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JAMES RIFFIN

\* IN THE

\* COURT OF APPEALS

v.

\* OF MARYLAND

\* Petition Docket No. 652  
September Term, 2000

PEOPLE'S COUNSEL FOR BALTIMORE\*  
COUNTY, MARYLAND, et al.

(No. 3002, Sept. Term, 1999,  
Court of Special Appeals)

### O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, the supplement and the answers filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and supplement be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

DATE: April 13, 2001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3002

September Term, 1999

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JAMES RIFFIN

v.

PEOPLE'S COUNSEL FOR BALTIMORE  
COUNTY, MARYLAND, et. al.

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\*Moylan,  
Sonner,  
Alpert, Paul E.  
(Ret., Specially Assigned)

JJ.

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OPINION BY MOYLAN, J.

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Filed: January 9, 2001

\* Moylan, J. participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

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The appellant, James Riffin, challenges an Order issued by Judge Thomas J. Bollinger in the Circuit Court for Baltimore County affirming the decision of the Baltimore County Board of Appeals which denied his petitions for a special hearing, special exception, and five separate zoning variances. On appeal, he contends:

1. that the Board erred in finding that the appellant's proposed use of the property constituted a "bungee jumping operation"; and
2. that the Board acted arbitrarily and capriciously in denying his petitions.<sup>1</sup>

At some point in the spring of 1998, the appellant petitioned the Baltimore County Zoning Commissioner for a Special Hearing, Special Exception, and for nine area parking and sign variances in an effort to operate a "Commercial Recreational Facility" at 1941 Greenspring Avenue Drive in Timonium. At that time, there existed an old one-story building which was rented for office space. The property was zoned for M.L. (Manufacturing -Light). It was the appellant's intention, in seeking the exceptions and variances, to create a commercial/recreation facility that would accommodate bungee jumping.

On June 1, 1998, the Zoning Commissioner granted four of the nine variances for existing non-conforming front and side-yard setbacks, but denied all of the other requests. The appellant

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<sup>1</sup> We note that in his brief to this Court, the appellant raise five issues with approximately twenty subcontentions. We have, needless to say, condensed those subcontentions into two.

appealed that decision to the Baltimore County Board of Appeals ("the Board") and a three day public hearing began on November 25, 1998.<sup>2</sup> During that hearing, the Board heard extensive testimony from the appellant regarding his plans for the property. The Board also heard testimony from the adjacent property owners, the Office of the People's Counsel, and a representative from the Greater Timonium Community Council, all of whom testified against the appellant's petitions.

On December 31, 1998, the Board issued an extensive written Opinion denying the appellant's request for both the Special Hearing and Special Exception for bungee jumping and for his requested variances. The appellant appealed to Circuit court for Baltimore County and on October 4, 1999 a hearing was held before Judge Bollinger. On October 7, 1997, Judge Bollinger affirmed the Board's decision finding that it was supported by substantial evidence and was not premised on an error of law. The appellant noted this timely appeal.

Initially, we note that with regard to the standard of review to be applied by in a case such as this, we explained in Stover v. Prince George's County, 132 Md. App. 373, 380-81 (2000) that:

[w]hen reviewing a decision of the administrative agency, this Court's role is "precisely the same as that of the circuit court." "Judicial review of administrative

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<sup>2</sup> The public hearing was held on November 25, December 15, and December 17, 1998.

agency action is narrow. The court's task on review is not to 'substitute its judgment for the expertise of those persons who constitute the administrative agency."

Rather, "[t]o the extent the issues on appeal turn on the correctness of an agency's findings of fact, such findings must be reviewed on the substantial evidence test." The reviewing court's task is to determine "whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions." The court cannot substitute its judgment for that of the agency, but instead must exercise a "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions."

(Citations omitted; emphasis supplied).

The appellant first contends that the trial court erred in denying his petition for Special Hearing and Special Exception in order to accommodate bungee jumping. The appellant specifically contends that the trial court erred in finding that his proposed use of the property would amount to a "bungee jumping operation," which both parties agree is prohibited in Maryland,<sup>3</sup> rather than a "recreational use" which is permissible. We are not persuaded.

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<sup>3</sup> Md. Code, Business Regulation, § 3-503 specifically provides:

**§3-503. Prohibition on bungee jumping operation.**

(a) *Definitions.* -- (1) in this section the following words have the meaning indicated.

(2) "Bungee jump" means jumping or falling by an individual from a height while attached to a rope or cord that is elastic, rubber, or latex.

(3) "Bungee jumping operation" means an operation that allows an individual to bungee jump for a fee or dues.

(b) *Prohibition.* -- A person may not conduct a bungee jumping operation.

(c) *Penalties.* -- A person who violates subsection (b) of this section is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$2,500 or imprisonment not exceeding 6 months or both.

In its Opinion denying the appellant's request for Special Hearing and Special Exception, the Board set forth, in great detail, its findings with respect to the appellant's proposed use:

The Board has carefully considered the testimony produced and the numerous exhibits of the evidence admitted and items marked for identification and weight assessment. This Board's initial review involved bungee jumping and how it is addressed in the Maryland Code. A review of the law and supporting documents afforded the Board members some insight into the thinking of the legislature on this subject. ... The Board concluded that the bungee jumping operations as proposed by the appellant/petitioner was in actuality a bungee jumping operation. Regardless of whether using the word "operation" or the word "activity," it is semantical and one resembles the other. The inference regarding fees came out in the testimony by a crane operator who acknowledged that he was paid by Mr. Riffin for operating the crane, and that he expected to continue on as a crane operator if Mr. Riffin were allowed to have a bungee jumping operation. As well, Mr. Riffin indicated that individuals would be able to rent the crane and /or any needed equipment in order to perform bungee jumping activities. These representations produce the appearance of being a bungee jumping operation, which is not allowed by Maryland law, this would not be a permitted use under the Baltimore County Zoning Regulations ["BCZR"].

The Board then examined whether the appellant's proposed use could in any way be viewed as a Commercial Recreational Facility, a permissible use for the property under the zoning regulations. In rejecting the appellant's contention, the Board stated:

The Board then looked at the definitions of Commercial Recreational Facilities under BCZR 101. ...The definition notes that a

commercial recreational facility shall not include an amusement park or similar use. Throughout the numerous discussions as to what bungee jumping would be considered, it came up that it was frequently done in conjunction with amusement-like operations and was described by expert witnesses as a "thrill seeking activity." It was noted that State legislation regarding bungee jumping was put in that Section of the Annotated Code as amusement activities.

In rejecting the appellant's final two arguments with respect to his request for Special Exception, the Board found 1) that bungee jumping did not qualify as a permitted use under Section 253 of the BCZR, which permits practice or training physical conditioning and fields for amateur or professional sports organizations; and 2) that bungee jumping did not qualify as a use permitted without special exception under Section 270 of the BCZR 2-115 Schedule of Special Exceptions. That Schedule provides that a community building, swimming pool, or other structural or land use devoted to civic, social or recreational and educational activities is a use permitted without special exception.

The appellant is correct in that a requested special exception should be granted unless there is substantial evidence that it would have an adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. What the appellant fails to acknowledge, however, is that the Board made a factual finding that the appellant's proposed use of the property amounted to a "bungee

jumping operation," not a "recreational facility." That finding alone required the Board to deny the petition for special exception. The Board simply cannot grant a special exception for a use that is neither permitted by law nor by Baltimore County Zoning Regulations. There is substantial evidence in the record to support that finding. We see no error.

