter, please let me know. Otherwise, we can treat same as a preliminary matter at the hearing.

Thank you for your kind attention and courtesies in this regard.

Very truly yours,

Michael T. Wyatt

cc: Mr. Arnold Jablon, Director
Dept. of Permits & Development Management
Mr. Timothy M. Wolfe, P.E.
Mr. Thomas E. Koch

ALTERNATE LTR
for 3/28/98



Baltimore County
Department of Permits and
Development Management

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

June 2, 1998

Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Baltimore, MD 21204

RE: Tape Duplication
Hearing Case #94-368-A and
PDM #11-389

Dear Mr. Wyatt:

In response to your letter to Ms. Suzanne Mench of Circuit Court for Baltimore County, the tape records of the above referenced hearing is no longer available. It is the practice of the zoning office to re-use all tapes after one year of the actual hearing date.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Very truly yours,

Ann R. Fernando
Planner II
Zoning Review

JRF:gcj

DEVELOPMENT PLAN CONFERENCE AND HEARING OFFICER'S HEARING
NOTIFICATION

NAME OF DEVELOPMENT: 6500 Falls Road (A.K.A. Klaunberg North)
Location: NW Corner of Old Pimlico & Falls Road

Dear Sir or Madam:

In anticipation of a public hearing on the above referenced project, I am enclosing a copy of the development plan we have filed with Baltimore County. The Hearing Officer's Hearing (and combined Zoning Hearing, if required), scheduled by the Department of Permits and Development Management of Baltimore County, is as follows:

Hearing Date: April 9, 1998 Time: 2:00 p.m.

Hearing Location: Room 106 of the County Office Building
111 West Chesapeake Avenue, Towson, MD 21204

As you are probably aware, the attached plan will receive a thorough review by appropriate agencies for compliance with applicable State and County regulations. Agency comments will be presented to the developer's representative at the Development Plan Conference to be held on March 20, 1998 at 10:00 a.m. in Room 123 of the County Office Building (COB), 111 West Chesapeake Avenue, Towson, MD 21204. The purpose of this conference is to ensure a coordinated review among agencies for the development plan proposal. You are invited to observe this exchange between county staff and the developer, however, the public hearing will provide the proper format for citizen comment.

Please accept this letter as written notification that agency comments, responses and recommendations as required by the County Code will be available in the official file in Room 123 of the COB, until five (5) days preceding the public hearing. At that time, the file will be forwarded to the Hearing Officer/Zoning Commissioner in preparation of the hearing.

Should you have any questions or concerns regarding this matter, you are encouraged to attend the public hearing. For further information, you may also contact the Department of Permits and Development Management at (410) 887-3335.

Respectfully yours,

6500 FALLS ROAD L.L.P.

Enclosure: Development Plan
cc: PDM/Development Manager, 111 West Chesapeake Avenue, Towson, MD 21204

NICK LAMBROS ASSOCIATES

March 25, 1998

Baltimore County Office of Planning & Zoning
111 W. Chesapeake Ave.
Room 123
Towson, Maryland 21204

RE: Property at Old Pimlico & Falls Road

To Whom It May Concern:

Recently I was able to meet with Thomas E. Koch who is developing the property adjacent to the south of mine at 5510 Falls Road. We were able to discuss the project in detail working from a plan showing scaled side elevation and plat showing location of the structure and its parking and landscaped areas.

I voiced my concern that the brick finish material be on the sides of the building as well as the front. He assured me that it would. My only other concern was regarding the retaining wall needed at our shared property line. He assured me that it would be approximately three feet at the highest point; not the six or more feet which I had been expecting.

All in all I think Mr. Koch's plans will be a definite improvement to the neighborhood, keeping most of the forest in tact while creating clearer and safer sight lines for motorists traveling Falls Road.

After talking to Mr. Koch, I have confidence that the quality level of the project will be very high and I am looking forward to having them as neighbors.

