

8/1/98.
IN THE MATTER OF
THE APPLICATION OF
SLEEPY HOLLOW WOODS, INC. /ERNEST
SLIGH, PRESIDENT -PROPERTY OWNER /
PETITIONER FOR A ZONING
RECLASSIFICATION, SPECIAL EXCEPTION
AND VARIANCE ON PROPERTY LOCATED
ON THE SOUTHWEST SIDE OF MOHRS LANE
(FUTURE CAMPBELL BOULEVARD), 1630'
E OF C/L PULASKI HIGHWAY AND SE/S
BGE/SUSQUEHANNA TRANSMISSION R/W
11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CR-98-149-XA
* (Cycle II, 1997/98)
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O P I N I O N

This case comes to the County Board of Appeals based on a reclassification request filed by the Petitioner to reclassify property located at the southwest side of Mohrs Lane (future Campbell Boulevard), 1630 feet east of the centerline of Pulaski Highway and southwest side of the BG&E/Susquehanna Transmission right-of-way, from M.L.-I.M. to D.R. 3.5, accompanied by a Petition for Special Exception for a mobile home park and Petition for Variance to permit trailers (mobile homes) within 25 feet of any other boundary line in lieu of the required 75 feet.

A public hearing was held on Tuesday, March 10, 1998, and continued for a second day, May 12, 1998, with public deliberation held on May 21, 1998. Newton A. Williams, Esquire, represented the Petitioner. Peter Max Zimmerman represented the Office of People's Counsel for Baltimore County.

This Board may grant a reclassification of zoning on property if a Petitioner can demonstrate either substantial change in the character of the neighborhood where the property is location, or that the last classification was established in error or mistake by the County Council [Baltimore County Code, Section 2-356(j)(1)-(2)]. The Petitioner has not alleged that a substantial change has

occurred in the neighborhood of the subject property. Rather, the Petitioner's request is based solely on an element of "error" or "mistake" when the Baltimore County Council (County Council) adopted the 1996 Comprehensive Zoning Maps (CZMP). Case law in Maryland vigorously supports the premise that there is a strong presumption of correctness in the comprehensive rezoning by the County Council (Anne Arundel County v. A-Pac, Ltd., 67 Md.App. 122 (Md Court of Special Appeals 1986) (Boyce v. Sembly, 25 Md.App. 43-49 (Md. Court of Special Appeals 1975)). Therefore, "...strong evidence of error is required to make the issue of mistake in comprehensive zoning fairly debatable; and unless such strong evidence is present by the petitioner, the action of the Board in granting a reclassification is arbitrary and capricious." Boyce 25 Md.App. 50. If the Board does find error or mistake, the Board must then determine whether the reclassification is warranted by that error or mistake. It was Judge Rita Davidson who set the standard as to what precisely was meant by the term "mistake" and "error," stating that the terms are interchangeable ones as employed in zoning law. In the Boyce case, 25 Md.App. 43-44, which was decided in 1975, Judge Davidson set out quite plainly that a conclusion of the County Board of Appeals in deciding that the County Council erred in a zoning matter because it was wrong, ill-advised, or unsuitable in a reclassification case was not an adequate finding of an actual mistake or error within the contemplation of zoning law. Reciting from that decision, Judge Davidson stated:

In order to assess the evidence before the Board, it is

necessary to understand the inherent nature of the terms "mistake" or "error" as they are used in zoning law. A perusal of cases, particularly those in which a finding of error was upheld, indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension.

Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not "fairly debatable."

25 Md.App. at 52 (Footnote omitted; emphasis supplied.)

The Petitioners offered several witnesses in support of the reclassification petition. Mr. Ernest Sligh testified, stating that he was President of Sleepy Hollow Woods, Inc., primary stockholder, and present owner of the subject site. The Board received the Documented Site Plan as Petitioner's Exhibit No. 1A and 1B. Mr. Sligh related his experience in building other mobile home properties during the period from 1988 through 1994 in M.H.-I.M. zoned areas, including the one in proximity to the subject site which he had constructed consisting of 187 occupied units. He opined that he had purchased that property in 1997 from the Price Club who he stated had attempted to dispose of the unimproved property for approximately 8 to 10 years without success. It had been listed with a realtor for roughly \$1,000,000.00, but no serious offers had been tendered. Some interest had materialized

in an "M.L." development, but met with local citizen opposition and the proposal fell through.

Price Club placed the property for sale at public auction, and Mr. Sligh's group was the sole bidder, offering \$60,000.00, which was refused with a subsequent negotiated offer of \$87,500.00 being accepted by the sellers. One of the problem areas in selling what would normally be an attractive site was the presence of wetlands which acted as a deterrent to development of the area. Mr. Sligh testified that when the County Council adopted the Maps in 1996 his group did not own the property. After the purchase, Mr. Sligh engaged the firm of Whitman and Associates to design a site plan that would accommodate a mobile home facility. He stated that he had originally considered a townhouse development but that project required rezoning. Current mobile home owners across the road from the site objected to that proposal, fearing that it would cause a depreciation in their home value. That project would also have required D.R. 3.5 zoning.

Petitioner's Exhibit No. 2 was admitted, reflecting 1,000 scale map. Mr. Sligh opined that the houses to be constructed would be roughly 10 to 15 percent higher in value than those already existing in the older park, and would run about \$70,000.00 for the home and \$30,000.00 for the lot, although the average price would still be in the area of \$130,000.00. Mr. Sligh explained that the land was actually rented to the homeowner for \$270.00 per month plus a \$30.00 County tax. That fee included cost of sewers, right-of-way, grass cutting, fire hydrants, etc., which the park or management was required to maintain. He stated that this cost was

comparable to other such homes that cost \$70,000.00 plus the lot. The park would not allow any metal roofs. A considerable portion of the site could not be developed because of the wetlands and environmental constraints. Also present were the required buffer, stormwater management basin which would push development to the transmission lines, causing the request for the variance which Mr. Sligh stated had been granted when the older park was constructed across the road, and that 10 homes would be lost if the 75-foot buffer was lost. Mr. Sligh indicated that no present roadway existed, but that he would construct such roads in accordance with County specifications, along with sidewalks, water /sewer facilities, fire hydrants, and treed areas. He testified that most of the prospective owners would come from depressed areas of Baltimore County, and of the need for such facilities and housing types. He opined that there were no open sites in the older communities housing such parks, and for the most part, residents in these types of mobile homes stayed for long periods of time.

Petitioner's Exhibit No. 3 reflected the types of homes to be constructed, and Mr. Sligh outlined how his management company encourages maintenance, and actually awards prizes for those that are maintained properly on a monthly basis. No rentals are permitted in the park, and a complete set of rules and regulations exists that state the conditions required for proper maintenance, and that legal action would be undertaken if there was noncompliance by any of the homeowners.

Mr. Sligh described the site in the rear of the existing Price Club as being 40 to 50 feet lower because of the slope, and that

while he had not thought of any other use for the property, he took into consideration the desire of current Sleepy Hollow residents, and felt that a new park similar to the presently existing one was more compatible for the D.R. 3.5 zoning. He testified that he was bound by the Documented Site Plan, if approved by the Board, and that 10 houses again would be lost representing roughly 30 percent of the project if their requested variance was not granted.

Mr. Zimmerman cross-examined Mr. Sligh at length. Mr. Sligh stated that his organization was not a non-profit institution; that he was aware of the wetland problems when he purchased the property in 1995. He was also aware of the wetland delineation. He was also aware that of the 17 acres only roughly 6 acres was buildable. He was also cognizant of a stream which further limited development. The purchase price from Price Club amounted to \$5,000.00 per acre, 34 lots were proposed, and without the variances, only 24 could be constructed. If only 24 were constructed, that would have the effect of increasing the price of the homes, and the unused portion of the land would be utilized for open space and other amenities.

If the variance were not granted, he could also redesign the park and slip more houses in, but they would be with smaller units, and he felt that would affect the quality of life. Mr. Sligh acknowledged that Campbell Boulevard had not yet been constructed, and that there was no assurance that it would be built before the year 2000. Mr. Sligh related his experience is managing other properties in that essentially he was a one-person operation familiar with all aspects of running a mobile park facility.

Mr. Steven Warfield, a mobile home developer, also testified on behalf of the Petitioner. He indicated that he sells the type of homes that were proposed, and that the proposed subject area was a most desirable site with residential values in the existing park extremely good with a very strong demand. The existing Sleepy Hollow park was considered to be a premiere park, with excellent resale value and had a number of present owners that were interested in buying homes in the newer park. Mr. Warfield testified that the homes could be placed in the park with the Schulte manufacturer, which he stated was considered to be the "cadillac" of mobile homes, with a quality typical of those mobile homes existing in the nearby Sleepy Hollow Park. Mr. Warfield stated that up to 30 years financing was readily available at the rate of 8-1/2 to 9 percent with a variety of programs available to such home purchasers. He stated that those homes closer to Route 40 were less desirable by reason of traffic and noise; and on cross-examination, Mr. Warfield acknowledged that other mobile homes in Baltimore County had wetland problems, and that those homes closer to transmission lines were not detrimental to value, since some residents favored the larger lots because of the transmission line spacing.

Mr. Wes Daub, with the firm of W. R. Associates, Baltimore, Maryland, also testified. He has been a Registered Professional Civil Engineer since 1981 who has testified before this Board on previous occasions, was a graduate of Johns Hopkins University, with 13 years experience with W.R. Associates. He stated that he was not an environmental engineer. He was accepted as an expert in

civil engineering, and could testify as to environmental matters as to this particular site since his firm had prepared the Documented Site Plan. He described the site as consisting of approximately 17 acres, below the Price Club area, which looked down on the property at a 25 foot highest elevation point. The property was divided by a stream, with the stream outlined in blue on Petitioner's exhibit, surrounded by wetlands, with a portion zoned D.R. 3.5. He stated that environmental constraints forced the property toward Pulaski Highway. He also stated that the tract was wooded with oak and pine. Of the 17 acres, only 6.7 acres could be developed, leaving 10.7 acres involving pockets of trees. The County would not require any reforestation. He related the split zoning of the parcel, transmission lines maintained by Baltimore Gas & Electric Company, and a G.S.I. map was admitted as Petitioner's Exhibit No. 4 reflecting the property to the southwest as zoned D.R. 3.5, with no access, 675 feet from Mohrs Lane to the right-of-way. He outlined in a general manner the site layout and stated his opinion concerning the "uniqueness" aspect of the site. With 60 percent of the property not being usable, the impact to the wetlands, Baltimore County setback problems, and restrictions on the property relative to environmental concerns required movement of the homes up to the northwest corner. He also related the number of lots relative to the project infrastructure and the need for the 30-foot surface in front and the positive approach of placing the long side of the trailers to face the road reduced the number that could be placed in the proposed park. He testified that the proposed density was equal to D.R. 2 and that 5,000 sq. ft. per lot would be

available to each owner. As to the special exception request and the requirements imposed by BCZR 502.1, he opined that there were no detriments faced with a 40 percent impervious area, 30-foot road requirement, and any industrial use would be of a higher nature with considerably more runoff than that proposed by the site plan.

On cross-examination, Mr. Daub stated that he had been involved in the project since 1997, after the property was acquired. Without reclassification, only approximately 8 acres was the maximum that could be developed. He was not aware as to when Campbell Boulevard would be constructed.

Mr. William Monk, Towson, Maryland, President of William Monk, Inc., also testified. He is a Civil Engineer and land planner, having a B.A. and Master's Degree in urban planning from the University of Illinois. He stated his experience since 1980. He has testified as an expert before this Board on several occasions, and was accepted as an expert in civil engineering and land planning. He testified that he had represented Mr. Sligh in Case No. 86-3131 in 1990 relative to the presently existing Sleepy Hollow mobile home park in which the variances were granted, and also reviewed Petitioner's exhibits which were submitted reflecting the property and the nearby facilities. Additional exhibits were admitted reflecting the site and also a log of issues dated June 11, 1992 reflecting 43.78 acres in which B.R. zoning was requested for the two parcels. Mr. Monk stated that the M.L. zoning formerly allowed B.R. uses. The M.L. was not proper in his opinion because it was a bad site by reason of the fact there was no visibility from Pulaski Highway, as well as the general topography, the shelf

in the rear, loading in the rear of the Price Club and general physical conditions. Mr. Monk stated that it had been on the market for in excess of \$1,000,000.00 and that in 1996 the property was split M.L.-I.M. and D.R. 3.5. Mr. Monk stated that the transmission line separated the property and was a good divider. It was his opinion that the site should have been designated with a low density factor. He expressed his opinion concerning Section 502.1 of the BCZR and did not feel there was any conflict. The property was unique by reasons of its configuration, soil, stream, wetlands, and its limited development on only 1/3 of the total area.

The facts in this case are relatively simple. Price Club, the original owner, purchased a substantial tract of land in order to develop one of its larger discount warehouses. By log issue 6-092 in 1992, that entity secured B.R.-C.S. and B.R.-I.M. zoning for approximately 43 acres via the CZMP. As time progressed, Price Club developed a large portion of the property facing Pulaski Highway (Route 40) with its store, a Home Depot facility, Sports Authority complex, along with several other retail stores and fast food operations. In that process, 17 acres were left undeveloped in the rear portion of the property in the back of a BG&E line easement zoned B.R.-I.M. Then in 1995, Price Club undertook a site investigation to determine future uses of the 17 acres.

Additionally, a local improvement association (Windless Run) put the property in issue as part of a larger issue 5-049 in the CZMP (People's Counsel Exhibit No. 2). The association wanted the parcel to retain B.R. zoning northwest of the small stream which

crosses the property, and M.L.-I.M. or S.E. on the easterly side of the stream. The Office of Planning and Zoning reviewed the property, the local councilman (Gardina) provided input, and ultimately the subject site was downzoned with the area northwest of the stream designated M.L. and the portion to the east D.R. 3.5. Price Club did not seek any zoning change; and once the change took place, did not oppose the zoning reclassification. In fact, it was only after the rezoning process that Price Club recognized that their own million dollar plus sale price for the unimproved acreage was unrealistic because of the wetlands, streams, severe slopes, and building limitations for commercial purposes. That prompted a sale of the property to the present owner for a negotiated sum of \$87,000.00 in late 1996 /early 1997, again subsequent to the CZMP.

Counsel for the Petitioners has argued that the County Council erred in 1996 and should not have left an isolated island, M.L.-I.M. zoning, on the easterly side of the existing BG&E power line right-of-way. To that end, he has presented the Board with a detailed and chronological digest of the site and area which, while quite interesting and informative, is not particularly germane in establishing that assumptions or premises relied upon by the County Council at the time of the rezoning were invalid. Indeed, it is obvious that Price Club wanted to leave the B.R.-I.M. zoning in place to secure the one million dollars or more they desired to achieve as the sale price for the property. There is no question but that the local councilman was fully aware that the subject property was not physically connected to the Pulaski Highway corridor, had very limited sight visibility from Route 40, and that

along with the general topography of the area were facets that possibly limited development of a commercial nature, and was also fully cognizant of the existing Sleepy Hollow community across the road.

While the Petitioner and People's Counsel both acknowledge that there were no protestants in opposition to the reclassification, and one group actually supported it, that is not the criteria that this Board must employ in reaching a decision. This Board must equally be cognizant that, while appreciative and respectful of both Mr. Monk's expertise and testimony and also that of Mr. Daub relative to their assessment of the site and obvious support of the Petitioner's request, the Board must also be mindful of the Court of Appeals and the Court of Special Appeals who have stated strongly that an opinion, even that of an expert, is not evidence or substantive enough to show error in a comprehensive rezoning unless the reasons given by the expert as the basis for his or her opinion, or other supporting facts relied upon by the expert, are themselves substantive and strong enough to do so; and, while the two experts who testified in support of the reclassification were convincing, the Board does not believe that their evidence or testimony submitted was of such a nature or sufficient quantity to support the reclassification.

There was also no evidence of a conclusive nature that any projections or trends were reasonably foreseeable of fruition in the future so that the action of the County Council was premised on a misapprehension. Indeed, the present area of zoning is mixed with both commercial and industrial zoning. There are, as People's

Counsel has stated, other uses supportable by the M.L. zoning - some of which may or may not require a granting of a special exception. While the property is currently landlocked, with no immediate plans for construction of Campbell Boulevard, the Petitioner was fully aware of the property's existing zoning when the purchase occurred, and of its limitations. Undoubtedly, that was a factor in the price for which it was ultimately sold.

While the Board sincerely believes that Mr. Williams has presented this case in light of the most favorable conditions to persuade the Board to grant the reclassification, and that the project is a worthy one, and in the opinion of the Board a perfect fit when one considers the outstanding example of quality mobile homes being afforded by the present existing and in proximity Sleepy Hollow Woods development, this Board cannot wipe the slate clean and is obliged to support the existing zoning adopted by the County Council during the last comprehensive map rezoning process. It is the conclusion of the Board that the Petitioner simply has not established, by the weight of evidence or testimony to establish his case. While the Board may find that the new zoning request to be worthwhile, advantageous and quite well suited to the subject location, that in and of itself is not justification for the reclassification.

As to the request for a special exception and variance, People's Counsel and this Board, based on the facts and evidence presented at the hearing, were convinced that if the reclassification were granted, the Petitioner had met the requirements of the Baltimore County Code relative to the granting

of the special exception as well as the law recited in Schultz v. Pritts. The question of the variance, however, is a different one. The variance being sought was to maximize the use of the buildable area, and if allowed, would permit 10 trailers within 25 feet of the Baltimore Gas & Electric boundary. Not allowing the variance would cause the developer to lose about 10 trailer homes or redesign the park, which would also cause the loss of some lots. The Board is aware that decisions of the Maryland higher courts have held that where a special exception, as a conditional use, is conditioned with a variance, then the presumption that the conditional use permitted may well fall by the wayside. While the subject property may have some unique features that could possibly pass the uniqueness test as required in Cromwell v. Ward, nevertheless the Board is constrained to deny the variance based on the decision of the County Council in Bill 109-64, that trailer parks should be subject to defined setbacks which apply no matter what the adjacent use or zone is (BCZR 414.4). Because the reclassification was based upon a documented site plan, on which the Board has declined to grant a reclassification, the Board has concluded that both the special exception and the variance request should be denied.

O R D E R

IT IS THEREFORE, this 5th day of August, 1998 by the
County Board of Appeals of Baltimore County

ORDERED that the Petition for Reclassification from M.L.-I.M.
to D.R. 3.5 on a documented site plan for 34 mobile homes on a
17.08-acre tract be and is hereby DENIED; and it is further

ORDERED that the Petition for Special Exception for a mobile home park be and is hereby DENIED; and it is further

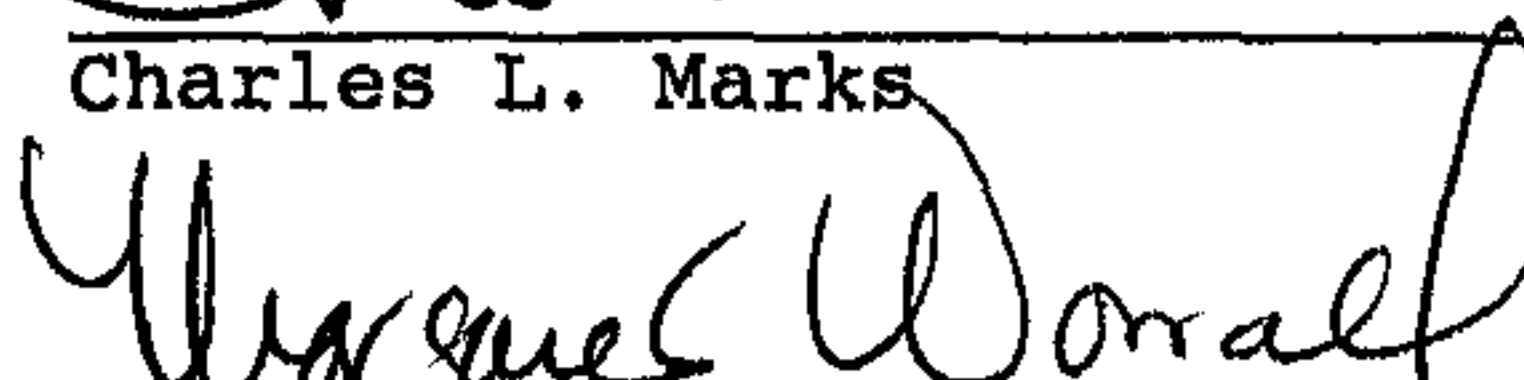
ORDERED that the Petition for variance of 25 feet setbacks for the required 75 feet setbacks for 10 mobile homes along the BG&# transmission line boundary be and is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Kristine K. Nowanski, Chairman


Charles L. Marks


Margaret Worrall



County Board of Appeals of Baltimore County

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

August 5, 1998

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
520 Washington Avenue
Towson, MD 21204

RE: Case No. CR-98-149-XA
Sleepy Hollow Woods, Inc.

Dear Mr. Williams:

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,

Kathleen C. Bianco
Kathleen C. Bianco
Administrator

Enclosure

cc: Ernest Sligh, President
Sleepy Hollow Woods, Inc.
James A. Avirett, Jr.,
Whiteman, Requardt & Associates
James Earl Kraft /Bd of Education
People's Counsel for Baltimore Co.
Pat Keller
Jeffrey Long /Planning
Lawrence E. Schmidt
W. Carl Richards, Jr. /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty



5/5/98

RECEIVED
COUNTY BOARD OF APPEALS

IN THE MATTER OF:

Sleepy Hollow Woods, Inc.
SW/S of Mohr's Lane
Future Campbell Boulevard
1760 East of the C/L of Pulaski
Highway, and Southeast side of
BGE/Susquehanna Transmission Line

98 MAY -5 PM 3:49

BEFORE THE

COUNTY BOARD

OF APPEALS

OF BALTIMORE COUNTY

No. CR-98-149XA

* * * * *

**PETITIONER'S MEMORANDUM IN SUPPORT OF
REQUESTED DOWNSHIFT TO D.R.3.5.**

Sleepy Hollow Woods, Inc., legal owner and Petitioner, by Newton A. Williams and Nolan, Plumhoff & Williams, Chtd., submits this Memorandum in support of the Planning Staff and Planning Board's recommended downshift of a portion of the subject property from ML-IM to D.R.3.5., on a documented site plan for 34 mobile homes on a 17.08 acre tract. The mobile home request is supported by a special exception request for mobile home parks and a variance of 25 feet setbacks for the required 75 feet setbacks for 10 mobile homes along the BG&E Transmission Line boundary.

THE PROPERTY AND ITS SURROUNDINGS

The Sleepy Hollow Property is comprised of a total of 17.09 acres, with 9.74 acres zoned ML-IM. This area is requested and recommended for a downshift to D.R.3.5., and the balance of 7.34 acres is presently zoned D.R.3.5. Uniform D.R.3.5. zoning is in harmony with surrounding uses and zones, and it will support a special exception for mobile homes.

This site is adjoined by the following zones and uses:

1. To the North - The Sleepy Hollow Mobile Home Community is owned by a related group to the Petitioner. The community is zoned MH-IM, and it is an attractive, single family

residential community of moderate density. See Petitioner's photographs 3A, 3B and 3C.

2. To the South - residentially zoned, D.R.3.5. land, proposed for development from Bird River Road, including the Alma Smith and Tito, Inc. lands. See the Tax Map, People's Counsel's ("P.C.") Exhibit No. 1.

3. To the East, unimproved D.R.3.5., accessed from Bird River Road and Reames Road, including, again, the Tito, Inc. ownership of the Julios and lands owned by Adolph Fisher. See P.C. Exhibit No. 1.

4. To the West - The BG&E 150 foot wide Transmission Line, zoned ML-IM, and the BR-IM zoned Price Club Plaza, with three "big box" stores, and a fast food chain restaurant. Price Club Plaza is considerably elevated above the subject site, and includes the Home Depot loading area and the Stormwater Management Ponds adjoining the northwest side of the BG&E Line and right-of-way at the rear of Price Club Plaza overlooking the transmission line and the subject property. See the 1995 County "CAD" Aerials, Petitioner's Exhibit 2, and the Site Plan, Petitioner's Exhibit 1, as well as Mr. Monk's series of photos, Petitioner's Exhibit 5.

THE SITE

The subject property is wooded, and it varies in elevation from elevation 70 at the northwest corner to elevation 56 (+/-) along the eastern boundary, where a 20 inch sanitary sewer is proposed. See the documented Site Plan, Petitioner's Exhibit 1. The site's development potential is severely limited by flood plains, wetlands, forest buffers and several streams. Again, see the Site Plan, Petitioner's Exhibit 1 on these points, as well as the testimony of Mr. Wes Daub, a civil engineer with Whitman, Requardt & Associates ("WRA"), and the testimony of Mr. William Monk, an expert planner.

The small, development envelope is adjacent to the 150 foot wide BG&E line and right of way in the northwest portion of the property. The development area is limited to an area 280 to 380 feet wide at its widest point. It is estimated by Mr. Doub of WRA, that this developable envelope comprises less than 40 percent of the total property. As noted, this developable area is proposed for 34 mobile dwellings of a very attractive type, varying in length from about 56 to 60 feet, and in width from 24 to 28 feet. These homes are very well built, and will sell in the \$60,000 to \$80,000 range, according to Mr. Sligh, the spokesman for the Petitioner. These homes can be financed for considerable terms, at least 15 to 20 years, at interest rates close to those available for regular "site built" homes, according to Mr. Sligh and Mr. Steve Warfield of Warfield Mobile Homes.

Mr. Warfield was a welcome, unsolicited witness for the project. He is the proprietor of Warfield Mobile Homes. He termed the nearby Sleepy Hollow Community, the best in the area, with a high demand and high resale values. He, like Mr. Sligh, stated that Schult and Heartland Homes are the industry leaders, the type prevalent at Sleepy Hollow.

THE LOCATION

The Planning Staff and Planning Board both support the applicant's requested D.R.3.5. downshift. Upon careful examination of the various exhibits, and according to Mr. Monk, it is apparent that the Pulaski Highway industrial and commercial corridor does not include the subject property. The 150 foot wide BG&E Transmission Line serves as the appropriate transition area or divider between the Pulaski Highway commercial corridor to the northwest, and the medium density residential development to the southeast along Bird River Road. See the testimony of Mr. Monk, the Planning Staff recommendation and the Master Plan/Community Plans recommendation of single family housing for the area per the Planning Board report in the file. These professional assessments

are further reinforced and supported by the recent rezoning of a vacant, nearby, unused industrial park (Tito Inc. Holdings). This old, never used industrial park is unneeded, and it and the area continue to experience residential growth pressure, which reinforces the residential pattern in this Bird River Road area. The Tito property is situated less than one-half mile east of the subject property, on the west side of Bird River Road, all with similar residential zoning of D.R.3.5. and some 5.5. The Bird River Road corridor, encompasses land holdings extending westerly to the subject property, and is predominantly zoned D.R.3.5.

As was noted in Mr. Monk's testimony, this property was not studied carefully on its own merits during the 1995/1996 comprehensive zoning. See the Log of Issues, submitted as Petitioner's Exhibit 8. Issue 5-049 was submitted by the Windless Run/Ballard Gardens Improvement Association. This request was a blanket or omnibus issue, comprising 175.54 acres, with seven different commercial, industrial and residential zones. A 17 acre property is easily lost in the midst of a 175.54 acre request. Furthermore, there were hundreds of requests reviewed in the map process, 114 in the Fifth Councilmanic District alone. It is little wonder that this property was not carefully reviewed and that it was erroneously split zoned on the 1996 maps. Bear in mind also that Mr. Wes Daub testified that the very irregular zoning line that purports to follow the stream does not in fact do so. Thus, an incorrectly located stream was used as the D.R.3.5./ML-IM divider, further evidence of error.

CHRONOLOGY OF THE SITE AND AREA

Consider the history of the area as well, in broad outline form:

1. The route from the south to the northeast in this country, as long ago as the Revolutionary War, has skirted the head of the bay in this area.

2. First came Philadelphia Road dating from Colonial Times.

3. Next came the B&O (now the C&O) Railroad on the opposite side of Pulaski Highway, paralleling Pulaski Highway. See the 1000 Scale Map of the area.

4. Route 40, Pulaski Highway, opened prior to World War II. A railroad with a major highway can become a commercial and industrial corridor, as Pulaski Highway did.

5. At some time in the same modern era, the 150 foot wide BG&E right of way with towers was built. We see it as a buffer or as a divider, per the testimony of Messrs. Sligh, Daub and Monk.

6. Next I-95 opened, and Pulaski Highway went into decline; in use, in traffic and in the condition of many of the properties, only recently to see some revival. This proposal for housing and the existing Sleepy Hollow community are examples of that revival just outside the business and industrial corridor.

7. The Farmer's Market, the Salt Company on Mohr's Lane, and other uses close to Pulaski Highway date from the 40's, 50's, 60's and 70's. Yet, in the 1986 County Aerial, Petitioner's Exhibit 6, there were at least two large houses behind the Farmer's Market on either side of Mohr's Lane, which lane then turned northeastward through what is now the Sleepy Hollow community.

8. Then per the testimony of Mr. Sligh, in the late 80's, Sleepy Hollow a residential use was built in the previously vacant MH-IM areas. No industrial use for the property had occurred between 1945 and the late 1980's, despite its MH-IM zoning, dating back to the 1950's.

9. In the early 1990's, Price Club Plaza with BR-IM zoning displaced the Farmer's Market. This new commercial center with large "big box" stores is, once again, an example of

Pulaski Highway's revival.

10. The subject parcel of 17 acres was a remnant of the Price Club Ownership, but it was never used by Price Club or the previous Farmer's Market.

11. Price Club tried to sell it for one million dollars for years with no takers.

12. Then the 1995/1996 maps occurred, and Price Club beseeched the Council to leave them their BR-IM zoning. The Council settled on D.R.3.5. and ML-IM, incorrectly divided, as a part of the much larger, 175 plus acre issue, 5-049.

13. The Price Club Reit then auctioned the property, and Sleepy Hollow Woods, Inc., bought it for well below \$1 million, namely less than \$100,000.00, proving its unsuitability for industrial use. Mr. Sligh testified that he and his partners were the only bidders at the auction.

14. The present case is filed, and the staff and Planning Board, after the staff field inspection, acknowledge the error of ML-IM, and the staff and Board both recommend the D.R.3.5. downshift, special exception and variance requested.

15. On March 9, 1998, the Windless Run Improvement Association sends the Board its endorsement of the request in a letter in the Board's file.

16. Bird River Road single family developments on Alma Smith and Tito, Inc., and other properties continue to approach the subject site with primarily D.R.3.5. zoning and single family homes as here proposed.

17. The Board hears the case on March 10, 1998.

THE COUNCIL'S ERRORS IN 1996

The Council, quite simply, should not have left this isolated island of ML-IM zoning on the easterly side of the BG&E power line right-of-way. Mr. Monk testified the Council erred for the

following reasons:

1. The subject site does not physically relate to Pulaski Highway.
2. Access is limited and must go under the power lines.
3. The site is not visible from Pulaski Highway from a distance of over 1260 feet away, on the other side of Price Club Plaza.
4. The topography of the site falls off dramatically from the commercially zoned and developed parcel loading docks (Price Club Plaza) to the west of the power line right-of-way, which is evident by the locations of the loading docks and SWM facility of the Price Club Plaza.
5. The existing 150 foot wide transmission line right-of-way provides an excellent transition/buffer area between the commercial developments to the west along Pulaski Highway and the residential areas east of the right-of-way. This land use pattern is further reinforced by the site topography which is similar to the Bird River Road single family properties and area.
6. The existing Sleepy Hollow Community, located on the east side of the right-of-way, just north of the subject site and zoning, is equivalent to a medium density, single family residential community despite its MH-IM zoning.

No contrary evidence for the correctness or useability of the ML-IM zoning was offered by the People's Counsel in the case, nor were there any protestants. In fact, no one appeared in opposition to the request, and one group wrote the Board favoring it. D.R.3.5. is the correct zone. ML-IM was erroneous in 1996, and it is erroneous now.

THE SPECIAL EXCEPTION AND THE VARIANCE

The Planning Board and Staff recommend the Special Exception and the variance.

Secondly, the special exception is entitled to the presumption of correctness and

compatibility under *Schultz v. Pritts* 291 Md. 1 (1981). No evidence was offered to show any feature of this D.R.3.5. tract which would distinguish it from other D.R.3.5. tracts. In fact, in the rear of Price Club Plaza and in the shadow of the BG&E line, it is an ideal place for 34 mobile homes. Bear in mind these are not Airstream trailers up on blocks, but are virtually indistinguishable from moderately priced, single family homes. The site meets the requirements of Section 502.1 (BCZR).

There was no adverse traffic testimony. These 34 homes per County standards will produce 340 or fewer trips per day, spread over a 24 hour period. In fact, with seniors there will be fewer trips, and they will tend to fall in off-peak hours, per Mr. Monk. There is no area traffic deficiency or other public facility deficiency. ML-IM would generate more traffic on average during peak hours.

As for impervious area, Mr. Doub and Mr. Monk said there will be far less impervious area than from a ML-IM use, which could range as high as 85 percent coverage.

As for health, safety and welfare, 34 single family homes fit the proposed, Area Community Plan. They would be built per the BOCA Building Code. There is public water and sewer available. There is adequate fire and police protection.

THE REQUESTED VARIANCE

The variance both makes sense, and it meets the criteria of Section 307.1, as laid out in *Cromwell v. Ward* 102 Md. App. 691 (1995). The site is unique for at least the following reasons, according to the testimony of Mr. Daub of WRA and Mr. Monk, the expert planner, including the combination of the following factors:

UNIQUE SITE FEATURES

1. The 1100 foot western boundary of the site is contiguous to the 150 foot wide,

BG&E power line right-of-way.

2. The fact that the single variance requested is against the 150 foot wide power line and the rear of Price Club Plaza, neither of which need screening, but should themselves be screened.

3. Similar variances of 15 feet from the required 75 feet were granted for the nearby Sleepy Hollow Community, again against the transmission line.

4. The irregular configuration of the property, like a large wedge, restricts the developable area placing it adjacent to the power lines. See Petitioner's Exhibit 1, the WRA Site Plan.

5. The unique, development constraining streams, wetlands, forest buffers, flood plains, etc., which leave about only 40 percent or less developable, with the developable area adjacent to the power line right-of-way.

6. The power line is not centered in the easement, and the towers are closer to the proposed 10 mobile homes than to Price Club Plaza.

7. The overshadowing effect of the Price Club Plaza property, set considerably in elevation above and further graded above the site, with the loading areas and SWM areas adjacent, across and above the transmission line right-of-way. See the WRA Documented Plan, Petitioner's Exhibit 1, as well as the Monk photos, 5A to F.

8. The advantages noted by Mr. Daub and Mr. Monk of placing the long side of the house elevations towards the loop road.

9. The advantages of "double loading" each side of the loop road on the west side, with the houses against the power line actually acting as a screen for the road per Mr. Monk's testimony.

MORE ON COUNCIL ERROR

Compare the former, very deep BR-IM, ML-IM and MH-IM on the 200 Scale Map, NE 6I, furnished with Mr. Zimmerman's letter of March 12, 1998, with the present zones. The 9.74 acres of ML-IM sticks out like a "sore thumb" as an isolated, unusable area of ML-IM with single family homes, i.e. D.R.3.5. zoning to the south and east, and MH-IM zoning used as single family housing to the north. The unuseability of the ML-IM area is confirmed by the fact that the tract had only one bidder at auction for a very low price, namely the Petitioner, Sleepy Hollow Woods, Inc. It was error for the Council to leave this piece of ML-IM jutting into an area slated for medium to low density residential housing under the Master Plan proposed, and preliminarily sanctioned Windless Run/Bird River Road Area Community Plan.

CONCLUSION

For all of these reasons, the Petitioner respectfully urges the Board to adopt the correct D.R.3.5. as a downshift, as recommended by the Planning Board and Planning Staff, and grant the documented, dependent special exception for mobile home park for 34 homes, with the variance requested to allow the best layout in view of the unique features enumerated.

Respectfully submitted,



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(410) 823-7800

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 5th day of May, 1998, that a copy of the foregoing Petitioner's Memorandum In Support of Requested Downshift to D.R.3.5. was mailed, postage prepaid, to: Peter Max Zimmerman, Esquire and Carole S. DeMilio, Esquire, People's Counsel for Baltimore County, Courthouse, Room 47, Towson, Maryland 21204.

Newton A. Williams
Newton A. Williams

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

RE: PETITION FOR RECLASSIFICATION * BEFORE THE COUNTY
 PETITION FOR SPECIAL EXCEPTION *
 PETITION FOR VARIANCE * BOARD OF APPEALS
 SW/S Mohrs Lane (future Campbell Blvd.) *
 1630' E of c/l Pulaski Hwy. and SE/S * FOR BALTIMORE COUNTY
 BGE/Susquehanna Transmission rt-of-way *
 15th Election District, 5th Councilmanic * Case No. CR-98-149-XA
 SLEEPY HOLLOW WOODS, INC. *
 Petitioner *

* * * * *

PEOPLE'S COUNSEL'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

I. Proposed Findings of Fact

1. Price Club acquired property on Pulaski Highway in order to develop one of its discount warehouses.
2. In 1992, Price Club obtained BR-CS and BR-IM zoning for 43 acres in the comprehensive zoning process to further its purposes. See Issue 6-092.
3. Price Club developed the front portion of the property, leaving 17 acres in the rear unimproved, in back also of a BGE transmission line easement, then zoned BR-IM.
4. In 1995, Price Club conducted a site investigation of the undeveloped section – including a wetland delineation and sleep slope analysis – to determine limits of buildable area and price the property for sale. See P.C. Exhibit 3, EIS Attachments.

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 COUNTY BOARD OF APPEALS

5. In 1995 also, the Windless Run Improvement Association placed the property in issue as part of a larger Issue 5-049 in the comprehensive zoning process. P.C. Exhibit 2.

6. On February 23, 1996, the Association wrote with specific requests, and suggested that this parcel 385 "... retain BR zoning northwest of the small stream which crosses this property and ML-IM or SE on the easterly side of this stream." P.C. Exhibit 2.

7. Following OPZ and Planning Board review, the 1996 County Council, with specific input from Councilman Gardina, downzoned the property, designating the area northwest of the stream as M.L., and the easterly portion D.R.-3.5. This downzoning was actually more protective than the Community's request. P.C. Exhibits 5-10.

8. There was no evidence in the hearing record that Price Club either introduced an issue on the property or particularly opposed what the Council did. (According to William Monk, Price Club wrote in favor of split zoning: M.L. and D.R.-3.5.)

9. The documentary record also shows that the Council gave specific attention to the entire 175 acres and revised the zoning in a comprehensive way.

10. In late 1996/early 1997, Price Club put the subject property up for auction, and sold it to the present Petitioner for \$87,000.

11. The purchase price reflects the restricted development potential of the property, which has a buildable area of about 6.7 acres due to the presence of the stream, wetlands, stream buffers, and forest buffers.

12. Petitioner's representative, Mr. Sligh, conceded his awareness of the limitations of the property, although he initially thought closer to one-half (8.5) of the acres would be buildable.

13. The 1989-2000 Master Plan identifies the area of the subject site as an industrial area. See P.C. Exhibit 9. The developer's EIS recognized this. P.C. Exhibit 3.

14. The property is currently landlocked. The most direct access to Pulaski Highway would be by connection to and extension of the access road running through the Price Club property, as conceded by Developer's engineer.

15. The property is also 675 feet away from the dead end of Mohrs Lane. This road is listed in the 1989-2000 Master Plan for extension south of Pulaski Highway to MD 43, under the name Campbell Boulevard, as a non-programmed project. Whatever its current program status, there is no evidence that any contracts are underway for final planning, design, or construction of this road.

16. The developer proposes rezoning of the M.L. part of the 17 acres to D.R.-3.5, along with a special exception (BCZR 415.6) and variance (to the BCZR 414.4 boundary setback) for a trailer park.

17. The zoning in the area is mixed with commercial and industrial zoning along the Pulaski Highway corridor, including Price Club and Home Depot. There also is M.H. zoning, just to the north, where developer has recently completed an existing trailer park, with special exception and variances.

18. The developer's planning witness, William Monk, essentially viewed the M.L. choice as bad planning because of access, visibility, the transmission line, and proximity to proposed residential developments closer to Bird River Road. But he had not reviewed the 1996 Council Issue File and was unfamiliar with, or vague, as to zoning history.

19. The developer promotes its proposal as a state of the art, substantial double-wide 34-trailer park with advanced, parallel to street, frontage design.

20. In order to maximize use of the buildable area, it seeks variances to bring 10 trailers within 25 feet of the BGE boundary. If this is not allowed, it will either lose these 10 trailers or redesign the park in another way, still potentially losing some lots.

21. The land price per mobile home lot is relatively low, about \$2,500 per lot proposed, compared with a proposed sale price of \$100,000, plus ground rentals. Even if less lots were involved, the land price per lot is low.

22. The proposed density of the proposed trailer park, within its buildable area of 6.7 acres, is about 5 units per acre.

23. The proposed impermeable surface area for the trailer park is higher than would be expected for an ordinary residential development, although probably less than for industrial use.

24. There are many wetlands, streams, and transmission lines in eastern Baltimore County, the low-lying area closest to Chesapeake Bay and its tributaries.

25. According to Mr. Warfield, a real estate man, some trailer parks have wetlands and transmission lines on or near them, and some don't.

26. Developer did not conduct a survey of trailer parks for comparison purposes.

27. There is no evidence that the M.L. zoning is confiscatory. It provides 100 permitted uses by right, and another 30 by special exception, available for use earlier by Price Club and then by any voluntary purchaser. Mr. Sligh said that Price Club considered a mini-warehouse project but forbore because of community concerns. BCZR 253.

28. Developer emphasizes the quality and success of its existing trailer park, the granting of variances there, and demand for the proposed new trailer park.

29. The entire zoning petition is actually based on the new developer's view of the best business and market planning for the site, and maximization of use and profit.

II. Background: Zoning as a Legislative Function; Home Rule

Comprehensive zoning is a legislative function. County Council v. Offen, 334 Md. 499 (1994), Sycamore Realty Co. v. People's Counsel, 344 Md. 57 (1996), and People's Counsel v. Beachwood, 107 Md.App. 627 (1995), cert. denied 344 Md. 572 (1996). The charter form of government contemplates local legislation. State Constitutions Art. XI-A provides Home Rule. The Express Powers Act delegates broad police power, and power over planning and zoning. Md. Code Art. 25A, Sec. 5(S), (X).

The 1956 Baltimore County Charter, Article III, makes the County Council the legislative branch. Title 26 of the Code involves planning and zoning. Sec. 26-116 describes the police power. The statutory "Zoning Regulations" set up the use classes.

III. The Quadrennial Comprehensive Rezoning Process

Since 1971, Baltimore County has had a quadrennial countywide comprehensive rezoning process. Code Secs. 26-122 to 26-125. The Court approved this framework in Coppolino v. County Board of Appeals, 23 Md.App. 358 (1974).

This makes available to the Council input and information from departments, staff, property owners, neighboring citizens, and published or in-process materials – capital budget, master plan, updates, etc. Anyone can apply to have a property changed. There is wide public notice, and notice by mail to

affected property owners. The Planning Board holds hearings and publishes recommendations. The Council then holds its set of hearings and in October enacts an ordinance for each council district.

IV. The “Mistake-Change” Rule

A piecemeal rezoning differs from ordinary administrative cases and other zoning cases. Usually, the CBA makes a de novo judgment of first impression. But here, the agency reviews a legislative judgment. Its own scope of review is narrowly limited.

In Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), the Court held it must sustain a legislative zoning classification, an exercise of the police power, where fairly debatable.

Maryland evolved the “mistake-change” rule to protect comprehensive zoning. Absent “strong” evidence of “mistake” or “change”, the legislative decision stands. The CBA may not overturn comprehensive zoning if it is reasonable or “fairly debatable.”

Judge Rita Davidson explained the rule in the course of reversing administrative rezonings in Coppolino, supra, Boyce v. Sembly, 25 Md.App. 43 (1975), and Howard County v. Dorsey, 292 Md. 351 (1982). Judge Moylan’s opinion in Beachwood, supra, builds on this foundation.

These cases show that “mistake” is evaluated with reference to the Council’s decision “at the time of the comprehensive zoning...” In this context,

recommendations of a planning body or master plan are advisory only. See Miller v. Abrahams, 239 Md. 263, 272 (1965); Nottingham Village v. Baltimore County, 266 Md. 339, 354 (1972); Coppolino, supra, at 374.

In Baltimore County, the mistake-change rule has been codified in Section 2-356(j) of the County Code, which originates in Bill 122-78.

V. Proposed Conclusions of Law: Rezoning

1. The 1996 County Council not only is presumed to be aware, but also was specifically familiar with the subject property.

2. The Council had dealt with the entire Price Club property in 1992. It proceeded in 1996 to address Issue 5-049 and considered input from Windlass Run Improvement Association, Price Club and the Planning Board.

3. The Council made a judgment which balanced the competing requests, downzoned the property, and yet apparently suited Price Club's desires or needs.

4. The Council's judgment was reasonable in view of the property's status as a remainder from Price Club's successful development, with visible wetlands restrictions and access issues.

5. The Council's consideration of the property as part of a 175-acre issue is consistent with the comprehensive nature of legislative zoning. Coppolino, supra.

6. With evident access problems – the current proximity of Price Club's access road and the future extension of Campbell Boulevard – it was reasonable for the Council to view the property's orientation in 1996 to Price Club and

Pulaski Highway. Access to the existing trailer park would have to await Campbell Boulevard, which will not exist at least until the twenty-first century. Coppolino shows that future road improvement plans weigh in favor of leaving the issue to future comprehensive zoning, as those plans reach fruition.

7. Mr. Monk's planning testimony, even if believed, is of the type of "conclusory" or "quasi-conclusory" planning opinion testimony which is insufficient to show "mistake." See Beachwood, *supra*.

8. Indeed, Mr. Monk failed to inquire into the history of the 1992 and 1996 comprehensive zonings, which reveal the Council's attention to this area.

