

1/27/03
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
INDIVIDUALS ERNIE AND
RUTH BAISDEN

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

CIVIL ACTION
NO.: 03-C-03-0275

IN THE MATTER OF:
POOR BOY'S INC.
(TERRY GERAHTY, LEGAL OWNER)
2711 TAYLOR AVENUE

98-267-SPH
CASE NO: CBA-00-159

* * * * *
**CERTIFIED COPIES OF PROCEEDINGS BEFORE THE
BALTIMORE COUNTY DEPARTMENT OF PERMITS & LICENSES
AND THE BOARD APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the
Petition for Judicial Review directed against it in this case, herewith transmits 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

2003 JAN 27 A 10:27

HONORABLE
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

9/20/2002

Order of The Honorable John F. Fader II, Circuit Court for Baltimore County, Case number 03 C 02 1085 - Remanding to the Board of Appeals. Without knowing specifically why the Agency did what it did, and upon what its decision is based, a remand is all that can occur in this case. The January 3, 2002 Board of Appeals decision is remanded without being either affirmed or denied. (Transcript and Record previously filed by the Board is returned herewith to the Circuit Court) (See Record Extract Case Number: 03 C 02-1085 attached as Exhibit A)

FILE BEING RETURNED HEREWITH

CBA-00-159

12/12/2002

Order of the Board on Remand From the Circuit Court for Baltimore County

1/09/2003

Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Ruth and Ernie Baisden.

1/16

Certificate of Notice sent to interested parties.

1/27

Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Board acted are permanent records of the originating agency in Baltimore County. Certified copies of these records in the Board's file are hereby forwarded to the Court, together with the transcript and Record of Proceeding previously filed in Civil Action No.: 3-C-02-01085.

Respectfully submitted,



Theresa R. Shelton, Legal Secretary
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204 (410) 887-3180

c: C. William Clark, Esquire
Terry Gerahty / Poor Boy's, Inc.
J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
Avery Harden, Landscape Architect / PDM
John R. Reisinger, Buildings Engineer / PDM
Edward J. Gilliss, County Attorney
Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney

1/16/03
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
INDIVIDUALS ERNIE AND
RUTH BAISDEN

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 MATTER OF:
POOR BOY'S INC.
(TERRY GERAHTY, LEGAL OWNER)
2711 TAYLOR AVENUE

CASE NO: CBA-00-159

CIVIL ACTION
NO.: 03-C-03-0275

RECEIVED AND FILED

2003 JAN 16 A 9:54

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, 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:

J. Carroll Holzer
508 Fairmount Avenue, Towson, MD 21286

Earnest and Ruth Baisden
7706 Oak Avenue, Baltimore, MD 21234

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

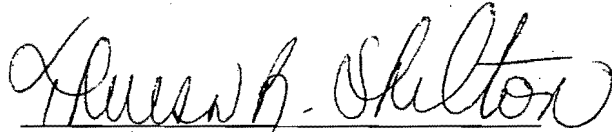
Poor Boy's, Inc.
c/o Terry Gerahty, 7721 Old Harford Road,
Baltimore, MD 21234

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.



Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to: J. Carroll Holzer, 508 Fairmount Avenue, Towson, MD 21286; Earnest and Ruth Baisden, 7706 Oak Avenue, Baltimore, MD 21234; C. William Clark, Esquire, NOLAN, PLUMHOFF & WILLIAMS, Suite 700, Nottingham Centre, 502 Washington Avenue, Towson, MD 21204; and Poor Boy's, Inc., c/o Terry Gerahty, 7721 Old Harford Road, Baltimore, MD 21234, this 16TH day of January, 2002.



Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)



County Board of Appeals of Baltimore County

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

January 16, 2003

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

RE: Circuit Court Civil Action No. 3-C-03-0275
Petition for Judicial Review
Ernie and Ruth Baisden
-- Poor Boy's, Inc. (Terry Gerahty, Legal Owner)
Case No.: CBA-00-159 on REMAND

Dear Mr. Holzer:

In accordance with the Maryland Rules, 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.

All costs incurred for certified copies for the completion of the record must be at your expense. There is no transcript for the record being filed under the above referenced Circuit Court Civil Action number.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Theresa R. Shelton".

Theresa R. Shelton
Legal Secretary

/trs

Enclosure

c: C. William Clark, Esquire
Terry Gerahty / Poor Boy's, Inc.



County Board of Appeals of Baltimore County

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

January 16, 2002

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

RE: Circuit Court Civil Action No. 3-C-03-0275
Petition for Judicial Review
Ernie and Ruth Baisden
-- Poor Boy's, Inc. (Terry Gerahty, Legal Owner)
Case No.: CBA-00-159 on REMAND

Dear Mr. Clark:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on January 9, 2003, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter on REMAND from the Circuit Court under Civil Action number 03-C-02-1085. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

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-03-0275.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
Terry Gerahty / Poor Boy's, Inc.
Avery Harden, Landscape Architect / PDM
John R. Reisinger, Buildings Engineer / PDM
Edward J. Gilliss, County Attorney
Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney

1/9/03

PETITION OF
INDIVIDUALS ERNIE AND
RUTH BAISDEN

IN THE MATTER OF:
POOR BOYS', INC.
2711 TAYLOR AVENUE

BEFORE THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
400 WASHINGTON AVE.
TOWSON, MARYLAND 21204

9th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
RE: APPROVAL OF LANDSCAPE PLAN
AND LIGHTING PLAN BY PDM
CASE NO: CBA-00-159

* IN THE CIRCUIT COURT

* FOR

* BALTIMORE COUNTY

Case No.

03-C-03-275

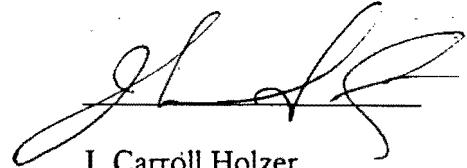
* * * * *
* 98-267-SP4 * * * * *

PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioners, individuals, Ruth and Ernie Baisden, by and through their attorney, J. Carroll Holzer and Holzer and Lee, request Judicial Review of the Opinion of the County Board of Appeals of Baltimore County in the above referenced matter rendered on December 12, 2002 and attached hereto.

Petitioners were parties before the County Board of Appeals and fully participated in the proceedings.

Respectfully Submitted,



J. Carroll Holzer
508 Fairmount Avenue
Towson, MD 21286
410-825-6961
Attorney for Petitioners

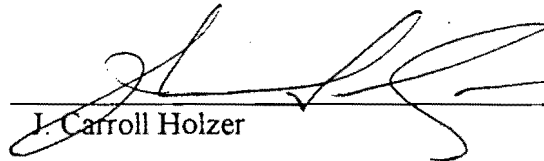
LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

(410) 825-6961
FAX: (410) 825-4923

FILED JAN 9 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 9th day of January, 2003, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid, to C. William Clark, Esquire, 502 Washington Ave., Suite 700 Towson, MD 21204; and the Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.


J. Carroll Holzer

1/9/03

PETITION OF
INDIVIDUALS ERNIE AND
RUTH BAISDEN

IN THE MATTER OF:
POOR BOYS', INC.
2711 TAYLOR AVENUE

BEFORE THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
400 WASHINGTON AVE.
TOWSON, MARYLAND 21204

9th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
RE: APPROVAL OF LANDSCAPE PLAN
AND LIGHTING PLAN BY PDM
CASE NO: CBA-00-159

* IN THE CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

Case No.

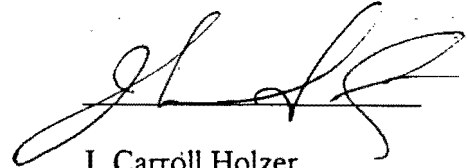
03-C-03-275

* * * * *
* 78-267-SP4 * * * * *
PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioners, individuals, Ruth and Ernie Baisden, by and through their attorney, J. Carroll Holzer and Holzer and Lee, request Judicial Review of the Opinion of the County Board of Appeals of Baltimore County in the above referenced matter rendered on December 12, 2002 and attached hereto.

Petitioners were parties before the County Board of Appeals and fully participated in the proceedings.

Respectfully Submitted,



J. Carroll Holzer
508 Fairmount Avenue
Towson, MD 21286
410-825-6961
Attorney for Petitioners

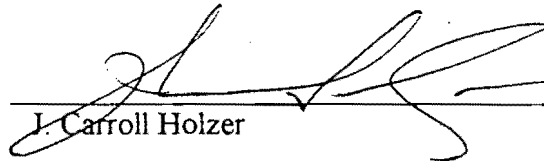
LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

(410) 825-6961
FAX: (410) 825-4923

FILED JAN 9 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 9th day of January, 2003, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid, to C. William Clark, Esquire, 502 Washington Ave., Suite 700 Towson, MD 21204; and the Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.


J. Carroll Holzer

12/12/02
IN THE MATTER OF
POOR BOY'S, INC. (Terry Gerahty /Legal Owner)
2711 TAYLOR AVENUE

9TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

RE: APPROVAL OF LANDSCAPE PLAN AND
LIGHTING PLAN BY PDM
(Case No. CBA-00-159)

* ON REMAND
* FROM THE
* CIRCUIT COURT FOR
* BALTIMORE COUNTY
* Civil Action
No.: 03-C-02-001085
* * * * *

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

This matter originally was before the Board on a Motion to Dismiss filed on behalf of Appellee, Poor Boy's, Inc., to the appeal noted by the Appellants, Ernie and Ruth Baisden, to the approval of a landscaping plan and a lighting plan by the Department of Permits and Development Management (PDM). Memorandums were filed on behalf of both parties, and argument presented by counsel on August 1, 2001. This Board issued its Ruling on Motion to Dismiss on January 3, 2002. Subsequently, a Petition for Judicial Review was filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Ernie and Ruth Baisden. On September 24, 2002, this matter was remanded to the Board of Appeals by order of the Honorable John F. Fader II, Judge, "for clarification and statement of reasons for the Board's opinion and determination."

The facts relating to this Motion are clear. In furtherance of an application for a grading permit related to the expansion of an existing parking lot, approved landscaping and lighting plans are required by Baltimore County. Such plans were prepared, presented and stamped as approved by E. Avery Harden, Landscape Architect, Development Plans Review of the Baltimore County Department of Permits and Development Management on September 7, 2000 (Landscape Plan) and September 8, 2000 (Lighting Plan). An appeal to this Board of those approved plans was taken by the Appellants on October 5, 2000.

The narrow question presented in this Motion is whether or not the approval of the landscape and lighting plans by Mr. Harden as part of the permit process constituted an event which was appealable to this Board.

Article 25-A, § 5(U), of the *Annotated Code of Maryland* authorized Baltimore County to establish and provide for a County Board of Appeals; and noted its power:

...to enact local laws providing... (4) for the decision by the Board on petition by any interested person and after the notice and opportunity for a hearing and on the basis of the record before the Board of such of the following matters arising (...on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of... the County Council, as specified from time to time by such local laws enacted under this subsection... the issuance... or modification of a license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order.

The Board adopts the argument of the Appellee as follows:

Section 602 of the Baltimore County Charter only authorizes the County Board of Appeals to hear appeals from certain enumerated matters: zoning § 602(a), licenses § 602(b), orders relating to building § 602(c), and appeals from executive administrative and adjudicatory orders § 602(d). Neither the County Code nor the Charter expressly authorizes an appeal from a decision of the Landscape Architect, or the approval of landscape and lighting plans to accompany an application for a grading permit. Nor does it expressly authorize appeals from the approval of grading permits. Nothing in any of the sections of the Code which regulate and relate to grading authorizes any such appeal to the County Board of Appeals. The approval of the Landscape Architect as to the proposed landscape and lighting plans does not constitute an "administrative and adjudicatory order." The only conceivable category is that it fits under an order relating to building. However, the express language of the statutes regulating grading found in Title 14 of the *Baltimore County Code* militate against such a construction when the County Council has spent enumerable paragraphs defining grading, and under any reasonable

reading of those definitions, it excluded the construction or erection of any building or structure of any kind.

In the case at Bar, the Protestant's Notice of Appeal states that this appeal is from the Decision of the Director of the Department of Permits and Development Management and attaches various exhibits, none of which demonstrate that the Director made any decision. The Landscape Architect did approve and sign lighting and landscape plans in connection with an application for a grading permit to construct a new parking lot at the subject site. This was not a final act issuing a permit. The appealable act might be the final granting of the grading permit itself by the Department of Permits and Development Management, if the Appellants have standing and are permitted by law to take such an appeal. The decision of the Landscape Architect is only one step in the process of obtaining a permit.

Once an application for a grading permit for a parking lot is filed, it is referred to the Landscape Architect, who then conducts a review of the application and makes a determination that, from his point of view, there are no concerns and/or issues under the applicable lighting and landscaping regulations. If there are none, it would, therefore, be appropriate from that department's point of view to have a permit issued. The findings of the Landscape Architect, if he approves, are then forwarded to the Department of Permits and Development Management for final review and approval, and, if all is in order, the building, or grading permit in this case, is granted. To allow appeals from interlocutory statements from administrative agencies (in this case, the Landscape Architect) would be to allow myriad appeals in the same case. A separate appeal could be taken from each department reviewing the application, which might occur on a series of different days, and the period within which to note an appeal could vary accordingly.

For the Board of Appeals to have subject matter jurisdiction, two elements must be met. First, there must be a statutory grant of authority, which is discussed above. Secondly, there

must be an operative event that determined the rights of the parties. In *Meadows v. Foxleigh*, 133 Md. at 510, the Court of Special Appeals commented upon the Court of Appeals' decision in *United Parcel Service v. People's Counsel*, 336 Md. 569, 650 A.2d 226 (1994). In *United Parcel Service* (UPS), the Court of Appeals held that a letter from the Zoning Commissioner written in response to a citizen complaint dated more than two months after a building permit was issued to UPS was not an appealable decision. The Court held that the "approval" or "other form of permission" occurred when the Zoning Commissioner and other officials approved UPS's application for a building permit, and the building engineer issued a building permit. The appealable event occurred then, when the application for the permit was approved and issued. *Id.* at 583-584. In *Meadows v. Foxleigh*, they found that the letter from the Director of the Department of Permits and Development Management was not an "operative event" that determined whether Foxleigh's proposed plan would be granted a license or permit, rather it merely informed Foxleigh that the proposed plan must be reviewed by the CRG. *Meadows v. Foxleigh*, 133 Md. at pg 516. The *Meadows* Court went on to comment upon *Art Wood v. Wiseburg*, 88 Md. at 723, 596 A.2d 712 (1991) Cert Denied 25 Md. 397, 601 A.2d 130 (1992). In *Art Wood*, the Court held that the CRG's action was an appealable final action; because the CRG "was not waiting for or seeking any additional information before approving a plan." In contrast to the *Art Wood* situation, in the instant case, at the time the Landscape Architect approved the plans to accompany the application for a permit, there was not yet a final action that could be appealed, because the Director of the Department of Permits and Development Management needed additional information from other departments to complete the approval process, so that a permit could be issued.

The Board has reviewed the Briefs of the parties and considered the arguments presented at the hearing. We find unanimously that the approvals by the Landscape Architect dated

September 7, 2000 and September 8, 2000 were not final appealable events. The obtaining of a permit is a process containing many constituent parts, any one of which could prove fatal to the application. Although appealable under the Code, a denial could conceivably be issued by the Director even if no specific objections were raised during the process. Mr. Harden inherently acknowledged this authority when he stated in his letter of December 24, 1996 to the parties that "the proposal above is essentially what the Baltimore County Landscaping Manual will require when a permit for the parking lot is sought." [Emphasis added.] The approval by Mr. Harden was only one of the many steps leading to an ultimate approval or denial of the requested permit. His action does not in and of itself allow the actual project to go forward and work to proceed on the ground; only the issuance of a proper grading permit would enable Appellees to do so. It is therefore from that final determination to grant the permit that all rights of appeal should emanate.

The Board is not unmindful and recognizes the frustration of the Appellants with regard to their inability under § 7-36 of the Code to appeal the granting of a permit. Unfortunately, their attempt to render appealable one particular internal part of the permit decision-making process is neither supported by statute or by case law. There is no specific authority in § 5(U) or § 602 for Appellants' position nor is there a right of appeal under the statutes regulating grading found in Title 14 of the Code, and in fact only limited appeals under § 7-36 of the Code. We are similarly unconvinced by Appellants' argument that a basis for their appeal lies in § 26-32 of the Code, which we find is clearly related to zoning decisions and not to the issuance or denial of grading permits. Finally, we find the UPS decision still clear and controlling. To hold otherwise would open the way for a myriad of appeals, each on its own schedule, of every positive or negative departmental comment, objection, question, or approval made or sought as part of a request for a permit, application, or development plan. This Board does not believe that such a result is the

intent or letter of the present statutory or case law, and we accordingly grant Appellee's Motion to Dismiss.

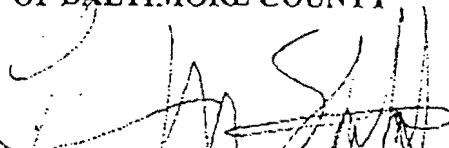
ORDER

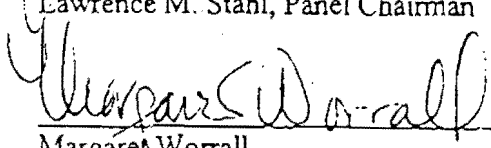
IT IS, THEREFORE, THIS 12th day of December, 2002, by the
County Board of Appeals of Baltimore County, on remand from the Circuit Court for Baltimore
County

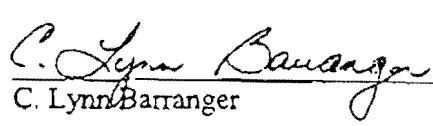
ORDERED that Appellee's Motion to Dismiss be and the same is hereby GRANTED;
and it is further

ORDERED that the appeal filed in Case No. CBA-00-159 be and the same is hereby
DISMISSED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence M. Stahl, Panel Chairman


Margaret Worrall


C. Lynn Barranger

IN THE MATTER OF
ERNIE BAISDEN, et al.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
CASE NO. 03 C 02 1085

ORDER OF COURT REMANDING
CASE TO BOARD OF APPEALS

CBA-00-159
98-267-SPH

As a result of a hearing before this court on September 13, 2002, it is
ORDERED by the Circuit Court for Baltimore County this 20th day of September
2002 that this case is remanded to the Board of Appeals (Board) for clarification
and statement of the reasons for the Board's opinion and determination.

Specifically, this court has no information before it, whereby it can determine
whether the Board's granting of the motion by Poor Boy's, Inc. to dismiss the
appeal has a foundation in law.

A.

Terry Gerahty t/a Poor Boy's Inc. made application to Baltimore County,
Maryland regarding the construction of a parking lot on property located at 2711
Taylor Avenue, Baltimore County, Maryland, where a garden and plant center is
located and operated. Both parties agreed, that as part of the process of
application, a landscape and lighting plan for the site must be obtained and
approved. A landscape and lighting plan was approved, and when an appeal was
taken, opposing that approval, by protestants to the Board of Appeals, the appeal
was dismissed by the Board, because the Board found the approval to be a non
final determination, and therefore a non appealable event.