Sincerely,

Nick Lambros
6510 Falls Road
Baltimore, MD 21209

NL:jh

cc: Thomas E. Koch



County Board of Appeals of Baltimore County

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

November 8, 1996

Michael T. Wyatt, Esquire
404 Allegheny Avenue
Towson, MD 21204

RE: Civil Action No. 03-C-96-10921
KLAUBERG NORTH PROPERTY
6500 FALLS ROAD, LLP

Dear Mr. Wyatt:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Second Petition for Judicial Review was filed on October 31, 1996, 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. 3-C-96-10921.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Thomas Koch and John Riehl / 6500 Falls Road, LLC
Frederick H. Klaunberg, Jr.
Timothy W. Wolfe / Spotts, Stevens & McCoy, Inc.
Pat Keller
Lawrence E. Schmidt
Arnold Jablon / PDM
for Baltimore County
Douglas N. Silber, Asst. County Attorney
Virginia W. Barnhart, County Attorney

CBA-96-1116 and 96-158-A, Klaunberg Property North
File No. 3-C-96-10921 (Second Certificate of Notice)

SECOND CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Lawrence M. Stahl, S. Diane Levero, and Harry E. Buchheiser, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Second Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Henry R. Lord, Esquire, PIPER AND HARBURY, LLP, 36 South Charles Street, Baltimore, Maryland 21201, Attorney for Robert E. Lee Park Conservancy, Inc., et al; Robert E. Lee Park Conservancy, Inc., et al, 912 Rolandus Avenue, Ruxton, Maryland 21204, Petitioners; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204; Frederick H. Klaunberg, Jr., 6400 Falls Road, Baltimore, Maryland 21209; Thomas Koch and John Riehl, 6500 Falls Road, LLC, 19 Inverlin Circle, Timonium, Maryland 21093; Michael T. Wyatt, Esquire, MARLOW AND WYATT, 404 Allegheny Avenue, Towson, Maryland 21204, Counsel for 6500 Falls Road, LLC; and Douglas N. Silber, Assistant County Attorney, 400 Washington Avenue, 2nd Floor, Towson, Maryland 21204, 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

The Pleasant View Civic Association

1415 Linden Avenue
Baltimore, Maryland 21209

September 4, 1996

Mr. C. William Clark Esq.
Suite 700, Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204

Enclosed are the minutes of the Pleasant View Civic Association meeting on June 2, 1996, as requested.

It should be noted that it is the policy of the Association to have the President appoint spokesmen for public meetings or hearings when the President is not available. I appointed Mrs. Natalie Bunday, recording secretary, to speak at the 6500 Falls Road hearings.

Sincerely,

Gladys G. Reed
Gladys G. Reed
President

Dear Mr. Radcliffe,
I would appreciate your addressing reason for my name being included in this notice of civil action. I have not owned the subject property for approximately 18 months. Also, please note my correct mailing address.

FREDERICK H. KLAUNBERG JR.
1640 BELFAST RD.
SPARKS, MD. 21152

Sincerely,
Fred Klaunberg

GENERAL MEETING

Pleasant View Civic Association 6/2/96 D. Brown residence
The meeting was opened by the President with an inspirational song. Minutes from previous meeting received and adopted. Treasurer's report given. Minutes 1/22/96 as of 4/30/96.

Neighborhood notes Mrs. Smart is moving and her house will be on the market. Girl has been sent wishing her well in her new home. Acknowledgment for plants received from Doris Davis, Valerie Brown and Mary Turner. One sent to Cathy Powell, also.

Community Concerns

MTA Falls Road Light Rail Station Exposition
Mrs. Brown and Mrs. Bunday represented the Association at the Community Working Group meeting on May 21, 1996 concerning "Information Summary" of April 27, 1996. Mrs. Brown and Mrs. Bunday expressed concern that only 2 of 8 community organizations were represented and a fear that others are no longer interested in opposing the expansion. It was agreed that all one failing a letter would be drafted with conditions being listed. That

1. MTA agree that no additional parking would be requested in the future.
2. Barriers be erected to prevent any customer infringement on surrounding property.
3. Posting and prosecution be enforced for all violators.

Community Concerns Continued

Development 6500 Falls Road
Mrs. Reed, President, Mrs. V. Brown, Vice President, and Mrs. Bunday, Secretary, attended "Community Input" meeting on May 7, 1996, matter having been received by Hearing Officer since matter last presented was March 1994. The President stated that this is the Klaunberg site which the Association had assumed had been denied building permit because of stream and buffer set backs. The Department of Permits and Development Management called the meeting to order. The Department of Environmental Protection and Resource Management (DEPRM) has now permitted off site mitigation and has approved the concept as of March 5, 1996 of drainage area of Jones Falls on another site in the vicinity of Thornton Road.

