IN THE MATTER OF : RUTH BAISDEN	*	IN THE CIRCUIT COURT
	*	
	*	FOR BALTIMORE COUNTY
IN THE MATTER OF: TERRY GERAHTY		
	*	CIVIL ACTION
	*	CASE NO: 03-C-00-6650 03-C-00-6687

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

MEMORANDUM OPINION AND ORDER

These two consolidated cases come before this Court as a record appeal from the Board of Appeals of Baltimore County. Ruth Baisden contends that the Board of Appeals erred by not adopting a letter, dated December 24, 1996, from Avery Harden of the Department of Permits and Development Management regarding the location of a fence. Terry Gerahty, owner of Poor Boys, a garden and plant center located at 2711 Taylor Avenue, argues the Board of Appeals erred in requiring that the fence in question be made "permanent", and that it replace the current fence with one having concrete footings, as ordered by Harden in the aforementioned letter.

The dispute between Poor Boys and Ernie and Ruth Baisden, his wife, who reside to the rear of the garden shop, arose in 1996 during the comprehensive rezoning cycle for Baltimore County. Poor Boys' property was rezoned to Business Local (BL) with a total buffer zone of 70 ft. between Poor Boys and the Baisden property. Subsequently, Mr. Gerahty entered into a restrictive covenant agreement with the Villa Cresta Association, dated October 8, 1996, regarding this buffer zone.

Mr. Harden then became involved in the process. Mr. Gerahty contends that he asked Mr. Harden to design a landscape buffer in accordance with an easement agreement with

APP B

> fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.
>
> Thirty five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thrive within two years must be replaced. Steven's Hollies are recommended where excessive moisture is an issue. Hollies must be placed closer together to achieve the desired effect. See plan. The other evergreen selections are half Norway Spruce and half White Pine.

The record is clear that Poor Boys was granted a change in zoning from residential to Business Local (BL) on the express condition that Mr. Harden's proposal and site plane be implemented.

In early 1997, Poor Boys filed a petition for a special hearing for a variance concerning their parking lot. The Baisdens, apparently concerned that the Harden recommendations had not been implemented, appeared at a hearing before Deputy Zoning Commissioner, Timothy Kotroco. In granting the variance for parking, Mr. Kotroco commented on the Baisden's concerns.

> As noted earlier in this opinion, the adjoining property owners, Mr. and Mrs. Baisden, appeared in opposition to the request. The Baisdens reside with their three children on the adjacent property located on the south side of the subject site on Oak Avenue. The Baisdens are opposed to the variance requested herein and believe that the Petitioner should be required to pave the parking area and provide storm water management controls. Testimony offered revealed that water runoff from the subject site is projected out onto Taylor Avenue. The Baisdens are opposed to the general use of the subject property; however, given its predominant B. L. zoning, the garden center is permitted as of right. However, the Baisdens raised many issues concerning the operation of the business and requested that certain appropriate restrictions be imposed on the use to insure that the quality and character of the surrounding residential community will

> "Pursuant to my original Order, Mr. Gerahty installed a board-on-board fence running parallel to the Baisden property and oak Avenue. Said fence is situated 60 ft. from and running parallel with Baisden property line and the Oak Avenue property line. The purpose of this 60 ft. set-back was to establish a buffer area between this commercial business and the adjacent residential properties. The buffer area was to be maintained on a regular basis and kept as if it were a residential yard. As to the location of the fence itself, after my site inspections of the property, I find that the fence was properly installed and located in compliance with the dictates of my previous Order. Therefore, the fence, as it exists on the property today, shall be permitted to remain and need not be relocated. In addition, the height of the fence is appropriate.
>
> The photographs submitted and my site visit revealed that certain sections of the fencing are currently leaning; that is the fence does not presently exist in a straight linear fashion. Mr. Gerahty shall be required to maintain the fence in a neat and orderly manner and also insure that the fencing itself remains in a vertical position. Mr. Gerahty shall be required to provide additional supports for the fence to insure that the fence remains straight and vertical.

With regard to the lighting issue, Mr. Kotroco found that the lighting that was installed on Poor Boys' was "in contradiction to the restriction imposed by my previous decision." Mr. Gerahty was required to submit a lighting plan to be approved by Mr. Harden. Ms. Baisden appealed to the Board of Appeals on the issue of the fence and Mr. Gerahty appealed on the issue of the lighting. This latter appeal was dismissed before the Board Appeals at the time of the hearing (T.9)

After hearing the evidence, the Board of Appeals found the fence to be of a "temporary" nature and required it to be replaced with a "permanent" construction with concrete footings. The Board found that this fence could be at the existing location of the current fence rather than the location recommended by Mr. Harden.

Mr. Gerahty testified before the Board that the fence had been leaning but that this

exercising appellate jurisdiction from the Deputy Zoning Commissioner's decision does not restrict the Board from hearing new evidence or hearing the case "de novo" with the ability to substitute its judgment for that of the Deputy Zoning Commissioner. The Board is not required to give any deference to the decision of the Deputy Zoning Commissioner. While the Deputy Zoning Commissioner may exercise his "discretion", on appeal at a "de novo" hearing, the Board may exercise its independent "discretion". The Board may accept first level facts by the Deputy Zoning Commissioner or make their own independent finding of facts. "(T)he meaning of de novo in administrative law is elastic and varies with the circumstances", PEOPLE'S COUNSEL V. CROWN DEVELOPMENT, 328 Md. 303, 316 (1992).

Assuming arguendo that this Court were to adopt the more restrictive "abuse of discretion" test as advocated by counsel for Gerahty, the record would still be sufficient to affirm the Board of Appeals decision with regard to the necessity of a "permanent"fence. Mr. Kotroco's Findings of Fact and Conclusions of Law dated July 7, 1999 (Petitioner's Exhibit #9), reference the prior decision of March 6, 1997, which adopted Mr. Harden's letter, and including a diagram of the fence, placing the base of the fence below grade and enclosing it in sand with 6 inches of crushed stone. Such a fence is clearly intended to be of a permanent nature. In addition, Deputy Zoning Commissioner Kotroco in his recent decision stated as follows (page 2-3 of his Findings of Fact and Conclusions of Law).

> "The photographs submitted and my site revealed that certain sections of the fencing are currently leaning; that is the fence does not presently exist in a straight linear fashion. Mr. Gerahty shall be required to maintain the fence in a neat and orderly manner and also insure that the fencing itself remains in a vertical position. Mr. Gerahty shall be required to provide additional supports for the fence to insure that the fence remains straight and vertical."

really have estoppel against the government. We are not here trying an estoppel case. We are not here trying an injunction case. The fact of the matter is what Mr. Harden requested is reasonable, but this solution was not reasonable. While Mr. Harden's solution, and suggestion, and requirement, and requests were reasonable, his boss, the County Executive for Baltimore County, whom even the Board of Appeals, I guess–actually, I guess you answer to the County Council, but it is a coordinate branch of the government. The County Executive put his imprimatur approval on this location. What is Mr. Gerahty supposed to do? In reliance on that decision, among other things, he completed the easement with Baltimore County, which has been accepted and signed by Baltimore County, and he dismissed his appeal at the request of Doug Silber, the Assistant County Attorney, where he could have challenged certain of these variance conditions, one of which was Mr. Kotroco's decision to put the fence in, as Mr. Harden requested. In reliance upon the County's request and decision, he gave up those rights. Now, at what point- - and this is what I ask the board to consider- -at what point do these things become final? At what point do we have to stop and say, okay, this is the action of the County government, albeit it is not what Councilman Bartenfelder promised them, but as a citizen and as a taxpayer, Mr. Gerahty went to the government, tried to do everything he could do, and made an agreement with the powers that be to put the fence where it is, and in reliance on that, he gave up certain rights that he had.

Now, on top of that, even following that, we have more enforcement calls, and as a result of that, he had to file a petition to amend the prior decision of Deputy Zoning Commissioner Kotroco in order to get the fence approved that the County Executive's representatives and the County Attorney's representatives told him was okay. At what point can a citizen, and a tax payer, and a business person say, okay, now, I have the decision of the government. Well, he, apparently, didn't have it at that point. He had to go back in and file another petition, have another hearing before the Deputy Zoning Commissioner, whereupon he finally got the approval of the decision that the County Executive and the County Office of Law gave him a year before, and here are now. I understand there is a right to an appeal. There is a right to a process, but here we are in the second hearing before the board seeking approval of a decision that the County Executive's Office and the County Attorney's

6/2/02

IN RE: PETITION FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
S/E Corner Old Harford Road and Taylor Avenue 2711 Taylor Avenue 9th Election District 6th Councilmanic District Legal Owners: Terry J. Gerahty 98-267-SPH	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO. 03-C-00-6650
	*	03-C-00-6687

* * * * * * * * * * *

RESPONSE TO MOTION FOR AN INJUNCTION, MANDAMUS, ENFORCEMENT OF COURT ORDER AND CONTEMPT OF COURT

Terry Gerahty, by and through his attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chtd., pursuant to Maryland Rule, hereby moves this Honorable Court to dismiss the Motion and deny the requested relief, states unto this Honorable Court:

FACTUAL BACKGROUND

1. Mr. Gerahty filed an appeal from the April 25, 2001 Memorandum Opinion and Order issued by the Honorable Robert N. Dugan of the Circuit Court for Baltimore County in Case No. 03-C-00-6650 and 03-C-00-6687 which were consolidated below and on appeal in Case No. 00588, September 2001.

2. The Circuit Court cases consisted of Petitions for Judicial Review of Case No. 98-267-SPHA heard and decided by the Baltimore County Board of Appeals.

3. The Board of Appeals granted in part, and denied in part, a Petition for Special Hearing, filed by Appellant, seeking amendments to conditions placed on the granting of

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a variance in Case No.: 97-295-SPHA permitting the existence of a gravel parking lot in lieu of the construction of a parking lot, for Appellant's business, of a durable and dustless composition.

4. Later in the year 2001, Grading, Paving, and Storm Water Management Permits were issued by Baltimore County for parking lot construction on Gerahty's property. (Exhibit 1: Grading & Paving Permit # B329149 {July 17, 2001}; Exhibit 2: Storm Water Management Permit #B431416 {July 6,2001}). The permits issued for this parking facility and the Site Plan, Grading & Sediment Control Plan did not require a zoning variance for the construction of new paved parking facilities on Appellant's property. The Site Plan specifically states that "Zoning Case 97-295-SPHA, which permitted a stone paved parking lot on the property will not apply after the parking lot is paved in accordance with this drawing." (Exhibit 3: Site Plan, Grading & Sediment Control Plan: Parking Lot Expansion and Modifications: Note 24 and Exhibits 4 and 5: enlarged excerpts of Exhibit 3).

5. The Site Plan, bearing the notation quoted above, and showing the fence in its present location, was approved by the Department of Permits & Development Management, and by Avery Harden, the Landscape Architect for Baltimore County. That plan formed the basis for the permits issued by Baltimore County.

6. The construction of Gerahty's paved parking facility was completed on September 27, 2001 according to, and in compliance with, the Site Plan & Sediment Control Plan pursuant to the permits issued for grading, paving and storm water management by Baltimore County.

7. As a result of the new paved parking lot, there is no necessity for the zoning variance and the conditions attached to it which were at issue in the subject cases heard and decided by The Board of Appeals and The Circuit Court for Baltimore County.

INJUNCTION

8. The Baisdens request this Court issue an Injunction to enforce a zoning violation. The Baisdens cite as authority Section 26-120 of the Baltimore County Code. Section 26-120 only permits an abbutting or adjacent property owner to "maintain an action in any appropriate Court for an injunction enjoining the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, and land in violation of zoning regulations and restrictions adopted pursuant to this title..."

9. The Baisdens do not allege, and they cannot cite, any provisions from the Baltimore County Zoning Regulations which the fence, as located, violates. In fact, the fence does not violate any Baltimore County Zoning Regulation.

10. The Motion filed by the Baisdens does not comply with the Maryland Rules of Procedure and does not meet the

standard for granting a Temporary or Permanent Injunction. Maryland Rule 15-504 (a) permits a Temporary Restraining Order to be granted only if it clearly appears from specific facts shown by Affidavit or other statement under oath, that immediate, substantial, and irreparable harm will result to the person seeking the order before a full adversary Hearing can be held on the propriety of a Preliminary or Final Injunction. The allegations filed by the Baisdens are not supported by an Affidavit or other statement under oath, and they do demonstrate that immediate, substantial, and irreparable harm will result. The Court of Appeals in Bogley v. Barber 114 Md 632, affirmed a lower court decision denying an injunction sought to enjoin the construction of a commercial building and cited with approval Myers v. Bethlehem Steel Co. 303 US 44, 58 SCt 459, 82 L. Ed. 638, which held that hearings and actions by an administrative board under a statute which provided for judicial review of action taken could not be prevented by injunction. The pending hearing before the Zoning Commissioner is subject to appeal and ultimately to judicial review.

11. The Baisdens seek an Injunction to prevent the Hearing now scheduled before the Zoning Commissioner for June 6, 2002. The Baisdens contend, among other things, that the matter is res judicata. Gerahty does not believe that the Doctrine of res judicata bars the Hearing that is scheduled. The elements of the traditional principle of res judicata are

as follows:

(1) The parties in the present litigation should be the same or in privity of the parties to the earlier case; and

(2) The second suit must present the same cause of action as the first; and

(3) In the first suit, there must have been a valid final judgment on the merits by a Court of competent jurisdiction. Gertz v. Anne Arundel County 339 Md 261 (1995).

Mr. Gerahty contends that the Hearing now before the Zoning Commissioner does not present the same cause of action or claim as the matter decided by this Court. The focus of the pending case is whether or not the fence which was required as a condition of a variance from §409.8A(2) granted in 97-295-SPHA, and as modified in Case No. 98-267-SPHA which was the subject of the Petitions for Judicial Review, continues to have any bearing upon the property. The gravel parking lot which required a variance from the requirement of a durable and dustless surface in §409.8A(2) has been eliminated. Pursuant to two permits issued by Baltimore County, Mr. Gerahty has constructed a paved parking lot which meets all of the requirements of the Baltimore County Zoning Regulation without the need for any zoning variance. A variance for the use of property in a particular way cannot be personal to the owner, but instead it is available to any subsequent owner until the variance expires according to its

terms or until it is effectively revoked. Rathkopf: The Law of Zoning and Planning §58:23. The Power to impose conditions upon the grant of a variance is one which is implicit in the power to grant a variance. See Halle v. Crofton Civic, 339, Md 131(1995) The converse must necessarily be true. If there is no need for the grant of a zoning variance, then there is no power to impose conditions and no need for the conditions to continue to exist. The issue as to whether or not a style of fence in a particular location which was required as a condition of the zoning variance, and whether that condition would continue once the zoning variance was no longer needed and after Baltimore County approved a fence at a different location as part of a permit application, was not decided by this Court in the above-captioned case. This is necessarily so given the fact the permits issued by Baltimore County were not issued until July, 2001, some three months after the Opinion of this Court which is sought to be enforced.

MANDAMUS

12. The Baisdens contend that the Director of the Department of Permits and Development Management is required to enforce violations of zoning ordinances and regulations of Baltimore County citing Section 26-116 through 121 of the Baltimore County Code.

13. The Baisdens have not cited and cannot point to any regulation of the Baltimore County Zoning Regulations alleged to be in violation.

14. Furthermore, Section 26-121(a) permits the Director to interpret and enforce the County Zoning Regulations to ensure that the uses or buildings conform to plans approved by the county. The plans approved by the County in connection with the above captioned building permits, not only permit, but require the fence to be in its present location.

15. The Baisdens request for the issuance of a Writ of Mandamus do not comply with the Maryland Rules of Procedure found in Maryland Rule 15-701 et seq.

16. Maryland Rule 15-701 (a) requires that an action for a Writ of Mandamus be commenced by the filing of a verified Complaint, the former contents which shall comply with Rules 2-303 through 2-305.

17. Although Terry Gerahty and his counsel do not represent Baltimore County, Maryland, the County was not a party to the above-captioned case, and it has not been made a party by proper service upon it of a verified Compliant as required by the Rules.

ENFORCEMENT OF COURT'S ORDER

18. The Baisdens request that the Court enforce its own Order of April 25, 2001.

19. The Court's Order dated April 25, 2001 remanded the case to the Board of Appeals with instructions to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996.

20. The Board of Appeals on February 8, 2002 did so.

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21. The Order of this Court has been fully complied with, and there is not any jurisdiction in this Court, nor any reason for the Court to issue any further Orders in the above- captioned cases. The Baisdens offer no authority for this Court to issue any post-judgment orders.

22. The Court ordered the Board to pass an Order regarding the fencing of the property as set forth in Harden's letter. It is clear that the letter of December 24, 1996 issued by Avery Harden, Landscape Architect was an interim decision. It was addressed to James Thompson, among others, the Supervisor of Code Enforcement, at the time. He noted that business activity at Poor Boys would cease for their current season, however, before opening in the Spring of 1997, Poor Boy's must have a fence and an evergreen buffer in place as specified on the plan. The fourth paragraph of Page 2 of the letter clearly indicates that his office "<u>will work with Poor Boy's when the planning for the expanded parking lot begins.</u> The proposal above is essentially what the Baltimore County Landscape Manual will require <u>when a permit for the parking lot is sought.</u>" (Emphasis Added). Even Mr. Harden acknowledged and recognized in 1996 that Poor Boy's was going to seek a permit for an expanded parking lot. When it did so, Mr. Harden approved, on September 7 and 8, 2000, (nearly four years later) the location of the fence on the plan which ultimately formed the basis for the issuance of the grading permits and sediment control permits allowing the construction of the parking lot in July of 2001, and establishing Baltimore

County's approval of the fence in its present location.

23. The Order of this Court is contained in cases consisting of Petitions for Judicial Review which essentially reviewed decisions by the Board of Appeals on a Petition filed by Mr. Gerahty seeking to change the conditions attached to the approval of the variance allowing the gravel parking lot in lieu of the durable and dustless surface. Once that lot was removed and a new lot was constructed pursuant to the permits issued by Baltimore County, the necessity of the variance ceased to exist and the conditions attached for its approval expired with it. Thus, the premise which gave this Court jurisdiction to issue its Order in the first place has disappeared, and the Order of this Court, and likewise the Order of the Board of Appeals passed on February 8, 2002, no longer have any validity.

CONTEMPT OF COURT

24. The Baisdens request that the Court hold Terry Gerahty in Contempt of Court. The Motion does not comply with Maryland Rule 15-206, in particular Maryland Rule 15-206(c). Nor are there grounds to hold Mr. Gerahty in Contempt of Court when he is, and has acted, in accordance with site plans, and permits issued by Baltimore County. Furthermore, Maryland Rule 15-206(c) prescribes the procedure to be followed in connection with an alleged constructive civil contempt, which procedure has not been followed in the filing of this Motion and the proceedings thereafter.

WHEREFORE, Terry J. Gerahty respectfully requests that this Honorable Court dismiss the Motion filed by the Baisdens in this case.

C. William Clark
Nolan, Plumhoff & Williams, Chartered
502 Washington Ave., Suite 700
Towson, Maryland 21204
410-823-7800
Attorneys for Terry Gerahty

STATEMENT OF POINTS AND AUTHORITIES

Maryland Rule 2-303 through 2-305

Maryland Rule 15-20

Maryland Rule 15-206(c)

Maryland Rule 15-504(a)

Maryland Rule 15-701 et seq.

Rathkopf: The Law of Zoning and Planning §58:23

Baltimore County Zoning Regulation §409.8 A(2)

Baltimore County Code Section 26-121(a)

Bogley v. Barber 114 Md 632,

Gertz v. Anne Arundel County 339 Md 261 (1995).

Halle v. Crofton Civic, 339, Md 131(1995)

Myers v. Bethlehem Steel Co. 303 US 44, 58 SCt 459, 82 L. Ed. 638

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 4th day of June, 2002, a copy of the foregoing Response to Motion for Injunction, Mandamus, Enforcement of Court Order and Contempt of Court, and Request for Hearing was hand delivered to J. Carroll Holzer, Esq., 509 Fairmount Avenue, Towson, Maryland 21286, Attorney for the Movant and to C. Robert Loskot, Assistant County Attorney for Baltimore County, 400 Washington Ave. Towson, MD 21204

C. William Clark

IN RE: PETITION FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
S/E Corner Old Harford Road and Taylor Avenue 2711 Taylor Avenue 9th Election District 6th Councilmanic District Legal Owners: Terry J. Gerahty	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO. 03-C-00-6650
	*	03-C-00-6687

* * * * * * * * * * *

REQUEST FOR HEARING

Mr. Clerk:

Please schedule a hearing on this Motion for an Injunction, Mandamus, Enforcement of Court Order and Contempt of Court in the above-captioned matter.

Respectfully submitted,

C. William Clark
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED
502 Washington Avenue, Suite 700
Towson, MD 21204
(410)823-7800

5/31/02

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	CIVIL ACTION
IN THE MATTER OF: RUTH BAISDEN	*	CASE NO.03-C-00-6650 03-C-00-6687
IN THE MATTER OF: TERRY GERAHTY	*	98-267-SPH
	*	
	*	

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

MOTION FOR AN INJUNCTION, MANDAMUS, ENFORCEMENT OF COURT ORDER, AND CONTEMPT OF COURT

Ruth and Ernie Baisden, by their attorney J. Carroll Holzer, Holzer and Lee, hereby request this Circuit Court of Baltimore County for an injunction against Poor Boys, Inc. and Terry Gerahty, Owner to require compliance with this Court's Order of the Honorable Robert N. Dugan, Judge, dated April 25th, 2001, requiring the construction of a permanent fence and the location thereof as determined by the Court in its "Memorandum and Opinion Order" of that date; a mandamus against Baltimore County requiring the county to enforce the zoning regulations of Baltimore County as interpreted by this Court in its order of April 25th, 2001; and enforcement of this Court's order without any further need of hearings or other procedures as required by this Court's Order and the Order of the Baltimore County Board of Appeals dated February 8th, 2002 in which the Board of Appeals required the subject property be accomplished "as set forth in Avery Harden's correspondence of December 24th, 1996, a copy of which is attached hereto and made a part of this order," and further says in support:

1. Ruth and Ernie Baisden appealed a Board of Appeals decision to this Court, which resulted in a "Memorandum Opinion and Order" of this Court by the Honorable Robert N. Dugan, Judge on April 25th, 2001. The Court reversed the

"Exh A"

Board and remanded the matter to the Board with instructions to pass an order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24th, 1996 (See Appendix #A – Circuit Ct. Order).

2. The Avery Harden letter and plat referred to by the Court is attached hereto (See Appendix B - Harden December 24th, 1996 letter and plat).

3. That Poor Boys filed an appeal from the Circuit Court to the Court of Special Appeals. That Poor Boys on October 5, 2001 filed a Motion to Dismiss its Appeal on the basis that Harden's fence requirements were a condition variance, and therefore, "moot" since Poor Boys had renovated the parking lot and no longer needed a variance. The Court of Special Appeals denied the Motion to Dismiss but allowed an extension of the time to file a brief. Poor Boys however, elected not to continue the appeal and voluntarily withdrew its appeal. Therefore, Poor Boys abandoned its argument and failed to timely pursue its remedy, if any. Poor Boys had the opportunity for "due process" and elected not to proceed. (See App C attached hereto).

4. Subsequently, the Board of Appeals passed such an order on February 8th, 2002, requiring the fencing, as remanded by the Circuit Court (See Appendix D – CBA order, February 8th, 2002).

5. That the matter still has not been resolved by Baltimore County and now the County has filed a special hearing request to re-examine and re-litigate the issue of the location of the fence of which hearing is scheduled for Thursday, June 6th, 2002 (See Appendix E - Jablon letter of April 18th, 2002). The Baisdens through Counsel on April 10, 2002 have requested the County to enforce the Court's

Order without the need for the additional administrative hearing scheduled for June 6, 2002 in that that proceeding is precluded by res judicate as set forth in Judge Dugan's Order of April 25, 2001. (See Appendix F-1).

6. That the events following the Circuit Court Order are set forth in an outline attached hereto (See Appendix G).

7. That Ruth and Ernie Baisden do not believe that the matter resolved by the Circuit Court in Judge Dugan's order, needs to be re-litigated and in fact is res judicata for any other contrary interpretation as to the need or location or conditions of the location of the fence and its permanent nature.

8. Ruth and Ernie Baisden further object to the additional expense and time of procedures before administrative zoning enforcement officers or Hearing Officers to re-litigate and re-determine issues put to rest and finally adjudicated without appeal in this matter. Judge Dugan's order, while at first being appealed to the Court of Special appeals, was later dismissed by that Court by the voluntary withdrawal by Poor Boys, Inc. Thus, the Baisdens submit that the Circuit Court order is final and must be complied with.

INJUNCTION

9. Pursuant to Baltimore County Code Sec. 26-120, abutting and adjacent property owners may bring a request for an injunction to enforce a zoning violation (See Sec. 26-120 Baltimore County Code attached as Appendix H).

10. In light of the findings of the Circuit Court for Baltimore County, the Baisdens request that this Court grant an order requiring no further action by the county, other than to enforce this Court's order of April 25th, 2001.

11. Wherefore, the Baisdens specifically request that the Court Order the Special Hearing set for June 6, 2002 be postponed pending a decision on this Motion.

MANDAMUS

12. Pursuant to the Baltimore County Code, the Director of the Department of Permits and Development Management is required to enforce violations of zoning ordinances and regulations of Baltimore County. See Sec. 26-116 through 121.

13. By his action, the Director has failed to comply with the Order of this Circuit Court in requiring the location and the placing and the nature of the fence as ordered by this court and by the Baltimore County Board of Appeals.

14. Ruth and Ernie Baisden respectfully request this Honorable Court to enforce its order and to order the Director of the Department of Permits and Development Management to enforce the Zoning Regulations of Baltimore County as interpreted by this Court.

ENFORCEMENT OF COURT'S ORDER

15. Ruth and Ernie Baisden respectfully request that this Court enforce its own Order of April 25th, 2001 and require permanent fencing to be installed according to Avery Harden's letter of December 24th, 1996 by the respondent Poor Boys, Inc. and Terry Gerahty.

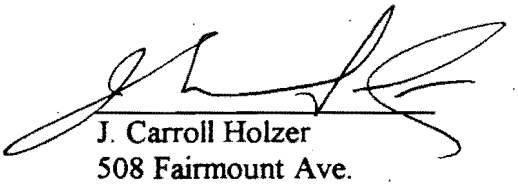
CONTEMPT OF COURT

16. Ruth and Ernie Baisden respectfully request this Court to find an intention on the part of the respondent Poor Boys, Inc. and Terry Gerahty to violate this Court's order, in continuing to violate this Court's order in respect to the nature, location,

and permanence required by this Court's order.

17. Wherefore Ruth and Ernie Baisden respectfully request this Court to immediately enforce the Circuit Court order of April 25th, 2001 as previously discussed in this motion.

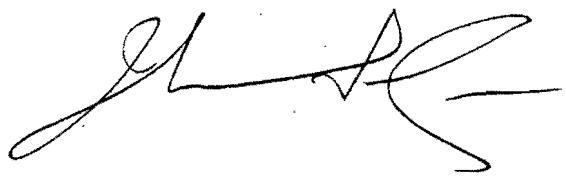
Respectfully submitted,



J. Carroll Holzer
508 Fairmount Ave.
Towson, MD 21286
410-825-6961
Attorney for Ruth and Ernie Baisden

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2002 a copy of the foregoing Motion for Injunction, Mandamus, and Contempt of Court was mailed first class, postage pre-paid to William Clark, Esq., Nottingham Centre, 502 Washington Ave., Ste 700, Towson, MD 21204; Edward Gillis, County Attorney for Baltimore County, 400 Washington Ave., Towson, MD 21204; Arnold Jablon, Director of Permits & Development Management, County Office Building, Towson, MD 21204.



(1)

IN THE MATTER OF : RUTH BAISDEN	*	IN THE CIRCUIT COURT
	*	
	*	FOR BALTIMORE COUNTY
IN THE MATTER OF: TERRY GERAHTY		
	*	CIVIL ACTION
	*	CASE NO: 03-C-00-6650 03-C-00-6687

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

MEMORANDUM OPINION AND ORDER

These two consolidated cases come before this Court as a record appeal from the Board of Appeals of Baltimore County. Ruth Baisden contends that the Board of Appeals erred by not adopting a letter, dated December 24, 1996, from Avery Harden of the Department of Permits and Development Management regarding the location of a fence. Terry Gerahty, owner of Poor Boys, a garden and plant center located at 2711 Taylor Avenue, argues the Board of Appeals erred in requiring that the fence in question be made "permanent", and that it replace the current fence with one having concrete footings, as ordered by Harden in the aforementioned letter.

The dispute between Poor Boys and Ernie and Ruth Baisden, his wife, who reside to the rear of the garden shop, arose in 1996 during the comprehensive rezoning cycle for Baltimore County. Poor Boys' property was rezoned to Business Local (BL) with a total buffer zone of 70 ft. between Poor Boys and the Baisden property. Subsequently, Mr. Gerahty entered into a restrictive covenant agreement with the Villa Cresta Association, dated October 8, 1996, regarding this buffer zone.

Mr. Harden then became involved in the process. Mr. Gerahty contends that he asked Mr. Harden to design a landscape buffer in accordance with an easement agreement with

Appendix A

Per. #4

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Esq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

Appendix B

Printed with Soybean Ink

MANDATE

Court of Special Appeals

Maryland Relay Service
1-800-735-2258
TT/VOICE

No. 00588, September Term, 2001

Terry J. Gerahty
vs.
Ruth Baisden

JUDGMENT: December 26, 2001: Notice of Dismissal filed by counsel for appellant. Appeal dismissed.

December 31, 2001: Mandate issued.

From the Circuit Court: for **BALTIMORE COUNTY**
00003C006650
03C006687

STATEMENT OF COSTS:

Appellant(s):

Lower Court Costs-	120.00
Steno Costs of Appellant-	266.25
Filing Fee of Appellant-	100.00

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this thirty-first *day of* December 2001

Leslie D. Gradet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

APP. C 1

Baltimore County
Department of Permits and
Development Management

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

April 18, 2002

Mr. J. Carroll Holzer
The 508 Building
508 Fairmount Avenue
Towson, MD 21286

Dear Mr. Holzer:

I am in receipt of your letter, dated April 10, 2002, with its attachments. I also read Mr. Clark's letter. I have reviewed all of the decisions issued by the zoning commissioner, the Board of Appeals, and by the Circuit Court.

I believe I understand the issue surrounding the location of the fence. As you know, the Division of Code Inspections and Enforcement did issue a citation to Poor Boys, Inc. that concluded the fence was not in the location required by Mr. Harden, of the Bureau of Development Plans Review, and enforced by the Circuit Court in its decision of April 25, 2001. In response to the citation, Mr. Clark argued in his letter that the fence location issue is now moot because the variance that was the source of the fence is now moot. You conversely argue that Mr. Clark is wrong.

I believe that this issue does not belong before the Code Enforcement Hearing Officer. This issue belongs before the County Board of Appeals, not in Code Enforcement. In my opinion, the best way to get this before the Board is to have a hearing before the Zoning Commissioner, from whom any interested party may take an appeal. This is not the case, as you know, from a decision of the Code Enforcement Hearing Officer. Your client would be able to take part and be a party before the Zoning Commissioner and Board. Your client would not be a party before the Hearing Officer; your client could be a witness, but could not be a party, and could not take an appeal from an adverse decision.

The Department of Permits and Development Management will file the petition, post and advertise at its expense. We will schedule the hearing within thirty (30) days, and at the hearing, you and your clients and Mr. Clark and his client will make the appropriate arguments as to the location of the fence which is at issue here.

Appendix E-1

Printed with Soybean Ink
on Recycled Paper

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING
508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

April 10, 2002
7024

Hand Delivered
Mr. Arnold Jablon, Director
Department of Permits and Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

RE: Poor Boys, Inc.
Correction Notice # 121106 & 121107
Case # 02-1188

Dear Mr. Jablon:

I am writing as a result of a letter my client received from William Clark, attorney for Poor Boys, concerning the referenced correction notice, (attachment #1. Letter from Bud Clark dated March 20, 2002 and correction Notice # 121106 & 121107). Citation # 121106 was issued as a result of Board of Appeal's remand requiring Poor Boys to provide a permanent fence as detailed in Avery Harden's letter, dated December 24, 1996 (See attachment #2 - Board of Appeals Remand dated February 8, 2002). This order requires Poor Boys to rebuild an existing fence at a different location. To date this has not been done. In addition, the correct fence location, type of fence, and landscape needs to be amended on Poor Boys current site plan to conform to the Board of Appeals remand Order

Mr. Clark argues in his letter that the fence requirements are a condition of a variance, under which Poor Boys no longer operates, and is, therefore, a moot point. This is a stale argument already entertained by the Circuit Court Order in Case No.03-C-00-6650 – 03-C-006687 (attachment #3) which states that a permanent fence is to be installed as set forth by Avery Harden's, letter dated December 24, 1996. Mr. Clark, on behalf of Poor Boys filed an appeal to the Court of Special Appeals of Maryland. On October 5, 2001, Poor Boys filed a Motion to Dismiss the Appeal stating that Avery Harden's fence requirements were a condition to a variance and, therefore, "moot" since Poor Boys had renovated the parking lot and was no longer in need of a variance. The Court of Special Appeals denied the Motion to Dismiss the appeal as "moot" but allowed an extension for Poor Boys to file its brief. As a result, Poor Boys elected not to continue the appeal. Therefore, the Circuit Court Order is final. A Mandate from the Court of Special Appeals, and other

Appendix E-1

Outline To Judge Dugan, Circuit Court

RE: Circuit Court Order Case No.03-C-00-6650 – 03-C-006687
Matter of Ruth Baisden & Matter of Terry Gerahty, April 25, 2001

1. Events Following Circuit Court Order (Requiring the Installation Of A Permanent Fence)

• **April 25, 2001 - Circuit Court Order Case No.03-C-00-6650 – 03-C-006687** orders a permanent fencing to be installed according to Avery Harden's, Baltimore County Landscape Architect, letter dated December 24, 1996. Appendix A attached hereto

• **Mr. Bud Clark, Esquire, on behalf of Poor Boys filed an appeal to the Court of Special Appeal of Maryland Case No. 00588**

• **October 5, 2001 - Mr. Clark filed a Motion to Dismiss the Appeal and Motion to Extend Time for Filing of Briefs.** In the Motion to Dismiss, Mr. Clark states that Avery Harden's fence requirements were a condition to a variance and therefore "moot" since Poor Boys had renovated the parking lot and no longer in need of a variance. Appendix C 7

• **October 15, 2001 – Mr. Carroll Holzer, Esquire, on behalf of the Baisden's filed an Answer to Motion to Dismiss Appeal.** This document states the fence issue pre-dated alleged variance request and permit process filed by Poor Boys, and is required by Baltimore County. It is also noted: "...there is suspicion that granting the Motion to Dismiss based on alleged mootness would allow Poor Boys to improperly circumvent Circuit Court Order." Appendix C 4

• **November 13, 2001 - Court of Special Appeal denied the Motion to Dismiss the Appeal as "moot" and granted an extension to file briefs.** Appendix C 3

• **December 20, 2001 - Mr. Clark voluntarily dismiss appeal,** therefore, the Circuit Court Order is final. Appendix F 36

• **December 31, 2001 – Court of Special Appeals issued A Mandate.** Appendix C attached hereto

• **January 31, 2002 – Baisdens send letter to Arnold Jablon** requesting that no additional permits be granted until Circuit Court Order concerning fence is enforced Attached to outline

• **February 8, 2002 - Baltimore County Board of Appeals Issued Remand.**
This order requires Poor Boys to rebuild an existing fence at the location according to Avery Harden, Landscape Architect Baltimore County, letter dated December 24, 1996. Appendix F 8
According the Circuit Court Order the existing fence needs to be replaced by an 8 ft. fence (6ft. fence with 2 ft. lattice on top) of a more permanent quality in a location 10 ft. within the BL zoning line as shown on Avery Harden's letter. In addition, the required landscaping needs to be planted. The relocation of the fence, type of fence, and proper landscape is important since its purpose is to limit impacts from this business to the surrounding residential properties.

Appendix F-1

zoning maps and appropriate regulations shall be prepared in the manner hereinafter provided to regulate and restrict, within the county, the height, number of stories, and size of buildings and other structures; the percentage of a lot that may be occupied; the size of yards or courts; the setback or distance of any buildings or structures from front or side lot, road, street, or alley line and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purpose. Such zoning maps and regulations shall be made in accordance with a comprehensive plan. They shall be designed to reduce congestion in the roads, streets, and alleys; to promote safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land to avoid undue concentration of population; to facilitate adequate provision for schools, parks, water, sewerage, transportation, and other public requirements, conveniences, and improvements, including gas and electric structures and facilities.
(Code 1978, § 22-19)

Sec. 26-117. Validation of existing zoning regulations.

The zoning regulations adopted by the county on March 30, 1955 and as thereinafter and whenever adopted and amended are hereby declared to be in full force and effect provided, however, that in the case of any conflict between such regulations and the provisions of this title, these provisions shall control.
(Code 1978, § 22-31; Bill No. 18, 1990, § 2)

Sec. 26-118. Record and copies of rules, regulations, etc.; certified copies of rules, etc., as evidence.

The office of planning and zoning shall keep in a separate book all rules, regulations, and restrictions adopted by the county council from time to time under the authority of this title, and any amendments or supplements thereto, and the office of law shall cause copies thereof to be printed and made available for general distribution.
(Code 1978, § 22-34; Bill No. 18, 1990, § 2)

Sec. 26-119. Penalty for violation of regulations, etc.

Any violation of the zoning regulations or policies, rules, or regulations interpreting the zoning regulations or of any final written order made or adopted pursuant to this title shall be a misdemeanor.
(Code 1978, § 22-35; Bill No. 18, 1990, § 2; Bill No. 88, 1990, § 1)

Sec. 26-120. Injunctive proceedings.

In addition to all other remedies provided by law, the director of zoning administration and development management or any person whose property is affected by any violation, including abutting and adjacent property owners, whether specially damaged or not, may maintain an action in any appropriate court for an injunction enjoining the erection, construction, reconstruction, alteration, repair, or use of buildings, structures,

---

regional shopping center and cottages. Trustees of McDonogh v. Baltimore County, 221 Md. 550, 158 A.2d 637 (1969).

Construed in Oursler v. Board of Zoning Appeals, 204 Md. 399, 104 A.2d, 568 (1954); Offutt v. Board of Zoning Appeals, 204 Md. 551, 105 A.2d 219 (1954); Daniels v. Board of Zoning Appeals, 205 Md. 36, 106 A.2d 57 (1954); Temmink v. Board of Zoning Appeals, 205 Md. 489, 109 A.2d 85 (1954).

Applied in Zinn v. Board of Zoning Appeals, 207 Md. 355, 114 A.2d 614 (1955).

Price v. Cohen et al., 213 Md. 457, 132 A.2d 125 (1957), denial of rezoning of a certain tract of land on the grounds that it would materially increase the traffic hazard at that particular location, was upheld pursuant to this section.

An order rezoning certain property from residential to commercial to permit erection of a shopping center was reversed in Hardesty v. Zoning Board, 211 Md. 172, 126 A.2d 621 (1956), on the grounds that such rezoning would clearly increase the traffic hazard in the vicinity. Such a reclassification would be a plain violation of the statutory requirement against congestion in the streets pursuant to this section.

Applied as to a rezoning from residential to manufacturing restricted. Huff v. Board of Zoning Appeals of Baltimore County, 214 Md. 48, 133 A.2d 84 (1957).

Cited in Nelson v. Montgomery County, 214 Md. 596, 136 A.2d 377 (1957).

Applied in Tyrie v. Baltimore County, 215 Md. 135, 137 A.2d 156 (1957).

Applied and appellant required to pay cost, Missouri Realty Co. v. Reamer, 216 Md. 442, 140 A.2d 656 (1958).

Charter references—Zoning maps, § 523; county board of appeals functions and powers relating to zoning, § 602(a).

Cross references—Parking commercial vehicles in residential zones, § 21-110; parking nonmotorized vehicles on residential streets, § 21-112; residential permit parking areas, § 21-186 et seq.

Appendix H

IN THE MATTER OF 2300 OLD FREDERICK ROAD / (SOUTHWEST ELEMENTARY SCHOOL SITE) CATONSVILLE, MD RE: ISSUANCE OF GRADING PERMIT NO. B286118	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. CBA-96-171

* * * * * * * * *

O P I N I O N

This case comes as an appeal of the issuance of Grading Permit #B286118 for grading of the site for a new public school to be located at 2300 Old Frederick Road in the First Election District, First Councilmanic District, Baltimore County, Maryland. The Baltimore County Board of Education, by its attorneys, Virginia Barnhart, County Attorney, and J. Robert Haines, Assistant County Attorney, moved to dismiss the appeals of said grading permit. The Motion to Dismiss and accompanying Memorandum in Support of Motion to Dismiss was brought prior to the opening of the hearing. At the hearing, Protestants /Appellants Henry G. and Iris L. Winters and Lyn C. Middleton, appearing pro se, brought Response to the Motion to Dismiss. Appellants Marita and Paul Cush and Nancy Anne Null failed to appear before the Board. Following submission on the record of the Response to Motion to Dismiss, the Board recessed to read the materials, reconvening to hear oral argument from both sides on any unresolved matters relative to the Motion.

Baltimore County argues there is no statutory right of appeal to the Board of Appeals of Baltimore County regarding the issuance of a grading permit. The County argues that Title 14, Article VI, Division 2 of the Baltimore County Code is devoid of language which confers a right of appeal to the County Board of Appeals. In the absence of statutory provision creating the right of appeal

EXHIBIT

1

CBA-96-171 /B.C. Board of Educ.
CCt grants Motion to Dismiss
12/1/97-(Alfred Brennan, J)

IN THE	*	IN THE	
MATTER OF	*	CIRCUIT COURT	
HENRY WINTERS	*	FOR BALTIMORE COUNTY	
ET AL	*	C97-5189	

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

97 DEC -2 PM 3:23

COUNTY BOARD OF APPEALS
RECEIVED
FILED

MEMORANDUM OPINION

This is an appeal from the Board of Appeals of Baltimore County when it passed an Order on April 25, 1997, as follows:

1. ORDERED that the Motion to Dismiss brought by Baltimore County, Maryland be and the same is hereby GRANTED; and it is further

2. ORDERED that the Appeal filed in Case No. CBA-96-171 be and the same is hereby DISMISSED; and

3. ORDERED that Motions for Protective Order and Motion to Quash brought by the U. S. Department of the Army and the State of Maryland be and the same are MOOT.

In dismissing the Appeal, the County Board of Appeals found that it lacked subject matter jursidiction.

This case involves the issuance of a "grading permit." Such issuances are governed under Title 14 of the Baltimore County Code beginning at Article VI, Division 1, section 14-191 through section 14-225. The entire section is devoid of any language which provides for a method of appeal, which includes Division 2, sections 14-221 through 14-225 which contains language pertaining only to grading permits.

The Board is a body with authority granted by legislative act of the County Council. The Board does not by itself have the authority to confer to itself "subject matter jurisdiction" w

EXHIBIT
2

For note discussing the standard of proof in a juvenile waiver hearing and the problem of unreported opinions, see 41 Md. L. Rev. 169 (1981).

Rule 8-114. Unreported opinions.

(a) **Not authority.** An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority.

(b) **Citation.** An unreported opinion of either Court may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. In any other court, an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited.

Source. — This Rule is derived from former Rules 1092 c and 891 a 2.

Maryland Law Review. — For article, "The Court of Appeals of Maryland: Roles, Work and Performance," see 37 Md. L. Rev. 1 (1977).

For article, "Of Men and Laws: Murphy, Cornford, Arnold, Potter, Parkinson, Peter, Maccoby, and Gall," see 38 Md. L. Rev. 37 (1978).

For note discussing the standard of proof in a juvenile waiver hearing and the problem of unreported opinions, see 41 Md. L. Rev. 169 (1981).

Opinions of the lower courts are not binding on the Court of Appeals or Court of Special Appeals. Department of Health & Mental Hygiene v. Dillman, 116 Md. App. 27, 695 A.2d 211 (1997).

Published opinions. — This Rule clearly bars the use of unreported opinions of this court and may not be circumvented merely because a commercial publisher decides to publish the opinion. If the court files an opinion as unreported and, as a result, it does not appear in the official Maryland Appellate Reports, it is subject to the rule. Nicholson v. Yamaha Motor Co., 80 Md. App. 695, 566 A.2d 135 (1989), cert. denied, 318 Md. 683, 569 A.2d 1242 (1990).

Citation of unreported opinion harmless error. — Citation of an unreported opinion to rebut appellant's assertion that the cases relied upon by appellee were rather old cases was error; however, error was harmless under the circumstances of the case. Smith v. Warbasse, 71 Md. App. 625, 526 A.2d 991 (1987).

Administrative interpretations of law. — Administrative interpretation contrary to the clear and unambiguous meaning of a statute is entitled to no deference by a reviewing court. Montgomery County v. Buckman, 333 Md. 516, 636 A.2d 448 (1994).

Quoted in Director of Fin. v. Charles Towers Partnership, 104 Md. App. 710, 657 A.2d 809 (1995), aff'd sub nom. C & P Tel. Co. v. Director of Fin., 343 Md. 567, 683 A.2d 512 (1996); Mayberry v. Board of Educ., 131 Md. App. 686, 750 A.2d 677 (2000).

Stated in Major v. First Va. Bank, 97 Md. App. 520, 631 A.2d 127, cert. denied, 331 Md. 480, 628 A.2d 1067 (1993), 334 Md. 18, 637 A.2d 1191 (1994); Goldman, Skeen & Wadler v. Cooper, Beckman & Tuerk, 122 Md. App. 29, 712 A.2d 1 (1998).

Rule 8-121. Appeals from courts exercising juvenile jurisdiction — Confidentiality.

(a) **Scope.** This Rule applies to an appeal from an order relating to a child entered by a court exercising juvenile jurisdiction.

(b) **Caption.** Unless the court orders otherwise, the proceedings shall be styled "In re ..... (first name and initial of last name of child)."

EXHIBIT 3

IN THE MATTER OF: TERRY GERAHTY	*	IN THE
Petitioner	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE ROOM 49, 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204	*	FOR BALTIMORE COUNTY CASE NO. 03-C-00-6687
IN THE CASE OF: IN THE MATTER OF THE APPLICATION OF TERRY J. GERAHTY FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OLD HARFORD ROAD AND TAYLOR AVENUE	*	
9th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT CASE NO. 98-267-SPH	*	

* * * * * * * * * * *

NOTICE OF APPEAL

Madam Clerk:

Pleased enter an appeal on behalf of the Petitioner, Terry Gerahty to the Court of Special Appeals of Maryland, from the judgment entered in favor of the Respondent, Ruth Baisden in the above-captioned case.

Respectfully submitted,

C. William Clark
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED
502 Washington Avenue, Suite 700
Towson, MD 21204
(410)823-7800
Attorneys for Petitioner
Terry Gerahty

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

RECEIVED AND FILED
01 MAY 23 PM 3:52
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

EXHIBIT
4

2/8/02

IN THE MATTER OF THE APPLICATION OF TERRY J. GERAHTY -PETITIONER FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OLD HARFORD ROAD AND TAYLOR AVENUE (2711 TAYLOR AVENUE) 9TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT (Case No. 98-267-SPH)	*	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY Civil Action No.: 03-C-00-6650 03-C-00-6687

* * * * * * * * * * *

ORDER OF THE BOARD ON REMAND
FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY

Notice of Dismissal having been filed in the Court of Special Appeals by Counsel for Appellant Terry J. Gerahty, and subsequent Mandate of the Court of Special Appeals having been issued on December 31, 2001, this matter comes before the Board on remand by Order of Judge Robert N. Dugan, Circuit Court for Baltimore County, filed April 25, 2001, in which Judge Dugan orders as follows:

> This case is remanded to the Board of Appeals with instructions to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996.

IT IS THEREFORE this 8th day of February, 2002, by the County Board of Appeals of Baltimore County

ORDERED that, consistent with the Remand Order of the Honorable Robert N. Dugan, Judge, Circuit Court for Baltimore County, filed April 25, 2001, the fencing of the subject property shall be accomplished "as set forth in Avery Harden's correspondence of December 24, 1996," a copy of which is attached to and made a part of this Order.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott

Margaret Worrall

C. Lynn Barranger

County Board of Appeals of Baltimore County

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

February 8, 2002

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Circuit Case #03-C-00-6650; 03-C-00-6687
/In the Matter of Terry Gerahty /Case No. 98-267-SPH
On Remand from the Circuit Court for Baltimore County

Dear Mr. Holzer:

Enclosed please find a copy of the Board's Order issued this date in response to the Remand Order of the Circuit Court for Baltimore County.

Very truly yours,

Kathleen C. Bianco /trs

Kathleen C. Bianco
Administrator

Enclosure

c: Terry Gerahty
J. Carroll Holzer, Esquire
Mr. and Mrs. Ernie Baisden
James Reed, Jr.
Joseph Kreis
Barry Ashbury
Ellen Otto
Alice & John Baker, Jr.
Pat Keller /Planning Director
Lawrence E. Schmidt /Z.C.
Avery Harden /PDM
Arnold Jablon, Director /PDM
Edward J. Gilliss, County Attorney

Printed with Soybean Ink
on Recycled Paper

5/23/01

IN THE MATTER OF: TERRY GERAHTY	*	IN THE
Petitioner	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE ROOM 49, 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204	*	FOR BALTIMORE COUNTY
	*	CASE NO. 03-C-00-6687
IN THE CASE OF: IN THE MATTER OF THE APPLICATION OF TERRY J. GERAHTY FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OLD HARFORD ROAD AND TAYLOR AVENUE	*	
9th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT CASE NO. 98-267-SPH	*	

* * * * * * * * * * *

NOTICE OF APPEAL

Madam Clerk:

Pleased enter an appeal on behalf of the Petitioner, Terry Gerahty to the Court of Special Appeals of Maryland, from the judgment entered in favor of the Respondent, Ruth Baisden in the above-captioned case.

Respectfully submitted,

C. William Clark
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED
502 Washington Avenue, Suite 700
Towson, MD 21204
(410)823-7800
Attorneys for Petitioner
Terry Gerahty

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 22 day of May 2001, a copy of the Petitioner, Terry Gerahty's Notice of Appeal was mailed, first class, postage prepaid, to the following attorney of record:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286
Attorney for Respondent
Ruth Baisden

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

C. William Clark

THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
DOUGLAS L. BURGESS
C. WILLIAM CLARK
CATHERINE A. POTTHAST
E. BRUCE JONES**
CORNELIA M. KOETTER**

* ALSO ADMITTED IN D C
**ALSO ADMITTED IN NEW JERSEY

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

JAMES D NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

NEWTON A WILLIAMS
(RETIRED 2000)

RALPH E DEITZ
(1918-1990)

WRITER'S DIRECT DIAL
(410) 823-7850

May 23, 2001

VIA HAND DELIVERY

Clerk's Office
Circuit Court of Maryland
for Baltimore County
401 Bosley Avenue
Towson, MD 21286

01 MAY 23 PM 4:01

Re: In The Matter of: Ruth Baisden; Case No. 03-C-00-6650 and
In The Matter of: Terry L. Gerahty; Case No. 03-C-00-6687

Dear Clerk:

Enclosed herein for immediate filing are two Notices of Appeal filed by Respondent/Petitioner, Terry Gerahty in connection with the above-captioned cases.

Additionally, this firm's check in the amount of $220.00 is enclosed to cover the cost of the filing fee of $110.00 for each Notice.

Please date stamp the file copy and return.

If you have any questions, please do not hesitate to call.

√E

Very truly yours,

Kathleen A. Lance
Legal Assistant to C. William Clark

KAL:
Enclosures
cc: J. Carroll Holzer, Esquire
County Board of Appeals
Terry J. Gerahty
F:\Data\KATIEDATA\data\CWC\Clients\PoorBoy's\ClerkCirCtLtr2.wpd

98-267-SPH./Terry Gerahty
CCt REMANDS to CBA
4/25/01 - Robert N. Dugan, J

4/25/01

RECEIVED
COUNTY BOARD OF APPEALS
01 APR 26 PM 3:36

IN THE MATTER OF : RUTH BAISDEN	*	IN THE CIRCUIT COURT
IN THE MATTER OF: TERRY GERAHTY	*	FOR BALTIMORE COUNTY
	*	CIVIL ACTION
	*	CASE NO: 03-C-00-6650 03-C-00-6687

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

MEMORANDUM OPINION AND ORDER

These two consolidated cases come before this Court as a record appeal from the Board of Appeals of Baltimore County. Ruth Baisden contends that the Board of Appeals erred by not adopting a letter, dated December 24, 1996, from Avery Harden of the Department of Permits and Development Management regarding the location of a fence. Terry Gerahty, owner of Poor Boys, a garden and plant center located at 2711 Taylor Avenue, argues the Board of Appeals erred in requiring that the fence in question be made "permanent", and that it replace the current fence with one having concrete footings, as ordered by Harden in the aforementioned letter.

The dispute between Poor Boys and Ernie and Ruth Baisden, his wife, who reside to the rear of the garden shop, arose in 1996 during the comprehensive rezoning cycle for Baltimore County. Poor Boys' property was rezoned to Business Local (BL) with a total buffer zone of 70 ft. between Poor Boys and the Baisden property. Subsequently, Mr. Gerahty entered into a restrictive covenant agreement with the Villa Cresta Association, dated October 8, 1996, regarding this buffer zone.

Mr. Harden then became involved in the process. Mr. Gerahty contends that he asked Mr. Harden to design a landscape buffer in accordance with an easement agreement with

Baltimore County pursuant to the agreement with the Villa Cresta Association. Mrs. Baisden takes the position that Mr. Harden became involved because of a violation dispute between Poor Boys and Baltimore County.

The record, specifically Protestor's Exhibit #5, an inter-office correspondence dated November 29, 1996 to Avery Harden from James H. Thompson, Code Enforcement, indicates that as a condition of rezoning, Poor Boys was to create a landscape buffer for the benefit of the adjacent community surrounding a proposed parking lot. Mr. Harden's letter of December 24, 1996 set forth a description of the buffer area. Inter-office Correspondence from Arnold Keller, III, Director, Office of Planning to Arnold Jablon, Director, Department of Permits and Development Management, dated February 20, 1997, also included in Protestor's Exhibit #5, states in part, "Should the applicant's request be granted, full compliance with Mr. Harden's recommendations would be necessary in order to buffer the proposed parking lot area and the proposed outside sales/storage areas from the adjoining residential community." County Councilman Joseph Bartenfelder's letter to Mr. Baisden, dated September 18, 1997 also contained in Protestor's Exhibit # 5, clearly indicates that the granting of the rezoning to Poor Boys was conditioned on the creation of the landscape buffer area as directed by Mr. Harden. The buffer area was described by Mr. Handen as follows:

> The 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space. See plan.
>
> As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot

fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

Thirty five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thrive within two years must be replaced. Steven's Hollies are recommended where excessive moisture is an issue. Hollies must be placed closer together to achieve the desired effect. See plan. The other evergreen selections are half Norway Spruce and half White Pine.

The record is clear that Poor Boys was granted a change in zoning from residential to Business Local (BL) on the express condition that Mr. Harden's proposal and site plane be implemented.

In early 1997, Poor Boys filed a petition for a special hearing for a variance concerning their parking lot. The Baisdens, apparently concerned that the Harden recommendations had not been implemented, appeared at a hearing before Deputy Zoning Commissioner, Timothy Kotroco. In granting the variance for parking, Mr. Kotroco commented on the Baisden's concerns.

> As noted earlier in this opinion, the adjoining property owners, Mr. and Mrs. Baisden, appeared in opposition to the request. The Baisdens reside with their three children on the adjacent property located on the south side of the subject site on Oak Avenue. The Baisdens are opposed to the variance requested herein and believe that the Petitioner should be required to pave the parking area and provide storm water management controls. Testimony offered revealed that water runoff from the subject site is projected out onto Taylor Avenue. The Baisdens are opposed to the general use of the subject property; however, given its predominant B. L. zoning, the garden center is permitted as of right. However, the Baisdens raised many issues concerning the operation of the business and requested that certain appropriate restrictions be imposed on the use to insure that the quality and character of the surrounding residential community will

> be maintained. Many of the concerns raised by Mr. and Mrs. Baisden are valid and involve topics upon which certain restrictions shall be imposed. However, I believe it is appropriate to grant the variance to allow the loose stone parking lot to remain in lieu of the required durable and dustless surface, inasmuch as the Petitioner has met the burdens imposed upon him by the B.C.Z.R.

Deputy Commissioner Kotroco granted the variance "subject " to certain restrictions, including a fence in accordance with the diagram provided by Avery Harden. Mr. Kotroco required, within 60 days, an easement agreement containing all the conditions and restrictions imposed by the variance order.

Two months following the Deputy Zoning Commissioners decision, Mr. Gerahty met with some representatives of the County Executive and agreed to a fence not consistent with the variance order. Subsequently, this fence was installed and the easement agreement was filed pursuant to this informal agreement and not in accord with either Mr. Kotroco's decision or with the specific condition that granted the B.L. Zoning. The Baisdens and the Community Association were unaware of the arrangement between Mr. Gerahty and representatives of the County Executives office that the fence would be 6 feet high and 60 feet from the property line rather than 8 feet high and 70 feet from the property line.

In July, 1999, Mr. Gerahty filed a Petition for a Special Hearing before the Deputy Zoning Commissioner, requesting an amendment of the 1997 prior Order with regard to the fence and lighting conditions. The instant appeal arises from this Petition.

Without mentioning the informal agreement between Mr. Gerahty and representatives of the County Executives Office, Deputy Zoning Commissioner made the following decision with regard to the fence:

"Pursuant to my original Order, Mr. Gerahty installed a board-on-board fence running parallel to the Baisden property and oak Avenue. Said fence is situated 60 ft. from and running parallel with Baisden property line and the Oak Avenue property line. The purpose of this 60 ft. set-back was to establish a buffer area between this commercial business and the adjacent residential properties. The buffer area was to be maintained on a regular basis and kept as if it were a residential yard. As to the location of the fence itself, after my site inspections of the property, I find that the fence was properly installed and located in compliance with the dictates of my previous Order. Therefore, the fence, as it exists on the property today, shall be permitted to remain and need not be relocated. In addition, the height of the fence is appropriate.

> The photographs submitted and my site visit revealed that certain sections of the fencing are currently leaning; that is the fence does not presently exist in a straight linear fashion. Mr. Gerahty shall be required to maintain the fence in a neat and orderly manner and also insure that the fencing itself remains in a vertical position. Mr. Gerahty shall be required to provide additional supports for the fence to insure that the fence remains straight and vertical.

With regard to the lighting issue, Mr. Kotroco found that the lighting that was installed on Poor Boys' was "in contradiction to the restriction imposed by my previous decision." Mr. Gerahty was required to submit a lighting plan to be approved by Mr. Harden. Ms. Baisden appealed to the Board of Appeals on the issue of the fence and Mr. Gerahty appealed on the issue of the lighting. This latter appeal was dismissed before the Board Appeals at the time of the hearing (T.9)

After hearing the evidence, the Board of Appeals found the fence to be of a "temporary" nature and required it to be replaced with a "permanent" construction with concrete footings. The Board found that this fence could be at the existing location of the current fence rather than the location recommended by Mr. Harden.

Mr. Gerahty testified before the Board that the fence had been leaning but that this

problem had been fixed. A number of photographs were introduced into evidence that depicted that the fence was leaning and that some of the support beams had been broken.

The Board of Appeals, unlike Mr. Kotroco did comment on the involvement of representatives of the County Executive's Office.

> "In conclusion, the Board feels constrained to note that it is unfortunate for both the Petitioner and the Protestant that governmental representatives outside the legislated development and zoning approval process chose to become involved in the resolution of this conflict. Baltimore County has instituted a review and enforcement policy to deal with such disagreements, and that process is the one on which citizens, both Petitioner and Protestant, must rely, without interference from outside sources, however well meaning."

Baltimore County, pursuant to Article 25A, Section 5 of the Maryland Code (1957, 1998 REPL. VOL.), has established a County Board of Appeals to decide zoning cases on appeal. Section 5 (u) requires the Board "to file an opinion which shall include a statement of facts found and grounds for its decision."

Baltimore County Zoning Regulation Section 501.6 states that appeals shall be heard "DeNovo." This is consistent with Section 5(u) of Article 25 A of the Maryland Code. The fact that the Zoning Commissioner, pursuant to Section 500.7 of the Baltimore County Zoning regulations, has "discretion" does not limit the County Board of Appeals to an abuse of discretion standard of review as argued by counsel for Gerahty. While the issues are limited to those decided by Deputy Zoning Commissioner, DAIHL V. COUNTY BOARD OF APPEALS, 258 MD. 157 (1970), a "de novo hearing is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered", BOEHM v. ANNE ARUNDEL CO., 54 Md. App. 497 (1983). The fact that the Board of Appeals is

exercising appellate jurisdiction from the Deputy Zoning Commissioner's decision does not restrict the Board from hearing new evidence or hearing the case "de novo" with the ability to substitute its judgment for that of the Deputy Zoning Commissioner. The Board is not required to give any deference to the decision of the Deputy Zoning Commissioner. While the Deputy Zoning Commissioner may exercise his "discretion", on appeal at a "de novo" hearing, the Board may exercise its independent "discretion". The Board may accept first level facts by the Deputy Zoning Commissioner or make their own independent finding of facts. "(T)he meaning of de novo in administrative law is elastic and varies with the circumstances", PEOPLE'S COUNSEL V. CROWN DEVELOPMENT, 328 Md. 303, 316 (1992).

Assuming arguendo that this Court were to adopt the more restrictive "abuse of discretion" test as advocated by counsel for Gerahty, the record would still be sufficient to affirm the Board of Appeals decision with regard to the necessity of a "permanent"fence. Mr. Kotroco's Findings of Fact and Conclusions of Law dated July 7, 1999 (Petitioner's Exhibit #9), reference the prior decision of March 6, 1997, which adopted Mr. Harden's letter, and including a diagram of the fence, placing the base of the fence below grade and enclosing it in sand with 6 inches of crushed stone. Such a fence is clearly intended to be of a permanent nature. In addition, Deputy Zoning Commissioner Kotroco in his recent decision stated as follows (page 2-3 of his Findings of Fact and Conclusions of Law).

> "The photographs submitted and my site revealed that certain sections of the fencing are currently leaning; that is the fence does not presently exist in a straight linear fashion. Mr. Gerahty shall be required to maintain the fence in a neat and orderly manner and also insure that the fencing itself remains in a vertical position. Mr. Gerahty shall be required to provide additional supports for the fence to insure that the fence remains straight and vertical."

From this record, the Board had before it the issue of the structure of the fence. The fence installed at Poor Boys was not the type and nature required by Mr. Harden. Calling the present structure "temporary" rather than "permanent" was a shorthand method of description by the Board. This was not the creation of a new issue by the Board.

The exclusion of the Baisdens from the agreement entered into by and between representatives of the County Executive's Office and Mr. Gerahty, combined with the reliance, at least in part, on that agreement regarding the location of the fence by the Deputy Zoning Commissioner and the County Board of Appeals violated the basic rule of fundamental fairness. See ROGERS V. RADIO SHACK 271 Md. 126 (1974). In essence, the Baisden's were denied due process in being precluded from the decision making process which should have been afforded to them under the Zoning Code.

The improper intervention by the County Executive's Office as to a location of the fence other than the one determined by Mr. Harden was beyond the scope of its authority.

The Easement Agreement entered into by Poor Boy's and the County Executive's Office was beyond any legal authority pursuant to the Baltimore County Zoning Ordinance and the Baltimore County Code. During closing argument before the Board, Gerahty's counsel requested the Board to approve and accept this invalid agreement.

> Finally, we come to May of 1997, but in a response from the County Executive's Office, Mr. Gerahty met with the County Executive's representatives, Davis and Barrett, who are his two top deputies. He met with Doug Silber, the County Attorney, and agreed to put in a fence, but he wanted to know where is it supposed to go, and what am I supposed to do. They agreed upon putting the fence in as it presently is now, a 6-foot high fence, located on the zone line. That is the evidence before you. That is where it has been since May of 1997. I guess you can't

really have estoppel against the government. We are not here trying an estoppel case. We are not here trying an injunction case. The fact of the matter is what Mr. Harden requested is reasonable, but this solution was not reasonable. While Mr. Harden's solution, and suggestion, and requirement, and requests were reasonable, his boss, the County Executive for Baltimore County, whom even the Board of Appeals, I guess–actually, I guess you answer to the County Council, but it is a coordinate branch of the government. The County Executive put his imprimatur approval on this location. What is Mr. Gerahty supposed to do? In reliance on that decision, among other things, he completed the easement with Baltimore County, which has been accepted and signed by Baltimore County, and he dismissed his appeal at the request of Doug Silber, the Assistant County Attorney, where he could have challenged certain of these variance conditions, one of which was Mr. Kotroco's decision to put the fence in, as Mr. Harden requested. In reliance upon the County's request and decision, he gave up those rights. Now, at what point- - and this is what I ask the board to consider- -at what point do these things become final? At what point do we have to stop and say, okay, this is the action of the County government, albeit it is not what Councilman Bartenfelder promised them, but as a citizen and as a taxpayer, Mr. Gerahty went to the government, tried to do everything he could do, and made an agreement with the powers that be to put the fence where it is, and in reliance on that, he gave up certain rights that he had.

Now, on top of that, even following that, we have more enforcement calls, and as a result of that, he had to file a petition to amend the prior decision of Deputy Zoning Commissioner Kotroco in order to get the fence approved that the County Executive's representatives and the County Attorney's representatives told him was okay. At what point can a citizen, and a tax payer, and a business person say, okay, now, I have the decision of the government. Well, he, apparently, didn't have it at that point. He had to go back in and file another petition, have another hearing before the Deputy Zoning Commissioner, whereupon he finally got the approval of the decision that the County Executive and the County Office of Law gave him a year before, and here are now. I understand there is a right to an appeal. There is a right to a process, but here we are in the second hearing before the board seeking approval of a decision that the County Executive's Office and the County Attorney's

> Office made back in May of 1999. That is the part that I think the board needs to consider, because that is really what our position is based on. It is not what they are requesting is unreasonable. It is really a question of when has the government made a decision and has Mr. Gerahty justifiably relied upon it, and I think he has. (T-168-172)

This Court is convinced that the Board of Appeals improperly relied on the Easement Agreement by accepting the 60 ft. buffer zone rather than the 70 ft. buffer zone recommended by Mr. Harden. In approving this improper, non-binding and extrajudicial agreement, the Board rubber stamped an inappropriate political intervention into the zoning process and therefore erred in recognizing, interpreting and applying the law. EVANS V. SHORE COMMUNICATIONS, 112 Md. 284 (1996).

This case is remanded to the Board of Appeals with instructions to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996.

APRIL 25, 2001
DATE

ROBERT N. DUGAN, JUDGE
BALTIMORE COUNTY CIRCUIT COURT

cc: Board of Appeals
C. William Clark, Esquire
J. Carroll Holzer, Esquire

11/8/00

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
PETITION OF **Ruth Baisden** 7706 Oak Avenue Baltimore, MD 21234	*	CIVIL ACTION No. 3-C-00-6650
and	*	
PETITION OF **Terry H. Gerahty** 7721 Old Harford Road Baltimore, MD 21234	*	(2nd Petition filed under Civil Action No. 3-C-00-6687)
FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNT BOARD OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204	*	Complete record filed under *Civil Action No. 3-C-00-6650* ***Ruth Baisden- Petitioner***
IN THE CASE OF: IN THE MATTER OF THE APPLICATION OF **TERRY J. GERAHTY** FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OLD HARFORD ROAD AND TAYLOR AVENUE	*	
9th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT	*	
CASE NO. 98-267-SPH	*	

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

MEMORANDUM OF RUTH BAISDEN

Ruth Baisden, Petitioner/Protestant, through her attorney, J. Carroll Holzer, Holzer & Lee, hereby submits this Memorandum as required under MD Rule 7-207 and says:

STATEMENT OF THE CASE

This case comes before the Circuit Court of Baltimore County as a result of a Petition for Judicial Review filed by Ruth Baisden under Civil Action No. 3-C-00-6650,

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

on June 30, 2000 from an Opinion and Order rendered by the Baltimore County Board of Appeals on May 31, 2000. A Second Petition for Judicial Review was filed in the Circuit Court on behalf of Petitioner Terry Gerahty under a separate Civil Action, No. 3-C-00-6687. A copy of the Second Petition was filed with the Board on July 7, 2000.

The case originally was presented to the Deputy Zoning Commissioner of Baltimore County by a Petition for Special Hearing filed by Terry J. Gerahty, legal owner and operator of a garden and plant center known as "Poor Boy's" located at 2711 Taylor Avenue, 9th Election District, 6th Councilmanic District. Gerahty generally appealed the Deputy Zoning Commissioner's decision, denying his Special Hearing request to amend the Order in a prior Zoning Case, No. 97-295-SPHA; and the reimposition of conditions and restrictions upon Gerahty in that case as described in the D.Z.C.'s Opinion and Order of July 7, 1999. Petitioner/Protestant Ruth Baisden, appearing before the Deputy Zoning Commissioner, likewise, filed a limited appeal to the Board of Appeals from the D.Z.C.'s adoption of Restriction No. 1 regarding the location of the fence, as set forth by the D.Z.C. on page 5 of his Opinion and Order in Case No. 98-267-SPH, as follows:

> 1. The fence on the subject property shall be permitted to remain as it exists today. (emphasis supplied) The location, height and materials used are in compliance with my previous order dated March 6, 1997. However, the Petitioner shall be required to maintain the fence in a neat and orderly fashion and shall ensure that all sections of the fence remain in an absolute vertical position. All corrections to the fence shall be performed within thirty (30) days from the date of this order.

The Petitioner/Protestant, Ruth Baisden, an adjacent and adjoining property owner residing at 7706 Oak Avenue, appeared before the Baltimore County Board of Appeals (hereinafter the "Board") *Pro Se*.

At the Board, Gerahty withdrew his appeal and the case was heard before the Board only on Baisden's appeal regarding the fence location as described above in Restriction No. 1.

A hearing was held before the Board on March 9, 2000 with a public deliberation being conducted on March 30, 2000. The Board's written Opinion and Order is dated May 31, 2000 from which Petitioner Baisden, as well as, Gerahty appeal.

QUESTIONS PRESENTED

I. The Board of Appeals erred as a matter of law in not finding that the determination of the Department of Permits and Management in the Harden letter of December 24th, 1996 was binding on the County in that it was a determination made by the statutorily designated County authority.

II. The County Board of Appeals while correct in finding the Department of Development Management was the proper agency to determine the location and type of fence in its Harden letter of December 24th, 1996, erred by letting its judgment as to the fence location be improperly influenced by the Executive intervention which occurred in May of 1997.

III. Due process was denied Petitioners/Protestants Baisden's by the Board's decision permitting determination of the fence location outside of the zoning and development process which resulted in the Baisden's being excluded from any input in the unlawful intervention.

IV. That the Board of Appeals decision is tainted by the improper influence of the Executive branch on the Deputy Zoning Commissioner and the Board of Appeals to unlawfully change the initial requirements of the December 24th, 1996 PADM decision and the CBA without explanation adopted the Executive decision regarding the location of the fence even while recognizing the proper authority of the December 24th letter.

V. Due process was denied the Petitioners/Protestants Baisden's by their improper exclusion from the decision making process as to the location of the fence as opposed to the proper resolution of the fence location through the

Department of Permits and Development Management and/or the Zoning Commissioner.

VI. The Board of Appeals erred on the merits of the matter as to the location of the fence by not adopting the December 24th, 1996 letter from PADM as the proper determination.

STATEMENT OF FACTS

This is the case of the misplaced fence and County Executive interference with the zoning process in Baltimore County. The problems between Poor Boys, Inc., a garden and plant center located at 2711 Taylor Avenue in Baltimore County, owned by Terry J. Gerahty, and its neighbors, specifically Ruth and Ernie Baisden, and the Greater Parkville Community Council, commenced during the comprehensive rezoning cycle for Baltimore County, held in 1996. In 1996, as part of the Comprehensive Zoning Map Process (CZMP), the Poor Boy's property was rezoned to Business Local (BL) with a designated buffer of 70 feet to remain on the side of the subject site between the neighboring residential area (the Baisden property). A restricted covenant was entered into between Gerahty and the Villa Cresta Civic Association dated October 8, 1996 in order to insure the 70 foot buffer before the County Council granted the BL zoning. The Baisdens were not members of the Villa Cresta Civic Association and no one ever consulted with the Baisdens prior to the enactment of the new zoning by the County Council (Baisden testimony, Transcript page 92 and Gerahty testimony, Transcript page 85-86).

After the Comprehensive Rezoning process, Avery Harden, from the Department of Permits and Development Management (PDM), the agency responsible for approving site and development plans, as well as enforcing code violations, resolved a violation

dispute between Poor Boys and the County by his decision contained in a letter dated December 24, 1996, with attachments (see Petitioner Exhibit #4 attached hereto and incorporated herein as **Exhibit A**). This document was produced as a result of a code enforcement action taken by PADM against Poor Boys concerning the requirements for buffer planting, paving and a fence on the subject site. The thrust of Harden's Order on the 24th, provided for a 60-ft. transition buffer area and a 10-ft. landscape strip with "the fence must be located on the inside edge of the 70-ft. space (see Plan)." In reviewing the plan attached to the December 24th letter, it can clearly be seen that the landscape buffer area consisted of 60-ft. and the 10-ft. planting area is added to the 60-ft. to make it 70-ft. from the Baisden property line to the fence to be erected by Poor Boy's Nursery. The location of the fence is to be 70-ft. from the property line and immediately adjacent to Poor Boy's Nursery. (See Plan attached to Exhibit A) Further, Harden required a 6-ft. high fence with an additional 2 feet in height added in the form of a framed "lattice top." The 6-ft. high fence was then to be reduced to 4 feet at the corner of the property. Harden also required 35 Evergreen trees, minimum height of 5' to 6' to be planted in the buffer as shown on the plan attached to his letter.

This Order from Harden on September 24th satisfied the Baisdens and the Community Association. From that point in 1996 until the present, the Baisdens have been attempting to have the plan implemented, as approved by Avery Hardin on the 24th of December, 1996, representing the Department of Permits and Development Management for Baltimore County, and to their consternation, they have been frustrated by a series of events outside of the proper process from which they have been excluded..

Until March 6, 1997, the Baisdens were unable to force Poor Boy's to comply with the Harden letter. In March 1997, in Case No. 97-295-SPHA, Poor Boys petitioned for a Special Hearing and Variance concerning the subject site. Poor Boy's requested a stone-paved parking lot in lieu of the required asphalt paving and striping. As result of that Hearing, with Baisdens, appearing before the D.Z.C. and raising issues in regard to the fencing, landscaping and the buffer area, the Deputy Zoning Commissioner made certain findings and conditions concerning the site. The D. Z. C., as part of his approval of the Special Hearing, required Poor Boy's to enter into an Open Space Easement, guaranteeing a buffer area, adjacent to the Baisdens' property. He further required a fence "in accordance with the diagram provide by Avery Harden, landscape architect for Baltimore County, which was included as an attachment to his letter of December 24, 1996" (see D.Z.C. Opinion, Case No. 97-295 SPHA, P.4, attached as **Exhibit B** hereto). He further found that "it is appropriate for the Petitioner (Gerahty) to extend this fencing in the fashion and manner depicted on Mr. Harden's diagram. Therefore, as a condition of approval, the subject fencing shall be required" (**Exhibit** B, Page 4). The D.Z.C. further required that the Easement Agreement contain all conditions and restrictions imposed by his Order, and that it be recorded in the Land Records of Baltimore County (Opinion, Page 7). It can clearly be seen from the file that the Deputy Zoning Commissioner, in his March 1997 Order, was requiring the fence to be located and constructed as depxhiicted in Harden's letter which was required to be 70' from the Baisden property line (See **Exhibit A**).

The story of what happened next came to light for the first time in the instant case before the Baltimore County Board of Appeals on January 20, 2000. There, for the first

time, the Baisdens discovered that the County Executive's Office had intervened into the process and conducted extensive negotiations with Gerahty without the presence of the Baisdens and the community. The negotiations between the County Executive and Gerahty resulted in a change in the height and location of the fence required in the Harden letter of December 24th, as well as the Decision of the Deputy Zoning Commissioner found in his decision and Order dated March 6, 1997. The Baisdens were provided a copy of the Easement Agreement (Petitioners Exhibit #6) for the first time. The Easement Agreement changed not only the requirements contained in PADM's letter of December 24th, but also countermanded the Opinion and Order of the D.Z.C.

What happened next is contained in the transcript as related by the parties and counsel. Counsel for Poor Boy's, in his Opening Statement to the Board, stated that:

> "In May of 1997, Mr. Gerahty met with Doug Silber, Assistant County Attorney; Mike Davis and Bob Barrett, who are for the want of a better word, Mr. Ruppersberger's two top deputies. I think their official position is something like Special Assistant to the County Executive or something like that. As a result of that meeting, a fence, the location of a fence was agreed upon between Mr. Gerahty and Baltimore County. They requested and required that the fence be installed within 24 hours, which Mr. Gerahty did... It was acceptable to Mr. Davis, Mr. Barrett and Mr. Silber" (T 12 & 13).

And again, later in his argument, Counsel stated "the fence, as was installed in May 1997 and approved by Mr. Silber, Mr. Barrett and Mr. Davis, as a 6-ft. fence all the way around of even height" (T 14). The reason Counsel for Poor Boy's offered such an Opening Statement was that, subsequently, his client, Gerahty, testified as to the events in May 1997 by saying:

> **A.** "Yes. In May of 1997 we met with Dough Silber, Michael Davis and Bob Barrett. My attorney at the time was Doug Burgess. One of my partners answered yes."

Q. "One of my partners."

A. "Yes."

Q. "Who is Mr. Silver?"

A. "An Assistant County Attorney."

Q. "Who are Mike Davis and Bob Barrett?"

A. "I only knew them as Mr. Ruppersberger's Associates."

Q. "In fact they are Special Assistants to the County Executive and, in effect, act as his deputies. Isn't that correct?

A. "Yes." (T. 40-41)

Later on, Gerahty testified that:

A. "I am sorry, the original meeting took place in one of the offices at the Executive's Office. That lasted, a least an hour, hour and half, if not two."

Q. "The fence was one of the items of discussion, wasn't it?"

A. "Yes."

Q. "Did there come a time when you reached an agreement with them as to where the fence was going to go and what type of fence?"

A. "At that meeting, yes we did."

Q. "What was the agreement that you reached with them."

A. "They wanted to see a 6-ft. stockade fence at the location it is at now, on the zoning line. We did that, which actually pleased them." (T. 41-42)

The Easement Agreement between Poor Boy's and Baltimore County was entered into evidence before the Board as Petitioner's Exhibit #8. It indicates that it was signed by a John Wasilsen for the County (John M. Wasilsen is employed by the Office of Employment and Training- clearly not the Zoning Commissioner, nor the Director the

Department of Permits and Development Management, which is the only agency authorized to approve site plans and zoning orders (Transcript, page 47)).

Ruth Baisden then testified before the Board that the location agreed to by Baltimore County was not consistent with the December 24, 1996 drawing of Avery Harden, that it was only 6 feet high and that it was 60-ft. from the property line and not 70-ft., as required by Harden in his attached diagram to his December 24th letter. It was also not consistent with the Restrictive Covenant Agreement between Gerahty and the Villa Cresta Civic Association marked as CBA, Petitioner Exhibit # 3 and later referred to by the CBA in its Opinion.

Baisden then cross-examined Gerahty before the Board and elicited these responses:

Q. "I am also very curious about elected officials having agreements that is outside the County process.... Isn't there a process that you go through when you apply for a permit or you apply for a development plan? I am a little bit confused. Maybe you can explain to me. Is there something in writing from Bob Barrett? How did this go about that this is a legal decision from Ruppersberger or Bob Barrett that fence is an appropriate fence or an appropriate type?"

A. "There is no written decision. We based it on their word. That is basically where it was. It was based on their word. We put the fence up."

Q. "Did you make aware to Mr. Barrett and Mr. Davis that there was a letter existing stating what type of fence should be put up and what location the fence should be put up in?"

A. "I'm not sure if I need to make them aware of that. I not sure it is my job to tell them how to do their job." (T 75 & 76).

This concluded the questioning of Gerahty by Ruth Baisden on cross examination.

Baisden then testified on her own behalf before the Board that the fence is not in the location as required by Avery Harden, nor was it 8 feet high (T 112). She testified

that she was not involved in the agreement between Baltimore County, Bob Barrett, County Executive Ruppersberger and Gerahty (T 126). Baisden, while acknowledging contact with Silver and Barrett in regard to the Community's complaints about the fence, made it clear that she was not involved in any way in the negotiations and agreement that resulted in the Easement entered in to by the County (T 126 & 128).

Finally, in Closing Argument before the Board, counsel for Poor Boy's argued the effect of the Easement Agreement entered into in May 1997:

> "Finally, we come to May of 1997, but in a response from the County Executive's Office, Mr. Gerahty met with the County Executive's Representatives, Davis and Barrett, who are his two top deputies. He met with Doug Silber, the County Attorney and agreed to put in a fence but he wanted to know where is it supposed to go and what am I supposed to do. They agreed upon putting the fence in as it presently is now, a 6-ft. fence located on the zone line (T 168)... While Mr. Harden's solution and suggestion in requirement and request were reasonable, his boss, the County Executive of Baltimore County, whom even the Board of Appeals, I guess- actually, I guess you answer to the County Council, but it is a coordinate branch of the Government. The County Executive put his imprimatur approval on this location..." (T 169; emphasis supplied)

After the unilateral negotiations between the County Executive's Representatives and Poor Boys in May 1997, the record reflects that the Deputy Zoning Commissioner changed his position in regard to the location of the fence. Gerahty, in July 1999, filed another Petition for Special Hearing before the Deputy Zoning Commissioner, requesting to amend his prior Zoning Order in Case No. 97-295 regarding the installation of a fence and lighting conditions. The number in this case was 98-267-SPH, the instant case on appeal. The purpose of Gerahty's request in July 1999 was to amend the Deputy Zoning Commissioner's Order, requiring the fence to be 8-feet high and to be 70-feet from the property line, which was consistent with the December 24, 1996 decision by PADM. Keeping in mind that, at this point the County Executive, through his aides Bob Barrett

and Doug Silber, had injected themselves into this issue and entered into an Easement Agreement, the Deputy Zoning Commissioner now changed his view of where the location of the fence should be and accepted the fence to be located 60-feet from the property line, which was the same location as agreed upon by Barrett, Silber and Gerahty at their May 1997 meeting. The D. Z.C. refused to change the lighting requirements that he had imposed. It can clearly be seen that the D. Z. C. in the instant case, changed his decision and accepted the location of the fence as agreed upon unilaterally between Gerahty and Barrett and Silber. The D.Z.C. at this point rejected the argument of Baisden that the location should be as determined by PADM. The Deputy Zoning Commissioner reaffirmed his decision in a letter to all parties on August 6, 1999.

Baisden thereafter filed here appeal to the Baltimore County Board of Appeals which heard the case on January 20, 2000. The Board clearly recognized the fact that unilateral negotiations between Silber, Davis, Barrett and Gerahty had occurred in May 1997 and that, as a result, the D.Z.C. on July 9, 1999, accepted that agreement and determined that the existing fence was acceptable (Board Opinion, page 2). Furthermore, the Board found as a fact that an Easement Agreement was reached by Silber, Davis, Barrett and Gerahty as to the location of the fence (Opinion, page 3). The Board then, relying upon the letter of December 24, 1996 from Avery Harden, found that the fence constructed by Poor Boy's was "of a temporary nature" and needed to be replaced by a permanent one as described by Harden in his December 24th letter (which meant a 6-ft. high fence with a 2-ft. addition on top) and they further found a 10-ft. interior easement to be required; they permitted the replacement fence to be located at the existing location instead of the location described in the December 24th Harden letter. To support the

Board's adoption of the fence location, as agreed upon between the County Executive Representatives and Poor Boys, the Board points to the Villa Cresta Restrictive Covenant Agreement (Petitioner's Exhibit #3) as supporting their finding that the fence could remain where it is currently located, when in fact the Villa Cresta Restrictive Covenant requires a total of 70 feet of open space. The Covenant Agreement is consistent with the Harden drawing contained in the December 24th letter.

Finally the Board ends with this note:

> In conclusion, the Board feels constrained to note that it is unfortunate for both the Petitioner and the Protestant that governmental representatives outside the legislated development and zoning approval process chose to become involved in the resolution of this conflict. Baltimore County has instituted a review and enforcement policy to deal with such disagreements and that process is the one on which citizens both Petitioner and Protestant must rely without interference from outside sources however well meaning. (Opinion, p.7).

LEGAL ARGUMENT

A. Statutory Authority for Decision Making Process

The Baisden's argue that the determination of the location of the fence, once having been made by the proper authority of Baltimore County, the Department of Permits and Development Management, it was unlawful and in error for the Executive branch of Baltimore County, namely the County Executive's administrative aides, to resolve the question of the location of the fence outside of the proper process created to resolve such questions. Simply put, in this instance, there was improper political influence outside of the appropriate zoning and development process set aside to resolve issues such as the fence location in this case.

The determination as to the appropriate fence type and location was properly before the Department of Permits and Development Management. That Department

acted on the 24th of December. In this case the issue of proper zoning enforcement and code violations is in PADM, and as such, was delegated by the supervisor of code enforcement, James Thompson to Avery Harden, a landscape architect, with the development plans review section. Harden, on December 24th, 1996, determined that the fence should be located on the inside edge of the 70 buffer and should be of a certain height dimension. He supported this decision with appropriate drawings and a scaled map. (See Exh. A).

A review of the Baltimore County Zoning Regulations establishes that under §500.1 B.C.Z.R., only the Zoning Commissioner/Deputy Zoning Commissioner have authority to review applications for building permits and/or variances and/or special hearings. Moreover, by legislative change, under §26-3 of the Baltimore County Code (d) the Director of Department of Permits and Development Management shall administer the zoning code and all other administrative matters otherwise assigned in this article or by zoning regulations or elsewhere to the Zoning Commissioner. Thus, the Director of PADM had responsibility for determining the location of the fence as was done in the December 24th, 1996 letter. Furthermore, under Baltimore County Zoning Regulations §500.5, §500.6, and §500.7 only the Zoning Commissioner has power to conduct hearings for purposes of special hearing such as the subject matter in the instant case. No authority is granted to the County Executive or the County Executive's aide or assistants to make these kinds of zoning determinations.

In a review of the Baltimore County Code, §26 dealing with Planning, Zoning and Subdivision Control, again one finds no authority delegated to aides or assistants, to the County Executive to participate in and/or resolve zoning or code matters related to

zoning enforcement cases, site plans, or conditions of zoning approval. B.C.C. §26-127, 128, 132 all provide for appropriate zoning determinations within the framework of public hearings and rights of appeal. §26-135 provides the Director of PADM to manage the development process. Likewise, the development of land is controlled by development regulations as defined in §26-166, 167, and §26-169. Enforcement action and remedies are contained in §26-175 as it relates to permits complying with the development regulations.

It is clear from the Baltimore County Zoning Regulations as well as the Baltimore County Code that certain procedural due process is envisioned in regard to code enforcement, permit issuance, and dispute resolution of issues relating thereto. Nowhere in the Zoning Code or in the Baltimore County Code is there a provision for intervention by the County Executive through his aids and representatives for direct negotiations and resolution of issues such as the location of a fence as contained in this case.

I. The Board of Appeals erred as a matter of law in not finding that the determination of the Department of Permits and Management in the Harden letter of December 24th, 1996 was binding on the County in that it was a determination made by the statutorily designated County authority.

The Court of Appeals in the recent case of Bucktail, LLC v. The County Council of Talbot County et al., 352 Md. 530 (1999) reaffirmed that the County Board of Appeals' findings of facts must be sufficient to permit judicial review stating:

> The court's task on review is not to substitute its judgment for the expertise of those persons who constitute the administrative agency. A reviewing court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency. A court's role is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. UPS v. People's Counsel for Baltimore County, 336 Md. 569 (1994).

> ...a fundamental right of a party to a proceeding before an administrative agency is to be apprised of the facts relied upon by the agency in reaching its decision and to permit meaningful judicial review of those findings. In a judicial review of administrative action the court may only uphold the agency order if it is sustained by the agency's findings and for the reasons stated by the agency. United Steel Workers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corp., 298 Md. 665 (1984).

The findings of fact must be meaningful and cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions. Turner v. Hammond, 270 Md. 41 (1973). It is not permissible for the County Board of Appeals or any administrative body simply to parrot general statutory requirements, or rest on broad conclusory statements. Rodriguez v. Prince George's County, 79 Md.App. 537 (1989). The Court of Appeals further stated in Board of County Commissioners v. Ziegler, 244 Md. 224 (1966) that:

> Where, as it seems to be the case here, the decision of the zoning authority is apparently contrary to the weight of the evidence introduced on behalf of the applicants for the special exception, the zoning authority should have stated the reasons for its actions and included them in the record. When this is not done, the record should be remanded for the purpose of having the deficiency supplied.

Furthermore, in Bucktail, the Court found that where the planning staff and the planning commission had recommended approval of the project and found that it complied with all applicable requirements, it is not sufficient for the council simply to express conclusions, without pointing to the facts found by the council that formed the basis for its contrary conclusion.

Applying the above law to the instant case, it is clear from the opinion of the Board of Appeals, that the Board relied upon the improper negotiations between the County Executive and the Easement Agreement thus entered into to determine the

location of the fence in question without consideration of the December 24th determination by Avery Harden that it should be located 70 feet from the property line. The Board of Appeals accepted the remainder of the December 24th letter as it related to the 70 foot requirement in total including a 10 foot interior landscape usage. It incorporated Avery Harden's letter as to the nature of the permanent construction but it did not adopt the height established by the agency nor the location of the fence. The only reason that the Board could have accepted the 60 foot location of the fence from the property line was because of the Easement Agreement already entered into by the County Executive's staff and Poor Boy's. The Court should recognize that the appropriate County authorities (the Director of PADM), nor the Zoning Commissioner or Deputy Zoning Commissioner was involved in the decision by the County, rather it was an individual who worked in the Employment and Training Department of the County who signed the Easement Agreement. There is no provision anywhere in the Zoning Ordinance or the County Code to permit such action. As a result, the Board adopted the location of the fence previously agreed by the Executive aides to while noting that it was an action of government representatives "outside" the legislative development and the zoning approval process that chose to become involved in the resolution of this conflict. The Board perpetuated and legitimized this outside interference by the County Executive's office in its Opinion and Order.

Furthermore, the only fact submitted in the Board's opinion to support its acceptance of the present location of the fence was the Restrictive Covenant Agreement with the Villa Cresta Association. However, that Covenant required a 70 foot open space

easement area which really supports the argument of the Baisden's and the decision of Avery Harden contained in the December 24th letter.

Therefore, this Court should reverse the decision of the Board of Appeals.

II. **The County Board of Appeals while correct in finding the Department of Development Management was the proper agency to determine the location and type of fence in its Harden letter of December 24th, 1996, erred by letting its judgment as to the fence location be improperly influenced by the Executive intervention which occurred in May of 1997.**

The County Board of Appeals, although condemning the practice of outside intervention and dispute resolution by the Executive Office, and although finding that the appropriate document to rely upon was the agency determination in the December 24th 1996 letter of Harden, was improperly influenced by the Easement Agreement entered into by the Executive office and Poor Boy's. This improper influence was reflected in the Board's decision to the detriment of the Baisden's concerning the issue of the fence location. While the Board affirmed other aspects of the December 24th letter it bowed to the Easement Agreement entered into by the Executive staff. It should be pointed out again that the Baisden's had no input in either the meeting between Poorboys and the Executive staff in the Executive offices nor on site. They were excluded from the discussions and consideration. It is also clear that the December 24th letter locating the fence 70 feet from the property line was not shared with the Executive staff by Poorboys during either the meeting in the Executive office nor on the site.

Baisden's were prejudiced by the conduct and activity which took place outside the scope of the appropriate zoning and code procedures.

III. **Due process was denied Petitioners/Protestants Baisden's by the Board's decision permitting determination of the fence location outside of the zoning and development process which resulted in the Baisden's being excluded from any input in the unlawful intervention.**

Baisden's were denied due process by the Board's acceptance of the procedure adopted for locating the fence outside of the zoning and development process and by being excluded from the ultimate determination as to the location of the fence. It is clear that prior to May 1997, the Deputy Zoning Commissioner in his initial order in Case No. 97-295, SPHA relied upon the December 24th letter and did not change his position in regard to the location of the fence until after the May 1997 meeting and Easement Agreement which was entered into by the County. Clearly the Deputy Zoning Commissioner and the Board were improperly influenced by the Executive Agreement to the detriment of the Baisden's due process rights.

IV. **That the Board of Appeals decision is tainted by the improper influence of the Executive branch on the Deputy Zoning Commissioner and the Board of Appeals to unlawfully change the initial requirements of the December 24th, 1996 PADM decision and the CBA without explanation adopted the Executive decision regarding the location of the fence even while recognizing the proper authority of the December 24th letter.**

The resolution of the location of the fence made outside of the appropriate administrative agency determinations by the Executive caused the Deputy Zoning Commissioner to change his requirements in regard to the location of the fence and for the County Board of Appeals to adopt without explanation the current location of the fence as opposed to that required by the December 24th letter. Baisden's contend that this intervention by the Executive office was improper and denied them the rights provided under the Baltimore County Code and the Zoning Ordinance. It further precluded them from the ability to present their case and preserve the record. As a result, Baisden's were denied a fair opportunity to convince the Deputy Zoning Commissioner and the County Board of Appeals as to the location of the fence.

V. **Due process was denied the Petitioners/Protestants Baisden's by their improper exclusion from the decision making process as to the location of the fence as opposed to the proper resolution of the fence location through the Department of Permits and Development Management and/or the Zoning Commissioner.**

The Baisden's were denied due process in being precluded from the appropriate discussions and dispute resolution which would have been afforded them under the Zoning Code and the Development Regulations.

VI. **The Board of Appeals erred on the merits of the matter as to the location of the fence by not adopting the December 24th, 1996 letter from PADM as the proper determination.**

The administrative agency charged with the enforcement of the Baltimore County Code and with site plan review is the Department of Permits and Development Management for whom Avery Harden worked on Dece 24th, 1996. As a condition for site plan approval and as part of a resolution of a code enforcement proceeding, Harden required the clear location of the fence on the inside edge of the 70 foot space described on the plan attached to his letter. This is the agency charged with enforcing the County Code and its requirements. It was recognized as the proper authority by the Deputy Zoning Commissioner when he adopted the terms of the December 24th agreement in his Order in 1997. It was recognized by the Board of Appeals in this case when they adopted all of the terms but for the site location of the fence. It is the only recognized agency charged with the proper review approval and enforcement of this issue. The intervention by the County Executive's office to locate the fence at another location was ultravires and beyond the scope of his authority. The Easement Agreement submitted in this case is beyond the legal authority contained in the Baltimore County Zoning Ordinance and the Baltimore County Code. The only legitimate evidence for the location of the fence is

contained in the December 24th, 1996 letter. As such, the Board of Appeals erred by not adopting the only lawful recognized approved site plan in this case.

SUMMARY

Baisden, for all the reasons set forth above, respectfully requests this Honorable Court to reverse the approval of the County Board of Appeals as to the location of the fence.

Respectfully submitted,

J. Carroll Holzer
508 Fairmount Ave.
Towson, MD 21286
410-825-6961

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 8th day of November, 2000 a copy of the foregoing Memorandum was mailed first class, postage pre-paid to C. William Clark, Esq. at Nolan, Plumhoff & Williams, Suite 700, Nottingham Centre, 502 Washington Ave., Towson, Maryland 21204.

J. Carroll Holzer

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Exq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

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on Recycled Paper

(Exh A)

Baltimore County
Zoning Commissioner
Office of Planning and Zoning

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

March 6, 1997

Newton A. Williams, Esquire
Douglas L. Burgess, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING and VARIANCE
SE/Corner Old Harford Road & Taylor Avenue
(7721 Old Harford Road)
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 97-295-SPHA

Dear Messrs. Williams & Burgess:

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

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

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Terry Gerahty
7721 Harford Road, Baltimore, Md. 21234

Mr. & Mrs. Ernest Baisden
7706 Oak Avenue, Baltimore, Md. 21234

Mr. James Reed
7705 Oak Avenue, Baltimore, Md. 21234

Mr. Avery Harden, DPDP; People's Counsel; Case File

Exh. B

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IN THE MATTER OF : RUTH BAISDEN	*	IN THE CIRCUIT COURT
IN THE MATTER OF: TERRY GERAHTY	*	FOR BALTIMORE COUNTY
	*	CIVIL ACTION
	*	CASE NO: 03-C-00-6650 03-C-00-6687

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

MEMORANDUM OPINION AND ORDER

These two consolidated cases come before this Court as a record appeal from the Board of Appeals of Baltimore County. Ruth Baisden contends that the Board of Appeals erred by not adopting a letter, dated December 24, 1996, from Avery Harden of the Department of Permits and Development Management regarding the location of a fence. Terry Gerahty, owner of Poor Boys, a garden and plant center located at 2711 Taylor Avenue, argues the Board of Appeals erred in requiring that the fence in question be made "permanent", and that it replace the current fence with one having concrete footings, as ordered by Harden in the aforementioned letter.

The dispute between Poor Boys and Ernie and Ruth Baisden, his wife, who reside to the rear of the garden shop, arose in 1996 during the comprehensive rezoning cycle for Baltimore County. Poor Boys' property was rezoned to Business Local (BL) with a total buffer zone of 70 ft. between Poor Boys and the Baisden property. Subsequently, Mr. Gerahty entered into a restrictive covenant agreement with the Villa Cresta Association, dated October 8, 1996, regarding this buffer zone.

Mr. Harden then became involved in the process. Mr. Gerahty contends that he asked Mr. Harden to design a landscape buffer in accordance with an easement agreement with

APP B

IN THE MATTER OF	*	IN THE CIRCUIT COURT
BETH TFILOH CONGREGATION	*	FOR BALTIMORE COUNTY
	*	CASE NO. 03 C 96 005667

* *

ORDER AFFIRMING BOARD OF APPEALS

For the reasons stated on the record in open court on 3/19/97, it is ORDERED by the Circuit Court for Baltimore County this 20th day of March 1997 that the decision by the Board of Appeals in this case is affirmed. Specifically, this court finds that no right to appeal exists to the Board of Appeals from the denial by the Planning Board of the concept plan submitted by Beth Tfiloh Congregation (Case No. CBA-95-184).

John F. Fader II
Judge

JFF:am

cc: Julius Lichter, Esq.
Howard L. Alderman, Jr., Esq.
Levin & Gann
305 W. Chesapeake Avenue
Suite 113
Towson, MD 21204

J. Carroll Holzer, Esq.
Holzer & Lee
305 Washington Avenue
Suite 502
Towson, MD 21204

Done 3/21/97 am

3/1000

FILED JUL 24 1997

EXHIBIT 2

APP C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 754

September Term, 1997

THE BETH TFILOH CONGREGATION OF BALTIMORE CITY, INC.

v.

OLD COURT-GREENSPRING IMPROVEMENT ASSOCIATION, et al.

Murphy, C.J.
Harrell,
Bell, Rosalyn B. (retired, specially assigned),

JJ.

Opinion by Harrell, J.

Filed: April 20, 1998

#03C96005667

EXHIBIT 1

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Exq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

Exh. C

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Baltimore County
Zoning Commissioner
Office of Planning and Zoning

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

March 6, 1997

Newton A. Williams, Esquire
Douglas L. Burgess, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING and VARIANCE
SE/Corner Old Harford Road & Taylor Avenue
(7721 Old Harford Road)
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 97-295-SPHA

Dear Messrs. Williams & Burgess:

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

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

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Terry Gerahty
7721 Harford Road, Baltimore, Md. 21234

Mr. & Mrs. Ernest Baisden
7706 Oak Avenue, Baltimore, Md. 21234

Mr. James Reed
7705 Oak Avenue, Baltimore, Md. 21234

Mr. Avery Harden, DPDP; People's Counsel; Case File

Exh. D

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Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

RULING

July 8, 1999

C. William Clark, Esquire
Nolan, Plumhoff & Williams, Chtd.
502 Washington Avenue, Suite 700
Towson, Maryland 21204

Re: Petition for Special Hearing
Case No. 98-267-SPH
Property: 2711 Taylor Avenue

Dear Ms. Murphy:

Enclosed please find the decision rendered in the above-captioned case. The Request for Special Hearing has been denied in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from 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 410-887-3391.

Very truly yours,

Timothy Kotroco

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

c: Mr. Terry J. Gerahty
Mr. & Mrs. Ernest Baisden
Mr. & Mrs. John Baker
Mr. James Reed, Jr.
Mr. Joseph Kreis

EXH. E

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Baltimore County
Department of Permits and
Development Management

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

October 13, 2000

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmont Avenue
Towson, MD 21286

Re: In the Matter of Poor Boy's, Inc., 2711 Taylor Avenue, Baltimore, MD 21234

Dear Mr. Holzer:

Please be advised that the appeal of the above-referenced matter was filed in this office on October 5, 2000, on behalf of Ruth and Ernie Baisden, appellants. All relative materials will be forwarded to the Baltimore County Board of Appeals.

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

Sincerely,

Arnold Jablon
Director

AJ/jm

c: C. William Clark, Esquire; Nolan, Plumhoff & Williams, Suite700, Nottingham Centre, 502 Washington Avenue, Towson, MD 21204
Douglas N. Silber, Esquire, Baltimore County Office of Law
John R. Reisinger, P.E., Baltimore County Buildings Engineer
Avery Harden, Landscape Architect, Baltimore County Bureau of Development Plans Review

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8/31/00

2 originals filed in CCT (1 for each civil action number)

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF **Ruth Baisden**
7706 Oak Avenue
Baltimore, MD 21234

and

PETITION OF **Terry H. Gerahty**
7721 Old Harford Road
Baltimore, MD 21234

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

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF
TERRY J. GERAHTY
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE SOUTHEAST CORNER OLD
HARFORD ROAD AND TAYLOR AVENUE

9th ELECTION DISTRICT
6th*COUNCILMANIC DISTRICT*

CASE NO. 98-267-SPH

CIVIL ACTION
No. **3-C-00-6650**

(2nd Petition filed under
Civil Action No. 3-C-00-6687)

Complete record filed under
Civil Action No. 3-C-00-6650
Ruth Baisden - Petitioner

* * * * * * * * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence S. Wescott, Margaret Worrall, and Lynn Barranger, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
THE DEPARTMENT OF PERMITS AND DEVELOPMENT
MANAGEMENT OF BALTIMORE COUNTY

RECEIVED AND FILED
00 AUG 31 PM 3:45
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

No. 98-267-SPH

Jan. 20, 1998	Petition for Special Hearing filed by Douglas L. Burgess, Esquire, on behalf of Terry J. Gerahty, to amend variance case #97-295-SPHA regarding the fence and lighting conditions.
August 18, 1998	Revised Petition for Special Hearing filed by C. William Clarke, Esquire, on behalf of Terry J. Gerahty; to remove the existing variance (case #97-295), in the alternative, request that variance #97-295 be amended in the manner stated in attached letter).
September 3	ZAC Comments on Revised Petition Forms
September 24	Publication in newspaper.
September 30	Certificate of Posting.
October 22	Certificate of Posting (Repost)
December 3	Certificate of Posting (Repost)
April 9, 1999	Hearing held on Petitions by the Deputy Zoning Commissioner.
July 7	Order issued by the Deputy Zoning Commissioner in which the Petition for Special Hearing was DENIED.
July 23	Letter from C. William Clark, Esquire to the Deputy Zoning Commissioner; indicating that several issues that formed a part of the Petition were not ruled on, and requesting a revised Opinion.
August 2	Letter from Ernest Baisden, Pres., Parkville Park Community Association to the Deputy Zoning Commissioner; indicating that there was confusion over an inconsistency between the original and most recent order, and requesting clarification.
August 6	Letter from the Deputy Zoning Commissioner to C. William Clark, Esquire; denying request to modify 7/7/99 Order, as the additional relief requested was not contained within the file nor posted or advertised. In addition, a reply is also made to Mr. Baisden's 8/2/00 letter, wherein the DZC reiterates that his 7/7/99 decision supercedes any and all prior agreements (also a NOTE: Appellate period runs 30 days from the date of this letter).
August 5	Notice of Appeal filed by Ruth Baisden, Protestant.
August 5	Notice of Appeal filed by C. William Clark, Esquire, on behalf of Terry J. Gerahty, Petitioner /Property Owner.
March 9, 2000	Hearing held by the Board of Appeals.

Exhibits submitted at hearing on 3/9/00 before the Board of Appeals:

Petitioner's Nos.:
1A – 2 photos on 1 sheet (top) front from Old Harford Road
(bottom) back w/ stone parking lot
B – 2 photos (top) across Taylor Avenue
(bottom) from Oak Avenue w/ fence
C – 1 photo from Taylor Avenue onto property
D – 1 panoramic photo – from middle of subject property w/ buffer fence
2 – Site Plan
3 – Restrictive Covenant Agreement
4 – Letter Dec. 24, 1996 from Avery Harden to Gerahty, etc.
5 – Ruling from DZC March 6, 1997
6 – Easement Agreement Feb. 17, 1998
7 – Sept. 24, 1997 CBA Order of Dismissal
8 – Signed copy of easement between Gerahty & Balto. Co.
9 – Case No. 98-267-SPH – Kotroco's opinion

Protestant's Nos.
1 – Community Concerns document for Case #97-259-SPHA
2 – Letter to Ms. Baisden from Bartenfelder Sep. 18, 1997
3 – Letter to Thos. Robinson from Ernest Baisden Jan. 21, 2000
4 – Letter to David Miller from Jablon Dec. 17, 1996
5 – Collective County Comments
6 – Parkville Park Comm. Assn position papers
7 – Photos – from fie below (9 pages)
A-Spring 1999 fence leaning (top)
Unscreened parking (bottom)
B-(top) from
C-Dec. 1998 conditions (3 photos)
D-Dec. 1998 conditions
E-Dec. 1998 conditions
F-Dec. 1998 conditions
G-Fall 1997 conditions
H-Fall 1997 conditions
I-Old trees in existence in buffer area
8A&B-Photo – new – taken by Baisden – 2 pages
from backyard of Baisden
9-Baisden's drawing of fence concept

March 30, 2000 — Public Deliberation conducted by the Board of Appeals.

May 31 — Opinion and Order issued by the Board of Appeals; Ordered that the previous restrictions imposed upon the Petitioner in Case No. 97-295-SPHA regarding the fencing of the subject property shall remain in full force and effect pursuant to conditions.

June 30 — Petition for Judicial Review filed in the Circuit Court for Baltimore County by Ruth Baisden under Civil Action No. 3-C-00-6650. A copy of this Petition was received by the Board on June 30, 2000.

June 30, 2000	2nd Petition for Judicial Review filed in the Circuit Court for Baltimore County by C. William Clark, Esquire, on behalf of Terry Gerahty under a separate Civil Action No. 3-C-00-6687; Mr. Clark is intending to file a Motion to Consolidate with 3-C-00-6650. A copy of this 2nd Petition was received by the Board on July 7, 2000.
July 14	Certificate of Notice sent to interested parties.
August 31, 2000	Transcript of testimony filed.
August 31, 2000	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Charlotte E. Radcliffe

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

c: Ernest & Ruth Baisden
C. William Clark, Esquire
Terry Gerahty

County Board of Appeals of Baltimore County

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

July 14, 2000

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTRD
SUITE 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204-4528

RE: Civil Action No. 3-C-00-006650
TERRY H. GERAHTY

Dear Mr. Clark:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on June 30, 2000, in the Circuit Court for Baltimore County for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-00-006650.

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

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Terry H. Gerahty

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

July 14, 2000

Ruth Baisden
7706 Oak Avenue
Baltimore, MD 21234

RE: Civil Action No. 3-C-00-006650
TERRY H. GERAHTY

Dear Ms. Baisden:

In accordance with Rule 7-206 (c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

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

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

Printed with Soybean Ink
on Recycled Paper

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

Case Number: 03-C-00-006650

TO: BALTIMORE COUNTY BOARD OF APPEALS
400 Washington Ave
Baltimore, MD 21204

RECEIVED
COUNTY BOARD OF APPEALS
00 JUL -5 PM 12:45

6/30/00

PETITION OF:

Ruth Baisden
7706 Oak Avenue
Baltimore, Maryland 21234

FOR JUDICIAL REVIEW OF
FINAL DECISION OF COUNTY
BOARD OF APPEALS OF
BALTIMORE COUNTY
400 Washington Avenue
Towson, Maryland 21204

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Case No. C00-16650

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

PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioner Ruth Baisden request Judicial Review of the decision of the Board of Appeals in Case No. 98-267-SPHA rendered May 31, 2000.

Petitioner was a party before the County Board of Appeals and participated fully in the proceedings.

Respectfully submitted,

Ruth Baisden
7706 Oak Avenue
Baltimore, Maryland 21234
410 668-2580

RECEIVED AND FILED
00 JUN 30 AM 11:21
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

6/30/00

PETITION OF:	* IN THE
TERRY GERAHTY 2711 Taylor Avenue Baltimore, MD 21234	* CIRCUIT COURT
JUDICIAL REVIEW OF	*
THE DECISION OF:	* FOR
County Board of Appeals of Baltimore County Old Courthouse, Room 49 400 Washington Avenue Towson, MD 21204 410-887-3180	* BALTIMORE COUNTY * * * CIVIL ACTION NO. 3-C-00-006687
IN THE CASE OF:	*
IN THE MATTER OF: TERRY GERAHTY, Property Owner (2711 Taylor Avenue) 9th Election District 6th Councilmanic District Case No. 98-267SPH	* Per CCK Filed 7-3-00 * *

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

PETITION FOR JUDICIAL REVIEW

Terry Gerahty, Appellant who participated in the proceedings before the County Board of Appeals of Baltimore County, by C. William Clark, Esquire and Nolan, Plumhoff & Williams, Chartered, his legal counsel, in accordance with Maryland Rule 7-202, hereby requests judicial review of the May 31, 2000 Decision of the County Board of Appeals of Baltimore County in the above-captioned matter.

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

Respectfully submitted,

C. William Clark, Esquire
Nolan, Plumhoff & Williams Chartered
502 Washington Avenue, Suite 700
Towson, Maryland 21204
410-823-7800
Attorney for the Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 30th day of June, 2000, a copy of the foregoing Petition for Judicial Review was mailed, postage prepaid, to the following:

Virginia W. Barnhart, County Attorney
for Baltimore County
Court House, Second Floor
Towson, MD 21204

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

Mr. & Mrs. Ernie Baisden
7706 Oak Avenue
Baltimore, MD 21234

C. William Clark, Esquire

D:\data\CWC\Clients\PoorBoy's\PetitionJudicialRev.wpd

THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
DOUGLAS L. BURGESS
ROBERT E. CAHILL, JR.
C. WILLIAM CLARK
CATHERINE A. POTTHAST
E. BRUCE JONES**
MELINDA A. KIMMITT

* ALSO ADMITTED IN D.C
**ALSO ADMITTED IN NEW JERSEY

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

WRITER'S DIRECT DIAL
(410) 823-7850

June 30, 2000

RECEIVED
JUL - 7 2000
2:18 PM
BALTIMORE COUNTY

VIA HAND DELIVERY

Clerk's Office
Circuit Court of Maryland
for Baltimore County
401 Bosley Avenue
Towson, MD 21286

Re: In The Matter of Terry J. Gerahty Property Owner
CBA Case No. 98-267SPH

Dear Clerk:

With regard to the above-captioned matter, enclosed for immediate filing is Appellant, Terry Gerahty's Petition For Judicial Review

Please date stamp the file copy and return.

If you have any questions, please do not hesitate to call.

Very truly yours,

Kathleen A. Lance
Legal Assistant to C. William Clark

KAL:
Enclosure
cc: Virginia W. Barnhart, County Attorney
County Board of Appeals
Mr. & Mrs. Ernie Baisden
Terry J. Gerahty
D:\data\CWC\Clients\PoorBoy's\ClerkCirCtLtr.wpd

7/3
03C006689

Circuit Court for BALTIMORE COUNTY
City or County

CIVIL---NON-DOMESTIC CASE INFORMATION REPORT

Directions:

Plaintiff: *This Information Report must be completed and attached to the complaint filed with the Clerk of the Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111. A copy must be included for each defendant to be served.*

Defendant: *You must file an Information Report as required by Rule 2-323(h).*

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER TO RESPONSE.

FORM FILED BY: ☒ PLAINTIFF ☐ DEFENDANT CASE NUMBER: _____

CASE NAME: In The Matter Of Terry Gerahty, Property Owner
Plaintiff v. Defendant

JURY DEMAND: ☐ Yes ☒ No Anticipated length of trial: 2 hours or _____ days

RELATED CASE PENDING? ☐ Yes ☒ No If yes, Case #(s), if known: _____

HAS ALTERNATIVE DISPUTE RESOLUTION (ADR): Been Tried? ☐ Yes ☒ No
Requested? ☐ Yes ☒ No

If yes, specify: _____

Special Requirements? ☐ Interpreter/communication impairment
☐ Other ADA accommodation: _____

NATURE OF ACTION
(CHECK ONE BOX)

TORTS
- ☐ Motor Tort
- ☐ Premises Liability
- ☐ Assault & battery
- ☐ Product Liability
- ☐ Professional Malpractice
- ☐ Wrongful Death
- ☐ Business & Commercial
- ☐ Libel & Slander
- ☐ False Arrest/Imprisonment
- ☐ Nuisance
- ☐ Toxic Torts
- ☐ Fraud
- ☐ Malicious Prosecution
- ☐ Lead Paint
- ☐ Asbestos
- ☐ Other

_____

LABOR
- ☐ Workers' Comp.
- ☐ Wrongful Discharge
- ☐ EEO
- ☐ Other _____

CONTRACTS
- ☐ Insurance
- ☐ Confessed Judgment
- ☐ Other _____

REAL PROPERTY
- ☐ Judicial Sale
- ☐ Condemnation
- ☐ Landlord/Tenant
- ☐ Other

OTHER
- ☐ Civil Rights
- ☐ Environmental
- ☐ ADA
- ☒ Other ~~Judicial Review~~

DAMAGES/RELIEF

A. TORTS

Actual Damages
- ☐ Under $7,500
- ☐ $7,500 - $50,000
- ☐ $50,000 - $100,000
- ☐ Over $100,000

- ☐ Medical Bills $_____
- ☐ Property Damages $_____
- ☐ Wage Loss $_____

B. CONTRACTS
- ☐ Under $10,000
- ☐ $10,000 - $20,000
- ☐ Over $20,000

C. NONMONETARY RELIEF
- ☐ Declaratory Judgment
- ☐ Injunction
- ☒ Other Judicial Review

TRACK REQUEST

With the exception of Baltimore County, Baltimore City, and Prince George's County, please fill in the estimated LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.

- ☐ *½ day of trial or less*
- ☐ *1 day of trial time*
- ☐ *2 days of trial time*
- ☐ *3 days of trial time*
- ☐ *More than 3 days of trial time*

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY, PLEASE SEE REVERSE SIDE OF FORM FOR INSTRUCTIONS.

Date: June 30, 2000 *Signature:* _____
~~C. William Clark, Esquire~~

6/14/00

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY *

PETITION OF **Ruth Baisden**
7706 Oak Avenue
Baltimore, MD 21234 *

and *

PETITION OF **Terry H. Gerahty**
7721 Old Harford Road
Baltimore, MD 21234 *

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

IN THE CASE OF: IN THE MATTER OF THE APPLICATION OF
TERRY J. GERAHTY
FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OLD HARFORD ROAD AND TAYLOR AVENUE *

9th ELECTION DISTRICT
6thCOUNCILMANIC DISTRICT *

CASE NO. 98-267-SPH *

CIVIL ACTION
No. **3-C-00-006650**

(2nd Petition filed under Civil Action No. 3-C-006687)

* * * * * * * * * *

00 JUL 14 PM 3:09

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Lawrence S. Wescott, Margaret Worrall, and Lynn Barranger, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Ruth Baisden, 7706 Oak Avenue, Baltimore, Maryland 21234, Petitioner; C. William Clark, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHARTERED, 502 Washington Avenue, Suite 700, Towson, Maryland 21204, Counsel for Petitioner /Property Owner, Terry H. Gerahty, 7721 Old Harford

Road, Baltimore, Maryland 21234, Petitioner /Property Owner, and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204;

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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Ruth Baisden, 7706 Oak Avenue, Baltimore, Maryland 21234, Petitioner; C. William Clark, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHARTERED, 502 Washington Avenue, Suite 700, Towson, Maryland 21204, Counsel for Petitioner /Property Owner; Terry H. Gerahty, 7721 Old Harford Road, Baltimore, Maryland 21234, Petitioner/Property Owner , and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 14th day of June, 2000.