When the Board gave a written ruling January 3, 2002 dismissing the protestant's appeal, it said:

... In furtherance of an application for a grading permit related to the expansion of an existing parking lot, approved landscaping and lighting plans are required by Baltimore County. Such plans were prepared, presented and stamped as approved by E. Avery Harden, Landscape Architect, Development Plans Review of the Baltimore County Department of Permits and Development Management on September 7, 2000 (Landscape Plan) and September 8, 2000 (Lighting Plan). An appeal to this Board of those approved plans was taken by the Appellants on October 5, 2000.

... The Board notes that, as part of the application process for a grading permit, various prerequisite approvals, comments, and concerns, if any, are elicited from relevant County departments and agencies. The responses obtained, as well as other relevant input, are provided to the Director of the Department of Permits and Development Management for his review and ultimate granting or denial of the requested permit. Under § 7-36 of the *Baltimore County Code*, a denial by PDM would then constitute an appealable event. [Emphasis added.]

... The obtaining of a permit is a process containing many constituent parts, any one of which could prove fatal to the application ...

... The approval by Mr. Harden was only one of the many steps leading to an ultimate approval or denial of the requested permit. His action does not in and of itself allow the actual project to go forward and work to proceed on the ground; only the issuance of a proper grading permit would enable Appellees to do so. It is therefore from that final determination to grant the permit that all rights of appeal should emanate.

The undersigned judge has no idea whether the statements by the Board are legally correct in the permit process, or where I would look to determine the legal correctness. No one has told me the basis of these statements by the Board -

what code sections, regulations, etc. are determinative. Therefore, I am not able to tell whether the Board is correct.

B.

Trial courts must review the decision by an Agency on the record of the Agency and on the basis stated by the Agency.

The scope of judicial review of an administrative agency has been explained by the Court of Appeals in the case *MVA v. Karwacki*, 340 Md. 271, 666 A.2d 511 (1995):

The scope of judicial review of an agency's factual determinations is extremely narrow. *Liberty Nursing Center v. Department of Health and Mental Hygiene*, 330 Md. 433, 442, 624 A.2d 941, 945 (1993). A reviewing court must defer to the agency's factual findings and inferences that are supported by substantial evidence. *United Parcel v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994); *Caucus*, 320 Md. at 324, 577 A.2d at 788; *Lindsey*, 318 Md. at 334, 568 A.2d at 33. In other words, a reviewing court evaluates the administrative agency's fact finding results; it does not make an independent, *de novo* assessment of the evidence. *Zeitschel v. Board of Education*, 274 Md. 69, 82, 332 A.2d 906, 913 (1975). If there is any substantial evidence in the record to support an agency's factual determinations, the reviewing court must affirm the agency's decision, which on its face is correct, and presumed to be valid. *Liberty Nursing Ctr., supra*, 330 Md. at 442, 624 A.2d at 945; *Anderson v. Department of Public Safety*, 330 Md. 187, 212, 623 A.2d 198, 210 (1993); *Department of Health and Mental Hygiene v. Shrieves*, 100 Md. App. 283, 302, 641 A.2d 899, 908 (1994). For purposes of determining whether an administrative agency's decision is supported by substantial evidence in the record, substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Caucus*, 320 Md. at 324, 577 A.2d at 788. See also *Liberty Nursing, supra*, 330 Md. at 442, 624 A.2d at 945; *State Election Board v. Billhimer*, 314 Md. 46, 58, 548 A.2d 819, 825 (1988), *cert. denied*, 490 U.S. 1007, 109 S. Ct. 1644, 104 L. Ed. 2d 159 (1989); *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512, 390 A.2d 1119, 1123

(1978); *Supervisor of Assessments v. Peter & John Radio Fellowship, Inc.*, 274 Md. 353, 355-56, 335 A.2d 93, 94 (1975); *Dickinson-Tidewater Inc. v. Supervisor of Assessments*, 273 Md. 245, 256, 329 A.2d 18, 25 (1974); *Snowden v. Mayor & City Council of Baltimore*, 224 Md. 443, 448, 168 A.2d 390, 392 (1961). *Id.* at 280-81.

In *United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corporation*, 298 Md. 665, 472 A.2d 62 (1983), the Court of Appeals stated that it is necessary that administrative agencies "resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law." *Id.* at 678. In the judicial review of an agency, "the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." *Id.* at 679.

More recently, the Court of Special Appeals has held:

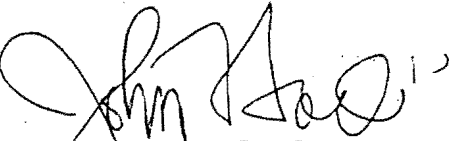
A reviewing court may not make its own findings of fact, *Board of County Comm'rs v. Holbrook*, 314 Md. 210, 218, 550 A.2d 664 (1988), or supply factual findings that were not made by the agency. *Ocean Hideaway Condo. v. Boardwalk Plaza*, 68 Md.App. 650, 662, 515 A.2d 485 (1986). Findings of fact are essential in order for the reviewing court to review meaningfully the agency's decision. See *Gray v. Anne Arundel Co.*, 73 Md.App. 301, 307-09, 533 A.2d 1325 (1987). Moreover, it is the agency's function to determine the inferences to be drawn from the facts. On review, neither the circuit court nor this Court may substitute its judgment for that of the agency. *Eberle v. Baltimore County*, 103 Md.App. 160, 165, 652 A.2d 1175 (1995).

Maryland Securities Commissioner v. U.S. Securities Corporation, et al., 122 Md.App. 574, 586, 716 A.2d 290 (1998).

Without knowing specifically why the Agency did what it did, and upon what its decision is based, a remand is all that can occur in this case.

C.

At the hearing in this case, the attorneys brought to my attention some matters concerning changes to the applicable law, etc. that may or may not affect the end decision in this case. All of that is something for the agency to consider on remand, to the extent it deems advisable.


John F. Fader II
Judge

JFF:am

cc: J. Carroll Holzer, Esq.
Holzer and Lee
The 508 Building
508 Fairmount Avenue
Towson, MD 21286-5448

C. William Clark, Esq.
Nolan, Plumhoff & Williams
502 Washington Avenue
Nottingham Center Ste 700
Towson, MD 21204-4528

mailed 9/23/02
sw



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

[Signature]
DIRECTOR

BUILDING PERMIT

[Signature]
BUILDINGS ENGINEER

PERMIT #: B329149 CONTROL #: CRC- DIST: 09 PREC: 21
DATE ISSUED: 07/17/2001 TAX ACCOUNT #: 1800007926 CLASS: 06

PLANS: CONST 0 PLOT 0 R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE

OWNERS INFORMATION

NAME: GERANTY, TERRY J
ADDR: 7721 OLD HARFORD RD 21234

TENANT:

CONTR: TBD

ENGINE:

SELLER:

WORK: GRADING & PAVING FOR PARKING LOT EXPANSION.
42,000SF DISTURBED AREA. PERMIT EXPIRES
TWO YEARS FROM DATE OF ISSUE.

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: RETAIL & GRADING

45,000.00 EXISTING USE: RETAIL

TYPE OF IMPRV: OTHER

USE: OTHER - RESIDENTIAL

FOUNDATION:

SEWAGE: PUBLIC EXIST

BASEMENT:

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 499190F

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: NC/NC

RIOF STR SETB:

REAR SETB: NC

EXHIBIT

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

TOWSON, MARYLAND 21204

[Signature]
DIRECTOR

BUILDING PERMIT

[Signature]
BUILDINGS ENGINEER

PERMIT #: B431416 CONTROL #: SWMC- DIST: 09 PREC: 01
DATE ISSUED: 07/06/2001 TAX ACCOUNT #: 1999907926 CLASS: 06

PLANS: CONST 00 PLOT B, R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE

OWNERS INFORMATION

NAME: GERAHTY, TERRY J
ADDR: 7721 OLD HARFORD RD 21234

TENANT:

CONTR: OWNER

ENGR:

SELLR:

WORK: CONST STORM WATER MGMT FOR 0.75AC OF DRAINAGE
AREA. SEE GRADING PERMIT B329149
PERMIT EXPIRES TWO YEARS FROM DATE OF ISSUE.

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

25,000.00 PROPOSED USE: RETAIL + SUM
EXISTING USE: RETAIL

TYPE OF IMPRV: OTHER

USE: OTHER - NON-RESIDENTIAL

FOUNDATION:

BASEMENT:

SEWAGE: PUBLIC EXIST

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 49.919AC

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: NC

SIDE SIX SETB:

REAR SETB: NC

Kevin Sharbonda
Sediment Control Inspector II - Inspection and Enforcement

Baltimore County
Department of Environmental Protection
& Resource Management
401 Basley Avenue, Room 416
Towson, Maryland 21204

410-887-3226 Fax 410-887-4804



PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

EXHIBIT

2

OAK

(50 FT. R/W - MA

OWNER'S SIGNATURE AND CERTIFICATION FORM

I certify that I have reviewed this Final Landscape Plan; that I am aware of the regulations presented in the Baltimore County Landscape Manual; and I agree to comply with these regulations and all applicable policy, guidelines and ordinances. I agree to certify the implementation of this approved Final Landscape Plan upon completion of the landscape installation not later than one (1) year from the date of approval of this plan to the Department of Permits and Development Management, Development Plans Review, County Office Building, Room 211, Towson, MD 21204.

Owner's signature

Date

TERRY GERAHTY

9/6/00 910-668-7599

Printed name

Tel. #

8309 Palesford RD
(Print) Street address

Baltimore MD
City State

21234
Zip

PDM #

Building Permit #

SANY. M.H.
TOP EL. = 356.11
INV. EL. = 348.76(OUT)

POLE 204524

BALTIMORE COUNTY
DEPT. OF PERMITS & DEV. MGMT.
LANDSCAPE PLAN APPROVED

BY

DATE

9-7-00

EXH. A

SITE PLAN TO ACCOMPANY PERMIT APPLICATION B-329149
FOR GRADING, PAVING AND INSTALLATION OF
PRIVATE UTILITIES & WQ FACILITY

EXHIBIT

5

3/7/00	MOVED TRENCH NO. 1 TO EASTERN EDGE OF PAVING
11/19/99	INCREASED OUTSIDE STORAGE AREA & # PARKING SPACES
	LENGTHENED W/D TRENCH NO. 1
10/27/99	REMOVED EARTH BERM & REVISED GRADE OF UPPER LOT
DATE	REVISION DESCRIPTION

~~LANDSCAPE PLAN~~
SITE PLAN, GRADING & SEDIMENT CONTROL 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: FEB. 10, 1998

ENGINEER:

R. A. CHILDRESS & ASSOC. INC.
713 PHEASANT DRIVE
FOREST HILL, MD. 21050
(410) - 803 - 0304

OWNER

TERRY GERAHTY
7721 OLD HARFORD ROAD
BALTIMORE, MD. 21234
(410) 888 - 7599

DRAWING No.

SP-1

SHEET 1 OF 2



Alonso Pulido

5/31/02

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

IN THE MATTER OF: RUTH BAISDEN

IN THE MATTER OF: TERRY GERAHTY

* CIVIL ACTION
* CASE NO. 03-C-00-6650
03-C-00-6687

* 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

- 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.

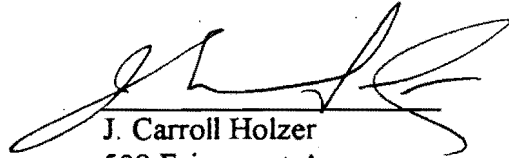
CONTEMPT OF COURT

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.

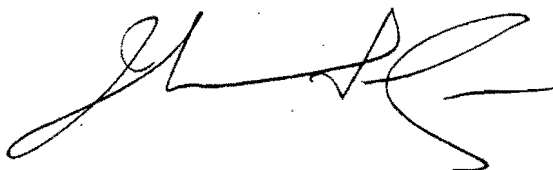
Respectfully submitted,



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.

A handwritten signature in black ink, appearing to be 'J. Clark', written in a cursive style.

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

* * * * *

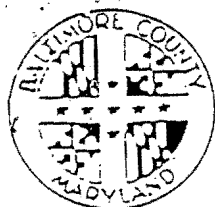
MEMORANDUM OPINION AND ORDER

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

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

Ernest 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 Poorboys
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



MANDATE

Court of Special Appeals

Maryland Relay Service
1-800-735-2258
TDD/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



motion hearing
County Board of Appeals of Baltimore County

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

Attachment # *und*

6

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

Appendix D 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.

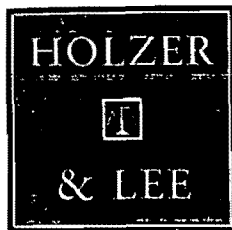
I believe I understand the issue surrounding the location of the fence. As you know, the Division of Code Inspections and Enforcement did issue a citation to Poor Boys, Inc. that concluded the fence was not in the location required by Mr. Harden, of the Bureau of Development Plans Review, and enforced 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





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 F 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 26*
- **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,

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. 469, 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.

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 thereafter 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. 38, 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,

3/29/02
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
INDIVIDUALS ERNIE AND
RUTH BAISDEN

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

CIVIL ACTION
NO.: 03-C-02-001085

IN THE MATTER OF:
POOR BOY'S INC.
(TERRY GERAHTY, LEGAL OWNER)
2711 TAYLOR AVENUE

9B-267-SPH
CASE NO: CBA-00-159

* * * * *

**CERTIFIED COPIES OF PROCEEDINGS BEFORE THE
BALTIMORE COUNTY DEPARTMENT OF PERMITS & LICENSES
AND THE BOARD APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the
Petition for Judicial Review directed against it in this case, herewith transmits 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:**

CBA-00-159

9/7/2000

Approval of Landscape Plan by PDM

RECEIVED AND FILED

9/8

Approval of Lighting Plan by PDM

02 MAR 29 AM 11:12

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

10/5 Notice of Appeal filed by J. Carroll Holzer, Esquire on behalf of Ruth and Ernie Baisden, Appellants.

6/14/01 Motion to Dismiss and Request for Hearing filed by C. William Clark, counsel for Terry Gerahty, Property Owner.

7/19 Appellant's Response to Motion to Dismiss filed by J. Carroll Holzer, Esquire, on behalf of Mr. and Mrs. Baisden.

7/30 Reply to Appellant's Answer to Motion to Dismiss filed by C. William Clark, counsel for Terry Gerahty, Property Owner.

8/1 Motion hearing on Motion to Dismiss

**County's
Exhibit List**

A. Landscape Plan for Poor Boy's Inc.
B. Lighting Plan for Poor Boy's Inc.
C. Letter to the Honorable Joseph Bartenfelder, etc., dated December 24, 1996
D. Letter to Newton A. Williams, Esq., dated March 6, 1997
E. Letter to C. William Clark, Esquire, dated July 8, 1999
F. Letter to C. William Clark, Esquire, dated May 31, 2000

1/3/2002 Ruling on Motion to Dismiss issued by Board of Appeals GRANTING Appellee's Motion to Dismiss and that the appeal filed in Case No. CBA-00-159 is DISMISSED.

1/31 Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Ruth and Ernie Baisden.

2/13 Certificate of Notice sent to interested parties.

3/27 Transcript of Proceedings filed.

3/29 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Board acted are permanent records of the originating agency in Baltimore County. Certified copies of these records in the Board's file are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204 (410) 887-3180

c: C. William Clark, Esquire
Terry Gerahty / Poor Boy's, Inc.
J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
Avery Harden, Landscape Architect / PDM
John R. Reisinger, Buildings Engineer / PDM
Edward J. Gilliss, County Attorney
Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney

2/13/02
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
INDIVIDUALS ERNIE AND
RUTH BAISDEN

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

CIVIL ACTION
NO.: 03-C-02-001085

IN THE MATTER OF:
POOR BOY'S INC.
(TERRY GERAHTY, LEGAL OWNER)
2711 TAYLOR AVENUE

CASE NO: CBA-00-159

* * * * *
98-267-SPH

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, 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:

J. Carroll Holzer
508 Fairmount Avenue, Towson, MD 21286

Earnest and Ruth Baisden
7706 Oak Avenue, Baltimore, MD 21234

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

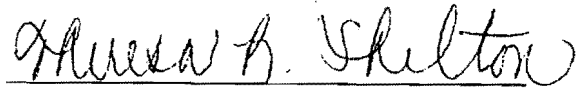
Poor Boy's, Inc.
c/o Terry Gerahty, 7721 Old Harford Road,
Baltimore, MD 21234

RECEIVED AND FILED

02 FEB 13 AM 11:12

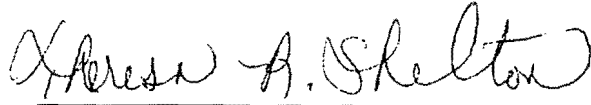
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.



Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to: J. Carroll Holzer, 508 Fairmount Avenue, Towson, MD 21286; Earnest and Ruth Baisden, 7706 Oak Avenue, Baltimore, MD 21234; C. William Clark, Esquire, NOLAN, PLUMHOFF & WILLIAMS, Suite 700, Nottingham Centre, 502 Washington Avenue, Towson, MD 21204; and Poor Boy's, Inc., c/o Terry Gerahty, 7721 Old Harford Road, Baltimore, MD 21234, this 13th day of February, 2002.



Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)



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 13, 2002

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

RE: **Circuit Court Civil Action No. 3-C-02-001085**
Petition for Judicial Review
Ernie and Ruth Baisden
-- Poor Boy's, Inc. (Terry Gerahty, Legal Owner)
Case No.: CBA-00-159

Dear Mr. Clerk:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on January 31, 2002, in the Circuit Court 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 the Maryland Rules.

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-02-001085.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
Terry Gerahty / Poor Boy's, Inc.
Avery Harden, Landscape Architect / PDM
John R. Reisinger, Buildings Engineer / PDM
Edward J. Gilliss, County Attorney
Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney



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 13, 2002

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

RE: Circuit Court Civil Action No. 3-C-02-001085
Petition for Judicial Review
Ernie and Ruth Baisden
-- Poor Boy's, Inc. (Terry Gerahty, Legal Owner)
Case No.: CBA-00-159

Dear Mr. Holzer:

In accordance with the Maryland Rules, 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 the Maryland Rules.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Theresa R. Shelton".

Theresa R. Shelton
Legal Secretary

/trs

Enclosure

c: C. William Clark, Esquire
Terry Gerahty / Poor Boy's, Inc.



1/31/02

PETITION OF
INDIVIDUALS ERNIE AND
RUTH BAISDEN

7706 OAK AVENUE
BALTIMORE, MD 21234

IN THE MATTER OF:
POOR BOY'S, INC. (Terry Gerahty, Legal Owner)
2711 TAYLOR AVENUE

9th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
RE: APPROVAL OF LANDSCAPE PLAN
AND LIGHTING PLAN BY PDM
CASE NO: CBA-00-159

* IN THE CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
*

Case No.

