

2/18/02

csd
pmz

CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF
PATRICIA L. SHANEYBROOK
and SHARON H. BASSO

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY
BOARD OF APPEALS
FOR BALTIMORE COUNTY

IN RE:
PETITION FOR SPECIAL EXCEPTION
W/S Back River Neck Road
245' N of the c/l Luciano Drive
(720 Back River Neck Road)
15th Election District
5th Councilmanic District
Case No. 00-139-X

*
*
* CIVIL CASE
*
• NO. 3-C-01-8460

ORDER

After review of the Memoranda of Petitioners Patricia L. Shaneybrook and Sharon H. Basso and of Respondents Back River Neck Peninsula Community Association, Carl Maynard and Leroy Sennett filed in the above-referenced case pursuant to the Petition for Review, and after presentation of oral argument by the parties on the aforesaid Petition for Review, and after review of the Opinion and Order of the County Board of Appeals for Baltimore County in this case and based on the oral decision rendered on February 5, 2002, and findings as stated therein, including consideration of the clear wording of Baltimore County Zoning Regulations §500.14 it is hereby

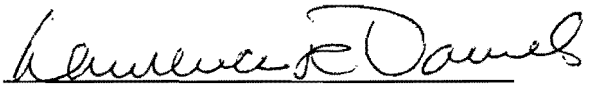
ORDERED this 18th day of February, 2002, by the Circuit Court for Baltimore

County that the Opinion and Order of the County Board of Appeals of Baltimore County in

FILED FEB 22 2002

J.J.
cc. Bergerding, Gentrum

Board Case No. 00-139-X, dated July 16, 2001 be and the same is hereby AFFIRMED.


LAWRENCE R. DANIELS, JUDGE

PETITION OF
PATRICIA L. SHANEYBROOK
and SHARON H. BASSO

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY
BOARD OF APPEALS
FOR BALTIMORE COUNTY

IN RE:

PETITION FOR SPECIAL EXCEPTION
W/S Back River Neck Road
245' N of the c/l Luciano Drive
(720 Back River Neck Road)
15th Election District
5th Councilmanic District

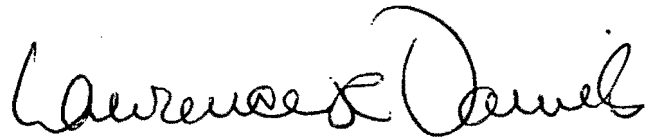
* BEFORE THE
* CIRCUIT COURT
* OF
* BALTIMORE COUNTY
*

* Civil Case No.
* 3-C-01-8460
*

ORDER

Upon review of the foregoing Amended Response to Petition
for Review filed on behalf of Back River Neck Peninsula Community
Association, Inc., Carl Maynard and Leroy Sennett, it is hereby

ORDERED this 5TH day of FEB., 2002 that leave to
participate pursuant to Maryland Rule of Procedure 7-204 is and
the same is hereby granted.



Judge

FILED FEB 05 2002

CC: Francis Gontrom

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

03/05/02

Case Number: 03-C-01-008460 AE
Date Filed: 08/16/2001
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter of: Patricia L Shaneybrook, et al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	00-139 X
Case Folder ID	C01008460V01

INVOLVED PARTIES

Type	Num	Name(Last.First.Mid.Title)	Disposition	Entered
		Addr Str/End	Addr Update	
PET	001	Shaneybrook, Patricia L	BT DO 02/22/02	08/16/01
		Party ID: 0446551		
		Attorney: 0006860 Borgerding, Francis X		08/16/01
		409 Washington Ave		
		Suite 600		
		Towson, MD 21204		
		(410)296-6820		
PET	002	Basso, Susan H	BT DO 02/22/02	08/16/01
		Party ID: 0446552		
		Attorney: 0006860 Borgerding, Francis X		08/16/01
		409 Washington Ave		
		Suite 600		

Towson, MD 21204
(410)296-6820

Type Num	Name (Last, First, Mid, Title)	Addr Str/End	Disposition Addr Update	Entered
ITP 001	County Board Of Appeals Of Baltimore County	Party ID: 0446553	BT DO 02/22/02	08/16/01
	Mail: Old Courthouse, Room 49 400 Washington Avenue Baltimore, MD 21204	08/16/01	01/15/02 DR	
ITP 002	Back River Neck Peninsula Community Association	Party ID: 0451617	BT DO 02/22/02	09/14/01
	Attorney: 0012404 Gontrum, John B Romadka, Gontrum & McLaughlin 814 Eastern Boulevard Baltimore, MD 21221 (410)686-8274			09/14/01
ITP 003	Maynard, Carl	Party ID: 0473621	BT DO 02/22/02	01/15/02
	Attorney: 0012404 Gontrum, John B Romadka, Gontrum & McLaughlin 814 Eastern Boulevard Baltimore, MD 21221 (410)686-8274	Appear: 01/11/2002		01/15/02
ITP 004	Sennett, Leroy	Party ID: 0473623	BT DO 02/22/02	01/15/02
	Attorney: 0012404 Gontrum, John B Romadka, Gontrum & McLaughlin 814 Eastern Boulevard Baltimore, MD 21221 (410)686-8274	Appear: 01/11/2002		01/15/02

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User	ID
02/05/02	09:30A	01H	yes	CIVI	S		LRD	01	/01	CON	C	02/05/02	LRD	P		Y	KLS	
Stenographer(s): Rhonda Smith																		

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	08/16/01	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000	Petition for Judicial Review	08/14/01	08/16/01	PET001	TBA	02/22/02	JM JBJ
0001001	Response to Petition	09/12/01	09/14/01	ITP002	TBA	02/22/02	NW JBJ
0001002	Amended answer Filed by ITP002-Back River Neck Peninsula Community Association, . ITP003-Maynard, Carl, ITP004-Sennett, Leroy	01/11/02	01/15/02	ITP002	TBA	02/22/02	DR JBJ
0002000	*Transcript of Record from Adm Agency	10/19/01	10/19/01	ITP001	TBA	02/22/02	DR JBJ
0003000	Notice of Transcript of Record Sent	10/19/01	10/19/01	ITP001	TBA	10/19/01	DR DR
0004000	Notice of Transcript of Record Sent	10/19/01	10/19/01	ITP002	TBA	10/19/01	DR DR
0005000	Notice of Transcript of Record Sent	10/19/01	10/19/01	PET001	TBA	10/19/01	DR DR
0006000	Scheduling Order	10/30/01	10/30/01	000	TBA	10/30/01	KLS KLS
0007000	Stipulation to Extend Time for Appellant to File Memorandum to December 12, 2001.	11/16/01	11/20/01	PET001	TBA	11/20/01	DFF DFF
0008000	Memorandum Filed by PET001-Shaneybrook, Patricia L, PET002-Basso, Susan H	12/12/01	12/14/01	PET001	TBA	12/14/01	MJ MJ
0009000	Stipulation for Extension of Time for Respondents' Memorandum to 01/14/02	01/11/02	01/15/02	000	TBA	01/15/02	DR DR
0010000	Memorandum * Filed by ITP002-Back River Neck Peninsula Community Association. . ITP003-Maynard, Carl, ITP004-Sennett, Leroy	01/14/02	01/16/02	ITP002	TBA	01/16/02	DFF DFF
0011000	Open Court Proceeding Februay 5, 2002. Hon. Lawrence R. Daniels. Hearing had in re: Petition for Judicial Review. Opinion and Order to be filed. Order signed re: Amended Response to Petition (p.1002.)	02/05/02	02/05/02	000	LRD	02/22/02	MB JBJ
0012000	Order granting Back River Neck Peninsula Community Assn., Inc. leave to participate pursuant to	02/05/02	02/05/02	000	LRD Granted	02/05/02	CKC CKC

MD Rule of Procedure 7-204.