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

5/31/00

IN THE MATTER OF THE APPLICATION OF TERRY J. GERAHTY –PETITIONER FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER OLD HARFORD ROAD AND TAYLOR AVENUE (2711 TAYLOR AVENUE) 9TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 98-267-SPH

* * * * * * * * *

OPINION

This case comes before the Board of Appeals of Baltimore County based on two appeals resulting from the denial of the Petition for Special Hearing (Case No. 98-267-SPH) by the Deputy Zoning Commissioner, with the previous restrictions regarding fence and lighting to remain in full effect. A public hearing before this Board was held on March 9, 2000. A public deliberation was held on March 30, 2000.

The Petitioner, Terry J. Gerahty, legal owner and operator of a garden and plant center at 2711 Taylor Avenue, 9th Election District, 6th Councilmanic District, appealed the decision denying the Special Hearing request to amend the order in prior zoning Case No. 97-295-SPHA; and the re-imposition of conditions and restrictions upon the Petitioner in Case No. 97-295-SPHA, as described in the Opinion and Order of July 7, 1999. Mr. Gerahty was represented by C. William Clark, Esquire.

The Protestant, Mrs. Ruth Baisden, appealed only the restriction #1, regarding the fence, as set forth by the Deputy Zoning Commissioner on page 5 of his Opinion and Order in Case No. 98-267-SPH, as follows:

> 1. The fence on the subject property shall be permitted to remain as it exists today. The location, height and materials used are in compliance with my previous Order dated March 6, 1997. However, the Petitioner shall be required to maintain the fence in a neat and orderly fashion and shall insure that all sections of the fence remain in an absolute vertical position. All corrections to the fence shall be performed within thirty (30) days from the date of this Order.

Ruth Baisden, whose property at 7706 Oak Avenue adjoins the subject property, appeared before the Board *pro se*.

In a preliminary matter, C. William Clark, attorney for the Petitioner, asked to withdraw his client's appeal and go forward on the Protestant's appeal alone, regarding the fence restriction as described above. The Board accepted the withdrawal and proceeded to hear only the Protestant's appeal on the fence issue.

In his opening statement, Mr. Clark described the subject property as a plant and garden store at the intersection of Taylor Avenue, Old Harford Road and Oak Avenue. He noted that in 1996, as part of the Comprehensive Zoning Map Process (CZMP), the property was rezoned to B.L. (business local) with a designated 60-foot buffer to remain D.R. 5.5 on the east side between the business on the subject site and the neighboring residential area. A restrictive covenant agreement was signed with the Villa Cresta Civic Association, Inc., dated October 8, 1996, and Avery Harden, landscape architect for Baltimore County, made further suggestions that a fence be included in the buffer. Mr. Gerahty agreed and a subsequent easement agreement relative to the buffer was signed and accepted with Baltimore County.

Ultimately, in May 1997 by way of negotiations with Douglas Silber, Assistant County Attorney, Office of Law, and Michael Davis and Robert Barrett, representatives of County Executive Ruppersberger, the Petitioner erected a 6-foot fence in the buffer area on the 60-foot line. In his Order of July 9, 1999, Deputy Zoning Commissioner Kotroco determined that this existing fence is acceptable.

The Petitioner has also applied for a grading permit to bring his parking lot into compliance with the *Baltimore County Zoning Regulations* (BCZR). This subject is not before the Board.

In her opening statement, Mrs. Ruth Baisden, the Protestant, stated her request that the fence as described by Avery Harden in his letter of December 24, 1996, and promised to the community, replace the fence currently on the subject property and permitted as a result of the Deputy Zoning Commissioner's decision of July 9, 1999.

The first witness was Terry J. Gerahty, the Petitioner and owner of the Poor Boys Garden Center at 2711 Taylor Avenue. Mr. Gerahty recited that he began his business in 1993 by leasing the subject site, which had been an ABC Rental business. In 1995 he purchased the 1.34-acre property. Photos of the subject property were accepted by the Board as Petitioner's Exhibit No. 1 A-D.

The Petitioner also presented a site plan as Petitioner's Exhibit No. 2, which shows the buffer area as described in the easement agreement with Baltimore County (Petitioner's Exhibits No. 6 and No. 8). The 60-foot buffer area is zoned D.R. 5.5 with a 10-foot interior buffer zoned B.L. The remainder of the subject site is zoned B.L.

Mr. Gerahty stated that he signed a restrictive covenant agreement with the Villa Cresta Civic Association, Inc., in October 1996 (Petitioner's Exhibit No. 3) which required a landscape buffer to be approved by Baltimore County landscape architect Avery Harden. Mr. Harden added the fence requirement (Petitioner's Exhibit No. 4) and called for evergreens, shrubs and hardwood trees to be planted in the buffer area. Mr. Gerahty stated that he agreed to Mr. Harden's additions.

In 1997 Mr. Gerahty testified that he petitioned for a variance from the parking lot requirements in Case No. 97-295-SPHA and was granted approval of the parking lot as requested with conditions. In May 1997, as a result of complaints by Ruth and Ernest Baisden and others in the community, according to Mr. Gerahty's testimony, he met with Messrs. Silber, Davis and Barrett as representatives of County Executive Ruppersberger. The four men reached an agreement that within 24 hours Mr. Gerahty would install a 6-foot stockade fence between the D.R. 5.5 buffer area and the B.L. Business area of the subject property. Mr. Gerahty complied; the fence as installed was inspected and approved; and the fence is the same fence in the same location as now exists. Mr. Gerahty testified that the fence had been leaning and that he had that problem "fixed."

Mr. Gerahty further testified that it is his desire to leave the fence as it now exists at that location as approved by the Deputy Zoning Commissioner's Order. It is his opinion that, with continued planting within the buffer area, the community will be protected from the business intrusion. The planting, in conjunction with the construction of the permanent parking lot which will lower the lot level by 3 feet, will actually exceed the requirements instituted by Baltimore County through Avery Harden, their landscape architect.

On cross-examination by Mrs. Baisden, Mr. Gerahty explained that the easement area covers 70 feet from Oak Avenue. The interior 10 feet, according to Mr. Gerahty, will be used for business-related

utilities such as a storm water management trench, as set forth in the easement agreement with Baltimore County. He noted as well that he does not consider the existing fence to be a temporary one. He testified that there was no written agreement with the representatives of Mr. Ruppersberger but that he acted on their word of approval, and that he did not know whether or not these representatives were aware of Mr. Harden's recommendations.

The Petitioner further explained that planting the required landscape trees and shrubs is difficult because of the shade and roots of the old trees that are already there. However, Mr. Gerahty promised that he will persevere in the planting and that no old trees would be cut down nor would there be any grading in the buffer area when the parking lot is constructed.

Mr. Gerahty testified that he developed the agreement with the Villa Cresta Civic Association, Inc., because they were the only such community organization in existence at the time (1996). He stated that he did not go directly to adjacent property owners such as the Baisdens to elicit their opinions.

Next to testify was Protestant Ruth Baisden who has lived at 7706 Oak Avenue for 18 years and shares a 180-foot-property line with the subject property. Mrs. Baisden has been active in numerous community organizations and is secretary of the Greater Parkville Council as well as chairperson for the community plan for this area as set forth in the Master Plan for Baltimore County. She described the Parkville Park section where she lives as a community of single-family dwellings in an older, very stable neighborhood. Parkville Park is designated as a community conservation area in order to avoid change from the residential qualities it now enjoys. The park in the middle of the community is listed on the County Landmarks' list, according to Mrs. Baisden's testimony.

She further testified that the buffer area of the subject site was arrived at during the 1996 CZMP rezoning of the subject site from D.R. 5.5 to B.L., with the buffer to remain D.R. 5.5. Mrs. Baisden submitted as Protestant's Exhibit No. 2 a letter from councilman Bartenfelder which supported Avery Harden's recommendations concerning the buffer area including the fence concept as well as the landscaping requirements. It is this fence concept and design that Mrs. Baisden wishes the Petitioner to institute.

Mrs. Baisden said that when no fence was erected after the rezoning, she made a complaint to the zoning enforcement office and contacted Mr. Harden. She recited that Mr. Gerahty testified at a previous hearing that the current fence was a temporary one until the grading for the parking lot is completed. She also stated that Mr. Gerahty has not fulfilled the landscaping requirements of 35 evergreens. She said that in the last 4 years since the rezoning only 15 trees and shrubs have been planted and that this planting does not provide a sufficient screening wall. Protestant's Exhibits No. 7 A-I and No. 8 A and B, photos of the buffer area, were accepted as evidence by the Board.

Ernest Baisden, husband of the Protestant, was next to testify. He indicated that he also had lived at 7706 Oak Avenue for 18 years and that he is now President of the Parkville Park Community Association and the Greater Parkville Community Council.

By vocation, Mr. Baisden is a civil engineer and planner licensed in five states. In his opinion as an engineer, Mr. Baisden sees no design problem which would prohibit the buffer area fence being constructed and placed as Mr. Harden designed it. Mr. Baisden presented a drawing (Protestant's Exhibit No. 9) showing how the fence alignment affects the view from his property.

On cross-examination by counsel for the Petitioner, Mr. Baisden testified that he wants the customers, employees and parking lot screened from his view, but that he is mostly concerned with the parking lot. He stated that the subject property and parcels on the other corners of the intersection of Taylor Avenue and Old Harford Road have been used for business purposes such as a beauty salon and a convenience store since he purchased his residence. At that time the subject property was an ABC Rental facility, but he said that he could not see that store from his backyard or his house.

Alice Baker and James Reed, neighbors in the Parkville Park community, testified individually that they believed that the fencing was important to screen the community as a whole from commercial encroachment.

In his closing argument, Mr. Clark, representing the Petitioner, reiterated that the decision of the Deputy Zoning Commissioner is reasonable and that the existing fence should remain where it is as it was

approved with government representatives in May 1997 and confirmed by the Deputy Zoning Commissioner's Order of July 9, 1999.

In her closing, Mrs. Baisden stated that she is unfamiliar with the agreement reached with the representatives of the Office of Law and the County Executive, and that there was no evidence presented in confirmation of that agreement. On the other hand, she stated that there has been consistency supporting the fence design and concept throughout the appropriate County agencies in their approval as shown by the exhibits presented in evidence. She indicated that she felt it was not the job of the politicians to get involved in the County development approval process. Mrs. Baisden stated that the fence should be located and constructed as approved through the County approval process for such construction.

After thorough review of the testimony and evidence before us, the Board unanimously finds as a matter of fact that the existing fence buffering the adjacent residential community from the commercial property at 2711 Taylor Avenue is of a temporary nature. This fence shall be replaced with one of a permanent construction with concrete footings as described by the landscape architect, Avery Harden, in his letter of December 24, 1996. Mr. Harden's letter states as follows:

> As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 fence sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

The Board finds that the replacement fence shall be placed at the existing location; the 60-foot line with a 10-foot interior easement to be used only as set forth in the agreement with Baltimore County (Petitioner's Exhibit No. 8) for business utilities. There shall be no parking and no storage allowed within the 10-foot interior easement. Stops shall be placed 10 feet from the fence to prevent parking within the 10-foot easement strip.

The easement document states (in pertinent part) as follows:

> 2.(A) … said industrial and commercial activities are prohibited on the Open Space Area, except for such activities as allowed in the B.L. Zone in the ten foot (10') strip area as shown on Exhibit C, not including structures or parking lots, but including lighting, grading, slope easements, water and utility lines, fencing and landscaping….

Additional testimony and evidence supports the placement of the fence at this location in order to fully shield the residential community from the commercial uses noted above on the subject property.

The restrictive covenant agreement with the Villa Cresta Civic Association, Inc. (Petitioner's Exhibit No. 3), states in pertinent part that:

> …there shall be a ten foot (10') interior landscape easement established and maintained inside the BL line in a manner consistent with the requirements of said BL zone and with the Baltimore County Landscape Manual. The sixty foot (60') Landscape Buffer, plus the ten foot (10') interior landscape easement, will provide a total of seventy feet (70') of open space from Oak Avenue.

Inasmuch as the fence was the only issue appealed to us in this hearing, the remainder of the Order and Opinion in Deputy Zoning Commissioner Kotroco's opinion of July 9, 1999 (Petitioner's Exhibit No. 9) shall continue as ordered.

In conclusion, the Board feels constrained to note that it is unfortunate for both the Petitioner and the Protestant that governmental representatives outside the legislated development and zoning approval process chose to become involved in the resolution of this conflict. Baltimore County has instituted a review and enforcement policy to deal with such disagreements, and that process is the one on which citizens, both Petitioner and Protestant, must rely, without interference from outside sources, however well meaning.

ORDER

THEREFORE, IT IS THIS 31st day of May, 2000 by the County Board of Appeals of Baltimore County

ORDERED that the previous restrictions imposed upon the Petitioner in Case No. 97-295-SPHA regarding the fencing of the subject property shall remain in full force and effect, pursuant to the following conditions:

1. The existing fence buffering the adjacent residential community from the commercial property at 2711 Taylor Avenue, which is of a temporary nature, shall be replaced with one of a permanent construction with concrete footings as set out by the landscape architect, Avery Harden, in his letter of December 24, 1996, after grading and permanent parking is completed;

2. The replacement fence shall be placed at the existing location (the 60-foot line, with a 10-foot interior easement to be used only as set forth in the agreement with Baltimore County [Petitioner's Exhibit No. 8] for business utilities);

3. There shall be no parking and no storage allowed within the 10-foot interior easement. Stops shall be placed 10 feet from the fence to prevent parking within the 10-foot easement strip, all in accordance with the easement agreement entered into by Petitioner with Baltimore County, Maryland (Petitioner's Exhibit No. 8); and

4. The ten foot (10') interior landscape easement shall be established and maintained *inside the B.L. line in a manner consistent with the requirements of said B.L. zone* and with the Baltimore County Landscape Manual. The sixty foot (60') Landscape Buffer, plus the ten foot (10') interior landscape easement, will provide a total of seventy feet (70') of open space from Oak Avenue, as set forth in the restrictive covenant agreement between Petitioner and the Villa Cresta Civic Association, Inc. (Petitioner's Exhibit No. 3).

Inasmuch as the fence was the only issue appealed to us in this hearing, the remainder of the Order and Opinion in Deputy Zoning Commissioner Kotroco's opinion of July 9, 1999 (Petitioner's Exhibit No. 9) shall continue as ordered.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

Margaret Worrall

Lynn Barranger

TO [illegible] WCR

County Board of Appeals of Baltimore County

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

May 31, 2000

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: In the Matter of Terry J. Gerahty
/ Petitioner /Case No. 98-267-SPH

Dear Mr. Clark:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules of Procedure*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed form this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe for

Kathleen C. Bianco
Administrator

Enclosure

c: Terry Gerahty
Mr. and Mrs. Ernie Baisden
James Reed, Jr.
Joseph Kreis
Barry Ashbury
Ellen Otto
Alice & John Baker, Jr.
Pat Keller /Planning Director
Lawrence E. Schmidt /Z.C.
Avery Harden /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Printed with Soybean Ink
on Recycled Paper

8/5/99

IN RE: PETITION FOR SPECIAL HEARING

	* BEFORE THE
S/E Corner Old Harford Road and Taylor Avenue 9th Election District 6th Councilmanic District (2711 Taylor Avenue)	* ZONING COMMISSIONER * OF BALTIMORE COUNTY * CASE No.98-267-SPH
Terry J. Gerahty Petitioner	*

* * * * * * * * * *

APPEAL

Terry J. Gerahty, Petitioner and Property Owner, by C. William Clark and Nolan, Plumhoff & Williams, Chartered, its attorneys, file this Appeal to the Board of Appeals from the decision of the Zoning Commissioner of July 7, 1999, and appeal specifically:

A. The decision denying the Special Hearing Request to Amend the Order in prior Zoning Case No. 97-295-SPH; and

B. The reimposition of conditions and restrictions upon the Petitioner in Case No. 97-295-SPHA, as described in the Opinion and Order.

Respectfully submitted,

C. William Clark
Nolan, Plumhoff & Williams, Charted
502 Washington Avenue, Suite 700
Towson, MD 21202
(410) 823-7800
Attorneys for Terry J. Gerahty

RECEIVED
AUG - 5 1999
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this on this 5 day of August, 1999, the foregoing Appeal was mailed, first class, postage prepaid, to the following:

Mr. & Mrs. Ernie Baisden
7706 Oak Avenue
Baltimore, MD 21234

C. William Clark

D:\data\CWC\Clients\PoorBoy's\Appeal.wpd

C. WILLIAM CLARK

(410) 823-7800

EMAIL
cwclark@nolanplumhoff.com

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

August 5, 1999

VIA HAND DELIVERY

Ms. Sophie Jennings
Office of Zoning for Baltimore County
Room 109, County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Petition for Special Hearing - Terry J. Gerahty
Case Nos. 98-267-SPH

Dear Ms. Jennings:

Enclosed herein please find an Appeal for immediate filing in connection with the above-captioned case. This firm's check in the amount of $175.00 is accompanying the Appeal to cover the cost of filing.

Additionally, please find this firm's check in the amount of $35.00 to cover the cost of the sign posting fee in connection with the above-captioned case.

Thank you for your anticipated cooperation. If you have any questions, please do not hesitate to contact me.

Until then, I remain.

Very truly yours,

C. William Clark

CWC:kal
Enclosures
cc: Mr. & Mrs. Ernie Baisden
Terry J. Gerahty
D:\data\CWC\Clients\PoorBoy's\Zoningltr.wpd

IN RE: PETITION FOR SPECIAL HEARING
S/E Corner Old Harford Road
and Taylor Avenue
9th Election District
6th Councilmanic District
(2711 Taylor Avenue)

Terry J. Gerahty
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 98-267-SPH
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing filed by the legal owner of the subject property, Terry J. Gerahty, requesting special hearing relief for property he owns at 2711 Taylor Avenue. Specifically, the special hearing request is to amend prior Zoning Case No. 97-295-SPHA regarding the installation of a fence and lighting conditions.

Appearing at the hearing on behalf of the special hearing request were: Terry Gerahty, property owner; Glen McFaul, an employee of BGE and C. William Clark, attorney at law, representing the Petitioner. Appearing in opposition to the Petitioner's request were: Ruth & Ernest Baisden, Alice & John Baker, James Reed, Jr. and Joseph Kreis, all residents of the surrounding community.

Testimony and evidence indicated that property, which is the subject of this special hearing request, is located at the southeast corner of the intersection of Old Harford Road and Taylor Avenue in the Parkville area of Baltimore County. The subject property is being operated by Mr. Gerahty as a garden center known as "Poor Boys".

Mr. Gerahty first came before this Deputy Zoning Commissioner in Case No. 97-295-SPHA. Therein a variance was granted to Mr. Gerahty which allowed him to provide a parking lot which was constructed out of material that was not durable, nor dustless. This relief was

granted to him in lieu of requiring Mr. Gerahty to pave his parking area. As a condition of the granting of the variance, several restrictions were imposed upon Mr. Gerahty. One restriction involved the installation of a board-on-board screen fence running parallel to the property line of Mr. & Mrs. Baisden and also parallel to Oak Avenue. In addition, a restriction was imposed upon Mr. Gerahty regulating the amount and type of lighting to be installed on the property. That previous Order was issued on the 6th day of March, 1997.

Mr. Gerahty files this new petition for special hearing seeking to amend my previous decision, specifically regarding the fencing and lighting conditions I previously imposed upon him.

Extensive testimony and evidence was offered by the Petitioner relating to the fence and lighting on the subject property. Pursuant to my original Order, Mr. Gerahty installed a board-on-board fence running parallel to the Baisden property and Oak Avenue. Said fence is situated 60 ft. from and running parallel with the Baisden property line and the Oak Avenue property line. The purpose of this 60 ft. setback was to establish a buffer area between this commercial business and the adjacent residential properties. The buffer area was to be maintained on a regular basis and kept as if it were a residential yard. As to the location of the fence itself, after my site inspections of the property, I find that the fence was properly installed and located in compliance with the dictates of my previous Order. Therefore, the fence, as it exists on the property today, shall be permitted to remain and need not be relocated. In addition, the height of the fence is appropriate.

The photographs submitted and my site visit revealed that certain sections of the fencing are currently leaning; that is the fence does not presently exist in a straight linear fashion. Mr. Gerahty shall be required to maintain the fence in a neat and orderly manner and also insure that

the fencing itself remains in a vertical position. Mr. Gerahty shall be required to provide additional supports for the fence to insure that the fence remains straight and vertical.

The second issue raised by the petition for special hearing involved the method and amount of lighting that is to be utilized by Mr. Gerahty at his garden center. My previous order mandated that:

> "all outdoor lighting of the subject site shall be supplied in a tasteful manner and installed on fixed standards as approved by Mr. Avery Harden, Landscape Architect for Baltimore County. Within sixty (60) days of the date of this Order, and prior to the installation of any outdoor lighting, the Petitioner shall submit a lighting plan to Mr. Harden for his review and approval. The Petitioner is prohibited from stringing lights along extension cords, from tree to tree, on the subject site. All outdoor lighting shall be installed in such a manner so as not to reflect onto adjacent residential properties."

Testimony and evidence offered at the hearing revealed that Mr. Gerahty did install lighting on the subject property without the approval of Mr. Harden as ordered in my previous decision. Mr. Gerahty worked in conjunction with BGE and installed telephone poles with flood lights affixed to the top of the poles. In addition, Mr. Gerahty continues to utilize the string lighting on the interior of the site. All of this lighting was installed in contradiction to the restriction imposed by my previous decision. The explanation given by Mr. Gerahty was that my previous decision was appealed, and, therefore, this particular restriction not applicable. Mr. Gerahty is now requesting permission to maintain the amount and level of lighting that currently exists.

Further testimony revealed that Mr. Gerahty has spent a considerable amount of money installing these lights on the property. Both he and Mr. McFaul from BGE testified that in their opinion the lights do not adversely affect the adjacent residential properties. However, photographs offered by the Baisdens, as well as their personal testimony, indicated otherwise. Clearly, there are times of the year where the lighting used by Mr. Gerahty does in fact trespass

ORDER RECEIVED FOR FILING
Date 7/12/99
By YP Jamison

onto adjacent residential properties. On my recent site inspections, I could not see light trespassing onto the Baisden house. However, the trees on the property are in full bloom and the leaves do a great job in shielding the glare from these light standards. Without the summertime foliage on the trees, however, light would be a problem as is evidenced by the photographs submitted by the Baisdens, as well as their testimony.

After considering the testimony and evidence offered by the Petitioner, as well as the Baisdens regarding the lighting on the subject property, I find that the previous restriction imposed upon the Petitioner regarding the lighting for the subject property should not be modified. Mr. Gerahty should prepare and submit a lighting plan to Mr. Harden for his review and approval as I originally ordered. This undoubtedly will require the removal and modification of the existing lighting on the property. The lighting fixtures chosen by Mr. Gerahty brightly illuminate the subject property. However, they are not designed so as to prevent light from spilling onto adjacent residential properties. Therefore, I shall re-impose Restriction No. 7 of my previous Order and require that Mr. Gerahty comply with that restriction.

ORDER RECEIVED FOR FILING
Date 7/7/99
By JC Quesenberry

Pursuant to the advertisement, posting of the property, and public hearing held on the Petition and for the reasons given above, the special hearing request filed for the property located at 2711 Taylor Avenue requesting that the restrictions imposed in Case No. 97-295-SPHA regarding the installation of a fence and the lighting on the subject property, be and is hereby DENIED.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner/Hearing Officer for Baltimore County, this 7th day of July, 1999, that the previous restrictions imposed upon the Petitioner in Case No. 97-295-SPHA, regarding the fencing of the subject property, and the

lighting of the subject property shall remain in full force and effect and shall be restated herein as follows:

1. The fence on the subject property shall be permitted to remain as it exists today. The location, height and materials used are in compliance with my previous Order dated March 6, 1997. However, the Petitioner shall be required to maintain the fence in a neat and orderly fashion and shall insure that all sections of the fence remain in an absolute vertical position. All corrections to the fence shall be performed within thirty (30) days from the date of this Order.

2. All outdoor lighting of the subject site shall be supplied in a tasteful manner and installed on fixed standards, as approved by Mr. Avery Harden, Landscape Architect for Baltimore County. Within thirty (30) days from the date of this Order, the Petitioner shall submit a lighting plan to Mr. Harden for his review and absolute approval. It shall be within the discretion of Mr. Harden as to the type and method of lighting that shall be installed on the subject property. Mr. Harden shall insure that no lighting trespasses onto adjacent residential properties. Once a lighting plan is approved by Mr. Harden, the Petitioner shall have thirty (30) days to install said lighting in accordance with the approved plan.

IT IS FURTHER ORDERED, that all other conditions and restrictions previously imposed upon the Petitioner by way of my decision dated March 6, 1997 in Case No. 97-295-SPHA shall remain in full force and effect.

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING
Date 7/7/99
By R. Jamieson

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

July 8, 1999

C. William Clark, Esquire
Nolan, Plumhoff & Williams, Chtd.
502 Washington Avenue, Suite 700
Towson, Maryland 21204

Re: Petition for Special Hearing
Case No. 98-267-SPH
Property: 2711 Taylor Avenue

Dear Ms. Murphy:

Enclosed please find the decision rendered in the above-captioned case. The Request for Special Hearing has been denied in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from 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 410-887-3391.

Very truly yours,

Timothy Kotroco

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

c: Mr. Terry J. Gerahty
Mr. & Mrs. Ernest Baisden
Mr. & Mrs. John Baker
Mr. James Reed, Jr.
Mr. Joseph Kreis

copies also to: Robert Loskot, Asst. Co. Atty.
Doug Silber, Asst. Co. Atty.

Printed with Soybean Ink
on Recycled Paper

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2711 Taylor Avenue

which is presently zoned BL / DR5.5

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

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should ~~approve~~ amend variance case # 97-295 SPHA regarding the fence and lighting conditions (see attached letter).

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

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

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

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Legal Owner(s):

Terry J. Gerahty

(Type or Print Name)

Signature

(Type or Print Name)

Signature

8309 Dalesford Road 410 668-7599

Address Phone No.

Baltimore, MD. 21234

City State Zipcode

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

Terry J. Gerahty

Name

8309 Dalesford Road 410 668-7599

Address Phone No.

Baltimore, MD. 21234

ORDER RECEIVED FOR FILING
Date 1/21/98
By [illegible]

Attorney for Petitioner:

Douglas L. Burgess, Nolan, Plumhoff, & Williams, Chtd.

(Type or Print Name)

Signature

502 Washington Avenue

Suite 700 410 823-7800

Address Phone No.

Towson, MD. 21204

City State Zipcode

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates Next Two Months

ALL OTHER

REVIEWED BY: JRP DATE 1/20/98

Revised 9/5/95

98-267-SPH #267

Poor Boy's Country Market
7721 Old Harford Road
Baltimore, Maryland 21234
(410) 668-7599

January 19, 1998

Timothy M. Kotroco
Deputy Zoning Commissioner
for Baltimore County
Suite 112, Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Petition for Special Hearing (case # 97-295 SPHA)

Dear Mr. Kotroco,

Attached for filing with the Department of Permits and Development Management is a Petition for Special Hearing for the property located at 2711 Taylor Avenue which is presently zoned BL/DR5.5 (the "Petition"). The purpose for filing this Petition is to request that the Order 97-295 (the "Order") be amended with respect to the requirements for fencing and outdoor lighting.

First, the Order should be amended with regard to the requirements for a fence on the Property so that the existing fence that was erected on the Property complies with the Order. There is no Baltimore County Code provision or regulation that requires the erecting of a fence on the Property. Furthermore, the Baltimore County landscape architect, Mr. Avery Hardin, in his signed plan dated December 2, 1996, did not recommend the erecting of a fence on the Property and the covenant agreement between Poor Boy's and the Villa Cresta Civic Community Association requires proper landscaping, not a fence. After a great deal of cooperation between Poor Boy's and County officials, a compromise regarding the fence was reached in the spring of 1997. We agreed to erect a fence, which we have done, in a manner and location agreed to by the County. We obtained a permit for the existing fence, which was granted, and representatives of the County Executive's office inspected and approved the existing fence. We ask that the Department respect the decisions of the County Executive's office and the Department of Permits and Licenses, as well as the spirit of cooperation between Poor Boy's and these various County offices with respect to the existing fence.

Second, with regard to the outdoor lighting requirements on the Property, the Order should be amended to permit outdoor lighting that complies with Baltimore County Code. Section 409.8 of the Baltimore County Zoning Regulations requires that "any fixture used to illuminate any parking facility shall be so arranged as to reflect the light away from residential lots and public streets." This regulation governs the outdoor lighting of only "parking facilities." The majority of the Property is not a "parking facility," but

to be aimed further downward thus greatly lessening the chance that light is reflected onto residential property. This certainly does not sound like the kind of action that would be taken by a business seeking revenge. Rather, it is the action of a business trying to coexist with its neighbors and still operate its business.

Finally, we ask that in deciding whether to grant our request that the Order be amended with respect to what should be two minor issues, namely, a fence and outdoor lighting, you consider the fact that the requirements in the Order imposed on Poor Boy's were 8 pages in length, and that Poor Boy's, without argument, has met or exceeded virtually all of these requirements. For instance, the Baisdens filed a complaint with the Maryland Department of the Environment that our outdoor speaker system did not meet code. Although the speaker system was tested and approved as meeting code, the Order provides that the system only could be used during certain hours and not after 5 p.m. Poor Boy's has not only complied with this requirement, but has completely alleviated the issue by ceasing the use of the outdoor speaker system and, instead, using two-way radios.

We believe the above provides strong and sufficient information upon which to base an amendment to the Order with respect to the requirements for fencing and outdoor lighting. Thus, we respectfully request that the fencing and outdoor lighting requirements of the Order be amended in the manner requested in this letter.

Thank you for your time and consideration.

Respectfully,

POOR BOY'S ~~COUNTY~~ MARKET

By: _____

~~Terry~~ J. Gerahty

Its: President

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2711 Taylor Avenue

which is presently zoned BL / DR5.5

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

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should ~~approve~~ remove the existing variance (case #97-295). In the alternative, we request that variance #97-295 be amended in the manner stated in the attached letter.

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

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

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

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):

Terry J. Gerahty
(Type or Print Name)

Signature

(Type or Print Name)

Signature

Attorney for Petitioner.

William C. Clarke, Nolan, Plumhoff, & Williams, Chtd.
(Type or Print Name)

Signature

502 Washington Avenue (410)823-7800
Address Phone No.

Suite 700,
Towson, Maryland 21204
City State Zipcode

8309 Dalesford Road (410)668-7599
Address Phone No

Baltimore, Maryland 21234
City State Zipcode

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

Terry J. Gerahty
Name

7721 Old Harford Road (410)668-7599
Address Phone No.

Baltimore, Maryland 21234

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

DROP. OFF
NO REVIEW
5/18/98
ncl

98-267-SPH

Revised 9/5/95

ZONING DESCRIPTION
2711 TAYLOR AVE.

ALL That property in Parkville, Baltimore County, Maryland, owned by George C. Peverley, III, as sole tenant, as described herein. For description, refer to Deed dated September 19, 1990 from Gene F. Rahll and recorded among the Land Records of Baltimore County in Liber 8701, Folio 730, and as also described in Deed dated September 29, 1988 and recorded among the Land Records of Baltimore County in Liber 7993, Folio 66.

BEGINNING At a point where the Southwest line of Taylor Avenue intersects the Northwest line of Oak Avenue and running thence along the Northwest line of Oak Avenue South 39 1/4 degrees West 240 feet to a point, thence North 51 degrees West 180 feet to a point, thence North 39 1/4 degrees East 90.0 feet, thence along the boundary line between Lots 126 and 127, 100 feet to a point, thence North 39 1/4 degrees East 150 feet (erroneously described as 100 feet in a previously recorded Deed dated April 16, 1979 and recorded among the Land Records of Baltimore County at Liber E.H.K. 6014, Folio 516) to the Southwest line of Taylor Avenue, thence along the Southwest line of Taylor Avenue South 51 degrees East 280 feet to the place of beginning.

BEING Lots 92, 93, 94 and 95 and part of Lots 91, 124, 125 and 126 on a Plat entitled "Map of Parkville", which Plat was filed among the Plat Records of Baltimore County in plat Book J.W.S. No. 1, Folio 34.

SAVING AND EXCEPTING 177 square feet as described in an Inquisition in Case No. 13/256/82C-8, Baltimore County Circuit Court, recorded among the Land Records of Baltimore County at Liber 6794, Folio 411.

BEING Part of the land conveyed in a Deed dated April 27, 1979 from Ellen J. Hargreaves to Mellor A. Hargreaves and Ellen J. Hargreaves, as recorded among the Land Records of Baltimore County, Maryland at Liber 6138, Folio 159.

BEING Those same lots of ground which by Deed dated September 29, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7993, Folio 066, was granted and conveyed by Mellor A. Hargreaves and Ellen J. Hargreaves, his wife, unto George C. Peverley, III and Gene F. Rahll, a one-half interest each, as tenants in common, in fee simple.

BEING Those same lots of ground which by Deed dated September 19, 1990 and recorded among the Land Records of Baltimore County in Liber 8701, Folio 730 was granted and conveyed by Gene F. Rahll, his one-half interest in said property, unto George C. Peverley, III, in fee simple.

#267

C:\data\cindy docs\WPDOCS\GERAHTY\Easement.1202.dcl.wpd

98-267-SPH

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 069282

DATE 8/5/99 ACCOUNT 001-6150

AMOUNT $ 210.00

RECEIVED FROM: Nolan, Plumhoff & Williams

FOR: Appeal #98-267-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PROCESS ACTUAL TIME
8/06/1999 8/05/1999 16:28:32
REG W503 CASHIER PWFS PFW DRAWER 5
Dept 5 528 ZONING VERIFICATION
Receipt # 093047 DAM
CR NO. 069282
Recpt Tot 210.00
210.00 CK .00 CA
Baltimore County, Maryland

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 069281

DATE 8/5/99 ACCOUNT 001-6150

AMOUNT $ 210.00 (

RECEIVED FROM: Ernest & Ruth Baisden

FOR: Appeal - #98-267-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PROCESS ACTUAL TIME
8/06/1999 8/05/1999 16:27:56
REG W503 CASHIER PWFS PFW DRAWER 5
Dept 5 528 ZONING VERIFICATION
Receipt # 093046 DAM
CR NO. 069281
Recpt Tot 210.00
210.00 CK .00 CA
Baltimore County, Maryland

BALTIMORE COUNTY, MAI AND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 04675

DATE 11/21/97 ACCOUNT R-001-615-000

AMOUNT $ 250.00

RECEIVED FROM: Terry Gaudy
2711 Taylor Ave. Thurs. 12/7
FOR: 0410 SPH Taken by: JEF

98-267-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
11/21/1997 11/21/1997 10:10:47
REG 0303 CASHIER MAIL MRM DRAWER 6
5 MISCELLANEOUS CASH RECEIPT
Receipt # 046765
CR NO. 046765

250.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, M. LAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 056603

DATE 8/18/98 ACCOUNT 001-6150

AMOUNT $ 100.00 (WCR)

RECEIVED FROM: Poor Boys Inc

FOR: REVISIONS Case No. 98-267-SPH
2711 Taylor Avenue
Drop-Off -- No Review

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS ACTUAL TIME
8/21/1998 8/21/1998 11:35:40
REG 0506 CASHIER MAIL MRM DRAWER 6
5 MISCELLANEOUS CASH RECEIPT
Receipt # 034263
CR NO. 056603

100.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

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

Case: #97-267-SPH
2711 Taylor Avenue
SWC Taylor Avenue and Oak Avenue
9th Election District
6th Councilmanic District
Legal Owner(s):
Terry J. Gerahty

Special Hearing: to remove the existing variance (case number 97-295) or in the alternative, amend variance number 97-295.

Hearing: Thursday, October 15, 1998 at 9:00 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.

9/329 Sept. 24 C260881

CERTIFICATE OF PUBLICATION

TOWSON, MD., 9/24/, 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 9/24/, 1998.

THE JEFFERSONIAN,

A. Henrickson

LEGAL AD. - TOWSON

[redacted]

NOTICE OF ZONING 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: #98-267-SPH
2711 Taylor Avenue
SWC Taylor Avenue and Oak Avenue
9th Election District
6th Councilmanic District
Legal Owner(s):
Terry J. Gerahty

Special Hearing: to amend variance case #97-295-SPHA regarding the fence and lighting conditions.

Hearing: Monday, March 2, 1998 at 9:00 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.

2/141 Feb. 12 C206358

CERTIFICATE OF PUBLICATION

TOWSON, MD., 2-12, 19 98

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 2-12, 19 98

THE JEFFERSONIAN,

A. Henrikson

LEGAL AD. - TOWSON

CERTIFICATE OF POSTING

RE: Case # 97-267-SPH
Petitioner/Developer:
(Terry J. Gerahty)
Date of Hearing/Closing:
(Oct. 15, 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

2711 Taylor Ave. Baltimore, Maryland 21234

The sign(s) were posted on Sept. 30, 1998
(Month, Day, Year)

Sincerely,

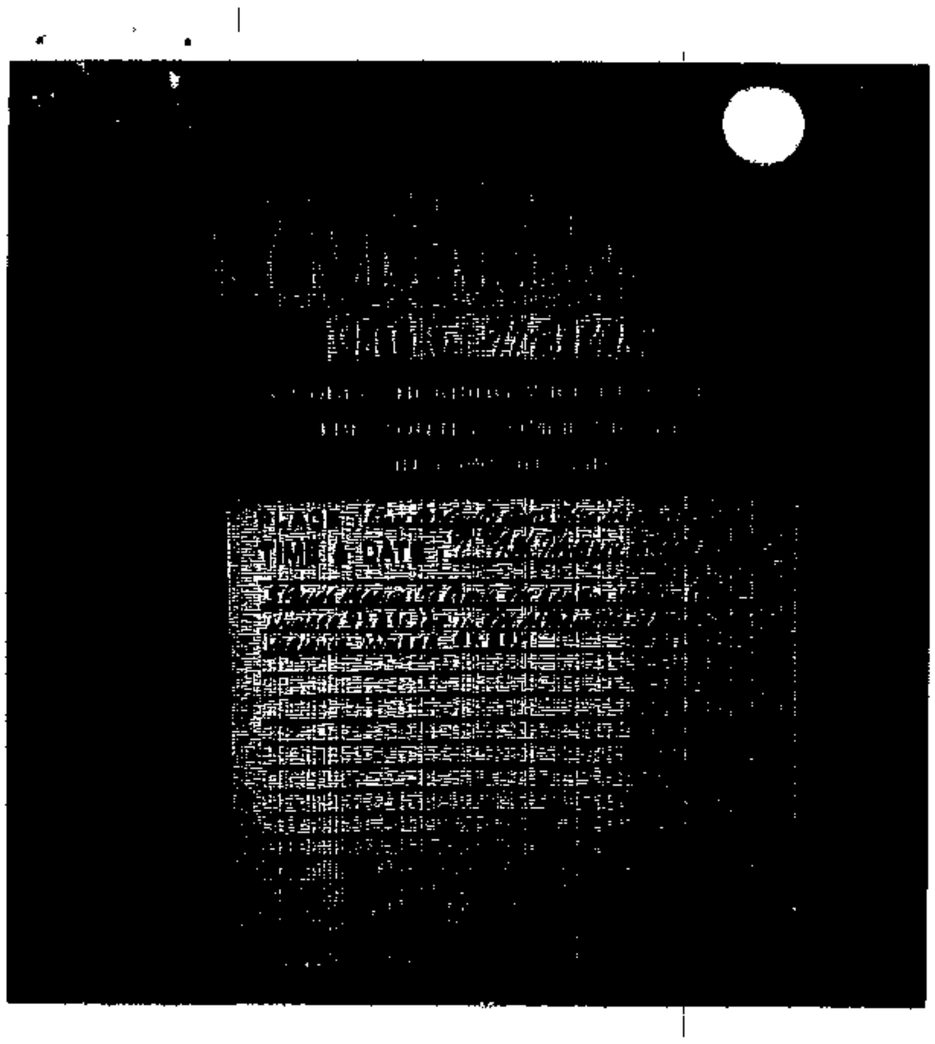
9/30/98
(Signature of Sign Poster & Date)

Thomas P. Ogle, Sr.

325 Nicholson Road

Baltimore, Maryland 21221

(410)-687-8405
(Telephone Number)



CERTIFICATE OF POSTING

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

CASE NUMBER: 97-267-SPH

PETITIONER/DEVELOPER: ( ) TERRY J. GERAHTY

DATE OF HEARING/~~CLOSING~~: ( ) 12-3-98 REPOSTED

ATTENTION: MS. GWENDOLYN STEPHENS

LADIES AND GENTLMEN:

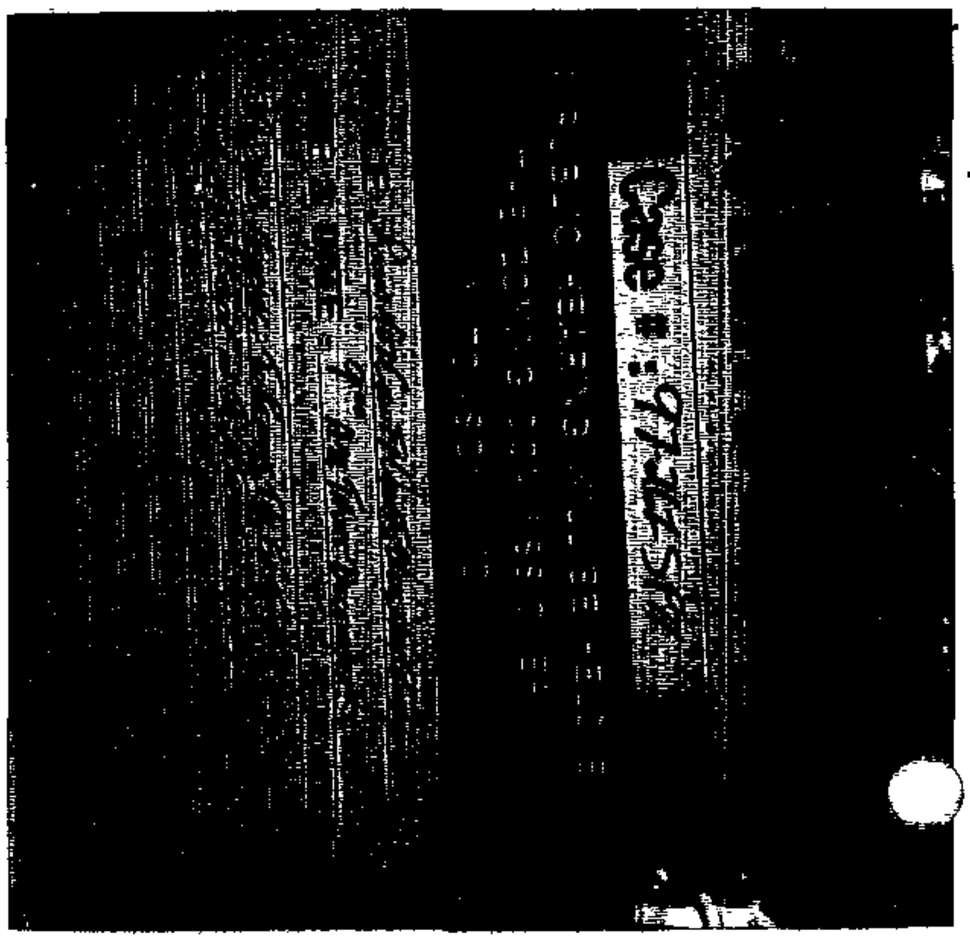
THIS LETTER IS TO CERTIFY UNDER THE PENALTIES OF PERJURY

THAT THE NECESSARY SIGN (S) REQUIRED BY LAW WERE POSTED

CONSPICUOUSLY ON THE PROPERTY LOCATED AT,

2711 TAYLOR AVE. BALTIMORE, MD. 21234

THE SIGN (S) WERE POSTED ON, 11-15-98 BY THE UNDERSIGNED.



SINCERELY,

Thomas P. Ogle 11-15-98

THOMAS P. OGLE SR.
325 NICHOLSON RD.
BALTIMORE MD. 21221
(410) 687-8405
(410) 687-4381 (FAX)

12/13

CERTIFICATE OF POSTING

RE: Case # 97-267-SPH
Petitioner/Developer:
(Terry J. Gerahty)
Date of Hearing/~~Closing~~:
(Nov. 5, 1998)

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

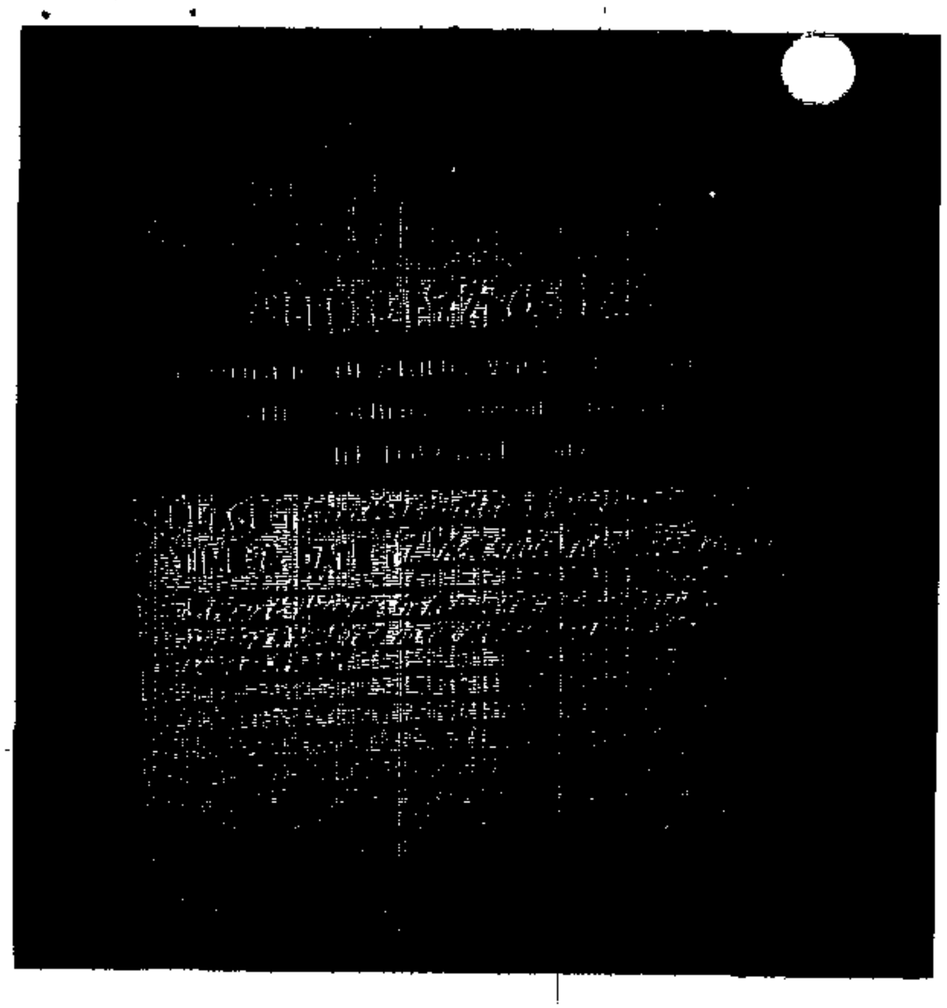
Attention : Ms. Gwendolyn Stephens

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

2711 Taylor Avenue Baltimore, Maryland 21234

The sign(s) were posted on Oct. 22, 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)

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.: #267

Petitioner: TERRY J. GERAHTY

Location: 2711 Taylor Ave

PLEASE FORWARD ADVERTISING BILL TO:

NAME: TERRY GERAHTY

ADDRESS: 7721 OLD Harford RD

BALTO. MD 21234

PHONE NUMBER: 410 668-7599

AJ:ggs

(Revised 09/24/96)

98-267-SPH

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

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

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 98-267-SPH

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

PLACE: _____

DATE AND TIME: _____

REQUEST: SPECIAL HEARING - To amend hearing case # 97-295-SPHA regarding the fence & lighting conditions.

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

CERTIFICATE OF POSTING

RE: Case No.: 98-267-SPH

Petitioner/Developer: TERRY J. GARAHTY LO

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 2711 TAYLOR AVE.

The sign(s) were posted on 9/27/99
(Month, Day, Year)

Sincerely,

Gary Freund 9/27/99
(Signature of Sign Poster and Date)

GARY FREUND
(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

9/96
cert.doc

TO: PATUXENT PUBLISHING COMPANY
February 12, 1998 Issue - Jeffersonian

Please forward billing to:
Terry Gerahty 410-668-7599
7721 Old Harford Road
Baltimore, MD 21234

NOTICE OF ZONING 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: 98-267-SPH
2711 Taylor Avenue
SWC Taylor Avenue and Oak Avenue
9th Election District - 6th Councilmanic District
Legal Owner: Terry J. Gerahty

Special Hearing to amend variance case #97-295-SPHA regarding the fence and lighting conditions.

HEARING: Monday, March 2, 1998 at 9:00 a.m. in Room 407, County Courts Building, 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.

Baltimore County
Department of Permits and
Development Management

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

January 28, 1998

NOTICE OF ZONING 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: 98-267-SPH
2711 Taylor Avenue
SWC Taylor Avenue and Oak Avenue
9th Election District - 6th Councilmanic District
Legal Owner: Terry J. Gerahty

Special Hearing to amend variance case #97-295-SPHA regarding the fence and lighting conditions.

HEARING: Monday, March 2, 1998 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

c: Douglas L. Burgess, Esquire
Terry J. Gerahty

NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY FEBRUARY 15, 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.

Printed with Soybean Ink
on Recycled Paper

TO: PATUXENT PUBLISHING COMPANY
September 24, 1998 Issue - Jeffersonian

Please forward billing to:
Terry J. Gerahty 410-668-7599
7721 Old Harford Road
Baltimore, MD 21234

NOTICE OF ZONING HEARING

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

CASE NUMBER: 97-267-SPH
2711 Taylor Avenue
SWC Taylor Avenue and Oak Avenue
9th Election District - 6th Councilmanic District
Legal Owner: Terry J. Gerahty

Special Hearing to remove the existing variance (case number 97-295) or in the alternative, amend variance number 97-295.

HEARING: Thursday, October 15, 1998 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt SC

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
pdmlandacq@co.ba.md.us

September 2, 1998

NOTICE OF ZONING HEARING

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

CASE NUMBER: 97-267-SPH
2711 Taylor Avenue
SWC Taylor Avenue and Oak Avenue
9th Election District - 6th Councilmanic District
Legal Owner: Terry J. Gerahty

Special Hearing to remove the existing variance (case number 97-295) or in the alternative, amend variance number 97-295.

HEARING: Thursday, October 15, 1998 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

c: William C. Clarke, Esquire
Terry J. Gerahty

NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY SEPTEMBER 30, 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.

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

January 20, 2000

NOTICE OF ASSIGNMENT

CASE #: 98-267-SPH

IN THE MATTER OF: TERRY J. GERAHTY -Legal Owner /Petitioner 2711 Taylor Avenue
9th Election District; 6th Councilmanic

(7/07/99 -Decision of the D.Z.C. in which Petition for Special Hearing DENIED; previous restrictions regarding fence and lighting to remain in full effect.)

ASSIGNED FOR: **THURSDAY, MARCH 9, 2000 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 Appellant /Petitioner : C. William Clark, Esquire
Appellant /Petitioner : Terry Gerahty
W. Glen McFaul /BGE

Appellant /Protestant : Ruth Baisden
(Appealed restriction #1 only)

James Reed, Jr.
Joseph Kreis
Barry Ashbury
Ellen Otto
Alice & John Baker, Jr.

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Avery Harden /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

March 14, 2000

NOTICE OF DELIBERATION

IN THE MATTER OF:
TERRY J. GERAHTY -Legal Owner /Petitioner
Case No. 98-267-SPH

The above matter having been heard 3/09/2000, deliberation has been scheduled as follows:

DATE AND TIME : **THURSDAY, MARCH 30, 2000 at 9:30 a.m.**

LOCATION : **Room 48, Basement, Old Courthouse**

Kathleen C. Bianco
Administrator

c: Counsel for Appellant /Petitioner : C. William Clark, Esquire
Appellant /Petitioner : Terry Gerahty
W. Glen McFaul /BGE

Appellant /Protestant : Ruth Baisden
(Appealed restriction #1 only)
James Reed, Jr.
Joseph Kreis
Barry Ashbury
Ellen Otto
Alice & John Baker, Jr.

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Avery Harden /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

copies: S.W.B.

Printed with Soybean Ink
on Recycled Paper

THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
DOUGLAS L. BURGESS
C. WILLIAM CLARK
CATHERINE A. POTTHAST
E. BRUCE JONES**
CORNELIA M. KOETTER**

* ALSO ADMITTED IN D.C.
** ALSO ADMITTED IN NEW JERSEY

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

NEWTON A. WILLIAMS
(RETIRED 2000)

RALPH E. DEITZ
(1918-1990)

WRITER'S DIRECT DIAL
(410) 823-7850

May 31, 2001

01 JUN 4 AM 9:49

Clerk's Office
Court of Special Appeals of Maryland
361 Rowe Boulevard
Annapolis, MD 21401-1699

Re: *In The Matter of: Ruth Baisden;* *Case No. 03-C-00-6650 and*
In The Matter of: Terry J. Gerahty; *Case No. 03-C-00-6687*

Dear Clerk:

Enclosed herein for immediate filing are the Pre-hearing Information Reports filed by the Appellant, Terry Gerahty in connection with the above-captioned cases.

Please date stamp the file copy and return in the enclosed self-addressed, stamped envelope provided for your convenience.

If you have any questions, please do not hesitate to call.

Very truly yours,

Kathleen A. Lance
Legal Assistant to C. William Clark

KAL:
Enclosures
cc: *J. Carroll Holzer, Esquire*
County Board of Appeals
Terry J. Gerahty
F:\Data\KATIEDATA\data\CWC\Clients\PoorBoy's\ClerkSpAppealltr.wpd

C WILLIAM CLARK

(410) 823-7850

EMAIL
cwclark@nolanplumhoff.com

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

JAMES D NOLAN
(RETIRED 1980)

J EARLE PLUMHOFF
(1940-1988)

RALPH E DEITZ
(1918-1990)

NEWTON A. WILLIAMS, LLC
OF COUNSEL

March 2, 2000

VIA HAND DELIVERY

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

Re: Subpoena of Petitioner Terry J. Gerahty
Case No. 98-267-SPH

Dear Clerk:

Enclosed herein for execution is a Subpoena issued to W. Glen McFaul in connection with the above-captioned case.

Thank you for your attention to this matter.

Very truly yours,

Kathleen A. Lance
Legal Assistant to C. William Clark

KAL
Enclosure

D:\data\CWC\Clients\PoorBoy's\BdAppealsltr.wpd

RECEIVED
COUNTY BOARD OF APPEALS
00 MAR -2 PM 3:43

C. WILLIAM CLARK

(410) 823-7800

EMAIL
cwclark@nolanplumhoff.com

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

August 5, 1999

VIA HAND DELIVERY

Ms. Sophie Jennings
Office of Zoning for Baltimore County
Room 109, County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: Petition for Special Hearing - Terry J. Gerahty
Case Nos. 98-267-SPH

Dear Ms. Jennings:

Enclosed herein please find an Appeal for immediate filing in connection with the above-captioned case. This firm's check in the amount of $175.00 is accompanying the Appeal to cover the cost of filing.

Additionally, please find this firm's check in the amount of $35.00 to cover the cost of the sign posting fee in connection with the above-captioned case.

Thank you for your anticipated cooperation. If you have any questions, please do not hesitate to contact me.

Until then, I remain.

Very truly yours,

C. William Clark

CWC:kal
Enclosures
cc: Mr. & Mrs. Ernie Baisden
Terry J. Gerahty
D:\data\CWC\Clients\PoorBoy's\Zoningltr.wpd

NEWTON A. WILLIAMS
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
DOUGLAS L. BURGESS
ROBERT E. CAHILL, JR.
C. WILLIAM CLARK
E. BRUCE JONES**

*ALSO ADMITTED IN D.C.
**ALSO ADMITTED IN NEW JERSEY

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

July 23, 1999

JUL 23

VIA HAND DELIVERY

The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
for Baltimore County
County Courts Building, Room 407
401 Bosley Avenue
Towson, MD 21204

Re: Baltimore County, Maryland v. Terry J. Gerahty
Petition for Special Hearing; Case No. 98-267-SPH

Dear Mr. Kotroco:

My client and I have received your recent Opinion in the above-captioned matter, and reviewed the same. It appears to us that you have not ruled on several issues that formed a part of the Petition. My notes, and my recollection, reflect that, in addition to relief from the condition and restrictions you placed on the variance in Case No. 97-295-SPHA, involving the location and style of fence and the issue of the lighting, Mr. Gerahty, by letters attached to the Petition and in a letter to you following that, as well as in my opening remarks, the Petitioner asked for relief as follows:

1. Relief from Condition No. 4. - That the Easement Agreement executed between the Petitioner and Baltimore County be applicable to any subsequent owner to the subject property in perpetuity. I would advise you that, since the close of testimony in this case, we have received back from Baltimore County an executed copy of the Easement Agreement, which we offered into evidence. Therefore, I believe that this matter is either moot, or that your Order ought to reflect the acceptance by Baltimore County of the Easement, previously marked as an Exhibit.

2. Relief from Restriction No. 6. Mr. Gerahty testified with respect to the hours of operation for gasoline powered chain saws, which he asked to be from nine to nine, seven days a week during Christmas season only.

3. Relief from Restriction No. 10. Mr. Gerahty asked for relief from Restriction No. 10 to the effect that it should read that those requirements "will not unduly restrict Petitioner from obtaining permits."

4. Relief from Restrictions No. 3b, and 7. Petitioner asked for relief from these Restrictions, which I believe you have dealt with in your Opinion.

Please let us know as soon as you can whether or not you will be issuing a revised Opinion addressing these issues, so that we may file an appeal from your Decision, should the Petitioner wish to do so.

Thank you for your anticipated cooperation.

Until then, I remain.

Very truly yours,

C. William Clark

CWC:kal
cc: Terry J. Gerahty
Mr. & Mrs. Ernie Baisden
D:\data\CWC\Clients\PoorBoy's\Kotrocoltr2.wpd

NEWTON A. WILLIAMS
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
DOUGLAS L. BURGESS
ROBERT E. CAHILL, JR.
C. WILLIAM CLARK
E. BRUCE JONES**

*ALSO ADMITTED IN D.C.
**ALSO ADMITTED IN NEW JERSEY

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

RECEIVED
FEB 16
ZONING COMMISSIONER

February 16, 1999

VIA HAND DELIVERY

The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner
for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Baltimore County, Maryland v. Terry J. Gerahty
Case No. 98-267-SPH

Dear Mr. Kotroco:

As you know, this firm represents Terry Gerahty in connection with the above-captioned case.

I am sorry to inform you that Mr. Gerahty's mother, Rita Gerahty died on February 14, 1999. Enclosed please find a copy of the death notice from the February 15,1999, edition of the *Baltimore Sun* paper. As you can see, the services are scheduled to be held on Thursday, February 18, 1999, which, unfortunately, is the day scheduled for the remainder of the testimony in the above-captioned case. Respectfully, we request a postponement of the hearing.

This morning I spoke to Ruth Baisden and advised her of these developments. She told me she had no objection to the postponement, and asked that your office contact her, as well as me to set a new date. I am taking the liberty of sending a copy of this letter to the other named individuals who received notice of the hearing, but do not have telephone numbers for all of them.

3. Relief from Restriction No. 10. Mr. Gerahty asked for relief from Restriction No. 10 to the effect that it should read that those requirements "will not unduly restrict Petitioner from obtaining permits."

4. Relief from Restrictions No. 3b, and 7. Petitioner asked for relief from these Restrictions, which I believe you have dealt with in your Opinion.

Please let us know as soon as you can whether or not you will be issuing a revised Opinion addressing these issues, so that we may file an appeal from your Decision, should the Petitioner wish to do so.

Thank you for your anticipated cooperation.

Until then, I remain.

Very truly yours,

C. William Clark

CWC:kal
cc: Terry J. Gerahty
Mr. & Mrs. Ernie Baisden
D:\data\CWC\Clients\PoorBoy's\Kotrocoltr2.wpd

C. WILLIAM CLARK

(410) 823-7800

EMAIL
cwclark@nolanplumhoff.com

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Web: www.nolanplumhoff.com

1/15/99
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LOCR
To Sop

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

January 13, 1999

Arnold Jablon, Director
Department of Permits and
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Poor Boys 98-269-SPH

Re: Removal of Variance Conditions, Case No. 97-295

Dear Mr. Jablon:

Please advise me when the second day of the hearing will be scheduled. The first day of the hearing was held on December 3, 1998.

Please contact me upon receipt of this letter, so we know how to proceed.

Until then, I remain

Very truly yours,

C. William Clark

CWC:kal
cc: Mrs. Ernest Baisden

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RECEIVED
99-113
JAN 15 1999
PDM

Greater Parkville Community Council

Help Unite Northeast Baltimore County - For A Better Community

April 2, 1999

Honorable C.A. Dutch Ruppersberger
County Executive
Old Court House - Mezzanine
Towson, MD 21204

APR 12

Dear County Executive Ruppersberger:

Recently I attended a public forum for Neighborhood Open Space held at Morgan State University. The keynote speakers where Patricia Gallagher, Chicago Planning Department and Director of City*Space* (an open space plan for the City of Chicago), and Kathleen Dickhut of Neighbor*Space* (a Chicago Land Trust). The forum offered exciting solutions for overcoming obstacles such as ownership, liability, and maintenance of small parcels of land that could be preserved as community open space.

Cook County (which Chicago is within) was deficient of open space, with half of its open space located in big parks or along the lake and very little open space in established neighborhoods (similar to neighborhoods such as Parkville in Baltimore County). As a result, the Chicago area established several open space programs that have become nationally recognized and have improved the quality of life for its citizens. The School Parks Program was established and is creating 100 new parks on public school property and adjacent to public schools. Another program intiated is Neighbor*Space* which finds local community sites too small (half an acre or less) for the Parks Department to maintain and preserves them as community open space.

Neighbor*Space* is a partnership between government, environmental agencies, and the community in addressing the community's desire for local open space and addresses the issues of ownership, liability, and maintenance. It is a land trust that acquires ownership of the property for the use of small community parks, gardens, and natural areas. All Neighbor*Space* properties are managed by local community groups. The land trust assumes the liability and provides permanent protection of the property. These community open space areas are passive which allows for less liability. The program has proven to be very successful, allowing neighborhood gardeners to beautify local communities and permanently secure precious local community open space. Three years after the creation of Neighbor*Space* the local government has experienced an increase of property values near these sites, which has resulted in an increase of the tax base. Please find attached Neighbor*Space* annual report.

Many of the Community Conservation neighborhoods in Baltimore County have expressed their desire to save small parcels of open space in their areas. Most of these communities were developed prior to open space development requirements and are deficient in open space when compared to the newer developments. These Community Conservation areas

are already built out and much of the small undeveloped parcels of land are being subject to infill development which frequently result in a detrimental effect to the surrounding neighborhood. Protecting these small parcels of land as local open space has been a key concern, especially for residents living in Community Conservation areas. This concern has been expressed at Capital Improvement Budget Hearings, Master Plan 2010 Community Conservation Advisory Group, Town Meetings, Community Conservation Action Group, Project 98, and in the Greater Parkville/Carney Community Plan Survey. During the last election the voters overwhelmingly approved open space funding. Out of 148 ballot questions on open space funding across the Country, 124 (84%) were approved by the voters.

The Neighbor*Space* Program is an effective way for local government to protect and support community management of local community open space and address liability, ownership, and maintenance issues. I feel that a land trust similar to Neighbor*Space* would work well in Baltimore County. Other areas such as Boston, Philadelphia, Atlanta, Portland, San Francisco, and Seattle already have similar programs. Baltimore City seems to be very interested and will be moving forward with developing a land trust organization as well.

A successful program like Neighbor*Space* can be the blue print for Baltimore County so that available properties such as the "L" shape buffer area at Taylor and Oak Avenues in Parkville can be publicly owned and permanently protected as local community open space. I have contacted Neighbor*Space* and the company that provides their liability insurance and will be receiving more information. I am requesting that Baltimore County go forward with this initiative and feel that this will improve the quality of life for citizens in our Community Conservation areas. If you have any questions you may reach me at 410 668-2580.

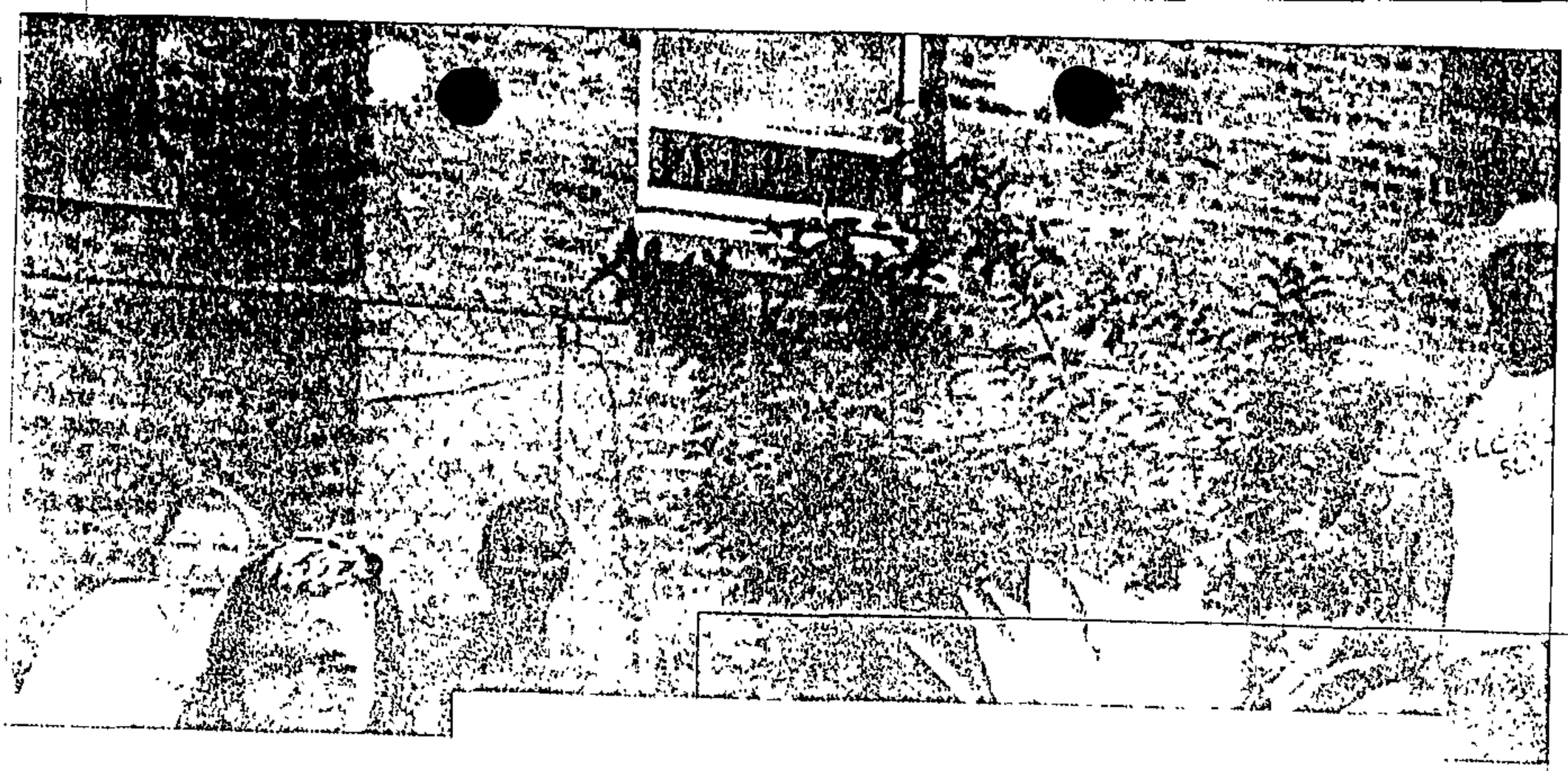
Yours Truly,

Ruth Baisden

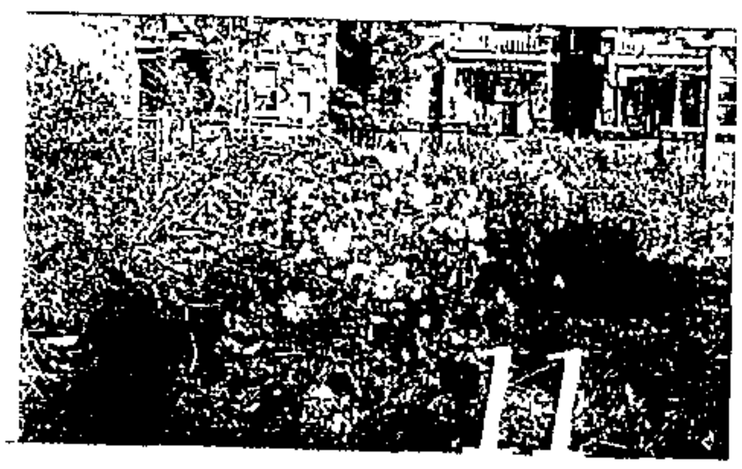
Ruth Baisden
Chairperson of the Greater Parkville/Carney Community Plan
7706 Oak Avenue
Parkville, MD 21234

attachments:

CC: Bob Barrett, County Executive's Office
Baltimore County Council Members
Baltimore County Planning Board Members
Pat Keller, Director, Office of Planning
David Fields, Director, Office Community Conservation
John F. Weber, III, Director, Dept. Recreation and Parks



1998 Annual Report



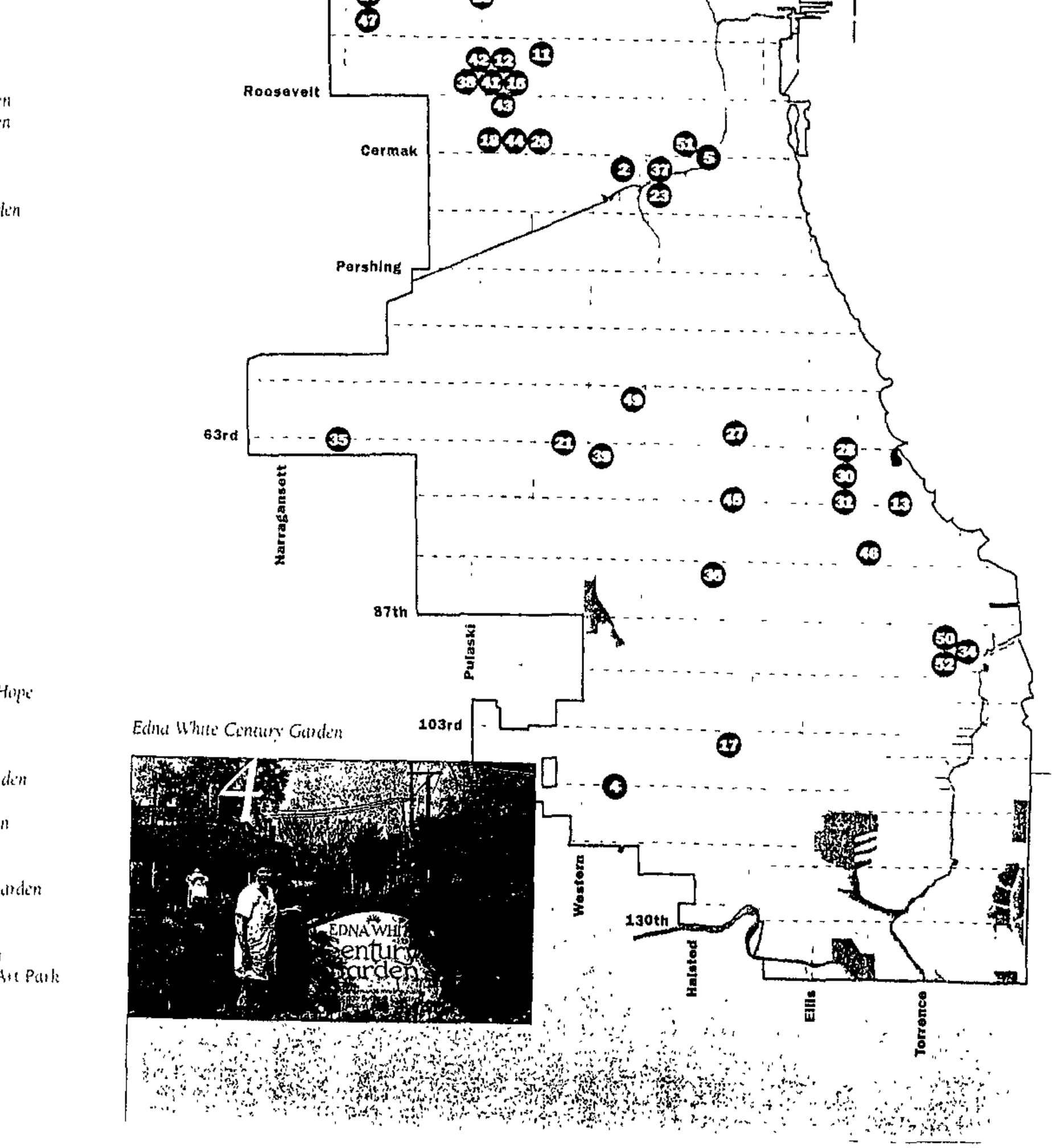
NeighborSpace

NeighborSpace Sites

Legend

- Chicago Park District
- Forest Preserve District of Cook County
- Chicago River and Inland Waterways

1 Drake Gardens
2 Xochiquetzal Peace Garden
3 Clark & Wisconsin Park Site
4 Edna White Century Garden
5 Emerald Triangle
6 Frankie Machine Garden
7 Howard Area Community Garden
8 LaPointe Park
9 Neighbors Garden
10 Triangle Park
11 3400 W Flournoy Block Club Garden
12 3800 W Flournoy Block Club Garden
13 7000 S Merrill Community Garden
14 Ginkgo Organic Gardens
15 Super Block Park
16 3800 W Arthington Block Club Garden
17 Langston Hughes School Garden
18 1900 S Ridgeway Enabling Garden
19 Children's Garden of Hope
20 Paradise Garden
21 Churchview Park
22 Greenhouse Garden
23 Origins Triangle
24 Riverside Neighbors
25 Sheffield Site
26 1600/1800 South Troy Block Club
27 Chicago Better Housing Association
28 WECAN
29 1200 North Menard Garden
30 6800 South Dante Garden
31 6900 South Dante Garden
32 Refugee Community Garden Project
33 West Andersonville Gardens
34 South Chicago People's Park
35 62nd & Central Green Space
36 7900 South Lowe Block Club Park
37 Whittier School River Project
38 3800 Fillmore Block Club Garden of Hope
39 Hamilton Greenway Project
40 3900 North Heritage Green Space
41 Crystal Peace Garden
42 3900 West Arthington Block Club Garden
43 Grenshaw Goody Garden
44 1800 South Millard Block Club Garden
45 69th & Stewart Block Garden
46 7600 Ridgeland Block Club Garden
47 100/200 North Laramie Block Club Garden
48 Edgewater Gateway
49 5500 South Marshfield Garden
50 8800 S Exchange Community Garden
51 Eighteenth Street Development Corp Art Park
52 Victory Garden



Edna White Century Garden

John H. Stroger, Jr.
President, Forest Preserve District of Cook County

Richard M. Daley
Mayor, City of Chicago

John W. Rogers, Jr.
President, Chicago Park District

A letter from the President

When NeighborSpace was incorporated in mid-1996, our initial three-year goal was to acquire land for 39 parks and gardens. By the end of two full years of operation, NeighborSpace had far exceeded that goal. It owned 15 sites, leased 3 sites and was proceeding with the acquisition of another 34 sites for a total of 52 parks and gardens. Citizens from across Chicago continue to seek assistance from NeighborSpace to secure open spaces to be maintained and cared for by block clubs, community organizations and businesses.

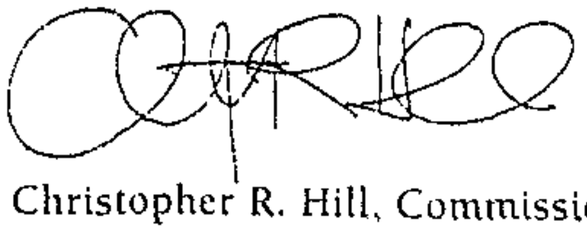
The momentum behind NeighborSpace is gaining attention across the region, state and nation. In 1998 the Metropolitan Planning Council recognized NeighborSpace when it awarded their prestigious Burnham Award to the City of Chicago, Chicago Park District and Forest Preserve District of Cook County for the *CitySpace Plan, an Open Space Plan for Chicago*. Also in 1998, NeighborSpace received the Urban Innovation in Illinois Award for fiscal responsibility by The Civic Federation and a statewide consortium of financial and professional organizations. In addition, NeighborSpace has been recognized by the Land Trust Alliance, an organization serving land trusts across the country. For two consecutive years, the Alliance has awarded NeighborSpace the maximum funding from its Great Lakes Grant Program.

While news of NeighborSpace successes often recounts the number of parcels or acres of open land saved, behind each plot of land is the story of people and what the land means to them and to their community. In 1998, NeighborSpace began collecting these stories, and excerpts of them appear in this report. Through the words of dedicated Chicago citizens, the real value of a land trust such as NeighborSpace becomes clear.

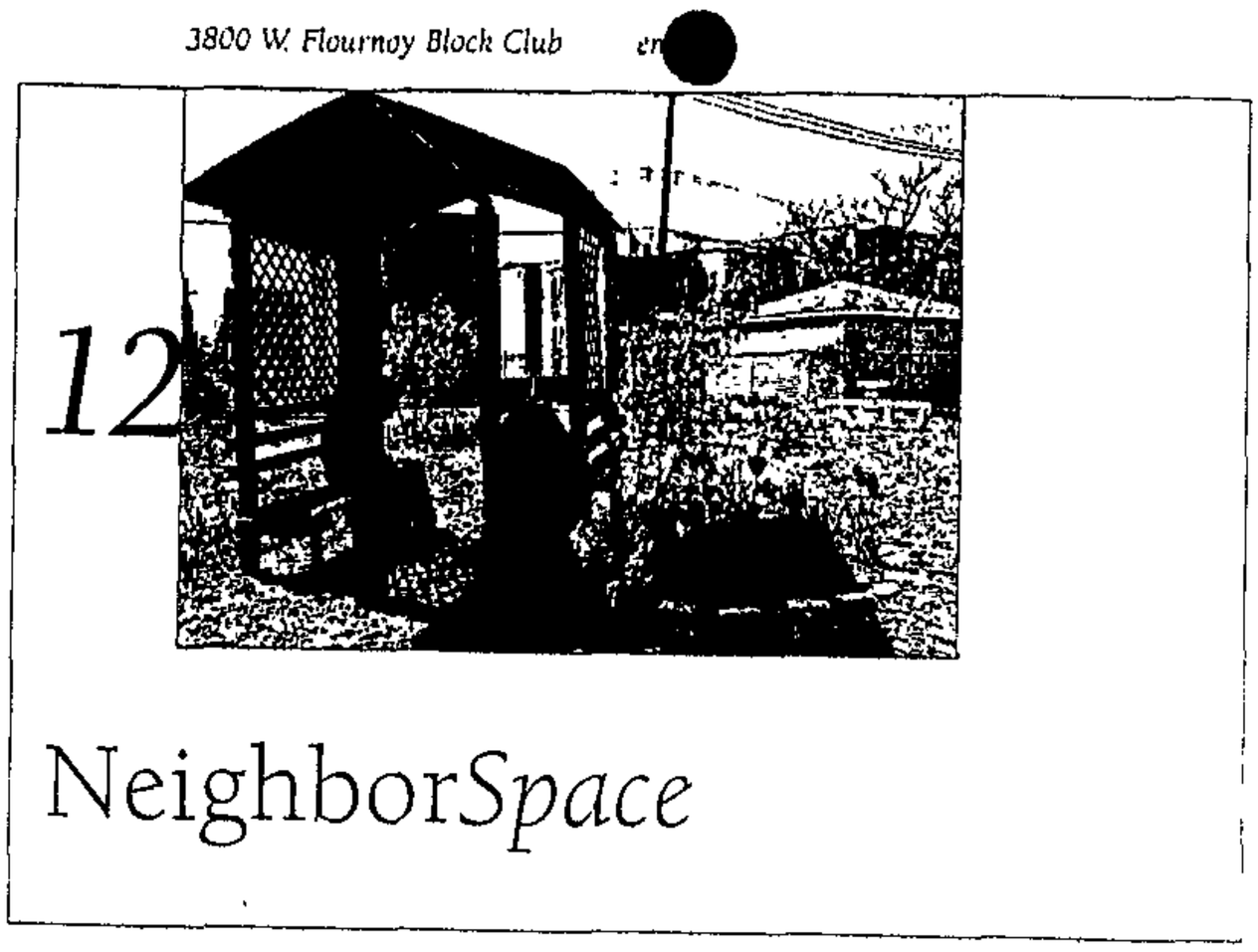
With the momentum of our initial success behind us, in 1998 the NeighborSpace Board of Directors began charting the course for the long-term viability of the organization. Consultants were brought on board to interview NeighborSpace board members, site managers and staff from partner organizations and private foundations to identify the strengths and weaknesses of NeighborSpace. The result of these interviews was the conclusion that private foundations are generally more interested in funding the actual greening activities of neighborhood organizations than land acquisition—the primary activity of NeighborSpace. In response, Mayor Richard M. Daley, Park District President John Rogers and Forest Preserve District President John Stroger renewed the initial three-year intergovernmental agreement sponsoring NeighborSpace for 20 years, with funding to be appropriated on an annual basis.

To further secure NeighborSpace in the future, the Board of Directors created the NeighborSpace Stewardship Fund. With this fund, approximately $6,000 is set aside for every site acquired or leased by NeighborSpace to support long-term management and maintenance of this land. The fund currently contains $105,000.

Before NeighborSpace, there was no effective way for local governments to protect and support community-managed open spaces. Over the last two and one-half years, Chicago's neighborhood gardeners have proven the capacity and power to beautify and secure their precious open spaces. On behalf of the Board of Directors, I want to thank these citizens for their dedication and hard work. We look forward to working with these and future NeighborSpace managers for the next 20 years.



Christopher R. Hill, Commissioner
City of Chicago Department of Planning and Development
President, NeighborSpace Board of Directors



12

The Neighbors in NeighborSpace

Garden Therapy. [12] After a building was torn down in North Lawndale, the lot became an eyesore filled with weeds and junk. With no ones permission but plenty of zeal, JoElla Williams set to work on the 3800 W. Flournoy Block Club Community Garden. "It's life to me," Mrs Williams says. "The garden is like a doctor. When I put a plant out there with my hands and see it come back next year, it makes me want to live."

A Breath of Green. [5] A small plot of land in Pilsen east of Halsted and south of 21st Street doesn't offer the world's prettiest view Immediately east of the lot, enormous concrete pillars prop up eight lanes of the Dan Ryan Expressway. Overhead the expressway roars with cars and trucks, and the only real scenery to be found is on a Marlborough billboard showing horses and mountains. This seems an unlikely choice of a place to go if you hope to find hills forested with white pines and Douglas fir. But thanks to Al DiFranco's work at this site, hills have formed and trees are thriving transforming a former junkyard into the miniature forest of the Emerald Triangle.

Tavern to Trees. [19] An apartment complex with a street-level tavern stood on the site of the Children's Garden of Hope. Though the tavern in Humbolt Park had always been a source of consternation to the residents of the block, it was better than the vacant building that remained when the tavern finally closed. Not that it stayed vacant for long. "There were people living there," recalls neighbor Bettina Savage. "But I don't guess they were paying rent, they were just flopping It was a crack house." When the City finally razed the building, downgrading it from den of iniquity to simple eyesore, the neighbors seized the opportunity to beautify the spot. "It sort of brightens the neighborhood People seem to take better care of their houses, clean up trash in their yards," she says. "We have a group that comes out and cleans the whole block every Saturday now. What it really did was bring the people on the street together."

A Force for Green—and Good. 5' There used to be a 24-flat building on the site of Paradise Garden in Austin. "It had three or four owners and finally was abandoned There was all kinds of awful stuff going on in there—drugs, squatters, awful stuff. And the kids had to walk right by it on their way to school." It took six years of trips downtown, calls to the alderman, and letters to the powers that be before the building was finally torn down and the land established as a community garden. "Now," says gardener Mary Peery, "as long as one tree stands, this land belongs to the neighborhood."

From Community Garden to Homeless Table. [14] On a sliver of land between two multi-story apartment buildings in Uptown, Ginkgo Organic Gardens gushes like a green geyser "We challenge the definition of a community garden," co-founder Jill Swan concedes, because of the distance of the gardeners' homes from the land. "But even though we don't get our volun-

...Garden

teers from within the immediate community. We take the energy that people have for gardening and channel it to solve a larger community hunger problem." Ginkgo has two main destinations for the 800 pounds of fresh produce they grow each year. One is the Inspiration Cafe, a free restaurant staffed by and dedicated to the homeless. The other is Growers Land, a free supermarket run by Open Hand Chicago serving low-income people with AIDS.

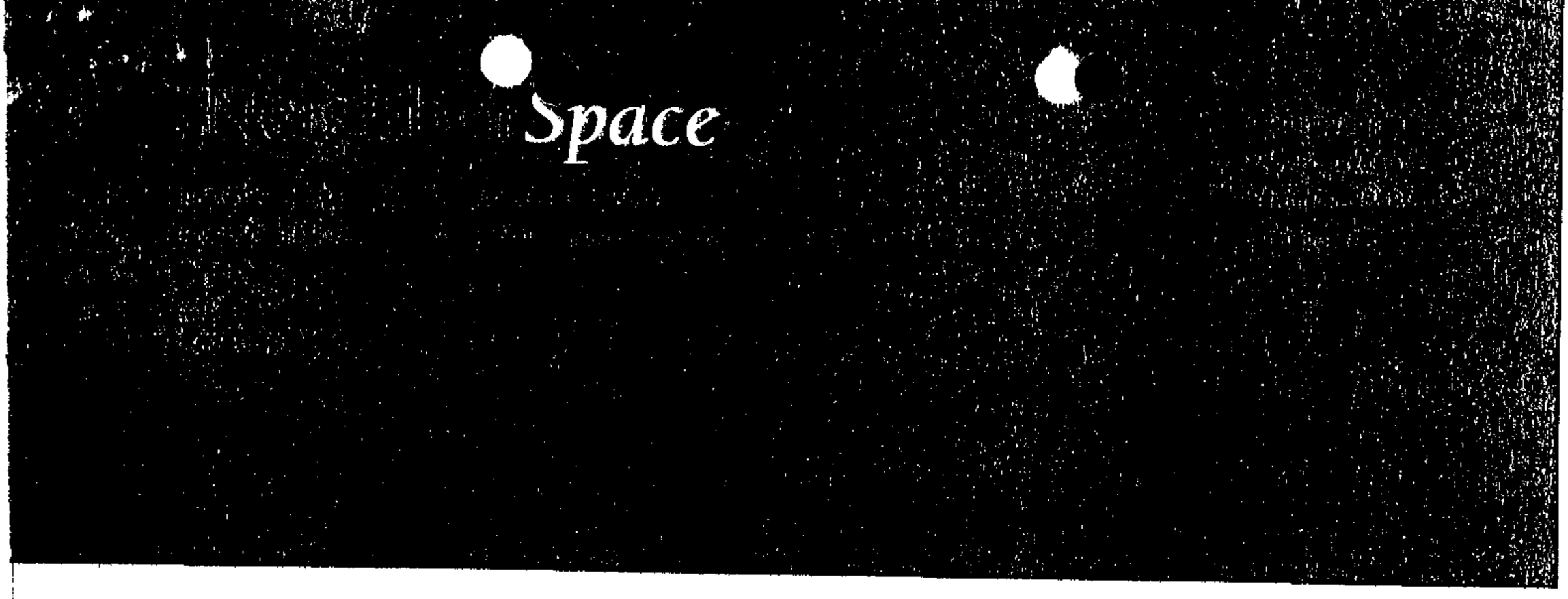
Common Ground. The most important thing is that the Frankie Machine Garden is a common ground for everyone who gardens there," says Marjorie Issacson of the West Town neighborhood. "It's a way to get to know your neighbors and start a conversation. We may not go to the same schools or churches but the garden draws us together."

1998 Financial Statement

Contributions/Land Donations	5,100
Contributions/Site Specific	4,600
Investment Interest	28,762
Contract Income–City of Chicago	93,750
Contract Income–Chicago Park District	93,750
Contract Income–Forest Preserve District of Cook County	93,750
Total Revenue	**319,712**
Program Expenses	112,077
Property Expenses	46,087
Total Expenses	**158,164**
Revenue Over Expenses	161,548
Fund Balance, Beginning 12-31-97	464,140
Fund Balance, ending 12-31-98	**625,688**

In 1998 the NeighborSpace Board of Directors established the **NeighborSpace Stewardship Fund**. The Stewardship Fund will provide a long-term source of income for ongoing property expenses. The Fund's end of the year balance stood at $105,000.

Frankie Machine Garden



NeighborSpace 1998 Board of Directors

Officers

President
Christopher R. Hill
Commissioner, City of Chicago
Department of Planning
and Development

Vice President
Deborah Sims
Commissioner, Forest Preserve
District of Cook County

Secretary
John W. Baird
Chairman, Baird & Warner, Inc.

Treasurer
Edward K. Uhlir
Director, Millennium Park Project

Board of Directors

Anita M. Cummings
Commissioner, Chicago Park District

Janice Bennett
Manager of Advertising and Public
Relations, KMC Telecom

Susan B. Brogdon
Vice President of Programs,
Chicago Botanic Garden

Henry L. Henderson
Commissioner, City of Chicago
Department of Environment

John Henderson
Acting Deputy Director of Research,
Planning and Evaluation, Chicago
Park District

Allan Mellis
Director of Planning and
Development, Forest Preserve
District of Cook County

Mary Ann Smith
Alderman, 48th Ward

Ex-Officio Members

Carolyn Williams Meza
General Superintendent, Chicago
Park District

Joseph Nevius
General Superintendent, Forest
Preserve District of Cook County

NeighborSpace Staff

Kathleen E. Dickhut
Project Director

Thomas Hahn
Technical Advisor

Julie Frugé-Greco
Program Assistant

Laura Ackelson
Program Assistant

Staff Assistance Provided by:

City of Chicago Department of
Planning and Development

Patricia Gallagher
Assistant Commissioner

Ray Pruchnicki
Senior Research Analyst

Michael A. Volini
Legislative Liaison

City of Chicago Department of Law

Elizabeth K. Whitaker
Assistant Corporation Counsel

Contributors

NeighborSpace funding in 1998 was provided by the City of Chicago Department of Planning and Development, the Chicago Park District and the Forest Preserve District of Cook County. The City of Chicago Department of Environment conducted Phase I Environmental Site Assessments for five NeighborSpace properties. Thomas Hefty, Attorney, McDermott, Will & Emery, *provided pro bono legal services for* Frankie Machine Garden, Paradise Garden and the 3800 Fillmore Block Club Garden of Hope. Additional financial contributions provided by the Land Trust Alliance and Wolff Clements and Associates, LTD.

NeighborSpace is a not-for-profit organization that acquires small community parks, gardens and natural areas in the City of Chicago. NeighborSpace owns the land, while block clubs, businesses and community organizations provide day-to-day maintenance and management.

Call the NeighborSpace office to obtain an application for land acquisition. Staff can assist in determining land ownership and acquisition costs. Applications are reviewed by the NeighborSpace Board of Directors several times during the year.

Design by Three Communication Design

Greater Parkville Community Council

Help Unite Northeast Baltimore County - For A Better Community

RESOLUTION

Resolved: That the position of the Greater Parkville Community Council (GPCC) as adopted by the Board of Directors on the zoning matter known as:

Special Hearing: Case Number 98-267
Amendment Of Conditions In Variance

Petitioner: Mr. Gerahty (owner of Poor Boys Country Market)

Reference: Case Number: 97-295
Findings Of Fact And Conclusion Of Law

is that:
The 70 foot "L" shaped landscape buffer area be accepted as a county owned community passive park with an eight foot high wooden fence as described in Councilman Bartenfelder's September 18, 1997 letter. If the original intent of the passive park is not possible, GPCC supports a permanent open space easement written so the intent of the community passive park would be satisfied. Furthermore, the conditions that Mr. Gerahty is requesting relief from should remain and be promptly enforced.

As witness this day of March 8, 1999.

ATTEST:

Greater Parkville Community Council

Secretary

President

Board Member Witness

Board Member Witness

Greater Parkville Community Council

Help Unite Northeast Baltimore County - For A Better Community

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Greater Parkville Community Council.

ATTEST:

Ernest Baisden
Greater Parkville Community Council

Secretary

President

Board Member Witness

Board Member Witness

March , 1999

Greater Parkville Community Council

Help Unite Northeast Baltimore County - For A Better Community

RESOLUTION

Resolved: That at the general meeting of the Greater Parkville Community Council (GPCC) held on February 10, 1999 it was decided by the Council that responsibility for review and action on all zoning and development related matters be the responsibility of the Board of Directors consisting of the following members:

Ernest Baisden, President
Nancy Hilsher, Vice President
Jana Leonard, Treasurer
Ruth Baisden, Secretary
Bob Carpenter, Director
Gregory Leverton, Director

As witness this day of March 8, 1999.

ATTEST:

Secretary

Greater Parkville Community Council

President

Board Member Witness

Board Member Witness

Greater Parkville Community Council

Help Unite Northeast Baltimore County - For A Better Community

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Greater Parkville Community Council.

ATTEST:

Ruth Baisden
Greater Parkville Community Council

Secretary

President

Board Member Witness

Board Member Witness

March 8, 1999

The Parkville Park Community Association Inc.

7706 Oak Avenue Baltimore, Maryland 21234 (410) 668-2580

RECEIVED
FEB 9 19
ZONING COMMISSIONER

February 8, 1998

Mr. Robert W. Bowling,
Department Plans Review Division
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Dear Mr. Bowling:

This is a follow-up to our recent letter of February 3, 1998 regarding Poor Boys Country Market expansion development plan. An item was missed in our initial review concerning the Landscape Buffer Area shown on the subject development plan.

It should be noted on the development plan that an open space easement agreement exist for the Landscape Buffer Area in accordance with zoning case 97-295 SPHA. All conditions and restrictions of the zoning case shall be included and incorporated into the open space easement agreement in accordance with condition 4.) page 7 of the Findings of Fact and Conclusion of Law by Deputy Zoning Commissioner Timothy Katroco. This easement was to be reduced in writing and recorded in the Land Records of Baltimore County within 60 days of the order (dated March 6, 1997). The easement will be applicable to any subsequent owner of the subject property in perpetuity.

If there are any questions regarding this matter, please call Ruth Baisden at 410 668-2580 or write to the address above.

Sincerely,

Ernest M. Baisden

Ernest M. Baisden, President
Parkville Park Community Association

cc: Arnold Jablon, PDM
Rick Wisnom, PDM
Rahee Famiali, PDM
Avery Harden, PDM
Al Wirth, DEPRM
Lee Dregier, DEPRM
Timothy Katroco (Deputy Zoning Commissioner)

The Parkville Park Community Association Inc.

7706 Oak Avenue Baltimore, Maryland 21234 (410) 668-2580

RECEIVED
AUG - 2
ZONING

August 1, 1999

The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner for Baltimore County
County Courts Building, Room 407
Towson, MD 21204

RE: Baltimore County, Maryland vs. Terry Gerahty (owner of Poor Boy's)
Petition To Amend Variance Conditions Case # 98-267 SPH - July 7, 1999

Dear Mr. Kotroco:

The Board of Directors has reviewed your recent opinion of the above captioned matter and appreciate your decision to uphold your original order (case # 97-295 dated March 6, 1997) by **denying** the relief of the conditions for variance. As you may recall from our testimony the Parkville Park Community Association (PPCA) fully supports the conditions in the original order and feel these conditions should remain in full effect. The conditions that the petitioner had requested relief from are of the most critical in protecting and preserving the residential character of our community in the future.

However, after reviewing your recent order there was confusion over an inconsistency between the original and most recent order. The July 7, 1999 ruling describes the fence as "shall be permitted to remain as it exists today. The location, height and materials used are in compliance with my previous Order dated March 6, 1997." The pervious order states that the fence shall be installed in accordance to the diagram provided by Avery Harden in his letter of December 24, 1996. This same letter and diagram is also attached to Councilman Bartenfelder's letter dated September 8, 1997 describing his intent of the buffer area when rezoning the property. (See enclosed Councilman's letter of intent with Avery Harden's letter and diagram attached). The existing fence is not in compliance with Mr. Harden's diagram. The diagram describes an 8 foot fence (6 foot wooden fence with a 2 foot lattice on top) a more sturdy construction, and placement of the fence on the 70 foot line. It is also noted in the letter that this will be required when applying for a permit. The Board request a review and clarification of the inconsistent fence requirement of your recent order.

We recently were copied on a letter dated July 23, 1999 sent to you from Mr. C. William Clark, attorney for the petitioner. The board is in strong opposition to the request of this letter.

Thank you for your time and consideration. I look forward for the clarification concerning the fence height, type of construction and location. If you have any questions or would like to discuss this matter, call me or Ruth (my wife) at 410 668-2580.

Sincerely,

Ernest M. Baisden, President
Parkville Park Community Association

File 98-262-SPH Plat Bags

The Parkville Park Community Association Inc.

7706 Oak Avenue Baltimore, Maryland 21234 (410) 668-2580

RECEIVED
FEB 16

To: Attached Distribution List

Date: February 16, 1999

Re: Response To Letter Sent By Michele Schafer- Gallagher

It has come to the attention of the Parkville Park Community Association (PPCA) Board of Directors that a letter (attachment A) was sent to you from the Law Office of Michele Schafer-Gallagher. In this letter slanderous statements are made to government officials and the press which the Board feels must be addressed. These accusations are unsubstantiated or based on false statements. Our response is as follows.

PPCA's Nomination /Election Process

The method by which the PPCA conducts its nominations and election process is outlined in its bylaws. At election time the pertinent information is reviewed. In general, the election is to be held annually during the month of January; nominations are accepted starting September; to be eligible for nomination the member must be in good standing for a minimum of one year; nominations can be accepted from the floor as well. Notices are given out for each of the five general meetings per year. During this past election, only five nominations were received in advance of the January meeting. At the January meeting a nomination was also received from the floor for president. This nominee received two votes, the nominee's and the person that made the nomination. These two members and one other (which did not attend the meeting) are Ms. Schafer-Gallagher's clients.

Amendment Of The PPCA's Bylaws

The bylaws have never been amended. There was no statement to that effect made by Ruth Baisden during the January meeting. Ms. Schafer-Gallagher was present during the entire meeting and has made a false statement in her letter. Copies of the bylaws have been displayed for members to take during several general meetings. No member had asked any of the Board Members for the bylaws and not received a copy.

PPCA Members Not Included In Decisions

Without having any specific examples regarding this accusation it is difficult to address. We work on many projects, and attend hearings regarding the community as well as county-wide issues. Attached is a summary of our initiatives and associated public outreach (attachments B&C). These initiatives are discussed at our meetings and a consensus has been reached to go forward with them.

Excluding Members In The Operation Of The Association

Frankly, this accusation is puzzling. Like most associations the work falls on a few members. There is plenty of work to go around but very few volunteers. Ms. Schafer-Gallagher's clients have had the opportunity to volunteer and are welcome to do so in the future.

Ms. Schafer-Gallagher's past actions have concerned members of the Board. For instance, she was the only resident of the area that testified at the Landmarks Preservation Commission meeting against the Parkville Park being placed on the historic landmark list. You may have also received other letters from her in the past as organizer and principal of a group called the Friends of Poor Boys. This group was organized as a community planting group that would receive Poor Boys Country Market newsletters. Board members and others join under this premise and receive the attached newsletters (attachments D&E) which are consistent with that premise. A PPCA Board Member volunteered for a community planting to find herself and Ms. Schafer-Gallagher as the only participants out of a proclaimed membership of 1,300.

It was brought to the Board's attention that Ms. Schafer-Gallagher had written letters (attachment F) under the Friends of Boys name to county officials in support of relieving Poor Boys of county requirements. As members of the Friends of Poor Boys, we did not know the group would be speaking on community issues and others have said the same. This is a concern because that was not the stated purpose of the group. Ms. Schafer-Gallagher did not reveal this in her letters to the county officials or to the people that signed up for the planting group. In the October 14th letter to the zoning commissioner, Ms Schafer-Gallagher makes unsubstantiated statements which we believe are misleading and does not reflect our knowledge of the community. This group is essentially people on a mailing list that receive a newsletter and volunteer for plantings. The group has no bylaws, no elections, no boundaries, and no general meetings where issues would be discussed.

In conclusion, there are zoning conditions and county requirements that still have not been met by the Poor Boys business. The owner of Poor Boys is currently asking relief of them. PPCA passed a resolution to follow-up on the Poor Boys expansion so that promises made to the community are met and the expansion is implemented without detrimental impact to the surrounding residences. The PPCA did not support the 1996 Poor Boys rezoning request. The only three votes that did were Ms. Schafer-Gallagher's clients. This appears to be the real issue.

Ms. Schafer-Gallagher's letter appears to be an attempt to discredit the PPCA and its Board Members when testifying and requesting grants to benefit residents of Parkville Park. State and County officials have been very helpful in responding to the needs and requests of the PPCA and our community council (Greater Parkville Community Council). A lot has been accomplished in a short period of time due to this partnership and we look forward to continued success. We appreciate your understanding of this matter and welcome your suggestions on how to address this situation. If you would like to discuss this matter in more detail, please do not hesitate to call Ruth Baisden at 410 668-2580.

Respectfully yours,
Board Members Parkville Park Community Association

Ernest Baisden, President

Joseph Kreis, Vice President

Ruth Baisden, Secretary

Gill Reed, Board Member

Beverly Sandroni, Board Member

DISTRIBUTION LIST

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Robert Schutz, Villa Cresta Civic Assoc.
Butch Johnson, Harford Park Community Assoc.
Richard Forstner, Parkville Business and Professional Assoc..

Newspapers
Virginia Terhune, Patuxent Publishing
Don Dohler, The Avenue
Marina Brockmann, Times Herald

Parkville Park Enhancement Projects

Initiatives	Accomplishments	Public Outreach
Phase I - Landscaping Project *Purpose:* Installation of additional landscaping to enhance the Park and War Memorial.	• Applied and received grant (May 96) Prepared drawings and costs estimates, established greening committee, and received necessary approvals. Improvements installed through county contract. • Water supply in park (August 97 - January 99). Arranged to have a water faucet hookup installed. This was a joint effort of the PPCA, County, and American Legion. PPCA greening committee will water plantings. • Dead plantings are scheduled to be replaced in Spring 1999.	• News Coverage - Local papers • Discussed at meetings • Collected signatures from all surrounding residents.
Phase II - Lighting Project *Purpose:* To install ornamental lampposts for the purpose of enhancing the park, and provide safety for pedestrians and motorist approaching the park at night.	• Initiated lighting project (August 96 - Ongoing) • Worked with County Public Works and BGE. • Testified the need for lighting before Planning Board during budget process. • Incorporated lighting project into Enhancement Project Phase III (March 98). • Pursuing through County &/or BGE community grant.	• News Coverage - Local papers • Discussed at meetings • Collected signatures from all surrounding residents.
Phase III Beautification Project *Purpose:* To enhance the Parkville Park by providing: ornamental lampposts, replace sidewalks, pedestrian crossings, community identification signs, historic marker, additional landscaping.	• Prepared enhancement plan and cost estimate. • Presented enhancement plan to Councilman and BGE. • Received $1,000 from BGE. • Submitted project to state elected officials.	• Plan presented and discussed at meetings

Parkville Park Historic Listing

Initiatives	Accomplishments	Public Outreach
Historic Park Listing *Purpose:* To place the Parkville Park on County's Final Historic Landmark List so that the park will be given its historic recognition and protection.	• Adoption to Preliminary Landmark List (May 96 - July 96). Applied for historic listing, and testified before County Landmarks Commission. • Community meeting with Councilman (March 98). Held a meeting with Councilman with over 50 residents in attendance. • County Council hearing (March 98) PPCA and residents testified in favor park's historic landmark listing. • Adoption as a Final Historic Landmark (April 98).	• News Coverage - Channel 2 - WCBM Radio - Local papers • Discussed at meetings • Distributed Flyers

Parkville Park

COMMUNITY ASSOCIATION

Initiatives and Accomplishments

The Parkville Park Community Association was established in May 1996 for the purpose of preserving the Parkville Park and surrounding residential community.

Attachment "B"

Addressed Neighborhood Concerns

Initiatives	*Accomplishments*	*Public Outreach*
Traffic Management *Issue:* Motorist using Linganore Avenue to cut through in order to avoid traffic congestion on Harford Road and Taylor Avenue.	• Community met with county traffic engineer. • County surveyed traffic pattern and returned with corrective options. • "No Left Turn" signs installed on Harford Road. • "Slow, Children at Play" signs installed on Linganore Avenue. • Met with councilman and county traffic engineer to request speed humps. • Testify to Planning Board requesting speed humps. • Worked on legislation through Project 98 concerning speed humps.	• Collected signatures from residents. • News Coverage - Local papers • Discussed at meetings • Distributed flyers
Crime Prevention *Issue:* To provide a safe environment in our neighborhood.	• Police presentation on "Citizens on Patrol" and "Neighborhood Watch" crime prevention programs.	• Discussed at meetings • Distributed flyers
Zoning Issues 2211 Taylor Avenue Poor Boys Country Market	• Voted and testified against the rezoning of residential property to commercial (1996 Comprehensive Zoning Process). • Followed up with zoning conditions and county requirements as to ensure compliance with law.	• News Coverage - Local papers • Discussed at meetings
Poor Boys Country Market Landscape buffer / Open space	• Requested county's acceptance of passive park as promised to the community. This was a condition of Poor Boys to gain the rezoning of residential property. • Met with county executive.	• News Coverage - Channel 2 - Sun papers - Local papers • Discussed at meetings
2901 Taylor Avenue Nonconforming use	• Requested conditions that would regulate misuse of residential rental property.	• Discussed at meetings

Community Planning

Initiatives	*Accompaniments*	*Public Outreach*
Baltimore County Master Plan 2010	• Served on Community Conservation Advisory Committee. • Attended Town Hall meeting and Open -House meeting.	• Discussed at meetings • News Coverage -Local papers
Greater Parkville / Carney Community Master Plan	• Participated in workshops. • Participated in visual preference survey.	• Discussed at meetings • News Coverage -Local papers
Community Conservation Conference	• Participated in workshops	• Discussed at meetings
Grant Writing Seminar	• Participated in workshops	• Discussed at meeting
Smart Growth Conference	• Attended conference	• Discussed at meeting

Neighborhood Clean-up

Initiatives	*Accomplishments*	*Public Outreach*
Neighborhood Clean-up Committee *Purpose:* To address neighborhood code violation complaints.	• Wrote purpose and guidelines of committee. • Resolved complaints, worked with county code enforcement.	• Discussed at meetings
Neighborhood Clean-up Day *Purpose:* To promote a cleaner neighborhood by providing dumpsters on an annual clean-up day.	• Applied and received grants from county program that provides communities with dumpsters. This is an annual event.	• News Coverage - Local papers • Discussed at meetings • Distributed Flyers
Letters of Recognition *Purpose:* To recognize residents for making major improvements to the exterior of their homes and encourage others to do the same.	• Established guidelines. • Presented neighbors with Letters of Recognition.	• News Coverage - Local papers • Discussed at meetings

Community Improvements

Initiatives	*Accomplishments*	*Public Outreach*
Capital Improvement Budget *Purpose:* To request needed capital improvements for the area.	• Developed inventory of aging infrastructure and needed improvements. • Attended and testified at County Capital Improvement Budget Hearing. • Followed-up with letters to Planning Board requesting locally needed improvements.	• News Coverage - Local papers • Discussed at meetings
Installation of Sidewalks *Purpose:* To install sidewalks where it is dangerous for pedestrians to walk (along Old Harford Road).	• Testified before Planning Board during budget process. • Met with other associations, residents, public works department and councilman. • Followed-up with Public Works.	• News Coverage - Local papers • Discussed at meetings
Police Sub Station *Purpose:* Convert vacant Newsstand on Harford Road into Police Community Substation.	• Testified before Planning Board during budget process. • Met with councilman and police precinct captain.	• Discussed at meetings

Affiliations

Greater Parkville Community Council (GPCC)
Greater Parkville/Carney Community Master Plan
Community Conservation Action Group (CCAG)
Project 98

Attachment "C"

Parkville Park

Community Association Newsletter

November 1996

• *The next meeting of the Parkville Park Community Association will be held Wednesday, November 20, 7:30 p.m., in the library of Villa Cresta Elementary School. At this meeting we will have representatives from the Baltimore County Police Department to speak on community crime prevention programs. This will be a meeting you don't want to miss.*

• *Starting in December, our meetings will be held on the second Tuesday of each month at the Villa Cresta Library, 7:30 p.m. Please plan to attend.*

• *Become a member of the Parkville Park Community Association and start recieving our Community Newsletter - application inside.*

In this Issue

- What is a Community Conservation Area (page 1)
- Updating Baltimore County's Master Plan (page 2)
- Community Conservation Action Group (page 2)
- Planning Board Establishes Citizen Input Process for Capital Budget (page 3)
- The Reactivation of the Greater Parkville Community Council (page 4)
- **New County Legislation**

  Signs for Chemically Treated Lawns (page 4)

What is a Community Conservation Area? Is Parkville One?

Community Conservation Areas (CCAs) are the County's established and urbanized communities. This designation encompasses both residential neighborhoods and commercial corridors/areas. Most of the County's citizens live in these areas, and the predominant housing type is single family detached units at low or medium density (DR 1 through DR 3.5). The commercial areas in CCAs include shopping districts such as Parkville, Catonsville, Pikesville, Essex, and Dundalk, as well as smaller neighborhood shopping areas, and the commercial strips along the major roads.

Communities under this designation have experience stress in recent years, due to a variety of factors. Vacant land is now being developed at higher densities than the surrounding communities. This newer development is sometimes incompatible with less dense surrounding neighborhoods. Existing infrastructure (roads, alleys, stormdrain systems) is aging and may be in need of upgrading. Commercial centers that were once the neighborhood core are also aging, experiencing higher vacancy rates, and facing competition with newer regional commercial sites. To preserve and enhance CCAs, creative development or redevelopment should be sensitive to issues relative to compatibility, traffic issues, and general neighborhoods character. It should not be detrimental to the surrounding communities' well-being. Zoning that may further the deterioration of a community should be discouraged.

"Communities under this designation have experience stress in recent years"

This description was taken directly from a Baltimore County Growth Management Program document. The State and County have said Community Conservation is a priority. We have to make sure they follow through with their commitments. The State and County have both initiated programs that will benefit communities such as Parkville and the surrounding area. Zoning is key to the preservation of our community. Any zoning changes must be consistent with good land-use planning, maintain the character of the neighborhood and have no detrimental or adverse effects to the adjacent residential areas.

Updating Baltimore County's Master Plan

Baltimore County's charter requires the County to prepare a master plan for development at least every ten years. *The Baltimore County Master Plan 1989-2000* was adopted in February, 1990. It is once again time to begin preparing an updated master plan for Baltimore County.

The master plan is a statement of our collective vision for the future of the County and our plan for development in the first decade of the next century. As such, it must be developed through a very open process of public participation.

While staff of the Planning Office and other County agencies will provide substantial support to the process, including background research and analysis of the County's existing conditions, as was the case with the *Baltimore County Master Plan 1989-2000*, there will be extensive public involvement. It is anticipated that several advisory groups will be created this fall and winter to assist in the development of the various segments of the master plan. These groups will work closely with Planning and other County agencies to identify issues and frame policy and action recommendations. Particular attention will be focused on revitalization of the employment centers, completion of the growth areas, and targeting Community Conservation Areas for extensive action designed to stabilize and maintain their viability.

Special attention must be given to the older communities in the County. They have experienced significant infill development in the past decade and will require repair and rehabilitation of roads, schools and other community utilities and facilities.

Not dealing with these improvements at the appropriate time leads eventually to community decline and despair, at which time the social and political costs of rehabilitation are usually prohibitive.

Community Conservation Action Group (CCAG)

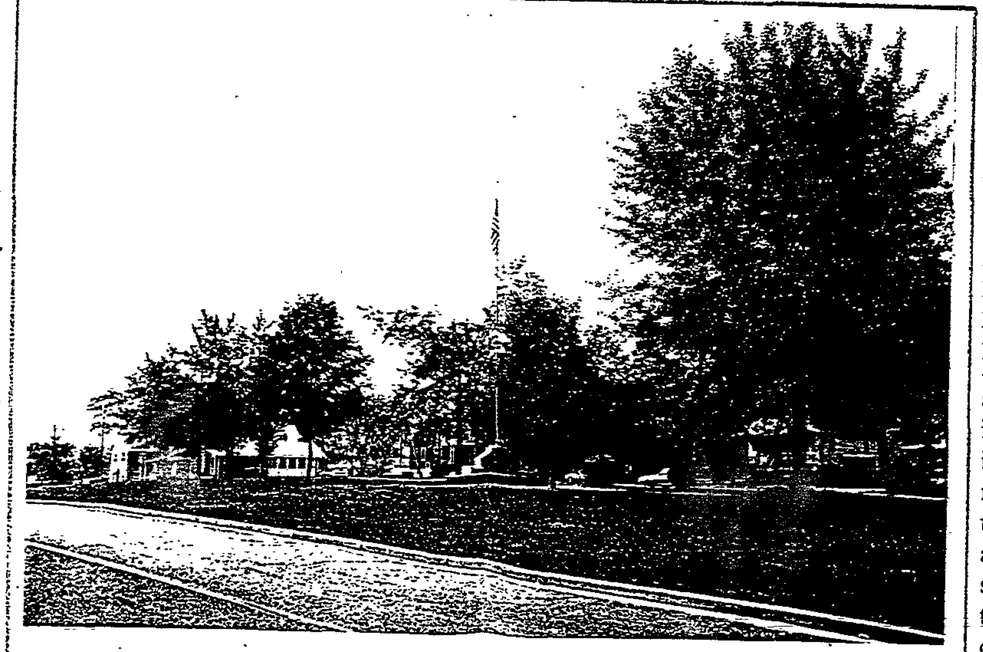
The CCAG was formed in 1991 to assist in developing a community conservation program for Baltimore County. Its purpose is to make both government and community associations more effective and to empower citizen leaders to work in partnership with County government to identify and address issues that affect all Community Conservation areas.

"This is the time to put ideas and concepts on the table for discussion"

Their active committees are: Annual Conference, Code Enforcement (developed community code enforcement pilot program), Notification (finding ways to get the word out about hearings, etc.), Public Education (trying to tie education into community conservation concepts) and Legislation (review proposed legislation that pertains to community conservation).

The major focus for the next ten months will be on doing preliminary work for the upcoming County Master Plan (2000 to 2010). This is the time to put ideas and concepts on the table for discussion. This is where it all begins. Those interested in participating in or would like a copy of the Community Conservation Master Plan Working Paper call Ernie or Ruth Baisden at 668-2580.

To continue to receiving our Community Newsletter fill out the enclosed membership application for the Parkville Park Community Association, along with a membersip fee of $3.00 per household. For further information call Ruth Baisden at 668-2580.



An update on the Community Action Landscaping Grant for the Parkville Park will be given at our next meeting.

Planning Board Establishes Citizen Input Process for Capital Budget

At the Administration's request, the Planning Board convened a special study committee last Spring to examine alternatives for increasing citizen input into the capital budget formulation process. The capital budget (for the next fiscal year) and capital improvements program (CIP), for the following four fiscal years, are used to schedule and identify the financing for the construction of public infrastructure and buildings. The Planning Board makes recommendations on the capital budget and CIP to the County Executive.

The first annual citizen input meeting on the CIP was held Thursday, October 17, 1996, 7:00 p.m. at the County Office Building.

Listed below are the items that were requested for our area during the meeting.