03-C-02-
001085

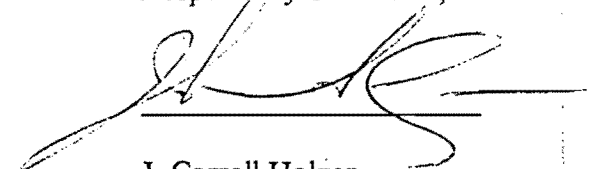
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* * * * *
98-267-SP4 PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioners, individuals, Ruth and Ernie Baisden, by and through their attorney, J. Carroll Holzer and Holzer and Lee, request Judicial Review of the Opinion of the County Board of Appeals of Baltimore County in the above referenced matter rendered on January 3, 2002 and attached hereto.

Petitioners were parties before the County Board of Appeals and fully participated in the proceedings.

Respectfully Submitted,



J. Carroll Holzer
508 Fairmount Avenue
Towson, MD 21286
410-825-6961
Attorney for Petitioners

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286
(410) 825-6961
FAX: (410) 825-4923

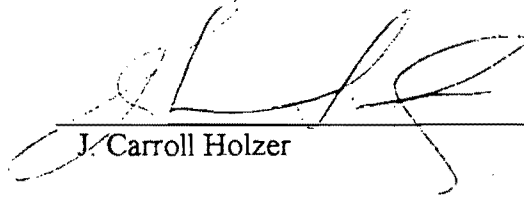
RECEIVED AND FILED
02 JAN 31 PM 12:45

CLERK OF THE COURT
BALTIMORE COUNTY

RECEIVED
COUNTY BOARD OF APPEALS
02 FEB -6 PM 12:11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 31st day of January, 2002, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid, to C. William Clark, Esquire, 502 Washington Ave., Suite 700 Towson, MD 21204; and the Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.



J. Carroll Holzer

IN THE MATTER OF
POOR BOY'S, INC. (Terry Gerahty /Legal Owner)
2711 TAYLOR AVENUE

9TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

RE: APPROVAL OF LANDSCAPE PLAN AND
LIGHTING PLAN BY PDM

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-00-159

* * * * *

= = RULING ON MOTION TO DISMISS

This matter is before the Board on a Motion to Dismiss filed on behalf of Appellee, Poor Boy's, Inc., to the appeal noted by the Appellants, Ernie and Ruth Baisden, to the approval of a landscaping plan and a lighting plan by the Department of Permits and Development Management (PDM). Memorandums were filed on behalf of both parties, and argument presented by counsel on August 1, 2001.

The facts relating to this Motion are clear. In furtherance of an application for a grading permit related to the expansion of an existing parking lot, approved landscaping and lighting plans are required by Baltimore County. Such plans were prepared, presented and stamped as approved by E. Avery Harden, Landscape Architect, Development Plans Review of the Baltimore County Department of Permits and Development Management on September 7, 2000 (Landscape Plan) and September 8, 2000 (Lighting Plan). An appeal to this Board of those approved plans was taken by the Appellants on October 5, 2000.

The narrow question presented in this Motion is whether or not the approval of the landscape and lighting plans by Mr. Harden as part of the permit process constituted an event which was appealable to this Board.

Article 25-A, § 5(U), of the *Annotated Code of Maryland* authorized Baltimore County to establish and provide for a County Board of Appeals; and noted its power:

DANIEL HOPE, JR. ET AL. v. BALTIMORE
COUNTY, MARYLAND ET AL.

[No. 9, September Term, 1980.]

Decided October 27, 1980.

STATUTES — *Presumption Of Validity — Presumption Does Not Prevent Court Declaring Invalidity Of Statute, Notwithstanding Passage Of Time.*
pp. 661-662

CHARTERED COUNTIES — *Baltimore County — County Board Of Appeals Established By Charter, Pursuant To Maryland Constitution, Art. XI-A And Express Powers Act — Code (1957) Art. 25A, § 5 (U) — Appeal To Circuit Court From Action Of Board Of Appeals Is Authorized By Statute.*
pp. 662-663

CHARTERED COUNTIES — *Baltimore County — Board Of Appeals — By Charter, Board Of Appeals Is Exclusive Body To Consider Appeals From All Executive, Administrative And Adjudicatory Orders To The Extent Provided By Express Powers Act — Baltimore County Charter, § 602; Code (1957) Art. 25A, § 5 (U) — Appeal From Approval Or Disapproval Of Subdivision Plat Must Be Taken To Board Of Appeals.* pp. 663-664

CHARTERED COUNTIES — *ADMINISTRATIVE LAW — County Ordinance Authorizing Direct Appeal To Court Of Administrative Decision Held Invalid Where Inconsistent With Charter Provision Requiring Appeal To Board Of Appeals.* Where Baltimore County, acting in accordance with the Express Powers Act, provided in its Charter for a Board of Appeals, intending that the Board of Appeals have the powers set forth in Code (1957) Art. 25A, § 5 (U), and where that section (5 (U)) of the Express Powers Act authorized appeals to a Board of Appeals as the exclusive method of review of an approval or other form of permission or of any adjudicatory order, the Court held: 1) that the intent of the Baltimore County Charter was to vest its Board of Appeals with full powers as set forth in Code (1957) Art. 25A, § 5 (U); 2) that the scope of the Board of Appeals' appellate authority extended to appeals from the approval or disapproval of a subdivision plat; and 3) that § 22-38 of the Baltimore County Code (1968) authorizing an appeal to the circuit court by "any person . . . aggrieved by the action of the planning board on final plats of subdivisions," was invalid as inconsistent with the exclusive right of appeal to the Board of Appeals, as provided by the Baltimore County Charter.
pp. 663-664

CHARTERED COUNTIES — *Board Of Appeals — Exclusive Right Of Review — Where Chartered County Establishes Board Of Appeals, As Authorized*

RALPH L. KLEIN ET AL. v. COLONIAL
PIPELINE COMPANY

[No. 52, September Term, 1978.]

Decided April 26, 1979.

ZONING — CHARTERED COUNTIES — APPEAL — *Express Powers Act Requires Appeal From Action On Application For Zoning Variance Or Exception Be Made To Board Of Appeals — Decision By Board Of Appeals Is Prerequisite To Appeal To Circuit Court — Code (1957, 1973 Repl. Vol., 1978 Cum. Supp.) Art. 25A, §§ 5 (U), 5 (X).* pp. 81-83

ZONING — Harford County — Ordinance Authorizing Direct Appeal To Circuit Court From Decision Of Hearing Examiner Held Contrary To State Enabling Act With Respect To Decisions On Zoning Variance Or Exception. Where Harford County Zoning Hearing Examiner denied pipeline company's application for conditional use permit for above-ground petroleum storage tanks, and pipeline company took direct appeal from that decision to the circuit court, the Court *held* that Harford County Bill 75-94 purporting to create such a right of direct appeal was *ultra vires* and in conflict with Code (1957, 1973 Repl. Vol., 1978 Cum. Supp.) Art. 25A, § 5 (U), which requires appeals from decisions on zoning variances or exceptions to be made to the Board of Appeals. pp. 81-83

STATUTES — *Conflicts — Public General Law Takes Precedence Over Conflicting Local Law On Same Subject Enacted By Charter County.* p. 83

J. A. A.

Appeal from the Circuit Court for Harford County (CLOSE, J.), pursuant to certiorari to the Court of Special Appeals.

Colonial Pipeline Company (Colonial) appealed to the Circuit Court for Harford County from a decision of the Zoning Hearing Examiner, denying an application for a conditional use permit for above-ground petroleum storage tanks. The Circuit Court reversed the decision and remanded the case to the Hearing Examiner with directions to issue the permit upon reasonable conditions. Ralph L. Klein, Shirley S. Klein, James C. Thompson, Ida F. Thompson, William G. Thompson and Leona G. Thompson, protestants and parties in the Circuit Court, filed an appeal to the Court of Special

1/2/02
IN THE MATTER OF
POOR BOY'S, INC. (Terry Gerahty /Legal Owner)
2711 TAYLOR AVENUE

9TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

RE: APPROVAL OF LANDSCAPE PLAN AND
LIGHTING PLAN BY PDM

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-00-159

* * * * *
98-267-SPH

RULING ON MOTION TO DISMISS

This matter is before the Board on a Motion to Dismiss filed on behalf of Appellee, Poor Boy's, Inc., to the appeal noted by the Appellants, Ernie and Ruth Baisden, to the approval of a landscaping plan and a lighting plan by the Department of Permits and Development Management (PDM). Memorandums were filed on behalf of both parties, and argument presented by counsel on August 1, 2001.

The facts relating to this Motion are clear. In furtherance of an application for a grading permit related to the expansion of an existing parking lot, approved landscaping and lighting plans are required by Baltimore County. Such plans were prepared, presented and stamped as approved by E. Avery Harden, Landscape Architect, Development Plans Review of the Baltimore County Department of Permits and Development Management on September 7, 2000 (Landscape Plan) and September 8, 2000 (Lighting Plan). An appeal to this Board of those approved plans was taken by the Appellants on October 5, 2000.

The narrow question presented in this Motion is whether or not the approval of the landscape and lighting plans by Mr. Harden as part of the permit process constituted an event which was appealable to this Board.

Article 25-A, § 5(U), of the *Annotated Code of Maryland* authorized Baltimore County to establish and provide for a County Board of Appeals; and noted its power:

...to enact local laws providing...(4) for the decision by the Board on petition by any interested person and after the notice and opportunity for a hearing and on the basis of the record before the Board of such of the following matters arising (...on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of...the County Council, as specified from time to time by such local laws enacted under this subsection...the issuance...or modification of a license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order.

Section 602 of the *Baltimore County Charter* authorizes the County Board of Appeals to hear appeals of certain particular areas including zoning, licenses, orders relating to buildings, and appeals from executive, administrative and adjudicatory orders.

The Board notes that, as part of the application process for a grading permit, various prerequisite approvals, comments, and concerns, if any, are elicited from relevant County departments and agencies. The responses obtained, as well as other relevant input, are provided to the Director of the Department of Permits and Development Management for his review and ultimate granting or denial of the requested permit. Under § 7-36 of the *Baltimore County Code*, a denial by PDM would then constitute an appealable event. [Emphasis added.]

The Court of Appeals has addressed the underlying issue of finality and appealability in *United Parcel Service v. People's Counsel*, 336 Md. 569, 602 A.2d 226 (1994). The Court, rejecting arguments to the contrary, held that "approval" or "other form of permission" occurred when an application for a permit is finally approved and actually issued.

The Board has reviewed the Briefs of the parties and considered the arguments presented at the hearing. We find unanimously that the approvals by the Landscape Architect dated September 7, 2000 and September 8, 2000 were not final appealable events. The obtaining of a permit is a process containing many constituent parts, any one of which could prove fatal to the application. Although appealable under the Code, a denial could conceivably be issued by the Director even if no specific objections were raised during the process. Mr. Harden inherently

acknowledged this authority when he stated in his letter of December 24, 1996 to the parties that "the proposal above is essentially what the Baltimore County Landscaping Manual will require when a permit for the parking lot is sought. [Emphasis added.] The approval by Mr. Harden was only one of the many steps leading to an ultimate approval or denial of the requested permit. His action does not in and of itself allow the actual project to go forward and work to proceed on the ground; only the issuance of a proper grading permit would enable Appellees to do so. It is therefore from that final determination to grant the permit that all rights of appeal should emanate.

The Board is not unmindful and recognizes the frustration of the Appellants with regard to their inability under § 7-36 of the Code to appeal the granting of a permit. Unfortunately, their attempt to render appealable one particular internal part of the permit decision-making process is neither supported by statute or by case law. There is no specific authority in § 5(U) or § 602 for Appellants' position nor is there a right of appeal under the statutes regulating grading found in Title 14 of the Code, and in fact only limited appeals under § 7-36 of the Code. We are similarly unconvinced by Appellants' argument that a basis for their appeal lies in § 26-32 of the Code, which we find is clearly related to zoning decisions and not to the issuance or denial of grading permits. Finally, we find the UPS decision still clear and controlling. To hold otherwise would open the way for a myriad of appeals, each on its own schedule, of every positive or negative departmental comment, objection, question, or approval made or sought as part of a request for a permit, application, or development plan. This Board does not believe that such a result is the intent or letter of the present statutory or case law, and we accordingly grant Appellee's Motion to Dismiss.

ORDER

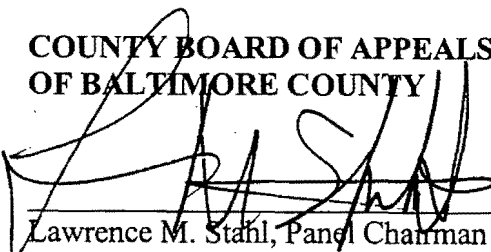
IT IS, THEREFORE, THIS 3rd day of January, 2002, 2001 by the
County Board of Appeals of Baltimore County

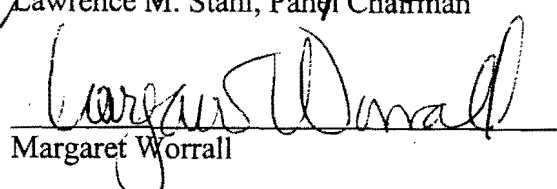
ORDERED that Appellee's Motion to Dismiss be and the same is hereby **GRANTED**;
and it is further

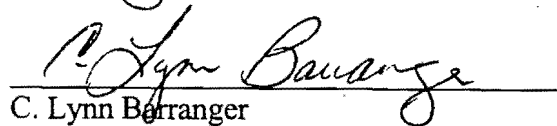
ORDERED that the appeal filed in Case No. CBA-00-159 be and the same is hereby
DISMISSED.

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*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence M. Stahl, Panel Chairman


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

January 3, 2002

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

RE: *In the Matter of: Poor Boy's Inc.* (Terry Gerahty -Legal Owner)
Case No. CBA-00-159 /Ruling on Motion to Dismiss

Dear Mr. Holzer:

Enclosed please find a copy of the Ruling on Motion to Dismiss 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 from 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,

Kathleen C. Bianco
Administrator

Enclosure

c: Ernie and Ruth Baisden
C. William Clark, Esquire
Terry Gerahty /Poor Boy's, Inc.
Avery Harden, Landscape Architect /PDM
John R. Reisinger, Buildings Engineer /PDM
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney
Edward J. Gilliss, County Attorney



7/30/01

IN THE MATTER OF:	*	THE BOARD OF APPEALS
POOR BOY'S INC. (Terry Gerahty)	*	OF BALTIMORE COUNTY
Legal Owner		
S/E Corner Old Harford Road and	*	FOR
Taylor Avenue		
2711 Taylor Avenue	*	BALTIMORE COUNTY
9 th Election District		
6 th Councilmanic District	*	CASE NO. CBA-00-159

98-267-SPH

* * * * *

REPLY TO APPELLANTS' ANSWER TO MOTION TO DISMISS

Terry Gerahty, T/A Poor Boy's, Appellee, by and through his attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chartered, respectfully reply to the Appellants' Answer to Motion to Dismiss, and state as follows:

I. § 26-132 Of The Baltimore County Code Does Not Authorize This Appeal.

Appellants cite § 26-132(a) as authority for their appeal of the approval of a Landscape Plan and a Lighting Plan by the County's Landscape Architect in connection with the issuance of a grading permit based on the wording found in that section of the statute stating that any decision of the Director of Zoning Administration and Development Management can be appealed to the County Board of Appeals. The argument made by the Appellants grossly overstates the plain intent of that section of the code. § 26-132(a) is found in Article IV entitled "Zoning". All of the provisions of Article IV deal with zoning, including granting authority to the Director of

Law Offices
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

Zoning Administration and Development Management to interpret and enforce the County's Zoning Regulations in § 26-121, and granting authority to the Director of Zoning Administration and Development Management to make, adopt, promulgate and amend from time-to-time such policy rules and regulations relating to or in connection with zoning regulations as may be deemed necessary or proper to carry out and enforce the provisions of that title in § 26-135. The argument that the language in § 26-132(a) permits an appeal from "any decision" of the Director of Zoning Administration and Development Management clearly takes those words out of context, and ignores the surrounding provisions in that Article of the Code. The Lighting and Landscaping Plans approved by the Landscape Architect are not a decision on any zoning matter, nor is the issuance of a grading permit, based in part upon those plans, a zoning matter. § 26-132(a) only permits appeals from any decision of the Director of Zoning Administration and Development Management emanating from the Director's decision of zoning matters.

Appellants argue that the Board has recognized that an appeal can flow from the signing of an actual document by the Department of Permits and Development Management, citing In The Matter Of Blakehurst Life Care Community, Case No. CBA-99-152 and CBA-99-159. That case, still pending in the Circuit Court for Baltimore County on a Petition for Judicial Review,

does not decide, as Appellants imply, that this Board ruled that § 26-132 authorizes an appeal from a decision of the Director of Zoning Administration and Development Management (now the Departments of Permits and Development Management). The Blakehurst case involved an appeal under development regulations in effect prior to 1992, pursuant to § 26-169 of the Baltimore County Code. That approval process involved a review by the CRG. The Baltimore County Code in effect for development prior to January 6, 1992, permitted appeals to the Board of Appeals from final action on a plan. It also provided that any material amendment to an approved plan shall be reviewed and approved in the same manner as the original plan. The heart of the Blakehurst case involved the determination by this Board as to whether or not the proposed plan was a "material amendment" to the original CRG plan. In Blakehurst the DRC met to fulfill the function previously performed by the CRG. This Board in Blakehurst did not render any decision based upon the wording of § 26-132(a), and it did not determine that an appeal can flow from the determination by the Department of Permits and Development Management approving a Landscape Plan and a Lighting Plan in connection with a grading permit. Thus, the Blakehurst case offers no persuasive authority to guide the Board on the issue before it in this case.

The County Board of Appeals has previously considered whether or not an appeal lies from the issuance of a Grading Permit, and has determined that no such right of appeal exists. Attached hereto and incorporated herein by reference is a copy of Opinion in Case No. CBA-96-171, In The Matter Of 2300 Old Frederick Road. That case was taken on appeal to the Circuit Court for Baltimore County, in Case No. C-97-5189, In The Matter Of Henry Winters, et al. The Honorable Alfred L. Brennan, Sr. affirmed the decision of the Board to dismiss the appeal from the issuance of a Grading Permit, since the Baltimore County Code did not specifically provide for a jurisdiction to hear such appeals. Attached hereto and incorporated herein by reference is a copy of that Opinion.

II. The County Board Of Appeals Does Not Have Authority To Hear This Appeal In The Absence Of Statutory Authority.

In addition to the argument made in its Motion To Dismiss, Appellee relies upon the Decision made by this Board In The Matter Of 2300 Old Frederick Road, Case No. CBA-96-171, which addresses and rejects the argument made by the Appellants based on the case of Hope, et al. v. Baltimore County, et al., 288 Md. 656, in which the Board determined that § 602 of the Baltimore County Code did not provide any subject matter jurisdiction where the appeal is from the issuance of a Grading Permit.

