

IN RE: PETITIONS FOR SPECIAL HEARING, * BEFORE THE
SPECIAL EXCEPTION & ZONING VARIANCE
W/S Cedar Knoll Drive, 160 ft. N * ZONING COMMISSIONER
of Sherwood Road
10881 York Road * OF BALTIMORE COUNTY
8th Election District
3rd Councilmanic District * Case No. 98-238-SPHXA
Legal Owners: Dr. Gulab Shah, et al
Contract Purchaser: 10881 York Rd., LLC
Petitioners *

IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE THE
& ZONING VARIANCE
W/S Cedar Knoll Drive, 333 ft. * ZONING COMMISSIONER
+/- N of Sherwood Road
10883 York Road * OF BALTIMORE COUNTY
8th Election District
3rd Councilmanic District * Case No. 98-239-XA
Legal Owners: Dr. Gulab Shah, et al
Contract Purchaser: 10881 York Rd., LLC
Petitioners *

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

These matters come before the Zoning Commissioner as a combined public hearing, on Petitions for Special Hearing, Special Exception and Zoning Variance. In case No. 98-238-SPHXA, consideration is given to a Petition for Special Exception; seeking approval of an Assisted Living Facility, Class B, of 15 residents on the subject property to be known as 10881 York Road (presently known as 8 Cedar Knoll Road) predominantly zoned R.O., with small areas zoned B.L. and B.R.3.5. Additionally, within that case, special hearing relief is requested to permit the location of parking for the proposed Assisted Living Facility to be on the adjacent lot, (10883 York Road) and that such arrangement complies with the provisions of Section 409.7, 409.8B and 409.12 of the of the Baltimore County Zoning Regulations (BCZR). Lastly, a Petition for Variance has been filed, seeking relief from Section 450.4 of the BCZR to permit a sign 20 sq. ft. per face on the subject property, in lieu of the maximum 15 sq. ft. per face, with direct illumination of the sign.

ORDINANCE NO. 98-238-SPHXA
Date 2/28/98
By M. Park

Somewhat similar relief is requested in case No. 98-239-XA. That case pertains to the property to be known as 10883 York Road (formerly known as 8-10 Cedar Knoll Road). In case No. 98-239-XA, special exception relief is requested to approve an assisted living facility, Class B, of 15 residents to be permitted on that lot, predominantly zoned D.R.3.5, with a small area zoned R.O. This Special Exception relief is requested in accordance with Section 432.1.A.3.

Additionally, as an alternative to a variance of the RTA restrictions contained in Sections 1B01.1.B.1.c.d.e, special exception relief is requested to waive the RTA restrictions applicable to the subject property, pursuant to Section 432.4. In addition, variance relief is sought, in the alternative to the special exception, from Section 1B01.1.B.1.c., d., and e., all to permit a minimum 20 ft. buffer and 35 ft. setback area, in lieu of the required 50 ft. buffer and 75 ft. setback for R.T.A. requirements. A second variance is also requested, from Section 1B01.2.C.1.a, to permit a rear yard of 30 ft. in lieu of a front yard setback requirement of 50 ft. for a double frontage lot, and also to approve a modified parking plan. Both of the subject properties and requested relief therefore is more particularly shown on Petitioners' Exhibit No. 1, the plat to accompany the Petitions.

As noted above, the two cases at issue relate to adjoining properties identified as 10881 York Road (also known as lot No. 1 or 8 Cedar Knoll Road) and 10883 York Road (also known as lot No. 2 or 10 Cedar Knoll Road). To promote ease in discussion and clarity, the properties will be referred to hereinafter as 10881 York Road and 10883 York Road.

In that both the properties are proposed for development in accordance with one scheme, the public hearing for all of the Petitions was combined. Therefore, this single written decision will be entered, although all of the various issues presented shall be addressed.

CRIMINAL JUSTICE TRAINING
DATE 2/18/98
BY M. Howard

The zoning Petitions were filed by the owners of the subject property, Dr. Gulab Shah, Dr. Rekha Shah, D.G. Parekh and Nirulata D. Parekh, as well as the contract purchaser of same, 10881 York Road, LLC through David Farrell, Executive Vice President.

Appearing at the requisite public hearing on behalf of the Petitions was Mr. David Farrell. The company which will acquire title to the subject properties (10881 York Road, LLC) is a limited liability corporation established solely for that purpose. Mr. Farrell also represents the entity which will operate the proposed assisted living facilities for the elderly, Newport Assisted Living, Inc. Also appearing on behalf of the Petitions was James S. Patton, a professional engineer and land planner. The Petitioners were represented by Howard L. Alderman, Jr., Esquire.

The proposed zoning relief generated significant public interest and participation. A number of individuals appeared from the surrounding locale in conditional support of the proposal. These individuals support the proposal for so long as certain restrictions and limitations are imposed. (e.g. landscaping) These individuals included Michael and Judy D'Anna, Edward J. Conif, Chris Supik, Audrey Cyphers-Crush and Richard Evans. Additionally, several individuals appeared who are opposed to the requested relief, irrespective of the Petitioners' attempts to mitigate the anticipated impacts of same. These protestants included Kate Masterton, who appeared on her own behalf as well as her husband (Jay Hergenroeder), Chris Dern and Chris Harvey.

Testimony and evidence presented was that the entire property at issue is approximately 2.50 acres in net area. The property has frontage on York Road (Md. Rt. 45), a major north-south arterial road in central Baltimore County. In fact, it can be argued that York Road is the predominant arterial road in central Baltimore County. York Road begins in Baltimore City to

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BY [Signature]

the south, runs through the County seat in Towson, pass the interchange with the Baltimore Beltway (I-695) and thence northbound to the Pennsylvania line. At its southern extremity, York Road is an urban roadway adjacent to numerous retail, commercial and business uses. Ultimately, the road becomes more rural in character.

At this location, the roadway is suburban in character. The subject site is near the former location of the Cockeysville underpass. In a major repair project, several years ago, the underpass was eliminated and York Road rebuilt. At this locale, most of the properties which front York Road are retail/business in character. However, the side streets which intersect York Road lead to a number of residential communities to the interior.

In addition to the frontage on York Road on the property's west side, the property also abuts Cedar Knoll Road on the east. This is a residential type road which serves the adjacent residential community. Abutting the property's southern boundary is a commercial site owned by Mareposa, LLC. This business is a picture frame shop. On the north side, the property abuts land owned by Mr. and Mrs. D'Anna, which is used residentially.

Presently, the site is improved with a large building which was formerly used as a single family dwelling. The house is a large structure which was, no doubt, originally constructed and used as a country home when the locale was rural. In addition to this dwelling, the property contains several outbuildings. All of the structures which presently exist on the site will be razed if this project moves forward.

The Petitioners propose a substantial redevelopment of the site. The property has been subdivided so as to create two lots, shown on the plan as lots 1 and 2. Lot 1 contains the southern portion of the tract, is to be known as 10881 York Road and contains 1.29 acres in net area. It is split zoned B.L. and R.O., with the predominant zoning being R.O. As shown on the

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Date 2/15/93
By [Signature]

site plan, the zone line transects lot 1 near its southern border so as to create a small B.L. strip along the property line. The Petitioner proposes constructing a single story 15 person assisted living facility for the elderly on lot No. 1. Assisted living facilities are defined in Section 101 of the BCZR. Summarized, that definition states that an assisted living facility is a building which provides a residential environment for persons 62 years of age or older, who have temporary or periodic difficulties with one or more of the essential activities of daily living. Assisted living facilities are not nursing homes and do not provide intensive care for their residents. Instead, they are designed to create a residential environment while nonetheless providing assistance for individuals who need limited help. Where assisted living services are located in the new building, such as proposed, the regulations identify the facility as a Class B facility.

A second identical building is proposed on lot No. 2. Lot 2 is 1.21 acres in net area and is to be known as 10883 York Road. Essentially, lot 2 occupies the northern portion of the overall tract. Lot 2 is also split zoned with the R.O. and D.R.3.5 designation. The predominant zoning of the tract is D.R.3.5, including that section where the proposed building is to be located.