9. The crux of the case is that the advent of new business plans, either by the existing owner or a new purchaser, does not justify "Monday-Morning Quarterbacking" or second guessing to overturn a reasonable legislative judgment.

The Board of Appeals has rejected similar contentions in the Perry Hall United Methodist Church case, No. R-97-467, and in Nottingham Village, Inc., No. R-83-60, affirmed by the Court of Special Appeals, both attached.

10. To the extent that the developer relies on perceived market demand, the reply is that zoning controls and regulates the market. Zoning addresses land use on a long-term basis, and is not subordinate to current market conditions, which may fluctuate. If zoning legislation were subject to each developer's new business plan, the comprehensive zoning process would be a mockery.

11. As to Planning Board support of the current request, it is not based on any evidence of “mistake.” It is purely a planning recommendation, with a conclusory statement as to “mistake.” Again, the above case law (Coppolino, Boyce, Dorsey, Beachwood) consistently shows that such recommendations are not probative of “mistake.”

VI. Background: Special Exception Combined with Variance

Where a special exception, as a conditional use, is combined with a variance, then “... the [rebuttable] presumption that a conditional use is permitted may well fall by the wayside.” Chester Haven L.P. v. County Board of Appeals, 103 Md.App. 324, at 336 (1995); Umerley v. People’s Counsel, 108 Md.App., 497 at 510-11 (1996). Here, the County Council determined in Bill 109, 1964 that trailer parks should be subject to defined boundary setbacks. These apply no matter what the adjacent use or zone is. BCZR 414.4. Clearly, the Council was aware that some parks might adjoin industrial or utility areas. Compare this law with others, such as BCZR 410, 421.2, and 426, which restrict trucking facilities, kennels, and taverns in proximity to residential uses or zones only.

VII. Background: The Zoning Variance: Uniqueness which Results in Practical Difficulty

In Maryland, “variance” normally refers to deviation from height and area (not use) limits. To obtain a variance, BCZR Sec. 307.1 requires “... special circumstances or

conditions... peculiar to the land or structure... and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship.”

The first step, peculiarity or “uniqueness,” is explained in Cromwell v. Ward, 102 Md.App. 691 (1995). It refers to the characteristic of the property rather than the owner.

The second step, “practical difficulty,” is defined in McLean v. Soley, 270 Md. 208, 215-15 (1973):

“1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restriction unnecessarily burdensome.

2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; and

3) Whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured.”

Zoning variances usually pertain to uses permitted by right, like the apartment development in McLean or the single house in Cromwell. Even so, Cromwell found only five reported appellate cases approving zoning variances in the history of Maryland zoning.

On the question of difficulty or hardship, Cromwell elaborated with this reference to Xanthos v. Board of Adjustment, 685 P.2d 1032, 1036-37 (Utah 1984), involving frontage and setback issues:

“Hardship is not demonstrated by economic loss alone. It must be tied to special circumstances, none of which has been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime economic loss is alleged would make a mockery of the zoning program.” 102 Md.App., at 715-16.

VIII. Proposed Conclusions of Law: Special Exception and Variance

1. The special exception is inconsistent with the spirit and intent of the zoning law because it fails to comply with the specific trailer park standard of BCZR 414.4.
2. The BCZR 414.4 minimum boundary setback, from Bill 109, 1964, applies regardless of the adjacent use. It is, in part, intended to give space to the trailer park itself and its occupants.
- 3.. It is irrelevant whether or not there is sufficient demand to purchase the trailers. All zoning requests for special exceptions and variances are based on the premise of market demand.
4. The proposed trailer park expansion is comparable in many respects to the proposed trucking facility expansion in Umerley, supra. There, the property owner also suggested that to maximize an appropriate use, its irregular (L-shaped) property, bounded by a railroad track in the rear, should have residential use/zone and wetlands setback variances.
5. In this context, there is nothing extraordinary or unique about the subject property’s proximity to wetlands and transmission line, which are common to other properties and some other trailer parks.

6. In any event, the setbacks do not, as a matter of law, cause “practical difficulty” because they merely limit the level of development and economic return, and do not prevent use of the property.

7. In conjunction with the existing 187-unit trailer park, the real issue is whether developer ends up with at least 211 (187 + 24) units, without variances, or 221 units with the new variances.

8. Moreover, the argument based on advanced trailer design has already been tried and rejected in Floyd v. Williams Estates, CSA No. 551, Sept. Term, 1994, attached.

9. This County Board of Appeals has already recently rejected the special exception/variance combination with strong language in the Witmyer case. CBA No. 97-556-XA, attached.

10. Finally, the existence of any variances on nearby property does not justify the compounding or multiplication of variances here. Park Shopping Center v. Lexington Park Theatre Co., 216 Md. 271 (1958), Marino v. City of Baltimore, 215 Md. 206 (1957); Easter v. Mayor & City Council, 195 Md. 395 (1950).

IX. Conditional Zoning

1. The Petitioner utilized the documented site plan process to request essentially conditional zoning, without true regard to “mistake” on the Comprehensive Map.



Petition for Reclassification

to the Board of Appeals of Baltimore County

for the Property located at SW/S of Mohrs Lane

1700' EAST OF DULASKI HIGHWAY

This Petition shall be filed with the Department of Permits & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an ML-IM zone to an D.R.3.5 zone, for the reasons given in the attached and (2) for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for: a Mobile Home Park -

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

See Attached

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

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

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

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zip Code

Attorney for Petitioner:

Newton A. Williams

Nolan, Plumhoff & Williams, Chtd.

(Type or Print Name)

Newton A. Williams
Signature

700 Nottingham Centre
502 Washington Avenue 410-823-7800

Address Phone No.

Towson MD 21204
City State Zip Code

Legal Owner(s):

Sleepy Hollow Woods, Inc.

(Type or Print Name)

Signature

Ernest Sligh, President

(Type or Print Name)

Ernest Sligh
Signature

11401 Symphony Woods Lane

Address

301-681-8617
Phone No.

Silver Spring

City

MD

State

20901

Zip Code

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

Newton A. Williams

Nolan, Plumhoff & Williams, Chtd.

Name

700 Nottingham Centre
502 Washington Avenue
Towson, MD 21204

Address

410-823-7800
Phone No.

Office Use Only

ESTIMATED LENGTH OF HEARING

unavailable for Hearing the following dates

Next TWO Months

ALL

OTHER

REVIEWED BY: DATE



mk - 8/29/97
OK to file

CR-98-149-XA

REASONS FOR REQUESTED RECLASSIFICATION

The subject property should have been placed in an D.R.3.5. zone for the following reasons; and it was error to do so on 1996 maps.

1. It was formerly zoned BR-IM as a part of the Price Club Plaza, but it does not form a part of the Price Club Land. It is separated from the Price Club Land not only by the BGE 150 transmission line, but by parking, loading, SWM facilities and stockpiled dirt.
2. It is separated from Price Club by a BGE Transmission Line and surrounded on all or part of 3 sides by D.R.3.5. As noted, this BGE transmission line right of way is vacant, except for the line itself.
3. It is adjacent to a large MH-IM zone but this MH-IM zone is developed as the Sleepy Hollow Mobile Home Park, and the logical and correct zoning is D.R.3.5. as requested near this mobile home park, proposed for another smaller mobile home park on the southwest side of Mohrs Lane.
4. The proposed D.R.3.5. zone allows mobile home park development, while the ML-IM zone does not, thus encouraging industrial use in a residential area between the BR-IM Price Club, the MH-IM mobile home park, and D.R.3.5. development approaching the site from the Bird River Road side.
5. That the correct zone in 1996 was and is D.R.3.5. to encourage this small parcel's inclusion as a part of the mobile home park and the residential area approaching and surrounding in part from Bird River Road, not another isolated industrial use.
6. That D.R.3.5. is more appropriate on this parcel due to environmental constraints which would be more of a problem as ML-IM, another reason for error.

Requested Variance(s)

A variance(s) from Section 414.4 to permit trailers (mobile homes) within 25 feet of any other boundary line in lieu of the required 75 feet.

The Reasons for the Variance

1. The subject site is unique in that only 40 per cent or less of the tract is useable due to environmental constraints, wetlands, slopes, etc.
2. The subject site is unique in that it adjoins on the proposed variance side a 150 foot wide BGE open transmission line right of way, effectively providing a 175 foot setback.
3. The subject site is further unique in that it is to the rear of a large commercial area on Pulaski Highway and in addition to the 150 foot BGE Right-of-Way, there are dirt stockpiles and storm water management ponds on the side of the requested variance.
4. That the Petitioner has already lost about 60 percent of the site to environmentally unusable areas, and without the requested variance will lose an additional potential building area for affordable mobile home sites.
5. That the requested variance will in no way adversely affect the BGE Right-of-Way or the commercial uses along Pulaski Highway; and the residential use of the site rather than an industrial use of the site will benefit the entire area.

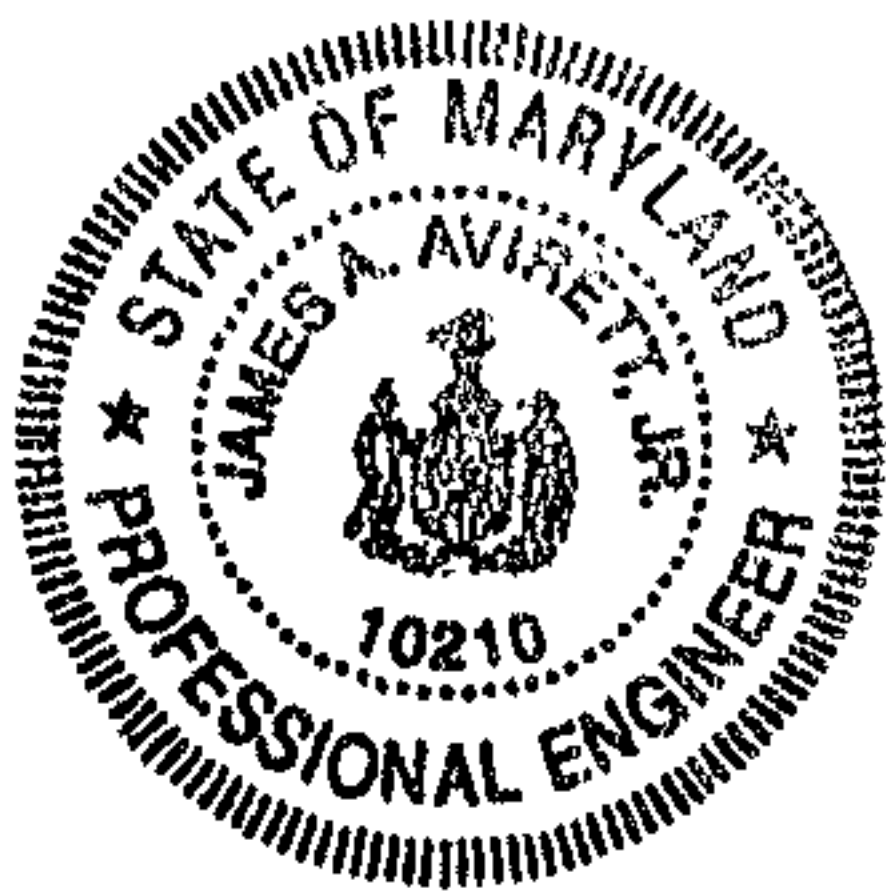
DESCRIPTION FOR
SPECIAL EXCEPTION
15th ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND

Southwest side of the future Campbell Boulevard, approximately 1630 feet southwest of centerline of Pulaski Highway and Mohrs Lane, also southeast side of Susquehanna Transmission Line.

Beginning for the same at a point having Baltimore County Grid Meridian Coordinate North 22180.59, East 49468.53 said point being South 45 degrees 20 minutes 27 seconds West, 128.00 feet of the future Campbell Right of Way, running thence and referring the courses of this description to the Baltimore County Grid Meridian

- 1.) South 65 degrees 54 minutes 40 seconds East, 378.01 feet
- 2.) South 18 degrees 57 minutes 55 seconds West, 1044.72 feet
- 3.) South 60 degrees 10 minutes 21 seconds West, 273.00 feet
- 4.) North 47 degrees 43 minutes 28 seconds West, 747.61 feet
- 5.) North 45 degrees 20 minutes 27 seconds East, 1102.83 feet to the point of beginning.

Containing 17.0791 acres of land more or less.



James A. Avirett, Jr.

DESCRIPTION FOR
ZONING CHANGE
15th ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND

Southwest side of future Campbell Boulevard, approximately 1630 feet southwest of centerline of Pulaski Highway and Mohrs Lane, also southeast side of Susquehanna Transmission line.

Beginning for the same at a point having Baltimore County Grid Meridian Coordinate North 22180.59, East 49468.53 said point being South 45 degrees 20 minutes 27 seconds West, 128.00 feet of the future Campbell Right of Way, running thence and referring the courses of this description to the Baltimore County Grid Meridian

- 1.) South 65 degrees 54 minutes 40 seconds East, 378.10 feet
- 2.) South 18 degrees 57 minutes 55 seconds West, 563.12 feet
- 3.) South 71 degrees 02 minutes 04 seconds West, 3.81 feet
- 4.) South 71 degrees 07 minutes 26 seconds West, 30.09 feet
- 5.) South 46 degrees 16 seconds 19 seconds West, 26.22 feet
- 6.) South 34 degrees 28 minutes 07 seconds West, 34.34 feet
- 7.) South 68 degrees 23 minutes 46 seconds West, 35.82 feet
- 8.) South 82 degrees 33 minutes 01 seconds West, 56.52 feet
- 9.) North 69 degrees 29 minutes 32 seconds West, 32.77 feet
- 10.) North 49 degrees 26 minutes 05 seconds West, 31.35 feet
- 11.) North 65 degrees 51 minutes 53 seconds West, 24.88 feet
- 12.) North 84 degrees 58 minutes 14 seconds West, 16.44 feet
- 13.) South 42 degrees 57 minutes 19 seconds West, 24.28 feet
- 14.) South 47 degrees 18 minutes 10 seconds West, 31.26 feet
- 15.) South 64 degrees 23 minutes 00 seconds West, 29.84 feet
- 16.) South 69 degrees 03 minutes 56 seconds West, 32.65 feet
- 17.) South 84 degrees 17 minutes 06 seconds West, 23.73 feet
- 18.) North 29 degrees 58 minutes 44 seconds West, 31.54 feet
- 19.) North 23 degrees 48 minutes 29 seconds West, 34.97 feet
- 20.) North 39 degrees 06 minutes 43 seconds West, 30.73 feet
- 21.) North 33 degrees 18 minutes 23 seconds West, 23.72 feet
- 22.) North 30 degrees 26 minutes 07 seconds West, 38.12 feet
- 23.) North 53 degrees 43 minutes 13 seconds West, 27.11 feet
- 24.) North 83 degrees 08 minutes 14 seconds West, 26.55 feet
- 25.) South 79 degrees 58 minutes 00 seconds West, 28.88 feet
- 26.) South 71 degrees 47 minutes 19 seconds West, 28.71 feet
- 27.) South 27 degrees 35 minutes 52 seconds West, 24.58 feet
- 28.) South 36 degrees 42 minutes 40 seconds West, 23.69 feet
- 29.) North 83 degrees 14 minutes 36 seconds West, 19.31 feet
- 30.) South 88 degrees 15 minutes 11 seconds West, 16.81 feet



James A. Avirett, Jr.

CR-98-149-XA

- 31.) South 83 degrees 22 minutes 22 seconds West, 14.91 feet
- 32.) North 81 degrees 43 minutes 32 seconds West, 15.34 feet
- 33.) North 85 degrees 57 minutes 30 seconds West, 14.42 feet
- 34.) South 61 degrees 33 minutes 41 seconds West, 12.79 feet
- 35.) South 37 degrees 39 minutes 16 seconds West, 22.51 feet
- 36.) South 79 degrees 36 minutes 47 seconds West, 21.99 feet
- 37.) South 44 degrees 31 minutes 27 seconds West, 18.41 feet
- 38.) South 34 degrees 07 minutes 31 seconds West, 26.71 feet
- 39.) South 46 degrees 16 minutes 18 seconds West, 17.85 feet
- 40.) North 71 degrees 22 minutes 44 seconds West, 19.35 feet
- 41.) North 48 degrees 37 minutes 14 seconds West, 38.08 feet
- 42.) North 59 degrees 48 minutes 29 seconds West, 28.08 feet
- 43.) North 64 degrees 27 minutes 11 seconds West, 39.84 feet
- 44.) North 59 degrees 40 minutes 40 seconds West, 3.24 feet
- 45.) North 45 degrees 20 minutes 27 seconds East, 984.96 feet to the point of beginning.

Containing 9.7375 acres of land more or less.

DESCRIPTION FOR
ZONING CHANGE
15th ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point having Baltimore County Grid Meridian Coordinate North 21488.2755, East 48767.9205 on the eastmost right of way line of the Susquehanna Transmission Line Right of Way said point being 1550 feet east of Pulaski Highway, U. S. Route 40 and 1215 feet south of Mohrs Lane, running thence and referring the courses of this description to the Baltimore County Grid Meridian

- 1.) North 45 degrees 20 minutes 27 seconds East, 984.96 feet
- 2.) South 65 degrees 54 minutes 40 seconds East, 378.10 feet
- 3.) South 18 degrees 57 minutes 55 seconds West, 563.12 feet
- 4.) South 71 degrees 02 minutes 04 seconds West, 3.81 feet
- 5.) South 71 degrees 07 minutes 26 seconds West, 30.09 feet
- 6.) South 46 degrees 16 seconds 19 seconds West, 26.22 feet
- 7.) South 34 degrees 28 minutes 07 seconds West, 34.34 feet
- 8.) South 68 degrees 23 minutes 46 seconds West, 35.82 feet
- 9.) South 82 degrees 33 minutes 01 seconds West, 56.52 feet
- 10.) North 69 degrees 29 minutes 32 seconds West, 32.77 feet
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- 12.) North 65 degrees 51 minutes 53 seconds West, 24.88 feet
- 13.) North 84 degrees 58 minutes 14 seconds West, 16.44 feet
- 14.) South 42 degrees 57 minutes 19 seconds West, 24.28 feet
- 15.) South 47 degrees 18 minutes 10 seconds West, 31.26 feet
- 16.) South 64 degrees 23 minutes 00 seconds West, 29.84 feet
- 17.) South 69 degrees 03 minutes 56 seconds West, 32.65 feet
- 18.) South 84 degrees 17 minutes 06 seconds West, 23.73 feet
- 19.) North 29 degrees 58 minutes 44 seconds West, 31.54 feet
- 20.) North 23 degrees 48 minutes 29 seconds West, 34.97 feet
- 21.) North 39 degrees 06 minutes 43 seconds West, 30.73 feet
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James A. Avirett, Jr.

- 35.) South 61 degrees 33 minutes 41 seconds West, 12.79 feet
- 36.) South 37 degrees 39 minutes 16 seconds West, 22.51 feet
- 37.) South 79 degrees 36 minutes 47 seconds West, 21.99 feet
- 38.) South 44 degrees 31 minutes 27 seconds West, 18.41 feet
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- 43.) North 59 degrees 48 minutes 29 seconds West, 28.08 feet
- 44.) North 64 degrees 27 minutes 11 seconds West, 39.84 feet
- 45.) North 59 degrees 40 minutes 40 seconds West, 3.24 feet to the point of beginning.

Containing 9.7375 acres of land more or less.

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No.

073510

DATE 8/29/97

ACCOUNT 001-6181

Taken by 725
#2

AMOUNT \$ 1,835.00 (MJK)

RECEIVED FROM: Slippy 11 How (\$1800), Nolan Plumber (\$35)

FOR:

074 - Re-insure 2nd unit	\$ 1250
020 - Varnish	\$ 250
150 - 1 sign	\$ 335

5615 at Motors Lane, 1700' East of Pulaski Highway

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

#2

PAID RECEIPT

REG. NO. 073510
CASHIER: MARY BART JARVER
MISCELLANEOUS CASH RECEIPT
DATE: 8/29/97
PR. NO. 073520

1,835.00 CASH

Baltimore County, Maryland

CASHIER'S VALIDATION

**NOTICE OF ZONING RE-
CLASSIFICATION HEARING**

The County Board of Appeals of Baltimore County, by authority of the County Charter, Sec. 602.(e) and Sec. 603 and the County Code, Section 2-356(d), will hold a public hearing in Towson, Maryland on the property identified as follows:

Case: #CR-98-149-XA.
SW/S Mohrs Lane (future Campbell Boulevard), 1630' E of centerline Pulaski Highway and SE/S BGE/Susquehanna Transmission right-of-way
15th Election District
5th Councilmanic District
Legal Owner(s):

Sleepy Hollow Woods, Inc.

Reclassification: of the property from M.L.-1M, to D.R.-35. **Special Exception:** for a mobile home park. **Variance:** to permit trailers (mobile homes) within 25 feet of any other boundary line in lieu of the required 75 feet.

Hearing: Tuesday, March 10, 1998 at 10:00 a.m., in Room 48 of the Old Courthouse, 400 Washington Avenue.

KRISTINE M. HOWANSKI,
Chairman

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call (410) 887-3180.
(2) For information concerning the File and/or Hearing, Please Call (410) 887-3180.

2/28/98 Feb. 19 c208005

CERTIFICATE OF PUBLICATION

TOWSON, MD., 2-19-, 1998

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 2-19, 1998

THE JEFFERSONIAN,

A. Henrichson

LEGAL AD. - TOWSON

CERTIFICATE OF POSTING

RE: Case No.: CR-98-149-XA

Petitioner/~~Developer~~: _____

SLEEPY HOLLOW WOODS, Inc.

Date of Hearing/~~Closing~~: 3-10-98

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 END OF PAVED

MOHR'S LANE @ EXISTING SLEEPY HOLLOW
MOBIL HOME PARK.

The sign(s) were posted on 2/13/98
(Month, Day, Year)

Sincerely,

Gary C. Freund 2/13/98

(Signature of Sign Poster and Date)

GARY C. FREUND

(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

TO: THE ESSEX TIMES
February 19, 1998 Issue - Essex Times

Please forward billing to:

Newton A. Williams, Esquire 410-823-7800
700 Nottingham Centre
502 Washington Avenue
Towson, MD 21204

NOTICE OF ZONING RECLASSIFICATION HEARING

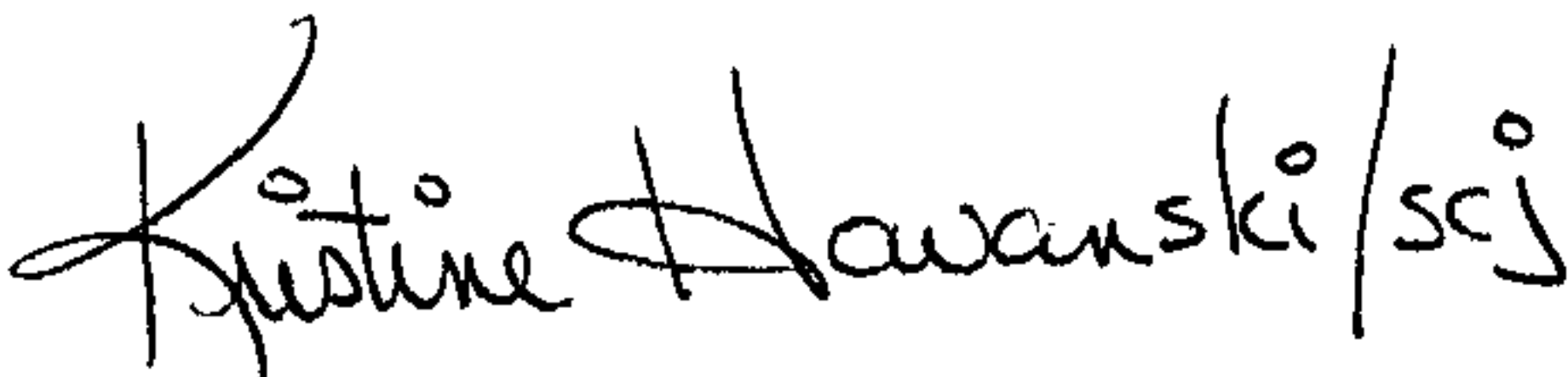
The County Board of Appeals of Baltimore County, by authority of the County Charter, Sec. 602.(e) and Sec. 603 and the County Code, Section 2-356(d), will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: CR-98-149-XA

SW/S Mohrs Lane (future Campbell Boulevard), 1630' E of centerline Pulaski Highway and
SE/S BGE/Susquehanna Transmission right-of-way
15th Election District - 5th Councilmanic District
Legal Owner: Sleepy Hollow Woods, Inc.

Reclassification of the property from M.L.-I.M. to D.R.-3.5. Special Exception for a mobile home park. Variance to permit trailers (mobile homes) within 25 feet of any other boundary line in lieu of the required 75 feet.

HEARING: Tuesday, March 10, 1998 at 10:00 a.m. in Room 48 of the Old Courthouse, 400 Washington Avenue

A handwritten signature in black ink that reads "Kristine Howanski/scj". The signature is fluid and cursive, with the initials "scj" written at the end.

Kristine M. Howanski
Chairman

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3180.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 410-887-3180.



County Board of Appeals of Baltimore County

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

January 16, 1998

NOTICE OF ZONING RECLASSIFICATION HEARING

The County Board of Appeals of Baltimore County, by authority of the County Charter, Sec. 602.(e) and Sec. 603 and the County Code, Section 2-356(d), will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: CR-98-149-XA

SW/S Mohrs Lane (future Campbell Boulevard), 1630' E of centerline Pulaski Highway and
SE/S BGE/Susquehanna Transmission right-of-way
15th Election District - 5th Councilmanic District
Legal Owner: Sleepy Hollow Woods, Inc.

Reclassification of the property from M.L.-I.M. to D.R.-3.5. Special Exception for a mobile home park. Variance to permit trailers (mobile homes) within 25 feet of any other boundary line in lieu of the required 75 feet.

HEARING: Tuesday, March 10, 1998 at 10:00 a.m. in Room 48 of the Old Courthouse, 400 Washington Avenue

Kristine M. Howanski
Chairman

c: Newton A. Williams, Esquire
Sleepy Hollow Woods, Inc.

RECEIVED
COUNTY BOARD OF APPEALS
98 JAN 20 AM 11:51

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3180.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3180.



BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: K. Howanski
C. Marks
M. Worrall

DATE: May 6, 1998

FROM: Kathi

SUBJECT: Case No. CR-98-149-XA /Sleepy Hollow Woods, Inc.

The subject matter is scheduled for day #2 and conclusion on Tuesday, May 12, 1998 at 12:30 p.m. Attached are the following documents filed by Counsel with regard to this case:

1. People's Counsel's Proposed Findings of Fact and Conclusions of Law; and
2. Petitioner's Memorandum in Support of Requested Downshift to D.R. 3.5 filed by Newton A. Williams, Esquire, on behalf of Petitioner, Sleepy Hollow Woods, Inc.

Should you have any questions regarding the above, or need any additional information, please call me.

kathi

Attachments

P.S. Just a reminder - On Tuesday, May 12, 1998, we are starting at 12:15 p.m. to hear argument on a Motion to Remand to the Zoning Commissioner in the Brooks case (tatoo parlor) prior to concluding the Sleepy Hollow reclass.



County Board of Appeals of Baltimore County

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

May 13, 1998

NOTICE OF DELIBERATION

Having concluded this matter in two days of hearing (March 10 and May 12, 1998), the Board of Appeals has scheduled the following date and time for deliberation in the matter of:

SLEEPY HOLLOW WOODS, INC.
CASE NO. CR-98-149-XA

DATE AND TIME : Thursday, May 21, 1998 at 2:00 p.m.
LOCATION : Room 48, Basement, Old Courthouse

Kathleen C. Bianco
Administrator

cc: Counsel for Petitioner : Newton A. Williams, Esquire
Petitioner : Ernest Sligh, President
Sleepy Hollow Woods, Inc.

James A. Avirett, Jr. /Whitman, Requardt & Associates

James Earl Kraft /Bd of Education

People's Counsel for Baltimore Co.

Pat Keller

Jeffrey Long /Planning

Lawrence E. Schmidt

W. Carl Richards, Jr. /PDM

Arnold Jablon, Director /PDM

Virginia W. Barnhart, Co Atty

copied /K.W.C.



Printed with Soybean Ink
on Recycled Paper



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3353
Fax: (410) 887-5708

March 3, 1998

Newton A. Williams, Esq.
700 Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Item No.: 149
Case No.: CR-98-149-XA
Petitioner: Sleepy Hollow Woods, Inc.

Dear Mr. Williams:

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 August 29, 1998.

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 Gwendolyn Stephens in the zoning office (410-887-3391).

Sincerely,

A handwritten signature in cursive script, reading "W. Carl Richards, Jr.".

W. Carl Richards, Jr.
Zoning Supervisor

WCR/ggs
Attachment(s)



B A L T I M O R E C O U N T Y, M A R Y L A N D

I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director
 Department of Permits & Development
 Management

Date: December 11, 1997

FROM:  Robert W. Bowling, Chief
 Bureau of Developer's Plans Review

SUBJECT: Zoning Reclassification Cycle II
 October 1997 to April 1988
 Item #1
 Sleepy Hollow Woods, Inc.
 Case No. CR-98-149-XA
 Hearing Date: March 10, 1998
 District 15C5

The Bureau of Developer's Plans Review has reviewed the subject zoning item. This office requests that any request being granted be conditioned with a requirement for sidewalks. See this office for planting design guidelines for the required landscape plan and sidewalk design.

RWB:HJO:jrb

cc: File

ZONERECL.CII

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

DATE: December 10, 1997

To: Arnold L. Jablon
From: Bruce Seeley *BS/48*
Subject: Zoning Item #CR-98-149-XA

Sleepy Hollow Woods

Zoning Advisory Committee Meeting of

- The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.
- The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.
- X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:
- X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code.)
- X Development of this property must comply with the Forest Conservation Regulations (Sections 14-401 through 14-422 of the Baltimore County Code).
- Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).



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 12.2.97
Item No. #1
CR-98-149-XA
Sleepy Hollow Woods, Inc.

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,

P. J. Gredlein
for Ronald Burns, Chief
Engineering Access Permits
Division

LG

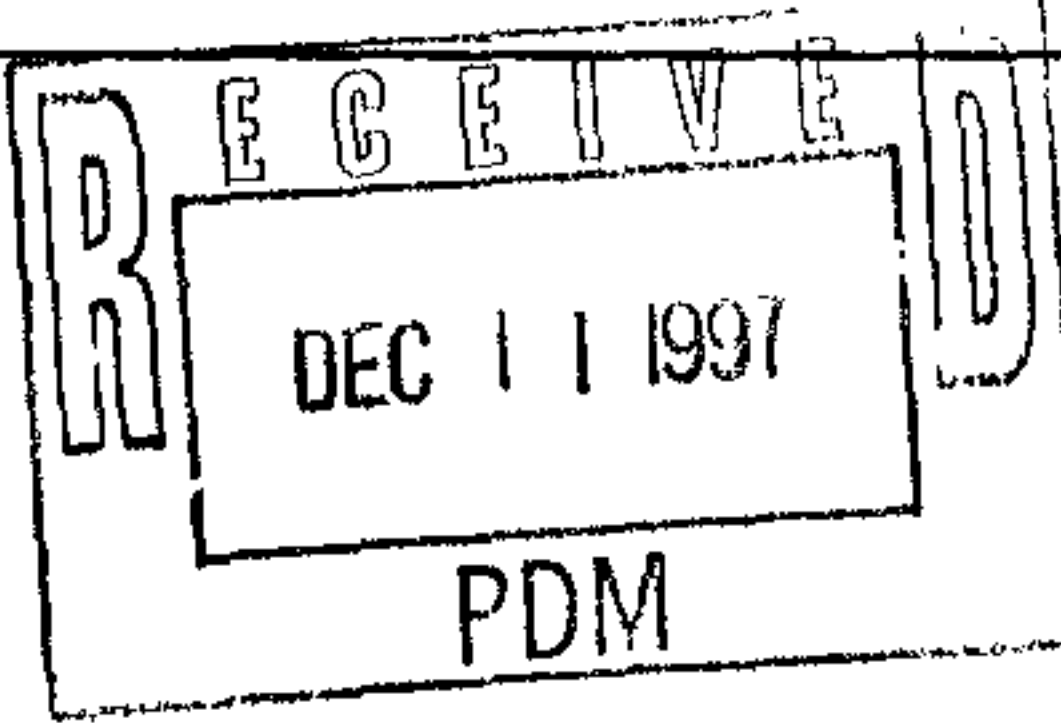
My telephone number is _____

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



Baltimore County
Fire Department



Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
(410)887-4880

DATE: December 10, 1997

TO DARRYL PUTTY, ZADM, MAIL STOP-1301

FROM: LT. ROBERT P. SAUERWALD
BALTIMORE COUNTY FIRE MARSHAL OFFICE
MAIL STOP-1102F, PHONE (410)887-4881

SUBJECT: SUBDIVISION REVIEW COMMENTS

PROJECT NAME: SLEEPY HOLLOW WOODS, INC.

PROJECT NUMBER: CR-98-149-XA; MARCH 10, 1998

LOCATION: SW/S MOHRS LA.

DISTRICT: 15TH

COMMENTS:

13. THE FIRE MARSHAL'S OFFICE HAS NO COMMENTS AT THIS TIME.

cc. File



RE: PETITION FOR ZONING RECLASSIFICATION * BEFORE THE COUNTY
PETITION FOR SPECIAL EXCEPTION
PETITION FOR VARIANCE * BOARD OF APPEALS OF
SW/S Mohrs Lane (future Campbell Blvd.)
1630' E of c/l Pulaski Hwy. and SE/S * BALTIMORE COUNTY
BGE/Susquehanna Transmission rt-of-way
15th Election District, 5th Councilmanic * Case No. CR-98-149-XA

Legal Owner: Sleepy Hollow Woods, Inc. *
Petitioner
* * * * *

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 12th day of December, 1997, a copy of the foregoing Entry of Appearance was mailed to Newton A. Williams, Esq., Nolan, Plumhoff & Williams, 502 Washington Avenue, Suite 700, Towson, MD 21204, attorney for Petitioners.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

RECEIVED
COUNTY BOARD OF APPEALS

97DEC 12 AM 11:28

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: March 19, 1999
Permits & Development Management

FROM: Charlotte E. Radcliffe 
County Board of Appeals

SUBJECT: Closed File: CR-98-149 /Sleepy Hollow Woods, Inc.

As no further appeal was taken in the above captioned case,
we are hereby closing the file and returning same to you herewith.

Attachment (Case File No. CR-98-149)

SLEEPY HOLLOW WOODS, INC. /ERNEST
SLIGH, PRESIDENT -Property Owner/
Petitioner SW/s of Mohrs Lane
(future Campbell Boulevard), 1630'
E of c/l Pulaski Highway and SE/s
BGE/Susquehanna Transmission R/W

CR-98-149-XA
CYCLE II, 1997/98

11th Election District
5th Councilmanic District

Reclassification: From ML-IM to D.R. 3.5

Special Exception -Mobile home park

Variance to permit trailers (mobile
homes) within 25' of any other
boundary line ilo required 75'

Documented Site Plan

17.079 acres - Total acreage

9.7375 AC - area to be reclassified /currently zoned M.L.

7.3415 AC - area of parcel remaining /currently zoned DR 3.5

17.0790 AC - area to subjected to special exception

August 29, 1997

Petition for Reclassification filed by Newton A.
Williams, Esquire, on behalf of Sleepy Hollow Woods,
Inc., Ernest Sligh, President /Petitioner.

* Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
520 Washington Avenue
Towson, MD 21204

Counsel for Petitioner

Ernest Sligh, President
Sleepy Hollow Woods, Inc.
11401 ~~Sleepy Hollow Lane~~ SYMPHANY WOODS LN
Silver Spring, MD 20901

Petitioner

James A. Avirett, Jr.
WHITMAN, REQUARDT & ASSOCIATES
2315 Saint Paul Stret
Baltimore, MD 21218

James Earl Kraft
Baltimore County Board of Education
Mail Stop 1102-J

People's Counsel for
Baltimore County

Pat Keller
Jeffrey Long
Lawrence E. Schmidt
W. Carl Richards, Jr.
Docket Clerk /PDM
Arnold Jablon, Director /PDM

CR-98-149-XA /Sleepy Hollow Woods, Inc.
Cycle II 1997/98

1/20/98 -Copy of Notice of Hearing dated 1/16/98 sent to parties by PDM received in this office. Hearing scheduled for Tuesday, March 10, 1998 at 10:00 a.m.

3/10/98 -Date to be set for conclusion of this matter, including closing argument w/option for brief. (K.C.W.)

3/12/98 -Letter from P. Zimmerman with attached True Test Copy of the Official 1" = 200' Zoning Map. Requests that this map be added as People's Counsel's Exhibit #13.

3/13/98 -Notice of Assignment /Day #2 sent to parties; scheduled for Tuesday, May 12, 1998 at 12:30 p.m. NOTE LATER START TIME FOR THIS HEARING Copy also sent to K.C.W. as FYI and for calendar.

Newton A. Williams, Esquire
Ernest Sligh, President
Sleepy Hollow Woods, Inc.
James A. Avirett, Jr. /Whitman, Requardt & Associates
James Earl Kraft /Bd of Education
People's Counsel for Baltimore Co.
Pat Keller
Jeffrey Long /Planning
Lawrence E. Schmidt
W. Carl Richards, Jr. /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty

5/05/98 -People's Counsel's Proposed Findings of Fact and Conclusions of Law filed by Peter M. Zimmerman and Carole S. Demilio.
- Petitioner's Memorandum in Support of Requested Downshift to D.R. 3.5 filed by Newton A. Williams, Esquire, on behalf of Sleepy Hollow Woods, Inc., legal owner and Petitioner. (K.C.W.)

5/12/98 -Testimony /evidence concluded; scheduled for public deliberation 5/21/98; notice to be sent.

5/13/98 -Notice of Deliberation sent to parties; scheduled for Thursday, May 21, 1998 at 2:00 p.m.

5/21/98 -Deliberation held and concluded; Petition for Reclassification DENIED; special exception and variance relief fell as a result of that denial. Order to be issued. (K.C.W.)

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Sleepy Hollow Woods, Inc.
Case No. CR-98-149-XA

DATE : May 21, 1998 at 2:00 p.m.

BOARD /PANEL : Kristine K. Howanski (KKH)
Margaret Worrall (MW)
Charles L. Marks (CLM)

SECRETARY : Kathleen C. Bianco
Administrator

PURPOSE: To deliberate Case No. CR-98-149-XA /Petition for Reclassification from M.L. to D.R. 3.5; Petition for Special Exception for mobile home park; and Petition for Variance to permit mobile homes within 25' of any other boundary line in lieu of required 75'. Heard before the Board on March 10, 1998 and concluded on May 12, 1998.

Upon public deliberation by the Board on the above-referenced date and time, following is the decision reached on this matter:

CLM: Petition for Reclassification DENIED. Despite possible merits to the plan as present, Petitioner did not prove case and petition must be denied. As to special exception and variance, did not proceed on those petitions inasmuch as reclassification request was denied. Difficult to determine land use and how M.L.-I.M. will proceed.

MW: Could not find from evidence that County Council committed error; therefore, Petition for Reclassification is DENIED. Questioned whether or not other relief could be granted if reclassification is denied. Did not believe Board could grant requested additional relief in view of denial of reclassification.

KKH: Petition for Reclassification should be DENIED. Although concept is good, cannot grant this request based on evidence presented; found no error by the County Council. As to special exception and variance relief, both would fall with the denial of the reclassification request.

At the conclusion of this deliberation, the Board reached the unanimous decision that the Petition for Reclassification from M.L.-I.M. to D.R. 3.5 is DENIED; Petition for Special Exception and Petition for Variance fall with the denial of the Petition for Reclassification.

Written Opinion and Order to be issued by the Board as required by statute. Appellate period to run from date of written Order; anyone feeling aggrieved by the Board's decision may appeal to

Deliberation /Sleepy Hollow Woods, Inc.
Case No. CR-98-149-XA

Circuit Court.