Additionally, we note that even assuming for the sake of argument that the Board erred in finding that the appellant's proposed use was an illegal "bungee jumping operation," we would hold that the Board did not err in denying the appellant's petition for Special Exception. In its Opinion the Board carefully examined the criteria for granting a request for special exception under Section 502.1 of the BCZR.<sup>4</sup> After doing so, the Board found,

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<sup>4</sup>Section 502.1 specifically provides:

Before any Special Exception may be granted, it must appear that the uses for which the Special exception is requested will not:

- a. Be detrimental to the health, safety or general welfare of the locality involved;
- b. Tend to create congestion in roads, streets or alley therein;
- c. Create a potential hazard from fire, panic, or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transformations or other public requirements, convenience, or improvements;
- f. Interfere with adequate light and air;
- g. Be consistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
- h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.



without question, that the appellant failed to satisfy that criteria. We hold that there was substantial evidence on the record supporting that decision.

With regard to the appellant's variance requests, we note that a variance, if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance. North v. St. Mary's County, 99 Md. App. 502, 510 (1994). "An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance." North, 99 Md. App. at 510.

In denying the appellant's requests for variances, the Board explained:

Section 307.1 of the Baltimore County Zoning Regulations states, in pertinent part, as follows:

"...[T]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship...Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area .. regulations, and only in such manner

as to grant relief without injury to public health, safety, and general welfare."

As well, this Board enjoys the guidance provided by the Court of Special Appeals in Cromwell v. Ward, 102 Md. App. 691 (1995). In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., it shape, topography, subsurface condition, environmental factors, historical significance, access, or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. ...

It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone. The Maryland Department of Assessments and Taxation, real Property System map, shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations. ... At no time in the hearing did the appellant entertain any historical significance to the site nor were environmental or subsurface conditions

documented. Mr. Riffin did testify as to the damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs or documentation by some authority regarding the nature or extent of this damage. There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site. In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.

(Emphasis supplied). We see no error.

**JUDGMENT AFFIRMED; COSTS TO BE PAID  
BY APPELLANT.**

|                                     |   |                       |
|-------------------------------------|---|-----------------------|
| PETITION OF JAMES RIFFIN            | * | IN THE                |
|                                     | * | CIRCUIT COURT         |
| FOR JUDICIAL REVIEW OF THE          | * | FOR                   |
| DECISION OF THE COUNTY BOARD OF     | * | BALTIMORE COUNTY      |
| APPEALS OF BALTIMORE COUNTY         | * |                       |
| IN THE MATTER OF THE APPLICATION OF | * |                       |
| JAMES RIFFIN FOR A SPECIAL HEARING, | * |                       |
| SPECIAL EXCEPTION, AND VARIANCE     | * | CASE NO.:03 C 99 0779 |
| * * * * *                           |   |                       |

**MEMORANDUM OPINION AND ORDER**

This matter comes before the Court on Petition for Judicial Review regarding a decision of the Baltimore County Board of Appeals denying the Petitioner's Petition for Special Hearing, Special Exception, and Variance. A hearing was held on October 4, 1999, at which time the Court entertained the arguments of James Riffin, appearing in proper person, Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, on behalf of Baltimore County, and C. William Clark, Esquire, on behalf of Respondents Jack, David, and Helen Trapp.

In reviewing a decision of the Board of Appeals, the Circuit Court is limited to whether that decision is "in accordance with the law." Maryland Code Annotated, Article 25A § 5(U) (1957, 1994 Repl. Vol.). The Circuit Court may correct any abuse of discretion by an administrative agency, such as the County Board of Appeals. The Court may also reverse or modify the Board's actions when they are unsupported by facts, arbitrary, illegal, capricious, or unreasonable. Heaps v. Cobb, 185 Md. 372 (1945); Art Woods Enterprises v. Wiseburg Community Assoc., 88 Md. App. 723, 727 (1991). However, the scope of judicial review of decisions by administrative agencies is markedly narrow, recognizing that the Board members have expertise in a particular area and, ultimately, should be free to exercise their discretion as

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such. Finney v. Halle, 241 Md. 224 (1966).

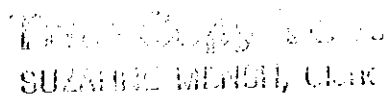
Thus a reviewing court will not substitute its judgment for that of an administrative board where the issue is freely debatable and the record contains substantial evidence supporting the administrative decision. Montgomery County v. Woodward and Lothrop, Inc., 280 Md. 686 (1977). Accordingly, the Circuit Court's role is limited to determining whether or not there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine whether or not the agency's decision is premised upon a proper construction of the law. United Parcel Service, Inc. v. People's Counsel for Baltimore County, 336 Md. 569, 577 (1994).

The Court has carefully considered the arguments presented, the fine legal memoranda submitted by counsel, and the applicable law in rendering its decision in this matter. The Court finds that the relevant issues in this case are freely debatable, there is substantial evidence in the record to support the decision of the Zoning Commissioner, and the Board's decision is based on a proper construction of the applicable law.

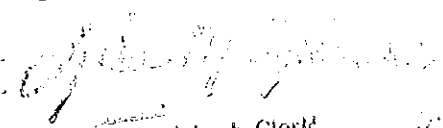
Accordingly, it is this 7<sup>th</sup> day of October, 1999, by the Circuit Court for Baltimore County,

**ORDERED** that the decision of the Baltimore County Board of Appeals in the above captioned matter is hereby **AFFIRMED**.

  
THOMAS J. BOLLINGER, JUDGE

  
SUZANNE WENZEL, CLERK

Per

  
Assistant Clerk

cc: James Riffin  
1941 Greenspring Drive  
Timonium, Maryland 21093

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IN THE MATTER OF THE  
THE APPLICATION OF  
JAMES RIFFIN -PETITIONER  
FOR SPECIAL HEARING, SPECIAL  
EXCEPTION AND VARIANCES ON  
PROPERTY LOCATED ON THE EAST  
SIDE GREENSPRING DRIVE, 150'  
NORTH OF BUSINESS PARK DRIVE  
(1941 GREENSPRING AVENUE)  
8TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. 98-336-SPHXA  
\*

\* \* \* \* \*

#### O P I N I O N

This case comes before the County Board of Appeals of Baltimore County based on a decision of the Zoning Commissioner in which Petitions for Special Hearing, Special Exception, and five zoning variances for this property zoned M.L.-I.M. were denied. However, it should be noted that four variances were granted representing existing setbacks. Public hearings of the Board were conducted on November 25, 1998, December 15, 1998 and December 17, 1998. A public deliberation was held on December 22, 1998.

Mr. Riffin appeared in proper person and the Protestants, Mr. & Mrs. J. Trapp, adjacent property owners, were represented by C. William Clark, Esquire. The Office of People's Counsel for Baltimore County was represented by Peter Max Zimmerman, Esquire. In addition, Ms. Kathleen Beadell from the Greater Timonium Community Council and Jane Y. Barrell and Brad Barrell, adjacent property owners, were noted as Protestants.

Opening statements began with Mr. Riffin who stated he had seven issues to bring before the Board.