Mr. Patton offered substantial expert testimony, from an engineering, development and planning perspective, regarding the subject property and its proposed use. He detailed the proposed improvements as more fully described in Petitioners' Exhibit No. 1. As noted above, two buildings will be built, each housing 15 residents. Each building will be one story in height and designed to capture a residential character. Importantly, vehicular access to the site will be by way of York Road only. Such a design is envisioned to eliminate traffic to the subject property from Cedar Knoll Road. In fact, the property's frontage along Cedar Knoll Road will be bermed and/or

landscaped, in an effort to mitigate the view and impact of the proposed use to the residences which are located on the other side of that road.

Apparently, the subdivision of the property into two lots has already been approved by Baltimore County. In this regard, Mr. Patton indicated that the Development Review Committee had approved same and had granted the project an exemption from the development regulations as a minor subdivision on December 15, 1997. In addition to the site plan, Mr. Patton also offered a number of photographs of the property and surrounding locale. In addition, he testified as to the proposals' compliance with the various requirements and standards contained within the BCZR. In his judgment, the project complies with the applicable provisions of the BCZR and should be approved.

Testimony was also received from Ms. Supik, Mrs. D'Anna and Mr. Farrell. These witnesses all appeared in support of the project, contingent upon the Petitioner developing the site in the manner shown on the site plan. Specifically, these witnesses support the proposal; assuming that landscaping will be installed as promised, with the buildings to be of the character described and that vehicular access will be only from York Road. Mr. Coniff, in particular, testified that the proposal is an improvement on present conditions and believes it appropriate.

Lastly, limited testimony was also taken from Mr. Farrell. He addressed some of the Protestants' concerns regarding fencing and trash removal.

Oral testimony was also received from the three Protestants who appeared. Some of their testimony was summarized in written statements which were also received into the record. Essentially, the Protestants believe that the proposal presents an unwarranted intrusion on their residential community. They believe that the proposed use is out of character with the

neighborhood and will detrimentally impact their properties and community. The specifics of their opposition are set forth in their written comments.

The above summary is not intended as a full recitation of the testimony and evidence offered by both sides. The hearing which was conducted occupied nearly one full day and for the sake of brevity, all of the comments and testimony cannot be repeated herein. Suffice it to say, however, that I considered all of the testimony and evidence offered, both oral and documentary. Additionally, I visited the site and am familiar with the area.

Turning first to the issues presented in case No. 98-238-SPHXA (10881 York Road), it is again to be noted that three petitions are at issue, Petitions for Special Exception, Special Hearing and Variance. The Petition for Special Exception requests approval of a Class B Assisted Living Facility in an R.O. zone, pursuant to Section 432.1.A.3 of the BCZR.

In this regard, it is to be noted that the BCZR essentially divides the uses of land into three categories. The first are uses which are permitted by right. For example, in residential (D.R.) zones, a dwelling is a permitted use by right. Zoning approval is not required for the construction of a dwelling in a residential zone, assuming compliance with all building codes and similar standards. Uses permitted by right are exactly that; they are automatically allowed despite any potential impact of same.

The second category contains prohibited uses. In a residential zone, for example, manufacturing uses are not allowed. No matter how slight its impact, a prohibited use is not permitted.

The third type of use are special exceptions. In other jurisdictions, special exception uses are known as conditional uses. In effect, these uses are a middle ground, between uses permitted by right and those prohibited. Special exception/conditional uses are permitted only after the property owner obtains approval from the zoning authority. In order to obtain such

approval, a Petition for Special Exception must be filed and public hearing thereon conducted. The Petitioner must produce evidence to meet the requirements of Section 502.1 of the BCZR. In essence, that section sets out the standard which must be applied in order to make a determination if the use adversely impacts the health, safety or general welfare of the locale.

Special exceptions have frequently been considered by the appellate courts of this State. In the seminal case of Schultz v. Pritts, 291 Md.1 (1981) the Court of Appeals of Maryland comprehensively discussed the law of special exceptions and the considerations which must be applied in the evaluation of same. The Court stated that "The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any factor or circumstance negating that presumption". (emphasis in original pg. 11) Thus, the Court opined that special exception uses are presumptively valid and should not be permitted only if circumstances exist in that particular case which negates this presumptive permissibility.

The Schultz case also set out the standard to be applied in considering special exceptions. Specifically, the Court stated that it must be determined if the proposed use has an adverse effect upon the surrounding properties unique and different from the effect that would, otherwise, result from the development of such a special exception elsewhere in the zone. To deny a special exception, the zoning authority must make a finding of facts and circumstances demonstrating that the particular use proposed at the particular location proposed would have adverse effects above and beyond those inherently associated with the use.

Cases issued by the appellate courts of this State since Schultz have expanded upon that holding. One recent case is Mossberg v. Montgomery

County, 107 Md. App. 1 (1995). Therein, the Court explained, ". . . it is not whether a use permitted by way of a special exception will have adverse effects (adverse effects are applied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency." (pgs. 8-9)

Thus, in the instant case, the issue is not whether the proposed assisted living facility will have impacts in the neighborhood. It, no doubt, will. (e.g. traffic will be generated, buildings will be visible, etc.) Moreover, it is not significant if those effects are adverse upon the community. The adverse nature of same are implied by making the use permitted by special exception, rather than by right. The test is whether the adverse impact would be different and more flagrant here than elsewhere in the R.O. zone.

Based upon the testimony and evidence presented, I find that the Petition for Special Exception should be granted. In reaching this judgment, I place great weight upon the fact that the subject property is adjacent to and access will be provided from York Road. This is not an instance of an assisted living facility located in the midst of a residential community. To the contrary, this site is immediately adjacent to a primary arterial road in north central Baltimore County. If such a use is not to be located adjacent to an arterial road, it might be asked, where should it be? Moreover, I believe that the Petitioners have made appropriate efforts to mitigate the impact of the use from the adjacent residential community (e.g., landscaping, berming, etc.). These factors are sufficient to support the conclusion that the property complies with the requirements set forth in

Section 502.1 of the BCZR. Thus, the Petition for Special Exception, in case No. 98-238-SPHXA, should be approved.

The second item for consideration in that case is the Petition for Special Hearing, which essentially seeks approval of the modified parking arrangement. As shown on the site plan, there will be but one curb cut on York Road for means of access to both lots. That access from York Road will lead to a cul-de-sac which terminates in the interior of the property. The roadway and cul-de-sac are bisected by the lot line. Thus, much of the traffic destined to lot 1 (10881 York Road) will park on the cul-de-sac which is located on lot 2 (10883 York Road). In my judgment, the Petition for Special Hearing should be approved. Although there are two lots at issue, the parking scheme is integrated to accommodate both buildings. The existence of the lot lines are an artificial consideration, to the extent that the property will have but a single purpose. I believe that the proposed modified parking plan is appropriate and satisfies the criteria under law. Thus, the Petition for Special Hearing shall be granted.

The third item under consideration relates to signage. Specifically, the Petitioners propose the erection of a sign on York Road, which would be 20 sq. ft. per face and visible to both northbound and southbound traffic. Also, the sign will be illuminated by way of "soft lighting".

Unlike special exceptions, variances are a different zoning tool. Variances are governed by Section 307 of the BCZR. In Baltimore County, the Zoning Commissioner has the authority to grant variance relief from area requirements, sign regulations, and parking requirements. The variance under consideration in this case is not a use variance, which is not permitted in Baltimore County.

The variance process in Baltimore County has also undergone review by the appellate courts of this State. The leading and most recent case is

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Cromwell v. Ward, 102 Md. App. 691 (1995). Therein, the court set out a three part test which must be applied. First, the Petitioner must demonstrate that the property at issue is unique. If such testimony is offered, the second step is then considered, whether the Petitioner would suffer a practical difficulty or unreasonable hardship if relief were not granted. Third, variance relief can only be approved if there would be no adverse impact on the surrounding locale.

In this case, the Petitioner argued several factors which it alleges makes the property unique. First, is the property's location adjacent to York Road, a highly traveled arterial roadway, as noted above. Moreover, the Petitioner noted the unusual grade of the subject property. Specifically, it was argued that the grade of the property rises rapidly from York Road. This distinguishing characteristic supports the variance relief, according to the Petitioner.

From a more practical standpoint, it is to be noted that the Petitioner could, by right, erect two signs on the property at large: one on each lot. Most of the interested persons present, including some of the Protestants, acknowledge that a single sign, as proposed, would be more appropriate, than two signs which would be permitted by right.