These minutes indicate public deliberation in Case No. CR-98-149-XA
was held this date and a final decision reached by the Board in
which the petitions were denied.
~~~~~

Respectfully submitted,



Kathleen C. Bianco  
Administrator

TO: PATUXENT PUBLISHING COMPANY  
December 18, 1997 Issue - Jeffersonian  
1/2 Page Ad

Please forward billing to:

Newton A. Williams, Esquire  
700 Nottingham Centre  
502 Washington Avenue  
Towson, MD 21204

410-823-7800

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**NEWSPAPER AD MUST BE 1/2 PAGE AD.**

SEE ATTACHED SAMPLE FOR PROPER SET-UP OF AD. SEE ATTACHED PAPERS FOR CORRECT WORDING FOR ZONING RECLASSIFICATION CYCLE II (OCTOBER 1997 TO APRIL 1998) AND CORRECT MAP.

PLEASE FORWARD TO ZONING REVIEW, PERMITS & DEVELOPMENT MANAGEMENT, A CONTACT POSITIVE PRINT.

ANY QUESTIONS CONCERNING THIS AD, PLEASE CONTACT EITHER SOPHIA JENNINGS OR CARL RICHARDS IN ZONING REVIEW AT 410-887-3391.

TO: ESSEX TIMES  
February 5, 1998 Issue - Essex Times  
1/2 Page Ad

Please forward billing to:  
Newton A. Williams, Esquire  
700 Nottingham Centre  
502 Washington Avenue  
Towson, MD 21204  
410-823-7800

---

**NEWSPAPER AD MUST BE 1/2 PAGE AD.**

SEE ATTACHED SAMPLE FOR PROPER SET-UP OF AD. SEE ATTACHED PAPERS FOR CORRECT WORDING FOR ZONING RECLASSIFICATION CYCLE II (OCTOBER 1997 TO APRIL 1998) AND CORRECT MAP.

PLEASE FORWARD TO ZONING REVIEW, PERMITS & DEVELOPMENT MANAGEMENT, A CONTACT POSITIVE PRINT.

ANY QUESTIONS CONCERNING THIS AD, PLEASE CONTACT EITHER SOPHIA JENNINGS OR CARL RICHARDS IN ZONING REVIEW AT 410-887-3391.

RECLASSIFICATION & REDISTRICTING PETITIONS ACCEPTED FOR  
FILING BY BALTIMORE COUNTY BOARD OF APPEALS FOR THE  
OCTOBER 1997 - APRIL 1998 ZONING RECLASSIFICATION CYCLE II

BY ORDER OF  
KRISTINE HOWANSKI, CHAIRMAN, BALTIMORE COUNTY BOARD OF APPEALS  
ARNOLD F. KELLER, III, DIRECTOR, OFFICE OF PLANNING AND  
COMMUNITY CONSERVATION

**WESTERN SECTOR**

No Petitions Filed for Area

**NORTHERN SECTOR**

No Petitions Filed for Area

**CENTRAL SECTOR**

No Petitions Filed for Area

**EASTERN SECTOR**

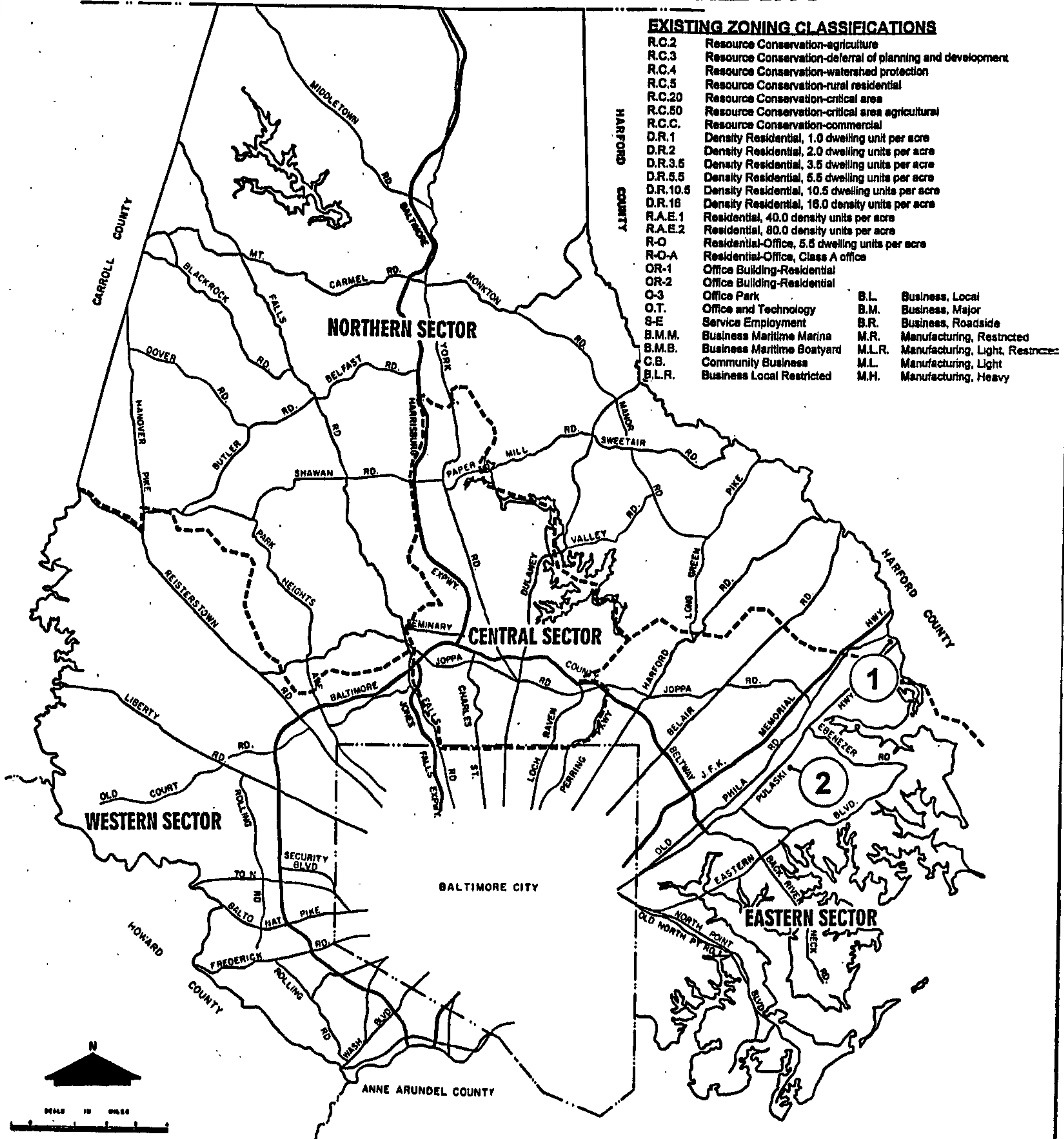
**ITEM #1**

|                        |                                                                                                                                                                           |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Property Owner:        | Sleepy Hollow Woods, Inc.                                                                                                                                                 |
| Case No./Hearing Date: | CR-98-149-XA; March 10, 1998                                                                                                                                              |
| Contract Purchaser:    | N/A                                                                                                                                                                       |
| Location:              | SW/S Mohrs Lane (future Campbell Boulevard), 1630' E of centerline Pulaski Highway and SE/S BGE/Susquehanna Transmission right-of-way                                     |
| Existing Zoning:       | M.L.-I.M.                                                                                                                                                                 |
| Election District:     | 15th                                                                                                                                                                      |
| Councilmanic District: | 5th                                                                                                                                                                       |
| Acres:                 | 9.7375 +/-                                                                                                                                                                |
| Proposed Zoning:       | D.R.-3.5. Special Exception for a mobile home park. Variance to permit trailers (mobile homes) within 25 feet of any other boundary line in lieu of the required 75 feet. |

**ITEM #2**

|                        |                                                                                                                  |
|------------------------|------------------------------------------------------------------------------------------------------------------|
| Property Owner:        | Samuel & Margaret Mogavero                                                                                       |
| Case No./Hearing Date: | R-98-150; March 24, 1998                                                                                         |
| Contract Purchaser:    | N/A                                                                                                              |
| Location:              | 120' NW of NW/S Pulaski Highway and 700' SW of centerline Little Gunpowder Falls (rear of 12436 Pulaski Highway) |
| Existing Zoning:       | B.L.-C.R.                                                                                                        |
| Election District:     | 11th                                                                                                             |
| Councilmanic District: | 5th                                                                                                              |
| Acres:                 | 1.1958 +/-                                                                                                       |
| Proposed Zoning:       | B.M.                                                                                                             |

# LOCATIONS OF PROPERTIES UNDER PETITION CYCLE II --- OCTOBER 1997 - APRIL 1998



541010

BALTIMORE COUNTY, MARYLAND

# PUBLIC NOTICE

RECLASSIFICATION & REDISTRICTING PETITIONS ACCEPTED FOR  
FILING BY BALTIMORE COUNTY BOARD OF APPEALS FOR THE  
OCTOBER, 1993 - APRIL, 1994 ZONING RECLASSIFICATION CYCLE II

## WESTERN SECTOR

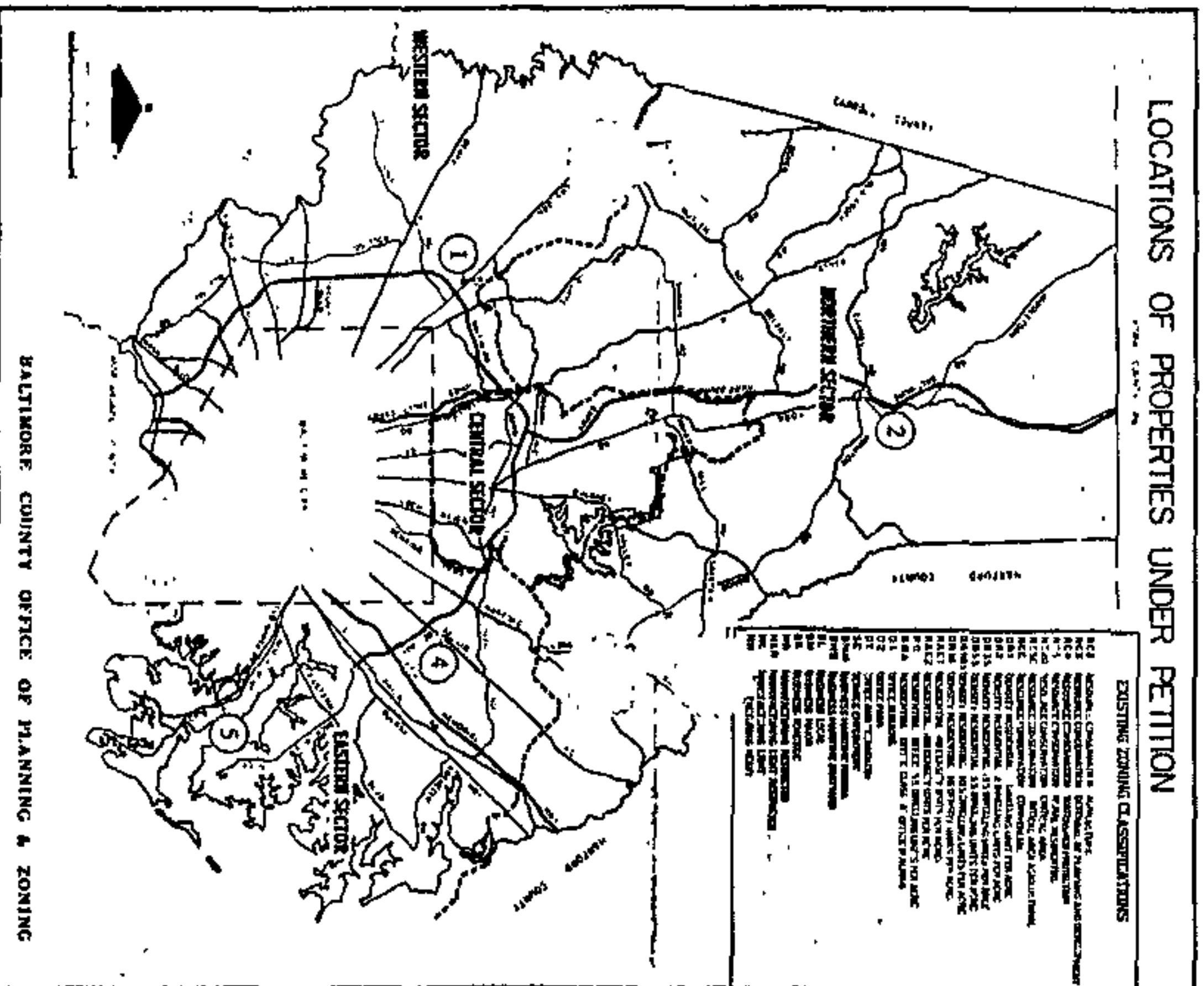
1. Property Owner: J.F.O. Holding Corporation & Josephine Owings Ginnings  
Case No./Hearing Date: R-94-141; 3/9/94  
Contract Purchaser: J. Patrick Gill  
Location: SW/S Reisterstown Road, 540' SE of centerline M. Wilson Lane, opposite Castleton Avenue (#1838-1850 Reisterstown Road)  
Existing Zoning: R.O.  
Election District: 3rd  
Councilmanic District: 3rd  
Acres: 5.81 +/- or 5.25 +/-  
Proposed Zoning: B.L.

## NORTHERN SECTOR

2. Property Owner: Harford Joint Venture  
Case No./Hearing Date: R-94-142; 3/23/94  
Contract Purchaser: N/A  
Location: N/S Everett Road, W/S York Road (Monkton Centre)  
Existing Zoning: R.C.-5  
Election District: 7th  
Councilmanic District: 3rd  
Acres: .90 +/-  
Proposed Zoning: B.M.-C.R.

## 3. Property Owner: The Prosser Company, Inc.

- Case No./Hearing Date: CR-94-143; 4/6/94  
Contract Purchaser: N/A  
Location: SE/S Long Green Pike and NW/S Glen Arm Road (12107 & 12109)  
Long Green Pike and 5328 Glen Arm Road  
Existing Zoning: R.O. & R.C.-5  
Election District: 11th



Councilmanic District: 6th  
Acres: 5.2 +/-  
Proposed Zoning: M.L.

## CENTRAL SECTOR

No Petitions in the Central Sector

## EASTERN SECTOR

4. Property Owner: State Highway Administration  
Case No./Hearing Date: R-94-144; 4/20/94  
Contract Purchaser: White Marsh Dinner Theatre, Inc.  
Location: NW/S Belair Road, corner NE/S White Marsh Boulevard (8204 Belair Road)  
Existing Zoning: D.R.-5.5  
Election District: 14th  
Councilmanic District: 6th  
Acres: .61 +/-  
Proposed Zoning: B.M.

5. Property Owner: Beachwood II Limited Partnership & Cignal Development Corporation  
Case No./Hearing Date: R-94-145; 5/4/94  
Contract Purchaser: N/A  
Location: E/S Morse Lane between Lynhurst and Shore Roads (Beachwood)  
Existing Zoning: D.R.-1  
Election District: 15th  
Councilmanic District: 7th  
Acres: 27.309  
Proposed Zoning: D.R.-3.5 or D.R.-5.5 or D.R.-10.5

LISTINGS OF PETITIONS: Numbers in the listings are keyed to the map above.

BY ORDER OF  
WILLIAM HACKETT, CHAIRMAN BALTIMORE COUNTY BOARD OF APPEALS  
P. DAVID FIELDS, DIRECTOR BALTIMORE COUNTY PLANNING AND ZONING

CR-98-149-XA Sleepy Hollow Woods



## ZONING RECLASSIFICATION PETITIONS

Cycle II, 1998

Report by the Baltimore County  
Planning Board

to the

Baltimore County  
Board of Appeals

January 22, 1998

Baltimore County  
Office of Planning  
Towson, Maryland

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Baltimore County  
Office of Planning

401 Bosley Avenue  
Towson, Maryland 21204  
(410) 887-3211  
Fax: (410) 887-5862

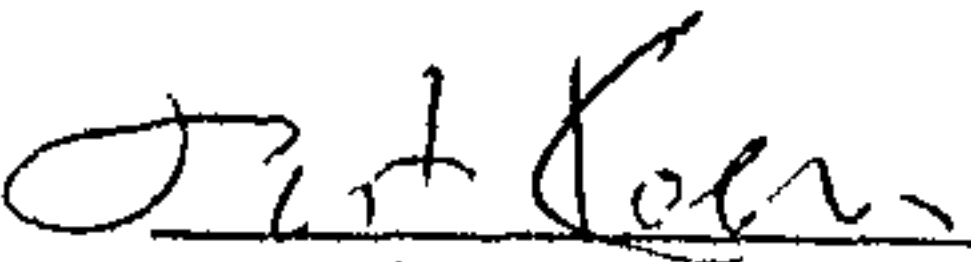
November 28, 1997

TO: MEMBERS OF THE BALTIMORE COUNTY PLANNING BOARD

In the current cycle, two zoning reclassification petitions were accepted by the Baltimore County Board of Appeals. In compliance with the County Code, recommendations on the petitions are submitted in the attached report.

The Planning Board is scheduled to review the petitions on January 8, 1998, and to make final recommendations in January. The Planning Board's report must be submitted to the Baltimore County Board of Appeals no later than January 31, 1998.

The Board of Appeals has tentatively scheduled hearings on these petitions and will advertise these hearings as required. Hearings are set to take place on March 10, 1998 (R-98-149) and March 24, 1998 (R-98-150).

  
Arnold F. "Pat" Keller  
Director of Planning

AFK: JL  
Attachment

cyc2.doc

## Introduction

Under the provisions of Section 2-356(e), Baltimore County Code, 1988, (see Appendix A), the Director of Planning is required to submit to the Planning Board, during Period I of each zoning cycle, a report on the petitions accepted by the County Board of Appeals for filing during the previous zoning cycle. The report is to contain the following information:

1. Maps showing properties under petition and the reclassifications sought therefore; such maps may also identify groups of such properties located close to each other and show other indications of the inter-relation of petitions with respect to planning considerations.
2. Recommendations on the petitions.
3. Supporting data for the recommendations, including any pertinent data and recommendations submitted by other County agencies.
4. Recommendations for scheduling of all hearings (to be held during the next Period IV, prepared in consultation with the County Board of Appeals).

The two petitions in the current cycle have been reviewed by the planning staff, and the following pages report the Office of Planning staff's analysis and recommendations. The process of formulating these recommendations included: staff inspections of each site; a review of the policies and statements in the current Baltimore County Master Plan, and a preparation and adoption of the 1996 Comprehensive Zoning Map. Comments also were requested from other county agencies including the Board of Education, the Department of Environmental Protection and Resource Management, the Fire Department, the Police Department, the Department of Public Works, the Department of Recreation and Parks, and the Bureau of Traffic Engineering.

In reaching its decision on each petition, the Board of Appeals is required to use the standards in Section 2-356(j) of the County Code. During the first cycle following a Comprehensive Zoning Map Process, Section 2-356(k) further limits the Board's authority to granting reclassifications only where the Board finds that the change is warranted upon consideration of the specified factors and also if "the last classification of the property [i.e., by the County Council's vote on October 8, 1996] was established in error."

**PETITIONS FOR RECLASSIFICATION  
CYCLE II, 1997**

**Assigned Hearing Dates  
County Board of Appeals**

Week of March 9, 1998

Case No. CR-98-149XA

Sleepy Hollow Woods, Inc.

**Tuesday, March 10, 1998 @ 10:00 a.m.**

Week of March 23, 1998

Case No. R-98-150

Samuel & Margaret Mogavero

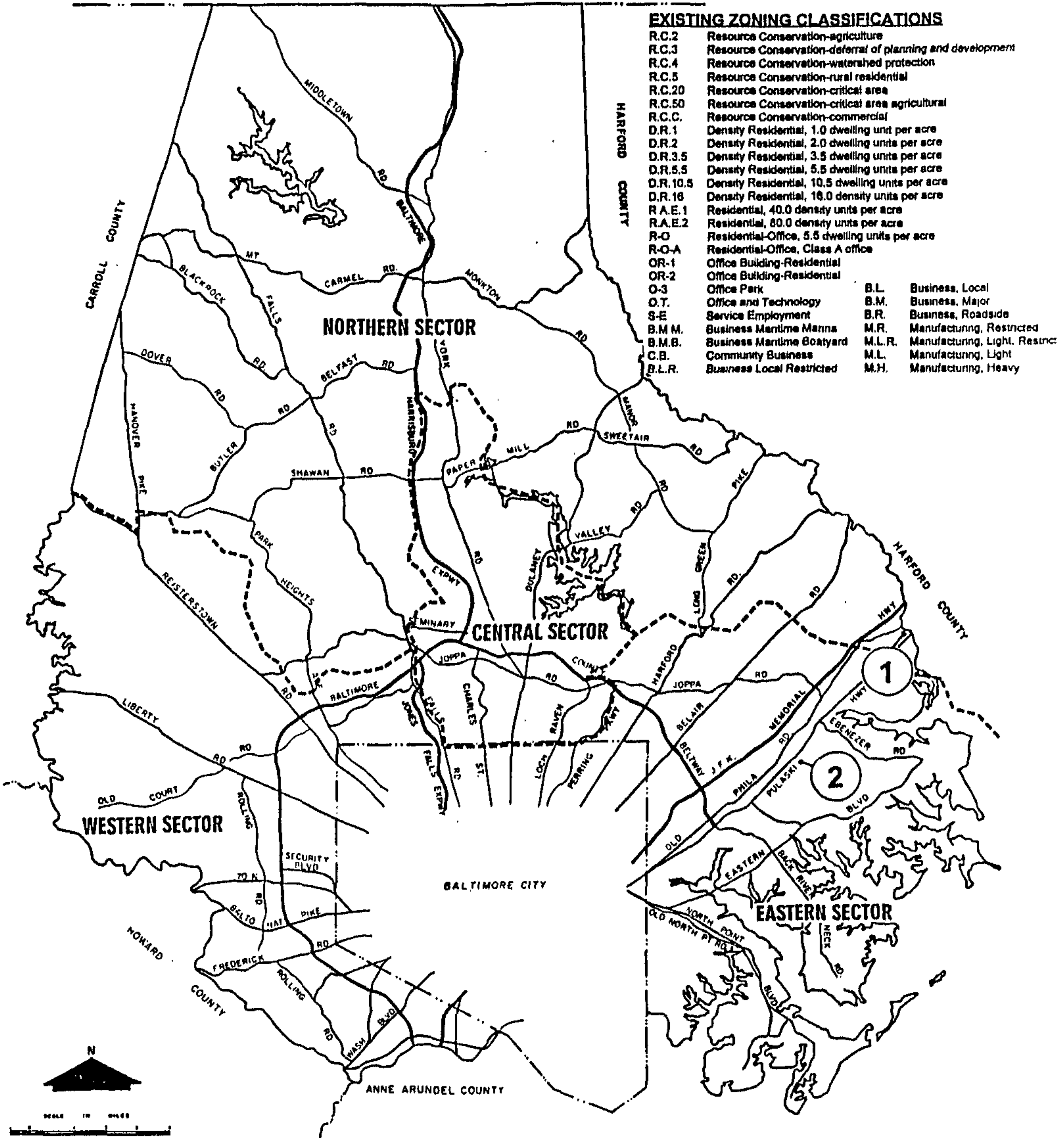
**Tuesday, March 24, 1998 @ 10:00**

**BALTIMORE COUNTY, MD**  
**RECOMMENDATIONS OF THE OFFICE OF PLANNING**

November 28, 1997

| <b>ITEM NO. and<br/>PETITIONER</b>                 | <b>LOCATION</b>                                                                                                                                                                                  | <b>ACREAGE</b> | <b>EXISTING<br/>ZONING</b> | <b>REQUESTED<br/>ZONING</b> | <b>RECOMMENDATION</b> |
|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|----------------------------|-----------------------------|-----------------------|
| Item No. 1<br>Sleepy Hollow<br>Woods, Inc.         | Southwest side<br>Mohrs Lane<br>(future Campbell<br>Boulevard), 1760'<br>east of centerline of<br>Pulaski Highway and<br>southeast side of<br>BGE/Susquehanna<br>Transmission right-<br>of-way   | 9.73           | ML-IM                      | DR 3.5                      | DR 3.5                |
| Item No. 2<br>Samuel Mogavero<br>Margaret Mogavero | 190' northwest<br>of the centerline of<br>Pulaski Highway<br>and 360' southeast<br>of the centerline of<br>Pulaski Highway and<br>Baltimore/Harford County<br>(rear of 12436 Pulaski<br>Highway) | 1.19           | BL-CR                      | BM                          | BL                    |

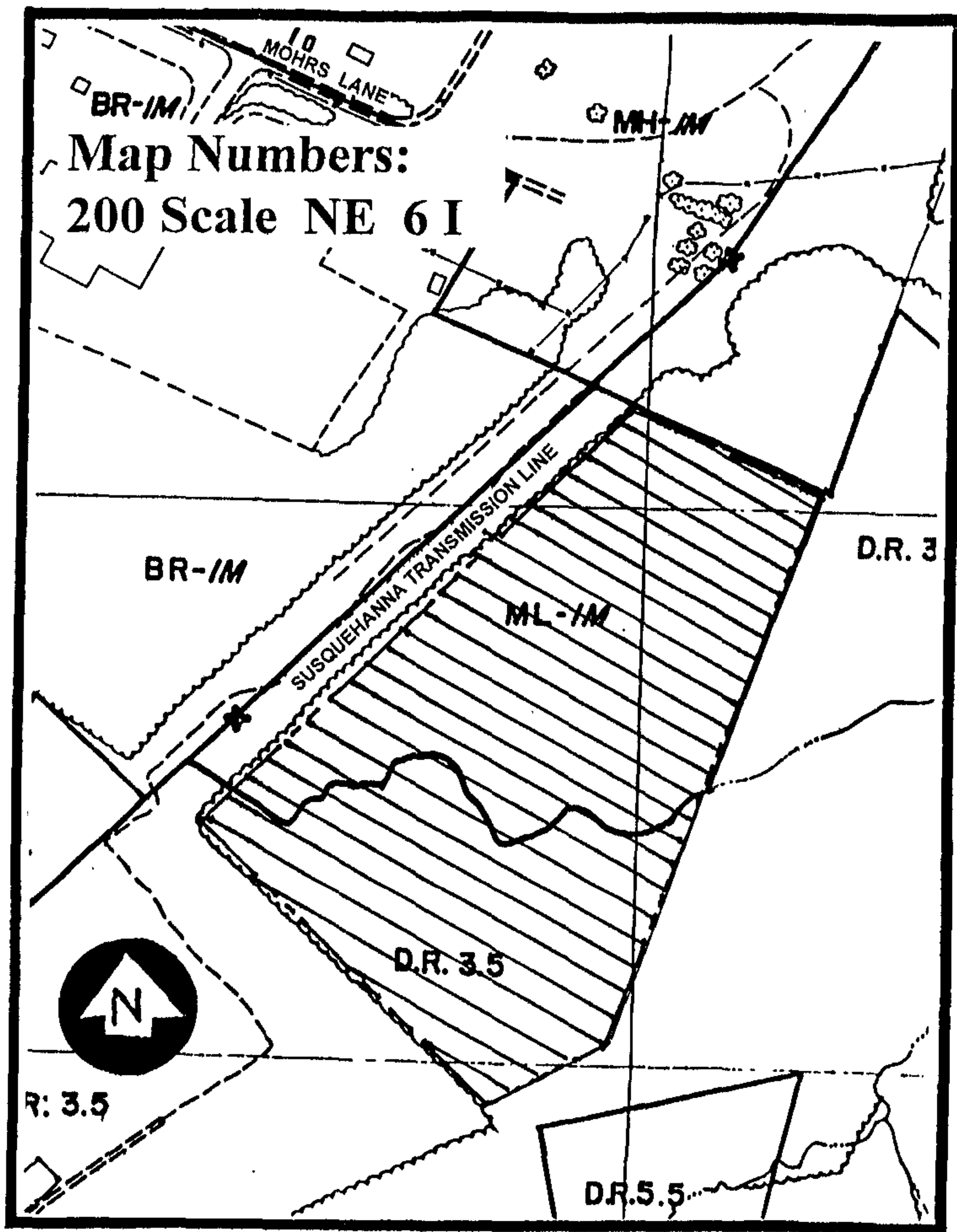
# LOCATIONS OF PROPERTIES UNDER PETITION CYCLE II -- OCTOBER 1997 - APRIL 1998



### SOURCE MATERIAL

Recommendations for the two (2) petitions filed are based on the following:

1. Information compiled during the processing of the Comprehensive Zoning Map adopted by the County Council on October 8, 1996;
2. Capital Budget and 5-Year Capital Program;
3. Zoning Plans Advisory Committee comments;
4. Discussions with other governmental agencies;
5. Field inspections of subject sites; and
6. Baltimore County Master Plan.



**ITEM NUMBER 1**  
**Location of Property Under Petition**

**Scale 1" = 300'**

**CASE NO.** CR-98-149 XA

**PETITIONER:** Sleepy Hollow Woods, Inc.

**REQUESTED ACTION:** Reclassification to DR 3.5, and a Variance from Section 414.4 of the Baltimore County Zoning Regulations to permit mobile homes within 25 feet of any boundary line in lieu of the required 75 feet, and a Special Exception for a mobile home park.

**EXISTING ZONING:** ML-IM

**LOCATION:** Southwest side of Mohrs Lane (future Campbell Boulevard), 1760 feet east of the centerline of Pulaski Highway and southeast side of the BGE/Susquehanna Transmission right-of-way.

**AREA OF SITE:** 9.73 acres

**ZONING OF ADJACENT PROPERTY/USE:**

|               |        |                                                          |
|---------------|--------|----------------------------------------------------------|
| <b>North:</b> | MH-IM  | Sleepy Hollow Mobile Home Park (owned by the Petitioner) |
| <b>South:</b> | DR 3.5 | Unimproved                                               |
| <b>East:</b>  | DR 3.5 | Unimproved                                               |
| <b>West:</b>  | BR-IM  | Price Club Plaza                                         |

**SITE DESCRIPTION:** The site is currently unimproved. A Baltimore Gas and Electric Company transmission line situated between the subject property and the Price Club Plaza dominates the landscape.

**WATER AND SEWERAGE:** Water and sewer is available to the property via Mohrs Lane (future Campbell Boulevard). Notes 21 and 22 on the Documented Site Plan (DSP) provide specific information regarding the provision of water and sewer.

**TRAFFIC AND ROADS:** The DSP indicates direct access to Mohrs Lane (future Campbell Boulevard).

**ZONING HISTORY:** This site comprised a portion of Issue No. 5-049 (involving approximately 175 acres) which was filed as part of the 1996 Comprehensive Zoning Map Process.

**MASTER PLAN / COMMUNITY PLANS:** The draft Windlass Run/Bird River Road Area Community Plan recommends single-family housing for the area. Improvement of the property with mobile homes would be consistent with the draft recommendations for the subject site, since the various styles of the mobile homes proposed closely resemble small single-family homes.

**PROPOSED vs. EXISTING ZONING:** Regulations governing the DR 3.5 zone may be found in Section 1B01.1A of the Baltimore County Zoning Regulations. The zone would permit a density of 3.5 dwelling units per acre. Regulations regarding the ML zone are found in Section 253 of the Baltimore County Zoning Regulations. The ML zone permits a number of light manufacturing uses by right. The zone also allows auxiliary retail or service uses, provided that any such use is located in a planned industrial park of at least 25 acres in net area or in an IM district.

**DOCUMENTED SITE PLAN:** The documented site plan proposes the improvement of the property with 33 mobile homes. Indicated building envelopes would accommodate either a 28' x 60' or a 28' x 56' mobile home, and the homes are intended to be used for primary residential uses only.

Note # 9 on the plan indicates that a 17.07 acre parcel -owned by the applicant- of which 9.73 acres comprise the reclassification request, is subject to a Petition for Special Exception which has been filed as a part of this case. Section 2-356(p) states, in part, the following: "The board of appeals, subject to the appropriate principles, standards, rules, conditions and safeguards as set forth in the zoning regulations, shall have original jurisdiction for the purpose of hearing and deciding for petitions for special exception and/or variances the granting of which is dependent upon the reclassification of the property involved in the petition for reclassification..." This section appears to indicate that only that portion of the property subject to reclassification could be reviewed in terms of the Special Exception request.

The Documented Site Plan also includes a landscape plan and information regarding four optional floor plans.

**OFFICE OF PLANNING RECOMMENDATION:** Staff supports the applicant's Petitions for Reclassification, Variance, Special Exception (notwithstanding the above mentioned concerns) since the proposed use would provide a reasonable use of the property that is compatible with adjacent land uses.

**MISTAKE/CHANGE:** Based upon the information provided and analysis conducted, the Office of Planning concludes that the County Council made an error when the Comprehensive Zoning Maps were last adopted.



Baltimore County  
Department of Environmental Protection  
and Resource Management

Office of the Director  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204  
(410) 887-3733  
Fax: (410) 887-4804

March 14, 1997

Mr. John Hollister  
Whitman, Requardt and Associates  
2315 Saint Paul Street  
Baltimore, Maryland 21218

Re: Proposed Sleepy Hollow Woods Project

Dear Mr. Hollister:

I am writing in response to your correspondence dated February 17, 1997 requesting information on the above referenced site under Maryland's Public Information Act.

The Department of Environmental Protection and Resource Management (DEPRM) stores information in files in the following offices. The files in the offices checked "Srchd." were searched to determine whether they contain information of the type requested pertaining to the specific site. Those offices possessing this information are checked "Yes". In accordance with the Public Information Act requirement that we provide access to this information, you are welcome to make an appointment to visit our offices and review the files.

| <u>Srchd.</u> | <u>Information</u><br><u>Present</u> | <u>Section</u>                    |
|---------------|--------------------------------------|-----------------------------------|
|               | Yes      No                          |                                   |
| X             | X                                    | Waste Management (887-3745)       |
| X             | X                                    | Air Quality (887-3775)            |
| X             | X                                    | Groundwater Management (887-2762) |

Please contact the individuals indicated above to make the arrangements for your visit.

There is a fee of \$21.00 per hour, after the first two hours, for the time spent in file search, and preparing and reviewing records for your inspection and copying. In addition, should you desire copies of the materials in the files, Baltimore County policy requires payment of \$1.00 per page, in advance.

If you have any questions please feel free to give me a call at (410)887-2904.

Very truly yours,

Sheldon F. Brill  
M.I.S / G.I.S. Section

SFB/als  
cc: Robert P. Schleigh  
FO97-028.ltr





**Baltimore County  
Department of Environmental Protection  
and Resource Management**

Bureau of Waste Management  
and Community Services  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204  
(410) 887-3775 - Air Quality  
(410) 887-3745 - Waste Management

**February 25, 1997**

**Mr. John Hollister  
Whitman, Requardt and Associates  
2315 Saint Paul Street  
Baltimore, Maryland 21218**

**Re: Environmental Assessment  
Proposed Sleepy Hollow Woods Project**

**Dear Mr. Hollister:**

**Reference is made to your correspondence of February 17, 1997 concerning an environmental assessment of the above referenced site and additional sites within a 1/2 mile radius.**

**The Waste Management Section has information in its files concerning miscellaneous chemical and/or solid waste investigations at the following addresses:**

**9717 BIRD RIVER RD.  
807 LANNERTON RD.  
9759 MATZON RD.**

**ALLEY  
RESIDENCE - VEHICLE  
WIDENER PROPERTY**

**Section facility files contain information concerning solid waste sites, hazardous waste sites, solid waste processing or hazardous waste generation at the following locations:**

**9918 PULASKI HWY.**

**WILLIAM F. SCHUMAN & SON**

**The Groundwater Management Section files contain information concerning underground storage tanks at the following addresses:**

**9624 PULASKI HWY.  
9724 PULASKI HWY.  
9726 PULASKI HWY.  
10003 BIRD RIVER RD.  
10132 BIRD RIVER RD.  
9600 BIRD RIVER RD.**

**JOE CARPENTIERI  
SOSCO CORPORATION  
TRU-ROL COMPANY, INC.  
OUR LADY QUEEN OF PEACE  
MAGSAMEN BUS COMPANY**

**Mr. Thomas I. Bodrogi, of the Groundwater Management Section, should be contacted for information regarding these tanks. He may be reached at (410) 887-2762.**

**Section records indicate that the following addresses involve groundwater investigations:**

**9724 PULASKI HWY.  
10101 BIRD RIVER RD.**

**SOSCO CORPORATION  
ROHE FARM**

The Baltimore County Department of Environmental Protection and Resource Management, Groundwater Management Section should be contacted for additional information concerning these cases. This division may be contacted in writing or by telephone at (410) 887-2762 in order to request this information.

According to our records, the Maryland State Department of the Environment is conducting or has conducted groundwater investigations at the following addresses:

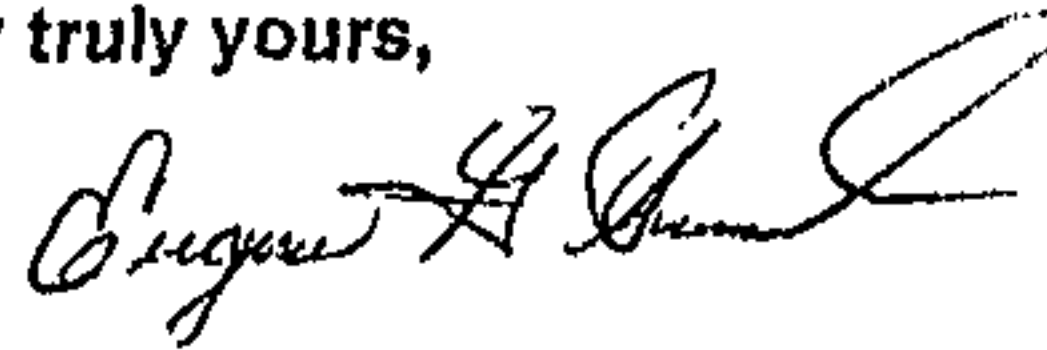
9724 PULASKI HWY.

SOSCO CORPORATION

The Department of the Environment may be contacted at 631-3442 for additional information regarding these investigations.

If you have any questions or desire to review any of the information contained in the Waste Management Section files, please contact me at (410) 887-3745

Very truly yours,



Eugene G. Slewierski, Supervisor  
Waste Management Section

EGS/als  
cc: Thomas I. Bodrogi  
97-028.wr

## Environmental Impact Statement

### Proposed DR 3.5 Zoning for Parcel 385 (Tax map # 82, Grid 17) Price Club Property, Mohrs Lane

Election District 15  
Census Tract # 4517.01  
Subsewer watershed 16  
Topo and aerial map 16

Councilmanic District 5  
Watershed number 1  
Regional Planning District 322  
Zoning map NE 61



#### 1. Description of Proposed Project

The parcel in question is 17.079 acres in size and is located approximately 1700 feet east of Pulaski Highway, behind the Price Club property. The parcel is separated from the Price Club by the BGE power line right-of-way and the storm water management pond on the eastern portion of the Price Club site. The parcel currently has no direct roadway access.

The proposed project consists of 33 large-sized mobile-home lots, adjacent to an existing mobile home park (Sleepy Hollow Mobile Home Park). Access would be from the anticipated extension of Mohrs Lane to Bird River Road.

#### 2. Environmental Impacts of Proposed Action

**Land Acquisition and Displacements.** This property was bought at auction; there are no existing buildings or land uses on the site.

**Land Use and Zoning.** Currently, the site has two different zoning classifications: DR 3.5 (residential) in the southern portion of the parcel, and ML-IM (light manufacturing) in the remainder. Surrounding zoning and land use includes the mobile home park to the northeast (zoned MH-IM), proposed residential development to the south and east (zoned DR 3.5) and roadside commercial (Price Club and Home Depot) to the northwest and west (zoned BR-IM). The proposed zoning reclassification from ML-IM to DR 3.5 would allow, with a special exception, a mobile home park.

**Water Quality.** A second-order, use IV, unnamed tributary of White Marsh Run crosses the southern portion of the site flowing from west to east. This stream and its associated wetlands will be protected with appropriate buffers, as determined through correspondence with Baltimore County Department of Environmental Protection (DEPRM), and the natural hydrology of the site will be preserved. The proposed storm water management facility for the site is a created wetland marsh, providing an extension of the existing stream and wetland system on site. All appropriate erosion and sediment control measures will be conducted and all permits and approvals will be obtained (see Attachments).

**Wetlands.** Wetlands on site were delineated and a jurisdictional determination was obtained from the U.S. Army Corps of Engineers on August 2, 1995. This delineation was confirmed by DEPRM. This project will have no impacts to wetlands; all appropriate buffers as determined by DEPRM will be incorporated in the site plan (see Attachments).

**Forest Conservation.** A preliminary site reconnaissance has been conducted. As per State and County Forest Conservation Regulations, a Forest Stand Delineation and Forest Conservation Plan will be submitted during the site plan review.

***Flood plains.*** A flood plain study will be performed to determine the existence and/or extent of the flood plain on this property. Appropriate buffers will be developed in consultation with DEPRM.

***Endangered Species.*** No state or federal endangered, threatened or special status species are known to occur in the project area (see Attachments).

***Traffic and Parking.*** No traffic impacts are anticipated from this project. The existing roadway network (Pulaski Highway and Mohrs Lane) has sufficient capacity to absorb the additional traffic generated by the proposed mobile home park expansion. In addition, Mohrs Lane is expected to be extended to Bird River Road and renamed Campbell Boulevard, providing additional access.

***Hazardous Materials.*** Contacts with DEPRM have indicated no known hazardous materials on the proposed site (see Attachments).

***Historical Properties.*** No historic or archeological resources were identified in the proposed project area (see Attachments).

***Aesthetics.*** The proposed project will have little visual impacts. The stream and wetland buffers proposed for the southwestern portion of the parcel will provide screening for the residential land uses to the south and east of the project. On the west side, the proposed project will face the back, service side of the Price Club and Home Depot across the adjoining 150 foot BGE easement.

***Consistency with Local Plans.*** According to the Baltimore County Master Plan (February 5, 1990), the area surrounding the proposed project is designated as Industrial, with areas of Commercial along Pulaski Highway. The proposed use does not conflict with the overall land use in the area, as the surrounding land uses include residential (mobile homes and town homes) and commercial (Price Club and Home Depot) land uses.

***Summary of Impacts and Proposed Mitigation.*** The proposed project will be conducted to avoid impacts to the natural and socioeconomic environment to the greatest extent possible. The site plan will be prepared in an environmentally sensitive manner, ensuring adequate protection of steep slopes, wetlands, forest stands and streams. Landscaping, and street layouts will conform to all zoning requirements and set-backs. Buffer areas will be preserved between the proposed mobile home park and the proposed adjacent residential development. Because of the project's intent to avoid all impacts to the large areas of wetlands and streams on the site, only 35 percent of the total 17.079 acres will actually be cleared for development, leaving over 11 acres of forested wetlands and streams untouched.

### **3. Project Alternatives**

Because of the parcel's current land-locked status, few options exist for this property. The original zoning for the site was BR-IM (business roadside), but the isolation of the parcel from Pulaski Highway by the location of the storm water management pond and the BGE right-of-way made this use unlikely. Its use as a light-manufacturing site is limited by the adjacent residential development and the environmental constraints that reduce the developable size of the site.

Several alternative layouts have been developed for the proposed mobile home park, including several layouts designed to avoid the wetlands, flood plains and forested area on the south and southeastern portions of the site.

### **4. Unavoidable Adverse Environmental Effects**

The proposed project will create additional impervious area; however, this area will be less than what would be created by a light industrial use. Appropriate mitigation measures will be undertaken to ensure

that water quality impacts caused by this impervious area will be minimal. No other unavoidable adverse effects are anticipated.

**5. Cumulative, Long-term Effects.**

This project is not anticipated to have any long-term effects to the natural or socioeconomic environment. No moratoria on elementary schools, roads, water supplies or sewers exist in this area. This project will have no impact on development in the surrounding area, nor will it foreclose any important future uses of property in the vicinity.

**6. Irreversible or Irretrievable Commitment of Resources.**

This proposed project involves minor commitment of resources, such the site work, water and sewer lines, roadway construction and landscaping. However, the nature of a mobile home park implies that few of these commitments are irreversible or irretrievable. As indicated above, 11 of the total 17.079 acres will remain in forested wetlands and streams, thus preserving this portion of the site as a natural area.

**Attachments**



Baltimore County  
Department of Environmental Protection  
and Resource Management

Bureau of Engineering Services  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204  
(410) 887-3768  
Fax: (410) 887-4804

September 20, 1995

Mr. John Canoles  
Eco-Science Professionals, Inc.  
P.O. Box 5006  
Glen Arm, Maryland 21057

Re: Price Club Property  
Steep Slope/Erodible Soils Analysis

Dear Mr. Canoles:

The Department of Environmental Protection and Resource Management has received and reviewed your Steep Slope/Erodible Soils Analysis for the above-referenced property. The Steep Slope/Erodible Soils Analysis is approved at this time.

If you have any questions regarding these findings, please contact me at 887-3980.

Sincerely,

A handwritten signature in cursive script, appearing to read "Keith Kelley".

Keith Kelley  
Natural Resource Specialist  
Environmental Impact Review

KDK/tmm

PRICECL/DEPRM/WQBCA





Baltimore County  
Department of Environmental Protection  
and Resource Management

Bureau of Engineering Services  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204  
(410) 887-3768  
Fax: (410) 887-4804

August 8, 1995

Mr. John Canoles  
Eco-Science Professionals, Inc.  
P. O. Box 5006  
Glen Arm, Maryland 21057

Re: Price Club Property  
Mohr's Lane - Parcel 385  
Approved - Wetland Delineation

Dear Mr. Canoles:

The Department of Environmental Protection and Resource Management has received and reviewed your Wetland Delineation for the above-referenced property. The Wetland Delineation is approved at this time. Please note that a 1st order, Use IV unnamed tributary to Whitemarsh Run runs parallel and within fifty (50) feet of wetland "A". The Forest Buffer Easement (FBE) would be determined from a Steep Slope/Erodible Soils Analysis due to the high "K" factor of the soils. The minimal Forest Buffer Easement would be 100 feet which is measured from the centerline of this stream which is greater than 25 feet off the outer edge of the non-tidal wetlands. Also these would be a minimal 100 foot Forest Buffer Easement from the centerline of the intermittent stream for wetland "C" instead of a 25 foot Forest Buffer Easement which is shown on your plan.

If you have any questions regarding these findings, please contact me at 887-3980.

Sincerely,

A handwritten signature in cursive script, appearing to read "Keith Kelley".

Keith Kelley  
Natural Resource Specialist  
Environmental Impact Review

KK:sp

c: Mrs. Traies Roe

CANOLES/DEPRM/WQCBCA

# *Eco-Science Professionals, Inc.*



CONSULTING ECOLOGISTS

August 21, 1995

Mr. Keith Kelley  
Baltimore County Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue  
Towson, Maryland 21204

RE: Price Club Steep Slopes Analysis

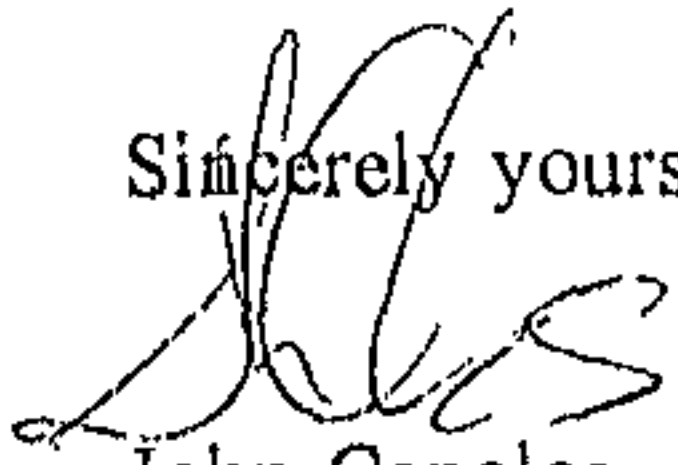
Dear Keith,

Enclosed please find a steep slopes analysis for the Price Club property. As we have discussed, Price Enterprises is trying to determine the actual buildable area of the site to establish a selling price. To assist in determining the site constraints a wetland delineation was performed. This delineation has been approved by Baltimore County DEPRM and the USACOE. It has been determined that since the site is technically a parcel and not a single lot, any development of the site will require the application of the County's Forest Buffer, as per the information you provided in the wetland approval letter.

To that end, I have prepared a steep slopes analysis (SSA) for the site. The enclosed information shows the data generated in preparing the SSA and the resulting 100 foot forest buffer. The enclosed mapping shows a 100 foot buffer from all wetland areas, existing slopes differentiated as per the SSA, soils mapping and vegetative cover. Upon review of the site information, it became apparent that no transect breaks would occur within 100 feet of the resource, no slopes on or adjacent to the site are greater than 20 percent, all soils on the site have a K value greater than 0.32, and vegetative cover is good throughout the site. Upon these determinations it was concluded that the 100 foot forest buffer is appropriate for the existing site conditions. The following text outlines the basis for this conclusion:

