

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.

COPIES OF ZONING
Date 2/8/98
By M. [Signature]

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.

Date 8/18/98 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

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

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.

2/18/98
M. Patton
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

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

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.

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.

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.


LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

86/112

**IN RE: PETITIONS FOR SPECIAL EXCEPTION
AND VARIANCE
W/S Cedar Knoll Drive, 333' ± N of Sherwood
Road
10883 York Road
8th Election District
3rd Councilmanic District**

**Dr. Gulab Shah, *et al*,
Legal Owners**

**10881 York Rd., LLC,
Contract Purchaser,**

Petitioners

**BEFORE THE
ZONING
COMMISSIONER

FOR

BALTIMORE COUNTY

Case No.: 98-239-XA**

ORDER ON REMAND

This matter comes back before the Zoning Commissioner on remand from the County Board of Appeals for Baltimore County (the "Board"). Separate appeals of my original Order in this matter, dated February 18, 1998 were noted to the Board by two of the neighbors who appeared and testified at the original, combined hearing held by me in consideration of the relief requested by the Petitioners for the subject property.

While the appeals were pending before the Board, the Appellants and the Petitioners reached agreement on certain issues in resolution of the appeals filed. A joint request was filed with the Board by the Appellants and the Petitioners requesting that this matter be remanded to me for further consideration to incorporate the provisions of the agreements reached by the parties. The Board of Appeals, by Order dated June 16, 1998 remanded this case to me for such further consideration.

On the remand from the Board, the parties, through legal counsel, submitted into evidence a jointly approved, revised Plat to Accompany Zoning Petitions in the above-referenced case (the "Revised Plat"), which depicts certain modifications to the original Plat introduced as Petitioners'

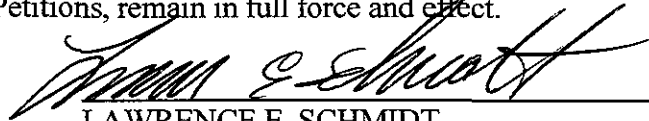
Exhibit No. 1. Additionally, the Appellants and the Petitioners submitted a copy of the written Agreement among them which requests that certain conditions contained in my original Order be modified and that certain other conditions be added on remand. No other requests or conditions were requested.

Therefore, in order to incorporate the terms and conditions of the agreements reached among the Appellants and the Petitioners and pursuant to the remand from the County Board of Appeals for Baltimore County, after consideration of the jointly approved site plan on remand and for the purposes and reasons described above, my original order in the above-referenced cases should be amended.

IT IS THEREFORE ORDERED, by the Zoning Commissioner for Baltimore County, this 14th day of July, 1998, that pursuant to the Order of Remand from the County Board of Appeals for Baltimore County, my Order dated February 18, 1998 in the above-referenced case which is incorporated in its entirety by reference, is hereby AMENDED as follows:

1. The Plat to Accompany Zoning Petitions, accepted into evidence as Petitioners' Exhibit No. 1 in the above-referenced case is hereby STRICKEN and the Revised Plat to Accompany Zoning Petitions, marked as Revised Petitioners' Exhibit No. 1 during the hearing on remand from the County Board of Appeals for Baltimore County, is hereby adopted in lieu thereof.
2. Restriction No. 3 in my original Order is hereby STRICKEN in its entirety and the following restriction is imposed in its place: Within the landscape buffer areas noted on Revised Petitioners' Exhibit No. 1, along the delineated portions of the side of Cedar Knoll Road, Developer shall plant and maintain spruce and/or leyland cypress trees, on the north and the northeast sides of the Property, six to seven feet tall, in a staggered row, not less than 10 feet apart. The planting in the landscape buffer areas shall be installed as soon as possible after commencement of demolition and/or site preparation, weather and growing conditions permitting.
3. The fourth restriction in my original Order (erroneously identified as the second restriction number 3) shall be renumbered as Restriction number 4.

4. A new restriction number 5. is hereby added as follows: "The access to the Property from Cedar Knoll Road will be permanently eliminated as quickly as is reasonably possible after commencement of demolition or site preparation and in no event later than thirty (30) days after commencement of demolition or site preparation and, thereafter, there will be no vehicular access whatsoever, including but not limited to access for the purpose of trash removal, dumpster or food removal, from Cedar Knoll Road to or from the Property."
5. A new restriction number 6. is hereby added as follows: "10881 York Rd., LLC was identified by the Appellants and the Petitioners as the Developer of the Property. The Developer will not use the Property for any purpose other than assisted living for the elderly for so long as the Developer as an ownership interest in the Property."
6. In all other respects, the findings of fact, conclusions of law, relief granted and restrictions imposed in my original Order, to the extent that they are not inconsistent with the terms of this Order on Remand and/or the Revised Plat to Accompany Zoning Petitions, remain in full force and effect.



LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

ORDER RECEIVED FOR FILING
Date 7/14/98
By Mr. Proctor



Baltimore County
Zoning Commissioner
Office of Planning

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

July 14, 1998

Howard L. Alderman, Jr., Esquire
Levin and Gann
305 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Petitions for Special Exception & Variance
Case No. 98-239-XA
Property: 10881/10883 York Road

Dear Mr. Alderman:

Enclosed please find the decision rendered in the above captioned case. The Order on Remand has been agreed upon and amended.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".
Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.

c: Robert D. Sellers, Esquire
Suite 303, 401 Washington Avenue
Towson, Maryland 21204

**IN RE: PETITIONS FOR SPECIAL EXCEPTION
AND VARIANCE
W/S Cedar Knoll Drive, 333' ± N of Sherwood
Road
10883 York Road
8th Election District
3rd Councilmanic District**

**Dr. Gulab Shah, *et al*,
Legal Owners**

**10881 York Rd., LLC,
Contract Purchaser,**

Petitioners

**BEFORE THE
COUNTY BOARD
OF APPEALS
FOR
BALTIMORE COUNTY
Case No.: 98-239-XA**

REMAND ORDER

This case comes before this Board on separate appeals filed by Christopher Dern ("Dern") and Christian D. Harvey ("Harvey") of the relief granted in the February 18, 1998 Order of the Zoning Commissioner for Baltimore County. Specifically, Dern noted an appeal, filed with the Department of Permits and Development Management on March 20, 1998, of the variance relief granted and the variance relief prayed by the Petitioners which was dismissed by the Zoning Commissioner as moot. Harvey noted an appeal, also filed with the Department of Permits and Development Management on March 20, 1998, of the special exception granted.

At the hearing held before this Board, Counsel for the Appellants and the Petitioners filed a joint request to have this Board remand this matter to the Zoning Commissioner for further consideration in accordance with the agreements reached among the Appellants and the Petitioners.

Upon consideration of the representations of counsel for the parties to these proceedings and the papers filed at the hearing held by this Board, it is this 16TH day of June, 1998, by the County

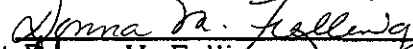
Board of Appeals for Baltimore County,

ORDERED, that the appeal of Christian D. Harvey and the appeal of Christopher Dern are hereby REMANDED to the Zoning Commissioner for Baltimore County for further consideration in light of the agreements reached among the parties to this appeal.

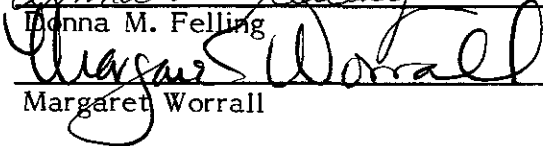
COUNTY BOARD OF APPEALS



Charles L. Marks, Acting Chairman



Donna M. Felling



Margaret Worrall



County Board of Appeals of Baltimore County

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

June 16, 1998

Howard L. Alderman, Jr., Esquire
LEVIN & GANN. P.A.
305 W. Chesapeake Avenue
Suite 113
Towson, MD 21204

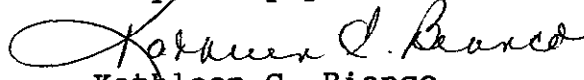
Robert D. Sellers, Esquire
401 Washington Avenue
Suite 303
Towson, MD 21204

RE: Case No. 98-239-XA
Dr. Gulab Shah, et al; 10881 York Rd LLC
Ruling on Joint Request for Remand

Dear Counsel:

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

Very truly yours,


Kathleen C. Bianco
Administrator

encl.

cc: Christian D. Harvey
Christopher Dern
David Farrell, Executive V.P.
10881 York Road, LLC
James S. Patton, P.E.
Ms. Kate Masterton
Mr. and Mrs. Michael D'Anna
Mr. Edward J. Conif
Mr. Chris Supik
Ms. Audrey Cyphers-Crush
Mr. Richard Evans
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney



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,

A handwritten signature in dark ink, reading "Lawrence E. Schmidt". The signature is stylized with a large, flowing "L" and "S".