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0013000	Order affirming decision of the County Board of Appeals of Baltimore County	02/22/02	02/22/02	000	LRD Affirmed	02/22/02	JBK JBJ
0014000	Docket entries sent to Board of Appeals for Baltimore County	03/05/02	03/05/02	000	TBA		CVM CVM

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	09/12/01	0	no	no		DANS D	001	001
1YRT	One Year Tickle (Jud	CLOSED	08/14/02	365	no	no		DAAA D	001	000
EXPU	Exhibit Pickup Notic	OPEN	04/23/02	30	no	no			000	000
SLIL	Set List - Informati	CANCEL	01/15/02	0	no	no			000	000
SLTR	Set List For Trial	DONE	09/12/01	0	yes	yes		1ANS T	001	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp	Dt	Dis	By
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Offered By: ITP 001 County Board Of Appeals Of Ba
000 B BOX 292/ZOANING TR B

DIFFERENTIATED CASE MANAGEMENT**TRACKS AND MILESTONES**

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 10/30/01 Order Date : 10/30/01
Start Date : 10/30/01 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322C	11/14/01	02/22/02	CLOSED	
All Motions (excluding Motions in Limine	12/19/01	02/22/02	CLOSED	
TRIAL DATE is	02/05/02	01/28/02	02/05/02	REACHED

8/20/01

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:

PATRICIA L. SHANEYBROOK AND
SUSAN H. BASSO

c/o Francis X. Borgerding, Jr., Esquire
409 Washington Avenue, Suite 600
Towson, MD 21204

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. 3-C-01-8460

IN THE MATTER OF THE CASE OF
PATRICIA L. SHANEYBROOK &
SUSAN H. BASSO

FOR A SPECIAL HEARING
ON PROPERTY LOCATED ON THE WEST SIDE
BACK RIVER NECK ROAD, 245' NORTH OF THE
CENTERLINE OF LUCIANO DRIVE
(720 BACK RIVER NECK ROAD)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

CASE NO. 00-139-X

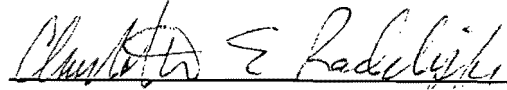
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CERTIFICATE OF NOTICE

Madam Clerk:

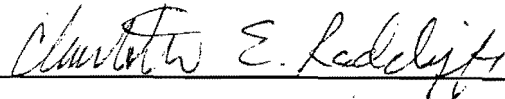
Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue, Suite 600, Towson, Maryland 21204, Counsel for Petitioners; Patricia L. Shaneybrook and Susan H. Basso, Petitioners, c/o Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue, Suite 600, Towson, Maryland, 21204; Back River Neck Peninsula Community Association c/o John Gontrum, Esquire, ROMADKA, GONTRUM & MCLAUGHLIN, 814 Eastern Boulevard, Baltimore, Maryland 21221; and Peter

Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204.



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

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue, Suite 600, Towson, Maryland 21204, Counsel for Petitioners; Patricia L. Shaneybrook and Susan H. Basso, Petitioners, c/o Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue, Suite 600, Towson, Maryland, 21204; Back River Neck Peninsula Community Association c/o John Gontrum, Esquire, ROMADKA, GONTRUM & MCLAUGHLIN, 814 Eastern Boulevard, Baltimore, Maryland 21221; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 20th day of August, 2001.



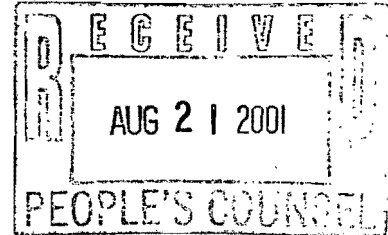
Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182
August 20, 2001

CD/pmz



John Gontrum, Esquire
ROMADKA, GONTRUM & MCLAUGHLIN
814 Eastern Boulevard
Baltimore, MD 21221

RE: PATRICIA L. SHANEYBROOK
AND SUSAN H. BASSO
CCt Civil Action No. 3-C-01-8460
Zoning Case No. 00-139-X

Dear Mr. Gontrum:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on August 14, 2001, in the Circuit Court for Baltimore County for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to 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-01-8460.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

cc: Back River Neck Peninsula Community Association
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM

8/14/01

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PMZ

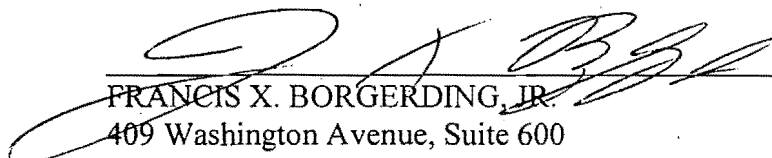
PETITION OF PATRICIA L. SHANEYBROOK * IN THE
AND SUSAN H. BASSO *
FOR JUDICIAL REVIEW OF THE DECISION * CIRCUIT COURT
OF THE COUNTY BOARD OF APPEALS * OF
OF BALTIMORE COUNTY *
IN THE CASE OF IN THE MATTER OF THE *
APPLICATION OF PATRICIA L. * BALTIMORE COUNTY
SHANEYBROOK AND SUSAN H. BASSO- *
PETITIONERS FOR SPECIAL EXCEPTION * Case No.:
ON PROPERTY LOCATED ON THE W/S *
BACK RIVER NECK ROAD, 245' N OF C/L *
LUCIANO DRIVE (720 BACK RIVER NECK *
ROAD) *
15TH ELECTION DISTRICT *
5TH COUNCILMANIC DISTRICT *
BEFORE THE COUNTY BOARD OF APPEALS *
Case No.: 00-139-X *

* * * * *

PETITION FOR JUDICIAL REVIEW

Patricia L. Shaneybrook and Susan H. Basso, by and through their counsel, Francis X. Borgerding, Jr., pursuant to Maryland Rule 7-202, hereby request judicial review of the Opinion of the County Board of Appeals of Baltimore County dated July 16, 2001, case number 00-139-X. Patricia L. Shaneybrook and Susan H. Basso were Petitioners before the County Board of Appeals of Baltimore County in relation to the above-referenced case.

Respectfully submitted,


FRANCIS X. BORGERDING, JR.
409 Washington Avenue, Suite 600
Towson, Maryland 21204
410-296-6820

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of August, 2001, a copy of the foregoing was mailed, postage prepaid to:

John B. Gontrum, Esquire
814 Eastern Boulevard
Baltimore, Maryland 21221

People's Counsel for Baltimore
County
Old Court House, Room 47
400 Washington Avenue
Towson, Maryland 21204

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


FRANCIS X. BORGERDING, JR.

7/16/01

FILE COPY

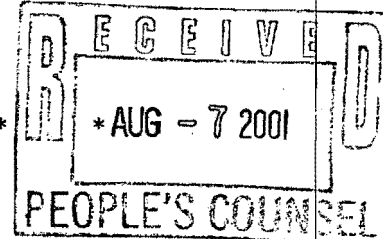
csd / PMZ

IN THE MATTER OF
THE APPLICATION OF
PATRICIA L. SHANEYBROOK AND
SUSAN H. BASSO - PETITIONERS
FOR SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE W/S BACK RIVER NECK
ROAD, 245' N OF C/L LUCIANO DRIVE
(720 BACK RIVER NECK ROAD)

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 00-139-X

15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* * * * *



OPINION

This matter is before the Board on an appeal of the decision of the Zoning Commissioner for Baltimore County dated May 30, 2000 granting the Petitioners' requested special exception for an adult day care center on the subject property pursuant to § 1A05.2G of the *Baltimore County Zoning Regulations* (BCZR) with conditions. The Protestants, the Back River Neck Peninsula Community Association, Carl Maynard, President, and Leroy Sennott, individually, filed a Notice of Appeal from the Zoning Commissioner's Order on June 29, 2000. The Board conducted hearings on April 3, 2001; April 18, 2001; and May 2, 2001. Briefs were filed in the matter and were due May 10, 2001. The Petitioners were represented by Francis X. Borgerding, Jr., Esquire, and the Protestants were represented by John B. Gontrum, Esquire. Public deliberation was held on May 17, 2001.

The property in question consists of approximately 9.861 acres predominantly zoned R.C. 20 with a small portion of the property zoned D.R. 3.5. There are a number of environmental constraints on the property, including a tidal floodplain, stream, wetlands and forest. Although the parcel is predominantly zoned R.C. 20, many of the adjacent and nearby properties are zoned differently. Specifically, there is a nursery for children located immediately north of the subject

FILED

site on D.R. 3.5 zoned land and a small strip center immediately south of the property on land zoned B.L.

Petitioners presented Mr. Ertel, the professional engineer with M.J. Consultants, who indicated that he had prepared the site plan for the project. The Petitioners propose to construct a 5,700 square foot one-story building on the R.C. 20 zoned portion of the site for an adult day care center. The building will be constructed nearly 300 feet from the property line. Testimony indicated that the proposed facility will be open as a day care center from 7 a.m. to 7 p.m., five days a week. It is anticipated there will be approximately 8 employees plus the owners, and up to 65 senior clients will be accommodated. There would be no food service preparation on the property, and it was testified that all meals would be catered, using plastic flatware and plates. There will be no overnight accommodations and no requirement to do laundry, although there will be a washer and dryer on the premises in the event that there is a need for washing of any client's clothes during the day. Individuals will be brought to the site in the morning and transported to and from the site by two minibuses which will be parked off the property. Mr. Ertel testified that he did not think that there would be any detrimental impact to the health, safety or general welfare of the locale.

Petitioners contend that, while an adult day care operation is not specifically set forth in § 1A05 of the BCZR, § 1A05.2G of the BCZR allows "other uses substantially similar in character and impact to those uses ordinarily permitted by right or special exception in the zone." Petitioners contend that the use as an adult day care center is similar to the use of a facility as a child day care center. They cite the testimony of Mr. Carl Richards, Zoning Supervisor of the Department of Permits & Development Management, who testified that that was the position of the department based upon the decision of the Deputy Zoning Commissioner in Case No. 89-405-SPHA, a copy of which was introduced into evidence before the Board.