"The Association" (PWCA) will go on record, as in 1993, opposing any building at the 6500 Falls Road site that cannot be constructed with present restrictions remaining unchanged.

LEGAL OFFICES

NOLAN, PLUSHOFF & WILLIAMS
CHARTERED
SUITE 700 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-6340
(410) 823-7800
TELEFAX (410) 296-2705

NOLAN, PLUSHOFF & WILLIAMS
CHARTERED
SUITE 700 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-6340
(410) 823-7800
TELEFAX (410) 296-2705

JAMES D. NOLAN
J. CARLE PLUSHOFF
JAMES D. NOLAN
J. CARLE PLUSHOFF
JAMES D. NOLAN
J. CARLE PLUSHOFF

9 September 1996

Mrs. Kathleen C. Blanco
Legal Administrator
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: 6500 Falls Road, LLP
(a/k/a Klaunberg North)
CBA-96-120

Dear Ms. Blanco:

Enclosed please find the Rule 8 materials with regard to The Pleasant View Civic Association.

Should you have any questions, please feel free to contact me.

Very truly yours,

Charles C. Clark
C. William Clark

CWC:hc

Enclosure

cc: Michael T. Wyatt, Esquire

Community Concerns Continued

Adopt-Vital request for rezoning S.24 acres from SR 3-5 to SR 10-5
Zoning Issue 2-024

Planning Board Hearing was scheduled at Mondelltown High School on May 16, 1996 at 7:30 P.M. Mrs. Bunday spoke for the Association in opposition to any change The County Council will meet on Sept. 10, 1996 at Pikeville Senior High School at 7 P. M. Councilman Fremont will meet with constituents concerning 2nd district rezoning issues. It was agreed that some members would attend on 7/10/96 at Liberty Road District Office, Liberty Resource Center-3525 Resource Drive 6-8 P.M.
Final approval for zoning map is scheduled for 10/6/96.

Ideas for Future Meetings

Mrs. Valerie Brown suggested that the Association could invite Mr. Linwood Johnson to speak on Historical Negro Communities in Baltimore County.
Another suggestion was to invite Mrs. Marie Brown to hear her thoughts concerning the Scott district as it relates to our community.

Other notes of interest

Thelma Lorraine has been accepted at St. Paul's School for girls having finished Rodgers Forge as an "A" student.
Through the efforts of Mr. Wallace Rev. Carter's dog is now being walked on a leash.

The meeting was adjourned.

Respectfully submitted,
Natalie Bunday
Recording Secretary
Gladys Reed
President

03-96-6-43555

The Lake Roland Protective Association
1203 Hollins Lane, Baltimore MD 21209

RESOLVED: That at the May 20, 1996 meeting of the Lake Roland Protective Association it was decided by the Association that the responsibility for review and action and testimony on zoning matters regarding Klauenberg North be handled by the following members:

Jane Lawrence
Henry Lord
Sarah Lord
Robert Macht
Helga Morrow

ATTEST: The Lake Roland Protective Association

Jane Lawrence
President

Sarah Lord
Secretary/Treasurer

Date: 23 August 1996

The Lake Roland Protective Association
1203 Hollins Lane, Baltimore MD 21209

RESOLVED: That the position of the Lake Roland Protective Association as adopted by its members in the zoning matter known as: Klauenberg North / PDM III-389
CRA-96-148
-94-368-A

is to oppose the proposed development. Please see attached minutes of 5-20-96 meeting.

AS WITNESS OUR HANDS THIS 23rd DAY OF August 1996

ATTEST: The Lake Roland Protective Association

Jane Lawrence
Secretary/Treasurer

Sarah Lord
President

The Lake Roland Protective Association
1203 Hollins Lane, Baltimore MD 21209

Minutes of 5-20-96 Klauenberg North Meeting

Yesterday this Association, together with members of The Falls Road Scenic Route Group, met at the home of Gail Stetten, president of The Falls Road Scenic Route Group. The purpose of the meeting was to discuss the status of "Klauenberg North" (PDM III-389) aka. "6500 Falls Road" and to vote on whether legal action and fundraising for such action should be undertaken.

