

"REMAND FOR FURTHER
PROCEEDINGS"
§ 436.4 A

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0952

September Term, 2001

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

v.

COUNTRY RIDGE SHOPPING
CENTER, INC., et al.

Kenney,
Sharer,
Moylan, Charles E., Jr.
(retired, specially assigned),

JJ.

Opinion by Moylan, J.

Filed: June 3, 2002

The single issue before us on this zoning appeal is whether the Baltimore County Board of Appeals, on a remand to it by this Court, adequately complied with the terms of our mandate remanding for "further proceedings." We hold that, in the procedural and factual posture of this particular case, it did.

More is involved in that holding, however, than at first glance appears. It is necessary that we dissect, at the most elemental level, the very nature and the institutional characteristics of the Baltimore County Board of Appeals specifically and, arguably, of administrative boards and agencies generally. The focus of our examination will be on the impact that periodic changes in personnel have on the institutional continuity and operational vitality of the tribunal itself.

The Pawnshop's Petition For A Special Exception

One of the appellees, Southside Brokers, Inc., is the operator of a pawnshop. Prior to 1995, the pawnshop had been located at 8110 Pulaski Highway. When the lease on that property was about to expire, the pawnshop leased space in the Country Ridge Shopping Center, Inc., the other appellee, located at 1508 Back River Neck Road, and moved to the new location in May of 1996. The shopping center was, and is, zoned B.M. (business major). Pawnshops are permitted in a B.M. zone by way of special exception. Baltimore County Zoning Regulations, §§ 436, 233. Accordingly, the pawnshop petitioned for a special exception at its new location.

Initially the appellees ran afoul of BCZR § 436.4, which the Baltimore County Council had adopted on July 3, 1995. It provides, in pertinent part:

436.4 Special exception petition. In addition to the requirements of Section 436.3 and such other requirements of these regulations relating to a special exception petition, a pawnshop is subject to the following requirements:

- A. Location may not be within a one-mile radius of any other pawnshop, and no more than two pawnshops may be located in a councilmanic district.

(Emphasis supplied).

Invoking that provision, the Zoning Commissioner initially denied the petition for a special exception on January 22, 1996, because the relocation site was within a one-mile radius of an existing pawnshop. On a motion for reconsideration, the Zoning Commissioner on April 19, 1996 reversed his position and granted the special exception. He realized that he had failed to take into consideration the "grandfather" provision of the 1995 bill enacting the one-mile radius limitation, which had further provided:

SECTION 6. AND BE IT FURTHER ENACTED, that pawnshops lawfully in existence and operating on the effective date of this Act are not subject to the requirements of Sections 436.4.

**The County Board of Appeals:
Round One**

At that point, the appellant, People's Counsel for Baltimore County, representing various residents of the Back River Neck Road

area including the presidents of both the Rockway Beach Association and the Back River Neck Peninsula Community Association, appealed the decision of the Zoning Commissioner to the Baltimore County Board of Appeals.

The Board of Appeals conducted two full days of hearings, on November 6, 1996 and March 12, 1997. A public deliberation on the matter was held on April 17, 1997. One witness, the owner of the pawnshop, testified in favor of the petition for special exception. A number of witnesses testified against the petition. On April 30, 1997, a two-to-one majority of the Board of Appeals denied the special exception. In the majority opinion, two strands of reasoning were intertwined. The ultimate outcome of this appeal may turn 1) on the extent to which those separate strands of reasoning are capable of being isolated and independently evaluated and 2) on whether they were actually so isolated and independently evaluated in the Board's decision.

On our present reading, it seems overwhelmingly likely to us that the original majority opinion of the Board of Appeals concluded, with solid evidentiary support for so concluding, that the pawnshop had failed to show, under traditional Schultz v. Pritts, 291 Md. 1 (1981) standards, that it was entitled to the special exception. This apparent conclusion of the Board of Appeals seems to have been completely independent of any consideration of the debatable one-mile radius limitation. The

Board of Appeals initially set out the test that framed its analysis.

BCZR Section 502.1 sets the standards for the granting of a special exception. In this case, the special considerations are 502.1(a) and (g):

- a. Be detrimental to health, safety, or general welfare of the locality involved; and
- g. Be inconsistent with the purposes of the zoning classification, nor in any way inconsistent with the spirit and intent of the zoning regulations.

Using the standard set forth in Schultz v. Pritts, 291 Md. 1, 1981, "the test for considering a special exception is not whether the use will have an adverse effect, but whether the adverse effect at the particular location is greater than ordinarily associated with the use.... Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses. The duties given to the Board are to judge ... whether the use in the particular case is in harmony with the general purpose and intent of the plan."

Properly applying Schultz v. Pritts, the Board then concluded that the pawnshop would have an unduly adverse impact in the intended location.

Using the Schultz v. Pritts standard for granting or denying a special exception--that the proposed use would have an adverse effect above and beyond what it would ordinarily have in any area--it would appear that a pawnshop would have more than the usual adverse effects in the area of the Country Ridge Shopping Center, because the location is the focus of intense efforts at revitalization.

(Emphasis supplied).

The Board emphasized that the neighborhood is "the highest priority revitalization area."

Contrary to the opinion of the Zoning Commissioner, who granted this Petition, we feel compelled to recognize the qualitative judgments of the County Council and the uncontradicted testimony that this section of Essex is in the highest priority revitalization area, has the highest incidence of negative socioeconomic indicators, and has the highest incidence of major crime in the County. These adverse effects are greater in the subject neighborhood than they would be elsewhere within the zone, which is a persuasive reason for denial of the special exception for a third pawnshop in the Essex area.

(Emphasis supplied).

At that point, to be sure, the opinion of the Board of Appeals did not stop and announce that its reasoning to that juncture was self-sufficient to justify its decision. Had it done so, this appeal would not now be before us. The Board added to its catalogue of reasons, seemingly as little more than a makeweight, the one-mile radius limitation.

Because that locational limitation was recited as one of the factors, however, it became necessary for the Board to address the applicability of the "grandfather" provision to the relocation in this case. As the Board approached its analysis of the "grandfather" clause's applicability, it seemed to be under some arguable misapprehension as to the scope of the "grandfather" clause exemption, if applicable. It is a plausible reading that the Board of Appeals believed that the Zoning Commissioner had erroneously deemed the "grandfather" provision to be not only an exemption from the one-mile radius limitation but, more broadly, an exemption from the required showings for a special exception

generally. The Board itself made an ambiguous reference in the plural to "[1] special exception and [2] locational requirements."

In this Majority Opinion, we concur that the Council, in Section 6 of Bill No. 112-95, did exempt from the BCZR 436.4 special exception and locational requirements for pawnshops lawfully in existence and operating on the effective date of the Act.

(Emphasis supplied).

In any event, the Board of Appeals ruled that the "grandfather" clause exemption from § 436.4's one-mile radius limitation applied only to pawnshops that remained in place and not to those that were being relocated. On appeal to the Circuit Court for Baltimore County, the Board of Appeals was affirmed.

The Opinion and Mandate of the Court of Special Appeals

The appellees appealed the denial of the special exception to this Court. The case before us focused on whether the "grandfather" clause exemption covered a pre-existing pawnshop that was in the process of relocating. Our opinion, filed on July 21, 1999, reversed the rulings of the circuit court and of the Board of Appeals and held that the "grandfather" clause exemption from the one-mile radius limitation, indeed, applied to pawnshops that were in the process of relocating.

The backbone of our opinion was our statutory construction of Baltimore County Council Bill No. 112-95, which had, on July 3, 1995, adopted both 1) the one-mile radius limitation itself, which became BCZR § 436.4; and 2) in § 6 of the Bill, the exemption for

pawnshops already in existence. We held that both the Board of Appeals and the circuit court had been unduly restrictive in their construction of the exemption.

We made it very clear, however, that the exemption for a preexisting and relocating pawnshop was only from the locational requirement specifically and not from the Schultz v. Pritts special exception requirements generally. Those general requirements still had to be satisfied.

This does not mean, however, that Appellant is entitled to have its special exception in this case granted, as a matter of law, on the record before us. There are other statutory requirements requiring favorable findings before a special exception may be approved.

(Emphasis supplied).

Our opinion then confronted the problem of how to frame an appropriate remand. We were not sure what it was that the Board of Appeals had actually done. On the one hand, the Board of Appeals noted that the County Council had, in Bill No. 112-95, "provided a statement of purpose and a set of performance standards in regard to the situation for pawnshops" and had used such terms with respect to pawnshops as "adverse effect," "particular location," and "disruption of the harmony of the comprehensive plan of zoning." Using the Schultz v. Pritts standards, the Board had then unequivocally concluded

that the proposed use would have an adverse effect above and beyond what it would ordinarily have in any area--it would appear that a pawnshop would have more than the

usual adverse effects in the area of the Country Ridge Shopping Center.

(Emphasis supplied).

After cataloguing the especially sensitive characteristics of the Back River Neck Road neighborhood, the Board, with no mention yet of the locational requirement, asserted what may well have been its dispositive conclusion.

These adverse effects are greater in the subject neighborhood than they would be elsewhere within the zone, which is a persuasive reason for denial of the special exception for a third pawnshop in the Essex area.

(Emphasis supplied).

If, indeed, that is what the Board meant to do, its further mention of the locational requirement was both redundant and unfortunate. As a good rhetorician frequently does, however, the Board chose to unleash maximum firepower. The barrage of persuasion included, counterproductively it turned out, a mention of the locational factor. The Board neither asserted nor disclaimed that factor as a sine qua non of its decision.

This Court in its opinion opined that, if the locational factor had, indeed, influenced the Board's decision, the Board's decision was flawed.

[A]n existing pawnshop seeking to relocate, though it must otherwise obtain a special exception as to the proposed new location, is entitled to have its special exception application evaluated free of the standards prescribed in Section 436.4.

In the last analysis, however, we were not sure if the factor had played a part in the Board's decision and we concluded, therefore, that a "new consideration" by the Board would be "necessary." We did not presume, however, to micromanage how the Board should undertake that "new consideration."

The Board's majority opinion addressed those other requirements somewhat, but did so in a manner that commingled its consideration of those requirements with those of Section 436.4. On remand a new consideration of Appellant's application will be necessary.

(Emphasis supplied).

Our mandate read:

CASE REMANDED TO THE CIRCUIT COURT WITH DIRECTION TO
REMAND TO THE BOARD OF APPEALS FOR FURTHER PROCEEDINGS IN
ACCORDANCE WITH THIS OPINION.

A Complicating Factor: The Change of Personnel

The Board that initially denied the special exception on April 30, 1997, consisted of three members. S. Diane Levero and Harry E. Buchheister, Jr., issued the majority opinion. Charles L. Marks was in dissent. By the time the Board, on remand, issued the decision now under review on December 13, 2000, Ms. Levero and Mr. Buchheister were gone. They had been replaced by Donna M. Felling and Margaret Worrall. Mr. Marks remained as a holdover member of the Board.

**The County Board of Appeals:
Round Two**

The two new members of the Board of Appeals "reviewed the testimony and record" of the earlier denial of the petition by the Board in 1997. A full public deliberation was held by the Board on August 16, 2000. The detailed Minutes of that Deliberation reflect discussions among the members about 1) the opinion of the Court of Special Appeals and 2) the remand and its implied directive to examine whether the "adverse impact" in the requested location would be "greater than elsewhere in the zone."

By a two to one vote, the Board again voted to deny the special exception. The majority noted its special reliance on the testimony of Mary Emmerick, the Eastern Sector Coordinator for the Baltimore County Office of Community Conservation. The majority called attention to her testimony about 1) the neighborhood's "having the highest crime rate in Baltimore County," 2) the public funding that was being directed into special rehabilitation plans for the neighborhood, 3) some federally funded community "cleanup" programs "in the immediate vicinity of [the] Country Ridge Shopping Center," and 4) the characteristics of the shopping center as "a neighbor shopping center" because "many people walk to the center because they do not have use of private transportation."

The Minutes also recited that the majority called attention to the testimony of Orlando Yarborough, who operates a non-profit organization for at-risk families and youth located across from the

shopping center. The majority called attention to the testimony of both 1) John J. Dillon, a 29-year veteran of the Office of Planning and Zoning who had been "accepted by the Board as an expert planner in Baltimore County"; and 2) Captain James Johnson of the Baltimore County Police Department and the Precinct Commander in Essex, who testified that "the area immediately around the Country Ridge Shopping Center suffers from some of the highest public safety warning indicators in all of Baltimore County--a scourge of narcotic activity, recently a rash of robberies, socioeconomic decay." The majority members also noted reliance on "documenting materials" from the Baltimore County Council and the Baltimore County Planning Board.

On December 13, 2000, the Board issued a ten-page Majority Opinion and an eight-page Dissenting Opinion by Charles L. Marks. By a vote of two to one, the special exception was again denied. On December 19, 2000, the appellees filed a Motion for Reconsideration with the Board, stressing the procedural point that a de novo hearing should have been held because two members of the Board on remand had not been members of the original 1997 Board. On January 12, 2001, the Board unanimously denied the Motion for Reconsideration.

Reversed by the Circuit Court

The appellees promptly appealed both the denial of the special exception and the denial of the reconsideration to the Circuit

Court for Baltimore County. The circuit court on June 13, 2001, reversed the Board of Appeals and remanded for a de novo hearing. In rendering its decision, the court stated:

This Court concedes that a remand from the CSA does not automatically require the Board to hold a new hearing in every case. This Court will also concede that a remand to a Board with two new members does not always require a de novo hearing. However, due to the totality of circumstances in this case, it is this Court's opinion that a de novo hearing was required. Petitioner has persuaded this Court that Prosser is not applicable in this case. There, the remand was on a limited technical issue. In the case sub judice, the remand is for a "new consideration" of an application for Special Exception, which unquestionably is not a limited technical issue. It is the opinion of this Court that Clark is applicable as witness credibility and demeanor is certainly an important factor in the Board's decision to grant or deny an application.

The Appealability of The Remand Order

People's Counsel has appealed to us that reversal and remand by the circuit court. With respect to the immediate appealability of such an action, Schultz v. Pritts, 291 Md. 1, 6, 432 A.2d 1319 (1981), was clear:

[A] circuit court's order remanding a proceeding to an administrative agency is an appealable final order When a court remands a proceeding to an administrative agency, the matter reverts to the processes of the agency, and there is nothing further for the court to do. Such an order is an appealable final order because it terminates the judicial proceeding and denies the parties the means of further prosecuting or defending their rights in the judicial proceeding.

Standard of Appellate Review

Although the judicial act being appealed to us is literally the June 13, 2001 ruling of the Baltimore County Circuit Court, our review will look not so much at the circuit court action as through it to the December 13, 2000 decision of the Baltimore County Board of Appeals. As we explained in Pollard's Towing, Inc. v. Berman's Body Frame & Mechanical, Inc., 137 Md. App. 277, 287, 768 A.2d 131 (2001):

At the outset, let it be clear whose decision is being reviewed and by whom. The review on the ultimate merits is now being conducted by this Court. We are not reviewing the procedural correctness of the earlier review by the circuit court. We are undertaking our own de novo review of the decision of the administrative agency. As Judge Motz explained in Department of Health and Mental Hygiene v. Shrieves, 100 Md. App. 283, 303-04 (1994):

Moreover, it is well recognized in Maryland that, when reviewing administrative decisions, the role of an appellate court is precisely the same as that of the circuit court. See e.g., Baltimore Lutheran High Sch. Ass'n, Inc. v. Employment Security Admin., 302 Md. 649, 662, 490 A.2d 701 (1985) ("a reviewing court, be it a circuit court or an appellate court, shall apply the substantial evidence test"). For those reasons, rather than remanding to the circuit court for it to determine, under the correct legal standards, whether the SOPD's decision is based on substantial evidence, we shall address the question.

(Emphasis supplied). See also Stover v. Prince George's County, 132 Md. App. 373, 380-81 (2000). The decision of the circuit court, therefore, is before us only in a pro

forma capacity, as the necessary procedural conduit by which the decision of the administrative agency gets to us for our review.

(Emphasis supplied).

In this case, moreover, we are reviewing the Board of Appeals's interpretation of what its own earlier action had been and what its reason had been for so acting. That is neither a finding of first-level fact nor a ruling of law. Whether considered as something akin to "a mixed question of law and fact" or as the type of judgment call to which the abuse of discretion standard typically applies, it clearly is the kind of decision to which a reviewing court extends great deference. As Judge James Eyler explained in Powell v. Calvert County, 137 Md. App. 425, 432, 768 A.2d 750 (2001), reversed on other grounds, ____ Md. ____, ____ A.2d ____ (2002):

An agency's factual findings and its decisions involving mixed questions of law and fact, however, will be given deference such that we cannot substitute our judgment for that of the agency's. Friends of the Ridge v. Baltimore Gas & Elec. Co., 120 Md. App. 444, 465, 707 A.2d 866 (1998), vacated in part by 352 Md. 645, 724 A.2d 34 (1999). We will "accept the agency's conclusions if they are based on substantial evidence and if reasoning minds could reach the same conclusion based on the record."

We need not necessarily agree that the Board of Appeals was correct in its interpretation of its earlier decision. We will affirm its interpretation if there was any reasonable basis that could have supported it. We now look to the Board's response to our remand.

An Open-Ended Remand

Our remand for "further proceedings" was deliberately open-ended. We reject the appellees' argument that "further proceedings" necessarily implies a de novo hearing, with witnesses being called and arguments being made as if for the first time. "Further proceedings" could, of course, embrace such a procedure but could also embrace other less radical procedures. It was not for us to anticipate what "further proceedings" might be required. That was a determination to be made in the first instance by the Board of Appeals itself, consistent, of course, with the salient principle of law enunciated in our opinion, to wit, consistent with our statutory interpretation of § 6 of County Council Bill No. 112-95. Beyond that, we did not presume to determine what "proceedings" were required. Theoretically, the Board could have made three or four different determinations as to what "further proceedings" might under the circumstances be appropriate.

1. The Board could have decided simply to clarify its earlier rationale that had been inadvertently ambiguous. It could have said, "We are stating unambiguously **NOW** what it was that we were intending to say **THEN**." This would simply be a present clarification of a past decision, not a new decision. Powell v. Calvert County, 137 Md. App. 425, 441, 768 A.2d 750 (2001), rev'd on other grounds, ____ Md. ____, ____ A.2d ____ (2002) ("If the court cannot tell if the administrative agency was right or wrong ... the court should remand to the agency for further proceedings.").

2. The Board could have decided to make a de novo policy decision based on, for instance, three proper factors, ignoring the fourth factor that had initially been improperly considered. The factors themselves

having been correctly established, there would be no need for further fact-finding with respect to them. There remained only to make the ultimate policy determination based on a present consideration of the appropriate number of already established factors. State Tax Comm'n v. Chesapeake & Potomac Telephone Co., 193 Md. 222, 232, 66 A.2d 477 (1948) ("Evidence may be said to have been 'considered' when it has been reviewed by a court to determine whether any probative force should be given it."); People's Counsel v. Mockard, 73 Md. App. 340, 346-47, 533 A.2d 1344 (1987); People's Counsel v. Prosser Co., 119 Md. App. 150, 161-62, 180, 704 A.2d 483 (1998).

3. The Board could have decided that the record before the Board initially was incomplete and that it would be desirable **TO SUPPLEMENT** that record with additional argument or additional evidence. New witnesses could be called but the old witnesses would not have to be recalled. Lawton Sharp Farm v. Somerlock, 52 Md. App. 207, 209-12, 447 A.2d 500 (1982).

4. The Board could have decided to ignore the original record and to proceed de novo with an entirely new hearing as if the first hearing had never occurred.

The first two of those procedural options on remand would almost always be offered as a combined package of alternatives. Under the first optional procedure, if the Board of Appeals were to say, "We had decided and we meant to convey that the other factors, even absent the locational factor, were sufficient for us to deny the special exception," that clarification in the affirmative would be enough and there would be no need to proceed to the second optional procedure. Conversely, if the Board of Appeals were to say, "We had decided and we meant to convey that the aggregate of all of the factors, including the locational factor, was indispensable to our decision to deny the special exception," that clarification in the negative would be enough and there would be no

need to proceed to the second optional procedure. Neither of those clarifications would represent a new decision.

If, on the other hand, the Board of Appeals were to say, "We never gave any thought to what we would do, one way or the other, on the basis of less than all of the factors," then it would be necessary for the Board of Appeals to proceed from procedural option one to procedural option two, if it should deem option two adequate for its task on remand.

As we read what the Board of Appeals did on remand, especially in its denial of the appellees' Motion for Reconsideration wherein it provided introspective insight into its own earlier thinking, we conclude that it chose to follow the first of the four procedures listed above. Alternatively, it is conceivable that it was utilizing the second procedure. Our analysis, therefore, will consist of examining whether those two procedures were, in the circumstances of this case, within the Board's rightful prerogative. If they were, whichever of the two alternative procedures was actually utilized is not of critical importance.

Two Distinct Subissues

Two subissues are intertwined. We deem it helpful to isolate them for analysis. The first is that of whether either or both of the procedures possibly utilized by the Board on remand would have been within its rightful prerogative if, hypothetically, there had been no change in the personnel making up the Board. The second

and distinct issue will then be whether a change in a critical voting majority (or, indeed, any change) in the make-up of the Board might ipso facto render a procedure on remand illegitimate that would otherwise have been, without such a change in personnel, legitimate.

Remand Procedures By An Unchanged Board

Assuming, arguendo, that the members constituting the administrative tribunal remain unchanged, if an appellate court is in doubt as to why an administrative agency did what it did, as we were in this case, it is appropriate to remand the case to the agency for nothing more than 1) a clarification of or 2) an amplification of its reasoning. In Powell v. Calvert county, 137 Md. App. 425, 429, 768 A.2d 750 (2001), reversed on other grounds, ____ Md. ____, ____ A.2d ____ 2002), we approved precisely such a procedure.

As a result of an earlier petition for judicial review, this Court, in an opinion filed on April 23, 1999, vacated the board's approval and remanded the case to the Board for further proceedings on the ground that the reasons given by the Board were insufficient to permit appellate review. On remand, without receiving additional evidence or argument, the Board amended its opinion in response to this Court's mandate and granted the special exception. The case is now before us as a result of a second petition for judicial review. We hold that the evidence and reasons given by the Board in its amended opinion are, as explained herein, legally sufficient to support the Board's decision.

(Emphasis supplied).

The opinion of Judge James Eyler made it very clear that an appellate court may remand to an administrative agency simply so that the agency can clarify its reasoning.

A decision of an administrative agency should be upheld only if it can be sustained on the findings and reasons given. Montgomery County v. Stevens, 337 Md. 471, 482, 654 A.2d 877 (1995); Harford County v. Preston, 322 Md. 493, 505-06, 588 A.2d 772 (1991).

If the record fails to reflect such findings or reasons, the appropriate remedy is a remand to the agency with directions to comply with the requirement. Stevens, 337 Md. at 481-82, 482, 654 A.2d 877. If the court cannot tell if the administrative agency was right or wrong, or to put it more accurately, whether it committed error because the court cannot discern the basis of the agency's decision to determine if it was proper, the court should remand to the agency for further proceedings.

137 Md. App. at 441 (emphasis supplied). See also People's Counsel v. Mockard, 73 Md. App. 340, 533 A.2d 1344 (1987); Mortimer v. Howard Research, 83 Md. App. 432, 442, 575 A.2d 750 (1990).

Assuming again, arguendo, that the membership of the Board of Appeals was the same when it received the case on remand as it had been when it considered the case initially, we conclude that it would have been within the legitimate prerogative of the Board to have proceeded under any of the four procedural options listed above. Even counsel for the pawnshop conceded as much in his final argument before the Baltimore County Circuit Court.

I'll concede that, your Honor, if there were the three original members who heard the case and that it was remanded, they could make those findings from their recollection of the witnesses and the evidence.

The Board's Action on Remand Was a Clarification

Our reading of the 18-page opinion of the Board of Appeals following its consideration of the case on remand, and our further reading of the 6-page opinion of the Board in denying the appellees' Motion for a Reconsideration, convinces us that what the Board did on remand was no more than to clarify what it had earlier done on April 30, 1997. The Board made it clear that its initial 1997 denial of the special exception had not depended on the one-mile radius limitation and that it had not considered that limitation to be a critical factor in its decision.

The December 13, 2000 opinion of the Board, to be sure, is not a model of polished appellate draftsmanship. At times, it slides into linguistic habits that are more appropriate to fact-finding. We are not unmindful, however, that even trained appellate courts also occasionally misuse the verb "find" when they should say "hold." ("We find the law to be ..."; "We find the trial court to have been in error.") Even Homer nods. The occasional use by the Board of the verb "find," therefore, is not, we hold, dispositive as to what function the Board was performing. Neither do we conclude that the occasional and inartful use of the verbs "concur" and "affirm" establishes that the Board was sitting in appellate review of its own earlier decision.

The appellees seize upon these random usages, however, as upon the terms of a covenant. We would urge them to heed instead our

admonition in Heinlein v. Stefan, 134 Md. App. 356, 368-69, 759

A.2d 1180 (2000):

It is tempting, particularly when it serves one's purpose, to ascribe oracular significance to what may be nothing more than stylistic happenstance in an opinion's wording, but that is not the way the opinion writing business works. The other members of an appellate panel scrutinize with painstaking care the opinion writer's articulation of the actual decision in a case. That is why in Anglo-American jurisprudence actual holdings are given precedential status. The other panel members, however, do not hover critically over every word of an opinion writer's phraseology as if it were being chiseled in marble. For that matter, neither does the opinion writer. When the narrative juices are flowing, a writer's ultimate choice of words is frequently nothing more than a subliminal stylistic reflex.

There were counter-indications that the Board was merely clarifying or explaining its earlier action and, although the issue could plausibly be argued either way, those counter-indications persuade us that the Board, on remand, was engaged only in clarifying and not in either fresh fact-finding or appellate reviewing.

In characterizing what the Board had done in 1997, the Board on remand summarized what had in 1997 been established as the dispositive factors. It made no mention of the one-mile radius limitation.

In denying the Petitioner a special exception for a pawnshop to be relocated in the Country Ridge Shopping Center, it is abundantly clear that the Board of Appeals, in its majority opinion, relied on the evidence and concepts considered in the legislative findings and Baltimore County policy as found in Bill No. 112-95 as well as the testimony of Baltimore County employees in

the Police Department, the Office of Planning and the Office of Community Conservation.

With regard to standards set forth for the granting of a special exception in BCZR 402.1, this Board affirms the majority opinion that the Petitioner did not meet the special considerations of 502.1(a) and (g):

Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

A. Be detrimental to health, safety, or general welfare of the locality involved; and

B. Be inconsistent with the purposes of the zoning classification, nor in any way inconsistent with the spirit and intent of the zoning regulations.

The uncontradicted evidence, with no reference to the one-mile radius, had made it clear that the pawnshop would have an adverse impact on that neighborhood that it would not have elsewhere.

Evidence and testimony are uncontradicted that the Essex-Middle River area is a section of Baltimore County designated the highest priority for revitalization and conservation. It has the lowest socioeconomic indicators and the greatest incidence of crime. There are already two pawnshops in the area. A third pawnshop in this area would be detrimental to health, safety, and specifically the general welfare of this particular area of Baltimore County.

In their Motion for Reconsideration of December 19, 2000, the appellees challenged the December 13 Opinion of the Board for the failure of the Board to have held a de novo hearing, particularly so the new members of the Board could "make findings on credibility." In denying that motion, the Board unequivocally stated what the nature of its decision on remand had been.

On January 3, 2001, the Board again met in public session and deliberated the matter; and denied the Motion for Reconsideration. At the time of the public deliberation concerning the Motion for Reconsideration, the Board indicated that it could not find anywhere in the remand order that the Court of Special Appeals required any further hearings and that it was left exclusively to the discretion of the County Board of Appeals as to whether or not any further hearings should or should not be held. The Board takes significant note of the fact that the majority of the panel had already reviewed the record and denied the special exception. The only issue determined by the panel on remand concerned the process to ascertain whether or not that denial stood independent of, or "free of the BCZR 436.4 standards." In its December 13, 2000 Opinion at page 9, concurring with the original Board majority, the current majority effectively found that, based on this record, the original majority decision to deny the special exception stood free of the BCZR 436.4 standards and was independent of them.

(Emphasis supplied).

Significantly, the opinion of the Board denying the reconsideration was unanimous. The hold-over Board member, who had been in dissent on the merits both in 1997 and again in 2000, agreed with his colleagues as to the nature of what the decision had consisted of on remand. It cannot be gainsaid that the Board would have been entitled, without an evidentiary rehearing, to issue such a clarification of its own earlier action, had there been no change in the membership of the Board

Reweighting Established Factors Versus Resolving Disputed Credibility

That is not, however, all the Board would have been entitled to do on remand without an evidentiary rehearing. Among the other procedural options would have been the de novo weighing,

essentially a policy determination, of already established factors without any necessity of fresh fact-finding as to the existence of those factors.

Such a reweighing is, not uncommonly, what happens in the relitigation of mixed questions of law and fact. First-level fact-finding, frequently requiring the resolution of disputed credibilities and necessitating the choice of competing versions of the facts, is no longer involved. That fact-finding function is a fait accompli. It is only after the first-level facts have once been established that the second-level question even arises of what to make of those facts. That second-level question may be revisited without any necessity of revisiting the first-level fact-finding. The only question that matters is no longer, "What will actually happen in the neighborhood?" but, "What is the significance of what will happen in the neighborhood?" On such a mixed question of law and fact, the decisional process is far more one of policy-making than of fact-finding. The decisional process involves the application of the law, or of the policy, to an already given set of facts.

With some frequency, tribunals are called upon to engage in a de novo reassessment of the significance of established factors even though those tribunals never saw a witness and never participated in any of the first-level fact-finding that went into the establishment of those factors. Appellate courts, far from the

action of resolving disputed credibilities or choosing among contradictory versions of events, frequently engage in the de novo process of weighing the significance of predicate facts found by others and then deciding for themselves the ultimate, conclusory fact, such as probable cause, the voluntariness of consent, the voluntariness of a confession, etc. Ornelas v. United States, 517 U.S. 690, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996). Chancellors in equity frequently make decisions based on facts that were found by Masters. The two levels of decision making are distinct.

The essentially undisputed first-level facts in this case were established and precisely articulated by the Board of Appeals in its initial Opinion of April 30, 1997. From that moment on, they were not in any way in dispute. The Board, on remand, could readily have reassessed the ultimate second-level or conclusory fact of adverse impact on a special neighborhood without any occasion to revisit the predicate first-level facts. It could have concluded:

Our predecessors may arguably have considered as many as four factors in deciding to deny the variance. We have now been told by the Court of Special Appeals that the fourth of those factors should not have been considered. Accordingly, we will now eliminate that factor from the equation as we decide what significance to give the other three factors, standing alone. We conclude, on the sole basis of those remaining factors, that the granting of the variance at the location in question would have an adverse impact that it would not have elsewhere in the zone. The variance is, therefore, denied.

It cannot be gainsaid that the Board would have been entitled, without an evidentiary rehearing, to engage in such a reweighing of the significance of already established factors, had there been no change in the membership of the Board.

"The Regiment Goes On"

In this case, however, there was a change in the membership of the Board. Two of the three members of the Board that received the case on remand in 2000 had not been members of the Board that initially denied the variance in 1997. To whom or what, therefore, did the Court of Special Appeals remand the case? To the same Board that had initially decided it or to a new Board? It is not a simple question. Involved is the essential nature of the Baltimore County Board of Appeals itself.

The appellees, at least for purposes of this case, conceptualize the Board of Appeals as little more than a petit jury, with no life of its own before or after the immediate adjudication. If the appellees were correct in their conceptualization, the Board, following any change in the personnel who from time to time make it up, would be unable to engage in the most minor reconsideration without starting the process all over again. Institutional continuity would terminate with the end of tenure of any of its members.

We conceptualize the Board of Appeals as an ongoing governmental entity, not as an ad hoc petty jury. It is an

administrative tribunal with an institutional life that transcends the tenure of any of its members. Courts, by parity of behavior, unabashedly use the first personal pronouns "we," "us," and "our" in describing decisions made a century before any current member of the court was born. In this phenomenon of institutional continuity there are echoes of the stirring epilogue of a John Wayne epic,¹ "The names may change; the faces may change; but the regiment goes on." Thus it is with the Baltimore County Board of Appeals. It has a life that goes on beyond the tenure of any of its members.

The Caselaw On Changes in Membership

It remains then to be seen what, if any, limitations the caselaw may have imposed on the exercise of that institutional continuity. In urging that the change in the membership of the Board mandated an evidentiary rehearing on remand, the appellees rely primarily on the case of Clark v. County Board of Appeals for Montgomery County, 235 Md. 320, 201 A.2d 499 (1964).

Even to the extent that Clark retains any limited vitality, it provides no support for the proposition for which the appellees cite it. Clark was a case in which the Montgomery County Board of Appeals had granted a special exception. Clark did not involve a remand. Clark did not involve any change in the membership of the County Board of Appeals. Clark did not involve the modality by

¹"Fort Apache" (1948).

which a board member may receive evidence--hearing witnesses versus reviewing a transcript.

Clark involved the statutory construction of what was then § 104-22d of the Montgomery County Code (1960). The Court of Appeals concluded in Clark that the code provision that "all actions or decisions of the board shall be taken by a resolution, in which at least three members must concur" established a minimum quorum of three in order for the required public hearing on the matter to have any validity. 235 Md. at 323-24. Although a third board member had read the transcript and concurred in the decision of his colleagues, only two members of the board had actually been present at the required public hearing. The Court concluded that it was dealing with a "problem of statutory construction" and held that the absence of the required quorum rendered the hearing, and the decision reached at that hearing, a nullity.

Other state courts have taken a contrary view, and require the presence at the hearing or hearings of all members who participate in the decision. We think the cases holding that at least enough members to constitute a quorum for decision, be present at the public hearing, are more consistent with our construction of the ordinance in the instant case, and with our prior decisions. Accordingly, we hold that the Board's decision was improperly reached and the order must be reversed.

235 Md. at 325 (emphasis supplied).

The Baltimore County Board of Appeals in this case, by contrast, was in full compliance at all times with the quorum

requirement. Rule 1c of the Rules of Practice and Procedure of the Baltimore County Board of Appeals provides, in pertinent part:

Three (3) members of the board of appeals, as designated by the chairman, shall sit for the purpose of conducting the business of the board; and a majority vote of two (2) members shall be necessary to render a decision.

That requirement was never violated.

The only comfort the appellees could take from the Clark opinion is the dictum:

Insofar as the case may turn on the credibility of the witnesses, absent members do not have the opportunity of seeing and hearing the witnesses.

235 Md. at 324.

One year and a half after the Clark decision, the Court of Appeals decided Younkin v. Boltz, 241 Md. 339, 216 A.2d 714 (1966), another special exception case out of Montgomery County. It was a disservice for the appellees in their brief to have totally ignored the Younkin case, for it flatly precludes the "spin" they seek to put on Clark. It is Younkin that is absolutely dispositive of the issue before us.

The evidentiary hearings on the special exception in Younkin were spread over two days. Only three of five board members were present for the first day's hearing and only two of those three ultimately voted to grant the special exception. The necessary majority vote to grant the exception depended on at least one of the two additional board members, who joined their colleagues for the second day of the hearing but who had missed the first day.

Judge Hammond, 241 Md. at 341-42, summarized what had happened and before whom it happened.

The first hearing was held on February 27, 1964. Ten witnesses gave one hundred sixty-four pages of testimony. The second hearing was held on April 9, 1964, and the three members who had been at the first hearing were joined by the other two members of the Board who had read the transcript of the testimony taken at the first hearing and had examined the record. Five additional witnesses gave fifty-four more pages of testimony at the second hearing. At the conclusion of the testimony at the second hearing, the matter was fully argued to the five members of the Board by counsel for the petitioner and counsel for the protestants, with full and generally explicit references to particular witnesses and the essence of their testimony.

(Emphasis supplied).

Following the grant of the special exception, the protestants appealed, claiming that an indispensable member of the majority had not been present for the first day's hearing and had not seen the first day's ten witnesses or had the opportunity to assess their credibility. The trial judge, relying on the Clark case, reversed the Board of Appeals.

The instant case presented a variation of the Clark factual situation. There were two hearings; three members of the Board attended both and the other two members attended only the second hearing. Only two of the three members who had been at both hearings voted to grant the exception and the requisite third vote (and a fourth) came from a member who had been at the second hearing only. ... Judge Shure ruled that under Clark the Board's action was illegal and ineffective in that only two of the three who had heard all the testimony voted to grant the exception.

241 Md. at 341 (emphasis supplied). It is that reading of Clark that the appellees now urge upon us.

In Younkin, however, the Court of Appeals reversed the trial judge and rejected that reading of Clark. It adopted, rather, the federal and the majority state view, disdained by Clark, that it is not required that a voting member of an administrative agency shall have heard the witnesses so long as the member shall have "considered and appraised the evidence."

The general rule in both the federal and state systems is that in the absence of specific statutory direction to the contrary the deciding member or members of an administrative or quasi-judicial agency need not hear the witnesses testify. 2 Davis, Administrative Law Treatise § 11:02, p. 40.

"The [federal] Administrative Procedure Act, of course, assumes that deciding officers need not be present at the hearing ***.

"The law of nearly all state courts is as clear as the law of the federal courts that deciding officers need not be present when witnesses testify; this attitude is implicit in most of the state cases discussed in the ensuing two sections."

The general rule is that it is enough if those who decide have considered and appraised the evidence and the courts feel more satisfied that they have done so if they have heard argument.

241 Md. at 342-43 (emphasis supplied).

Judge Hammond added that that procedure was fully consonant with the Maryland Administrative Procedure Act, as well as with the Model Administrative Procedure Act.

The Maryland Administrative Procedure Act, applicable to state board and agencies as defined, Code (1965 Replacement Vol.), Art. 41, §§ 244-56, contemplates (as does the model Administrative Procedure Act, 8C Uniform Laws Annotated, on which it was based) that in a

"contested case" the evidence need not be heard by all those who will render the final decision. Section 253 provides:

"Whenever in a contested case, a majority of the officials of the agency who are to render the final decision have not heard the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision, including findings of fact and conclusions of law, has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

241 Md. at 344 (emphasis supplied). That provision of the Administrative Procedure Act, without any significant change, is now codified as Md. Code, State Government Article, § 10-216(2).

The Court of Appeals, in conclusion, acknowledged that the Clark case could not, at least in its tone, be fully reconciled with Younkin v. Boltz and it politely confined Clark to its own precise facts.

In any event, we see no reason to extend the holding in Clark to a case not precisely similar on the facts.

241 Md. at 344.²

The Court of Appeals has regularly followed Younkin v. Boltz. Bethesda Management Services v. Dep't of Licensing and Regulation, 276 Md. 619, 627-28, 350 A.2d 390 (1976); Gemeny v. Prince George's

²Professor Max Radin observed that when an appellate court confines one of its own earlier opinions to "its own facts," that is the way appellate courts have "of administering euthanasia to their own non-viable progeny."

County, 264 Md. 85, 94, 285 A.2d 602 (1972); Hyson v. Montgomery County Council, 242 Md. 55, 72, 217 A.2d 578 (1966). This Court has also recognized its authority. In Howard County v. Bay Harvestore System, 60 Md. App. 19, 22, 478 A.2d 1172 (1984), Judge Weant observed:

The circuit court found the practice of permitting absent members of the Board to participate in a decision, provided they had familiarized themselves with the testimony, was in accordance with standard State and Federal procedures. See Younkin v. Boltz, 241 Md. 339, 216 A.2d 714 (1966).

See also Citizens for Rewastico Creek v. Commissioners of Hebron, 67 Md. App. 466, 478, 508 A.2d 493 (1986).

The case of People's Counsel for Baltimore County v. Prosser Co., 119 Md. App. 150, 704 A.2d 483 (1998), is, on its procedural facts, almost indistinguishable from the case now before us. It is a decision, moreover, that looms large in the arguments that have been made to us. The Circuit Court for Baltimore County had vacated a decision by the Baltimore County Board of Appeals and had remanded the case to the Board "for further consideration." By the time of the remand, however, the membership of the Board had changed.

The case was then remanded to the Board pursuant to the circuit court's order. Two of the three original Board members had resigned by that time. ... A new three-member panel was formed, which included the carry-over member from the original panel who had voted to approve the application previously. The new panel, after reviewing the transcript of the 1994 hearing, denied appellants' request to present new evidence. The Board, through the new panel, held public deliberations on June

5 and July 3 and, in an opinion dated September 19, 1996, determined that the reclassification was warranted and granted the rezoning.

119 Md. App. at 162 (emphasis supplied).

The challenge made to the failure of the Board of Appeals, on remand, to conduct a new evidentiary hearing in this case echoes precisely the challenge made in that case. In Prosser, we rejected the claim that a de novo evidentiary hearing was necessary. That was the actual holding of Prosser. By way of explaining our holding, however, we were actually far gentler with the argument than we need have been in light of Younkin v. Boltz, a case that was not cited to us.

The Board recognized that there was no adverse expert testimony on the issue on remand and that the issue was of a technical nature. The Board noted that the evaluation of lay witness credibility and demeanor was not a material factor in determination of the issue before it. We believe that the Board could have properly premised its decision on a review of the transcript and the remainder of the written record. In our view, the holding in Clark has not been violated when a quorum participates in the proceedings on remand and when an assessment of credibility of witnesses is not required.

119 Md. App. at 180.

The distinction made by Prosser between those remands that call for a resolution of disputed credibilities and those remands that do not, even assuming the distinction to be a viable one, would not help the appellees here in any event. The remand in this case did not entail any assessment of the credibility of lay witnesses or, indeed, any further first-level fact-finding. Even

if, arguendo, the need to resolve on remand the credibility of lay witnesses were the key criterion in distinguishing a broad from a narrow remand, the appellees in this case would not have been entitled to the broad de novo evidentiary hearing they seek.

That entire observation as to the impact of Prosser, however, is in the subjunctive mood. Our holding is that, under the direct authority of Younkin v. Boltz, the appellees were not entitled to a de novo evidentiary hearing regardless of whether lay credibility were still in dispute or not.

A critical member of an administrative tribunal is not required to do more on remand than would, under Younkin v. Boltz, have been required the first time around. In Younkin, a vote critical to the Board of Appeals's decision was cast by a board member who, albeit having read the transcript of testimony and having heard full argument, had not personally observed the demeanor of ten witnesses (out of a total of fifteen) whose testimony filled one hundred sixty-four pages of the transcript. There was no suggestion in the opinion that credibility had not been in dispute in assessing the testimony of the fifteen witnesses. The failure of a critical voting member to have observed personally the testimony of ten of those witnesses gave the Court of Appeals no pause, just so long as the member had read the transcript and heard the argument.

[A]ll the members of the Board had considered and appraised all the evidence, first by either hearing it

first hand or by reading it, and second by hearing full argument which was directed to the strengths and weaknesses of the testimony for the respective sides. We think the Board's action was properly taken.

241 Md. at 345 (emphasis supplied). That is dispositive of the issue before us.

A further word is nonetheless in order to explain why we made the distinction we did in Prosser, lest it lead the unwary astray. Our basic determination in Prosser was to affirm the trial court and to reject the challenge there being made to the remand procedure utilized by the Board of Appeals on that occasion. We were unaware of Younkin v. Boltz, however, which would have provided a simpler rationale for what we intended to do in any event. We were faced with what we believed to be the continuing vitality of Clark v. County Board of Appeals, supra, and the "spin" that was being put upon it.

Under those circumstances, the distinction we drew between one hearing modality required on certain remands and another modality permitted on others was necessary, we thought, to distinguish Prosser from Clark. We affirmed the County Board of Appeals in Prosser, using that more circuitous rationale. Under the banner of Younkin v. Boltz, however, we would have reached the same result more quickly and more easily without any necessity for the convoluted "credibility-resolving" rationale, which may now mercifully evanesce. We reverse the judgment of the circuit court

so that we may, in effect, affirm the judgment of the County Board of Appeals.

The Preemption Argument

When the appellees first went to the circuit court in 1998, they argued for the first time that state law, Maryland Code, Business Regulation Article, § 12-100 et. seq., preempted the field of regulating pawnshops and thereby rendered unconstitutional both 1) BCZR § 436.2(D), which imposes a countywide "cap" of twelve on the number of pawnshops in the county; and 2) BCZR § 436.4(A), which provides, inter alia, that there shall be no more than two pawnshops in any councilmanic district. In its opinion of February 9, 1998, the circuit court ruled that the county zoning regulation is not unconstitutional. When the appellees first appealed to this Court, they again raised the preemption issue. In our first opinion of July 21, 1999, we decided that, because of our reversal on other grounds, it was not necessary to address the preemption issue.

Although we would be strongly inclined to hold against the appellees on the basis of either 1) non-preservation for failure to raise the issue before the Board of Appeals either in 1997 or 2000 or 2) the ultimate merits, we will be content, in the interest of judicial economy, to rest our holding on the ground of mootness.

The appellees' attack on § 436 is two-pronged. They claim that Baltimore County does not possess

the right to regulate in such a manner as to limit the number of state licensed pawnshops in the County to twelve and the number of pawnshops in each councilmanic district to two.

With respect to the countywide "cap" of twelve on the number of pawnshops, the appellees never ran afoul of that limit and it had no adverse impact on them in any way. It was never remotely alluded to as a basis for denying the special exception in this case.

With respect to the limit of two pawnshops in each councilmanic district, it cannot be stated with absolute certainty that that limitation was not considered by the Board of Appeals in 1997. Captain Johnson, in his testimony before the Board, did make mention of the negative impact of "a third pawnshop in the 11th precinct." The Board itself made reference to the fact that there were already "two existing pawnshops in this vicinity." The issue was not moot when raised in the first appeal to this Court.

Even if the issue were not moot in 1997-99, however, it has since become so. It was County Council Bill No. 112-95, passed on June 5, 1995, that enacted what became BCZR 436.4A, which provides that a pawnshop

[l]ocation may not be within a one-mile radius of any other pawnshop, and no more than two pawnshops may be located in a councilmanic district.

(Emphasis supplied).

Our entire opinion of July 21, 1999, dealt with the applicability to that section of Section 6 of Bill No. 112-95, the "grandfather" provision, which stated:

AND BE IT FURTHER ENACTED, that pawnshops lawfully in existence and operating on the effective date of this Act are not subject to the requirements of Sections 436.4.

(Emphasis supplied).

The single issue dealt with in our 1999 opinion was that the "grandfather" provision of Section 6 exempted existing pawnshops that were in the act of relocating from the locational limitations of § 436.4A. The exemption applied to the two-pawnshops-per-councilmanic-district-limitation as surely as it applied to the one-mile-radius-limitation. We held that the very limitation which the appellees now claim is unconstitutional did not apply to the appellees.

The Board of Appeals, on remand, complied with our opinion in every way. The Board's decision of December 19, 2000, was based exclusively on Schultz v. Pritts factors. Neither of the inapplicable locational limitations were factors in that decision. They were not even mentioned. The Baltimore County "cap" of two pawnshops per councilmanic district, whatever its constitutional merit or demerits, had absolutely nothing to do with the ultimate denial of the special exception in this case. This final contention is, therefore, moot.

**JUDGMENT OF THE BALTIMORE COUNTY
CIRCUIT COURT REVERSED AND RULING OF**

-40-

THE BALTIMORE COUNTY BOARD OF
APPEALS AFFIRMED; COSTS TO BE PAID
BY APPELLEES.

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Appellant

Vs.

COUNTRY RIDGE SHOPPING
CENTER, INC., et al.

Appellees

* IN THE COURT OF SPECIAL
* APPEALS OF MARYLAND

* No. 952

* September Term, 2001

*

*

MOTION TO WITHDRAW APPEARANCE

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Pursuant to Maryland Rules 8-402 and 2-132, Gildea, LLC, attorneys for Appellees, Southside Brokers, Inc. ("Southside") hereby moves to withdraw their appearance as counsel for Southside Brokers, Inc. and states in support the following:

1. Southside has failed to fulfill its obligation in paying its legal fees. Southside has not made a payment since August, 2001 and has an account currently past due in the amount of \$23,229.32.
2. This failure to fulfill its obligation allows for a termination of representation as established by Maryland Rule of Professional Responsibility 1.16.
3. Gildea, LLC has repeatedly attempted to warn Southside of this past due amount and possible termination of services if not rectified, as evidenced by

correspondence dated July 31, 2001, October 16, 2001, October 29, 2001, November 5, 2001, November 8, 2001, December 7, 2001, January 4, 2002, and February 25, 2002, attached hereto.

4. Gildea, LLC granted five days notice of withdrawal of representation and informed Southside Brokers, Inc. of the necessity to acquire new counsel.

WHEREFORE, Gildea, LLC respectfully requests their appearance be stricken from the above referenced matter.

Respectfully submitted,



Sebastian A. Cross
Gildea, LLC
301 North Charles Street
Suite 800
Baltimore, Maryland 21201
(410)234-0070
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6~~th~~ day of March, 2002, a copy of the foregoing Withdrawal of Appearance was mailed first class, postage prepaid to:

Edward Sedlar
Southside Brokers, Inc.
1508 Country Ridge Lane
Essex, MD 21221

Baltimore County Board of Appeals
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Sebastian A. Cross

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Appellant

Vs.

COUNTRY RIDGE SHOPPING
CENTER, INC., et al.

Appellees

* IN THE COURT OF SPECIAL

* APPEALS OF MARYLAND

* No. 952

* September Term, 2001

*

*

ORDER

Upon the foregoing Motion to Withdraw Appearance, it is this ____ day
of _____, 2002, hereby

ORDERED that the Motion to Withdraw Appearance of Gildea, LLC on
behalf of Southside Brokers, Inc., Appellee, is hereby **GRANTED**.

Judge

12/21/01

**IN THE
COURT OF SPECIAL APPEALS OF MARYLAND**

**No. 952
September Term, 2001**

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

V.

COUNTRY RIDGE SHOPPING CENTER, INC., et al.

**APPEAL FROM THE BALTIMORE CIRCUIT COURT FOR
BALTIMORE COUNTY
(John Grason Turnbull, II, Judge)**

**APPELLEE SOUTHSIDE BROKERS, INC.'S
(Brief and Appendix)**

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PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Appellant

Vs.

COUNTRY RIDGE SHOPPING
CENTER, INC., et al.

Appellees

* IN THE COURT OF
* SPECIAL APPEALS OF
* MARYLAND
* No. 952
* September Term, 2001

*

APPELLEE SOUTHSIDE BROKERS, INC.'S BRIEF AND APPENDIX

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Baltimore County Zoning Regulations (BCZR) Section 502	10

(Legislation cont.)

Bill No. 112-95	12, 13, 21, 34
Maryland Annotated Code, Article 25A, Section 5	20
Maryland Annotated Code, Business Regulation Article Section 12-100	28
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PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY

Appellant

Vs.

COUNTRY RIDGE SHOPPING
CENTER, INC., et al.

Appellees

* IN THE COURT OF SPECIAL

* APPEALS OF MARYLAND

* No. 952

* September Term, 2001

*

*

APPELLEE SOUTHSIDE BROKERS, INC.'S BRIEF AND APPENDIX

I. STATEMENT OF THE CASE

On November 29, 1995, Southside, a tenant in the Country Ridge Shopping Center located in Baltimore County, applied for Special Exception to operate a pawnshop pursuant to Baltimore County Zoning Regulations ("BCZR") Sections 436, 502.1 and 233. The Country Ridge Shopping Center is zoned BM (Business Major), pawnshops are permitted in the BM zone by Special Exception . (BCZR Sections 436, 233)

A hearing was held on the Petition for Special Exception before the Baltimore County Zoning Commissioner ("Zoning Commissioner"). In an Order dated January 26, 1996, in case number 96-226-X, the Zoning Commissioner denied the Special Exception request.

Southside filed a Motion for Reconsideration. On April 19, 1996, the Zoning Commissioner issued a Ruling on the Motion for Reconsideration and granted Southside's Petition for Special Exception.

The Back River Neck Community Association ("Back River Neck") appealed the Zoning Commissioner's decision on his Ruling on the Motion for Reconsideration to the Baltimore County Board of Appeals ("Board of Appeals"). People's Counsel for Baltimore County ("People's Counsel") joined in opposition with the Back River Neck at the Board of Appeals. The appeal to the Board of Appeals was *de novo* and a two-day hearing was held on November 6, 1996 and March 12, 1997. On April 30, 1997, the Board of Appeals' majority (2-1) issued an Opinion and Order denying the Petition for Special Exception.

On May 29, 1997, Southside filed a Petition for Judicial Review to the Circuit Court for Baltimore County of the Board of Appeals' Opinion and Order dated April 30, 1997. The Circuit Court conducted a hearing on January 20, 1998, (case number 03-C-97-5479) at which time counsel presented oral argument. On February 9, 1998, the Circuit Court for Baltimore County (J. Bollinger) affirmed the Board of Appeals' majority Opinion.

Southside filed a Motion to Revise Judgment, or, in the alternative, to Alter or Amend Judgment of the Circuit Court for Baltimore County's decision. The Circuit Court denied the Motion to Revise Judgment on March 6, 1998.

Southside filed an appeal of the Circuit Court's decision to the Court of Special Appeals on April 1, 1998. The Court of Special Appeals reversed the judgment of the Circuit Court and remanded the case to the Circuit Court with directions to remand to the Board of Appeals for further proceedings in accordance with their ruling on July 21, 1999. On September 8, 1999, the Circuit

Court entered its order remanding the case to the Board of Appeals. At the time of this remand from the Circuit Court, two of the original three members were no longer sitting on the Board.

Petitioner filed a motion to the Board of Appeals requesting a hearing on the remand on February 9, 2000 and again repeated this request by a motion on August 7, 2000. Both of these motions were denied by the Board of Appeals during open deliberations without allowing for oral argument on December 13, 2000. On this date, the Board of Appeals also issued an opinion made upon review of the record denying Southside's request for a special exception. On December 19, 2000, Southside filed a Motion for Reconsideration to the Board of Appeals raising the procedural error committed by the Board of denying an opportunity for a hearing on the remand from the Court of Special Appeals.

The Board of Appeals held deliberations on Southside's Motion for Reconsideration on January 3, 2001, and based on the nature of those deliberations, Southside filed a Petition for Judicial Review on January 9, 2001 to the Circuit Court. In this Petition, Southside specifically stated this appeal was submitted to satisfy the limitation period for filing a Petition for Judicial Review. The Board of Appeals denied Southside's Motion for Reconsideration on January 12, 2001.

Notice was also given that upon the Board of Appeals written decision, Southside would file another appeal and seek consolidation of the two appeals.

On January 22, 2001, Southside filed a second Petition for Judicial Review of the Board of Appeals Ruling on Motion for Reconsideration. In the Petition, Southside sought consolidation with the previously filed Petition for Judicial Review. On February 13, 2001, People's Counsel filed a Motion to Dismiss and/or Raising Preliminary Objections stating that Southside had submitted a void Petition due to a typographical error in the caption.

On April 12, 2001, Southside filed a Motion to Amend and Consolidate in order to combine the two submitted Petitions for Judicial Review into one hearing and amend the typographical error submitted in the caption.

On April 27, 2001, Southside's Motion to Amend and Consolidate was granted and given the case number of 3-C-01-000307.

On June 12, 2001, Judge Turnbull of the Circuit Court for Baltimore County heard oral argument and issued his Opinion on June 13, 2001 reversing the decision of the Board of appeals and remanding the case to the Board of Appeals for a *de novo* hearing for a "true 'new consideration' of the application for Special Exception, as was required by the Court of Special Appeals."

III. ISSUES PRESENTED

- 1) Did the Baltimore County Board of Appeals err as a matter of law in its handling of the remand from the Court of Special Appeals?**
- 2) Is a new hearing required when two of the three members encompassing the Board of Appeals on remand were not present during the original hearing?**

- 3) Does Baltimore County have authority under the Express Powers Act to limit the number of state licensed pawnshops permitted to operate in the county to twelve for the entire county and two in each councilmanic district?
- 4) Is Baltimore County preempted by state law to regulate the licensing of pawnshops by limiting the number to twelve in the county as a whole and two in each councilmanic district?

IV. BRIEF ANSWERS

- 1) Yes, the Board of Appeals was ordered to conduct a new hearing by the explicit instructions of the remand from the Court of Special Appeals.
- 2) Yes, a *de novo* hearing is required when a quorum of the reviewing board on remand was not present at the original hearing.
- 3) No, Baltimore County violated the Express Powers Act by attempting to pass legislation to regulate the licensing of a pawnshop, which is expressly reserved as a state power.
- 4) Yes, state law specifically preempts Baltimore County's legislation attempting to confer licensing authority of pawnshops to the Baltimore County Zoning Board.

V. STATEMENT OF MATERIAL FACTS

1. Procedural Error Committed by the Board of Appeals on Remand From Court of Special Appeals

In their decision dated July 21, 1999, the Court of Special Appeals remanded this case with the instruction that “ a new consideration” of Southside's petition be granted by the Board of Appeals. Southside Brokers, Inc. v.

People's Counsel for Baltimore County, No. 866, Sept. Term at 8 (July 21, 1999)(*emphasis added*). E 29. Despite this instruction, the Board of Appeals issued their decision based entirely on a review of the record originally entered by the Board of Appeals on April 30, 1997, and did not hold a new hearing. This original decision was made by a 2-1 majority and was based on a flawed interpretation of the exemption contained in BCZR Section 436.4. E 57.

The two members making up the majority for the Board of Appeals' original opinion had since left the board. Not having filled these vacancies by the issuance of the remand, two new members were appointed to join the former dissenting member to hear this case on remand. These two new members of the reviewing board (who were not present during the original evidentiary hearing) comprised the 2-1 majority of the decision entered on December 13, 2000. E 57.

This decision based on a review of the record is an error of law as it was in direct conflict with the Court of Special Appeals' decision. Further, the recomposition of the Board of Appeals' members to decide the matter mandated that the case be heard anew. The Circuit Court found the Board of Appeals had committed this error of law and held that a *de novo* hearing was necessary under the mandate from the Court of Special Appeals. E134.

2. Preserved Issues Not Yet Decided Due to the Remand From The Court of Special Appeals.

The Circuit Court was presented with four different issues for their hearing on June 12, 2001. The issues at this hearing regarded; (1) did Baltimore County

Board of Appeals err as a matter of law in its handling of the remand from the Court of Special Appeals; (2) was a new hearing required when two of the three members encompassing the Board of Appeals on remand were not present during the original hearing; (3) whether Baltimore County had acted outside their authority under the Express Powers Act to limit the number of state licensed pawnshops in the County and Councilmanic districts; and (4) whether Baltimore County's legislation was preempted by State law in regard to licensing of pawnshops being limited in the County as a whole and more specifically in each councilmanic district.

The Circuit Court ruled in favor of Southside regarding the first two issues, finding that the Board of Appeals erred in not following the remand order from the Court of Special Appeals and that this remand required a *de novo* hearing. E134. The Circuit Court remanded the case based on those findings. *Id.* As to the other two constitutional issues, the Circuit Court found that it was unnecessary to rule on these in light of their remand on the previously listed issues. As such, these two remaining constitutional issues had been preserved for the record and require a final decision by this Court.

VI. ARGUMENT

1. THE REMAND FROM THE COURT OF SPECIAL APPEALS REQUIRED A *DE NOVO* HEARING TO BE CONDUCTED BY THE BOARD OF APPEALS.

- A. The Court of Special Appeals found that the Board of Appeals commingled a misinterpretation of legislation with the findings for the**

requirements of a Special Exception, and ordered a new consideration of the Special Exception.

The Court of Special Appeals found the Board of Appeals erred as a matter of law in applying the location standards of Section 436.4 of the BCZR, and the Circuit Court erred by affirming this decision of the Board of Appeals. Southside Brokers, Inc. v. People's Counsel for Baltimore County, No. 866, Sept. Term (July 21, 1999). E 29. In reaching this conclusion, the Court of Special Appeals found the Board of Appeals had addressed the statutory requirements necessary for approval of a special exception "somewhat, but did so in a manner that **commingled** its consideration of those requirements with those of Section 436.4." (*emphasis added*) Id. Accordingly, the Court issued a remand for "a **new** consideration of [Southside's] application." (*emphasis added*) Id. Despite the clear choice by the Court to mandate a "new" hearing in its remand order, and the determination of the Court of Special Appeals that the Board of Appeals "commingled" its consideration improperly, the Board of Appeals refused to grant a *de novo* hearing. The Court of Special Appeals recognized that the issues relating to the Special Exception and the locational standards could not be dissected by the Board of Appeals on remand, and thereby directed the Board of Appeals to conduct a new consideration of the matter.

Further, the recognition of the commingling of the issues, coupled with the circumstances that the original trier of facts (the original three on the Board of

Appeals panel) were not available on remand, mandated that the matter be heard “*de novo*.”

The Court of Special Appeals has clarified the rationale behind an appeal of an administrative agency decision being remanded rather than reversed at the Appellate level. In Belvoir Farms Homeowners Ass’n, Inc. v. North, 355 Md. 259, 734 A.2d 227 (1999), the Court stated:

“It is a fundamental principle of administrative law that a reviewing court should not substitute its judgment for the expertise of the administrative agency from which the appeals is taken. This principle underlies the rule that if an administrative function remains to be performed after a reviewing court has determined that the administrative agency has made an error of law, the court ordinarily may not modify the agency order. Under such circumstances, the Court should remand the matter to the administrative agency without modification.”

Id. at 268, 734 A.2d 232, (citing *O’Donnell v. Bassler*, 289 Md. 501, S09-11, 425 A.2d 1003, 1009 (1981)).

The Court went on to state:

“The function of the reviewing court ends when an error of law is laid bare. At that point, the matter once more goes to the commission for **reconsideration**.”

Id. at 269, 734 A.2d 233 (*emphasis added*).

The Court further stated that this remand was granted to an administrative agency due to the agency existing as the **correct trier of fact**. *See Belvoir supra*. This responsibility as the trier of fact has been established as a capacity solely held by an administrative body. *Id.* When this body formerly based their decision on an incorrect standard, evidence must be reheard in order to apply the most minimal

of untreated evidence to correct the standard from the previous trial. *Id* at 270, 734 A.2d at 234. The Court found, “This general rule regarding a remand is especially applicable where the statute authorizing the administrative action includes a requirement that the agency consider factors of a legislative or administrative nature.” *Id*.

Section 502 of the BCZR (Special Exceptions), App 25-26, requires this exact type of legislative administrative factors to be considered when debating a Special Exception’s approval. Just as the Court of Special Appeals could not act as a trier of fact (instead deferring these types of decisions to the administrative board), a newly comprised board existing with two out of the three members board members as new members, who were not present at the original hearing, cannot act as the original triers of fact to the original proceedings. This administrative agency would have to conduct a hearing *de novo* for the same reason the Court of Special Appeals does not rely solely on the record of comprised evidence not heard directly by the Court.

In *Mortimer v. Howard Research and Dev. Corp.*, 83 Md. App. 432, 575 A.2d 750 (1990), the Court of Special Appeals clarified the rationale behind a Court remanding a decision of an administrative agency rather than issuing a ruling on the record. This rationale is identical to the justification for a rehearing by this newly appointed Board of Appeals because denying a *de novo* hearing would result in the “clumsy alternative [of the Board of Appeals] to *read* the record, *speculate* upon the portions which probably were believed by the original

board, *guess* at the conclusions drawn from credited portions, *construct a basis* for decision, and *try to determine* whether the decision thus arrived at should be sustained.” *Id* at 446, 575 A.2d at 757 (*emphasis added and in original*).

Lawton T. Sharp Farm, Inc. v. Somerlock, 52 Md. App. 207, 447 A.2d 500 (Md. App. 1982), presented the similar issue of the requirements for a *de novo* hearing upon the remand of a decision from the Board of Appeals. *Id*. As in the instant case, the Court of Special Appeals in *Lawton* had remanded a decision from the Howard County Board of Appeals due to the Board of Appeals applying an incorrect standard in their original consideration of a special exception petition. *Id*. The correct standard of review had been established by an intervening decision by the Court of Appeals, and given this new standard had not been applied, the Court of Special Appeals mandated that the underlying decision by the Board of Appeals must be reopened to “permit additional testimony from either side under this new standard of review.” *Id* at 210, 447 A.2d at 502. The case *sub judice* presents the identical circumstances confronted by the Court in *Lawton*. The Board of Appeals erred as matter of law in applying the incorrect interpretation of BCZR Section 436.4, App 22-24, to Southside’s Petition and, as such, a new trial by the Board of Appeals is required on remand in keeping with the precedent established in *Lawton*.

This requirement for a new trial would also serve the interests of justice in that the Board of Appeal’s original deliberations and resulting majority opinion

focused almost exclusively on the incorrect application of a locational standard set forth in Section 436.4 of the BCZR. *Id.* The majority opinion states,

“The issues raised in this case as considered in this majority Opinion of the Board are the application of the provisions of Bill No. 112-95, and the addition of Section 436 to the Baltimore County Zoning Regulations (BCZR). The reading and interpretation of Section 436.4 and Section 6, and their application, is the critical consideration to the denial or approval of the relocation of the pawnshop.”

Bd. of Appeals of Balt. Co. Decision, April 30, 1997. E 2.

Similarly, the deliberations of both Board members comprising the majority focused on an interpretation of the aforementioned legislation as the basis for their decision. Board member Harry E. Buchheister, Jr. stated in his deliberations, “The locational violation of the site, in my view, requires denial of the special exception.” Bd. of Appeals of Balt. Co. Deliberations, April 17, 1997, E 2-3.

This view was concurred with by Board Member S. Diane Levero’s statement, “On the basis that [Southside] cannot satisfy the requirements of 436.4a on two grounds, the one-mile limit and at least two existing pawnshops in the 7th district, I would deny petition for special exception.” Bd. of Appeals of Balt. Co. Deliberations, April 17, 1997, E 3.

The Circuit Court agreed with this interpretation that a *de novo* hearing was necessary due to the new Board not being able to discern where and how much the original Board relied on the locational standard in rendering its decision and rather it seemed as though the Board of Appeals simply “rubber stamped” the original Board’s decision. E 138. This was not seen as a new consideration by the Circuit

Court in its reversal and remand Order. The Circuit Court went on to point out that the Board of Appeals not only erred by relying on the incorrect requirements of Bill No. 112-95 but exasperated this error by usurping its authority as trier of fact and taking on the role of an appellate court in its statements, “We **affirm** the majority opinion that the Petitioner has not met his burden under BCZR 502.1 and that his request for a Special Exception for a pawnshop ... should be denied.” Maj. Op. at E 65.9 (emphasis added). The Board also stated it, “It **concurs** with the County Council and the majority of the original Board,” *Id* in direct violation of its role as an administrative body and trier of fact rather than by assuming an appellate role.

C. The Board of Appeals is required to have a quorum of deciding members present at a public hearing when reconsidering a decision on remand.

1. A Board Comprised of a Majority of New Members Required the Remand Be Heard *de novo*.

In *Prince George's County v. Zayre Corp.*, 70 Md. App. 392, 521 A.2d 779 (1987), the Court of Special Appeals ruled that a *de novo* hearing is required on remand when none of the members of the Board of Appeals had the opportunity to hear testimony that was introduced originally to the former Commission. *Id* at 399, 521 A.2d at 783. The Court ruled that a *de novo* hearing is appropriate where, “(1) the original trier of fact becomes unavailable and is consequently replaced by a second trier of fact; and (2) the material issues of the case turn on conflicting evidence in which the demeanor and credibility of lay witnesses is a crucial

factor.” *Id* at 400, 521 A.2d at 783. The Board of Appeals on remand has two new members of the board that were not privy to the original hearing, and the findings required for special exceptions depend heavily on the testimony of lay witnesses. Both of these criteria establish the necessity for a *de novo* hearing by the Board of Appeals on remand.

The *Zayre* Court also found that “[a]n agency of the government must scrupulously observe rules, regulations or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down.” *Id* at 401, 521 A.2d at 784 (citing *Hopkins v. Maryland Inmate Grievance Commission*, 40 Md. App. 329, 335-36, 391 A.2d 1213 (1978)). This is particularly true “when the regulations are intended primarily to confer important procedural benefits upon individuals.” *Id* at 401, 521 A.2d at 784.

As provided by Rule 1(c) of Practice and Procedure of the Baltimore County Board of Appeals, “Three (3) members of the board of appeals, . . . , shall sit for the purpose of conducting business of the board; and a majority vote of two (2) members shall be necessary to render a decision,” Rules of Practice and Procedure of the Baltimore County Board of Appeals, Rule 1(c). Apx 1. Therefore, as required by its own rules of procedure, at least two members of the board have to be present at the original hearing for any remanded decision to valid.

The Court of Appeals ruled on this exact issue when finding that the Montgomery County Code provision requiring at least three members from the

Board of Appeals must concur to reach a decision mandated that all members consisting of this quorum must be present at the public hearing for the Board's decision to be valid. Clark v. County Bd. of Appeals for Montgomery County, 235 Md. 320, 201 A.2d 499 (1964). This requirement was ruled as appropriate because absent members would not have the opportunity of seeing and hearing the witnesses which is a necessity for administrative agencies acting in a quasi-judicial manner. *See, Id.* at 324, 201 A.2d at 501. Baltimore County only requires that two members need to agree to constitute a quorum, and under the ruling of Clark, both of these members would have been present at the original hearing. As mentioned previously, only one member of the current Board was present at the public hearing.

2. As Evidenced by Prosser, on Remand, a Review of the record by the Board of Appeals is Only Appropriate When the Basis of the Remand is for a Limited, Technical Issue.

In their Ruling on the Motion for Reconsideration, the Board of Appeals stated their decision to not to hold a *de novo* decision was consistent with the holding of People's Counsel for Baltimore County v. Prosser Co., 119 Md. App. 150, 704 A.2d 483 (1998). (*See, Ruling on Motion for Reconsideration*, County Board of Appeals of Baltimore County, January 12, 2001, E 90.) Southside submits this conclusion of law is incorrect.

Prosser dealt with the Baltimore County Board of Appeals (on remand from the Circuit Court), upholding a former decision entered by a prior Board consisting of different members. The Board of Appeals sustained the prior

decision based entirely on a review the record and the decision was ruled to be appropriate by the Court of Special Appeals due to the unique and limited nature of the issue remanded. See Prosser at 179-80, 704 A.2d at 498.

The remand in Prosser dealt with a limited and technical issue, the determination of which did not rely the evaluation of lay witnesses credibility and demeanor. See Id. The instant case involved a determination by this Court that the Board of Appeals misinterpreted the law and commingled this misinterpretation of the law with its ultimate decision on the Special Exception. This Court on remand recognized an appellate Court could not extract the misinterpretation of the law from the analysis of the requirements for a Special Exception in the Board of Appeals' original decision. Therefore, the resulting decision did not contemplate a newly constructed Board (not present at the original hearing) would likewise be able to untangle the original decision without a new hearing.

As such, the remand mandated there be a new consideration with the instruction to ignore the locational standard. The Court of Special Appeals recognized it could not have discerned from a review of record how the Board of Appeals would have ruled without the misinterpretation of the law. The Board of Appeals, however, attempted to act as trier of fact, simply by reviewing the record, to glean what the correct decision of the original Board of Appeals panel would have been. The "untangling" done by the new Board of Appeals by simply reviewing the record is in derogation of the role of the Board of Appeals as the trier of fact and a clear error of law. Southside's petition was specifically ordered

to be granted a “new consideration”, which necessarily requires a substantial evaluation of all aspects of the special exception. This review is not technical in nature, as every element to be considered and evaluated is unique to each petition and requires an independent, subjective analysis. The solitary reason the court allowed a review of the record on remand in Prosser was because of the extremely limited nature of the remand, Southside’s remand deals with a much larger issue which necessitates a new trial.

This error of law was compounded due to two of the three members of the newly comprised Board were not the original trier of facts, and the remand was not of a technical nature.

In granting themselves authority to concur with the decision making process, the Board of Appeals also determined credibility of witnesses was not at issue on remand. This decision was made by two members who were absent from the original hearing and had no first hand knowledge of any of the witnesses or their credibility. This type of ruling, again, is an attempt by the Board of Appeals to act as an omnipotent entity, fully capable of understanding the former decision making process of the original Board and the weight it attributed to each witness.

People’s Counsel cites Powell v. Calvert Co., 137 Md.App. 425, 768 A.2d 750 (2001), People’s Counsel v. Prosser, 119 Md.App. 150, 704 A.2d 483 (1998) and People’s Counsel v. Mockard, 73 Md.App. 340, 533 A.2d 1344 (1987) to support its proposition that such review on the record by an administrative agency (even if they are newly comprised) is the normal procedure for handling all

remands. All three of these cases cited existed as **exceptions**, allowing for administrative review on the record after remand due to the particular facts surrounding each case.

In Powell v. Calvert County, the remand occurred because the original Board of Appeals had submitted an incomplete report to the Court of Special Appeals. The Board of Appeals in Powell was allowed to review the record **solely** because there was a job inspection by the Board and a report was not submitted as to the findings concluded from this visit. See, Powell supra, at 429, 768 A.2d at 752. This decision was not remanded due to incomplete findings or reasoning of the Court.

Similarly, in People's Counsel v. Mockard, the case was remanded to determine a specific issue of how an amended code provision would be dealt with prospectively. Again, this decision was remanded due to a specific, technical issue and, therefore, did not require a rehearing on the merits. See, Id.

This one technical, specific issue necessitating a remand also occurred in People's Counsel v. Prosser. In Prosser, the Court found that the Board of Appeals was very close in handing down a correct ruling; however, one technical issue had to be explained in order to clean up the record. See, Id.

Southside's case is different from these previously cited cases because the remand was due to the prior decision unlawfully commingling two inapplicable standards together. Thus, the remand was for "a new consideration of Appellant's

[Special Exception] application.” This remand was not for one technical issue, but, rather, for the entire Special Exception application and case.¹

By ignoring the technical nature of Prosser, People’s Counsel has erroneously analogized an entire trial on the merits with that of a remand for a technical issue. These merits were never ruled on as the original Board of Appeals ignored mentioning the statutory requirements. In order for these requirements to be ruled upon, the Board of Appeals must establish that the Petitioner either has or has not satisfied the burden associated with each element. See, Mossberg v. Montgomery County, 107 Md.App. 1, 666 A.2d 1253 (1995). This duty was imposed upon the Board by this Court’s previous decision. Despite the ruling, no mention of the statutory requirements was made by the Board of Appeals. See Board of Appeals Decision on remand. E 57.

As a matter of law, the required evidentiary hearing cannot be determined upon remand based on review of the record alone. To do so would subvert the role of the Board of Appeals as a trier of fact and result in the clumsy alternative of the Board of Appeals “*reading the record, speculating upon the portions which probably were believed by the original Board, guessing at the conclusions drawn from the portions, constructing a basis for a decision, and trying to determine whether the decision thus arrived at should be sustained.*” See, Mortimer v.

¹ A Special Exception application is analogous to a cause of action a party files in their civil lawsuits. As such, these are not technical issues for a court to decide. This is why a Special Exception requires a hearing, trial, calling of witnesses, cross examination of these witnesses, etc. All of these issues turn on the credibility and demeanor of the witnesses. A Board of Appeals sits as a trier of these facts and must hear all of these facts.

(1990).

3. BALTIMORE COUNTY DID NOT HAVE THE AUTHORITY UNDER THE EXPRESS POWERS ACT TO LIMIT THE NUMBER OF STATE LICENSED PAWNSHOPS PERMITTED TO OPERATE TO TWELVE IN THE COUNTY AS A WHOLE AND TWO IN EACH COUNCILMANIC DISTRICT.

A. Authority Under the Express Power Act.

Baltimore County, a charter county of the State of Maryland, only has power as expressly granted and conferred upon it by the State. The Annotated Code of Maryland, Article 25A, Section 5, enumerates the express powers which the State has given to chartered counties of Maryland, and states:

“§5. Enumeration.

The following enumerated express powers are granted to and conferred upon any county or counties which hereafter from a charter under the provisions of Article IX-A of the Constitution, that is to say:

(A) Local Legislation

(1) To enact local laws for the county, including the power to repeal or amend local laws of the county enacted by the General Assembly upon the matters covered by the express powers in this article.

(X) Planning and Zoning

(1)(i) To enact local laws, for the protection and promotion of public safety, health, morals, and welfare, relating to zoning and planning...

(v) The powers granted to the county pursuant to this paragraph shall not be construed:

4. To preempt or supersede the regulatory authority of any State department or agency under any public general law.” E 3-7. MD. ANN. CODE Art. 25A §5 App. 3

The Express Powers Act does not give to Baltimore County the right to regulate in such a manner as to limit the number of state licensed pawnshops in the County to twelve and the number of pawnshops in each councilmanic district to two. Concededly, Baltimore County has the right, under its delegated zoning authority, to determine the location of the pawnshops in particular zones, i.e. BM or BR zones, and require that pawnshops receive Special Exception approval. However, Baltimore County acted outside of its authority in creating a law which limits the total number of state licensed pawnshop businesses in the County to twelve and to two in each councilmanic district.

The regulation of the maximum permitted number of state licensed pawnshops is clearly a licensing regulation and not a land use and zoning regulation. In enacting Bill No. 112-95, Apx. 2, Baltimore County conferred onto itself the right to regulate the number of state licensed pawnshops in the County. *BALTIMORE CO. MD.* Bill No. 112-95 (1995). An entity could obtain a valid pawnshop dealer's license from the State of Maryland, and attempt to exercise its legal rights conferred by the State pursuant to the issuance of the license, and be denied the ability to do so by Baltimore County. Under the scheme devised by Baltimore County, pursuant to Bill No. 112-95, Baltimore County law supersedes the state law. *Id.* Baltimore County has created for itself a veto of the decision of the State of Maryland to issue a pawnshop broker's license. An entity may meet all the requirements to obtain a license from the state, but is absolutely precluded

by Baltimore County in exercising its rights conferred by the issuance of the license.

The limitation on the number of a particular use in a jurisdiction is not a traditional land use regulation as observed in *Flax v. City of Richmond*, 52 S.E.2d 250 (Va. 1949). *Flax* involved an enabling statute passed by the Virginia General Assembly which authorized counties, cities and towns to limit the number of pawnshops. The *Flax* Court stated, “Acts of the General Assembly ... authorize counties, cities and towns to limit the number of pawnshops to be operated therein. This *enabling act* delegating authority to the locality reads:

‘[T]he governing body of any county, city or town may limit by resolution or ordinance the number of pawnshops that may be operated at any one time within the territory limits thereof...’ “
(emphasis added)

52 S.E.2d at 278.

The Council of the City of Richmond, through the rights conferred by the enabling act delegating licensing authority to the City, enacted an ordinance which limited the number of pawnshops to be licensed in the City to twelve. In the instant matter, there is no enabling act which delegates authority to Baltimore County to limit the number of state licensed pawnshops in its territorial limits to twelve, or to two per councilmanic district.

Baltimore County applied the general rule from *Flax* that municipalities can limit the number of pawnshops to twelve within its territorial area. Had the drafters of Bill No. 112-95 read carefully *Flax*, they would have understood that

Baltimore County first needed an enabling statute from the State of Maryland prior to adopting legislation which limits the number of pawnshops in Baltimore County. The State of Maryland clearly has delegated the authority to Baltimore County to regulate the land use and zoning issues, i.e. where pawnshops can be located and setbacks from other uses, but never authorized any licensing ability over pawnshops.²

B. BCZR Section 436 is a Hybrid Between a Zoning Regulation and a Licensing Regulation.

On October 29, 1998, this Court issued its opinion in *Mayor and City Council of Baltimore City v. Dembo, Inc.*, 123 Md.App. 527, 719 A.2d 1007 (1998) which specifically addresses the distinction between a municipality's power to zone and a municipality's power to license.

Dembo is illustrative on one of the issues in the instant matter; namely, whether

² A useful analogy in discussing licensing versus land use regulations is in the area of alcoholic beverages. Pursuant to the Annotated Code of Maryland, Article 2B, the State of Maryland has the authority to regulate and license alcoholic beverages and the businesses serving such. In Article 2B, the State of Maryland defines with particularity the number of establishments in each jurisdiction which can hold various types of liquor licenses. For example, the State of Maryland regulates and licenses and places limitations on the number of liquor licenses in Baltimore County, Baltimore City, etc. The State of Maryland has not delegated the authority to the local municipalities to limit the number of establishments holding a particular type of liquor license.

However, under the Express Powers Act of Section 5(X) of Article 25, chartered counties have the ability to make land use determinations where establishments selling alcoholic beverages may be located. For example, a chartered county has the power to determine that no taverns may be located in a residentially zoned area or that taverns may only be located in a business zone by way of Special Exception. Chartered counties, through the Express Powers Act, may establish setbacks from one tavern to another tavern. For example, the one-mile setback for pawnshops in Bill No. 112-95 is a valid land use control of pawnshops and likely could be used for taverns.

Municipality zoning regulations in Maryland do not have limitations on the number of establishments selling alcoholic beverages. For example, municipality regulations in Maryland do not have a limitation that only twelve taverns are permitted to operate in that particular municipality. Furthermore, municipality zoning regulations in Maryland do not have a limitation that only two liquor stores are permitted in a councilmanic district. Such a regulation is a licensing regulation, and not a land use control, and is preempted by Article 2B, of the Annotated Code of Maryland.

- (1) all aspects of BCZR Section 436 meet the criteria as a zoning regulation, or
- (2) all aspects of BCZR Section 436 meet the criteria as a licensing regulation, or
- (3) that some of the aspects of BCZR Section 436 meet the criteria as a zoning regulation, while other aspects meet the criteria as a licensing regulation.

Applying the legal principals set forth in Dembo to the issues raised in the instant matter, it is apparent that some of the aspects of BCZR Section 436 meet the criteria as a zoning regulation, while other aspects meet the criteria as a licensing regulation. The aspects of BCZR Section 436 that meet the criteria as a zoning regulation are valid restrictions. App. 22. The aspects of BCZR Section 436 that meet the criteria as a licensing regulation are not valid because the State has expressly preempted Baltimore County from regulating the licensing of pawnshops.

Dembo examined Baltimore City's effort to regulate the operation of adult entertainment businesses. Baltimore City had enacted two types of regulations to regulate adult entertainment; namely, a zoning regulation which concerns the placement of the use, and a licensing regulation which regulated the operation of adult entertainment businesses.

Although the question before the Court in Dembo related to issues of nonconforming use and of grandfathering, the Court went to great lengths to

explain the distinction between municipal power to zone and the separate municipal power to license. This Court began its discussion in *Dembo* by stating:

We find that Appellant, Appellee, and the Board all failed to recognize the distinction between the municipal power to zone and the separate municipal power to license. The parties improperly merged the separate concepts in their analysis of the rules pertaining to nonconforming uses. We consider the distinction between these concepts to be critical, and hold that a property owner will not lose its nonconforming use status accorded under zoning laws simply by its failure to comply with a licensing law.

Dembo, supra at 534, 719 A.2d at 1011.

The *Dembo* ruling concluded:

The recited purposes of the [Baltimore City] Ordinance ... as well as the substance of the licensing provisions for adult entertainment businesses, clearly demonstrate that these licensing provisions are not in the nature of a zoning law, which is primarily concerned with uniformity of land use and stability of location. *See Maybee*, 789 F.Supp. at 89-90; *City of Batavia*, 578 N.E.2d at 599; *Primm*, 252 P.2d at 839. Rather, the provisions are more broadly aimed to protect the health and welfare of the citizens by licensing operators of adult entertainment establishments.”

Dembo, supra at 536-37, 719 A.2d at 1012.

In the instant matter, BCZR Section 436 is a hybrid between a zoning regulation and a licensing regulation. There are aspects of BCZR Section 436, namely, the provisions as to which zones pawnshops are permitted, which are clearly zoning in nature. However, there are aspects of BCZR Section 436 that meet the criteria as a discretionary licensing regulation attempting to limit or suppress outright the general operation of pawnshops. Specifically, the provisions in Section BCZR 436 which mandate that only 12 pawnshops be permitted in the

entire County and only 2 be permitted in each councilmanic district are, under *Dembo*, clearly a discretionary licensing regulation and not a zoning regulation.

4. THE STATE HAS EXPRESSLY PREEMPTED BALTIMORE COUNTY FROM REGULATING THE LICENSING OF PAWNSHOPS.

The distinction between the municipal power to zone and the separate municipal power to license illustrated by the Court in *Dembo* is critical to the resolution of the issues raised in the instant matter. The State has delegated to Baltimore County the municipal power to zone; i.e. regulate land use through the enactment of zoning regulations that control where in the County pawnshops may be located. The State, however, has not delegated to Baltimore County the separate municipal power to license pawnshops; i.e. regulate certain types of businesses by controlling how many pawnshops may be operated in the County, regardless of location. On the contrary, the State has expressly preempted Baltimore County from regulating the licensing of pawnshops.

1. In rendering its decision, the Board of Appeals relied heavily upon the “licensing” language of BCZR Section 436.

In fact, it is impossible to separate the Board of Appeals’ analysis to ascertain whether the Board of Appeals relied solely upon the zoning aspect of BCZR Section 436 or relied on both the licensing and zoning aspects of Section 436. E 57. The Board of Appeals’ decision demonstrates that the licensing and zoning aspects of Section 436 are inextricably intertwined. *Id.* BCZR Section 436 is a hybrid regulation wherein Baltimore County is attempting to assert both the municipal power to zone (which it has), and the municipal power to license

pawnshops (which it does not have), and, therefore, this Court should hold that BCZR Section 436 is invalid in regard to its granting licensing power to the Zoning Board. See Insurance Commissioner of the State of Maryland v. Equitable Life Assurance Society of the United States, 339 Md. 596, 617-618, 664 A.2d 862 (1995); See also Hoffman v. City of Baltimore, 197 Md. 294, 305-306, 79 A.2d 367, 372 (1951); Baltimore v. Seabolt, 210 Md. 199, 207, 123 A.2d 207, 210 (1956).

Applying Dembo to the instant matter, Baltimore County may use its municipal zoning powers to create a “reasonable and orderly segregation of residential, commercial and industrial areas” and create regulations which are “primarily concerned with the uniformity of land use and stability of community growth.” The State has given Baltimore County the municipal power to zone through the Express Powers Act which states at Md. Ann. Code, Art. 25A, Section 5(x) that Baltimore County has the power to “enact local laws for the protection and promotion of public safety, health, morals and welfare, relating to zoning and planning.” App 6.

The Court of Special Appeals in County Commissioners of Queen Anne’s County, et al. v. Soaring Vistas Properties, Inc., et al., 121 Md.App. 140, 708 A.2d 1066 (1998), recently addressed the law of preemption and stated:

“A State law will ordinarily preempt a local law ‘in one of three ways: (1) preemption by conflict; (2) express preemption; or (3) implied preemption.’ Perdue Farms, Inc. v. Hadder, 109 Md.App. 582, 588, 675 A.2d 577 (1996); see Talbot County v. Skipper, 329 Md. 481, 487-88, 620 A.2d 880 (1993); May Dep’t Stores v.

Montgomery County, 118 Md.App. 441, 462, 702 A.2d 988 (1997); cert. granted, 349 Md. 327, 707 A.2d 1330 (1998). In Ad + Soil, Inc. v. County Commissioners of Queen Anne's County, 307 Md. 307, 513 A.2d 893 (1986), the Court explained:

The doctrine of preemption is grounded upon the authority of the General Assembly to reserve for itself exclusive domain over an entire field of legislative concern. When properly invoked, the doctrine precludes local legislative bodies from enacting any legislation whatsoever in the preempted field."

Id at 324, 513 A.2d 893.

121 Md.App. at 152.

The Court of Appeals in Boulden v. Mayor of Elkton, 311 Md. 411, 415-17, 535 A.2d 477 (1988), defined preemption by conflict existing, "[I]f a local ordinance prohibits an activity which is intended to be permitted by state law, or permits an activity which is intended to be prohibited by state law." *Id.*

In the instant case, there is an express preemption or preemption by conflict. Annotated Code of Maryland, Business Regulation Article Section 12-100, et seq., App. 27-37, which pertains to secondhand precious metal object dealers and pawnbrokers, states at Section 12-102(d):

"Powers of county or municipal corporations. –

(1) The county or municipal corporation may not enact a law to regulate dealers, coins, or numismatic items.

(2) This title supercedes any existing law of a county or municipal corporation that regulates dealers, coins, or numismatic items."