Lawrence E. Schmidt
Zoning Commissioner

LES:mmm
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 98-239-XA

OPPOSITION MEMORANDUM 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 requests of 10881 York Road, LLC (a.k.a. Newport Assisted Living, or "Newport") and the Shahs and Parekhs ("Owners"), filed in the above-referenced case and its companion case, Number 98-238-SPHXA, for reasons set forth below. The Introduction set forth in Opposers' Opposition Memorandum filed in Case Number 98-238-SPHXA is incorporated by reference as though fully set forth herein.

I. ARGUMENT

A. The Petition For Variance Respecting Buffers and Setbacks Must Be Denied, As No Characteristic Of The Property Warrants Such Relief

The County requires that a number of safeguards be in place to ensure an appropriate transition zone between areas of residential use and an area where, inter alia, an ALF is in operation. These include space buffer zones, landscaping requirements, etc. Petitioners seek a variance from BCZR §1B01.1.B1c, d, & e to reduce the setback and buffer requirements for residential transition areas ("RTAs").

They ask that, on the property line between 10 Cedar Knoll Road and the D'Annas (directly across from Mr. Harvey's home), the County permit a 20 foot buffer zone instead of the required 50 foot buffer, and a 30 foot setback instead of the required 75 foot setback.

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 the grant or denial of variance petitions: (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 a 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., shape, topography, subsurface conditions, environmental factors, or practical restrictions imposed by neighboring properties (such as obstructions). Umerley, id. An "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 in court.

Petitioners submitted no evidence upon which the Commission may base the required finding of uniqueness of the Property. The assertion of a surveyor's gap of 10 feet between adjoining properties (which will be quitclaimed to D'Anna) does not satisfy the relevant

legal standard, as there is no showing that the "gap," even if "unique," is even part of the subject Property. Even if the existence of the "gap" met the standard, it does not warrant any variance in excess of the "unique" characteristic, i.e., there is no justification for a variance more than 10 feet from the required buffer distance. The claim that steep grading of the site will provide further screening and thus justifies a variance is facetious: all properties on this stretch of Cedar Knoll Road experience the same steep grade. The Property is not "unique" in relation to the surrounding area. Further, the drop-off occurs close to York Road, while the institution would be built just 30 feet from Cedar Knoll Road. The final factor cited--petitioners' desire to build a one-story structure for the convenience of prospective tenants--also does not address the first prong of the legal standard that governs their request: uniqueness of the property.

Even if the "uniqueness" prong was met, there is no showing that "unreasonable hardship" would result from enforcement of the zoning ordinance; any hardship that does result is self-imposed by petitioners and therefore not a proper factor for consideration by this Commission. Petitioners have, for their own profit and convenience, designed an institution which is too large and otherwise inappropriate for the property targeted for acquisition and development. In order to fit the "square peg" of the ALF as designed into the "round hole" of the Property, Petitioners seek an array of exceptions and variances from the regulations that are in place, in part, to protect the surrounding homeowners. Petitioners have refused, on grounds of

"reduced profitability," Opposers' request to reduce the size of the institution to tailor it to the existing site in conformance with the regulations. There is no "unreasonable hardship" in telling a developer it must design its institution to suit the property it wishes to purchase, rather than "remake" an unsuitable property to accommodate an overlarge facility. Any claimed "hardship" due to reduced capacity or profitability is self-created by petitioners' coupling of an inappropriate institutional design and an inappropriate lot. It is not a legitimate factor for the Commission to consider.

Petitioners also seek a variance from BCZR §1B01.2c1a to reduce "rear yard space requirements" and thus allow construction much closer to Cedar Knoll Road than regulations permit. In a DR 3.5 zone, the principal building must be set back 50 feet from a road. Petitioners want instead a setback from Cedar Knoll Road of only 30 feet, arguing that since there is road frontage along both the west and east borders of property, the Cedar Knoll frontage should be treated as a rear yard instead of a front yard; a rear yard setback need only be 30' in a DR 3.5 zone. Of course, petitioners' "rear yard" would be the front yard of Mr. Harvey and other Knollbrook homeowners.

Here, too, petitioners submitted no evidence of uniqueness of the Property not shared by other area properties. The only basis asserted is the existence of "double frontage" (a property fronting on two roads, York and Cedar Knoll). As this characteristic is shared by the first four properties on Cedar Knoll Road, the condition precedent to variance relief has failed. Petitioners must observe the same setback requirement as the similarly-situated proper-

ties in the area, rather than being permitted to build a structure 28' closer to Cedar Knoll Road than the current house on the Property. There also is no showing that "unreasonable hardship" would result from enforcement of the setback ordinance. As stated above, any hardship that does result is self-imposed by petitioners' choice of design, and not a legitimate factor to consider.

Additionally, while an ALF technically is residential, its attributes--expansive parking, numerous employees, large-volume waste generation, etc.--are in all respects those of a commercial entity, and wholly objectionable in this area. And, while assisted ALFs are benignly thought of as "elderly housing," county regulations in fact contemplate the housing of developmentally disabled persons in such facilities. A change in licensure to permit such housing would not provide for public notice and input; thus, Opposers' best opportunity to prevent such inappropriate siting of such housing is to prevent its construction. To the extent there is any hardship, it is on the homeowners deeply invested in this neighborhood.

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

Petitioners seek a Special Exception on 10 Cedar Knoll Road, between 8 Cedar Knoll Road and the D'Anna property, for a Class B ALF housing 15 residents. The argument set forth in Section A of Opposers' Opposition Memorandum filed in Case Number 98-238-SPHXA is incorporated by reference as though fully set forth herein.

As an alternative to obtaining the variances requested above, petitioners seek to have the applicable RTA restrictions waived in their entirety, by special exception. Petitioners ask that they not

have to comply in any way with these safeguards, which include space buffer zones, landscaping requirements, etc.

A Special Exception may not be used as a substitute for a variance in order to avoid the burden of proving hardship. Cromwell v. Ward, 651 A.2d 424, 430 (Md.App. 1995). While this RTA special exception relief is requested as an alternative to variance relief, the standard for a special exception is actually much more difficult to meet. The Zoning Commissioner may,

by special exception, modify or waive residential transition area restrictions in cases where an elderly housing facility development would be severely or adversely affected by the restrictions set forth in Paragraph 1B01.1B.1.b. if [it] determines that (A) Compliance with...the restrictions will cause unreasonable hardship on the development; (B) the quality of the site design and the amenities provided would justify a modification or waiver of the... restrictions; and (C) the development will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties & general neighborhood.

BCZR 432.4 (emphasis added). If petitioners cannot satisfy the "unreasonable hardship" standard to qualify for a variance, they also do not qualify for a special exception under 432.4, as "unreasonable hardship" is but the first of three conditions precedent to such relief. Under Cromwell it is improper even to try, as a special exception may not be used as a substitute for a variance to obtain same or similar relief.

Further, petitioners also fail the remaining 2 prongs of the test for special exception relief from RTA restrictions: they have submitted no evidence that either the quality of the site design or the amenities provided justify a waiver of RTA restrictions. In fact, the site design would place huge institutional structures 28'

closer to the neighborhood lane than the current home on the Property and would eliminate much of the existing environmental ambiance with a "minimalist approach" to landscaping. See Compatibility Statement at 3. There also is no evidence that this development will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties and the general neighborhood. To the contrary, it is well-known that as a residential area becomes invaded by increased commercial and institutional use, its peaceful enjoyment is reduced, as is property value of nearby residences. Homeowners across Cedar Knoll Road from the project, who will have it virtually in their front yards, have provided evidence of the detrimental effect this project will present. Since petitioners cannot meet any of the three prongs of the required waiver-by-special exception test, much less all three, their alternative relief must be denied.