Appellants offer the case of Beth Tfiloh Congregation of Baltimore City v. Old Court-Greenspring Improvement Association, an unreported Decision of the Court of Special Appeal in support of its argument based on Article 25 A, § 5(u) of the Annotated Code of Maryland and Baltimore County Charter § 602. The Maryland Rules of Procedure specifically state that an unreported Opinion of Court of Appeals or Court of Special Appeals is neither precedent within the Rule of Stare Decisis, nor persuasive authority. Furthermore, the Rules of Procedure provide that in any other Court than the Appellate Court, an unreported Opinion of either Court may only be cited in three instances, none of which apply here. Attached hereto and incorporated herein by reference is a copy of Maryland Rule 8-114. Thus, the Beth Tfiloh should not be considered by this Board.

III. The Landscaping And Lighting Plan, Which Is The Subject Of This Hearing Is Not Void And Illegal.

The Opinion issued by the Circuit Court in Case No. 03-C-00-6650 has been appealed to the Court of Special Appeals. Attached hereto and incorporated herein by reference is a copy of the Notice of the Appeal. Thus, that Decision is not final.

The Decision in that case does not have any bearing upon the application for and approval by the Landscape Architect of a Lighting and Landscape Plan in connection with an

application to grade the Appellee's property and to construct a new parking facility that meets the County law and requirements in all respect. The prior decisions of the Zoning Commissioner and of the County Board of Appeals, which passed upon the location, and type and style of a fence on Appellee's property all stemmed from the Petition for Special Hearing and the Petition for Variance in Case No. 97-295-SPHA. As a condition of granting the relief requested in that case by the Deputy Zoning Commissioner, the Appellee agreed to install and provide a pre-assembled sectional fence on the property. The Deputy Zoning Commissioner in his Opinion in Case No. 97-295-SPHA, determined that the Appellee should extend the fencing in a fashion and manner depicted on Mr. Harden's diagram, and, therefore, decided that as a condition of approval the subject fencing shall be required. That case became a final Decision.

Subsequently, in 1999, Appellee filed a second Petition for Special Hearing, requesting an amendment of the 1997 Order with regard to the fence and lighting conditions. The Deputy Zoning Commissioner made a determination in that case, which Case No. was 98-267-SPH. From that decision, both the Appellants and the Appellee appealed to the County Board of Appeals, which issued its Decision on the fence, since Appellee dismissed his appeal with respect to the lighting.

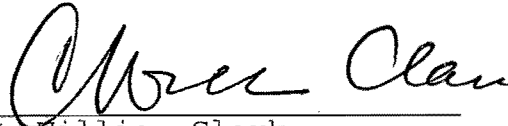
That case was appealed to the Circuit Court for Baltimore County, and was given Case No. 3-C-00-6650.

The authority of the Zoning Commissioner to require the fence was all as a condition to a requested variance, which had been approved. The present Plan in this case, for which the Landscape Plan and the Lighting Plan were approved by the Landscape Architect in connection with a Grading Permit, does not require, nor does it depend upon any variance. The variance sought originally was to allow a parking lot made of gravel and to determine that the proposed parking lot constituted a "durable and dustless" surface, and thus allow a stone-paved parking lot in lieu of the required asphalt paving and stripping. The Special Hearing relief to determine that the parking lot proposed was a durable and dustless surface was denied. However, the variance from § 409.8 to permit a stone-paved parking lot in lieu of the required durable and dustless surface was granted upon conditions. It was clearly noted in the Deputy Zoning Commissioner's Opinion in Case No. 97-295-SPHA, the Deputy Zoning Commissioner stated in his Opinion that the Petitioner sought approval of a proposed "interim" parking lot. Now, the Appellee is seeking to remove the interim parking lot and construct a parking lot that meets all of the County's requirement. Thus, the Grading Permit approved and issued by the County on the Lighting and Landscaping Plans, which had been approved, from which the

Appellants have appealed, does not require a variance. The prior Decisions based on the authority granted the Zoning Commissioner in ruling on variance do not control the present Grading Permit.

WHEREFORE, Terry Gerahty, Appellee, requests that the County Board of Appeals grant his Motion to Dismiss the Appeal 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
Attorney for Protestant
Terry Gerahty

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2001, a copy of the foregoing Reply to Appellants' Answer to Motion to Dismiss was mailed first class, postage pre-paid to the following attorney of record:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286
Attorney for Appellants
Mr. & Mrs. Ernie Baisden

Virginia W. Barnhart, County Attorney
for Baltimore County
Courthouse, Second Floor
401 Bosley Avenue
Towson, MD 21204

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


C. William Clark

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

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IN THE
MATTER OF
HENRY WINTERS
ET AL

* IN THE
* CIRCUIT COURT
* FOR BALTIMORE COUNTY
* C97-5189

* * * * *

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 jurisdiction.

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

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Rule 8-114

MARYLAND RULES

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)." 712 Md.

IN THE MATTER OF: TERRY GERAHTY

Petitioner

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

CIRCUIT COURT

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

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

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CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

EXHIBIT

4

7/19/01
IN THE MATTER OF:

Poor Boy's Inc. (Terry Gerahty)
Legal owner
S/E corner Old Harford Road and
Taylor Avenue
2711 Taylor Avenue
9th Election District
6th Councilman District

THE BOARD OF APPEALS
OF BALTIMORE COUNTY
CASE NO. CBA-00-159

* * * * *
98-267-SPH

APPELLANTS ANSWER TO MOTION TO DISMISS

Ruth and Ernie Baisden, Appellants, by and through their attorney, J.
Carroll Holzer, Holzer and Lee, respectfully respond to the Motion to Dismiss
filed in this matter by Poor Boy's, Inc and state:

STATEMENT OF THE CASE AND FACTS

Pursuant to the previous zoning history and applicable development
regulations of this case, Poor Boy's Inc. a garden and plant center located at 2711
Taylor Avenue in Baltimore County owned by Terry H. Gerahty was required to
obtain approval from the Department of Permits and Development Management
("PDM"), whose representative, Avery Harden is the employee responsible for
tentatively approving landscape and lighting plans subject to the ultimate approval
of the Director. (Attached and incorporated as part of this Memorandum is a
Memorandum of Ruth Baisden submitted in Board of Appeal Case No. 98-267-
SPH (Circuit Court Case No. 3-C00-6650)). (APP A)The Statement of Facts in

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that Memorandum sets forth the factual history for the origin of the need for approval by the Department of Permits and Development Management of a properly designed landscape and lighting plan. It can be seen from that history that such a plan was required under previous decisions of the Deputy Zoning Commissioner and this board in prior cases related to this issue.

The landscape plan also accompanied or was part of the Site Plan to Accompany Permit Application for grading, paving and installation of private utilities submitted and reviewed by the "Baltimore County Department of Permits and Development Management landscape approved by Avery Harden, September 7, 2000" (See Exhibit A and B attached to the Notice of Appeal). It is clear from the stamp on Exhibit A that the landscape and lighting plans were approved by the Baltimore County Department of Permits and Development Management. A timely Notice of Appeal was filed to this Board and received on October 6, 2000. Attached to the Notice of Appeal were Exhibits A and B, the landscape and lighting plans which reflect the stamp of approval by the DPM. Attached as Exhibit C to the Notice of Appeal is the original December 24, 1996 letter of Avery Harden requiring and locating the fence and the proposed landscape. Attached as Exhibit D is a copy of the Deputy Zoning Commissioner's decision dated March 6, 1997 requiring said landscape plans. Also attached are the subsequent decision of the Deputy Zoning Commissioner and the Board of Appeals on May 31, 2000.

Not attached at the time of the appeal was the decision of the Circuit Court of Baltimore County reviewing this Board's action in the CBA Case No. 98-267-SPH found under the Circuit Court No. 03-C-00-6650. The Circuit Court remanded the matter on April 25, 2001 to this Board of Appeals requiring you to pass an Order regarding the fencing of the subject property as set forth in Avery Harden's correspondence of December 24, 1996. (While an appeal has been taken by Poor Boy's to the Court of Special Appeals, the law of the case as it currently exists requires a relocation of the fence as approved by this Board and would require a redrafting of the approved landscape and lighting plans attached as Exhibit A and B, which are the subject of this appeal. (The Memorandum Opinion and Order of the Circuit Court is attached hereto as an Appendix B.)

QUESTIONS PRESENTED

The narrow issue presented by the Motion to Dismiss is whether or not the Appellants have a right to appeal the approval of the landscape and lighting plans by the Baltimore County Department of Permits and Development Management signed by Avery Harden on September 7, 2000.

LEGAL ARGUMENT

The Appellants submit that it is clear and beyond dispute that the Appellants, Ruth and Ernie Baisden, are permitted by law to appeal the final

approval by PDM of a landscape and lighting plan to this Board for the reasons set forth below:

I. The Baltimore County Code §26-132 specifically authorizes this appeal.

~~Section 26-132(a) permits "any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decision or order of the Zoning Commissioner or the Director of Zoning Administration and Development Management shall have the right to appeal therefrom to the County Board of Appeals."~~ (emphasis supplied) Appellants submit that this section of the Baltimore County Code clearly authorizes an appeal by the Baisden's who are adjacent and adjoining property owners to the subject site and who have participated in numerous zoning matters related to this issue. The Baisdens have a right to file an appeal to this Board from "any decision" of the Director of Zoning Administration and Development Management. That broad language clearly encompasses the appeal in this case. The Appellees to suggestion that the action of approving the landscape and lighting plan was not that of the Director is belied by the fact that on the actual approved landscape plan attached to the Notice of Appeal as Exhibit A and B, the stamp of approval is from the "Baltimore County Department of Permits and Development Management landscape plan approved." While Avery Harden signed the document and was the reviewer, it is clear that he is acting on behalf of the Director of the Department in such approval

particularly based on the language as shown on Exhibit A and B. Clearly, under the language contained on the actual document itself, marked as Exhibit A and B, and also pursuant to the Deputy Zoning Commissioner's and this Board's previous orders, it cannot be argued that the approval of this landscape and lighting plan was not an official act of the department and required by the law of the case.

This is not the first case that the Board has recognized that an appeal can flow from the signing of an actual document by the DPM. In Case No. CBA 99-152 and CBA 99-159 in the Matter of Blakehurst Life Care Community, an appeal was filed not only from a decision of the DRC on November 8, 1999, but also from the approval of the Fourth Amended CRG plan signed by the two department heads pursuant to the authorization of the DRC. It is clear that this Board recognizes the authority to appeal the signing of a plan approval by Permits and Development Management, pursuant to the Baltimore County Code §26-132.

Therefore, Appellants respectfully request this Board to deny the Motion to Dismiss.

II. The Baltimore County Board of Appeals has authority to hear this appeal even in the absence of statutory authority.

In Article 25-A, § 5(u), the State of Maryland authorized Charter Counties to establish and provide for County Boards of Appeals. In Article 25-A, § 5 (u), the statute provides for:

“decisions by the Board on Petition by any interested person and after notice and opportunity for hearing and on the basis of the record before the Board, of such of the following matters arising under any law, ordinance or regulation of, or subject to the amendment of appeal by the County Council, as shall be specified from time to time by such local laws and enacted on under the Subsection: an application for zoning variation or exception on an 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 matter,”

It is clear that the State provided for “other forms of permission” to be reviewed by the County Board of Appeals. Baltimore County adopted a Charter pursuant to the Annotated Code, and adopted and included all of the powers and authority set forth in § 5(u) as powers of this Board of Appeals.

By Baltimore County adopting the Charter form of government and a Board of Appeals, Baltimore County has already adopted the powers and authorities designated in Article 25-A, § 5(u).

Appellants position is well expressed in the case of Hope vs. Baltimore County 288 Md 656 (1980). There the Court of Appeals held that the Baltimore County Board of Appeals had Charter authority to review a sub-division plat despite a code provision in which by passed the County Board of Appeals and purported to allow a direct appeal to Circuit Court. After reviewing in detail the County Charter, Judge Marvin Smith found:

“The plain meaning of the Charter provision is to embrace all of the authority granted under § 5(u). This provides for a right of appeal in the matter of any ‘approval...or other form of permission or of any adjudicator order, language sufficiently broad to grant a right of

appeal from the approval or disapproval of the sub-division plat.” at 663-664. (emphasis supplied)

Further, the Court of Appeals stated:

“Here, Baltimore County in its creation of its Board of Appeals has indicated an intent that the Board’s powers are to be set forth in Article 25-A, §5(u). Once having availed itself of its power than it files that § 5(u)’s provisions must be applicable. The concluding sentence of the section is, ‘the review proceedings provided in this section shall be exclusive.’ At 664.

In other words, the CBA has the exclusive Charter authority to review an administrative approval, despite the absence of a code provision setting forth the appeal right. The Hope decision followed the Court’s similar but more precise analysis in Klein vs. Colonial Pipe Line Co. 285 Md 76, 181-83 (1979). This case invalidated Harford County’s Zoning law, which allowed a by pass of the CBA. In Klein, the Court found that “1972 adoption of a Charter for Harford County, however, made the Express Powers Act, Article 25-A, the basis of Harford County’s power to zone.” Klein found that § 5(u) of Article 25-A provided the County Council with the power to establish a Board of Appeals that would resolve issues (Zoning). It further found that the section required that the “review proceedings provided by the Subsection shall be exclusive” and grants the right of appeal to persons aggrieved by the “decision by the Board of Appeals” at 182. The Court found that the language of § 5(u) expressly provided that a decision by the Board is a prerequisite to an appeal to the Circuit Court and there is no

authority in § 5(u) for the creation of a new right of appeal directly from a decision of the Hearing Examiner to the Circuit Court.

The language and decision in the Hope case has been reiterated and amplified in a recent Court of Special Appeals decision arising from a case before this Board (unreported) dated April 20, 1998. Attached as Appendix C is the Court of Special Appeals decision in the case of Beth Tfiloh Congregation of Baltimore City vs. Old Court-Greenspring Improvement Association which concerned an issue of the right of appeal by Beth Tfiloh from a decision of the Baltimore County Planning Board, denying a PUD. The Board found that it had no jurisdiction to hear an appeal from a denial of a PUD concept plan because there was no specific statutory provision therefore. The Court of Special Appeals on pages 17 through 21 of its decision address this point. Even though Beth Tfiloh lost the case for other reasons, the Court of Special Appeals address this issue of the Administrative Review process. It found that "because the County is silent on the issue of whether an appeal lies in the Board following the denial of a concept plan, we must look elsewhere for guidance" the Court of Special Appeals then reviewed Baltimore County's adoption of the Charter in 1956, citing Hope vs. Baltimore County 44 Md app 481 (1980). The Court that also addressed Article 25-A, § 5(u). The Court then further discussed Article 25-A, § 5(u) and Baltimore County Charter 602 and 602(d). The Court again cited the Hope case for the same authority as previously cited herein. At page 20, the Court agreed with the argument of Beth Tfiloh there was a right to appeal. The Court said "the silence

of §26-202 and §26-208 regarding an appeal from a denial of a concept plan did not persuade us otherwise.” It stated “this Court does not understand...silence as prohibiting the exercise of appellate jurisdiction by the Board of Appeals in this case.” It accordingly found that an appeal would lie from the denial of a PUD concept plan to the Baltimore County Board of Appeals.

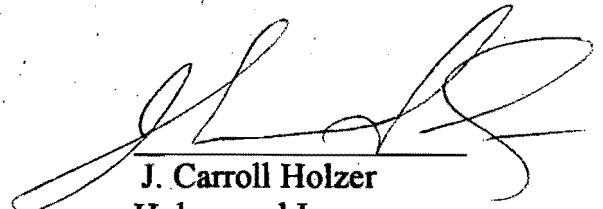
Wherefore, the Appellants have a right to appeal to this Board and the Board has jurisdiction to hear this case.”

III. Under any circumstances, the current status of this case requires a determination that the landscape and lighting plan which is the subject of this hearing is void and illegal.

The Circuit Court, by the Honorable Judge Robert Dugan, in Case No. 03-C-00-6650, ordered this Board to pass an Order regarding the fencing of the subject property as set forth in the Avery Harden’s correspondence of December 24, 1996. That requirement, until reversed, is the law of this case. The law of this case at this point requires this Board to reject and deny the approval of the Baltimore County Department of Permits and Development Management approving the landscape and lighting plans marked as Exhibits A and B in that this plan shows the fence in a location other than in Avery Harden’s letter of December 24, 1996. It is therefore in violation of the current law of the case and must be determined to be illegal and void.

Wherefore, for all the reasons advanced in this Memorandum, the
Appellants respectfully request this Board to deny the Motion to Dismiss.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'J. Carroll Holzer', written over a horizontal line.

J. Carroll Holzer
Holzer and Lee
The 508 Building
508 Fairmount Avenue
Towson, MD 21204
(410) 825-6961
Attorney for Appellants
Ruth and Ernie Baisden

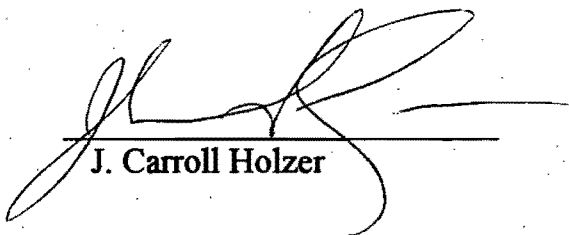
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of July, 2001, a copy of the foregoing Answer to the Memorandum of the Motion to Dismiss was mailed first class, postage pre-paid to the following attorney of record:

C. William Clark
Nolan, Plumhoff & Williams, Chartered
502 Washington Avenue, Suite 700
Towson, MD 21204
(410) 823-7800
Attorney for Protestant
Terry Gerahty

County Attorney
for Baltimore County
Court House, Second Floor
Towson, MD 21204

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


J. Carroll Holzer

IN THE MATTER OF:	*	THE BOARD OF APPEALS
POOR BOY'S INC. (Terry Gerahty)	*	OF BALTIMORE COUNTY
Legal Owner		
S/E Corner Old Harford Road and	*	FOR
Taylor Avenue		
2711 Taylor Avenue	*	BALTIMORE COUNTY
9 th Election District		
6 th Councilmanic District	*	CASE NO. CBA-00-159

* * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Terry Gerahty, T/A Poor Boy's, Appellee, by and through his attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chartered, files this Memorandum in Support of Motion to Dismiss, and for reasons says:

"The jurisdiction of the County Board of Appeals is conferred by the Charter and Code of the County pursuant to legislative authority.." Smuck v. Anne Arundel County, 55 Md. at 163. 166 (1983), and "derived from §5(U) of Article 25 A and from the County Charter". Id. These statutes must be read together as a whole, so that all the statutory provisions are considered together, and, to the extent possible, reconciled and harmonized. Blitz v. Beth Isaac Adas Israel Congregation, 352 Md. 31, 40 (1998). When the Court construes one part of a statutory scheme, it must consider and give effect to every other part of the statutes or ordinances, Brzowski v. Maryland Home Improvement Commissioner, 114 Md. at 615, 627, Cert. Denied, 346 Md. 238 (1997), so that no "word,

clause, sentence or phrase is rendered superfluous or nugatory." Chesapeake and Potomac Telephone Company v. Director of Finance, 342 Md. 567, 579 (1996).

