Baltimore County
Department of Permits and
Development Management

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

March 20, 2000

Mr. Konstantine J. Prevas
c/o Prevas and Prevas
231 E. Baltimore Street
Suite 702
Baltimore, Maryland 21202

Dear Mr. Prevas:

RE: Zoning Verification, 4140 E. Joppa Road, 11th Election District

In response to your letter dated March 8, 2000, meant for Arnold Jablon, Director of Permits and Development Management, the following has been determined.

The above property is mostly zoned B.L. (Business, Local) with a portion zoned R.O.A. (Residential-Office, Class A) and a smaller portion zoned D.R.5.5 (Density, Residential) as shown on Baltimore County zoning map NE-10G (copy enclosed). Please be advised that drive-through, carry-out, fast food, and standard restaurants are a permitted use in the B.L. zoned area. This property was the subject of a Special Hearing (case #97-455-SPH) requesting and receiving approval to use the R.O.A. zoned area for the necessary parking for a proposed diner. This approval was granted by Deputy Zoning Commissioner Timothy Kotroco on June 3, 1997, and reaffirmed after an appeal.

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.

Sincerely,

R. David Duvall

R. David Duvall
Drafting Technician II
Zoning Review

RDD:kew

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Printed with Soybean Ink on Recycled Paper

WCR
no check

-Bel-

PREVAS & PREVAS
ATTORNEYS AT LAW
AMERICAN BLDG., SUITE 702
231 EAST BALTIMORE STREET
BALTIMORE, MARYLAND 21202

TELEPHONE
410-752-2340

FAX
410-332-0474

KONSTANTINE J. PREVAS
STEPHEN L. PREVAS
PETER A. PREVAS

3/10/00
w ck
no check

To: Dave
need $
3/13/00 ua

Dave -
Call for
$40 fee

March 8, 2000

NE ID 9
N/S w of Belair
11th

Zoning Comissioner
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: 4140-42 East Joppa Road, and Lots 5 & 6 of Plat of Brookfield Road, Baltimore County, MD
Request for Certification of Proper Zoning of Parcels for use as a diner

Dear Mr. Commissioner:

I respectfully request that you provide me with a certification that the above captioned properties are properly zoned for use as a diner.

This certification is requested for the use and benefit of Harbor Bank of Maryland.

Please forward the certification to me so that I may in turn forward it to the bank.

Thank you for your cooperation.

Yours truly,

Konstantine J. Prevas

KJP:rp

RECEIVED
MAR 9 - 2000

MICROFILMED

3/20/00
WLR

To DD
3/21/00

PREVAS & PREVAS
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KONSTANTINE J. PREVAS
STEPHEN L. PREVAS
PETER A. PREVAS

March 8, 2000

David Duval
CK 40.00
"Balto. County"

Zoning Comissioner
111 West Chesapeake Avenue
Towson, Maryland 21204

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Thank you for your cooperation.

Yours truly,

KJP:rp

Konstantine J. Prevas

RECEIVED
MAR 20 2000

MICROFILMED

IN THE MATTER OF THE	*	BEFORE THE
THE APPLICATION OF		
GEORGE AND PEGGY MARMARAS	*	COUNTY BOARD OF APPEALS
FOR SPECIAL EXCEPTION ON		
PROPERTY LOCATED ON THE NORTH	*	OF
SIDE JOPPA ROAD, 360 W OF THE		
C/L OF BELAIR ROAD (4140 EAST	*	BALTIMORE COUNTY
JOPPA ROAD)		
AND	*	CASE NO. 97-455-SPH
RE: LIMITED EXEMPTION UNDER		AND
SECTION 26-171(A)(7)	*	CASE NO. CBA-97-129
BALTIMORE COUNTY CODE		
11TH ELECTION DISTRICT	*	
5TH COUNCILMANIC DISTRICT		

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

OPINION

This matter comes before the Board of Appeals on two issues, the first arising from the Order of the Deputy Zoning Commissioner dated June 3, 1997 which granted a Petition for Special Hearing to park in an R.O.A. zone for a proposed diner located on an adjacent lot; and the second arising from the granting of a limited exemption under Section 26-171(a)(7) of the Baltimore County Code (BCC) by the Development Review Committee relative to the subject site as set forth in the letter from the Director, Arnold Jablon, dated June 4, 1997. The case was heard on January 21 and 22, 1998 as to both issues. Although a Motion to Dismiss was made by Counsel for the Petitioners at the beginning of the testimony in the case, all parties agreed to take testimony as to the Petition for Special Hearing in its entirety and then to address itself to the issues of the appeal of the limited exemption. The parties further agreed to incorporate all evidence introduced in the Special Hearing appeal as part of the limited exemption appeal. A ruling on the Motion to Dismiss was deferred by the Board until all testimony and exhibits on both issues were received.

Motion to Dismiss

The Petitioners in this matter requested a limited exemption

under Section 26-171(a)(7) of the BCC from the County Development Review Committee (DRC). The exemption was granted, as set forth in a letter from the Director of the Department of Permits & Development Management, Arnold Jablon, to KLS Consultants, Inc., dated June 21, 1997. The Protestants take the position that the granting of the limited exemption is a "decision" under the regulations and, as such, is an appealable event which can be brought before the Board of Appeals.

The Appellate position on this issue is a clear one which has been applied a number of times by the Board. The Maryland Court of Appeals in United Parcel Service, Inc., et al v. People's Counsel for Baltimore County, Maryland, et al, 336 Md. 569 (1994) is the clearest appellate guidance available. It supports the proposition that a "decision" or other determination by an Administrator in the matter such as the one before us, does not constitute an appealable event. As recently as last year, the Circuit Court for Baltimore County in the Matter of George and Debra Rojak, Case #03-C-95-010618 (Brennan, J.), affirmed a granting by this Board of a Motion to Dismiss pursuant to the United Parcel Service holding, stating "...for to rule otherwise would open to appeal every administrative interpretation or procedural step rather than the final administrative decision, order or determination from which appeals are intended to be taken."

As this Board previously has stated, in relation to Baltimore County land development, there are only two final administrative decisions which are appealable events. They are: actions under Title 26, Section 26-209 of the Baltimore County Code (decisions of

a Hearing Officer); and Title 7, Section 7-36 of the Baltimore County Code (building permits issued by the Building's Engineer). The DRC, in granting an exemption under Section 26-171 of the Code, is only a preliminary step, merely determining the "route" which a developer must follow in order to ultimately obtain the issuance of permits to construct his particular project.

Therefore, this Board unanimously finds that the letter of Arnold Jablon, Director of the Department of Permits and Development Management, to KLS Consultants dated June 24, 1997 approving the limited exemption is not an appealable event. That letter was not a final approval or a decision but simply conveyed the guidance provided by the DRC. By referring to such guidance as a "decision" does not make it so, nor does it grant a right to appeal under Section 26-132 of the Code. The determination of the DRC in this instance is simply guidance for the landowner to follow in pursuit of the necessary and required building permits for his project.

The Motion to Dismiss, therefore, is unanimously granted.

Special Hearing

We now turn our attention in this matter to the Petitioners' request for a Special Hearing to allow parking in an R.O.A. zone. The Board heard considerable testimony and received numerous exhibits in the course of the two days that we heard the case.

The first to testify was the Petitioner, George Marmaras. He stated that he originally purchased 4142 E. Joppa Road as the site for his proposed new "Double T" diner. He related that after being turned down for parking variances, and at the suggestion of the

community participants in that variance hearing, he purchased the adjacent property at 4140 E. Joppa Road in order to provide better access and necessary parking. He proposes a plan in which 24 parking spaces are provided, divided equally between the restaurant property which is zoned B.L. and the adjacent property, zoned R.O.A. Under cross-examination, he confirmed that the proposed diner, at least initially, would be open 24 hours per day, would have a capacity of 125 persons, and at peak hours utilize 12 to 14 employees.

Arthur Leonard, the president of KLS Consultants, was called by the Petitioners. A Professional Engineer since 1979, he subsequently was confirmed by the Board as an expert witness in Civil Engineering. He testified that he had prepared the original and amended site and landscaping plans for the Petitioners as well as the Special Hearing request before the Zoning Commissioner. He stated he was familiar with the site and that in his opinion the addition of the R.O.A. property to the project would provide appropriate parking, and both better and safer ingress and egress from the site onto Brookfield Road than would exist without such a merger. He testified that the area would be fenced on the northern-most side with a "board on board" fence to shield it from neighbors. He described the R.O.A. property as an "island" in a B.L. area and noted that a small part of the B.L. lot, primarily in its northeastern corner, is zoned D.R. 5.5. He stated that the entire D.R. 5.5 portion will be grassed and landscaped. He further related that the diner will be 142 feet from the nearest B.L./D.R. 5.5 border, with the closest homes nearer to the parking provided

for Joppa Corner Shopping Center than to the proposed diner parking. He described the surface for the proposed parking as hard, bituminous concrete similar to that utilized by Baltimore County and proffered that the lighting envisioned will be reflected away from any nearby homes as part of the landscaping plan being submitted as part of the proposal. He stipulated that the plan would be subject to review and approval by the Baltimore County Office of Planning as a condition to the approval of the entire project. He informed the Board that, although there is now a deed for each property, they will be merged into one deed upon approval of the Special Hearing. He concluded by stating that the project otherwise complied with all permeable surface and vegetation requirements, minimum setbacks, sizing and striping requirements, design standards and all other zoning requirements. In so stating, he opined that the project met the requirements of Sections 490.7.B.2, 409.8 and 502.1h of the Baltimore County Zoning Regulations (BCZR), and that the use permit could be granted without any harm to the surrounding community.

Under cross-examination, the witness agreed he was not a traffic engineer, noting that Joppa Corner Shopping Center presently has no access to Brookfield Road. While confirming his belief that the project as presently proposed met all necessary zoning requirements, he conceded that the smaller the diner itself, the less parking would be needed or traffic impacted.

John Rhode was called by the Petitioners. Describing himself as a Registered Landscape Architect since 1976, with experience in small commercial developments, parks and recreation areas, he was,

after voir dire, accepted as an expert in landscaping, architecture and land planning as it related to landscape architectural practices.

He testified that he was familiar with the site and had worked on a number of the site plan drawings. He presented a number of photographs taken by him of the proposed site and the surrounding area, which were then entered into evidence.

He proceeded to detail his agreement with, and conformation of, Mr. Leonard's previous opinions and testimony as to the project's conformance with Section 409.8.B.2 of the zoning regulations. He reiterated that the R.O.A. lot would adjoin the B.L. lot; that the site would be for passenger vehicles only and would be used for no other purpose than parking; that lighting would be slanted away from neighboring houses and would be approved by the County as a condition of the project; and that the parking plan was appropriate and would be maintained and enforced by the owner. Addressing himself to the requirements of Section 502.1(a-g) incorporated in Section 409, he corroborated the testimony of the previous witness that these requirements were met by the project, and specifically enumerated his reasons as to each.

In summation he stated that the subject site was an isolated R.O.A. parcel and as such was appropriate for accessory parking uses. He opined that it would "clean-up" the intersection, would not be detrimental to the health, safety and welfare of the area's residents, and, in all manner and respect, met all applicable County rules, regulations and prerequisites.

Under cross-examination the witness conceded that he was

testifying mainly from an "aesthetic" point of view and took no issue with the principle that R.O.A. zoning is used to ease pressure on neighboring residential areas. He did not agree that R.O.A. zoning presumes that existing structures must remain but agreed that Section 202.2 does not allow parking at a "principal use." Upon further questioning he also took note of the fact that his testimony specifically did not include issues concerning Brookfield Road and the impact of the project on traffic thereupon.

The Petitioners rested their case-in-chief, and Protestants called C. Richard Moore as their first witness. An engineer with Wells and Associates, the witness was subjected to voir dire and accepted as an expert in traffic engineering and transportation planning. He testified that he was familiar with the site and the plans proposed by the Petitioners, had reviewed the relevant County traffic studies, and conducted his own field study and analysis of traffic issues related to the proposed R.O.A. /B.L. site.

He testified that, on January 14, 1998, he was present during the "peak" evening traffic hour at the area of Brookfield and Belair Roads. He described cars parked on both sides of Brookfield and Joppa Roads along with the loading and unloading of a truck on Brookfield Road. He stated that, because of the median strip on Joppa Road, the majority of traffic generated onto the subject site and adjoining B.L. parcel would access the site from Brookfield Road. Noting that the existing roadway provides only 23 feet of clearance for vehicles to enter and exit Brookfield Road, Mr. Moore stated that the ability presently to make left-hand turns from Brookfield Road onto Belair Road was a continuing problem which

would only be made worse by an increase in traffic generated if the Petitioners' Special Hearing request was granted. He observed that two nearby businesses limit left-hand turns in an effort to respond to the problem. He stated that, in his opinion, in order to ameliorate the problem, a full 35-foot roadway would be required, including a clear left-hand turn lane to accommodate movement onto Belair Road.

The witness described Belair and Joppa Roads as "D" level service roads which would likely continue as such if the Special Hearing use was approved. He stated he had reviewed the Institute of Traffic Engineer Standard Trip Generation Rates and, based upon these figures, presented his estimate of the traffic volume which the Petitioners' proposed use would generate. Those written findings were entered into evidence. He related that he had also investigated the traffic volumes generated at Petitioners' other diner, located on White Marsh Boulevard. He testified that his field observation of this site indicated to him that the actual trip generation on the particular site amounted to some 50 percent higher than the standard trip generation rates otherwise would have indicated. Those written findings likewise were entered into evidence. In summary, he believed that the granting of the proposed Special Hearing use would tend to cause congestion in the roads adjacent to and surrounding the proposed site, would therefore cause harm to the health, safety and welfare of the surrounding community, and, as such, would prevent the proposed Special Hearing request from satisfying the requirements of Section 502.1 of the BCZR.

The witness was cross-examined at some length. Noting that he was not rendering an opinion as to the impact on traffic at Joppa and Belair Roads, he acknowledged that he had done the traffic count at Brookfield and Belair Roads on the belief that the major impact would be felt at that location. He conceded that he did not perform a full traffic study, including a full capacity analysis, but that he did an "operational" study. He reaffirmed that Belair and Joppa Roads would remain "D" level roads if the Special Hearing was granted and agreed that the County could not bar access in any event from the existing B.L. site. He confirmed that the hour of his field study differed from that which Baltimore County defines as peak traffic time, but believed that, if anything, the facts would indicate a lower figure rather than a higher one. He observed that the existing driveway from the B.L. site is 110 to 120 feet from Joppa Road and that if the R.O.A. parcel was approved as part of the project, the driveway could be as much as 230 to 240 feet from Joppa Road. It was his opinion, however, that any access more than 100 feet away from an intersection is equally as safe or unsafe as any other access and, in any event, observed that all access points from the site are encumbered by the median strip and resulting turn limitations.

The witness reiterated that his main concern was the ability to turn from Brookfield Road onto Joppa Road. He conceded that, if the R.O.A. site was developed separately, conceivably there could be two access sites to Joppa Road within as little as 25 feet, based on existing space and use regulations, and that, therefore, traffic would go onto Brookfield Road resulting in turn delays.

Protestants called Norman Gerber, who was qualified and accepted as an expert in land use planning. He testified that he was familiar with this particular site and proposed plan, and was also conversant with both the general and specifically applicable zoning and land use regulations promulgated by Baltimore County as they relate to this project.

He described for the Board the facts upon which he based his opinion that parking as set forth in this Special Hearing request is not permitted under the regulations and is not in conformance with the law. Citing Section 202.2 of the BCZR, he indicated that, in his opinion, only parking as an accessory use for a converted Class A office building was allowed under the application section. He testified that the increased traffic flow on Brookfield Road specifically, and in the area generally, would be detrimental to the health, safety and general welfare of the surrounding community, and would tend to create congestion in the roads, streets and alleyways of those communities, and, as such, the proposed use of the property would not satisfy the objectives of Section 502.1 of the BCZR.

On cross-examination and redirect, the witness acknowledged that parking was allowed by special hearing in the R.O.A. zone, and that under Section 409.7.B.2 "accessory parking" is permitted. He stated that, although it was Mr. Moore's opinion that congestion could successfully be addressed by road expansion and traffic direction changes, his opinion on the issue was independent and differed from that witness's conclusions. He stated he would continue to be concerned (in spite of such changes) about turning

traffic at Brookfield and Belair Roads as well as the "stacking of traffic" caused by vehicles waiting to turn left onto the B.L. site.

Mr. Edward Baker, who resides at 4140 Brookfield Road, appeared and testified that he has lived for many years at what is now the northeast corner of the B.L. site. He described continuing difficulties in making a right turn onto Belair Road and complained that there were no sidewalks or places to walk on Brookfield Road. He further stated he was concerned that if the proposed Special Hearing use was approved the resultant increase in traffic would present an increased danger for children playing and pedestrians using the road. Finally, the idea of a diner operating, at least initially, 24 hours a day, 7 days a week, was to him a disconcerting prospect.

Mr. Arthur Bogard, who has resided for the last 39 years at 4136 Brookfield Road, was next to testify. He reiterated and joined Mr. Baker in his concerns regarding traffic, safety and the effect of the project on the residents of the area.

Dorothy McCann, Zoning Chairperson of the Perry Hall Improvement Association, was the final witness for the Protestants. Speaking on behalf of the Association, she testified that it was their position that the proposed hours of operation of the diner combined with traffic and overflow parking concerns would result in severe consequences, to not only the residents of Brookfield Road but also those who lived in the surrounding community and utilized the area of Belair and Joppa Roads. She presented a number of photographs of the entire affected area which were entered into the

record. Utilizing the photographs, she described in detail the traffic problems she believed would result if the Special Hearing use was granted and opined that she felt that the proposed use conflicted with the intention of the property's R.O.A. zoning.

On cross and re-direct, Ms. McCann acknowledged that she was at the first Zoning Commissioner's hearing at which the residents in opposition to the diner took a position that the Petitioners should acquire the lot which is the subject of this Special Hearing request in order to resolve the concerns then existing concerning the project.

The Board then acknowledged the presence of Mr. Clinton Marshall, also an area resident, who stated that he agreed with the position and testimony of Mr. Baker and Mr. Bogard.

Arthur Leonard was recalled as a rebuttal witness by the Petitioners. He stated that in anticipation of the problem described by Mr. Moore in his testimony the Petitioner had submitted plans to Baltimore County relative to improvements at Brookfield and Belair Roads. Specifically, the plans include a widening of Brookfield, including sidewalks, curbs and gutter along the Petitioners' side of Brookfield Road. The suggested proposal will result in sufficient space for three lanes at Brookfield and Belair Roads to allow one lane in, one turning to the right and one turning to the left. He further stated that these improvements met all applicable Baltimore County requirements. Counsel then stipulated for the record on behalf of the Petitioners that the proposed improvements as described by Mr. Leonard, subject to approval by Baltimore County, would be accepted as a condition of

any approval of the requested Special Hearing use for the subject site.

A review of the applicable regulations and statutes reveals that the site at 4142 E. Joppa Road is zoned B.L. and, as such, a diner such as that proposed by the Petitioners is permitted as a matter of right. The adjacent property, 4140 E. Joppa Road, is zoned R.O.A. Section 409.7.B.2 states in part:

> ...in R.O. and R.O.A. zones all required off street parking places shall be provided on the same lot as the structure or use to which they are accessory except that in cases where adjacent dwellings have been converted to class A office buildings, parking spaces may be provided on the adjacent lots.

In the instant case, the Petitioners own two adjacent lots, each with its own deed. They have stipulated that, upon the affirmation of the Special Hearing use by the Board, it is their intention to merge the two lots into one and issue a new deed accordingly. Once that has been accomplished, the new configuration resulting in the R.O.A. zoned portion of the new lot providing an accessory off-street parking use to the diner located on the B.L. portion of the same lot would, in the unanimous opinion of the Board, satisfy the requirements of the BCZR and permit the parking use.

Section 409.8 sets out various requirements and conditions that also must be satisfied in order to provide this accessory parking use in the R.O.A. zone as proposed by the Petitioners. Subsection B(1)(e)(3) permits the Zoning Commissioner to condition any granting or denial of this type of use on:

> ...the manner in which the requirements of Section 409.8.B.2 and other applicable requirements are met; and any additional requirements as deemed necessary by the zoning commissioner in order to ensure that the parking

facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations.

Section 409.8.B.2 states:

In addition to all other applicable requirements, such parking facilities shall be subject to the following conditions:

a. The land so used must adjoin or be across an alley or street from the business or industry involved.

b. Only passenger vehicles, excluding buses, may use the parking facility.

c. No loading, services, or any use other than parking shall be permitted.

d. Lighting shall be regulated as to location, direction, hours of illumination, glare, and intensity, as required.

e. A satisfactory plan showing parking arrangements and vehicular access must be provided.

f. Method and area of operation, provision for maintenance, and permitted hours of use shall be specified, and regulated as required.

g. Any conditions not listed above which, in the judgment of the zoning commissioner, are necessary to ensure that the parking facility will not be detrimental to adjacent properties.

Section 502.1 of the BCZR, normally utilized in the granting or denial of special exceptions, relates primarily to any effect which a permitted activity may have on those residing in surrounding areas. It states:

Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not [BCZR, 1955; Bill No. 45 1982]:

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

b. Tend to create congestion in roads, streets or alleys therein;

c. Create a potential hazard from fire, panic or other dangers;

d. Tend to overcrowd land and cause undue concentration of population;

e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

f. Interfere with adequate light and air;

g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor

h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

Petitioners' expert witnesses, Arthur Leonard and John Rhode, testified specifically as to each of the requirements of these Sections and concurred in their opinions that the granting of the Special Hearing appropriately would satisfy all of the above requirements.

Protestants presented testimony supporting the proposition that the plan as put forth by the Petitioners in their case-in-chief would in fact tend to create congestion in roads, streets or alleys affected thereby, and the resulting dangerous condition would be, in fact, detrimental to the health, safety, or general welfare of the locality involved. As set forth hereinabove, much testimony was presented by both sides as to the effect of the project on traffic utilizing Brookfield Road, Joppa Road, and Belair Road. Significantly, however, Richard Moore, Protestants' expert in traffic engineering and transportation planning, opined

what he considered a way to address the projected difficulties. The subsequent rebuttal testimony presented by Mr. Leonard, in which he related steps being taken by the Petitioner to carry out those types of additional road construction as a condition for any approval (and which subsequently was stipulated to as a condition by counsel on behalf of the Petitioner) has resolved significantly those questions in the minds of the Board as to the traffic factor in Petitioners' proposed project. We take note of the fact that Mr. Gerber attempted to distance himself from Mr. Moore's position relative to his suggested road construction; but in the totality of all testimony received, the Board is unanimously convinced that Petitioners' proposed roadway improvement is sufficient to overcome any concerns relative to traffic congestion and safety. We further find that the Petitioners' plan satisfies the requirements set forth in Sections 409.8.B.2 and 502.1 of the BCZR.

The Board, therefore, unanimously finds that the Special Hearing use requested by the Petitioners shall be granted subject to the conditions as set forth in the following Order.

O R D E R

IT IS THEREFORE this 22nd day of May, 1998 by the County Board of Appeals of Baltimore County,

ORDERED that Petitioners' Motion to Dismiss filed in Case No. CBA-97-129 as to the granting of the limited exemption under Section 26-171(a)(7) of the Baltimore County Code be and the same is **GRANTED**; and it is further

ORDERED that the appeal filed in Case No. CBA-97-129 be and the same is hereby **DISMISSED**; and it is further

ORDERED that the Petition for Special Hearing to approve parking in an R.O.A. zone for a proposed diner located on an adjacent lot zoned B.L. be and the same is hereby **GRANTED**, subject to the following conditions:

1. That before the issuance of any permits for development or construction, the Petitioners shall merge the properties at 4140 and 4142 E. Joppa Road into one lot and record a deed accordingly.

2. That prior to the issuance of any permits, the Petitioners shall obtain approval of landscaping and lighting plans which must be submitted for review and approval by the Landscape Architect for Baltimore County.

3. That the issuance of any use permits be contingent upon the submittal by the Petitioner and approval by Baltimore County of widening and improvements to Brookfield Road as outlined before the Board, allowing three lanes of traffic at Brookfield and Belair Roads as well as appropriate sidewalks, curbs and gutter as prescribed by Baltimore County; all said improvements to be completed before the proposed diner may begin operation.

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

Kristine K. Howanski, Chairman

Lawrence M. Stahl

Harry E. Buchheister, Jr.

County Board of Appeals of Baltimore County

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

May 22, 1998

Francis X. Borgerding, Jr., Esquire
Suite 600
Mercantile-Towson Building
409 Washington Avenue
Towson, MD 21204

RE: Case No. 97-455-SPH /Case No. CBA-97-129
George and Peggy Marmaras (Double "T" Diner)

Dear Mr. Borgerding:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure, **with a photocopy provided to this office concurrent with filing in Circuit Court.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe for

Kathleen C. Bianco
Administrator

encl.

cc: Al Thompson, President / Perry Hall Imp. Assn., Inc.
Richard & Christine Reid
Clinton E. Marshall
Arthur J. Bogard
Bertha Ginn
Edward & Barbara Baker
Dorothy McMann
Norman Gerber
G. Scott Barhight, Esquire
Julie D. Wright, Esquire
George and Peggy Marmaras
KLS Consultants, Inc. /Art Leonard
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Donald T. Rascoe, Project Manager /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
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March 9, 1998

Via Hand Delivery

Ms. Kristine K. Howanski
Mr. Harry E. Buchheister, Jr.
Mr. Lawrence M. Stahl
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Petitioner: Peggy Marmaras
4140 E. Joppa Road and 4142 East Joppa Road
Case Nos. CBA-97-129 and 97-455-SPH

Dear Ms. Howanski and Messrs. Buchheister and Stahl:

Enclosed for filing in the above-referenced case, please find the Petitioner's Brief in Lieu of Closing Argument, together with a draft Opinion.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

G. Scott Barhight

GSB:sll
Enclosures
cc: Francis X. Borgerding, Jr., Esquire
Mr. & Mrs. George Marmaras

130338

Received 3/09/98

3-9-98

IN RE:	*	BEFORE THE
4140 East Joppa Road 4142 East Joppa Road N/S Joppa Road, 360 ft w of the C/L of Belair Rd	*	COUNTY BOARD OF APPEALS OF
11th Election District 5th Councilmanic District	*	BALTIMORE COUNTY
	*	
LEGAL OWNER/PETITIONER: Peggy Marmaras	*	Case No: CBA-97-129 97-455-SPH

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

BRIEF OF PETITIONER IN LIEU OF CLOSING ARGUMENT

Peggy Marmaras, Petitioner, by and through her attorneys, G. Scott Barhight and Whiteford, Taylor & Preston L.L.P., hereby submits this brief in lieu of closing argument and states:

I. STATEMENT OF THE CASE.

This matter comes before the County Board of Appeals of Baltimore County (the "Board") on two appeals by several Protestants. The first appeal is from the Order of the Deputy Zoning Commissioner dated June 3, 1997 which granted a Petition for Special Hearing to park in an ROA zone for a proposed diner located on an adjacent parcel. The second appeal is from the Order of Arnold Jablon, the director of the Department of Permits and Development Management, on June 24, 1997, granting a limited exemption pursuant to Baltimore County Code, Section 26-171(A)(7) of the Baltimore County Development Regulations for the proposed Double-T Diner located at 4140/4142 E. Joppa Road.

Prior to proceeding with the current case which involves both 4140 and 4142 E. Joppa Road, your Petitioner sought zoning approval to develop 4142 E. Joppa Road as the Double-T Diner. Petitions for Special Hearing and Variances were filed which were ultimately denied by Order of the Deputy Zoning Commissioner on December 17, 1996 (Case No. 97-193-SPHA). In that case, the Deputy Zoning Commissioner denied the

Special Hearing seeking approval for parking for the proposed restaurant in a D.R. 5.5 zone and denied a series of variances from parking requirements, RTA buffer and set-back requirements and landscaping requirements.

As a direct result of comments and recommendations received from the Office of Planning and the Protestants, the Petitioner purchased 4140 E. Joppa Road in order to avoid the need for the zoning relief requested in Case No. 97-193-SPHA. The purchase of 4140 E. Joppa Road permitted the development of the Double-T Diner at 4142 E. Joppa Road without any variances. Believing the purchase and utilization of 4140 E. Joppa Road to be a solution to the concerns of the Office of Planning and the Protestants, the Petitioner proceeded with the filing of the necessary Petition for Special Hearing to permit parking at 4140 E. Joppa Road, an ROA zoned property, for the proposed diner to be located at 4142 E. Joppa Road, which is zoned BL. The relief requested in Case No. 97-455-SPH was granted and the Development Review Committee ("DRC") request for limited exemption was granted. This matter comes before the Board on appeal from these two decisions.

These appeals came before the Board for hearings on January 21 and 22, 1998. Both appeals were heard de novo. The Petition for Special Hearing was heard in its entirety first. Then, the appeal of the limited exemption was heard in its entirety. In order to expedite the completion of the case, the parties agreed to incorporate all of the evidence introduced in the zoning appeal into the record of the limited exemption appeal.

II. QUESTIONS PRESENTED.

A. Whether the Board should grant the Petition for Special Hearing to approve parking in an ROA zone for the proposed diner located on an adjacent parcel zoned BL.

1. Whether the Baltimore County Zoning Regulations ("BCZR") permit parking in an ROA zone for an adjacent use in a BL zone.

2. Whether the facts support the granting of the Petition for Special Hearing.

B. Whether the limited exemption was properly granted.

III. MOTION TO DISMISS APPEAL OF LIMITED EXEMPTION.

At the beginning of the hearing regarding the appeal of the limited exemption, counsel for Petitioner made a Motion to Dismiss the appeal. The Motion to Dismiss was based on the assertion that the granting of the limited exemption is not an appealable event. The Petitioner would prefer to have a ruling on the merits of the appeal of the limited exemption. However, in order to preserve the record, the Petitioner made its Motion to Dismiss. Since the decision granting the limited exemption is not an appealable event, the appeal should be dismissed.

IV. APPLICABLE LAW.

A. Petition for Special Hearing.

BCZR Section 409.8.B governs Business or Industrial Parking in Residential Zones. BCZR Section 409.8.B.1 permits the Zoning Commissioner to issue a use permit for the use of land in a residential zone for parking facilities pursuant to certain procedures and requirements. The Zoning Commissioner may either deny or grant the use permit conditioned upon:

1. His findings following the public hearing;

2. The character of the surrounding community and the anticipated impact of the proposed use on that community;

3. The manner in which the requirements of Section 409.8.B.2 and other applicable requirements are met; and any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the parking facility will not be detrimental

to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations.

BCZR Section 409.8.B.2 provides the following additional applicable requirements for the approved parking facilities:

"A. The land so used must adjoin or be across an alley or street from the business or industry involved.

B. Only passengers vehicles, excluding buses may use the parking facility.

C. No loading, service, or any use other than parking shall be permitted.

D. Lighting shall be regulated as to location, direction, hours of the illumination, glare and intensity as required.

E. A satisfactory plan showing parking arrangement and vehicular access must be provided.

F. Method and area of operation, provision for maintenance, and permitted hours of use shall be specified, and regulated as required.

G. Any conditions not listed above which, in the judgment of the Zoning Commissioner, are necessary to ensure that the parking facility will not be detrimental to adjacent properties."

BCZR Section 202.3 contains use regulations governing the ROA zone. BCZR Section 202.3.A.1 permits uses permitted by right and as limited in D.R. zones as a matter of right in any ROA zone. BCZR Section 202.3.A.2 permits class A office buildings containing offices and their accessory uses including surface parking, but not including parking as a principal use, except as provided in Section 409.7.B.2.

BCZR Section 101 contains the definition of "residential zone." Zones classified as RC, DR, ROA, or RAE are considered residential zones.

BCZR Section 202.2 further supports the assertion that principal parking is not permitted in the ROA zone. Section 202.2 provides the following policy statement: "To

maintain residential character, the council does not intend that lots be developed or redeveloped solely for the purpose of providing parking in the ROA zone."

BCZR Section 202.3.C.2 contains the requirements for off-street parking in the ROA zone. These requirements include that the spaces shall be provided in accordance with Section 409, proper landscaping, ten foot set-backs from property lines, provisions for the location of parking in a side or rear of buildings and a limitation on parking variances for ROA uses.

BCZR Section 409.7 governs the location of parking. The general rule is that all required off-street parking spaces shall be located either on the same lot as the structure or use to which they are accessory or off-site as provided in subsection 409.7.A, B and C. Section 409.7.B.2 states that in the ROA zones "all required off-street parking spaces shall be provided on the same lot as the structure or use to which they are accessory except that in cases where adjacent dwellings have been converted to class A office buildings, parking spaces may be provided on the adjacent lots."

Before the use permit may be granted, the following requirements must be met:

- The character of the surrounding community and the anticipated impact the proposed use on that community must be taken into account. Section 409.8.B.e(2).
- The parking must not be detrimental to the health, safety, or general welfare of the surrounding community. Section 409.8.B.1.e(3).
- The objectives of Section 502.1 must be met. Section 409.8.B.1.e(3).
- Additional requirements regarding the utilization of the parking facility must be met in accordance with Section 409.8.B.2.a-g.

B. <u>The Law of Limited Exemptions</u>.

Baltimore County Code Section 26-171 governs limited exemptions from the

Baltimore County Development Regulations. Limited exemptions granted pursuant to Section 26-171(a) are exempt from the requirements of Division 2 of the Development Regulations. Division 2 (Sections 26-201, et seq.) are what is known as the development review and approval process. Division 2 of the Development Regulations requires the filing of a concept plan, a community input meeting, the filing of a development plan, and a hearing officer's hearing for all development not exempt under Section 26-171(a).

Section 26-171(a)(7) permits limited exemptions for:

> "The construction of residential accessory structures or minor commercial structures."

There is no definition within the definition section, Section 26-168, for a minor commercial structure. Notwithstanding the lack of a definition, two exhibits in this case provide us with further guidance for the definition of a minor commercial structure. Petitioner's Exhibit No. 11 is the policy memorandum which governs limited exemptions for minor commercial structures. The applicable portion of that policy states as follows: "In determining whether a proposed addition or independent commercial structure should be exempted, the following guidelines should be utilized: up to 25,000 sq. ft. and measurable degree of community interest, not to exceed 50% of the existing size."

Additionally, in the context of 200 ft. tall towers for wireless transmitting and receiving facilities, an Office of Law opinion provides further guidance. Petitioner's Exhibit No. 10 is the Law Office opinion which discusses the statutory interpretation of minor commercial structures.

The Board is bound by long standing administrative practice where it is consistent with the clear language of the statute. Maryland Classified Employees v. Governor, 325 Md. 19 (1991); Board of Education, Garrett Co. v. Lendo, 295 Md. 55 (1982). Mr. Rascoe testified at length regarding the long standing administrative practice of

approving various uses as minor commercial structures for Section 26-171(a)(7) limited exemptions. Mr. Rascoe testified that Section (a)(7) limited exemptions had been provided for a variety of uses including, convenience stores, service stations, entire shopping centers, office buildings, and cell towers. He further testified that there was long standing administrative practice to provide (a)(7) exemptions for these commercial structures for sizes up to 100,000 sq. ft.

V. THE FACTS

George Marmaras, Art Leonard and John Rhode testified on behalf of the Petitioner in the Petition in Special Hearing case. Richard Moore, Norman Gerber, Edward Baker, Arthur Bogart and Dorothy McMann testified on behalf of the Protestants in the zoning case.

In the limited exemption appeal case, Norman Gerber, Don Rascoe and Dorothy McMann testified. Below is a summary of the relevant testimony and evidence introduced in each case:

A. The Petition for Special Hearing - Use Permit Case.

1. George Marmaras.

- Extensive experience in the restaurant business;
- Currently operates the Double-T Diner on Pulaski Highway;
- Has received a commendation from the Rosedale Association regarding the diner on Pulaski Highway;
- Proposes a 5,592 sq. ft. diner at 4142 E. Joppa Road;
- Proposes to utilize what is currently known as 4140 E. Joppa Road to meet some of the parking requirements for the diner;
- Specifically purchased 4140 E. Joppa Road for the purpose of razing the existing building and providing parking for the diner;

- Was encouraged by the Office of Planning and the Protestants to purchase 4140 E. Joppa Road and include it in his plans for the diner so as to avoid any variances.

2. Art Leonard

- A registered professional civil engineer in the State of Maryland with extensive experience in civil engineering;
- Accepted as an expert in the field of civil engineering;
- Prepared the site plan (Petitioner's Exhibit No. 1) previously filed before the Zoning Commissioner;
- Prepared the amended Plan (Petitioner's Exhibit No. 3) which shows that the 10 ft set-back requirement is properly met;
- Described the commercial zoning and uses of Joppa Road and Belair Road corridors;
- Described the fencing, screening and landscaping which will be provided to eliminate any view of the parking from the adjacent residential communities fronting on Brookfield Road;
- The parking surface will be a durable and dustless surface;
- The lighting provided in the parking will be directed away from the adjacent residential uses. The exact location of all of the lighting poles will be reviewed and approved through the final landscape plan;
- All the parking spaces will be properly striped in accordance with the size requirements of the Baltimore County Zoning Regulations;

- The proposed parking meets all of the set-back and other design standard requirements set forth in the Baltimore County Zoning Regulations Section 409.8.A;
- The owner will combine the subject lot, known as 4140 E. Joppa Road into the diner lot, known as 4142 E. Joppa Road in the event that the use permit for parking is finally approved. This will meet the requirements of BCZR Section 409.7.B.2 that the accessory parking occur on the same lot as the principal use or structure to be served;
- All of the design requirements and bulk requirements of the Zoning Regulations and County Code are met;
- The impermeable surface and vegetative retention provisions (See Section 502.1.h) of the BCZR are met;
- From the prospective of a civil engineer, the use permit may be granted without any harm to the community.

3. John Rhode

- Registered professional landscape architect in the State of Maryland with extensive experience in landscape architecture and land planning;
- Accepted as an expert in landscape architecture and land planning;
- Testified at length regarding a photoboard (Petitioner's Exhibit No. 4) showing the commercial character of the neighborhood;
- Significant commercial activity along Joppa and Belair Roads;

- Proposed parking use meets the requirements of Section 409.8.B.2;
    - The use permit land adjoins the land intended for the diner;
    - The subject site will be limited to use by passenger vehicles, excluding buses, for parking;
    - No loading, service or any use other than parking will be permitted on the subject site;
    - Lighting will be directed away for the residential uses, and will be regulated pursuant to the final landscape plan to be reviewed and approved by the Office of Planning and the County landscape architect, Avery Harden;
    - The site plan shows satisfactory parking arrangements and vehicular access;
    - The parking area will be maintained by the owner and utilized in conjunction with the diner;
- The requirements of Section 502.1.A-G are all met. Specific testimony was provided with regard to each requirement of Section 502.1.A-G, the overall opinion being that this is a commercial corridor, accessory parking is consistent with this corridor, the accessory parking area is very well screened and buffered from the adjacent residential uses and no harm will come to the residential community along Brookfield Road if the use permit is granted;

- All of the Baltimore County agency comments have been met (See Zoning Advisory Committee comments in Petitioner's Exhibit No. 5);
- The Office of Planning affirmatively recommended the granting of the requested use permit;
- The granting of the use permit will not have a detrimental impact on the residential character of the houses which front on Brookfield Road;
- The accessory parking is in the side yard of the diner;
- From the perspective of a landscape architect and land planner, there will not be any harm to the community if the use permit is granted.

4. Richard Moore

- Accepted as an expert in traffic engineering and transportation planning;
- Did not perform a full traffic impact analysis;
- Did not study the Double-T Diner during the peak hours. The proposed access to the diner through the accessory parking area is a safe access; the farther away you get from the intersection the safer the access;
- Neither Baltimore County nor the State Highway Administration could deny access to the owner of the subject site;
- If the use permit is denied, the access point for the diner will be closer to the intersection of Joppa and Belair Roads;

- Main concern: left turn from Brookfield to Belair Road, need 35 ft to permit right and left turn lanes from Brookfield on to Belair Road.
- Zoning Regulations do permit accessory parking for the diner in an ROA zone;
- Level of service of the intersection at Belair and Joppa Roads is satisfactory;
- Two accesses are more unsafe than one access, if use permit is denied, the diner access will move closer to the intersection and a new individual access will be provided for the ultimate use of the subject site;
- Questioned the utilization of the valet parking spaces by employees;
- Indicated concern regarding the volume of traffic leaving Brookfield Road; but had no knowledge of the incremental differences in the delays which might be caused by this additional traffic;
- Believes that there should be a "no left turn" sign at Belair and Brookfield.

5. Norman Gerber.

- Accepted as an expert in planning and zoning;
- Parking in ROA zone not permitted;
- If permitted, does not meet the requirements of Section 409 because it does not maintain residential character of community and creates congestion at the intersection of Brookfield and Belair Roads;

- Contrary to the spirit and intent of the Zoning Regulations,
- Section 202.5 prohibits any use of ROA lands other than as conversion to class A office building
- Applicant did not follow conversion requirements under Section 202.5.

6. Edward Baker

- 39 year resident at 4140 Brookfield Road;
- Brookfield Road is a country road;
- No sidewalks on the street, no place to walk;
- Concerned about the noise from the diner operation.

7. Arthur Bogart

- 38 year resident at 4136 Brookfield Road;
- Complained that had no sidewalks on Brookfield;
- Difficult to turn left on to Belair Road.

8. Dorothy McMann

- Long time community activist with the Perry Hall Improvement Association;
- Opposed to parking because not permitted;
- Adverse affect on Brookfield Road;
- Difficulty with intersection at Brookfield and Belair Roads;
- Introduced many photographs showing character of area;
- Concern regarding operation of valet parking;
- Concern regarding 24 hour operation of diner,

- Agreed with assertion by the Zoning Commissioner that "at the hearing before me in December, residents in opposition to this diner asserted that the Petitioner should acquire the Shaeffer parcel and incorporate same into this project. Now the opponents argue that parking on this parcel should not be permitted."
- No sidewalks and no curb and gutter currently on Brookfield.

6. Art Leonard (rebuttal)

- Had anticipated problems identified by Richard Moore;
- Has already submitted plans to Baltimore County to address the requirements at Brookfield Road;
- Petitioner is meeting Baltimore County standards for the improvements at Brookfield Road and Belair Road;
- These improvements will accommodate 3 lanes at Brookfield and Belair (one lane in, one right turn out and one left turn out);
- Proposed improvements to Brookfield Road meet all of Baltimore County requirements and believes they will be approved by Baltimore County;
- Sidewalks, curbs and gutter will be provided along the Petitioner's side of Brookfield Road;
- Counsel for Petitioner stipulated that the improvement proposed by the Petitioner as described by Mr. Leonard to Brookfield Road will occur.

B. Limited Exemption Appeal.

1. Documents

- The parties agreed to proceed with the limited exemption appeal by having the Applicant/Petitioner introduce the documentation proving that the limited exemption was applied for, granted and appealed in a timely fashion. The following documents were introduced:
  - June 24, 1997 letter from Arnold Jablon granting the limited exemption under Section 26-171(a)(7) (Petitioner's Exhibit 6)
  - The Protestant's appeal letter (Petitioner's Exhibit 7)
  - Jablon letter dated July 8, 1997 advising the Applicant of the appeal (Petitioner's Exhibit 8)

2. Inclusion of Special Hearing Record

- By agreement of the parties a motion was made and granted that all of the evidence introduced in the zoning case regarding the Petition for Special Hearing is incorporated by reference into the de novo appeal of the limited exemption.

3. Witnesses

a. Norman Gerber

- Was not accepted or qualified to testify as an expert regarding limited exemptions.

b. Don Rascoe

- Works as Development Manager for Permits and Development Management, Division Chief of Development Management, Chairman of the Development Review Committee (DRC).
- Confirmed grant of (a)(7) limited exemption
- Testified regarding long standing administrative practice to grant minor commercial structure, (a)(7), limited exemptions.
- Wide variety of activities have been granted limited exemptions: office buildings, shopping centers, cell towers, convenience stores, service stations.
- Not unusual to grant (a)(7) exemption for a commercial activity as large as 50,000 to 100,000 square feet.
- Policy statement followed for (a)(7) exemptions provided by Arnold Jablon (Petitioner's Exhibit 11).
- Jablon policy guideline: up to 25,000 square feet in measurable degree of community interest, not to exceed 50% of the existing size.
- DRC was aware of the community's interest in this case.
- Proposed diner is far less than 25,000 sq. ft. in size.

VI. ARGUMENT

A. The Petition for Special Hearing requesting a use permit for accessory parking in an ROA zone to support the proposed diner in an adjacent BL zone should be approved.

1. The Baltimore County Zoning Regulations permit accessory parking in an ROA zone to support an adjacent use or structure in a BL zone.

It is clear that Section 409.8.B permits the issuance of a use permit for the use of the subject ROA zoned property for parking for the adjacent restaurant use. Since the ROA zone is a residential zone, a use permit may be granted as long as the requirements of the BCZR are met.

The Protestants have asserted that parking is prohibited in the ROA zone. This assertion ignores the provisions of Section 409.7.B.2 which permits accessory parking as long as it is provided on the same lot as the structure or use to which they are accessory. In the instant case, assuming that the use permit is granted, the Petitioner intends to merge the two parcels into one lot so that this single lot requirement is met.

The Protestants over-emphasize the policy language of Section 202.2 which indicates the counsel's intention that lots not be developed for the sole purpose of providing parking. This argument ignores the clear intent of the counsel to prohibit parking merely as a principal use. Parking lots as a principal use, not as an accessory use for a legitimate use or structure are prohibited. Section 202.3.A.2. Accessory parking is clearly permitted as long as the ROA parking is situated on the same lot as the use or structure to be served. Section 409.7.B(2) and 409.8.B.

2. The Baltimore County Zoning Regulations for the use permit have been met.

There can be no question that all of the requirements of Section 409 and 202 of the BCZR have been met. Messrs. Leonard and Rhode testified at length and in detail that each of the requirements of Sections 409, 502.1 and 202 were met. Simply stated, there will be no adverse impact on the community if this use permit is granted.

Other than the legal issue raised in A.1 above, the only two factual issues raised were (1) potential adverse traffic impacts at the intersection of Brookfield and Belair Roads, and (2) adverse impact on the character of the community inconsistent with the policy and purpose of the Zoning Regulations.

(1) Richard Moore identified his major concern regarding the proposed use permit. According to Mr. Moore, the traffic leaving the diner parking area and utilizing Brookfield Road will have difficulty making a left turn on to Belair Road. Mr. Moore opined that unless 3 lanes were created at the intersection of Brookfield and Belair Roads, that there would be an adverse impact on the community. Mr. Moore further testified that the incremental increase of traffic permitted by the additional parking approved pursuant to the use permit (and the resulting increase in the size of the diner) would result in an incremental increase in the problems associated with the difficulties of making a left turn on to Belair Road.

Fortunately for the Petitioner, our civil engineer expert, Mr. Leonard had already anticipated the potential problems at the intersection of Brookfield and Belair Roads. Mr. Leonard already had plans filed with Baltimore County meeting all of the Baltimore County requirements for improvements to Brookfield Road. After hearing Mr. Moore's testimony, Mr. Leonard was able to indicate that additional widening of Brookfield would be permitted on lands owned by the Petitioner to provide for the three lanes suggested by Mr. Moore. Counsel for the Petitioner stipulated that those improvements would actually be made. As a result, these improvements can be made a condition of the approval of the use permit.

Since Mr. Moore's main concern has been resolved, there is no need to further address the issue. However, it is important to point out that even if the three lanes

were not being provided, Mr. Moore was never able to testify clearly to the actual incremental adverse impact created by the additional parking at 4140 E. Joppa Road on the intersection movements at Brookfield and Belair Roads.

(2) Norman Gerber testified that the parking at what is now 4140 E. Joppa Road is inconsistent with the purposes of the ROA zone in that it would have an adverse impact on the community and that only conversions to office buildings are permitted in the ROA zone. Mr. Gerber offered nothing other than conclusory and speculative testimony regarding potential adverse impacts to the community. Further, his assertion of adverse impact rested largely upon the traffic concerns raised by Mr. Moore, which have now been fully resolved.

There is no evidence of any adverse impact on the community if the use permit is granted. The photographs provided by Mr. Rhode (Petitioner's Exhibit 4) make it clear that the accessory parking will be virtually invisible, if not totally invisible, from the neighboring adjacent properties. It is important to note here that the neighboring adjacent properties also are zoned BL for those portions immediately adjacent to the proposed parking area. Additionally, the existing residential structures are in closer proximity to the parking areas for the shopping center adjacent to the proposed accessory parking then the proposed parking areas themselves. The screening and buffering (fence, landscaping, etc.) will provide more than adequate protection for the community.

Mr. Gerber's assertion that the ROA zone only permits conversions to office buildings pursuant to Section 202.5 is not supported in any way by the ROA zone regulations. Section 202.3 makes clear that there are a variety of uses permitted in the ROA zone, including uses permitted by a matter of right, special exception uses, as well as

signs and off-street parking. Specifically, Section 409.7.B(2) makes it clear that accessory off-street parking is permitted in the ROA zone.

Mr. Gerber also asserts that the conversion process of Section 202.5 was not properly met. Any reading of Section 202.5 makes it clear that the conversion requirements of Section 202.5 relate to plans for conversion to a class A office building only.

B. The Limited Exemption under Section 26-171(a)(7) was properly granted.

Baltimore County Code Section 26-171(a)(7) clearly permits limited exemptions for minor commercial structures. Policies established by Mr. Jablon (Petitioner's Exhibit 11) and the long standing administrative practice testified to by Don Rascoe make it clear that this approximately 5,592 sq. ft. diner meets the written policy and administrative practice for a minor commercial structure. It would be absurd to reverse the decision of Mr. Jablon in this case where the written policy of Permits and Development Management is to permit minor commercial structures as limited exemptions provided they do not exceed 25,000 sq. ft. It is equally illogical to reverse this decision where the long standing administrative practice shows that a large variety of commercial uses as or more intense than a restaurant with sizes up to 100,000 sq. ft. have been approved through the (a)(7) exemption. The diner is approximately 20% of the maximum size permitted under the written policy and approximately 5% of the size permitted in the actual administrative practice for minor commercial structures.

VII. CONCLUSION

It is clear from the record that a small group of citizens is opposed to the construction and operation of a 24 hour diner at what is known as 4142 E. Joppa Road. It is also clear that at least an equal number of local residents is in favor of the diner. In a previous case the Protestants directed the Petitioner to purchase 4140 E. Joppa Road in

order to avoid parking variances for the diner. Now that the Petitioner has done as suggested by not only the Protestants, but also the Office of Planning, the Protestants continue to oppose the diner.

The diner is a use permitted as a matter of right in the BL zone in which it is proposed. The Protestants can do nothing to stop the approval of the diner. They can only delay its construction by appeals of zoning and development relief granted. There is no credible evidence whatsoever in the record that the proposed accessory parking is going to have any adverse impact whatsoever on the community.

It is also abundantly clear that the (a)(7) exemption was properly granted. The written policy and long-standing administrative practice of Permits and Development Management make it clear that the proposed diner is significantly smaller in square footage than the maximum permitted for a minor commercial structure. There is no evidence whatsoever in the record to contradict the policies and practices of the Development Review Committee or to show that the proposed diner did not meet the definition of a minor commercial structure.

The (a)(7) limited exemption is there to encourage business development and commercial activity in Baltimore County. Here, the diner is a use permitted as a matter of right. There has been more than adequate community input in this process. There have been two Zoning Commissioner hearings and a Board of Appeals hearing, all of which were well attended by community residents, both pro and con. Reversing the grant of the limited exemption will only result in further delay of the project, increase costs to the Petitioner, and create economic hardship with no real benefit. The filing of concept and development plans, a community input meeting and a Hearing Officer's hearing will have no real benefit

to any of the parties. The appeal of the (a)(7) exemption is merely a way to delay the diner's construction and harass the owner.

Today, when the rights of the community are so strictly guarded by the zoning and development regulations, it is easy to forget that Baltimore County relies upon commercial activity for its well being. It is also frequently forgotten that property owners have rights too. In this case, the Petitioner has spent years trying to develop a diner, a use permitted as a matter of right on the BL zoned portion of this property. At the request of the community Protestants and the Office of Planning, at significant expense, the Petitioner has purchased an adjacent parcel to avoid the need for variances and to enhance the viability of the diner. The law clearly permits the use permit and the limited exemption as granted. The facts and circumstances of the case show that no harm whatsoever will come to the community if this use permit is granted and the limited exemption is affirmed.

Respectfully submitted,

G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Avenue
Towson, Maryland 21204
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify on this 9TH day of March, 1998 that the Brief of Petitioner in Lieu Of Closing Argument was mailed, first class, postage prepaid to:

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Mercantile-Towson Building, Suite 600
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Towson, Maryland 21204

G. Scott Barhight

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IN RE:	* BEFORE THE
4140 East Joppa Road	
4142 East Joppa Road	* COUNTY BOARD OF APPEALS
N/S Joppa Road, 360 ft w	
of the C/L of Belair Rd	* OF
11th Election District	* BALTIMORE COUNTY
5th Councilmanic District	
	*
LEGAL OWNER/PETITIONER:	Case No: CBA-97-129
Peggy Marmaras	* 97-455-SPH

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

OPINION

The above-captioned matter is before the Board of Appeals of Baltimore County ("Board") for the review and consideration of two appeals, filed by the Protestants. The first is from the Opinion and Order of the Deputy Zoning Commissioner dated June 3, 1997 granting the Petition for Special Hearing seeking approval of parking in an ROA zone for a proposed diner located on an adjacent parcel, zoned BL, subject to certain restrictions (Case No. 97-455-SPH), and the granting of a limited exemption pursuant to Baltimore County Code Section 26-171(a)(7) as evidenced by the June 24, 1997 letter from Arnold Jablon, Director of the Department of Permits and Development (CBA-97-129).

G. Scott Barhight, Esquire and Whiteford, Taylor & Preston L.L.P. represented the Petitioner, Peggy Marmaras. Francis X. Borgerding, Jr., Esquire represented various Protestants, namely Perry Hall Improvement Association, Richard A. Reid, Christine L. Reid, Clinton E. Marshall, Arthur J. Bogart, Bertha Ginn, Edward E. Baker, Barbara J. Baker, Al Thompson and Dorothy McMann.

The property which is the subject of the Petition for Special Hearing for a use permit consists of approximately 0.23 acres, more or less, zoned ROA. A one and one-half story building previously situated on the site has been razed. The subject property is proposed to be used as accessory parking for a proposed restaurant on the adjacent property.

The second appeal relates to a limited exemption granted for on the property identified as 4140 and 4142 E. Joppa Road. As shown on the plan to accompany the limited exemption (Petitioner's Exhibit 9) the limited exemption was granted for a proposed diner of 5,592 sq. ft.

The area known as 4142 E. Joppa Road is zoned BL. In the Petition for Special Hearing case a civil engineer, Art Leonard, and a landscape architect land planner, John Rhode, testified on behalf of the Petitioner. Mr. Marmaras who will operate the proposed Double-T Diner, also testified in support of the use permit. Their testimony shows that 15 complete parking spaces and portions of 9 parking spaces are proposed for what is known as 4140 E. Joppa Road to provide accessory parking to the proposed diner. A 8 ft high board on board fence and extensive landscaping will also be provided to significantly screen the proposed parking from the adjacent residential uses. The adjacent residential uses contain BL zoned properties immediately adjacent to the proposed accessory parking. The subject site is near the intersection of Joppa and Belair Roads,

a heavily traveled commercial corridor. All three Petitioner's witnesses testified that there would be no adverse impact to the surrounding community and that all of the requirements of the Baltimore County Zoning Regulations under Sections 409, 502.1 and 202 would be met.

Several witnesses testified in opposition to the Petition for Special Hearing. Mr. Richard Moore, an expert in traffic engineering and transportation planning, testified as to various adverse traffic impacts should the proposed use permit be granted. Mr. Moore's main concern related to the need to upgrade the intersection at Brookfield and Belair Roads to provide a left turn and right turn lane from Brookfield Road to Belair Road. In his rebuttal case, the Petitioner's expert, Mr. Leonard, indicated that the three lanes requested by Mr. Moore would in fact be constructed at the expense of the Petitioner.

Mr. Norman Gerber also testified on behalf of the Protestants. Mr. Gerber opined that the ROA zoning regulations prohibited the proposed use, that the spirit and intent of the Zoning Regulations did not permit the proposed use, that the conversion plan requirements for ROA zones was not satisfied and that there would be an adverse impact on the community should the use permit be granted. Additionally, several neighbors testified about the concerns which largely related to the operation of the diner. There were no actual concerns expressed about the impact of the parking at the subject

site. The primary focus of the opposition, rather, was on the construction and operation of the diner on the adjacent parcel.

After the Petition for Special Hearing case was completed, a hearing was held, de novo, on the appeal of the limited exemption. The evidence provided by Donald Rascoe, Chairman of the Development Review Committee, made it clear that the proposed diner met the written policies of the Department of Permits and Development Management, and the long-standing administrative practice of the Development Review Committee in granting such limited exemptions for a minor commercial structure.