I am persuaded that the Petitioner has satisfied the variance requirements. As to the first test, I find that the grade of the site and the configuration of the property are factors which justify a finding of uniqueness. Moreover, I believe that a practical difficulty or unreasonable hardship would be sustained if relief were denied. In this regard, it is vital that the Petitioner properly advertise its location, so as to enable emergency vehicles to find the site. Additionally, a sign of sufficient size will be helpful in directing routine visitor traffic and deliveries to the property. These considerations are sufficient and serve a public safety

goal, to prevent unsafe traffic movements and reserve the orderly flow of vehicular traffic on York Road. For these reasons, I find that a practical difficulty would be suffered if relief were denied.

Lastly, there will be no detrimental impact on surrounding properties. It is doubtful that the sign will not be visible from the residential community to the rear. Although it will be visible from other properties along York Road, many of those properties are commercial in character and I find no detrimental impact.

Turning next to the Petitions at issue in case No. 98-239-XA, special exception relief is requested for the second assisted living facility building (Class B) on the lot known as 10883 York Road. This lot is zoned D.R.3.5 and the special exception request is requested pursuant to Section 432.1.A.3. Again, the standards enunciated above and as set forth in Schultz and Mossberg are relevant. The question to be determined is not whether the impact of the proposed use will have an inherent effect on the community; rather, whether there is a unique detriment associated with the proposal at this location. For many of the same reasons as set forth above, I will grant the Petition for Special Exception in this case. In my judgment, the Petitioner has presented sufficient testimony to support the granting of the requested relief. I believe that the proposal complies with the requirements set forth in Section 502.1 of the BCZR.

The Petition for Special Exception in case No. 98-239-XA contains a second prong. Specifically, the Petitioner requests approval, pursuant to Section 432.4 of the BCZR, for special exception relief as to the Residential Transition Area (RTA) requirements. Specifically, Section 432.4 provides, in relevant part, that the Zoning Commissioner may, by special exception, modify or waive the residential transition area restrictions " . . . in cases where a elderly housing facility development would be severely or

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BY [Signature]
CITY OF BOSTON

adversely affected by the restrictions set forth in paragraph 1B01.1.B.1.b.
...".

The RTA regulations are set forth in Article 1B of the Baltimore County Zoning Regulations. By definition, the RTA is a 100 ft. area including any public right of way extending from a D.R. zone tract boundary into the site to be developed. The purpose of the RTA requirements is to assure that similar housing types are built adjacent to one another or that adequate buffers and screenings are provided between dissimilar housing types.

In this case, the R.T.A. is generated by the adjacent residential community. The Petitioner seeks a variance from the RTA buffer and setback requirements or, in the alternative, special exception relief as aforesaid. The Zoning Commissioner may grant special exception relief if three findings are made; (a) That compliance with all or part of the RTA restrictions would cause unreasonable hardship on the development; and, (b) if the quality of the site design and amenities provided would justify a modification or waiver of the RTA restrictions; and, (c) that the development will not be detrimental to the use and peaceful enjoyment, economic value or development of surrounding properties in the general neighborhood.

These issues were the subject of significant expert testimony from Mr. Patton and commented on both for and against by the community members who appeared. It is to be noted that the RTA does not absolutely prohibit dissimilar housing styles but requires either a compatibility of same, or an appropriate screening or buffering of the similar types. In this regard, the Petitioner has made significant efforts to provide a reasonable screening and buffering, and to mitigate the impacts of the different uses.

The building elevation drawings, which were submitted, show that the proposed buildings have been designed to cast a residential character. The buildings are not similar to office building architecture, for example.

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BY [Signature]

Instead, they appear to be more in character with large country style dwellings. Additionally, a significant amount of landscaping/berming is proposed. As shown on the site plan and described at the hearing, the Petitioner will install landscaping along the northern and eastern boundary so as to buffer the proposed use.

Testimony and evidence was offered by the Protestants suggesting the relocation of the building. However, I am satisfied that the proposed location is appropriate and most practical. Relocation of the building closer to York Road would be difficult in view of the grade of the property as well as the proposed location of the storm water management facility. For all of these reasons, I shall grant that prong of the special exception relief required, to waive/modify the RTA requirements consistent with the development as shown on the site plan.

The second consideration in case No. 98-239-XA is the Petition for Variance. Based upon the finding as to the Petition for Special Exception, a portion of the variance is now moot; specifically, the relief requested from Section 1B01.1.B.1.c, d and e. Variance relief from the RTA buffers and setbacks is not required in view of the grant of the special exception.

However, variance relief is requested for the proposed building on lot 2 (10883 York Road). As shown on the site plan, the rear wall of the building is located 30 ft. from the right of way line and variance relief is, therefore, requested from a front yard setback of 50 ft.

This unusual request is generated by the fact that the property abuts two public roads. As noted above, the primary frontage is on York Road, however, the rear of the property is adjacent to the right of way for Cedar Knoll Road. An examination of the site plan shows that the building under consideration is oriented towards York Road. Moreover, vehicular access is by way of same.

In my judgment, a variance from the front yard setback requirements is not needed. I find that his property does not have two front yards, but a front yard between the structure and York Road and a rear yard between the structure and Cedar Knoll Road. Thus, the front yard setback regulations do not have to be met as to the distance between the building and the right of way to Cedar Knoll Road. For so long as the property maintains an adequate rear yard setback in that location, a front yard setback variance relief is not necessary. Thus, this request shall be dismissed, as moot.

Lastly, it is to be noted that the plan approved and relief granted is conditioned, in accordance with comments made at the hearing. The property shall be landscaped and bermed as more particularly shown on the site plan. Moreover, the buildings must be constructed in substantial accordance with the building elevation drawings presented. All development of the site must be in accordance with the site plan submitted, in terms of vehicular access, architecture/size of buildings, etc.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested should be granted.

IT IS THEREFORE ORDERED, by the Zoning Commissioner for Baltimore County, this 18th day of February 1998, that, pursuant to the Petition for Special Exception, approval to allow a Class B Assisted Living Facility, of 15 residents on the subject property to be known as 10881 York Road (presently known as 8 Cedar Knoll Road) predominantly zoned R.O., with small areas zoned B.L. and D.R.3.5, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that, pursuant to the Petition for Special Hearing, approval to permit the location of parking for the proposed use on the property to be known as 10881 York Road to be on the adjacent lot, (10883 York Road) and a finding that such arrangement complies with the provisions

of Section 409.7, 409.8B and 409.12 of the of the Baltimore County Zoning Regulations (BCZR), be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance from Section 450.4 of the BCZR to permit a sign 20 sq. ft. per face on the subject property, in lieu of the maximum 15 sq. ft. per face, with direct illumination of the sign, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that in case no. 98-239-XA special exception relief pursuant to Section 432.1.A.3 of the BCZR approval for an assisted living facility, Class B, of 15 residents to be permitted on the subject property, predominantly zoned D.R.3.5, with a small area zoned R.O., be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that as an alternative to a variance of the RTA restrictions contained in Section 1B01.1.B.1.C, D & E, special exception relief is requested to waive the RTA restrictions applicable to the subject property, pursuant to Section 432.4, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance from Section 1B01.1.B.1.c., d., and e., all to permit a minimum 20 ft. buffer and 35 ft. setback area, in lieu of the required 50 ft. and 75 ft. setback for R.T.A. requirements, be and is hereby DISMISSED AS MOOT; and,

IT IS FURTHER ORDERED that a variance from Section 1B01.2.C.1.a, to permit a rear yard of 30 ft. in lieu of a front yard setback requirement of 50 ft. for a double frontage lot, and also to approve a modified parking plan, be and are hereby DISMISSED AS MOOT, all subject, however to the following restrictions:

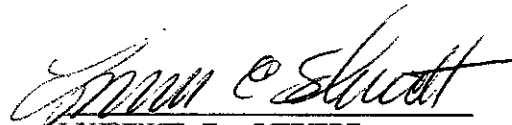
1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

On 11/11/98
By [Signature]
[Signature]

2. The proposed assisted living facility buildings shall be contributed in substantial accordance with the building elevation drawings submitted as Exhibit 3A, 3B and 3C.