II. 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

239



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

(Formerly 8-10 Cedar Knoll Rd.)
for the property located at 10883 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]
Signature
c/o 64 Main Street
Address
Reisterstown, Maryland 21136
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 Dr. Rekha Shah
(Type or Print Name) (Type or Print Name)
[Signature] [Signature]
Signature
D. G. Parekh Nirulata D. Parekh
(Type or Print Name) (Type or Print Name)
[Signature] [Signature]
Signature

Attorney for Petitioner
Howard L. Alderman
(Type or Print Name)
[Signature]
Signature
305 W. Chesapeake Ave., #113 (410) 321-0600
Address Phone No
Towson, Maryland 21204
City State Zip Code

9 Westspring Way
Address
410-269-7100
Phone No
Lutherville, Maryland 21093
City State Zip Code
Name Address and phone number of legal owner, contract purchaser or authorized 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 1 hr
the following dates _____ Next Two Months
All _____ OTHER _____
REVIEWED BY: [Signature] DATE 12/10/97

98-239-XA

ATTACHMENT TO
PETITION FOR SPECIAL EXCEPTION
10883 YORK ROAD
COCKEYSVILLE, MARYLAND

1. An Assisted Living Facility, Class "B" of fifteen (15) residents to be permitted in that area of the tract to be known as 10883 York Road, predominantly DR-3.5 (gross area of 1.18 acres $\pm$) with small area of RO (gross area of 0.10 acres $\pm$). This request is in accordance with Section 432.1A3 (BCZR).
2. In the alternative to variancing the RTA restrictions of 1B01.1.B1c, d & e (BCZR) in accordance with Section 432.4 by Special Exception waive the residential transition area restrictions applicable to this lot.



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at (Formerly 8-10 Cedar Knoll Rd.)
10883 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 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.

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
Towson, Maryland 21204 Phone No

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

D. G. Parekh

(Type or Print Name)

Signature

Nirulata D. Parekh

9 Westspring Way

Address

410-269-7100

Phone No

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.

Name

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

Address

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following date

Next Two Months

ALL

OTHER

REVIEWED BY:

DATE

12/18/97

98-239-XA

ATTACHMENT TO
PETITION FOR VARIANCE
10883 YORK ROAD, COCKEYSVILLE, MD.

A. SECTION 1B01.1.B1c, d & e. (BCZR):

To permit a minimum 20 foot (20') buffer and minimum thirty foot (30') setback in lieu of the required fifty foot (50') buffer and seventy-five foot (75') setback for the Residential Transition Area (RTA).

FOR THE FOLLOWING REASONS:

1. Assisted Living Facilities are preferred as one-story structures, for ease of circulation of the elderly.
2. The structure will be further screened due to the grading of the site.
3. There is a surveyor's "gap" between the adjoining lots of ten (10) feet $\pm$ which will be "quit claimed" to the adjoiner subject to the variancing of the RTA buffer & setback. (Area of additional planted buffer).
4. Such other reasons presented at the time of the hearing.

B. FROM SECTION 1B01.2c1a:

To permit a rear yard of thirty (30) feet in lieu of a front yard of fifty (50') feet for a double frontage lot. ~~APPROVE~~ *APPROVE A MODIFIED PARKING PLAN* 

FOR THE FOLLOWING REASONS:

1. No access is being provided from Cedar Knoll Road.
2. The true front of the proposed facility is the opposite face of the structure facing York Road.
3. Topography will screen the structure from this "frontage".
4. Such other reasons presented at the time of the hearing.

PATTON

Patton
Consultants
Ltd.
Engineering
& Site
Planning

239

ZONING DESCRIPTION

10883 York Road (MD. Rte. 45)
(Formerly 10 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 three hundred thirty two and eighty two hundredths feet (332.82') north of the centerline of Sherwood Road which is fifty feet (50') wide. Thence the following courses and distance.

1.	N	07°	44'	00"	W	-	194.36'
2.	S	68°	08'	00"	W	-	90.14'
3.	S	79°	50'	00"	W	-	195.58'
4.	S	13°	22'	00"	W	-	31.31'
5.	S	28°	38'	00"	W	-	50.40'
6.	S	18°	21'	00"	E	-	96.00'
7.	N	71°	39'	00"	E	-	145.50' +
8.	S	60°	51'	00"	E	-	54.00' +
9.	S	85°	51'	00"	E	-	27.00' +
10.	N	74°	09'	00"	E	-	97.00' +

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



98-239-XA

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 050810

DATE 3/24/98 ACCOUNT R-001-6150

AMOUNT \$ 460.00

RECEIVED FROM: Robert Sellers + Christian Harvey

FOR: Appeal - Case # 98-239-XA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
3/25/1998 3/25/1998 15:05:27
REG MS05 CASHIER BTRY BXT DRAWER 5
5 MISCELLANEOUS CASH RECEIPT
Receipt # 057930
CR NO. 050810
460.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 050810

DATE 3/24/98 ACCOUNT R-001-6150

AMOUNT \$ 460.00

RECEIVED FROM: Robert Sellers + Christian Harvey

FOR: Appeal - Case # 98-239-XA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
3/25/1998 3/25/1998 15:05:27
REG MS05 CASHIER BTRY BXT DRAWER 5
5 MISCELLANEOUS CASH RECEIPT
Receipt # 057930
CR NO. 050810
460.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYL D
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

239 JUL

No. 00

DATE 12/18/97 ACCOUNT R0016150
AMOUNT \$ 550.

RECEIVED
FROM:

Jim Patton

FOR:

XA

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

PROCESS ACTUAL TIME
2/19/1997 12/18/1997 15:44:26

REQ W801 CASHIER CLERK CHL DRAWER 1

5 MISCELLANEOUS CASH RECEIPT

Receipt # : 051849

OFLH

CR NO. 046986

550.00 CHECK: FN

Baltimore County, Maryland

98-239-XA

CASHIER'S VALIDATION

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: #98-239-XA
10883 York Road
W/S Cedar Knoll Drive
333' +/- N of Sherwood Road
8th Election District
3rd Councilmanic District
Legal Owner(s):
Dr. Gulab Shah & Dr. Reha Shah & D.G. Parekh & Nirulata D. Parekh
Contract Purchaser:
10881 York Road, LLC

Special Exception: for an Assisted Living Facility, Class "B" of 15 residents to be known as 10883 York Road; in the alternative to variances, the RTA restrictions of 1901.1.B1c, d & e (BCZR) in accordance with Section 432.4 by Special Exception waive the residential transition area restrictions applicable to this lot. Variance: to permit a minimum 20 foot buffer and minimum 30 foot setback in lieu of the required 50 foot buffer and 75 foot setback for RTA; and to permit a rear yard of 30 feet in lieu of a front yard of 50 feet for a double frontage lot and approve a modified parking plan.

Hearing: Wednesday, January 21, 1998 at 11:00 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) 887-3353.

(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391.

1/17/98 Jan. 8

CT98971

CERTIFICATE OF PUBLICATION

TOWSON, MD., 1-8, 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 1-8, 1998

THE JEFFERSONIAN,

A. Henickson
LEGAL AD. - TOWSON

CERTIFICATE OF POSTING

RE: Case No.: 98-239-XA
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 _____**

10883 York Road Baltimore, Maryland 21031 _____

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

Sincerely,

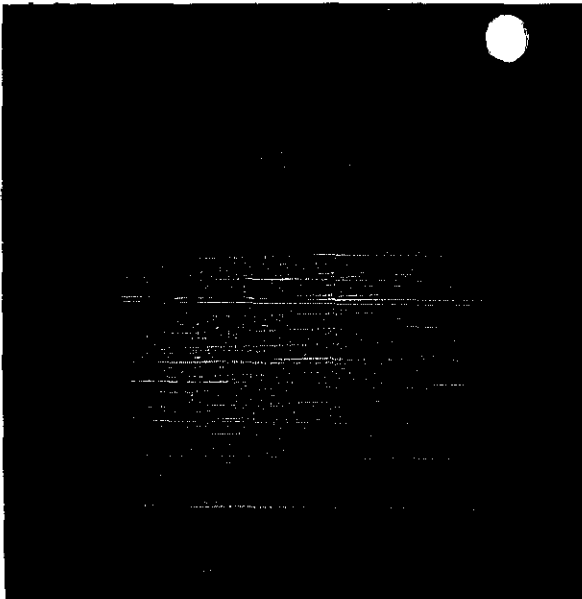

(Signature of Sign Poster & Date)

_____ Thomas P. Ogle, Sr. _____

_____ 325 Nicholson Road _____

_____ Baltimore, Maryland 21221 _____

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



98-239-XA

CERTIFICATE OF POSTING

RE: Case No.: 98-239-XA

Petitioner /Developer: DR. SHAH, SHAH,
PAREKH, PAREKH

Date of Hearing/Closing: _____

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

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the
necessary sign(s) required by law were posted conspicuously on the
property located at 10881, 10883 YORK RD.