Based upon the witnesses and evidence presented, it is the conclusion of the Board that the use permit requested should be granted. The parking provided can be done so without any real detriment to the community and is being more than adequately screened and buffered. This portion of Baltimore County, near the intersection of Joppa and Belair Roads is part of a major commercial corridor. The diner proposed at what is now 4142 E. Joppa Road is a use permitted as a matter of right. Although we understand and appreciate that there are some members of the community who would prefer not to have a 24 hour diner in their community, it is a use that is permitted as a matter of right under the Baltimore County Zoning Regulations. The evidence makes it clear that all of the requirements of BCZR Sections 409, 202 and 502.1 have been met.

With regard to the appeal of the limited exemption, the Board further finds that the proposed diner development meets the definition of minor commercial structure under Baltimore County Code Section 26-171(a)(7). The written policies and administrative practices of Baltimore County make it clear that a 5,592 sq. ft. diner meets the definition of a minor commercial structure, and as such, should be provided with a limited exemption from the Division 2 requirements of the Development Regulations. In light of these findings, the Board will enter its ORDER embodying our Findings of Facts and Conclusions of Law.

ORDER

THEREFORE, IT IS THIS _____ DAY OF _____, 1998, by the County Board of Appeals of Baltimore County

ORDERED, that the Petition for Special Hearing seeking approval of parking in an ROA zone for a proposed diner located on an adjacent parcel zoned BL, pursuant to Section 409.8.B of the Baltimore County Zoning Regulations in accordance with Petitioner's Exhibit 3, BE AND IS HEREBY GRANTED, subject to the following restrictions:

1. Prior to the issuance of any permits, the Petitioner shall obtain approval of a landscape plan which must be submitted for review and approval by the Landscape Architect for Baltimore County.

2. When applying for a building permit, the site plan and landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

3. Prior to the issuance of any permits, the lots known as 4140 and 4142 E. Joppa Road must be merged so as to be one lot; and

4. Prior to the issuance of a use and occupancy permit for the diner, the Petitioner shall construct all improvements to Brookfield Road as required by Baltimore County law, and shall improve Brookfield Road to permit a left turn lane and a right turn lane for Brookfield Road at its intersection with Belair Road.

IT IS FURTHER ORDERED, that the decision of the Arnold Jablon, the Director of Permits and Development Management as reflected in his letter and order dated June 24, 1997 approving a limited exemption under section 26-171(a)(7) is hereby affirmed.

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

Kristine K. Howanski

Harry E. Buchheister, Jr.

Lawrence M. Stahl

130253

3-9-98

IN RE	*	BEFORE THE
PETITION FOR SPECIAL HEARING	*	COUNTY BOARD OF
S JOPPA ROAD, 360' W OF THE	*	APPEALS FOR
c/l OF BELAIR ROAD (4140 EAST	*	BALTIMORE COUNTY
JOPPA ROAD) 11TH ELECTION	*	Case No. 97-455-SPH
DISTRICT, 5TH COUNCILMANIC	*	
DISTRICT	*	
GEORGE AND PEGGY MAMARAS Petitioners	*	

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CLOSING ARGUMENT MEMORANDUM

The Perry Hall Improvement Association by and through its attorney, Francis X. Borgerding, Jr. files this Closing Argument Memorandum and in support of says:

STATEMENT OF THE CASE

This case comes before the Board on appeal of the June 3, 1997 decision of the Deputy Zoning Commissioner of Baltimore County granting a special hearing seeking approval of parking in an ROA zone for a proposed diner located on an adjacent parcel, zoned BL, pursuant to Section 409.8B of the Baltimore County Zoning Regulations (herein "BCZR") in accordance with a plat entered as Petitioner's Exhibit #1 before the Deputy Zoning Commissioner. The Deputy Zoning Commissioner had originally denied the Petitioner's request for parking in a DR 5.5 zone pursuant to Section 409.8B of the BCZR: a variance from BCZR Section 409.6.A.2.A.2 to permit seventy-seven parking spaces in lieu of the required 88 spaces; a variance from Section 1B01.1 to

permit an RTA buffer and setback of 9.5 feet each in lieu of the required 50 and 75 feet respectively and landscape manual variances, pursuant to his opinion dated December 17, 1996 in Case No. 97-193SPHA.

The Perry Hall Improvement Association and five adjoining property owners on Brookfield Road filed a timely appeal to this Board of the Deputy Zoning Commissioner's June 3, 1997 decision. It is from that decision that the appeal herein now lies.

STATEMENT OF FACTS

Petitioner's witnesses before the Board were Petitioner George Mamaras, Arthur E. Leonard, Professional Licensed Registered Engineer and Mr. John Rhode, Landscape Architect in the Petitioner's case in chief. Arthur E. Leonard was also called on rebuttal by the Petitioner.

Testifying on behalf of the Protestants were Richard Moore, expert in Traffic Engineering and Transportation Planning, Norman Gerber, an expert in Land Planning and Zoning, Edward Baker, Arthur Bogart and Clinton Marshall, all residents of Brookfield Road and Mrs. Dorothy McMann, Zoning Chair of the Perry Hall Improvement Association.

Petitioner's first witness was Petitioner George Mamaras. Mr. Mamaras briefly testified about the proposed diner to be located on a parcel adjacent to the ROA property which was the subject of the hearing before the Board. Mr. Mamaras related that he operates another diner in the Rosedale community. On cross examination, Mr. Mamaras indicated that he needed the proposed parking on the ROA lot to support a proposed diner which is to be open 7 days a week, 24 hours a day. Mr. Mamaras indicated that the proposed diner would have an average of approximately twelve employees working at any given time and the diner would have a seating capacity of 235 people. Mr. Mamaras further indicated that when he purchased the subject ROA

property from Ms. Schaffer, there was a residential house on the property. He stated that he tore the residential structure down approximately three weeks before the date of the hearing before the Board.

The next witness called by the Petitioner was Arthur E. Leonard, who qualified as an expert in the field of civil engineering. Mr. Leonard introduced Petitioner's Exhibit #1 which was a previous plat regarding the Petitioner's proposed relief. Mr. Leonard also entered Petitioner's Exhibit #2 which was a landscaping plat which was prepared by the Petitioner. Additionally, Mr. Leonard entered Petitioner's Exhibit #3 which is a revised plat in relation to the Petitioner's proposed relief before the Board. Mr. Leonard described the proposed use of the ROA parcel as well as the adjoining diner use. Mr. Leonard indicated that the Ginn, Marshall and Almony properties on Brookfield Road were closer to the Joppa Corners Shopping Center than the proposed ROA parking. Mr. Leonard testified from an engineering perspective that the proposed special hearing if granted would not be harmful to the health, safety and welfare of the surrounding community. On cross examination, Mr. Leonard indicated that he was not a traffic expert. Mr. Leonard also indicated that the Joppa Corners Shopping Center had no access onto Brookfield Road, unlike the Petitioner's proposed relief. Mr. Leonard verified that the proposed days and hours of operation of the diner would be 7 days a week, 24 hours a day. Mr. Leonard indicated that pursuant to Petitioner's Exhibit #3, twenty-two (22) parking spaces, or 24% of the ninety (90) required parking spaces to support the diner would be valet stacking spaces. Mr. Leonard further indicated that the size of the diner dictates the need under the BCZR for ninety (90) parking spaces and if the size of the diner were reduced, the BCZR would require less parking. Mr. Leonard also indicated that pursuant to Petitioner's Exhibit #3, the Petitioner is

requesting parking in what would be the front yard of the subject ROA parcel.

The next witness called by the Petitioner was John Rhode. Mr. Rhode was accepted by the Board as an expert in landscape architecture and over the objection of undersigned council, as an expert in land planning. The Board, however, indicated that his testimony from a land planning perspective would be given the weight it saw fit. Mr. Rhode indicated that he had no license or certification in land planning although his college curriculum in landscape architecture had "some exposure" to land planning. Mr. Rhode testified he believed that if the special hearing is granted it would assist in circulation of the site and "loosen up the site". He testified that from a "aesthetic or visual perspective", the Petitioner's proposed special hearing would not be detrimental to the health, safety and welfare of the surrounding community. On cross examination, when asked about the intention of ROA zoned property pursuant to Section 202.2 of the BCZR, Mr. Rhode indicated that Section 202.2 stated that it was the Council's intention in order to maintain the residential character of ROA parcels, that parking not be the primary use of ROA zoned property. After Mr. Rhode's testimony, Petitioner rested its case in chief.

The first witness called by the Protestants was Richard Moore. Mr. Moore qualified as an expert in traffic engineering and transportation planning. His resume was entered as Protestant's Exhibit #1. Mr. Moore testified that he was familiar with the property which was the subject of the hearing before the Board. He testified that he was familiar with the Petitioner's proposed relief as indicated on Petitioner's Exhibits #1 and #3. Mr. Moore testified that he investigated the proposed relief from a traffic engineering and transportation planning perspective. Mr. Moore indicated that in order to investigate Petitioner's proposed relief, he had visited that site and general area at issue, conducted a visual investigation based on his observation from a vantage

point of the intersection of Brookfield Road and Belair Road, reviewed county traffic information as well as conducted interviews with county staff and conducted a field visit to what he felt was a similar diner use at Ebenezer Road and Pulaski Highway. Mr. Moore indicated that because of the median strip on Joppa Road, the majority of traffic generated onto the subject parcel and adjoining BL parcel would access the site from Brookfield Road. Mr. Moore indicated that his analysis of the subject property area and the Petitioner's proposed relief indicated 3 problem areas: 1) operational traffic problems on Brookfield Road at Belair Road; 2) that the type of restaurant proposed by the Petitioner needs all accessible parking spaces required by the zoning regulations instead of the proposed percentage of valet stacking spaces proposed by the Petitioner; and 3) the parking on the ROA zoned parcel will increase traffic volumes on Brookfield Road and compound and cause additional traffic congestion. Mr. Moore indicated that Brookfield Road is a narrow public street with head in parking on both sides. Further, he indicated that the existing situation only allows for approximately 23 feet of clearance for vehicles to enter and exit Brookfield Road. Mr. Moore indicated that during the time that he conducted his field study no one made a left turn onto Belair Road. Mr. Moore indicated that the ability to make left hand turns from Brookfield onto Belair Road was very problematic at present and would only be exacerbated by the increase in traffic generated by Petitioner's proposed special hearing. Further, Mr. Moore indicated that the state has prohibited left hand turns at Bill's Seafood location and McDonald's location, both of which are within a block of Brookfield Road on Belair Road. Mr. Moore indicated that to further compound the problem at Brookfield Road, he observed a truck double parked on Brookfield Road for over thirteen minutes during one of his field visits making passing in either direction on Brookfield Road very difficult. Mr. Moore

testified that in an attempt to ease existing problems on Brookfield Road, the paved street should have a 35 foot paved clear passage way to accommodate left turns at Belair Road and existing traffic volumes. Entered through Mr. Moore were Protestant's Exhibit #3a, which indicated some of the results of his findings with regard to the proposed relief. Mr. Moore stated that he had indicated on Protestant's Exhibit #3a that the Petitioner's proposed use would generate, pursuant to estimates based on Standard Institute of Transportation Engineer's Trip Generation Rates, eighty-three (83) trips (forty-two (42) inbound and forty-one (41) outbound) during AM peak hours, and seventy-three (73) trips (forty-one (41) inbound and thirty-two (32) outbound) during PM peak hours. Based on the Standard Institute of Transportation Engineer's Trip Generation Rates, the generated trips are divided into 28% new trips, 32% diverted trips and 40% pass-by trips. Mr. Moore also entered into evidence Protestant's Exhibit #3b, which indicated some of his findings pursuant to his investigation of the White Marsh Double T Diner. Mr. Moore indicated that his field observation of that site indicated that the actual trip generation on that site amounted to 50% higher than the Standard Institute of Transportation Engineer's Trip Generation Rates which he used on the subject property. Mr. Moore also noted that his field observation of the White Marsh Double T Diner was conducted on a Tuesday night which is not one of the diner's busier nights of use. Mr. Moore testified that based upon his investigation and findings, in his opinion, if the proposed special hearing were granted for parking on the subject ROA parcel, it would cause harm to the health, safety and welfare of the surrounding community and would tend to cause congestion in the roads, streets and alleyways of the surrounding community. Mr. Moore based his findings upon the fact that the proposed parking in the ROA zone would tend to cause congestion in the roads, streets and alleyways of the surrounding community by increasing

the traffic generated by the parking allowed in the ROA zone. Mr. Moore's testimony indicated that the Petitioner's requested special hearing relief did not meet the requirements of Section 502.1 of the BCZR.

On cross examination, Mr. Moore indicated that he did not perform a capacity analysis of the intersection of Belair and Joppa Roads as he usually would perform in a full traffic study. Mr. Moore, however, stated that he did not perform a capacity analysis in relation to the subject hearing because he was not rendering an opinion as to the impact of the capacity of the intersection at Joppa and Belair Roads. Mr. Moore further indicated that he had done a traffic count at Brookfield and Belair Roads because that's where he felt the impact of the ROA parking, if allowed, would have its most adverse impact. Mr. Moore indicated that he felt that residents of Brookfield Road would be impeded from making right hand turns by commercial traffic on Brookfield Road attempting to make left hand turns. Although he indicated that he had not done any specific analysis of the amount of the additional left hand turn traffic that would be generated, when he was at the site he did not see anyone make a left hand turn under the present conditions. Mr. Moore additionally indicated that, in his opinion, regardless of Petitioner's use of the property, he feels that there should be a no left hand turn sign at Belair and Brookfield Roads. He testified that the more the intersection was used, the more the problem would be exacerbated. Counsel for the Petitioner asked Mr. Moore to render an opinion as to the impact of moving access on Joppa Road to the BL portion fronting Joppa Road, closer to the intersection of Belair Road and Joppa Road from its present location and he concluded that, in his opinion, any access more than 100 feet away from an intersection is equally as unsafe as any other access. Although Mr. Moore indicated on cross examination that the period of the time of his field study may have

been out of what the county defines as peak traffic time, he indicated on redirect that any time he had observed out of peak traffic time would tend to indicate a lower traffic estimation for his opinion rather than a larger traffic estimation. Mr. Moore also indicated that the Double T Diner in White Marsh at Ebenezer Road and Pulaski Highway does not have valet parking. Mr. Moore emphasized again on his redirect testimony that the increase in traffic from the use of the ROA portion of the property, if granted, would impact directly upon Brookfield Road, especially in light of the existing median strip on Joppa Road. Further, after reviewing the Baltimore County Bureau of Traffic Engineering's May 5, 1997 comment with regard to the Petitioner's proposed relief, Mr. Moore indicated that in fact the Baltimore County Bureau of Traffic Engineering had no comment with regard to Petitioner's proposed relief.

Protestants next called Mr. Norman Gerber to the stand. Mr. Gerber was accepted as an expert in land planning and zoning. His resume was entered as Protestant's Exhibit #4. Mr. Gerber indicated that he was familiar with the proposed relief that the Petitioner had requested pursuant to the special hearing and was familiar with Petitioner's plats entered as Petitioner's Exhibit's #1 and #3. Mr. Gerber indicated he was familiar with the property which is the subject of the hearing and that he had reviewed the BCZR and the Baltimore County Code with regard to the Petitioner's proposed relief. Mr. Gerber indicated that there were three issues which he was concerned with from a planning and zoning perspective with regard to Petitioner's proposed relief: 1) that the Petitioner's proposed relief was not allowed pursuant to the terms of the BCZR; 2) that even if the proposed use was allowed, it did not meet the terms and conditions of Section 409.8B and 502.1 of the BCZR in conjunction therewith; and 3) that pursuant to the terms of Section 202.5.B of the BCZR, any change in the use of the ROA property as, in his opinion, had

occurred on the property would require the Petitioner proceed in accordance with the development regulations and therefore the limited exemption granted was in error. Mr. Gerber testified that the Baltimore County Council had down-zoned the subject property pursuant to the 1996 Comprehensive Zoning Map process from BL-AS to ROA. Mr. Gerber indicated that the property was listed as issue # 5-035 in the 1996 Comprehensive Zoning Map process. Mr. Gerber reviewed Section 202 of the BCZR entitled "Residential Office, Class A Office Zone (ROA) zone. Mr. Gerber reviewed Section 202.1, the declaration of findings by the County Council, indicating that Section 202.1.C allowed for the conversion of residential structures into offices and he stated that it was significant that there were no other options for utilization of ROA properties given in the declaration of finding. Mr. Gerber further noted that Section 202.2 of the BCZR entitled "Statement of Legislative Policy" which indicated in the last sentence of the first paragraph that "to maintain residential character, the Council does not intend that the lots be developed or redeveloped solely for the purpose of providing parking in the ROA zone". Mr. Gerber went on to indicate that Section 202.3.2 required that Class A office buildings contain offices and their accessory uses including service parking, were allowed but not as including parking as a permitted use except as allowed under Section 409.7.B.2 and after reviewing that section, he indicated to the Board that only that section allows parking in an ROA zone as an accessory use for converted Class A office buildings. Mr. Gerber thereafter indicated that further, Section 202.3.C.2.C only allows parking on the side or rear yard of an ROA lot unless approved by the Zoning Commissioner pursuant to Section 307 of the BCZR, which required a variance. Mr. Gerber noted that Section 202.3.C.2.d only allows a variance pursuant to Section 307 of the BCZR of not more than one parking space below the number required by the regulations. After

reviewing all these regulations, Mr. Gerber concluded that under the terms of the BCZR, specifically, the whole of Section 202, it is his opinion that the Petitioner's proposed parking use to support adjacent business or commercial use is not allowed or intended under the terms of the Residential Office Zone Regulations of the BCZR.

Mr. Gerber next reviewed his findings with regard to Section 409.8.B, concluding that if the Board did not accept his argument and felt that the Petitioner's proposed hearing was allowed, the use must pass the scrutiny of Section 409.8.B.1.e and 409.8.B.2. Further, Mr. Gerber reviewed the necessities of the requirements of Section 409.8.B.1.E, (1), (2) and (3), specifically pointing out that Section (3) required compliance of "Section 409.8.B.2 and other applicable requirements are met: and any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations". Mr. Gerber reviewed the requirements of Section 502.1 and concluded that because of the increased traffic which would be generated from the size of the diner use permitted, if the Petitioner's special hearing for parking in an ROA zone was granted, the proposed use failed to meet the standards of Section 502.1 in that the use would be detrimental to the health, safety and general welfare of the surrounding community and would tend to create congestion in the roads, streets and alleyways of the surrounding community. Mr. Gerber testified that because of the access constraints on Joppa Road, especially in light of the existing median strip, that the majority of the ingress and egress for the proposed diner and parking on the ROA lot would be forced through the intersection of Belair and Brookfield Roads. Mr. Gerber noted that this would introduce commercial traffic onto a

residential street and that was undesirable. Further, Mr. Gerber noted the unusual access at the corner of Brookfield and Belair Roads. He indicated that the Petitioner's proposed use failed to meet the requirements of Section 502.1.g in that the proposed relief was inconsistent with the purposes of the property's zoning classification and spirit and intent of the zoning regulations.

In addition, Mr. Gerber reviewed the requirements of Section 202.5 and concluded that before the use or development of an ROA property can be changed from the use or development that existed on the day the ROA zone became enacted, the CRG must approve a new plan. Mr. Gerber testified that the CRG had been replaced by a new system, but the requirement is now the responsibility of the hearing officer. Mr. Gerber went on to testify that in his opinion, this section would require the ROA portion of the property to undergo its own scrutiny under the Development Review Process before a limited exemption could be granted.

On cross examination, Mr. Gerber indicated that he felt the Petitioner's proposed use failed to meet the requirements of not only Section 502.1.a and .b, but also 502.1.g. On redirect, Mr. Gerber indicated that his opinions given in direct testimony had not changed after any of the questions asked by opposing counsel on cross examination. Mr. Gerber indicated that in relation to his opinion that Petitioner's proposed use would tend to create congestion in the roads, streets and alleyways, his opinion was independent of Mr. Moore's. Mr. Gerber opined that there was an access problem on Brookfield Road, which included that cars attempting to make left turns would stack up and impede cars attempting to make right hand turns on to Belair Road. Secondly, there is an access problem of getting from Belair Road onto Brookfield Road in light of the short stacking lane space on Belair Road just prior to Brookfield Road for cars to make a left hand turn. Mr. Gerber indicated on redirect that road improvements to be effective in improving the left turn

problem on Brookfield Road would have to be at least 35 feet paved. In addition, Mr. Gerber indicated that regardless of whether a left hand turn lane was placed on Brookfield Road as Mr. Moore indicated there should be, he was still of the opinion that the proposed relief would tend to create congestion in the roads, streets or alleyways of the surrounding community because of the access problem making left hand turns proceeding north on Belair Road from Belair Road onto Brookfield Road.

The next witness called by the Protestants was Mr. Edward Baker. Mr. Baker lives with his wife directly adjacent from the access point of the proposed diner on Brookfield Road at the address of 4140 Brookfield Road. Mr. Baker stated that he lived at that address with his wife for forty three years. Mr. Baker stated he was in opposition to the proposed hearing for parking on the ROA lot as the parking that would be allowed to be created by the special hearing would cause a very harmful impact as a result of the traffic flow generated onto Brookfield Road. Mr. Baker noted that there were not curbs or sidewalks on Brookfield Road, and that the increase in traffic would be unsafe for individuals in the area. He noted that he had a two year old grandchild who often played in his front lawn and expressed concern about her safety as a result of the proposed use. In addition, Mr. Baker testified that he liked to keep his windows open and the traffic generated from the large scale 24 hour a day, 7 day a week diner that would be allowed if the special hearing were granted would severely impact upon his property. He noted that the headlights from the cars exiting the diner would shine directly into his house. Mr. Baker testified that if the proposed special hearing were granted, it would be harmful to the health, safety and welfare of the surrounding community. Mr. Baker's testimony indicated that if the proposed special hearing were granted, it would tend to create congestion in the roads, streets or alleyways

of the surrounding community.

Mr. Arthur Bogart also testified. Mr. Bogart indicated that he lived on Brookfield Road for 39 years. Mr. Bogart indicated that he was in opposition to the granting of the proposed special hearing as the traffic generated from the proposed use would clearly negatively impact Brookfield Road. Mr. Bogart indicated that Brookfield Road was in essence a country lane and the traffic from the proposed use would have a detrimental effect on the neighborhood. Mr. Bogart indicated this was especially true in light of the size of the diner that would be allowed to be created if the proposed special hearing for parking in an ROA zone was granted. Mr. Bogart also commented about problems with Schaffer's Pub which was previously located at the corner of Joppa and Belair Roads. He noted that with the 24 hour a day, 7 day a week operation as proposed, he anticipated problems with people who had been drinking coming into the neighborhood and potentially causing disturbances at all hours of the night. The substance of Mr. Bogart's testimony was that if the proposed special hearing was granted, that the surrounding community would suffer detrimental effects to the health, safety and welfare and further that the proposed special hearing would tend to create congestion in the roads, streets and alleyways of the surrounding community. Both Mr. Bogart and previously Mr. Baker noted the problems with access to and from Belair Road and Brookfield Road.

Dorothy McMann, Zoning Chair of the Perry Hall Improvement Association testified next. Mrs. McMann said she lived in Perry Hall for 26 years. Further, Mrs. McMann said she had been involved with the community association since 1983. Mrs. McMann stated that she had held the positions of Corresponding Secretary, member of the Board of Directors, President, and is presently Zoning Chair with the community association. Mrs. McMann testified that she has

previously been involved with planning and zoning matters in Baltimore County, including serving on the committee which was involved in creating new development regulations, being on a committee that created the Belair Road Corridor Study, being on the Honeygo Committee, and being on the Community Conservation Committee. Entered into evidence was Protestant's Exhibit #7, which was the paperwork enabling Mrs. McMann to speak on behalf of the Perry Hall Improvement Association. Mrs. McMann indicated that the Perry Hall Improvement Association was in opposition to the proposed special hearing for a number of reasons. Mrs. McMann indicated that she felt the proposed relief conflicted with the intention of the property's ROA zoning. Mrs. McMann also indicated that the traffic from the proposed use would have a detrimental effect on Brookfield Road. She indicated that the size of the diner that would be allowed if the special hearing were granted increased the detrimental effect of the traffic generated from the proposed use. Mrs. McMann called into question the Petitioner's proposed use of valet stacking parking. Entered into evidence through Mrs. McMann were a series of photographs marked as Protestant's Exhibits #5a-z and #6a-d. Mrs. McMann testified as to what was pictured in each of the photographs and made particular note of pictures #5u and #5v showing the short stacking lane when proceeding north on Belair Road to make a left turn onto Brookfield Road. Mrs. McMann testified that she was very concerned with cars stacking up on Belair Road attempting to make a left hand turn onto Brookfield Road for the proposed use. Mrs. McMann indicated that the stacking lane could only hold two cars at one time. She noted the inability of cars to access the proposed use when proceeding eastbound on Joppa Road due to the existing median strip. She further stated that all the photographs entered into evidence through her were taken on either a Saturday or Sunday and did not show weekday traffic. Mrs. McMann called

into question the proposed 7 day a week, 24 hours a day diner on the scale that would be allowed if the special hearing for parking in an ROA zone was granted and its impact upon the surrounding community.

On cross examination, Mrs. McMann was questioned about the Deputy Zoning Commissioner's decision in Case No. 97-193SPH concerning whether or not she suggested the Petitioner attempt to incorporate the Schaffer property into his proposed use. It should be noted, however, that at the time of that hearing, all parties believed that the Schaffer property was zoned BL. Mrs. McMann indicated that photos shown to her by opposing counsel on cross examination were on a weekend day, not a weekday and therefore did not show weekday parking. On redirect, Mrs. McMann testified that even if Brookfield Road were widened, the community would still oppose the Petitioner's proposed special hearing because the widening of Brookfield Road would not remedy access problems for traffic proceeding north on Belair Road and attempting to make a left hand turn onto Brookfield Road. She noted the overall traffic congestion caused if the additional parking and therefore a larger size diner were allowed.

After Mrs. McMann, Mr. Clinton Marshall stood in the back of the court room to indicate his opposition to the proposed petition. Mr. Marshall indicated that he agreed with the testimony of Mr. Baker and Mr. Bogart. He further stated that he had relatives that had visited him and had gotten into accidents at the corner of Brookfield and Belair Roads.

The Protestants then rested their case and Petitioner called Mr. Arthur E. Leonard in rebuttal. Mr. Leonard measured the distance from Brookfield Road to the access point of the diner. He indicated that the Petitioner was proposing certain improvements to the section of Brookfield Road from Belair Road to the point of access of the diner. Mr. Leonard indicated that

the Petitioner was proposing a paving widening to 30 feet and an overall 50 foot right of way on Brookfield Road. He indicated, however, that the Petitioner would only be responsible for one half of the project on his side of Brookfield Road and therefore would only be responsible for 15 feet of pavement and 25 feet of right of way. Mr. Leonard indicated that presently there was a 30 foot right of way with 21 feet of paving. On cross examination, Mr. Leonard indicated that the Petitioner was only proposing improvements to his side of Brookfield Road and that the Petitioner was not responsible nor had any control over the construction of improvements on the other side of Brookfield Road. Further, Mr. Leonard indicated that improvement to the other side of Brookfield Road would only happen if the owner of that property, Bill's Seafood, proposed improvements to his property. Mr. Leonard indicated that he had not observed the parking on the Bill's Seafood property and could not testify as to its nature or scope. Mr. Leonard indicated he was not aware of any plans for the improvement of the thrift shop property owned by the Petitioner at the corner of Brookfield and Belair Roads. Mr. Leonard indicated that he was aware of the present head-in parking which occurred on the side of the thrift shop property into Brookfield Road. Although Mr. Leonard claimed that once the Petitioners made their road improvements, there would be no head-in parking on the side of the thrift shop abutting Brookfield Road. Mr. Leonard indicated on cross examination that he had no idea of what the parking requirements were for the thrift shop property under the BCZR. Further, he testified that he had no idea whether the parking could fit in or use the back lot of the thrift shop property. Mr. Leonard indicated that no plans for any change in parking in the thrift shop property had been considered at this time. After Mr. Leonard's testimony concluded, the Petitioner concluded his rebuttal case.

APPLICABLE LAW

Section 409.8.B of BCZR

Section 502.1 of BCZR

Section 500.7 of BCZR

Section 409.6 of BCZR

Section 409.7.B.2 of BCZR

Section 202 of BCZR

Baltimore County Council Bill 170-91, enacted October 7, 1991

Attached hereto collectively as Exhibit A for the Board's reference.

ARGUMENT

The testimony and evidence before the Board in reference to the above captioned case clearly establishes that the Petitioner has failed to meet its burden under Section 409.8.B of the BCZR and the Petitioner's Special Hearing for parking in an ROA zone should be denied.

Section 409.8.B reads in pertinent part:

"B. Business or Industrial Parking in Residential Zones.

> 1. Upon application, the zoning commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of Subsection 409.6, under the following procedure:
>
> d. If a formal request for a public hearing is files, the zoning commissioner shall schedule a date for the public hearing, such hearing to be held not less than 30 days and not more than 90 days form the date of filing of the request for public hearing.
>
> e. Following the public hearing, the zoning commissioner may either deny or grant a use permit conditioned upon:

(1) his findings follow the public hearing;
(2) the character of the surrounding community and the anticipated impact of the proposed use on that community;
(3) The manner in which the requirements of Section 409.8B.2 and other applicable requirements are met; and any additional requirements as deemed necessary by the zoning commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations.[1]

2. In addition to all other applicable requirements, such parking facilities shall be subject to the following conditions:

a. The land so used must adjoin or be across an alley or street from the business or industry involved.
b. Only passenger vehicles, excluding buses, may use the parking facility.
c. No loading, service, or any use other than parking shall be permitted.
d. Lighting shall be regulated as to location, direction, hours of illumination, glare, and intensity, as required.
e. A satisfactory plan showing parking arrangement and vehicular access must be provided.
f. Method and area of operation, provision for maintenance, and permitted hours of use shall be specified, and regulated as required.
g. Any conditions not listed above which, in the judgement of the zoning commissioner, are necessary to ensure that the parking facility will not be detrimental to adjacent properties."

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[1]Although Section 409.8B of the BCZR requires that a petition for relief thereunder meet the objectives of Section 502.1 of the BCZR, relief under Section 409.8B is not classified as a special exception. Special exception case law, therefore, is not reviewed herein as it is the Protestant's position that special exception case law is not applicable to the relief which the Petitioner herein requests.

Section 502.1 of the BCZR reads in pertinent part:

"502.1 -- Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not: [B.C.Z.R., 1955; Bill No. 45, 1982.]

a. Be detrimental to the health, safety, or general welfare of the locality involved; [B.C.Z.R., 1955.]
b. Tend to create congestion in roads, streets or alleys therein; [B.C.Z.R., 1955.]
c. Create a potential hazard from fire, panic or other dangers; [B.C.Z.R., 1955.]
d. Tend to overcrowd land and cause undue concentration of population; [B.C.Z.R., 1955.]
e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements; [B.C.Z.R., 1955.]
f. Interfere with adequate light and air; [B.C.Z.R., 1955; Bill No. 45, 1982.]
g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor [Bill No. 45, 1982.]
h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations. [Bill No. 45, 1982.]"

Protestant's witnesses established that the proposed special hearing to allow parking in an ROA zoned lot would enable the building of a large scale 24 hour, 7 day a week diner and that the additional traffic generated from the granting of the special hearing would clearly be detrimental to the health, safety and welfare of the surrounding community, tend to cause congestion of the roads, streets or alleyways of the surrounding community and be inconsistent with the intention of the subject property's zoning classification.

Richard Moore, who was admitted before the Board as an expert in traffic engineering and transportation planning, testified that his investigation of the subject petition indicated that if the

proposed special hearing were granted, the granting would be detrimental to the health, safety and welfare of the surrounding community and tend to cause congestion of the roads, streets and alleyways of the surrounding community.

Mr. Moore's testimony indicates that the Petitioner's requested relief does not meet the requirements of Section 502.1 of the BCZR. Mr. Moore testified that his analysis of the subject petition indicated three problem areas with regard to the Petitioner's proposed relief: 1) operational problems on Brookfield Road at Belair Road; 2) the type of restaurant proposed by the Petitioner needs all accessible parking spaces required by the zoning regulations instead of the proposed percentage of valet stacking spaces proposed by the Petitioner; and 3) the parking on the ROA zoned parcel will increase traffic volumes on Brookfield Road and compound and cause additional traffic congestion. Mr. Moore pointed out that due to the median strip on Joppa Road, eastbound traffic on Joppa Road would be forced to enter the subject site through Brookfield Road. Mr. Moore further pointed out that Brookfield Road presently only allows clearance for 23 feet of clearance for vehicles to enter and exit. In his investigation, he did not observe anyone making a left hand turn onto Belair Road. Further Mr. Moore indicated that Brookfield Road should have at least a 35 foot paved clear passage area to accommodate left hand turns onto Belair Road. Protestant's #3A entered into evidence through Mr. Moore which included a summary of some of his findings with regard to Petitioner's proposed relief. Mr. Moore testified that pursuant to Standard Transportation Engineer's Trip Generation Rates that the subject use enabled by the granting of the special hearing would generate approximately eighty-three (83) trips per AM peak hour and seventy-three (73) peak trips per PM peak hour. Protestant's Exhibit #3B was a summary of Mr. Moore's findings with regard to his review of a

diner use which he felt was similar to the Petitioner's proposed use which indicated that the trips generated from that use were 50% higher than the Standard Transportation Engineer's Trip Generation Rates.

Mr. Moore observed that twenty-two (22) of the ninety (90) spaces required by the zoning regulations for the Petitioner's proposed use are proposed valet parking spaces. Mr. Moore indicated based upon his opinion that he has not seen valet parking work for a high turnover, sit-down restaurant based upon his years of experience in conducting traffic studies. Further, Mr. Moore indicated that during peak times for the restaurant, congestion will be created on the parking lot by a shortage of parking. Mr. Moore emphasized that the increase in traffic from the use of the subject ROA portion of property would impact directly upon Brookfield Road, especially in light of the existing median strip on Joppa Road.

Mr. Norman Gerber, an expert in land planning and zoning indicated that his investigation revealed three problem areas with regard to the Petitioner's proposed relief: 1) the Petitioner's proposed relief was not allowed under the terms of the BCZR; 2) that even if the proposed use was allowed, it did not meet the terms and conditions of Sections 409.8B and 502.1 of the BCZR in conjunction therewith; and 3) pursuant to the terms of Section 202.5.B of the BCZR, any change in the use of the ROA property, as, in his opinion, had occurred on the property, would require that the Petitioner proceed in accordance with the Development Regulations and therefore, the limited exemption granted in relation to the subject property was granted in error.

Mr. Gerber reviewed the terms of Section 202 of the BCZR including specifically highlighting Section 202.1, 202.2 and 202.3 and additionally reviewed Section 409.7.B.2 in conjunction with his opinion that Petitioner's proposed use was not permitted under the BCZR.

Mr. Gerber noted that only parking in the side or rear of an ROA lot was permitted unless a variance was obtained pursuant to Section 307 of the BCZR. Pursuant to Section 202.3.C, and additionally that only a variance of 1 parking space was permitted under Section 202.3.2.D.

Mr. Gerber testified that because of the access constraints with regard to the subject ROA property, including the median strip on Joppa Road, a majority of the traffic from the ROA property would be forced through the intersection of Belair and Brookfield Roads. Further, Mr. Gerber testified that the increased traffic generated if the Petitioner's proposed special hearing is granted would be detrimental to the health, safety and welfare of the surrounding community and tend to cause congestion of the roads, streets and alleyways of the surrounding community. Mr. Gerber emphasized that Brookfield Road was a narrow residential road and noted the access problems of cars proceeding from Brookfield Road onto Belair Road and from Belair Road onto Brookfield Road. Further, Mr. Gerber testified that the Petitioner's proposed special hearing was inconsistent with the property's zoning classification and the intention of the BCZR. On cross examination, Mr. Gerber made clear that his opinion was independent of Mr. Moore's testimony. Additionally, Mr. Gerber made clear that even if he agreed with Mr. Moore that Brookfield Road should be widened to a clear passageway of at least 35 feet, and if Brookfield Road was widened, the length of the widening may only assist in the making of left hand turns from Brookfield Road onto Belair but would in no way impact the problem he noted of traffic making left hand turns from Belair Road northbound onto Brookfield Road.

The expert testimony regarding the proposed use's failure to meet the requirements of BCZR Sections 409.8B and 502.1 due to its impact on the surrounding community was supported by the lay witnesses who testified in opposition to the Petitioner's requested relief.

Mr. Edward Baker, Mr. Clinton Marshall and Mr. Arthur Bogart, residents of Brookfield Road, all made clear through their testimony that the granting of the proposed special hearing for parking in an ROA zone would be detrimental to the health, safety and welfare of the surrounding community and would cause congestion on Brookfield Road as well as the other roads, streets and alleyways of the community. In addition, the granting of the proposed special hearing would allow the construction of a larger scale 24 hour per day, 7 day per week diner that would irrevocably harm Brookfield Road and the surrounding area.

Dorothy McMann, zoning chair of the Perry Hall Improvement Association, who has a background in zoning matters in Baltimore County, indicated in her testimony that the Petitioner's proposed special hearing was inconsistent with the property's zoning classification, would be harmful to the health, safety and welfare of the surrounding community and tend to cause congestion in the roads, streets and alleyways of the surrounding community. Mrs. McMann specifically noted the impact on Brookfield Road in light of traffic being forced there due to the median strip on Joppa Road. Further, Mrs. McMann noted the access problems of getting onto Belair Road from Brookfield Road and also expressed major concerns about cars making a left hand turn onto Brookfield Road from Belair Road in light of the very limited stacking lane on Belair Road at that point. Mrs. McMann surmised that cars waiting to make a left hand turn would back up traffic on Belair Road at the intersection of Belair Road and Joppa Road. Mrs. McMann produced photographs including those entered as Protestants Exhibits #5u and #5v, showing the short stacking lane proceeding north on Belair Road to make a left hand turn on Brookfield Road. Mrs. McMann also expressed concern about the valet stacking spaces proposed as part of the Petitioner's parking for the diner use. In addition, Mrs. McMann entered

a series of photographs, which was entered as Protestant's #5a-z and #6a-d. The photographs entered show the narrow access of residential Brookfield Road (Protestant's #5a-d), the residential character of Brookfield Road (Protestant's #5e-h), Brookfield Road and the diner site from Mr. Baker's property (Protestant's #5i), additional views of Brookfield Road (Protestant's #5j-p), No Left Turn signs on Belair Road in the immediate area (Protestant's #5q-t), the short stacking area for left turns onto Brookfield Road when proceeding northbound on Belair Road (Protestants #5u-v), the corner of Belair and Joppa Roads (Protestant's #5w-x), and the subject property from across Joppa Road (Protestant's #5y-z and #6a-d).

Ms. McMann made clear that the community opposed the size and scale of the diner that would be permitted if the special hearing for parking in an ROA zone was granted due to the impact it would have on the surrounding community.

When the weight of the testimony and evidence produced by the witnesses who testified in opposition to the proposed special hearing are compared to the testimony and evidence produced by the Petitioner's witnesses, it is clear that the Petitioner's requested relief fails to meet the requirements of Sections 409.8B and 502.1 of the BCZR.

Petitioner's testimony did not include any expert traffic testimony. They produced Mr. Arthur Leonard, a civil engineer and Mr. John Rhode, landscape architect, who testified but did not explain in detail how the traffic flow generated from the Petitioner's proposed use would adequately function. Further, neither of the Petitioner's experts testified specifically as to the actual traffic effects on the community of the granting of the special hearing for parking in the ROA zone or the overall diner use on Brookfield Road and the intersection of Brookfield Road and Belair Road. Mr. Leonard indicated on rebuttal testimony that the Petitioner was proposing

some widening of Brookfield Road. However, he made clear that the Petitioner could only control half of any potential widening of Brookfield Road. Further, although he acknowledged head-in parking onto Brookfield Road by the present thrift shop use on the Petitioner's property on the corner of Brookfield Road and Belair Road, he indicated that he had no knowledge of the parking requirements for that lot or if parking could function on the property's parking requirements after the proposed widening. Mr. Leonard testified that the size of the proposed diner dictates the need for ninety (90) parking spaces under the BCZR, twenty-two (22) of which are proposed as valet parking spaces, and if the size of the diner were reduced, the BCZR would require less parking.

In short, through the use of valet parking spaces and parking on an adjacent ROA lot, the Petitioner is seeking to squeeze a 5,592 square foot diner onto property which clearly cannot fit the required ninety (90) parking spaces on the perimeters of the lot itself. Petitioner, in essence, is seeking to have this Board enable the building of a diner too large for their site by having the Board ignore the ultimate effect of the granting of the Petitioner's requested special hearing for parking on the surrounding community. That effect will clearly include an unbearable traffic situation on residential Brookfield Road and severe access problems onto and off of Belair and Brookfield Roads. Petitioner's own expert, Mr. Leonard, testified that if the size of the diner were reduced, the amount of parking required under the BCZR would be reduced. Reduction in the size of the diner would accordingly reduce the traffic generated from the use and proportionally lessen the adverse impact on the community.

Mr. Leonard further indicated that pursuant to Petitioner's Exhibit #3, the Petitioner is requesting parking in the front lot of the subject ROA parcel. As noted by Mr. Gerber, Section

202.3.C only allows parking on the side or rear yard of an ROA lot unless approved by the zoning commissioner through a variance granted under Section 307 of the BCZR.

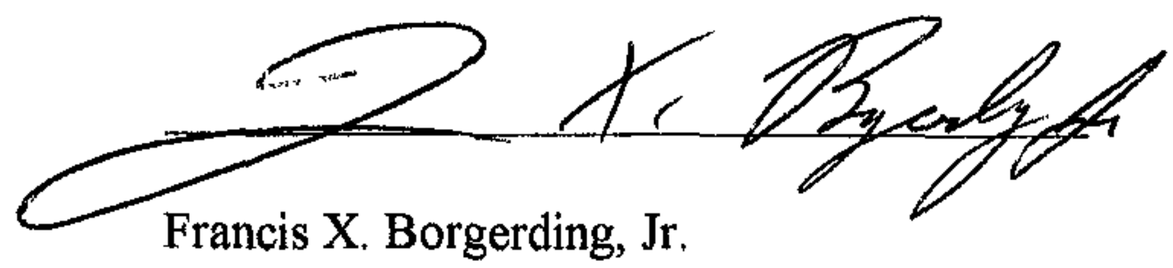
Mr. John Rhode, landscape architect, testified that if the proposed special hearing is granted, "it would assist in the circulation of the site and loosen up the site". However, he did not testify specifically as to the effect of the granting of the proposed special hearing on Brookfield Road nor how access would function onto or off of Belair Road and Brookfield Road. In addition, although Mr. Rhode testified that the proposed special hearing, if granted, would not be detrimental to the health, safety and welfare of the surrounding community, he indicated that he was speaking from "an aesthetic or visual perspective". Neither Mr. Leonard nor Mr. Rhode's testimony provides substantial probative evidence that the granting of Petitioner's requested special hearing will not be detrimental to the health, safety and welfare of the surrounding community or that the use will not cause congestion in the roads, streets or alleyways therein.

When the whole of the testimony and evidence before the Board is reviewed, it is clear that the Petitioners have failed to meet their burden under Section 409.8B and Section 502.1 that the proposed special hearing will not be detrimental to the health, safety and welfare of the surrounding community, will not tend to cause congestion in the roads, streets or alleyways of the surrounding community, and is consistent with the purposes of the property's zoning classification and the intention of the BCZR. The record establishes that the size and scope of the proposed diner use with 24% of its parking being valet stacking spaces and the need for parking on the subject ROA lot is an ill-conceived plan based upon its impact on the surrounding community.

CONCLUSION

In light of the above, the Petitioner's requested special hearing for parking in an ROA zone should be denied.

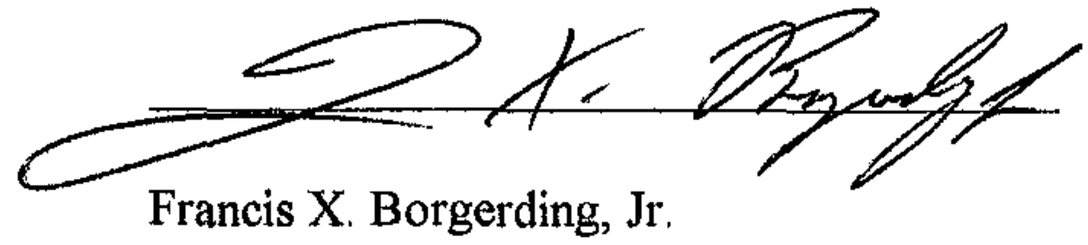
Respectfully submitted,



Francis X. Borgerding, Jr.
409 Washington Avenue, Suite 600
Towson, MD 21204
Attorney for Perry Hall Improvement Association, Inc.

CERTIFICATE OF SERVICE

I certify that on this 9th day of March, 1998 a copy of the foregoing Closing Memorandum was mailed to G. Scott Barhight, Esquire, Whiteford, Taylor and Preston, 210 West Pennsylvania Avenue, Towson, MD 21204-4515.



Francis X. Borgerding, Jr.

409. Location - Parking

2. In R-O and R-O-A zones all required off-street parking spaces shall be provided on the same lot as the structure or use to which they are accessory except that in cases where adjacent dwellings have been converted to Class A office buildings, parking spaces may be provided on the adjacent lots. The use of an off-site parking facility which is accessory to a church or other existing principal use may satisfy the parking requirement, if located no more than 500 feet from the lot. [Bill No. 170, 1991.]

C. Prior to the approval of any building permit involving an off-site parking facility, the zoning commissioner shall require guarantees of the continued future availability and proper maintenance of the facility, including, but not limited to, a grant of an easement, a deed restriction, a restrictive covenant, or a binding contractual agreement, including a lease. Any plans approved subject to lease agreements shall contain contingency annotation requiring a renewed review and approval of parking arrangements by the zoning commissioner, in the event of lease expiration of termination, or change of use.

409.8--Design Standards

A. Requirements for Parking Facilities in all Zones - All off-street parking facilities shall be subject to the following requirements:

1. Design, Screening and Landscaping - Design, screening and landscaping shall be provided in accordance with the landscape manual and all other manuals adopted pursuant to Section 22-105 of the Baltimore County Code.

2. Surface - A durable and dustless surface shall be provided and shall be properly drained so as not to create any undesirable conditions.

3. Lighting - Any fixture used to illuminate any parking facility shall be so arranged as to reflect the light away from residential lots and public streets. Light standards shall be protected from vehicular traffic by curbing or landscaping.

4. Distance to Street Line - No parking space in a surface parking facility for a nonresidential use shall be closer than 10 feet to the right-of-way line of a public street, excluding vehicle overhang, except that in the C.T. district of Towson such setback is not required if the parking facility is screened from the street in accordance with the landscape manual.

EXHIBIT A

5. Dead Ends - All dead end aisles shall be designed to provide sufficient back-up area for the end parking spaces.

6. All parking spaces must be striped. Striping shall be maintained so as to remain visible.

B. Business or Industrial Parking in Residential Zones.

1. Upon application, the zoning commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of Subsection 409.6, under the following procedure:

   a. On the property in question, notice of the application for the use permit shall be conspicuously posted for a period of fifteen (15) days following the filing of the application.

   b. Within the fifteen (15) day posting period, any interested person may file a formal request for a public hearing with the zoning commissioner in accordance with Section 500.7.

   c. If a formal request for a public hearing is not filed, the zoning commissioner, without a public hearing, may grant a use permit for parking in a residential zone if the proposed use meets all the requirements of Section 409.8B.2. The use permit may be issued with such conditions or restrictions as determined appropriate by the zoning commissioner to satisfy the provisions of Section 409.8B.2 below and to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community.

   d. If a formal request for a public hearing is filed, the zoning commissioner shall schedule a date for the public hearing, such hearing to be held not less than 30 days and not more than 90 days from the date of filing of the request for public hearing.

   e. Following the public hearing, the zoning commissioner may either deny or grant a use permit conditioned upon:

      (1) his findings following the public hearing;

      (2) the character of the surrounding community and the anticipated impact of the proposed use on that community;

(3) The manner in which the requirements of Section 409.8B.2 and other applicable requirements are met; and any additional requirements as deemed necessary by the zoning commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations.

2. In addition to all other applicable requirements, such parking facilities shall be subject to the following conditions:

   a. The land so used must adjoin or be across an alley or street from the business or industry involved.

   b. Only passenger vehicles, excluding buses, may use the parking facility.

   c. No loading, service, or any use other than parking shall be permitted.

   d. Lighting shall be regulated as to location, direction, hours of illumination, glare, and intensity, as required.

   e. A satisfactory plan showing parking arrangement and vehicular access must be provided.

   f. Method and area of operation, provision for maintenance, and permitted hours of use shall be specified, and regulated as required.

   g. Any conditions not listed above which, in the judgment of the zoning commissioner, are necessary to ensure that the parking facility will not be detrimental to adjacent properties.

C. Requirements for Parking Bays on a Street - Parking bays on a street are subject to the following requirements and all applicable requirements of the Department of Public Works.

   1. The length of any parking bay (measured along the right-of-way) shall not exceed 180 feet. All bays must be separated by a divider which is at least 10 feet in width.

Section 502--SPECIAL EXCEPTIONS [B.C.Z.R., 1955.]

(See Section 270--Schedule of Special Exceptions) [B.C.Z.R., 1955.]

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junk yards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business, and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety, or general welfare of the public, the uses listed as Special Exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the Board of Zoning Appeals.[36] [B.C.Z.R., 1955.]

In granting any Special Exception, the Zoning Commissioner and the Board of Zoning Appeals,[37] upon appeal, shall be governed by the following principles and conditions. [B.C.Z.R., 1955.]

502.1--Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not: [B.C.Z.R., 1955; Bill No. 45, 1982.]

a. Be detrimental to the health, safety, or general welfare of the locality involved; [B.C.Z.R., 1955.]

b. Tend to create congestion in roads, streets or alleys therein; [B.C.Z.R., 1955.]

c. Create a potential hazard from fire, panic or other dangers; [B.C.Z.R., 1955.]

d. Tend to overcrowd land and cause undue concentration of population; [B.C.Z.R., 1955.]

e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements; [B.C.Z.R., 1955.]

f. Interfere with adequate light and air; [B.C.Z.R., 1955; Bill No. 45, 1982.]

g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor [Bill No. 45, 1982.]

h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations. [Bill No. 45, 1982.]

502.2--In granting any Special Exception, the Zoning Commissioner or the Board of Zoning Appeals,[38] upon appeal, shall impose such conditions, restrictions, or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a Special Exception is granted, if required by the Zoning Commissioner, or Board of Zoning Appeals,[39] upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners[40] of Baltimore County, stipulating the conditions, restrictions, or regulations governing such Special Exception, the same to be recorded among the Land Records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such Special Exception. When so recorded, said agreement shall govern the exercise of the Special Exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer. [B.C.Z.R., 1955.]

502.3--A Special Exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void. The Zoning Commissioner or, on appeal, the County Board of Appeals, in connection with the grant of any Special Exception, shall fix within the aforegoing limits,[41] the period of time for its utilization. Any party to the proceedings may, by so specifying, appeal from either the order of the Zoning Commissioner or of the County Board of Appeals as the case may be, solely as to the reasonableness of the period of time allowed or, alternatively, may have such question determined in conjunction with any appeal from the grant or refusal of the application for a Special Exception. After a final order granting a Special Exception the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the Special Exception is not thereby extended for a period of more than five years from the date of the final order granting same. [B.C.Z.R., 1955; Bill No. 42, 1962; No. 85, 1967.]

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the zoning commissioner for a use permit, upon such form as the zoning commissioner may prescribe. If such use is permissible the zoning commissioner may issue a use permit, conditioned by other provisions contained in the regulations which shall indicate that it authorizes particular6 use applied for. [B.C.Z.R., 1955; Resolution, November 21, 1956.]

500.5--In cases of petitions for special exceptions under Section 502 of these regulations, the zoning commissioner shall receive such petitions in such form as he may prescribe. He shall hold a public hearing thereon after giving public notice of such hearing as above provided with respect to petition7 for reclassification. After such a hearing he shall pass his order granting or refusing such special exception.8 [B.C.Z.R., 1955.]

500.6--In addition to his aforesaid powers, the zoning commissioner shall have the power, upon notice to the parties in interest, to conduct hearings involving any violation or alleged violation or non-compliance with any zoning regulations, or the proper interpretation thereof, and to pass his order thereon, subject to the right of appeal to the Board of Zoning Appeals9 as hereinafter provided. [B.C.Z.R., 1955.]

500.7--The said zoning commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the zoning commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

With respect to any zoning petition other than a petition for a special exception, variance, or reclassification, the zoning commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing. If the petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. Whether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers of general circulation in the county. The notice shall describe the property, if any, and the action requested in the petition. Upon establishing a hearing date for the petition, the zoning commission-

Commissioner shall promptly forward a copy thereof to the Director of Planning (or his deputy) for his consideration and for a written report containing his findings thereon with regard to planning factors. [Bill No. 18, 1976.]

500.8--He shall have the power to prescribe rules and regulations for the conduct of hearings before him, to issue summons for and compel the appearance of witnesses, to administer oaths and to preserve order. [B.C.Z.R., 1955.]

500.9--The Zoning Commissioner shall have the power to require the production of plats of developments or subdivisions of land, or of any land in connection with which application for building or use permits or petitions[10] for a Special Exception, a reclassification, or a temporary use shall be made, such plats to show the location of streets or roads and of buildings or other structures proposed to be erected, repaired, altered, or added to. All such plats shall be drawn to scale and shall clearly indicate the proposed location, size, front, side and rear setbacks from property lines and elevation plans of proposed buildings or other structures. Such details shall conform in all respects with Zoning Regulations. No such plats or plans, showing the opening or laying out of roads or streets, shall be approved by the Zoning Commissioner unless such plats or plans shall have been previously approved by the Office of Planning[11] and the Department of Public Works of Baltimore County. [B.C.Z.R., 1955; Resolution, November 21, 1956.]

500.10--Any person or persons, jointly or severally, or any taxpayer or any official, department, board or bureau of Baltimore County,[12] feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the Board of Zoning Appeals.[13] Notice of such appeal shall be filed, in writing, with the Zoning Commissioner within ten days from the date of any final Order appealed from. Such appeals shall be heard and disposed of by the Board of Zoning Appeals[14] as hereinafter provided.[15] [B.C.Z.R., 1955.]

500.11--Upon such appeal, the Zoning Commissioner shall present to the Board of Zoning Appeals[16] all pertinent papers in connection therewith.[17] Notice of such appeal, and the date of hearing or continuance thereof, shall be given to the attorneys for the respective parties, if any, or to such person, or persons, as may be designated at the original hearing to receive such notice. [B.C.Z.R., 1955.]

500.12--If a zoning reclassification or special exception petition has been denied, the Zoning Commissioner may not accept for filing any other zoning reclassification or special

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409.5 Number of Small Car Spaces

A. In off-street parking facilities where more than 50 parking spaces are provided, small car spaces shall be permitted as specified below.

1. In facilities serving office or industrial uses: up to 40 percent of the number of spaces required for such uses.

2. In parking structures serving residential or lodging uses: up to 40 percent of the number of spaces required for such uses. In surface parking facilities serving residential or lodging uses: no small car spaces permitted.

B. Notwithstanding the provisions of paragraph 409.5.A., for any non-residential development, all parking spaces provided which exceed the requirements of Section 409.6 may be small car spaces at the discretion of the developer.

409.6 Required Number of Parking Spaces

A. General Requirements - The standards set forth below shall apply in all zones unless otherwise noted. Where the required number of off-street parking spaces is not set forth for a particular type of use, the Zoning Commissioner shall determine the basis of the number of spaces to be provided. When the number of spaces calculated in accordance with this subsection results in a number containing a fraction, the required number of spaces shall be the next highest whole number.

1. Residential and Lodging Uses

Type of Use	Minimum Number of Required Off-Street Parking Spaces
Dormitory	1 per 4 beds
Elderly Housing Facilities	For housing for the elderly, Class A, at least 1 usable offstreet parking space shall be provided for each 2 dwelling units in a town center or for each 1 1/2 dwelling units elsewhere.

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For housing for the elderly, Class B, at least 1 usable offstreet parking space shall be provided for each dwelling unit. However, if the development is supported substantially or in part by any type of rent subsidy, the developer may petition for a hearing before the Zoning Commissioner for a decrease in the number of spaces to be provided.

For continuing care facilities, at least one usable off-street parking space shall be provided for each dwelling unit and at least one usable off-street parking space shall be provided for each 2 assisted living beds and for each 3 convalescent or nursing beds.

For assisted living facilities, at least 1 usable off-street parking space shall be provided for each two beds.

In RAE 1 and RAE 2 Zones and in all business and industrial zones, all parking requirements of the underlying zone must be met for any commercial or office use which is contained within the elderly housing facility.