For sites with uniformly poor soils and good vegetative cover, the slopes and sediment delivery become the factors that direct the location of the forest buffer. Under these circumstances, once outside the 100 foot minimum segment, only areas with slopes greater than 20 percent score 35 on the SSA. Since no areas on the site have a slope greater than 14 percent the forest buffer cannot extend beyond the first 100 foot segment. Typical transect scores show the calculations upon which this determination has been made.

Please review the enclosed information and do not hesitate to contact me if you have any questions. As the client is interested in placing this property on the market as soon as possible, a timely response would be greatly appreciated.

Sincerely yours,  
  
John Canoles

Enc.

cc: Ms. Traies Roe; Price Enterprises, Inc.



DEPARTMENT OF THE ARMY  
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
P.O. BOX 1715  
BALTIMORE, MD 21203-1715

REPLY TO  
ATTENTION OF

AUG 6 1995

Operations Division

Subject: CENAB-OP-RW(Price Club-White Marsh/JD)95-68622-3

Mr. Valek Zarski  
G.W. Stephens, Jr., and Associates, Inc.  
658 Kenilworth Drive, Suite 100  
Towson, Maryland 21204

AUG 6 1995

RECEIVED  
JUL 27 1995

Dear Mr. Zarski:

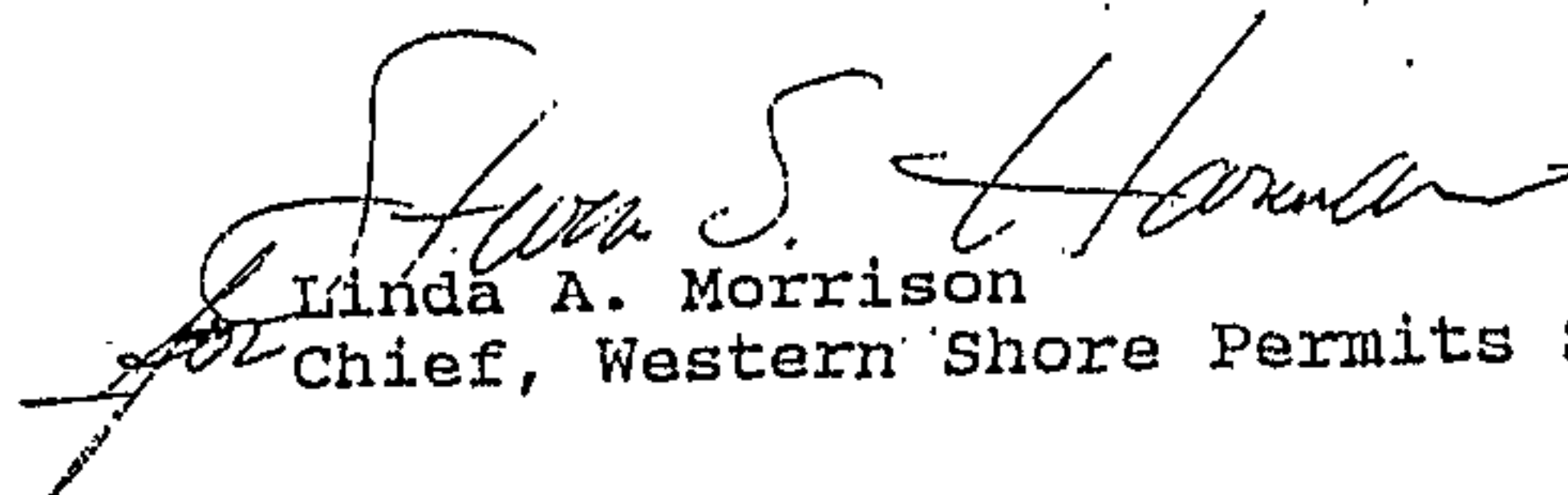
I am replying to your request dated July 14, 1995, for a jurisdictional determination and verification of the delineation of Waters of the United States, including jurisdictional wetlands, on your property in Baltimore County, Maryland.

A field inspection was conducted on August 2, 1995. This inspection indicated that the delineation of waters of the United States, including jurisdictional wetlands, on the Eco-Science Professionals, Inc., blueprint dated July 3, 1995, is accurate. This verification is valid for five years from the date of this letter unless new information warrants a revision before the expiration date.

You are reminded that any grading or filling of waters of the United States, including jurisdictional wetlands, is subject to Department of the Army authorization. In addition, the Interstate Land Sales Full Disclosure Act may require that prospective buyers be made aware, by the seller, of the Federal regulatory authority over any waters of the United States, including jurisdictional wetlands, being purchased.

If you have any questions concerning this matter, please call Mr. Steven Harman of this office at (410)962-4522.

Sincerely,

  
Linda A. Morrison  
Chief, Western Shore Permits Section

DRAINAGE AREA: \_\_\_\_\_

Price Club - Typical Transect

| CROSS SECTION:     |  | A     |       | B <sub>1</sub> |       |
|--------------------|--|-------|-------|----------------|-------|
| Subsection Factor: |  | Value | Score | Value          | Score |
| Slope              |  | <10   | 0     | <10            | 0     |
| Slope Length       |  | >200' | 10    | >200'          | 10    |
| SEI                |  | 2.32  | 10    | 2.32           | 10    |
| Cover              |  | bare  | 10    | good.          | 0     |
| Sediment Delivery  |  | adj   | 10    | 100            | 5     |
| Total Score        |  |       | 40    |                | 25    |

| CROSS SECTION:     |  | B <sub>2</sub> |       | C <sub>1</sub> |       |
|--------------------|--|----------------|-------|----------------|-------|
| Subsection Factor: |  | Value          | Score | Value          | Score |
| Slope              |  | 10-20          | 5     | <10            | 0     |
| Slope Length       |  | >200'          | 10    | >200'          | 10    |
| SEI                |  | 2.32           | 10    | 2.32           | 10    |
| Cover              |  | good           | 0     | good           | 0     |
| Sediment Delivery  |  | 100            | 5     | 300            | 0     |
| Total Score        |  |                | 30    |                | 20    |

| CROSS SECTION:     |  | C <sub>2</sub> |       |       |       |
|--------------------|--|----------------|-------|-------|-------|
| Subsection Factor: |  | Value          | Score | Value | Score |
| Slope              |  | 10-20          | 5     |       |       |
| Slope Length       |  | >200'          | 10    |       |       |
| SEI                |  | 2.32           | 10    |       |       |
| Cover              |  | good           | 0     |       |       |
| Sediment Delivery  |  | 300            | 0     |       |       |
| Total Score        |  |                | 25    |       |       |

PCD 1/11/13  
**WHITMAN, REQUARDT AND ASSOCIATES**

**Engineers and Planners**

Partners:

Thomas J. Shafer  
J. Richard Lortz  
John S. Maynes  
James A. Avirett, Jr.  
Edward A. Serp, III  
William A. DeLoache  
Joseph S. Makar

Senior Associates:

Charles W. Deakyne  
James O. Armacost, III  
Phillip Lee  
Thomas M. Smith  
Louis W. Klinefelter  
David B. McCormick

2315 Saint Paul Street  
Baltimore, Maryland 21218

(410) 235-3450

Fax: (410) 243-5716

Associates:

G. Stuart Menzies  
Richard J. Kane  
Earl L. Swartzendruber, Jr.  
William E. Bingley  
Thomas D. Rose, Jr.  
Herbert W. Low  
Luther E. Bathurst  
Thomas J. Hannan, Jr.  
John D. Emerson  
Gary B. Bush  
David P. Hernson

May 8, 1997

MAY - 9 1997

Mr. J. Rodney Little  
Maryland Historical Trust  
100 Community Place  
Crownsville, MD 21032

RE: Sleepy Hollow Woods  
Mobile Home Park BA CO

Dear Mr. Little:

Our firm is developing a site plan for a mobile home park in Baltimore County. Please review the enclosed preliminary site plan to verify that the proposed work will not adversely affect any historically significant remains. Please note this project will have temporary impacts within stream and wetland buffers where the proposed sewer crosses the tributary of Whitemarsh Run. The trench will be refilled to match existing grades and will be vegetatively stabilized to avoid soil runoff. Best management practices for working in non-tidal wetlands will be used as per COMAR 08.05.04.01 Section 10.

Should you require additional information during your review, please contact us at your convenience.

*M. Menzies*  
*Wes Daub*  
*(1A) 5-22-97*

Very truly yours,

WHITMAN, REQUARDT AND ASSOCIATES

*Wes Daub*

Wes Daub

WD/gap

Encl: Preliminary Site Plan and  
Vicinity Map

cc: James Avirett, Jr.  
File 12915

A review of MHT files and your submittal indicates that this project is unlikely to affect significant historic and archeological properties.

12915ALittle.#1

Baltimore, Maryland • Richmond, Virginia

Office of Preservation Services  
Maryland Historical Trust

Date

*James J. Cole* 6/23/97



Parris N. Glendening  
*Governor*

Maryland Department of Natural Resources  
Forest, Wildlife and Heritage Service  
Tawes State Office Building  
Annapolis, Maryland 21401

John R. Griffin  
*Secretary*

Carolyn D. Davis  
*Deputy Secretary*

April 18, 1997

Whitman, Requardt & Associates  
Attn: Mr. John Hollister  
2315 Saint Paul Street  
Baltimore, MD 21218

RE: Proposed Sleepy Hollow Woods Project, Baltimore County

Dear Mr. Hollister:

The Wildlife and Heritage Division has no records for Federal or State rare, threatened or endangered plants or animals within this project site. This statement should not be interpreted as meaning that no rare, threatened or endangered species are present. Such species could be present but have not been documented because an adequate survey has not been conducted or because survey results have not been reported to us.

Sincerely,

Michael E. Slattery  
Associate Director, Wildlife  
& Heritage Division

ER# 97.460.ba

# WHITMAN, REQUARDT AND ASSOCIATES

Engineers and Planners

Partners:

Thomas J. Shafer  
Richard Lortz  
John S. Maynes  
James A. Avirett, Jr.  
Edward A. Serp, III  
William A. DeLoache  
Joseph S. Makar

2315 Saint Paul Street  
Baltimore, Maryland 21218

(410) 235-3450

Fax: (410) 243-5716

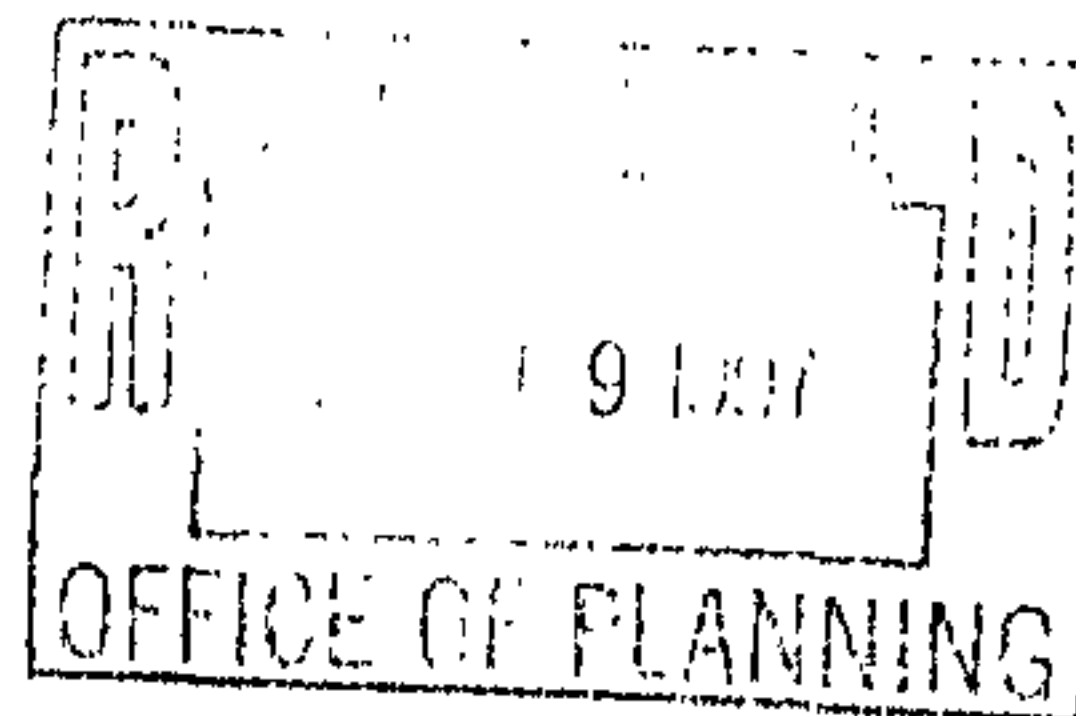
Associates:

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Thomas D. Rose, Jr.  
Herbert W. Law  
Luther E. Bathurst  
Thomas J. Hannan, Jr.  
John D. Emerson  
Gary B. Bush  
David P. Herson

Senior Associates:

Charles W. Deakyna  
James O. Armacost, III  
Phillip Lee  
Thomas M. Smith  
Louis W. Klinefelter  
David B. McCormick

February 17, 1997



Mr. John McGrain  
Baltimore County, Department of Planning  
County Court Building  
401 Bosley Ave.  
Towson, MD 21204

RE: Proposed Development for Sleepy Hollow  
Woods

Dear Mr McGrain:

I wish to follow up on our discussion of February 11, 1997 by confirming our finding that the proposed Sleepy Hollow Woods development site does not contain Archaeological or Historic sites.

At this time, we are developing a concept plan for this project. A preliminary site plan is enclosed for your reference. Please sign below for confirmation and return the letter to me (either by fax or mail). Thank you for your prompt assistance in this matter.

Very truly yours,

WHITMAN, REQUARDT AND ASSOCIATES

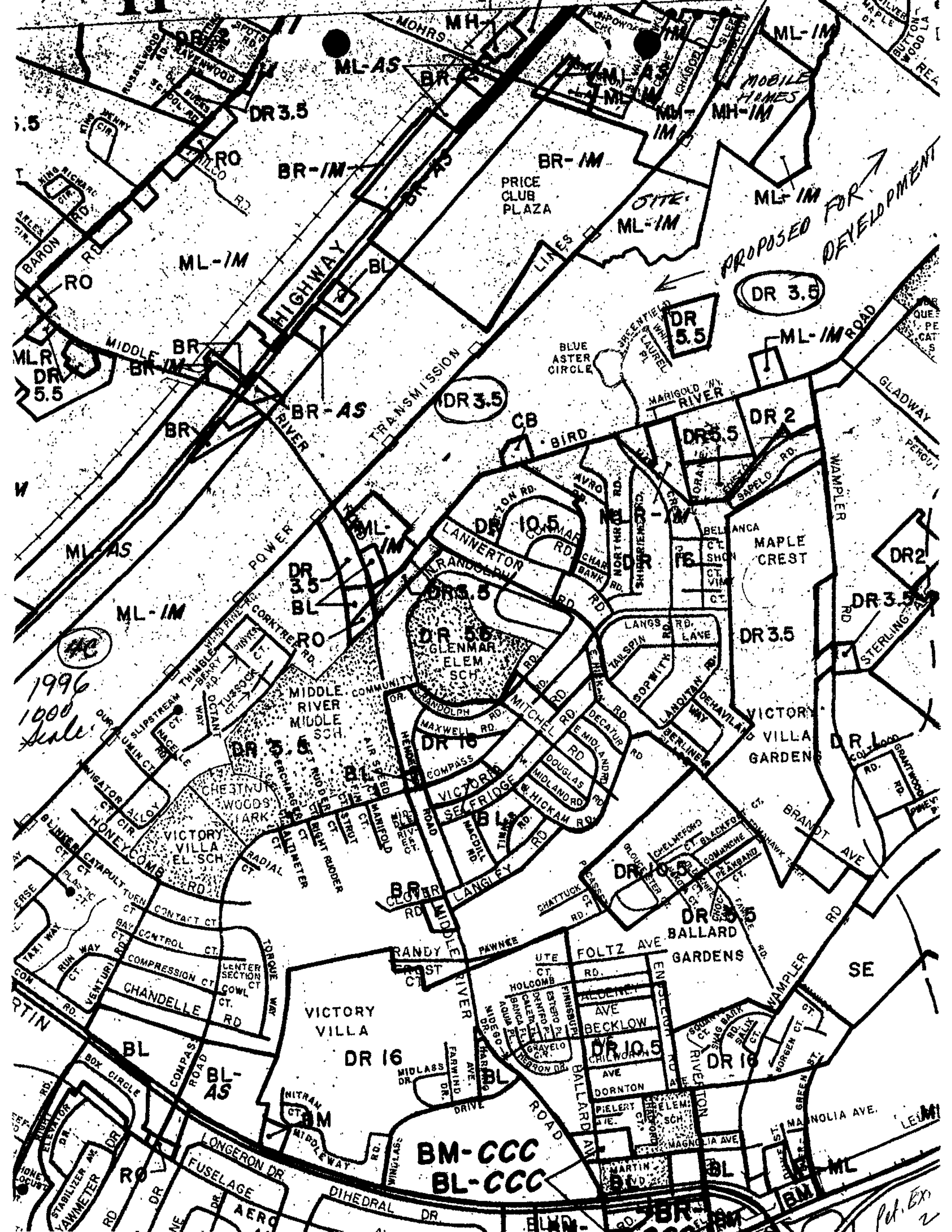
John Hollister

JH/jh

CONFIRMED:

cc: J. Avirett  
File 12915

12915/Shw-Arch.Con



● ● ● ● ●

No. R-83-60

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32

## O P I N I O N

from M.L.R. to M.L. for 134 acres of land located on the south side of Honeygo Blvd.  
east of Perry Hall Blvd. Case was heard this day in its entirety.

the physical aspects of the property. The entire site now zoned M.L.R. encompasses some 204 acres. The proposal is to rezone the center area containing some 134 acres to M.L. so that an industrial park could be developed upon it while the abutting 32 acres to the north would remain M.L.R. and 38 acres to the south would remain M.L.R. The adjoining property to the west is what is now known as "The White Marsh Mall", all zoned B.M. while the subject site is bounded on the east by Interstate I-95.

the developers of the White Marsh Town Center, which in turn is a part of the Baltimore County Master Plan, testified as to the need for the requested reclassification. His testimony basically indicated that the M.L.R. zoning was too restrictive to foster development, that money for M.L.R. land use was not readily available and that this present zoning encumbers the entire area and retards its development. He also testified that this parcel was not on the 1980 Comprehensive Maps, since the principal and overriding issue at that time was the necessary zoning for the mall and that M.L. zoning for this parcel was not a consideration before the County Council.

for the Petitioner. He entered as exhibit #6, a document published in November 1980, showing the majority of industrial land demand is in industrial parks and page 16 of this

exhibit indicates almost no land presently available in industrial parks. This study was completed and published after the 1980 Comprehensive Maps were adopted. Exhibits #7, #8, and #9 further supported this contention. He testified that as of January 1982 there were practically no sites available in already established industrial parks. He further testified that at the time of the 1980 map adoption, the County Council had no knowledge of these shortages and that it was his function to attract business and industry into Baltimore County and in order to so do, he needed M.L. industrial park land now and not in 1984 when the next maps are to be adopted.

Mr. George E. Gaverilis, a land planner, also testified in support of the requested zoning change. He testified that he saw no conflict in the proposed zoning with any nearby properties and no conflicts with the Master Plan. He noted that the present resistance to M.L.R. zoned land as to sales, the almost total lack of industrial park land available, the need for more manufacturing land uses to promote employment, the labor for which is now available in this area and cited all these as being change in the area since the 1980 maps and supporting the requested reclassification. This concluded Petitioner's case along with a memorandum which is part of the case file.

Mr. Paul Jarosinski, a nearby resident, testified in opposition to the petition. He noted the increased industrial uses provided for under M.L. zoning and feared these would detract from the value of his holdings. He also objected to the increase in traffic, especially heavy trucks, that the proposed use would generate. He also noted on the Baltimore County zoning maps the large amount of M.L. zoned land in this area already in existence and felt this provided ample M.L. zoned land for this area.

Mr. James Hoswell, Planner for Baltimore County, testified at length as to the history of the zoning on this site. The Board will not attempt to delineate this zoning history, but merely summarize by saying that through this process the entire town center known as White Marsh Town Center was zoned and is now well under development. No issue as to this alleged need for this M.L. zoning was before the Council in the 1980 map process and there was no discussion relative to the restrictive effects of M.L.R. zoning.

Nottingham Village, Inc.  
Case No. R-83-60

3.

It was his opinion that if M.L. land was needed it should have been proposed on the 1976 maps, or the 1980 maps, and that there was no error on the 1980 maps, since a reasonable land use has been provided by M.L.R. and that there has been no changes since 1980 to qualify this parcel for reclassification. This concluded the County's case.

The Board must now decide whether to grant the requested reclassification or retain the existing classification. Petitioner has presented a strong case for its granting. The Board is however aware that this parcel, while of substantial size, is only a small percentage of the area zoned for the entire White Marsh Town Center. When the County Council considers an entire town center in a zoning process, each parcel or each classification of an area must be considered in light of its relation to the entire town center. The Board must, however, only consider this one individual parcel. To assume that the apparently now present need for industrial park land that was not addressed during the 1980 map process by the property owner constitutes error by the County Council, does not seem proper. To classify this same need as change is likewise deemed not proper. It is the opinion of this Board that if this reclassification requested is proper, that it should be addressed comprehensively, so that its impact on the entire town center can be evaluated and will therefore deny the petition and will so order.

O R D E R

For the reasons set forth in the foregoing Opinion, it is this 15th day of February, 1983, by the County Board of Appeals, ORDERED that the Petition by Nottingham Village Inc., requesting the reclassification of 134 acres of its holdings from M.L.R. to M.L., be and the same is hereby DENIED.

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

Nottingham Village, Inc.  
Case No. R-83-60

4.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

*William T. Hackett*  
William T. Hackett, Chairman

*Joanne L. Sudler*  
Joanne L. Sudler

*Leroy B. Spurrer*  
Leroy B. Spurrer

IN THE MATTER OF  
THE APPLICATION OF  
NOTTINGHAM VILLAGE, INC.  
FOR REZONING FROM  
M.L.R. to M.L. ON PROPERTY  
LOCATED ON THE SOUTH SIDE OF  
HONEYGO BLVD., 750 FT.  
EAST FROM THE CENTER LINE  
OF PERRY HALL BLVD.  
14TH DISTRICT

\* IN THE CIRCUIT COURT  
\* FOR BALTIMORE COUNTY

MISCELLANEOUS

15/126/83-M-91

\*\*\*\*\*

OPINION  
AND  
ORDER

R. 83 60

This is an appeal from the decision of the County Board of Appeals of Baltimore County concerning the reclassification from M.L.R. to M.L. of 134 acres located on the south side of Honeygo Boulevard, east of Perry Hall Boulevard. The entire site of 204 acres is presently zoned M.L.R. The Petitioner's request is for 134 acres to be reclassified to M.L.

On July 13, 1983, counsel for the Petitioners and People's Counsel were heard in open court. After reading the transcript, memoranda, and examining the numerous exhibits and the applicable law, the Court finds that the Petitioner presented more than sufficient evidence to overcome the presumption of correctness which attaches to the comprehensive zoning map, and that there was substantial probative evidence that there was "error", and that the Petitioner established events occurring subsequent to the comprehensive zoning that proved the Council's initial premises were incorrect.

Therefore, it is this 13th day of July, 1983, by the Circuit Court for Baltimore County ORDERED that the decision of the County Board of Appeals of Baltimore County is REVERSED.

  
\_\_\_\_\_  
William R. Buchanan, Sr.  
JUDGE

FILED JUL 13 1983



UNREPORTED  
IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1010

September Term, 1983

---

PEOPLE'S COUNSEL FOR  
BALTIMORE COUNTY

v.

NOTTINGHAM VILLAGE, INC.

# R-83-60

---

Moylan  
Liss  
Bell,

JJ.

---

Per Curiam

---

Filed: February 10, 1984

*Recd. 2-13-84  
10:30 AM*

PER CURIAM:

In November of 1980, Baltimore County adopted its current zoning maps as part of its legislative quadrennial comprehensive rezoning process. The subject property here involved is owned by Nottingham Village, Inc., the appellee (hereinafter "Nottingham").

It is located in the White Marsh Town Center, comprising 134.41 acres sandwiched between the John F. Kennedy Memorial Highway (I-95) to the east and the recently developed White Marsh Mall, zoned B.M.-C.T. (Business, Major-Commercial, town-center core District). The petitioner is the principal property owner in the immediate neighborhood. The 134 acres designated for consideration form but a part of a larger vacant 200-acre tract zoned M.L.R. (Manufacturing Light, Restricted). The petitioner also owns the mall property and the residential property to the north and south (together approximately 930 acres), and property on the opposite side of I-95 (600 acres) zoned residential but currently under lease for strip mining of sand and gravel.

In 1971, Baltimore County inaugurated its countywide legislative comprehensive zoning process, which is repeated at four year intervals. The County Council at that time followed the recommendation of the Planning Board in classifying the subject property M.L.R. In 1976 and 1980, neither the petitioner nor the Planning Staff raised any specific question as to the appropriateness of that classification, and the M.L.R. zoning was retained.

The stated purpose of the M.L.R. zone is,

To permit grouping of high types of industrial plants in industrial subdivisions in locations with convenient access to expressways or other primary motorways so as to minimize the use of residential streets; to fill special locational needs of certain types of light industry; to permit planned dispersal of industrial employment centers so as to be conveniently and satisfactorily related to residential communities; and as traditional bands between residential or institutional areas and M.L. or M.H. Zones. [Baltimore County Zoning Regulations, Section 247].

In March of 1982, Nottingham petitioned the Board of Appeals of Baltimore County to reclassify the 134 acres here involved from M.L.R. to M.L.

The requested M.L. classification gives a wider choice of permitted uses, generally involving somewhat heavier manufacturing uses and providing for outdoor storage. Many of the uses in the two classifications, however, are identical. For example, so-called "high technology" industry, office buildings, and warehouses, are permitted in both M.L. and M.L.R.

The Planning Board of Baltimore County reviewed the property and recommended that the reclassification not be granted. A hearing was then held before the Board of Appeals during the course of which Nottingham presented witnesses in support of its contention that there had been error in the original zoning of the particular tract, that there had been substantial change in the conditions of the neighborhood and that blue-collar unemployment had increased substantially in the northeastern area of the county and public urgency demanded an immediate rezoning.

People's Counsel for Baltimore County, the appellant herein, presented witnesses who gave the Board of Appeals the history of the establishment of the M.L.R. zone by the County Council without objection from Nottingham. His witness concluded that there was no error in zoning and that the M.L.R. zone provided for a reasonable use of the property. It was called to the attention of the Board that Nottingham had made no effort to request a change to M.L. since 1972. The expert witness opined that the issue here raised should be considered by the County Council in the 1984 Comprehensive zoning map process, that legislative body being in a better position to consider the relationship between the several properties here involved.

In his opinion the zoning would be more orderly and effective if considered on the broad comprehensive basis rather than on a piecemeal basis. He finally denied there had been any error or change and pointed out that the town center concept had developed as originally contemplated by the County Council in the adoption of the comprehensive zoning maps.

The Board denied the petitioner's application for reclassification and gave the following reasons for their decision:

The Board must now decide whether to grant the requested reclassification or retain the existing classification. Petitioner has presented a strong case for its granting. The Board is however aware that this parcel, while of substantial size, is only a small percentage of the area zoned for the entire White Marsh Town Center. When the County Council considers an entire town center in a zoning process, each parcel or each classification of an area must be considered in light of its relation to the entire town center. The Board must, however, only consider this one individual parcel. To assume that the apparently now present need for industrial park land that was not addressed

during the 1980 map process by the property owner constitutes error by the County Council, does not seem proper. To classify this same need as change is likewise deemed not proper. It is the opinion of this Board that if this reclassification requested is proper, that it should be addressed comprehensively, so that its impact on the entire town center can be evaluated and will therefore deny the petition and will so order.

The petitioner appealed to the Circuit Court for Baltimore County and on July 13, 1983, the trial judge issued the following opinion and order, reversing the Board of Appeals:

This is an appeal from the decision of the County Board of Appeals of Baltimore County concerning the reclassification from M.L.R. to M.L. of 134 acres located on the south side of Honeygo Boulevard, east of Perry Hall Boulevard. The entire site of 204 acres is presently zoned M.L.R. The Petitioner's request is for 134 acres to be reclassified to M.L.

On July 13, 1983, counsel for the Petitioners and People's Counsel were heard in open court. After reading the transcript, memoranda, and examining the numerous exhibits and the applicable law, the Court finds that the Petitioner presented more than sufficient evidence to overcome the presumption of correctness which attaches to the comprehensive zoning map, and that there was substantial probative evidence that there was "error", and that the Petitioner established events occurring subsequent to the comprehensive zoning that proved the Council's initial premises were incorrect.

It is from that order that this appeal was filed. The issue to be decided by this appeal is whether the Circuit Court erred in reversing the decision of the County Board of Appeals refusing zoning reclassification of the property sought to be rezoned?

The scope of judicial review of an administrative decision in a reclassification case has been stated to be:

It is only where there is no room for reasonable debate or where the record is devoid of substantial, supporting facts that the courts are justified in reversing a decision of the Board, or declaring its actions arbitrary or capricious. [Citations omitted]. Jobar Corp. v. Rodgers Forge, 236 Md. 106, 120 (1964).

In Boyce v. Sembly, 25 Md. App. 43, 51-52 (1975), this Court discussed the presumption of validity accorded comprehensive zoning:

It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map, the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning. . . . [citation omitted] . . . . Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not "fairly debatable." [Footnote omitted].

Appellee offers as proof of the error in comprehensive zoning in 1980 the fact that the Council did not have available to it the subsequent studies made by the county which it contends established the need for land zoned M.L. in industrial parks in the northeast section of Baltimore County.

In the more recent case of Howard County v. Dorsey, 292 Md. 351, 356-57 (1982), the Court of Appeals, quoting Boyce v. Sembly, supra, discussed the evidence required to overcome the presumption of validity of comprehensive zoning:

A perusal of cases, particularly those in which a finding of error was upheld, indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council

at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension. [Citations omitted]. Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect. [Citations omitted].

We find it significant that neither the County Council nor the petitioner had any question that the M.L.R. zoning classification was appropriate at the time of comprehensive rezoning in 1980 and that petitioner apparently was satisfied with that zoning classification from 1972 through 1980, since it made no effort to have it reconsidered at the time of the general review of zoning. That the Council acted responsibly is evidenced by the fact that it authorized studies to address the general question of the need for land for industrial use. These studies will be available to the Council when it next considers comprehensive zoning in 1984. The procedure for comprehensive zoning map reviews in Baltimore County is unique because of the short period between reviews. The scheme permits the County Council to meet newly perceived trends every fourth year. The process conjoins and coordinates the Capital Budget, the Master Water and Sewer Plan, the State Highway Commission's annual construction projects and all other considerations necessary for the integration of a comprehensive general zoning plan rather than a piecemeal review of individual tracts. See Coppolino v. County Board of Appeals of Baltimore County, 23 Md. App. 358 (1974).

From our own independent review of the record in this case, we find no error in the County Council's adoption of the comprehensive zoning in 1980 as it affected the property here involved. Nor is there any evidence of a change in the character of the neighborhood. Conversely, we conclude that the White Marsh area has developed exactly as contemplated in the original comprehensive zoning and this development does not support a finding probative of a substantial change in the character of the neighborhood. See Prince George's Co. v. Prestwick, 263 Md. 217 (1971).

It is clear to us that the Board had before it sufficient evidence to make the question of reclassification of the property here considered "fairly debatable" and that in the light of that legislative situation the action of the trial judge in reversing the Board exceeded his proper scope of review and was arbitrary and capricious. We shall reverse the trial judge's order and affirm the Board.

ORDER OF CIRCUIT COURT REVERSED.

ORDER OF COUNTY BOARD OF APPEALS

AFFIRMED. COSTS TO BE PAID BY

APPELLEE.

IN THE MATTER OF  
THE APPLICATION OF  
HENRY M. WITMYER, ET UX /LEGAL  
OWNERS; AND AT&T WIRELESS  
SERVICES /LESSEE FOR SPECIAL  
EXCEPTION AND VARIANCE ON  
PROPERTY LOCATED ON THE NORTH-  
WEST END GREENWOOD PLACE, 525'  
NW OF OLD COURT ROAD, SW/S  
WESTERN MARYLAND RAILROAD  
(7 GREENWOOD PLACE)  
3RD ELECTION DISTRICT  
2ND COUNCILMANIC DISTRICT

\* BEFORE THE  
COUNTY BOARD OF APPEALS  
OF  
BALTIMORE COUNTY  
CASE NO. 97-556-XA

\* \* \* \* \*

### O P I N I O N

This matter comes before this Board pursuant to an appeal of the Zoning Commissioner's Order of August 8, 1996 granting a Petition for Special Exception and Variance to permit construction of a 170-foot tall transmission tower on the subject M.L. property. The need for special exception arises from a need to approve the erection of the transmission tower insofar as it cannot meet the 200-foot requisite setback from any residential boundary which would permit its use as a matter of right in M.L. under Section 426.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). Additionally, the variance is necessary in order to obtain relief from the rear lot setback requirements under Section 255.1 of the BCZR. The appeal was heard de novo.

Paul Dorf, Esquire, appeared on behalf of AT&T Wireless Services, Inc., the Contract Lessee, and the property owners, Henry M. and Helen A. Witmyer. Nancy E. Paige, Esquire, appeared on behalf of Pine Ridge Association, and Michael E. Marino, Esquire, appeared on behalf of Brittany Properties. Lastly, the Office of People's Counsel for Baltimore County was represented by Carole S.

Demilio, Esquire.

As a preliminary issue, the Petition is infirm for failure to comply with Appendix E, B.5.o of the BCZR. The surveyor, Anthony Vitti, conceded that he had failed to show the locations of all principal buildings within 200 feet of each joint side property line. While this Board tends to eschew technical defenses in favor of substance, the side yard setbacks are part and parcel of the actual merits of the case. Thus, the Petition cannot be granted. The Board will proceed, however, to analyze the case on its merits.

After reviewing the testimony, exhibits, file and memoranda, the Board makes the following findings of fact. Petitioner AT&T is a corporation engaged in the business of providing wireless and mobile communications. Petitioner, in the course of its business, investigated various sites, rejecting some as unsuitable and not proceeding with others for undisclosed reasons once it settled upon the subject site.

The subject property already is developed and has a business which operates from the site. Virtually the entire site already is improved either by the existing building or various impervious surfaces in part, by virtue of previous variances which essentially eliminated the 30-foot rear yard setback in 1964.

The subject site is zoned M.L., but requires special exception approval herein because the proposed setback of the tower from the nearest residential boundary is less than the 200 feet which would permit its construction as a matter of right. All parties concede that the tower is not violative of Section 502.1(c), (e) and (f).

The parties disputed whether or not evidence adequate to establish Section 502.1(a), (b), (d) and (g) were produced in satisfaction of the standard as espoused in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981).

Before addressing the special exception on the merits, this Board is constrained to deny its granting insofar as it is coupled with a variance request, and thus is violative as a matter of law of Umerley v. People's Counsel, 108 Md.App. 497, cert. denied 342 Md. 584 (1996). By definition, therefore, the Petitioner did not satisfy Section 502.1(g) insofar as the request for the special exception coupled with the variance is inconsistent with the spirit and intent of the zoning regulations. Accordingly, the special exception also must be denied under Section 502.1(g).

Turning to the variance request, Section 307.1 of the BCZR coupled with Cromwell v. Ward, 102 Md.App. 691, 651 A.2d 424 (1995) and its progeny set the standard for the granting of variances. Prior to assessing the variance itself, this Board must find both that the property itself is somehow unique and that an unreasonable hardship or practical difficulty arises as a result thereof. Moreover, the practical difficulty cannot be self-imposed. Satisfying that, parties then must go on to demonstrate that the variances are in strict harmony with the spirit and intent of the various regulations and do not result in damage to the public.

While Mitchell Kellman did testify to the uniqueness of the property by virtue of the fact that it was quite narrow and triangular and that previous variances were granted thereon, his

testimony with respect to the erection of the tower in question, however, was belied by his own admission that the tower could be located elsewhere on the property without requesting a variance.

Equally significant is the dearth of evidence of practical difficulty or unreasonable hardship. The property is fully developed and is being used for light manufacturing and thus does not present as a situation in which the owner has been precluded from using the property. More importantly, the evidence was that the need for the variance was entirely self-imposed. That is, the existence of the building and/or Mr. Witmyer's imposition of the requirement that the tower be located at the requested location artificially have created the need for the variance, and thus violate Cromwell's predisposition against self-inflicted hardships.

There being no satisfactory evidence of either uniqueness or practical difficulty and/or hardship, this Board need not consider the variance on its merits, but would nonetheless observe that the above findings also make clear that its granting would not be in strict harmony with the spirit and intent of the BCZR for the same reasons it does not satisfy Section 502.1(g).

In short, Petitioners cannot obtain a special exception that is coupled with a variance request insofar as it violates Umerley and Section 502.1(g) of the BCZR. Its plan also is flawed for failing to comply with Appendix E, B.5.0 of the BCZR. Finally, the variance must be denied for failure to show uniqueness as well as practical difficulty and/or unreasonable hardship, and because it is not in keeping with the spirit and intent of the BCZR.

O R D E R

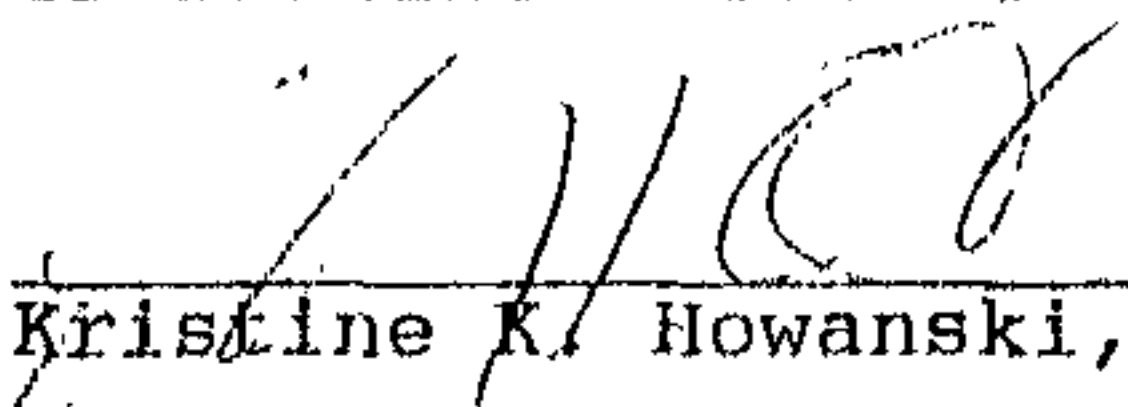
THEREFORE, IT IS THIS 24rd day of February, 1998 by the  
County Board of Appeals of Baltimore County

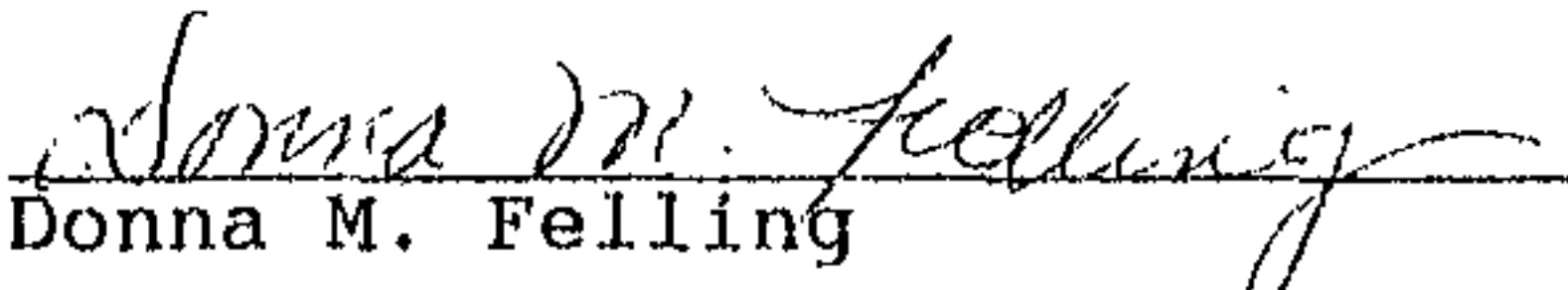
ORDERED that the Petition for Special Exception to permit a  
wireless transmitting and receiving facility not permitted by right  
under Section 426.1 of the Baltimore County Zoning Regulations  
(BCZR) in an M.L. zone be and the same is hereby DENIED, and it is  
further

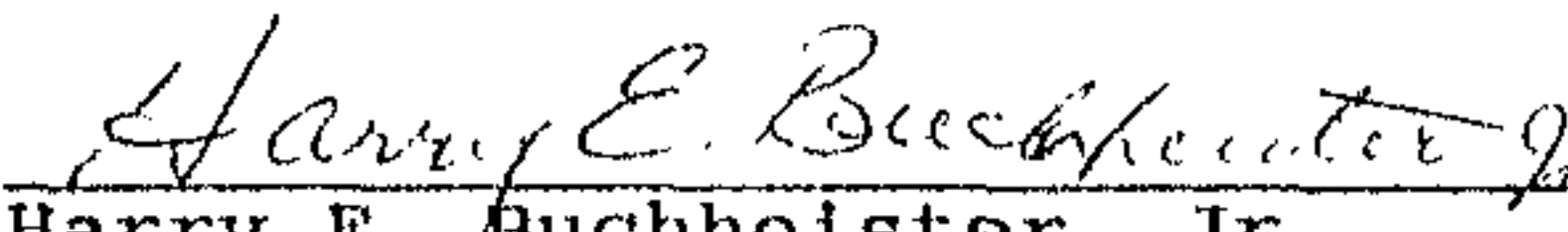
ORDERED that the Petition for Variance seeking relief from  
Section 255.1 of the BCZR to permit a principal structure as close  
as 3 feet to the rear lot line, rather than the required 30 feet be  
and is hereby DENIED.

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

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

  
Kristine K. Howanski, Chairman

  
Donna M. Felling

  
Harry E. Buchheister, Jr.

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 551

September Term, 1994

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GRETCHEN FLOYD, ET AL.

v.

WILLIAM ESTATES, ET AL.

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Bishop,  
Bloom,  
Davis,

JJ.

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PER CURIAM