§5(U) provides, in pertinent part, that the following enumerated express powers have been granted to and conferred upon the County under the provisions of Article XI-A of the Constitution of Maryland:

To enact local laws providing...(4) for the decision by the Board on petition by any interested person and after notice and opportunity for a hearing and on the basis of the record before the Board, of such of the following matters arising (...on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, ... the County Council, as specified from time-to-time by such local laws enacted under this subsection... the issuance... or modification of a license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or of any adjudicatory order;

§602 of the Baltimore County Charter only authorizes the County Board of Appeals to hear appeals from certain enumerated matters: zoning (§602(a)), licenses §602(b), orders relating to building §602(c), and appeals from executive administrative and adjudicatory orders §602(d). Neither the County Code nor the Charter expressly authorize an appeal from a decision of the Landscape Architect, or the approval of landscape and lighting plans to accompany an application for a grading permit. Nor does it expressly authorize appeals from the approval of grading permits. Nothing in any of the

Sections of the Code which regulate and relate to grading authorizes any such appeal to the County Board of Appeals. The approval of the Landscape Architect as to the proposed landscape and lighting plans does not constitute an "administrative and adjudicatory order." The only conceivable category is that it fits under an order relating to building. However, the express language of the statutes regulating grading found in Title 14 of the Baltimore County Code militate against such a construction when the County Council has spent enumerable paragraphs defining grading, and under any reasonable reading of those definitions, it excluded the construction or erection of any building or structure of any kind.

In the case at Bar, the Protestant's Notice of Appeal states that this appeal is from the Decision of the Director of the Department of Permits and Development Management and attaches various exhibits, none of which demonstrate that the Director made any decision. The Landscape Architect did approve and sign lighting and landscape plans in connection with an application for a grading permit to construct a new parking lot at the subject site. This was not a final act issuing a permit. The appealable act might be the final granting of the grading permit itself by the Department of Permits and Development Management, if the Appellants have standing and are permitted by law to take such an appeal. The

decision of the Landscape Architect is only one step in the process of obtaining a permit.

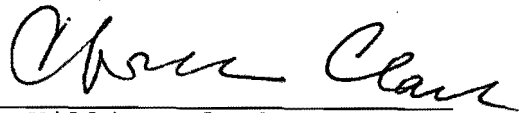
Once an application for a grading permit for a parking lot is filed, it is referred to the Landscape Architect, who then conducts a review of the application and makes a determination that from his point of view, there are no concerns, and/or issues under the applicable lighting and landscaping regulations. If there are none, it would, therefore, be appropriate from that department's point of view to have a permit issued. The findings of the Landscape Architect, if he approves, are then forwarded to the Department of Permits and Development Management for final review and approval and if all is in order, the building, or grading permit, in this case, is granted. To allow appeals from interlocutory statements from administrative agencies (in this case, the Landscape Architect) would be to allow myriad appeals in the same case. A separate appeal could be taken from each department reviewing the application, which might occur on a series of different days, and the period within which to note an appeal could vary accordingly.

For the Board of Appeals to have subject matter jurisdiction, two elements must be met. First, there must be a statutory grant of authority, which is discussed above. Secondly, there must be an operative event that determined the rights of the parties. In Meadows v. Foxleigh, 133 Md. at

510, the Court of Special Appeals commented upon the Court of Appeals' Decision in United Parcel v. Peoples Council, 336, Md. 569, 650 A.2d 226 (1994). In United Parcel, the Court of Appeals held that a letter from the Zoning Commissioner written in response to a citizen complaint dated more than two months after a building permit was issued to UPS, was not an appealable decision. The Court held that the "approval" or "other form of permission" occurred when the Zoning Commissioner and other Officials approved UPS's application for a building permit, and the building engineer issued a building permit. The appealable event occurred then, when the application for the permit was approved and issued. *Id.* at 583-584. In Meadows v. Foxleigh, they found that the letter from the Director of the Department of Permits and Development Management was not an "operative event" that determined whether Foxleigh's proposed plan would be granted a license or permit, rather it merely informed Foxleigh that the proposed plan must be reviewed by the CRG. Meadows v. Foxleigh, 133 Md. at pg. 516. The Meadows Court went on to comment upon Art Wood v. Wiseburg, 88 Md. at 723, 596 A. 2d 712 (1991) Cert Denied 325 Md. 397, 601 A. 2d 130 (1992). In Art Wood, the Court held that the CRG's action was an appealable final action, because the CRG "was not waiting for or seeking any additional information before approving a plan. In contrast to the Art Wood situation, in the instant case, at the time the

Landscape Architect approved the plans to accompany the application for a permit, there was not yet a final action that could be appealed, because the Director of the Department of Permits and Development Management needed additional information from other departments to complete the approval process, so that a permit could be issued.

Respectfully Submitted,



C. William Clark
Nolan, Plumhoff & Williams, Chartered
502 Washington Avenue, Suite 700
Towson, MD 21204
(410) 823-7800
Attorney for Protestant
Terry Gerahty

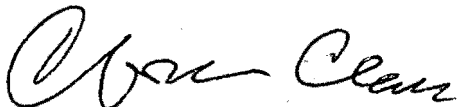
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14 day of June, 2001, a copy of the foregoing Memorandum in Support of the Motion to Dismiss was mailed first class, postage pre-paid to the following attorney of record:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286
Attorney for Appellants
Mr. & Mrs. Ernie Baisden

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


C. William Clark

F:\Data\KATIEDATA\data\CWC\Clients\PoorBoy's\MemoSupMotDismiss.wpd

6/14/01

IN THE MATTER OF:

POOR BOY'S INC. (Terry Gerahty)
Legal Owner

S/E Corner Old Harford Road and
Taylor Avenue
2711 Taylor Avenue
9th Election District
6th Councilmanic District

* THE BOARD OF APPEALS
* OF BALTIMORE COUNTY
* FOR
* BALTIMORE COUNTY
* CASE NO. CBA-00-159

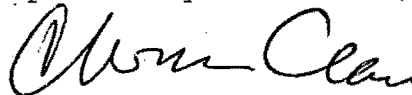
* * * * *
98-267-SPH

MOTION TO DISMISS

Terry Gerahty, T/A Poor Boy's, Appellee, by and through his attorneys, C. William Clark and Nolan, Plumhoff & Williams, Chartered, respectfully represents unto this Board:

1. The Board does not have jurisdiction to hear the appeal filed;
2. Appellants do not have a right to the appeal filed by them; and
3. The reasons supporting this Motion are more fully explained in a Memorandum in Support of Motion to Dismiss filed contemporaneously with this Motion.

Respectfully Submitted,



C. William Clark
Nolan, Plumhoff & Williams, Chartered
502 Washington Avenue, Suite 700
Towson, MD 21204
(410) 823-7800
Attorney for Appellee
Terry Gerahty, T/A Poor Boy's

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

01 JUN 14 PM 3:52

RECEIVED
COUNTY BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14 day of June, 2001, a copy of the foregoing Motion to Dismiss with Request for Hearing was mailed first class, postage pre-paid to the following attorney of record:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286
Attorney for Appellants
Mr. & Mrs. Ernie Baisden

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



C. William Clark

6/14/01

IN THE MATTER OF:

POOR BOY'S INC. (Terry Gerahty)
Legal Owner
S/E Corner Old Harford Road and
Taylor Avenue
2711 Taylor Avenue
9th Election District
6th Councilmanic District

* THE BOARD OF APPEALS
* OF BALTIMORE COUNTY
* FOR
* BALTIMORE COUNTY
* CASE NO. CBA-00-159

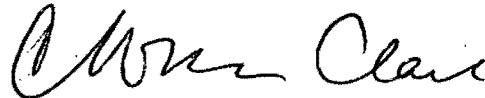
* * * * *
98-267-SPH

REQUEST FOR HEARING

Mr. Clerk:

Please schedule a hearing on this Motion to Dismiss 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

F:\Data\KATIEDATA\data\CWC\Clients\PoorBoy's\MotionDismiss.wpd

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

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

June 14, 2001

VIA HAND DELIVERY

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

Re: Appellee, Terry J. Gerahty Motion to Dismiss and Memorandum in Support
Case No. CBA-00-159

Dear Clerk:

Enclosed herein for immediate filing is Appellee, Terry Gerahty's Motion to Dismiss with a Request for Hearing, along with his Memorandum in Support in connection with the above-captioned case.

Please date stamp the file copy and return.

Thank you for your attention to this matter.

Very truly yours,



Kathleen A. Lance
Legal Assistant to C. William Clark

KAL

Enclosure

cc: J. Carroll Holzer, Esquire
Virginia W. Barnhart, County Attorney
Terry Gerahty

F:\Data\KATIEDATA\data\CWC\Clients\PoorBoy's\BdAppealsltr2.wpd

RECEIVED
COUNTY BOARD OF APPEALS
01 JUN 14 PM 3:52

2050 7/12/01



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

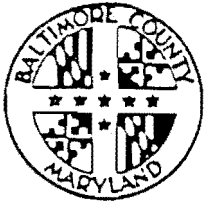
Re: Buffer Poorboys
from community

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.





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, Plumbhoff & 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,

A handwritten signature in cursive script, reading "Timothy Kotroco".

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

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

BETH TFILOH CONGREGATION

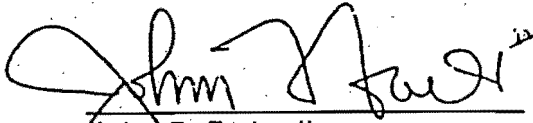
IN THE CIRCUIT COURT

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

Dere 3/21/97
am

FILED JUL 24 1997

EXHIBIT 2

APP C

0003

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

10/100

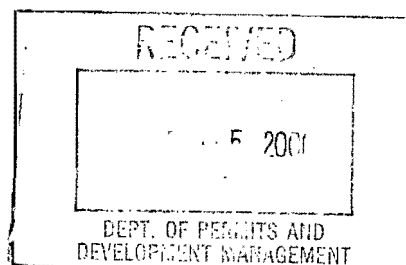
IN RE: **POOR BOY'S, INC.** * **BEFORE THE**
 Parking Lot Expansion & * **BALTIMORE COUNTY**
 Modification * **DEPARTMENT OF**
 2711 ~~77-21~~ Taylor Ave. * **PERMITS AND DEVELOPMENT**
 District 9 C6 * **MANAGEMENT**
 PDM Approval 9/7/00 *
 Permit # B-329149 *

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

NOTICE OF APPEAL

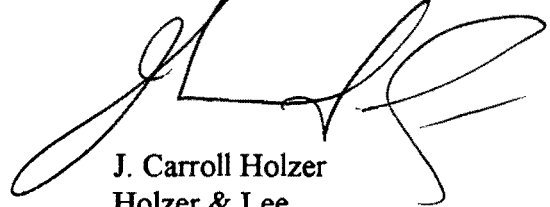
Ruth and Ernie Baisden, herein Appellants in the above captioned case, by and through their attorney, J. Carroll Holzer and Holzer and Lee, hereby note an appeal to the County Board of Appeals from the decision of the Director of the Department of Permits and Development Management approving the Landscape Plan and Lighting Plan attached hereto and incorporated herein as **Exhibits A and B**.

Also attached hereto and incorporated herein as **Exhibit C** is a letter from E. Avery Hardin, Landscape Architect for Baltimore County, dated December 24, 1996 to Appellants and others. Attached hereto and incorporated herein as **Exhibit D** is the Findings of Fact and Conclusion of Law of the Deputy Zoning Commissioner dated March 6, 1997 in Poor Boy's Petitions for Special Hearing and Variance. Attached hereto and incorporated herein as **Exhibit E** is the Findings of Fact and Conclusions of Law of the Deputy Zoning Commissioner in Poor Boy's Petition for Special Hearing. And finally, the Board of Appeals' Opinion in the Appeal of Terry Gerahty in the Special Hearing Case for the property located at 2711 Taylor Ave. dated May 31, 2000, attached hereto and incorporated herein as **Exhibit F**.



Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal. Appellants were parties below and fully participated in the proceedings.

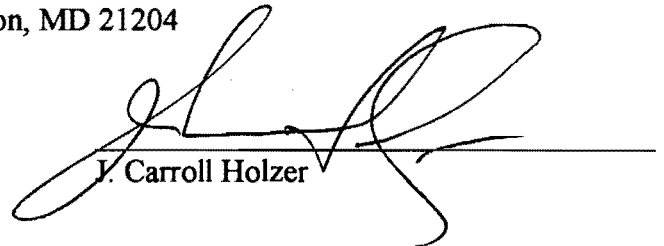
Respectfully submitted,



J. Carroll Holzer
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Notice of Appeal was mailed first class, postage prepaid, to C. William Clark; Esquire, Nolan, Plumhoff & Williams, Suite 700, Nottingham Centre, 502 Washington Avenue, Towson, MD 21204; and the County Board of Appeals, Basement, Old Courthouse, 400 Washington Avenue, Towson, MD 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 Poorboys
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





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,

A handwritten signature in cursive script, reading "Timothy Kotroco".

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



Baltimore County
Zoning Commissioner

RULING

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,

A handwritten signature in cursive script that reads "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

Come visit the County's Website at www.co.ba.md.us

EXH. E



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,

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

Exh. F



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,

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

Arnold Jablon
Director

AJ/jm

c: C. William Clark, Esquire; Nolan, Plunhoffs & Williams, Suite 700, 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



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 067698

DATE 10/12/00 ACCOUNT R-001-6150

AMOUNT \$75.00

RECEIVED FROM: J. Carroll Holzer, Holzer + Lee

FOR: Parr Roy's appeal - Ruth +
Ernie Paisden, 7721 Taylor Ave.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

PAYMENT	ACTUAL	TIME
10/13/2000	10/12/2000	13:50:16
REG 4806	CASHIER JPTC JAR	DRIVER 1
Dept	5	528 ZONING VERIFICATION
Receipt #	019862	UFLH
CR #0.	067698	
Receipt Tot	75.00	
75.00	OK	.00 CA
Baltimore County, Maryland		

CASHIER'S VALIDATION

Appeal

Decision of the Director of the Department of Permits and Development Management Approving
the Landscape Plan and the Lighting Plan

Poor Boy's, Inc., 2711 Taylor Avenue
9th Election District, 6th Councilmanic District

Ruth and Ernie Baisden – Appellants

Pending Building Permit B-329149

✓ Application for building permit

✓ Approvals detail screen

✓ Notice of Appeal from J. Carroll Holzer, Esquire, date of receipt by the Baltimore County
Department of Permits and Development Management – October 5, 2000

✓ Exhibit A – Landscape plan for Poor Boy's, Inc., dated September 7, 2000

Exhibit B – Lighting plan for Poor Boy's, Inc., dated September 8, 2000

✓ Exhibit C – Letter to the Honorable Joseph Bartenfelder, Baltimore County Councilman, Sixth
District; John F. Weber, III, Baltimore County Director of the Department of
Recreation and Parks; Ernest and Ruth Baisden, residents adjacent to Poor Boy's,
Inc.; James Thompson, Supervisor, Baltimore County Bureau of Code Enforcement;
Terry Gerahty, owner of Poor Boy's, Inc.; and Douglas L. Burgess, Esquire,
RE: Poor Boy's Buffer from Community from Avery Harden, Landscape Architect,
Baltimore County Bureau of Development Plans Review, dated December 24, 1996

✓ Exhibit D – Letter to Newton A. Williams, Esquire, and Douglas L. Burgess, Esquire, RE:
Petitions for Special Hearing and Variance, from Timothy M. Kotroco, Baltimore
County Deputy Zoning Commissioner, dated March 6, 1997

✓ Exhibit E Letter to C. William Clark, Esquire, RE: Petition for Special Hearing, Case No.
98-267-SPH, from Timothy M. Kotroco, dated July 8, 1999

✓ Exhibit F Letter to C. William Clark, Esquire, Final Opinion and Order in the Matter of
Terry J. Gerahty/Petitioner/Case No. 98-267-SPH, from Kathleen C. Bianco,
Administrator, County Board of Appeals of Baltimore County, dated May 31, 2000

✓ Letter to J. Carroll Holzer, Esquire, from Arnold Jablon, Director, Department of Permits and
Development Management, dated October 12, 2000

✓ Receipt for \$75 appeal fee

RECEIVED
COUNTY BOARD OF APPEALS
00 OCT 11 11 AM '00
*cc: J. Carroll Holzer, Holzer & Lee, 508 Fairmont Avenue, Towson, MD 21286
C. William Clark, Esquire; Nolan, Plumhoff & Williams, Suite 700, Nottingham Centre,
502 Washington Avenue, Towson, MD 21204
Arnold Jablon, Director, Baltimore County Department of Permits and Development
Management
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

RUTH & ERNIE BAISDEN
7706 OAK AVENUE
BALTIMORE MD 21234

APPELLANTS / PROTESTANTS

POOR BOY'S INC
C/O TERRY GERAHTY
7721 OLD HARFORD ROAD
BALTIMORE MD 21234

OWNER / APPLICANT

CBA-00-159

9/07/2000 – Approval of Landscape Plan by PDM

9/08/2000 – Approval of Lighting Plan by PDM (agreement of Owner to attach the lighting plan to the grading permit)

4/27/2001 – Notice of Assignment sent to following parties; case assigned for hearing on Wednesday, August 1, 2001 at 10:00 a.m.:

J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
C. William Clark, Esquire
Terry Gerahty /Poor Boy's, Inc.
Avery Harden, Landscape Architect
John R. Reisinger, P.E. /Buildings Engineer
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Virginia W. Barnhart, County Attorney

6/14/01 – Motion to Dismiss and Request for Hearing filed by C. William Clark, counsel for Terry Gerahty, Property Owner. To schedule motion hearing and notice to be sent (prior to scheduled hearing date of 8/01/01)

6/19/01 – Notice of Assignment /MOTION ONLY HEARING sent to parties; argument to be received on Mr. Clark's Motion to Dismiss on Wednesday, July 18, 2001 at 10:00 a.m. Should motion be denied, hearing will take place on assigned date of 8/01/01; if granted, then 8/01/01 will be pulled.

6/25/01 – Letter from C. Holzer requesting postponement of 7/18/01 motion hearing (citing vacation, additional time to prepare response, and also continued Development Plan hearing before ZC scheduled for 9 a.m. that date.

6/26/01 – Letter from B. Clark in response to above letter; his client will be out of town 7/30 through 8/02/01; consents to extension of time and rescheduling. Suggests utilization of 8/01/01 as motion date. Notice of PP and Reassignment to be sent.

6/28/01 – Notice of PP and Reassignment /Motion Only Hearing sent to parties; scheduled for Wednesday, August 1, 2001 at 10:00 a.m. (hearing on merits previously scheduled for this date to be postponed; no evidence or testimony to be received at 8/01/01 motion hearing). FYI copy to LWB. Response due from Mr. Holzer no later than Thursday, July 19, 2001.