3. The property shall be landscaped and/or bermed across the rear (east) property line in accordance with the site plan (Exhibit 1) and comments offered at the hearing; so as to adequately screen the property from the residential community across Cedar Knoll Road, subject to the review and approval of the Office of Planning and the County's Landscape Architect.

3. The lighting of the proposed sign shall be "soft", so as to not reflect, shine or cause glare onto adjoining properties, nor interfere with vehicular traffic.



LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmm

OFFICE OF PLANNING
2/1/98
Mr. Board
By



Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

February 18, 1998

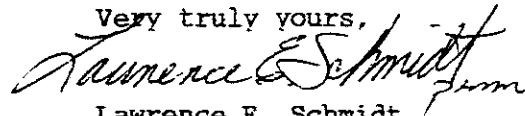
Howard L. Alderman, Jr., Esquire
305 W. Chesapeake Avenue
Suite 113
Towson, Maryland 21204

RE: Petitions for Special Hearing, Special Exception & Variance
Case No. 98-238-SPHXA and 98-239-XA
Property: 10881 York Road and 10883 York Road
Legal Owners: Dr. Gulab Shah, et al
Contract Purchaser: 10881 York Road, LLC, Petitioners

Dear Mr. Alderman:

Enclosed please find the decision rendered in the above captioned case. The Petitions for Special Hearing, Special Exception and Variance have been granted, with restrictions.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,

Lawrence E. Schmidt
Zoning Commissioner

LES:mn
att.

- c: Mr. David Farrell, Exec. Vice President
10881 York Road, LLC, 65 Main Street, Reisterstown, Md. 21136
- c: Mr. James S. Patton, P.E. 305 W. Chesapeake Avenue, Suite 206
Towson, Maryland 21204
- c: Ms. Kate Masterton, 11 Oak Knoll Road, Cockeysville, Md. 21030
- c: Mr. Chris Dern, 15 Cedar Knoll Road, Cockeysville, Md. 21030
Mr. Chris Harvey, 17 Cedar Knoll Road, Cockeysville, Md. 21030
- c: Mr. and Mrs. Michael D'Anna, 10899 York Road, 21030
- c: Mr. Edward J. Conif, 11 Cedar Knoll Road, 21030
- c: Mr. Chris Supik, 22 Cedar Knoll Road, 21030
- c: Ms. Audrey Cyphers-Crush, 36 Cedar Knoll Road, 21030
- c: Mr. Richard Evans, 521 Dunkirk Road, 21212



BEFORE THE
ZONING COMMISSION FOR BALTIMORE COUNTY

IN RE PETITIONS OF

10881 YORK ROAD, LLC

(AKA NEWPORT ASSISTED LIVING) *

Case Number 98-238-SPHXA

OPPOSITION OF KATHLEEN MASTERTON AND JAY HERGENROEDER

Kathleen J. Masterton and Jay Hergenroeder ("Opposers"), homeowners in the neighborhood of Knollbrook, Cockeysville, Baltimore County, Maryland, oppose the various requests of 10881 York Road, LLC (a.k.a. Newport Assisted Living, or "Newport") and Gulab Shah, Rehka Shah, D.G. Parekh and Nirulata Parekh ("Owners"), filed in the above-referenced case and its companion case, Number 98-239-XA, for reasons set forth below.

I. INTRODUCTION

In this case, the Owners of 8 and 10 Cedar Knoll Road ("Properties"), zoned primarily D.R. 3.5, and set in a quaint, hilly neighborhood of single-family homes known as Knollbrook, wish to sell both parcels to Newport. Newport wants to raze an existing Victorian home, and in its place erect, much closer to tiny Cedar Knoll Road and surrounding homes, two huge institutional buildings as an assisted living facility ("ALF") to house, it claims, thirty elderly citizens. While Case 238 deals with just one lot, it must be considered in context of petitions pending for the adjoining lot, which are the subject of Case Number 98-239-XA. While Newport de-emphasizes the project's impact on Knollbrook by calling the Properties "10881 and 10883 York Road," as they would be known if

the petitions are granted, both are residences known as 8 and 10 Cedar Knoll Road, and herein are referred to correctly.

Knollbrook, adjacent to York Road, consists of just two narrow roads (Cedar Knoll and Oak Knoll) which both end in cul-de-sacs. The old neighborhood has a peaceful country-like air, with large gardens and majestic woods. Removal of a rail overpass on York Road in 1991 catalyzed an assault by developers converting long-time residential Knollbrook properties (which front on both York and Cedar Knoll Roads) to commercial-type uses, to the detriment of those who rely on existing zoning to preserve their neighborhood. Removal of the overpass illustrates how an improvement can lead to unintended sprawl and scattershot development, and the perception of continuing commercial encroachment on Knollbrook has driven more than one resident to place a home on the market and seek to relocate "further out."

The first commercial encroachment occurred in 1994, when Mareposa LLC obtained an exemption from the community input process and, without input from residents, doubled the size of an existing home, paved a lawn into a 23-space parking lot (increasing by 50% the number of cars entering the community) and opened a retail store, Valley Framing. Since that disastrous event, Knollbrook has been under regular assault from developers. In the recent comprehensive rezoning, the Owners sought to rezone the Properties from D.R. 3.5 to BL. Opposers successfully fought to retain the existing zoning on one parcel and obtained RO, not BL, zoning on the other. Other speculators, the D'Annas, bought the historic Cockey

homestead just north of the Properties and sought to rezone that home for commercial use. Opposers successfully fought that effort too. The D'Annas support the instant petitions, the granting of which would make more probable future commercial rezoning of their own property.

II. ARGUMENT

A. The Petition For Special Exception Must Be Denied, As The Requisite Zoning Conditions Have Not Been Met

Petitioners seek a Special Exception on 8 Cedar Knoll Road, north of the Valley Framing store, for a Class B ALF housing 15 tenants. This use is not permitted as of right, but is permitted only upon the granting of a Special Exception. A Special Exception is to be granted only if petitioners show that all conditions imposed in the zoning ordinance for operation of such a facility are satisfied. Umerley v. Baltimore County People's Counsel, 672 A.2d 173, 177 (Md. App. 1996); Cromwell v. Ward, 651 A.2d 424 (Md.App. 1995). A special exception may not be used as a substitute for a variance in order to avoid the burden of proving hardship. Cromwell, 651 A.2d at 430.

Here, the standards set forth in the zoning ordinance for siting an ALF clearly are not met. Baltimore County Zoning Regulation ("BCZR") Section 432 permits elderly housing facilities in D.R. zones "under the conditions set forth" in Section 432 and the regulations generally. As petitioners acknowledge, the project does not comply with BCZR §§1B01.1.B1 c, d, & e and 1B01.2cla. It fails to satisfy the residential transition area ("RTA") buffer,

setback, and rear yard requirements of the zoning regulations. Thus, the petition for Special Exception must be denied.

Petitioners have applied for variances from some of the requirements which they do not meet. As shown below, petitioners fail the test for obtaining those variances, so their entire application fails. Umerley. However, even if they obtain the variances, the Special Exception still should be denied, for two reasons.

First, while Maryland's appellate courts have not decided if the Special Exception test is passed when the imposed conditions are not met but are instead eliminated by an administrative grant of a variance, the Court of Special Appeals has twice opined that "under such circumstances the presumption that a conditional use is permitted may well fall to the wayside." Umerly; Chester Haven Beach Partnership v. Bd. of App. for Queen Anne's County, 103 Md. App. 324, 653 A.2d 532 (1995). The Court has thus shown great skepticism to the concept that one may "meet" the conditions by having them varianced away, and when squarely faced with the issue is likely to so hold. There are important policy reasons to reject that concept: the difference between a special exception and a variance lies in the form of legislative approval of the underlying use. A special exception grants permission to engage in a use that the legislative authority has sanctioned under specific conditions, and signifies acknowledgement by the zoning authority that those conditions have been met. Umerly, 672 A.2d at 179. In contrast, a variance grants permission to engage in a use that legislative authority has otherwise proscribed, and is a determination by the

zoning authority that in a given instance adherence to the letter of the applicable zoning regulations would result in hardship to the property owner. Id.; Cromwell, 651 A.2d 424. Here, the County Council has approved exceptions for assisted living facilities so long as other zoning requirements are met--not ignored. This imposes an affirmative obligation upon the developer, and to interpret BCZR Section 432 as allowing special exceptions by simply ignoring the unmet zoning requirements flouts its plain meaning.