Mr. Clark noted that the Appellant wanted a special exception to allow bungee jumping which does not fit within any of the definitions of Section 101 of the Baltimore County Zoning Regulations (BCZR). He noted that, in addition to the special

exception being requested, Mr. Riffin wanted to have an office building with a number of variances to allow for a parking deck and access ramp to accommodate same. Mr. Clark noted that there was a utility easement along the property line. He noted that construction in a utility easement is not allowed by BG&E, and Baltimore County Government as well is opposed to permanent construction in an easement. He summarized by concluding that the Appellant was really trying to overcrowd the site with insufficient land to support the uses he desired.

Mr. Zimmerman, People's Counsel for Baltimore County, stated that the Appellant had filed a multi-combination request involving a major addition to the existing building structure, a special exception for bungee jumping, a commercial use in an M.L. zone, and nine separate variances. In summary, he concluded that the Appellant wanted to take a one-story building, make it three stories, and expand it virtually to the boundary lines of the adjacent property owners, the Trapps on the north and the Barrells on the south. Mr. Zimmerman noted that expansion of the building did not satisfy one requirement for a variance, let alone all of the requirements for variance. As well, he noted that State law (Annotated Code, Business Regulation Article 3-503) does not allow bungee jumping for a fee or dues. In addition, he questioned where this proposed use fit in the Baltimore County Zoning Regulations.

Mr. James Riffin, representing himself as the Appellant, noted that he is an attorney. However, he is not a member of the Maryland Bar, and he is not a land use expert. He had no witnesses and presented the evidence, then the argument phase of his testimony.



The first issue Mr. Riffin addressed was the special exception /variance for a free-standing sign. He expressed his plans to have a sign 12 feet above the roadway and cited that his property sits 5 feet below the roadway, thus putting him at a disadvantage. On-street parking is allowed, and this takes distance away from the sign distance. He documented the 5-foot drop by photographs accepted as Petitioner's Exhibit No. 2. He cited a request for an area variance according to BCZR Section 307.1, and noted practical difficulty as related to the 5-foot slope in the property from the roadway. Concerning the special exception for commercial /recreational use, he noted that he did have a permit allowing him to use the rear of the property for employee recreational use. Mr. Riffin indicated that he had been using the rear of his property for this use for the past 6 months, and there had been no adverse impact. He wanted to open up the recreational facilities to the public. Mr. Riffin further noted that the occupant load was based on BOCA code and noted that the occupant load would not change if the public assumed use. He indicated that the Fire Code had been met and exceeded by one additional exit. The Petitioner did not produce any copies of permit, Master Plan, BOCA code, or Fire Code to support his statements, and commented that he did not have the documentation. Mr. Riffin went on to discuss that no adverse impact would occur relative to the facility or traffic as the same is made of noncombustible materials. He indicated no overcrowding of the land and noted he was not changing the use, just who could use it. He stated that he would not cause any difficulty with air or light with this proposal, and noted that he would not adversely affect neighbors as he would be in conformance with zoning laws.

He did want to use the property as a commercial, recreational facility. He cited Section 255.1 of the zoning and district regulations which defines the area regulations in the M.L. zone to be the same as those in the B.R. zone unless in conflict with Section 255.2. He indicated that Section 238.2 concerns side yard requirement to be 30 feet for a commercial building in a B.R. zone. He stated that a building is defined as a structure enclosed by exterior walls to enclose persons /animals. Mr. Riffin cited the Dean v. BG&E case, 240 Md. 317 Court of Appeals 214 A.2d (October 11, 1965), to support the argument against intent to prohibit building in side yards. He noted that this case supported allowing parking structures. The only restriction was to locate the structure 8 feet off of the street line. He was interested in building a parking structure. Petitioner next discussed the purpose of a side yard. For this argument, he cited Loyola Federal Savings & Loan v. Bushman, 226 Md. 243, 176 A.2d, to support the concept that the purpose of a side yard is to provide air and light to adjacent property owners. Further, there was concern relative to fire safety. He noted that his proposal would seek to allow one additional story on his building for parking. He claimed there are no height restrictions and made comparisons to other tall buildings nearby, such as the Holiday Inn, and confirmed that his parking structure would be one story high, open and not blocking air flow. The visual impact would be minimal. No expert testimony or exhibits were offered to support the concept.

Mr. Riffin stated that, if he cannot build a parking structure in the side yard as of right, then he wanted to build one under a variance. He indicated that he must show practical difficulty.

Mr. Riffin went on to share that a parking structure would look better than what is on the site presently. He also stated code restrictions concerning ramp width and road building restrictions. He submitted additional photographs to support the condition and surroundings of his own and neighboring structures, which were examined by the Board Members.

Petitioner then turned his discussions to the uniqueness of his property, noting the topography. He discussed that practical difficulty was apparent for a number of reasons. The property is the only one on Greenspring Drive that sits below the roadway; it would not interfere with light or air; a parking facility would look better aesthetically; it would decrease the number of cars and traffic; would reduce the number of impervious surfaces; better to build up rather than out, and water run-off much less with a garage. He went on to discuss the debilitated condition of the property when he bought it, and the numerous improvements he had to make including but not limited to removal and replacement of the walls and roof with replacement of masonry structures. He cited these "hidden defects" in the building as an undue hardship. He also discussed the economic impact of improving his site, specifically increasing the number of jobs in Baltimore County. He wanted to add two more floors to the building. He stated that he had the right to do so, and saw this as a positive step in affecting the economic impact. He perceives the need for additional parking for activities in the subject property. He also discussed the proximity to the light rail stop which he noted to be directly behind his facility. Additional photographs were entered into evidence, which were reviewed in depth by the Board.

Mr. Riffin then turned his discussion to the issue regarding allowed uses under his current zoning. He cited Section 253.1A42 of the BCZR as that section of the M.L. regulations that outlines a Sporting Facility. He believes that he has the absolute right under this section of the BCZR to function in this manner. He would propose to have bungee jumping activities at this facility. He would use the crane located on his property to perform safe and legal activities in his opinion. Mr. Riffin would allow people to bring their own cord and use his crane, renting harnesses. He stated there is a pending court case scheduled in March 1999 which will determine if bungee jumping is an allowed activity. He stated that he would allow people to repel as they do at ReBounders, another local exercise establishment. Mr. Riffin also has a large air bag to allow jumping on such as one might use to jump from a plane or burning building. He stated that he had a working relationship with ReBounders to have their patrons use his facility for their height activities. Again he cited Section 253.1A42 and noted that this did not limit the type of sporting activities. He thought that he had shown practical difficulty due to undue hardships experienced due to the "hidden defects" outlined earlier.

The Appellant wants either parking and no bungee jumping or bungee jumping and no parking. He plans to build two floors and have his existing tenants on the first floor, retail florist on the second floor and, on the third level, recreational /office space, if the Board approves his special exception for recreational use. He also plans a restaurant on the second level. He advised that he would abandon variance #8 concerning parking, as it is premature.

Mr. Riffin purchased this property on October 2, 1997 from

Brian Chan, vice president of Professional Choice, Inc., although he has never had the deed recorded or paid a transfer tax. He did obtain a building permit for a recreational facility signed by Professional Choice, Inc., on June 29, 1998. There are four tenants occupying the site, printing, office support, signs and recreational activities. Mr. Riffin denied any involvement with Professional Choice, Inc., and stated that he pays the property tax. There is a crane located on the property and it is used for construction purposes. Mr. Riffin did have a crane operator, Ashler Duncan, testify as to the use of the crane, personal cage and maximum height for jumping and the number of people. He is employed by the Appellant to operate the crane and would probably be the operator involved if bungee jumping were permitted.