App. 29

Section 12-101(b) defines a dealer as, "[A]n individual who acquires commercially from the public or trades commercially with the public secondhand precious metal objects or, unless otherwise provided, a *pawnbroker*." App. 27-28

The Express Powers Act at Section 5(X)(1)(v) states:

“The powers granted to the county pursuant to this paragraph shall not be construed to:

(v) preempt or supersede the regulatory authority of any State department or agency under any public general law.”

App 6.

The clear language of Section 12-102(d) and the Express Powers Act demonstrate an express state preemption of regulatory and licensing powers of Baltimore County in the field of pawnshops.

The Planning Board and the Office of Law recognized that Baltimore County, under the Express Powers Act, has the ability to regulate traditional land use and zoning issues, however, does not have the delegated authority from the State to regulate the number of pawnshops in a municipality. The Planning Board’s report states:

“From 1964 to 1982, Baltimore County licensed pawnshops. The regulations were codified in Title 19 of the County Code.

...

In 1981, the State adopted regulations for the licensing of Secondhand Precious Metal Object Dealers as part of the Maryland Annotated Code. (Art. 56, Secs. 416-415) A 1982 amendment expanded the coverage of the law to include pawnbrokers.

...

In addition to specifying requirements for obtaining a license, the State, since 1981, has substantially limited the authority of local jurisdictions to regulate businesses dealing in numismatic items and secondhand precious metals. This includes pawnbrokers if they deal in such merchandise, which virtually all pawnbrokers do.

...

The County repealed Title 19 of the County Code in 1989 and the 1989 recodification and *thereby officially acknowledged the loss of its licensing power.*

...

The licensing regulations discussed above extend only to the conduct of the business trade. Land use considerations were neither addressed by the County in Title 19, which formally controlled pawnshops, nor are they included in the State regulations that govern pawnshops today. To ascertain that the County has authority to enact zoning regulations for pawnshops, the Planning Board asked the County Attorney to review the preemption provision of Title 12 and was advised that the State's regulations do not preempt the County's authority to establish location, setback and *other customary zoning regulations*, including conditions for granting Special Exceptions." (emphasis added)
BALTIMORE CO., MD., PLANNING BD. FINAL REP. Leg. Project 94-06, (Feb. 16, 1995). Apx. 9

The Planning Board acknowledged that in its research of the issue of regulating pawnshops that Baltimore County lost its power to regulate and license pawnshops. The Planning Board also acknowledged that the repealed regulation dealt with the conduct of the business trade. The Planning Board asked the County Attorney to ascertain whether the County had the authority to enact zoning regulations for a pawnshop. The clear language of the Express Powers Act indicates that Baltimore County has the authority to enact zoning regulations for particular uses in the County. The County Attorney correctly answered the inquiry by stating that, "The State's regulations should not preempt the County's authority to extend such locations, setbacks and other *customary zoning regulations*, including conditions for granting Special Exceptions." *Id* at Apx. 13 (emphasis added). Southside does not dispute the County Attorney's finding.

However, the attempt to limit the number of state licensed pawnshops in the County to twelve total and to limit the number of pawnshops in a particular councilmanic district to two is clearly a regulation of the conduct of the business

trade, which is a licensing regulation. *See Flax v. City of Richmond*, 184 Va. 273, 52 S.E.2d 250 (1949). The limitation of the number of a particular use in a jurisdiction is a licensing regulation and the local municipality must have authority delegated to it from the State to conduct that licensing. *See Id.*

Business Regulation Article, Section 12-102(d) expressly preempts any county to enact any laws which regulate state licensed pawnshop dealers. App 27. The language in Section 12-102(d) is quite broad and clear. Section 12-102(d) manifests a clear intent of the State law to preempt any local jurisdiction law which attempts to regulate state licensed pawnshops dealers. *Id.* The Planning Board's report discusses the history of the licensing and regulation of pawnshops and indicates that the State did not become involved in any regulation of pawnshops until 1982. App 9. Prior to 1982, several of the chartered counties had their own licensing and regulations pertaining to pawnshops.

Pursuant to Business Regulations Article, Section 12-102(d), any power once held by Baltimore County to regulate the licensing of pawnshops is preempted by State law. Baltimore County may not pass a regulation which supersedes and preempts the regulatory authority of the State regarding pawnshops. The limitation that only 12 state licensed pawnshops and only two state licensed pawnshops are permitted in Baltimore County preempts and supersedes the regulatory authority of the State. The State determines who may receive licensing and who may operate a pawnshop. The Baltimore County pawnshop regulation effectively precludes a validly state licensed pawnshop from

operating in Baltimore County as a whole, and in each of the councilmanic districts.

People's Counsel argues that Hamdan v. Klimovitz, 124 Md. App. 314, 722 A.2d 86 (1998) is dispositive on the preemption issue. Hamdan simply stands for the proposition that if both the state and county regulations impose substantially similar reporting requirements, the laws do not conflict. *Id.* In the instant matter, the state and county statutes are not substantially similar. The Baltimore County regulation does not deal with similar reporting requirements, rather it imposes a cap on the number of pawnshops permitted in the county. In Hamdan, the state and county regulations simply overlapped one another which is not the case *sub judice*.

Furthermore, Hamdan concerned a Harford County pawnshop licensing statute, not a zoning regulation. People's Counsel cites no supporting authorities for the proposition that Baltimore County, or any other municipality for that matter, has the power to create a hybrid ordinance with both elements of a zoning regulation and a licensing regulation. In Hamdan, Harford County created a specific licensing regulation for pawnshops. There were no zoning regulation elements to the Harford County licensing regulation. *See, Hamdan supra* at 328, 722 A.2d at 93.

Baltimore County does not issue licenses for any type of pawn transaction. Baltimore County does not have any reporting requirements separate and apart of those imposed by the state for pawn transactions. Southside Brokers does not, and

need not, hold a Baltimore County license to conduct pawn transactions. The only Baltimore County regulations regarding pawnshops are found in the Baltimore County Zoning Code Section 436, et seq. Hamdan, supra; and Mayor and City Council of Baltimore City v. Dembo, Inc., 123 Md.App. 527, 719 A.2d 1007 (1998), stand for the proposition that a municipality must separate its zoning regulations and licensing regulations.

People's Counsel cites A & D Soil, Inc. v. County Commissioners, 307 Md. 307, 513 A.2d 893 (1986) and Holiday Point Marina v. Anne Arundel County, 349 Md. 190, 707 A.2d 829 (1998) for the proposition that individuals may obtain a state license, but still be regulated by county zoning ordinances. Those cases are distinguishable.

In A & D Soil, the County required the use at issue to meet conditional use approval and meet the required setbacks. If the use met the conditional use at issue approval and minimal setbacks, it was permitted. Holiday Point Marina, dealt with an entity obtaining a state permit to harvest shellfish, but the county enacted a zoning regulation which concerned setbacks to marinas for such harvesting. In both A & D Soil and Holiday Point Marina, had the entity met the zoning requirements, they were permitted to exercise their rights under the state issued license.

In the instant matter, an entity could obtain a validly issued state license, and could be prohibited, outright, from exercising the rights of that validly issued state permit in Baltimore County. Unlike A & D Soil and Holiday Point Marina,

the County created an absolute prohibition of an entity attempting to exercise the rights under a validly issued state permit. In A & D Soil and Holiday Point Marina, the entities simply had to comply with minimum setback requirements and conditional use requirements and would be permitted to operate.

Further, A & D Soil and Holiday Point Marina concern the alleged conflict between a state licensing regulation and a local zoning ordinance. The instant matter, there is a conflict between a state licensing ordinance and a county licensing ordinance cloaked in the clothing of a purported zoning regulation. Dembo makes clear that the regulation of the number of pawnshops permitted to operate in Baltimore County is a licensing regulation.

Therefore, Southside respectfully requests this Honorable Court to declare the sections of Bill No. 112-95 and BCZR Section 436.4 preempted or invalid.

5. Counsel for Southside Properly Raised the Constitutional Issues before the Board of Appeals.

People's Counsel contends that the constitutional issues were not properly preserved. People's Counsel is incorrect in its assertion. On the first day of the hearing before the Board of Appeals, counsel to Southside raised the constitutional issues. As a preliminary matter, counsel for Southside stated:

“It's always been a question in my mind, and you may have to struggle with this, or may now, whether this attempt by the legislation before you is to usurp the authority of the State of Maryland to control pawnshops when, in fact, the very statute that's enacted by the State of Maryland says that it is the sole and exclusive control of the operation of pawnshops in the State of Maryland. Nevertheless, [Baltimore County] in their wisdom has decided to copy the City of Alexandria which has done something

similar in enacting a similar land use zoning piece of legislation down there for similar purpose, so we are dealing with a legal issue.”

Counsel for Southside properly raised the constitutional issues before the Board of Appeals. Counsel for Southside has continued to raise the constitutional issues from the Board of Appeals, through the Circuit Court, the Court of Special Appeals, a second time in Circuit Court and now again to the Court of Special Appeals. This Court found it unnecessary to rule on the constitutional issues initially and these issues have remained on the record.

VII. CONCLUSION

WHEREFORE, for the aforementioned reasons, Appellant, Southside Brokers, respectfully requests this Honorable Court to affirm the ruling of the Circuit Court and remand this case for a *de novo* heaving of the aforementioned case to the Board of Appeals, and further requests a ruling on the constitutional issues raised in this Memorandum.

Respectfully submitted,



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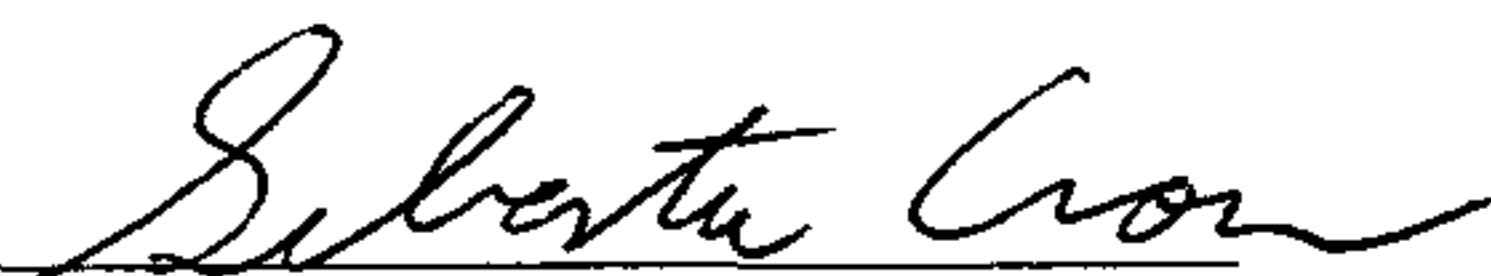
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December, 2001, a copy of the foregoing Appellee Southside Brokers, Inc.'s Brief and Appendix was mailed first class, postage prepaid to:

Baltimore County Board of Appeals
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
Carole S. DeMilio, Esquire
People's Counsel for Baltimore County
Room 47 – Old Court House
400 Washington Avenue
Towson, Maryland 21204


Sebastian A. Cross

APPENDIX H
RULES OF PRACTICE AND PROCEDURE
OF THE BALTIMORE COUNTY BOARD OF APPEALS¹

Rule 1. General

- a. The county board of appeals shall select one of its members to be the chairman of the board, and he shall serve as chairman at the pleasure of the board. The chairman shall preside at all meetings of the county board of appeals, and in his absence he shall designate another member of the board to sit in his place as acting chairman.
- b. Meetings of the county board of appeals shall be held as determined by the chairman, but never less than weekly; and the board shall meet at such other times as the board may determine.
- c. Three (3) members of the board of appeals, as designated by the chairman, shall sit for the purpose of conducting the business of the board; and a majority vote of two (2) members shall be necessary to render a decision, except that, in the event of illness or death of a sitting member, upon agreement of counsel of record or parties or record, two (2) members may continue to sit for purposes of concluding any matter before the board of appeals.
- d. All appeals to the board from decisions of the zoning commissioner or deputy zoning commissioner shall be in conformance with the rules of the zoning commissioner of Baltimore County with respect to the form of appeal, and the filing fees shall be as established either by said rules of the zoning commissioner or by the Zoning Regulations of Baltimore County.

Rule 2. Notice.

- a. No hearing shall be conducted without at least ten (10) days' notice to all parties of record or their counsel of record, unless otherwise agreed to by all such parties or their counsel of record.
- b. Postponements and continuances will be granted at the discretion of the board only upon request in writing by an attorney of record, addressed to the board and with a copy to every other attorney of record, or party of record (if not represented by counsel) entitled to receive notice, in accordance with section 500.11 of the Baltimore County Zoning Regulations, setting forth good and sufficient reasons for the requested postponement.
- c. No postponement shall be granted within fifteen (15) days prior to the hearing date except in extraordinary circumstances and for a reason satisfactory to the board, given by the party requesting such postponement indicating that the circumstances requiring the postponement are of an unusual and ordinary nature.

¹ Editor's Note: These rules are included here as they appeared in Appendix G of the 1987 Edition of the Baltimore County Zoning Regulations, as amended.

APX. 1

DISPOSITION LIST

INDEX

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
LEGISLATIVE SESSION 1995, LEGISLATIVE DAY NO. 12

BILL NO. 112-95

C.C. Ehl
#11

MR. KEVIN KAMENETZ, COUNCILMAN

BY THE COUNTY COUNCIL, JUNE 5, 1995

A BILL ENTITLED

AN ACT concerning

Pawnshops

FOR the purpose of repealing a moratorium on the establishment of pawnshops in Baltimore County; regulating the location of pawnshops; defining terms; permitting pawnshops in certain zones by Special Exception; providing certain restrictions upon existing pawnshops; limiting the total number of pawnshops permitted in the County; providing restrictions and requirements for a petition for Special Exception; and generally relating to pawnshops in Baltimore County.

BY repealing

Bill No. 14-95

BY repealing and re-enacting, with amendments,

Section 101-Definitions, by adding, alphabetically, the definition of
"pawnshop"

Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments,

Sections 233.2, 233.4 and 236.4

Baltimore County Zoning Regulations, as amended

BY adding

Section 436

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

APX-2

WHEREAS, the Baltimore County Council received a final report from the Planning Board, dated February 17, 1995, concerning the subject legislation and held a public hearing thereon on April 17, 1995; now, therefore

1. SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY,
2. MARYLAND, that Bill No. 14-95 be and it is hereby repealed in its entirety.

3. SECTION 2. AND BE IT FURTHER ENACTED, that Section 101 - Definitions, of
4. the Baltimore County Zoning Regulations, be and it is hereby repealed and
5. re-enacted, with amendments, by adding, alphabetically, the definition of
6. "pawnshop", to read as follows:

7. Section 101 - Definitions

8. PAWNSHOP: A BUSINESS WHICH LOANS MONEY ON DEPOSITS OF PERSONAL PROPERTY,
9. OTHER THAN SECURITIES OR PRINTED EVIDENCES OF INDEBTEDNESS, OR DEALS IN THE
10. PURCHASE OR POSSESSION OF PERSONAL PROPERTY ON CONDITION OF SELLING THE SAME BACK
11. TO THE PLEDGOR OR DEPOSITOR. A PAWNSHOP IS LICENSED BY THE STATE AS A DEALER AND
12. DEFINED BY THE STATE AS A PAWNBROKER. FOR THE PURPOSES OF THESE REGULATIONS ONLY,
13. A BUSINESS OPERATED BY A DEALER WHO LOANS MONEY ON DEPOSITS OF SECONDHAND PRECIOUS
14. METALS AND GEMS, ONLY, SHALL NOT BE CONSIDERED A PAWNSHOP PROVIDED THAT THE DEALER
15. DOES NOT LOAN MONEY ON DEPOSITS OF ANY OTHER KIND OF PERSONAL PROPERTY.

16. SECTION 3. AND BE IT FURTHER ENACTED, that Sections 233.2, 233.4 and 236.4
17. of the Baltimore County Zoning Regulations, as amended, be and they are hereby
18. repealed and re-enacted, with amendments, to read as follows:

APX. 3

1. B.M. Zone - Business, Major

2. Section 233 - Use Regulations

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

4. 233.1 - Uses permitted in B.L. Zone.

5. 233.2

6. {Pawnshop.}

7. 233.4 - Special Exceptions - The following uses when permitted as special
8. exceptions (see Sections 270 and 502):

9. PAWNSHOP

10. B.R. Zone - Business, Roadside

11. Section 236 - Use Regulations

12. 236.4 - Special Exceptions - The following uses when permitted as special
13. exceptions (see Sections 270 and 502):

14. PAWNSHOP

15. SECTION 4. AND BE IT FURTHER ENACTED, that Section 436 be and it is hereby
16. added to the Baltimore County Zoning Regulations, as amended, to read as follows:

17. SECTION 436 - PAWNSHOPS.

18. 436.1 - LEGISLATIVE FINDINGS.

19. (A) THE PRINCIPLE OF COMMUNITY CONSERVATION IS AN EXPRESSED GOAL IN
20. BALTIMORE COUNTY. THE MASTER PLAN 1989-2000 PROPOSES THAT COMMERCIAL ACTIVITIES
21. INCOMPATIBLE WITH LOCAL NEIGHBORHOODS SHOULD BE RESTRICTED IN SUCH AREAS.

22. (B) THE STATE OF MARYLAND REQUIRES THAT BUSINESSES WHICH PURCHASE OR
23. LOAN ON DEPOSIT OF SECONDHAND PRECIOUS METALS AND OTHER VALUABLES OBTAIN A
24. "DEALER'S" LICENSE AND REPORT TRANSACTIONS TO THE LOCAL LAW ENFORCEMENT AGENCY TO
25. HELP PREVENT STOLEN ITEMS FROM BEING TRADED.

* 26. (C) THE BALTIMORE COUNTY COUNCIL FINDS THAT AN UNDUE CONCENTRATION OR
27. THE INAPPROPRIATE SITING OR DESIGN OF PAWNSHOP BUSINESSES HAS A REASONABLE

APX. 4

1. PROBABILITY OF CAUSING ADVERSE EFFECTS ON NEARBY RESIDENTIAL AND COMMERCIAL AREAS
2. BY CREATING AN IMPRESSION OF COMMUNITY DECLINE AND INSTABILITY.

3. (D) BASED UPON REPORTS SUBMITTED BY THE BALTIMORE COUNTY POLICE
4. DEPARTMENT, THE COUNTY COUNCIL FINDS THAT PAWNSHOPS WHICH DEAL IN A WIDE VARIETY
5. OF VALUABLE GOODS ARE MORE LIKELY TO HAVE A GREATER DELETERIOUS EFFECT ON
6. NEIGHBORHOODS THAN BUSINESSES WHICH DEAL EXCLUSIVELY IN SECONDHAND PRECIOUS METALS
7. AND GEMS, WHERE PAWN TRANSACTIONS ARE MERELY INCIDENTAL TO THE SALE OF NEW OR
8. SECONDHAND JEWELRY.

9. (E) SUCH ADVERSE EFFECTS WOULD DIRECTLY CONFLICT WITH THE COUNTY'S
10. COMMITMENT TO CONSERVING AND REVITALIZING OLDER COMMUNITIES AND WOULD BE
11. INORDINATELY DIFFICULT TO OVERCOME ONCE ILL-SITED PAWNSHOPS HAVE BEEN ESTABLISHED.

12. (F) THE COUNCIL FINDS THAT THE NUMBER OF EXISTING PAWNSHOPS IN
13. BALTIMORE COUNTY IS MORE THAN SUFFICIENT TO MEET THE NEEDS OF THE COMMUNITY AND
14. THAT IT IS CONSISTENT WITH THE INTENT OF THESE REGULATIONS FOR PROMOTING THE
15. PUBLIC HEALTH, SAFETY AND WELFARE TO ESTABLISH A LIMIT ON THE TOTAL NUMBER OF
16. BUSINESSES IN BALTIMORE COUNTY WHICH LOAN ON DEPOSIT OF ITEMS OTHER THAN
17. SECONDHAND PRECIOUS METALS AND GEMS.

18. 436.2 - PROCEDURE

19. (A) THE CHIEF OF POLICE, BASED ON TRANSACTION SHEETS SUBMITTED BY
20. LICENSED DEALERS, SHALL REPORT TO THE DIRECTOR OF PERMITS AND DEVELOPMENT
21. MANAGEMENT THE NAMES AND ADDRESSES OF ALL LICENSED DEALERS IN BALTIMORE COUNTY
22. WHO, IN CALENDAR YEAR 1995, MADE LOANS ON DEPOSIT OF AN ITEM OTHER THAN A
23. SECONDHAND PRECIOUS METAL.

24. (B) UPON RECEIPT OF A DEALER'S TRANSACTION SHEET REPORTING A LOAN ON
25. DEPOSIT OF ANY ITEM OTHER THAN A SECONDHAND PRECIOUS METAL, THE CHIEF OF POLICE
26. SHALL REPORT TO THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT THE NAME AND
27. ADDRESS OF THE BUSINESS, IF THE CHIEF HAS NOT PREVIOUSLY REPORTED THIS INFORMATION
28. TO THE DIRECTOR.

APX-5

1. (C) FOR ANY LICENSE REPORTED TO THE DIRECTOR, THE CHIEF SHALL PROMPTLY
2. NOTIFY THE DIRECTOR WHEN THE STATE RENEWS OR REVOKES THE LICENSE OR WHEN THE
3. LICENSE EXPIRES.

4. (D) THE DIRECTOR MAY NOT ACCEPT A SPECIAL EXCEPTION PETITION FOR A
5. PAWNSHOP IF THERE ARE TWELVE VALID DEALERS' LICENSES IN THE COUNTY USED TO OPERATE
6. PAWNSHOPS.

7. (E) A DEALER MAY, BY AFFIDAVIT, ANNUALLY DECLARE TO THE DIRECTOR THAT
8. ALL FUTURE PAWN TRANSACTIONS SHALL BE LIMITED SOLELY TO SECONDHAND PRECIOUS
9. METALS, AND THE DIRECTOR SHALL REMOVE THE NAME AND ADDRESS OF THAT PAWNSHOP FROM
10. THE LIST, DURING SUCH TIME AS THE AFFIDAVIT REMAINS IN EFFECT.

11. 436.3 - BUFFER AND SIGN REQUIREMENTS.

12. A PAWNSHOP IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

13. (A) A PAWNSHOP ABUTTING A RESIDENTIAL ZONE LINE (OTHER THAN A STREET
14. RIGHT-OF-WAY), A SCHOOL OR A CHURCH, SHALL PROVIDE A BUFFER IN THE FORM OF A SIX
15. FOOT HIGH BOARD ON BOARD FENCE OR A BRICK WALL IN COMBINATION WITH LANDSCAPING; AND

16. (B) NOTWITHSTANDING THE REQUIREMENTS OF SUBSECTION 413.2:

17. 1. ONE WALLMOUNTED BUSINESS SIGN IS PERMITTED WITH A SURFACE AREA
18. OF NO MORE THAN TWICE THE LENGTH OF THE WALL ON WHICH IT IS MOUNTED, BUT IN NO
19. CASE MORE THAN 50 SQUARE FEET.

20. 2. THE PLACEMENT OF ANY SIGN SHALL BE SIMILAR TO THE PLACEMENT OF
21. SIGNS MOUNTED ON WALLS OF NEIGHBORING BUSINESSES EXCEPT THAT NO SUCH SIGN MAY
22. EXTEND ABOVE THE EAVES LINE OF A PITCHED ROOF OR THE PARAPET OF A FLAT ROOF
23. BUILDING.

24. 3. A FREESTANDING BUSINESS SIGN IS NOT PERMITTED.

25. 4. MISCELLANEOUS EXTERIOR TEMPORARY SIGNS, AS DESCRIBED IN
26. SUBSECTION 413.4, ARE NOT PERMITTED TO BE DISPLAYED ANYWHERE ON THE PREMISES,
27. INCLUDING WINDOWS.

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1. (C) THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING
2. COMMISSIONER MAY CONTROL REASONABLY REGULATE THE LETTER SIZE, LIGHTING,
3. COLOR AND OTHER DESIGN ASPECTS OF ALL SIGNAGE FOR CONSISTENCY AND COMPATIBILITY
4. WITH SIGNAGE ON NEIGHBORING BUSINESSES.

5. (D) THE USE OF THE WORD "PAWN" OR THE USE OF THE THREE GOLDEN BALL
6. SYMBOL DESIGNATING A PAWNSHOP IS RESTRICTED TO PAWNSHOPS, AS DEFINED IN THESE
7. REGULATIONS, AND MAY NOT BE USED BY ANY OTHER BUSINESS.

8. (E) THE SALE OF FIREARMS IS PROHIBITED, UNLESS AUTHORIZED BY THE
9. APPROPRIATE FEDERAL AND STATE AGENCIES.

10. 436.4 - SPECIAL EXCEPTION PETITION.

11. IN ADDITION TO THE REQUIREMENTS OF SECTION 436.3 AND SUCH OTHER
12. REQUIREMENTS OF THESE REGULATIONS RELATING TO A SPECIAL EXCEPTION PETITION,
13. A SPECIAL EXCEPTION PETITION FOR A PAWNSHOP IS SUBJECT TO THE FOLLOWING
14. REQUIREMENTS:

15. (A) A PAWNSHOP MAY NOT BE LOCATED WITHIN A ONE MILE RADIUS OF ANY
16. OTHER PAWNSHOP, AND NO MORE THAN TWO PAWNSHOPS MAY BE LOCATED IN A COUNCILMANIC
17. DISTRICT.

18. (B) THE ZONING COMMISSIONER MAY REASONABLY LIMIT THE HOURS OF
19. OPERATION OF A PAWNSHOP.

20. 436.5 - ENFORCEMENT.

21. THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT SHALL PROVIDE FOR THE
22. ENFORCEMENT OF THIS SECTION IN ACCORDANCE WITH THE PROVISIONS OF TITLE 26, ARTICLE
23. IV OF THE BALTIMORE COUNTY CODE AND ARTICLE 5 OF THESE REGULATIONS.

24. SECTION 5. AND BE IT FURTHER ENACTED, that pawnshops lawfully in
25. existence and operating on the effective date of this Act shall comply with the
26. requirements of Section 436.3 within six eighteen months from the
27. effective date of this Act.

APX.7

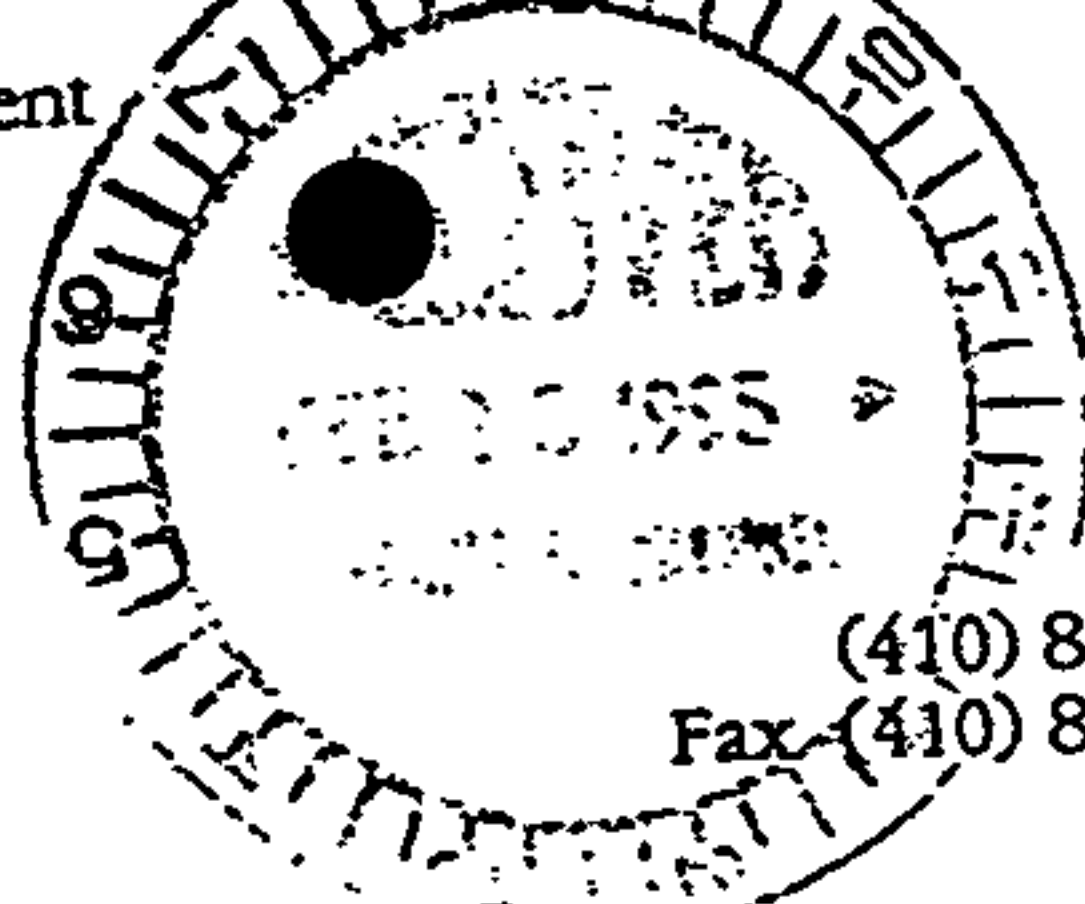
SECTION 6. AND BE IT FURTHER ENACTED, that pawnshops lawfully in existence and operating on the effective date of this Act are not subject to the requirements of Sections 436.4.

SECTION 7. AND BE IT FURTHER ENACTED, that this Act is hereby declared to be an emergency measure affecting the public health, safety and welfare, and having been passed by the affirmative vote of five members of the County Council, the same shall take effect from the date of its enactment.

B11295/BILLS95

APX-8

Baltimore County Government
Planning Board



(410) 887-3211
Fax (410) 887-5862

401 Bosley Avenue
Towson, MD 21204

February 17, 1995

P.C. #12

The Honorable Vincent J. Gardina
Chairman, Baltimore County Council
Court House
Towson, Maryland 21204

Re: Proposed Amendments to the
BCZR Regarding Pawnshops

Dear Councilman Gardina:

Enclosed is a Final Report of the Baltimore County Planning Board, adopted February 16, 1995, which I am submitting to you in accordance with Section 26-123(c) of the Baltimore County Code, 1988.

Bill 14-95 imposed a "freeze" on new pawnshops until regulations were received from the Planning Board. This report recommends limiting the total number of pawnshops in Baltimore County to 100 and requiring a special exception for any new pawnshop. New pawnshops would also be subject to performance standards. Pawnshops dealing only in secondhand precious metals would not be affected.

Sincerely,

Pat Keller

Pat Keller, Secretary
Baltimore County Planning Board

PK/KEB/mjm
LETGPS/PZONE/TXTKEB

Enclosures

cc: Hon. C.A. "Dutch" Ruppertsberger, III, County Executive
Members, Baltimore County Council
Merreen E. Kelly, Administrative Officer
Thomas Peddicord, Legislative Counsel/Secretary
Lawrence Schmidt, Zoning Commissioner
Stanley J. Schapiro, County Attorney
Patrick Roddy, Director, Legislative Relations
Arnold Jablon, Director, ZADM
Peter Max Zimmerman, People's Counsel

APX. 9



Introduced November 10, 1994
Planning Board Public Hearing January 5, 1995
Revised Final Report adopted February 16, 1995

Legislative Project # 94-06

PROPOSED AMENDMENTS TO THE
BALTIMORE COUNTY ZONING REGULATIONS
REGARDING PAWNSHOPS

A Final Report of the Baltimore County
Planning Board
Adopted February 16, 1995

This report is in response to Council Resolution 31-94 (Attachment 1), which requests the Planning Board to consider proposing amendments to the Baltimore County Zoning Regulations in order to require a special exception for pawnshops located in BM and BR zones.

BACKGROUND

The Zoning Regulations permit pawnshops by right in BM and BR zones, but the use is not defined. In cases where no definition is provided, the Zoning Regulations require that the most recent edition of Webster's Third New International Dictionary be consulted. That dictionary defines a "pawnshop" as: "A pawnbroker's shop" and a "pawnbroker" as: "One that loans money on the security of personal property pledged in his keeping."

Pawnshops have traditionally been located in the central business district of cities and this is true for the Baltimore region. Recently however, new pawnshops have located along the commercial corridors outside the core. As is often the case in economically hard times, the number of such businesses has grown significantly. In Baltimore City, pawnshop operations increased from 16 to 45 between 1990 and 1994. Responding to community concerns, City Council in May, 1994 adopted Bill No. 818 to strengthen the City's licensing law which regulates pawnbrokers. The bill limited the total number of pawnshops permitted in the City to 45, increased the surety bond from \$10,000 to \$50,000 and stiffened penalties for violations. Since City Council Bill No. 818 prevents new pawnshops from locating in the City, County residents fear that more such establishments may move into Baltimore County.

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Regulation of Pawnshops

For centuries, pawnshops have provided a service to law-abiding citizens. However, pawnshops can also be places to "fence" stolen property and can attract a criminal element into the neighborhood in which they are located. Because pawnshops can become linked to the commission of crime, jurisdictions are permitted to apply stricter regulations to pawnshops than to other kinds of businesses (McQuillin, Municipal Corporations, Vol. 19, Sec. 26.62). In most jurisdictions, pawnshops are subject to special licensing requirements, in addition to the standard vendor's license and local zoning.

From 1964 to 1982, Baltimore County licensed pawnshops. The regulations were codified in Title 19 of the County Code. They defined "pawnbroker" and regulated the manner in which the business was to be conducted. The County required that records be kept of pawned items involving precious metals or stones, serialized items, electronic equipment, furs, bicycles and other valuables. These records had to be submitted to the Police Department daily. Title 19 also required a pawnbroker to file a \$10,000 bond with the County.

In 1981, the State adopted regulations for the licensing of Secondhand Precious Metal Object Dealers as part of the Maryland Annotated Code (Art. 56, Secs. 416-425). A 1982 amendment expanded the coverage of the law to include pawnbrokers. In 1992, this part of the Annotated Code was recodified as Title 12 of the Business Regulations Article. Title 12 governs all "dealers" in secondhand precious metals and numismatic items, including pawnbrokers. The State law recognizes that the business practices of the various dealer types are similar and makes them subject to the same licensing procedures. At the same time, the State acknowledges that they are different by providing definitions which distinguish "dealers" from "pawnbrokers":

"Dealer" means a person engaged in the business of buying, acquiring, or trading commercially with members of the public in secondhand precious metals in this State or, unless otherwise provided, a pawnbroker. [12-101(b)]

"Pawn transaction" means a loan of money by a dealer on deposit or pledge of personal property or other valuable thing other than securities or printed evidences of indebtedness, or a purchase by a dealer of personal property or other valuable things on condition of selling the same back at a stipulated price. [12-101(f)]

"Pawnbroker" means a person who engages in pawn transactions. [12-101(e)]

In addition to specifying requirements for obtaining a license, the State, since 1981, has substantially limited the authority of local jurisdictions to regulate businesses dealing in numismatic items and secondhand precious metals. This includes pawnbrokers if they

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valuables as electronic equipment, furs, guns, musical instruments, etc.

As far as the State is concerned it is of no interest whether a dealer purchases jewelry, sells jewelry or pawns hard goods. All businesses receive the same license. From a community conservation point of view, however, it is important to make a distinction between the various business types. A jewelry store that buys or provides loans for secondhand precious metals looks in outward appearance very much like any other jewelry store. Tucked into a neighborhood shopping center, announcing "loan on deposit" service on a small, discreet sign inside or outside of the store, some of these shops have served an established clientele for generations. In this type of store loaning money on deposit usually makes up only a small part of the overall business volume.

In contrast to jewelry stores, the principal business of dealers of "hard goods" is to loan money on personal property. These businesses are highly visible and tend to locate along major commercial roads where they are easily accessible. These shops often use big, colorful, flashy signs that advertise in no uncertain terms that this is a place where items can be pawned and "quick cash" obtained. Of the 36 dealers in Baltimore County, 11 deal in hard goods. Four opened in 1994.

In general, pawnshops have the reputation of attracting a low income clientele. Low income people may have difficulty getting loans due to bad credit ratings or lack of collateral. While others have the option of using credit cards, or applying to banks or other financial institutions to obtain loans, poorer people may need to resort to pawnshops. Representatives of the pawnbrokers' industry feel they provide a service to those who are less fortunate and think of themselves as being the "poor man's bankers". Additionally they point out that pawnbrokers also have middle and upper income customers. These customers may want to obtain cash discreetly or need funds to pay a bill or meet payroll while waiting for a payment from a third party.

The Planning Board could not locate documentation that pawnshops cause neighborhood instability or an increase in crime, yet it is well established that perceptions affect real estate decisions. The presence of a pawnbroker, especially a shop which is clearly and loudly advertised as such, is often seen as a sign of neighborhood decline and such an image could influence the decision of established businesses to stay in the area and affect what types of new businesses will locate there. The presence of a pawnshop could likewise sway the real estate decisions of nearby homeowners.

DISCUSSION

The licensing regulations discussed above extend only to the conduct of the business trade. Land use considerations were neither addressed by the County in Title 19, which formerly controlled pawnshops, nor are they included in the State regulations that govern

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pawnshops today. To ascertain that the County has authority to enact zoning regulations for pawnshops, the Planning Board asked the County Attorney to review the preemption provision of Title 12 (see p. 3) and was advised that the State's regulations do not preempt the County's authority to establish location, setback and other customary zoning regulations, including conditions for granting special exceptions.

The majority of the nearby metropolitan jurisdictions permit pawnshops by right in some or all business zones. Pawnshops generally are not defined and are not separately catalogued in the use listings, i.e. they are regulated the same as other retail uses. The one exception is Fairfax County, Virginia, which defines pawnshops and permits them by special exception in three of its nine commercial districts. The standards which Fairfax County uses as a basis for reviewing a special exception request are open ended. An applicant must prove that the use proposed would be "in harmony" with the adopted comprehensive plan as well as with the "general purpose and intent of the applicable zoning district regulations" and that it would be harmonious with and would not adversely affect the use or development of neighboring properties. The special exception requirement for pawnshops was enacted in 1992 and has not yet been tested although two petitions have recently been submitted. Also, Fairfax County, which has a population 18 percent larger than Baltimore County, allows no more than 12 pawnshops in the County.

Baltimore County currently has no way to control the location of pawnshops within BR and BM zones. Provided that the dealer's license is obtained from the State, pawnshops can locate anywhere in these zones. The State is not required to forward license applications to the County to determine compliance with local zoning.

RECOMMENDATIONS

The Planning Board recommends creating a new section in the Zoning Regulations which would deal exclusively with pawnshops. The Section would include a statement of findings that would provide background information and explain the legislative intent of the proposed regulations.

A definition should be added to Section 101 to ensure that the proposed regulations would apply only to dealers licensed by the State who engage in pawn transactions. The Planning Board recommends that the definition exclude dealers who only trade in secondhand precious metals or gems, for the reasons stated above. The definition should also exclude other businesses which deal in secondhand goods such as thrift shops or consignment stores since these businesses do not fall within the police power of the State dealer's license.

The total number of pawnshops, as defined in the Zoning Regulations, should be limited to eleven. The cap would prevent any other pawnshop from locating in Baltimore County until an existing pawnshop license expires or is revoked by the State. The proposed regulations would allow the existing eleven businesses which pawn

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↓
"goods" to remain in operation, even if there is a change in ownership, as long as the business continues at the same site and the owner obtains a State dealers' license.

The cap was suggested by the Baltimore County Police Department because of recent increases in the number of pawn transactions. Limiting the total number of pawnshops in Baltimore County would facilitate the Police Department's efforts in retrieving stolen property. Other reasons for the cap are that the existing pawnshops accommodate local needs and additional business would undermine the County's community conservation efforts.

In addition to the number of pawnshops, another concern is that concentration of pawnshops in one place could accelerate the decline of a marginal neighborhood or business area. A spacing requirement which sets a minimum distance between pawnshops would address this problem. The Planning Board proposes a one mile radius. Representatives of communities that already have pawnshops favor a distance requirement of three to five miles. The Planning Board feels that a three to five mile distance requirement, in addition to a cap, is unnecessarily restrictive and would force any new pawnshops into areas in which there are presently none. This policy would not serve the County's community conservation goal. On the other hand, a one mile distance requirement, combined with the cap, would prevent the undue concentration of pawnshops in any one area.

Provided the cap is not exceeded and the spacing requirement is met, any new pawnshop should be permitted in BM and BR zones by special exception rather than by right. The special exception process is designed to allow for discretionary approval in cases where uses that are permitted in the zone are not suited for all locations. A use permitted by special exception cannot be "detrimental to the health, safety, or general welfare of the locality involved" (B.C.Z.R. Section 502.1, paragraph a). The siting of a pawnshop could have an effect that is detrimental to the community. The fact that much of Article 12 in the State law is devoted to procedures intended to prevent the trade in stolen property shows that, in the eyes of the law, pawnshops are more likely to become a locus of criminal activity than other retail uses. The special exception process would give the County some control over where pawnshops might be located, which supports the County's commitment to conserve communities.

Approval by special exception also provides an opportunity to apply performance standards that can help ensure that a use will be more compatible with its surroundings. Mandating that a landscape buffer be provided where pawnshops abut a residential zone line, church or school would further strengthen the special exception requirement. BR and BM zones are frequently adjacent to residential zones and a buffer in the form of a six foot high fence in combination with landscaping may lessen some of the safety concern of residents.

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While field checking pawnshops, it became apparent that businesses with glaring signs and large lettering have a greater negative impact on a neighborhood than businesses using discreet signage. The Planning Board recommends giving the Zoning Commissioner broad authority to approve the placement, design, size of lettering and coloring of pawnshop signs. Similar requirements are presently used for business signs in CR zones and for "striptease business" signs. Also, banners and temporary signs should be prohibited.

None of the regulations proposed in this report would apply to licensed dealers who deal only in secondhand precious metals or gems, regardless of whether they purchase such items or loan on deposit.

The regulations proposed in this report only consider the land use implications of pawnshops, but many of the problems associated with pawnbrokers relate to the manner in which the business is being conducted and cannot be resolved through zoning. Establishing a higher licensing fee which covers all administrative and enforcement costs, requiring that pawnbrokers be substantially bonded, raising the penalties for violations, and increasing the holding limit for pawned items to allow more time for police investigation would together make it more likely that a pawnbroker would operate as a legitimate business. The County should also work closely with the State to assure that licenses are not issued to applicants who have not met County zoning requirements. These changes will require cooperative legislative action by the General Assembly. During the Planning Board's January 5, 1995 public hearing, State Senator Dolores G. Kelley offered support at the State level and she has introduced two bills, S.B. 317 and S.B. 318.

On February 6, 1995 the County Council enacted Bill 14-95 which places a six month "freeze" on new pawnshops. The bill allows the Council time to consider the Planning Board's recommendations and gives the County a tool to prevent any trader's license from being signed off by Zoning Administration and Development Management.

The Baltimore County Zoning Regulations, as amended, should be further amended as indicated below. Bold indicates text to be added, { } indicates text to be deleted.

1. To Section 101 add the following definitions:

Pawnshop: A business which loans money on deposits of personal property, other than securities or printed evidences of indebtedness, or deals in the purchase or possession of personal property on condition of selling the same back to the pledgor or depositor. A pawnshop is licensed by the State as a dealer and defined by the State as a pawnbroker. For the purpose of these regulations, a business where money is loaned on deposits of secondhand precious metals, only, shall not be considered a pawnshop provided that the dealer does not loan money on deposits of any other kind of personal property.

APX. 15

Section 233.2 -- Uses permitted by right in BM zone delete

Pawnshop}

Section 233.4-- Uses permitted by special exception in BM zones

Add:

Pawnshop

Section 236.4--Uses permitted by special exception in BR zones,

Add:

Pawnshop

Create a new Section:

Section 436--Pawnshops. This Section applies only to pawnshops as defined in Section 101 of these Regulations.

Statement of Legislative Findings and Policy

1. The principle of community conservation is an expressed goal in Baltimore County. The Master Plan 1989-2000 proposes that "commercial activities incompatible with local neighborhoods should be restricted in such areas;" and
2. The State requires that businesses which purchase or loan on deposit of secondhand precious metals and other valuables obtain a "dealer's" license and report transactions to the local law enforcement agency to help prevent stolen items from being traded; and
3. The County Council finds that an undue concentration or the inappropriate siting or design of pawnshop businesses has a reasonable probability of causing adverse effects on nearby residential and commercial areas by creating an impression of community decline and instability; and
4. The County Council finds, as reported by the Police Department, that pawnshops which deal in a wide variety of valuable goods are more likely to have a greater deleterious effect on neighborhoods than businesses which deal exclusively in secondhand precious metals, where pawn transactions are merely incidental to the sale of new or secondhand jewelry; and
5. Such adverse effects would directly conflict with the County's commitment to conserving and revitalizing older communities and would be inordinately difficult to overcome once ill-sited pawnshops have been established; and
6. The Council finds that it is consistent with the intent of these Regulations for promoting health, safety and welfare to

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establish a limit on the total number of businesses in Baltimore County which loan on deposit of items other than secondhand precious metals.

B. Procedures

1. By {five days after adoption of Bill }, the Chief of Police, based on transaction sheets submitted by dealers, shall report to the Director of ZADM the names and addresses of all licensed dealers in Baltimore County who, in calendar year 1995, made loans on deposit of an item other than a secondhand precious metal.
2. Upon receipt of a dealer's transaction sheet reporting a loan on deposit of any item other than a secondhand precious metal, the Chief of Police shall report to the Director of ZADM the name and address of the business, if the Chief has not previously reported this information to the Director.
3. For any license reported to the Director, the Chief shall promptly notify the Director when the State renews or revokes the license or when the license expires.
4. The Director of ZADM shall not accept a special exception petition for a pawnshop if there are eleven valid dealers' licenses in the County used to operate pawnshops, except when an existing licensee certifies by affidavit that the shop which the licensee is authorized to operate will be closed on or before the date a new shop is opened. Any unexpired or suspended license shall be considered a valid license. A revoked license shall not be considered a valid license.
5. A dealer reported to ZADM may, by affidavit, annually declare to the Director that all future pawn transactions shall be limited to secondhand precious metals and the Director shall remove the name and address of that pawnshop from the list, during such time as the affidavit remains in effect.

C. Any special exception petition for a pawnshop shall be subject to the following requirements:

1. No pawnshop shall be located within a one mile radius from any other pawnshop;
2. Any pawnshop abutting a residential zone line (other than a street right-of-way), a school or a church, shall provide a buffer in the form of a six foot high board on board fence or brick wall in combination with landscaping;
3. The Zoning Commissioner may limit the hours of operation;
4. Notwithstanding the requirements of Subsection 413.2:

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- a. One wallmounted business sign is permitted with a surface area of no more than twice the length of the wall on which it is mounted but in no case more than 75 square feet.
 - b. The placement of the sign shall be similar to the placement of signs mounted on walls of neighboring businesses except that no such sign may extend above the eaves line of a pitched roof or the parapet of a flat roof building.
 - c. No freestanding business sign shall be permitted.
 - d. The Zoning Commissioner shall have the authority to control letter size, color and other design aspects of all signage for consistency and compatibility with signage on neighboring businesses.
5. No miscellaneous temporary signs as described in Subsection 413.4, shall be permitted to be displayed anywhere on the premises, including windows;
 6. The sale of firearms shall not be permitted, except where authorized by the appropriate federal and State agencies.
 7. The provisions of Section 436.C shall not apply to any pawnshop, licensed by the State as a dealer and legally in operation prior to date of passage of this bill.

PAWN13/PZONE/TXTHSR

PAWN13/PZONE/TXTHSR

05:26:45 PM

APX-18



96-226-X(r) Country Ridge
Shopping Center
CCt REVERSES & REMANDS for
new consideration
6/13/01 (Judge Turnbull)

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN GRASON TURNBULL, II

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
410-887-2647

PETITION OF COUNTRY RIDGE
SHOPPING CENTER, INC. and
SOUTHSIDE BROKERS, INC.

* IN THE
* CIRCUIT COURT

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

* FOR
* BALTIMORE COUNTY

IN THE CASE OF
THE APPLICATION OF COUNTRY
RIDGE SHOPPING CENTER, INC.
(Owner) and SOUTHSIDE BROKERS,
INC. (Tenant), PETITIONERS,
FOR A SPECIAL EXCEPTION ON
PROPERTY LOCATED AT 1508
BACK RIVER NECK ROAD,
11th Election District, 7th Councilmanic

*
*
*
* CASE NO.: 03-C-01-0307

* * * * *

OPINION AND ORDER

This case comes before this Court on a Petition for Judicial Review after a rather lengthy procedural history. It originated in November of 1995 when Southside Brokers, Inc.

("Petitioner") applied for Special Exception, pursuant to Baltimore County Zoning Regulations

("BCZR"), to operate a pawnshop in the Country Ridge Shopping Center. The shopping center is zoned BM (Business Major) and pawnshops are permitted in the zone by Special Exception,

pursuant to BCZR §§ 436 and 502.1.

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COUNTY CLERK'S OFFICE

The Baltimore County Zoning Commissioner held a hearing on the application for Special Exception and denied the request. Petitioner filed a Motion for Reconsideration and in an order dated April 19, 1996, the Zoning Commissioner granted the application for Special Exception. The Back River Neck Community Association ("Back River Neck") and People's Counsel for Baltimore County ("Respondent") appealed the Zoning Commissioner's decision to the Baltimore County Board of Appeals ("Board").

On November 6, 1996 and March 12, 1997, a *de novo* hearing on the appeal was held before the Board. By a 2-1 majority, the Board issued an Opinion and Order denying the application for Special Exception. Petitioner filed a Petition for Judicial Review to the Circuit Court for Baltimore County ("Circuit Court"). The Circuit Court (J. Bollinger) conducted a hearing on January 20, 1998 and later issued an Opinion affirming the Board's Majority Opinion. Petitioners filed a Motion to Revise the judgment of the Circuit Court, which was denied on March 6, 1998.

Petitioner then filed an appeal of the Circuit Court's decision to the Court of Special Appeals ("CSA"). For reasons to be discussed later in this Opinion, the CSA reversed the judgment of the Circuit Court with instructions to remand the case to the Board for further proceedings in accordance with its ruling on July 21, 1999. The Circuit Court remanded the case to the Board.

On remand, Petitioner filed a Request for a Hearing with the Board, which was denied. On December 13, 2000, the Board, by a 2-1 majority, denied Petitioner's application for Special Exception for a second time. Petitioner filed a Motion for Reconsideration with the Board which was also denied. It is from these decisions that Petitioner brings this Petition for Judicial Review.

Due to the nature of the grounds raised on appeal, this Court has reviewed the contents of all court files, including the transcripts, opinions by the Board, opinion by the CSA, and memoranda submitted by counsel. A hearing was held on June 12, 2001 in which arguments were presented by counsel.

Both Petitioner and Respondent raise several issues in this appeal. The first issue is whether the Board, on remand, was in compliance with the instructions given by the CSA. This issue can be divided into two related questions. Those questions are: 1. Did the Board give a “new consideration” to the application, as was instructed by the CSA?; and 2. Did the Board err by not holding a *de novo* hearing on the matter?.

As mentioned previously, the CSA, in an unreported opinion, reversed the judgment of the Circuit Court. Specifically, the CSA held “that the Board erred as a matter of law in considering the location standards of Section 436.4” of the BCZR, and that the Circuit Court “erred in affirming the action of the Board.” *Southside Brokers, Inc. v. People’s Counsel for Baltimore County*, No. 866, Sept. Term (July 21, 1999). The CSA ordered a remand of the case for a “new consideration” of Petitioner’s application, free of consideration of the location standards of Section 436.4 of the BCZR.

On remand, the Board, consisting of two new members, reviewed the record and issued another opinion denying Petitioner’s application for a Special Exception. The Board also denied Petitioner’s request for a *de novo* hearing. Petitioner first argues that this decision based on a review of the record was in direct conflict with the CSA’s decision because “the issues relating to the Special Exception and the locational standards could not be dissected by the Board of Appeals on remand.” Petitioner’s Memorandum, p. 12.

Petitioner further argues that because the Board originally commingled its consideration

of the application improperly, a “new consideration” of the application mandated the Board to conduct a new hearing. Finally, Petitioner contends that because the Board consisted of two new members on remand who were not the original triers of fact, a *de novo* hearing was appropriate.

Respondent counters that the CSA’s opinion does not expressly require a new hearing and thus leaves that decision to the discretion of the Board. Respondent also claims that the Board’s original opinion denied the application for Special Exception free and clear of the locational standards and therefore, the Board could review that opinion and the record without holding a hearing. Respondent’s Memorandum at p. 7.

It is obvious from the language of the Board’s original opinion that the majority relied heavily on the location standard under BCZR 436.4. The CSA agreed and reversed on that very ground. On remand, the Board claims, “As directed, this Board restricted its review to the special exception issue only” and not to the locational standard. The Board of Appeals’ Majority Opinion on Remand, p. 4. However, the opinion reads, “The two Board members reviewing this Opinion **concur** with the County Council and the majority of the original Board that a pawnshop in this particular location would be inappropriately sited as well as create an undue concentration.” Majority Opinion at p. 9 (Emphasis added). It continues, “We **affirm** the majority opinion that the Petitioner has not met his burden under BCZR 502.1 and that his request for a special exception for a pawnshop at 1508 Back River Neck Road should be denied.” Majority Opinion at p. 9 (Emphasis added).

This Court is persuaded by Petitioner’s contentions and agrees that the Board could not discern when and how much the original Board relied on the location standard in rendering its decision. Respondent contends that the evidence at the original hearing supports the Board’s

decision to deny the application for Special Exception, free and clear of the location standard. However, the CSA expressly disagrees and states in its opinion, "There are other statutory requirements requiring favorable findings before a special exception may be approved. The Board's majority opinion addressed those other requirements somewhat, but did so in a manner that coming led its consideration of those requirements with those of Section 436.4." *Southside Brokers, Inc. v. People's Counsel for Baltimore County*, No. 866, Sept. Term at p. 8 (July 21, 1999).

The Board's opinion on remand is so similar to the original opinion of the Board that it appears to this Court that the Board "rubber stamped" the original Board's decision, despite the order to give the matter a "new consideration." Therefore, it is the conclusion of this Court that the Board, in affirming and concurring with the commingled decision of the original Board's majority, did not give a "new consideration" to the application as was required by the CSA.

The second question is whether the Board was required to hold a *de novo* hearing. Petitioner maintains that a *de novo* hearing was required because the "new consideration" ordered by the CSA made it appropriate and because the Board consisted of two new members on remand who were not the original triers of fact. Respondent asserts that because the hearing was not expressly ordered by the CSA, that decision was left to the Board. Respondent also argues that a Board consisting of two new members on remand is not required to hold a new hearing simply because it has new members.

In answering this second question, both Petitioner and Respondent cite *People's Counsel v. Prosser*, 119 Md.App. 150 (1998). *Prosser* involved a Board of Appeals decision granting a site plan zoning reclassification. The case was remanded to the Board when two of the three members who had heard the original testimony were no longer on the Board. The Board then

rendered its subsequent decision without a hearing. The CSA held that a hearing was not required and that the two new members could render a decision when the remand order was on a limited technical issue and assessment of credibility of witnesses was not required. *Id.* at 180.

Petitioner relies on the case of *Clark v. County Board of Appeals for Montgomery County*, 235 Md. 320 (1964) which states that a quorum for county board of appeals zoning decision should be present at a public hearing. The CSA in *Prosser* distinguished *Clark* by claiming that the remand in *Prosser* was based on an issue that was technical in nature whereas the remand in *Clark* involved the assessment of the credibility of witnesses.

Respondent avers that the holding in *Prosser* applies in this case because the Board did not have to consider witness credibility and demeanor as a material factor in determination of the issue before it. Petitioner responds that witness credibility in a hearing on an application for Special Exception is crucial. Petitioner also claims that *Prosser* is distinguishable from this case because the remanded issue here is a “new consideration” of an application for a Special Exception, which is not a limited technical issue.

This Court concedes that a remand from the CSA does not automatically require the Board to hold a new hearing in every case. This Court will also concede that a remand to a Board with two new members does not always require a *de novo* hearing. However, due to the totality of circumstances in this case, it is this Court’s opinion that a *de novo* hearing was required. Petitioner has persuaded this Court that *Prosser* is not applicable in this case. There, the remand was on a limited technical issue. In the case *sub judice*, the remand is for a “new consideration” of an application for Special Exception, which unquestionably is not a limited technical issue. It is the opinion of this Court that *Clark* is applicable as witness credibility and demeanor is certainly an important factor in the Board’s decision to grant or deny an application.

Therefore, a quorum for the Board should have been present at the hearing. Because two of the three members were not at the original hearing and the Board is deciding more than a limited technical issue, a new hearing is required.

Because this Court is convinced that the Board did not give a "new consideration" to the application and should have held a *de novo* hearing, the other issues raised by the parties can not and will not be addressed.

For the above stated reasons, it is hereby ORDERED by the Baltimore County Circuit Court that the decision of the Board of Appeals is REVERSED. This case is to be REMANDED to the Board of Appeals for a *de novo* hearing and a true "new consideration" of the application for Special Exception, as was required by the Court of Special Appeals.


JUDGE JOHN GRASON TURNBULL, II

DATE June 13, 01

Copies: Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County
David K. Gildea, Esq.

PETITION OF COUNTRY RIDGE
SHOPPING CENTER, INC. and
SOUTHSIDE BROKERS, INC.

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

IN THE CASE OF
THE APPLICATION OF COUNTRY
RIDGE SHOPPING CENTER, INC.
(Owner)/SOUTHSIDE BROKERS,
INC. (Tenant)
FOR SPECIAL EXCEPTION ON
PROPERTY LOCATED AT 1508 BACK
RIVER NECK ROAD

11th ELECTION DISTRICT
7th COUNCILMANIC DISTRICT

IN CASE NO.: 96-226-X

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Civil Action No.: 3-C-01-000307

 **COPY**

**MOTION FOR MODIFICATION OF TIME REQUIREMENT FOR FILING A
MEMORANDUM AS PROVIDED BY MARYLAND RULE 7-207(a)**

Pursuant to Maryland Rule 7-207(c), Petitioner, COUNTRY RIDGE SHOPPING
CENTER, INC./SOUTHSIDE BROKERS, INC. ("Southside"), moves for a modification
of the time requirements for filing a memorandum as provided by Maryland Rule 7-
207(a), and state in support thereof the following:

1. Following the requirements provided by Maryland Rule 7-206, filing of
the underlying administrative decision record was recorded by the Court Clerk on March
15, 2001.

2. Due to a relocation of Southside's counsel's office, Petitioner never
received notice of the date the record was filed.

PETITION OF COUNTRY RIDGE
SHOPPING CENTER, INC. and
SOUTHSIDE BROKERS, INC.

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

IN THE CASE OF
THE APPLICATION OF COUNTRY
RIDGE SHOPPING CENTER, INC.
(Owner)/SOUTHSIDE BROKERS,
INC. (Tenant)
FOR SPECIAL EXCEPTION ON
PROPERTY LOCATED AT 1508 BACK
RIVER NECK ROAD

11th ELECTION DISTRICT
7th COUNCILMANIC DISTRICT

IN CASE NO.: 96-226-X

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Civil Action No.: 3-C-01-000307
*
*
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*
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*

 **COPY**

MOTION TO AMEND AND CONSOLIDATE

Pursuant to Maryland Rules 2-341 and 2-503, Petitioner, COUNTRY RIDGE SHOPPING CENTER, INC./SOUTHSIDE BROKERS, INC. ("Southside"), hereby move this Court for an amendment to the underlying case number in Petitions for Judicial Review filed by Petitioner, and consolidation of those Petitions, stating as follows:

1. Southside filed a Petition for Judicial Review of the above referenced matter on January 9, 2001.
2. The Petition for Judicial Review filed on January 9, 2001 was assigned Civil Action No. 3-C-97-000685.
3. A second Petition for Judicial Review of the above referenced matter was filed on January 22, 2001 and was assigned Civil Action No. 3-C-01-000307.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF :
COUNTRY RIDGE SHOPPING CENTER, INC.*
AND SOUTHSIDE BROKERS, INC.

c/o Whiteford, Taylor & Preston, L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

CIVIL ACTION
No. 3-C-01-000685

IN THE CASE OF
THE APPLICATION OF
COUNTRY RIDGE SHOPPING CENTER,
INC. ; SOUTHSIDE BROKERS, INC.
FOR A SPECIAL EXCEPTION ON PROPERTY
LOCATED 767' SOUTHEAST OF BACK
RIVER NECK ROAD
(1508 BACK RIVER NECK ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

CASE NO. 96-226-X

Cross-reference original
Civil Action No. 3-C-97-005479

* * * * *

**PROCEEDINGS ON REMAND FROM THE
CIRCUIT COURT FOR BALTIMORE COUNTY BEFORE
THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Charles L. Marks, Donna M. Felling and Margaret Worrall, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition 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 original papers on file in the Department of Permits and Development Management of the Board of Appeals of Baltimore County:

RECEIVED
JAN 15 1997
PH 1:09

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS

No. 96-226-X

For the complete history of this matter on remand and the Motion for Reconsideration filed therein – refer to the Record of Proceedings filed in Civil Action No. 3-C-01-000307 (see attached copy of Record Extract filed in 3-C-01-000307).

January 12, 2001	Ruling on Motion for Reconsideration issued by the Board of Appeals; Motion for Reconsideration is DENIED.
January 22	Petition for Judicial Review filed in the Circuit Court for Baltimore County by David K. Gildea, Esquire, and Roger N. Powell, Esquire, on behalf of Country Ridge Shopping Center, Inc./Southside Brokers, Inc.
January 25	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
January 26	Certificate of Notice sent to interested parties.
March 15, 2001	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court (The supplemental record along with the original record of the Board's proceedings has been filed under Civil Action No. 3-C-01-000307).


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

c: David K. Gildea, Esquire
Roger N. Powell, Esquire
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF :
COUNTRY RIDGE SHOPPING CENTER, INC.*
AND SOUTHSIDE BROKERS, INC.

c/o Whiteford, Taylor & Preston, L.L.P.

210 West Pennsylvania Avenue

Towson, Maryland 21204-4515

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

OLD COURTHOUSE, ROOM 49

400 WASHINGTON AVENUE

TOWSON, MARYLAND 21204

CIVIL ACTION

No. 3-C-01-000307

IN THE CASE OF
THE APPLICATION OF

COUNTRY RIDGE SHOPPING CENTER,
INC. ; SOUTHSIDE BROKERS, INC.

FOR A SPECIAL EXCEPTION ON PROPERTY
LOCATED 767' SOUTHEAST OF BACK
RIVER NECK ROAD

(1508 BACK RIVER NECK ROAD)

11TH ELECTION DISTRICT

5TH COUNCILMANIC DISTRICT

CASE NO. 96-226-X

Cross-reference original

Civil Action No. 3-C-97-005479

PROCEEDINGS ON REMAND FROM THE
CIRCUIT COURT FOR BALTIMORE COUNTY BEFORE
THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Donna M. Felling and Margaret Worrall, constituting a majority of the County Board of Appeals of Baltimore County, and in answer to the Petition 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

ATTACHMENT (3-C-01-307)

Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS

No. 96-226-X

September 8, 1999

Ruling of the Circuit Court for Baltimore County (Hon. Thomas J. Bollinger) case is REMANDED pursuant to mandate of the Court of Special Appeals for "further proceedings" in accordance with the opinion of the Court of Special Appeals. Record Extract in Civil Action #3-C-97-5479 attached herewith as Exhibit A. (Transcript and Record of Proceedings filed by the Board of Appeals on 9/30/97, is stored in Box 31 and is maintained by the Circuit Court Records Manager under Civil Action No. 3-C-97-5479).

Note from the Board of Appeals file: The Majority Opinion in this matter was authored by Diane Levero and Harry Buchheister. Both Mr. Buchheister and Ms. Levero are no longer on the Board. The only remaining member of this panel is Chuck Marks, who authored the Dissenting Opinion.

Note: The panel of this remand consists of Charles L. Marks, Donna M. Felling and Margaret Worrall, who reviewed the Joint Record Abstract filed by both parties in the Court of Special Appeals as the complete record of this matter -- a copy of said Joint Record Abstract is included in the Board of Appeals Record of Proceedings filed March 15, 2001 in the Circuit Court for Baltimore County under Civil Action No. 3-C-01-000307.

Dec. 21, 1999 -
Aug. 14, 2000

Correspondence between Counsel (People's Counsel for Baltimore County, Protestants and David K. Gildea, Esquire, on behalf of Country Ridge Shopping Center, Inc. and Southside Brokers, Inc., Petitioners) and the Board of Appeals regarding procedure to be followed.

August 16

Public Deliberation /Special Session concluded by the Board of Appeals (Minutes of Deliberation are included with this Record -- no additional transcript nor exhibits)

December 13

Majority Opinion on Remand from the Circuit Court for Baltimore County pursuant to Order of the Court of Special Appeals issued by the Board of Appeals; Petition for Special Exception is DENIED; Dissenting Opinion issued by Mr. Marks.

December 19

Motion for Reconsideration of Board of Appeals December 13, 2000 decision on remand, filed by David K. Gildea, Esquire, on behalf of Petitioners.

December 22, 2000 People's Counsel for Baltimore County's Answer to Motion for Reconsideration filed by Peter Max Zimmerman and Carole S. Demilio.

December 22 Letter /Addendum to Motion for Reconsideration filed by David Gildea, Esquire, on behalf of Petitioners.

January 3, 2001 Public Deliberation on Motion for Reconsideration concluded by the Board of Appeals.

January 11 Petition for Judicial Review filed by David K. Gildea, Esquire and Roger N. Powell, Esquire (from the Majority Opinion on Remand issued by the Board of Appeals on December 13, 2000).

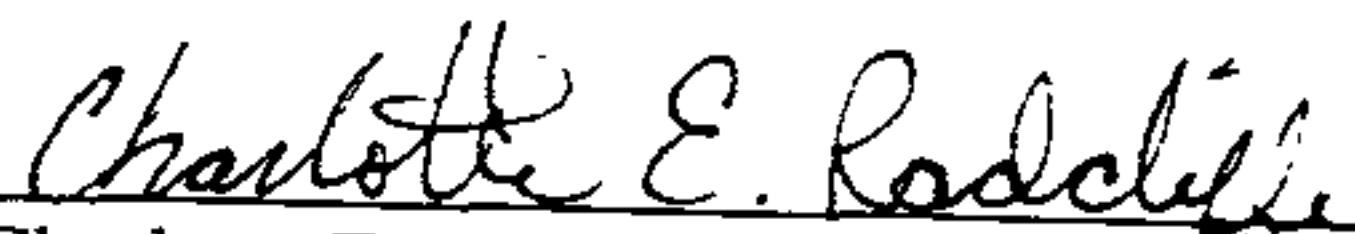
January 12 Ruling on Motion for Reconsideration issued by the Board of Appeals; Motion for Reconsideration is DENIED.

January 25 Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.

January 26 Certificate of Notice sent to interested parties.

March 15, 2001 Record of Proceedings (no additional transcript nor exhibits) filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court (The original record previously filed in Civil Action No. 3-C-97-005479 is stored in Box 31- and is maintained by the Circuit Court Records Manager).


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

c: David K. Gildea, Esquire
Roger N. Powell, Esquire
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF :

**COUNTRY RIDGE SHOPPING CENTER, INC.*
AND SOUTHSIDE BROKERS, INC.**

c/o Whiteford, Taylor & Preston, L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

CIVIL ACTION
No. 3-C-01-000307

IN THE CASE OF
THE APPLICATION OF
**COUNTRY RIDGE SHOPPING CENTER,
INC. ;SOUTHSIDE BROKERS, INC.**
FOR A SPECIAL EXCEPTION ON PROPERTY
LOCATED 767' SOUTHEAST OF BACK
RIVER NECK ROAD
(1508 BACK RIVER NECK ROAD)

11TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

CASE NO. 96-226-X

Note: Cross-Reference original
Civil Action No. 3-C-97-005479

* * * * *

CERTIFICATE OF NOTICE

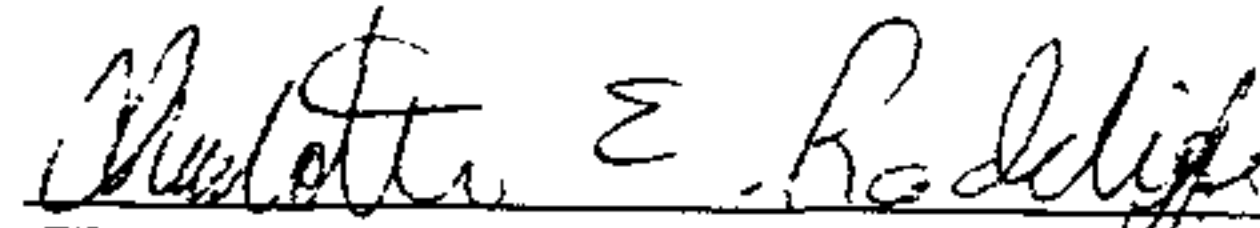
Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure,
Margaret Worrall and Donna M. Felling, constituting the majority of the County Board of
Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial
Review to the representative of every party to the proceeding before it; namely, David K. Gildea,
Esquire, and WHITEFORD, TAYLOR & PRESTON, L.L.P., 210 West Pennsylvania Avenue,
Towson, Maryland 21204-4515, along with Roger N. Powell, Esquire, POWELL & SORRELL,

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01 JAN 26 PM 12:40

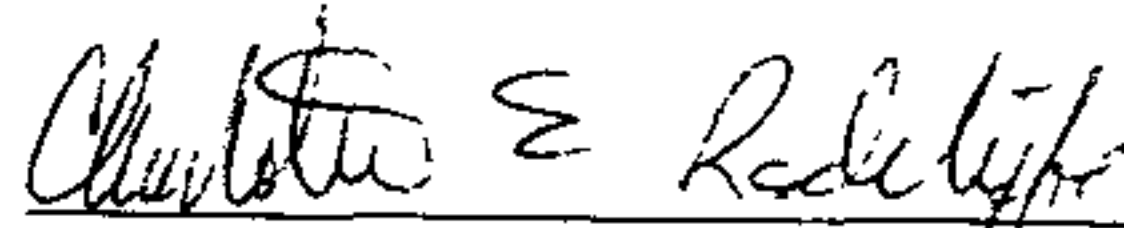
CLERK OF THE COURT
BALTIMORE COUNTY

107 Old Court Road, Baltimore, Maryland 21208, as *Counsel for Petitioner*; Country Ridge Shopping Center, Inc., and Southside Brokers, Inc., *Petitioners* c/o WHITEFORD, TAYLOR & PRESTON, L.L.P.; and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; a copy of which Notice is attached hereto and prayed that it may be made a part hereof.



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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to David K. Gildea, Esquire, and WHITEFORD, TAYLOR & PRESTON, L.L.P., 210 West Pennsylvania Avenue, Towson, Maryland 21204-4515, along with Roger N. Powell, Esquire, POWELL & SORRELL, 107 Old Court Road, Baltimore, Maryland 21208, as *Counsel for Petitioner*; Country Ridge Shopping Center, Inc., and Southside Brokers, Inc., *Petitioners* c/o WHITEFORD, TAYLOR & PRESTON, L.L.P.; and, Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; this 26th day of January, 2001.



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



County Board of Appeals of Baltimore County

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

January 26, 2001

Peter Max Zimmerman
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

RE: Civil Action No. 3-C-01-000685
***COUNTRY RIDGE SHOPPING CENTER,
INC.; SOUTHSIDE BROKERS, INC.***

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on January 22, 2001, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above captioned 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-01-000685.

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

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Jack Hession / Alfred E. Clasing, Jr., et al
Dennis Norris
Richard J. Shrader
Betty Christopher
Orlando Yarborough
Lawrence E. Schmidt / Z.C.
Nancy C. West, Assistant County Attorney
Virginia W. Barnhart, County Attorney
Howard Dubick
Marion MacCrehan
Theresa Guckert
Pat Keller, Director / Planning
Arnold Jablon, Director / PDM





County Board of Appeals of Baltimore County

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

January 26, 2001

David K. Gildea, Esquire
WHITEFORD, TAYLOR & PRESTON, L.L.P.
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

Roger N. Powell, Esquire
POWELL & SORRELL
107 Old Court Road
Baltimore, MD 21208

RE: Civil Action No. 3-C-01-000685
**COUNTRY RIDGE SHOPPING CENTER,
INC.; SOUTHSIDE BROKERS, INC.**

Dear Counsel:

In accordance with Rule 7-206 (c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. However, since there is no need to prepare a transcript, the record will be filed as soon as possible.

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

Very truly yours,

A handwritten signature in cursive script, reading "Charlotte E. Radcliffe".

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Country Ridge Shopping Center, Inc.
and Southside Brokers, Inc.





County Board of Appeals of Baltimore County

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

January 26, 2001

Peter Max Zimmerman
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

RE: Civil Action No. 3-C-01-000307
***COUNTRY RIDGE SHOPPING CENTER,
INC.; SOUTHSIDE BROKERS, INC.***

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on January 11, 2001, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above captioned 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-01-000307.

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

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Jack Hession / Alfred E. Clasing, Jr., et al
Dennis Norris
Richard J. Shrader
Betty Christopher
Orlando Yarborough
Lawrence E. Schmidt / Z.C.
Nancy C. West, Assistant County Attorney
Virginia W. Barnhart, County Attorney
Howard Dubick
Marion MacCrehan
Theresa Guckert
Pat Keller, Director / Planning
Arnold Jablon, Director / PDM



1/22/01
PETITION OF COUNTRY RIDGE
SHOPPING CENTER, INC. and
SOUTHSIDE BROKERS, INC.

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

IN THE CASE OF
THE APPLICATION OF
COUNTRY RIDGE SHOPPING CENTER,
INC. (Owner)/SOUTHSIDE BROKERS,
INC. (Tenant)
FOR SPECIAL EXCEPTION ON
PROPERTY LOCATED AT 1508 BACK
RIVER NECK ROAD

11th ELECTION DISTRICT
7th COUNCILMANIC DISTRICT

IN CASE NO. 69-226-X

* IN THE

*

* CIRCUIT COURT

*

*

FOR

*

* BALTIMORE COUNTY

*

CIVIL ACTION NO. _____

*

* * * * *

PETITION FOR JUDICIAL REVIEW

Pursuant to Maryland Rule 7-202, Petitioner, COUNTRY RIDGE SHOPPING
CENTER, INC./ SOUTHSIDE BROKERS, INC. ("Southside"), by its attorneys, David K.
Gildea, and Whiteford, Taylor & Preston L.L.P., hereby files this Petition for Judicial
Review from the Baltimore County Board of Appeals' "Ruling on Motion for
Reconsideration" dated January 12, 2001.

Petitioner was a party to the proceedings below.

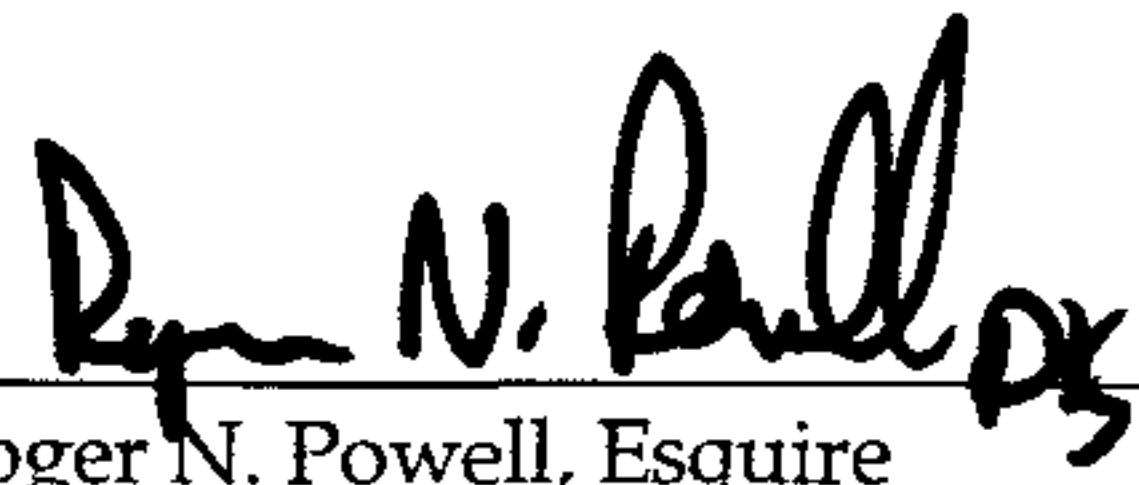
W/ 3-C-01-000007
Petition seeks consolidation of its Petition for Judicial Review of the County Board
of Appeals' Majority Opinion dated December 13, 2000, and its "Ruling on Motion for

FILED
D JAN 22 2001

Reconsideration" dated January 12, 2001.



David K. Gildea, Esquire
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000
Attorneys for Petitioner



Roger N. Powell, Esquire
Powell & Sorrell
107 Old Court Road
Baltimore, Maryland 21208
Attorneys for Petitioner

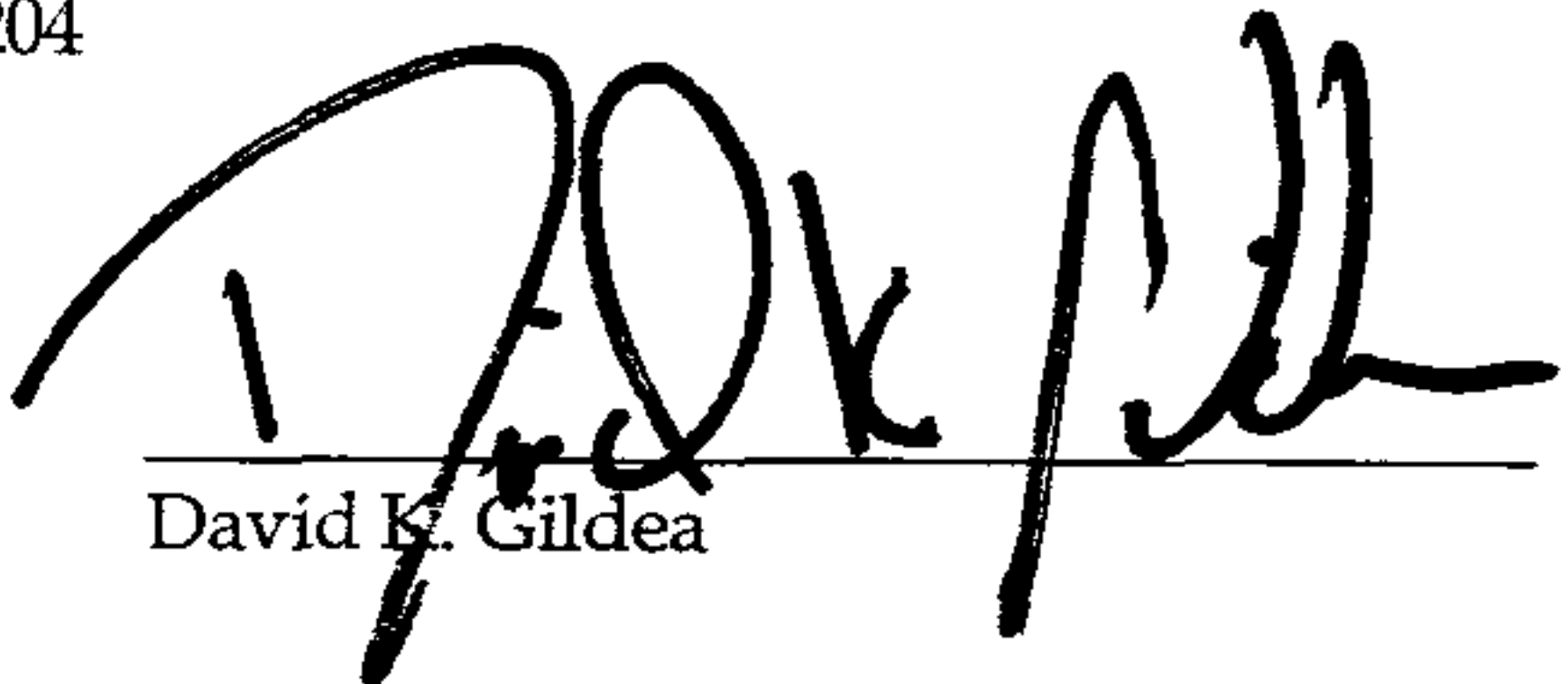
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of January, 2001, a copy of the foregoing Petition for Judicial Review was mailed first class, postage prepaid to:

Baltimore County Board of Appeals
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Roger N. Powell, Esquire
Powell & Sorrell
107 Old Court Road
Baltimore, Maryland 21208

Peter Max Zimmerman, Esquire
Carole S. Demilio, Attorney at Law
People's Counsel for Baltimore County
Room 47 - Old Court House
400 Washington Avenue
Towson, Maryland 21204



David K. Gildea

11721
CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-01-000685

BALTIMORE COUNTY
01 JAN 25 AM 9:56

TO: BALTIMORE COUNTY BOARD OF APPEALS
Rm 49 Old Courthouse
400 Washington Avenue
Baltimore, MD 21204

1/2/01
IN THE MATTER OF
THE APPLICATION OF
COUNTRY RIDGE SHOPPING CENTER,
INC; SOUTHSIDE BROKERS, INC.
FOR A SPECIAL EXCEPTION ON
PROPERTY LOCATED 767' SE OF
BACK RIVER NECK ROAD
(1508 BACK RIVER NECK ROAD)
11TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

* ON REMAND
* FROM THE CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* File No. 3-C-97-005479
*

(Case No. 96-226-X)

* * * * *

RULING ON MOTION FOR RECONSIDERATION

This case was remanded back to the Baltimore County Board of Appeals by the Court of Special Appeals, via the Circuit Court of Baltimore County, for consideration of the special exception question, "free of the standards prescribed in § 436.4, " including the locational requirement which the County Board of Appeals found applicable in its original decision. In the July 21, 1999 Opinion by Judge Bishop (page 8), "on remand, a new consideration of appellant's application will be necessary." The Court of Special Appeals ordered that, "judgement reversed. Case remanded to the Circuit Court with direction to remand the case for further proceedings in accordance with this opinion."

The Court Order is, pursuant to Rule 8-604(d), the rule on remands which concludes as follows:

Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion of the appellate court.

On September 8, 1999, the Baltimore County Circuit Court accordingly entered its Order remanding the case "for further proceedings." Appropriately, this remand situation also fits Rule 7-209 which permits "remand to the agency for further proceedings." Rule 1-202(T) states:

THE COURT OF
SPECIAL APPEALS
Charles E. Smith
Chief Judge

“Proceeding” means any part of an action.

When the case was remanded to the Board, only one original panel member was left on the Board. The other two original panel members had not been reappointed or did not request reappointment. As the current “Rules of Practice and Procedure” adopted by the Board do not prescribe how two new members will be selected in such remand issues, the Board Chairperson selected two new members to establish the three-member remand panel. This has long been the established procedure of the Baltimore County Board of Appeals.

Counsel for the Petitioner requested on two occasions that a hearing be held to discuss the procedural issues and argue how the law addresses this specific matter on the remand issue. The Board dismissed those Motions on the basis that it would first have the three current panel members review the evidence and transcript, and determine if, based on those factors, there was sufficient testimony and evidence to support a conclusion that a special exception should be granted independent of the requirements of § 436.4. In essence, the Court of Special Appeals held that “an existing pawnshop seeking to relocate, though it must otherwise obtain a special exception as to the proposed relocation, is entitled to have its special exception application evaluated free of the standards prescribed in § 426.4.” As the Court of Special Appeals directed, “this does not mean, however, that appellant is entitled to have its special exception in this case granted, as a matter of law, on the record before it. There are other statutory requirements requiring favorable findings before a special exception may be approved. The Board’s majority opinion addressed those other requirements somewhat, but did so in a manner that comingled its consideration of those requirements with those of § 436.4. On remand, a new consideration of appellant’s application will be necessary.” [CSA decision, page 8]

The Board adopted the posture that if sufficient testimony and evidence appeared on the record to support the original panel's conclusions relative to denial of the special exception, it would not be necessary to hold a "de novo" hearing as argued by Counsel for the Petitioner. Counsel for the Petitioner also argued that a "de novo" procedure was necessary because "the Board must review a number of issues and statutory requirements that involve an evaluation of both factual and expert witness testimony. In addition, the credibility of those witnesses is an important factor to be weighed by the Board in making its decision in this matter."

The Board disagreed, opting to review the transcript and evidence, hold a public deliberation, and determine if such testimony and evidence was sufficient to sustain the original Board's determination. That is, that the decision relative to the special exception was made independent of § 436.4. The Board held its public deliberation. On December 13, 2000 the Board issued its "Opinion and Order" [and dissenting opinion] relative to the subject matter. Thereafter, Counsel for the Petitioner filed a Motion for Reconsideration on December 21, 2000, essentially stating that the handling of the remand by the Board of Appeals was a clear error of the law and that his Motion requesting a determination by the Board whether the remanded matter should be heard "de novo" or on the record was denied and that he did not have an opportunity to discuss the law as it applied to the instant matter.

On January 3, 2001, the Board again met in public session and deliberated the matter; and denied the Motion for Reconsideration. At the time of the public deliberation concerning the Motion for Reconsideration, the Board indicated that it could not find anywhere in the remand order that the Court of Special Appeals required any further hearings and that it was left exclusively to the discretion of the County Board of Appeals as to whether or not any further hearings should or should not be held. The Board takes significant note of the fact that the

majority of the panel had already reviewed the record and denied the special exception. The only issue determined by the panel on remand concerned the process to ascertain whether or not that denial stood independent of, or "free of the BCZR 436.4 standards." In its December 13, 2000 Opinion at page 9, concurring with the original Board majority, the current majority effectively found that, based on this record, the original majority decision to deny the special exception stood free of the BCZR 436.4 standards and was independent of them. In so doing, the Board stated:

We affirm the Majority Opinion that the Petitioner has not met his burden under BCZR 502.1 and that his request for a special exception for a pawnshop at 1508 Back River Neck Road should be denied."

Based on the transcript and the evidence, the Board followed the dictates of *Turner v. Hammond*, 270 Md. 41, 55 (1973):

If he [the Petitioner] shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adverse the public health, he has met his burden.

The Board determined, again based on the transcript and evidence, that the Petitioner had not met that burden. In reaching its conclusion, the CBA on page 8 of its December 13, 2000 Opinion, stated:

In denying the Petition for Special Exception for a pawnshop to be relocated in the Country Ridge Shopping Center, it is abundantly clear that the Board of Appeals, in its Majority Opinion, relied on the evidence and concepts considered in the legislative findings and Baltimore County policy as found in Bill No. 112-95, as well as the testimony of Baltimore County employees and the Police Department, the Office of Planning and the Office of Community Conservation.

In so doing, the CBA majority affirms, consistent with *People's Counsel v. Prosser*, 119 Md 150, 179-180 (1998) that its Opinion did not consider "lay witness credibility and demeanor...as a material factor in determination of the issue before it." Rather, it involved a finding that the Petitioner did not meet his burden of proof, and that, in any event, there was uncontradicted

expert testimony which showed that the Petitioner did not satisfy the standards set forth in BCZR 502.1.

The Board feels compelled to include within the confines of this Order mention of the interruption during its public deliberation on the Motion for Reconsideration on the part of Counsel for Petitioner. Public deliberations are not the forum for any participation on the part of counsel on either side, or members of the public, but are for public observation solely to witness the proceedings and to determine the thought processes, rationale, and resulting conclusions reached by the Board. Counsel for the Petitioner was placed on notice twice that his interruption of the public deliberation was improper; and if there was any disagreement relative to the outcome of the proceedings, Counsel's proper approach is to file a "Petition for Judicial Review" with the Circuit Court for Baltimore County subsequent to the issuance of the Board's written Opinion and Order.

The Board also takes strenuous objection to the challenge to Margaret Worrall's participation in the proceedings which was set forth by Mr. Gildea in his Motion for Reconsideration. Members of this Board provide a public service to the citizens of Baltimore County. They take a solemn oath to administer and interpret the law in a fair and impartial manner. It is not unusual for a Board member under appropriate circumstances to recuse him/herself in a particular case. The Board considers as spurious those contentions raised by Counsel in his Motion for Reconsideration. Indeed, the Board is incensed and concerned that such suggestions have even been made that Mrs. Worrall might have a conflict of interest. To that end, this Board incorporates the same comments as those made by People's Counsel in his "Answer to Motion for Reconsideration" and will simply not comment any further, except to

state that such actions and comments could well prevent the future participation of citizens in public service positions such as this Board.