7/19/01 – Appellants' Response to Motion to Dismiss filed by J. Carroll Holzer, Esquire, on behalf of Mr. and Mrs. Baisden. Copy to be given to L. and B. on 7/24/01; to W on 7/25/01.

7/30/01 – Reply to Appellants' Answer to Motion to Dismiss filed by C. William Clark, Esquire. Copies to W and B 7/31/01; copy to L on 8/01/01.

8/01/01 – Motion hearing completed before CBA (Stahl, Worrall, Barranger). Deliberation to be scheduled and notice sent.

8/10/01 – Notice of Deliberation /Motion to Dismiss issued; scheduled for Wednesday, October 17, 2001 at 9:00 a.m. T/C to L. (lm) W and B. Copy to LWB; copy of original Motion to L.

10/17/01 – Deliberation conducted and concluded (L.W.B.); Property Owner's Motion to Dismiss GRANTED; Order to be issued by the Board; appellate period to run from date of written Order.

9/07/2000 – Approval of Landscape Plan by PDM

9/08/2000 – Approval of Lighting Plan by PDM (agreement of Owner to attach the lighting plan to the grading permit)

4/27/2001– Notice of Assignment sent to following parties; case assigned for hearing on Wednesday, August 1, 2001 at 10:00 a.m.:

J. Carroll Holzer, Esquire
Ernie and Ruth Baisden
C. William Clark, Esquire
Terry Gerahty /Poor Boy's, Inc.
Avery Harden, Landscape Architect
John R. Reisinger, P.E. /Buildings Engineer
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
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7/30/01 – Reply to Appellants' Answer to Motion to Dismiss filed by C. William Clark, Esquire. Copies to W and B 7/31/01; copy to L on 8/01/01.

8/01/01 – Motion hearing completed before CBA (Stahl, Worrall, Barranger). Deliberation to be scheduled and notice sent.

8/10/01 – Notice of Deliberation /Motion to Dismiss issued; scheduled for Wednesday, October 17, 2001 at 9:00 a.m. T/C to L. (lm) W and B. Copy to LWB; copy of original Motion to L.

10/17/01 – Deliberation conducted and concluded (L.W.B.); Property Owner's Motion to Dismiss GRANTED; Order to be issued by the Board; appellate period to run from date of written Order.

PETITION FOR JUDICIAL REVIEW FILED IN CIRCUIT COURT; REMANDED TO CBA

11/13/02 – On remand from Circuit Court, draft opinion sent to LWB for review /comment.

7/24/01

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: July 19, 2001

TO: L. Stahl
M. Worrall
L. Barranger

FROM: Kathi

SUBJECT: Case No. CBA-00-159 /Poor Boy's, Inc. (Terry Gerahty)
Motion to Dismiss (Motion Hearing scheduled for 8/01/01)

A Motion to Dismiss the appeal taken by Ruth and Ernie Baisden in the subject matter was filed by C. William Clark, Esquire, counsel for Mr. Gerahty, on June 14, 2001. A copy of this Motion was sent on June 19th to C, W, and L for a July motion hearing.

Since that time, the motion hearing has been reassigned to August 1, 2001, with the panel of L, W, and B. In addition to Mr. Clark's Motion, a response to same has been filed this date by Mr. Holzer on behalf of the Baisdens.

Accordingly, attached for your review is a copy of Appellant's Answer to Motion to Dismiss filed by Mr. Holzer.

Also attached for Lynn is a copy of the original Motion filed by Mr. Clark (since she was not on the original July panel).

Depending upon the outcome of the motion hearing, a date for hearing on the merits will be assigned if needed. Please note that the same Board is not required for both hearings since neither testimony nor evidence as to the merits will be received on August 1st.

Please call me if you have any questions.

Kathi

Attachments (1 each for Larry and Margaret; 2 for Lynn)

[Handwritten signature: Kathi]

[Handwritten: Mr 25A]

[Handwritten: 50]

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: October 30, 2002

TO: L. Stahl
L. Barranger
M. Worrall

FROM: Kathi

SUBJECT: Case No. CBA-00-159 /Poor Boy's /Appeal from lighting/landscaping plan
On Remand from Circuit Court

Attached is a copy of Judge Fader's Order in the subject matter. He has remanded the case back to the Board as "this court has no information before it, whereby it can determine whether the Board's granting of the motion by Poor Boy's, Inc. to dismiss the appeal has a foundation in law."

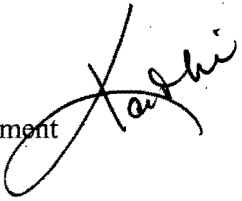
It would appear that additional hearing should not be necessary, although you may have to reconvene for further discussion /deliberation prior to issuing a supplemental order, per Judge Fader's remand, for "further clarification and statement of the reasons for the Board's opinion and determination."

After you've reviewed the attached, we'll need a determination as to public deliberation /discussion and an Order on Remand in response to the Circuit Court's Order.

Please call me if you have any questions.

Kathi

Attachment



BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: July 31, 2001

TO: L. Stahl

FROM: Kathi

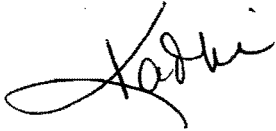
SUBJECT: Case No. CBA-00-159 /Poor Boy's, Inc. (Terry Gerahty)
Motion to Dismiss (Motion Hearing scheduled for 8/01/01)

Larry:

Attached FYI and review is a copy of Reply to Appellants' Answer to Motion to Dismiss filed by Bud Clark on 7/30/01.

A copy of this Reply brief was given to Margaret and Lynn on 7/30/01.

Kathi

A handwritten signature in cursive script, appearing to read "Kathi", with a long, sweeping underline.

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-03-000275
Administrative Agency : CBA-00-159
C I V I L

In The Matter Of: Poor Boys Inc

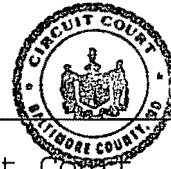
Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 27th day of January, 2003.

Suzanne Mensh

Suzanne Mensh

Clerk of the Circuit Court, per DR



Date issued: 01/29/03

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

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 The Assignment Date: 03/26/03
400 Washington Ave
Baltimore MD 21204

Case Title: In The Matter Of: Poor Boys Inc
Case No: 03-C-03-000275 AE

The above case has been assigned to the CIVIL STANDARD 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 04/10/03
2. Plaintiff's Expert Reports or Md. Rule 2-402(e) (1) Disclosures 08/18/03
3. Defendant's Expert Reports or Md. Rule 2-402(e) (1) Disclosures 09/17/03
4. Joinder of Additional Parties Deadline is 09/17/03
5. Dismissal Notice for unserved defendants (Md. Rule 2-507(B)) 07/24/03
6. Discovery must be completed by 11/01/03
7. All Motions (excluding Motions in Limine) are due by 11/16/03
8. ADR Deadline Date is 11/16/03
9. Settlement Conference is 12/16/03
Settlement Conference: Start Time: 10:30AM; Hon. Frank E. Cicone;
10. Deadline/Exchange list of all exhib. and copies of paper exhib. 01/05/04
11. Deadline for Motions in Limine incl. objections to exhibits is 01/15/04
(Note: Documents will be deemed authentic if objection is not filed)
12. TRIAL DATE is 01/20/04
Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1 DAY MERITS

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: J Carroll Holzer Esq

cc: C William Clark Esq

Issue Date 03/26/03

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-03-000275

RECEIVED

JAN 31 2003

**BALTIMORE COUNTY
BOARD OF APPEALS**

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

TIME: 10:08:04
DATE: 10/12/2000

AUTOMATED PERMIT TRACKING SYSTEM
APPROVALS DETAIL SCREEN

PANEL BP1018M
LAST UPDATE 07/09/1999
ERP 13:46:01

PERMIT #: B329149

PASSWORD :

AGENCY	DATE	CODE	COMMENTS
-----	-----	-----	-----
SEDI CTL	01/30/1998	12	SECUR-X3733////////SWM-X3768////////DEPRM-NO///SCD-NO
ZONING	01/26/1998	01	JRA/JMC
PUB SERV	02/13/1998	12	JRA/JMC NEED LS. PLAN PER AVERY.
ENVRMNT	01/27/1998	01	TT
PERMITS			

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL

PF4 - ISSUE PERMIT

PF9 - SAVE

CLEAR - MENU

APPLICATION FOR BUILDING PERMIT

PERMIT #: B329149 CONTROL #: GRC- DIST: 09 PREC: 21

LOCATION: 2711 TAYLOR AVE
SUBDIVISION: PARKVILLE
TAX ASSESSMENT #: 1800009926

OWNERS INFORMATION

NAME: GERAHTY, TERRY J
ADDR: 7721 OLD HARFORD RD 21234

APPLICANT INFORMATION

NAME: R. ALONSO CHILDRESS
COMPANY: R. A. CHILDRESS & ASSOC. INC
ADDR1: 713 PHEASANT DR
ADDR2: FOREST HILL, MD 21050
PHONE #: 410-803-0304 LICENSE #:

NOTES

JMC/JMC

DRC#

PLANS: CONST 0 PLOT 8 R FLAT 0 DATA 0 ELEC NO PLUM NO
TENANT:
CONTR: TBD
ENGR:
SELLR:
WORK: GRADING & PAVING FOR PARKING LOT EXPANSION.
42,680SF DISTURBED AREA.

PROPOSED USE: RETAIL & GRADING
EXISTING USE: RETAIL

BLDG. CODE: BOCA CODE

RESIDENTIAL CATEGORY: OWNERSHIP: PRIVATELY OWNED
ESTIMATED COST OF MATERIAL AND LABOR: 45,000.00

TYPE OF IMPRV: OTHER

USE: OTHER - RESIDENTIAL

FOUNDATION:

SEWAGE: PUBLIC EXIST

CONSTRUCTION:

CENTRAL AIR:

BASEMENT:

WATER: PUBLIC EXIST

FUEL:

SINGLE FAMILY UNITS

TOTAL 1 FAMILY BEDROOMS

MULTI FAMILY UNITS

EFFICIENCY (NO SEPARATE BEDROOMS): NO. OF 1 BEDROOM:

NO. OF 2 BEDROOMS: NO. OF 3 BEDROOMS OR MORE:

TOTAL NO. OF BEDROOMS: TOTAL NO. OF APARTMENTS:

PERMIT #: B329149

DIMENSIONS - INSTALL FIXTURES

	BUILDING SIZE
GARBAGE DISP:	FLOOR: 42,680
POWDER ROOMS:	WIDTH:
BATHROOMS:	DEPTH:
KITCHENS:	HEIGHT:
	STORIES:

LOT SIZE AND SETBACKS
SIZE: 49919SF
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: NC/NC
SIDE STR SETB:
REAR SETB: NC

LOT NOS:
CORNER LOT:

ZONING INFORMATION

	BLOCK:
DISTRICT:	SECTION:
PETITION:	LIBER: 000
DATE:	FOLIO: 034
MAP:	CLASS: 06

ASSESSMENTS

LAND: 0156950.00
IMPROVEMENTS: 0000000.00
TOTAL ASS.:

PLANNING INFORMATION

MASTER PLAN AREA: SUBSEWERSHED: CRITICAL AREA:

DATE APPLIED: 01/26/1998 INSPECTOR INITIALS: 09C
FEE: \$85.00 PAID: \$85.00 RECEIPT #: A344420
PAID BY: APPLICANT

(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)

COMPANY OR OWNER

DATE

ADDRESS

AGENT ____
OWNER ____

SIGNATURE OF APPLICANT

PHONE



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

June 19, 2001

*Motion Hearing
pp 2 to 8/02/01*

NOTICE OF ASSIGNMENT – MOTION ONLY HEARING

CASE #: CBA-00-159

IN THE MATTER OF: Poor Boy's, Inc. (Terry Gerahty -Legal Owner)
2711 Taylor Avenue 9th Election District; 6th Councilmanic

9/07/2000 –Approval of Landscape Plan by PDM

9/08/2000 – Approval of Lighting Plan by PDM (agreement of Owner to attach
lighting plan to grading permit) Pending Building Permit B-329149

has been scheduled for a **MOTION ONLY HEARING** for the purpose of receiving argument from counsel on
the Motion to Dismiss filed by Counsel for Property Owner.

August hearing date to remain as scheduled pending outcome of Motion hearing.

ASSIGNED FOR:

WEDNESDAY, JULY 18, 2001 at 10:00 a.m. – MOTION HEARING

NOTICE: **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).

If you have a disability requiring special accommodations, please contact this office at least one week prior to
hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Ernie and Ruth Baisden

Counsel for Property Owner : C. William Clark, Esquire
Property Owner : Terry Gerahty /Poor Boy's, Inc.

Avery Harden, Landscape Architect
John R. Reisinger, P.E. /Buildings Engineer
Arnold Jablon, Director /PDM

Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney





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

June 28, 2001

NOTICE OF POSTPONEMENT & REASSIGNMENT – MOTION ONLY HEARING

CASE #: CBA-00-159

IN THE MATTER OF: Poor Boy's, Inc. (Terry Gerahty -Legal Owner)
2711 Taylor Avenue 9th Election District; 6th Councilmanic

9/07/2000 –Approval of Landscape Plan by PDM

9/08/2000 – Approval of Lighting Plan by PDM (agreement of Owner to attach
lighting plan to grading permit) Pending Building Permit B-329149

which was assigned for argument on 7/18/01 has been POSTPONED at the request of Counsel for Appellants and, at request of Counsel for Property Owner, has been reassigned to 8/01/01 (NO EVIDENCE OR TESTIMONY TO BE RECEIVED AT THIS HEARING); and has been

(A hearing date on the merits will be scheduled if required pending outcome of Motion hearing.)

NOTE: Response to Motion to Dismiss shall be filed no later than Thursday, July 19, 2001.

REASSIGNED FOR:

WEDNESDAY, AUGUST 1, 2001 at 10:00 a.m. – MOTION HEARING

NOTICE: **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).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c:	Counsel for Appellants /Protestants	: J. Carroll Holzer, Esquire
	Appellants /Protestants	: Ernie and Ruth Baisden
	Counsel for Property Owner	: C. William Clark, Esquire
	Property Owner	: Terry Gerahty /Poor Boy's, Inc.
	Avery Harden, Landscape Architect	
	John R. Reisinger, P.E. /Buildings Engineer	
	Arnold Jablon, Director /PDM	
	Nancy C. West, Assistant County Attorney	
	C. Robert Loskot, Assistant County Attorney	





County Board of Appeals of Baltimore County

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

August 10, 2001

NOTICE OF DELIBERATION (Appellee's Motion to Dismiss)

IN THE MATTER OF:

Poor Boy's, Inc. (Terry Gerahty - Owner) (#B0329149)
Case No. CBA-00-159

Having heard oral argument on 8/01/01, deliberation has been scheduled for the following date and time:

DATE AND TIME : **WEDNESDAY, OCTOBER 17, 2001 at 9:00 a.m.**

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Ernie and Ruth Baisden

Counsel for Property Owner : C. William Clark, Esquire
Property Owner : Terry Gerahty /Poor Boy's, Inc.

Avery Harden, Landscape Architect
John R. Reisinger, P.E. /Buildings Engineer
Arnold Jablon, Director /PDM

Nancy C. West, Assistant County Attorney
C. Robert Loskot, Assistant County Attorney

FYI copy to L.W.B.





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

April 27, 2001

NOTICE OF ASSIGNMENT

CASE #: CBA-00-159

IN THE MATTER OF: Poor Boy's, Inc. (Terry Gerahty -Legal Owner)
2711 Taylor Avenue 9th Election District; 6th Councilmanic

9/07/2000 – Approval of Landscape Plan by PDM

9/08/2000 – Approval of Lighting Plan by PDM (agreement of Owner to attach lighting plan to grading permit) Pending Building Permit B-329149

ASSIGNED FOR:

WEDNESDAY, AUGUST 1, 2001 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).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : J. Carroll Holzer, Esquire
Appellants /Protestants : Ernie and Ruth Baisden

Counsel for Property Owner : C. William Clark, Esquire
Property Owner : Terry Gerahty /Poor Boy's, Inc.

Avery Harden, Landscape Architect
John R. Reisinger, P.E. /Buildings Engineer
Arnold Jablon, Director /PDM

Nancy C. West, Assistant County Attorney
Virginia W. Barnhart, County Attorney

pp'd; to be assigned pending outcome of motion 8/10/01 meeting



**BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION /Motion to Dismiss**

IN THE MATTER OF: Poor Boy's, Inc. (Terry Gerahty –Owner)
Case No. CBA-00-159 /Motion to Dismiss

DATE : Wednesday, October 17, 2001

BOARD /PANEL : Lawrence M. Stahl (LMS)
Margaret Worrall (MW)
C. Lynn Barranger (LB)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Case No. CBA-00-159 /appeal from signatures on Landscaping and Lighting Plan /ruling on Property Owner's Motion to Dismiss. Argument on Motion received August 1, 2001.

Preliminary Issues:

- Whether or not Appellants have right to appeal signature approval of Landscaping and Lighting Plan
- Clark's Motion to Dismiss

Discussion:

- Appellants noted appeal – believe it to be appealable
- Question raised by Clark – Do we have jurisdiction
- Both sides quoted 5U of Annotated Code; Board reviewed 5U as quoted in Motion and Response
- Decision to be appealed must be “final” – what allows someone to go forward or not
- Discussed what is or is not appealable event
- Ultimate issuance of grading permit
- Quoted from Harden's letter – “what will be required when permit is sought.”
- Reviewed § 7-36 of Code as to issuance of permit – only appeal is by Applicant
- Counsel for Appellant is attempting to find appeal along the way
- Would allow to appeal constituent part of something – leading to permit
- Example – if department says “no issues to development plan” – can the community then say – “We, the community, disagree” – and then appeal every review of every step of the process? Does not go to legislative intent
- Other elements along the way could affect this signature approval of plan – only one step
- As to issue – no one but applicant to permit can appeal – this is current law – can only be changed by CC; the law is the law

Decision:

LB – would grant Motion to Dismiss; concern with the way the law is written – appeal allowed by Applicant only; but the signature on the plan is not the final event; only one of many steps – does not permit applicant to go forward with building – Motion to Dismiss is **GRANTED**

MW – Motion should be **GRANTED** and appeal dismissed – also has great concern about the process – and the related matter in the Court of Special Appeals regarding this property – but there are avenues in the Circuit Court after final decision is made in the CSA; as to this appeal – the signature on the plan is not a final decision allowing someone to proceed with building – only a review

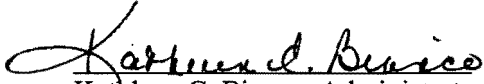
LMS – Would grant Motion – injunction can be sought in the Circuit Court to stop work and owner would be required to put it back and to follow the order of the upper courts. **Motion is granted.**

FINAL DECISION:

Property Owner's Motion to Dismiss is GRANTED; Ruling to be issued by the Board.

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 Motion to Dismiss. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order /Ruling to be issued by this Board.