The Protestants' first witness, Louis Miller, a retired financial executive and long-time community activist who served on the Zoning and Development Council of his organization, testified as to concern regarding the Appellant's building expansion, including the proposed height of the building and the parking deck. He referred to the proposal as a gross overuse of the land and questioned why the Appellant would not formalize a re-development plan subject to hearings and community input. He expressed that he sees this process as a flagrant abuse of the variance process. He went on to discuss that there is nothing unusual about Mr. Riffin's property. He indicated there is a slight grade downward to the Greenspring Drive front of the property, and that to the rear of the property (to the east) was the light rail. He noted that all of the buildings along Greenspring are one-story buildings built in the last 1950s. He stated that there have been no requests to

increase the height of any buildings during his time as zoning committee member. He testified that this proposal would not be aesthetically pleasing, and that it made total use of every square inch of property. There would be no open space. He referred to the Master Plan for Timonium-Hunt Valley, and noted that this proposal is inconsistent with the aesthetic mixed uses that are suggested. Mr. Miller stated that bungee jumping is an inappropriate use in an M.L. zone. He stated that it is an area for developing business products and services. He also noted that Section 253.1A42 of the BCZR allows for amateur /professional sports "organizations" and that Mr. Riffin referenced "individuals" using his facility, not organizations. He noted that the crane stands out at the site and is unsightly. As well, he feels the property is too small for this type of expansion to the building. Additionally, he feels this proposal is being dealt with in a vacuum, and that it needs to be done with regional consideration. It should not be viewed as to what is your right, but how it affects everyone.

Mr. Miller did discuss the 65 parking spaces and the expected number of trips to be generated. The impact to an already congested intersection less than 500 feet from the subject property was also discussed. On cross-examination, Mr. Riffin was able to establish that only 17 spaces would be dedicated for bungee jumping traffic, that there are other two-story buildings in the area, and that at least one set of businesses have no space between their developed properties. It was also brought out that the M.L. zone does allow for the housing of construction equipment, and that trees along the back of the property (along the light rail line)

are 35-40 feet in height.

Mr. Brad Barrell, who lives in Orlando, Florida, presently, owns the adjacent property with his mother, Jane Barrell. He testified to problems with parking of patrons for 1941 Greenspring Drive on his property at 1937 Greenspring Drive. He noted that tenants at 1937 Greenspring Drive constructed a chain-link fence to keep 1941 patrons off their portion of the lot. Mr. Riffin's proposed building would come out to the fence line on 1937 Greenspring. Mr. Barrell indicated there have always been issues between the two properties regarding traffic, and he felt that the proposed changes would create further crowding and problems. Regarding variances, he specified the one with proposed changes to the southeast corner of the building on 1941 Greenspring. He noted that there are difficulties there presently. He noted a County condemnation of 1937 property in 1966 and changes made by the County to the property at that time. He stated that there are difficulties presently when trucks attempt to enter. He expected that the proposed bungee jumping would impact traffic. He testified to bungee jumping as being inconsistent with activities in the area, and the unsightliness of the crane to light rail patrons, noting that the station is directly behind the subject property. The building expansion appears to be three stories, with bungee jumping on the roof, and he feels this is inappropriate in a business park. He also referenced the downward slope or grade of the subject property, and stated that the same occurs on his property and the Libertini Building property. He noted this is not a unique characteristic in the community. He also testified that the properties to the north and south are rectangular in shape.

Ms. Jane Barrell, co-owner of 1937 Greenspring Drive, agreed with the testimony brought forward by her son and co-owner. She added that there has been an increase in traffic along Business Park Drive during non-peak times. She testified that she can avoid three traffic lights by using Business Park Drive. She noted that relative to the business community, ingress and egress is becoming more difficult and even stated that there was a serious accident at the intersection of Valleywood and Business Park Drive last year.

James Patton, expert in land use and planning, was accepted by the Board, and hired by Mr. Trapp to lend his expertise to the request before the Board relative to the property located at 1941 Greenspring Drive. He described the building as one story with building materials on the roof, a crane located in the rear and a second floor wall being built, the surrounding community being one to two story warehouses and small office buildings, light industrial manufacturing warehouses, and a railroad right-of-way. He noted that the general grade drops with the higher portion being up near Greenspring Drive, and the lowest portion toward the rear, near the light rail line. This is M.L. zoning with front setback of 25 feet and side and rear setbacks of 30 feet. On this property, side yard setbacks were granted .5 feet on the side for parking. A number of exhibits were offered to include the tax map and Sections 254, 255, and 238 of the BCZR to clarify the variances requested. As well, Mr. Patton entered Protestants' Exhibit No. 6 in which he took a copy of the Plat and identified the proposed parking deck, recreation area, and landscaped areas. He noted that the parking outlined is not in compliance nor is the variance requested. Mr. Patton reviewed the requested variance #7 front



yard setback for open stairs from the second floor to ground level to project within 5 feet of the front property line. He stated that this request is a projection setback in actuality and referred to BCZR 301.2. He noted that if the stairs were proposed to be parallel and not perpendicular, then the variance would not be needed. On variance #6, Mr. Patton stated that this request is a projection and could be enclosed. It would need a variance and be subject to those considerations. Variance #5 was also subject to variance consideration. He noted there is nothing unique about the site, and he noted that the Appellant is using columns to hold up variances. The sign height variance request is needed to build as proposed. Mr. Patton testified that there are no hardships other than self-imposed, and the property is not unique. He noted that some property owners elected to have their fronts filled in and have their entrance in the rear. The previous owners of this property elected not to raise the building up to grade. Mr. Patton provided information regarding landscaping from the Landscape Manual, pages 35 and 36, as evidence (Protestants' Exhibit No. 8) to support that this requirement was not being met with the requests for variances. He also addressed the construction of the parking ramp over the sanitary sewer line and offered Protestants' Exhibits No. 9 and 10, a deed agreement and a letter from Robert Bowling, Bureau of Developers Plans and Review, to support that one cannot construct over a utility easement. He also discussed accessory uses or structures, and provided Protestants' Exhibit No. 13 -- Baltimore County zoning regulation regarding accessory uses. He stated that you cannot move beyond the building permit line without consideration of a proposal for an accessory structure. He

had concerns about columns to support overhang in a sanitary sewer easement and how it would be repaired or maintained if it became necessary, not to mention the stress on the entire building system.