1) Improve stormwater drainage by adding a sufficient number of stormwater inlets along Old Harford Road from the Beltway to the city line - especially around the Taylor Avenue area. There are many houses southwest of the Taylor Avenue & Old Harford Road intersection that have basements that flood during rain storms.

2) Install sidewalks where they do not currently exist on arterial roads. This occurs in two key areas in our community - between Taylor Avenue and Rader Avenue on Old Harford Road, and on Taylor Avenue just west of Harford Road behind the Parkville Crab House and the Hair Cuttery. In both cases, it is dangerous for children as well as adults to walk along these streets and is impossible for someone in a wheelchair to travel.

3) Install lighting at the Parkville Park on Taylor Avenue between Harford Road and Old Harford Road. Currently, this park has no lighting at night. This is a safety and security concern for pedestrians and is a safety concern for traffic traveling toward the park. There has been many accidents involving vehicles traveling eastbound. A few years ago a fatal accident occured when a speeding eastbound car hit a tree in the park. An attributing factor that caused the accident was the park was not illumination.

4) The Villa Cresta Elementary School is over crowded. There currently is a temporary building at the school. The school needs more space and this should be accommodated by a permanent addition to the school.

"In both cases, it is dangerous for children as well as adults to walk along these streets"

5) Many residents of our community association have expressed a strong desire to have trees and landscaping planted in the areas where it would be most visible to the general public. We do not like the fact that recent rezoning in the area will cause the community to loose many valuable mature trees long Taylor Avenue, near Old Harford Road. We would like to keep the charm and character of our community intact. We requested the County to work with our association on a landscaping plan for the community. An example of areas that need tree planting is in the median strip on Perring Parkway and along Taylor Avenue.

As follow up a letter has been sent to our Planning Board member, Dorothy Foos, and the Director of Planning, Pat Keller, requesting that serious consideration be given to these requests and that we be updated on the priority they are given and the status of our request.

The Reactivation of the Greater Parkville Community Council (GPCC)

• *GPCC was a community council that was active until the mid 1980's.*
The GPCC is being reactivated to act as an umbrella group for the common goals of the community associations and civic groups in the Greater Parkville Area. Its role in the community will include:

- Helping neighborhoods start their own community associations

- Become a point of contact for the County and State to disseminate information (such as available grant program, notices, etc.) to community associations and civic groups of the Greater Parkville area.

- To be a voice for the Greater Parkville Community to the County and State on our needs, concerns, and issues.

• *Open House Meeting held October 28th at the Parkville Senior Center.*
Over 60 residents attended representing most of the Greater Parkville Area. Addressing the audience was Senator Thomas Bromwell, Delegates James Ports and Katherine Klausmeier. They spoke on the need for the Greater Parkville Community to become organized and commended the GPCC's efforts.

• *General Meeting held November 6th at the Hiss United Methodist Church.*
It was again a good turnout of 30 residents. Delegate Katherine Klausmeier attended. Delegate James Ports wrote a letter apologizing for his prior commitments and asked if GPCC could reschedule future meetings so he can attend. This has been done. Other guests included Officer Hoke of the Baltimore County Police Department (Parkville District) - he spoke on crime prevention and Brent Flickinger of the Baltimore County Planning Office - he spoke on Community Conservation and other related programs. Other discussions included issues related to traffic, stormwater runoff problems, and code enforcement.

• *Next General Meeting will be 7:30 p.m. December 11, at the Hiss United Methodist Church, room 105.*
A representative from the Zoning Enforcement Department of the County will speak on the County's "Livability Code" - for rentals and owner occupied houses.

• *Future Meetings are being scheduled for the third Wednesdays of every month.*
Everyone is invited. Please attend.

For more information call Ernie or Ruth Baisden at 668-2580.

Upcoming Legislation Signs for Chemically Treated Lawns

Justification: In January 1996, after hearing of an allergic reaction to professionally treated lawns (children experiencing blisters and respiratory problems; sickness and deaths of pets) a Baltimore County resident and an active community started a grass roots campaign for legislation that would require larger signs on commercially applied chemically treated properties.

According to the journal of the American Medical Association, March 1996, the chemicals applied to our lawns have an adverse affect on the immune system of our children, senior citizens and those that are chronically ill.

State law currently requires one (1) 4"x5" sign to be posted only at the property access (entrance sidewalk). The proposed legislation will require 8"x10" signs posted at each primary access and at each boundary of the chemically treated property that can clearly seen from 20 feet.

Status: In March 1996, a request was sent to Councilman Bartenfelder to introduce this legislation after support was received from State Delegates Redemer, Ports, Klausmeier, Klima and Kach.

In August 1996, the Baltimore County Law Office reviewed and approved the proposed legislation for legal sifficiencey in preparation for Councilman Bartenfelder who is to submit this legislation to the County Council for a vote.

Similar laws are in effect in other counties such as Montgomery County and Prince George's County.

Call Councilman Bartenfelder's office, at 887-3388 to say you are in support of this legislation, that will require better signs for commercially applied chemically treated property. This needs your support.

Attachment "D"

FRIENDS OF POOR BOYS

"Planting the Seeds for a Brighter Community"

Theme 7/1/1998 BY: Michele Gallagher 7801 Oak Avenue, 21234 (410) 668-9207

HAPPY SUMMER! Thanks to everyone for there support !

A Word from the Organizer

Friends of Poor Boy's have been out planting in the Parkville community brightening up the neighborhood on the first Saturday of every month. We have had three outings this year and are planning our next outing on Saturday, August 1, 1998. We will be meeting at 9AM in the parking lot of Poor Boys. If you would like to volunteer, we hope to see you on the morning of August 1 with your overalls, garden hand tools and garden gloves.

Thanks again to those volunteers who have already planted flowers in the community and pulled weeds: It was a real feeling of doing good deeds and not just talking about doing them - - "it is nice to be nice."

Suggestion Box

We have placed a suggestion box in the front of Poor Boy's Country Market for your suggestions in providing addresses of neighbors in the Parkville community who you think would benefit from a flower garden, and a brief reason why this individual would benefit. Keep in mind the benefit would be best served to those unable to provide gardens for themselves due to financial, illness or age limitations.

Calendar of Events

August 1	Community Planting
September 5	Community Planting
October 3	Community Planting
November - December	Holiday Food Drive
December 11.....	Holiday Caroling

Attachment "E"

FRIENDS OF POOR BOY'S

Fall 1998 Issue

Organizer: Michele Gallagher

Fall has arrived with all of its splendid color. We have had an eventful year and our membership has grown to over One Thousand Four Hundred (1,400) members. Many letters were received voicing your support for Friends of Poor Boy's. Many Thanks for your support!

A Word from the Principal

I would like to thank the members of Friends of Poor Boy's for coming out and showing their support by planting flower beds in our community. Many of the recipients were surprised and delighted with the gardens planted in their yards. Additional thanks to Terry, owner of Poor Boy's County Market, for his donations of flowers that were planted throughout our community.

GET OUT THE VOTE - JOE BARTENFELDER 6TH DISTRICT BALTIMORE COUNTY

It is important for us to recognize the leaders in our community. Councilman Joe Bartenfelder has proven himself to be such a leader in Parkville. He has invested his time and effort in seeing that our community is moving in the right direction for the benefit of the majority, not a small minority. I am asking for your vote for Joe Bartenfelder on Tuesday, November 3, 1998 -- A true friend of our community.

DON'T FORGET...

Friend's of Poor Boy's will be sponsoring a food drive. A box will be placed in the Poor Boys Country Market Store for you to drop off your non perishable dry foods and canned goods. These donations will then be forwarded to local community centers and churches for disbursement.

CALENDAR OF EVENTS

November 3, 1998	Election Day -VOTE
November 1 - December 15	Food Drive -
December 12, 1998	Christmas Caroling 7PM

We will be Leaving from Poor Boy's Parking Lot at 7PM

Michele Y. Gallagher
Friends of Poor Boy's

Attachment "F"

7801 Oak Avenue
Baltimore, Maryland 21234

October 14, 1998

Zoning Commissioner
County Courts Building
401 Bosley Avenue
Room 405
Towson, Maryland 21204

Dear Commissioner:

I am writing concerning the zoning variance issues which are currently before you regarding Terry Gerahty t/a Poor Boy's Country Market. As we are all well aware, the issues concerning this matter are brought by a small few. In light of this small opposition's small but vocal protest, I formed "Friends of Poor Boys" in the Spring of 1998 to show the "rest" of the communities **real** continuing support of Poor Boy's. To date, Friends of Poor Boy's has over One Thousand Three Hundred (1,300) members. The membership drive was billed as "showing our continued community support of Poor Boys." Despite what the small opposition has to say, Friends of Poor Boy's continues to grow monthly. It is indeed the feeling of the majority, not the minority to see Poor Boy's be relieved of the draconian variances placed upon them to appease a small few.

I live less than 500 Five Hundred Feet from Poor Boy's and feel that I am immediately impacted by any decisions made. I have personally visited Poor Boy's and feel that the existing character and quality of the business has greatly enhanced the community and surrounding areas. The existing fencing, landscaping and lighting seem to be issues raised by a small few in attempts to drive Poor Boy's to another place of business. Clearly, the existing fencing, landscaping and lighting are above any that any other business owner in the Parkville area has had to meet. Mr. Gerahty has gone above and beyond that of which any businessman has in order to appease a small few. The rest of the community would like to see Mr. Gerahty continue to do business in our community and see him as a good neighbor. Clearly, the majority feel that the variance issues should be modified to allow Poor Boy's to continue operating. Please listen to the voices of the majority, not a small, but loud minority, trying to voice their own personal concerns. We all pay taxes too.

Should you have any questions regarding the community support, please do not hesitate to contact me at (410) 203-2377.

Sincerely,

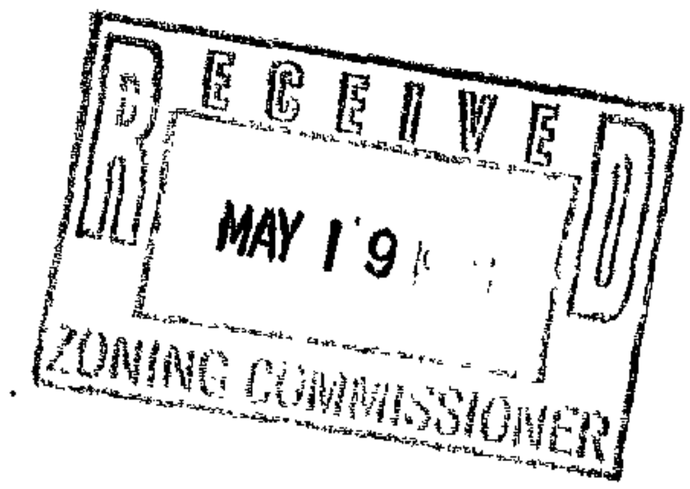
Michele Schäfer Gallagher

Poor Boy's Country Market

7721 Old Harford Road
Baltimore, Maryland 21234
(410) 668-7599

" A Touch of Country...In the Heart of Parkville "

May 12, 1998



Timothy M. Kotroco
Deputy Zoning Commissioner
for Baltimore County
401 Bosley Avenue
M.P.S. 3401
Towson, Maryland 21204

Re: Special Hearing Case # 98-267

Dear Commissioner Kotroco,

By this letter, we request that a new date be set for a special hearing in the above referenced case. As you may recall, the special hearing originally was set for March 2, 1998. Due to an oversight on our part, proper notice of the special hearing was not posted. By letter dated February 26, 1998, we requested a continuance, which was granted. The continuance, however, did not provide a new date for the special hearing. At this time, we wish to request that a new date be set for the special hearing and that the Petition for Special Hearing be amended as set forth in the remainder of this letter.

First, we respectfully request that Order 97-295 (the "Order") which granted a variance from Section 409.8 of the B.C.Z.R. "to permit a stone paved parking lot in lieu of the required durable and dustless surface," subject to certain restrictions specified in the Order, be amended to remove the variance and restrictions because the property now has a "durable and dustless surface," and thus, the conditions upon which we requested the variance, namely that a "durable and dustless surface" did not exist, are no longer applicable.

In the alternative, we respectfully request certain of the restrictions set forth in the Order be removed or, at least, amended as follows:

(i) Remove in their entirety restrictions (4) and (10) as set forth and numbered in the Order:

(ii) Delete the second sentence of restriction 3(b) and replace with a provision requiring evergreen screening.

(iii) Although listed only in the text of the Order and not in any of the enumerated restrictions, amend the fencing requirements to allow the existing fence, including its style and location, to fully comply.

(iv) Amend restriction (6) to extend the time period to 9 p.m., seven days a week.

(v) Amend restriction (7) to eliminate the need for an outdoor lighting plan but require that outdoor lighting not unreasonably reflect onto residential property.

(vi) Add a provision that the variance and its restrictions shall not unduly prohibit Petitioner from obtaining permits which would allow Petitioner to come into full compliance with B.C.Z.R.

Please feel free to contact us at the above number should you have any questions regarding this request. Thank you for your time.

Respectfully yours,

Terry Gerahty, President
Poor Boy's, Inc.

Poor Boy's Country Market

7721 Old Harford Road
Baltimore, Maryland 21234
(410) 668-7599

Betty,
Do a letter of post-
ponement. Call the
Baisdens to let them
know case is
postponed.

February 26,1998

Timothy Kotroco
Deputy Zoning Commissioner
for Baltimore County
Suite 112, Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Poor Boy's Case # 98-267

Dear Mr. Kotroco,

We would like to request a continuance for our Special Hearing scheduled for Monday, March 2, 1998 due to an oversight. The requirement of posting sign on site before our Special Hearing was not completed.

We will notify our neighbors, the Baisden's, via telephone later today. If you would like for us to notify anyone else please let us know.

Thank you for your time and consideration on this prolonged matter.

Best regards,

Terry Gerahty, President
Poor Boy's, Inc.

Poor Boy's Country Market

7721 Old Harford Road
Baltimore, Maryland 21234
(410) 668-7599

1/20/98
C
WCR

January 20,1998

Dear County Officials,

In an effort to keep everyone up to speed on our evolving issue we have enclosed a copy of the Petition for a Special Hearing we recently filed with Zoning. We are respectfully requesting amendments to the existing Variance Case # 97-295.

An attached letter will go into more detail. If we can address any concerns please don't hesitate to call.

Thank you for your time and consideration.

Respectfully,

POOR BOY'S COUNTRY MARKET

BY: _____

Terry J. Gerahty
It's: President

98-261-SPH

RECEIVED
JAN 20 1998
98-256
PDM

Law Office of
MICHELE SCHAFER-GALLAGHER

Phone: 410-203-2377 Fax: 410-203-9229

3716 Court Place, Suite 201
Ellicott City, Maryland 21043

7801 Oak Avenue
Baltimore, Maryland 21234

TO: ATTACHED DISTRIBUTION LIST

DATE: JANUARY 29, 1999

RE: CONDUCT OF OFFICERS OF PARKVILLE PARK COMMUNITY ASSOCIATION

The attached notice is being sent to you to advise you of recent unfortunate developments in the running of the Parkville Park Community Association (the "Association"). These "unfortunate developments" involve the questionable conduct of the Association's 1998 officers, namely, Ernest and Ruth Baisden and Joseph Kreis, in the nomination and selection process of the 1999 officers which yielded the re-nomination and re-election of the Baisdens and Kreis.

The notice was drafted after several concerned Parkville Park residents requested that I, as an attorney, look into this situation on their behalf. These residents have long had concerns about the "true" motives of the Association's officers, namely, that these individuals are using the Association as a platform to solely advance their own self-serving agenda without concern for the desires of the community and, many times, in direct opposition to the desires of the community. These residents believe that this latest conduct all too accurately depicts the overall manner in which this Association has been run and it is too egregious to ignore any longer.

The intent of the notice is to inform Parkville Park residents of these "unfortunate developments" and to provide them with something they haven't gotten from their own community association - a means of expressing *their* concerns, having *their* concerns addressed, and being *fully informed and involved* in the process.

In addition, the notice is intended to inform you, local and state officials and representatives who have or are likely to have contact with the officers of the PPCA of this questionable conduct and the level of concern of the residents affected by this conduct. I hope that you will support the residents of Parkville Park as they work toward the goal of having a true "community" association. I also hope that this information will serve you well in your next encounter with these individuals, whether that be the next time they testify in front of you "on behalf of" the residents of Parkville Park, write you a letter in which they claim to be "representing" the interests of the residents of Parkville Park, or request grant monies for projects "to benefit" the residents of Parkville Park.

If you would like to discuss this matter further or to be informed of our progress in this endeavor, please contact me at 410-203-2131. Thank you.

IMPORTANT NOTICE TO ALL RESIDENTS OF PARKVILLE PARK

This Important Notice is for all residents of Parkville Park. It concerns the methods by which your local community association, the Parkville Park Community Association (PPCA) is being run. On January 12, 1999, elections were held for officers and directors of the PPCA. No notice was sent to members that elections were being held and no prior opportunity to submit nominations for the respective positions was provided.

Not ironically, the only nominations accepted prior to the meeting were from the existing officers: Ernest Baisden, Ruth Baisden and Joseph Kreis. These existing officers re-nominated each other to their respective positions: President – Ernest Baisden, Vice President – Joseph Kreis, and Secretary – Ruth Baisden.

Members in attendance at this January 12 meeting objected to the manner in which these elections were being held, including the lack of notice and the "secretive" nature in which prior nominations from only the existing officers were accepted. Ernest and Ruth Baisden informed these members that they should read the by-laws of the PPCA and then they would know the procedures for notice and the timing of the annual elections. Curiously, however, several members of the PPCA have requested copies of the by-laws in the past from the Baisdens and have yet to be provided copies.

Members in attendance were also informed by Ruth Baisden that the officers have amended the by-laws but did not elaborate on any specific amendments. When? What was amended? Why weren't the members of the PPCA and, for that matter, all of the residents of Parkville Park, informed that amendments were being proposed to their community association's by-laws and provided a chance to vote on these amendments? This is how any other true "community" association would operate.

Obviously, the Baisden's and Kreis give little credence to the word "community" in Parkville Park "Community" Association. They feel no need to include the members of the community in their decisions. Mind you, these are the same individuals that have no problem (i) showing up at every imaginable state and county hearing and testifying that they represent the interests of the residents of Parkville Park, (ii) serving on other associations and groups (e.g., Greater Parkville Community Association and Project '98) claiming to represent the interests of the residents of Parkville Park, and (iii) applying for state and county monies to fund projects "on behalf of" the interests of the residents of Parkville Park.

Several residents are concerned with what appears to be deliberate attempts on the part of the current officers of the PPCA to exclude members of the Parkville Park community in the operations of the community association while at the same time professing to represent the interests of the community members to state and local officials. Is this appropriate? More importantly, is this fair? If not, what can be done about it?

To try to gain some insight into these issues, several residents have called upon a local attorney, Michele Schafer Gallagher, who happens to be a Parkville Park resident. Ms. Gallagher has offered to look into this issue, free of charge, and to share the information she uncovers with any interested Parkville Park resident, as well as, if necessary, local and state officials. If you are concerned about these issues and wish to express your opinion and be informed of the progress of addressing these issues, please contact Ms. Gallagher at 410-203-2131.

Michele Y. Gallagher
Friends of Poor Boys

7801 Oak Avenue
Baltimore, Maryland 21234

October 14, 1998

Zoning Commissioner
County Courts Building
401 Bosley Avenue
Room 405
Towson, Maryland 21204

Dear Commissioner:

I am writing concerning the zoning variance issues which are currently before you regarding Terry Gerahty t/a Poor Boy's Country Market. As we are all well aware, the issues concerning this matter are brought by a small few. In light of this small opposition's small but vocal protest, I formed "Friends of Poor Boys" in the Spring of 1998 to show the "rest" of the communities **real** continuing support of Poor Boy's. To date, Friends of Poor Boy's has over One Thousand Three Hundred (1,300) members. The membership drive was billed as "showing our continued community support of Poor Boys." Despite what the small opposition has to say, Friends of Poor Boy's continues to grow monthly. It is indeed the feeling of the majority, not the minority to see Poor Boy's be relieved of the draconian variances placed upon them to appease a small few.

I live less than 500 Five Hundred Feet from Poor Boy's and feel that I am immediately impacted by any decisions made. I have personally visited Poor Boy's and feel that the existing character and quality of the business has greatly enhanced the community and surrounding areas. The existing fencing, landscaping and lighting seem to be issues raised by a small few in attempts to drive Poor Boy's to another place of business. Clearly, the existing fencing, landscaping and lighting are above any that any other business owner in the Parkville area has had to meet. Mr. Gerahty has gone above and beyond that of which any businessman has in order to appease a small few. The rest of the community would like to see Mr. Gerahty continue to do business in our community and see him as a good neighbor. Clearly, the majority feel that the variance issues should be modified to allow Poor Boy's to continue operating. Please listen to the voices of the majority, not a small, but loud minority, trying to voice their own personal concerns. We all pay taxes too.

Should you have any questions regarding the community support, please do not hesitate to contact me at (410) 203-2377.

Sincerely,

Michele Schafer Gallagher

HARFORD PARK COMMUNITY ASSOCIATION

2522 Linwood Rd. Baltimore Md. 21234

Zoning Commissioner
County Courts Building
401 Bosley Ave.
Room 405
Towson Md. 21204

October 12,1998

Re: Zoning Variance
Poor Boy's

Gentlemen:

This is to let you know that our Association has in the past and continues to support Poor Boy's in its request for zoning modification for its building, landscaping, parking, and lighting. We feel strongly that Poor Boy's is an asset to our community.

The owner has met with our Association on many occasions to keep us informed of his plans for the property. We have supported these plans from the onset.

I am enclosing a copy of a letter that my wife and I sent to Councilman Joseph Bartenfelder in September 1996 before I became President of the Association.

The Harford Park Community Association feels that the improvements Mr Gerahty has made to this property are a real addition to our neighborhood. The landscaping is absolutely beautiful, and the additional parking has improved the traffic flow. The owner has gone above and beyond the call of duty to resolve this problem, with the placement of fence, redirection of lights, and restrictive use of his property. These concessions have been all one sided, and we feel it is time to resolve the outstanding zoning issues and let Poor Boy's continue to be an asset to our community.

Besides running a desirable business and improving our area, Poor Boy's support many Community Projects, the local schools, churches, little league etc.

We ask you to consider our request, and should you need any additional information, please feel free to contact me at 410-665-1330.

Very truly yours,

Albert W. Willis,Sr. President
Harford Park Community Assoc.

Councilman Joseph Bartenfelder
Old Courthouse - Second Floor
400 Washington Ave.
Towson Md. 21204

September 17,1996

Re: Rezoning Poor Boy's

Dear Councilman:

This is to confirm our telephone calls to your office in support of the rezoning of the area adjacent to Poor Boy's Country Market. My wife and I are both members of the Board of Governors of the Harford Park Community Association and concerned neighbors. We feel strongly that Poor Boy's is an asset to our community.

The proposed rezoning will give them the parking they need, and with the additional parking, actually improve the traffic flow in the area.

We are extremely upset with the tactics of the opposition to this rezoning. They have used misinformation and scare tactics to upset many of the older residents in our area. They came to our meeting asking for our support, and when it was clear the majority were in favor of the rezoning, we were told to keep out of it.

This rezoning affects us as much as anyone else, as our boundaries adjoin the subject property. I understand Mr. McCarthy said at the hearing that Harford Park's support should be disregarded because we did not have a Quorum, but our By Laws define a Quorum as the majority of those members present.

This letter is not in behalf of Harford Park Community Association, but from one of the many families who are members and support this rezoning. Hoping you will give consideration to our feelings and all who signed the petitions in favor of this when you make your vote, we are

Very truly yours,

Albert W. Willis, Sr.

Rosemary M. Willis

Rosemary M. Willis
2608 Linwood Rd.
Baltimore Md. 21234

August 5, 1999

Arnold Jablon, Director
Department of Permits and Management
County Office Building
111 West Chesapeake Avenue
Towson. Maryland 21214

RE: Request For An Appeal
Zoning Commissioner Order Dated: July 7, 1999
Petition For Special Hearing: Case # 98-267 SPH
Property: 2711 Taylor Avenue
Property Owner: Mr. Terry Gerahty

Dear Mr. Jablon:

By this letter, I request an appeal of the Baltimore County Zoning Commissioner's order referenced above. The subject of my appeal is the fence requirement only as described on page 5. # 1 of the above order. Please feel free to contact me at 410 668-2580 if there are any questions. Thank you for attention to this matter.

Sincerely,

Ruth Baisden
7706 Oak Avenue
Baltimore, MD 21234

RECEIVED
AUG - 5 1999
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

Item 5
case
10/15/98

October 14, 1998

Mr. Timothy Katroco
Deputy Zoning Commissioner
Dept. Of Planning & Zoning
401 Bosley Avenue
Towson, MD 21204

RE: Case # 98-267 SPH

Dear Mr. Katroco,

We would like to go on record as opposing any removal of variances on the above referenced case.

Since these variances were imposed on the rezoning issue there have been no changes to the conditions and therefore we do not feel the variances should be removed.

When these variances were imposed they were done so with the intent of protecting the neighborhood and the community This location is an older residential community in Baltimore County (Parkville) and as such should be protected from the growth of commercialism. We are very concerned that Taylor Avenue may become another Joppa Road and destroy our residential community.

Thank you for your time and attention to this matter and we hope you will not remove any of the variances from this property and help keep Parkville the wonderful residential community it is today.

Sincerely,

Barbara & Ryan Fisher

Fisher
2526 Wycliffe Road
Baltimore, Maryland 21234

Cover Memorandum
For
Facsimile Transmittal

To: Deputy Zoning Commissioner
Timothy M. Katroco

From: Ruth Baisden

Fax: 410 887-3468

Page: 7

Phone: 410 887-4386

Date: 08/03/99

Re: Case # 98-267 SPHA
July 7, 1999

CC:

I am resubmitting a letter that was hand delivered to your office yesterday. At the time, I did not realize that the letter did not have the attachments enclosed. Please forgive this error. If you have any questions you may reach me at 410 668-2580

My phone number 410 668-2580

Fax number 410 668-2580 (call first)

The Parkville Park Community Association Inc.

7706 Oak Avenue Baltimore, Maryland 21234 (410) 668-2580

August 1, 1999

The Honorable Timothy M. Kotroco
Deputy Zoning Commissioner for Baltimore County
County Courts Building, Room 407
Towson, MD 21204

RE: Baltimore County, Maryland vs. Terry Gerahty (owner of Poor Boy's)
Petition To Amend Variance Conditions Case # 98-267 SPH - July 7, 1999

Dear Mr. Kotroco:

The Board of Directors has reviewed your recent opinion of the above captioned matter and appreciate your decision to uphold your original order (case # 97-295 dated March 6, 1997) by **denying** the relief of the conditions for variance. As you may recall from our testimony the Parkville Park Community Association (PPCA) fully supports the conditions in the original order and feel these conditions should remain in full effect. The conditions that the petitioner had requested relief from are of the most critical in protecting and preserving the residential character of our community in the future.

However, after reviewing your recent order there was confusion over an inconsistency between the original and most recent order. The July 7, 1999 ruling describes the fence as "shall be permitted to remain as it exists today. The location, height and materials used are in compliance with my previous Order dated March 6, 1997." The pervious order states that the fence shall be installed in accordance to the diagram provided by Avery Harden in his letter of December 24, 1996. This same letter and diagram is also attached to Councilman Bartenfelder's letter dated September 8, 1997 describing his intent of the buffer area when rezoning the property. (See enclosed Councilman's letter of intent with Avery Harden's letter and diagram attached). The existing fence is not in compliance with Mr. Harden's diagram. The diagram describes an 8 foot fence (6 foot wooden fence with a 2 foot lattice on top) a more sturdy construction, and placement of the fence on the 70 foot line. It is also noted in the letter that this will be required when applying for a permit. The Board request a review and clarification of the inconsistent fence requirement of your recent order.

We recently were copied on a letter dated July 23, 1999 sent to you from Mr. C. William Clark, attorney for the petitioner. The board is in strong opposition to the request of this letter.

Thank you for your time and consideration. I look forward for the clarification concerning the fence height, type of construction and location. If you have any questions or would like to discuss this matter, call me or Ruth (my wife) at 410 668-2580.

Sincerely,

Ernest M. Baisden, President
Parkville Park Community Association

COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

JOSEPH BARTENFELDER
COUNCILMAN, SIXTH DISTRICT

September 18, 1997

COUNCIL OFFICE: TOWSON 887-3388
DISTRICT OFFICE - FULLERTON 887-5223

Dear Mr. Baisden:

This is in response to the request of the Parkville Park Community Association to explain the intent of the "L" shaped landscape buffer area located along the west side of the 7700 block of Oak Avenue and the first residence on Oak Avenue. The exact size and location of this landscape buffer area is shown on the attached plan and is labeled "Landscape Conservation Easement".

The creation of this landscape buffer area was the result of a compromise to allow the property owner (owner of Poor Boys) to gain the rezoning of residential property to BL commercial and to protect the property values of the surrounding residential properties. It was to become a landscaped passive park (owned by the County) and provide screening for the surrounding residential community from the newly zoned commercial property. The goal of the buffer and landscaping is to preserve the residential character and quality of life of the residental neighborhood and additionally not to cause a detrimental effect to the community. The rezoning of the residental property was based on this compromise and I feel strongly this intent be carried out.

I also feel it is important to have a permanent fence and landscaping as directed in attached letter from Baltimore County Department of Permits and Development Management (Avery Harden, Landscape Architect).

Sincerely,

Joe Bartenfelder

Joseph Bartenfelder
Chairman, County Council
Sixth District

Baltimore County
Department of Permits and
Development Management

Development Processi
County Office Buildin
111 West Chesapeake
Towson, Maryland 21

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Exq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

Printed with Soybean Ink
on Recycled Paper

The 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space. See plan.

As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

Thirty five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thirive within two years must be replaced. Steven's Hollies are recommemded where excessive moisture is an issue. Hollies must be placed closer together to achieve the desired effect. See plan. The other evergreen selections are half Norway Spruce and half White Pine.

This office will work with Poorboys when the planning for the expanded parking lot begins. The proposal above is essentially what the Baltimore County Landscape Manual will require when a permit for the parking lot is sought. Every effort will be made to save the existing trees within the proposed parking lot area. There shall be no increase in runoff onto the adjacent residences as a result of the sitework.

As a condition of completing the buffer requirements, the copse of brambles along Oak Avenue should be mowed.

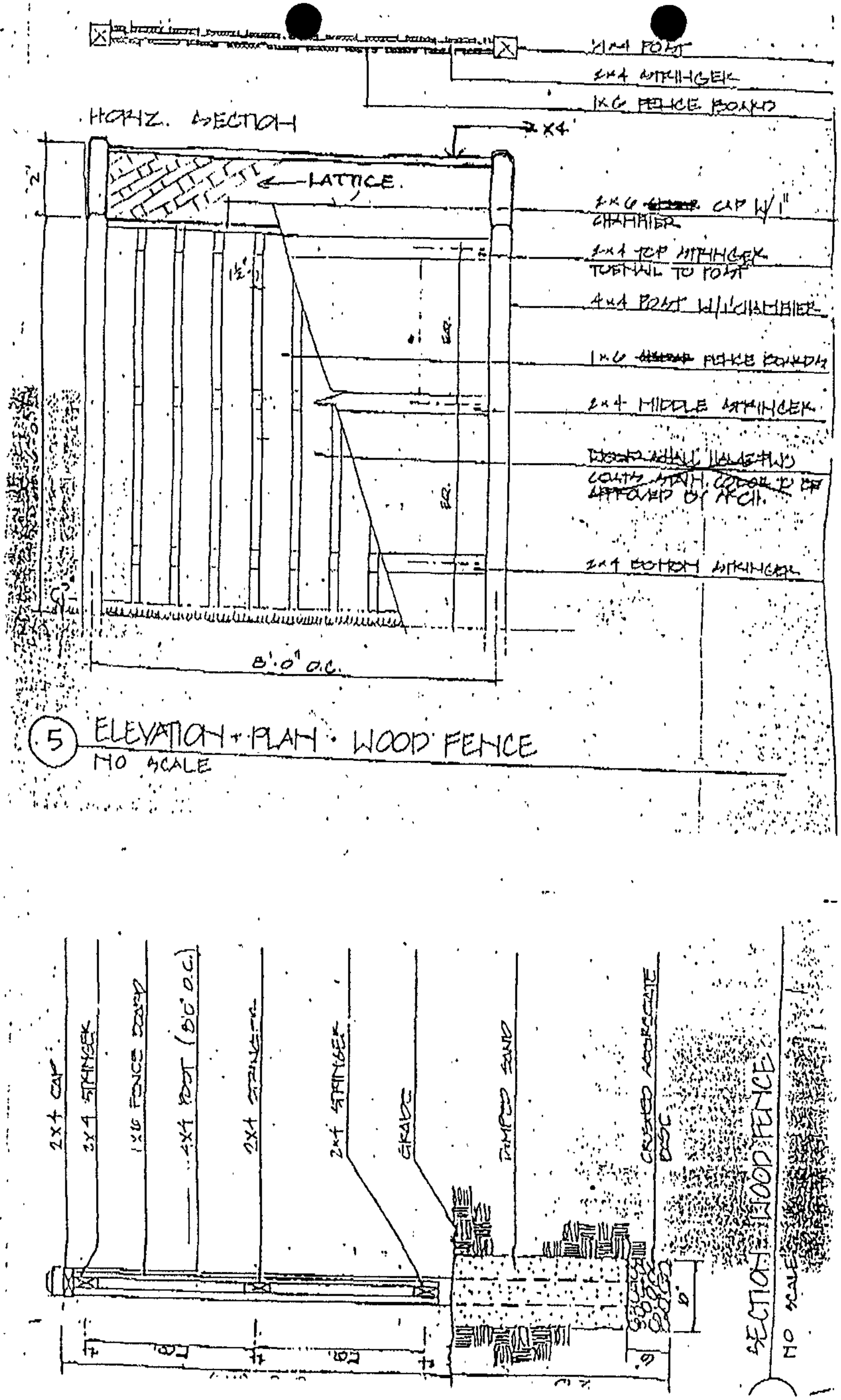
If anyone has any questions or comments, please call me at 887-3751.

Sincerely,

E. Avery Harden

E. Avery Harden, Landscape Architect
Development Plans Review

2 Attachments



5 ELEVATION + PLAN · WOOD FENCE
NO SCALE

SECTION WOOD FENCE
NO SCALE

RESIDENCE

BUFFER

LANDSCAPE

HOLLIES

WET AREA

FENCE LOCATION

LATTICE ON FENCE

6 FOOT FENCE

4 FOOT FENCE

60'

10' LANDSCAPE STRIP

PROPOSED TREE LOCATIONS

TERMINATE FENCE

POORBOYS NURSERY

TAYLOR AVE

APPROXIMATE SCALE
1"=30'

RO TO B

DR5.5 TO B

PEAK RES

122

123

180'

50 50 50

TO R5 TO R2

60'

100'

45 45 45 45

11868.31'

195'

124

125

126

127

128

45 45 45

70'

95

94

92

91

50'

COMPACT EVERGREEN SCREENING

60'

50'

50'

45 45 45 45

LANDSLAPE
CONSERVATION
48 EASEMENT

DATE: 10/8/96

1" =

180' P/O PLA
72 PARI

0011868 313

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

1 Type(s) of Instruments	(☐ Check Box if Addendum Intake Form is Attached.) Deed / Deed of Trust	☐ Mortgage / Lease	☒ Other Rest. Covenant Agmt	☐ Other	
2 Conveyance Type Check Box	☐ Improved Sale Arms-Length [1]	☐ Unimproved Sale Arms-Length [2]	☐ Multiple Accounts Arms-Length [3]	☐ Not an Arms-Length Sale [9]	
3 Tax Exemptions (If Applicable) Cite or Explain Authority	Recordation / State Transfer / County Transfer				

CHF FD SURE $ 2.00
RECORDING FEE 75.00
TOTAL 77.00
Rest BA04 RCPT # 22867
SM DM BLK # 2542
Oct 28, 1996 12:36 PM

4 Consideration and Tax Calculations

Consideration Amount	
Purchase Price/Consideration	$ -0-
Any New Mortgage	$
Balance of Existing Mortgage	$
Other:	$
Other:	$
Full Cash Value	$

Finance Office Use Only — Transfer and Recordation Tax Consideration	
Transfer Tax Consideration	$
X ( ) % =	$
Less Exemption Amount −	$
Total Transfer Tax =	$
Recordation Tax Consideration	$
X ( ) per $500 =	$
TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 75.00	$
Surcharge	$ 2.00	$
State Recordation Tax	$	$
State Transfer Tax	$	$
County Transfer Tax	$	$
Other	$	$
Other	$	$

Agent: [signature]
Tax Bill:
C.B. Credit: —
Ag. Tax/Other: —

6 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

AGR

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG ☐ (5)
6		8701/730			

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (4)

Location/Address of Property Being Conveyed (2)
7721 Old Harford Road

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential ☐ or Non-Residential ☒ | Fee Simple ☒ or Ground Rent ☐ Amount:
Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Terry Geraghty, Poor Boys, Inc and Villa Cresta Civic Assoc. Inc.	
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)

New Owner's (Grantee) Mailing Address

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person
Name: Dorsey Dennison
Firm: Nolan Plumhoff
Address:
Phone: (410) 823-7800

☐ Return to Contact Person
☒ Hold for Pickup
☐ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☐ Yes ☒ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☒ No Does transfer include personal property? If yes, identify:
☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Terminal Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification
Transfer Number: Date Received: Deed Reference: Assigned Property No.:

Year	19	19	Geo.	Map	Sub	Block
Land			Zoning	Grid	Plat	Lot
Buildings			Use	Parcel	Section	Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
AOC-CC-300 (6/95)

TRANSFER TAX PAID AT CLOSING
DEPT. OF ASSESSMENTS & TAXATION
BALTIMORE COUNTY, MARYLAND
Date 10-28-96 Per [signature]
10-28-96 Sec 33-139 AGR

122

123

180'

50'

50'

50'

60'

RU TO BL

DR5.5 TO BL

100'

360'

PARK RESERVE

AMENDED 12-03-97

TOWSON

124

125

126

127

128

45'

45'

45'

45'

70'

95

94

92

91

90'

60'

COMPACT EVERGREEN SCREENING

LANDSCAPED CONSERVATION EASEMENT

50'

45'

45'

45'

45'

45'

45'

48

44

45

43

72

40

DATE: 10/8/96

1"=50'

P/O PLAT OF "PARKVILLE"

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 3-26-97

OEA: 1/4 H

HISTORIC DISTRICT/BLDG.

PERMIT #: B
RECEIPT #: A
CONTROL #: C-
XREF #:

PROPERTY ADDRESS 2711 Taylor Ave ☐ YES ☒ NO
SUITE/SPACE/FLOOR
SUBDIV: Parkville ☐ DO NOT KNOW
TAX ACCOUNT #: 18-00-009926 DISTRICT/PRECINCT 9 21

OWNER'S INFORMATION (LAST,FIRST)
NAME: Gerahty, Terry
ADDR: 8309 Oakford Rd 21234

FEE: 30.00 + 5. + 12.
PAID: 47-
PAID BY: Appl.
INSPECTOR:

APPLICANT INFORMATION
NAME: Terry Gerahty

DOES THIS BLDG. HAVE SPRINKLERS
YES — NO —

I HAVE CAREFULLY READ THIS APPLICATION

CITY

Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Code Enforcement: 410- 887-3351 Extension_____
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE VIOLATION NOTICE

VIOLATION(S) OF TITLE 3, 7, 18, 24, OR 26 OF THE BALTIMORE COUNTY CODE, ZONING, OR OTHER CODES, REGULATIONS, AND POLICIES AS INDICATED BELOW:

Violation Notice No. 107108

Case No.: 97-3996

Election District 9 Permit No. _____

Name (s) Terry Gerahty

Address 7721 Old Hartford Rd. Parkville MD. 21234

Location of Violation (if different than address) _____

Vehicle License No.: _____ Vehicle ID: _____

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

County Code:
§§ _____
§§ _____

Zoning Regulations:
§§ 102.1, 405.8.A.3
§§ 500

Building Code (BOCA):
§§ 107.1 1996
§§ _____

Livability Code (18-66):
§§ _____
§§ _____

Investment Property Act (7-66):
§§ _____

Electrical Code (NEC):
§§ _____

Plumbing Code (NSPC):
§§ _____

Dwelling (CABO):
§§ _____

Other: §§ _____

COMMENTS OR OTHER VIOLATIONS:

1) Fence not properly installed all parallel to Oakford Parklet to Taylor as per Special Hearing
2) Cease stringing of lights on lot as per Special Hearing #7 3) Cease light from commercial zoning from shining on Residential Property

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE 12/18/97 FAILURE TO COMPLY WILL RESULT IN THE PENALTIES DESCRIBED ON THE REVERSE SIDE OF THIS VIOLATION NOTICE.

DATE ISSUED: 12/4/97 INSPECTOR: Rowe

4) Obtain permit for or remove trailer on property

STOP WORK NOTICE

PURSUANT TO INSPECTION AND IDENTIFICATION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT.

THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN: _____

DATE ISSUED: _____ INSPECTOR: _____

IMPORTANT INFORMATION ON FINES AND PENALTIES PRINTED ON REVERSE SIDE

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 3-26-99

OEA: KRA
HISTORIC DISTRICT/BLDG.

PERMIT #: B
RECEIPT #: A
CONTROL #: C-
XREF #:

FEE: 30. + 5. + 12.
PAID: 47.
PAID BY: Appl
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

PROPERTY ADDRESS 2711 Taylor Ave ☐ YES ☒ NO
SUITE/SPACE/FLOOR ☐ DO NOT KNOW
SUBDIV: Parkville
TAX ACCOUNT #: 18-00-009926 DISTRICT/PRECINCT 9 21

OWNER'S INFORMATION (LAST,FIRST)
NAME: Geraghty, Torrey
ADDR: 8309 Oakford Rd 21234

DOES THIS BLDG. HAVE SPRINKLERS YES — NO —

APPLICANT INFORMATION
NAME: Terry Geraghty
COMPANY: Poor Boy's Inc.
STREET 7721 Old Harford Rd
CITY,ST,ZIP Balto. MD 21234
PHONE #: 410 668-7599 MHIC LICENSE #:
APPLICANT SIGNATURE:
DRC#
PLANS: CONST PLOT PLAT DATA EL 2 PL 2
TENANT
CONTR: Owner
ENGNR:
SELLR:

BUILDING 1 or 2 FAM.
CODE CODE
BOCA CODE ✓

TYPE OF IMPROVEMENT
1. ✓ NEW BLDG CONST
2. ADDITION
3. ALTERATION
4. REPAIR
5. WRECKING
6. MOVING
7. OTHER

DESCRIBE PROPOSED WORK: Construct A Detached Shed On Sales Lot of Ex Country Market. 8'x8'x8' = 64 sq ft

PLANS WAIVED JB Myers

TYPE OF USE

RESIDENTIAL

01. ONE FAMILY
02. TWO FAMILY
03. THREE AND FOUR FAMILY
04. FIVE OR MORE FAMILY (ENTER NO UNITS)
05. SWIMMING POOL
06. GARAGE
07. OTHER

NON-RESIDENTIAL

08. AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. CHURCH, OTHER RELIGIOUS BUILDING
10. FENCE (LENGTH HEIGHT)
11. INDUSTRIAL, STORAGE BUILDING
12. PARKING GARAGE
13. SERVICE STATION, REPAIR GARAGE
14. HOSPITAL, INSTITUTIONAL, NURSING HOME
15. OFFICE, BANK, PROFESSIONAL
16. PUBLIC UTILITY
17. SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. SIGN
19. ✓ STORE ✓ MERCANTILE RESTAURANT SPECIFY TYPE Country Market
20. SWIMMING POOL SPECIFY TYPE
21. TANK, TOWER
22. TRANSIENT HOTEL, MOTEL (NO. UNITS)
23. OTHER

TYPE FOUNDATION
1. SLAB
2. BLOCK
3. CONCRETE

BASEMENT
1. FULL
2. PARTIAL
3. NONE

TYPE OF CONSTRUCTION
1. MASONRY
2. WOOD FRAME
3. STRUCTURE STEEL
4. REINF. CONCRETE

TYPE OF HEATING FUEL
1. GAS 3. ELECTRICITY
2. OIL 4. COAL

TYPE OF WATER SUPPLY
1. ~~PUBLIC~~ SYSTEM ~~EXISTS~~ PROPOSED
2. PRIVATE SYSTEM EXISTS PROPOSED

TYPE OF SEWAGE DISPOSAL
1. ✓ PUBLIC SEWER ~~EXISTS~~ PROPOSED
2. PRIVATE SYSTEM
SEPTIC EXISTS PROPOSED
PRIVY EXISTS PROPOSED

CENTRAL AIR: 1. 2. ✓
ESTIMATED COST: $ 750.
OF MATERIALS AND LABOR

PROPOSED USE: Country Market + Accessory Structure
EXISTING USE: Country Market Sales Lot - VACANT

OWNERSHIP
1. ✓ PRIVATELY OWNED 2. PUBLICLY OWNED 3. SALE 4. RENTAL

RESIDENTIAL CATEGORY: 1. DETACHED 2. SEMI-DET. 3. GROUP 4. TOWNHSE 5. MIDRISE 6. HIRISE
#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS/CONDOS:
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1. Y 2. N BATHROOMS CLASS 06
POWDER ROOMS KITCHENS LIBER 01 FOLIO 34

BUILDING SIZE
FLOOR 64
WIDTH 8'
DEPTH 8'
HEIGHT 8'
STORIES 1
LOT #'S 124
CORNER LOT
1. Y 2. N

LOT SIZE AND SETBACKS
SIZE 1.14 Ac.
FRONT STREET
SIDE STREET
FRONT SETBK 82'
SIDE SETBK 102' / 170'
SIDE STR SETBK
REAR SETBK 89'
ZONING

APPROVAL SIGNATURES		DATE
BLD INSP		
BLD PLAN	120	3-22-99
FIRE	120	3-26-99
SEDI CTL	416WC Final Signed	3 26 99
ZONING	111 CMA Of Approved	3/26/99
PUB SERV	111	
ENVRMNT	416WC Final Signed	3-26-99
PERMITS		

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

Wants To Waive Plans.

ADDENDUM TO CHECKLIST
OF PDM CASE FILE #98-267-SPH

Terry J. Gerahty – Legal Owner/ Petitioner

Note: The following documents were generated after the issuance of the DZC's 7/7/99 Order and are a part of the original file submitted by PDM on 8/19/99.

- 7/23/99 -- Letter to DZC from C. Wm. Clark, Esq., on behalf of the Petitioner -- request to revise 7/7/99 Order; to rule on other issues addressed at hearing..

- 8/01/99 -- Letter to DZC from Ernest M. Baisden, Protestant , – request for clarification of 7/7/99 Order; concerning fence height, type of construction and location.

- 8/6/99 -- Response letter from the DZC –
  -Letter ("motion for reconsideration") from C. Wm. Clark is "denied".
  -Letter ("motion for reconsideration") from Mr. Baisden is clarified

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
C. William Clark	502 Washington Ave Ste 700, Towson, MD 21204
Terry Gorsht	7721 Old Harford Rd 21234
W. Glen McFaul	BGE Co. 7130 Rutherford Rd. Balto MD. 21244

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on Recycled Paper

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Ernie Baisden	7706 Oak Ave 21234
Ruth Baisden	" " "
JAMES REED	7705 OAK AVE. 21234
Joseph KREIS	7807 TAYLOR AVE 21234
Barry Asbury	P.O. Box 10922 21234

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Ruth Baisden	7706 Oak Ave, Balto MD 21234
Ernest Baisden	" " "
ALICE M. BAKER	2307 ELLEN AVE 21234
JOHN B. BAKER, JR.	2307 ELLEN AVE. 21234
JAMES REED, JR.	7705 OAK AVE., BALTO., MD. 21234
Joseph P. Kreis	2802 Taylor Ave 21234

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Ruth Baisden	410 668-2580 7706 Oak Ave, 21234
Ernie Baisden	7706 Oak Ave, 21234
Joseph T Krebs	2807 Taylor Ave 21234
Ellen Otto	2615 Hillcrest Ave
JOHN BAKER	2307 ELLEN AVE
ALICE M. BAKER	2307 ELLEN AVE

NOTIFY Avery Horden also

PLEASE PRINT CLEARLY

BALTIMORE COUNTY REPRESENTATIVES
SIGN-IN SHEET

NAME	ADDRESS
AVERY HARDEN	PDM

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Terry Gorman	7721 Old Harford Rd 21234
C. William Clark	502 Washington Ave 21204

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on Recycled Paper

APPEAL

Petition for Special Hearing
SEC Old Harford Road and Taylor Avenue
2711 Taylor Avenue
9th Election District – 6th Councilmanic District
Terry J. Gerahty- Legal Owner
Case Number: 98-267-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting (9/30/98, 10/22/98, 11/15/98 – Thomas P. Ogle, Sr.)

Certification of Publication (2/12/98, 9/24/98 – The Jeffersonian)

Entry of Appearance by People's Counsel

Petitioner(s) Sign-In Sheets (3)

Protestant(s) Sign-In Sheets (3)

Baltimore County Representatives Sign-In Sheet (1)

Zoning Advisory Committee Comments

Petitioners' Exhibits:

1 Plat to Accompany a Zoning Petition for a Variance and Special Hearing
2 Order from Case Number 97-295-SPHA
3 Letter from Terry Gerahty, President of Poor Boy's, Inc. to Timothy M. Kotroco, Deputy Zoning Commissioner, dated May 12, 1998
4 Restrictive Covenant Agreement between Terry Gerahty and the Villa Cresta Civic Association, Inc. dated October 8, 1996
5 Two Photographs of Subject Property
6 One Photograph of Flowers
7 Site Plan of Parking Lot Expansion and Modifications
8 Final Order of Dismissal for Case Number 97-295-SPHA
9 Letter from Douglas L. Burgess, Esquire to Doug Silber, Esquire dated February 17, 1998
10 Letter from A. Thomas Rochfort, President of The Villa Creasta Civic Association to Zoning Commissioner dated October 9, 1998

Protestants' Exhibits:

1 Resolution of Greater Parkville Community Council dated March 8, 1999
2 Resolution of The Parkville Park Community Association Inc. dated March 7, 1999
3 Restrictive Covenant Agreement between Terry Gerahty and the Villa Cresta Civic Association, Inc. dated October 8, 1996
4 Letter from Joseph Bartenfelder, Chariman, County Council, Sixth District to Mr. Baisden dated September 18, 1997
5 Memo from James H. Thompson to Avery Harden dated November 29, 1996
6 Minutes of Parkville Park Community Association General Meeting of December 10, 1996
7 Letter from E. Avery Harden, Landscape Architect to Honorable Joseph Bartenfelder & John F. Weber, III & Earnest and Ruth Baisden & James Thompson & Terry Gerahty & Douglas Burgess, Esquire dated December 24, 1996

8 Letter from Arnold Jablon, Director to Mr. David Miller dated December 17, 1996
9 Note "Old Case File & Exhibits from Case No. 97-295"
10 Community Concerns that Need to be Addressed
11 Memo from Arnold F. 'Pat' Keller, III, Director to Arnold Jablon, Director dated February 7, 1997
12 Final Order of Dismissal from Case Number 97-295-SPHA
13 Letter from Ernest Baisden, President of Parkville Park Community Association to Mr. Arnold Jablon, Director dated November 23, 1997
14 Baltimore County Uniform Code Violation Notice Number 107108
15 Findings of Fact and Conclusions of Law, Final Order of the Code Official for Civil Citation Number 97-3996
16 Letter from Arnold Jablon to Mr. Terry Gerahty, President dated March 18, 1998
17 Letter from William O. Jensen, Jr., Assistant County Attorney to Ms. Pat Sheeder, Supervisor I dated November 24, 1998
18 Memo from Avery Harden, County Landscape Architect to Zoning Advisory Committee dated February 6, 1998
19 Memo from Avery Harden, Landscape Architect, to Arnold Jablon dated January 29, 1998
20A Six Pages of Photographs
20B Four Pages of Photographs
20C Four Pages of Photographs
20D One Page of Photographs
20E One Page of Photographs
21A One Page of Photographs
21B One Page of Photographs
21C One Page of Photographs
21D One Page of Photographs
21E One Page of Photographs
21F One Page of Photographs
21G One Page of Photographs
21H One Page of Photographs
21I One Page of Photographs
22A Letter from Terry J. Gerahty, President, Poor Boy's, Inc. to Ernie Baisden dated May 5, 1997
22B One Page of Photographs
22C One Page of Photographs
22D One Page of Photographs
23 Eight Pages of Photographs
24 Fourteen Pages of Photographs
25 Three Pages of Photographs
26A Memo from Robert W. Bowling, Chief, Bureau of Developer's Plans Review to Arnold Jablon, Director dated February 10, 1998
26B Letter from Timothy M. Kotroco, Deputy Zoning Commissioner to Mr. Terry Gerahty, President of Poor Boy's, Inc. dated February 27, 1998
26C Memo from Arnold F. 'Pat' Keller, III, Director, Office of Planning to Arnold Jablon, Director dated February 23, 1998
27 Letter from Board of Directors, Parkville Park Community Association to Mr. David Flowers, Supervisor dated January 5, 1998
28 Letter from Board of Directors, Parkville Park Community Association to Mr. Robert W. Bowling, Department Plans Review Division dated February 3, 1998
29 Testimony of Ernest Baisden dated April 9, 1999

Misc. (Not Marked as Exhibits):
Correction Notice for Case Number C-96-4255 dated April 22, 1996
Findings of Fact and Conclusions of Law for Case Number 97-295-SPHA
Memo from Avery Harden, Landscape Architect to Arnold Jablon, Director dated December 31, 1997
Letter from Terry J. Gerahty, President of Poor Boy's Country Market to County Officials dated January 20, 1998

Notice of Zoning Hearing dated January 28, 1998
Memo from James H. Thompson, Code Enforcement Supervisor to Larry E. Schmidt, Zoning Commissioner dated February 5, 1998
Letter from Ernest M. Baisden, President of Parkville Park Community Association to Mr. Robert W. Bowling, Department of Plans Review Division dated February 8, 1998
Letter from Timothy M. Kotroco, Deputy Zoning Commissioner to Mr. Terry Gerahty, President dated February 27, 1998
Letter from Terry Gerahty, President of Poor Boy's, Inc. to Timothy M. Kotroco, Deputy Zoning Commissioner dated May 12, 1998
Notice of Zoning Hearing dated September 2, 1998
Letter from Barbara & Ryan Fisher to Mr. Timothy Kotroco, Deputy Zoning Commissioner dated October 14, 1998
Letter from Timothy M. Kotroco, Deputy Zoning Commissioner to William C. Clarke, Esquire dated October 16, 1998
Letter from Timothy M. Kotroco, Deputy Zoning Commissioner to William C. Clarke, Esquire dated October 27, 1998
Letter from C. William Clark, Esquire to Arnold Jablon, Director dated January 13, 1999
Letter from Timothy M. Kotroco, Deputy Zoning Commissioner to William C. Clarke, Esquire dated January 21, 1999
Letter from C. William Clark, Esquire to The Honorable Timothy M. Kotroco, Deputy Zoning Commissioner dated February 16, 1999
Letter from Board Members, Parkville Park Community Association to Office of the County Executive & County Council & State Senator, 8th District & State Delegates, 8th District & Office of Law & Department of Permits and Development Management & Deputy Zoning Commissioner & Department of Recreation and Parks & Office of Planning & Development Plans Review & Office of Community Conservation & Community Groups & Newspapers dated February 16, 1999
Resolution of Greater Parkville Community Council dated March 8, 1999
Affidavit of Greater Parkville Community Council dated March 8, 1999
Letter from Timothy M. Kotroco, Deputy Zoning Commissioner to William C. Clarke, Esquire dated March 16, 1999
Two Applications for Permits and Site Plan dated March 26, 1999
Letter from Ruth Baisden, Chairperson of the Greater Parkville/Carney Community Plan to Honorable C.A. Dutch Ruppersberger dated April 2, 1999

Deputy Zoning Commissioner's Order dated July 7, 1999

Notice of Appeal received on August 5, 1999 from Ruth Baisden.
Notice of Appeal received on August 5, 1999 from C. William Clark, Esquire, on behalf of Terry J. Gerahty.

C: C. William Clark, Esquire
Terry Gerahty
Ruth Baisden
People's Counsel of Baltimore County, MS #2010
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*C: C. William Clark, Esquire
Terry Gerahty
* Ruth Baisden
People's Counsel of Baltimore County, MS #2010
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

} See letter to Burgess for names and addresses

ADDENDUM TO CHECKLIST
OF PDM CASE FILE #98-267-SPH

Terry J. Gerahty – Legal Owner/ Petitioner

Note: The following documents were generated after the issuance of the DZC's 7/7/99 Order and are a part of the original file submitted by PDM on 8/19/99.

- 7/23/99 – Letter to DZC from C. Wm. Clark, Esq., on behalf of the Petitioner – request to revise 7/7/99 Order; to rule on other issues addressed at hearing..

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- 8/6/99 – Response letter from the DZC –
  -Letter ("motion for reconsideration") from C. Wm. Clark is "denied".
  -Letter ("motion for reconsideration") from Mr. Baisden is clarified

Case No. 98-267-SPH

SPH -To amend prior Zoning Case No. 97-295-SPHA regarding installation of fence and lighting conditions.

7/07/99 -D.Z.C.'s decision in which Petition for Special Hearing was DENIED; previous restrictions regarding fencing of property and lighting to remain in full force and effect.

1/20/2000 -Notice of Assignment for hearing scheduled for Thursday, March 9, 2000 at 10:00 a.m. sent to the following:

C. William Clark, Esquire
Terry Gerahty
W. Glen McFaul /BGE
Ruth Baisden
James Reed, Jr.
Joseph Kreis
Barry Ashbury
Ellen Otto
Alice & John Baker, Jr.
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Avery Harden /PDM
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

3/09/00 -Hearing concluded before Board (Westcott, Worrall, Barranger); deliberation to be scheduled; no memos to be filed.

3/14/00 -Notice of Deliberation sent to parties and posted; scheduled for Thursday, March 30, 2000 at 9:30 a.m. Copy to S.W.B.

3/30/00 -Concluded deliberation: fence at 60' line; 10' interior easement /no parking etc as specified in agreement with County; fence to be replaced with permanent fence when grading is completed. Appellate period to run from date of written order.

TERRY J GERAHTY **CASE NO. 98-267-SPH**

Civil Action No. 3-C-00-6650

Jan. 20, 1998	Petition for Special Hearing filed by Douglas L. Burgess, Esquire, on behalf of Terry J. Gerahty, to amend variance case #97-295-SPHA; fence and lighting conditions.
August 18	Revised Petition for Special Hearing filed by C. William Clarke, Esquire, on behalf of Terry J. Gerahty; to remove the existing variance (case #97-295), in the alternative, request that variance #97-295 be amended in the manner stated in attached letter).
April 9, 1999	Hearing held on Petitions by the Deputy Zoning Commissioner.
July 7	Order issued by the DZC in which the Petition for SPHwas DENIED.
July 23	Letter from C. William Clark, Esquire to the DZC; indicating that several issues that formed a part of the Petition were not ruled on, and requesting a revised Opinion.
August 2	Letter from Ernest Baisden, Pres., Parkville Park Community Association to the DZC; indicating that there was confusion over an inconsistency between the original and most recent order, and requesting clarification.
August 6	Letter from the Deputy Zoning Commissioner to C. William Clark, Esquire; denying request to modify 7/7/99 Order, as the additional relief requested was not contained within the file nor posted or advertised. In addition, reply to Mr. Baisden's 8/2/00 letter, wherein the DZC reiterates that his 7/7/99 decision supercedes any and all prior agreements (w/ note Appellate period runs 30 days from the date of this letter).
August 5	Notice of Appeal filed by Ruth Baisden, Protestant.
August 5	Notice of Appeal filed by C. William Clark, Esquire, on behalf of Terry J. Gerahty, Petitioner /Property Owner.
March 9, 2000	Hearing held by the Board of Appeals.
March 30	Public Deliberation conducted by the Board of Appeals.
May 31	Opinion and Order issued by the Board of Appeals; Ordered that the previous restrictions imposed upon the Petitioner in Case No. 97-295-SPHA regarding the fencing of the subject property shall remain in full force and effect pursuant to conditions.
June 30	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Ruth Baisden under Civil Action No. 3-C-00-6650. A copy of this Petition was received by the Board on June 30, 2000.
June 30, 2000	2nd Petition for Judicial Review filed in the CCt by C. William Clark, Esquire, on behalf of Terry Gerahty under a separate Civil Action No. 3-C-00-6687; Mr. Clark is intending to file a Motion to Consolidate with 3-C-00-6650. A copy of this 2nd Petition was received by the Board on July 7, 2000.
July 14	Certificate of Notice sent to interested parties.
August 31, 2000	Transcript of testimony and Record of Proceedings filed in the Circuit Court for Baltimore County.
April 25, 2001	Memorandum Opinion and Order issued by the Circuit Court for Baltimore County; case is REMANDED to the Board of Appeals with instructions to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996 (Judge Dugan). *Note: May 8, 2001 – record on remand returned by CCt and will send record ASAP.*
May 23, 2001	Notice of Appeal filed in the Court of Special Appeals by Kathleen A. Lance, Legal Assistant to C. William Clark, Esquire, as counsel for Terry Gerahty.

12 CSA

TERRY J. GERAHTY	*	IN THE CIRCUIT COURT
	*	FOR BALTIMORE COUNTY
VS	*	CIVIL
	*	DOCKET SM
RUTH BAISDEN	*	CASE NO. C00-6650

01 AUG 13 PM 2:18

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BROWN ENVELOPE CONTAINING EXHIBITS FOR C00-6650/C006687 UNDER SEPARATE COVER

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

08/09/01

Case Number: 03-C-00-006650 AE
Date Filed: 06/30/2000
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter of: Ruth Baisden

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	98-267 SPHA
Case Folder ID	C00006650V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition / Addr Update	Entered
PET	001	Baisden, Ruth Mail: 7706 Oak Avenue Baltimore, MD 21234	06/30/00	CT DO 04/25/01	06/30/00
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961		01/11/01	
ITP	001	Board Of Appeals For Baltimore County Mail: 400 Washington Ave Baltimore, MD 21204	06/30/00	CT DO 04/25/01	06/30/00

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User ID
01/10/01	09:30A		yes	CIVI	S		JGT	01	/01	POS	C	01/10/01	JGT	P		KLS	LLH
03/13/01	09:30A		yes	CIVI	S		RND	01	/01	CON	C	04/25/01		P		KGR	

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	06/30/00	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	06/30/00	06/30/00	PET001	TBA		04/25/01	JM PH
0002000	Certificate of Notice*	07/14/00	07/17/00	ITP001	TBA		04/25/01	JM PH
0003000	Transcript of Record from Adm Agency *	08/31/00	09/01/00	ITP001	TBA		04/25/01	DFF PH
0004000	Notice of Transcript of Record Sent	09/01/00	09/01/00	ITP001	TBA		09/01/00	DFF DFF
0005000	Notice of Transcript of Record Sent	09/01/00	09/01/00	PET001	TBA		09/01/00	DFF DFF
0006000	Extension Agreement that the parties ageed to extend filing Memorandum until the close of business on Wednesday, November 8, 2000	09/28/00	10/02/00	000	TBA		04/25/01	MJ PH
0007000	Scheduling Order	10/06/00	10/06/00	000	TBA		10/06/00	KLS KLS
0008000	Memorandum of Ruth Baisden*	11/08/00	11/09/00	PET001	TBA		11/09/00	JM JM
0009000	Memorandum of Petitioner Terry J Gerahty Filed by C William Clark.	11/09/00	11/09/00	000	TBA		11/09/00	JM JM
0010000	Hearing Notice	01/24/01	01/24/01	PET001	TBA		01/24/01	KGR KGR
0011000	Hearing Notice	01/24/01	01/24/01	ITP001	TBA		01/24/01	KGR KGR
0012000	Order remanding case to the B O A	04/25/01	04/25/01	000	RND	Granted	04/25/01	PH PH

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0013000	case history sent to bd. of appeals	04/26/01	04/26/01	000	TBA			ATA ATA
0014000	Invoice 10698 to j holzer	04/27/01	04/27/01	000	TBA			LG LG
0015000	*Notice of Appeal to COSA fd by Terry Geranty 11/205	05/23/01	05/23/01	PLT001	TBA			AR AR
0016000	Pre Trial Hearing Letter Issued	05/24/01	05/24/01	000	TBA		05/24/01	AJ AJ
0017000	Original Record sent to COSA of Maryland by certified mail #7099-3220-0003-8139-8150. 1 volume (sent with c00-6687 & brown envelope containing exhibits).	08/09/01	08/09/01	000	TBA			FG FG

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	06/30/01	365	no	no	DAAA	D	000	000
SLTR	Set List For Trial	DONE	08/31/00	0	yes	yes	DTRA	D	003	000
SLTR	Set List For Trial	CANCEL	01/10/01	0	yes	no	CIVI	S	000	000
EXPU	Exhibit Pickup Notic	CLOSED	06/24/01	30	no	no			000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
000		B	BOX 242/TRANSCRIPT		B			

Offered By: ITP 001 Board Of Appeals For Baltimor

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 10/06/00 Order Date : 10/06/00
Start Date : 10/06/00 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		10/21/00	04/25/01	CLOSED
All Motions (excluding Motions in Limine		02/01/01	04/25/01	CLOSED
TRIAL DATE is	03/13/01	01/04/01	04/25/01	CLOSED

IN CSA

TERRY J. GERAHTY	*	IN THE CIRCUIT COURT
	*	FOR BALTIMORE COUNTY
VS	*	CIVIL
	*	DOCKET SM
COUNTY BOARD OF APPEALS	*	CASE NO. C00-6687

01 AUG 13 PM 2:21
CIRCUIT COURT
BALTIMORE COUNTY

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BROWN ENVELOPE CONTAINING EXHIBITS FOR C00-6650/C006687 UNDER SEPARATE COVER

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

08/10/01

Case Number: 03-C-00-006687 AE
Date Filed: 07/03/2000
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter of: Terry Gerahty

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	98-267-SPH
Case Folder ID	C00006687V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
RES	001	County Board Of Appeals Of Baltimore County Mail: Old Courthouse Room 49 400 Washington Avenue Baltimore, MD 21204	07/03/00	CT DO 04/25/01	07/03/00
PET	001	Gerahty, Terry Capacity : 9th Election District/6th Councilmanic District Mail: 2711 Taylor Avenue Baltimore, MD 21234	07/03/00	CT DO 04/25/01	07/03/00
		Attorney: 0020817 Clark, C William Nolan, Plumhoff & Williams, Chartered 502 Washington Avenue Nottingham Center Ste 700 Towson, MD 21204-4528 (410)823-7800			07/03/00

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User ID
01/09/01	09:30A		yes	CIVI	S		TBA	01 /01 POS	C		01/04/01	JGT	P			KLS AED
02/13/01	09:30A		yes	CIVI	S		TBA	01 /01 VAC	C		01/18/01		P			KGR KGR
03/13/01	09:30A		yes	CIVI	S		RND	01 /01 CON	C		04/25/01		P			KGR

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	07/03/00	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	07/03/00	07/03/00	PET001	TBA		04/25/01	JET PH
0002000	Transcript of Record from Adm Agency	08/31/00	09/06/00	RES001	TBA		04/25/01	DFF PH
0003000	Notice of Transcript of Record Sent	09/06/00	09/06/00	PET001	TBA		09/06/00	DFF DFF
0004000	Notice of Transcript of Record Sent	09/06/00	09/06/00	RES001	TBA		09/06/00	DFF DFF
0005000	Extension Agreement for filing of Memo up to and including 11/08/00	09/28/00	10/03/00	000	TBA		10/03/00	DR DR
0006000	Scheduling Order	10/06/00	10/06/00	000	TBA		10/06/00	KLS KLS
0007000	Hearing Notice	01/24/01	01/24/01	PET001	TBA		01/24/01	KGR KGR
0008000	Order remanding case to the B O A	04/25/01	04/25/01	000	RND	Granted	04/25/01	PH PH
0009000	Docket entries sent to Baltimore County Board of Appeals	04/27/01	04/27/01	000	TBA			CVM CVM
0010000	*Notice of Appeal to COSA 11/204	05/23/01	05/23/01	PET001	TBA			AR AR
0011000	Pre Trial Hearing Letter Issued	05/24/01	05/24/01	000	TBA		05/24/01	AJ AJ
0012000	Order to proceed w/out prehearing conf.	06/25/01	06/27/01	000	TBA			AR AR

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0013000	Original Record sent to COSA of Maryland by certified mail #7099-3220-0003-8139-8167. 1 volume (sent with c00-6650 and brown envelope containing exhibits).	08/10/01	08/10/01	000	TBA			FG FG

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	07/03/01	365	no	no	DAAA	D	000	000
SLTR	Set List For Trial	DONE	08/31/00	0	yes	yes	DTRA	D	002	000
SLTR	Set List For Trial	CANCEL	01/04/01	0	yes	no	CIVI	S	000	000
EXPU	Exhibit Pickup Notic	CLOSED	06/24/01	30	no	no			000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: RES 001 County Board Of Appeals Of Ba								
000		B	BOX 242/TRANSCRIPT		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 10/06/00 Order Date : 10/06/00
Start Date : 10/06/00 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		10/21/00	04/25/01	CLOSED
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TRIAL DATE is	03/13/01	01/04/01	04/25/01	CLOSED

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

04/26/01

Case Number: 03-C-00-006650 AE
Date Filed: 06/30/2000
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter of: Ruth Baisden

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	98-267 SPHA
Case Folder ID	*C00006650V01*

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
PET	001	Baisden, Ruth		CT DO 04/25/01	06/30/00
		Mail: 7706 Oak Avenue Baltimore, MD 21234	06/30/00		
		Attorney: 0012186 Holzer, J Carroll *Holzer And Lee* The 508 Building 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961		01/11/01	
ITP	001	Board Of Appeals For Baltimore County		CT DO 04/25/01	06/30/00
		Mail: *400 Washington Ave* Baltimore, MD 21204	06/30/00		

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User ID
01/10/01	09:30A		yes	CIVI	S		JGT	01	/01	POS	C	01/10/01	JGT	P			KLS LLH
03/13/01	09:30A		yes	CIVI	S		RND	01	/01	CON	C	04/25/01		P			KGR PH

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	06/30/00	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	06/30/00	06/30/00	PET001	TBA		04/25/01	JM PH
0002000	Certificate of Notice*	07/14/00	07/17/00	ITP001	TBA		04/25/01	JM PH
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0005000	Notice of Transcript of Record Sent	09/01/00	09/01/00	PET001	TBA		09/01/00	DFF DFF
0006000	Extension Agreement that the parties ageed to extend filing Memorandum until the close of business on Wednesday, November 8, 2000	09/28/00	10/02/00	000	TBA		04/25/01	MJ PH
0007000	Scheduling Order	10/06/00	10/06/00	000	TBA		10/06/00	KLS KLS
0008000	Memorandum of Ruth Baisden*	11/08/00	11/09/00	PET001	TBA		11/09/00	JM JM
0009000	Memorandum of Petitioner Terry J Gerahty Filed by C William Clark.	11/09/00	11/09/00	000	TBA		11/09/00	JM JM
0010000	Hearing Notice	01/24/01	01/24/01	PET001	TBA		01/24/01	KGR KGR
0011000	Hearing Notice	01/24/01	01/24/01	ITP001	TBA		01/24/01	KGR KGR
0012000	Order remanding case to the B O A	04/25/01	04/25/01	000	RND	Granted	04/25/01	PH PH

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0013000	case history sent to bd. of appeals	04/26/01	04/26/01	000	TBA		ATA ATA

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	06/30/01	365	no	no	DAAA	D	000	000
SLTR	Set List For Trial	DONE	08/31/00	0	yes	yes	DTRA	D	003	000
SLTR	Set List For Trial	CANCEL	01/10/01	0	yes	no	CIVI	S	000	000
EXPU	Exhibit Pickup Notic	CLOSED	06/24/01	30	no	no			000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 Board Of Appeals For Baltimor								
000		B	BOX 242/ZOANING TR		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 10/06/00 Order Date : 10/06/00
Start Date : 10/06/00 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		10/21/00	04/25/01	CLOSED
All Motions (excluding Motions in Limine		02/01/01	04/25/01	CLOSED
TRIAL DATE is	03/13/01	01/04/01	04/25/01	CLOSED

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

04/27/01

Case Number: 03-C-00-006687 AE
Date Filed: 07/03/2000
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter of: Terry Gerahty

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	98-267-SPH
Case Folder ID	C00006687V01

RECEIVED
COUNTY BOARD OF APPEALS
01 APR 30 PM 1:56

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
RES	001	County Board Of Appeals Of Baltimore County		CT DO 04/25/01	07/03/00
	Mail:	Old Courthouse Room 49 400 Washington Avenue Baltimore, MD 21204	07/03/00		
PET	001	Gerahty, Terry Capacity : 9th Election District/6th Councilmanic District		CT DO 04/25/01	07/03/00
	Mail:	2711 Taylor Avenue Baltimore, MD 21234	07/03/00		
	Attorney:	0020817 Clark, C William Nolan, Plumhoff & Williams, Chartered 502 Washington Avenue Nottingham Center Ste 700 Towson, MD 21204-4528 (410)823-7800			07/03/00

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User ID
01/09/01	09:30A		yes	CIVI	S		TBA	01	/01	POS	C	01/04/01	JGT	P		KLS	AED
02/13/01	09:30A		yes	CIVI	S		TBA	01	/01	VAC	C	01/18/01		P		KGR	KGR
03/13/01	09:30A		yes	CIVI	S		RND	01	/01	CON	C	04/25/01		P		KGR	PH

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	07/03/00	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	07/03/00	07/03/00	PET001	TBA		04/25/01	JET PH
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0004000	Notice of Transcript of Record Sent	09/06/00	09/06/00	RES001	TBA		09/06/00	DFF DFF
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0007000	Hearing Notice	01/24/01	01/24/01	PET001	TBA		01/24/01	KGR KGR
0008000	Order remanding case to the B O A	04/25/01	04/25/01	000	RND	Granted	04/25/01	PH PH
0009000	Docket entries sent to Baltimore County Board of Appeals	04/27/01	04/27/01	000	TBA			CAM CAM

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
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SLTR	Set List For Trial	DONE	08/31/00	0	yes	yes	DTRA	D	002	000
SLTR	Set List For Trial	CANCEL	01/04/01	0	yes	no	CIVI	S	000	000
EXPU	Exhibit Pickup Notic	CLOSED	06/24/01	30	no	no			000	000

EXHIBITS

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Offered By: RES 001 County Board Of Appeals Of Ba								
000		B	BOX 242/TRANSCRIPT		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 10/06/00 Order Date : 10/06/00
Start Date : 10/06/00 Remove Date:

Milestone	Scheduled Target	Actual	Status
Motions to Dismiss under MD. R[illegible]	10/21/00	04/25/01	CLOSED
All Motions (excluding Motions in Limine	02/01/01	04/25/01	CLOSED
TRIAL DATE is	03/15/01	01/04/01	04/25/01 CLOSED

RECEIVED
COUNTY BOARD OF APPEALS
00 MAR -2 PM 3:42

IN RE:

PETITION FOR SPECIAL HEARING

S/E Corner Old Harford Road
and Taylor Avenue
9th Election District
6th Councilmanic District
(2711 Taylor Avenue)

Terry J. Gerahty
Petitioner

* BEFORE THE

* COUNTY BOARD OF

* APPEALS

* OF BALTIMORE COUNTY

* CASE No.98-267-SPH

* * * * * * * * * *

SUBPOENA

TO: W. Glen McFaul
BGE
7130 Rutherford Road
Baltimore, MD 21244

You are hereby summoned and commanded to be and appear personally before the County Board of Appeals of Baltimore County in Room 48, Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204 on Thursday, March 9, 2000, at 10:00 AM in connection with the above-captioned case, for the purpose of testifying and to bring with you any and all records, documents, reports and photographs of 2711 Taylor Avenue, Baltimore County, Maryland, at the request of:

C. William Clark
Nolan, Plumhoff, & Williams, Chartered
502 Washington Avenue, Suite 700
Towson, MD 21204
(410) 823-7800
Attorney For Petitioners

C. William Clark

The witness named above is hereby ordered to so appear before the County Board of Appeals. (The Board requests the Sheriff to issue the summons set forth herein)

County Board of Appeals of
Baltimore County

Issued: _____

D:\data\CWC\Clients\PoorBoy's\SubpoenaMcFaul.wpd

RECEIVED
COUNTY BOARD OF APPEALS
00 MAR -2 PM 3:42

To be filed in by
Clerk, Court of
Special Appeals

PHC No._____

NOTICE
Pursuant to Md. Rule 8-205 this form must be completed and sent to Clerk, Court of Special Appeals, Courts of Appeal Bldg., Annapolis, MD 21401

COURT OF SPECIAL APPEALS

CIVIL APPEAL PREHEARING INFORMATION REPORT

In The Matter of: Terry Gerahty, Petitioner

1. Title of Case: For Judicial Review of the Opinion of the County Board of Appeals

Which party is Appellant in Court of Special Appeals:

Name Terry Gerahty

2. Names, addressses, and telephone numbers of counsel:

For Appellant: C. William Clark, Nolan, Plumhoff & Williams, Chartered
502 Washington Avenue, Suite 700
Towson, MD 21204 (410) 823-7800

For Appellee: J. Carroll Holzer
508 Fairmount Avenue
Towson, MD 21286 (410) 825-6961

3. Trial Court: (Circuit) (~~Orphan's~~) Court for Baltimore County

a. Docket No: 03-C-00-6687 c. Trial Judge Robert N. Dugan

b. ~~Jury~~/ Non-Jury/ ~~Motion Hearing~~

4. Type of Case (e.g., automobile negligence, worker's compensation, breach of contract, domestic, employment dispute, product liability, property dispute, tax, UCC, zoning, etc):
Judicial review of Board of Appeals Decision on Petition for Special Hearing

5. Trial
a. Duration of trial or hearings (days/hours): 2 hours

b. Number of exhibits in evidence: 18, plus Board Opinion and Transcript

6. Judgment
a. Date of Judgment being appealed (if date is other than that shown on docket, please explain): 4/25/01

b. Describe judgment or order being appealed. (Attach a copy of any written opinion of the trial court.) Memorandum, Opinion and Order (attached)

c. Did judgment finally dispose of all claims by and against all parties? Yes If not, please explain why judgment is appealable. (See Md. Rule 2-602; Courts Art., Sections 12-301, 12-303.)

7. **Post Judgment Motions**
Was post judgment motion under Md. Rule 2-532, 2-533, or 2-534 or request for in banc review under Md. Rule 2-551 filed? No If so, date filed_____ and date of disposition_____.

8. **Date Appeal noted:** May 23, 2001 **ATTACH COPY OF NOTICE OF APPEAL**

9. **Issues on Appeal**
State each issue you intend to raise on appeal, and, as to each, state whether and how the issue was decided by the trial court, whether you anticipate a defense of noe-preservation, waiver, or harnmless error. and how you propose to respond to any such defense. Did the Lower Court recognize and apply the correct principles of Law governing the case? Did the Lower Court improperly substitute its judgment for that of the Administrative Agency during its judicial review? The Lower Court reversed the Decision of the County Board of Appeals and remanded the case. No defense of non-preservation, waiver or harmless error is anticipated.

10. **Settlement discussions:**
a. Was settlemnet discussed before trial or hearing which resulted in judgment? No Describe briefly.

b. Was this case submitted to any ADR process (arbitration, mediation, settlement conference, etc)? No Describe briefly.

c. Has settlement been discussed since judgment? No Describe briefly.

11. **Record Extract**
Given the number of papers and exhibits and the likely size of any transcript, do you anticipate that the record extract will exceed 100 pages in length? No If so, state whether the deferred record extract procedure authorized in Md. Rule 8-501(1) would be appropriate and, if not, why.

12. **Custody, adoption, guardianship cases**
Is this appeal from an order (1) granting or denying a petition for adoption, guardianship terminating parental rights, or guardianship of the person of a minor or disabled person, or (2) granting, denying, or establishing custody of or visitation with a minor child? No . If so, state whether the expedited appeal provision of Md. Rule 8-207(b) is applicable and, if not, why.

13. Motions cases N/A

If this appeal is from the granting of a motion to dismiss or for summary judgment

a. Was the proceeding recorded? (See Md. Rule 16-404-D)_____

b. If the proceeding was recorded:
   (1) How long did the hearing on the motion last?_____
   (2) If a transcript of the proceeding is not necessary to the appeal, state why.

14. Settlement or Scheduling Conference

a. Would a prehearing conference be helpful in settling or limiting issues? No

b. Do you see a need for an administrative conference to resolve any special issues regarding the record, briefing, or scheduling? No If so, state (1) the issues and (2) whether you have discussed them with opposing counsel.

NOTICE

A prehearing conference is designed to encourage the parties to reach a voluntary settlement before incurring the expenses of securing a transcript and preparing and printing briefs, or, if that is not possible, to consider limiting the issues, the option of an expedited appeal pursuant to Md. Rule 8-207, and any special scheduling or briefing problems. Please set forth succinctly any additional information and attach any documents that will assist the Court and the parties in these regards. Information concerning settlement negotiations will be kept confidential

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing report was mailed to:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

5/31/01 C. William Clark
Date Signed

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

N O T I C E O F H E A R I N G / T R I A L

(2ND # TO BE CONSOLIDATED)

Case Number: 03-C-00-006687
Administrative Agency : 98-267-SPH
C I V I L

In The Matter of: Terry Gerahty

01 JAN 25 PM 12:21
BALTIMORE COUNTY
BOARD OF APPEALS

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: County Board Of Appeals Of Baltimore County
Old Courthouse Room 49
400 Washington Avenue
Baltimore, MD 21204

You are hereby NOTIFIED TO APPEAR before a Judge of the:

CIRCUIT COURT FOR BALTIMORE COUNTY
County Courts Building
401 Bosley Avenue
Towson, MD 21285-6754

Court date:
March 13, 2001
At: 09:30 AM
Civil Non-Jury Trial
1 HOUR ADMINISTRATIVE APPEAL

PLEASE NOTE: All counsel are expected to confer with each other with regard to the assigned trial date and to advise the court and other parties of any pre-existing conflict promptly.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Application for postponement must be made in writing with copies to all attorneys.

Please refer to Information Desk for Court Room Designation.

Assignment Clerk: Rushton Kathy
Assignment Office Phone: (410)-887-2660

Date Issued: 01/24/01

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

County Board Of Appeals Of Baltimore County
Old Courthouse Room 49
400 Washington Avenue
Baltimore MD 21204

Assignment Date: 10/06/00

Case Title: In The Matter of: Terry Gerahty
Case No: 03-C-00-006687 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 10/21/00
2. All Motions (excluding Motions in Limine) are due by..... 11/30/00
3. TRIAL DATE is..... 01/09/01
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; 1 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for *undue hardship or emergency* situations. *All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for* postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by *Settlement Judges as long as trial dates are not affected.* (Call [410] 887-2920 for more information.)

Special Assistance Needs: *If you, a party represented by you, or a witness to be called on behalf of that party need an* accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, *(800) 735-2258.*

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

cc: C William Clark Esq
Issue Date 10/06/00

00 OCT 10 PM 12:05
COUNTY BOARD OF APPEALS
RECEIVED

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

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

Case Number: 03-C-00-006687
Administrative Agency : 98-267SPH
C I V I L

In The Matter of: Terry Gerahty

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 31st day of August, 2000.

Suzanne Mensh
Clerk of the Circuit Court, per D.F.

Date issued: 09/06/00

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

RECEIVED
COUNTY BOARD OF APPEALS
BALTIMORE COUNTY
00 SEP -7 PM 1:00

To: Board Members

Lawrence S. Wescott – Chairman
C. Lynn Barranger
Donna M. Felling
Richard K. Irish
Charles L. Marks
Lawrence M. Stahl
Margaret Worrall

Memo date: 4/5/01

Kathi – FYI – 4 copies of Avery Harden's 12/24/96 letter which was submitted before the CBA as Petitioner's Exhibit #4.

Hold

RE: Status of Upper Court Decisions

98-267-SPH /Terry Gerahty (Poor Boys)

4/25/01 – Judge Dugan /CCt (CCt #3-C-00-6687) REMANDS to CBA with instructions to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996.
(original Board – Wescott, Worrall & Barranger)

PLEASE SEE CHARLOTTE IF YOU WISH TO REVIEW ANY OF THESE CASE FILES

5-23-01
CSA appeal

Editing Csa table with form F: Record 21 of 69 Edit ▲=▼

STATUS

Csa # 21

NAME: Gerahty, Terry (Poor Boys) ◄
CSA APPEAL: 5/23/2001
BY WHOM: Clark for Gerahty
DECISION:
DATE:
UP:

3-C-00-6687

98-207-SPH

7-18-01 - Record ret'd to CCt to prepare appeal to CSA

John H. Almond

CCt / Record File Room

Editing Cct-2000 table with form F: Record 8 of 20 Edit ▲=▼

Cct-2000 # 8

CCT#: 3-C-00-006650
FILE#: 98-267-SPH
NAME: Terry Gerahty (Poor Boys)
APPELLANT: Ruth Baisden /Prot.; and Bud Clark for Gerahty
APPEALED: 6/30/2000
FILED: 8/31/2000
JUDGE: Robert N. Dugan
DECISION: Remanded to CBA -pass Order /fencing per A. Harden
DATE: 4/25/2001
UP: X ◄

5/01 - Rec'd Record from CCt.

7/01

Rec'd record from CCt

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF:	Terry J. Gerahty –Legal Owner /Petitioner Case No. 98-267-SPH	
DATE :	Thursday, March 30, 2000	
BOARD /PANEL :	Lawrence S. Wescott	(LSW)
	Margaret Worrall	(MW)
	Lynn Barranger	(LB)
SECRETARY :	Kathleen C Bianco /Administrator	

PURPOSE: To deliberate Case No. 98-267-SPH /Petition for Special Hearing /Poor Boy's –fence /lighting .

Panel members discussed:

Issue: Fencing restriction (Petitioner withdrew his appeal regarding the lighting issue; only issue before the Board at this hearing was therefore the fencing issue; specifically, the fencing restriction as stated in 1999 Order.

- 1997 Decision – 6' fence with 2' lattice (Petitioner's #9);
- Easement to Baltimore County /Petitioner's #8;
- 70' easement /not 60'; 60' on one side, next to Baisden property; other side is 60' to outside of trees; 70' to fence line.

Deliberation continued on the issue of where the 10' was to be – inside or outside the fence; was the fence on the 60' line, with 10' easement on the inside of the fence; was the 10' to be on the outside of the fence, thereby putting the fence on the 70' line?

Discussed Covenant p 4 – 60' buffer + 10'interior; 70' from Oak. Discussed Baltimore County agreement and open space reference.

Discussed exhibits submitted regarding this issue, including Protestants' #2 from Harden and Bartenfelder.

Covenant and agreement – fence @ 60' line with 10' interior easement for lighting, stormwater management, etc. No commercial use or parking in 10"easement.

Board determined that fence would be placed on 60' line, with 10' strip falling inside of the fence – no parking allowed; no storage, etc. The strip was left as open easement for lighting, stormwater management, etc. Stops would be placed 10' from fence to prevent parking cars in that 10' strip.

Next issue to be discussed was the condition of the fence; was to be of permanent installation. Per Harden's description – fencing installed with footings; a permanent fence, but it is not leaning; is not a permanent fence. Waiver received for temporary parking lot – temporary fence went up until other work was completed; this is temporary fence. Requires permanent fence – better quality; better installation; and installed with concrete footings.

Board agreed as to required quality of permanent fence; permanent fence should go in after grading and permanent parking with landscaping.

Unanimous decision of Board:

Fence at 60' line; 10' interior easement; cannot be utilized except as set forth in agreement with County.

Fence replaced with permanent 6' + 2' fence after grading; maintained and landscaping provided.

Anyone aggrieved by this decision will have 30 days in which to file a Petition for Judicial Review in the Circuit Court; that 30-day period will begin the date the written Order is issued by the Board and not today's date.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place this date regarding this zoning case. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted

Kathleen C. Bianco

Kathleen C. Bianco, Administrator
County Board of Appeals

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: March 22, 2002

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: W. Carl Richards, Jr.

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **Terry J. Geraghty**
Case No.: 98-267-SPH
Circuit Court Case No.: 03-C-00-6650 and 6687

Judge Dugan of the Circuit Court REMANDED to the CBA on 4/25/01. Order of the Board issued on Remand from the Circuit Court on February 8, 2002. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith.

Attachment: SUBJECT FILE ATTACHED

Baltimore County
Department of Permits and
Development Management

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

August 18, 1999

RECEIVED
COUNTY BOARD OF APPEALS
99 AUG 19 AM 9:31

Mr. Douglas Burgess
Nolan, Plumhoff & Williams
502 Washington Avenue
Suite 700
Towson, MD 21204

Dear Mr. Burgess:

RE: Case No. 98-267-SPH, 2711 Taylor Avenue, 9th Election District

Please be advised that an appeal of the above referenced case was filed in this office on August 5, 1999 by Ruth Baisden and on August 5, 1999 by C. William Clark, Esquire on behalf of Terry J. Gerahty. 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,

Arnold Jablon
Director

AJ:scj

C: C. William Clark, Esquire, 502 Washington Ave., Suite 700, Towson 21204
Terry Gerahty, 7721 Old Harford Road, Baltimore 21234
Ruth & Ernie Baisden, 7706 Oak Avenue, Baltimore 21234
James Reed, Jr., 7705 Oak Avenue, Baltimore 21234
W. Glen McFaul, BGE Co., 7130 Rutherford Road, Baltimore 21244
Joseph Kreis, 2802 Taylor Avenue, Baltimore 21234
Barry Ashbury, PO Box 10922, Baltimore 21234
Ellen Otto, 2515 Hillcrest Avenue, Baltimore 21234
Alice & John Baker, Jr., 2307 Ellen Avenue, Baltimore 21234
Avery Harden, PDM
People's Counsel

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on Recycled Paper

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

August 6, 1999

RECEIVED
COUNTY BOARD OF APPEALS
99 AUG 10 AM 9:51

C. William Clark, Esquire
Nolan, Plumhoff & Williams
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204-4528

Re: Baltimore County, MD v. Terry J. Gerahty
Petition for Special Hearing; Case No. 98-267-SPH

Dear Mr. Clark:

I have read and reviewed your letter dated July 23, 1999 concerning my decision made in Case No. 98-267-SPH. In addition to your letter dated July 23, I have also read and reviewed the letter submitted by Mr. Ernest Baisden, President of the Parkville Park Community Association dated August 1, 1999.

You have requested a modification to my original decision requesting that additional relief be granted to your client. While these additional requests may have been made orally by you at the time of the hearing, they were not contained within the petition itself or the letter written by Mr. Gerahty which was attached to the petition contained within the file. Inasmuch as the additional relief you request was not stated on the petition itself, nor posted or advertised, I believe those matters are not properly before me. The protestants who attended the hearing in opposition to your client's request did not have a fair opportunity to prepare for the additional relief requested, given that the requests were not contained within the file nor posted or advertised. Therefore, I do not believe it is appropriate to amend or modify my decision dated July 7, 1999. Accordingly, your additional request contained within your July 23, 1999 letter be and is hereby denied and would be more appropriately brought to the attention of the Board of Appeals, in the event an appeal is filed.

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on Recycled Paper

As to the letter issued by Mr. Baisden written on behalf of the Parkville Park Community Association, I reiterate that the fence that presently exists on the Petitioner's property satisfies my original decision and shall be permitted to remain in accordance with the dictates stated in my July 7, 1999 ruling. Mr. Baisden appears to rely upon old agreements reached between the Petitioner, Councilman Bartenfelder's office, and Mr. Avery Harden. My decision dated July 7, 1999 supercedes any and all prior agreements concerning the fence and therefore, the fence as it exists today subject to the conditions imposed by my July 7, 1999 decision shall remain.

I trust that this letter has served to resolve the matters brought to my attention by virtue of your letter, as well as the letter written by Mr. Baisden. Any appeal of this matter must be made within thirty (30) days from the date of this letter, inasmuch as I have treated your letter and Mr. Baisden's letter as motions for reconsideration.

Very truly yours,

Timothy Kotroco

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj

c: Mr. Ernest Baisden, President
Parkville Park Community Association

Baltimore County
Zoning Commissioner
Office of Planning

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

January 21, 1999

William C. Clarke, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
SE/Corner Old Harford Road & Taylor Avenue
(7721 Old Harford Road)("Poor Boys")
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 98-267-SPH

Dear Mr. Clarke:

This letter is to confirm that the hearing in the above-captioned matter, which was continued from its last hearing date of December 3, 1998, has been reset for Thursday, February 18, 1999. The hearing will be held at 9:00 AM in Room 407 of the County Courts Building. A copy of this letter has been forwarded to all parties who appeared at the hearing in December, and those who have expressed an interest in this case.

Should you have any questions concerning the rescheduling of this matter, please do not hesitate to contact this office.

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Terry Gerahty, 7721 Old Harford Road, Baltimore, Md. 21234
Mr. W. Glen McFaul, c/o BGE, 7130 Rutherford Rd., Baltimore, Md. 21244
Mr. & Mrs. Ernie Baisden, 7706 Oak Avenue, Baltimore, Md. 21234
Mr. James Reed, 7705 Oak Avenue, Baltimore, Md. 21234
Mr. Joseph Kreis, 2802 Taylor Avenue, Baltimore, Md. 21234
Mr. Barry Asbury, P.O. Box 10922, Parkville, Md. 21234
Mr. & Mrs. Ryan Fisher, 2526 Wycliffe Road, Baltimore, Md. 21234

Mr. Avery Harden, DPDM; People's Counsel; Case Files

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Baltimore County
Zoning Commissioner
Office of Planning and Zoning

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

October 27, 1998

William C. Clarke, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
SE/Corner Old Harford Road & Taylor Avenue
(7721 Old Harford Road)("Poor Boys")
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 98-267-SPH

Dear Mr. Clarke:

This letter is to confirm that the hearing in the above-captioned matter has been rescheduled, at the request of the Protestants, from Thursday, November 5, 1998 to Thursday, December 3, 1998. The hearing will be held at 9:00 AM in Room 407 of the County Courts Building. A copy of this letter has been forwarded to all parties who appeared at the original hearing date of October 15, 1998, and those who have expressed an interest in this case.

Should you have any questions concerning the rescheduling of this matter, please do not hesitate to contact this office.

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Terry Gerahty
7721 Old Harford Road, Baltimore, Md. 21234

Mr. W. Glen McFaul, c/o BGE, 7130 Rutherford Rd., Baltimore, Md. 21244

Mr. & Mrs. Ernie Baisden, 7706 Oak Avenue, Baltimore, Md. 21234
Mr. James Reed, 7705 Oak Avenue, Baltimore, Md. 21234
Mr. Joseph Kreis, 2802 Taylor Avenue, Baltimore, Md. 21234
Mr. Barry Asbury, P.O. Box 10922, Parkville, Md. 21234
Mr. & Mrs. Ryan Fisher, 2526 Wycliffe Road, Baltimore, Md. 21234

Mr. Avery Harden, DPDM; People's Counsel; Case Files

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Baltimore County
Zoning Commissioner
Office of Planning

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

March 16, 1999

William C. Clarke, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
SE/Corner Old Harford Road & Taylor Avenue
(7721 Old Harford Road)("Poor Boys")
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 98-267-SPH

Dear Mr. Clarke:

This letter is to confirm that the hearing in the above-captioned matter has been rescheduled for Friday, April 9, 1999 at 2:00 PM in Room 407 of the County Courts Building. A copy of this letter has been forwarded to all parties who appeared at the hearing in December, and those who have expressed an interest in this case.

Should you have any questions concerning the rescheduling of this matter, please do not hesitate to contact this office.

Very truly yours,

Timothy Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Terry Gerahty, 7721 Old Harford Road, Baltimore, Md. 21234
Mr. W. Glen McFaul, c/o BGE, 7130 Rutherford Rd., Baltimore, Md. 21244
Mr. & Mrs. Ernie Baisden, 7706 Oak Avenue, Baltimore, Md. 21234
Mr. James Reed, 7705 Oak Avenue, Baltimore, Md. 21234
Mr. Joseph Kreis, 2802 Taylor Avenue, Baltimore, Md. 21234
Mr. Barry Asbury, P.O. Box 10922, Parkville, Md. 21234
Mr. & Mrs. Ryan Fisher, 2526 Wycliffe Road, Baltimore, Md. 21234

Mr. Avery Harden, DPDM; People's Counsel; Case Files

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on Recycled Paper

Baltimore County
Zoning Commissioner
Office of Planning

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

February 27, 1998

Mr. Terry Gerahty, President
Poor Boy's, Inc.
7721 Old Harford Road
Baltimore, Maryland 21234

RE: PETITION FOR SPECIAL HEARING
SW/S Taylor Avenue, 145' NW of c/l Oak Avenue
(7721 Old Harford Road)
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 98-267-SPH

Dear Mr. Gerahty:

This Office is in receipt of your request for postponement of the above-captioned matter, scheduled for Monday, March 2, 1998. It is my understanding that the property was improperly posted for this upcoming hearing and as a result, must be reposted and/or advertised with a new hearing date and time.

Please contact the Department of Permits and Development Management to secure the next available hearing date and time when you are prepared to move forward with this case. In the meantime, this Office has notified Mr. and Mrs. Ernest Baisden of your request for postponement. It is suggested that you notify them in writing of the new hearing date and time when your case has been rescheduled.

Thank you for your cooperation in this matter.

Very truly yours,

Timothy Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. & Mrs. Ernest L. Baisden
7706 Oak Avenue, Baltimore, Md. 21234

DPDM; People's Counsel; Case Files

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Baltimore County
Zoning Commissioner
Office of Planning and Zoning

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

October 16, 1998

William C. Clarke, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
SE/Corner Old Harford Road & Taylor Avenue
(7721 Old Harford Road)("Poor Boys")
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 98-267-SPH

Dear Mr. Clarke:

This letter is to confirm that the hearing in the above-captioned matter, which was originally scheduled to be heard by Zoning Commissioner Lawrence E. Schmidt on October 15, 1998, has been postponed, at the request of the Protestants, and rescheduled for a mutually convenient date before this Deputy Zoning Commissioner. Please be advised that this matter has been reset to be heard by me on Thursday, November 5, 1998, at 9:00 AM in Room 407 of the County Courts Building. A copy of this letter has been forwarded to all parties who appeared at the hearing on October 15, 1998, and those who have expressed an interest in this case.

Should you have any questions concerning the rescheduling of this matter, please do not hesitate to contact this office.

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Terry Gerahty
7721 Old Harford Road, Baltimore, Md. 21234

Mr. W. Glen McFaul, c/o BGE, 7130 Rutherford Rd., Baltimore, Md. 21244

Mr. & Mrs. Ernie Baisden, 7706 Oak Avenue, Baltimore, Md. 21234
Mr. James Reed, 7705 Oak Avenue, Baltimore, Md. 21234
Mr. Joseph Kreis, 2802 Taylor Avenue, Baltimore, Md. 21234
Mr. Barry Asbury, P.O. Box 10922, Parkville, Md. 21234
Mr. & Mrs. Ryan Fisher, 2526 Wycliffe Road, Baltimore, Md. 21234

Mr. Avery Harden, DPDM; People's Counsel; Case Files

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Baltimore County
Zoning Commissioner
Office of Planning

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

February 27, 1998

Mr. Terry Gerahty, President
Poor Boy's, Inc.
7721 Old Harford Road
Baltimore, Maryland 21234

RE: PETITION FOR SPECIAL HEARING
SW/S Taylor Avenue, 145' NW of c/l Oak Avenue
(7721 Old Harford Road)
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 98-267-SPH

Dear Mr. Gerahty:

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Please contact the Department of Permits and Development Management to secure the next available hearing date and time when you are prepared to move forward with this case. In the meantime, this Office has notified Mr. and Mrs. Ernest Baisden of your request for postponement. It is suggested that you notify them in writing of the new hearing date and time when your case has been rescheduled.

Thank you for your cooperation in this matter.

Very truly yours,

Timothy M. Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. & Mrs. Ernest L. Baisden
7706 Oak Avenue, Baltimore, Md. 21234

DPDM; People's Counsel; Case Files

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on Recycled Paper

Petition Exh 2

COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

JOSEPH BARTENFELDER
COUNCILMAN, SIXTH DISTRICT

September 18, 1997

COUNCIL OFFICE: TOWSON 887-3388
DISTRICT OFFICE - FULLERTON 887-5223

Dear Mr. Baisden:

This is in response to the request of the Parkville Park Community Association to explain the intent of the "L" shaped landscape buffer area located along the west side of the 7700 block of Oak Avenue and the first residence on Oak Avenue. The exact size and location of this landscape buffer area is shown on the attached plan and is labeled "Landscape Conservation Easement".

The creation of this landscape buffer area was the result of a compromise to allow the property owner (owner of Poor Boys) to gain the rezoning of residential property to BL commercial and to protect the property values of the surrounding residential properties. It was to become a landscaped passive park (owned by the County) and provide screening for the surrounding residential community from the newly zoned commercial property. The goal of the buffer and landscaping is to preserve the residential character and quality of life of the residental neighborhood and additionally not to cause a detrimental effect to the community. The rezoning of the residental property was based on this compromise and I feel strongly this intent be carried out.

I also feel it is important to have a permanent fence and landscaping as directed in attached letter from Baltimore County Department of Permits and Development Management (Avery Harden, Landscape Architect).

Sincerely,

Joe Bartenfelder

Joseph Bartenfelder
Chairman, County Council
Sixth District

RO TO BL

DR5.5 TO BL

122

123

180'

50' 50' 50'

TOWNSOAD

60'

100'

PARK RESERVE

360'

45 45 45 45 45 45

45'

70'

124

125

95

94

92

COMPACT EVERGREEN SCREENING

126

60'

127

128

91

50'

LANDSCAPED CONSERVATION EASEMENT

48

45

44

DATE: 10/8/96

1" = 50'

180' P/O PLAT OF "OAKVILLE"

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Exq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the *above referenced matter.*

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

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on Recycled Paper

The 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space. See plan.

As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

Thirty five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thirive within two years must be replaced. Steven's Hollies are recommemded where excessive moisture is an issue. Hollies must be placed closer together to achieve the desired effect. See plan. The other evergreen selections are half Norway Spruce and half White Pine.

This office will work with Poorboys when the planning for the expanded parking lot begins. The proposal above is essentially what the Baltimore County Landscape Manual will require when a permit for the parking lot is sought. Every effort will be made to save the existing trees within the proposed parking lot area. There shall be no increase in runoff onto the adjacent residences as a result of the sitework.

As a condition of completing the buffer requirements, the copse of brambles along Oak Avenue should be mowed.

If anyone has any questions or comments, please call me at 887-3751.

Sincerely,

E. Avery Harden

E. Avery Harden, Landscape Architect
Development Plans Review

2 Attachments

RESIDENCE

BUFFER

LANDSCAPE BUFFER

HOLLIES

WET AREA

FENCE LOCATION

LATTICE ON FENCE

6 FOOT FENCE

60'

10' LANDSCAPE STRIP

4 FOOT FENCE

PROPOSED TREE LOCATIONS

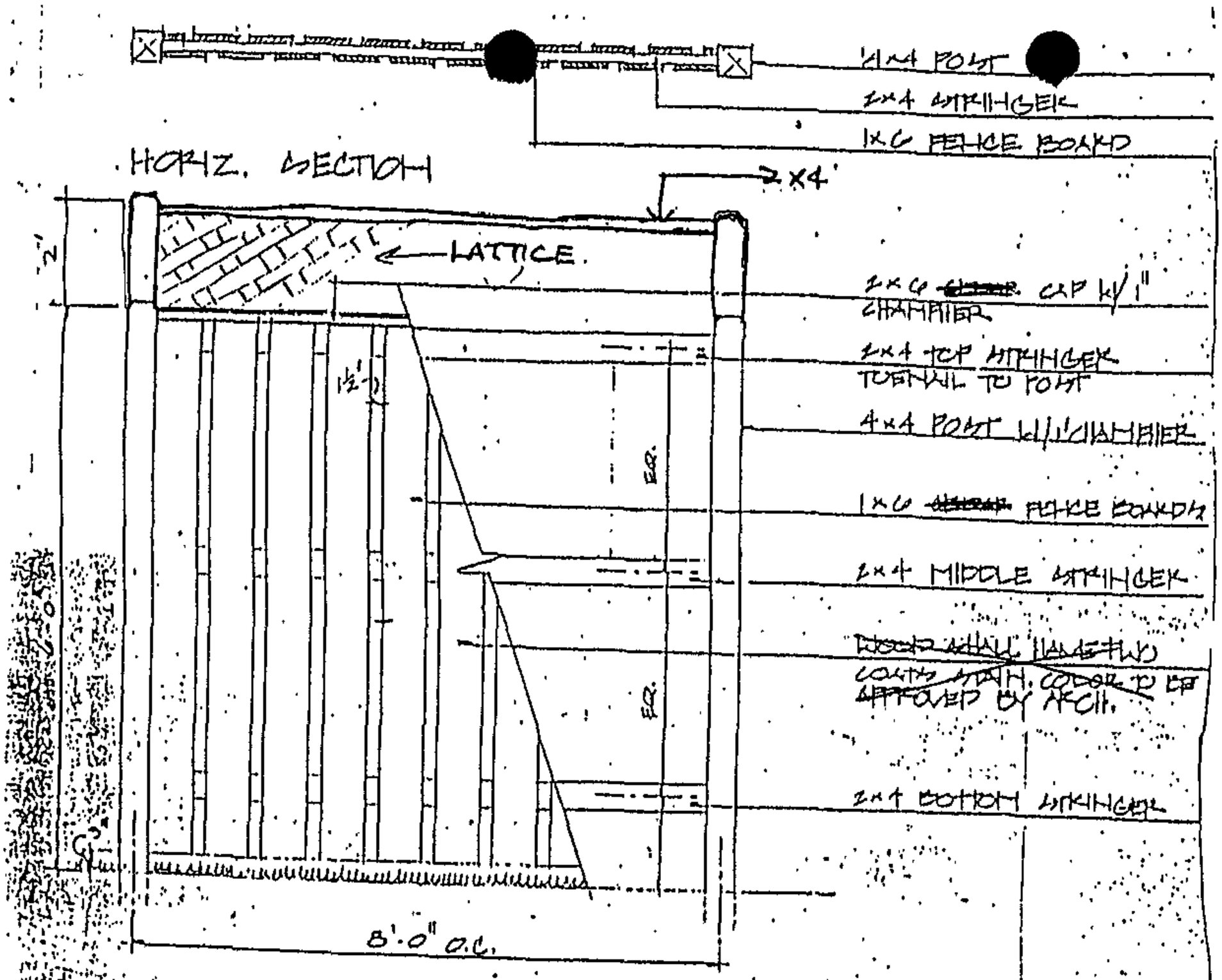
TERMINATE FENCE

POORBOYS NURSERY

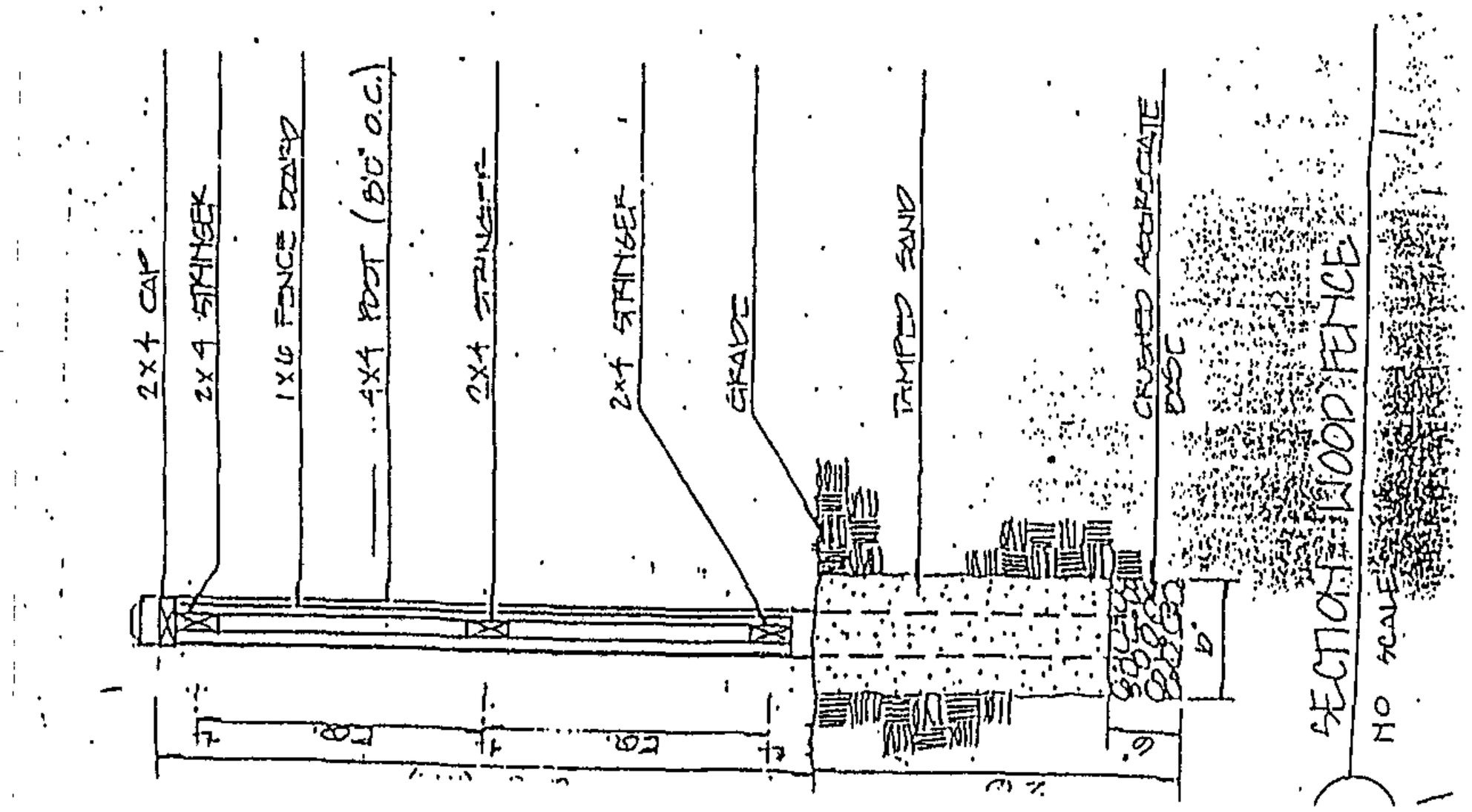
TAYLOR AVE

APPROXIMATE SCALE
1"=30'

HORIZ. SECTION



5 ELEVATION + PLAN · WOOD FENCE
NO SCALE



Baltimore County
Department of Permits and
Development Management

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

February 18, 1998

Douglass L. Burgess, Esquire
Nolan, Plumhoff & Williams, Chtd.
502 Washington Avenue, Suite 700
Towson, MD 21204

RE: Item No.: 267
Case No.: 98-267-SPH
Petitioner: Terry J. Gerahty

Dear Mr. Burgess:

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 January 20, 1998.

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

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

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)

Printed with Soybean Ink
on Recycled Paper

Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary

Parker F. Williams
Administrator

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

RE: Baltimore County 1/30/98
Item No. 267 JRF

Dear Ms. Eubanks:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

BALTIMORE COUNTY GOVERNMENT

INTER-OFFICE COMMUNICATION

PERMITS AND DEVELOPMENT MANAGEMENT

DATE: 2/6/98

TO: ZONING ADVISORY COMMITTEE

FROM: Avery Harden, County Landscape Architect

SUBJECT: *ITEM # 267; Zoning Case # 97 - 295 SPHA, Violation Case # 97 - 3996; "Poor Boys"*

This office recommends against granting the requested relief. Besides the subject order, the applicant is subject to the Baltimore County Landscape Manual — that also requires a fence — and the parking-lot lighting is still subject to (Sec. 409.8; A. 3.) of the Baltimore County Zoning Regulations. The recent modification to the subject site lighting still leaves the trespass-light issue in significant non-conformance with the Illumination Engineering Society standards for this particular situation. The applicant plans additional lighting still.

The design need for the conditions in the subject order has not changed. The applicant is presently pursing a grading permit that would include permission to permanently store 1,900 cubic-yards of subsoil clay excavation on top of the buffer area. The resulting pyramidal-type constructions would create an aesthetic nuisance while smothering significant portions of the root systems of the numerous specimen trees. It would also be horticulturally unfeasible to establish vegetation on these constructions. The applicant request that these pyramids be accepted as the necessary buffer in-lieu-of the subject zoning order conditions. This office recommends against permitting this.

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: PDM

DATE: 1/29/93

FROM: R. Bruce Seeley . RBS/93
Permits and Development Review
DEPRM

SUBJECT: Zoning Advisory Committee
Meeting Date: Feb 2, 93

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s: 93-156
267
269
270
272
273
274
275

RBS:sp

BRUCE2/DEPRM/TXTSBP

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

INTEROFFICE CORRESPONDENCE

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

Date: February 10, 1998

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

SUBJECT: Zoning Advisory Committee Meeting
for February 9, 1998
Item No. 267

The Bureau of Developer's Plans Review has reviewed the subject zoning item. The zoning plan is not consistent with the submitted site and grading plans, and it has to be rectified.

Only a single new point of access will be permitted for the proposed addition.

Four-hundred foot sight lines along Taylor Avenue shall be shown for the vehicles using Oak Avenue and the proposed point of access.

PLEASE SEE ATTACHED MEMORANDUM FOR ADDITIONAL COMMENTS.

RWB:HJO:jrb

Attachment

cc: File

ZONE0209.267

Baltimore County
Fire Department

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

February 4, 1998

RECEIVED
FEB 5 1998
PDM

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

RE: Property Owner: Terry J. Gerahty
Scotts Corner Limited Partnership

Location: DISTRIBUTION MEETING OF February 2, 1998

Item No.: (267) 272 Zoning Agenda:

Gentlemen:

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

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

Printed with Soybean Ink
on Recycled Paper

Jim 3/2

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: February 23, 1998

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

SUBJECT: Zoning Advisory Petitions

The Planning Office has no comments on the following petition because the issues related to the subject case deal with enforcement matters.

Item No. 267

If there should be any questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at (401) 887-3495.

Prepared by: Jeffrey W. Long

Division Chief: Gary L. Kerns

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\NOCOM\267.DOC

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

INTEROFFICE CORRESPONDENCE

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

Date: September 3, 1998

FROM: Robert W. Bowling, Chief
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting
for September 8, 1998

1. Revised Petition Forms (Variance)
Zoning Case #99-52-XA
2340 York Road

2. Revised Petition Forms (Special Hearing)
Zoning Case #98-267-SPH
2711 Taylor Avenue

The Development Plans Review Division has reviewed the subject zoning items, and we did not receive plans for either zoning case.

RWB:HJO:jrb

cc: File

REVPET.908

RE: PETITION FOR SPECIAL HEARING 2711 Taylor Ave, SWC Taylor Ave & Oak Ave 9th Election District, 6th Councilmanic	*	BEFORE THE ZONING COMMISSIONER
Terry J. Gerahty Petitioner	*	OF BALTIMORE COUNTY
	*	CASE NO. 98-267-SPH

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of February, 1998, a copy of the foregoing Entry of Appearance was mailed to Douglas L. Burgess, Esq., Nolan, Plumhoff & Williams, 502 Washington Avenue, Suite 700, Towson, MD 21204, attorney for Petitioner.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

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

INTEROFFICE CORRESPONDENCE

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

Date: September 3, 1998

FROM: Robert W. Bowling, Chief
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting
for September 8, 1998

1. Revised Petition Forms (Variance)
Zoning Case #99-52-XA
2340 York Road

2. Revised Petition Forms (Special Hearing)
Zoning Case #98-267-SPH
2711 Taylor Avenue

The Development Plans Review Division has reviewed the subject zoning items, and we did not receive plans for either zoning case.

RWB:HJO:jrb

cc: File

REVPET.908

Code Enforcement

Baltimore County
Department of Permits & Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3351

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE: February 5, 1998

TO: Larry E. Schmidt
Zoning Commissioner

FROM: James H. Thompson - HR
Code Enforcement Supervisor

SUBJECT: ITEM NO.: 267
PETITIONER: Terry J. Gerahty

VIOLATION CASE NO.: 97-3996

LOCATION OF VIOLATION: 2711 (7721) Taylor Avenue
9th Election District

DEFENDANTS: Terry J. Gerahty

Please be advised that Hunter Rowe would like to be contacted when the violation file is needed and he will bring it over to you for your perusal. Also, there is a difference in the address of the location site. Our file shows the address as 7721 Taylor Avenue.