Second, even if petitioners obtain variances from §1B01.1.B1c, d, & e and §1B01.2cla, they have failed to show that "all conditions imposed in the zoning ordinance for the operation of a given facility are satisfied," as Umerley requires, because for a Class B ALF, "the lot shall meet the minimum setback, maximum height, and maximum coverage for other principal buildings for the zone where it is located." BCZR §432.5 B 3a. Petitioners sought no exception or variance from §432.5 B 3a and do not meet it. Here, where the County Council requires that a proposed ALF must comply with both the requirements of general applicability (from which petitioners seek exceptions/variances) and the prescribed setbacks for the zone in which it is located, the suggested rule of Umerley and Chester Haven is far more likely to prevail.

Finally, here the Property Owners--the Shahs and Parekhs--have many other options to use their property in a conforming way, and Newport has the option to go elsewhere and find a property large enough for facility it wants to build.

B. The Petition For Variance Respecting A Proposed Sign Must Be Denied, As No Characteristic Of The Property Warrants Permitting A Larger Sign

Petitioners seek a variance from the sign-limit regulations set forth in BCZR §450.4, to erect a sign 25% larger than permitted (20 square feet, rather than the 15 square feet allowed under BCZR §450.4), and to illuminate the sign, which is not permitted as of right. Authority to grant a variance should be exercised sparingly and only under exceptional circumstances. Umerley v. Baltimore County People's Counsel, 672 A.2d 173, 177 (Md.App. 1996). A two part test governs petitions for a variance: (1) Is the subject property in any way unusual or unique in a manner different from surrounding property such that the uniqueness of the property causes the a zoning provision to have disproportionate impact upon the property? Id. If not, the variance is denied. Id. (2) If so, an unreasonable hardship must be shown to result from the disproportionate impact of the ordinance. Id.; Cromwell v. Ward, 651 A.2d 424 (Md.App. 1995). "Unique" does not refer to improvements upon the property; it requires that the property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface conditions, environmental factors, or practical restrictions imposed by neighboring properties (such as obstructions). Umerley, id. Respecting the second prong, "unreasonable hardship" cannot be self-inflicted. Cromwell, id. Grant of a variance where both prongs of test are not met is arbitrary and capricious and subject to reversal by a reviewing court.

Petitioners have submitted no evidence upon which Commission may base the required finding of uniqueness of the Property. The only basis asserted for this request is to make the sign more readable on a principal arterial street, and to conform with a corporate standard for all "Newport" ALF signs. Neither reason addresses the characteristics of the Property. There is, for example, no showing that topography or some other unique characteristic would hinder the readability of a conforming sign. Even if such a showing had been made, no hardship would result from enforcing the ordinance--tenants and workers know where they live and work, and don't need any sign at all, much less sign that would be 25% larger than normally permitted and also lit up.

C. The Remaining Requested Relief Must Be Denied

Petitioners also filed a Petition For Special Hearing seeking approval of special parking arrangements and issuance of a use permit under BCZR §§409.8B & 409.12, for a modified parking plan. They seek a declaration that locating parking for one lot (8 Cedar Knoll, the lot closest to Valley Framing) on the adjacent lot (10 Cedar Knoll, the lot closest to the D'Anna property) complies with BCZR §409.7 (Location of Parking) provided that appropriate cross easements are granted for ingress, egress, parking and maneuvering, as well as a use permit allowing this to occur. This specific part of the Newport proposal should be rejected as part of denial of the overall project.

III. CONCLUSION

For all the foregoing reasons, all relief sought by petitioners should be denied.

Respectfully submitted,



Kathleen J. Masterton



Jay D. Hergenroeder

11 Oak Knoll Road
Cockeysville, MD 21030
(410) 667-0753



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

(Formerly 8-10 Cedar Knoll Rd.)
for the property located at 10881 York Road. (MD. Rte. 45) Cockeysville

which is presently zoned RO, BL & DR 3.5

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

SEE ATTACHED

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

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

10881 York Rd. LLC

Contract Purchaser/Lessee:

David Farrell, Executive Vice President

(Type or Print Name)

Signature

c/o 64 Main Street

Address

Reisterstown, Maryland 21136

City

State

Zipcode

Attorney for Petitioner

Howard L. Alderman

(Type or Print Name)

Signature

305 W. Chesapeake Ave., #113 (410) 321-0600

Address Phone No.
Towson, Maryland 21204

City

State

Zipcode

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.

Legal Owner(s):

Dr. Gulab Shah

(Type or Print Name)

Signature

Dr. Rekha Shah

(Type or Print Name)

Signature

D.G. Parekh

(Type or Print Name)

Signature

Nirulata D. Parekh

(Type or Print Name)

9 Westspring Way

Address

410-247-7100

Phone No

Lutherville, Maryland 21093

City

State

Zipcode

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

James S. Patton, P.E.

Name

305 W. Chesapeake Ave., #206 (410) 296-2140

Address

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY:

DATE

12/18/97



Revised 9/97

98-238-SPHXA

ATTACHMENT
PETITION FOR SPECIAL HEARING
10881 YORK ROAD, COCKYESVILLE, MD.

That location of parking for 10881 on the adjacent lot, 10883 York Road complies with the provisions of BCZR Section 409.7 - Location of Parking subject to providing cross easements between 10881 & 10883 York Road for ingress, egress, parking and maneuvering and approve a use permit therefore in accordance with Sections 409.8B and 409.12. (A MODIFIED PARKING PLAN)



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at (Formerly 8-10 Cedar Knoll Rd.)
10881 York Rd. (MD. Rte 45) Cockeysville,
which is presently zoned RO, BL & DR 3.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

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.

10881 York Rd. LLC

Contract Purchaser/Lessee:

David Farrell, Executive Vice President

(Type or Print Name)

Signature

c/o 64 Main Street

Address

Reisterstown, Maryland 21136

City

State

Zip Code

Attorney for Petitioner:

Howard L. Alderman

(Type or Print Name)

Signature

305 W. Chesapeake Ave., #113 (410) 321-0600

Address

Phone No

Towson, Maryland 21204

City

State

Zip Code

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

Legal Owner(s)

Dr. Gulab Shah

(Type or Print Name)

Signature

Dr. Rekha Shah

(Type or Print Name)

Nirulata D. Parekh

D. G. Parekh

(Type or Print Name)

Signature

9 Westspring Way

Address

410-249-7100

Phone No

Lutherville, Maryland 21093

City

State

Zip Code

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

James S. Patton, P.E.

Name

305 W. Chesapeake Ave., #206 (410) 296-2140

Address

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

98-238-5PA1XA

ATTACHMENT TO
PETITION FOR SPECIAL EXCEPTION
10881 YORK ROAD
COCKEYSVILLE, MARYLAND

An Assisted Living Facility, Class "B" of fifteen (15) residents to be permitted in that area of the tract to be known as 10881 York Road which is presently zoned predominantly RO with small areas of BL and DR-3.5. This request is in accordance with Section 432.1A3 (BCZR).



Petition for Variance

to the Zoning Commissioner of Baltimore County

(Formerly 8-10 Cedar Knoll Rd.)

for the property located at 10811 York Road. (MD. Rte 45) Cockeysville,.

which is presently zoned RO, BL & DR 3.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

SEE ATTACHED

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

SEE ATTACHED

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

I, or we, agree to pay expenses of above Variance 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.

10811 York Rd. LLC

Contract Purchaser/Lessee:

David Farrell, Executive Vice President

(Type or Print Name)

Signature

c/o 64 Main Street

Address

Reisterstown, Maryland 21136

City

State

Zipcode

Attorney for Petitioner:

Howard L. Alderman

(Type or Print Name)

Signature

305 W. Chesapeake Ave., #113 (410) 321-0600

Address

Towson, Maryland 21204

Phone No

City

State

Zipcode

(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

Legal Owner(s):

Dr. Gulab Shah

(Type or Print Name)

Signature

Dr. Rekha Shah

Nirulata D. Parekh

D. G. Parekh

(Type or Print Name)

Signature

9 Westspring Way

Address

Lutherville, Maryland 21093

City

State

Zipcode

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

James S. Patton, P.E.