Mr. Patton also addressed Section 253 of the BCZR (Protestants' Exhibit No. 14) and the intent of the legislation passed in Section A42 for a physical conditioning facility for amateur and professional sports organizations. He provided a discussed about the definition of field as it is used in this regulation and noted that no field has been proposed for this site. He also addressed Section 270 of the BCZR which is a schedule of special exceptions and noted that community building, swimming pool or civic, social, recreational or educational use is allowed without special exception. However, he noted that this proposed use does not fit into the definition. He also addressed Section 101 of the BCZR and the definition of a "Commercial, Recreational Facility." Mr. Patton's testimony then reviewed Section 502.1 of the BCZR and the granting of special exceptions. Mr. Patton stated this subject property cannot meet the test of this section. He stated that the crane could cast shadows and affect light and air. He did not have a proper parking drawing but believed that light /air would be impacted. He noted that the Appellant has overcrowded the land. He has increased the size of the building with parking, but not increased the size of the building. He noted that if you did not increase the size of the building, then no increase in parking is needed. Hazard, fire, panic and other dangers are potentially increased due to the congestion of the area and he noted that the use of the crane is difficult in a congested area. He noted that the proposed structure is out to within one

foot of the property line and is large horizontally, which is out of character. The proposed parking is part of this building. This proposal does not meet the standards of a variance. Current stormwater management is substandard. There is a higher amount of impervious area described as greater than 10 percent. The facility at present is already substandard and only exists because it was grandfathered.

On cross-examination, Mr. Riffin challenged Mr. Patton's calculations regarding parking and stairs. He also did have Mr. Patton testify that two other properties to the north of the subject property have easements.

Mr. Clark, attorney for the Protestants, offered his last witness, Mr. Trapp, adjacent property owner and one of the Protestants. He proffered his testimony as being opposed to the proposal because it comes to the property line. The same was accepted in lieu of his testimony.

People's Counsel brought forward Jeffrey Long, Section Chief, Baltimore County Development Review, who was accepted as an expert in land planning. He described the area as one with mixed uses. He noted that the County Council had approved the Hunt Valley /Timonium Plan. He stated that, in his opinion, this proposal would not be consistent with the goals established for this community. He noted that corporations and employers of large numbers of employees are frequently encouraged in this showcase area. He believed that the crane and its use is not aesthetically consistent with movie theaters and other facilities in the area. The land is being significantly overused if a special exception and at least three variances are needed for this facility to be

functional. He also expressed concern with traffic on I-83 and thus attention being diverted because of the activities at the site. He was concerned about the aesthetics relative to light rail users. He discussed Bill #125-78, the "Irsay Bill," which was passed specifically for the Colt's training facility as Section 253.1A, #42, and uses the word "organization" in the first sentence. The bungee activities have never been described as part of an organization and, as well, there is no measure of proficiency which the definition of #42 references. Field activity is also referenced, and there is no field presently or proposed. Mr. Long stated that bungee jumping does not relate to this legislation. He, as well, testified under cross-examination that this is not any use outlined in Section 270 of the BCZR.

Mr. Riffin, during the course of the hearing, subpoenaed a number of Baltimore County employees from various departments with whom he had spoken about his plans for this facility. There was a Motion to Quash several of these subpoenas filed on the record by Baltimore County's Office of law. This Motion was argued on behalf of Baltimore County by Nancy C. West, Assistant County Attorney and said Motion was granted. Mr. Riffin proffered what he believed the testimony of those individuals would be. Mr. Rockell from Baltimore County Land Acquisition did testify that he had discussion with Mr. Riffin about building over utility easements.

The Board has carefully considered the testimony produced and the numerous exhibits of the evidence admitted and items marked for identification and weight assessment. This Board's initial review involved bungee jumping and how it is addressed in the Maryland Code. A review of the law and supporting documents afforded the

Board members some insight into the thinking of the legislature on this subject. The law in Chapter 315, Business Regulation, Section 3-503 defines bungee jumping, prohibits bungee jumping for a fee or dues, disallows conducting a bungee jumping operation and establishes a fine for violators. There was no record of an Attorney General's opinion letter, and Mr. Riffin, although referencing that such a document exists, did not offer into evidence the same. The Board concluded that the bungee jumping activities as proposed by the Appellant /Petitioner was in actuality a bungee jumping operation. Regardless of whether using the word "operation" or the word "activity," it is semantical and one resembles the other. The inference regarding fees came out in testimony by the crane operator who acknowledged that he was paid by Mr. Riffin for operating the crane, and that he expected to continue on as a crane operator if Mr. Riffin were allowed to have a bungee jumping operation. As well, Mr. Riffin indicated that individuals would be able to rent the crane and/or any needed equipment in order to perform bungee jumping activities. These representations produce the appearance of being a bungee jumping operation, which is not allowed by Maryland law, this would not be a permitted use under the Baltimore County Zoning Regulations.

The Board then looked at the definitions of Commercial Recreational Facilities under BCZR 101:

COMMERCIAL RECREATIONAL FACILITIES -- Facilities whose principal purpose is to provide space and equipment for nonprofessional athletic activities. A commercial recreational facility includes, but is not limited to, a baseball-batting range or cage; golf-driving range; putting green; miniature golf; athletic field; swimming pool; skating rink or course; baseball, racquetball, tennis or squash court; archery range or similar facility; or any combination of the above. For the

purpose of these regulations, a commercial recreational facility shall not include a rifle, pistol, skeet or trap range, go-cart course; amusement park; or similar use. [Bill Nos. 176-1994; 21-1996]

The definition notes that a commercial recreational facility shall not include an amusement park or similar use. Throughout the numerous discussions as to what bungee jumping would be considered, it came up that it was frequently done in conjunction with amusement-like operations and was described by expert witnesses as a "thrill-seeking activity." It was noted that State legislation regarding bungee jumping was put in that Section of the Annotated Code as amusement activities.

The Board next considered allowed uses in Section 253 of the BCZR -- uses permitted as of right in the M.L. zone. Section 253.A42 states:

42. Practice or training physical conditioning facilities and fields for amateur or professional sports organizations, provided that there shall not be any accommodations for public spectators, no more than one sports organization uses such a facility at one time, and no such facility includes any lighting that would produce substantial off-site illumination, nor any provisions for selling public admissions to sports events to be conducted thereon. For the purposes of these regulations, "practice or training physical conditioning facilities and fields for amateur or professional sports organizations" may include such offices as are necessary for the administration of the organization. [Bill No. 125-1978]

This information was, as described during the hearing before the Board, specifically drafted to address the Colt Training Facility. The experts, Jeffrey Long and James Patton, both discussed the words "and fields" and a definition from Webster's for "field" was offered as an exhibit. (See Protestants' Exhibit No. 15.) Neither expert or any members of the Board envision the bungee jumping circle as a field as it was used in that legislation when passed in

1978. As well, it defines the use for organizations (professional or amateur). At no time did any organization appear on behalf of the Appellant to describe their potential use of the proposed "facility." The Board concludes that clearly this definition is not intended for individuals, or public spectators, both of which would have an interest in a bungee jumping activity. It was rather set up for the purpose of "training /physical conditioning facilities and fields for organizations."

Under Section 270 of the BCZR 2-115 Schedule of Special Exceptions, a Community Building, swimming pool, or other structural or land use devoted to civic, social, recreational and educational activities is a use permitted without special exception. Again, from the testimony this Board concludes that bungee jumping activities are not community, civic or social activities. The weight of evidence does not classify it as a community-oriented activity that is defined under this section of the regulations. This also applies to Section 253.F.5 of the BCZR. This addresses an I.M. zone use -- Accessory uses --Employee's Recreation Facility. Again, in the review of all possible definitions, the Board concludes that the evidence provided was directed at employees' use and there were no employees present to testify to its use for employees. Mr. Riffin testified that it was being used presently by employees, but again there was no supporting testimony or exhibits to document the same. The Appellant stated in his notice of appeal that no one would be charged to jump; they would, however, pay a fee to rent cords, equipment, body harnesses, jumping platforms and cranes. Again, another semantical interpretation, not to mention that this would

be a bungee jumping operation which is illegal in the State of Maryland.