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Filed: December 8, 1994

This is an appeal from a judgment in the Circuit Court for Baltimore County. Appellee Williams Management Services, Inc. manages a mobile home park owned by appellee Williams Estates. In 1992, appellees requested a variance from Baltimore County zoning regulations that govern the distance between mobile home units. The zoning commissioner granted the variance with regard to one section of the park, but denied it with regard to the remainder. Williams appealed the denial to the County Board of Appeals, which approved the variance for the remainder of the park by order dated July 16, 1993 and amended August 11, 1993. On February 14, 1984, the Circuit Court for Baltimore County affirmed the Board's orders.

Appellants present the following questions for our review, several of which we restate for clarity:

- I. Did the Board err by issuing an opinion that failed to contain findings of fact setting forth the reasons for the Board's decision?
- II. Did the Board err in finding that "special circumstances or conditions" existed?
- III. Did the Board err in finding that strict compliance with the zoning regulations would result in "practical difficulty"?
- IV. Did the Board err by granting a variance when the record fails to establish that the owner cannot fully use his property without the variance?
- IV. Did the Board err by granting a "blanket variance" that applied to all home sites at Williams Estates?
- V. Did the Board err by granting a variance that was not in "strict harmony" with the "spirit and intention" of the applicable zoning regulation?

## FACTS

Appellee Williams Estates owns a mobile home park bearing the same name. The park is situated on eighty-six acres in the northeast corner of Baltimore County. Appellee Williams Management Services, Inc. manages Williams Estates and two other mobile home parks in the same vicinity. The original section of Williams Estates was developed in 1970 and 1971, and presently includes approximately 393 home sites. A newer section containing 170 additional sites was added in the mid-1980's.

When the park was originally developed, the standard mobile home was a single-section trailer, which generally did not exceed fourteen-feet in width or seventy-feet in length. Although new single-section homes are still produced and sold, market demand for "manufactured housing" has shifted toward double-section (or "double-wide") homes, which are both wider (twenty-four to twenty-eight feet) and shorter than a traditional home. Most existing lots at Williams Estates are too narrow to accommodate a double-wide home without violating § 414.5 of the Baltimore County Zoning Regulations (B.C.Z.R.), which states that "there shall be a space of not less than 25 feet between each trailer."

In 1992, Williams petitioned for a variance that would allow a separation of twenty feet side-to-side and sixteen feet rear-to-

rear.<sup>1</sup> The requested variance would have applied to the entire park, with the exception of an unspecified number of lots located within the Chesapeake Bay Critical Area near Middle River. On November 2, 1992, the Deputy Zoning Commissioner granted the variance with regard to the newer section of the park, but denied it with regard to the older section. The Commissioner found that sites in the newer section are larger and provide better drainage, and he concluded that the newer lots could accommodate a double-wide home "without any detriment to the surrounding community" and without compounding a storm water drainage problem that exists in the older section. No appeal was taken from the order granting the variance for the newer section, and that order is now final.

The order denying the variance for the remainder of the park was appealed to the County Board of Appeals for Baltimore County, and the Board conducted a de novo hearing. William Poole, president of Williams Management, testified that the owners of single-section homes are removing them from the park in increasing numbers. He also stated that Williams has received an increasing number of inquiries about placing a double-wide home in the park. In his words, Williams is "trying to plan ahead to make sure that Williams Estates continues to be a viable investment for the owners and a viable community for our residents to live in for another 20, 25 years."

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<sup>1</sup> Because double-wide homes tend to be shorter, the requested rear-to-rear separation is not necessary to accommodate those homes. It appears that the rear-to-rear variance was intended to allow the placement of longer single-section homes on certain lots.

Nonetheless, there was also testimony that only five of the park's 557 sites are currently vacant (a vacancy rate of less than one percent), and that two of the vacant lots could accommodate a double-wide home without the requested variance. Mr. Poole also testified that there is still a "very large" market for new single-section homes, and as many as fifty percent of the sites in the older section of the park could accommodate a double-section home without the requested variance.

Mr. Poole's testimony was supplemented with the opinions of several experts, including a landscape architect and an industry trade official. Both testified that a separation of twenty feet was the norm in new communities, and opined that the requested variance would not have an adverse impact on the safety or appearance of Williams Estates. The trade official stated that mobile home communities that fail to adapt to the demand for double-wide home sites are likely to experience higher vacancy rates and a gradual decline in appearance, as home owners relocate elsewhere and renters move into older homes. Such parks, he concluded, would cease to be "viable" communities.

The requested variance was opposed by park residents, neighboring property owners, and the People's Counsel for Baltimore County. The owner of a neighboring drive-in theater testified that flooding caused by poor drainage at Williams Estates has shut down his theater on several occasions and caused extensive property damage. A park resident testified that some areas of the park remain flooded more than forty-eight hours after a heavy rain.

Park residents also expressed concerns about the loss of open space, and the possibility that a fire in one home would threaten neighboring homes. Notwithstanding the opposition, the Board granted the variance, subject to certain restrictions intended to ensure that the flooding problem does not become worse. The Board subsequently amended its order to provide for a separation of twenty feet rear-to-rear, rather than sixteen feet.<sup>2</sup> Appellants, who include park residents as well as an association of mobile home owners, took an appeal from the Board's decision to the Circuit Court for Baltimore County. The court affirmed, and appellants noted this appeal.

## LEGAL ANALYSIS

### I

As a general rule, review in both this Court and the circuit court is limited to determining whether the Board's decision is "in accordance with the law or whether it is arbitrary, illegal, and capricious." *Moseman v. County Council*, 99 Md. App. 258, 262 (1994). The court will not overturn the board's factual findings or its application of law to facts if the board's decision is supported by substantial evidence. *Mortimer v. Howard Research & Dev. Corp.*, 83 Md. App. 432, 441, cert. denied, 321 Md. 164 (1990). Substantial evidence means more than a scintilla of evidence,

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<sup>2</sup> On appeal, Williams had amended its petition to provide for twenty feet of space rear-to-rear, but the Board's original order mistakenly granted a variance for sixteen feet.

*Montgomery County v. Gr. Colesville Citizens' Ass'n*, 70 Md. App. 374, 382 (1987); such that a reasonable person could come to more than one conclusion. *Moseman*, 99 Md. App. at 262-63 (citing *Eger v. Stone*, 253 Md. 533, 542 (1969)). In such a situation, the issue is considered to be "fairly debatable," and the reviewing court will not substitute its judgment for that of the board. When reviewing issues of law, on the other hand, the reviewing court may reach its own conclusions without deference to the board's opinion. *Columbia Road Citizens' Ass'n v. Montgomery County*, 98 Md. App. 695, 698 (1994).

Several of the issues raised by appellants may be addressed in short order. Under § 307.1 of the Baltimore County Zoning Regulations, a variance may be granted only upon a showing that "practical difficulty or unreasonable hardship" would result from strict compliance with the ordinance. See *Red Roof Inns, Inc. v. People's Council*, 96 Md. App. 219, 224 (1993) (the language of the Baltimore County ordinance is disjunctive and a showing of either "practical difficulties" or "unreasonable hardships" will suffice); *McLean v. Soley*, 270 Md. 208, 214-15 (1973) (discussing the criteria for evaluating a claim that "practical difficulties" existed). Under the practical difficulties standard, the party seeking a variance need not show that full use of the property cannot be made unless the variance is granted. See *McLean*, 270 Md. at 214. As we explain more fully below, *McLean* requires only that the party seeking a variance show a substantial and unnecessary burden.

We likewise find no error in the Board's decision to grant a "blanket" variance covering most of the lots at Williams Estates. As Williams correctly points out, a trailer park is not analogous to a subdivision. Williams Estates is a single piece of property, for which a single variance has been granted. Assuming, *arguendo*, that a showing of "special circumstances" and "practical difficulties" has been made, those difficulties could be alleviated only by granting a broad variance covering some substantial portion of the park. It should be obvious that Williams can neither control nor predict where future vacancies may occur. The only alternative to the variance granted here would effectively require that Williams petition for a separate variance on each individual lot. We think that result to be both unnecessary and unreasonable.

Appellants also contend that the grant of a "blanket" variance is invalid because it crosses the boundary between "adjudication" and "legislation." We disagree. An ordinance authorizing variances presumes that they will be the exception, and that only a fraction of a particular zoning district will qualify. See 3 ROBERT M. ANDERSON, *AMERICAN LAW OF ZONING* § 20.74, at 604-07 (3d ed. 1986) (discussing variance requests with regard to large tracts of land). Although the record does not state the number of parks now operating in the county, there was testimony concerning two others. Assuming that special circumstances could be shown, we think it fair to conclude that the twenty-foot separation between trailers would remain the exception rather than the rule.

## II

Appellants stand on firmer ground when they contend that the Board's opinion failed to contain the necessary factual findings. In Baltimore County, an order granting a variance "shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance." B.C.Z.R. § 307.1. In their brief, appellants broadly contend:

A review of the [Board's] opinion and order of July 16, 1993, subsequently amended, establishes that the Board summarized the testimony of the witnesses that it believed key to the Petitioner's case. Appellants submit that the recitation of the witness' testimony cannot be viewed as the statement or findings of fact that are necessary for the Board to explain its decision. . . .

We disagree that the Board's opinion is devoid of factual findings. Where testimony containing statements of fact is quoted or paraphrased with approval, and is not contradicted by other statements in the Board's opinion, we think it fair to count those statements among the facts found by the Board.<sup>3</sup> See *Gray v. Anne Arundel County*, 73 Md. App. 301, 313-14 (1987) (reference to summary of testimony may suffice as statement of factual findings).

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<sup>3</sup> For example, the Board's opinion states:  
The property owner of the drive-in theater across Eastern Avenue, Edward Vogle, stated that Williams Estates has caused major flooding to his property. This flooding has shut down the drive-in theater on several occasions, and caused major property damage to the site.

The opinion does not discuss conflicting evidence. Although we would prefer that the Board label its findings more clearly, we think it obvious that the facts stated above were found by the Board.

See also *Mossberg v. Montgomery County*, 329 Md. 494, 507 (1993) (agency's statement of factual findings must be such that parties are appraised of the facts relied upon by the agency and meaningful judicial review is possible).

Nonetheless, appellants are correct when they state that the Board's factual findings are insufficient to support the Board's ultimate conclusion. Section 307.1 of the Baltimore County Zoning Regulations sets out four requirements that must be met before a variance can be granted. It must be shown that:

- 1) "special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request";
- 2) "strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship";
- 3) the requested variance is "in strict harmony with the spirit and intent" of the zoning regulations; and
- 4) the requested variance may be granted "without injury to the public health, safety, and general welfare."

The Board's conclusion with regard to each of those issues must be supported by detailed factual findings, *Ocean Hideaway Condo. v. Boardwalk Plaza*, 68 Md. App. 650, 659-60 (1986), and the party seeking a variance bears the burden of showing that each requirement for a variance is satisfied. *North v. St. Mary's County*, 99 Md. App. 502, 510 (1994); *Easter v. Mayor of Baltimore*, 195 Md. 395, 400 (1950). As the Court of Appeals explained in *Turner v. Hammond*, 270 Md. 41, 56 (1973), the Board's opinion must

contain something more than conclusory statements or mere boilerplate resolutions. *Accord Ocean Hideaway*, 68 Md. App. at 658-59; *Pistorio v. Zoning Board*, 268 Md. 558, 570 (1983).

The inadequacy of the Board's factual findings with regard to the first two requirements will be explained in greater detail below. With regard to the remaining requirements, the Board's opinion is entirely devoid of the required statement of reasons. The Board does not state that the requested variance is in keeping with the spirit and harmony of the zoning regulations, nor does it state that the variance can be granted without injury to the public health and welfare. At best, those conclusions may only be inferred from the Board's brief summary of the testimony.

The Board found that other Maryland counties permit a twenty-foot separation between trailers, and that new parks are designed with twenty feet between structures. Relying on testimony by Mr. Poole, the Board summarily concluded that Williams "need[s] the requested variances in order to keep the park as updated as possible and desirable to the public." From the testimony of the trade official, the Board noted that "[i]f older parks are not updated, developers may buy up units and turn them into rentals." Those findings and conclusions, taken together, do not add up to the findings of fact "setting forth and specifying the reason or reasons for granting the variance" that are required by B.C.Z.R. § 307.1. Moreover, the Board's opinion does not address the concerns raised by appellants, including the loss of open space and the increased danger of fire spreading from one structure to another.

The residents of the park "are entitled to more than the perfunctory disposition" that the Board made of this case. *Ocean Hideaway*, 68 Md. App. at 659-60.

Williams attempts to supplement the Board's meager and conclusory factual findings with numerous references to the record. The Board's decision must be supported on the facts that were found by the Board and stated in the Board's opinion. Where the Board's factual findings are inadequate, the necessary facts may not be supplied by the parties, and neither we nor the circuit court will glean the record in search of evidence to support the Board's conclusion. As we explained in *Ocean Hideaway*, 68 Md. App. at 661-662, appellee's attempt to delve into the record for specific facts to support the Board's conclusions only serves to support our holding that the necessary factual findings were not made by the Board. See also *United Steelworkers v. Bethlehem Steel*, 298 Md. 665, 679 (1984) (holding that a court may not uphold an agency order unless it is sustainable on the agency's factual findings, and for the reasons stated by the agency).

In the interests of sparing a further appeal, however, we may go beyond the Board's factual findings and review the record to determine whether the Board's ultimate conclusions were supported by substantial evidence. See *Ocean Hideaway*, 68 Md. App. at 662-63. Upon reviewing the record here in the light most favorable to Williams, we conclude that Williams has failed to meet its burden of proof. The record does not contain substantial evidence to support the conclusion that special circumstances existed, or that

practical difficulties would result from strict adherence to the zoning regulations. Accordingly, the judgment of the circuit court is reversed.

### III

Under § 307.1 of the Baltimore County Zoning Regulations, a finding of special circumstances must be supported by evidence that those circumstances are "peculiar to the land or structure" that is the subject of the variance request. A "peculiar" condition is one that is "uncommon," "unusual," or "distinguished in character or nature from others." THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (1967). As the Court of Appeals explained in *Easter*, 195 Md. at 400, the existence of special circumstances must be tested against "other property in the neighborhood." See also *North*, 99 Md. App. at 514 (property must have "an inherent characteristic not shared by other properties in the area"). In *Burns v. Mayor of Baltimore*, 251 Md. 554, 559 (1968), the owner of an apartment building complained of financial difficulties brought on by general economic conditions and a greater demand for one-bedroom as opposed to two-bedroom apartments. The Court concluded that:

These are also factors which present problems common to other rental properties in the neighborhood and are not sufficiently peculiar to the appellee's premises as to justify the relaxation of the ordinance. . . .

Compare *Frankel v. Mayor of Baltimore*, 223 Md. 97, 104 (1960) (irregular shape of lot and relationship of property to neighboring streets and structures were not common to other property in the area).

Although we have said that special circumstances must be tested against other properties in the area or "neighborhood," it would be more accurate to state that special circumstances must be tested against other properties which are subject to the same zoning restrictions. See *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 339-40 (1986). The reason should be obvious; if a variance could be granted without such a showing, the exceptions to a particular restriction would ultimately swallow the rule. In the context of this case, we conclude that the existence of special circumstances must be tested against other properties that are subject to the requirements contained in B.C.Z.R. § 414.5. In short, the "neighborhood" here consists of all mobile home parks in Baltimore County. In order to find that "special circumstances" existed, there must be evidence from which the Board could reasonably conclude that conditions at Williams Estates are unusual or uncommon among those parks. As a practical matter, Williams was required to demonstrate that the great majority of the parks in the county can accommodate double-wide homes without the need for a variance.

The Board's opinion is devoid of any reasoning as to how or why special circumstances existed in this case, and the Board made no factual findings that would support that conclusion. In their brief, Williams contends that the special circumstances here consist of limitations created by the park's original design. The necessary practical difficulties arise, they explain, from "the configuration of the park, the placement of the utilities, and the

layout of home sites," none of which can be easily adapted to current market demand for double-wide homes unless the variance is granted.

Although that may be true, there was no evidence to show that those limitations were in any way "uncommon" or "unusual." While there was testimony that the total number of parks in Baltimore County is relatively small, and that no parks were built in the county between 1970 and 1985, there was no testimony concerning present conditions at other parks, with the exception of brief testimony about the other two parks controlled by Williams Management.

We shall carry appellants' argument one step farther. There is not sufficient evidence from which the Board could have concluded that the conditions found at Williams Estates are uncommon among the three parks managed by Williams, much less among other parks in the county. According to Mr. Poole, Williams manages a park called Oakdale that was built in the 1940's and 1950's, when a "trailer" was genuinely a trailer and could be towed behind the family car. Poole testified that Oakdale was originally designed to accommodate trailers approximately eight-feet wide and twenty to twenty-five feet in length. We find nothing in the record concerning current conditions at Oakdale, and certainly no testimony that Oakdale could accept a double-wide home without the type of variance requested here.

#### IV

Williams has also failed to meet its burden of proof with regard to the practical difficulties requirement. An applicant seeking a variance from area restrictions in Baltimore County must show that "strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. . . ." B.C.Z.R. § 307.1. Courts have interpreted the "practical difficulty or unreasonable hardship" language to be disjunctive, and a showing of practical difficulty alone will be sufficient. *Red Roof Inns v. People's Counsel*, 96 Md. App. 219, 224-45 (1993); *Loyola S&L Ass'n v. Buschman*, 227 Md. 243, 250-51 (1961). Although the "practical difficulty" requirement may be satisfied by a lower standard of proof than "unreasonable hardship," *Red Roof Inns*, 96 Md. App. at 224-25, the precise limits of the rule have not been well-delineated.

A ruling by the Court of Appeals in *Carney v. City of Baltimore*, 201 Md. 130 (1952) provides a useful starting point. The issue in *Carney* was a special exception from certain setback requirements. The relevant ordinance provided that the exception could not be granted unless "there are practical difficulties or unreasonable hardships." *Carney*, 201 Md. at 136. The Court of Appeals concluded:

The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have

the tendency to cause discrimination and eventually destroy the usefulness of the ordinance.

*Id.* at 137. *Accord Pem Constr. Co. v. Mayor of Baltimore*, 233 Md. 372, 377 (1964). See also *McLean v. Soley*, 270 Md. 208, 212-13 (quoting *Carney* with approval). In *McLean*, the Court of Appeals adopted additional criteria for determining whether practical difficulty would result from strict compliance with the zoning ordinance. The applicant must also establish, *inter alia*, that strict compliance "would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *McLean*, 270 Md. at 214. When *McLean* and *Carney* are read together, it is clear that the party seeking a variance must show that conformity with the ordinance would impose a burden that is both substantial and unnecessary. A burden that is unnecessary but insubstantial is merely an inconvenience and will not justify a variance.

Under proper circumstances a financial burden may satisfy the practical difficulty requirement. See, e.g., *Loyola S&L Ass'n*, 227 Md. at 250 (subterranean water conditions required construction of narrow building on front half of site, and variance was necessary to construct a building sufficiently large to be economical); *Red Roof Inns*, 96 Md. App. at 226-27 (showing of competitive disadvantage may constitute practical difficulty). But see *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547, 555 (1965) (a lower return on investment does not constitute "unwarranted hardship and injustice"). The financial burden must nonetheless be

significant or substantial. *McLean*, 270 Md. at 212-13. The facts of *McLean* illustrate the minimum showing that will satisfy the practical difficulty requirement. There, the petitioner presented evidence that strict compliance with the zoning ordinance would result in the destruction of trees, and that preservation of existing trees had greatly contributed to full occupancy of a neighboring apartment building over a six-year period. There was also considerable evidence to show the natural beauty of the trees, their importance to the ecology, and the public benefit of preserving those trees. The Court of Appeals suggested that it would have reached a different conclusion on those facts, but conceded that the issue was "fairly debatable." *Id.* at 215-16.

Our conclusion that practical difficulties must be supported by a showing of some substantial burden is consistent with the decisions of other states, including those of New York, where the practical difficulty rule originated. See 3 ANDERSON § 20.50, at 527-31. The New York courts, for example, have generally held that a financial burden or loss does not constitute practical difficulties unless the loss is "significant" or "substantial." See, e.g., *Orchard Michael, Inc. v. Falcon*, 481 N.Y.S.2d 906, 907 (N.Y. App. Div.), *aff'd*, 484 N.E.2d 127 (N.Y. 1985) (holding that the goal of making a supermarket "more profitable and competitive" does not constitute the "significant economic injury" necessary to justify an area variance).

As the Court of Appeals stressed in *McLean*, it is not our task to substitute our judgment for that of the Board. 270 Md. at 215-

16. The zoning ordinance requires a showing that practical difficulties "would result" from strict compliance. B.C.Z.R. § 307.1 (emphasis added). In reviewing the Board's opinion, we observe that the Board's analysis of the issue is cursory at best. Citing testimony by Mr. Poole, the Board notes that Williams needs the requested variance "to keep the park as updated as possible and desirable to the public." Relying on the testimony of the trade official, the Board further notes that "older parks must be updated in order to survive," and that where older parks are not updated, "developers may buy up units and turn them into rentals." After quoting the full three-part test from McLean, the Board summarily concludes that Williams has met the burden of proof. We disagree. The Board's conclusory summary of assertions by three or four witnesses does not constitute the factual findings necessary to support the Board's conclusion. Moreover, McLean and Carney require that the party seeking a variance show some substantial burden or injury. The language of the ordinance requires that the injury must flow, with a fair degree of probability, from compliance with the zoning regulations. The evidence presented by Williams falls short of meeting those requirements.

Although the trade official may choose not to live in a park containing older rental units, that is merely his preference. The record is devoid of evidence to show that conversion of home sites from home ownership to rentals would be unprofitable or burdensome. The desire to keep the park updated and attractive is likewise merely a preference; it cannot support the requested variance

without a showing that the inability to do so would also result in some significant injury or competitive disadvantage to the property owner requesting the variance. The record contains no specific facts from which the Board could make such a finding.

Our conclusion is guided, in part, by *Mayor of Baltimore v. Borinsky*, 239 Md. 611 (1965). In that case, Sarah Borinsky sought approval to build an office and warehouse building on property located in a residential use district. In support of her petition, Borinsky offered the testimony of two experts. One, a registered architect, testified that the site was not feasible for residential construction due to the shape and depth of the lot. The other, a developer and real estate expert, testified that it would be economically unsound and unwise to build houses on it; in his words, the use of the land for residential purposes would be "economic suicide." 239 Md. at 619. In reversing the lower court's conclusion that an unconstitutional taking had occurred, the Court of Appeals declared that "even emphatic opinion testimony does not take the place of the necessary factual support." 239 Md. at 624. The Court noted that there was no specific evidence regarding the cost or marketability of the five row houses which could be constructed on the property, and concluded that Borinsky had failed to meet her burden of proof.

The same may be said for the evidence presented in this case. Expert opinion that outdated mobile home parks, in general, may cease to be a "viable" business at some unspecified date in the future does not constitute the factual support necessary to show

that a substantial burden "would result" if the variance is not granted. Compare *McLean*, 270 Md. at 210-11 (development of the lot without the variance would require the destruction of trees). The survival of Williams Estates will depend on whether the park remains competitive in relation to other parks in the same geographic market. By Mr. Poole's own testimony, Williams Estates may have as many as 366 sites which will accommodate a double-wide home without the requested variance.<sup>4</sup> Of the five vacant sites at Williams, two will accommodate a double-wide home. There was no evidence that any resident of Williams Estates has ever left the park because the site they already occupied could not accommodate a double-wide home, or that any prospective resident has been turned away for want of such a site. There was also no evidence that any vacancy at Williams Estates has ever been filled with a home inferior in quality and appearance to the home that previously occupied the lot.

We have already noted that Williams presented no evidence concerning conditions which may exist at other parks in the area. With regard to the issue of practical difficulty, there is no evidence that denial of the variance would place Williams at a competitive disadvantage in relation to other parks. There is no evidence, for example, regarding the total number of double-wide sites at other parks, or the total number of sites which may be

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<sup>4</sup> We calculate that number as follows: 170 sites for which a variance was previously granted, plus 50% of the remaining 393 sites. The number may be lower if some of those sites are located in the Critical Area.

vacant in the county at any given time. Compare *Red Roof Inns*, 96 Md. App. at 225. (motel seeking sign variance presented evidence that neighboring competitors enjoyed significantly higher and larger rooftop signs, and that Red Roof was ineligible for a State-sponsored highway sign program which benefitted competing motels). Williams contends that the variance is necessary to compete with parks in neighboring counties, where a twenty-foot separation between homes is permitted. That conclusion is also unsupported by the record. Whether parks in Howard or Harford counties can accommodate a double-wide home will depend on how those parks were designed. A park designed for single-section homes, with a twenty-foot separation between trailers, would have precisely the same problems that currently exist at William Estates.

As in *Borinsky*, the opinions of Mr. Poole and the expert witnesses regarding the viability of Williams Estates and the consequences of strict compliance with the ordinance are unsupported by specific factual evidence. In the absence of such evidence, the Board's conclusion that practical difficulties "would result" from the denial of the requested variance is arbitrary and unreasonable.

## V

In view of the expert testimony offered by Williams, the Board could have fairly concluded that a separation of twenty-five feet between trailers is unnecessary. That alone will not suffice to justify a variance, and we believe that the advice offered by the

Court of Appeals in *Marino v. Mayor of Baltimore*, 215 Md. 206 (1957), may be appropriate:

"\* \* \* where a claimed hardship is common to other properties in the area and not one special and peculiar to the specific property, the remedy is by change in the zoning ordinance itself."

*Id.* at 222-23 (quoting *Miller v. Silver*, 105 N.Y.S.2d 474 (1951)).

JUDGMENT REVERSED; CASE  
REMANDED TO THE CIRCUIT COURT  
FOR REMAND TO THE COUNTY BOARD  
OF APPEALS WITH DIRECTION THAT  
THE VARIANCE BE DENIED.

COSTS TO BE PAID BY APPELLEES.

from P.C.

Deeply Mellow Roads  
(P.C. closing)

*William Shakespeare*

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*The Tragedy of*  
**JULIUS CAESAR**

With New Dramatic Criticism  
and an Updated Bibliography

Edited by William and Barbara Rosen

*The Signet Classic Shakespeare*  
GENERAL EDITOR: SYLVAN BARNET



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Casca. O, he sits high in all the people's hearts;  
And that which would appear offense in us,  
His countenance,° like richest alchemy,°  
Will change to virtue and to worthiness.

Cassius. Him, and his worth, and our great need of him,  
You have right well conceited.° Let us go,  
For it is after midnight, and ere day  
We will awake him and be sure of him. *Exeunt.*

159 *countenance* support 159 *alchemy* (the "science" by which many  
experimenters tried to turn base metals into gold) 162 *conceited*  
(1) understood (2) described in an elaborate simile

## ACT II

## [Scene I. Rome.]

*Enter Brutus in his orchard.*°

Brutus. What, Lucius, ho!  
I cannot, by the progress of the stars,  
Give guess how near to day. Lucius, I say!  
I would it were my fault to sleep so soundly.  
When, Lucius, when? Awake, I say! What, Lucius!

*Enter Lucius.*

Lucius. Called you, my lord?

Brutus. Get me a taper° in my study, Lucius.  
When it is lighted, come and call me here.

Lucius. I will, my lord.

*Exit.*

Brutus. It must be by his death; and for my part,  
I know no personal cause to spurn at° him,  
But for the general.° He would be crowned.  
How that might change his nature, there's the ques-  
tion.

It is the bright day that brings forth the adder,  
And that craves° wary walking. Crown him that,  
And then I grant we put a sting in him

11 *orchard* garden 7 *taper* candle 11 *spurn at* rebel (literally  
"kick") against 12 *general* public welfare 15 *craves* demands

56

JULIUS CAESAR