The property is also located within the Chesapeake Bay Critical Area, which places additional restrictions on the Board and the property owners. Section 500.14 of the BCZR states:

Within the Chesapeake Bay Critical Area.

No decision may be rendered by the Zoning Commissioner on any petition for special exception, variance or special hearing unless the Zoning Commissioner has received from the Director of the Department of Environmental Protection and Resource Management, or his designated representative, written recommendations describing how the proposed request would:

- A. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- B. Conserve fish, wildlife and plant habitat; and
- C. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

The Protestants also cite COMAR regulations 27.01.02.05, the Critical Area Commission guidelines for evaluation of local programs during comprehensive reviews and a letter from John C. North, Chairman of the Chesapeake Bay Critical Area Commission dated April 2, 1993 regarding the approval of a set of guidelines concerning land uses in the resource conservation area. They also submitted a letter from R. Bruce Seeley of the Department of Environmental Protection and Resource Management (DEPRM) to Arnold Jablon, dated November 15, 1999, concerning the subject property in which, among other things, DEPRM recommended denial of the special exception, and stated "if the applicant wishes to pursue the project further, a critical area growth allocation approval will be necessary."

Without going any further into the matter, the Board finds that the written recommendations required from DEPRM in accordance with § 500.14 of the BCZR are lacking in this matter. Therefore, the Board must deny the Petition for Special Exception.

ORDER

THEREFORE, IT IS this 16th day of July, 2001 by the
Baltimore County Board of Appeals

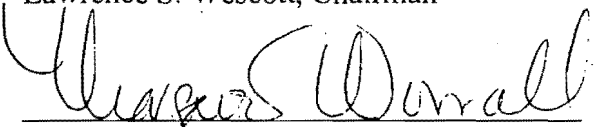
ORDERED that the request for special exception for an adult day care center on the subject property is hereby **DENIED**.

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

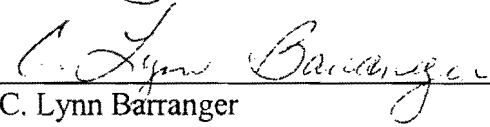
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Chairman



Margaret Worrall



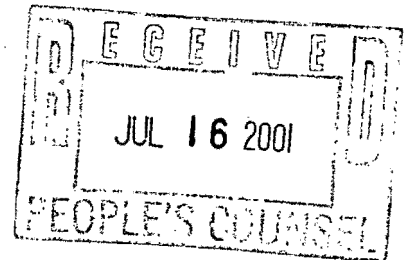
C. Lynn Barranger



County Board of Appeals of Baltimore County

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

wd PM2



July 16, 2001

John B. Gontrum, Esquire
ROMADKA, GONTRUM & MCLAUGHLIN
814 Eastern Boulevard
Baltimore, MD 21221

RE: *In the Matter of: Patricia L. Shaneybrook
and Susan H. Basso / Case No. 00-139-X*

Dear Mr. Gontrum:

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 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,

Charlotte E. Redcliffe for

Kathleen C. Bianco
Administrator

Enclosure

c: Back River Neck Peninsula Community Assn
Carl Maynard, President
Leroy Sennett
Francis X. Borgerding, Jr., Esquire
Patricia L. Shaneybrook / Susan H. Basso
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM



7/12/01
PATRICIA L. SHANEYBROOK
AND
SUSAN H. BASSO

Appellee

v.

BACK RIVER NECK PENINSULA
COMMUNITY ASSOCIATION

Appellant

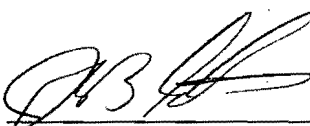
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IN THE
CIRCUIT COURT
OF
BALTIMORE COUNTY
CIVIL CASE NO.: 3-C-01-8460
ZONING CASE NO.: 00-139-X

RESPONSE TO PETITION

Appellant, Back River Neck Peninsula Community Association, by their attorneys, John B. Gontrum and Romadka, Gontrum & McLaughlin, oppose the Petition of Patricia L. Shaneybrook and Susan H. Basso, and intend to participate in this action for judicial review.

ROMADKA, GONTRUM & MCLAUGHLIN

BY: 

John B. Gontrum, Esquire
814 Eastern Boulevard
Baltimore, Maryland 21221
410-686-8274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of September, 2001, a copy of the foregoing Response to Petition was mailed, postage prepaid, first class, to the following:

Francis X. Borgerding, Jr.
409 Washington Avenue
Suite 600
Towson, Maryland 21204
Attorney for
Patricia Shaneybrook and Susan H. Basso

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

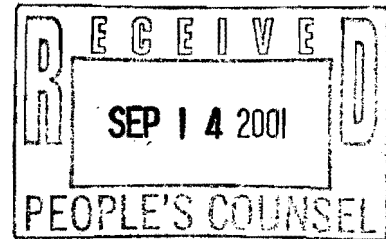
Peter Max Zimmerman
People's Counsel for Baltimore County
400 Washington Avenue
Room 47
Towson, Maryland 21204

90 PMZ
ROMADKA, GONTRUM & McLAUGHLIN, P.A.

814 Eastern Boulevard
Baltimore, Maryland 21221

(410) 686-8274
(410) 686-0118 FAX

ROBERT J. ROMADKA
JOHN B. GONTRUM
J. MICHAEL McLAUGHLIN, JR.*



* Also Admitted In the District of Columbia

September 10, 2001

Clerk
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204-0754

RE: Response to Petition

Civil Case No.: 3-C01-8460

SHANEUBROOK/BASSO
(00-139-X)

Dear Clerk:

Enclosed please find for filing a Response to Petition with regard to the above captioned matter.

Jod Rev,

Thank you for your assistance in this matter.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John B. Gontrum".

John B. Gontrum

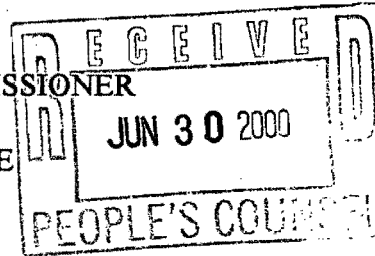
JBG/jmh
Enclosure

cc: Back River Neck Peninsula Community Association

IN RE: PETITION FOR SPECIAL EXCEPTION
W/S Back River Neck Rd., 245" N of the
C/I Luciano Drive
(720 Back River Neck Rd.)
15th Election District
5th Councilmanic District

Patricia Shaneybrook and
Susan Basso, Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* FOR BALTIMORE
* COUNTY
* Case No. 00-139-X



* * * * *

NOTICE OF APPEAL

Appellants Back River Neck Peninsula Community Association; Carl Maynard, President, and Leroy Sennett, individually 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 Zoning Commissioner of Baltimore County rendered on May 30, 2000, and attached hereto and incorporated herein as **Exhibit A.**

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal.

Respectfully submitted,

J. Carroll Holzer / L.L.

J. Carroll Holzer
Holzer and Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of June, 2000, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to Francis X. Borgerding, Esq., 409 Washington Ave, Suite 600, Towson, MD 21204, and Peter Max Zimmerman, Esq., People's Counsel for Baltimore County, 400 Washington Ave., Old Courthouse, Towson, MD 21204; and the County Board of Appeals, Basement, Old Courthouse, Towson, MD 21204.

J. Carroll Holzer
J. Carroll Holzer

4/30/00

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
W/S Back River Neck Road, 245' N of the		
c/l Luciano Drive	*	ZONING COMMISSIONER
(720 Back River Neck Road)		
15 th Election District	*	OF BALTIMORE COUNTY
5 th Councilmanic District		
	*	Case No. 00-139-X
Patricia L. Shaneybrook and		
Susan H. Basso - Petitioners	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by the owners of the subject property, Patricia L. Shaneybrook and her sister, Susan H. Basso, through their attorney, Francis X. Borgerding, Jr., Esquire. The Petitioners request a special exception for an adult day care center on the subject property, zoned R.C.20, pursuant to Section 1A05.2.G of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 3.

Appearing at the requisite public hearing held in support of this request were Patricia L. Shaneybrook and Susan Basso, owners of the subject property, and Francis X. Borgerding, Jr., Esquire, attorney for the Petitioners. Also appearing in support of the request were Mrs. Shaneybrook's husband, Guy L. Shaneybrook, Jr., Sara Bayne, and Michael J. Ertel, Professional Engineer who prepared the site plan for this property. Appearing as interested citizens in the matter were Carl Maynard, President of the Back River Neck Peninsula Community Association, Leroy Sennett, and Gloria Besis, all nearby residents of the area.