The sign(s) were posted on _____

5/1/98

(Month, Day, Year)

Sincerely,

Gary C. Freund 5/1/98

Signature of Sign Poster and Date

GARY C. FREUND
Printed Name

Address

City, State, Zip Code

Telephone Number



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.: 239

Petitioner: 10881 YORK Rd. LLC.

Location: 10883 YORK Rd.

PLEASE FORWARD ADVERTISING BILL TO:

NAME: DAVID FARRELL, EXEC V.P.

ADDRESS: 64 MAIN STREET
REISTERSTOWN, MD 21136

PHONE NUMBER: 410-296-2140

AJ:ggs

(Revised 09/24/96)

98-239-XA

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.: 28-239-XA

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", AND WAIVER OF RESIDENTIAL TRANSITION AREA STANDARDS
IF APPLICABLE. (SEE VARIANCE) AND A VARIANCE TO PERMIT 20 FT BUFFERS
AND SETBACKS (RTA) AND TO PERMIT A 30 FT REAR YARD ~~AND 50 FT~~
IN LIEU OF ~~AND 50 FT~~

~~AND 50 FT. (ON A DOUBLE FRONTAGE LOT) AND 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. VP 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: 98-239-XA

10883 York Road

W/S Cedar Knoll Drive, 333' +/- 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 Exception for an Assisted Living Facility, Class "B" of 15 residents to be known as 10883 York Road; in the alternative to variances the RTA restrictions of 1B01.1.B1c, d & e (BCZR) in accordance with Section 432.4 by Special Exception waive the residential transition area restrictions applicable to this lot. Variance to permit a minimum 20 foot buffer and minimum 30 foot setback in lieu of the required 50 foot buffer and 75 foot setback for RTA; and to permit a rear yard of 30 feet in lieu of a front yard of 50 feet for a double frontage lot and approve a modified parking plan.

HEARING: Wednesday, January 21, 1998 at 11:00 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: 98-239-XA

10883 York Road

W/S Cedar Knoll Drive, 333' +/- N of Sherwood Road

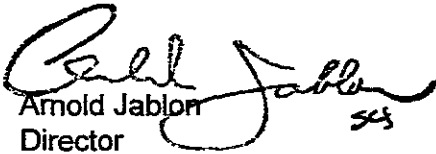
8th Election District - 3rd Councilmanic District

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

Contract Purchaser: 10881 York Road LLC

Special Exception for an Assisted Living Facility, Class "B" of 15 residents to be known as 10883 York Road; in the alternative to variances the RTA restrictions of 1B01.1.B1c, d & e (BCZR) in accordance with Section 432.4 by Special Exception waive the residential transition area restrictions applicable to this lot. Variance to permit a minimum 20 foot buffer and minimum 30 foot setback in lieu of the required 50 foot buffer and 75 foot setback for RTA; and to permit a rear yard of 30 feet in lieu of a front yard of 50 feet for a double frontage lot and approve a modified parking plan.

HEARING: Wednesday, January 21, 1998 at 11:00 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.





County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

April 6, 1998

NOTICE OF ASSIGNMENT

CASE #: 98-239-XA

IN THE MATTER OF: DR. GULAB SHAH & DR. RAHKA SHAH
AND D.G. AND NIRULATA D. PAREKH -Legal Owners;
10811 YORK ROAD LLC -Contract Purchaser /Petitioner
(10883 York Road) 8th E; 3rd C

(Petitions for Special Exception and Variance
GRANTED in part; dismissed as moot in part by ZC)

ASSIGNED FOR: TUESDAY, JUNE 16, 1998 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should
consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure,
Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient
reasons; said requests must be in writing and in compliance with
Rule 2(b) of the Board's Rules. No postponements will be granted
within 15 days of scheduled hearing date unless in full compliance
with Rule 2(c).

Kathleen C. Bianco
Administrator

cc: Counsel for Appellants /Protestants: Robert D. Sellers, Esquire
Appellant/Protestant (special exception): Chris Harvey
Appellant/Protestant (all variances) : Chris Dern

Counsel for CP /Petitioner : Howard L. Alderman, Jr., Esq.
Contract Purchaser /Petitioner : David Farrell, Executive V.P.
10881 York Road LLC

James S. Patton P.E.

Ms. Kate Masterton
Mr. and Mrs. Michael D'Anna
Mr. Edward J. Conif
Mr. Chris Supik
Ms. Audrey Cyphers-Crush
Mr. Richard Evans

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt

Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty





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.: 239
Case No.: 98-239-XA
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 dark ink, appearing to read "W. Carl Richards, Jr.", is written over the typed name.

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

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.

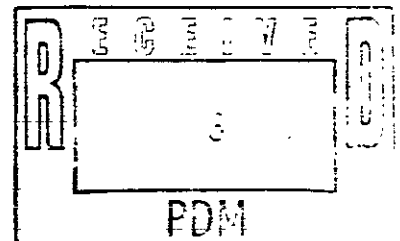
In addition, the following conditions are also recommended:

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

DATE: January 9, 1998

To: Arnold L. Jablon

From: Bruce Seeley *BS/42*

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 14-411 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 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:

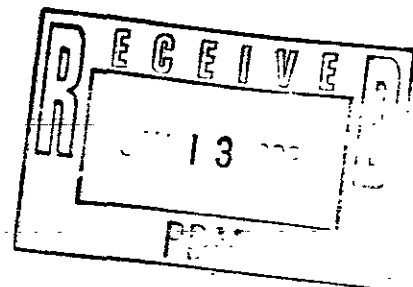
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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 887-4881, MS-1102F

cc: File

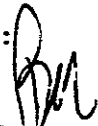


BALTIMORE COUNTY, MARYLAND

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

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
PETITION FOR VARIANCE		
10883 York Road, W/S Cedar Knoll Dr,	*	ZONING COMMISSIONER
333' N of Sherwood Rd		
8th Election Dist., 3rd Councilmanic	*	OF BALTIMORE COUNTY
Legal Owners: Dr. Gulab Shah & Dr. Rehka Shah		
& D.G. Parekh & Nirulata D. Parekh		
Contract Purchaser: 10881 York Road, LLC	*	CASE NO. 98-239-XA
Petitioners		
* * * * *		

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman
 PETER MAX ZIMMERMAN
 People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 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



Baltimore County
Department of Permits and
Development Management

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

March 25, 1998

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

RE: Petitions for Special Exception and
Variance
Case No.: 98-239-XA
10883 York Road
8c3
Dr. Gulab Shah, et al - Legal
Owners
10881 York Road, LLC - Contract
Purchasers/Petitioners

Dear Mr. Alderman:

Please be advised that an appeal of the above referenced case was filed in this office on March 20, 1998 by Robert D. Sellers, Esquire on behalf of Chris Harvey for special exception only and Chris Dern for variance only. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call the Board of Appeals at 410-887-3180.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ:rye

c: Ms. Kate Masterton
Mr. Chris Dern
Mr. and Mrs. Michael D'Anna
Mr. Edward J. Conif
Mr. Chris Supik
Ms. Audrey Cyphers-Crush
Mr. Richard Evans
People's Counsel