II. I.

That at his will he may do danger<sup>o</sup> with.  
Th' abuse of greatness is when it disjoins  
Remorse<sup>o</sup> from power; and, to speak truth of Caesar,  
I have not known when his affections swayed<sup>o</sup>  
More than his reason. But 'tis a common proof<sup>o</sup>  
That lowliness<sup>o</sup> is young ambition's ladder,  
Whereto the climber upward turns his face;  
But when he once attains the upmost round,<sup>o</sup>  
He then unto the ladder turns his back,  
Looks in the clouds, scorning the base degrees<sup>o</sup>  
By which he did ascend. So Caesar may;  
Then lest he may, prevent<sup>o</sup>. And, since the quarrel<sup>o</sup>  
Will bear no color<sup>o</sup> for the thing he is,  
Fashion it<sup>o</sup> thus: that what he is, augmented,  
Would run to these and these extremities;<sup>o</sup>  
And therefore think him as a serpent's egg  
Which hatched, would as his kind<sup>o</sup> grow mischievous,  
And kill him in the shell.

Enter Lucius.

35 Lucius. The taper burneth in your closet<sup>o</sup>, sir.  
Searching the window for a flint, I found  
This paper thus sealed up, and I am sure  
It did not lie there when I went to bed.

3 Gives him the letter.

Brutus. Get you to bed again; it is not day.  
Is not tomorrow, boy, the ides of March?

Lucius. I know not, sir.

Brutus. Look in the calendar and bring me word.

Lucius. I will, sir.

Exit.

17 danger harm 18-19 disjoins/Remorse separates mercy 20 affec-  
tions swayed emotions ruled 21 common proof matter of common ex-  
perience 22 lowliness humility 24 round rung 26 base degrees  
(1) low steps of the ladder (2) less important grades of office (3) com-  
mon people 28 prevent take action to forestall 28 quarrel cause of  
complaint 29 bear no color have no excuse 30 Fashion it construct  
the case 31 these and these extremities such and such extremes (of  
tyranny) 33 as his kind according to its nature 35 closet  
study

II. I.

JULIUS CAESAR

57

Brutus. The exhalations<sup>o</sup> whizzing in the air  
Give so much light that I may read by them.

Opens the letter and reads.

"Brutus, thou sleep'st; awake, and see thyself.  
Shall Rome, &c.<sup>o</sup> Speak, strike, redress.  
Brutus, thou sleep'st; awake."

Such instigations have been often dropped  
Where I have took them up.

"Shall Rome, &c." Thus must I piece it out:<sup>o</sup>  
Shall Rome stand under one man's awe? What,  
Rome?

My ancestors did from the streets of Rome  
The Tarquin drive, when he was called a king.  
"Speak, strike, redress." Am I entreated  
To speak and strike? O Rome, I make thee promise,  
If the redress will follow, thou receivest  
Thy full petition at the hand of<sup>o</sup> Brutus!

Enter Lucius.

Lucius. Sir, March is wasted fifteen days. Knock within.

Brutus. 'Tis good. Go to the gate; somebody knocks.

[Exit Lucius.]

Since Cassius first did whet<sup>o</sup> me against Caesar,  
I have not slept.

Between the acting of a dreadful thing  
And the first motion,<sup>o</sup> all the interim is  
Like a phantasma,<sup>o</sup> or a hideous dream.  
The genius<sup>o</sup> and the mortal instruments<sup>o</sup>  
Are then in council, and the state of a man,  
Like to a little kingdom, suffers then  
The nature of an insurrection.<sup>o</sup>

44 exhalations meteors 47, 51 &c. (read "et cetera") 51 piece it out  
develop the meaning 52 under one man's awe in awe of one man  
53 Thy full . . . hand of all you ask from 61 whet incite 64 motion  
prompting 65 phantasma hallucination 66 genius guardian spirit  
(?) reasoning spirit (?) 66 mortal instruments the emotions and physi-  
cal powers (which should be ruled and guided by reason) 69 nature of  
an insurrection a kind of insurrection

To do I know not what; but it sufficeth  
That Brutus leads me on.

*Thunder.*

*Brutus.* Follow me, then. *Exeunt.*

[Scene II. Caesar's house.]

*Thunder and lightning. Enter Julius Caesar in his nightgown.*

*Caesar.* Nor heaven nor earth have been at peace  
tonight:

Thrice hath Calphurnia in her sleep cried out,  
"Help, ho! They murder Caesar!" Who's within?

*Enter a Servant.*

*Servant.* My lord?

*Caesar.* Go bid the priests do present<sup>5</sup> sacrifice,  
And bring me their opinions of success.

*Servant.* I will, my lord.

*Exit.*

*Enter Calphurnia.*

*Calphurnia.* What mean you, Caesar? Think you to walk  
forth?

You shall not stir out of your house today.

*Caesar.* Caesar shall forth. The things that threatened  
me  
Ne'er looked but on my back; when they shall see  
The face of Caesar, they are vanished.

*Calphurnia.* Caesar, I never stood on ceremonies,<sup>10</sup>  
Yet now they fright me. There is one within,  
Besides the things that we have heard and seen,  
Recounts most horrid sights seen by the watch.<sup>15</sup>

*Il. s. d. nightgown dressing gown 5 present immediate 6 opinions  
of success judgment as to the future course of events 13 stood on  
ceremonies paid attention to omens 16 watch nightwatchmen*

A lioness hath whelped in the streets,  
And graves have yawned, and yielded up their dead;  
Fierce fiery warriors fought upon the clouds  
In ranks and squadrons and right form<sup>20</sup> of war,  
Which drizzled blood upon the Capitol;  
The noise of battle hurtled<sup>25</sup> in the air,  
Horses did neigh and dying men did groan,  
And ghosts did shriek and squeal about the streets.  
O Caesar, these things are beyond all use,<sup>30</sup>  
And I do fear them.

*Caesar.*

What can be avoided  
Whose end is purposed by the mighty gods?  
Yet Caesar shall go forth; for these predictions  
Are to<sup>35</sup> the world in general as to Caesar.

*Calphurnia.* When beggars die, there are no comets seen;  
The heavens themselves blaze forth<sup>40</sup> the death of  
princes.

*Caesar.* Cowards die many times before their deaths;  
The valiant never taste of death but once.  
Of all the wonders that I yet have heard,  
It seems to me most strange that men should fear,  
Seeing that death, a necessary end,  
Will come when it will come.

*Enter a Servant.*

What say the augurers?  
*Servant.* They would not have you to stir forth today.  
Plucking the entrails of an offering forth,  
They could not find a heart within the beast.

*Caesar.* The gods do this in shame of cowardice:  
Caesar should<sup>45</sup> be a beast without a heart<sup>50</sup>  
If he should stay at home today for fear.  
No, Caesar shall not; Danger knows full well  
That Caesar is more dangerous than he.

*20 right form proper military formation 22 hurried clashed 25 use  
normal experience 29 Are to apply to 31 blaze forth i.e., proclaim  
(by comets and meteors) 42 should would 42 heart (the organ of  
courage)*

70

JULIUS CAESAR

II. ii.

We are two lions littered in one day,  
And I the elder and more terrible,  
And Caesar shall go forth.

*Calphurnia.*

Alas, my lord,

Your wisdom is consumed in confidence.

Do not go forth today. Call it my fear

That keeps you in the house and not your own.

We'll send Mark Antony to the Senate House,

And he shall say you are not well today.

Let me, upon my knee, prevail in this.

*Caesar.* Mark Antony shall say I am not well,  
And for thy humor, I will stay at home.

*Enter Decius.*

Here's Decius Brutus, he shall tell them so.

*Decius.* Caesar, all hail! Good morrow, worthy Caesar;  
I come to fetch<sup>49</sup> you to the Senate House.

*Caesar.* And you are come in very happy time<sup>50</sup>  
To bear my greeting to the senators,

And tell them that I will not come today.

Cannot, is false; and that I dare not, false:  
I will not come today. Tell them so, Decius.

*Calphurnia.* Say he is sick.

*Caesar.* Shall Caesar send a lie?

Have I in conquest stretched mine arm so far

To be afraid to tell graybeards the truth?

Decius, go tell them Caesar will not come.

*Decius.* Most mighty Caesar, let me know some cause,  
Lest I be laughed at when I tell them so.

*Caesar.* The cause is in my will: I will not come.  
That is enough to satisfy the Senate.

But for your private satisfaction,  
Because I love you, I will let you know.

*Calphurnia.* The cause is in my will: I will not come.  
That is enough to satisfy the Senate.

But for your private satisfaction,  
Because I love you, I will let you know.

*Caesar.* The cause is in my will: I will not come.  
That is enough to satisfy the Senate.

But for your private satisfaction,  
Because I love you, I will let you know.

<sup>49</sup> consumed in confidence destroyed by too much confidence <sup>56</sup> *has*  
<sup>59</sup> fetch escort <sup>60</sup> happy time favorable time (i.e., just at  
the right moment)

II. ii.

JULIUS CAESAR

71

Calphurnia here, my wife, stays<sup>75</sup> me at home.

She dreamt tonight<sup>76</sup> she saw my statue,<sup>77</sup>

Which, like a fountain with an hundred spouts,  
Did run pure blood, and many lusty Romans

Came smiling and did bathe their hands in it.

And these does she apply for<sup>78</sup> warnings and portents<sup>79</sup>

And evils imminent, and on her knee

Hath begged that I will stay at home today.

*Decius.* This dream is all amiss interpreted;  
It was a vision fair and fortunate:

Your statue spouting blood in many pipes,  
In which so many smiling Romans bathed,

Signifies that from you great Rome shall suck  
Reviving blood, and that great men shall press

For tinctures, stains, relics, and cognizance.<sup>80</sup>

This by Calphurnia's dream is signified.

*Caesar.* And this way have you well expounded it.

*Decius.* I have, when you have heard what I can say;  
And know it now, the Senate have concluded

To give this day a crown to mighty Caesar.

If you shall send them word you will not come,  
Their minds may change. Besides, it were a mock

Apt to be rendered<sup>81</sup> for someone to say  
"Break up the Senate till another time,

When Caesar's wife shall meet with better dreams."

If Caesar hide himself, shall they not whisper  
"Lo, Caesar is afraid?"

Pardon me, Caesar, for my dear dear love  
To your proceeding<sup>82</sup> bids me tell you this,

And reason to my love is liable.<sup>83</sup>

*Caesar.* And this way have you well expounded it.

*Decius.* I have, when you have heard what I can say;  
And know it now, the Senate have concluded

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"Lo, Caesar is afraid?"

Pardon me, Caesar, for my dear dear love  
To your proceeding<sup>82</sup> bids me tell you this,

<sup>75</sup> stays keeps <sup>76</sup> tonight i.e., last night <sup>76</sup> statue (trisyllabic; pronounced "stat-u-a") <sup>80</sup> apply for explain as <sup>80</sup> portents (accent on last syllable) <sup>89</sup> tinctures . . . cognizance (Samuel Johnson paraphrases the line: "The Romans, says Decius, all come to you, as to a shrine, for relics; as to a prince, for honors") <sup>89</sup> tinctures (1) alchemical of arms <sup>89</sup> relics venerated property of a martyr <sup>89</sup> cognizance mark of identification worn by a nobleman's followers <sup>96-97</sup> mock . . . <sup>104</sup> reason . . . liable i.e., my affection proves stronger than my judgment (of impropriety) in telling you this (liable = subordinate)

72

JULIUS CAESAR

II. ii.

105

Caesar. How foolish do your fears seem now,  
Calpurnia!  
I am ashamed I did yield to them.  
Give me my robe,° for I will go.

*Enter Brutus, Ligarius, Metellus [Cimber], Casca,  
Trebonius, Cinna, and Publius.*

And look where Publius is come to fetch me.

Publius. Good morrow, Caesar.

Caesar.

Welcome, Publius.

110

What, Brutus, are you stirred so early too?  
Good morrow, Casca. Caius Ligarius,  
Caesar was ne'er so much your enemy°  
As that same ague which hath made you lean.  
What is't o'clock?

Brutus.

Caesar, 'tis strucken eight.

115

Caesar. I thank you for your pains and courtesy.

*Enter Antony.*

See! Antony, that revels long a-nights,  
Is notwithstanding up. Good morrow, Antony.

Antony. So to most noble Caesar.

Caesar.

Bid them prepare° within.

120

I am to blame to be thus waited for.  
Now, Cinna: now, Metellus: what, Trebonius,  
I have an hour's talk in store for you;  
Remember that you call on me today;  
Be near me, that I may remember you.

Trebonius. Caesar, I will [*aside*] and so near will I be,

125

That your best friends shall wish I had been further.

Caesar. Good friends, go in and taste some wine with  
me,

107 *robe* toga 112 *enemy* (Ligarius had supported Pompey against  
Caesar in the Civil War and had recently been pardoned by Caesar)  
118 *prepare* i.e., set out the wine mentioned in line 126

II. iii.

JULIUS CAESAR

73

And we (like friends) will straightway go together.

Brutus. [*Aside*] That every like is not the same,° O Caesar,  
The heart of Brutus earns° to think upon. *Exeunt.*

[Scene III. A street near the Capitol, close to  
Brutus' house.]

*Enter Artemidorus [reading a paper].*

[*Artemidorus.*] "Caesar, beware of Brutus; take heed of  
Cassius: come not near Casca: have an eye to Cinna;  
trust not Trebonius; mark well Metellus Cimber;  
Decius Brutus loves thee not; thou hast wronged  
Caius Ligarius. There is but one mind in all these  
men, and it is bent° against Caesar. If thou beest not  
immortal, look about you: security gives way to  
conspiracy.° The mighty gods defend thee!

Thy lover,° ARTEMIDORUS."

10

Here will I stand till Caesar pass along,  
And as a suitor° will I give him this.  
My heart laments that virtue cannot live  
Out of the teeth of emulation.°  
If thou read this, O Caesar, thou mayest live;  
If not, the Fates with traitors do contrive.° *Exit.*

15

128 *That every like is not the same* i.e., what a pity that those who  
appear like friends may actually be enemies 129 *earns* grieves  
131 *bent* directed 7-8 *security* gives way to conspiracy overcon-  
fidence gives conspiracy its opportunity 9 *lover* devoted friend  
11 *as a suitor* like a petitioner 13 *Out of the teeth of emulation*  
beyond the reach of envious rivalry 15 *contrive* conspire

# ACT III

[Scene I. Rome. Before the Capitol.]

*Flourish. Enter Caesar, Brutus, Cassius, Casca, Decius, Metellus [Cimber], Trebonius, Cinna, Antony, Lepidus, Artemidorus, Publius, [Popilius], and the Soothsayer.*

Caesar. The ides of March are come.

Soothsayer. Ay, Caesar, but not gone.

Artemidorus. Hail, Caesar! Read this schedule.

Decius. Trebonius doth desire you to o'er-read, At your best leisure, this his humble suit.

Artemidorus. O Caesar, read mine first; for mine's a suit That touches Caesar nearer. Read it, great Caesar.

Caesar. What touches us ourself shall be last served.

Artemidorus. Delay not, Caesar; read it instantly.

Caesar. What, is the fellow mad?

Publius.

Sirrah, give place.

Cassius. What, urge you your petitions in the street? Come to the Capitol.

JULIUS CAESAR

[Caesar goes to the Capitol, the rest following.]

Cinna. I wish your enterprise today may thrive.

Cassius. What enterprise, Popilius?

Cinna.

Fare you well.

[Advances to Caesar.]

Cassius. What said Popilius Lena?

Cassius. He wished today our enterprise might thrive. Fear our purpose is discovered.

Cinna. Look how he makes to Caesar; mark him.

Cassius. Casca, be sudden, for we fear prevention.

Brutus, what shall be done? If this be known,

Cassius or Caesar never shall turn back.

For I will slay myself.

Cassius, be constant.

Popilius Lena speaks not of our purposes;

For look, he smiles, and Caesar doth not change.

Cassius. Trebonius knows his time; for look you, Brutus, He draws Mark Antony out of the way.

[Exeunt Antony and Trebonius.]

Decius. Where is Metellus Cimber? Let him go

And presently prefer his suit to Caesar.

Brutus. He is addressed. Press near and second him.

Cinna. Casca, you are the first that rears your hand.

Caesar. Are we all ready? What is now amiss

That Caesar and his Senate must redress?

Metellus. Most high, most mighty, and most puissant

Caesar,

Metellus Cimber throws before thy seat

An humble heart.

[Kneeling.]

18 makes to heads for 19 sudden swift 19 prevention being fore-  
stalled 21 turn back i.e., return alive 22 constant calm 24 change  
change his expression 28 presently prefer immediately present 29  
addressed ready 33 puissant powerful

III.3 schedule scroll 7 touches conceals 10 Sirrah, give place  
fellow, get out of the way

78

JULIUS CAESAR

III. 1

35

Caesar. I must prevent thee, Cimber.

These couchings<sup>o</sup> and these lowly courtesies<sup>o</sup>

Might fire the blood of ordinary men,

And turn preordnance and first decree<sup>o</sup>

Into the law of children. Be not fond<sup>o</sup>

To think that Caesar bears such rebel blood<sup>o</sup>

That will be thawed from the true quality<sup>o</sup>

With that<sup>o</sup> which melteth fools—I mean sweet words,

Low-crook'd curtsies, and base spaniel<sup>o</sup> fawning.

Thy brother by decree is banished.

If thou dost bend and pray and fawn for him,

I spurn thee like a cur out of my way.

Know, Caesar doth not wrong, nor without cause

Will he be satisfied.

50

Metellus. Is there no voice more worthy than my own,

To sound more sweetly in great Caesar's ear

For the repealing<sup>o</sup> of my banished brother?

Brutus. I kiss thy hand, but not in flattery, Caesar,

Desiring thee that Publius Cimber may

Have an immediate freedom of repeal<sup>o</sup>.

Caesar. What, Brutus?

55

Cassius.

Pardon, Caesar; Caesar, pardon!

As low as to thy foot doth Cassius fall

To beg enfranchisement<sup>o</sup> for Publius Cimber.

Caesar. I could be well moved, if I were as you;

If I could pray to move<sup>o</sup>, prayers would move me;

But I am constant as the Northern Star<sup>o</sup>,

Of whose true-fixed and resting<sup>o</sup> quality

60

36 couchings low bowings 36 lowly courtesies humble obeisances  
38 preordnance and first decree customs and laws established from antiquity  
39 fond so foolish as 40 bears such rebel blood has such uncontrolled emotions  
41 true quality proper quality (i.e., firmness)  
42 With that by those things 43 spaniel doglike, cringing 51 repeal  
54 freedom of repeal permission to be recalled from exile  
57 enfranchisement recall, freedom 59 pray to move i.e., beg others to change their minds  
60 constant as the Northern Star unchanging as the polestar  
61 resting changeless

III. 1

JULIUS CAESAR

79

There is no fellow<sup>o</sup> in the firmament.

The skies are painted with unnumb'd<sup>o</sup> sparks,

They are all fire and every one doth shine;

But there's but one in all doth hold<sup>o</sup> his place.

So in the world; 'tis furnished well with men,

And men are flesh and blood, and apprehensive<sup>o</sup>;

Yet in the number I do know but one

That unassailable holds on his rank<sup>o</sup>,

Unshak'd of motion;<sup>o</sup> and that I am he,

Let me a little show it, even in this—

That I was constant<sup>o</sup> Cimber should be banished,

And constant do remain to keep him so.

Cinna. O Caesar—

Caesar.

Hence! Wilt thou lift up Olympus?

Decius. Great Caesar—

Caesar.

Doth not Brutus bootless<sup>o</sup> kneel?

Casca. Speak hands for me!

They stab Caesar.

Caesar. Et tu, Brute? Then fall Caesar.

Dies.

Cinna. Liberty! Freedom! Tyranny is dead!

Run hence, proclaim, cry it about the streets.

Cassius. Some to the common pulpits,<sup>o</sup> and cry out

"Liberty, freedom, and enfranchisement!"

Brutus. People, and senators, be not affrighted.

Fly not; stand still; ambition's debt is paid.

Cinna. Go to the pulpit, Brutus.

Decius.

And Cassius too.

3 yellow equal 63 unnumb'd innumerable 65 hold keep 67 apprehensive capable of reason 69 holds on his rank maintains his position  
71 Unshak'd of motion i.e., unmoved by internal or external forces  
72 constant firmly determined 74 Olympus a mountain in Greece  
75 bootless in vain 77 Et tu, and you (too), Brutus 80 pulpits platforms for public speakers  
ambition's debt is paid ambition has received what was due to it

With all true faith. So says my master Antony.

*Brutus.* Thy master is a wise and valiant Roman;

I never thought him worse.

<sup>140</sup> Tell him, so<sup>o</sup> please him come unto this place,

He shall be satisfied and, by my honor,

Depart untouched.

*Servant.*

I'll fetch him presently.<sup>o</sup>

*Exit Servant.*

*Brutus.* I know that we shall have him well to friend.<sup>o</sup>

*Cassius.* I wish we may. But yet have I a mind

<sup>145</sup> That fears him much; and my misgiving still

Falls shrewdly to the purpose.<sup>o</sup>

*Enter Antony.*

*Brutus.* But here comes Antony. Welcome, Mark

Antony.

*Antony.* O mighty Caesar! Dost thou lie so low?

Are all thy conquests, glories, triumphs, spoils,

<sup>150</sup> Shrunk to this little measure? Fare thee well.

I know not, gentlemen, what you intend,

Who else must be let blood,<sup>o</sup> who else is rank.<sup>o</sup>

If I myself, there is no hour so fit

As Caesar's death's hour, nor no instrument

<sup>155</sup> Of half that worth as those your swords, made rich

With the most noble blood of all this world.

I do beseech ye, if you bear me hard,<sup>o</sup>

Now, whilst your purpled hands do reek and smoke,<sup>o</sup>

Fulfill your pleasure. Live<sup>o</sup> a thousand years,

<sup>160</sup> I shall not find myself so apt<sup>o</sup> to die;

<sup>140</sup> so if it should <sup>142</sup> presently immediately <sup>143</sup> well to friend as a  
good friend <sup>145-46</sup> misgiving . . . purpose my forebodings always  
turn out to be justified <sup>152</sup> let blood (1) bled, purged (common  
Elizabethan practice of drawing blood to cure those swollen with dis-  
ease) (2) put to death <sup>152</sup> rank (1) swollen with disease (2) over-  
grown, i.e., too powerful <sup>157</sup> bear me hard have a grudge against me  
<sup>158</sup> purpled (1) made scarlet (with blood) (2) made royal (?) <sup>158</sup> reek  
and smoke i.e., steam (with freshly shed warm blood) <sup>159</sup> Live  
though I live <sup>160</sup> apt prepared

No place will please me so, no mean<sup>o</sup> of death,

As here by Caesar, and by you cut off,

The choice and master spirits of this age.

*Brutus.* O Antony, beg not your death of us!

Though now we must appear bloody and cruel,

As by our hands and this our present act

You see we do, yet see you but our hands

And this the bleeding business they have done.

Our hearts you see not; they are pitiful;<sup>o</sup>

And pity to the general wrong of Rome—

As fire drives out fire, so pity pity<sup>o</sup>—

Hath done this deed on Caesar. For your part,

To you our swords have leaden<sup>o</sup> points, Mark An-  
tony:

Our arms in strength of malice, and our hearts

Of brothers' temper,<sup>o</sup> do receive you in

With all kind love, good thoughts, and reverence.

*Cassius.* Your voice<sup>o</sup> shall be as strong as any man's

In the disposing of new dignities.<sup>o</sup>

*Brutus.* Only be patient till we have appeased

The multitude, beside themselves with fear,

And then we will deliver<sup>o</sup> you the cause

Why I, that did love Caesar when I struck him,

Have thus proceeded.

*Antony.* I doubt not of your wisdom.

Let each man render me his bloody hand.

First, Marcus Brutus, will I shake with you;

Next, Caius Cassius, do I take your hand;

Now, Decius Brutus, yours; now yours, Metellus;

Yours, Cinna; and, my valiant Casca, yours;

Though last, not least in love, yours, good Trebonius.

Gentlemen all—alas, what shall I say?

My credit<sup>o</sup> now stands on such slippery ground

161 mean manner 169 pitiful full of pity 171 pity pity pity for  
Rome's subjection drove out pity for Caesar 173 leaden blunt 174-  
75 Our arms . . . temper our arms, strong with the might inspired by  
enmity, and our hearts, full of brotherly feeling 177 voice vote 178  
dignities offices 181 deliver communicate to 191 credit reputation

114

JULIUS CAESAR

IV. *in*

205

Do stand but in a forced affection;<sup>o</sup>  
For they have grudged us contribution.  
The enemy, marching along by them,  
By them shall make a fuller number up,  
Come on refreshed, new-added<sup>o</sup> and encouraged;  
From which advantage shall we cut him off  
If at Philippi we do face him there,  
These people at our back.

210

Cassius.

Hear me, good brother.

215

Brutus. Under your pardon.<sup>o</sup> You must note beside  
That we have tried the utmost of our friends,  
Our legions are brimful, our cause is ripe.  
The enemy increaseth every day;  
We, at the height, are ready to decline.  
There is a tide in the affairs of men  
Which, taken at the flood, leads on to fortune;  
Omitted,<sup>o</sup> all the voyage of their life  
Is bound in<sup>o</sup> shallows and in miseries.  
On such a full sea are we now afloat,  
And we must take the current when it serves,  
Or lose our ventures.<sup>o</sup>

220

Cassius.

Then, with your will,<sup>o</sup> go on;  
We'll along ourselves and meet them at Philippi.

225

Brutus. The deep of night is crept upon our talk,  
And nature must obey necessity,  
Which we will niggard with a little rest.<sup>o</sup>  
There is no more to say?

Cassius.

No more. Good night.  
Early tomorrow will we rise and hence.<sup>o</sup>

Enter Lucius.

204 Do... affection i.e., support us only under compulsion. 208 new  
added reinforced 212 Under your pardon excuse me 219 Omitted  
neglected 220 bound in limited to 223 ventures shipping trade, i.e.,  
risks 223 with your will as you wish 227 niggard with a little rest  
i.e., put off with the shortest possible sleep 229 hence leave this place

IV. *in*

JULIUS CAESAR

115

Brutus. Lucius, my gown.<sup>o</sup>

Exit Lucius.  
Farewell, good Messala.

230

Good night, Titinius. Noble, noble Cassius,  
Good night, and good repose.

Cassius.

O my dear brother,  
This was an ill beginning of the night.

Never come<sup>o</sup> such division 'tween our souls!  
Let it not, Brutus.

Enter Lucius, with the gown.

Brutus.

Everything is well.

235

Cassius. Good night, my lord.

Brutus.

Good night, good brother.

Titinius, Messala. Good night, Lord Brutus.

Brutus.

Farewell, every one.  
Exeunt.

Give me the gown. Where is thy instrument?<sup>o</sup>

Lucius. Here in the tent.

Brutus.

What, thou speak'st drowsily?  
Poor knave,<sup>o</sup> I blame thee not; thou art o'erwatched.<sup>o</sup>

240

Call Claudius and some other of my men;  
I'll have them sleep on cushions in my tent.

Lucius. Varro and Claudius!

Enter Varro and Claudius.

Varro. Calls my lord?

Brutus. I pray you, sirs, lie in my tent and sleep.

245

It may be I shall raise<sup>o</sup> you by and by  
On business to my brother Cassius.

Varro. So please you, we will stand and watch your  
pleasure.<sup>o</sup>

230 gown dressing gown 234 Never come may there never again come  
238 instrument (probably a lute) 240 knave boy 240 o'erwatched  
tired out from lack of sleep 246 raise rouse 248 watch your  
pleasure be on the watch for your command

124

JULIUS CAESAR

V. II.

Cassius.

Then, if we lose this battle,  
You are contented to be led in triumph<sup>o</sup>  
Through the streets of Rome?

110

*Brutus.* No, Cassius, no; think not, thou noble Roman,  
That ever Brutus will go bound to Rome;

He bears too great a mind. But this same day  
Must end that work the ides of March begun;  
And whether we shall meet again I know not.  
Therefore our everlasting farewell take.

115

Forever, and forever, farewell, Cassius!  
If we do meet again, why, we shall smile;  
If not, why then this parting was well made.

120

*Cassius.* Forever, and forever, farewell, Brutus!  
If we do meet again, we'll smile indeed;  
If not, 'tis true this parting was well made.

125

*Brutus.* Why then, lead on. O, that a man might know  
The end of this day's business ere it come!  
But it sufficeth that the day will end,  
And then the end is known. Come, ho! Away! *Exeunt.*

[Scene II. The field of battle.]

*Alarum.*<sup>o</sup> Enter Brutus and Messala.

*Brutus.* Ride, ride, Messala, ride, and give these bills<sup>o</sup>  
Unto the legions on the other side.<sup>o</sup> *Loud alarum.*  
Let them set on at once; for I perceive  
But cold demeanor<sup>o</sup> in Octavius' wing,  
And sudden push<sup>o</sup> gives them the overthrow.  
Ride, ride, Messala! Let them all come down. *Exeunt.*

5

108 *in triumph* (as a captive) in the victor's procession V. II. 1 s. d. *Alarum*  
call to arms (drums or trumpets) 1 bills written orders 2 side wing  
(commanded by Cassius) 4 But cold demeanor marked lack of spirit  
in fighting 5 push attack

V. III.

JULIUS CAESAR

125

[Scene III. The field of battle.]

*Alarums.* Enter Cassius and Titinius.

*Cassius.* O, look, Titinius, look, the villains<sup>o</sup> fly!  
Myself have to mine own<sup>o</sup> turned enemy.  
This ensign<sup>o</sup> here of mine was turning back;  
I slew the coward, and did take it<sup>o</sup> from him.

*Titinius.* O Cassius, Brutus gave the word too early,  
Who, having some advantage on Octavius,  
Took it too eagerly; his soldiers fell to spoil,<sup>o</sup>  
Whilst we by Antony are all enclosed.

Enter Pindarus.

*Pindarus.* Fly further off, my lord, fly further off!  
Mark Antony is in your tents, my lord.  
Fly, therefore, noble Cassius, fly far<sup>o</sup> off!

*Cassius.* This hill is far enough. Look, look, Titinius!  
Are those my tents where I perceive the fire?

*Titinius.* They are, my lord.

*Cassius.* Titinius, if thou lovest me,  
Mount thou my horse and hide thy spurs in him  
Till he have brought thee up to yonder troops  
And here again, that I may rest assured  
Whether yond troops are friend or enemy.

*Titinius.* I will be here again even with a thought.<sup>o</sup>

*Exi.*

*Cassius.* Go, Pindarus, get higher on that hill;

V. III. 1 villains i.e., cowardly soldiers of his own side 2 mine own my  
own men 3 ensign standard-bearer 4 it i.e., the standard 7 spoil  
looting 11 far farther 19 even with a thought as quickly as thought

My sight was ever thick.° Regard Titinius,  
And tell me what thou not'st about the field.

[Exit Pindarus.]

This day I breathed first. Time is come round,  
And where I did begin, there shall I end.  
My life is run his compass.° Sirrah, what news?

Pindarus. (Above)° O my lord!

Cassius. What news?

Pindarus. [Above] Titinius is enclosed round about  
With horsemen that make to him on the spur.°  
Yet he spurs on. Now they are almost on him.  
Now, Titinius! Now some light.° O, he lights too!  
He's ta'en!° (Shout.) And, hark! They shout for joy.

Cassius. Come down; behold no more.

O, coward that I am, to live so long,  
To see my best friend ta'en before my face!

Enter Pindarus.

Come hither, sirrah.

In Parthia did I take thee prisoner;  
And then I swore thee, saving of thy life,  
That whatsoever I did bid thee do,  
Thou shouldst attempt it. Come now, keep thine oath.  
Now be a freeman, and with this good sword,  
That ran through Caesar's bowels, search° this bosom.  
Stand° not to answer. Here, take thou the hilts,  
And when my face is covered, as 'tis now,  
Guide thou the sword—Caesar, thou art revenged,  
Even with the sword that killed thee. [Dies.]

Pindarus. So, I am free; yet would not so have been,  
Durst I have done my will. O Cassius!  
Far from this country Pindarus shall run,  
Where never Roman shall take note of him. [Exit.]

21 My . . . thick I have always been nearsighted 25 is run his compass  
has completed its circuit 26 s.d. Above on the upper stage 29 make  
... spur ride toward him at top speed 31 light dismount 32 ta'en  
taken, captured 38 swore . . . of made you swear, when I spared  
42 search penetrate 43 Stand delay

Enter Titinius and Messala.

Messala. It is but change,° Titinius; for Octavius  
Is overthrown by noble Brutus' power,  
As Cassius' legions are by Antony.

Titinius. These tidings will well comfort Cassius.

Messala. Where did you leave him?

Titinius.

With Pindarus his bondman, on this hill. All disconsolate,

Messala. Is not that he that lies upon the ground?

Titinius. He lies not like the living. O my heart!

Messala. Is not that he?

Titinius.

No, this was he, Messala,  
But Cassius is no more. O setting sun,  
As in thy red rays thou dost sink to night,  
So in his red blood Cassius' day is set.  
The sun of Rome is set. Our day is gone;  
Clouds, dews,° and dangers come; our deeds are done!  
Mistrust of° my success hath done this deed.

Messala. Mistrust of good success hath done this deed.  
O hateful Error, Melancholy's child,°  
Why dost thou show to the apt° thoughts of men  
The things that are not? O Error, soon conceived,  
Thou never com'st unto a happy birth,  
But kill'st the mother° that engend'ed thee!

Titinius. What, Pindarus! Where art thou, Pindarus?  
Messala. Seek him, Titinius, whilst I go to meet  
The noble Brutus, thrusting this report  
Into his ears. I may say "thrusting" it;

51 change exchange (of fortune) 64 dews (considered unwholesome)  
65 mistrust of lack of confidence in 67 Melancholy's child (i.e., those  
of despondent temperament are liable to be introspective and full of  
imaginary fears) 68 apt easily impressed 71 mother i.e., the melan-  
choly person, Cassius, who conceived the error

15 *Brutus*. Come hither, good *Volumnius*; list<sup>o</sup> a word  
*Volumnius*. What says my lord?

*Brutus*.

Why, this, *Volumnius*:  
 The ghost of Caesar hath appeared to me  
 Two several<sup>o</sup> times by night; at Sardis once,  
 And this last night here in Philippi fields.  
 I know my hour is come.

20 *Volumnius*.

Not so, my lord.

*Brutus*. Nay, I am sure it is, *Volumnius*.  
 Thou seest the world, *Volumnius*, how it goes;  
 Our enemies have beat us to the pit.<sup>o</sup> *Low alarm*  
 It is more worthy to leap in ourselves  
 Than tarry till they push us. Good *Volumnius*,  
 Thou know'st that we two went to school together;  
 Even for that our love of old, I prithee  
 Hold thou my sword-hilts whilst I run on it.

*Volumnius*. That's not an office for a friend, my lord.

*Alarm still.*

30 *Cicilius*. Fly, fly, my lord, there is no tarrying here.

*Brutus*. Farewell to you; and you; and you, *Volumnius*.  
 Strato, thou hast been all this while asleep;  
 Farewell to thee too, Strato. Countrymen,  
 My heart doth joy that yet in all my life  
 I found no man but he was true to me.  
 I shall have glory by this losing day  
 More than Octavius and Mark Antony  
 By this vile conquest<sup>o</sup> shall attain unto.  
 So fare you well at once,<sup>o</sup> for *Brutus'* tongue  
 Hath almost ended his life's history.  
 Night hangs upon mine eyes; my bones would rest,

That have but labored to attain this hour.<sup>o</sup>  
*Alarm. Cry within, "Fly, fly, fly!"*

*Cicilius*. Fly, my lord, fly!

*Brutus*.

Hence! I will follow.

[*Exeunt Cicilius, Dardanius, and Volumnius.*]

I prithee, Strato, stay thou by thy lord,  
 Thou art a fellow of a good respect.<sup>o</sup>  
 Thy life hath had some snatch<sup>o</sup> of honor in it;  
 Hold then my sword, and turn away thy face,  
 While I do run upon it. Wilt thou, Strato?

Strato. Give me your hand first. Fare you well, my lord.

*Brutus*. Farewell, good Strato—Caesar, now be still;  
 I killed not thee with half so good a will. *Dies.*

*Alarm. Retreat. Enter Antony, Octavius, Messala,  
 Lucilius, and the Army.*

*Octavius*. What man is that?

*Messala*. My master's man.<sup>o</sup> Strato, where is thy master?

Strato. Free from the bondage you are in, *Messala*;  