Testimony and evidence offered revealed that the subject property is an unimproved parcel located on the west side of Back River Neck Road in Essex, immediately across from the Chesapeake High School and the site of the Turkey Point Middle School. The property consists of a gross area of 9.861 acres, more or less, predominantly zoned R.C.20, with a small sliver of

D.R.3.5 zoned land in the northern corner of the site. There are a number of environmental constraints on the property, including a tidal floodplain, stream, wetlands, and forest. Although the parcel is predominantly zoned R.C.20, many of the adjacent and nearby properties are zoned differently. Specifically, there is a nursery for children located immediately north of the subject site on D.R. 3.5 zoned land, and a small strip center immediately south of the property on land zoned B.L.

On behalf of the Petitioners, Mr. Ertel testified that the Petitioners are desirous of opening an adult day care facility on the subject property and propose constructing a 5700 sq.ft., one-story building on the R.C.20 zoned portion of the site. The building will be constructed nearly 300 feet from the front property line to avoid environmentally sensitive areas. Testimony indicated that the proposed facility will not be a 24-hour operation; rather, the adult day care center will be open from 7:00 AM to 7:00 PM, five days a week. It is anticipated that there will be approximately 8 employees on the site and up to 65 seniors will be accommodated. Essentially, individuals will be brought to the site in the morning, and picked up in the late afternoon or early evening. During their stay, there will be group and individual activities and a paid staff to lead activities and provide services to these seniors. Additionally, two mini-buses will be available to provide transportation for the seniors to and from the site. The adult day care concept is designed to assist individuals who are unable to provide round-the-clock care for elderly parents and seniors who are not yet ready to reside in assisted living facilities or nursing homes. Mr. Ertel believes that the proposed use will not cause any detrimental impact to the health, safety or general welfare of the locale. In this regard, he testified extensively about the requirements of Section 502.1 of the B.C.Z.R. as they relate to special exception relief.

Guy L. Shaneybrook, Jr. appeared and testified on behalf of his wife and sister-in-law. Mr. Shaneybrook described the area and opined that an adult day care facility at this location would be appropriate. He also described the operation and services offered. He indicated that arts and crafts, exercise classes, and group activities would be available. There will be no meal

preparation on the site; however, food will be brought in to the site to provide two meals and one snack daily.

The testimony offered by the Protestants primarily related to the environmental constraints associated with this property. They believe that the proposed use is not permitted on R.C.20 zoned land.

The essential question raised in this case is indeed the permissibility of the proposed use on the subject parcel. In this regard, testimony offered by Mitchell Kellman, a Zoning Technician with the Department of Permits and Development Management (PDM), was particularly instructive. As Mr. Kellman noted, adult day care facilities are nowhere identified or defined in the B.C.Z.R. That is, unlike other land uses which are defined in Section 101 of the B.C.Z.R., or are referenced throughout that publication, an adult day care operation does not appear anywhere within the manual. The absence of this land use in the B.C.Z.R. is problematic for the Petitioners, particularly in view of Section 102.1 thereof which provides that "No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations, and this shall include any extension of a lawful nonconforming use." As has been previously stated and held, the Baltimore County Zoning Regulations are written in the inclusive. That is, any use permitted by right or special exception must be set out in the B.C.Z.R. (See Kowalski v. Lamar, 25 Md. App. 493 (1975)).

Nonetheless, Mr. Kellman believes that the proposed use is permitted by special exception in the R.C.20 zone. The use of land zoned R.C.20 is regulated in Section 1A05 of the B.C.Z.R. Subsection 1A05.2 identifies land uses that are permitted, either by right or special exception, in that zone. As noted above, the adult day care operation is not contained in that Section. However, Section 1A05.2.G of the B.C.Z.R. does allow, "...other uses substantially similar in character and impact to those uses ordinarily permitted by right or by special exception in the zone." Section 1A05.2.G is, in effect, a "catchall" in that it allows unspecified uses which are similar to those specifically enumerated therein, either by right or special exception. Contrary to Section 102.1 of the B.C.Z.R., this language empowers the Zoning Commissioner with

discretion to consider a particular use not enumerated in the B.C.Z.R. and determine whether same is consistent, appropriate, and/or permitted in the R.C.20 zone.

An examination of other land uses permitted by right or special exception by Section 1A05.2 of the B.C.Z.R. is appropriate. Most relevant is that use defined in Section 1A05.2.C.1. Therein, schools, including publicly or privately operated day care or nursery programs as an ancillary use of schools, is permitted by right. The Petitioner argues, and Mr. Kellman agrees, that an adult day care center is similar to a school, including such an institution with an ancillary day care or nursery program and thus, should be permitted by special exception.

In addition to these Sections of the B.C.Z.R., consideration is also given to the holding by then Deputy Zoning Commissioner Ann M. Nastarowicz in prior Case No. 89-405-SPHXA. The question presented in that case related to a group adult day care center. While recognizing that the B.C.Z.R. does not define an adult day care center specifically, Deputy Commissioner Nastarowicz held that such a land use was akin to a child care center. In that case, she granted special exception approval for an adult day care center which was to be operated contemporaneously with a child day care center on the same site. Based upon this decision and holding, Mr. Kellman indicated that the administrative policy of the Department of Permits and Development Management (PDM) has been to consider adult day care centers synonymous with day care centers for children.

In addition to this testimony and evidence offered, a series of letters in support of the request were offered. These included several from physicians in the area who believe that adult day care centers are needed in the eastern area of Baltimore County and the proposed use here is appropriate. Similar letters were received from the Essex Chamber of Commerce, Delegate Diane DiCarlo of the Maryland House of Delegates, the State Department of Health and Mental Hygiene, the Deep Creek Democratic and Civic Club, etc.

Based upon the testimony and evidence offered, I am persuaded to grant the Petition for Special Exception. I concur with Mr. Kellman's assessment and will exercise the discretion provided by Section 1A05.2.G of the B.C.Z.R. It need be emphasized that this Section allows the

Zoning Commissioner the authority to determine other land uses not specifically enumerated therein and permits same by special exception or by right in the R.C.20 zone. In my judgment, the adult day care center is a use similar to a school with an ancillary day care center so as to permit the use by special exception.

Having made such a finding, I also believe that the use would comply with the requirements of Schultz v. Pritts, 432 A.2d 1319 (1981) and Section 502.1 of the B.C.Z.R. The testimony and evidence offered was overwhelming that the proposed use will not be detrimental to the health, safety or general welfare of the surrounding locale. The existence of a children's day care center immediately adjacent to the site, a school across the street, and a strip shopping center abutting the southern property line, are compelling. I do not believe that the proposed use as described at the hearing will cause detrimental impacts on the surrounding locale.

My only reservation about the proposed use relates to the environmental constraints associated with this property. In this regard, a lengthy Zoning Advisory Committee (ZAC) comment was received from the Department of Environmental Protection and Resource Management (DEPRM). That comment recommends a denial of the request. However, this comment is written to request the denial of any development of the subject property. For example, the comment indicates that since forest clearing, stream crossing, and impervious surfaces will be added, the project should be denied. These impacts would result no matter what development was proposed for this parcel. Taken to its logical conclusion, adoption of this position would result in a moratorium on development of the property and would be confiscatory. All R.C.20 zoned land, by its nature, is environmentally sensitive. I do not believe that the impact of the proposed use here is particularly egregious when compared with the impacts of this use elsewhere within this zone. (See Schultz, *infra*.) Thus, I decline to deny this Petition on that basis.

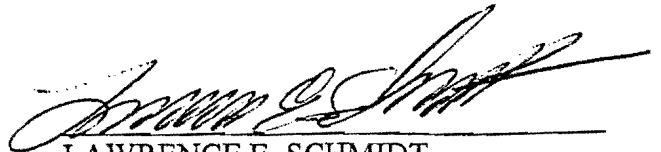
However, my decision in granting this special exception should not be construed as to constitute a waiver of any environmental requirements or conditions. The property is indeed subject to the Chesapeake Bay Critical Area requirements, need receive Critical Area Growth Allocation approval, and is subject to all other State, Federal, and Local environmental standards

This decision should not be considered a waiver or exception from any of those requirements. In answer to the limited question presented, I answer in the affirmative that the use is permitted in the R.C.20 zone and on this site by special exception. I also believe that the Petitioners have complied with the requirements of Section 502.1 of the B.C.Z.R.; however, I defer to DEPRM as well as the other interested State and Federal agencies for the determination that the proposed use can actually be constructed in accordance with their guidelines and standards. If the Petitioner can meet the environmental requirements, the project may move forward. If not, it cannot be implemented.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 30th day of May, 2000 that the Petition for Special Exception for an adult day care center on the subject property, zoned R.C.20, pursuant to Section 1A05.2.G of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 3, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The special exception use granted herein must be in compliance with all Federal, State and Local environmental standards and regulations.
- 3) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