In the case of any type of elderly housing facility, the Zoning Commissioner may allow the provision of fewer parking spaces, after a public hearing at which evidence has been given regarding use of rent vouchers, certificates, or other subsidies or the availability of developer-sponsored van service or other ridesharing for the

	prospective residents of the housing, and after the director of planning and zoning has furnished information regarding the availability and accessibility to the elderly of public mass transportation to the site. In no case, however, may the facility provide less than 1 parking space for each 3 dwelling units.
Fraternity or Sorority House	1 per 2 beds
Group-House (or Townhouse) Apartment Building, Garden Apartment Building, and other Apartment Buildings (i.e., Multiple Family Rental or Condominium Dwellings)	In a C.T. district or R.A.E.2 zone: 1 per apt. with no separate bedroom, 1.25 per apt. with one or two separate bedrooms, 1.5 per apt. with three or more separate bedrooms Elsewhere: 1.25 per apt. with no separate bedroom, 1.5 per apt. with one or two separate bedrooms, 2 per apt. with three or more separate bedrooms
Hotel, Motel	1 per guest room or suite; no spaces required for ancillary uses
Mobile Home	2 per unit
One-family Detached or Semi-detached House, One-family Group House, (or Townhouse), Patio House, Side-and-back Attached House, Two-family House	2 per dwelling unit
Tourist Home, Rooming or Boarding House	1 per guest room
	No parking spaces are required for residential buildings contributing to the historic character of an area, if such buildings have been on the

2. Commercial and Service Uses

Type of Use	Minimum Number of Required Off-Street Parking Spaces
Automotive Service Station	See Section 405
Bank	3.3 per 1,000 square feet of gross floor area
Beauty or Barber Shop	5 per 1,000 square feet of gross floor area
Car Wash	See Section 419
Carry-out Restaurant	5 per 1,000 square feet of gross floor area {Bill No. 110, 1993.}
Fast Food and Standard Restaurants	16 per 1,000 square feet of gross floor area with at least 10 spaces required in all cases, except that no parking spaces are required for restaurants in the C.T. district of Towson or for buildings contributing to the historic character of an area, if such buildings have been designated on the National Register of Historic Places and are located within a C.T. or B.L.-C.C.C. district and if such buildings will be adapted for reuse for a restaurant. {Bill No. 110, 1993.}
Fast Food, Drive-Through Only Restaurant	14 per 1,000 square feet of gross floor area, plus spaces for outdoor seating area in accordance with the requirement for fast food and standard restaurants. A minimum of 10 spaces is required. {Bill No. 110, 1993.}
Furniture or Carpet Store	2.5 per 1,000 square feet of gross floor area
Medical Office or Clinic	4.5 per 1,000 square feet of gross floor area

	Maryland Mass Transit Administration. [Bill No. 91, 1990.]
Personal Service Establishment, Except Beauty and Barber Shop	3.3 per 1,000 square feet of gross floor area
Residential Art Salon	See Subsection 402C.4
Restaurant, Nightclub, Tavern, or Striptease Business	20 per 1,000 square feet of gross floor area with at least 10 spaces required in all cases, except no spaces required for restaurants in the C.T. district of Towson or for buildings contributing to the historic character of an area, if such buildings have been designated on The National Register of Historic Districts and are located within a C.T. or B.L.-C.C.C. district and if such buildings will be adapted for reuse for a restaurant, nightclub, tavern or striptease business. [Bill No. 137, 1990.]
Retail - General	3 per 1,000 square feet of gross floor area in the C.T. district of Towson; 5 per 1,000 square feet of gross floor area elsewhere no parking spaces are required for buildings contributing to the historic character of an area, if such buildings have been designated on The National Register of Historic Districts and are located within a C.T. or B.L.-C.C.C. district and have been adapted for reuse for retail space
Shopping Center (Less than 100,000 Square Feet of Gross Leasable Area)	The required number of spaces shall be calculated according to the particular types of

Hotel or Motel	75%	100%	75%	100%	75%
Restaurant	50%	100%	100%	100%	10%
Theatre, Commercial Recreation, Night-Club or Tavern	40%	100%	80%	100%	10%
Other Uses	100%	100%	100%	100%	100%

a. Method of Calculation - Step I -- For each of the five time periods, multiply the minimum number of parking spaces required for each use (including any transit or ride-sharing adjustments) by the corresponding percentage in the table.

Step II -- Add the results of each column. The required number of parking spaces shall equal the highest column total.

b. Conditions for Approval -

(1) Reserved or otherwise restricted spaces shall not be shared.

(2) The land uses served by the shared parking facility shall be in single ownership, or permitted for multiple ownership by the zoning commissioner upon satisfactory guarantees of the continued operation and proper maintenance of the shared parking facility.

409.7--Location of Parking

All required off-street parking spaces shall be located either on the same lot as the structure or use to which they are accessory or off-site as provided for below.

A. Off-site parking spaces for residential uses and lodging uses shall be located within 300 feet walking distance of a building entrance to the use that such spaces serve.

B. 1. Except in C.T. districts and R-O-A and R-O zones, off-site parking spaces for uses other than residential and lodging shall be located within 500 feet walking distance of a building entrance to the use that such spaces serve. In C.T. districts, such spaces shall be permitted within 1,000 feet walking distance of the building entrance. In the C.T. district of Towson, such spaces shall be permitted within 1,500 feet walking distance of the building entrance, provided they are located within the town center boundary. [Bill No. 155, 1988; Bill 170, 1991.]

409.1 LOCATION OF PARKING

2. In R-O and R-O-A zones all required off-street parking spaces shall be provided on the same lot as the structure or use to which they are accessory except that in cases where adjacent dwellings have been converted to Class A office buildings, parking spaces may be provided on the adjacent lots. The use of an off-site parking facility which is accessory to a church or other existing principal use may satisfy the parking requirement, if located no more than 500 feet from the lot. [Bill No. 170, 1991.]

C. Prior to the approval of any building permit involving an off-site parking facility, the zoning commissioner shall require guarantees of the continued future availability and proper maintenance of the facility, including, but not limited to, a grant of an easement, a deed restriction, a restrictive covenant, or a binding contractual agreement, including a lease. Any plans approved subject to lease agreements shall contain contingency annotation requiring a renewed review and approval of parking arrangements by the zoning commissioner, in the event of lease expiration of termination, or change of use.

409.8--Design Standards

A. Requirements for Parking Facilities in all Zones - All off-street parking facilities shall be subject to the following requirements:

1. Design, Screening and Landscaping - Design, screening and landscaping shall be provided in accordance with the landscape manual and all other manuals adopted pursuant to Section 22-105 of the Baltimore County Code.

2. Surface - A durable and dustless surface shall be provided and shall be properly drained so as not to create any undesirable conditions.

3. Lighting - Any fixture used to illuminate any parking facility shall be so arranged as to reflect the light away from residential lots and public streets. Light standards shall be protected from vehicular traffic by curbing or landscaping.

4. Distance to Street Line - No parking space in a surface parking facility for a nonresidential use shall be closer than 10 feet to the right-of-way line of a public street, excluding vehicle overhang, except that in the C.T. district of Towson such setback is not required if the parking facility is screened from the street in accordance with the landscape manual.

Section 202--RESIDENTIAL-OFFICE, CLASS A OFFICE ZONE (R-O-A) ZONE
[Bill No. 170, 1991]

202.1--Declaration of Findings.

A. Residential use of certain sites may not be economically feasible in some predominantly moderate-density residential areas that are immediately adjacent to commercial or other non-residential uses;

B. Neither business zoning nor high-density residential zoning nor residential-office zoning which permits new office buildings on those sites is appropriate; and

C. With appropriate restrictions, houses converted to offices are suitable, economically feasible uses of such sites.

202.2--Statement of Legislative Policy. The R-O-A zoning classification is established, pursuant to the findings of Section 202.1, to accommodate single-family, duplex and two-family detached houses converted to office buildings in predominantly residential areas on sites that, because of adjacent non-residential activity, heavy commercial traffic, or other similar factors, can no longer reasonably be limited solely to uses allowable in moderate-density residential zones. It is further the intent of the county council that the residential appearance of the existing structure and the residential setting of any building converted to offices be maintained in the R-O-A zones so that the converted dwelling will be highly compatible with neighboring residential property. To maintain residential character, the council does not intend that lots be developed or redeveloped solely for the purpose of providing parking in the R-O-A zone.

The R-O-A zone shall only be applied to sites which are large enough or designed in such a way that parking and access can be accommodated without sacrificing the residential character of the site and where the conversion from residential to office use will not cause serious disruption in traffic flow.

202.3--Use Regulations.

A. Uses permitted by right. The following uses, only, are permitted by right in any R-O-A zone:

1. Uses permitted by right and as limited in D.R. 3.5 zones.

2. Class A office buildings containing offices, and their accessory uses including surface parking, but not including parking as a principal use, except as provided under Section 409.7B.2.

3. A single-family or two-family, detached dwelling in which a portion of the building is converted to offices and a portion is used for a dwelling, without any external enlargement, except as permitted and conditioned by Section 202.5, for the purpose of creating office space or otherwise accommodating the office use. Residential expansion is subject to the conditions of Section 202.3.B. and 202.5.

4. The reconstruction of a Class A office building which is destroyed by fire or other casualty, subject to the conditions of Section 202.6.

B. Uses permitted by special exception. Uses permitted by special exception and as limited in D.R.3.5 zones, only, are permitted by special exception. Any dwelling which is under application for either a change in zoning classification to R-O-A or for a conversion from a residential use to an office use after obtaining the R-O-A zoning classification shall require a special exception if the dwelling has been enlarged in floor area by ten percent or more within a period of five years prior to the date of application for change or conversion.

C. Signs and off-street parking requirements.

1. In addition to signs permitted under Subsection 413.1, one stationary outside identification sign is permitted, provided that the sign is not illuminated, is wall-mounted or projects from the building and does not have a surface area exceeding six square feet on each side. No other signs or displays of any kind visible from outside the building are permitted.

2. Off-street parking spaces shall be provided in accordance with Section 409, but no structured parking is permitted, except for a residential garage, that was constructed as an accessory use to a dwelling prior to its conversion to a Class A office building.

   a. Parking areas shall be screened in accordance with the landscape manual;

   b. Parking shall be setback at least 10 feet from the property line except that if the property line abuts an alley, no setback is required provided that the alley does not abut a front or side yard of a residentially used property;

   c. Parking shall be located in the side or rear only, unless otherwise approved by the zoning commissioner pursuant to Section 307.

d. Notwithstanding the provisions of Section 307, the zoning commissioner may not permit a variance of more than one parking space below the number required by these regulations.

202.4--Bulk Regulations of R-O-A Zones. Uses permitted by right or by special exception are governed by the following bulk regulations: [Bill No. 170, 1991.]

A. Residential uses and new structures accessory to Class A office buildings are governed by the bulk regulations of the D.R. zone classification in place at the time when the R-O-A zone was applied, subject to compliance with Section 202.6. If a D.R. zone was not in place at the time that the R-O-A zone was applied, the bulk regulations of the D.R.3.5 zone, as set forth in Section 1B02.3C.1, shall govern. The provisions of Subsection 1B01.1B (Residential Transition Areas and Uses Permitted Therein) shall apply in the R-O-A zone to the development of any use other than a single-family home or the conversion of a home to a Class A office building.

B. Class A office buildings themselves, which by definition may not be enlarged, are not subject to bulk regulations, nor are unenlarged structures accessory to the original building.

C. The reconstruction of an existing Class A office building which is destroyed by fire or other casualty may not increase the size or gross floor area of the structure or alter the location of the structure, subject to the limitations contained in Section 104.2.

202.5--Submitting Plan for Conversion. A new building or part of a building to be used as a dwelling must be occupied as a residential use for five years before submitting a plan for conversion to a Class A office building, subject to documentation of compliance with the residential use requirement in this section. The use or development of any property in an R-O-A zone may not be changed from that existing on the effective date of the classification's application to that property, except in accordance with a plan approved by the County Review Group as provided in Title 26, Article V of the Baltimore County Code, unless the change in use is confined to a change in the number of dwelling units in accordance with the provisions of Section 402. {Bill No. 170, 1991.}

202.6--Review for Compatibility. Any conversion to a Class A office building involving change to the exterior of the dwelling, any new building to be used as a dwelling, or the reconstruction of any Class A office building which has been destroyed by fire or other casualty, is subject to Section 26-282 of the Development Regulations. In addition to the standards of 26-282, the Director of the Office of Planning and Zoning shall consider the compatibility of proposed window and door treatments in relation to existing adjacent or surrounding buildings. {Bill No. 170, 1991.}

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1991, LEGISLATIVE DAY NO. 18

BILL NO. 170-91

MR. DOUGLAS B. RILEY, COUNCILMAN

BY THE COUNTY COUNCIL, OCTOBER 7, 1991

A BILL ENTITLED

AN ACT concerning

Zoning Regulations - R-O-A Zone

FOR the purpose of creating the R-O-A Zone in the Baltimore County Zoning Regulations which will allow for the conversion of homes into offices; stating findings of the County Council; defining terms; authorizing certain uses in the zone by right or by special exception; providing sign, bulk regulation, and parking requirements for the zone; providing for a review of conversion plans; conforming certain provisions of the development regulations; and generally relating to uses in R-O-A zones.

BY repealing and re-enacting, with amendments,

Section 100.1.A.2 and Section 101, the definitions of "Office Building, Class A" and "Residential Zone"

Baltimore County Zoning Regulations, as amended

BY adding

Section 202

Baltimore County Zoning Regulations, as amended

BY repealing and reenacting, with amendments,

Section 409.7.B.

Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments

Section 26-282(a)

Title 26 - Planning, Zoning and Subdivision Control

Baltimore County Code, 1988

WHEREAS, the Baltimore County Council has received a final report from the Planning Board, dated July 18, 1991, concerning the subject legislation and held a public hearing on the report on September 26, 1991, now therefore

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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.

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Section 100.1.A.2. and Section 101, the definitions of "Office Building, Class A" and "Residential Zone" of the Baltimore County Zoning Regulations, as amended, be and they are hereby repealed and reenacted, with amendments, to read as follows:

Section 100 - Zones and Districts: Boundaries.

100.1--Baltimore County is hereby divided into zones and districts in accordance with this subsection.

A. Zones.

2. Zones are classified as follows:

R.C.2	(Resource Conservation--agriculture)
R.C.3	(Resource Conservation--deferral of planning and development)
R.C.4	(Resource Conservation--watershed protection)
R.C.5	(Resource Conservation-- rural residential)
R.C.20	(Resource Conservation--critical area) {Bill No. 6, 1989}
R.C.50	(Resource Conservation--critical area agricultural) {Bill No. 6, 1989}
R.C.C.	(Resource Conservation--commercial) {Bill No. 103, 1988}
D.R.1	(Density Residential, 1.0 dwelling unit per acre)
D.R.2	(Density Residential, 2.0 dwelling units per acre)
D.R.3.5	(Density Residential, 3.5 dwelling units per acre)
D.R.5.5	(Density Residential, 5.5 dwelling units per acre)
D.R.10.5	(Density Residential, 10.5 dwelling units per acre)
D.R.16	(Density Residential, 16.0 density units per acre)
R.A.E.1	(Residential, 40.0 density units per acre)
R.A.E.2	(Residential, 80.0 density units per acre)
R-O	(Residential-Office, 5.5 dwelling units per acre)
R-O-A	(RESIDENTIAL-OFFICE, CLASS A OFFICE)
O-1	(Office Building)
O-2	(Office Park)
O.T.	(Office and Technology)
B.L.	(Business, Local)
B.M.	(Business, Major)
B.R.	(Business, Roadside)
M.R.	(Manufacturing, Restricted)
M.L.R.	(Manufacturing, Light, Restricted)
M.L.	(Manufacturing, Light)
M.H.	(Manufacturing, Heavy)

Section 101 - Definitions.

Office Building, Class A: A principal building that was originally constructed as a 1-family or 2-family detached dwelling and that is converted BY PROPER PERMIT to office use without any external enlargement for the purpose of creating the office space or otherwise accommodating the office use. For the purposes of this definition,

enclosure of a porch of a house OR THE ADDITION OF AN EXTERIOR STAIRWAY AT THE SIDE OR REAR OF THE BUILDING does not constitute external enlargement.

Residential Zone: A zone classified as R.C., D.R., R-O-A, or R.A.E. "Zoned for residential purposes": Within a residential zone.

SECTION 2. AND BE IT FURTHER ENACTED, that Section 202 be and it is hereby added to the Baltimore County Zoning Regulations, as amended, to read as follows:

SECTION 202--RESIDENTIAL-OFFICE, CLASS A OFFICE ZONE (R-O-A) ZONE

202.1 DECLARATION OF FINDINGS.

A. RESIDENTIAL USE OF CERTAIN SITES MAY NOT BE ECONOMICALLY FEASIBLE IN SOME PREDOMINANTLY MODERATE-DENSITY RESIDENTIAL AREAS THAT ARE IMMEDIATELY ADJACENT TO COMMERCIAL OR OTHER NONRESIDENTIAL USES;

B. NEITHER BUSINESS ZONING NOR HIGH-DENSITY RESIDENTIAL ZONING NOR RESIDENTIAL-OFFICE ZONING WHICH PERMITS NEW OFFICE BUILDINGS ON THOSE SITES IS APPROPRIATE; AND

C. WITH APPROPRIATE RESTRICTIONS, HOUSES CONVERTED TO OFFICES ARE SUITABLE, ECONOMICALLY FEASIBLE USES OF SUCH SITES.

202.2--STATEMENT OF LEGISLATIVE POLICY. THE R-O-A ZONING CLASSIFICATION IS ESTABLISHED, PURSUANT TO THE FINDINGS OF SECTION 202.1, TO ACCOMMODATE SINGLE FAMILY, DUPLEX AND TWO FAMILY DETACHED HOUSES CONVERTED TO OFFICE BUILDINGS IN PREDOMINANTLY RESIDENTIAL AREAS ON SITES THAT, BECAUSE OF ADJACENT NONRESIDENTIAL ACTIVITY, HEAVY COMMERCIAL TRAFFIC, OR OTHER SIMILAR FACTORS, CAN NO LONGER REASONABLY BE LIMITED SOLELY TO USES ALLOWABLE IN MODERATE-DENSITY RESIDENTIAL ZONES. IT IS FURTHER THE INTENT OF THE COUNTY COUNCIL THAT THE RESIDENTIAL APPEARANCE OF THE EXISTING STRUCTURE AND THE RESIDENTIAL SETTING OF ANY BUILDING CONVERTED TO OFFICES BE MAINTAINED IN THE R-O-A ZONES SO THAT THE CONVERTED DWELLING WILL BE HIGHLY COMPATIBLE WITH NEIGHBORING RESIDENTIAL PROPERTY. TO MAINTAIN RESIDENTIAL CHARACTER, THE COUNCIL DOES NOT INTEND THAT LOTS BE DEVELOPED OR REDEVELOPED SOLELY FOR THE PURPOSE OF PROVIDING PARKING IN THE R-O-A ZONE. THE R-O-A ZONE SHALL ONLY BE APPLIED TO SITES WHICH ARE LARGE ENOUGH OR DESIGNED IN SUCH A WAY THAT PARKING AND ACCESS CAN BE ACCOMMODATED WITHOUT SACRIFICING THE RESIDENTIAL CHARACTER OF THE SITE AND WHERE THE

EXCEPT FOR A RESIDENTIAL GARAGE, THAT WAS CONSTRUCTED AS AN ACCESSORY USE TO THE DWELLING PRIOR TO ITS CONVERSION TO A CLASS A OFFICE BUILDING.

A. PARKING AREAS SHALL BE SCREENED IN ACCORDANCE WITH THE LANDSCAPE MANUAL;

B. PARKING SHALL BE SETBACK AT LEAST 10 FEET FROM THE PROPERTY LINE EXCEPT THAT IF THE PROPERTY LINE ABUTS AN ALLEY, NO SETBACK IS REQUIRED PROVIDED THAT THE ALLEY DOES NOT ABUT A FRONT OR SIDE YARD OF A RESIDENTIALLY USED PROPERTY;

C. ~~NOTWITHSTANDING THE PROVISIONS OF SECTION 307,~~ PARKING SHALL BE LOCATED IN THE SIDE OR REAR ONLY , UNLESS OTHERWISE APPROVED BY THE ZONING COMMISSIONER PURSUANT TO SECTION 307.

D. NOTWITHSTANDING THE PROVISIONS OF SECTION 307, THE ZONING COMMISSIONER MAY NOT PERMIT A VARIANCE OF MORE THAN ONE PARKING SPACE BELOW THE NUMBER REQUIRED BY THESE REGULATIONS.

202.4--BULK REGULATIONS OF R-O-A ZONES. USES PERMITTED BY RIGHT OR BY SPECIAL EXCEPTION ARE GOVERNED BY THE FOLLOWING BULK REGULATIONS:

A. RESIDENTIAL USES AND NEW STRUCTURES ACCESSORY TO CLASS A OFFICE BUILDINGS ARE GOVERNED BY THE BULK REGULATIONS OF THE D.R. ZONE CLASSIFICATION IN PLACE AT THE TIME WHEN THE R-O-A ZONE WAS APPLIED , SUBJECT TO COMPLIANCE WITH SECTION 202.6. IF A D.R. ZONE WAS NOT IN PLACE AT THE TIME THAT THE R-O-A ZONE WAS APPLIED, THE BULK REGULATIONS OF THE D.R.3.5 ZONE , AS SET FORTH IN SECTION 1B02.3C.1, SHALL GOVERN. THE PROVISIONS OF SUBSECTION 1B01.1.B. (RESIDENTIAL TRANSITION AREAS AND USES PERMITTED THEREIN) SHALL APPLY IN THE R-O-A ZONE TO THE DEVELOPMENT OF ANY USE OTHER THAN A SINGLE FAMILY HOME OR THE CONVERSION OF A HOME TO A CLASS A OFFICE BUILDING.

B. CLASS A OFFICE BUILDING THEMSELVES, WHICH BY DEFINITION MAY NOT BE ENLARGED. ARE NOT SUBJECT TO BULK REGULATIONS, NOR ARE UNENLARGED STRUCTURES ACCESSORY TO THE ORIGINAL BUILDING.

C. THE RECONSTRUCTION OF AN EXISTING CLASS A OFFICE BUILDING WHICH IS DESTROYED BY FIRE OR OTHER CASUALTY MAY NOT INCREASE THE SIZE OR GROSS FLOOR AREA OF THE STRUCTURE OR ALTER THE LOCATION OF THE STRUCTURE, ~~WITHOUT A SPECIAL HEARING~~ SUBJECT TO THE LIMITATIONS CONTAINED IN SECTION 104.2.

202.5--SUBMITTING PLAN FOR CONVERSION. A NEW BUILDING OR PART OF A BUILDING TO BE USED AS A DWELLING MUST BE OCCUPIED AS A

RESIDENTIAL USE FOR FIVE YEARS BEFORE SUBMITTING A PLAN FOR CONVERSION TO A CLASS A OFFICE BUILDING, SUBJECT TO DOCUMENTATION OF COMPLIANCE WITH THE RESIDENTIAL USE REQUIREMENT IN THIS SECTION. THE USE OR DEVELOPMENT OF ANY PROPERTY IN AN R-O-A ZONE MAY NOT BE CHANGED FROM THAT EXISTING ON THE EFFECTIVE DATE OF THE CLASSIFICATION'S APPLICATION TO THAT PROPERTY, EXCEPT IN ACCORDANCE WITH A PLAN APPROVED BY THE COUNTY REVIEW GROUP AS PROVIDED IN TITLE 26, ARTICLE V OF THE BALTIMORE COUNTY CODE, UNLESS THE CHANGE IN USE IS CONFINED TO A CHANGE IN THE NUMBER OF DWELLING UNITS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 402.

202.6--REVIEW FOR COMPATIBILITY. ANY CONVERSION TO A CLASS A OFFICE BUILDING INVOLVING CHANGE TO THE EXTERIOR OF THE DWELLING, ANY NEW BUILDING TO BE USED AS A DWELLING, OR THE RECONSTRUCTION OF ANY CLASS A OFFICE BUILDING WHICH HAS BEEN DESTROYED BY FIRE OR OTHER CASUALTY, IS SUBJECT TO SECTION 26-282 OF THE DEVELOPMENT REGULATIONS. IN ADDITION TO THE STANDARDS OF 26-282, THE DIRECTOR OF THE OFFICE OF PLANNING AND ZONING SHALL CONSIDER THE COMPATIBILITY OF PROPOSED WINDOW AND DOOR TREATMENTS IN RELATION TO EXISTING ADJACENT OR SURROUNDING BUILDINGS.

SECTION 3. AND BE IT FURTHER ENACTED, that Section 409.7.B. of the Baltimore County Zoning Regulations, as amended, be and it is hereby repealed and re-enacted, with amendments, to read as follows:

409.7--Location of Parking

All required off-street parking spaces shall be located either on the same lot as the structure or use to which they are accessory or off-site as provided for below.

B. (1) Except in C.T. Districts AND R-O-A and R-O zones, off-site parking spaces for uses other than residential and lodging shall be located within 500 feet walking distance of a building entrance to the use that such spaces serve. In C.T. Districts, such spaces shall be permitted within 1000 feet walking distance of the building entrance. In the C.T. District of Towson, such spaces shall be permitted within 1500 feet walking distance of the building entrance, provided they are located within the town center boundary. {In R-O zones, such spaces shall be provided on the same lot as the structure or use to which they are accessory.}

(2) IN R-O AND R-O-A ZONES ALL REQUIRED OFF-STREET PARKING SPACES SHALL BE PROVIDED ON THE SAME LOT AS THE STRUCTURE OR

USE TO WHICH THEY ARE ACCESSORY EXCEPT THAT IN CASES WHERE ADJACENT DWELLINGS HAVE BEEN CONVE[illegible]D TO CLASS A OFFICE BUILDINGS, PARKING SPACES MAY BE PROVIDED ON THE ADJACENT LOTS. THE USE OF AN OFF-SITE PARKING FACILITY WHICH IS ACCESSORY TO A CHURCH OR OTHER EXISTING PRINCIPAL USE MAY SATISFY THE PARKING REQUIREMENT, IF ~~LOCATE~~ LOCATED NO MORE THAN 500 FEET FROM THE LOT.

SECTION 4. AND BE IT FURTHER ENACTED, that Section 26-282(a) of Title 26 - Planning Zoning and Subdivision Control, of the Baltimore County Code, 1988, be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Sec. 26-282. Development in RCC, R-O, R-O-A, O-1, O-2, or OT zone and CR Districts.

(a) (1) Development of property in AN R-O-A ZONE AND an R-O zone shall be appropriate to the specific circumstances of the site, taking into account surrounding uses; tree preservation; protection of watercourses and bodies of water from erosion and siltation; and safety, convenience, and amenity for the neighborhoods.

(2) In determining the appropriateness of A NEW DWELLING, THE RECONSTRUCTION OF A CLASS A OFFICE BUILDING WHICH INVOLVES CHANGES TO THE EXTERIOR OF THE ~~DWELLING~~ BUILDING, OR THE DEVELOPMENT OF class B office buildings, design elements of proposed buildings shall be evaluated in relation to existing adjacent or surrounding buildings. Unless determined otherwise by the director of the office of planning and zoning to be considered appropriate, new buildings shall be similar to existing ones in the following respects:

a. Height;
b. Bulk and general massing;
c. Major divisions or rhythms of the facade;
d. Proportion of openings (window-wall-relation);
e. Roof treatment;
f. Materials, colors, textures;
g. General architectural character:

1. Horizontal or vertical emphasis;
2. Scale;
3. Stylistic features and themes - porches, colonnades, pediments, cupolas, cornices, coins, detail, and ornament;

h. Relation to street;
i. Exterior lighting. Buildings shall not be lighted on the exterior, and any lighting provided for safety reasons should be minimized and directed away from adjoining residential property.

Section 5. And be it further enacted, that this Act shall take effect forty-five days after its enactment.

CONVERSION FROM RESIDENTIAL TO OFFICE USE WILL NOT CAUSE SERIOUS DISRUPTION IN TRAFFIC FL

202.3--USE REGULATIONS.

A. USES PERMITTED BY RIGHT. THE FOLLOWING USES, ONLY, ARE PERMITTED BY RIGHT IN ANY R-O-A ZONE:

1. USES PERMITTED BY RIGHT AND AS LIMITED IN D.R. 3.5 ZONES.

2. CLASS A OFFICE BUILDINGS CONTAINING OFFICES, AND THEIR ACCESSORY USES INCLUDING SURFACE PARKING, BUT NOT INCLUDING PARKING AS A PRINCIPAL USE , EXCEPT AS PROVIDED UNDER SECTION 409.7.B.2.

3. A SINGLE FAMILY OR TWO FAMILY DETACHED DWELLING IN WHICH A PORTION OF THE BUILDING IS CONVERTED TO OFFICES AND A PORTION IS USED FOR A DWELLING, WITHOUT ANY EXTERNAL ENLARGEMENT , EXCEPT AS PERMITTED AND CONDITIONED BY SECTION 202.5, FOR THE PURPOSE OF CREATING OFFICE SPACE OR OTHERWISE ACCOMMODATING THE OFFICE USE. RESIDENTIAL EXPANSION IS SUBJECT TO THE CONDITIONS OF SECTION 202.3.B. AND 202.5.

4. THE RECONSTRUCTION OF A CLASS A OFFICE BUILDING WHICH IS DESTROYED BY FIRE OR OTHER CASUALTY, SUBJECT TO THE CONDITIONS OF SECTION 202.6.

B. USES PERMITTED BY SPECIAL EXCEPTION. USES PERMITTED BY SPECIAL EXCEPTION AND AS LIMITED IN D.R.3.5 ZONES, ONLY, ARE PERMITTED BY SPECIAL EXCEPTION. ANY DWELLING WHICH IS UNDER APPLICATION FOR EITHER A CHANGE IN ZONING CLASSIFICATION TO R-O-A OR FOR A CONVERSION FROM A RESIDENTIAL USE TO AN OFFICE USE AFTER OBTAINING THE R-O-A ZONING CLASSIFICATION SHALL REQUIRE A SPECIAL EXCEPTION IF THE DWELLING HAS BEEN ENLARGED IN FLOOR AREA BY TEN PERCENT OR MORE WITHIN A PERIOD OF FIVE YEARS PRIOR TO THE DATE OF APPLICATION FOR CHANGE OR CONVERSION.

C. SIGNS AND OFF-STREET PARKING REQUIREMENTS.

1. IN ADDITION TO SIGNS PERMITTED UNDER SUBSECTION 413.1, ONE STATIONARY OUTSIDE IDENTIFICATION SIGN IS PERMITTED, PROVIDED THAT THE SIGN IS NOT ILLUMINATED, IS WALL-MOUNTED OR PROJECTS FROM THE BUILDING AND DOES NOT HAVE A SURFACE AREA EXCEEDING SIX SQUARE FEET ON EACH SIDE. NO OTHER SIGNS OR DISPLAYS OF ANY KIND VISIBLE FROM OUTSIDE THE BUILDING ARE PERMITTED.

2. OFF-STREET PARKING SPACES SHALL BE PROVIDED IN ACCORDANCE WITH SECTION 409, BUT NO STRUCTURED PARKING IS PERMITTED,

3-9-98

IN RE	*	BEFORE THE
PETITION FOR SPECIAL HEARING	*	COUNTY BOARD OF
AND S JOPPA ROAD, 360' W OF THE	*	APPEALS FOR
c/l OF BELAIR ROAD (4140 EAST	*	BALTIMORE COUNTY
JOPPA ROAD) 11TH ELECTION	*	Case No. 97-455-SPH
DISTRICT, 5TH COUNCILMANIC	*	
DISTRICT	*	
GEORGE AND PEGGY MAMARAS Petitioners	*	

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

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PROTESTANT'S PROPOSED FINDING OF FACT

Upon review of the testimony and evidence before the Board in reference to the above-captioned case, the County Board of Appeals for Baltimore County herein finds as a matter of fact:

That the Petitioner's proposed special hearing for parking in an ROA zone if granted, would cause detrimental effects to the health, safety and welfare of the surrounding community, would tend to cause congestion in the roads, streets and alleyways of the surrounding community and would be inconsistent with the purposes of the subject property's zoning classification and the intention of the Baltimore County Zoning Regulations; and further

That the Petitioner has failed to meet its burden of producing evidence that the proposed relief meets the requirements of Section 409.8B; and further

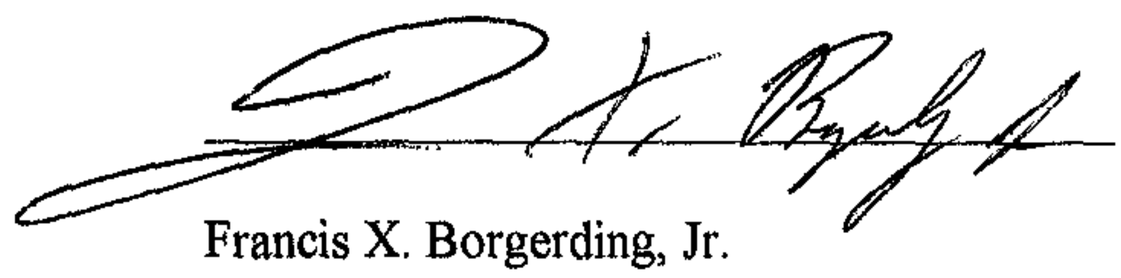
The Board finds as a matter of fact that the Petitioner's proposed relief fails to meet the objectives and requirements of Section 502.1 of the Baltimore County Zoning Regulations as

required by Section 409.B.e.3.

Accordingly, Petitioner's requested special hearing for parking in an ROA zone is hereby denied.

CERTIFICATE OF SERVICE

I certify that on this 9th day of March, 1998 a copy of the foregoing Protestant's Proposed Findings of Fact was mailed to G. Scott Barhight, Esquire, Whiteford, Taylor and Preston, 210 West Pennsylvania Avenue, Towson, MD 21204-4515.



Francis X. Borgerding, Jr.

3-9-98

IN RE	*	BEFORE THE
PETITION FOR LIMITED EXEMPTION	*	COUNTY BOARD OF
S JOPPA ROAD, 360' W OF THE	*	APPEALS FOR
c/l OF BELAIR ROAD (4140-4142 EAST	*	BALTIMORE COUNTY
JOPPA ROAD) 11TH ELECTION	*	Case No. CBA-97-129
DISTRICT, 5TH COUNCILMANIC	*	
DISTRICT, DRC#05197C	*	
GEORGE AND PEGGY MAMARAS Petitioners	*	

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COUNTY
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* *

CLOSING ARGUMENT MEMORANDUM

The Perry Hall Improvement Association by and through its attorney, Francis X. Borgerding, Jr. files this Closing Argument Memorandum and in support of says:

STATEMENT OF THE CASE

This case comes before the Board on a timely appeal filed by the Perry Hall Improvement Association, Inc. and five adjoining property owners on Brookfield Road of the decision of the Director of the Department of Permits and Development Management dated June 24, 1997 based upon the recommendation of the Development Review Committee (herein "DRC") from its meeting held June 16, 1997.

MOTION TO DISMISS

At the beginning of the above-captioned case during the hearing before the Board, counsel for Petitioners made a motion to dismiss, claiming that the Board lacked authority to review the

decision of the DRC rendered in relation to the above-captioned case.

Factually, it should be noted that the decision which has been appealed to this Board by the Perry Hall Improvement Association, Inc. and adjoining property owners is the decision of the Director of the Department of Permits and Development Management dated June 24, 1997 entered as Petitioner's Exhibit #6 before the Board, which, by its own terms, accepts the recommendation of the DRC from its meeting dated June 16, 1997 to grant a limited exemption under Baltimore County Code Section 26-171.a.7. As indicated in the body of Petitioner's Exhibit #6, the decision of the Director of the Department of Permits and Development Management rendered pursuant to that document was pursuant to "Article 25A, Section 5(U) of the Annotated Code of Maryland as provided in Section 602(d) of the Baltimore County Charter and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal or modification of a license, permit, approval, exemption, waiver or other form of promotion you filed with this department."

Article 25A, Section 5(U) of the Annotated Code of Maryland reads in pertinent part:

> "§ 5. Enumeration
>
> The following enumerated express powers are granted to and conferred upon any county or counties which hereafter form a charter under the provisions of Article XI-A of the Constitution, that is to say:
>
> *(U) County Board of Appeals*
>
> To enact local laws providing (1) for the establishment of a county board of appeals whose members shall be appointed by the county council; (2) for the number, qualifications, terms, and compensation of the members; (3) for the adoption by the board of rules of practice governing its proceedings; and (4) for the decision by the board on petition by any interested person and after notice and opportunity for hearing and on the basis of the record before

the board, of such of the following matters arising (either originally or on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, ro subject to amendment or repeal by, the county council, as shall be specified form time to time by such local laws enacted under this subsection: An application for a zoning variation or exception or amendment of a zoning ordinance map; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and the assessment of any special benefit tax: Provided, that upon any decision by a county board of appeals it shall file an opinion which shall include a statement of the facts found and the grounds for its decision. Any person aggrieved by the decision of the board and a party to the proceeding before it may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require. Any party to the proceeding in the circuit court aggrieved by the decision of the said court may appeal from such decision to the Court of Special Appeals. The review proceedings provided by this subsection shall be exclusive."

Section 602(d) of the Baltimore County Charter reads in pertinent part:

"**Sec. 602. Powers and functions of county board of appeals.**

The county board of appeals shall have and may exercise the following functions and powers:

(d) *Appeals from executive, administrative and adjudicatory orders.* The county board of appeals shall hear and decide appeals from all other administrative and adjudicatory orders as my from time to time be provided by Article 25A of the Annotated Code of Maryland (1957 Edition), as amended, or by legislative act of the county council not inconsistent therewith."

In addition, Section 603 of the Baltimore County Charter reads in pertinent part:

> "**Sec. 603. Rules of practice and procedure.**
>
> Subject to the approval of the county council, the county board of appeals shall have authority to adopt and amend rules of practice and procedure to cover the conduct of its proceedings. Such rules may include matters relating to filing fees, meetings and hearings conducted by the board, the manner in which the chairman of the board shall be selected and the term for which he shall serve as chairman, and all other matters deemed appropriate or necessary for the board to conduct its proceedings. Said rules and regulations when approved by the county council shall have the force and effect of law. All decisions of the county board of appeals shall be made after notice and opportunity of hearings upon the issues before said board. <u>All hearings held by the board shall be heard de novo, unless otherwise provided by legislative act of the County Council, and shall be open to the public</u>. The board shall cause to be maintained complete public records of its proceedings, with a suitable index. (Bill No. 85, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)"

Section 26-132 of the Baltimore County Code reads in pertinent part:

> "**Sec. 26-132. Appeals to county board of appeals.**
>
> (a) Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decision or order of the zoning commissioner or the director of zoning administration and development management shall have the right to appeal therefrom to the county board of appeals. . . . Notice of such appeals shall be filed, in writing, with the director within thirty (30) days from the date of any final order appealed, together with the required fee as provided in the zoning regulations. Such appeals shall be heard and disposed of by the county board of appeals as may be provided in the Charter and the board's own rules of procedure. . . ."

When the above is construed, it becomes clear that the decision recommended by the Development Review Committee pursuant to their June 16, 1997 meeting as rendered by the Director of the Department of Permits and Development Management pursuant to his June 24, 1997 letter in DRC number 05197C is clearly a decision for which this Board has the jurisdiction and authority to hear. In addition, Section 603 of the Baltimore County Charter makes clear that the Board's hearing of this matter is a de novo hearing.

STATEMENT OF FACTS

Protestants called as witnesses Norman Gerber, an expert in planning and zoning, Dorothy McMann, Zoning Chair of the Perry Hall Improvement Association, and Mr. Donald Rascoe, Baltimore County Director for Development Management. Petitioner cross-examined the above witnesses but called no additional witnesses in support of their case. Prior to calling Protestant's first witness, it was clarified that all the testimony and evidence that was already before the Board in relation to the special hearing case became part of the record before the Board in the limited exemption case.

Protestants first called Norman Gerber to the stand. Mr. Gerber testified that he was familiar with the limited exemption which was requested by the Petitioner. Mr. Gerber indicated he had reviewed the Baltimore County Code Section 26-171 entitled "Limited Exemptions". Mr. Gerber indicated he had conducted an investigation of the proposed use in relation to the limited exemption. Mr. Gerber was accepted as an expert in the area of planning and zoning. However, after an extended period of testimony with regard to Mr. Gerber's qualifications, the Board ruled, despite exception taken by the Protestant's counsel, that Mr. Gerber's area of expertise did not extend to the present limited exemption section of the Development Regulations found in the

Baltimore County Code. Mr. Gerber then testified from a planning and zoning standpoint he had reviewed Section 202.5 which indicated that the subject ROA portion of the property had to go through the County CRG process, the predecessor of the Development Review process, and development regulations upon any change in use. Mr. Gerber further indicated that, in his opinion, that meant that the ROA section of the proposed use must undergo its own scrutiny through the Development Review Process.

Dorothy McMann, Zoning Chair of the Perry Hall Improvement Association, testified on behalf of the Association as well as herself individually. Mrs. McMann indicated that she had served on the Development Regulations Committee which created the new development regulations found in the Baltimore County Code. Mrs. McMann testified that she had attended the limited exemption hearings before the DRC held in relation to the limited exemption which is now before the Board. Mrs. McMann indicated she had attended a hearing in May and another hearing in June. Mrs. McMann indicated that she asked Mr. Donald Rascoe during the DRC meeting in May what the criteria was for granting a limited exemption for "minor commercial construction". Mrs. McMann indicated that his response was that it was an "arbitrary decision". Mrs. McMann further testified that immediately upon her conversation with Mr. Rascoe, she proceeded to talk to Mr. Patrick H. Rodde, assistant county attorney, and asked for his analysis of what qualified as minor commercial construction. Mrs. McMann then indicated that she had received correspondence dated June 5, 1997, entered as Protestant's Exhibit #8. Mrs. McMann further indicated that after that correspondence, she had not gotten any further response from Mr. Rodde notwithstanding her continued attempted calls to him in reference to this subject.

Mrs. McMann indicated that the community was in opposition to the granting of the

limited exemption because the new development regulations enacted provided for community input meetings in order that the community could meet with the developer and attempt to work out some of the problems inherent in the development process and that was particularly relevant for a site such as the project before the Board. Additionally, Mrs. McMann testified that she felt that the absence of the community input meeting in relation to the project before the Board was particularly detrimental to the community.

Mr. Donald Rascoe, Baltimore County Director for Development Management, was then called to the stand. Mr. Rascoe indicated that part of his duties pursuant to his position was to oversee the DRC process. Mr. Rascoe. indicated that pursuant to his duties relating to the DRC process, he got involved with the subject property. Mr. Rascoe testified there was a meeting in February in relation to the Petitioner's requested limited exemption from Section 26-171.a.7 of the Baltimore County Code. Further, Mr. Rascoe stated that because zoning was not granted at that time, the matter was tabled. Mr. Rascoe indicated the matter then came back up in May and at that point the Zoning Commissioner had not heard the zoning aspects of the case and therefore the matter was again tabled. Mr. Rascoe then indicated that the matter came back up on June 16, 1997 and at that time Petitioner's proposed limited exemption was granted by the DRC. Mr. Rascoe indicated that there were no minutes of that meeting, the only documentation in relation to the meeting were a few handwritten notes which he read into the record. Those notes indicated that the Petitioner was requesting a limited exemption under Section 26-171.a.7 of the Baltimore County Code and that the matter had been tabled awaiting the outcome of the zoning hearing which was to occur in relation to the property. Mr. Rascoe indicated that the DRC process did not approve the Petitioner's plan. Mr. Rascoe indicated that the limited exemptions ruled upon by

the DRC only applied to exemptions from Division 2 of the Development Regulations.

Mr. Rascoe was asked what the criteria was for the granting of the Petitioner's proposed limited exemption under Section 26-171.a.7 of the Baltimore County Code. Mr. Rascoe indicated that the proposed limited exemption under Section 26-171.a.7 of the Baltimore County Code was granted because the project was for construction of a "single structure on a single lot". When further asked if there was any other criteria taken into account in granting the Petitioner's requested limited exemption, Mr. Rascoe indicated that there was nothing else which the DRC took into account in granting the Petitioner's requested limited exemption. Mr. Rascoe further indicated that there was no definition for "minor commercial construction" under Section 26-171.a.7 of the Baltimore County Code. When questioned, Mr. Rascoe indicated that there was no structure on the ROA zoned portion of the plan included in the Petitioner's project. Further, Mr. Rascoe indicated that when the DRC made its June 16, 1997 decision, it did not consider the zoning regulations, as its practice is that if any necessary zoning hearings have been granted, the DRC considers that the zoning issues in relation to a project have been resolved and does not consider them as part of its decision. Mr. Rascoe was then asked to review a plat found in his file dated 1/27/97, entered as Protestant's Exhibit #10. Upon questioning, he indicated that the only property considered in the DRC's decision with regard to the limited exemption now before the Board was the BL zoned portion of the Petitioner's property. On cross examination, Mr. Rascoe referred to a plat found in his file dated April 22, 1997 entered as Petitioner's #9, and indicated on that file that the ROA zoned portion of the Petitioner's property was proposed to be part of the diner project. Mr. Rascoe was asked to read the note on the plat entered as Petitioner's Exhibit #9 which indicated that the two lots, being the BL and ROA lots, would be merged. Mr. Rascoe

then indicated that upon the merger of the two lots, the DRC would have to review the ROA lot, as it was his interpretation that when the lots were merged together, a "subdivision" would occur and would therefore necessitate that the subject ROA lot come before the DRC for review as to the appropriateness for the granting of any proposed limited exemption under Section 26-171.a or .b of the Baltimore County Code. Mr. Rascoe was questioned as to his criteria for granting a limited exemption under Section 26-171.a.7 of the Baltimore County Code and he indicated that basically, if there was a single building on a single lot, a limited exemption would probably be granted, although he indicated that he had probably denied an a.7 limited exemption for a single building on a single lot. Further, Mr. Rascoe indicated that there was no set definition for the criteria of granting of an a.7 limited exemption. Mr. Rascoe was then shown Petitioner's Exhibit #10, an Office of Law memo relating to limited exemption for cellular towers and Petitioner's Exhibit #11, a letter from Arnold Jablon discussing criteria for granting a.7 limited exemptions. Said Exhibit noted community interest as one factor to consider in granting or denying an a.7 limited exemption. Mr. Rascoe indicated that the project as a whole had to be taken into consideration when making the decision of whether or not to grant an a.7 limited exemption. On redirect, Mr. Rascoe indicated that he was aware of community interest in reference to the limited exemption now before the Board. He indicated he was aware of Mrs. McMann's interest on behalf of herself and the Perry Hall Improvement Association. He further indicated that typically, a.7 exemptions, especially those granted for larger square footages were for existing structures and he hesitated to grant them for new structures. Mr. Rascoe indicated that the proposed development as shown on Petitioner's Exhibit #4 constituted "new construction".

After Mr. Rascoe left the stand, Petitioner's counsel entered Petitioner's Exhibit #12, a

letter from the previous owner of the ROA portion of the subject property and Petitioner's Exhibits #13a and #13b which were attendance lists for people who attended the hearing in support of the diner. In addition, Protestants entered Protestant's Exhibit #8e , which was an attendance list for people opposing the project who had attended the subject hearings.

APPLICABLE LAW

Motion to Dismiss

Article 25 A, Section 5(U) of the Annotated Code of Maryland

Section 602.d of the Baltimore County Charter

Section 603 of the Baltimore County Charter

Section 26-132 of the Baltimore County Code

Case No. CBA-97-129

Section 26-171 of the Baltimore County Code

Attached hereto collectively as Exhibit A for the Board's reference.

ARGUMENT

Pursuant to Section 603 of the Baltimore County Charter, the Board's review of the testimony and evidence before it in relation to the above-captioned case is de novo and not appellate review. The testimony and evidence before the Board in relation to the above-captioned case established that the Petitioner should not have received a limited exemption under Section 26-171.a.7 of the Baltimore County Code. Further, even assuming for the sake of argument that the Petitioner's BL zoned portion of property at 4142 East Joppa Road is eligible for a limited exemption under Section 26-171.a.7 of the Baltimore County Code, the Petitioner's ROA portion of property at 4140 East Joppa Road clearly does not qualify for a limited exemption under

Section 26-171.a.7 of the Baltimore County Code.

Norman Gerber, accepted as an expert in planning and zoning, testified that pursuant to Section 202.5 of the BCZR, the ROA portion of the subject property had to go through the County CRG process, now the Development Review Process, prior to any change in use as was proposed on the subject property. Mr. Gerber made clear that, in his opinion, the requirements of Section 202.5 meant that the ROA portion of the Petitioner's property must undergo its own scrutiny through the development review process.

Mrs. Dorothy McMann, Zoning Chair of the Perry Hall Improvement Association, who served on the new development review regulations committee at the time of the creation of the Development Regulations, indicated that the granting of the limited exemption in the above captioned case effectively eliminates the community input meeting called for under the new development regulations which she felt was particularly necessary on a site such as the project proposed by the Petitioner in order that potential problem issues be worked out. Further, Mrs. McMann indicated that neither members of the Development Review Committee nor Mr. Patrick Rodde of the Office of Law could give her an answer as to the criteria of granting a limited exemption under Section 26-171.a.7 of the Baltimore County Code.

Mr. Don Rascoe indicated that there were no minutes of the meeting at the time that the Petitioner's limited exemption was granted. Further, Mr. Rascoe indicated that the Petitioner's proposed a.7 limited exemption was granted because "this matter was a single structure on a single lot". Mr. Rascoe indicated that there was nothing else taken into consideration in the granting of the Petitioner's a.7 limited exemption. Mr. Rascoe went on to indicate that there was no definition for minor commercial structure as used in Section 26-171.a.7 of the Baltimore

County Code.

Mr. Rascoe did indicate, however, that there was no structure on the ROA zoned portion of the Petitioner's property. Further, Mr. Rascoe indicated that the DRC did not consider the zoning regulations when making its decision with regard to the Petitioner's proposed a.7 limited exemption. On cross examination by opposing counsel, Mr. Rascoe made clear that the DRC would have to review the ROA portion of the Petitioner's property after the BL and ROA lots of the Petitioner's property were combined as it was his interpretation that when the lots were merged, it would be defined as a subdivision and would therefore necessitate coming back before the DRC for review of the applicability of granting a limited exemption under Section 26-171.a or .b. Mr. Rascoe indicated he was aware of the interest of Dorothy McMann and the Perry Hall Improvement Association at the time the DRC conducted its meeting with regard to the Petitioner's proposed limited exemption.

The testimony and evidence before the Board establishes that the Petitioner's proposed use on its BL and ROA lots does not constitute "construction of a residential accessory structure or a minor commercial structure". The location of the site is close to the corner of Belair Road and Joppa Road, the most heavily used intersection in the Perry Hall area. In addition, according to Mr. Rascoe's testimony, it is clear that the DRC only took into consideration the criteria that the proposed use constituted a single structure on a single lot, when granting the limited exemption under Section 26-171.a.7 of the Baltimore County Code. It is clear from Mr. Rascoe's testimony that the DRC did not take into account the property's location nor its impact on the surrounding community when classifying the Petitioner's proposed use of the BL and ROA zoned lots as minor commercial construction. As mentioned earlier, the Board's review of this matter is

de novo and therefore, the Board has the opportunity to take into account the size and scope of the Petitioner's proposed use, especially in light of its location and impact on the surrounding community. Accordingly, the Petitioner's requested limited exemption under Section 26-171.a.7 of the Baltimore County Code should be denied.

Further, it is abundantly clear from the testimony of Mr. Gerber and Mr. Rascoe that not only does Section 202.5 require the Petitioner's ROA property at 4140 East Joppa Road to undergo its own scrutiny for the granting or denying of a limited exemption under Section 26-171.a.7 of the Baltimore County Code, but that the DRC did not render that scrutiny on the subject ROA zoned property. Mr. Rascoe made clear that the ROA zoned property contained no structure. Further, he testified on questioning by opposing counsel that when the BL and ROA zoned lots are merged as noted on Petitioner's plat for the development of the subject properties that "subdivision" would necessitate the property coming back before the DRC for review as to whether or not a limited exemption would be applicable. Further, Mr. Rascoe's testimony that the only criteria used in granting the Petitioner's limited exemption under Section 26-171.a.7 of the Baltimore County Code was that the matter involved a single structure on a single lot is telling that in fact the DRC did not consider the Petitioner's ROA zoned portion of the property which at the time of the hearing before this Board was not part of the Petitioner's adjacent BL zoned property.

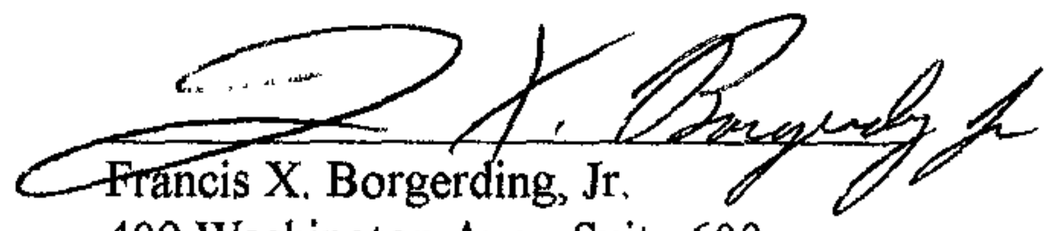
Accordingly, even assuming for the sake of argument that the Petitioner qualified for a limited exemption under Section 26-171.a.7 of the Baltimore County Code in reference to the BL zoned property at 4142 East Joppa Road, the Petitioner's ROA zoned property at 4140 East Joppa Road, from the testimony and evidence before the Board, clearly does not qualify for a

limited exemption under Section 26-171.a.7 of the Baltimore County Code as it does not involve a "minor commercial structure" or any structure for that matter.

CONCLUSION

In light of the above, Petitioner's requested limited exemption under Section 26-171.A.7 of the Baltimore County Code should be denied.

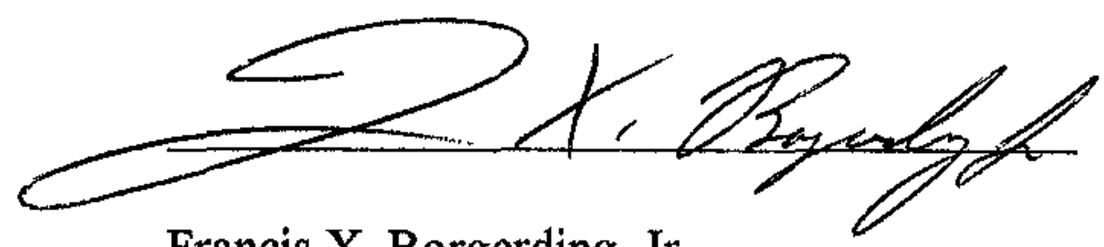
Respectfully submitted,



Francis X. Borgerding, Jr.
409 Washington Ave., Suite 600
Towson, MD 21204
Attorney for Perry Hall Improvement Association, Inc.

CERTIFICATE OF SERVICE

I certify that on this 9th day of March, 1998 a copy of the foregoing Closing Memorandum was mailed to G. Scott Barhight, Esquire, Whiteford, Taylor and Preston, 210 West Pennsylvania Avenue, Towson, MD 21204-4515.



Francis X. Borgerding, Jr.

Legislative Services Building
90 State Circle
Annapolis, Maryland 21401 (five copies)
(2) Secretary of State of Maryland
State House
Annapolis, Maryland 21404 (one copy)
(3) State Archives
P.O. Box 828
Annapolis, Maryland 21404 (one copy)
(4) State Law Library
Courts of Appeal Building
Rowe Boulevard and Taylor Avenue
Annapolis, Maryland 21401 (one copy)
(1976, ch. 431, § 1; 1978, ch. 6; 1979, ch. 619; 1984, ch. 286, § 5.)

GRANT OF POWERS

§ 4. In general.

(a) *Exercise of express powers.* — Whenever any county among the geographical subdivisions of this State, as that term is defined in § 4 of Article XI-A of the Constitution of the State, shall have adopted for itself a charter or form of government under the provisions of said Article XI-A of the Constitution, it shall be entitled to exercise the following express powers, said powers being, as to the counties of Maryland adopting such charter or form of government, granted as a substitute for and in extension of the powers codified in Article 25 of the Annotated Code of Maryland, title "County Commissioners", it being the intent of the General Assembly of Maryland that said Article 25 shall continue to be operative in any and all such counties of Maryland as do not adopt for themselves a charter or form of government under the provisions of said Article XI-A of the Constitution, but that the powers herein granted shall be operative in any and all such counties of Maryland as do adopt such charter or form of government.

(b) *Applicability of subtitle "Draining Lands" of Article 25 to charter counties.* — Notwithstanding the provisions of this section, the subtitle "Draining Lands" of Article 25 of the Code applies to a county that adopts a charter form of government under the provisions of Article XI-A of the Constitution. (An. Code, 1951, § 4; 1918, ch. 456, § 2; 1924, § 1; 1939, § 2; 1985, ch. 42.)

Editor's note. — Section 2, ch. 42, Acts 1985, provides that "this act confirms and ratifies anything done before July 1, 1985, which would be valid under the terms of this act, and in no instance may the board of managers of a public drainage association or a county be required to refund any tax or fee, collected prior to July 1, 1985, which would be valid under the terms of this act."

University of Baltimore Law Review. — For comment, "State and Local Legislative Powers: An Analysis of the Conflict and Preemption Doctrines in Maryland," see 8 U. Balt. L. Rev. 300 (1979).