Bruce Boswell reviewed the developer's blueprints, while Sarah Lord, Jane Lawrence and Helga Morrow led discussion of the development's progress through the bureaucracy, from 12-21-92 to the present.

It was unanimously RESOLVED that since:

this proposed development has been a concern for our neighborhoods since the 2-8-93 community input meeting -- long after the passage of 12 months;

the site is rocky, extremely steep, contains two streams and the developers seek to place an office building cluster in Falls Road (to Baltimore County Scenic Route) than regulations allow;

the trading of on-site abate for off-site mitigation is in effect new policy by DEPRM which needs to be challenged;

the radical nature of the DEPRM's attempt to force buffer regulations (permission to build 10 feet instead of the required 125 feet from one stream) necessitates an appeal;

the casual granting of environmental and zoning variances, when "uniqueness" does not exist, needs to be challenged;

the abused condition of the two streams demands mitigation but the County requires none;

there are these streams contribute to the degradation of Lake Roland the Lake Protective Association, together with The Falls Road Scenic Route Group and other interested associations, would oppose the Klauenberg North development, would appeal the County's granting of permits, would hire legal counsel. It was agreed that LRPA members Jane Lawrence, Harry & Sarah Lord, Robert Macht and Helga Morrow (president), together with TYRSRG members Bruce Boswell and Gail Stetten (president) are authorized to represent us at upcoming hearings and in court appearances re Klauenberg North. Contributions should be made out to the Lake Roland Protective Association and mailed to 1203 Hollins Lane.

Respectfully submitted

Sarah Lord
Sarah Lord, Inter Chair
5-21-96

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY

TO WIT

I hereby swear upon penalty of perjury that I am currently a duly elected member of the board of directors and of the zoning committee of the Lake Roland Protective Association.

Sarah Lord

ATTEST:

The Lake Roland Protective Association

Jane Lawrence
Secretary/Treasurer

Helga Morrow
President

Date: August 23, 1996

The Lake Roland Protective Association
1203 Hollins Lane, Baltimore MD 21209

Hon. Lawrence E. Schmidt, Esq.
Hearing Officer/Zoning Commissioner
Office of the Zoning Commissioner
Suite 111, Old Court House
400 Washington Avenue
Towson, MD 21204

July 24, 1996

Case No. III-389 & 94-368-A
Development Plan
Development Plan Approval
and Variances
Klauenberg North
aka 6500 Falls Road, LLC

Dear Commissioner Schmidt:

Please enter an appeal to the Board of Appeals of Baltimore County from your adverse ruling, as Hearing Officer and as Zoning Commissioner, in the above cases.

This appeal is on behalf of the Robert E. Lee Park Conservancy, Inc., 912 Roland Avenue, Baltimore MD 21204; the Ruxton-Ridderwood-Lake Roland Area Improvement Association, Inc. PO Box 204, Ridderwood MD 21139; the Pleasant View Civic Association 1415 Gardman Avenue, Baltimore MD 21209; the Lake Roland Protective Association 1203 Hollins Lane, Baltimore MD 21209; and individuals Jane S.B. Lawrence 6137 Berrell Road, Baltimore MD 21209, and Sarah F. Lord 6134 Berrell Road, Baltimore Md. 21209.

Thank you.

Sincerely,

Sarah Lord

Sarah Lord

12:00 pm 8/26
12:30 pm 8/26
L.S. M

Falls Road Scenic Route Group
6219 Falls Road • Baltimore, MD 21209

June 9, 1996

The Honorable Lawrence E. Schmidt
Hearing Officer/Zoning Commissioner
Old Court House
Towson, MD 21204

Dear Commissioner Schmidt:

I write to you in my role as a concerned citizen, a resident of Falls Road, and as President of the Falls Road Scenic Route Group. Our group is an umbrella organization of community groups along Falls Road which successfully sought Baltimore County Scenic Route designation for this storied, two-lane road, once known as the Falls Road Turnpike. It is one of the few thoroughfares out of the city which retains its sense of history and a suggestion of the rural past. At the time of its scenic route designation, county planners pledged to help us clean up the streetscape and encourage responsible future development.

In light of this pledge, the proposed development by Klauenberg North at the NW corner of Falls and Old Pimlico Roads is shockingly irresponsible.