305 W. Chesapeake Ave., #206 (410) 296-2140

Address

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY:

DATE

12/18/97

98-238-SPHXA

ATTACHMENT
PETITION FOR VARIANCE
10881 YORK ROAD, COCKEYSVILLE, MD

FROM SECTION 450.4 (BCZR):

To permit a twenty (20) square foot per face sign in lieu of the maximum fifteen (15) square foot per face sign with direct illumination of the sign.

FOR THE FOLLOWING REASONS:

1. Readability of sign on a principal arterial street.
2. Standard sign for all "Newport" Assisted Living Facilities.
3. Such other reasons presented at the time of the hearing.

PATTON

Patton
Consultants
Ltd.
Engineering
& Site
Planning

230

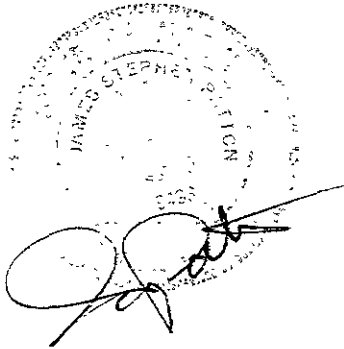
ZONING DESCRIPTION

10881 York Road (MD. Rte. 45)
(Formerly 8 Cedar Knoll Road)
Cockeysville, Maryland

Beginning at a point on the west side of Cedar Knoll Road which has no defined width at a distance of one hundred and sixty feet (160') north of the centerline of Sherwood Road which is fifty feet (50') wide. Thence the following courses and distance.

1.	N	02°	39'	00"	W	-	172.82'
2.	S	74°	09'	00"	W	-	97.00' +
3.	N	85°	51'	00"	W	-	27.00' +
4.	N	60°	51'	00"	W	-	54.00' +
5.	S	71°	39'	00"	W	-	145.50' +
6.	S	18°	21'	00"	E	-	26.00' +
7.	S	18°	51'	00"	E	-	45.92'
8.	S	17°	51'	00"	E	-	29.02'
9.	S	15°	58'	00"	E	-	125.28'
10.	S	44°	37'	00"	E	-	44.04'
11.	S	71°	54'	00"	E	-	16.29'
12.	N	21°	46'	00"	E	-	116.00'
13.	N	81°	58'	00"	E	-	178.93'

To the place of beginning as recorded in deed Liber 6692 Folio 367. As being subdivided for the two Class "B" Assisted Living Facilities.



98-238-SP4XA

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

238 J.L. No.

046905

DATE

12/18/97

ACCOUNT

80016150

AMOUNT \$

650.00

RECEIVED FROM:

64 West of LLC.

FOR:

SPHYA

DISTRIBUTION
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

08.238
SPHYA

PAID RECEIPT

PROCESSED

ACTION

TIME

12/19/1997

12/18/1997 15:48:21

REC 0501

CASHIER CLM CM DRAWER 1

5 MISCELLANEOUS CASH RECEIPT

031850

Receipt #

031850

11/11

\$50.00 CHECK: CM
BALTIMORE COUNTY, MARYLAND

CASHIER'S VALIDATION

NOTICE OF HEARING

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Town Hall Meeting on the property identified herein as follows:

Case: #98-238-SBH-XA

10881 York Road
W/S Cedar Knoll Drive,
1601 N of Sherwood Road
8th Election District,
3rd Councilmatic District
Legal Owners:

Dr. Guadalupe & Dr. Renka
Shah & D.G. Parakh &
Niraj D. Parakh
Contract Purchaser:
10881 York Road, LLC

Special Hearing to approve that location of parking for 10881 on the adjacent lot 10883 York Road, complies with the provisions of BCZR Section 409.7. Location of parking subject to providing cross easements between 10881 and 10883 York Road for ingress, egress, parking and maneuvering and approve a site permit therefore in accordance with Section 408.88 and 409.12 (a) modified parking plan. Special Exception for an Assisted Living Facility, Class B, of 14 residents to be permitted in that area of the lot to be known as 10881 York Road, which is presently zoned predominantly R.O. with small areas of B1 and D-R-3.5 in accordance with Section 432.1A3 (BCZR).

Variance to permit a 20 square foot per acre sign in lieu of the maximum 15 square foot with direct illumination of the sign.

Hearing: Wednesday, January 21, 1998 at 10:00 a.m., in Room 407, County Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County.

NOTES: (1) Hearings are handicapped accessible for special accommodations. Please call (410) 887-3393.

(2) For information concerning the file and/or hearing, please call (410) 887-3391.

1/17/98 Jan. 8 C198966

CERTIFICATE OF PUBLICATION

TOWSON, MD., 1-28, 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 1-28, 1998

THE JEFFERSONIAN,

A. H. Enickson
LEGAL AD. - TOWSON

CERTIFICATE OF POSTING

RE: Case No.: 98-238-SPHXA
Petitioner/Developer:
(10881 York Rd. LLC)
Date of Hearing/Closing:
(Jan. 21, 1998)

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

Attention : Ms. Gwendolyn Stephens

Ladies and Gentleman:

**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 _____**

10881 York Road Baltimore, Maryland 21031 _____

The sign(s) were posted on _____ Jan 6, 1998 _____
(Month, Day, Year)

Sincerely,

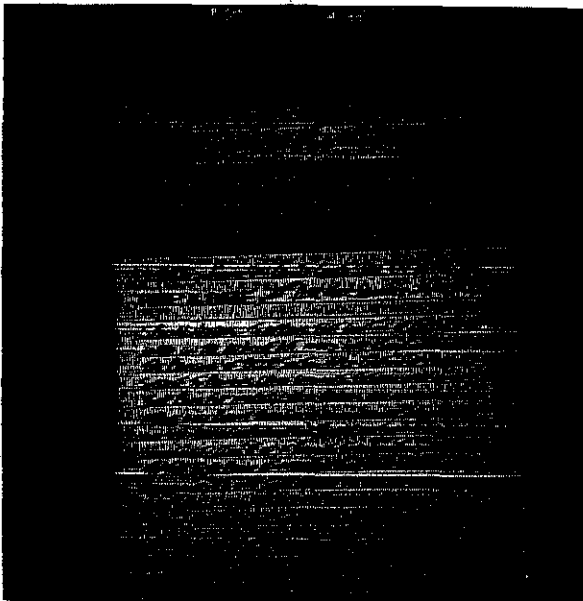

(Signature of Sign Poster & Date)

_____ Thomas P. Ogle, Sr. _____

_____ 325 Nicholson Road _____

_____ Baltimore, Maryland 21221 _____

_____ (410)-687-8405 _____
(Telephone Number)



98-238-SPHXA



Baltimore County
Department of Permits and
Development Management

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

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

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

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

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

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

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 238

Petitioner: 10811 YORK ROAD, LLC

Location: 10811 YORK ROAD, COCKEYSVILLE,

PLEASE FORWARD ADVERTISING BILL TO:

NAME: DAVID FARRER, EXEC V.P.

ADDRESS: 64 MAIN STREET

ROBERTSTOWN, M.D. 21136

PHONE NUMBER: 410-296-2140

AJ:ggs

98-238-SPHXA
(Revised 09/24/96)

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

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

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 98-238-SPHKA

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

PLACE: *

DATE AND TIME: *

REQUEST: A SPECIAL EXCEPTION FOR AN ASSISTED LIVING FACILITY CLASS "B"
A VARIANCE TO PERMIT A 20 SQ. FT. SIGN (PER FACE) WITH DIRECT ILLUMINATION
AND A SPECIAL HEARING TO APPROVE A MODIFIED PARKING PLAN

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

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

HANDICAPPED ACCESSIBLE

TO: PATUXENT PUBLISHING COMPANY
December 31, 1997 Issue - Jeffersonian

Please forward billing to:

David Farrell, Exec. V.P.