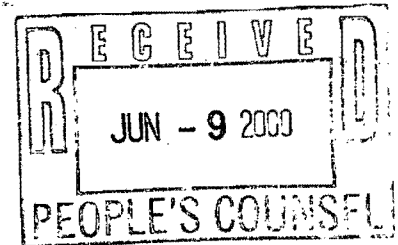


Baltimore County
Zoning Commissioner

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

May 30, 2000

Francis X. Borgerding, Jr., Esquire
409 Washington Avenue, Suite 600
Towson, Maryland 21204



RE: PETITION FOR SPECIAL EXCEPTION
W/S Back River Neck Road, 245' N of the c/l Luciano Drive
(720 Back River Neck Road)
15th Election District - 5th Councilmanic District
Patricia L. Shaneybrook and Susan H. Basso - Petitioners
Case No. 00-139-X

Dear Mr. Borgerding:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Exception has 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 Department of Permits and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Guy L. Shaneybrook, Jr., 1029 Chester Road, Middle River, Md. 21220
Ms. Susan Basso, 8613 Sassafras Court, Columbia, Md. 21046
Ms. Sara Bayne, 20 Drawbridge Court, Catonsville, Md. 21228
Mr. Carl Maynard, 1546 Denton Road, Baltimore, Md. 21221
Mr. Leroy Sennett, 1716 Beachwood Avenue, Baltimore, Md. 21221
Ms. Gloria Beseris, 814 Cedar Avenue, Baltimore, Md. 21221
Chesapeake Bay Critical Areas Commission
45 Calvert Street, 2nd Floor, Annapolis, Md. 21401
DEPRM; People's Counsel; Case File

*Reviewed with Carl
Maynard, no interest
in appeal. 1.12*





Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 720 Back River Neck Rd., Essex, MD 21220

which is presently zoned R.C. 20 and
D.R. 30.5

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

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for for an adult day care facility in an R.C. 20 zone pursuant to Section 1A05.2G of the Baltimore County Zoning Regulations

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

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

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

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

Francis X. Borgerding, Jr.
(Type or Print Name)

Signature

409 Washington Ave., #600, 410-296-6820

Address Phone No.

Towson MD 21204
City State Zipcode

Legal Owner(s):

Patricia L. Shaneybrook

(Type or Print Name)

Signature

Susan H. Basso

(Type or Print Name)

Signature

8613 Sassafras Court

Address

Phone No.

Columbia

MD

21046

City

State

Zipcode

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

Francis X. Borgerding, Jr.

Name

409 Wash. Ave., Ste. 600 410-296-6820

Address

Phone No.

Towson, MD 21204

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

2-3 hr

the following dates _____ Next Two Months

ALL ☒ OTHER ☐

REVIEWED BY: WJK DATE 9/28/99



00-139-X





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 3, 2001

NOTICE OF DELIBERATION

IN THE MATTER OF:

PATRICIA L. SHANEYBROOK & SUSAN H. BASSO –Legal Owner
Case No. 00-139-X

Having concluded this matter after three days of hearing (4/03/01; 4/18/01; and 5/02/01), public deliberation has been assigned as follows:

DATE AND TIME : THURSDAY, MAY 17, 2001 at 9:30 a.m.
LOCATION : Hearing Room 48, Basement, Old Courthouse

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants : John B. Gontrum, Esquire
(Back River Neck Peninsula Comm Assn)
Appellants /Protestants : Back River Neck Peninsula Community Assn
Carl Maynard, President
Leroy Sennett

Counsel for Petitioners : Francis X. Borgerding, Jr., Esquire
Petitioners : Patricia L. Shaneybrook /Susan H. Basso

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

c S.B.W.



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon
FROM: R. Bruce Seeley *MB*
DATE: November 15, 1999
SUBJECT: Zoning Item #139
720 Back River Neck Road

Zoning Advisory Committee Meeting of October 25, 1999

- X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:
- X Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).
 - X Development of this property must meet the requirements Baltimore County Bill No. 64-99 for public sewage connection, or COMAR 26.04.02 for the siting of an on-site sewage disposal system.
 - X The impacts of the proposed commercial development (forest clearing, stream crossing, storm water management facility, impervious surfaces) do not conserve existing natural resources on the site and are not consistent with the purpose and intent of the RC-20 zones outlined in Section 1A05.1.B of the Baltimore County Zoning Regulations nor the Coastal Rural Legacy Plan in which the property is a part of.
 - X The portion of the property on which the adult day care facility is proposed is in a Resource Conservation Area (RCA) of the Chesapeake Bay Critical Area. Given that the proposed use is in an RCA, denial of the Special Exception is requested.
 - X If the applicant wishes to pursue the project further, a critical area growth allocation approval will be necessary.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: November 2, 1999

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

SUBJECT: 720 Back River Neck Road

INFORMATION:

Item Number: 139

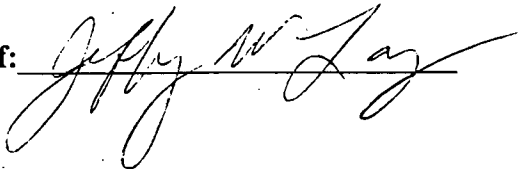
Petitioner: Patricia Shaneybrook

Zoning: RC 20

Requested Action: Special Exception

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not support an adult day care facility at the subject site. The proposed development is located on land zoned RC 20. Bill 64-99 does not permit new development to connect to public sewer if the land is zoned RC 20. Section 1A05 of the Baltimore County Zoning Regulations (BCZR) does not permit adult day care facilities in RC 20 zones. The BCZR permits day care facilities that are ancillary to a public school. Day care operations have traditionally been treated the same, regardless of whether they serve children or adults. In RC 20 zones, however, provision of day care seems to be intended solely for children since the use is to be ancillary to a school.

Section Chief: 

AFK/JL

BALTIMORE COUNTY, MARYLAND

CD

INTER-OFFICE CORRESPONDENCE

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

DATE: November 2, 1999

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

SUBJECT: 720 Back River Neck Road

INFORMATION:

Item Number: 139

Petitioner: Patricia Shaneybrook

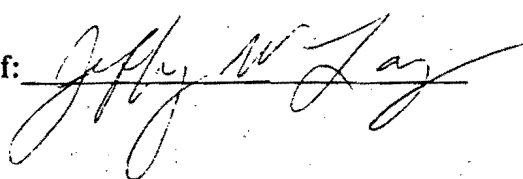
Zoning: RC 20

Requested Action: Special Exception

SUMMARY OF RECOMMENDATIONS:

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Section Chief:



AFK/JL

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

Date: November 4, 1999

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for November 1, 1999
Item No. 139

The Bureau of Development Plans Review has reviewed the subject zoning item. Site is zoned RC-20, Resources Conservation Zoning, designated W-7 and S-7, for which metropolitan facilities extensions are not planned or intended per the aerial water and sewerage plan maps.

RWB:HJO:jrb

cc: File

ZAC11019.139



**Maryland Department of Transportation
State Highway Administration**

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 8.25.99

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

RE: Baltimore County
Item No. 139 MJK

Dear Ms Stephens:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

RE: PETITION FOR SPECIAL EXCEPTION
720 Back River Neck Road, W/S Back River
Neck Rd, 245' N of c/l Luciano Dr
15th Election District, 5th Councilmanic

Legal Owner: Patricia L. Shaneybrook
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 00-139-X

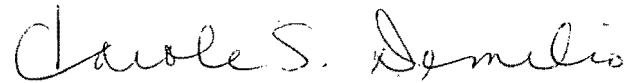
* * * * *

ENTRY OF APPEARANCE

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



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of October, 1999 a copy of the foregoing Entry of Appearance was mailed to Francis X. Borgerding, Jr., Esq., DiNenna & Breschi, 409 Washington Avenue, Suite 600, Towson, MD 21204, attorney for Petitioners.



PETER MAX ZIMMERMAN

CO/p42

BACK RIVER NECK PENINSULA
COMMUNITY ASSOCIATION

v.

PATRICIA L. SHANEYBROOK

AND

SUSAN H. BASSO

* COUNTY BOARD OF APPEALS
* OF BALTIMORE COUNTY
*
* CASE NO.: 00-139-X
*
*

ENTRY OF APPEARANCE

Dear Sir/Madam:

Please enter the appearance of Romadka, Gontrum & McLaughlin and John Gontrum on behalf of Back River Neck Peninsula Community Association, Defendant in the above captioned case.

JOHN B. GONTRUM



JOHN B. GONTRUM

Romadka, Gontrum & McLaughlin
814 Eastern Boulevard
Baltimore, Maryland 21221
410-686-8274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of January, 2001, a copy of the foregoing Entry of Appearance was mailed, postage prepaid to Francis X. Borgerding, Jr., Esquire, Suite 600, Mercantile-Towson Building, 409 Washington Avenue, Towson, Maryland 21204. People's Counsel for Baltimore County, 400 Washington Avenue, Towson, Maryland 21204.