For the reasons so stated, the Petitioner's Motion for Reconsideration is herewith denied.

ORDER

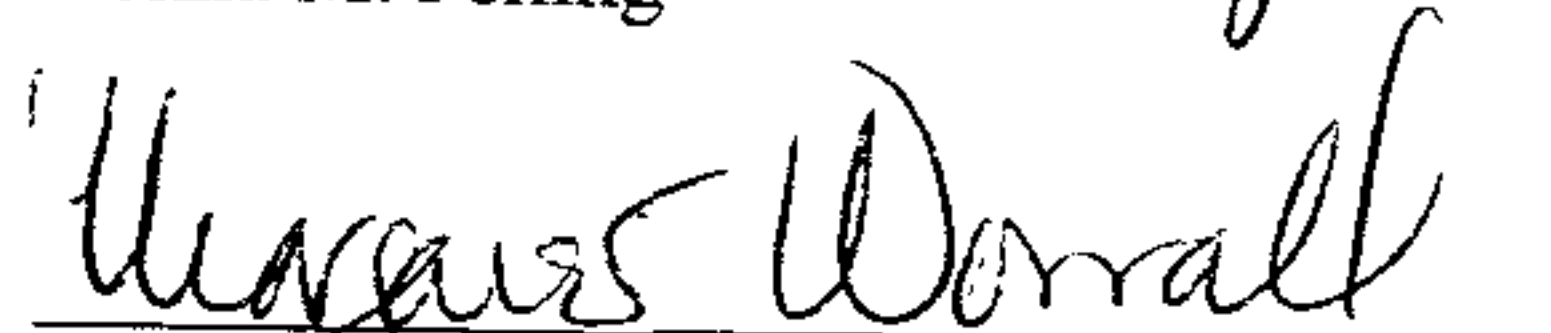
THEREFORE, FOR THE REASONS STATED ABOVE, IT IS THIS 12th day
of January, 2001 by the County Board of Appeals of Baltimore County
ORDERED that Petitioner's Motion for Reconsideration be and the same is hereby
DENIED.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Charles L. Marks, Panel Chairman


Donna M. Felling


Margaret Worrall



County Board of Appeals of Baltimore County

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

January 12, 2001

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

RE: Circuit Case #03-C-97-05479 /In the Matter of
Country Ridge Shopping Center, Inc. /Case No. 96-226-X
Ruling on Motion for Reconsideration

Dear Mr. Zimmerman:

Enclosed please find a copy of the Board's Ruling on Petitioner's Motion for Reconsideration issued this date in the subject matter.

Very truly yours,

Kathleen C. Bianco
Kathleen C. Bianco
Administrator

Enclosure

c: Jack Hession /Alfred E. Clasing, Jr., et al
David K. Gildea, Esquire
Gary S. Salvo /Country Ridge Shopping Center
Meyer Scherr /Southside Brokers, Inc.
Roger N. Powell, Esquire
Nancy C. West, Assistant County Attorney
Robert F. Dashiell, Esquire
Steve Cassidy
Howard Dubick
Richard J. Shrader
Marion MacCrehan
Betty Christopher
Theresa Guckert
Orlando Yarborough

Pat Keller, Planning Director
Lawrence E. Schmidt /ZC
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney
Clerk of the Court /Case #03-C-97-05479
The Honorable Thomas J. Bollinger, Judge
Circuit Court for Baltimore County

PETITION OF COUNTRY RIDGE
SHOPPING CENTER, INC. and
SOUTHSIDE BROKERS, INC.

* IN THE

*

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

* CIRCUIT COURT

*

IN THE CASE OF
THE APPLICATION OF
COUNTRY RIDGE SHOPPING CENTER,
INC. (Owner)/SOUTHSIDE BROKERS,
INC. (Tenant)
FOR SPECIAL EXCEPTION ON
PROPERTY LOCATED AT 1508 BACK
RIVER NECK ROAD

*
FOR

*

* BALTIMORE COUNTY

11th ELECTION DISTRICT
7th COUNCILMANIC DISTRICT

*

IN CASE NO. 69-226-X

CIVIL ACTION NO. 3-C-01-00307

*

* * * * *

PETITION FOR JUDICIAL REVIEW

Pursuant to Maryland Rule 7-202, Petitioner, COUNTRY RIDGE SHOPPING
CENTER, INC./ SOUTHSIDE BROKERS, INC. ("Southside"), by its attorneys, David K.
Gildea, and Whiteford, Taylor & Preston L.L.P., hereby files this Petition for Judicial
Review from the Baltimore County Board of Appeals' Majority Opinion dated December
13, 2000 on Remand from the Circuit Court for Baltimore County pursuant to the Order of
the Court of Special Appeals in the above-referenced matter.

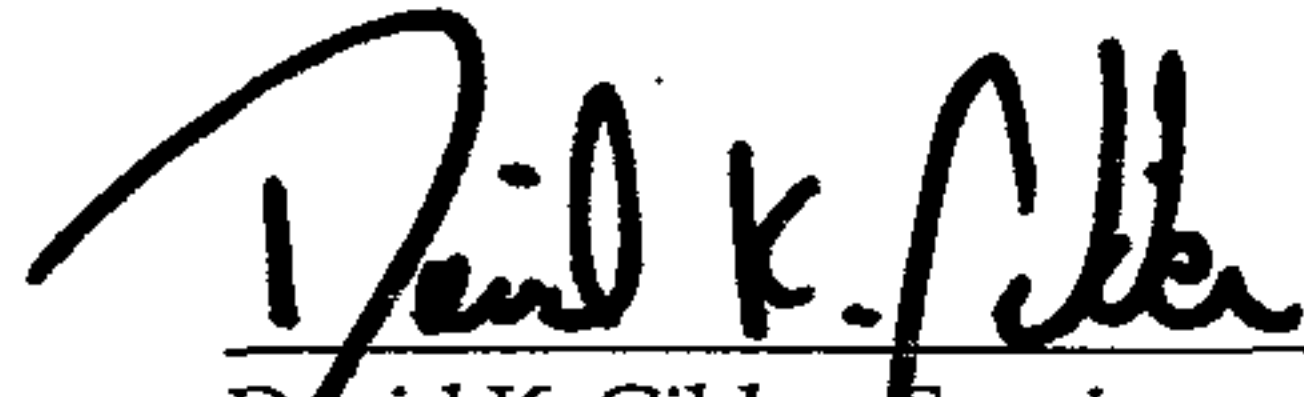
Petitioner was a party to the proceedings below.

On December 19, 2000, Petitioner filed a Motion for Reconsideration with the
Board of Appeals with regard to specific procedural issues. The Board of Appeals

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publicly deliberated on January 3, 2001 and will issue a written decision on the Motion for Reconsideration. Petitioner will file an appeal from the Board of Appeals' written decision on Petitioner's Motion for Reconsideration, as soon as that decision is issued and will seek a consolidation of the two appeals.



David K. Gildea, Esquire
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000
Attorneys for Petitioner



Roger N. Powell, Esquire
Powell & Sorrell
107 Old Court Road
Baltimore, Maryland 21208
Attorneys for Petitioner

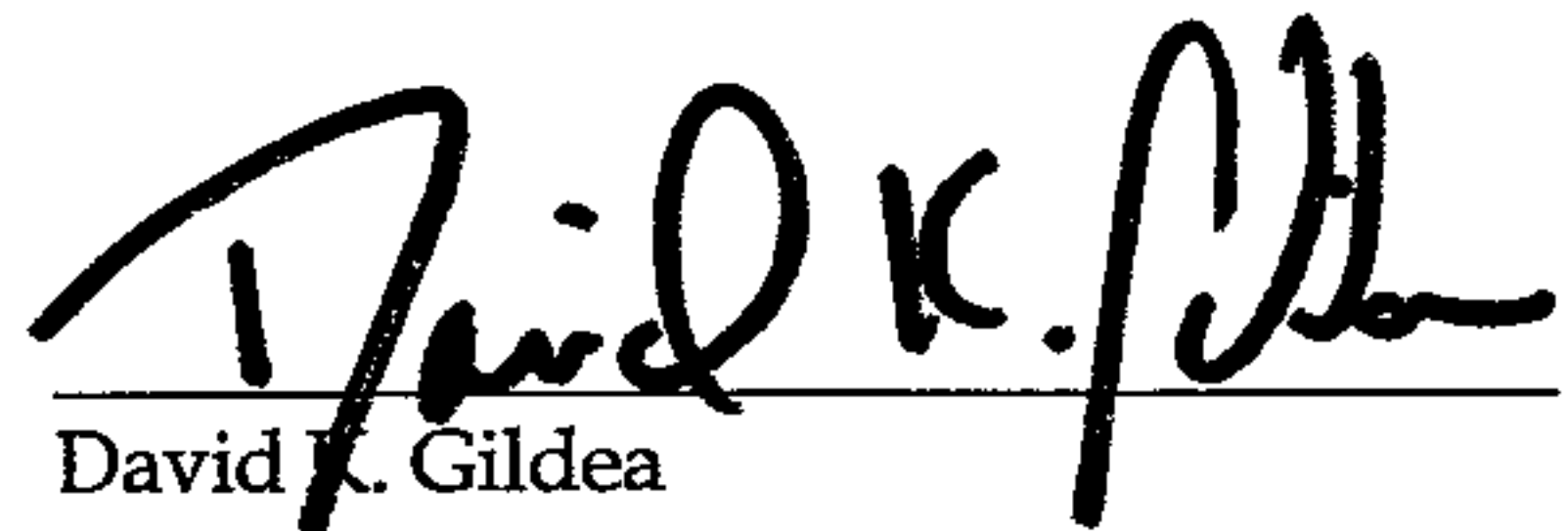
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 2001, a copy of the foregoing Petition for Judicial Review was mailed first class, postage prepaid to:

Baltimore County Board of Appeals
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Roger N. Powell, Esquire
Powell & Sorrell
107 Old Court Road
Baltimore, Maryland 21208

Peter Max Zimmerman, Esquire
Carole S. Demilio, Attorney at Law
People's Counsel for Baltimore County
Room 47 - Old Court House
400 Washington Avenue
Towson, Maryland 21204


David K. Gildea

12/22/00

IN THE MATTER OF
COUNTRY RIDGE SHOPPING CENTER,
INC. (Owner) **and** **SOUTHSIDE BROKERS,**
INC. (Tenant) for a Special Exception on property
located at 1508 Back River Neck Road

Circuit Court Case No. 3-C-97-5479

* ON REMAND
* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF BALTIMORE COUNTY
* **Case No.: 96-226-X**

* * * * *

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S ANSWER TO
MOTION FOR RECONSIDERATION

People's County for Baltimore County answers Petitioners' Motion for Reconsideration as

follows:

I. The Scope of the Remand

1. The Court of Special Appeals (CSA) remanded this case to the County Board of Appeals (CBA) for consideration of the special exception, "free of the standards prescribed in Section 436.4," including the locational requirement which the CBA found applicable in its original decision.

2. In the CSA's July 21, 1999 Opinion, Judge Bishop wrote, as page 8:

"On remand a new consideration of Appellants' application will be necessary."

3. The CSA ordered:

"Judgment reversed. Case remanded to the Circuit Court with direction to remand the case for further proceedings in accordance with this Opinion.

4. The Court Order is, pursuant to Rule 8-604(d), the rule on remands. That rule concludes with this language:

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COUNTY CLERK

True Copy To:
Hon. Stephen J. Bishop
Chairman, County Board of Appeals

“Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion of the appellate court.”

5. On September 8, 1999, the Circuit Court accordingly entered its Order remanding the case “for further proceedings.”

6. This remand also fits Rule 7-209, which allows “remand to the agency for further proceedings.”

7. Rule 1-202(T) states:

“‘Proceeding’ means any part of an action.”

8. In the present case, the Court orders neither require nor indicate the necessity or appropriateness of any further hearings. It was left, therefore, to the discretion of the CBA as to whether to hold any further hearings.

9. Here, the original CBA majority had already reviewed the record and denied the special exception, but there was uncertainty whether its consideration of the locational standard had improperly influenced that decision. The only issue on remand involved the intellectual process to determine whether that denial also stood independent of, or “free of the BCZR 436.4 standards.”

10. In its December 13, 2000 opinion (at page 9), concurring with the original Board majority, the current majority effectively found that, based on this record, the original majority decision to deny the special exception stands free of the BCZR 436.4 standards and was independent of them.

11. Moreover, the CBA majority also wrote, on page 9:

“We affirm the majority opinion that the Petitioner has not met his burden under BCZR 502.1 and that his request for a special exception for a pawnshop at 1508 Back River Neck Road should be denied.”

12. It is to be remembered that in a special exception case, the petitioner has “the burden of adducing testimony which will show that his use meets the prescribed standards and requirements...” Turner v. Hammond, 270 Md. 41, 55 (1973). Judge McWilliams there said:

“If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public health, he has met his burden.”

13. Here, the entire Petitioners’ case consisted of Meyer Scherr’s testimony, which was summarized in the original CBA Opinion and recapitulated on page 3 of the current opinion. His testimony did not produce any evidence relevant to satisfaction of these standards. As a matter of law, he did not meet the burden of production.

14. The CBA should, on reconsideration reconfirm and repeat explicitly that, as a matter of law, the petitioner did not meet the burden of production set forth in Turner v. Hammond.

15. Under these circumstances, there is no justification or warrant for a new hearing.

II. The Advent of Two New CBA Members

16. In People’s Counsel v. Prosser Co., 119 Md.App. 150, 179-180 (1998), attached, the Court of Special Appeals determined that the CBA could convene a new

panel on remand where the decision did not involve “lay witness credibility and demeanor” as a “material factor in determination of the issue before it.”

17. In the present case, the Petitioner did not meet his burden of production. On this ground alone, the denial clearly stands free of any lay witness credibility.

18. Moreover, as in Prosser, there was here the uncontradicted expert testimony of Police Captain James Johnson, Planner John J. Dillon, and Community Conservation sector coordinator Mary Emerick, summarized on pages 4-7 of the current majority opinion. The CBA stated, at page 8 of its December 13, 2000 opinion:

“In denying the Petitioner a special exception for a pawnshop to be relocated in the Country Ridge Shopping Center, it is abundantly clear that the Board of Appeals, in its majority opinion, relied on the evidence and concepts considered in the legislative findings and Baltimore County policy as found in Bill No. 112-95 as well as the testimony of Baltimore County employees in the Police Department, the Office of Planning and the Office of Community Conservation.

19. The CBA majority should reconfirm that, consistent with Prosser, its opinion does not depend on lay witness credibility and demeanor. Rather, it involves a finding that Petitioner did not meet his burden of production, and that, in any event, there was uncontradicted expert testimony which showed that Petitioner did not satisfy BCZR 502.1 standards, particularly in light of the legislative findings of BCZR 436.1 on pawnshops.

III. The Challenge to Margaret Worrall's Participation

20. The Petitioner's unfair challenge to Margaret Worrall's participation is untimely, unsupported by Affidavit, and insufficient as a matter of law.

21. If the Petitioner had any concern about potential assignment of CBA member Worrall to this case, he should have raised it before or at the time the remand was set in for deliberation. Indeed, Petitioner's counsel, Roger Powell, attended the deliberation and did not object at that time.

22. The CBA outlined its procedure on remand in a letter dated February 18, 2000 and set the case in for deliberation on August 8, 2000.

23. While the Petitioner requested a hearing, reflected in correspondence, the last dated August 7, 2000, there was no issue raised as to Ms. Worrall's participation.

24. We responded to Petitioner's claims in our letter dated August 14, 2000, attached hereto.

25. Clearly, it was not until after the decision went against Southside Brokers that the cry of foul went up against Ms. Worrall.

26. The claim of foul play, moreover, is unsupported by Affidavit. Ordinarily, there must be an Affidavit to support a request for disqualification, which both states the basis for and asserts the proposition that the party cannot obtain a fair review.

27. In any event, the challenge here is not of the type which warrants disqualification, or meets the threshold for further review.

28. There is no claim that Ms. Worrall has a financial interest in the outcome of the case or is related to any of the parties by blood or family ties.

29. Rather, the allegation is that Ms. Worrall was formerly employed by the Valleys Planning Council (an organization which has no interest in the present case)

which currently employs John Dillon, who was a witness in this case, but did not testify on VPC's behalf so far as the record reflects, and, was not employed by VPC at the time he testified.

30. This challenge is too absurd and outrageous to warrant much reply by the Board.

31. Suffice it to say that there is no rule or case which precludes a decisionmaker from hearing a case in which one of the witnesses happens to be employed by an organization which once employed that decisionmaker.

32. Indeed, judges often hear cases argued by attorneys from their former law firms, much less involving witnesses.

33. Supreme Court justice Antonin Scalia has reportedly sat on cases argued by the law firm for George Bush where his son also works, such as Bush v. Gore, without a question of a recusal challenge, and several justices were appointed either by Presidents Bush or Clinton.

34. State judges hear cases in which the State is a party.

35. Board of Appeals members are employed by the County but hear cases in which the County is a party.

36. Here, the allegation does not involve a party or lawyer, does not involve a current relationship, and does not involve a relationship that has anything to do with this case.

37. Petitioner here does not cite any authority for this belated challenge to Ms. Worrall's fairness, or the appearance of it.

38. Under all the circumstances, it amounts to an unjust accusation and innuendo concerning her fairness and integrity.

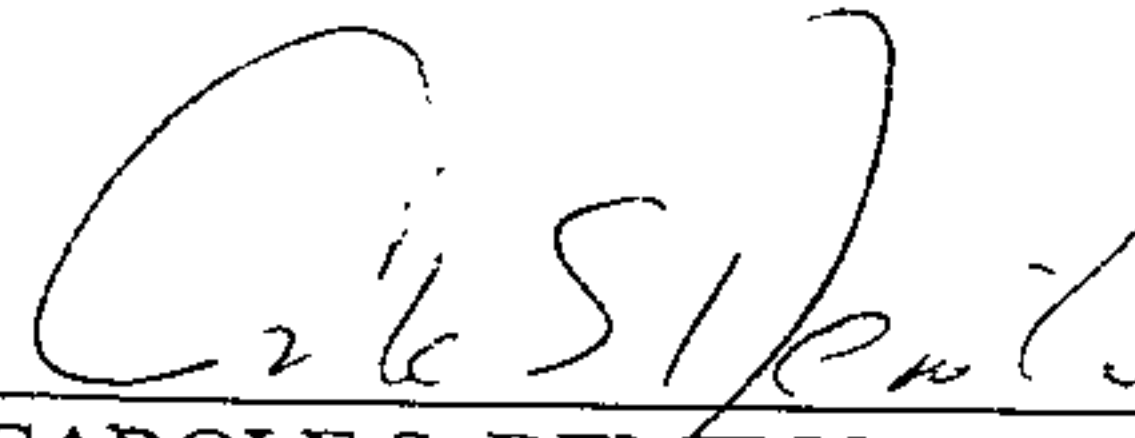
39. The Petitioner has not raised a legitimate issue of conflict of interest, or its appearance.

Conclusion

WHEREFORE, for all of the above reasons, the CBA should DENY the Motion for Reconsideration.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of December, 2000 a copy of the foregoing Answer to Motion for Reconsideration was mailed to David K. Gildea, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204 and to Roger N. Powell, Esq., Powell & Sorrell, 107 Old Court Road, Baltimore, MD 21208, attorneys for Petitioners.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

12/19/00
IN THE MATTER OF
COUNTRY RIDGE SHOPPING
CENTER, INC./SOUTHSIDE
BROKERS, INC.

Petitioner

* BEFORE THE
* BALTIMORE COUNTY
* BOARD OF APPEALS
* Case No.: 96-226-X

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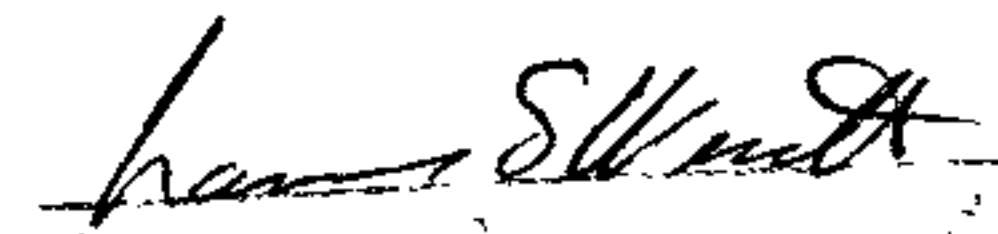
MOTION FOR RECONSIDERATION

Country Ridge Shopping Center, Inc./Southside Brokers, Inc. ("Southside"), by and through their attorneys, David K. Gildea and Whiteford, Taylor & Preston L.L.P., files this Motion for Reconsideration and states:

1. Southside requests that this Board remedy a situation which, left unaddressed, will create needless appellate issues. The Board is in a position to remedy the situation prior to the filing of appeals. It is respectfully requested that this Board grant consideration of the following issues prior to the expiration of the appeal period.

2. This case presented the Board with a procedural oddity. On remand, there was only one remaining member of the original panel hearing the matter. Margaret Worrall and Donna Felling were appointed to render their decision in this matter.

3. There was no opportunity for discord among the parties and the newly appointed panel. On two occasions I requested that a hearing be held to discuss the procedural issue and how the law addresses the matter in the instant case. Specifically, by letter dated February 9, 2000, I made a motion requesting a hearing to allow counsel to present argument on the procedural issue of how the remand from the Court of

True Copy Test:

Chairman, County Board of Appeals

Special Appeals should be handled by the Board. The Board erred as a matter of law in denying my request for a hearing, and further erred as a matter of law in its determination of the method of handling the remand.

4. The handling of the remand from the Board of Appeals is a clear error of law and will be raised on appeal. The parties should have the opportunity to present its arguments on the procedural issue in an open hearing so as to give the Board the opportunity to properly review the relevant law and make a more informed decision. Regardless of the Board's determination, there needs to be a proper record on this issue, with briefing by the attorneys and argument, so that the Appellate Court reviewing the Board of Appeals' decision will have an adequate record and basis for their decision. Denying the opportunity for a hearing is a clear error of law and will not unnecessarily elongate this case whose age is over five years. The *Petition for Special Exception* was filed on November 29, 1995

5. On August 7, 2000, I filed a Motion Requesting a Determination by the Board of whether the remanded matter should be heard de novo or on the record. The Board did not provide either party an opportunity to discuss the law as it applies to the instant matter. Again, the Board erred as a matter of law in determining that the matter should be reviewed on the record, by only one of the three original panel members. There are important issues of credibility which cannot be determined by reading a transcript.

6. The role of trial judges and administrative bodies is to rule on issues of credibility. It is not the Appellate Court's role to rule on issues of credibility as they

only have transcripts to review. As the two new panelist were essentially acting in quasi-appellate roles by simply reviewing the record, they should not have made findings regarding credibility. It is clear from the Opinion that the Board members did make findings on credibility.

7. This case will be appealed. The Appellate Courts will need a better record of the arguments regarding whether the issue should have been heard on remand as de novo hearing or on the record. By providing the parties an opportunity to be heard on this issue, it may clear up several misconceptions of the application of law, and be judicially economical by addressing the issues now, as opposed to on another remand from an appellate court.

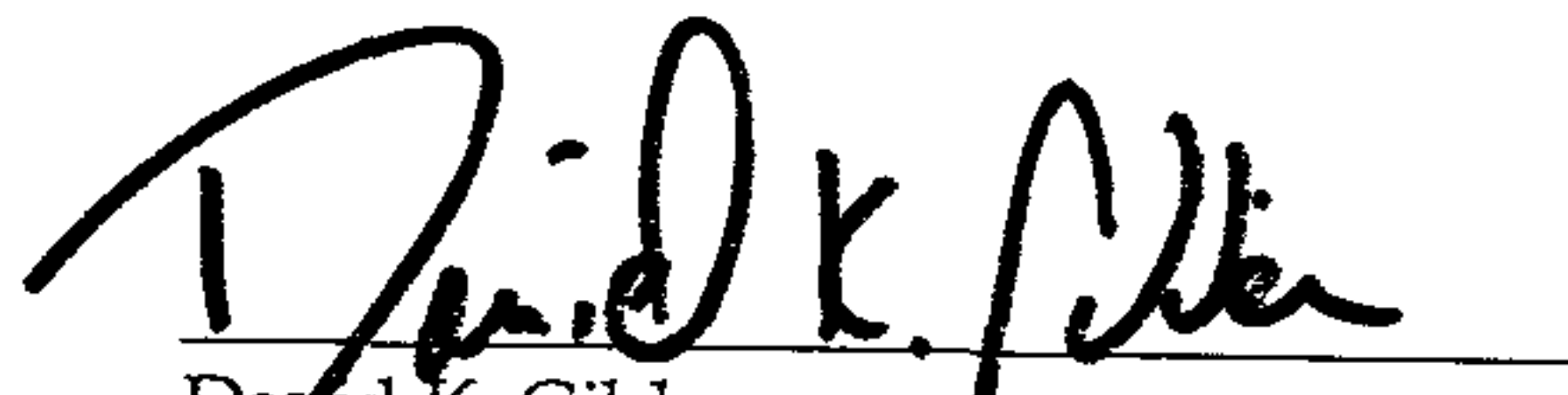
8. My client raised with me an issue of a potential conflict of interest. My client is aware that Margaret Worrall has served or is still serving in some capacity of the Valley's Planning Council. My client is also aware that the main witness for the Protestants, Jack Dillon, is employed by the Valley's Planning Council. Ms. Worrall made several findings, as is evidenced by the Opinion, on issues of credibility. My client was concerned that Ms. Worrall did not disclose her relationship with the VPC and her connection with Mr. Dillon, an important Protestant expert witness. I have no way of responding to my client's concern as I do not have adequate information, nor did I have an opportunity to address those issues.

9. The appearance to my client is that there was a conflict of interest. Normally, such issues can be resolved when there is an open hearing and a forum to discuss the issues. As this matter was for public deliberation only, Ms. Worrall was not

an original panelist, and all requests for a public hearing were denied, my client never had the opportunity to explore the conflict of interest issue.

10. My client is simply seeking participation in the process to explore whether there is a potential conflict of interest. The appearance of the conflict of interest should not go undiscussed as it would undermine the credibility of the Board. Any judicial body has an obligation to provide the litigants the opportunity to explore whether there are conflicts of interest in an open hearing. The unique circumstances in the instant matter prohibited that from occurring. On behalf of my client, I respectfully request that the matter be set for an open hearing to clear up the perception of the appearance of impropriety by the Board.

THEREFORE, Southside Brokers, Inc. respectfully requests that a hearing be held prior to the expiration of the appeal period to address (1) the correct legal posture of the remand, (2) the correct legal treatment of the remand (i.e. on the record or a de novo hearing), and (3) to further explore whether there is a conflict of interest by Ms. Worrall.



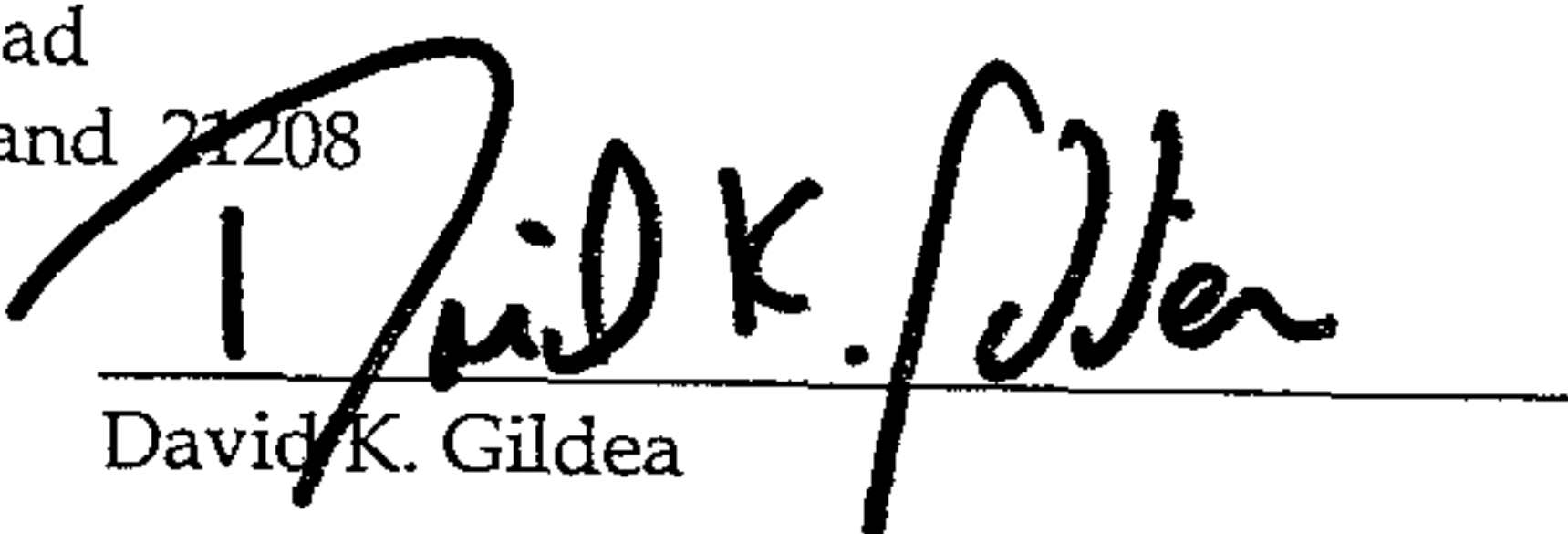
David K. Gildea
Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Avenue, 4th Floor
Towson, Maryland 21204
(410)832-2066
Attorneys for Southside Brokers, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of December, 2000, a copy of the
aforegoing Motion for Reconsideration was mailed, postage prepaid, to:

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

Roger N. Powell, Esquire
Powell & Sorrell
107 Old Court Road
Baltimore, Maryland 21208



David K. Gildea

SEVEN SAINT PAUL STREET
BALTIMORE MARYLAND 21202-1626
TELEPHONE 410 547-8700
FAX 410 752-7092

50 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

DAVID K. GILDEA
DIRECT NUMBER
410 832-2066
dgildea@wiplaw.com

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
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410 832-2000
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FAX 202 351-0573

1517 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

December 21, 2000

Via Hand Delivery

Chairman Lawrence M. Stahl
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

**Re: Southside Brokers, Inc.
CBA No.: 96-226-X
Our File: 05935/00001**

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Dear Mr. Stahl:

Please accept for filing the following which will serve as an addendum to the Motion for Reconsideration filed on December 19, 2000:

1. Correspondence dated February 9, 2000 from David Gildea to Kathleen C. Bianco, Administrator of the Board of Appeals.
2. Correspondence dated February 18, 2000 from Kathleen C. Bianco, Administrator of the Board of Appeals to counsel of record.
3. Correspondence dated August 7, 2000 from David Gildea to Lawrence Stahl, Esquire, Chairman of the Baltimore County Board of Appeals.

It is my understanding that this matter is being set in for a hearing and consideration the first week in January, 2001. Please keep me updated as to any assigned hearing dates.

Respectfully submitted,

David K. Gildea

DKG:bhb

CC: Mr. Meyer Scherr, Southside Brokers (w/enclosures)
Mr. Edward Sedlar, Southside Brokers (w/enclosures)
Peter Max Zimmerman, Esquire, People's Counsel (w/enclosures)
Roger N. Powell, Esquire (w/enclosures)

215904

12/13/97
IN THE MATTER OF
THE APPLICATION OF
COUNTRY RIDGE SHOPPING CENTER,
INC; SOUTHSIDE BROKERS, INC.

FOR A SPECIAL EXCEPTION ON
PROPERTY LOCATED 767' SE OF
BACK RIVER NECK ROAD
(1508 BACK RIVER NECK ROAD)

11TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

(Case No. 96-226-X)

* ON REMAND
* FROM THE CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* File No. 3-C-97-005479
*

* * * * *
MAJORITY OPINION ON REMAND FROM THE
CIRCUIT COURT FOR BALTIMORE COUNTY PURSUANT TO
ORDER OF THE COURT OF SPECIAL APPEALS

This case comes before the Baltimore County Board of Appeals on remand from the Circuit Court pursuant to the Order of the Court of Special Appeals of Maryland. The Board was directed to determine whether or not sufficient testimony existed within the transcript and record of the Board's hearing to reach a decision on the request by Southside Brokers, Inc., for a Special Exception for a pawnbroker as set out in *Baltimore County Zoning Regulations* (BCZR) § 502.1 and as required by County Council Bill No. 112-95 which created § 436 of the BCZR. The business has relocated in a B.M. zone at 1508 Back River Neck Road in the Seventh District of Baltimore County from 8110 Pulaski Highway.

Inasmuch as the Board members who wrote the Majority Opinion dated April 30, 1997 no longer serve, two members of the current Board, plus the remaining Board member who heard the case originally, reviewed the testimony and record in order to render the opinion required by the Order of the Court of Special Appeals.

These members reviewed carefully all the evidence presented which led to the creation of legislation passed by the County Council on July 3, 1995, Bill No. 112-95 (People's Counsel's

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Exhibit #11). This included "A Final Report of the Baltimore County Planning Board," adopted February 16, 1995 (People's Counsel's Exhibit #12), which proposed amendments to the BCZR "to require a special exception for pawnshops located in BM and BR zones."

The Planning Board noted in their report that:

The Special Exception process is designed to allow for discretionary approval in cases where uses that are permitted in the zone are not suitable for all locations. [Emphasis added.] A use permitted by special exception cannot be "detrimental to the health, safety, or general welfare of the locality involved" (BCZR 502.1, paragraph a). The siting of a pawnshop could have an effect that is detrimental to the community. The fact that much of Title 12 in the State law is devoted to procedures intended to prevent the trade in stolen property shows that, in the eyes of the law, pawnshops are more likely to become the locus of criminal activity than other retail users. The special exception process would give the County some control over where pawnshops might be located, which supports the County's commitment to conserve communities. [Emphasis added.]

The Baltimore County Council, in creating Bill No. 112-95, and especially § 436, recognized the special exception process and noted that some areas in the County may not be suitable for pawnshops, as follows:

§ 436 – Pawnshops
436.1 – Legislative Findings

(A) The principle of community conservation is an expressed goal in Baltimore County. The Master Plan 1989-2000 proposes that commercial activities incompatible with local neighborhoods should be restricted in such areas.

(B) The State of Maryland requires that businesses which purchase or loan on deposit of secondhand precious metals and other valuables obtain a "dealer's" license and report transactions to the local law enforcement agency to help prevent stolen items from being traded.

(C) The Baltimore County Council finds that an undue concentration or the inappropriate siting [emphasis added] or design of pawnshop businesses has a reasonable probability of causing adverse effects on nearby residential and commercial areas by creating an impression of community decline and instability.

(D) Based upon reports submitted by the Baltimore County Police Department, the County Council finds that pawnshops which deal in a wide

variety of valuable goods are more likely to have a greater deleterious effect on neighborhoods than businesses which deal exclusively in secondhand precious metals and gems, where pawn transactions are merely incidental to the sale of new or secondhand jewelry.

(E) Such adverse effects would directly conflict with the County's commitment to conserving and revitalizing older communities [emphasis added] and would be inordinately difficult to overcome once ill-sited pawnshops have been established.

The burden of proof rests with the Petitioners, Southside Brokers, Inc., to prove that they meet the requirements as set forth in Bill No. 112-95 and the standards of the conditional use of a special exception as set forth in BCZR 502.1. Therefore, the Board carefully reviewed the evidence and testimony presented by the Petitioner.

Roger W. Powell, Esquire, attorney for the Petitioner, called Meyer Scherr as witness. Mr. Scherr testified that he is the president and CEO of Southside Brokers, Inc., a licensed pawnshop. He indicated that his business does "very close to 2,000 pawn transactions" and that "ninety-nine percent of them come from the zipcode 21221," [Transcript, Nov. 6, 1997 {sic} pp. 57-58], where the subject pawnshop is located in the Country Ridge Shopping Center.

Mr. Scherr described this shopping center as including businesses such as the Ames department store, a beauty shop, a Chinese restaurant, a fast food restaurant, a law office, a liquor store, a dry cleaners, a laundromat, and a Baltimore County Department of Health facility. He further testified that he has seen no vacancies occur since he located his business in the shopping center. As evidence the Petitioner presented a "petition signed by people who have come into your store and have signed the petitions asking that you be allowed to remain there to operate in your current capacity as Southside Brokers." [*Ibid.*, p. 65]

Mr. Scherr was the only witness for the Petitioner.

In opposition the Protestants called several witnesses. Some testified relative to other aspects of the *de novo* case which was before the Board of Appeals which do not apply to the special exception issue before the Board on remand. As directed, this Board restricted its review to the special exception issue only.

On review of the transcript, the Board examined the opinion of Police Captain James Johnson who noted that Southside Brokers had not been cited for any criminal activity but that "Unfortunately, the area immediately around the Country Ridge Shopping Center suffers from some of the highest public safety warning indicators in all of Baltimore County. Suffers, unfortunately, from a blight, scourge, of narcotic activity, recently a rash of robberies, socioeconomic decay." (P.C. Exhibit #5)

Captain Johnson also produced a document which was entitled, "A Composite Map of Public Safety Indicators in Baltimore County, 1995," which was marked as Exhibit #5. This map is divided into individual police posts or districts and "analyzes four separate issues, violent crime; narcotic violations, juvenile crime, and what's referred to as maintenance, loitering, drinking in public, disorderly conducts." [T 11/06/97 p 142] He went onto explain the color coding of the map indicating that "red" colorings are the "absolute worst in the county. They are among the top five percent of these 1,200 reporting areas that possess all four of these factors." He goes on in his testimony of November 6, 1997, p 142, to show the Board the red bottom shaped post and the gray area that surrounds Country Ridge and states "you can see what's happening in the area immediately surrounding your location." He then compares it to the rest of the County and states, "you will find the vast majority, unfortunately, are in the Essex-Middle River precinct." [T 11/16/97, p 143] "What I'm telling you," Captain Johnson testified, "those

areas have among the worst crime problems in Baltimore County, and your pawnshop location is right in the middle of it." [ibid, p 161]

Captain Johnson also provided testimony regarding the fact that three pawnshops are located in his district and that there is an increased amount of workload created with each establishment. He testified to not receiving additional resources "either human or equipment to keep up with the items that the pawnshops accept....That means some officers are going to be taken off the street twenty-five percent of the time just to keep up with the additional workload for this location."

Also called as a witness for the opposition was John J. Dillon, employed by Baltimore County for over 34 years: "29 of those years I was working in the office of planning and zoning, seven years in the zoning office, and the remainder of the time in various capacities in the office of planning." [Transcript, March 12, 1997, p. 9]. "And in the last couple of years before my retirement, I had moved from the Third Councilmanic District to be the area planner for the Fifth Councilmanic District, and I was there until my retirement last year." [Ibid. p. 10]

Mr. Dillon testified that he had worked on matters dealing with the Essex-Middle River area over his time of employment with Baltimore County [ibid. p. 16] and that he was involved with "an in-depth analysis of the Essex-Middle River area" conducted by the Office of Planning in 1995. [Ibid. pp. 15-20] This analysis led to a Community Conservation Plan for Essex-Middle River, adopted by the County Council on July 1, 1996 (P.C. Exhibit #9). Mr. Dillon was accepted by the Board as an expert planner in Baltimore County.

With specific reference to the standards of BCZR 502.1, Mr. Dillon opined that "As far as this particular location, this is a community that is in distress in a variety of ways. And I believe—I believe that a pawnshop is not the kind of use that should be located in that situation,

in this particular area...Good, bad, indifferent, this is one of those uses that seem to draw concerned buyers and sellers in a community. To that extent, it's not a positive influence in this area." [Transcript, March 12, 1997, p. 70]

In additional testimony regarding Bill No. 112-95 [*Ibid.* p. 75], Mr. Dillon said:

Part (e) says that such adverse effect would directly conflict with the county commitment to conserving, revitalizing older communities and would be inordinately difficult to overcome once ill-sighted pawnshops have been established. In this particular instance, I think this fits that category specifically. It is in an area that has a poverty level that is high and a crime level that is documented as being very high in the county.

Mr. Dillon concluded his extensive testimony by saying, "I think it is not compatible with the community in this area." [*Ibid.* p. 143]

Mary Emerick, eastern sector coordinator for the Baltimore County Office of Community Conservation, was called as a witness. Ms. Emerick testified that her office was charged with identifying four priority actionaries in Baltimore [County], Essex-Middle River being the first area of concentration...designing these areas for intense attention and resource development community development. [*Ibid.* p. 175] She indicated that even though this part of the county has the highest crime rate, "there are many good neighborhoods" [*ibid.* p. 187] and this is where the County is committing resources to conservation and revitalization, such as family oriented service centers, an athletic league, and the YMCA youth programs. A County Action Plan for the Southeast Sector was accepted as P.C. Exhibit #13. In fact, throughout Ms. Emerick's testimony of March 12, 1997, she outlines numerous concerns in this sector, specifically, "concern for crime" [p 177]; "we have had the highest crime rate in Baltimore County, and although it has declined over 1996, we still have the highest rate of crime in Baltimore County, the Essex precinct does." [p 177]; "the incidence of free and reduced lunch programs in this part of the county were also higher than the county average" [p 178]; "approximately 20% of the

population receives some kind of public assistance and that's through welfare reform." Also, "And we saw the need for increased residential opportunity for youth and family in the area" [p 184]; "and we also, through block grant dollars, helped to fund a community center located within Tall Trees that provides services, health and social services, and day care center." On pp 192 and 193, she outlines the amount of public dollars infused into this area of the county (\$6 million), and People's Counsel Exhibit #13 – pp 199-207 of the consolidated plan, describes the types and amounts of money along with the magnitude and significance of the project.

Speaking as an employee of Baltimore County, Ms. Emerick opined that "the County Council action that passes legislation both limiting the location and the number of pawnshops, I mean, obviously, they are viewed as objectionable uses." [*ibid.* pp. 194-95] Further, she testified that "Certainly I think this is an inappropriate place because of the residential neighborhood, because of the residential uses, because this shopping center, in my opinion, is a neighbor shopping center [*ibid.* p. 195]...and I think it is contrary to our efforts in conservation." [*Ibid.* p. 196]

Orlando Yarborough, who operates a nonprofit organization for at-risk families and youth which is located across from Country Ridge Shopping Center, testified in opposition to the petition. He cited the perception of decay associated with pawnshops and the adverse effects on the at-risk youth with whom he deals on a daily basis as his reasons. [*Ibid.* pp. 144-172]

Alfred Clasing, Jr., also testified in opposition as a member of the Essex-Middle River community. He noted that "I have been involved in community activities for many, many years...We are sensitive to good things as opposed to things that are bad." [*Ibid.* p. 235]

The Court said in *Schultz v. Pritts*, 291 Md. 1, 1981:

When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes other uses

serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. Such uses cannot be developed if at a particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses.

In denying the Petitioner a special exception for a pawnshop to be relocated in the Country Ridge Shopping Center, it is abundantly clear that the Board of Appeals, in its majority opinion, relied on the evidence and concepts considered in the legislative findings and Baltimore County policy as found in Bill No. 112-95 as well as the testimony of Baltimore County employees in the Police Department, the Office of Planning and the Office of Community Conservation.

With regard to standards set forth for the granting of a special exception in BCZR 502.1, this Board affirms the majority opinion that the Petitioner did not meet the special considerations of 502.1(a) and (g):

Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

A. Be detrimental to health, safety, or general welfare of the locality involved; and

G. Be inconsistent with the purposes of the zoning classification, nor in any way inconsistent with the spirit and intent of the zoning regulations.

Evidence and testimony are uncontradicted that the Essex-Middle River area is a section of Baltimore County designated the highest priority for revitalization and conservation. It has the lowest socioeconomic indicators and the greatest incidence of crime. There are already two pawnshops in the area. A third pawnshop in this area would be detrimental to health, safety, and specifically the general welfare of this particular area of Baltimore County.

Using the *Schultz v. Pritts* standard that "the test for considering a special exception is not whether the use will have an adverse effect, but whether the adverse effect at the particular

location is greater than ordinarily associated with the use," this Board finds that the pawnshop will have an adverse effect that is greater here than in other B.M. zones because of the specific problems documented within the Essex-Middle River area.

It is abundantly clear from the legislative findings and policy that are stated in Bill No. 112-95 which created the special exception process for pawnshops in § 436 that there are locations where such businesses would have an adverse effect greater than in other sections of the County. These findings state that the Master Plan proposes "that commercial activities incompatible with local neighborhoods be restricted" and that "The Baltimore County Council finds that undue concentration or the inappropriate siting or design of pawnshop businesses has a reasonable probability of causing adverse effects on nearby residential and commercial areas by creating an impression of community decline and instability."

The two Board members reviewing this Opinion concur with the County Council and the majority of the original Board that a pawnshop in this particular location would be inappropriately sited as well as create an undue concentration. Therefore, we find that the granting of a special exception for a pawnshop in the Country Ridge Shopping Center would be inconsistent with the spirit and intent of the zoning regulations.

We further find that there was significant and persuasive evidence and testimony before the Board of Appeals to make this decision. We affirm the majority opinion that the Petitioner has not met his burden under BCZR 502.1 and that his request for a special exception for a pawnshop at 1508 Back River Neck Road should be denied.

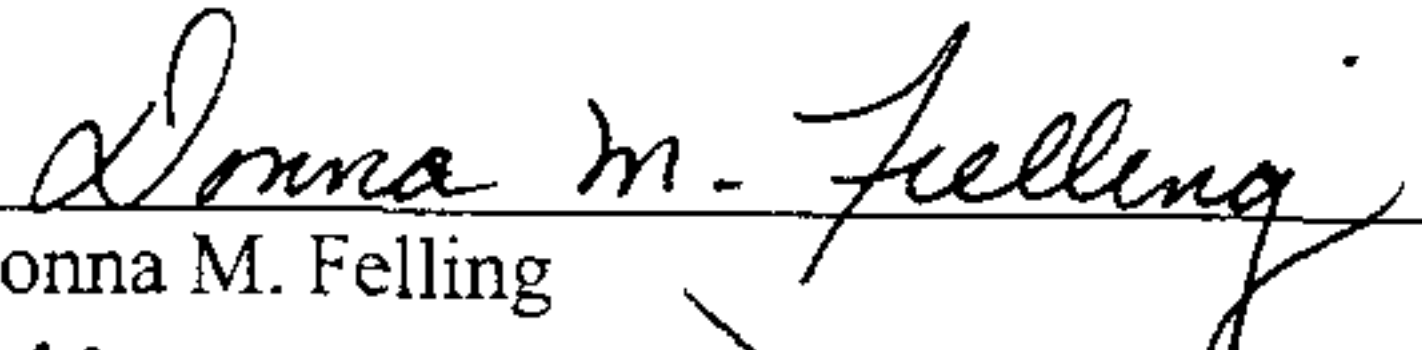
ORDER

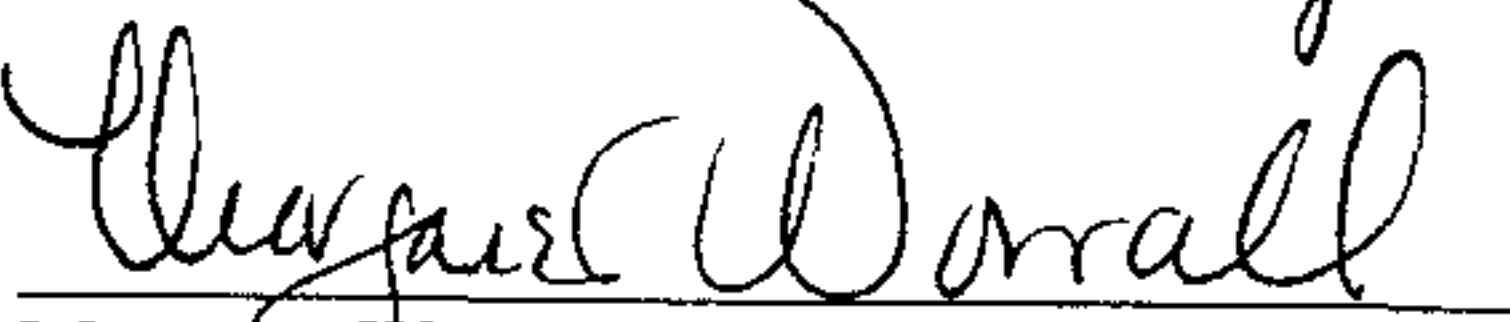
THEREFORE, IT IS THIS 13th day of December, 2000 by the
County Board of Appeals of Baltimore County

ORDERED, pursuant to the foregoing Opinion and finding that Petitioner has not met his burden under BCZR § 502.1 and that there was significant and persuasive evidence and testimony in the original record before the Board of Appeals, that the Petition for Special Exception as filed in Case No. 96-226-X for a pawnshop to be relocated at 1508 Back River Neck Road be and the same is hereby **DENIED**.

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**


Donna M. Felling


Margaret Worrall

IN THE MATTER OF
THE APPLICATION OF
COUNTRY RIDGE SHOPPING CENTER,
INC; SOUTHSIDE BROKERS, INC.
FOR A SPECIAL EXCEPTION ON
PROPERTY LOCATED 767' SE OF
BACK RIVER NECK ROAD
(1508 BACK RIVER NECK ROAD)
11TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

* ON REMAND
* FROM THE CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* File No. 3-C-97-005479
*

(Case No. 96-226-X)

* * * * *

DISSENTING OPINION ON REMAND

The writer of this Minority Opinion was the only member of the original panel that heard the case over a two-day period that began on November 6, 1996 and was concluded on March 12, 1997, with a public deliberation held on April 17, 1997. Two of the other panel members have left the Board of Appeals since the case was remanded by the Court of Special Appeals. The sole question to be determined by the Board is whether or not the initial Board's denial of the special exception was based upon that Board's determination as to both the "grandfathering" issue and the Petitioner's failure to meet the requirements under § 502.1 of the *Baltimore County Zoning Regulations* (BCZR), and, further, whether or not the testimony produced at the hearing yielded sufficient substance and evidence as reflected in the transcript to reach the majority decision as to the § 502.1 issue.

It should be remembered that the Court of Special Appeals agreed with the minority opinion as to the "grandfathering" issue, overturning the majority decision. Having now had the benefit of the full text of the transcript (instead of having to rely on personal notes) and a second review of the exhibits admitted during the course of the hearing, this writer is even more convinced that the special exception request should have been granted by the Board. The General Assembly of the State of Maryland has determined that special exception uses are permissible absent any facts or circumstances negating the presence [Schultz v. Pritts, 291 Md 1, 432 A.2d 1319 (1981)]. The question is one as to whether or not the

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Chairman, County Board of Appeals

Petitioner has met his burden considering the "impact" factors required under BCZR § 502.1. Do the facts and circumstances demonstrate that the proposed use at the site would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location with the zone? One must also recognize that the presumption established by the Maryland courts relative to special exception uses and that they are "expressly permitted" [*Mossberg v. Montgomery County*, 107 Md. (1995)].

The duty imposed on the Board is to judge whether the use in the particular case is in harmony with the general purpose and intent of the plan. The fact that special exception uses may have an adverse effect at the proposed location is not an issue in the approval of a special exception use, since such uses carry with them inherent adverse effects. The minority Board member disagreed with the majority membership at the time of the original hearing and again strongly disagrees with the majority remand Opinion. To that end, the writer reasserts the minority opinion stated on pages 5 through 9 of the "Dissenting Opinion" under date of April 30, 1997 relative to the special exception issue and continues to find that sufficient testimony did not exist to justify the Majority Opinion to deny the special exception request. Additional comments follow as a supplement thereto.

The real issue present in this case is one of "perception" versus "reality." From a perspective standpoint, the County Council has recognized that a pawnshop may have an adverse effect by its presence in the community. That is why such legal operations are so intensely regulated – not only by local ordinances but also by State and Federal regulations. Mr. Meyer Scherr testified at length concerning the nature of pawnshops and his operation in general [T 11/06/96, pp 52-66, and on cross-examination, pp 67-78]. Nowhere in the transcript is there any testimony from any tenant of the Country Ridge Shopping Center that the pawnshop created any disruption or diminution of business by reason of the pawnshop's operation in the shopping center; nor is there present anywhere in the transcript that the operation had not fully complied with the very stringent County, State, or Federal regulations imposed upon it. Mr. Scherr indicated that, since the relocation of the shop to the Country Ridge Shopping Center, there had been "2,000 pawn transactions, and that excludes the sale of merchandise [with]...99% of them

coming from the zip code 21221" [T 11/06/96, p 58] The mere fact that the business has prospered in this location is evidence of a need to serve the immediate community. If there were no need, pure economics would be the death knell for the business.

Mr. Jack Dillon, who had been active in community planning in the Essex-Middle River areas for a number of years acknowledged that "the crime statistics and crime categories, they are all present with the Petitioner being located in the Country Ridge Shopping Center" [T 3/12/97, p 107]; and "since the Petitioner has been in the shopping center, there has been a decrease in crimes" [p 108]. He described his visit to the pawnshop premises [T 3/12/97, pp 136-137]. There was nothing unusual about the operation of the shop. "There was a variety of general merchandise." [p 105] He had not talked to any of the other merchants about how they felt concerning their neighborhood. Unfortunately a considerable portion of Mr. Dillon's testimony revolved around the "perception" of a pawnshop. It was his opinion, relative to § 502.1(a) that the proposed pawnshop in the Country Ridge Shopping Center would be detrimental to the health, safety and general welfare of the particular locale [T 3/12/97, pp 63-64] Why? "Pawnshops, through history – and we go back through a variety of case law, if you want...they seem to have a history that raises concern that a particular element of the population uses pawnshops to gain access to money by disposing of goods that they own. Easy money may be another term." [p 64] Perception or reality? Conjecture versus reality? No hard and factual evidence produced on the part of Mr. Dillon as a planner to establish that the presence of this particular pawnshop created any greater adverse effect in the Country Ridge Shopping Center than if located anywhere else in the zone.

"Historically, from what information I have been able to gather, pawnshops may bring in an element contrary to the benefit of the community in that it may bring in undesirable characters or persons with various anti-social motives." [T p 68] Again, also referencing the transcript, page 69, "that in the reading I have done in the various law journals and some of the history of pawnshops, they have historically been treated as a type of use that can create a problem within a given area; and they have been treated as a special category and that's what this legislation has done." [T pp 69-70] Fact, hardly. Perception, yes! Enough to deny the special exception request? Hardly!

Let's also take a look at the testimony of other witnesses opposed to the special exception request. John Hession, President of the Back River Neck Peninsular Community Association:

QUESTION – give us your point of view. How do you see it? Let's not worry too much about the details of Mr. Scherr's testimony. Tell us how you see it." ANSWER – "Well, we feel that the area, that pawnshops or things of that nature, check cashing stores, give a connotation to our community that people in this community are in such dire straits that they don't have money to get through the next day, they don't have credit that they can exercise anywhere, they have to go and sell assets right now to survive, or, you know, for however long, and then there's a great possibility that they lose that absent in the long run."

[T 11/06/96, p 89] "I don't think that it's going to draw people into our shopping center who are there to buy from the stores that are already in the center. I think it's the kind of business that is detrimental to the other kind of businesses that the people in our community use on a regular basis, have used on a regular basis. The shopping center is a desirable place to shop and we use it. We would like to see it improved and not deteriorating." [T p 94] Again, perception unsupported by factual evidence. This writer finds it of considerable significance that no merchant in the existing shopping center appeared or testified in support of Mr. Hession's position.

Mr. Charles Poole, Sr., a resident of Hopewell Avenue, also testified. He opined that "I think it brings the neighborhood down.... It will draw people in there we don't need around there. It will bring property values down (my opinion). [T pp 106-108] "That, the pawnshop, would make our neighborhood look like a neighborhood of losers." [p 113] Mr. Poole was not aware of any people who had gone to Southside to conduct a transaction [p 115]. He did not know people who go to pawnshops "because I don't stand outside watching." [p 117] He only opined that "a pawnshop indicates that someone is in such dire straits that they have to take an asset that might be very important to their livelihood and put it in there to get some money." [p 117] Mr. Poole opined that "I'm not an expert in pawnshops, but that's how I understand they work. I've never been to one." [p 124] How do pawnshops create the problem? "I said that pawnshops gave the connotation to people who might move into the community." [p 125] "Except that in your deteriorating area, the Rite Aid has built a brand new

facility right on the corner of the shopping center – Yes.” [p 133] Factual or perception. Lots of perception, void of fact.

Captain James Johnson also testified in opposition to the special exception request. He had four primary concerns:

(1) “Every additional pawnshop created in Baltimore County creates an additional workload for the Baltimore County Police Department. There are no additional resources that are given to me, human or equipment, to keep up with the items pawnshops accept...an additional pawnshop is going to create an additional 25% workload on them...it’s a very time consuming process.” [T 11/06/96, pp 136-137] Is this an adequate reason to deny the special exception because the bureaucracy has created legislation and then not supplied the necessary resources required to enforce the regulations and the laws? Hardly! That is a deficiency solely on the part of the County Council, and hardly a reason to deny a legitimate businessman, already operating within strict legislative guidelines, the ability to practice his trade.

(2) “The second area of concern that I have relative to pawnshop locations is that they have been known to accept stolen property.” [T p 140] Captain Johnson was not speaking necessarily concerning this particular location, but of “pawnshops that you have to review, in your (his) experience.” [p 140] “I believe that a pawnshop would enhance the movement of stolen or unlawfully obtained property that they desire to turn into cash.” [p 141] However, Captain Johnson acknowledged that this particular pawnshop had no violations and had not caused any problems in the Country Ridge Shopping Center. In fact, he reiterated that, “it (a pawnshop) creates an additional workload on County service providers and an additional tax burden on the taxpayers of the County...the entire County is affected by this, not just the Essex area, due to the type of business.” [p 145] Is the adverse effect greater at the proposed site than elsewhere in the zone? Captain Johnson seemed to have answered that question as stated above.

(3) “The third concern that I wanted to discuss was the administrative errors associated with acceptance of pawned property.” [p 149] “It’s known that pawnshops do accept property or have accepted property without complying with the administrative requirements imposed on them, not reporting the items to the Police Department, incorrectly recording of the items.” “Documented cases of

these occurring...is a general problem?" "That is correct." [p 149] However, Captain Johnson acknowledged that "not a month goes by without discovering items or a piece of property recovered from a pawnshop. There is some investigation taking place relative to a pawnshop year after year with the same thing." "But not from Country Ridge." "That is correct." [p 165] (Emphasis added.) "My testimony throughout the afternoon reflects generally the pawnshops in Baltimore County. I have no direct knowledge of this gentleman (Mr. Scherr) being involved in any illegal activities in the pawn industry." [pp 169-170] Again, this minority writer reflects on the testimony of Captain Johnson. Perception or fact? Very little supported facts. Significant perception which is not substantive evidence.

Mr. Orlando Yarborough testified for the Protestants. He discussed the area in general and in particular his activities with youth in the area. In response to the following question, "Let me put it this way, Mr. Yarborough, to this particular pawnshop, Southside Brokers, do you have an opinion from living and working in the area as to whether it has a negative or positive effect on the character of your neighborhood?" [T 3/12/97, p 158] "I think so, and it's not just that pawnshop." [p 158] However, careful perusal of Mr. Yarborough's testimony reflects much on speculation – but very little of anything of a factual nature on which to deny the special exception request. [Reference T 3/12/97, pp 150-172]

Mary Emerick, the Eastern Sector Coordinator for Baltimore County, Community Conservation Office, also spoke in opposition to the special exception request. She discussed in detail the County's community conservation efforts in the area. The crux of Ms. Emerick's testimony is reflected on page 194 of the transcript as follows:

- Perception that the area is in decline.
- It is an inappropriate place because of the residential uses, because the shopping center in my opinion is a neighborhood shopping center.
- Many people walk to the center because they do not have use of private transportation.

Yet, the transcript does not reflect any significant areas of deterioration. In fact, just down the peninsula, there were homes being re-developed into \$500,000 homes. Again, not one tenant in the shopping center testified or complained about loss of business or "unfavorable" clientele that the pawnshop would attract.

There were no vacancies in the shopping center [p 210]. "It fits in with the rest of the shopping center. Certainly it is in conformity with the other signs in view." [pp 210-211] Ms. Emerick had not spoken with any of the other merchants in the shopping center regarding how they felt about the location of the Petitioner's business [p 211]: "I think that pawnshops generally, especially in this County, have located next to the residential zones; and, in my opinion, they prey on poor people." [p 214] Ms. Emerick had no substantive facts to support her opinions.

Mr. Alfred Clasing, Jr., also testified as a community leader and activist. He described the peninsula area in general fashion. He felt that "since, a pawnshop, again not to be redundant, but there is a demise." [T p 236] "[People] are afraid to go shopping." [p 237] "If we permit the likes of this pawnshop, and the shopping center (Country Ridge) continues to lose its tenants, if we ever lose one of the anchors which would be Ames or Value Food being the anchors of that, I think it would just crumble to a point where we would have the likes of the pornographic store. That would probably come next. That's what I believe. I believe too if we continue to permit this to happen I think that it is inevitable, that's what I think." [pp 237-238] Mr. Clasing was concerned with his experience in the shopping center and the person that "looked out of character, looked like she didn't belong in the store, shopping for whiskey or beer or cigarettes." [p 238] "She looked like a homeless person." "That's the kind of activity" he perceived as making the shopping center a less desirable experience for him. [p 240]

Upon a very careful and intense review of this case, the testimony and exhibits will reflect much of what the Zoning Commissioner originally believed when he heard the case as to the special exception portion. I think it needs to be repeated because it necessarily reflects my thoughts in this minority opinion:

Under the enumerated standards in § 502.1, I would be persuaded to grant the Petition for Special Exception. There was no testimony that the inherent effects of the proposed use were any more detrimental here than elsewhere within the zone. Despite my pointed questions to the Protestants on this issue, these witnesses failed to offer any substantive testimony or evidence. Instead, they reiterated only the well-worn fears of Ms. Hughes, namely, that it would bring crime, traffic congestion, etc. There was no factual basis for these allegations and no testimony that, even if true, these inherent effects would be worse here. [Zoning Commissioner's Opinion and Order, January 22, 1996]

This is a case wherein perception and not reality and the facts have unfortunately held sway to the detriment of a businessman attempting to conduct a legitimate establishment as authorized by law. The Majority has permitted perception to prevail and has failed, in my opinion, to apply the facts to the law in the Majority Opinion. That same perception was formed in the Planning Board's "proposed amendments" to the Baltimore County Zoning Regulations regarding pawnshops adopted on February 16, 1995 in which that Board states: "The Planning Board could not locate documentation that pawnshops cause neighborhood instability or an increase in crime, yet it is well-established that perceptions affect real estate decisions." That same perception carried over to the Baltimore County Council when the County Council adopted Bill No. 112-95 under § 436-1 in which "the Baltimore County Council finds that undue concentration or the inappropriate siting or design of pawnshop business has a reasonable probability of causing adverse effects on nearby residential and commercial areas by creating an impression of community decline and instability." Yet, neither the Planning Board nor the County Council provides any substantive documentation that pawnshops do in fact cause neighborhood instability or an increase in crime. That is precisely why a special exception is required to determine from the testimony and evidence if, in fact, any greater adverse condition exists at the site location then elsewhere in the zone. This case deals with perception and not fact. Perception and conjecture have ruled the day, and it is a sad day, indeed, for the free enterprise system.

This Board member respectfully dissents from the Majority decision.



Charles L. Marks

DATE: December 13, 2000



County Board of Appeals of Baltimore County

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

December 13, 2000

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

RE: Circuit Case #03-C-97-05479 /In the Matter of
Country Ridge Shopping Center, Inc. /Case No. 96-226-X
On Remand from the Circuit Court for Baltimore County

Dear Mr. Zimmerman:

Enclosed please find a copy of the Board's Order issued this date in response to the Remand Order of the Circuit Court for Baltimore County pursuant to mandate of the Court of Special Appeals in accordance with the opinion of that Court.

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*, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Jack Hession /Alfred E. Clasing, Jr., et al
David K. Gildea, Esquire
Gary S. Salvo /Country Ridge Shopping Center
Meyer Scherr /Southside Brokers, Inc.
Roger N. Powell, Esquire
Nancy C. West, Assistant County Attorney
Robert F. Dashiell, Esquire
Steve Cassidy
Howard Dubick
Richard J. Shrader
Marion MacCrehan
Betty Christopher
Theresa Guckert
Orlando Yarborough

Pat Keller, Planning Director
Lawrence E. Schmidt /ZC
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney
Clerk of the Court /Case #03-C-97-05479
The Honorable Thomas J. Bollinger, Judge
Circuit Court for Baltimore County

96-226-X /Country Ridge Shopping Center
CSA REVERSES; case REMANDED to the CCT
to REMAND to CBA for further proceedings
7/21/99 (Wenner, Harrell, Bishop, JJ)

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 866

SEPTEMBER TERM, 1998

SOUTHSIDE BROKERS, INC.

v.

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
et al.

Wenner,
Harrell,
Bishop, John J., Jr.,
(Retired, specially
assigned)

JJ.

Opinion by Bishop, J.

Filed: July 21, 1999

#3C975479

This is an appeal from the order of the Circuit Court for Baltimore County (Bollinger, J.) that affirmed the decision of the County Board of Appeals reversing a decision of the Zoning Commissioner of Baltimore County that granted the Petition for Special Exception of Appellant, Southside Brokers, Inc. which permitted Appellant to relocate an existing pawnshop from 8110 Pulaski Highway to 1508 Back River Neck Road.

Appellee, People's Counsel For Baltimore County, is supported by residents of the Back River Neck Road area of Baltimore County, including John Hessian, President of the Rockway Beach Association and Alfred Clasing, President of the Back River Neck Peninsula Community Association, the latter representing many of the associations in the area.

Appellant raises three issues:

1. Whether the Board of Appeals erred as a matter of law in taking into consideration the locational standards of BCZR Section 436.4 ... and thereby denying the special exception request.
2. Whether Baltimore County had authority under the Express Powers Act to limit the number of state licensed pawnshops permitted to operate in the county as a whole to twelve and two in each councilmanic district.
3. Whether Baltimore County is preempted by state law to regulate the licensing of pawnshops by limiting the number to twelve in the county as a whole and two in each councilmanic district.

Before July 3, 1995, pawnshops in Baltimore County were permitted as a matter of right in Business, Major (B.M.) Zones. On

that date, the Baltimore County Council adopted Bill No. 112-95, which provided, *inter alia*, that pawnshops would thereafter be permitted as special exceptions, not as a matter of right, in B. M. Zones. The bill added Section 436.4 to the Baltimore County Zoning Regulations:

436.4 Special exception petition. In addition to the requirements of Section 436.3 and such other requirements of these regulations relating to a special exception petition, a pawnshop is subject to the following requirements:

- A. Location may not be within a one-mile radius of any other pawnshop, and no more than two pawnshops may be located in a councilmanic district.
- B. The Zoning Commissioner may reasonably limit the hours of operation.

The bill also included the following "grandfather" provision:

SECTION 6. AND BE IT FURTHER ENACTED, that pawnshops lawfully in existence and operating on the effective date of this Act are not subject to the requirements of Sections 436.4.

The bill itself reads as follows (CAPITALS indicate matter added to existing law; underlining indicates amendments to bill.):

436.4 SPECIAL EXCEPTION PETITION.

IN ADDITION TO THE REQUIREMENTS OF SECTION 436.3 AND SUCH OTHER REQUIREMENTS OF THESE REGULATIONS RELATING TO A SPECIAL EXCEPTION PETITION, A SPECIAL EXCEPTION PETITION FOR A PAWNSHOP IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

(A) A PAWNSHOP MAY NOT BE LOCATED WITHIN A ONE MILE RADIUS OF ANY OTHER PAWNSHOP, AND NO MORE THAN TWO PAWNSHOPS MAY BE LOCATED IN A

COUNCILMANIC DISTRICT.

(B) THE ZONING COMMISSIONER MAY
REASONABLY LIMIT THE HOURS OF OPERATION OF A
PAWNSHOP.

Prior to 1995, Southside Brokers, Inc., Appellant, operated a pawnshop on Pulaski Highway. When the lease on that property was about to expire, Appellant leased space in the Country Ridge Shopping Center on Back River Neck Road. Appellant's petition sought to obtain a special exception to relocate the pawnshop there. The petition was initially denied by the Zoning Commissioner because the new location was within one mile of an existing pawnshop. In response to a motion for reconsideration, however, the Commissioner granted the special exception because, he concluded, the one-mile restriction did not apply to the relocation of an existing pawnshop.

The Commissioner determined that the bill exempted existing brokers from the one-mile radius limitation of Section 436.4(A), but not from the special exception requirements in Section 502.1 of the BCZR. He summed up, "That is, if a broker chose to relocate, he/she would be free to relocate anywhere in the County without regard to other existing pawn shops, but still be subject to the zoning regulations and special exception requirements for any new location." He held "that the effect of Bill 112-95 is that existing pawn brokers are not restricted by the language of section 436.4(A) and may relocate within a mile of other pawn shops. . . any relocation will subject the broker to compliance with the

special exception criteria of the BCZR."

The Commissioner's decision was appealed by several parties, including the Back River Neck Community Association and People's Counsel for Baltimore County, Appellees. The County Board of Appeals conducted a *de novo* hearing, and, in a 2-1 decision, reversed the Commissioner. The majority concluded that the requirements of Section 436.4 were applicable to the relocation of an existing pawnshop.

Appellant sought judicial review in the Circuit Court for Baltimore County, which affirmed the Board of Appeals.

Since we answer the first question raised by Appellant in the affirmative and reverse on that basis, we do not address the remaining questions.

Our review of the decision of the circuit court in an appeal from a decision of an administrative agency "is essentially to repeat the task of the circuit court; that is, to be certain the circuit court did not err in its review." *Mortimer v. Howard Research & Dev. Corp.*, 83 Md. App. 432, 442, 575 A.2d 750 (citations omitted), cert. denied, 321 Md. 164, 582 A.2d 499 (1990). *Northwest Land Corp. v. Maryland Dept. of Environment*, 104 Md. App. 471, 488 (1995).

In *Linkus v. State Board*, 114 Md. App. 262, 277 (1997), we stated:

[O]ur goal in interpreting a statute is to discern and effectuate legislative intention.

Various rules of construction have been recognized as aids in that process. If the intended purpose of a statute and its language are clear and consistent, we ordinarily can end our analysis at that point. If the legislative intent is clear, although the language may not plainly state the intent, we construe the language so as to effectuate the intent if it is capable of such construction. In those instances, the rules of construction are useful, but primarily to explain the predetermined goal.

The crucial language is found in the enactment clause, Section 6 of Bill No. 112-95: "AND BE IT FURTHER ENACTED, that pawnshops lawfully in existence on the effective date of this Act are not subject to the requirements of [BCZR] Section 436.4". The pertinent language in that section is: "In addition to the requirements of Section 436.3 and such other requirements of these regulations relating to a special exception, a special exception petition for a pawnshop is subject to the following requirements:

(A) A pawnshop may not be located within a one mile radius of any other pawnshop, and no more than two pawnshops may be located in a councilmanic district."

County Councilman Kevin Kamenetz, Chairman of the County Council at the time of the passage of the bill, wrote to the County Attorney, on February 15, 1996:

"By way of legislative history, when I met with the existing pawn shop owners prior to the introduction of the bill, the pawn shop owners complained that imposing a one-mile radius restriction on their businesses would in all practical terms allow their landlords to arbitrarily increase their rent. Finding that to be a reasonable position, I exempted existing pawn shops from the radius restriction. As they would otherwise be

subject to a special exception petition, I found that exemption to be reasonable. . . ."

While this legislative history is not necessary to our disposition of this appeal, we believe that it is a reasonable explanation of the meaning of the legislation. The courts, both trial and appellate, defer to the expertise of the administrators.

As Appellant correctly reminds us, the standard of review of the action of an administrative agency is whether a reasoning mind could have reached the conclusion which the administrative agency reached. *State Ins. Comm'r. v. National Bureau of Casualty Underwriters*, 248 Md. 292, 305 (1967).

Appellees also advise us that, in interpreting a statute or ordinance, "we look to the context surrounding the enactment . . . to determine the intention of the legislature." *Comptroller v. Jameson*, 332 Md. 723, 733 (1993). In *Stanford v. Maryland Police Training*, 346 Md. 374, 380 (1997), the Court elaborated:

As the preceding summary of the parties' arguments indicates, this case involves an issue of statutory construction. "As we have so often said, the cardinal rule of statutory construction is to ascertain and effectuate legislative intention." *State v. Crescent Cities Jaycees*, 330 Md. 460, 468, 624 A.2d 955, 959 (1993). In determining legislative intent, "the court's inquiry begins with the words of the statute" *Tidewater v. Mayor of Havre de Grace*, 337 Md. 338, 344, 653 A.2d 468, 472 (1995). The statutory language is not read in isolation, but "in light of the full context in which [it] appears, and in light of external manifestations of intent or general purpose available through other evidence." *Cunningham v. State*, 318 Md. 182,

185, 567 A.2d 126, 127 (1989); see also *Warsame v. State*, 338 Md. 513, 519, 659 A.2d 1271, 1273 (1995); *Kaczorowski v. City of Baltimore*, 309 Md. 505, 514-15, 525 A.2d 628, 632 (1987).

The majority of the Board of Appeals decided that the "grandfather" clause in Bill No. 112-95 applied only to the preexisting locations of pawnshops; it did not apply to preexisting pawnshops seeking to relocate. We believe that the dissenting member of the Board saw it correctly:

In a clear reading of the express language of Section 6 the County Council exempted pawnshops lawfully in existence and operating as of July 3 1995, from the requirements of Section 436.4 as enacted by the Bill, as to an existing pawnshop business; however, the provisions of the Bill requiring the granting of a special exception would only be applied if the existing business wanted to relocate. No special exception would be needed if the business stayed at its present location. Therefore, had the County Council intended to subject an existing pawnshop business, seeking to relocate, and to obtain a special exception for that purpose to the requirements of Section 436.4 of the BCZR, then the language of Section 6 of the Bill would be pointless and serve no useful purpose. Such a construction must be avoided.

(Emphasis in original)

As the dissenting member noted, "a statute is to be read so that no word, clause sentence or phrase shall be rendered surplusage, superfluous, meaningless or nugatory." *Thomas v. Police Commissioner*, 211 Md. 357, 361 (1956); "It is an elemental proposition that the statute should be construed so as to give

effect, if possible, to every word, clause and sentence therein, and so that no part will be inoperative, superfluous, void or insignificant." *Fisher v. Bethesda Discount Corp.*, 221 Md. 271, 278 (1960).

We find the language of the ordinance clearly states its meaning. The so-called grandfather clause means what it says: existing pawnshops are not subject to the requirements of BCZR Section 436.4. Necessarily, that means that an existing pawnshop seeking to relocate, though it must otherwise obtain a special exception as to the proposed new location, is entitled to have its special exception application evaluated free of the standards prescribed in Section 436.4.

Applying the foregoing standards, we hold that the Board of Appeals erred as a matter of law in considering the location standards of Section 436.4. The circuit court, in turn, erred in affirming the action of the Board. This does not mean, however, that Appellant is entitled to have its special exception in this case granted, as a matter of law, on the record before us. There are other statutory requirements requiring favorable findings before a special exception may be approved. The Board's majority opinion addressed those other requirements somewhat, but did so in a manner that coming led its consideration of those requirements with those of Section 436.4. On remand a new consideration of Appellant's application will be necessary.

JUDGMENT REVERSED. CASE
REMANDED TO THE CIRCUIT
COURT WITH DIRECTION TO
REMAND TO THE BOARD OF
APPEALS FOR FURTHER
PROCEEDINGS IN ACCORDANCE
WITH THIS OPINION.

COSTS TO BE PAID BY
APPELLEES.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF SOUTHSIDE BROKERS, INC.
FOR JUDICIAL REVIEW OF THE
DECISION OF THE BOARD OF APPEALS
OF BALTIMORE COUNTY
IN RE: COUNTRY RIDGE SHOPPING
CENTER, INC./SOUTHSIDE BROKERS, INC.

Case no: 03-C-97-5479

True Copy Test

SUTHERLAND, Clerk

Per *[Signature]*

Assistant Clerk

FILED MAR 12 1998

MOTION TO REVISE JUDGMENT, OR, IN THE ALTERNATIVE,
TO ALTER OR AMEND JUDGMENT

Southside Brokers, Inc., Appellant, by Meyer Scherr, its President, by Roger N. Powell, its attorney, moves pursuant to Maryland Rules 2-311, 2-534 and 2-535 to revise Judgment, or, in the alterative, to alter or amend Judgment, and as basis says:

1. Although the Court's Memorandum Opinion and Order is dated February 9, 1998, same was not mailed to counsel until February 12, 1998, nor was same received until February 13, 1998, so that the date of entry of Judgment should be revised to the end that it is consistent with the date of the mailing thereof.

2. In its Memorandum Opinion and Order, the Court erred in its reference to the legislation which is in part the subject of the original litigation and this Appeal.

3. On Page 4 of the Court's Opinion in Number I thereof, the Court referred erroneously to BCZR 436.6 reciting that: "'pawn shops lawfully in existence and operating on the effective date of this Act are not subject to the requirements of Sections 436.4.'" "

FILED FEB 20 1998

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-97-005479

TO: COUNTY BOARD OF APPEALS BALTIMORE COUNTY THE
400 Washington Ave
Room 49
Towson, MD 21204

CBA

PETITION OF SOUTHSIDE BROKERS, INC * IN THE
FOR JUDICIAL REVIEW OF THE * CIRCUIT COURT
DECISION OF THE BOARD OF * FOR
APPEALS OF BALTIMORE COUNTY * BALTIMORE COUNTY
IN RE. COUNTRY RIDGE SHOPPING CENTER,*
INC./SOUTHSIDE BROKERS, INC. * CASE NO 03-C-97-5479

* * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court pursuant to Maryland Rule 7-201, et seq., as an appeal from a decision of the Baltimore County Board of Appeals dated April 30, 1997, reversing the decision of the Zoning Commissioner rendered April 19, 1996. The Zoning Commissioner initially denied Petitioner's Petition for Special Exception on January 20, 1996 and consequently granted it upon a Motion for Reconsideration.

This Court conducted a hearing on January 20, 1997, at which time the Court entertained the argument of Roger N. Powell, Esquire, attorney for Petitioner, and Peter M. Zimmerman, Esquire, People's Counsel for Baltimore County. J. Carroll Holzer, Esquire was present on behalf of Respondents Back River Neck Community Association, Carl Maynard, President, and John M. Hession and Alfred E. Clasing individuals. At the time of the hearing Mr. Holzer adopted Mr. Zimmerman's oral argument. The Court has carefully considered the arguments presented by counsel, the legal memoranda filed, the transcript of record, and the applicable statutory and case law in rendering its decision in this matter.

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BALTIMORE

FACTS

The relevant facts of this case are not in dispute. Petitioner was a pawn shop in operation at 8110 Pulaski Highway prior to the enactment of Bill 112-95 on July 20, 1995 dealing with pawn shops already in existence. Bill 112-95 created new Baltimore County Zoning Regulation Section 436 BCZR 436 made legislative findings regarding the adverse effects of pawn shops on our communities, created reporting procedures and buffer and sign requirements, and requirements of special exception petitions. Petitioner filed a Petition for Special Exception for approval of relocation of his existing pawn shop to the Country Ridge Shopping Center on 1508 Back River Neck Road.

On January 22, 1996 the Zoning Commissioner denied the petition because it failed to meet the minimum distance requirement of one mile from an already existing pawn shop located on Eastern Boulevard. The Zoning Commissioner reversed his decision on the basis that the one mile limit does not apply because the pawn shop was relocating from an already existing location, and therefore the special exception applied. On appeal, the County Board of Appeals found that the Petitioner failed to meet the minimum distance requirement and denied the special exception. Petitioners have requested a judicial review of the Board's decision.

QUESTIONS PRESENTED FOR REVIEW

The Petitioners present three basic questions for review. They may be summarized as follows:

- I. Does BCZR 436.6 exempt Petitioner from the Special Exception Petition Requirement of BCZR 436 4?

II Did the Board of Appeals properly deny Southside's Petition for Special Exception?

III Is Bill 112-95 unconstitutional?

SCOPE OF REVIEW

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. Heaps v. Cobb, 185 Md. 372 (1945), Art Woods Enterprises v. Wiseburg 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. Finney v. Halle, 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. Montgomery 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. 569, 577

(1994)

ANALYSIS

I. BCZR 436.6 states that “pawn shops lawfully in existence and operating on the effective date of this Act are not subject to the requirements of Sections 436.4.” Petitioner argues that, because the pawn shop existed when BCZR 436 was enacted, it is not subject to the conditions in Section 436.4, which states that a special exception petition for a pawn shop is subject to the requirement that the pawn shop may not be located within a one mile radius of any other pawn shop, and no more than two pawn shops may be located within the same councilmanic district.

The Court must agree with Respondents’ interpretation of the “grandfather clause.” The pawn shop was already in existence at the Pulaski Highway location. However, the location for which the exemption is requested is in the Country Ridge Shopping Center. Zoning ordinances are not concerned with ownership or occupants, but are concerned with property locations and use. Mayor & City Council of Baltimore v. Poe, 224 Md. 428 (1961), Boulevard Scrap v. Baltimore, 213 Md. 6 (1957). The exemption would apply to the Pulaski Highway location only as an already existing pawn shop. Petitioner is subject to the requirements of BCZR 436.4 because the Country Ridge pawn shop was not already in existence prior to the enactment of BCZR 436.

II The next question the Court turns to is whether the Petition for Special Exception was properly denied. The evidence before the Court does support the finding that the Petition was properly denied. BCZR 502.1 sets the standard for granting a special exception. Of concern here

is the detrimental effect of the pawnshop to the locality and whether granting the special exception will be inconsistent with the spirit and intent of the zoning regulation. Applying the standard set forth in Schultz v. Pritts, 291 Md. 1 (1981) the Board looked at whether the adverse effect at the particular location is greater than ordinarily associated with the use, and whether the use is in harmony with the intent of the plan. The Board heard uncontradicted testimony from citizens and professionals that amply supports the conclusion that the adverse effects are greater in the subject neighborhood and that the use of the location for a pawnshop is clearly inconsistent with the purpose of BCZR 436.

BCZR 436 also sets forth locational standards. Section 436 4 (A) states that a pawnshop may not be located within a one mile radius of any other pawnshop, and no more than two pawnshops may be located in a councilmanic district. The Board's decision was supported by a computer generated map which was produced to show that the Country Ridge location is clearly within a one mile radius of another pawn shop on Eastern Boulevard. There is no question that there are already at least two pawn shops in the Seventh Councilmanic District. Clearly the evidence supports the denial of the Petition for Special Exception.

Additionally, Petitioner asserts that the Board committed reversible error in considering evidence outside the record. The Court finds no merit in this argument. The Board simply observed that two pawn shop owners appeared in protest before the Zoning Commissioner. The Majority Opinion clearly shows that the Board's findings and conclusions were based on the facts before it, and this passing reference was of no significance.

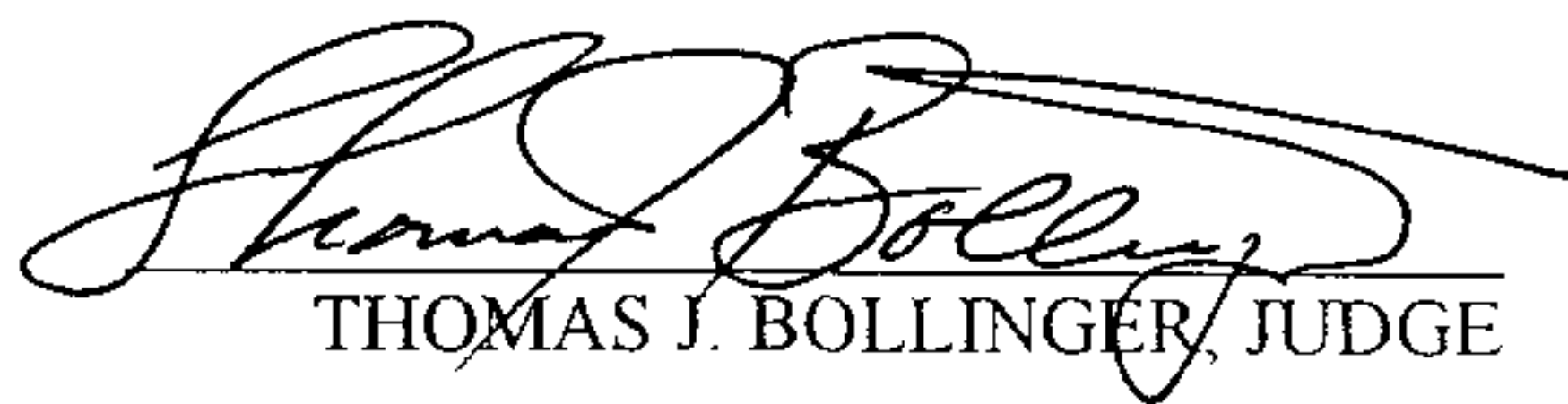
III. Finally, Petitioner poses the question of whether Bill 112-95 is unconstitutional. In support of its argument that it is unconstitutional, Petitioner states that the zoning ordinance

regulates pawn shops, which is prohibited by Annotated Code of Maryland, Business Regulation Article, Title 12. What the ordinance actually does is regulate the location of pawn shops within Baltimore County. Annotated Code of Maryland Article 25A, Sec 5(X) gives counties the broad power to legislate with respect to zoning and planning. The state law does not involve the regulation of zoning and planning, which is exclusively within the power of the county. The Court finds nothing unconstitutional with regard to Bill 112-95.

CONCLUSION

Accordingly, it is this 9th day of February, 1998, by the Circuit Court for Baltimore County,

ORDERED that the Decision of the Board of Appeals of Baltimore County in the Petition of Southside Brokers, Inc. for Judicial Review In Re: Country Ridge Shopping Center, Inc./Southside Brokers, Inc. be and is hereby **AFFIRMED**.


THOMAS J. BOLLINGER, JUDGE

cc: Roger N. Powell, Esquire
Powell & Sorrell
107 Old Court Road
Baltimore, Maryland 21208

J. Carroll Holzer, Esquire
303 Washington Avenue
Suite 202
Towson, Maryland 21204

Carole S. DeMilio, Esquire
Deputy People's Counsel
Court House, Room 47
400 Washington Avenue
Towson, Maryland 21204

Peter Max Zimmerman, Esquire
People's Counsel
Court House, Room 47
400 Washington Avenue
Towson, Maryland 21204

The Baltimore County Board of Appeals
Old Court House

CIRCUIT COURT FOR BALTIMORE COUNTY

RECEIVED
COUNTY BOARD OF APPEALS

97 JUL 22 PM 6:39

PETITION OF SOUTHSIDE BROKERS, INC.
1508 Back River Neck Rd.

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS,
BALTIMORE COUNTY, MARYLAND
400 Washington Ave., Rm. 49
Towson, MD 21204

For Special Exception on property
located 767' SE of Back River Neck Rd.
11th Election District
7th Councilmanic District

CIVIL ACTION NO:
03-C-97-5479

Baltimore County Board
of Appeals No.96-226-X

MOTION TO EXTEND TIME TO TRANSMIT RECORD

Comes now Southside Brokers, Inc., Appellant, by Roger N. Powell, its attorney, and for its Motion to Extend Time to Transmit the Record says:

1. Appellant noted an Appeal in the premises pursuant to Maryland Rule 7-202 on or about May 29, 1997.

2. Incident to the noting of the Appeal, Appellant ordered a copy of the transcript of testimony pursuant to Maryland Rule 7-206, also on or about May 29, 1997.