 The conquerors can but make a fire of him.  
 For *Brutus* only overcame himself.<sup>o</sup>  
 And no man else hath honor by his death.

*Lucilius*. So *Brutus* should be found. I thank thee,

*Brutus*,

That thou hast proved *Lucilius'* saying<sup>o</sup> true.

*Octavius*. All that served *Brutus*, I will entertain<sup>o</sup> them.

Fellow, wilt thou bestow<sup>o</sup> thy time with me?

Strato. Ay, if *Messala* will prefer<sup>o</sup> me to you.

*Octavius*. Do so, good *Messala*.

15 list hear 18 several separate 23 pit (1) trap for capturing wild  
 animals (2) grave 29 s.d. still continuing 38 vile conquest i.e., over-  
 throw of the revolution against tyranny 39 at once without further  
 delay

42 but . . . hour i.e., worked hard only to reach this goal of death  
 (which brings, for a Stoic, rest from life's trials) 45 respect reputation  
 46 snatch smack, taste 53 man servant 56 Brutus only overcame  
 himself only Brutus overcame Brutus 59 saying (see V.iv.21-25)  
 60 entertain take into service 61 bestow spend 62 prefer recommend

*Messala*. How died my master, Strato?

65 *Strato*. I held the sword, and he did run on it.

*Messala*. Octavius, then take him to follow thee,  
That did the latest<sup>67</sup> service to my master.

*Antony*. This was the noblest Roman of them all.

70

All the conspirators save only he

Did that they did in envy of great Caesar;

He, only in a general honest thought

And common good to all, made one of them.<sup>68</sup>

His life was gentle,<sup>69</sup> and the elements<sup>70</sup>

So mixed<sup>71</sup> in him that Nature might stand up

And say to all the world, "This was a man!"

75

*Octavius*. According to his virtue,<sup>72</sup> let us use<sup>73</sup> him  
With all respect and rites of burial.

Within my tent his bones tonight shall lie,

Most like a soldier ordered honorably.<sup>74</sup>

So call the field<sup>75</sup> to rest, and let's away

To part<sup>76</sup> the glories of this happy day. *Exeunt omnes*.

80

# FINIS

67 *latest* last 71-72 *He only* . . . *them* he, moved only by impersonal motives directed to the good of the community, joined the conspirators 73 *gentle* noble 73 *elements* (the four opposed elements, of which all nature was thought to be composed, were represented in the human body by the four liquids, bile, phlegm, blood, and choler; the dominance of one of these determined a man's temperament—melancholic, phlegmatic, sanguine, or choleric) 74 *So mixed* i.e., so well-balanced 76 *virtue* excellence 76 *use* treat 79 *ordered* *honorably* arrayed (and treated) with all honor 80 *field* army 81 *part* divide

## Textual Note

The First Folio of 1623 provides us with the text for *Julius Caesar*; there are no early quarto editions. In setting this play for the press, the printer's compositors probably worked from the playhouse promptbook, for the Folio text contains remarkably few misprints, serious errors in punctuation, or misattribution of speeches. The stage directions, unusually numerous and detailed, also suggest a stage manager's prompt copy; stage directions like "Alarm still" and "Enter Boy with wine and tapers" are obviously closely connected with actual performance.

In the present edition, the names of characters have been normalized so that *Murellus* appears for the Folio *Murellus* (and *Murellus*), *Caska* for *Caska*, *Lucilius* for *Lucilius*. Occasionally the Folio uses the forms "Antonio" (I.ii.3, 4, 6, 190; I.iii.37), "Claudio" (IV.iii.241, 243, 243 s.d., 288), "Flavio," "Labio" (V.iii.108), "Octavio" (III.i.275 s.d., V.ii.4), "Varrus" (IV.iii.243, 243 s.d., 288); these are standardized, appearing as *Antony*, *Claudius*, *Flavius*, *Labea*, *Octavius*, and *Varro*. The present edition modernizes spelling and punctuation, corrects a few obvious misprints, translates the act divisions from Latin into English, expands the speech prefixes, and alters the lineation of a few passages. The only other substantial departures from the Folio are listed below, the present reading in italics and then the Folio's reading in roman.

I.iii.129 *In favor's* Is Favours

II.i.40. *ides* first 213 *eight* eight

# THE OXFORD DICTIONARY OF ENGLISH ETYMOLOGY

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## ERICACEOUS

**ericaceous** erikei'fəs (bot.) pert. to the family Ericaceae (heaths). XIX. modL., f. L. *erice* - Gr. *erikē* (earlier *erikē*) heath; see -ACEOUS.

**eristic** eri'stik controversial. XVII. - Gr. *eristikós*, f. *erizein* wrangle, f. *erid-*, *éris* strife; see -IC.

**eri-king** ɛrɪ'kɪŋ goblin haunting the Black Forest. XVIII (Scott). Partial tr. of G. *erlkönig* 'elder-king' (first in Herder's 'Stimmen der Völker in Liedern', 1778), misunderstanding of Da. *elle(r)konge* (for *elpe(r)konge*) king of elves (see ELF, KING).

**ermine** ɛr'mɪn stoat XII; fur of this, often having the black tails arrayed upon it XIII; (her.) white with black spots XV. - OF. (*h*)ermine (mod. *hermine*) = Pr. *ermīni*, Sp. *armiño*, Pg. *arminho*, prob. :- medL. (*mūs*) *Armenius* 'Armenian mouse', equiv. to L. *mūs Ponticus* (Pliny) 'mouse of Pontus' (Armenia and Pontus were conterminous); cf. medGr. *muōtós* (f. *mūs* mouse) name of an Armenian garment (Julius Pollux, c. 180 A.D.). But contact with similar Germ. words is possible, viz. OHG. *harmīn* adj., f. *harmo* stoat, weasel (G. *harme*) = OE. *hearna* glossing L. *megale* (i.e. *mygale*), rel. to Lith. *šermuō* weasel; cf. OHG. *harmilī*, MHG. *hermelīn* (G. *hermelin*), which may be either a deriv. of this, or - Rom. \**armelinus*, whence F. *hermine*, It. *ermellino*, *hermelino*, Sp. *armelina*, obs. or arch. Eng. *ermelin* (Spenser). So **ermine** (her.) fur with white spots on a black ground. XVI. poss. - OF. *hermines*, pl. of *herminet*, dim. of *hermine*.

**-ern** ɛrn suffix in *eastern*, *western*, *northern*, *southern*; OE. -*erne* = OS., OHG. -*rōni*, ON. -*rœnn* :- Germ. \*-*rōnjaz*, f. \*-*ro-* (as in \**austro-*; see EAST) :- \*-*ōnjaz* = L. -*āneus* -ANEUS.

**erne** ɛrn (arch.) eagle. OE. *earn* = MLG. *arn*, *arnt* (Du. *arend*), OHG. *arn*, ON. *prn* :- Germ. \**arnus*, rel. to \**aron*, whence OHG. *aro* (G. *aar*), ON. *ari*, Goth. *ara*; cf. Gr. *órnis* bird, OSl. *orlū*, Lith. *erlīs*, *ēras*, W. *eryr*, OIr. *irar*, Corn., Bret. *er* eagle.

**erode** ɛrou'd eat or wear away. XVII. - F. *éroder* or L. *ērōdere*, f. *ē* EX-<sup>1</sup> + *rōdere* gnaw (see RODENT). So **erosion** ɛrou'ʒən. XVI. - F. *érosion* - L. *ērōsiō(n-)*, f. *ērōs-*, pp. stem of *ērōdere*.

**erotic** ɛrə'tɪk pert. to the passion of love. XVII. - F. *érotique* - Gr. *erōtikós*, f. *erōt-*, *ērōs* sexual love; see -IC. So **erotism** ɛrəutɪzəm. XIX; after F. *érotisme*. **eroticism**. XIX. **erotomania**. XIX.

**err** ɛr go astray; roam. XIV (R. Mannyng, Rolle, Ch., Wyclif). - (O)F. *errer* = Pr., Sp. *errar*, It. *errare* :- L. *errāre* :- \**ersāre*, rel. to Goth. *airzei* error, *airzjan* lead astray, OS., OHG. *irri* astray, angry (G. *irre*), OE. *ierre* gone astray, perverse, angry. ¶ For anger conceived as wandering from a path cf. L. *dēlīrāre* (see DELIRIUM).

## ERUDITE

**errand** ɛrənd fmessage; fmission OE.; business on which one is sent XIII; journey taken to convey a message, etc. XVII. OE. *ærende* = OFris. *ērende*, OS. *ārundi*, OHG. *ārunti*, -*onti*, -*andi* :- Germ. \**ārundjam*, obscurely rel. to synonym. ON. *cyrindi*, *orindi*, *erindi* (Sw. *ärende*, Da. *ærinde*) :- Germ. \**arundjam*; neither type can be reconciled with the otherwise plausible connexion with OE. *ār*, OS. *ēru*, ON. *dr̥r*, Goth. *airus* messenger.

**errant** ɛrənt A. travelling in quest of adventure, as in *knight errant* XIV; f(leg.) itinerant, in *eyre* XV; B. fthorough (see ARRANT); C. wandering, straying XV. - (O)F. *errant*, in which two distinct words have coalesced: (i) prp. of OF. *errer*, earlier *fedrer* travel as in quest of adventure (*chevalier errant* knight errant) :- Rom. \**iterāre*, for L. *itinerāre* ITINERATE, f. *iter* journey; (ii) prp. of (O)F. *errer* wander, ERR. In C - L. *errant-*, -*ans*, prp. of *errāre*. So **error** ɛrər false belief XIII; mistake, wrongdoing XIV; wandering XVI. - OF. *error*, *errur* (mod. *erreur*) = Pr., Sp. *error*, It. *errore* :- L. *errōrem*, nom. *error* :- \**ersor* (see ERR). As with *horror*, *mirror*, *terror*, the sp. continued to vacillate between -*or* and -*our* till c. 1800. **erratic** ɛrətɪk f wandering, vagrant XIV (Ch., *erratique sterres*, tr. L. *stellæ errantes*, Gr. *ἀστερες πλανήται* planets); (geol.) stray; eccentric or irregular in conduct XIX. - (O)F. *erratique* - L. *errāticus*, f. *errāt-*, pp. stem of *errāre* ERR; see -IC. So **erratum** ɛrɪtəm error made in writing or printing. XVI. sb. use of n. pp. of *errāre*. ¶ In XVII-XVIII *errata* was used as a sg. with pl. *errataes*, *errata's*. **erroneous** ɛrou'nɪəs wrong, faulty XIV (Usk); fstraying XV. - OF. *erroneus* or f. L. *errōneus* (whence F. *erroné*), f. *errō(n-)* vagabond, f. *errāre*; see -EUS.

**ersatz** ɛ'zats substitute or imitation. XX. G. 'compensation', 'replacement', f. *ersetzen* replace, f. *er-*, unstressed var. of *ur-* = OFris., OS. *ur-*, *or-*, OE. *or-* + *setzen* SET<sup>1</sup>.

**Erse** ɛrs Irish, esp. applied to Irish and Scotch Gaelic. XIV (*ersche*). Early Sc. var. of IRISH.

**erst** ɛrst f earliest, first, (arch.) formerly, before. Also **arst** (XIV-XV). OE. *ærest*, superl. corr. to *ær* ARE = OS. *ērist* (Du. *eerst*), OHG. *ērist* (G. *erst*) :- WGerm. \**airista* (see -EST). Hence **erst-while**. XVI (Spenser). after *erewhile*.

**erubescence** ɛrube'sənt blushing. XVIII. - L. *erubescere*, -*ens*, prp. of *erubescere*, f. *ē* EX-<sup>1</sup> + *rubescere*, f. *rubere* be RED; see -ESCENT.

**eructate** ɪrə'kteɪt belch. XVII. f. pp. stem of L. *eructāre*, f. *ē* E- + *ructāre* belch, rel. to RBEK; see -ATE<sup>2</sup>. So **eructation**. XV. - L.

**erudite** ɛr'ʒdaɪt learned. XV. - L. *eruditus*, pp. of *erudire*, f. *ē* EX-<sup>1</sup> + *rudis* RUDE; see -ITE. So **erudition**. XV. - (O)F. or L.

## ERUPTION

**eruption** ɪrə'pʃən forth, outburst, f. *eruptio(n-)*, f. *rupere* break **erupt**. XVII formation. er

**-ery** ɛrɪ sult -*erye* in adq quently used formations of -*erie*, which formative, at personal des denote quali tion, or call archer; chev *flatterie* FLAT came to be : the ult. base consequently of sb. were *diabole* devil *juiverie* Jewi lot; this was *effrontery* and to vbs. and the prac tions, as *deceit* *thievery*. 'I having a de ence as *bu pery*, monk 'The sullix and -*er*<sup>2</sup>, so actually or noting con bndery, *dr millinery*; tions of pi ment, *fit deanery*, *m piggery*, *ro vinery*; the sg. in nam some case manufact TERY), on has been i shire and ducal seat tion of 181 for the Colindere Exhibitio ¶ A few I in recent

**eryngo** ɛ'tɪŋɡo ɛ timum; irreg. - I *ērūggion*,

**erysipela** ɪrɪ'sɪpələ with red pila). - *eruthrós* skin, FBI

**erythem**

**misgive** misgi-v A. (of the heart, mind) suggest doubt or foreboding; B. (dial.) fail, miscarry. XVI. f. MIS-<sup>1</sup> + GIVE (in A with the ME. sense of 'suggest', in B with meaning as in *give out*, *give over*).

**mishap** mishæp fɪll lʊk; unlucky accident. XIV (R. Mannyng, Ch.). f. MIS-<sup>1</sup> + HAP, prob. after OF. *mescheance* MISCHANCE.

**mish-mash** miʃmæʃ medley, hodge-podge. XV (*mysse masche*). redupl. of MASH, with variation of vowel.

**mishna(h)** miʃna collection of *halakhoth* (legal decisions) forming the basis of the Talmud. XVII. - post-biblical Heb. *mishnāh* repetition, instruction, f. *shānaḥ* repeat, teach or learn (oral tradition).

**miskal** mi-skəl Arabian money of account. XVI. ult. - Arab. *misqāl*, local var. of *miḥqāl*, f. *ḥaqala* weigh. The earliest forms *mitigal*, *mitical* came through Sp. and Pg.

**mislike** mislai-k (chiefly literary or dial.) not to like OE.; see DISLIKE. Hence **mislike** sb. f. displeasure XIII; (rare) want of affection, dislike. XVI.

**misnomer** misnou-mər (leg.) mistake in naming XV; use of a wrong name XVII. - AN., sb. use of OF. *mesnom(m)er*, f. *mes-mis-<sup>2</sup> + nommer* :- L. *nōmināre*; see NOMINATE, -ER<sup>6</sup>.

**misogynist** mai-, mis-ə-dʒɪnɪst woman-hater. XVII. f. Gr. *misoginēs*, f. *miso-*, comb. form of *misēn* hate, *misos* hatred + *gūnē* woman (see QUEAN); see -IST.

**misprision** mispri-zən (leg.) wrongful action or omission XV (*m. of treason or felony* XVI; often taken to mean 'failure to denounce'); (arch.) misunderstanding, mistake XVI (Sh.). - AN. *mesprisioun* = OF. *mesprison* error, wrong action or speech, f. *mesprendre* (mod. *méprendre*), f. *mes-mis-<sup>2</sup> + prendre* take (see PRISON).

**misprize** misprai-z (arch.) despise. XV (Caxton). - OF. *mesprisier* (mod. *mépriser*), f. *mes-mis-<sup>2</sup> + priser* PRIZE<sup>2</sup>. Hence **misprision** mispri-zən contempt. XVI.

**misrule** misrū-l fɪsɔːdərli conduct; bad government. XIV (*Lord, Abbot of M.* XV). f. MIS-<sup>1</sup> + RULE.

**miss<sup>1</sup>** mis A. fail to hit or reach OE.; fail to attain XIII; B. discover the absence of XII (Orin.); C. omit XVI. OE. *missan* = OFris. *missa*, (M)LG., (M)Du. *missen*, (O)HG. *missen*, ON. *missa* :- CGerm. (exc. Gothic) \**missjan*, f. \**missa-* (cf. MIS-<sup>1</sup>, AMISS), ppl. formation with \*-to- on an IE. base \**mith-*, repr. by Skr. *mithás*, OSl. *mitē* alternating, cogn. with Skr. *mēthati* alternates, L. *mūtāre* (see MUTATION), Goth. *maidjan* falsify. So **miss** sb. OE. *miss* loss, corr. to MLG., MHG. *misse* (Du. *mis*), ON. *missa*, -ir.

**miss<sup>2</sup>** mis (dial.) kept mistress; title prefixed to the name of an unmarried woman. XVII. Clipped form of MISTRESS; cf. *mass*, *mess*, *mus* (from XVI), shortening of *master*,

now dial. (*misses and masses* occurs XVIII); cf. MISSIS. Hence **missy**<sup>6</sup>. XVII.

**missal** mi-səl mass-book. XIV (*messel*). - medL. *missāle* (whence OF. *messel*, mod. *missel*, the source of some early Eng. instances), use of n. sing. of *missālis* pert. to the Mass, f. *missa* MASS<sup>1</sup>; see -AL<sup>1</sup>.

**missel-thrush** mi-səlprəʃ thrush (*Turdus viscivorus*) that feeds on mistletoe berries. XVIII (Goldsmith). Earlier *missel-bird* (XVII, Bacon); f. f. *missel* mistletoe, OE. *mistel* = OHG. *mistil* (G. *mistel*), Du. *mistel*, ON. *mistil-*, of unkn. origin.

**missile** mi-sail adapted for throwing; sb. missile weapon. XVII. - L. *missilis* (n. sg. *missile* as sb.), f. *miss-*; see next and -ILE.

**mission** mi-jən fɪsɛndɪŋ, esp. abroad XVI; sending forth on a service (spec. Mission of the Holy Ghost) or with authority; body of persons sent; commission, errand XVII; establishment of missionaries XVIII; personal duty or vocation XIX; operational sortie XX. - F. *mission* or L. *missiō(n-)*, f. *miss-*, pp. stem of *mittere* let go, send; see -ION. So **missionary**. XVII. - modL. *missionarius*, whence also F. *missionnaire* (XVII). ¶ For other reprs. of the base see *admit*, *commit*, *emit*, *intermit*, *omit*, *permit*, *submit*, *transmit*, with corr. nouns of action, etc.; *compromise*, *demise*, *promise*; *missile*, *missive*; MASS<sup>1</sup>, MESS<sup>1</sup>.

**missis, missus** mi-siz, -iz (illiterate) *the m.*, one's wife; servant's mistress. XIX. Slurred pronunc. of MISTRESS; *mi-siz* is now the oral equiv. of Mrs.

**missive** mi-siv letter m., (orig. tech.) letter sent by a superior authority XV; f. *missile* XVI; sb. letter (esp. and orig. official), in early use mainly Sc. XVI. - medL. *missivus* (in *litterae missivae*), f. *miss-* (see MISSION) + -ivus -IVE. Cf. F. *missive* (XVI) in *lettre missive*; Sp. *letra* and *carta misiva*, etc.

**mist** mist vapour of water; dimness, obscurity. OE. *mist* = (M)LG., (M)Du. *mist*, Icel. *mistur*, Norw. dial., Sw. *mist* :- Germ. \**mīxstaz*, f. \**mīg-* (cf. Du. *miggelen*, WFr. *miggele* drizzle) :- IE. \**mīgh-* \**mēigh-*, as in Gr. *omikhlē*, OSl. *mīgla*, Arm. *mēg*, Av. *maēya*, Skr. *mīh*, *mēghas* cloud, mist. Hence **misty**<sup>1</sup>. OE.

**mistake** misteɪk fɛrr, transgress XIII (Cursor M.); f. take wrongly XIV; misunderstand XV; make a mistake XVI. In earliest use north. - ON. *mistaka* take in error, refl. miscarry (Sw. *missaga* be mistaken), f. *mis-mis-<sup>1</sup> + taka* TAKE. Cf. OF. *mesprendre* (mod. *se méprendre*), which has prob. infl. the meaning. Hence **mista-ke** sb. XVII. **mista-ken** f. wrongly supposed XVI; of wrong opinion XVII.

**mister<sup>1</sup>** mi-stər (obs. exc. arch. and dial.) handicraft, employment; (*this, what*) kind of; office, duty; need, necessity. XIII. - AN. *mester*, OF. *mestier* (mod. *métier*) = Pr. *meistier*, Sp. *mestiere* (It. *mestiere*, from F. or Pr.) :- Rom. \**misterium*, for L. *ministerium*, see MYSTERY<sup>2</sup>.

## VANTAGE

**vantage** vāntédz †advantage, profit XIII (Cursor M.); position of superiority XV; †additional amount XVI; (in lawn tennis) XIX. - AN. *vantage*, aphetic of OF. *avan-tage* ADVANTAGE.

**vant-brace** var. of VAMBRACE. XIV.

**vapid** vœpid flat, insipid (of beverages) XVII; (of talk, etc.) XVIII. - L. *vapidus*, rel. to *vappa* flat or sour wine, and perh. further to *vapor* VAPOUR; see -ID<sup>1</sup>.

**vapour** vei-paɪ steam, steamy exhalation XIV (Ch., Wyclif); (pl.) exhalations arising in the human body XV; (arch.) morbid condition resulting from these XVII. - (O)F. *vapeur*, †-our (= Sp. *vapor*, It. *vapore*) or L. *vapōre-m*, *vapor* steam, heat; see prec. and -OUR<sup>2</sup>. So **va-porous**. XVI. f. late L. *vapōrus* or -late L. *vapōrōsus*; cf. F. *vaporeux*.

**Varangian** vœrændʒiən one of the Scand. rovers who in IX-X overran parts of Russia and reached Constantinople. XVIII (Gibbon). f. medL. *Varangus* - medGr. *Bārangos* - (through Slav. lang.) ON. *Væringi* (pl. *Væringjar*), prob. f. *vār* (pl. *vārar*) plighted faith; see -IAN.

**varec(h)** vœrek seaweed XVII; carbonate of soda obtained from it XIX. - F. *varec(h)*, OF. *warec*, *vrec* - ON. \**wrek* WRECK.

**variable** vœriəbl liable to vary. XIV (Ch., Trevisa). - (O)F. *variable* - L. *variābilis*, f. *variāre*; see VARY, -ABLE. Hence **va-ri-ability**. XVIII. So **variance** vœriəns variation, difference XIV; discrepancy; dissension XV (at v. XVI). - OF. *variance* - L. *variantia*, f. *variāre*. **va-ri-ant** †in-constant, not uniform (Ch.); diverse, differing (from) XIV; sb. XIX. - (O)F. *variant*. **va-ri-ation** †difference, divergence XIV (Ch.); fact or instance of varying XVI. - (O)F. or L.

**varicose** vœrikəʊs (of a vein) affected with a varix. XVIII. - L. *varicōsus*, f. *varic-*, *varix* dilated vein (in Eng. use from XIV, comb. form *varico-* in *varicocele* (XVIII), f. Gr. *kēlē* tumour); see -OSE<sup>1</sup>.

**variegate** vœriēgeit make varied XVII. f. pp. stem of L. *variēgāre* (Apuleius), f. L. *varius* VARIOUS; see -ATE<sup>2</sup>. So **variega-tion**. XVII.

**variola** vœraiələ (med.) smallpox. XVIII. - late L. *variola* pustule, pock, f. L. *varius* speckled, variegated, VARIOUS.

**variorum** vœriə-rəm edition of a work containing the observations of various commentators. XVIII. g. pl. m. of L. *varius* VARIOUS in phr. *editio cum notis variorum* 'edition with the notes of various' (editors).

**various** vœriəs †variable, changeable XVI; varied, variegated; (with pl.) differing from one another XVII (Milton). f. L. *varius*; see -IOUS. So **variety** vœrai-iti. XVI. - (O)F. or L.

## VASELINE

**varlet** vāalit attendant, e.g. on a knight XV; knave, rascal XVI. - OF. *varlet*, var. of *vaslet*, *vadlet* VALET.

**varmint** vāimint (dial.) vermin XVI; troublesome or mischievous creature XVIII. var. of *varmin* VERMIN, with parasitic *t* as in *peasant*, *tyrant*.

**varnish** vānɪʃ solution of resinous matter used for providing a hard shiny coat XIV; fig. XVI. ME. *vernis* - (O)F. *vernis* (whence also Du. *vernīs*, G. *firnis*) = Pr. *vernitz* Sp. *barniz*, It. *vernice* - medL. *veronice-m*, *veronix* (VIII) fragrant resin, sandarac, or - medGr. *berenikē*, prob. appellative use of the town-name (Berenice, in Cyrenaica). So **va-ri-nish** vb. XIV. - OF. *verniss(i)er*, -ic(i)er = It. *verniciare* (cf. Pr. *envernizar*, Sp. *barnizar*), f. the sb. (F. *vernir*, -iss- XVI is a new formation on the sb.).

**varsity** vārsiti XIX (earlier †iversity XVII). colloq. clipped form of UNIVERSITY; cf. *varsal* (XVII), early †versal (XVI, Sh.), for *universal*.

**varsoviene** vārsouviēn dance resembling Polish national dances. XIX. F., fem. of *varsovien*, f. *Varsovie* Warsaw.

**varvel** vārvəl metal ring attached to a hawk's jess. XVI. Earlier †vervel - (O)F. *vervelle*, †varvelle, syncopated form of *vertevelle* - Rom. \**vertibella*, beside \**verti-bellum* (whence F. *verveux*, It. *bertovello* hoop-net), dim. of late L. *vertibulum* joint, f. *vertere* turn (cf. VERTEBRA) with suffix of instrument as in L. *infundibulum* funnel. (Cf. dial. *vordle* XVI, *vartivell* XVIII eye of a hinge, hinge.)

**vary** vœri undergo change, cause to change. XIV (Ch., Wyclif, Trevisa). - (O)F. *varier* or L. *variāre* (whence also Sp. *variar*, It. *variare*), f. *varius* VARIOUS. Hence **varied** vœrid diverse XVI (Sh.); variegated XVIII; see -ED<sup>1</sup> and cf. F. *varié*, L. *variātus* (Apuleius); twice in Sh., but not gen. current before XVIII (Prior, Pope).

**vascular** vœskjələɪ pert. to tubular vessels. XVII. - modL. *vāsculāris*, f. L. *vāsculum*, dim. of *vās* vessel; see next and -AR.

**vase** vāz, (formerly) vōz, (earlier, now U.S.) veis, veiz ornamental vessel of circular section. XVII. F. *vase* - L. *vās*, earlier also *vāsum*, *vāsus* vessel, dish, implement, utensil, pl. military baggage. Rhymes used by Swift, Byron, Emerson, Whittier, and Lowell show the pronunc. veis. (In XVII the L. pl. *vāsa* was used as pl. and s. in Eng. contexts.) A comb. form *vaso-* vœsou is used in physiol. and path. terms relating to vascular parts XIX.

**vaselline** vœsəlɪn, vœz- proprietary name, registered as a trade mark in 1872 by the Chesebrough Manufacturing Company, for an ointment or lubricant obtained from petroleum. XIX. irreg. f. G. *wasser* vœsər WATER + Gr. *elaion* oil + -INE<sup>2</sup>.

## VASSAL

**vassal** vœsəl tenant in fee XIV; fig. XV. - (O)F. *vassal* - Pr. *va* Sp. *vasallo*, It. *vassallo* - med man-servant, retainer, of Celtic simplex *vassus* (see VAVASOUI OGaulish -*vassus* in personal *Dagovassus*, OBrit. *muas* (Brit. *groas*, Ir. *foss* servant. So **va-s** - OF. *vassalage* (mod. *vass* *vassalage*).

**vast** vāst of immense size or ar - L. *vastus* waste, uncultivate (whence also F. *vaste*, Sp., It. formation on a base \**vās-*, rep *vānus* (- \**vāsnos*) VAIN, *vascu-fās* empty, and WGerm. \**wōst*-OS. *wōsti*, OIIG. *wuosti*, Du. *wūst*). Hence **va-sty**<sup>1</sup>. XVI (Sh.

**vat** væt cask or tun for l Southern and western var. of *fat* OFris. *fat*, OS. *fat* (Du. *vat*) (G. *fass*), ON. *fat* - CGerm. ( \**fatam* vessel, cask, rel. to ( M.L.G. *vaten*, OIIG. *fazgōn* (G. contain, seize), f. \**fat-*, wh. *fetel*, etc. (see FETTER); IE. \* also by Lith. *pūdas* pot, OPruss. dim. *podalis*. For init

**Vatican** vætikan palace of the Vatican Hill in Rome. XVI. - L. *Vaticānus* (sc. *collis* hill, *mōn* see -AN.

**vaticinate** vətisineit predict. stem of L. *vāticināri*, f. *vātēs* poet, rel. to Ir. *fāith* poet, W of praise, and Germ. \**wōd*-wōd mad, wōp song, OIIG. *wi* ōdr possessed, inspired, ōdr i wōd-, \**wōps* possessed). So v vat-. XVII (Holland). - L.

**vaudeville** vœudəvil light XVIII; light stage performance with songs XIX. - F. *vaude* song or play, theatrical piece with rhymes, alt. of *vaudevir* de Vire 'valley of Vire', name Calvados, Normandy, the sc had a vogue in XV.

**Vaudois** vœudwa. XVI. F. - *densis* WALDENSIAN.

**vault**<sup>1</sup> vōlt arched roof or burial chamber XVI. ME. OF. *voute*, *vaute* (mod. *voute* *voute*, Pg., It. *volta* - Rom. *vita*, pp. fem. (for *volūta*) of (cf. *volute*). So **vault** vb (mod. *vouter*). The sp. with (after later OF. usage), and influenced the pronunc. as in **vau-ltage**. XVI (Sh.).

**vault**<sup>2</sup> vōlt †leap on to (a horse with the support of the hands) *vouter*, *vouter* turn (a horse leap = Cat. *vollar* upset, I. It. *voltare* - Rom. \**voltāre*

TENNESSEE VALLEY AUTHORITY,  
Petitioner,

v.

Hiram G. HILL, Jr., et al.  
No. 76-1701.

Argued April 18, 1978.

Decided June 15, 1978.

Environmental groups and others brought action under Endangered Species Act of 1973 to enjoin Tennessee Valley Authority from completing dam and impounding section of Little Tennessee River. The United States District Court for the Eastern District of Tennessee, Robert L. Taylor, J., 419 F.Supp. 753, refused a permanent injunction, and plaintiffs appealed. The Court of Appeals, 549 F.2d 1064, reversed and remanded, and certiorari was granted. The Supreme Court, Mr. Chief Justice Burger, held that Endangered Species Act of 1973 prohibited completion of dam, where operation of dam would either eradicate known population of the snail darter, an endangered species, or destroy its critical habitat, even though dam was virtually completed and even though Congress continued to appropriate large sums of public money on project even after congressional appropriations committees were apprised of project's apparent impact upon survival of snail darter.

Affirmed.

1. Fish ⇐ 12

Where completion and operation of dam by Tennessee Valley Authority would either eradicate known population of the snail darter, an endangered species, or destroy its critical habitat, completion and operation of dam were prohibited by explicit provisions of Endangered Species Act, even though dam was virtually completed and even though Congress continued to appropriate large sums of public money for project after congressional appropriations

committees were advised of project's apparent impact upon survival of snail darter. Endangered Species Act of 1973, § 7, 16 U.S.C.A. § 1536.

2. Fish ⇐ 12

Game ⇐ 3½

Section of Endangered Species Act of 1973 requiring all federal agencies "to insure that actions authorized, funded or carried out by them do not jeopardize the continued existence" of an endangered species or "result in the destruction or modification of habitat of such species" was not limited to federal projects in planning stages. Endangered Species Act of 1973, § 7, 16 U.S.C.A. § 1536.

3. Fish ⇐ 12

Game ⇐ 3½

Under Endangered Species Act of 1973, Congress intended protection of endangered species to be afforded highest of priorities. Endangered Species Act of 1973, § 7, 16 U.S.C.A. § 1536.

4. Statutes ⇐ 190

When confronted with statute which is plain and unambiguous on its face, courts ordinarily do not look to legislative history as guide to its meaning.

5. Fish ⇐ 9

Plain intent of Congress in enacting Endangered Species Act of 1973 was to halt and reverse trend towards species extinction, whatever the cost. Endangered Species Act of 1973, § 7, 16 U.S.C.A. § 1536.

6. Fish ⇐ 12

Game ⇐ 3½

Pointed omission, in Endangered Species Act of 1973, of type of qualifying language previously included in endangered species legislation revealed conscious decision by Congress to give endangered species priority over the "primary missions" of federal agencies. Public Works Appropriations Act, 1967, 80 Stat. 1002; Endangered Species Act of 1973, §§ 2(c), 3(2), 14), 7, 9(a)(1)(B), 16 U.S.C.A. §§ 1531(c), 1532(2), 14), 1536, 1538(a)(1)(B).

less do we have a mandate from the people to strike a balance of equities on the side of the Tellico Dam. Congress has spoken in the plainest of words, making it abundantly clear that the balance has been struck in favor of affording endangered species the highest of priorities, thereby adopting a policy which it described as "institutionalized caution."

[17] Our individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the Congress is to be put aside in the process of interpreting a statute. Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end. We do not sit as a committee of review, nor are we vested with the power of veto. The lines ascribed to Sir Thomas More by Robert Bolt are not without relevance here:

"The law, Roper, the law. I know what's legal, not what's right. And I'll stick to what's legal . . . I'm not God. The currents and eddies of right and wrong, which you find such plain-sailing, I can't navigate, I'm no voyager." But in the thickets of the law, oh there I'm a forester. . . . What would you do? Cut a great road through the law to get after the Devil? . . . And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast—Man's laws, not God's—and if you cut them down d'you really think you could stand up-right in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake." Bolt, *A Man for All Seasons*, Act I, at 147 (Heinemann ed. 1967).

We agree with the Court of Appeals that in our constitutional system the commitment to the separation of powers is too

1. Attorney General Bell advised us at oral argument that the dam had been completed, that all that remains is to "close the gate," and to complete the construction of "some roads and

fundamental for us to pre-empt congressional action by judicially decreeing what accords with "commonsense and the public weal." Our Constitution vests such responsibilities in the political Branches.

*Affirmed.*

Mr. Justice POWELL, with whom Mr. Justice BLACKMUN joins, dissenting.

The Court today holds that § 7 of the Endangered Species Act requires a federal court, for the purpose of protecting an endangered species or its habitat, to enjoin permanently the operation of any federal project, whether completed or substantially completed. This decision casts a long shadow over the operation of even the most important projects, serving vital needs of society and national defense, whenever it is determined that continued operation would threaten extinction of an endangered species or its habitat. This result is said to be required by the "plain intent of Congress" as well as by the language of the statute.

In my view § 7 cannot reasonably be interpreted as applying to a project that is completed or substantially completed when its threat to an endangered species is discovered. Nor can I believe that Congress could have intended this Act to produce the "absurd result"—in the words of the District Court—of this case. If it were clear from the language of the Act and its legislative history that Congress intended to authorize this result, this Court would be compelled to enforce it. It is not our province to rectify policy or political judgments by the Legislative Branch, however egregiously they may disserve the public interest. But where the statutory language and legislative history, as in this case, need not be construed to reach such a result, I view it as the duty of this Court to adopt a permissible construction that accords with some modicum of commonsense and the public weal.

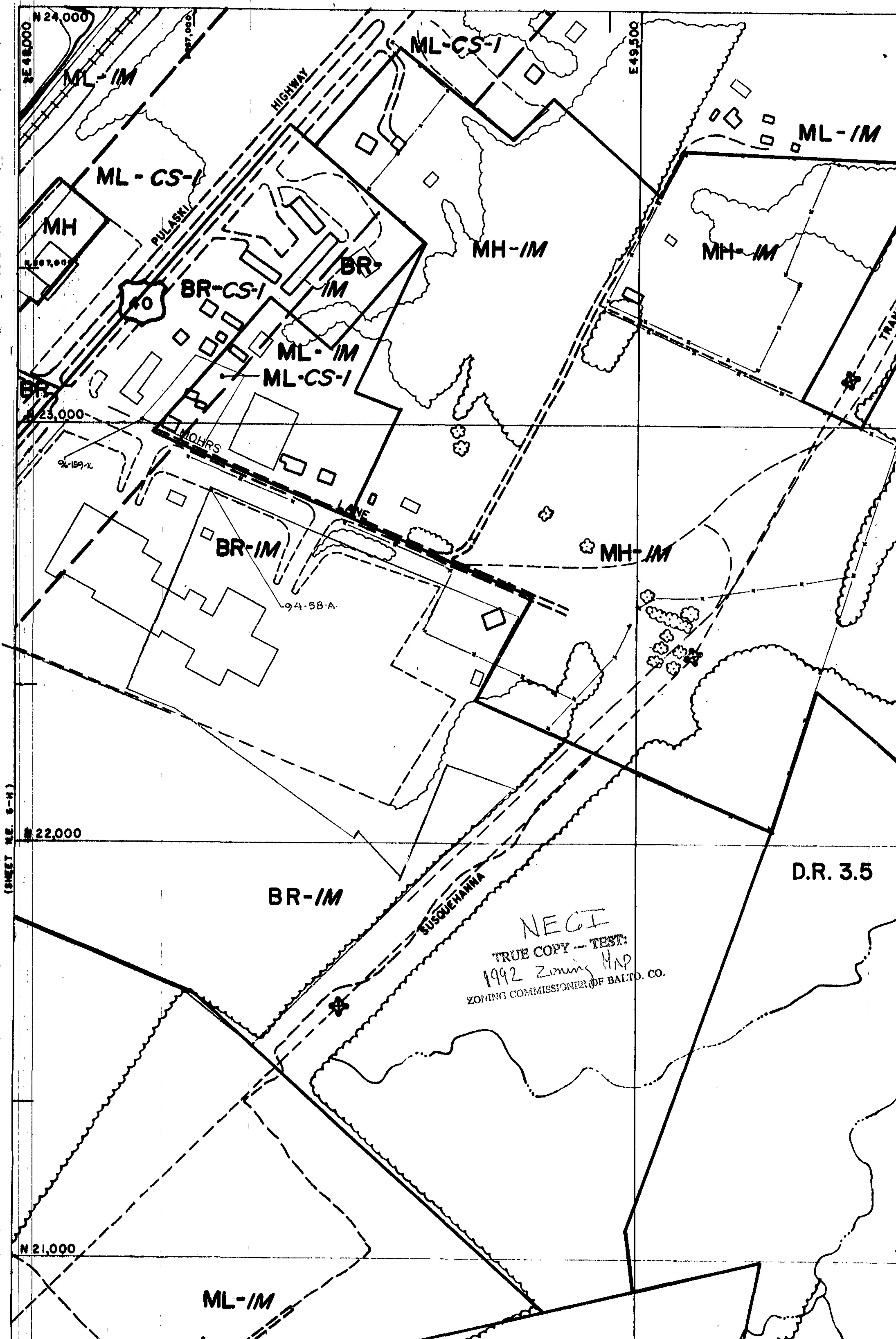
bridges." The "dam itself is finished. All the landscaping has been done. . . . It is completed." Tr. of Oral Arg. 18.

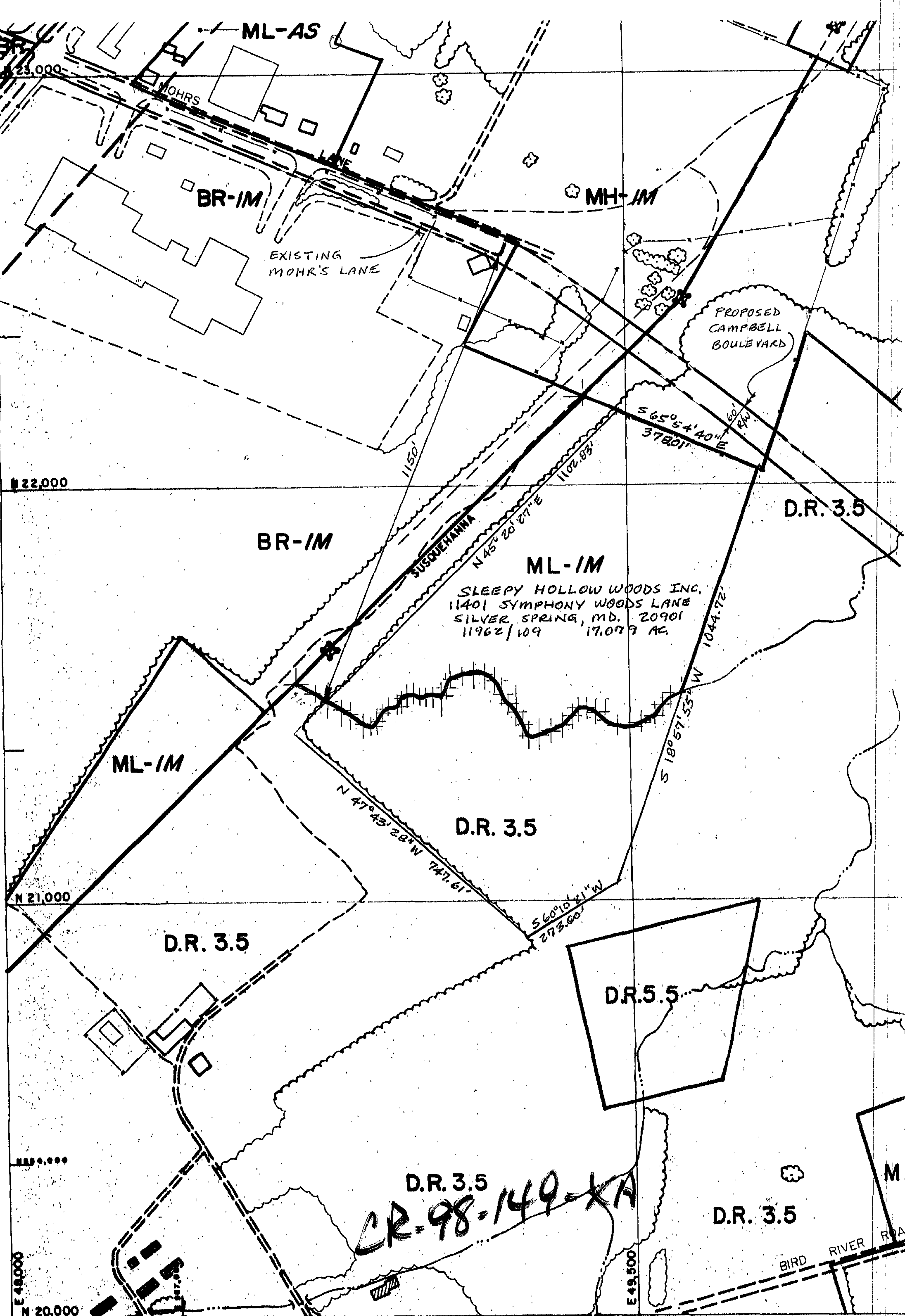
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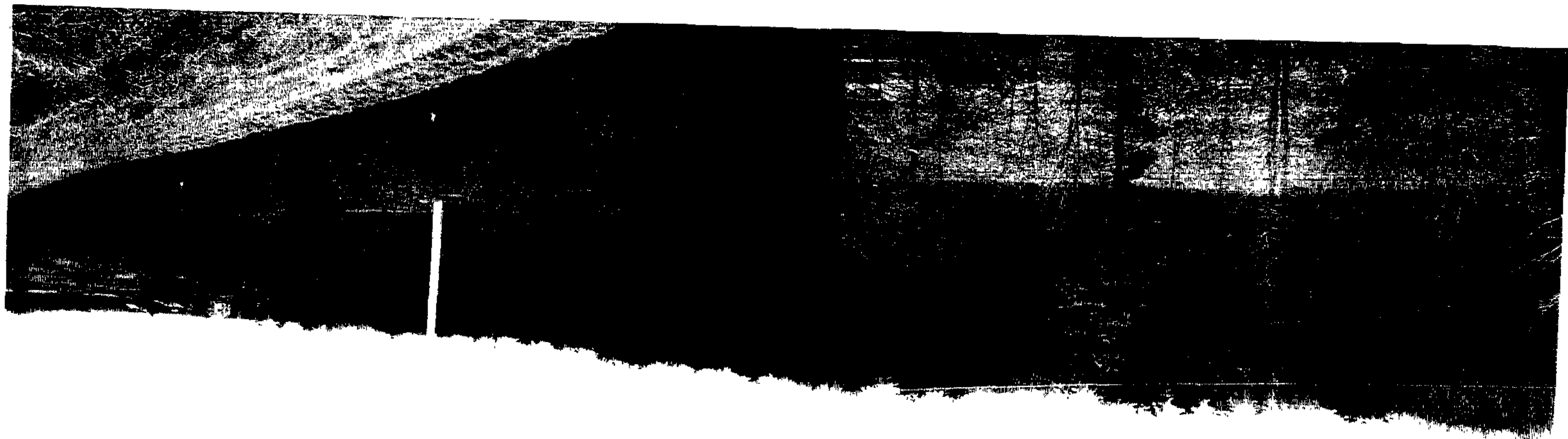
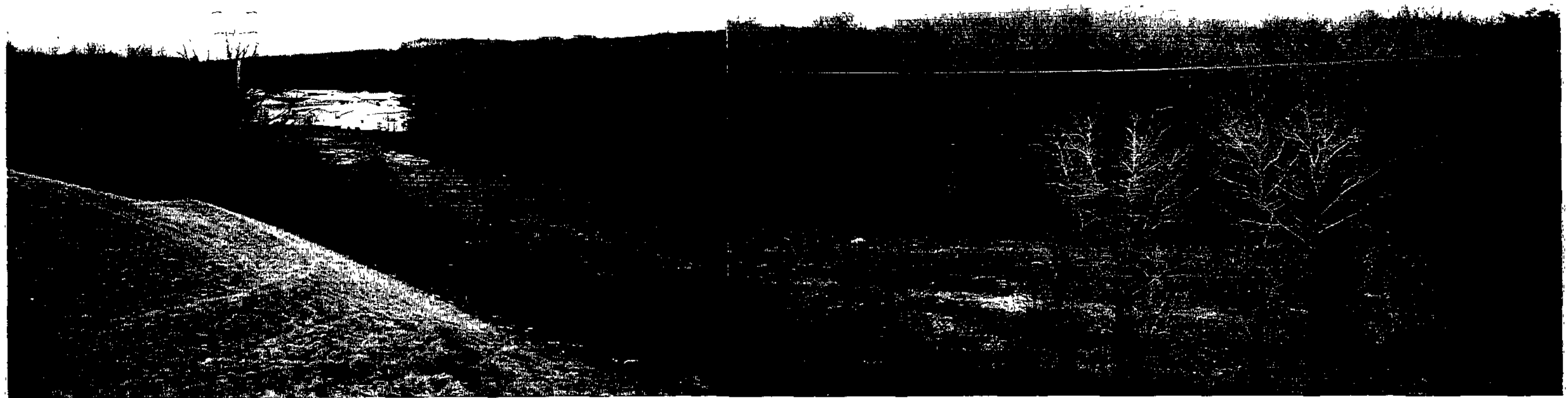


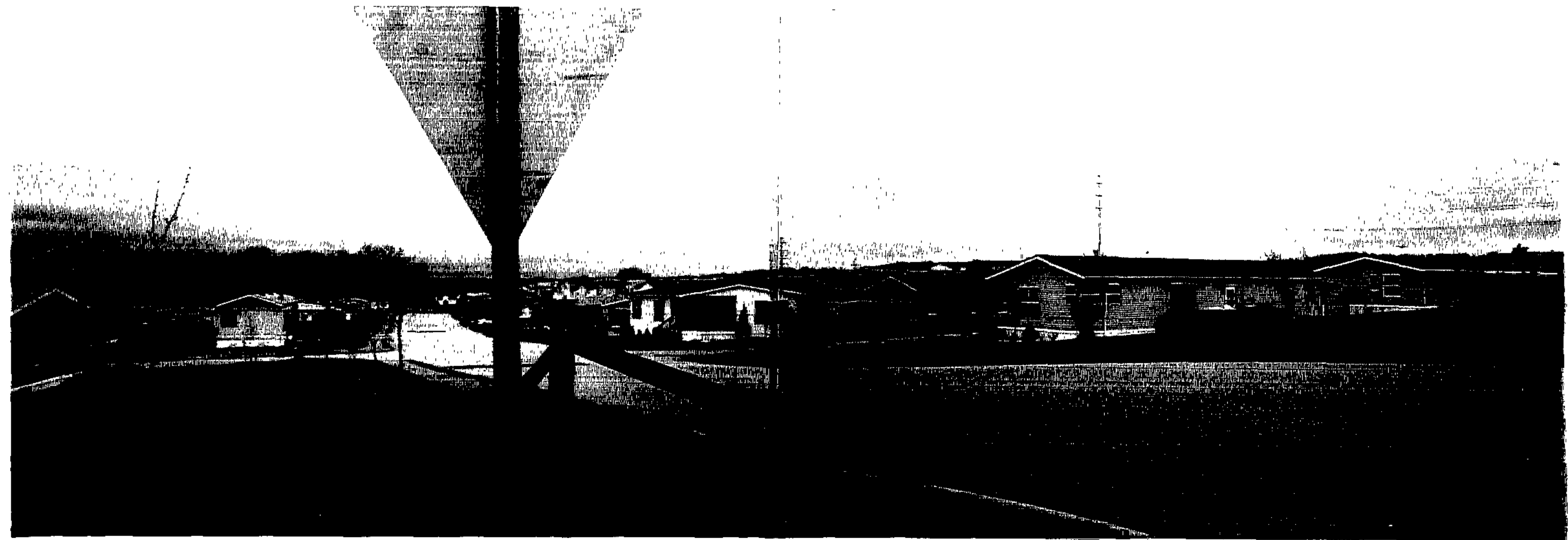


M - SE  
I - NE

1996 COMPREHENSIVE ZONING MAP  
ADOPTED by  
THE BALTIMORE COUNTY COUNCIL  
OCTOBER 8, 1996

11-7-97









# **WILLIAM MONK, INC.**

**ENGINEERS • PLANNERS**

## **MOHRS LANE/CAMPBELL BLVD.**



**VIEW SOUTHEAST**



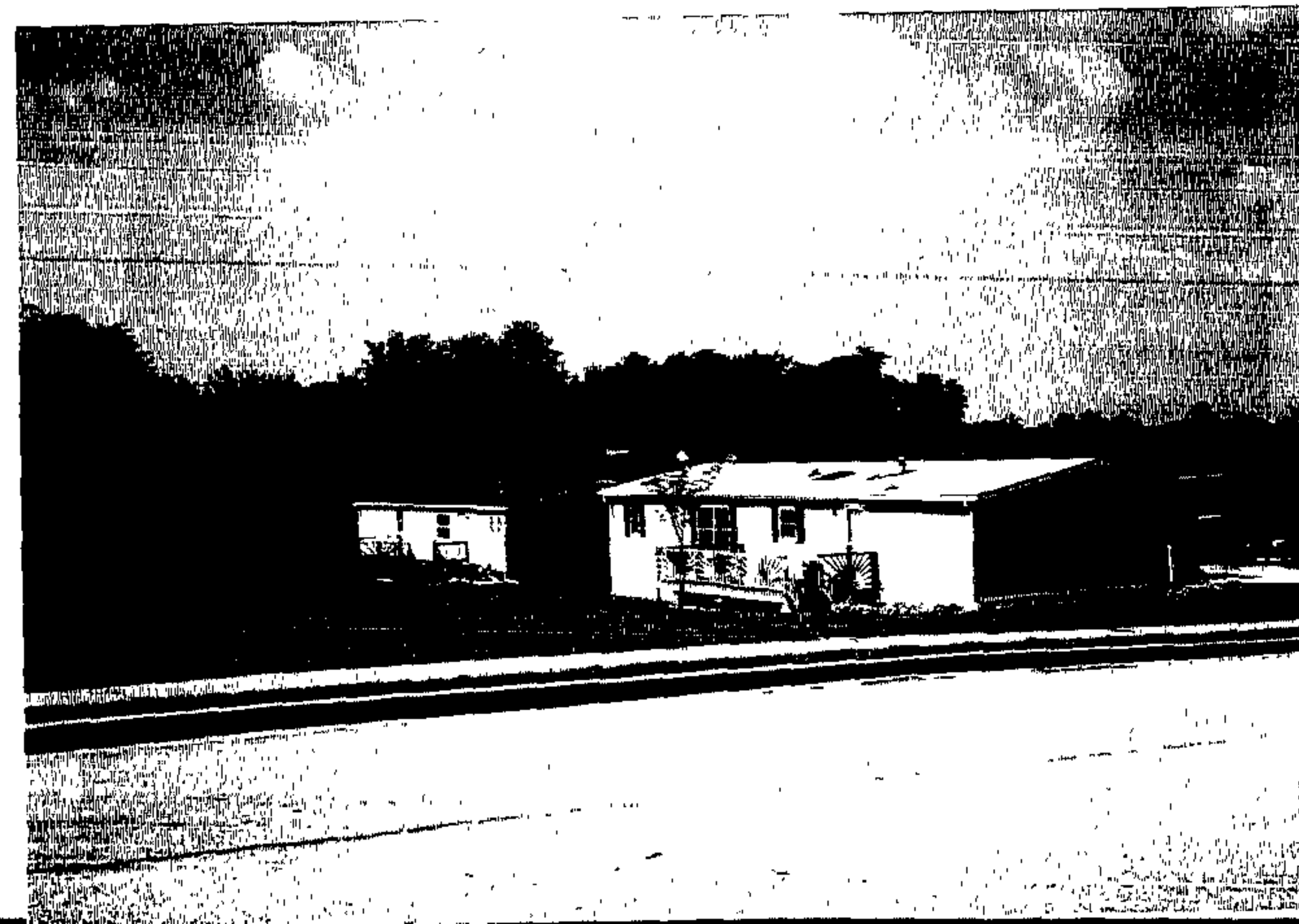
**VIEW NORTHWEST**



SLEEPY HOLLOW  
WOODS, INC.  
CR-98-149-7A.

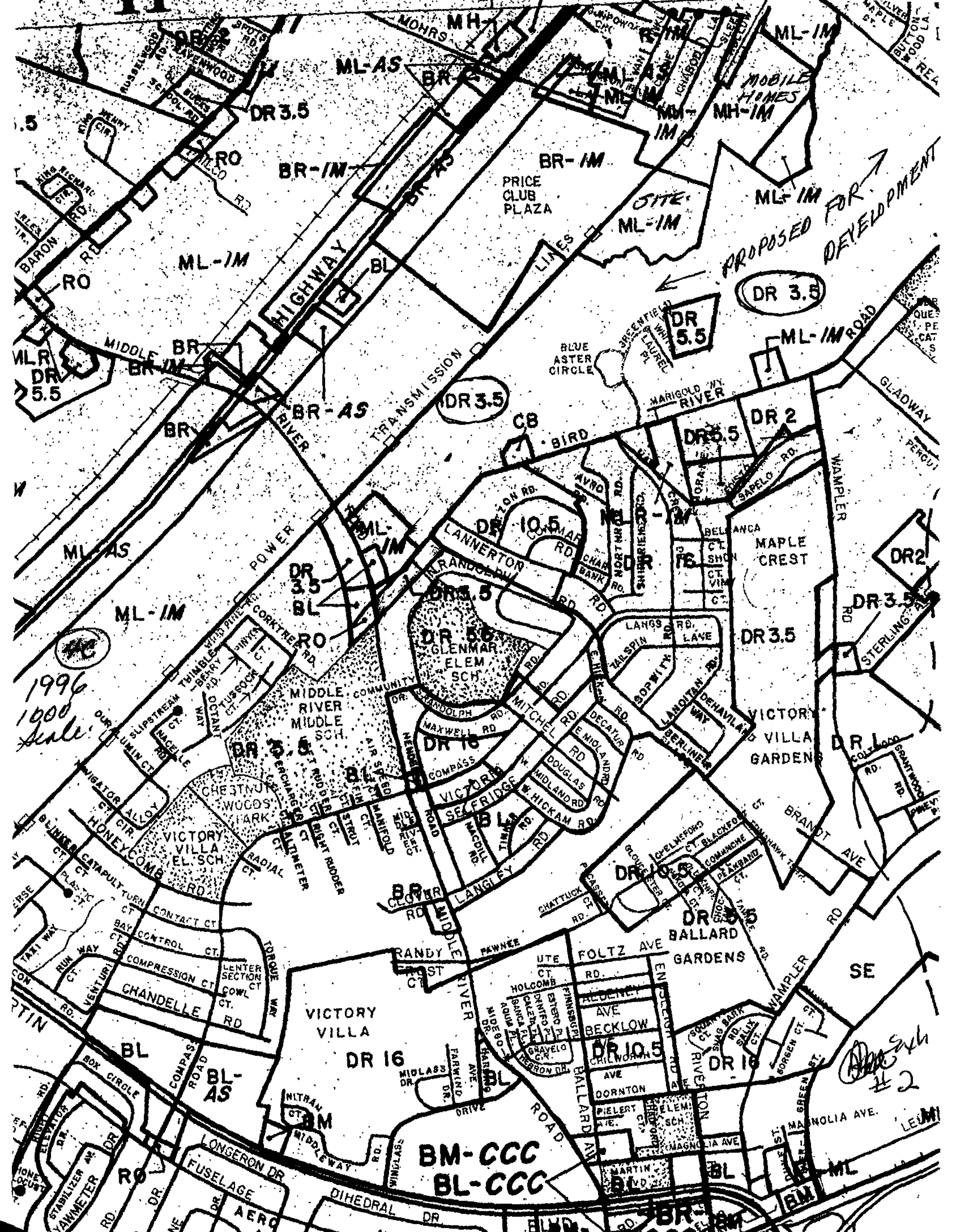


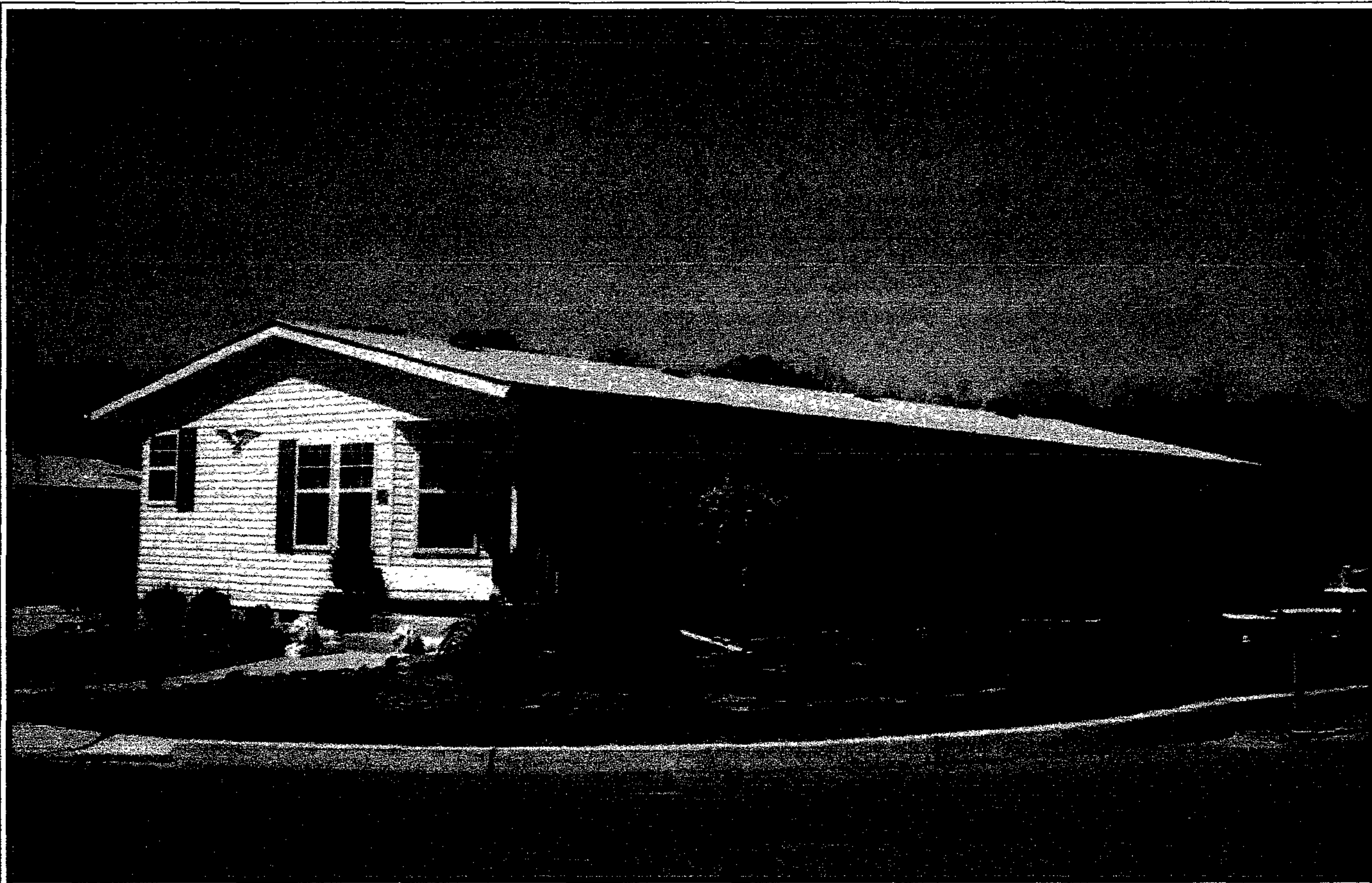
B, Mobile Zone Looking NW toward Pulaski  
Highway



C, Typical Mobile Homes.

#3A, B, C.  
Put Bx B





**SLEEPY HOLLOW WOODS**  
**Sample Mobile Homes**



**SLEEPY HOLLOW WOODS**  
Sample Mobile Homes

highway rights-of-way and highway widenings, slope easements, drainage and utility easements, access easements, forest buffer or forest conservation areas in fee or easement, greenway areas in fee or easement, and stormwater management areas, no matter how entitled, shown hereon, are reserved unto the owner and, except for those indicated as private, are hereby offered for dedication to Baltimore County, Maryland. The owner, his personal representatives and assigns will convey said areas by deed, to Baltimore County, Maryland, at no cost. Until such time as said conveyance is accepted by Baltimore County, the owner authorizes Baltimore County, its agents and assigns, the right to enter the property for the purpose of installing, constructing, maintaining and repairing roads, utility lines and facilities, and stormwater management ponds and facilities.

streets and/or roads shown hereon and the mention thereof in deeds are for the purposes of description only, and the same are not intended to be dedicated to public use; the fee simple title to one beds thereof is expressly reserved in the grantors of the deed which this plat is attached, their heirs and assigns.

This plat may expire in accordance with the provisions of the Baltimore County Code, Section 26-216.

The recording of this plat does not guarantee the installation of  
trees or utilities by Baltimore County.

The information shown hereon may be superseded by a subsequent or amended plat.

Additional information concerning this plot may be obtained from the Baltimore County Office of Permits and Development Management and the Department of Public Works.

LAND OF  
HOLLOW WOODS INC.  
11967/109

7. The recording of this plat does not constitute or imply acceptance by the county of any street, easement, park, open space or other public area shown on this plat.
8. The owner/developer will comply with the best management practices adopted by the Baltimore County Department of Environmental Protection and Resource Management.

9. The original CRG for the property shown on this plat was approved on

10. Except as otherwise indicated, all building restriction lines shown hereon have been placed as the result of an interpretation only of currently applicable regulations and policies of the Baltimore County Office of Planning and Zoning. Exceptions to these restrictions may apply.

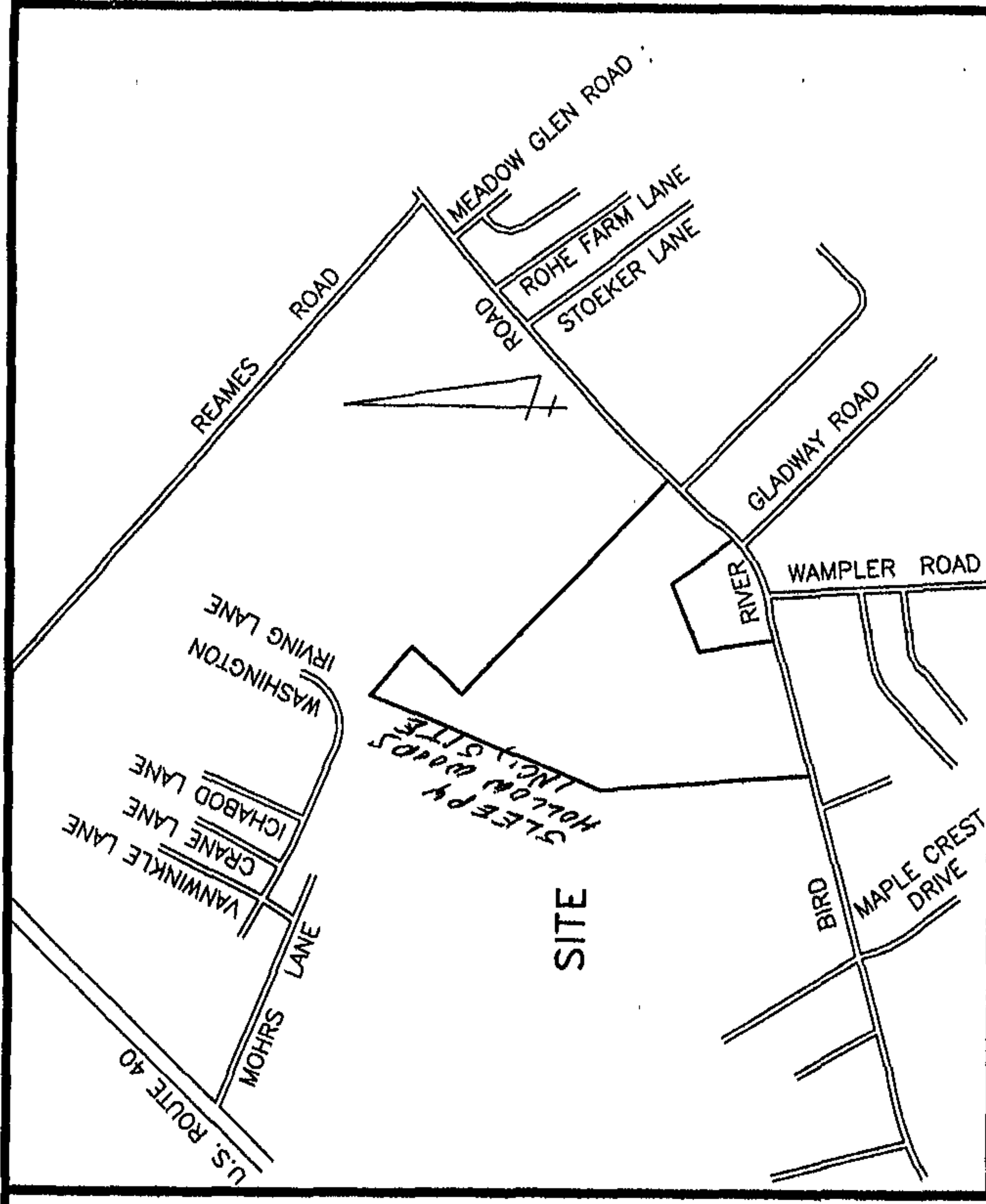
11. The approval of this plat is based upon a reasonable expectation that the water and sewer service which is planned for the development will be available when needed. However, building permits may not be issued until the planned water and sewer facilities are completed and determined to be adequate to serve the proposed development.

12. There shall be no clearing, grading, construction or disturbance of vegetation in the Forest Buffer Easement except as permitted by the Baltimore County Department of Environmental Protection and Resource Management.

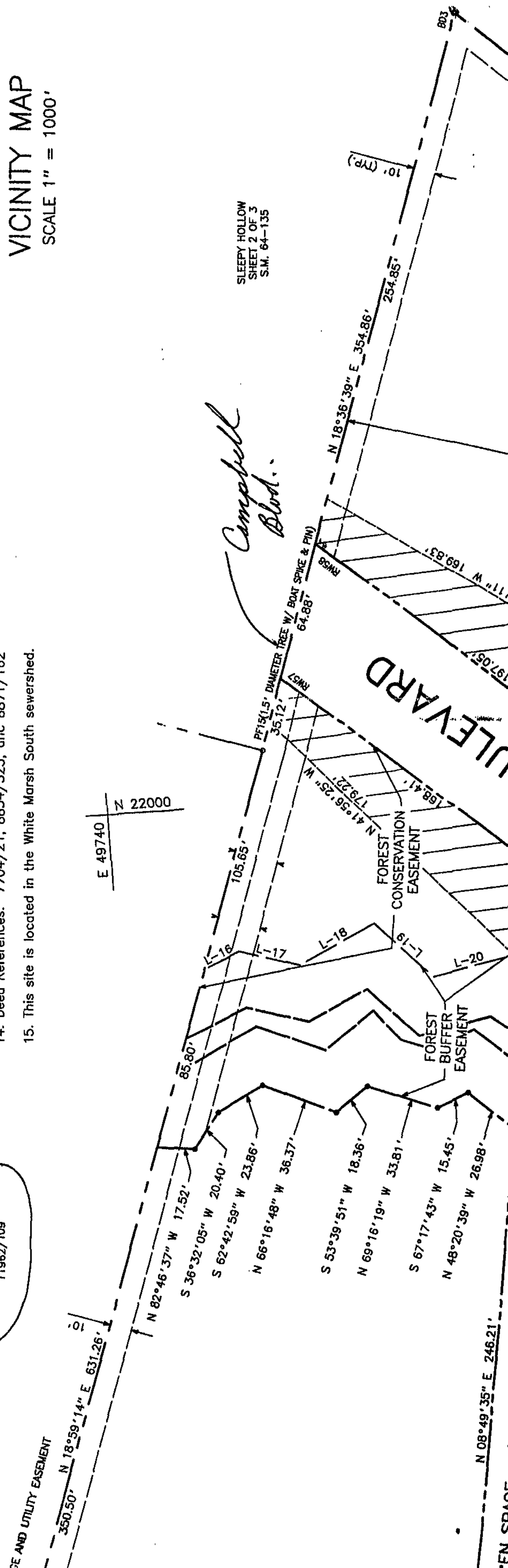
13. Any Forest Buffer Easement or shown hereon is subject to protective covenants which may be found in the Land Records of Baltimore County and which restrict disturbance and use of these areas.

14. Deed References: 7704/21, 8834/323, and 8871/162

15. This site is located in the White Marsh South sewershed.



VICINITY MAP  
SCALE 1" = 1000'



Density Permitted:  
DR 5.5: 3.6 x 5.5 = 19  
19 Lots Permitted

Total Lots Permitted = 168  