County charter is to its legislative body as the State Constitution is to the General Assembly. Harford County v. Board of Supervs. of Elections, 272 Md. 33, 321 A.2d 151 (1974).

Quoted in Prince George's County v. Fitzhugh, 308 Md. 384, 519 A.2d 1285 (1987).

Stated in Boswell v. Prince George's County, 273 Md. 522, 330 A.2d 663 (1975).

EXPRESS POWERS

§ 5. Enumeration.

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

(A) *Local Legislation*

To enact local laws for such county, including the power to repeal or amend local laws thereof enacted by the General Assembly upon the matters covered by the express powers in this article granted; to provide for the enforcement of all ordinances, resolutions, bylaws and regulations adopted under the authority of this article by fines, penalties and imprisonment, enforceable according to law as may be prescribed, but no such fine or penalty shall exceed $1,000.00 for any offense or imprisonment for more than six months; to provide for enforcement of all ordinances, resolutions, bylaws, and regulations adopted under the authority of this article by civil fines and penalties.

(B) *County Property and Franchises*

To provide for the protection of the county property; to provide for the acquisition by purchase, lease, or otherwise, and condemnation of property required for public purposes in the county; to dispose of any real or leasehold property belonging to the county, provided the same is no longer needed for public use; to grant any franchise or right to use the same, or any right or franchise in relation to any highway, street, road, lanes, alley or bridge; to grant one or more exclusive or nonexclusive franchises for a community antenna system or other cable television system that utilizes any public right-of-way, highway, street, road, lane, alley, or bridge, to impose franchise fees, and to establish rates, rules, and regulations for franchises granted; and to provide for the leasing as lessor to the State or any political subdivision or other agency thereof, or to any county agency, or to any person, any property belonging to the county or any agency thereof, in furtherance of the public purposes of such county or agency, upon such terms and compensation as said county may deem proper, and after such disposition, grant or lease shall have been advertised once a week for three successive weeks in one or more newspapers of general circulation published in said county, stating the terms thereof and the compensation to be received therefor, and giving opportunity for objections thereto. Provided, however, that easements for public utilities may be granted without advertisement.

(C) *County Institutions*

To erect, establish, maintain and control hospitals, almshouses, pesthouses or other similar institutions within the county, and make all regulations for

EXHIBIT A

Set.

the government and conduct of the same; to erect, establish and maintain courthouses; to establish, maintain, regulate and control county jails, and county houses of correction or detention and reformatories, and to regulate all persons confined therein; to make proper provision for female and juvenile offenders.

(D) *Advertising and Printing*

To provide for county advertising, printing and publishing, including that of all ordinances, bylaws or resolutions adopted by the county council and of annual statements of expenses of the county government.

(E) *Audits and Claims*

To audit the accounts of all county officers, assisting the Legislative Auditor or other State officer clothed with authority in the performance of this duty; to provide for proof of all claims against the county before their payment.

(F) *Contracts and Bonds; Purchases Through Purchasing Bureau*

To provide for competitive bidding for any county work and the making and awarding of contracts requiring bonds whenever proper. To also provide for the purchase of materials, supplies, and equipment through the Purchasing Bureau of the State Department of General Services whenever desirable.

(G) *Drainage*

(1) To provide, as far as necessary, for the draining of swamp and lowlands.

(2) With regard to a redetermination as to which lands continue to benefit from a prior drainage improvement project:

(i) At the request of the board of managers of a drainage association, the county council shall appoint a board of viewers to determine if the original determination as to which lands have benefited from the improvements has changed;

(ii) The board of viewers shall have the same qualifications, rights, powers, privileges, and duties as the original board of viewers;

(iii) The board of viewers shall report its findings to the county council. The report shall be considered in the same manner as the original report, including the same right to a public hearing and the right to judicial review; and

(iv) Any revision in the original determination as to which lands benefit from the improvements shall become the basis for all future assessments for paying for the improvements, including related expenses such as damages, and the maintenance of the improvements.

(H) *Election Districts and Precincts*

To rearrange and create election districts and precincts.

(I) *Court Records*

To provide for recording, indexing and keeping indexed all records in the office of the clerk of the court, register of wills and of the records of the commissioners and county council to the extent that such matters are not provided for by general law.

(J) *Health and Nuisances*

To prevent, abate and remove nuisances; to prevent the introduction of contagious diseases into such county; and to regulate the places of manufacturing soap and candles and fertilizers, slaughterhouses, packinghouses, canneries, factories, workshops, mines, manufacturing plants and any and all places where offensive trades may be carried on, or which may involve or give rise to unsanitary conditions or conditions detrimental to health.

Nothing in this article or section contained shall be construed to affect in any manner any of the powers and duties of either the Secretary of Health and Mental Hygiene or the Secretary of the Environment or any public general laws of the State relating to the subject of health.

(K) *Highways, Bridges and Streets*

To provide for grading, shelling, graveling, paving and curbing, or for regrading, reshelling, regraveling, repaving, recurbing and repairing any street, road, lane, alley, footway, bridge, culvert, highway or public place within said county, or any part thereof, now or hereafter condemned, ceded, opened, widened, extended or straightened as public property; and for assessing the cost of any such work upon the assessable basis of the county; to compel by fine or penalty the owner or possessor of any lot to grade, regrade, pave, repave or repair the footways in front thereof; to regulate the opening of street surfaces.

(L) *Livestock*

To regulate the conditions under which dogs, cows, sheep, pigs, cattle and livestock of any and every kind may be at large, or may pass over the streets, roads, alleys, lanes, bridges, highways and public places.

(M) *Fish and Game*

To pass local fish and game laws.

(N) *Fences*

To regulate the making and keeping secure of fences and provide for the procedure to enforce the rights of the parties, and a lien for repairs, made by an owner not in default.

(O) *Assessments, Levy and Collection of Taxes*

To direct the class or subclass of improvements on land and personal property which shall be made subject to the county tax levy, and to provide for the levy thereupon and upon the value of land in accordance with Article 15 of the Declaration of Rights of the Constitution of Maryland as amended, of any sum which may be necessary to pay and discharge the principal and interest of any loan which may heretofore have been obtained, or which may hereafter be obtained by such county, according to law, and to create a sinking fund to meet the liabilities thus incurred, and levy upon the property so subject to taxation from time to time such sums as may be necessary to provide therefor, as well as to collect from such property so subject to the levy such sums as may be necessary for the support and maintenance of the county government.

To provide for the prompt collection of all taxes due the county; and for the sale of real estate, as well as leasehold and personal property, for the payment of the same.

To rectify errors in the assessment of property; to provide for the reduction or abatement of assessments improperly made, and for the reimbursement of moneys paid in consequence of such errors.

To levy and collect taxes for the organization, operation, maintenance of libraries, fire and ambulance services, and other municipal services and to authorize the purchase, sale, construction, maintenance, and operation of all real and personal property necessary or incidental to such services, and to establish, modify, amend and abolish special taxing areas for any of the purposes enumerated in this article, except that nothing herein contained shall be construed to permit the modification or abolition of existing special taxing areas performing municipal services, (other than furnishing fire protection or library service) and governed or administered by a citizen's committee or a commission elected or appointed independently of the county council.

To levy and collect taxes to provide for the payment of additional retirement or disability benefits to such former employees of the county as may, in the opinion of the county council, be entitled to receive such additional benefits.

(P) *Bonds or Evidences of Indebtedness*

(1) To provide for the borrowing of moneys on the faith and credit of the county and for the issuance of bonds or other evidences of indebtedness therefor in such sums, for such purposes, on such terms and payable at such times, and from such taxes or other sources as may have been or may be provided by or pursuant to local law, subject to any limitations imposed by the charter adopted by the county and to the following limitations:

(i) The aggregate amount of bonds and other evidences of indebtedness outstanding at any one time shall not exceed 15 per centum upon the assessable basis of the county, except that (a) tax anticipation notes or other evidences of indebtedness having a maturity not in excess of 12 months, (b) bonds or other evidences of indebtedness issued or guaranteed by the county payable primarily or exclusively from taxes levied in or on, or other revenues of,

special taxing areas or districts heretofore or hereafter established by law, and (c) bonds or other evidences of indebtedness issued for self-liquidating and other projects payable primarily or exclusively from the proceeds of assessments or charges for special benefits or services, shall not be subject to, or be included as bonds or evidences of indebtedness in computing or applying, said 15 per centum limitation.

(ii) Any local law authorizing the borrowing of money or issuance of bonds or other evidences of indebtedness shall be submitted to the registered voters of the county for approval or rejection, if a petition for such submission is filed pursuant to the provisions of the charter and local laws of the county. If the charter contains no such provisions, any local law authorizing the borrowing of money or issuance of bonds or other evidences of indebtedness shall be submitted to the registered voters of the county for approval or rejection, if a petition for such submission, bearing the signatures of 10 per centum or more of such voters, is filed with the board of supervisors of elections of the county within 75 days after the enactment of such local law.

(2) To provide for the issuance of bonds or other obligations payable as to principal and interest and premium, if any, solely from the funds or revenues received from or in connection with any system, project, or undertaking, all or part of which is financed from the proceeds of such bonds or obligations. Bonds or obligations issued under this paragraph do not constitute an indebtedness of the county or a pledge of its faith and credit or taxing power, may be sold at private (negotiated) sale, and are not subject to the limitations of paragraph (1) of this subsection, Article 31, §§ 10 and 11 of the Code, or any provision of the issuing county's charter. Nothing in this paragraph shall be construed as a limitation on the power of a county to issue revenue bonds under the provision of any other applicable law.

(3) The bonds, notes, and any other evidences of obligation issued under this section, their transfer, the interest payable on them, and any income derived from them, including any profit realized in their sale or exchange, shall be exempt at all times from every kind and nature of taxation by this State, or by any of its political subdivisions, municipal corporations or public agencies of any kind.

(Q) *County Officers*

To provide for the appointment and removal of all county officers except those whose appointment or election is provided for by the Constitution or public general law, and to establish a merit system, if deemed desirable, in connection with the appointment of all county officials and employees not elected or appointed under the Constitution and the public general laws; to fix the qualifications and term of office of such county executive authority as may be established, and to fix its compensation; provided that the county council may enact local laws designed to prevent conflicts between the private interests and public duties of any county officers, including members of the county council, and to govern the conduct and actions of all such county officers in the performance of their public duties, and to provide for penalties, including

removal from office, for violation of any such laws or the regulations adopted thereunder.

(R) *Protection of County Credit*

To prevent the credit of the county in any manner being given or loaned to or in aid of any individual, association or corporation.

(S) *Amendment of County Charter*

To pass any ordinance facilitating the amendment of the county charter by vote of the electors of the county and agreeable to Article XI-A of the Constitution.

The foregoing or other enumeration of powers in this article shall not be held to limit the power of the county council, in addition thereto, to pass all ordinances, resolutions or bylaws, not inconsistent with the provisions of this article or the laws of the State, as may be proper in executing and enforcing any of the powers enumerated in this section or elsewhere in this article, as well as such ordinances as may be deemed expedient in maintaining the peace, good government, health and welfare of the county.

Provided, that the powers herein granted shall only be exercised to the extent that the same are not provided for by public general law; provided, however, that no power to legislate shall be given with reference to licensing, regulating, prohibiting or submitting to local option, the manufacture or sale of malt or spirituous liquors.

(T) *Road, Waste Disposal, Soil Erosion and Building Ordinances*

To enact local laws enabling the county council to adopt from time to time, after reasonable notice and opportunity for public hearing and with or without modifications, ordinances and amendments thereof for the protection and promotion of public safety, health, morals, comfort and welfare, relating to any of the following: the location, construction, repair, and use of streets and highways; the disposal of wastes; the control of problems of soil erosion and of the preservation of the natural topography in newly developed and other areas; and the erection, construction, repair and use of buildings and other structures; and to enact local laws providing appropriate administrative and judicial proceedings, remedies, and sanctions for the administration and enforcement of such ordinances and amendments.

(U) *County Board of Appeals*

To enact local laws providing (1) for the establishment of a county board of appeals whose members shall be appointed by the county council; (2) for the number, qualifications, terms, and compensation of the members; (3) for the adoption by the board of rules of practice governing its proceedings; and (4) for the decision by the board on petition by any interested person and after notice

and opportunity for hearing and on the basis of the record before the board, of such of the following matters arising (either originally or on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, or subject to amendment or repeal by, the county council, as shall be specified from time to time by such local laws enacted under this subsection: An application for a zoning variation or exception or amendment of a zoning ordinance map; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and the assessment of any special benefit tax: Provided, that upon any decision by a county board of appeals it shall file an opinion which shall include a statement of the facts found and the grounds for its decision. Any person aggrieved by the decision of the board and a party to the proceeding before it may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require. Any party to the proceeding in the circuit court aggrieved by the decision of the said court may appeal from such decision to the Court of Special Appeals. The review proceedings provided by this subsection shall be exclusive.

(V) *Recreation*

To enact local laws providing for the development and administration of a comprehensive recreational program including the construction, equipment and use of park, community center, and recreational buildings and facilities, the acquisition of sites therefor, including financial support for artistic, musical, and cultural public and private nonprofit organizations and activities, and the furnishing of recreational and other municipal services in connection therewith; and to exercise any power or authority conferred by the provisions of Article 25 of this Code, in the subtitle "Public Recreation and Parks".

(W) *Storm Drainage*

To enact local laws providing for the creation of a storm drainage district or districts and the levying of taxes therein, the financing, construction and maintenance of storm drainage projects, and the regulation of storm drainage facilities.

(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, including:

1. The power to provide for the right of appeal of any matter arising under such planning and zoning laws to the circuit court, except as is provided in § 5 (U) of this article. Any decision of the circuit court may be appealed to the Court of Special Appeals; and

2. The power to establish a program for the transfer of development rights.

(ii) To provide by ordinance that a violation of a zoning law or regulation enacted under this section may be a civil zoning violation. The violation shall be enforced as provided in Article 66B, § 7.01 (c) of the Code.

(2) (i) It has been and shall continue to be the policy of this State that the orderly development and use of land and structures requires comprehensive regulation through implementation of planning and zoning controls.

(ii) It has been and shall continue to be the policy of this State that planning and zoning controls shall be implemented by local government.

(iii) To achieve the public purposes of this regulatory scheme, the General Assembly recognizes that local government action will displace or limit economic competition by owners and users of property.

(iv) It is the policy of the General Assembly and of this State that competition and enterprise shall be so displaced or limited for the attainment of the purposes of the State policy for implementing planning and zoning controls as set forth in this article and elsewhere in the public local and public general law.

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

1. To grant to the county powers in any substantive area not otherwise granted to the county by other public general or public local law;

2. To restrict the county from exercising any power granted to the county by other public general or public local law or otherwise;

3. To authorize the county or its officers to engage in any activity which is beyond their power under other public general law, public local law, or otherwise; or

4. To preempt or supersede the regulatory authority of any State department or agency under any public general law.

(Y) *County Board of Health*

To organize and establish a county board of health to act instead of the county council as the county board of health under Title 3, Subtitle 2 of the Health-General Article.

(Z) *Federally Assisted Watershed Projects*

To have the same powers enumerated in subsection (dd) of § 3 of Article 25 of this Code.

(AA) *Commission to Establish Compensation for County Councils*

To establish by ordinance a commission empowered to set compensation and allowances to be paid to members of county councils. When established, the commission shall set the compensation and allowances within 15 days after the beginning of the fourth year of the term of each council. The commission

by resolution shall submit its determination for compensation and allowances to the county council. The commission may recommend an increase or decrease in the compensation paid to members of the county council, but in no event may compensation or allowances be less than provided in the charter of the respective counties. Upon receiving the resolution, the council may reduce or reject the commission's recommendation, but it shall not increase any item in the resolution. The recommendations contained in the resolution shall become effective upon the adoption by the council of an ordinance encompassing the recommendations, but the salary specified at the time a council takes office shall not change for that period during which the council was elected.

The ordinance making any change in the salary paid to members of the county council shall be ordained prior to the election for the members of the next succeeding council and take effect only for the members of the next succeeding council.

(BB) *Historic and Landmark Zoning and Preservation*

To enact laws generally for historic and landmark zoning and preservation or to enact those laws in accordance with the provisions of Article 66B, § 8.01 et seq., or to enact such laws to be administered generally by an Historic District Commission and to provide for appeals. The authority conferred by this subsection shall be in addition to any existing charter provisions or local law providing for planning and zoning.

(CC) *Waiver of Sovereign Immunity*

Repealed by Acts 1987, ch. 594, effective July 1, 1987.

(DD) *Commercial or Industrial Redevelopment Projects*

To make use of federal or State financial assistance for commercial or industrial redevelopment projects for the purpose of making grants, loans, or guaranteeing loans to private entities; provided, that the authority granted by this subsection may be used only for commercial or industrial redevelopment projects and may not be used for residential or housing projects.

(EE) *Conditioning Acceptance of Certain Land Development*

To enact local laws conditioning the acceptance of any development of land for residential purposes approved by appropriate local authorities upon a demonstration, acceptable to local authorities, of compliance by the developer with the pertinent underground electric and telephone residential service regulations, including those pertaining to deposits, promulgated by the Public Service Commission of Maryland.

(FF) *Commercial District Management Authority*

In accordance with the provisions of this subsection, to establish a commercial district management authority for any commercial district within its geographical limits.

(1) As to each authority it establishes, the county governing body shall:

(i) Specify the membership, organization, jurisdiction, and geographical limits of the authority;

(ii) Specify one or more of the following as the purposes of the authority:

1. Promotion;

2. Marketing; and

3. The provision of security, maintenance, or amenities within the district; and

(iii) Provide such financing as it deems appropriate for the authority through fees which may be charged to, or taxes which may be levied against, businesses subject to the authority's jurisdiction.

(2) An authority established pursuant to this subsection may not:

(i) Exercise the power of eminent domain;

(ii) Purchase, sell, construct, or, as a landlord, lease office or retail space; or

(iii) Except as otherwise authorized by law, otherwise engage in competition with the private sector.

(3) Any fees or taxes imposed under this subsection shall be used only for the purposes stated in this subsection and may not revert to the general fund of the county.

(4) The county commissioners may establish an authority pursuant to this subsection as a special taxing district. (An. Code, 1951, § 5; 1939, § 3; 1924, § 3; 1918, ch. 456, § 3; 1949, ch. 339, § 3 (Q); ch. 646, § 3 (P); 1950, ch. 86, § 3 (Q); 1951, ch. 670, § 3 (U), (V), (W); 1953, ch. 199; 1955, chs. 558, 581; 1957, ch. 399, § 13; ch. 777; 1959, ch. 614, § 1; ch. 644; 1961, chs. 162, 462; 1962, ch. 36, § 21; 1964, chs. 14, 57; 1966, ch. 212; 1971, ch. 753; 1972, ch. 181, § 23; ch. 259, § 4; 1973, ch. 891; 1973, 1st Sp. Sess., ch. 4, § 5; 1974, chs. 122, 615; 1975, ch. 70, § 1; ch. 267, § 2; 1976, ch. 472, § 5; chs. 477, 825; 1977, ch. 234; 1978, ch. 742; 1980, chs. 325, 416, 429, 537; 1982, ch. 562, § 4; ch. 770, § 4; ch. 825; 1983, chs. 8, 395; 1984, ch. 285, § 3; ch. 752; 1985, ch. 10, § 1; chs. 41, 2; 1986, ch. 605; 1987, ch. 594; 1988, ch. 6, § 1; 1989, ch. 5, § 1.)

Effect of amendment. — The 1989 amendment, approved Mar. 9, 1989, and effective from date of passage, in (J), inserted "and" preceding "to regulate" in the first paragraph.

Editor's note. — Section 5, ch. 70, Acts 1975, provides that "insofar as the provisions of this act may be inconsistent with or contraty to the provisions of the Maryland-Washington Regional District Act, as enacted by Chapter 780 of the Acts of 1959 and any amendments thereto, the provisions of this act shall have no application so long as such District Act is in force and effect and nothing contained herein shall be deemed or construed to affect the validity, or operative effect, of said Chapter 780 of the Acts of 1959 as amended, which established city and regional planning in Montgomery and Prince George's counties within the limits of the Maryland-Washington Regional District as said district is now or shall hereafter be defined by law."

Section 2, ch. 742, Acts 1978, provides that "§ 5 (R) of Article 25A of the Annotated Code, as restated in § 1 of this act, constitutes a grant of legislative authority and does not limit, in and of itself, the authority vested in chartered counties under § 5 (P) of Article 25A relating to bonds and evidences of indebtedness."

Section 2, ch. 429, Acts 1980, provides that

the act shall not be construed to grant, expand, or enlarge the power of eminent domain of any county or city.

Section 2, ch. 594, Acts 1987, provides that "any provision or portion of a statute, law, ordinance, or charter provision enacted by a local government which is inconsistent with any provision of this act is repealed."

Section 3 of ch. 594 provides that "this act applies only to actions arising from events occurring on or after July 1, 1987."

Section 4 of ch. 594 provides that "every insurer providing liability insurance to a local government, as defined in this act, in this State shall submit to the Insurance Commissioner information on the nature and cost of reinsurance, the claims experience by category of local government, the amount of claims settlements and claims awards, the amount of reserves for claims incurred and incurred but unreported claims, the number of structured settlements used in payment of claims, and any other information relating to local government liability claims as prescribed by the Insurance Commissioner in rule and regulation. The Insurance Commissioner shall report its findings as to the impact of this act on the availability and affordability of local government liability insurance in this State to the Legislative Policy Committee of the General Assembly by October 31 of each year. This section shall remain effective through October 31, 1997, and with no further action required by the General Assembly, this section shall be abrogated and of no further force and effect."

Maryland Law Review. — For article on reclassification variances, and special exceptions in Maryland, see 21 Md. L. Rev. 306 (1961).

For note, "Local Legislation — Implied Preemption by Occupation — Local Election Ordinances Held Invalid Because State Legislation Impliedly Preempted Field," see 35 Md. L. Rev. 543 (1976).

For note, "Taking the Chartered Route Around Municipal Immunity," see 41 Md. L. Rev. 316 (1982).

For article, "Survey of Developments in Maryland Law, 1983-84," see 44 Md. L. Rev. 618, 663 (1985).

For comment discussing sovereign immunity from statutes of limitation in Maryland, see 46 Md. L. Rev. 408 (1987).

University of Baltimore Law Review. — For comment, "Maryland's Warrantless Inspection Laws: A Warrantless Expectation of Constitutionality," see 8 U. Balt. L. Rev. 88 (1978).

For comment, "State and Local Legislative Powers: An Analysis of the Conflict and Preemption Doctrines in Maryland," see 8 U. Balt. L. Rev. 300 (1979).

For article, "Preservation of Maryland Farmland: A Current Assessment," see 8 U. Balt. L. Rev. 429 (1979).

For article, "State Constitutional Law for Maryland Lawyers: Judicial Relief for Violations of Rights," see 10 U. Balt. L. Rev. 102 (1980).

For note discussing the exercise of police power by a nonlegislative body, see 11 U. Balt. L. Rev. 158 (1981).

For note discussing county ordinance enacted pursuant to Express Powers Act as prevailing over ordinances enacted by municipalities within that county pursuant to municipal Express Powers Act, see 12 U. Balt. L. Rev. 191 (1982).

For article, "Maryland's Growing Pains: The Need for State Regulation," see 16 U. Balt. L. Rev. 201 (1987).

For comment concerning federal, State and local regulation of hazardous and nonhazardous waste management, see 17 U. Balt. L. Rev. 114 (1987).

For article, "Impact Fees in Maryland," see 17 U. Balt. L. Rev. 502 (1989).

Express Powers Act enacted in obedience to mandate of Constitution. — Maryland Const., Article XI-A, § 2 required the General Assembly to provide by a public general law "a grant of express powers" to counties establishing a charter form of government. In obedience to the mandate the General Assembly enacted the Express Powers Act. Anne Arundel County v. Bowen, 258 Md. 713, 267 A.2d 168 (1970).

Pursuant to Md. Const., Article XI-A, § 2, the General Assembly enacted the Express Powers Act. Steimel v. Board of Election Supvrs., 278 Md. 1, 357 A.2d 386 (1976).

Pursuant to Md. Const., Article XI-A, § 2, the General Assembly enumerated the express powers granted to counties which adopted charters. Bradshaw v. Prince George's County, 284 Md. 294, 396 A.2d 255 (1979).

Underlying purpose of Md. Const., Article XI-A, is to share with the counties, within well-delineated limits, the legislative powers formerly reserved to the General Assembly. County Council v. Investors Funding Corp., 270 Md. 403, 312 A.2d 225 (1973).

"Legislative powers". — The legislature enacted the Express Powers Act, which endows charter counties with a wide array of legislative and administrative powers over local affairs. These "legislative powers" are those usually associated with the objects of government — that is, powers to legislate for the benefit of the health, safety and general welfare of the local community. Ritchmount Partnership v. Board of Supvrs. of Elections, 283 Md. 48, 388 A.2d 523 (1978).

Effect of delegation by General Assembly. — Once a particular power has been delegated under this article, the State Constitution

DIVISION 5. [RESERVED]*

ARTICLE VI. COUNTY BOARD OF APPEALS†

Sec. 601. Appointment; terms; compensation.

There is hereby created and established a county board of appeals consisting of seven members who shall be appointed by the county council. Each member of the county council shall have the right to nominate one person to serve on the board of appeals. The first board of appeals appointed after this amendment shall consist of two members appointed for a term of one year, two members appointed for a term of two years and three members appointed for a term of three years. Thereafter, all appointments or reappointments shall be for three-year terms except that an appointment to fill a vacancy occurring before the expiration of a term shall be for the remainder of the unexpired term. All members of the board shall be residents of Baltimore County, and appointments shall be made so no more than five (5) of the members of the board shall be members of the same political party. The county council shall by legislative act set the compensation of the county board of appeals; provided, however, that no reduction in salary shall affect the compensation of a member of the county board of appeals during his current term. The board of appeals as constituted at the time of this amendment shall remain in effect until changed as provided in this section of the Charter.
(Bill No. 85, 1978, § 1; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 53, 1982, § 1; approved by voters Nov. 2, 1982; effective Dec. 2, 1982)

Sec. 601.1. [Repealed.]

Repealed by Bill No. 85, 1978, § 2. (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

*Editor's note—Division 5, consisting of section 544, was repealed by Bill No. 132, 1990, § 1, which was approved by the voters on Nov. 6, 1990; effective Dec. 7, 1990.

†Editor's note—The title of this article was changed by Bill No. 85, 1978. Approved by voters Nov. 7, 1978; effective Dec. 8, 1978.

Sec. 602. Powers and functions of county board of appeals.

The county board of appeals shall have and may exercise the following functions and powers:

(a) *Appeals from orders relating to zoning.* The county board of appeals shall have and exercise all the functions and duties relating to zoning described in Article 25A of the Annotated Code of Maryland [Ann. Code of Md., art. 25A] as such functions and powers may be prescribed by legislative act of the County Council. All references in law to the board of zoning appeals shall be construed to refer to the county board of appeals. In all cases, except those excluded by this Charter or by legislative act of the county council, the order of the county board of appeals shall be final unless an appeal is taken therefrom in the manner provided in section 604 of this article. (Bill No. 85, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

(b) *Appeals from orders relating to licenses.* The county board of appeals shall have and exercise all the functions and powers of the board of license appeals as such functions and powers are prescribed in the public local laws of the county in effect at the time of the adoption of this Charter. All references in said laws to the board of license appeals shall be construed to refer to the county board of appeals created by this article. As soon as the county board of appeals has been duly constituted by the appointment and qualifications of its members as herein provided, the board of license appeals shall cease to exist.

(c) *Appeals from orders relating to building.* The county board of appeals shall hear and decide all appeals from orders relating to building. (Bill No. 85, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

(d) *Appeals from executive, administrative and adjudicatory orders.* The county board of appeals shall hear and decide appeals from all other administrative and adjudicatory orders as may from time to time be pro-

vided by Article 25A of the Annotated Code of Maryland (1957 Edition), as amended, or by legislative act of the county council not inconsistent therewith.

(e) The county board of appeals shall have original and exclusive jurisdiction over all petitions for reclassification. (Bill No. 85, 1978, § 3) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

Sec. 603. Rules of practice and procedure.

Subject to the approval of the county council, the county board of appeals shall have authority to adopt and amend rules of practice and procedure to cover the conduct of its proceedings. Such rules may include matters relating to filing fees, meetings and hearings conducted by the board, the manner in which the chairman of the board shall be selected and the term for which he shall serve as chairman, and all other matters deemed appropriate or necessary for the board to conduct its proceedings. Said rules and regulations when approved by the county council shall have the force and effect of law. All decisions of the county board of appeals shall be made after notice and opportunity of hearing upon the issues before said board. All hearings held by the board shall be heard de novo, unless otherwise provided by legislative act of the County Council, and shall be open to the public. The board shall cause to be maintained complete public records of its proceedings, with a suitable index.
(Bill No. 85, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

Sec. 604. Appeals from decisions of the board.

Within thirty days after any decision by the county board of appeals is rendered, any party to the proceeding who is aggrieved thereby may appeal such decision to the circuit court of Baltimore County, which shall have power to affirm the decision of the board, or, if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing, as justice may require. Whenever such appeal is taken, a copy of the notice of appeal shall be served on the board by the clerk of said court, and the board shall promptly give notice of the appeal to all parties to the proceeding before it. The board shall, within fifteen days after the filing of the appeal, file with the court the originals or certified copies of all papers and evidence presented to the board in the proceeding before it, together with a copy of its opinion which shall include a statement of the facts found and the grounds for its decision. Within thirty days after the decision of the circuit court is rendered, any party to the proceeding who is aggrieved thereby may appeal such decision to the court of appeals of this state. The review proceedings provided by this section shall be exclusive.

Annotation—One must be a taxpayer or a "party aggrieved" to seek review by the circuit court of a decision of the board of zoning appeals and to appeal from the circuit court to the court of appeals. Southland Hills Improvement Assn. v. Raine, 220 Md. 213, 151 A.2d 735 (1959).

Cited in Prince George's County v. Donohue, 220 Md. 372, 152 A.2d 560 (1959).

Referred to in Renz v. Bonfield Holding Co., 223 Md. 34, 158 A.2d 615 (1960); and in Jobar Corp. v. Rodgers Forge, 236 Md. 106, 202 A.2d 612 (1964).

Certain persons owning property near property proposed for rezoning constitute "parties aggrieved" within the meaning of this section. Wier v. Witney Land Company, 257 Md. 600, 263 A.2d 833 (1970).

Sec. 605. Employees of the board.

The board may appoint such employees, and the county executive shall make available to the board such services and facilities of the county as are necessary or appropriate for the proper performance of its duties. The county attorney or some member of the legal staff whom the county attorney designates shall serve as counsel to the board.
(Bill No. 172, 1981, § 1) (Approved by voters Nov. 2, 1982; effective Dec. 3, 1982)

Sec. 606. Furthering legislation.

The county council shall have the power to enact furthering legislation not inconsistent with the provisions of this article to implement and define the powers and functions of the county board of appeals as herein specified. To the extent permitted by the public general laws of this state, the county council shall also have the power, by legislative act, to prescribe other appeals to be heard

(b) The zoning commissioner shall furnish with reasonable promptness a copy of any paper or record in his office to any person applying for same upon payment in advance of the sum of fifty cents ($0.50) per page or as otherwise established by the administrative officer for transcribing, photographing, or otherwise reproducing such paper. Such reproduction when so made and certified under the seal of the zoning commissioner shall be evidence in any court or before any county board, commission, or official.

(c) The zoning commissioner shall permit any resident of the county or representative of the press to inspect and examine, as soon as received for filing or at any time thereafter, all papers filed in the zoning commissioner's office and to make memoranda or notes therefrom for any lawful purpose whatsoever, without payment of fees therefor, and also to examine the records and indexes in his office, free of charge. It shall be the duty of the zoning commissioner to afford such person immediate access to such papers or records and a full opportunity to examine the same and make memoranda therefrom.

(d) All records kept by the zoning commissioner shall be open to inspection by the county executive or any member of the county council at all reasonable times, whether or not such records are required to be kept by statute or ordinance. The zoning commissioner is authorized, in his discretion, to permit other county officials to remove a zoning file from his office; provided such official signs a regular receipt book to be kept by the zoning commissioner as a permanent record which shall show the date and time that such file is taken and returned. When the file is returned, the receipt book must be signed by the person who had withdrawn the file and countersigned by the zoning commissioner or his deputy.

(e) Nothing contained in this title or elsewhere shall prevent the zoning commissioner from transferring any file in his official custody to the board of appeals or to any circuit court or to the state court of appeals while review of proceedings is pending, and upon making such transfer the zoning commissioner is hereby relieved from any duties or responsibilities in connection therewith until such file is returned to him.

(f) The provisions of this section shall be executed by the deputy zoning commissioner as well as the zoning commissioner, and they may delegate to their chief clerk the performance of the daily duties and responsibilities in connection therewith.

(Code 1978, § 22-30; Bill No. 18, 1990, § 2; Bill No. 4, 1992, § 1)

Sec. 26-132. Appeals to county board of appeals.

(a) Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decision or order of the zoning commissioner or the director of zoning administration and development management shall have the right to appeal therefrom to the county board of appeals. No official, office, department, or board of the county aggrieved or feeling aggrieved by any decision of the zoning commissioner shall have the right to appeal therefrom to the county board of appeals without the prior approval of the administrative officer and the county attorney. People's counsel is not subject to such prior approval. Notice of such appeals shall be filed, in writing, with the director within thirty (30) days from the date of any final order appealed, together with the required fee as provided in the zoning regulations. Such appeals shall be heard and disposed of by the county board of appeals as may be provided in the Charter and the board's own rules of procedure. Any reclassification when granted by the county board of appeals shall, in the absence of an appeal therefrom, have the force and effect of law.

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

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

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

1. If incorporated, any geographic description contained in the associa-

tion's corporate articles, bylaws, charter, or similar document;

2. If not so incorporated, by any metes and boundaries description for the association contained in any zoning map, plat, or similar document on file at the county department of public works, the land records office of the county, or at some other county governmental agency or department;

3. If no such description exists, by any street, road, or thoroughfare description for the association contained in any zoning map, plat, or similar document on file in the county department of public works, the land records office of the county, or at some other county governmental agency or department; or

b. The property or issue is of such a nature and kind as to be within the association's discernable and assessable tax base if such exists; or of such a nature as to personally and specifically affect, damage, or impact the members of the association in a way different from that suffered by the members of any other associations or in a way different from a general interest such as is the concern shared by the public in general; or of such a nature or type as to give the members of the association a valid and discernible property interest therein or right thereto.

(2) The association complies with the rules of procedure of the board.

(Code 1978, § 22-32; Bill No. 18, 1990, § 2; Bill No. 116, 1990, § 2; Bill No. 4, 1992, § 1)

Annotations—Remedy provided under title 34 of 1958 Code *held to be an alternative to that afforded* by this section, at least where it is affirmatively alleged that the planning board has violated zoning regulations and that a violation of either the zoning or the subdivision regulations was subject to an injunction under title 34. Lynn v. Goldman, 216 Md. 562, 141 A.2d 172 (1958).

County council need not follow the recommendations of the planning board, and need not have any further or additional hearing in regard to any changes or amendments the county council may see fit to make. Swathmore Company v. Kaestner, 258 Md. 517, 266 A.2d 341 (1970).

The people's counsel has the right to appeal zoning decisions. People's Counsel for Baltimore County v. Williams, 45 Md. App. 617, 415 A.2d 585 (1974).

Sec. 26-133. Appeals from the county board of appeals.

Appeals from the county board of appeals to the courts may be taken in the manner provided in article VI of the Charter.

(Code 1978, § 22-33)

Annotations—This section (34-7, 1958 Code) directs that the court of appeals shall not award cost of the appeal against any party to the appeal except the appellant. Kroen v. Board of Zoning Appeals of Baltimore County 209 Md. 420, 121 A.2d 181 (1956).

The adoption of a new land use may have caused issuance of the appeal to become moot. This section directs that the court of appeals should not award cost of the appeal against *any party to the appeal except the appellant.* Lake Falls Assn. v. Board of Zoning Appeals of Baltimore County, 209 Md. 561, 121 A.2d 809 (1956); Grau v. Board of Zoning Appeals of Baltimore County, 210 Md. 21, 122 A.2d 825 (1956); Hardesty v. Board of Zoning Appeals of Baltimore County, 211 Md. 174, 126 A.2d 621 (1956).

Cited in Prince George's County v. Donohue, 220 Md. 372, 152 A.2d 560 (1959).

Construed in Renz v. Bonfield Holding Co., 223 Md. 34, 158 A.2d 615 (1960).

This section before amendment provided that in the appeal of zoning cases "the court of appeals shall not award cost of the appeal against any party to the appeal except the appellant." Maryland Rule 882a provides that in all cases in the court of *appeals "the awarding of costs* shall be in the discretion of this court, but unless it is otherwise ordered by this court, costs shall be awarded against the losing party." Held, that Maryland Rule 882 applies. Reese et al. v. Mandel et ux., 224 Md. 121, 167 A.2d 111 (1961).

Referred to in Renz v. Bonfield Holding Co., 223 Md. 34, 158 A.2d 615 (1960).

A person who was not a party to a proceeding before the board of appeals has no standing to appeal from an order entered by the board of appeals, Hitzrot v. County Board of Appeals, 262 Md. 297, 278 A.2d 11 (1971).

Sec. 26-134. Correction of zoning map.

(a) The owner of any property may give written notice to the director of planning and zoning that the zoning map last enacted by the county council does not accurately reflect the final zoning classification imposed by the council on the owner's property during the last or prior comprehensive

Reclamation property means the site of a legally operating quarry and all contiguous or adjacent property in common ownership, including property that may be separated by public streets and containing a minimum of three hundred (300) acres.

Residential development means the development of land for any purpose or use permitted as of right or by special exception in the following zones and districts of the county: All DR and RC Zones, RAE-1, RAE-2, R-O and residential transition areas.

Steep slope means an area where the natural grade is twenty-five (25) percent or greater.

Street means any street, avenue, boulevard, road, lane, parkway, freeway, viaduct, bridge or other way, which is an existing state or county highway, or a street or way shown on a plat duly filed and recorded in the office of the clerk of the circuit court for the county, and includes the land between the street right-of-way lines, whether improved or unimproved, and may comprise pavements, shoulders, curbs and gutters, sidewalks, parking areas and other areas within the street right-of-way lines.

Subdivision means the division of property into two (2) or more lots or the combination of lots, parcels, tracts or other units of property previously divided for the purpose, whether immediate or future, of sale, rental or building development.

Wetland means:

(1) A private wetland or a state wetland as defined in Ann. Code of Md., Natural Resources article, § 9-101, and, if a private wetland, as delineated under the procedures of Ann. Code of Md., Natural Resources article, § 9-301; or

(2) A wetland as defined in section 16 U.S.C.A. § 1302 and as described in 7 C.F.R. § 7.752.2; or

(3) An area not designated under these provisions but which is inundated or saturated by surface water or groundwater and which supports vegetation predominantly adapted to saturated soils and which has been designated as a wetland by ordinance of the county council.

(Code 1978, § 22-39; Bill No. 172, 1989, § 2; Bill No. 1, 1992, § 2; Bill No. 173-93, § 3, 11-17-93)

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

Sec. 26-169. Scope of regulations.

These regulations shall apply to all development except: (i) such development which, prior to the effective date of this article (June 11, 1982), has received tentative approval of the preliminary plan by the planning board or for which development a valid, unexpired building permit exists, or for which development a current executed public works agreement exists, all of which development shall be governed by the subdivision regulations in effect at the time of said preliminary plan approval, building permit issuance, or public works agreement execution, as the case may be. Proposed development shall be in compliance with the present zoning classification on the subject property; (ii) such development as has received a CRG approval, reclamation plan approval, any other project vested by law or such development for which a CRG plan has been accepted for filing by the department of public works prior to the date of adoption of Bill 1-92, all of which development shall be governed by the subdivision regulations in effect at the time of said approval or acceptance for filing, as the case may be.

(Code 1978, § 22-40; Bill No. 18, 1990, § 2; Bill No. 1, 1992, § 2)

Sec. 26-170. General exemption.

The subdivision of land for agricultural purposes is exempt from these regulations if no new streets are involved, subject to compliance with all applicable zoning regulations.

(Code 1978, § 22-41; Bill No. 18, 1990, § 2)

Sec. 26-171. Limited exemptions.

(a) The following development is exempt from division 2 of this article only. Compliance with divisions 3, 4 and 5 is required as is compliance with all applicable zoning regulations.

(1) The building or preparation of land for building for a dwelling for one (1) or two (2) families (i) on a single lot or tract which is not part of a recorded plat, or (ii) on a lot or lots exempt from the lapse provisions of section 26-216.

(2) The building or preparation of land for building on a lot of record lawfully in effect at the time of the building or preparation of the land for building if the lot of record did not result from a subdivision of land exempt under section 26-170.

(3) The construction of one (1) tenant house or the location of one (1) trailer on a farm tract.

(4) The subdivision of property pursuant to court order, a will or the laws of interstate succession.

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

(6) The subdivision of land into three (3) or fewer lots for residential single-family dwellings, provided that they are not served by a panhandle driveway. If the lots are served by a panhandle driveway, the development is exempt from the requirements of sections 26-202 and 26-205 only.

(7) The construction of residential accessory structures or minor commercial structures.

(8) The construction of a building owned and operated by a county volunteer fire, ambulance or rescue company which is used primarily for storage or training purposes, fund-raising activities, or other purposes related to rescue or fire-suppression activities.

(9) Lot line adjustments in residential zones which are not part of an approved final development plan or zoning plan.

(10) A subdivision of land into three (3) or fewer lots recorded prior to January 26, 1990.

(b) The following development is exempt from the community input meeting and hearing officer's hearing pursuant to sections 26-202 and 26-206:

(1) Lot line adjustments, including the combination of lots or parcels.

(2) The subdivision of property pursuant to court order, a will or the laws of intestate succession.

(3) Amendments to an approved plan or plat which do not materially alter the proposed development.

(4) The subdivision of land in an approved state agricultural land preservation district or county agricultural easement for the purpose of the conveyance of lot(s) to the owner or his children pursuant to title 2, subtitle 5 of the agricultural article of the Annotated Code of Maryland and article XI of the Baltimore County Code. The use or development of land in a county agricultural easement established in accordance with section 14-457 of article XI of the Baltimore County Code, shall be governed by agricultural land preservation provisions enacted by the county council pursuant to section 14-461 of that article in the case of any conflict between those provisions and the Baltimore County zoning regulations.

(5) The subdivision of a farm tract into two (2) lots.

(6) The subdivision of land into three (3) or fewer lots for residential single-family dwellings.

(7) The construction of accessary structures.

(8) The subdivision of land or buildings in a planned office or industrial park for which a development plan has been approved in accordance with these regulations.

(9) A minor development, as defined in section 26-168, not to exceed a total of three lots.

(Code 1978, § 22-42; Bill No. 172, 1989, § 2; Bill No. 18, 1990, §§ 2, 3; Bill No. 106, 1990, §§ [illegible]; Bill No. 1, 1992, § 2; Bill No. 50-93, 1993, § [illegible]

IN RE	*	BEFORE THE
PETITION FOR LIMITED EXEMPTION	*	COUNTY BOARD OF
S JOPPA ROAD, 360' W OF THE	*	APPEALS FOR
c/l OF BELAIR ROAD (4140-4142 EAST	*	BALTIMORE COUNTY
JOPPA ROAD) 11TH ELECTION	*	Case No. CBA-97-129
DISTRICT, 5TH COUNCILMANIC	*	
DISTRICT, DRC#05197C	*	
GEORGE AND PEGGY MAMARAS Petitioners	*	

* *

PROTESTANT'S PROPOSED FINDINGS OF FACT

Upon review of the testimony and evidence presented before the Board in relation to the above captioned case, the County Board of Appeals for Baltimore County herein finds as a matter of fact:

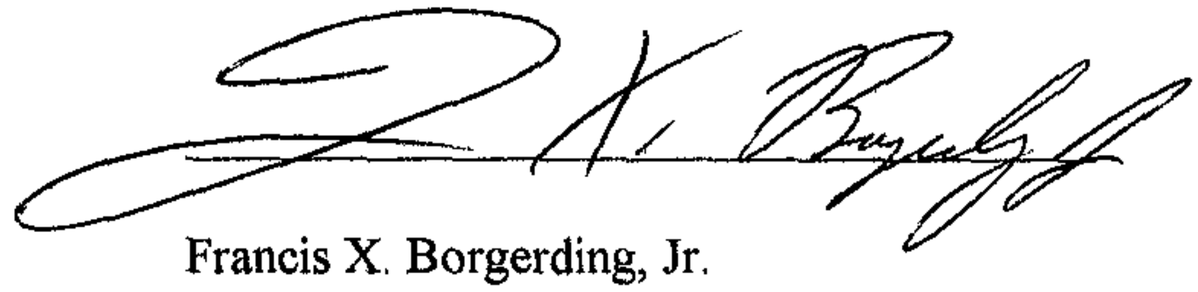
That the Petitioner's proposed use of 4142 East Joppa Road and 4140 East Joppa Road fails to qualify for a limited exemption under Section 26-171.A.7 of the Baltimore County Code.

Accordingly, Petitioner's requested limited exemption for 4140 and 4142 East Joppa Road is hereby denied.

Or, in the alternative, regarding Petitioner's requested limited exemption for 4140 East Joppa Road, Petitioner's ROA zoned property fails to meet the requirements for granting of a limited exemption under Section 26-171.a.7 of the Baltimore County Code and accordingly, Petitioner's requested limited exemption under Section 26-171.a.7 of the Baltimore County Code for its property located at 4140 East Joppa Road is hereby denied.

CERTIFICATE OF SERVICE

I certify that on this 9th day of March, 1998 a copy of the foregoing Protestant's Proposed Findings of Fact was mailed to G. Scott Barhight, Esquire, Whiteford, Taylor and Preston, 210 West Pennsylvania Avenue, Towson, MD 21204-4515.



Francis X. Borgerding, Jr.

6-3-97

IN RE: PETITION FOR SPECIAL HEARING N/S Joppa Road, 360' W of the c/l of Belair Road (4140 East Joppa Road) 11th Election District 5th Councilmanic District Peggy Marmaras Petitioner	* * * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 97-455-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Special Hearing for that property known as 4140 East Joppa Road, located in the vicinity of Belair Road in Perry Hall. The Petition was filed by the owner of the property, Peggy Marmaras, a Joint Tenant, through her attorney, Julie D. Wright, Esquire. The Petitioner seeks approval of parking in an R.O.A. zone for a proposed diner located on an adjacent parcel, zoned B.L., pursuant to Section 409.8.B of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were George and Peggy Marmaras, joint owners of the subject property, Art Leonard, Professional Engineer, who prepared the site plan for the property, and several other parties who appeared in support of the request. The Petitioners were represented by G. Scott Barhight, Esquire and Julie D. Wright, Esquire, attorneys at law. Appearing as Protestants in the matter were numerous residents from the surrounding community, all of whom signed the Protestant's Sign In sheet. Ms. Dorothy McMann, a representative of the Perry Hall Improvement Association, participated at the trial table.

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Date 6/3/97
By

Testimony and evidence offered revealed that the subject property consists of 0.23 acres, more or less, zoned R.O.A., and is improved with a one and one-half story building. The Petitioners propose to raze this building and use the property as a parking lot for a proposed restaurant on the adjacent property. By way of background, the proposed restaurant use on the adjacent property came before this Deputy Zoning Commissioner in Case No. 97-193-SPHA. In that case, the Petitioners sought special hearing and variance relief for a proposed diner on that site; however, at that time the Petitioners did not have sufficient property and parking to support a restaurant use, and by Order issued December 17, 1996, the special hearing and variance requests were denied. Since that hearing, the Petitioners have purchased from Mr. & Mrs. Schaeffer, two of the Protestants who attended the prior hearing, the subject 0.23 acre parcel. The Petitioners propose to incorporate this property into the other parcel owned by them and use same as a parking lot for the proposed diner. By acquiring this additional land, the Petitioners now meet all parking requirements imposed by the B.C.Z.R. However, due to the zoning of the property as R.O.A., a special hearing is necessary in order to utilize same for parking. It is to be noted that the zoning of this parcel is unusual in that all of the other property surrounding the Schaeffer parcel is zoned B.L.

The Petitioners indicated that they have submitted a landscape plan to the Landscape Architect for review and approval. A copy of that plan was submitted into evidence as Petitioner's Exhibit 2. The plan shows extensive landscaping in an effort to buffer the restaurant from adjacent residential properties. In addition, the landscape plan shows a 6-foot high board on board fence which will run along the entire buffer area

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Date
By

between the restaurant use and the properties owned by Mr. Clinton Marshall and Ms. Bertha Ginn.

As noted above, many residents from the surrounding community appeared in opposition to the Petitioner's request. The cumulative testimony of all of the Protestants is that they do not favor a diner-type restaurant being built at this location. As is well known in the area, traffic along Belair Road in this area is very heavy. That, in conjunction with the renovations currently taking place on Belair Road, makes driving this road difficult. Furthermore, both Belair Road and Joppa Road are heavily travelled roads, and thus, traffic in this area is a major concern to these citizens. These residents would prefer not to see a diner-type restaurant at this location.

I explained to the Protestants in attendance that the issue of whether a diner is an appropriate use on the adjacent property was not properly before me. In fact, the B.C.Z.R. permit a restaurant use on B.L. zoned land as a matter of right. The hearing before me is only to determine whether parking for the proposed restaurant should be permitted on the subject property, which is zoned R.O.A.

After considering all of the testimony and evidence offered at the hearing, I am persuaded to grant the relief requested. I find that the acquisition of the Schaeffer property and utilizing same as a parking lot to support the adjacent use is appropriate. At the first hearing before me in December, residents in opposition to this diner asserted that the Petitioner should acquire the Schaeffer parcel and incorporate same into this project. Now the opponents argue that parking on this parcel should not be permitted. The acquisition of the Schaeffer property provides a tremendous benefit to the proposed restaurant use. Not only do

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Date 6/3/92
By

the Petitioners meet all parking and setback requirements, but the Petitioners are now able to move the Joppa Road entrance to the restaurant further to the west, offering a safer ingress and egress to the parking lot. Therefore, I find it is appropriate for this 0.23 acre parcel to be utilized for parking as accessory to the proposed restaurant.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioners seek relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

The Petitioners also had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioners have shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

ORDER RECEIVED FOR FILING
Date 6/3/91
By

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 3rd day of June, 1997 that the Petition for Special Hearing seeking approval of parking in an R.O.A. zone for a proposed diner located on an adjacent parcel, zoned B.L., pursuant to Section 409.8.B of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

> 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
>
> 2) Prior to the issuance of any permits, the Petitioners shall obtain approval of a landscape plan which must be submitted for review and approval by the Landscape Architect for Baltimore County.
>
> 3) When applying for a building permit, the site plan and landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

ORDER RECEIVED FOR FILING
Date 6/3/97
By

Baltimore County
Zoning Commissioner
Office of Planning and Zoning

Suite 112, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4386

June 3, 1997

C. Scott Barhight, Esquire
Julie D. Wright, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, 4th Floor
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
N/S Joppa Road, 360' W of the c/l of Belair Road
(4140 East Joppa Road)
11th Election District - 5th Councilmanic District
Peggy Marmaras - Petitioner
Case No. 97-455-SPH

Dear Mr. Barhight & Ms. Wright:

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

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

Very truly yours,

Timothy Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. & Mrs. George Marmaras
9127 Cornflower Road, Baltimore, Md. 21237

Ms. Dorothy McMann
9513 Dawnvale Road, Baltimore, Md. 21236

People's Counsel; Case Files

Printed with Soybean Ink
on Recycled Paper

RE: PETITION FOR SPECIAL HEARING 4140 East Joppa Road, N/S Joppa Road, 360' W of c/l Belair Road 11th Election District, 5th Councilmanic Peggy Marmaras Petitioner	* * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 97-455-SPH

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

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates 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 23rd day of May, 1997, a copy of the foregoing Entry of Appearance was mailed to Julie D. Wright, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204, attorney for Petitioners.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

Case No. 97-455-SPH

PEGGY MARMARAS - Petitioner

N/s Joppa Road, 360' W of the c/l of Belair Road
(4140 East Joppa Road)

11th District Appealed: 7/3/97

-Attached Petitioner's
Exh. #1 - Site Plan

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 4140 East Joppa Road

97-~~445~~-SPH

which is presently zoned ROA

This Petition shall be filed with the Office of Zoning Administration & Development Management.
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County to determine whether or not the Zoning Commissioner should approve

Pursuant to BCZR Section 409.8.B, parking in an ROA zone for a diner located on an adjacent parcel zoned BL. (4142 E. Joppa Road)

97-455-SPH

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

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:

(Type or Print Name)

Signature

Address

City State Zipcode

Legal Owner(s):

Peggy Marmaras (Joint Tenancy Owner)
(Type or Print Name)

Peggy Marmaras
Signature

(Type or Print Name)

Signature

9127 Cornflower Rd. 256-4755
Address Phone No.

Baltimore MD 21237
City State Zipcode

Attorney for Petitioner:

Julie D. Wright and Whiteford, Taylor & Preston L.L.P.
(Type or Print Name)

Signature

210 W. Pennsylvania Ave. 832-2000
Address Phone No.

Towson MD 21204
City State Zipcode

Name, Address and phone number of representative to be contacted.

Julie D. Wright
Name

210 W. Pennsylvania Ave., 832-2084
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: JRA DATE 4-16-97

ORDER RECEIVED FOR FILING
Date 4/3/97
By

455

SPECIAL HEARING AREA DESCRIPTION
ZONING DESCRIPTION
FOR
4140 EAST JOPPA ROAD

97-455-SPH

~~97-445-SPH~~

Beginning at a point on the north side of Joppa Road which is 84 feet, more or less, wide at the distance of 360 feet west of the centerline of the nearest improved intersecting street, Bel Air Road, which is 80 feet wide and described as follows:

N 04*18'19" W 160.02 ft., N 85*49'13" E 60.00 ft.,
S 00*34'07" E 150.19 ft., and S 74*31'01" W 51.66 ft.
to the place of beginning, containing 0.20 acres ,
also known as 4140 E. Joppa Road and located in
the 11th Election District, 5th Councilmanic District.

STATE OF MARYLAND
RONALD MAURICE KEARNEY
No. 91
REGISTERED
PROPERTY LINE SURVEYOR

455

97-455-SPH

Property Description
Zoning Description
for
4142 East Joppa Road

~~97-445-SPH~~

Beginning at a point on the South side of Brookfield Road which is 50 feet wide at the distance of 318 feet West of the centerline of the nearest improved intersecting street Bel Air Road which is 80 feet wide, as recorded in Deed Liber 8980 Folio 151 and Deed Liber 10109 Folio 712 and described as follows:

S 81* 30' 12" E 144.58 ft, S 46* 50' 38" W 18.42 ft,
S 36* 37' 22" W 161.84 ft, S 29* 26' 33" W 155.26 ft,
Southwesterly by a curve, 47.17 ft with radius of 292.01 ft,
S 74* 31' 01" W 129.72 ft, N 04* 08' 19" W 160.02 ft,
N 85* 49' 13" E 125.21 ft, and N 30*13' 58" E 201.00 ft
to the place of beginning, containing 1.21 acres, also
known as 4142 E. Joppa Road and located in the 11th
Election District, 5th Councilmanic District.

STATE OF MARYLAND
RONALD MAURICE KEARNEY
No. 91
REGISTERED
PROPERTY LINE SURVEYOR

455

97-455-SPH

SPECIAL HEARING AREA DESCRIPTION
ZONING DESCRIPTION
FOR
4140 EAST JOPPA ROAD

~~97-445-SPH~~

Beginning at a point on the north side of Joppa Road which is 84 feet, more or less, wide at the distance of 360 feet west of the centerline of the nearest improved intersecting street, Bel Air Road, which is 80 feet wide and described as follows:

N 04*18'19" W 160.02 ft., N 85*49'13" E 60.00 ft.,
S 00*34'07" E 150.19 ft., and S 74*31'01" W 51.66 ft.
to the place of beginning, containing 0.20 acres ,
also known as 4140 E. Joppa Road and located in
the 11th Election District, 5th Councilmanic District.

STATE OF MARYLAND
RONALD MAURICE KEARNEY
No. 91
REGISTERED
PROPERTY LINE SURVEYOR

455

CERTIFICATE OF PUBLICATION

TOWSON, MD., May 1, 1997

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 May 1, 1997

THE JEFFERSONIAN,

A. Henicksen

LEGAL AD. - TOWSON

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 in Towson, Maryland on the property identified herein as follows:

Case: #97-455-SPH
4140 East Joppa Road
N/S Joppa Road, 360' W of c/l Belair Road
11th Election District
5th Councilmanic
Legal Owner(s):
Peggy Marmaras

Special Hearing: to approve parking in an RO zone for a diner located on an adjacent parcel zoned BL.

Hearing: Thursday, May 29, 1997 at 11:00 a.m. 4th floor hearing room, County Building, 401 Bosley Avenue.

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.

5/049 May 1 C139429

Baltimore County
Department of Permits and
Development Management

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

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

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

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

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

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

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 455.

Petitioner: MARMADAS.

Location: 4140 & 4142 E - JOPPA RD.