JOHN B. GONTRUM

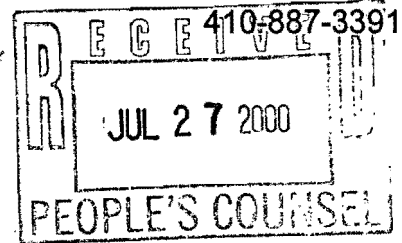


Baltimore County
Department of Permits and
Development Management

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

July 24, 2000

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



Dear Mr. Holzer :

SHANEYBROOK/BASSO

RE: Case No. 00-139-X, 720 Back River Neck Rd., 15th Election District

Please be advised that an appeal of the above-referenced case was filed in this office on June 29, 2000. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

NOTE: The subject property will be posted with the date, time, and location of the appeal hearing. If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

Sincerely,

Arnold Jablon
Director

AJ:

c:

✓ People's Counsel
Patricia L. Shaneybrook
Susan H. Basso



APPEAL

Petition for Special Exception
720 Back River Neck Road
W/S Back River Neck Rd., 245' N of the centerline Luciano Drive
15th Election District – 5th Councilmanic District
Patricia L. Shaneybrook and Susan H. Basso – Legal Owner
Case No. 00-139-X

Petition for Special Exception (filed 9/28/99)

Zoning Description of Property

Notice of Zoning Hearing (dated 10/22/99)

Certification of Publication (The Jeffersonian 10/28/99)

Certificate of Posting (posted 11/1/99 by Thomas P. Ogle, Sr.)

Entry of Appearance by People's Council (dated 10/28/99)

Petitioners' Sign-In Sheet

Protestants' Sign-In Sheet (NO PROTESTANTS SHEET FOUND)

Citizen Sign-In Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibits:

1A-1C Area Maps

2A-2G Photos

3- Plat to Accompany Special Exception (dated 8/16/99)

4- Copy of "Findings of Fact and Conclusions of Law"

5- Memo to Arnold Jablon from Arnold F. Keller

6- Letter to Gene Heisler, Assist. Dir. of Dept. of Health and Mental Hygiene
from Abdul Majid, Acting Chief, Division of Engineering and Maintenance

7- NOT IN FILE

8A- Letter from Alfred J. Shulman, M.D., to Guy Shaneybrook (dated 5/1/00)

Miscellaneous (not marked as exhibits):

Subpoena for Mitch Kellman to appear on 5/8/00 before Zoning Commissioner of Baltimore County

Letter from Diane DeCarlo, House of Delegates to Mr Guy Shaneybrook

Letter from Essex-Middle River Chamber of Commerce (1/4/00)

Zoning Commissioner's Order, dated 05/30/00 (Granted with restrictions)

Notice of Appeal received 06/29/00 from J. Carroll Holzer, Esquire on behalf of Patricia L. Shaneybrook and Susan H. Basso, Petitioners

c: Ms. Patricia L. Shaneybrook and Ms. Susan H. Bassco, 720 Back River Neck Rd., Essex, Md. 21220
J. Carroll Holzer, Esquire, 508 Fairmount Ave., Towson, Md. 21286
People's Counsel, M.S. 2010
Arnold Jablon, PDM Director
Zoning Commissioner

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1999, Legislative Day No. 14

Bill No. 64-99

Mr. Kevin Kamenetz, Chairman
By Request of County Executive

By the County Council, July 6, 1999

A BILL
ENTITLED

AN ACT concerning

Public Sewer Service and Building Permits

FOR the purpose of requiring certain property owners in certain areas to connect to the public sewer under certain circumstances; authorizing the issuance of building permits in certain areas under certain circumstances; prohibiting the extension of public sewer service to certain properties under certain circumstances; prohibiting certain property owners from receiving building permits under certain provisions; requiring a certain department to report to the County Council annually; providing for the construction of this Act; and generally relating to the building permits and the extension of public sewer service.

BY repealing and reenacting, with amendments

Section 35-177
Article IV - Metropolitan District
Title 35 - Water and Sewers
Baltimore County Code, 1988

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

JUDGE JOHN C. NORTH, II
CHAIRMAN
410-822-9047 OR 410-974-2418
410-820-5093 FAX

SARAH J. TAYLOR, PhD.
EXECUTIVE DIRECTOR
410-974-2418/26
410-974-5338 FAX



WESTERN SHORE OFFICE
45 CALVERT ST., 2ND FLOOR
ANNAPOLIS, MARYLAND 21401

EASTERN SHORE OFFICE
31 CREAMERY LANE
EASTON, MARYLAND 21601

STATE OF MARYLAND
CHESAPEAKE BAY CRITICAL AREA COMMISSION

August 2, 1993

RECEIVED

AUG 12 1993

ENVIRONMENTAL
IMPACT REVIEW

Ms. Pat Farr
Department of Environmental Protection
and Resource Management
County Courts Building, 401 Bosley Avenue
Towson, Maryland 21204

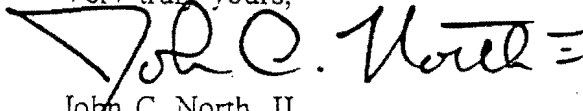
Dear Ms. Farr:

The Chesapeake Bay Critical Area Commission, at its meeting on July 7, 1993, approved a set of guidelines concerning land uses in the Resource Conservation Area. The Commission will use these guidelines during the required four-year comprehensive review of local Critical Area Programs.

Initially, the Commission staff will work with local planning and administrative staff to ensure full understanding of the application of the guidelines to specific local ordinances and programs. As the comprehensive reviews proceed, a panel of Commission members will use the guidelines to evaluate particular issues and needs raised by each jurisdiction, and to make recommendations to the full Commission membership.

The guidelines are enclosed. If you have questions or need additional information about the guidelines or the comprehensive review process, please contact Ms. Pat Pudelnkewicz, the Commission's comprehensive review coordinator, or the Commission staff planner assigned to your jurisdiction.

Very truly yours,


John C. North, II
Chairman

JCN/lah

Critical Area Commission guidelines for evaluation of local programs during comprehensive reviews

1. Land use and development in the Critical Area are subject to the regulations and policies of the Criteria, as implemented through local Critical Area programs. Where conflicts exist between the Criteria and either pre-existing underlying zones or locally-designated Critical Area zones, the Criteria control. Conflicts will be resolved through the comprehensive review process.
2. Institutional uses should be regarded as identical to industrial and commercial uses in terms of environmental performance and consistency with permitted uses in the RCA.
3. Intensification or expansion of existing industrial, commercial, and institutional facilities and uses may, but not necessarily shall, be permitted in the RCA. A variance, in accordance with COMAR 27.01.11, is required if such intensification or expansion involves a use which does not conform with provisions of a local program.
4. Any additional facility, structure, or use not directly related to and a part of an existing industrial, commercial, or institutional use in location, nature, and legal incorporation shall be considered a new use and may require growth allocation.
5. Any additional structures, facilities, and uses that are found to be unacceptable uses of the RCA, according to the guidelines listed above, must be located outside of the RCA or will require growth allocation.
6. If a use can be located outside the RCA, it should be located outside the RCA.

Approved by CAC - 7/7/93

subtitle and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state.

(c) Stormwater management measures shall be consistent with the requirements of Environment Article, §4-201 et seq., Annotated Code of Maryland.

.05 Resource Conservation Areas.

A. Resource conservation areas are those areas characterized by nature-dominated environments (that is, wetlands, forests, abandoned fields) and resource-utilization activities (that is, agriculture, forestry, fisheries activities, or aquaculture). These areas shall have at least one of the following features:

- (1) Density is less than one dwelling unit per 5 acres; or
- (2) Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.

B. In developing their Critical Area programs, local jurisdictions shall follow these policies when addressing resource conservation areas:

- (1) Conserve, protect, and enhance the overall ecological values of the Critical Area, its biological productivity, and its diversity;
- (2) Provide adequate breeding, feeding, and wintering habitats for those wildlife populations that require the Chesapeake Bay, its tributaries, or coastal habitats in order to sustain populations of those species;
- (3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities, and aquaculture; and
- (4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide.

C. In developing their Critical Area programs, local jurisdictions shall use all of the following criteria for resource conservation areas:

- (1) Land use management practices shall be consistent with the policies and criteria for habitat protection areas in COMAR 27.01.09, the policies and criteria for agriculture in COMAR 27.01.06, and the policies and criteria on forestry in COMAR 27.01.05.
- (2) Agricultural and conservation easements shall be promoted in resource conservation areas.

(3) Local jurisdictions are encouraged to develop tax or other incentive/disincentive programs to promote the continuation of agriculture, forestry, and natural habitats in resource conservation areas.

* (4) Land within the resource conservation area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. Within this limit of overall density, minimum lot sizes may be determined by the local jurisdiction. Local jurisdictions are encouraged to consider such mechanisms as cluster development, transfer of development rights, maximum lot size provisions, and/or additional means to maintain the land area necessary to support the protective uses.

* (5) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the density specified in §C(4), above, shall be allowed in resource conservation areas. Additional land may not be zoned for industrial or commercial development, except as provided in Regulation .06, below.

(6) Local jurisdictions shall develop a program to assure that the overall acreage of forest and woodland within their resource conservation areas does not decrease.

(7) Development activity within the resource conservation area shall be consistent with the criteria for limited development areas in Regulation .04.

(8) Nothing in this regulation shall limit the ability of a participant in the Agricultural Easement Program to convey real property impressed with such an easement to family members provided that no such conveyance will result in a density greater than 1 dwelling unit per 20 acres.

.06 Location and Extent of Future Intensely Developed and Limited Development Areas.

A. Intensely developed and limited development areas may be increased subject to these guidelines:

(1) The area of expansion of intensely developed or limited development areas, or both, may not exceed an area equal to 5 percent of the county's portion of the resource conservation area lands that are not tidal wetlands or federally owned;

(2) When planning future expansion of intensely developed and limited development areas, counties, in coordination with affected

Prince George's County has also completed its portion of the quadrennial review per §8-1809(g) of the *Critical Area Law* and submitted the required documentation package. According to CBCAC Planner Theresa Corless, who briefed the Commission for information-only, Prince George's County submitted the following information:

- A statement certifying that the required review has been accomplished;
- Five proposed amendments;
- Updated resource inventory maps, including watersheds of anadromous fish spawning streams, agricultural land, forest cover, sand and gravel resources, and physical characteristics (tidal wetlands, non-tidal wetlands, and steep slopes);
- Current growth allocation status:
 - * Original acreage: 328
 - * Acreage used: 150.3
 - * Acreage remaining: 177.7

The proposed amendments mainly clarify the existing ordinances including a requirement that a developer obtain and record, amongst the land records of the County, an approved Conservation Plan and Conservation Agreement prior to issuance of a grading or construction permit in the Critical Area. An amendment proposed to the Subdivision Regulations, according to Ms. Corless, would clarify that a subdivision plat for minor subdivisions need not be filed with the County if the land was legally subdivided prior to October 30, 1989. A proposed amendment to the Zoning regulations would allow the enlargement of a nonconforming structure without a Special Exception if: impervious surfaces are the only nonconforming element; there is no net increase in impervious surfaces; and, all structures existed prior to December 1, 1985. The *Anti-Litter and Weed Ordinance* will be amended to add a definition for "underbrush" and to clarify the definition of "weeds". Other amendments are proposed by Prince George's County which would permit the enlargement of a nonconforming use, building or structure if the property meets the County's variance requirement. Following a public hearing, details of these proposed amendments, according to Ms. Corless, will be presented for formal Commission action at the June meeting.

SPECIAL ISSUES

✧ Uses In The RCA

For some time the Commission and staff have been considering guidance for local jurisdictions on permitted Uses in the Resource Conservation Area (RCA) - the subject of a draft paper prepared by Mr. John Lipman first presented at last year's October Commission retreat.

Commissioner Whitson, Chair of the Program Implementation Subcommittee commented that the need

for a policy statement, based on the Lipman paper, is urgent for use in conjunction with the on-going quadrennial Comprehensive Reviews. A meeting of the Subcommittee, according to CBCAC Project Evaluation Division Chief Ren Serey, will be held, prior to the June Commission meeting, to discuss and analyze uses permitted in the RCA in all jurisdictions. Issues identified in this meeting will be reported out to the full Commission at the June meeting.

A series of principals developed by Mr. Lipman will be used for discussion and comparison to try to bring some uniformity to the principals which are as follows:

- the activity or use permitted must be related to a resource-utilization activity and dependent on location in the RCA;
- the activity or use permitted must also be permitted under the water-dependent facility or the shore erosion protection criteria;
- the activity or use permitted must also be permitted by a local variance as an appropriate intensification or expansion of an existing non-conforming use;
- the use or activity permitted is recreational and public-oriented and if there are no structures in the RCA, such as the Queenstown Harbour Golf Course in Queen Anne's County;
- the use or activity permitted is for government or quasi-government purposes and is of RCA character, or is determined by the local jurisdiction and the Commission to be of public necessity; and,
- the use permitted is for residential purpose at a density of one dwelling unit per 20 acres, or the use is of a type and intensity traditionally associated with residential use, such as a home occupation or a Bed and Breakfast in an existing dwelling.

Ms. Carolyn Watson, standing in for Commissioner Parris Glendening, ventured that there appears to be a double standard wherein a public institutional use is permitted in the RCA without Growth Allocation and a private institution is denied use even if it serves a public need.

Dr. Sarah Taylor, CBCAC Executive Director, explained that the pivotal issue of Uses in the RCA is the public-private ownership, public-private ability to deal with the Criteria and an effort to avoid penalizing the local jurisdictions for pockets of Growth Allocation for a governmental facility in the RCA. The "ownership" issue, according to Dr. Taylor, will be addressed.

Tentative decision:

7/28/2000

Eligible for special exception 1A0526

Both sides represented

Judgment call /

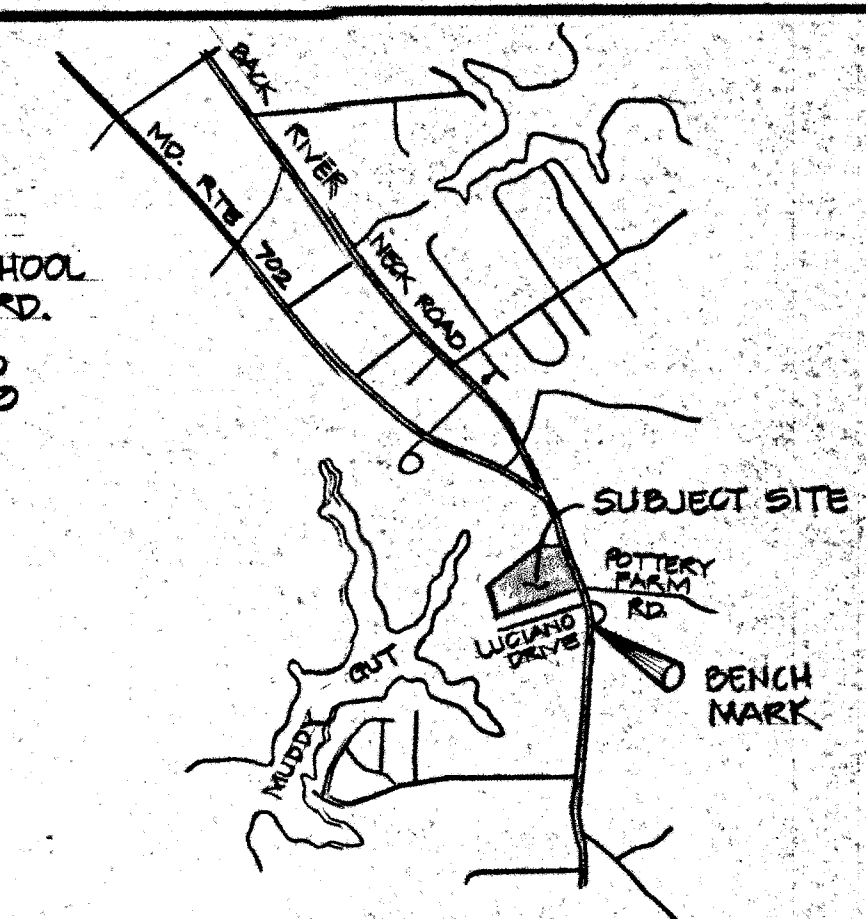
Approval subject to environmental standards

No need to participate

Will review environmental comments

PMZ

BENCH MARK
 NG 13548 ELEV. 23.783*
 S 8327.30 E 53531.27
 SET RR SPIKE IN MACADAM DR.
 TO BACK RIVER ELEMENTARY SCHOOL
 ON 'E' SIDE BACK RIVER NECK RD.
 * MUST BE ADJUSTED (-1.01') TO
 MATCH 'NAVD 88' - SEE NOTE 9