Total Lots Proposed = 78

NOTE: IT IS CERTIFIED THAT THIS PLAT IS IN COMPLIANCE  
WITH ALL PLANS PREVIOUSLY APPROVED BY THE COUNTY AND  
BALTIMORE COUNTY COMMENTS ATTENDANT THERETO.

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RGE W. VOLZ

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SURVEYOR'S CERTIFICATE

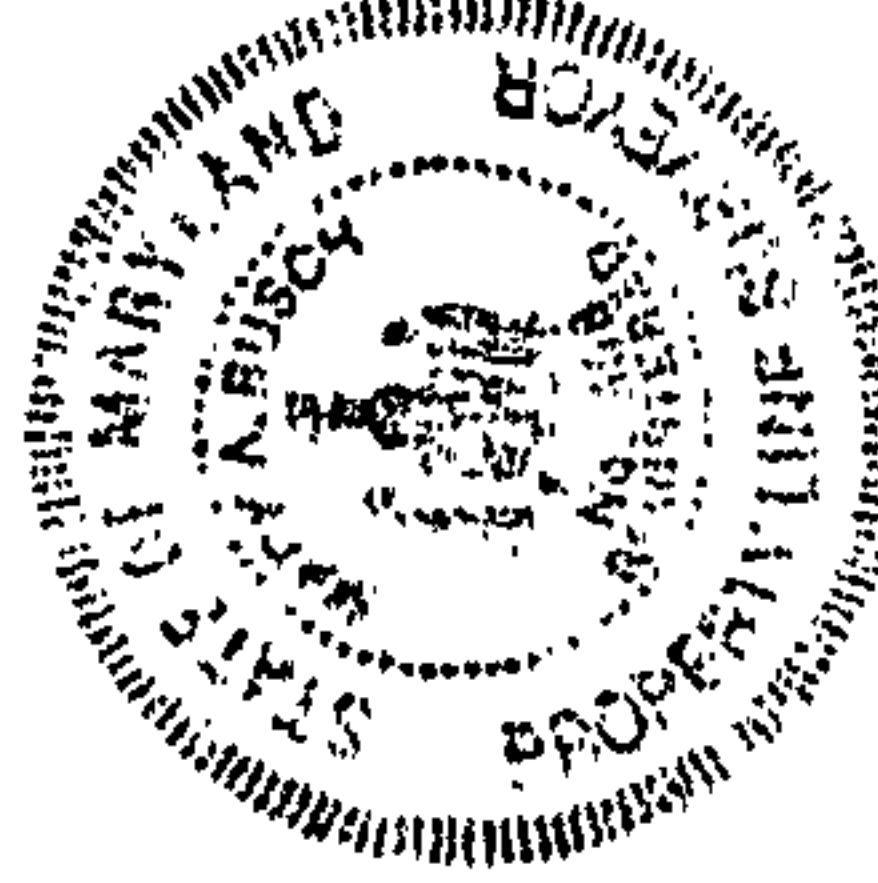
THE UNDERSIGNED, A REGISTERED PROPERTY  
LINE SURVEYOR OF THE STATE OF MARYLAND, DOES  
HEREBY CERTIFY THAT HE IS THE SURVEYOR WHO  
PREPARED THIS PLAT AND THAT THE LAND SHOWN  
ON THIS PLAT HAS BEEN LAID OUT AND THE PLAT  
THEREOF HAS BEEN PREPARED IN COMPLIANCE WITH  
SUBSECTION (C) OF SECTION 3-108 OF THE REAL  
PROPERTY ARTICLE OF THE ANNOTATED CODE OF  
MARYLAND, PARTICULARLY INsofar AS THE SAME  
CONCERNS THE MAKING OF THIS PLAT AND THE  
SETTING OF MARKERS.

MARK A. BUSCH PROP. LINE SURVEYOR #508 DATE

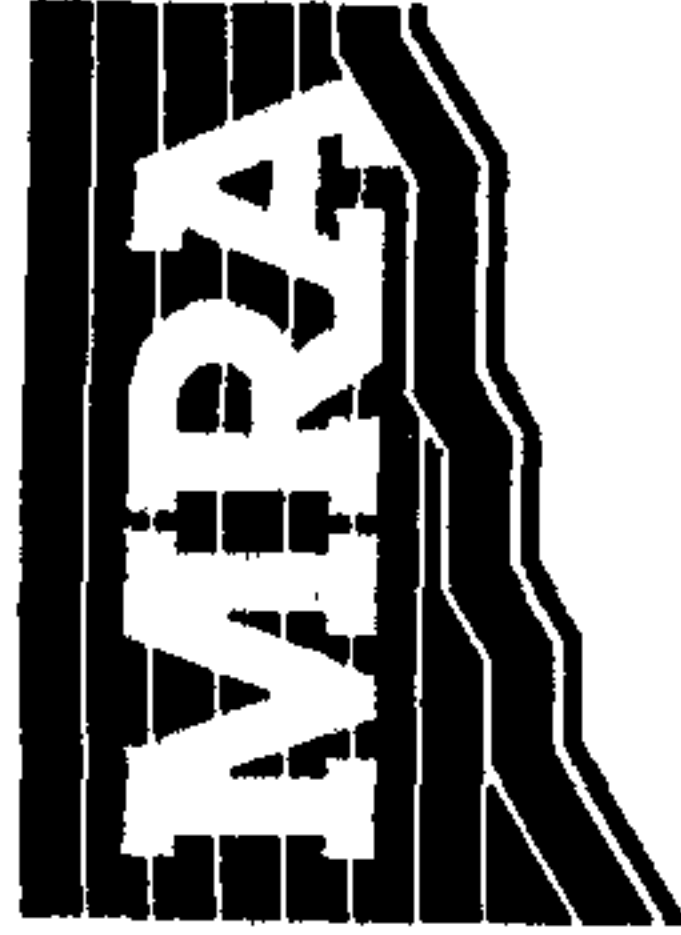
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CONCERNS THE MAKING OF THIS PLAT AND THE  
SETTING OF MARKERS.

Mark A. Busch 2/11/98  
MARK A. BUSCH PROP. LINE SURVEYOR #508 DATE



SURVEYOR'S  
SEAL



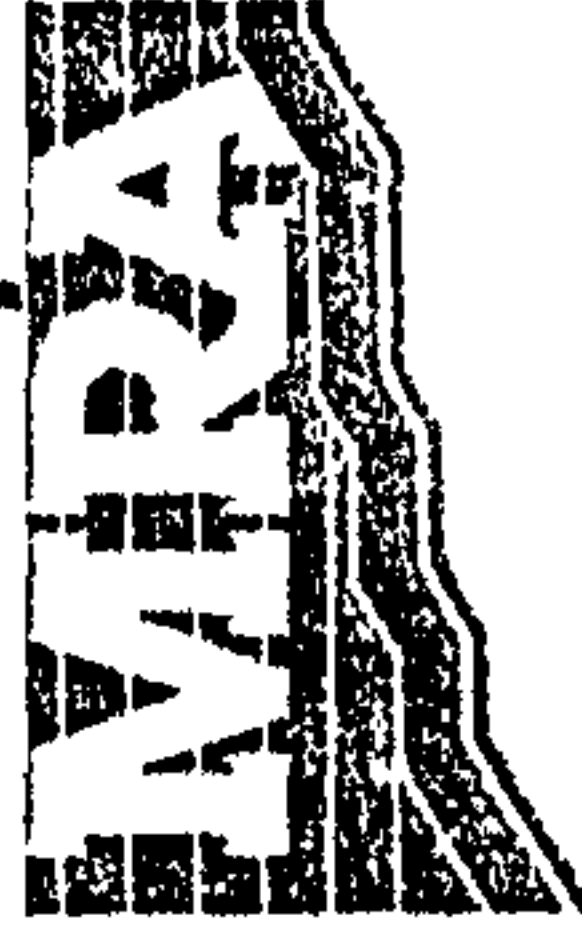
JOB NO. 10344

SCALE: 1" = 50'

DATE: 1/19/98

DRAWN BY: G.S.P.

REVIEW BY:



JOB NO. 10344

SCALE: 1" = 50'

DATE: 2/11/98

DRAWN BY: GSP/JWH

REVIEW BY: M.A.R.

FINAL PLAT TWO

THE ALMA SMITH PROPERTY

BALTIMORE COUNTY, MARYLAND  
ELECTION DISTRICT 15  
COUNCILMANIC TRACT 6

110 WEST ROAD - SUITE 105  
TOWSON, MARYLAND 21204  
(410) 821-1690  
Fax: (410) 821-1748

COUNCILMANIC TRACT 6

ENGINEERS, PLANNERS, SURVEYORS, AND LANDSCAPE ARCHITECTS

MORRIS & RITCHIE ASSOCIATES, INC.  
ENGINEERS, PLANNERS, SURVEYORS, AND LANDSCAPE ARCHITECTS

110 WEST ROAD - SUITE 105  
TOWSON, MARYLAND 21204  
(410) 821-1690  
Fax: (410) 821-1748

FINAL PLAT THREE

THE ALMA SMITH PROPERTY

BALTIMORE COUNTY, MARYLAND  
ELECTION DISTRICT 15

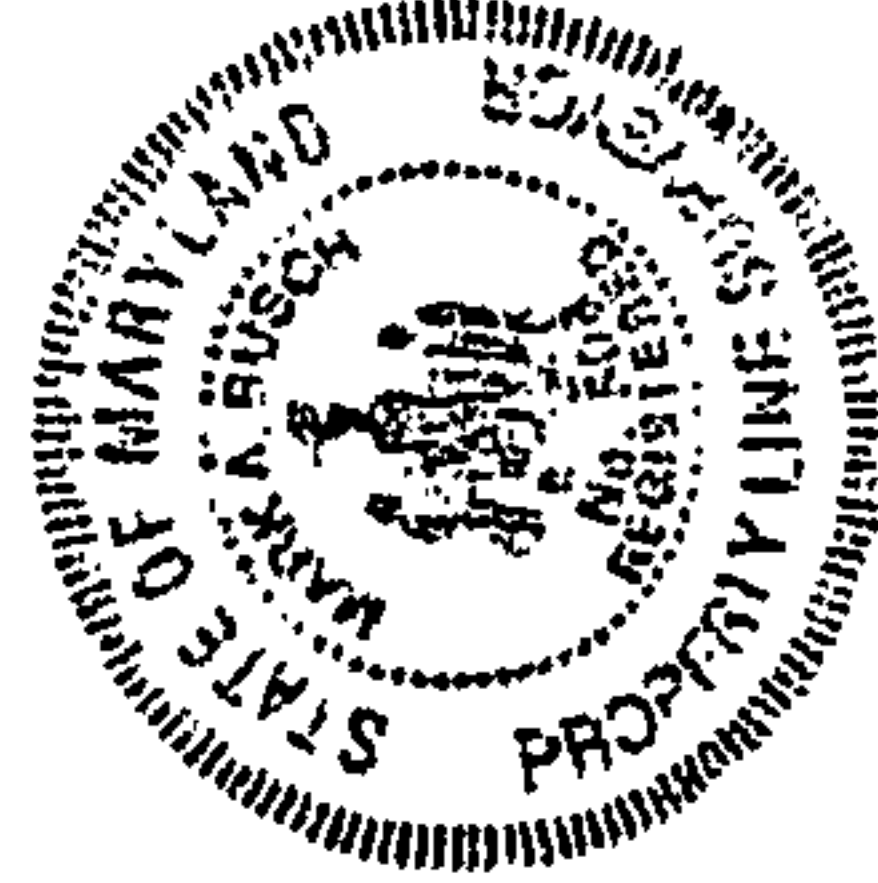
COUNCILMANIC TRACT 6

ENGINEERS, PLANNERS, SURVEYORS, AND LANDSCAPE ARCHITECTS

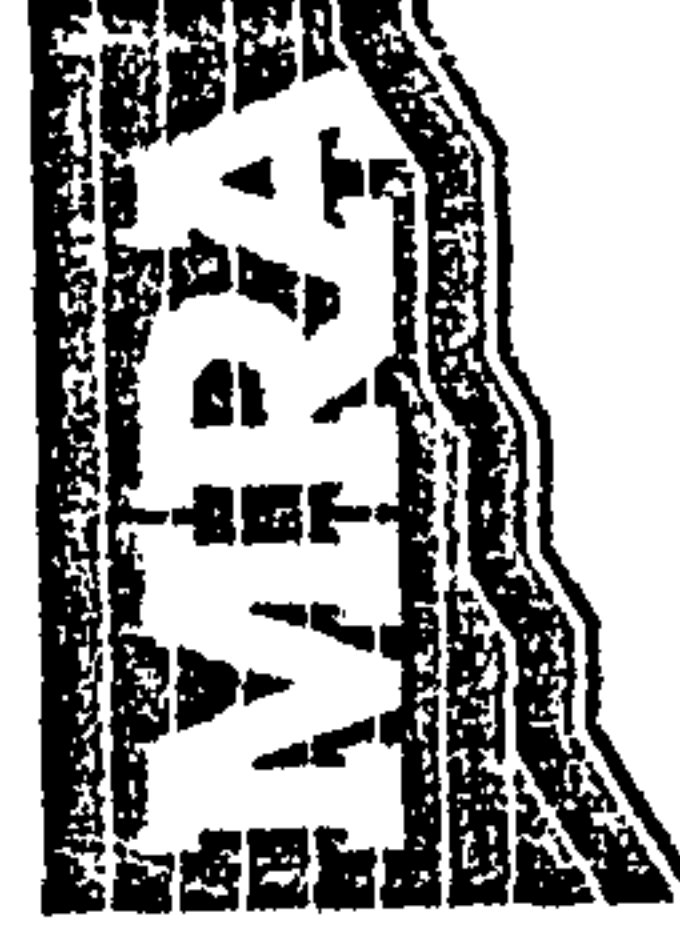
SURVEYOR'S CERTIFICATE

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LINE SURVEYOR OF THE STATE OF MARYLAND, DOES  
HEREBY CERTIFY THAT HE IS THE SURVEYOR WHO  
PREPARED THIS PLAT AND THAT THE LAND SHOWN  
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CONCERNS THE MAKING OF THIS PLAT AND THE  
SETTING OF MARKERS.

Mark A. Busch 2/11/98  
MARK A. BUSCH PROP. LINE SURVEYOR #508 DATE



SURVEYOR'S  
SEAL



JOB NO. 10344

SCALE: 1" = 50'

DATE: 2/11/98

DRAWN BY: J.W.H.

REVIEW BY: M.A.R.

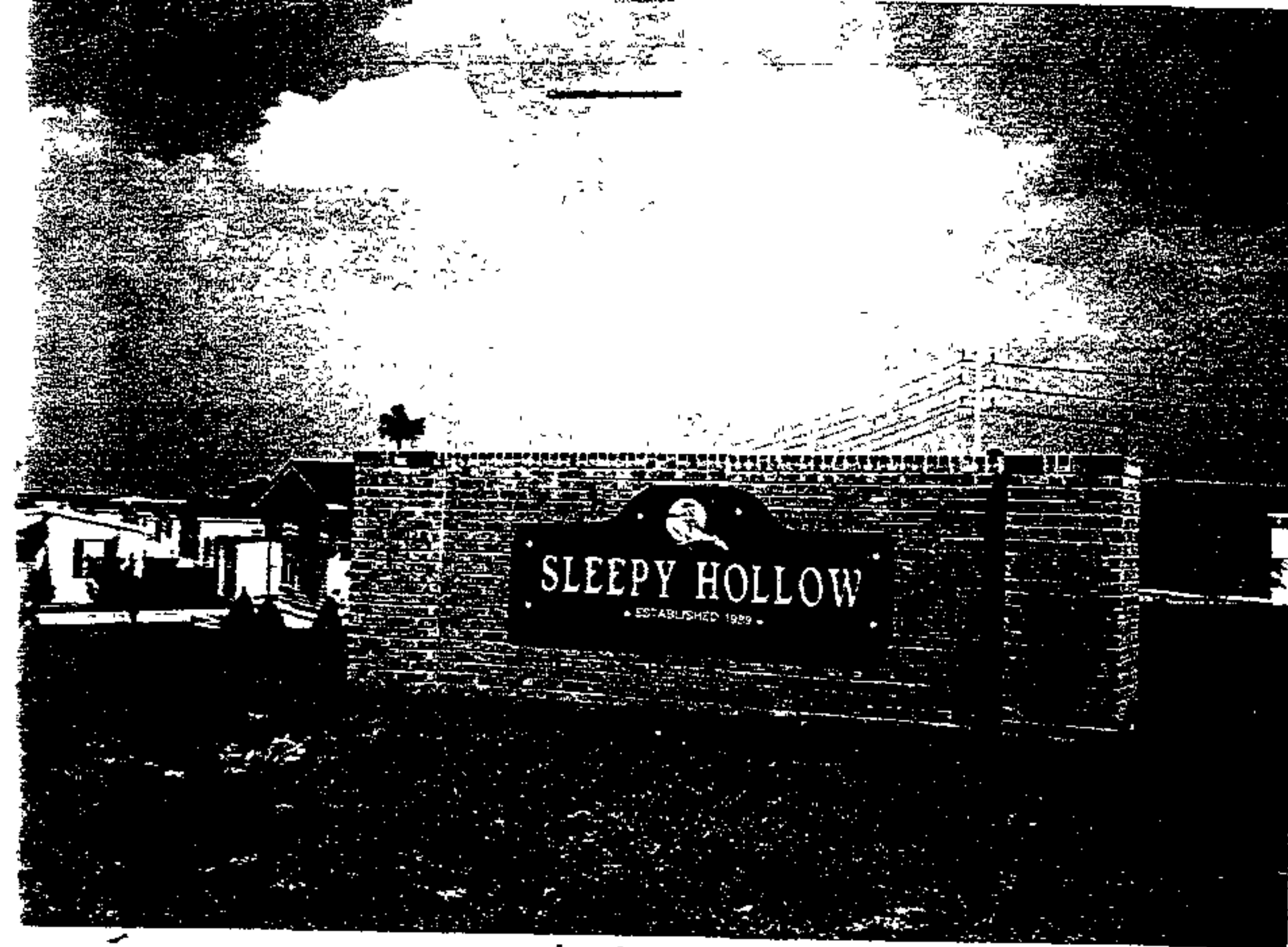
MORRIS & RITCHIE ASSOCIATES, INC.  
ENGINEERS, PLANNERS, SURVEYORS, AND LANDSCAPE ARCHITECTS

110 WEST ROAD - SUITE 105  
TOWSON, MARYLAND 21204  
(410) 821-1690  
Fax: (410) 821-1748

FINAL PLAT ONE

THE ALMA SMITH PROPERTY

BALTIMORE COUNTY, MARYLAND  
ELECTION DISTRICT 15  
COUNCILMANIC TRACT 6



A. Present Sleepy Hollow Community

SLEEPY HOLLOW  
WOODS, INC.

CR-98-149-XA

App # 3A, B, C



B. Mohr's Lane looking NW toward Pulaski Highway



C. Typical Mobile Homes.

App. #8



**THE RECOMMENDED  
BALTIMORE COUNTY  
COMPREHENSIVE  
ZONING MAP**

*Log of Issues, June 11, 1992*

A Report by the Baltimore County Planning Board  
for Public Hearings  
by the Baltimore County Council

*Pat. #8*

BALTIMORE COUNTY  
1992 COMPREHENSIVE ZONING MAP ISSUES

| ISSUE NO | OWNER, PETITIONER                                    | LOCATION                                                                              | TOTAL ACRES | EXISTING ZONING AND ACRES         | REQUESTED ZONING AND ACRES        | PLANNING BOARD RECOMMENDATIONS    | COMMENTS                |
|----------|------------------------------------------------------|---------------------------------------------------------------------------------------|-------------|-----------------------------------|-----------------------------------|-----------------------------------|-------------------------|
| 6-085    | AGP Fitch Avenue Pshp<br>By Julius W Lichter, Esq    | E Side of Rossville Blvd<br>230' N of Fitch Ave                                       | 10.69       | MLR-IM<br>10.69                   | BR<br>10.69                       | MLR-IM<br>10.69                   | See Issue 6-002         |
| 6-086    | William & Olive Burkard,<br>et al                    | E & W Sides of Walther<br>Blvd 140' S of Joppa Rd<br>(3519 E Joppa Rd)                | 5.93        | DR 5-5<br>5.93                    | RL<br>5.93                        | DR 5-5<br>5.93                    | See Issues 6-044, 6-094 |
| 6-087    | R. David Leas<br>By Howard L Alderman Jr             | SE Side of Pulaski<br>Highway 240' SW of Middle<br>River Rd (9523 Pulaski<br>Highway) | 1.14        | ML-CS-1<br>1.14                   | BR<br>1.14                        | BR<br>1.14                        |                         |
| 6-088    | William Z Hohenstein                                 | S Side of Joppa Rd 60' E<br>of Teaberry Lane (3335 E<br>Joppa Rd)                     | 0.20        | DR 5-5<br>0.20                    | RO<br>0.20                        | DR 5-5<br>0.20                    | See Issue 6-093         |
| 6-089    | Rossville Ctr Ltd<br>Partnership                     | SW corner Rossville Blvd<br>& Fitch Ave (7850<br>Rossville Blvd)                      | 1.90        | MLR-IM<br>0.50<br>ML-IM<br>1.40   | BR-IM<br>1.90                     | MLR-IM<br>0.50<br>ML-IM<br>1.40   |                         |
| 6-090    | Leroy M Merritt<br>By Venable, Baetjer &<br>Howard   | SE Side of Pulaski<br>Highway 750' NE of Middle<br>River Rd                           | 1.84        | ML-CS-1<br>1.84                   | BR-CS-1<br>1.84                   | BR-CS-1<br>1.84                   |                         |
| 6-091    | Milton G White, Jr<br>By G Scott Barnight            | S Side of Hydes Rd 1000'<br>W of Elders Rd (5051<br>Hydes Rd)                         | 77.00       | RC 2<br>77.00                     | RC 5<br>77.00                     | RC 2<br>77.00                     |                         |
| 6-092    | The Price Company<br>By Venable, Baetjer &<br>Howard | SE Side of Pulaski<br>Highway 650' SW of Mohra<br>Lane                                | 43.87       | ML-IM<br>40.12<br>ML-CS-1<br>3.75 | BR-IM<br>40.12<br>BR-CS-1<br>3.75 | BR-IM<br>40.12<br>BR-CS-1<br>3.75 | Includes Issue 6-001    |

## Baltimore County 1996 Comprehensive Zoning Map Issues

7/1/98

| Issue Number | Owner, Petitioner                         | Location                                                                               | Existing Zoning and Acres                                                                                                                               | Requested Zoning and Acres                                    | Planning Board Recommendations                                                                                                                                                        | Comment                                                                |
|--------------|-------------------------------------------|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| 5-047        | Woodford Realty Services                  | West side of Belair Road, 1200' north of Sunshine Ave.                                 | RC 5      0.240<br>Total      0.240                                                                                                                     | RCC or CR      0.240<br>BL CR      0.240<br>Total      0.240  | RC 5      0.240<br>Total      0.240                                                                                                                                                   | See Greater Kingsville Area Community Plan.                            |
| 5-048        | Robyn L. Burke                            | East side of Philadelphia Road, 200' south of New Forge Road (1545 Philadelphia Road). | BL      1.310<br>Total      1.310                                                                                                                       | BR      1.310<br>Total      1.310                             | BL      1.310<br>Total      1.310                                                                                                                                                     | (BR)                                                                   |
| 5-049        | Windless Run/Ballard Gardens Impr. Assoc. | Northwest side of Bkd River Road and Middle River Road.                                | DR 5.5      59.400<br>DR 16      18.500<br>BL      1.310<br>BR      19.520<br>MLR      14.240<br>ML      44.600<br>MH      17.770<br>Total      175.540 | DR 3.5      171.140<br>ML IM      4.400<br>Total      175.540 | DR 3.5      105.675<br>DR 5.5      21.580<br>DR 16      2.000<br>CB      0.700<br>BR      11.360<br>MLR IM      2.715<br>ML IM      13.910<br>MH IM      17.500<br>Total      175.540 | -1.21<br>-7.28<br>-1.2<br>-13.91<br>-7.7<br>See Issue 5-002 and 5-063. |

Page #6

Det. 6



# Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse  
400 Washington Ave.  
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN  
People's Counsel

March 12, 1998

CAROLE S. EMILIO  
Deputy People's Counsel

RECEIVED  
COUNTY BOARD OF APPEALS  
98 MAR 12 AM 10:22

Kristine K. Howanski, Chairman  
Board of Appeals of Baltimore County  
Room 49 Courthouse  
400 Washington Avenue  
Towson, MD 21204

Hand-delivered

Re: PETITIONS FOR RECLASSIFICATION,  
SPECIAL EXCEPTION and VARIANCE  
SWS Mohrs Lane (future Campbell Blvd)  
1760' E of c/l Pulaski Hwy, & SES of  
BGE/Susquehanna Transmission r.o.w.  
15th Election Dist, 5th Councilmanic  
SLEEPY HOLLOW WOODS, INC., Petitioner  
Case No. CR-98-149-XA  
Hearing Date: March 10, 1998

Dear Chairman Howanski:

To clear up any confusion about Council 1992 action on the subject property, I transmit a True Test Copy of the relevant portion of the Official 1" = 200' Zoning Map. It shows the property was zoned B.R.-I.M. Please note that the Price Club's Pulaski Highway frontage was zoned in part B.R.-C.S. This is consistent with the log introduced in evidence.

I have advised Mr. Williams about this. The submission of the map is in accord with discussions at the conclusion of the hearing March 10. I respectfully suggest that the map be admitted as People's Counsel's Exhibit # 13.

Very truly yours,

Peter Max Zimmerman  
People's Counsel for Baltimore County

KWC

Copy of enclosure attached -  
Original in file - PC # 13

Kristine K. Howanski, Chairman  
Board of Appeals of Baltimore County  
March 12, 1998  
Page Two

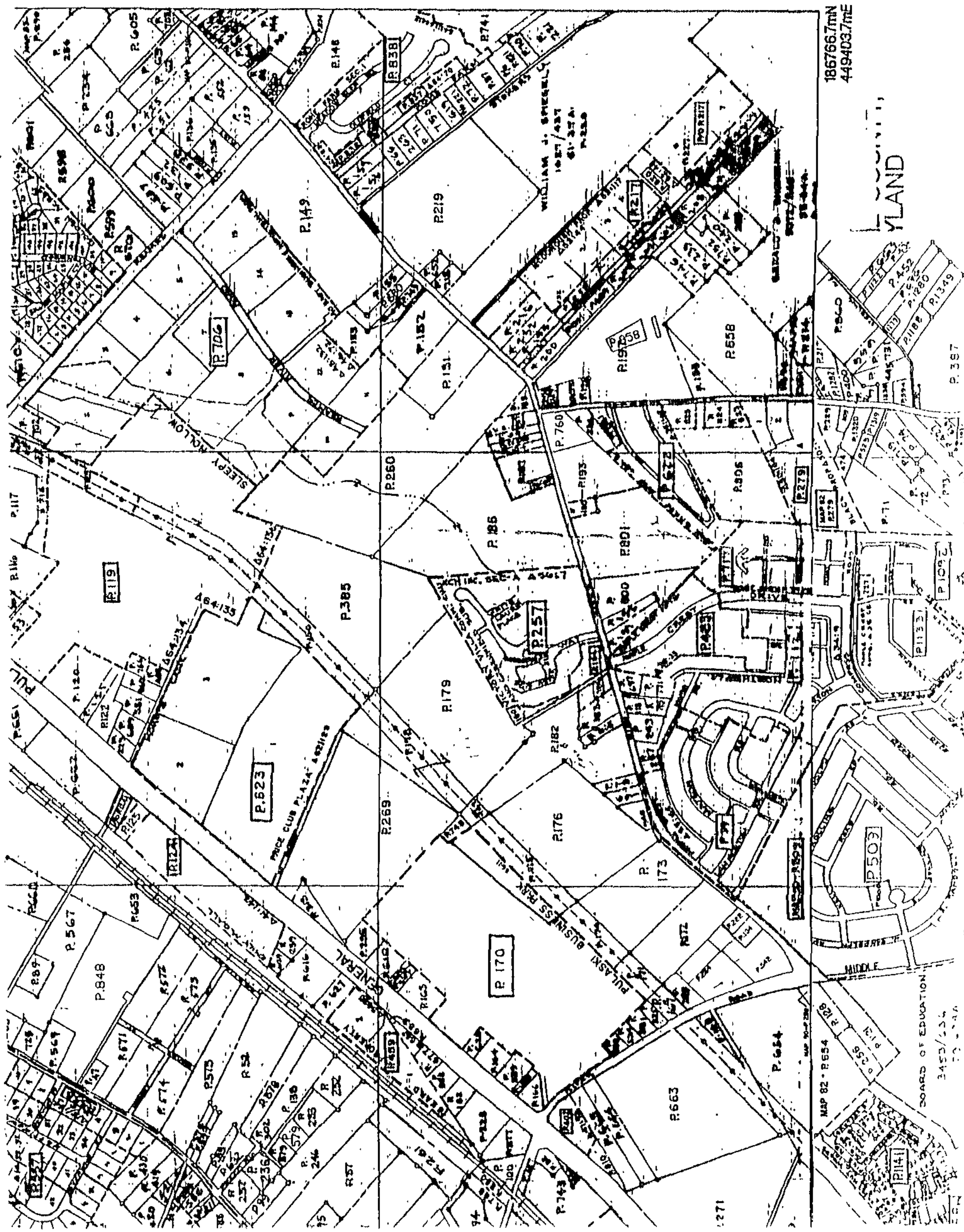
  
Carole S. Demilio  
Deputy People's Counsel

PMZ/caf

Enclosure

cc: Newton A. Williams, Esq. (with enclosure)

Q1





Baltimore County Office of Planning  
401 Bosley Avenue Towson Maryland 21204  
(410) 887-3480

P.C. #2

# 1996 COMPREHENSIVE ZONING MAP APPLICATION

This form and required material must be presented in person

|                                                                                   |  |                                                                                                                            |
|-----------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------|
| Issue No. <u>6-049</u><br>Council District <u>5th</u><br>Planner <u>J. Dillon</u> |  | <b>OFFICE USE ONLY</b><br>Received on <u>10 / 1 / 95</u><br>Fee (non-refundable) <u>75.00</u><br>Receipt No. <u>000827</u> |
|-----------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------|

## APPLICANT INFORMATION

|                                                                                                                                   |  |                               |
|-----------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------|
| <u>ADRIANNE BAYLE/ALBERTA SHIFLET</u><br>1. Name                                                                                  |  | 6. Attorney or Representative |
| <u>Windless Run Improvement Association/</u><br><u>Ballard Gardens Improvement Association</u><br>2. Organization (if applicable) |  | Firm name (if applicable)     |
| <u>1004 Gladway Road</u><br>3. Mailing Address                                                                                    |  | Address                       |
| <u>Baltimore, Maryland 21220</u><br>4. City, State, Zip                                                                           |  | City, State, Zip              |
| <u>(410) 687-5877</u><br>5. Home, Business Phone                                                                                  |  | Business Phone Number         |

## PROPERTY INFORMATION

|                                                         |                                               |                                                                                       |
|---------------------------------------------------------|-----------------------------------------------|---------------------------------------------------------------------------------------|
| <u>See Attached List</u><br>7. Property Owner's Name    |                                               | <u>N/W/S of Bird River Road &amp; Middle River Road</u><br>8. Property Street Address |
| <u>175.5 Ac ±</u><br>9. Acreage of Property             |                                               | Zip                                                                                   |
| <u>1</u><br>11. Election Dist.<br>(2 digit)             | <u>5</u><br>Property tax number<br>(10 digit) | <u>82 &amp; 90</u><br>12. Property tax map number / parcel number                     |
| <u>See Attached List</u><br>Election Dist.<br>(2 digit) | Property tax number<br>(10 digit)             | Property tax map number / parcel number                                               |
| Election Dist.<br>(2 digit)                             | Property tax number<br>(10 digit)             | Property tax map number / parcel number                                               |

## RECLASSIFICATION INFORMATION

|                                                                               |                                                            |                                                                                   |
|-------------------------------------------------------------------------------|------------------------------------------------------------|-----------------------------------------------------------------------------------|
| <u>175.54 Ac ±</u><br>13. Acreage of land requested for rezoning              |                                                            | 14. Zoning History (issue/case #, year, type)<br><u>DR3.5 171A ± ML-EM 4.44 ±</u> |
| <u>DR5.5, DR16, ML-IM 44.8 ±</u><br>15. Existing zoning (acres per zone)      |                                                            | 16. Requested zoning (acres per zone)                                             |
| <u>ML-IM 11.71 ±, MLR-IM 14.24 13P-IM 19.52</u><br>17. Existing Use of Parcel |                                                            | <u>Residential</u><br>18. Proposed Use of Site                                    |
| <u>E4</u><br>19. 1000' scale<br>zoning map no.                                | <u>NE 511.5 ±, 611.6 ±</u><br>200' scale<br>zoning map no. |                                                                                   |

THE INFORMATION SHOWN ON THIS FORM IS ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE

(SIGNATURE)

OWNER ACKNOWLEDGEMENT: Are you the owner? N X Y      If yes, review and sign below.

- I hereby grant permission to Baltimore County for any required inspections of my property in regard to the subject zoning request.
- I hereby acknowledge that if any rezoning occurs, a change in the property tax assessment and/or transfer taxes may result for which the property owner would be responsible. Further, I understand that if this zoning request is granted, it does not guarantee the issuance of plan approval or building permit. At the time of development processing, all County, State, and Federal requirements in effect at that time must be satisfied.
- I hereby acknowledge that the raising of an issue in no way guarantees that the requested zoning will be applied to the parcel by the County Council upon adoption of the Comprehensive Zoning Map.

Owner Name (Please Print)

Signature



**WINDLESS RUN IMPROVEMENT ASSOCIATION, INC.**  
1004 GLADWAY ROAD  
BALTIMORE, MD 21220  
687-5877

October 5, 1995

Baltimore County Office of Planning  
County Court Building, Suite 406  
Towson, MD 21204

Attention: Mr. Pat Keller

Reference:

Dear Sir:

The community organizations of Windless Run Improvement Association and Ballard Gardens Improvement Association have met with the Community Conservation Zoning Committee and have found that the zoning of ML IM, MH IM, BL, DR16, DR5.5, MLR IM in the area outlined, is detrimental for stable future development of our area.

In consideration of our already stressed infrastructure and county statistics proving that our area has more residents per acre than other areas of the county, we feel the areas outlined should be rezoned to DR3.5.

We believe that DR3.5 will assure a quality of housing development that the community can support.

Very truly yours,

**WINDLESS RUN IMPROVEMENT ASSOCIATION, INC.**

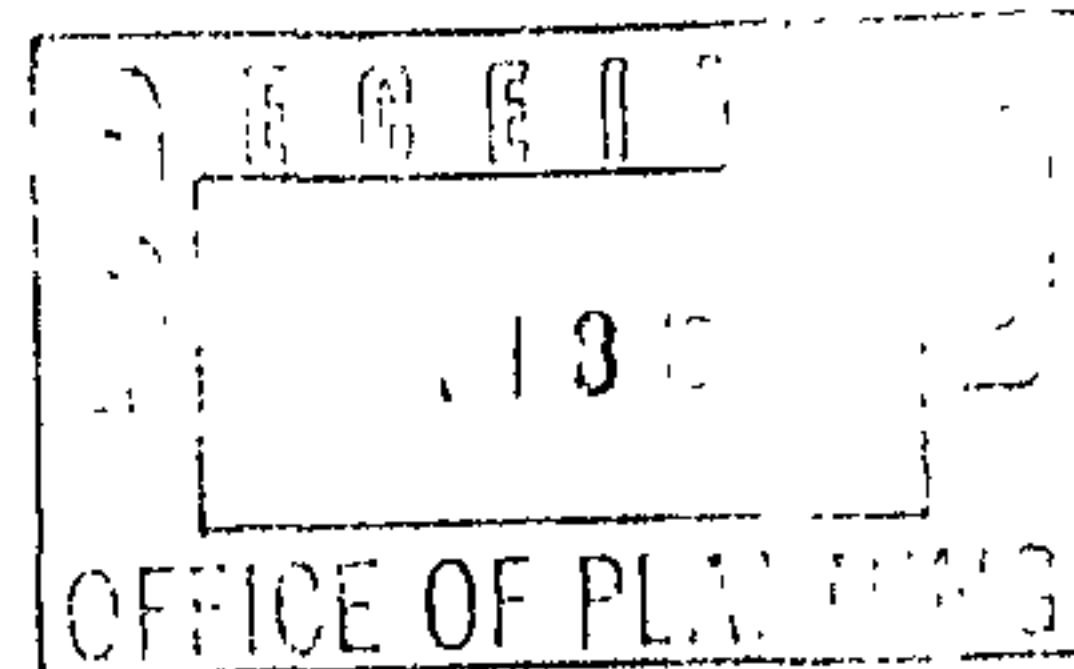
Adrienne Bayle  
President

cc: Alberta Shiflet  
Jack Dillon



**WINDLESS RUN IMPROVEMENT ASSOCIATION, INC.**

1004 GLADWAY ROAD  
BALTIMORE, MD 21220  
687-5877



April 12, 1996

Members of the Baltimore County Planning Board  
401 Bosley Avenue  
Towson, MD 21204

Reference: 1996 Comprehensive Zoning Map Process  
Issue 5-049

Ladies & Gentlemen of the Board:

Enclosed please find copy of letter addressed to Mr. Arnold "Pat" Keller in regards to the above referenced Issue.

Please note at this time the members of Windless Run Improvement Association and Ballard Gardens Community Association are still requesting these changes.

Sincerely yours,

Adrienne Bayle  
President

enclosure:



**WINDLESS RUN IMPROVEMENT ASSOCIATION, INC.**  
1004 GLADWAY ROAD  
BALTIMORE, MD 21220  
687-5877

February 23, 1996

Arnold "Pat" Keller, Director  
Office of Planning  
County Courts Building  
406 Bosley Avenue  
Towson, MD 21204

Reference. 1996 Comprehensive Zoning Map Process  
Issue No 5-049

Dear Mr. Keller:

On October 10, 1995, the Windless Run Improvement Association and Ballard Gardens Community Association jointly filed a request for review of 175 acres of land for consideration of rezoning within our communities.

The objective of these organizations was to stabilize the community by discouraging the development of additional apartments and townhouses, while encouraging single family detached housing and to provide a reasonable line of demarcation between the commercial/industrial corridors along Pulaski Highway.

This request includes approximately 35 separate parcels with a variety of different zoning classifications. Since that time we have met with our area planner to discuss the various implications of this request. As might be expected we, as communities, have gained additional information regarding some of this land such as established businesses, an existing trailer park, pre-existing zoning approvals and individual hardships. Based on the new information we are requesting the following.

- 1 Properties identified as tax parcel P182 is recommended for split zoning with westerly portion to remain ML-IM or SE while the eastern portion along Bird River Road to DR3.5
- 2 Property identified as tax parcel P179 to remain ML-IM or SE.
- 3 Property identified as tax parcel P257 to remain DR5.5 and DR16
- 4 Property identified as tax parcel P385 is to retain BR zoning northwest of the small stream which crosses this property and ML-IM or SE on the easterly side of this stream.
- 5 Property identified as tax parcel P119 to retain the MH-IM zoning.
- 6 Property identified as tax parcel P702 to remain ML-IM.
7. Property identified as tax parcel P706 to partially remain ML-IM with the remainder to change to DR3.5



**WINDLESS RUN IMPROVEMENT ASSOCIATION, INC.**  
1004 GLADWAY ROAD  
BALTIMORE, MD 21220  
687-5877

Mr. Arnold "Pat" Keller  
Office of Planning  
Page 2

Thanking you in advance for your attention to the above mentioned properties

Sincerely,

Adrienne Bayle, representing  
WINDLESS RUN IMPROVEMENT ASSOCIATION and  
BALLARD GARDENS COMMUNITY ASSOCIATION

cc: Alberta Shiflet, President  
Ballard Gardens Comm. Assoc.



BALTIMORE COUNTY  
1996 COMPREHENSIVE ZONING MAP PROCESS  
COMMENT FORM

Issue No. 5. 049

☒

Support Requested Zoning

☐

Oppose Requested Zoning

PLEASE PRINT

Name: ADRIANNE BAYLE

Organization (if any): WINDLESS RUN Imp Assoc

Address: 1004 GLADWAY RD 21220

Telephone #: 687-5877

Comments: WE SUPPORT THE Requested Zoning To  
STABILIZE THE Community & Discourage Multi Family  
Dwellings

Signature: Adrienne Bayle Date: 4-11-96

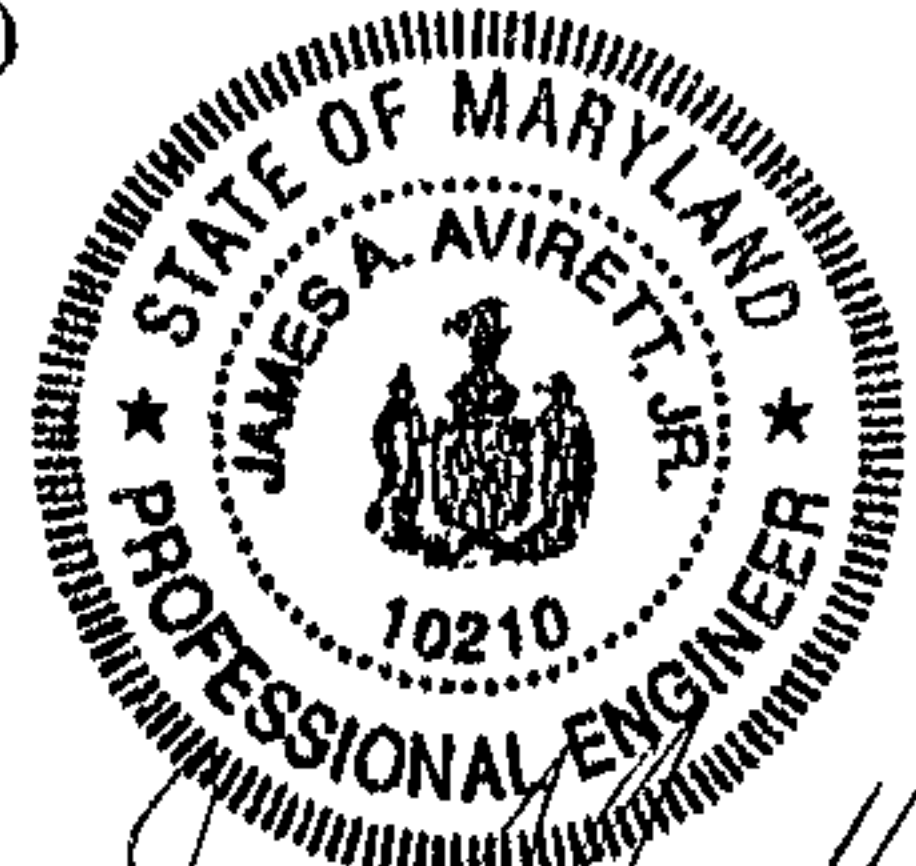
Use back of sheet for additional comments.

## Environmental Impact Statement

### Proposed DR 3.5 Zoning for Parcel 385 (Tax map # 82, Grid 17) Price Club Property, Mohrs Lane

Election District 15  
Census Tract # 4517.01  
Subsewer watershed 16  
Topo and aerial map 16

Councilmanic District 5  
Watershed number 1  
Regional Planning District 322  
Zoning map NE 6I



#### 1. Description of Proposed Project

The parcel in question is 17.079 acres in size and is located approximately 1700 feet east of Pulaski Highway, behind the Price Club property. The parcel is separated from the Price Club by the BGE power line right-of-way and the storm water management pond on the eastern portion of the Price Club site. The parcel currently has no direct roadway access.

The proposed project consists of 33 large-sized mobile-home lots, adjacent to an existing mobile home park (Sleepy Hollow Mobile Home Park). Access would be from the anticipated extension of Mohrs Lane to Bird River Road.

#### 2. Environmental Impacts of Proposed Action

**Land Acquisition and Displacements.** This property was bought at auction; there are no existing buildings or land uses on the site.

**Land Use and Zoning.** Currently, the site has two different zoning classifications: DR 3.5 (residential) in the southern portion of the parcel, and ML-IM (light manufacturing) in the remainder. Surrounding zoning and land use includes the mobile home park to the northeast (zoned MH-IM), proposed residential development to the south and east (zoned DR 3.5) and roadside commercial (Price Club and Home Depot) to the northwest and west (zoned BR-IM). The proposed zoning reclassification from ML-IM to DR 3.5 would allow, with a special exception, a mobile home park.

**Water Quality.** A second-order, use IV, unnamed tributary of White Marsh Run crosses the southern portion of the site flowing from west to east. This stream and its associated wetlands will be protected with appropriate buffers, as determined through correspondence with Baltimore County Department of Environmental Protection (DEPRM), and the natural hydrology of the site will be preserved. The proposed storm water management facility for the site is a created wetland marsh, providing an extension of the existing stream and wetland system on site. All appropriate erosion and sediment control measures will be conducted and all permits and approvals will be obtained (see Attachments).

**Wetlands.** Wetlands on site were delineated and a jurisdictional determination was obtained from the U.S. Army Corps of Engineers on August 2, 1995. This delineation was confirmed by DEPRM. This project will have no impacts to wetlands; all appropriate buffers as determined by DEPRM will be incorporated in the site plan (see Attachments).

**Forest Conservation.** A preliminary site reconnaissance has been conducted. As per State and County Forest Conservation Regulations, a Forest Stand Delineation and Forest Conservation Plan will be submitted during the site plan review.

***Flood plains.*** A flood plain study will be performed to determine the existence and/or extent of the flood plain on this property. Appropriate buffers will be developed in consultation with DEPRM.

***Endangered Species.*** No state or federal endangered, threatened or special status species are known to occur in the project area (see Attachments).

***Traffic and Parking.*** No traffic impacts are anticipated from this project. The existing roadway network (Pulaski Highway and Mohrs Lane) has sufficient capacity to absorb the additional traffic generated by the proposed mobile home park expansion. In addition, Mohrs Lane is expected to be extended to Bird River Road and renamed Campbell Boulevard, providing additional access.

***Hazardous Materials.*** Contacts with DEPRM have indicated no known hazardous materials on the proposed site (see Attachments).

***Historical Properties.*** No historic or archeological resources were identified in the proposed project area (see Attachments).

***Aesthetics.*** The proposed project will have little visual impacts. The stream and wetland buffers proposed for the southwestern portion of the parcel will provide screening for the residential land uses to the south and east of the project. On the west side, the proposed project will face the back, service side of the Price Club and Home Depot across the adjoining 150 foot BGE easement.

***Consistency with Local Plans.*** According to the Baltimore County Master Plan (February 5, 1990), the area surrounding the proposed project is designated as Industrial, with areas of Commercial along Pulaski Highway. The proposed use does not conflict with the overall land use in the area, as the surrounding land uses include residential (mobile homes and town homes) and commercial (Price Club and Home Depot) land uses.

***Summary of Impacts and Proposed Mitigation.*** The proposed project will be conducted to avoid impacts to the natural and socioeconomic environment to the greatest extent possible. The site plan will be prepared in an environmentally sensitive manner, ensuring adequate protection of steep slopes, wetlands, forest stands and streams. Landscaping, and street layouts will conform to all zoning requirements and set-backs. Buffer areas will be preserved between the proposed mobile home park and the proposed adjacent residential development. Because of the project's intent to avoid all impacts to the large areas of wetlands and streams on the site, only 35 percent of the total 17.079 acres will actually be cleared for development, leaving over 11 acres of forested wetlands and streams untouched.

### **3. Project Alternatives**

Because of the parcel's current land-locked status, few options exist for this property. The original zoning for the site was BR-IM (business roadside), but the isolation of the parcel from Pulaski Highway by the location of the storm water management pond and the BGE right-of-way made this use unlikely. Its use as a light-manufacturing site is limited by the adjacent residential development and the environmental constraints that reduce the developable size of the site.

Several alternative layouts have been developed for the proposed mobile home park, including several layouts designed to avoid the wetlands, flood plains and forested area on the south and southeastern portions of the site.

### **4. Unavoidable Adverse Environmental Effects**

The proposed project will create additional impervious area; however, this area will be less than what would be created by a light industrial use. Appropriate mitigation measures will be undertaken to ensure

that water quality impacts caused by this impervious area will be minimal. No other unavoidable adverse effects are anticipated.

#### **5. Cumulative, Long-term Effects.**

This project is not anticipated to have any long-term effects to the natural or socioeconomic environment. No moratoria on elementary schools, roads, water supplies or sewers exist in this area. This project will have no impact on development in the surrounding area, nor will it foreclose any important future uses of property in the vicinity.

#### **6. Irreversible or Irretrievable Commitment of Resources.**

This proposed project involves minor commitment of resources, such the site work, water and sewer lines, roadway construction and landscaping. However, the nature of a mobile home park implies that few of these commitments are irreversible or irretrievable. As indicated above, 11 of the total 17.079 acres will remain in forested wetlands and streams, thus preserving this portion of the site as a natural area.

#### **Attachments**

# Attachments



Baltimore County  
Department of Environmental Protection  
and Resource Management

Bureau of Engineering Services  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204  
(410) 887-3768  
Fax: (410) 887-4804

September 20, 1995

Mr. John Canoles  
Eco-Science Professionals, Inc.  
P.O. Box 5006  
Glen Arm, Maryland 21057

Re: Price Club Property  
Steep Slope/Erodible Soils Analysis

Dear Mr. Canoles:

The Department of Environmental Protection and Resource Management has received and reviewed your Steep Slope/Erodible Soils Analysis for the above-referenced property. The Steep Slope/Erodible Soils Analysis is approved at this time.

If you have any questions regarding these findings, please contact me at 887-3980.

Sincerely,

A handwritten signature in cursive script, reading "Keith Kelley".

Keith Kelley  
Natural Resource Specialist  
Environmental Impact Review

KDK/tmm

PRICECL/DEPRM/WQCBGA





Baltimore County  
Department of Environmental Protection  
and Resource Management

Bureau of Engineering Services  
401 Bosley Avenue, Suite 416  
Towson, Maryland 21204  
(410) 887-3768  
Fax: (410) 887-4804

August 8, 1995

Mr. John Canoles  
Eco-Science Professionals, Inc.  
P. O. Box 5006  
Glen Arm, Maryland 21057

Re: Price Club Property  
Mohr's Lane - Parcel 385  
Approved - Wetland Delineation

Dear Mr. Canoles:

The Department of Environmental Protection and Resource Management has received and reviewed your Wetland Delineation for the above-referenced property. The Wetland Delineation is approved at this time. Please note that a 1st order, Use IV unnamed tributary to Whitemarsh Run runs parallel and within fifty (50) feet of wetland "A". The Forest Buffer Easement (FBE) would be determined from a Steep Slope/Erodible Soils Analysis due to the high "K" factor of the soils. The minimal Forest Buffer Easement would be 100 feet which is measured from the centerline of this stream which is greater than 25 feet off the outer edge of the non-tidal wetlands. Also these would be a minimal 100 foot Forest Buffer Easement from the centerline of the intermittent stream for wetland "C" instead of a 25 foot Forest Buffer Easement which is shown on your plan.

If you have any questions regarding these findings, please contact me at 887-3980.

Sincerely,

A handwritten signature in cursive script, appearing to read "Keith Kelley".

Keith Kelley  
Natural Resource Specialist  
Environmental Impact Review

KK:sp

c: Mrs. Traies Roe

CANOLES/DEPRM/WQCBCA

# *Eco-Science Professionals, Inc.*



CONSULTING ECOLOGISTS

August 21, 1995

Mr. Keith Kelley  
Baltimore County Department of Environmental Protection  
and Resource Management  
401 Bosley Avenue  
Towson, Maryland 21204

RE: Price Club Steep Slopes Analysis

Dear Keith,

Enclosed please find a steep slopes analysis for the Price Club property. As we have discussed, Price Enterprises is trying to determine the actual buildable area of the site to establish a selling price. To assist in determining the site constraints a wetland delineation was performed. This delineation has been approved by Baltimore County DEPRM and the USACOE. It has been determined that since the site is technically a parcel and not a single lot, any development of the site will require the application of the County's Forest Buffer, as per the information you provided in the wetland approval letter.

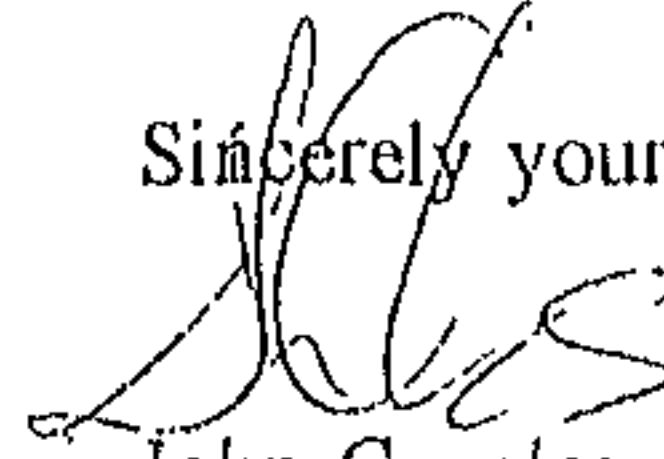
To that end, I have prepared a steep slopes analysis (SSA) for the site. The enclosed information shows the data generated in preparing the SSA and the resulting 100 foot forest buffer. The enclosed mapping shows a 100 foot buffer from all wetland areas, existing slopes differentiated as per the SSA, soils mapping and vegetative cover. Upon review of the site information, it became apparent that no transect breaks would occur within 100 feet of the resource, no slopes on or adjacent to the site are greater than 20 percent, all soils on the site have a K value greater than 0.32, and vegetative cover is good throughout the site. Upon these determinations it was concluded that the 100 foot forest buffer is appropriate for the existing site conditions. The following text outlines the basis for this conclusion:

For sites with uniformly poor soils and good vegetative cover, the slopes and sediment delivery become the factors that direct the location of the forest buffer. Under these circumstances, once outside the 100 foot minimum segment, only areas with slopes greater than 20 percent score 35 on the SSA. Since no areas on the site have a slope greater than 14 percent the forest buffer cannot extend beyond the first 100 foot segment. Typical transect scores show the calculations upon which this determination has been made.



Please review the enclosed information and do not hesitate to contact me if you have any questions. As the client is interested in placing this property on the market as soon as possible, a timely response would be greatly appreciated.

Sincerely yours,



John Canoles

Enc.

cc: Ms. Traies Roe; Price Enterprises, Inc.

DRAINAGE AREA:

Price Club - Typical Transect

CROSS SECTION:

A

B<sub>1</sub>

| Subsection Factor: | Value | Score | Value | Score |
|--------------------|-------|-------|-------|-------|
| Slope              | <10   | 0     | <10   | 0     |
| Slope Length       | 7200' | 10    | 7200' | 10    |
| SEI                | 2.32  | 10    | 2.32  | 10    |
| Cover              | bare  | 10    | good  | 0     |
| Sediment Delivery  | adj   | 10    | 100   | 5     |
| Total Score        |       | 40    |       | 25    |

CROSS SECTION:

B<sub>2</sub>C<sub>1</sub>

| Subsection Factor: | Value | Score | Value | Score |
|--------------------|-------|-------|-------|-------|
| Slope              | 10-20 | 5     | <10   | 0     |
| Slope Length       | 7200' | 10    | 7200' | 10    |
| SEI                | 2.32  | 10    | 2.32  | 10    |
| Cover              | good  | 0     | good  | 0     |
| Sediment Delivery  | 100   | 5     | 300   | 0     |
| Total Score        |       | 30    |       | 20    |

CROSS SECTION:

C<sub>2</sub>

| Subsection Factor: | Value | Score | Value | Score |
|--------------------|-------|-------|-------|-------|
| Slope              | 10-20 | 5     |       |       |
| Slope Length       | 7200' | 10    |       |       |
| SEI                | 2.32  | 10    |       |       |
| Cover              | good  | 0     |       |       |
| Sediment Delivery  | 300   | 0     |       |       |
| Total Score        |       | 25    |       |       |