In addressing the request for special exception, Section 502.1 criteria must be reviewed to determine their effects.

502.1--Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- a. Be detrimental to the health, safety, or general welfare of the locality involved;
- b. Tend to create congestion in roads, streets or alleys therein;
- c. Create a potential hazard from fire, panic or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- f. Interfere with adequate light and air;
- g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
- h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

The safety of bungee jumping from a crane in an area that is questionable in size is of great concern to the Board. There was testimony from the crane operator about the area and the operation of the equipment that leads us to a finding that safe operation cannot be assured, especially concerning overhead electrical wires within approximately 10 feet of activities.

Concerning congestion in the roads, streets or alleys therein, this Board finds that parking on this site or nearby would cause



congestion particularly if the variance for the parking structure were not granted. It should be noted that the mere fact that the need to grant a variance request to support a special exception is violative as a matter of law under Umerley v. People's Counsel, 108 Md.App. 497, cert denied 334 Md. 584 (1996). This Board also finds that fire safety and use of emergency vehicles was not documented adequately to satisfy this requirement.

The issue of crowding of land was testified to numerous times by the experts. Light and air would be compromised without question if a parking structure were allowed to be built by granting of a variance. Using the standard set forth in Schultz v. Pritts, 291 Md. 1, 1981, "the test for considering a special exception is not whether the use will have an adverse effect, but whether the adverse effect at the particular location is greater than ordinarily associated with the use.... Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses. The duties given to the Board are to judge...whether the use in the particular case is in harmony with the general purpose and intent of the plan."

The Board considered the spirit and intent of the Hunt Valley /Timonium Master Plan and finds this proposed use as outlined inconsistent with the focus of the surrounding community. The testimony of the expert witnesses supports that finding, especially that of Jeffrey Long, land planner for Baltimore County, who stated that the County frequently showcased this area and looked to develop it with uses such as Maryland National Bank, Girl Scouts

and other employers who would hire larger groups of individuals particularly since light rail access is available.

In addressing the variances, it should be noted that the Appellant Mr. Riffin, requested in his letter of appeal dated June 7, 1998, for variance numbers 5, 6 and 7 as established on his Plat which was entered as Petitioner's Exhibit No. 1A. He did not appeal #4, sign height variance, or #8, parking variance. However, he did discuss both variances during the hearing and advised this Board that he was withdrawing his request for parking variance #8. The standard for consideration of a variance is BCZR Section 307.1.

Section 307.1 of the Baltimore County Zoning Regulations states, in pertinent part, as follows:

"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

As well, this Board enjoys the guidance provided by the Court of Special Appeals in Cromwell v. Ward, 102 Md.App. 691 (1995). In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental

factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... Id. at 710.

It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone. The Maryland Department of Assessments and Taxation, Real Property System map (People's Counsel Exhibit No. 5B) shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations. Photographic exhibits entered by the Protestants document the same. At no point in the hearing did the Appellant entertain any historical significance to the site nor were environmental or subsurface conditions documented. Mr. Riffin did testify as to damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs, or documentation by some authority regarding the nature or extent of this damage. There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site. In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.

O R D E R

IT IS THEREFORE this 31st day of December, 1998 by the County Board of Appeals of Baltimore County

ORDERED that the Petitions for Special Hearing and Special Exception for bungee jumping be and the same are hereby DENIED; and it is further

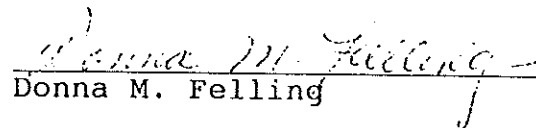
ORDERED that Petitioner's requested variance relief be and the same is DENIED.

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

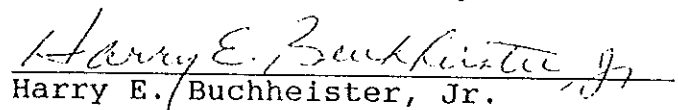
COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY



Charles L. Marks, Chairman



Donna M. Felling



Harry E. Buchheister, Jr.

|                                       |   |                       |
|---------------------------------------|---|-----------------------|
| IN RE: PETITIONS FOR SPECIAL HEARING, | * | BEFORE THE            |
| SPECIAL EXCEPTION & VARIANCE          |   |                       |
| E/S Greenspring Dr., 150 ft. N        | * | ZONING COMMISSIONER   |
| of Business Park Drive                |   |                       |
| 1941 Greenspring Drive                | * | OF BALTIMORE COUNTY   |
| 8th Election District                 |   |                       |
| 4th Councilmanic District             | * | Case No. 98-336-SPHXA |
| James Riffin, Petitioner              |   |                       |

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FINDINGS OF FACTS AND CONCLUSIONS OF LAW

These matters come before the Zoning Commissioner as a combined public hearing on Petitions for Special Hearing, Special Exception and Zoning Variance, all for the property located at 1941 Greenspring Drive in Timonium. The Petitions were filed by James Riffin, property owner. Special Hearing relief is requested to permit bungee jumping from a crane held platform on the subject property pursuant to Section 270 of the Baltimore County Zoning Regulations (BCZR) as a Recreational Activity or, in the alternative, pursuant to Section 253.1A.40A of the BCZR as a Sports Practice/Training and/or Physical Conditioning Facility. Essentially, under the Petition for Special Hearing, the Petitioner seeks a finding that the proposed bungee jumping facility is permitted by right on the subject property, zoned M.L.-I.M. Within the Petition for Special Exception, approval is requested for a bungee jumping facility as a Commercial Recreational Facility, pursuant to Section 253.2D(4) of the BCZR. Variance relief is also requested. Specifically, variances are sought from Sections 255.1, 238.1, 238.2, 450.3J, 450.4G, 301.1A and 409.6 of the BCZR to permit side yard setbacks of 16 ft., 28 ft., and 21 ft., (all existing) and 1 ft.(proposed), in lieu of the required 30 ft.; front yard setbacks of 22 ft. and 18 ft. in lieu of the required 25 ft.; a front yard setback of 5 ft., in lieu of the required 22.5 ft., for a stair/landing area; a rear yard setback of 6" in lieu of the required 30 ft.; a sign with a height of 15 ft. above grade in lieu of the permitted 12 ft.; and a parking variance to permit 57 spaces in

lieu of the required 65 spaces.

The subject property and requested relief are more particularly shown on the site plan and revised site plan to accompany the Petitions for Special Exception, Special Hearing and Variances, marked as Petitioner's Exhibits No. 1A and 1B, respectively.

Appearing at the requisite public hearing on behalf of the Petitions was James Riffin, property owner/Petitioner. Mr. Riffin was not represented by counsel and produced no witnesses other than himself in support of the Petitions. Appearing in opposition to the request were Jack Trapp and Helen J. Trapp, adjacent property owners. They were represented by C. William Clark, Esquire. Testifying in opposition to the requests was James S. Patton, a professional engineer retained by Mr. and Mrs. Trapp. Also testifying in opposition to the requests was Kathleen Beadell, on behalf of the Greater Timonium Community Council.