JHT/HR/hek

Code Enforcement

Baltimore County
Department of Permits & Development Management
111 West Chesapeake Avenue
Towson Maryland 21204
(410) 887-3351

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE: February 5, 1998

TO: Larry E. Schmidt
Zoning Commissioner

FROM: James H. Thompson - HR
Code Enforcement Supervisor

SUBJECT: ITEM NO.: 267
PETITIONER: Terry J. Gerahty

VIOLATION CASE NO.: 97-3996

LOCATION OF VIOLATION: 2711 (7721) Taylor Avenue
9th Election District

DEFENDANT(S): Terry J. Gerahty

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s):

NAME	ADDRESS
Douglas L. Burgess, Esquire	Nolan, Plumhoff & Williams 502 Washington Avenue Suite 700 Towson, Maryland 21204
Mr. Ernest Baisden	7706 Oak Avenue Baltimore, Maryland 21234

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Code Enforcement Supervisor, so that the appropriate action may be taken relative to the violation case.

JHT/HR/hek

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

INTER-OFFICE CORRESPONDENCE

DATE: November 29, 1996

TO: Avery Harden
Landscape Architect

FROM: James H Thompson
Code Enforcement

RE: Landscape Installation
7721 Old Harford Road
Poor Boy's Incorporated
9th Election District

Please be advised that the subject property recently had a portion of it's land rezoned to commercial (B.L.) during the most recent comprehensive map process.

As a condition of this re-zoning, the property owner/tenant is to create a landscape buffer for the benefit of the adjacent community surrounding a proposed parking lot.

Douglas L. Burgess, Esquire, who represents the tenant, Poor Boy's Incorporated, has informed me his client is ready and willing to proceed with this requirement, but they first wish that you propose an acceptable landscape plan to satisfy Councilman Joseph Bartenfelder's requirement.

If our division can be of any assistance, please notify me at once.

C: Douglas L. Burgess, Esq.
Nolan, Plumhoff & Williams
Suite 700 Nottingham Centre
502 Washington Ave.
Towson, Md 21204

Inspector Hunter Rowe

Ernie & Ruth Baisden
7706 Oak Ave.
Balto. Md. 21234

JHT:bb

PLAINTIFF'S EXHIBIT
#1 FD
03-C-00-6650
03-13-01

Verified 3-13-00
Verified 3-14-00 ~~CBA~~ 98-267-SPH

3/9/00

Verified 3/10/00

Exhibits

Verified 8-29-00 BOR CCT.

Petitioner

1, A. 2 photos on 1 sheet
(top) from from Old Harford Rd
(bottom) back w/ store parking lot

B. 2 photos
(top) across Taylor
(bottom) from Oak Ave w/ fence

C. 1 photo from Tayler Ave. onto property

D. 1 panoramic photo - from middle of subject property w/ buffer fence

2. Site Plan

3. Restrictive Covenant Agreement

4. Letter Dec. 24, 1996 from Avery Harden to Gerahty, etc.

5. Ruling from DZC March 6, 1997

6. Easement agreement Feb. 17, 1998

7. Sept. 24, 1997 CBA Order of Dismissal

8. Signed copy of easement bet. Gerahty & B. Cty.

9. Case No. 98-267-SPH Kotroco's opinion

Protestants

1. Community Concerns document for Case #97-259-SPHA
2. letter to Ms. Baisden from Baltenfelder Sept. 18, 1997
3. letter to Thos. Robinson from Ernest Baisden Jan. 21, 2000
4. letter to David Miller from Jablon Dec, 17, 1996
5. Collective County Comments
6. Parkville ~~Comm~~. Park Comm. Ass'n position papers
7. Photos - from file below - #9 pages
   A. Spring 1999 fence leaning (top)
      Unscreened parking (bottom)
   B. (top) from Baisden's backyd.
      (bottom) from Baisden's bedroom
   C. Dec. 1998 conditions (3 photos)
   D. Mary of Dec. 1998 conditions
   E. Dec. 1998 conditions
   F. " " "
   G. Fall 1997 conditions
   H. " " "
   I. Old trees in existence in buffer area
8. ~~KAB~~ A. Photo - new - taken by Baisden - 2 pages
      from backyd. of Baisden
9. Baisden's drawing of fence concept

#14
#15

OBA Pet. 1A

PHOTOGRAPHS

Subject Property - Front View
7721 Old Harford Road

Subject Property - Rear View
7721 Old Harford Road

CBA
Per. 1B

PHOTOGRAPHS, CONTD.

Subject Property - Taylor Avenue Frontage
Ingress & Egress to the Parking Area

Subject Property - View of Buffer Land Area
at Rear and South Side of the Property

CBA Per. #5

FAX 882-2006

Baltimore County
Zoning Commissioner
Office of Planning and Zoning

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

March 6, 1997

Newton A. Williams, Esquire
Douglas L. Burgess, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

2

RE: PETITIONS FOR SPECIAL HEARING and VARIANCE
SE/Corner Old Harford Road & Taylor Avenue
(7721 Old Harford Road)
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 97-295-SPHA

Dear Messrs. Williams & Burgess:

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

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

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bj

cc: Mr. Terry Gerahty
7721 Harford Road, Baltimore, Md. 21234

Mr. & Mrs. Ernest Baisden
7706 Oak Avenue, Baltimore, Md. 21234

Mr. James Reed
7706 Oak Avenue, Baltimore, Md. 21234

Mr. Avery Harden, DPDP; People's Counsel; Case File

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE - SE/Corner Old Harford Road & Taylor Avenue (7721 Old Harford Road) 9th Election District 6th Councilmanic District

Terry Gerahty
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 97-295-SPHA

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Special Hearing and a Petition for Variance for that property known as 7721 Old Harford Road, located at its intersection with Taylor Avenue in Parkville. The Petitions were filed by the owner of the property, Terry Gerahty, through his attorney, Newton A. Williams, Esquire. The Petitioner seeks approval that a proposed interim parking lot meets the requirements of the Baltimore County Zoning Regulations (B.C.Z.R.) and, if such use is disallowed, a variance from Section 409.8 of the B.C.Z.R. to permit a stone paved parking lot in lieu of the required asphalt paving and striping. The subject property and relief sought are more particularly described on the site plan submitted, which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Terry Gerahty, legal owner of the property, James Kline, Land Planning Consultant with George W. Stephens, Jr. and Associates, who prepared the site plan for this property, and Douglas L. Burgess, Esquire, who provided Legal Counsel to the Petitioner. Appearing in opposition to the Petitioner's request were several residents from the surrounding community, including Mr. & Mrs. Ernest Baisden and Mr. James Reed, adjoining property owners.

Testimony and evidence offered revealed that the subject property is the site of an outdoor garden center known as Poor Boys. The property

consists of a 1,705 sq.ft. indoor sales building with office and storage space, and a 385 sq.ft. outside sales area in the front portion of the site. Other improvements include a 3,320 sq.ft. outside sales area, a large outdoor storage area for flowers, trees, shrubs, mulch, and garden supplies, etc., and a 5,400 sq.ft. stone-paved parking area to the rear of the subject site. All of the improvements contained on the property are more particularly described on the site plan marked into evidence as Petitioner's Exhibit 1. [redacted] The parking area in question is paved with No. 2 loose stone, and provides approximately 19 parking spaces for customers. The parking lot has two access points from Taylor Avenue, both of which are one way in direction. Vehicles enter the parking lot through the entrance on the western end of the lot, and exit out through the second access point on the eastern portion of the lot. The Petitioner seeks approval to allow the existing loose stone surface to remain in lieu of the required durable and dustless paved surface. The Petitioner argued that the No. 2 loose stone base currently provided on the parking lot meets the requirements of a durable and dustless surface in that no dust results from the use of this stone. However, after hearing the testimony offered by . Kline and performing a site inspection of the parking lot, I find that the stone base surface is not durable and dustless, and thus, the special hearing to approve same shall be denied. Therefore, the Petitioner's request for a variance is necessary to allow the stone surface to remain.

[redacted] testimony revealed that Poor Boys sells landscaping materials, gardening supplies, flowers, Christmas trees, mulch, and other

horticultural products to the general public. Poor Boys has both an indoor sales area as well as an outdoor sales and display area as shown on Petitioner's Exhibit 1. The subject property for the most part is zoned B.L., which permits such use as of right. However, a 60-foot buffer area, zoned D.R. 5.5, is located on the subject property, adjacent to Oak Avenue. and to the rear of the subject site, adjacent to the residential property owned by Mr. & Mrs. Baisden.

The Petitioner indicated that the manner in which he presently operates his business is an interim use (approximately five years until the property can be more fully developed in the future. Until then, he wishes to continue the use of this stone parking area and outdoor sales area as shown on the site plan. The Petitioner agreed to allow the existing trees to remain on the property during this interim use. Furthermore, he agreed to allow the existing trees within the 60-foot buffer zone D.R. 5.5 to remain in perpetuity. Regarding this D.R. 5.5 zoned buffer area, the Petitioner has agreed to place this buffer area into an open space easement and grant same to Baltimore County, thereby guaranteeing that this buffer area remains as open space in accordance with the terms of the easement that is to be negotiated and reduced to writing with Assistant County Attorney Doug Silber. The Petitioner shall maintain ownership of the buffer area under this easement and shall be responsible for all maintenance and upkeep of same.

The Petitioner also agreed to install and provide an 8-foot high, pre-assembled sectional fence along the edge of the B.L./D.R. 5.5 zoning line, which runs parallel to the Baisden property for an approximate distance of 120 feet. The Petitioner has also agreed to provide this fencing along the B.L./D.R. 5.5 zone which runs parallel to Oak Avenue. However,

the Petitioner is only proposing to provide this fencing for a distance of 32 feet, running parallel to Oak Avenue as shown on the plan. This proposed fencing is highlighted in brown and shown on Petitioner's Exhibit 4.

After reviewing the contents of the file as well as making a site visit to the property, [redacted]t is appropriate for the Petitioner to extend this fence, not only the 32-feet along Oak Avenue as proposed, but also to provide for the further extension of this fence in accordance with the diagram provided by Avery Harden, Landscape Architect for Baltimore County, which was included as an attachment to his letter of December 24, 1996. Mr. Harden shows this fence as running almost the entire length of the B.L./D.R. 5.5 zoning line parallel to Oak Avenue, stepping this fence down from a 6-foot high fence with lattice on top, to a 4-foot high fence with lattice on top, and terminating approximately 30 feet from the property line along Taylor Avenue. After considering the Protestants' testimony in this regard, my site visit to the property, and Mr. Harden's diagram, I [redacted] is appropriate for the Petitioner to extend this fencing in the fashion and manner depicted on Mr. Harden's diagram. Therefore, as a condition of approval, the subject fencing shall be required.

As noted earlier in this opinion, the adjoining property owners, Mr. & Mrs. Baisden, appeared in opposition to the request. The Baisden's reside with their three children on the adjacent property located on the south side of the subject site on Oak Avenue. The Baisdens are opposed to the variance requested herein and believe that the Petitioner should be required to pave the parking area and provide storm water management controls. Testimony offered revealed that water runoff from the subject site is projected out onto Taylor Avenue. The Baisdens are opposed to the general use of the subject property; however, given its predominant B.L. zoning,

the garden center is permitted as of right. However, the Baisdens raised many issues concerning the operation of the business and requested that certain appropriate restrictions be imposed on the use to insure that the quality and character of the surrounding residential community will be maintained. Many of the concerns raised by Mr. & Mrs. Baisden are valid and involve topics upon which certain restrictions shall be imposed. However, I believe it is appropriate to grant the variance to allow the loose stone parking lot to remain in lieu of the required durable and dustless surface, inasmuch as the Petitioner has met the burdens imposed upon him by the B.C.Z.R.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

> 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
>
> 2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
>
> 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the special hearing and variance are not granted. It has been estab-

lished that special circumstances or conditions exist that are peculiar to the land which is the subject of these requests and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 6th day of March, 1997 that the proposed interim parking lot, as set forth on Petitioner's Exhibit 1 and the No. 2 stone thereon, does not meet the requirements of the Baltimore County Zoning Regulations (B.C.Z.R.), and as such, the Petition for Special Hearing be and is hereby DENIED; and,

IT IS FURTHER ORDERED that a variance from Section 409.8 of the B.C.Z.R. to permit a stone paved parking lot in lieu of the required durable and dustless surface (asphalt paving and striping), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) Within sixty (60) days of the date of this Order, the Petitioner shall reduce to writing an easement agreement with Baltimore County which places the 60-foot D.R. 5.5 buffer located along Oak Avenue and adjacent to the property owned by Mr. & Mrs. Baisden into open space. It is apparent through the rezoning

process that this D.R. 5.5 buffer was set aside to screen the subject property from the adjacent residential community.

3) The maintenance and upkeep of this 60-foot buffer shall be at the sole cost and expense of the Petitioner and shall be performed as follows:

a) The grassy area within the buffer shall be mowed on a regular basis so as to take on the appearance of a residential lawn. On approximately a monthly basis, any leaves, sticks and branches shall be picked up to keep the buffer area well-manicured. The Petitioner shall be required to keep this buffer area litter-free and shall insure that any trash is picked up on a weekly basis.

b) All existing trees within this buffe shall be maintained and preserved. Furthermore, he etitioner shall perform and accomplish the additional landscaping shown on Petitioner's Exhibit 4, under the direction of Avery Harden, Landscape Architect for Baltimore County.

c) There exists within this buffer area, particularly in the area adjacent to the property owned by Mr. & Mrs. Baisden, certain piles of dirt and debris that has been dumped there and which has altered the drainage and topography of the subject site. These piles of dirt and debris shall be removed within thirty (30) days of the date of this Order and the buffer area returned to its original natural state. Within thirty (30) days after the removal of this dirt and the installation of the fencing and landscaping as required by this Order, the Petitioner shall grade and smooth any and all tire ruts, including those which currently exist and any which are created during the installation of the landscaping. Any disturbance to the ground within this buffer area shall be planted with grass seed and returned to its natural grassy condition.

d) Any and all weeds and unwanted foliage shall be removed from this buffer area at the direction of Mr. Avery Harden, Landscape Architect for Baltimore County.

4) All of these conditions and restrictions shall be included and incorporated into the easement agreement executed between the Petitioner and Baltimore County to insure that this buffer area is not only protected by the terms and conditions of this Order, but also by the terms and provisions of the easement agreement entered into with Baltimo. County. A copy of said easement agreement shall be recorded in the Land Records of

Baltimore County and will be applicable to any subsequent owner of the subject property in perpetuity.

5) The Petitioner shall be permitted to operate an outdoor intercom system only between the hours of 9:00 AM to 5:00 PM Monday through Friday, and 12:00 Noon to 5:00 PM on Saturday and Sunday. The outside intercom system shall not be permitted to operate outside these hours. The purpose of this restriction is to preserve the peace and tranquility of the surrounding residential community.

6) The Petitioner shall be permitted to use gasoline powered chain saws only between the hours of 9:00 AM and 5:00 PM Monday through Friday, and 12:00 N .1 to 5:00 PM on Saturday and Sunday. Outside of these ".urs, the Petitioner must use an electric chain saw, particularly in light of the sale of Christmas trees during the winter season. This should keep noise levels to a minimum and during appropriate hours.

7) All outdoor lighting of the subject site shall be supplied in a tasteful manner and installed on fixed standards, as approved by Mr. Avery Harden, Landscape Architect for Baltimore County. Within sixty (60) days of the date of this Order and prior to the installation of any outdoor lighting, the Petitioner shall submit a lighting plan to Mr. Harden for his review and approval. The Petitioner is prohibited from stringing lights along extension cords from tree to tree on the subject site. All outdoor lighting shall be installed in such a manner so as not to reflect onto adjacent residential properties.

8) The Petitioner shall not interfere with the free passage of pedestrians along the sidewalk adjacent to Taylor Avenue and Old Harford Road. These areas shall not be utilized for display purposes and shall remain open for pedestrian access.

9) Any and all deliveries of products to and from the subject site shall be performed prior to 11:00 PM on any given evening. This is particularly applicable during the Christmas season where trees have been delivered to the site into the early morning hours. Ther fore, no deliveries to or from the subject site shall take place arter 11:00 PM on any given evening.

10) When applying for a building permit, t... ..te plan, landscaping plan, and/or lighting plan filed must r ferenc. thi. case and set forth and address the restrictions of this Order.

TIMOTHY M. KOTROCO

Poor Boy's Country Market
7721 Old Harford Road
Baltimore, Maryland 21234
(410) 668-7599

" A Touch of Country...In the Heart of Parkville "

May 12, 1998

Timothy M. Kotroco
Deputy Zoning Commissioner
for Baltimore County
401 Bosley Avenue
M.P.S. 3401
Towson, Maryland 21204

3

Re: Special Hearing Case # 98-267

Dear Commissioner Kotroco,

By this letter, we request that a new date be set for a special hearing in the above referenced case. As you may recall, the special hearing originally was set for March 2, 1998. Due to an oversight on our part, proper notice of the special hearing was not posted. By letter dated February 26, 1998, we requested a continuance, which was granted. The continuance, however, did not provide a new date for the special hearing. At this time, we wish to request that a new date be set for the special hearing and that the Petition for Special Hearing be amended as set forth in the remainder of this letter.

First, we respectfully request that Order 97-295 (the "Order") which granted a variance from Section 409.8 of the B.C.Z.R. "to permit a stone paved parking lot in lieu of the required durable and dustless surface," subject to certain restrictions specified in the Order, be amended to remove the variance and restrictions because the property now has a "durable and dustless surface," and thus, the conditions upon which we requested the variance, namely that a "durable and dustless surface" did not exist, are no longer applicable.

In the alternative, we respectfully request certain of the restrictions set forth in the Order be removed or, at least, amended as follows:

(i) Remove in their entirety restrictions (4) and (10) as set forth and numbered in the Order:

(ii) Delete the second sentence of restriction 3(b) and replace with a provision requiring evergreen screening.

Pet. Exh 3

(iii) Although listed only in the text of the Order and not in any of the enumerated restrictions, amend the fencing requirements to allow the existing fence, including its style and location, to fully comply.

(iv) Amend restriction (6) to extend the time period to 9 p.m., seven days a week.

(v) Amend restriction (7) to eliminate the need for an outdoor lighting plan but require that outdoor lighting not unreasonably reflect onto residential property.

(vi) Add a provision that the variance and its restrictions shall not unduly prohibit Petitioner from obtaining permits which would allow Petitioner to come into full compliance with B.C.Z.R.

Please feel free to contact us at the above number should you have any questions regarding this request. Thank you for your time.

Respectfully yours,

Terry Gerahty, President
Poor Boy's, Inc.

EXHIBIT 4

0011868 303

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is entered into, as of the 24th day of October, 1996, by and between TERRY GERAHTY ("Gerahty") Owner, POOR BOYS, INC. ("Poor Boys") Lessee, and the VILLA CRESTA CIVIC ASSOCIATION, INC. ("Villa Cresta").

RECITALS:

A. Poor Boys is the lessee of 7721 Old Harford Road, and Terry Gerahty is the owner of a lot of land (the "Land"), containing in the aggregate approximately 1.34 acres, located in the Sixth Councilmanic District of Baltimore County, Maryland, on the southwestern side of Taylor Avenue and Oak Avenue. The Land is more particularly described in a deed recorded among the Land Records of Baltimore County at Liber 8701, Folio 730.

B. At the present time, most of the Land is zoned D.R.5.5 (1.17 acres) and RO (0.17 acres).

C. The Land is currently not developed.

D. Poor Boys has submitted a request for change in zoning for the Land as a part of the 1996 Baltimore County Comprehensive Zoning Map process. The request seeks to have all of the Land classified BL. If this Agreement is executed, Gerahty and Poor Boys intends to amend its BL request to the area as shown on the attached Drawing marked "Amended Request". This requested zoning would enable Poor Boys to upgrade and expand its garden center and farm market now on the Land and at 7721 Old Harford Road with a more attractive, modern, garden center, farm market and country store with sufficient parking. The new site would include a significantly larger number of square feet than the present site.

E. If its request for BL zoning is granted, Poor Boys desires to develop on the Land sales, storage and parking areas for the upgraded garden center with such ancillary/accessory office and retail uses as are permitted as a matter of right in

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE HK DATE 10/28/96

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

HK 10/28/96
By

that zone and that are consistent with the terms of this Agreement. Poor Boys intends to work with appropriate officials of Baltimore County, the State of Maryland, to provide an upgraded garden center and farm market/country store with sufficient parking. The proposed garden center, farm market and country store uses would be designed to serve the Parkville Community and the immediate neighborhood, as well as the general public.

F. Villa Cresta is an incorporated association of Baltimore County residents interested in preserving the existing character and quality of life of residential areas in the vicinity of the Land.

G. Gerahty and Poor Boys desire to place certain restrictions on the Land and on the use thereof to assure that, in the event that it is rezoned to BL as requested, future use does not have a deleterious effect on nearby residential areas.

H. Gerahty and Poor Boys, in recognition of the concerns of the Villa Cresta Civic Association, is willing to place certain restrictions on the Land in return for the agreement of Gerahty and Poor Boys described below.

I. In order to make the covenants, restrictions and conditions contained in this Agreement binding and fully effective on the Land, and on the present and future owners and occupants thereof, the parties have entered into this Agreement, to the end and with the intent that Gerahty and Poor Boys, and its successors and assigns, will hold, use, and hereafter convey the Land subject to the said covenants, restrictions, and conditions.

AGREEMENTS:

NOW THEREFORE, in consideration of the mutual agreements and understandings contained in this Agreement, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

GERAHTY AND POOR BOYS, ON BEHALF OF ITSELF, AND ITS SUCCESSORS AND ASSIGNS, AGREES AS FOLLOWS:

1. Garden Center Use. The Land shall be used only for an upgraded garden center, farm market and country store, as well as parking, outdoor sales area, outdoor storage area, and accessory uses and related uses to support said uses. "Garden Center" and "Farm Market" uses shall be as defined in the Baltimore County Zoning Regulations, except Gerahty is not a farmer and that limitation in the "farm market" definition shall not be a requirement to the "farm market" use. A "country store" shall include garden center and farm market uses, along with gourmet items, crafts, deli items, pit beef and seasonal food sales consistent with a country store and farm market theme, and seasonal and holiday items of all kinds, including Christmas, Easter, Mother's Day, Memorial Day, Halloween, etc. It is further agreed that the Land and the property may be further used, expanded and upgraded for garden center, farm market and country store purposes, as allowed by its zoning.

2. Landscape Buffer. It is further agreed that the area marked "Landscaped Conservation Easement," as shown on the attached Drawing marked "Amended Request," shall:

a) be offered for dedication to Baltimore County, in such a manner as will be determined by the County, whether by fee, or easement so as to fulfill the spirit of this covenant that said area be preserved as a landscape buffer, and

b) if said area is not accepted by Baltimore County for dedication pursuant to Paragraph a) above, said area shall be offered for dedication, whether by fee or easement unto the Parkville American Legion, in such a manner as will be determined by the County so as to fulfill the spirit of this covenant so that said area be preserved as a landscape buffer, and

c) if said area is not accepted by Baltimore County or the Parkville American Legion, it shall be dedicated and preserved as a landscape buffer on any site plan associated with the upgraded garden center contemplated herein, and otherwise preserved and dedicated in such a manner so as to fulfill the spirit and intent of this covenant

Said "landscape conversation easement" shall remain residentially zoned and be established and maintained by Poor Boys and Gerahty, its successors and assigns, as a landscaped conservation buffer with coniferous screening substantially consistent with the requirements of the Baltimore County Landscape Manual and with compact evergreen screening placed as shown on the attached Drawing.

In addition, there shall be a ten foot (10') interior landscape easement established and maintained inside the BL line in a manner consistent with the requirements of said BL zone and with the Baltimore County Landscape Manual. The sixty foot (60') Landscape Buffer, plus the ten foot (10') interior landscape easement, will provide a total of seventy feet (70') of open space from Oak Avenue as shown on the attached Drawing.

CONDITION PRECEDENT:

The obligations of Gerahty and Poor Boys shall not become effective and binding upon Poor Boys and the Land unless and until the Land has been reclassified to BL, as shown on the attached Drawing marked Amended Request, on the 1996 Comprehensive Zoning Map for Baltimore County, as that map is finally adopted.

BINDING EFFECT: DURATION

Immediately upon satisfaction of the condition precedent stated above, Gerahty and Poor Boys shall cause these covenants, restrictions, and conditions to be recorded among the Land Records of Baltimore County, Maryland. Gerahty and Poor Boys shall then promptly deliver to Villa Cresta Civic Association a copy of the covenants as recorded, together with

evidence of their recordation. The covenants shall run with and be binding upon the Land, and upon all present and future owners thereof, and shall inure to the benefit of each of the parties respectively, and their successors and assigns, for a period of twenty-five (25) years from the date of this Agreement, provided that this covenant shall be binding for thirty-five (35) years from the date of this Agreement: (1) to allow only those uses allowed in the BLR zone,[1] provided that the following uses otherwise allowed in the BLR zone shall be prohibited: fast food, taverns, drycleaners, laundromats, video rental, supermarket, health and athletic club, martial arts and dance studio; and (2) to require adherence to the last sentence of the provisions of Page 4, Para. 2, regarding maintenance of Landscape Buffer.

CONDITION SUBSEQUENT:

Notwithstanding the preceding paragraph, this Agreement shall terminate and be of no further force or effect as to any portion of the Land that is rezoned, in proceedings subsequent to the adoption of BL zoning, as shown on the attached Drawing marked "Amended Request", to a zone other than this zone, at the time such rezoning becomes final and unappealable.

ENFORCEMENT:

If any party to this Agreement, or any party's successor, is required to institute legal action to enforce the terms of this Agreement, and is successful thereafter (whether by judgment or by settlement) in obtaining enforcement of the Agreement, that party or successor shall be entitled to recover

---

1 Regardless of the fact the underlying zone is BL, the Declarants herein are agreeing to the aforegoing restrictions, which essentially restrict the BL zoning in a manner that allows only BLR uses, with the exception that those uses labelled Garden Center on Page Three, Paragraph One shall be allowed. Accordingly, the Garden Center, etc. use specified on Page Three, Paragraph One shall be an allowed use regardless of whether it is a use of right, vel non, in the BLR zone.

reasonable attorneys' fees and other reasonable costs of the action from the person or entity against whom enforcement is obtained. However, as a prerequisite to the recovery of fees and costs under this paragraph, the person or entity seeking enforcement shall serve the alleged violator of the Agreement with written notice of the violation, and only if the alleged violator has failed to remedy or to make substantial progress toward remedying the violation within sixty (60) days after receipt of this notice may legal action be instituted.

In order to further ensure Villa Cresta of the enforcement of this Covenant, Gerahty shall have the duty to provide in all sales contracts for his business and/or Land that the Buyer be subject to and bound by these covenants and the obligations herein, including but not limited to the aforegoing "obligation to pay reasonable attorney's fees and costs" provision if enforcement of the covenants is successfully obtained. If and when Gerahty shall sell the Land or Business, Gerahty shall also assign One Thousand Dollars ($1,000.00) from the sale proceeds to Villa Cresta, or its successor, for Villa Cresta, or its successor, to use at its sole discretion for enforcement or any other community enhancement needs.

AMENDMENTS:

Prior to its recordation among the Land Records of Baltimore County, Maryland, this Agreement may be amended only by a written instrument in recordable form, signed by both of the parties hereto. Following its recordation among the Land Records of Baltimore County, this Agreement may be amended only by a written instrument, signed by Villa Cresta or its successor and the legal owner or owners of the Land and recorded among the Land Records of Baltimore County, Maryland. If Villa Cresta Civic Association, Inc. is no longer in existence or otherwise defunct, the owner of the land is entitled to the appointment of a Trustee to act on their behalf upon application to a Court of Equity.

MISCELLANEOUS PROVISIONS:

The parties warrant and represent that they have taken all necessary action required to be taken by their respective charters, by-laws, or other organizational documents to authorize the execution of this Agreement.

This Agreement, which may be executed in counterparts, contains the entire understanding of the parties.

Each of the parties warrants that it has carefully read and understands this Agreement, is cognizant of the terms hereof, and has had ample time to consult with counsel of choice regarding its respective rights and obligations in connection herewith.

Failure, in any instance, to enforce any of the covenants, restrictions, and conditions contained in this Agreement shall in no event constitute a waiver or estoppel of the right to enforce the same or any other covenant, restriction or condition in the event of another violation occurring prior or subsequent thereto.

All notices required by this Agreement shall be sent by certified mail, return receipt requested.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST:

POOR BOYS, INC.

(SEAL)

By: Terry ~~Gerahty~~, President

TERRY GERAHTY

WITNESS/ATTEST:

Margaret Grace Kraft

VILLA CRESTA CIVIC ASSOCIATION, INC.

(SEAL)

By: Tom Rochfort

STATE OF MARYLAND, ~~CITY~~/COUNTY OF Harford, to wit:

I HEREBY CERTIFY, that on this 21st day of October, 1996, before me, the subscriber, a Notary Public of the State of Maryland, in and for the jurisdiction aforesaid, personally appeared TERRY GERAHTY, the duly authorized agent of POOR BOYS, INC., and being so authorized, acknowledged the aforegoing document to be the free and voluntary act of POOR BOYS, INC.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: 2/10/97

STATE OF MARYLAND, ~~CITY~~/COUNTY OF Harford, to wit:

I HEREBY CERTIFY, that on this 21st day of October, 1996, before me, the subscriber, a Notary Public of the State of Maryland, in and for the jurisdiction aforesaid, personally appeared TERRY GERAHTY, and he acknowledged the aforegoing document to be his free and voluntary act.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: 2/10/97

STATE OF MARYLAND, CITY/COUNTY OF Baltimore, to wit:

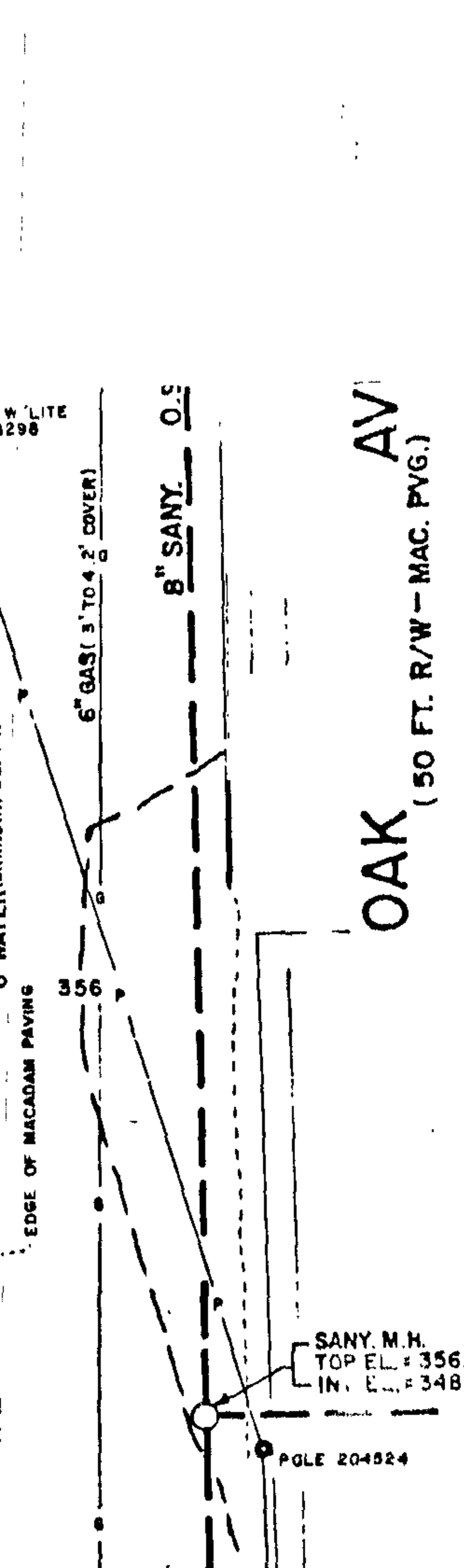
I HEREBY CERTIFY, that on this 8th day of October, 1996, before me, the subscriber, a Notary Public of the State of Maryland, in and for the jurisdiction aforesaid, personally appeared TOM ROCHFORT, the duly authorized agent of VILLA CRESTA CIVIC ASSOCIATION, INC., and being so authorized, acknowledged the aforegoing document to be the free and voluntary act of VILLA CRESTA CIVIC ASSOCIATION, INC.

AS WITNESS my hand and Notarial Seal.

Notary Public
Robert E. Strohmer, Notary Public
Baltimore County
State of Maryland
My Commission Expires Mar. 11, 1997

My Commission Expires: _____

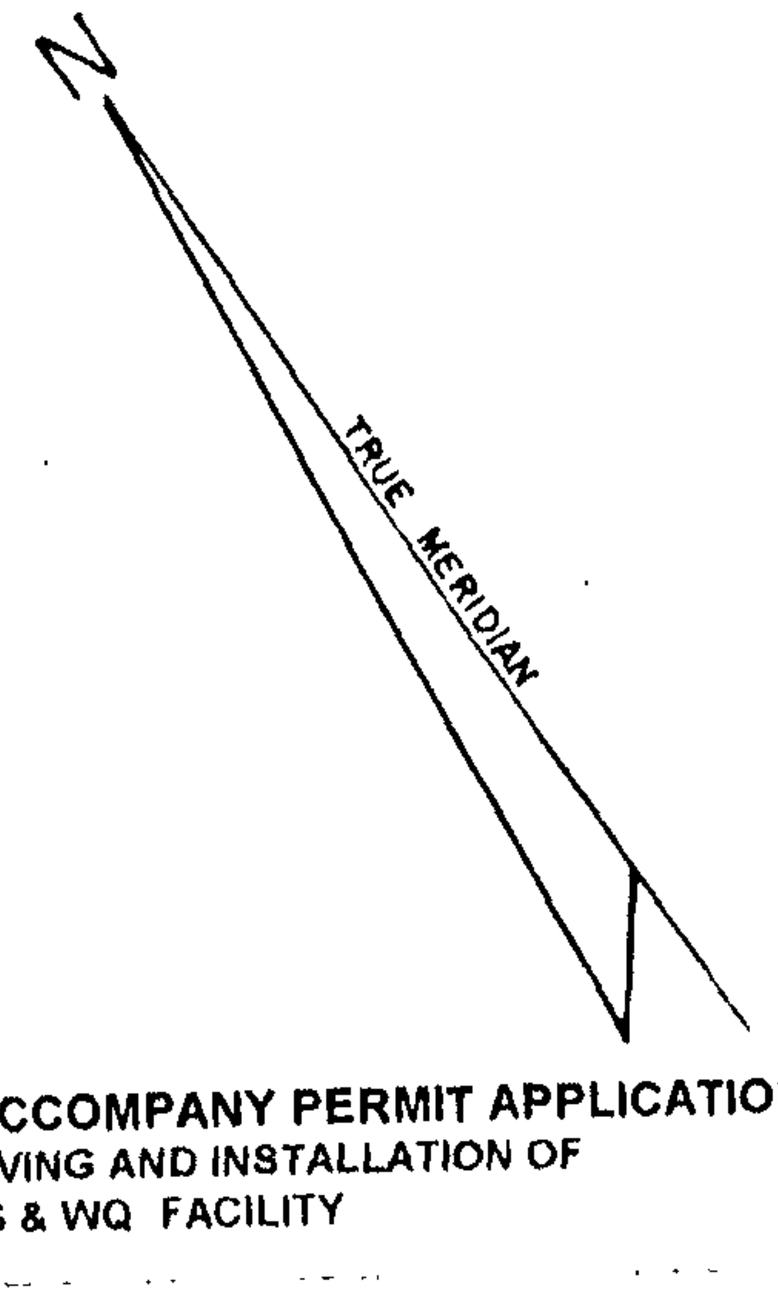
1166D DLB/caw



22 ANY NEW SIGN(S) WILL COMPLY WITH SECTION 413 OF THE "BCZR" AND ALL ZONING POLICIES
23 ILLUMINATION FOR OFF-STREET PARKING WILL REFLECT AWAY FROM RESIDENTIAL LOTS AND PUBLIC STREETS
24 ZONING CASE 97-295-SPHA, WHICH PERMITTED A STONE PAVED PARKING LOT ON THE PROPERTY WILL NOT APPLY AFTER THE PARKING LOT IS PAVED IN ACCORDANCE WITH THIS DRAWING

LANDSCAPING

25 INSTALL TREE AERATION SYSTEM TO PROTECT LARGE TREE WHERE SHOWN ON THE PLAN
(4 LOCATIONS)



SITE PLAN TO ACCOMPANY PERMIT APPLICATION
FOR GRADING, PAVING AND INSTALLATION OF
PRIVATE UTILITIES & WQ FACILITY

DATE	REVISION DESCRIPTION

SITE PLAN
PARKING LOT EXPANSION and MODIFICATIONS
POOR BOY'S, INC
2711 TAYLOR AVENUE (AT OLD HARFORD ROAD)

BALTIMORE COUNTY DIST. 9 C6 MARYLAND

SCALE : 1" = 20' DATE : JAN.12, 1998

ENGINEER
R. A. CHILDRESS & ASSOC. INC.
713 PHEASANT DRIVE
FOREST HILL MD 21050
(410) - 803 0304

OWNER
JERRY OF RALLY
2721 OLD HARFORD ROAD
BALTIMORE MD 21234
(410) 668 7519

DRAWING No
SP-1
SHEET 1 OF

FILE - Gerahty

County Board of Appeals of Baltimore County

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

September 24, 1997

8

Douglas L. Burgess, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Case No. 97-295-SPHA
Terry Gerahty - Petitioner

Dear Mr. Burgess:

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

Very truly yours,

Charlotte E Radcliffe

Kathleen C. Bianco
Legal Administrator

encl.

cc: Terry Gerahty
Mr. and Mrs. Ernest Baisden
James Reed
Avery Harden
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
TERRY GERAHTY -PETITIONER	*	COUNTY BOARD OF APPEALS
FOR SPECIAL HEARING AND		
VARIANCE ON PROPERTY LOCATED	*	OF
ON THE SOUTHEAST CORNER OLD		
HARFORD ROAD AND TAYLOR AVENUE	*	BALTIMORE COUNTY
(7721 OLD HARFORD ROAD)		
9TH ELECTION DISTRICT	*	CASE NO. 97-295-SPHA
6TH COUNCILMANIC DISTRICT		

* * * * * * * * *

ORDER OF DISMISSAL

This matter comes to this Board on appeal from a decision of the Deputy Zoning Commissioner in Case No. 97-295-SPHA in which Petitioner's request for special hearing relief was denied and Petition for Variance granted with restrictions.

WHEREAS, the Board is in receipt of a dismissal of appeal filed by Douglas L. Burgess, Esquire, counsel for Terry Gerahty, Petitioner /Appellant, dated September 19, 1997 (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said counsel for Petitioner /Appellant requests that the appeal filed in this matter be dismissed as of this date;

IT IS HEREBY ORDERED this 24th day of September, 1997 by the County Board of Appeals of Baltimore County that said appeal be and the same is hereby **DISMISSED.**

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Kristine K. Howanski, Chairman

Charles L. Marks

Harry E. Buchheister, Jr.

IN RE:	PETITIONS FOR SPECIAL HEARING AND VARIANCE S/E Corner Old Harford and Taylor Avenue (7721 Old Harford Road) 9th Election District 6th Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
		*	Case No. 97-295-SPHA

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

ORDER OF DISMISSAL

Terry Gerahty, Petitioner by Douglas L. Burgess and Nolan, Plumhoff & Williams, Chartered, his attorneys, hereby dismisses his appeal from the Findings of Fact and Conclusions of Law of the Deputy Zoning Commissioner of March 6, 1997.

Douglas L. Burgess
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 823-7800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 15 day of September, 1997, that a copy of the foregoing Order of Dismissal was mailed, postage prepaid, to Peter M. Zimmerman, People's Counsel for Baltimore County, Court House, 400 Washington Avenue, Towson, Maryland 21204, Mr. and Mrs. Ernest Baisden, 7706 Oak Avenue, Baltimore, Maryland 21234 and to Mr. David Miller, 2801 Taylor Avenue, Baltimore, Maryland 21234.

Douglas L. Burgess

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

\\Mao\wpdocs\GERAHTY.NAW\Dismisal.wpd

DOUGLAS L. BURGESS

DIRECT DIAL:
(410) 823-7857

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

February 17, 1998

BY HAND DELIVERY

Doug Silber, Esquire
Assistant County Attorney
Old Courthouse
Towson, Maryland 21204

Dear Doug:

Enclosed is the final signed Easement for delivery to you pursuant to this letter escrow agreement. I understand you will hold this document in escrow until:

1. Mr. Gerahty obtains an approved grading permit, the same being substantially but not completely approved at this time; and

2. Said permit is final, non-appealable and construction has been substantially completed pursuant to said permit, a period of perhaps ten (10) days of good weather.

Upon the completion of Items 1 and 2 above, the document will become effective, and it will be released fully signed to me whereupon I will immediately record it at my client's expense.

As it is in the interest of all to expedite this process, you will assist when requested in navigating the permit through the end stages of its approval process so it does not sit on someone's desk.

As always, thank you for your kind attention to this matter.

Very truly yours,

Douglas L. Burgess

DLB/caw
Enclosure
cc: Mr. Terry Gerahty

AGREED AS STATED ABOVE:

_____
Doug Silber, Esquire

EASEMENT

THIS DEED OF EASEMENT FOR OPEN SPACE Made this _____ day of _____, 1998, by TERRY GERAHTY, party of the first part; and BALTIMORE COUNTY, MARYLAND, a body corporate and politic, party of the second part.

WHEREAS, TERRY GERAHTY, the party of the first part, is the owner of all that property situate in Baltimore County, State of Maryland, as more particularly described in Exhibit "A", which is attached hereto and made a part hereof, to which he acquired title in fee simple by a Deed dated July 26, 1995, which Deed is recorded among the Land Records of Baltimore County in Liber 11142, Folio 001, from George C. Peverley, III; and

WHEREAS, The party of the first part desires to reserve a portion of said property described in Exhibit "A" as an open space easement for the benefit of BALTIMORE COUNTY, MARYLAND, as hereinafter set forth; and

WHEREAS, The open space easement is intended to be a buffer to mitigate the impact of commercial uses on the character of the neighboring residential area; and

WHEREAS, The party of the second part desires to accept an easement to a portion of the property, said portion that is subject to this easement being described on Exhibit "B" attached hereto.

NOW, THEREFORE, THIS DECLARATION WITNESSETH, That the said party of the first part, for himself, his successors and assigns, declares and covenants that all that property described on Exhibit "B" shall be subject to the following reserved easement for open space as follows:

ARTICLE I

RESERVED EASEMENTS AND COVENANTS

Easement for open space containing _____ acres (_____ square feet), more or less, as shown on the attached plan, which is attached hereto as Exhibit "C" and made a part hereof, is hereby reserved by the party of the first part for the purpose of open space. Open space shall mean undeveloped land whose use shall be governed by the provisions of Articles II and III herein. The easement area shall be maintained continuously by the party of the first part consistent with this easement agreement.

ARTICLE II

GENERAL PROVISIONS

1. Tax Exemption. Nothing herein contained shall prohibit Grantor from seeking a Federal and/or State or local tax credit or reduction equal to the difference, if any, of the value of the Property before the grant of this Open Space Easement and the value of the Property after the grant of this Open Space Easement.

2. Binding Effect. The provisions of this Open Space Easement (a) are made by the Grantor for himself and for his respective successors and assigns, (b) are binding upon the Grantor, his respective successors and assigns, and (c) shall run with and bind all land within the Open Space Area. The provisions of this Open Space Easement shall be binding upon and benefit the Grantee. The Grantee cannot assign this agreement to anyone other than its successor governmental entity.

3. Enforcement and Remedies. The provisions of this instrument may be enforced by: 1) the Grantor, its successors and assigns, or 2) the Director or designee of the Baltimore County Department of Permits and Development Management or other department, agency, or other public body duly authorized by the County Executive. Upon any breach of the terms of this Open Space Easement by any party, which breach is not cured by the other party within thirty (30) days of the other party's receipt of written notice of such breach from the other party, the other party may, with or without additional notice to the other party, exercise any and all of the following remedies: (a) institute suits to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction, either prohibitive or mandatory; and/or (b) require that the Open Space Area be restored promptly to the condition required by this Open Space Easement at the sole cost and expense of the party responsible for the injury to the condition of the Property.

4. Reserved Rights. Except to the extent that prior written approval of Grantee is required by any paragraph of this Article, all rights reserved by or not prohibited to Grantors are considered to be consistent with the open space purposes of this Easement and require no prior notification or approval, except that, if Grantors believe that the exercise of a reserved right may have a significant adverse effect on the open space use of easement area, Grantors shall notify Grantee in writing before exercising such right.

5. Reserved Rights. Grantor specifically reserves all rights related to the ownership of the property, except as specifically granted and restricted hereby.

ARTICLE III

USE RESTRICTIONS AND OBLIGATIONS

1. The Open Space Area shall remain undisturbed, except as provided below:

(A) mowing, cleaning and cutting by Grantor on a schedule consistent with the schedule of maintenance adopted by the Baltimore County Department of Recreation and Parks for County parklands on outside private contractors;

(B) maintenance of landscape buffer plants and trees and fencing by Grantor in a manner so as to promote reasonable screenings between Grantor's commercial property and the residences on the 700 block of Oak Avenue, provided said screening shall not interfere with sight lines for the intersection of Oak and Taylor Avenue. Plants and trees planted by Grantor as buffer vegetation shall carry a warranty of survivability of two (2) years guaranteed by Grantor. Established trees in excess of three inches (3") in diameter in the Open Space Area shall not be removed, except: 1) with the prior written permission of the Baltimore County Department of Recreation and Parks (the lack of a reply by Recreation and Parks within thirty (30) days of prior written request shall be deemed permission by default), or 2) in the case of grading, as shown on and pursuant to an approved grading permit/plan;

(C) open space use; "open space" shall mean passive use only, to wit, uses for vegetative planting and landscaped buffer area, but not for active use of any kind, whether commercial or non-commercial, except as provided by and otherwise allowed by this Easement.

2. Whether or not such is referred to in Paragraph 1, nothing in this Paragraph shall be construed to authorize or permit the use of the Open Space Area for:

(A) industrial or commercial activities, other than landscaping, mowing, clearing and fencing, necessary to maintain the Open Space Area in accordance with Paragraph 1; said industrial or commercial activities are prohibited on the Open Space Area, except for such activities as allowed by the B.L. zone in the ten foot (10') strip area as shown on Exhibit C, not including structures or parking lots, but including lighting, grading, slope easements, water and utility lines, fencing and landscaping, provided lighting fixtures used to illuminate any parking facility or display areas shall be so arranged as to use reasonable efforts to reflect lights away from residential homes. All grading in the Open Space Area will be conducted with a grading permit, if required;

(B) display of billboards, signs, or advertisements is prohibited on or over the Open Space Area;

(C) Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the Open Space Area is prohibited, except that soil, rock, other earth materials, vegetative matter, or composts may be placed as may be reasonably allowable for grading pursuant to a grading permit/plan, if required;

(D) Excavation, dredging, mining, and removal of loam, gravel, soil, rock, sand, coal, petroleum, and other materials are prohibited, except (1) for the purpose of combatting erosion or flooding, or (2) for the construction and/or maintenance of fencing, landscaping, etc.

3. No building or other structure shall be constructed on the Open Space Area after the date of this Open Space Easement, except for those structures or improvements permitted to be constructed in the Open Space Area pursuant to the provisions of Paragraphs 1 or 2 above, and except for the following:

(A) improvements, repairs, restorations, replacements, reconstructions, alterations, remodelings, and maintenance of utility lines servicing the BL zoned property owned by Grantor, underground storm water management facilities and other uses permitted under this Open Space Easement; use of the open space area for construction easements is allowed provided the area is restored to its substantially previous condition consistent with open space useage promptly; use of the open space for utilities, utility easements, storm water management facilities and storm water management easements, of all kinds is permitted with thirty (30) days prior notice to Baltimore County, including but not limited to restoration, replacement, installation and maintenance of same; Grantee shall join into all easements and conveyances required by the intent of this paragraph;

(B) reasonable means of utility access to all permitted uses and structures on other lands of Grantor.

4. The Grantor reserves all rights under applicable law not otherwise prohibited by this Agreement.

ARTICLE IV

MISCELLANEOUS

This instrument sets forth the entire agreement of the parties with respect to the Open Space Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Open Space Easement. If any provision is found to be invalid, the remainder of the provisions of this Open Space Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

No failure on the part of the Grantee to enforce any covenant or provision thereof shall discharge or invalidate such covenant or any other covenant, condition or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

No person who is not a party to this Open Space Easement shall have any benefit hereunder nor have any third party beneficiary rights as a result of this Open Space Easement, nor shall any such party be entitled to rely on any actions or inactions of the parties hereto or their agents, all of which are done for the sole benefit of the parties hereto.

Any notices by the Grantor to the Grantee or by the Grantee to the Grantor pursuant to any provision hereof shall be sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the following parties, or to such other address as the Grantor or Grantee may establish in writing on notification to one another:

If to Grantee:

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

And

Director
Baltimore County Department of
Recreation and Parks
301 Washington Avenue
Towson, Maryland 21204

If to Grantor:

Mr. Terry Gerahty
7721 Old Harford Road
Baltimore, Maryland 21234

Whenever and wherever the Grantor is required under any section of this Open Space Easement to obtain the prior written consent or approval of any Grantee or any other person or entity prior to taking any action or construction or improvements, the Grantor shall only be required to obtain the prior written consent or approval, as the case may be, of the Grantee, persons or entities that are in existence at the time the Grantor seeks such consent or approval.

This easement shall be for a period of thirty-five (35) years from the date hereof, after which it shall terminate by operation of law and be of no further force and effect.

The Open Space Easement may only be amended in writing signed by the parties to be bound by the change or alteration.

ARTICLE V

RIGHTS AND INSPECTION

The Baltimore County Department of Permits and Development Management, or other department, agency, or other public body duly authorized by the County Executive, or the Grantees, shall have the right to enter on the above-described Open Space Area lands from time to time for the sole purpose of inspection and enforcement of the easement, covenants, conditions, limitations, and restrictions herein contained.

The covenants contained in this Declaration and the Easements shall run with the land and be binding upon the party of the first part, its successors and assigns.

IN WITNESS WHEREOF, The parties hereto place their hands and seals this ____ day of _____, 1998.

WITNESS:

_____ _____
TERRY GERAHTY

WITNESS/ATTEST: BALTIMORE COUNTY, MARYLAND

_____ _____
By:

ATTORNEY'S CERTIFICATION

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

_____
DOUGLAS L. BURGESS

Return to:
Douglas L. Burgess, Esquire
Nolan, Plumhoff & Williams, Chartered
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(File No. 4639-1)

EXHIBIT A

ALL That property in Parkville, Baltimore County, Maryland, owned by George C. Peverley, III, as sole tenant, as described herein. For description, refer to Deed dated September 19, 1990 from Gene F. Rahll and recorded among the Land Records of Baltimore County in Liber 8701, Folio 730, and as also described in Deed dated September 29, 1988 and recorded among the Land Records of Baltimore County in Liber 7993, Folio 66.

BEGINNING At a point where the Southwest line of Taylor Avenue intersects the Northwest line of Oak Avenue and running thence along the Northwest line of Oak Avenue South 39 1/4 degrees West 240 feet to a point, thence North 51 degrees West 180 feet to a point, thence North 39 1/4 degrees East 90.0 feet, thence along the boundary line between Lots 126 and 127, 100 feet to a point, thence North 39 1/4 degrees East 150 feet (erroneously described as 100 feet in a previously recorded Deed dated April 16, 1979 and recorded among the Land Records of Baltimore County at Liber E.H.K. 6014, Folio 516) to the Southwest line of Taylor Avenue, thence along the Southwest line of Taylor Avenue South 51 degrees East 280 feet to the place of beginning.

BEING Lots 92, 93, 94 and 95 and part of Lots 91, 124, 125 and 126 on a Plat entitled "Map of Parkville", which Plat was filed among the Plat Records of Baltimore County in plat Book J.W.S. No. 1, Folio 34.

SAVING AND EXCEPTING 177 square feet as described in an Inquisition in Case No. 13/256/82C-8, Baltimore County Circuit Court, recorded among the Land Records of Baltimore County at Liber 6794, Folio 411.

BEING Part of the land conveyed in a Deed dated April 27, 1979 from Ellen J. Hargreaves to Mellor A. Hargreaves and Ellen J. Hargreaves, as recorded among the Land Records of Baltimore County, Maryland at Liber 6138, Folio 159.

BEING Those same lots of ground which by Deed dated September 29, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7993, Folio 066, was granted and conveyed by Mellor A. Hargreaves and Ellen J. Hargreaves, his wife, unto George C. Peverley, III and Gene F. Rahll, a one-half interest each, as tenants in common, in fee simple.

BEING Those same lots of ground which by Deed dated September 19, 1990 and recorded among the Land Records of Baltimore County in Liber 8701, Folio 730 was granted and conveyed by Gene F. Rahll, his one-half interest in said property, unto George C. Peverley, III, in fee simple.

EXHIBIT B

(To be provided by Juri Maiste)

EXHIBIT C

(To be provided by Juri Maiste)

The Villa Cresta Civic Association
c/o 7813 Tilmont Avenue, Baltimore, MD 21234

October 9, 1998

Zoning Commissioner
County Courts Building
401 Bosley Avenue
Room 405
Towson, MD 21204

Dear Sir:

I am writing concerning the zoning/variance issues which are currently affecting Poor Boy's Country Market.

On October 8, 1996, The Villa Cresta Civic Association entered into a covenant agreement with Poor Boy's in order to support the vision of Mr. Gerahty for his business while maintaining the existing character and quality of life in our neighborhood. We believe that this document accomplishes these goals. Throughout the entire process, Mr. Gerahty was open and up front with our association and sought (and continues to seek) our input.

I have personally visited Poor Boy's on many occasions and have found Mr. Gerahty to be in compliance with the restrictive covenant agreement. In fact, Mr. Gerahty has invited me to inspect his property to be certain that he was in compliance. Our association has been continually informed of developments as they have occured. The existing fence style and location as well as the existing lighting are acceptable to this association. The landscaping is gorgeous. Poor Boy's is the best looking property in the area!

Mr. Gerahty has been and continues to be a wonderful neighbor. He generously supports our association as well as the local high school . He maintains a beautiful property. He maintains a wonderful business for us to patronize. In short, I find it hard to image a better use of this location; especially given its past uses as a rental center, gas station, and vacant lot.

The Villa Cresta CivicAssociation supports Mr. Gerahty in his efforts to remove the existing variance and requests that you resolve the outstanding issues with respect to Poor Boy's in a fair and equitable manner.

Please do not hesitate to contact me if you have any questions or require additional information. Thank you for your time and consideration.

Sincerely,

A. Thomas Rochfort, President
The Villa Creasta Civic Association

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HARFORD PARK COMMUNITY ASSOCIATION

2522 Linwood Rd. Baltimore Md. 21234

Zoning Commissioner
County Courts Building
401 Bosley Ave.
Room 405
Towson Md. 21204

October 12,1998

Re: Zoning Variance
Poor Boy's

Gentlemen:

This is to let you know that our Association has in the past and continues to support Poor Boy's in its request for zoning modification for its building, landscaping, parking, and lighting. We feel strongly that Poor Boy's is an asset to our community.

The owner has met with our Association on many occasions to keep us informed of his plans for the property. We have supported these plans from the onset.

I am enclosing a copy of a letter that my wife and I sent to Councilman Joseph Bartenfelder in September 1996 before I became President of the Association.

The Harford Park Community Association feels that the improvements Mr. Gerahty has made to this property are a real addition to our neighborhood. The landscaping is absolutely beautiful, and the additional parking has improved the traffic flow. The owner has gone above and beyond the call of duty to resolve this problem, with the placement of fence, redirection of lights, and restrictive use of his property. These concessions have been all one sided, and we feel it is time to resolve the outstanding zoning issues and let Poor Boy's continue to be an asset to our community.

Besides running a desirable business and improving our area, Poor Boy's support many Community Projects, the local schools, churches, little league etc.

We ask you to consider our request, and should you need any additional information, please feel free to contact me at 410-665-1330.

Very truly yours,

Albert W. Willis,Sr. President
Harford Park Community Assoc.

Councilman Joseph Bartenfelder
Old Courthouse - Second Floor
400 Washington Ave.
Towson Md. 21204

September 17,1996

Re: Rezoning Poor Boy's

Dear Councilman:

This is to confirm our telephone calls to your office in support of the rezoning of the area adjacent to Poor Boy's Country Market. My wife and I are both members of the Board of Governors of the Harford Park Community Association and concerned neighbors. We feel strongly that Poor Boy's is an asset to our community.

The proposed rezoning will give them the parking they need, and with the additional parking, actually improve the traffic flow in the area.

We are extremely upset with the tactics of the opposition to this rezoning. They have used misinformation and scare tactics to upset many of the older residents in our area. They came to our meeting asking for our support, and when it was clear the majority were in favor of the rezoning, we were told to keep out of it.

This rezoning affects us as much as anyone else, as our boundaries adjoin the subject property. I understand Mr. McCarthy said at the hearing that Harford Park's support should be disregarded because we did not have a Quorum, but our By Laws define a Quorum as the majority of those members present.

This letter is not in behalf of Harford Park Community Association, but from one of the many families who are members and support this rezoning. Hoping you will give consideration to our feelings and all who signed the petitions in favor of this when you make your vote, we are

Very truly yours,

Albert W. Willis, Sr.

Rosemary M. Willis

Rosemary M. Willis
2608 Linwood Rd.
Baltimore Md. 21234

Michele Y. Gallagher
Friends of Poor Boys

7801 Oak Avenue
Baltimore, Maryland 21234

October 14, 1998

Zoning Commissioner
County Courts Building
401 Bosley Avenue
Room 405
Towson, Maryland 21204

Dear Commissioner:

I am writing concerning the zoning variance issues which are currently before you regarding Terry Gerahty t/a Poor Boy's Country Market. As we are all well aware, the issues concerning this matter are brought by a small few. In light of this small opposition's small but vocal protest, I formed "Friends of Poor Boys" in the Spring of 1998 to show the "rest" of the communities **real** continuing support of Poor Boy's. To date, Friends of Poor Boy's has over One Thousand Three Hundred (1,300) members. The membership drive was billed as "showing our continued community support of Poor Boys." Despite what the small opposition has to say, Friends of Poor Boy's continues to grow monthly. It is indeed the feeling of the majority, not the minority to see Poor Boy's be relieved of the draconian variances placed upon them to appease a small few.

I live less than 500 Five Hundred Feet from Poor Boy's and feel that I am immediately impacted by any decisions made. I have personally visited Poor Boy's and feel that the existing character and quality of the business has greatly enhanced the community and surrounding areas. The existing fencing, landscaping and lighting seem to be issues raised by a small few in attempts to drive Poor Boy's to another place of business. Clearly, the existing fencing, landscaping and lighting are above any that any other business owner in the Parkville area has had to meet. Mr. Gerahty has gone above and beyond that of which any businessman has in order to appease a small few. The rest of the community would like to see Mr. Gerahty continue to do business in our community and see him as a good neighbor. Clearly, the majority feel that the variance issues should be modified to allow Poor Boy's to continue operating. Please listen to the voices of the majority, not a small, but loud minority, trying to voice their own personal concerns. We all pay taxes too.

Should you have any questions regarding the community support, please do not hesitate to contact me at (410) 203-2377.

Sincerely,

Michele Schafer Gallagher

Greater Parkville Community Council

Help Unite Northeast Baltimore County - For A Better Community

RESOLUTION

Resolved: That the position of the Greater Parkville Community Council (GPCC) as adopted by the Board of Directors on the zoning matter known as:

Special Hearing: Case Number 98-267
Amendment Of Conditions In Variance

Petitioner: Mr. Gerahty (owner of Poor Boys Country Market)

Reference: Case Number: 97-295
Findings Of Fact And Conclusion Of Law

is that:
The 70 foot "L" shaped landscape buffer area be accepted as a county owned community passive park with an eight foot high wooden fence as described in Councilman Bartenfelder's September 18, 1997 letter. If the original intent of the passive park is not possible, GPCC supports a permanent open space easement written so the intent of the community passive park would be satisfied. Furthermore, the conditions that Mr. Gerahty is requesting relief from should remain and be promptly enforced.

As witness this day of March 8, 1999.

ATTEST:

Secretary

Greater Parkville Community Council

President

Board Member Witness

Board Member Witness

Prot Ex #1

The Parkville Park Community Association Inc.

Resolution

Resolved: That the position of the Parkville Park Community Association (PPCA) as adopted by the Board of Directors on the zoning matter known as:

Special Hearing: Case Number 98-267
Amendment Of Conditions In Variance

Petitioner: Mr. Gerahty (owner of Poor Boys Country Market)

Reference: Case Number: 97-295
Findings Of Fact And Conclusion Of Law

is that:

the PPCA fully supports the conditions of the variance and feel these conditions should remain in full effect. The community concerns outlined in the February 2/, 199' document from the PPCA to Deputy Zoning Commissioner Timothy Kotroco are still relevant to our community. The conditions that the petitioner has requested relief from are of the most critical in protecting and preserving the residential character of our community for the future. There has been no change in the residential community to warrant lessening the March 6, 1997 conditions that were accepted by the petitioner.

As Witness our hands and seal this March 7 , 1999.

ATTEST:

Secretary

Parkville Park Community Association

President

Board Member Witness

Board Member Witness

Board Member Witness

Prot Ex #2

8 1996
OFFICE OF PLAN

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is entered into, as of the 24 day of October, 1996, by and between TERRY GERAHTY ("Gerahty") Owner, POOR BOYS, INC. ("Poor Boys") Lessee, and the VILLA CRESTA CIVIC ASSOCIATION, INC. ("Villa Cresta").

RECITALS:

A. Poor Boys is the lessee of 7721 Old Harford Road, and Terry Gerahty is the owner of a lot of land (the "Land"), containing in the aggregate approximately 1.34 acres, located in the Sixth Councilmanic District of Baltimore County, Maryland, on the southwestern side of Taylor Avenue and Oak Avenue. The Land is more particularly described in a deed recorded among the Land Records of Baltimore County at Liber 8701, Folio 730.

B. At the present time, most of the Land is zoned D.R.5.5 (1.17 acres) and RO (0.17 acres).

C. The Land is currently not developed.

D. Poor Boys has submitted a request for change in zoning for the Land as a part of the 1996 Baltimore County Comprehensive Zoning Map process. The request seeks to have all of the Land classified BL. If this Agreement is executed, Gerahty and Poor Boys intends to amend its BL request to the area as shown on the attached Drawing marked "Amended Request". This requested zoning would enable Poor Boys to upgrade and expand its garden center and farm market now on the Land and at 7721 Old Harford Road with a more attractive, modern, garden center, farm market and country store with sufficient parking. The new site would include a significantly larger number of square feet than the present site.

E. If its request for BL zoning is granted, Poor Boys desires to develop on the Land sales, storage and parking areas for the upgraded garden center with such ancillary/accessory office and retail uses as are permitted as a matter of right in

Prot Ex #3

that zone and that are consistent with the terms of this Agreement. Poor Boys intends to work with appropriate officials of Baltimore County, the State of Maryland, to provide an upgraded garden center and farm market/country store with sufficient parking. The proposed garden center, farm market and country store uses would be designed to serve the Parkville Community and the immediate neighborhood, as well as the general public.

F. Villa Cresta is an incorporated association of Baltimore County residents interested in preserving the existing character and quality of life of residential areas in the vicinity of the Land.

G. Gerahty and Poor Boys desire to place certain restrictions on the Land and on the use thereof to assure that, in the event that it is rezoned to BL as requested, future use does not have a deleterious effect on nearby residential areas.

H. Gerahty and Poor Boys, in recognition of the concerns of the Villa Cresta Civic Association, is willing to place certain restrictions on the Land in return for the agreement of Gerahty and Poor Boys described below.

I. In order to make the covenants, restrictions and conditions contained in this Agreement binding and fully effective on the Land, and on the present and future owners and occupants thereof, the parties have entered into this Agreement, to the end and with the intent that Gerahty and Poor Boys, and its successors and assigns, will hold, use, and hereafter convey the Land subject to the said covenants, restrictions, and conditions.

AGREEMENTS:

NOW THEREFORE, in consideration of the mutual agreements and understandings contained in this Agreement, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

GERAHTY AND POOR BOYS, ON BEHALF OF ITSELF, AND ITS SUCCESSORS AND ASSIGNS, AGREES AS FOLLOWS:

1. Garden Center Use. The Land shall be used only for an upgraded garden center, farm market and country store, as well as parking, outdoor sales area, outdoor storage area, and accessory uses and related uses to support said uses. "Garden Center" and "Farm Market" uses shall be as defined in the Baltimore County Zoning Regulations, except Gerahty is not a farmer and that limitation in the "farm market" definition shall not be a requirement to the "farm market" use. A "country store" shall include garden center and farm market uses, along with gourmet items, crafts, deli items, pit beef and seasonal food sales consistent with a country store and farm market theme, and seasonal and holiday items of all kinds, including Christmas, Easter, Mother's Day, Memorial Day, Halloween, etc. It is further agreed that the Land and the property may be further used, expanded and upgraded for garden center, farm market and country store purposes, as allowed by its zoning.

2. Landscape Buffer. It is further agreed that the area marked "Landscaped Conservation Easement," as shown on the attached Drawing marked "Amended Request," shall:

a) be offered for dedication to Baltimore County, in such a manner as will be determined by the County, whether by fee, or easement so as to fulfill the spirit of this covenant that said area be preserved as a landscape buffer, and

b) if said area is not accepted by Baltimore County for dedication pursuant to Paragraph a) above, said area shall be offered for dedication, whether by fee or easement unto the Parkville American Legion, in such a manner as will be determined by the County so as to fulfill the spirit of this covenant so that said area be preserved as a landscape buffer, and

c) if said area is not accepted by Baltimore County or the Parkville American Legion, it shall be dedicated and preserved as a landscape buffer on any site plan associated with the upgraded garden center contemplated herein, and otherwise preserved and dedicated in such a manner so as to fulfill the spirit and intent of this covenant

Said "landscape conversation easement" shall remain residentially zoned and be established and maintained by Poor Boys and Gerahty, its successors and assigns, as a landscaped conservation buffer with coniferous screening substantially consistent with the requirements of the Baltimore County Landscape Manual and with compact evergreen screening placed as shown on the attached Drawing.

In addition, there shall be a ten foot (10') interior landscape easement established and maintained inside the BL line in a manner consistent with the requirements of said BL zone and with the Baltimore County Landscape Manual. The sixty foot (60') Landscape Buffer, plus the ten foot (10') interior landscape easement, will provide a total of seventy feet (70') of open space from Oak Avenue as shown on the attached Drawing.

CONDITION PRECEDENT:

The obligations of Gerahty and Poor Boys shall not become effective and binding upon Poor Boys and the Land unless and until the Land has been reclassified to BL, as shown on the attached Drawing marked Amended Request, on the 1996 Comprehensive Zoning Map for Baltimore County, as that map is finally adopted.

BINDING EFFECT: DURATION

Immediately upon satisfaction of the condition precedent stated above, Gerahty and Poor Boys shall cause these covenants, restrictions, and conditions to be recorded among the Land Records of Baltimore County, Maryland. Gerahty and Poor Boys shall then promptly deliver to Villa Cresta Civic Association a copy of the covenants as recorded, together with

evidence of their recordation. The covenants shall run with and be binding upon the Land, and upon all present and future owners thereof, and shall inure to the benefit of each of the parties respectively, and their successors and assigns, for a period of twenty-five (25) years from the date of this Agreement, provided that this covenant shall be binding for thirty-five (35) years from the date of this Agreement: (1) to allow only those uses allowed in the BLR zone,[1] provided that the following uses otherwise allowed in the BLR zone shall be prohibited: fast food, taverns, drycleaners, laundromats, video rental, supermarket, health and athletic club, martial arts and dance studio; and (2) to require adherence to the last sentence of the provisions of Page 4, Para. 2, regarding maintenance of Landscape Buffer.

CONDITION SUBSEQUENT:

Notwithstanding the preceding paragraph, this Agreement shall terminate and be of no further force or effect as to any portion of the Land that is rezoned, in proceedings subsequent to the adoption of BL zoning, as shown on the attached Drawing marked "Amended Request", to a zone other than this zone, at the time such rezoning becomes final and unappealable.

ENFORCEMENT:

If any party to this Agreement, or any party's successor, is required to institute legal action to enforce the terms of this Agreement, and is successful thereafter (whether by judgment or by settlement) in obtaining enforcement of the Agreement, that party or successor shall be entitled to recover

---

1 Regardless of the fact the underlying zone is BL, the Declarants herein are agreeing to the aforegoing restrictions, which essentially restrict the BL zoning in a manner that allows only BLR uses, with the exception that those uses labelled Garden Center on Page Three, Paragraph One shall be allowed. Accordingly, the Garden Center, etc. use specified on Page Three, Paragraph One shall be an allowed use regardless of whether it is a use of right, vel non, in the BLR zone.

reasonable attorneys' fees and other reasonable costs of the action from the person or entity against whom enforcement is obtained. However, as a prerequisite to the recovery of fees and costs under this paragraph, the person or entity seeking enforcement shall serve the alleged violator of the Agreement with written notice of the violation, and only if the alleged violator has failed to remedy or to make substantial progress toward remedying the violation within sixty (60) days after receipt of this notice may legal action be instituted.

In order to further ensure Villa Cresta of the enforcement of this Covenant, Gerahty shall have the duty to provide in all sales contracts for his business and/or Land that the Buyer be subject to and bound by these covenants and the obligations herein, including but not limited to the aforegoing "obligation to pay reasonable attorney's fees and costs" provision if enforcement of the covenants is successfully obtained. If and when Gerahty shall sell the Land or Business, Gerahty shall also assign One Thousand Dollars ($1,000.00) from the sale proceeds to Villa Cresta, or its successor, for Villa Cresta, or its successor, to use at its sole discretion for enforcement or any other community enhancement needs.

AMENDMENTS:

Prior to its recordation among the Land Records of Baltimore County, Maryland, this Agreement may be amended only by a written instrument in recordable form, signed by both of the parties hereto. Following its recordation among the Land Records of Baltimore County, this Agreement may be amended only by a written instrument, signed by Villa Cresta, or its successor and the legal owner or owners of the Land and recorded among the Land Records of Baltimore County, Maryland. If Villa Cresta Civic Association, Inc. is no longer in existence or otherwise defunct, the owner of the land is entitled to the appointment of a Trustee to act on their behalf upon application to a Court of Equity.

MISCELLANEOUS PROVISIONS:

The parties warrant and represent that they have taken all necessary action required to be taken by their respective charters, by-laws, or other organizational documents to authorize the execution of this Agreement.

This Agreement, which may be executed in counterparts, contains the entire understanding of the parties.

Each of the parties warrants that it has carefully read and understands this Agreement, is cognizant of the terms hereof, and has had ample time to consult with counsel of choice regarding its respective rights and obligations in connection herewith.

Failure, in any instance, to enforce any of the covenants, restrictions, and conditions contained in this Agreement shall in no event constitute a waiver or estoppel of the right to enforce the same or any other covenant, restriction or condition in the event of another violation occurring prior or subsequent thereto.

All notices required by this Agreement shall be sent by certified mail, return receipt requested.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST:

Patricia Blakney-Tenso
PATRICIA BLAKENEY TENSO

Melissa A. Smith
MELISSA A. SMITH

WITNESS/ATTEST:

Margaret Grace Kight

POOR BOYS, INC.

_____(SEAL)
By: Terry Gerahty, President

_____
TERRY GERAHTY

VILLA CRESTA CIVIC ASSOCIATION, INC.

_____(SEAL)
BY: Tom Rochford

STATE OF ~~MARYLAND~~ Vermont, ~~CITY~~/COUNTY OF Bennington, to wit:

I HEREBY CERTIFY, that on this 8 day of October, 1996, before me, the subscriber, a Notary Public of the State of ~~Maryland~~ Vermont, in and for the jurisdiction aforesaid, personally appeared TERRY GERAHTY, the duly authorized agent of POOR BOYS, INC., and being so authorized, acknowledged the aforegoing document to be the free and voluntary act of POOR BOYS, INC.,

AS WITNESS my hand and Notarial Seal.

Melissa A. Smith
Notary Public

My Commission Expires: 2/10/99

STATE OF ~~MARYLAND~~ Vermont, ~~CITY~~/COUNTY OF Bennington, to wit:

I HEREBY CERTIFY, that on this 8 day of October, 1996, before me, the subscriber, a Notary Public of the State of ~~Maryland~~ Vermont, in and for the jurisdiction aforesaid, personally appeared TERRY GERAHTY, and he acknowledged the aforegoing document to be his free and voluntary act.

AS WITNESS my hand and Notarial Seal.

Melissa A. Smith
Notary Public

My Commission Expires: 2/10/99

STATE OF MARYLAND, CITY/COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this 8th day of October, 1996, before me, the subscriber, a Notary Public of the State of Maryland, in and for the jurisdiction aforesaid, personally appeared TOM ROCHFORT, the duly authorized agent of VILLA CRESTA CIVIC ASSOCIATION, INC., and being so authorized, acknowledged the aforegoing document to be the free and voluntary act of VILLA CRESTA CIVIC ASSOCIATION, INC.

AS WITNESS my hand and Notarial Seal.

Notary Public
Robert E. Strohmer, Notary Public
Baltimore County
State of Maryland
My Commission Expires Mar. 11, 1997

My Commission Expires: _____

1166D DLB/caw

122

123

180'

50 50 50

DR5.5 TO BL

TO R5-072

60'

100'

PARK RESERVATION

360'

194'

124

45 45 45

70'

125

95 94 92

COMPACT EVERGREEN SCREENING

126

60

LANDSCAPED CONSERVATION EASEMENT

127

180'

60

91

128

50' 45 46 45 45 45 45

48 44 43

45

DATE 10/8/96 1"=50'

180' P/O PLAT OF "PARKVILLE"

72

COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

JOSEPH BARTENFELDER
COUNCILMAN, SIXTH DISTRICT

September 18, 1997

COUNCIL OFFICE: TOWSON 887-3388
DISTRICT OFFICE - FULLERTON 887-5223

Dear Mr. Baisden:

This is in response to the request of the Parkville Park Community Association to explain the intent of the "L" shaped landscape buffer area located along the west side of the 7700 block of Oak Avenue and the first residence on Oak Avenue. The exact size and location of this landscape buffer area is shown on the attached plan and is labeled "Landscape Conservation Easement".

The creation of this landscape buffer area was the result of a compromise to allow the property owner (owner of Poor Boys) to gain the rezoning of residential property to BL commercial and to protect the property values of the surrounding residential properties. It was to become a landscaped passive park (owned by the County) and provide screening for the surrounding residential community from the newly zoned commercial property. The goal of the buffer and landscaping is to preserve the residential character and quality of life of the residental neighborhood and additionally not to cause a detrimental effect to the community. The rezoning of the residental property was based on this compromise and I feel strongly this intent be carried out.

I also feel it is important to have a permanent fence and landscaping as directed in attached letter from Baltimore County Department of Permits and Development Management (Avery Harden, Landscape Architect).

Sincerely,

Joe Bartenfelder

Joseph Bartenfelder
Chairman, County Council
Sixth District

Prot Ex #4

RO TO BL

DR 5.5 TO BL

PARK RESERV

122

123

180'

50' 50' 50'

TOWSON 72

60'

100'

360'

45 45 45 45 45 45

45'

70'

124

125

95

94

92

60'

126

COMPACT EVERGREEN SCREENING

127

128

90

91

50'

50' 43' 46' 45' 45' 46'

LANDSCAPED CONSERVATION EASEMENT

48

45

44

DATE 10/8/96

1"=50'

180' P/O PLAT OF "OAKVILLE"

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Exq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

Printed with Soybean Ink
on Recycled Paper

The 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space. See plan.

As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

Thirty five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thirive within two years must be replaced. Steven's Hollies are recommemded where excessive moisture is an issue. Hollies must be placed closer together to achieve the desired effect. See plan. The other evergreen selections are half Norway Spruce and half White Pine.

This office will work with Poorboys when the planning for the expanded parking lot begins. The proposal above is essentially what the Baltimore County Landscape Manual will require when a permit for the parking lot is sought. Every effort will be made to save the existing trees within the proposed parking lot area. There shall be no increase in runoff onto the adjacent residences as a result of the sitework.

As a condition of completing the buffer requirements, the copse of brambles along Oak Avenue should be mowed.

If anyone has any questions or comments, please call me at 887-3751.

Sincerely,

E. Avery Harden

E. Avery Harden, Landscape Architect
Development Plans Review

2 Attachments

RESIDENCE

BUFFER

LANDSCAPE

HOLLIES

WET AREA

FENCE LOCATION

LATTICE ON FENCE

6 FOOT FENCE

60'

10' LANDSCAPE STRIP

4 FOOT FENCE

PROPOSED TREE LOCATIONS

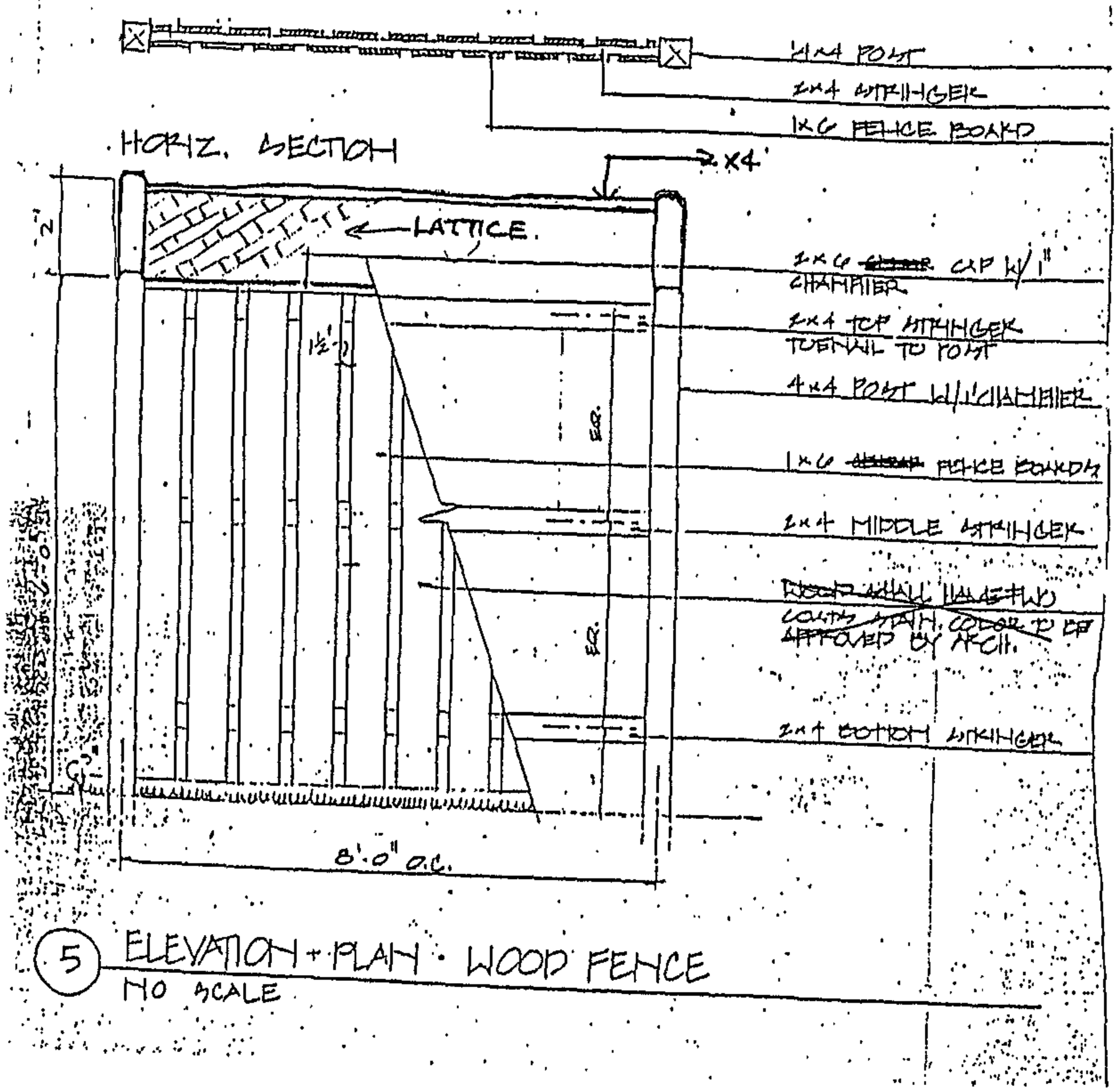
TERMINATE FENCE

POORBOYS NURSERY

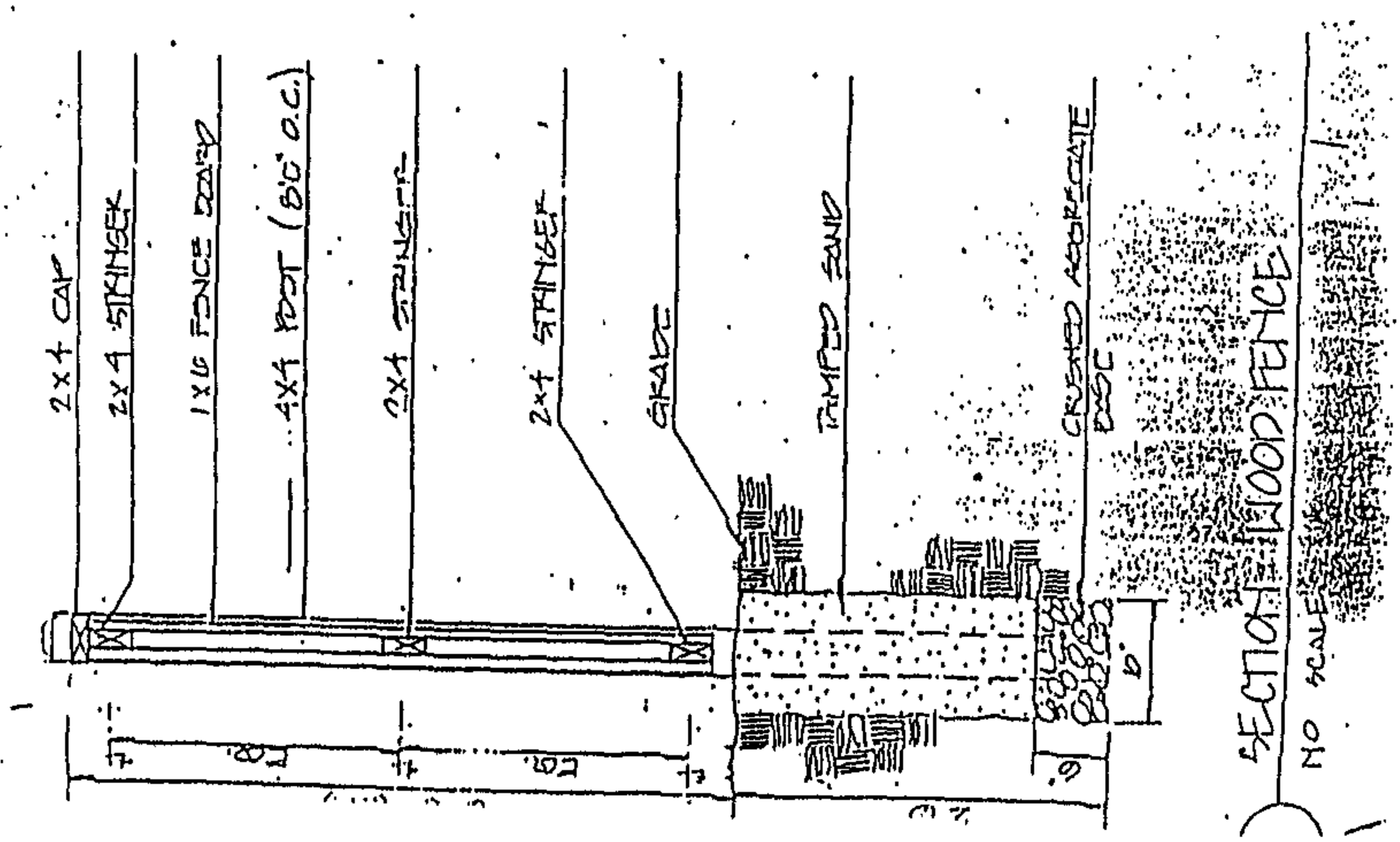
TAYLOR AVE

APPROXIMATE SCALE
1"=30'

HORIZ. SECTION



5 ELEVATION + PLAN · WOOD FENCE
NO SCALE



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

INTER-OFFICE CORRESPONDENCE

DATE: November 29, 1996

TO: Avery Harden
Landscape Architect

FROM: James H Thompson
Code Enforcement

RE: Landscape Installation
7721 Old Harford Road
Poor Boy's Incorporated
9th Election District

Please be advised that the subject property recently had a portion of it's land rezoned to commercial (B.L.) during the most recent comprehensive map process.

As a condition of this re-zoning, the property owner/tenant is to create a landscape buffer for the benefit of the adjacent community surrounding a proposed parking lot.

Douglas L. Burgess, Esquire, who represents the tenant, Poor Boy's Incorporated, has informed me his client is ready and willing to proceed with this requirement, but they first wish that you propose an acceptable landscape plan to satisfy Councilman Joseph Bartenfelder's requirement.

If our division can be of any assistance, please notify me at once.

C: Douglas L. Burgess, Esq.
Nolan, Plumhoff & Williams
Suite 700 Nottingham Centre
502 Washington Ave.
Towson, Md 21204

Inspector Hunter Rowe

Ernie & Ruth Baisden
7706 Oak Ave.
Balto. Md. 21234

Prot Ex #5

JHT:bb

Parkville Park Community Association
General Meeting - December 10, 1996

approved 2/11/97

Minutes

A General Meeting of the Parkville Park Community Association was called to order at 7:30 p.m. on December 10, 1997, at the Villa Cresta Elementary School library.

The Minutes Of The October And November Meetings Were Approved.

Parkville Park Project (Update):
Ruth Baisden spoke to Office of Community Conservation concerning the landscape project for the Parkville Park, findings were:

- The county would take ownership of the Parkville Park since they have been maintaining it.
- The county will hire a contractor to install landscaping according to our plan.
- The landscaping should be installed in the spring of 1997.

Membership And Dues:
It was discussed that a membership drive and collection of unpaid dues should be addressed.

1997 Meeting Dates:
A schedule of meeting dates for 1997 was approved at our last meeting. The General Meeting schedule is as follows March 11th, May 13th, July 8th, September 9th, November 11th. There will be no meetings in the months of January and February. Meetings will be held at 7:30 p.m. in the Villa Cresta Elementary School library. Due to the closure of Villa Cresta Elementary School during the summer, the July meeting will be held at another location. A flyer with the scheduled meetings will be prepared and delivered to members of the association by Ruth Baisden.

Officers Elections:
Due to the requirement in the by-laws that members have to be in good standing for at lease twelve connective months prior to elections a vote was taken to follow the by-laws, current officers will remain in office for the entire year.

Poor Boy's Development:
A vote was taken to approve the design, location, and type of fence and landscaping as described by Baltimore County Landscape Architect, Avery Harden and sketch plan. It was further agreed and voted as a resolution that the Board of Directors will follow-up on the implementation of the Poor Boys development so that it is constructed and installed in accordance with Baltimore County Regulations, including all promises made to the community, without impacts to the surrounding neighbors, and as so to protect and preserve the residential character of our community.

Wooded Landscape Buffer To Be Offered To The County By Poor Boy's:
It was voted to support the option of county ownership of this property as a preference and to send a letter to that effect to the County Executive. PPCA prefers this to remain a permanent green space and have the right to make improvements on this property such as planting of trees.

Prot Ex #6

The Parkville Park Community Association Inc.

Resolution

Resolved: That at the general meeting of the Parkville Park Community Association (PPCA) held on December 10, 1996. It was decided by the PPCA that the Board of Directors take the necessary steps to accomplish the following:

- To ensure the implementations of the design, location, and type of fence and landscaping as described by Baltimore County Landscape Architect, Avery Harden and sketch plan.

- To follow-up on the implementation of the Poor Boys development so that it is constructed and installed in accordance with Baltimore County Regulations, including all promises made to the community, without impacts to the surrounding neighbors, and as so protect and preserve the residential character of our community.

- To support county ownership of the 70 foot wide "L" shaped passive park buffer area as promised as a condition of the rezoning and send a letter to the County Executive to that effect. The PPCA prefers this to remain a permanent green space and have the right to make improvements on this property such as planting trees.

David L. Miller

Proposer

Ernest M. Boindon

President

Secretary

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Exq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

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from community

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Prot Ex #7

Printed with Soybean Ink
on Recycled Paper

The 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space. See plan.

As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

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As a condition of completing the buffer requirements, the copse of brambles along Oak Avenue should be mowed.

If anyone has any questions or comments, please call me at 887-3751.

Sincerely,

E. Avery Harden

E. Avery Harden, Landscape Architect
Development Plans Review

2 Attachments

HORIZ. SECTION

4x4 POST

2x4 STRINGER

1x6 FENCE BOARD

2x4

LATTICE

2x6 CAP W/ 1" CHAMFIER

2x4 TOP STRINGER TOENAIL TO POST

4x4 POST W/ CHAMFER

1x6 FENCE BOARDS

2x4 MIDDLE STRINGER

WOOD GRAIN HARDWD COLOR STAIN. COLOR TO BE APPROVED BY ARCH.

2x4 BOTTOM STRINGER

8'-0" O.C.

5 ELEVATION + PLAN - WOOD FENCE

NO SCALE

2x4 CAP

2x4 STRINGER

1x6 FENCE BOARD

4x4 POST (8'0" O.C.)

2x4 STRINGER

2x4 STRINGER

GRADE

TAMPED SAND

CRUSHED AGGREGATE BASE

6"

SECTION-ELEVATION

NO SCALE

RESIDENCE

BUFFER

LANDSCAPE

HOLLIES

WET AREA

FENCE LOCATION

LATTICE ON FENCE

6 FOOT FENCE

60'

10' LANDSCAPE STRIP

4 FOOT FENCE

PROPOSED TREE LOCATIONS

TERMINATE FENCE

POORBOYS NURSERY

TAYLOR AVE

APPROXIMATE SCALE
1"=30'

LETTER FROM ARNOLD JABLON, DIRECTOR

Baltimore County
Department of Permits and
Development Management

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

Prot. #4

December 17, 1996

Mr. David Miller
2801 Taylor Avenue
Parkville, MD 21234

RE: Poor Boy's
Taylor and Oak Avenues
9th Election District

Dear Mr. Miller:

Your letter to County Executive C.A. Dutch Ruppersberger, dated December 8, 1996, was referred to me for response.

We can appreciate the concern and issues you raise. Your primary complaint centers around the new zoning which is now in place on this particular property. Under county law, the zoning of property is within the total province of the county council. The county executive has no role in this process. Zoning and re-zoning of property in Baltimore County is totally within the domain of the council. The county executive and I are not familiar with any of the reasons for the new zoning of this property.

Recent complaints, however, have been made about the site in question, both relating to zoning and to sediment control. It is my understanding that James H. Thompson, Chief of the Bureau of Code Enforcement, will be responding to you in greater detail within the next few days about these issues.

There is no new construction being undertaken on this property at this time. I do know that a new parking area has been created, but it was small enough that this did not require a grading permit. It will require a variance, however, to the zoning regulations, which require a parking area to be "durable and dustless," or its removal. The mere change in zoning designation does not in and of itself mandate submittal to the county development plan approval process. I do understand that the parking area is in place, with crusher run material, and Mr. Thompson will

Prot Ex #8

Printed with Soybean Ink
on Recycled Paper

give notice to the property owner that he has thirty days to either request a hearing for the variance, do the requisite paving, or remove the parking area. I also would point out that if a variance is requested, a public hearing will be held before the zoning commissioner, at which time you and others may appear and testify on the screening issue you raise. The zoning commissioner does have the authority to add conditions to any approval granted.

County law does provide that, when no building permit is required, the director of the Department of Permits and Development Management has the authority to require a use permit and an accompanying site plan. The purpose of the former is to insure that the use is in compliance with those uses permitted under the zoning regulations; the purpose of the latter is to insure that the requisite parking, setback and other bulk requirements, are satisfied, e.g., the new parking area. Public input via a community input meeting or development plan hearing is not required. Even if an addition were to be proposed to an existing commercial enterprise, a full development plan reviewing process would not be required. County law provides that development of an existing lot of record is exempt from the otherwise requisite community input meeting and development plan hearing. While it would still require county review to insure compliance with all county laws and regulations, public input would not be required.

I cannot respond to any agreement between the property owner and the community, as I was not involved. I did have the county landscape architect review the plan for compliance with the county landscape manual, and the landscaping proposed does satisfy county requirements. I point out, though, that county standards are intended to be minimal, and I cannot comment on what may have been promised to the neighbors.

As for the issue of the park land, I know Mr. Ruppersberger has requested John Weber, director of the Department of Recreation and Parks, to respond to you. If you have not received his response, I know it will be forthcoming.

Sincerely,

Arnold Jablon
Director

AJ/jm

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND VARIANCE - SE/Corner
Old Harford Road & Taylor Avenue * DEPUTY ZONING COMMISSIONER
(7721 Old Harford Road)
9th Election District * OF BALTIMORE COUNTY
6th Councilmanic District
* Case No. 97-295-SPHA

Terry Gerahty
Petitioner * * * * * * * * * * * *

Prot Ex #9

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Special Hearing and a Petition for Variance for that property known as 7721 Old Harford Road, located at its intersection with Taylor Avenue in Parkville. The Petitions were filed by the owner of the property, Terry Gerahty, through his attorney, Newton A. Williams, Esquire. The Petitioner seeks approval that a proposed interim parking lot meets the requirements of the Baltimore County Zoning Regulations (B.C.Z.R.) and, if such use is disallowed, a variance from Section 409.8 of the B.C.Z.R. to permit a stone paved parking lot in lieu of the required asphalt paving and striping. The subject property and relief sought are more particularly described on the site plan submitted, which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Terry Gerahty, legal owner of the property, James Kline, Land Planning Consultant with George W. Stephens, Jr. and Associates, who prepared the site plan for this property, and Douglas L. Burgess, Esquire, who provided Legal Counsel to the Petitioner. Appearing in opposition to the Petitioner's request were several residents from the surrounding community, including Mr. & Mrs. Ernest Baisden and Mr. James Reed, adjoining property owners.

Testimony and evidence offered revealed that the subject property is the site of an outdoor garden center known as Poor Boys. The property

consists of a 1,705 sq.ft. indoor sales building with office and storage space, and a 385 sq.ft. outside sales area in the front portion of the site. Other improvements include a 3,320 sq.ft. outside sales area, a large outdoor storage area for flowers, trees, shrubs, mulch, and garden supplies, etc., and a 5,400 sq.ft. stone-paved parking area to the rear of the subject site. All of the improvements contained on the property are more particularly described on the site plan marked into evidence as Petitioner's Exhibit 1. The special hearing and variance requests deal specifically with the 5,400 sq.ft. parking area and not necessarily the remaining uses on the property. The parking area in question is paved with No. 2 loose stone, and provides approximately 19 parking spaces for customers. The parking lot has two access points from Taylor Avenue, both of which are one way in direction. Vehicles enter the parking lot through the entrance on the western end of the lot, and exit out through the second access point on the eastern portion of the lot. The Petitioner seeks approval to allow the existing loose stone surface to remain in lieu of the required durable and dustless paved surface. The Petitioner argued that the No. 2 loose stone base currently provided on the parking lot meets the requirements of a durable and dustless surface in that no dust results from the use of this stone. However, after hearing the testimony offered by Mr. Kline and performing a site inspection of the parking lot, I find that the stone base surface is not durable and dustless, and thus, the special hearing to approve same shall be denied. Therefore, the Petitioner's request for a variance is necessary to allow the stone surface to remain.

Further testimony revealed that Poor Boys sells landscaping materials, gardening supplies, flowers, Christmas trees, mulch, and other

horticultural products to the general public. Poor Boys has both an indoor sales area as well as an outdoor sales and display area as shown on Petitioner's Exhibit 1. The subject property for the most part is zoned B.L., which permits such use as of right. However, a 60-foot buffer area, zoned D.R. 5.5, is located on the subject property, adjacent to Oak Avenue, and to the rear of the subject site, adjacent to the residential property owned by Mr. & Mrs. Baisden.

The Petitioner indicated that the manner in which he presently operates his business is an interim use (approximately five years) until the property can be more fully developed in the future. Until then, he wishes to continue the use of this stone parking area and outdoor sales area as shown on the site plan. The Petitioner agreed to allow the existing trees to remain on the property during this interim use. Furthermore, he agreed to allow the existing trees within the 60-foot buffer zoned D.R. 5.5 to remain in perpetuity. Regarding this D.R. 5.5 zoned buffer area, the Petitioner has agreed to place this buffer area into an open space easement and grant same to Baltimore County, thereby guaranteeing that this buffer area remains as open space in accordance with the terms of the easement that is to be negotiated and reduced to writing with Assistant County Attorney Doug Silber. The Petitioner shall maintain ownership of the buffer area under this easement and shall be responsible for all maintenance and upkeep of same.

The Petitioner also agreed to install and provide an 8-foot high, pre-assembled sectional fence along the edge of the B.L./D.R. 5.5 zoning line, which runs parallel to the Baisden property for an approximate distance of 120 feet. The Petitioner has also agreed to provide this fencing along the B.L./D.R. 5.5 zone which runs parallel to Oak Avenue. However,

the Petitioner is only proposing to provide this fencing for a distance of 32 feet, running parallel to Oak Avenue as shown on the plan. This proposed fencing is highlighted in brown and shown on Petitioner's Exhibit 4.

After reviewing the contents of the file as well as making a site visit to the property, I believe it is appropriate for the Petitioner to extend this fence, not only the 32-feet along Oak Avenue as proposed, but also to provide for the further extension of this fence in accordance with the diagram provided by Avery Harden, Landscape Architect for Baltimore County, which was included as an attachment to his letter of December 24, 1996. Mr. Harden shows this fence as running almost the entire length of the B.L./D.R. 5.5 zoning line parallel to Oak Avenue, stepping this fence down from a 6-foot high fence with lattice on top, to a 4-foot high fence with lattice on top, and terminating approximately 30 feet from the property line along Taylor Avenue. After considering the Protestants' testimony in this regard, my site visit to the property, and Mr. Harden's diagram, I believe it is appropriate for the Petitioner to extend this fencing in the fashion and manner depicted on Mr. Harden's diagram. Therefore, as a condition of approval, the subject fencing shall be required.

As noted earlier in this opinion, the adjoining property owners, Mr. & Mrs. Baisden, appeared in opposition to the request. The Baisden's reside with their three children on the adjacent property located on the south side of the subject site on Oak Avenue. The Baisdens are opposed to the variance requested herein and believe that the Petitioner should be required to pave the parking area and provide storm water management controls. Testimony offered revealed that water runoff from the subject site is projected out onto Taylor Avenue. The Baisdens are opposed to the general use of the subject property; however, given its predominant B.L. zoning,

the garden center is permitted as of right. However, the Baisdens raised many issues concerning the operation of the business and requested that certain appropriate restrictions be imposed on the use to insure that the quality and character of the surrounding residential community will be maintained. Many of the concerns raised by Mr. & Mrs. Baisden are valid and involve topics upon which certain restrictions shall be imposed. However, I believe it is appropriate to grant the variance to allow the loose stone parking lot to remain in lieu of the required durable and dustless surface, inasmuch as the Petitioner has met the burdens imposed upon him by the B.C.Z.R.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

> 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
>
> 2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
>
> 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the special hearing and variance are not granted. It has been estab-

lished that special circumstances or conditions exist that are peculiar to the land which is the subject of these requests and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 6th day of March, 1997 that the proposed interim parking lot, as set forth on Petitioner's Exhibit 1 and the No. 2 stone thereon, does not meet the requirements of the Baltimore County Zoning Regulations (B.C.Z.R.), and as such, the Petition for Special Hearing be and is hereby DENIED; and,

IT IS FURTHER ORDERED that a variance from Section 409.8 of the B.C.Z.R. to permit a stone paved parking lot in lieu of the required durable and dustless surface (asphalt paving and striping), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) Within sixty (60) days of the date of this Order, the Petitioner shall reduce to writing an easement agreement with Baltimore County which places the 60-foot D.R. 5.5 buffer located along Oak Avenue and adjacent to the property owned by Mr. & Mrs. Baisden into open space. It is apparent through the rezoning

process that this D.R. 5.5 buffer was set aside to screen the subject property from the adjacent residential community.

3) The maintenance and upkeep of this 60-foot buffer shall be at the sole cost and expense of the Petitioner and shall be performed as follows:

a) The grassy area within the buffer shall be mowed on a regular basis so as to take on the appearance of a residential lawn. On approximately a monthly basis, any leaves, sticks and branches shall be picked up to keep the buffer area well-manicured. The Petitioner shall be required to keep this buffer area litter-free and shall insure that any trash is picked up on a weekly basis.

b) All existing trees within this buffer shall be maintained and preserved. Furthermore, the Petitioner shall perform and accomplish the additional landscaping shown on Petitioner's Exhibit 4, under the direction of Avery Harden, Landscape Architect for Baltimore County.

c) There exists within this buffer area, particularly in the area adjacent to the property owned by Mr. & Mrs. Baisden, certain piles of dirt and debris that has been dumped there and which has altered the drainage and topography of the subject site. These piles of dirt and debris shall be removed within thirty (30) days of the date of this Order and the buffer area returned to its original natural state. Within thirty (30) days after the removal of this dirt and the installation of the fencing and landscaping as required by this Order, the Petitioner shall grade and smooth any and all tire ruts, including those which currently exist and any which are created during the installation of the landscaping. Any disturbance to the ground within this buffer area shall be planted with grass seed and returned to its natural grassy condition.

d) Any and all weeds and unwanted foliage shall be removed from this buffer area at the direction of Mr. Avery Harden, Landscape Architect for Baltimore County.

4) All of these conditions and restrictions shall be included and incorporated into the easement agreement executed between the Petitioner and Baltimore County to insure that this buffer area is not only protected by the terms and conditions of this Order, but also by the terms and provisions of the easement agreement entered into with Baltimore County. A copy of said easement agreement shall be recorded in the Land Records of

Baltimore County and will be applicable to any subsequent owner of the subject property in perpetuity.

5) The Petitioner shall be permitted to operate an outdoor intercom system only between the hours of 9:00 AM to 5:00 PM Monday through Friday, and 12:00 Noon to 5:00 PM on Saturday and Sunday. The outside intercom system shall not be permitted to operate outside these hours. The purpose of this restriction is to preserve the peace and tranquility of the surrounding residential community.

6) The Petitioner shall be permitted to use gasoline powered chain saws only between the hours of 9:00 AM and 5:00 PM Monday through Friday, and 12:00 Noon to 5:00 PM on Saturday and Sunday. Outside of these hours, the Petitioner must use an electric chain saw, particularly in light of the sale of Christmas trees during the winter season. This should keep noise levels to a minimum and during appropriate hours.

7) All outdoor lighting of the subject site shall be supplied in a tasteful manner and installed on fixed standards, as approved by Mr. Avery Harden, Landscape Architect for Baltimore County. Within sixty (60) days of the date of this Order and prior to the installation of any outdoor lighting, the Petitioner shall submit a lighting plan to Mr. Harden for his review and approval. The Petitioner is prohibited from stringing lights along extension cords from tree to tree on the subject site. All outdoor lighting shall be installed in such a manner so as not to reflect onto adjacent residential properties.

8) The Petitioner shall not interfere with the free passage of pedestrians along the sidewalk adjacent to Taylor Avenue and Old Harford Road. These areas shall not be utilized for display purposes and shall remain open for pedestrian access.

9) Any and all deliveries of products to and from the subject site shall be performed prior to 11:00 PM on any given evening. This is particularly applicable during the Christmas season where trees have been delivered to the site into the early morning hours. Therefore, no deliveries to or from the subject site shall take place after 11:00 PM on any given evening.

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

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

Prot Ex #10

Community Concerns That Need To Be Addressed

1. Preservation Of Existing Trees

- Identified all trees to be saved. This should be done in cooperation with the community association (PPCA) and the County Landscaping Department (E. Avery Harden, Landscape Architect) and/or County Forest Conservation (Keith Kelly). This should be done and agreed upon prior to issuance of zoning variance. The larger mature trees should be a priority.

- Poor Boy's should provide a protection plan describing all measures and devices necessary to insure the health and well being of the trees as prescribed by a reputable tree expert.

- As a good faith measure and to show a commitment in the protection and preservation of the subject trees, Poor Boy's and PPCA should enter into a restrictive covenant agreement. This agreement would commit Poor Boy's to the long term protection and preservation plan for the trees and should be drafted and agreed upon prior to issuance of zoning variance. This should be a perpetual agreement recorded among the Land Records of Baltimore County that requires any successor land or business buyer to be bound by this covenant agreement and obligation.

2. Screening To The Residential Neighborhood

- The required privacy fence and landscaping parallel to Oak Avenue and parallel to the property line of the first house on Oak Avenue (Baisden's Residence) as prescribed by Avery Harden (County Landscape Architect) should be shown on plan and installed prior to reopening business. Avery Harden's letter with plan and details is attachment F.

- Appropriate screening and landscaping should also be installed along Taylor Avenue.

- All trash dumpsters, trucks, equipment and like should be screened all year around (even when business is closed) from the community.

- Trash and litter should be picked up on a weekly basis.

3. Stormwater Management Concerns

- The soil in the subject parking area has become compacted and impervious due to vehicles driving and parking in this area since this past spring. This is evident when walking on subject parking area and then adjacent area after a rain. In the parking area the water does not percolate but the adjacent area absorbs water and becomes very soggy (a person will sink several inches).

Many loads of stone have also been applied to this area during the spring/summer and then again in the fall. The topography of the adjacent area is such that the stormwater runoff flows from east

to west (and slightly north) across Oak Avenue and through the lawns of several houses toward the intersection of Old Harford Road and Taylor Avenue. A stormwater management facility (pond) should be provided for water quality (to trap sediment from stone parking lot) and quantity (for additional runoff caused by impervious area).

• The change in ground elevation due to the many loads of stone, the installation of a stone path (1,000 SF) this past spring (located just east of existing building), and the excavation from another construction site (piled just south of the subject parking area a couple of years ago), has caused a diversion to the runoff from Oak Avenue and a backwater damming condition that effects several properties and flooding basements. The backyards of these properties now have ponding water and becomes so saturated that it is impossible to walk on for over a week after a rain. Neighborhood children are not able to play in their backyards for weeks at a time. This must be corrected. The excavation piles should be removed and the stormwater runoff from Oak Avenue should be routed through the site so that the backwater damming condition is eliminated. See photos of stone areas, excavation piles, and wet areas - Photo Page 5, 6, & 7.

• The development plan should be reviewed and approved by the county for stormwater and sediment control practices.

4. Traffic Concerns

• This type of business requires high turnover, short term parking and is one of the highest generators of traffic. During the busy season this business generates a significant amount of traffic to an already congested area. Taylor Avenue is a two lane (one lane each direction) east/west arterial road that accommodates a steady flow of traffic. The use of the subject lot started this past spring and compounded the traffic problem of the area. Having three driveways located on Taylor Avenue has been the caused of a number of near miss accidents in this short period of time. The driveway to the east is close to the Parkville Park/War Memorial (located in the center of Taylor Avenue) and presents a sight distance traffic safety problem for vehicles traveling westbound around the park and those vehicles that are entering or exiting this driveway to or from the westbound lane of Taylor Avenue. This easternmost driveway should be eliminated before a major accident occurs.

• The county Traffic Department (Steve Webber) should review this development plan and any future development plans of this site.

• The 19 space parking lot should be limited to 19 passenger vehicles and these vehicles should be confined to the designated stone covered parking area. Appropriate methods should be employed and identified on the plan to prevent parking in other areas.

5. Lighting Of Commercial Area

• Lighting should consist of dark metal poles (maximum height 15 feet), not strings of light bulbs strung from trees and wooden poles.

• The light poles should be arranged and fixtures equipped with shields so that light does not spill over to the surrounding residential community.

• The light pole and fixture style should be compatible with the character our residential community and consistent with future four sided lamppost that will be installed in adjacent historic Parkville Park/War Memorial. Copy of catalogue cut is on attachment H-1.

• The adjacent Parkville Park/War Memorial is currently on the Preliminary Landmarks List 10th series. All plans and lighting should be reviewed by the County Historic Preservation Committee.

6. Noise To The Residential Community

• No gasoline power chain saws should be used during the normal operation of business. During the past Christmas season, this noise was very disturbing to the community starting from 10:00 a.m. until 10:00 p.m. An electric saw is adequate for cutting Christmas trees.

• To retain the residential atmosphere of our neighborhood, the use of an intercom should be discontinued. In the past year the Poor Boy's intercom could be heard by all the houses on the 7700 block of Oak Avenue with their windows closed. There is no current county noise ordnance in place such as Montgomery County's where this would be prohibited.

7. Incompatible Uses With Surrounding Residential Community

The surrounding community consisting of the original park (Parkville Park/War Memorial) and the original development of Parkville. This area is very visible and represents residential Parkville to many motorist that pass through the area. Recognizing the development of his site has an effect on the visual quality and ambiance of our community, we would like to have the following uses prohibited on this site.

• Tents.
• Trailers.
• Inappropriate signs, such as cardboard signs nailed to trees and wooden poles, etc.
• Commercial displays should be located back off of the sidewalks (should be set back to property line).
• No Pit Beef or Snowballs stands located on this lot.
• No pay phones.
• No deliveries after 9:00 p.m. This past Christmas, trees were delivered as late as midnight with the entire property lighted.
• Since there are wheelchair bound residents in our community, assessable handicap marked parking should be provided.

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

INTER-OFFICE CORRESPONDENCE

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

DATE: February 7, 1997

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

Prot Ex #11

SUBJECT: 7721 Old Harford Road

INFORMATION:

Item Number: 295

Petitioner: Terry Gerahty

Property Size:

Zoning: BL

Requested Action:

Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

Based upon a review of the information provided and analysis conducted, staff offers the following comment:
On December 24, 1996, Avery Harden, a Landscape Architect with the Development Plans Review Section of Permits and Development Management, forwarded a letter - accompanied by a site plan - to some interested parties in this case (see attached). Should the applicant's request be granted, full compliance with the above mentioned plan and its stated conditions ~~would be necessary in order to~~ buffer the proposed parking area and the proposed outside sales/storage areas from the adjoining residential community. In addition, the management of stormwater run-off should be addressed by the applicant to the satisfaction of the Department of Environmental Protection and Resource Management to ensure that no adjacent properties will be negatively impacted by stormwater run-off.

Prepared by: Jeffrey W. Long

Division Chief: Arnold F. Keller

AFK/JL:rdn

ITEM295/PZONE/ZAC1

Post-it® Fax Note 7671	Date 2/11/97	# of pages ▶ 1
To	From	
Co./Dept.	Co.	
Phone #	Phone #	
Fax #	Fax #	

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

September 24, 1997

Douglas L. Burgess, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Case No. 97-295-SPHA
Terry Gerahty - Petitioner

Dear Mr. Burgess:

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

Very truly yours,

Charlotte E Radcliffe

Kathleen C. Bianco
Legal Administrator

encl.

cc: Terry Gerahty
Mr. and Mrs. Ernest Baisden
James Reed
Avery Harden
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Prot Ex #12

Printed with Soybean Ink
on Recycled Paper

IN RE:	PETITIONS FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
	S/E Corner Old Harford and Taylor Avenue	*	COUNTY BOARD
	(7721 Old Harford Road)	*	OF APPEALS
	9th Election District		
	6th Councilmanic District	*	OF BALTIMORE COUNTY
		*	Case No. 97-295-SPHA

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

ORDER OF DISMISSAL

Terry Gerahty, Petitioner by Douglas L. Burgess and Nolan, Plumhoff & Williams, Chartered, his attorneys, hereby dismisses his appeal from the Findings of Fact and Conclusions of Law of the Deputy Zoning Commissioner of March 6, 1997.

Douglas L. Burgess
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 823-7800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 19 day of September, 1997, that a copy of the foregoing Order of Dismissal was mailed, postage prepaid, to Peter M. Zimmerman, People's Counsel for Baltimore County, Court House, 400 Washington Avenue, Towson, Maryland 21204, Mr. and Mrs. Ernest Baisden, 7706 Oak Avenue, Baltimore, Maryland 21234 and to Mr. David Miller, 2801 Taylor Avenue, Baltimore, Maryland 21234.

Douglas L. Burgess

\\Mao\wpdocs\GERAHTY.NAW\Dismisal.wpd

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
TERRY GERAHTY -PETITIONER	*	COUNTY BOARD OF APPEALS
FOR SPECIAL HEARING AND		
VARIANCE ON PROPERTY LOCATED	*	OF
ON THE SOUTHEAST CORNER OLD		
HARFORD ROAD AND TAYLOR AVENUE	*	BALTIMORE COUNTY
(7721 OLD HARFORD ROAD)		
9TH ELECTION DISTRICT	*	CASE NO. 97-295-SPHA
6TH COUNCILMANIC DISTRICT		

* * * * * * * * *

ORDER OF DISMISSAL

This matter comes to this Board on appeal from a decision of the Deputy Zoning Commissioner in Case No. 97-295-SPHA in which Petitioner's request for special hearing relief was denied and Petition for Variance granted with restrictions.

WHEREAS, the Board is in receipt of a dismissal of appeal filed by Douglas L. Burgess, Esquire, counsel for Terry Gerahty, Petitioner /Appellant, dated September 19, 1997 (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said counsel for Petitioner /Appellant requests that the appeal filed in this matter be dismissed as of this date;

IT IS HEREBY ORDERED this 24th day of September, 1997 by the County Board of Appeals of Baltimore County that said appeal be and the same is hereby DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Kristine K. Howanski, Chairman

Charles L. Marks

Harry E. Buchheister, Jr.

The Parkville Park Community Association Inc.

7706 Oak Avenue Baltimore, Maryland 21234 (410) 668-2580

November 23, 1997

Mr. Arnold Jablon, Director
Baltimore County Department of
Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Dear Mr. Jablon:

I am writing this in reference to the September 26, 1997 letter that was sent to Deputy Zoning Commissioner, Timothy Kotrocco and you from our association. Subsequent to sending the letter, I talked to Mr. Kotrocco and he stated that his ruling is to be enforced but the enforcement of the conditions are to be carried out by code enforcement. I then called Mr. Raymond Wisnom of your office and informed him of our letter and my conversation with Mr. Kotrocco.

The conditions of the Deputy Zoning Commissioner were to be met within 30 days (except the open space easement). It has now been over 60 days and the conditions have not been met. The community has been very patient but have seen little results. With the recent addition of string lighting, we feel the situation has become worse. The installation of string lighting is explicitly contrary to the conditions of the Deputy Zoning Commissioner's ruling.

Also find enclosed standards appropriate for site lighting of neighborhood commercial areas which is specific to our situation. We are awaiting a written response to our letter and for the Deputy Zoning Commissioner's conditions to be promptly enforced.

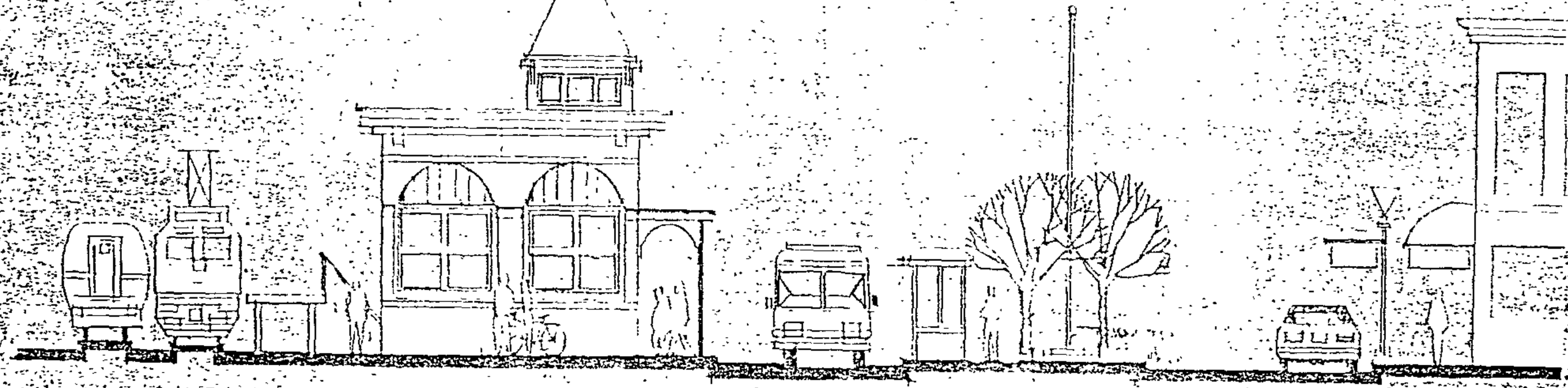
Sincerely,

Ernest Baisden, President
Parkville Park Community Association

Prot Ex #13

Planning for Transit-Friendly Land Use

A Handbook for New Jersey Communities



NJTRANSIT

12.7 Site Lighting

a) Site lighting shall be provided in accordance with the standards set forth in the following tables:

b) Lighting for safety shall be provided at intersections, along walkways, at entryway, between buildings, and in parking areas.

c) Spacing of standards shall be equal to approximately four times the height of the standard.

d) The maximum height of standards shall not exceed the maximum building height permitted, or 25 feet, whichever is less.

e) The height and shielding of lighting standards shall provide proper lighting without hazard to drivers or nuisance to residents, and the design of lighting standards shall be of a type appropriate to the development and the municipality.

f) Spotlights, if used, shall be placed on standards pointing toward the building rather than on the buildings and directed outward.