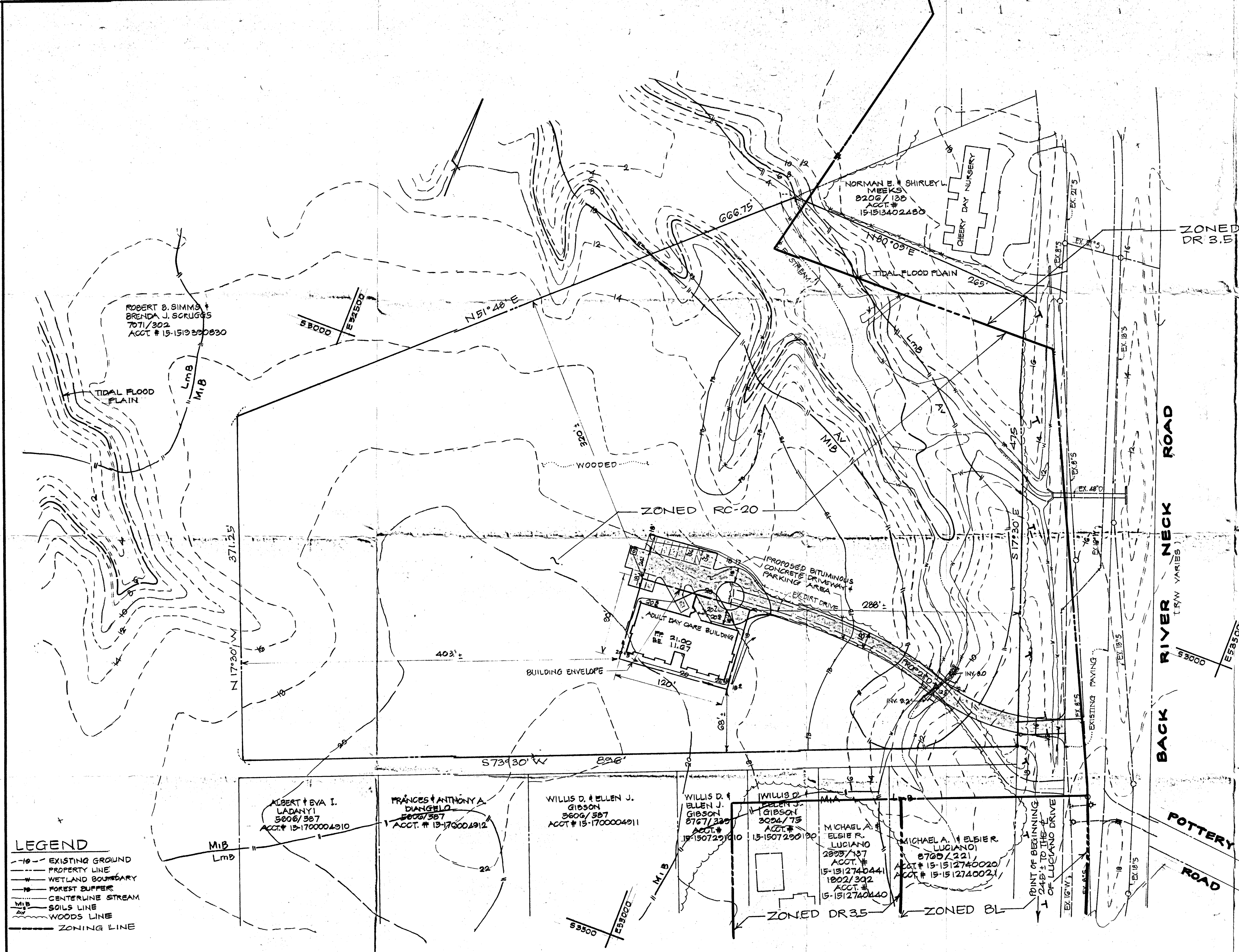


VICINITY MAP
 SCALE 1" = 2000'

GENERAL NOTES

1. PROPERTY OWNER - PATRICIA L. SHANEYBROOK & SUSAN H. BASSO
8613 SASSAFRAS COURT
COLUMBIA, MD. 21046
2. DEED REFERENCE - 12761/224
3. TAX ACCOUNT NO. - 15-1503472094
4. TRACT ACREAGE - 9.961 ACRES
5. TRACT ZONING - DR 3.5, RC 20
6. PROPERTY INFORMATION - TAX MAP 97, GRID 24, PARCEL 703
7. EXISTING USE - VACANT LAND
8. PROPOSED USE - ADULT DAY CARE FACILITY
9. TOPO SHOWN HEREON IS 'NAVD 88' VERTICAL DATUM.
10. PROPERTY ADDRESS - #720 BACK RIVER NECK RD.
11. PARKING REQUIRED = 1 RS/EMPLOYEE OF LARGEST SHIFT = 8
12. PARKING PROPOSED = 8 RS + 2 HANDICAP = 10 TOTAL RS.
13. MAXIMUM BLDG. HEIGHT ALLOWED IN RC-20 ZONE = 35'
PROPOSED BLDG. HEIGHT = 20'±

ZONING HISTORY
 THERE ARE NO PREVIOUS ZONING CASES ON THIS PROPERTY



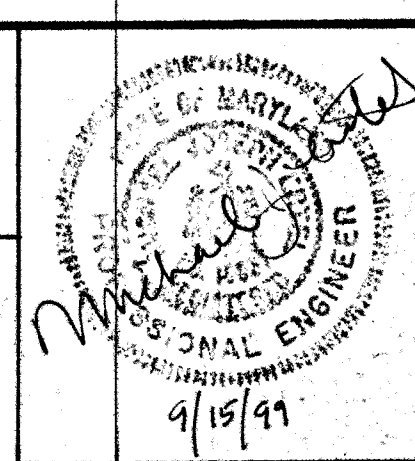
- LEGEND**
- - - EXISTING GROUND
 - - - PROPERTY LINE
 - - - WETLAND BOUNDARY
 - - - FOREST BUFFER
 - - - CENTERLINE STREAM
 - - - SOILS LINE
 - - - WOODS LINE
 - - - ZONING LINE

00-139-X

#139

DEVELOPER
 BASSBROOK INC.
 1039 CHESTER RD.
 BALTIMORE, MARYLAND 21220

ENGINEER
 M.J. CONSULTING
 5317 EAST GLEN RD.
 ELLICOTT CITY MD. 21043
 410-465-9573 PHONE
 410-465-9565 FAX



**PLAT TO ACCOMPANY PETITION
 FOR SPECIAL EXCEPTION**
"GRACEFUL LIVING"
 ADULT DAY CARE CENTER

SCALE: 1" = 50'
 ELECTION DISTRICT 15
 COUNCILMATIC DISTRICT 5

AUGUST 16, 1999
 BALTIMORE COUNTY, MD.

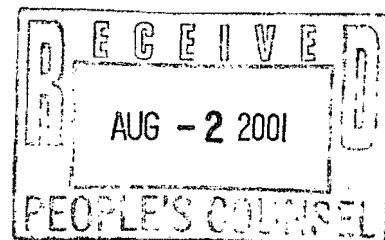


Baltimore County
Zoning Commissioner

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

August 2, 2001

Mr. & Mrs. Daniel Dietrich
11444 Glen Arm Road
Glen Arm, Maryland 21057



RE: PETITION FOR VARIANCE
E/S Glen Arm Road, 650' N of the c/l Glen Arm Road
(11444 Glen Arm Road)
11th Election District - 5th Council District
Daniel Dietrich, et ux - Petitioners
Case No. 01-460-A

Dear Mr. & Mrs. Dietrich:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has been denied, 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 Department of Permits and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Dudley Brownell, 11520 Glen Arm Road, Glen Arm, Md. 21057
Mr. Marvin Johnson, Jr., 11510 Glen Arm Road, Glen Arm, Md. 21057
Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Md. 21204
Code Enforcement Division, DPDM; People's Counsel; Case File

SHOULD P.C. APPEAL?

DENIED

Protestants involved?

X Yes No

PMZ:

N/A

CSD:

N/A

follow up appealed

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



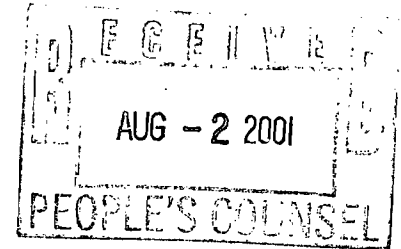
Baltimore County
Zoning Commissioner

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

July 25, 2001

Ms. Vivian C. Machovec
6728 Joliette Lane
Charlotte, North Carolina 28277

RE: PETITION FOR VARIANCE
W/S Riverside Avenue, 130' S of the c/l Mitchell Road
(1344 Riverside Avenue)
15th Election District - 7th Council District
Vivian C. Machovec, et al, Owners; Scott M. Merbach, et al, Contract Purchasers
Case No. 01-484-A



Dear Ms. Machovec:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has 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 Department of Permits and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Scott M. Merbach
1429 Sussex Road, Baltimore, Md. 21221
Chesapeake Bay Critical Areas Commission,
1804 West Street, Suite 100, Annapolis, Md. 21401
Office of Planning; Bureau of Development Plans Review (DPDM);
DEPRM: People's Counsel; Case File

SHOULD P.C. APPEAL?

GRANTED
W/RESUR

Protestants involved?

Yes ☒ No

PMZ:

No *PMZ 8/10*

CSD:

No *6/1*

replace existing on
waterfront lot

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