APPEAL

**Petitions for Special Exception and Variance
W/S Cedar Knoll Drive, 333' +/- N of Sherwood Road
(10883 York Road)**

8th Election District - 3rd Councilmanic District

Dr. Gulab Shah & Dr. Rehka Shah & D.G. Parekh & Nirulata D. Parekh - Legal Owners

10881 York Road LLC - Contract Purchaser/Petitioner

Case Number: 98-239-XA

Petitions for Special Exception and Variance

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Advisory Committee Comments

Petitioners, Protestants, and Citizens Sign-In Sheets

Petitioners' Exhibits:

- 1 - Plan to Accompany Petition for Special Exception, Special Hearing, and Variance**
- 2A-D - Seven Photographs**
- 3A-C - Three Elevation Drawings**

Protestants' Exhibits:

- 1 - Letter from Chris and Judy Dern to Bill Hughey, Office of Planning, dated January 5, 1997(8)
- 2 - Letter from Christian D. Harvey to the Zoning Commissioner of Baltimore County dated January 21, 1998

Opposition Memorandum of Kathleen Masterton and Jay Hergenroeder

Zoning Commissioner's Order dated February 18, 1998 (Granted in Part, Dismissed as Moot in Part)

Notice of Appeal received on March 20, 1998 from Robert D. Sellers, Esquire on behalf of Chris Harvey for special exception only

Notice of Appeal received on March 20, 1998 from Robert D. Sellers, Esquire on behalf of Chris Dern for variance only

c: Howard L. Alderman, Jr., Esq., 305 W. Chesapeake Ave., Ste. 113, Towson, Maryland 21204
Mr. David Farrell, Exec. V.P., 10881 York Rd., LLC, 65 Main St. Reisterstown, Maryland 21136
Robert D. Sellers, Esquire, 401 Washington Avenue, Suite 303, Towson, MD 21204
Mr. James S. Patton, P.E., 305 W. Chesapeake Avenue, Suite 206, Towson, Maryland 21204
Ms. Kate Masterton, 11 Oak Knoll Road, Cockeysville, MD 21030
Mr. Chris Dern, 15 Cedar Knoll Road, Cockeysville, MD 21030
Mr. Chris Harvey, 17 Cedar Knoll Road, Cockeysville, MD 21030
Mr. and Mrs. Michael D'Anna, 10899 York Road, Cockeysville, MD 21030
Mr. Edward J. Conif, 11 Cedar Knoll Road, Cockeysville, MD 21030
Mr. Chris Supik, 22 Cedar Knoll Road, Cockeysville, MD 21030
Ms. Audrey Cyphers-Crush, 36 Cedar Knoll Road, Cockeysville, MD 21030
Mr. Richard Evans, 521 Dunkirk Road, Baltimore, MD 21212
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

Case No. 98-239-XA

SE -To waive RTA restrictions per Section 432.4 or in alternative - variance to permit min 20' buffer and 35' setback area ilo req'd 50' buffer and 75' setback for RTA requirements;
VAR -To permit rear yard of 30' ilo front yard setback of 50' for double frontage lot; and to approve modified parking plan.

2/18/98 -Zoning Commissioner's Order in which Petition for Special Exception and Variance GRANTED; alternative variances dismissed as moot.

3/31/98 -Letter from H. Alderman, counsel for owners and contract purchasers; requesting expedited hearing of this matter so as not to prejudice his clients. Reviewing schedule and awaiting comment /response from opposing counsel /party.

4/06/98 -Notice of Assignment for hearing scheduled for Tuesday, June 16, 1998 at 10:00 a.m. sent to following:

Robert D. Sellers, Esquire
Chris Harvey
Chris Dern
Howard L. Alderman, Jr., Esq.
David Farrell, Executive V.P.
10881 York Road LLC
James S. Patton P.E.
Ms. Kate Masterton
Mr. and Mrs. Michael D'Anna
Mr. Edward J. Conif
Mr. Chris Supik
Ms. Audrey Cyphers-Crush
Mr. Richard Evans
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt

Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty

6/16/98 -H. Alderman and R. Sellers to jointly request remand to Zoning Commissioner at hearing this date.

-Joint Request for Remand filed at hearing and on the record; granted by the Board. Order of Remand to be issued by Board. (C.W.F.)

BALTIMORE COUNTY, MARYLAND

SUBJECT: LIMITED EXEMPTION PLAN COMMENTS

FROM: PDM - ZONING REVIEW

DATE: June 16, 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:

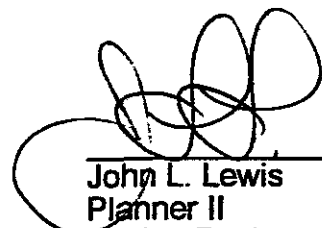
ZONING CASES: 98-238-SPHA & 98-239-XA

1. The information and site development as shown on the plan must agree with that of the approved zoning hearing plans. This includes designation of all RTA buffers and setbacks, as well as building and parking layouts and the (varianced) sign detail and information. Due to the substantial plan changes, staff must consider this a revision to the plan approved by the zoning commissioner. This requires that the zoning hearing plan be revised to agree with this development plan or vice versa. Since, as noted on the plan, these zoning cases are currently under appeal, staff strongly suggests that these plans be accepted as revised by the Board of Appeals before proceeding further.

2. Put the complete zoning orders on the plan as granted, dismissed, or denied with all restrictions.

3. Note at the seal that the plan complies with the zoning cases and all agency comments.

Staff is unable to give approval of the development plan until the above issues are resolved.



John L. Lewis
Planner II
Zoning Review

JLL:rye

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

RA1001B

DATE: 05/02/2001

STANDARD ASSESSMENT INQUIRY (1)

TIME: 11:51:19

PROPERTY NO.	DIST	GROUP	CLASS	OCC.	HISTORIC	DEL	LOAD DATE
23 00 004192	08	2-3	06-00	N	NO		01/08/01
10881 YORK ROAD LLC					DESC-1.. IMPS1.16425 AC SWM		
10883 YORK ROAD LLC					DESC-2.. NEWPORT ASSISTED LIVING		
10881 YORK RD					PREMISE. 10883 YORK		RD

00000-0000

COCKEYSVILLE MD 21030-2122 FORMER OWNER: 10881 BORROWER LLC

FCV		PHASED IN		
PRIOR	PROPOSED	CURR	CURR	PRIOR
		FCV	ASSESS	ASSESS
LAND: 247,510	239,500			
IMPV: 583,500	627,500	TOTAL.. 867,000	867,000	342,000
TOTL: 831,010	867,000	PREF... 0	0	0
PREF: 0	0	CURT... 0	0	0
CURT: 0	0	EXEMPT.	0	0
DATE: 12/95	12/99			

TAXABLE BASIS		FM DATE
01/02 ASSESS:	867,000	12/14/00
00/01 ASSESS:	342,000	06/01/00
99/00 ASSESS:	91,360	06/04/99

ENTER-INQUIRY2 PA1-PRINT PF4-MENU PF5-QUIT PF7-CROSS REF

DATE: 05/02/2001 STANDARD ASSESSMENT INQUIRY (2)

TIME: 11:52:23

PROPERTY NO.	DIST	GROUP	CLASS	OCC.	HISTORIC	DEL	LOAD DATE
23 00 004192	08	2-3	06-00	N	NO		01/08/01
LOT....	2	BOOK....	0070	MAP.....	0042	LOT WIDTH.....	.00
BLOCK..		FOLIO...	0146	GRID....	0022	LOT DEPTH.....	.00
SECTION..				PARCEL..	0179	LAND AREA..	50714.000 S
PLAT..						YEAR BUILT.....	00

-----TRANSFER DATA-----

NUMBER..... 173747
DATE..... 09/20/99
PURCHASE PRICE..... 0
GROUND RENT..... 0
DEED REF LIBER..... 14032
DEED REF FOLIO..... 0379
CONVEYED IND..... 9
TOT-PART TRAN IND..... T
GRANTOR ACCT NO.. 23-00-004192

CRITICAL NEW CONST CARD
AREAS CODE YEAR NO
99 01389

-----EXEMPT DATA-----

STATUS.....
CLASS CODE..... 000
STATE EXEMPT CODE..... 000
COUNTY EXEMPT CODE..... 000
CURR STATE EX ASMT.... 0
PRIOR STATE EX ASMT... 0
CURR COUNTY EX ASMT... 0
PRIOR COUNTY EX ASMT.. 0

-----STRUCTURE-----

CODE SQ. FEET

ENTER-INQUIRY3 PA1-PRINT PF2-INQUIRY1 PF4-MENU PF5-QUIT PF7-CROSS REF

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: April 6, 1999
Permits & Development Management

FROM: Charlotte E. Radcliffe *CR*
County Board of Appeals

SUBJECT: Closed Files on Remand:

98-423-A /William J. Cochran (ZC Order - 12/18/98)
98-483-SPH /Fitzpatrick Realty, Inc. (DZC Order - 3/5/99)
98-239-XA /Dr. Gulab Shah (ZC Order - 7/14/98)

Since the 30-day appellate period has expired with no further appeals having been taken in the above captioned cases, which were remanded to the Zoning Commissioner in 1998, we are hereby noting our records that these files are closed.