This development requires many, many variances to important Baltimore County environmental and zoning regulations. It poses so many insoluble site problems that Mr. James Deiter, the former Director of the Department of Environmental Protection and Resource Management denied its forest buffer variance request to years ago. No on-site conditions have changed since that time, so why is the development suddenly moving forward?

We have worked long and hard to preserve what is good about Falls Road, and to keep it from being yet another strip-development, like Reisterstown, York or Joppa Roads, streets which once had real character but which now have none.

In our view the County should strenuously OPPOSE all zoning variances along the Falls Road Scenic Route. Yet the development, Klauenberg North, appears poised to receive an 85-foot setback from a DR-1 zone instead of the required 100-foot setback. This office



Falls Road Scenic Route Group
6219 Falls Road • Baltimore, MD 21209

building, with its dumpster in front, will crowd Falls Road. Moreover, the Falls Road-side parking lot will leave virtually no room for a planting buffer. We ask that you DENY this zoning variance request.

It is also our view that the County should DENY the waiver to storm quantity regulations, since the stream into which this water will flow is seriously abused and in need of mitigation. No on-site mitigation is being required.

We believe as well that the County should NOT be reversing itself by the granting of a 10-foot stream buffer, when a 125-foot stream buffer is DEPRM's acknowledged requirement. Off-site mitigation in trade for the right to ignore important safeguards needed on-site constitutes an inexcusable loophole. The building slope is extremely steep here, and further damage to the stream is inevitable without intervention.

Finally, we urge that the County not give the State Highways Administration cause to require an unsightly bulge in this Scenic Route. We note that Klauenberg North's proposed entrance is so irresponsibly close to the Old Pimlico Road intersection that traffic safety becomes an issue. If the County endorses this development of the west side, SHA intends to carve out a new lane from the serpentine cliff on the east side.

The Falls Road Scenic Route Group urges you to DENY the zoning variance request in case III-389, and further, to deny this ill-conceived development altogether.

Respectively,

Gail Stetten
Gail Stetten
President

CALVERT SCHOOL

FOUNDED 1887
TUSCANT ROAD
BALTIMORE, MARYLAND 21202



Dear Lawrence E. Schmidt, April 6, 1996

I am writing about the Klauenberg Property at Falls and Old Court Roads. This property should not be developed.

- The Traffic Patterns are at issue
- The storm water management quantity controls is unknown
- Other studies are out of date and should be sent back to the drawing board.

In these reasons and others, the Redlined Home Owners Association is against the development of this property. I can be of further help, please contact me at 296-1666. Thank you for your support on this issue.

Sincerely, James M. Bruggeman

County Board of Appeals

Attn: Kathleen C. Weidenhammer
Old Courthouse, Rm. 49
Towson, MD 21204

Re: Hamburg North
CBA-94-156

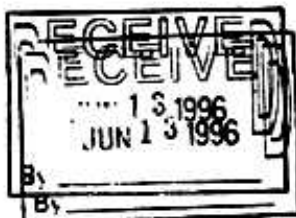
Dear Ms Weidenhammer:

Please withdraw the
~~app~~ above reference appeal.
The parties have reached a
compromise.