PARKING LOT ILLUMINATION

Activity Level	Lux	Foot Candles
Low activity[1]	2	0.2
Medium activity[2]	6	0.6
High activity[3]	10	0.9

[1] Examples include Neighborhood shopping, industrial employee parking, church or recreational facility parking.

[2] Examples include community shopping centers, office parks, hospital parking areas, cultural civic or recreational events, and residential complex parking.

[3] Examples include major cultural or civic events, major league athletic events, regional shopping centers and fast food facilities.

Excerpted from Listoken, David and Walker, Carole, The Subdivision and Site Plan Handbook, New Brunswick 1989.

PEDESTRIAN WALKWAY ILLUMINATION

Walkway Classification	Minimum Average Horizontal Levels-Lux	Average Levels for Special Pedestrian Safety-Lux
Roadside Sidewalks		
Commercial areas	10	22
Intermediate areas	6	11
Residential areas	2	5
Walkways Distant from Roadways		
Walkways and stairways	5	5
Pedestrian tunnels	43	54

Source: Listoken, David and Walker, Carole, op.cit.

Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Pet Ex #14

Code Enforcement: 410- 887-3351 Extension_____
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE VIOLATION NOTICE

VIOLATION(S) OF TITLE 3, 7, 18, 24, OR 26 OF THE BALTIMORE COUNTY CODE, ZONING, OR OTHER CODES, REGULATIONS, AND POLICIES AS INDICATED BELOW:

Violation Notice No. 107108

Case No.: 97-3996

Election District 9 Permit No. _____

Name (s) Terry Gerughty

Address 7721 Old Harford Rd. Parkville MD. 21234

Location of Violation (if different than address) _____

Vehicle License No.: _____ Vehicle ID: _____

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

County Code:
§§ _____
§§ _____

Zoning Regulations:
§§ 102.1, 409.8.A.3
§§ 500

Building Code (BOCA):
§§ 107.1
§§ _____

Livability Code (18-66):
§§ _____
§§ _____

Investment Property Act (7-66):
§§ _____

Electrical Code (NEC):
§§ _____

Plumbing Code (NSPC):
§§ _____

Dwelling (CABO):
§§ _____

Other: §§ _____

COMMENTS OR OTHER VIOLATIONS:

1) Fence not properly installed all parallel to Oakd Parallel to Taylor as per Special Hearing
2) Cease stringing of Lights on Lot as per special Hearing #97 (3) Cease Light from commercial zoning from shining on Residential Property
4) Obtain Permit for or Remove Trailer on Property

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE 12/18/97 FAILURE TO COMPLY WILL RESULT IN THE PENALTIES DESCRIBED ON THE REVERSE SIDE OF THIS VIOLATION NOTICE.

DATE ISSUED: 12/4/97 INSPECTOR: Rowe

STOP WORK NOTICE

PURSUANT TO INSPECTION AND IDENTIFICATION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT.

THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN: _____

DATE ISSUED: _____ INSPECTOR: _____

SEE REVERSE FOR INFORMATION ON FINES AND PENALTIES PRINTED ON REVERSE SIDE

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

IN RE: BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CITATION CODE ENFORCEMENT HEARING	*	BEFORE THE CODE OFFICIAL
Terry Gerahty	*	Civil Citation No. 97-3996
Respondent	*	7721 Old Harford Road

* * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINAL ORDER OF THE CODE OFFICIAL

This matter came before the Code Official pursuant to §1-7, Baltimore County Code, for consideration of code enforcement citations issued to the respondent named above by the Division of Code Inspections and Enforcement, Department of Permits and Development Management, for violations allegedly occurring at the property known as 7721 Old Harford Road, Parkville, and zoned B.L.

The respondent did appear.

Appearing at the hearing were Terry Gerahty, the owner of the property, and C. William Clark, Esquire, who provided legal counsel for the respondent.

This code enforcement hearing was duly scheduled, and was conducted on the 18th day of March, 1998.

Appearing and testifying was Terry Gerahty, the respondent. Appearing as complainants to the respondent's alleged use of the cited property were Mr. Ernie Baisden, Mrs. Ruth Baisden, and Mr. James Reed.

Petitioner's #15

Testimony also was taken from Hunter Rowe, code enforcement inspector.

Testimony and evidence presented indicates that the subject property is the site of an outdoor garden center known as Poor Boys. The property consists of a 1,705-square-foot sales building with office and storage space; an outside sales area of some 3,705 square feet; a storage area for flowers, trees, shrubs, mulch, and garden supplies; and a 5,400-square-foot parking area. All as shown on the site plan, which was marked into evidence as Respondent's Exhibit 1. The subject property is zoned B.L. except for a 60-foot buffer area, zoned D.R. 5.5, adjacent to Oak Avenue, and to the rear of the site, adjacent to the residential property owned by Mr. and Mrs. Baisden at 7706 Oak Avenue.

As the result of a petition for variance from §409.8 of the Baltimore County Zoning Regulations (hereinafter "BCZR"), permission for a stone-paved parking lot, in lieu of the required durable and dustless surface, was granted by the Deputy Zoning Commissioner on March 6, 1997. The order required the respondent to comply with certain restrictions, such as: maintain a buffer area and provide landscaping as directed by Avery Harden, Baltimore County's landscape architect, and provide outdoor lighting, as approved by Mr. Harden, so as to not reflect on adjacent residential property. The respondent was prohibited from stringing lights along extension cords from tree to tree, and required to provide a six-foot-high fence with lattice on top. The respondent is charged with violating the deputy commissioner's order under §26-119 of the Baltimore County Code by failing to comply with these restrictions.

A correction notice was issued on 4 December 1997, requiring the respondent to properly install the fence, cease shining light on residential property, and remove or obtain a permit for the trailer.

Testimony and evidence presented indicates that the respondent has used string lights at one time, that the respondent installed outdoor lighting without submitting a lighting plan to Mr. Harden, and that the fence is erected on the buffer line and does not have a two-foot lattice on top as required by the order dated 6 March 1997. Mr. Harden wants the fence located 70 feet from the southern and eastern property lines.

In addition, the respondent has paved a portion of the parking area, less than 5,000 square feet, that was originally part of the variance order. Because of the paving of a portion of the parking area, the respondent claims that the variance order is moot, and the restrictions imposed by the order do not apply. The fact is that parking is occurring on some of the unpaved area, which was the subject of the variance, and therefore the restrictions and conditions of the order are in full force and effect. See Plaintiff's Exhibit 1. The order dated 6 March 1997 remains in full force and effect, until such time as a plan which provides for a durable and dustless parking area and the legally sufficient number of parking spaces is submitted and approved by the county. Should the respondent wish to amend any of the restrictions imposed by the aforementioned, the respondent must file a petition for a special hearing to be heard by the zoning commissioner.

Mr. and Mrs. Baisden testified about the intensity of the light, which is reflected on their property adjacent to Poor Boys' property. They introduced photographs taken in December 1997 showing the intensity of the light on their property. Plaintiff's Exhibit 2, collectively. The string lights are up but not used. See Plaintiff's Exhibit 3.

The respondent has made efforts to adjust the lights to prevent the light from shining on the residential properties. One of the problems stated by Mr. Harden is that the lighting used has the wrong intensity, and therefore will always shine into the residential area. The respondent has never submitted a lighting plan to Mr. Harden for his review. Mrs. Baisden submitted a plan locating the lighting on the site plan, marked Plaintiff's Exhibit 5, and photos taken at night, showing the lighting of the subject property and the reflection of that light onto their property, as Plaintiff's Exhibit 4. She also measured the light intensity and marked it on the site plan. The respondent has indicated that he would prefer to use the string lights, which use was denied under the 6 March 1997 order of the deputy zoning commissioner. The string lights would certainly solve the problem of the light invading the residential area, and, according to the respondent, would enhance the color of the products he sells.

On 22 December 1997, pursuant to §1-7(d), Baltimore County Code, a code enforcement citation was issued. The citation was legally served on the respondent.

The citation described the violation as follows: (1) violation of BCZR, §102.1, no land shall be used except in conformance with the zoning regulations; (2) BCZR, §409.8.A.3, failing to provide lighting fixtures for parking that reflects light away from residential areas; and (3)

BCC, §26-119, failure to comply with zoning commissioner's order. Further, the citation proposed a civil penalty of $600 to be assessed. A code enforcement hearing date was scheduled for 11 February 1998.

Pursuant to the correction notice and subsequent code enforcement citation issued, the hearing held, and the reasons set forth above, it is found as a matter of law that code violations existed on 22 December 1997, and the same violations have been continuing.

THEREFORE, IT IS ORDERED by the Code Official, this 26 day of March, 1998, that a civil penalty is imposed in the amount of $300.

IT IS FURTHER ORDERED that the respondent immediately cease and desist from shining light onto the adjacent residential property.

IT IS FURTHER ORDERED that the respondent move the existing fence to a line 70 feet from the southern and eastern property line and add the lattice work on top as per the approved plan.

IT IS FURTHER ORDERED that the subject property be monitored periodically for compliance;

IT IS FURTHER ORDERED that should the division of code inspection and enforcement determine that there is violation of this order, it shall re-schedule this matter before the code official, subject to appropriate notice to the respondent.

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

IT IS FURTHER ORDERED that the order of 6 March 1997, in case 97-295-SPHA, remains in full force and effect, until such time as a plan is submitted and approved by the county, which provides for a durable and dustless parking area and the legally sufficient number of parking spaces. In the event that the respondent wishes to amend any of the restrictions imposed by the above mentioned order, the respondent must file a petition for a special hearing to be heard by the zoning commissioner.

Signed: Stanley J. Schapiro

Stanley J. Schapiro
Code Official

The violator is advised that pursuant to §1-7(g)(1), Baltimore County Code (effective 6 June 1997), an appeal to the Baltimore County Board of Appeals may be taken within fifteen (15) days after the date of a final Order. §1-7(g)(2) requires the filing of a petition setting forth the grounds for appeal and a filing fee of $150. The appellant is urged to read the requirements for the appeal petition. Security in the amount of the civil penalty must be posted with the director.

Baltimore County
Department of Permits and
Development Management

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

18 March, 1998

Mr. Terry Gerahty, President
Poor Boy's, Inc.
7721 Old Harford Road
Baltimore, Maryland 21234

Re: removal of variance conditions

Dear Mr. Gerahty:

I am herewith returning your check, which you forwarded to this office along with your request for our opinion as to the status of the variance approved in Case # 97-295.

In response, please be advised that should your grading plan, which is currently before the county for review and approval, be accepted, then the variance you received in the aforementioned case would no longer be of application. Inasmuch as the variance was to permit you to use an alternative surface for your parking area, crusher run, to that which is required by law, it would no longer be applicable because you would be in compliance with the law, i.e., durable and dustless. The grading plan you submitted has not received final approval.

It is my understanding, however, that parking is occurring on that area which was the subject of the variance. In fact, you are utilizing the variance you were granted; thus, all of the conditions delineated by the deputy zoning commissioner are in full force and effect. You must comply with all of its conditions, and any deviation constitutes a violation. Any mootness would not occur until the grading plan were to be approved, permits issued, and the parking lot paved. At that time, and not before, would the variance order and the conditions contained therein become moot.

Whether the order and its conditions becomes moot, however, is not the issue. As we discussed, you are required to conform to all zoning requirements, landscape requirements and environmental regulations, as well as with the agreement you executed with the county. Of course, the lighting issue is still unresolved. While you have been cited for certain violations, about which a code enforcement hearing was held today, it is important that you understand the potential continuing violation involving the use of the existing lighting which shines impermissibly into the adjoining residential properties.

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on Recycled Paper

Prot Ex #16

You must cease and desist using these lights until such time as you can show the county that the lights conform to the county's requirements. Even should the variance order become moot, this point will never change. In order to facilitate full corrective action, we will contact BGE and ask that it take equally appropriate action with those lights which it erected.

Your letter obviously seeks our assurance that all of the conditions set out in the deputy zoning commissioner's order are no longer valid. As stated above, they are still valid. The question you raise will not mature to a viable issue until the grading plan is approved and the paving pursuant to county regulations occurs. Regardless, I must caution you that the landscaping plan requirement contained and incorporated into the zoning order is still applicable. As I explained to you, should you disagree with Mr. Harden's interpretation of the Landscape Manual and concomitant its impact on the easement issue, the remedy to express your disagreement is before the zoning commissioner. You will need to file a petition for special hearing to amend the variance and ask the zoning commissioner to amend or disapprove Mr. Harden's requirements. However, your grading plan will not be approved if you do not either carry out Mr. Harden's requirements or have the zoning commissioner issue an appropriate order. Obviously, if the grading plan is not approved, you will not be permitted to pave the area you need to comply with the zoning parking requirements, and the variance and its conditions will remain in full force and effect. It will be necessary for you to abide by all of its conditions. Yes, it is the proverbial catch-22; but the overriding concern now with this office is satisfaction and correction of the lighting situation.

If you have any questions, please feel free to contact Jim Thompson of this department, or Doug Silber, Assistant County Attorney.

Sincerely,

Arnold Jablon

Baltimore County
Office of Law

400 Washington Avenue
Towson, Maryland 21204
410-887-4420
Fax: 410-296-0931

November 24, 1998

Ms. Pat Sheeder, Supervisor I
Civil Administration-Towson Court
District Court of Maryland
for Baltimore County
120 E. Chesapeake Avenue
Towson. Maryland 21286

RE: Baltimore County, Maryland v. Terry J. Gerahty
O/L File No.: 16,583-37

Dear Ms. Sheeder:

Enclosed herewith is the Petition for Code Enforcement, Show Cause Order and Proof of Service with regard to the above-referenced case for the Court's approval, signature and return to our office for service by private process server.

Thank you very much for your cooperation in this matter.

Very truly yours,

WILLIAM O. JENSEN, JR.
Assistant County Attorney

/ak

Enc.

cc: Arnold Jablon, Director, PDM
cc/Enc James H. Thompson, PDM Inspector

Prot Ex #17

Come visit the County's Website at **www.co.ba.md.us**

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BALTIMORE COUNTY, MARYLAND a body corporate and politic	*	IN THE
	*	DISTRICT COURT
Plaintiff	*	OF MARYLAND
vs.	*	FOR
TERRY J. GERAHTY 8309 Dalesford Road Baltimore, Maryland 21234	*	BALTIMORE COUNTY
	*	CASE NO.
Defendant	*	

* * * * * * * * * *

PETITION FOR COUNTY CODE ENFORCEMENT

The Petition of Baltimore County, Maryland, Plaintiff, by its undersigned attorney, respectfully represents unto this Court:

1. Jurisdiction is conferred upon this Court by Maryland Code, Courts and Judicial Proceedings Article, Section 4-401(8) and 4-401(10)(vi)(1).

2. Plaintiff brings this action pursuant to Baltimore County Code, Section 26-120 (Injunctive Proceedings) and Section 26-121 (Civil Penalty).

3. At all times pertinent hereto Defendant is and has been the owner of real property situate in Baltimore County, State of Maryland, and known as 7721 Old Harford Road, Baltimore County, Maryland 21234 (hereafter the "property"). At all times pertinent hereto a portion of the property was zoned B.L. (Business Local) and a portion thereof was zoned D.R.5.5, a residential zone.

4. At all times pertinent hereto Defendant has and continues to operate and maintain a retail business upon the property.

5. The Baltimore County Zoning Regulations (BCZR) and specifically Regulation No. 409.8 dealing with design standards for off street parking facilities in all zones, require that such facilities have a durable and dustless surface and that all parking spaces thereon be striped. Heretofore Defendant sought a variance from those requirements from the Zoning Commissioner of Baltimore County and, after hearing, the Deputy Zoning Commissioner passed his Order on March 6, 1997 granting such a variance subject to certain restrictions upon the use of the property by Defendant

thereafter.

6. Defendant has failed and refused to comply with many of the substantive restrictions or conditions placed upon his use of the property by the Deputy Zoning Commissioner in his Order including, but not by way of limitation, a requirement that Defendant submit a lighting plan to Plaintiff's landscape architect, which conditions were to have been performed within sixty (60) days of the date of said Order of the Deputy Zoning Commissioner.

7. Plaintiff believes and therefor avers that the failure of the Defendant to comply with the restrictions or conditions placed upon his use of the property by the Deputy Zoning Commissioner as a condition of the granting of the variance sought has, in effect, nullified the Order of the Deputy Zoning Commissioner granting the variance thus leaving the Defendant in violation of the BCZR by virtue of his failure to pave and stripe the parking areas upon the property.

8. In the alternative, if the Court should find that the Order of the Deputy Zoning Commissioner granting a variance to Defendant as hereinbefore referred to was not in fact nullified by Defendant's failure and refusal to perform the restrictions and conditions upon which such variance was granted then, and in that event, Plaintiff seeks to enforce the conditions or restrictions placed upon the use of the property by the Deputy Zoning Commissioner, as authorized by Baltimore County Code, Section 26-127(c) and in support thereof alleges that:

a. Defendant has failed and refused to reduce to writing an easement agreement with Plaintiff and to otherwise comply with Restriction No. 2 in the aforesaid Order of the Deputy Zoning Commissioner dated March 6, 1997, a copy of which is attached hereto as Plaintiff's Exhibit No. 1;

b. Defendant has failed to maintain and keep up the buffer as required by Restriction No. 3 as contained in Exhibit No. 1;

c. Defendant has failed and refused to comply with the provisions of Restriction No. 3(b) of Exhibit No. 1 by failing to plant the required landscaping, and;

d. Defendant has otherwise failed and refused to comply with the site plans submitted by him as an adjunct to his Petition for variance heretofore filed.

WHEREFORE, Plaintiff seeks the following relief:

a. That this Court pass its Order, directed to the Defendant, ordering him to comply with the Baltimore County Zoning Regulations by causing the parking areas upon the property referred to in the foregoing Petition to be properly surfaced and striped and to otherwise comply with Section 409.8 of the Baltimore County Zoning Regulations;

b. That in the alternative, this Court pass its Order directed to the Defendant, ordering the Defendant to comply with each and every restriction and condition set forth in the Order of the Deputy Zoning Commissioner dated March 6, 1997, a copy of which is attached to Plaintiff's Petition and to order such compliance within a specific time;

c. That this Court assess a civil penalty against the Defendant in the amount of $200.00 for each and every day that Defendant is found to have violated the Baltimore County Zoning Regulations as alleged in the foregoing Petition;

d. That this Court pass its Order, directed to the Defendant, enjoining and restraining the Defendant from violating the Baltimore County Zoning Regulations in any manner in the future;

e. That this Court issue its Show Cause Order, directed to the Defendant, ordering him to be and appear in this Court on a date and at a time set forth therein to show cause, if any he may have, why the relief prayed in this Petition ought not to be granted, and;

f. For such other and further relief as the nature of Plaintiff's cause may require.

WILLIAM O. JENSEN, JR.
Assistant County Attorney
Courthouse, 2nd Floor
Towson, Maryland 21204
410/887-4420
Attorney for Plaintiff

BALTIMORE COUNTY, MARYLAND a body corporate and politic	*	IN THE
	*	DISTRICT COURT
Plaintiff	*	OF MARYLAND
vs.	*	FOR
TERRY J. GERAHTY 8309 Dalesford Road Baltimore, Maryland 21234	*	BALTIMORE COUNTY
	*	CASE NO.
Defendant	*	

* * * * * * * * * *

SHOW CAUSE ORDER

Upon the foregoing Petition, the Court having read and considered the same, it is, this _____ day of _____, 19___, by the District Court of Maryland for Baltimore County,

ORDERED, that the Defendant, Terry J. Gerahty, be and he is hereby directed to appear in this Court at 1:30 p.m. on the _____ day of _____, 19___, to show cause, if any he may have, why he should not be permanently enjoined from violation of the Baltimore County Zoning Regulations upon the property described and referred to in the foregoing Petition, and ordered to abate existing violations thereon as described and referred to in the foregoing Petition, provided that a copy of that Petition and this Order be served upon the Defendant on or before the _____ day of _____, 19___.

_____
JUDGE

BALTIMORE COUNTY GOVERNMENT

INTER-OFFICE COMMUNICATION

PERMITS AND DEVELOPMENT MANAGEMENT

DATE: 2/6/98

TO: ZONING ADVISORY COMMITTEE

FROM: Avery Harden, County Landscape Architect

SUBJECT: *ITEM # 267; Zoning Case # 97 - 295 SPHA, Violation Case # 97 - 3996; "Poor Boys"*

This office recommends against granting the requested relief. Besides the subject order, the applicant is subject to the Baltimore County Landscape Manual — that also requires a fence — and the parking-lot lighting is still subject to (Sec. 409.8; A. 3.) of the Baltimore County Zoning Regulations. The recent modification to the subject site lighting still leaves the trespass-light issue in significant non-conformance with the Illumination Engineering Society standards for this particular situation. The applicant plans additional lighting still.

The design need for the conditions in the subject order has not changed. The applicant is presently pursing a grading permit that would include permission to permanently store 1,900 cubic-yards of subsoil clay excavation on top of the buffer area. The resulting pyramidal-type constructions would create an aesthetic nuisance while smothering significant portions of the root systems of the numerous specimen trees. It would also be horticulturally unfeasible to establish vegetation on these constructions. The applicant request that these pyramids be accepted as the necessary buffer in-lieu-of the subject zoning order conditions. This office recommends against permitting this.

Prot Ex #18

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE COMMUNICATION

DATE: 1/29/98
TO: Arnold Jablon, Director of the Department of Permits and Development Management, PDM
FROM: Avery Harden, Landscape Architect, PDM
SUBJECT: *Poor Boy's Country Market*

This memo is in response to the attached letter from Mr. Terry Gerahty you should have received, dated 12/18/97. Mr. Gerahty presented his position regarding the lighting problem and non-conformance with the residential buffer requirements at his *Poor Boy's Country Market.* His distribution list included various County officials.

Mr. Gerahty referenced me as having been the primary point person giving directives for the County on most of the issues. I offered none of the directives attributed to me by Mr. Gerahty in his letter. My role was limited to asking questions, gathering information and offering design evaluation of the various negotiating points Mr. Gerahty and Douglas Silber of the Office of Law were considering. Anything Mr. Gerahty construed as a directive was offered by Mr. Silber. Any confusion regarding the negotiating process headed by the Office of Law and the position of PDM has, in my opinion, been created by Mr. Gerahty in his effort to gain leniency.

The County has had a two-track campaign with this difficult case. The first track has been the Office of Law attempting to negotiate a resolution between Mr. Gerahty and the aggrieved surrounding residential community. The second track taken, that was engaged after the Office of Law withdrew its effort, has been PDM attempting to enforce regulations applicable to the situation.

The PDM position on the residential buffer has explicitly and consistently followed the position letter prepared by me that was submitted to and approved by Councilman Bartenfelder and the Deputy Zoning Commissioner, Timothy Kotroco. Mr. Gerahty chose to ignore some of the crucial specifications of that County approved document.

Unlike Mr. Gerahty's assertion, the PDM position on the lighting issue has been consistent. As long as the overall illumination and excessive light source points glare into the adjacent residences, violating the integrity of the required residential buffer, there has been a code violation problem. The PDM position while the negotiation between Mr. Gerahty and the Office of Law was in progress was to avoid specific lighting design directives and emphasize only the

Prot Ex #19

necessary outcome. Now that the negotiations are over, PDM can offer specifics on to how that necessary outcome can be achieved.

Mr. Gerahty states that he submitted a lighting design, as required, for my review and that I never responded. My review of his plan was a moot point because the lighting had been installed and operating for six weeks before he made his submittal. If and when Mr. Gerahty genuinely solicits from us what he needs to do to make his lighting acceptable, we stand ready to oblige him. The lighting poles and fixtures on the residential zone line should be moved in 10 feet to the inside edge of the Class A buffer line. The angled lighting along Taylor Avenue that presently glares across the site into the residential area should be turned to face perpendicular to the ground. Lowering the lights to 15 feet and using cut-offs on the fixtures to further corral the light is also necessary.

Councilman Bartenfelder gave Mr. Gerahty the right to physically expand his business. However, Mr. Gerahty's precipitous ill conceived lighting installation has created a visual land grab that extends well into the residential community.

I believe that with a properly designed lighting installation, combined with adherence to the approved residential buffer design, it is possible for the *Poor Boy's Country Market* to adequately light its area without being a nuisance to the surrounding neighborhood. Unfortunately, the cost of having to modify his lighting and fence will be burdensome because of Mr. Gerahty's precipitous action.

Arnold, I am copying this memo to those in PDM that are involved in this issue. However, because of Mr. Gerahty's various inaccurate statements, the other County officials on Mr. Gerahty's lengthy copy list should, in my opinion, receive a timely response from PDM. Please let me know your thoughts.

cc: Robert Bowling
Rick Wisnom
James Thompson
Hunter Rowe

attachment

Baltimore County
Zoning Commissioner
Office of Planning

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

February 27, 1998

Mr. Terry Gerahty, President
Poor Boy's, Inc.
7721 Old Harford Road
Baltimore, Maryland 21234

RE: PETITION FOR SPECIAL HEARING
SW/S Taylor Avenue, 145' NW of c/l Oak Avenue
(7721 Old Harford Road)
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 98-267-SPH

Dear Mr. Gerahty:

This Office is in receipt of your request for postponement of the above-captioned matter, scheduled for Monday, March 2, 1998. It is my understanding that the property was improperly posted for this upcoming hearing and as a result, must be reposted and/or advertised with a new hearing date and time.

Please contact the Department of Permits and Development Management to secure the next available hearing date and time when you are prepared to move forward with this case. In the meantime, this Office has notified Mr. and Mrs. Ernest Baisden of your request for postponement. It is suggested that you notify them in writing of the new hearing date and time when your case has been rescheduled.

Thank you for your cooperation in this matter.

Very truly yours,

Timothy Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. & Mrs. Ernest L. Baisden
7706 Oak Avenue, Baltimore, Md. 21234

DPDM; People's Counsel; Case Files

Prot Ex 2(B

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on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: February 23, 1998

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

SUBJECT: *Zoning Advisory Petitions*

The Planning Office has no comments on the following petition because the issues related to the subject case deal with enforcement matters.

Item No. 267

If there should be any questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at (401) 887-3495.

Prepared by: Jeffrey M. Long

Division Chief: Carl L. Kess

AFK/JL

Pet Ex 26C

C:\MSOFFICE\WINWORD\ZAC\NOCOM\267.DOC

RECEIVED
FEB 1998

The Parkville Park Community Association Inc.

7706 Oak Avenue Baltimore, Maryland 21234 (410) 668-2580

January 5, 1998

Mr. David Flowers, Supervisor
Department of Building Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Dear Mr. Flowers:

This letter is written under the direction of the Parkville Park Community Association, Inc. (PPCA) Board of Directors. This is to request that a commitment to the PPCA be honored as described in the attached letter from Baltimore County Department of Permits and Development Management, dated December 24, 1996 and therefore included in the review and consideration of any plans submitted or permit request by Mr. Terry Gerahty owner of Poor Boy's County Market. The County letter specifically describes the type of construction, height, and location of a permanent fence and landscaping that would provide security and screening to the surrounding residential neighborhood. This letter was based on discussions with Mr. Avery Harden, Baltimore County Landscape Architect, and the PPCA. These requirements were reviewed and approved at the PPCA's Board Meeting and subsequent General Meeting.

Background

Poor Boy's Country Market is located at 7721 Old Harford Road and is within our community association's boundaries. During the 1996 Comprehensive Rezoning Mr. Gerahty gained BL commercial zoning of the residential property, located at Taylor Avenue between Old Harford Road and Oak Avenue, to expand his business. As a compromise for receiving his rezoning the owner was to provided a landscape buffer area for the surrounding residential community. This was our Councilman's intent when approving the zoning as described in his letter of September 18, 1997 to the PPCA (letter attached).

After the zoning was approved, it was discovered that a community input meeting to address community concerns was not going to occur as promised by the business owner. The PPCA then contacted the Department of Permits and Development Management and the Councilman's office requesting a permanent fence and landscaping be installed prior to the commercial use of this property. This request was made a requirement by the landscape manual and was put in a letter as referenced above.

Prot Ex #7

After working with Mr. Harden, we agreed to wait until the spring of 1997 for the requirements to be met. Poor Boy's owner did not install the fence as specified and it was our understanding that the letter (landscape manual) could not be officially enforced until a permit was requested or plan was received.

Mr. Gerahty elected to install a temporary gravel parking lot that measured 5,000 + square feet, requiring no permit or review by Mr. Harden. However, a variance was required because a gravel lot is not considered a "dustless and durable surface". At the February 21, 1997 variance hearing (case #97-295 SPHA), Mr. Gerahty argued the need for the temporary parking lot and asked if he could install a temporary fence. His reasoning was that the fence would need to be removed during the future construction of a permanent parking lot at which time a permanent fence could be installed. The Deputy Zoning Commissioner granted the variance with a condition that a temporary type fence (prefabricated type) be installed at the location and height as described in Mr. Harden's letter. Mr. Gerahty chose to appealed the variance ruling, the date was scheduled for September 23, 1997. On September 19, 1997 his lawyer withdrew the appeal and stated that Mr. Gerahty will comply with the conditions set forth in the variance ruling.

To date Mr. Gerahty has not complied with a number of conditions of the variance ruling. The temporary type fence was not installed in the proper location, and height as described in Mr. Harden's letter. Mr. Gerahty was cited for these violations and was given until December 18, 1997 to comply (citation attached). He has not complied and a hearing date is scheduled for February 11, 1998.

We understand from a recent article in the Northeast Reporter (article attached) that Mr. Gerahty is submitting a development plan to pave the parking lot in the near future. We have inquired at the various departments in Baltimore County and found that a permit has not been applied for and an official review of plans has not been initiated. The PPCA requests that when the County receives a permit application or begins reviewing a plan of Mr. Gerahty's, that we be notified of who is part of the review and respectfully request that Mr. Harden's letter be submitted for enforcement as part of the review process. We have been told all along that when the owner applies for a permit or request a plan review the requirements of Mr. Harden's letter would be fulfilled.

The PPCA has been patient in waiting for the installation of the permanent fence and landscaping in accordance with the letter from Baltimore County Department of Permits and Development Management. We feel a permanent fence and landscaping is not only considered a County requirement but essential to the quality of life of the surrounding residents. The fence also provides privacy to the abutting residents from the commercial business, security protection for children playing in their backyards, and eliminates people cutting through the business and residential properties. Developing a proper site plan for this business is very important to the PPCA. There have been other community concerns regarding stormwater management, proper lighting, and screening that has been discussed with Mr. Harden. The proper installation of the fence will also help in some of these concerns as well, such as moving the light source away from the surrounding residences.

We can be contacted at 410 668-2580, or mailing address is 7706 Oak Avenue, Baltimore, MD 21234. Your prompt attention to this matter is greatly appreciated. We look forward to your return response and the fulfillment of this commitment to our community.

Sincerely,
Board of Directors
Parkville Park Community Association

Ernest M. Baisden, President

Joseph P. Kreis, Vice President

Ruth Baisden, Secretary/Treasurer

James G. Reed Jr., Board Member

David D. Miller, Board Member

Carville W. Burris, Board Member

Attachments:

Letter from Department of Permits and Development Management
Letter from Councilman Bartenfelder
Citation from Baltimore County Code Enforcement
Article from the Northeast Reporter

cc: Honorable Joseph Bartenfelder, Councilman Eighth District
Mr. Arnold Jablon, Director of Permits and Development Management
Mr. Raymond (Rick) Wisnom, Supervisor of Code Enforcement
Mr. Avery Harden, Baltimore County Landscape Architect
Mr. George Perdikakis, Director of the Department of Environmental Protection and Resource Management
Mr. Al Wirth, Supervisor of Engineering Services
Mr. Timothy Katroco, Deputy Zoning Commissioner

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Esq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

Printed with Soybean Ink
on Recycled Paper

The 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space. See plan.

As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

Thirty five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thirive within two years must be replaced. Steven's Hollies are recommemded where excessive moisture is an issue. Hollies must be placed closer together to achieve the desired effect. See plan. The other evergreen selections are half Norway Spruce and half White Pine.

This office will work with Poorboys when the planning for the expanded parking lot begins. The proposal above is essentially what the Baltimore County Landscape Manual will require when a permit for the parking lot is sought. Every effort will be made to save the existing trees within the proposed parking lot area. There shall be no increase in runoff onto the adjacent residences as a result of the sitework.

As a condition of completing the buffer requirements, the copse of brambles along Oak Avenue should be mowed.

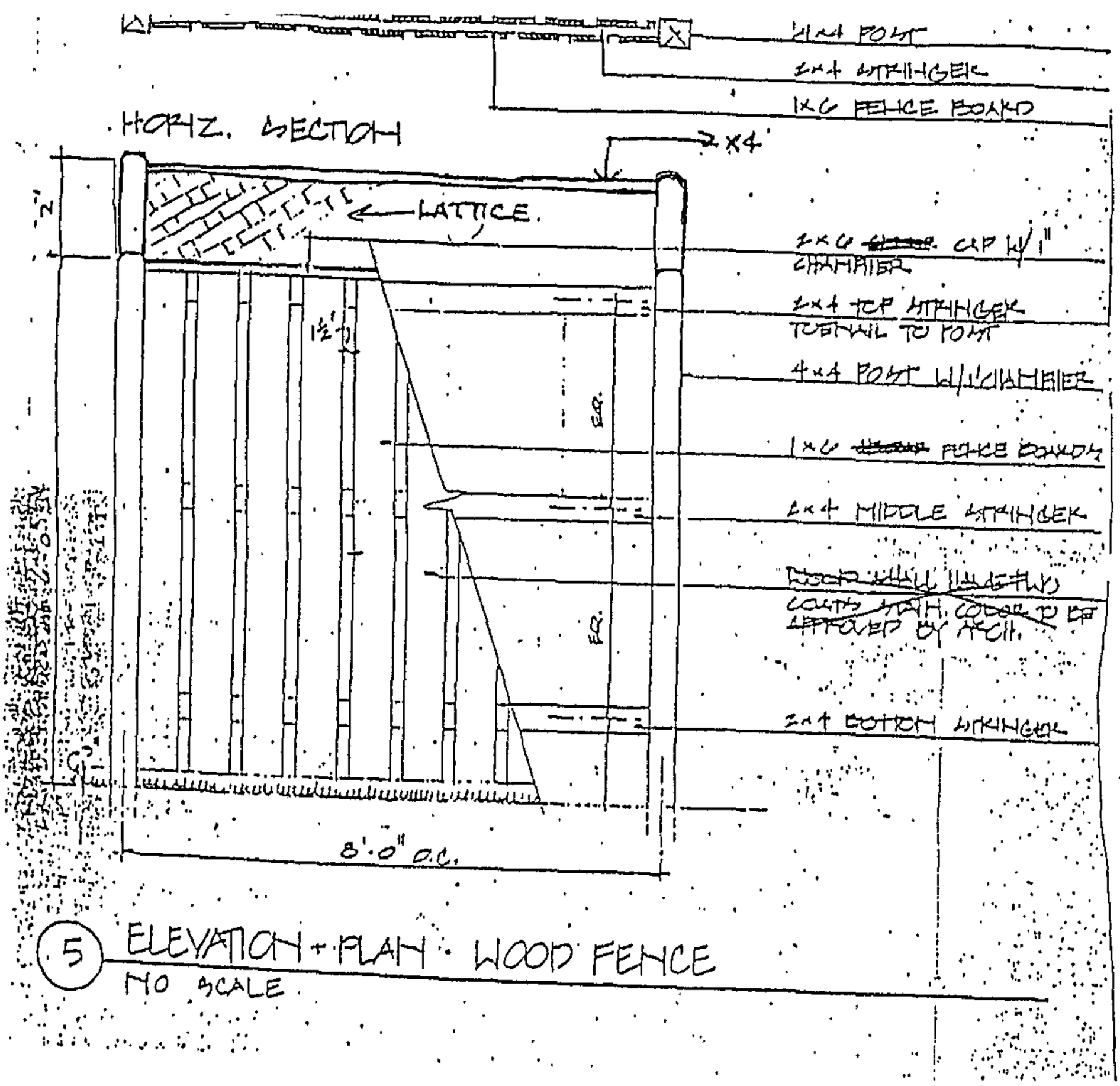
If anyone has any questions or comments, please call me at 887-3751.

Sincerely,

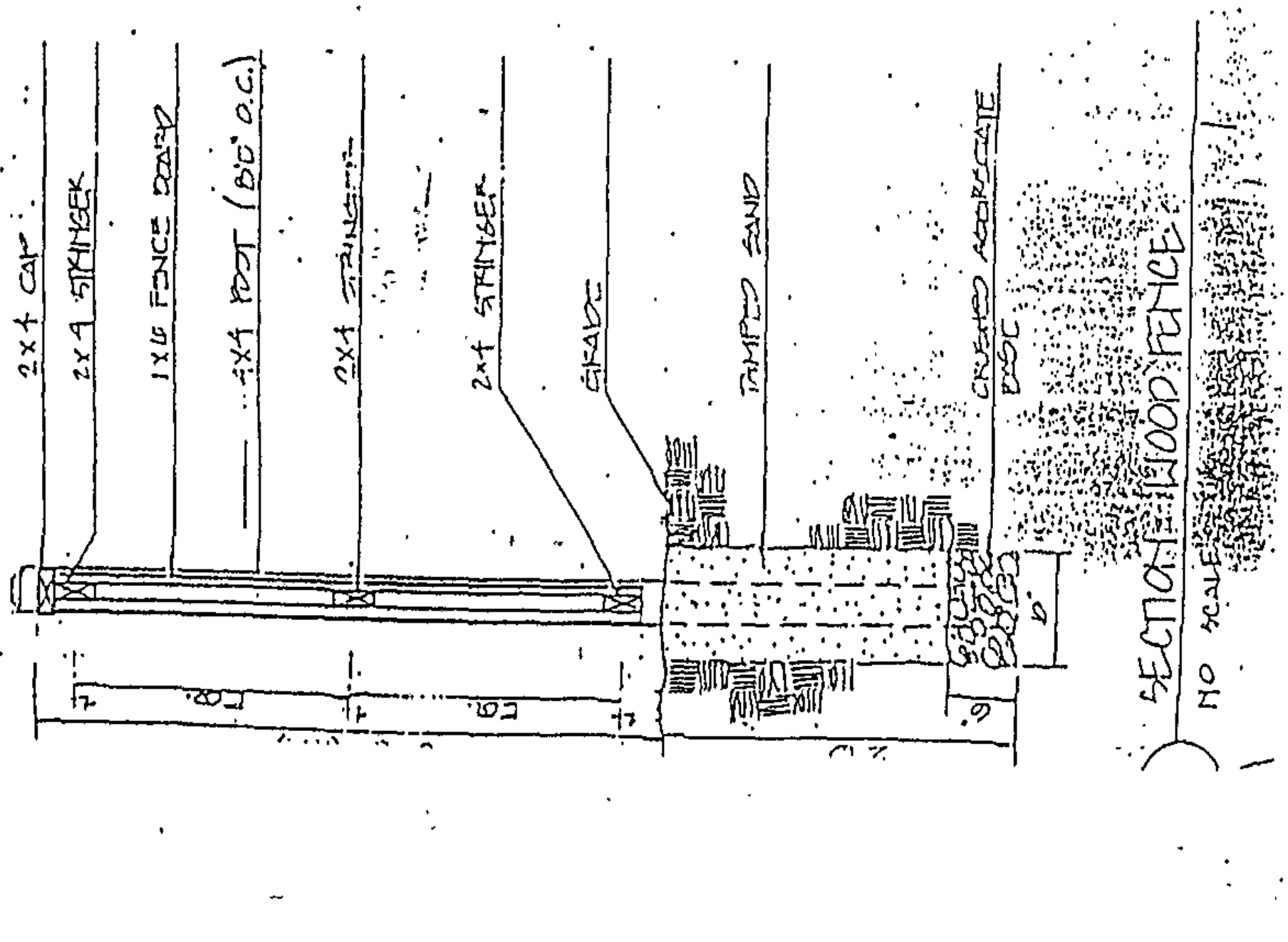
E. Avery Harden

E. Avery Harden, Landscape Architect
Development Plans Review

2 Attachments



5 ELEVATION + PLAN - WOOD FENCE
NO SCALE



BUFFER

LANDSCAPE

HOLLIES

WET AREA

FENCE LOCATION

LATTICE ON FENCE

6 FOOT FENCE

60'

10' LANDSCAPE STRIP

4 FOOT FENCE

PROPOSED TREE LOCATIONS

TERMINATE FENCE

POORBOYS NURSERY

TAYLOR AVE

APPROXIMATE SCALE
1"=30'

COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

JOSEPH BARTENFELDER
COUNCILMAN, SIXTH DISTRICT

September 18, 1997

COUNCIL OFFICE: TOWSON 887-3388
DISTRICT OFFICE - FULLERTON 887-5223

Dear Mr. Baisden:

This is in response to the request of the Parkville Park Community Association to explain the intent of the "L" shaped landscape buffer area located along the west side of the 7700 block of Oak Avenue and the first residence on Oak Avenue. The exact size and location of this landscape buffer area is shown on the attached plan and is labeled "Landscape Conservation Easement".

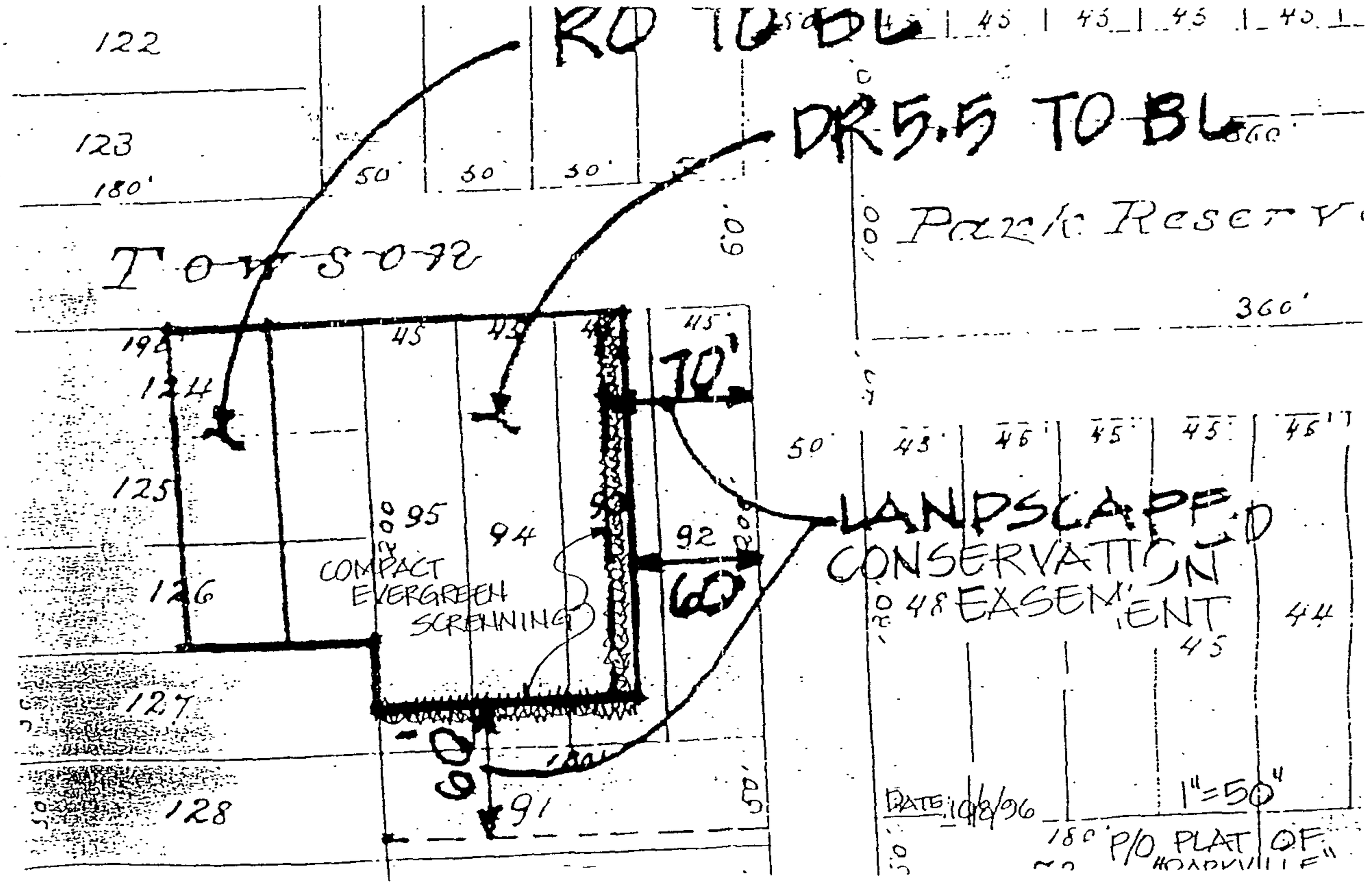
The creation of this landscape buffer area was the result of a compromise to allow the property owner (owner of Poor Boys) to gain the rezoning of residential property to BL commercial and to protect the property values of the surrounding residential properties. It was to become a landscaped passive park (owned by the County) and provide screening for the surrounding residential community from the newly zoned commercial property. The goal of the buffer and landscaping is to preserve the residential character and quality of life of the residental neighborhood and additionally not to cause a detrimental effect to the community. The rezoning of the residental property was based on this compromise and I feel strongly this intent be carried out.

I also feel it is important to have a permanent fence and landscaping as directed in attached letter from Baltimore County Department of Permits and Development Management (Avery Harden, Landscape Architect).

Sincerely,

Joe Bartenfelder

Joseph Bartenfelder
Chairman, County Council
Sixth District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91
50'
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46
45
45
46
LANDSCAPED
CONSERVATION
EASEMENT
48
44
45
DATE: 10/8/96
1"=50'
180' P/O PLAT OF "OAKVILLE"

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
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Douglas Burgess, Esq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

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on Recycled Paper

The 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space. See plan.

As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

Thirty five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thirive within two years must be replaced. Steven's Hollies are recommemded where excessive moisture is an issue. Hollies must be placed closer together to achieve the desired effect. See plan. The other evergreen selections are half Norway Spruce and half White Pine.

This office will work with Poorboys when the planning for the expanded parking lot begins. The proposal above is essentially what the Baltimore County Landscape Manual will require when a permit for the parking lot is sought. Every effort will be made to save the existing trees within the proposed parking lot area. There shall be no increase in runoff onto the adjacent residences as a result of the sitework.

As a condition of completing the buffer requirements, the copse of brambles along Oak Avenue should be mowed.

If anyone has any questions or comments, please call me at 887-3751.

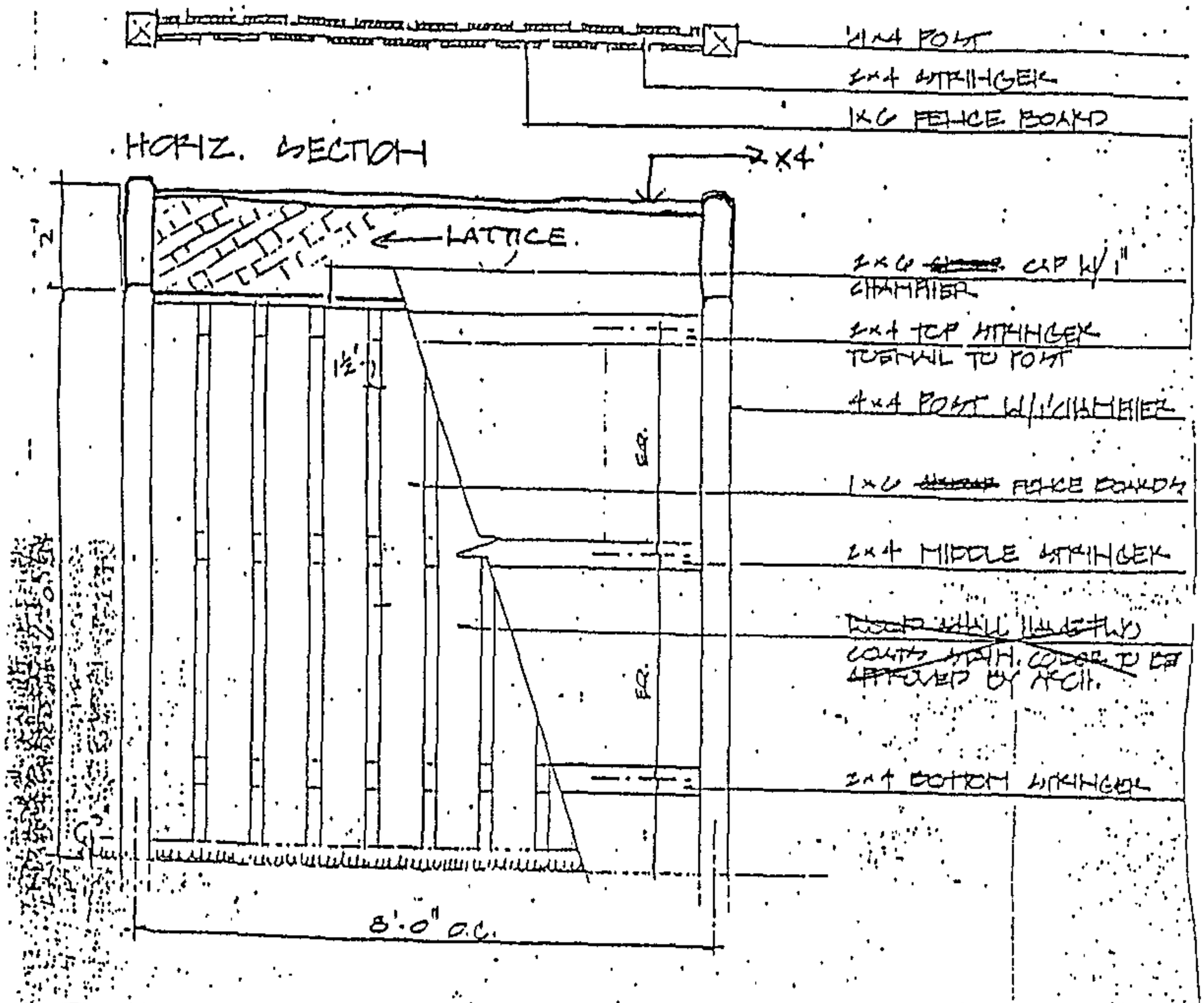
Sincerely,

E. Avery Harden

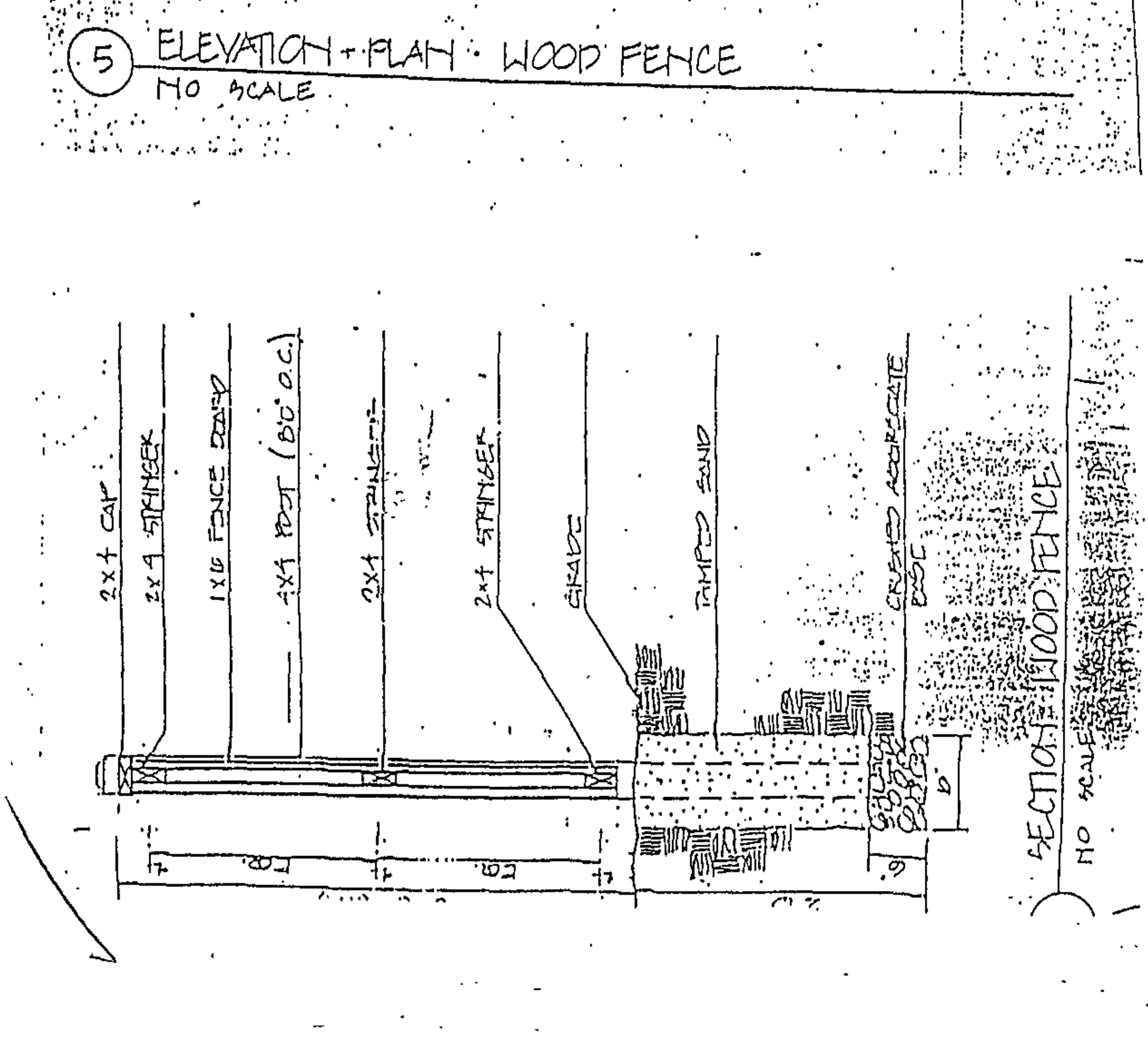
E. Avery Harden, Landscape Architect
Development Plans Review

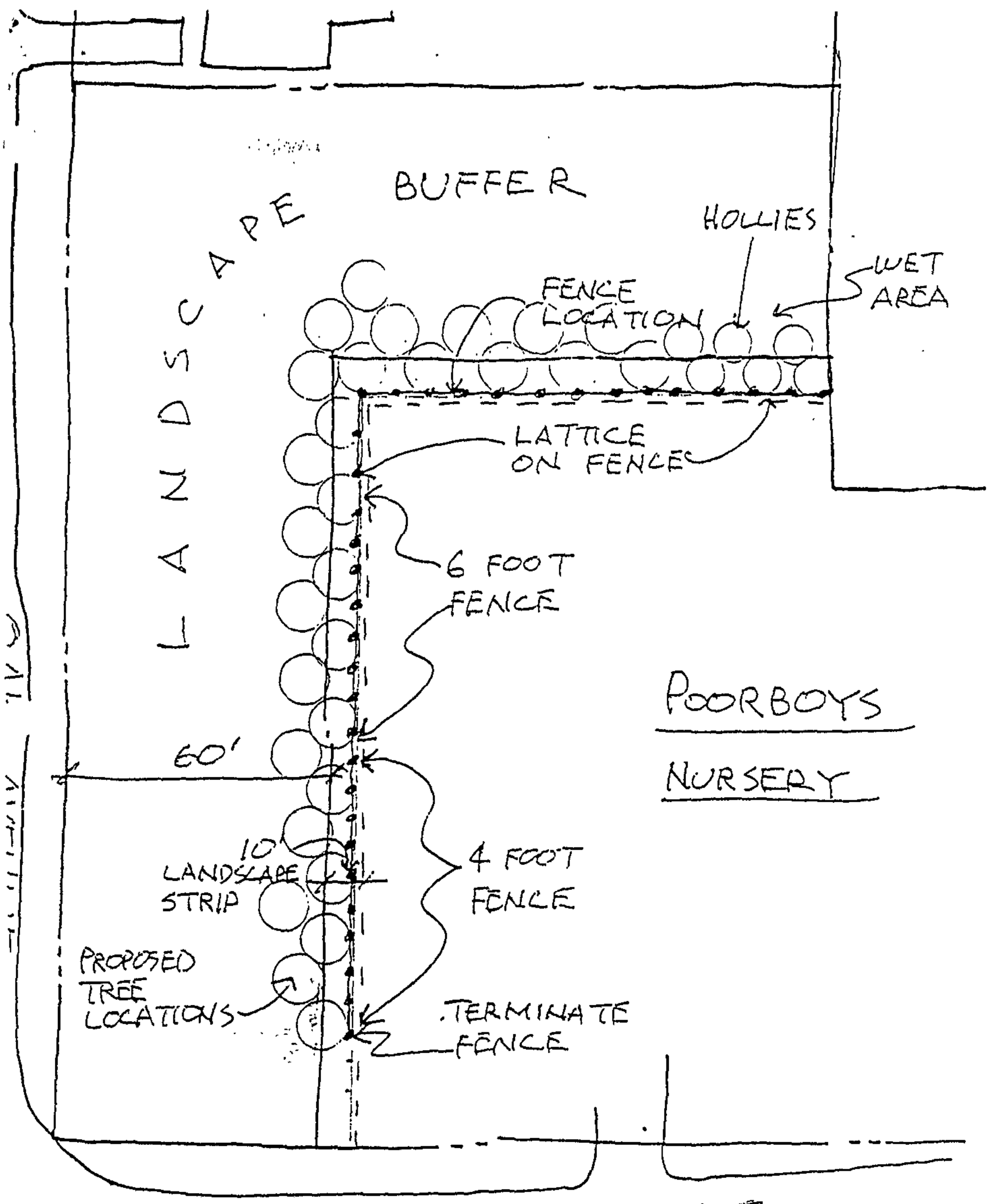
2 Attachments

HORIZ. SECTION



5 ELEVATION + PLAN · WOOD FENCE
NO SCALE



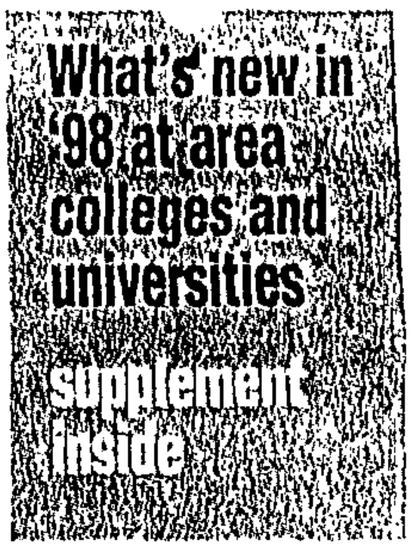


APPROXIMATE SCALE
1"=30'

Northeast REPORTER

SERVING THE COMMUNITIES OF PARKVILLE, CARNEY, LOCH RAVEN AND HILLENDALE

VOL. 47, NO. 48 WEEK OF DECEMBER 31, 1997 PATUXENT PUBLISHING COMPANY



Holiday burglars target high-end video games

BY JENNIFER BRENNAN

Nowadays, burglars just don't want your TV, your VCR and your stereo. Lately, they've been snatching up another high-ticket item as well: your Nintendo.

Ten video game systems were reported stolen from homes in the White Marsh and Parkville precincts between September and November, according to county police spokesperson Bill Toohey.

In the first two weeks of December, three more were swiped during home burglaries, and a fourth was stolen Dec. 16 from a home in the unit block of Candor Court in Perry Hall.

In that incident, someone cut a hole in a screen door, reached in, pushed open a sliding glass door, and entered the home sometime between 7:30 a.m. and 5:15 p.m. The person left with compact discs, a couple of watches and a Sony PlayStation.

The White Marsh and Parkville precincts reported no more than two video game system thefts a months between January and August, said Toohey. He said police cannot explain the recent surge.

They do know, however, that systems like Nintendo 64, Sega Genesis and Sony PlayStation, which sell at Toys 'R Us for $150 to $170, can easily be hocked at a

See **Videos,** page 3

Poor Boy's cited for lighting and fence violations

BY VIRGINIA TERHUNE

The holiday season may be drawing to a close at Poor Boy's garden center in Parkville, but owner Terry Gerahty still has some outstanding issues with the county to resolve before he reopens in March.

Earlier this month he received a

See **Violations,** page 1

NEWS

Owner says paved lot would eliminate lighting restrictions

Violations, from page 1

violation notice for failing to comply with conditions set last March after Deputy Zoning Commissioner Timothy Kotroco granted him a variance for a crushed stone parking lot.

The notice said a wooden fence along a buffer strip along Oak Avenue and the rear of his lot was improperly installed 10 feet too close to the edge of his property.

The notice also says that string lights used during the holidays violated Kotroco's order, and that pole lights used for security and display are shining on to residential property.

Gerahty failed to remedy the problems by the Dec. 18 deadline and is now scheduled for a hearing before a code enforcement hearing officer on Feb. 11 in Towson.

Gerahty was also issued a violation notice for using a section of his lot zoned for storage for Christmas tree displays and given until Jan. 6 to comply.

Gerahty said that has been corrected and that he will be closing the store for its usual two-month winter hiatus on New Year's Day.

Since Gerahty won a rezoning battle to expand his business in October 1996, several neighbors have argued that his growth has been at their expense.

"What about our rights?" say Ruth and Ernie Baisden, whose house overlooks the lot and who object to lights from the business shining on to their house.

Ever since the rezoning, the Baisdens, who also head the Parkville Park community association, have been keeping up the pressure on county officials and departments to ensure that promises made concerning a 70-foot buffer, a fence and landscaping are kept.

Since then, Kotroco had also set conditions regulating lights and other matters after granting the parking lot variance last March.

"He hasn't done any of this, he does what he wants to do," said Ernie Baisden about the lighting conditions.

But Gerahty argues that has tried to comply with requests from a variety of county officials and agencies and that he is now being cited for things he has been asked to do.

"The benefit of our actions oftentimes has been that the county insists that Poor Boy's not merely comply with the code, but exceed the requirements of the code, and even then we may still be told that our efforts are not good enough," he wrote in a letter asking without success for an extension of the Dec. 18 deadline.

In response to the citation, Gerahty says the fence had been approved by county officials at its present location.

He also says he took down three of the six lights on the poles closest to the Baisden house, and he says he intends to install shields this week which will help direct light away from their house.

He also argues that other pole lights on his property closer to Taylor Avenue meet county code.

In addition, Gerahty says he plans to send a letter to Kotroco asking him to amend the variance conditions.

The county normally requires parking lots to be paved, which Gerahty says he intends to do late next spring.

Once paved, he says his lot will no longer require the variance, which in turn will eliminate the reason for Kotroco's fence and lighting conditions.

In the meantime, he has submitted plans to the county for the paved parking lot, which include taking down eight trees along Taylor Avenue to make way for the lot and drainage pipes. He says he plans to donate the wood to a therapeutic riding center.

Gerahty says his revised paving plan also calls for installation of underground air pipes to preserve four large oak trees and about 20 smaller trees at the rear of the paved lot.

NOW FEATURING

Government: Local, state and

The Parkville Park Community Association Inc.

7706 Oak Avenue Baltimore, Maryland 21234 (410) 668-2580

February 3, 1998

Mr. Robert W. Bowling,
Department Plans Review Division
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Dear Mr. Bowling:

This letter is written under the direction of the Parkville Park Community Association, Inc. (PPCA) Board of Directors. We appreciate the opportunity to review the development plan drawings of the proposed Poor Boy's Country Market expansion which is located within our community association's boundaries. Our community association was formed to preserve the quality of life in our residential community and keep the area a desirable place to live. In the past this business has been a subject of concern therefore, an emergency Board Meeting was held to review this development plan. We are providing the following comments to be incorporated into the approved development plan.

Permits Development Management (PDM) Fence And Landscape Requirement

1. A permanent fence and landscaping needs to be shown on the development plan as specified in the enclosed December 24, 1996 letter and as detailed on its attached drawing by the PDM.

This letter was part of the approval of the original (1996) development plan and a requirement prior to issuing permits for this parking lot. It is also the desire of Councilman Joseph Bartenfelder after he granted the property owner the rezoning from residential to BL commercial. The permanent fence and landscaping is important to our community since it provides privacy, screens the visual intrusion of the business operations from the abutting residences, provides security protection for children playing in their backyards, eliminates people cutting through the business and residential properties, and the specified fence location will save an additional seven trees. The fence and landscaping plans attached to the PDM letter was reviewed and approved at the PPCA's Board Meeting and subsequent General Meeting.

2. The buffer area should be marked as "Landscape Buffer Area" with a note that stipulates "Not be used for parking or any other ancillary/accessory use". This is consistent with the intent of Councilman Bartenfelder (see enclosed letter).

Prot Ex 28

Other Landscaping Concerns

3. Earth berms should be eliminated from final development plan.

The development plan shows mounds (earth berms) formed by excess excavation located in the Landscape Buffer Area. These mounds are not attractive and do not provide adequate screening for the surrounding residences. They are not consistent with the character of our residential neighborhood. They are also inconsistent with the landscape plan provided in December 24, 1996 letter by PDM, that was approved by the PPCA.

4. To ensure the preservation of those trees that are covered by plan note #25, a report should be prepared by a registered tree expert stating that the impacted trees can in fact be saved if the proposed improvements occur. The report should contain detail drawings and specifications as to how the parking area can be installed to permanently protect the trees.

It is not clear what is being proposed for all the trees in the undisturbed areas. The community desires the preservation of the trees. The trees in this area are key to providing the charm and character of our community.

Lighting of the Commercial Business

5. A lighting plan consisting of calculated point by point foot-candle levels (produced by the proposed lighting system) plotted on the development plan (covering the residential and commercial areas) should be submitted for review and approval prior to the development plan approval or issuance of any permit. This will allow the County to review the proposed lighting system prior to installation to ensure no light is reflected on the residential lots. After installation of the lighting system, light levels should be field tested for the necessary adjustments for compliance.

General note #23 indicates illumination of this development will reflect away from residential lots. The lighting from this business currently reflects on the residential lots and has been an issue for the community. This is an intrusion of the surrounding residents privacy. Since this development is within a residential community, the lighting levels should be appropriate so that the surrounding residential character is preserved. The business owner has been cited by Baltimore County Code Enforcement to cease shinning light on the residential property. The hearing has been scheduled for February 11, 1997.

Stormwater Management

6. Stormwater runoff from Oak Avenue needs to be shown and accommodated by this development or curbs and stormwater inlets need to be installed on Oak Avenue.

The complete stormwater drainage pattern is not shown on the development plan. The stormwater currently flows from properties on the east side of Oak Avenue, across Oak Avenue (because of inadequate crown on street) in a west / slightly north direction into the proposed development. There are no curbs or inlets on this end of Oak Avenue to catch this stormwater. There has been a drainage problem for the residents on the west side of Oak Avenue. The County has installed a bituminous berm in front of the homes to prevent the flooding of basements and to help alleviate the drainage problem. Because of the bituminous berm in front of the homes and the lack of curbs and inlets, a large amount of stormwater currently flows into the proposed development area. This stormwater needs to be accounted for so that the drainage problem does not worsen, requiring the County to install curbs and inlets along Oak Avenue.

7. The existing topographic contours on the Baisden's property are not accurate. The property slopes down in a west direction.

8. The displace water quality trench located at the south end of the proposed parking lot (due to proper location of fence) could be added to WQ trench #1. The grades would need to be slightly modified to direct all of the stormwater into the WQ trench #1.

9. The pavement width (adjacent to WQ trench #1) of 61 feet can be reduced to 60 feet to allow a one foot green space between the parking and the proper location of the fence.

Traffic Entrance/Exit

10. Location of parking lot access on Taylor Avenue is a traffic safety concern.

This type of business has high turn over, short term parking needs and is one of the highest generators of traffic. During the busy season this business generates a significant amount of traffic on Taylor Avenue. The proposed location of the entrance/exit on Taylor Avenue is moving closer to the Parkville Park/War Memorial. This will give less time for vehicles traveling westbound on Taylor Avenue (around the Parkville Park/War Memorial) to react to vehicles entering or exiting the relocated site access. This is also a sight distance problem for residents leaving Oak Avenue. The current situation has been a traffic safety issue problem with many close calls. The new location of the access would appear to exacerbate the problem.

General Layout Comments

11. Plan note # 24 is an incorrect statement and should be deleted. Instead the conditions of zoning case # 97-295 SPHA should be recorded on the plan as specified on page 8. condition 10). of the Deputy Zoning Commissioner's Finding of Fact and Conclusion of Law (zoning case #97-295 SPHA).

12. The dumpster pads needs to be relocated away from the residential side of the development to a more appropriate location. Odor (from decaying produce) and rodents have been a problem with the dumpster in the past.

13. Commercial truck parking (36 foot space) should also be relocated so it is screened from the residential area.

14. It appears that the outside retail area is not handicap accessible to meet ADA requirements. There are people in the area that are wheelchair bound.

The PPCA would like to work with the County during the development plan review process to assure that the community concerns are properly addressed before the development plan is approved or any permits are granted. The implementation of this development will have a permanent affect on the character of our residential community. Addressing the community's concerns will help preserve our residential character and fulfill the Councilman's intent.

Again, we thank you for the opportunity to comment on the development plans. We would like to be kept informed of the status of the development plan review and status of our comments. We can be available to meet or discuss these comments as a follow-up with you, please do not hesitate to call Ruth Baisden at 410 668-2580 or our mailing address is 7706 Oak Avenue, Baltimore, MD 21234.

Sincerely,

Board of Directors
Parkville Park Community Association

Ernest M. Baisden, P.E., President

Joseph P. Kreis, Vice President

Ruth Baisden, Secretary/Treasurer

James G. Reed Jr., Board Member

David D. Miller, Board Member

Carville W. Burris, Board Member

Attachments:
Letter from Councilman Bartenfelder (dated September 18, 1997)
Letter from Department of Permits and Development Management (dated December 24, 1996)

cc: Honorable Joseph Bartenfelder, Councilman
Al Wirth, DEPRM
Lee Dregier, DEPRM
Rahee Famiali, PDM
Avery Harden, PDM

The Parkville Park Community Association Inc.

7706 Oak Avenue Baltimore, Maryland 21234 (410) 668-2580

February 8, 1998

Mr. Robert W. Bowling,
Department Plans Review Division
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Dear Mr. Bowling:

This is a follow-up to our recent letter of February 3, 1998 regarding Poor Boys Country Market expansion development plan. An item was missed in our initial review concerning the Landscape Buffer Area shown on the subject development plan.

It should be noted on the development plan that an open space easement agreement exist for the Landscape Buffer Area in accordance with zoning case 97-295 SPHA. All conditions and restrictions of the zoning case shall be included and incorporated into the open space easement agreement in accordance with condition 4.) page 7 of the Findings of Fact and Conclusion of Law by Deputy Zoning Commissioner Timothy Katroco. This easement was to be reduced in writing and recorded in the Land Records of Baltimore County within 60 days of the order (dated March 6, 1997). The easement will be applicable to any subsequent owner of the subject property in perpetuity.

If there are any questions regarding this matter, please call Ruth Baisden at 410 668-2580 or write to the address above.

Sincerely,

Ernest M. Baisden, President
Parkville Park Community Association

cc: Arnold Jablon, PDM
Rick Wisnom, PDM
Rahee Famiali, PDM
Avery Harden, PDM
Al Wirth, DEPRM
Lee Dregier, DEPRM
Timothy Katroco (Deputy Zoning Commissioner)

Testimony of Ernest Baisden **April 9, 1999**
Special Case Number: 98-267-SPH
Petitioner: Mr. Gerahty Owner Of Poor Boys
Request to Remove Conditions Stated in Variance Order (Case #97-295)

Introduction

My name is Ernest Baisden

I live at 7706 Oak Avenue, in Parkville

I am a Civil Engineer and Planner with a professional engineering license in five states including Maryland.

I am Chief of Project Development for a Maryland State agency.

I am President of the Greater Parkville Community Council
- an umbrella group which is currently preparing a Community Plan and has conducted a Quality Community Survey of the area.

I am President of the Parkville Park Community Association
- which is where the subject property is within.

My home share's a 180 ft. property line with the subject property to the south.

Pet Ex 29

Our community is predominately residential with single family homes in what the County refers to as an established community conservation area.

This is a stable neighborhood that has many long-term residents with a second generation staying in the community and raising their families.

There were many concerns regarding the rezoning of the subject property from residential to BL commercial use during the 1996 Comprehensive Rezoning Process. These concerns were mainly related to the compatibly of commercial encroachment into our residential neighborhood, & the impacts to the surrounding residences.

The petitioner's attorney (Doug Burgess) stated publicly that there would be a community input meeting to address community concerns before any development would go forward.

Initially the Councilman indicated that he was against the rezoning, but at the end he passed it with certain conditions to provide protection to the surrounding residential neighborhood.

The property owner accepted these conditions to gain the rezoning, which the rezoning significantly increased his property value. (by 3 times)

- Some of these conditions were included in Councilman Bartenfelder's letter of September 18, 1997, which also included a letter from the Baltimore County Department of Permits and Development by Mr. Avery Harden dated December 24, 1996. The Councilman's letter was written to me as president of the Parkville Park Community Association (Exhibit ___).

- In the letter, Councilman Bartenfelder stated the intention of creating a permanent passive park to provide a buffer with screening and landscaping inorder to protect the residential character and quality of life of the neighborhood. He further said this was a compromise to gain the BL commercial rezoning.

  * He attached a diagram that showed the extent of the passive park.
  * It is an "L" shaped, with a 70 foot leg parallel to Oak Avenue and 60 foot leg southern property line.

- The attached County letter is dated December 24, 1996 and includes:
  * a diagram detailing the fence construction and its location
  * the fence is shown as 8 foot high, located on the commercial side of a 10 foot landscape strip on the southside which became a 70 foot leg and on the Oak Avenue side, it is on Passive Park line (remaining 70 foot leg).
  * also shown are the proposed tree locations, type of trees and number of trees (35)
  * The letter was addresses to.....
  * As stated before, the fence location, size, type and landscaping (as described in the letter) were all discussed and agreed upon at a PPCA Board Meeting and General Meeting and a Resolution passed (Exhibit ___)

.

• To some extent, the petitioner recognized these conditions at the February 21, 1997 variance hearing by showing an 8 foot fence (not 6 foot)on a site plan; but at the wrong location (to petitioner's benefit).

- It was also stated at the hearing that the petitioner agreed that the existing trees within the Passive Park buffer area were to remain in perpetuity and agreed to place this buffer area into an open space easement, thereby guaranteeing that this buffer area remains as open space.

- This is paraphrase from your variance findings of March 6, 1997 on the bottom half of page 3.

• Based on the testimony at the February 21, 1997 variance hearing, a site visit, and the December 1996 letter from Baltimore County Department of Permits and Development Management a decision was made.

• The variance tried to address most of the community's key concerns and this was appreciated since the development was moving forward without a community input meeting. ← contrary to what was said by the petitioner's attorney.

- The variance conditions provided some follow through with the County's letter on the fence construction and location: and included

- the Councilman's intent of a permanent passive park

- by requiring an open space easement for the passive park area.

• You considered the community impacts of the noise from gasoline powered chain saws operating in residential neighborhood at night.

• You also considered the outdoor lighting plan. You recognized that if not properly designed and installed it could impact the surrounding residents. And therefore you required that the petitioner submit a lighting plan to the County for review and approval prior to installing any lighting - to ensure that the lighting was appropriate of the residential community and did not shine on residential property. ↑ for

• We felt these conditions were appropriate and being considerate of the surrounding residential neighborhood and fair to the business considering the location of the [redacted] business within the existing residential neighborhood.

• To make sure these conditions were not over looked or forgotten in the future, you stating that:

- the conditions be included in an open space easement agreement and that it be recorded in the land records of Baltimore County and will apply to subsequent property owners in perpetuity.

- Also that this case be referenced in plans, when future development occurs.

- This condition is key to protecting the future of our community.

• You granted the variance with these conditions.

• In your findings also stated that the petitioner had 30 days to appeal.

- The Petitioner appealed and then dropped the appeal. His attorney, Newt Williams, called and said that the appeal was being dropped and when asked what that meant, He said the petitioner accepted the conditions.

What the petitioner is currently requesting is to eliminate or significantly reduce the conditions I just went over.

I would like to go over the concern regarding the requested changes or elimination of conditions.

(c) The petitioner is requesting to delete conditions (4) and (10); two of the most important conditions in providing future protection of the residential community.

• Condition (4) says all of the conditions and restrictions shall be included and incorporated into the easement agreement and the easement be recorded in the land records of Baltimore County; and will apply to any subsequent owner of the property in perpetuity.

- This is key to protecting the future of the residential neighborhood.

- The conditions were not included in the proposed easement.

- The easement was to be in perpetuity (which is consistent with the rezoning conditions) but was drafted for 35 years.

- As the easement is currently written, it states that no one should benefit from the open space except the County; and no one (except for the County) shall be able to enforce the open space easement agreement. The Councilman's letter states that the intent of the buffer is to protect the property values of the surrounding residential properties; and preserve the residential character and quality of life of the residential neighborhood. - Since the intent of the Passive Park Buffer is to benefit the surrounding residential property owners, that should be stated and they should be included in the easement agreement and be able to enforce it. they = adjoining residential property owner.

- The Passive Park easement should be permanent as the Councilman intended. This business received its rezoning allowing a large commercial expansion into residential neighborhood and was to give the Passive Park land to the County as a compromise for receiving the rezoning. The business can remain in operation in perpetuity even if the zoning was to change under nonconforming use.

- The easement agreement also included a development plan which is reduced in size to an 8 1/2 x 11. The development plan shows the fence in the wrong location – being: located inside the Passive Park buffer area. As result some of the community Passive Park (that was to benefit the surrounding neighbors) is on the business side of the fence, which benefits the business instead.

- The attached development plan also showed the Passive Park buffer area regraded with seven foot hill of excavation placed in the Passive Park buffer area. This area was to be preserved for the benefit of the surrounding residential neighborhood not to dump the petitioner's excess excavation.

- As stated before, the Councilman's letter includes a property plat that shows a "L" shaped Passive Park buffer area – (70 foot wide along Oak Avenue and 60 foot wide along the southside, adjoining the residence) and should be included in the easement.

The December 24, 1996 County letter by Mr. Avery Harden includes:

* Diagrams detailing the fence and its location
* Plan drawing showing locations and types of 35 evergreen trees.
* This diagram should also be included in the easement agreement.
* By putting the fence in the correct location the lighting would move 10 ft away from the residence and be less visible from my first floor and second floor windows.

(ii) In condition 3(b) the petitioner is asking not to require landscaping as specified by Baltimore County Architect Avery Harden – which required 35 evergreen trees at 5'-6' in height in the 10' landscaping strips. Currently, there are only 19 trees planted in a location outside the landscaping strip. Initially this was a very wooded area, with 100 + year old oak trees. This is why our street is named Oak Avenue. Many trees were cut down in recent years. We would like to start reestablishing this as a green area.

(iii) The petitioner is also requesting the permanent 8 foot high fence that he said he would install at the February 21, 1997 (during variance hearing), be reduced to 6 foot high. And that the location and type of construction (as stated in the December 24, 1996 letter from Permits and Development and Management) not to be followed.

- Instead, the petitioner is requesting the existing 6 foot high fence that is flimsy, leaning over and 10 foot inside the Passive Park buffer area (which is 10 foot closer to the residents) be accepted.

- This is key to the residents on the southeast side. Putting the required 8 foot high fence (in the correct location) would move the lights 10 foot away from the residents and offer much better screening for the residents on that side.

- The petitioner installed this fence after receiving the County's letter and your zoning conditions; and was told that it was in wrong location by county code enforcement; but proceed to install it at his own risk.

- Too many times we see "zoning by violation". Meaning someone knowingly violates zoning regulations

- and gives wrong information

- and then come back and get it approved

- at no fault of the community but at their expense.

- There is no legitimate justification for this.

(c) The petitioner is requesting to amend condition (6) which limits the use of a gasoline power chainsaw currently the hours of operation 9:00 a.m. – 5:00 p.m. Monday through Friday and between 12:00 noon – 5:00 p.m. on Saturday and Sunday.

- It is felt that the County has bent over backwards for this business. Especially a business that is within a residential community and when there are many other quieter methods that provide less intrusive ways of cutting wood such as a hand saw or electric power saw, which are used by other merchants selling Christmas trees.

- The Petitioner is now asking to extend the time a gasoline chain saw can be used in a residential area until 9:00 p.m. every night. This is a residential neighborhood where young children live and go to bed before this time.

  - This request is inconsiderate of the existing residential neighborhood and was some of the general concerns we had with the rezoning of residential property to commercial use.

(d) The petitioner is also asking to eliminate the need for an outdoor lighting plan and to eliminate the restriction of light shinning onto residential property.

- This should <u>not</u> be changed. When this business requested the rezoning, they said that they would be a neighborhood business that would not impact the residential community. Again, this is inconsiderate and was another concern with the rezoning of residential property in our neighborhood.

  - If the lighting system is properly design, using the appropriate lighting levels, the type of light fixtures, and moving the light system in 10 foot away from the residential property (behind the proper fence location); a lighting system can easily be designed so <u>not</u> to reflect on residential property.

- The petitioner again decided (at his own risk) to ignore the zoning variance condition and failed to submit a lighting plan for review and approval prior to installing a lighting system.

  - Now at the expense of the surrounding neighbors it is being requested to shine the lights on their property and in their home.

(e) The last request provided a loophole to dilutes or eliminate many of the conditions which also may make it difficult to enforce the conditions in the future.

- The petitioner is requesting a provision be added that would relieve him of any of the conditions that is felt would unduly prohibit the petitioner from obtaining a development permit.

- This [illegible] like an electrician telling the County, I do not want to follow the electrical code, if it makes my job difficult.

• None of these conditions are unduly or excessive and haven't been met by other developments;

- especially when the conditions or parameters are known, it can easily ~~and can~~ become part of ~~your~~ the future development design.

- This is another way to avoid following through with the conditions of the rezoning and variance.

- It will undermine the enforcement of the conditions.

Closing Statement

In 1996 a zoning request was submitted to rezone 2+ acres of residential property to BL commercial, which the planning staff and planning board recommended against because it wasn't appropriate in a residential neighborhood.

- BL zoning would allow businesses that you typically find on Harford Road or Belair Road to locate on the site, which also increased the value of the property - but decrease the residences property values.

There were concerns on the compatibility of this large business operation encroaching in a residential neighborhood. The concerns included: lights shining onto residential property, truck deliveries, overflow parking into the residential neighborhood, noise and visual impacts associated with large business. All of them becoming true.

The petitioner accepted the rezoning based on conditions that would help protect the surrounding property owners. The most important condition was the promise of a Passive Park buffer area (community news article, and Councilman's letter and memo from Jim Thompson of code enforcement). It provides the surrounding residential community with a buffer area and screening from the [redacted] business (which will remain there even if the zoning was changed by nonconforming use) and for any other future businesses which the zoning allows that can be less desirable such as fast foods or a tavern.

The petitioner requested and was granted a variance which included conditions. The petitioner accepted the variance and the conditions.

The petitioner received in writing from the County Permits and Management Department by Avery Harden a diagram specifying location and construction of the fence and landscaping.

All this information was received prior to the construction of the fence and installing the lighting system. The petitioner knowingly went forward at his own risk and failed to comply with variance conditions.

To date the conditions have still not been fulfilled but, the petitioner accepted and benefited from the rezoning and variance at the expense of the surrounding impacted residence. The petitioner began using the property before following up with the conditions.

Since the variance was granted nothing in the community has changed to warrant any change of the conditions, especially the changes that are being requested.

There is no justification for changing the conditions at the expense of the surrounding residential neighborhood.

This would be "zoning by violation" and is becoming an increasing problem in our County

- First you violate
- then you come back to get it OKed.

There is no legitimate reason why these conditions can not be met.

I am a professional engineer and have designed parking lots and developments, etc. I find that these conditions are typical and reasonable conditions that can easily be incorporated into the petitioner's current and future development. I offer my engineering experience and services to help incorporate these conditions so that the operation of this business will not have a detrimental effect on the quality of life and character of the surrounding residential community.

These decisions are very crucial within an older community conservation area such as ours. I hope you recognize our situation and enforce your conditions to specifically include: in the easement agreement.

- the permanent easement wording and its intent from Councilman Bartenfelder's letter

- since the intent of the Passive Park was to benefit surrounding residences the adjoining residential property owner should be included in the easement as a signatory.

- the diagram showing the Passive Park dimensions, from the Councilman's letter.

- the diagrams showing fence height, construction, and location; and landscaping quantity and location from the December 24, 1996 letter from Permits and development Management.

It should be clearly specified that the lighting be moved out of the Passive Park area to the business side of the fence and not shine in residential homes and on residential property.

I thank you for your consideration and would like to provide my services to help get the conditions met.

Pet. #3

001868 303

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is entered into, as of the 24th day of October, 1996, by and between TERRY GERAHTY ("Gerahty") Owner, POOR BOYS, INC. ("Poor Boys") Lessee, and the VILLA CRESTA CIVIC ASSOCIATION, INC. ("Villa Cresta").

RECITALS:

A. Poor Boys is the lessee of 7721 Old Harford Road, and Terry Gerahty is the owner of a lot of land (the "Land"), containing in the aggregate approximately 1.34 acres, located in the Sixth Councilmanic District of Baltimore County, Maryland, on the southwestern side of Taylor Avenue and Oak Avenue. The Land is more particularly described in a deed recorded among the Land Records of Baltimore County at Liber 8701, Folio 730.

B. At the present time, most of the Land is zoned D.R.5.5 (1.17 acres) and RO (0.17 acres).

C. The Land is currently not developed.

D. Poor Boys has submitted a request for change in zoning for the Land as a part of the 1996 Baltimore County Comprehensive Zoning Map process. The request seeks to have all of the Land classified BL. If this Agreement is executed, Gerahty and Poor Boys intends to amend its BL request to the area as shown on the attached Drawing marked "Amended Request". This requested zoning would enable Poor Boys to upgrade and expand its garden center and farm market now on the Land and at 7721 Old Harford Road with a more attractive, modern, garden center, farm market and country store with sufficient parking. The new site would include a significantly larger number of square feet than the present site.

E. If its request for BL zoning is granted, Poor Boys desires to develop on the Land sales, storage and parking areas for the upgraded garden center with such ancillary/accessory office and retail uses as are permitted as a matter of right in

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE HK DATE 10/28/96

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

HK 10/28/96
By

that zone and that are consistent with the terms of this Agreement. Poor Boys intends to work with appropriate officials of Baltimore County, the State of Maryland, to provide an upgraded garden center and farm market/country store with sufficient parking. The proposed garden center, farm market and country store uses would be designed to serve the Parkville Community and the immediate neighborhood, as well as the general public.

F. Villa Cresta is an incorporated association of Baltimore County residents interested in preserving the existing character and quality of life of residential areas in the vicinity of the Land.

G. Gerahty and Poor Boys desire to place certain restrictions on the Land and on the use thereof to assure that, in the event that it is rezoned to BL as requested, future use does not have a deleterious effect on nearby residential areas.

H. Gerahty and Poor Boys, in recognition of the concerns of the Villa Cresta Civic Association, is willing to place certain restrictions on the Land in return for the agreement of Gerahty and Poor Boys described below.

I. In order to make the covenants, restrictions and conditions contained in this Agreement binding and fully effective on the Land, and on the present and future owners and occupants thereof, the parties have entered into this Agreement, to the end and with the intent that Gerahty and Poor Boys, and its successors and assigns, will hold, use, and hereafter convey the Land subject to the said covenants, restrictions, and conditions.

AGREEMENTS:

NOW THEREFORE, in consideration of the mutual agreements and understandings contained in this Agreement, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

GERAHTY AND POOR BOYS, ON BEHALF OF ITSELF, AND ITS SUCCESSORS AND ASSIGNS, AGREES AS FOLLOWS:

1. Garden Center Use. The Land shall be used only for an upgraded garden center, farm market and country store, as well as parking, outdoor sales area, outdoor storage area, and accessory uses and related uses to support said uses. "Garden Center" and "Farm Market" uses shall be as defined in the Baltimore County Zoning Regulations, except Gerahty is not a farmer and that limitation in the "farm market" definition shall not be a requirement to the "farm market" use. A "country store" shall include garden center and farm market uses, along with gourmet items, crafts, deli items, pit beef and seasonal food sales consistent with a country store and farm market theme, and seasonal and holiday items of all kinds, including Christmas, Easter, Mother's Day, Memorial Day, Halloween, etc. It is further agreed that the Land and the property may be further used, expanded and upgraded for garden center, farm market and country store purposes, as allowed by its zoning.

2. Landscape Buffer. It is further agreed that the area marked "Landscaped Conservation Easement," as shown on the attached Drawing marked "Amended Request," shall:

a) be offered for dedication to Baltimore County, in such a manner as will be determined by the County, whether by fee, or easement so as to fulfill the spirit of this covenant that said area be preserved as a landscape buffer, and

b) if said area is not accepted by Baltimore County for dedication pursuant to Paragraph a) above, said area shall be offered for dedication, whether by fee or easement unto the Parkville American Legion, in such a manner as will be determined by the County so as to fulfill the spirit of this covenant so that said area be preserved as a landscape buffer, and

c) if said area is not accepted by Baltimore County or the Parkville American Legion, it shall be dedicated and preserved as a landscape buffer on any site plan associated with the upgraded garden center contemplated herein, and otherwise preserved and dedicated in such a manner so as to fulfill the spirit and intent of this covenant

Said "landscape conversation easement" shall remain residentially zoned and be established and maintained by Poor Boys and Gerahty, its successors and assigns, as a landscaped conservation buffer with coniferous screening substantially consistent with the requirements of the Baltimore County Landscape Manual and with compact evergreen screening placed as shown on the attached Drawing.

In addition, there shall be a ten foot (10') interior landscape easement established and maintained inside the BL line in a manner consistent with the requirements of said BL zone and with the Baltimore County Landscape Manual. The sixty foot (60') Landscape Buffer, plus the ten foot (10') interior landscape easement, will provide a total of seventy feet (70') of open space from Oak Avenue as shown on the attached Drawing.

CONDITION PRECEDENT:

The obligations of Gerahty and Poor Boys shall not become effective and binding upon Poor Boys and the Land unless and until the Land has been reclassified to BL, as shown on the attached Drawing marked Amended Request, on the 1996 Comprehensive Zoning Map for Baltimore County, as that map is finally adopted.

BINDING EFFECT: DURATION

Immediately upon satisfaction of the condition precedent stated above, Gerahty and Poor Boys shall cause these covenants, restrictions, and conditions to be recorded among the Land Records of Baltimore County, Maryland. Gerahty and Poor Boys shall then promptly deliver to Villa Cresta Civic Association a copy of the covenants as recorded, together with

evidence of their recordation. The covenants shall run with and be binding upon the Land, and upon all present and future owners thereof, and shall inure to the benefit of each of the parties respectively, and their successors and assigns, for a period of twenty-five (25) years from the date of this Agreement, provided that this covenant shall be binding for thirty-five (35) years from the date of this Agreement: (1) to allow only those uses allowed in the BLR zone,[1] provided that the following uses otherwise allowed in the BLR zone shall be prohibited: fast food, taverns, drycleaners, laundromats, video rental, supermarket, health and athletic club, martial arts and dance studio; and (2) to require adherence to the last sentence of the provisions of Page 4, Para. 2, regarding maintenance of Landscape Buffer.

CONDITION SUBSEQUENT:

Notwithstanding the preceding paragraph, this Agreement shall terminate and be of no further force or effect as to any portion of the Land that is rezoned, in proceedings subsequent to the adoption of BL zoning, as shown on the attached Drawing marked "Amended Request", to a zone other than this zone, at the time such rezoning becomes final and unappealable.

ENFORCEMENT:

If any party to this Agreement, or any party's successor, is required to institute legal action to enforce the terms of this Agreement, and is successful thereafter (whether by judgment or by settlement) in obtaining enforcement of the Agreement, that party or successor shall be entitled to recover

---

1 Regardless of the fact the underlying zone is BL, the Declarants herein are agreeing to the aforegoing restrictions, which essentially restrict the BL zoning in a manner that allows only BLR uses, with the exception that those uses labelled Garden Center on Page Three, Paragraph One shall be allowed. Accordingly, the Garden Center, etc. use specified on Page Three, Paragraph One shall be an allowed use regardless of whether it is a use of right, vel non, in the BLR zone.

reasonable attorneys' fees and other reasonable costs of the action from the person or entity against whom enforcement is obtained. However, as a prerequisite to the recovery of fees and costs under this paragraph, the person or entity seeking enforcement shall serve the alleged violator of the Agreement with written notice of the violation, and only if the alleged violator has failed to remedy or to make substantial progress toward remedying the violation within sixty (60) days after receipt of this notice may legal action be instituted.

In order to further ensure Villa Cresta of the enforcement of this Covenant, Gerahty shall have the duty to provide in all sales contracts for his business and/or Land that the Buyer be subject to and bound by these covenants and the obligations herein, including but not limited to the aforegoing "obligation to pay reasonable attorney's fees and costs" provision if enforcement of the covenants is successfully obtained. If and when Gerahty shall sell the Land or Business, Gerahty shall also assign One Thousand Dollars ($1,000.00) from the sale proceeds to Villa Cresta, or its successor, for Villa Cresta, or its successor, to use at its sole discretion for enforcement or any other community enhancement needs.

AMENDMENTS:

Prior to its recordation among the Land Records of Baltimore County, Maryland, this Agreement may be amended only by a written instrument in recordable form, signed by both of the parties hereto. Following its recordation among the Land Records of Baltimore County, this Agreement may be amended only by a written instrument, signed by Villa Cresta or its successor and the legal owner or owners of the Land and recorded among the Land Records of Baltimore County, Maryland. If Villa Cresta Civic Association, Inc. is no longer in existence or otherwise defunct, the owner of the land is entitled to the appointment of a Trustee to act on their behalf upon application to a Court of Equity.

MISCELLANEOUS PROVISIONS:

The parties warrant and represent that they have taken all necessary action required to be taken by their respective charters, by-laws, or other organizational documents to authorize the execution of this Agreement.

This Agreement, which may be executed in counterparts, contains the entire understanding of the parties.

Each of the parties warrants that it has carefully read and understands this Agreement, is cognizant of the terms hereof, and has had ample time to consult with counsel of choice regarding its respective rights and obligations in connection herewith.

Failure, in any instance, to enforce any of the covenants, restrictions, and conditions contained in this Agreement shall in no event constitute a waiver or estoppel of the right to enforce the same or any other covenant, restriction or condition in the event of another violation occurring prior or subsequent thereto.

All notices required by this Agreement shall be sent by certified mail, return receipt requested.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST:

Dorothy Gerson
as to both

POOR BOYS, INC.

_____(SEAL)
By: Terry Geraity, President

_____
TERRY GERAHTY

WITNESS/ATTEST:

Margaret Grace Kraft

VILLA CRESTA CIVIC ASSOCIATION, INC.

_____(SEAL)
By: Tom Rochfort

STATE OF MARYLAND, ~~CITY~~/COUNTY OF Harford, to wit:

I HEREBY CERTIFY, that on this 21st day of October, 1996, before me, the subscriber, a Notary Public of the State of Maryland, in and for the jurisdiction aforesaid, personally appeared TERRY GERAHTY, the duly authorized agent of POOR BOYS, INC., and being so authorized, acknowledged the aforegoing document to be the free and voluntary act of POOR BOYS, INC.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: 2/10/97

STATE OF MARYLAND, ~~CITY~~/COUNTY OF Harford, to wit:

I HEREBY CERTIFY, that on this 21st day of October, 1996, before me, the subscriber, a Notary Public of the State of Maryland, in and for the jurisdiction aforesaid, personally appeared TERRY GERAHTY, and he acknowledged the aforegoing document to be his free and voluntary act.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires: 2/10/97

STATE OF MARYLAND, CITY/COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY, that on this 8th day of October, 1996, before me, the subscriber, a Notary Public of the State of Maryland, in and for the jurisdiction aforesaid, personally appeared TOM ROCHFORT, the duly authorized agent of VILLA CRESTA CIVIC ASSOCIATION, INC., and being so authorized, acknowledged the aforegoing document to be the free and voluntary act of VILLA CRESTA CIVIC ASSOCIATION, INC.

AS WITNESS my hand and Notarial Seal.

Notary Public
Robert E. Strohmer, Notary Public
Baltimore County
State of Maryland
My Commission Expires Mar. 11, 1997

My Commission Expires: _____

1166D DLB/caw

122

123

180'

50

50

50'

DR 5.5 TO BL

660'

TOWNSOUTH

60'

PARK RESERVE

360'

AMENDED 12-6-93

194'

45

45

45'

124

70'

125

95

94

92

20'

20'

COMPACT EVERGREEN SCREENING

126

60'

LANDSCAPED CONSERVATION EASEMENT

127

48

44

45

43

90'

180'

128

91

50'

DATE: 10/8/96

1"=50'

180'

72

P/O PLAT OF "PARKVILLE"

40

0011868 313

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

1 **Type(s) of Instruments** — (☐ Check Box if Addendum Intake Form is Attached.)

Deed / Deed of Trust	Mortgage / Lease	☒ Other Rest. Covenant Agmt	Other

2 **Conveyance Type** Check Box

Improved Sale Arms-Length [1]	Unimproved Sale Arms-Length [2]	Multiple Accounts Arms-Length [3]	Not an Arms-Length Sale [9]

3 **Tax Exemptions** (If Applicable) Cite or Explain Authority

Recordation	State Transfer	County Transfer

4 **Consideration and Tax Calculations**

Consideration Amount		Finance Office Use Only — Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ -0-	Transfer Tax Consideration	$
Any New Mortgage	$	X ( ) % =	$
Balance of Existing Mortgage	$	Less Exemption Amount −	$
Other:	$	Total Transfer Tax =	$
Other:	$	Recordation Tax Consideration	$
Full Cash Value	$	X ( ) per $500 =	$
		TOTAL DUE	$

5 **Fees**

Amount of Fees	Doc. 1	Doc. 2	
Recording Charge	$ 75.00	$	Agent:
Surcharge	$ 2.00	$	Tax Bill:
State Recordation Tax	$	$	
State Transfer Tax	$	$	C.B. Credit:
County Transfer Tax	$	$	
Other	$	$	Ag. Tax/Other:
Other	$	$	

6 **Description of Property** — AGR

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOC
6		8701/730			[ ] (5

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (

Location/Address of Property Being Conveyed (2)

7721 Old Harford Road

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential [ ] or Non-Residential ☒ | Fee Simple ☒ or Ground Rent [ ] Amount:

Partial Conveyance? [ ] Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 **Transferred From**

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Terry Geraghty, Poor Boys, Inc and Villa Cresta Civic Assoc. Inc.	
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**

8 **Transferred To**

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)

New Owner's (Grantee) Mailing Address

9 **Other Names to Be Indexed**

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 **Contact/Mail Information**

Instrument Submitted By or Contact Person

Name: Dana Denison

Firm: Dolan Blumhoff

Address:

Phone: (410) 823-7800

☐ Return to Contact Person

☒ Hold for Pickup

☐ Return Address Provided

11 **IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER**

Assessment Information

☐ Yes ☒ No Will the property being conveyed be the grantee's principal residence?

☐ Yes ☒ No Does transfer include personal property? *If yes, identify:*

☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Terminal Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number: Date Received: Deed Reference: Assigned Property No.:

Year	19	19	Geo.	Map	Sub	Block
Land			Zoning	Grid	Plat	Lot
Buildings			Use	Parcel	Section	Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer

TRANSFER TAX AND RECORDING FEE REQUIRED
BALTIMORE COUNTY, MARYLAND
Per Judy Bullock
Date 10-28-96 Sec 33:39 AGR

FEE SURE $ 2.00
RECORDING FEE 75.00
TOTAL 77.00
Rest 0004 RCPT # 222867
SM: 0M BLK # 2542
Dec 28, 1996 12:36 PM

Per. #4

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Exq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

Printed with Soybean Ink
on Recycled Paper

The 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space. See plan.

As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

Thirty five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thirive within two years must be replaced. Steven's Hollies are recommemded where excessive moisture is an issue. Hollies must be placed closer together to achieve the desired effect. See plan. The other evergreen selections are half Norway Spruce and half White Pine.

This office will work with Poorboys when the planning for the expanded parking lot begins. The proposal above is essentially what the Baltimore County Landscape Manual will require when a permit for the parking lot is sought. Every effort will be made to save the existing trees within the proposed parking lot area. There shall be no increase in runoff onto the adjacent residences as a result of the sitework.

As a condition of completing the buffer requirements, the copse of brambles along Oak Avenue should be mowed.

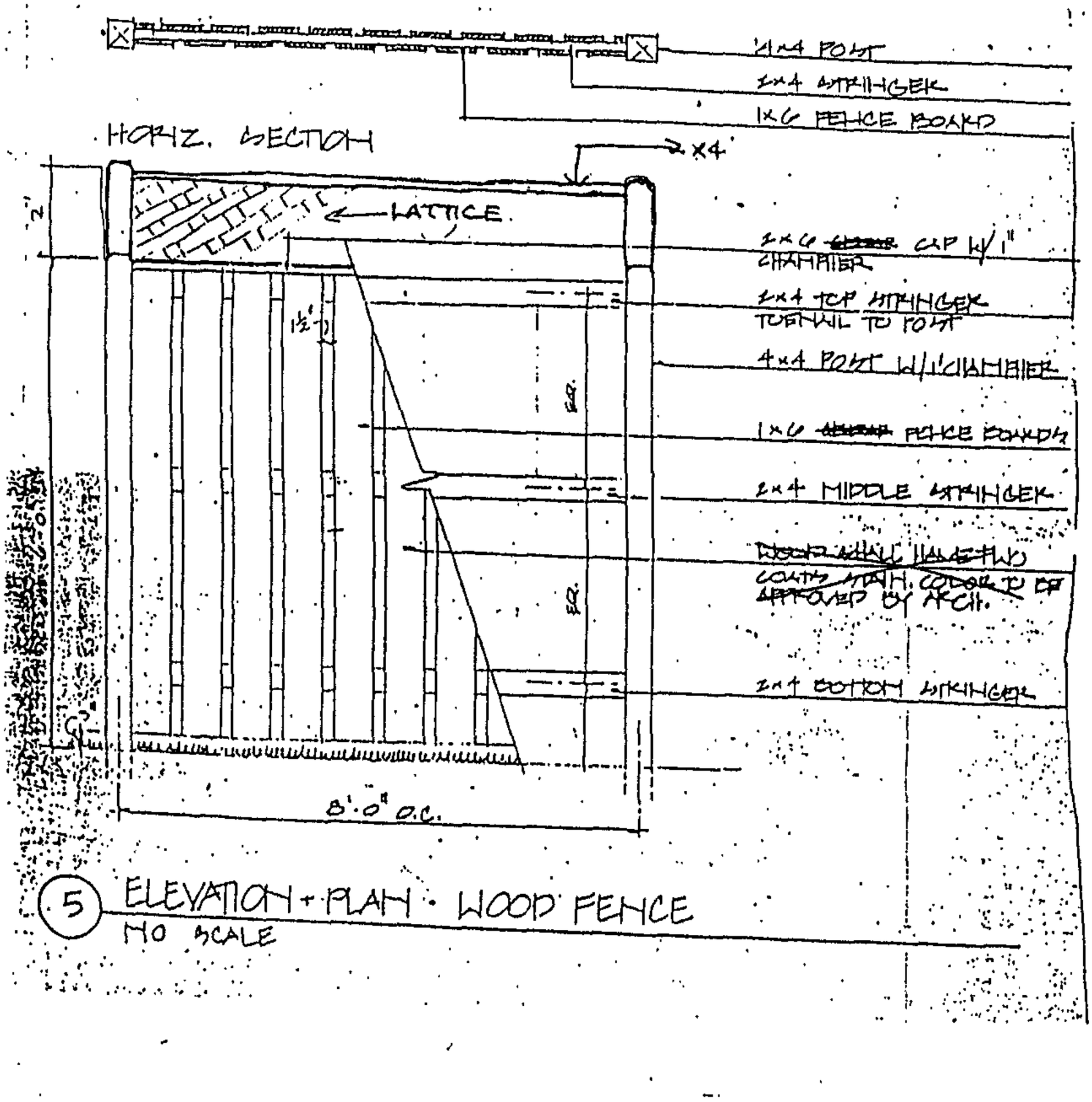
If anyone has any questions or comments, please call me at 887-3751.

Sincerely,

E. Avery Harden

E. Avery Harden, Landscape Architect
Development Plans Review

2 Attachments



5 ELEVATION + PLAN · WOOD FENCE
NO SCALE

122

123

180'

50 50 50

RO TO BE

DR 5.5 TO BE

PARK RES

TO TO SO 72

60'

100'

11868.312

11868.312

194

124

45 45 45

70'

125

95

94

92

COMPACT
EVERGREEN
SCREENING

126

127

128

91

50'

50'

45 45 45 45

LANDSCAPE
CONSERVATION
EASEMENT

48

DATE: 10/8/96

1" =

180'

P/O PLA
PARI

72

BAISDEN RESIDENCE

BUFFER

LANDSCAPE

HOLLIES

WET AREA

FENCE LOCATION

LATTICE ON FENCE

6 FOOT FENCE

60'

10' LANDSCAPE STRIP

4 FOOT FENCE

PROPOSED TREE LOCATIONS

TERMINATE FENCE

POORBOYS NURSERY

TAYLOR AVE

APPROXIMATE SCALE
1"=30'

Pet. #6

DOUGLAS L. BURGESS

DIRECT DIAL:
(410) 823-7857

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

February 17, 1998

BY HAND DELIVERY

Doug Silber, Esquire
Assistant County Attorney
Old Courthouse
Towson, Maryland 21204

Dear Doug:

Enclosed is the final signed Easement for delivery to you pursuant to this letter escrow agreement. I understand you will hold this document in escrow until:

1. Mr. Gerahty obtains an approved grading permit, the same being substantially but not completely approved at this time; and

2. Said permit is final, non-appealable and construction has been substantially completed pursuant to said permit, a period of perhaps ten (10) days of good weather.

Upon the completion of Items 1 and 2 above, the document will become effective, and it will be released fully signed to me whereupon I will immediately record it at my client's expense.

As it is in the interest of all to expedite this process, you will assist when requested in navigating the permit through the end stages of its approval process so it does not sit on someone's desk.

As always, thank you for your kind attention to this matter.

Very truly yours,

Douglas L. Burgess

DLB/caw
Enclosure
cc: Mr. Terry Gerahty

AGREED AS STATED ABOVE:

_____
Doug Silber, Esquire

EASEMENT

THIS DEED OF EASEMENT FOR OPEN SPACE Made this _____ day of _____, 1998, by TERRY GERAHTY, party of the first part; and BALTIMORE COUNTY, MARYLAND, a body corporate and politic, party of the second part.

WHEREAS, TERRY GERAHTY, the party of the first part, is the owner of all that property situate in Baltimore County, State of Maryland, as more particularly described in Exhibit "A", which is attached hereto and made a part hereof, to which he acquired title in fee simple by a Deed dated July 26, 1995, which Deed is recorded among the Land Records of Baltimore County in Liber 11142, Folio 001, from George C. Peverley, III; and

WHEREAS, The party of the first part desires to reserve a portion of said property described in Exhibit "A" as an open space easement for the benefit of BALTIMORE COUNTY, MARYLAND, as hereinafter set forth; and

WHEREAS, The open space easement is intended to be a buffer to mitigate the impact of commercial uses on the character of the neighboring residential area; and

WHEREAS, The party of the second part desires to accept an easement to a portion of the property, said portion that is subject to this easement being described on Exhibit "B" attached hereto.

NOW, THEREFORE, THIS DECLARATION WITNESSETH, That the said party of the first part, for himself, his successors and assigns, declares and covenants that all that property described on Exhibit "B" shall be subject to the following reserved easement for open space as follows:

ARTICLE I

RESERVED EASEMENTS AND COVENANTS

Easement for open space containing _____ acres (_____ square feet), more or less, as shown on the attached plan, which is attached hereto as Exhibit "C" and made a part hereof, is hereby reserved by the party of the first part for the purpose of open space. Open space shall mean undeveloped land whose use shall be governed by the provisions of Articles II and III herein. The easement area shall be maintained continuously by the party of the first part consistent with this easement agreement.

ARTICLE II

GENERAL PROVISIONS

1. Tax Exemption. Nothing herein contained shall prohibit Grantor from seeking a Federal and/or State or local tax credit or reduction equal to the difference, if any, of the value of the Property before the grant of this Open Space Easement and the value of the Property after the grant of this Open Space Easement.

2. Binding Effect. The provisions of this Open Space Easement (a) are made by the Grantor for himself and for his respective successors and assigns, (b) are binding upon the Grantor, his respective successors and assigns, and (c) shall run with and bind all land within the Open Space Area. The provisions of this Open Space Easement shall be binding upon and benefit the Grantee. The Grantee cannot assign this agreement to anyone other than its successor governmental entity.

3. Enforcement and Remedies. The provisions of this instrument may be enforced by: 1) the Grantor, its successors and assigns, or 2) the Director or designee of the Baltimore County Department of Permits and Development Management or other department, agency, or other public body duly authorized by the County Executive. Upon any breach of the terms of this Open Space Easement by any party, which breach is not cured by the other party within thirty (30) days of the other party's receipt of written notice of such breach from the other party, the other party may, with or without additional notice to the other party, exercise any and all of the following remedies: (a) institute suits to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction, either prohibitive or mandatory; and/or (b) require that the Open Space Area be restored promptly to the condition required by this Open Space Easement at the sole cost and expense of the party responsible for the injury to the condition of the Property.

4. Reserved Rights. Except to the extent that prior written approval of Grantee is required by any paragraph of this Article, all rights reserved by or not prohibited to Grantors are considered to be consistent with the open space purposes of this Easement and require no prior notification or approval, except that, if Grantors believe that the exercise of a reserved right may have a significant adverse effect on the open space use of easement area, Grantors shall notify Grantee in writing before exercising such right.

5. Reserved Rights. Grantor specifically reserves all rights related to the ownership of the property, except as specifically granted and restricted hereby.

ARTICLE III

USE RESTRICTIONS AND OBLIGATIONS

1. The Open Space Area shall remain undisturbed, except as provided below:

(A) mowing, cleaning and cutting by Grantor on a schedule consistent with the schedule of maintenance adopted by the Baltimore County Department of Recreation and Parks for County parklands on outside private contractors;

(B) maintenance of landscape buffer plants and trees and fencing by Grantor in a manner so as to promote reasonable screenings between Grantor's commercial property and the residences on the 700 block of Oak Avenue, provided said screening shall not interfere with sight lines for the intersection of Oak and Taylor Avenue. Plants and trees planted by Grantor as buffer vegetation shall carry a warranty of survivability of two (2) years guaranteed by Grantor. Established trees in excess of three inches (3") in diameter in the Open Space Area shall not be removed, except: 1) with the prior written permission of the Baltimore County Department of Recreation and Parks (the lack of a reply by Recreation and Parks within thirty (30) days of prior written request shall be deemed permission by default), or 2) in the case of grading, as shown on and pursuant to an approved grading permit/plan;

(C) open space use; "open space" shall mean passive use only, to wit, uses for vegetative planting and landscaped buffer area, but not for active use of any kind, whether commercial or non-commercial, except as provided by and otherwise allowed by this Easement.

2. Whether or not such is referred to in Paragraph 1, nothing in this Paragraph shall be construed to authorize or permit the use of the Open Space Area for:

(A) industrial or commercial activities, other than landscaping, mowing, clearing and fencing, necessary to maintain the Open Space Area in accordance with Paragraph 1; said industrial or commercial activities are prohibited on the Open Space Area, except for such activities as allowed by the B.L. zone in the ten foot (10') strip area as shown on Exhibit C, not including structures or parking lots, but including lighting, grading, slope easements, water and utility lines, fencing and landscaping, provided lighting fixtures used to illuminate any parking facility or display areas shall be so arranged as to use reasonable efforts to reflect lights away from residential homes. All grading in the Open Space Area will be conducted with a grading permit, if required;

(B) display of billboards, signs, or advertisements is prohibited on or over the Open Space Area;

(C) Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the Open Space Area is prohibited, except that soil, rock, other earth materials, vegetative matter, or composts may be placed as may be reasonably allowable for grading pursuant to a grading permit/plan, if required;

(D) Excavation, dredging, mining, and removal of loam, gravel, soil, rock, sand, coal, petroleum, and other materials are prohibited, except (1) for the purpose of combatting erosion or flooding, or (2) for the construction and/or maintenance of fencing, landscaping, etc.

3. No building or other structure shall be constructed on the Open Space Area after the date of this Open Space Easement, except for those structures or improvements permitted to be constructed in the Open Space Area pursuant to the provisions of Paragraphs 1 or 2 above, and except for the following:

(A) improvements, repairs, restorations, replacements, reconstructions, alterations, remodelings, and maintenance of utility lines servicing the BL zoned property owned by Grantor, underground storm water management facilities and other uses permitted under this Open Space Easement; use of the open space area for construction easements is allowed provided the area is restored to its substantially previous condition consistent with open space useage promptly; use of the open space for utilities, utility easements, storm water management facilities and storm water management easements, of all kinds is permitted with thirty (30) days prior notice to Baltimore County, including but not limited to restoration, replacement, installation and maintenance of same; Grantee shall join into all easements and conveyances required by the intent of this paragraph;

(B) reasonable means of utility access to all permitted uses and structures on other lands of Grantor.

4. The Grantor reserves all rights under applicable law not otherwise prohibited by this Agreement.

ARTICLE IV

MISCELLANEOUS

This instrument sets forth the entire agreement of the parties with respect to the Open Space Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Open Space Easement. If any provision is found to be invalid, the remainder of the provisions of this Open Space Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

No failure on the part of the Grantee to enforce any covenant or provision thereof shall discharge or invalidate such covenant or any other covenant, condition or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

No person who is not a party to this Open Space Easement shall have any benefit hereunder nor have any third party beneficiary rights as a result of this Open Space Easement, nor shall any such party be entitled to rely on any actions or inactions of the parties hereto or their agents, all of which are done for the sole benefit of the parties hereto.

Any notices by the Grantor to the Grantee or by the Grantee to the Grantor pursuant to any provision hereof shall be sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the following parties, or to such other address as the Grantor or Grantee may establish in writing on notification to one another:

If to Grantee:

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

And

Director
Baltimore County Department of
Recreation and Parks
301 Washington Avenue
Towson, Maryland 21204

If to Grantor:

Mr. Terry Gerahty
7721 Old Harford Road
Baltimore, Maryland 21234

Whenever and wherever the Grantor is required under any section of this Open Space Easement to obtain the prior written consent or approval of any Grantee or any other person or entity prior to taking any action or construction or improvements, the Grantor shall only be required to obtain the prior written consent or approval, as the case may be, of the Grantee, persons or entities that are in existence at the time the Grantor seeks such consent or approval.

This easement shall be for a period of thirty-five (35) years from the date hereof, after which it shall terminate by operation of law and be of no further force and effect.

The Open Space Easement may only be amended in writing signed by the parties to be bound by the change or alteration.

ARTICLE V

RIGHTS AND INSPECTION

The Baltimore County Department of Permits and Development Management, or other department, agency, or other public body duly authorized by the County Executive, or the Grantees, shall have the right to enter on the above-described Open Space Area lands from time to time for the sole purpose of inspection and enforcement of the easement, covenants, conditions, limitations, and restrictions herein contained.