3. Maryland Rule 7-206(d) provides in pertinent part that

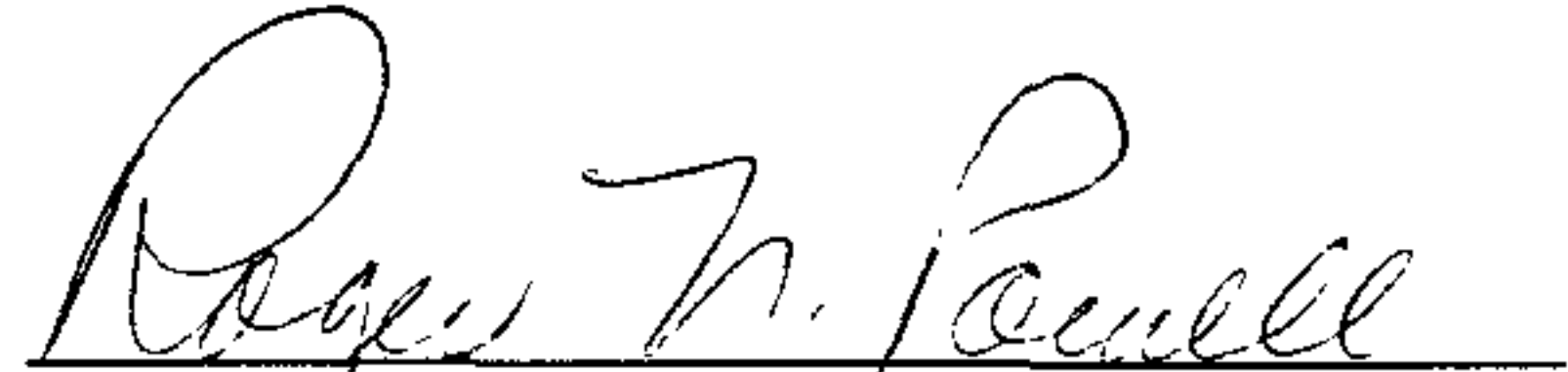
"Upon the Motion by ... any party ... the court may ... extend the time for transmittal of the record..."

4. The Court Reporter has by the attached letter, advised your Appellant of the need for additional time to prepare the transcript of testimony.

5. It is necessary for reason of the necessity of the additional time for the preparation of the transcript of the

testimony, that the Court extend the time permitted by the Rule for the preparation and filing of the transcript.

WHEREFORE, your Appellant prays that this Court extend the time for the preparation and filing of the transcript of the testimony; and grant your Appellant such other and further relief as its cause may require.



ROGER N. POWELL
POWELL & SORRELL
107 Old Court Road
Baltimore, MD 21208
(410) 653-0262
Attorney for Petitioner
Southside Brokers, Inc.

I HEREBY CERTIFY that a copy of the foregoing Motion to Extend Time was mailed this 31 day of July, 1997, to:

County Board of Appeals of Baltimore County
Old Courthouse, Room 49, 400 Washington Avenue
Towson, MD 21204

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

J. Carroll Holzer, Esquire
305 Washington Ave., #502
Towson, MD 1204



ROGER N. POWELL

July 17, 1977

Dear Mr. Powell,

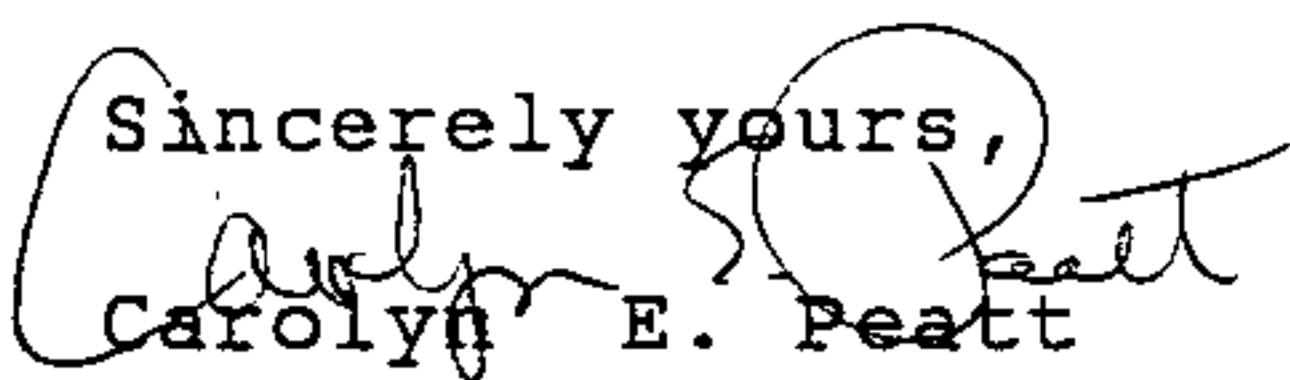
In following up on our phone conversation, I would greatly appreciate your asking for an extension on the County Ridge case heard before the Baltimore County Board of Appeals.

My workload has suddenly escalated and has been concentrated into a short time period, and in order to satisfactorily complete the transcript in time, (which is a two-day hearing), I would greatly appreciate the additional time.

I regretfully ask for the extension, as I have always prided myself on getting transcripts done in an efficient manner, and it has been many years since I have made such a request.

I thank you again for your cooperation. If you have any questions, please call me at 410-887-3180.

Sincerely yours,


Carolyn E. Peatt
(court reporter)

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF THE SOUTHSIDE BROKERS, INC.
1508 Back River Neck Road
Baltimore, Maryland 21221

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

CIVIL
ACTION
No. 3-C-97-005479

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF COUNTRY RIDGE SHOPPING
CENTER, INC.; SOUTHSIDE BROKERS, INC.
FOR A SPECIAL EXCEPTION ON PROPERTY
LOCATED 767' SE OF BACK RIVER NECK
ROAD (1508 BACK RIVER NECK ROAD)
11TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT
CASE NO. 96-226-X

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, S. Diane Levero and Harry E. Buchheister, Jr., constituting the majority of the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Roger N. Powell, Esquire, POWELL & SORRELL, 107 Old Court Road, Baltimore, Maryland 21208, Counsel for Petitioner; Southside Brokers, Inc., 1508 Back River Neck Road, Baltimore, Maryland 21221, Petitioners; Jack Hession, 2411 Beach Avenue, Baltimore, Maryland 21221 and Alfred E. Clasing, Jr., et al, 2025 Holly Neck Road, Baltimore, Maryland 21221, Protestants; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204; a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

RECEIVED AND FILED

97 JUN -3 PM 3:02

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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 Roger N. Powell, Esquire, POWELL & SORRELL, 107 Old Court Road, Baltimore, Maryland 21208, Counsel for Petitioner; Southside Brokers, Inc., 1508 Back River Neck Road, Baltimore, Maryland 21221, Petitioner; Jack Hession, 2411 Beach Avenue, Baltimore, Maryland 21221 and Alfred E. Clasing, Jr., et al, 2025 Holly Neck Road, Baltimore, Maryland 21221, Protestants; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 3rd day of June, 1997.

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

June 3, 1997

Roger N. Powell, Esquire
POWELL & SORRELL
107 Old Court Road
Baltimore, MD 21208

RE: Civil Action No. 3-C-97-05479
COUNTRY RIDGE SHOPPING CENTER,
INC.; SOUTHSIDE BROKERS, INC.

Dear Mr. Powell:

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

c: Southside Brokers, Inc.





County Board of Appeals of Baltimore County

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

June 3, 1997

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-97-05479
COUNTRY RIDGE SHOPPING CENTER,
INC.; SOUTHSIDE BROKERS, INC.

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on May 29, 1997, 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-97-05479.

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

Very truly yours,

A handwritten signature in cursive script, reading "Charlotte E. Radcliffe".

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c:	Jack Hession	Alfred E. Clasing, Jr., et al
	Steve Cassidy	Marion MacCreham
	Howard Dubick	Betty Christopher
	Richard J. Shrader	Theresa Guckert
	Orlando Yarborough	Nancy C. West, Asst. Co. Atty
	Gary S. Salvo /Country Ridge Shopping Center	Pat Keller /Planning
	Lawrence E. Schmidt /ZC	
	Arnold Jablon, Director /PDM	
	Virginia W. Barnhart, Co. Atty	



CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF SOUTHSIDE BROKERS, INC.
1508 Back River Neck Rd.

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS,
BALTIMORE COUNTY, MARYLAND
400 Washington Ave., Rm. 49
Towson, MD 21204

For Special Exception on property
located 767' SE of Back River Neck Rd.
11th Election District
7th Councilmanic District

CIVIL ACTION NO: _____

Baltimore County Board
of Appeals No.96-226-X

ORDER

UPON the foregoing Petition to Stay Enforcement of the Order of the County Board of Appeals of Baltimore County, it appearing that the Petitioner is currently operating his business in a shopping center containing other merchants, and it appearing that the decision appealed from involves a question or statutory interpretation, and it further appearing that the decision of the County Board of Appeals of Baltimore County was a split decision with a written dissent, it is this _____ day of _____, 1997, by the Circuit Court for Baltimore County,

ORDERED, that the Order of the County Board of Appeals of Baltimore County of April 30, 1997 in the within matter, be and same hereby is stayed pending the outcome of this Appeal.

JUDGE

CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF SOUTHSIDE BROKERS, INC.
1508 Back River Neck Rd.

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS,
BALTIMORE COUNTY, MARYLAND
400 Washington Ave., Rm. 49
Towson, MD 21204

For Special Exception on property
located 767' SE of Back River Neck Rd.
11th Election District
7th Councilmanic District

CIVIL ACTION NO: _____

Baltimore County Board
of Appeals No.96-226-X

PETITION TO STAY ENFORCEMENT OF ORDER OF
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Comes now Southside Brokers, Inc., Petitioner, by Roger N. Powell, its attorney, and pursuant to the Annotated Code of Maryland, Volume on State Government, §10-222, moves to stay enforcement of the Order of the County Board of Appeals of Baltimore County in the above captioned case, and for reasons says:

1. The Order of the County Board of Appeals of Baltimore County in the above captioned case involves interpretation of a statute which was an issue before the Board.

2. The decision of the Board was a split decision in which a long dissent was written both with regard to interpretation of the statute and with regard to the finding of fact.

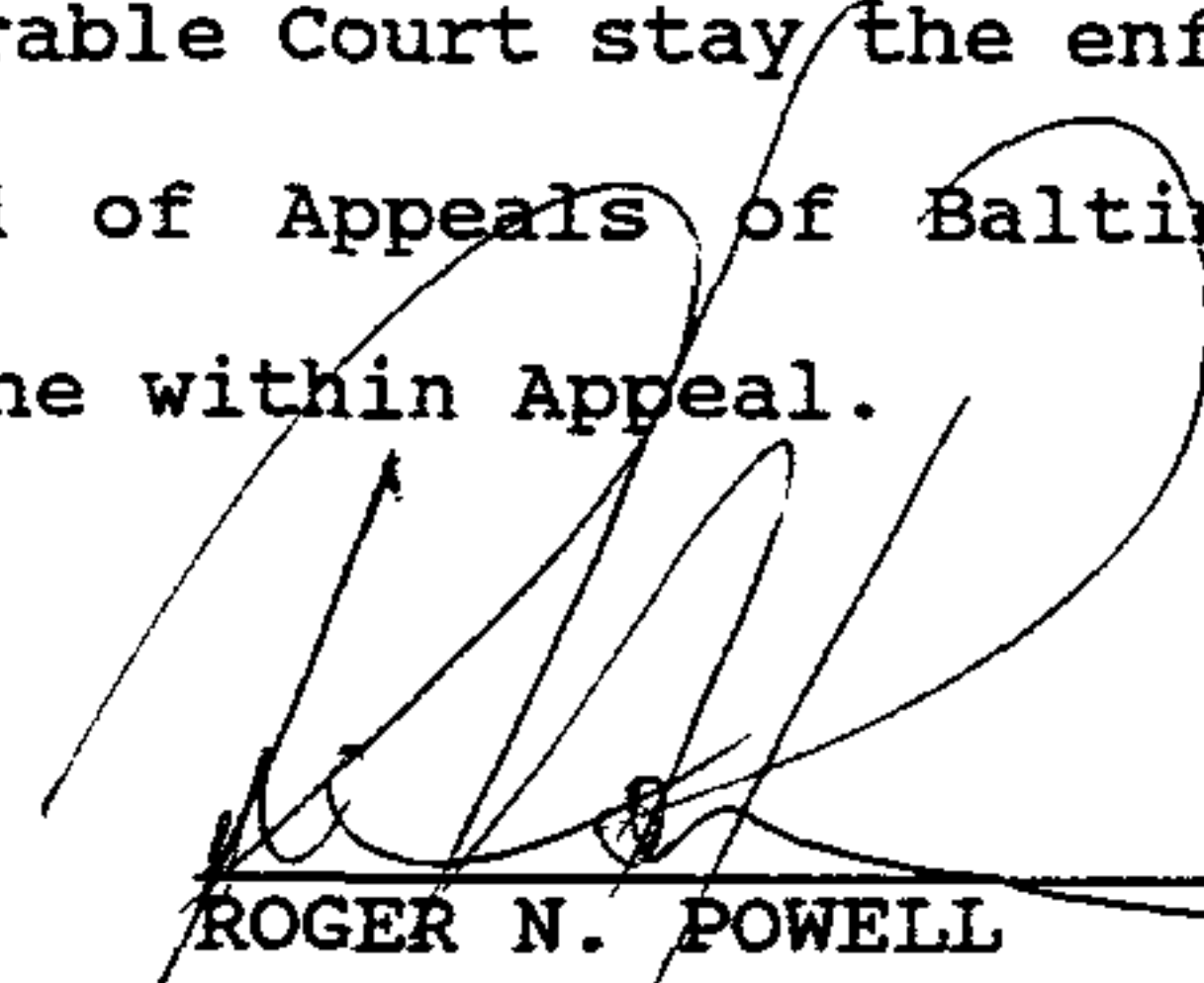
3. Petitioner Southside Brokers, Inc. has filed a Petition for Judicial Review relative to the Order of the County Board of Appeals of Baltimore County of april 30, 1997, a copy of which Petition is attached hereto and prayed to be made a part hereof as if here fully set out.

4. Principals of your Petitioner depend for their livelihood on the operation of the business.

5. No harm will result to any person, firm or corporation by staying the effect of the Order during the pendency of the Appeal; indeed, if the County Board of Appeals of Baltimore County is reversed and the relief prayed herein, to wit, stay of enforcement, is not granted, your Petition will have been procedurally put out of business the pendency of the Appeal notwithstanding.

6. No prejudice will result to any party in that your Petitioner is currently operating his business without there being any indication of prejudice by virtue of the existence of Petitioner's business; indeed, the closing of Petitioner's business would cause immediate harm to the shopping center by obliging the center to maintain Petitioner's premises without receiving rent therefor and to be obliged to sustain a closed business in the premises, the effect of which would per se have a detrimental effect on the balance of the tenants in the shopping center.

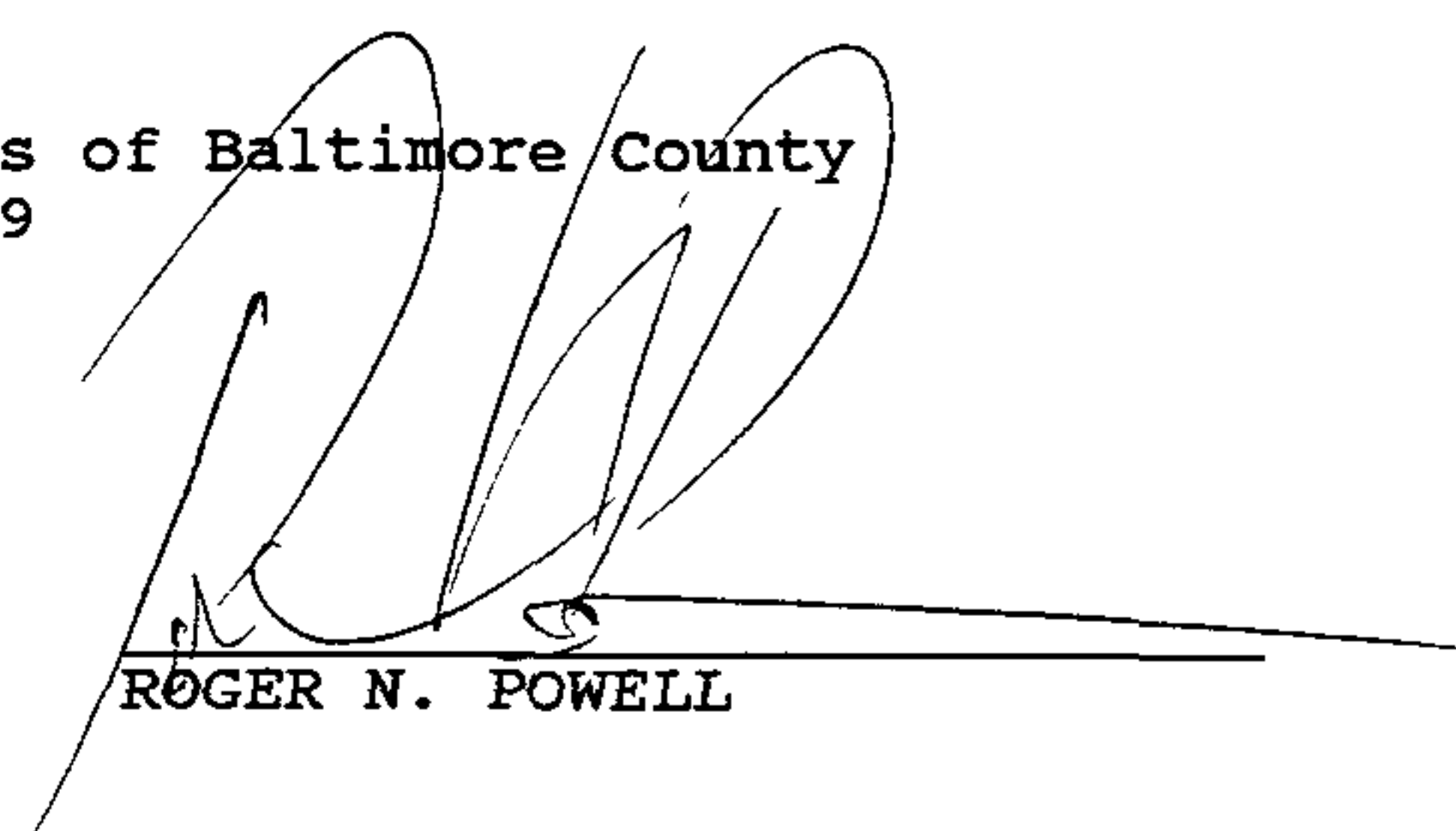
WHEREFORE, and for all reasons recited in the foregoing, your Petitioner prays that this Honorable Court stay the enforcement of the Order of the County Board of Appeals of Baltimore County pending the final decision in the within Appeal.



ROGER N. POWELL
POWELL & SORRELL
107 Old Court Road
Baltimore, MD 21208
(410) 653-0262
Attorney for Petitioner
Southside Brokers, Inc.

I HEREBY CERTIFY that a copy of the foregoing Petition to Stay Enforcement of the Order was mailed this 22 day of May, 1997, to:

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204



ROGER N. POWELL

122/1
CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF SOUTHSIDE BROKERS, INC.
1508 Back River Neck Rd.

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS,
BALTIMORE COUNTY, MARYLAND
400 Washington Ave., Rm. 49
Towson, MD 21204

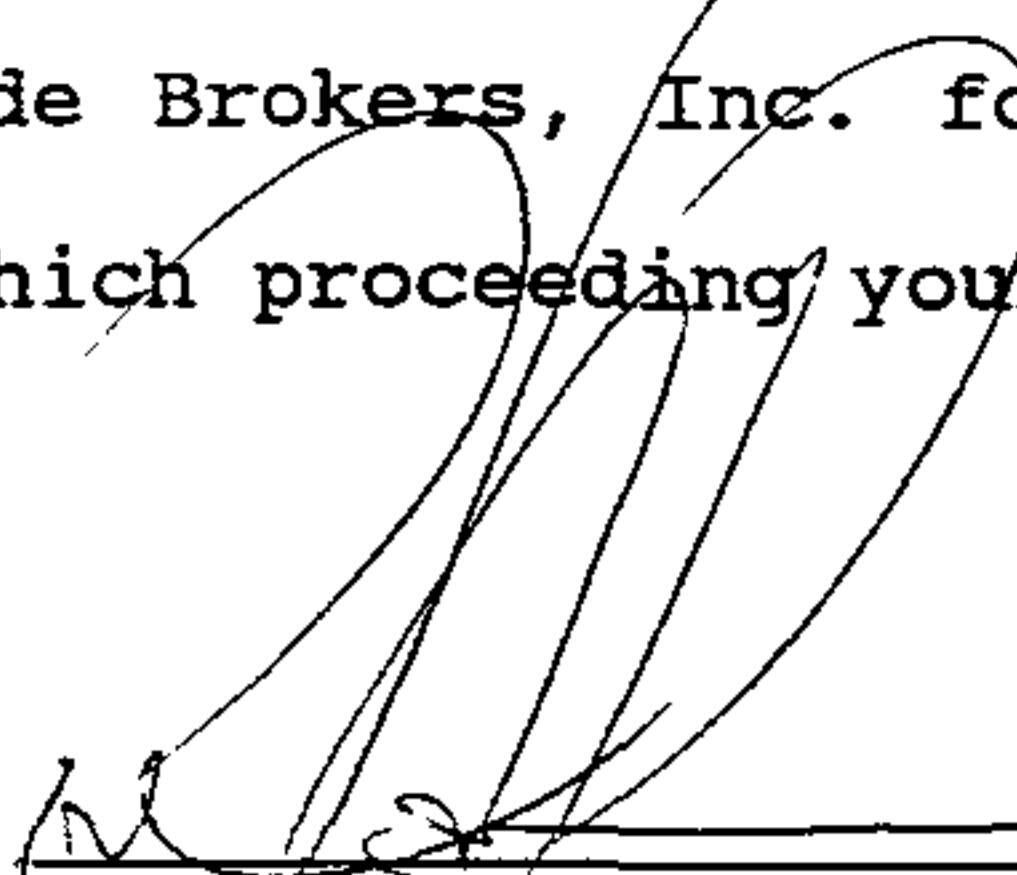
For Special Exception on property
located 767' SE of Back River Neck Rd.
11th Election District
7th Councilmanic District

CIVIL ACTION NO: _____

Baltimore County Board
of Appeals No.96-226-X

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

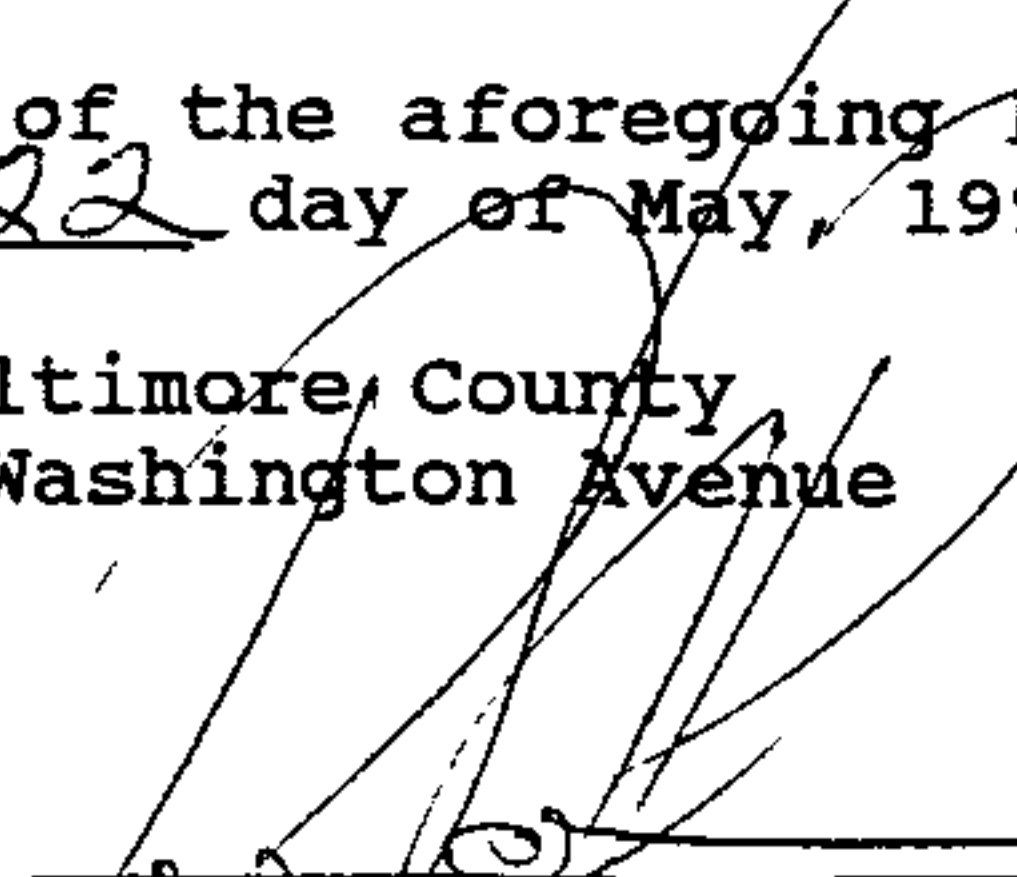
Comes now Southside Brokers, Inc., Petitioner, by Roger N. Powell, its attorney, and hereby requests judicial review of the Order of April 30, 1997, of the County Board of Appeals of Baltimore County in the matter of the Petition of Country Ridge Shopping Center, Inc. and Southside Brokers, Inc. for a Special Exception as above captioned, to which proceeding your Petitioner was a party.



ROGER N. POWELL
POWELL & SORRELL
107 Old Court Road
Baltimore, MD 21208
(410) 653-0262
Attorney for Petitioner
Southside Brokers, Inc.

I HEREBY CERTIFY that a copy of the foregoing Petition for Judicial Review was mailed this 22 day of May, 1997, to:

County Board of Appeals of Baltimore County
Old Courthouse, Room 49, 400 Washington Avenue
Towson, MD 21204



ROGER N. POWELL

CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF SOUTHSIDE BROKERS, INC.
1508 Back River Neck Rd.

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS,
BALTIMORE COUNTY, MARYLAND
400 Washington Ave., Rm. 49
Towson, MD 21204

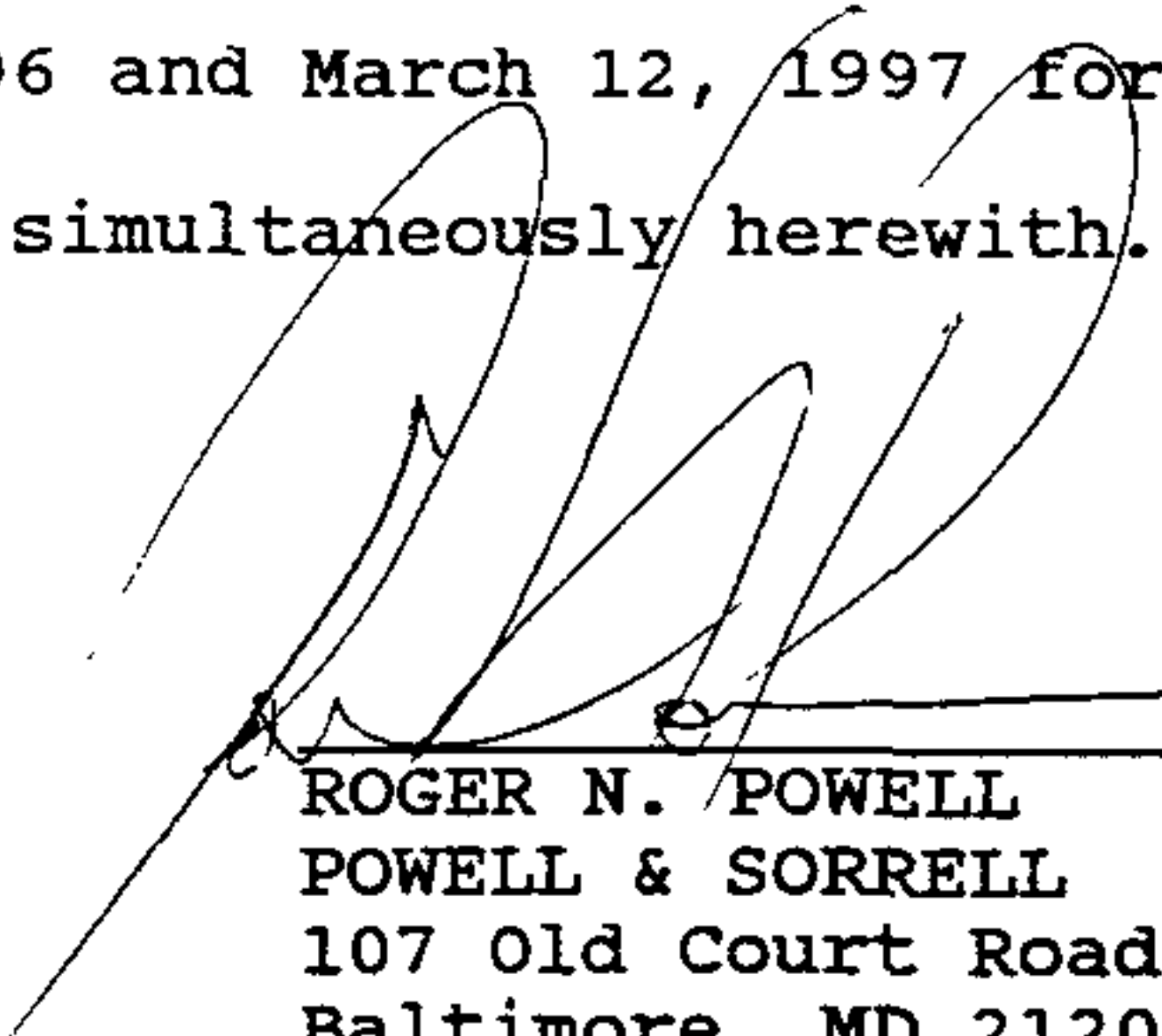
For Special Exception on property
located 767' SE of Back River Neck Rd.
11th Election District
7th Councilmanic District

CIVIL ACTION NO: _____

Baltimore County Board
of Appeals No.96-226-X

REQUEST FOR PREPARATION OF TRANSCRIPT

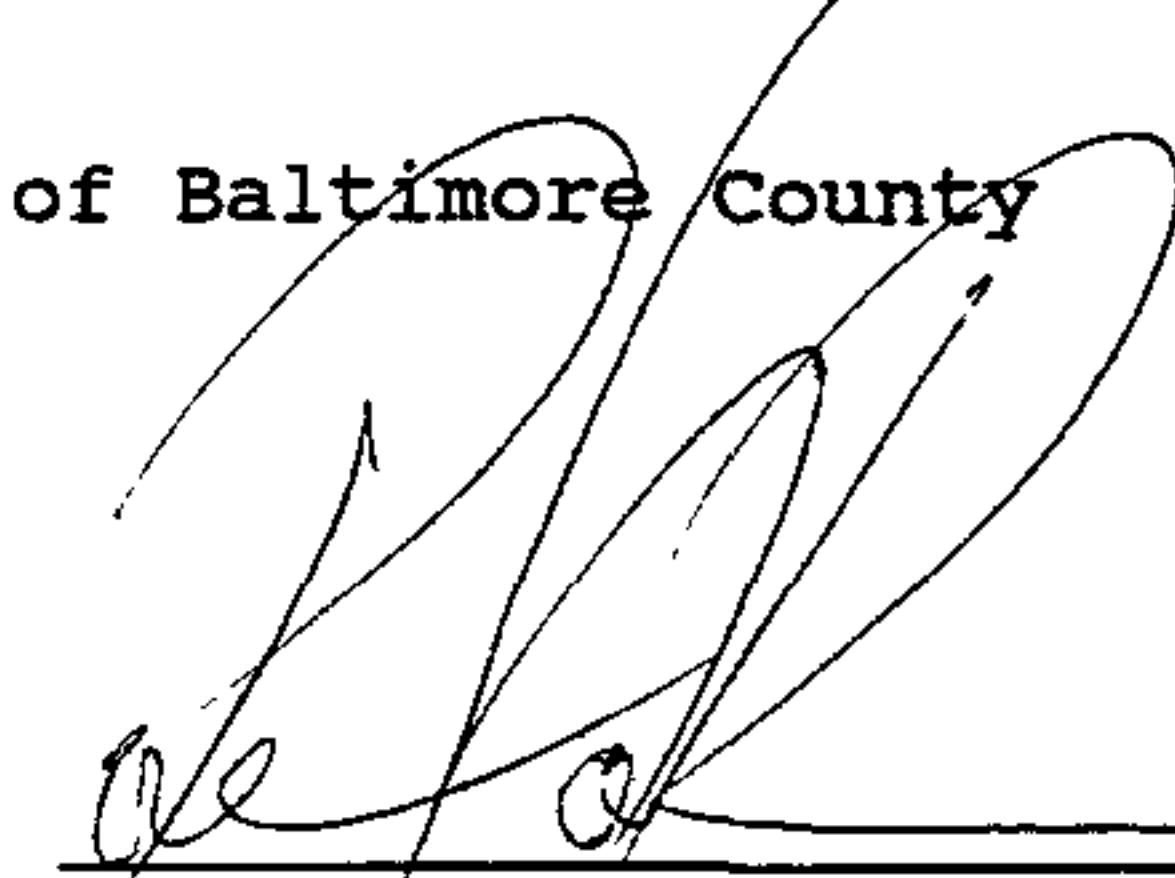
The Petitioner requests the County Board of Appeals of
Baltimore County prepare and supply a copy of the transcript of the
hearings held November 6, 1996 and March 12, 1997 for use in the
Petition for Judicial Review simultaneously herewith.



ROGER N. POWELL
POWELL & SORRELL
107 Old Court Road
Baltimore, MD 21208
(410) 653-0262
Attorney for Petitioner
Southside Brokers, Inc.

I HEREBY CERTIFY that a copy of the foregoing Request for
Preparation of Transcript was mailed this 22 day of May, 1997,
to:

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204



ROGER N. POWELL

CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF SOUTHSIDE BROKERS, INC.
1508 Back River Neck Rd.

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS,
BALTIMORE COUNTY, MARYLAND
400 Washington Ave., Rm. 49
Towson, MD 21204

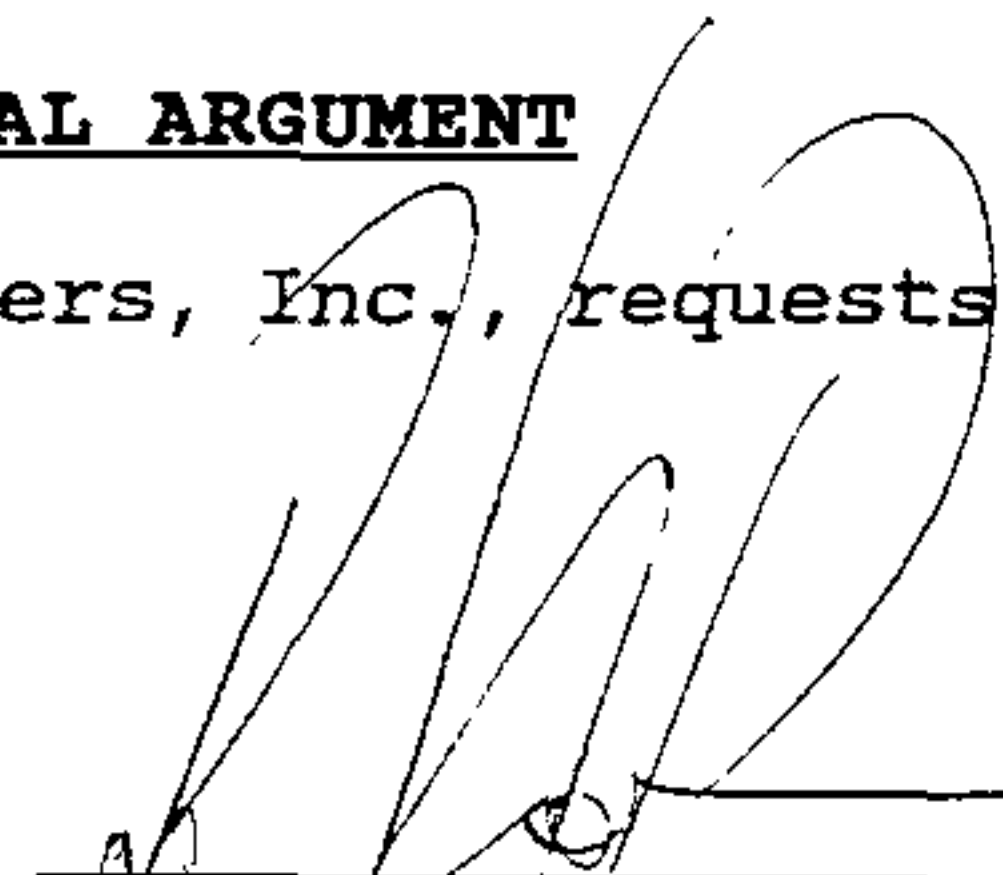
For Special Exception on property
located 767' SE of Back River Neck Rd.
11th Election District
7th Councilmanic District

CIVIL ACTION NO: _____

Baltimore County Board
of Appeals No.96-226-X

REQUEST FOR ORAL ARGUMENT

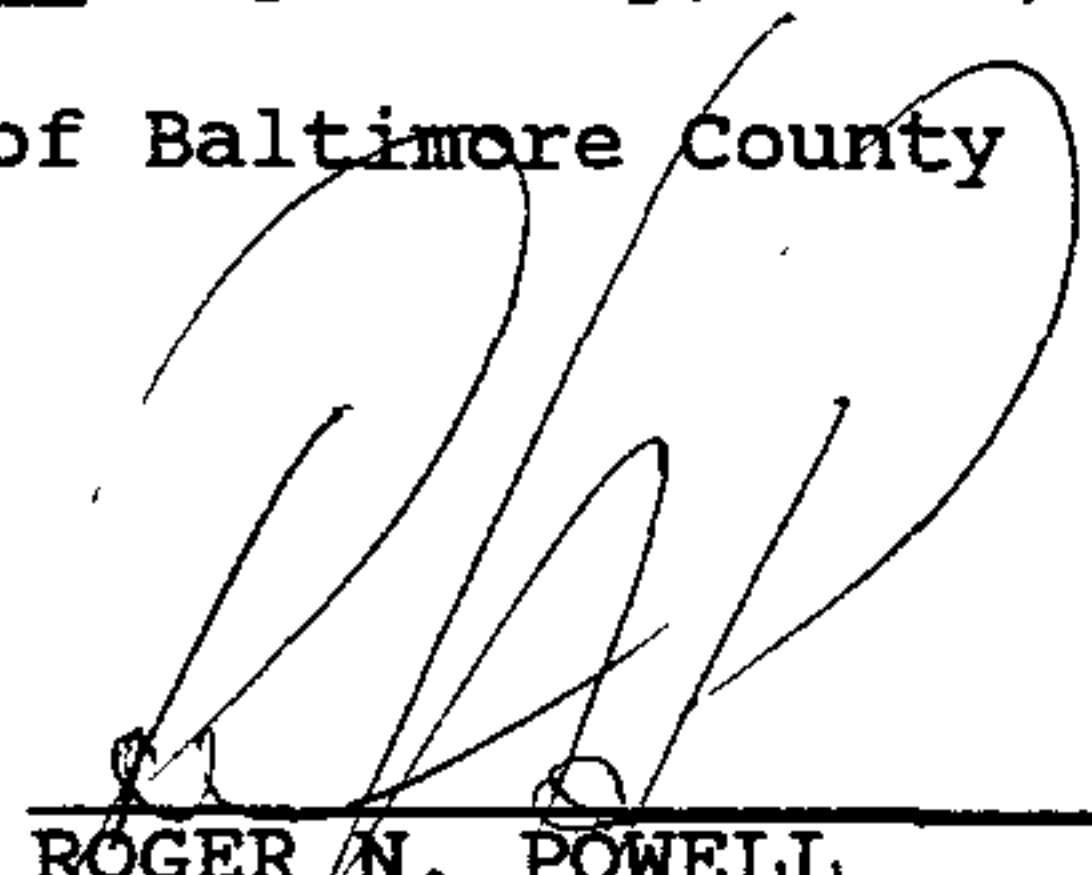
The Petitioner, Southside Brokers, Inc., requests this matter
be scheduled for oral argument.



ROGER N. POWELL
POWELL & SORRELL
107 Old Court Road
Baltimore, MD 21208
(410) 653-0262
Attorney for Petitioner
Southside Brokers, Inc.

I HEREBY CERTIFY that a copy of the foregoing Request for
Oral Argument was mailed this 22 day of May, 1997, to:

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204



ROGER N. POWELL

IN THE MATTER OF * BEFORE THE
 THE APPLICATION OF *
COUNTRY RIDGE SHOPPING CENTER, INC.; SOUTHSIDE BROKERS, INC. * COUNTY BOARD OF APPEALS
 FOR A SPECIAL EXCEPTION ON * OF
 PROPERTY LOCATED 767' SE OF *
 BACK RIVER NECK ROAD * BALTIMORE COUNTY
 (1508 Back River Neck Road)
 11TH ELECTION DISTRICT * CASE NO. 96-226-X
 5TH COUNCILMANIC DISTRICT
 * * * * *

DISSENTING OPINION

This case involves a Petition for Special Exception, the approval of the relocation of an existing pawnshop to a new location. The hearing on this matter consumed two full days of testimony and evidence. Public deliberation took place on Thursday, April 17, 1997. At that time, the Board members denied the special exception request, two in favor, one opposed. This Opinion represents the dissenting viewpoint.

There are two issues present in this case. The first involves legislation enacted by the Baltimore County Council under Section 436 of the Baltimore County Zoning Regulations (BCZR) (Bill No. 112-95), seeking to regulate the pawnshop business, and limiting the number of pawnshops in Baltimore County and the relocation of same in a restrictive manner. Under Section 436.4, "Special Exception Petitions":

"A special exception petition for a pawnshop is subject to the following regulations:

(A) A pawnshop may not be located within a one-mile radius of any other pawnshop, and no more than two pawnshops may be located in a councilmanic district.

(B) The Zoning Commissioner may reasonably limit the hours of operation of a pawnshop."

Under Section 6 (Bill No. 112-95), it recites: "And be it further enacted, that pawnshops lawfully in existence and operating

on the effective date of this act are not subject to the requirements of Section 436.4." The Petitioner was a licensed pawnbroker at the time the act became effective on July 3, 1995. The Petitioner sought to relocate his pawnshop from a Pulaski Highway location to the co-Petitioner's premises in the Country Ridge Shopping Center in the Spring of 1996. That center is located in a B.M. zone in which such pawnshops are authorized to conduct business under the County regulations.

Because of the relocation, it was necessary for the Petitioner to comply with Title 09 "Department of Licensing and Regulations [subsection 25], Second Hand Precious Metals and General Dealer and Pawn Brokers." The broker was required to obtain a new license before engaging in the second-hand precious metals business at the new address. There was no question but that the pawnshop was lawfully in existence and in operation on the effective date of the Act, but by Maryland State law, the broker was required to apply for a new license at the relocating address. The shop was both lawfully in existence and operating at the Pulaski Highway address as of the effective date of the Act, that is July 3, 1995, relocating to the Country Ridge Shopping Center location in the Spring of 1996.

It appears to me that Bill No. 112-95 and Section 6 apply to pawnshops such as that of the Petitioner in that the pawnshop was lawfully in existence and operating on the effective date of the Act. Section 6 recites: "And be it further enacted, that pawnshops lawfully in existence and operating on the effective date of this Act are not subject to the requirements of Section 436.4." The

fact that it had to apply for a new license by Maryland law does not indicate that it ceased to be legally in existence and operating. The law simply requires a new license before engaging in the second-hand precious metals business at the new address. There is no doubt but that the County Council was concerned relative to the undue concentration or the inappropriate siting or design of pawnshop businesses, since the Council felt that such operations had a reasonable (but not conclusive) probability of causing adverse effects on nearby residential and commercial areas by creating an impression of community decline and instability. There is also a considerable amount of verbiage throughout Section 436 that relates to community conservation efforts, the Master Plan, and the number of pawnshops needed to be regulated and that the number of presently existing pawnshops in Baltimore County was more than sufficient to meet the needs of the community. So therefore the County Council elected to limit the total number of such businesses being consistent with the public health, safety and general welfare of the County. To that end, the Council elected to put in the legislation a restriction that a pawnshop location may not be within a one-mile radius of any other pawnshop, and no more than 2 pawnshops could be located in a councilmanic district.

From an historical viewpoint, prior to the adoption of the Bill in question, a pawnshop was a use permitted as a matter of right in a B.M. and B.R. zones. The Bill changed that right and required that going forward, pawnshops would only be permitted in those two zones by special exception. In addition to the normal requirements for the granting of a special exception, as specified,

in Section 502.1 of the Baltimore County Zoning Regulations, the Bill imposed certain new requirements in its enactment of Section 436.4 of the BCZR.

In a clear reading of the express language of Section 6, the County Council exempted pawnshops lawfully in existence and operating as of July 3, 1995, from the requirements of Section 436.4 as enacted by the Bill, as to an existing pawnshop business; however, the provisions of the Bill requiring the granting of a special exception would only be applied if the existing business wanted to relocate. No special exception would be needed if the business stayed at its present location. Therefore, had the County Council intended to subject an existing pawnshop business, seeking to relocate, and to obtain a special exception for that purpose to the requirements of Section 436.4 of the BCZR, then the language of Section 6 of the Bill would be pointless and serve no useful purpose. Such a construction must be avoided. It is fundamental in legal interpretation that an enactment should be construed so as to give effect, if possible, to every word, clause or sentence therein, and that no part would be inoperative, superfluous, void or insignificant.

If the County Council had intended such pawnshops not to have the ability to relocate into areas within the one-mile radius factor, and also be excluded from any councilmanic district that already had two existing pawnshops, the Bill could have been written in a more specific and restrictive manner. It was not! Additionally, if the Council specifically did not desire such pawnshops to be located in community conservation areas, the Bill

would have been crafted differently. It was not! By including the special exception requirement, the County Council saw fit to permit such inclusion in an area where the administrative board has the authority to allow specific uses which the legislature (or Council) has determined to be permissible. Following through, granted that authority, the Board is, I believe, called upon to grant the relocation of the pawnshop in question, since Section 6 of Bill No. 112-95 references "Pawnshops" lawfully in existence and operating as of July 3, 1995; and, not "Pawnbroker." The Act references location, and not the license required to conduct the business.

As Judge Rita Davidson stated in Schultz v. Pritts, 291 Md. 1, 20-22 (1981):

"When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses. (Emphasis added.)

* * *

"If [the applicant] shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide."

The significant question before the Board is one of the Special Exception requested and required by Section 436.4 of the BCZR. The Board heard testimony from several area residents, Mr. Jack Hession; Mr. Charles Poole; and Mr. Alfred Clasing. All

expressed concern over the presence of a pawnshop in a community conservation area; and expressed their concerns that the presence of such a shop would draw undesirable elements into the area. Most of that which was expressed was based on opinion as long time area residents, and, at least in my mind, not factually conclusive.

Captain James Johnson, who is the commander of the Essex District, Baltimore County Police, also testified at length concerning crime in the area. He also related to the Board members the extreme methodology by which his department must detail the daily operations of pawnshops. He indicated that the pawnshop in question had not had any violations according to his records, but did express concern that another pawnshop in the district would simply exacerbate additional reporting requirements on his district's employees who were already heavily overworked. He described what were salutary effects on recent community conservation efforts and the County enhancement projects to revitalize the area which had brought down the amount of crime in the immediate area of the Country Ridge Shopping Center.

Mr. John Dillon also testified in opposition to the pawnshop. While Mr. Dillon proffered that, in his opinion, the Petitioner's pawnshop would be detrimental to the health, safety or general welfare of the community, based on historical concepts, he also indicated that as part of the report done on the regulation of pawnshops for the Baltimore County Council, in which he was an active participant, he could not find any factual documentation that pawnshops caused neighborhood instability or significant increase in crime. He further stated that the Essex area was in

the midst of rehabilitation and that homes of substantial worth (between \$200,000 and \$500,000) were being contemplated within a few miles of the shopping center, which he indicated was the first major center going north from the peninsula. He further admitted that he had been in the shopping center, and had gone into the Petitioner's shop and that there were no vacancies in the shopping center (which would certainly be a sign of decay or decline) and that the operation appeared to be a well-run retail establishment.

Ms. Mary Emerick also testified on behalf of the Protestants and opined as to what she considered to be a successful implementation of the County's community conservation plans for the Essex area. These included substantial new development along Weber Road, and a new restaurant and marina to be known as Hopewell Point. However, as was the case with many of the other Protestants, much of what was stated concerning pawnshops giving "the perception of decline to an area and having a negative impact on a neighborhood in transition" and was based on opinion rather than fact.

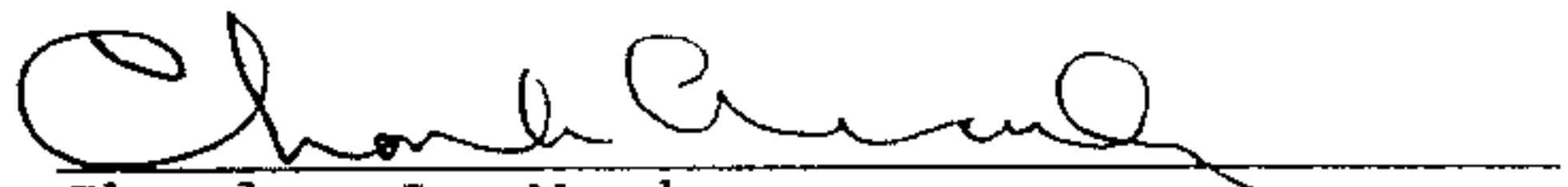
During the course of any hearing, Board members hear much testimony and need to separate opinion from fact. There are those who honestly believe that pawnshops are simply places to "fence" stolen property; and are establishments that can attract a criminal element into the neighborhood in which they are located. There are also those who firmly believe that pawnshops have the reputation of attracting a low-income clientele. However, it must be kept in mind that such establishments are permitted, regulated, monitored, and heavily controlled by the State in its policing authority.

Captain Johnson very succinctly described the daily activity required of his department in reporting all transactions, and found the subject operation to be totally in compliance with no incidents reported as to stolen goods or inappropriate activities. It is undeniable that pawnshops must be located in an area or locale where their services are needed and the public is served. If the operation is outside the area of need and where it can operate profitably, its purpose is not functional, and it will cease to exist. Obviously there is a need in the Country Ridge Shopping Center area for such a service. If not, there would not be any patronage. There were no objections presented on the part of any of the presently existing merchants in the shopping center that would cause this Board to believe that its presence has diminished any patronage of their particular services. It was also evident at the hearing that there are currently no vacancies in the shopping center. It was also evident from the testimony that the Country Ridge Shopping was located in the vicinity of Back River Neck Road and that that area is heavily commercially developed along both sides of the roadway, which included a variety of businesses; i.e., auto repair shops, gas stations, pizza shops, and multiple other businesses.

Perhaps there are some who have the opinion that a pawnshop operation is an unnecessary evil that detracts from the neighborhood. People's Counsel has recited in their brief (page 12) various California and Virginia cases where "those witnesses, by antidote, experience, observation, and opinion, testified to the tendency of pawnshops to prey on disadvantaged persons, hurt the

character, image and property values in the neighborhood, and generally help drag a neighborhood down," that credibility should be afforded such opinions. However, there was also testimony that extensive community conservation efforts have caused a rebound in the general area with substantial crime reduction; and increased real estate values as new development emerges because of the County's efforts. It is unfortunate that the substantive portions of the Protestants' case evolved around considerable opinion and conjecture. My associate Board members obviously felt that the case presented by the Protestants outweighed that offered by the Petitioner. However, my conclusions are based on the lack of factual evidence which leads me to believe that the proposed use would be conducted without real detriment to the neighborhood and would not affect the public interest.

After two days of intensified hearings, I could not conclude that there were strong and substantial existing facts or circumstances showing that the particularized proposed use had a detrimental effect above and beyond the inherent ones associated with such uses. Therefore, I respectfully dissent from the Majority Opinion.


Charles L. Marks

DATE: April 30, 1997

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
COUNTRY RIDGE SHOPPING CENTER,	*	COUNTY BOARD OF APPEALS
<u>INC.; SOUTHSIDE BROKERS, INC.</u>		
FOR A SPECIAL EXCEPTION ON	*	OF
PROPERTY LOCATED 767' SE OF		
BACK RIVER NECK ROAD	*	BALTIMORE COUNTY
(1508 Back River Neck Road)		
11TH ELECTION DISTRICT	*	CASE NO. 96-226-X
7TH COUNCILMANIC DISTRICT		
* * * *	*	* * * *

MAJORITY OPINION

This matter comes before the Board as a Petition for Special Exception for a pawnshop in the Country Ridge Shopping Center, located in a B.M. zone at 1508 Back River Neck Road in the Seventh Councilmanic District of Baltimore County. Special Exception relief is requested to approve the relocation of an existing pawnshop from 8110 Pulaski Highway, as required under the 1995 pawnshop law, Council Bill No. 112-95, which created new Section 436 of the Baltimore County Zoning Regulations (BCZR).

This case comes on an appeal from a ruling of the Zoning Commissioner on a Motion for Reconsideration (April 19, 1996) in which Petition for Special Exception was granted, after having been initially denied (January 22, 1996) by the Zoning Commissioner.

The Petitioner in this case, which was heard de novo, was Meyer Scherr, President of Southside Brokers, Inc., Lessee, represented by Roger N. Powell, Esquire.

The Appellants were residents of the Back River Neck Road area, and included John Hessian, President of the Rockway Beach Association, and Alfred Clasing, President of the Back River Neck Peninsula Community Association, an umbrella organization for many associations.

The first day of hearing was November 6, 1996, and the final day was March 12, 1997. The public deliberation on the matter by the Board was conducted on April 17, 1997. The time lapse in this case was due to a postponed hearing on January 23, 1997, agreed upon by both parties.

Legislative Background

The County Council used its legislative authority and judgement to determine standards and regulations for pawnshops in Baltimore County, and on July 20, 1995, Bill No. 112-95 was enacted. The Act was declared to be an emergency measure affecting the public health, safety and welfare.

The principle of community conservation is an expressed goal in Baltimore County (Section 436.1, Baltimore County Zoning Regulations). The Master Plan, 1989-2000, proposes that commercial activities incompatible with local neighborhoods should be restricted in such locales. The goal of revitalization of neighborhoods and communities in the Essex area is a high priority of the County, based on findings of crime, economic decline, housing and the general neighborhood image. The Council cited, in Section 436.1(C) that "an undue concentration or the inappropriate siting or design of pawnshop businesses has a reasonable probability of causing adverse effects on nearby residential and commercial areas by creating an impression of community decline and instability." The intent, as stated in 436.1, is to avoid an undue concentration or the inappropriate location of pawnshops so as to avoid deleterious effects on older communities which the County is

trying to conserve and revitalize. Section 436.4(A) also stipulates that a pawnshop may not be located within a one-mile radius of any other pawnshop, and that no more than two pawnshops may be located in a councilmanic district.

Section 6 of Bill No. 112-95 further enacts that pawnshops lawfully in existence and operating on the effective date of the Act are not subject to the requirements of Section 436.4.

The issues raised in this case as considered in this Majority Opinion of the Board are the application of the provisions of Bill No. 112-95, and the addition of Section 436 to the Baltimore County Zoning Regulations (BCZR). The reading and interpretation of Section 436.4 and Section 6, and their application, is the critical consideration to the denial or approval of the relocation of the pawnshop.

Testimony

Meyer Scherr, the President of Southside Brokers, Inc., testified that his pawnshop business at 8110 Pulaski Highway had to be relocated because of the termination of his lease on that property. No evidence to that effect was presented at the hearing, and the relocation was possibly for better business opportunities. In May 1996, Southside Brokers relocated to the Country Ridge Shopping Center which provides numerous business enterprises, adequate parking and proximity to other commercial services situated along Back River Neck Road.

Mr. Scherr testified in detail regarding his management and business procedures, which he described as a retail business,

selling items received from people as collateral for money. He reviewed the reporting of pawn transactions and the special record keeping necessary to avoid acceptance of illegal items, keeping files on every transaction. Forms for each transaction are completed and given to the Baltimore County Police daily. Since opening his shop at Country Ridge in May, Mr. Scherr remarked that he has conducted 2,000 transactions for people living in the postal zone 21221 (Essex).

Southside Brokers at Country Ridge does not deal with weapons, which would require a special license. Mr. Scherr concurred that the State license for the Country Ridge location is for that address and is not a transferred license from Pulaski Highway.

Protestants to the location in the subject shopping center perceive it as a vulnerable section of Essex trying to overcome a long era of decline.

John Dillon, former County Planner, testified that the neighborhoods near the shopping center exemplify high levels of poverty and the lowest levels of income and property values. Dillon, who helped develop the Community Conservation Plan for Essex-Middle River (People's Counsel Exhibit No. 9), found the location inappropriate for a pawnshop for the following reasons: is counterproductive to business revitalization; it undermines efforts to enhance a community known for crime and low income; is detrimental to the public safety, health and welfare; and contradicts legislative findings and provisions of BCZR Section 436 over the undue concentration of pawnshops in a high priority

revitalization area. Mr. Dillon's studies of the area (1995) found a census tract area of 9,000 acres where 63,000 people lived in 4,000 of the acres for an average of 13.7 people /acre. The County averages 4.1 /acre. His study also found that the area around the shopping center was 50 percent poverty level and other adjacent areas were 25 to 50 percent.

Captain James Johnson of the County Police and Precinct Commander in Essex presented statistical evidence showing the neighborhood around the center has the highest magnitude of major crimes. Captain Johnson testified that pawnshops are known as receptors of stolen goods and an additional pawnshop would tend to overburden police regiments to review pawned transactions against items of reported stolen property. He testified that a third pawnshop in the 11th precinct would have a decidedly negative impact on law enforcement and assignment of officers. With the County and community effort to reverse the downward socioeconomic history in parts of Essex, he felt that another pawnshop in this location would discourage the success of more stable businesses necessary for revitalization.

Mary Emerich, Community Conservation Specialist for the area, reviewed conservation efforts and areas targeted for revitalization. She identified specific investments by the County and activities in the subject neighborhood. Feeling that improvements were beginning to have results, Ms. Emerich testified that the area is still the County's highest priority revitalization area. She felt that an additional pawnshop would be counter-

productive to public expenditures expected to reach \$100 Million.

A computer-generated map showing land use and the radii around the shopping center was presented and reviewed by Edward Michel, OIT Specialist. The pawnshop locations in the area were shown as to their proximity to each other. In the prior hearing before the Zoning Commissioner, the proprietors of the two existing pawnshops in this vicinity appeared in protest, along with an attorney representing the trade association of pawnbrokers.

The citizens and community representative gave testimony in strong support of the conservation and revitalization program the County has undertaken in Essex. Their viewpoints supported the County's intention to protect the neighborhoods, and based on their individual experiences and observations, their testimony matched the County Council's profile for neighborhoods under stress.

Orlando Yarborough, a retired Federal accountant, began working at a Body Fitness Center on Back River Neck Road across from the shopping center in 1983, and upon retirement on 1991, became the director of a non-profit organization for at-risk-youth. Serving the youth from low income apartment complexes, their objective is to build character through martial arts, aerobics, weight lifting, field trips, with participation by the health and police departments. His concern was the comments and plans of youth to get merchandise to pawn for ready cash.

Alfred Clasing, a member of the Board of Directors of the Back River Neck Community Association, stated his opposition to the Southside Brokers location from his observation as a 40-year

resident of the Hyde Park neighborhood several miles down the Back River Neck Peninsula, a lower density neighborhood with older single-family homes mixed in with newer development. Country Ridge is the closest neighborhood shopping center, which he feels is in decline. An additional pawnshop is inappropriate in consideration of the difficult process of community revitalization.

John Hessian, president of the Back River Neck Association, served on the advisory committee to the County for the Essex-Middle River Conservation Plan. He opined that pawnshops make neighborhoods look like losers. It gives the connotation of people in dire straits with no credit who have to sell an asset to get along. Such possibilities for residents will not guarantee a better community in his opinion.

Counsel for the Petitioner raised various questions as to the Protestants' opinions about the impact of pawnshops upon a neighborhood. Counsel asserted that the opinions were not factually based, but rather the result of personal prejudices, fears, or hearsay. Petitioner remarked that none of the various witnesses offered any evidence other than unsupported assertions that pawnshops bring crime and undesirable elements, and are therefore inappropriate. Mr. Yarborough's assumption that youth pawn items at the shop is not accurate because they have to be able to prove ownership and be eighteen. John Dillon's opinion was that pawnshops have a negative effect, but he then acknowledged that the County report completed on regulation of pawnshops could not locate documentation that pawnshops caused neighborhood instability or an

increase in crime.

Countering the negative concerns of the Protestants, Mr. Powell observed that there were no witnesses' testimony or evidence that there was a decline in established businesses or to move elsewhere because of the location of Petitioner's shop, or facts that the business would be detrimental to the health, safety, or general welfare of the locality involved.

Opinion

The Petitioner argues that because he was in existence and operating a pawnshop on Pulaski Highway prior to the effective date of Bill No. 112-95, then moved his shop to the subject location, he is not subject to the requirements of Section 436.4. He argues that the clear intent of the statute is to limit the number of pawnshops (12) in the County to those existing. We note that the intent, as stated in Section 436.1, as also to avoid an undue concentration or inappropriate location of pawnshop businesses, and so avoid deleterious effects on older communities which the County is trying to conserve and revitalize.

Section 6 of Bill No. 112-95 does grandfather from the special exception requirements of Section 436.4 pawnshops "in operation" on the effective date of the Act. Southside Brokers, however, was not even in existence at Country Ridge Shopping Center before the Act's effective date of July 3, 1995. Although Petitioner is one of the existing pawn dealers, which are limited to 12 in number, and was exempt at his existing location, we believe the law's exemption does not apply to those existing owners (brokers) for new

locations, or who relocate their existing shop to another site.

We also agree with People's Counsel that the "grandfathering" of an operation goes with the land, not the person, especially in light of the stated intent of this section regarding the inappropriate siting of pawnshops. Therefore, Bill No. 112-95 must be applied to the relocation of Southside Brokers from 8110 Pulaski Highway to 1508 Back River Neck Road.

Majority Opinion

BCZR Section 502.1 sets the standards for the granting of a special exception. In this case, the special considerations are 502.1(a) and (g):

- a. Be detrimental to health, safety, or general welfare of the locality involved; and
- g. Be inconsistent with the purposes of the zoning classification, nor in any way inconsistent with the spirit and intent of the zoning regulations.

Using the standard set forth in Schultz v. Pritts, 291 Md. 1, 1981, "the test for considering a special exception is not whether the use will have an adverse effect, but whether the adverse effect at the particular location is greater than ordinarily associated with the use.... Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses. The duties given to the Board are to judge...whether the use in the particular case is in harmony with the general purpose and intent of the plan." (Emphasis added.)

In application of Schultz v. Pritts, the County Council has provided a statement of purpose and a set of performance standards

in regard to the situation of pawnshops, and a more complete and objective structure for evaluation of Petitioner's request for the special exception through the enactment of Bill No. 112-95. Terms and words such as "adverse effect," "particular location," and "disruption of the harmony of the comprehensive plan of zoning" are addressed by Bill No. 112-95. Using the Schultz v. Pritts standard for granting or denying a special exception -- that the proposed use would have an adverse effect above and beyond what it would ordinarily have in any area -- it would appear that a pawnshop would have more than the usual adverse effects in the area of the Country Ridge Shopping Center, because the location is the focus of intense efforts at revitalization.

Contrary to the opinion of the Zoning Commissioner, who granted this Petition, we feel compelled to recognize the qualitative judgements of the County Council and the uncontradicted testimony that this section of Essex is in the highest priority revitalization area, has the highest incident of negative socioeconomic indicators, and has the highest incident of major crime in the County. These adverse effects are greater in the subject neighborhood than they would be elsewhere within the zone, which is a persuasive reason for denial of the special exception for a third pawnshop in the Essex area.

In denying the special exception requested, there are the additional locational standards of BCZR 463.4(A). The County Council decided to act on pawnshops as it is entitled to do. They found undue concentration or inappropriate siting of pawnshops in

described neighborhoods to cause adverse effects. They found that limiting the number of pawnshops to twelve (12) was more than sufficient to meet the needs of the community. The County Council also set regulations that a pawnshop may not be located within a one-mile radius of any other pawnshop, and no more than two may be located in a councilmanic district (436.4(a)).

In this carefully designed regulation, with guidance from the Planning Board, the Council repealed Bill No. 14-95 and enacted Bill No. 112-95, an Act concerning pawnshops written in precise and well-defined language. However, in this case, the meaning set forth by the County Council was seen as not clear. In the Zoning Commissioner's reconsidered ruling, from which the instant appeal was filed, it was determined that existing pawnshop brokers were exempt both at existing locations and in the event they relocated. Additionally, there was testimony that the Bill could be read so as to exempt existing brokers, if not the pawnshop, from the one-mile radius limitation of 436.4(A) but not from the special exception requirement. If a broker chose to relocate, he/she could relocate anywhere in the County without regard to other existing pawnshops.

In this Majority Opinion, we concur that the Council, in Section 6 of Bill No. 112-95, did exempt from the BCZR 436.4 special exception and locational requirements for pawnshops lawfully in existence and operating on the effective date of the Act (July 20, 1995). However, the law in no possible interpretation exempted new locations or relocations by brokers of existing pawnshops. As asserted by People's Counsel, this accords

with the usual idea that zoning addressed property locations rather than ownership and that "grandfathering" goes with the land and not the person. To proceed otherwise would place control in the hands of a few without fear of competition.

The Council has employed the special exception as a means to determine the appropriate and inappropriate locations for pawnshops. The Council has specified minimum site and location standards (BCZR 436.3, 436.4). These include the minimum one-mile distance (radius) from any other pawnshop, and the limit to two in each councilmanic district (BCZR 436.4(A)). The Petition by Southside Brokers has failed to meet any of these standards and therefore the Petition for Special exception is denied.

O R D E R

THEREFORE, IT IS THIS 30th day of April, 1997 by the County Board of Appeals of Baltimore County

ORDERED that the special exception to approve relocation of an existing pawnshop be and the same is hereby DENIED.

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

S. Diane Levero
S. Diane Levero

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

*Photocopy to CBA by
Mr. Powell at hearing
11/06/96*

PETER MAX ZIMMERMAN
People's Counsel for
Baltimore County

Appellant

V.

COUNTRY RIDGE SHOPPING
CENTER - Legal Owner
and
SOUTHSIDE BROKERS, INC. -
Lessee

Appellees

* BEFORE
* THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No: 96-226-X
*

* * * * *

RESPONSE TO ANSWER TO MOTION TO STRIKE

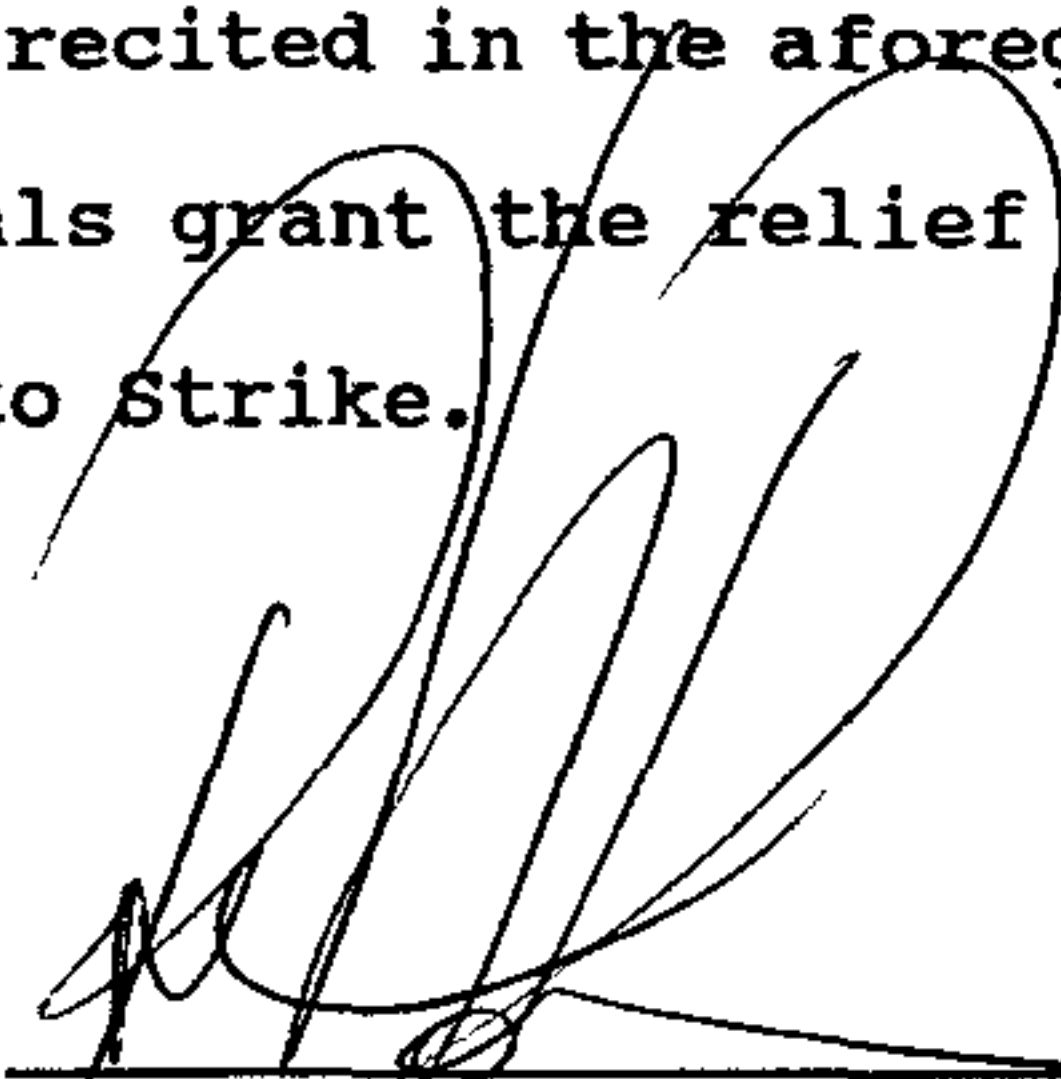
Comes now Southside Brokers, Inc., Petitioner, by Roger N. Powell, its attorney, and for its Response to the Answer of People's Counsel to your Petitioner's Motion to Strike, says:

1. The subject Appeal was filed by People's Counsel.
2. People's Counsel now represents that it has the responsibility to defend the comprehensive zoning maps.
3. The subject Petition arises solely for reason of a recently enacted statute, the interpretation of which by the Zoning Commissioner in his written opinion, which is a matter of record, speaks for itself.
4. Factually, the Petitioner seeks to open a store in an existing shopping center so that the issue of defense of a comprehensive zoning map in the public interest, is irrelevant to the subject matter of the Petition, as the Petition seeks only to comply with the statute and does not seek to change a land use.
5. Were the Petitioner's position to seek a special exception for a use, for instance, of the nature of a landfill or a toxic

waste storage or a medical waste incinerator, in that case, People's counsel's position to defend the comprehensive zoning map might be entitled to consideration. Here, the question is whether or not the Petitioner's proposed use will affect the health, welfare or safety of the community. Clearly, the opening of a store in an existing shopping center which only seeks to engage in commerce similar to the nature of the commerce engaged in by other tenants of the shopping center, does not permit People's Counsel to act beyond the jurisdiction of People's Counsel nor to attempt to usurp the authority of the Baltimore County Office of Law or the prerogative of the legislators.

6. It is People's Counsel and not the Petitioner who should be concerned with the attempt to introduce inadmissible evidence as the pending Petition and the record in the proceedings, speak for themselves.

WHEREFORE, and for all reasons recited in the foregoing, your Petitioner prays the Board of Appeals grant the relief originally prayed by the Petitioner's Motion to Strike.



ROGER N. POWELL
POWELL & SORRELL
107 Old Court Road
Baltimore, MD 21208
(410) 653-0262
Attorney for Petitioner
Southside Brokers, Inc.

I HEREBY CERTIFY that a copy of the foregoing Response to Answer to Motion to Strike was mailed this 4th day of November, 1996, to:

Nancy C. West, Esquire
Assistant County Attorney for Baltimore County
400 Washington Avenue
Towson, MD 21204

Peter Max Zimmerman, People's Counsel for Baltimore County
Carole S. Demilio, Deputy People's County
Rm. 47, Courthouse, 400 Washington Avenue, Towson, MD 21204

Robert F. Dashiell, Esq.
2300 N. Calvert St., Ste. 100, Baltimore, MD 21218
Attorney for Pawn It, Inc.

Howard Dubick, Gold Marina Jewelry & Loans
138 Eastern Blvd., Baltimore, MD 21221

Back River Neck Peninsula Community Assn.
John Hession, President
P. O. Box 16754, Baltimore, MD 21221

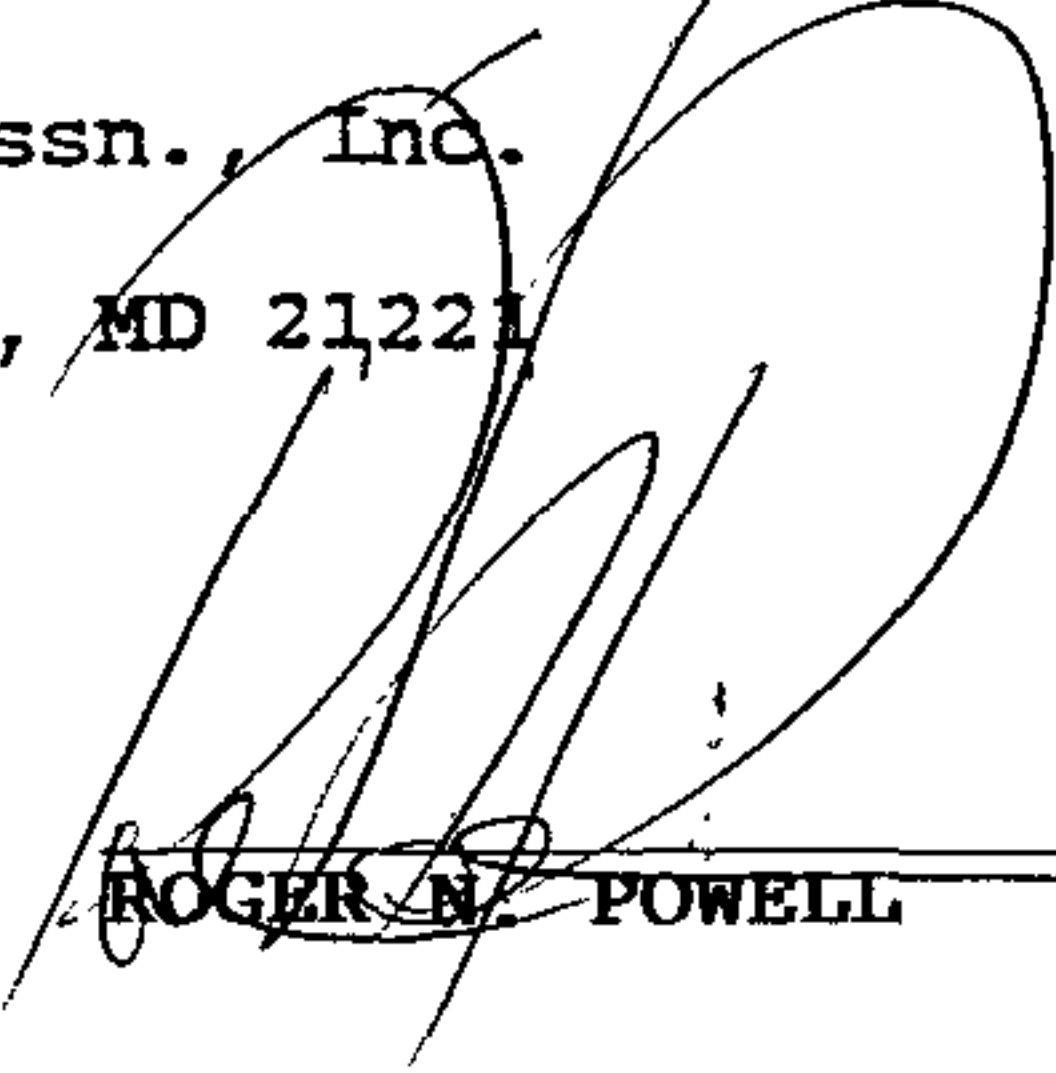
Barrison Point Improvement Assn.
Debby Huson, President
2411 Barrison Point Rd., Baltimore, MD 21221

Alfred Clasing, Jr.
2025 Holly Neck Rd., Baltimore, MD 21221

Essex-Middle River Civic Council, Inc.
Ellen Jackson, Secretary
P. O. Box 5031, Baltimore, MD 21220

Rockaway Beach Improvement Assn.
Jackie Nickel, President
721 Rockaway Beach Ave., Baltimore, MD 21221

Walnut Grove Neighborhood Assn., Inc.
Susan Widerman, President
26 Lockett Court, Baltimore, MD 21221



ROGER N. POWELL

15/35/24
RE: PETITION FOR SPECIAL EXCEPTION
1508 Back River Neck Road (Country
Ridge Shopping Center), 767' SE of
Back River Neck Road, the point of
which on Back River Neck Road is
200' S of Hopewell Street, 11th Elec-
tion District, 5th Councilmanic

BEFORE THE
COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY

Legal Owner: Country Ridge Shopping
Center, Inc.
Contract Purchaser/Lessee: Southside
Brokers, Inc.
Petitioners

CASE NO.: 96-226-X

* * * * *

ANSWER TO MOTION TO STRIKE

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY answers the Motion to
Strike as follows:

1. People's Counsel for Baltimore County has the authority and
responsibility to defend the comprehensive zoning maps in the public
interest. Baltimore County Charter, Sec. 524.1(b); People's
Counsel v. Williams, 45 Md.App. 617 (1980); Board of Child Care v.
Harker, 316 Md. 683 (1989); People's Counsel v. Crown Development
Corp., 328 Md. 303 (1992).

2. As a party to a special exception case, People's Counsel
may move to exclude evidence which is inadmissible because of its
subject matter, from whatever source. Board Rule 7. Here, the
inadmissible subject matter is the subjective motives of individual
legislators.

3. In addition, there is a public interest in the protection
of the legislative process. Here, petitioner has subpoenaed
legislators in order to characterize the motivation and conduct of
the legislature, its process, or product. In this setting, as

public defender of the comprehensive zoning map, People's Counsel has standing to invoke the privilege and immunity of the legislative process from intrusion by individual subpoena to a legislator. This privilege and immunity is also important to the separation of powers. Montgomery County v. Schooley, 97 Md.App. 107, 117-24 (1993); see Hollyday v. Rainey, 964 F.2d 1441 (4th Cir. 1992); Baker v. Mayor & City Council of Baltimore, 894 F.2d 679 (4th Cir. 1990); Schlitz v. Commonwealth, 854 F.2d 43 (4th Cir. 1988); Public Service Comm'n v. Patuxent Valley, 300 Md. 200 (1984).



PETER MAX ZIMMERMAN
People's Counsel for
Baltimore County



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October, 1996, a copy of the foregoing Answer to Motion to Strike was mailed to Roger N. Powell, Esq., Powell & Sorrell, 107 Old Court Road, Baltimore, MD 21208, attorney for Petitioner.



PETER MAX ZIMMERMAN

15/22/25
PETER MAX ZIMMERMAN
People's Counsel for
Baltimore County

Appellant

v.

COUNTRY RIDGE SHOPPING
CENTER - Legal Owner
and
SOUTHSIDE BROKERS, INC. -
Lessee

Appellees

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

Case no: 96-226-X

* * * * *

MOTION TO STRIKE

1. People's Counsel has filed a Motion entitled Motion in Limine.

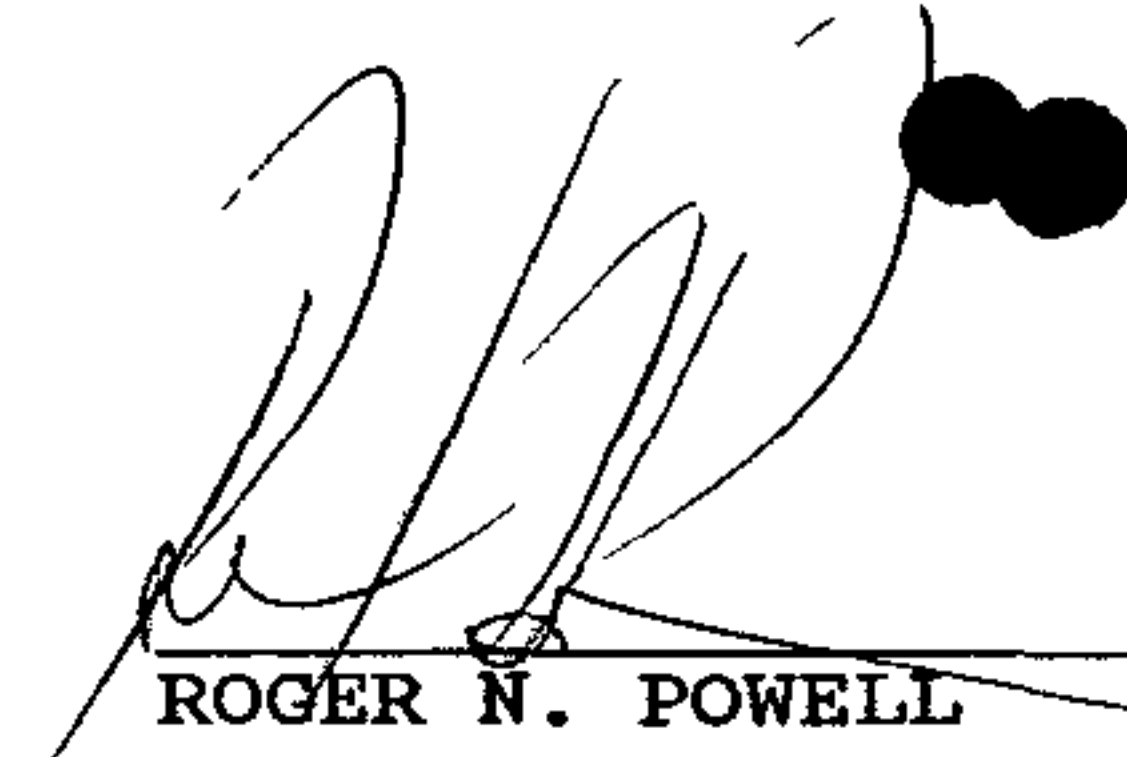
2. The Rules of Procedure of the Board of Appeals of Baltimore County do not provide for such Motion.

3. The Rules specifically provide for evidence of the nature sought by the witnesses summonsed by the Appellee Southside Brokers, Inc.

4. If the Legislators wish to raise legislative immunity, the proper parties to raise legislative immunity are the Legislators and not People's Counsel.

5. The Motion is improper procedurally and substantively, and should be given no consideration.

WHEREFORE, your Appellee Southside Brokers, Inc. prays, for all reasons recited in the foregoing, that the Motion in Limine by People's Counsel and the relief sought thereby be denied.



ROGER N. POWELL
POWELL & SORRELL
107 Old Court Road
Baltimore, MD 21208
(410) 653-0262
Attorney for Appellee
Southside Brokers, Inc.

I HEREBY CERTIFY that a copy of the foregoing Motion to Strike was mailed this 22nd day of October, 1996, to:

Peter Max Zimmerman, People's Counsel for Baltimore County
Carole S. Demilio, Deputy People's County
Rm. 47, Courthouse, 400 Washington Avenue, Towson, MD 21204

Robert F. Dashiell, Esq.
2300 N. Calvert St., Ste. 100, Baltimore, MD 21218
Attorney for Pawn It, Inc.

Howard Dubick, Gold Marina Jewelry & Loans
138 Eastern Blvd., Baltimore, MD 21221

Back River Neck Peninsula Community Assn.
John Hession, President
P. O. Box 16754, Baltimore, MD 21221

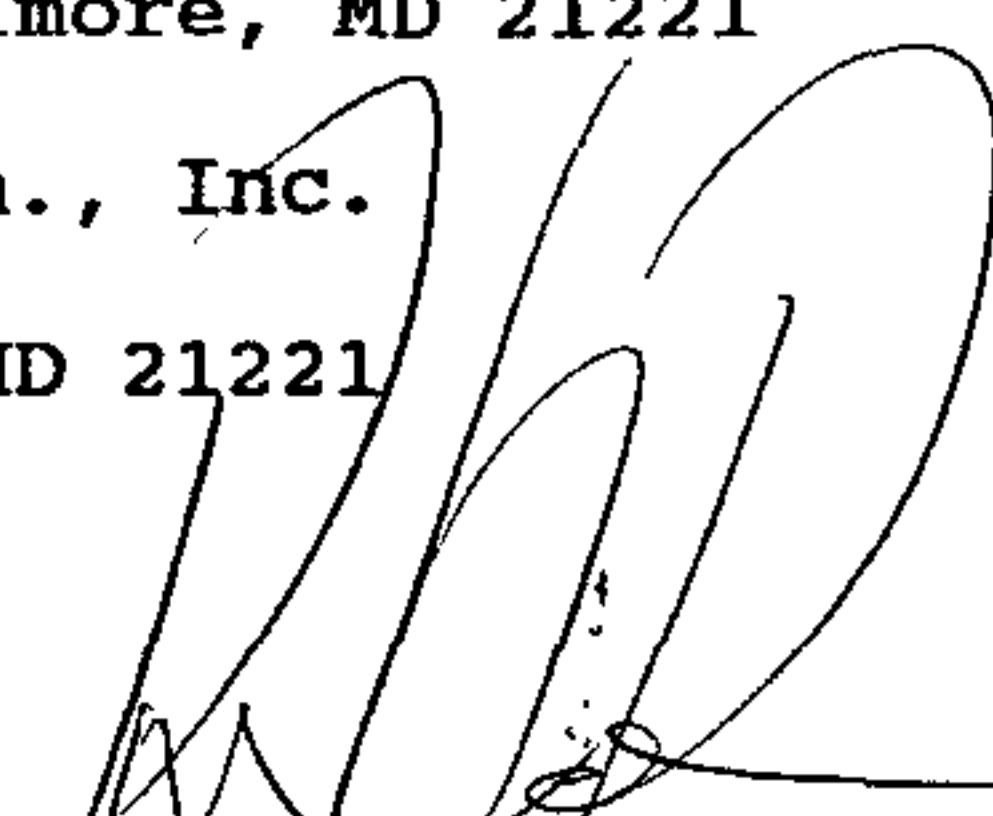
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Alfred Clasing, Jr.
2025 Holly Neck Rd., Baltimore, MD 21221

Essex-Middle River Civic Council, Inc.
Ellen Jackson, Secretary
P. O. Box 5031, Baltimore, MD 21220

Rockaway Beach Improvement Assn.
Jackie Nickel, President
721 Rockaway Beach Ave., Baltimore, MD 21221

Walnut Grove Neighborhood Assn., Inc.
Susan Widerman, President
26 Lockett Court, Baltimore, MD 21221



ROGER N. POWELL

Researched
C. B. A.
10/25/96
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which occur in the regular course of the legislative process and as to the motivation for those acts.

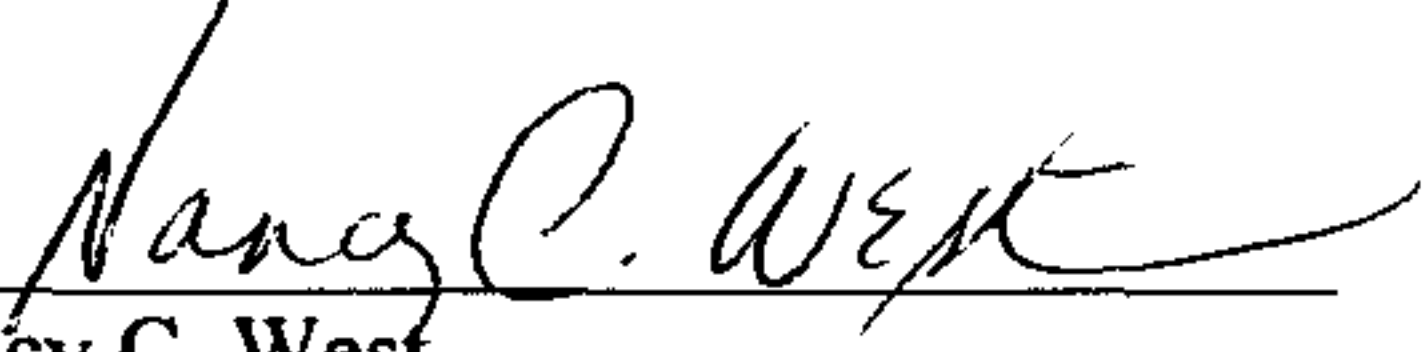
4. It is well settled that the motives, wisdom or propriety of legislative conduct is not subject to judicial or administrative inquiry.