Mr. Riffin testified and presented the site plan. The property is a rectangularly shaped parcel, approximately 7/10ths of an acre in area, zoned ML-IM. The property is located on Greenspring Drive in Timonium. The rear of the property is near the Light Rail Extension. The neighborhood in general contains a number of mixed commercial/business uses. The Timonium Holiday Inn is located nearby and there are a number of light manufacturing, commercial and business uses in the vicinity. A site inspection reveals that the building is in a state of disrepair and that the property is not well kept.

The site is improved with an existing one story building. The building is approximately 9400 sq. ft. in area. Mr. Riffin indicated that he has owned the site and building for less than one year and presently leases space to three tenants. A printing firm occupies the front portion of the building. Space in the rear of the building is leased to an office support

business and a sign making shop. Additionally, a heating, ventilating and air conditioning business owned by Mr. Riffin occupies the premises. In addition to the existing building, a portion of the site is improved with a macadam area for parking.

Mr. Riffin proposes two physical changes to the site which drive the zoning Petitions which have been filed. First, he proposes an expansion to the subject building so as to add one or two stories. Additionally, a parking deck and elevated driveway access to same are proposed. In addition to these physical improvements to the site, the Petitioner also proposes a new use on the property. Specifically, he wishes that the site be used to support a bungee jumping facility. Although he has never jumped himself, he seeks approval to allow a crane which is presently stored on the site to be used to allow bungee jumping. Mr. Riffin thinks he will enjoy this activity and anticipates that other individuals who enjoy that pursuit will practice their activity at the subject site from Mr. Riffin's crane.

Turning first to Mr. Riffin's proposed physical improvements to the property, I am not persuaded that they are appropriate and will, therefore, deny the variances, as are necessary, to permit same. The subject property is quite small (less than an acre in area) and is already improved with a large building which occupies most of the acreage. To allow Mr. Riffin's proposed addition and parking deck on a lot this small is inappropriate. With such minimal setbacks as are proposed, I find that the proposed expansion will be harmful to adjacent properties.

Under the proposal, the proposed parking deck and access way to same would be located 1 ft. from the side property line and the Trapp property. Additionally, it would virtually abut the rear property, leaving a setback of 6 inches. A reduction of the side and rear yard area to such minimal levels is inappropriate and variance relief should not be granted. Moreover,

I am not persuaded that Mr. Riffin has clearly thought out his proposed expansion and submitted a plan which can be legally approved. Specifically, during the course of the hearing, he indicated that the building might be expanded to a second or a third floor; but did not commit to either alternative. This Zoning Commissioner must incorporate a definitive site plan when approving any Petition. The proposed expansion will clearly overcrowd the site and overwhelm adjacent properties. For all of these reasons, I shall deny the Petitioner's request for variance to allow the new construction.

Variance relief will, however, be granted to legitimize existing conditions. In this regard, the plan shows certain variances are needed to legitimize setbacks for the existing building. Specifically, variance relief is requested to approve a 16 ft. side yard setback on the north side for an addition to the building which was built in 1991. The 16 ft. setback variance shown for that part of the building is necessary in lieu of the required 30 ft. Secondly, variance relief is necessary for an existing front yard setback of 22 ft. in lieu of the required 25 ft. This setback is measured from an existing porch on the front of the building. Third, variance relief is requested to approve a 21 ft. side yard setback on the south side of the building, again, in lieu of the required 30 ft. Last, variance relief is requested to permit a 28 ft. setback on the north side in lieu of the required 30 ft.

In my judgment, requiring the Petitioner to raze a portion of the structure to meet the setback requirements would be inappropriate. Testimony and evidence presented was persuasive that the existing setbacks are sufficient given the character of the neighborhood and adjacent property uses. Therefore, I will grant the Petition for Variance as it relates to the existing side and front yard setbacks. However, the balance of the



variance requests to allow lesser setbacks, a larger sign and a deficient parking arrangement shall all be denied. In this regard, I find that a grant of those variances would cause a detrimental impact to the surrounding locale. Additionally, the testimony offered by the Petitioner failed to meet the requirements set forth in Section 307 of the BCZR and the case law. (See Cromwell v. Ward, 102 Md. App. 691 (1995). Specifically, there was no testimony or evidence presented to support a finding that the property is unique and that variance relief is justified.

Turning next to the Petition for Special Hearing, this request is driven by the Petitioner's proposed use of the subject property. As was the case with Mr. Riffin's testimony in support of the variances (i.e., proposed expansion to 2 or 3 floors), the Petitioner's testimony regarding his bungee jumping operation was non-specific. He did offer an opinion that bungee jumping is a sport, combining elements of diving, gymnastics and mountain climbing. He noted that there are no bungee jumping facilities in Maryland and that his facility would be the first in this State. Apparently, the facility would be available to members only, wherein individuals would be able to bungee jump and use the facilities at the site upon enrollment in a club to be established at this location.

The Petitioner filed a Petition for Special Hearing to permit this use as a matter of right. He suggests that same is permitted by right under two theories. First, the Petitioner claims that the use is permitted as a practice or training physical conditioning facility pursuant to Section 253.1A.40A of the BCZR. That section of the BCZR is well known to this Zoning Commissioner and its legislative history is of some interest. It is frequently cited as the "Baltimore Colt facility at Owings Mills" regulation. In the late 1970s, the then Baltimore Colts were owned by Robert Irsay. Throughout that time, Mr. Irsay made repeated threats to move the

team and ultimately the franchise was relocated to Indianapolis. Prior to the move, however, the powers that be in Baltimore County and the State of Maryland made efforts to induce Mr. Irsay to keep the team in Baltimore. Among those efforts was the making available of a site in Owings Mills to be the Colts' training facility. In order to avoid any zoning conflict, the Baltimore County Council adopted the language which is now codified in Section 253.1A(40A). That section allows, in the M.L. zone, practice or training physical conditioning facilities and fields for amateur or professional sports organizations. The section goes on to provide certain restrictions to that use.

The regulation was clearly enacted to accommodate the professional football franchise which then existed in Baltimore. Clearly, the County Council did not intend or envision that that regulation could be used to support a bungee jumping operation, or any use other than a professional football franchise. Mr. Riffin, however, argues the use applies to his operation. He testified that he believed that the use identified in Section 253.1A(40A) had been used in the past to permit an athletic club in the M.L. zone. Moreover, he believes an analogy can be drawn between the proposed bungee jumping operation and an athletic or fitness club.

An examination of the zoning files in Baltimore County show that there have been at least two limited occasions where the language in Section 40A was used to permit a fitness or wellness center. In one case, a facility in White Marsh was approved.

Notwithstanding these prior decisions and Mr. Riffin's arguments, I am unconvinced that Section 253.1A(40A) would permit the proposed bungee jumping operation at the subject property. First, the legislative history of this bill clearly is persuasive that the section was enacted only to accommodate a professional or amateur sports franchise. More importantly, the

words used do not support the Petitioner's contention. The regulation requires that practice or training facilities and fields must encompass the operation. The use of the word "and" indicates that both facilities and fields are required. There are no fields here.