410-296-2140

64 Main Street

Reisterstown, MD 21136

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-238-SPHXA

10881 York Road

W/S Cedar Knoll Drive, 160' N of Sherwood Road

8th Election District - 3rd Councilmanic District

Legal Owner: Dr. Gulab Shah & Dr. Rehka Shah & D.G. Parekh & Nirulata D. Parekh

Contract Purchaser: 10881 York Road, LLC

Special Hearing to approve that location of parking for 10881 on the adjacent lot, 10883 York Road, complies with the provisions of BCZR Section 409.7 - Location of Parking subject to providing cross easements between 10881 and 10883 York Road for ingress, egress, parking and maneuvering and approve a use permit therefore in accordance with Section 409.8B and 409.12 (a modified parking plan). Special Exception for an Assisted Living Facility, Class "B" of 14 residents to be permitted in that area of the tract to be known as 10881 York Road, which is presently zoned predominantly R.O. with small areas of B.L. and D.R.-3.5 in accordance with Section 432.1A3 (BCZR). Variance to permit a 20 square foot per face sign in lieu of the maximum 15 square foot with direct illumination of the sign.

HEARING: Wednesday, January 21, 1998 at 10:00 a.m. in Room 407, County Courts
Building, 401 Bosley Avenue



Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS
PLEASE CALL 410-887-3353.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 410-
887-3391.



Baltimore County
Department of Permits and
Development Management

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

December 26, 1997

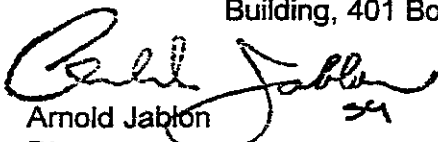
NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 98-238-SPHXA
10881 York Road
W/S Cedar Knoll Drive, 160' N of Sherwood Road
8th Election District - 3rd Councilmanic District
Legal Owner: Dr. Gulab Shah & Dr. Rehka Shah & D.G. Parekh & Nirulata D. Parekh
Contract Purchaser: 10881 York Road, LLC

Special Hearing to approve that location of parking for 10881 on the adjacent lot, 10883 York Road, complies with the provisions of BCZR Section 409.7 - Location of Parking subject to providing cross easements between 10881 and 10883 York Road for ingress, egress, parking and maneuvering and approve a use permit therefore in accordance with Section 409.8B and 409.12 (a modified parking plan). Special Exception for an Assisted Living Facility, Class "B" of 14 residents to be permitted in that area of the tract to be known as 10881 York Road, which is presently zoned predominantly R.O. with small areas of B.L. and D.R.-3.5 in accordance with Section 432.1A3 (BCZR). Variance to permit a 20 square foot per face sign in lieu of the maximum 15 square foot with direct illumination of the sign.

HEARING: Wednesday, January 21, 1998 at 10:00 a.m. in Room 407, County Courts
Building, 401 Bosley Avenue


Arnold Jablon
Director

c: Howard L. Alderman, Esquire
Dr. Gulab Shah, et al

James S. Patton, PE
10881 York Road, LLC

- NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY JANUARY 6, 1998.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3391.





Baltimore County
Department of Permits and
Development Management

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

January 14, 1998

Howard L. Alderman, Esquire
305 W. Chesapeake Avenue, Suite 113
Towson, MD 21204

RE: Item No.: 238
Case No.: 98-238-SPHXA
Petitioner: Dr. Gulab Shah, et al

Dear Mr. Alderman:

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 December 18, 1997.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (410-887-3391).

Sincerely,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)





**Maryland Department of Transportation
State Highway Administration**

Parris N. Glendening
Governor

David L. Winstead
Secretary

Parker F. Williams
Administrator

January 5, 1998

Ms. Roslyn Eubanks
Baltimore County Office of
Permits and Development Management
County Office Building
Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 238 & 239
Newport Assisted Living
MD 45 (east side)
160' north of Sherwood Road
10881 York Road
Mile Post 8.22

Dear Ms. Eubanks:

We have reviewed the referenced items and have no objection to approval of the Special exception.

However, we will require the owner to obtain an access permit through this office. Please have the owner contact this office regarding the required improvements conditioned to the access permit.

If you have any questions, please contact Larry Gredlein at 410-545-5606 or you may E-mail (lgredlein@sha.state.md.us).

Very truly yours,

Ronald Burns, Chief
Engineering Access Permits Division

LG/eu

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

DATE: January 9, 1998

To: Arnold L. Jablon
From: Bruce Seeley *BS/JP*
Subject: Zoning Item #238 & 239

Dr. Gulab Shah, Newport Assisted Living

Zoning Advisory Committee Meeting of December 29, 1997

- 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:
- 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), if the property is being subdivided according to the Development Regulations.
- 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).

VK:GP:sp

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

Date: January 7, 1998

FROM: Arnold F. "Pat" Keller, III, Director
Office of Planning

SUBJECT: Newport Assisted Living/York Road

INFORMATION

Item Nos. 238 and 239
Petitioner: 10881 York Road
Zoning: BL, RO, and DR 5.5
Requested Action: Special Hearing, Variance, and Special Exception

Summary of Recommendations:

Based upon the information provided and analysis conducted, staff offers the following comments in keeping with an agreement between the developer and the Cedar Knoll Community Association:

- prior to the final plan approval, a meeting should be convened with the Knollbrook Community Association in order to review and resolve issues related to landscaping, building architecture and building location;
- the building shall only be used for elderly housing; and
- the developer shall not seek access to Cedar Knoll Road other than a removable barrier to allow emergency access.

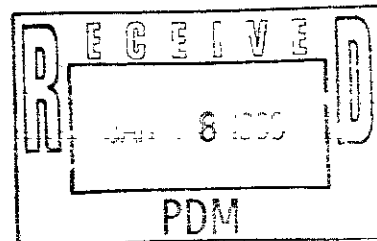
In addition, the following conditions are also recommended:

- a landscape plan and architectural elevations should be submitted to the Baltimore County Planning Office prior to final plan approval;
- the developer should save as much existing mature vegetation on site as possible; and
- the developer should be required to prove a legitimate hardship regarding the requested sign variance.

Prepared by: Jeffrey W. Long

Division Chief: Gary L. Kerns

AFK/JL



Baltimore County Government
Fire Department



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

(410) 887-4500

January 9, 1998

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

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF December 29, 1997

Item No.: 234, 238, 239, 240 Zoning Agenda:

Gentlemen:

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

1. Fire hydrants for the referenced property are required and shall be located at proper intervals, along an approved road in accordance with Baltimore County Standard Design Manual Sec. 2.4.4 Fire Hydrants, as published by the Department of Public Works.
4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

REVIEWER: LT. ROBERT P. SAUERWALD

Fire Marshal Office, PHONE 897-4881. MS-1102F

cc: File



BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

Date: January 6, 1998

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

SUBJECT: Zoning Advisory Committee Meeting
for January 5, 1998
Item Nos. 229 (Agenda of 12/29/97),
230, 231, 232, 233, 235, 236, 237,
238, 239, 240, 241

The Bureau of Developer's Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

ZONE0105.NOC

1/5/98

RITA FROM JIM PATTON'S
OFFICE CALLED. TYPO IN
ADVERTISING + LETTER SENT FOR
NOTICE OF HEARING SHOULD
BE 15 RESIDENTS, NOT 14.

Sepia

SIGN OK
PETITION FORM OK

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PUBLIC WORKS

BUREAU OF LAND ACQUISITION

INTER-OFFICE CORRESPONDENCE

TO: PAGE P. HUDSON, P.E.
CHIEF, BUREAU OF ENGINEERINGFROM: SHIRLEY M. MURPHY
CHIEF, BUREAU OF LAND ACQUISITION

ATTN. OF: _____

DATE: _____

SUBJECT:

JOB ORDER

LOCATION:

DATE TRANSMITTED:

ELECTION DISTRICT NO.

COUNCILMANIC DISTRICT NO.

RW: 19

CROSS REF. RW: 19

OFFICE CHARGE

ADVERTISING & TRUCK

MILK & HEARING

BE 1/2 RESIDENTIAL

"OFFICE COPY"

WALTER L. BEAUMONT, JR.
DRAFTING SUPERVISOR

BUREAU OF LAND ACQUISITION

APPROVAL AND / OR COMMENTS:

BUREAU OF LAND ACQUISITION

"DRAFTING SECTION"

INTER-OFFICE CORRESPONDENCE

RECORDS MANAGEMENT

FEB. 28, 1989

FORM: 2-CC

BALTIMORE COUNTY, MARYLAND

SUBJECT: LIMITED EXEMPTION PLAN COMMENTS

FROM: PDM - ZONING REVIEW

DATE: July 29, 1998

PROJECT NAME: **Newport Assisted Living Facility**

PLAN DATE: 12/97

PROJECT NUMBER: 98-073-Z

PDM NUMBER: VIII-711

LOCATION: W/S Cedarknoll Dr., 330' +/- N of Sherwood Rd.

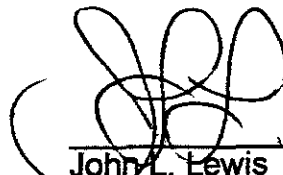
DISTRICT: 8c3

PROPOSAL: 2 Class "B" Assisted Living Facilities

ZONING:

ZONING CASES: 98-238-SPHA & 98-239-XA

1. The plan basically agrees with the zoning hearing plans as approved and is approved for zoning subject to the following.
2. Change plan note 12 to state "see sheet 2 of 2".
3. Final zoning approval is contingent first upon all plan comments being addressed on the development plan; secondly upon the final resolution of all comments, the outcome of any requested zoning hearings; and finally the inclusion of the blue commercial checklist information being included on the building permit site plans.



John L. Lewis
Planner II
Zoning Review

JLL:rye

c: zoning case #98-238-SPHA & #98-239-XA

RE: PETITION FOR SPECIAL HEARING
PETITION FOR SPECIAL EXCEPTION
PETITION FOR VARIANCE
10881 York Road, W/S Cedar Knoll Dr,
160' N of Sherwood Rd
8th Election District, 3rd Councilmanic

Legal Owners: Dr. Gulab Shah & Dr. Rehka Shah
& D.G. Parekh & Nirulata D. Parekh
Contract Purchaser: 10881 York Road, LLC
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 98-238-SPHXA
*
*
*
*
*
*
*
*
*
*

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 9th day of January, 1998, a copy of the foregoing Entry of Appearance was mailed to Howard L. Alderman, Jr., Esq., 305 W. Chesapeake Avenue, ^{#113} Towson, MD 21204, attorney for Petitioners.

Peter Max Zimmerman
PETER MAX ZIMMERMAN



KNOLLBROOK COMMUNITY ASSEMBLY, INC.
P O. BOX 1212
Cockeysville, MD 21030

January 19, 1998

To Whom It May Concern:

On January 16, 1998, the Knollbrook Community Assembly Board of Directors met with Mr. David Farrell of Newport Assisted Living to discuss the upcoming special hearing regarding his project on Cedar Knoll Road. The following is the position of the Board regarding these matters:

1. The Board does not oppose a variance for parking as designated on the plans that were presented to the Board at the January 16th meeting, showing parking around the circle only.
2. The Board does not oppose a Special Exception for an Assisted Living Facility provided that covenants are drawn up specifically stating that the facility and site be used for "elderly housing only."
3. The Board does not oppose a variance for a 20 square foot per face sign provided that the sign is "softly illuminated."
4. The Board does not oppose a variance to permit a minimum 20' buffer and minimum 30' setback, and to permit a rear yard of 30' only under the following conditions:
 - a. The 20' buffer zone is along the North side of the property which is adjacent to the D'Anna property AS WELL AS along the Northeast property line which is adjacent to Cedar Knoll Road.
 - b. That the buffer zone along Cedar Knoll Road be planted with 3-4' Leyland Cypress or 6-7' Spruce trees, planted 6-8' apart, and in a double, staggered row. Deciduous trees are not to be used in this zone, only evergreens.
 - c. That the buffer zone adjacent to the D'Anna property include a berm and be heavily planted with evergreens.
 - d. The Baltimore County Office of Planning must approve all landscaping plans in conjunction with the approval of the Knollbrook Community Assembly Board.

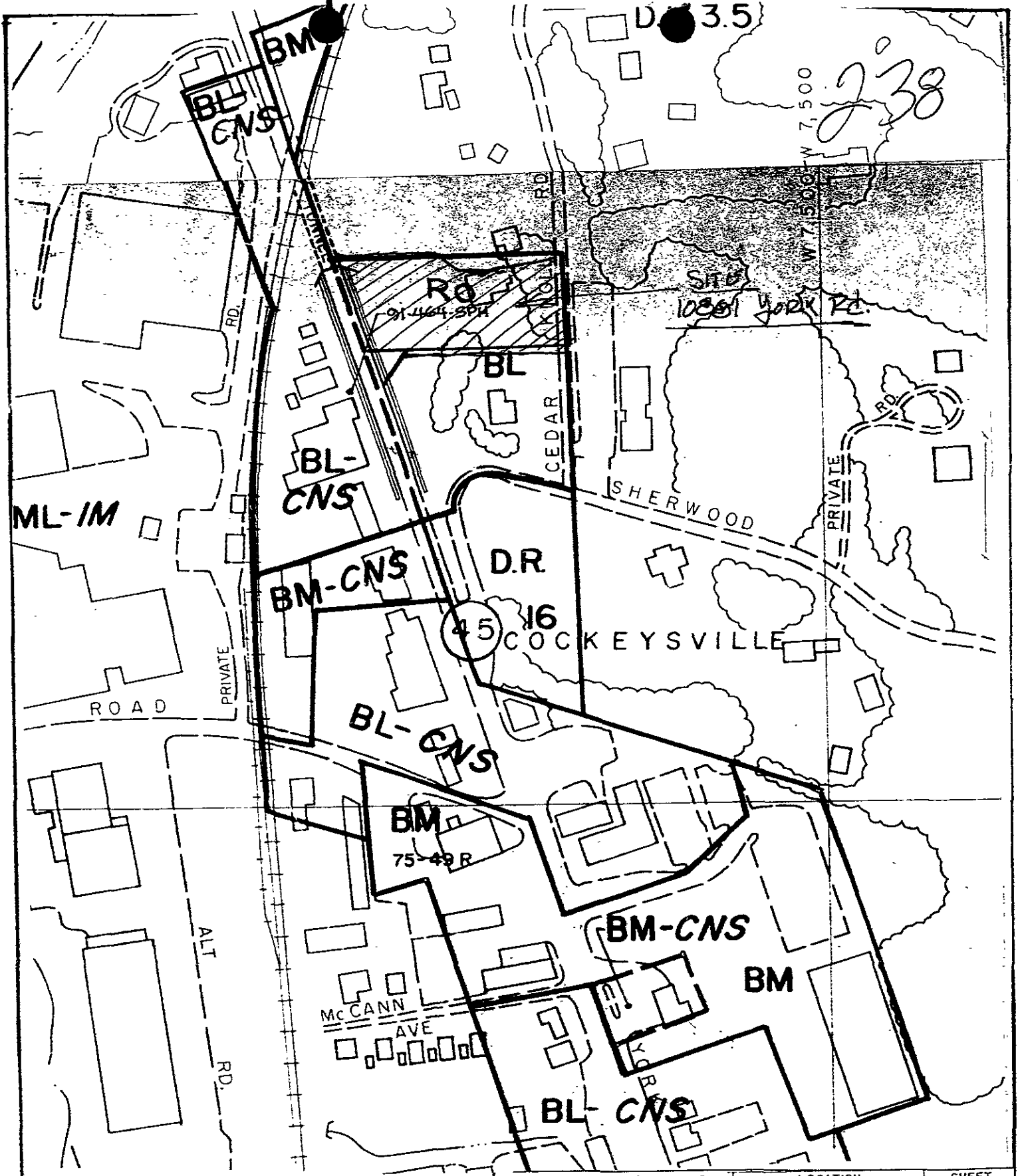
THE BOARD STRONGLY OPPOSES ANY WAIVER OF THE RESIDENTIAL TRANSITION AREA RESTRICTIONS. Variances to these restrictions will be unopposed only if the above conditions are met.

These are the only conditions the Board will accept in lieu of opposing these exceptions and variances.

Sincerely,

The Board of Directors
The Knollbrook Community Assembly, Inc.

Citizens No 1



PATTON

Patton Consultants Ltd., Engineering & Site Planning
 305 West Chesapeake Avenue, Suite 118
 Towson, Maryland 21204
 410-296-2140 Fax: 410-296-0412

SCALE

1" = 200'

DATE OF
 PHOTOGRAPHY
 JANUARY
 1986

LOCATION

Cockeysville

SHEET

N.W.
 17-18

DRAWN

CHECKED

JOBS

SCALE

SMT

98-238-SPHXA