5. That to compel individual Council members to testify as to the motives actuating Council action, or to testify as to what was intended or meant by an adopted measure, impugns the integrity and independence of the legislative process.

WHEREFORE, Councilman Kevin Kamenetz and Councilman Louis L. DePazzo respectfully pray that this Board:

1. Pass a Protective Order and quash the subpoenas requiring them to appear and testify at the scheduled hearing; and
2. For such other and further relief as this Board may deem just and appropriate.

Virginia W. Barnhart
County Attorney


Nancy C. West
Assistant County Attorney
Baltimore County Office of Law
2nd Floor - Old Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420

STATEMENT OF POINTS AND AUTHORITIES

1. Montgomery County v. District Land Corp., 274 Md. 691, 337 A.2d 712 (1975)
2. Blondes v. State, 16 Md. App. 165, 294 A.2d 661 (1972)
3. United States v. Mandel, 415 F. Supp. 1025 (D. Md. 1976), aff'd 602 F.2d 653 (4th Cir.) rehearing en banc, denied, 609 F.2d 1076 (4th Cir. 1979)
4. 5 McQuillin, The Laws of Municipal Corporations, Sec. 16.90 and 16.91 at 366-371 (3rd ed. 1989)

CERTIFICATE OF SERVICE

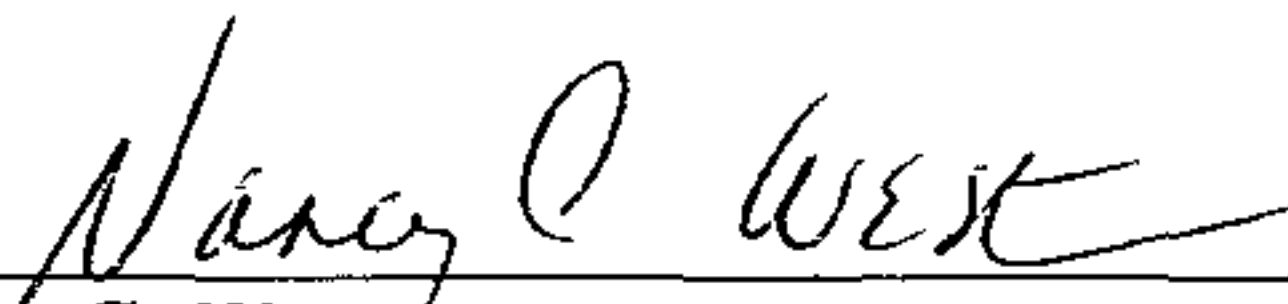
I HEREBY CERTIFY, that on this 25th day of October, 1996, a copy of the foregoing

Motion to Quash and/or Motion for Protective Order was mailed, postage prepaid, to:

Roger N. Powell, Esq.
Powell & Sorrell
107 Old Court Road
Baltimore, Maryland 21208

Robert F. Dashiell, Esq.
2300 N. Calvert Street, Ste. 100
Baltimore, Maryland 21218

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



Nancy C. West
Assistant County Attorney

7/18/96

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
1508 Back River Neck Road (Country *
Ridge Shopping Center), 767' SE of * COUNTY BOARD OF APPEALS
Back River Neck Road, the point of * OF
which on Back River Neck Road is *
200' S of Hopewell Street *
11th Election Dist., 5th Councilmanic * BALTIMORE COUNTY

Legal Owner: Country Ridge Shopping *
Center, Inc. *
Contract Purchaser/Lessee: * Case No. 96-226-X
Southside Brokers, Inc. *
Petitioners *

* * * * *

MOTION IN LIMINE

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY moves to limit evidence,
as a matter of public policy:

1. Upon review of the file, it appears that Petitioners have
subpoenaed two (2) County Council members, Kevin Kamenetz and Louis
L. DePazzo.

2. It is well-established in zoning cases that there may be no
such judicial or administrative inquiry into the motives, wisdom, or
propriety of legislative conduct.

3. In this connection, it is inappropriate to admit or receive
testimony as to the subjective explanation, intent, or motive of the
legislators.

4. It is particularly inappropriate to admit testimony directly
from a legislator, as this intrudes on the legislative process and
its independence.

WHEREFORE, People's Counsel requests that the County Board of
Appeals limit or preclude the Petitioners' proposed testimony from
elected representatives of the County Council.

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

STATEMENT OF POINTS AND AUTHORITIES

1. Montgomery County v. District Land Corp., 274 Md. 691 (1975); Montgomery County v. School, 97 Md.App. 107 (1993); Supreme Court of Virginia v. Consumers Union, 446 U.S. 719 (1980).
2. Public Service Comm'n v. Patuxent Valley, 300 Md. 200 (1984); Montgomery County v. Stevens, 337 Md. 471 (1995).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October, 1996, a copy of the foregoing Motion in Limine was mailed to:

- 1) Roger N. Powell, Esq., Powell and Sorrell, 107 Old Court Road, Baltimore, MD 21208, attorney for Petitioners;
- 2) Robert F. Dashiell, Esq., 2300 N. Calvert Street, Suite 100, Baltimore, MD 21218, attorney for Protestant Pawn It, Inc.;

3) Howard Dubick, Gold Marina Jewelry & Loans, 138 Eastern Blvd., Baltimore, MD 21221, Protestant;

4) Protestants Back River Neck Peninsula Community Assn., P. O. Box 16754, Baltimore, MD 21221, Attn: John Hession, President;

5) Protestants Barrison Point Improvement Assn., 2411 Barrison Point Road, Baltimore, MD 21221, Attn: Debby Huson, President;

6) Alfred Clasing, Jr., 2025 Holly Neck Road, Baltimore, MD 21221, Protestant;

7) Protestants Essex-Middle River Civic Council, Inc., P. O. Box 5031, Baltimore, MD 21220, Attn: Ellen Jackson, Secretary;

8) Protestants Rockaway Beach Improvement Assn., Inc., 721 Rockaway Beach Ave., Baltimore, MD 21221, Attn: Jackie Nickel, President;

9) Protestants Walnut Grove Neighborhood Assn., Inc., 26 Lockett Court, Baltimore, MD 21221, Attn: Susan Widerman, President.


PETER MAX ZIMMERMAN

IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
 767 ft. SE of Back River Neck *
 Road * ZONING COMMISSIONER
 1508 Back River Neck Road *
 11th Election District * OF BALTIMORE COUNTY
 5th Councilmanic District *
 Legal Owner: Country Ridge Shop- * Case No. 96-226-X
 ping Center, Inc.
 Lessee: Southside Brokers, Inc.
 Petitioner *

* * * * *

ZONING COMMISSIONER'S RULING ON MOTION FOR RECONSIDERATION

The above captioned matter is revisited pursuant to a Motion for Recon- sideration filed on behalf of Country Ridge Shopping Center, Inc., and Southside Brokers, Inc., co-Petitioners in the within case. The Motion for Reconsideration requests a re-examination and review of the decision issued by this Zoning Commissioner on January 22, 1996. In that decision, I denied a Petition for Special Exception filed by the co-Petitioners which requested approval of the relocation of an existing pawn shop to the subject property located at 1508 Back River Neck Road. My Findings of Fact and Conclusions of Law as set forth in that opinion are adopted herein, as same are not inconsistent with views expressed hereinafter.

The facts surrounding this case are relatively simple and not in dispute. The subject property is known as 1508 Back River Neck Road and is located in the Stemmers Run/Back River Neck section of Baltimore County. The site is improved with a strip shopping center which has been at this location for many years. The shopping center property and complex is owned by Country Ridge Shopping Center, Inc. The co-Petitioner, Southside Bro- kers, Inc., through its principal, Meyer Scherr, wishes to open a pawn shop business within the shopping center. Formerly, Mr. Scherr operated a pawn shop business at 8110 Pulaski Highway. As he explained at the original hearing, he was losing his lease for that location and desired to relocate to the Country Ridge Shopping Center, Inc.

As my original opinion notes, the primary issue raised by this case

ORDER RECOMMENDED FOR FILING
 Date 4/19/96
 By M. D. [Signature]

relates to the application of the provisions of Bill No. 112-95; enacted by the Baltimore County Council on or about June 5, 1995. This Bill comprehensively amended the Baltimore County Zoning Regulations as they relate to pawn shops.

As argued at the initial hearing, and discussed in my subsequent opinion, there were two views of the effect of the provisions of Bill 112-95. One view, which I adopted and was supported by the Protestants who opposed the relocation of the pawn shop, was that the language of Bill 112-95 exempted from the new law only existing pawn shop locations. That is, that view of the law held that designated brokers with existing businesses in Baltimore County were exempted from the changes in the law brought about by Bill 112-95, for only their existing pawn shop locations. Under that reading of the Bill, any broker, whether new to Baltimore County or not, was not exempt from the Bill if that broker attempted to open or relocate a shop to a different premise.

Contrary to this reading of the Bill was the view espoused by the Petitioner, through counsel, Roger Powell, Esquire. Under the Petitioner's view of the Bill, all existing pawn brokers were exempt from the reach and provisions of Bill No. 112-95. This reading considered that existing pawn shops brokers were exempt both at existing locations and in the event they relocated. Thus, as argued by Mr. Powell, the Bill exempted Mr. Scherr's operation both at its prior location on Pulaski Highway as well as the proposed new location at the Country Ridge Shopping Center.

As I observed through remarks at the bench and expressed in my previous written Order, there is language within the Bill to support both views. Section 6 of the Bill clearly provides that pawn shops lawfully in existence and operating on the effective date of the act are not subject to the changes to the BCZR described in Section 436.4 of the BCZR. As Mr. Powell notes, this language appears to set forth a broad exemption. However, it is,

indeed, unfortunate that the language of the Bill was not more precise. If the Bill stated that the requirements of Section 436.4(A) were exempted, as opposed to stating 436.4, the Council's intent would be much clearer. Moreover, the Council could have, by substituting the words "pawn broker", in lieu of "pawn shops", clarified their intent to support Mr. Powell's reading of the Bill.

In considering the matter further, it appears that there is a third choice, which was not addressed by the parties at the initial hearing and now deserves serious consideration. This third choice is somewhat of a middle ground between the opposite views which the Petitioners and Protestants have adopted. Under the third view, the Bill could be read so as to exempt existing brokers from the one mile radius limitation language of Section 436.4(A) but not exempt those brokers from the special exception requirements found in Section 502.1 of the BCZR. That is, if a broker chose to relocate, he/she would be free to relocate anywhere in the County without regard to other existing pawn shops, but still would be subject to the zoning regulations and special exception requirements for any new location.

In retrospect, this third reading of the Bill appears to be what the Council intended. Under this reading, existing brokers would not be held hostage by their landlords and limited by competition to where they could conduct business. Nonetheless, residential communities would be afforded the opportunity to challenge pawn shop relocations into their communities based on the special exception criteria set forth in Section 502.1.

After due consideration, I am inclined to adopt this third approach. Thus, I will hold that the effect of Bill 112-95 is that existing pawn brokers are not restricted by the language of Section 436.4(A) and may relocate within a mile of other pawn shops. However, any relocation will subject the broker to compliance with the special exception criteria of the BCZR.

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Date

By

4/19/96
M. G. Hark

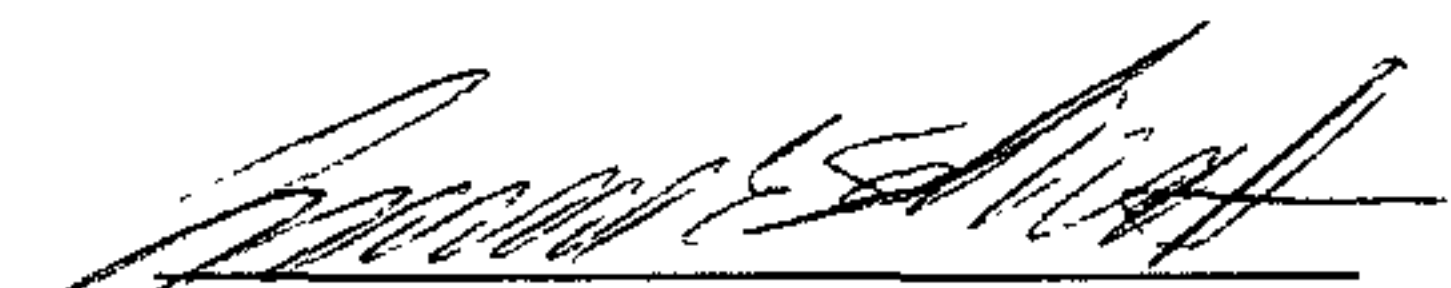
In adopting this approach, it is clear that the result reached in the earlier case cannot be sustained. As I found in the prior case, the Petitioners satisfied the burdens set forth in Section 502.1. The testimony presented original was persuasive that Mr. Scherr's proposed operation at the Country Ridge Shopping Center would not be detrimental to the health, safety and general welfare of the locale and met the special exception criteria set forth in Section 502.1 of the BCZR as construed in the case law. The fact that the shop is located within one mile of another pawn shop is not a bar to a granting of the relief, for the reasons set forth above. Thus, I shall grant the Petition for Special Exception and will so order.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 19th day of April 1996 that, pursuant to the Petition for Special Exception, approval to allow the relocation of an existing pawn shop, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the remainder of the Zoning Commissioner's opinion and Order issued on January 22, 1996, be and is hereby ratified and affirmed, except as expressly amended herein.

Any appeal from this decision must be taken in accordance with the applicable provisions of law.


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmn

ORDER RECEIVED FOR FILING

Date

By

4/19/96
M. G. [Signature]

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

April 15, 1996

Roger N. Powell, Esquire
107 Old Court Road
Baltimore, Maryland 21208

RE: Ruling on Motion for Reconsideration
Case No. 96-226-X
Lessee: Southside Brokers, Inc.
Legal Owner: Country Ridge Shopping Center

Dear Mr. Powell:

Enclosed please find a copy of my Ruling on Motion for Reconsideration rendered in the above captioned matter. The Motion for Reconsideration has been granted.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3353.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over a horizontal line.

LAWRENCE E. SCHMIDT
Zoning Commissioner

LES:mmn
encl.

c: Mr. Gary S. Salvo, 11509 Pulaski Highway, White Marsh, Md. 21162
Robert F. Dashiell, Esquire, 2300 N. Calvert St., Suite 100, 21218
Mr. Steve Cassidy, 1227 Eastern Blvd., 21221
Mr. Howard Dubick, 138 Eastern Blvd. 21221
Mr. Al Clasing, Jr., 2025 Holly Neck Road, 21221
Mr. Richard J. Shrader, 2016 Poplar Rd. 21221
Mr. Marion MacCrehan, 1708 Beachwood Avenue, 21221
Ms. Betty Christopher, 2116 Holly Neck Road, 21221
Ms. Theresa Guckert, 2530 Island View Road, 21221
Mr. Orlando Yarborough, 101 Back River Neck Road, 21221
Mr. and Mrs. Donald Hyson, 2411 Barrison Pt. Rd. 21221
Ms. Nellie Grinage, 1655 Hopewell Avenue, 21221

1/31/96

IN RE:
PETITION FOR SPECIAL EXCEPTION
767 ft. SE of Back River Neck Rd.
1508 Back River Neck Rd.
11th Election District
5th Councilmanic District
Legal Owner: Country Ridge
Shopping Center, Inc.
Lessee: Southside Brokers, Inc.

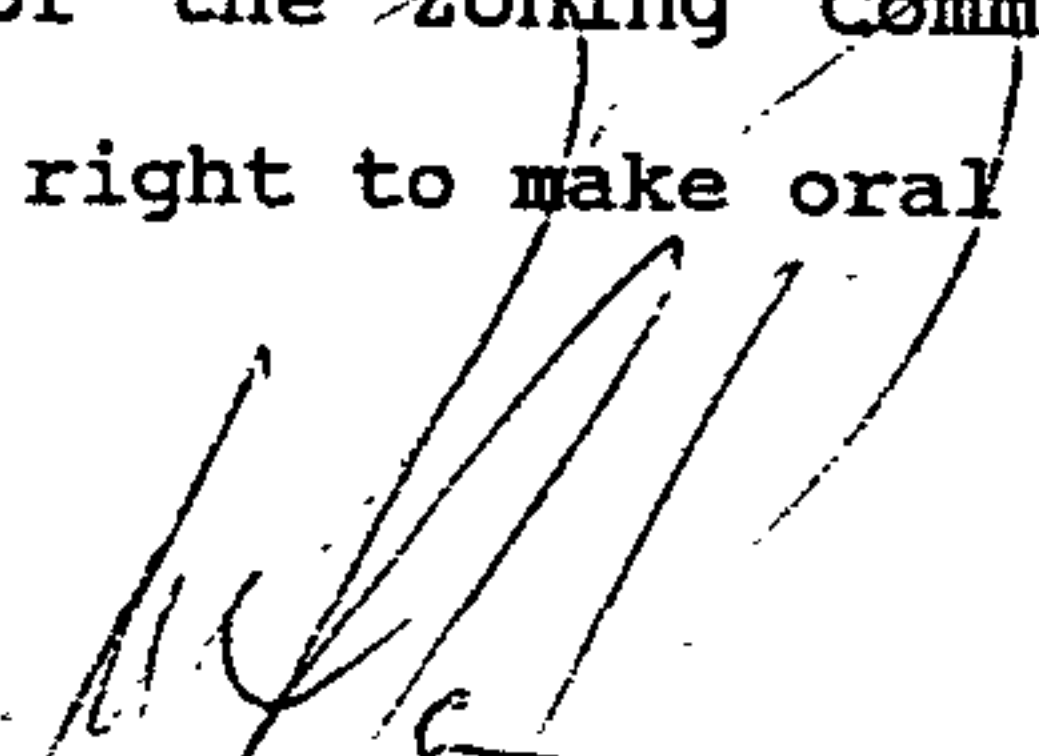
Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No: 96-226-X

REQUEST FOR RECONSIDERATION



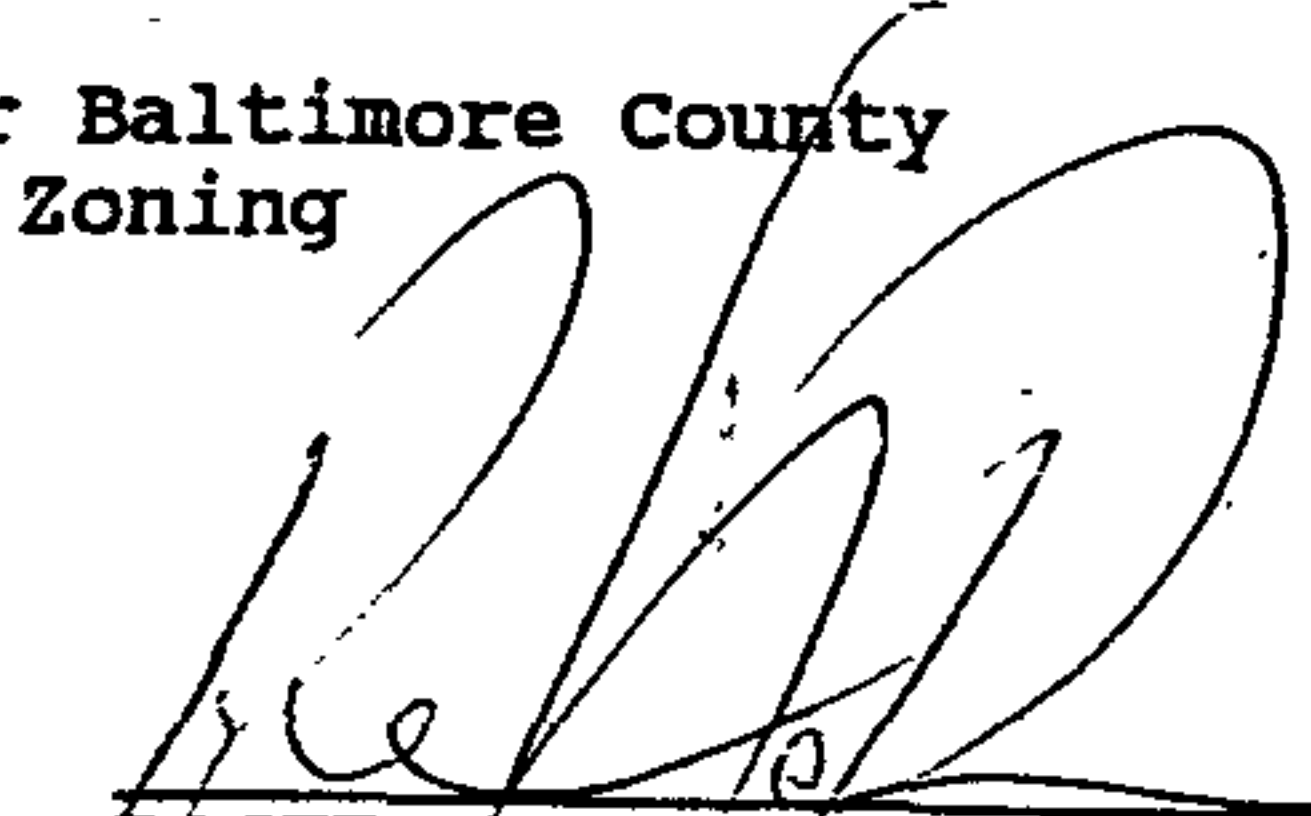
Comes now Meyer Scherr, Co-Petitioner, on behalf of Southside Brokers, Inc., by Roger N. Powell, his attorney, and requests a reconsideration of the decision of the Zoning Commissioner of January 22, 1996, and requests the right to make oral argument at the time of the reconsideration.



ROGER N. POWELL
POWELL & SORRELL
107 Old Court Road
Baltimore, MD 21208
(410) 653-0262
Attorney for Co-Petitioner,
Meyer Scherr on behalf of
Southside Brokers, Inc.

I HEREBY CERTIFY that a copy of the foregoing Request for Reconsideration was mailed this 31st day of January, 1996, to:

Lawrence E. Schmidt,
Zoning Commissioner for Baltimore County
Office of Planning and Zoning
Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204



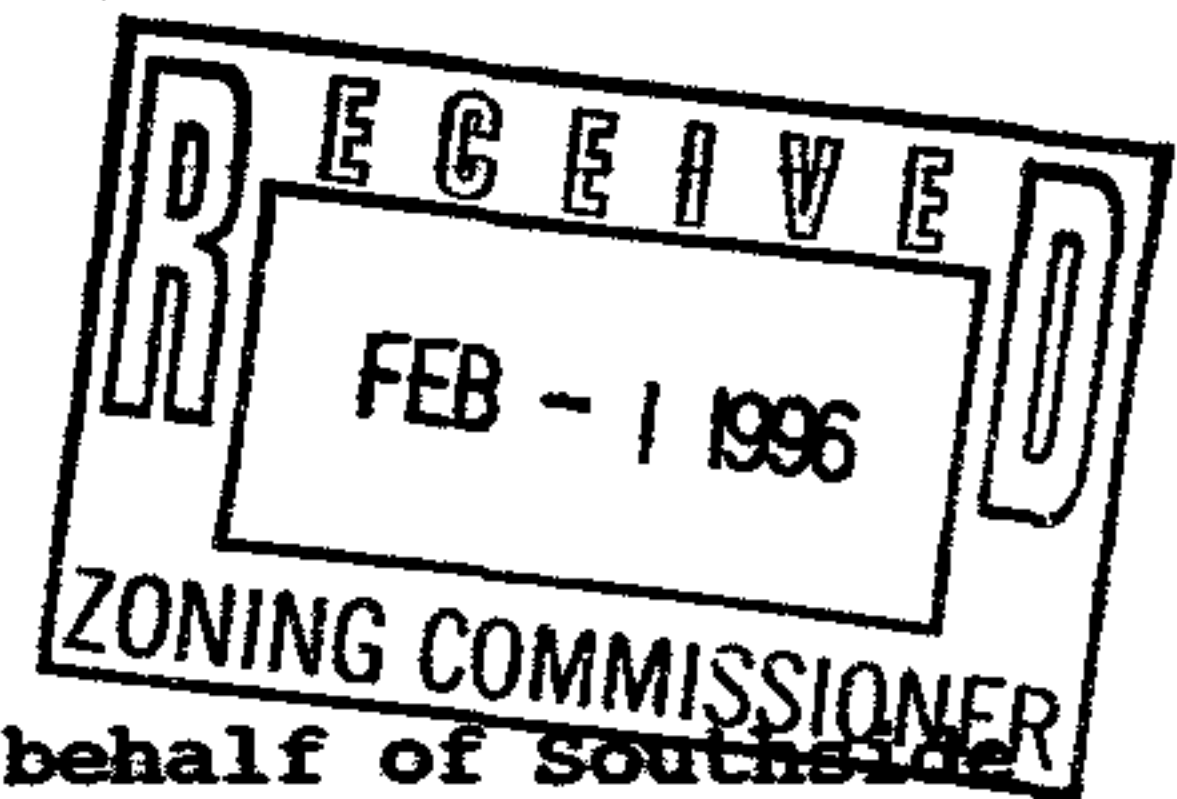
ROGER N. POWELL

2/20/95
2/26/95
2/27/95
2/28/95
3/6/95 Room 106
2:00
3/7/95 1:00 Room 106
11/95 Room 118

IN RE:
PETITION FOR SPECIAL EXCEPTION
767 ft. SE of Back River Neck Rd.
1508 Back River Neck Rd.
11th Election District
5th Councilmanic District
Legal Owner: Country Ridge
Shopping Center, Inc.
Lessee: Southside Brokers, Inc.

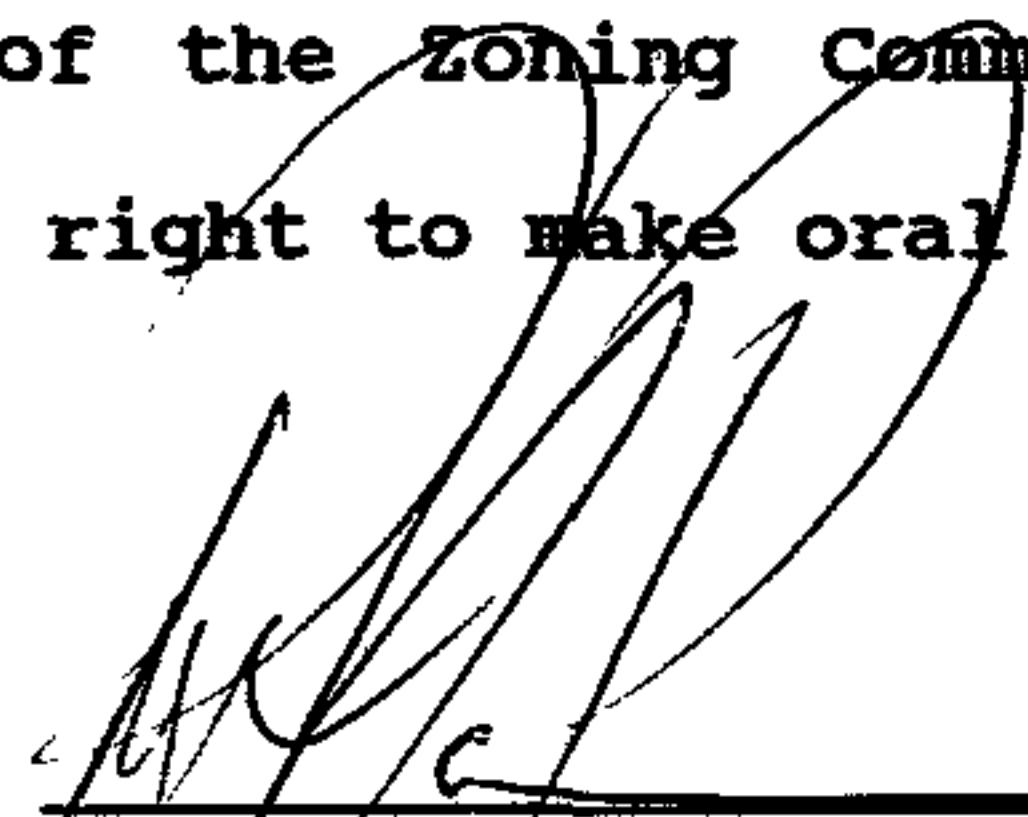
Petitioner

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No: 96-226-X



REQUEST FOR RECONSIDERATION

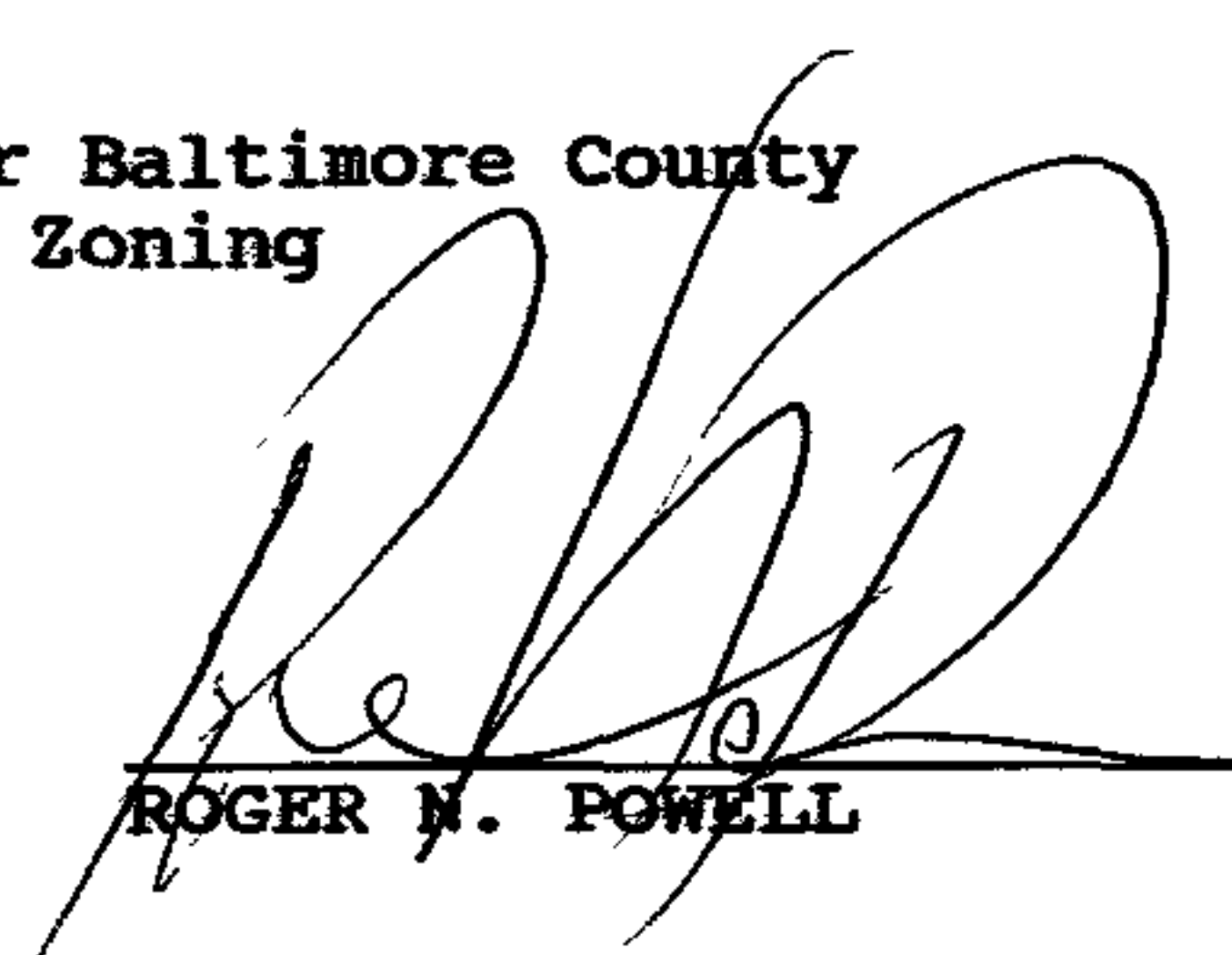
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ROGER N. POWELL
POWELL & SORRELL
107 Old Court Road
Baltimore, MD 21208
(410) 653-0262
Attorney for Co-Petitioner,
Meyer Scherr on behalf of
Southside Brokers, Inc.

I HEREBY CERTIFY that a copy of the foregoing Request for Reconsideration was mailed this 31st day of January, 1996, to:

Lawrence E. Schmidt,
Zoning Commissioner for Baltimore County
Office of Planning and Zoning
Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204



ROGER N. POWELL

1 22/96

IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
767 ft. SE of Back River Neck *
Road * ZONING COMMISSIONER
1508 Back River Neck Road
11th Election District * OF BALTIMORE COUNTY
5th Councilmanic District
Legal Owner: Country Ridge Shop- * Case No. 96-226-X
ping Center, Inc.
Lessee: Southside Brokers, Inc.
Petitioner *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Exception for the property located at 1508 Back River Neck Road in the Stemmers Run/Back River Neck section of Baltimore County. The Petition is filed by the Country Ridge Shopping Center, Inc., Property Owner and Southside Brokers, Inc., Lessee. Special Exception relief is requested to approve the relocation of an existing pawn shop. The subject property and requested relief are more particularly shown on the plat to accompany the Petition for Special Exception, received into evidence as Petitioner's Exhibit No. 1.

Appearing at the public hearing held for this case was Meyer Scherr, President of Southside Brokers, Inc., Lessee. The Petition was represented by Roger N. Powell, Esquire. There were numerous individuals who appeared in opposition to the request. These included Robert F. Dashiell, Esquire, an attorney, who represents a trade association of pawn brokers. Steve Cassidy and Howard Dubick, proprietors of two other pawn shops in the vicinity also appeared. A number of other interested persons from the community appeared and participated at the hearing, including Al Clasing, Jr., Betty Christopher, Richard J. Shrader, Marion MacCrehan, Theresa Guckert and Orlando Yarborough.

As to the property at issue, a review of the site plan shows that same is approximately 521,090 sq. ft. in area zoned B.M. The site has been

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Date

By

1/22/96
M. Powell

developed and is now occupied as the Country Ridge Shopping Center. The area of total building improvement on the property is 129,075 sq. ft., as shown on the site plan. The shopping center contains a large Ames Department Store as its anchor tenant and a number of restaurants, a food store and retail uses. The property is owned by the Country Ridge Shopping Center, Inc. and the co-Petitioner is designated as Gary S. Salvo, President of that corporation.

The co-Petitioner, Meyer Scherr, is the President of Southside Brokers, Inc. and presently maintains a pawn shop business at 8110 Pulaski Highway. The business situated at that location is known as Southside Brokers, Inc. Mr. Scherr indicated that he is losing his lease at the Pulaski Highway property and thus desires to relocate his business to the subject site. He plans on occupying space within the shopping center which is adjacent to a beauty shop and the Value Food Store. The area under consideration is 25 ft. wide and 80 ft. in depth. As shown on the site plan, the leasable area and a sufficient area for necessary parking is designated as the area of the proposed special exception.

As to the business, Mr. Scherr testified in detail regarding his operation. He noted that he is licensed by the State and is strictly regulated by government. He must provide daily reports to the Baltimore County Police Dept. regarding items acquired by him. He also described the business. His is a traditional pawn shop operation, wherein he provides loans to individuals secured by personal property as collateral. The collateral provided are tangible items and most often includes jewelry, electronics, video recorders, etc. He indicates that his business operates six days a week, Monday thru Saturday from 9:30 A.M. to 6:00 P.M.

He also described his clientele. He indicated that he serves as "a banker for people who have no bankers". He generally described his clien-

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Date 1/22/96
By M. Dvorak

tele as blue collar workers who earn between \$18,000.00 and \$22,000.00 per year. He believes that he serves a valuable service to members of this economic community. He also indicated that he does not deal in weapons or firearms and will not make loans with anyone under the age of 18.

Testimony offered by the Protestants was in opposition to the relocation of the pawn shop. Howard Dubick operates a business known as the Gold Marina Jewelry and Pawn Shop at 138 Eastern Boulevard. This shop is approximately 2 miles away from Mr. Scherr's proposed location. Mr. Dubick does not believe that an additional pawn shop within the area is appropriate. These comments were shared by by Steven Cassidy, the Manager of Pawn-It, another shop in the vicinity. Messrs. Dubick and Cassidy both testified that Pawn-It is located less than one mile from the Country Ridge Shopping Center. Both gentlemen expressed fears over an additional pawn shop in the area.

Mr. Yarborough and Ms. Guckert, nearby residents of the community, also appeared and testified. Both live within the vicinity and fear the inherent effects of the pawn business. They believe that the location of the proposed shop at the Country Ridge Shopping Center will increase crime and traffic in the area.

Alfred Clasing, Jr., a community activist, also testified. He is opposed to the pawn shop for reasons which are contained in the record. Unfortunately, much of his testimony was irrelevant to the issue presented and related to community participation in the legislative function of government.

The issue presented in this case is whether the proposed use should be permitted pursuant to the Petition for Special Exception. As a collateral issue, the Zoning Commissioner must determine the applicability of the provisions of Bill No. 112-95. That Bill, which was enacted by the County

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1/22/96

By

M. Howard

Council on or about June 5, 1995 comprehensively amended the Baltimore County Zoning Regulations as they relate to pawn shops.

The BCZR defines land uses and groups those uses by their permissibility in a given zone. In the instant case, the property is zoned B.M.(Business Major). Uses permitted within the B.M. zone are found within Section 233 of the BCZR. Certain uses are allowed in the B.M. zone as of right (e.g. bowling alleys, catering halls and all uses permitted by right in the B.L. (Business Local) zone. As is well settled, any uses not so identified in the zoning regulations as permitted by right or special exception are not allowed. See Kowalski v. Lamar, 25 Md. App. 493 (1975) For example, manufacturing uses are not identified as permitted by right or special exception in a B.M. zone and, thus, are prohibited in that zone. The third classification are uses permitted by special exception. Special exceptions are conditional uses, upon the finding by this Zoning Commissioner that said use complies with Section 502.1 of the BCZR and any other special regulations relevant to a specific use.

Formerly, pawn shops were permitted by right in a B.M. zone, pursuant to Section 233.2 of the BCZR. However, the adoption of Bill 112-95 changed the law in this respect. Pawn shops were deleted as permissible uses as of right in a B.M. zone and are now permitted in such a zone only by special exception. Obviously, the use did not exist at this location prior to the adoption of Bill 112-95. Thus, there can be no claim that the proposed use is nonconforming, as provided for in Section 104 of the BCZR.

Although the use is clearly not nonconforming, counsel for the Petitioner argued that language within Bill 112-95 effectively grandfathers Mr. Scherr's operation. Specifically, counsel notes that Section 6 of the Bill provides "That pawn shops lawfully in existence and operating on the effective date of this Act are not subject to the requirements of Sections

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Date

By

1/22/96
Mr. Novak

436.4." Thus, counsel argues that by the language of Section 6 of the Bill, Mr. Scherr's proposed operation does not require special exception relief.

I disagree. Bill 112-95 has amended the Baltimore County Zoning Regulations, a document which regulates land use, not business operations. The BCZR are specifically applied to individual and particular tracts of land and the uses thereon. Thus, although Mr. Scherr's business operation at 8110 Pulaski Highway may well be exempt from the reach of Bill 112-95, the proposed use of land at 1508 Back River Neck Road is not. Such an interpretation as argued by the Petitioner would render the Bill meaningless, at least to those individuals who were licensed pawn brokers in Baltimore County prior to the effective date of the Bill. They could move from location to location freely. I do not believe the counsel intended such a result. A fair reading of the entire Bill is that certain of the terms of same are not applicable to any existing pawn shop locations. Thus, although Mr. Scherr may be one of the existing pawn dealers which are limited by the Bill to 12 in number, the terms of the Bill must nonetheless be applied to any attempted relocation of his shop.

Having determined, therefore, that the Bill is applicable to the proposed use, attention is next turned to whether special exception relief can be granted. As noted above, special exception uses are, in another term, conditional uses. As set forth in the seminal case of Schultz v. Pritts, 291 Md. 1 (1981), the test for considering special exceptions is not whether the use will have an adverse effect, but whether the adverse effect at the particular location is greater than ordinarily associated with the use. That is, in order for a Petition for Special Exception to be defeated, facts must be found that the adverse effects are above and beyond (i.e., greater here) than they would be elsewhere within the zone. It is

ORDER RECEIVED FOR FILING

Date

By

1/22/96

Mr. H. H. H.

of note that the courts have repeatedly observed that special exceptions are part of the comprehensive zoning plan, sharing the presumption that same are in the interest of the general welfare and, therefore, valid. See People's Counsel v. Mangione, 85 Md. App. 738 (1991).

Under the enumerated standards in Section 502.1, I would be persuaded to grant the Petition for Special Exception. There was no testimony that the inherent effects of the proposed use were anymore detrimental here than elsewhere within the zone. Despite my pointed questions to the Protestants on this issue, these witnesses failed to offer any substantive testimony or evidence. Instead, they reiterated only the well worn fears of this use, namely, that it would bring crime, traffic congestion, etc. There was no factual basis for these allegations and no testimony that, even if true, these inherent effects would be worse here.

Although the use would pass muster under Section 502.1 of the BCZR, the Council's enactment of Bill 112-95 imposes additional tests. Section 436.4 sets forth additional requirements that any proposed use must meet in order for special exception relief to be granted. One such requirement is that a proposed pawn shop may not be located within a one mile radius of any other pawn shop. The only testimony offered on this issue was that presented by Messrs. Dubick and Cassidy. Both testified that the proposed shop will be less than one mile from the existing Pawn-It Shop. Both gentlemen measured this distance "As the crow flies" (See Protestants' Exhibit No. 5). This measurement was undisputed by the Petitioner. Rather, the Petitioner argued that the Council may have intended to compute the distance by road, a measurement which might result in a distance greater than one mile. The term "radius" is not defined within the BCZR. In such event, the regulations direct the reader to Webster's Third New International Dictionary of the English Language. Radius is defined in Web-

ORDER RECEIVED FOR FILING

Date

By

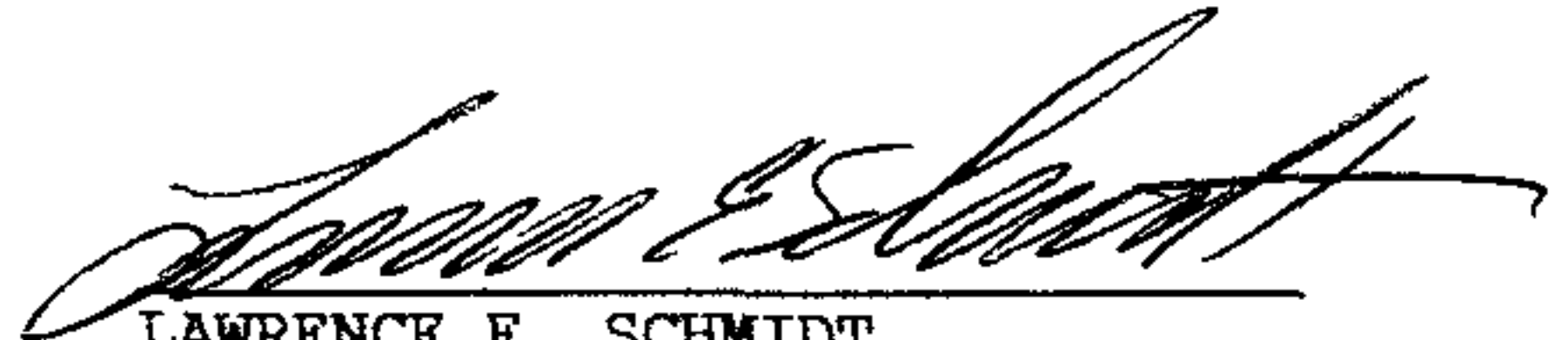
1/22/96
M. Howard

ster's as "A line segment extending from the center of a circle or sphere to the curve or surface", or "The circular area implicated by a stated radius". Using this definition, the one mile prohibition must be determined by measuring the one mile area, in a 360 degree fashion, from the existing shop.

Based on the uncontradicted testimony, it is, therefore, clear that the Petition for Special Exception must fail. The pawn shop cannot be located here, simply because same is within one mile of an existing shop.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 22nd day of January 1996 that, pursuant to the Petition for Special Exception, approval to allow the relocation of an existing pawn shop, be and is hereby DENIED.


LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmm

ORDER RECEIVED FOR FILING

Date

1/22/96

By

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

January 19, 1996

Roger N. Powell, Esquire
107 Old Court Road
Baltimore, Maryland 21208

RE: Petition for Special Exception
Case No. 96-226-X
Lessee: Southside Brokers, Inc.
Legal Owner: Country Ridge Shopping Center, Inc.

Dear Mr. Powell:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Exception has been denied, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3353.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.

- c: Mr. Gary S. Salvo, 11509 Pulaski Highway, White Marsh, Md. 21162
- c: Robert F. Dashiell, Esquire, 2300 N. Calvert St., Suite 100, 21218
- c: Mr. Steve Cassidy, 1227 Eastern Blvd. 21221
- c: Mr. Howard Dubick, 138 Eastern Blvd. 21221
- c: Mr. Al Clasing, Jr., 2025 Holly Neck Road, 21221
- c: Mr. Richard J. Shrader, 2016 Poplar Rd., 21221
- c: Mr. Marion MacCrehan, 1708 Beachwood Avenue, 21221
- c: Mr. Betty Christopher, 2116 Holly Neck Road, 21221
- c: Ms. Theresa Guckert, 2530 Island View Road, 21221
- c: Mr. Orlando Yarborough, 101 Back River Neck Rd., 21221

226



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 1508 Back River Neck Rd.

96-226-X

which is presently zoned BM

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

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for ~~A PAWN SHOP~~

RELOCATION OF EXISTING PAWN SHOP

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

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

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

Contract Purchaser/Lessee:

SOUTHSIDE BROKERS, INC.

(Type or Print Name)

Michael, Pres. (MEYER SCHERR)

Signature

1101 LIGHT ST.

Address

Baltimore MD. 21230

City

State

Zipcode

Legal Owner(s)

COUNTRY RIDGE SHOPPING CENTER, INC.

(Type or Print Name)

GARY S SALVO PRES

Signature

GARY S SALVO

(Type or Print Name)

Signature

11509 POLASKI HWY 335-3570

Address

Phone No

WHITE MARSH MD 21162

City

State

Zipcode

Name, Address and phone number of representative to be contacted

GARY S. SALVO

Name

11509 POLASKI HWY 335-3570

Address

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

1 HR.

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY: [Signature]

DATE

11/29/95



PROPERTY DESCRIPTION

226

96-226-X

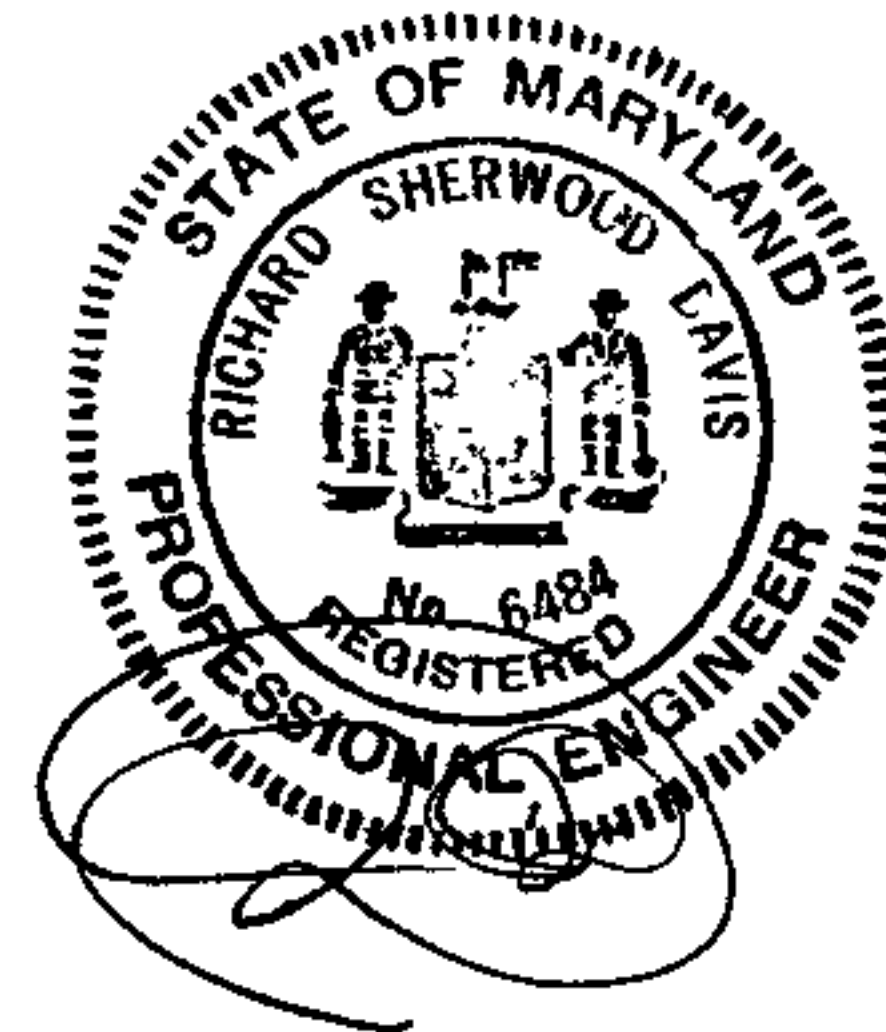
Beginning at a point 767 ft. S $35^{\circ} 43' 33''$ E of a point on Back River Neck Road which is 60 feet of right of way wide, said point on Back River Neck Road being 200 feet S $35^{\circ} 41' 17''$ E of Hopewell Street which is 30 feet wide. Thence from aforesaid point of beginning the following courses and distances:

S. $35^{\circ} 43' 33''$ E. 289.0 ft., S $35^{\circ} 43' 33''$ W. 50.0 ft,
N. $54^{\circ} 16' 27''$ W., 65.0 ft., N $35^{\circ} 43' 33''$ E. 25.0 ft,
N. $54^{\circ} 16' 27''$ W., 118.0 ft., S. $35^{\circ} 43' 33''$ W. 25.0 ft,
N. $54^{\circ} 16' 27''$ W., 106.0 ft., N. $35^{\circ} 43' 33''$ E. 50.0 ft.

to the point of beginning.

Being the demised premises in a lease between Southside Brokers, Inc., and Country Ridge Shopping Center, Inc., containing 11,350 square feet in Country Ridge Shopping Center which is recorded in Baltimore County Plat Book Liber 4088, Folio 210 containing 521,090 square feet.

Also known as 1508 Back River Neck Road located in the 11th Election District, 5th Councilmanic District.



96-226-X

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 11f Date of Posting 12/17/95

Posted for: Special Exception

Petitioner: Country Ridge Shopping Ctr

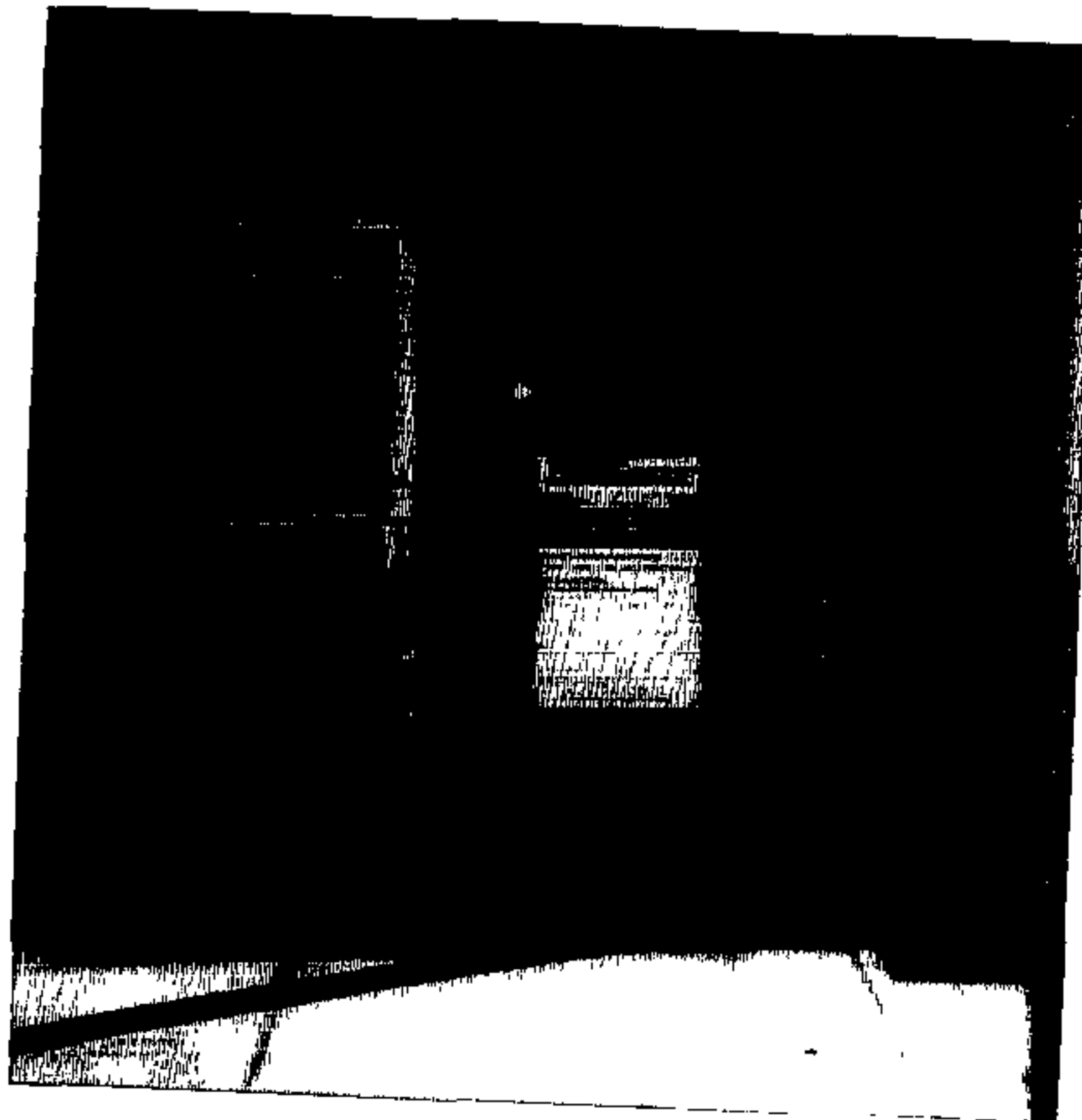
Location of property: 1508 Country Lane

Location of Signs: Facing parking lot of shopping ctr.

Remarks: _____

Posted by [Signature] Date of return: 12/22/95
Signature

Number of Signs: 1



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

96-276-X

District 11th

Date of Posting 5/28/96

Posted for: Appeal

Petitioner: Country Ridge Sh. Hq. Inc. & Southside Properties Inc.

Location of property: ~~747~~ Back River Neck Rd, SE/S

Location of Sign: Facing roadway on property being zoned

Remarks: _____

Posted by M. H. Kelly

Signature

Date of return: 5/31/96

Number of Signs: 1

NOTICE OF HEARING

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

Case: #96-226-X
(Item 226)

Country Ridge
Shopping Center
1508 Back River Neck Road
767 SE of Back River Neck
Road the point of which on
Back River Neck Road is 200'
S of Highway 100

11th Floor
5th Floor
Legal Department
Country Ridge Shopping
Center, Inc.
Contract Purchaser/Lessee:
Southside Brokers, Inc.

Special Exception: for relo-
cation of existing pawnshop.

Hearing: Tuesday, January 2,
1996 at 11:00 a.m. in Rm.
118, Old Courthouse.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are
Handicapped Accessible; for
special accommodations
Please Call 887-3353.

(2) For information concern-
ing the File and/or Hearing,
Please Call 887-3391.

12/082 Dec. 14. C22551

CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/15, 1995

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/14, 1995.

THE JEFFERSONIAN,

A. Henrichsen

LEGAL AD. - TOWSON

~~Publisher~~

CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/15, 1995

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/14, 1995

THE JEFFERSONIAN,

A. Hemmick
LEGAL AD. - TOWSON

Publisher

Notice of Hearing
The Zoning Commission 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: #96-226-X
(Item 226)
Country Ridge Shopping Center
1508 Back River Neck Road
767 SE of Back River Neck Road, the portion of which is located on the east side of Back River Neck Road, between Back River Neck Road and South River Road.

Country Ridge Shopping Center, Inc.
Contract Purchaser/Lessee:
Southside Brokers, Inc.

Special Exception for relocation of existing pawnshop.

Hearing: Tuesday, January 2, 1996 at 11:00 a.m. in Rm. 118, Old Courthouse.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.

(2) For information concerning the File and/or Hearing, Please Call 887-3391.

2/082 Dec. 14. C22551

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

No.

011150

DATE

11/21/95

ACCOUNT

FX010150

96-226-X

AMOUNT

\$ 335.00

RECEIVED

FROM:

MICHAEL SCHERER

FOR:

SPECIAL EXC-PTION 300.00
1 SIGN POSTAL 35.00

1508 BARK RIVERNECK RD. \$ 335.00 TOTAL

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

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

No.

DATE

5/17/96

ACCOUNT

A-001-6150

AMOUNT

\$ 285.00

RECEIVED

FROM:

Back River Neck Peninsula

FOR:

Appeal for Special Exception \$250.00

Sign

\$35.00

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PETITION OF: Country Ridge Shopping Center
Southside Brokers
CIVIL ACTION # 3-C-01-00309

IN THE MATTER OF COUNTRY RIDGE SHOPPING

Center. ; Southside Brokers, Inc
RECEIVED FROM THE COUNTY BOARD OF
APPEALS ~~EXHIBITS~~, BOARD'S RECORD &
EXTRACT & ~~TRANSCRIPT~~ FILED IN THE
ABOVE-ENTITLED CASE, ~~AND ZONING~~
~~COMMISSIONER'S FILE AND EXHIBITS~~

Tracy Tomlinson
Clerk's Office

Date: 3/15/01

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

No.

DATE 4/5/17/96 ACCOUNT B-001-6150

AMOUNT \$ 285.00

RECEIVED FROM: Back River Neck Peninsula

FOR: Appeal for Special Exemption \$250.00

Sign

\$35.00

01A00H0213MICHRC

\$285.00

BA C002:22PM05-17-96

DISTRIBUTION
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

VALIDATION OR SIGNATURE OF CASHIER

PETITION OF: Southside Brokers, Inc.

CIVIL ACTION # 3-C-97-05479

IN THE MATTER OF COUNTRY RIDGE SHOPPING CNTR

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

Mary B Ross
Clerk's Office

Date: 9/30/97

CCT#: 3-C-01-00000307
FILE#: 96-226-X(r)
NAME: Country Ridge Shopping Center (Majority Opinion)
APPELLANT: David Gildea for Country Ridge Shopping Center
APPEALED: 1/11/2001
FILED: 3/15/2001
JUDGE: John G. Turnbull, II
DECISION: Reversed & REMANDED to Board - "new consideration"
DATE: 6/13/2001 ◀
UP:

7-2001 TO BE SCHEDULED FOR
"New CONSIDERATION" OF SE

- REMANDED BY CCT



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

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

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

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be accessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

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

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 226

Petitioner: Country Ridge Shopping Center, Inc.

Location: 11509 TOLASKI Highway, White Marsh, Md. 21162

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Southside Brokers, Inc.

ADDRESS: 1101 LIGHT ST. BALTIMORE, MD. 21230

PHONE NUMBER: (410) 528-8229

AJ:ggs

(Revised 04/09/93)



Baltimore County
Department of Permits and
Development Management

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

December 8, 1995

NOTICE OF HEARING

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

CASE NUMBER: 96-226-X (Item 226)
Country Ridge Shopping Center
1508 Back River Neck Road
767' SE of Back River Neck Road, the point of which on Back River Neck Road is 200' S of Hopewell Street
11th Election District - 5th Councilmanic
Legal Owner: Country Ridge Shopping Center, Inc.
Contract Purchaser/Lessee: Southside Brokers, Inc.

Special Exception for relocation of existing pawnshop.

HEARING: TUESDAY, JANUARY 2, 1996 at 11:00 a.m. in Room 118, Old Courthouse.

A handwritten signature in cursive script, reading "Arnold Jablon".

Arnold Jablon
Director

cc: Gary S. Salvo/Country Ridge Shopping Center, Inc.
Southside Brokers, Inc.
Roger N. Powell, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

TO: PUTUXENT PUBLISHING COMPANY

December 14, 1995 Issue - Jeffersonian

Please forward billing to:

Southside Brokers, Inc.
1101 Light Street
Baltimore, MD 21230
528-8229

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204

or

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

CASE NUMBER: 96-226-X (Item 226)

Country Ridge Shopping Center

1508 Back River Neck Road

767' SE of Back River Neck Road, the point of which on Back River Neck Road is 200' S of Hopewell Street

11th Election District - 5th Councilmanic

Legal Owner: Country Ridge Shopping Center, Inc.

Contract Purchaser/Lessee: Southside Brokers, Inc.

Special Exception for relocation of existing pawnshop.

HEARING: TUESDAY, JANUARY 2, 1996 at 11:00 a.m. in Room 118, Old Courthouse.

LAWRENCE E. SCHMIDT

ZONING COMMISSIONER FOR BALTIMORE COUNTY

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



County Board of Appeals of Baltimore County

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

*Resignation cc 5/16/00
request of R Powell -
OK at PM2 area
CBA.*

April 24, 2000

NOTICE OF DELIBERATION /SPECIAL SESSION ON REMAND

IN THE MATTER OF:

**COUNTRY RIDGE SHOPPING CENTER, INC.
/SOUTHSIDE BROKERS, INC. /CASE NO. 96-226-X**

NOTE: The subject matter was REMANDED to this Board by ruling of the Circuit Court pursuant to mandate of the Court of Special Appeals. To allow sufficient time for individual review of the entire record in this matter by the panel members, the following date and time has been scheduled for the Board to convene for the purpose of determining if a final decision can be made based on the record as it exists; or, in the alternative, what further action is necessary for the Board to reach a final decision on remand.

DATE AND TIME : TUESDAY, AUGUST 8, 2000 at 1:00 p.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

**Kathleen C. Bianco
Administrator**

c. Appellant	: People's Counsel for Baltimore County
Appellants /Protestants	: Jack Hession /Alfred E. Clasing, Jr., et al
Counsel for Petitioners	: David K. Gildea, Esquire
Petitioners	: Gary S. Salvo /Country Ridge Shopping Center
	: Meyer Scherr /Southside Brokers, Inc.
Roger N. Powell, Esquire	
Nancy C. West, Assistant County Attorney	
Robert F. Dashiell, Esquire	
Steve Cassidy	
Howard Dubick	
Richard J. Shrader	
Marion MacCrehan	
Betty Christopher	
Theresa Guckert	
Orlando Yarborough	
Pat Keller, Planning Director	
Lawrence E. Schmidt /ZC	
Arnold Jablon, Director /PDM	
Virginia W. Barnhart, County Attorney	

Copy: C.W.F.

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

N O T I C E O F M O T I O N S H E A R I N G

(MOTION TO STAY)
Case Number : 03-C-97-00579
Old Case number:
C I V I L

In The Matter of: Southside Brokers Inc

RECEIVED
COUNTY BOARD OF APPEALS
AUG 14 PM 3:27

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

TO: County Board Of Appeals Baltimore County The
400 Washington Ave
Room 49
Towson, MD 21204

This case has been assigned a hearing on all open motions on:

CIRCUIT COURT FOR BALTIMORE COUNTY
County Courts Building
401 Bosley Avenue
Towson, MD 21285-6754

Court date:
September 29, 1997
At: 11:30 AM
Motion Hearing (Civil)

PLEASE NOTE: If you desire to submit prior to this hearing date, please contact the Motion Assignment Clerk. A total of no more that one-half hour is allotted for a hearing on "Motion Days". If motions will take more than one-half hour, please contact the Motion Assignment Clerk for reassignment.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

A court reporter will not be present at the motion hearing unless specifically requested. Requests for reporters should be directed to the Motion Assignment Clerk. All requests for a postponement **MUST BE MADE IN WRITING AS SOON AS POSSIBLE**. This should be directed to the Motion Assignment Clerk with a copy to all counsel. Claim of not receiving this notice will not constitute reason for postponement.

Please refer to Information Desk for Court Room Designation.

Assignment Clerk: Beverly Karmasek
Assignment Office Phone: (410)-887-2660

Date Issued: 08/13/97



County Board of Appeals of Baltimore County

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

May 8, 2000

NOTICE OF POSTPONEMENT & REASSIGNMENT -DELIBERATION **SPECIAL SESSION ON REMAND**

IN THE MATTER OF:

COUNTRY RIDGE SHOPPING CENTER, INC.
/SOUTHSIDE BROKERS, INC. /CASE NO. 96-226-X

NOTE: The subject matter was REMANDED to this Board by ruling of the Circuit Court pursuant to mandate of the Court of Special Appeals. To allow sufficient time for individual review of the entire record in this matter by the panel members, the following date and time has been scheduled for the Board to convene for the purpose of determining if a final decision can be made based on the record as it exists; or, in the alternative, what further action is necessary for the Board to reach a final decision on remand.

This matter which had been scheduled for deliberation on 8/08/00, has been **POSTPONED & REASSIGNED** to:

DATE AND TIME : **WEDNESDAY, AUGUST 16, 2000 at 10:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

Kathleen C. Bianco
Administrator

c: Appellant : People's Counsel for Baltimore County

Appellants /Protestants : Jack Hession /Alfred E. Clasing, Jr., et al

Counsel for Petitioners : David K. Gildea, Esquire
Petitioners : Gary S. Salvo /Country Ridge Shopping Center
: Meyer Scherr /Southside Brokers, Inc.

Roger N. Powell, Esquire
Nancy C. West, Assistant County Attorney
Robert F. Dashiell, Esquire

Steve Cassidy
Howard Dubick
Richard J. Shrader
Marion MacCrehan
Betty Christopher
Theresa Guckert
Orlando Yarborough

Pat Keller, Planning Director
Lawrence E. Schmidt /ZC
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Copy: C.W.F.





County Board of Appeals of Baltimore County

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

December 26, 2000

NOTICE OF ASSIGNMENT -DELIBERATION / MOTION FOR RECONSIDERATION

IN THE MATTER OF:

COUNTRY RIDGE SHOPPING CENTER, INC.
/SOUTHSIDE BROKERS, INC. /CASE NO. 96-226-X

NOTE: The Board's Order in this matter on remand was issued on December 13, 2000 (Majority Order and Dissenting Opinion). This special deliberation has been scheduled as the result of a Motion for Reconsideration filed by Country Ridge Shopping Center, Inc. /Southside Brokers, Inc., by and through their attorneys, David K. Gildea and Whiteford, Taylor & Preston LLP.

DATE AND TIME : **WEDNESDAY, JANUARY 3, 2001 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

Kathleen C. Bianco
Administrator

c: Appellant : People's Counsel for Baltimore County

Appellants /Protestants : Jack Hession /Alfred E. Clasing, Jr., et al

Counsel for Petitioners : David K. Gildea, Esquire
Petitioners : Gary S. Salvo /Country Ridge Shopping Center
: Meyer Scherr /Southside Brokers, Inc.

Roger N. Powell, Esquire
Nancy C. West, Assistant County Attorney
Robert F. Dashiell, Esquire

Steve Cassidy
Howard Dubick
Richard J. Shrader
Marion MacCrehan
Betty Christopher
Theresa Guckert
Orlando Yarborough

Pat Keller, Planning Director
Lawrence E. Schmidt /ZC
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Copy: C.W.F.



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

DATE: December 26, 2000

TO: C. Marks (copy left in home mail box 12/26/00)
D. Felling (copy hand-delivered in office 12/28/00)
M Worrall (copy hand-delivered in office 12/28/00)

FROM: Kathi

SUBJECT: Case No. 96-226-X /Country Ridge Shopping Center /Southside Brokers
Motion for Reconsideration

On December 13, 2000, we issued your Opinion and Order (and Dissenting Opinion) in the subject case. The appellate period runs from 12/13/00 through 1/12/01.

Attached for your review are copies of the following:

- 1) A Motion for Reconsideration filed by David Gildea on behalf of Southside;

Important to note is that, under the Board's rules, no provision exists that would allow a Motion to stay the 30-day appeal period. Therefore, public deliberation of this Motion has been scheduled for January 3, 2001 so that you will have time to issue a Ruling prior to January 12, 2001. Once an appeal is filed in the Circuit Court, you will lose jurisdiction.

- 2) People's Counsel for Baltimore County's Answer to Motion for Reconsideration; and
- 3) An addendum to the Motion for Reconsideration filed by Mr. Gildea by way of letter dated December 21, 2000.

Since Mr. Gildea indicates that an appeal will be filed from the decision, any action by the Board must be taken prior to further filing in Circuit Court.

Should you have any questions, please call me.

Kathi

Attachments (3)





Baltimore County
Department of Permits and
Development Management

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

December 28, 1995

Roger N. Powell, Esquire
107 Old Court Road
Baltimore, MD 21208

RE: Item No.: 226
Case No.: 96-226-X
Petitioner: Country Ridge
Shopping Ctr.

Dear Mr. Powell:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on November 29, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Carl Richards, Jr.", is written over a faint, circular official stamp.

W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)

96-226

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director, PDM

DATE: December 28, 1995

FROM: Arnold F. 'Pat' Keller, III, Director, PO

SUBJECT: 1508 Back River Neck Road

INFORMATION:

Item Number: 226

Petitioner: Country Ridge Shopping Center, Inc.

Property Size: _____

Zoning: BM

Requested Action: Special Exception

Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

Should the applicant's request be granted, staff recommends the following conditions be attached to Order:

1. A landscape plan indicating improvements to the existing parking lot that would bring this site into compliance with current standards, should be submitted to the Baltimore County Landscape Planner for review and approval.
2. The pawnshop should not be permitted to operate past 9:00 p.m.

Prepared by: Jeffrey W. Long

Division Chief: AF Keller

PK/JL

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: Dec. 21, 1995
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief
Development Plans Review

RE: Zoning Advisory Committee Meeting
for December 18, 1995
Items 221, 223, 225, (226), 229 and 230. 5

The Development Plans Review Division has reviewed
the subject zoning items and we have no comments.

RWB:sw

9 COPIES

Baltimore County Government
Fire Department



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

(410) 887-4500

DATE: 12/07/95

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

RE: Property Owner: SEE BELOW

LOCATION: DISTRIBUTION MEETING OF DEC. 11, 1995.

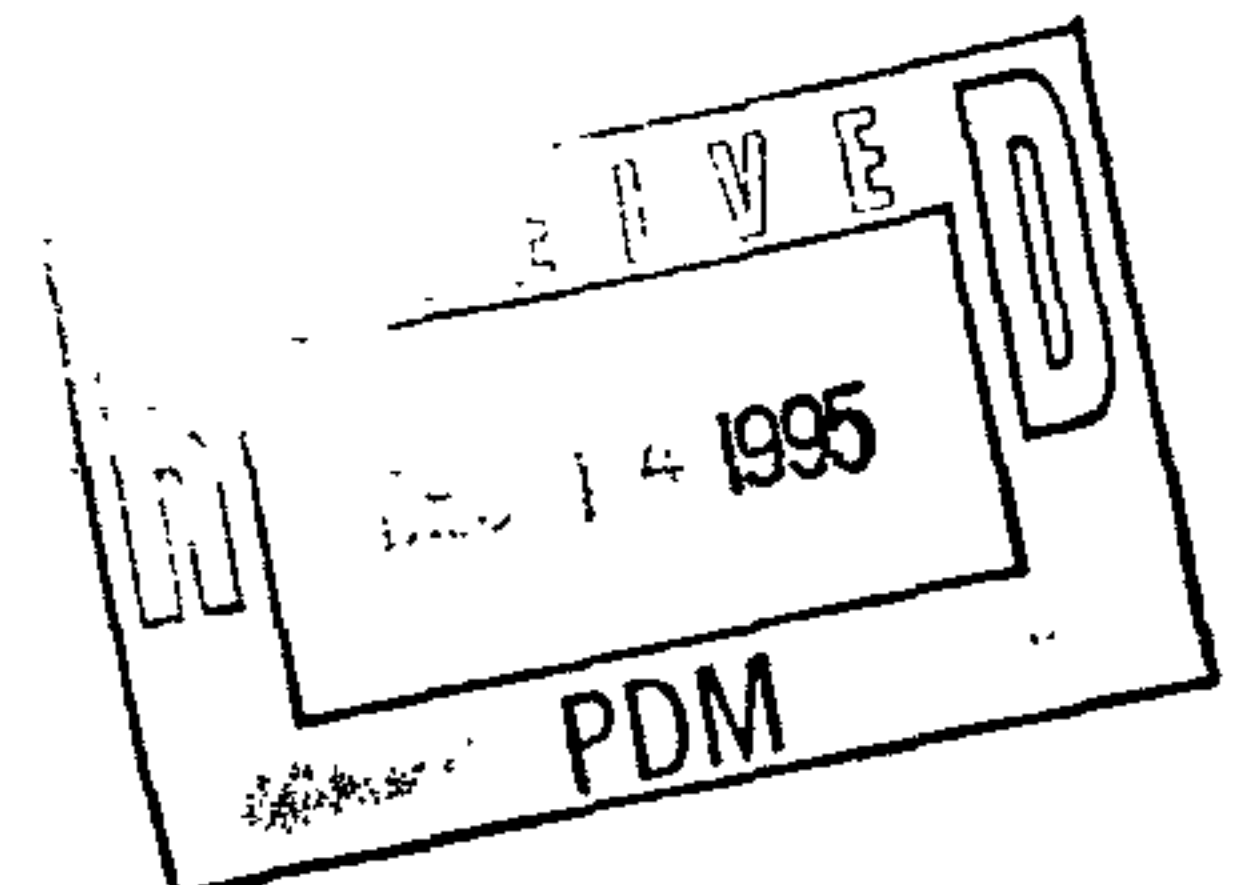
Item No.: SEE BELOW

Zoning Agenda:

Gentlemen:

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

8. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 220, 221, 222, 223, 225,
226, 228, 229 AND 230.



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

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

TO: ~~ZADM~~ PDM - Joyce Watson

DATE: 12/12/95

FROM: DEPRM
Development Coordination

SUBJECT: Zoning Advisory Committee
Agenda: 11/27/95 and

12/11/95

12/4/95

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

11/27/95

Item #'s: 205
207
209
213
214

12/11/95

220 thru 231
and
Rev. #195

226

12/4/95

215
217
218
219

LS:sp

LETTY2/DEPRM/TXTSBP



**Maryland Department of Transportation
State Highway Administration**

David L. Winstead
Secretary
Hal Kassoff
Administrator

12-7-95

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

RE: Baltimore County
Item No. 226 (JLL)

Dear Ms. Watson:

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

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for *Bob Small*
Ronald Burns, Chief
Engineering Access Permits
Division

BS/es

My telephone number is _____

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

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

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
1508 Back River Neck Road (Country Ridge *
Shopping Center), 767' SE of Back River * ZONING COMMISSIONER
Neck Rd, the point of which on Back River * OF BALTIMORE COUNTY
Neck Rd is 200' S of Hopewell Street *
11th Election District, 5th Councilmanic *
CASE NO. 96-226-X
Legal Owner: Country Ridge Shopping Center, Inc.
Contract Purchaser/Lessee: Southside Brokers, Inc.
Petitioners *

* * * * *

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of December, 1995, a copy of the foregoing Entry of Appearance was mailed to Roger N. Powell, Esquire, 107 Old Court Road, Baltimore, MD 21208, attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
1508 Back River Neck Road (Country	*	COUNTY BOARD OF APPEALS
Ridge Shopping Center), 767' SE of	*	OF
Back River Neck Road, the point of	*	
which on Back River Neck Road is	*	BALTIMORE COUNTY
200' S of Hopewell Street		
11th Election Dist., 5th Councilmanic	*	
Legal Owner: Country Ridge Shopping	*	
Center, Inc.		
Contract Purchaser/Lessee:	*	Case No. 96-226-X
Southside Brokers, Inc.	*	
Petitioners	*	

* * * * *

REQUEST FOR HEARING

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests an immediate hearing on its Motion In Limine.


 PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October, 1996, a copy of the foregoing Request for Hearing was mailed to:

- 1) Roger N. Powell, Esq., Powell and Sorrell, 107 Old Court Road, Baltimore, MD 21208, attorney for Petitioners;

2) Robert F. Dashiell, Esq., 2300 N. Calvert Street, Suite 100, Baltimore, MD 21218, attorney for Protestant Pawn It, Inc.;

3) Howard Dubick, Gold Marina Jewelry & Loans, 138 Eastern Blvd., Baltimore, MD 21221, Protestant;

4) Protestants Back River Neck Peninsula Community Assn., P. O. Box 16754, Baltimore, MD 21221, Attn: John Hession, President;

5) Protestants Barrison Point Improvement Assn., 2411 Barrison Point Road, Baltimore, MD 21221, Attn: Debby Huson, President;

6) Alfred Clasing, Jr., 2025 Holly Neck Road, Baltimore, MD 21221, Protestant;

7) Protestants Essex-Middle River Civic Council, Inc., P. O. Box 5031, Baltimore, MD 21220, Attn: Ellen Jackson, Secretary;

8) Protestants Rockaway Beach Improvement Assn., Inc., 721 Rockaway Beach Ave., Baltimore, MD 21221, Attn: Jackie Nickel, President;

9) Protestants Walnut Grove Neighborhood Assn., Inc., 26 Lockett Court, Baltimore, MD 21221, Attn: Susan Widerman, President.


PETER MAX ZIMMERMAN

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Hon. Kevin Kamenetz
Councilman, Second District

October 25, 1995

FROM: Virginia W. Barnhart
County Attorney

SUBJECT: Inquiry on Pawnshop Regulations

You have asked this office to review the letter written to you by Mr. Howard J. Dubick (see attached) and to advise you on how Council Bill 112-95 affects the situation described in that letter. Mr. Dubick currently operates a validly licensed pawnshop on 138 Eastern Boulevard in Essex. Previously, it is our understanding (up until September, 1994) Mr. Dubick also operated a validly licensed pawnshop at 311 Back River Neck Road. He has asked two questions:

1. Can he sell the license from 311 Back River Neck Road, which he apparently still has in his possession; and
2. Could he reopen the store at 311 Back River Neck Road and operate a second pawnshop on a small scale.

Based on our interpretation of Bill 112-95, it does not appear that either option is available to Mr. Dubick at this time.

- ✓ 1. Sale - Based on the phone conversation between Assistant County Attorney, Patrick Roddy and Mr. Dubick on Monday, October 23, 1995, the pawnshop at 311 Back River Neck Road has not been in operation since September of 1994. Therefore, the time of the passage of Council Bill 112-95, this pawnshop was not in operation and thus was not counted as one of the group of 12 valid licenses referred to in Bill 112-95. Twelve is the limit placed on the number of valid licenses beyond which the Director of Permits and Development Management may not issue a special exception for a pawnshop. Under Bill 112-95, a special exception is required in the only two zones where a pawnshop may be located in Baltimore County, B.R. and B.M. The existence of 12 or more valid licenses precludes the Director from accepting a special exception petition.

Any new owner of the license which Mr. Dubick currently holds for 311 Back River Neck Road would not be able to obtain a special exception permit from the Director of PADM until there exists less than 12 licenses in Baltimore County. Since that is not currently the case, and it is highly unlikely that any prospective buyer of Mr. Dubick's pawnshop license would not make

Hon. Kevin Kamenetz

Page -2-

October 25, 1995

the sale contingent upon the availability of proper zoning for the license, we do not believe that a sale is possible at this time.

2. Reopening 311 Back River Neck Road - For much the same reasons as were stated above, it would not be possible for Mr. Dubick to reopen 311 Back River Neck Road without violating the provisions of Council Bill 112-95 at this time. Any license used at that location will be considered a new license under the legislation and therefore would count against the limit of 12. Mr. Dubick would have to apply for a special exception because the zoning conditions at 311 have now changed. Previously, his pawnshop could be operated as a matter of right. Council Bill 112-95 changed that and made operation of a pawnshop at 311 a special exception. He therefore must apply for a special exception before legally reopening the pawnshop at 311 Back River Neck Road. His application must necessarily be denied by the Director PADM because there already exists in Baltimore County more than 12 operating pawnshops.

We hope this is responsive to your question. Please do not hesitate to contact us if you have any questions.



Virginia W. Barnhart
County Attorney

VWB:PHR:bj
c:\PR:bj\okkcc

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE



TO: Virginia W. Barnhart, Esq.
County Attorney

FROM: Kevin Kamenetz
Councilman, Second District

SUBJ. Pawnshops

DATE. September 28, 1995

Enclosed is a copy of correspondence from Howard Dubick of Gold Marina, inquiring regarding the status of the pawnshop licenses.

When you and I briefly spoke on September 26, 1995, you indicated that you would be preparing a response shortly. I then received this fax the following day.

KBK:clh

cc: Mr. Howard Dubick ✓

BARNHART.WPD

GOLD MARINA J & P
138 Eastern Blvd.
Baltimore, MD 21221
(410) 687-5045

*Received
ASAP*

October 17, 1995

ATTN: Virginia W. Barnhart, Esq.
County Attorney

Dear Ms. Barnhart,

I am following up on my correspondence with Councilman Kamenetz.

I am anxious because my landlord from Back River Neck Rd., would like me to sign a long lease, and before I do that, I want to be sure that I can operate my business legally in that location.

If you have any questions, please feel free to call or fax.

Sincerely,

Howard I. Dubick
Howard I. Dubick

FAX (410) 686-4755

138 Eastern Blvd.
Essex, Md. 21221

14 August 1995

Baltimore County Council
400 Washington Avenue
Towson, Md. 21204
Attn: Mr. Kevin Kamenetz

Re: Bill No. 112-95

Dear Mr. Kamenetz,

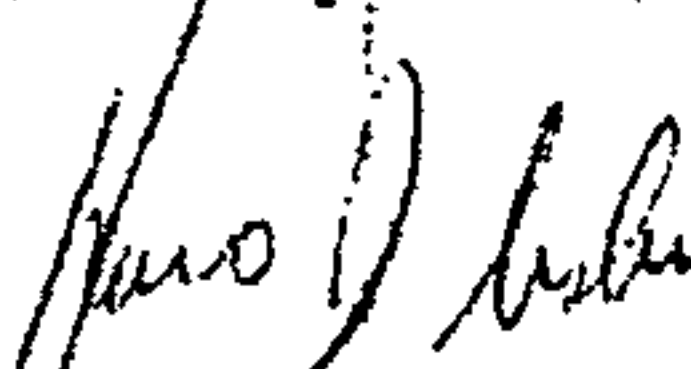
I am the owner of Gold Marina Jewelry & Pawn, which is located at 138 Eastern Blvd. in Essex. I have a question for you regarding the passage of Bill No. 112-95.

Last October I moved from 311 Back River Neck Road, where I started my business. When I moved I had to get a new license from the state; so now I have two licenses. My question is directed to you because you are the one most familiar with the laws and regulations.

I want to know how to proceed in the following two options. My first option is to be able to sell the license from 311 Back River Neck Road, with the new owner following all of the guidelines from Bill No. 112-95, and how would I go about selling the license? The second option is to re-open the store at 311 and operate a second pawn shop on a small scale. (The store is only 400 sq ft).

Please contact me as soon as you can, and we can discuss this or you can fax me back your reply at fax number (410)-686-4755.

Sincerely Yours,


Howard J. Dubick

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

December 13, 1995

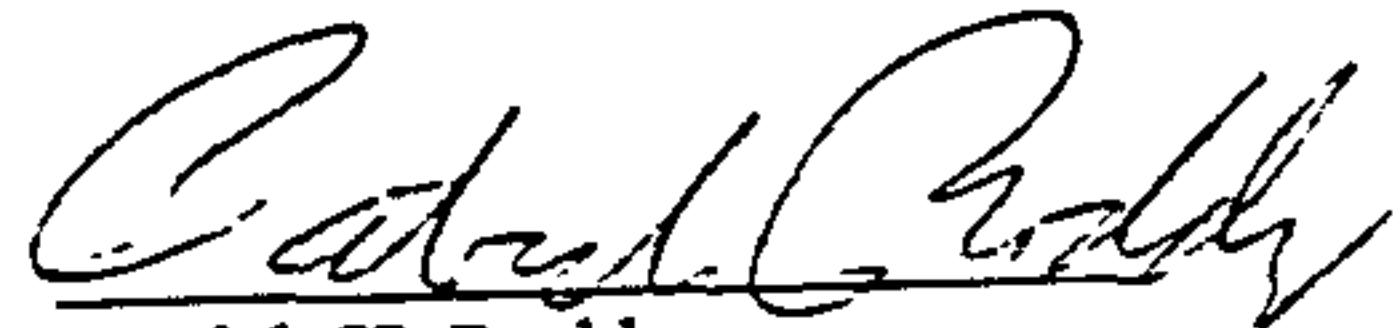
TO: Hon. Kevin Kamenetz
Councilman, Second District

FROM: Patrick H. Roddy
Assistant County Attorney

SUBJECT: Pawnshops - Meyer Scherr - Special Exception

The purpose of this Memo is to status you on Mr. Scherr's situation. To date, there has been no Declaratory Judgment proceeding nor any other Court action filed on behalf of Mr. Scherr. Attached is a letter from Roger Powell which indicates as you had previously indicated to me verbally, that Mr. Scherr will be pursuing the special exception process.

If you should have any further questions or instructions on this matter, please do not hesitate to contact me.



Patrick H. Roddy
Assistant County Attorney

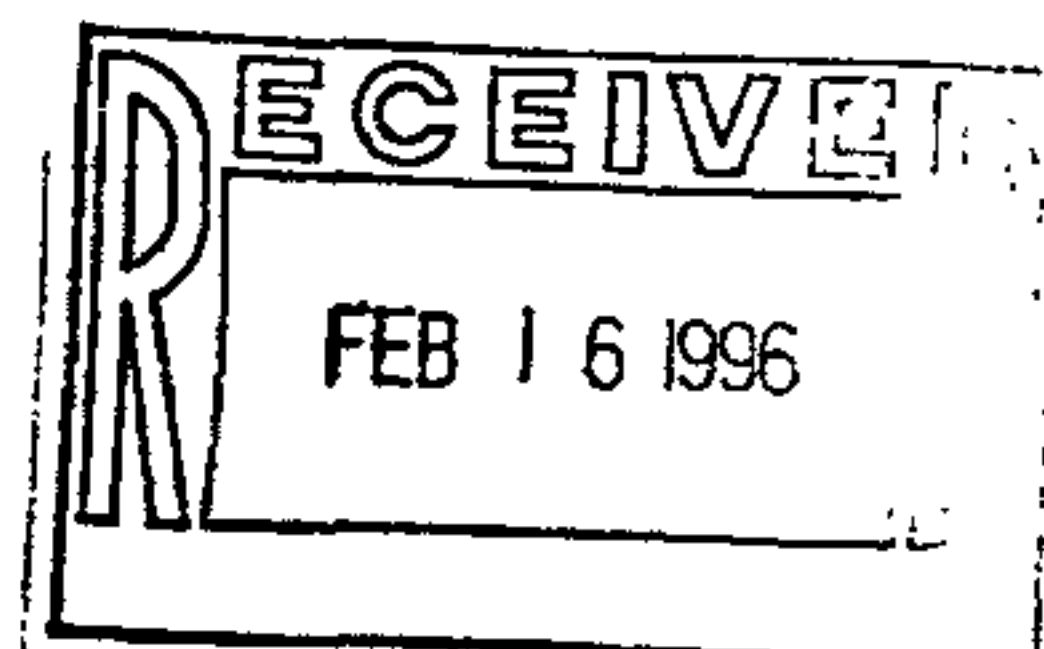
PHR/bj/c:PR:bj/focccK112

cc: Ginny Barnhart, Esq.
Tom Peddicord, Esq.

2/16 LCT due 3/5



BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE



TO: Virginia Barnhart, County Attorney
Office of Law

FROM: Kevin Kamenetz
Chairman, County Council

SUBJECT: Petition for Special Exception - Southside Broker's, Inc.
Case #96-226-X

DATE: February 15, 1996

I read with interest Zoning Commissioner Schmidt's Findings of Fact and Conclusions of Law in the above-captioned matter.

Page 5 of the Opinion states:

Such an interpretation as argued by the Petitioner would render the Bill meaningless, at least to those individuals who are licensed pawnbrokers in Baltimore County prior to the effective date of the Bill. They could move from location to location freely. I do not believe the [Council] intended such a result.

By way of legislative history, when I met with the existing pawnshop owners prior to introduction of the Bill, the pawnshop owners complained that imposing a one mile radius restriction on their existing businesses would in all practicable terms allow their landlords to arbitrarily increase their rent. Finding that to be a reasonable position, I exempted existing pawnshops from that radius restriction. As they would otherwise be subject to a special exceptions petition, I found that exemption to be reasonable.

Interestingly, I received correspondence from a competitor who desired that I become involved before the Zoning Commissioner. In declining, I also noted my belief that the one mile radius restriction was not applicable. I enclose a copy of that correspondence.

I believe that an injustice has occurred here, and I seek your input regarding potential responses.

KK:pln
Enclosure
BARNHART.002



COUNTY COUNCIL OF BALTIMORE COUNTY

COURT HOUSE, TOWSON, MARYLAND 21204

KEVIN KAMENETZ
COUNCILMAN, SECOND DISTRICT

COUNCIL OFFICE: 887-3198
DISTRICT OFFICE: 887-3385

January 2, 1996

Mr. Howard I. Dubick, President
Gold Marina Jewelry and Pawn
138 Eastern Boulevard
Essex, Maryland 21221

Dear Mr. Dubick:

Thank you for your December 28, 1995 correspondence relating to Mr. Scherr's desire to move his existing pawn shop.

As you may recall, one of the major considerations raised by existing pawn shop owners regarding the new law was an ability for existing owners to have the flexibility to move where economic circumstances so dictated. As a result of these considerations, the bill was amended to exempt existing pawn shop owners from the mile radius. Mr. Scherr's move is otherwise subject to existing zoning regulations, including a requirement that he have a Special Exception Hearing.

It is my practice not to involve myself in zoning development issues. To do otherwise would be an attempt to influence the outcome of proceedings by individuals who are subject to the Appropriation Budget Process.

The most effective manner to have your concerns recognized would be to make them known at the hearing.

Very truly yours,

Kevin Kamenetz
Councilman, Second District

KK:pln
DUBICK.LTR

RECEIVED
DEC 29 1995

December 28, 1995

ATTN: KEVIN KAMENETZ

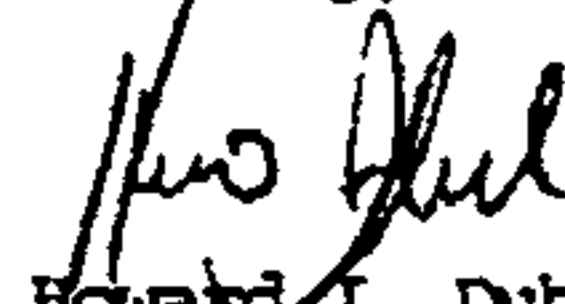
Dear Mr. Kmenetz,

I am not sure if you are aware of Micky Sher's desire to move his existing pawn shop from Rte. 40 to Essex. Moving his pawn shop in an area that has two pawnshops seems to be an overkill, as you stated in your findings about how pawnshops have "an adverse effect on nearby residential and commercial areas by creating an impression of community decline and instability".

The reason I am writing to you is because you enacted th bill that keeps control of the pawnshops and by Mr. Sher moving his store to the Essex community, violates the premise of the Bill. He clearly violates the bill because the proposed shop is within 1 mile of another pawn shop called Pawn It.. If this one issue is allowed to be by-passed then the rest of the Bill is at that POINT CONSIDERED TO BE inconsequential also. Mr. Sher would be setting a precedence as to not following the guidalines of the bill.

I feel you can help uphold the bill by being more aware of the consequences of Mr. Sher's move, and I am sure if you would tell Zoning your feelings, they would listen and understand.

Sincerely,



Howard I. Dubick
President, Gold Marina
Jewelry and Pawn

410-687-5045

P.S.

The hearing is scheduled for January 2, 1996 at 11:00 a.m..

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

TO : C. Marks
D. Felling
M. Worrall

DATE: 8/07/00

FROM: Kathi

RE : FYI – Letter received re Case No. 96-226-X /Southside Brokers /Scheduled for special
deliberation on 8/16/00 /on remand from Court of Special Appeals

The attached letter was received this date from David Gildea, Esquire, in the subject matter stating the reasons why he believes this matter should be heard *de novo* by the Board, with a full hearing scheduled on remand.

As you know, you are scheduled to deliberate on 8/16/00 for the purpose of determining whether or not additional hearing is required in light of the Court's remand, or if sufficient evidence exists to render a decision as required by the Court of Special Appeals.

On March 22, 2000, a complete extract was provided to you containing the transcript of the case before the Board, as well as copies of all exhibits entered.

Should you have any questions concerning this or the deliberation on 8/16/00, please call me.

Kathi

Attachment



BALTIMORE COUNTY, MARYLAND
Inter-Office Memorandum

DATE: November 29, 1995

TO: Hearing Officer

FROM: John L. Lewis
Planner II
Zoning Review, PDM

SUBJECT: Item #226
1508 Back River Neck Road

Per Pat Roddy of Law Office (11/29/95, 8:30 a.m.), since Mr. Scheer has been legally operating, he is exempt from "no new licenses to exceed 12" in Bill 112-95. Special Exception is required for new location.

Again per Mr. Roddy, he is exempt from Council district limits and 1 mile radius.

JLL:scj

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

DATE: August 2, 2002

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton 
Board of Appeals

SUBJECT: **Country Ridge Ridge Shopping Center**
Case No.: 96-226-X
PDM: 96-226-X
Circuit Court Case No.: 03-C-97-5479

In the September, 2001 term, the Court of Special Appeals REVERSED the ruling the Circuit Court and AFFIRMED the Board of Appeals. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith, along with Exhibits.

Attachment: SUBJECT FILE ATTACHED (w/Exhibits)

APPEAL

Petition for Special Exception
767 ft. SE of Back River Neck Road
(1508 Back River Neck Road)
11th Election District - 5th Councilmanic District
Case No.96-226-X

- ✓ Petition(s) for Special Exception
- ✓ Description of Property
- ✓ Certificate of Publication
- ✓ Entry of Appearance of People's Counsel
- ✓ Zoning Plans Advisory Committee Comments
- ✓ Petitioner(s), Protestant(s), and Citizen(s) Sign-In Sheets
- ✓ Petitioner's Exhibits: -1 - Plan to accompany Special Exception
2A-2F - Six photographs

- Protestant's Exhibits: - 1 - Memorandum to Zoning Commissioner from Susan Wideman, dated January 1, 1996 and one photograph
- ✓ 2 - Letter to Zoning Commissioner from John M. Hession, dated December 30, 1995 and one photograph
 - ✓ 3 - Letter from Jackie Nickel/Essex-Middle River Civic Council, Inc.
 - ✓ 4 - Letter from Jackie Nickel/Rockaway Beach Improvement Assn., Inc.
 - ✓ 5 - Photocopy of zoning map

✓ 16 Miscellaneous Correspondences

✓ County Council Bill No. 112-95

✓ Request for Reconsideration received from Roger N. Powell, dated January 31, 1996

✓ Zoning Commissioner's Order dated January 22, 1996 (Denied)

✓ Zoning Commissioner's Ruling on Motion for Reconsideration dated April 19, 1996 (Granted)

1 Notice of Appeal received on May 9, 1996 from Peter Max Zimmerman and Carole S. Demilio, People's Counsel

Notice of Appeal received on May 16, 1996 from Jack Hession and Alfred E. Clasing, Jr. on behalf of Back River Neck Peninsula Community Association Inc.

cc: Roger N. Powell, Esquire, 107 Old Court Road, Baltimore, MD 21208
Mr. Gary S. Salvo, 11509 Pulaski Highway, White Marsh, MD 21162
Robert F. Dashiell, Esquire, 2300 N. Calvert St., Ste. 100, Baltimore, MD 21218

Dennis →
Alornis

- ✓ ~~Mr. Steve Cassidy~~, 1227 Eastern Blvd. 21221
- Mr. Howard Dubick, 138 Eastern Blvd. 21221
- Mr. Al Clasing, Jr., 2025 Holly Neck Road, 21221
- Mr. Richard J. Shrader, 2016 Poplar Rd., 21221
- Mr. Marion MacCrehan, 1708 Beachwood Avenue, 21221
- Ms. Betty Christopher, 2116 Holly Neck Road, 21221
- Ms. Theresa Guckert, 2530 Island View Road, 21221
- Mr. Orlando Yarborough, 101 Back River Neck Rd., 21221
- * Mr. Jack Hession, 2411 Beach Avenue, 21221
- * People's Counsel of Baltimore County, M.S. 2010

Request Notification: *KAREN BROWN - PLANNING OFFICE*
Patrick Keller, Director, Planning & Zoning
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

Meyer Scherr, President
Southside Brokers, Inc.
1101 Light Street
Baltimore, MD 21230

Hession

Added:
Kenneth Kest, Asst Co
Attorney

VE

APPEAL

Petition for Special Exception
767 ft. SE of Back River Neck Road
(1508 Back River Neck Road)
11th Election District - 5th Councilmanic District
Case No.96-226-X

Petition(s) for Special Exception

Description of Property

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioner(s), Protestant(s), and Citizen(s) Sign-In Sheets

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2A-2F - Six photographs

Protestant's Exhibits: 1 - Memorandum to Zoning Commissioner from
Susan Wideman, dated January 1, 1996 and
one photograph
2 - Letter to Zoning Commissioner from John
M. Hession, dated December 30, 1995 and
one photograph
3 - Letter from Jackie Nickel/Essex-Middle
River Civic Council, Inc.
4 - Letter from Jackie Nickel/Rockaway
Beach Improvement Assn., Inc.
5 - Photocopy of zoning map

16 Miscellaneous Correspondences

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cc: Roger N. Powell, Esquire, 107 Old Court Road, Baltimore, MD 21208
Mr. Gary S. Salvo, 11509 Pulaski Highway, White Marsh, MD 21162
Robert F. Dashiell, Esquire, 2300 N. Calvert St., Ste. 100,
Baltimore, MD 21218
Mr. Steve Cassidy, 1227 Eastern Blvd. 21221
Mr. Howard Dubick, 138 Eastern Blvd. 21221
Mr. Al Clasing, Jr., 2025 Holly Neck Road, 21221
Mr. Richard J. Shrader, 2016 Poplar Rd., 21221
Mr. Marion MacCrehan, 1708 Beachwood Avenue, 21221
Ms. Betty Christopher, 2116 Holly Neck Road, 21221
Ms. Theresa Guckert, 2530 Island View Road, 21221
Mr. Orlando Yarborough, 101 Back River Neck Rd., 21221
Mr. Jack Hession, 2411 Beach Avenue, 21221
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

11/22/04

Case Number: 03-C-01-000685 AE
Date Filed: 01/23/2001
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter Of: Country Ridge Shopping Center Inc, Et Al

C A S E H I S T O R Y

CONSOLIDATED/RELATED CASES

Lead CaseID 03-C-01-000685

SubCaseID	Type	Start	End
03-C-01-000685	T	03/24	01

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	~~69-226 X~~ 96-226-X
Case Folder ID	001000685v01

INVOLVED PARTIES

Type	Num	Name(Last First Mid Title)	Addr Str/End	Pty Disp	Addr Update	Entered
PET	001	Country Ridge Shopping Center Inc		CT	03 09 16 03	01 23 01
			Party ID 0407100			
Attorney	0001691	Powell Roger L				01 23 01
		107 Old Court Road				
		Baltimore MD 21208				

(410)653-0262

0016859 Gildea, David K
 Gildea L L C
 301 North Charles St
 Ste 800
 Baltimore MD 21201
 (410)234-0070

01/23/01

Type Num	Name (Last First Mid Title)	Addr Str/End	Pty Disp Addr Update	Entered
PET 002	Southside Brokers Inc		CT D0 09/16/03	01/23/01
		Party ID 0407501		
Attorney 0006691	Powell Roger N 107 Old Court Road Baltimore MD 21208 (410)653-0262			01/23/01
	0016859 Gildea, David K Gildea L L C 301 North Charles St Ste 800 Baltimore, MD 21201 (410)234-0070			01/23/01
ITP 001	Baltimore County Board Of Appeals		CT D0 09/16/03	01/23/01
		Party ID 0407503		
Mail Rm 49	Old Courthouse 400 Washington Avenue Baltimore MD 21204	01/23/01	01/23/01 JM	01/23/01 JM
Attorney 0029075	Zimmerman, Peter M People's Counsel For Baltimore County Room 47 Courthouse 400 Washington Ave Towson MD 21204 (410)887-2188			02/16/01
	0804268 Demilio, Carole S Deputy Peoples Counsel Old Courthouse Room 47 400 Washington Ave Towson MD 21204 (410)887-2188			02/23/01

CALENDAR EVENTS

Date	Time	Dur	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
05/21/01	10 30A	020	Motion Hearing (Civil)		JTS	01 /01	03/07/01 JE PA
Vacate			09/16/03 C				
07/26/01	09 30A		Civil Non-Jury Trial	Y	TBA	01 /01	KLS KLS
Vacate			04/23/01 C				
07/27/01	09 30A		Civil Non-Jury Trial	Y	AW	01 /01	KLS AED
Vacate			07/20/01 C				

DISPOSITION HISTORY

Disp	Disp	Stage
Date	Code Description	Code Description User
09/16/03	DC Denree on Order	CT AFTER TRIAL HEARING

JUDGE HISTORY

JUDGE ASSIGNED	Type Assign	Date Removal	RSN
TBA To Be Assigned	J	01/23/01	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000	Petition for Judicial Review	01/22/01	01/23/01	PET001	TBA	09/16/03	JM PA
0001001	Response to Petition for Judicial Review	02/15/01	02/16/01	ITP001	TBA	09/16/03	AR PA
0001002	*Reply Memorandum of Appellant, Southside Brokers Inc	06/11/01	06/14/01	PET001	TBA	09/16/03	AR PA
0002000	*Certificate of Notice	01/26/01	01/30/01	ITP001	TBA	09/16/03	DR PA
0003000	Motion to Dismiss and/or Raising Preliminary Objections with exhibits	02/15/01	02/16/01	ITP001	BEC Denied	05/24/01	AR PH
0004000	Request for Hearing/Motion to Dismiss	02/21/01	02/23/01	ITP001	BEC Denied	05/24/01	DR PH

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0005000	Hearing Notice	03/07/01	03/07/01	000	TBA	03/07/01	JE JE
0006000	proceedings on remand from the Circuit Court for Baltimore County before the Board of Appeals of Baltimore County	03/15/01	03/16/01	000	TBA	09/16/03	MJ PA
0007000	Scheduling Order	04/23/01	04/23/01	000	TBA	04/23/01	KLS KLS
0008000	Scheduling Order	04/23/01	04/23/01	000	TBA	04/23/01	KLS KLS
0009000	*Correspondence	05/16/01	05/17/01	000	TBA	05/17/01	MJ MJ
0009001	*Answer Filed by PET002-Southside Brokers Inc , PET001-Country Ridge Shopping Center Inc	05/21/01	05/22/01	PET002	TBA	09/16/03	MI PA
0010000	Memorandum	05/31/01	06/04/01	ITP001	TBA	06/04/01	DR DR
0011000	Original record sent to COSA of Maryland by certified mail #7099-3220-0003-9706 2 volumes (C01-0307 & C01-0685) 1 transcript and exhibit	10/18/01	10/18/01	000	TBA	09/16/03	FG PA
0012000	*Mandate from COSA-Judgment of the Baltimore County Circuit Court reversed and ruling of the Baltimore County Board of Appeals affirmed, costs to be paid by appellees Reported opinion by J Moylan July 3, 2002 Mandate issued	07/16/02	07/17/02	000	TBA	09/16/03	DR PA

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	02/15/01	0	no	no	DANS	D	001	001
1ANS	1st Answer Tickle	CLOSED	05/21/01	0	no	no	DANS	D	009	001
1YRT	One Year Tickle (Jud	CLOSED	01/22/02	365	no	no	DAAA	D	000	000
EXPU	Exhibit Pickup Notice	CLOSED	11/15/03	30	no	no			000	000
SLMM	Set List Motions Mar	CLOSED	11/17/03	999	yes	no	DRHR	D	000	000
SLMR	Set List For Motions	CANCEL	03/09/01	22	no	no	MDIS	D	000	000
SLTR	Set List For Trial	DONE	02/15/01	0	yes	yes	1ANS	T	001	001
SLTR	Set List For Trial	CANCEL	05/21/01	0	yes	no	1ANS	T	009	001

EXHIBITS

Line #	Marked	Code	Description	Sp#	Sloc	NoticeDt	Disp Dt	Dis By

Offered By	ITP	001	Baltimore County Board Of App					
000		B	returned after 10/					

DIFFERENTIATED CASE MANAGEMENT**TRACKS AND MILESTONES**

Track	R1	Description	EXPEDITED APPEAL TRACK	Custom	Yes
Assign Date	04/23/01	Order Date	04/23/01		
Start Date	04/23/01	Remove Date			

Milestone	Scheduled	Target	Actual	Status

Motions to Dismiss under MD Rule 2-322c	05/08/01	09/16	03	CLOSED
All Motions (excluding Motions in Limine	06/12/01	09/16	03	CLOSED
TRIAL DATE is	07/22/01	09/16	03	CLOSED

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

06/19/01

Case Number: 03-C-01-000307 AE
Date Filed: 01/11/2001
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter Of: Country Ridge Shopping Center Inc, Et Al

C A S E H I S T O R Y

CONSOLIDATED/RELATED CASES

Lead CaseID 03-C-01-000307

SubCaseID	Type	Start	End
03-C-01-000685	T	05/24/01	

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	69-226-X
Case Folder ID	C01000307V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr	Str/End	Disposition	Addr	Update	Entered
PET	001	Country Ridge Shopping Center Inc			BT DO	06/15/01		01/11/01
		Attorney: 0006691 Powell, Roger N			Removed.	05/02/01		01/11/01
		0016859 Gildea, David K						01/11/01
		Gildea L L C						
		301 North Charles St						

RECEIVED
COUNTY COURT FOR BALTIMORE COUNTY
01 JUN 20 PM 12:49

Ste 800
 Baltimore, MD 21201
 (410)234-0070

Type Num	Name(Last First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
PET 002	Southside Brokers Inc Attorney 0006691 Powell, Roger N Powell & Sorrell 107 Old Court Road Baltimore, MD 21208 (410)653-0262		BT DO 06/15/01 01/11/01	01/11/01
	0016859 Gildea, David K Gildea L L C 301 North Charles St Ste 800 Baltimore, MD 21201 (410)234-0070		01/11/01	
ITP 001	Baltimore County Board Of Appeals Mail Room 49 Old Courthouse 400 Washington Avenue Towson, MD 21204	01/11/01	BT DO 06/15/01	01/11/01
Attorney	0005744 Demilio, Carole S		Removed: 02/23/01 02/16/01	
	0029075 Zimmerman, Peter M People's Counsel For Baltimore County Room 47 Courthouse 400 Washington Ave Towson, MD 21204 (410)887-2188		02/16/01	
	0804268 Demilio, Carole S Deputy Peoples Counsel Old Courthouse Room 47 400 Washington Ave Towson, MD 21204 (410)887-2188		02/23/01	

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User	ID
05/21/01	10 30A	02Q	yes	MOTN	S		BEC	01	/01			03/07/01				JE	PF	
06/12/01	09 30A	02Q	yes	CIVI	S		JGT	01	/01	CON	C	06/12/01	JGT	P		Y	KLS	
Stenographer(s) Barbara Ely																		

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned	J	01/11/01	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000	Petition for Judicial Review Filed by PET002-Southside Brokers Inc . PET001-Country Ridge Shopping Center Inc.	01/09/01	01/11/01	PET002	TBA	06/15/01	TT JH
0001001	Response to Petition for Judicial Review	02/15/01	02/16/01	ITP001	TBA	06/15/01	AR JH
0002000	Certificate of Notice	01/26/01	01/30/01	ITP001	TBA	06/15/01	DR JH
0003000	Motion to Dismiss and/or Raising Preliminary Objections with exhibits	02/15/01	02/16/01	ITP001	BEC Denied	05/24/01	AR PH
0003001	Answer	03/01/00	03/02/01	PET002	TBA	06/15/01	MJ JH
0004000	Request for Hearing (Motion to Dismiss)	02/21/01	02/22/01	ITP001	BEC Denied	05/24/01	DFP PH
0005000	Attorney Appearance Removed Carole Demilio	02/23/01	02/23/01	ITP001	TBA	02/23/01	AR AR
0006000	Hearing Notice	03/07/01	03/07/01	000	TBA	03/07/01	JE JE
0007000	Transcript of Record from Adm Agency	03/15/01	03/20/01	ITP001	TBA	06/15/01	DR JH
0008000	Notice of Transcript of Record Sent	03/20/01	03/20/01	ITP001	TBA	03/20/01	DR DR
0009000	Notice of Transcript of Record Sent	03/20/01	03/20/01	PET001	TBA	03/20/01	DR DR
0010000	Scheduling Order	03/23/01	03/23/01	000	TBA	03/23/01	KLS KLS
0011000	Attorney Appearance Filed	03/26/01	03/27/01	PET002	TBA	03/27/01	AR AR
0012000	Hearing Notice	03/29/01	03/29/01	PET002	TBA	03/29/01	KLS KLS
0013000	Hearing Notice	03/29/01	03/29/01	PET002	TBA	03/29/01	KLS KLS
0014000	Answer	04/20/01	04/23/01	ITP001	TBA	06/15/01	MF JH
0015000	Request for Hearing/ 14000	04/20/01	04/23/01	ITP001	TBA	06/15/01	MF JH

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User	ID
0016000	Answer to Motion to Amend and Consolidate	04/20/01	04/23/01	ITP001	TBA		06/15/01	MF	JH
0017000	Motion to Amend and Consolidate Filed by PET001-Country Ridge Shopping Center Inc. , PET002-Southside Brokers Inc.	04/24/01	04/25/01	PET001	ALB	Granted	05/01/01	AR	JH
0017001	*Answer Filed by PET001-Country Ridge Shopping Center Inc. , PET002-Southside Brokers Inc.	04/26/01	04/27/01	PET001	TBA		06/15/01	MJ	JH
0018000	*Motion for Modification of Time Requirement for filing a Memorandum as provided by Maryland Rule 7-207(a) Filed by PET001-Country Ridge Shopping Center Inc. , PET002-Southside Brokers Inc.	04/26/01	04/27/01	PET001	BEC	Granted	05/24/01	MJ	PH
0019000	Order to Strike Appearance	05/01/01	05/02/01	PET001	TBA			PH	PH
0020000	Attorney Appearance Removed Roger N Powell	05/02/01	05/02/01	PET001	TBA		05/02/01	PH	PH
0021000	Memorandum of Law in Support of Petition for Judicial Review with exhibits Filed by PET001-Country Ridge Shopping Center Inc. , PET002-Southside Brokers Inc.	05/01/01	05/02/01	PET001	TBA		05/02/01	AR	AR
0022000	Motion to Strike Order *	05/04/01	05/08/01	ITP001	TBA			OFF	OFF
0023000	Request for Hearing * (Motion to Strike Order)	05/04/01	05/08/01	ITP001	TBA		06/15/01	OFF	JH
0024000	*Correspondence	05/16/01	05/17/01	000	TBA		05/17/01	MJ	PH
0025000	Memorandum *	05/31/01	06/01/01	ITP001	TBA		06/01/01	OFF	OFF
0026000	Open Court Proceeding June 12, 2001 Hon John G Turnbull II Hearing had Opinion and order to be filed.	06/12/01	06/12/01	000	JGT		06/15/01	KP	JH
0027000	Opinion And Order Of Court That The Decision Of The Board Of Appeals IS REVERSED And Case Is REMANDED To The Board Of Appeals	06/15/01	06/15/01	000	JGT	Granted	06/15/01	JH	JH
0028000	Docket entries sent to Baltimore County Board of Appeals	06/19/01	06/19/01	000	TBA			CAM	CAM

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	01/11/02	365	no	no	DAAA	D	000	000
1ANS	1st Answer Tickle	CLOSED	02/15/01	0	no	no	DANS	D	001	001
SLTR	Set List For Trial	DONE	02/15/01	0	yes	yes	1ANS	T	001	001
SLMR	Set List For Motions	CANCEL	03/09/01	22	no	no	SLMM	T	000	000
SLMM	Set List Motions Mar	DONE	11/17/03	999	yes	yes	DANS	D	000	000
SLMH	Set List For Motions	CANCEL	03/01/00	0	no	no	SLMM	T	000	000
SLIL	Set List - Informati	CANCEL	03/26/01	0	no	no	DAAF	D	011	000
SLMM	Set List Motions Mar	DONE	01/14/04	999	yes	yes	DANS	D	000	000
SLMR	Set List For Motions	CANCEL	05/16/01	22	no	no	SLMM	T	000	000
SLMH	Set List For Motions	CANCEL	04/26/01	0	no	no	SLMM	T	000	000
SLMR	Set List For Motions	CANCEL	05/18/01	22	no	no	MMOT	D	000	000
SLMR	Set List For Motions	CANCEL	05/26/01	22	no	no	MSTR	D	000	000
SLMM	Set List Motions Mar	CLOSED	01/28/04	999	yes	no	DRHR	D	000	000
EXPU	Exhibit Pickup Notic	OPEN	08/14/01	30	no	no			000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp	Dt	Dis	By
Offered By	ITP	001	Baltimore County Board Of App							
000		B	BOX 257/TRANSCRIPT							B

DIFFERENTIATED CASE MANAGEMENT**TRACKS AND MILESTONES**

03-C-01-000307 Date: 06/19/01 Time: 09:09

Page: 6

Track R1 Description EXPEDITED APPEAL TRACK Custom: Yes
Assign Date 03/23 01 Order Date . 03/23/01
Start Date 03/23 01 Remove Date:

Milestone	Scheduled Target	Actual	Status
Motions to Dismiss under MD Rule 2-322C	04/07/01	06/15/01	CLOSED
All Motions (excluding Motions in Limine	05/12/01	06/15/01	CLOSED
TRIAL DATE is	06/12/01	06/21/01	06/12/01 REACHED

CCt #3-C-01-307 and CCt #3-C-01-685

January 11, 2001		Petition for Judicial Review filed by David K. Gildea, Esquire and Roger N. Powell, Esquire (from the Majority Opinion on Remand issued by the Board of Appeals on December 13, 2000). <i>Civil Action #3-C-01-307</i>
January 12		Ruling on Motion for Reconsideration issued by the Board of Appeals; Motion for Reconsideration is DENIED.
January 22	✓E	Petition for Judicial Review filed in the Circuit Court for Baltimore County by David K. Gildea, Esquire, and Roger N. Powell, Esquire, on behalf of Country Ridge Shopping Center, Inc./Southside Brokers, Inc. <i>Civil Action #3-C-01-685.</i>
January 25		Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals. <i>Civil Action #3-C-01-307</i>
January 25		Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals. <i>Civil Action #3-C-01-685.</i>
January 26		Certificate of Notice sent to interested parties. <i>Civil Action #3-C-01-307</i>
January 26		Certificate of Notice sent to interested parties. <i>Civil Action #3-C-01-685.</i>
March 15, 2001	✓	Record of Proceedings (no additional transcript nor exhibits) filed in the Circuit Court for Baltimore County. <i>Civil Action #3-C-01-307</i>
March 15, 2001	✓	Record of Proceedings (with reference to see 3-C-01-307 for complete history) filed in the Circuit Court for Baltimore County. <i>Civil Action #3-C-01-685.</i>
June 13, 2001	✓E	Opinion and Order issued by the CCt (Judge Turnbull); decision of the CBA is REVERSED; case is REMANDED to the CBA for a "new consideration" of Petition for Special Exception.

CCt #3-C-01-307 and CCt #3-C-01-685

September 8, 1999 Ruling of the Circuit Court for Baltimore County (Hon. Thomas J. Bollinger) case is REMANDED pursuant to mandate of the Court of Special Appeals for "further proceedings" in accordance with the opinion of the Court of Special Appeals. Record Extract in Civil Action #3-C-97-5479 attached herewith as Exhibit A. (Transcript and Record of Proceedings filed by the Board of Appeals on 9/30/97, is stored in Box 31 and is maintained by the Circuit Court Records Manager under Civil Action No. 3-C-97-5479).

Note from the Board of Appeals file: The Majority Opinion in this matter was authored by Diane Levero and Harry Buchheister. Both Mr. Buchheister and Ms. Levero are no longer on the Board. The only remaining member of this panel is Chuck Marks, who authored the Dissenting Opinion.

Note: The panel of this remand consists of Charles L. Marks, Donna M. Felling and Margaret Worrall, who reviewed the Joint Record Abstract filed by both parties in the Court of Special Appeals as the complete record of this matter – a copy of said Joint Record Abstract is included in the Board of Appeals Record of Proceedings filed March 15, 2001 in the Circuit Court for Baltimore County under Civil Action No. 3-C-01-000307.

Dec. 21, 1999 - Correspondence between Counsel (People's Counsel for Baltimore
Aug. 14, 2000 County, Protestants and David K. Gildea, Esquire, on behalf of Country Ridge Shopping Center, Inc. and Southside Brokers, Inc., Petitioners) and the Board of Appeals regarding procedure to be followed.

August 16 Public Deliberation /Special Session concluded by the Board of Appeals (Minutes of Deliberation are included with this Record -- no additional transcript nor exhibits)

December 13 Majority Opinion on Remand from the Circuit Court for Baltimore County pursuant to Order of the Court of Special Appeals issued by the Board of Appeals; Petition for Special Exception is DENIED; Dissenting Opinion issued by Mr. Marks.

December 19 Motion for Reconsideration of Board of Appeals December 13, 2000 decision on remand, filed by David K. Gildea, Esquire, on behalf of Petitioners.

December 22, 2000 People's Counsel for Baltimore County's Answer to Motion for Reconsideration filed by Peter Max Zimmerman and Carole S. Demilio.

December 22 Letter /Addendum to Motion for Reconsideration filed by David Gildea, Esquire, on behalf of Petitioners.

January 3, 2001 Public Deliberation on Motion for Reconsideration concluded by the Board of Appeals.

9/10/96 -Notice of Assignment sent to following for hearing scheduled for Wednesday, November 6, 1996 at 10:00 a.m.:

People's Counsel for Baltimore County
Jack Hession /Alfred E. Clasing, Jr., et al
Roger N. Powell, Esquire
Gary S. Salvo /Country Ridge
Meyer Scherr /Southside Brokers, Inc.
Robert F. Dashiell, Esquire
Steve Cassidy
Howard Dubick
Richard J. Shrader
Marion MacCrehan
Betty Christopher
Theresa Guckert
Orlando Yarborough
Pat Keller, Planning Director
Karen Brown /Planning
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

10/18/96 -Motion in Limine filed by People's Counsel to limit evidence as a matter of public policy for reasons as stated; and Request for Hearing on said Motion.

10/21/96 -Copy of Rules of Practice & Procedure (Board's) faxed to Roger N. Powell, Esq. per his telephone request.

10/22/96 -FAX copy of Motion to Strike People's Counsel Motion in Limine for reasons as stated. Copy to PMZ.

10/23/96 -Hard copy of Motion to Strike filed by Roger Powell, Esquire.

- Letter from People's Counsel advising of possible need for additional hearing day (second day) due to large number of witnesses; also, expected witness's scheduling problem with 11/06 date which could prevent attendance; therefore, would call this witness on second day.

10/25/96 -Motion for Protective Order and/or Motion to Quash filed by Nancy C. West, Assistant County Attorney, on behalf of Baltimore County.

10/29/96 -Letter from Roger Powell, Esquire in response to Mr. Zimmerman's letter of October 23, 1996 regarding additional date and unavailability of witness.

10/30/96 -Answer to Motion to Strike filed by P. Zimmerman.

11/06/96 -Hearing convened. Argument received on Motions. Motion to Quash granted as to subpoenas issued for Councilman Kamenetz and Councilman DePazzo QUASHED. Hearing proceeded on merits of the case. Continued to 1/23/97 for day #2 (date confirmed with Counsel); notice to be sent.

- Notice of Assignment /Day #2 sent to parties; second day scheduled for Thursday, January 23, 1997 at 10:00 a.m. Copies to C.M.B.

1/21/97 -T/C from Judy /Roger Powell's office -- will be requesting a postponement of Thursday 1/23/97 hearing due to death in family -R. Powell's father-in-law died 1/20/97. Beginning mourning period; must request postponement for Thursday; will put same in writing to Board via FAX.

-Advised Judy to fax letter; will discuss with PC and advise Judy by telephone as to status, date, etc.

- Pursuant to conversation w/Office of PC and subsequent T/C to Judy, hearing to be PP'd and rescheduled to 3/12 date, date agreed to by parties.

1/21/97 -Notice of PP and Reassignment sent to parties; matter rescheduled to Wednesday, March 12, 1997 at 10:00 a.m.

3/12/97 -Hearing concluded on merits; memos due from parties Friday, April 4, 1997; deliberation scheduled for 4/17/97 @ 9:30 a.m.; notice to be sent.

3/13/97 -Notice of Deliberation sent to parties; scheduled for Thursday, April 17, 1997 at 10:00 a.m.

4/02/97 -Memo filed by Roger N. Powell, Esquire, on behalf of Petitioner;
-Memo filed by Office of People's Counsel.
Copy of above to CBM

4/10/97 -Supplement to Petitioner's Memorandum filed by R. Powell; was not stamped in by CBA secretary, but was returned to Mr. Powell this date; record officially closed with the filing of memos on 4/02/97. No further submittals to be accepted or placed in the file in this matter. CC to PC.

Civil Action No. 3-C-97-05479

November 29, 1995 Petition for Special Exception filed by Southside Brokers, Inc., C.P., and Country Ridge Shopping Center, Inc., L.O., for the relocation of an existing pawnshop.

January 22 Order of the ZC - Petition for Special Exception was DENIED.

February 1 Request for Reconsideration by R. Powell, Esq. for Southside.

April 19 Z.C.'s Ruling on Motion for Reconsideration issued; Petition for Special Exception is GRANTED; ordered that remainder of ZC's Order issued 1/22/96 is ratified and affirmed as amended.

May 9 Notice of Appeal filed People's Counsel for Baltimore County.

May 16 2nd Notice of Appeal filed by Jack Hession (as president) and Alfred E. Clasing, Jr., of Back River Neck Peninsula Commun. Assoc., Inc.

October 18 Motion in Limine filed by People's Counsel for Baltimore Co.

October 22 Motion to Strike filed by Roger Powell, Esq.

October 25 Motion for Protective Order and/or Motion to Quash filed by Virginia Barnhart, County Attorney, on behalf of Balto. Co.

October 30 Answer to Motion to Strike filed by People's Counsel.

November 6 Hearing before the Board of Appeals (Day #1) - Argument received on Motions. Motion to Quash granted as to subpoenas issued for Councilman Kamenetz and Councilman DePazzo QUASHED. Hearing proceeded on merits of the case.

March 12, 1997 Hearing before the Board of Appeals (Day #2 - concluded).

April 2 Petitioner's Memorandum filed by Roger N. Powell, Esquire.

April 2 People's Counsel's Post-Hearing Memorandum filed.

April 17 Deliberation conducted by the Board.

April 30 Majority Opinion and Order of the Board in which the Petition for Special Exception was DENIED. Dissent by Mr. Marks.

May 29, 1997 ✓E Petition for Judicial Review filed in the CCT for Baltimore County by Roger N. Powell, Esquire, on behalf of Southside Brokers, Inc. The Palmetto Group, Inc. (rec'd by CBA 3/27/97)

March 27 Certificate of Notice sent to interested parties.

July 21 Motion to Extend Time to Transmit Record filed by Roger N. Powell, Esquire. (Extension granted to 9/30/97)

September 30 Record of Proceedings and transcript of testimony filed in the Circuit Court for Baltimore County.

February 11, 1998 ✓ Order issued by the CCT; CBA decision AFFIRMED by Judge Bollinger.

March 6 Motion to Revise Judgment filed by R. Powell, Esq., on behalf of Southside (Motion dismissed by Judge Bollinger).

April 1 ✓E Notice of Appeal filed in the CSA by Roger Powell and David Gildea, Esquire, on behalf of Southside Brokers, Inc.

July 21, 1999 ✓ Unreported opinion issued by the CSA; judgment REVERSED; CASE remanded to the CCT with direction to REMAND to the CBA for further proceedings in accordance with this opinion.

September 8 ✓ Ruling issued by the CCT; Pursuant to the mandade of the CSA, case is REMANDED to the CBA for further proceedings in accordance with the opinion of the CSA. (Thomas J. Bollinger, J)

9/08/99 - Remanded to the Board by ruling of the Circuit Court pursuant to mandate of the CSA for "further proceedings" in accordance with the opinion of the CSA.

NOTE: The Majority Opinion in this matter was authored by Diane Levero and Harry Buchheister. Both Mr. Buchheister and Ms. Levero are no longer on the Board. The only remaining member of this panel is Chuck Marks, who authored the Dissenting Opinion.

Upon consideration of the above and a review /search for precedent set in similar situations, a determination will be made as to the proper steps to take on remand and the procedure to be following by the Board in the absence of Mr. Buchheister and Ms. Levero.

12/21/99 - Letter from P. Zimmerman requesting that this matter be scheduled for hearing on remand from the CSA.

2/09/2000 - Letter from David Gildea, Esquire, Counsel for Petitioner - requesting hearing to allow counsel to present argument on procedural issue only -- i.e., how the CSA remand should be handled by the Board.

2/18/00 - Letter to David Gildea and Peter Zimmerman - re: procedure to be followed on remand; two additional Board members to be assigned to case; review of transcript; public delib /meeting re procedure. Awaiting return of file from Circuit Court at this time.

2/18/00 - Letter to D. Gildea and P. Zimmerman indicated Board's position and method of procedure as this point -- two additional members to be chosen to review transcript and existing record with C. Marks; at conclusion of independent and individual review, deliberation /meeting to be scheduled whereby it will be determined if additional testimony is needed or if memos alone will supplement or if an opinion /order can be issued by this three-member panel based upon existing and original record.

4/24/00 - Notice of Deliberation /Special Session on Remand sent to parties this date; Board to convene to determine (1) if final decision can be reached based upon existing record; or (2) if memos and/or additional testimony is required. Deliberative session scheduled for Tuesday, August 8, 2000 at 1:00 p.m. FYI copy to C.W.F.

5/04/00 - T/C on behalf of R. Powell - he is in Circuit Court Garrett County on 8/08/00 at scheduled delib time. Explained deliberation process and CBA policy of postponing deliberations (only done in extraordinary circumstances). However, since this deliberation is not the usual delib session, would consider same for this case; request to be put in writing.

5/05/00 - Letter from R. Powell requesting PP of 8/08 to next week, giving dates he would be available. Awaiting comment from P. Zimmerman as to his availability on 8/16/00 (also possible could be 8/22/00 but not confirmed with R. Powell); also advised C of this request.

Page 4

5/05/00 -Confirmation with P. Zimmerman as to availability on 8/16/00 for rescheduling of deliberation in this matter due to special circumstances. Notice to be sent.

5/08/00 -Notice of PP and Reassignment of Deliberation sent to parties; reassigned to Wednesday, August 16, 2000 at 10:00 a.m. Copy of this notice also sent FYI to C.W.F. (same panel was scheduled to sit on 8/16/00 -- case scheduled for that date had been postponed).

8/07/00 -Letter from D. Gildea -- stating that de novo hearing is required as result of the instruction given by CSA in this matter on remand; citing differences between this matter and Prosser. Copy provided for each Board member in this matter scheduled for special deliberation session on 8/16/00.

8/14/00 -Response from Peter Zimmerman in opposition to position of D. Gildea in his 8/07/00 letter; Mr. Zimmerman's position is that the CSA did not intend for there to be a new evidentiary hearing before the Board -- citing the CSA opinion to support his argument.

8/16/00 -Deliberation concluded; Majority Opinion -- special exception is DENIED; evidence exists in record of original hearing to find for a denial (Worrall and Felling); Dissent by Marks /he would grant same.

12/19/00 -- Motion for Reconsideration of Board's December 13, 2000 decision on Remand /to address procedural error of law /potential conflict of interest (30-day appeal period running from 12/13/2000 to 1/12/01). Copies to be sent to C.W.F

12/22/00 -- People's Counsel for Baltimore County's Answer to Motion for Reconsideration filed by Peter Zimmerman.
- Addendum to Motion filed by David Gildea by way of letter dated December 21, 2000. Copies of both documents to be sent to C.W.F. and date scheduled for deliberation.

12/26/00 -Notice of Deliberation /Motion for Reconsideration sent to parties [copy to C.(left in mail box); W.and F.(in office 12/28/00)]; scheduled for Wednesday, January 3, 2001 at 9:00 a.m.

1/03/2001 -- Deliberated as scheduled; denied request for hearing on Motion; D -Motion for Reconsideration; procedure followed by CBA was correct.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: COUNTRY RIDGE SHOPPING CENTER, INC.
/Southside Brokers -Petitioners
Case No. 96-226-X

DATE : April 17, 1997 /9:30 a.m.

BOARD /PANEL : Charles L. Marks, Acting Chairman (CLM)
S. Diane Levero (SDL)
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Bianco
Legal Administrator

Those in attendance at this deliberation included the following counsel: Roger N. Powell, Esquire, Counsel for Petitioners; and Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel.

PURPOSE --to deliberate issues and matter presented to the Board in Case No. 96-226-X.

CLM: Good morning. The Board of Appeals for Baltimore County is in its regularly scheduled season for deliberation of a case which was previously heard over a period of two days which involves Country Ridge Shopping Center, Case No. 96-226-X. By law we are required to deliberate this case as it involves a zoning matter. Let me say that since the time of the hearing, the Board members have individually reviewed their notes, the file, the evidence and exhibits submitted, and I know they have taken considerable time to dwell on the matters so that a fair and impartial hearing is afforded everybody.

Having said that, I will proceed, and let one of my associates go first. Harry?

HEB: The County Council in this matter of pawnshops, after studying the situation, used its legislative authority and judgement to determine the standards and regulations for pawnbrokers in Baltimore County, and on July 20, 1995, Bill No. 112-95 was effected. The County Council limited the total number of pawnbrokers to 12 throughout the County to prevent undue concentration and particularly to avoid incompatible locations in transitional conservation areas. Revitalization of neighborhoods and communities in the Essex area was a high priority of the County based on an assessment of crime, economic development, housing availability and overall image of the area.

The Board heard Mr. Dillon, former County planner, testify

#96-226-X /Country Ridge Shopping Center, Inc. /Deliberation

that the area around the Country Ridge Shopping Center included a neighborhood with high levels of poverty and the lowest levels of income and property values in the County.

Captain Johnson of the 11th Police Precinct cited statistical evidence showing neighborhoods around the Center to have high incidents of crime. He testified that the impact of a third pawnshop in the Essex area on law enforcement would be negative. The County Council restricted the kinds of neighborhoods they would like to have protected.

Mary Emerick, conservation specialist, testified that the Essex Area is still the County's highest priority action area. County's intent is to keep pawnshops out of areas targeted for revitalization.

Pawnshops do serve a purpose; must differentiate appropriate from inappropriate location. A special exception may be granted under site and location standards observed in Section 436 of the BCZR. Included in those regulations is a minimum one-mile distance radius from any other pawnshop, and a limit of two in each councilmanic district.

Petitioner argues that the statute does not apply to Southside Brokers as they pre-existed on Pulaski Highway prior to the enactment of 112-95, and the pawnshop is not subject to the requirements of 434.4a requiring a special exception. Their petition is for transfer to a new location in the Country Ridge Shopping Center as an existing licensed operator.

In review of the evidence, it is clear to me that the new location under a separate license was established well after the enactment of 112-95, and therefore is subject to the regulation requiring a special exception. In view of the standards of 502.1 which governs whether a special exception is granted if applied to operating a pawnshop, Petitioners had no witnesses to testify in their support. Contrarily, we have County officials and area property owners who testified to the detrimental and negative effect pawnshops would have on area, and would be counter-productive to County plans for large expenditures for improvements in the area.

In consideration of the locational standard of 436 of the BCZR, while acknowledging the importance of the testimony of the inappropriate social and economic impact of additional pawnshops to the area are the stipulations that a pawnshop may not be located in a mile radius of any other pawnshop. Evidence by McKee ascertained that the site was in conflict with this one-mile minimum radius requirement; no more than two pawnshops may be located in a councilmanic district. The

locational violation of the site, in my view, requires denial of the special exception.

SDL: Section 436 states that pawnshops lawfully in existence on June 5, 1995 are not subject to the requirements. Petitioner argues that because he was operating in another area of the County on Pulaski Highway and moved to the subject location, he is not subject to 436.4 requiring a special exception. He argues that the intent of the statute was to limit the number to those existing, but intent of 436.1 is also to avoid undue concentration and so to avoid effects on older communities trying to conserve. I agree with People's Counsel that the grandfathering of operation goes with the land and not the person. The Country Ridge Shopping Center pawnshop, according to testimony, began in the spring of 1996, well after the effective date of the legislation. He must therefore obtain a special exception and is subject to the requirements of 436.4.

436.4a stipulates that pawnshops may not be located in one-mile radius, and no more than two in a councilmanic district. Regarding the one-mile requirement, testimony that subject pawnshop and the one on Eastern Boulevard are less than one-mile apart. Petitioner maintains it's more than one mile by street distance. Law speaks of radius; no question in my mind that means distance must be one mile measurement on a map. Captain Johnson testified to two in a councilmanic district. I am aware of two in Dundalk, Logan Village and Wise Avenue. There are four existing pawnshops in the 7th district; the existence of just two is grounds for denial.

On the basis that the Petitioner cannot satisfy the requirements of 436.4a on two grounds, the one-mile limit and at least two existing pawnshops in the 7th district, I would deny petition for special exception.

Because so much of the testimony on both sides concerned adverse effects on the subject location, I will also briefly address that.

This is a "which came first" issue -- does a pawnshop help to cause decay or is it a symptom of deterioration already taking place? I'm more inclined to think of it as a symptom -- something going on for some time. If there was no demand for a pawnshop, a pawnbroker would not move in in the first place, or would soon move out. In my personal opinion, I don't think the presence or absence of a pawnshop operating under the law would make much of a dent either way in what I consider the problems in the area -- crime, drugs, blight, poverty.

#96-226-X /Country Ridge Shopping Center, Inc. /Deliberation

Per County Council and Section 436.1c, pawnshops can cause adverse effects on neighboring areas. Testimony and evidence made it clear that such an area is sensitive and vulnerable area -- the County expended energy and funds to conserve and revitalize.

Using the standards in Schultz v. Pritts for granting or denying a special exception, that proposed use would have an adverse effect above and beyond what it would otherwise have; did seem it would have more than the usual adverse effect in this area. I therefore think the petition could be denied also under Schultz v. Pritts.

CLM: This hearing involves a petition for special exception to approve the relocation of existing pawnshop to a new location. Accordingly the Board is governed by legislation enacted by the County Council under Section 436 and Bill 112 adopted in 1995. When you read that legislation, it causes us to become aware that the County Council was quite concerned about the location of pawnshops, not because they are inadvertently bad -- but undue concentration or inappropriate citing has reasonable probability of causing adverse effects on nearby residential and commercial areas in position of decline. Those are not my words but the words of the Baltimore County Code Section 436.1c.

There's also a considerable amount of verbiage under 436 for conservation efforts, number of pawnshops needed to be regulated; that number in Baltimore County is more than sufficient to meet the needs, and to that end it is consistent with the intent of 436 to establish limit on total number of such shops consistent with public health, safety and welfare.

Section 436.4 provides that in addition to buffer, sign requirements and other requirements, pawnshop is also subject to the following:

- Location may not be within one mile radius of any other pawnshop;
- No more than two located in one councilmanic district; and
- The Zoning Commissioner may limit hours of operation.

Petitioner indicated that 112-95 specifically states that pawnshops lawfully in existence and operating on effective date of this act are not subject to the requirements of 436.4, that is the one mile limitation. Prior to adoption of legislation, was approved as a matter of right; bill changed that right; only granted by special exception. In addition to

legal requirements for granting of special exception under 502.1 of BCZR, bill imposed new requirements in the enactment of 436.4 of BCZR.

As I read express language of Section 6, County Council exempted pawnshops presently in existence from requirements of 436.4 as to existing pawnshop businesses. However, the provision of the bill requiring the granting of special exception can only be applied if existing business wanted to relocate. If they stayed at present location, no special exception was needed. If the Council had required that a special exception was needed, the language of Section 6 of the bill would serve no useful purpose. It is fundamental in legal interpretation that enactment should be so construed as to give effect if possible to every word or sentence therein, and no part should be superfluous, void or insignificant.

Section 112-95 exempted only from new law existing pawnshops; that designated brokers with presently existing businesses in Baltimore County were exempted from changes in the law.

If you read the bill that way, any pawnshop operator, whether new or not to Baltimore County, was not exempt from the bill if the broker intended to relocate to a different location. In reading the bill several times, it seems clear to me that this bill was not restricted by 436.4a -- may relocate within one-mile but was indeed subject to special exception requirements of BCZR.

Does the Petitioner meet 436.3 and the other requirements of a special exception and to that extent -- if the relocation of a pawnshop is valid, which in my opinion it is, does it meet specific requirements of 502.1 of the BCZR. To that end, we heard from substantial number of persons testifying.

Mr. Scherr, licensed by the State of Maryland and regulated and controlled, has no violations reported by the police; his premises in the Country Ridge Shopping Center has not appeared to cause flight of merchants from the center; and indeed, Mr. Dillon had actually visited the shop and found it to be well run and orderly operation. Large number of protestants testified as to why the presence of a pawnshop was not conducive to their neighborhood; why the shop did not satisfy the requirements of 502.1. These included long-time residents, Captain Johnson, Mary Emerick, and Jack Dillon, well-intended, honest and respected in their belief that it would be detrimental to community conservation efforts.

However, this Board is constrained to look beyond opinions and needs and look to the facts of the hearing. In focusing in on

special exception requirements, I could find no effect it would have on roads, streets, alleys; no hazard from fire or panic; no overcrowding of land or population; nor in any way interfere with schools, parks or other requirements. No light or air. The only question left to us is the fact that whether or not relocation would be detrimental to the health, safety or general welfare of the locality and inconsistent with the spirit and intent of the zoning regulations. The duty of the Board is to judge whether properties would be adversely affected, and whether the use is in harmony with the purpose and intent of the plan; any harm to neighboring areas and usage, and evidence, not opinion or hearsay, is what the Board looks to. No evidence of harm or disturbances or factors causing disharmony to comprehensive plan, then denial is either capricious or illegal.

From evidence shown, I am cognizant of legislation findings and community conservation and County Council to keep pawnshops out of targeted areas. They were precise concerning one mile radius, buffer requirements and standards. One must question therefore why the Council was not explicit and simply say that pawnshops could not, under any circumstances, relocate to community conservation areas. By including special exception requirements, as People's Counsel stated in their brief, each case must be determined on individual and factual basis and Court decisions.

Reading the briefs submitted by People's Counsel clearly, I am in agreement with many issues raised therein; it is not the function of this Board to create legislation. Benefit of doubt must be given to the Petitioner and broader standards of case law applied.

Petitioner applied to full benefit of Section 6, 112-95; was lawfully in existence and operating as of the date of the act. And in applying Schultz v. Pritts and People's Counsel v. Mangione, I am satisfied that the requirements of special exception have been satisfied. At least to me the Petitioner has demonstrated that the use has been well-kept and productive; no adverse impact on the neighborhood; met his burden before the Board and the special exception should be granted.

Having said that, there seems to be disagreement among the Board members concerning whether the act applied to the Petitioner, and also whether or not special exception requirements have been met. I'm of the opinion...

SDL: I would like you to clarify your stand on one mile radius; seems to me that because it was existing business he was

#96-226-X /Country Ridge Shopping Center, Inc. /Deliberation

permitted to move location; but the law states he has to be within one mile radius. As existing business on Pulaski Highway, seems like he was in the one mile; but once he moved, I don't see how you can say he was complying with the law.

CLM: I don't think it makes a difference. The law says he was exempt. Said if you were in existence, you can relocate anywhere. Only to new licenses being granted.

The fact of the matter is that Petitioner was in existence; wanted to relate; Council said by statute that anybody who was in business could relocate. They could just have easily said you could not relocate to within one mile. I think the legislation is very poorly worded. I know the intention of the Council, but that is not the way you read the act and the bill.

SDL: You go back to the legislation.

CLM: Under Section 5 was very specific; stated that 436.3 within 18 months from effective date of act. But when you go to Section 6, lawfully in existence and operating are not subject to the requirements of 436.4. They are required to perform special exception requirement; they are not subject to one mile radius factor.

HEB: I don't think they were grandfathered when they relocated; changed the ball game. I have to feel that the considerations of whatever the application of 502.1 might have been at Pulaski Highway is entirely different at the Country Ridge Shopping Center. I think there are any number of detrimental effects. They were already there; they will be expanding and I think that's what numerous witnesses, County officials, knowledgeable people in what is trying to be accomplished in the area, and numerous residents -- see these things as becoming an increasing problem for the reasons of the examples given -- pawnshops can be used, even though management is prudent -- it is an attraction that I feel at this shopping center could develop and that would deteriorate to a further point than what we already know is there from the testimony of several residents who said they do not go to that shopping center any more.

I think 502.1, this special exception - in no way does it satisfy 502.1.

CLM: I understand what you are saying, and I don't fault it. People's Counsel in their brief cited two Court of Appeals cases indicating that administrative board like this should take into accord opinions of protestants. But you are dealing

with a Court of Appeals case. They tend to be very liberal. I could find none in Maryland relative to the fact that this Board -- in a hearing you take into account opinions and not facts. I heard few facts.

HEB: But Captain Johnson provided statistical facts.

CLM: But he indicated in the last year they have gone down in the area. One of the districts cited with lowest crime rate increase in the County.

And I think a lot of that is due to the fact that community conservation efforts...

HEB: They don't want this interrupted.

CLM: How would it interrupt?

HEB: Petitioner has said -- people have a negative impression about pawnshops; does not apply in this case but impressions are based upon reality.

SDL: Going back to the business of moving pawnshops -- to prevent undue concentration -- they do not spell out in the law that pawnshops cannot move location, but otherwise, under your reasoning, Chuck, the 12, I assume there are probably 12 pawnshops in the County -- theoretically these could all move and relocate to Essex.

CLM: That's correct. Your assumption is correct. And I thought about that.

SDL: That goes against the intent of the law and intent and spirit of the zoning regulations.

CLM: I see what you are saying, but I think the Council has the responsibility to be more specific in legislation.

SDL: We have dealt with laws that were ambiguous before, but you must deal with the intent and in this law it is stated.

We have already gotten the denial, but it concerns me.

CLM: You have cited Schultz v. Pritts; we view Schultz v. Pritts in a different light. I don't think in this case facts were presented to show a pawnshop would be detrimental to the community. No merchants appeared in opposition; if anyone would be impacted, it would merchants. None appeared in opposition.

HEB: Why did they not appear in support?

SDL: I don't think -- as far as proof that it is detrimental but the law states, and as far as the County Council is concerned, they are detrimental -- think we have to go with the law as it's written. My personal opinion is it would not matter either way. Problems will still be there.

CLM: My position will remain unchanged, and what I hear from my associates is that you are going to concur that (1) operating unlawfully in one-mile radius; (2) special exception should be denied.

And I will dissent on both points.

HEB: I would like to make one other point. The County and the news media, I have to say that from where I live, but what I read about there and remember about it -- when I used to teach at Stemmers Run in 1951 -- the place has changed dramatically; effort to revitalize and restore with an attitude toward the general public and those people who live in that very large area -- this is a place to move to.

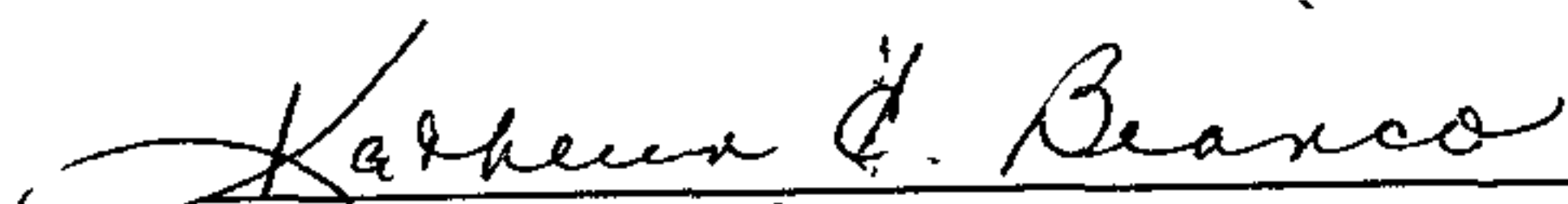
Looking at all kinds of issues; looking at arena and you have a development of expensive homes; want these realized; why not move pawnshop to Catonsville; why not move to Perry Hall? This community has attraction because of sociological aspects brought out in the testimony.

This has a deleterious effect on the community in the long haul; think it is a sore spot that can grow, not through the management and policies of the shop owner himself, but something about its presence. Therefore, I feel very strongly that this special exception should be denied.

CLM: I don't agree.

The Board will issue its formal opinion in a very short time, hopefully within the next two weeks. At the time that opinion is formally issued, any party may appeal that decision to the Circuit Court for Baltimore County. There being no further business, this hearing is adjourned.

.....
Respectfully submitted,


Kathleen C. Bianco

**BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION**

IN THE MATTER OF: Country Ridge Shopping Center, Inc. / -
Southside Brokers, Inc. /Case No. 96-226-X
On Remand from CSA via Circuit Court

DATE : Wednesday, August 16, 2000

BOARD /PANEL : Charles L. Marks (CLM)
Donna M. Felling (DMF)
Margaret Worrall (MW)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate, on remand from the Circuit Court via mandate by the Court of Special Appeals, (1) whether or not sufficient evidence exists in the original record of the proceedings in this matter to grant or deny the requested special exception; and (2) if the evidence is sufficient, to then deliberate as to whether or not the special exception request is granted or denied. If evidence as it exists is found to be insufficient, then a hearing will be scheduled on the merits of the special exception request. (The CSA has determined that this operation is grandfathered, thereby reversing the majority decision in part and remanding for the second part, as to the grant or denial on the merits.)

The Board convened for this special deliberation. This panel consisted of Charles L. Marks (the sole remaining member of the original panel (S. Levero and H. Buchheister no longer sit as members of the Board of Appeals); Margaret Worrall and Donna M. Felling have been appointed to this current panel to review the record, including the transcript and exhibits, for the purpose as stated above.

Panel members discussed:

- CSA determination – that Petitioner was grandfathered;
- Remanded – for 502.1 as to adverse impacts – greater here than elsewhere in the zone.
- ✓ Did the Board have enough evidence in transcript /record to support a decision in this matter pursuant to 502.1, *Schultz v. Pritts*, and *Mossberg*.
- ✓ Choices:
 - enough in record to deny (as the Majority did)
 - cannot find enough to deny it
 - not sure; need new hearing

Upon extensive review by the Board prior to this deliberation, DMF and MW found enough in the file and the record to support a denial under 502.1, particularly as to (a) and (g).

Cited testimony by Mary Emmerick; significant to 502.1; cited sections of the original transcript supporting this—

- page 177 as to crime
- page 184 as to infusion of public funding
- pages 190/192 as to monies invested in community cleanup; State and Federal

- page 195 as to uses; community residents walking to center, etc.

Also significant was Yarborough regarding programs in place.

In another area of the County, there would be less impact – no community outreach; no community conservation. Also cited testimony of Jack Dillon and Captain James Johnson – in looking at this specific area.

- ◆ Both MW and DMF agreed that evidence existed to deny the special exception; transcript contained more than sufficient evidence to render a decision; particularly strong on (g) – spirit and intent of the regulations. While a special exception is a permitted use absent adverse impact, it was found by DMF and MW that the impact was greater here and that the evidence contained in the file and complete record supported this finding. Found witnesses who testified to this issue to be credible and there was no rebuttal. Also discussed perception – and that the existing law which governs in this matter was written with these things in mind.
- ✓ Also considered review of County Council and Planning Board's documenting materials; County Council preamble concerning the law; clear that was intent; special exception would cause these things be considered.
- ✓ Also credible was the testimony of long-time residents in the community; way things were and are. No evidence was submitted to contradict what was presented by community leaders, the County and the Police Department. No rebuttal.

MW and DMF would deny the special exception based on 502.1 and for reasons as discussed at this deliberation.

- ❖ CLM also reviewed the record in this matter (authored dissent in original proceeding; found Petitioner was grandfathered and also that special exception should be granted).
 - ✓ Remains more convinced than ever that nothing is wrong with this business at this location; found no documentation by Planning Board that pawnshops cause crime; no evidence that it is inherently evil.
- Discussion followed regarding County Council and the belief that limitations were placed on this type of operation for a reason; limited concentration; limited hours, etc. That identifies it as something different. Also cited moratorium on pawnshops for 6 months; and decision to enact legislation to put specific restrictions on this type of business.
 - ✓ Again reviewed the transcript, citing testimony of Dillon specifically; also Charles Poole. Right or wrong, the majority of DMF and MW agreed that the Council saw fit to pass this legislation; reviewed policy and findings of the Council as to this legislation; indicated goals, concentration of pawnshops, revitalization efforts of the County, etc.
- CLM again disagreed strongly; believed that the majority was dealing in "perception"; he would grant the special exception.
- DMF and MW as the majority in this matter will deny the special exception request; doesn't meet *Schultz v. Pritts*.

Because of the special regulations which the Council found necessary to pass regarding this type of business, it is different from other businesses; and the majority will deny the request.

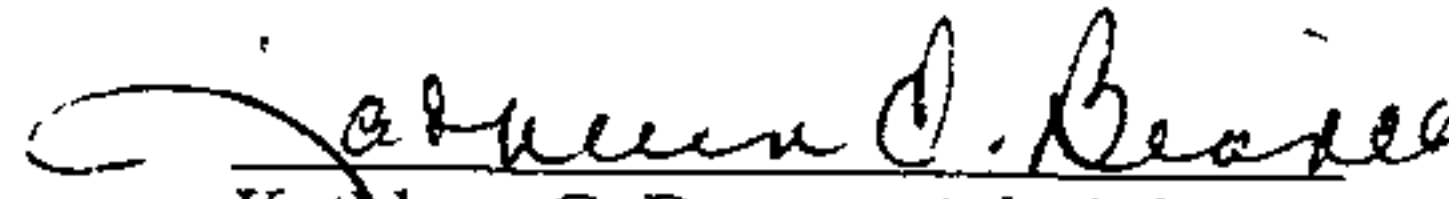
A dissent will be issued by Mr. Marks who strongly disagrees with the majority opinion in this matter.

FINAL DECISION:

Special exception to be **DENIED** by majority of Donna M. Felling and Margaret Worrall; dissent to be written by Charles L. Marks, who would grant same. Appellate period to run for thirty days from the date of issuance of the written Order.

NOTE: These minutes, which will become part of the case file, are intended only to indicate for the record that a public deliberation took place this date regarding this zoning case. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted


Kathleen C. Bianco, Administrator
County Board of Appeals

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION
Motion for Reconsideration

IN THE MATTER OF: Southside Brokers /Country Ridge Shopping Center
Case No. 96-226-X

DATE : Wednesday, January 3, 2001

BOARD /PANEL : Charles L. Marks (CLM)
Donna M. Felling (DMF)
Margaret Worrall (MW)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Motion for Reconsideration filed by Counsel for Petitioner in Case No. 96-226-X; for reconsideration of Board's Opinion and Order on Remand.

Review of Procedure:

- ❖ Case remanded; one or two members no longer here (on the Board)
- ❖ Chair chooses two or one member(s) to review transcript and evidence
- ❖ Determines if Court order can be satisfied in this way

Background:

- ❖ Remand from CSA – CSA determined that relocation was permitted; questions as to special exception – were 502.1 requirements considered by prior Board
- ❖ Board met in a prior public session
- ❖ Majority Opinion – enough evidence existed in transcript and record to reach conclusion that Petitioner did not meet burden of proof *per Schultz v Pritts*

Issues /matters deliberated:

Mr. Gildea's position:

- ◆ Asked for hearing on merits of case
- ◆ Board erred by not granting *de novo* hearing
 - Did Court order that?
 - Determination by Board that this was not ordered by the Court.
 - *Prosser* was handled in same manner

(At this point in deliberation, Mr. Gildea addressed the Board, asking that he be allowed to argue his Motion; was asked on several occasions to remain seated; no comments or outbursts were permitted from those attending a public deliberation; only there to "observe" proceedings; record has been closed as to argument. Mr. Gildea then indicated that he would raise this point on appeal; that he was not allowed to be heard by the Board; he resumed his seat in the room.)

Question:

- Can he argue on his Motion for Reconsideration?



- Board concluded that, since a response to same had been filed by People's Counsel; and since there were no questions raised by the briefs filed; that arguments raised by Petitioner had been responded to by People's Counsel, the Board there would be no hearing scheduled for argument on the Motion; the Board would continue deliberating that Motion.

Deliberation continued:

- ◆ Board found enough factual evidence in the record to decide the case without a public hearing
- ◆ This remand does not ask for a new hearing
- ◆ After individual review of the record (transcript/evidence) and the remand order, Board determines whether or not hearing is necessary (in this instant – determined it was not).
- ◆ As to credibility of witnesses:
 - ✓ Question to be answered: In reviewing transcript, was credibility an issue or the facts?
 - ✓ Facts in this case were key to decision
 - ✓ Found sufficient evidence to decide; no new hearing required
 - ✓ special exception denied based on evidence
 - ✓ credibility was not an issue
 - ✓ evidence was key – one of factual documentation

As to second issue of Motion:

- ◆ Regarding MW – issue raised by client (Petitioner) –Conflict of interest
 - As to VPC – Board found it difficult to believe that this was put in writing
 - CLM – attorney has responsibility to his client – but level of attack is not appropriate
 - DMF comments: example of ills of society
 - when you don't get what you want, you strike out at other people some way
 - offended by accusation
 - totally without credibility
 - could have found this out if he had done his homework – where an individual works, investments, etc., -- all public information / disclosure forms; it's all public information /as to where she works and when; public knowledge
 - can point finger at anyone – no one will serve on the Board
- MW comments – doesn't take it lightly
 - ethics problem on other side
 - the issue was raised by a law firm frequently before the Board; worked with her at VPC 6 years ago
 - no reason for not knowing who she is
 - no position with VPC since she left there 6 years ago; there was interim person before Dillon
 - Dillon was County employee when he testified
 - Sees it as a personal attack
 - it impugn and attacks the integrity of the entire Board

General discussion continued on this issue:

- Board members are traditionally kept out of cases that could present problem
- "Absurd" – term used by People's Counsel is a gentle term under the circumstances
- Again – level of attack is not appropriate
- Opinion will include response to this accusation

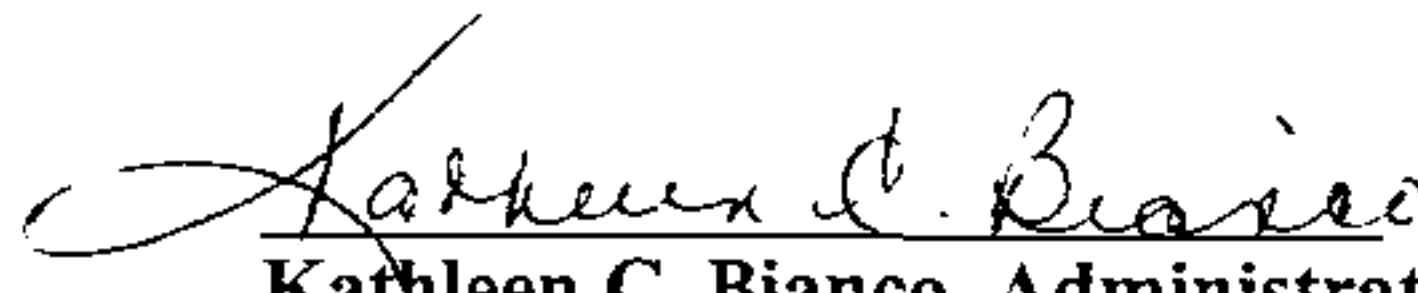
- Upper court must recognize that individuals will not sit if this type of accusation is routinely made
- “a hired gun must do what he must do” – however, this is beyond that and it will be strongly addressed in Board’s opinion.

Decision:

- Petitioner’s request for hearing on Motion for Reconsideration is DENIED; enough exists in the Motion filed and the response thereto filed by People’s Counsel to address the issues in full
- Petitioner’s Motion for Reconsideration is DENIED; the procedure followed by the Board in addressing this remand was correct and appropriate, based upon past precedent of the Board in these matters and review by upper courts supporting same
- Written Ruling on Motion to be issued by the Board as soon as possible.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place this date regarding the subject matter. A written Opinion /Ruling on Motion will be issued by the Board.

Respectfully submitted


Kathleen C. Bianco, Administrator
County Board of Appeals

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



bcc: Gwen Stephens

Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

February 14, 1996

(410) 887-4386

Roger N. Powell, Esquire
107 Old Court Road
Baltimore, Maryland 21208

RE: Petition for Special Exception
Case No. 96-226-X
Legal Owner: Country Ridge Shopping Center, Inc.
Lessee: Southside Brokers, Inc., Petitioner

Dear Mr. Powell:

This is to confirm my recent telephone conversation with your office regarding the Request for Reconsideration which you have filed in this matter. I have granted your request that this matter be reset for argument. This grant should be considered a stay of all proceedings in this matter, including all rights to an appeal of the decision rendered by me on January 22, 1996.

In regards to oral argument, I have scheduled this matter for rehearing on February 26, 1996 at 9:00 A.M. The rehearing will be held in Room 118 of the Old Court House. Copies of this notice are being sent to all interested parties including those who appeared at the initial hearing.

Very truly yours,

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn

- c: Mr. Gary S. Salvo, 11509 Pulaski Highway, White Marsh, Md. 21162
- c: Robert F. Dashiell, Esquire, 2300 N. Calvert St., Suite 100, 21218
- c: Mr. Steve Cassidy, 1227 Eastern Blvd. 21221
- c: Mr. Howard Dubick, 138 Eastern Blvd. 21221
- c: Mr. Al Clasing, Jr., 2025 Holly Neck Road, 21221
- c: Mr. Richard J. Shrader, 2016 Poplar Rd., 21221
- c: Mr. Marion MacCrehan, 1708 Beachwood Avenue, 21221
- c: Mr. Betty Christopher, 2116 Holly Neck Road, 21221
- c: Ms. Theresa Guckert, 2530 Island View Road, 21221
- c: Mr. Orlando Yarborough, 101 Back River Neck Rd., 21221
- c: Mr. Tony Kropkowski, 2435 Barrison Point Rd. 21221
- c: Ms. Debby Hyson, President, Barrison Pt. Improv. Assn.
- c: Ms. Lorene Kaymauk, 1648 Cape May Road, 21221
- c: Ms. Jackie Nickel, President, Rockaway Beach Improv. Assn.
- c: Mr. John M. Hession, Pres., Back River Neck Peninsula Comm.Assn

bcc: Councilman L. DePazzo
bcc: Peoples Counsel
Office of Planning



County Board of Appeals

OLD COURTH
400 WASHIN
TOWSON, M/
410-8
FAX: 410-

Post-It Fax Note 7671		Date 2/23	# of pages 1
To David Gildea	From Kathi Bianco		
Co./Dept	Co.		
Phone #	Phone # 410 887 3180		
Fax # 410 832 2015	Fax #		

February 18, 2000

David K. Gildea, Esquire
WHITEFORD, TAYLOR & PRESTON, LLP
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

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

RE: In the Matter of Southside Brokers /On Remand from
the Court of Special Appeals /Case No. 96-226-X
Circuit Court File No. 03-C-97-5479

Dear Counsel:

This Board will proceed as follows with the subject case on remand by mandate of the Court of Special Appeals.

Two Board members, in addition to Mr. Marks, will be assigned to this case to review the file and the transcript. These two additional members will replace Harry Buchheister and Diane Levero who no longer serve as members of the Board of Appeals.

Upon completion of each member's individual review, the Board will schedule a public deliberation /meeting to discuss and decide (1) whether or not testimony will be required; (2) whether or not memorandums from counsel will be required prior to further action by the Board; or (3) if, in fact, a final decision can be reached on the merits based upon the testimony and evidence existing in the record as originally submitted.

As indicated above, timely notice will be sent regarding the date and time of the Board's deliberation /meeting upon full review of the transcript and record by the three-member panel.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

cc: Mr. M. Scherr, Southside Brokers
Roger N. Powell, Esquire
Virginia W. Barnhart, County Attorney





Baltimore County
Department of Permits and
Development Management

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

March 3, 1998

Roger N. Powell, Esquire
Powell & Sorrell
107 Old Court Road
Pikesville, MD 21208

RE: Mr. Meyer Scherr's Relocated
Pawn Shop to 1508 Back River
Neck Road
Zoning Case #96-226-X
15th Election District

Dear Mr. Powell:

Reference is made to your February 23rd letter, on behalf of your client, to Arnold Jablon, Director of Permits and Development Management, which has been referred to me for reply. You have requested that your client be allowed to continue to operate his business at the above location pending motions and possible appeal from the Circuit Court decision. I have discussed your request with Mr. Jablon and this office would not attempt to close the business without a final order of denial.

As to your second question regarding other pawn shops that have been granted relocation without appeal, this office has no control over the zoning cases after they are accepted for filing. After filing, the decision is within the exclusive jurisdiction of the hearing officer or courts upon appeal. Should the decisions fail to address a certain interpretation of the Baltimore County Zoning Regulations (BCZR) and there is no appeal, it is out of our control. Obviously an unlimited number of agendas may contribute to an appeal and none of which may be driven by a particular interpretation of the BCZR. If you are comparing the cases for a possible double standard and subsequent appeal, it is advisable to first ensure that the facts in the cases are essentially identical with regard to any conflicts with the standards.

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,

A handwritten signature in black ink, appearing to read "W. Carl Richards, Jr.", written in a cursive style.

W. Carl Richards, Jr.
Zoning Supervisor, Zoning Review

WCR:scj



FACT SHEET
PAWN SHOP RELOCATION
Mr. Meyer Scherr (Southside Brokers, Inc.)

Pawn shop in operation at 8110 Pulaski Highway, District 15c7 prior to Bill 112-95 (7/6/95).

Bill 112-95 created Section 436, BCZR, which regulated pawn shops.

- Existing pawn shops were exempt from Paragraph 436.4, which limited to two in any council district and not within a mile radius of another pawn shop. Also, the zoning commissioner could not limit the hours of operation. Paragraph 436.4 is interestingly titled "S.E. petition".

Zoning required Southside to file special exception petition to relocate to 1508 Back River Neck Road, District 15c5.

96-226-X, 1/22/96 -- LES denied special exception to relocate due to the fact that the location is within one mile of an existing pawn shop. 4/19/96 -- on reconsideration, LES granted special exception "the fact that the proposed shop is within one mile of another pawn shop is not a bar to a granting of the relief..."

Appeal to the Board of Appeals -- 5/9/96, Peoples Counsel and 5/16/96 by Back River Neck Peninsula Community (Jack Hession and Alfred Clasing).

Board of Appeals -- majority opinion -- 4/30/97 - denies SE that the new pawnshop location is subject to location standards in 436.4. Dissenting opinion by Charles Marks - he points out that Section 6 of Bill 112-95 "Pawn shops existing lawfully and operating on the effective date are not subject to 436.4" is pointless due to the fact that they had to obtain a special exception to relocate and Section 436.4 required location standards for special exceptions already. Why exempt a business that doesn't need a special exception?

Appeal to Circuit Court and hearing 1/20/97 -- Thomas Bollinger, Judge.

Board of Appeals affirmed 2/9/98 -- "Zoning ordinances are not concerned with ownership or occupants, but are concerned with property locations...Petitioner is subject to BCZR 436.4 at the new location..."

Case 97-25 -- William Whortman/Craig F. Micelie, Lessee. Petitioner purchased license from Harry J. Ohle that was located at 75 Shipping Place. Special exception granted 8/26/96 (LES) to relocate within the same councilmanic district to 1709 Poplar Place.



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3353
Fax: (410) 887-5708

May 15, 1996

Roger N. Powell, Esquire
107 Old Court Road
Baltimore, MD 21208

RE: Petition for Special Exception
767 ft. SE of Back River Neck Rd
(1508 Back River Neck Road)
11th Election District
5th Councilmanic District
Country Ridge Shopping
Center, Inc. - Legal Owner
Southside Brokers, Inc. -
Lessee
Case No. 96-226-X

Dear Mr. Powell:

Please be advised that an appeal of the above-referenced case was filed in this office on May 9, 1996 by Peter Max Zimmerman and Carole S. Demilio, People's Counsel for Baltimore County. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals, "Board".

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

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Jablon", is written over a horizontal line.

ARNOLD JABLON
Director

AJ:rye

cc: Mr. Gary S. Salvo
Robert F. Dashiell, Esquire
Mr. Steve Cassidy
Mr. Howard Dubick
Mr. Al Clasing, Jr.
Mr. Richard J. Shrader
Mr. Marion MacCrehan
Ms. Betty Christopher
Ms. Theresa Guckert
Mr. Orlando Yarborough



Baltimore County
Department of Permits and
Development Management

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

May 29, 1996

Roger N. Powell, Esquire
107 Old Court Road
Baltimore, MD 21208

RE: Petition for Special Exception
767 ft. SE of Back River Neck
Road
(1508 Back River Neck Rd)
11th Election District
5th Councilmanic District
Country Ridge Shopping
Center, Inc. - Legal Owner
Southside Brokers, Inc. -
Lessee
Case No. 96-226-X

Dear Mr. Powell:

Please be advised that an appeal of the above-referenced case was filed in this office on May 16, 1996 by Jack Hession and Alfred E. Clasing, Jr., on behalf of Back River Neck Peninsula Community Association, Inc. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals, "Board".

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

ARNOLD JABLON Rye.
Director

AJ:rye

cc: Mr. Gary S. Salvo
Robert F. Dashiell, Esquire
Mr. Steve Cassidy
Mr. Howard Dubick
Mr. Richard J. Shrader
Mr. Marion MacCrehan
Ms. Betty Christopher
Ms. Theresa Guckert
Mr. Orlando Yarborough
People's Counsel





Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

5/19/96
↓
JO SL

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

May 9, 1996

Arnold Jablon, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: PETITION FOR SPECIAL EXCEPTION
1508 Back River Neck Road
(Country Ridge Shopping Center)
11th Election Dist., 5th Councilmanic
Petitioners:
COUNTRY RIDGE SHOPPING CENTER, INC.,
Legal Owner, and
SOUTHSIDE BROKERS, INC.,
Contract Purchaser/Lessee
Case No. 96-226-X

Dear Mr. Jablon:

Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the Order dated April 19, 1996 of the Baltimore County Zoning Commissioner in the above-entitled case.

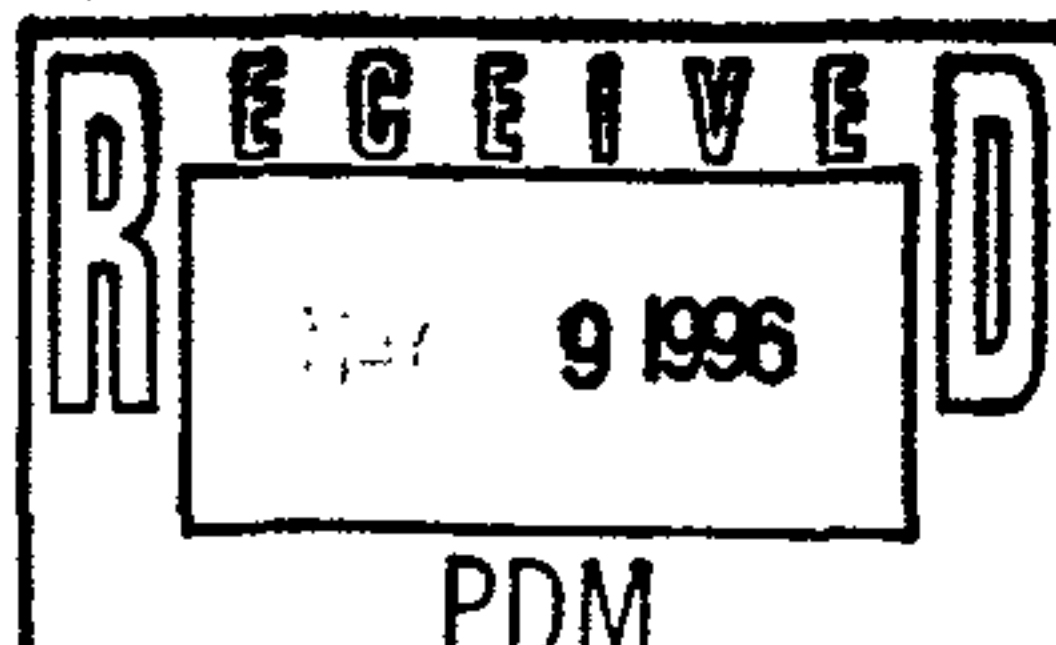
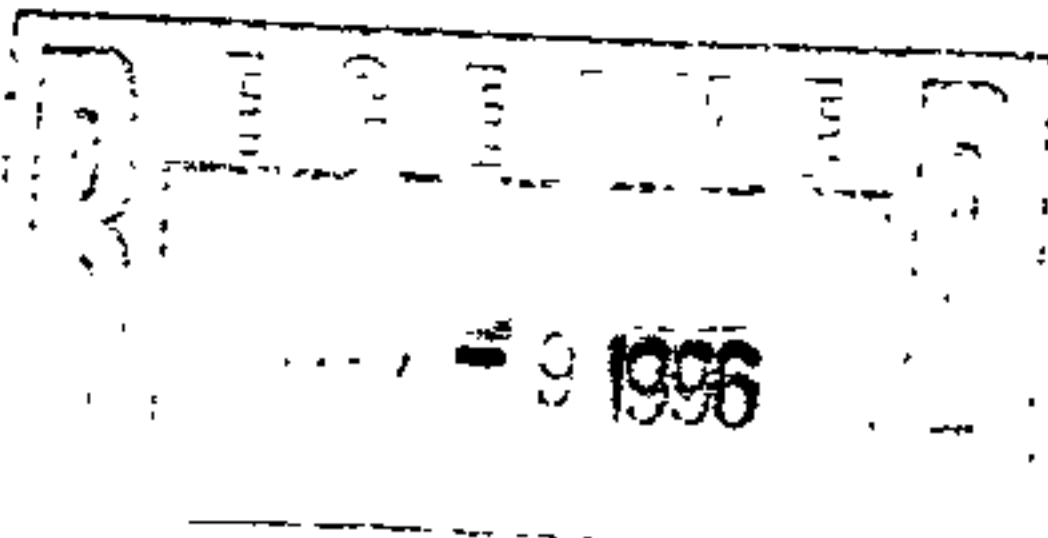
Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf



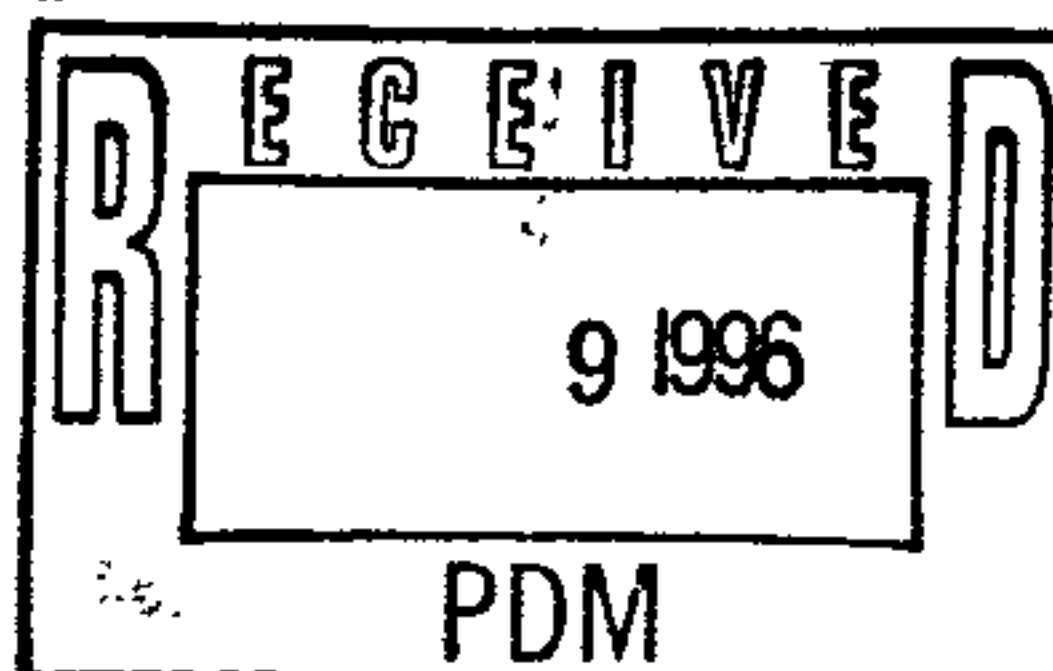
Arnold Jablon, Director
Department of Permits and
Development Management
May 9, 1996
Page Two

cc: Roger N. Powell, Esquire, Attorney for Petitioners

Robert F. Dashiell, Esquire, Attorney for Protestants
(Pawn brokers' trade association)

Betty Christopher, Protestant}
Al Clasing, Jr., Protestant}
Theresa Guckert, Protestant}
Marion MacCrehan, Protestant}
Richard J. Shrader, Protestant}
Orlando Yarborough, Protestant}

{All c/o Betty Christopher,
{Back River Neck Peninsula
{Community Association,
{P. O. Box 16754
{Baltimore, MD 21221





Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
Fax: (410) 296-0931

February 20, 1996

The Honorable Louis L. DePazzo
Councilman, 7th Councilmanic District
Courthouse
Towson, Maryland 21204

Dear Councilman DePazzo:

In a recent communication you have requested the opinion of this office with respect to the meaning and intent of County Council Bill No. 112-95 (the "Bill"), amending the Baltimore County Zoning Regulations (BCZR) and dealing with pawnshops. The Bill defines a pawnshop, requires that a Special Exception to the zoning regulations be obtained in order to operate one and establishes prerequisites for the granting of a Special Exception. We understand your specific inquiry to be directed to the question of whether Section 6 of the Bill, which excludes existing pawnshops from the requirements of (new) Section 436.4 of the BCZR, would operate in such fashion as to exclude an existing pawnshop seeking a Special Exception to move to a new location from the prohibition against locating within a one mile radius of another pawnshop.

In that regard we have been informed that Zoning Commissioner Lawrence E. Schmidt, in an Order dated January 22, 1996, has ruled to the contrary in finding that an existing pawnshop seeking a Special Exception to permit relocation is subject to the one mile radius limitation.

With all deference, in our view the Zoning Commissioner was in error when he so ruled. Prior to the adoption of the Bill a pawnshop was a use permitted as a matter of right in BM and BR zones. The Bill revoked that right and instead required that henceforth the pawnshops would only be permitted in those two zones by Special Exception. In addition to the normal requirements for the granting of a Special Exception, as contained in Section 502.1 of the BCZR, the Bill imposed certain additional requirements in its enactment of new Section 436.4 of the BCZR. The Section reads as follows:

"436.4 - Special Exception Petition. In addition to the requirements of Section 436.3 and such other requirements of these regulations relating to a Special Exception Petition, a Special Exception Petition for a pawnshop is subject to the following requirements:

(A) A pawnshop may not be located within a one mile radius of any other pawnshop, and no more than two pawnshops may be located in a councilmanic district.