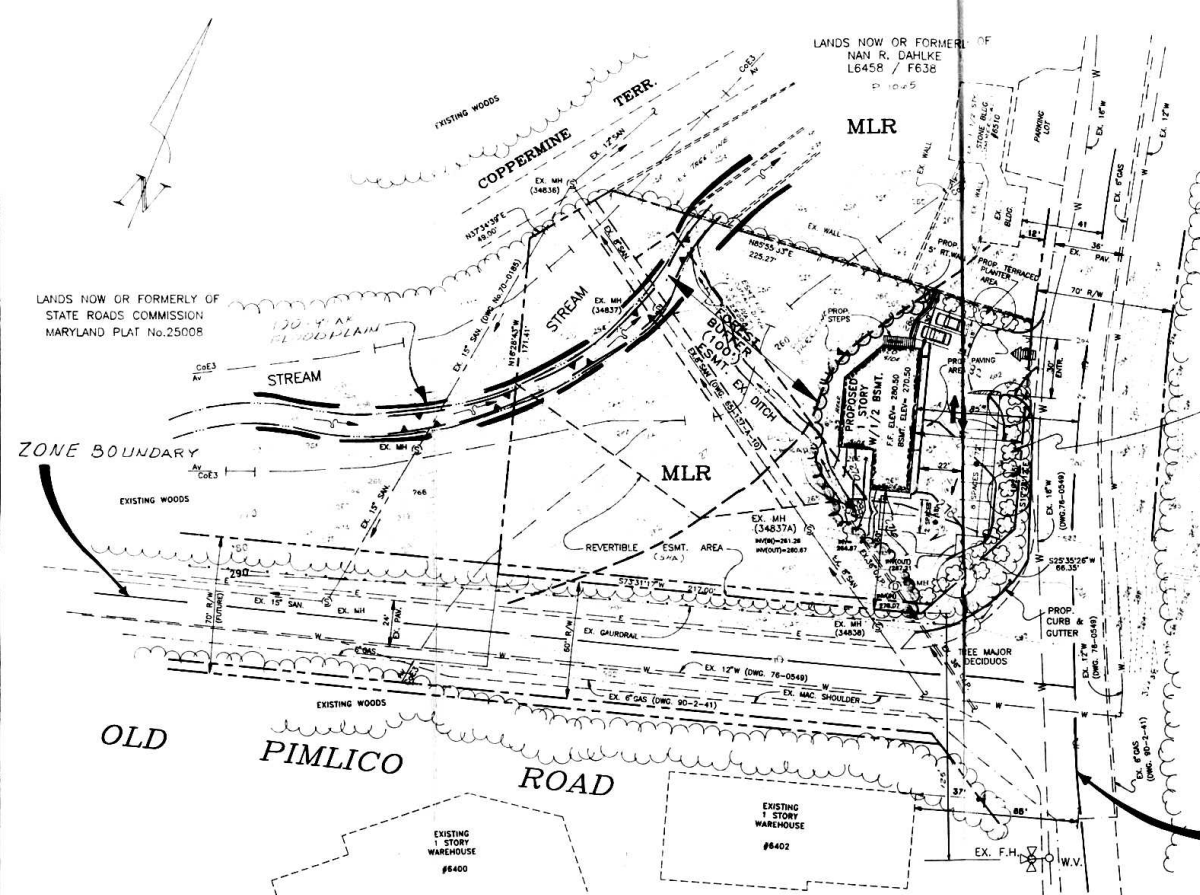
Thank you.

Michael T. Wyatt
Michael T. Wyatt

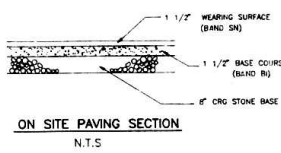
*Petitioner's
No 1*



94-368-A



- LEGEND:**
- GAS
 - W WATER
 - SITE ACCESS
 - WOODS
 - FOREST BUFFER
 - 100yr. FLOOD PLAIN
 - STREAM/DITCH
 - WETLAND LIMIT
 - SOIL LIMITS
 - GAURDRAIL
- LANDS NOW OR FORMERLY OF
FREDERICK H. KLAUNBERG
L6361 / F489
P. 99
- ML-CNS



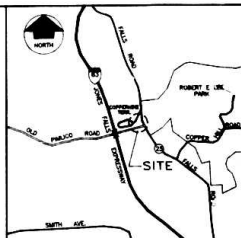
LANDS NOW OR FORMERLY OF
MAYOR & CITY COUNCIL
L6600 / F1
P 549

ROAD
DR1
(MD. RTE. 25)

FALLS ROAD
ZONE BOUNDARY

TAX ACCOUNT No.: 04-03-22000-13321
DEED REFERENCE: L 9414/T 6
TAX MAP: 69
BLOCK:
PARCELS NUMBER:
CURRENT OWNERSHIPS:
FREDERICK H. KLAUNBERG
6400 FALLS ROAD
BALTIMORE, MARYLAND 21209

CENSUS TRACT: 4036.01
REGIONAL PLANNING DISTRICT: 313C
WATERSHED: 24
SUBWATERSHED: 53
ELECTION DISTRICT: 3
COUNCILMAN: 2



VICINITY MAP
SCALE: 1"=2000'