Respectfully submitted


Kathleen C. Bianco, Administrator
County Board of Appeals

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

June 26, 2001

VIA HAND DELIVERY

Kathleen C. Bianco, Administrator
Baltimore County Board of Appeals
Old Courthouse Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of Poor Boy's, Inc.;
Case No. CBA-00-159

Dear Ms. Bianco:

Please be advised that I have received a copy of the letter from J. Carroll Holzer, Esquire, requesting a rescheduling of certain matters in the above-captioned case. After discussing the matter with my client, I was reminded by him that he will be out of town attending a convention in Atlanta from July 30 through and including August 2, 2001. After discussing Mr. Holzer's request with him, I believe it would be appropriate, and, therefore, my client consents to an extension of time and the rescheduling of the matter as it appears below.

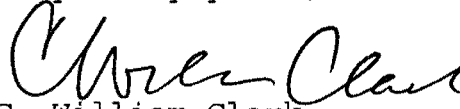
I would suggest that we keep the date of August 1, 2001, which is scheduled for a Hearing on the merits, but only have on that day a Hearing on the Motion to Dismiss. In the event that that Motion is not granted, we could reset the matter at the next available date on the Board's calendar. That way, no one will be inconvenienced by having to prepare witnesses or subpoena witnesses, which may turn out to be unnecessary. I would suggest a date of Friday, July 20, 2001, as a due date for Mr. Holzer's response to my client's Motion to Dismiss. That way, I would have approximately 10 days to prepare a response if we determine one is necessary.

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COUNTY BOARD OF APPEALS
01 JUN 26 PM 3:37

Kathleen C. Bianco
June 26, 2001
Page: 2

Thank you for your anticipated cooperation.

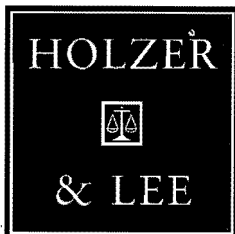
Very truly yours,


C. William Clark

CWC:kal

cc: J. Carroll Holzer, Esquire/via facsimile
Terry Gerahty

F:\Data\KATIEDATA\data\CWC\Clients\PoorBoy's\BdAppealsltr3.wpd



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

June 22, 2001

#7024

Kathleen Bianco, Administrator
Baltimore County Board of Appeals
Old Courthouse Road
400 Washington Avenue
Towson, MD 21204

Re: Case No. CBA-00-159
IN THE MATTER OF POOR BOY'S

Dear Mrs. Bianco:

Please be advised that I just this morning received a Notice of Hearings scheduling argument on the motions, motion in the above captioned case for Wednesday, July 18, 2001 at 10 a.m. I would request additional opportunity to file a response on behalf of Ruth Baisden on the above captioned matter in that Motion was filed on June 14, 2001 and I have an inordinant amount of briefs in the Court of Special Appeals due also I will be away from the office from Friday June 29 until Monday July 9.

In addition, I must request a postponement of the hearing based upon the fact that on Wednesday, July 18th at 9 a.m. I have a continued Development Plan case previously scheduled concerning "Blakley Springs." This matter has been previously set before the Zoning Commissioner for 9 o'clock and I would expect that the case would go that day. I would therefore respectfully request a postponement of the above captioned matter and time to file a written response to this Motion after I returned from vacation.

Very truly yours,

J. Carroll Holzer

cc: C. William Clark, Esquire
Ruth Baisden

01 JUN 25 PM 1:22
RECEIVED
COUNTY BOARD OF APPEALS

FILE BEING RETURNED TO CIRCUIT COURT
ON REMAND TO BOARD OF APPEALS

CASE NO.: 3-C-02-01085

BOARD OF APPEALS
CASE NUMBER: CBA-00-159 (98-267-SPH)

DATE: JANUARY 27, 2003

Christensen
Clerk of the Court

CASE NO. 3-C-02-01085

DATE: JANUARY 27, 2003

RECEIVED AND FILED

2003 JAN 27 A 10: 26

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Delib. - Poore Bay's

Issues: Motion to dismiss before us?

1. Does CBA have jurisdiction to hear appeal from "Dis. of PDM approving landscape/lighting plan"?
2. Why do App. want to appeal l & l?
case before Ct. of Sp. Appeals
- Ct. Ct. remanded to make 1996 letter dominant
- what happens if CBA hears & Ct. Sp. Appeals differs?

Clark argument

- No statute authorizing appeal from grading perm.
- land/light. only one part
 - not final decision
 - App. didn't appeal grading permit bc.
upper ct. says NOT appealable

Director can send back for changes or deny

- if denied, applicant can appeal

Holzer argument

Sec 26-132(a)

- anyone aggrieved or justly aggrieved by any decision
- says decision

Bill 123 1992

- combined zoning & permits
- Director PDM ultimate authority
- made final decision on l & l

Chairman grants power to hear appeals
from "other forms of permission granted"
L + L could be installed once approved - immed.
- not tied to grading permit
- grading can't be done, however,
unless L + L approved

Aug. 1, 2001

Carroll Holzer - Appell / Prot.

Bud Clark - Petitioner / owner

Clark Argument

Asked CBA to consider

Exh. A Site plan in file & attached to Holzer memo

Exh. B lighting plan

Above part of application for grading permit

Harden approved

Sept. 7, 2000 - landscape

Sept. 8, 2000 - lighting

Sect. 14-221 thru 14-225

14-222(a)(b)

- * - Harden approvals are only one piece of application for grading permit
- Other parts (sub) must be approved before permit issued

Motion to dismiss

- CBA does not have jurisdiction to hear "appeal from Dir. of PDM approving landscape/lighting plan"

CBA authority

Art 55A(u) Md. Code

- local law providing for an appeal

1st argument

- * - no statute authorizing appeal from grading permit
- 2300 Old Fred. Rd.
- affirmed CBA - no jurisdiction
- Appell. want to appeal one of steps of app. for grading permit
- appealable must be "final final"
- no further decision to be taken
- here only part of grading permit process

— have NOT appealed the grading permit
didn't bc. upper ct. says

NOT appealable
No ^{appeal} appeal from decision of landscape authority

App. cite

Ariz. 26-132 as authority to appeal

— all deal w/ zoning
— limited to zoning

Meadows v. Foxleigh - Aug 31, 2000

* Harden's approval NOT the operative event
that determined issuance of grading permit
— only 2 legs of 3 legged stool
— no final decision (602 d)

Final action will be Director after he gets
all parts together

— could then deny or pick back to
make changes

— if denied, applicant could appeal

Holzer

Clark's attach m1) "clear language"

Sec. 26-132

2) UPS theory

— Meadows doesn't apply

— Does CBA have rt. to hear
decision of Director

— UPS been ^{mis}represented

U: special language

Sec. 26-132(a)

* — Anyone aggrieved or substantially aggrieved
by any decision

— intended to be broadly
construed

— doesn't mean only order, but any decision

Not only apply to zoning

Bill 1-2-3 1992

- Combined zoning & permits
- Director P.D.M. the ultimate authority
- includes development process such as DEC

★★ Then Harden, Director approved landscape/lighting

- nothing further required
- did not appeal grading permit
- but I did not have anything to do w/ other permits required for grading permit

★ I signed off as approved

★ final act

- not appealing permit

- appealing instead the final decision of Director re: I & I

Memo - Appendix A

CBA 98-267-SPH

- summary for Ct. Ct.

- contrary to what Harden intended
Sept. 1996

- Bnd. reversed - Appendix to brief

- fence should be 70' from prop. line

- appealed beyond Ct. Ct.

★★ Appealing a final decision, not a permit

- appealed w/in 30 days of Sept. approval
Motion should not be granted

- appeal should be heard

Hope case -

- RAISE? what was enacted

★ - plain meaning to embrace all auth.
granted

- any approval or other permission

- as set forth 25A(5)u
- when Charter enacted & sets up CBA
- adopts all powers
- since KSDS decisions of dept. heads were appealable

Then UPS

- should have done SPH
- but took appeal instead
- Ct. of Appeals said
- letter not appealable
- But has no relation to this case
- NOT approval stamped on plan
- CBA then looked @ UPS
- took tack that unless specifically says RT to appeal
- none exists

Ct. Sp. Appeals said otherwise (unreported)

- BEST TRIUMPH
- silence does not mean denial of RT to appeal
- looked @ Hope
- adopted all the powers

I Clark objects to unreported - Stahl denies I UPS - arguments

- 1) Trt. for CBA to hear appeal from letter
- 2) CBA itself had original jurisdiction to hear case
- under 25A(5)u
- novel idea

Holding was letter appeal of reaffirmation was not appealable

- would run time to appeal forever

Original jurisdiction issue - CBA did not deal w/ this issue

- Ct. said no original as to statute - only reclaim.

UPS doesn't apply here
Addressed Hope

- did NOT reverse
- furnished no support for original jurisdiction

- * Do NOT need specific code distinction as to what can be appealed
 - Charter grants power to hear appeals from "other forms of permission granted"

14-222 - Clark's argument

- did not take appeal from grading permit
- * * - appealed from "Any Decision of Director"
- grading permit issue & Brennan's decision NOT relevant

Standing of L&L can't be approved bc. of Ct. Ct's reversal of board

Where code is clear where appeal is taken, that process takes precedence.

This is separate case

- silent

- we would have arbitrary & capricious hearing on landscape plan alone

Clark Rebuttal

Ct. Sp. Appeals has given way to resolve Meadows v. Foxleigh

- Stat. 602(d) approval, other form of permission
- p. 516 refer to "operative event"
- determine whether person gets permit
- becomes appealable w/ operative event
- when Harder approved, could he install L&L

- no, he needn't grading permit
- but 1st has to have approval of sed. control before permit
- * But problem is grading permit

isn't ~~appealable~~ appealable
Contrary to DRC

— once Jablon orders, developer can
"operate"

— can go ahead
here is drawn a "operative work"

* ? is can person do anything, go forward,
before doing something else
Here developer cannot go forward until he
gets a grading permit approval or
denial

— no one leg leading up to Director's
opinion is appealable

Hope & Klein cases

— Holz overrules both

— legis. passed law saying CBA could be
skipped & go directly to Ct. Ct.

— Ct. said, "Oh, no, you can't."

— has nothing to do w/ 602(d)

98-267-SPH

— on appeal to Ct. Sp. Appeals

— has no bearing on grading permit case

— variance case

— to allow gravel lot

— ZC imposed conditions to do w/ L & L

— L & L got appealed

— has no bearing on grading permit
application

— now will put in paved pkg. lot

— will render case on variance moot

Both TFILOH

— may only be cited in case before it

— improper for CBA to consider

Holzer

Location of fence is relevant

— part of rezoning agreement

B9 + E light fixtures to be installed before
(9-8-2000) grading permit

— not tied to grading permit

— could be implemented in time.

— note from Poor Boys attached to
this plan

"grading for new phy. area must be ~~can~~ begin
^{prior to} before July 1, 2001, and ^{must be} completed by
Sept. 2001."

Established 1985



Poor Boy's

COUNTRY MARKET

"A Touch of Country ... in the Heart of Parkville"

7721 OLD HARFORD ROAD BALTIMORE, MD 21234
PHONE 410-668-7599 FAX 410-382-2006

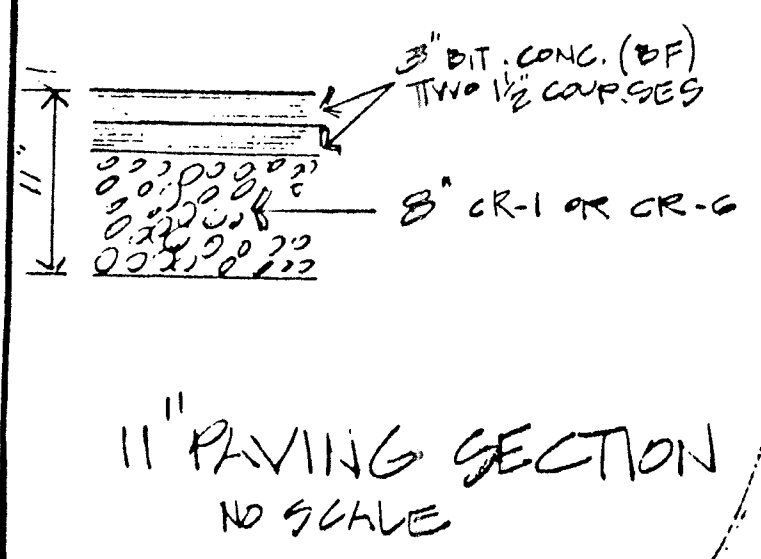
Poor Boy's agrees to attach this lighting plan to our grading permit with the following understandings.

1. New BGE light fixtures will be installed prior to the beginning of any grading. *Grading is the new parking area must begin Prior to July 1, 2001 and must be completed prior to Sept 2001*
2. Display, seasonal, and temporary lighting is allowed until our lighting plan is installed.
3. Once the lighting portion of our lighting plan is installed, as shown on the plan, the lighting plan is moot and no longer enforceable.
4. We further agree to use only lighting that is ~~allowed~~ by Baltimore County ~~code~~ after the installation of our lighting plan.

A stylized handwritten signature in black ink.

TERRY GREEN

OK PAH 9-8-00



- LEGEND**
- EXISTING CONTOURS 347
 - PROPOSED CONTOURS 347
 - PROPOSED PAVING
 - TRACT BOUNDARY
 - PROP CONC CURB & GUTTER
 - EXISTING CONC CURB & GUTTER
 - LIMIT OF DISTURBANCE
 - SILT FENCE
 - SUPER SILT FENCE
 - STABILIZED CONSTR. ENTRANCE
 - INLET PROTECTION

TEST FIT WALL FOOTING PRIOR TO EXCAVATING ADJACENT TO BUILDING WALL. NOTIFY OWNER & ENGINEER OF BOTTOM FOOTING ELEVATION.

OWNER: GEORGE C. PEVERLEY 3rd
ACCT No: 0919391250
6696 / 7311

PLANT LIST

- 8- QUERCUS RUBRA - NORTHEAST RED OAK 2-2 1/2" CAL.
- 2- " PALUSTRAIS - PIN OAK
- 5- PINUS STROBUS - WHITE PINE 5-6'
- 5- PICEA ABIES - NORWAY SPRUCE 6-7'
- 10- CUPRESSOCYPARIS LEYLANDII - LEYLAND CYPRESS #7 GALLON
- 8- TAXIS DENISFORMIS - YEW - 2 1/4" - 30"

* PLANT LOCATIONS TO BE FIELD LOCATED BY COUNTY L.A.

- 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.
 5. TEST PIT AS REQUIRED.
 6. CONTRACTOR SHALL REMOVE ON SITE TREES, WOOD FENCE, BUILDING AND ALL OTHER STRUCTURES REQUIRED FOR THE PROPOSED SITE IMPROVEMENTS.
 7. 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.
 8. STORM DRAIN INLETS (3 TOTAL) - STURGEON PLATE 12" x 24" x 24" ON 8" CR-6 SUB BASE PAVING - 4" BITUMINOUS CONCRETE (2" - 2" COURSES) ON 8" CR-6 SUB BASE.
 9. ALL SITE WORK CONSTRUCTION SHALL COMPLY WITH BALTIMORE COUNTY DEPT. OF PUBLIC WORKS SPECIFICATIONS.
 10. SUIABLE MATERIAL SHALL BE USED FOR FILL REQUIRED FOR THE MATERIAL AND PAVING SUBGRADE. ALL FILL SHALL BE INSPECTED AND TESTED BY A SOIL ENGINEER TO ENSURE THAT COMPARISON COMPLIES WITH BALTO. CO. DRAIN SPECIFICATIONS.
 11. DRIVEWAY AND PARKING AREA TO BE BITUMINOUS PAVING. ALL PARKING SPACES TO BE PAINTED ON PAVING.
 12. PARKING SPACES FOR HANDICAPPED PERSONS SHALL BE PAINTED WITH "HANDICAPPED WHEELCHAIR" HAVE SIGN AND POST. PAVING PEDESTRIAN RAMP SHALL COMPLY WITH THE "AMERICAN SYMBOL". THE ON-SITE PROP. ISLAND CURB SHALL BE EXTERIOR WITH "DISABILITIES ACT" OR WOOD TIES.
 13. TARMING CONCRETE

OWNER: TERRY J. GERAHY
8309 DALESFORD RD.
BALTIMORE, MD. 21234

JOHN M. & MARTHA MIMS
6027/536

DANIEL RAINVILLE
6152/008

2nd FLOOR BLDG.
INDOOR RETAIL SALES - 1705 SF

LOBBY FIN. FLOOR
ELEV. 340.65

POOR BOY'S INC. #721

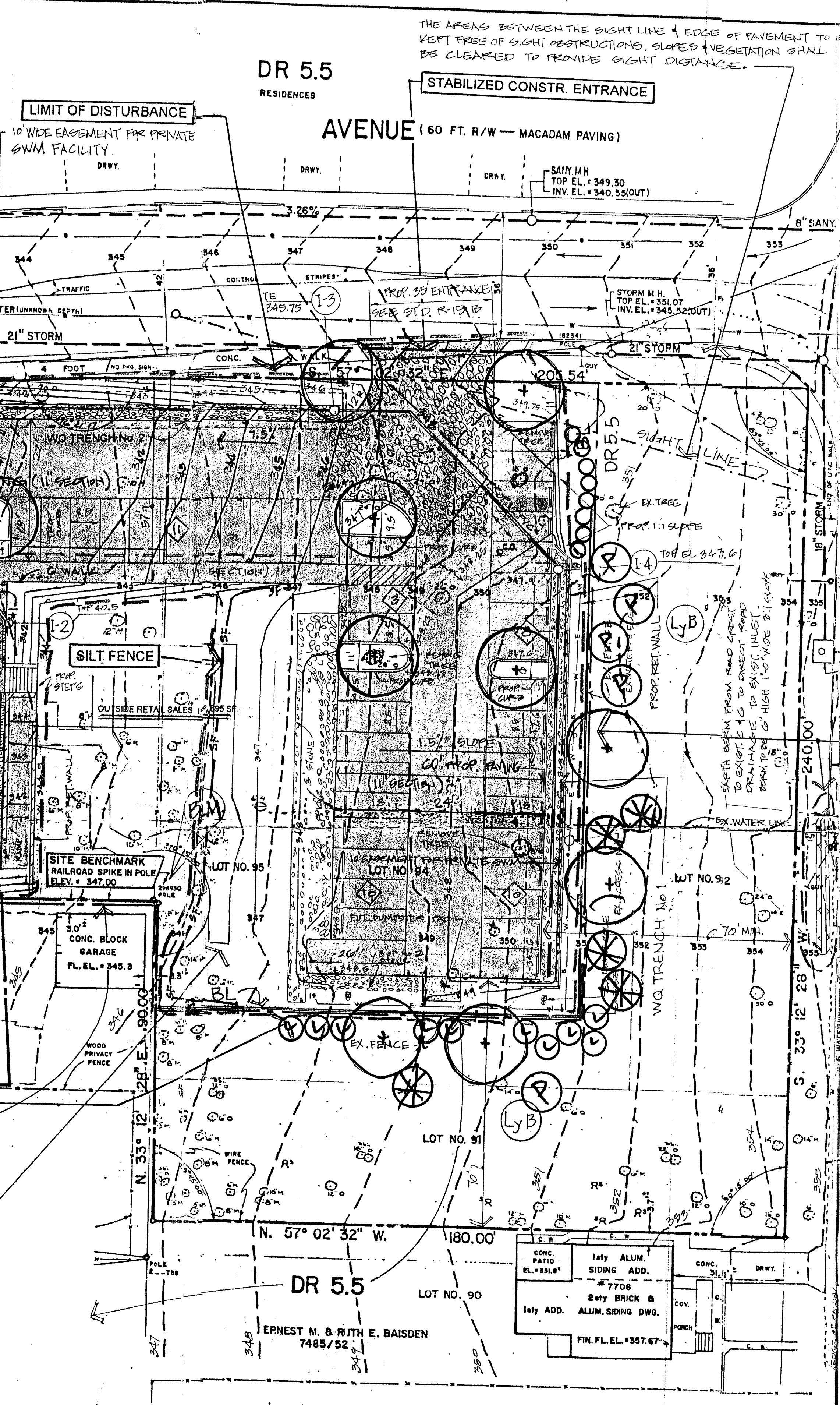
MACADAM PAVING

CONC. CURB

STORM M.H.
TOP EL. 338.45

8" SANY.