(B) The Zoning Commissioner may reasonably limit the hours of operation of a pawn shop."

Standing by itself the Section would clearly prohibit the granting of a Special Exception for the use of property for the operation of a pawnshop business under any circumstances where the proposed use would be in violation of Section 436.4(A). Included within the provisions of the Bill however was Section 6 which reads as follows:

"Section 6. And be it further enacted, that pawnshops lawfully in existence and operating on the effective date of this Act are not subject to the requirements of Section 436.4."

Thus by the express language of Section 6 the County Council exempted pawnshops presently in existence from the requirements of Section 436.4, as enacted by the Bill. As to an existing pawnshop business, however, the provisions of the Bill requiring the granting of a Special Exception would only be applicable in the event that the business desired to relocate as no Special Exception would be required if the business were to remain at its present location. Accordingly, had the Council intended to subject an existing pawnshop business, seeking to relocate and to obtain a Special Exception for that purpose, to the requirements of Section 436.4 of the BCZR, then the language of Section 6 of the Bill would be pointless and without purpose. Such a construction must be avoided. It is an elemental proposition that the enactment should be construed so as to give effect, if possible, to every word, clause and sentence therein and so that no part would be inoperative, superfluous, void or insignificant. See Fisher, et al. vs. Bethesda Discount Corporation, 221 Md. 271, 157 A.2d 265 (1960) and Sutherland Statutory Construction, 5th Edition, Section 46.06.

In sum, it is our opinion that the Bill as written excludes existing pawnshop businesses seeking a Special Exception from the BCZR to relocate from the prohibition against locating within a one mile radius of another pawnshop business.

We trust that the foregoing is responsive to your inquiry.

Very truly yours,



Virginia W. Barnhart
County Attorney



Lee S. Thomson
Assistant County Attorney

cc: Larry Schmidt, Zoning Commissioner

Larry:

As invited, I am enclosing a copy of my response to Councilman DePazzo concerning the recent pawnshop bill. I regret disagreeing with you on this issue and doing so publicly, but unfortunately a written response was compelled by the Councilman's request for opinion to my office. Also enclosed for your benefit is a memorandum from Kevin Kamenetz detailing, in retrospect, his view of the legislative intent of this bill. I note that he apparently shared this view with Mr. Dubick prior to your recent hearing. Is he the individual who testified that the legislative history was to the contrary?

Finally, I enclosed for your benefit copies of Mr. Dubick's prior communications with this office, and well as communications from and to Mr. Scherr's counsel from Pat Roddy. I now believe that you have the benefit of our file on this matter, for whatever value you place upon it.

Ginny

Baltimore County Government
Office of Law



400 Washington Avenue
Towson, MD 21204

(410) 887-4420
Fax (410) 296-0931

October 26, 1995

Roger N. Powell, Esquire
107 Old Court Road
Baltimore, Maryland 21208-4011

Dear Mr. Powell:

In response to your request during our phone conversation last weekend, the purpose of this letter is to explain in writing why we believe County Council Bill 112-95 does not exempt pawnshops from the special exception process. The construction of a statute must depend upon the intent of the legislative body that drafted and enacted it. As you correctly stated, this requires reading and interpreting the entire statute as a whole. The intent of Council Bill 112-95 is clearly stated in its title where such phrases as "regulating the location of pawnshops providing certain restrictions upon existing pawnshops limiting the total number of pawnshops permitted in the County" are used. All point to the legislative intent that this bill restricts and limits pawnshop activity in Baltimore County.

In addition to this clear legislative intent, I do not believe that Section 6 creates any ambiguity or statutory construction issues since the words of the statute are clear and unambiguous and consistent with the statute's purpose. It is required that they are to be accorded their ordinary meaning. The intent of Section 6 is that pawnshops are not subject to the requirements of new Section 436.4 of the Baltimore County Zoning Regulations. The requirements of 436.4 are in addition "to the requirements relating to a special exception petition and to requirements of Section 436.3 of the Zoning Regulations".

It is my belief that the intent of Section 436.4 is to add two additional requirements to a pawnshop requesting a special exception. These additional requirements are a location limitation and adherence to a limitation on pawnshop hours of operation as dictated by the Zoning Commissioner. In addition, the Council made clear its intent that all pawnshops be subjected to the special exception process by the changes that it made in Section 233.2 and 233.4 of the Zoning Regulations. There, the Council clearly changed the pawnshop use from being a matter of right in those zones to a matter of special exception.

Had the Council wished to exempt existing pawnshops from the entire special exception process, there are several ways that it could have been done in Section 6. First, it could have merely used Section 6 to exempt all existing pawnshops from the effects of Council Bill 112-95. Secondly, it could have used Section 6 to exempt existing pawnshops from the effects of the changes in Section 233.3 and 233.4.

Roger N. Powell, Esquire

Page -2-

October 26, 1995

I hope this is helpful to you and your client. I believe that the statute is clear on its face and particularly Section 6 is unambiguous. I will be happy to answer any questions or information you might have.

Sincerely,



Patrick H. Roddy

Assistant County Attorney

PHR:bj

cc: Councilman Kamenetz

Tom Peddicord, Esq.

c:\PHR:bj\powltr' file



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

October 23, 1996

Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
Room 49 Courthouse
400 Washington Avenue
Towson, MD 21204

Hand-delivered

Re: Petition for Special Exception
1508 Back River Neck Road (Country
Ridge Shopping Center), 767' SE of
Back River Neck Rd, 200' S of Hope-
well Street, 11th Election District,
5th Councilmanic
COUNTRY RIDGE SHOPPING CENTER, INC./
SOUTHSIDE BROKERS, INC., Petitioners
Case No.: 96-226-X
CBA Hearing Date: 11/6/96

Dear Chairman Schuetz:

Upon review of the record, it appears that this case may take two (2) days to try. There are numerous interested parties, and there will likely be a large number of witnesses and issues.

Nevertheless, we should advise you that one of the expected witnesses has just informed us of scheduling problems which may prevent an appearance on November 6. Therefore, we will be calling this witness on the second day of hearing, but thought we should duly notify the parties.

Very truly yours,

A handwritten signature in cursive script, reading "Peter Max Zimmerman".

Peter Max Zimmerman
People's Counsel for Baltimore County

A handwritten signature in cursive script, reading "Carole S. Demilio".

Carole S. Demilio
Deputy People's Counsel

Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
October 23, 1996
Page Two

PMZ/caf

cc: Roger N. Powell, Esq.

Robert F. Dashiell, Esq.



County Board of Appeals of Baltimore County

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

January 18, 2001

David K. Gildea, Esquire
WHITEFORD, TAYLOR & PRESTON, LLP
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: In the Matter of Country Ridge Shopping Inc. /
Southside Brokers, Inc. /Case No. 96-226-X

Dear Mr. Gildea:

On December 13, 2000, the Board issued its Decision and Order in the above matter on remand from the Court of Special Appeals in which you represented the Appellants, Southside Brokers.

On December 21, 2000, you filed a Motion for Reconsideration with the Board in that matter. In your Motion, you cited eight instances where you felt the Board erred in its refusal to grant your request for a hearing on the remand. In addition, as part of your Motion, you raised the issue of a potential conflict of interest on the part of Board member, Margaret Worrall. You based your accusation on the fact that "your client is aware that Ms. Worrall has served or is still serving in some capacity of the Valleys Planning Council." You then recite the fact that the main witness of the Protestants, Jack Dillon, who at the time of the hearing was employed by the Baltimore County Office of Planning and testified in that capacity, is currently employed by the Valleys Planning Council. The Valleys Planning Council is not involved in this case. You stated in your Motion that a public hearing would provide your client an opportunity to explore whether there is a potential conflict of interest, and to clear up the appearance of impropriety by the Board. You also stated, "The appearance of this conflict of interest should not go undiscussed as it would undermine the credibility of the Board."

On January 7, 2001, the three-member panel of the Board of Appeals which had reviewed the record on remand met to deliberate your Motion for Reconsideration. Following the usual procedure of the Board, in compliance with the Open Meetings Law, public notice was given to the parties of the deliberation, and the panel deliberated in the Board hearing room. While these deliberations are open to the public, no one but the Board members is allowed to participate in the deliberation process. No discussion or oral argument by any of the parties or members of the public is allowed at the deliberations.

Before the deliberation began, you came into the Board's office to discuss your Motion with two members who had arrived. You were told that your Motion was to be deliberated publicly and a decision would be made at that time. We would not discuss the matter further. After the deliberation began, you stood and began to argue orally as to why your position should be upheld. The chairman of the panel asked you to take your seat and allow the Board to proceed with its deliberation. You refused to be seated and continued to press the Board regarding issues raised in your Motion for Reconsideration in accordance with the needs of your client.

Your actions caused such concern among the Board members present that Board member Felling asked the panel chairman to call Security to have you removed from the hearing room. Once again, the panel chairman assured you that your Motion would be given full consideration in the usual procedure which the Board follows in processing such Motions. You then remained quiet throughout the rest of the deliberation.

After the deliberation, you entered the office of the Board and went to the rear office where Board members have their desks. You confronted Board member Donna Felling in the presence of Board Administrator Kathleen Bianco. Despite Ms. Felling telling you she could not discuss the case with you, you continued to attempt to engage her in conversation about the Motion for Reconsideration, discussing your reasons for intruding on the Board's deliberation with your oral argument. You indicated that you brought the Motion at the request of your client. After approximately five minutes of arguing to Ms. Felling, you left.

The Board feels that your actions in this matter cannot be condoned and warrant a letter of reprimand from this Board. As a member of the Bar for a number of years, and a partner in a distinguished Maryland law firm, the Board feels that you should know better than to act in such an unprofessional manner.

The Board has resolved your allegations regarding any possible conflict on the part of Ms. Worrall in its decision and Order. We feel constrained, however, individually and collectively, to state that the allegations of a conflict of interest on the part of Board member Worrall were unwarranted, unsubstantiated, and totally unfounded. It might appear that they were raised solely for the purpose of delaying a final decision in the case. In addition, your allegations impugned the integrity of this Board. As a member of the Bar, you are to represent your clients, but not to press issues and allegations on their behalf which are unsubstantiated, or to attempt to engage in a proceeding solely for the purpose of delay, even at the request of your client.

This Board holds itself to a high level of integrity. If there is any possible conflict of interest on the part of any Board member, that member recuses him or herself from consideration of the particular case where a conflict may arise. If a party raises any issue with respect to a conflict of interest, it may be raised at the beginning of a proceeding. The Board does not conduct evidentiary hearings on conflicts of interest of Board members. If a party feels a Board member should be excluded, an appropriate action may be filed in the Circuit Court. The allegation of a conflict by Ms. Worrall which you raised in your Motion for Reconsideration is so tenuous that, although the Board has ruled upon it, we believe it should not even have merited consideration.

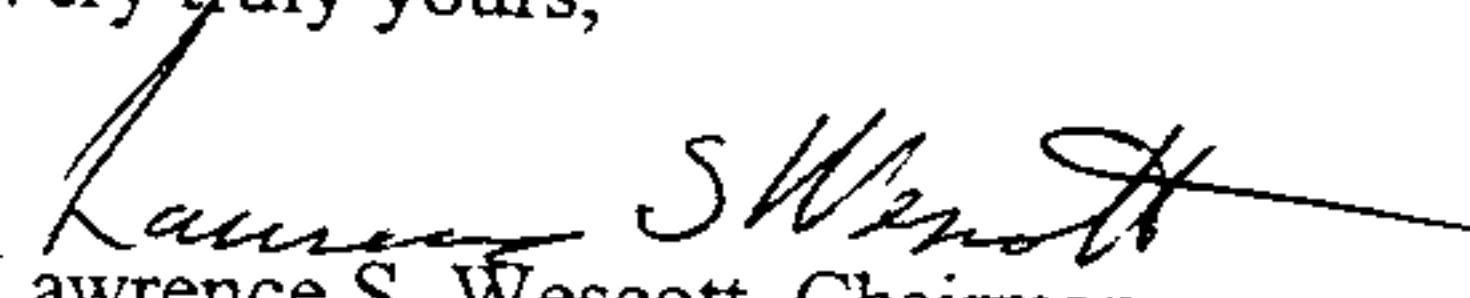
David K. Gildea, Esquire
January 18, 2001

In addition, your actions in confronting Ms. Felling in her office after the deliberation and continuing to press your point on the Motion for Reconsideration after she asked you to leave were totally unprofessional and uncalled for.

The Board will not tolerate such conduct in the future from you or any other member of the Bar or the public. The Board is considered a quasi-judicial body and should be treated with the same respect which you would accord the Circuit Court of Baltimore County. While the Board has no power to sanction individuals who practice before it, it does have the right to report such actions to the Bar Association. Be assured that if you engage in such conduct before this Board in the future, your actions will be reported to the Bar Association for any action which it may deem appropriate.

A copy of this letter is being entered in the file and sent to the managing partners of your firm.

Very truly yours,


Lawrence S. Wescott, Chairman

c: Albert J. Mezzaonotte Jr.
7 St. Paul Street
Suite 1400
Balto MD 21202-1626



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

August 14, 2000

CAROLE S. DEMILIO
Deputy People's Counsel

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

RECEIVED
COUNTY BOARD OF APPEALS
00 AUG 14 PM 2:20

Re: ON REMAND FROM THE COURT OF SPECIAL
APPEALS OF MARYLAND, No. 866/1998
Petition for Special Exception
1508 Back River Neck Road,
767' SE of Back River Neck Rd, 200' S of Hopewell St,
11th Election District, 5th Councilmanic
Southside Brokers, Inc., Petitioner
Case No.: 96-226-X

Dear Chairman Stahl:

This is in reply to Mr. Gildea's letter of August 7, 2000. The July 21, 1999 Court of Special Appeals Opinion ends with this sentence:

"On remand a new consideration of Appellant's application will be necessary."

The Opinion does **not** say that a new hearing is necessary, much less a *de novo* evidentiary hearing.

The CSA Opinion reversed the Board's finding of failure to satisfy the minimum one-mile distance requirement with respect to existing pawn shops. The CSA held that this requirement does not apply to this Petition because it involved relocation of an existing operation. At the same time, Petitioner must satisfy Special Exception standards under BCZR Sections 436 and 502.1. The relevant bill is 112-95.

At the original CBA hearing of this case, we argued that the Special Exception could and should be denied independently of the minimum distance requirement. We also argued to the Court of Special Appeals that the CBA, in its April 30, 1997 Majority Opinion, denied the Special Exception on grounds independent of the minimum distance issue. We believe a fair reading of the Board's Opinion reflects that the denial of the Special Exception stands on its own. On page 9, the Board referred to the standards in BCZR 502.1 and

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
August 14, 2000
Page Two

paragraphs a) and g) as particularly applicable to the evidence presented. On page 10, the Board discussed the evidence:

“... it would appear that a pawnshop would have more than the usual adverse effects in the area of the Country Ridge Shopping Center, because the location is the focus of intense efforts at revitalization.” (Emphasis in original)

“...we feel compelled to recognize... the uncontradicted testimony that this section of Essex is in the highest priority revitalization area, has the highest incident of negative socioeconomic indicators, and has the highest incident of major crime in the County. These adverse effects are greater in the subject neighborhood than they would be elsewhere within the zone, **which is a persuasive reason for denial of the special exception for a third pawnshop in the Essex area.**” (Emphasis added)

Separately, the Board looked at the locational standards on page 10.

In concluding on page 12, the Board said:

“The Council has employed the special exception as a means to determine the appropriate and inappropriate locations for pawnshops... The Petition by Southside Brokers has failed to meet any of these standards and therefore the Petition for Special Exception is denied.”

The Court of Special Appeals was uncertain, however, whether the Board's finding of violation of the minimum distance requirement may have affected consideration of the Special Exception. For this reason, it remanded for further consideration. Logically such consideration does not warrant a new evidentiary hearing. The Board's decision was not a preliminary denial akin to a Motion to Dismiss. The parties had the opportunity to present evidence on all the statutory requirements and did so. The required “consideration” is whether, on this record, the Special Exception was properly denied, independently of the absolute minimum distance requirement. The CSA did not disregard the Board's findings. Rather, the appellate court's decision stated:

“There are other statutory requirements [other than distance standard] requiring favorable findings before a special exception may be approved. The Board's Majority Opinion addressed those other requirements somewhat, but did so in a manner that coming [sic] [combined?] led its consideration of those requirements with those of Section 436.4.”

The CSA did not intend the Petitioner have a second opportunity to present his case with new counsel. It did not call for new evidence, only “a new consideration.”

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
August 14, 2000
Page Three

We continue to believe that the Board Majority in fact did deny the Special Exception on independent grounds. Even if the Board has any doubt about the intent of the Majority Opinion, the current panel should consider that the evidence overwhelmingly calls for denial of the Special Exception, irrespective of the distance issue. Indeed, there was no probative evidence to support the Special Exception.

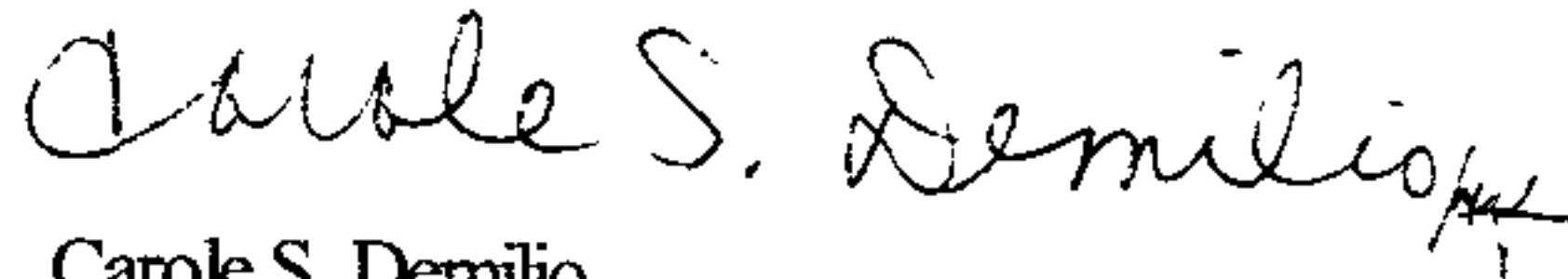
Finally, we are aware that due to the retirement of Board Members Diane Levero and Harry Buchheister, that at least two new Board Members will be joining the panel in this case. As the Board is aware, the Court of Special Appeals, in People's Counsel for Baltimore County v. Prosser, 119 Md.App. 150 (1998) decided, under similar circumstances, that two new panel members could review the record and make a decision. Southside's attempt to distinguish Prosser on the ground that "the issue was merely technical" is incorrect. It may be said that the remand in the present case involves essentially an intellectual issue and not an evaluation of testimony or credibility. **The question is merely whether the Majority's denial of the Special Exception stands independently of the distance issue upon which the appellate court reversed.**

Thank you for your consideration.

Very truly yours,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf

cc: David K. Gildea, Esq.,
Attorney for Petitioners

Roger Powell, Esq.,



Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
Fax: (410) 296-0931

HAND-DELIVERED

November 1, 1996

Mrs. Kathleen C. Bianco
Baltimore County Board of Appeals
Room 49, Old Courthouse
Towson, Maryland 21204

Re: Country Ridge Shopping Center
Case No.: 96-226X

Dear Mrs. Bianco:

Please enter my appearance on behalf of Baltimore County in the above-captioned matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Nancy C. West".

Nancy C. West
Assistant County Attorney

NCW:raj

c: Roger N. Powell, Esq.

Peter Max Zimmerman, People's Counsel

Robert F. Dashiell, Esq.

A large handwritten checkmark.



Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
Fax: (410) 296-0931

December 13, 1995

Roger N. Powell, Esquire
107 Old Court Road
Pikesville, Maryland 21208

Dear Mr. Powell:

This is in response to your letter of December 4, 1995. Attached is a Memo that I have sent to Councilman Kamenetz which indicates there is no pending judicial action regarding your client, Meyer Scherr, in process.

I hope this is satisfactory to you. Please do not hesitate to contact me on this matter if I can be of any further assistance.

Sincerely,

A handwritten signature in cursive script, reading "Patrick H. Roddy".

Patrick H. Roddy

Assistant County Attorney

PHR:bj

att.

c:\PR:bj\ltpow2

cc: Virginia Barnhart, Esq.
Tom Peddicord, Esq.

Baltimore County Government
Office of Law



400 Washington Avenue
Towson, MD 21204

(410) 887-4420
Fax (410) 296-0931

October 26, 1995

Roger N. Powell, Esquire
107 Old Court Road
Baltimore, Maryland 21208-4011

Dear Mr. Powell:

In response to your request during our phone conversation last weekend, the purpose of this letter is to explain in writing why we believe County Council Bill 112-95 does not exempt pawnshops from the special exception process. The construction of a statute must depend upon the intent of the legislative body that drafted and enacted it. As you correctly stated, this requires reading and interpreting the entire statute as a whole. The intent of Council Bill 112-95 is clearly stated in its title where such phrases as "regulating the location of pawnshops providing certain restrictions upon existing pawnshops limiting the total number of pawnshops permitted in the County" are used. All point to the legislative intent that this bill restricts and limits pawnshop activity in Baltimore County.

In addition to this clear legislative intent, I do not believe that Section 6 creates any ambiguity or statutory construction issues since the words of the statute are clear and unambiguous and consistent with the statute's purpose. It is required that they are to be accorded their ordinary meaning. The intent of Section 6 is that pawnshops are not subject to the requirements of new Section 436.4 of the Baltimore County Zoning Regulations. The requirements of 436.4 are in addition "to the requirements relating to a special exception petition and to requirements of Section 436.3 of the Zoning Regulations".

It is my belief that the intent of Section 436.4 is to add two additional requirements to a pawnshop requesting a special exception. These additional requirements are a location limitation and adherence to a limitation on pawnshop hours of operation as dictated by the Zoning Commissioner. In addition, the Council made clear its intent that all pawnshops be subjected to the special exception process by the changes that it made in Section 233.2 and 233.4 of the Zoning Regulations. There, the Council clearly changed the pawnshop use from being a matter of right in those zones to a matter of special exception.

Had the Council wished to exempt existing pawnshops from the entire special exception process, there are several ways that it could have been done in Section 6. First, it could have merely used Section 6 to exempt all existing pawnshops from the effects of Council Bill 112-95. Secondly, it could have used Section 6 to exempt existing pawnshops from the effects of the changes in Section 233.3 and 233.4.



Roger N. Powell, Esquire
Page -2-
October 26, 1995

I hope this is helpful to you and your client. I believe that the statute is clear on its face and particularly Section 6 is unambiguous. I will be happy to answer any questions or information you might have.

Sincerely,

A handwritten signature in cursive script, reading "Patrick H. Roddy".

Patrick H. Roddy
Assistant County Attorney

PHR:bj

cc: Councilman Kamenetz
Tom Peddicord, Esq.
c:\PHR:bj\powltr' file

Baltimore County Government
Office of Law



400 Washington Avenue
Towson, MD 21204

(410) 887-4420
Fax (410) 296-0931

November 13, 1995

Roger N. Powell, Esquire
107 Old Court Road
Pikesville, Maryland 21208

Dear Mr. Powell:

I am in receipt of your letter of October 31 and November 3, 1995. Attached please find a response I had drafted to your October 25 letter. This correspondence really reiterates my reading and interpretation of the statute.

In regard to your recommendation to your client to seek declaratory judgment in Circuit Court, I need to consult with my clients as to the appropriate course of action for them to take. In this situation, I will be consulting with County Councilman Kamenetz and Administrative Officer Merreen Kelly. I hope to have these conversations quickly so I can respond to your request for participation in the process of filing a complaint and answer.

Sincerely yours,

A handwritten signature in cursive script, reading "Patrick H. Roddy".

Patrick H. Roddy
Assistant County Attorney

PHR:bj
c:\PR:bj\ltPow





Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

December 21, 1999

CAROLE S. DEMILIO
Deputy People's Counsel

Ms. Kathleen C. Bianco, Administrator
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

RECEIVED
COUNTY BOARD OF APPEALS
89 DEC 21 PM 3:38

Re: **COUNTRY RIDGE SHOPPING CTR, INC./**
SOUTSHIDE BROKERS, INC., Petitioner
1508 Back River Neck Road
On Remand from the Court of Special Appeals
CSA Case No.: 866, Sept. Term 1998
Circuit Court Case No: 3-C-97-5479 /
CBA Case No.: 96-226-X

Dear Ms. Bianco:

Please set the above case in for hearing on the remand from the Court of Special Appeals at your earliest convenience.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf

cc: David K. Gildea, Esq., Attorney for Petitioners
J. Carroll Holzer, Esq., Attorney for Protestants

96-2292



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

5/19/96
↓
JO SL

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

May 9, 1996

Arnold Jablon, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: PETITION FOR SPECIAL EXCEPTION
1508 Back River Neck Road
(Country Ridge Shopping Center)
11th Election Dist., 5th Councilmanic
Petitioners:
COUNTRY RIDGE SHOPPING CENTER, INC.,
Legal Owner, and
SOUTHSIDE BROKERS, INC.,
Contract Purchaser/Lessee
Case No. 96-226-X

Dear Mr. Jablon:

Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the Order dated April 19, 1996 of the Baltimore County Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

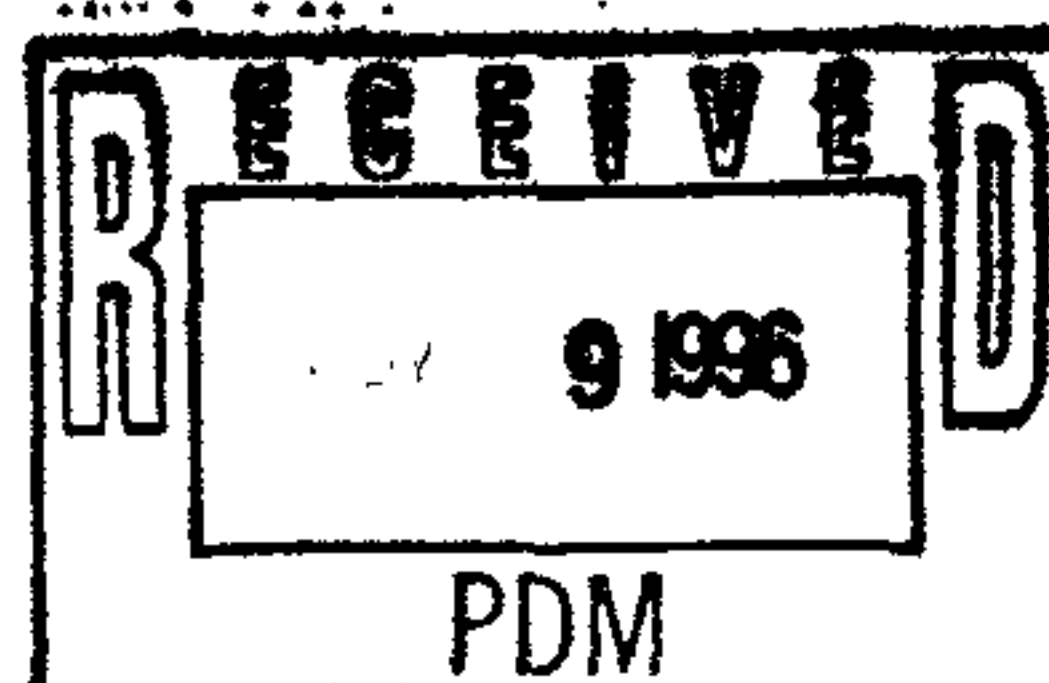
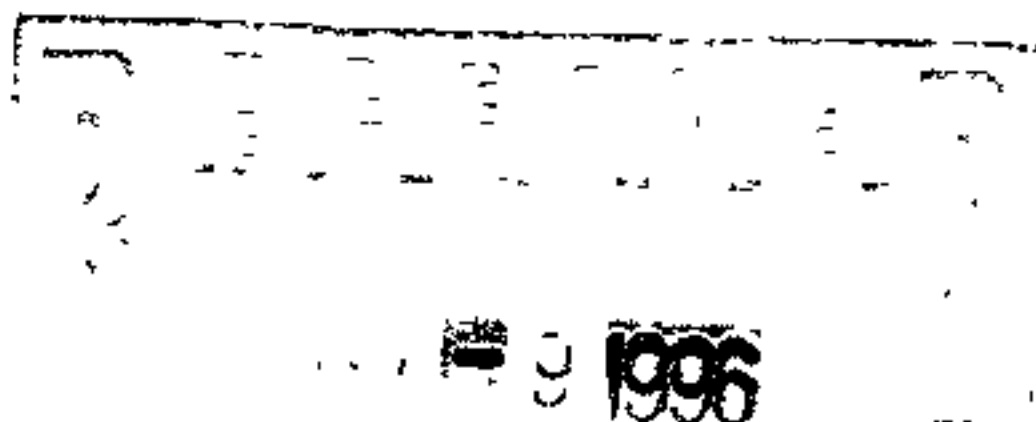
A handwritten signature in cursive script, reading "Peter Max Zimmerman".

Peter Max Zimmerman
People's Counsel for Baltimore County

A handwritten signature in cursive script, reading "Carole S. Demilio".

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf

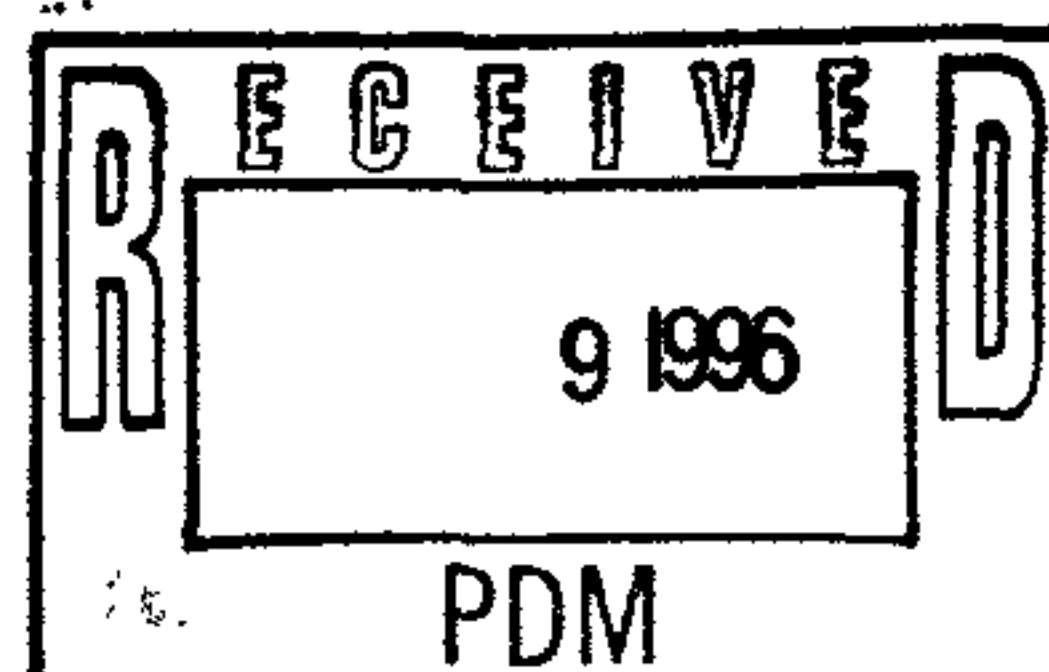


Arnold Jablon, Director
Department of Permits and
Development Management
May 9, 1996
Page Two

cc: Roger N. Powell, Esquire, Attorney for Petitioners

Robert F. Dashiell, Esquire, Attorney for Protestants
(Pawn brokers' trade association)

Betty Christopher, Protestant}	{All c/o Betty Christopher,
Al Clasing, Jr., Protestant}	{Back River Neck Peninsula
Theresa Guckert, Protestant}	{Community Association,
Marion MacCrehan, Protestant}	{P. O. Box 16754
Richard J. Shrader, Protestant}	{Baltimore, MD 21221
Orlando Yarborough, Protestant}	





County Board of Appeals of Baltimore County

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

February 18, 2000

David K. Gildea, Esquire
WHITEFORD, TAYLOR & PRESTON, LLP
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

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

RE: In the Matter of Southside Brokers /On Remand from
the Court of Special Appeals /Case No. 96-226-X
Circuit Court File No. 03-C-97-5479

Dear Counsel:

This Board will proceed as follows with the subject case on remand by mandate of the Court of Special Appeals.

Two Board members, in addition to Mr. Marks, will be assigned to this case to review the file and the transcript. These two additional members will replace Harry Buchheister and Diane Levero who no longer serve as members of the Board of Appeals.

Upon completion of each member's individual review, the Board will schedule a public deliberation /meeting to discuss and decide (1) whether or not testimony will be required; (2) whether or not memorandums from counsel will be required prior to further action by the Board; or (3) if, in fact, a final decision can be reached on the merits based upon the testimony and evidence existing in the record as originally submitted.

As indicated above, timely notice will be sent regarding the date and time of the Board's deliberation /meeting upon full review of the transcript and record by the three-member panel.

Very truly yours,


Kathleen C. Bianco
Administrator

Enclosure

cc: Mr. M. Scherr, Southside Brokers
Roger N. Powell, Esquire
Virginia W. Barnhart, County Attorney





Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

TER MAX ZIMMERMAN
People's Counsel

August 14, 2000

CAROLE S. DEMILIO
Deputy People's Counsel

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

RECEIVED
COUNTY BOARD OF APPEALS
00 AUG 14 PM 2:21

Re: ON REMAND FROM THE COURT OF SPECIAL
APPEALS OF MARYLAND, No. 866/1998
Petition for Special Exception
1508 Back River Neck Road,
767' SE of Back River Neck Rd, 200' S of Hopewell St,
11th Election District, 5th Councilmanic
Southside Brokers, Inc., Petitioner
Case No.: 96-226-X

Dear Chairman Stahl:

This is in reply to Mr. Gildea's letter of August 7, 2000. The July 21, 1999 Court of Special Appeals Opinion ends with this sentence:

"On remand a new consideration of Appellant's application will be necessary."

The Opinion does **not** say that a new hearing is necessary, much less a *de novo* evidentiary hearing.

The CSA Opinion reversed the Board's finding of failure to satisfy the minimum one-mile distance requirement with respect to existing pawn shops. The CSA held that this requirement does not apply to this Petition because it involved relocation of an existing operation. At the same time, Petitioner must satisfy Special Exception standards under BCZR Sections 436 and 502.1. The relevant bill is 112-95.

At the original CBA hearing of this case, we argued that the Special Exception could and should be denied independently of the minimum distance requirement. We also argued to the Court of Special Appeals that the CBA, in its April 30, 1997 Majority Opinion, denied the Special Exception on grounds independent of the minimum distance issue. We believe a fair reading of the Board's Opinion reflects that the denial of the Special Exception stands on its own. On page 9, the Board referred to the standards in BCZR 502.1 and

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County
August 14, 2000
Page Two

paragraphs a) and g) as particularly applicable to the evidence presented. On page 10, the Board discussed the evidence:

"... it would appear that a pawnshop would have more than the usual adverse effects in the area of the Country Ridge Shopping Center, because the location is the focus of intense efforts at revitalization." (Emphasis in original)

"...we feel compelled to recognize... the uncontradicted testimony that this section of Essex is in the highest priority revitalization area, has the highest incident of negative socioeconomic indicators, and has the highest incident of major crime in the County. These adverse effects are greater in the subject neighborhood than they would be elsewhere within the zone, **which is a persuasive reason for denial of the special exception for a third pawnshop in the Essex area.**" (Emphasis added)

Separately, the Board looked at the locational standards on page 10.

In concluding on page 12, the Board said:

"The Council has employed the special exception as a means to determine the appropriate and inappropriate locations for pawnshops... The Petition by Southside Brokers has failed to meet any of these standards and therefore the Petition for Special Exception is denied."

The Court of Special Appeals was uncertain, however, whether the Board's finding of violation of the minimum distance requirement may have affected consideration of the Special Exception. For this reason, it remanded for further consideration. Logically such consideration does not warrant a new evidentiary hearing. The Board's decision was not a preliminary denial akin to a Motion to Dismiss. The parties had the opportunity to present evidence on all the statutory requirements and did so. The required "consideration" is whether, on this record, the Special Exception was properly denied, independently of the absolute minimum distance requirement. The CSA did not disregard the Board's findings. Rather, the appellate court's decision stated:

"There are other statutory requirements [other than distance standard] requiring favorable findings before a special exception may be approved. The Board's Majority Opinion addressed those other requirements somewhat, but did so in a manner that coming [sic] [combined?] led its consideration of those requirements with those of Section 436.4."

The CSA did not intend the Petitioner have a second opportunity to present his case with new counsel. It did not call for new evidence, only "a new consideration."

Lawrence M. Stahl, Chairman
County Board of Appeals
of Baltimore County

August 14, 2000

Page Three

We continue to believe that the Board Majority in fact did deny the Special Exception on independent grounds. Even if the Board has any doubt about the intent of the Majority Opinion, the current panel should consider that the evidence overwhelmingly calls for denial of the Special Exception, irrespective of the distance issue. Indeed, there was no probative evidence to support the Special Exception.

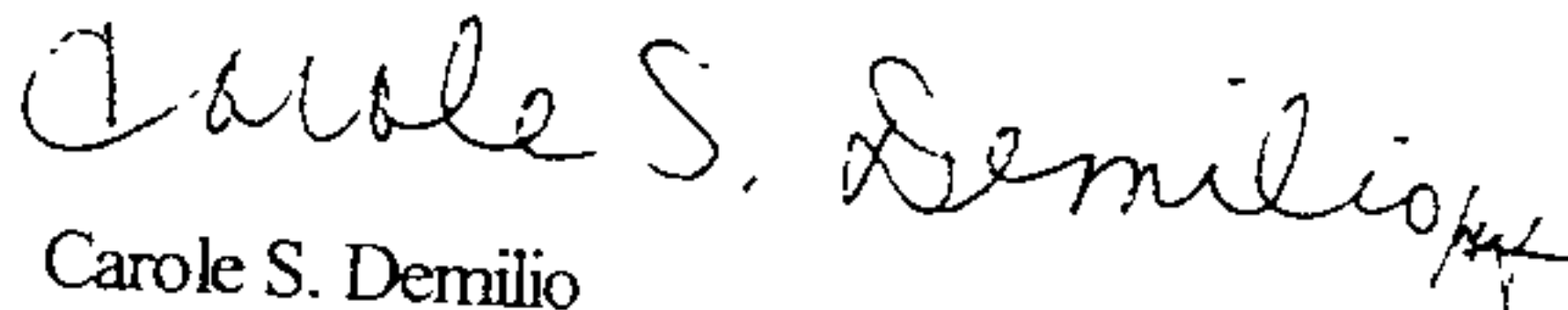
Finally, we are aware that due to the retirement of Board Members Diane Levero and Harry Buchheister, that at least two new Board Members will be joining the panel in this case. As the Board is aware, the Court of Special Appeals, in People's Counsel for Baltimore County v. Prosser, 119 Md.App. 150 (1998) decided, under similar circumstances, that two new panel members could review the record and make a decision. Southside's attempt to distinguish Prosser on the ground that "the issue was merely technical" is incorrect. It may be said that the remand in the present case involves essentially an intellectual issue and not an evaluation of testimony or credibility. **The question is merely whether the Majority's denial of the Special Exception stands independently of the distance issue upon which the appellate court reversed.**

Thank you for your consideration.

Very truly yours,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf

cc: David K. Gildea, Esq.,
Attorney for Petitioners

Roger Powell, Esq.,

Baltimore County Government
Office of Law



400 Washington Avenue
Towson, MD 21204

(410) 887-4420
Fax (410) 296-0931

November 6, 1995

Roger N. Powell, Esquire
107 Old Court Road
Pikesville, Maryland 21208

Dear Mr. Powell:

I am in receipt of your letter of October 25, 1995 regarding County Council Bill No. 112-95.

The think of the crux the difference between our interpretations is the change which is brought about by Section 436.4. I do not believe that this Section applied the special exception process to pawnshops. The special exception requirement was created in the amendments to Sections 233.2 and 233-4. These are the sections which made pawnshops a matter of special exception and not a matter of right in the subject zones.

I believe your suggestion to have a meeting is a good one; however, the appropriate protocol is for Councilman Kamenetz to ask me to come to this meeting in order to discuss any future legislative proposals.

I hope this letter is helpful to you. Please do not hesitate to contact me on this or any other matter.

Patrick H. Roddy
Assistant County Attorney

PHR:bj

c:\PR:bj\ltPow112

Baltimore County Government
Office of Law



400 Washington Avenue
Towson, MD 21204

(410) 887-4420
Fax (410) 296-0931

November 13, 1995

Roger N. Powell, Esquire
107 Old Court Road
Pikesville, Maryland 21208

Dear Mr. Powell:

I am in receipt of your letter of October 31 and November 3, 1995. Attached please find a response I had drafted to your October 25 letter. This correspondence really reiterates my reading and interpretation of the statute.

In regard to your recommendation to your client to seek declaratory judgment in Circuit Court, I need to consult with my clients as to the appropriate course of action for them to take. In this situation, I will be consulting with County Councilman Kamenetz and Administrative Officer Merreen Kelly. I hope to have these conversations quickly so I can respond to your request for participation in the process of filing a complaint and answer.

Sincerely yours,

A handwritten signature in cursive script, reading "Patrick H. Roddy".

Patrick H. Roddy
Assistant County Attorney

PHR:bj
cc:PR:bj/ltPow

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

WHITEFORD, TAYLOR & PRESTON
L.L.P.

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30 COLUMBIA CORPORATE CENTER
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COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

DAVID K. GILDEA
DIRECT NUMBER
410 832-2066
dgildea@wtplaw.com

COPY
January 8, 2001

ATTN: CIVIL CLERK
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21203

Courtesy
COPY →
- USED C.C. FOR
ORIGINAL (CCT
CONFIRMED # E
FILING DATE
ON 1-25-01)

01 JAN 10 PM 12:04
COUNTY BOARD OF APPEALS

Re: Country Ridge Shopping Center, Inc./Southside Brokers, Inc.
CBA File #69-226-X
Our File No.: 06510/0001

Dear Sir/Madame Clerk:

You will please find enclosed for filing in the above referenced matter a Petition for Judicial Review on behalf of Country Ridge Shopping Center, Inc./Southside Brokers, Inc. I have included a copy of the Petition for Judicial Review and would appreciate it if you would date stamp the copy and send it back with the messenger.

Should you have any questions or comments, please contact me.

Very truly yours,


David K. Gildea

DKG:sll

Enclosures

cc: Roger N. Powell, Esquire
Peter Max Zimmerman, Esquire
County Board of Appeals of Baltimore County

131634

WHITEFORD, TAYLOR & PRESTON
L.L.P.

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FAX 703 836-0265

DAVID K. GILDEA

DIRECT NUMBER
410 832-2066
dgildea@wtplaw.com

February 1, 2001

Sent Via Hand Delivery and Regular Mail

Lawrence S. Wescott, Chairman
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

**Re: In the Matter of Country Ridge Shopping, Inc.
Southside Brokers, Inc.
Case No.: 96-226-X**

COUNTY BOARD OF APPEALS
01 FEB - 1 PM 3:33

Dear Mr. Wescott:

I am in receipt of your letter dated January 18, 2001. I was aware at the Board of Appeals' hearing held on January 7, 2001 for the above referenced matter that there was a misunderstanding of my intentions; now it is apparent that there is a greater misunderstanding than I realized at that time. In no way was I intending to act outside of the bounds of the law during the proceeding. I certainly did not intend to act inappropriately or to impugn the fine reputation of the Board.

The context of the matter before the Board is critical to any understanding of the situation presented before the Board on the day in question. As you may know, although I recognize that you were not a Panel Member for any of the proceedings in this case, this case provided a procedural oddity. The original matter was heard before the Zoning Commissioner in 1995. The case was appealed to the Board of Appeals, then to the Circuit Court, then to the Court of Special Appeals.

This firm was not retained by Southside Brokers until after the Circuit Court decision and prior to the Court of Special Appeals. The Zoning Commissioner originally denied Southside Broker's Petition for Special Exception for a pawnshop, then rendered a favorable decision after a Motion for Reconsideration. At the first

Board of Appeals' hearing, Southside Brokers was denied their request for Special Exception by a 2 to 1 vote. The Board of Appeals' decision was appealed to the Circuit Court for Baltimore County. The Circuit Court for Baltimore County upheld the County Board of Appeals' decision.

This firm, along with Roger Powell, original counsel, represented Southside Brokers in the appeal to the Court of Special Appeals. We raised three issues before that Court. The Court of Special Appeals ruled in my client's favor on the first issue and ruled that it need not address the two other issues at that time. The Court of Special Appeals remanded the matter to the Board of Appeals.

The case presented a procedural oddity in that on remand only one of the original Board members was still on the Board of Appeals. Two additional Board members needed to be assigned to the Board to hear the matter. The matter is a contentious one involving a pawn shop.

It is likely that the matter will be appealed through the appellate courts again. For the sake of judicial economy, I requested, in writing, to have a hearing on my original Motions and then later on my Motion for Reconsideration on the procedural issues. As the matter was certain to be appealed, I wanted the ability to have a hearing on my Motion so that all of the attorneys could address the procedural issues. My concern was the Board would not be afforded the full opportunity to understand the issues. Without a full understanding of the issues, there was the likelihood that an error of law may be committed which would need to be reviewed by the appellate courts, all at great expense to my client.

When I went to the office of the Board of Appeals, it was my understanding that I would have the ability to discuss with the Board, in an open hearing, whether they would grant my request for a hearing on my Motion for Reconsideration. In other words, I was under the impression that I would at least be given the opportunity to argue why there should be a hearing on my Motion.

When the hearing commenced, I was somewhat shocked that the Chairman went right into public deliberation. It was my understanding that I would have the opportunity to at least argue why there should be a hearing on my Motion for Reconsideration. My actions, which I now understand were perceived to be disruptive, were simply to request a ruling on whether the Board would grant my request for hearing on my Motion for Reconsideration. The Chairperson misunderstood my intentions and believed I was attempting to argue the merits of the matter.

I simply wanted the record to be clear that the Board denied my request for a hearing on the Motion for Reconsideration. Once the Chairperson denied my request for a hearing, I sat down.

It became apparent, early on, that the Board members were agitated by certain language in the Motion for Reconsideration regarding a possible conflict of interest. To be clear, I never requested that Margaret Worrall be recused due to a conflict of interest. The pleadings make that clear. I requested that there be disclosure, in an open public hearing, addressing my client's perception that there was a conflict of interest. The law mandates that when parties perceive conflicts of interest, that the tribunal has an obligation to address those apprehensions. It was, and still is, my belief that if the Board had addressed the issue in an open hearing, that my client would have been satisfied, and the matter laid to rest.

Under normal circumstances, the matter would be set for a hearing and there would be an opportunity for dialogue and discussion with the tribunal. In other words, if my client perceived that a Circuit Court judge had a conflict of interest, I would have the opportunity to raise that issue with the judge and the judge would have the ability to disclose the material facts as part of the hearing process. I, as an attorney, would then have the opportunity to confer with my client and decide whether to make a motion to request the recusal of the decision maker.

In the instant matter, I was seeking disclosure from the Board of Appeals on an appearance of a conflict of interest. I was not seeking a recusal of any of the members. It is a fundamental tenet of law that there should be full disclosure in a public setting to quell any concerns about conflicts of interest by the participants in the proceeding.

In the instant matter, due to the quirky procedural nature, there was no hearing, and no opportunity to raise the issue verbally, as is the custom in many other tribunals.

Due to the nature of the matter, that is, a remand with two new Board members being assigned to the panel, these Board members, without the luxury of having a new hearing wherein they could discern the credibility of the various witnesses, made a decision on a Petition for Special Exception. The two new Board members were asked to review the record and, based on their review of the record, make a trial judge's call on the multitude of issues which are associated with a Petition for Special Exception.

After the newly appointed Board members reviewed the record and made their decision, their decision was not in my client's favor. One of the main, if not the most crucial, witnesses for the Protestants was Jack Dillon. Jack Dillon testified as a Planner and gave numerous opinions on the various aspects of the Petition for Special Exception.

My client's concern arose out of the fact that Ms. Worrall was acting as a trier of fact by reviewing the previous proceeding and attempting to resolve all of the issues on the remand. My client was concerned that Ms. Worrall had a professional relationship with Jack Dillon. My client's concern was that her knowledge of the credibility of one witness in this matter, while not having the opportunity to gauge the credibility of other witnesses, including my client, would have an adverse impact on the ultimate decision in this case. My client wanted to hear from Ms. Worrall, in an open public setting, that even though she was acting as a trier of fact and judging issues of credibility, that her professional relationship with Jack Dillon did not, in any way, affect her decision. It is only fair for my client to have the opportunity to request that Ms. Worrall disclose those facts in an open public hearing so that any apprehension my client may have regarding a potential conflict of interest could be resolved.

It is unfortunate that this matter has progressed to this point. I can assure you that I meant no disruption and believe that I was zealously representing my client within the bounds of the law. I am sorry if my actions, in any way, were perceived as inappropriate or personally offended any of the Board members.

It is my experience that when there is an opportunity for dialogue and discussion in an open hearing forum, issues such as the ones that arose in the instant matter are usually resolved amicably. It is unfortunate that the unusual procedural nature of this matter precluded such dialogue and discussion.

I look forward to practicing before the Board, in its present and future configuration, for many years. I understand that it is a small bar of attorneys that practice before the Baltimore County Board of Appeals. I am sure that you understand that I have an obligation to my clients to zealously represent them and raise all relevant issues which might bear on the matter pending before the tribunal.

I hope that we can all move on from this incident. I understand your concern about upholding the integrity of the Board and its members. I apologize if my actions personally offended any of the Board members. It was not my intent to personally offend any members of the Board, rather to zealously represent my client

Lawrence S. Wescott, Chairman

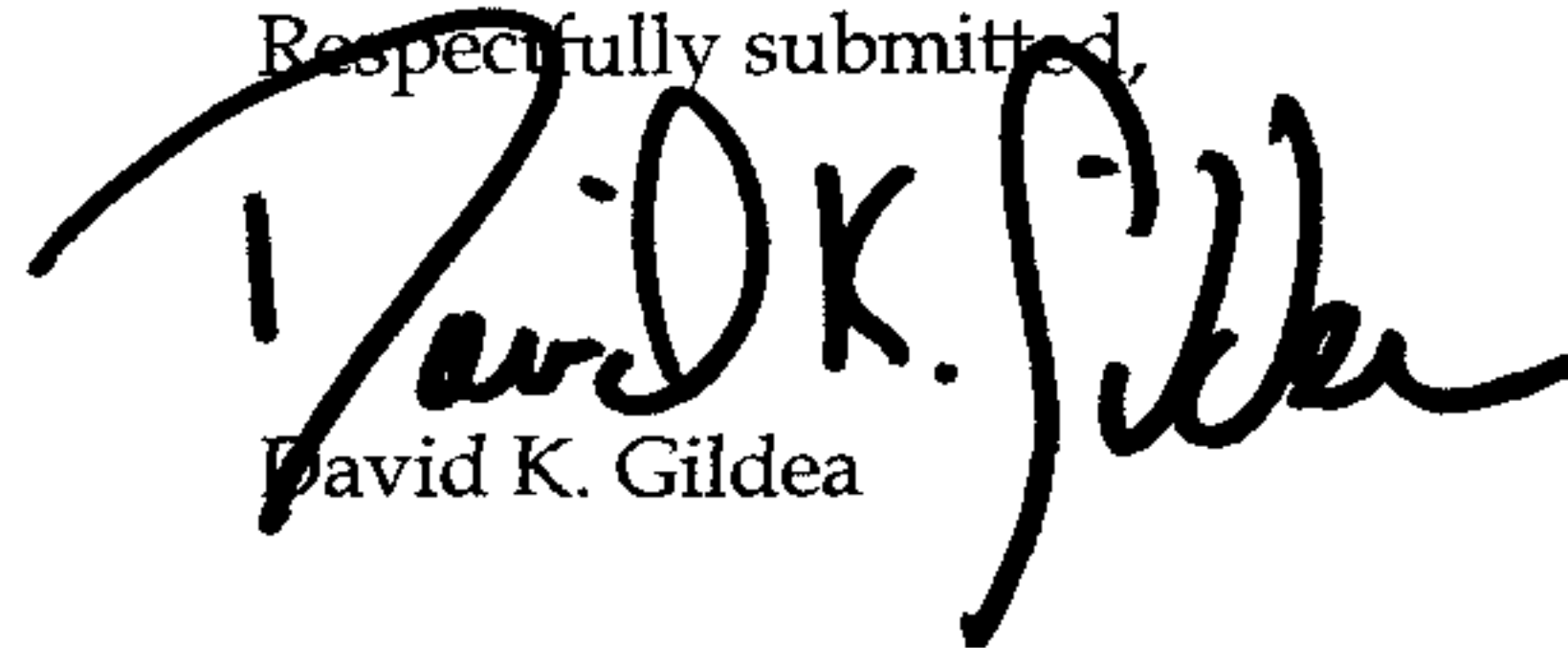
February 1, 2001

Page 5

within the bounds of the law. Please accept my apologies for any distress that I may have caused to the Board members by my actions.

I look forward to practicing before the Board in the future. I commend your good work and respect the service that you provide to Baltimore County and its citizens.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David K. Gildea". The signature is stylized with a large, sweeping initial "D" and a long, horizontal flourish at the end.

David K. Gildea

DKG:bhb

CC: Roger N. Powell, Esquire

218625

GILDEA, LLC
301 NORTH CHARLES STREET
SUITE 800
BALTIMORE, MARYLAND 21201
FAX 410-234-0072
www.gildeallc.com

DAVID K. GILDEA
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SEBASTIAN A. CROSS
DIRECT NUMBER
410-234-0071
SCROSS@GILDEALLC.COM

July 31, 2001

Mr. Edward Sedlar
Southside Brokers
1101 Light Street
Baltimore, MD 21230

Re: Southside Brokers, Inc./Potential Termination of Services

Dear Mr. Sedlar:

Our office has been unable to contact you for some time in regards to both payment of outstanding invoices and continued representation in People's Counsel for Baltimore County's appeal against Southside Brokers, Inc. As of the date of this letter, there are outstanding charges on your account in the amount of \$22,874.91 (see attached invoices). In order for our office to continue our representation of Southside Brokers in this matter, it is necessary for you to satisfy a substantial portion of this invoiced obligation.

As you know from our previous correspondence, People's Counsel for Baltimore County is currently appealing Case No. 3-C-97-000685 to the Court of Special Appeals. This appeal will require Southside Brokers to file a response brief, prepare a defense, and defend this appeal by oral argument in front of the Court of Special Appeals. This letter serves to inform you that Gildea, LLC will not take any further action in this matter unless we receive some commitment from you as to the payment of the outstanding invoices.

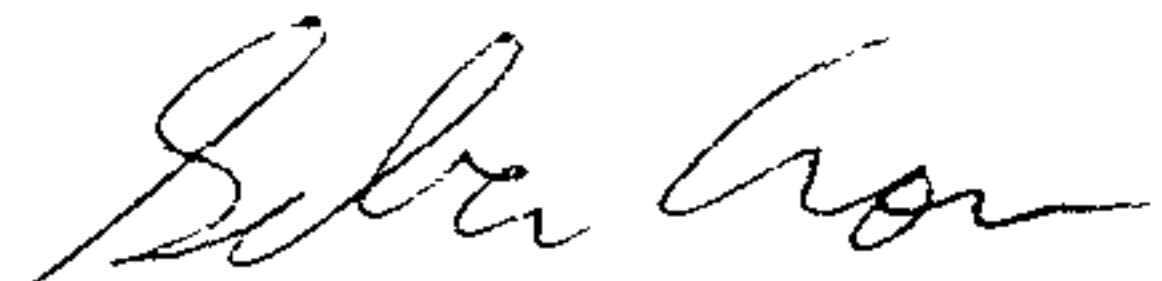
Maryland Rule 1.16 of the Maryland Code for Professional Conduct allows for termination of representation when a client fails to substantially fulfill an obligation to the lawyer regarding the lawyer's services. This obligation includes the obligation to pay legal fees. It should be noted this letter serves notice that a termination is imminent if no further action is taken regarding these outstanding invoices.

Mr. Edward Sedlar
July 31, 2001
Page 2.

Whether or not you decide to retain Gildea, LLC as your counsel, it should be noted that the appeal process has already been initiated by People's Counsel and will continue regardless of whether you terminate your relationship with Gildea, LLC.

Please contact our office as soon as possible so that we may amicably resolve this matter. We have enjoyed representing Southside Brokers thus far and hope that this matter can be resolved in order to continue our representation. Please excuse the tone of this letter but a termination of legal representation and the continued best interest of Southside Brokers is a very serious matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Sebastian A. Cross'.

Sebastian A. Cross

SAC:bhb
CC: David K. Gildea, Esquire
Enclosures

GILDEA, LLC
301 NORTH CHARLES STREET
SUITE 800
BALTIMORE, MARYLAND 21201
FAX 410-234-0072
www.gildeallc.com

DAVID K. GILDEA
DIRECT NUMBER
410-234-0070
DAVIDGILDEA@GILDEALLC.COM

SEBASTIAN A. CROSS
DIRECT NUMBER
410-234-0071
SCROSS@GILDEALLC.COM

October 16, 2001

Mr. Edward Sedlar
Southside Brokers
1101 Light Street
Baltimore, MD 21230

Re: Southside Brokers, Inc./Potential Termination of Services

Dear Mr. Sedlar:

This letter serves as a follow up to our letter dated July 31, 2001 and as confirmation of the terms you have agreed to regarding the legal fees owed to Gildea, LLC.

It is our understanding you have agreed to pay Gildea, LLC an amount equal to or above \$2,000.00 per month to be applied towards the outstanding balance of legal fees owed. Inasmuch as this office did not receive any payment for September, please be advised that we are expecting a check in the amount of \$4,000.00 for September and October.

As you know from our previous correspondence, People's Counsel for Baltimore County is currently appealing Case No. 3-C-97-000685 to the Court of Special Appeals. This appeal will require Southside Brokers to file a response brief, prepare a defense, and defend this appeal by oral argument in front of the Court of Special Appeals. This letter serves to inform you that Gildea, LLC will not take any further action in this matter unless we receive continued payment of the outstanding invoices.

Maryland Rule 1.16 of the Maryland Code for Professional Conduct allows for termination of representation when a client fails to substantially fulfill an obligation to the lawyer regarding the lawyer's services. This obligation includes the obligation to pay legal fees.

Mr. Edward Sedlar
October 16, 2001
Page 2.

We have enjoyed representing Southside Brokers thus far and hope that this matter can be resolved in order to continue our representation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Seb Cross', with a long, sweeping horizontal line extending to the right.

Sebastian A. Cross

SAC:bhb

CC: David K. Gildea, Esquire
Beverly H. Belt

GILDEA, LLC
301 NORTH CHARLES STREET
SUITE 800
BALTIMORE, MARYLAND 21201
FAX 410-234-0072
www.gildeallc.com

DAVID K GILDEA
DIRECT NUMBER
410-234-0070
DAVIDGILDEA@GILDEALLC.COM

SEBASTIAN A. CROSS
DIRECT NUMBER
410-234-0071
SCROSS@GILDEALLC.COM

January 4, 2002

Sent Certified Mail

Mr. Edward Sedlar
Southside Brokers, Inc.
1508 Country Ridge Lane
Essex, MD 21221

Re: People's Counsel v. Southside Brokers
Case No.: No. 952, September Term, 2001

Dear Ed:

We have written to you on numerous occasions and have had as many telephone conversations regarding the balance which has been past due for quite some time now. Repeatedly, you have conveyed that you are sending checks which our office never receives. This letter serves to inform you that if this office does not receive a minimum payment of \$5,000.00 by January 18, 2002, this matter will be referred to a collection agency.

Furthermore, we would also like to inform you that if the entire bill is not paid in full by March 1, 2002, prior to oral argument before the Court of Special Appeals, this office will be withdrawing its appearance immediately after the Court of Special Appeals oral argument.

Should you have any questions or comments, please contact me

Very truly yours,

Beverly H. Belt

BHB:mos

CC: David K. Gildea, Esquire
Sebastian A. Cross, Esquire

GILDEA, LLC
301 NORTH CHARLES STREET
SUITE 800
BALTIMORE, MARYLAND 21201
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410-234-0070
DAVIDGILDEA@GILDEALLC.COM

SEBASTIAN A. CROSS
DIRECT NUMBER
410-234-0071
SCROSS@GILDEALLC.COM

February 25, 2002

Sent Via Facsimile and Certified Mail

Mr. Edward Sedlar
Southside Brokers, Inc.
1508 Country Ridge Lane
Essex, MD 21221

Re: Countryridge Shopping Center/Southside Brokers, Inc.

Dear Mr. Sedlar:

As related to you through various correspondence, our office has not received payments on your account since August 21, 2001. As of the writing of this letter the amount past due is \$21,447.32. As you have displayed no intention to settle this account, this letter serves as notification that we will be filing notice of our termination as your counsel to the Court of Special Appeals after oral argument on March 4, 2002, as per Maryland Rule 1.16 of the Maryland Code for Professional Conduct. We will also be attaching several letters detailing the history of our attempts to resolve this matter with you.

Maryland Rule 1.16 allows for termination of representation when a client fails to substantially fulfill an obligation to the lawyer regarding the lawyer's services. This obligation includes the obligation to pay legal fees.

If you wish to make a payment on your account, please contact Beverly Belt in our office. Otherwise, Gildea, LLC will not longer provide legal services after March 4, 2002, and our relationship will be terminated.

Please contact us towards resolving this matter.

Sincerely,



Sebastian A. Cross

SAC:bhb
CC: David K. Gildea, Esquire

GILDEA, LLC
301 NORTH CHARLES STREET
SUITE 800
BALTIMORE, MARYLAND 21201
FAX 410-234-0072
www.gildeallc.com

DAVID K GILDEA
DIRECT NUMBER
410-234-0070
DAVIDGILDEA@GILDEALLC.COM

SEBASTIAN A CROSS
DIRECT NUMBER
410-234-0071
SCROSS@GILDEALLC.COM

December 7, 2001

Mr. Edward Sedlar
Southside Brokers, Inc.
1508 Country Ridge Lane
Essex, MD 21221

Re: People's Counsel v. Southside Brokers
Case No.: No. 952, September Term, 2001

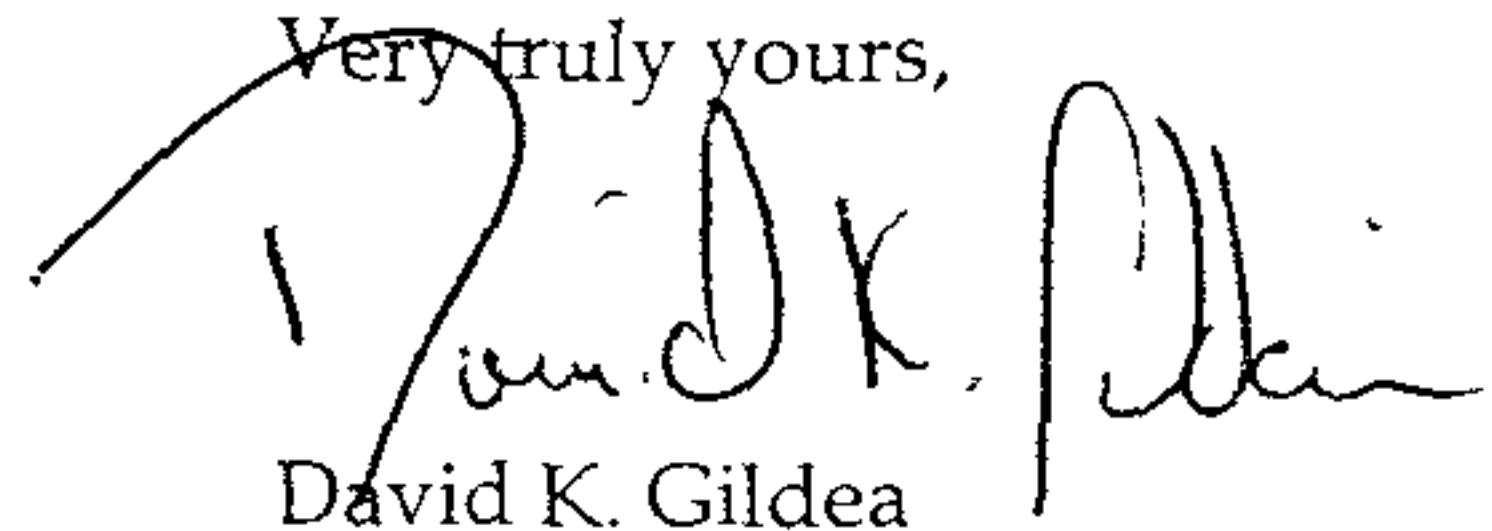
Dear Ed:

As discussed with you previously, this letter serves to certify that Gildea, LLC will be submitting a *brief on your behalf* in the above referenced matter and attending oral argument. Although we do not anticipate the total costs for these actions to be a substantial amount, we would like to reaffirm our desire for you to take action upon the outstanding balance.

Gildea, LLC would like to see a good faith effort to make payments on your unpaid balance. If a good faith effort is not made on your behalf to make payments on the outstanding balance, Gildea, LLC will seek a termination of the representation after oral argument, before the decision is rendered by the Court of Special Appeals. This action would be extremely unfortunate and undesirable, however, the present situation has deemed it necessary.

Please contact us at your earliest convenience regarding settling your account. Any payment plans or other resolutions towards the unpaid balance can be directed towards Beverly Belt, our office manager.

Very truly yours,


David K. Gildea

DKG:bhb

CC: Sebastian A. Cross, Esquire

GILDEA, LLC
301 NORTH CHARLES STREET
SUITE 800
BALTIMORE, MARYLAND 21201
FAX 410-234-0072
www.gildeallc.com

DAVID K. GILDEA
DIRECT NUMBER
410-234-0070
DAVIDGILDEA@GILDEALLC.COM

SEBASTIAN A. CROSS
DIRECT NUMBER
410-234-0071
SCROSS@GILDEALLC.COM

November 8, 2001

Sent Via Facsimile and Regular Mail

Mr. Edward Sedlar
Southside Brokers, Inc.
1508 Country Ridge Lane
Essex, MD 21221

Re: People's Counsel v. Southside Brokers
Motion to Withdraw

Dear Mr. Sedlar:

This letter serves as notice of our intention to file a Motion to withdraw our appearance in the above referenced case on Wednesday, November 14, 2001. This letter serves as a notice of our intention to move for withdrawal and to advise you to have another attorney enter their appearance or notify the Clerk of the Court of Special Appeals of Maryland in writing of your intention to proceed representing yourself as a *pro se* Appellee. This letter is being sent to you pursuant to the Maryland Rules 8-402(f) and 2-152.

Please contact our office with any questions or concerns you may have regarding this matter.

Very truly yours,


Sebastian A. Cross

SAC:bhb

CC: David K. Gildea, Esquire

GILDEA, LLC
301 NORTH CHARLES STREET
SUITE 800
BALTIMORE, MARYLAND 21201
FAX 410-234-0072
www.gildeallc.com

DAVID K. GILDEA
DIRECT NUMBER
410-234-0070
DAVIDGILDEA@GILDEALLC.COM

SEBASTIAN A. CROSS
DIRECT NUMBER
410-234-0071
SCROSS@GILDEALLC.COM

October 29, 2001

Mr. Edward Sedlar
Southside Brokers, Inc.
1508 Country Ridge Lane
Essex, MD 21221

Re: People's Counsel v. Southside Brokers

Dear Ed:

As communicated through previous correspondence, it is necessary that we receive the agreed upon payment of \$6,000.00 towards your outstanding balance on or before November 2, 2001. This \$6,000.00 represents the back charges for September and October and the \$2,000.00 due for November under the payment schedule you had arranged with our Office Manager, Beverly Belt. We expect you will settle this \$6,000.00 and continue to submit monthly payments in the amount of \$2,000.00 per month as per our agreement.

Attached please find the Record Extract designations submitted by People's Counsel and an accompanying scheduling letter from the Court of Special Appeals. This letter from the Court of Special Appeals states that People's Counsel's brief is due to the court on or before December 3, 2001 and our reply brief must be filed 30 days thereafter. As stated previously, our office can take no further action in this matter without a fulfillment of your obligation in regard to the outstanding balance on your account. Please understand that People's Counsel can file their brief with the Court of Special Appeals anytime between now and December 3, 2001 and, as such, our office should be preparing now for the reply brief. Any further delay in receiving your payment would jeopardize our representation of Southside Brokers in this matter.

We realize that the continued operation of your business is at stake for this appeal to the Court of Special Appeals and, as such, reiterate our position that it would be in your best interest to have this office begin preparation immediately.

Mr. Edward Sedlar
October 29, 2001
Page 2.

We look forward to resolving this matter and continuing our representation of you through this appeal process; however, this letter serves as a final notice as to our termination of representation upon failure to settle your account.

Please feel free to contact me if you have any questions or concerns regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Seb Cross", with a long horizontal flourish extending to the right.

Sebastian A. Cross

SAC:bhb
CC: David K. Gildea
Enclosure

GILDEA, LLC
301 NORTH CHARLES STREET
SUITE 800
BALTIMORE, MARYLAND 21201
FAX 410-234-0072
www.gildeallc.com

DAVID K GILDEA
DIRECT NUMBER
410-234-0070
DAVIDGILDEA@GILDEALLC.COM

SEBASTIAN A CROSS
DIRECT NUMBER
410-234-0071
SCROSS@GILDEALLC.COM

November 5, 2001

Sent Via Facsimile Only

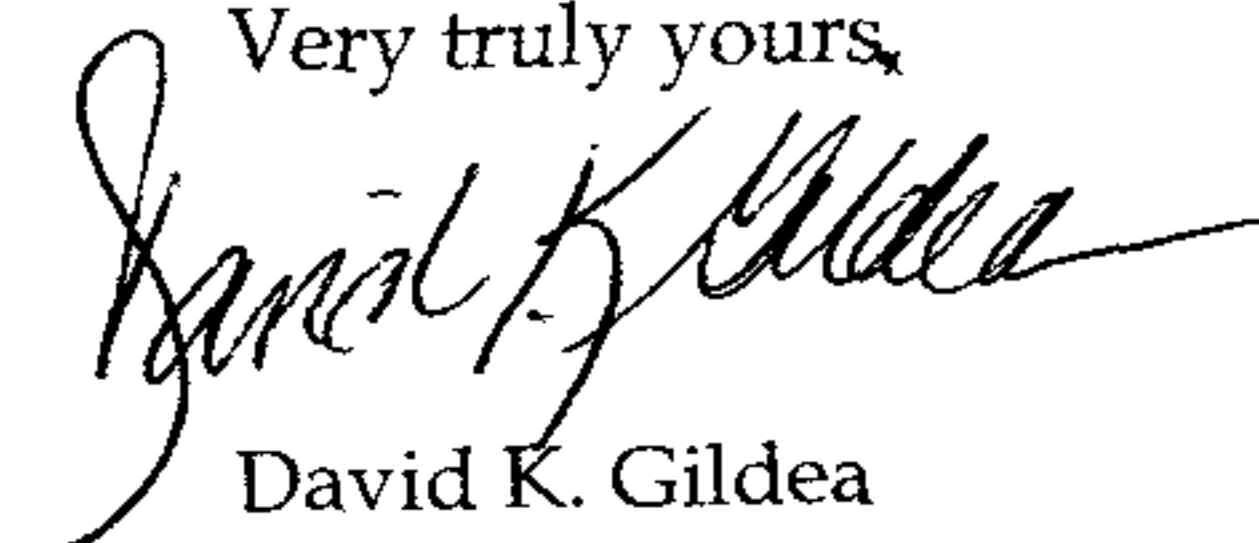
Mr. Edward Sedlar
Southside Brokers, Inc.
1508 Country Ridge Lane
Essex, MD 21221

Re: People's Counsel v. Southside Brokers

Dear Ed:

This is to follow up on letters sent to you on June 18, 2001, July 18, 2001, and October 29, 2001 regarding payment of legal fees for the above referenced matter. This letter serves to notify you that if this office does not receive a payment in the amount of \$6,000.00 before noon on Wednesday, November 7, 2001, we will file with the Court a Notice of Withdrawal pursuant to Maryland Rules of Professional Conduct 1.16.

Very truly yours,



David K. Gildea

DKG:bhb

CC: Sebastian A. Cross
Beverly H. Belt

GILDEA, LLC
301 NORTH CHARLES STREET
SUITE 800
BALTIMORE, MARYLAND 21201
FAX 410-234-0072
www.gildeallc.com

 **COPY**

DAVID K. GILDEA
DIRECT NUMBER
410-234-0070
DAVIDGILDEA@GILDEALLC.COM

SEBASTIAN A. CROSS
DIRECT NUMBER
410-234-0071
SCROSS@GILDEALLC.COM

March 6, 2002

Leslie D. Gradet, Clerk
Court of Special Appeals
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401

Re: Southside Brokers, Inc. v. People's Counsel
No. 952, September Term, 2001

Dear Ms. Gradet:

Please find enclosed 3 copies of a Motion to Withdraw Appearance. I have included the additional copy and would appreciate it if you would date stamp the copy and return it to me in the envelope provided.

Thank you for your assistance.

Very truly yours,



Sebastian A. Cross

SAC:bhb
CC: Baltimore County Board of Appeals
Peter Max Zimmerman, Esquire
Edward Sedlar
Enclosures

02 MAR 2002 5:24

GILDEA, LLC
19 EAST FAYETTE STREET
SUITE 205
BALTIMORE, MARYLAND 21202
410-332-0707
FAX 410-332-0759
DAVIDGILDEA@GILDEALLC.COM
www.gildeallc.com

 **COPY**

DAVID K. GILDEA

April 12, 2001

Clerk of the Court
Circuit Court for Baltimore County
County Courts Building
2nd Floor
401 Bosley Ave.
Towson, MD 21204

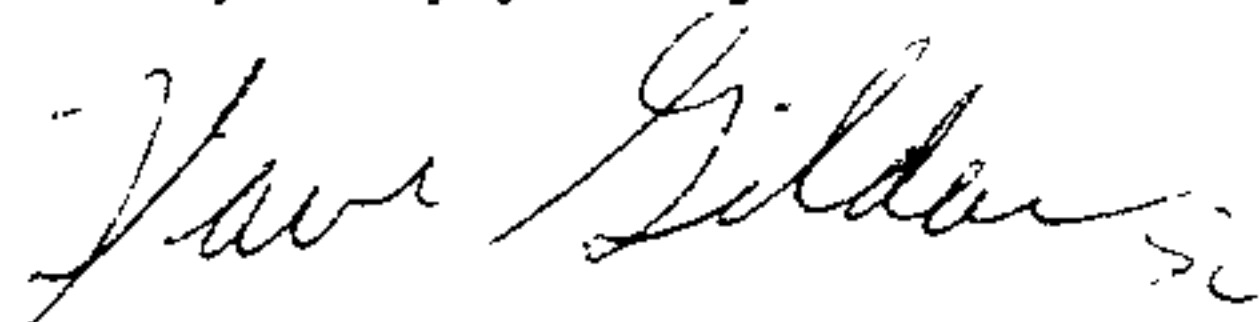
Re: In the case of the application of Country Ridge
Shopping Center, Inc.
Case No. 3-C-01-0307

Dear Clerk:

Please find enclosed one original and one copy of Southside Brokers, Inc.'s Motion to Amend and Consolidate and Motion for Modification of Time Requirement for the above referenced matter. I have included the additional copies and would appreciate it if you would date stamp them and return them to me in the envelope provided.

Thank you for your assistance.

Very truly yours,



David K. Gildea

DKG.bhb

CC: Baltimore County Board of Appeals
Roger N. Powell, Esquire
Peter Max Zimmerman, Esquire
John M. Hessing, President
Alfred E. Clasing, Jr.

Enclosures

GILDEA, LLC
301 NORTH CHARLES STREET
SUITE 800
BALTIMORE, MARYLAND 21201
FAX 410-234-0072
www.gildeallc.com

 **COPY**

DAVID K GILDEA
DIRECT NUMBER
410-234-0070
DAVIDGILDEA@GILDEALLC.COM

SEBASTIAN A. CROSS
DIRECT NUMBER
410-234-0071
SCROSS@GILDEALLC.COM

December 21, 2001

Leslie D. Gradet, Clerk
Court of Special Appeals
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, MD 21401

Re: Southside Brokers, Inc. v. People's Counsel
No. 952, September Term, 2001

Dear Ms. Gradet:

Please find enclosed 15 copies of Appellee Southside Brokers, Inc.'s Brief and Appendix. I have included an additional copy and would appreciate it if you would date stamp the copy and return it to me in the envelope provided.

Thank you for your assistance.

Very truly yours,



Sebastian A. Cross

SAC:bhb
CC: Baltimore County Board of Appeals
Peter Max Zimmerman, Esquire
Edward Sedlar
Enclosures

01 DEC 24 PM 12:47

LAW OFFICES
POWELL & SORRELL
107 OLD COURT ROAD
PIKESVILLE, MARYLAND 21208
(410) 653-0262
TELEFAX: (410) 653-5057

ROGER N. POWELL

JOHN B. SORRELL

October 28, 1996

Robert O. Schuetz, Chairman
Board of Appeals of Baltimore County
room 49, Courthouse
400 Washington Avenue
Towson, MD 21204

Re: Petition for Special Exception -
Country Ridge Shopping Center
Case no: 96-226-X
Hearing date: 11/6/96

Dear Mr. Schuetz:

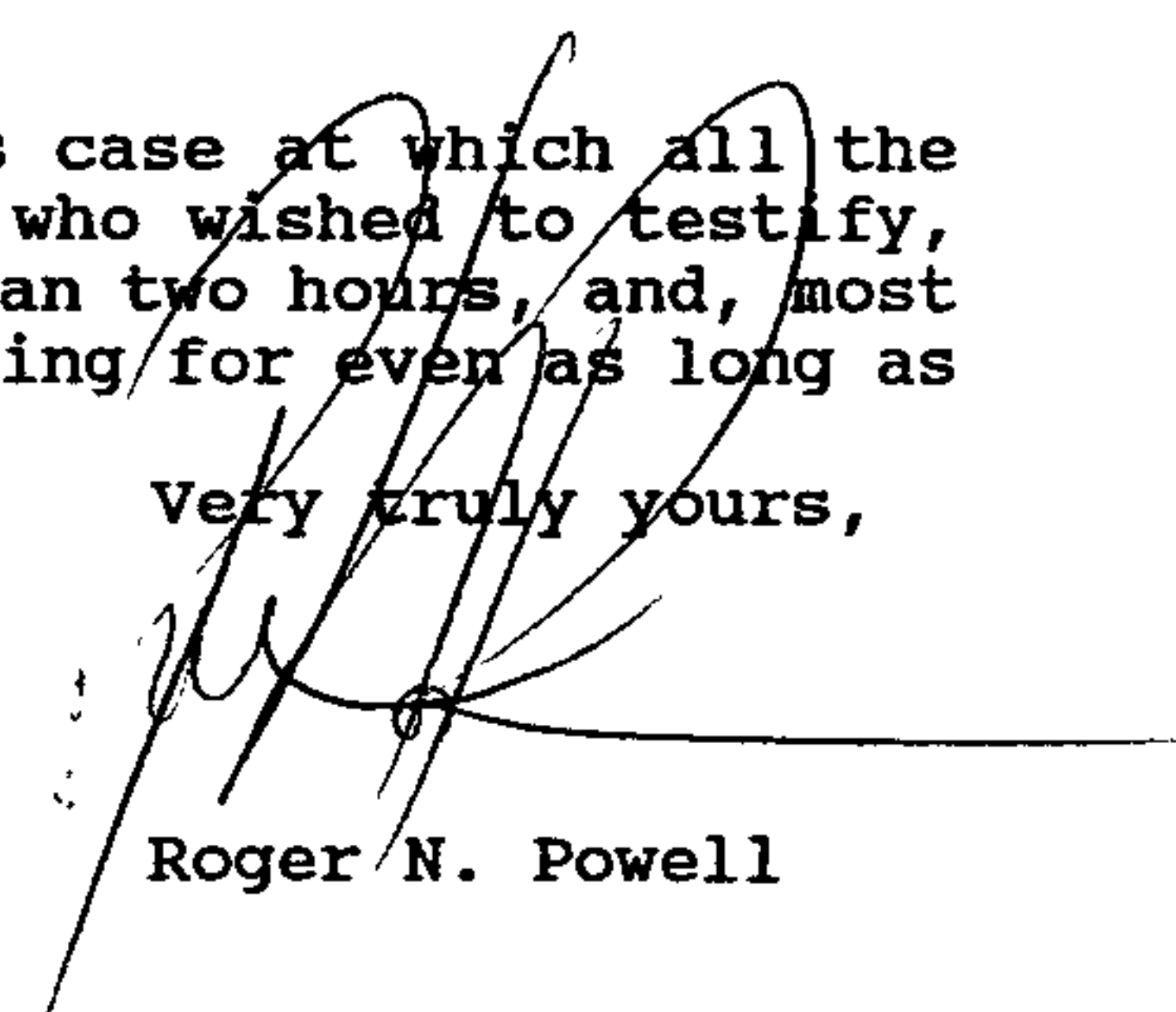
I am writing on behalf of my client, Southside Brokers, Inc., to reply to Mr. Zimmerman's letter of October 23rd. Mr. Zimmerman is quite presumptuous in his suggestion, first, that the hearing will take two days, and, second, that he intends to call a witness who is "unavailable" on the first day, for the second day.

Assuming the witness is a protestant, said protestant has been on notice for many months of the hearing date, and, is not entitled to any special consideration.

If the witness is a professional witness, then that witness should, at the least, identify himself and present his dilemma to you for your consideration, and should not "hide" behind vague requests of the nature contained in Mr. Zimmerman's letter, which although dated October 23rd, was not mailed to my office until October 25th (see photocopy of envelope enclosed), and obviously not received until after it was mailed.

There have been two hearings held in this case at which all the protestants who signed up appeared, and those who wished to testify, testified. None of those hearings took more than two hours, and, most humbly, I do not see the within hearing continuing for even as long as a full day.

Very truly yours,


Roger N. Powell

RNP/ejl

cc: Peter Max Zimmerman, Esquire

LAW OFFICES
POWELL & SORRELL
107 OLD COURT ROAD
PIKESVILLE, MARYLAND 21208
(410) 653-0262
TELEFAX: (410) 653-5057
E-MAIL ADDRESS: PSLAW@IX.NETCOM.COM

ROGER N. POWELL

JOHN B. SORRELL

February 23, 1998

Arnold Jablon, Esquire
Director, Baltimore County Office of
Permits and Development Management
111 West Chesapeake Avenue
Towson, MD 21204

Re: Southside Brokers

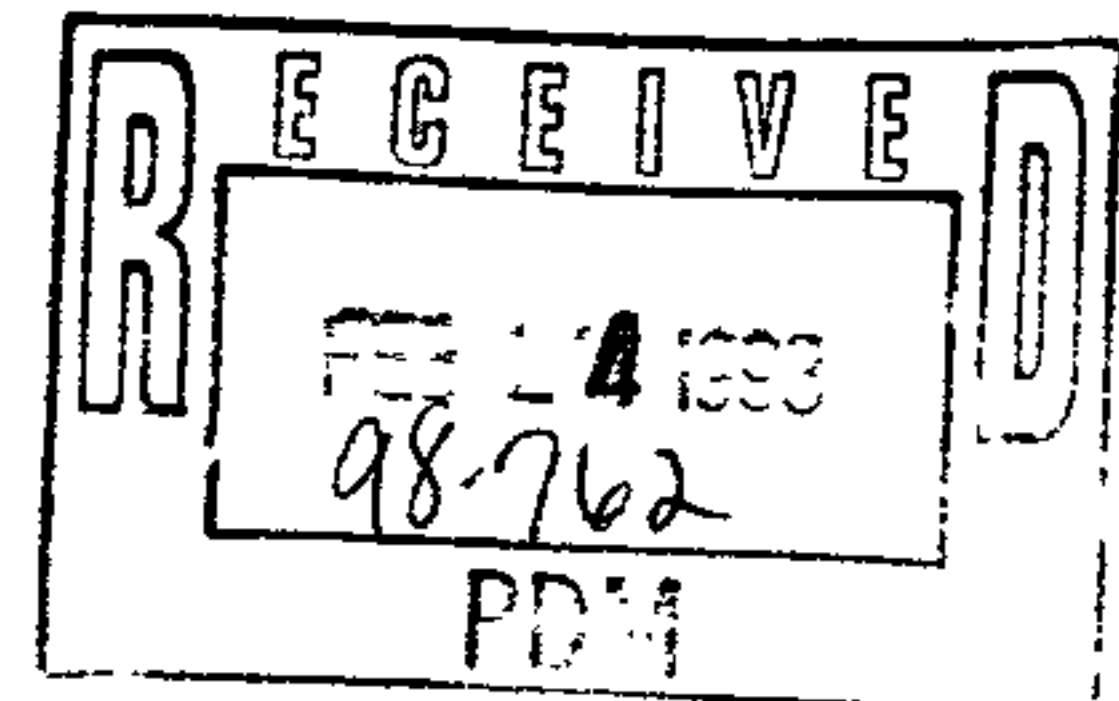
Dear Mr. Jablon:

By now you are aware of the fact that there has been lengthy litigation in regard to my client's location on Back River Neck Road in the Country Ridge Shopping Center whereby the Zoning Commissioner initially granted his Petition for Special Exception, that there was an effective reversal of that decision by the Baltimore County Board of Appeals of Baltimore County, and an affirmation of the decision of the Baltimore County Board of Appeals of Baltimore County by the Honorable Thomas Bollinger. Currently, there is a Motion to Revise or to Reconsider pending before Judge Bollinger, and depending on his determination to revise or reconsider, it is likely that there will be an Appeal to the Court of Special Appeals.

The foregoing notwithstanding, it is my client's concern that there be no collateral action to attempt to close his business solely on the basis of Judge Bollinger's decision and during the time that the litigation in this matter continues.

There is another matter of concern which is collateral to my client's pending case but is, nevertheless, a concern.

4 During the period of time that my client has pursued the matter, he having been as defined by the statute one of the twelve pawn shops which was in existence and operation at the time of his initial Petition, other pan shops have opened in the same councilmanic district, two of the three of which it is my understanding and belief were not opened by an owner of an existing business that was in operation but, rather, were opened by persons who had purchased the business and license from one of the existing operating pawn brokers. The foregoing notwithstanding, there were no oppositions to those brokers' Petition for Special Exceptions regarding their location (not relocations).