SITE DATA

EXISTING ZONING AND		MAXIMUM DENSITY PERMITTED	
ZONE	GEOSID ACRES	FAR ALLOWED	FAR PROPOSED

MLR	1.28 (55.52)	1.0 (235.50)	0.6	0.08
TOTAL	1.28 (55.52)	1.0 (235.50)	0.6	0.08

SITE DEVELOPMENT PROPOSAL

DWELLING TYPE	PROPOSED SQUARE FEET	PARKING REQUIRED	PARKING PROVIDED
OFFICE BLDG. (GENERAL) (1 STY. w/1/2 BSMT.)	3,630	12.0 (33 SP.)	12
TOTAL	3,630	12.0	12

OPEN SPACE PROPOSAL

OPEN SPACE TYPE	ACRES
BALTIMORE COUNTY GREENWAY/EASEMENT	N/A
STORM WATER MANAGEMENT	N/A
TOTAL PROVIDED	N/A

- NOTES:**
1. PARKING LOTS TO BE PAVED AND STRIPPED.
 2. THERE ARE NO EXISTING WELLS OR SEPTIC AREAS ON THE SITE.
 3. LANDSCAPE REQUIREMENTS REFER TO SCHEMATIC LANDSCAPE PLAN.
 4. STORM WATER QUALITY CONTROL TO BE PROVIDED FOR FIRST HALF INCH OF RUNOFF FROM ALL IMPERVIOUS AREAS.
 5. PUBLIC WATER & SEWER IS AVAILABLE.
 6. ANY PROPOSED SITE LIGHTING NOT TO REFLECT ON RESIDENTIAL LOTS OR PUBLIC ROADS.
 7. THE EXPECTED LEVELS OF POTENTIAL EMANATIONS, INCLUDING SMOKE, NOISE, DUST, ODOR, VIBRATION, CLARE, AND HEAT ARE MINIMUM OR NO MAJOR IMPACT.
 8. APPLICANT IS UNWARE OF ANY HAZARDOUS MATERIALS OR ARCHEOLOGICAL SITES ON PROPERTY.
 9. THIS AREA HAS BEEN IDENTIFIED AS AN AREA OF CRITICAL STATE CONCERN, POSSIBLE PRESENTS OF AN ENDANGERED PLANT SPECIES, AND IS SCHEDULED TO BE INVESTIGATED BY THE MARYLAND NATURAL HERITAGE PROGRAM.
 10. NO WETLANDS ARE PRESENT ON SITE OTHER THAN WITHIN STREAM BED.
 11. THERE ARE NO DELINQUENT ACCOUNTS FOR ANY OTHER DEVELOPMENT WITH RESPECT TO ANY OF THE FOLLOWING: THE APPLICANT, A PERSON WITH A FINANCIAL INTEREST IN THE PROPOSED DEVELOPMENT, OR A PERSON WHO WILL PERFORM CONTRACTUAL SERVICES ON BEHALF OF THE PROPOSED DEVELOPMENT.

- ADDITIONAL INFORMATION**
- ANTICIPATED/SECURED ACTIONS:
- VARIANCES: # 1. TO PERMIT A 85' SETBACK IN LIEU OF THE REQUIRED 100' FROM RESIDENTIAL ZONE LINES (FRONT).
2. TO PERMIT A 0.01 IN LIEU OF THE REQUIRED 25' BUILDING SETBACK FROM 100' FOREST BUFFER @ NW CORNER OF SITE (IS ON FILE WITH DEPRM).
- WAIVERS:
1. A WAIVER OF STORMWATER MANAGEMENT QUANTITY CONTROL WAS GRANTED BY DEPRM ON SEPTEMBER 14, 1993.
 2. A WAIVER OF PUBLIC WORKS STDS. ALONG OLD PIMLICO ROAD (CURB & GUTTER), BASED ON UNIMPROVED SECTIONS OF OLD PIMLICO ROAD ADJACENT TO THE SITE.
- AOT'S=92

DPW #923092
**DEVELOPMENT PLAN/PLAT
TO ACCOMPANY A ZONING
VARIANCE PETITION**
KLAUNBERG - NORTH
6500 FALLS ROAD
BALTIMORE CO., MARYLAND
DISTRICT 3C2

ZADM # III-389



O.S. T.W.W.	MARCH '94
MADE CHECK	APPROVALS
1"=30'	8785 - 004
SCALE	DRAWING NUMBER
	SHEET NO.

J/K	1	ZADM CONNORS - PRE. SUBDIVISION	9/9/94
BY	NO.	REVISION	DATE