The covenants contained in this Declaration and the Easements shall run with the land and be binding upon the party of the first part, its successors and assigns.

IN WITNESS WHEREOF, The parties hereto place their hands and seals this ____ day of _____, 1998.

WITNESS:

_____ _____
TERRY GERAHTY

WITNESS/ATTEST: BALTIMORE COUNTY, MARYLAND

_____ _____
By:

ATTORNEY'S CERTIFICATION

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

_____
DOUGLAS L. BURGESS

Return to:
Douglas L. Burgess, Esquire
Nolan, Plumhoff & Williams, Chartered
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(File No. 4639-1)

EXHIBIT A

ALL That property in Parkville, Baltimore County, Maryland, owned by George C. Peverley, III, as sole tenant, as described herein. For description, refer to Deed dated September 19, 1990 from Gene F. Rahll and recorded among the Land Records of Baltimore County in Liber 8701, Folio 730, and as also described in Deed dated September 29, 1988 and recorded among the Land Records of Baltimore County in Liber 7993, Folio 66.

BEGINNING At a point where the Southwest line of Taylor Avenue intersects the Northwest line of Oak Avenue and running thence along the Northwest line of Oak Avenue South 39 1/4 degrees West 240 feet to a point, thence North 51 degrees West 180 feet to a point, thence North 39 1/4 degrees East 90.0 feet, thence along the boundary line between Lots 126 and 127, 100 feet to a point, thence North 39 1/4 degrees East 150 feet (erroneously described as 100 feet in a previously recorded Deed dated April 16, 1979 and recorded among the Land Records of Baltimore County at Liber E.H.K. 6014, Folio 516) to the Southwest line of Taylor Avenue, thence along the Southwest line of Taylor Avenue South 51 degrees East 280 feet to the place of beginning.

BEING Lots 92, 93, 94 and 95 and part of Lots 91, 124, 125 and 126 on a Plat entitled "Map of Parkville", which Plat was filed among the Plat Records of Baltimore County in plat Book J.W.S. No. 1, Folio 34.

SAVING AND EXCEPTING 177 square feet as described in an Inquisition in Case No. 13/256/82C-8, Baltimore County Circuit Court, recorded among the Land Records of Baltimore County at Liber 6794, Folio 411.

BEING Part of the land conveyed in a Deed dated April 27, 1979 from Ellen J. Hargreaves to Mellor A. Hargreaves and Ellen J. Hargreaves, as recorded among the Land Records of Baltimore County, Maryland at Liber 6138, Folio 159.

BEING Those same lots of ground which by Deed dated September 29, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7993, Folio 066, was granted and conveyed by Mellor A. Hargreaves and Ellen J. Hargreaves, his wife, unto George C. Peverley, III and Gene F. Rahll, a one-half interest each, as tenants in common, in fee simple.

BEING Those same lots of ground which by Deed dated September 19, 1990 and recorded among the Land Records of Baltimore County in Liber 8701, Folio 730 was granted and conveyed by Gene F. Rahll, his one-half interest in said property, unto George C. Peverley, III, in fee simple.

EXHIBIT B

(To be provided by Juri Maiste)

EXHIBIT C

(To be provided by Juri Maiste)

Pet. #7

FILE - Gerahty

County Board of Appeals of Baltimore County

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

September 24, 1997

Douglas L. Burgess, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Case No. 97-295-SPHA
Terry Gerahty - Petitioner

Dear Mr. Burgess:

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

Very truly yours,

Charlotte E Radcliffe

Kathleen C. Bianco
Legal Administrator

encl.

cc: Terry Gerahty
Mr. and Mrs. Ernest Baisden
James Reed
Avery Harden
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF		
TERRY GERAHTY -PETITIONER	*	COUNTY BOARD OF APPEALS
FOR SPECIAL HEARING AND		
VARIANCE ON PROPERTY LOCATED	*	OF
ON THE SOUTHEAST CORNER OLD		
HARFORD ROAD AND TAYLOR AVENUE	*	BALTIMORE COUNTY
(7721 OLD HARFORD ROAD)		
9TH ELECTION DISTRICT	*	CASE NO. 97-295-SPHA
6TH COUNCILMANIC DISTRICT		

* * * * * * * * *

ORDER OF DISMISSAL

This matter comes to this Board on appeal from a decision of the Deputy Zoning Commissioner in Case No. 97-295-SPHA in which Petitioner's request for special hearing relief was denied and Petition for Variance granted with restrictions.

WHEREAS, the Board is in receipt of a dismissal of appeal filed by Douglas L. Burgess, Esquire, counsel for Terry Gerahty, Petitioner /Appellant, dated September 19, 1997 (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said counsel for Petitioner /Appellant requests that the appeal filed in this matter be dismissed as of this date;

IT IS HEREBY ORDERED this 24th day of September, 1997 by the County Board of Appeals of Baltimore County that said appeal be and the same is hereby **DISMISSED.**

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Kristine K. Howanski, Chairman

Charles L. Marks

Harry E. Buchheister, Jr.

IN RE:	PETITIONS FOR SPECIAL HEARING AND VARIANCE S/E Corner Old Harford and Taylor Avenue (7721 Old Harford Road) 9th Election District 6th Councilmanic District	* * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 97-295-SPHA

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

ORDER OF DISMISSAL

Terry Gerahty, Petitioner by Douglas L. Burgess and Nolan, Plumhoff & Williams, Chartered, his attorneys, hereby dismisses his appeal from the Findings of Fact and Conclusions of Law of the Deputy Zoning Commissioner of March 6, 1997.

Douglas L. Burgess
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 823-7800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 19 day of September, 1997, that a copy of the foregoing Order of Dismissal was mailed, postage prepaid, to Peter M. Zimmerman, People's Counsel for Baltimore County, Court House, 400 Washington Avenue, Towson, Maryland 21204, Mr. and Mrs. Ernest Baisden, 7706 Oak Avenue, Baltimore, Maryland 21234 and to Mr. David Miller, 2801 Taylor Avenue, Baltimore, Maryland 21234.

Douglas L. Burgess

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

\\Mao\wpdocs\GERAHTY.NAW\Dismisal wpd

Peb. # 8

EASEMENT

THIS DEED OF EASEMENT FOR OPEN SPACE Made this 25th day of February, 1998, by TERRY GERAHTY, party of the first part; and BALTIMORE COUNTY, MARYLAND, a body corporate and politic, party of the second part.

WHEREAS, TERRY GERAHTY, the party of the first part, is the owner of all that property situate in Baltimore County, State of Maryland, as more particularly described in Exhibit "A", which is attached hereto and made a part hereof, to which he acquired title in fee simple by a Deed dated July 26, 1995, which Deed is recorded among the Land Records of Baltimore County in Liber 11142, Folio 001, from George C. Peverley, III; and

WHEREAS, The party of the first part desires to reserve a portion of said property described in Exhibit "A" as an open space easement for the benefit of BALTIMORE COUNTY, MARYLAND, as hereinafter set forth; and

WHEREAS, The open space easement is intended to be a buffer to mitigate the impact of commercial uses on the character of the neighboring residential area; and

WHEREAS, The party of the second part desires to accept an easement to a portion of the property, said portion that is subject to this easement being described on Exhibit "B" attached hereto.

NOW, THEREFORE, THIS DECLARATION WITNESSETH, That the said party of the first part, for himself, his successors and assigns, declares and covenants that all that property described on Exhibit "B" shall be subject to the following reserved easement for open space as follows:

ARTICLE I

RESERVED EASEMENTS AND COVENANTS

Easement for open space containing .537 acres (23,400 square feet), more or less, as shown on the attached plan, which is attached hereto as Exhibit "C" and made a part hereof, is hereby reserved by the party of the first part for the purpose of open space. Open space shall mean undeveloped land whose use shall be governed by the provisions of Articles II and III herein. The easement area shall be maintained continuously by the party of the first part consistent with this easement agreement.

ARTICLE II

GENERAL PROVISIONS

1. Tax Exemption. Nothing herein contained shall prohibit Grantor from seeking a Federal and/or State or local tax credit or reduction equal to the difference, if any, of the value of the Property before the grant of this Open Space Easement and the value of the Property after the grant of this Open Space Easement.

2. Binding Effect. The provisions of this Open Space Easement (a) are made by the Grantor for himself and for his respective successors and assigns, (b) are binding upon the Grantor, his respective successors and assigns, and (c) shall run with and bind all land within the Open Space Area. The provisions of this Open Space Easement shall be binding upon and benefit the Grantee. The Grantee cannot assign this agreement to anyone other than its successor governmental entity.

3. Enforcement and Remedies. The provisions of this instrument may be enforced by: 1) the Grantor, its successors and assigns, or 2) the Director or designee of the Baltimore County Department of Permits and Development Management or other department, agency, or other public body duly authorized by the County Executive. Upon any breach of the terms of this Open Space Easement by any party, which breach is not cured by the other party within thirty (30) days of the other party's receipt of written notice of such breach from the other party, the other party may, with or without additional notice to the other party, exercise any and all of the following remedies: (a) institute suits to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction, either prohibitive or mandatory; and/or (b) require that the Open Space Area be restored promptly to the condition required by this Open Space Easement at the sole cost and expense of the party responsible for the injury to the condition of the Property.

4. Reserved Rights. Except to the extent that prior written approval of Grantee is required by any paragraph of this Article, all rights reserved by or not prohibited to Grantors are considered to be consistent with the open space purposes of this Easement and require no prior notification or approval, except that, if Grantors believe that the exercise of a reserved right may have a significant adverse effect on the open space use of easement area, Grantors shall notify Grantee in writing before exercising such right.

5. Reserved Rights. Grantor specifically reserves all rights related to the ownership of the property, except as specifically granted and restricted hereby.

ARTICLE III

USE RESTRICTIONS AND OBLIGATIONS

1. The Open Space Area shall remain undisturbed, except as provided below:

(A) mowing, cleaning and cutting by Grantor on a schedule consistent with the schedule of maintenance adopted by the Baltimore County Department of Recreation and Parks for County parklands on outside private contractors;

(B) maintenance of landscape buffer plants and trees and fencing by Grantor in a manner so as to promote reasonable screenings between Grantor's commercial property and the residences on the 700 block of Oak Avenue, provided said screening shall not interfere with sight lines for the intersection of Oak and Taylor Avenue. Plants and trees planted by Grantor as buffer vegetation shall carry a warranty of survivability of two (2) years guaranteed by Grantor. Established trees in excess of three inches (3") in diameter in the Open Space Area shall not be removed, except: 1) with the prior written permission of the Baltimore County Department of Recreation and Parks (the lack of a reply by Recreation and Parks within thirty (30) days of prior written request shall be deemed permission by default), or 2) in the case of grading, as shown on and pursuant to an approved grading permit/plan;

(C) open space use; "open space" shall mean passive use only, to wit, uses for vegetative planting and landscaped buffer area, but not for active use of any kind, whether commercial or non-commercial, except as provided by and otherwise allowed by this Easement.

2. Whether or not such is referred to in Paragraph 1, nothing in this Paragraph shall be construed to authorize or permit the use of the Open Space Area for:

(A) industrial or commercial activities, other than landscaping, mowing, clearing and fencing, necessary to maintain the Open Space Area in accordance with Paragraph 1; said industrial or commercial activities are prohibited on the Open Space Area, except for such activities as allowed by the B.L. zone in the ten foot (10') strip area as shown on Exhibit C, not including structures or parking lots, but including lighting, grading, slope easements, water and utility lines, fencing and landscaping, provided lighting fixtures used to illuminate any parking facility or display areas shall be arranged so as to reasonably reflect lights away from residential property. All grading in the Open Space Area will be conducted with a grading permit, if required;

(B) display of billboards, signs, or advertisements is prohibited on or over the Open Space Area;

(C) Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the Open Space Area is prohibited, except that soil, rock, other earth materials, vegetative matter, or composts may be placed as may be reasonably allowable for grading pursuant to a grading permit/plan, if required;

(D) Excavation, dredging, mining, and removal of loam, gravel, soil, rock, sand, coal, petroleum, and other materials are prohibited, except (1) for the purpose of combatting erosion or flooding, or (2) for the construction and/or maintenance of fencing, landscaping, etc.

3. No building or other structure shall be constructed on the Open Space Area after the date of this Open Space Easement, except for those structures or improvements permitted to be constructed in the Open Space Area pursuant to the provisions of Paragraphs 1 or 2 above, and except for the following:

(A) improvements, repairs, restorations, replacements, reconstructions, alterations, remodelings, and maintenance of utility lines servicing the BL zoned property owned by Grantor, underground storm water management facilities and other uses permitted under this Open Space Easement; use of the open space area for construction easements is allowed provided the area is restored to its substantially previous condition consistent with open space useage promptly; use of the open space for utilities, utility easements, storm water management facilities and storm water management easements, of all kinds is permitted with thirty (30) days prior notice to Baltimore County, including but not limited to restoration, replacement, installation and maintenance of same; Grantee shall join into all easements and conveyances required by the intent of this paragraph;

(B) reasonable means of utility access to all permitted uses and structures on other lands of Grantor.

4. The Grantor reserves all rights under applicable law not otherwise prohibited by this Agreement.

ARTICLE IV

MISCELLANEOUS

This instrument sets forth the entire agreement of the parties with respect to the Open Space Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Open Space Easement. If any provision is found to be invalid, the remainder of the provisions of this Open Space Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

No failure on the part of the Grantee to enforce any covenant or provision thereof shall discharge or invalidate such covenant or any other covenant, condition or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

No person who is not a party to this Open Space Easement shall have any benefit hereunder nor have any third party beneficiary rights as a result of this Open Space Easement, nor shall any such party be entitled to rely on any actions or inactions of the parties hereto or their agents, all of which are done for the sole benefit of the parties hereto.

Any notices by the Grantor to the Grantee or by the Grantee to the Grantor pursuant to any provision hereof shall be sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the following parties, or to such other address as the Grantor or Grantee may establish in writing on notification to one another:

If to Grantee:

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

And

Director
Baltimore County Department of
Recreation and Parks
301 Washington Avenue
Towson, Maryland 21204

If to Grantor:

Mr. Terry Gerahty
7721 Old Harford Road
Baltimore, Maryland 21234

Whenever and wherever the Grantor is required under any section of this Open Space Easement to obtain the prior written consent or approval of any Grantee or any other person or entity prior to taking any action or construction or improvements, the Grantor shall only be required to obtain the prior written consent or approval, as the case may be, of the Grantee, persons or entities that are in existence at the time the Grantor seeks such consent or approval.

This easement shall be for a period of thirty-five (35) years from the date hereof, after which it shall terminate by operation of law and be of no further force and effect.

The Open Space Easement may only be amended in writing signed by the parties to be bound by the change or alteration.

ARTICLE V

RIGHTS AND INSPECTION

The Baltimore County Department of Permits and Development Management, or other department, agency, or other public body duly authorized by the County Executive, or the Grantees, shall have the right to enter on the above-described Open Space Area lands from time to time for the sole purpose of inspection and enforcement of the easement, covenants, conditions, limitations, and restrictions herein contained.

The covenants contained in this Declaration and the Easements shall run with the land and be binding upon the party of the first part, its successors and assigns.

IN WITNESS WHEREOF, The parties hereto place their hands and seals this 25th day of February, 1998.

WITNESS:

Cindy A Whitestone

TERRY GERAHTY

WITNESS/ATTEST:

Donna Morrison

BALTIMORE COUNTY, MARYLAND

By:

STATE OF MARYLAND, ~~CITY~~/COUNTY OF CARROLL, to wit:

I HEREBY CERTIFY That on this 25th day of February, 1998, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared TERRY GERAHTY, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who signed the same in my presence, and acknowledged that he executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Cindy A Whitestone

Notary Public

CINDY A WHITESTONE NOTARY PUBLIC CARROLL COUNTY, MD.

My Commission Expires 5/1/99

STATE OF MARYLAND, CITY/COUNTY OF Maryland, to wit:

I HEREBY CERTIFY That on this 1 day of ~~February, 1998~~ June 1999, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared John M Wasilisen, the duly authorized agent for Baltimore County, Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who signed the same in my presence, and acknowledged that he executed the same for the purposes therein contained on behalf of Baltimore County, Maryland.

AS WITNESS my hand and Notarial Seal.

Mary Ann Stumpfner

Notary Public

My Commission Expires 6-1-2000

ATTORNEY'S CERTIFICATION

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

DOUGLAS L. BURGESS

APPROVED FOR LEGAL FORM AND SUFFICIENCY*
(SUBJECT TO EXECUTION BY THE DULY AUTHORIZED ADMINISTRATIVE OFFICIAL AND CHAIRMAN OF THE COUNTY COUNCIL, AS INDICATED)

5/25/99

Office of the County Attorney

*Approval of Legal Form and Sufficiency Does Not Convey Approval Or Disapproval of the Substantive Nature of This Transaction. Approval is Based Upon Typeset Document-All Modifications Require Re-Approval

Return to:
Douglas L. Burgess, Esquire
Nolan, Plumhoff & Williams, Chartered
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(File No. 4639-1)

EXHIBIT A

ALL That property in Parkville, Baltimore County, Maryland, owned by George C. Peverley, III, as sole tenant, as described herein. For description, refer to Deed dated September 19, 1990 from Gene F. Rahll and recorded among the Land Records of Baltimore County in Liber 8701, Folio 730, and as also described in Deed dated September 29, 1988 and recorded among the Land Records of Baltimore County in Liber 7993, Folio 66.

BEGINNING At a point where the Southwest line of Taylor Avenue intersects the Northwest line of Oak Avenue and running thence along the Northwest line of Oak Avenue South 39 1/4 degrees West 240 feet to a point, thence North 51 degrees West 180 feet to a point, thence North 39 1/4 degrees East 90.0 feet, thence along the boundary line between Lots 126 and 127, 100 feet to a point, thence North 39 1/4 degrees East 150 feet (erroneously described as 100 feet in a previously recorded Deed dated April 16, 1979 and recorded among the Land Records of Baltimore County at Liber E.H.K. 6014, Folio 516) to the Southwest line of Taylor Avenue, thence along the Southwest line of Taylor Avenue South 51 degrees East 280 feet to the place of beginning.

BEING Lots 92, 93, 94 and 95 and part of Lots 91, 124, 125 and 126 on a Plat entitled "Map of Parkville", which Plat was filed among the Plat Records of Baltimore County in plat Book J.W.S. No. 1, Folio 34.

SAVING AND EXCEPTING 177 square feet as described in an Inquisition in Case No. 13/256/82C-8, Baltimore County Circuit Court, recorded among the Land Records of Baltimore County at Liber 6794, Folio 411.

BEING Part of the land conveyed in a Deed dated April 27, 1979 from Ellen J. Hargreaves to Mellor A. Hargreaves and Ellen J. Hargreaves, as recorded among the Land Records of Baltimore County, Maryland at Liber 6138, Folio 159.

BEING Those same lots of ground which by Deed dated September 29, 1988 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7993, Folio 066, was granted and conveyed by Mellor A. Hargreaves and Ellen J. Hargreaves, his wife, unto George C. Peverley, III and Gene F. Rahll, a one-half interest each, as tenants in common, in fee simple.

BEING Those same lots of ground which by Deed dated September 19, 1990 and recorded among the Land Records of Baltimore County in Liber 8701, Folio 730 was granted and conveyed by Gene F. Rahll, his one-half interest in said property, unto George C. Peverley, III, in fee simple.

MAISTE & WATTS, INC.
SURVEYORS & ENGINEERS
Fax (410) 661-8752

Description of Buffer Area, Poor Boy's Inc. Property
2711 Taylor Avenue, Election District 9, Baltimore County, Maryland

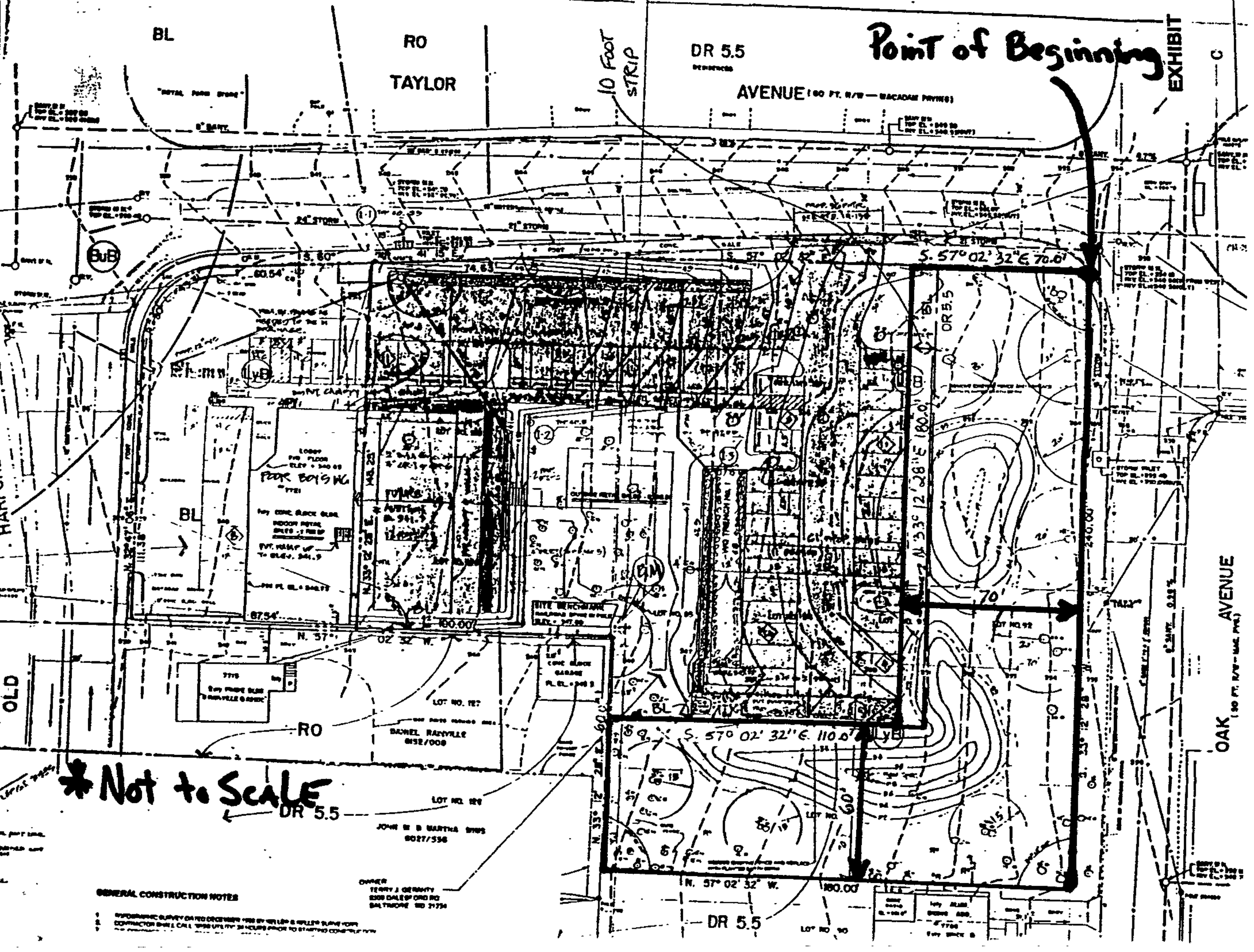
Beginning for the same at the corner formed by the intersection of the Southwest side of Taylor Avenue, 60 feet wide, and the Northwest side of Oak Avenue, 50 feet wide, said point of beginning also being at the beginning of the land which by deed dated September 19, 1990 from Gene F. Rahll, recorded among the Land Records of Baltimore County in Liber 8701 Folio 066, thence leaving said point of beginning and running with the Northwest side of Oak Avenue and binding on the first line of said deed, referring all courses of this description to the Grid Meridian as established by the Baltimore County Metropolitan District

1. South 33 degrees 12 minutes 28 seconds West 240.00 feet; thence leaving Oak Avenue and running and binding on the second line of said deed
2. North 57 degrees 02 minutes 32 seconds West 180.00 feet; thence running and binding on a part of the third line of said deed
3. North 33 degrees 12 minutes 28 seconds East 60.00 feet; thence leaving the boundary of the aforesaid deed and running through the lands described therein, of which the parcel now being described is a part, the two following courses:
4. South 57 degrees 02 minutes 32 seconds East 110.00 feet and
5. North 33 degrees 12 minutes 28 seconds East 180.00 feet to the Southwest side of the aforementioned Taylor Avenue; thence running with the Southwest side thereof
6. South 57 degrees 02 minutes 32 seconds East 70.00 feet to the point of beginning.

Containing 23,400 square feet or 0.537 acres of land, more or less.

STATE OF MARYLAND
JOHN MAISTE
NO. 9695
REGISTERED
PROFESSIONAL LAND SURVEYOR

EXHIBIT
B


Point of Beginning
EXHIBIT C
AVENUE
10 FOOT STRIP
DR 5.5
TAYLOR
BL
RO
S. 57° 02' 32" E. 70.0'
S. 57° 02' 32" E. 110.0'
N. 57° 02' 32" W. 180.00'
N. 33° 12' 28" E. 240.00'
70'
60'
180.0'
OAK AVENUE
OLD
POOR BOYS INC
LOT NO. 92
LOT NO. 91
DANIEL RANDVILLE
8152/008
JOHN M & MARTHA BYRNS
8027/556
TERRY J. GERARTY
5308 DALEFORD RD
BALTIMORE MD 21234
* Not to Scale
GENERAL CONSTRUCTION NOTES

Pet. #9

IN RE: PETITION FOR SPECIAL HEARING S/E Corner Old Harford Road and Taylor Avenue 9th Election District 6th Councilmanic District (2711 Taylor Avenue) Terry J. Gerahty Petitioner	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 98-267-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing filed by the legal owner of the subject property, Terry J. Gerahty, requesting special hearing relief for property he owns at 2711 Taylor Avenue. Specifically, the special hearing request is to amend prior Zoning Case No. 97-295-SPHA regarding the installation of a fence and lighting conditions.

Appearing at the hearing on behalf of the special hearing request were: Terry Gerahty, property owner; Glen McFaul, an employee of BGE and C. William Clark, attorney at law, representing the Petitioner. Appearing in opposition to the Petitioner's request were: Ruth & Ernest Baisden, Alice & John Baker, James Reed, Jr. and Joseph Kreis, all residents of the surrounding community.

Testimony and evidence indicated that property, which is the subject of this special hearing request, is located at the southeast corner of the intersection of Old Harford Road and Taylor Avenue in the Parkville area of Baltimore County. The subject property is being operated by Mr. Gerahty as a garden center known as "Poor Boys".

Mr. Gerahty first came before this Deputy Zoning Commissioner in Case No. 97-295-SPHA. Therein a variance was granted to Mr. Gerahty which allowed him to provide a parking lot which was constructed out of material that was not durable, nor dustless. This relief was

granted to him in lieu of requiring Mr. Gerahty to pave his parking area. As a condition of the granting of the variance, several restrictions were imposed upon Mr. Gerahty. One restriction involved the installation of a board-on-board screen fence running parallel to the property line of Mr. & Mrs. Baisden and also parallel to Oak Avenue. In addition, a restriction was imposed upon Mr. Gerahty regulating the amount and type of lighting to be installed on the property. That previous Order was issued on the 6th day of March, 1997.

Mr. Gerahty files this new petition for special hearing seeking to amend my previous decision, specifically regarding the fencing and lighting conditions I previously imposed upon him.

Extensive testimony and evidence was offered by the Petitioner relating to the fence and lighting on the subject property. Pursuant to my original Order, Mr. Gerahty installed a board-on-board fence running parallel to the Baisden property and Oak Avenue. Said fence is situated 60 ft. from and running parallel with the Baisden property line and the Oak Avenue property line. The purpose of this 60 ft. setback was to establish a buffer area between this commercial business and the adjacent residential properties. The buffer area was to be maintained on a regular basis and kept as if it were a residential yard. As to the location of the fence itself, after my site inspections of the property, I find that the fence was properly installed and located in compliance with the dictates of my previous Order. Therefore, the fence, as it exists on the property today, shall be permitted to remain and need not be relocated. In addition, the height of the fence is appropriate.

The photographs submitted and my site visit revealed that certain sections of the fencing are currently leaning; that is the fence does not presently exist in a straight linear fashion. Mr. Gerahty shall be required to maintain the fence in a neat and orderly manner and also insure that

the fencing itself remains in a vertical position. Mr. Gerahty shall be required to provide additional supports for the fence to insure that the fence remains straight and vertical.

The second issue raised by the petition for special hearing involved the method and amount of lighting that is to be utilized by Mr. Gerahty at his garden center. My previous order mandated that:

> "all outdoor lighting of the subject site shall be supplied in a tasteful manner and installed on fixed standards as approved by Mr. Avery Harden, Landscape Architect for Baltimore County. Within sixty (60) days of the date of this Order, and prior to the installation of any outdoor lighting, the Petitioner shall submit a lighting plan to Mr. Harden for his review and approval. The Petitioner is prohibited from stringing lights along extension cords, from tree to tree, on the subject site. All outdoor lighting shall be installed in such a manner so as not to reflect onto adjacent residential properties."

Testimony and evidence offered at the hearing revealed that Mr. Gerahty did install lighting on the subject property without the approval of Mr. Harden as ordered in my previous decision. Mr. Gerahty worked in conjunction with BGE and installed telephone poles with flood lights affixed to the top of the poles. In addition, Mr. Gerahty continues to utilize the string lighting on the interior of the site. All of this lighting was installed in contradiction to the restriction imposed by my previous decision. The explanation given by Mr. Gerahty was that my previous decision was appealed, and, therefore, this particular restriction not applicable. Mr. Gerahty is now requesting permission to maintain the amount and level of lighting that currently exists.

Further testimony revealed that Mr. Gerahty has spent a considerable amount of money installing these lights on the property. Both he and Mr. McFaul from BGE testified that in their opinion the lights do not adversely affect the adjacent residential properties. However, photographs offered by the Baisdens, as well as their personal testimony, indicated otherwise. Clearly, there are times of the year where the lighting used by Mr. Gerahty does in fact trespass

onto adjacent residential properties. On my recent site inspections, I could not see light trespassing onto the Baisden house. However, the trees on the property are in full bloom and the leaves do a great job in shielding the glare from these light standards. Without the summertime foliage on the trees, however, light would be a problem as is evidenced by the photographs submitted by the Baisdens, as well as their testimony.

After considering the testimony and evidence offered by the Petitioner, as well as the Baisdens regarding the lighting on the subject property, I find that the previous restriction imposed upon the Petitioner regarding the lighting for the subject property should not be modified. Mr. Gerahty should prepare and submit a lighting plan to Mr. Harden for his review and approval as I originally ordered. This undoubtedly will require the removal and modification of the existing lighting on the property. The lighting fixtures chosen by Mr. Gerahty brightly illuminate the subject property. However, they are not designed so as to prevent light from spilling onto adjacent residential properties. Therefore, I shall re-impose Restriction No. 7 of my previous Order and require that Mr. Gerahty comply with that restriction.

Pursuant to the advertisement, posting of the property, and public hearing held on the Petition and for the reasons given above, the special hearing request filed for the property located at 2711 Taylor Avenue requesting that the restrictions imposed in Case No. 97-295-SPHA regarding the installation of a fence and the lighting on the subject property, be and is hereby DENIED.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner/Hearing Officer for Baltimore County, this 7th day of July, 1999, that the previous restrictions imposed upon the Petitioner in Case No. 97-295-SPHA, regarding the fencing of the subject property, and the

lighting of the subject property shall remain in full force and effect and shall be restated herein as follows:

1. The fence on the subject property shall be permitted to remain as it exists today. The location, height and materials used are in compliance with my previous Order dated March 6, 1997. However, the Petitioner shall be required to maintain the fence in a neat and orderly fashion and shall insure that all sections of the fence remain in an absolute vertical position. All corrections to the fence shall be performed within thirty (30) days from the date of this Order.

2. All outdoor lighting of the subject site shall be supplied in a tasteful manner and installed on fixed standards, as approved by Mr. Avery Harden, Landscape Architect for Baltimore County. Within thirty (30) days from the date of this Order, the Petitioner shall submit a lighting plan to Mr. Harden for his review and absolute approval. It shall be within the discretion of Mr. Harden as to the type and method of lighting that shall be installed on the subject property. Mr. Harden shall insure that no lighting trespasses onto adjacent residential properties. Once a lighting plan is approved by Mr. Harden, the Petitioner shall have thirty (30) days to install said lighting in accordance with the approved plan.

IT IS FURTHER ORDERED, that all other conditions and restrictions previously imposed upon the Petitioner by way of my decision dated March 6, 1997 in Case No. 97-295-SPHA shall remain in full force and effect.

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

PHOTO EXHIBITS

FROM CASE #

97-295-SPHA

LIGHTING CONDITIONS AT POOR BOYS

VIEW OF POOR BOYS LIGHTING FROM TAYLOR AVENUE LOOKING EAST

VIEW OF POOR BOYS LOOKING FROM OAK AVENUE TOWARDS OLD HARLEM ROAD PRIOR TO INSTALLATION OF FENCE. SOME LIGHT FIXTURES ARE CURRENTLY IN PLACE

Conditions at Poor Boys

DECEMBER 1998

View from: the backyard of the first house on Oak Ave looking east towards Oak Ave.
Photo shows: Light shinning from Poor Boys on both houses.

View from: buffer area (south of Poor Boys) looking southeast towards OAK Ave.
Photo shows: Light shinning in buffer area and on house.
Note: Dead landscaping in foreground is not Providit screening.

Conditions at Poor Boys

DECEMBER 1998

View from: Oak Ave. looking south west towards first house on Oak Ave

Photo shows: Light shinning from Poor Boys on first house on Oak Ave.

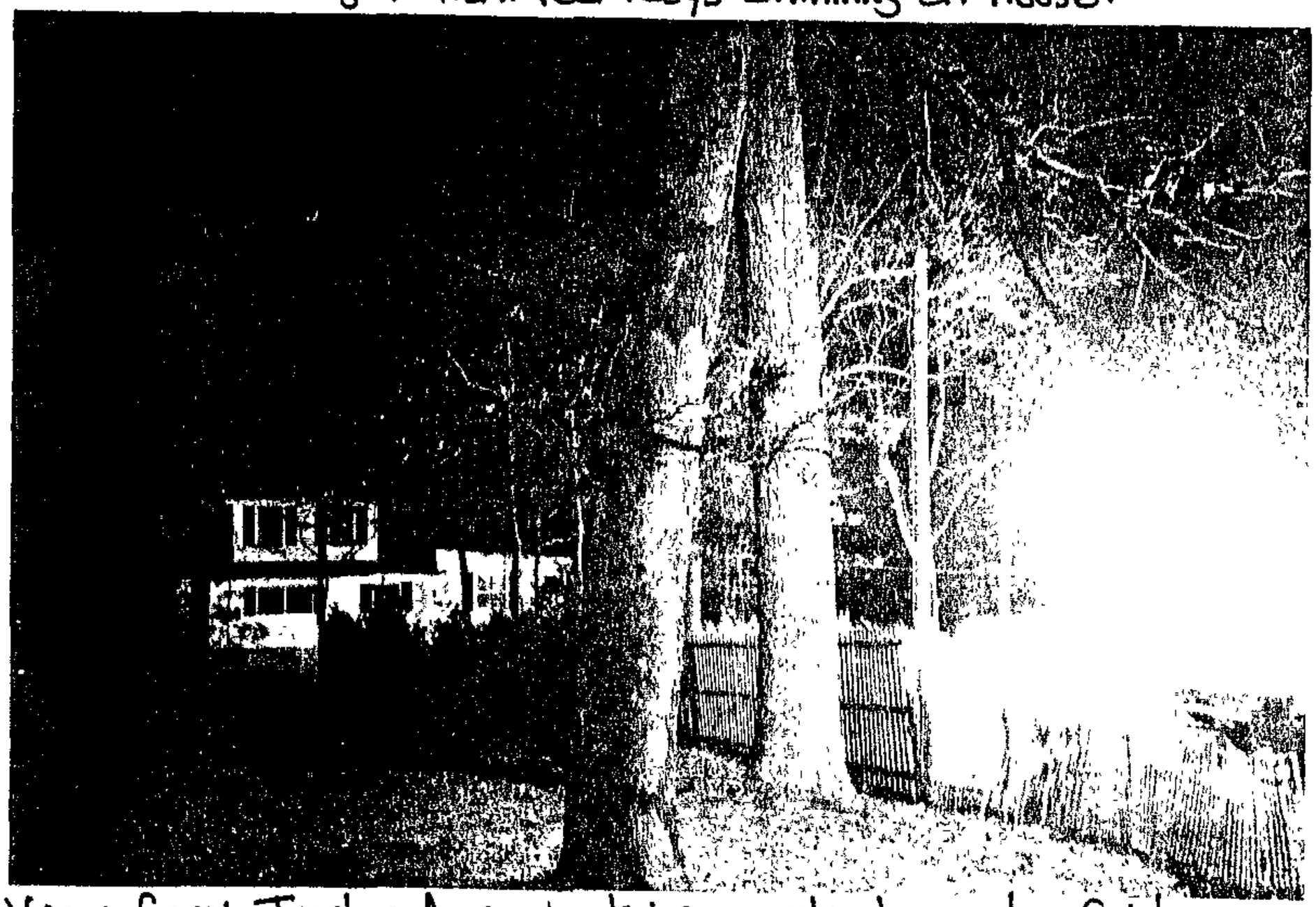
View from: Butter orea (south of Poor Boys) looking south towards first house on Oak Ave.

Photo Shows: Light shinning on house. Note: Dead landscaping in

Conditions at Poor Boys

DECEMBER 1998

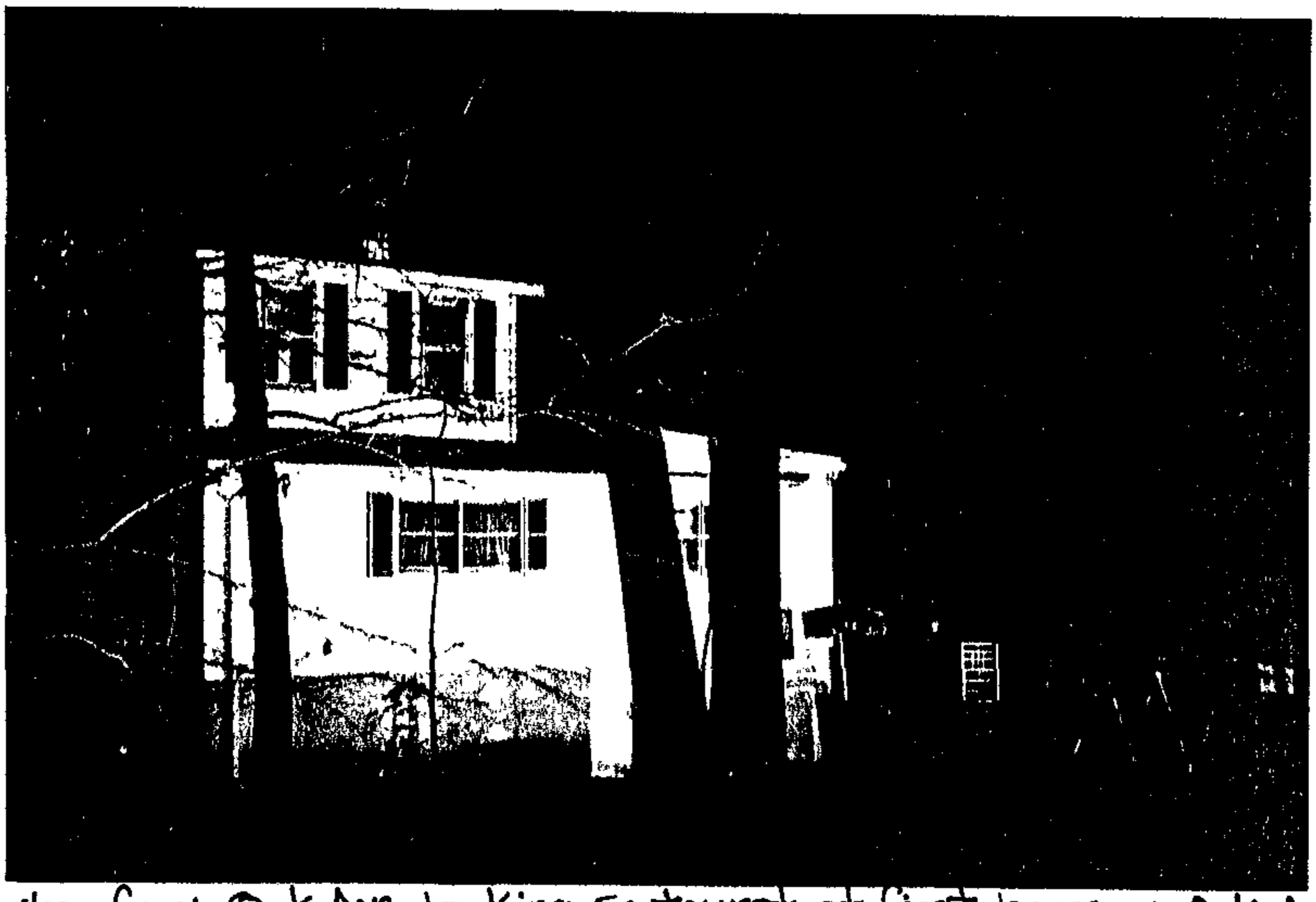
View from: Buffer area (south of Poor Boys) looking south towards first house on Oak Ave.
Photo Shows: Light from Poor Boys shinning on house.



View from: Taylor Ave. looking south towards first house on Oak Ave.
Photo shows: Light from Poor Boys shinning in buffer area and on first house on Oak Ave.

Conditions at Poor Boys

DECEMBER 1998

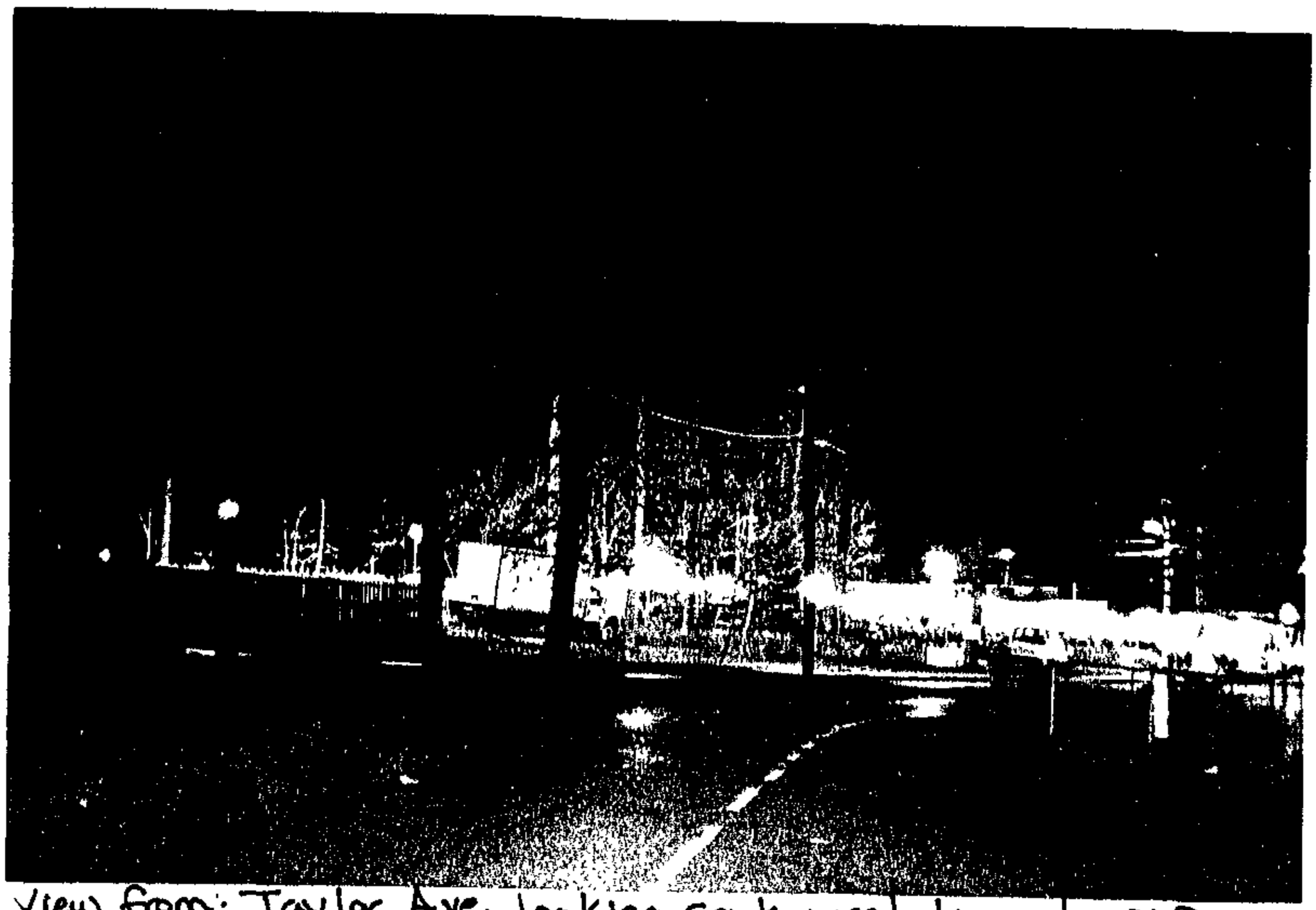


View from: Oak Ave looking southwest at first house on Oak Ave.
Photo shows: Light from Poor Boys shinning on first house on Oak Ave.

View from: Oak Ave. looking west towards Poor Boys.
Photo shows: Poor Boys lighting (string lights in center) at night.

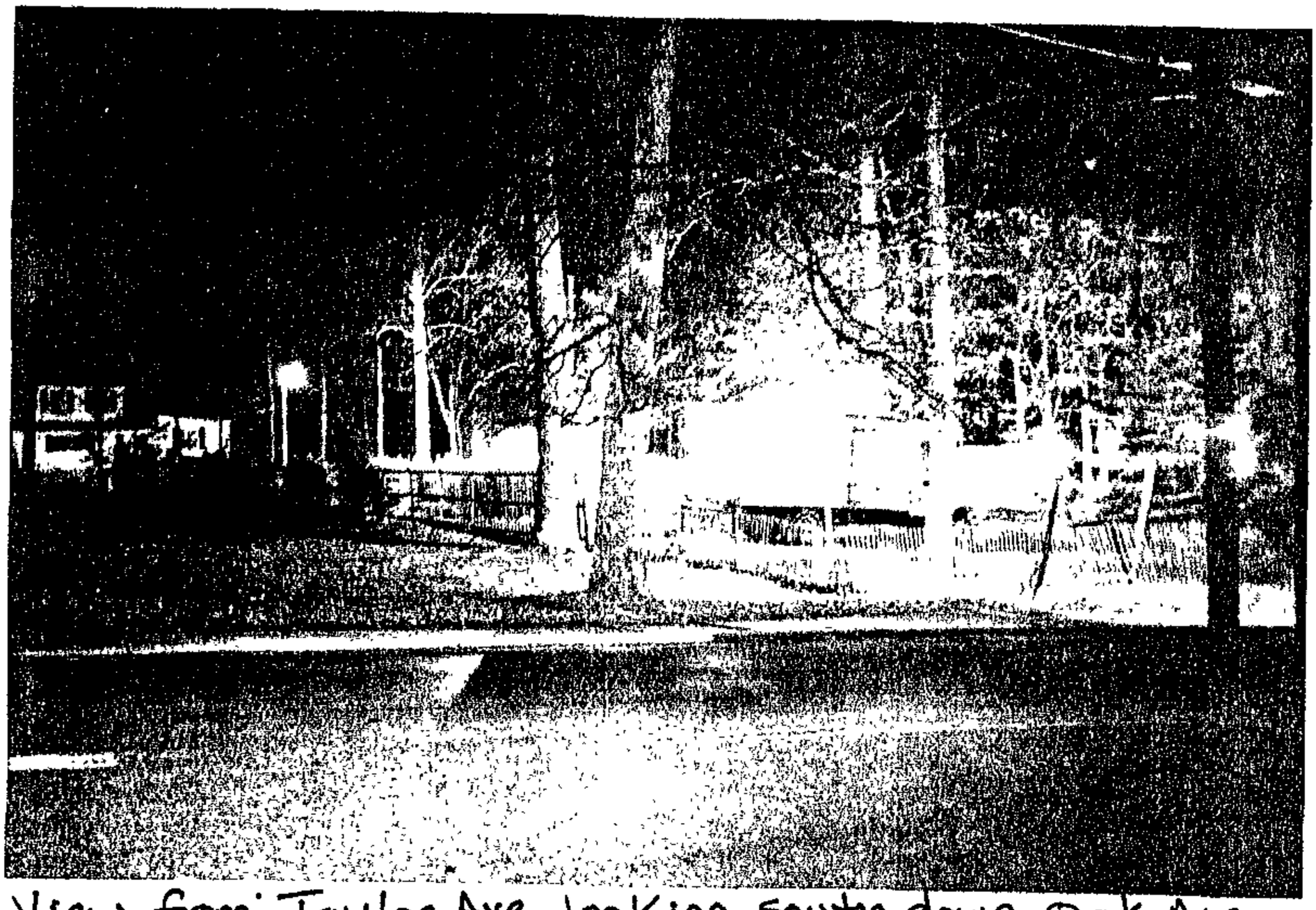
Conditions at Poor Boys

DECEMBER 1998



View from: Taylor Ave. looking southwest towards OLD Harford Rd.

Photo shows: Intense light from Poor Boys.



View from: Taylor Ave. looking south down Oak Ave.

Photo shows: Intense light from Poor Boys shinning in buffer area and on first house on Oak Ave.

Conditions at Poor Boys

CHRISTMAS SEASON 1997

PHOTO TAKEN DECEMBER 1997
VIEW FROM BACKYARD OF THE FIRST HOUSE ON OAK AVENUE LOOKING SOUTHEAST ON BACK OF THE HOUSE
PHOTO SHOWS LIGHT FROM POOR BOYS SHINNING ON THE HOUSE.

PHOTO TAKEN DECEMBER 1997
VIEW FROM THE BACKYARD OF THE FIRST HOUSE ON OAK AVENUE LOOKING NORTHWEST ON POOR BOYS.
PHOTO SHOWS LIGHT SHINNING ON RESIDENTIAL AREA AND INTENSITY OF LIGHT AT POOR BOYS.

Conditions at Poor Boys

CHRISTMAS SEASON 1997

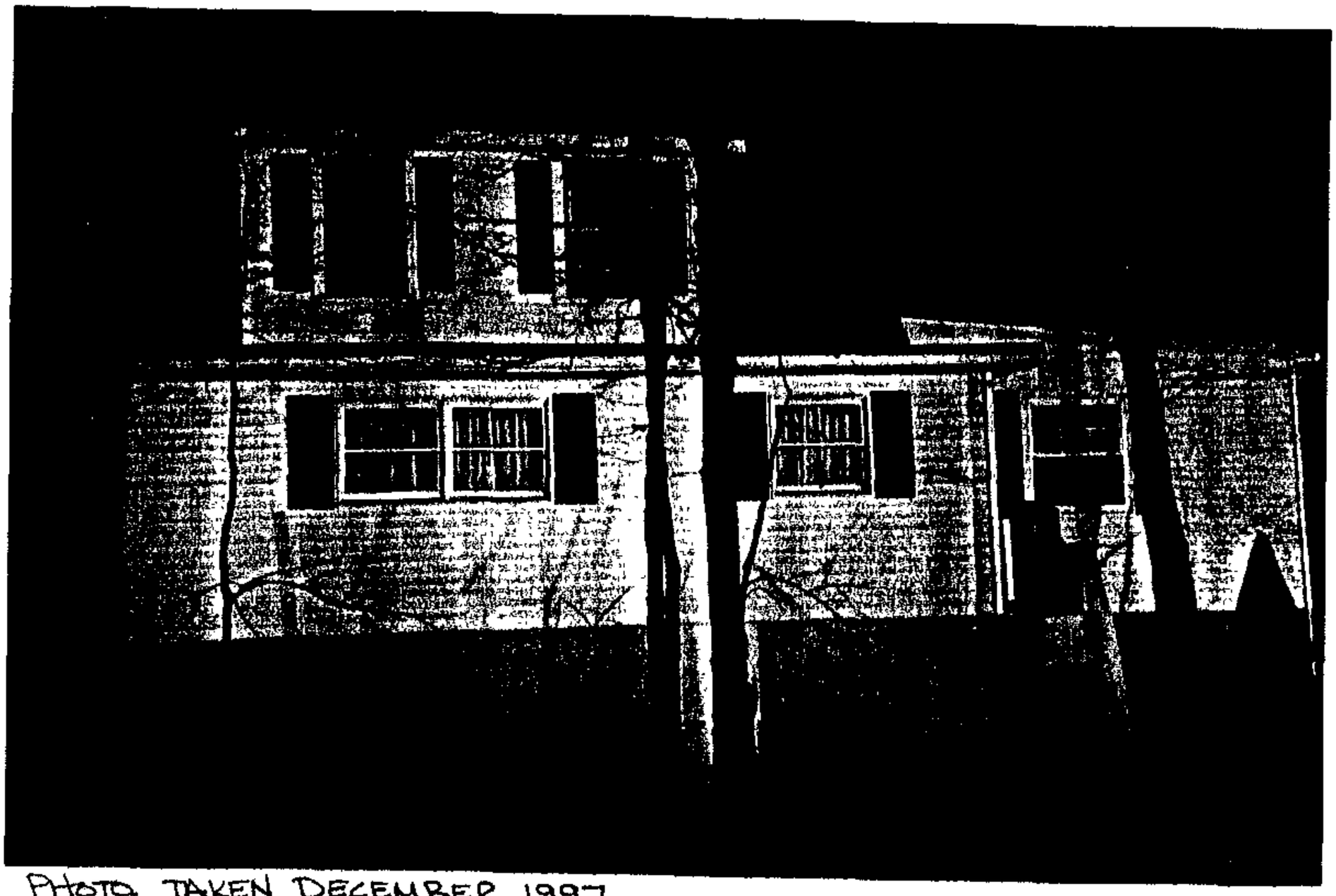


PHOTO TAKEN DECEMBER 1997
VIEW FROM POOR BOYS LANDSCAPE BUFFER AREA LOOKING SOUTH ON THE FIRST HOUSE ON OAK AVENUE.
PHOTO SHOWS LIGHT FROM POOR BOYS SHINNING ON HOUSE

PHOTO TAKEN DECEMBER 1997
VIEW FROM POOR BOYS LANDSCAPE BUFFER AREA LOOKING SOUTHEAST ON THE FIRST HOUSE ON OAK AVENUE
PHOTO SHOWS LIGHT FROM POOR BOYS SHINNING IN THE RESIDENTIAL AREA AND ON THE FIRST & SECOND HOUSE ON OAK AVENUE.

Conditions at Poor Boys

CHRISTMAS SEASON 1997

PHOTO TAKEN DECEMBER 1997
VIEW FROM TAYLOR AVENUE LOOKING SOUTH ON FIRST HOUSE ON OAK AVENUE.
PHOTO SHOWS LIGHT SHINNING IN RESIDENTIAL LANDSCAPE BUFFER AND ON THE FIRST HOUSE ON OAK AVENUE.

PHOTO TAKEN DECEMBER 1997
VIEW FROM OAK AVENUE (LANDSCAPE BUFFER AREA) LOOKING WEST ON POOR BOYS
PHOTO SHOWS INTENSITY OF LIGHT FROM POOR BOYS.

Conditions at Pool Boys

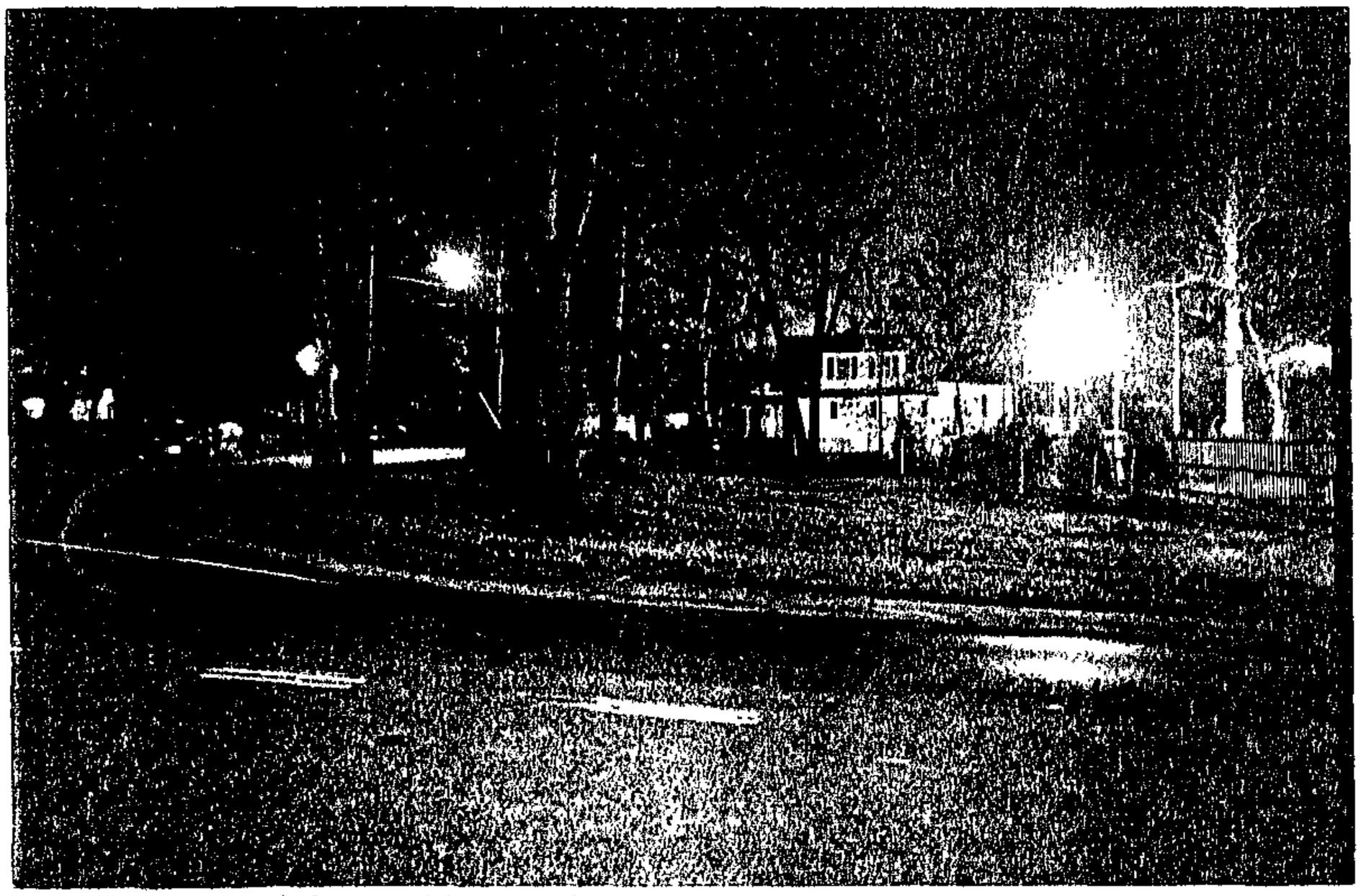


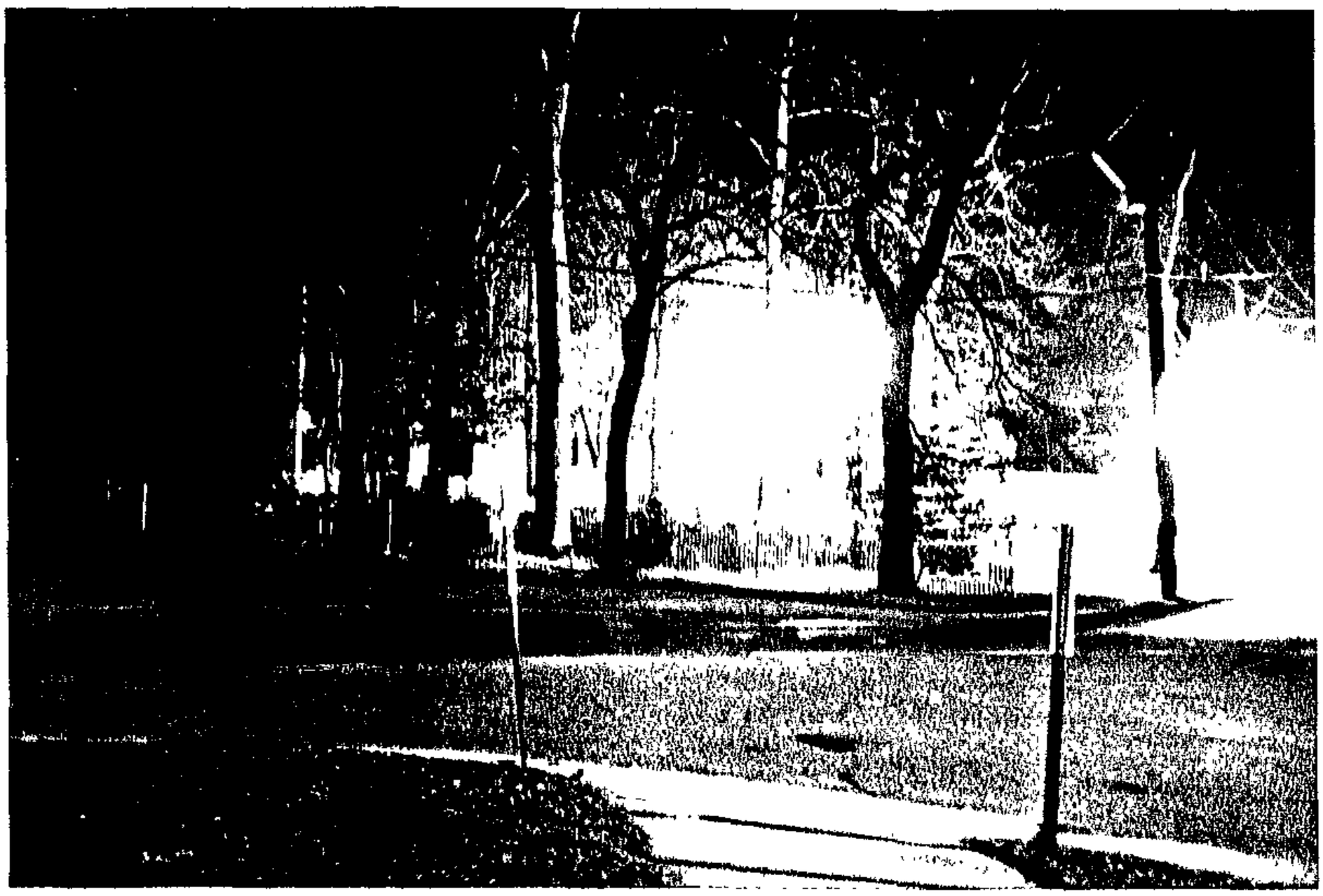
PHOTO TAKEN DECEMBER 1997
VIEW FROM TAYLOR AVENUE LOOKING SOUTH ON FIRST UNDED OF OAK AVENUE.
PHOTO SHOWS LIGHT SPILLING ON RESIDENTIAL PROPERTY. POOL BOYS ON THE FIRST HOUSE ON OAK AVENUE.

PHOTO TAKEN DECEMBER, 1997
VIEW FROM OAK AVENUE (LANDSCAPE [illegible] POOL BOYS
PHOTO SHOWS INTENSITY OF LIGHT SPILL [illegible]

B

LIGHTING CONDITIONS AT POOR BOYS
FALL 1997

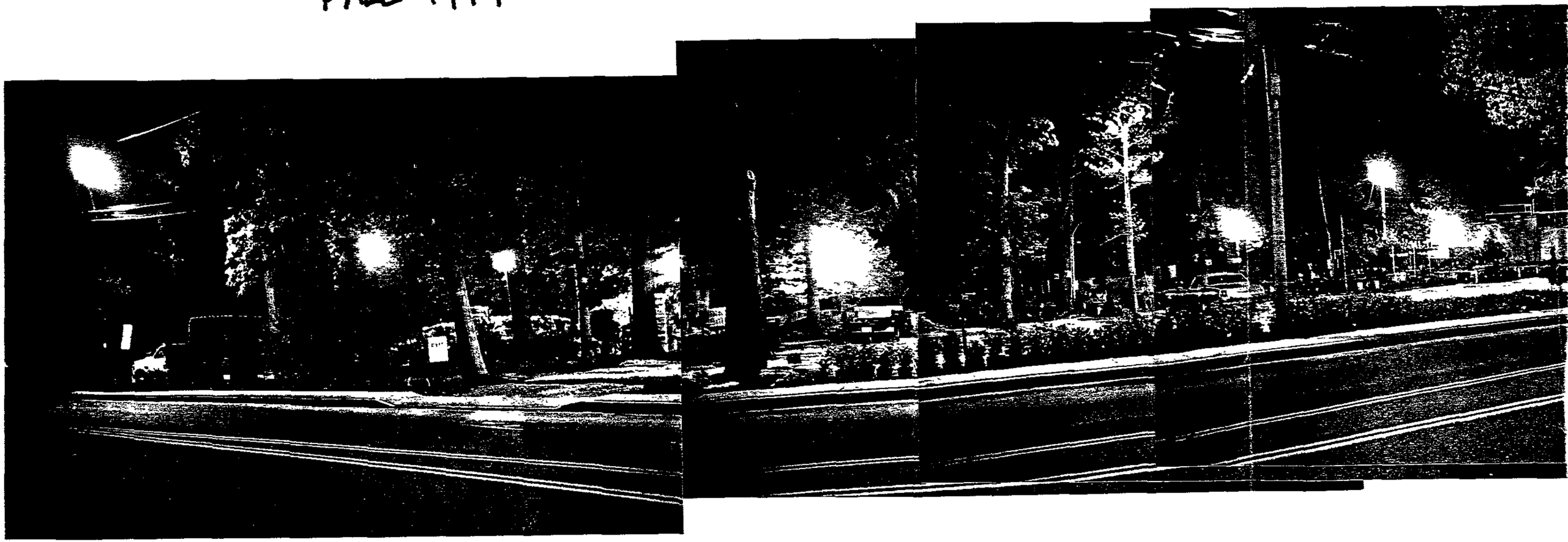
VIEW OF POOR BOYS LOOKING SOUTH ON TAYLOR AVENUE FROM THE PARKVILLE PARK



CA Aug Fall '97

ATTACHMENT D(2)

LIGHTING CONDITIONS AT POOR BOYS
FALL 1997

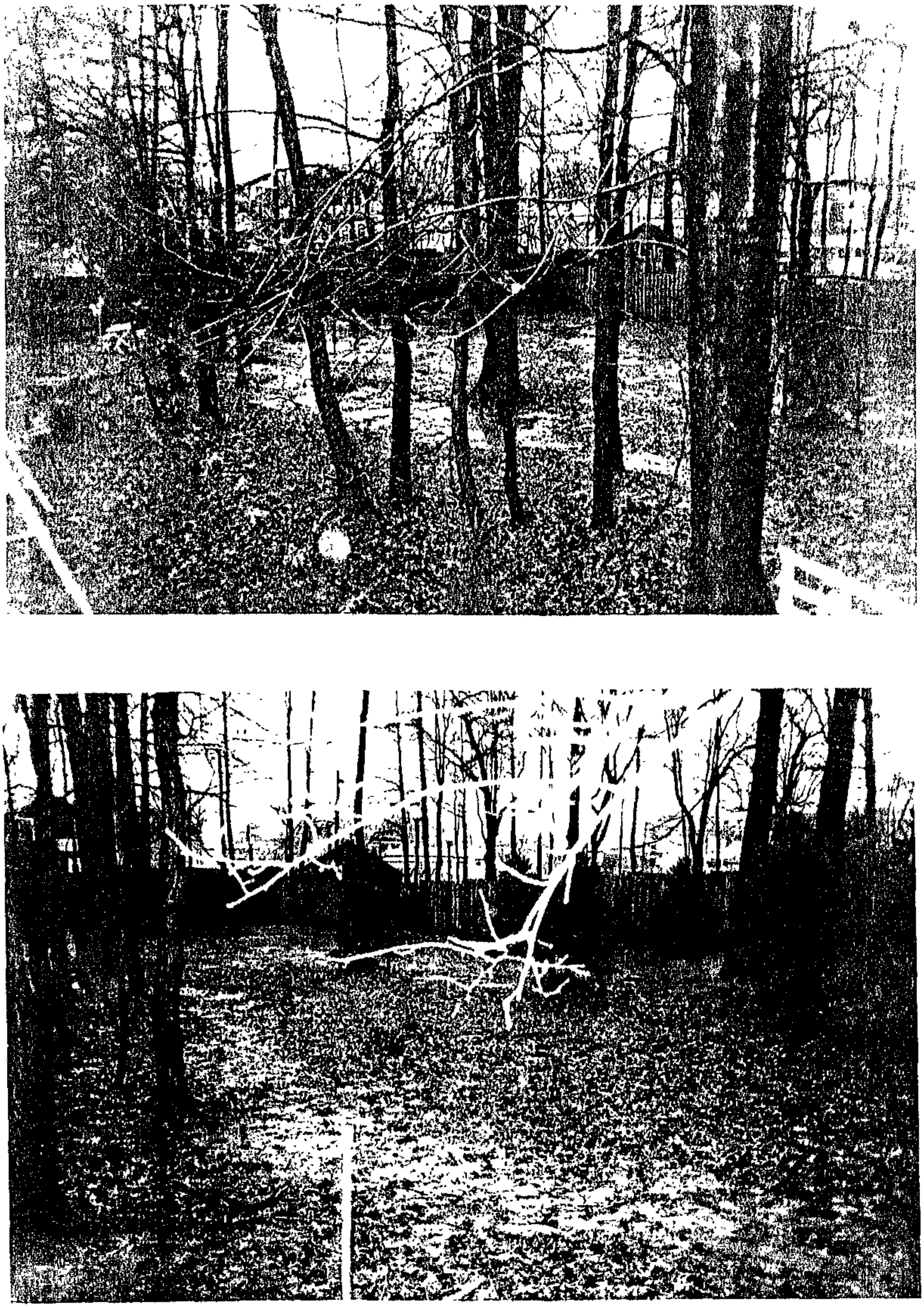


VIEW OF POOR BOYS LOOKING SOUTH ON TAYLOR AVENUE.

VIEW OF POOR BOYS LANDSCAPE BOFFER AREA & SURROUNDING PROPERTY FLOODING.

VIEW OF SURROUNDING PROPERTIES FLOODING

↕ VIEW OF POOR BOYS LANDSCAPE BUFFER AREA & FIRST PROPERTY ON OAK AVENUE PHOTO SHOWS FLOODING CAUSED BY POOR BOYS FILLING ACTIVITIES.



Conditions at Poor Boys Dec. 1998

A.

A. View from: Taylor Ave. looking South.

Photo shows: Poor Boys storage area with trucks and trailer. Bags of soil behind truck are on display. Customers may walk through storage area.

Landscaping along Taylor Ave. is missing.

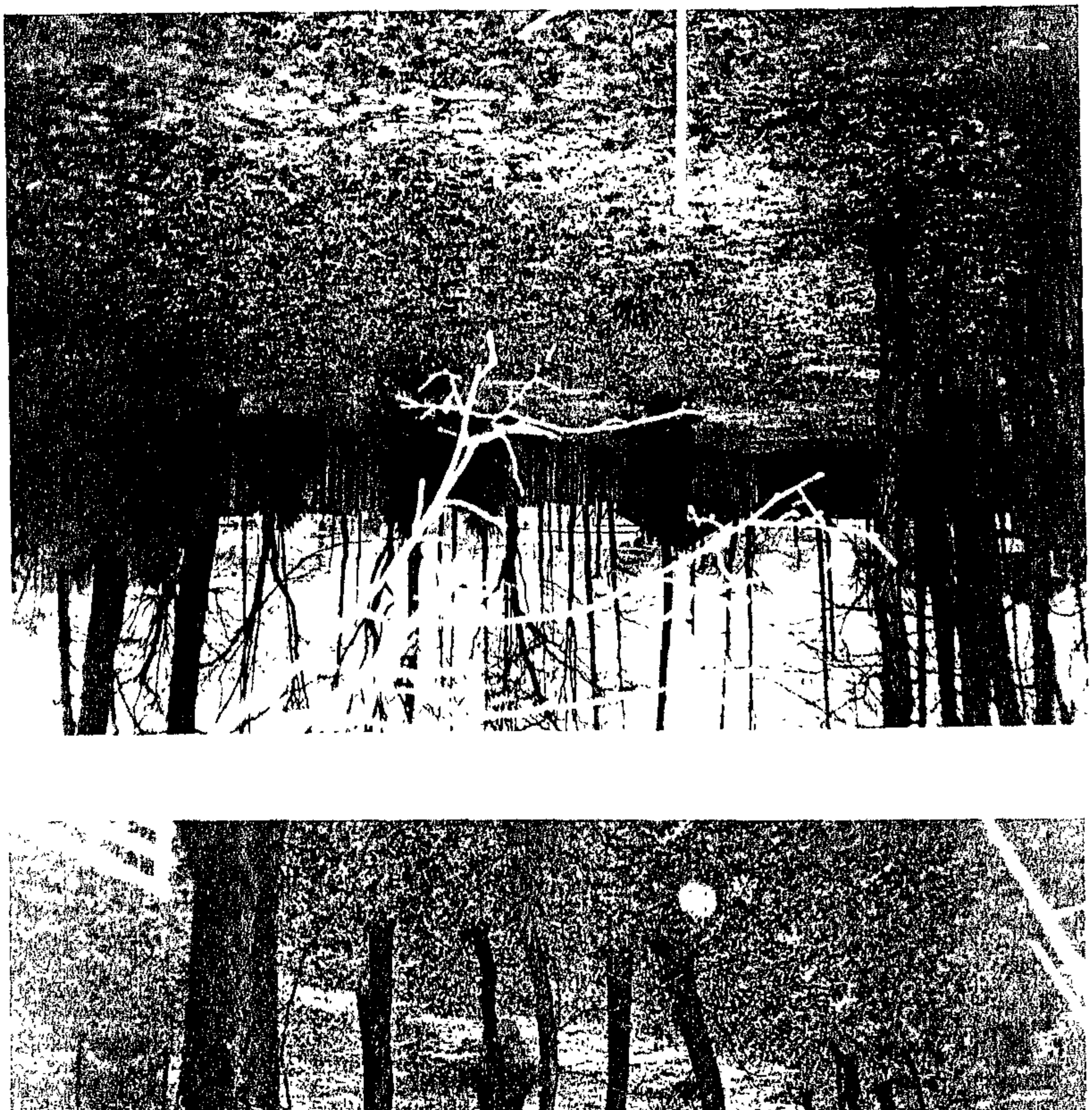
B. View from: Taylor Ave. looking south

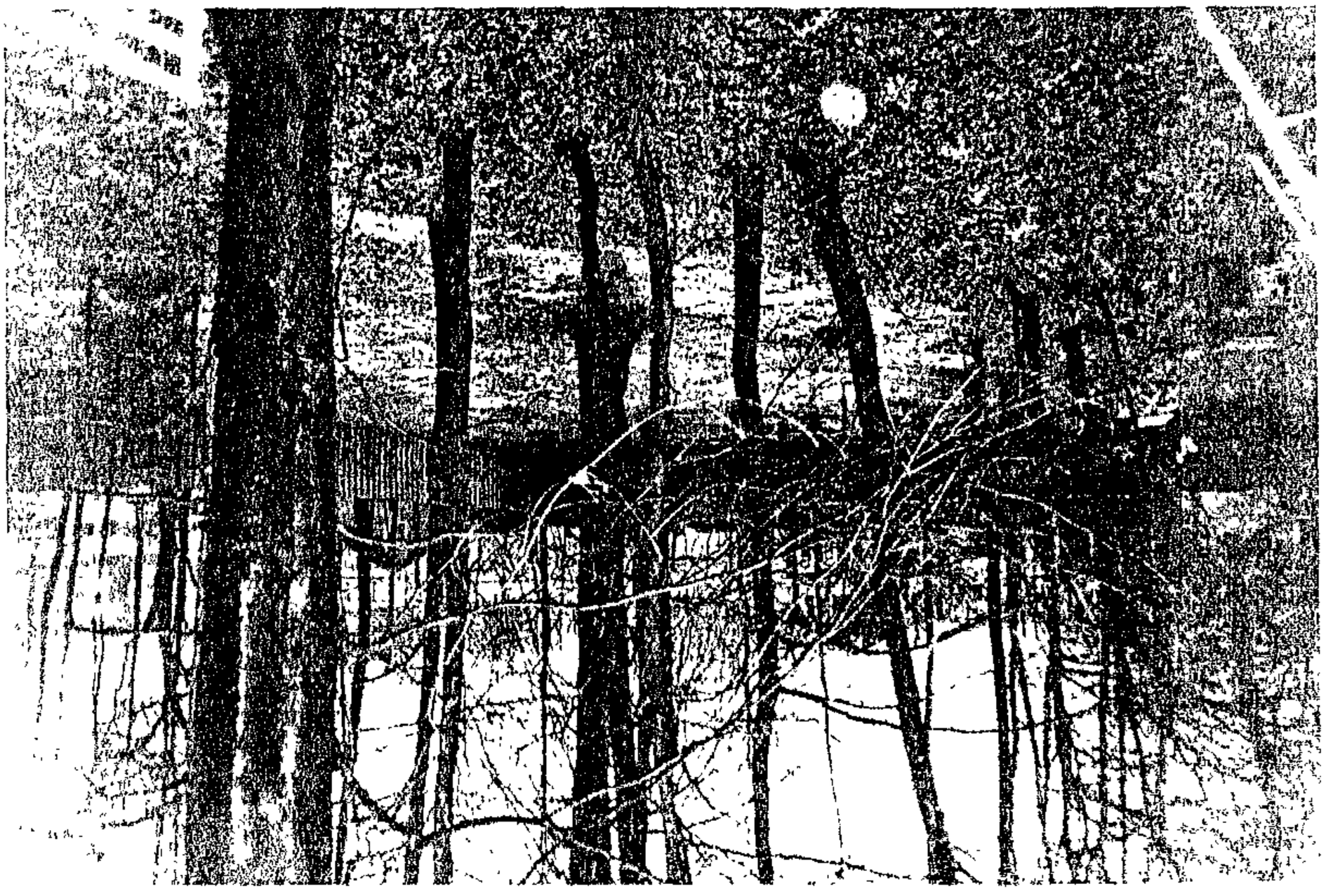
Photo shows: Cynder blocks & other storage items Compacting soil near large oak trees

Pink sign states: "All Soils ½ price" encouraging Customers to shop in storage area.

C. Views from: Taylor Ave looking South.

Photo Shows: Poor Boys storage area. At this time the store is closed (8:00 am)





CANDIDATE'S FOOD PANTRY

SPRING 1994

EXH

PHOTO TAKEN FROM TAYLOR AVENUE LOOKING SOUTHWEST AT POORBOYS PARKING LOT.

PHOTO SHOWS PILES OF MULCH BEING SPREAD IN DISPLAY/STORAGE AREA

EXH

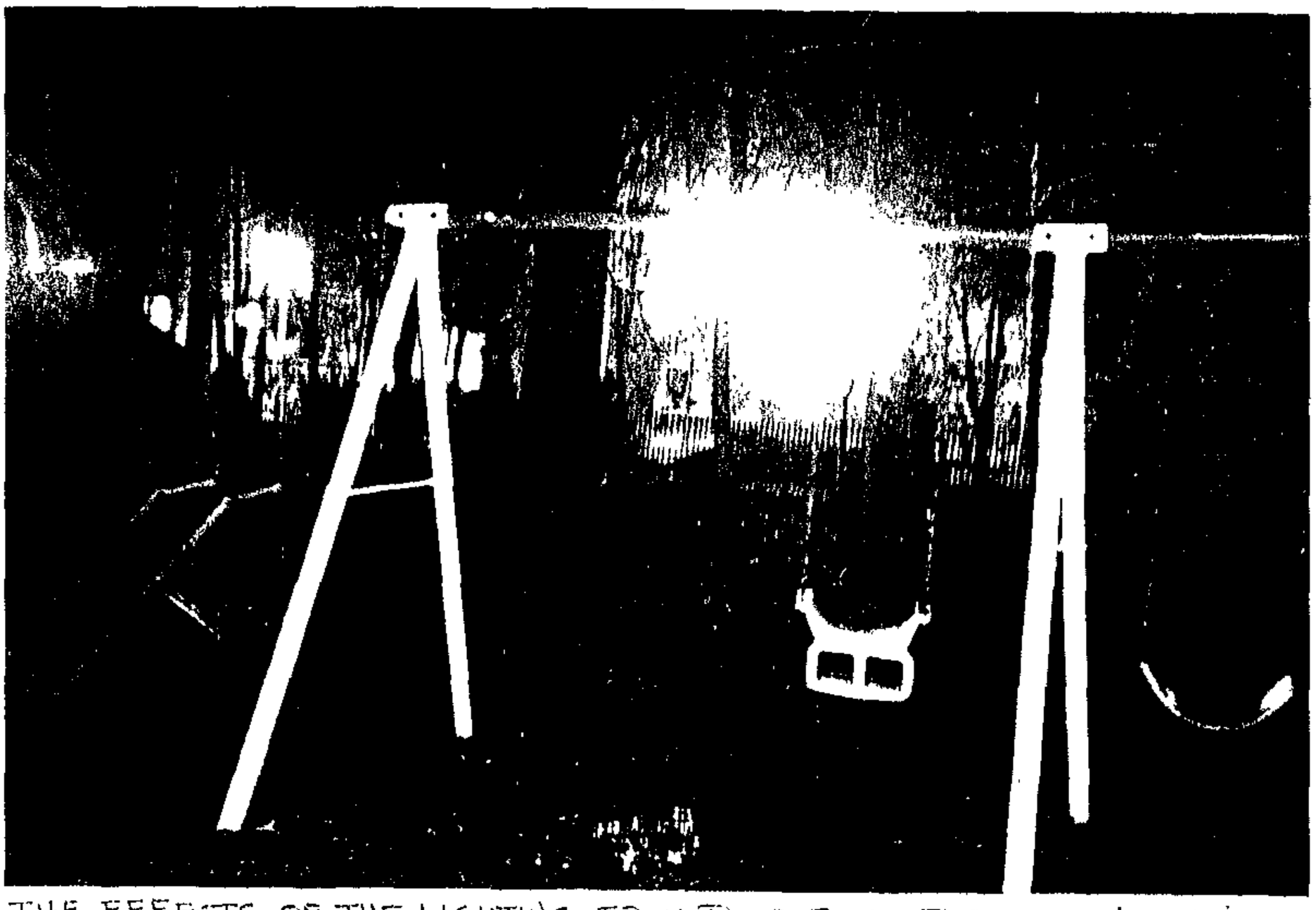
PHOTO SAME AS ABOVE

ATTACHMENT 1. (2.)

LIGHTING CONDITIONS

Lighting @ Sept. 9 pm

REFLECTION OF POOR BOYS LIGHTS ON FIRST HOUSE ON OAK AVENUE.



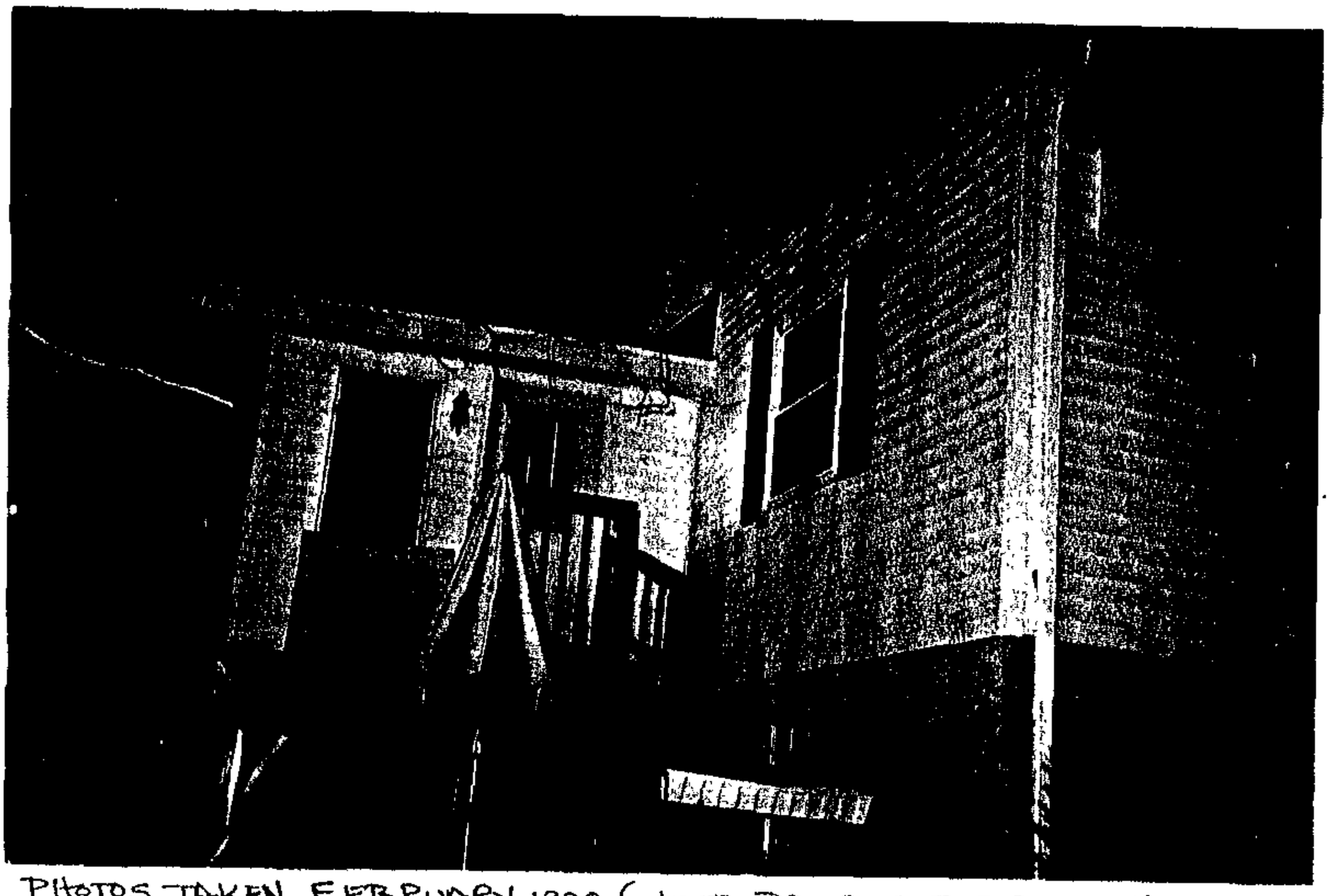
THE EFFECTS OF THE LIGHTING FROM POOR BOYS EXPANSION ON THE BACKYARD OF THE FIRST HOUSE ON OAK AVENUE.

Conditions at Poor Boys
DECEMBER 1998

View from: Taylor Ave. looking southwest towards Old Hartford Rd.
Photo shows: the use of string type lighting which is prohibited according to Poor Boys Variance conditions

Conditions at Poor Boys

FEBRUARY 1998



PHOTOS TAKEN FEBRUARY 1998 (JUST PRIOR TO FEBRUARY 11, 1998 HEARING WHICH WAS POSTPONED.)

VIEW TAKEN FROM THE BACKYARD OF THE FIRST HOUSE ON OAK AVENUE (SOUTH OF POOR BOYS)
LOOKING EAST ON TO THE BACK OF THE HOUSE.
PHOTO SHOWS LIGHT FROM POOR BOYS ON HOUSE & BACKYARD

CONTAMINATED AT 1000 FT.
SPRING 1999

PHOTO TAKEN FROM BUFFER AREA LOOKING SOUTH ON FIRST HOUSE ON OAK AVE.
PHOTO SHOWS LIGHT SHINNING ON HOUSE.

PHOTO TAKEN FROM BUFFER AREA LOOKING SOUTHEAST ON FIRST HOUSE ON OAK AVE.
PHOTO SHOWS LIGHT SHINNING ON HOUSE

CONDITIONS AT POOR BOYS
SPRING 1999

PHOTO TAKEN FROM BUFFER AREA LOOKING NORTH TO TAYLOR AVE.
PHOTO SHOWS FENCE LEANING OVER.
FENCE IS A CHEAPER QUALITY THAN REQUIRED.

7/14

PHOTO EX #2

PHOTO TAKEN FROM OAK AVENUE LOOKING WEST AT POOR BOYS PARKING LOT
PHOTO SHOWS FENCE LEANING AND NO LANDSCAPING.
THAT WOULD PROVIDE SCREENING TO RESIDENTS ON OAK & TAYLOR AVES.

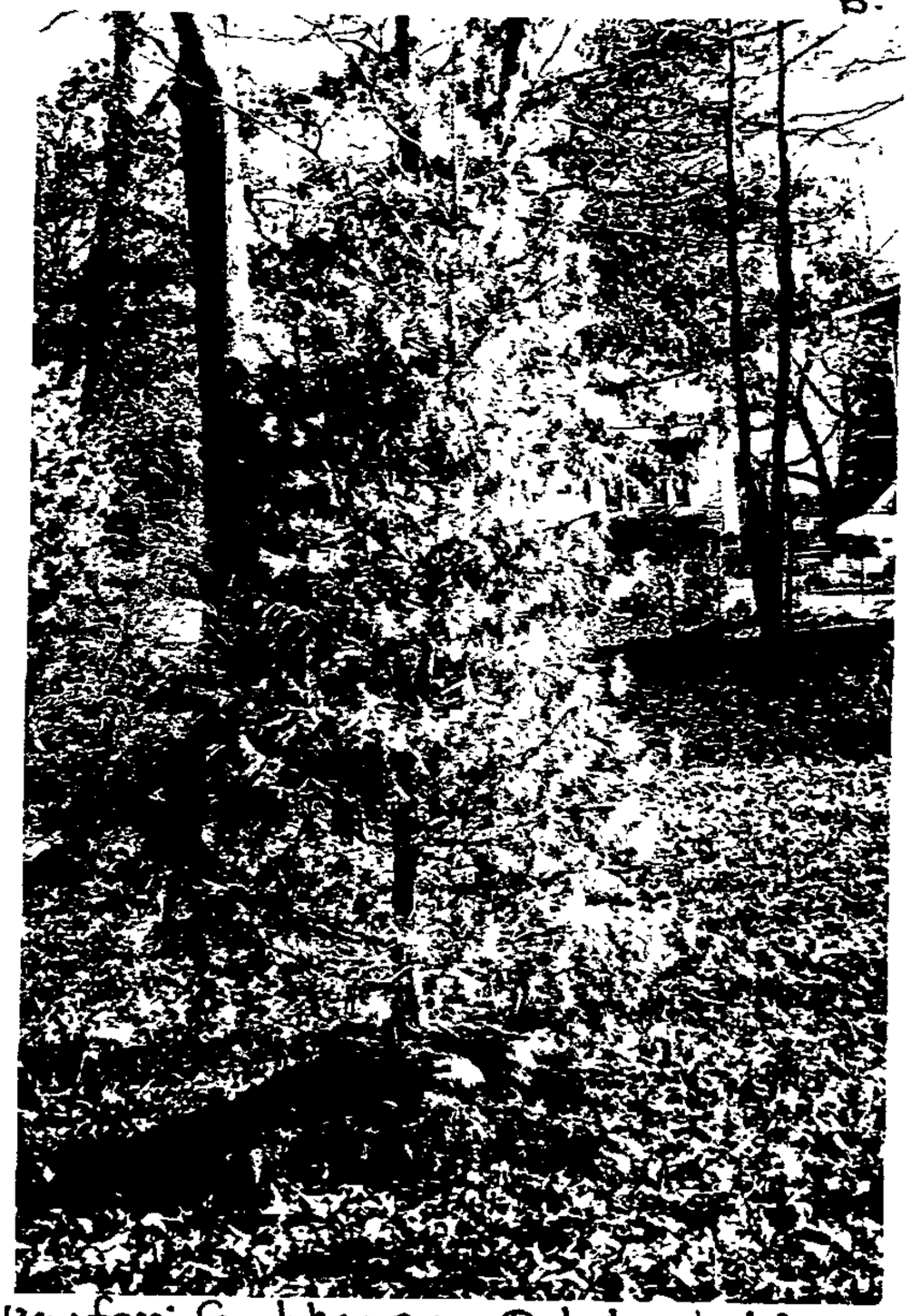
CONDITIONS AT POOR BOY'S
SPRING 1999

Ex 3/5

PHOTO TAKEN FROM BACKYARD OF FIRST HOUSE ON OAK AVE.
LOOKING NORTH TO POOR BOYS (TAYLOR AVE)
PHOTO SHOWS WHERE LANDSCAPE SCREENING IS MISSING

PHOTO TAKEN FROM FIRST HOUSE ON OAK AVE LOOKING NORTH TOWARDS
AT POOR BOYS
PHOTO SHOWS WHERE LANDSCAPE SCREENING IS MISSING

Conditions at Poor Boys
DECEMBER 1998



B.

A.

C.

A. View from first house on Oak Ave looking northeast towards Taylor Ave.

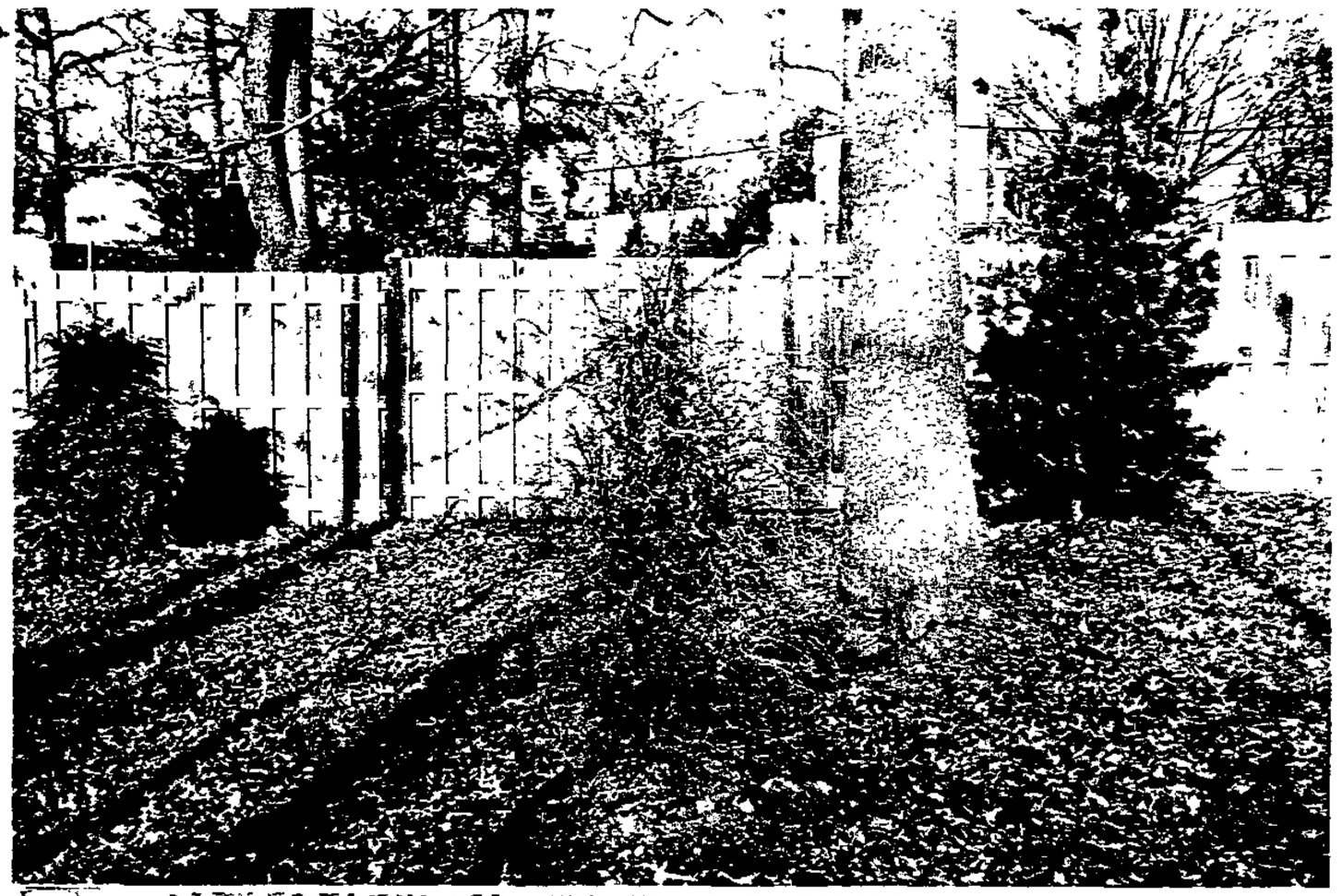
B. & C. Photo shows: tree not planted correctly. It is sitting on top of the ground tied in burlap bags. This has caused the tree to die.

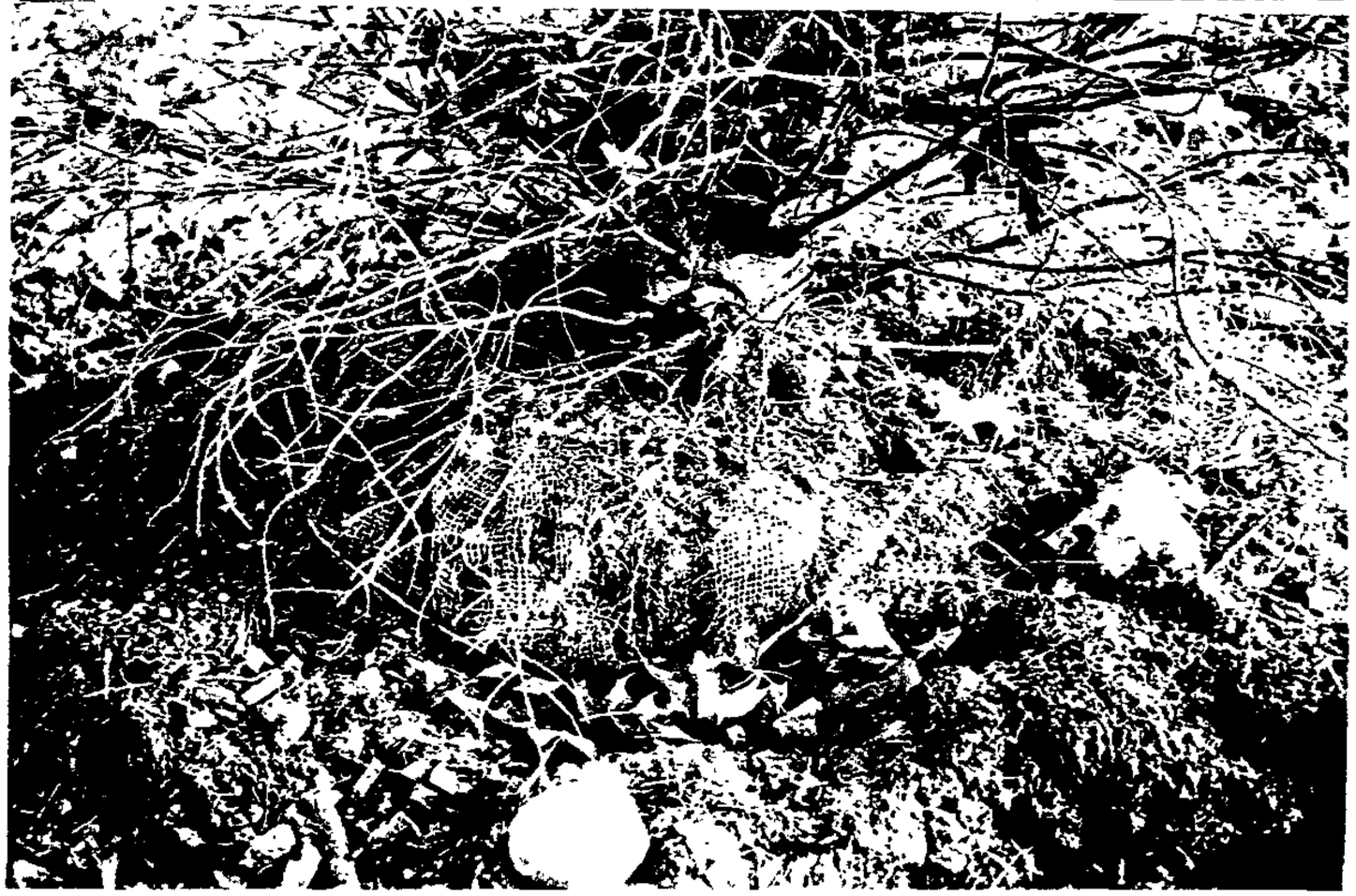
Note: leaves are not raked.

Conditions at Poor Boys
DECEMBER 1998

A.

B.

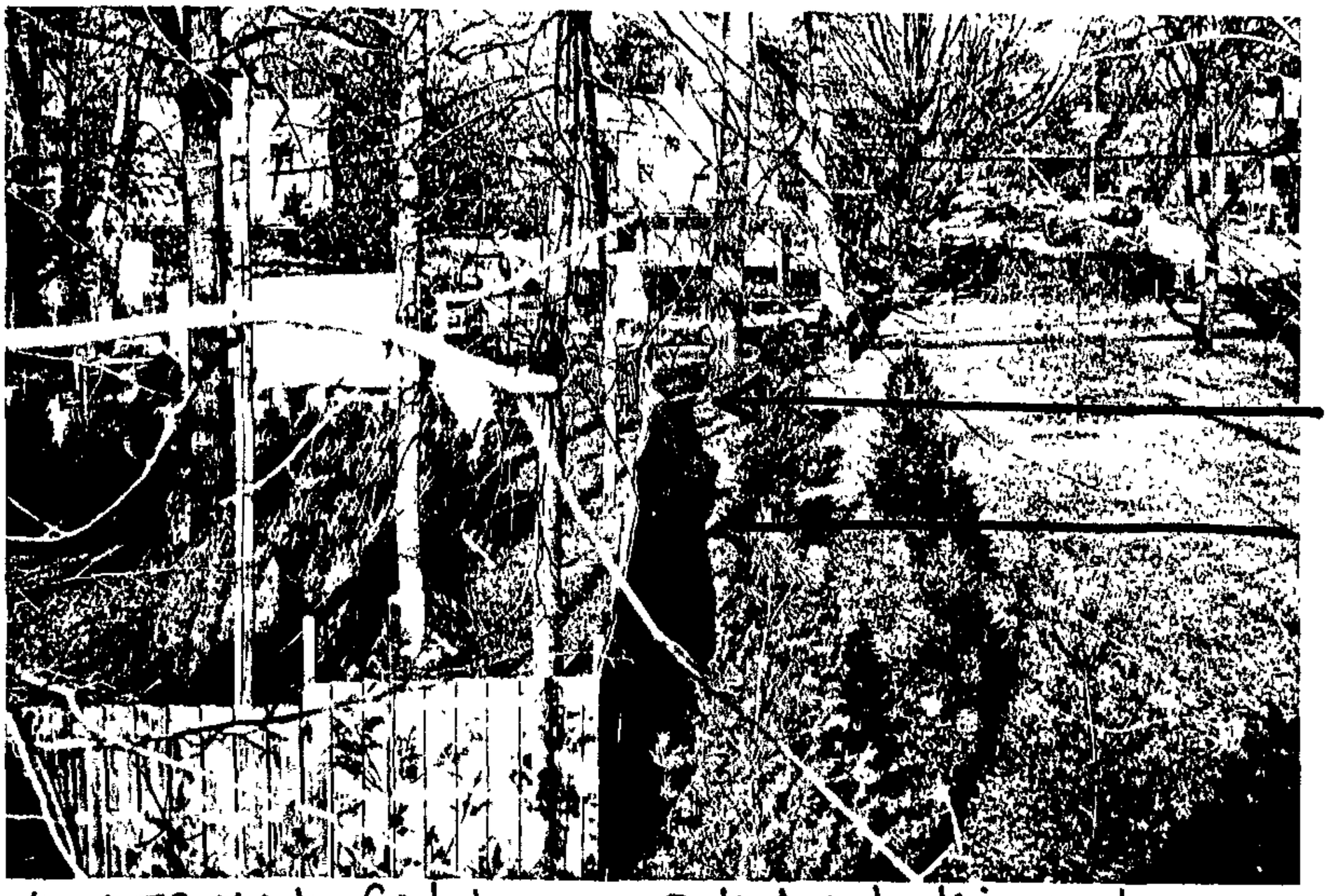




C.

A., B., & C.
View from: buffer area (south of Poor Boys) looking north towards Taylor Ave.
Photo shows: Required screening consists of dead landscaping. This tree was a Christmas tree with tag still on it. It was not planted correctly (still in burlap bag) causing it to die.

Conditions at Poor Boys
DECEMBER 1998



VIEW FROM: the first house on Oak Ave. looking north towards Taylor Ave.

Photo shows: Fence leaning to one side (flimsy) This is not the quality of fence required

View from: the backyard of the first house on Oak Ave looking north towards Taylor Ave.

Photo shows: Missing landscaping and lack of screening in buffer area.

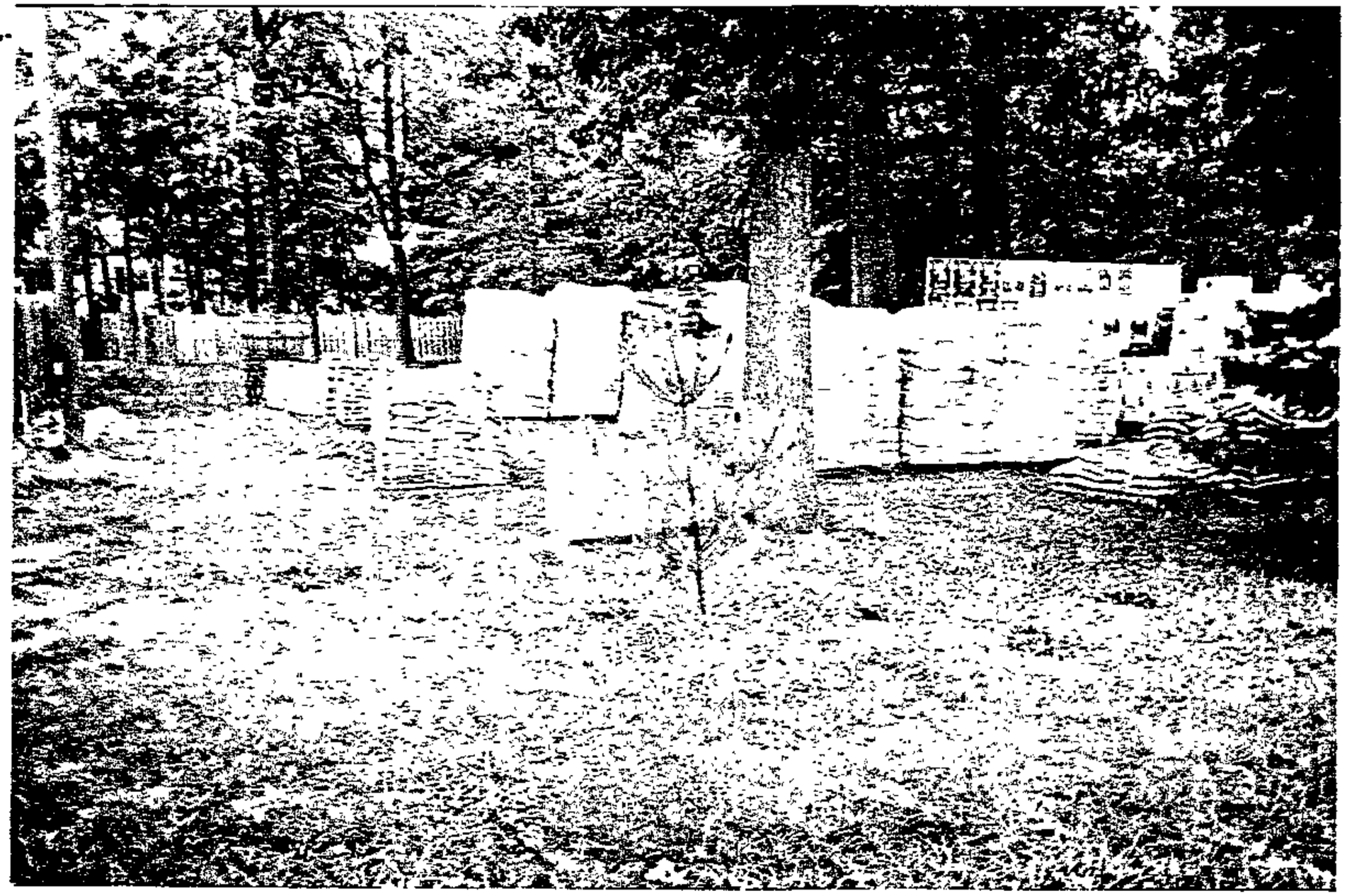
Conditions at Poor Boys
Summer 1998

A. View from Taylor Ave. looking South.
Photo shows: missing landscaping along Taylor Ave.

B. View from: buffer area looking north to Taylor Ave
Photo shows: Tree not planted correctly (still in burlap bag). Grass needs to be cut.

C. View from: buffer area looking east towards Oak Ave.
Photo shows: [illegible]

A.



C.

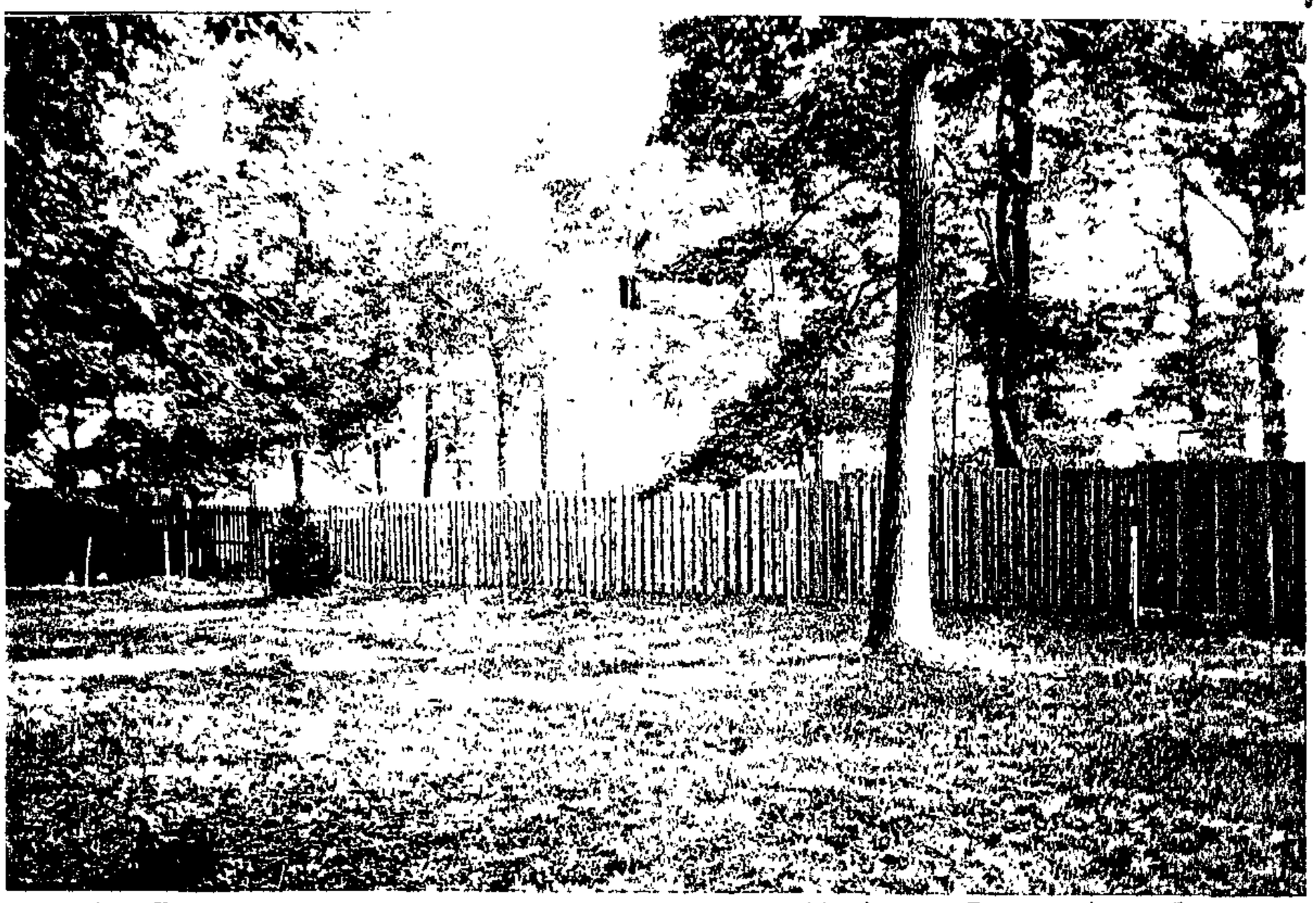
Conditions at Poor Boys
Fall 1997
View from: buffer area (south of Poor Boys) looking south.
Photo shows: Required screening is not planted correctly and will cause tree to die. Tree sits on top of the ground tied in burlap bag. Mulch is put over bag so that the tree appears to be planted.

Pet Ex 216

ATTACHMENT 6.

FALL 1997

FENCE AND LANDSCAPE CONDITIONS AT POOR BOYS



VIEW OF FENCE PARELL TO FIRST HOUSE ON OAK AVENUE. ONLY ONE TREE IS ALIVE, LANDSCAPING ACCORDING TO AVERY HARDEN'S LETTER NEEDS TO BE COMPLETED.

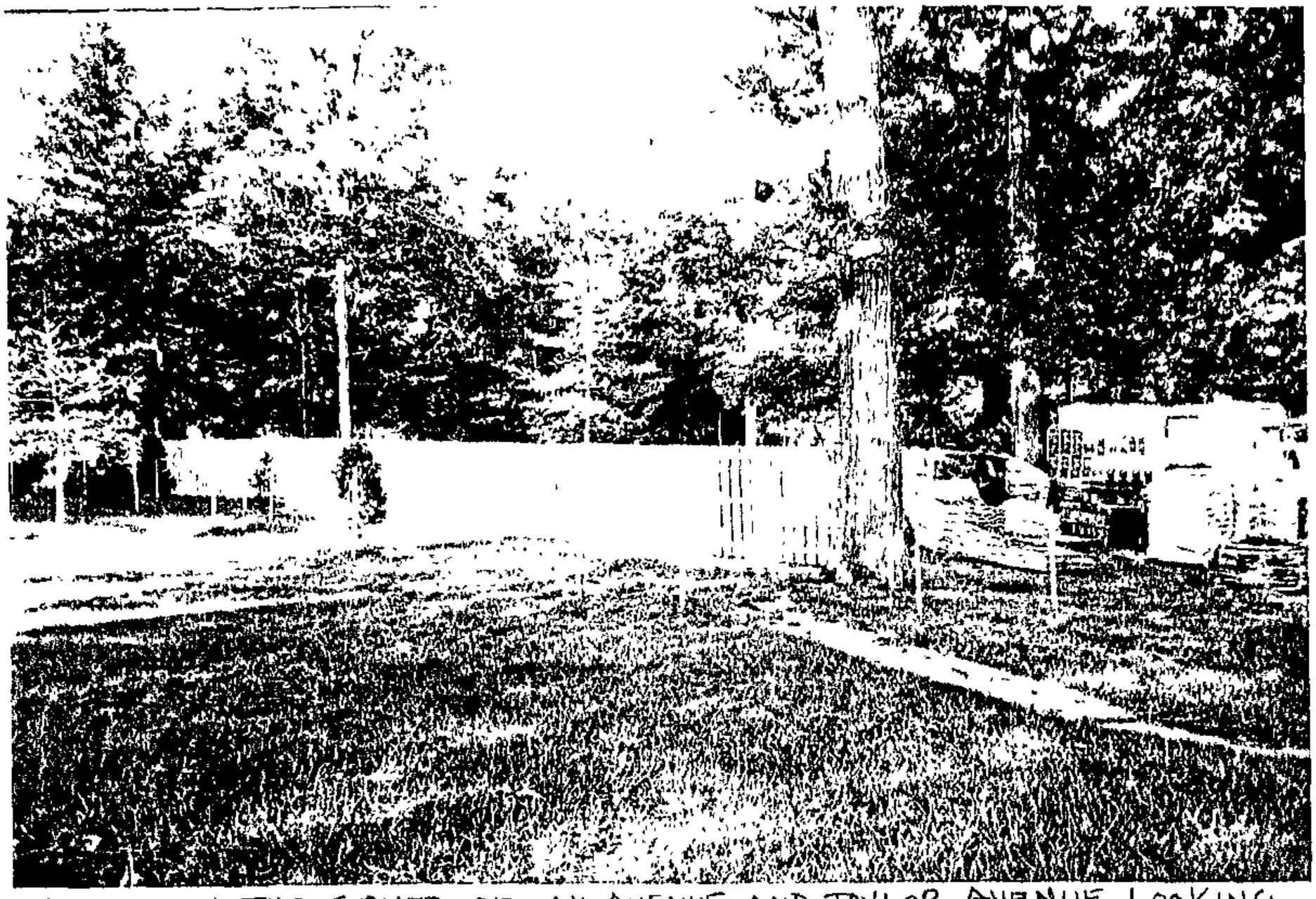
VIEW FROM OAK AVENUE LOOKING WEST AT END OF FENCE, STORAGE OF PRODUCTS BEYOND FENCE - INCOMPLETE LANDSCAPING

Prot Ex 21 H

ATTACHMENT 6.