Powell & Sorrell

Arnold Jablon, Esquire

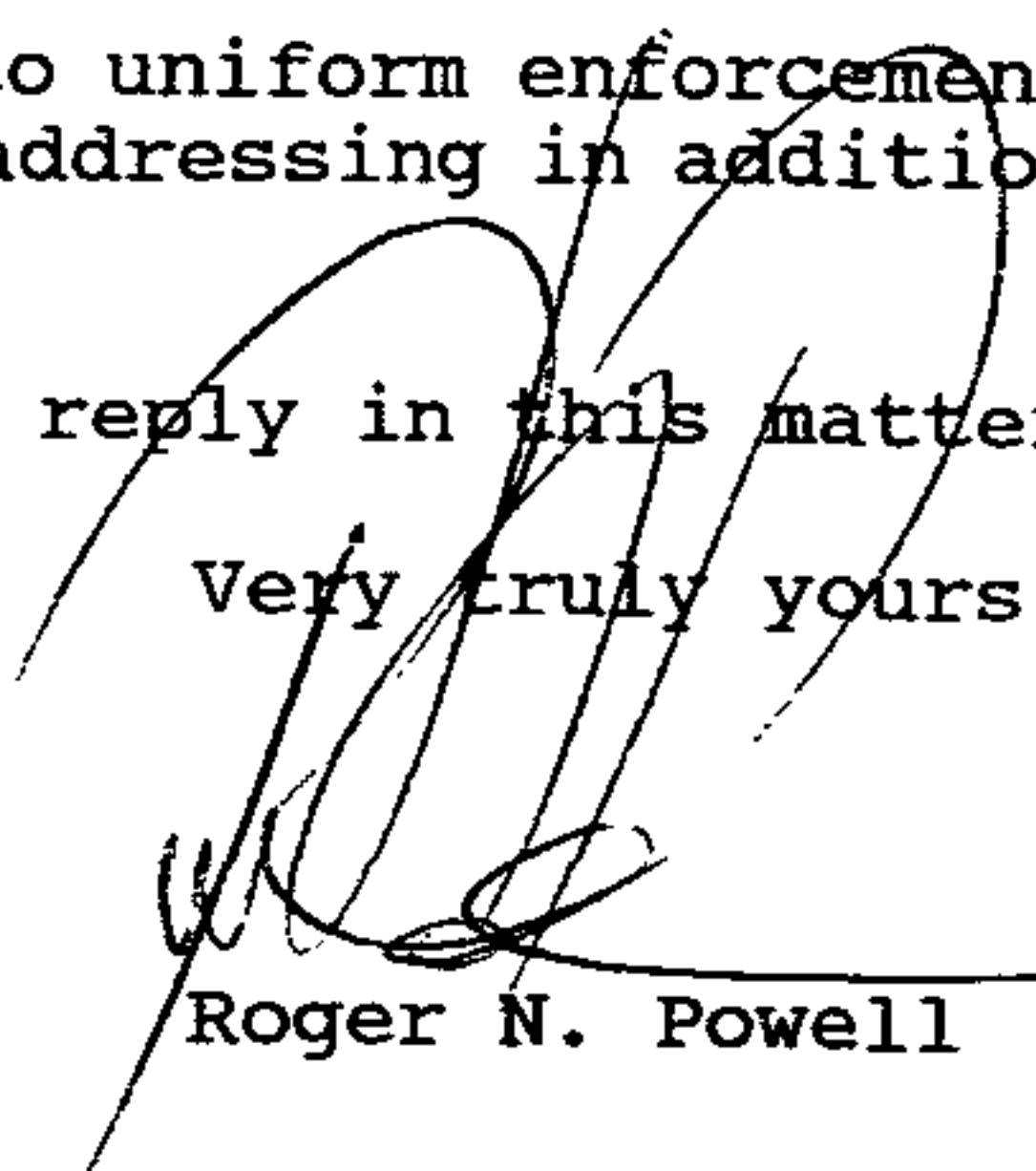
-2-

February 23, 1998

Obviously, there is some concern as to uniform enforcement of the statute which I would appreciate your addressing in addition to the matter I have here first addressed.

I thank you for your cooperation and reply in this matter.

Very truly yours,



Roger N. Powell

RNP/ejl

cc: Mr. Meyer Scherr
Mr. Edward Sedlar

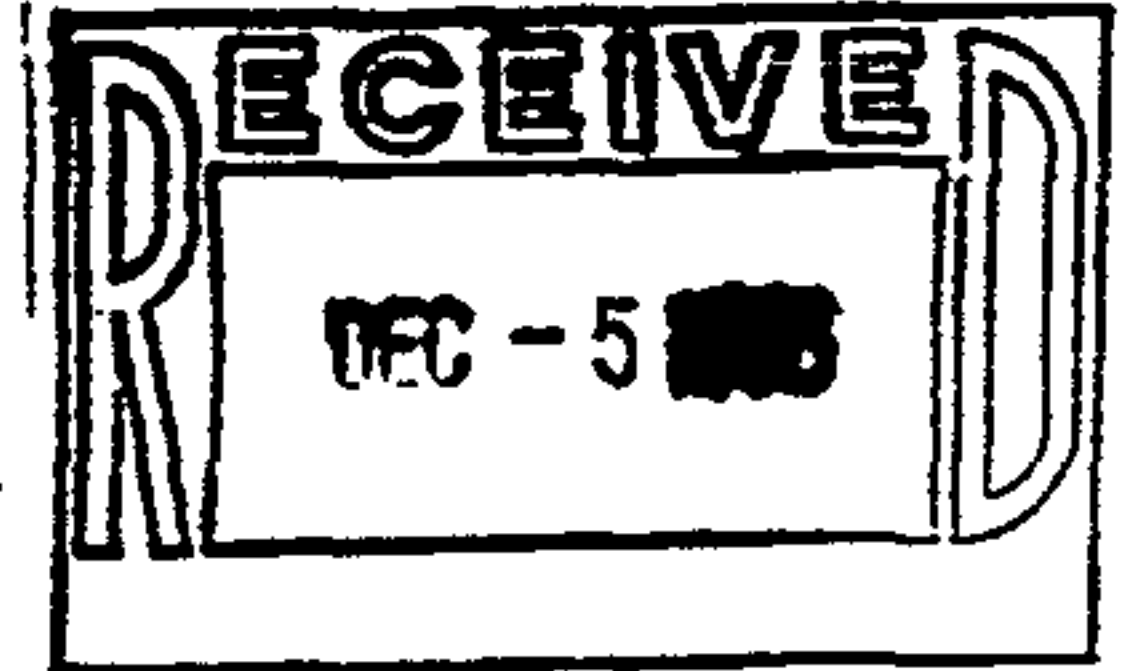
LAW OFFICES
ROGER N. POWELL
107 OLD COURT ROAD
PIKESVILLE, MARYLAND 21208
(410) 653-0262
TELEFAX: (410) 653-5057

ROGER N. POWELL

COUNSEL
THEODORE P. WEINER

December 4, 1995

Patrick H. Roddy, Esquire
Assistant County Attorney
Baltimore County Government Office of Law
400 Washington Avenue
Towson, MD 21204



Re: Southside Brokers, Inc.

Dear Mr. Roddy:

This will acknowledge and thank you for your letters of November 6th and November 13th.

I have never corresponded with Councilman Kamenetz; however, nevertheless, Councilman Kamenetz has, in a conversation prior to this letter, asked my client why he has filed suit against the County. I must conclude that you have discussed my proposal for Declaratory Judgment action with Councilman Kamenetz which resulted in that statement from him. Under the circumstances, might I suggest that it would now seem appropriate that you clarify to Councilman Kamenetz by a letter with copy to me, that no suit has been filed, only a suggestion to deal with the problem was made suggesting a Declaratory Judgment action, so that there is no further misunderstanding and that any misunderstanding that now exists is resolved and concluded.

The purpose of this letter is, in addition, to advise you that my client has determined, without prejudice to his belief in my interpretation of the statute or his rights to rely upon the exception for existing pawn shops regarding relocation in the statute, to file a Special Exception believing that one method, that is the special exception, would be no longer no shorter than filing of a declaratory judgment action and awaiting a result through that process.

This letter is to advise you on behalf of my client, that his election to proceed in this method is in no way a waiver of his rights to rely on the statute as I have interpreted it, nor will it estop him in the future from proceeding in accordance with my interpretation of the statute, nor will it prejudice him in any future proceeding, it being my client's position that the sole

Roger N. Powell - Attorney at Law

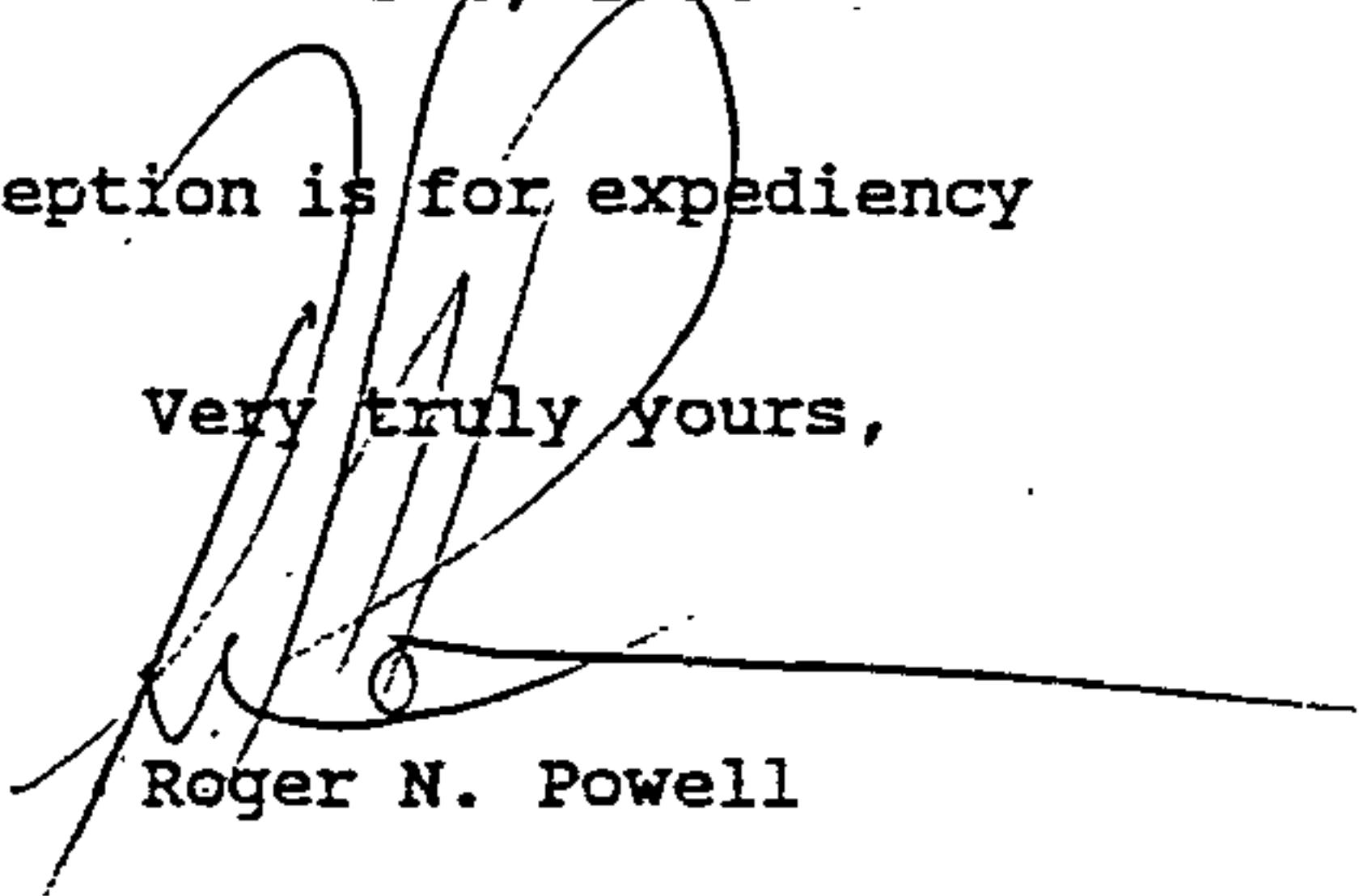
Patrick H. Roddy, Esquire

-2-

December 4, 1995

reason for his applying for the Special Exception is for expediency purposes and for no other reason.

Very truly yours,



Roger N. Powell

RNP/ejl

cc: Mr. Meyer Scherr

Law Offices

ROGER N. POWELL

107 Old Court Road
Pikesville, Maryland 21208

Telephone (410) 653-0262

Facsimile (410) 653-5057

May 4, 2000

RECEIVED
COUNTY BOARD OF APPEALS
00 MAY -5 AM 11:25

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

Re: In the matter of: Country Ridge Shopping center, Inc /
Southside Brokers, Inc. - Case no. 96-226-X
Deliberation: 8/8/00 - 1:00 PM

Dear Ms Bianco

Thank you for taking the time to explain the scheduling of deliberations for reason of my unavailability on the currently scheduled date of August 8th as I am required to be in the Circuit Court for Garrett County on that date and time.

You advised that the same Board members are available the following week. I am available the following week on August 16th, 17th and 18th. On the one hand, there would be no untimely delay in rescheduling this deliberation for the following week, and on the other it would not be a hardship for the members of the Board as it would not shorten the time within which they need to review the testimony

I thank you for your consideration and attention in attempting to reschedule this matter.

Very truly yours,

Roger N. Powell

RNP/ejl

cc David K. Gildea, Esquire
Mr. Meyer Scherr and Mr. Edward Sedlar

*8/16 is OK with PMZ
caj 5/5/00
5/5/00*

*I - I don't have a
problem moving this
to 8/16 or 8/17 - due to the unusual nature
of the "deliberation" - is Peter okay with
that change? Call me. Kath.*

*cc David K. Gildea, Esquire
Mr. Meyer Scherr and Mr. Edward Sedlar*

Law Offices
ROGER N. POWELL

107 Old Court Road
Pikesville, Maryland 21208

Telephone (410) 653-0262

Facsimile (410) 653-5057

May 4, 2000

RECEIVED
COUNTY BOARD OF APPEALS
00 MAY -5 AM 11:25

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

Re: In the matter of. Country Ridge Shopping center, Inc /
Southside Brokers, Inc. - Case no: 96-226-X
Deliberation 8/8/00 - 1:00 PM

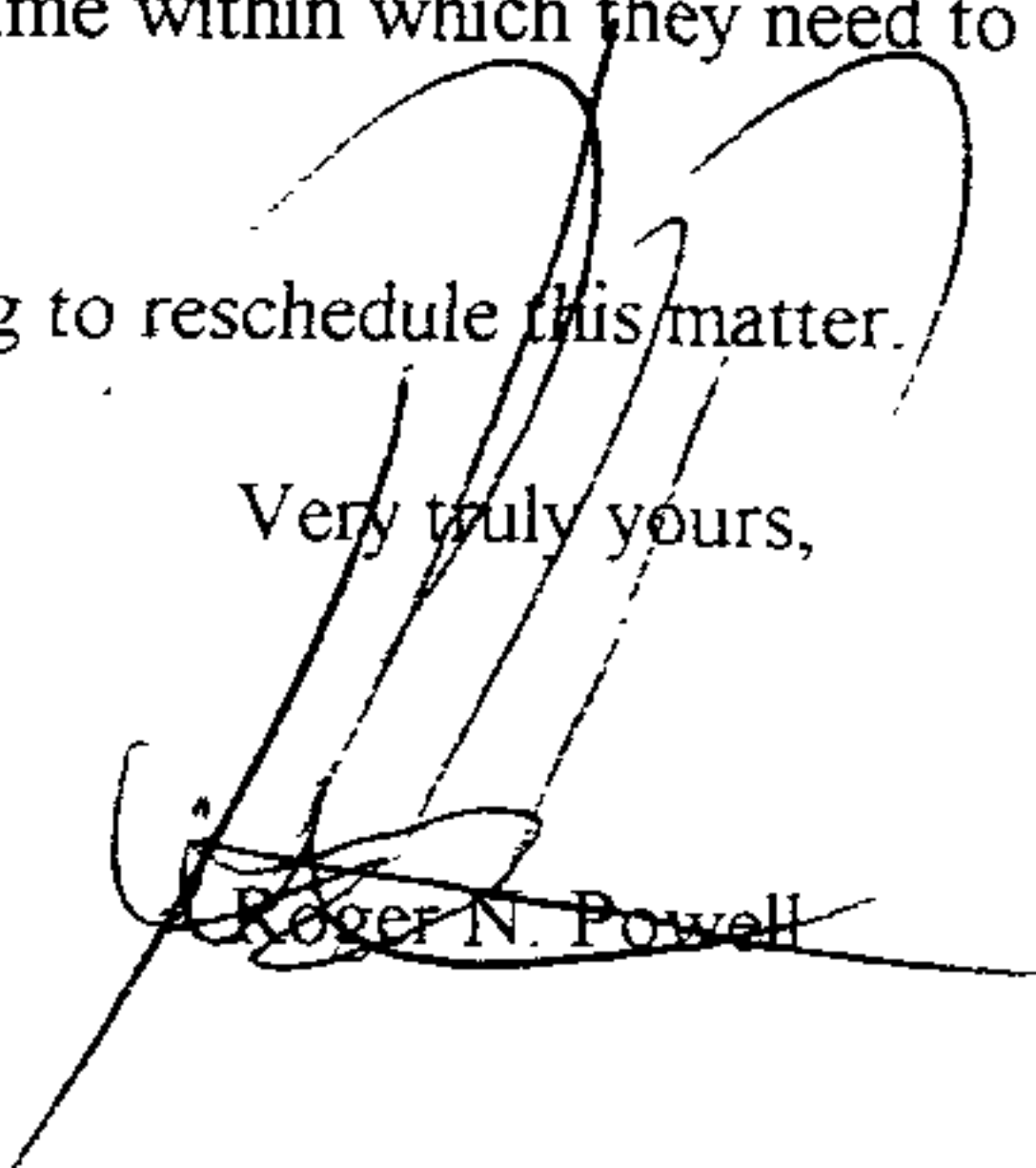
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You advised that the same Board members are available the following week. I am available the following week on August 16th, 17th and 18th. On the one hand, there would be no untimely delay in rescheduling this deliberation for the following week, and on the other it would not be a hardship for the members of the Board as it would not shorten the time within which they need to review the testimony

I thank you for your consideration and attention in attempting to reschedule this matter.

Very truly yours,


Roger N. Powell

RNP/ejl

cc. David K Gildea, Esquire
Mr. Meyer Scherr and Mr. Edward Sedlar

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

DAVID K. GILDEA
DIRECT NUMBER
410 832-2066
dgildea@wtplaw.com

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515

410 832-2000
FAX 410 832-2015
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

August 7, 2000

Via Hand Delivery

Mr. Lawrence Stahl
Chairman,
Baltimore County Board of Appeals
Baltimore County Courthouse
Room 49
Towson, MD 21204

Re: Southside Brokers, Inc.
CBA No.: 96-226-X

Dear Mr. Stahl:

This matter comes before you and the Board for public deliberation on Wednesday, August 16, 2000. As you are aware, the Court of Special Appeals issued its unreported Opinion in this matter on July 21, 1999. Based on the Court of Special Appeals' Opinion, a de novo review of this matter on remand is necessary.

The Baltimore County Zoning Regulations ("BCZR") requires that appeals on petitions for special exception, like this instant matter, be heard by the Board of Appeals *de novo*. BCZR § 501.6. Additionally, the general rule in Maryland is that matters on remand before the Board be heard *de novo*.

On page 8 of its Opinion in this matter, the Court of Special Appeals held that the Board "erred as a matter of law in considering the location standards of [BCZR] Section 436.4." The Court went on to explain that on remand the Board must properly address a number of statutory requirements, and thus "a new consideration of Appellant's application will be necessary." *Id.*

Mr. Lawrence Stahl
August 7, 2000
Page 2

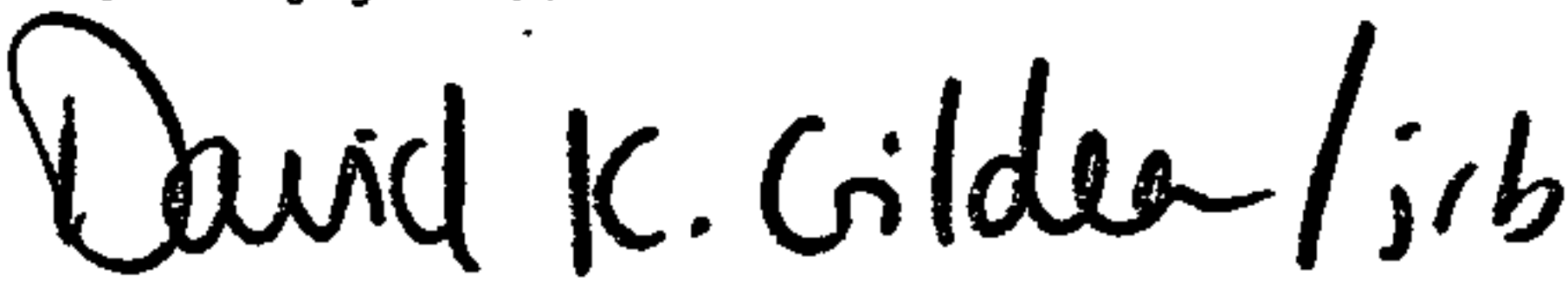
Southside's "application" is its petition for special exception. On remand, the Board must review a number of issues and statutory requirements that involve an evaluation of both factual and expert witness testimony. See, BCZR § 502.1. The credibility of these witnesses is an important factor to be weighed by the Board in making its decision in this matter. For this reason, a hearing *de novo* is necessary.

Unlike the review conducted by the Board of Appeals in People's Counsel for Baltimore County v. The Prosser Co., Inc., 119 Md.App. 150 (1998), the review that must be conducted by this Board, in this matter, involves a new evaluation of this petition for special exception in its entirety. Therefore, the Prosser case is not analogous to this matter. In Prosser, the Court of Special Appeals ruled that a review on the record by the Board was appropriate since on remand there was only one technical issue for the Board to review. As explained by the Court of Special Appeals, "there was no adverse testimony on the issue on remand and the issue was of a technical nature. The Board noted that the evaluation of lay witness credibility and demeanor was not a material factor in determination of the issue before it." 119 Md.App. at 180.

In this instant matter, the Board of Appeals is faced with a review of numerous issues where in the credibility and demeanor of both factual and expert witnesses is paramount. The Court of Special Appeals' instruction for remand in this case requires a hearing *de novo* to allow for a proper consideration of all relevant statutory requirements.

Thank you for your consideration of this matter.

Very truly yours,


David K. Gildea

DKG/JRB

cc: Mr. Mickey Scherr, Southside Brokers
Mr. Edward Sedlar, Southside Brokers
Mr. Carroll Holzer, Esq.
Mr. Peter Max Zimmerman, Esq.
Ms. Carole S. DeMilio, Esq.
Mr. Roger Powell, Esq.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515

410 832-2000
FAX 410 832-2015
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D C 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
FAX 410 884-0719

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

DAVID K. GILDEA
DIRECT NUMBER
410 832-2066
dgildea@wtplaw.com

February 9, 2000

Sent Via Hand Delivery

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

Re: Southside Brokers v. People's Counsel
Case No.: 96-226-X
Our File No.: 06510/00001

Dear Kathy:

The above referenced matter has been remanded to the Board of Appeals from the Court of Special Appeals.

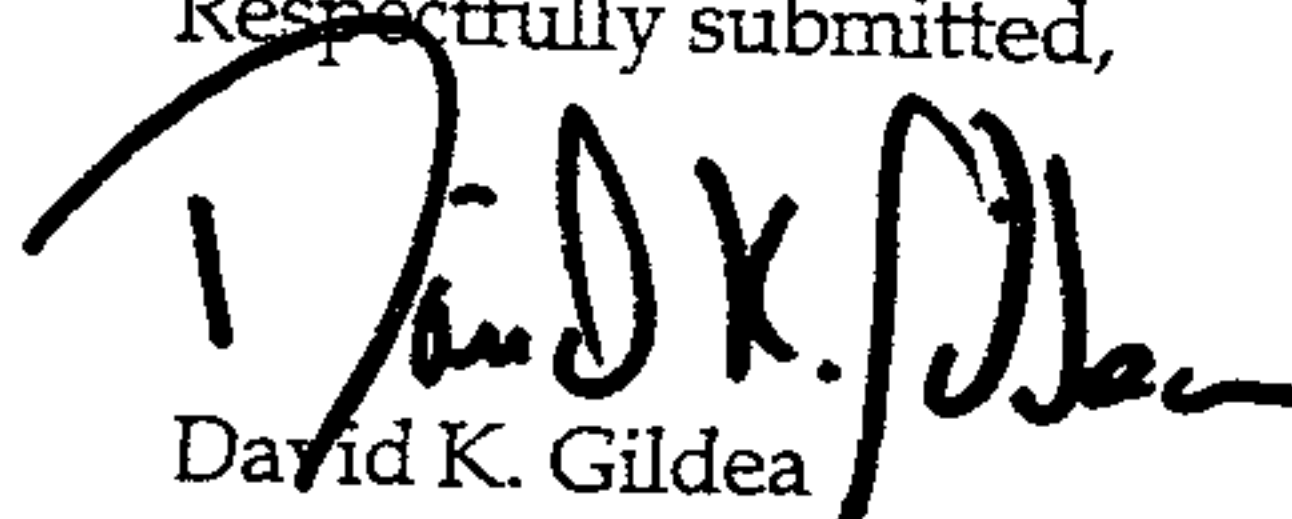
Southside Brokers hereby respectfully requests that the matter be set in for a hearing. The requested hearing would be for the sole purpose of counsel to present arguments on the procedural issue, that is, how the remand from the Court of Special Appeals should be handled. Prior to the requested hearing on the procedural issue, counsel would have the benefit of submitting a Memorandum of Law outlining and addressing the procedural issue.

Judicial economy would be served by conducting a hearing on the procedural issue as a record would be created for any appellate court to review. Should the Board act without such a hearing on the procedural issue, the absence of a record may present difficulty for any appellate court to review the decision of the Board.

Ms. Kathleen C. Bianco, Administrator
December 21, 2000
Page 2

Therefore, Southside Brokers respectfully submits that a hearing date be set for counsel to present their arguments on the procedural posture of the remand from the Court of Special Appeals.

Respectfully submitted,


David K. Gildea

DKG:bhb

CC: Mr. Mickey Scherr, Southside Brokers
Mr. Edward Sedlar, Southside Brokers
Roger N. Powell, Esquire
Peter Max Zimmerman, Esquire
Carole S. DeMilio, Esquire

188095

BACK RIVER NECK
PENINSULA
COMMUNITY ASSOCIATION



SINCE 1983

P.O. Box 16754, Baltimore, Maryland 21221

May 15, 1996

Mr. Arnold Jablon-Director
Dept. of Permits and
Develop. Management
111 W. Chesapeake Ave.
Towson, Maryland 21204

RE: Case No. 96-226-X Southside Brokers Inc.-Lessee
Petition for Special Exception
Country Ridge Shopping Center, Inc.-Owner

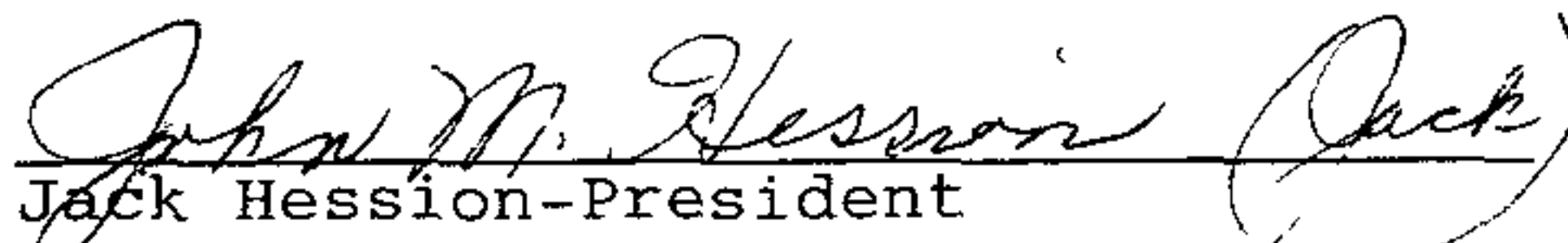
Dear Mr. Jablon:

Please enter an appeal of Back River Neck Peninsula
Community Assoc., Inc. and Alfred E. Clasing Jr. to the County
Board of Appeals from the order dated April 19, 1996 of the
Baltimore County Zoning Commissioner in the above case.

Kindly send any papers relating to this appeal as necessary.

Sincerely,

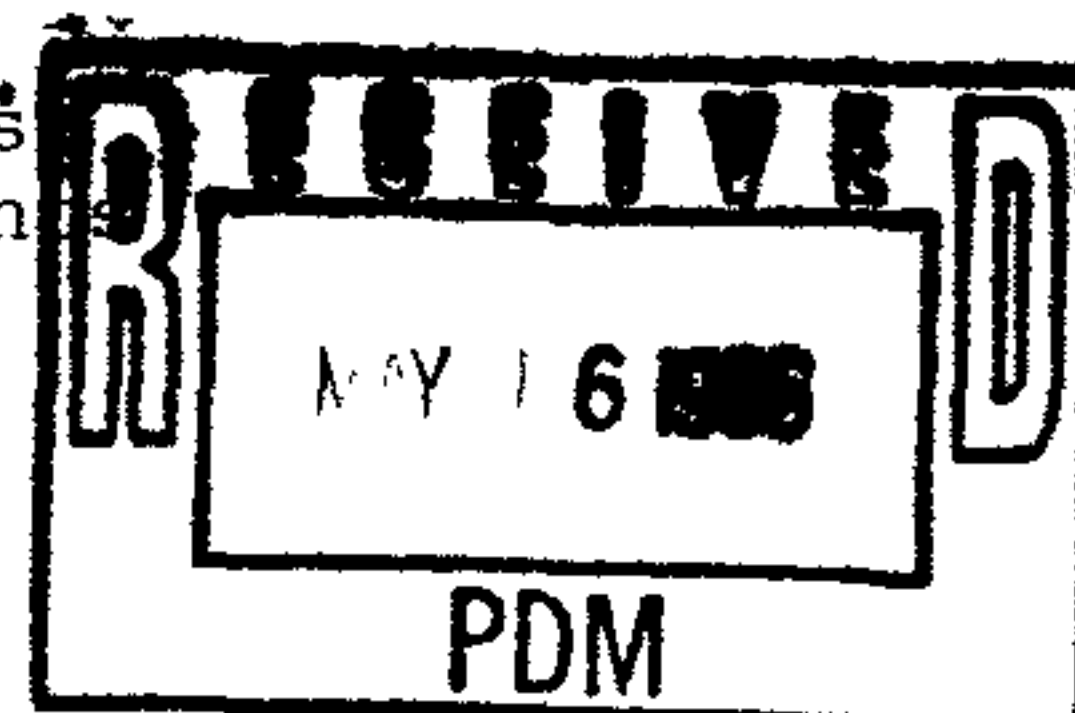
Back River Neck Peninsula Commun.
Assoc. Inc. -by


Jack Hession-President
2411 Beach Ave. -687-2944


Alfred E. Clasing Jr.
2025 Holly Neck Rd. -686-1095

JH/AEC/bc

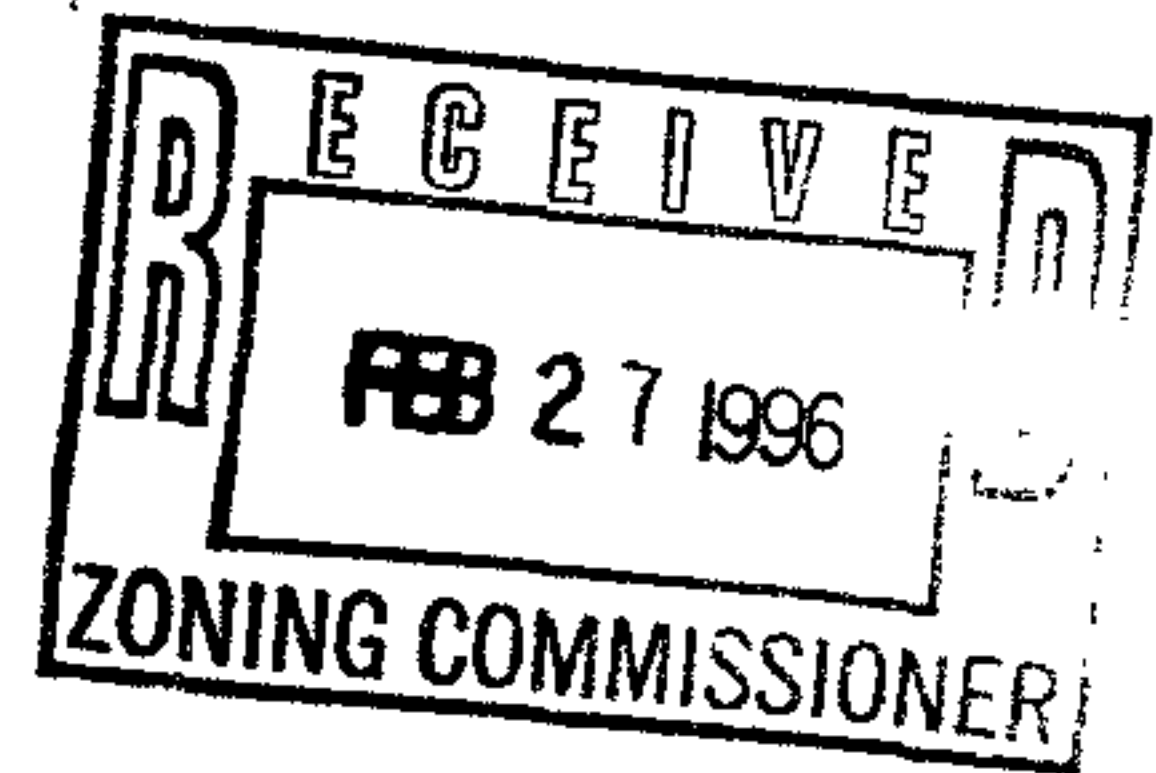
CC: Roger N. Powell, Esq., Atty. for Petitioners
Robert F. Dashiell, Esq. Atty. for Protestants
Office of People's Council





February 23, 1996

Mr. Lawrence Schmidt
Baltimore County Zoning Commissioner
Room 112 Old Court House
400 Washington Avenue
Towson, MD 21204



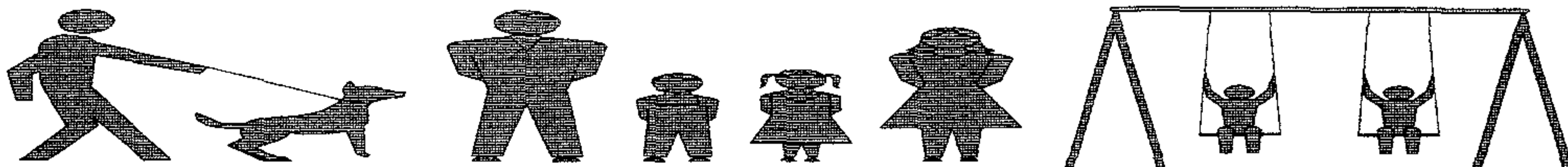
Dear Mr. Schmidt,

At our regularly scheduled meeting our organization voted to support the efforts of the neighborhood civic groups and individuals who oppose the operation of a "Pawn Shop" in the Country Ridge Shopping Center, regardless of any "disguise" under which the owner may choose to operate.

1. There is already a Pawn Shop located within the 1 mile distance limitation as specified by County law.
2. Even though the owner is calling it something other than a Pawn Shop, he is operating it as a Pawn Shop after being denied that designation.
3. A Pawn Shop located at that site would be counter productive to the vast efforts for the revitalization of the Eastern Area of Baltimore County which include that community.
4. There are already two other Pawn Shops located within close proximity of the Country Ridge location.

Thank you for your cooperation in making Eastern Baltimore County a great place to live and do business.

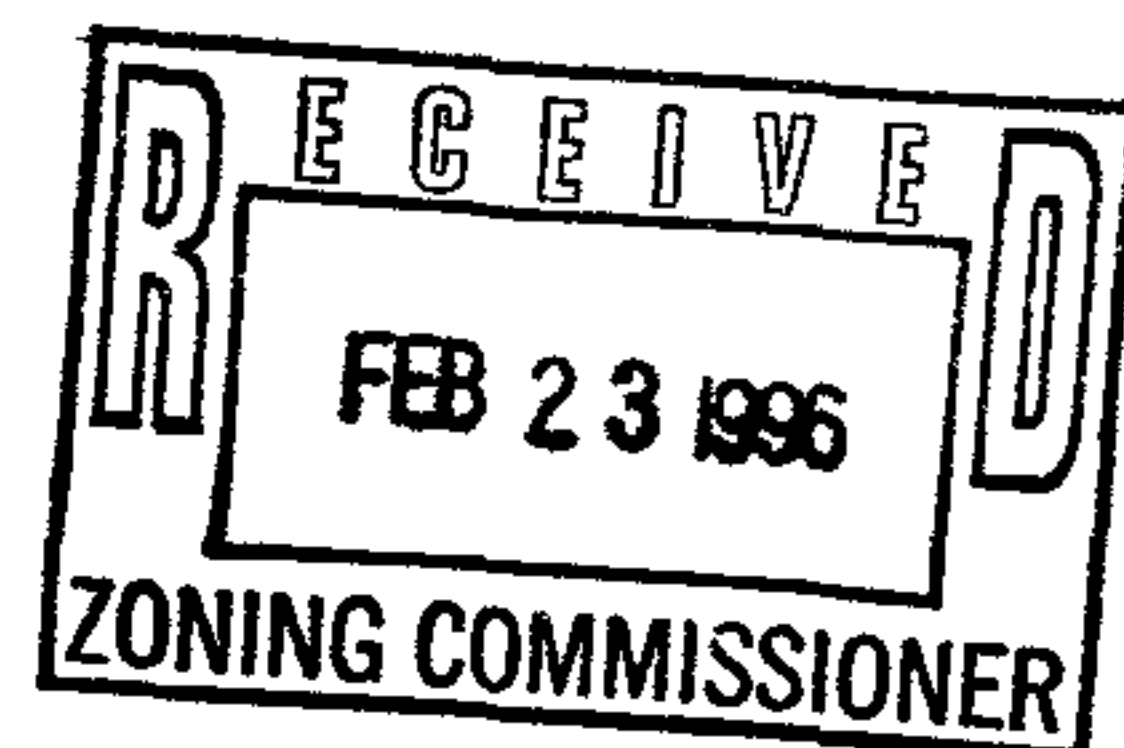
Sincerely,
Ellen F. Jackson
Ellen F. Jackson
Secretary



WALNUT GROVE NEIGHBORHOOD ASSOCIATION, INC.
26 LOCKETT COURT BALTIMORE, MARYLAND 21221-5904

February 14, 1996

Mr. Arnold Jablon, Director
Baltimore Co. Dept. of Permits and Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204



Dear Mr. Jablon:

The purpose of this letter is to convey our concern as to the operation of the Quick Cash shop in the Country Ridge Shopping Center.

Attached you will find a copy of the memorandum our association sent to the Zoning Commissioner, Mr. Lawrence Schmidt, opposing the relocation of this pawn shop to the Essex area. Despite the efforts of our association, other community groups, and what we thought was a positive move on the Commissioner's part, Mr. Scherr seems to be ignoring authority and has decided to operate in an abbreviated form of his former pawn business. The manner in which this new version is being operated seems to encourage even more of the negative practices with which we, as concerned neighbors, associate with pawn shops in general.

We understand that Mr. Scherr has been issued citations accordingly and respectfully request a copy of those citations. We would also like to receive a copy of the councilmatic ruling regarding the number of pawn shops permitted with each district.

The citizens in this area feel that this business owner is trying to "slip one over" on the community and Baltimore County government and that this should not be tolerated. We are trying our best to take responsibility for the problems in our area and are putting forth a great amount of community effort to improve the quality of our neighborhoods. This type of business is definitely not part of our plan to conserve our community!

Thank you for your consideration of this matter. We look forward to receiving the requested information. Please give us a call at 574-1893 if we may be of assistance to you.

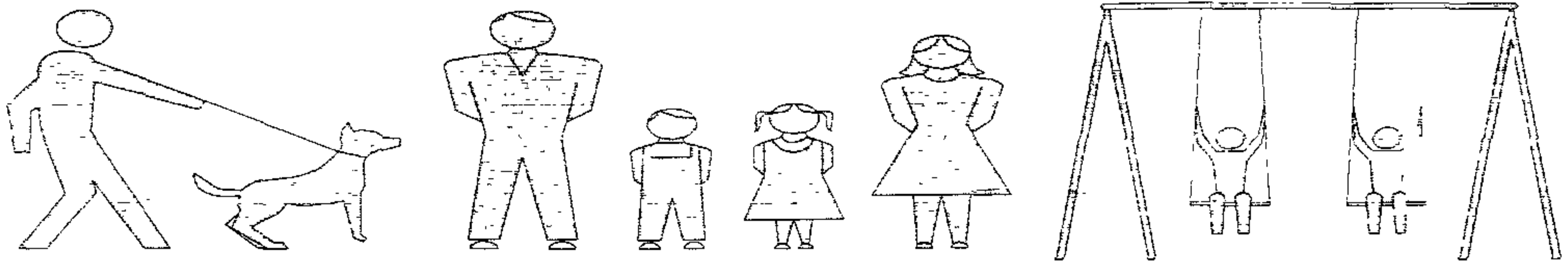
Sincerely,

A. Susan Widerman

A. Susan Widerman
President, WGNA, Inc.

Attachment

Copy to: Mr. Lawrence Schmidt, Zoning Commissioner



WALNUT GROVE NEIGHBORHOOD ASSOCIATION, INC.
26 LOCKETT COURT BALTIMORE, MARYLAND 21221-5904

MEMORANDUM

ATTENTION: Baltimore County Zoning Commissioner's Office

FROM: A. Susan Widerman, President W.G.N.A., Inc.

DATE: January 1, 1996

RE: Case #96-226X
Request for Relocation of Existing Pawn Shop
Public Hearing January 2, 1996 at 11:00 AM

This memorandum is to inform you that the members of the Walnut Grove Neighborhood Association, Inc. , located at the end of S. Marlyn Avenue on the Back River Neck Peninsula, is vehemently opposed to the placement of a pawn shop in the Country Ridge Shopping Center on Back River Neck Road.

The Essex area has been cited by Baltimore County Conservation as a target area in need of serious revitalization regarding infrastructure and economic growth. Many quality businesses have left the area. We are infested with low income rental housing, an increasing number of people supported by government assistance and deteriorating alleys and old buildings in need of repair. Country Ridge Shopping Center, itself, is in need of renovation, with an image already suffering.

A pawn shop, in our opinion, would only encourage what we consider to be the factors contributing to the demise of our surrounding neighborhoods. It would prey upon our low income residents, the elderly, people experiencing financial difficulty and those tempted to exchange illegally obtained items for quick cash. The neighborhoods behind the shopping center are already complaining about strangers roaming their alleys, using foul language and urinating on residents' properties.

Walnut Grove welcomes new business into our area and advocates supporting local entrepreneurs. This is definitely NOT what we have in mind. Please do not permit this to occur.

Dear Mr. Schmitt,

I was present at the hearing involving the pawnshop which wishes to locate on Back River Neck Rd., I own one of the other pawnshops in Essex, and though it may appear that I have a vendetta against Mr. Scher, it is not the case, but if I have the opportunity to prevent a competitor from moving into my market then I will take that opportunity, as would any businessman.

Mr. Powell again tried to say that the proposed pawnshop was not within a mile and the help of your title on him, but for argument sake I have triple checked and enclosed a clearer copy for you to view.

I would also like to raise the issue of Special exception for Mr. Scher to move, and the way the law was written. The reason that pawnshops which are grandfathered in are allowed to move without following the guidelines is if economic circumstances so dictated. The reason this was brought into the Bill was in case a business had, say for example, a fire, and they were forced to move. To avoid a lengthy process, they would be exempt, so as not to lose their clientele and be closed for so long that it would be like starting over again. If pawnshops were allowed to be wherever they wanted, then they could all move to one general area, which is what the Bill was trying to avoid.

In closing, I'd like to say two things. One; I wouldn't want to be in your shoes. It looks like a pretty tough job. Two: I think you handled all the proceedings very well in giving all parties a chance to speak even though what they were saying seemed irrelevant, and explaining all the legal terminology for all intrested parties to understand.

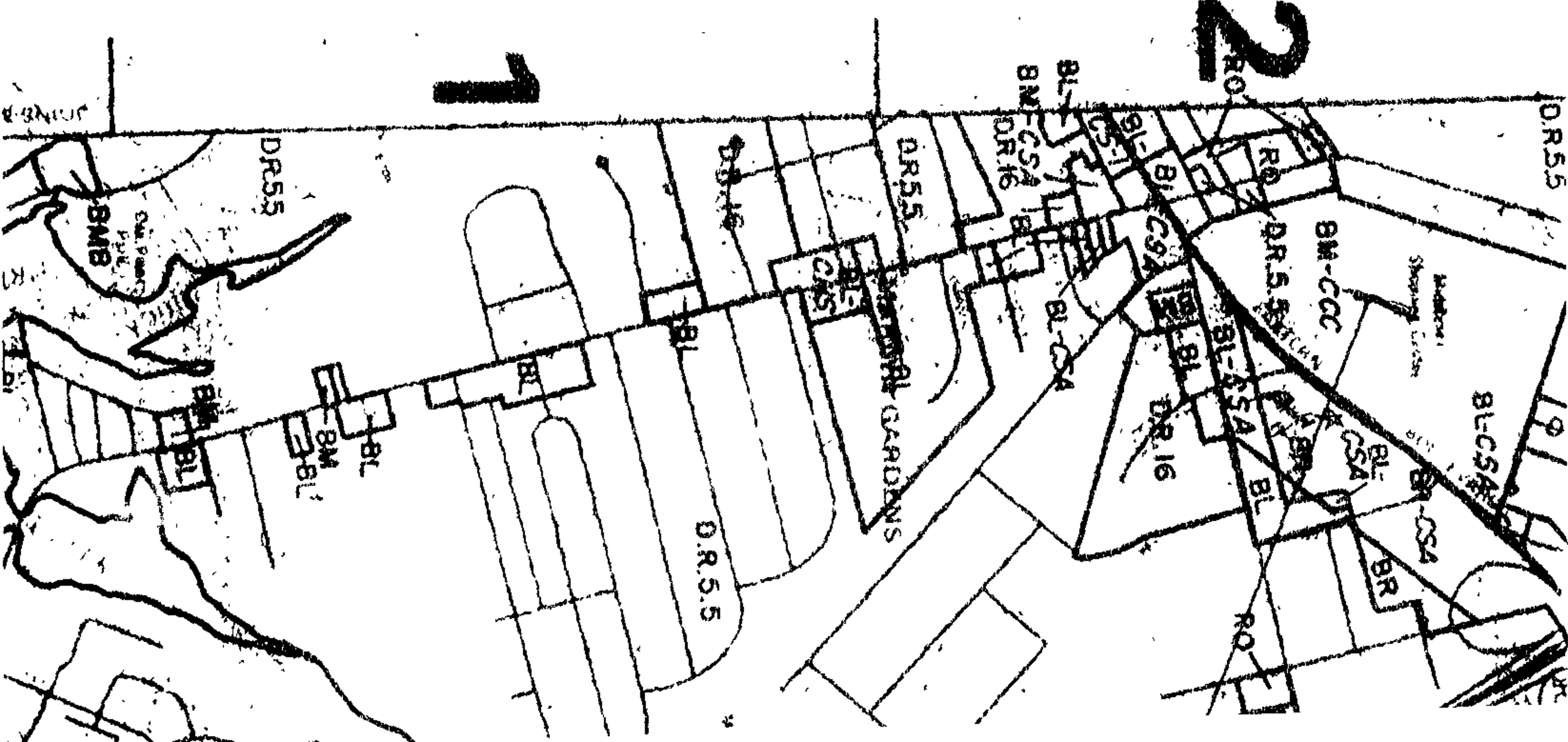
Sincerely,

Howard I. Dubick

P.S. Wouldn't it been easier if he had just moved 2 miles from Pawnee-It?

IF WE MEASURE
FROM THE FAR END
CORNER OF THE
SHOPPING CENTER WHERE
MR. SCHARF WANTS HIS
PAW SHOP TO BE, 1 MILE
DISTANCE ~~POSSIBLY~~ REACHES
ACROSS THE STREET FROM
FARM - IT, AT MIDDLESEX
SHOPPING CENTER

3. 11



1648 Cape May Rd.
Bulter, Md - Q 1221

January 21, 1996.

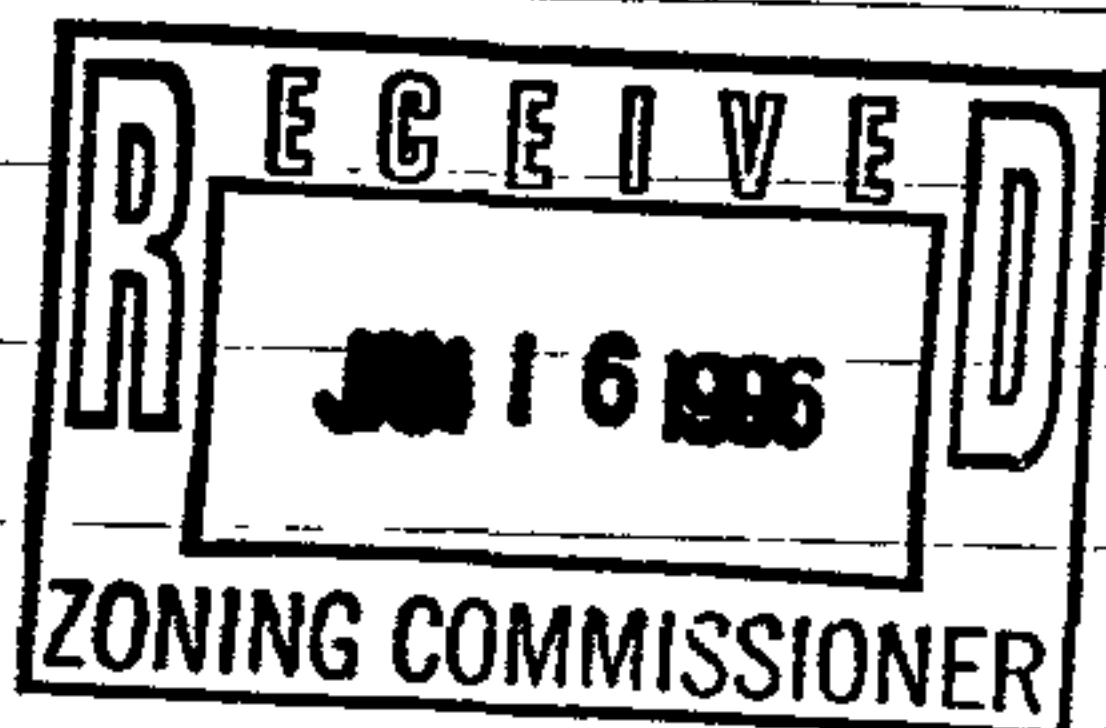
Dear Mr. Schmatt.

I would like to oppose a Pawn Shop in the Country Hedge Shopping Center. This area does not need another pawn shop, one is in Middlesex already.

Please do what you can to make this area more conducive to a healthy neighborhood. I trust you to do what the people of Essex wants.

Thanks in advance.

Sincerely
Lorene Kaymark.



Phone conversation

Per Pat Roddy of LAW OFFICE 11/29/95 8:30 AM.
Since Mr. Schen has been legally operating he is exempt from
"no new licenses to exceed 12" in Bill 112-95
~~since he is open~~ Special exception is required for
new location.

again per Mr Roddy.

He is exempt from Council district limits and
1 mile radius

JGR 11/29/95

Item # 226.

2435 Barrison Point Road
Baltimore, Maryland 21221

January 23, 1996

Mr. Lawrence E. Schmidt
400 Washington Avenue - Room 112
Towson, Maryland 21204

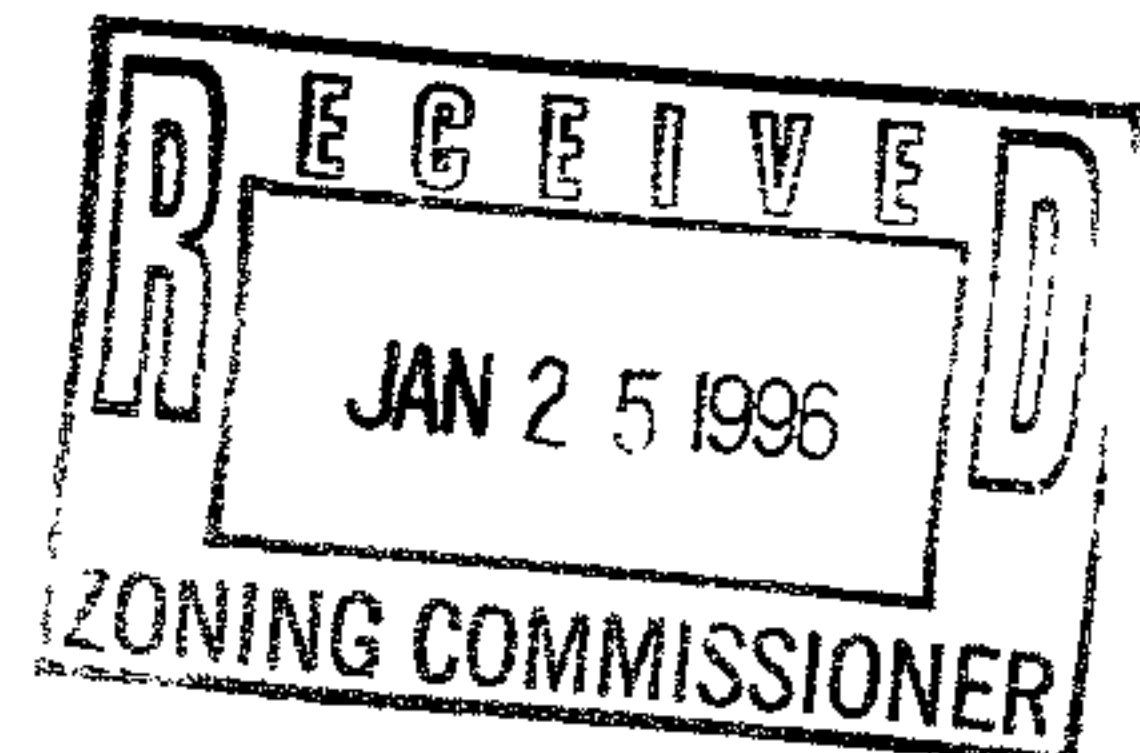
Re: Case No. 96-226X
Special Exception

Dear Mr. Schmidt:

This is to voice my opposition to the opening of a pawn shop in the Country Ridge Shopping Center which is going down hill fast enough. The last thing it needs is a pawn shop. I work across the street from one in downtown Baltimore and see the clientele that it draws daily—NOT A PRETTY SIGHT!!

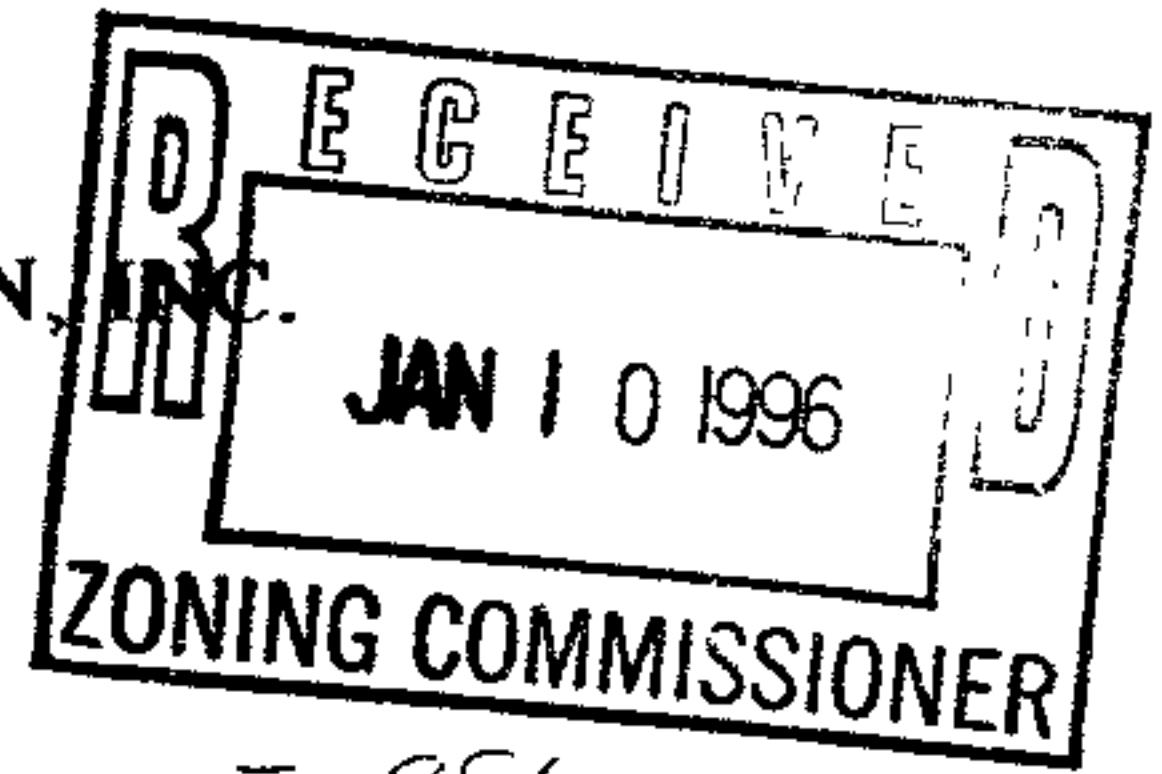
Mr. Ruppertsberger wants to revive the Essex/Middle River area. This is a step in the wrong direction.


Tony Kropkowski



BARRISON POINT IMPROVEMENT ASSOCIATION, INC.

2411 Barrison Point Road
Baltimore, Maryland 21221



Attn - Lawrence E. Schmidt

January 5, 1996

Dear Sir:

Several members of our association have called my attention to the "special exception" notice at the Country Ridge Shopping Center in Essex. We are all opposed to a pawn shop being located on these premises. There are already several such businesses located in the vicinity. Country Ridge has always been a family oriented place with Ames, Value Foods, the Town Bakery, Rite Aid etc. which has served the needs of our residents. A pawn shop would be detrimental to our goals of improving Essex's image at best and encourage shady dealing at worst. Please keep Case # 96-226X from being passed.

Sincerely,
Debbie Hyson

President - Barrison Pt. Imp. Assoc.

1648 Cape May Rd.
Bulter, Md - 21221

January 21, 1994.

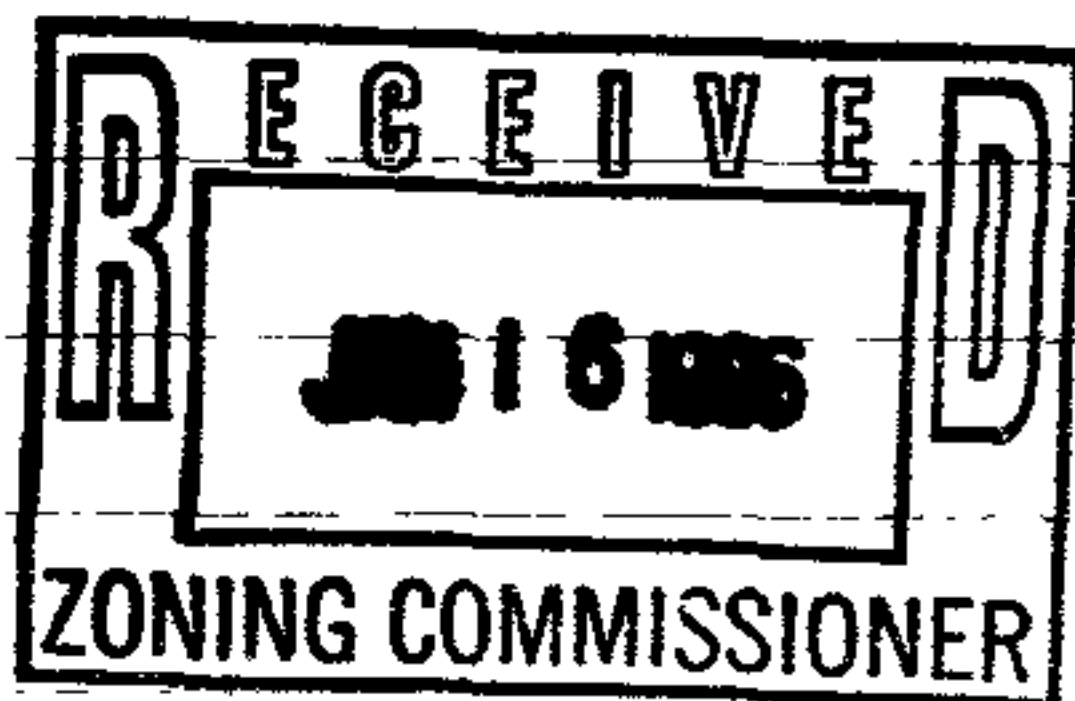
Dear Mr. Schmitt.

I would like to oppose a Pawn Shop in the Country Hedge Shopping Center. This area does not need another Pawn Shop, one is in Middlesex already.

Please do what you can to make this area more conducive to a healthy neighborhood. I trust you to do what the people of Essex want.

Thanks in advance.

Sincerely
Lorene Kaymark.



PROTESTANT(S) SIGN-IN SHEET

ADDRESS

৯১২২২

2025 HOLLY NECK RD.

Robert F. DASHTIEL, ESQ.

2300 N. CALVERT ST. Suite 100

Richard J. Shroder ~~Shroder~~ Shroder

R 2016 Postal Rd 21201 BA Ut. MD. 21218

Marion Matheson

1705 Beechwood Ave 2122

Betty Christopher

2116 Holly Neck Rd (21221)

Steve Cassidy (Pawn-it)

1227 EASTERN BLVD 21221

Theresa Gockert

2530 ISLAND VIEW Rd. 21221

HOWARD Dubick

138 EASTERN BLVD 21221

ORLANDO YARBOROUGH

101 BACK RIVER NECK RD 21221



CITIZEN SIGN-IN SHEET

Feb. 26, 1996

ADDRESS

2Y11BARRISON PTRD 21221

Pl Imp Acc 24/11 S. P. Rd

2116 Holly Neck Rd

138 EASTERN BLVD BALTO, 21221

823 Lounston Rd Bldg 21220

Councilman Gardina

2530 Island View Rd 21221

11655 Hopewell Ave

2025 Hollyhock Rd 2122



PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

MEYER, SCHERR
ROGER N POWELL

107 ELS COURT RD 2124



ASURE
FAR END
- title
ENTER WHERE
wants his
- be, 1 mile
- REACHES
street from
- middlesex
enter



IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF THE SOUTHSIDE BROKERS, INC.
1508 Back River Neck Road
Baltimore, Maryland 21221

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

CIVIL
ACTION
No. 3-C-97-005479

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF COUNTRY RIDGE SHOPPING
CENTER, INC.; SOUTHSIDE BROKERS, INC.
FOR A SPECIAL EXCEPTION ON PROPERTY
LOCATED 767' SE OF BACK RIVER NECK
ROAD (1508 BACK RIVER NECK ROAD)
11TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT
CASE NO. 96-226-X

* * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come S. Diane Levero and Harry E. Buchheister, Jr.,
constituting the County Board of Appeals of Baltimore County, and
in answer to the Petition 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. 96-226-X

November 29, 1995 Petition for Special Exception filed by
Southside Brokers, Inc. as Contract Purchaser
and Country Ridge Shopping Center, Inc., as
Legal Owners, for the relocation of an
existing pawnshop.

December 14, 1995 Publication in newspaper.

(No Certificate of Posting in file)

December 28, 1995 ZAC Comments.

RECEIVED AND FILED

97 JAN 14 PM 11:11
December 14

January 1, 1996	Hearing held on Petition by the Zoning Commissioner.
January 22	Order of the Zoning Commissioner in which Petition for Special Exception was DENIED.
February 1	Request for Reconsideration filed by Roger N. Powell, Esquire, on behalf of Southside Brokers, Inc.
April 19	Zoning Commissioner's Ruling on Motion for Reconsideration issued; Petition for Special Exception is GRANTED; further ordered that remainder of Zoning Commissioner's Order issued 1/22/96 is hereby ratified and affirmed, except as expressly amended.
May 9	Notice of Appeal filed People's Counsel for Baltimore County.
May 16	2nd Notice of Appeal filed by Jack Hession (as president) and Alfred E. Clasing, Jr., of Back River Neck Peninsula Commun. Assoc., Inc.
October 18	Motion in Limine filed by People's Counsel for Baltimore County.
October 22	Motion to Strike filed by Roger Powell, Esq.
October 25	Motion for Protective Order and/or Motion to Quash filed by Virginia Barnhart, County Attorney, on behalf of Baltimore County, Maryland.
October 30	Answer to Motion to Strike filed by People's Counsel for Baltimore County.
November 6	Hearing before the Board of Appeals (Day #1) - Argument received on Motions. Motion to Quash granted as to subpoenas issued for Councilman Kamenetz and Councilman DePazzo QUASHED. Hearing proceeded on merits of the case.
March 12, 1997	Hearing before the Board of Appeals (Day #2 - concluded).
April 2	Petitioner's Memorandum filed by Roger N. Powell, Esquire, on behalf of the Petitioner.
April 2	People's Counsel's Post-Hearing Memorandum filed by Peter Zimmerman and Carole DeMilio.
April 17	Deliberation conducted by the Board.
April 30	Majority Opinion and Order of the Board in which the Petition for Special Exception was DENIED. Dissenting Opinion of Mr. Marks.

May 29, 1997 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Roger N. Powell, Esquire, on behalf of Southside Brokers, Inc. The Palmetto Group, Inc.

March 27 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

March 27 Certificate of Notice sent to interested parties.

July 21 Motion to Extend Time to Transcit Record filed by Roger N. Powell, Esquire. (Extension granted - record to be filed September 30, 1997).

Petitioner's Exhibit Nos. 1-Letter from B. Co. Attorney (in file)
2A-Scene down BR Neck Rd. & Gas Station
B-Rite Aid towards Shp. ctr & Ames
C-Westerly towards B.R. Neck Rd. & Papa Johns
D-West of Shp. ctr & Auto Repair Shop
3A-J -Photos of signage in Shop ctr.

People's Counsel Exhibit No. ID-Identification only- sign-in sheet
1-Map (ADC) of Essex Area (zip code 21221)
2-200' scale zoning map (Location in yellow)
3-1000' scale zoning map
4-Individual precincts in Balto. County (11)
5-Composite Map of Public Safety B.C. (1995)
6-Index of Crimes B.C. Precincts (1996)
7A-Planimetric Plat of files (10/96)
7B-Mylar overlay of 7A
7C-Mylar overlay of 7A (straight line)
7D-Composite of 7A,B,C, (1 mile radius to P.S.)
Day 2 - March 12, 1997
ID-P.C. sign-in sheet and 4 items
8A-Zoning Map of Stemmers Run -B.R. Neck
8B-Zoning Map of Essex
9-Comm. Conservation Plan for Essex - M.R.
10-Per Cent of Renter Occupied Units
11-Bill No. 112-95
12-Proposed Amendments -Pat Keller to V. Gardina

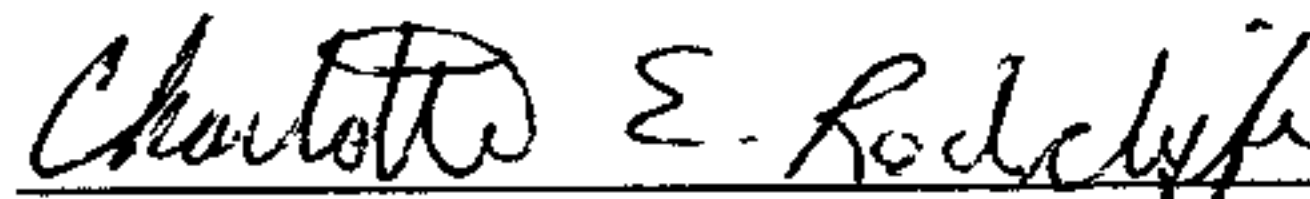
13-Consolidated Plan for Southeast
Section to H.U.D.
14-Councilmanic District Boundary
(Dist. 7&5)

September 30, 1997 Transcript of testimony filed.

September 30, 1997 Record of Proceedings filed in the
Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered
and upon which said Board acted are hereby forwarded to the Court,
together with exhibits entered into evidence before the Board.

Respectfully submitted,



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

cc: Roger N. Powell, Esquire
Southside Brokers, Inc.
Alfred E. Clasing, Jr., et al
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND.
LEGISLATIVE SESSION 1995, LEGISLATIVE DAY NO. 12

BILL NO. 112-95

NR. KEVIN KAMENETZ, COUNCILMAN-

BY THE COUNTY COUNCIL, JUNE 5, 1995

A BILL ENTITLED

AN ACT concerning

Pawnshops

FOR the purpose of repealing a moratorium on the establishment of pawnshops in Baltimore County; regulating the location of pawnshops; defining terms; permitting pawnshops in certain zones by Special Exception; providing certain restrictions upon existing pawnshops; limiting the total number of pawnshops permitted in the County; providing restrictions and requirements for a petition for Special Exception; and generally relating to pawnshops in Baltimore County.

BY repealing

Bill No. 14-95

BY repealing and re-enacting, with amendments,

Section 101-Definitions, by adding, alphabetically, the definition of
"pawnshop"

Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments,

Sections 233.2, 233.4 and 236.4

Baltimore County Zoning Regulations, as amended;

BY adding

Section 436

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

defense case. Instead, appellant failed to challenge the timing or validity of the jury trial waiver. It is appellant's silence during the four week continuance that most distinguishes this case from *Martinez*.

In our view, the right to complain about compliance with the timing of the waiver inquiry, under the circumstance presented here, resulted in a waiver of appellant's contention. The focus of the rule is, after all, on a knowing and voluntary waiver. We do not see how the failure to tell appellant that the court did not comply with the timing of Rule 4-246 affects these two elements, which are at the heart of the rule. Based on the facts of this case, we are satisfied that appellant's claim is not preserved, because he failed to object to the belated advisement, despite ample opportunity to do so. See Maryland Rule 8-131. If other constitutional rights can be waived by a defendant, this important right can also be waived.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

704 A.2d 483

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al.

v.

The PROSSER COMPANY, INC.

No. 603, Sept. Term, 1997.

Court of Special Appeals of Maryland.

Jan. 12, 1998.

People's counsel for county, community association, and association's president petitioned for judicial review of county board of appeals decision granting property owner's petition for interim site plan zoning reclassification of property from

residential office, commercial rural, and rural residential to light manufacturing. The Circuit Court, Baltimore County, affirmed in part and remanded. People's counsel, association, and president appealed, but subsequently voluntarily dismissed appeal. On remand, board granted petition. People's counsel, association, and president petitioned for judicial review. The Circuit Court, Baltimore County, Christian H. Kahl, J., affirmed. Appeal was taken, and people's counsel, association, and president moved for sanctions. The Court of Special Appeals, Eyler, J., held that: (1) county council did not disapprove interim site plan zoning reclassification, which board had previously approved for property, when council subsequently maintained property's prior classification in comprehensive zoning map; (2) law of the case doctrine did not preclude Court of Special Appeals from reaching issue of whether county zoning regulation required disqualification of owner's petition for reclassification; (3) county zoning regulation precluding "zoning commissioner" from accepting for filing petition to reclassify rural residential zone unless there was planned public water and sewer service within two years did not require disqualification of reclassification petition; (4) evidence was sufficient to sustain board's finding of mistake in county council's prior classification of property in comprehensive zoning map process so as to warrant granting of reclassification petition; (5) board rule requiring that three board members sit for purpose of conducting business of board did not require board decision on remand by three members who were at hearing; (6) board sufficiently addressed factors relating to purposes of zoning regulations and maps as required by county code provision; and (7) Court of Special Appeals would deny motion for sanctions.

Circuit court judgment affirmed, and motion for sanctions denied.

1. Zoning and Planning ¶742

People's counsel for Baltimore County was party in interest on appeal from circuit court judgment affirming county

RECEIVED
COUNTY BOARD OF APPEALS

99 SEP 10 PM 1:17

The Circuit Court for Baltimore County
Third Judicial Circuit of Maryland
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Thomas J. Bollinger
Judge

410-887-2693
Room 367

PETITION OF SOUTHSIDE BROKERS,
INC. FOR JUDICIAL REVIEW OF THE
DECISION OF THE BOARD OF
APPEALS OF BALTIMORE COUNTY
IN RE: COUNTRY RIDGE SHOPPING
CENTER, INC./SOUTHSIDE BROKERS,
INC. *96-226-X*

CASE NUMBER: 03 C 97 5479

RULING DATE: 2 SEPT. 1999

HEARING DATE: N/A

MADAM CLERK:

Please file this **RULING** and send copies to counsel of record.

RULING

Pursuant to the mandate of the Court of Special Appeals, the above captioned case is hereby remanded to the Board of Appeals of Baltimore County for further proceedings in accordance with the Opinion of the Court of Special Appeals.


THOMAS J. BOLLINGER, JUDGE

FILED SEP 08 1999

**IN THE MATTER OF
PETITION FOR SPECIAL EXCEPTION
COUNTRY RIDGE SHOPPING CENTER, Inc.
1508 BACK RIVER NECK ROAD**

**BEFORE THE
COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY
CASE 96-226-X**

PEOPLE'S COUNSEL'S POST-HEARING MEMORANDUM

Background

This is the first, de novo, special exception case arising under the 1995 pawnshop law, Bill 112-95, placing new Section 436 in the Zoning Regulations (BCZR). This is a comprehensive law, which gives a clear road map for the CBA's administrative decisionmaking process.

We will show that the legislative purpose, applied to undisputed material facts, compels denial at the proposed location on Back River Neck Road, Essex, in a local shopping center zoned Business-Major (B.M.). The County Council found it necessary to limit the total number of pawnshops in the County to 12, to prevent undue concentration, and particularly to avoid "incompatible" locations in challenged or transitional "conservation areas", on the double-edge of decline and revitalization. The Council recognized that pawnshops are subject to state licensing and reporting requirements because of potential availability for the trade of stolen goods, and that, based on police reports, they are "more likely to have a greater deleterious effect on neighborhoods" than jewelry businesses. All of this, and more, is in the explicit legislative findings. BCZR 436.1 (attached).

This simplifies the CBA's job. The Council found "undue concentration or inappropriate siting" ...of pawnshops in described neighborhoods to cause adverse effects "by creating an impression of community decline and instability." These adverse effects "directly conflict with the county's commitment to conserving and revitalizing older communities..." BCZR 436. 1(c)-(e).

IN THE MATTER OF
COUNTRY RIDGE SHOPPING CENTER,
INC., Legal Owner

and
SOUTHSIDE BROKERS, INC., Lessee

BEFORE THE
BOARD OF APPEALS OF
BALTIMORE COUNTY

Case no: 96-226X

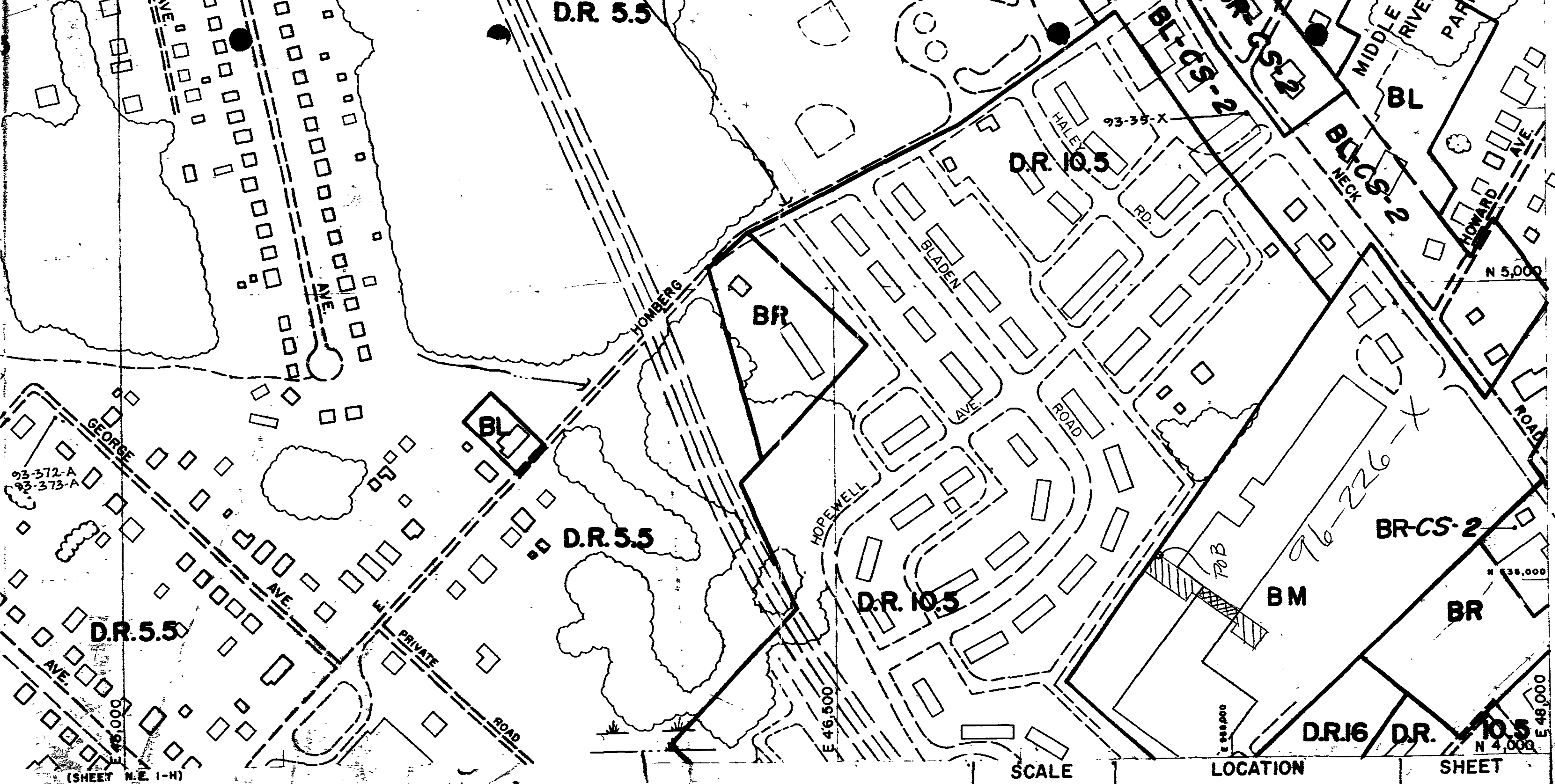
PETITIONER'S MEMORANDUM

Comes now Southside Brokers, Inc., Co-Petitioner, by Roger N. Powell, its attorney, and for its Memorandum says:

FACTS

Petitioner brought a Petition for Special Exception. The Petition was heard before Lawrence E. Schmidt, Zoning Commissioner, who initially by his Findings of Fact and Conclusions of Law, denied the Petition on January 22, 1996, but who thereafter granted a Motion for Reconsideration and by Ruling of April 19, 1996, granted the Petition for Special Exception, from which an Appeal was noted to the Board of Appeals of Baltimore County by People's Counsel for Baltimore County.

The Petition was brought for reason of the enactment of County Council Bill 112-95 limiting the number of pawnshops in Baltimore County and making provisions for location of pawnshops by licensees in existence at the time of the legislation and transferees who acquire license by purchase and seek to relocate. Because the statute contained wording in §436.4 thereof requiring a Special Exception Petition, although §6 recites that pawnshops lawfully in existence and operating on the effective date of this Act are not subject to the requirements of §436.4, nevertheless, there being no



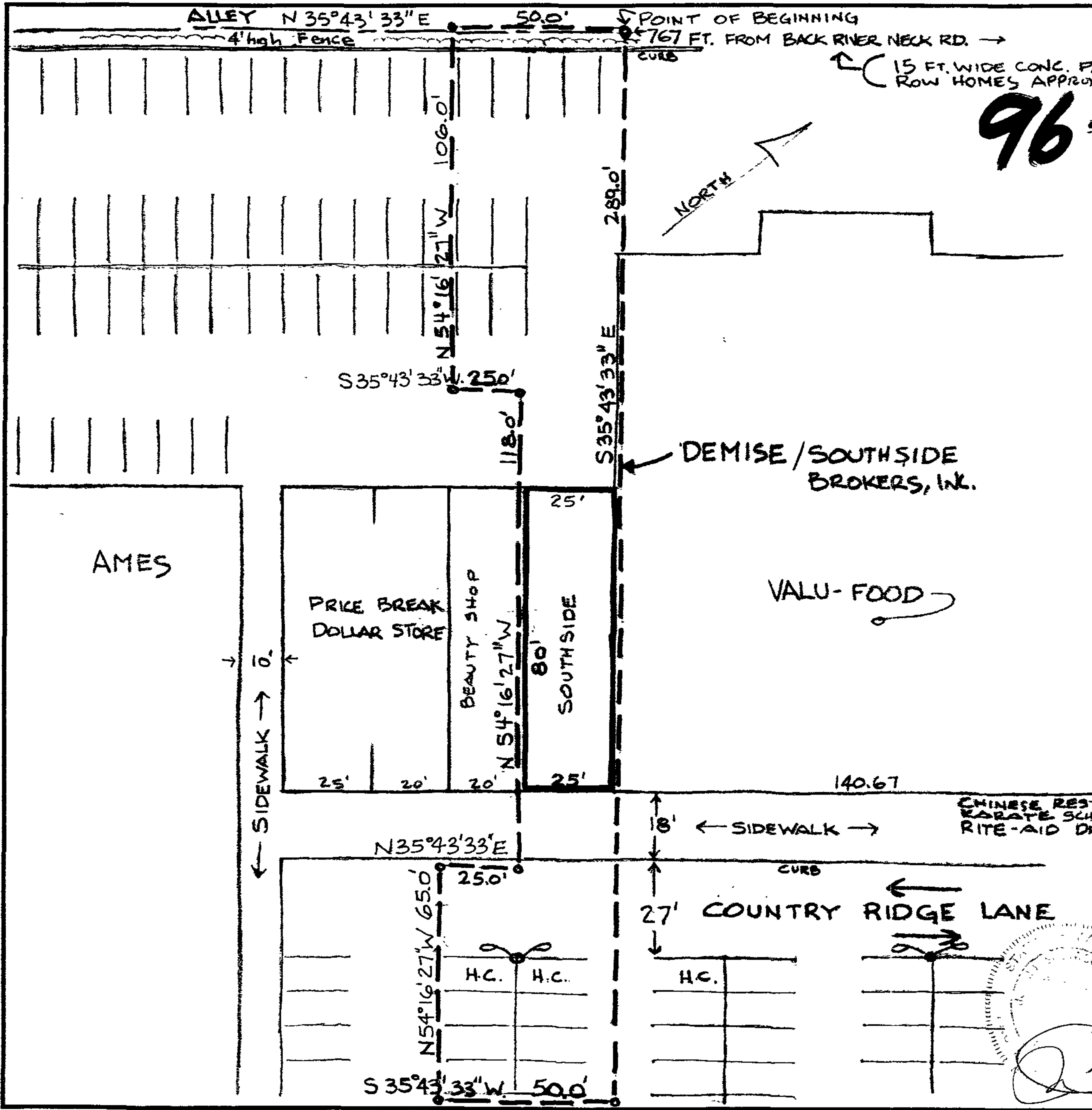
MORE COUNTY PLANNING AND ZONING COMMISSION ZONING MAP

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992

Map Nos. 183-92, 184-92, 185-92, 186-92, 187-92, 188-92, 189-92

William A. Howard IV
Chairman, County Council

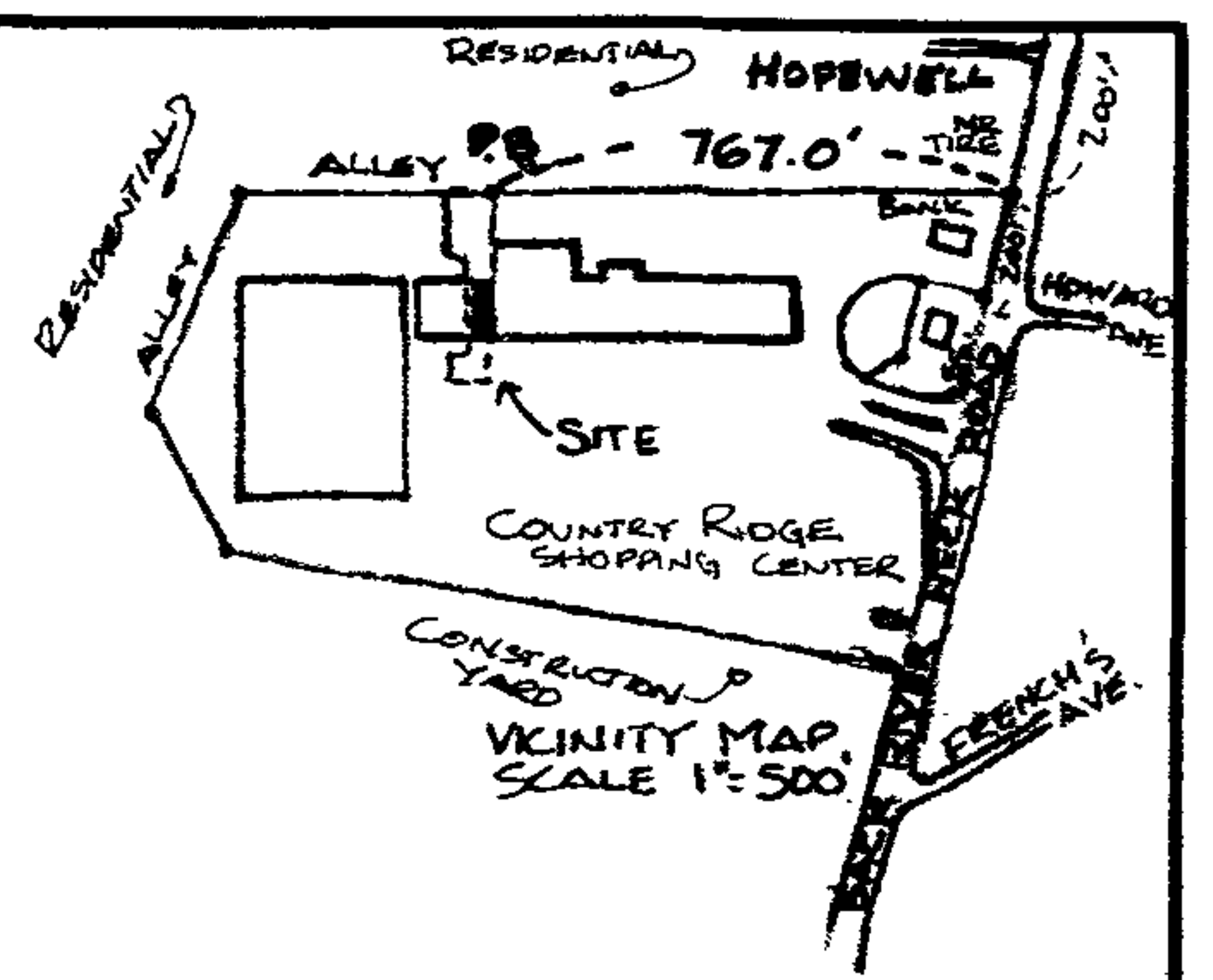
SCALE	LOCATION	SHEET
1" = 200' ±	STEMMERS RUN BACK RIVER NECK	N.E. 2-H
DATE OF PHOTOGRAPHY JANUARY 1986	226	



96-226-X

NOTES:

COUNCILMANIC DISTRICT : 5
ELECTION DISTRICT : 11
ZONING : BM
USE : RETAIL/SHOPPING CENTER
LAND AREA : SHOPPING CENTER : 521,090 S.F.
DEMISE/SOUTHSIDE : 11,350 S.F.
BUILDING AREA : SHOPPING CENTER : 129,075 S.F.
DEMISE/SOUTHSIDE : 2,000 S.F.
PARKING REQ'D : SHOPPING CENTER : 684
(5 PER 1,000 S.F.) DEMISE/SOUTHSIDE : 10
PARKING PROVIDED : SHOPPING CENTER : 198
DEMISE/SOUTHSIDE : 16
PARKING SPACES ARE SHARED WITH OTHER TENANTS
SPACES ARE STRIPED 9.0' X 18.0'
SHOPPING CENTER PARKING LOT IS ALL PAVED MACADAM
ALL STRUCTURES/USES WITHIN 200 FT OF DEMISE SHOWN
HANDICAP PARKING IS SHARED IN COMMON WITH OTHER TENANTS
THERE ARE NO SEPARATE FREE STANDING SIGNS EXCEPT THOSE
ON THE FRONT OF THE BUILDING, CONSISTENT WITH SHOPPING
CENTER AND BALTIMORE COUNTY RULES AND REGULATIONS.
SIGN PERMITS WILL BE OBTAINED AS REQUIRED.



Country Ridge Shopping Center
(ALL USES ARE AS EXISTING)

APPLICATION FOR SPECIAL EXCEPTION/VARIANCE 1508 Back River Neck Road		
SCALE: 1"=30'	APPROVED BY:	DRAWN BY RSD
DATE: 11/20/95		REVISED
Southside Brokers Inc. 1101 LIGHT ST. BALT. 21230 (410) 528-8229		
RICHARD S. DAVIS, P.E. (410) 247-2400		DRAWING NUMBER SBI-01

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