ROBERT D. SELLERS
ATTORNEY AT LAW
SUITE 303
401 WASHINGTON AVENUE
TOWSON, MD 21204

5/23/93
8
appeal

ROBERT D. SELLERS
LAURIE ANNE FILIPPI *
*ALSO ADMITTED IN PA

(410) 583-1712
(800) 543-6309
FAX (410) 583-2378

March 20, 1998

Arnold Jablon, Director
Permits and Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 98-239-XA

Dear Mr. Jablon:

Please enter my appearance on behalf of Chris Harvey, and note his appeal of the decision of the Zoning Commissioner in the above-referenced matter. Specifically, my client appeals the Commissioner's findings and rulings regarding all special exception relief requested in that petition.

Enclosed please find a check in the amount of \$250.00 representing the filing fee for the appeal. A fee for the appeal sign was paid with another appeal filed yesterday, so I assume that does not need to be paid again. If anything further needs to be done to perfect the appeal, or if the enclosed check is not sufficient for any reason, please notify me immediately.

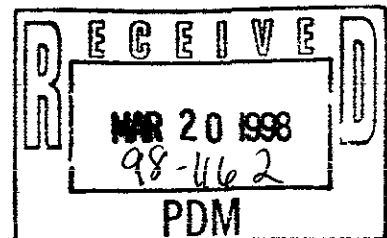
Yours,



Robert D. Sellers

RDS/as
Enclosure

cc: Chris Harvey



ROBERT D. SELLERS
ATTORNEY AT LAW
SUITE 303
401 WASHINGTON AVENUE
TOWSON, MD 21204

3/23/98
8
appeal
To: Ros
3/23/98
wa

ROBERT D. SELLERS
LAURIE ANNE FILIPPI *
*ALSO ADMITTED IN PA

(410) 583-1712
(800) 543-6309
FAX (410) 583-2378

March 19, 1998

Arnold Jablon, Director,
Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

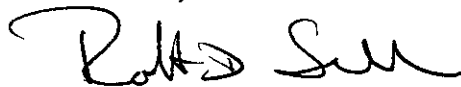
RE: Case No.: 98-239-XA

Dear Mr. Jablon:

Please enter my appearance on behalf of Chris Dern, and note his appeal of the decision of the Zoning Commissioner in the above-referenced matter. Specifically, my client appeals the Commissioner's findings and rulings regarding all variance relief requested in that petition, including but not limited to two requests for variances which were dismissed as moot.

Enclosed please find a check in the amount of \$210.00 representing the \$175.00 filing fee for the appeal and the \$35.00 charge for the appeal sign. If anything further needs to be done to perfect the appeal or if the enclosed check is not sufficient for any reason, please notify me immediately.

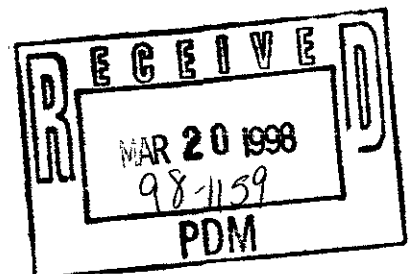
Yours,



Robert D. Sellers

RDS/jpg
Enclosure

cc: Chris Dern



BALTIMORE OFFICE
MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
9TH FLOOR
BALTIMORE, MARYLAND 21201
410-539-3700
TELECOPIER 410-625-9050

LAW OFFICES
LEVIN & GANN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR.
halderma@counsel.com

July 1, 1998

VIA HAND DELIVERY

Lawrence E. Schmidt, Esquire
Zoning Commissioner for Baltimore County
401 Bosley Avenue, Room 405
Towson, Maryland 21204

RE: Petitions for Special Exception and Variance
10881/10883 York Road
Case No. 98-239-XA
Proposed Order on Remand

Dear Mr. Schmidt:

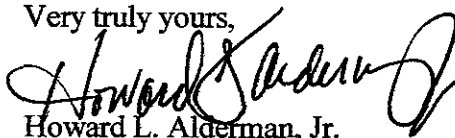
As I have indicated, the disputes and differences that existed among the Appellants and Respondents in the above-referenced case have been resolved. A joint request for remand was submitted to the County Board of Appeals; a copy of the Board's Remand Order is enclosed herewith.

I spoke with Robert D. Sellers, Esquire at approximately 2:00 p.m. this date, and he has authorized me to submit to you, on behalf of his clients (the Appellants at the Board level), for your consideration, the following enclosed materials:

1. Proposed Order on Remand;
2. The Revised Plat referenced in the proposed Order;
3. A copy of the Agreement among Mr. Sellers' clients and mine; and
4. A copy of the Board's Remand Order.

Upon your review of the enclosed materials, should you have any questions, please do not hesitate to call either Bob Sellers or me. Thank you for your consideration of resolving this case in the manner agreed to among the parties.

Very truly yours,


Howard L. Alderman, Jr.

HLA/gk

Enclosures (3)

c: Robert D. Sellers, Esquire

NB - Bell
Fitzgerald came
in & looked at the
file on 7/13/98. I asked
who he was & what was
his interest. He's a
neighbor & does not
object to the proposed
order
JEG
7/14/98

BALTIMORE OFFICE
MERCANTILE BANK & TRUST BUILDING
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9TH FLOOR
BALTIMORE, MARYLAND 21201
410-539-3700
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TOWSON, MARYLAND 21204
410-321-0600
TELECOPIER 410-296-2801

ELLIS LEVIN (1893-1960)

HOWARD L. ALDERMAN, JR.
halderma@counsel.com

March 31, 1998

HAND DELIVERED

Christine K. Howansky, Chairman
County Board of Appeals for
Baltimore County
400 Washington Avenue
Old Courthouse
Room 49
Towson, Maryland 21204

Re: Petitions for Special Exception and Variance
10881/10883 York Road
Case No.: 98-239-XA
Request for Expedited Hearing

Dear Ms. Howansky:

We represent the owners and contract purchasers of the properties located at 10881 and 10883 York Road in the Eighth Election District of Baltimore County. Following a hearing on Petitions for Special Exception and Variance in connection with the Petitioners' proposed use of the property for elderly assisted living facilities, the Zoning Commissioner for Baltimore County issued an opinion dated February 18, 1998 granting certain of the relief prayed and dismissing the balance as moot. Subsequently, Robert D. Sellers, Esquire on behalf of two property owners has appealed the grant of the Special Exception and the grant of the Variance relief. For the record, that appeal was filed on the last day of the thirty day appeal period.

The purpose of this letter is to request that the County Board of Appeals for Baltimore County schedule this matter for hearing as soon as the schedule of the Board reasonably permits. Our clients have moved forward, in good faith, based on the approvals granted and have further offered to address any outstanding concerns of the community at large, or the appellants in particular. In any event, a delay in having this matter resolved at the Board level will serve only to prejudice my clients. Clearly, the requested expedited hearing will have no detrimental effect on the appellants. Our greatest concern is that if this matter does not get scheduled until the summer months, conflicting vacation schedules of parties on either side will prohibit a hearing on the merits until some point in the fall.