Moreover, I do not conclude that Mr. Riffin's operation is a sport, particularly, in the context of the language used here. Section 101 of the BCZR provides that words not defined by the zoning regulations should be used in accordance with the definition contained in Webster's Third New International Dictionary Unabridged. Within that source, sport is defined as "a particular play, game, or mode of amusement . . . a game or contest especially when involving individual or physical prowess . . . ". I am appreciative of the fact that the International Olympic Committee designates ballroom dancing and synchronized swimming as sports. However, even by that less than rational body, bungee jumping is not so recognized. In my judgment, bungee jumping is more of a thrill seekers' amusement and the operation proposed clearly does not fit within the guise of amateur or professional sports organizations. Thus, for all of these reasons, I decline to enter a finding that Mr. Riffin's bungee jumping operation is permitted by Section 253.1A(40A). This Zoning Commissioner does not find that bungee jumping is a sport and does not conclude that it is permitted by Section 253.1A(40).

Mr. Riffin's second approach under the Petition for Special Hearing arises from a possible interpretation of Section 270 of the BCZR. Therein, a schedule of land uses is provided. Mr. Riffin contends that within that schedule, a "community building, swimming pool or other structural land use devoted to civic, social, recreational and educational activities" is allowed by right. He contends that his bungee jumping operation would fall within that classification. Clearly, however, the bungee jumping operation is not a community building or swimming pool. Moreover, it is not a civic,

social or educational activity. It would seem that Mr. Riffin could prevail on this point only if same was determined to be a recreational pursuit.

The list of those activities which fall under the concept of recreation is indeed broad. Almost any avocation or hobby could be considered recreational in nature. Nonetheless, I do not believe that Mr. Riffin's bungee jumping club is permitted by right as a recreational use, allowed by Section 270, particularly in view of the footnotes to that Section and the language in Section 253.2D(4). I explain.

Although Section 270 provides that recreational uses are permitted by right in the M.L. zone, the schedule contained therein is footnoted with language which is significant here. Specifically, footnote #17 provides that some of the uses listed, "conflicts in some degree with Section 253, as amended after the enactment of this entry". Thus, the note recognizes there may be some degree of inconsistency between Section 253 and the schedule contained in Section 270. I believe that this note indicates a deference to Section 253.

In this regard, the language used in Section 253.2D.4 is of note. Therein, commercial and recreational facilities are permitted by special exception. In my judgment, the listing of commercial and recreational facilities as being permitted by special exception is in conflict with the language in Section 270 allowing recreational pursuits by right. In view of the footnote and the fact that commercial and recreational facilities were added in Section 253.2 by Bill No. 21-96 (enacted in 1996 well after Section 270 was adopted), it is clear that Section 253.2D.4 should control. That is, the language and the footnote of Section 270 clearly defer any inconsistencies in favor of Section 253; particularly when subsequent legislation was enacted to broaden Section 253.2D.4. Thus, the Petition for Special Hearing must be denied. In sum, the use is neither a professional

or amateur sports facility and field, nor a recreational facility which would be permitted under Section 270. It is not permitted by right under either theory.

The use could be permitted only if the special exception were granted to approve a Commercial Recreational Facility. A Commercial Recreational Facility is defined in Section 101 of the BCZR as "Facilities whose principal purpose is to provide space and equipment for non-professional athletic activities. Such facilities include, but are not limited to, such activities as a baseball batting range cage, a golf driving range, an athletic field, a skating rink, tennis or squash court, etc". Although the types of activities defined as occurring in a Commercial Recreational Facility are sporting activities, they do not involve the game or sport itself but a component or skill thereof. That is, a baseball batting cage involves a part of the sport of baseball, but not the entire play of the game. Rather, the batting cage is a facility that allows an individual to improve a component of the sport.

Mr. Riffin indicated that bungee jumping involves components from a number of sports, including gymnastics and high diving. It would appear, in context, that the bungee jumping operation should, therefore, be considered a Commercial Recreational Facility.

If not a Commercial Recreational Facility, bungee jumping operation could even be considered an amusement park. Bungee jumping is clearly an activity for thrill seekers and is similar in character to roller coasters and other amusement park rides. In fact, this Zoning Commissioner is familiar with a bungee jumping type operation at an amusement park in Virginia. It is to be noted that amusement parks are permitted in the district only by special exception pursuant to Section 253.2D.1.

For all of these reasons, it is my judgment that bungee jumping operations are Commercial Recreational Facilities permitted in the M.L. district only by special exception. Thus, the Petitioner must adduce testimony and evidence sufficient to meet the standards for special exception relief to be granted as set forth in Section 502.1. Specifically, it must be shown that the use can be carried out without detrimental impact to the health, safety and general welfare of the locale.

The testimony and evidence offered in this case was insufficient to meet that burden. The lot, itself, is quite small and, in my judgment, incapable of handling a bungee jumping operation. Power lines and utilities exist around the perimeter of the site and will prevent the safe operation of a bungee jumping business at this location. Moreover, the neighborhood is not appropriate. The locale is commercial/business/manufacturing in nature and an operation of this type with its attendant traffic and sites would be detrimental to surrounding businesses and land uses. Simply stated, this is not the right place. In my judgment for special exception must be denied.<sup>1</sup>

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

IT IS THEREFORE ORDERED, by the Zoning Commissioner for Baltimore County, this 1st day of June 1998, that, pursuant to the Petition for Special Hearing, approval of the subject property to permit bungee jumping from

<sup>1</sup> It is of note that bungee jumping may not be allowed anywhere in Maryland. The pursuit appears prohibited in this State by Section 3-503, Business Regulation Article, Annotated Code of Maryland. Just as I will not be drawn into a discussion of the reasonableness of those who choose to pursue this activity; I will likewise not be drawn into a discussion of the reasonableness applicability, and/or constitutionality of this law. Such a discussion is beyond my jurisdiction and, as importantly, unnecessary in view of my decision here.

a crane held platform pursuant to Section 270 of the Baltimore County Zoning Regulations (BCZR) as a permitted recreational activity or, in the alternative, pursuant to Section 253.1A.40A of the BCZR as a practice or training physical conditioning facility, be and is hereby DENIED.

IT IS FURTHER ORDERED that, pursuant to the Petition for Special Hearing, approval that the proposed bungee jumping facility is permitted on the subject property, zoned M.L.-I.M. by right, be and is hereby DENIED; and,

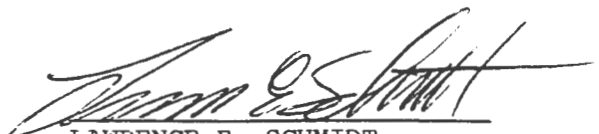
IT IS FURTHER ORDERED that variances from Sections 255.1 and 238.1 of the BCZR to permit setbacks of 16 ft. (side yard-North), in lieu of 30 ft.; 22 ft. (front yard), in lieu of 25 ft.; 21 ft. side yard-South), in lieu of 30 ft.; and 28 ft. (side yard-North) in lieu of the required 25 or 30 ft., all existing, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a rear yard setback of 6" in lieu of the required 30 ft.; a side yard of 1 ft. in lieu of 30; front yard of 22 ft. and 18 ft., in lieu of 25 ft; a front yard of 5 ft. in lieu of the required 22.5 ft. for a stair/landing area; a sign with a height of 15 ft. above grade in lieu of the permitted 12 ft.; and a parking variance to permit 57 spaces in lieu of the required 65 spaces, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a bungee jumping facility as a Commercial Recreational Facility, pursuant to Section 253.2D(4), be and is hereby DENIED.

Any appeal from this decision must be taken in accordance with the applicable provisions set forth in Section 26-132 of the Baltimore County Code.

LES:mmn

  
LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County