PLEASE FORWARD ADVERTISING BILL TO:

NAME: WHITEFORD TAYLOR & PRESTON L.L.P.

ADDRESS: 210 W. PENNSYLVANIA AVE.

PHONE NUMBER: 832-2000

AJ:ggs

(Revised 09/24/96)

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 036751

DATE 5/7/97 ACCOUNT R-001-6150

AMOUNT $40.00

RECEIVED FROM: Whitford Taylor Preston

FOR: 05197C Double T Farm

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
05/07/97 04 7 LBS R 5453
Dept 5 513 ZONING VERIFICATION
CR NO. 036751
$40.00 CK P-A-I-D
Baltimore County Maryland
Office Of Budget & Finance

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

#455.

No. 035974

DATE 4-16-97. ACCOUNT R-001-6150

AMOUNT $ 250.00

RECEIVED FROM: WHITEFORD TAYLOR
C/O Carl Berg. Re: Parking

FOR: Total 250

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
04/16/97 02 7 LBS R 7794
Dept 5 513 ZONING VERIFICATION
CR NO. 035974
$250.00 CK P-A-I-D
Baltimore County Maryland
Office Of Budget & Finance

CASHIER'S VALIDATION

Exhibit B

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

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

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.:_____

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

PLACE: *

DATE AND TIME: *

REQUEST: PARKING IN AN RO'A ZONE FOR COMMERCIAL USE IN ADJACENT BUSINESS ZONE (SAME OWNERSHIP)

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

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

HANDICAPPED ACCESSIBLE

9/96
post.4.doc

*UPON RECEIPT OF THE NOTICE OF HEARING, THE PETITIONER OR HIS AGENT FILLS IN THIS INFORMATION AND THEN FORWARDS THIS FORM TO THE SIGN POSTER.

#455

CERTIFICATE OF POSTING

RE: Case # 97-455-SPH

Petitioner/Developer:
(Peggy Marmaras)
Date of Hearing/~~Closing~~:
(May 29, 1997)

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

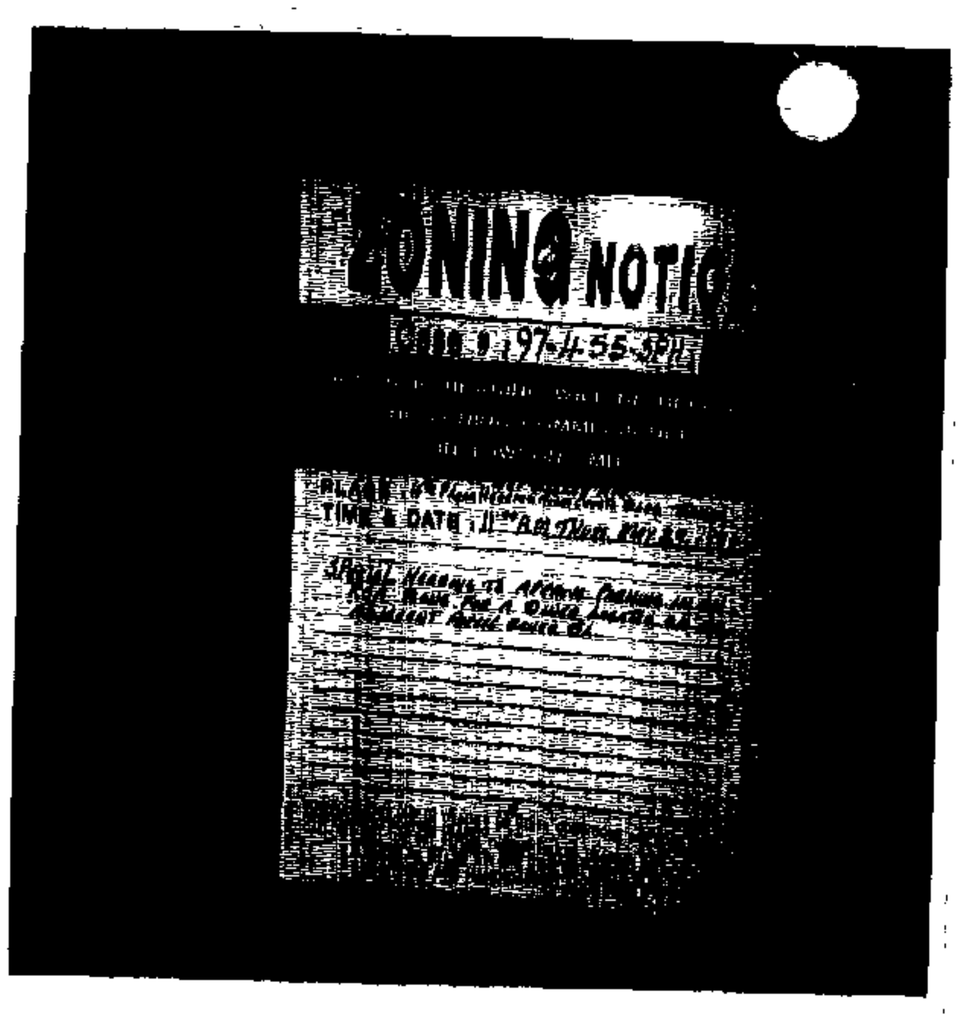
Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

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

4140 East Joppa Road Baltimore, Maryland 21234

The sign(s) were posted on May 14, 1997
(Month, Day, Year)



97-455-SPH

Sincerely,

5/14/97
(Signature of Sign Poster & Date)

Thomas P. Ogle, Sr.
(Printed Name)

325 Nicholson Road
(Address)

Baltimore, Maryland 21221

(410)-687-8405
(Telephone Number)

CERTIFICATE OF POSTING

RE: Case No.: 97-455 SPH

Petitioner/Developer: PEGGY MARMARAS

Date of Hearing/Closing: _____

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

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at FRONT OF PROPERTY BETWEEN 4140 & 4142 E. JOPPA RD.

The sign(s) were posted on 8/8/97
(Month, Day, Year)

Sincerely,

Gary Freund 8/8/97
(Signature of Sign Poster and Date)

GARY FREUND
(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

RECEIVED
COUNTY BOARD OF APPEALS
97 AUG 14 AM 10: 30

Development Review Committee Request Form

0519 TC

3 Copies of the Plan are Required **FEE: $** 40.00 (payable to Baltimore County and is non-refundable)

Applicant & Engineer Name: George Marmaras/ KLS Consultants, Inc. Filing Date: _____

Address: 102 North Main Street Phone #: (410) 838-1441

Bel Air, Maryland 21014 Acreage: ±1.21 acres

Project Name: Double 'T' Diner PDM File #: _____

Project Address: 4140/4142 E. Joppa Road ADC Map #: _____

Councilmanic District: 5th Election District: 11th Building Permit #: _____

Request: ☐ Refinement ☒ Limited Exemption ☐ Waiver (see yellow form for requirements)

(Attach letter if necessary)

MAY 1 1997

DO NOT WRITE BELOW THIS LINE! TO BE FILLED OUT BY COUNTY

Committee Action:

DRC #: Tabled until 5-29-97 Hearing

( ) Denied
( ) Limited Exemption under Section 26-171( )( )
( ) Material Amendment to the plan *(new CRG or HOH must be scheduled)*
( ) Plan Refinement *(submit enough plans for the agencies checked off below)*
( ) Waiver recommendation forwarded to Planning Board for determination
( ) Waiver of Standards referred to _____ (Department)
( ) Requires a zoning ( ) Special Hearing; ( ) Special Exception; ( ) Variance
( ) Other _____

Mr. Contact DTR. to be placed on agenda as old Bus.

COMMITTEE COMMENTS:

Agencies to Review and Return Comments to Committee:

( ) DPR ( ) OPCC ( ) Zoning ( ) DEPRM ( ) EIR ( ) SWM ( ) Rec & Parks ( ) Fire ( ) SHA

6-24-97
A-7 w/ Storm water management

Signature of Coordinator _____ Meeting Date: _____

TO: PUTUXENT PUBLISHING COMPANY
May 1, 1997 Issue - Jeffersonian

Please foward billing to:

Julie D. Wright, Esq.
Whiteford, Taylor & Preston, LLP
210 Allegheny Avenue
Towson, Maryland 21204
410-832-2000

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 in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-455-SPH
4140 East Joppa Road
N/S Joppa Road, 360' W of c/l Belair Road
11th Election District - 5th Councilmanic
Legal Owner(s): Peggy Marmaras

Special Hearing to approve parking in an ROA zone for a diner located on an adjacent parcel zoned BL.

HEARING: THURSDAY, MAY 29, 1997 at 11:00 a.m. 4th floor hearing room Courts Building, 401 Bosley Avenue.

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.

Baltimore County
Department of Permits and
Development Management

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

April 24, 1997

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 in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-455-SPH
4140 East Joppa Road
N/S Joppa Road, 360' W of c/l Belair Road
11th Election District - 5th Councilmanic
Legal Owner(s): Peggy Marmaras

Special Hearing to approve parking in an ROA zone for a diner located on an adjacent parcel zoned BL.

HEARING: THURSDAY, MAY 29, 1997 at 11:00 a.m. 4th floor hearing room Courts Building, 401 Bosley Avenue.

Arnold Jablon
Director

cc: Peggy Marmaras
Julie D. Wright, Esq.

NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY MAY 14, 1997.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

October 22, 1997

NOTICE OF ASSIGNMENT

CASE #: 97-455-SPH
AND
CASE #: CBA-97-129

IN THE MATTER OF: GEORGE AND PEGGY MARMARAS /
Double "T" Diner 4140/4142 E. Joppa Road
11th Election District; 5th Councilmanic

Petition for Special Hearing GRANTED with restrictions (97-455-SPH); and limited exemption under Section 26-171(A)(7) (CBA-97-129).

ASSIGNED FOR: WEDNESDAY, JANUARY 21, 1998 at 10:00 a.m. /Day #1
and THURSDAY, JANUARY 22, 1998 at 10:00 a.m. /Day #2

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

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

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

Kathleen C. Bianco
Administrator

---

cc: Appellants /Protestants : Al Thompson, President
Perry Hall Imp. Assn., Inc.
Richard & Christine Reid
Clinton E. Marshall
Arthur J. Bogard
Bertha Ginn
Edward & Barbara Baker

Entered Appearance 1/9/98 as
Counsel for Appellants /Protestants : Francis X. Borgerding, Jr., Esquire
Dorothy McMann

Counsel for Petitioners /Developers : G. Scott Barhight, Esquire
Julie D. Wright, Esquire

Petitioners /Developers : George and Peggy Marmaras

KLS Consultants, Inc. : Art Leonard

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Donald T. Rascoe, Project Manager /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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on Recycled Paper

Baltimore County
Department of Permits and
Development Management

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

May 23, 1997

Julie D. Wright, Esquire
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Item No.: 455
Case No.: 97-455-SPH
Petitioner: Peggy Marmaras

Dear Ms. Wright:

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 April 16, 1997.

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 Roslyn Eubanks in the zoning office (410-887-3391).

Sincerely,

W. Carl Richards, Jr.

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

Date: May 2, 1997

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

SUBJECT: 4140 E. Joppa Road

INFORMATION

Item Number: 455

Petitioner: Marmaras Property

Zoning: ROA

Requested Action: Special Hearing

Summary of Recommendations:

The applicant has appropriately addressed the concerns that had been raised by staff concerning the previously submitted plan; therefore, this office supports the request to allow parking in the ROA zone.

Prepared by: Jeffrey M. Long

Division Chief: Gary L. Kerns

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\455.DOC

RECEIVED
PDM

April 28, 1997

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 April 28, 1997

Item No.: 453, 454, 455, and 456 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.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

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

Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary

Parker F. Williams
Administrator

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

RE: Baltimore County 4.25.97
Item No. 455 JRA

Dear Ms. Eubanks:

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 Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

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

Roslyn

RECEIVED
APR 30 1997
PDM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: April 25, 1997

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

SUBJECT: Zoning Advisory Petitions

The Planning Office has no comments on the following petitions (s):

Item Nos. 447, 451, 455, 457, 459, 460, and 461

If there should be any questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3495

Prepared by: Jeffrey W. Long

Division Chief: Gary L. Kerns

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\NOCOM\447.DOC

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: PDM DATE: _____

FROM: R. Bruce Seeley
Permits and Development Review
DEPRM

SUBJECT: Zoning Advisory Committee
Meeting Date: April 28, 97

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

Item #'s:

443	451	457	458
445	452	459	
448	454	460	
449	455	461	
450	456		

RBS:sp

BRUCE2/DEPRM/TXTSBP

RECEIVED
MAY 2 1997

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

INTEROFFICE CORRESPONDENCE

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

Date: May 5, 1997

FROM: Robert W. Bowling, Chief
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting
for May 5, 1997
Item Nos. 443, 444, 445, 446, 447, 448, 451, 455, 457, 458, 459 and 460

The Development Plans Review Division has reviewed the subject zoning item, and we have no comments.

RWB:HJO:cab

cc: File

ZONE505.NOC

PETITION PROBLEMS

#440 --- CAM

1. Need title of person signing for legal owner.
2. Folder says area is 54.440 -- 54.440 what???

#443 --- JRF

1. Sign form is incomplete/incorrect.

#448 --- MJK

1. Sign form is incomplete/incorrect.

#450 --- MJK

1. Sign form is incomplete/incorrect.

#452 --- MJK

1. Sign form is incomplete/incorrect.
2. Lessee on petition form does not agree with lessee on plat.
3. No legal owner signature, name, address, or telephone number on petition form.

#453 --- MJK

1. Sign form is incomplete/incorrect.

#455 --- JRA

1. Sign form is incomplete/incorrect.
2. Folder says zoning is BL & ROA; petition says ROA.

#456 --- MJK

1. Sign form is incomplete/incorrect.
2. Parking variance for what??

#457 --- JCM

1. No location description on folder (WCR wrote for agenda).
2. Zoning case number on plat is illegible.

#458 --- JRA

1. Sign form is incomplete/incorrect.
2. No telephone number for legal owner.

#461 --- JCM

1. Plat indicates a contract purchaser; petition does not.

Baltimore County
Department of Permits and
Development Management

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

July 7, 1997

Julie D. Wright, Esquire
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Petition for Special Hearing
N/S Joppa Road, 360' W of the c/l of Belair Road
(4140 East Joppa Road)
11th Election District
5th Councilmanic District
Peggy Marmaras- Petitioner
Case No. 97-455-SPH

Dear Ms. Wright:

Please be advised that an appeal of the above-referenced case was filed in this office on July 3, 1997 by Al Thompson on behalf of Perry Hall Improvement Association, Inc. and five adjoining property owners on Brookfield Road. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

Sincerely,

ARNOLD JABLON
Director

AJ:rye

c: Ms. Dorothy McMann
People's Counsel

RECEIVED
COUNTY BOARD OF APPEALS
97 JUL -8 AM 9:10

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on Recycled Paper

APPEAL

Petition for Special Hearing
N/S Joppa Road, 360' W of the c/l of Belair Road
(4140 East Joppa Road)
11th Election District - 5th Councilmanic District
Peggy Marmaras - Petitioner
Case No. 97-455-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Advisory Committee Comments

Petitioners and Protestants Sign-In Sheets

Petitioners' Exhibits: 1 - Site Plan to Accompany Petition for Special Hearing
2 - Landscape Plan

Protestants' Exhibit: 1 - Copy of the Deputy Zoning Commissioner's Order in Case 97-193-SPHA dated December 17, 1996 (Denied)

Deputy Zoning Commissioner's Order dated June 3, 1997 (Granted)

Notice of Appeal received on July 3, 1997 from Al Thompson on behalf of Perry Hall Improvement Association, Inc. and five adjoining property owners on Brookfield Road

c: Julie D. Wright, Esquire, Whiteford, Taylor & Preston L.L.P., 210 W. Pennsylvania Avenue, Towson, MD 21204
Mr. and Mrs. George Marmaras, 9127 Cornflower Road, Baltimore, Maryland 21237
Ms. Dorothy McMann, 9513 Dawnvale Road, Baltimore, MD 21236
People's Counsel of Baltimore County, M.S. 2010
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

PHONE MEMO

TO Kathi/Chas DATE 4/16 TIME 10:00 AM PM
FROM Marvin Singer AREA CODE
OF 685-4111 NO. 10 E Baltimore St
EXT. Ste 1601
FAX # 21202

MESSAGE
wd like a decision Double T Diner issued abt 2 weeks ago
Copy wanted
returned
Fr. Chas Ramp
SIGNED

PHONED ☐ CALL BACK ☐ RETURNED CALL ☐ WANTS TO SEE YOU ☐ WAS IN ☐ WILL CALL AGAIN ☐ URGENT ☐

APPEAL

Petition for Special Hearing
N/S Joppa Road, 360' W of the c/l of Belair Road
(4140 East Joppa Road)
11th Election District - 5th Councilmanic District
Peggy Marmaras - Petitioner
Case No. 97-455-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Advisory Committee Comments

Petitioners and Protestants Sign-In Sheets

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Deputy Zoning Commissioner's Order dated June 3, 1997 (Granted)

Notice of Appeal received on July 3, 1997 from Al Thompson on behalf of Perry Hall Improvement Association, Inc. and five adjoining property owners on Brookfield Road

c: SCOTT BARHIGHTS, ESQ,
Julie D. Wright, Esquire, Whiteford, Taylor & Preston L.L.P., 210 W. Pennsylvania Avenue, Towson, MD 21204
Mr. and Mrs. George Marmaras, 9127 Cornflower Road, Baltimore, Maryland 21236
Ms. Dorothy McMann, 9513 Dawnvale Road, Baltimore, MD 21236
People's Counsel of Baltimore County, M.S. 2010
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

* Al Thompson, President -Perry Hall Improvement Association, Inc.
P.O. Box 63, Perry Hall, MD 21128

ON BEHALF OF

Richard A. Reid
and
Christine L. Reid
4134 Brookfield Road
Baltimore, MD 21236

Richard A. Reid
Christine L. Reid

Clinton E. Marshall
4135 Brookfield Road
Baltimore, MD 21236

Clinton E. Marshall

Arthur J. Bogard
4136 Brookfield Road
Baltimore, MD 21236

Arthur J. Bogard

Bertha Ginn
4137 Brookfield Road
Baltimore, MD 21236

Bertha Ginn

Edward E. Baker
and
Barbara J. Baker
4140 Brookfield Road
Baltimore, MD 21236

Edward E. Baker
Barbara J. Baker

RECEIVED

Francis X. Borgerding, Jr., Esquire
Mercantile Building, Suite 600
409 Washington Avenue
Towson, MD 21204

RECEIVED
COUNTY BOARD OF APPEALS
97 JUL -9 PM 3:01

APPEAL

Development Review Committee (DRC) Decision
4140/4142 E. Joppa Road
Double 'T' Diner
George & Peggy Marmaras - Developer
11th Election District - 5th Councilmanic District
File No. DRC 05197C
CBA-97-129

- Development Review Committee Request Form
- Receipt for payment of $40.00 fee for DRC
- Letter to accompany DRC request 5-1-97
- Site plan and landscape plan to accompany DRC request
- Letter from Arnold Jablon to KLS Consultants, Inc dated May 25, 1997, tabling the DRC action until after May 29, 1997
- Letter from Arnold Jablon to KLS Consultants, Inc dated June 24, 1997, determining that the project receive an exemption under Section 26-171 (A)(7) with stormwater management
- Notice of Appeal received July 3, 1997 from Mr. Al Thompson, on behalf of Perry Hall Improvement Association; Richard A. and Christine L. Reid; Clinton E. Marshall; Arthur J. Bogard; Bertha Ginn; and Edward E. and Barbara J. Baker, individually.

✓E

NOTIFICATION LIST

G. SCOTT BARHIGHT, ESQ
Julie D. Wright, Esq., Whiteford Taylor & Preston, LLP, 210 W Pennsylvania Ave, Towson MD 21204-4515
Mr Art Leonard, KLS Consultants, Inc., 102 North Main Street, Bel Air, MD 21014
Mr. Al Thompson, Perry Hall Improvement Association, P O Box 63, Perry Hall, MD 21128
Mr. and Mrs. Richard A. Reid, 4134 Brookfield Road, Baltimore MD 21236
Mr. Clinton E. Marshall, 4135 Brookfield Road, Baltimore MD 21236
Mr. Arthur J. Bogard, 4136 Brookfield Road, Baltimore MD 21236
Ms. Bertha Ginn, 4137 Brookfield Road, Baltimore MD 21236
Mr. and Mrs. Edward E. Baker, 4140 Brookfield Road, Baltimore MD 21236

Arnold F. Keller, III, Director, Office of Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director, Department of Permits and Development Management
Donald T. Rascoe, Project Manager

Francis X. Borgerding, Jr., Esquire
Mercantile Building, Suite 600
409 Washington Avenue
Towson, MD 21204

NOTE: Copy of Order to be sent to:
Norman Gerber
35 Pickburn Court
Cockeysville, MD 21030

1-21-98

IN THE MATTER OF THE APPLICATION OF George Marmaras and Peggy Marmaras 4140 East Joppa Road 4142 East Joppa Road	*	**BEFORE** **COUNTY BOARD OF APPEALS** **OF** **BALTIMORE COUNTY** **CASE NO.** 97-455-SPH CBA-97-129

* * * * * * * * *

S U B P O E N A

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on 1/21/98 and 1/22/98, **1998 at** _____ **a.m. in Room 48, Basement, Old Courthouse, located at 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.**

Witness: Mr. Donald Rascoe

Address: ~~111 W. Chesapeake Avenue~~
Towson, MD 21204

Requested by:

NAME: G. Scott Barhight, Esquire

FIRM: Whiteford, Taylor & Preston L.L.P.

ADDRESS: 210 W. Pennsylvania Ave, 4th Floor
Towson, MD 21204

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

RECEIVED
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98 JAN 21 PM 1:51

County Board of Appeals of Baltimore County

1-21-98

IN THE MATTER OF THE APPLICATION OF George Marmaras and Peggy Marmaras 4140 East Joppa Road 4142 East Joppa Road	*	**BEFORE** **COUNTY BOARD OF APPEALS** **OF** **BALTIMORE COUNTY** **CASE NO.** 97-455-SPH CBA-97-129

* * * * * * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on January 22, 1998 at _____ a.m. in Room 48, Basement, Old Courthouse, located at 400 Washington Avenue, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: Rahee J. Famili

Address: 111 W. Chesapeake Ave
Towson, Md. 21204

Requested by:

NAME: G. Scott Barhight, Esquire

FIRM: Whiteford, aTaylor & Preston L.L.P.

ADDRESS: 210 W. Pennsylvania Av., 4th Floor
Towson, MD 21204

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

County Board of Appeals of Baltimore County

RECEIVED
COUNTY BOARD OF APPEALS
98 JAN 21 PM 1:52

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, Md. 21204

(410) 887-3335

May 25, 1997

KLS Consultants, Inc.
102 North Maine Street
Bel Air, MD 21014

RE: Double "T" Diner
4140/4142 E. Joppa Road
DRC Number 05197C, Dist.11C5

Dear Sir:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland and as provided in Section 602 (d) of the Baltimore County Charter and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal or modification of a license, permit, approval, exemption, waiver or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to insure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management.

The DRC has in fact met in an open meeting on May 19, 1997, and made the following recommendations:

The DRC has tabled your project until the May 29, 1997 hearing. Please contact Don Rascoe at 410-887-3353 to be placed on the DRC agenda as old business.

Sincerely,

Arnold Jablon
Director

AJ:DTR:tcm
c: Bruce Seeley
Joyce Watson
File

County Board of Appeals of Baltimore County

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

January 23, 1998

NOTICE OF DELIBERATION

Having concluded this case after two days of hearing (January 21 and January 22, 1998), public deliberation has been scheduled as follows in the matter of:

GEORGE AND PEGGY MARMARAS /Petitioners
(Double "T" Diner)
Cases No. CBA-97-129 and 97-455-SPH

DATE AND TIME : WEDNESDAY, MARCH 25, 1998 @ 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

NOTE TO COUNSEL: Closing Briefs are due (Original and three (3) copies) on Monday, March 9, 1998, as requested by the Board.

Kathleen C. Bianco
Administrator

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cc: Counsel for Appellants /Protestants : Francis X. Borgerding, Jr., Esq.
Appellants /Protestants : Al Thompson, President
Perry Hall Imp. Assn., Inc.
Richard & Christine Reid
Clinton E. Marshall
Arthur J. Bogard
Bertha Ginn
Edward & Barbara Baker
Dorothy McMann
Norman E. Gerber
Counsel for Petitioners /Developers : G. Scott Barhight, Esquire
Julie D. Wright, Esquire
Petitioners /Developers : George and Peggy Marmaras

KLS Consultants, Inc. : Art Leonard

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

Copied: K.L.B.

Printed with Soybean Ink
on Recycled Paper

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: George and Peggy Marmaras -Petitioners (Double "T" Diner) Case No. 97-455-SPH and Case No. CBA-97-129

DATE : Wednesday, March 25, 1998 @ 9:30 a.m.

BOARD /PANEL : Kristine K. Howanski, Chairman (KKH)
Lawrence M. Stahl (LMS)
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Bianco
Administrator

PURPOSE: To deliberate Case No. 97-455-SPH and Case No. CBA-97-129 /George and Peggy Marmaras, Petitioners. Testimony and evidence in this received on January 21 and January 22, 1998. Counsel for Petitioners: G. Scott Barhight, Esquire; Counsel for Appellants /Protestants: Francis X. Borgerding, Jr., Esquire. The Office of People's Counsel for Baltimore County did not participate in these proceedings.

KKH: We are here to deliberate the Marmaras matter, the Double "T" Diner, Case No. CBA-97-129 and 97-455-SPH. That is a double appeal both from the limited exemption decision as well as the special hearing. There are certainly a myriad of issues, and, Mr. Buchheister, we will go ahead and listen to where you are at this stage.

HEB: The first issue raised in this case as to the decision to grant a limited exemption by the DRC and the Director of PDM, as well as the Board's authority to review that decision is my first point. And rather briefly I'll simply say that I felt that Counsel for Protestants thoroughly reviewed the laws appropriate to authority of the Board of Appeals under 603 of the Charter, which gives authority to the Board of Appeals to the hearing of the matter.

There may be other viewpoints on the legal application of Section 26-171(a)(7), but my curiosity was to why the granting of the limited exemption in this case under 26-171; limited exemptions are granted in matters pertaining to the subdivision of land for residential use. And after reading the section, I don't understand how the law applies to the subject site for a large commercial restaurant.

Petitioner cites 26-171 as permitting limited exemptions for the construction of residential accessory structures or minor commercial structures. Since no definition for minor commercial structure is included in 26-171, it is determined in the policy manual governing limited exemptions for minor

commercial structures, and offers the following guidelines for proposed additions or independent commercial structure:

1. Approved structure up to 25,000 sq. ft.

2. Measurable degree of community interest

3. Not to exceed 50 percent of the existing size.

Mr. Rascoe was involved in a decision for limited exemption which was delayed in its determination from February 1997 to June 16, 1997, due to unresolved zoning aspects. After granting, Mr. Rascoe noted that the exemption was for construction of a single structure on a single lot in the B.L. zone of the Petitioner's property at 4142 Joppa Road but not the ROA zoned lot at 4140 Joppa Road, which is the subject of today's special hearing.

The fact that the ROA site was to be part of the Double "T" Diner project and would be eventually merged with the B.L. site, Mr. Rascoe's interpretation was that, when the lots were merged together, a subdivision would occur. And the subject lot should come before the DRC for review as to the appropriateness for the granting of the limited exemption. The majority has not happened at this point. Mr. Rascoe testified that the project as a whole had to be considered as to the limited exemption. He indicated that (a)(7), limited exemptions, are granted usually for additions to existing structures, and he hesitated to grant them for new structures.

Is this new diner a minor commercial construction is my question. A 5,500 sq. ft. restaurant with the capacity for 235 diners, open 24 hours of the day, 7 days of the week, adding debatable parking for 90 vehicles at one of the busiest intersections and major highways in the County does not appear to me to be a minor development. Mrs. McMann, an officer of the Perry Hall Improvement Association, complained that the limited exemption for the ROA lot approved by the DRC as recommended by the Department of Permits & Management eliminates the community input meeting called for under the new regulations, which she felt particularly necessary on a site such as the Double "T" Diner project in order that potential problems be resolved. Mrs. McMann opposed the size and scale of the diner that would be permitted if the special hearing for parking in ROA was granted.

Which raises the next very debatable issue of traffic at the location, and access to the diner, and exit from it. Mrs. McMann's testimony was persuasive that this project brings serious safety problems for the purpose highlighted by Mr. Moore in his testimony. Petitioner dismissed traffic problems

with their magnanimous offer of improvement and widening of Brookfield Road on Petitioner's side of the road. In regard to Petitioner's resolution with the diner's patrons exiting the site via Brookfield Road, it is my suggestion that Petitioner and the County should cooperate and expedite the rebuilding of this third class (I believe that's it) dead-end street, if the diner construction is to go forward, and not just Petitioner's side of Brookfield Road. There's danger as it presently exists for vehicles making left-hand turns on to Belair Road, stacking of cars on Belair Road to enter Brookfield because of heavy east/west traffic on Belair Road.

Mr. Gerber and Mr. Moore both felt that the diner would create congestion on the road. The special hearing for the use of ROA zoned lot at 4140 Joppa for accessory parking is essential to the present plan, but not for a smaller facility. Norman Gerber testified that the proposed parking on 4140 is inconsistent with the purpose of ROA zone and only confers Class A office buildings as permitted in ROA zone.

Petitioner counters that section by saying that 202.3 of the regulations provides for a variety of uses permitted in ROA zone as a matter of right, and also special exception uses, but nothing is said in that section about restaurants in 202. Specifically, 409.7b.2 makes it clear that accessory off-street parking only is permitted in residential ROA zone. The parking plan for the ROA lot at 4140 Joppa Road is not a principal use but is to be accessory parking on the same lot as the diner once the two lots are merged as one. Mr. Gerber asserts that ROA portion of subject property has to go through the development review process prior to any change and must undergo its own scrutiny.

Counsel for Petitioner emphasizes the diner is a use permitted as a matter of right in the B.L. zone. The issues of the eventual use of 4140 for accessory parking to the diner as a merged lot with 4142, the configuration for parking at the diner, the consideration for providing for several entry and exit points using Brookfield Road, the size and scope of the 24-hour use and impact on the community, these matters I feel require a full review of the development regulations.

The granting of the limited exception appears to me to be an error because of the magnitude of the diner's proposed plan and its potential impact on the community. The proposed special hearing to allow parking in ROA zone lot to enable a larger diner at that location Protestants contend will be detrimental to the health, safety and welfare of the community. The hypothetical aspects of the ROA merger with the B.L. lot and the widening and improvements to Brookfield Road led me to think at this point that the special hearing

for the parking at 4140 Joppa Road, ROA lot is a plan as envisioned at this time for potential future resolution that should be denied.

KKH: What we want to do is hit the limited exemption first.

LMS: Merits aside, do you have any feelings as to whether it is appealable or not?

HEB: I think it is appealable.

KKH: The question is whether or not he made a decision and whether or not he made a decision that was a final one, and whether or not that final decision is one over which we have jurisdiction.

HEB: I thought the references Mr. Borgerding offered...

KKH: I understand, but we have conflicting case law in the Circuit Court. We have Judge Hinkel who is sympathetic to this particular position and we have Judge Brennan who adopted the Board's position in former cases who uniformly held after we got slapped on the UPS matter that we do not have jurisdiction to hear these matters, because we are a creature of statute. And that is the question here - is this the kind of a thing, a limited exemption, the kind of thing that has been handed to us to make a decision on? And we do have to find, and I think they were correct in showing the Charter but they have to show a road map to get us here.

But what we have in the beginning are the enumeration of powers as a generic statement that we can have whatever power the County Council decides to give us, and then we have particular rights of appeal. One is under 26-132 -- anyone feeling aggrieved by the decision of the zoning commissioner or the director of permits and development management may appeal. The question here is: is what happened here a decision?

I certainly want to hear what you have to say. I think my problem is I have already taken a position in a earlier matter that it was not because it was simply a statement of which path the developer takes terms of proceeding to obtain permits and so forth. And that is what is happening there is the County looks at it and says "you are proceeding under this path or that path" and at the end of either of those routes there is an appealable issue, but not at this point.

UPS also made it clear that if Arnold Jablon writes a letter and says this is what he's done, just because he calls it a decision that does not make it so. We have the same deal --

we have a letter, and we still have to deal with the question. I don't think we can simply write that off. There was a conflict in the Circuit Court and I will be very interested in hearing where you are and hope we can come to a resolution on that issue.

LMS: The problem as I see it -- I see it as really two procedural questions we have to deal with. First is the fact we are a creature of statute; it's specifically delineated what we can and cannot do. It's not really up to us to determine what that is on an on-going basis but certainly by making decisions in an area we can force the Court above us to do that. I am constrained to say that I think part of our responsibility as a Board set up under statute is that we are not a legislature. We are here to resolve particular issues under particular circumstances that those who give us our authority tell us we should.

And in many instances tell us the criteria which we must apply in making a certain decision; for example, Section 502.1 that says it has to be this, this and this. We have the Cromwell v. Ward situation in cases where we are specifically told that if we cannot find it this way we must do this and that. We are a creature of those above us.

I've looked at two matters -- one, USF&G, that dealt with this issue. There's the Rojek matter which you are talking about, Kris, the Judge Brennan thing. I don't think it's appropriate for the Board to take onto itself more authority than the statute provides us. We're a court in our procedures but we don't have the freedom that a constituted circuit court would have in determining that something should be done a certain way. I don't think we are the controllers of our rights to hear things.

HEB: You are saying that 603 does not allow us to do this?

LMS: If you read that in conjunction with what has happened when we take a position -- when Mr. Jablon sends a letter, meaning no disrespect to Mr. Jablon, he takes a lot on himself.

HEB: He was following recommendations--

LMS: However he got there, he got there and he did something. The question is -- is what he did an act that lays the grounds for an appeal?

HEB: Was the deputy zoning commissioner correct in telling him what to do?

KKH: The question is -- are we allowed to look at that? Arnold

Jablon is not sitting in the capacity as a zoning commissioner or a department head who is making a decision, under 26-132. What we have is the DRC -- a body created totally outside of the Court and regulations in terms of this kind of decision-making. I don't means it's an illegal creature, but it's not identified in the framework we have. In terms of the deputy zoning commissioner, we have traditional appeal from the final action on a plan.

LMS: Which is specifically laid out...

KKH: Under 26-209. We don't have another area. What we have here is, and that's why I say -- I cannot get away from us being limited in our authority and jurisdiction. We may not like what's happening (not saying this is not a laudable development or anything of the sort). But we are a statutory creature and for whatever reasons, the County Council is free to alter that -- but they have given us three areas of appeal in this area. One would be 132 in a different procedure. One would be this case later under 26-209 and one would be the permit section -- 7-36 -- with the issuance or denial of the permit.

And those are appealable events. But what we have here are people who are being permitted basically to get to that juncture by a route that the DRC decided is okay route for this particular property. I guess why I have to respect Judge Hinkel's decision, at least from an intellectual standpoint, as opposed to Judge Brennan -- I understand it as a sympathetic decision -- and as a personal matter, I might want to intercede on a particular matter, but I don't see the statute underpinning his theories.

HEB: As I said initially in my comments, I basically thought I read very thoroughly everything that counsel for protestants submitted and decided I agree. And now you are in disagreement based on this law -- and I'm satisfied and now agree that this limited exemption thing is...

KKH: We are not deciding the merits.

HEB: We cannot decide the merits if we do not have jurisdiction.

LMS: After hearing the testimony, we would certainly have opinions as to those ultimate issues, but the question for us as a Board is can we give force of law to those opinions.

HEB: I first thought we would have jurisdiction.

KKH: Judge Hinkel would agree with you.

LMS: I started this -- the bottom line -- though I really do have some opinion relative to what would happen were we do take it up, I think it is very clear that in the present state of the law and the cases we have, this is a bend in the road and Arnold Jablon can say, do it this way or that way, has the process for it -- none of that is an issue. But it's the effect of the process and the decision we make that give us the chance to say something or not. I agree with Judge Brennan that in the present state of the appellate law -- there not being any -- that simply because he put something in writing does not make it a final appealable decision. Just because he says do something one way or another is not a final decision from which rights and liabilities flow. And therefore it's not a final determination that the Board would be able to hear. I think we would be shot down. I may not be thrilled by that...

KKH: But that is not our task. I have a personal opinion on it, just as yourself. I think there are a couple of issues and all we can do is take our best shot now. The Circuit Court is going to have to resolve this at some point.

The County Council will decide; they can do something. But intellectually I don't believe whatever you want to call it -- approving or deciding to have a limited exemption - I do not view that as a final approval or decision.

LMS: The decision of Jablon is going to have the effect of making or permitting or allowing or guiding the Petitioners if they are allowed to go forward with the rest of the project, to ask for things, request final things, all of which have appellate rights attached to them. Which is when the appellate process would then come into play.

HEB: I understand, and would then agree...

KKH: I remember the last one when it was remanded I had to examine whether this was a minor commercial structure, and they had as an exhibit an Office of Law opinion letter that a 200-foot structure was a minor structure, so it would be hard for me to say that the little antenna was not a minor structure.

But that is where we are right now. Wiser people will have to decide this further down the road.

We still have the issue of the special hearing. Larry, where are you on that?

LMS: A couple of things -- this issue was replete with statutes. But it, like most situations, comes down to some relatively basic pieces of fact and presumptions. First, we have two

pieces, though I understand what happened in the process of the hearing and needing the second property -- I don't really find this a strong point, whether Petitioners were led to believe that if they bought the second piece of land it would make the project good -- they made value judgements and made decisions.

The issues are what do we know and what can we say for sure. A diner is allowed on B.L. We know that. We know that ROA allows parking to some degree. Statute tells us that. The question -- Is the way Petitioners are planning on doing it and effect it will have on surrounding community appropriate to allow them to go ahead and do it. I always try to start at one point and work to another point -- I think there's no question that 409.8 permits issuance of use permit. The question is -- in my mind, rebuttal - I found rebuttal witness important because he could not get away from the fact that it was two separate pieces of land, and all statutory language was talking about -- saying that it should be in the same one; 409.4B2 - ROA zone - off-street parking spaces shall be on the same lot to which they are accessory.

Getting back to what we were talking about before -- they bought the other piece of property. They are going to have to merge the two properties -- they do not fly if they are not merged. If they are going to do that, and it satisfies B2 by being one piece of property -- then is the parking an accessory activity to it? I think it is.

But then the County Council did something very interesting -- they told us where their ideas were by adding something that had nothing to do with that, per se -- 502.1 lays out a whole bunch of very community-oriented things. And it's obvious that they decided that they wanted that to be part of the consideration. Did that because ROA is under the broad general classification of residential -- people live near it -- and to have citizens have the right to a certain quality of life and protection.

The whole thing - as an aside - the principal use -- parking should be not the principal use in ROA is stated. But if you were putting up a parking lot because it was a shopping area and you thought an enclosed secured parking lot would be good business feature -- you could not do that. By merging the properties into one property, the parking is not the reason for being there.

HEB: Is that merging before or after?

LMS: They will need it before they can go ahead.

HEB: Before we made a decision?

LMS: No -- before they go ahead on the project. I think we have to make our decision. In order to make it fly, they will have to merge it into one property. If they don't, I don't see how they can get around the law. The Court clearly says it has to be on the same lot. Five lots away - that would be inappropriate.

HEB: Is the merging process long and involved?

LMS: That's not an issue here.

HEB: It may not get done.

LMS: They own two pieces of property. We can make, if we get to that point, we can make this contingent upon merging of those lots to comply with the intent of the statute as written.

I would not imagine that will be an insurmountable task. I think it's an accessory use the way it's set up.

KKH: That's by defining it.

HEB: There are various uses that can be put on the merged lot - but it does not mention anything about restaurants. Does that matter?

LMS: In my mind, the central issue is that B.L. lot allows it as a matter of right. The next logical step is if you need accessory use, that being the parking, if the ROA allows that use when part of an otherwise permitted activity on a merged lot; is that permitted activity.

It's a domino process; but it holds together logically. That brings us to -- if they are allowed to do it in the broad sense - what criteria - are they allowed to do it based on what the law says.

They do not have to prove it's a good project; but assuming it's a good project, how will it visit upon other people who have nothing to do with it?

The County Council throws the 502.1 laundry list into the mix. If we've gotten this far -- does it hold up under that? If not, the rest is irrelevant.

The parking and traffic is a factual issue. That bothers me, and it bothers me because everybody had an immediate opinion - whether good or bad. They were probably some of the witnesses we heard. On the Petitioner's side, elbowed way

into having someone able to talk about traffic. Traffic witness on the other side, with all back and forth arguing regarding testing, was not really important thing to me.

If you have a business running 24 hours per day, if we presume success -- people have to be coming back and forth, and if it is going to be open 24 hours per day with reasonable flow of cars throughout its use -- when they did the test, does not prove anything. We have to juxtapose on top of it what I think would happen if enough parking spaces were used. It's still 98 percent conjecture from traffic witnesses. Are three lanes better than one? Sure. Are two exits or entrances better than one? Probably.

I'm wondering what good you do about the flow of traffic that you can only guess about -- set up a structure you can look at and say -- given reasonable amount of additional traffic that this structure has a reasonable chance of supporting it.

Having a rebuttal witness say they will do this -- talks to that structure but does not answer the question. There are a lot of things on the list - I think they have made a case that other than the broad health, safety and welfare, I'm not concerned about anything else on the laundry list. I'm not moved; I can accept there will be more traffic in and out. Whether or not changing lanes or different distances will solve problems caused, I'm not 100 percent convinced.

HEB: One of the things I might question -- you're right -- Mr. Moore said two access points would be preferred -- but I think Mrs. McMann makes clear it's the flow of traffic on Joppa Road, the islands -- all these points make it insolvable because of the traffic coming in and out of the diner, including access to Brookfield Road from Belair Road.

LMS: My problem with the lay witnesses in terms of traffic is that in some instances the more involved, the more the area expands the lay witness -- the less technical credibility a witness has. If a witness is talking about what goes on in front of my house -- it's one thing. When a lay witness talks about traffic islands and any lane structures -- then frankly if I'm left a little bemused by "experts," civilian witnesses have even less a basis.

If you live in a neighborhood and someone brings a business in, it will have impact on traffic. The law does not say that if there is an increase in traffic you cannot do it. One of the things left up to the zoning commissioner and the Board of Appeals, and so forth.

KKH: Where are you leaning right now?

LMS: I'm leaning towards a belief that if you can take -- let me throw in one more concern -- I cannot see taking care of 1/2 road and County not responding to the other half. I'm leaning toward saying if they look toward the problem -- and obviously it is and because of rebuttal witness - realized that if customers cannot get in and out easily and cleanly, they will go to someone else's business. That is not the law; it's common sense. and I think Petitioners understand that will be an issue from a business standpoint to be dealt with; maybe different traffic signals and different timeframes, and so forth.

I think Petitioners are probably underestimating how easy it will be to deal with it and I think the protestants are probably overestimating adverse effect.

I'm leaning to saying they can probably deal with it if they do what they say they are going to do and we can make that a condition -- two conditions: condition of merging of properties; condition of these road changes that rebuttal witness indicated. Presuming we put on conditions, leaning to saying they can deal with it to overcome 502.1. The bottom line is - I think with conditions it could fly.

KKH: I agree with you in that I think traffic issue is the overriding issue. I also agree that I did not find the witnesses particularly helpful. Petitioner's witness was not helpful to a pertinent extent because he was relying on satisfying other people and not offering his own testimony. I don't think he gave data that hit the issue that we were looking at -- hit it on the head. He did talk about three lanes and whatever, but that was handled by Mr. Leonard.

It's a problem and I have a lot of sympathy for the folks on Brookfield Road. But the special hearing is not on the diner per se and the question is: are we better off or worse off by agreeing that this parcel -- there are some things that are laudable about the proposed parking. Plus is pushing the entrance away from Brookfield/Joppa. I do think that is a plus.

I did have a problem -- I thought Mrs. McMann had a good point and found her interesting and persuasive. The problem is I am not sure. She was most persuasive in an area we have authority to do the least about and that was the stacking on Joppa Road issue -- problem with people waiting to make left turns and congestion created. Thought that was the one that was not dealt with and one which the diner can do nothing about. Leonard did testify to a solution.

I do think they had testimony to show satisfying 502.1. Was

the other side able to show that this use would have a more adverse effect here than in another spot -- that's where I would like to have maybe seen more evidence. Did not hit it at this point. Would they be different with this than with any other permitted use?

LMS: Petitioners established reasonable belief in my mind that they are not going to violate 502.1. It was not done as strongly as I would like to have it, but protestants did not change that. Everyone has same problems -- stacking, traffic, coming out -- that's why there was talk about three lanes. The question is: which one leaves me with stronger impression that their point of view is right.

HEB: Larry, when you suggested the County and Petitioners should complete improvements to Brookfield Road before it opens -- how will that be done?

LMS: It will be necessary -- that is the County's problem.

HEB: That answers one of my concerns about the County and Petitioner getting together to satisfy this thing.

But I still think the three-lane situation -- making a left turn onto Belair Road out of Brookfield is pretty tough; that's the way it is. Then the other aspect is traffic coming across Joppa Road and heading east will have to make a turn to Brookfield to come out. This restaurant site has impact on traffic. But these are things that can be solved later on.

LMS: We know there will be an increase but this is just everyone's conjecture as to what will happen.

I think Petitioners have fairly and reasonably put forth a proposal that to some degree specifically addresses some of the problems that protestants specifically brought up. Whether that will be sufficient is at best a "guesstimate" from both sides.

KKH: I think I am inclined to agree -- I've been looking through here and through my notes -- I do have a lot of sympathy for the residents. Moore was closer.

HEB: Mrs. McMann gave a much more thorough perspective of it, but Moore was closer than the other.

KKH: The County can only do their part. They will see to the other part -- the other side and in terms of going further into Brookfield.

HEB: They were going to go down as far as the fence.

LMS: If they cannot do what we order as conditions, they are out of luck. If they cannot make it fly, then it falls. We presume they would not make an offer they cannot accomplish, but if they cannot accomplish it, then it is not approved.

KKH: At that point, with the special hearing, we can only say we can give it a thumbs up or thumbs down; only consistent with what we can make them do -- will have to be one lot.

Have we reached a consensus at this point?

Affirmative response from HEB and LMS.

We are agreed then that the limited exemption matter is one over which we do not have jurisdiction and it should be dismissed. And that we would grant the special hearing with two conditions. We have finished our deliberation, and we will go ahead and issue an opinion as quickly as we can, and anyone feeling aggrieved will have 30 days from the date of that order.

We are now adjourned. Thank you.

****

Respectfully submitted,

Kathleen C. Bianco

Kathleen C. Bianco

Case No. 97-455-SPH — SPH -Approval of parking in ROA zone for proposed diner on adjacent BL parcel GRANTED with restrictions.

Case No. CBA-97-129 — RE: Limited exemption under Section 26-171(A)(7) of BCC with storm management.

6/03/97 -D.Z.C.'s Order in which Petition for Special Hearing was GRANTED.

6/24/97 -Letter from Arnold Jablon to KLS Consultants determining that project receive an exemption under Section 26-171(A)(7) with stormwater management.

NOTE: Please refer to case file /#97-455-SPH for exhibits, etc.

8/11/97 - T/C from Mrs. Marmaras -- concerned that the sign was in the wrong place and that the issue may be raised that the property was not posted properly; CER called Inspector Fruend who said he looked at the plan and posted sign on property line between 4140 and 4142, since both were part of the case (and since 4140 was still occupied).

10/22/97 - Notice of Assignment for hearing scheduled for Wednesday, January 21, 1998 and Thursday, January 22, 1998 at 10:00 a.m. sent to following:

Al Thompson, President
Perry Hall Imp. Assn., Inc.
Richard & Christine Reid
Clinton E. Marshall
Arthur J. Bogard
Bertha Ginn
Edward & Barbara Baker
Dorothy McMann
G. Scott Barhight, Esquire
Julie D. Wright, Esquire
George and Peggy Marmaras
KLS Consultants, Inc. /Art Leonard
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Donald T. Rascoe, Project Manager /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

1/09/98 -Entry of Appearance filed by Francis X. Borgerding, Jr., Esquire, on behalf of Perry Hall Improvement Assn., Inc.

1/22/98 -Hearing concluded (two days 1/21 and 1/22/98) K.L.B.; Briefs due from counsel 3/09/98; deliberation scheduled for 3/25/98 at 9:30 a.m.

1/23/98 -Notice of Deliberation sent to parties; scheduled for Wednesday, March 25, 1998 at 9:30 a.m. (K.L.B. also copied.)

3/09/98 -Closing Argument Memo filed by Francis Borgerding, Esquire, on behalf of Perry Hall Improvement Assn. /Case No. 97-455-SPH (George and Peggy Marmaras) and Case No. CBA-97-129 (Double "T" Diner). Copies to be forwarded to K.L.B. when all have been filed.
- Petitioner's Brief in Lieu of Closing Argument filed by G. Scott Barhight on behalf of Mr. & Mrs. George Marmaras.
Copies to K.L.B.

3/13/98 -Correction to Brief filed by Scott Barhight by letter dtd 3/13/98 - reference to 4140 and 4142 E. Joppa Rd were were inverted and correction to addresses as referenced in Brief was accomplished via this submittal. Copies to K.L.B. this date.

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: K. Howanski
L. Stahl
H. Buchheister

DATE: March 13, 1998

FROM: Kathi

SUBJECT: Case No. 97-455-SPH and Case No. CBA-97-129 /Peggy Marmaras, Petitioner (Proposed Double "T" Diner) - Corrected Pages 9, 19 and 20 /Petitioner's Brief

The attached letter and enclosure were received this date from Scott Barhight. References to the addresses at 4140 E. Joppa Road and 4142 E. Joppa Road were inadvertently switched on pages 9, 19 and 20 of Petitioner's Brief, a copy of which was forwarded to you on March 9th. Therefore, Mr. Barhight has submitted these pages to correctly reflect the addresses as referenced in his Brief.

Please call me with any questions.

kathi

Attachments

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
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www.wtplaw.com

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FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

March 13, 1998

Via Hand Delivery

Ms. Kristine K. Howanski
Mr. Harry E. Buchheister, Jr.
Mr. Lawrence M. Stahl
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: *ERRATA*: **Brief submitted on behalf of Petitioner, Peggy Marmaras; Pages 9, 19, and 20.**
4140 E. Joppa Road and 4142 East Joppa Road
Case Nos. CBA-97-129 and 97-455-SPH

Dear Ms. Howanski and Messrs. Buchheister and Stahl:

Enclosed please find ***corrected*** copies of pages 9, 19, and 20 from the Petitioner's Brief in Lieu of Closing Argument, filed with the Board on March 9, 1998. On pages 9, 19, and 20, references to 4140 E. Joppa Road and E. 4142 E. Joppa were unintentionally inverted.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

G. Scott Barhight (gnzo)

G. Scott Barhight

GSB:sll
Enclosures
cc: Francis X. Borgerding, Jr., Esquire
Mr. & Mrs. George Marmaras

Corrected pages add to Brief
- highlighted in yellow

98 MAR 13 PM 1:42
RECEIVED
COUNTY BOARD OF APPEALS

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director **DATE:** January 19, 1999
Permits & Development Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed Files: 97-455-SPH /George and Peggy Marmaras
CBA-97-129 /Double 'T' Diner

As no further appeal has been taken in the above captioned case, we are hereby closing the files and returning same to you herewith.

Attachment (Case File Nos. 97-455-SPH and CBA-97-129)

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015

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FAX 703 836-0265

JULIE D. WRIGHT
DIRECT NUMBER
410 832-2084
2071752@mcimail.com

May 1, 1997

Via Hand Delivery

Donald T. Rascoe, Development Manager
Department of Permits and Development Management
111 W. Chesapeake Avenue, Room 111
Towson, Maryland 21204

Re: Limited Exemption for proposed Double 'T' Diner to be located at 4140/4142 E. Joppa Road; Previous Case No: 97-193-SPHA

Dear Mr. Rascoe:

Petitioners George and Peggy Marmaras, by and through their attorneys, G. Scott Barhight, Julie D. Wright, and Whiteford, Taylor & Preston L.L.P., hereby request that the Development Plan Review Committee ("DRC") review the enclosed site plan and landscaping plan, and determine that a limited exemption under 26-171(a)(7) of the Development Regulations of the Baltimore County Code ("BCC") is appropriate.

On January 28, 1997, Mr. and Mrs. Marmaras filed their first request for a limited exemption for a proposed Double 'T' Diner to be located at 4142 E. Joppa Road. The DRC discussed that first request at a DRC Meeting held on February 10, 1997. Because a Motion for Modification of Deputy Zoning Commissioner Timothy Kotroco's Order Denying Requested Variances for the Subject Site was pending at that time, the DRC decided to table their decision until after the February 25, 1997 hearing on the Motion for Modification. Deputy Zoning Commissioner Kotroco was to preside over the hearing.

Mr. and Mrs. Marmaras, however, withdrew their Motion for Modification prior to the scheduled hearing because it was discovered that the zoning on an adjacent parcel had been changed during the 1996 CZMP. The zoning change altered the nature

of the requested variances before Deputy Zoning Commissioner Kotroco and, accordingly, a Motion for Modification was no longer appropriate.

After withdrawing the Motion for Modification, Mr. Marmaras purchased the adjacent parcel located at 4140 E. Joppa Road. By purchasing the adjacent parcel, Mr. Marmaras eliminated the need for the previously requested setback and landscaping variances. Mr. Marmaras was also able to move the entrance on Joppa Road to a more desirable and safer location. Presently, the only variance requested with regard to this project is a variance to permit parking on the recently purchased adjacent parcel located at 4140 E. Joppa Road. That parcel, which was originally zoned BL, was rezoned during the 1996 CZMP to ROA. A petition for special hearing to permit parking in an ROA zone was filed on April 16, 1997. A special hearing for the request to permit parking in a residential zone is currently scheduled for May 29, 1997 at 11:00 a.m.; 4th floor Hearing Room, Courts Building, 401 Bosley Avenue, Towson, Maryland.

The subject site is located in an area predominantly zoned BL; the Joppa Corners Shopping Center is located west of the subject site and various other commercial uses are located south and southeast of the subject site. The proposed Double 'T' Diner qualifies as a minor commercial structure under § 26-171(a)(7) of the BCC Development Regulations. Accordingly, the development of the proposed Double 'T' Diner should be granted a limited exemption from Division 2 of the Development Regulations.

Thank you for your consideration, and should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Julie D. Wright

JDW:jdw

cc: Mr. George Marmaras
Mr. Robert Tipton
Mr. Art Leonard

Enclosures

105247

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sbarhight@wtplaw.com

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TELEPHONE 703 836-5742
FAX 703 836-0265

July 21, 1997

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COUNTY BOARD OF APPEALS
JUL 21 PM 6:56
97

Robert O. Schuetz, Chairman
County Board of Appeals
of Baltimore County
Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Appeal of DRC Decision CBA-97-129
4140/4142 E. Joppa Road
Double 'T' Diner
George & Peggy Marmaras - Petitioners
File No. DRC 05197C

Dear Chairman Schuetz:

Please enter the appearance of G. Scott Barhight, Julie D. Wright, and Whiteford, Taylor & Preston L.L.P., as attorneys in the above-referenced matter.

Please do not hesitate to contact me if you require any additional information.

Sincerely,

G. Scott Barhight (JDW)

G. Scott Barhight

GSB:jdw

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Ave.
Towson, Md. 21204

(410) 887-3321

July 8, 1997

Julie D. Wright, Esq.
Whiteford Taylor & Preston LLP
210 W Pennsylvania Avenue
Towson MD 21204-4515

RE: Appeal of DRC Decision
4140/4142 E. Joppa Road
Double 'T' Diner
District: 11 c 5
George & Peggy Marmaras - Applicant
File No.: DRC 05197C

Dear Ms Wright:

Please be advised that an appeal of the above-referenced case was filed in this office on July 3, 1997 by Mr Al Thompson on behalf of Perry Hall Improvement Association and Richard A. Reid and Christine L. Reid; Clinton E. Marshall; Arthur J. Bogard; Bertha Ginn; and Edward E. and Barbara J. Baker, individually. 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 (410) 887-3180.

Sincerely,

Arnold Jablon
Director

AJ:ckr

c: Mr. Al Thompson, Perry Hall Improvement Association
Mr. Art Leonard, KLS Consultants, Inc.
People's Counsel

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JUL 15 1997
WHITEFORD, TAYLOR, & PRESTON

SEVEN SAINT PAUL STREET
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ALEXANDRIA, VIRGINIA 22314-2928
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FAX 703 836-0265

July 21, 1997

Robert O. Schuetz, Chairman
County Board of Appeals
of Baltimore County
Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Petition for Special Hearing
N/S Joppa Road, 360' W of the c/l of Belair Road
(4140 East Joppa Road)
Peggy Marmaras - Petitioner
Case No: 97-455-SPH

Dear Chairman Schuetz:

Please enter the appearance of G. Scott Barhight, Julie D. Wright, and Whiteford, Taylor & Preston L.L.P., as attorneys in the above-referenced matter.

Please do not hesitate to contact me if you require any additional information.

Sincerely,

G. Scott Barhight

G. Scott Barhight

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COUNTY BOARD OF APPEALS
97 JUL 21 PM 3:30

GSB:jdw

FRANCIS X. BORGERDING, JR.
Attorney at Law
MERCANTILE BUILDING - SUITE 600
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6820
FAX (410) 296-6884

Member of Maryland and District of Columbia Bar

January 8, 1998

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

RE: Case Nos.: 97-455-SPH
CBA-97-129
In the Matter of George and Peggy Marmaras
4140/4142 East Joppa Road
Hearing Dates: Wednesday, 1/21/98 @ 10:00 a.m.
Thursday, 1/22/98 @ 10:00 a.m.

Gentlemen/Ladies:

Please enter my appearance in relation to the above-referenced cases on behalf of the Perry Hall Improvement Association, Inc., Protestants, in the above-referenced cases. Thank you very much for your cooperation with regard to this matter.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk
cc: G. Scott Barhight, Esquire
Julie D. Wright, Esquire

98 JAN -9 PM 1:07
RECEIVED
COUNTY BOARD OF APPEALS

PERRY HALL IMPROVEMENT ASSOCIATION, INC.

P.O. Box 63
Perry Hall, Maryland 21128

July 3, 1997

Mr. Arnold Jablon, Director
Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

RE: Appeal to Case #97-455-SPH
4140 East Joppa Road

Dear Mr. Jablon:

Please consider this an appeal to Case #97-455-SPH by the Perry Hall Improvement Association and the five adjoining property owners on Brookfield Road. (see attached names, addresses and signatures)

The decision to grant parking in a ROA zone was granted June 3, 1997 by Deputy Zoning Commissioner Timothy Kotroco.

There is also an appeal to the hearing held June 16, 1997 by the Development Review Committee (DRC) on DRC 05197C. The DRC granted a limited exemption and waiver according to Baltimore County Code 26-171 (a) 7.

We request the two appeal hearings be scheduled at the same time since the ROA zone parking is part of the development plan.

Enclosed is a check for $175.00 for the appeal and $35.00 for the sign.

Sincerely,

Al Thompson
President

RECEIVED
JUL 3 1997
PDM

Perry Hall Improvement Association

RE: Case #97-455-SPH

Richard A. Reid
and
Christine L. Reid
4134 Brookfield Road
Baltimore, MD 21236

Richard A. Reid
Christine L. Reid

Clinton E. Marshall
4135 Brookfield Road
Baltimore, MD 21236

Clinton E. Marshall

Arthur J. Bogard
4136 Brookfield Road
Baltimore, MD 21236

Arthur J. Bogard

Bertha Ginn
4137 Brookfield Road
Baltimore, MD 21236

Bertha Ginn

Edward E. Baker
and
Barbara J. Baker
4140 Brookfield Road
Baltimore, MD 21236

Edward E. Baker
Barbara J. Baker

County Board of Appeals of Baltimore County
ROOM 49 OLD COURTHOUSE
TOWSON, MARYLAND 21204

RETURN TO SENDER
NO SUCH STREET

PRESORT-01-27-98

RETURN SERVICE REQUESTED 01-23-98

RETURN TO SENDER
NO SUCH STREET

MR AND MRS GEORGE MARMARAS
9127 CORNFLOWER ROAD
BALTIMORE MD 21237

2/09/98 -Mailed to Mr./Mrs. Marmaras
at same address; using "21236" as ZIP -
"21237" is shown on Petition; however,
ZIP Directory shows "21236" as ZIP for
this address.

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Peggy Marmaras	9217 CORNFLOWER RD
George MARMARAS	9217 CORNFLOWER RD
Robert B. Tipton	617 STEMMERS RUN RD
ART LEONARD	102 N. MAIN ST., BEL AIR MD
Ruth O. Faul	9506 Stoneoak Rd.
Muriel L. McKinney	4618 Billy goat Rd. Perry Hall
Maria Giannakis	9 Batter Brook Ct. 21087
Sheila Hoover	2 Steve Way 21236

Printed with Soybean Ink
on Recycled Paper

PLEASE PRINT CLEARLY

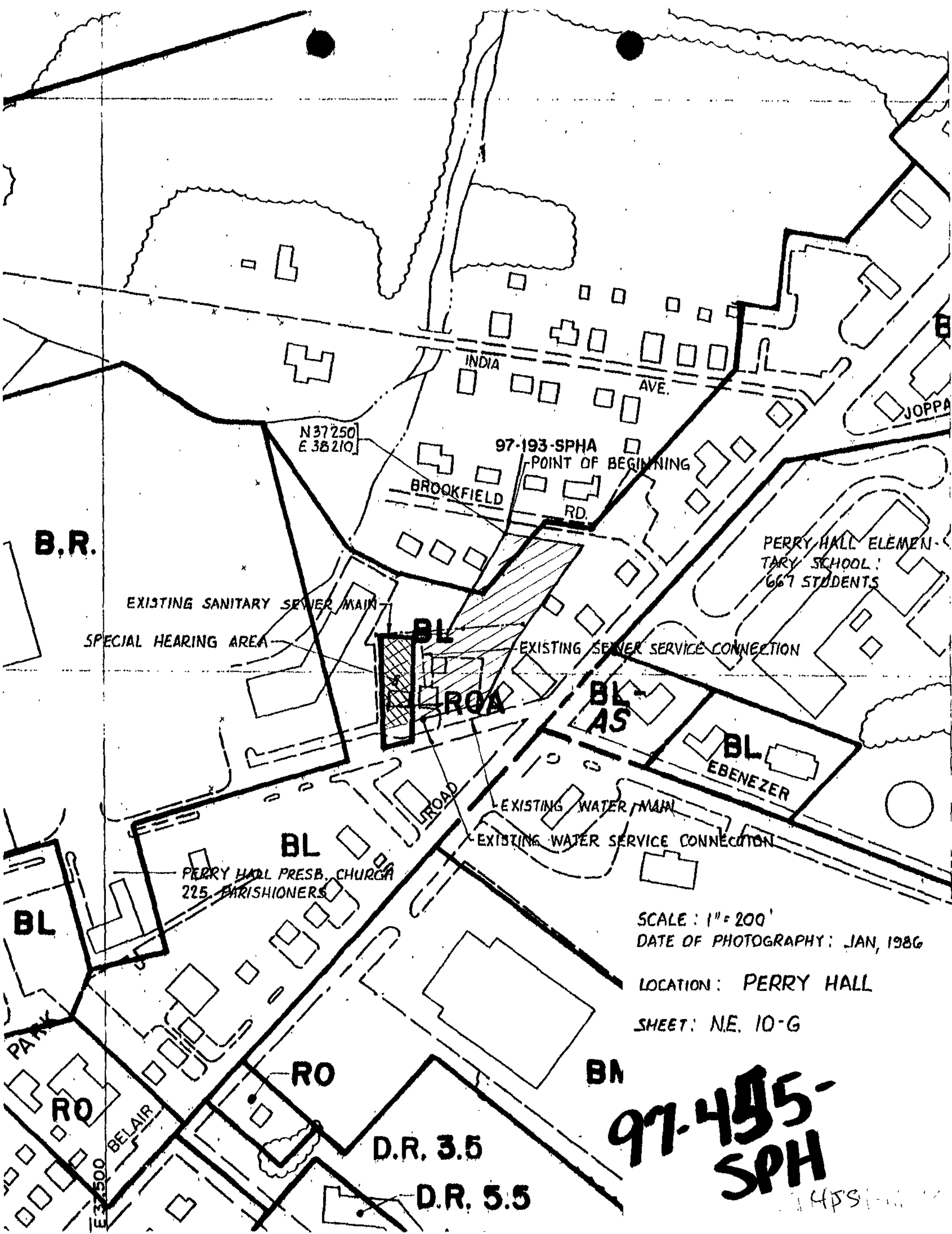
PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Chris Jackiritz	9814 Richlyn Dr. Perry Hall Md.
Dorothy A. McBram	9513 Dawnvue Rd 21236
Clinton E May Rd	4135 Brookfield RD 21236
George W. Wilson	4517 Forge Rd 21128
EDNA WILSON	4517 FORGE RD 21128
Angela L. Shannon	9307 Snyder Lane 21128
DENNIS ECKARD	39 BANGERT AVE 21128
Ed Hardesty	37 Bangert Ave 21128
Bob Hofman	48 Bangert Ave 21128
Winifred B. Grumbine	9514 Dawnvale Rd 21236
Dolores Clarke	36 Borgia Court 21234
Terri Isenrock	9210 Cowenton Ave. 21128
Eileen McGee	9512 Dawnvale Rd 21236
Kay Frampton	8939 Kilkenny Cir. 21236
George Staab	4702 E. Joppa Rd. 21128
Kenneth H. Mason	9125 Nayfield Rd 21234
William F. Edwards	4107 KARLSTON RD. 21236
Richard N. Andrews	9404 Pinedale Lane 21236
Bertha N. Grim	4137 Brookfield Rd 21236

Protestants 5A-5Z (26 photos)
" 6A-6D (4 photos)

97-455-SPH

Marianas
(Double "T" Diner)


INDIA
AVE.
N 37250
E 38210
97-193-SPHA
POINT OF BEGINNING
BROOKFIELD
RD.
JOPPA
B.R.
PERRY HALL ELEMENTARY SCHOOL:
667 STUDENTS
EXISTING SANITARY SEWER MAIN
SPECIAL HEARING AREA
BL
EXISTING SEWER SERVICE CONNECTION
ROA
BL-AS
BL
EBENEZER
ROAD
EXISTING WATER MAIN
EXISTING WATER SERVICE CONNECTION
BL
PERRY HALL PRESB. CHURCH
225 PARISHIONERS
BL
SCALE: 1" = 200'
DATE OF PHOTOGRAPHY: JAN, 1986
LOCATION: PERRY HALL
SHEET: N.E. 10-G
PARK
RO
BN
RO
BELAIR
E 37500
D.R. 3.5
D.R. 5.5
97-495-SPH

Section 202--RESIDENTIAL-OFFICE, CLASS A OFFICE ZONE (R-O-A) ZONE
[Bill No. 170, 1991]

202.1--Declaration of Findings.

A. Residential use of certain sites may not be economically feasible in some predominantly moderate-density residential areas that are immediately adjacent to commercial or other non-residential uses;

B. Neither business zoning nor high-density residential zoning nor residential-office zoning which permits new office buildings on those sites is appropriate; and

C. With appropriate restrictions, houses converted to offices are suitable, economically feasible uses of such sites.

202.2--Statement of Legislative Policy. The R-O-A zoning classification is established, pursuant to the findings of Section 202.1, to accommodate single-family, duplex and two-family detached houses converted to office buildings in predominantly residential areas on sites that, because of adjacent non-residential activity, heavy commercial traffic, or other similar factors, can no longer reasonably be limited solely to uses allowable in moderate-density residential zones. It is further the intent of the county council that the residential appearance of the existing structure and the residential setting of any building converted to offices be maintained in the R-O-A zones so that the converted dwelling will be highly compatible with neighboring residential property. To maintain residential character, the council does not intend that lots be developed or redeveloped solely for the purpose of providing parking in the R-O-A zone.

The R-O-A zone shall only be applied to sites which are large enough or designed in such a way that parking and access can be accommodated without sacrificing the residential character of the site and where the conversion from residential to office use will not cause serious disruption in traffic flow.

202.3--Use Regulations.

A. Uses permitted by right. The following uses, only, are permitted by right in any R-O-A zone:

1. Uses permitted by right and as limited in D.R. 3.5 zones.

2. Class A office buildings containing offices, and their accessory uses including surface parking, but not including parking as a principal use, except as provided under Section 409.7B.2.

Prot. Ex. 1A

3. A single-family or two-family, detached dwelling in which a portion of the building is converted to offices and a portion is used for a dwelling, without any external enlargement, except as permitted and conditioned by Section 202.5, for the purpose of creating office space or otherwise accommodating the office use. Residential expansion is subject to the conditions of Section 202.3.B. and 202.5.

4. The reconstruction of a Class A office building which is destroyed by fire or other casualty, subject to the conditions of Section 202.6.

B. Uses permitted by special exception. Uses permitted by special exception and as limited in D.R.3.5 zones, only, are permitted by special exception. Any dwelling which is under application for either a change in zoning classification to R-O-A or for a conversion from a residential use to an office use after obtaining the R-O-A zoning classification shall require a special exception if the dwelling has been enlarged in floor area by ten percent or more within a period of five years prior to the date of application for change or conversion.

C. Signs and off-street parking requirements.

1. In addition to signs permitted under Subsection 413.1, one stationary outside identification sign is permitted, provided that the sign is not illuminated, is wall-mounted or projects from the building and does not have a surface area exceeding six square feet on each side. No other signs or displays of any kind visible from outside the building are permitted.

2. Off-street parking spaces shall be provided in accordance with Section 409, but no structured parking is permitted, except for a residential garage, that was constructed as an accessory use to a dwelling prior to its conversion to a Class A office building.

   a. Parking areas shall be screened in accordance with the landscape manual;

   b. Parking shall be setback at least 10 feet from the property line except that if the property line abuts an alley, no setback is required provided that the alley does not abut a front or side yard of a residentially used property;

   c. Parking shall be located in the side or rear only, unless otherwise approved by the zoning commissioner pursuant to Section 307.

d. Notwithstanding the provisions of Section 307, the zoning commissioner may not permit a variance of more than one parking space below the number required by these regulations.

202.4--Bulk Regulations of R-O-A Zones. Uses permitted by right or by special exception are governed by the following bulk regulations: [Bill No. 170, 1991.]

A. Residential uses and new structures accessory to Class A office buildings are governed by the bulk regulations of the D.R. zone classification in place at the time when the R-O-A zone was applied, subject to compliance with Section 202.6. If a D.R. zone was not in place at the time that the R-O-A zone was applied, the bulk regulations of the D.R.3.5 zone, as set forth in Section 1B02.3C.1, shall govern. The provisions of Subsection 1B01.1B (Residential Transition Areas and Uses Permitted Therein) shall apply in the R-O-A zone to the development of any use other than a single-family home or the conversion of a home to a Class A office building.

B. Class A office buildings themselves, which by definition may not be enlarged, are not subject to bulk regulations, nor are unenlarged structures accessory to the original building.

C. The reconstruction of an existing Class A office building which is destroyed by fire or other casualty may not increase the size or gross floor area of the structure or alter the location of the structure, subject to the limitations contained in Section 104.2.

202.5--Submitting Plan for Conversion. A new building or part of a building to be used as a dwelling must be occupied as a residential use for five years before submitting a plan for conversion to a Class A office building, subject to documentation of compliance with the residential use requirement in this section. The use or development of any property in an R-O-A zone may not be changed from that existing on the effective date of the classification's application to that property, except in accordance with a plan approved by the County Review Group as provided in Title 26, Article V of the Baltimore County Code, unless the change in use is confined to a change in the number of dwelling units in accordance with the provisions of Section 402. {Bill No. 170, 1991.}

202.6--Review for Compatibility. Any conversion to a Class A office building involving change to the exterior of the dwelling, any new building to be used as a dwelling, or the reconstruction of any Class A office building which has been destroyed by fire or other casualty, is subject to Section 26-282 of the Development Regulations. In addition to the standards of 26-282, the Director of the Office of Planning and Zoning shall consider the compatibility of proposed window and door treatments in relation to existing adjacent or surrounding buildings. {Bill No. 170, 1991.}

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1991, LEGISLATIVE DAY NO. 18

BILL NO. 170-91

MR. DOUGLAS B. RILEY, COUNCILMAN

BY THE COUNTY COUNCIL, OCTOBER 7, 1991

A BILL ENTITLED

AN ACT concerning

Zoning Regulations - R-O-A Zone

FOR the purpose of creating the R-O-A Zone in the Baltimore County Zoning Regulations which will allow for the conversion of homes into offices; stating findings of the County Council; defining terms; authorizing certain uses in the zone by right or by special exception; providing sign, bulk regulation, and parking requirements for the zone; providing for a review of conversion plans; conforming certain provisions of the development regulations; and generally relating to uses in R-O-A zones.

BY repealing and re-enacting, with amendments,

Section 100.1.A.2 and Section 101, the definitions of "Office Building, Class A" and "Residential Zone"

Baltimore County Zoning Regulations, as amended

BY adding

Section 202

Baltimore County Zoning Regulations, as amended

BY repealing and reenacting, with amendments,

Section 409.7.B.

Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments

Section 26-282(a)

Title 26 - Planning, Zoning and Subdivision Control

Baltimore County Code, 1988

WHEREAS, the Baltimore County Council has received a final report from the Planning Board, dated July 18, 1991, concerning the subject legislation and held a public hearing on the report on September 26, 1991, now therefore

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.

Prints Ex. 1B

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Section 100.1.A and Section 101, the definitions of "Office Building, Class A" and "Residential Zone" of the Baltimore County Zoning Regulations, as amended, be and they are hereby repealed and reenacted, with amendments, to read as follows:

Section 100 - Zones and Districts: Boundaries.

100.1--Baltimore County is hereby divided into zones and districts in accordance with this subsection.

A. Zones.

2. Zones are classified as follows:

R.C.2	(Resource Conservation--agriculture)
R.C.3	(Resource Conservation--deferral of planning and development)
R.C.4	(Resource Conservation--watershed protection)
R.C.5	(Resource Conservation-- rural residential)
R.C.20	(Resource Conservation--critical area) {Bill No. 6, 1989}
R.C.50	(Resource Conservation--critical area agricultural) {Bill No. 6, 1989}
R.C.C.	(Resource Conservation--commercial) {Bill No. 103, 1988}
D.R.1	(Density Residential, 1.0 dwelling unit per acre)
D.R.2	(Density Residential, 2.0 dwelling units per acre)
D.R.3.5	(Density Residential, 3.5 dwelling units per acre)
D.R.5.5	(Density Residential, 5.5 dwelling units per acre)
D.R.10.5	(Density Residential, 10.5 dwelling units per acre)
D.R.16	(Density Residential, 16.0 density units per acre)
R.A.E.1	(Residential, 40.0 density units per acre)
R.A.E.2	(Residential, 80.0 density units per acre)
R-O	(Residential-Office, 5.5 dwelling units per acre)
R-O-A	(RESIDENTIAL-OFFICE, CLASS A OFFICE)
O-1	(Office Building)
O-2	(Office Park)
O.T.	(Office and Technology)
B.L.	(Business, Local)
B.M.	(Business, Major)
B.R.	(Business, Roadside)
M.R.	(Manufacturing, Restricted)
M.L.R.	(Manufacturing, Light, Restricted)
M.L.	(Manufacturing, Light)
M.H.	(Manufacturing, Heavy)

Section 101 - Definitions.

Office Building, Class A: A principal building that was originally constructed as a 1-family or 2-family detached dwelling and that is converted BY PROPER PERMIT to office use without any external enlargement for the purpose of creating the office space or otherwise accommodating the office use. For the purposes of this definition,

enclosure of a porch of a house or the ADDITION OF AN EXTERIOR STAIRWAY AT THE SIDE OR REAR OF THE BUILDING does not constitute external enlargement.

Residential Zone: A zone classified as R.C., D.R., R-O-A, or R.A.E. "Zoned for residential purposes": Within a residential zone.

SECTION 2. AND BE IT FURTHER ENACTED, that Section 202 be and it is hereby added to the Baltimore County Zoning Regulations, as amended, to read as follows:

SECTION 202--RESIDENTIAL-OFFICE, CLASS A OFFICE ZONE (R-O-A) ZONE

202.1 DECLARATION OF FINDINGS.

A. RESIDENTIAL USE OF CERTAIN SITES MAY NOT BE ECONOMICALLY FEASIBLE IN SOME PREDOMINANTLY MODERATE-DENSITY RESIDENTIAL AREAS THAT ARE IMMEDIATELY ADJACENT TO COMMERCIAL OR OTHER NONRESIDENTIAL USES;

B. NEITHER BUSINESS ZONING NOR HIGH-DENSITY RESIDENTIAL ZONING NOR RESIDENTIAL-OFFICE ZONING WHICH PERMITS NEW OFFICE BUILDINGS ON THOSE SITES IS APPROPRIATE; AND

C. WITH APPROPRIATE RESTRICTIONS, HOUSES CONVERTED TO OFFICES ARE SUITABLE, ECONOMICALLY FEASIBLE USES OF SUCH SITES.

202.2--STATEMENT OF LEGISLATIVE POLICY. THE R-O-A ZONING CLASSIFICATION IS ESTABLISHED, PURSUANT TO THE FINDINGS OF SECTION 202.1, TO ACCOMMODATE SINGLE FAMILY, DUPLEX AND TWO FAMILY DETACHED HOUSES CONVERTED TO OFFICE BUILDINGS IN PREDOMINANTLY RESIDENTIAL AREAS ON SITES THAT, BECAUSE OF ADJACENT NONRESIDENTIAL ACTIVITY, HEAVY COMMERCIAL TRAFFIC, OR OTHER SIMILAR FACTORS, CAN NO LONGER REASONABLY BE LIMITED SOLELY TO USES ALLOWABLE IN MODERATE-DENSITY RESIDENTIAL ZONES. IT IS FURTHER THE INTENT OF THE COUNTY COUNCIL THAT THE RESIDENTIAL APPEARANCE OF THE EXISTING STRUCTURE AND THE RESIDENTIAL SETTING OF ANY BUILDING CONVERTED TO OFFICES BE MAINTAINED IN THE R-O-A ZONES SO THAT THE CONVERTED DWELLING WILL BE HIGHLY COMPATIBLE WITH NEIGHBORING RESIDENTIAL PROPERTY. TO MAINTAIN RESIDENTIAL CHARACTER, THE COUNCIL DOES NOT INTEND THAT LOTS BE DEVELOPED OR REDEVELOPED SOLELY FOR THE PURPOSE OF PROVIDING PARKING IN THE R-O-A ZONE. THE R-O-A ZONE SHALL ONLY BE APPLIED TO SITES WHICH ARE LARGE ENOUGH OR DESIGNED IN SUCH A WAY THAT PARKING AND ACCESS CAN BE ACCOMMODATED WITHOUT SACRIFICING THE RESIDENTIAL CHARACTER OF THE SITE AND WHERE THE

CONVERSION FROM RESIDENTIAL TO OFFICE USE WILL NOT CAUSE SERIOUS DISRUPTION IN TRAFFIC FLOW.

202.3--USE REGULATIONS.

A. USES PERMITTED BY RIGHT. THE FOLLOWING USES, ONLY, ARE PERMITTED BY RIGHT IN ANY R-O-A ZONE:

1. USES PERMITTED BY RIGHT AND AS LIMITED IN D.R. 3.5 ZONES.

2. CLASS A OFFICE BUILDINGS CONTAINING OFFICES, AND THEIR ACCESSORY USES INCLUDING SURFACE PARKING, BUT NOT INCLUDING PARKING AS A PRINCIPAL USE , EXCEPT AS PROVIDED UNDER SECTION 409.7.B.2.

3. A SINGLE FAMILY OR TWO FAMILY DETACHED DWELLING IN WHICH A PORTION OF THE BUILDING IS CONVERTED TO OFFICES AND A PORTION IS USED FOR A DWELLING, WITHOUT ANY EXTERNAL ENLARGEMENT , EXCEPT AS PERMITTED AND CONDITIONED BY SECTION 202.5, FOR THE PURPOSE OF CREATING OFFICE SPACE OR OTHERWISE ACCOMMODATING THE OFFICE USE. RESIDENTIAL EXPANSION IS SUBJECT TO THE CONDITIONS OF SECTION 202.3.B. AND 202.5.

4. THE RECONSTRUCTION OF A CLASS A OFFICE BUILDING WHICH IS DESTROYED BY FIRE OR OTHER CASUALTY, SUBJECT TO THE CONDITIONS OF SECTION 202.6.

B. USES PERMITTED BY SPECIAL EXCEPTION. USES PERMITTED BY SPECIAL EXCEPTION AND AS LIMITED IN D.R.3.5 ZONES, ONLY, ARE PERMITTED BY SPECIAL EXCEPTION. ANY DWELLING WHICH IS UNDER APPLICATION FOR EITHER A CHANGE IN ZONING CLASSIFICATION TO R-O-A OR FOR A CONVERSION FROM A RESIDENTIAL USE TO AN OFFICE USE AFTER OBTAINING THE R-O-A ZONING CLASSIFICATION SHALL REQUIRE A SPECIAL EXCEPTION IF THE DWELLING HAS BEEN ENLARGED IN FLOOR AREA BY TEN PERCENT OR MORE WITHIN A PERIOD OF FIVE YEARS PRIOR TO THE DATE OF APPLICATION FOR CHANGE OR CONVERSION.

C. SIGNS AND OFF-STREET PARKING REQUIREMENTS.

1. IN ADDITION TO SIGNS PERMITTED UNDER SUBSECTION 413.1, ONE STATIONARY OUTSIDE IDENTIFICATION SIGN IS PERMITTED, PROVIDED THAT THE SIGN IS NOT ILLUMINATED, IS WALL-MOUNTED OR PROJECTS FROM THE BUILDING AND DOES NOT HAVE A SURFACE AREA EXCEEDING SIX SQUARE FEET ON EACH SIDE. NO OTHER SIGNS OR DISPLAYS OF ANY KIND VISIBLE FROM OUTSIDE THE BUILDING ARE PERMITTED.

2. OFF-STREET PARKING SPACES SHALL BE PROVIDED IN ACCORDANCE WITH SECTION 409, BUT NO STRUCTURED PARKING IS PERMITTED,

EXCEPT FOR A RESIDENTIAL GARAGE, THAT WAS CONSTRUCTED AS AN ACCESSORY USE TO THE DWELLING PRIOR TO ITS CONVERSION TO A CLASS A OFFICE BUILDING.

A. PARKING AREAS SHALL BE SCREENED IN ACCORDANCE WITH THE LANDSCAPE MANUAL;

B. PARKING SHALL BE SETBACK AT LEAST 10 FEET FROM THE PROPERTY LINE EXCEPT THAT IF THE PROPERTY LINE ABUTS AN ALLEY, NO SETBACK IS REQUIRED PROVIDED THAT THE ALLEY DOES NOT ABUT A FRONT OR SIDE YARD OF A RESIDENTIALLY USED PROPERTY;

C. ~~NOTWITHSTANDING THE PROVISIONS OF SECTION 307,~~ PARKING SHALL BE LOCATED IN THE SIDE OR REAR ONLY , UNLESS OTHERWISE APPROVED BY THE ZONING COMMISSIONER PURSUANT TO SECTION 307.

D. NOTWITHSTANDING THE PROVISIONS OF SECTION 307, THE ZONING COMMISSIONER MAY NOT PERMIT A VARIANCE OF MORE THAN ONE PARKING SPACE BELOW THE NUMBER REQUIRED BY THESE REGULATIONS.

202.4--BULK REGULATIONS OF R-O-A ZONES. USES PERMITTED BY RIGHT OR BY SPECIAL EXCEPTION ARE GOVERNED BY THE FOLLOWING BULK REGULATIONS:

A. RESIDENTIAL USES AND NEW STRUCTURES ACCESSORY TO CLASS A OFFICE BUILDINGS ARE GOVERNED BY THE BULK REGULATIONS OF THE D.R. ZONE CLASSIFICATION IN PLACE AT THE TIME WHEN THE R-O-A ZONE WAS APPLIED , SUBJECT TO COMPLIANCE WITH SECTION 202.6. IF A D.R. ZONE WAS NOT IN PLACE AT THE TIME THAT THE R-O-A ZONE WAS APPLIED, THE BULK REGULATIONS OF THE D.R.3.5 ZONE , AS SET FORTH IN SECTION 1B02.3C.1, SHALL GOVERN. THE PROVISIONS OF SUBSECTION 1B01.1.B. (RESIDENTIAL TRANSITION AREAS AND USES PERMITTED THEREIN) SHALL APPLY IN THE R-O-A ZONE TO THE DEVELOPMENT OF ANY USE OTHER THAN A SINGLE FAMILY HOME OR THE CONVERSION OF A HOME TO A CLASS A OFFICE BUILDING.

B. CLASS A OFFICE BUILDING THEMSELVES, WHICH BY DEFINITION MAY NOT BE ENLARGED, ARE NOT SUBJECT TO BULK REGULATIONS, NOR ARE UNENLARGED STRUCTURES ACCESSORY TO THE ORIGINAL BUILDING.

C. THE RECONSTRUCTION OF AN EXISTING CLASS A OFFICE BUILDING WHICH IS DESTROYED BY FIRE OR OTHER CASUALTY MAY NOT INCREASE THE SIZE OR GROSS FLOOR AREA OF THE STRUCTURE OR ALTER THE LOCATION OF THE STRUCTURE, ~~WITHOUT A SPECIAL HEARING~~ SUBJECT TO THE LIMITATIONS CONTAINED IN SECTION 104.2.

202.5--SUBMITTING PLAN FOR CONVERSION. A NEW BUILDING OR PART OF A BUILDING TO BE USED AS A DWELLING MUST BE OCCUPIED AS A

[illegible] YEARS BEFORE SUBMITTING A PLAN FOR CONVERSION TO A CLASS A OFFICE BUILDING, SUBJECT TO DOCUMENTATION OF COMPLIANCE WITH THE RESIDENTIAL USE REQUIREMENT IN THIS SECTION. THE USE OR DEVELOPMENT OF ANY PROPERTY IN AN R-O-A ZONE MAY NOT BE CHANGED FROM THAT EXISTING ON THE EFFECTIVE DATE OF THE CLASSIFICATION'S APPLICATION TO THAT PROPERTY, EXCEPT IN ACCORDANCE WITH A PLAN APPROVED BY THE COUNTY REVIEW GROUP AS PROVIDED IN TITLE 26, ARTICLE V OF THE BALTIMORE COUNTY CODE, UNLESS THE CHANGE IN USE IS CONFINED TO A CHANGE IN THE NUMBER OF DWELLING UNITS IN ACCORDANCE WITH THE PROVISIONS OF SECTION 402.

202.6--REVIEW FOR COMPATIBILITY. ANY CONVERSION TO A CLASS A OFFICE BUILDING INVOLVING CHANGE TO THE EXTERIOR OF THE DWELLING, ANY NEW BUILDING TO BE USED AS A DWELLING, OR THE RECONSTRUCTION OF ANY CLASS A OFFICE BUILDING WHICH HAS BEEN DESTROYED BY FIRE OR OTHER CASUALTY, IS SUBJECT TO SECTION 26-282 OF THE DEVELOPMENT REGULATIONS. IN ADDITION TO THE STANDARDS OF 26-282, THE DIRECTOR OF THE OFFICE OF PLANNING AND ZONING SHALL CONSIDER THE COMPATIBILITY OF PROPOSED WINDOW AND DOOR TREATMENTS IN RELATION TO EXISTING ADJACENT OR SURROUNDING BUILDINGS.

SECTION 3. AND BE IT FURTHER ENACTED, that Section 409.7.B. of the Baltimore County Zoning Regulations, as amended, be and it is hereby repealed and re-enacted, with amendments, to read as follows:

409.7--Location of Parking

All required off-street parking spaces shall be located either on the same lot as the structure or use to which they are accessory or off-site as provided for below.

B. (1) Except in C.T. Districts AND R-O-A and R-O zones, off-site parking spaces for uses other than residential and lodging shall be located within 500 feet walking distance of a building entrance to the use that such spaces serve. In C.T. Districts, such spaces shall be permitted within 1000 feet walking distance of the building entrance. In the C.T. District of Towson, such spaces shall be permitted within 1500 feet walking distance of the building entrance, provided they are located within the town center boundary. {In R-O zones, such spaces shall be provided on the same lot as the structure or use to which they are accessory.}

(2) IN R-O AND R-O-A ZONES ALL REQUIRED OFF-STREET PARKING SPACES SHALL BE PROVIDED ON THE SAME LOT AS THE STRUCTURE OR

TO WHICH THEY ARE ACCESSORY EXCEPT THAT IN CASES WHERE ADJACENT DWELLINGS HAVE BEEN CONVERTED TO CLASS A OFFICE BUILDINGS, PARKING SPACES MAY BE PROVIDED ON THE ADJACENT LOTS. THE USE OF AN OFF-SITE PARKING FACILITY WHICH IS ACCESSORY TO A CHURCH OR OTHER EXISTING PRINCIPAL USE MAY SATISFY THE PARKING REQUIREMENT, IF ~~LOCATE~~ LOCATED NO MORE THAN 500 FEET FROM THE LOT.

SECTION 4. AND BE IT FURTHER ENACTED, that Section 26-282(a) of Title 26 - Planning Zoning and Subdivision Control, of the Baltimore County Code, 1988, be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Sec. 26-282. Development in RCC, R-O, R-O-A, O-1, O-2, or OT zone and CR Districts.

(a) (1) Development of property in AN R-O-A ZONE AND an R-O zone shall be appropriate to the specific circumstances of the site, taking into account surrounding uses; tree preservation; protection of watercourses and bodies of water from erosion and siltation; and safety, convenience, and amenity for the neighborhoods.

(2) In determining the appropriateness of A NEW DWELLING, THE RECONSTRUCTION OF A CLASS A OFFICE BUILDING WHICH INVOLVES CHANGES TO THE EXTERIOR OF THE ~~DWELLING~~ BUILDING, OR THE DEVELOPMENT OF class B office buildings, design elements of proposed buildings shall be evaluated in relation to existing adjacent or surrounding buildings. Unless determined otherwise by the director of the office of planning and zoning to be considered appropriate, new buildings shall be similar to existing ones in the following respects:

a. Height;
b. Bulk and general massing;
c. Major divisions or rhythms of the facade;
d. Proportion of openings (window-wall-relation);
e. Roof treatment;
f. Materials, colors, textures;
g. General architectural character:

1. Horizontal or vertical emphasis;
2. Scale;
3. Stylistic features and themes - porches, colonnades, pediments, cupolas, cornices, coins, detail, and ornament;

h. Relation to street;
i. Exterior lighting. Buildings shall not be lighted on the exterior, and any lighting provided for safety reasons should be minimized and directed away from adjoining residential property.

Section 5. And be it further enacted, that this Act shall take effect forty-five days after its enactment.

Cont Sheet

C. RICHARD MOORE
VICE PRESIDENT

PROFILE: Mr. Moore has 31 years of experience in traffic, transportation, transit, parking, and pedestrian planning and engineering. He has worked for Baltimore County Government for those 31 years in all facets of traffic and transportation planning. This experience includes traffic impact studies, transportation analysis of full scale communities, as well as individual site review of various land uses. Additionally, his experience encompasses travel demand studies, parking studies, transit access studies, traffic signal studies and design, and community transportation studies. Mr. Moore has provided expert testimony before numerous planning boards, elected officials, administrative hearing officers, district and circuit courts, as well as citizens groups.

EXPERIENCE: Traffic Impact Studies. Conducted and reviewed numerous traffic impact studies for residential, commercial, and mixed use projects, as well as town master plans throughout Baltimore County. This includes preparation of reports and expert testimony in support of rezoning, subdivisions, site plans, and master plan approval.

Conducted large scale multi-modal transportation studies for such communities as White Marsh, Hunt Valley, Owings Mills, Towson, and others. These impact studies included large industrial complexes, such as the Rutherford Business Park, HCFA, town centers of Owings Mills, White Marsh, Towson, Loveton, as well as others while in Baltimore County for the last 31 years. Numerous large and small scaled residential projects, such as Owings Mills New Town, Loveton Farms, Honeygo, Cockeysville, Randallstown, and others.

Traffic Signal Operations. Conducted numerous studies for the installation and modernization of over 400 traffic signals in Baltimore County. This included studies to determine the need for traffic signals, as well as studies analyzing the signal timing and their coordination in signal systems in the various systems throughout the county. Installed and designed the first digital computerized signal system on the East Coast. Participated in the many years of continued upgrading of this signal system with improved signal technology and signal timings.

Transportation Corridor Studies. Provided traffic and transportation expertise as a member of the team of planners, engineers, and others for such arterials as Perry Hall Boulevard, Owings Mills Boulevard, Red Run Boulevard, Rossville Boulevard, as well as others during the 31 growth years in Baltimore County Development. These studies required analysis of the land use and a determination of future traffic volumes to ensure adequate design.

Traffic and Transportation Regulations. Supervised and prepared traffic and transportation regulations for over 100,000 traffic signs and markings in Baltimore County. Also, prepared the residential permit parking law, which was accomplished with numerous community groups attempting to resolve parking problems within their communities. Provided expertise in developing the transportation element of Baltimore County Basic Services legislation.

Transit Impact Analysis. Conducted numerous access studies and participated in the planning of the MTA's Metro Rail Line to Owings Mills, as well as the Light Rail to Timonium. This included Highway Capacity Analyses, traffic signal design, access requirements, as well as adjacent land use requirements. Also participated in the analysis of the Towson Transit Center. Additionally, participated in the semi-annual review of the bus routes in Baltimore County and adjustments to the routes as necessary.

Regional Transportation Studies. Participated with county planning agencies, mass transportation agencies, State Highway Administration, and the Baltimore Council of Governments in regional transportation needs and requirements.

Neighborhood Traffic Studies. Numerous neighborhood traffic studies requiring close coordination with many community groups throughout the county concerning speeding, truck traffic, cut through traffic, parking problems, traffic problems generated by development, and accidents (both pedestrian and vehicular) have been conducted with great success. Some of the communities involved were Loch Raven Village, Catonsville, Reisterstown, Timonium, Hawthorne, and Lochearn.

Transportation Demand Management. Coordinated and participated for over 20 years in the County's Ride Sharing Program. This program was utilized to encourage motorists to car pool, use mass transit, use of flexible work hours, use of bicycles, as well as other tools to reduce the demand on the road system by vehicular traffic. This program increased the importance with the passage of the Clean Air Act. This required our working closely with developers and property owners to reduce peak hour vehicular traffic.

Pedestrian Studies. Conducted pedestrian studies as part of the overall transportation plans in Towson, as well as numerous other communities throughout Baltimore County. This included analysis of pedestrian trips to the many schools, as well as working with the Coalition of the Handicapped to improve their access.

Traffic and Transportation Studies. As the analysis of the traffic and transportation needs on the 2,500 miles of county road were conducted, traffic count studies, highway capacity studies, intersection operational studies, channelization and access studies, truck studies, accident studies, and parking studies were required.

Environmental Impact Studies. Prepared the transportation components for numerous environmental documents required for over 15 years of transportation studies.

Traffic Accident Investigation. Prepared detailed Traffic Engineering studies and traffic accident analysis and provided expert testimony in District and Circuit Courts.

EDUCATION: Bachelor of Science, Civil Engineering, North Carolina State University, Raleigh, North Carolina 1965

Professional Program in Urban Transportation, Carnegie-Mellon University 1972

Various traffic and transportation short courses:
- Short Course in Traffic Engineering, University of Maryland, 1966
- Urban Transportation Short Course, Georgia Tech, 1966
- Traffic Management, Northwestern University, 1977
- Highway Capacity Manual, Institute of Transportation Engineers, 1986

- Freeway Incident Management, ITE, 1986
- Trip Generation Studies, ITE, 1988
- Traffic Signal System Coordination, Georgia Tech, 1996
- Traffic Engineering Short Course, Georgia Tech, 1996

AFFILIATIONS: Institute of Transportation Engineers
County Engineers Association
American Public Works Association

PUBLICATIONS:
- Owings Mills Traffic Study Department of Traffic Engineering and Department and Planning, Baltimore County Government, 1985
- Neighborhood Residential Speed Control, Institute of Transportation Engineers Annual Meeting, Vancouver, British Columbia, 1988
- Catonsville Traffic Study, Bureau of Traffic Engineering, Department of Public Works, Baltimore County Government, 1991
- Accident Analysis of Four Way Stop Signs When Used for Speed Control, Bureau of Traffic Engineering, Department of Public Works, 1992

EMPLOYMENT HISTORY:

1996 - present Wells & Associates, Inc., Towson, Maryland (Vice President)

Primary responsibility for traffic engineering and transportation planning services for the Baltimore region.

1993 - 1996 Baltimore County Government, Department of Public Works, Bureau of Highways and Traffic (Bureau Chief)

Supervise, plans, organize and direct the operations of the bureau and its budget of $15+ million, and its 400 employees. Responsible for all traffic movement, snow removal, and maintenance on 2,500 miles of county roadway. Responsible for transportation planning, traffic signs and markings, signal maintenance and construction, as well as road resurfacing, storm drain maintenance and grass cutting.

1987 - 1993 Baltimore County Government, Department of Public Works, Bureau of Traffic Engineering (Bureau Chief)

Supervise, plan, organize, and direct the operation of the bureau and its budget of $4+ million, with more than 80 employees. Responsible for all traffic movement on 2,500 miles of county roads with transportation planning, signs, markings, signal maintenance, and construction for a population of 760,000.

1985 - 1987 Baltimore County Government, Department of Traffic Engineering (Deputy Director)

Assists director in planning, organizing, directing and controlling activities in the Department of Traffic Engineering. Assists in policy and administration, establishment of procedures. Preparation and execution of department budget.

1969 - 1985 Baltimore County Government, Department of Traffic Engineering, Bureau of Planning and Design (Assistant Traffic Engineer)

Supervise operation of Bureau of Planning and Design. Plans, prepares and supervises traffic studies and surveys. Prepares designs on traffic signals, channelization, and intersection design. Operation of computerized traffic system. Reviews zoning, building, subdivision, and parking plans.

1964 - 1969 Baltimore County Government, Department of Traffic Engineering, Bureau of Planning and Design (Engineer)

Preparation of signal design. Reviewed and prepared comments on subdivision and zoning plans. Installation of county's first computerized signal system. Analysis of traffic data and preparation of reports.

Double T Diner
Bel Air Road and Joppa Road

Average peak hour trips for
High-Turnover(Sit-Down) Restaurant

AM Peak	In	42 trips	PM Peak	In	41 trips
	Out	41 trips		Out	32 trips
	Total	83 trips		Total	73 trips

28% New Trips
32% Diverted Trips
40% Pass-by Trips

100% Total

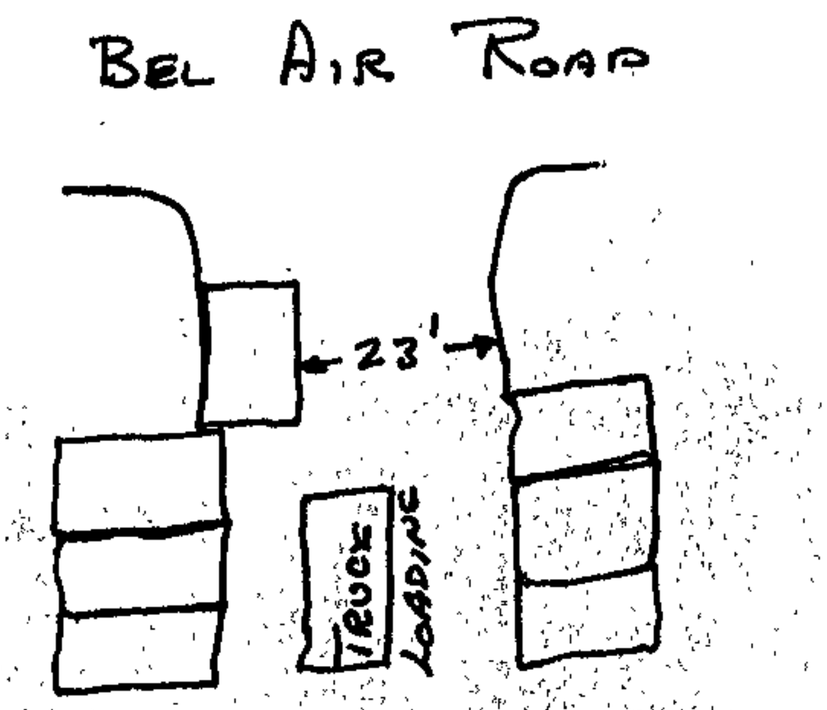
13238 Total vehicles entering intersection 7-9 am - 4-6 pm

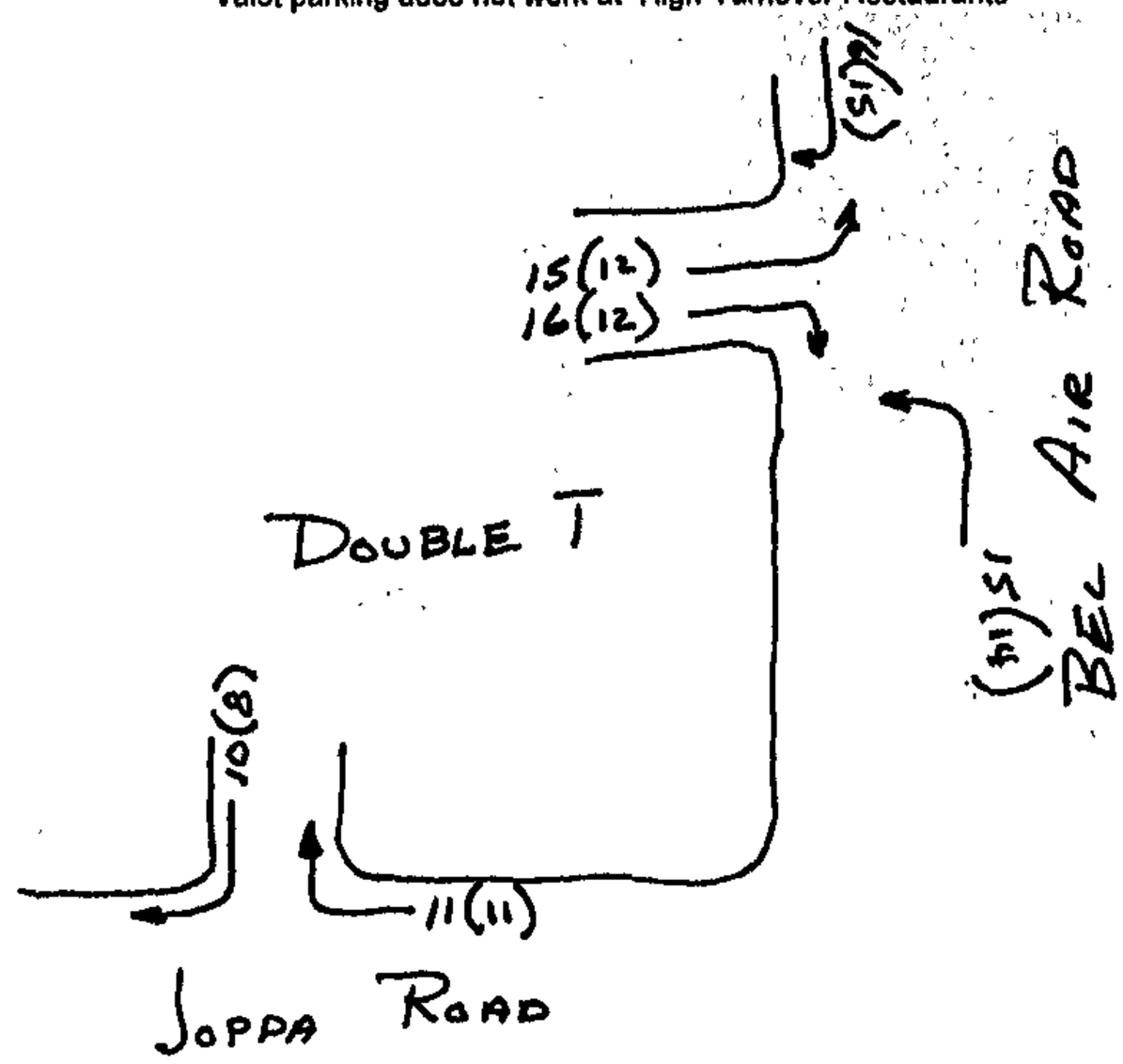
37% From the North
16% From the East
23% From the South
24% From the West

100% Total

Brookfield Road
narrow public street with head-in parking on both sides.
only 23 feet available for two way traffic
needs to be commerical driveway of 35 feet
would allow for left and right turn lanes at Bel Air Road
Left turn difficult due to heavy volume on Bel Air Road
Truck double parked on Brookfield Road for 13+ minutes to unload.
During field visits no vehicles made left turn(over one hour)

Valet parking does not work at High-Turnover Restaurants



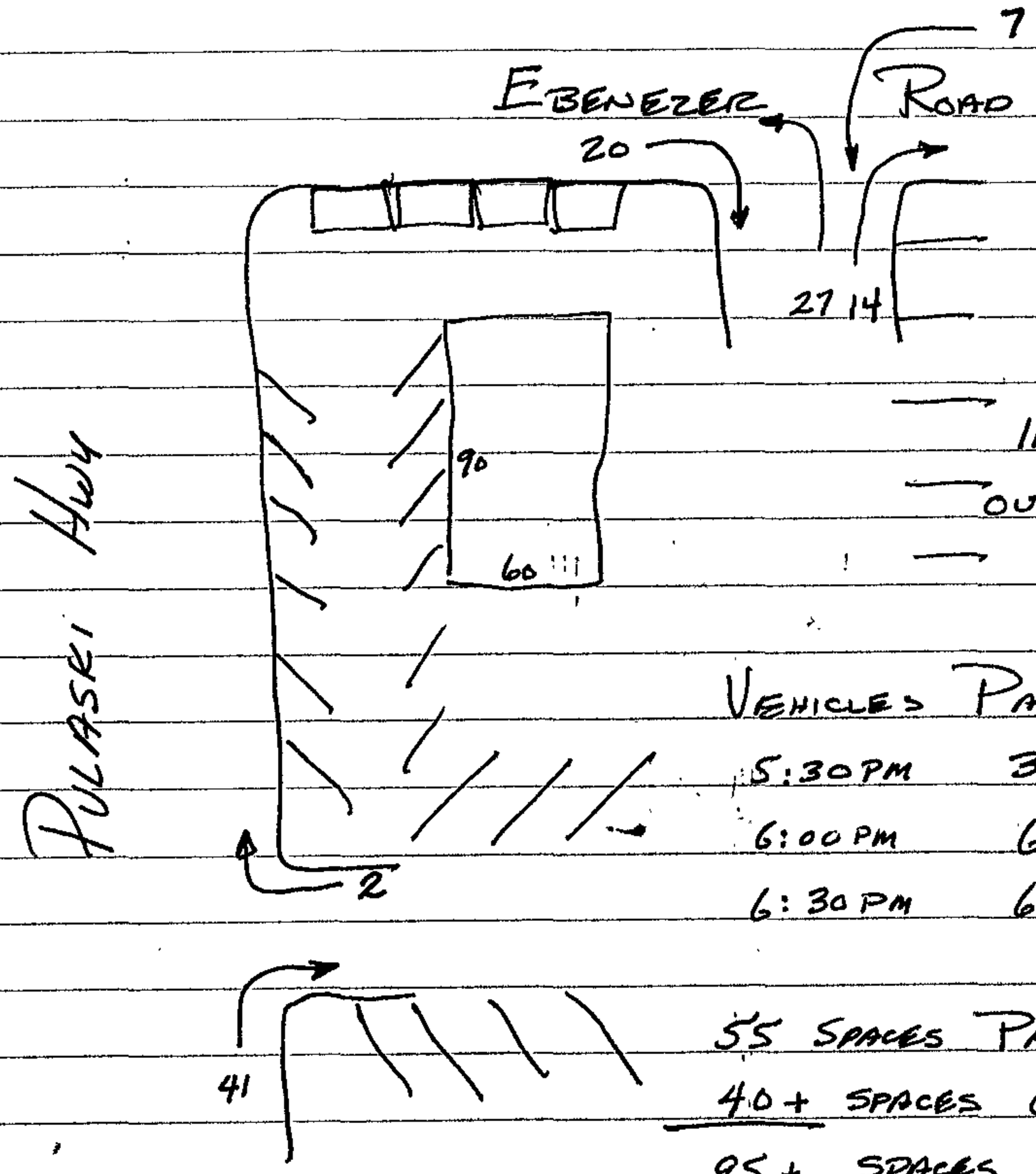


C. Richard Moore Vice President
Wells & Associates
420 Virginia Avenue
Towson, Maryland

Prot. 3A

DOUBLE T DINER
WHITE MARSH

9/20/98
5:30-6:30 PM



IN — 68
OUT — 43
111

VEHICLES PARKED

5:30 PM	33
6:00 PM	61
6:30 PM	65

55 SPACES PAVED
40+ SPACES GRAVEL LOT
95+ SPACES TOTAL

Part 3B

CURRICULUM VITAE

NORMAN E. GERBER, AICP

35 Pickburn Court Cockeysville, MD 21030

Business
(410)667-4543

Facsimilie
(410)683-4079

PROFESSIONAL EXPERIENCE

Preparation of Master Plans and Land Use Regulations

Prepared comprehensive, policy, small-area, facility and revitalization plans, capital programs and capital budgets.

Prepared zoning and development ordinances, agricultural land preservation and historic district regulations and growth management programs.

Conducted demographic, transportation, economic and market studies.

Implementation of Plans and Programs

Reviewed and approved new development.

Enforced zoning, agricultural and historic preservation regulations.

Negotiated plan and facilities projects with community groups, local and state legislative bodies and private sector business.

Other

Testified before local, state and national boards, commissions and legislatures on the behalf of plans and programs.

Testified before boards of appeals, circuit courts and the U. S. Tax Court of Appeals on land use issues.

Prepared RFP's, grant applications, selected consultants and administered contracts.

WORK EXPERIENCE

2/88 to present — NORMAN E. GERBER, AICP, Cockeysville, MD
Principal
Private practice as planning consultant specializing in land planning, preparation of land use regulations, property evaluation for potential use and expert testimony in zoning and development issues.

2/89 to 10/90 — The City of Laurel, Laurel, MD
The Office of Planning and Zoning
Director
Administered the planning program and enforced the zoning code.

9/80 to 1/88 — Baltimore County, Baltimore County Maryland
The Office of Planning and Zoning
Director
Administered the planning program, and the budgets of the Office of Zoning and the Peoples Council. Baltimore County Baltimore County Maryland The Office of Planning and Zoning

Pro A. Ex. 4

1977 to 1980 — The Office of Planning and Zoning
Deputy Director
Designed and supervised the planning program.

1956 to 1977 — The Office of Planning and Zoning
Various titles
Performed a variety of planning studies and services.

EDUCATION

Morgan State University, Baltimore, MD
Urban & Regional Planning Masters 1975

The Johns Hopkins University, Baltimore, Md
Bachelor of Science in Engineering, 1963
Minor: Civil Engineering

PROFESSIONAL SOCIETIES

1/69 to Present — American Planning Association
Past member of the Board of Directors and treasurer of the Maryland Chapter.

1/69 to Present — American Institute of Certified Planners

1975 to 1988 — The Maryland Association of County Planning Officials
Past President and member of the Board of Directors

2/89 to 10/90 — Technical Advisory Committee, the Patuxent River Commission

6/89 to 10/90 — The Patuxent River Commission
Alternate Member (for the Mayor)

PERSONAL

1985 to 1988 — The University of MD at Baltimore
Advise on planning program

1992 to Present — The Baltimore County Commission for the Disabled, Vice Chairman of the Transportation Committee
Coordinates activities of providers of services.

REFERENCES

Furnished on request.

5/20/94

PERRY HALL IMPROVEMENT ASSOCIATION, INC.

RESOLVED: That at the FIRST BOARD meeting of the PERRY HALL IMPROVEMENT ASSOCIATION held on JANUARY 5, 1998, it was decided by the Association that responsibility for review and action on all zoning matters for the period JANUARY/DECEMBER be placed in the (Board of Directors) (Development Committee) consisting of the following members:

AL THOMPSON	PRESIDENT
WILLIAM LIBERCCI	VICE-PRESIDENT
DENNIS ECKARD	RECORDING SECRETARY
DAVID MARKS	CORRESPONDING SECRETARY
DOMINIC MARTINO	TREASURER

BOARD OF DIRECTORS

DOLORES CLARK ANGELA SHANNON SANDY TRIMBLE
KARL VON LINDENBERG

AS WITNESS OUR HANDS AND SEAL THIS FIFTH day of JANUARY, 1998.

ATTEST:

SECRETARY

PERRY HALL IMPROVEMENT ASSOCIATION, INC.

PRESIDENT

Prot Sub 7A-D

PERRY HALL IMPROVEMENT ASSOCIATION, INC.

RESOLVED: That the position of the PERRY HALL IMPROVEMENT ASSOCIATION as adopted by the Board of Directors on the zoning matter known as:

CASE # 97-455-SPH
AND
CASE # (97-129)
4140/4142 East Joppa Road

is that:

WE OPPOSE THE SPECIAL HEARING TO GRANT PARKING AS THE PRIMARY USE IN A ROA ZONE AND THE GRANTING OF A LIMITED EXEMPTION AND WAVIER ACCORDING TO BALTIMORE COUNTY CODE 26-171 (a).

AS WITNESS OUR HANDS AND SEAL THIS FIFTH DAY OF JANUARY, 1998.

ATTEST:

Dennis E. Eckard
Secretary

PERRY HALL IMPROVEMENT ASSOCIATION

Al Thompson
President

RESOLUTION

MOTION: THAT THE PERRY HALL IMPROVEMENT ASSOCIATION AUTHORIZE CHAIR OF ZONING COMMITTEE DOROTHY S. MCMANN TO APPEAR ON BEHALF OF THE ASSOCIATION IN THE MATTER OF CASE # 97-455-SPH AND CASE # 97-129 4140/4142 EAST JOPPA ROAD

AND AFFIRM ITS SUPPORT.

SO MOVED; SECONDED;

VOTE: UNANIMOUS;

RESOLVED: THAT IN ACCORDANCE WITH THE BY-LAWS OF THE PERRY HALL IMPROVEMENT ASSOCIATION, DOROTHY S. MCMANN IS SO AUTHORIZED TO ACT.

PERRY HALL IMPROVEMENT ASSOCIATION

BY: _____

PRESIDENT

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hearby swear upon penalty of perjury that I am currently the duly elected chairperson of the Zoning Committee of the Perry Hall Improvement Association, Inc.

ATTEST:

Dorothy S. McMann
DOROTHY S. MCMANN

Dennis E. Eckard
Secretary Dennis E.Eckard

Al Thompson
President Al Thompson

4107 Brookfield Rd.
Balto Md. 21236

Prot. Sh
8A-8E

Board of Appeals
400 Washington Ave
Old Court House
Room 48
Towson Md 21204

I have lived on Brookfield Road for more then 40 years. It is a deadend street. If an entrance is allowed for the Diner there will be more accidents then ever. Right now with the flow on Belair Rd it is very hard to get in and out of the street. I was not aware of a meeting giving limited exemption, so that I could voice my opinion.

over

my property ajoins the property
where the diner is to be erected
which will be very ~~unf~~ uncomfortable
for me. I hope that all
considerations will be taken.
Thanks for giving me the
opportunity to write this letter
on my behalf.

Sincerely
Bertha L Shin

Board of Appeals
400 Washington Ave.
Old Courthouse
Room 48
Towson, MD 21204

8B

January 19, 1998

Dur street is a very narrow one, if you park a car on each side, there is barely enough room to pass between the parked cars with another car or small truck. We have no sidewalks on either side of the street, so there is no place for the children to ride a bike or even walk except in the street and now you want to dump all this traffic on our street.

This diner will be attracting all kinds of people to our small community of only seven(7) families, not only during the day but 24hrs a day and noise levels that will be very disturbing all night long. Also the fact of all the lights from the diner patrons cars all night long, especially after the bars and taverns close.

We thought if we bought property on a side street the property value would increase as time went on, but now with a 24hr diner in our front yard our property value will surely decrease.

The traffic on Belair Rd right now is so bad that it is just about impossible to turn left onto Belair Rd, add the traffic from this diner, going in or out of our small street and this will be aggravated to an even larger problem, especially when there will be huge trucks making deliveries to the diner and trash pick-ups.

In closing, we do not understand why we were not approached by the county to comment on the construction before approval was given to construct a diner in this particular areal

Respectfully,

Edward and Barbara Baker

Barbara Baker
Edward Baker

To: Board of Appeals
400 Washington Avenue
Room 48
Old Court House
Towson, Maryland 21204

8C

Subject: 24 hour diner

From: Christine and Richard Reid

My husband and I have lived on Brookfield Road since 1981. We have three children that would be very disadvantaged if an entrance to the 24 hour diner would be on Brookfield Road. This is a dead end street and the only cars that travel down our road are from the people who live on it, a total of 6. Our children play in the street. If the diner has an entrance onto our street then our children's lives would become endangered by the cars traveling down our road. Right now it is almost impossible to make a left hand turn onto Belair Road from Brookfield. The street is narrow and not designed for heavy traffic. We won't be able to get out if we have a line of cars in front of us. In addition, we would also have cars that can't get into the diner parking lot trying to park in front of our house along with the neighbor's houses. Our once peaceful and transquil community would go up in smoke.

We think that this is a disgrace, especially since the owner of the property was given a limited exemption to this project and we have not had the opportunity to go to a community input meeting and state our concerns to a hearing officer.

Concerned Citizens

Richard A. Reid

Richard A. Reid
4134 Brookfield Road
Baltimore, Maryland
21236

Christine L. Reid

Christine L. Reid
4134 Brookfield Road
Baltimore, Maryland
21236

Arthur J. Bogart
4136 Brookfield Road
Baltimore, MD 21236

January 20, 1998

Board of Appeals
400 Washington Ave.
Old Courthouse
Room 48
Towson, Maryland 21204

8D

Dear Board Members:

This letter is to express my concern with the proposed 24-hour diner to be built at the intersection of Joppa and Belair Roads in Perry Hall. I have lived in Perry Hall on Brookfield Road for almost 40 years and do not see a need for another eating establishment, much less one that is open all night, seven days a week. In the past, when there was a bar at the same location, patrons leaving the bar were often very noisy, to the point of waking up the neighborhood in the middle of the night. With no barriers whatsoever for noise, the residents of Brookfield Road will be subjected to all sorts of noises, as before, such as engines running, tires screeching, people talking and yelling to each other on their way in and out of the diner and holding loud conversations in the parking lot, delivery trucks, etc., all day, as well as all night. Since the diner will never close, the noise will be constant with no breaks for any peace whatsoever.

Another cause for concern is the kind of customers an all-night restaurant attracts. What kind of people are out eating between the hours of midnight and 6 a.m.? Not families! These establishments usually attract and become a regular hang-out for drug dealers, prostitutes and other low-life, as has been the case with Mr. Marmaras' other diner. For obvious reasons, we do not want this in our neighborhood. Also, we will no longer feel safe in our homes.

Our peace and safety will also be jeopardized with the increased traffic this diner will bring to our road. Not realizing Brookfield Road is dead-end, cars will travel down and back up the road all day and night. They will turn around in our driveways, most likely running up on our yards and running over mailboxes, especially if they have been drinking, and even worse, may run over our cats or dogs who like to sit in our driveways and have every right to. This increased traffic will also bring attention to the elderly who live on our street and greatly increase the risk of break-ins, and worse.

Another concern is what this diner will do to property values. The diner will be in full view of my house and its close proximity will undoubtedly decrease my property value substantially. I may not even be able to sell my house for the money necessary to move into a retirement community. What will I do then?

I, and many other Perry Hall residents, are very upset that we did not have a chance to speak at a community input meeting and voice our concerns before a hearing officer. Why weren't we informed of this meeting?

In light of all of the above, we are respectfully requesting that the plans for the diner be stopped.

Sincerely yours,

Arthur J. Bogart

Arthur J. Bogart

8E

Winfred J Gaumbine
9514 Dawnvale Rd., 21236

Mary M. Conner
4008 Baker Ln 21236

ROBIN WILLIAMS-BEERS
12442 JERUSALEM RD.
KINGSVILLE, MD. 21087

Walter C. McMann
9513 Dawnvale Rd 21236

(Eleanor Sherr)
ELEANOR SHERR
3800 WEAN DR # 1A
BALTO, MD 21236

Clinton E Moosbrook
4130 Brookfield Rd
Balt 21236 MD

Jackie Watts
4916 Forge Rd 21128

Wm Lebrecci
19 Shawn ct 21236

Dennis Eckard
39 Bergent Ave 21128

Ed Harden
37 Bergent Ave 21128

Edward L Kennedy 21236
3518 Blue Coat Rd.

Vicki Kennedy
3518 Blue Coat Rd 21236

Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
Fax: (410) 296-0931

June 5, 1997

Cont. Sch
#7

Ms. Dorothy McMahon
9513 Dawnvale Road
Baltimore, Maryland 21236

Dear Ms. McMahon:

This letter is in response to your request on 5/15/97 when you visited the Office of Law in the County Court House. At that time you asked me whether there was any definition for the phrase "minor commercial structure" as it appears in Section 26-171(a) (7) of the Baltimore County Code.

My research has indicated that these words were added to the statute by County Council Bill 18-90. That Bill, introduced in 1990, amended the 1978 Baltimore County Code (in that version of the County Code, limited exemption provisions for development process were found in Sections 22-42. When the Baltimore County Code was recodified to the 1988 version the limited exemption section was changed to Section 26-171). Section 22-42, prior to 1990, exempted from the then CRG process the construction of accessory structures. Bill 18-90 changed the exemption to apply to the construction of residential accessory structures or minor commercial structures.

Since our office files on this matter have been sent to the County Archives, I have been unable to continue my research. I have asked that the Office of Law file on County Council Bill 18-90 be retrieved so that I can see if there is any material in that file which would help determine

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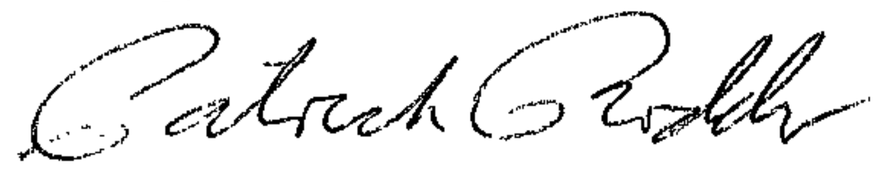
on Recycled Paper

the County Council's intent in placing the words minor commercial structure in a limited exemption from the development process.

As soon as I am able to complete further research I will be back in contact with you. If you have any questions, please do not hesitate to contact me at (410) 887-4420.

Sincerely,



Patrick H. Roddy
Assistant County Attorney

PHR/ps

Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204

PRESORTED FIRST CLASS

BALTIMORE MD JUN-7'97

U.S POSTAGE

PRESORTED**06-09-97**BALTO MD 212

Ms. Dorothy McMahon
9513 Dawnvale Road
Baltimore, Maryland 21236

21236>1519 09

Printed with Soybean Ink

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE - N/S Joppa Road, 1500'W of c/l of Belair Road (4142 E. Joppa Road) 11th Election District 5th Councilmanic District	*	BEFORE THE
	*	DEPUTY ZONING COMMISSIONER
	*	OF BALTIMORE COUNTY
	*	Case No. 97-193-SPHA
Peggy Marmaras Petitioner	*	

PETITIONERS EXHIBIT NO. 1

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as Petitions for Special Hearing and Variance for that property known as 4142 E. Joppa Road, located in the vicinity of Belair Road and Brookfield Road in Perry Hall. The Petition was filed by the owner of the property, Peggy Marmaras, Joint Tenancy Owner, through her attorney, Julie D. Wright, Esquire. The Petitioner seeks approval of parking for a proposed restaurant in a D.R. 5.5 zone, pursuant to Section 409.8.B of the Baltimore County Zoning Regulations (B.C.Z.R.), and variance relief from the B.C.Z.R. as follows: From Section 409.6.A.2 to permit 77 parking spaces in lieu of the required 88 spaces; from Section 1B01.1 to permit an RTA buffer and setback of 9.5 feet each in lieu of the required 50 feet and 75 feet, respectively; from Section 9.C.2.b.1 of the Landscaping Policy Manual to permit a 0 foot setback in lieu of the minimum required 10 feet; and, from Section 9.C.2.b.3 of the Landscaping Policy Manual to permit 2.7% interior landscaping in lieu of the required 7%. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions, were George and Peggy Marmaras, co-owners of the property, Robert B. Tipton, Arthur E. Leonard, Professional Engineer with K.L.S. Consultants, Inc., and G. Scott

Barhight and Julie D. Wright, Attorneys at Law who represented the Petitioner. Numerous individuals appeared in opposition to the Petitioner's request all of whom signed the Protestants Sign-In Sheet.

Testimony and evidence offered revealed that the subject property consists of 1.02 acres, more or less, split zoned B.L. and D.R. 5.5. The majority of the property is unimproved but for a vacant 1 and 1/2 story building and accessory garage in the far western corner of the site. The property is located on the north side of Joppa Road at its intersection with Belair Road, and abuts the south side of Brookfield Road, a small residential street just north of the intersection of Joppa and Belair Roads. The Petitioner proposes to develop the property with a 5,500 sq.ft. restaurant in accordance with the site plan submitted and marked into evidence as Petitioner's Exhibit 1. Testimony offered by Mr. Marmaras revealed that he has been in the restaurant business for the past 40 years and has operated a diner on Pulaski Highway for the past 13 years. The Petitioners wish to develop the subject property with a diner similar in character and design as that depicted in an elevation drawing of the proposed building which was submitted into evidence as Petitioner's Exhibit 2. Mr. Marmaras testified that he would be personally responsible for the operation of the restaurant at this location. Further testimony revealed that Mr. Marmaras originally intended to operate the restaurant 7 days a week, 24-hours a day; however, subsequent to the hearing held in this matter, the Petitioners through their attorneys, submitted a letter indicating a new schedule for the hours of operation. According to that letter, Mr. Marmaras would like to operate the restaurant from 5:00 AM to Midnight, Monday through Thursday, and 24-hours on weekends, with those hours of operation terminating at Midnight on Sunday evenings.

As stated previously, the subject property is split zoned B.L. with a small sliver of D.R. 5.5 zoned land consisting of 0.15 acres, in the northwest corner of the site. As shown on Petitioner's Exhibit 1, the Petitioner proposes to locate parking spaces and travelways within that D.R. 5.5 zoned portion of the site. Thus, the requested special hearing relief is necessary to use the residentially zoned portion of the property for parking. In addition, a number of variances are sought from Residential Transition Area (RTA) requirements, by virtue of the existence of that D.R. 5.5 zoned portion of land on the subject property. Furthermore, the variance relief sought involves most of the remaining parking spaces to be provided for this site. The engineer who testified on behalf of the Petitioner was not clear in his testimony as to the manner in which the RTA setbacks and buffers are measured on a particular property. Suffice it to say, however, the Petitioner does not meet RTA setback and buffer requirements, and thus, the requested variances are necessary.

As noted above, many residents from the surrounding community appeared and testified in opposition to the Petitioners' request. Bertha Ginn, Bill Paulshak, Clinton Marshall, Dorothy McMann, who is President of the Perry Hall Improvement Association, David Marks, and Janet Almony, all testified in opposition to the Petitioner's plans. Several of these individuals have been long-time residents of the surrounding community, some of whom have lived in their houses for over 40 years. Brookfield Road, as noted above, is a small, residential street which serves approximately 7 residential properties. These properties, which continue to be utilized as single family residences, are located immediately adjacent to the proposed use. Most specifically affected are the residential homes of Mr. & Mrs. Schafer, as well as Ms. Ginn, Helen Dunty. and Edward Baker. These resi-

dents believe that a restaurant of the magnitude proposed is not appropriate for this property, given its close proximity to this residential community. They testified that it is their belief the restaurant use would interfere with the quiet enjoyment of their homes, would be noisy, cause trash to accumulate on their property, and bring members of the general public into their neighborhoods at all hours of the night. This is particularly true, given the intention of the owner to operate a 24-hour restaurant, at least on weekends. The owner originally intended to operate the restaurant 24-hours a day, 7 days a week; however, the Petitioners have modified that position and now wish to operate on a 24-hour basis on weekends, only. Many residents oppose this 24-hour operation, or late night operation, in that many of those individuals who patronize bars and night-clubs in the late hours of the evening might go out afterwards and become unruly or cause a ruckus when entering or exiting the subject restaurant. Therefore, the residents are particularly opposed to a 24-hour operation.

After considering all of the testimony and evidence offered by both the Petitioners and the Protestants, I find that the special hearing request to allow parking in the D.R. 5.5 zoned portion of the site should be denied. The testimony and evidence was clear that to allow parking and travelways to exist in the D.R. 5.5 zoned portion of the site would adversely affect the surrounding residents, many of whom have lived in their homes for over 40 years. This is particularly true, given the nature of the proposed business, which is proposed to operate 24-hours a day on weekends, and until midnight during the week. The detrimental effect of this restaurant operation at this location would be above and beyond that normally associated with other similarly zoned properties.

Along those same lines, the variances sought from RTA buffer and setback requirements shall also be denied. These RTA areas have been established to provide appropriate distances between uses such as that which is proposed for this site and surrounding residential properties. The purpose of these buffers is to mitigate the effects of a commercial operation on neighboring residential properties. In this case, the Petitioners are unable to meet any of the required setbacks for the subject site. For the same reasons that the special hearing was denied, so to must the variance relief be denied. The operation of a restaurant at the subject location in close proximity to the residents, particularly Mr. & Mrs. Schafer and Ms. Ginn, as well as Ms. Dunty and Mr. Baker, are too great to allow the granting of the requested variances. This site is simply not an appropriate candidate for such a large scale restaurant use, with exaggerated hours of operation as proposed. Therefore, the special hearing and variance relief shall be denied.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 17th day of December, 1996 that the Petition for Special Hearing seeking approval of parking for a proposed restaurant in a D.R. 5.5 zone, pursuant to Section 409.8.B of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the B.C.Z.R. as follows: From Section 409.6.A.2 to permit 77 parking spaces in lieu of the required 88 spaces; from Section 1B01.1 to

permit an RTA buffer and setback of 9.5 feet each in lieu of the required 50 feet and 75 feet, respectively; from Section 9.C.2.b.1 of the Landscaping Policy Manual to permit a 0 foot setback in lieu of the minimum required 10 feet; and, from Section 9.C.2.b.3 of the Landscaping Policy Manual to permit 2.7% interior landscaping in lieu of the required 7%, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

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

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

Baltimore County
Department of Permits and
Development Management

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

May 23, 1997

Pet Exhibit #5

Julie D. Wright, Esquire
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Item No.: 455
Case No.: 97-455-SPH
Petitioner: Peggy Marmaras

Dear Ms. Wright:

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 April 16, 1997.

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 Roslyn Eubanks in the zoning office (410-887-3391).

Sincerely,

W. Carl Richards, Jr.

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)

Printed with Soybean Ink
on Recycled Paper

Pet. Ex. 5

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

Date: May 2, 1997

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

SUBJECT: 4140 E. Joppa Road

INFORMATION

Item Number: 455

Petitioner: Marmaras Property

Zoning: ROA

Requested Action: Special Hearing

Summary of Recommendations:

The applicant has appropriately addressed the concerns that had been raised by staff concerning the previously submitted plan; therefore, this office supports the request to allow parking in the ROA zone.

Prepared by: Jeffrey M. Long

Division Chief: Gary L. Kerns

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\455.DOC

RECEIVED
PDM

April 28, 1997

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 April 28, 1997

Item No.: 453, 454, 455, and 456 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.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

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

Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary

Parker F. Williams
Administrator

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

RE: Baltimore County 4.25.97
Item No. 455 JRA

Dear Ms. Eubanks:

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 Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

L. J. Gredlein

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

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

Roslyn

RECEIVED
APR 30 1997
PDM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: April 25, 1997

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

SUBJECT: Zoning Advisory Petitions

The Planning Office has no comments on the following petitions (s):

Item Nos. 447, 451, 455, 457, 459, 460, and 461

If there should be any questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3495

Prepared by: Jeffrey W. Long

Division Chief: Gary C. Kerns

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\NOCOM\447.DOC

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: PDM DATE: _____

FROM: R. Bruce Seeley
Permits and Development Review
DEPRM

SUBJECT: Zoning Advisory Committee
Meeting Date: April 28, 97

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

Item #'s:

443	451	457	458
445	452	459	
448	454	460	
449	455	461	
450	456		

RBS:sp

BRUCE2/DEPRM/TXTSBP

RECEIVED
MAY 2 1997

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

INTEROFFICE CORRESPONDENCE

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

Date: May 5, 1997

FROM: Robert W. Bowling, Chief
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting
for May 5, 1997
Item Nos. 443, 444, 445, 446, 447, 448, 451, 455, 457, 458, 459 and 460

The Development Plans Review Division has reviewed the subject zoning item, and we have no comments.

RWB:HJO:cab

cc: File

ZONE505.NOC

Baltimore County Government

Cat. Exh #6

111 West Chesapeake Ave.
Towson, Md. 21204

(410) 887-3335

June 24, 1997

KLS Consultants, Inc.
102 North Main Street
Bel Air, MD 21014

RE: Double "T" Diner
4140/4142 E. Joppa Road
DRC Number 05197C, Dist.11C5

Dear Sir:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland and as provided in Section 602 (d) of the Baltimore County Charter and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal or modification of a license, permit, approval, exemption, waiver or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to insure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management.

The DRC has in fact met in an open meeting on June 16, 1997, and made the following recommendations:

The DRC has determined that your project meets the requirements of a limited exemption under Section 26-171 (A)(7) with storm water management.

Now that you have received an A-7 limited exemption, please proceed with building permit application.

A copy of this letter must be presented when submitting engineering/construction plans to this office and/or when applying for a building permit.

Please be advised that Phase 2 review fees may apply, depending on the amount of site disturbance and/or the requirement of a Public Works Agreement, also, please be advised that sidewalks will be required.

Herein find a commercial site plan checklist which will serve as a guide when preparing plans for building permit applications. Please be advised, plans not meeting minimum checklist requirements will not be accepted for filing, which will consequently delay building permit approval. Please note, the "conceptual" plan required for DRC review, does not necessarily meet the checklist guidelines. Therefore, it should not be assumed that the DRC plan is acceptable for building permit applications.

Should you have any questions regarding the above, please contact the Zoning Review Section at 887-3391.

I have reviewed the recommendations carefully and I have determined to adopt the recommendations set forth above. It is this 24th day of June, 1997, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Arnold Jablon
Director

AJ:DTR:tcm

c: Bruce Seeley
Joyce Watson
File
Enclosure

PERRY HALL IMPROVEMENT ASSOCIATION, INC.

P.O. Box 63
Perry Hall, Maryland 21128

Pet. Exh. #7

July 3, 1997

Mr. Arnold Jablon, Director
Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

RE: Appeal to DRC 05197C
Double T Diner
4140 and 4142 East Joppa Road

Dear Mr. Jablon:

Please consider this an appeal to DRC 05197C by the Perry Hall Improvement Association and the five adjoining property owners on Brookfield Road. (see attached names, addresses and signatures)

The hearing and decision granting a limited exemption and wavier according to Baltimore County Code 26-171 (a) 7 was held June 16, 1997.

There is also an appeal to Case #97-455-SPH for parking in a ROA zone granted June 3, 1997 by Deputy Zoning Commissioner Timothy Kotroco.

We request the two appeal hearings be scheduled at the same time since the ROA zone parking is part of the development plan.

Enclosed is a check for $75.00 for the appeal.

Sincerely,

Al Thompson
President

RECEIVED
JUL 03 1997
BALTIMORE COUNTY
ZADM/DM

Perry Hall Improvement Association

RE: DRC 05197C

Richard A. Reid
and
Christine L. Reid
4134 Brookfield Road
Baltimore, MD 21236

Richard A. Reid
Christine L. Reid

Clinton E. Marshall
4135 Brookfield Road
Baltimore, MD 21236

Clinton E. Marshall

Arthur J. Bogard
4136 Brookfield Road
Baltimore, MD 21236

Arthur J. Bogard

Bertha Ginn
4137 Brookfield Road
Baltimore, MD 21236

Bertha Ginn

Edward E. Baker
and
Barbara J. Baker
4140 Brookfield Road
Baltimore, MD 21236

Edward E. Baker
Barbara J. Baker

RECEIVED
COUNTY BOARD OF APPEALS
97 JUL -9 PM 3:

Baltimore County Government
Department of Permits and
Development Management

Ct. Sgl #8

111 West Chesapeake Ave.
Towson, Md. 21204

(410) 887-3321

July 8, 1997

Julie D. Wright, Esq.
Whiteford Taylor & Preston LLP
210 W Pennsylvania Avenue
Towson MD 21204-4515

RE: Appeal of DRC Decision
4140/4142 E. Joppa Road
Double 'T' Diner
District: 11 c 5
George & Peggy Marmaras - Applicant
File No.: DRC 05197C

Dear Ms Wright:

Please be advised that an appeal of the above-referenced case was filed in this office on July 3, 1997 by Mr Al Thompson on behalf of Perry Hall Improvement Association and Richard A. Reid and Christine L. Reid; Clinton E. Marshall; Arthur J. Bogard; Bertha Ginn; and Edward E. and Barbara J. Baker, individually. 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 (410) 887-3180.

Sincerely,

Arnold Jablon CKR
Director

AJ:ckr

c: Mr. Al Thompson, Perry Hall Improvement Association
Mr. Art Leonard, KLS Consultants, Inc.
People's Counsel

CBA-97-129

RECEIVED
JUL 25 1994
WHITEFORD, TAYLOR & PRESTON

BALTIMORE COUNTY, MARYLAND

Interoffice Correspondence

TO: Arnold Jablon, Director
Zoning Administration

DATE: July 20, 1994

FROM: Office of Law

RE: Cellular One
(Mobile Phone Tower)

Cert Exh #10

Section 26-171(a)(7) exempts from Division 2 of Title 26 the construction of residential structures or minor commercial structures. The specific language of the ordinance provides: (a) The following development is exempt from division 2 of this article only .... (7) The construction of residential accessory structures or minor commercial structures.

The Development Review Committee (DRC) has requested a review of its denial of a limited exemption for the construction of a mobile phone tower. At issue is whether the proposed tower is a minor commercial structure pursuant to Section 26-171(a)(7) and therefore exempt from the requirements of Division 2 of the Development Regulations.

Initially, it should be noted that the general rules of construction which govern the interpretation of statutes are applicable to municipal ordinances (Baltimore v. First Methodist Episcopal Church of Baltimore City, 134 Md. 593, 107 A. 351 (1919)), and in accordance with such rules, an ordinance is to be construed so as to give effect to the intention of the municipal legislative body which enacted it. Town of Salisbury v. Camden Sewer Co., 141 Md. 254, 118 A. 662 (1922); Clark v. City of Baltimore, 29 Md. 277 (1868).

It should also be mentioned that the general purpose, intent or purport of the whole act is to control and that all parts of an ordinance are to be interpreted as subsidiary and harmonious. Creative Country Day School of Sandy Spring, Inc. v. Montgomery County Board of Appeals, 242 Md. 552, 219 A.2d 789 (1966); Comptroller of Treasury v. John C. Louis Co., 285 Md. 257, 404 A.2d 1045 (1979).

As provided in Sections 26-1 and 168, both captioned "Definitions," it is an appropriate legislative function to define the words contained in statutory law and prescribe rules for their interpretation through functionalized definition sections. Sutherland Statutory Construction, 5th ed., Section 20.08, 20.09. However, when the

legislative body has not defined certain words or phrases used in the act - as is the case here with the terminology "minor commercial structures" - the meaning of the language must be determined in accordance with common understanding. Sutherland, id., Section 20.08. The policy favoring conventional meaning and general understanding is supported by the premise that intention must be determined primarily from the language of the act itself. Board of Elections of Baltimore City v. Weiss, 217 Md. 133, 141 A.2d 734 (1958); Hillyard v. Board of Supervisors of Elections for Montgomery County, Maryland, 259 Md. 150, 269 A.2d 42 (1970). Accord AFL & CIO v. Kahn, 618 F.2d 784 (D.C. Cir. 1979) (fundamental that the plain and ordinary meaning of statutory language controls). Consequently, when popular or common words are used in a statute or ordinance, the words should be given their common meaning. Sutherland, id., Section 47.28, citing, inter alia, State Tax Commission v. Allied Mortgage Cos., Inc., 175 Md. 357, 2 A.2d 399 (1938). A more recent statement by the Maryland Court of Appeals confirms this same sentiment. The Court said: "We are obliged to ascertain and carry out the legislative intent: to consider the language of the enactment in its natural and ordinary signification." Rome v. Lowenthal, 290 Md. 33, 428 A.2d 75 (1981); Washington Suburban Sanitary Comm'n v. Elgin, 53 Md. App. 452, 454 A.2d 408 (1983). In addition, where statutory intent or meaning is the criterion of decision, emphasis is placed upon conventional or dictionary meanings. Accord Sutherland, id., Section 45.08. At any rate, the necessity to look to a standard dictionary definition reporting common usage, to ascertain the usual meaning of a word or a phrase does not make either of them ambiguous. Sutherland, id., Section 46.02. Therefore, standard meanings were examined relative to the meaning of the words comprising the phrase "minor commercial structures" as used in the context of Section 26-171(a)(7). The American Heritage Dictionary of the English Language defines "minor" to mean, "lesser in seriousness ... requiring comparatively little attention or concern," p. 836. Accord Webster's Third New International Dictionary, Unabridged, "minor" - "inferior in importance: comparatively unimportant: lower in standing ... than others of the same kind," p. 1439. "Commercial" is defined in the American Heritage Dictionary to mean "Of, pertaining to, or engaged in commerce." "Commerce" is defined as "the buying and selling of goods, ... business, trade," p. 267. Accord Webster's Third New International Dictionary, Unabridged, "commercial" - "related or dealing with commerce." "Commerce" - "the exchange or buying and selling of commodities ... and involving transportation from place to place," p. 456.

Administrative agencies such as the Development Review Committee (DRC) may interpret or construe the ordinance or local laws they are called upon to administer. Bartell v. Bartell, 278 Md. 12, 357 A.2d 343 (1976). Indeed, a contemporaneous and practical construction applied by an agency such as the DRC is of persuasive influence in determining the meaning of statutory law and should not be disregarded except for strong and urgent reasons. Department of Tidewater Fisheries v. Sollers, 201 Md. 603, 95 A.2d 306 (1953); Atlantic Gulf & Pac. Co. v. State Dept. of Assessments and Taxation, 252 Md. 173,

249 A.2d 180 (1969). On several occasions, the construction of cellular phone towers has been determined by the DRC to be within the category of "minor commercial structures" and therefore entitled to the limited exemption set forth in Code Section 26-171(a)(7). At all events, in interpreting the meaning of the words used in an ordinance, it is also of some consequence that past administrative interpretations of a provision such as Section 22-171(a)(7) have been consistent and unvarying. Hofmeister v. Frank Realty Co., 35 Md. App. 691, 373 A.2d 273 (1977). A contemporaneous and practical interpretation of local law by the agency charged with its administration is of exceptional service in determining the meaning of an uncertain statute. Hofmeister v. Frank Realty Co., supra (an administrative interpretation contemporaneous with passage of statute is strong evidence on the question of its best construction). This rule of construction is also closely related to the doctrine that statutes should be given their common and ordinary meaning. Sutherland, id., Section 49.03.

In conclusion, because of the following: (1) the contemporaneous construction accorded to Section 22-171(a)(7) determining that cellular phone towers are entitled to the statutory exemption, and (2) the associated plain meaning rule requiring that the words in the phrase at issue be assigned their ordinary and natural import, the construction of a cellular phone tower on the site of project DRC No. 05164A, 8C3, is to be deemed a minor commercial structure within the context of the statutory exemption discussed above.

STANLEY J. SCHAPIRO
County Attorney

MICHAEL MCMAHON
Assistant County Attorney

SJS:MMcM:sm

Pet. Sub #11

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

To: P. David Fields, Gene L. Neff
J. James Dieter

Date: 6/10/92
(Revised)
(9/10/92)

Fr: Arnold Jablon

Re: exemptions from development process

Section 26-171 of the Development Regulations provide for certain exemptions from the development process. We have attempted to arrive at a convenient method of determining when and if a particular proposed project meets any of the particular exemptions delineated in subsections (a) and (b). I would like to suggest the following methodology; if you have any comments, please let me know. We will proceed as described below unless I hear otherwise from you.

Most of the exemptions are obvious and require no written review or debate. If a formal request is made, it will be in the form of a letter to me, outlining the proposal and the reasons why the applicant believes the proposal meets one or more of the exemptions. I will require a fee to be paid in the amount of $40.00 for such a letter. I will then respond in writing.

However, there are a few exemptions which are not so obvious and require interpretation and review. Particularly, (a)(7), (b)(3), (b)(7) and (b)(9). (b)(8) also should be included although it in and of itself is not ambiguous. I propose the following confirmation process:

(a)(7): The construction of residential accessory structures or minor commercial structures.

There are two parts to this exemption, and I would suggest treating them separately. While interpretations of accessory structures are an integral part of zoning, the two parts should not be reviewed in the same fashion. Interpretations as to whether a proposal is a residential or commercial accessory structure should be made by zoning. Interpretations as to whether a proposal is a minor commercial structure, but not an accessory, should be made by the development review committee. In determining whether a proposed addition or independent commercial structure should be exempted, the following guideline should be utilized: up to 25,000 square feet and measurable degree of community interest, not to exceed 50% of the existing size.

(b)(3): Amendments to an approved plan or plat which do not materially alter the proposed development.

Determinations should be made by development review committee, using as its guide the standards adopted as part of CRG Comprehensive Manual of Administrative Procedures.

(b)(7): The construction of accessory structures.

Interpretations of accessory structures should be made by zoning, for the same reason as stated previously--accessory structures and uses are an integral part of zoning. If an applicant should disagree with zoning's interpretation of what is or what is not an accessory structure, the applicant could then file a petition for special hearing and a hearing will be held before the zoning commissioner. This would enable the existing framework to be utilized. Equally, if someone other than the applicant should disagree with an interpretation, a petition could be filed under section 500.7 of the BCZR and a hearing held before the zoning commissioner. It should be pointed out that this differs from minor commercial structures inasmuch as (a)(7) is not necessarily limited to commercial accessory structures.

(b)(8): The subdivision of land or building in a planned office of industrial park for which a development plan has been approved in accordance with these Regulations.

While there is no ambiguity contained in this section which should ordinarily require interpretation, the development review committee ought to have the opportunity to confirm the existence of either a planned office or industrial park and the existence of a plan. While there is a definition contained in Section 26-168 for a planned industrial park, there is none for a planned office park. Therefore, if there were an issue presented as to the latter, the committee ought to have the opportunity to review.

(b)(9): A minor development, as defined in Section 26-168, not to exceed a total of three lots.

While it is clear that the law exempts any project which satisfies the definition, we agree that proposed minor developments ought to be reviewed by the development review committee. If a minor development otherwise requires a zoning hearing, i.e., special exception or variance, then it would be exempted from the community input meeting and development plan hearing. If no zoning hearing were otherwise required, then the development review committee would utilize the same guideline as described above in (a)(7) for minor commercial structures. The purpose is to insure that if there is community interest, there be at least an opportunity for the community to be heard.

Confirmations of all other exemptions will be done by me. If an applicant files requests for waivers, and pays the fee, only later to be informed that the proposed project is in fact exempt, the fee should not be returned. The applicant has attempted to beat the system by filing early without input from the county, and therefore should bear the cost of doing so. If the applicant requests confirmation, either from this office or from the development review committee, a $40.00 fee should be charged.

It is important that where an agency knows that community interest is intense about a particular project, such interest is brought to the attention of this office and of the development review committee.

January 21, 1998

Dear Sir,

I Elsie Schafer, would have been at the meeting today about the Double T Diner at Belair & Joppa Rd. becaus I was hospitalized 1/16/98 to 1/20/98. Here is a copy of my hospital stay.

Mr. & MRS. Edward G.Schafer had lived at 4140 E. Joppa Road for 47 years. There was Schafers tavern at The Corner of Joppa & Belair Rd. & the Indian Rock TAVERN on the other side of Belair & Joppa Rd. I Edward G.Schafer have lived on this property all my life as this was our family farm which extended from Joppa Rd. to India Avenue, & there was Zinks Tavern at Belair Rd. & India Avenue.

Sir, from the day we lived there till the day we left, there was never any problems with robbing, stealing or any drinking related problems.Also there was rarily an accident at this intersection.

This property was always commercial as long as I can remember. It was changed from BL to ROA without our knowing it Sometime in 1997.

I Elsie Schafer was told this by Billy Paulchock in latter part of April 1997. I called Baltimore County at least ten times or more to the zoning & they said they did not know who changed it & to call your County Councilman who is Vince Cardina an ask him. I called & never got a return call.

Also, on Brookfield Ave. Clint Marshall, & Bertha Ginn back yards were made commercial - which ajoins the proposed Double T Diner property. Marshall & Ginn told me all they wanted was a fence seperating their property from the diner.

Now all we have is Mc Donalds & Outback to eat. Ootback only serves dinner after 4 Pm. The proposed Double T Diner will be welcomed by many business & family people for a good home cooked meal.

My husband was a business man himself & he can vouch for that.

Thanking You,
Mrs. Elsie L. Schafer

Mrs Elsie L Schafer

Cert Expl 12

00531350J ASU
SCHAFER, ELSIE LILLIAN
01/15/98 U#02-75-29
DR. FERNANDO BOHORQUEZ
F M 66
(STAMP NAMEPLATE)

ST. JOSEPH MEDICAL CENTER

7620 York Road
Towson, MD 21204-7582

AMBULATORY SURGERY RECORD

OPERATIVE NOTE: (Not a substitute for dictated note) Surgeon: Bohorquez.
Post-op Dx.: Ventral Hernia.
Name of Operation: " " repair.
Post-op Condition: good. Anesthesia: Gen + Marcaine O.T.

POST ANESTHETIC ORDERS

1. Follow PACU Routine
2. Discharge when discharge criteria are met
3. Pain Medication: PO
4. Other: DR. FERNANDO BOHORQUEZ 01/12/98 U#02-12-50
5. Newly diagnosed cancer case: T___ N___ Stage___
Biopsy only, staging deferred ☐
Awaiting Pathology ☐

Date: 1/15/98 Time:

N = node
M = metastasis

(Physician's Signature)

00531350J ASU
SCHAFER, ELSIE LILLIAN
01/15/98 U#02-75-29
DR. FERNANDO BOHORQUEZ
F M 66

ST. JOSEPH MEDICAL CENTER

7620 York Road
Towson, MD 21204-7582

DISCHARGE INSTRUCTIONS

AMBULATORY SURGERY

FOR TDD Service, Please Call (410) 337-1671

Date: 1/15/98 ☐ MTC ☐ ASU

Activity:

☐ Resume normal activity ☐ in 24 hours
☒ No exercising or strenuous activity or lifting for 21 days
☒ Shower or ☐ take tub bath ☒ tomorrow or in ___ days
☒ Use of stairs as desired or ☐ in ___ days
☐ May drive in 24 hours ☒ or 7 days
☐ Return to work/school tomorrow or ☐ in ___ days

Care of Operative Site:

☒ Keep dressing/incision clean/dry for 7 days
☒ If necessary, change dressing in 1 days
☒ Remove dressing in 7 days
☐ Apply ice for ___ minutes every hour for ___ hours

Use Abdominal Binder when ambulating.

Medications:

☒ Resume all previous medications except
☒ Medications percocet tabs I & II q 4 to 6h. p.r.n.

Diet:

☒ Unrestricted
☐ Clear liquids ☐ Full liquids for 24 hours
☐ Restrictions
☒ Drink plenty of fluids

Follow-up Care:

☒ Return to physician's office on Friday Time
☒ Call physician's office for appointment
Office Number 2963847.

Additional Instructions:

Call Dr. Ira Fine 337-6964 for appointment

☒ Call your physician at 2963847 if you have excessive bleeding, redness, swelling, pain, or an elevated temperature over 101 °F. for any problems.
☒ If you cannot reach your physician, call St. Joseph Medical Center Emergency Room at 337-1226.

M.D. Signature — Patient's Signature — Nurse's Signature

55-0630 (12-96)

Put Ent 13A

1/21/98 DRC Appeal Board of Appeals

In Support Of The Diner - Please Sign

NAME	ADDRESS
[illegible]	11404 MARLON RD 21087
[illegible]	3 STABLE GATE CT 21128
Bill Poppas	4411 LOYNE RD 21236
Gus Courtelis	4225 DARNALL RD 21236
Madeline M Burris	2800 Summit Ave 21234
Louis E. Burris	2800 Summit Ave 21234
Mary Paxenos	9218 Gardenia Rd 21236
Catherine Nichols	9218 Gardenia Rd. 21236
Dorothy Morin	9219 Cornflower Rd 21236
Mike Zelli	9218 Cornflower RD 21236
George J Mammel	9722 Hickoryhurst 21236
Frances Waynick	2533 Burgundy Drive 21047
Wallace R. Waynick	2533 Burgundy Drive 21047
Joseph Waynick	2533 Burgundy Dr 21047
[illegible]	9219 GARDENIA ROAD 21236
[illegible]	8834 DOVE DR 21128
Valerie Ford	1144 GLENDALE RD 21239
[illegible]	1144 Glendale Rd 21239
JOHN ROHDE	512 VIRGINIA AVE. 21286
[illegible]	102 N. MAIN ST. BELAIR 21014
JOHN J. SOMMERS	4008 SILVAGE RD BALTO 21236
EDZANGJR	3503 NORTH WIND RD BALTO 21234
[illegible]	9506 STONEOAK Rd. Balto 21236
Robert B. Lipton	617 STEMMERS RUN RD 21221
TOM GIANNAKIS	9 Batter Brook Ct. Kingsville Md 21087
Marion Giannakis	9 Batter Brook Ct Kingsville Md 21087
Sheila Hoover	2 Steve Way Balto 21236
Tina Ford	9506 Stoneoak Rd Balto. 21236
STEVEN GROSSNICKLE	9402 GUNVIEW RD. BALTO. 21236

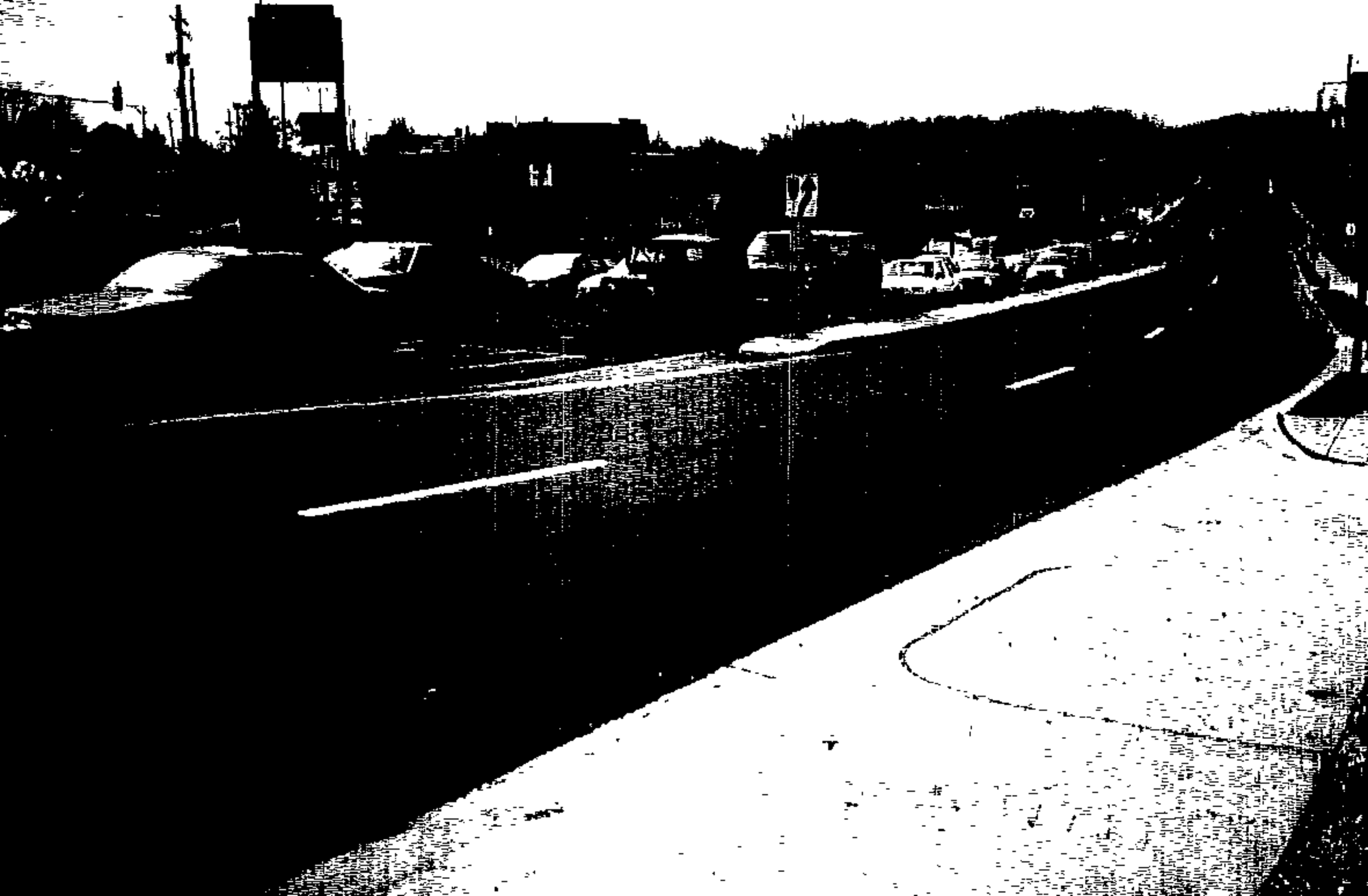
1/22/98 DRC Appeal Board of Appeals Pet Exh. 13B

In Support of the Diner - Please Sign

Jim Ford	9506 Stonewall Rd 21236
Steven Grossnickle	5402 Gunview Rd 21236
Lisa Ford	9506 Stonewall Rd 21236
Catherine Nichols	9218 Gardenia Rd. 21236
Dorothy Morin	9219 Cornflower Rd 21236
Mary Paxenos	9218 Gardenia Rd. 21236

Protestant # 6 A

Protestant #6 B



Protestant # 6 C

Protestant # 6 D

Protestant # 5 A

Protestant # 5 B

Protestant #5 c

Protestant 1150

Protestant # 5 E

Protestant #5-7

Protestant H 5 G

Protestant # 5 21

Protestant # 5. I

Protestant # 5 J

Parlestant # 5 K

Protestant #5 ~~[illegible]~~

Protestant # 5 707

Parlestant H 5 R

Participant # 5 ()

Protestant #5 P

Protestant 5 Q

Prälestant #5R

Protestant #5 S

BILL'S SEAFOOD
256-0020

Protestant HS J

Protislaut 4-4-5 U

Protestant #5 V

SALE or LEASE
OUT or PART
0-215-1800
Shell

Protestant HS W

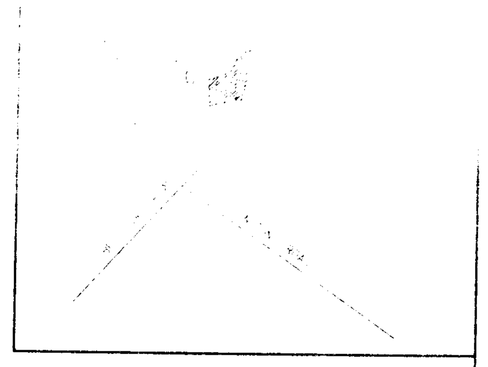
Protestant #5 X

President #5 Y

Protestant H 5 2.

PLAN VIEW
SCALE: 1" = 30'

SIDE ELEVATION
SCALE: 1" = 100'



VICINITY MAP
SCALE 1" = 1000'

SITE ANALYSIS

PREVIOUS COMMERCIAL PERMIT No. 81283329
PREVIOUS COMMERCIAL CONTROL No. S 87-99
DATE OF LAST IMPROVEMENT 05-93

PREVIOUS CASE No. 97-193-SPHA

REQUEST FOR PARKING IN A D.R. 5.5 ZONE WAS DENIED.

REQUEST FOR [illegible] SPACES IN LIEU OF [illegible] SPACES WAS DENIED.

[illegible]

LANDSCAPING WAS DENIED.

REQUEST FOR 2.7% INTERIOR LANDSCAPING IN LIEU OF 7% WAS DENIED.

GROSS AREA (ZONED BL)= 44,379 S.F. / 1.02 Acres
GROSS AREA (ZONED R.O.A.)= 10,099 S.F. / 0.23 Acres
GROSS AREA (ZONED D.R. 5.5)= 6,760 S.F. / 0.15 Acres
TOTAL GROSS AREA = 61,238 S.F. / 1.41 Acres

NET AREA (ZONED BL)= 39,462 S.F. / 0.90 Acres
NET AREA (ZONED R.O.A.)= 8,549 S.F. / 0.20 Acres
NET AREA (ZONED D.R. 5.5)= 4,650 S.F. / 0.11 Acres
TOTAL NET AREA = 52,661 S.F. / 1.21 Acres

FLOOR AREA RATIO = $\frac{5,592}{44,379}$ = 0.126
FLOOR AREA RATIO ALLOWED 3.0

ZONING MAP No. N.E. 10-G
PROPOSED USE COMMERCIAL RESTAURANT 5,592 S.F.
PROPERTY ZONED BL, R.O.A. & D.R. 5.5
AMENITY OPEN SPACE N/A

PARKING SPACES REQUIRED.
5,592 S.F. / 1,000 x 16 = 90

PARKING SPACES PROVIDED = 90 (INCLUDES 4 VAN ACCESSIBLE HANDICAP SPACES AND 21 VALET PARKING SPACES (24%))

PERPENDICULAR & VALET SPACES = 8 1/2' x 18'
PARALLEL SPACES = 7.5' x 21'

GENERAL NOTES

1. THE PURPOSE OF THIS PLAN IS TO REQUEST PARKING WITHIN THE R.O.A. ZONE. MR. MARMARAS RECENTLY PURCHASED THE PROPERTY ZONED R.O.A. IN ORDER TO SATISFY ZONING REGULATIONS FOR THE PROPOSED IMPROVEMENTS. DEED WILL BE RECORDED TO EXTINGUISH THE PROPERTY LINE BETWEEN (#4140) AND (#4142 EAST JOPPA ROAD.
2. NO SIGNS ARE PROPOSED AT THIS TIME, HOWEVER, ANY FUTURE SIGNS WILL COMPLY WITH THE BALTIMORE COUNTY ZONING REGULATIONS, SECTION 413. A SIGN PERMIT APPLICATION WILL BE SUBMITTED TO BALTIMORE COUNTY FOR APPROVAL.
3. ALL DRIVES AND PARKING AREAS ARE TO BE PAVED.
4. ALL PARKING SPACES ARE TO BE PERMANENTLY STRIPED.
5. A DETAILED LANDSCAPE PLAN WILL BE SUBMITTED TO [illegible]

[illegible] ANY EXISTING TREE TO BE ELIMINATED AN [illegible] SHALL BE APPROVED AT TO SERVE [illegible] RESIDENTIAL SITES AND PUBLIC [illegible]

[illegible] DELIVERIES SHALL BE SCHEDULED FOR NON-PEAK HOURS [illegible] THE SOUTHERLY VALET PARKING SPACES ARE VACANT.

PETITIONER'S EXHIBIT 1

DATE	REVISION	BY

ENGINEER / SURVEYOR
K.L.S. CONSULTANTS, INC.
102 NORTH MAIN STREET
BEL AIR, MARYLAND 21014
(410) 879-1441

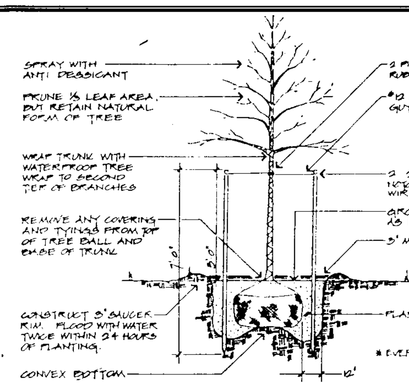
OWNER / DEVELOPER
GEORGE MARMARAS
9217 CORNFLOWER ROAD
BALTIMORE, MARYLAND 21237

DRAWN BY:	MA	DATE:	4/22/97
DESIGNED BY:	AEL	DRAWING NO.:	MARSITE1
CHECKED BY:	AEL	SCALE:	1" = 30'
KLS JOB NUMBER:	0639	SHT. 1 OF 1	

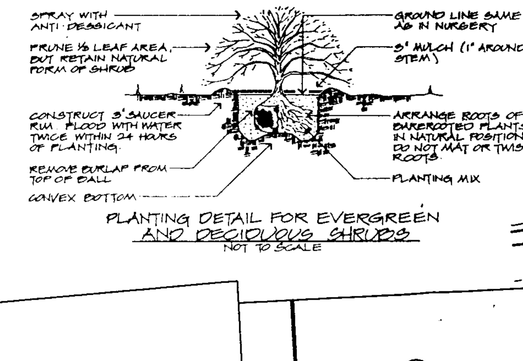
SITE PLAN TO ACCOMPANY PETITION
FOR SPECIAL HEARING
LAND OF
GEORGE MARMARAS
4142 E. JOPPA ROAD
ELECTION DISTRICT 11 , COUNTY COUNCIL DIST. 5
BALTIMORE COUNTY, MARYLAND

PLANTING PLAN

KEY	QTY.	BOTANICAL NAME / COMMON NAME	SIZE	COND	REMARKS
(+)	10	ACER RUBRUM 'RED SUNSET' RED SUNSET MAPLE	2-2½" CAL	B&B	
(△)	6	QUERCUS PALUSTRIS PIN OAK	2-2½" CAL	B&B	
(⊙)	9	ZELKOVA SERRATA 'GREEN VASE' GREEN VASE ZELKOVA	2-2½" CAL.	B&B	
	11	PINUS STROBUS WHITE PINE	6-7HT	B&B	
	5	AMELANCHIER CANADENSIS SERVICEBERRY	6-8HT	B&B	HEAVY, MULTISTEM
	6	CORNUS KOUSA KOUSA DOGWOOD	6-8'HT	B&B	HEAVY
	65	EUONYMUS KAUT. 'SIEBOLDIANA SIEBOLD EUONYMUS	2-3'HT	B&B	SPACE 4' O.C.
	6	EUONYMUS FORTUNEI 'COLORATUS' WINTERCREEPER	100 FLAT	100 FLAT	SPACE 1' O.C.
	10	VIBURNUM PLIC. 'MARIESII' MARIESII VIBURNUM	2-3'HT.	B&B	SPACE 5' O.C.
	40	SPIREA x BUMALDA 'LIMEMOUND' LIMEMOUND SPIREA	18-24"HT	CAN	SPACE 3' O.C.



PLANTING DETAIL FOR TREES - 1½" - 4" CALIPER
NOT TO SCALE

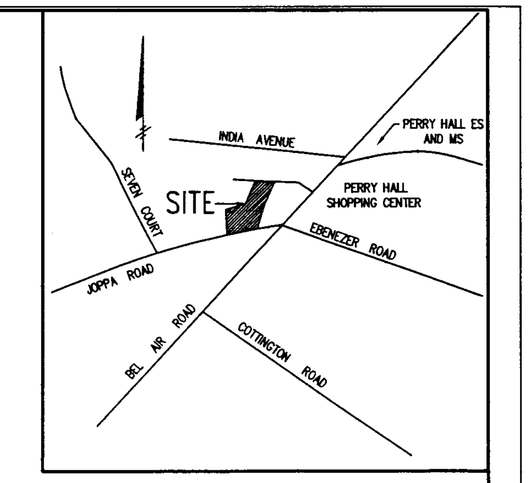


PLANTING DETAIL FOR EVERGREEN AND DECIDUOUS SHRUBS
NOT TO SCALE

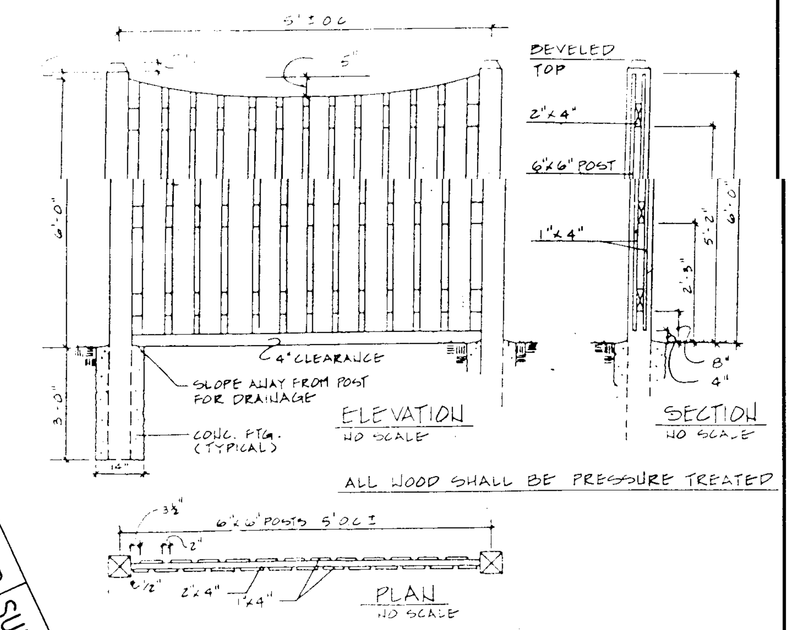
LANDSCAPE CALCULATIONS

PLANTING REQUIRED

1 PU/40 LF ADJACENT RD. (320 LF ÷ 40)	= 8.0	
1 PU/80 LF INTERIOR RD. (120 LF ÷ 20)	= 6	
1 PU/12 PARKING SPACES (68 PS ÷ 12)	= 5.5	
SCREEN PARKING FROM RD (270 LF ÷ 15) CLASS B	= 18	
SCREEN COMM. DEV. FROM RD. (310 LF ÷ 15) CLASS A	= 20.5	
TOTAL PLANTING REQUIRED	= 58	PLANT UNITS
TOTAL PLANTING PROVIDED	= 58	PLANT UNITS
(25) MAJOR DEC. TREES	= 25	
(11) MINOR DEC. TREES	= 5.5	
(9) EVERGREEN TREES	= 4.5	
(115) SHRUBS FOR SCREEN	= 23	
TOTAL	= 58	P.U.



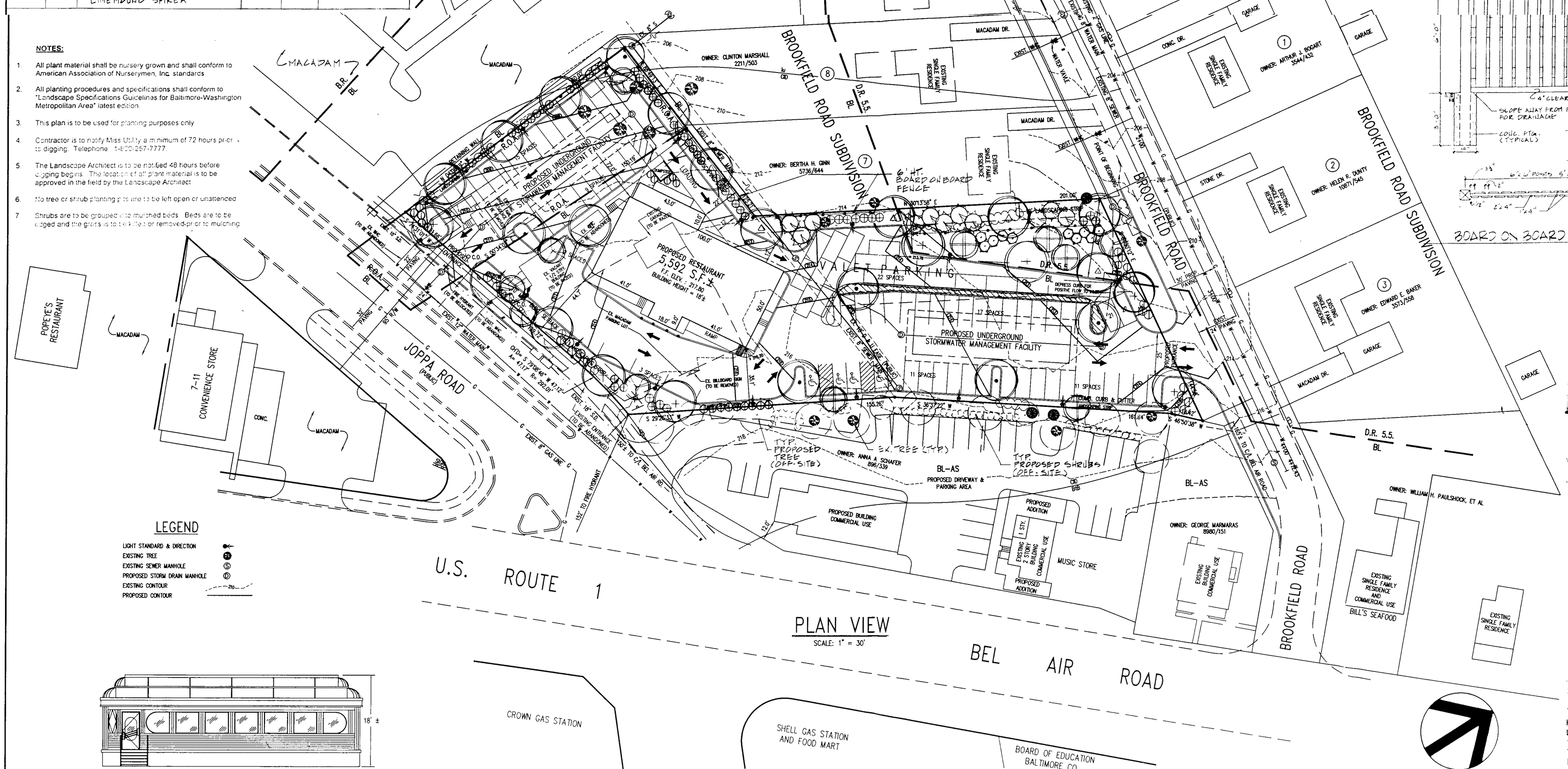
VICINITY MAP
SCALE: 1" = 1000'



BOARD ON BOARD WOOD FENCE DETAIL

NOTES:

1. All plant material shall be nursery grown and shall conform to American Association of Nurserymen, Inc. standards
2. All planting procedures and specifications shall conform to "Landscape Specifications Guidelines for Baltimore-Washington Metropolitan Area" latest edition.
3. This plan is to be used for planting purposes only.
4. Contractor is to notify Miss Utility a minimum of 72 hours prior to digging. Telephone: 1-800-257-7777.
5. The Landscape Architect is to be notified 48 hours before digging begins. The location of all plant material is to be approved in the field by the Landscape Architect.
6. No tree or shrub planting pits are to be left open or unattended.
7. Shrubs are to be grouped into mulched beds. Beds are to be edged and the grass is to be killed or removed prior to mulching.



PLAN VIEW
SCALE: 1" = 30'

LEGEND

- LIGHT STANDARD & DIRECTION
- EXISTING TREE
- EXISTING SEWER MANHOLE
- PROPOSED STORM DRAIN MANHOLE
- EXISTING CONTOUR
- PROPOSED CONTOUR

SIDE ELEVATION
SCALE: 1" = 100'

PETITIONER'S EXHIBIT 2

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
Development Plans Review

OWNER'S SIGNATURE AND CERTIFICATION FORM

I certify that I have reviewed this final landscape plan, that I am aware of the regulations presented in the Baltimore County Landscape Manual, and I agree to comply with these regulations and all applicable policy, guidelines and ordinances. I agree to certify the implementation of this approved Final Landscape Plan upon completion of the landscape installation not later than one (1) year from the date of approval of this plan to the Department of Permits and Development Management, Development Plans Review, County Office Building, Room 211, Towson, MD 21204.

Owner's Signature — Date

Owner's Printed Name — Title

Phone No. — Date

PACKET # — BLDG. & PERMIT #

CASE # 97-193-SPHA
LANDSCAPE PLAN
DATE 4-17-97

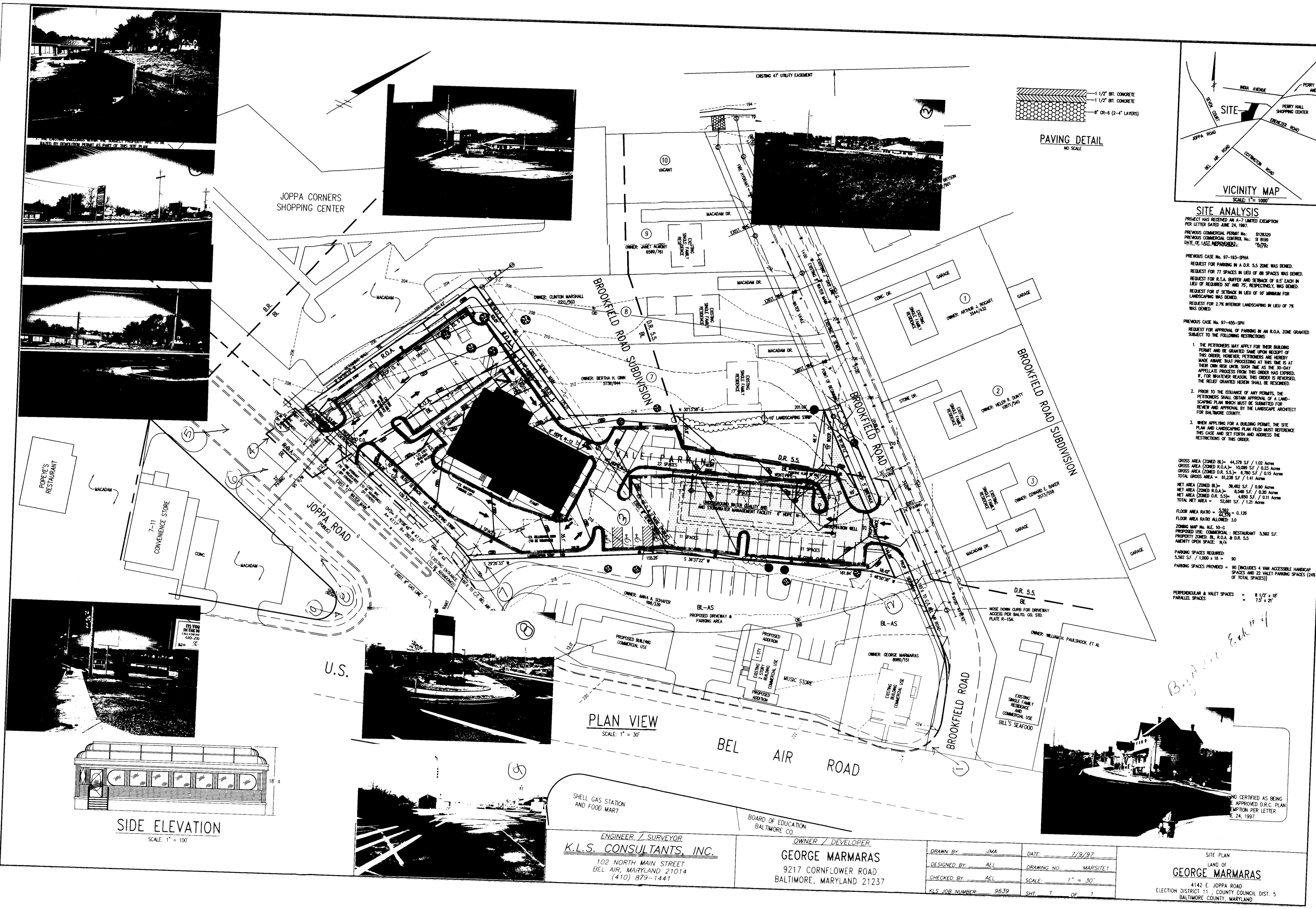
HUMAN & ROHDE, INC.
Landscape Architects
110 E. Pennsylvania Avenue
Towson, Maryland 21286
(410) 825-3885

DATE	REVISION	BY

ENGINEER / SURVEYOR
K.L.S. CONSULTANTS, INC.
102 NORTH MAIN STREET
BEL AIR, MARYLAND 21014
(410) 879-1441

OWNER / DEVELOPER
GEORGE MARMARAS
9217 CORNFLOWER ROAD
BALTIMORE, MARYLAND 21237

DRAWN BY: | DATE:
DESIGNED BY: | DRAWING NO.:
CHECKED BY: | SCALE:
K.L.S. JOB NUMBER: | SHT. OF



SITE ANALYSIS

PROJECT HAS RECEIVED AN A-7 LIMITED EXEMPTION PER LETTER DATED JUNE 24, 1997.

PREVIOUS COMMERCIAL PERMIT No.: B128329
PREVIOUS COMMERCIAL CONTROL No.: SI 8190
DATE OF LAST IMPROVEMENT: 06/92

PREVIOUS CASE No. 97-193-SPHA

REQUEST FOR PARKING IN A D.R. 5.5 ZONE WAS DENIED.

REQUEST FOR 77 SPACES IN LIEU OF 88 SPACES WAS DENIED.

REQUEST FOR R.T.A. BUFFER AND SETBACK OF 9.5' EACH IN LIEU OF REQUIRED 50' AND 75', RESPECTIVELY, WAS DENIED.

REQUEST FOR 0' SETBACK IN LIEU OF 10' MINIMUM FOR LANDSCAPING WAS DENIED.

REQUEST FOR 2.7% INTERIOR LANDSCAPING IN LIEU OF 7% WAS DENIED.

PREVIOUS CASE No. 97-455-SPH

REQUEST FOR APPROVAL OF PARKING IN AN R.O.A. ZONE GRANTED SUBJECT TO THE FOLLOWING RESTRICTIONS:

1. THE PETITIONERS MAY APPLY FOR THEIR BUILDING PERMIT AND BE GRANTED SAME UPON RECEIPT OF THIS ORDER; HOWEVER, PETITIONERS ARE HEREBY MADE AWARE THAT PROCEEDING AT THIS TIME IS AT THEIR OWN RISK UNTIL SUCH TIME AS THE 30-DAY APPELLATE PROCESS FROM THIS ORDER HAS EXPIRED. IF, FOR WHATEVER REASON, THIS ORDER IS REVERSED, THE RELIEF GRANTED HEREIN SHALL BE RESCINDED.

2. PRIOR TO THE ISSUANCE OF ANY PERMITS, THE PETITIONERS SHALL OBTAIN APPROVAL OF A LANDSCAPING PLAN WHICH MUST BE SUBMITTED FOR REVIEW AND APPROVAL BY THE LANDSCAPE ARCHITECT FOR BALTIMORE COUNTY.

3. WHEN APPLYING FOR A BUILDING PERMIT, THE SITE PLAN AND LANDSCAPING PLAN FILED MUST REFERENCE THIS CASE AND SET FORTH AND ADDRESS THE RESTRICTIONS OF THIS ORDER.

GROSS AREA (ZONED BL)= 44,379 S.F. / 1.02 Acres
GROSS AREA (ZONED R.O.A.)= 10,099 S.F. / 0.23 Acres
GROSS AREA (ZONED D.R. 5.5)= 6,780 S.F. / 0.15 Acres
TOTAL GROSS AREA = 61,238 S.F. / 1.41 Acres

NET AREA (ZONED BL)= 39,482 S.F. / 0.90 Acres
NET AREA (ZONED R.O.A.)= 8,549 S.F. / 0.20 Acres
NET AREA (ZONED D.R. 5.5)= 4,850 S.F. / 0.11 Acres
TOTAL NET AREA = 52,881 S.F. / 1.21 Acres

FLOOR AREA RATIO = 5,592 / 44,379 = 0.126

FLOOR AREA RATIO ALLOWED: 3.0

ZONING MAP No. N.E. 10-G
PROPOSED USE: COMMERCIAL : RESTAURANT 5,592 S.F.
PROPERTY ZONED: BL, R.O.A. & D.R. 5.5
AMENITY OPEN SPACE: N/A

PARKING SPACES REQUIRED:
5,592 S.F. / 1,000 x 16 = 90

PARKING SPACES PROVIDED = 90 [INCLUDES 4 VAN ACCESSIBLE HANDICAP SPACES AND 22 VALET PARKING SPACES (24% OF TOTAL SPACES)]

PERPENDICULAR & VALET SPACES = 8 1/2' x 18'
PARALLEL SPACES = 7.5' x 21'

...ND CERTIFIED AS BEING
...E APPROVED D.R.C. PLAN
...EMPTION PER LETTER
...E. 24, 1997.

ENGINEER / SURVEYOR
K.L.S. CONSULTANTS, INC.
102 NORTH MAIN STREET
BEL AIR, MARYLAND 21014
(410) 879-1441

OWNER / DEVELOPER
GEORGE MARMARAS
9217 CORNFLOWER ROAD
BALTIMORE, MARYLAND 21237

DRAWN BY: JMA		DATE: 7/9/97	
DESIGNED BY: AEL		DRAWING NO: MARSITE1	
CHECKED BY: AEL		SCALE: 1" = 30'	
KLS JOB NUMBER: 9639		SHT. 1 OF 1	

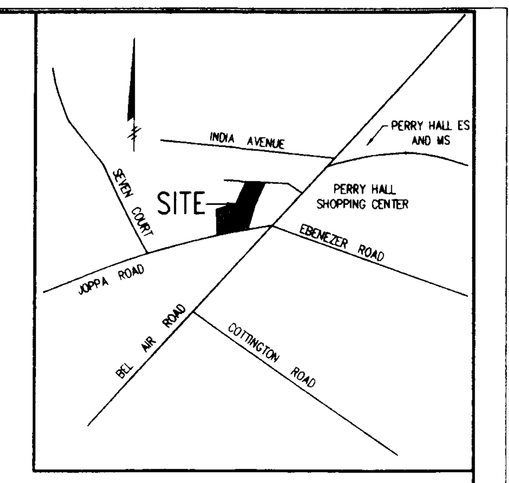
SITE PLAN
LAND OF
GEORGE MARMARAS
4142 E. JOPPA ROAD
ELECTION DISTRICT 11 , COUNTY COUNCIL DIST. 5
BALTIMORE COUNTY, MARYLAND

PLAN VIEW

SCALE 1" = 30'

PAVING DETAIL

NO SCALE



VICINITY MAP

SCALE: 1"= 1000'

SITE ANALYSIS

PREVIOUS COMMERCIAL PERMIT No.: B128329
PREVIOUS COMMERCIAL CONTROL No.: SI 8199
DATE OF LAST IMPROVEMENT: 05/92

PREVIOUS CASE No. 97-193-SPHA

REQUEST FOR PARKING IN A D.R. 5.5 ZONE WAS DENIED.

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REQUEST FOR 0 SETBACK IN LIEU OF 10' MINIMUM FOR LANDSCAPING WAS DENIED.

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FLOOR AREA RATIO ALLOWED: 3.0

ZONING MAP No. N.E. 10-G
PROPOSED USE: COMMERCIAL : RESTAURANT 5,592 S.F.
PROPERTY ZONED: BL, R.O.A. & D.R. 5.5
AMENITY OPEN SPACE: N/A

PARKING SPACES REQUIRED
5,592 S.F. / 1,000 x 16 = 90

PARKING SPACES PROVIDED = 90 (INCLUDES 4 VAN ACCESSIBLE HANDICAP SPACES AND 22 VALET PARKING SPACES (24% OF TOTAL SPACES))

PERPENDICULAR & VALET SPACES = 8 1/2' x 18'
PARALLEL SPACES = 7.5' x 21'

GENERAL NOTES

1. THE PURPOSE OF THIS PLAN IS TO REQUEST PARKING WITHIN THE R.O.A. ZONE. MR. MARMARAS RECENTLY PURCHASED THE PROPERTY ZONED R.O.A. IN ORDER TO SATISFY ZONING REGULATIONS FOR THE PROPOSED IMPROVEMENTS. DEED WILL BE RECORDED TO EXPUNGE THE PROPERTY LINE BETWEEN #4140 AND #4142 EAST JOPPA ROAD.
2. NO SIGNS ARE PROPOSED AT THIS TIME, HOWEVER, ANY FUTURE SIGNS WILL COMPLY WITH THE BALTIMORE COUNTY ZONING REGULATIONS, SECTION 413. A SIGN PERMIT APPLICATION WILL BE SUBMITTED TO BALTIMORE COUNTY FOR APPROVAL.
3. ALL DRIVES AND PARKING AREAS ARE TO BE PAVED.
4. ALL PARKING SPACES ARE TO BE PERMANENTLY STRIPED.
5. A DETAILED LANDSCAPE PLAN WILL BE SUBMITTED TO BALTIMORE COUNTY FOR APPROVAL.
6. PUBLIC WATER AND SEWER SERVICES ARE AVAILABLE TO THE SITE.
7. THE EXISTING DWELLINGS WITHIN THE SUBJECT PROPERTY ARE TO BE RAZED BY DEMOLITION PERMIT AS PART OF THIS SITE PLAN
8. RESTAURANT OWNER SHALL ESTABLISH POLICY THAT ALL EMPLOYEES MUST USE VALET PARKING SPACES TO MINIMIZE CUSTOMER VALET PARKING
9. ANY FIXTURE USED TO ILLUMINATE AN OFF-STREET PARKING AREA SHALL BE ARRANGED AS TO REFLECT LIGHT AWAY FROM ADJACENT RESIDENTIAL SITES AND PUBLIC STREETS.
10. DELIVERIES SHALL BE SCHEDULED FOR NON-PEAK HOURS AND WHEN THE SOUTHERLY VALET PARKING SPACES ARE VACANT

LEGEND

- LIGHT STANDARD & DIRECTION
- EXISTING TREE
- EXISTING SEWER MANHOLE
- PROPOSED STORM DRAIN MANHOLE
- EXISTING CONTOUR
- PROPOSED CONTOUR

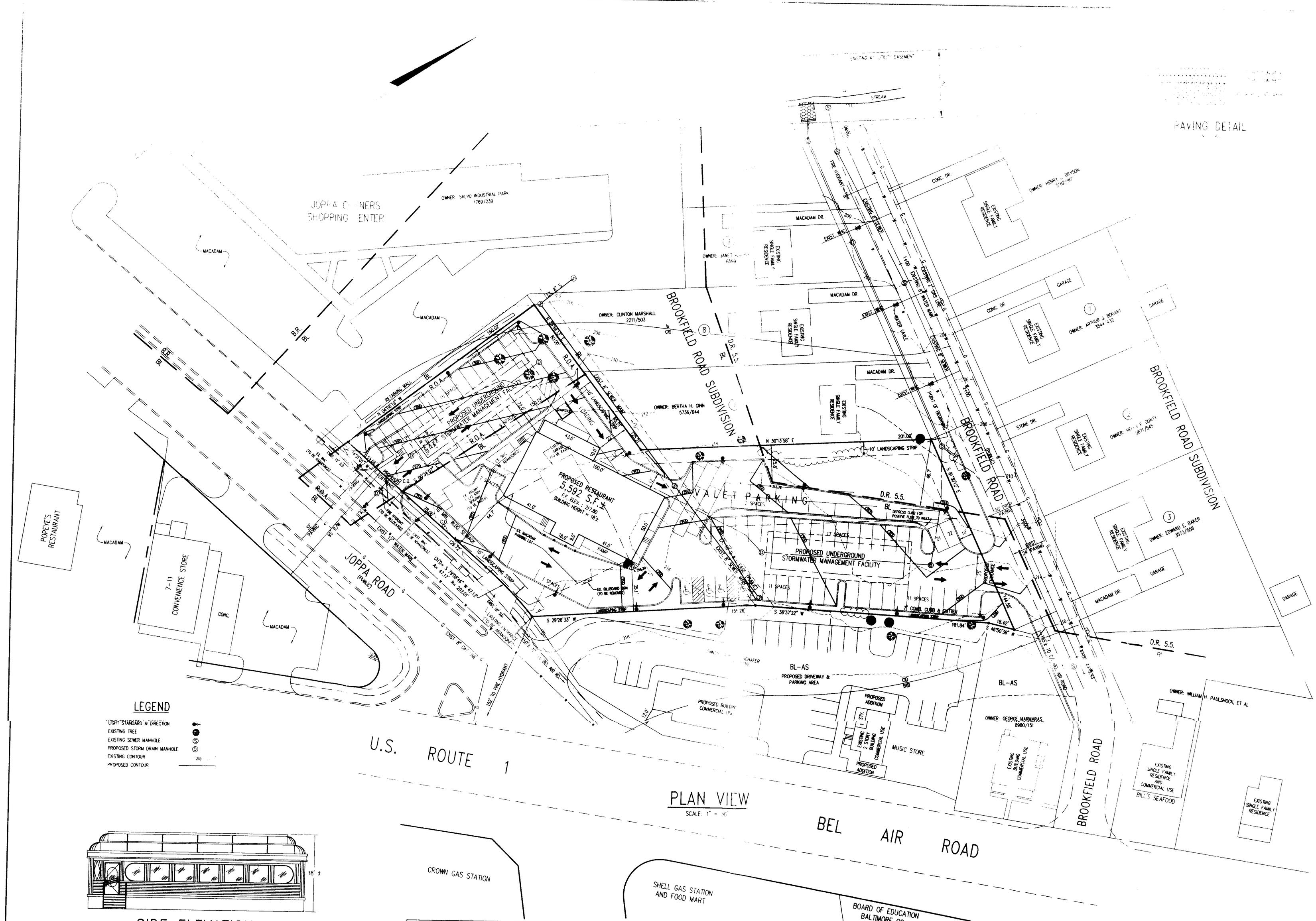
SIDE ELEVATION

K.L.S. CONSULTANTS, INC.

GEORGE MARMARAS

GEORGE MARMARAS

JOPPA CORNERS SHOPPING CENTER
OWNER: SALVO INDUSTRIAL PARK 1769/239
EXISTING 47' UTILITY EASEMENT
STREAM
VACANT
OWNER: HENRY L. BRYSON 5182/901
OWNER: JANET ALMONY 6599/781
OWNER: CLINTON MARSHALL 2211/503
OWNER: EDWARD G. SCHAFER 1769/239
OWNER: BERTHA H. GINN 5736/644
OWNER: ARTHUR J. BOGART 5441/432
OWNER: HELEN R. DUNTY 10611/545
OWNER: EDWARD L. BAKER 3513/258
BROOKFIELD ROAD SUBDIVISION
BROOKFIELD ROAD
BL - CSA (BL - AS)
D.R. 5.5.
PROPOSED RESTAURANT 4,937.5 S.F.±
RTA AREA 4,650 S.F.
LANDSCAPED AREA
UNDERGROUND STORMWATER MANAGEMENT FACILITY
PROPOSED DRIVEWAY & PARKING AREA
OWNER: ANNA A. SCHAFER 898/339
PROPOSED BUILDING COMMERCIAL USE
PROPOSED ADDITION
EXISTING 2 STORY BUILDING COMMERCIAL USE
MUSIC STORE
OWNER: GEORGE MARMARAS 8980/151
EXISTING BUILDING COMMERCIAL USE
OWNER: WILLIAM H. PAULSHOCK, ET AL
EXISTING SINGLE FAMILY RESIDENCE AND COMMERCIAL USE
BILL'S SEAFOOD
POPEYE'S RESTAURANT
7-11 CONVENIENCE STORE
JOPPA ROAD (PUBLIC)
U.S. ROUTE 1
BEL AIR ROAD
BROOKFIELD ROAD
MACADAM
CONC.
GARAGE
STONE DR.
MACADAM DR.
CONC. DR.
LOADING
ENCLOSED DUMPSTER AREA
RAMP
BLDG. SETBACK
UNDERGROUND STORMWATER MANAGEMENT FACILITY
7" COMB. CURB & GUTTER
POINT OF BEGINNING
EXISTING 8" WATER MAIN
EXISTING 8" SEWER
EXIST. 8" GAS LINE
EXIST. 18" STD.
EXIST. 12" WATER MAIN
EXIST. 24" PAVING
EXISTING SINGLE FAMILY RESIDENCE
PROPOSED BUILDING HEIGHT 18'±
PROPOSED 1" MHC
EXIST. 15" CMP
EXIST. 15" CONC.
EXIST. 8" CONC. (TO BE ABANDONED)
EXISTING SIGNS (TO BE REMOVED)
EXISTING SIGNS (TO BE ADDED)
EXISTING FIRE HYDRANT
PROPOSED FIRE HYDRANT
EXISTING 10' WIDE EASEMENT
EXISTING 15' WIDE EASEMENT
EXISTING 20' WIDE EASEMENT
EXISTING 25' WIDE EASEMENT
EXISTING 30' WIDE EASEMENT
EXISTING 40' WIDE EASEMENT
EXISTING 50' WIDE EASEMENT
EXISTING 60' WIDE EASEMENT
EXISTING 70' WIDE EASEMENT
EXISTING 80' WIDE EASEMENT
EXISTING 90' WIDE EASEMENT
EXISTING 100' WIDE EASEMENT
EXISTING 110' WIDE EASEMENT
EXISTING 120' WIDE EASEMENT
EXISTING

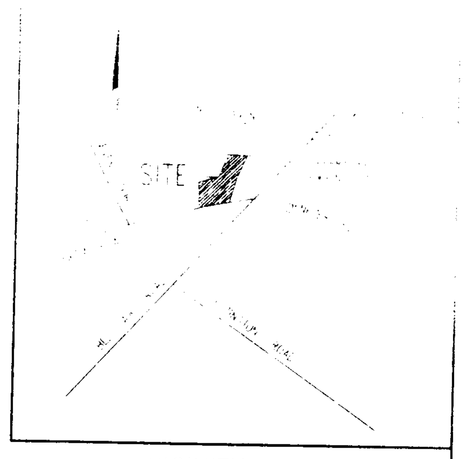


PLAN VIEW
SCALE: 1" = 30'

SIDE ELEVATION
SCALE: 1" = 100'

LEGEND

- "LIGHT" STANDARD & DIRECTION
- EXISTING TREE
- EXISTING SEWER MANHOLE
- PROPOSED STORM DRAIN MANHOLE
- EXISTING CONTOUR
- PROPOSED CONTOUR



VICINITY MAP
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SITE ANALYSIS

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TOTAL GROSS AREA = 61,238 S.F. / 1.41 Acres

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ZONING MAP No. N.E. 10-G
PROPOSED USE: COMMERCIAL - RESTAURANT 5,592 S.F.
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DATE	REVISION	BY

ENGINEER / SURVEYOR
K.L.S. CONSULTANTS, INC.
102 NORTH MAIN STREET
BEL AIR, MARYLAND 21014
(410) 879-1441

OWNER / DEVELOPER
GEORGE MARMARAS
9217 CORNFLOWER ROAD
BALTIMORE, MARYLAND 21237

DRAWN BY:	JMA	DATE:	4/22/97
DESIGNED BY:	AEL	DRAWING NO.:	MARSITE1
CHECKED BY:	AEL	SCALE:	1" = 30'
KLS JOB NUMBER:	9639	SHT. 1 OF 1	

SITE PLAN TO ACCOMPANY REQUEST FOR LIMITED EXEMPTION
LAND OF
GEORGE MARMARAS
4142 E. JOPPA ROAD
ELECTION DISTRICT 11 , COUNTY COUNCIL DIST. 5
BALTIMORE COUNTY, MARYLAND

LEGEND

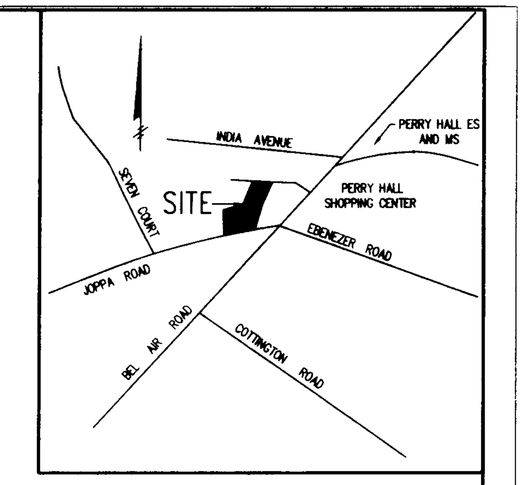
- LIGHT STANDARD & DIRECTION
- EXISTING TREE
- EXISTING SEWER MANHOLE
- PROPOSED STORM DRAIN MANHOLE
- EXISTING CONTOUR
- PROPOSED CONTOUR

PLAN VIEW

SCALE: 1" = 30'

PAVING DETAIL

NO SCALE



VICINITY MAP

SCALE: 1" = 1000'

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PARALLEL SPACES = 7.5' x 21'

GENERAL NOTES

1. THE PURPOSE OF THIS PLAN IS TO REQUEST PARKING WITHIN THE R.O.A. ZONE. MR. MARMARAS RECENTLY PURCHASED THE PROPERTY ZONED R.O.A. IN ORDER TO SATISFY ZONING REGULATIONS FOR THE PROPOSED IMPROVEMENTS. DEED WILL BE RECORDED TO EXPUNGE THE PROPERTY LINE BETWEEN #4140 AND #4142 EAST JOPPA ROAD.
2. NO SIGNS ARE PROPOSED AT THIS TIME, HOWEVER, ANY FUTURE SIGNS WILL COMPLY WITH THE BALTIMORE COUNTY ZONING REGULATIONS. A SIGN PERMIT APPLICATION WILL BE SUBMITTED TO BALTIMORE COUNTY FOR APPROVAL.
3. ALL DRIVES AND PARKING AREAS ARE TO BE PAVED.
4. ALL PARKING SPACES ARE TO BE PERMANENTLY STRIPED.
5. A DETAILED LANDSCAPE PLAN WILL BE SUBMITTED TO BALTIMORE COUNTY FOR APPROVAL.

RAZED BY DEMOLITION PERMIT AS FOLLOWS:

~~8. THERE WILL BE NO PARKING WITHIN THE R.T.A. AREA.~~
NO R.T.A. EXISTS
9. RESTAURANT OWNER SHALL ESTABLISH POLICY THAT ALL EMPLOYEES MUST USE VALET PARKING SPACES TO MINIMIZE CUSTOMER VALET PARKING.
10. ANY FIXTURE USED TO ILLUMINATE AN OFF-STREET PARKING AREA SHALL BE ARRANGED AS TO REFLECT LIGHT AWAY FROM ADJACENT RESIDENTIAL SITES AND PUBLIC STREETS.
11. DELIVERIES SHALL BE SCHEDULED FOR NON-PEAK HOURS AND WHEN THE SOUTHERLY VALET PARKING SPACES ARE VACANT.
12. Signage will comply with B.C.Z.R. § 413

97-455-SPH

SIDE ELEVATION

SCALE: 1" = 10'

97-455-SPH

ENGINEER / SURVEYOR
K.L.S. CONSULTANTS, INC.

OWNER / DEVELOPER
GEORGE MARMARAS
9217 CORNFLOWER ROAD
BALTIMORE, MARYLAND

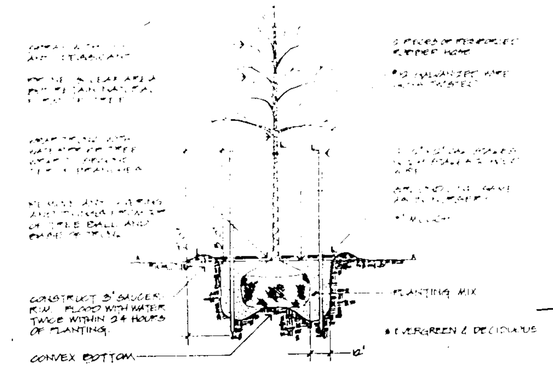
DRAWN BY
DESIGNED BY

DATE
REVISIONS

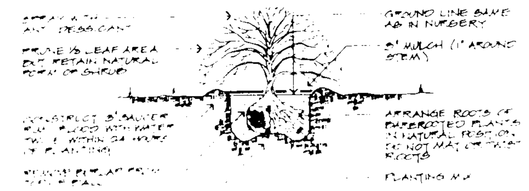
THE PLAN TO ACCOMPANY PETITION FOR SPECIAL HEARING
FOR
GEORGE MARMARAS
4142 & 4144 JOPPA ROAD
BALTIMORE COUNTY, MARYLAND

PLANTING PLAN

KEY	QTY	BOTANICAL NAME / COMMON NAME	SIZE	COND	REMARKS
	3	ACER RUBRUM 'RED SUNSET' RED SUNSET MAPLE	2½-3" CAL	B&B	
	6	QUERCUS PALUSTRIS PIN OAK	2½-3" CAL	B&B	
	6	CELTIS AUSTRALIS 'GREEN VASE' GREEN VASE ZELKOVA	2-2½" CAL	B&B	
	11	PINUS STROBUS WHITE PINE	6-7' HT	B&B	
	5	AMELANCHIER CANADENSIS SERVICEBERRY	6-8' HT	B&B	HEAVY, MULTI STEM
	6	CORNUS KOUSA KOUSA DOGWOOD	6-8' HT	B&B	HEAVY
	65	EUONYMUS KIAUT. 'SIEBOLDIANA' SIEBOLD EUONYMUS	2-3' HT	B&B	SPACE 4' O.C.
	6	EUONYMUS FORTUNEI 'COLORATUS' WINTERCREEPER	100 FLAT	100 FLAT	SPACE 1' O.C.
	10	VIBURNUM PLIC. 'MARIESII' MARIESII VIBURNUM	2-3' HT.	B&B	SPACE 5' O.C.
	40	SPIREA X BUMALDA 'LIMEMOUND' LIMEMOUND SPIREA	18-24" HT	CAN	SPACE 3' O.C.



PLANTING DETAIL FOR TREES - 1½"-4" CALIPER
NOT TO SCALE

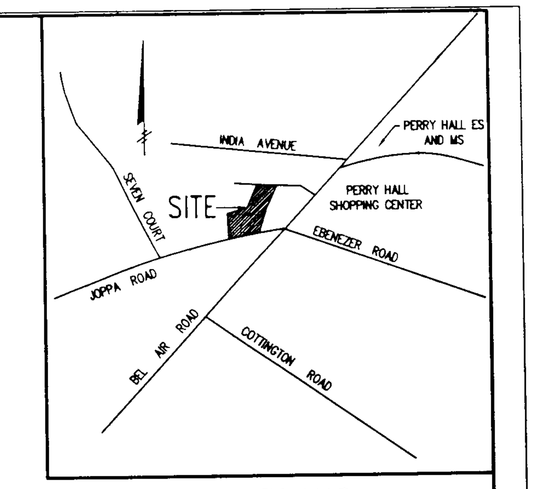


PLANTING DETAIL FOR EVERGREEN AND DECIDUOUS SHRUBS
NOT TO SCALE

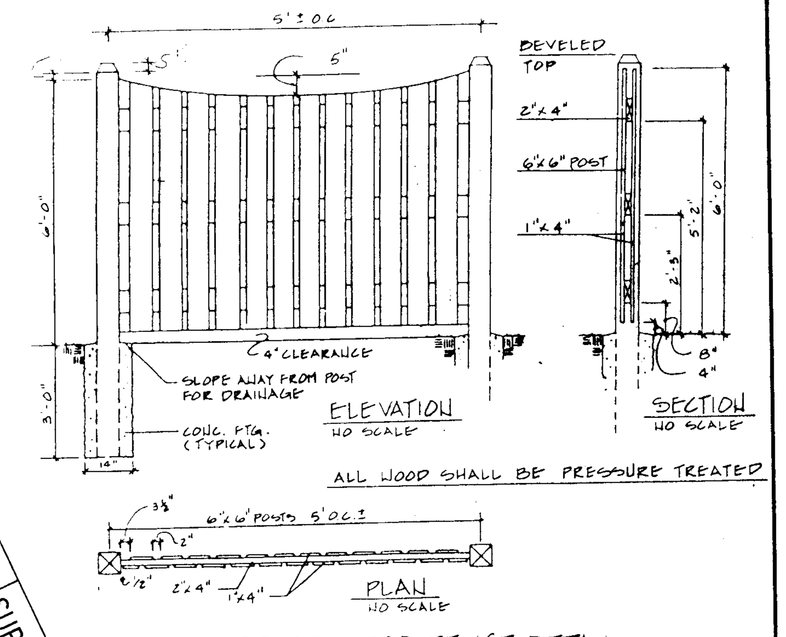
LANDSCAPE CALCULATIONS

PARKING REQUIRED
PARKING AREA REQUIRED
320 SF ÷ 40 = 8.0
1,180 SF ÷ 200 SF REQ'D = 6
90% PARKING SPACES
(22 PS ÷ 2) = 5.5
SCREEN PARKING FROM RD
27% (22 − 5) CLASS B = 18
SCREEN OVERALL PERV. FROM RD.
(136 LF ÷ 15) CLASS A = 20.5

TOTAL PLANTING REQUIRED	= 58	PLANT UNITS
TOTAL PLANTING PROVIDED	= 58	PLANT UNITS
(25) VALOR DEC. TREES	= 25	
(11) MINOR DEC. TREES	= 5.5	
(9) EVERGREEN TREES	= 4.5	
(115) SHRUBS FOR SCREEN	= 23	
TOTAL	= 58	P.U.



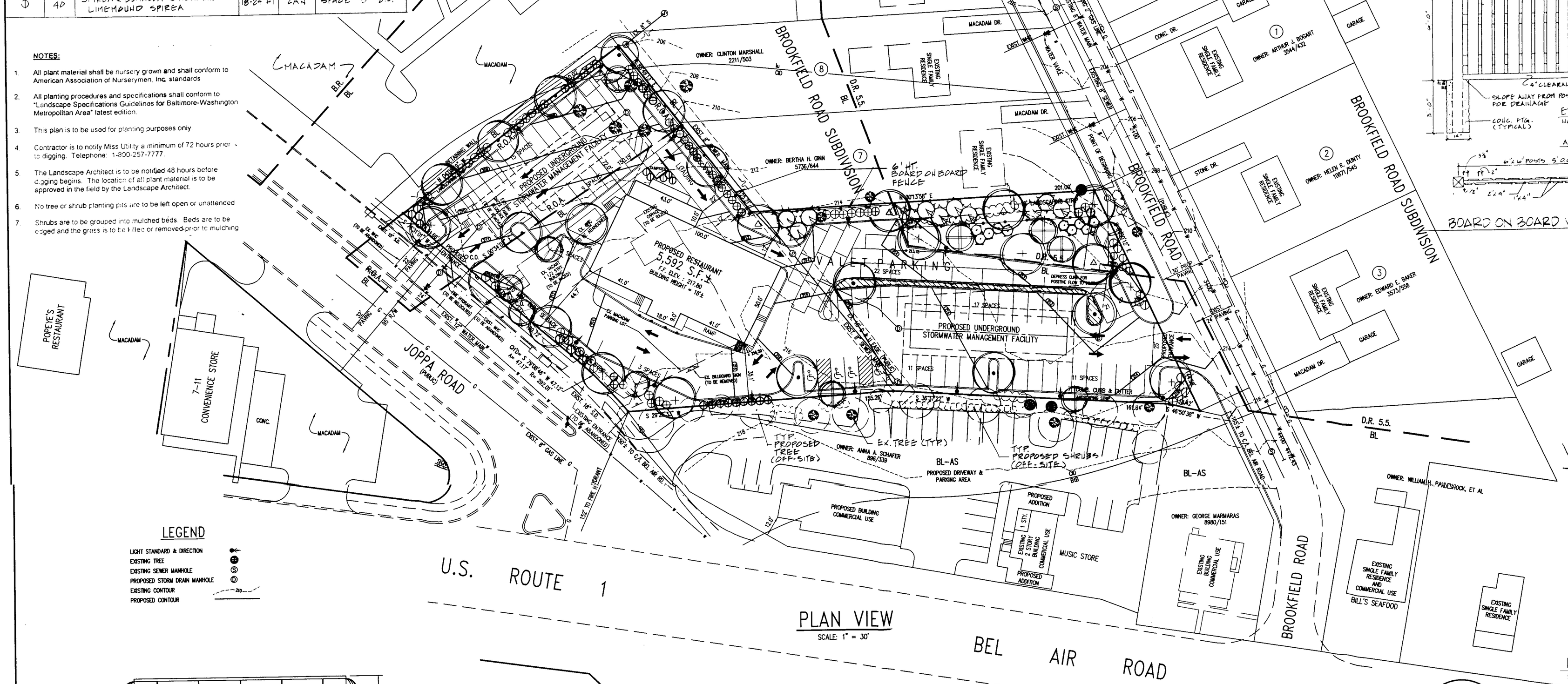
VICINITY MAP
SCALE: 1" = 1000'



BOARD ON BOARD WOOD FENCE DETAIL

NOTES:

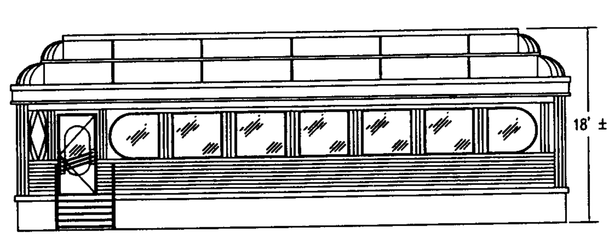
1. All plant material shall be nursery grown and shall conform to American Association of Nurserymen, Inc. standards
2. All planting procedures and specifications shall conform to "Landscape Specifications Guidelines for Baltimore-Washington Metropolitan Area" latest edition.
3. This plan is to be used for planting purposes only.
4. Contractor is to notify Miss Utility a minimum of 72 hours prior to digging. Telephone: 1-800-257-7777.
5. The Landscape Architect is to be notified 48 hours before digging begins. The location of all plant material is to be approved in the field by the Landscape Architect.
6. No tree or shrub planting pits are to be left open or unattended.
7. Shrubs are to be grouped into mulched beds. Beds are to be edged and the grass is to be killed or removed prior to mulching.



PLAN VIEW
SCALE: 1" = 30'

LEGEND

- LIGHT STANDARD & DIRECTION
- EXISTING TREE
- EXISTING SEWER MANHOLE
- PROPOSED STORM DRAIN MANHOLE
- EXISTING CONTOUR
- PROPOSED CONTOUR



SIDE ELEVATION
SCALE: 1" = 100'

BLDG PERMIT # 311071
WADE TIPTON 682-5252

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
Development Plans Review

OWNER'S SIGNATURE AND CERTIFICATION FORM

I certify that I have reviewed this Final Landscape Plan; that I am aware of "the requirements" contained in the Baltimore County Landscape Manual; and I agree to comply with these regulations and all applicable policy, guidelines and ordinances. I agree to certify the implementation of this approved Final Landscape Plan upon completion of the landscape installation not later than one (1) year from the date of approval of this plan to the Department of Permits and Development Management, Development Plans Review, County Office Building, Room 211, Towson, MD 21204.

Owner's signature — Date 4/30/97
ROBERT B. TIPTON 682-5252
Owner's Printed Name — Tele #
417 SPENCERS RUN RD TOWSON 21286
(Print) Mailing address - City - State - Zip

PADM #_____ BUILDING PERMIT #_____

CASE # 97-193-SPHA

LANDSCAPE PLAN
DATE 4-17-97

PREPARED BY:
HUMAN & ROHDE, INC.
Landscape Architects
110 E. Pennsylvania Avenue
Towson, Maryland 21286
(410) 825-3885

DATE	REVISION	BY

ENGINEER / SURVEYOR
K.L.S. CONSULTANTS, INC.
102 NORTH MAIN STREET
BEL AIR, MARYLAND 21014
(410) 879-1441

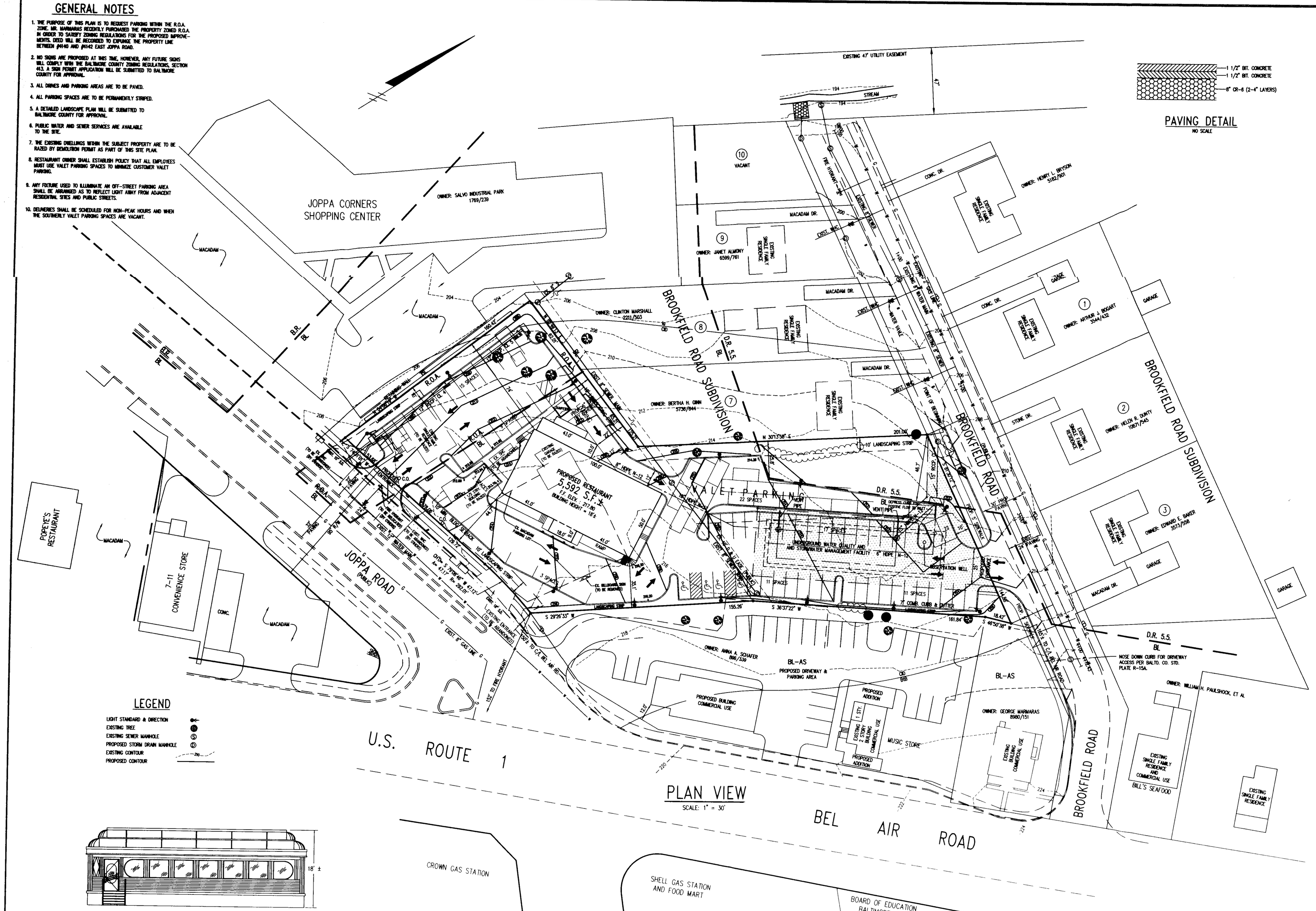
OWNER / DEVELOPER
GEORGE MARMARAS
9217 CORNFLOWER ROAD
BALTIMORE, MARYLAND 21237

DRAWN BY:	DATE:
DESIGNED BY:	DRAWING NO.:
CHECKED BY:	SCALE:
KLS JOB NUMBER:	SHT. OF

97-455-SPH

GENERAL NOTES

1. THE PURPOSE OF THIS PLAN IS TO REQUEST PARKING WITHIN THE R.O.A. ZONE. MR. MARMARAS RECENTLY PURCHASED THE PROPERTY ZONED R.O.A. IN ORDER TO SATISFY ZONING REGULATIONS FOR THE PROPOSED IMPROVEMENTS. DEED WILL BE RECORDED TO EXPUNGE THE PROPERTY LINE BETWEEN #4140 AND #4142 EAST JOPPA ROAD.
2. NO SIGNS ARE PROPOSED AT THIS TIME, HOWEVER, ANY FUTURE SIGNS WILL COMPLY WITH THE BALTIMORE COUNTY ZONING REGULATIONS, SECTION 413. A SIGN PERMIT APPLICATION WILL BE SUBMITTED TO BALTIMORE COUNTY FOR APPROVAL.
3. ALL DRIVES AND PARKING AREAS ARE TO BE PAVED.
4. ALL PARKING SPACES ARE TO BE PERMANENTLY STRIPED.
5. A DETAILED LANDSCAPE PLAN WILL BE SUBMITTED TO BALTIMORE COUNTY FOR APPROVAL.
6. PUBLIC WATER AND SEWER SERVICES ARE AVAILABLE TO THE SITE.
7. THE EXISTING DWELLINGS WITHIN THE SUBJECT PROPERTY ARE TO BE RAZED BY DEMOLITION PERMIT AS PART OF THIS SITE PLAN.
8. RESTAURANT OWNER SHALL ESTABLISH POLICY THAT ALL EMPLOYEES MUST USE VALET PARKING SPACES TO MINIMIZE CUSTOMER VALET PARKING.
9. ANY FIXTURE USED TO ILLUMINATE AN OFF-STREET PARKING AREA SHALL BE ARRANGED AS TO REFLECT LIGHT AWAY FROM ADJACENT RESIDENTIAL SITES AND PUBLIC STREETS.
10. DELIVERIES SHALL BE SCHEDULED FOR NON-PEAK HOURS AND WHEN THE SOUTHERLY VALET PARKING SPACES ARE VACANT.



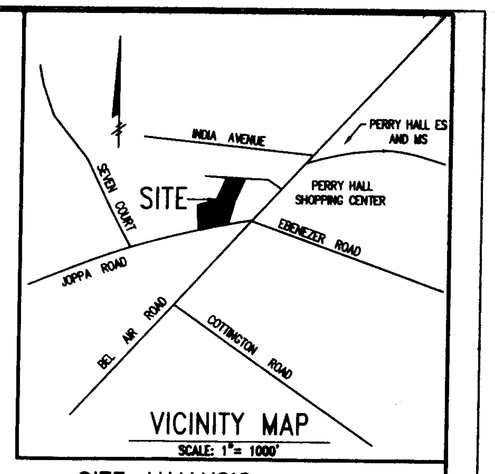
PAVING DETAIL

NO SCALE

1 1/2" BIT. CONCRETE
1 1/2" BIT. CONCRETE
8" CR-6 (2-4" LAYERS)

VICINITY MAP

SCALE: 1" = 1000'



SITE ANALYSIS

PROJECT HAS RECEIVED AN A-7 LIMITED EXEMPTION PER LETTER DATED JUNE 24, 1997.

PREVIOUS COMMERCIAL PERMIT No.: B128329
PREVIOUS COMMERCIAL CONTROL No.: SI 8199
DATE OF LAST IMPROVEMENT: 05/92

PREVIOUS CASE No. 97-193-SPHA

REQUEST FOR PARKING IN A D.R. 5.5 ZONE WAS DENIED.

REQUEST FOR 77 SPACES IN LIEU OF 88 SPACES WAS DENIED.

REQUEST FOR R.T.A. BUFFER AND SETBACK OF 9.5' EACH IN. LIEU OF REQUIRED 50' AND 75', RESPECTIVELY, WAS DENIED.

REQUEST FOR 0' SETBACK IN LIEU OF 10' MINIMUM FOR LANDSCAPING WAS DENIED.

REQUEST FOR 2.7% INTERIOR LANDSCAPING IN LIEU OF 7% WAS DENIED.

PREVIOUS CASE No. 97-455-SPH

REQUEST FOR APPROVAL OF PARKING IN AN R.O.A. ZONE GRANTED SUBJECT TO THE FOLLOWING RESTRICTIONS:

1. THE PETITIONERS MAY APPLY FOR THEIR BUILDING PERMIT AND BE GRANTED SAME UPON RECEIPT OF THIS ORDER; HOWEVER, PETITIONERS ARE HEREBY MADE AWARE THAT PROCEEDING AT THIS TIME IS AT THEIR OWN RISK UNTIL SUCH TIME AS THE 30-DAY APPELLATE PROCESS FROM THIS ORDER HAS EXPIRED. IF, FOR WHATEVER REASON, THIS ORDER IS REVERSED, THE RELIEF GRANTED HEREIN SHALL BE RESCINDED.
2. PRIOR TO THE ISSUANCE OF ANY PERMITS, THE PETITIONERS SHALL OBTAIN APPROVAL OF A LANDSCAPING PLAN WHICH MUST BE SUBMITTED FOR REVIEW AND APPROVAL BY THE LANDSCAPE ARCHITECT FOR BALTIMORE COUNTY.
3. WHEN APPLYING FOR A BUILDING PERMIT, THE SITE PLAN AND LANDSCAPING PLAN FILED MUST REFERENCE THIS CASE AND SET FORTH AND ADDRESS THE RESTRICTIONS OF THIS ORDER.

GROSS AREA (ZONED BL)= 44,379 S.F / 1.02 Acres
GROSS AREA (ZONED R.O.A.)= 10,099 S.F / 0.23 Acres
GROSS AREA (ZONED D.R. 5.5.)= 6,760 S.F / 0.15 Acres
TOTAL GROSS AREA = 61,238 S.F / 1.41 Acres

NET AREA (ZONED BL)= 38,462 S.F. / 0.90 Acres
NET AREA (ZONED R.O.A.)= 8,540 S.F. / 0.20 Acres
NET AREA (ZONED D.R. 5.5)= 4,650 S.F. / 0.11 Acres
TOTAL NET AREA = 52,661 S.F. / 1.21 Acres

FLOOR AREA RATIO = $\frac{5,592}{44,379}$ = 0.126
FLOOR AREA RATIO ALLOWED: 3.0

ZONING MAP No. N.E. 10-G
PROPOSED USE: COMMERCIAL : RESTAURANT 5,592 S.F.
PROPERTY ZONED: BL, R.O.A. & D.R. 5.5
AMENITY OPEN SPACE: N/A

PARKING SPACES REQUIRED:
5,592 S.F. / 1,000 x 16 = 90

PARKING SPACES PROVIDED = 90 (INCLUDES 4 VAN ACCESSIBLE HANDICAP SPACES AND 22 VALET PARKING SPACES (24% OF TOTAL SPACES))

PERPENDICULAR & VALET SPACES = 8 1/2' x 18'
PARALLEL SPACES = 7.5' x 21'

LEGEND

- LIGHT STANDARD & DIRECTION
- EXISTING TREE
- EXISTING SEWER MANHOLE
- PROPOSED STORM DRAIN MANHOLE
- EXISTING CONTOUR
- PROPOSED CONTOUR

PLAN VIEW

SCALE: 1" = 30'

SIDE ELEVATION

SCALE: 1" = 100'

THIS PLAN IS SEALED AND CERTIFIED AS BEING IN ACCORDANCE WITH THE APPROVED D.R.C. PLAN WITH A-7 LIMITED EXEMPTION PER LETTER DATED JUNE 24, 1997.

DATE	REVISION	BY

ENGINEER / SURVEYOR
K.L.S. CONSULTANTS, INC.
102 NORTH MAIN STREET
BEL AIR, MARYLAND 21014
(410) 879-1441

OWNER / DEVELOPER
GEORGE MARMARAS
9217 CORNFLOWER ROAD
BALTIMORE, MARYLAND 21237

DRAWN BY: JMA		DATE: 7/9/97	
DESIGNED BY: AEL		DRAWING NO.: MARSITE1	
CHECKED BY: AEL		SCALE: 1" = 30'	
KLS JOB NUMBER: 9639		SHT. 1 OF 1	

SITE PLAN
LAND OF
GEORGE MARMARAS
4142 E. JOPPA ROAD
ELECTION DISTRICT 11 COUNTY COUNCIL DIST. 5
BALTIMORE COUNTY, MARYLAND