FALL 1997

FENCE AND LANDSCAPE CONDITIONS AT POOR BOYS



VIEW FROM THE CORNER OF OAK AVENUE AND TAYLOR AVENUE LOOKING SOUTH - SELLING PRODUCT EXTENDS FURTHER THAN FENCE.

VIEW FROM TAYLOR AVENUE LOOKING SOUTH - PRODUCT PILED AS HIGH AS ONE STORY.

Prot Ex 21 I

CONDITIONS AT POOR BOYS
SPRING 1999

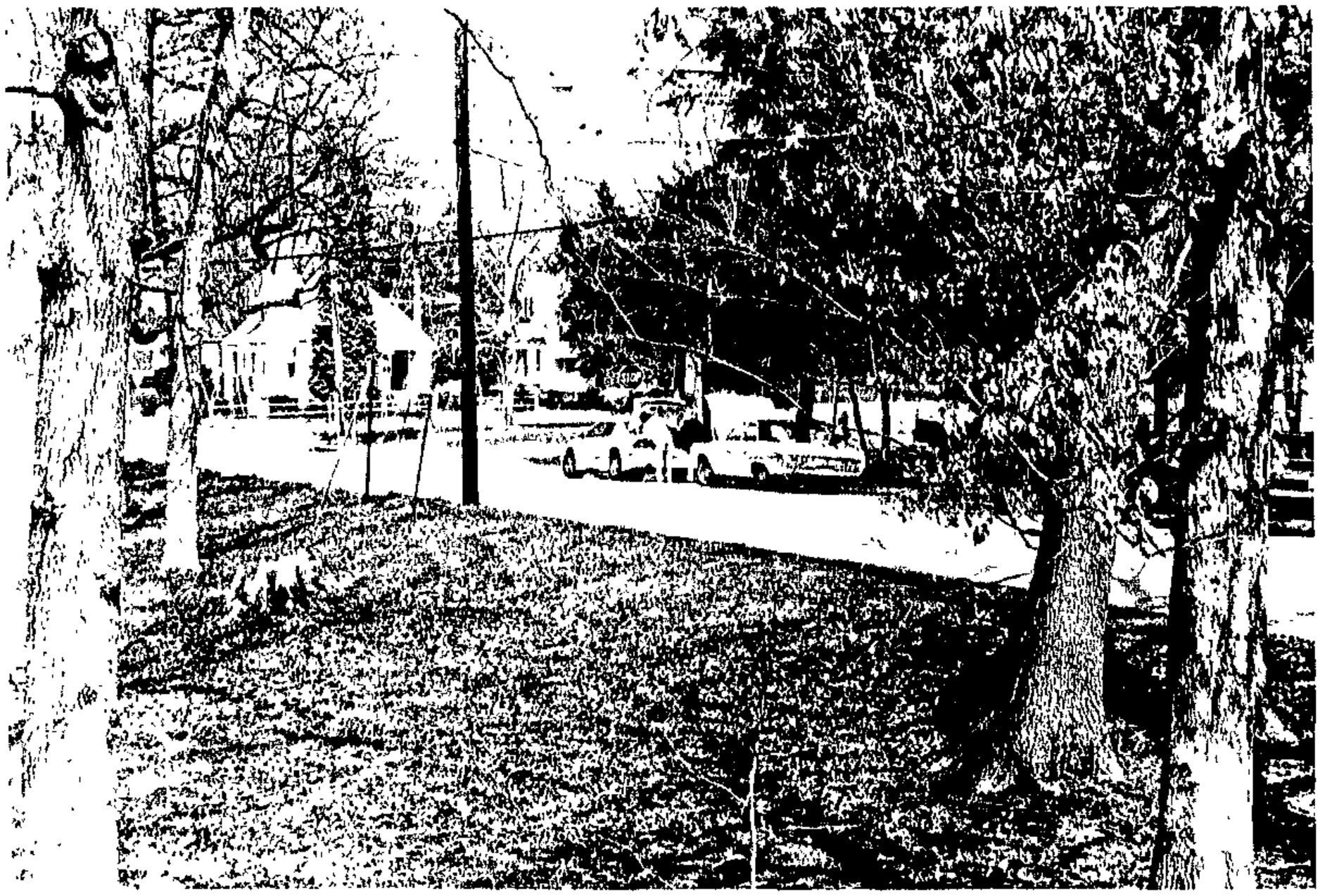


PHOTO TAKEN FROM OAK AVENUE LOOKING NORTHEAST TO TAYLOR AVE.
PHOTO SHOWS CUSTOMERS FROM POOR BOYS PARKING ON
OAK AVENUE (RESIDENTIAL STREET)

PHOTO SHOWS SAME AS ABOVE.

CONDITIONS AT POOR BOYS
SPRING 1999

PHOTO TAKEN FROM TAYLOR & OAK AVENUES LOOKING EAST
PHOTO SHOWS POOR BOYS CUSTOMERS PARKING ON TAYLOR AVENUE
(OVERFLOW PARKING IN RESIDENTIAL AREA)

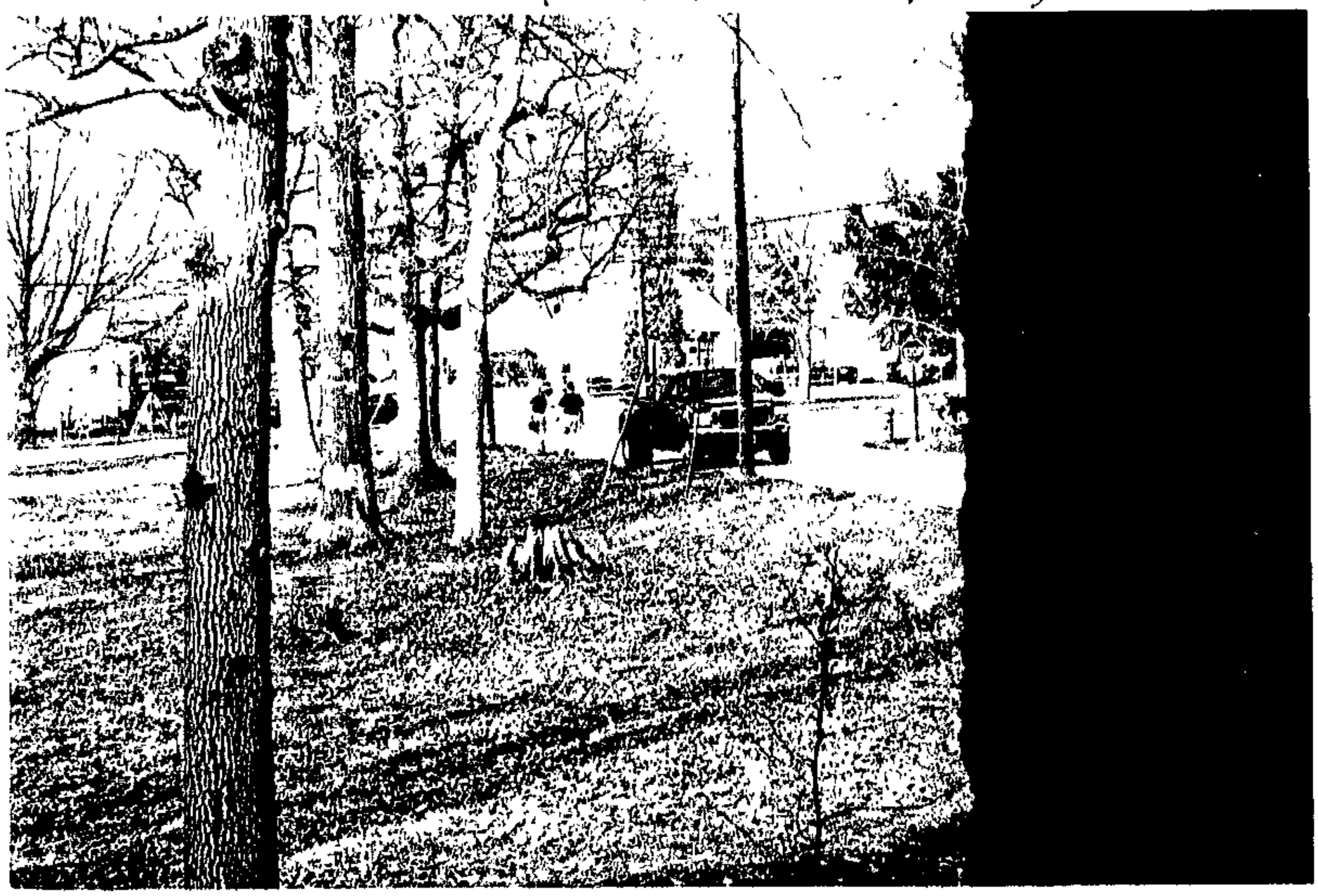


PHOTO SHOWS SAME AS ABOVE
(EXCEPT ON OAK AVENUE)

CONDITIONS AT POOR BOYS
SPRING 1999

PHOTO TAKEN FROM TAYLOR AVENUE LOOKING SOUTH EAST AT POOR BOYS PARKING LOT
PHOTO SHOWS CARS & TRUCKS PARKED OFF OF PAVED AREA ON DIRT. (SHOWS NEED FOR VARIANCE)

PHOTO TAKEN FROM TAYLOR AVE. LOOKING SOUTHWEST AT POOR BOYS PARKING LOT
PHOTO SHOWS CARS & TRUCKS OFF OF PARKED THE PAVED AREA ON THE DIRT.

CONDITIONS AT 'POOR BOYS'
SPRING 1999

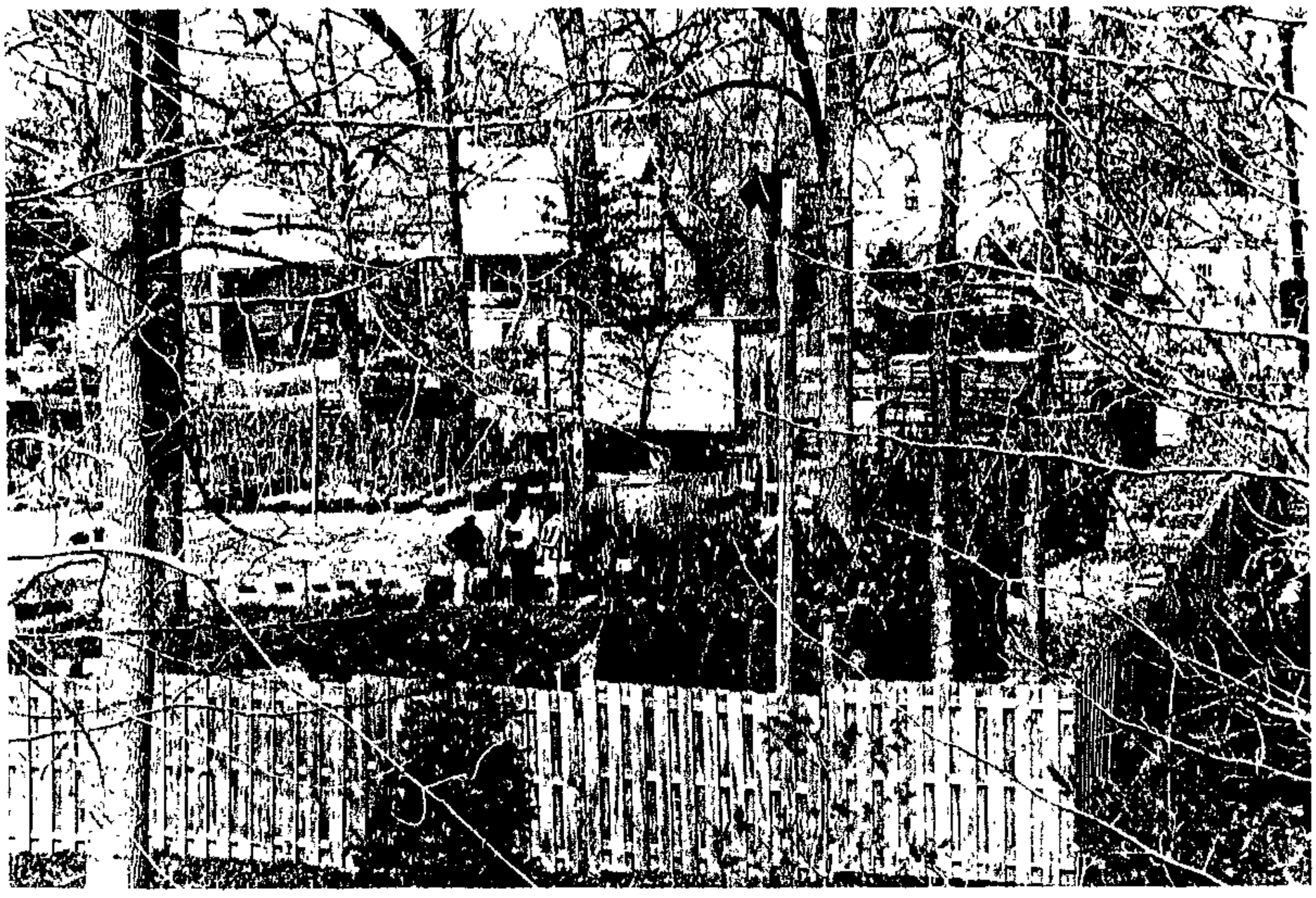


PHOTO TAKEN FROM FIRST HOUSE ON OAK AVE. LOOKING NORTH TO TAYLOR AVE.
PHOTO SHOWS STORAGE (SHOWN ON PLAN) BEING USED AS A DISPLAY (SALES) AREA

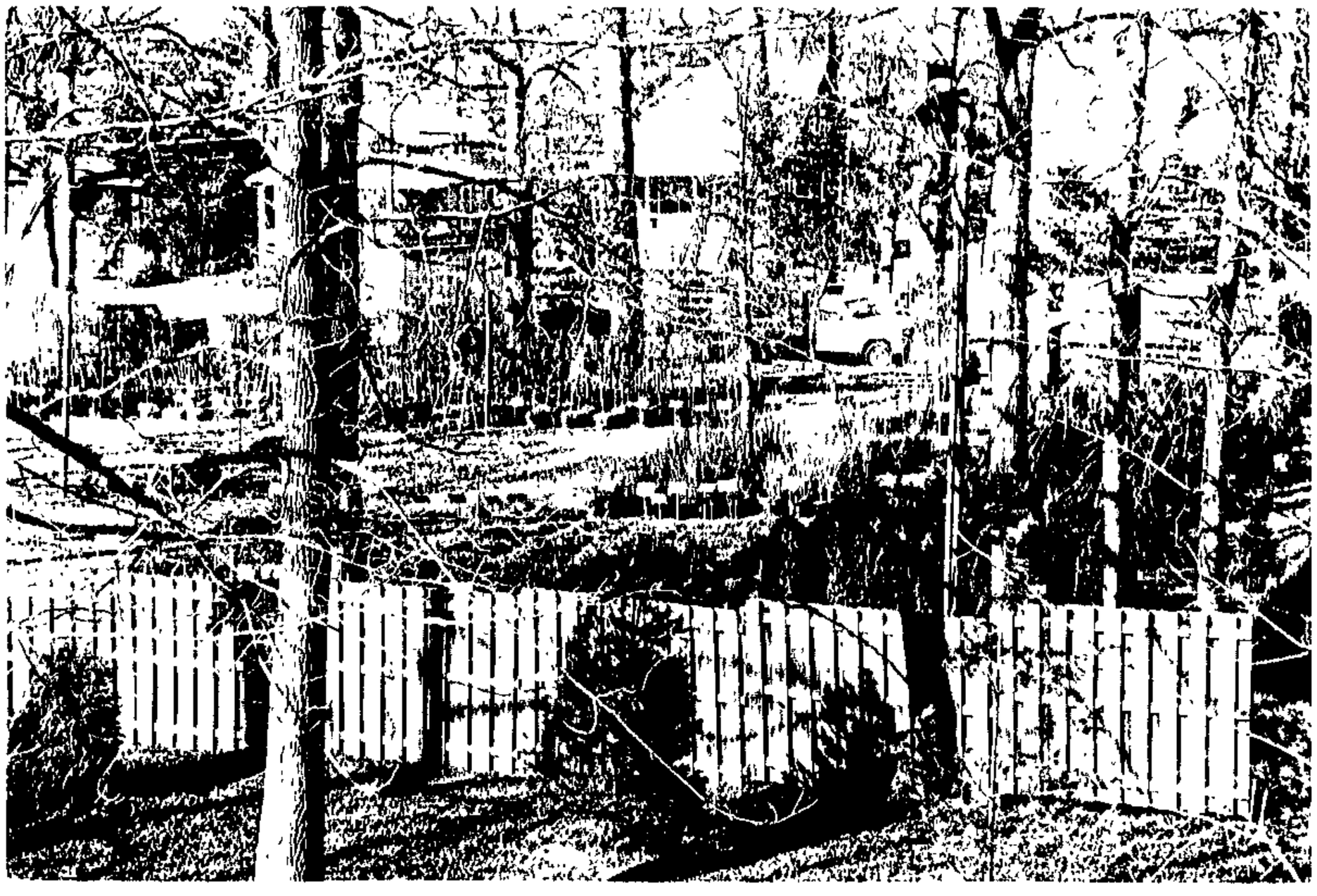


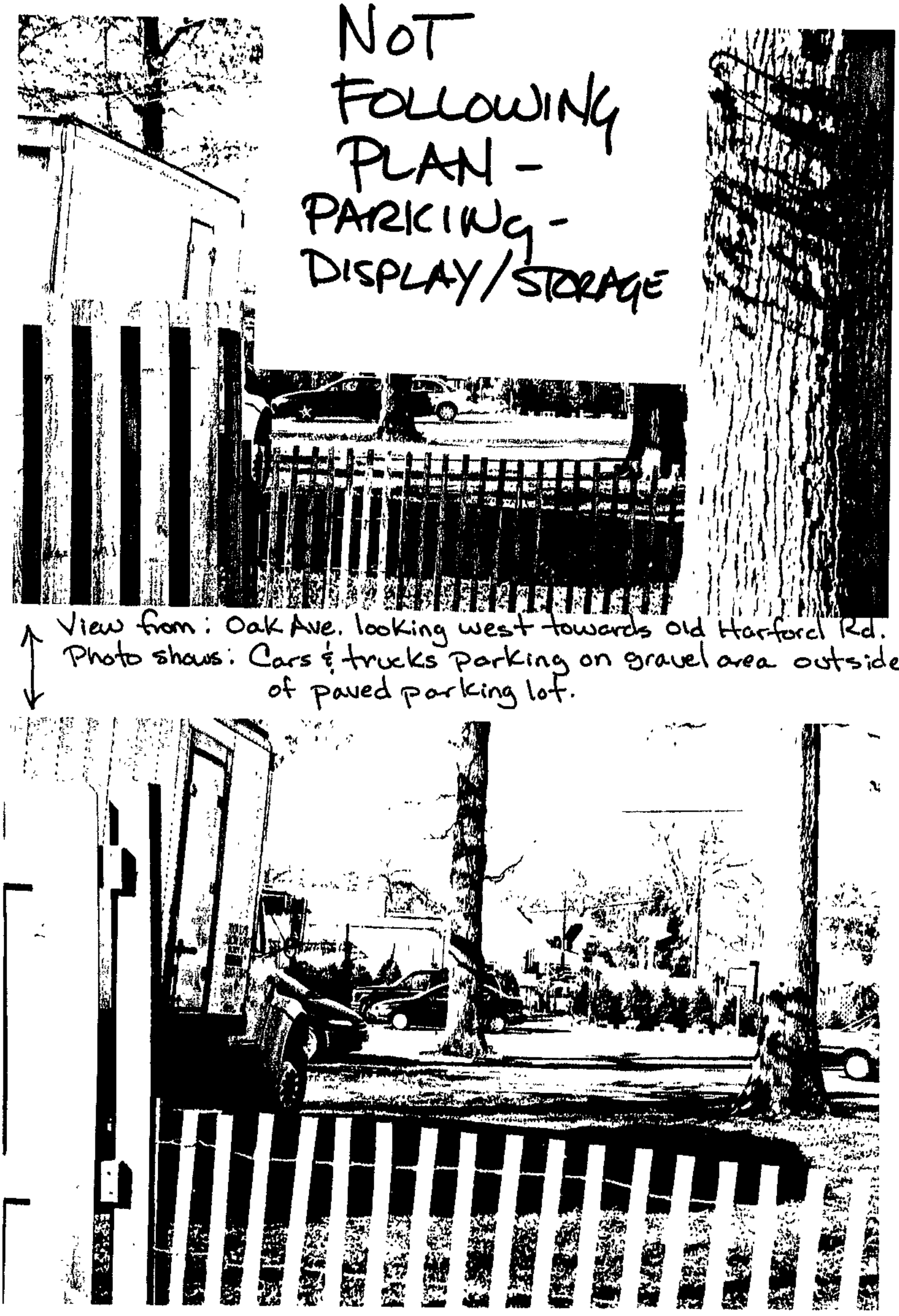
PHOTO SAME AS ABOVE

VIEW FROM POOR
BOYS LOOKING
EAST TOWARDS
OAK AVENUE. THIS
AREA IS WHERE I
ON POOR BOY'S
PLANT AS SEASONAL
SIGNS ADVERTISE
CUSTOMERS TO SHOP
IN STORAGE AREA.
PINK SIGN READS
ALL MULCH $1.99 NO
LIMIT.
GREEN SIGN SAYS
LIVE TREES READY
TO PLANT

VIEW FROM THE
FIRST HOUSE ON
OAK AVE. LOOK
NORTH ON AVE.
SHOWN AS STORAGE
ON POOR BOY'S
SITE PLAN
CUSTOMERS ARE
SHOPPING IN
STORAGE AREA
PEOPLE ARE
ON CHRISTMAS
TREES

Conditions at Poor Boys

DECEMBER 1998



View from: Oak Ave. looking west towards old Harford Rd.
Photo shows: Cars & trucks parking on gravel area outside of paved parking lot.

Conditions at Poor Boys

DECEMBER 1998

TOP:
VIEW from Taylor Ave. looking south.
Photo shows: Trees in aisles for sale.
Note price tags on trees
This area is shown on Poor Boys plan as storage.

← View from the first house on Oak Avenue looking north towards Taylor Ave.
Photo shows: trees for sale, note price tags. This area is shown as storage on Poor Boys plan.

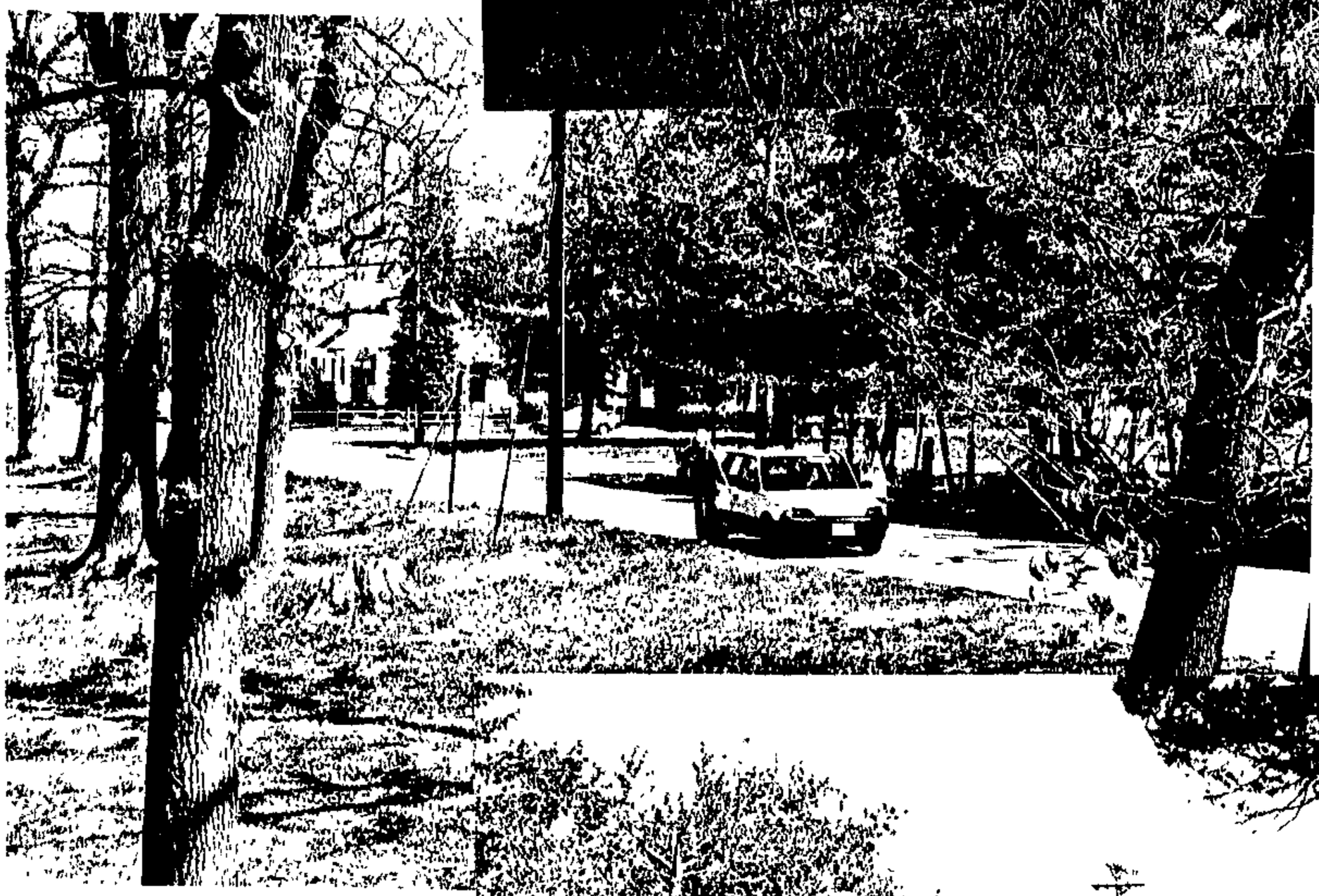
Conditions at Poor Boys

A.

- Spring 1998

View from Taylor Ave. looking west to Old Harford Road.

Photo shows: Lack of parking provided on Poor Boys lot. This forces customers to park in the residential community.



B.

View from: Oak Ave looking northeast towards Taylor Ave. Photo shows: Poor Boys customer entering car.

C.

View from Taylor Ave. looking north towards Harford Road.

Photo shows: Poor Boys customer parking on Taylor Ave.

Conditions at Poor Boys

Spring 1998

A., B., & C.
View from: Oak Ave. looking north towards Taylor Ave.

Photo shows: Customers shopping in an area shown on Poor Boys Plan as storage area. Note Prices in front of items (plants).

A.

B.

C.

Conditions at Poor Boys

MARCH 1998

↑ PHOTO TAKEN MARCH 1998
VIEW FROM TAYLOR AVENUE LOOKING SOUTH ON POOR BOYS PAVED PARKING LOT.
PHOTO SHOWS TRUCKS & CARS PARKED OFF OF THE PAVED AREA ON THE DIRT
(WHICH IS NOT A DUSTLESS & DURABLE SURFACE.)

Conditions at Poor Boys

MARCH 1998

PHOTO TAKEN MARCH 1998
VIEW FROM THE FIRST HOUSE ON OAK AVENUE LOOKING NORTHWEST ON POOR BOYS PAVED PARKING LOT.
PHOTO SHOWS TRUCKS & CAR PARKED OFF OF THE PAVED AREA ON THE DIRT (WHICH IS NOT A DUSTLESS AND DURABLE SURFACE.)

PHOTO TAKEN MARCH 1998
VIEW FROM TAYLOR AVENUE LOOKING SOUTHEAST ON POOR BOYS PAVED PARKING LOT.
PHOTO SHOWS TRUCK & CARS PARKED OFF OF PAVED AREA ON THE DIRT (WHICH IS NOT A DUSTLESS & DURABLE SURFACE)

Conditions at Poor Boys

MARCH 1998

PHOTOS TAKEN MARCH 1998

VIEW FROM TAYLOR AVENUE LOOKING SOUTHEAST ON POOR BOYS PAVED PARKING LOT.

PHOTO SHOWS TRUCKS AND CARS PARKED OFF OF THE PAVED AREA ON THE DIRT (WHICH IS NOT A DUSTLESS & DURABLE SURFACE.)

Conditions at Poor Boys

CHRISTMAS SEASON 1997

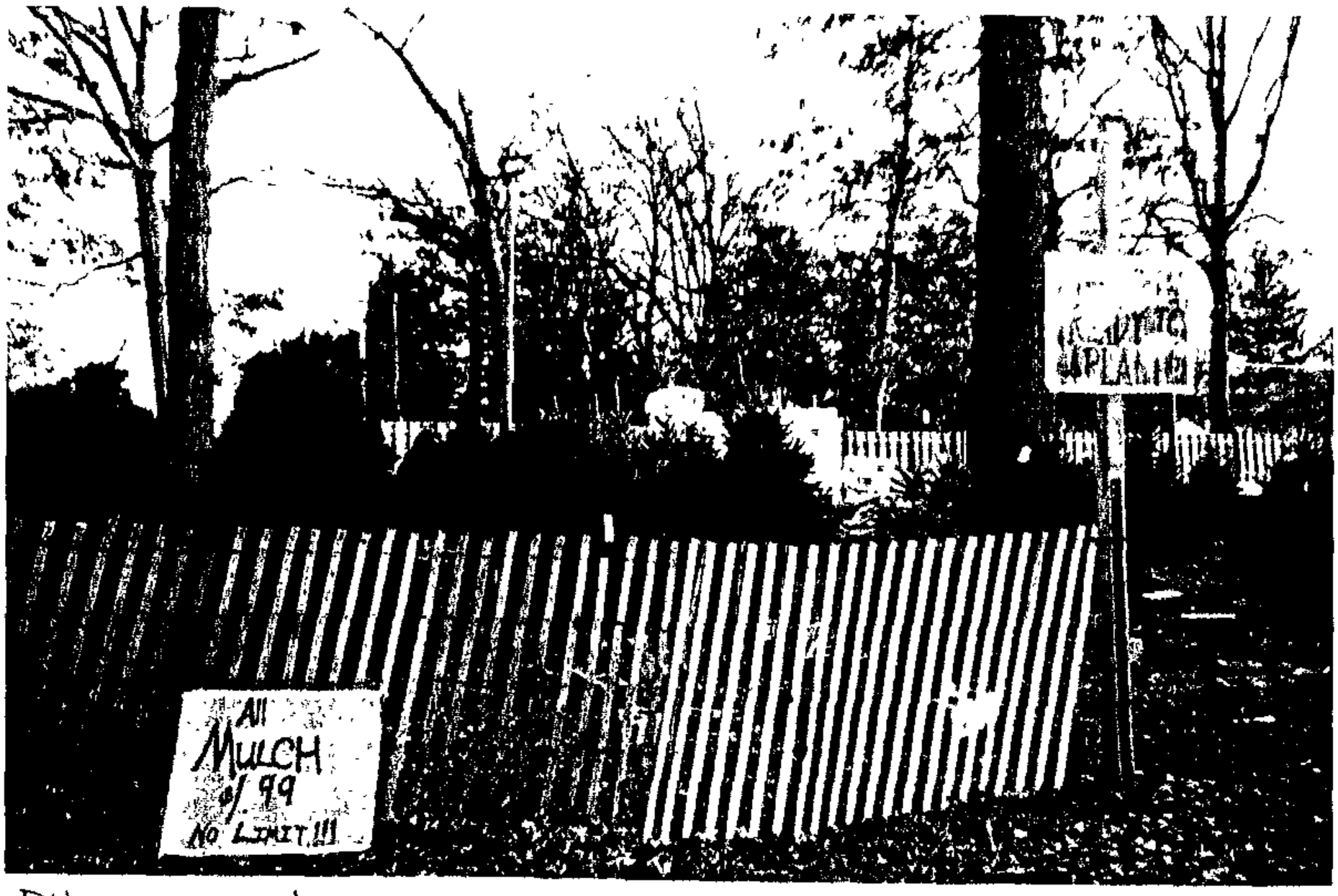


PHOTO TAKEN DECEMBER 1997
VIEW OF POOR BOYS, LOOKING SOUTH FROM TAYLOR AVENUE
PHOTO SHOWS SIGNS & OPEN GATE INVITING CUSTOMERS TO SHOP (PURCHASE CHRISTMAS TREES & MULCH) IN AN AREA SHOWN ON POOR BOYS PLAN AS STORAGE AREA. PINK SIGN STATES "ALL MULCH $1.99 NO LIMIT". GREEN SIGN STATES "LIVE TREES READY TO PLAN."

PHOTO TAKEN DECEMBER 1997
VIEW OF POOR BOYS LOOKING SOUTH FROM TAYLOR AVENUE.
PHOTO SHOWS CUSTOMERS SHOPPING FOR CHRISTMAS TREES IN AN AREA SHOWN ON POOR BOYS PLAN AS STORAGE AREA. Note price TAGS ON TREES

CONDITIONS AT POOR BOYS

SPRING 1999

PHOTO TAKEN FROM TAYLOR AVENUE LOOKING SOUTH WEST AT POOR BOYS PARKING LOT

PHOTO SHOWS LARGE TRUCK DELIVERY

PHOTO SAME AS ABOVE

Prot. #1

POOR BOY'S VARIANCE HEARING
CASE #97-259-SPHA
FEBRUARY 21, 1997

Community Concerns

Submitted By

The Parkville Park
Community Association Inc.

Plot. # 2

COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

JOSEPH BARTENFELDER
COUNCILMAN, SIXTH DISTRICT

September 18, 1997

COUNCIL OFFICE: TOWSON 887-3388
DISTRICT OFFICE - FULLERTON 887-5223

Dear Mr. Baisden:

This is in response to the request of the Parkville Park Community Association to explain the intent of the "L" shaped landscape buffer area located along the west side of the 7700 block of Oak Avenue and the first residence on Oak Avenue. The exact size and location of this landscape buffer area is shown on the attached plan and is labeled "Landscape Conservation Easement".

The creation of this landscape buffer area was the result of a compromise to allow the property owner (owner of Poor Boys) to gain the rezoning of residential property to BL commercial and to protect the property values of the surrounding residential properties. It was to become a landscaped passive park (owned by the County) and provide screening for the surrounding residential community from the newly zoned commercial property. The goal of the buffer and landscaping is to preserve the residential character and quality of life of the residental neighborhood and additionally not to cause a detrimental effect to the community. The rezoning of the residental property was based on this compromise and I feel strongly this intent be carried out.

I also feel it is important to have a permanent fence and landscaping as directed in attached letter from Baltimore County Department of Permits and Development Management (Avery Harden, Landscape Architect).

Sincerely,

Joe Bartenfelder

Joseph Bartenfelder
Chairman, County Council
Sixth District

122

123

180'

50 50 50

RO TO BL

DR 5.5 TO BL

PRIV. RES

TOWNSOUTH

60'

100'

45 45 45 45

45 45 45 45 45

70'

50'

50

45 45 45 45 43

LANDSCAPE
CONSERVATION
EASEMENT

48

43

DATE: 10/8/96

1" =

150' P/O PLA
PARI

72

30'

11868, 312

11868 312

124

125

126

127

128

95

94

92

91

COMPACT
EVERGREEN
SCREENING

60'

50'

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Exq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

Printed with Soybean Ink
on Recycled Paper

The 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space. See plan.

As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

Thirty five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thirive within two years must be replaced. Steven's Hollies are recommemded where excessive moisture is an issue. Hollies must be placed closer together to achieve the desired effect. See plan. The other evergreen selections are half Norway Spruce and half White Pine.

This office will work with Poorboys when the planning for the expanded parking lot begins. The proposal above is essentially what the Baltimore County Landscape Manual will require when a permit for the parking lot is sought. Every effort will be made to save the existing trees within the proposed parking lot area. There shall be no increase in runoff onto the adjacent residences as a result of the sitework.

As a condition of completing the buffer requirements, the copse of brambles along Oak Avenue should be mowed.

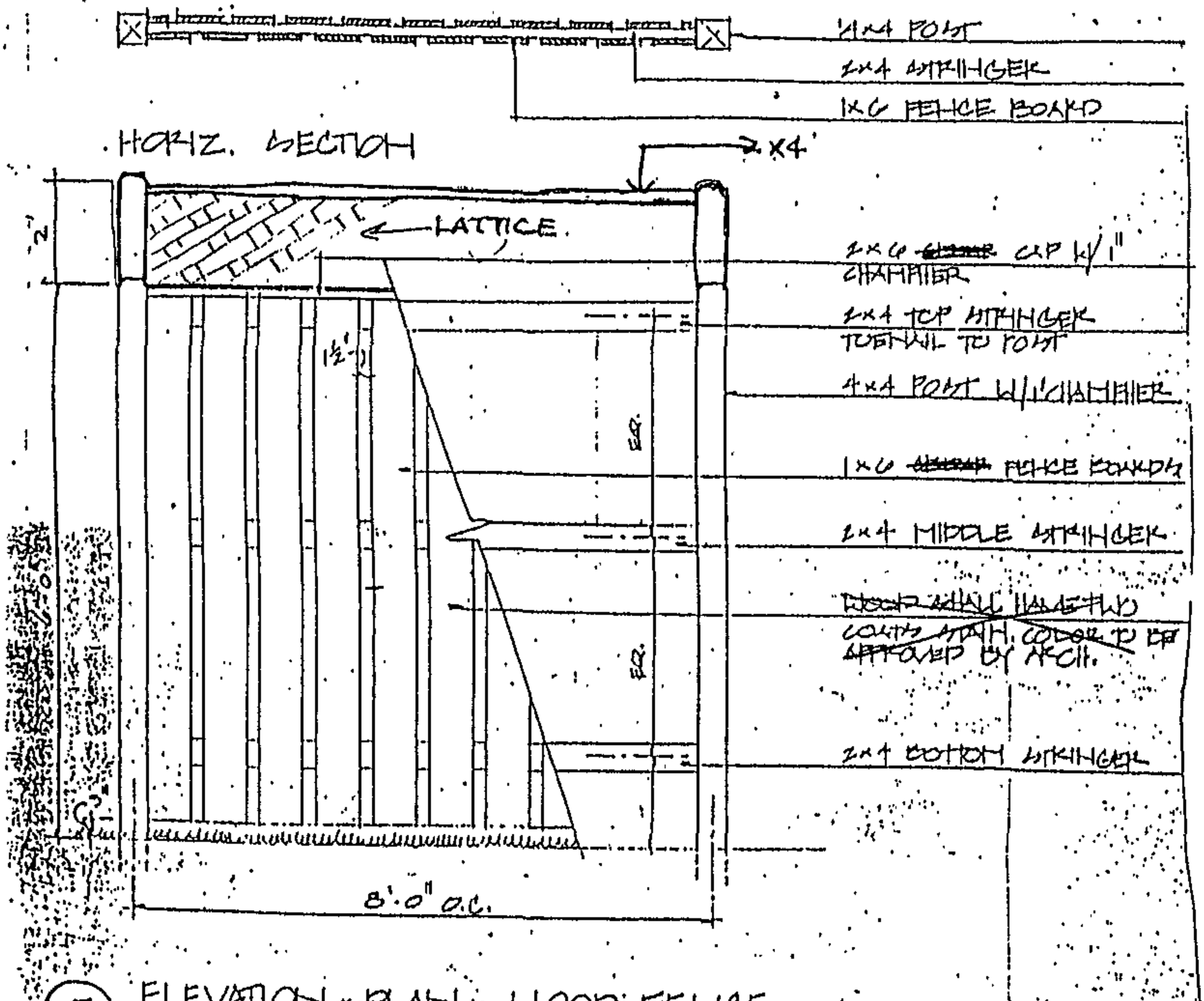
If anyone has any questions or comments, please call me at 887-3751.

Sincerely,

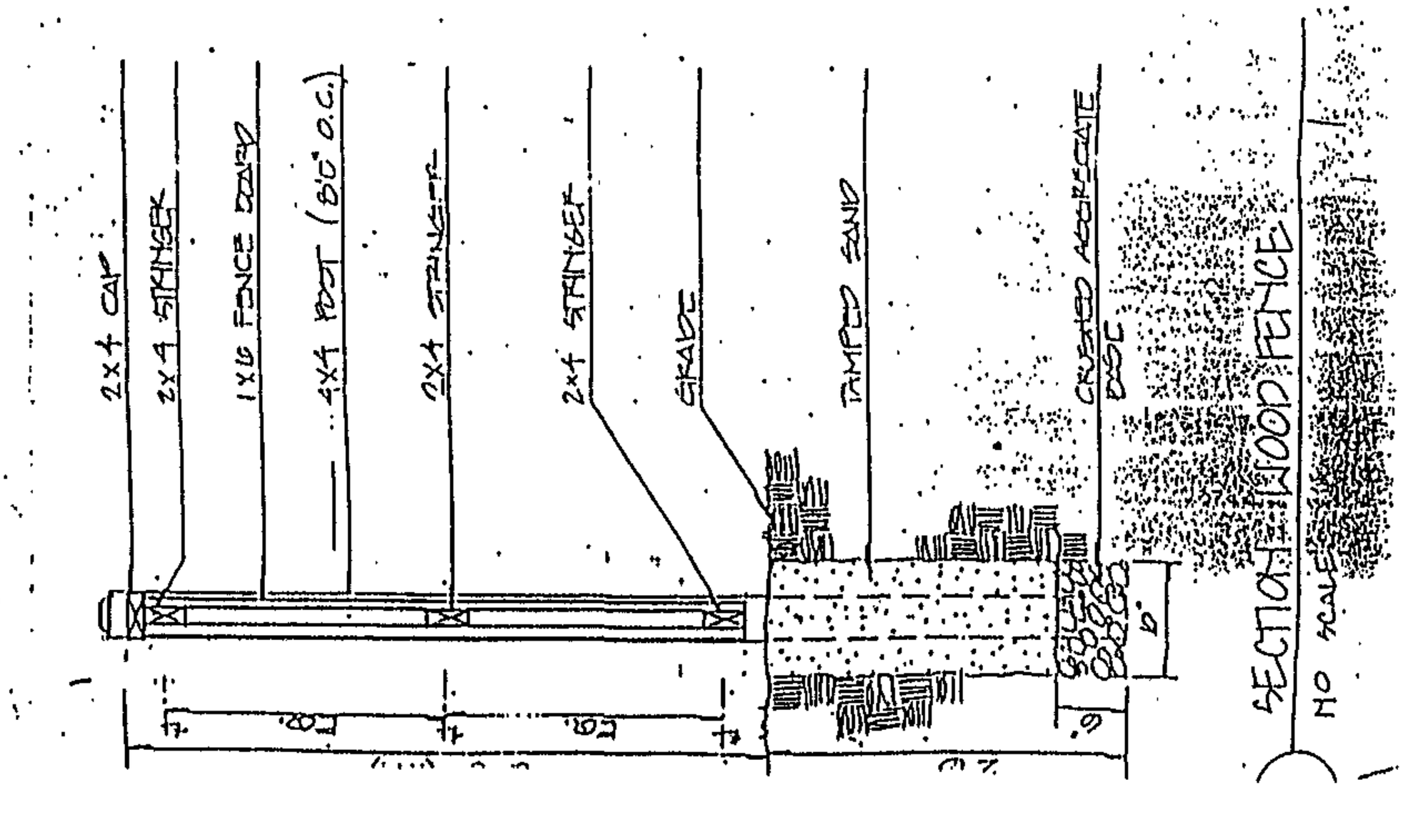
E. Avery Harden

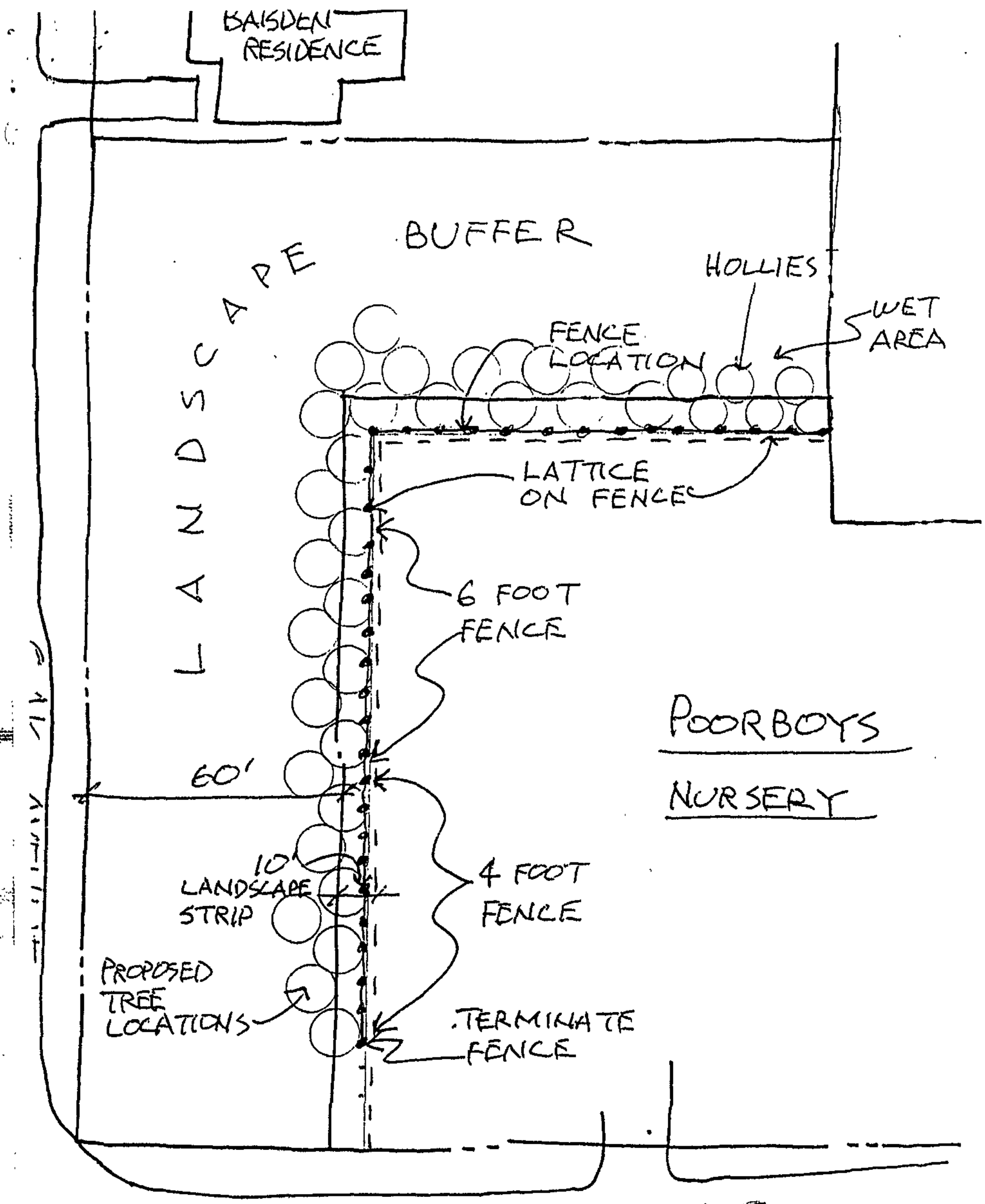
E. Avery Harden, Landscape Architect
Development Plans Review

2 Attachments



5 ELEVATION + PLAN - WOOD FENCE
NO SCALE





APPROXIMATE SCALE
1"=30'

The Parkville Park Community Association Inc.

7706 Oak Avenue Baltimore, Maryland 21234 (410) 668-2580

Plot. #3

January 21, 2000

Mr. Thomas Robinson, President
Villa Cresta Civic Association
7914 Oakdale Avenue
Parkville, MD 21234

Dear Mr. Robinson:

I am writing in regard to the restrictive covenant agreement (#0011868303) between Villa Cresta Civic Association and Terry Gerahty of Poor Boys. Currently, a fence and light poles are located 10 feet inside the "Landscape Conservation Easement" along Oak Avenue which was to provide a total of 70 feet of community open space and not be located on the business side. At this time a pavement development plan is being reviewed for approval by the county which shows the same location. The incorrect location of the fence and light poles was brought to the attention of Tom Rochfort (at the time president of Villa Cresta Civic Association) by our vice president Joseph Kreis. His response was that he would look into the matter and get back. This never happened.

We are asking you as president of the association to enforce the covenant, so that there is a total of 70 feet of community open space as shown on attached "Landscape Conservation Easement" diagram from the covenant agreement.

Time is of the essence, since the development plan is being reviewed by the county. It would be easier to correct this matter now than later. I can be reached at 410 668-2580.

Sincerely,

Ernest Baisden

Ernest Baisden, President
Parkville Park Community Association

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT is entered into, as of the 24th day of October, 1996, by and between TERRY GERAHTY ("Gerahty") Owner, POOR BOYS, INC. ("Poor Boys") Lessee, and the VILLA CRESTA CIVIC ASSOCIATION, INC. ("Villa Cresta").

RECITALS:

A. Poor Boys is the lessee of 7721 Old Harford Road, and Terry Gerahty is the owner of a lot of land (the "Land"), containing in the aggregate approximately 1.34 acres, located in the Sixth Councilmanic District of Baltimore County, Maryland, on the southwestern side of Taylor Avenue and Oak Avenue. The Land is more particularly described in a deed recorded among the Land Records of Baltimore County at Liber 8701, Folio 730.

B. At the present time, most of the Land is zoned D.R.5.5 (1.17 acres) and RO (0.17 acres).

C. The Land is currently not developed.

D. Poor Boys has submitted a request for change in zoning for the Land as a part of the 1996 Baltimore County Comprehensive Zoning Map process. The request seeks to have all of the Land classified BL. If this Agreement is executed, Gerahty and Poor Boys intends to amend its BL request to the area as shown on the attached Drawing marked "Amended Request". This requested zoning would enable Poor Boys to upgrade and expand its garden center and farm market now on the Land and at 7721 Old Harford Road with a more attractive, modern, garden center, farm market and country store with sufficient parking. The new site would include a significantly larger number of square feet than the present site.

E. If its request for BL zoning is granted, Poor Boys desires to develop on the Land sales, storage and parking areas for the upgraded garden center with such ancillary/accessory office and retail uses as are permitted as a matter of right in

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE HK DATE 10/25/96

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

HK 10/25/96
By Date

that zone and that are consistent with the terms of this Agreement. Poor Boys intends to work with appropriate officials of Baltimore County, the State of Maryland, to provide an upgraded garden center and farm market/country store with sufficient parking. The proposed garden center, farm market and country store uses would be designed to serve the Parkville Community and the immediate neighborhood, as well as the general public.

F. Villa Cresta is an incorporated association of Baltimore County residents interested in preserving the existing character and quality of life of residential areas in the vicinity of the Land.

G. Gerahty and Poor Boys desire to place certain restrictions on the Land and on the use thereof to assure that, in the event that it is rezoned to BL as requested, future use does not have a deleterious effect on nearby residential areas.

H. Gerahty and Poor Boys, in recognition of the concerns of the Villa Cresta Civic Association, is willing to place certain restrictions on the Land in return for the agreement of Gerahty and Poor Boys described below.

I. In order to make the covenants, restrictions and conditions contained in this Agreement binding and fully effective on the Land, and on the present and future owners and occupants thereof, the parties have entered into this Agreement, to the end and with the intent that Gerahty and Poor Boys, and its successors and assigns, will hold, use, and hereafter convey the Land subject to the said covenants, restrictions, and conditions.

AGREEMENTS:

NOW THEREFORE, in consideration of the mutual agreements and understandings contained in this Agreement, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

GERAHTY AND POOR BOYS, ON BEHALF OF ITSELF, AND ITS SUCCESSORS AND ASSIGNS, AGREES AS FOLLOWS:

1. Garden Center Use. The Land shall be used only for an upgraded garden center, farm market and country store, as well as parking, outdoor sales area, outdoor storage area, and accessory uses and related uses to support said uses. "Garden Center" and "Farm Market" uses shall be as defined in the Baltimore County Zoning Regulations, except Gerahty is not a farmer and that limitation in the "farm market" definition shall not be a requirement to the "farm market" use. A "country store" shall include garden center and farm market uses, along with gourmet items, crafts, deli items, pit beef and seasonal food sales consistent with a country store and farm market theme, and seasonal and holiday items of all kinds, including Christmas, Easter, Mother's Day, Memorial Day, Halloween, etc. It is further agreed that the Land and the property may be further used, expanded and upgraded for garden center, farm market and country store purposes, as allowed by its zoning.

2. Landscape Buffer. It is further agreed that the area marked "Landscaped Conservation Easement," as shown on the attached Drawing marked "Amended Request," shall:

a) be offered for dedication to Baltimore County, in such a manner as will be determined by the County, whether by fee, or easement so as to fulfill the spirit of this covenant that said area be preserved as a landscape buffer, and

b) if said area is not accepted by Baltimore County for dedication pursuant to Paragraph a) above, said area shall be offered for dedication, whether by fee or easement unto the Parkville American Legion, in such a manner as will be determined by the County so as to fulfill the spirit of this covenant so that said area be preserved as a landscape buffer, and

evidence of their recordation. The covenants shall run with and be binding upon the Land, and upon all present and future owners thereof, and shall inure to the benefit of each of the parties respectively, and their successors and assigns, for a period of twenty-five (25) years from the date of this Agreement, provided that this covenant shall be binding for thirty-five (35) years from the date of this Agreement: (1) to allow only those uses allowed in the BLR zone,[1] provided that the following uses otherwise allowed in the BLR zone shall be prohibited: fast food, taverns, drycleaners, laundromats, video rental, supermarket, health and athletic club, martial arts and dance studio; and (2) to require adherence to the last sentence of the provisions of Page 4, Para. 2, regarding maintenance of Landscape Buffer.

CONDITION SUBSEQUENT:

Notwithstanding the preceding paragraph, this Agreement shall terminate and be of no further force or effect as to any portion of the Land that is rezoned, in proceedings subsequent to the adoption of BL zoning, as shown on the attached Drawing marked "Amended Request", to a zone other than this zone, at the time such rezoning becomes final and unappealable.

ENFORCEMENT:

If any party to this Agreement, or any party's successor, is required to institute legal action to enforce the terms of this Agreement, and is successful thereafter (whether by judgment or by settlement) in obtaining enforcement of the Agreement, that party or successor shall be entitled to recover

---

1 Regardless of the fact the underlying zone is BL, the Declarants herein are agreeing to the aforegoing restrictions, which essentially restrict the BL zoning in a manner that allows only BLR uses, with the exception that those uses labelled Garden Center on Page Three, Paragraph One shall be allowed. Accordingly, the Garden Center, etc. use specified on Page Three, Paragraph One shall be an allowed use regardless of whether it is a use of right, vel non, in the BLR zone.

reasonable attorneys' fees and other reasonable costs of the action from the person or entity against whom enforcement is obtained. However, as a prerequisite to the recovery of fees and costs under this paragraph, the person or entity seeking enforcement shall serve the alleged violator of the Agreement with written notice of the violation, and only if the alleged violator has failed to remedy or to make substantial progress toward remedying the violation within sixty (60) days after receipt of this notice may legal action be instituted.

In order to further ensure Villa Cresta of the enforcement of this Covenant, Gerahty shall have the duty to provide in all sales contracts for his business and/or Land that the Buyer be subject to and bound by these covenants and the obligations herein, including but not limited to the aforegoing "obligation to pay reasonable attorney's fees and costs" provision if enforcement of the covenants is successfully obtained. If and when Gerahty shall sell the Land or Business, Gerahty shall also assign One Thousand Dollars ($1,000.00) from the sale proceeds to Villa Cresta, or its successor, for Villa Cresta, or its successor, to use at its sole discretion for enforcement or any other community enhancement needs.

AMENDMENTS:

Prior to its recordation among the Land Records of Baltimore County, Maryland, this Agreement may be amended only by a written instrument in recordable form, signed by both of the parties hereto. Following its recordation among the Land Records of Baltimore County, this Agreement may be amended only by a written instrument, signed by Villa Cresta or its successor and the legal owner or owners of the Land and recorded among the Land Records of Baltimore County, Maryland. If Villa Cresta Civic Association, Inc. is no longer in existence or otherwise defunct, the owner of the land is entitled to the appointment of a Trustee to act on their behalf upon application to a Court of Equity.

MISCELLANEOUS PROVISIONS:

The parties warrant and represent that they have taken all necessary action required to be taken by their respective charters, by-laws, or other organizational documents to authorize the execution of this Agreement.

This Agreement, which may be executed in counterparts, contains the entire understanding of the parties.

Each of the parties warrants that it has carefully read and understands this Agreement, is cognizant of the terms hereof, and has had ample time to consult with counsel of choice regarding its respective rights and obligations in connection herewith.

Failure, in any instance, to enforce any of the covenants, restrictions, and conditions contained in this Agreement shall in no event constitute a waiver or estoppel of the right to enforce the same or any other covenant, restriction or condition in the event of another violation occurring prior or subsequent thereto.

All notices required by this Agreement shall be sent by certified mail, return receipt requested.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST:

Donna Anderson as to both

POOR BOYS, INC.

By: Terry Gerarty, President (SEAL)

TERRY GERARTY

WITNESS/ATTEST:

Margaret Grace Knight

VILLA CRESTA CIVIC ASSOCIATION, INC.

By: Tom Rochfort (SEAL)

STATE OF MARYLAND, CITY/COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY, that on this 8th day of October, 1996, before me, the subscriber, a Notary Public of the State of Maryland, in and for the jurisdiction aforesaid, personally appeared TOM ROCHFORT, the duly authorized agent of VILLA CRESTA CIVIC ASSOCIATION, INC., and being so authorized, acknowledged the aforegoing document to be the free and voluntary act of VILLA CRESTA CIVIC ASSOCIATION, INC.

AS WITNESS my hand and Notarial Seal.

Notary Public
Robert E. Strohmer, Notary Public
Baltimore County
Maryland
My Commission Expires: Mar. 11, 1999

My Commission Expires: _____

1166D DLB/caw

RO TO BL

DR5.5 TO BL

TOT SO 72

AMENDED TO DR3.5

PARK RESERVE

LANDSCAPED CONSERVATION EASEMENT

COMPACT EVERGREEN SCREENING

11868, 312

122

123

180'

50'

50'

50'

60'

100'

360'

124

125

126

127

128

195'

45'

45'

45'

70'

95

94

92

91

90'

60'

50'

45'

45'

45'

45'

45'

45'

45'

44

43

48

72

180'

40

DATE: 10/8/96

1"=50"

P/O PLAT OF "PARKVILLE"

c) if said area is not accepted by Baltimore County or the Parkville American Legion, it shall be dedicated and preserved as a landscape buffer on any site plan associated with the upgraded garden center contemplated herein, and otherwise preserved and dedicated in such a manner so as to fulfill the spirit and intent of this covenant

Said "landscape conversation easement" shall remain residentially zoned and be established and maintained by Poor Boys and Gerahty, its successors and assigns, as a landscaped conservation buffer with coniferous screening substantially consistent with the requirements of the Baltimore County Landscape Manual and with compact evergreen screening placed as shown on the attached Drawing.

In addition, there shall be a ten foot (10') interior landscape easement established and maintained inside the BL line in a manner consistent with the requirements of said BL zone and with the Baltimore County Landscape Manual. The sixty foot (60') landscape buffer, plus the ten foot (10') interior landscape easement, will provide a total of seventy feet (70') of open space from Oak Avenue as shown on the attached Drawing.

CONDITION PRECEDENT:

The obligations of Gerahty and Poor Boys shall not become effective and binding upon Poor Boys and the Land unless and until the Land has been reclassified to BL, as shown on the attached Drawing marked Amended Request, on the 1996 Comprehensive Zoning Map for Baltimore County, as that map is finally adopted.

BINDING EFFECT; DURATION

Immediately upon satisfaction of the condition precedent stated above, Gerahty and Poor Boys shall cause these covenants, restrictions, and conditions to be recorded among the Land Records of Baltimore County, Maryland. Gerahty and Poor Boys shall then promptly deliver to Villa Cresta Civic Association a copy of the covenants as recorded, together with

c) if said area is not accepted by Baltimore County or the Parkville American Legion, it shall be dedicated and preserved as a landscape buffer on any site plan associated with the upgraded garden center contemplated herein, and otherwise preserved and dedicated in such a manner so as to fulfill the spirit and intent of this covenant

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In addition, there shall be a ten foot (10') interior landscape easement established and maintained inside the BL line in a manner consistent with the requirements of said BL zone and with the Baltimore County Landscape Manual. The sixty foot (60') Landscape Buffer, plus the ten foot (10') interior landscape easement, will provide a total of seventy feet (70') of open space from Oak Avenue as shown on the attached Drawing.

CONDITION PRECEDENT:

The obligations of Gerahty and Poor Boys shall not become effective and binding upon Poor Boys and the Land unless and until the Land has been reclassified to BL, as shown on the attached Drawing marked Amended Request, on the 1996 Comprehensive Zoning Map for Baltimore County, as that map is finally adopted.

BINDING EFFECT; DURATION

Immediately upon satisfaction of the condition precedent stated above, Gerahty and Poor Boys shall cause these covenants, restrictions, and conditions to be recorded among the Land Records of Baltimore County, Maryland. Gerahty and Poor Boys shall then promptly deliver to Villa Cresta Civic Association a copy of the covenants as recorded, together with

Prot. #5

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

INTER-OFFICE CORRESPONDENCE

DATE: November 29, 1996

TO: Avery Harden
Landscape Architect

FROM: James H Thompson
Code Enforcement

RE: Landscape Installation
7721 Old Harford Road
Poor Boy's Incorporated
9th Election District

Please be advised that the subject property recently had a portion of it's land rezoned to commercial (B.L.) during the most recent comprehensive map process.

As a condition of this re-zoning, the property owner/tenant is to create a landscape buffer for the benefit of the adjacent community surrounding a proposed parking lot.

Douglas L. Burgess, Esquire, who represents the tenant, Poor Boy's Incorporated, has informed me his client is ready and willing to proceed with this requirement, but they first wish that you propose an acceptable landscape plan to satisfy Councilman Joseph Bartenfelder's requirement.

If our division can be of any assistance, please notify me at once.

C: Douglas L. Burgess, Esq.
Nolan, Plumhoff & Williams
Suite 700 Nottingham Centre
502 Washington Ave.
Towson, Md 21204

Inspector Hunter Rowe

Ernie & Ruth Baisden
7706 Oak Ave.
Balto. Md. 21234

JHT:bb

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C: Douglas L. Burgess, Esq.
Nolan, Plumhoff & Williams
Suite 700 Nottingham Centre
502 Washington Ave.
Towson, Md 21204

Inspector Hunter Rowe

Ernie & Ruth Baisden
7706 Oak Ave.
Balto. Md. 21234

JHT:bb

Prot. #6 Exhibit 7

The Parkville Park Community Association Inc.

Resolution

Resolved: That the position of the Parkville Park Community Association (PPCA) as adopted by the Board of Directors on the zoning matter known as:

Special Hearing: Case Number 98-267
Amendment Of Conditions In Variance

Petitioner: Mr. Gerahty (owner of Poor Boys Country Market)

Reference: Case Number: 97-295
Findings Of Fact And Conclusion Of Law

is that:

the PPCA fully supports the conditions of the variance and feel these conditions should remain in full effect. The community concerns outlined in the February 27, 1996 document from the PPCA to Deputy Zoning Commissioner Timothy Kotroco are still relevant to our community. The conditions that the petitioner has requested relief from are of the most critical in protecting and preserving the residential character of our community for the future. There has been no change in the residential community to warrant lessening the March 6, 1997 conditions that were accepted by the petitioner.

As Witness our hands and seal this March 7 , 1999.

ATTEST:

Secretary

Parkville Park Community Association

President

Board Member Witness

Board Member Witness

Board Member Witness

Community Concerns That Need To Be Addressed

1. Preservation Of Existing Trees

- Identified all trees to be saved. This should be done in cooperation with the community association (PPCA) and the County Landscaping Department (E. Avery Harden, Landscape Architect) and/or County Forest Conservation (Keith Kelly). This should be done and agreed upon prior to issuance of zoning variance. The larger mature trees should be a priority.

- Poor Boy's should provide a protection plan describing all measures and devices necessary to insure the health and well being of the trees as prescribed by a reputable tree expert.

- As a good faith measure and to show a commitment in the protection and preservation of the subject trees, Poor Boy's and PPCA should enter into a restrictive covenant agreement. This agreement would commit Poor Boy's to the long term protection and preservation plan for the trees and should be drafted and agreed upon prior to issuance of zoning variance. This should be a perpetual agreement recorded among the Land Records of Baltimore County that requires any successor land or business buyer to be bound by this covenant agreement and obligation.

2. Screening To The Residential Neighborhood

- The required privacy fence and landscaping parallel to Oak Avenue and parallel to the property line of the first house on Oak Avenue (Baisden's Residence) as prescribed by Avery Harden (County Landscape Architect) should be shown on plan and installed prior to reopening business. Avery Harden's letter with plan and details is attachment F.

- Appropriate screening and landscaping should also be installed along Taylor Avenue.

- All trash dumpsters, trucks, equipment and like should be screened all year around (even when business is closed) from the community.

- Trash and litter should be picked up on a weekly basis.

3. Stormwater Management Concerns

- The soil in the subject parking area has become compacted and impervious due to vehicles driving and parking in this area since this past spring. This is evident when walking on subject parking area and then adjacent area after a rain. In the parking area the water does not percolate but the adjacent area absorbs water and becomes very soggy (a person will sink several inches).

Many loads of stone have also been applied to this area during the spring/summer and then again in the fall. The topography of the adjacent area is such that the stormwater runoff flows from east

to west (and slightly north) across Oak Avenue and through the lawns of several houses toward the intersection of Old Harford Road and Taylor Avenue. A stormwater management facility (pond) should be provided for water quality (to trap sediment from stone parking lot) and quantity (for additional runoff caused by impervious area).

- The change in ground elevation due to the many loads of stone, the installation of a stone path (1,000 SF) this past spring (located just east of existing building), and the excavation from another construction site (piled just south of the subject parking area a couple of years ago), has caused a diversion to the runoff from Oak Avenue and a backwater damming condition that effects several properties and flooding basements. The backyards of these properties now have ponding water and becomes so saturated that it is impossible to walk on for over a week after a rain. Neighborhood children are not able to play in their backyards for weeks at a time. This must be corrected. The excavation piles should be removed and the stormwater runoff from Oak Avenue should be routed through the site so that the backwater damming condition is eliminated. See photos of stone areas, excavation piles, and wet areas - Photo Page 5, 6, & 7.

- The development plan should be reviewed and approved by the county for stormwater and sediment control practices.

4. Traffic Concerns

- This type of business requires high turnover, short term parking and is one of the highest generators of traffic. During the busy season this business generates a significant amount of traffic to an already congested area. Taylor Avenue is a two lane (one lane each direction) east/west arterial road that accommodates a steady flow of traffic. The use of the subject lot started this past spring and compounded the traffic problem of the area. Having three driveways located on Taylor Avenue has been the caused of a number of near miss accidents in this short period of time. The driveway to the east is close to the Parkville Park/War Memorial (located in the center of Taylor Avenue) and presents a sight distance traffic safety problem for vehicles traveling westbound around the park and those vehicles that are entering or exiting this driveway to or from the westbound lane of Taylor Avenue. This easternmost driveway should be eliminated before a major accident occurs.

- The county Traffic Department (Steve Webber) should review this development plan and any future development plans of this site.

- The 19 space parking lot should be limited to 19 passenger vehicles and these vehicles should be confined to the designated stone covered parking area. Appropriate methods should be employed and identified on the plan to prevent parking in other areas.

5. Lighting Of Commercial Area

- Lighting should consist of dark metal poles (maximum height 15 feet), not strings of light bulbs strung from trees and wooden poles.

- The light poles should be arranged and fixtures equipped with shields so that light does not spill over to the surrounding residential community.

- The light pole and fixture style should be compatible with the character our residential community and consistent with future four sided lamppost that will be installed in adjacent historic Parkville Park/War Memorial. Copy of catalogue cut is on attachment H-1.

- The adjacent Parkville Park/War Memorial is currently on the Preliminary Landmarks List 10th series. All plans and lighting should be reviewed by the County Historic Preservation Committee.

6. Noise To The Residential Community

- No gasoline power chain saws should be used during the normal operation of business. During the past Christmas season, this noise was very disturbing to the community starting from 10:00 a.m. until 10:00 p.m. An electric saw is adequate for cutting Christmas trees.

- To retain the residential atmosphere of our neighborhood, the use of an intercom should be discontinued. In the past year the Poor Boy's intercom could be heard by all the houses on the 7700 block of Oak Avenue with their windows closed. There is no current county noise ordnance in place such as Montgomery County's where this would be prohibited.

7. Incompatible Uses With Surrounding Residential Community

The surrounding community consisting of the original park (Parkville Park/War Memorial) and the original development of Parkville. This area is very visible and represents residential Parkville to many motorist that pass through the area. Recognizing the development of his site has an effect on the visual quality and ambiance of our community, we would like to have the following uses prohibited on this site.

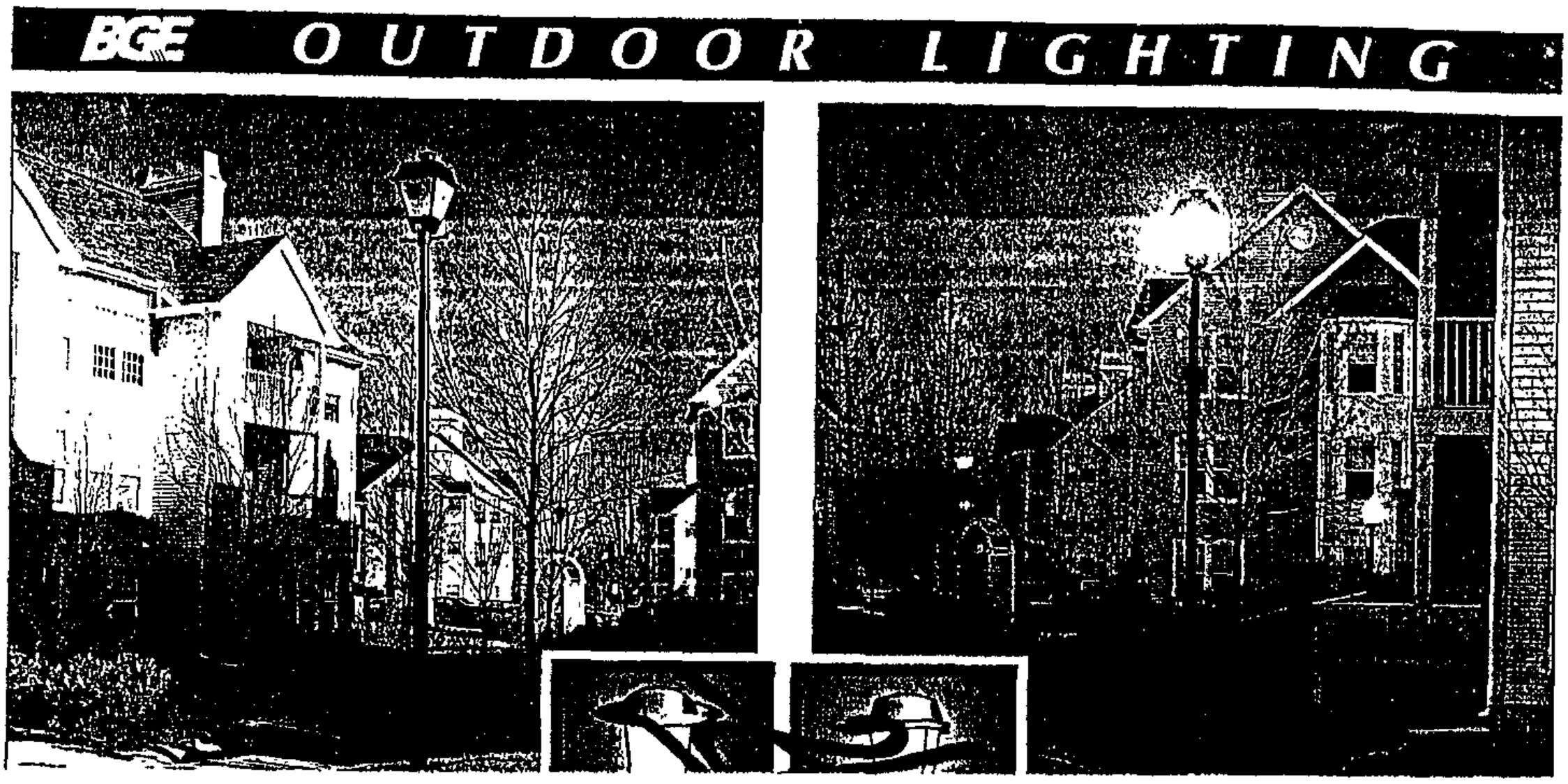
- Tents.
- Trailers.
- Inappropriate signs, such as cardboard signs nailed to trees and wooden poles, etc.
- Commercial displays should be located back off of the sidewalks (should be set back to property line).
- No Pit Beef or Snowballs stands located on this lot.
- No pay phones.
- No deliveries after 9:00 p.m. This past Christmas, trees were delivered as late as midnight with the entire property lighted.
- Since there are wheelchair bound residents in our community, assessable handicap marked parking should be provided.

Attachment H-1

Type of Outdoor Lighting

Top catalogue cut shows light fixtures and poles to be used in Parkville Park/War Memorial
Bottom: shows lighting Poor Boy's used during 1996 season from spring to winter.

Attachment H-1



ATTACHMENT F

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Exq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

Ladies and Gentlemen:

This is a response to the various meetings and phone calls regarding the above referenced matter.

Activity will cease at Poorboys for the current business season within the next 10 days; therefore, the buffer planting and fence previously agreed to are not required at this time. However, before opening the Spring 97 business season, Poorboys must have a fence and evergreen tree buffer in place as specified on the attached plan.

Printed with Soybean Ink
on Recycled Paper

The 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space. See plan.

As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

Thirty five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thirive within two years must be replaced. Steven's Hollies are recommemded where excessive moisture is an issue. Hollies must be placed closer together to achieve the desired effect. See plan. The other evergreen selections are half Norway Spruce and half White Pine.

This office will work with Poorboys when the planning for the expanded parking lot begins. The proposal above is essentially what the Baltimore County Landscape Manual will require when a permit for the parking lot is sought. Every effort will be made to save the existing trees within the proposed parking lot area. There shall be no increase in runoff onto the adjacent residences as a result of the sitework.

As a condition of completing the buffer requirements, the copse of brambles along Oak Avenue should be mowed.

If anyone has any questions or comments, please call me at 887-3751.

Sincerely,

E. Avery Harden

E. Avery Harden, Landscape Architect
Development Plans Review

2 Attachments

BAISDEN RESIDENCE

BUFFER

LANDSCAPE

HOLLIES

WET AREA

FENCE LOCATION

LATTICE ON FENCE

6 FOOT FENCE

60'

10' LANDSCAPE STRIP

4 FOOT FENCE

PROPOSED TREE LOCATIONS

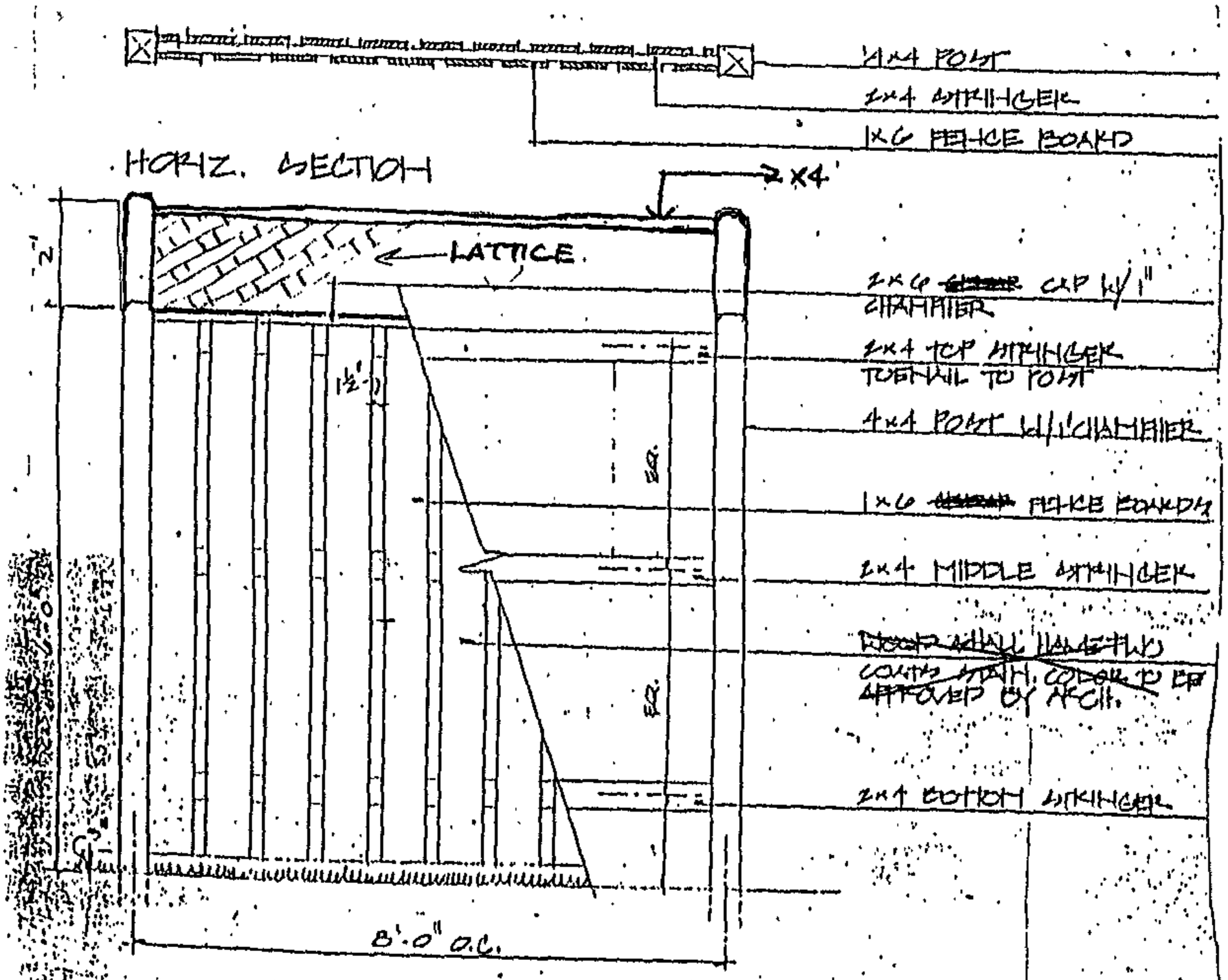
TERMINATE FENCE

POORBOYS NURSERY

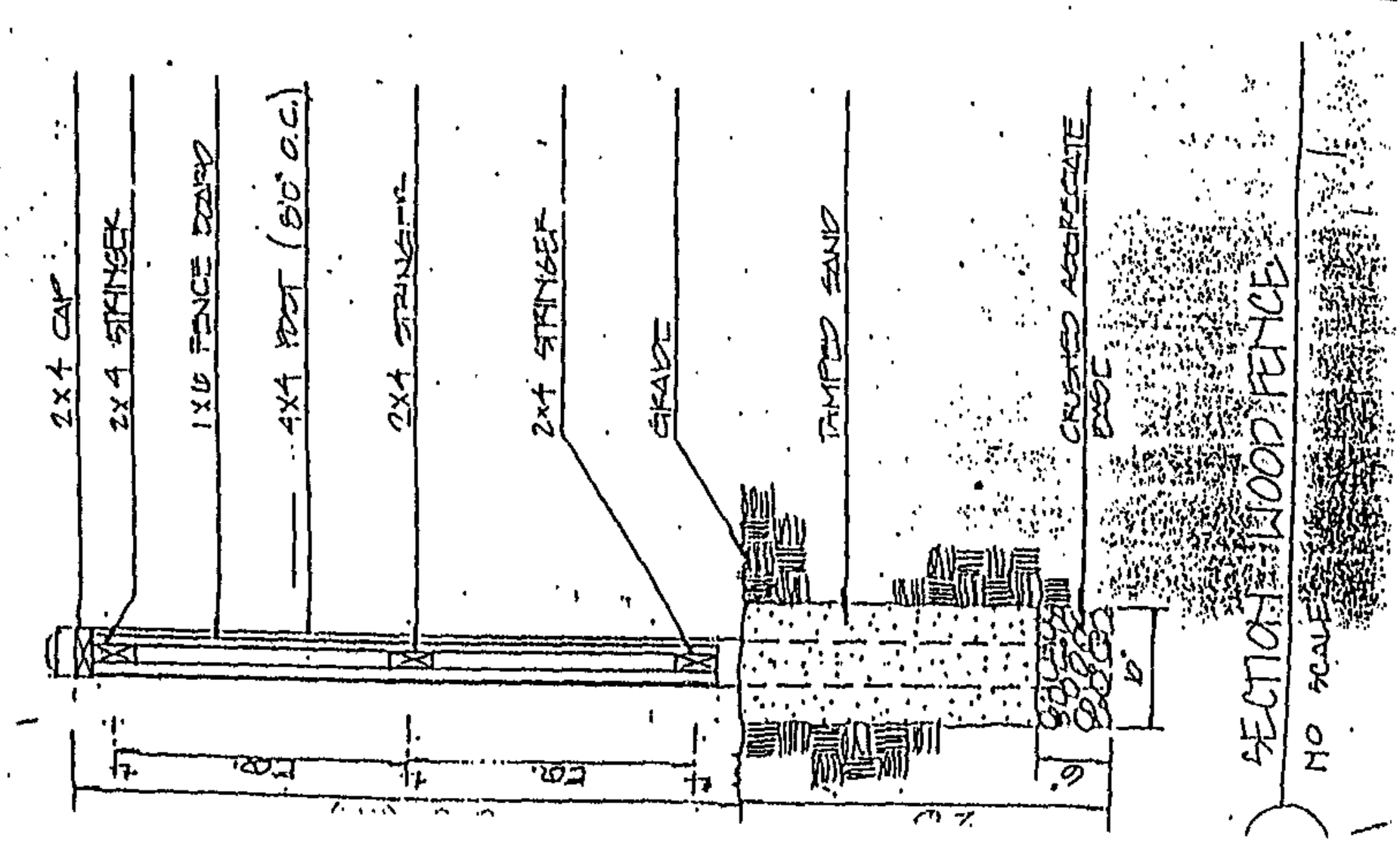
TAYLOR AVE

APPROXIMATE SCALE
1"=30'

HORIZ. SECTION



5 ELEVATION + PLAN · WOOD FENCE
NO SCALE



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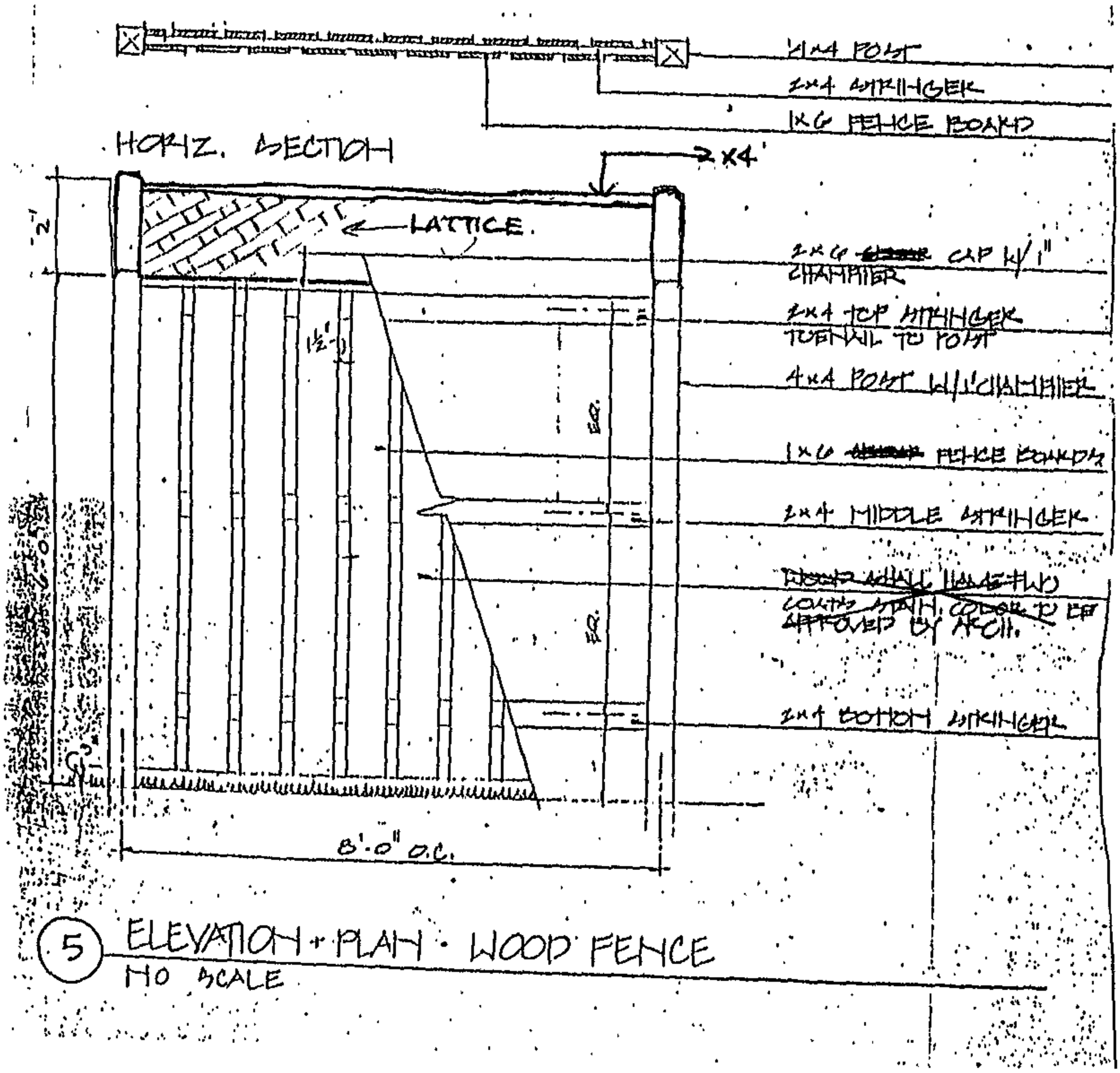
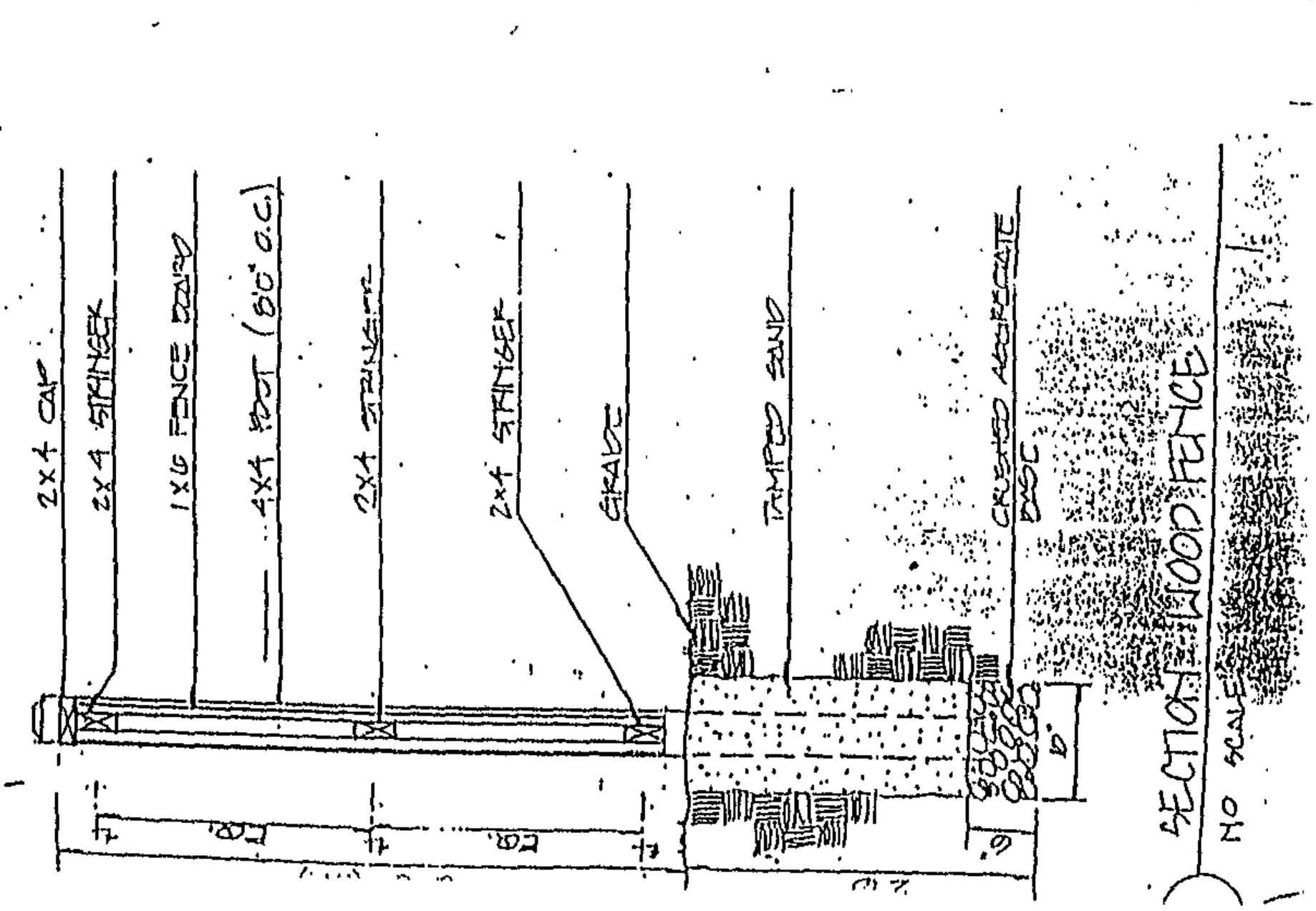


5 ELEVATION + PLAN - WOOD FENCE
NO SCALE



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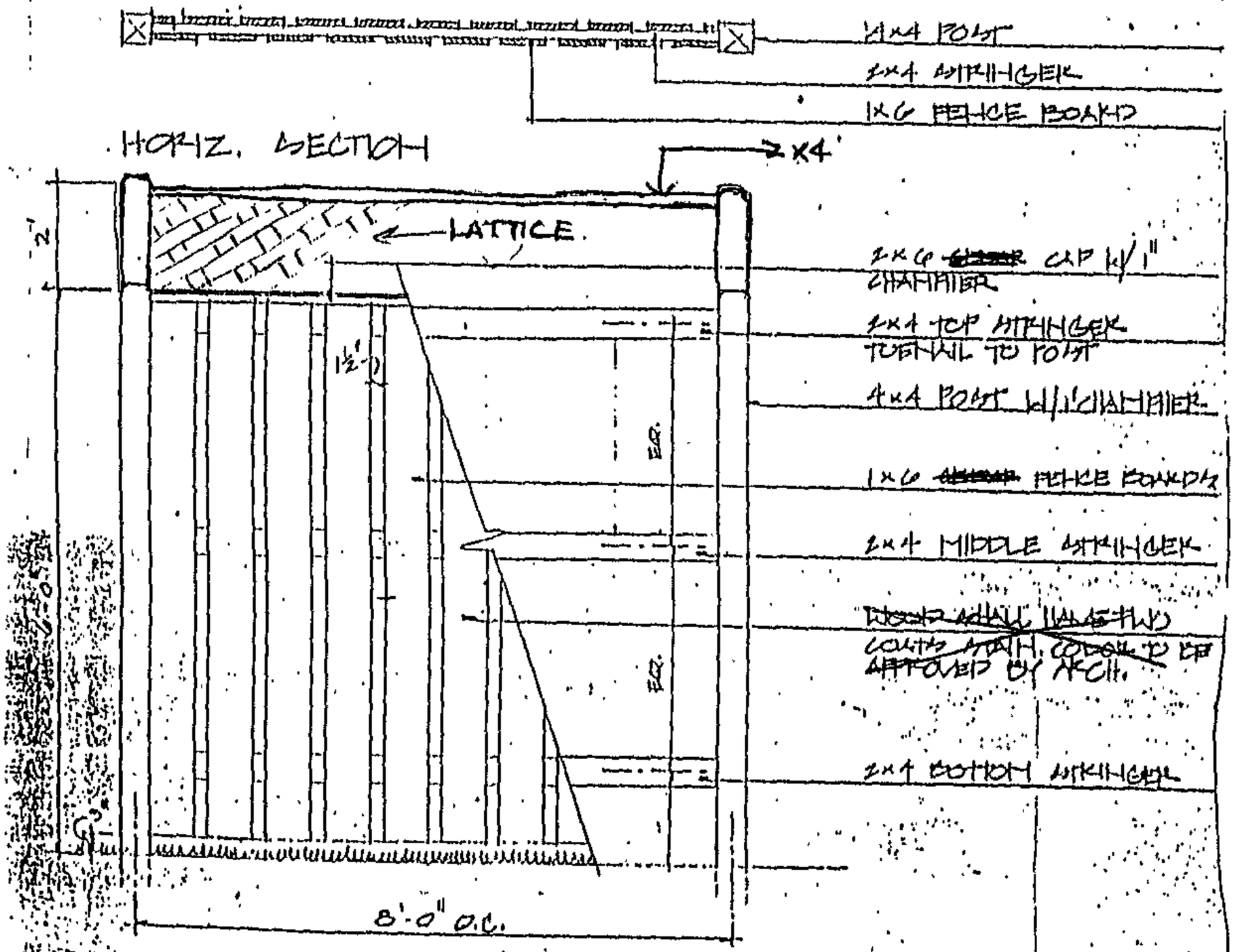

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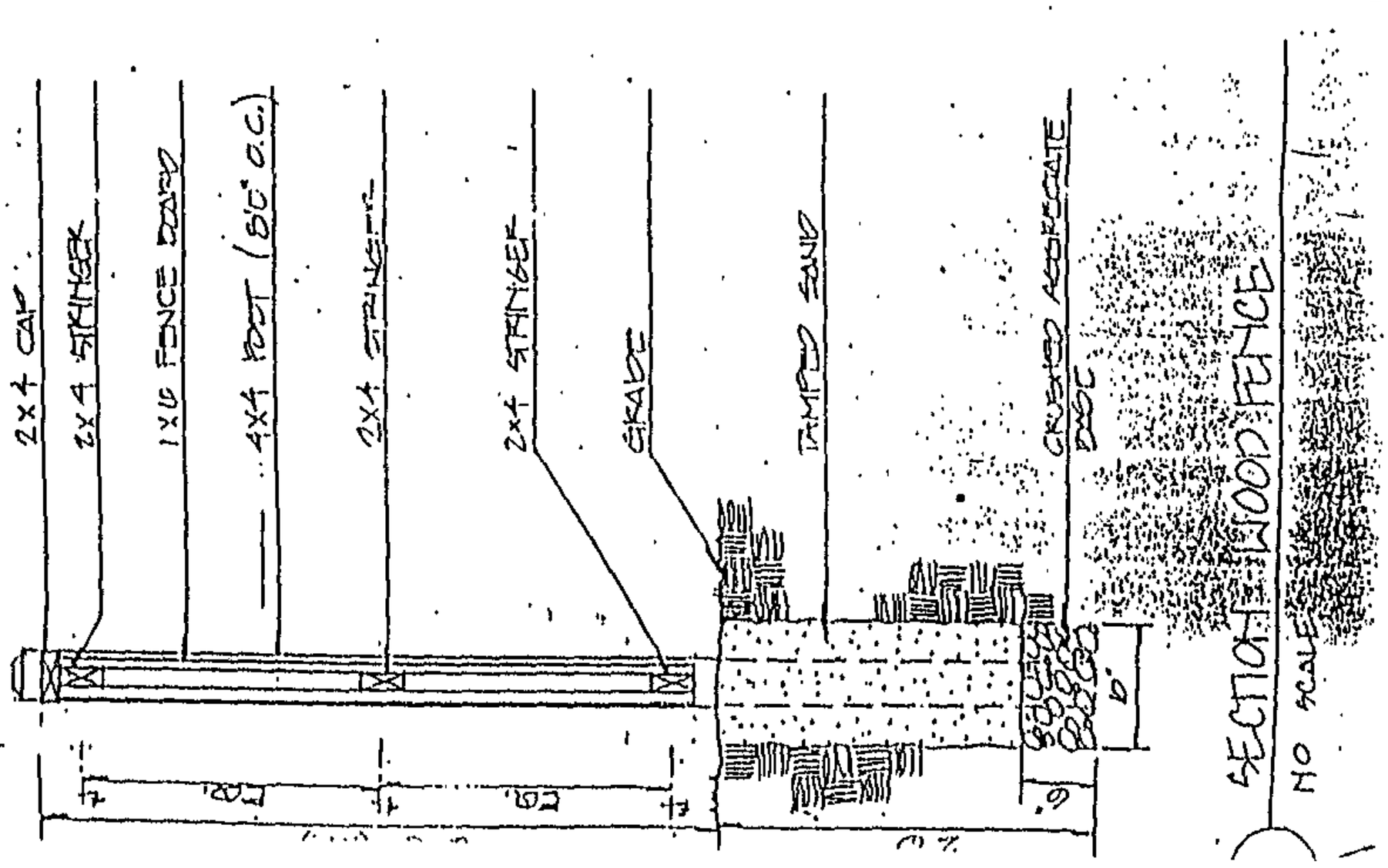

COUNTY COUNCIL OF BALTIMORE COUNTY
COURT HOUSE, TOWSON, MARYLAND 21204

JOSEPH BARTENFELDER
COUNCILMAN, SIXTH DISTRICT

COUNCIL OFFICE: TOWSON 887-3388
DISTRICT OFFICE - FULLERTON 887-5223

September 18, 1997

Dear Mr. Baisden:

This is in response to the request of the Parkville Park Community Association to explain the intent of the "L" shaped landscape buffer area located along the west side of the 7700 block of Oak Avenue and the first residence on Oak Avenue. The exact size and location of this landscape buffer area is shown on the attached plan and is labeled "Landscape Conservation Easement".

The creation of this landscape buffer area was the result of a compromise to allow the property owner (owner of Poor Boys) to gain the rezoning of residential property to BL commercial and to protect the property values of the surrounding residential properties. It was to become a landscaped passive park (owned by the County) and provide screening for the surrounding residential community from the newly zoned commercial property. The goal of the buffer and landscaping is to preserve the residential character and quality of life of the residental neighborhood and additionally not to cause a detrimental effect to the community. The rezoning of the residental property was based on this compromise and I feel strongly this intent be carried out.

I also feel it is important to have a permanent fence and landscaping as directed in attached letter from Baltimore County Department of Permits and Development Management (Avery Harden, Landscape Architect).

Sincerely,

Joe Bartenfelder

Joseph Bartenfelder
Chairman, County Council
Sixth District

122

123

180'

50 50 50

RO TO BL

DR 5.5 TO BL

PARK RES

TOT S072

60'

100'

50'

50' 45 45 45 45

11868, 312

11868 312

194'

124

45 45 45

70'

125

95 94 92

COMPACT EVERGREEN SCREENING

126

127

128

91

60'

LANDSCAPE CONSERVATION EASEMENT

120 48

DATE: 10/8/96

1" =

150' P/O PLA PARI

72

Baltimore County
Department of Permits and
Development Management

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

DATE: December 24, 1996

TO: Hon. Joseph Bartenfelder
Sixth District Councilman
M.S. 2201

John F. Weber, III
Director of the Dep. of Recreation and Parks
M.S. 52

Earnest and Ruth Baisden
7706 Oak Ave.
Parkville MD 21234

James Thompson
Supervisor of Code Enforcement

Terry Gerahty, Owner of Poorboys
7721 Old Harford Road
Parkville MD 21234

Douglas Burgess, Exq.
Nolan, Plumhoff and Williams
Suite 700, Nottingham Centre
502 Washington Ave
Towson, MD 21204

Re: Buffer Poorsboys
from community

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As a condition of completing the buffer requirements, the copse of brambles along Oak Avenue should be mowed.

If anyone has any questions or comments, please call me at 887-3751.

Sincerely,

E. Avery Harden

E. Avery Harden, Landscape Architect
Development Plans Review

2 Attachments

4x4 POST

2x4 STRINGER

1x6 FENCE BOARD

HORIZ. SECTION

4x4

LATTICE.

2x6 ~~CLEAR~~ CAP W/ 1" CHAMFER

2x4 TOP STRINGER TOENAIL TO POST

4x4 POST W/ CHAMFER

1x6 ~~CLEAR~~ FENCE BOARDS

2x4 MIDDLE STRINGER

~~ROUGH SAWN~~ (SAME AS) COLORS WIDTH, COLOR TO BE APPROVED BY ARCH.

2x4 BOTTOM STRINGER

EQ.

EQ.

1½"

6'-0"

8'-0" O.C.

(5) ELEVATION + PLAN - WOOD FENCE
NO SCALE

2x4 CAP

2x4 STRINGER

1x6 FENCE BOARD

4x4 POST (8'-0" O.C.)

2x4 STRINGER

GRADE

TAMPED SAND

CRUSHED AGGREGATE BASE

6"

SECTION-WOOD FENCE

NO SCALE

BAISDEN RESIDENCE

BUFFER

LANDSCAPE

HOLLIES

WET AREA

FENCE LOCATION

LATTICE ON FENCE

6 FOOT FENCE

60'

10' LANDSCAPE STRIP

4 FOOT FENCE

PROPOSED TREE LOCATIONS

TERMINATE FENCE

POORBOYS NURSERY

TAYLOR AVE

APPROXIMATE SCALE
1"=30'

approved 3/11/97

Parkville Park Community Association

General Meeting - December 10, 1996

Minutes

A General Meeting of the Parkville Park Community Association was called to order at 7:30 p.m. on December 10, 1997, at the Villa Cresta Elementary School library.

The Minutes Of The October And November Meetings Were Approved.

Parkville Park Project (Update):
Ruth Baisden spoke to Office of Community Conservation concerning the landscape project for the Parkville Park, findings were:

- The county would take ownership of the Parkville Park since they have been maintaining it.
- The county will hire a contractor to install landscaping according to our plan.
- The landscaping should be installed in the spring of 1997.

Membership And Dues:
It was discussed that a membership drive and collection of unpaid dues should be addressed.

1997 Meeting Dates:
A schedule of meeting dates for 1997 was approved at our last meeting. The General Meeting schedule is as follows March 11th, May 13th, July 8th, September 9th, November 11th. There will be no meetings in the months of January and February. Meetings will be held at 7:30 p.m. in the Villa Cresta Elementary School library. Due to the closure of Villa Cresta Elementary School during the summer, the July meeting will be held at another location. A flyer with the scheduled meetings will be prepared and delivered to members of the association by Ruth Baisden.

Officers Elections:
Due to the requirement in the by-laws that members have to be in good standing for at lease twelve connective months prior to elections a vote was taken to follow the by-laws, current officers will remain in office for the entire year.

Poor Boy's Development:
A vote was taken to approve the design, location, and type of fence and landscaping as described by Baltimore County Landscape Architect, Avery Harden and sketch plan. It was further agreed and voted as a resolution that the Board of Directors will follow-up on the implementation of the Poor Boys development so that it is constructed and installed in accordance with Baltimore County Regulations, including all promises made to the community, without impacts to the surrounding neighbors, and as so to protect and preserve the residential character of our community.

Wooded Landscape Buffer To Be Offered To The County By Poor Boy's:
It was voted to support the option of county ownership of this property as a preference and to send a letter to that effect to the County Executive. PPCA prefers this to remain a permanent green space and have the right to make improvements on this property such as planting of trees.

approved 12/10

Parkville Park Community Association

General Meeting - November 20, 1996

Minutes

A General Meeting of the Parkville Park Community Association was called to order at 7:30 p.m. on November 20, 1996, at the Villa Cresta Elementary School library.. The president was in the chair, and the secretary was present.

The review of the October 16th Minutes, Old Business and New Business were waived in order that we could spend more time with our speakers. Speakers were Officer John Reginoldi who spoke on Citizens on Patrol, and Officer Robert Hoke who spoke on Neighborhood Watch.

The Parkville Park Community Association Inc.

Resolution

Resolved: That at the general meeting of the Parkville Park Community Association (PPCA) held on December 10, 1996. It was decided by the PPCA that the Board of Directors take the necessary steps to accomplish the following:

- To ensure the implementations of the design, location, and type of fence and landscaping as described by Baltimore County Landscape Architect, Avery Harden and sketch plan.

- To follow-up on the implementation of the Poor Boys development so that it is constructed and installed in accordance with Baltimore County Regulations, including all promises made to the community, without impacts to the surrounding neighbors, and as so protect and preserve the residential character of our community.

- To support county ownership of the 70 foot wide "L" shaped passive park buffer area as promised as a condition of the rezoning and send a letter to the County Executive to that effect. The PPCA prefers this to remain a permanent green space and have the right to make improvements on this property such as planting trees.

David L. Miller

Proposer

Ernest M. Bainbridge

President

Ruth L. Zeindler

Secretary

The Parkville Park Community Association Inc.

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Parkville Park Community Association.

ATTEST:

Ernest Baisden
Parkville Park Community Association

Ruth Baisden
Secretary

Ernest Baisden
President

Joseph Kreis
Vice President

Gil Reed Jr.
Board Member Witness

Beverly Sandroni
Board Member Witness

March 7 , 1999

CBA
PLOT. 7A

CONDITIONS AT POOR BOY'S
SPRING 1999

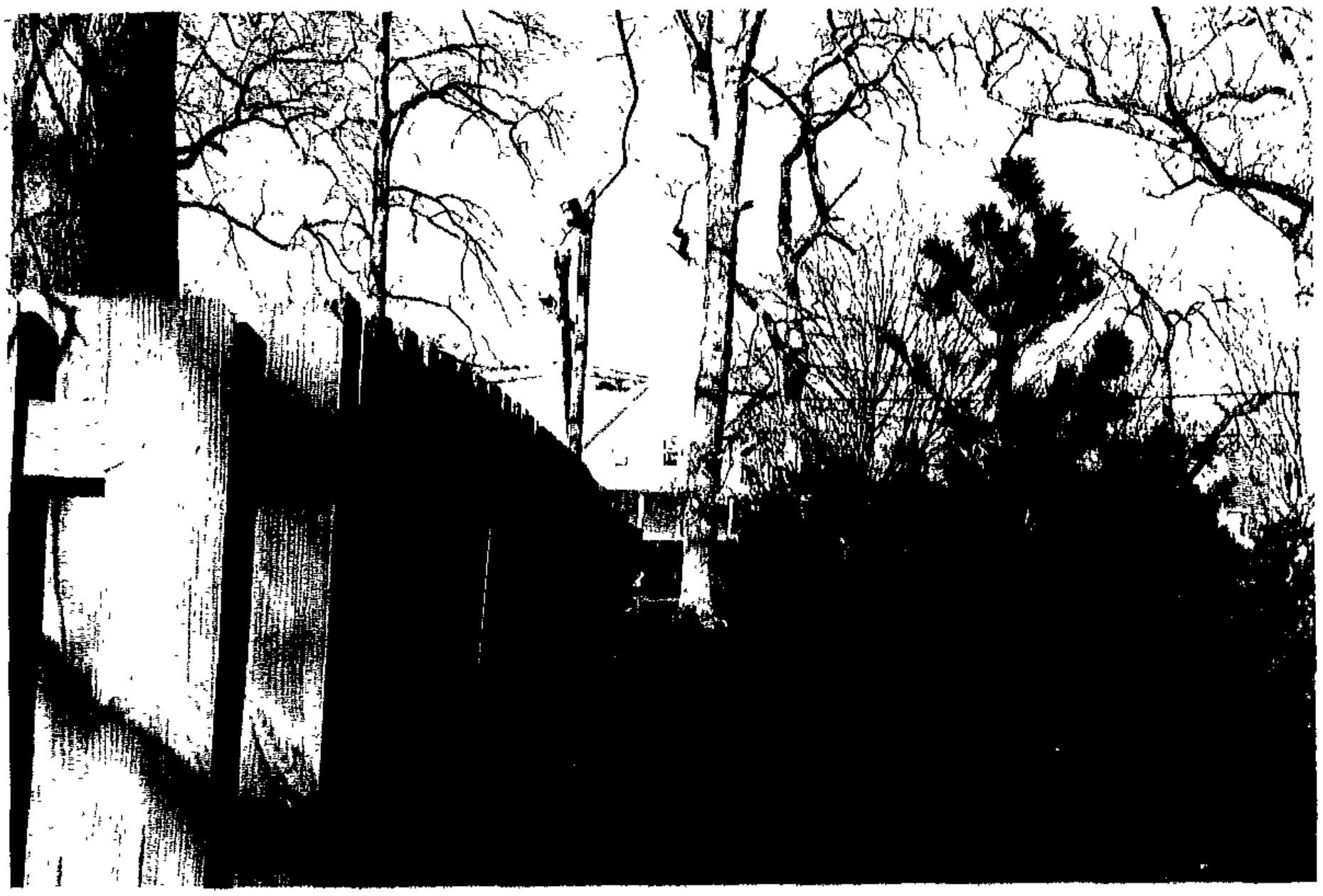


PHOTO TAKEN FROM BUFFER AREA LOOKING NORTH TO TAYLOR AVE.
PHOTO SHOWS FENCE LEANING OVER.
FENCE IS A CHEAPER QUALITY THAN REQUIRED.

Prot Ex 21A

PHOTO TAKEN FROM OAK AVENUE LOOKING WEST AT POOR BOY'S PARKING LOT.
PHOTO SHOWS FENCE LEANING AND NO LANDSCAPING THAT WOULD PROVIDE SCREENING TO RESIDENTS ON OAK & TAYLOR AVES.

CBA
Plot. # 7B

CONDITIONS AT POOR BOYS
SPRING 1999

Plot Ex 21B

PHOTO TAKEN FROM BACKYARD OF FIRST HOUSE ON OAK AVE.
LOOKING NORTH TO POOR BOYS (TAYLOR AVE)
PHOTO SHOWS WHERE LANDSCAPE SCREENING IS MISSING

PHOTO TAKEN FROM FIRST HOUSE ON OAK AVE LOOKING NORTHWEST
AT POOR BOYS
PHOTO SHOWS WHERE LANDSCAPE SCREENING IS MISSING

Conditions at Poor Boys
DECEMBER 1998

CBA Pur. #4C

Prot Ex 21C

B.

A.

C.

A. View from first house on Oak Ave looking northeast towards Taylor Ave.

B. & C.
Photo shows: tree not planted correctly. It is sitting on top of the ground tied in burlap bags. This has caused the tree to die.

Note: leaves are not raked.

Conditions at Poor Boys
DECEMBER 1998

Pot ex 31D

CBA Pot. #7D

A.

B.

C.

A., B., & C.
View from: buffer area (south of Poor Boys) looking north towards Taylor Ave.
Photo shows: Required screening consists of dead landscaping. This tree was a Christmas tree with tag still on it. It was not planted correctly (still in burlap bag) causing it to die.

Conditions at Poor Boys
DECEMBER 1998

CBA Ref. # 7E

VIEW FROM: the first house on Oak Ave. looking north towards Taylor Ave.

Photo shows: Fence leaning to one side (flimsy) This is not the quality of fence required

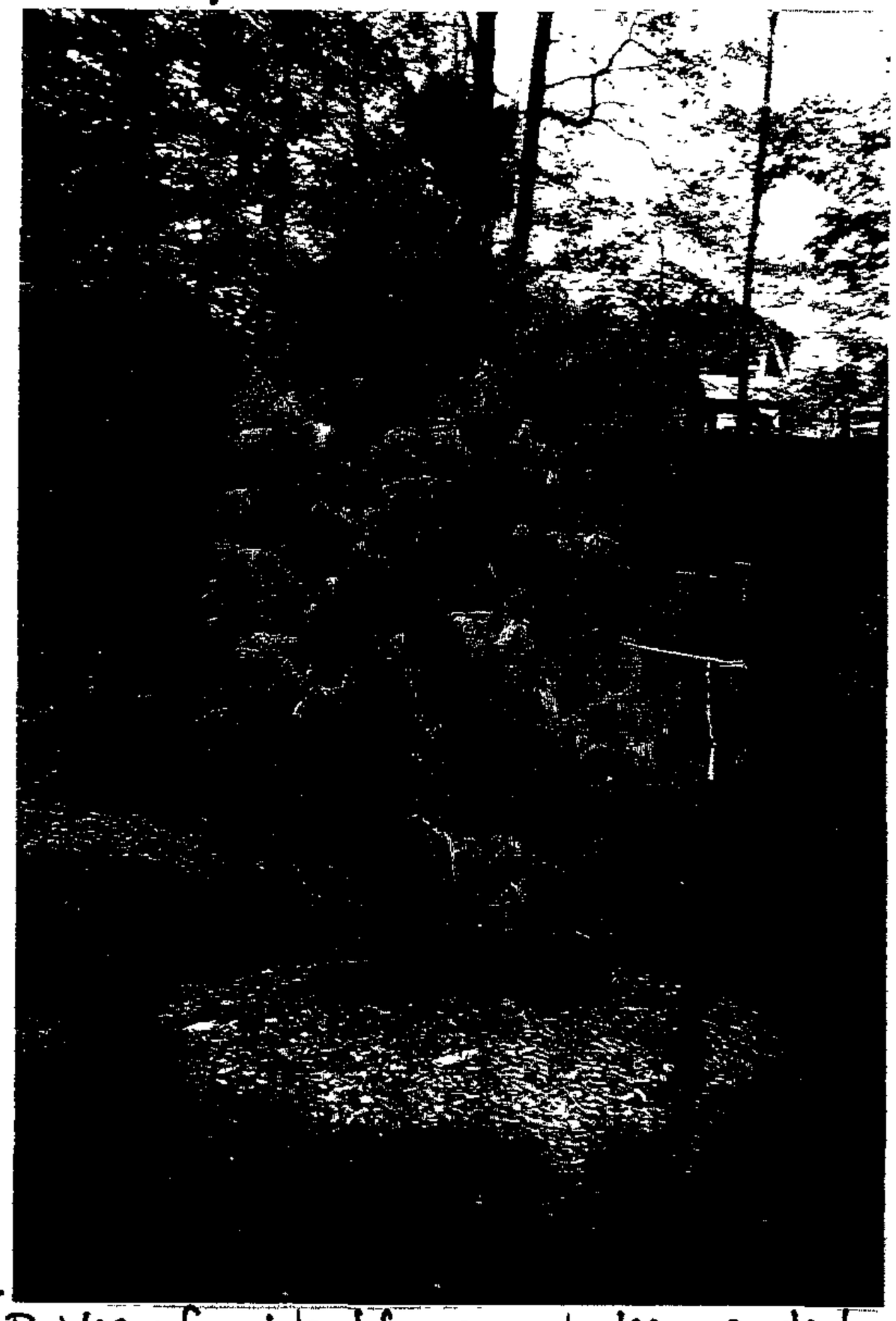
Ref. # 7E

Views from: the backyard of the first house on Oak Ave. looking north towards Taylor Ave.

Photo shows: Missing landscaping and lack of screening in buffer area.