Christine K. Howansky, Chairman
March 31, 1998
Page 2

Should you need any additional information or support in connection with the request for early hearing, as always, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Howard L. Alderman, Jr.", written in black ink.

Howard L. Alderman, Jr.

HLA:las

cc: Newport Assisted Living, LLC
Robert D. Sellers, Esquire

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

HOWARD L. AUERMAN Jr Esq

David Farrell

JAMES S. PATTON

ADDRESS

305 W. Chesapeake Ave #113
Towson MD 21204

Newport Assisted Living
64 Main St., Pikesville, MD 21136
~~305 W. CHESAPEAKE AVE~~ 206
TOWSON, MD.



Printed with Soybean Ink
on Recycled Paper

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

Kate Masterton
(+ Jay Heerenroeder)

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

Chris Dern

15 Cedar Knoll Road
Cockeysville, MD 21030

Chris Harvey

17 Cedar Knoll Road
Cockeysville MD 21030

~~XXXXXXXXXXXXXXXXXXXX~~

~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~



PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

NAME

ADDRESS

Mr & Mrs Michael Danna

10899 York rd. 21030

Edward J. Bonif,

11 Cedar Knoll Rd. 21030

Christina
Audrey Lyphane - Bush
Ruth E. Jones

23 Cedar Knoll Rd 21030

36 Cedar Knoll Rd 21030

521 Dunkirk Rd 21212

Chris and Judy Dern
15 Cedar Knoll
Cockeysville, MD 21030

January 5, 1997

Bill Hughey
Office of Planning
401 Bosley Avenue, Suite 406
County Courts Building
Towson, MD 21204

*Protestants
No 1*

Dear Mr. Hughey:

This letter addresses the proposed development of an assisted living complex on the lot across the road from our home on 15 Cedar Knoll Road. We have not previously provided our views on this matter as we expected, based on the meeting where we met you, to be involved in a consultative process with the developer. As this process did not take place and as I understand that a planning meeting is scheduled for January, we are taking the opportunity to express our views now.

We would not oppose the proposed development provided that the developer can provide covenants that the property can only be used for care for the elderly, which covenants will survive any transfer of the property.

In addition, the development should have, in all respects, a residential look that minimizes the impact of York Road. Among other things:

1. Buildings should be one-story and include suitable decorative elements on the Cedar Knoll Road side.
2. There should be no neon lighting.
3. There should be no access to Cedar Knoll Road whatsoever: this access restriction must include the construction process.
4. Buildings should be set back from Cedar Knoll Road by at least 100 feet: there is no reason to site the property unnecessarily close to the neighborhood, as opposed to York Road.
5. All trash bins, air conditioning units, vents and other utility elements should be hidden, but located on the York Road side of the building. As we are located above the development, we will see and hear these utility elements unless they are on the York Road side of the development.

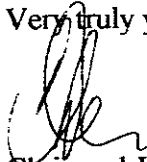
Bill Hughey
January 5, 1998
Page 2

6. An attractive and permanent barrier should be installed along Cedar Knoll Road in advance of beginning construction. This barrier should include a suitably-attractive fence and a continuous hedge of evergreen trees, such as cedars. The hedge trees should have an initial height of ten feet with an ultimate height of around 25 feet.
7. A barrier of hedge trees, similar to those described above, should also be established on the York Road side of the property prior to construction. This will have a substantial mitigating effect of keeping York Road out of our neighborhood.
8. None of the existing trees on the site should be removed unless they directly stand on the building footprint.

I respectfully request that you consider our views as we live directly across the road from the development and, perhaps more than any other neighbor, we will personally bear the impact of the development.

Please let us know when the planning meeting will take place as we will wish to attend.

Very truly yours,



Chris and Judy Dern

cc: Chris Supik
T. David Farrell

January 21, 1998

Zoning Commissioner
of Baltimore County

Re: Case 238, 10881 York Road, and
Case 239, 10883 York Road

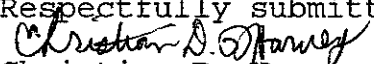
I am filing as a protestant in both of the above cases regarding a development plan and request for exemptions and variances being proposed by Newport Assisted Living Facilities.

I purchased 17 Cedar Knoll in April 1995 as a primary residence for two reasons. First, it was small, quiet neighborhood with privacy behind it, and had a buffer of residences in front from York Road. Second, because it was located on a dead end road which meant there would be no through traffic. Since the date of my purchase I have been involved in various community meetings and rezoning hearings to prevent York Road businesses from being in my front yard.

The compatibility study presented by Newport Assisted Living Facilities attempts to indicate that this facility will "fit right in" between York Road and Cedar Knoll. The deception is to put a business in the midst of a residential area. With monthly charges to thirty participants of between \$2,400 to \$2,800 per month, this is not just a facility for assisted living, it is a full-fledged business. When questioned at the community meeting about a scaled-back version, the developer responded that both buildings were necessary to meet his cost of development and turn a profit. Past investments by this developer involved renovating existing residential structures rather than tearing down and rebuilding. What the community is being asked to accept in this instance are two structures that don't match the charm of existing homes, but are institutional facades attempting to look like two homes facing each other. That is hardly complimentary to the existing open space of the adjoining properties and the neighborhood as a whole.

I am opposed to the planned development, the variances and/or special exemptions being requested and to the notion of removing a part of Cedar Knoll and making it a part of York Road. Continued pursuit of this property to be developed in the manner proposed will cause me to seek residence elsewhere. In so doing, I will potentially be faced with a devaluation in the market price of my property by having a York Road business built in my front yard.

The community meeting on this planned development was not properly publicized, there was no meeting place designated, and there was not a unanimous vote for this project. I therefor submit that the Zoning Commission and County Planning Board should deny this project as suitable for this location.

Respectfully submitted,

Christian D. Harvey
17 Cedar Knoll Road
Cockeysville MD 21030
(410) 683-0618

Protestant
NO 2

AGREEMENT

THIS AGREEMENT is made this day of **COPY**, 1998 by and among 10881 YORK RD., LLC, a Maryland limited liability company ("Developer"); CHRISTIAN D. HARVEY, individually ("Harvey") and CHRISTOPHER DERN, individually ("Dern") (Harvey and Dern are referred to collectively herein as the "Neighbors").

RECITALS

WHEREAS, the Developer is the contract purchaser of the property known as 10883 York Road (the "Development Property") and for which the Developer has filed Petitions for Special Exception and Variance, said petitions having been docketed and heard as Case No. 98-239-XA; and

WHEREAS, by Order dated February 18, 1998, the Zoning Commissioner for Baltimore County granted to the Developer the relief necessary for the construction of assisted living, elderly housing facilities and a certain sign on the Development Property; and

WHEREAS, the Neighbors appeared at the hearing held before the Zoning Commissioner for Baltimore County in opposition to the zoning relief requested by the Developer; and

WHEREAS, Harvey and Dern have each filed a separate appeal of the Order of the Zoning Commissioner to the County Board of Appeals for Baltimore County; and

WHEREAS, the Developer and the Neighbors have reached agreement in resolution of the separate appeals as filed; and

WHEREAS, the Developer and the Neighbors desire to reduce their agreements to writing in resolution of the appeals filed.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), paid by Developer to each of the Neighbors listed above, and other considerations and covenants herein contained, the

receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The above Recitals form an integral part of this Agreement and are incorporated herein by reference as if set out in their entirety.

2. The Developer will not use the Development Property for any purpose other than assisted living for the elderly for so long as the Developer has an ownership interest in the Property.

3. The access to the Development Property from Cedar Knoll Road will be permanently eliminated as quickly as is reasonably possible after commencement of demolition or site preparation and in no event later than thirty (30) days after commencement of demolition or site preparation and, thereafter, there will be no vehicular access whatsoever, including but not limited to access for the purpose of trash removal, dumpster or food service, from Cedar Knoll Road to or from the Development Property.

4. The landscape buffer areas noted on the revised Plat to Accompany Zoning Petition (the "Site Plan"), a copy of which is attached hereto and incorporated herein as Exhibit A, along portions of the side of Cedar Knoll Road shall be planted in accordance with this Agreement. The Developer shall plant and maintain spruce and/or leyland cypress trees in the landscape buffer areas on the north and the northeast sides of the Development Property six to seven feet tall, in a staggered row, not less than 10 feet apart. The planting in the landscape buffer areas shall be installed as soon as possible after commencement of demolition and/or site preparation, weather and growing conditions permitting.

5. The Site Plan has been amended to move the proposed building at 10883 York Road to be not less than thirty five feet from the edge of the Baltimore County Right of Way along Cedar Knoll Road. The elevation of the proposed building for 10883 York Road has been lowered by one

foot. The modifications to the Site Plan are reflected on Exhibit A which is attached hereto.

6. Should any party to this Agreement bring an action to enforce any term or terms of this Agreement in a Court of law or administrative form, the non-prevailing party in such action shall pay reasonable attorneys fees and costs incurred by the prevailing party.

7. Upon complete execution of this Agreement, the parties hereto agree as follows:

a. File a Joint Request for Remand with the County Board of Appeals for Baltimore County to have the appeal of zoning special exception relief noted by Harvey and the appeal of the variance relief (both as granted and dismissed as moot) noted by Dern to the County Board of Appeals remanded to the Zoning Commissioner.

b. Present an Order on Remand for signature by the Zoning Commissioner for Baltimore County to amend the relief granted in the above-referenced cases by substituting the Site Plan for the Plan which was included in said case as Petitioner's Exhibit No. 1.

8. The terms and conditions of this Agreement shall not be binding and enforceable unless and until the Developer, its successors and/or assigns utilizes the special exception and/or variance relief granted in the above-referenced cases. The signature of the present owners of the Development Property shown below, are merely for purposes of ensuring to the Neighbor's satisfaction that all parties in interest have executed this Agreement.

9. The Neighbors agree, jointly and severally, not to appeal either directly or indirectly, any order of the County Board of Appeals or the Zoning Commissioner for Baltimore County consistent with the agreements and conditions contained herein.

IN WITNESS WHEREOF, the parties hereto and the present owners of the Development Property have affixed their signatures the date and year first above written.

WITNESS/ATTEST:

DEVELOPER:

10881 YORK RD., LLC, a Maryland limited liability company

By: _____ (SEAL)

T. David Farrell, Member

**NEIGHBORS:
HARVEY:**

Christian D. Harvey

_____(SEAL)

DERN:

Christopher Dern

_____(SEAL)

**PRESENT OWNERS OF DEVELOPMENT
PROPERTY:**

Dr. Gulab Shah

_____(SEAL)

Dr. Rekha Shah

_____(SEAL)

D.G. Parekh

_____(SEAL)

Ninulata D. Parekh

_____(SEAL)

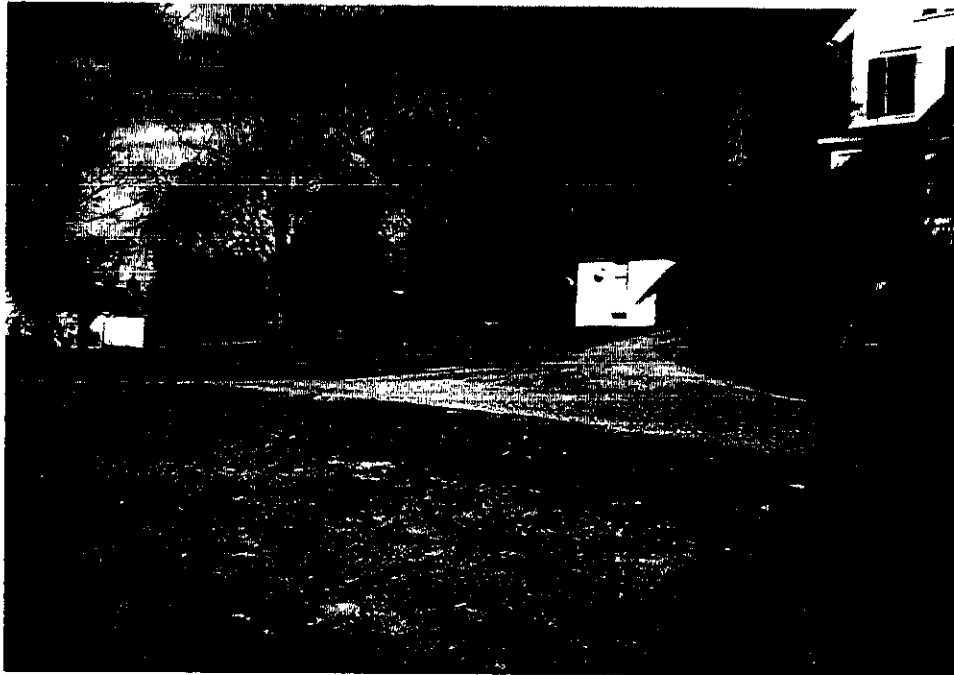


LOOKING NORTHWEST - HUNT VALLY



**LOOKING WEST - COCKEYSVILLE "ANTIQUE ROW"
YORK ROAD**

Bel's
2A



LOOKING NORTHEAST - CEDAR KNOLL ROAD



PROPOSED IMPROVED ENTRANCE LOCATION

*Let's
2 B*

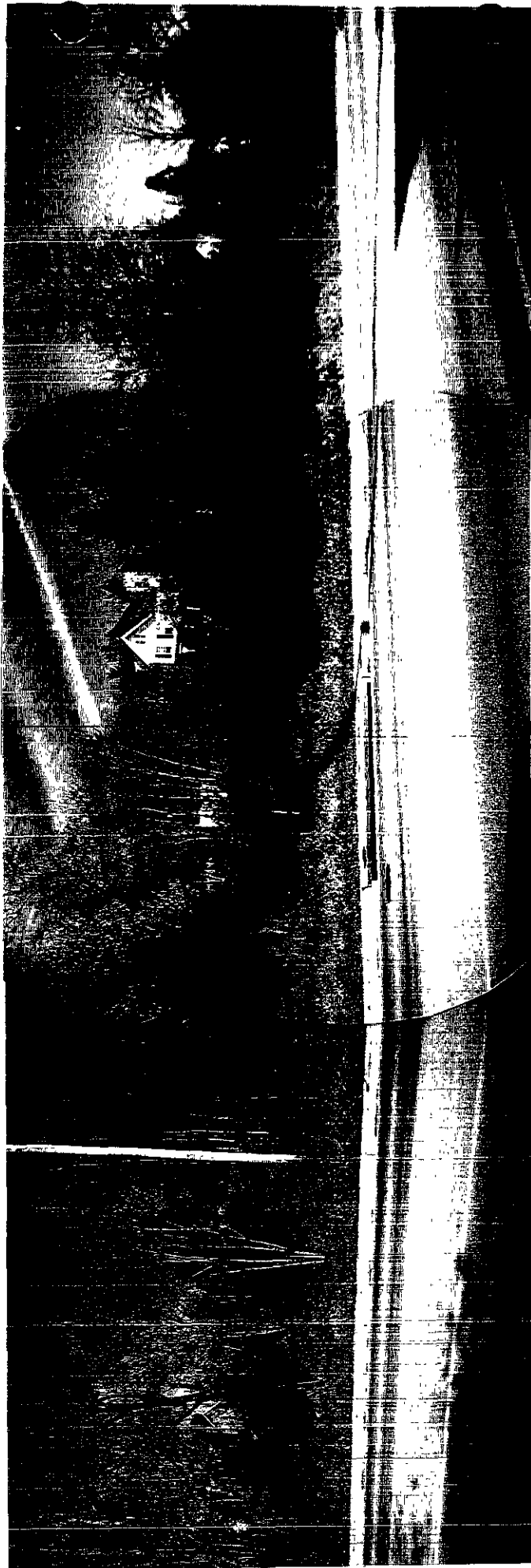


**LOOKING SOUTH - FRAME SHOP/(BL)
YORK ROAD TO THE RIGHT**



**LOOKING NORTH - OLD COCKEY'S HOMESTEAD IN CENTER
(WHITE GARAGE TO BE REMOVED)**

*Let
2C*



LOOKING EAST FROM YORK ROAD
WHITE HOUSE IN CENTER TO BE REMOVED
ENTRANCE AT RIGHT

2 D Red