BL RO



SCHEDULE OF PANELBOARD DP (EXISTING)									
SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS WITH 200A MAIN C.B.									
CKT	SERVICES	BREAKER	KVA	NOTES	CKT	SERVICES	BREAKER	KVA	NOTES
1	EX. LTG. RECEPT	20	1	1.2	2	EX. LTG. RECEPT	15	1	1.2
3	PANEL LC1	40	2	8.0	4		15	1	1.2
7	PANEL LC2	40	2	8.0	8		15	1	1.2
11	PANEL LC3	40	2	8.0	10		15	1	1.2
15	POLE MTD LIGHTS	20	2	2.4	12		15	1	1.2
17	POLE MTD LIGHTS	20	2	2.4	14		15	1	1.2
19	POLE MTD LIGHTS	20	2	2.4	16	RECEPT ON LIGHT POLE	20	1	1.2
21	POLE MTD LIGHTS	20	2	2.4	18	RECEPT ON LIGHT POLE	20	1	1.2
23	POLE MTD LIGHTS	20	2	2.4	20	RECEPT ON LIGHT POLE	20	1	1.2
25	POLE MTD LIGHTS	20	2	2.4	22	EX SPACE			
27	EX SPACE				24				
29	EX SPACE				26				
					28				
					30				

PANEL DP } CONN. LOAD: 141 AMPS
DEMAND LOAD: 87 AMPS

SCHEDULE OF PANELBOARD LC1 (NEMA 3R ENCLOSURE)									
SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS 100A MAINS									
CKT	SERVICES	BREAKER	KVA	NOTES	CKT	SERVICES	BREAKER	KVA	NOTES
1	RECEPT	20	1	1.2	2	SPACE			
3	SPACE	20	1	1.2	4				
5	SPACE	20	1	1.2	6				
7	SPACE	20	1	1.2	8				

SCHEDULE OF PANELBOARD LC2 (NEMA 3R ENCLOSURE)									
SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS 100A MAINS									
CKT	SERVICES	BREAKER	KVA	NOTES	CKT	SERVICES	BREAKER	KVA	NOTES
1	RECEPT	20	1	1.2	2	RECEPT	20	1	1.2
3	SPACE	20	1	1.2	4	SPACE			
5	SPACE	20	1	1.2	6				
7	SPACE	20	1	1.2	8				

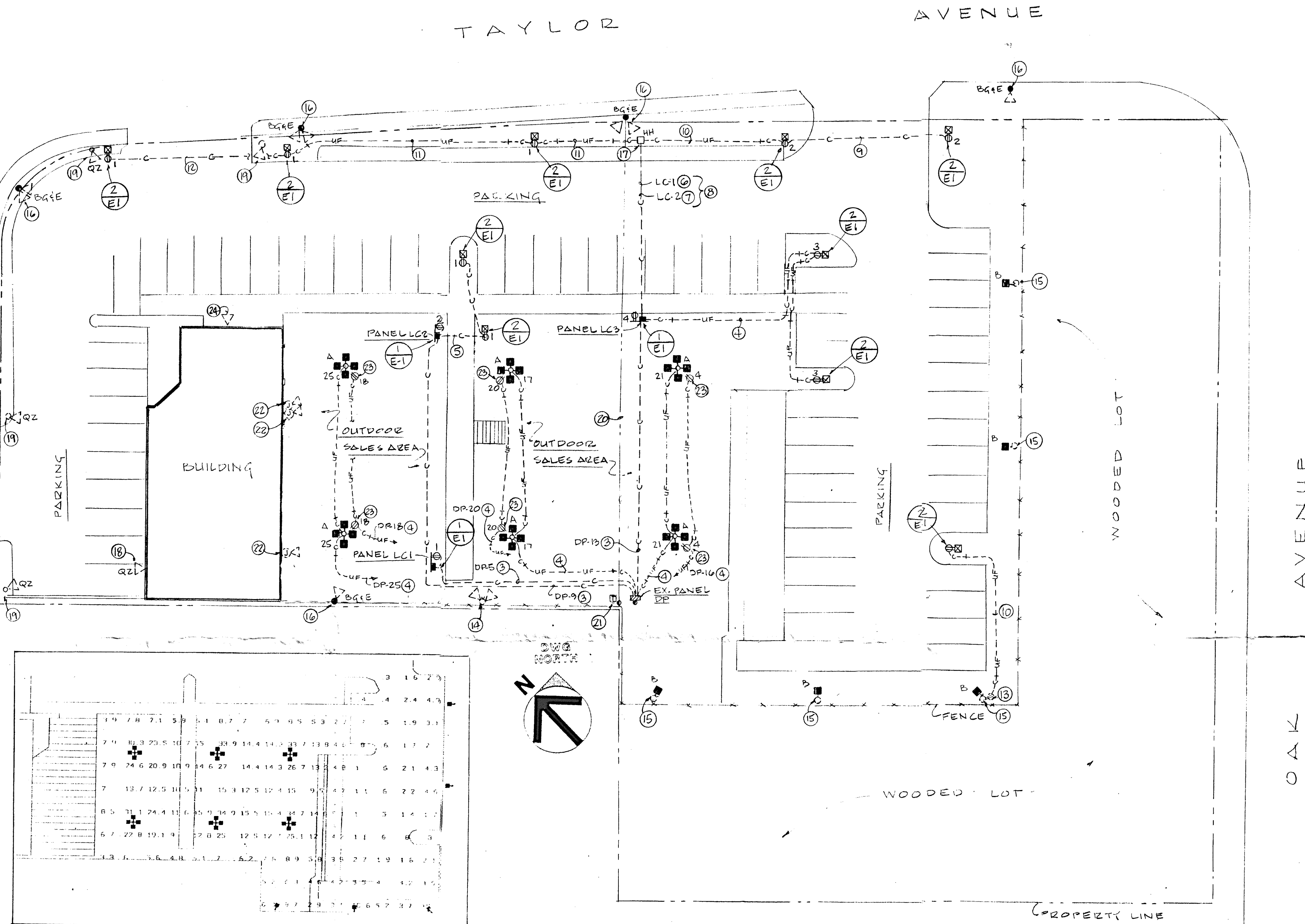
SCHEDULE OF PANELBOARD LC3 (NEMA 3R ENCLOSURE)									
SERVICE: 120/240 VOLT, 1 PHASE, 3 WIRES, +GND. BUS 100A MAINS									
CKT	SERVICES	BREAKER	KVA	NOTES	CKT	SERVICES	BREAKER	KVA	NOTES
1	RECEPT	20	1	1.2	2	RECEPT	20	1	1.2
3	SPACE	20	1	1.2	4	RECEPT	20	1	1.2
5	SPACE	20	1	1.2	6	SPACE			
7	SPACE	20	1	1.2	8	SPACE			

DRAWING NOTES

- NEW CIRCUIT BREAKER SHALL BE COMPATIBLE WITH EX. CUTLER-HAMMER PANELBOARD.
- CIRCUIT BREAKER SHALL BE SWD RATED
- 3" x 8", 1" x 10" AND 1" x 12"
- 2" x 12", 1" x 12" GND. FROM PANEL TO LAST OUTLET ON CKT. CONDUIT SLEEVES SHALL BE 3/4"
- 2" x 12", 1" x 12" GND. FROM PANEL TO LAST OUTLET ON CKT. CONDUIT SHALL BE 3/4"
- 2" x 10", 1" x 12" GND.
- 2" x 12", 1" x 12" GND.
- IN 1/2" CONDUIT
- 2" x 12", 1" x 12" GND IN 3/4" CONDUIT
- 2" x 12", 1" x 12" GND WITH 3/4" CONDUIT SLEEVES
- 2" x 10", 1" x 12" GND WITH 3/4" CONDUIT SLEEVES
- 2" x 10", 1" x 12" GND IN 3/4" CONDUIT
- EXTEND EX. RECEPTACLE BRANCH CKT. WIRING.
- DISCONNECT EX. LTG. BRANCH CKT. WIRING TO EX. FLOODLIGHT AND CAP OFF. REMOVE EX. FLOODLIGHT AND TURN OVER TO OWNER.
- REMOVE EX. FLOODLIGHT AND PROVIDE NEW TYPE "B", M.H. 1" x 4" A.F.C. MODIFY EX. BRANCH CKT. WIRING AS REQ'D. TO ACCOMMODATE NEW WORK.
- EX. BQ'E CO. MTD HID FLOODLIGHTS TO REMAIN. MAINTAIN EX. HARDWARE.
- HANDHOLE W.P. NOMINAL 2" x 6" x 12" O. PVC CONSTRUCTION WITH EX. HARDWARE. MOUNT FLUSH WITH FINISHED GRADE
- EX. WALL MOUNTED INCANDESCENT QUARTZ FLOODLIGHT TO REMAIN
- EX. POLE MOUNTED INCANDESCENT QUARTZ FLOODLIGHT TO REMAIN
- EX. BQ'E CO. OVERHEAD INCOMING SERVICE CONDUCTORS
- EX. BQ'E CO. POLE MTD INCOMING 120/240V, 1P, 3W SECONDARY SERVICE TRANSFORMER
- DISCONNECT EX. LIGHTING BRANCH CKT. WIRING TO EX. FLOODLIGHT AND CAP OFF. REMOVE EX. FLOODLIGHT AND TURN OVER TO OWNER.
- RECEPTACLE 20A, 125V, DUPLEX GFCI TYPE, WEATHERPROOF, MOUNT ON WOOD LIGHT POLE 15" A.F.C.
- EX. HID WALL PACK LIGHT TO REMAIN
- LIGHTS MOUNTING ORIENTATION SHALL BE AS SHOWN ON THE SITE PLAN.

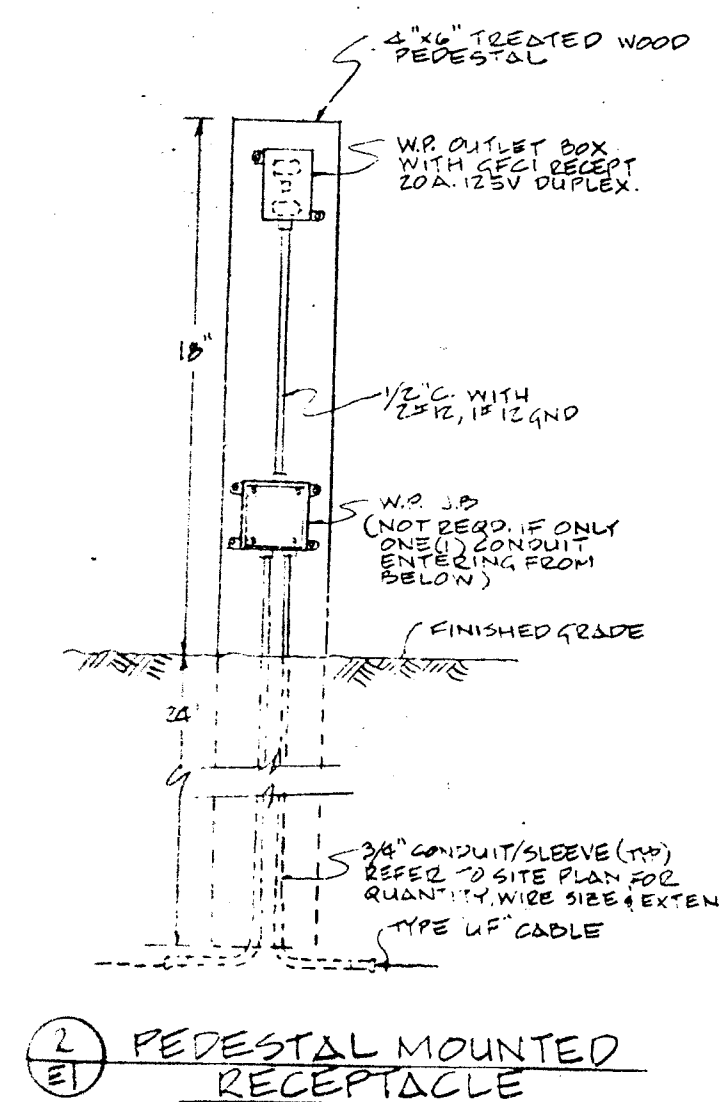
GENERAL ELECTRICAL CONSTRUCTION NOTES

- 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.
- THE CONTRACTOR SHALL EXAMINE THE SITE AND OBSERVE THE CONDITIONS UNDER WHICH THE WORK WILL BE DONE OR OTHER CIRCUMSTANCES WHICH WILL AFFECT THE CONTINGENTED WORK. CONTRACTOR SHALL APPLY AND PAY FOR ALL NECESSARY PERMITS AND CERTIFICATES OF INSPECTION REQUIRED BY THE AUTHORITY.
- PERFORM TESTS ON ALL NEW WORK TO ASSURE THE ABSENCE OF SHORTS AND GROUND.
- ALL EXCAVATION WORK NECESSARY FOR THE INSTALLATION OF ELECTRICAL WORK SHALL BE INCLUDED UNDER THIS CONTRACT.
- CONDUIT INSTALLED UNDERGROUND SHALL BE PVC. CONDUIT INSTALLED ON BLDG. SHALL BE EMT. ALL OUTLET AND JUNCTION BOXES SHALL BE WEATHERPROOF. ALL PANELBOARD FEEDERS SHALL BE INSTALLED IN CONDUIT.
- DIRECT BURIAL CABLE SHALL BE TYPE UF. ALL WIRE SHALL BE COPPER.
- PANELBOARDS SHALL BE "LOAD CENTER" TYPE. PROVIDE CIRCUIT DIRECTORY, UPDATE EX. PANEL DP DIRECTORY.
- IT SHALL BE NOTED THAT A REASONABLE SHIFTING IN ELECTRICAL WORK BEFORE THE BEGINNING OF THE WORK SHALL BE EXPECTED IN ORDER TO MEET FIELD CONDITIONS AND THIS WORK SHALL BE DONE AT NO INCREASE COST TO OWNER.
- AS-BUILT DWGS. AT COMPLETION OF WORK PROVIDE OWNER WITH AS-BUILT DWGS. SHOWING ANY REROUTING OF FEEDERS, BRANCH CIRCUITS ETC. AND/OR ANY CHANGE WHATSOEVER.
- 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 ORIGINALLY INSTALLED THE WORK AT THE EXPENSE OF THE CONTRACTOR UNDER THIS CONTRACT.

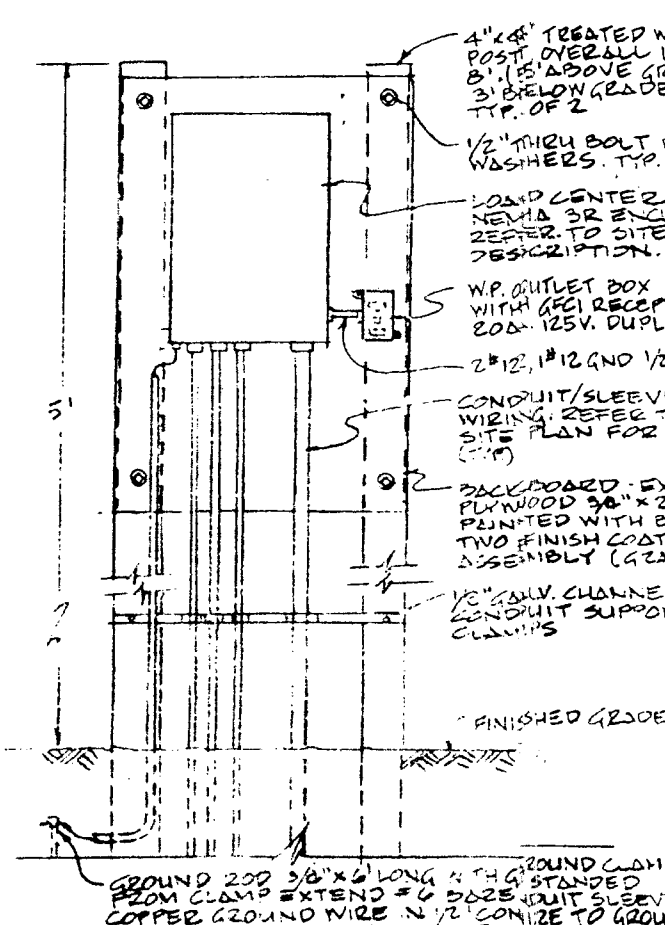


MAINTAINED FOOTCANDLES AT GRADE									
1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50
51	52	53	54	55	56	57	58	59	60
61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90
91	92	93	94	95	96	97	98	99	100

LIGHTING SCHEDULE (3)		
TYPE	DESCRIPTION	MEQR. 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 240V OPERATION - YOKE MOUNT - WOOD POLE MOUNTING BRACKET POLE SHALL BE MIN. 12" DIA. 20' LONG, INSTALL MIN. 4'-10" BELOW FIN. GRADE SECURE EA. TWO (2) BRACKETS 18" W/ 5/8" THREADED ROD HARDWARE SHALL INCLUDE NUTS AND LOCKWASHERS. CUT OFF AT EACH END EXCESS ROD 1/4" FROM NUT	BLIND LIGHTING (TEL. 800-236-7000) FOUR (4) LIGHTS EA. CAT. NO. AC-4-025-M-T-PVY-1
B	SAME AS TYPE "A" EXCEPT SINGLE WHITE MOUNTED ON EX. WOOD POLE AND FURNISHED WITH BACKLIGHT SHIELD	BLIND LIGHTING CAT. NO. AC-4-425-M-T-PVY-1-SB-V



PEDESTAL MOUNTED RECEPTACLE
NO SCALE



BACKBOARD MOUNTED LOAD CENTER & RECEPTACLE
NO SCALE

SITE PLAN
SCALE: 1" = 20'