Conditions at Poor Boys
Summer 1998

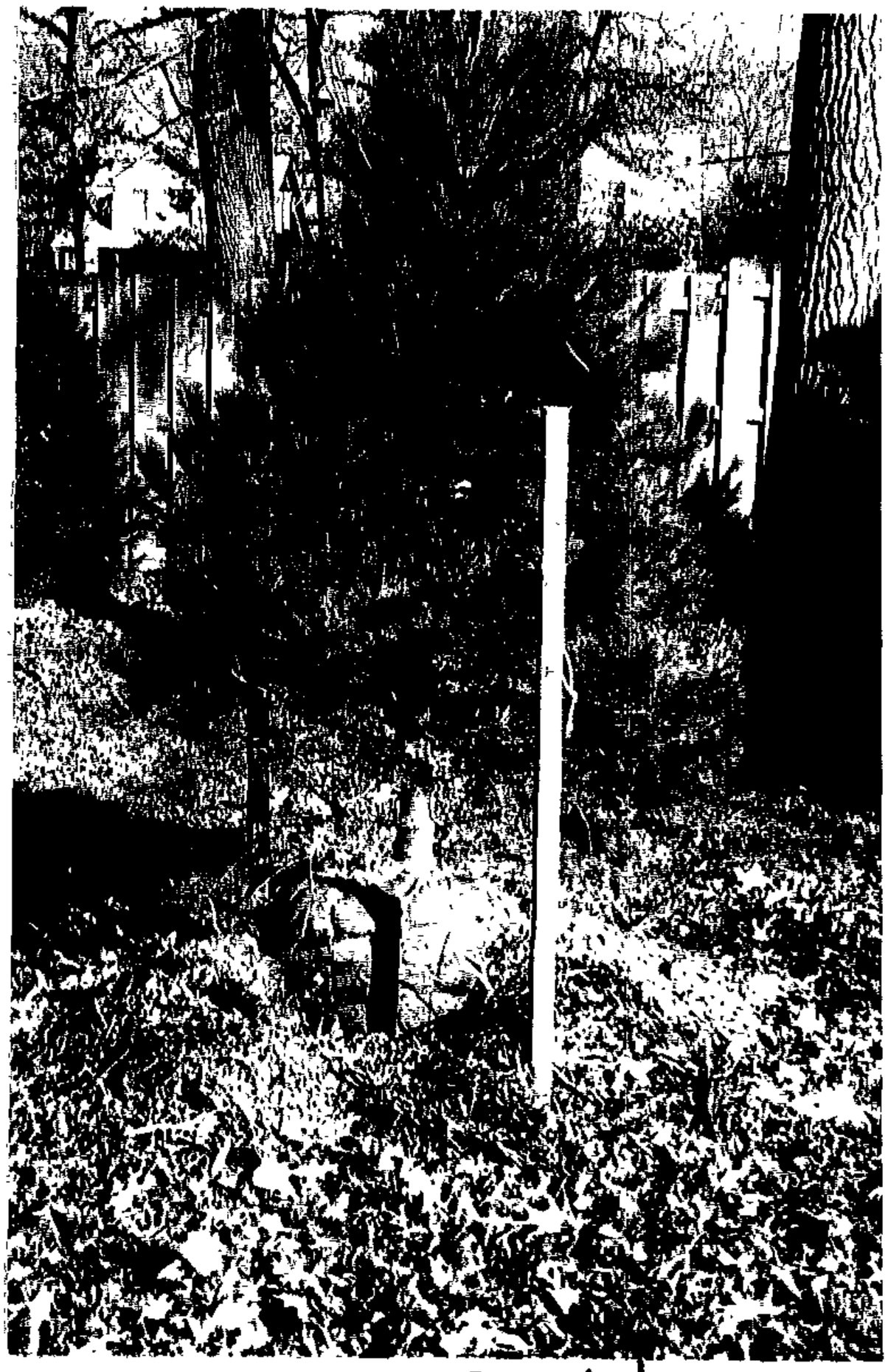
A. View from Taylor Ave. looking South.
Photo shows: missing landscaping along Taylor Ave.



B. View from: buffer area looking north to Taylor Ave
Photo shows: Tree not planted correctly (still in burlap bag). Grass needs to be cut.

C. View from: buffer area looking east towards Oak Ave.
Photo shows: dead landscaping

CBA Prot. #7F



Conditions at Poor Boys
Fall 1997
View from: buffer area (south of Poor Boys) looking south.
Photo shows: Required screening is not planted correctly and will cause tree to die. Tree sits on top of the ground tied in burlap bag. Mulch is put over bag so that the tree appears to be planted.

Prot Ex 21G

ATTACHMENT 6.

FALL 1997

FENCE AND LANDSCAPE CONDITIONS AT POOR BOYS

CBA
Plot #74

VIEW FROM THE CORNER OF OAK AVENUE AND TAYLOR AVENUE LOOKING SOUTH - SELLING PRODUCT EXTENDS FURTHER THAN FENCE.

VIEW FROM TAYLOR AVENUE LOOKING SOUTH - PRODUCT PILED AS HIGH AS ONE STORY.

Prot Ex 21 I

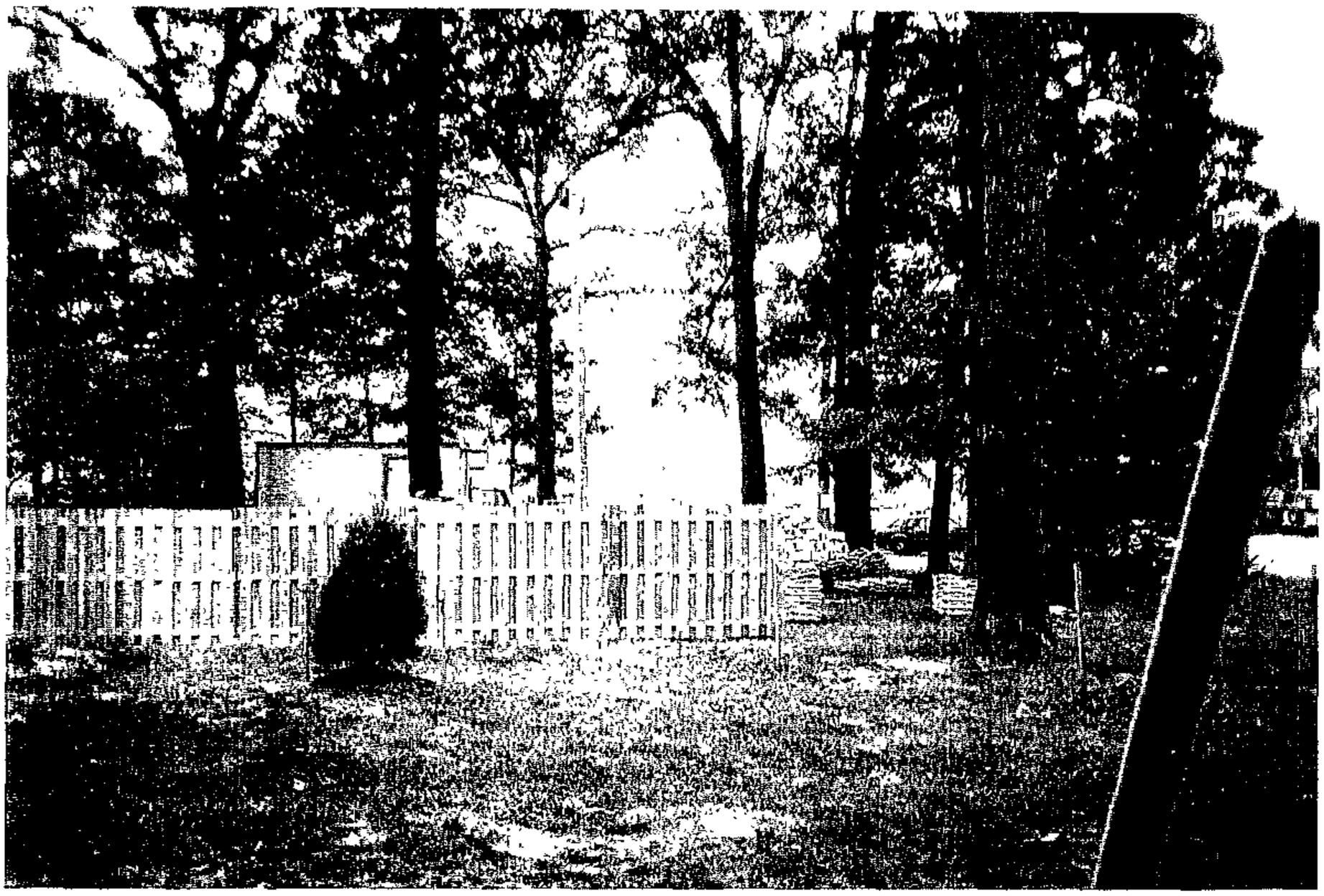
ATTACHMENT 6.

FALL 1997

FENCE AND LANDSCAPE CONDITIONS AT POOR BOYS

CBA Put. #7A

VIEW OF FENCE PARRELL TO FIRST HOUSE ON OAK AVENUE. ONLY ONE TREE IS ALIVE, LANDSCAPING ACCORDING TO AVERY HARDEN'S LETTER NEEDS TO BE COMPLETED.



VIEW FROM OAK AVENUE LOOKING WEST AT END OF FENCE, STORAGE OF PRODUCTS BEYOND FENCE - INCOMPLETE LANDSCAPING

Prot Ex 21 H

Conditions at Poor Boys
May 1997

Landscape Buffer Before

View from: Oak Ave looking southeast towards first home on Oak Ave.

Photo shows: Landscape Buffer area prior to neighbors clean-up. It was a condition that Poor Boys maintain the buffer area. but they neglected to do so.

and after.

Prot Ex 22C

View from: Oak Ave. looking southeast to first house on Oak Ave.
Photo shows: buffer area after clean-up by neighbors.

LBA Prof # 7I

Conditions at Poor Boys

View from first house on Oak Avenue looking northwest at Poor Boys business. Photos show mulch being spread over lot. Many truck loads of mulch and gravel have been spread overtime on this property and has caused a change in topography which has resulted in a redirection of the flow of stormwater. This has caused a flooding of the Poor Boys Landscape Buffer area and surrounding properties. Prior to Poor Boys filling activities, the natural stormwater flowed in the northwest direction.

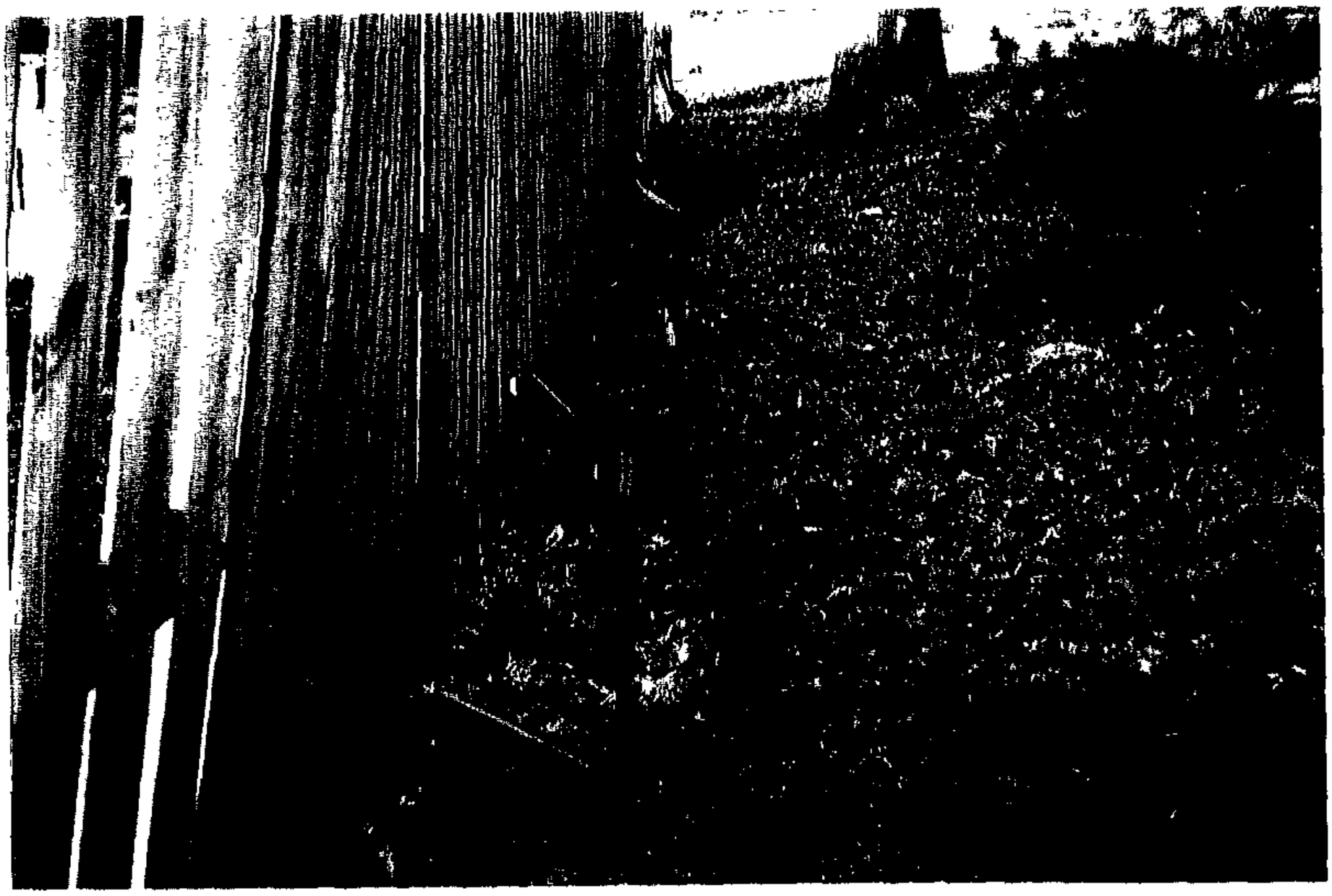
↕ VIEW OF POOR BOYS BUSINESS. PHOTO SHOWS MULCH BEING SPREAD OVER LOT.

Prof Ex 23

↕ VIEW OF POOR BOYS LANDSCAPE BUFFER AREA · PHOTO SHOWS FLOODING
↕ CAUSED BY POOR BOYS FILING ACTIVITIES.

CBA
PLOT. 8A

MARCH, 2,000
FENCE CONDITIONS AT
POOR BOYS



Plot 8B

MARCH, 2000
MISSING
LANDSCAPING
AT
POOR
BOYS

IN THE MATTER OF:
TERRY J. GERAHTY
LEGAL OWNER/PETITIONER
2711 Taylor Avenue

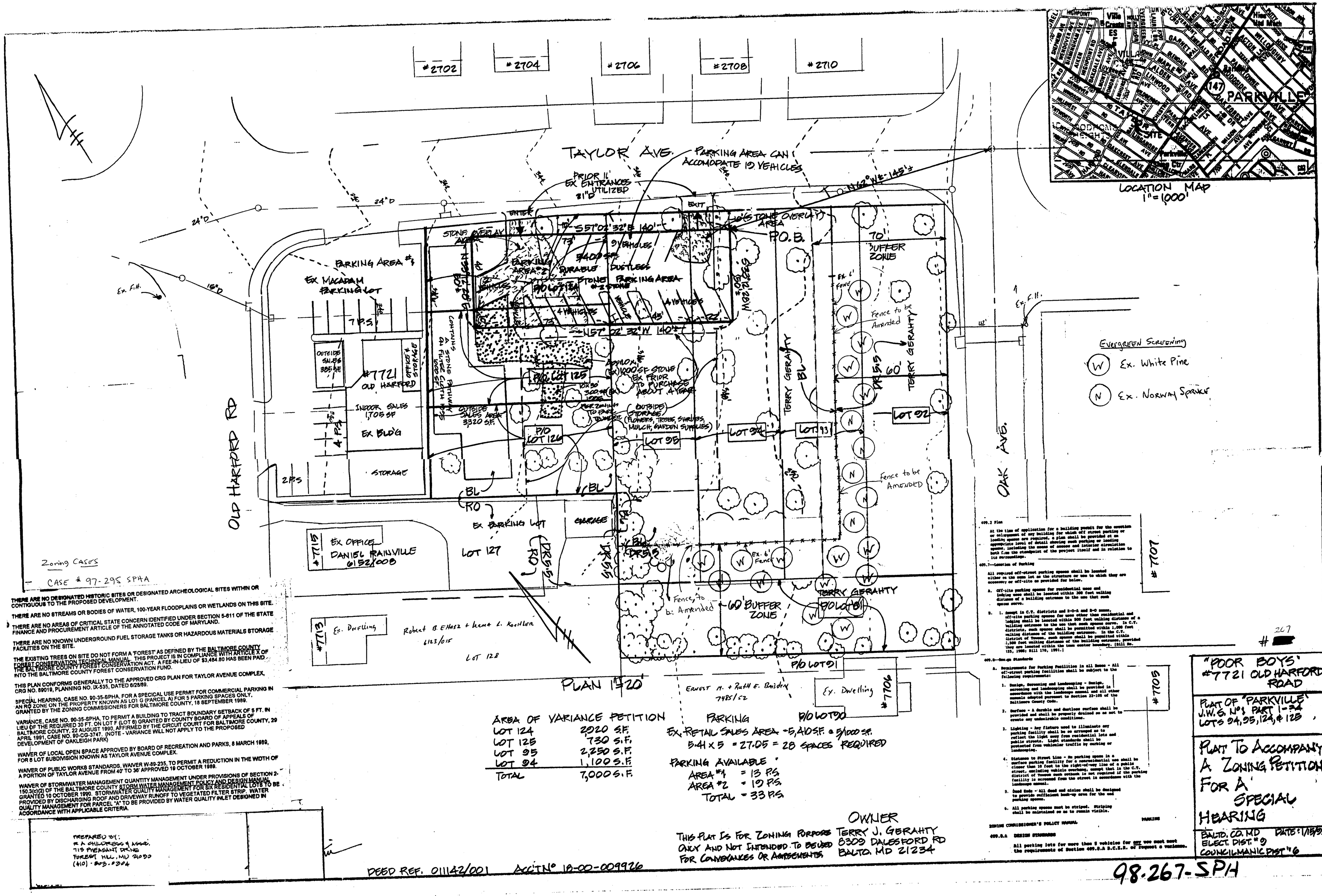
BEFORE THE
BALTIMORE COUNTY
BOARD OF APPEALS

Case No. 98-267-SPH
January 20, 2000

_____/

The above-captioned matter came on for hearing before the Baltimore County Board of Appeals, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204, commencing at 10 a.m., on January 20, 2000, before Susan A. Kambouris, Notary Public.

Reported by:
Susan A. Kambouris



LOCATION MAP
1"=1000'

Zoning Cases

- CASE # 97-295 SPHA

THERE ARE NO DESIGNATED HISTORIC SITES OR DESIGNATED ARCHEOLOGICAL SITES WITHIN OR CONTIGUOUS TO THE PROPOSED DEVELOPMENT.

THERE ARE NO STREAMS OR BODIES OF WATER, 100-YEAR FLOODPLAINS OR WETLANDS ON THIS SITE.

THERE ARE NO AREAS OF CRITICAL STATE CONCERN IDENTIFIED UNDER SECTION 5-611 OF THE STATE FINANCE AND PROCUREMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND.

THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS OR HAZARDOUS MATERIALS STORAGE FACILITIES ON THE SITE.

THE EXISTING TREES ON SITE DO NOT FORM A 'FOREST' AS DEFINED BY THE BALTIMORE COUNTY FOREST CONSERVATION TECHNICAL MANUAL. THIS PROJECT IS IN COMPLIANCE WITH ARTICLE X OF THE BALTIMORE COUNTY FOREST CONSERVATION ACT. A FEE-IN-LIEU OF $3,484.80 HAS BEEN PAID INTO THE BALTIMORE COUNTY FOREST CONSERVATION FUND.

THIS PLAN CONFORMS GENERALLY TO THE APPROVED CRG PLAN FOR TAYLOR AVENUE COMPLEX, CRG NO. 89019, PLANNING NO. IX-535, DATED 6/28/89.

SPECIAL HEARING, CASE NO. 90-35-SPHA, FOR A SPECICAL USE PERMIT FOR COMMERCIAL PARKING IN AN RC ZONE ON THE PROPERTY KNOWN AS LOT G (PARCEL A) FOR 5 PARKING SPACES ONLY, GRANTED BY THE ZONING COMMISSIONERS FOR BALTIMORE COUNTY, 18 SEPTEMBER 1989.

VARIANCE, CASE NO. 90-35-SPHA, TO PERMIT A BUILDING TO TRACT BOUNDARY SETBACK OF 5 FT. IN LIEU OF THE REQUIRED 30 FT. ON LOT F (LOT G) GRANTED BY COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY, 22 AUGUST 1990, AFFIRMED BY THE CIRCUIT COURT FOR BALTIMORE COUNTY, 29 APRIL 1991, CASE NO. 90-CG-3747. (NOTE - VARIANCE WILL NOT APPLY TO THE PROPOSED DEVELOPMENT OF OAKLEIGH PARK)

WAIVER OF LOCAL OPEN SPACE APPROVED BY BOARD OF RECREATION AND PARKS, 8 MARCH 1989, FOR 8 LOT SUBDIVISION KNOWN AS TAYLOR AVENUE COMPLEX.

WAIVER OF PUBLIC WORKS STANDARDS, WAIVER W-89-235, TO PERMIT A REDUCTION IN THE WIDTH OF A PORTION OF TAYLOR AVENUE FROM 40' TO 36' APPROVED 19 OCTOBER 1989.

WAIVER OF STORMWATER MANAGEMENT QUANTITY MANAGEMENT UNDER PROVISIONS OF SECTION 2-150.3(c)(2) OF THE BALTIMORE COUNTY STORM WATER MANAGEMENT POLICY AND DESIGN MANUAL GRANTED 10 OCTOBER 1990. STORMWATER QUALITY MANAGEMENT FOR SIX RESIDENTIAL LOTS TO BE PROVIDED BY DISCHARGING ROOF AND DRIVEWAY RUNOFF TO VEGETATED FILTER STRIP. WATER QUALITY MANAGEMENT FOR PARCEL 'A' TO BE PROVIDED BY WATER QUALITY INLET DESIGNED IN ACCORDANCE WITH APPLICABLE CRITERIA.

AREA OF VARIANCE PETITION

LOT 124	2,920 S.F.
LOT 125	730 S.F.
LOT 95	2,250 S.F.
LOT 94	1,100 S.F.
TOTAL	7,000 S.F.

PARKING

Ex. RETAIL SALES AREA = 5,410 S.F. @ 5/1000 S.F.
5.41 x 5 = 27.05 = 28 SPACES REQUIRED

PARKING AVAILABLE
AREA #1 = 13 P.S.
AREA #2 = 19 P.S.
TOTAL = 33 P.S.

THIS PLAT IS FOR ZONING PURPOSES ONLY AND NOT INTENDED TO BE USED FOR CONVEYANCES OR AGREEMENTS.

OWNER
TERRY J. GERAHTY
8309 DALESFORD RD
BALTO. MD 21234

PREPARED BY:
R A CHILDRESS & ASSOC.
713 PHEASANT DRIVE
FOREST HILL, MD 21050
(410) - 893-8304

DEED REF. 01142/001 ACCT.N° 10-00-009926

409.2 Plan

At the time of application for a building permit for the erection or enlargement of any building for which off-street parking or or enlargement of any building for which off-street parking or loading spaces are required, a plan shall be provided at an approximate level of detail showing such parking or loading spaces, including the means of ingress and interior circulation spaces, including the means of ingress and interior circulation between them from the standpoint of the project itself and in relation to its surroundings.

409.7--Location of Parking

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

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

B. 1. Except in C.T. districts and B-O-A and B-O zones, off-site parking spaces for uses other than residential and lodging shall be located within 900 feet walking distance of a building entrance to the use that such spaces serve. In C.T. building entrance to the use that such spaces serve. In C.T. districts, such spaces shall be permitted within 1,000 feet walking distance of the building entrance. In the C.T. district of Towson, such spaces shall be permitted within 1,500 feet walking distance of the building entrance, provided they are located within the town center boundary. [Bill No. 155, 1988; Bill 170, 1991.]

409.8--Design Standards

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

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

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

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

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

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

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

ZONING COMMISSIONER'S POLICY MANUAL PARKING

409.8.A DESIGN STANDARDS

All parking lots for more than 5 vehicles (or any use must meet the requirements of Section 409.8.A B.C.Z.R. or request a variance.

"POOR BOYS"
#7721 OLD HARFORD ROAD

PLAT OF "PARKVILLE"
J.W.S. N°1 PART 1 - PT
LOTS 94, 95, 124, & 125

PLAT TO ACCOMPANY A ZONING PETITION FOR A SPECIAL HEARING

BALTO. CO. MD ELECT. DIST. # 9 COUNCILMANIC DIST # 6

DATE: 1/15/97

98-267-SPH

hts

own at least once
wn at least twice
un twice than removed
n; than removed
wn
twice
wn

wn
wn
ed

#2702 #2704 #2706 #2708 #2710

TAYLOR AVE.

PRIOR 11' EX ENTRANCES UTILIZED 21'D

24'D

ENTER EXIT

100 SQ. FT. DW. SIDE SIGN

16'x32' TENT

EX MACADAM PARKING LOT

H.C.

MACADAM SURFACE

STONE SURFACE

#7721 OLD HARFORD

OFFICE & STORAGE

INDOOR SALES

EX BLDG

STORAGE

Outside STORAGE + Display

80'x40' TENT

OLD HARFORD RD

BL

EX PARKING LOT

GARAGE

#7715 EX OFFICE DANIEL RAINVILLE 6152/008

LOT 127

DR5.5 RD

DR5.5

#7713 Ex. Dwelling

Robert B. Ethier + Norma L. Koehler 6123/015

LOT 128

PLAN 1"=20'

BL

Ex. 6' Fence

60' BUFFER ZONE

P/O LOT 91

Ernest N. + Ruth E. Boisdin 7425/52

#7705 Ex. Dwelling

P/O LOT 90

N 16°42' W 145.42'

BL

Ex. 6' FENCE

TERRY GERAHTY

60'

42'

Ex. F.H.

OAK AVE.

LOCATION MAP
1"=1000'

97-295-SPHA (See Attached copy of Variance Decision for conditions)

Poor Boy's Lights

Light # A - Put shield on; but blew off
B - Has shield
C - Removed
D - Removed
E - Has shield
F - Removed
g - No Shield
H thru # K - untouched
L - Aimed down
M - untouched
- String Lights

295

"POOR BOYS"
#7721 OLD HARFORD ROAD

PLAT OF "PARKVILLE" J.W.G. No 9 PART 1-34 LOTS 94, 95, 124, & 125

PLAT TO ACCOMPANY A ZONING PETITION FOR A VARIANCE AND SPECIAL HEARING

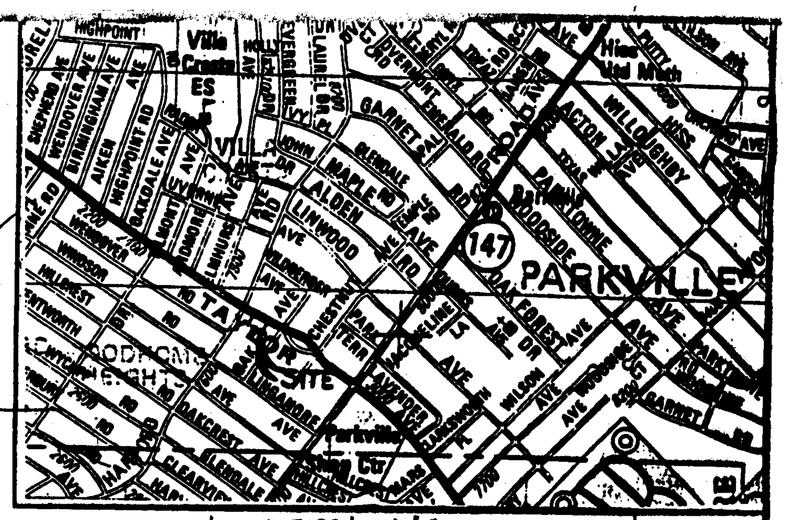
BALTO. CO. MD ELECT. DIST. "9 COUNCILMANIC DIST "6

DATE: 1/15/97

OWNER
TERRY J. GERAHTY
8309 DALESFORD RD
BALTO. MD 21234

THIS PLAT IS FOR ZONING PURPOSES ONLY AND NOT INTENDED TO BE USED FOR CONVEYANCES OR AGREEMENTS

DEED REF. 01142/001 ACCT N° 18-00-009926



#2702 #2704 #2706 #2708 #2710

TAYLOR AVE.

PARKING AREA CAN ACCOMODATE 19 VEHICLES

PRIOR 11' EX ENTRANCES UTILIZED 21'D

24'D 24'D 15'D

Ex. F.H.

ENTER EXIT

STONE OVERLAY AREA

10' S51°02'32"E 140'

73'

9 VEHICLES

P.O.B.

PARKING AREA #3

EX MACADAM PARKING LOT

7 P.S.

PARKING AREA #2 5400 SF DURABLE DUSTLESS

10 P.S. 4 VEHICLES

STONE PARKING AREA #1 STONE

4 VEHICLES

N51°02'32"W 140'±

70' BUFFER ZONE

Ex. 6' Fence

Fence to be Amended

60' BUFFER ZONE

TERRY GERAHTY

OUTSIDE SALES 325 SF

#7721 OLD HARFORD

OFFICE & STORAGE

CONTAINS A STONE FILTER CLOTH & 6" STONE

STONE PATHWAY

INDOOR SALES 1,705 SF

EX BLDG

4 P.S.

OUTSIDE SALES AREA 3320 S.F.

P/O LOT 125

10'x30' 300 SF (±) 100%

RECEIVING TO BE DONE

APPROX. (±) 1000 SF STONE EX PRIOR TO PURCHASE ABOUT 4 YEARS

(OUTSIDE) STORAGE (FLOWERS, TREES, SHRUBS, MULCH, GARDEN SUPPLIES)

P/O LOT 124

LOT 95

LOT 94

LOT 93

LOT 92

LOT 91

P/O LOT 90

BL

RO

CBL

DRS

EX PARKING LOT

GARAGE

#7715 EX OFFICE DANIEL RAINVILLE 6152/008

LOT 127

#7713 Ex. Dwelling

Robert B. Ehasz + Irene L. Koehler 6123/015

LOT 128

#7706 Ex. Dwelling

Ernest M. + Ruth E. Buster 7485/52

#7707

OLD HARFORD RD

OAK

PLAN 1"=20'

Evergreen Screening

W Ex. White Pine

N Ex. Norway Spruce

Zoning Cases

- CASE # 97-295 SPHA

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AREA OF VARIANCE PETITION

LOT 124	2020 S.F.
LOT 125	730 S.F.
LOT 95	2,250 S.F.
LOT 94	1,100 S.F.
TOTAL	7,000 S.F.

PARKING P/O LOT 90

EX. RETAIL SALES AREA = 5,410 S.F. @ 5/1000 SF.

5.41 X 5 = 27.05 = 28 SPACES REQUIRED

PARKING AVAILABLE

AREA #1 = 13 P.S.

AREA #2 = 10 P.S.

TOTAL = 33 P.S.

409.2 Plan

At the time of application for a building permit for the erection or enlargement of any building for which off-street parking or loading spaces are required, a plan shall be provided at an appropriate level of detail showing such parking or loading spaces, including the means of access and interior circulation back from the standpoint of the project itself and in relation to its surroundings.

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B. 1. Except in C.T. districts and R-O-A and R-O zones, off-site parking spaces for uses other than residential and lodging shall be located within 800 feet walking distance of a building entrance to the use that such spaces serve. In C.T. districts, such spaces shall be permitted within 1,000 feet walking distance of the building entrance. In the C.T. District of Towson, such spaces shall be permitted within 1,500 feet walking distance of the building entrance, provided they are located within the town center boundary. [Bill No. 155, 1988; Bill 170, 1991.]

409.8--Design Standards

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

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

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

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

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

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

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

ZONING COMMISSIONER'S POLICY MANUAL PARKING

409.8.A DESIGN STANDARDS

All parking lots for more than 5 vehicles for any use must meet the requirements of Section 409.8.A B.C.Z.R. or request a variance.

PREPARED BY:
R. A. CHILDRESS & ASSOC.
719 PHEASANT DRIVE
FOREST HILL, MD 21050
(410) - 893-7304

DEED REF. 01114Z/001 ACCT.N° 18-00-009926

OWNER
TERRY J. GERAHTY
8309 DALESFORD RD
BALTO. MD 21234

THIS PLAT IS FOR ZONING PURPOSES ONLY AND NOT INTENDED TO BE USED FOR CONVEYANCES OR AGREEMENTS.

#267

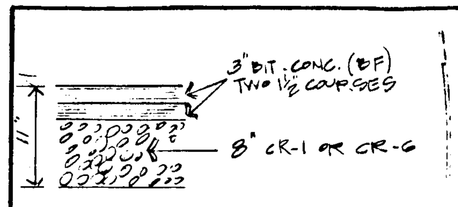
"POOR BOYS" #7721 OLD HARFORD ROAD

PLAT OF "PARKVILLE" J.W.S. N°1 PART 1-24 LOTS 94, 95, 124, & 125

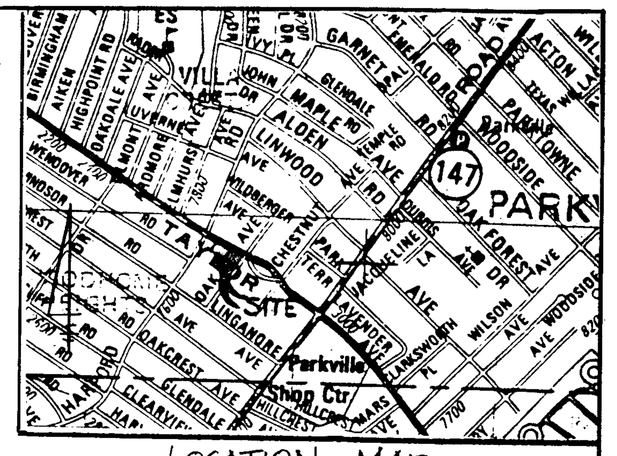
PLAT TO ACCOMPANY A ZONING PETITION FOR A SPECIAL HEARING

BALTO. CO. MD ELECT. DIST. "9" COUNCILMANIC DIST "6" DATE: 1/15/97

98-267-SPH



11" PAVING SECTION
NO SCALE



ON SITE BENCH MARK SEE BM

GENERAL NOTES FOR BUILDING PERMIT APPLICATION

(For Grading, Paving and installation of utilities & WQ Facility)

SITE

1 DEED REFERENCE 011142 001
2 TAX ACCOUNT # 18 00 000926
3 TAX MAP 81 GRID BLOCK 1 PARCELS 685 GROUP B1
4 ELECTION DISTRICT 9th COUNCILMANIC DISTRICT 6th
5 TOTAL AREA OF PROPERTY GROSS & NET = 1 332 AC +/- (Approx 58 021 sf)

ENVIRONMENTAL

6 THERE ARE NO CRITICAL AREAS ARCHAEOLOGICAL SITES ENDANGERED SPECIES HABITATS OR HISTORICAL BUILDINGS WITHIN THE LIMITS OF CONSTRUCTION SHOWN ON THIS PLAN, TO THE BEST OF OUR KNOWLEDGE
7 THERE ARE NO CRITICAL EXISTING SLOPES OF 25% OR GREATER
8 THERE ARE NO EXISTING WELL SEPTIC SYSTEM OR ABANDONED UNDERGROUND TANKS ON SITE
9 FOREST CONSERVATION REGULATION DOES NOT APPLY TO THIS SITE PER SECTION 14 402 B 1 iii
10 NO WETLANDS EXIST WITHIN 25' OF THE PROPOSED CONSTRUCTION
11 NO STREAMS EXIST WITHIN 100' OF THE PROPOSED CONSTRUCTION THE SITE IS NOT WITHIN A 100 YEAR FLOODPLAIN
12 PUBLIC WATER AND SEWER SERVE THIS SITE
13 STORMWATER MANAGEMENT WAIVER FOR 22 000 sf IMPERVIOUS AREA WAS REQUESTED DEC 1997

ZONING

14 EXISTING ZONING OF SUBJECT PROPERTY BL
15 EXISTING INDOOR SALES AREA 1 705 sf
PROPOSED ADDITIONAL INDOOR SALES AREA 0 sf (NO INCREASE IN BUILDING SIZE PROPOSED)
PROPOSED OUTSIDE SALES AREA 9 895 sf
TOTAL SALES AREA 11 600 sf
NOTE FLOOR AREA RATIO (FAR) = 3 265 / 75933 = 0 04 ALLOWED FAR = 2 0
AMENITY OPEN SPACE (AOS) NOT REQUIRED
16 EXISTING USE RETAIL SALES OF LANDSCAPING / GARDENING SUPPLIES
PROPOSED USE RETAIL SALES OF LANDSCAPING / GARDENING SUPPLIES
17 THE SITE IS LOCATED ON 1 200' SCALE ZONING MAP NE 8 D
18 ALL PARKING SPACES WILL BE A MINIMUM OF 8 5 X 18 UNLESS OTHERWISE NOTED PROPOSED PARKING SPACE SHALL HAVE ANCHORED WHEEL STOPS WHERE SHOWN ON PLAN WATER QUALITY TRENCHES ARE PROPOSED AT EDGE OF PAVING, THEREFORE CURBING WILL NOT BE USED
19 IMPROVEMENTS PROPOSED AT THIS TIME DO NOT INCLUDE ANY NEW BUILDING ADDITION
20 REQUIRED PARKING

EXISTING CONDITIONS

AREA	SQ FT	SPACES / 1000 sf	REQ'D
INSIDE SALES	1 705	5 / 1 000	8 5
OUTSIDE SALES	9 895	5 / 1 000	49 5
TOTAL	11 600		58 SPACES

PROPOSED CONDITIONS NO INCREASE IN BUILDING SIZE

TOTAL REQUIRED 58 PARKING SPACES
TOTAL PROVIDED 58 PARKING SPACES (INCLUDING 3 HC SPACES)
NOTE ONE VAN PARKING SPACE WILL BE PROVIDED

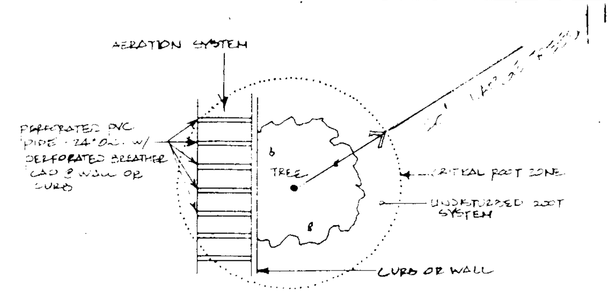
21 INCREASED AVERAGE DAILY TRIPS ADT FOR THIS SITE WILL IMPLEMENT NO 3 OR 4 5 TRIPS
22 ANY NEW SIGN(S) WILL COMPLY WITH SECTION 413 OF THE BCZR AND ALL ZONING POLICIES
23 ILLUMINATION FOR OFF STREET PARKING WILL REFLECT AWAY FROM RESIDENTIAL LOTS AND PUBLIC STREETS
24 ZONING CASE 97 295 SPHA WHICH PERMITTED A STONE PAVED PARKING LOT ON THE PROPERTY WILL NOT APPLY AFTER THE PARKING LOT IS PAVED IN ACCORDANCE WITH THIS DRAWING

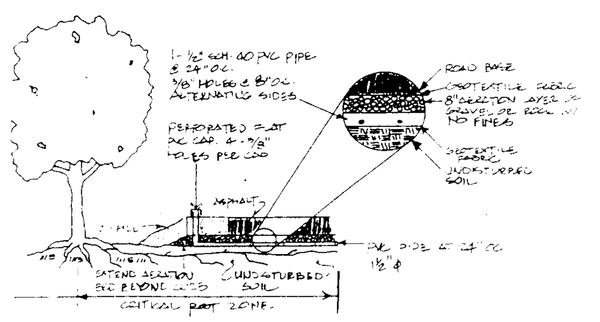
LANDSCAPING

25 INSTALL TREE AERATION SYSTEM TO PROTECT LARGE TREE WHERE SHOWN ON THE PLAN
(4 LOCATIONS)

TEST PIT WALL FOOTING PRIOR TO EXCAVATING ADJACENT TO BUILDING WALL. NOTIFY OWNER & ENGINEER OF BOTTOM FOOTING ELEVATION.

OWNER
GEORGE C. PEVERLEY 3rd
ACCT No 0919391250
8696 / 731



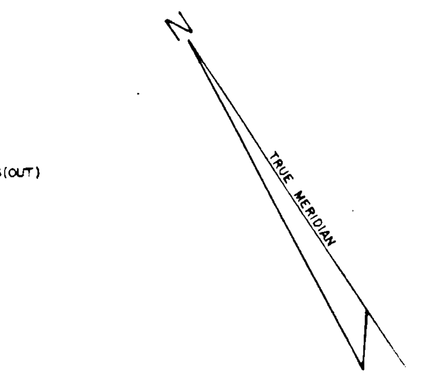


Notes:
Bed preparation should not exceed two inches.
Vertical pipe should be capped & with a perforated cap with 4-3/8 inch holes per cap
Gravel or rock should contain no fines.
Can also be used when critical root zone is covered by fill instead of asphalt

PROP TREE AERATION SYSTEM (At four locations)
NO SCALE

GENERAL CONSTRUCTION NOTES

1. TOPOGRAPHIC SURVEY DATED DECEMBER 1988 BY KELLER & KELLER SURVEYORS
2. CONTRACTOR SHALL CALL "MISS UTILITY" 24 HOURS PRIOR TO STARTING CONSTRUCTION
3. THE CONTRACTOR SHALL OBTAIN ALL PERMITS FROM BALTIMORE COUNTY FOR ALL CONSTRUCTION ON-SITE AND WITHIN THE COUNTY RIGHT-OF-WAY ACCESS PERMIT IS REQUIRED FOR NEW CONCRETE ENTRANCE AT TAYLOR AVENUE
4. THE LOCATION OF EXISTING UTILITIES SHOWN ARE APPROXIMATE CONTRACTOR SHALL IDENTIFY ALL UTILITIES TO HIS SATISFACTION PRIOR TO STARTING CONSTRUCTION. TEST PIT AS REQUIRED
5. CONTRACTOR SHALL REMOVE ON SITE TREES WOOD FENCE BUILDING AND ALL OTHER STRUCTURES REQUIRED FOR THE PROPOSED SITE IMPROVEMENTS
6. ALL DAMAGES TO THE PUBLIC RIGHT-OF-WAY SHALL BE REPAIRED AT THE CONTRACTOR'S EXPENSE BALTIMORE COUNTY STANDARD DETAILS SHALL BE USED FOR SITE WORK
   STORM DRAIN INLETS (3 TOTAL) STD PLATE NO 23
   PAVING 4" BITUMINOUS CONCRETE (2 - 2" COURSES) ON 8" CR-6 SUB BASE
7. ALL SITE WORK CONSTRUCTION SHALL COMPLY WITH BALTIMORE COUNTY DEPT OF PUBLIC WORKS SPECIFICATIONS
8. SUITABLE MATERIAL SHALL BE USED FOR FILL REQUIRED THE MATERIAL AND PAVING SUBGRADE ALL FILL SHALL BE INSPECTED AND TESTED BY A SOIL ENGINEER TO ENSURE THAT COMPACTION COMPLIES WITH BALTO CO DPW SPECIFICATIONS
9. DRIVEWAY AND PARKING AREA TO BE BITUMINOUS PAVING ALL PARKING SPACES TO BE PAINTED ON PAVING
10. PARKING SPACES FOR HANDICAPPED PERSON SHALL HAVE SIGN AND POST PAINTED SHALL BE PAINTED WITH HANDICAPPED WHEELCHAIR SYMBOL THE ON-SITE PEDESTRIAN RAMP SHALL COMPLY WITH THE AMERICANS WITH DISABILITIES ACT AND SHALL INCLUDE
   A FINISHED SURFACE TO BE SLIP RESISTANT (MEDIUM BROOM FINISH OR EQUIVALENT)
   B DETECTABLE WARNINGS TRUNCATED DOMES
11. SEE APPROVED SEDIMENT CONTROL PLAN FOR REQUIRED SEDIMENT CONTROL DEVICES



SITE PLAN TO ACCOMPANY PERMIT APPLICATION FOR GRADING, PAVING AND INSTALLATION OF PRIVATE UTILITIES & WQ FACILITY

DATE	REVISION DESCRIPTION

SITE PLAN
PARKING LOT EXPANSION and MODIFICATIONS
POOR BOY'S, INC
2711 TAYLOR AVENUE (AT OLD HARFORD ROAD)

BALTIMORE COUNTY DIST 9 C6 MARYLAND

SCALE 1" = 20' DATE JAN 12, 1998

ENGINEER	OWNER	DRAWING No
[illegible]	[illegible]	SP-1

3" BIT. CONC. (BF) THIN ½ COMPOSED
8" CR-1 OR CR-6

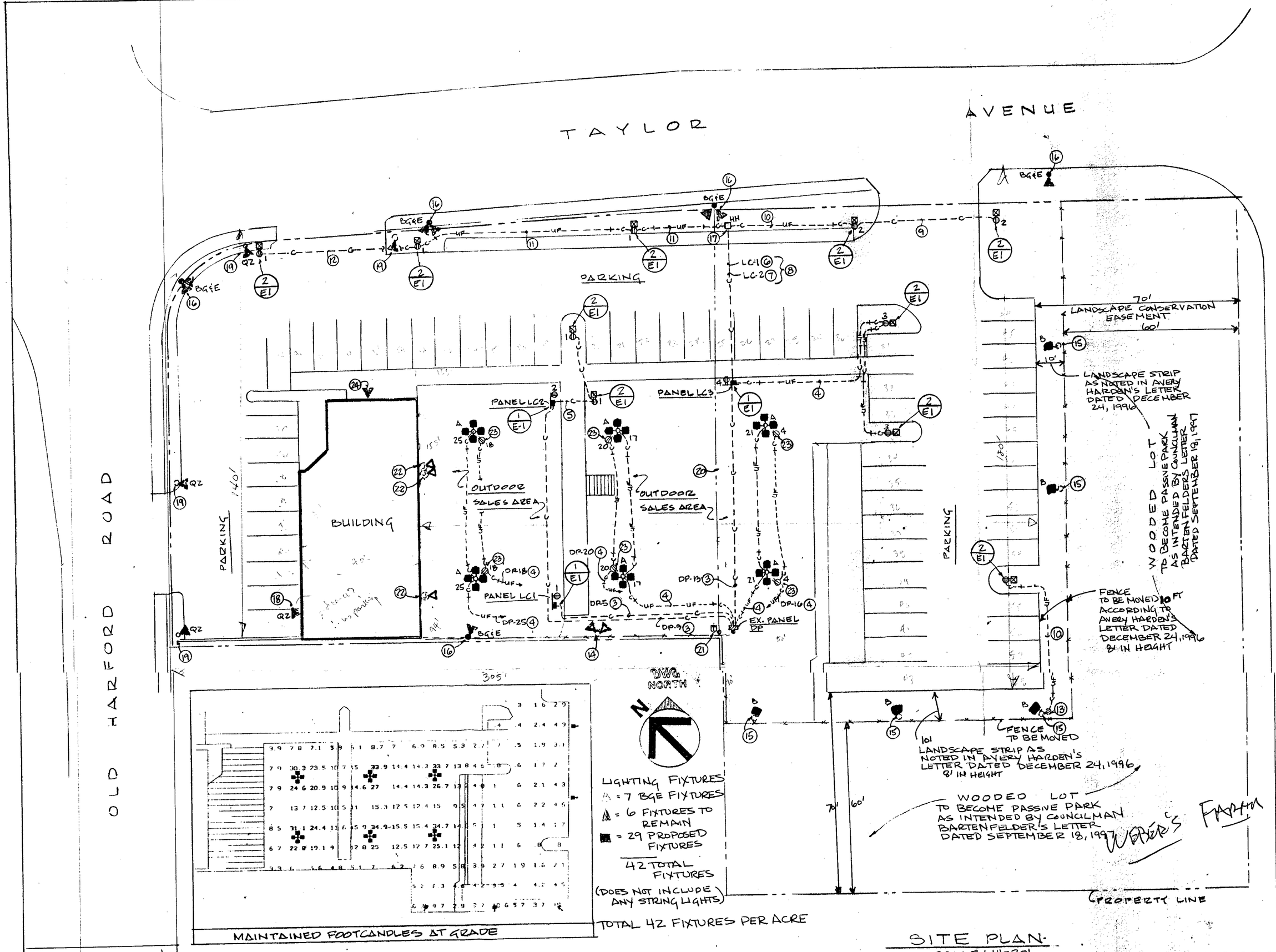
11" PAVING SECTION
NO SCALE

TEST PIT WALL FOOTING PRIOR TO EXCAVATING ADJACENT TO BUILDING WALL. NOTIFY OWNER & ENGINEER OF BOTTOM FOOTING ELEVATION.

LEGEND

EXISTING CONTOURS ..... 340'
PROPOSED CONTOURS ..... 340'
PROPOSED PAVING .....
TRACT BOUNDARY .....
PROP. CONC. CURB & GUTTER ..... 12" A.C.
EXISTING CONC. CURB & GUTTER .....
LIMIT OF DISTURBANCE ..... L.O.D.
SILT FENCE ..... S.F.
SUPER SILT FENCE ..... S.S.F.
STABILIZED CONSTR. ENTRANCE .....
PROJECTION .....

BL
RO
DR 5.5
RESIDENCES
TAYLOR
AVENUE (60 FT. R/W — MACADAM PAVING)
OLD HARFORD ROAD
OAK AVENUE (50 FT. R/W — MAC. PVG.)
"ROYAL FARM STORE"
STABILIZED CONSTR. ENTRANCE
LIMIT OF DISTURBANCE
SUPER SILT FENCE
SILT FENCE
SANY. M.H. TOP EL. = 337.26 INV. EL. = 329.41(IN)
SANY. M.H. TOP EL. = 349.30 INV. EL. = 340.55(OUT)
SANY. M.H. TOP EL. = 354.88 INV. EL. = 346.08
STORM M.H. TOP EL. = 338.49
STORM M.H. TOP EL. = 342.76 INV. EL. = 335.81
STORM M.H. TOP EL. = 351.07 INV. EL. = 345.52(OUT)
STORM M.H. TOP EL. = 354.18 INV. EL. = 346.88(IN FROM WEST) INV. EL. = 346.58(OUT)
INLET TOP EL. = 341.66 INV. EL. = 333.81
INLET TOP EL. = 338.92 INV. EL. = 336.37
STORM INLET TOP EL. = 355.49 INV. EL. = 350.09(OUT)
8" SANY. 3.26%
8" SANY. 4.7%
8" SANY. 0.96%
24" STORM
21" STORM
15" STORM
18" STORM
16" WATER (UNKNOWN DEPTH)
10" GAS
6" WATER
12" WATER (UNKNOWN DEPTH)
S. 60° 54' 43" E. 80.54'
S. 57° 02' 32" E. 205.54'
74.63'
60.54'
WQ TRENCH No. 2
WQ TRENCH No. 1
PROP. PAVING (11" SECTION)
EX. PAVING TO BE REMOVED & REPLACED WITH PROP. PAVING (11" SECTION)
7.5%
1.5% SLOPE
LOT NO. 124
LOT NO. 125
LOT NO. 126
LOT NO. 127
LOT NO. 128
LOT NO. 95
LOT NO. 94
LOT NO. 92
LOT NO. 91
LOT NO. 90
LOBBY FIN. FLOOR ELEV. = 340.65
POOR BOYS WC
#7721
1sty CONC. BLOCK BLDG.
INDOOR RETAIL SALES - 1,705 SF
FUT. RAMP UP TO ELEV. 341.3
FUT. CANOPY & WALK
FUTURE BLDG ADDITION EL 341.3
1½% SLOPE
OUTSIDE RETAIL SALES - 10,895 SF
FIN. FL. EL. = 340.73
MACADAM PAVING
8" CONC. BLOCK WALL
CONC. CURB
BRICK WALK
6' WALK
12' WATER (UNKNOWN DEPTH)
4 FOOT CONC. WALK
N. 32° 47' 06" E. 111.38'
N. 33° 12' 28" E. 145.25'
N. 33° 12' 28" E. 190.00'
N. 57° 02' 32" W. 180.00'
87.54'
100.00'
SITE BENCHMARK
RAILROAD SPIKE IN POLE
ELEV. = 347.00
7715 1sty 2sty FRAME BLDG. "D RAINVILLE & ASSOC"
3.0' CONC. BLOCK GARAGE FL. EL. = 345.3
DANIEL RAINVILLE 6152/008
JOHN M. & MARTHA MIMS 6027/536
OWNER: TERRY J. GERAHTY 8309 DALESFORD RD. BALTIMORE, MD 21234
EPNEST M. & RUTH E. BAISDEN 7485/52
OWNER GEORGE C. PEVERLEY 3rd ACCT No 0919391250 8696 731
1sty CONC. BLOCK BLDG. FIN. FL. EL. = 354.5
1sty ALUM. SIDING ADD. #7706 2sty BRICK & ALUM. SIDING DWG. FIN. FL. EL. = 357.67
CONC. PATIO EL. = 356.6'
FUT. DUMPSTER PAD
REMOVE TREES
10' ENCROACHMENT FOR PROP. SIGN
PROP. TREES
EX. TREE
EX. FENCE
WOOD PRIVACY FENCE
WIRE FENCE
CHAIN LINK FENCE
EX. WATER
EX. GAS
EX. OVERHEAD WIRES
EX. UTILITY POLE
EX. LIGHT POLE
EX. SIGN
EX. CANOPY
EX. BUILDING
EX. CONC. WALK
EX. CURB
EX. CONC. PAD
EX. MAILBOX
EX. HYDRANT
EX. GAS METER
EX. A/C UNIT
EX. TRANSFORMER
EX. BOLLARD
EX. SHRUBS
EX. TREE
EX. TREE LINE
EX. BUSH
EX. ROCK
EX. BENCH
EX. TRASH CAN
EX. FLAG



SCHEDULE OF PANELBOARD DP (EXISTING)

SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS WITH 200A MAIN C.B.

CKT	SERVES	BREAKER TRIP	BREAKER P	BREAKER VOLT	KVA	NOTES	CKT	SERVES	BREAKER TRIP	BREAKER P	BREAKER VOLT	KVA	NOTES
1	EX. LTG / RECEPT.	20	1	120	1.2		2	EX. LTG/RECEPT	15	1	120	1.2	
3	↓	20	1	120	1.2		4		15	1	120	1.2	
5	PANEL LC1	40	2	120/240	8.0	①	6		15	1	120	1.2	
7	↓	↓	↓	↓			8		15	1	120	1.2	
9	PANEL LC2	40	2	120/240	8.0	①	10		15	1	120	1.2	
11	↓	↓	↓	↓			12		15	1	120	1.2	
13	PANEL LC3	40	2	120/240	8.0	①	14		15	1	120	1.2	
15	↓	↓	↓	↓			16	RECEPT. ON LIGHT POLE	20	1	120	1.2	①⑤
17	POLE MTD LIGHTS	20	2	240	2.4	①④	18	RECEPT. ON LIGHT POLE	20	1	120	1.2	①⑤
19	↓	↓	↓	↓			20	RECEPT. ON LIGHT POLE	20	1	120	1.2	①⑤
21	POLE MTD LIGHTS	20	2	240	2.4	①④	22	EX SPACE					
23	↓	↓	↓	↓			24						
25	POLE MTD LIGHTS	20	2	240	2.4	①④	26						
27	↓	↓	↓	↓			28						
29	EX SPACE						30						

PANEL DP } CONN. LOAD: 16 AMPS.
DEMAND LOAD: 8 AMPS.

SCHEDULE OF PANELBOARD LC1 (NEMA 3R ENCLOSURE)

SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS 100A MAINS

CKT	SERVES	BREAKER TRIP	BREAKER P	BREAKER VOLT	KVA	NOTES	CKT	SERVES	BREAKER TRIP	BREAKER P	BREAKER VOLT	KVA
1	RECEPT	20	1	120	1.2	②	2	SPACE				
3	SPARE	20	1	120		②	4					
5	SPARE	20	1	120		②	6					
7	SPARE	20	1	120		②	8					

SCHEDULE OF PANELBOARD LC2, (NEMA 3R ENCLOSURE)

SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS 100A MAINS.

CKT	SERVES	BREAKER TRIP	BREAKER P	BREAKER VOLT	KVA	NOTES	CKT	SERVES	BREAKER TRIP	BREAKER P	BREAKER VOLT	KVA
1	RECEPT.	20	1	120	1.2	②	2	RECEPT	20	1	120	1.2
3	SPARE	20	1	120		②	4	SPACE				
5	SPARE	20	1	120		②	6					
7	SPARE	20	1	120		②	8					

SCHEDULE OF PANELBOARD LC3 (NEMA 3R ENCLOSURE)

SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS 100A MAINS

CKT	SERVES	BREAKER TRIP	BREAKER P	BREAKER VOLT	KVA	NOTES	CKT	SERVES	BREAKER TRIP	BREAKER P	BREAKER VOLT	KVA
1	RECEPT	20	1	120	1.2	②	2	RECEPT	20	1	120	1.2
3	RECEPT	20	1	120	1.2	②	4	RECEPT	20	1	120	1.2
5	SPACE					②	6	SPACE				
7	SPACE					②	8	SPACE				

DRAWING NOTES

① NEW CIRCUIT BREAKER SHALL BE COMPATIBLE WITH EX. CUTLER-HAMMER PANELBOARD.
② CIRCUIT BREAKER SHALL BE SWD RATED
③ 3#8, 1#10 GND. 1"C.
④ 2#12, 1#12 GND. FROM PANEL TO LAST OUTLET ON CKT. CONDUIT SLEEVES SHALL BE 3/4"
⑤ 2#12, 1#12 GND. FROM PANEL TO LAST OUTLET ON CKT. CONDUIT SHALL BE 3/4"
⑥ 2#10, 1#12 GND.
⑦ 2#12, 1#12 GND.
⑧ IN 1 1/2" CONDUIT
⑨ 2#12, 1#12 GND IN 3/4" CONDUIT
⑩ 2#12, 1#12 GND WITH 3/4" CONDUIT SLEEVES
⑪ 2#10, 1#12 GND WITH 3/4" CONDUIT SLEEVES
⑫ 2#10, 1#12 GND IN 3/4" CONDUIT
⑬ EXTEND EX. RECEPTACLE BRANCH CKT. WIRING.
⑭ DISCONNECT EX. LTG. BRANCH CKT. WIRING TO EX. FLOODLIGHT AND CAP OFF. REMOVE EX. FLOODLIGHT AND TURN OVER TO OWNER.
⑮ REMOVE EX. FLOODLIGHT AND PROVIDE NEW TYPE "B". M.H. 16'A.F.G. MODIFY EX. BRANCH CKT. WIRING AS REQD. TO ACCOMODATE NEW WORK.
⑯ EX. BG\E CO. POLE MTD HID FLOODLIGHTS TO REMAIN. M.H. APPROX 30'
⑰ HANDHOLE W.P. NOMINAL 8"x8"x12" D. PVC CONSTRUCTION WITH S.S HARDWARE. MOUNT FLUSH WITH FINISHED GRADE
⑱ EX. WALL MOUNTED INCANDESCENT QUARTZ FLOODLIGHT TO REMAIN
⑲ EX. POLE MOUNTED INCANDESCENT QUARTZ FLOODLIGHT TO REMAIN
⑳ EX. BG\E CO. OVERHEAD INCOMING SERVICE CONDUCTORS
㉑ EX. BG\E CO. POLE MTD INCOMING 120/240V, 1ϕ, 3W SECONDARY SERVICE TRANSFORMER
㉒ DISCONNECT EX. LIGHTING BRANCH CKT. WIRING TO EX. FLOODLIGHT AND CAP OFF. REMOVE EX. FLOODLIGHT AND TURN OVER TO OWNER.
㉓ RECEPTACLE 20A.125V. DUPLEX GFCI TYPE, WEATHERPROOF. MOUNT ON WOOD LIGHT POLE 18'A.F.G.
㉔ EX. H.I.D WALL PACK LIGHT TO REMAIN
㉕ LIGHTS MOUNTING ORIENTATION SHALL BE AS SHOWN ON THE SITE PLAN.

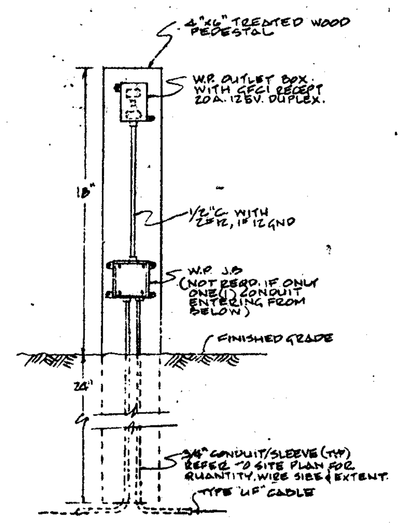
POOR BOYS LIGHTING SYSTEMS

- ▲ LIGHTING SYSTEM #1
  - BY BGE
- ▲ LIGHTING SYSTEM #2
  - CONTROL BY POOR BOYS
- ■ LIGHTING SYSTEM #3
  - CONTROL BY POOR BOYS PROPOSED ADDITIONAL LIGHTING BEING REVIEWED BY BALTIMORE COUNTY
  - POINT BY POINT CACULATIONS ARE SHOWN ON PLAN - ONLY FOR THIS SYSTEM

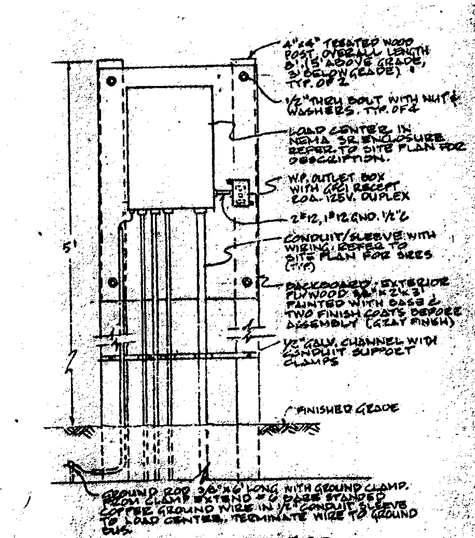
LIGHTING SYSTEM #4
- STRING LIGHTING VARIES FROM 60 - 150 BULBS

LIGHTING SCHEDULE (25)

TYPE	DESCRIPTION	MFGR.', CAT. NO.
A	FOUR(4) 250W. METAL HALIDE AREA CUTOFF (SHOE BOX STYLE) WITH 240V. BALLAST. MOUNTED ON TREATED WOOD POLE. ACCESSORIES SHALL INCLUDE THE FOLLOWING: - TRI-VOLT BALLAST SUITABLE FOR 240 V OPERATION - YOKE MOUNT - WOOD POLE MOUNTING BRACKET POLE SHALL BE MIN. 12" DIA 20' LONG, INSTALL MIN. 4'-0" BELOW FIN. GRADE SECURE EA. TWO(2) BRACKETS 180° WITH 5/8" THREADED ROD HARDWARE SHALL INCLUDE NUTS AND LOCKWASHERS. CUT OFF AT EACH END EXCESS ROD 1/4" FROM NUT	ELWOOD LIGHTING (TEL: 800-236-7000) FOUR(4) LIGHTS EA. CAT. NO. AC-4-425-M-T-PWV-1
B.	SAME AS TYPE "A" EXCEPT SINGLE UNIT MOUNTED ON EX. WOOD POLE AND FURNISHED WITH BACKLIGHT SHIELD	ELWOOD LIGHTING CAT. NO: AC-1-425-M-T-PWV-1-SBW16



(2/E1) PEDESTAL MOUNTED RECEPTACLE
NO SCALE



(1/E1) BACKBOARD MOUNTED LOAD CENTER & RECEPTACLE
NO SCALE

SITE PLAN

SCALE: 1" = 20'

GENERAL ELECTRICAL CONSTRUCTION NOTES

1. PROVIDE ALL LABOR, MATERIALS AND EQUIPMENT NECESSARY FOR THE INSTALLATION OF ALL ELECTRICAL WORK SHOWN ON THIS DWG. AND IN CONFORMANCE WITH THE NATIONAL ELECTRIC CODE (NEC) AND ALL APPLICABLE BALTO. CO. AND STATE OF MARYLAND BUILDING CODES.
2. THE CONTRACTOR SHALL EXAMINE THE SITE AND OBSERVE THE CONDITIONS UNDER WHICH THE WORK WILL BE DONE OR OTHER CIRCUMSTANCES WHICH WILL AFFECT THE CONTEMPLATED WORK. CONTRACTOR SHALL APPLY AND PAY FOR ALL NECESSARY PERMITS AND CERTIFICATES OF INSPECTION REQUIRED BY THE AUTHORITY.
3. PERFORM TESTS ON ALL NEW WORK TO ASSURE THE ABSENCE OF SHORTS AND GROUNDS.
4. ALL EXCAVATION WORK NECESSARY FOR THE INSTALLATION OF ELECTRICAL WORK SHALL BE INCLUDED UNDER THIS CONTRACT.
5. CONDUIT INSTALLED UNDERGROUND SHALL BE PVC. CONDUIT INSTALLED ON BUILDING SHALL BE EMT. ALL OUTLET AND JUNCTION BOXES SHALL BE WEATHERPROOF. ALL PANELBOARD FEEDERS SHALL BE INSTALLED IN CONDUIT.
6. DIRECT BURIAL CABLE SHALL BE TYPE UF. ALL WIRE SHALL BE COPPER.
7. PANELBOARDS SHALL BE "LOAD CENTER" TYPE. PROVIDE CIRCUIT DIRECTORY. UPDATE EX. PANELBOARD DIRECTORY.
8. IT SHALL BE NOTED THAT A REASONABLE SHIFTING IN ELECTRICAL WORK BEFORE THE ROUGHING-IN OF THE WORK SHALL BE EXPECTED IN ORDER TO MEET FIELD CONDITIONS AND THIS WORK SHALL BE DONE AT NO INCREASE COST TO OWNER.
9. AS-BUILT DWGS: AT COMPLETION OF WORK PROVIDE OWNER WITH AS-BUILT DWG. SHOWING ANY REROUTING OF FEEDERS, BRANCH CIRCUITS ETC. AND/OR ANY CHANGE WHATSOEVER.
10. THE CONTRACTOR SHALL BE HELD RESPONSIBLE FOR ANY DAMAGE TO WORK ALREADY IN PLACE DUE TO EITHER HIS WORK OR THE NEGLIGENCE OF HIS WORKMEN. CORRECTION OF ALL DAMAGE WORK SHALL BE DONE BY THE TRADES WHO ORGINALLY INSTALLED THE WORK AT THE EXPENSE OF THE CONTRACTOR UNDER THIS CONTRACT.

SCOTS CONSULTANTS
19907 York Rd., P.O. Box 415
Parkton, Maryland 21120-0415
Phone: (410) 343-0256
Fax: (410) 343-0364

OUTDOOR SALES AREA LIGHTING UPGRADE

Poor Boy's COUNTRY MARKET
7721 OLD HARFORD ROAD BALTIMORE, MD 21234

DATE: 10/25/99

DWG NO: SE-1

SHEET: 1 OF 1

rather is used as storage or display areas. Furthermore, the outdoor lights on the Property that are used to illuminate an area that is used for parking are reflected away from residential lots and public streets, and thus should be determined to meet the requirements of Section 409.8.

Please understand that the current outdoor lighting was not installed at our behest. We were forced to find another form of outdoor lighting when the owners of a neighboring property, Ruth and Ernie Baisden, complained to the County that the type of outdoor lighting we were using, namely, 60 watt string lighting, did not comply with the Baltimore County Electrical Code. These 60 watt bulbs did not reflect onto any residential lot or public street; however, not wanting another needless, time consuming, not to mention expensive debate with the Baisdens, we removed the 60 watt string lighting and consulted not only our electrician, but the Baltimore County Electrical Department, BGE and the Baltimore County Zoning Department to derive a solution. We requested guidance from all of these experts and agencies because no lighting manual for Baltimore County exists that could provide us with the needed information. We were desperate to find a solution because we were beginning our very busy spring nursery season and we needed outdoor lighting. Unfortunately, the only financially feasible method for Poor Boy's at the time, without going back to string lighting which the Baisdens had already forbidden, was to have BGE install outdoor lights on the Property, affixed onto existing utility poles. All steps were taken to try to make the BGE lights as unimposing as possible to the Baisdens while not violating any provisions of the Code.

Our attempt at amicable resolution was not successful. As we should have expected by this time, the Baisdens still were not satisfied. They began complaining that the BGE lights were not in compliance with the Code and that Poor Boy's intentionally had the BGE lights installed and aimed at their property to get back at them for complaining. Nothing could be further from the truth. First, if Poor Boy's were interested in "getting back" at the Baisdens for complaining, why would we have waited this long and let so many other complaints by the Baisdens go untouched and then choose a minor issue like outdoor lighting in which to "seek our revenge." Frankly, that is just not our style. Admittedly, one of the BGE lights installed on the Property did reflect onto the Baisdens residence, but once sufficient light from another direction was installed we promptly aimed the light downward, but the complaints continued and the light was aimed further down at the ground. The light which presented this problem has since been removed altogether.

Wanting desperately to devote our time to the operation of a small business and not to becoming experts in "How to Accommodate Residential Neighbors Without Going Out of Business or Losing Your Mind", we engaged in several discussions with County officials, who had been contacted by the Baisdens regarding the outdoor lights, to discuss adjustments to the lights, i.e., height and placement. The discussions with County officials resulted, among other things, in Poor Boy's agreeing to remove 50% of the light fixtures that we installed ourselves (which has been completed) and to install shields on the remaining 50% of the light fixtures (which also has been completed). Although we have not been asked to, Poor Boy's has had two more of the BGE lights removed from the Property, and is making arrangements for the light from a third BGE light on the Property

Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Code Enforcement: 410- 887-3351 Extension_____
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

BALTIMORE COUNTY UNIFORM CODE VIOLATION NOTICE

VIOLATION(S) OF TITLE 3, 7, 18, 24, OR 26 OF THE BALTIMORE COUNTY CODE, ZONING, OR OTHER CODES, REGULATIONS, AND POLICIES AS INDICATED BELOW:

Violation Notice No. 107108

Case No.: 97-3996

Election District 9 Permit No. _____

Name (s) Terry Gerachty

Address 7721 Old Hartford Rd. Parkville MD. 21234

Location of Violation (if different than address) _____

Vehicle License No.: _____ Vehicle ID: _____

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

County Code:
§§ _____
§§ _____

Zoning Regulations:
§§ 102.1, 409.8.A.3
§§ 500

Building Code (BOCA):
§§ 101.1 1996
§§ _____

Livability Code (18-66):
§§ _____
§§ _____

Investment Property Act (7-66):
§§ _____

Electrical Code (NEC):
§§ _____

Plumbing Code (NSPC):
§§ _____

Dwelling (CABO):
§§ _____

Other: §§ _____

COMMENTS OR OTHER VIOLATIONS:

1) Fence not properly installed all parallel to Oakley Parallel to Taylor As per Special Hearing
3) Cease stringing of lights on lot as per special hearing #97-3 (3) cease light from commercial zoning from shining on Residential Property

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE 12/18/97 FAILURE TO COMPLY WILL RESULT IN THE PENALTIES DESCRIBED ON THE REVERSE SIDE OF THIS VIOLATION NOTICE.

DATE ISSUED: 12/4/97 INSPECTOR: Rowe

4) Obtain permit for or Remove trailer on property

STOP WORK NOTICE

PURSUANT TO INSPECTION AND IDENTIFICATION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT.

THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN: _____

DATE ISSUED: _____ INSPECTOR: _____

IMPORTANT INFORMATION ON FINES AND PENALTIES PRINTED ON REVERSE SIDE

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 3-26-99

OEA: 1/4

HISTORIC DISTRICT/BLDG.

PERMIT #: B
RECEIPT #: A
CONTROL #: C-
XREF #:

FEE: 30.00 + 5.00 + 12.00
PAID: 47.00
PAID BY: Appl.
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

BUILDING 1 or 2 FAM.
CODE CODE ____
BOCA CODE ✓

TYPE OF IMPROVEMENT
1. ✓ NEW BLDG CONST
2. ____ ADDITION
3. ____ ALTERATION
4. ____ REPAIR
5. ____ WRECKING
6. ____ MOVING
7. ____ OTHER

PROPERTY ADDRESS 2711 Taylor Ave ☐ YES ☒ NO
SUITE/SPACE/FLOOR ☐ DO NOT KNOW
SUBDIV: Parkville
TAX ACCOUNT #: 18-00-009926 DISTRICT/PRECINCT 9 21

OWNER'S INFORMATION (LAST,FIRST)
NAME: Conaghty, Tony
ADDR: 8309 Belsford Rd 21234

DOES THIS BLDG. HAVE SPRINKLERS
YES ___ NO ___

APPLICANT INFORMATION
NAME: Tony Conaghty
COMPANY: Four Boys Inc!
STREET 7721 Old Harford Rd
CITY,ST ZIP Balto. MD 21234
PHONE #: 410 668-7599 MHIC LICENSE #:
APPLICANT SIGNATURE: DRC#

PLANS: CONST ___ PLOT ___ PLAT ___ DATA ___ EL 2 PL 2
TENANT
CONTR: Owner
ENGNR:
SELLR:

DESCRIBE PROPOSED WORK: Construct A Detached Shed On Sales Lot of Ex Country Market, 6'x8'x8' = 48sf PLANS WAIVED JBryan

TYPE OF USE

RESIDENTIAL
01. ___ ONE FAMILY
02. ___ TWO FAMILY
03. ___ THREE AND FOUR FAMILY
04. ___ FIVE OR MORE FAMILY (ENTER NO UNITS) ____
05. ___ SWIMMING POOL
06. ___ GARAGE
07. ___ OTHER

NON-RESIDENTIAL
08. ___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ___ CHURCH, OTHER RELIGIOUS BUILDING
10. ___ FENCE (LENGTH ____ HEIGHT ____)
11. ___ INDUSTRIAL, STORAGE BUILDING
12. ___ PARKING GARAGE
13. ___ SERVICE STATION, REPAIR GARAGE
14. ___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ___ OFFICE, BANK, PROFESSIONAL
16. ___ PUBLIC UTILITY
17. ___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ___ SIGN
19. ___ STORE ✓ MERCANTILE ___ RESTAURANT SPECIFY TYPE Country Market
20. ___ SWIMMING POOL SPECIFY TYPE
21. ___ TANK, TOWER
22. ___ TRANSIENT HOTEL, MOTEL (NO. UNITS ____)
23. ___ OTHER

TYPE FOUNDATION
1. _ SLAB
2. _ BLOCK
3. _ CONCRETE

BASEMENT
1. _ FULL
2. _ PARTIAL
3. _ NONE

TYPE OF CONSTRUCTION
1. ___ MASONRY
2. ___ WOOD FRAME
3. ___ STRUCTURE STEEL
4. ___ REINF. CONCRETE

TYPE OF HEATING FUEL
1. ___ GAS 3. ___ ELECTRICITY
2. ___ OIL 4. ___ COAL

TYPE OF WATER SUPPLY
1. ✓ PUBLIC SYSTEM ✓ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM ___ EXISTS ___ PROPOSED

TYPE OF SEWAGE DISPOSAL
1. ✓ PUBLIC SEWER ✓ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM
___ SEPTIC ___ EXISTS ___ PROPOSED
___ PRIVY ___ EXISTS ___ PROPOSED

CENTRAL AIR: 1. ___ 2. ✓
ESTIMATED COST: $ 750.00 OF MATERIALS AND LABOR

PROPOSED USE: Same + Accessory Structure
EXISTING USE: Country Market Sales Lot - VACANT

OWNERSHIP
1. ✓ PRIVATELY OWNED 2. ___ PUBLICLY OWNED 3. ___ SALE 4. ___ RENTAL

RESIDENTIAL CATEGORY: 1. ___ DETACHED 2. ___ SEMI-DET. 3. ___ GROUP 4. ___ TOWNHSE 5. ___ MIDRISE 6. ___ HIRISE
#EFF: ___ #1BED: ___ #2BED: ___ #3BED: ___ TOT BED: ___ TOT APTS/CONDOS: ____
1 FAMILY BEDROOMS ____
GARBAGE DISPOSAL 1. Y 2. N BATHROOMS ____ CLASS 06
POWDER ROOMS ____ KITCHENS ____ LIBER 21 FOLIO 34

BUILDING SIZE
FLOOR 48
WIDTH 6'
DEPTH 8'
HEIGHT 8'
STORIES 1
LOT #'S 124
CORNER LOT
1. ___ YES 2. ___ N

LOT SIZE AND SETBACKS
SIZE 1.14 Ac.
FRONT STREET ____
SIDE STREET ____
FRONT SETBK 35'
SIDE SETBK 32' / 239'
SIDE STR SETBK ____
REAR SETBK 106'
ZONING ____

APPROVAL SIGNATURES		DATE
BLD INSP		
BLD PLAN	JBryan Appr	3:26:99
FIRE	JBryan Appr	3:26:99
BEDI CTL	WAIVED FINAL Sec'y	3.26.99
ZONING	OK A Lee	3.26.99
PUB SERV	WAIVED FINAL Sec'y	3.26.99
ENVRMNT		
PERMITS		

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

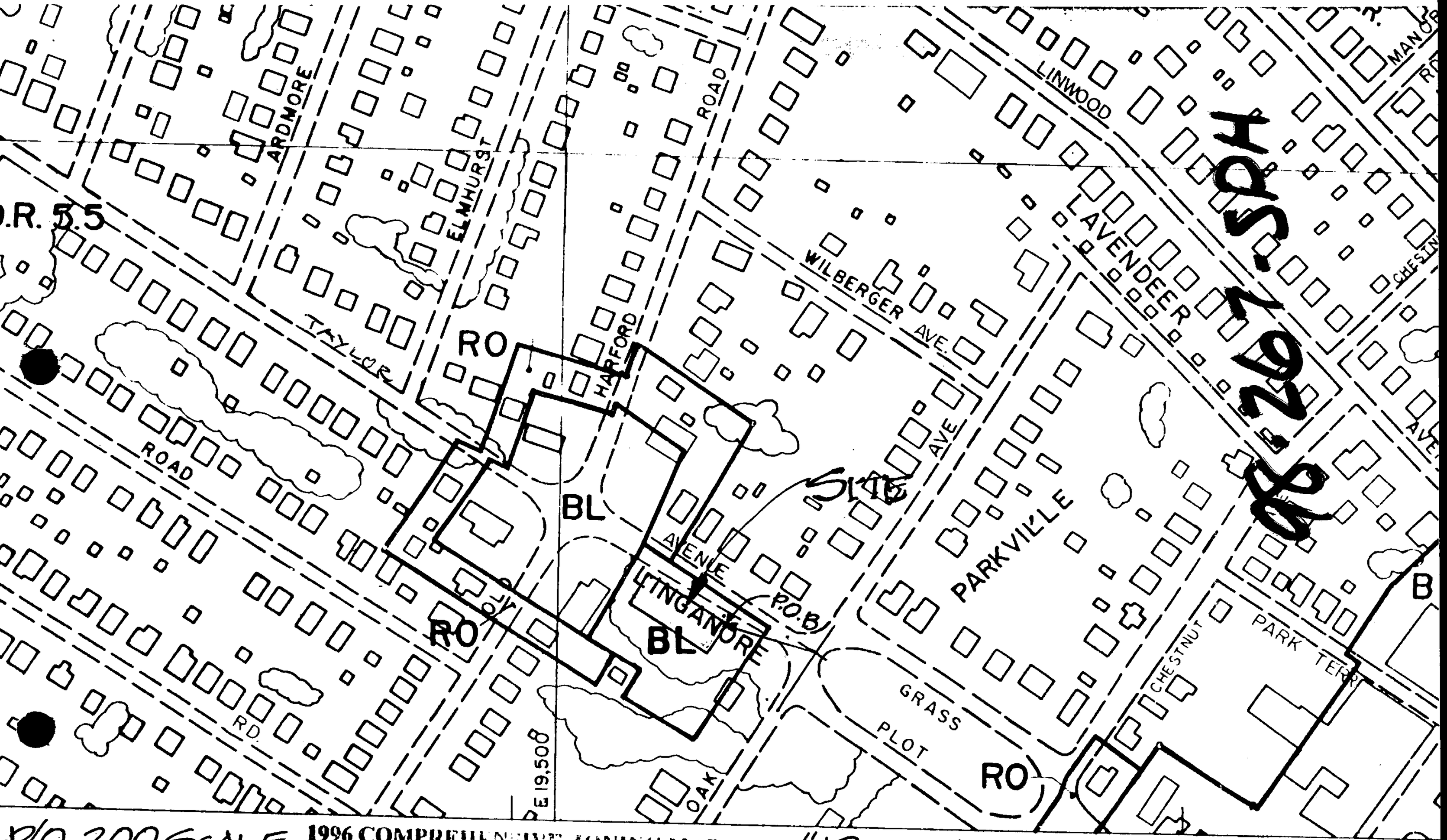
Wants to Waive Plans,

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Terry Gerahty	7721 Old Harford Rd 21234
C William Clark	502 Washington Ave 21204
Glen McFarland	~~180~~ BCE

Printed with Soybean Ink
on Recycled Paper



P/O 200 SCALE ZONING MAP N.E. 8D

1996 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 3, 1996
Bills Nos. 129-96, 130-96, 131-96, [illegible], 133-96, 134-96, 135-96

#267 "POOR BOYS

Kevin Kamenetz
Chairman, County Council

AREAS.
TRIC METHODS
210

BALTIM
OFFICE OF PL
OFFICIAL

APR 21 1998

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 754

September Term, 1997

THE BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.

v.

OLD COURT-GREENSPRING IMPROVEMENT
ASSOCIATION, et al.

Murphy, C.J.
Harrell,
Bell, Rosalyn B. (retired,
specially assigned),

JJ.

Opinion by Harrell, J.

Filed: April 20, 1998

III-376

#03C96005667

EXHIBIT 1

In August 1994, appellant and cross-appellee, Beth Tfiloh Congregation of Baltimore City, Inc. (Beth Tfiloh) submitted a concept plan to Baltimore County for review and referral to the Baltimore County Planning Board (Planning Board) regarding a proposed planned unit development (PUD or PUD-R1[1]) for senior housing on its property located at 3300 Old Court Road, Baltimore County, Maryland. After conducting two community meetings, the Planning Board denied the plan on 7 September 1995. Appellant appealed the denial to the Board of Appeals for Baltimore County (Board) on 5 October 1995. On 16 February 1996, certain individuals and entities, including Old Court-Greenspring Improvement Association (now appellees and cross-appellants, hereinafter referred to as "appellees"), opposed to the PUD-R1 filed a motion to dismiss the appeal. The Board of Appeals held a hearing on appellees' motion on 19 March 1996. The Board granted appellees' motion on 4 June 1996, finding that the Board had no jurisdiction to hear an appeal from a denial of a PUD concept plan. This appeal followed.

ISSUES

Appellees suggest that we consider a threshold issue before deciding whether to reach the merits of Beth Tfiloh's appeal. Appellees' query, which we have rephrased, is:

> I. Is Beth Tfiloh's case rendered moot by the Baltimore County Council's 1996 Comprehensive

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[1]PUD-R1 means a planned unit development with a minimum tract size of 5 acres. Baltimore County Zoning Regulations (BCZR) § 430.5. A request for a PUD approval in Baltimore County is not a request for rezoning. It constitutes an alternative development technique which, if approved, overlays the existing zoning. BCZR § 430.3.E.

with twenty-four units, to provide seventy-two senior housing units. Each building would contain eight two-bedroom units and eight two-bedroom units with dens. Each building would have underground parking for fifty cars, and an additional fifty surface spaces would be provided. The plan also proposed a three-story assisted living facility which would accommodate eighty residents. Forty-two surface parking spaces would be available for the assisted living facility. An addition of 50,375 square feet to the existing school (currently 36,000 square feet) and a two story (14,275 square feet) building were also proposed.

Beth Tfiloh also presented three contrast plans to the Director of the Office of Planning and Zoning (OPZ) to satisfy the requirement of Balt. County Code § 26-202(c)(2).[3] Contrast

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> drainage. Based on the best available existing information, the general location of streams, wetlands, steep slopes, major vegetation, erodible soils and proposed buffers and setbacks should be shown. . . . The plan should be in sufficient detail to enable the county, other reviewing agencies, and the general public to make reasonably informed judgments regarding the proposed development, including, but not limited to, compliance with the county master plan. While not final, the concept plan presented to the community should generally meet county regulations and standards.

[3]Section 26-202(c)(2) of the County Code provides:

> The concept plan for a planned unit development shall contain additional information. The plan shall be submitted in a format designed to contrast the proposed development of the land as a PUD with its development pursuant to the requirements of the underlying zoning classification. The purpose of such contrast is to demonstrate the

The Planning Board met on 7 September 1995 and voted to deny the PUD-R1 concept plan.[5] On 8 September 1995 the Secretary of the Planning Board sent an inter-office memorandum to the Director of the Department of Permits & Development Management notifying him that Beth Tfiloh's PUD-R1 concept plan was denied. A copy was sent to Beth Tfiloh's counsel. The memorandum did not provide any reasons or explanations for the denial.

On 4 October 1995, Beth Tfiloh appealed the Planning Board's decision to the Board. On 16 February 1996, appellees filed a motion to dismiss the appeal, asserting that the Board did not have jurisdiction to hear Beth Tfiloh's appeal. On 4 June 1996, the Board granted the motion to dismiss, finding that Baltimore County Code Section 26-208(b)(4)[6] did not create a right of appeal from

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[5]No transcript of this hearing was included in the record. The minutes of the Baltimore County Planning Board meeting that are in the record are less than informative. The minutes note that the ad hoc Committee on Development Plans and Issues listened to "[c]omments . . . made by eight of the citizens who had registered to address the board. The first supported the Committee's recommendation to disapprove the Beth Tfiloh PUD, and the others urged reconsideration and approval of the PUD." The minutes also tallied the votes: "Mr. Chase moved the Committee's recommendation that the Planning Board disapprove the Planned United Development proposal for the Beth Tfiloh property as presented. The motion was seconded by Mr. Bauman and passed, on a voice vote, with one nay vote. . . ."

[6]Section 26-208(b)(4), regarding procedures before the planning board, provides:

> With respect to issues referred pursuant to section 26-207(a)(5) [planned unit developments], the planning board shall file its written decision with the hearing officer no later than forty-five (45) days from the date of referral. The planning board shall grant final approval or denial of the director's report and concept plan. Projects denied by the planning board may not be

I.

Before we address the issues Beth Tfiloh raises, we must consider appellee's contention that this appeal should be dismissed as moot. As the Court of Appeals stated, "[a]ppellate courts do not sit to give opinions on abstract propositions or moot questions, and appeals which present nothing else for decision are dismissed as a matter of course." Potts v. Governor, 255 Md. 445, 449 (1969). Maryland Rule 8-602(a)(10) allows this Court to dismiss an appeal when the case has become moot. The test for mootness is whether "a case presents a controversy between the parties for which, by way of resolution, the court can fashion an effective remedy." Carroll County v. Lennon, 119 Md. App. 49, 57 (1998) (citing Adkins v. State, 324 Md. 641, 646 (1991)). A case may be rendered moot not only by a change in the factual circumstances, but also by a change in the law.

Maryland has consistently followed the rule that "[a]n appellate court is bound to decide a case according to existing laws . . . . [A] change in the law after a decision below and before final decision by the appellate Court will be applied by that Court. . . ." Yorkdale Corp. v. Powell, 237 Md. 121, 124 (1964) (a "change in the law between a *nisi prius* and an appellate decision requires the appellate court to apply the changed law"). Such a change in law may render a case moot. For example, the Court of Appeals held that a change in zoning after a decision below and before final decision by the appellate court rendered the case moot in Banner v. Homes Sales Co., 201 Md. 425, 428 (1953).

decision, the parcel was rezoned again as "Business Local." The parties stipulated that the uses permitted under "Business Local" were not the same as those permitted under "E" Commercial, and that "Business Local" was generally more restrictive than "E" Commercial. Id. at 564. Rejecting the appellants' argument that the Court should decide the case anyway because it involved "questions of general public interest which may be raised again in the near future," the Court pointed out that the questions at issue "relate to a particular lot of ground and that answers thereto would not have abstract application." Id. at 565. Because the parcel had later been rezoned as "Business Local," the Court declined to decide the issue of whether the Zoning Board had properly rezoned the property as "E" Commercial. The Court concluded:

> Appellants say that they should be allowed to challenge . . . the classification of this property. . . . Such a course of action, however, would be circumventing the procedure provided by statute in such matters, and would amount to more than the raising of new issues of law in this Court. There would be new issues of fact, because the evidence in opposition to or support of the new classification of "Business Local" may be substantially different from that in relation to the classification of "E" Commercial. *In short, it would amount to an original trial of a case in this Court.*

Id. at 566 (emphasis added).

Finally, in Grau v. Board of Zoning Appeals of Baltimore County, 210 Md. 19 (1956), the Court of Appeals dismissed an appeal as moot when a new zoning map adopted between the trial court's order and the appellate court's decision changed the zoning of the parcel. In Grau, the owner of two lots in Baltimore County

regulations." BCZR § 430.3.A.

The County allows two types of PUDs in residential zones (PUD-R). One allows PUD development on tracts of land 100 acres or greater in size. This PUD, designated PUD-R2, is for property located within or adjacent to growth areas, which are determined by reference to the County Master Plan. The PUD-R2 allows residential density increases (allowing more development than the underlying zoning permits) as well as commercial uses not permitted by the underlying zoning. Development may be distributed throughout the tract of land, without consideration of zone boundaries. BCZR § 430.10.B.

At issue in the instant case is the PUD-R1, which requires a minimum tract size of 5 acres. Unlike the PUD-R2, no density increases or commercial uses are permitted, nor must the property be in or near a growth area. In a PUD-R1, however, housing types may be altered and density may be shifted across zone lines to permit better site design than the underlying zoning boundaries would allow. BCZR § 430.9.B.

In order for the OPZ and the Planning Board to evaluate the benefits of the proposed PUD-R1, an applicant must submit a concept plan, which should include a map of the tract's existing conditions, a site plan demonstrating the proposed layout of the development, architectural drawings of the buildings, and documentation of the PUD's effects on the environment, traffic flow, and the provision of public facilities. Balt. County Code § 26-202(c)(2). The plan should also demonstrate how any adverse

Planning Board that outlines the County's position regarding the proposed PUD. In the report, the Director of OPZ "may recommend changes in the site layout, types, intensity of uses, signage, landscaping requirement or other aspects of the plan which the director deems necessary for the plan to meet the intent and purposes of these regulations and the zoning regulations." County Code, § 26-202(m).

Because Beth Tfiloh planned to build an elderly housing facility, Section 432 of the BCZR also applied to their proposal. According to § 432, if an elderly housing facility is proposed on a property that contains one or more existing institutional buildings, a special exception may be granted to modify or waive the maximum residential density standard of the underlying zoning. The Zoning Commissioner may consider the property's current density and use by the existing institution in determining whether to grant a special exception. BCZR § 432.3.A.1.

Beth Tfiloh's concept plan contained a PUD-R1 proposal and three "contrast" plans. The PUD-R1 proposed a 72 dwelling unit independent housing for the elderly facility consisting of three 3 story buildings with 150 underground garage parking spaces and 50 surface parking spaces; an 80 bed assisted living facility with 42 surface parking spaces; and an addition to the existing school building of 50,375 square feet.

Contrast proposal A showed the site developed with 50 single family houses with 100 parking spaces in the DR-2 portion of the property and 36 condominium units with 77 parking spaces in the DR-

determine whether Beth Tfiloh's proposal fulfills the requirements of the zoning regulations based on the property's new zoning.

Beth Tfiloh points out that although it submitted three contrast plans, the Code only requires one contrast plan for a complete application. Contrast Plan C, Beth Tfiloh argues, would not need to be revised as a result of the downzoning; thus its presence fulfills the minimum Code requirements as proposed. Regardless of the accuracy of Beth Tfiloh's argument, we decline to assess it. We are not compelled to consider Beth Tfiloh's submission revised so as to delete the allegedly surplus contrast plans and merely consider Contrast Plan C. The OPZ and Board considered all three plans; Beth Tfiloh cannot now change its submission before this Court. The OPZ, Planning Board, and perhaps the Board will get a chance to consider Beth Tfiloh's proposal anew but under the new zoning.

We find that the pending case has been rendered moot by the change in the underlying zoning. We do not find persuasive Beth Tfiloh's argument that, assuming the case is moot, we should still render a holding on the merits of its appeal. A court will depart from the general rule of not deciding moot cases only in rare circumstances, which have been identified as follows:

> [I]f the public interest clearly will be hurt if the question is not immediately decided, if the matter involved is likely to recur frequently, and its recurrence will involve a relationship between government and its citizens, or a duty of government, and upon any recurrence, the same difficulty which prevented the appeal at hand from being heard in time is likely again to prevent a decision, then the Court may find justification for

be for another panel of this Court when it considers Beth Tfiloh II.

II.

Beth Tfiloh asserts that the Board of Appeals for Baltimore County has jurisdiction to hear and decide an appeal of the Planning Board's decision to deny a PUD concept plan. The County Code outlines the administrative review process for PUD concept plans:

> For a planned unit development, the office of planning and zoning, on behalf of the county, shall provide written comments in the form of a report to the planning board and the applicant within thirty (30) working days from the date of the CIM. Copies of the comments shall be made available to the public, residents and community associations in attendance at the CIM. The director of the office of planning and zoning may recommend changes in the site layout, types, intensity of uses, signage, landscaping requirements or other aspects of the plan which the director deems necessary for the plan to meet the intent and purposes of these regulations and the zoning regulations. *The planning board shall grant final approval or denial of the director's report and concept plan. Applications denied by the planning board may not be forwarded for development plan review.* The planning board may amend or modify the concept plan. Following approval of the concept plan, the plan may be filed for review in accordance with section 26-203.

Baltimore County Code § 26-202(m) (emphasis added).[8] If a concept plan is approved by the Planning Board, it is forwarded to the

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[8]Section 26-208(b)(4), regarding planning board procedures, also provides that "[t]he planning board shall grant final approval or denial of the director's report and concept plan. Projects denied by the planning board may not be forwarded to the hearing officer for review. The planning board may amend or modify the concept plan."

> exception or amendment of a zoning ordinance map; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order; and the assessment of any special benefit tax: Provided, that upon any decision by a county board of appeals it shall file an opinion which shall include a statement of the facts found and the grounds for its decision. Any person aggrieved by the decision of the board and a party to the proceeding before it may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require. Any party to the proceeding in the circuit court aggrieved by the decision of the said court may appeal from such decision to the Court of Special Appeals. The review proceedings provided by this subsection shall be exclusive.

Article 25A §5(U).

In accordance with the authority granted by § 5(U), Article VI of the Baltimore County Charter, relating to the County Board of Appeals, authorizes the Board to hear appeals from orders relating to zoning, licenses, and building. County Charter § 602. The Charter further provides:

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

Baltimore County Charter § 602(d). As this court has noted, "this subsection is a 'catch-all' designed particularly to include within

understand . . . silence as prohibiting the exercise of appellate jurisdiction by the Board of Appeals in this case."). Accordingly, we conclude that where the action of the Planning Board involves the denial of a PUD concept plan, an appeal will lie to the Baltimore County Board of Appeals.

III.

Beth Tfiloh finally argues that if the Board has jurisdiction to hear such an appeal, the subsequent hearing on the merits would be a de novo proceeding, and not an appeal on the record created before the Planning Board. We first note that § 603 of the Baltimore County Charter provides that all hearings of the Board "shall be heard de novo, unless otherwise provided by legislative act of the County Council." The County Council has not acted in this instance, which may indicate that the hearing should be de novo.

The hearing in a case such as this one should be de novo for another reason as well. In the case sub judice, no meaningful record was created, and no findings of fact or conclusions of law were made, by the Planning Board for the Board to review. We have no way of knowing whether the lack of a meaningful Planning Board record or the lack of an explicated decision is the practice in such cases or whether the instant case is some anomalous mutant. If it were the norm, an appeal based only on the existing record in this case would effectively insulate the Planning Board from meaningful review. As this Court noted in a similar situation,

> "[A] direct appeal from the Planning Board could reach the court in the posture of no

IN THE MATTER OF	*	IN THE CIRCUIT COURT
BETH TFILOH CONGREGATION	*	FOR BALTIMORE COUNTY
	*	CASE NO. 03 C 96 005667

* *

ORDER AFFIRMING BOARD OF APPEALS

For the reasons stated on the record in open court on 3/19/97, it is ORDERED by the Circuit Court for Baltimore County this 20th day of March 1997 that the decision by the Board of Appeals in this case is affirmed. Specifically, this court finds that no right to appeal exists to the Board of Appeals from the denial by the Planning Board of the concept plan submitted by Beth Tfiloh Congregation (Case No. CBA-95-184).

John F. Fader II
Judge

JFF:am

cc: Julius Lichter, Esq.
Howard L. Alderman, Jr., Esq.
Levin & Gann
305 W. Chesapeake Avenue
Suite 113
Towson, MD 21204

J. Carroll Holzer, Esq.
Holzer & Lee
305 Washington Avenue
Suite 502
Towson, MD 21204

Done 3/21/97 am

31000

FILED JUL 24 1997

EXHIBIT 2
APP C

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE - SE/Corner Old Harford Road & Taylor Avenue (7721 Old Harford Road) 9th Election District 6th Councilmanic District

* BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 97-295-SPHA

Terry Gerahty
Petitioner * * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Special Hearing and a Petition for Variance for that property known as 7721 Old Harford Road, located at its intersection with Taylor Avenue in Parkville. The Petitions were filed by the owner of the property, Terry Gerahty, through his attorney, Newton A. Williams, Esquire. The Petitioner seeks approval that a proposed interim parking lot meets the requirements of the Baltimore County Zoning Regulations (B.C.Z.R.) and, if such use is disallowed, a variance from Section 409.8 of the B.C.Z.R. to permit a stone paved parking lot in lieu of the required asphalt paving and striping. The subject property and relief sought are more particularly described on the site plan submitted, which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Terry Gerahty, legal owner of the property, James Kline, Land Planning Consultant with George W. Stephens, Jr. and Associates, who prepared the site plan for this property, and Douglas L. Burgess, Esquire, who provided Legal Counsel to the Petitioner. Appearing in opposition to the Petitioner's request were several residents from the surrounding community, including Mr. & Mrs. Ernest Baisden and Mr. James Reed, adjoining property owners.

Testimony and evidence offered revealed that the subject property is the site of an outdoor garden center known as Poor Boys. The property

horticultural products to the general public. Poor Boys has both an indoor sales area as well as an outdoor sales and display area as shown on Petitioner's Exhibit 1. The subject property for the most part is zoned B.L., which permits such use as of right. However, a 60-foot buffer area, zoned D.R. 5.5, is located on the subject property, adjacent to Oak Avenue, and to the rear of the subject site, adjacent to the residential property owned by Mr. & Mrs. Baisden.

The Petitioner indicated that the manner in which he presently operates his business is an interim use (approximately five years) until the property can be more fully developed in the future. Until then, he wishes to continue the use of this stone parking area and outdoor sales area as shown on the site plan. The Petitioner agreed to allow the existing trees to remain on the property during this interim use. Furthermore, he agreed to allow the existing trees within the 60-foot buffer zoned D.R. 5.5 to remain in perpetuity. Regarding this D.R. 5.5 zoned buffer area, the Petitioner has agreed to place this buffer area into an open space easement and grant same to Baltimore County, thereby guaranteeing that this buffer area remains as open space in accordance with the terms of the easement that is to be negotiated and reduced to writing with Assistant County Attorney Doug Silber. The Petitioner shall maintain ownership of the buffer area under this easement and shall be responsible for all maintenance and upkeep of same.

The Petitioner also agreed to install and provide an 8-foot high, pre-assembled sectional fence along the edge of the B.L./D.R. 5.5 zoning line, which runs parallel to the Baisden property for an approximate distance of 120 feet. The Petitioner has also agreed to provide this fencing along the B.L./D.R. 5.5 zone which runs parallel to Oak Avenue. However,

the garden center is permitted as of right. However, the Baisdens raised many issues concerning the operation of the business and requested that certain appropriate restrictions be imposed on the use to insure that the quality and character of the surrounding residential community will be maintained. Many of the concerns raised by Mr. & Mrs. Baisden are valid and involve topics upon which certain restrictions shall be imposed. However, I believe it is appropriate to grant the variance to allow the loose stone parking lot to remain in lieu of the required durable and dustless surface, inasmuch as the Petitioner has met the burdens imposed upon him by the B.C.Z.R.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

> 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
>
> 2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
>
> 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the special hearing and variance are not granted. It has been estab-

process that this D.R. 5.5 buffer was set aside to screen the subject property from the adjacent residential community.

3) The maintenance and upkeep of this 60-foot buffer shall be at the sole cost and expense of the Petitioner and shall be performed as follows:

a) The grassy area within the buffer shall be mowed on a regular basis so as to take on the appearance of a residential lawn. On approximately a monthly basis, any leaves, sticks and branches shall be picked up to keep the buffer area well-manicured. The Petitioner shall be required to keep this buffer area litter-free and shall insure that any trash is picked up on a weekly basis.

b) All existing trees within this buffer shall be maintained and preserved. Furthermore, the Petitioner shall perform and accomplish the additional landscaping shown on Petitioner's Exhibit 4, under the direction of Avery Harden, Landscape Architect for Baltimore County.

c) There exists within this buffer area, particularly in the area adjacent to the property owned by Mr. & Mrs. Baisden, certain piles of dirt and debris that has been dumped there and which has altered the drainage and topography of the subject site. These piles of dirt and debris shall be removed within thirty (30) days of the date of this Order and the buffer area returned to its original natural state. Within thirty (30) days after the removal of this dirt and the installation of the fencing and landscaping as required by this Order, the Petitioner shall grade and smooth any and all tire ruts, including those which currently exist and any which are created during the installation of the landscaping. Any disturbance to the ground within this buffer area shall be planted with grass seed and returned to its natural grassy condition.

d) Any and all weeds and unwanted foliage shall be removed from this buffer area at the direction of Mr. Avery Harden, Landscape Architect for Baltimore County.

* 4) All of these conditions and restrictions shall be included and incorporated into the easement agreement executed between the Petitioner and Baltimore County to insure that this buffer area is not only protected by the terms and conditions of this Order, but also by the terms and provisions of the easement agreement entered into with Baltimore County. A copy of said easement agreement shall be recorded in the Land Records of

Baltimore County
Zoning Commissioner
Office of Planning and Zoning

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

March 6, 1997

Newton A. Williams, Esquire
Douglas L. Burgess, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING and VARIANCE
SE/Corner Old Harford Road & Taylor Avenue
(7721 Old Harford Road)
9th Election District - 6th Councilmanic District
Terry Gerahty - Petitioner
Case No. 97-295-SPHA

Dear Messrs. Williams & Burgess:

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

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

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Terry Gerahty
7721 Harford Road, Baltimore, Md. 21234

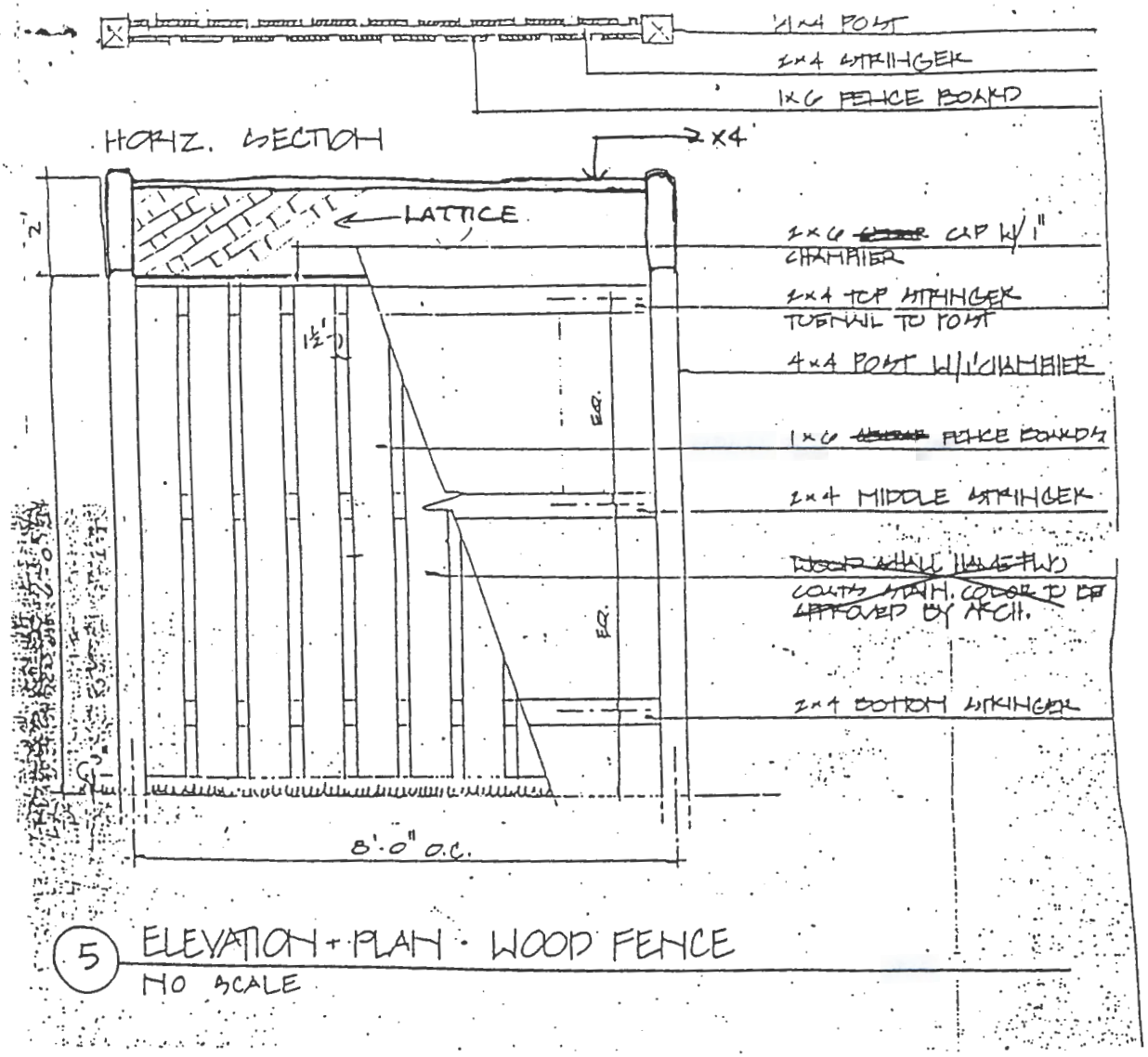
Mr. & Mrs. Ernest Baisden
7706 Oak Avenue, Baltimore, Md. 21234

Mr. James Reed
7705 Oak Avenue, Baltimore, Md. 21234

Mr. Avery Harden, DPDP; People's Counsel; Case File

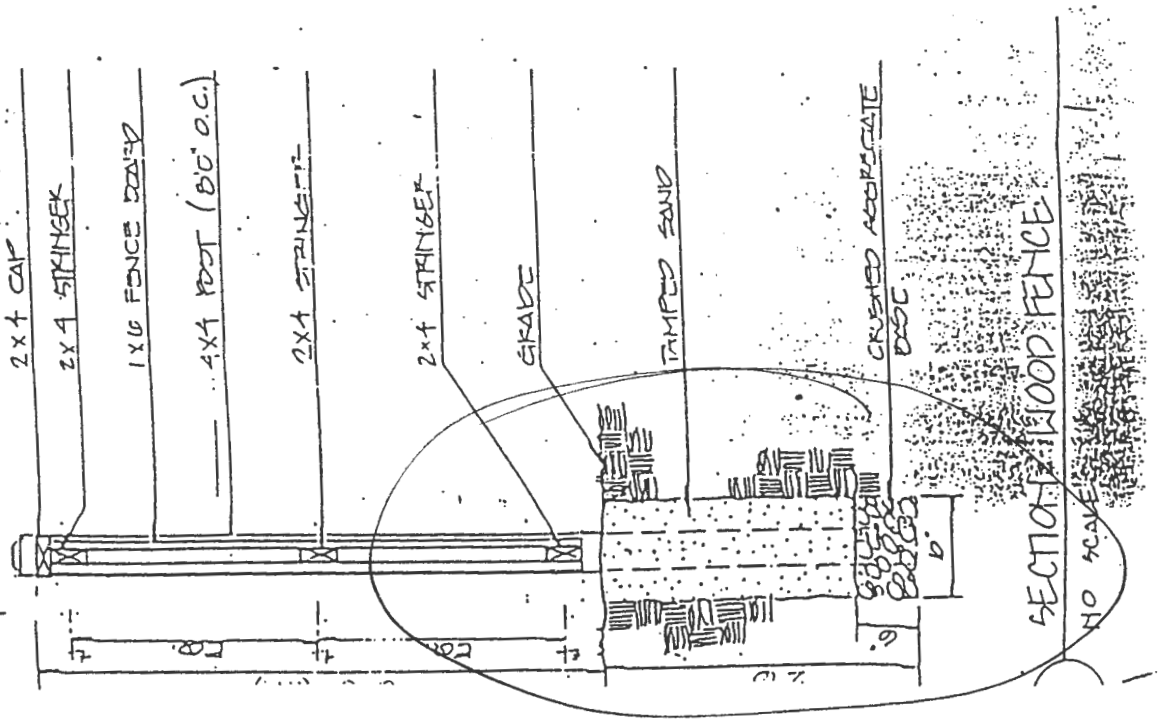
Exh. B

Printed with Soybean Ink
on Recycled Paper



5 ELEVATION + PLAN - WOOD FENCE

NO SCALE



The 60 foot transition buffer area and 10 foot landscape strip must be laid out in accordance with an approved property survey. The fence must be located on the inside edge of the 70 foot space. See plan.

As delineated on the attached site plan, the 6 foot high fence shall have an additional 2 feet in height added in the form of a framed lattice on top. This lattice detail shall extend to the 90 degree bend in the fence at Oak Avenue and continue for 16 feet (two fence sections) along Oak Avenue. At that point, the 2 foot lattice top shall cease and the 6 foot fence shall continue for 64 feet (8 fence sections). The 6 foot high fence shall then drop to 4 feet and continue 64 feet (8 sections) and stop. Sight visibility must be maintained from this point to Taylor Avenue.

Thirty five evergreen trees a minimum of 5-6 feet in height shall be installed where delineated on the attached plan. The actual placement of the evergreen trees may vary in order to accommodate the existing trees. Installed trees that die or fail to thirive within two years must be replaced. Steven's Hollies are recommemded where excessive moisture is an issue. Hollies must be placed closer together to achieve the desired effect. See plan. The other evergreen selections are half Norway Spruce and half White Pine.

This office will work with Poorboys when the planning for the expanded parking lot begins. The proposal above is essentially what the Baltimore County Landscape Manual will require when a permit for the parking lot is sought. Every effort will be made to save the existing trees within the proposed parking lot area. There shall be no increase in runoff onto the adjacent residences as a result of the sitework.

As a condition of completing the buffer requirements, the copse of brambles along Oak Avenue should be mowed.

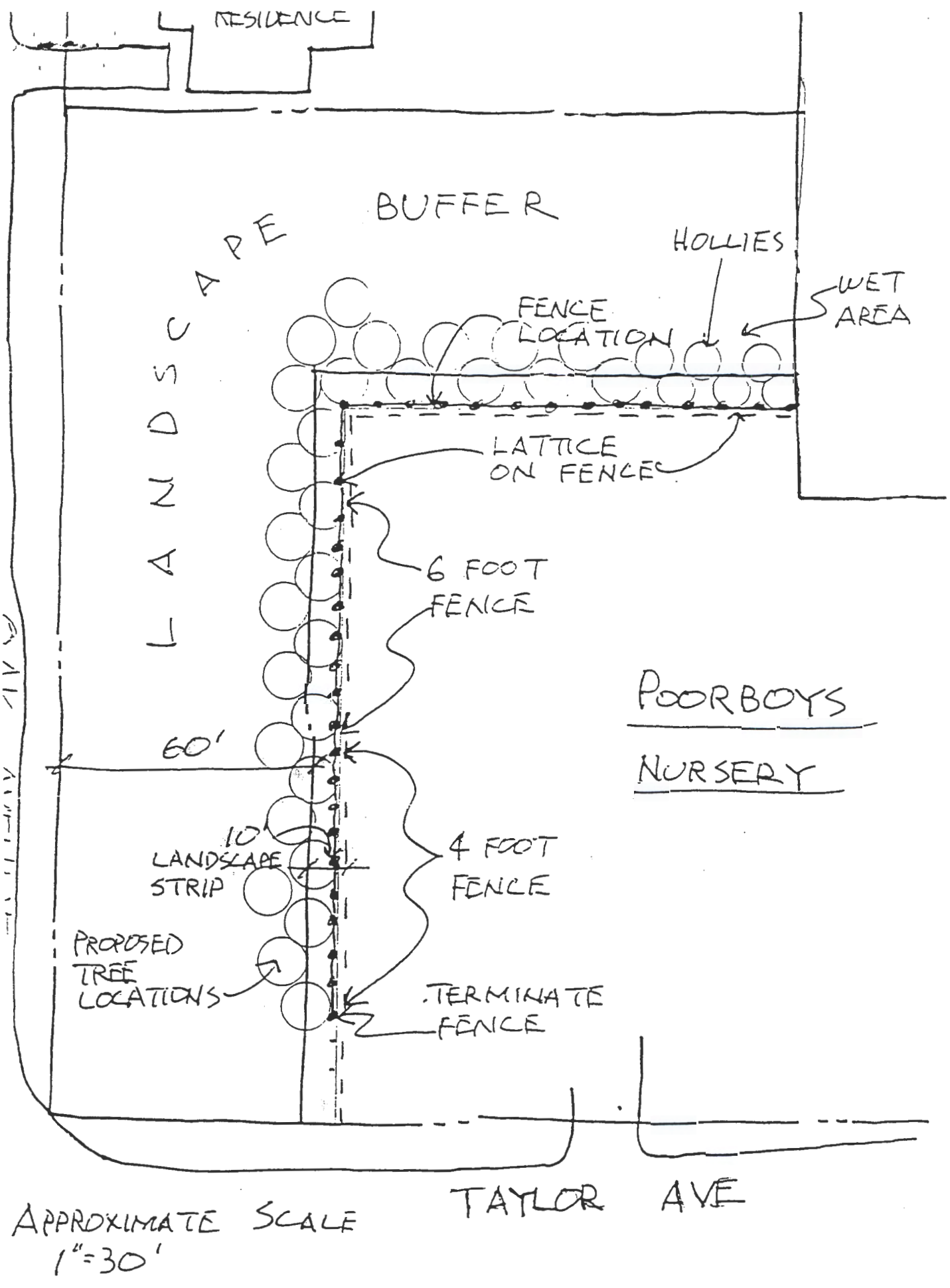
If anyone has any questions or comments, please call me at 887-3751.

Sincerely,

E. Avery Harden

E. Avery Harden, Landscape Architect
Development Plans Review

2 Attachments



APPROXIMATE SCALE
1"=30'

Baltimore County and will be applicable to any subsequent owner of the subject property in perpetuity.

5) The Petitioner shall be permitted to operate an outdoor intercom system only between the hours of 9:00 AM to 5:00 PM Monday through Friday, and 12:00 Noon to 5:00 PM on Saturday and Sunday. The outside intercom system shall not be permitted to operate outside these hours. The purpose of this restriction is to preserve the peace and tranquility of the surrounding residential community.

6) The Petitioner shall be permitted to use gasoline powered chain saws only between the hours of 9:00 AM and 5:00 PM Monday through Friday, and 12:00 Noon to 5:00 PM on Saturday and Sunday. Outside of these hours, the Petitioner must use an electric chain saw, particularly in light of the sale of Christmas trees during the winter season. This should keep noise levels to a minimum and during appropriate hours.

7) All outdoor lighting of the subject site shall be supplied in a tasteful manner and installed on fixed standards, as approved by Mr. Avery Harden, Landscape Architect for Baltimore County. Within sixty (60) days of the date of this Order and prior to the installation of any outdoor lighting, the Petitioner shall submit a lighting plan to Mr. Harden for his review and approval. The Petitioner is prohibited from stringing lights along extension cords from tree to tree on the subject site. All outdoor lighting shall be installed in such a manner so as not to reflect onto adjacent residential properties.

8) The Petitioner shall not interfere with the free passage of pedestrians along the sidewalk adjacent to Taylor Avenue and Old Harford Road. These areas shall not be utilized for display purposes and shall remain open for pedestrian access.

9) Any and all deliveries of products to and from the subject site shall be performed prior to 11:00 PM on any given evening. This is particularly applicable during the Christmas season where trees have been delivered to the site into the early morning hours. Therefore, no deliveries to or from the subject site shall take place after 11:00 PM on any given evening.

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

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs